



OMA Government Affairs Committee

August 22, 2019

AGENDA

Welcome & Introductions

Scott Corbitt, Region Vice President, Anheuser-Busch
Committee Chair

Josh Zabek, General Manager, Anheuser-Busch
Host

National Issue Minute

Luke Harms, Senior Manager, Government Relations, Whirlpool
Committee Vice Chair

OMA Counsel's Report

Chris Slagle, Partner, Bricker & Eckler LLP,
OMA General Counsel

Staff Reports

Ryan Augsburg, OMA Staff

Rob Brundrett, OMA Staff

Kim Bojko, Partner, Carpenter Lipps & Leland
OMA Energy Counsel

John Seryak, RunnerStone
OMA Energy Engineer

Committee Members

Gene Pierce, Pierce Communications
Ohioans Against Corporate Bailouts

Special Guest

Discussion Agenda

- State Budget
- Business Taxes in the Budget
- HB 6 Electricity Power Plant Bailouts
- HB 6 Referendum
- 2019 Legislative Outlook
- Lake Erie Bill of Rights
- PTSD Coverage under Workers' Comp
- OMA Workforce Opportunities

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2019 Government Affairs Committee Calendar
Meetings will begin at 9:30 a.m.

Wednesday, November 13

Public Policy “Hot Topics” August 22, 2019

Overview

Activity has been high since the Government Affairs Committee met last on June 5. Budget legislation was the biggest bill, but a far-reaching and controversial bailout package for at-risk nuclear and coal power plants rivaled the budget as top priority dragging out completion of the state budget until mid-July. Both legislative debates significantly impact manufacturers and the OMA played a major advocacy role.

Legislative Branch Composition & Control

- Senate (Republicans control 24 – 9)
- House of Representatives (Republicans control 61 – 38)

A session calendar is included in member resource materials. Lawmakers are scheduled to have an active autumn and early winter.

The Budget

The state budget is actually a collection of budget bills, but under Ohio’s constitution, they must all be adopted before July 1. Surprisingly, the budget was not approved on time and a continuing resolution kept government operating during the Independence Day week. The sticking point for budget passage was House Bill 6, the electricity generation bailout. Also in the mix was horse trading related to benefit expansions in the workers comp budget bill.

Main Operating Budget

As expected, the main Operating Budget, HB 166 has become a Christmas tree for hundreds of law changes. The House approved the budget with widespread bipartisanship. The Senate completed work on the budget by middle of June, however an impasse between the House and Senate followed that went unresolved until mid-July.

State Budget & Tax Policy

Of interest to businesses was a tax increase on business “owners” who have enjoyed zero state tax liability on their first \$250,000 of income since 2014. The intended justification: too many professionals are getting the tax holiday but not doing enough in their business to stimulate the economy.

After a contentious debate the OMA and allies were able to retain the business income tax deduction at current levels. Only lawyers and lobbyists lose the benefit under the final legislation. See tax section.

Also included in the House passed version of the budget were two tax amendments beneficial to manufacturers. One facilitates state support for capital reinvestment of existing companies. The other expands a favorable sales tax exemption for makers of food and beverage. These constitute some big wins for manufacturers. See tax section for more information. Numerous other more targeted issues that impact some group of manufacturers were debated within budget bill.

Workers’ Comp Claims Expansion to Mental Injury

The Workers’ Comp budget became a loaded political football over the course of its debate. Originally the bill contained very little policy and was mainly an appropriation vehicle. The Ohio House amended the bill to include coverage of PTSD for emergency first-responders, illegal alien provisions, settlement changes, and new severe penalties for employers who even mistakenly misclassify their employees. The PTSD extension sets a dangerous precedent for extending mental coverage into a system that has required a physical injury to receive treatment. The OMA has long opposed the extension of PTSD.

Cooler heads prevailed and the Senate stripped the bill of all policy and eventually an agreement was made in conference committee to use the Senate version of the bill. Legislative leaders have expressed they would like to provide PTSD coverage for first responders. The business community is working to come up with a solution that would provide the necessary coverage outside of the BWC system.

Transportation Budget

The Transportation Budget (House Bill 62) was completed in remarkable bipartisan fashion in early April. The bill contained an increase in motor fuel tax, bifurcating the tax on gasoline and diesel for the first time.

While the OMA supported a reasonable gas tax adjustment to provide for needed road and bridge construction, the OMA did not support the taxing of diesel (now \$0.47 / gallon) at a higher rate than gasoline (\$0.385 / gallon). The OMA articulated concerns on disproportionate diesel fuel increases since diesel costs will be passed on to trucking customers (manufacturers) in the form of variable fuel costs.

Electricity Bailouts / Market Distortion

After being denied new subsidy payments for many years, proponents of nuclear power plant bailouts succeeded earlier this summer at winning approval of HB 6. The bill transfers money from customers to power plant owners and in so doing, distorts markets. The OMA has been a leading opponent to the various prior attempts and has been heavily engaged in the legislative advocacy effort. The legislative chapter has turned, but the book is not over. Now comes a referendum proposal and implementation. Stay tuned and stay engaged! See energy report.

Other Priority Legislation

Customarily the first bills introduced in a legislative session reflect the highest priorities of the chamber's leadership. In the Senate, SB 1 is a regulatory reform bill taking aim at the number of regulations on the books. A version of SB 1 was included in the state budget bill.

- SB 2 was introduced to complement the Governor's H2Ohio program and deals Ohio water quality. The state budget also included portions of SB 2.
- SB 3 deals with reform of drug sentencing laws. House Bill 2 impacts workforce development. The bill sets aside money for industry sector partnerships and industry recognized credentials. The OMA is supportive and is working with the House on improvements.
- HB 1 is a House version of criminal sentencing reform and was passed at the end of the summer session and has moved on to the Senate.
- HB 2 is a workforce development bill that the OMA has been supportive. This bill would be the implementing language for the money set aside in the state budget for industry sector partnerships and the new TechCred program.
- HB 3 also known as Aisha's Law is a domestic violence bill and currently remains in the House.

Ballot Reform

Last November Ohioans defeated a criminal sentencing constitutional amendment. The issue once again ignited the debate about how well-financed out of state interests are able to use Ohio's constitution as a petri dish for policy experimentation. The initial interest in a fix to the ballot process has dissipated.

Workforce Development

A top priority for Ohio manufacturers, the OMA is in its third year supporting an industry sector partnership model on a regional basis. Your company is invited to opt-in to next steps and participate in 2019 activity. Please contact the OMA staff to get your team engaged in regional efforts to develop a modern manufacturing workforce. The OMA's third annual summit will be held on October 29 and will build on the workforce successes over the past several years. Make sure your company is plugged in. See included sponsorship under Human Resources.

The OMA was successful in securing \$5 million in the state budget (HB 166) to help support the industry sector partnership approach. Another \$30 in TechCred money can be used by individual companies to help upskill incumbent or prospective employees.

Environment

The DeWine administration remains focused on water quality across Ohio. The Governor introduced the H2Ohio program which is designed to attack water quality through three agencies, EPA, AG, and ODNR. Each agency has a different focus to come at the problem. Funding for the program was included in the passed state budget. H2Ohio does not take the heavy handed regulatory approach we had seen previously.

The budget also included an amendment that takes judicial standing away from bodies of water. This is in direct response to the Lake Erie Bill of Rights where Lake Erie was giving standing to sue parties who infringed on the Lake. See environment report.

Unemployment Compensation

The legislature remains on the sideline of true unemployment compensation reform. After some early comments on putting reform into the state budget, the issue has once again fallen to the wayside. There was a short-lived effort in the Senate to extend the current compromise but there was not the appetite in the House to continue the benefit freeze and temporary tax increase.

There seems to be some support for reform in some smaller circles of the House but not enough to gather the steam necessary to tackle such a controversial issue.

Tort Reform

The OMA is supporting legislation to shorten the statute of limitations for business contracts. The OMA is also working to protect the advantageous statute of repose. Limitations on third party financing of class action litigation is also a priority.

More recently legislation to revise Ohio's whistleblower protections could morph into a false claims with a qui tam right for citizen initiated lawsuits of the State. We are watching this with concern. See counsel's report.

Right to Work

No action anticipated.

Workers' Comp & Industrial Commission

The BWC continues to give state fund employers massive rebates. Last month the Bureau announced another \$1.5 billion back for employers. Employers can expect to see their checks started later this year.

Leadership

Ex-Im Bank Faces Sept. 30 Reauthorization Deadline

August 16, 2019

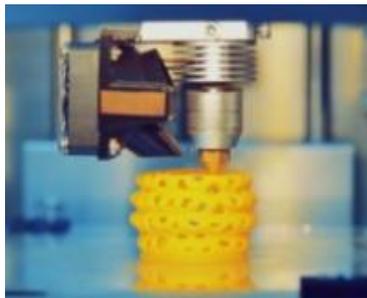


The OMA urges members to contact their **federal lawmakers** in support of re-authorization of the Export-Import Bank of the United States (Ex-Im). Or sign onto **the NAM's letter** by Sept. 6.

Ex-Im operations are being threatened by a deadline of Sept. 30, the date by which Congress must re-authorize the bank's charter. As the official export credit agency of the United States, Ex-Im has served **200 exporters** in Ohio since 2014, with a combined \$1 billion in exports. It's estimated that when Ex-Im activities were recently hobbled due to the lack of a board quorum, U.S. manufacturers lost \$119 billion in output, which translated into 80,000 fewer manufacturing jobs in 2016 and 2017 alone. *8/15/2019*

3D Manufacturing Conference in Cleveland, August 20

August 16, 2019



On Thursday, Aug. 20, Northeast Ohio's MAGNET will host its **Additive Manufacturing Cluster of Ohio Conference** in Cleveland, from 8 a.m. to 5 p.m. According to the organizers, conference attendees will walk away with a better understanding of how to use 3D printing to gain a competitive edge in the marketplace.

For insight before you attend, check out this **blog post** on how additive manufacturing can benefit your operations. *8/13/2019*

Governor Plans Business Development Mission in Japan

August 16, 2019



Gov. Mike DeWine will **travel to Japan** next month, Sept. 8-13, to seek new opportunities for partnership between the island nation and Buckeye State. Japan is Ohio's top international investor, with 72,860 Ohioans employed at 852 Japan-owned establishments across the state. Japan is also the fifth largest export market for Ohio products, base on 2018 data.

As part of his trip, the governor will participate in the Midwest U.S.-Japan Association's annual conference. Accompanying him will be Director Lydia Mihalik of the Development Services Agency, as well as JobsOhio President J.P. Nauseef. *8/14/2019*

Ohio's New Budget Funds Port Infrastructure Program

August 16, 2019

The new state budget (**House Bill 166**) — passed and signed in mid-July — includes a provision to create the **Ohio Maritime Assistance Program**. Under this new program, certain port authorities can apply for grants to construct new marine cargo terminals or improve existing terminals on the shores of Lake Erie or the Ohio River. Funded at \$23 million over the biennium, the program will rely on dollars used by the state to award loans to businesses for land and building acquisition, construction, expansion or renovation, and equipment purchases.

Ohio is among the top ten states for maritime port freight, yet has not historically invested state revenue into port infrastructure, as do

larger port states. The OMA supports the utilization of state funds to enhance Ohio's maritime ports, and the association welcomes the funding provision in the new budget. 8/15/2019

Manufacturing has Fueled Cleveland's Recent Economic Gains August 9, 2019



The Federal Reserve Bank of Cleveland's newly released **Cleveland Metro Mix** indicates that the city's economy continues to improve. While employment grew slowly in 2018, the metro's unemployment rate dropped steadily in the early part of 2019, landing at 4.3% in May. Manufacturers have played a key role in that improved statistic, with manufacturing employment growing 2.2% year-over-year as of December 2018. Moreover, manufacturing accounted for about one-third of the 7,728 net new jobs in the metro area between December 2017 and December 2018. 8/6/2019

Cincinnati's Manufacturing Growth Leads State, U.S. Averages August 9, 2019



The Federal Reserve Bank of Cleveland has also released its latest **Metro Mix report for Cincinnati**. At 3.6% as of April, Cincinnati's unemployment rate was 0.4% lower compared to a year earlier.

Manufacturing has been a top performing sector in the metro for several months, with 2.8% employment growth year-over-year. From December 2017 through December 2018, manufacturers in and around Cincinnati added more than 3,270 jobs, while outpacing the

statewide and U.S. economic growth averages for the sector. 8/6/2019

Manufacturing Report Card Gives Ohio a 'B' August 9, 2019

Ohio's manufacturing industry has earned a solid overall grade of "B" in Ball State University's **annual report card** that critiques each state's manufacturing sector. The study considered several factors across eight broad categories, including taxes, human capital, and global reach. Ohio's top grade came in logistics ("A"), while its lowest grade was for worker benefit costs ("C-"). The only category in which Ohio declined from 2018 was sector diversification, dropping to a "B-" from a "B." Only five states were given a grade of "A," but four of them are in the Midwest or are neighboring states: Indiana, Iowa, Kentucky, and Michigan. 8/7/2019

At Groundbreaking in Lancaster, Pence Calls for Ratification of USMCA August 2, 2019



Vice President Mike Pence visited Fairfield County earlier this week to lead a **groundbreaking ceremony** for OMA member and auto supplier Magna Seating. The \$60 million manufacturing facility near Lancaster will provide an estimated 300 jobs by 2021. It will be Magna's fifth manufacturing plant in Ohio.

Speaking to more than 300 attendees, the vice president focused on the need for Congress to approve the USMCA trade deal yet this year. The NAFTA replacement would encourage more goods and materials to be manufactured in the U.S., he said. **Canada and Mexico** buy more manufactured goods from Ohio than the rest of the world combined. As of 2017, Ohio's top export to both those countries was

transportation equipment, totaling nearly \$8 billion. 7/30/2019

Taking part in this week's groundbreaking for Magna Seating's new facility near Lancaster were (from left) U.S. Rep. Steve Stivers, Magna CEO Don Walker, Vice President Mike Pence, and Acting Director of the U.S. Labor Department Patrick Pizzella. (Photo credit: Magna)

State Rep. Mark Romanchuk to Run for Ohio Senate August 2, 2019



State Rep. **Mark Romanchuk** (R-Mansfield) has announced he will run for the upper house in 2020, vying to represent Ohio's 22nd Senate District. The seat is currently held by Senate President Larry Obhof, who is term-limited.

In his **announcement**, Rep. Romanchuk said: "I look forward to continuing to fight for the conservative principles of lower taxes, less spending, and more jobs for the people of Richland, Ashland, Holmes, and Medina counties as a member of the Ohio Senate."

Mark and his wife Zoi own a manufacturing firm, PR Machine Works, Mansfield, which is an OMA member. OMA staff members frequently work with Mark on policy matters. He brings a strong background in business and data analysis to his work in the General Assembly. **Learn more** about Mark and how to **support** his campaign. 8/1/2019

U.S. Bridge's Richard Rogovin Appointed to Ex-Im Advisory Committee

August 2, 2019

Richard Rogovin, chairman and general counsel of OMA member U.S. Bridge in Cambridge, Ohio, has been appointed to the advisory committee of the Export-Import Bank of the United States (**Ex-Im**). The advisory committee, as required by Congress, advises Ex-Im on its programs, which provide competitive financing to support American jobs through exports. Ex-Im is self-funded through user fees it collects.

In May, the U.S. Senate confirmed Kimberly Reed as president of the Ex-Im, along with two other board appointees, allowing the bank to once again approve loans greater than \$10 million. The OMA strongly supports the Ex-Im, which serves **200 exporters** in Ohio with a combined \$1 billion in exports.

Ex-Im's full operations risk ceasing again Sept. 30 when its charter is scheduled to expire. The NAM this week **announced** its support for bipartisan legislation that would reauthorize the bank for 10 years. 8/1/2019

Magazine: Ohio a Top 10 State in Manufacturing, Technology Categories August 2, 2019

In the latest 50-state comparisons by **Business Facilities** magazine, Ohio and its manufacturing muscle fare well in several categories. As expected, the Buckeye State finished strong for overall manufacturing employment (No. 3) and automotive manufacturing strength (No. 2). Some of Ohio's other top 10 rankings include the following:

- 6th in Qualified Opportunity Zones;
- 7th in Solar Power (percentage of electricity);
- 8th in Percentage of Workforce in Manufacturing;
- 9th in Aerospace Production;
- 10th in Foreign Trade Zone Activity (imports);
- 10th in Tech Job Employment; and
- 10th in Tech Jobs Growth.
-

The publication found the best overall business climate in Tennessee, due in large part to its “customized workforce training, prefertilized sites, and lower industrial electricity costs.” 7/30/2019

26, 2019



The OMA has updated its annual **Ohio Manufacturing Counts** publication for 2019-2020. Compiled using research from state and federal agencies, the document is a data-driven look at the significant impact manufacturing has on Ohio’s economy.

Containing more than 20 pages of facts and figures, showcased with tables and charts, the publication includes findings such as:

- > Manufacturing is responsible for around 17% of Ohio’s Gross Domestic Product – \$107.9 billion in 2017 – making Ohio’s manufacturing sector the nation’s third largest after California and Texas.
- > As the largest industrial sector in the state, manufacturing provides more than 700,000 jobs for Ohio workers.
- > Manufacturers in Ohio have an annual payroll of \$40 billion, the highest total annual wages of any Ohio industry sector.

Future updates to the publication will be made as new data become available. 7/23/2019

Poll: Biden is Only Democratic Candidate Leading Trump in Ohio
July 26, 2019

Fresh Facts Spotlight the Power of Ohio Manufacturing

July

A new **Quinnipiac Poll of Ohio** released Thursday shows former Vice President Joe Biden as the only Democratic presidential candidate leading President Donald Trump in a one-on-one matchup, with the president virtually tied with five others.

Nationally, Biden holds a comfortable lead over the other top dozen Democratic presidential candidates, according to RealClearPolitics’ **mix of polling data**. 7/24/2019

Ohio Legislature Sets Calendar for Second Half of Year

July 26, 2019



Following the House’s final passage of the nuclear bailout bill, activity at the Ohio Statehouse will slow to a trickle for the rest of the summer.

Both the House and the Senate have issued their tentative **session calendar** for the second half of 2019, with both chambers set to be in session Wednesday, Sept. 18. 7/24/2019

Feds Focus on Promoting Corporate Compliance

July 26, 2019

OMA Connections Partner Calfee reports that federal agencies have recently released multiple sets of guidance. This action re-emphasizes the importance of implementing, maintaining, and enforcing effective corporate compliance programs. See **Calfee’s report** for details. 7/23/2019

**Up to \$25,000 in State Funding Available for Ohio Manufacturers for Innovation
July 26, 2019**

If finding funding for innovation has been a barrier, manufacturers can receive up to \$25,000 worth of innovation work with Eureka! Ranch, a leading provider of innovation services for more than 30 years. Eureka! Ranch's Innovation Engineering teaches advanced methods and tools for creating big ideas, accelerating projects, and solving daily challenges. The grant funding pays for 80% of the costs associated with training, tools, and/or innovation projects to develop new or improved strategies, products, services, etc. But you need to act fast. Funding must be spent by Sept. 30, 2019. **Learn more** and check your company's eligibility. 7/25/2019

**It's Time to Start Planning for MFG DAY
July 26, 2019**



August is nearly here and it's time to start planning for **Manufacturing Day** — the annual celebration of modern manufacturing aimed at inspiring young people to consider manufacturing careers. This year, MFG DAY will be Friday, Oct. 4.

The OMA encourages members to open their doors to students, parents, teachers, and community leaders. (**Here** is who has already **Economic Profiles Updated for All 88 Ohio Counties**
July 19, 2019

registered.) While MFG DAY is Oct. 4, companies and organizations should plan their events on the date in October that works best for them. Events can be marked as public or invitation-only. **Here** is how to register. 7/24/2019

**Grocery Manufacturers Recognize J.M. Smucker Leader
July 19, 2019**



Richard K. Smucker, executive chairman of the board of J.M Smucker Co. of Orrville — an OMA member company — will be inducted into the Grocery Manufacturers Association's **Hall of Achievement** on Aug. 15 in Colorado Springs, Colo.

Richard will join his father (Paul) and brother (Tim) in the hall. His induction will bring to 47 the number of honorees since the award's inception in 1984.

Congratulations to the Smucker family. 6/17/2019



The Ohio Department of Job and Family Services has updated the **economic profiles for all of the state's 88 counties**. These reports provide a snapshot of the key economic indicators — such as local workforce numbers — that can be used in strategic planning, economic development, and policy development. Information includes employment by industry; wage and hiring trends; employment by firm size; local area talent; job postings; and industry turnover rates. 7/15/2019



Nearly two weeks ago, Ohio lawmakers left the Statehouse without passing a new two-year budget, thereby failing to meet the June 30 budget deadline. Due to House-Senate disagreements on several issues, both chambers instead passed continuing resolutions on June 29 and 30, allowing the state government to continue to function.

Over the past 12 days, budget negotiations have been conducted behind the scenes. The

How Manufacturers Can Combat Rising Logistics Costs July 19, 2019

OMA Connections Partner **RSM** recently published its take on ways that manufacturers can **reduce or stem the rising costs of logistics**. Suggested strategies include ideas to address tight trucking capacity and the growth of e-commerce. (Note: Your OMA membership qualifies you for shipping discounts through the **OMA's Freight and Shipping Program** partnership with YRC and UPS.) 7/17/2019

USMCA Roundtable Set for August 1 July 19, 2019

Manufacturers with a presence in northeast Ohio are invited to a roundtable conference and discussion on the United States-Mexico-Canada Agreement. The forum will be held in Strongsville on Aug. 1, from 8:30-10 a.m. Assistant Secretary of the U.S. Foreign Commercial Service Ian Steff will be the keynote presenter. The event is co-hosted by U.S. Rep. Anthony Gonzalez and the U.S. Chamber of Commerce. More information **here**. 7/18/2019

Ohio's Budget Impasse Continues July 12, 2019

continuing resolution for the main operating budget expires Wednesday, July 17. Therefore, final action is likely to occur early next week. Learn more about **tax issues** included in the pending budget bill (**House Bill 166**). The House and Senate are **scheduled to be in session** the middle of next week. After that, lawmakers are not slated to be in session again until mid-September.

A smaller budget bill (**House Bill 80**) to fund the Bureau of Workers' Compensation (BWC) is also at an impasse due to disagreement over costly expansions to benefits. The bureau is operating under a continuing resolution that will expire July 30. Final action on the BWC budget could come next week or could languish until the end of the month. **Learn more and take action** to urge lawmakers to reject the proposed benefits expansion. 7/11/2019

Manufacturers Intensify Efforts to Ratify USMCA July 12, 2019

Canada and Mexico buy more manufactured goods from Ohio than the rest of the world combined. Without tariff-free trade across North America, Ohio's manufactured exports to these neighboring nations could face up to **\$3.1 billion in extra taxes** (compared to zero tariffs today).

That's why Ohio manufacturers support efforts by the Trump administration to push aggressively for timely ratification of the U.S.-Mexico-Canada Agreement (USMCA), which would replace NAFTA. The OMA has **conveyed its support** to Ohio's congressional delegation. **Click here** to email your member of Congress and tell him/her why manufacturers support prompt consideration of the USMCA. 7/9/2019

CNBC Names Ohio a Top 10 State for Business July 12, 2019



Ohio has cracked the top 10 list of CNBC's 2019 **"Top States for Business"** study. At No. 10 overall, the Buckeye State jumped five spots from last year's rankings. This marks the first time **Ohio** has made the network's top 10 since the study started 13 years ago.

CNBC's comparison examines 64 metrics across **10 categories** of competitiveness. A key reason for Ohio's improvement is its standing in infrastructure (No. 4) and cost of doing business (No. 8). Ohio also fared better than average in education (No. 11), technology and innovation (No. 13), access to capital (No. 13), cost of living (No. 15), and workforce (No. 17).

The best three states for business according to CNBC are Virginia, Texas, and North Carolina. The bottom three are Rhode Island, Hawaii, and Mississippi. 7/10/2019

House & Senate Leaders Fail to Pass Operating Budget; Negotiations Continue July 2, 2019



For the first time since 2009, Ohio lawmakers have failed to meet the June 30 deadline to finalize the state's two-year budget (**House Bill 166**). A 17-day stopgap measure has been passed and signed to fund government operations and give lawmakers more time to reach an agreement.

A joint House-Senate committee has faced several sticking points caused by **differences** between the two versions of the main operating budget. The budget bill contains several items that would impact manufacturers, including workforce funding, **tax provisions**, and numerous smaller changes.

The legislature also failed to meet Sunday's deadline for approving **House Bill 80**, the funding measure for the Ohio Bureau of Workers' Compensation. (See the story in the "Safety & Workers' Compensation" section.)

Upon signing the temporary funding measures for both state operations and the BWC, Gov. Mike DeWine urged both chambers to continue negotiations and reach a timely compromise. The OMA will keep members updated as negotiations look to stretch into the next week. 7/1/2019

Manufacturing Roundtable Set for July 18 in NW Ohio July 2, 2019

OMA Connections Partner **Gilmore Jasion Mahler** will host its Manufacturing & Distribution Financial Executive Roundtable in northwest Ohio on Thursday, July 18, in Findlay and Maumee. The event will focus on the transformation of the automotive industry and its effects on the broader economy. Guest presenter Lawrence Keyler, **RSM's** global

automotive expert, will provide the big picture for all manufacturers, not just automotive. The sessions are open to manufacturing financial executives and there is no cost to attend. **RSVP here** and specify the session you plan to attend. For more details, **click here**. 7/1/2019

Export Guidance Offered to Small & Mid-Sized Businesses July 2, 2019



Manufacturing companies with sales from \$5 million to \$50 million that want to expand into foreign markets can get a head start through the **GlobalTarget Program**. The nine-month program was created by the Monte Ahuja College of Business Global Business Center at Cleveland State University, along with the SBDC Export Assistance Network, the U.S. Commercial Service, and other regional and international organizations. According to the **export experts** at the Ohio Development Services Agency, companies will gain knowledge and tools on operating in global markets, as well as best practices to execute their global strategies. 7/1/2019

Lawmakers Continue Negotiations on Biennial Budget June 28, 2019



Members of the House and Senate continue to negotiate differences between the chambers' versions of the state's two-year main operating budget, **House Bill 166**. The spending plan contains several major policy provisions that would affect manufacturers — including

workforce funding, numerous **tax provisions**, and a plethora of smaller changes.

The HB 166 conference committee convened Tuesday to receive the latest revenue estimates from **OBM** and **LSC**. Conferees were told that tax revenue for the current fiscal year — as well as the two covered by the new budget — would be hundreds of millions more than the estimates used at the beginning of the budget writing process. After the hearing, the committee recessed until a later date, which was still unknown as of the deadline for this issue of the *Leadership Briefing*.

The conferees have a deadline of 11:59 p.m. Sunday, June 30, to provide a final budget agreement. If the committee fails to produce a report that is accepted by the House and Senate, and signed by the governor, then the state would require a continuing resolution — a temporary funding measure to provide for the functions of state government. Both the House and Senate are scheduled to be in session for the weekend in anticipation of a budget agreement. 6/27/2019

Survey: Concerns Over Workforce, Trade Affect Manufacturers' Optimism June 28, 2019

Nationwide, manufacturers were feeling more cautious about their economic prospects in the second quarter, according to the NAM's latest **Manufacturers' Outlook Survey**. While 79.8% of American manufacturers rated their outlook as positive, that was a drop from 89.5% in the first quarter of 2019. When analyzing specific issues, 68.8% of respondents said workforce was their top concern. On trade, 56.0% reported uncertainty due to the USMCA, U.S.-China trade disputes, the threat of Section 232 auto tariffs, and the tariffs on Mexico, which has since been resolved. 6/25/2019

Manufacturers Can Request 'List 3' Tariff Exemption Beginning June 30 June 28, 2019



According to OMA Connections Partner **Dinsmore**, businesses have until Sept. 30 to file a request to be exempted from the 25% tariffs (List 3) recently placed on \$200 billion worth of Chinese goods on May 10, 2019. The Office of the U.S. Trade Representative (USTR) has posted instructions on how to request an exclusion of certain products covered by the Trump administration's third — and latest — round of tariffs. Interested parties can make their **exclusion requests online** beginning noon Sunday, June 30. See **Dinsmore's update** for more on this and other tariff-related issues. 6/26/2019

SCOTUS Ruling Means Ohio's Current Congressional Districts Will Remain Until 2022

June 28, 2019

In a 5-4 **ruling** Thursday, the U.S. Supreme Court declared that federal courts should not decide congressional redistricting disputes. As interpreted by **Poltico**, the ruling is "a boon to Republicans, who control the majority of state legislatures," which draw the congressional district maps in most states.

The ruling means Ohio will keep its current legislative districts until 2022. Republicans have held 12 of Ohio's 16 congressional districts since the last redistricting process after the 2010 census. 6/27/2019

OMA Board Elects Jane Neal as New Chair

June 21, 2019

On Tuesday, June 18, the OMA Board of Directors met for their quarterly meeting at the OMA headquarters. Key actions taken by the board included the election of officers and new directors.

Jane Neal, senior vice president of **AMG Vanadium LLC**, was elected new chair of the OMA, replacing Scott Balogh, president and CEO of **Mar-Bal, Inc.**, following his two years of

leadership as chair. Billy Vickers, president and CEO of **MAI-GLA**, was elected first vice-chair.

To recognize Balogh's service, the OMA made a donation in his name to **Modern Warrior Live** — a theatrical production of a combat veteran's journey.

The following new directors were elected to the board:

- Cathy Lyttle, senior vice president & chief human resources officer, **Worthington Industries**.
- Greg Muhlenkamp, vice president, **Hartzell**.
- Bob Nelson, senior vice president, **Honda of America Mfg.**

Guest speakers at the meeting included Ohio Excels President Lisa Gray, who discussed efforts to enhance Ohio's K-12 education system and graduation standards. Lydia Mahalik, director of the Ohio Development Services Agency, briefed the board on **House Bill 2**, which would boost industry-recognized credentials and regional industry sector partnerships. 6/18/2019



In his last board meeting as OMA chairman, Scott Balogh of Mar-Bal, Inc. this week recapped his experience leading the association.

Senate Passes State Operating Budget

June 21, 2019

The Ohio Senate on Thursday passed **House Bill 166**, the state operating budget. The passage came following the Senate Finance Committee's acceptance of an omnibus amendment that was comprised of **eight pages** of bullet-point changes. Among these changes were new graduation standards, H2Ohio provisions, and increased funding for the TechCred program. The **House did not concur** with the Senate changes.

The House and Senate will soon designate appointees for a conference committee, which will begin negotiations as the House, Senate, and governor will work towards an agreement on the bill's final provisions. The deadline for final budget passage is Sunday, June 30. The OMA will continue to work with the legislature to protect Ohio's manufacturers in this final stage of consideration. 6/20/2019

Have You Started Planning for MFG DAY? June 21, 2019



Manufacturing Day — the annual celebration of modern manufacturing that is meant to inspire the next generation — will be held this year on Friday, Oct. 4. Now is the time to begin planning.

MFG DAY is an opportunity to educate young people — and their parents and educators — about 21st century manufacturing. According to Deloitte's 2016 survey, 84% of students who attended MFG DAY events emerged "more convinced that manufacturing provides careers that are interesting and rewarding."

The OMA encourages its members to open their doors to students, parents, teachers, and community leaders. (**Here** is who has already registered.) While MFG DAY is Oct. 4, companies and organizations should plan their events on the date in October that works best for

them. Events can be marked as public or invitation-only. To register, or for help with publicizing your event, **click here**. 6/17/2019

OMA More Active Than Ever on Social Media June 21, 2019



When the **Pew Research Center** began tracking social media use in 2005, just 5% of American adults used at least one of these platforms. Today, 72% of the public uses some type of social media. For those under 30, the figure exceeds 90%. That's why the OMA has become more active in its use of **LinkedIn**, **Twitter**, and **Facebook**. If you're using one or more of these social media platforms, be sure to check out the OMA's pages for manufacturing news and information, as well as announcements and updates. 6/19/2019

State Budget Nears Vote by the Full Senate June 14, 2019

The Ohio Senate this week made their first round of amendments to the state's two-year, main operating budget, contained in **House Bill 166**. Early next week, the upper chamber will make further revisions before voting on the final Senate version and sending it to a joint House-Senate conference committee that will reconcile various differences between the two chambers.

The current Senate version of the bill includes \$33.58 billion in General Revenue Fund spending in Fiscal Year 2020, down \$10.64 million from the House version, and \$35.24 billion in FY 2021, up \$23.15 million from the House version. Across all funds, the Senate version allocates \$69.83 billion in FY 2020, up \$18.20 million from the House, and \$71.88 billion in FY 2021, up \$187.36 million from the House.

The final budget must be presented to Gov. Mike DeWine no later than June 30. 6/13/2019

Top Three Factors Disrupting the Food Industry

June 14, 2019

In a recent blog post, JobsOhio's Joe Needham — director of food and agribusiness for the state's private economic development corporation — writes about the key factors currently disrupting the food industry: financial pressure, consumer preference, and technology. "These trends are causing and enabling significant shifts and disruption in the Ohio and the U.S. food manufacturing system," Needham writes. See the **article here**. 6/10/2019

Study: Ohio Gets High Marks for Fun
June 14, 2019



Looking for fun this summer? You'll find it in Ohio, which has just been ranked the 13th "most fun" state by personal finance website **WalletHub.com**.

To determine the states that have more fun, WalletHub examined dozens of comparisons within the broader categories of "entertainment & recreation" and "nightlife."

According to the website's analysis, Ohio is fifth best for number of golf courses and country clubs per capita; ninth for movie theaters per capita; and 11th for fitness centers per capita. The state also scored well for number of restaurants, amusement parks, and performing-arts theaters. 6/13/2019

Officials, Policy Experts Headline OMA 'Food Day'
June 7, 2019



On Wednesday, state officials and policy experts addressed industry leaders at the OMA's 2019

Ohio Food Manufacturers Policy Council — also known as "Food Day."

The well-attended event — chaired by Jennifer Sweeney, director – government affairs for Campbell Soup Company — featured key members of Gov. Mike DeWine's cabinet. Providing executive branch insight were Directors Jack Marchbanks of the Ohio Department of Transportation; Dorothy Pelanda of the Ohio Department of Agriculture; and Laurie Stevenson of the Ohio EPA.

The day was filled with expert analysis on several issues, including:

- Foreign trade and tariffs;
- Pending legislation in the Ohio Legislature;
- Lake Erie Bill of Rights and Ohio water regulations;
- Laws banning plastics and single-use packaging; and
- Economic development efforts to grow the food industry.

• The production of food and beverages contributes nearly \$13 billion annually to Ohio's economy, making it the state's third-largest manufacturing sector. Ohio has approximately 1,300 food manufacturers, which employ more than 61,100 Ohio residents. 6/4/2019

Barry Named One of Northeast Ohio's Top Executives
June 7, 2019



OMA board member Lissa Barry has been named one of Northeast Ohio's top executives by **Smart Business** magazine and Corporate College, a division of Cuyahoga Community College. Barry is president and CEO of Delta Systems Inc., the Streetsboro-based company that provides the outdoor power equipment industry and adjacent markets with high-quality electronic components products. The magazine stated that "much of Delta Systems' success comes from collaboration, with Barry fostering an environment with the flexibility to encourage new ideas and experimentation." Congratulations, Lissa! 6/4/2019

JobsOhio President Addresses OMA Government Affairs Committee June 7, 2019



J.P. Nauseef, the president and chief investment officer of **JobsOhio**, addressed the OMA's Government Affairs Committee this week, sharing his vision and strategy to create and retain jobs, while growing the state's economy.

Nauseef told committee members that since taking the reins at Ohio's top economic development entity three months ago, he has spent considerable time meeting with economic development professionals and business leaders across the state to better understand their needs. He has repeatedly heard concerns regarding available workforce to fill existing jobs, as well as the need for a "robust inventory of sites." As an Air Force veteran, Nauseef said he is also prioritizing the Ohio's ability to attract and support additional military activity.

Chaired by Scott Corbitt, region vice president for Anheuser-Busch, this week's OMA Government Affairs meeting also included briefings on key policy issues including: transportation funding, energy legislation, workforce development, tort reform, and workers' compensation policy.

The committee will meet again **August 22. 6/5/2019**

JobsOhio's J.P. Nauseef (upper right) addressed the OMA's Government Affairs Committee meeting on June 5.

Coalition Urges Senate to Drop Drug Price Controls June 7, 2019

Among the many policy changes contained within the pending legislation to fund Ohio's government (**House Bill 166**), is a provision to tie drug prices to an unproven foreign-based pricing index.

A coalition of businesses and organizations, including the OMA, recently wrote state senators asking them to reject the "International Pricing Index" proposal, as included in the House-passed version of HB166. **The letter** notes that if the proposal is enacted into law, "there are likely to be negative consequences for Ohians who depend on medication," as well as for the Ohio economy.

More than 75,000 Ohioans are employed at more than 4,000 locations in the bio-science sector, which would be directly affected by the price control plan. 6/6/2019

Miscellaneous Legislation of Interest to Manufacturers

Prepared by: The Ohio Manufacturers' Association
Report created on August 20, 2019

- HB30 EUTHANIZED ANIMAL REMAINS-FOOD** (LANESE L) To prohibit pet food from containing remains from any dog or cat or from any other animal that was euthanized by the use of an injected drug.
Current Status: 2/12/2019 - Referred to Committee House Agriculture and Rural Development
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-30>
- HB46 STATE GOVT EXPENDITURE DATABASE** (GREENSPAN D) To require the Treasurer of State to establish the Ohio State Government Expenditure Database.
Current Status: 5/15/2019 - **REPORTED OUT**, House State and Local Government, (Fifth Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-46>
- HB48 LOCAL GOVT ROAD IMPROVEMENT FUND** (GREENSPAN D) To provide for a new Local Government Road Improvement Fund for local governments to fund road improvements.
Current Status: 2/12/2019 - Referred to Committee House Finance
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-48>
- HB62 TRANSPORTATION BUDGET** (OELSLAGER S) To increase the rate of and modify the distribution of revenue from motor fuel excise taxes, to make appropriations for programs related to transportation and public safety for the biennium beginning July 1, 2019, and ending June 30, 2021, and to provide authorization and conditions for the operation of those programs.
Current Status: 4/3/2019 - **SIGNED BY GOVERNOR**; eff. 90 days, Taxes eff. 7/1/19
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-62>
- HB72 CAPITAL IMPROVEMENTS FUND** (ROGERS J, CERA J) To create the Supplemental State Capital Improvements Pilot Program funded by a temporary transfer from the Budget Stabilization Fund and to make an appropriation.
Current Status: 2/20/2019 - Referred to Committee House Finance
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-72>
- HB76 BALLOT LANGUAGE UNIFORMITY** (MERRIN D) To enact the "Ballot Uniformity and Transparency Act" to modify the form of election notices and ballot language for property tax levies.
Current Status: 4/9/2019 - **REPORTED OUT AS AMENDED**, House Ways and Means, (Fourth Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-76>
- HB115 REGULATOR RESTRICTION REDUCTION** (RIEDEL C, ROEMER B) To require certain agencies to reduce the number of regulator restrictions and to amend the versions of

sections 106.021 and 106.03 of the Revised Code that are scheduled to take effect August 18, 2019, to continue the provision of this act on and after that effective date.

Current Status: 4/10/2019 - House State and Local Government, (Second Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-115>

HB116 **TRANSPORTATION RESEARCH (BRINKMAN T)** To make an appropriation related to transportation planning and research.

Current Status: 3/12/2019 - Referred to Committee House Finance

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-116>

HB160 **ALCOHOLIC ICE CREAM (INGRAM C)** To revise the law governing alcoholic ice cream.

Current Status: 6/12/2019 - **REPORTED OUT**, House State and Local Government, (Fourth Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-160>

HB168 **AFFIRMATIVE DEFENSE-HAZARDOUS SUBSTANCES (ARNDT S)** To establish an affirmative defense to a release or threatened release of hazardous substances from a facility for certain bona fide prospective purchasers.

Current Status: 6/26/2019 - Senate Agriculture and Natural Resources, (First Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-168>

HB174 **CONCEALED WEAPONS REFORM (HOOD R, BRINKMAN T)** To modify the Weapons Law by renaming a concealed handgun license as a concealed weapons license, allowing a concealed weapons licensee to carry concealed all deadly weapons not otherwise prohibited by law, repealing a notice requirement applicable to licensees stopped for a law enforcement purpose, authorizing expungement of convictions of a violation of that requirement, allowing a person age 21 or older and not prohibited by federal law from firearm possession to carry a concealed deadly weapon without needing a license subject to the same carrying laws as a licensee, and correcting the definition of dangerous ordnance mistakenly resulting from Am. Sub. H.B. 228 of the 132nd General Assembly.

Current Status: 3/27/2019 - Introduced

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-174>

HB178 **CONCEALED WEAPONS REFORM (HOOD R)** To modify the Weapons Law by renaming a concealed handgun license as a concealed weapons license, allowing a concealed weapons licensee to carry concealed all deadly weapons not otherwise prohibited by law, repealing a notice requirement applicable to licensees stopped for a law enforcement purpose, authorizing expungement of convictions of a violation of that requirement, and allowing a person age 21 or older and not prohibited by federal law from firearm possession to carry a concealed deadly weapon without needing a license subject to the same carrying laws as a licensee.

Current Status: 6/30/2019 - Re-Referred to Committee

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-178>

- HB181** **PROMOTE OHIO-GROWN ALCOHOL INGREDIENTS** (HAMBLEY S) To authorize the Department of Agriculture to promote the use of Ohio-produced agricultural goods grown for inclusion in beer, cider, or spirituous liquor through promotional programs.
Current Status: 4/4/2019 - Referred to Committee House Agriculture and Rural Development
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-181>
- HB185** **JOBSONIO-PUBLIC RECORDS-MEETINGS** (INGRAM C) To establish that records kept by JobsOhio are public records subject to inspection and copying under Ohio Public Records Law and to require all meetings of the JobsOhio Board of Directors to be open to the public, except when in an executive session.
Current Status: 5/15/2019 - House Economic and Workforce Development, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-185>
- HB202** **ELECTRIC VEHICLE INFRASTRUCTURE** (SMITH K, WEINSTEIN C) To establish the Electric Vehicle Infrastructure Study Committee.
Current Status: 6/25/2019 - House Transportation and Public Safety, (Second Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-202>
- HB216** **CHAIN ESTABLISHMENT REGULATION** (SKINDELL M, KELLY B) To regulate employment practices of formula retail and food services establishment employers and contractors and to require the purchaser of a formula retail or food services establishment to retain certain employees.
Current Status: 5/22/2019 - House Commerce and Labor, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-216>
- HB220** **GOVERNMENT BLOCKCHAIN USE** (CARFAGNA R) To allow a governmental entity to utilize distributed ledger technology, including blockchain technology.
Current Status: 6/12/2019 - **REPORTED OUT AS AMENDED**, House Commerce and Labor, (Third Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-220>
- HB237** **SHIPPED LIQUOR** (MANNING D, UPCHURCH T) To allow spirituous liquor and mixed beverages to be shipped to consumers via an S liquor permit holder.
Current Status: 5/14/2019 - Referred to Committee House Commerce and Labor
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-237>
- HB238** **WHISTLEBLOWER PROTECTIONS** (CERA J, SCHERER G) To revise Ohio's whistleblower protection laws.
Current Status: 6/25/2019 - House Civil Justice, (Third Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-238>

- HB242** **CONTAINER USE RESTRICTIONS** (LANG G, JONES D) To authorize the use of an auxiliary container for any purpose, to prohibit the imposition of a tax or fee on those containers, and to apply existing anti-littering law to those containers.
Current Status: 6/26/2019 - **REPORTED OUT**, House State and Local Government, (Fourth Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-242>
- HB251** **CONTRACT ACTION-PERIOD OF LIMITATION** (LANG G, HILLYER B) To shorten the period of limitations for actions upon a contract.
Current Status: 6/18/2019 - House Civil Justice, (Third Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-251>
- HJR1** **INITIATIVE PETITION SIGNATURE REQUIREMENTS** (KOEHLER K) Proposing to amend Sections 1a and 1g of Article II of the Constitution of the State of Ohio to modify certain signature requirements for a proposed constitutional amendment by initiative petition.
Current Status: 9/3/2019 - House Civil Justice, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HJR-1>
- SB1** **REDUCE REGULATORY RESTRICTIONS** (MCCOLLEY R, ROEGNER K) To require certain agencies to reduce the number of regulatory restrictions and to continue the provision of this act on and after August 18, 2019.
Current Status: 6/12/2019 - House State and Local Government, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-1>
- SB3** **DRUG SENTENCING REFORM** (EKLUND J, O'BRIEN S) To modify the controlled substance possession and trafficking prohibitions and penalties and the drug and alcohol abuse civil commitment mechanism.
Current Status: 6/27/2019 - **BILL AMENDED**, Senate Judiciary, (Seventh Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-3>
- SB33** **CRITICAL INFRASTRUCTURE FACILITIES OFFENSES** (HOAGLAND F) To modify certain criminal offenses with respect to critical infrastructure facilities and to impose fines and civil liability for damage to a critical infrastructure facility.
Current Status: 6/19/2019 - House Public Utilities, (Second Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-33>
- SB46** **PUNITIVE OR EXEMPLARY DAMAGES LIMITATION EXEMPTIONS** (EKLUND J) To expand the exemption from punitive or exemplary damages limitations in tort law that is related to certain felony convictions.
Current Status: 3/19/2019 - Senate Government Oversight and Reform, (Second Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-46>

- SB52** **CIVILIAN CYBER SECURITY RESERVE FORCES** (GAVARONE T) To create the civilian cyber security reserve forces, to make the Secretary of State a member of the Homeland Security Advisory Council, to require the Secretary of State to appoint a chief information security officer, to require the boards of elections to audit election results, and to make an appropriation.
Current Status: 6/19/2019 - **REPORTED OUT AS AMENDED**, House Finance, (Third Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-52>
- SB57** **HEMP REGULATION** (HILL B, HUFFMAN S) To establish conditions and requirements governing the regulation of hemp and hemp products, and to declare an emergency.
Current Status: 7/30/2019 - **SIGNED BY GOVERNOR**; eff. immediately
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-57>
- SB119** **DAYLIGHT SAVINGS TIME** (ROEGNER K, PETERSON B) To exempt Ohio from daylight savings time.
Current Status: 4/3/2019 - **SUBSTITUTE BILL ACCEPTED**, Senate General Government and Agency Review , (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-119>
- SB124** **MARITIME ASSISTANCE** (WILLIAMS S) To create the Ohio Maritime Assistance Program and to make an appropriation.
Current Status: 5/21/2019 - Senate Finance, (Second Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-124>
- SB140** **EXEMPT KNIVES-CONCEALED WEAPONS** (UECKER J) To exempt knives not used as weapons from the prohibition against carrying concealed weapons and to eliminate the prohibition against manufacturing, possessing for sale, selling, or furnishing certain weapons other than firearms or dangerous ordnance.
Current Status: 6/27/2019 - **PASSED BY SENATE**; Vote 32-1
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-140>
- SCR2** **SIDE GUARDS-COMMERCIAL TRUCKS** (YUKO K, O'BRIEN S) To urge Congress to enact legislation requiring commercial trucks to use side guards and establishing side guard technical specifications.
Current Status: 3/6/2019 - Referred to Committee Senate Transportation, Commerce and Workforce
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SCR-2>



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Householder, Obhof Release Schedule for Second Half of 2019

Speaker of the House Larry Householder (R-Glenford) and Senate President Larry Obhof (R-Medina) have released the proposed schedules for both chambers for the remainder of 2019. Unless otherwise notified, the House meets at 1 p.m. on Tuesdays, Wednesdays and Thursdays and the Senate meets at 1:30 p.m. on generally Tuesdays and/or Wednesdays. Dates and times are subject to change.

July

Monday, July 1 - **FY20 began**

Tuesday, July 23 - House Session

August

Thursday, Aug. 1 - House Session

Tuesday, Aug. 6 - **Special Election**

Tuesday, Aug. 13 - Senate Session (if needed)

Tuesday, Aug. 20 - Senate Session (if needed)

September

Monday, Sept. 2 - **Labor Day** (State Offices closed)

Tuesday, Sept. 3 - House Committee Hearings

Wednesday, Sept. 4 - House Committee Hearings

Thursday, Sept. 4 - House Committee Hearings

Tuesday, Sept. 10 - Senate Session (if needed)/
House Committee Hearings

Wednesday, Sept. 11 - House Committee Hearings

Thursday, Sept. 12 - House Committee Hearings

Tuesday, Sept. 17 - House Session (if needed)

Wednesday, Sept. 18 - House/Senate Sessions

Thursday, Sept. 19 - House Session

Tuesday, Sept. 24 - House Session (if needed)

Wednesday, Sept. 25 - House Session/Senate
Session (if needed)

Thursday, Sept. 26 - House Session

October

Tuesday, Oct. 1 - House Session (if needed)

Wednesday, Oct. 2 - House/Senate Sessions

Thursday, Oct. 3 - House Session

Tuesday, Oct. 8 - House/Senate Sessions (if needed)

Wednesday, Oct. 9 - House/Senate Sessions

Thursday, Oct. 10 - House Session

Monday, Oct. 14 - **Columbus Day** (State Offices
closed)

Wednesday, Oct. 23 - House/Senate Sessions

Thursday, Oct. 24 - House Session

Wednesday, Oct. 30 - House Session

November

Tuesday, Nov. 5 - **Election Day**
- House Session (if needed)

Wednesday, Nov. 6 - House/Senate Sessions

Thursday, Nov. 7 - House Session

Monday, Nov. 11 - **Veterans' Day** *observed* (State
Offices closed)

Tuesday, Nov. 12 - House Session (if needed)

Wednesday, Nov. 13 - House/Senate Sessions

Thursday, Nov. 14 - House Session

Tuesday, Nov. 19 - House Session

Wednesday, Nov. 20 - House Session/Senate Session
(if needed)

Thursday, Nov. 28 - **Thanksgiving Day** (State Offices
closed)

December

Wednesday, Dec. 4 - Senate Session

Tuesday, Dec. 10 - House Session/Senate Session (if
needed)

Wednesday, Dec. 11 - House/Senate Sessions

Thursday, Dec. 12 - House Session

Tuesday, Dec. 17 - House/Senate Sessions (if needed)

Wednesday, Dec. 18 - House Session (if needed)

Thursday, Dec. 19 - House Session (if needed)

Wednesday, Dec. 25 - **Christmas Day** (State Offices
closed)

Rev. 7/22/19

<https://www.mfgday.com/about-us/>



THE MANUFACTURING DAY MISSION

Manufacturing Day addresses common misperceptions about manufacturing by giving manufacturers an opportunity to open their doors and show, in a coordinated effort, what manufacturing is — and what it isn't. By working together during and after MFG DAY, manufacturers will begin to address the skilled labor shortage they face, connect with future generations, take charge of the public image of manufacturing, and ensure the ongoing prosperity of the whole industry.

MFG DAY is designed to amplify the voice of individual manufacturers and coordinate a collective chorus of manufacturers with common concerns and challenges. The rallying point for a growing mass movement, MFG DAY empowers manufacturers to come together to address their collective challenges so they can help their communities and future generations thrive.

Learn more about manufacturing day [here](#).

WHO'S BEHIND MANUFACTURING DAY?

Created by Founding Partner Fabricators and Manufacturers Association, International in 2012, MFG DAY has enjoyed support from many organizations aligned with its mission of positively changing the public perception of modern manufacturing. Organizations that have played a vital role in working with FMA to successfully grow this national celebration of all things manufacturing include the National Association of Manufacturers (NAM), the Manufacturing Institute (MI), and the National Institute of Standards and Technology's (NIST) Hollings Manufacturing Extension Partnership (MEP).

MFG DAY is now produced annually by the NAM with key contributions and support from the MEP and the MI.

ABOUT THE NAM

The NAM is the preeminent U.S. manufacturers association, as well as the nation's largest industrial trade association, representing small and large manufacturers in every industrial sector and in all 50 states.

The National Association of Manufacturers

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TYPES OF MFG DAY EVENTS



There are many ways to celebrate Manufacturing Day. The only real requirement is that an MFG DAY event should be designed to expose more people to present-day manufacturing while showcasing manufacturing in a positive light.

Having said that, there are a few types of events that have been especially successful during past Manufacturing Day celebrations:

- plant tours,
- manufacturing community events and expos that include many companies,
- job fairs,
- educational fairs
- celebrations of the manufacturing community

Below are descriptions of what each type of event entails, along with a few tips for making them successful. We hope these examples will help spark some ideas!

MEMORANDUM

TO: Ohio Manufacturers' Association
Government Affairs Committee

FROM: Bricker and Eckler LLP
Christopher N. Slagle, OMA General Counsel

DATE: August 15, 2019

RE: August 2019 OMA Government Affairs Committee
Report

I. August 2019 Government Affairs Committee Counsel Report.

Please find below several political, legislative, and judicial efforts our Firm has been monitoring for the OMA.

II. Statewide Ballot Issues Overview.

There are no statewide ballot issues placed for the November 2019 general election ballot. There are currently several statewide issues attempting to qualify for the November 2020 general election.

H.B. 6 Referendum. After having the initial referendum summary rejected by the Attorney General's office with 21 outlined inaccuracies/omissions, the petitioners are taking steps to again place a referendum of H.B. 6 on the November 2020 general election ballot. A second attempted referendum petition was filed with the Attorney General and Secretary of State on Friday, August 16, 2019. The Attorney General has until August 30, 2019 to determine if the summary provides a fair and truthful overview of the statutory scheme to be referred.

Gun Background Checks. A group has filed its summary and is free to collect an initial 132,000 signatures for an initiated statute closing perceived loopholes in background checks for certain firearms purchases. The Attorney General certified the petitions on July 19, 2019, and the signatures are due to the Secretary of State in late December 2019.

National Popular Vote. A group has received approval from the Ohio Attorney General to begin collecting 442,000 signatures for an amendment to the Ohio Constitution requiring that Ohio presidential electors cast their Electoral College votes to the winner of the national popular vote for President

of the United States. The petition was certified by the Attorney General on May 21, 2019, and signatures are due to the Secretary of State by July 4, 2020.

III. Pending Legislation (2019-2020).

Despite missing Ohio's Constitutional deadline for passing the state's general operating budget, the 133rd General Assembly has completed work for the first half of 2019. An overview of the budget is provided with counsel's report. We expect the General Assembly to return in September 2019 for a busy second half of the 133rd General Assembly filled with committee hearings and full floor sessions.

Attached to this report are also copies of Bricker's summary and overview memorandum of HB 166 – the biennial operating budget – and our separate analysis of the business income tax deduction elimination impacting attorneys and lobbyists.

Employment Law Reform. Introduced in the 132nd General Assembly as H.B. 2 by Representative Bill Seitz (R-Cincinnati), this legislation has yet to be reintroduced this session. The legislation has been a priority of the business community in the past.

S.B. 1 – Reduction of Agency Regulations. On February 12, 2019, Senator Rob McColley (R-Napoleon) and Senator Kristina Roegner (R-Hudson) introduced this bill, which requires agencies to reduce the number of regulatory restrictions. During its second hearing, many business groups provided proponent testimony explaining that the bill will support economic growth and business development in Ohio. The bill passed the Senate on May 8, 2019 and has been referred to the House State and Local Government Committee. Sponsor testimony was held in House State and Local Government Committee on June 12, 2019.

Specifically, the bill requires a state department and/or agency to amend or rescind rules identified in its inventory of regulatory restrictions as necessary to reduce the total number of regulatory restrictions by 30 percent according to a specific schedule set forth in the language. The bill also creates a website where individuals and businesses can report burdensome regulations to the Joint Committee on Agency Rule Review.

A version of S.B. 1 – a priority of Senate President Larry Obhof – was included in H.B. 166 – Ohio's biennial operating budget passed by the Ohio General Assembly on July 17, 2019.

S.B. 11 – Discrimination. This bill, which is sponsored by Senator Nickie Antonio (D-Lakewood), will enact the Ohio Fairness Act to prohibit discrimination on the basis of sexual orientation or gender identity or expression. The bill seeks to add mediation to the list of informal methods by which the Ohio Civil Rights Commission may use to induce compliance

with Ohio's Civil Rights Law before instituting a formal hearing. The bill also will uphold existing religious exemptions under Ohio Civil Rights Law.

It was introduced on February 12, 2019 and is assigned to the Senate Judiciary Committee where it had its third hearing on May 22, 2019. Previous versions of the bill received strong support from the business community. Many business groups are supportive of the bill because they recognize the importance of diversity in the workplace and believe that improvements should be made to protect against discrimination of any type.

H.B. 238 – Ohio Whistleblower Protection Law. This bill is sponsored by Representative Jack Cera (D-Bellaire) and Gary Scherer (R-Circleville). It was introduced on May 7, 2019 and was referred to the House Civil Justice Committee where it has had two hearings. The bill expands the protections provided to private and public sector employees under Ohio's Whistleblower Protection Law (OWPL). Among many things, it increases the statute of limitations from 180 days to one year after the date the disciplinary or retaliatory action was taken. It eliminates the requirement that a report must be made pursuant to a specific process to be protected under OWPL. It also expands protection under OWPL to an employee who refuses to participate in illegal activities that the employee reasonably believes are illegal activities.

IV. Tort Reform.

We are currently monitoring various tort reform legislative efforts and await the possible re-introduction of certain civil justice legislative items from prior legislative cycles. We do not know whether or if at all civil justice efforts will be curtailed or enhanced given the new leadership in the General Assembly, Governor's Office, and other statewide executive offices.

Third Party Litigation Funding. As of this date no legislation has been introduced addressing this issue.

Statute of Limitations on Contracts. Introduced last session as H.B. 694 by Representative George Lang (R-West Chester), this legislation was designed to shorten Ohio's statute of limitations for actions brought related to contracts and bring Ohio in line with other states to maintain Ohio's competitiveness with other similarly situated states. The legislation received two hearings in the House Civil Justice Committee. The bill was reintroduced on May 21, 2019 as H.B. 251 and was referred to the Civil Justice Committee where it has had three hearings.

The legislation changes the statute of limitations from eight years to three years for causes of action related to agreements in writing and changes the statute of limitations from six years to three years for causes of action related to agreements not in writing.

S.B. 46 – Punitive or Exemplary Damages Limitations Exceptions. Senator John Eklund (R-Chardon) introduced this legislation on February 12, 2019. The bill was referred to the Senate Government Oversight and Reform Committee where it has had two hearings.

The legislation exempts from punitive or exemplary damages limitations in tort law related to felonies or strict liability offenses that have as an element of the offense one or more mental states of purposely and knowingly as described in section R.C. 2901.22.

Statute of Limitations / Certain Criminal Offenses. Recent investigations into former Ohio State University team physician Dr. Richard Strauss have led to certain Ohio elected officials – including Governor Mike DeWine and Attorney General Dave Yost – to call for an end to certain statutes of limitations when criminal issues are present, including rape. Strauss is accused of sexual conduct against more than 177 Ohio State student athletes between 1979 – 1997. Attorney General Yost, along with former Attorneys General Betty Montgomery, Nancy Rodgers, Jim Petro, Richard Cordray and Lee Fisher sent a letter on June 3, 2019 to legislative leaders in the Ohio General Assembly calling for an elimination to Ohio’s 20 year statute of limitations on rape. We will monitor closely the impact of the possible changes here and that to which the expansion of civil recovery may follow.

V. Litigation and Amicus Activity Update.

A. Monitored Cases.

1. Lake Erie Bill of Rights Litigation – *Drewes Farm*.

On February 26, 2019, with only nine percent of the electorate voting in a special election in Toledo, the Lake Erie Bill of Rights (“LEBOR”) passed.

The day after the special election, Drewes Farm filed an action in federal district court in Toledo challenging the LEBOR as unconstitutional. *See Drewes Farm Partnership v. City of Toledo*, (N.D. Ohio, W.D.), Case No. 3:19-cv-00434-JZ. The case is assigned to Judge Zouhary. Drewes Farm sought a preliminary injunction and a declaratory judgment. The parties agreed to stay enforcement of the LEBOR and the Court put the case on a fast track. The State of Ohio was permitted to intervene as a plaintiff. Toledoans for Safe Water, Inc. was not permitted to intervene as a defendant. Toledoans for Safe Water, Inc. filed an interlocutory appeal, which was later voluntarily dismissed. The district court issued an expedited scheduling order.

On June 6, 2019, Drewes Farms and the State filed motions for judgment on the pleadings. Briefing on these motions is to be completed by August 19, 2019. Toledoans for Safe Water, Inc. (which was not permitted to intervene as a party) was granted leave to file an amicus curiae brief opposing the motions for judgment on the pleadings.

2. *State of Ohio v. Du Pont de Nemours and Co., Washington County Common Pleas Court, No. 18OT000032 (February 8, 2018).*

On February 8, 2018, Ohio Attorney General Mike DeWine filed a lawsuit against DuPont and the Chemours Company in the Washington County Common Pleas Court alleging that the company released perfluorooctanoic acid (PFOA) from its 1,200 acre facility on the Ohio River for decades, all while knowing the harm the toxic chemical posed to people and the environment.

The complaint cites a 2017 University of Cincinnati study that found residents of the Mid-Ohio River Valley had elevated levels of PFOA. The state further alleges that at least 150,000 pounds of the chemical used to manufacture Teflon products was put into the Ohio River in the 1980s and an additional 350,000 pounds was discharged into the river in the 1990s. The complaint alleges that DuPont negligently caused environment contamination and created a public nuisance through its release of PFOA in the air, soil, and water.

The state is asking for (1) a declaration of DuPont's duty to compensate the state for expenses related to the contamination from the chemical; (2) damages for injury to the state's natural resources; (3) an award of present and future costs to clean up the contamination; and (4) restitution damages for profits DuPont obtained through the conduct alleged in the complaint.

On April 12, 2018, Defendants each filed a motion to dismiss. DuPont argues that the court lacks jurisdiction because the US EPA consent orders preempt such claims and that the state lacks standing. Defendant Chemours Company's motion to dismiss argues that the state failed to state a claim upon which relief can be granted against Chemours. On May 14, 2018, the state filed its memoranda in opposition to Defendants' motions to dismiss. The motions to dismiss have been fully-briefed and argument was held on July 20, 2018, but the Court has not yet decided any of them.

On October 12, 2018, the Little Hocking Water Association ("Little Hocking") filed a motion to intervene as a plaintiff. The State opposed the motion. This motion has been fully-briefed and the parties are awaiting the Court's decision.

In January 2019, this case was assigned to Judge Timothy Hogan, a retired judge from Hamilton County, Ohio. In late February, Plaintiff requested a status conference with the Court in late March to address the pending motion to dismiss, the pending motion to intervene, and to discuss a scheduling order.

On June 4, 2019, the court denied the Defendants' motions to dismiss and also denied Little Hocking's motion to intervene. Little Hocking filed a motion for reconsideration, which awaits the court's decision.

On July 5, 2019, Little Hocking also appealed from the June 4 decision denying its motion to intervene. This appeal is pending in the Fourth District Court of Appeals, designated as Case No. 19CA000015. On July 25, the court of appeals ordered appellant to file a memorandum addressing the issue of jurisdiction. If the court of appeals lacks jurisdiction (for lack of a final order or because the appeal was not timely filed), the appeal will be dismissed. Briefing on this issue has not been completed.

On July 27, 2019, Plaintiff filed an amended complaint to add claims for actual and constructive fraudulent transfer under the Uniform Fraudulent Transfer Act, R.C. 1336.01, *et seq.* The Defendants have not yet filed answers to the amended complaint.

3. *State of Ohio v. Purdue Pharma L.P., et al.*, Ross County Common Pleas Court, No. 17CI000261.

On May 31, 2017, Ohio Attorney General Mike DeWine filed an action in Ross County Common Pleas Court against several manufacturers of opioids, including Purdue Pharma (which sold OxyContin) and Endo Health Solutions (which sold Percocet). The lawsuit alleges that the defendant drug companies violated the Ohio Consumer Sales Practices Act and created a public nuisance by disseminating false and misleading statements about the benefits and risks of opioids. The suit alleges that the defendant drug companies' conduct increased the prescription of opioids and fueled Ohio's opioid crisis. Among other remedies, the State seeks an injunction to stop continued misrepresentations and damages for the money the State spent on opioids.

The drug company defendants moved to dismiss the complaint and sought a stay of discovery. The motions to dismiss are fully briefed. On March 28, 2018, the trial court denied defendants' motion to stay discovery pending the results of the multi-district litigation, but granted their motion to stay discovery pending the trial court's ruling on the motions to dismiss. On April 30, 2018, the trial court held oral argument on defendants' motions to dismiss (and other pending motions).

On August 22, 2018, the trial court denied all motions to dismiss. It also vacated the stay on discovery, allowing discovery to proceed. Defendants have filed answers. The Court held a status conference on April 5, 2019. In early May, the defendants filed a motion to compel discovery from the State. The State opposed this motion and it is fully briefed.

The case had been scheduled for a multi-week trial, beginning on August 10, 2019, but no trial commenced on that date. Since May 2019, there have been numerous filings to compel the State, its agencies, and the governor's office to provide discovery. As of August 16, 2019, the court had not decided these discovery disputes.

4. *State of Ohio v. McKesson Corporation, et al., Madison County Common Pleas Court, No. CVH20180055.*

On February 26, 2018, Ohio Attorney General Mike DeWine filed an action in Madison County Common Pleas Court against the following distributors of opioids: McKesson Corporation, Cardinal Health, Inc., AmerisourceBergen Drug Corporation, and Miami-Luken, Inc. The lawsuit alleges, among other things, that these distributors acted irresponsibly in oversupplying the market in and around Ohio with opioids and failed to report suspicious orders to the U.S. Drug Enforcement Agency and the Ohio Board of Pharmacy. The suit alleges that these companies should have known that the volume of opioids supplied far exceeded what could responsibly be used in Ohio, thereby fueling Ohio's opioid epidemic.

The State seeks a number of remedies, including punitive damages and compensatory damages for increased costs Ohio incurred for criminal justice, healthcare, social services, and education related to the opioid epidemic.

On May 30, 2018, Amerisource Bergen Drug Corp., Cardinal Health, Inc. and McKesson Corp. filed a joint Civ.R. 12(B)(6) motion to dismiss the complaint. On June 1, 2018, Miami-Luken, Inc. filed a Civ.R. 12(B)(6) motion to dismiss the complaint. The motions to dismiss are fully-briefed and awaiting a decision.

In January and February 2019, two defendants filed motions to compel the State to provide discovery responses. These defendants assert that the State's objections to the discovery responses are baseless. The State opposed the motions to compel. The court denied the motions to compel.

On May 20, 2019, the court denied the defendants' motions to dismiss. Answers were filed on July 3, 2019. Also on July 3, 2019, the State filed a motion seeking an order to prohibit speaking objections during depositions. On July 15, 2019, the court granted this motion. Defendants have filed several pro hac vice motions to admit out-of-state counsel to participate in this case.

Trial is scheduled to commence on July 21, 2020.

B. Amicus Cases.

1. *New Riegel Local School Board of Education v. The Buehrer Group Architecture & Engineering, Inc., Ohio Sup. Ct. No. 2018-0189 and 2018-0213.*

This case involves construction defects to a school building. The issue is whether the ten-year statute of repose for improvements to real property (R.C. 2305.131) applies.

The trial court held that the statute of repose for improvements to real property applies to any type of civil action, including contract claims, and dismissed the complaint, finding that it was filed after the repose period had expired.

The Third District Court of Appeals reversed on the basis of a 1986 Ohio Supreme Court decision construing a former statute of repose. In that decision, *Kocisko v. Charles Shutrump & Sons Co.*, 21 Ohio St.3d 98, the Ohio Supreme Court held that the statute of repose applied only to tort claims and not to contract claims. Because the claim at issue is characterized as a contract claim, the Third District followed *Kocisko* and did not apply the current statute of repose.

The OMA joined with the Ohio Insurance Institute and other organizations on an amicus brief in support of the Appellant. Amici asserted that the architects, designers, builders and other construction industry professionals depend on uniform interpretation of the currently-governing statute of repose and that it plainly applies to both tort and contract claims. They urged the Court to reverse the Third District's decision and dismiss the lawsuit because it is barred by the statute of repose applicable to claims involving real property.

Oral argument was held on March 5, 2019. On July 17, 2019, in a 6-1 decision authored by Justice French, the Court reversed the court of appeals decision, holding that the "construction statute of repose," R.C. 2305.131, "applies to actions sounding in contract as well as to actions sounding in tort." The case was remanded to the court of appeals. Justice Stewart dissented, finding (in part) that the current statute and the statute addressed in the Court's previous *Kocisko* decision are so similar as to be construed as in *Kocisko*— not applicable to contract claims.

A motion for reconsideration was filed and has been fully briefed.

VI. Referendum on H.B. 6.

As mentioned above, Petitioners have undertaken the initial steps to circulate a petition to place a statewide referendum on H.B. 6 on the November 2020 general election ballot. H.B. 6, sponsored by Representatives Jamie Callender and Shane Wilkin, created the nuclear generation fund and the renewable generation fund, which directs approximately \$150 million per year to Ohio's two nuclear power plants (the Davis-Besse and Perry power plants) and \$20 million per year to solar generation projects respectively. The legislation also effectively ended Ohio's renewable portfolio standards and energy efficiency programming and codified PUCO decisions granting rate recovery to the Ohio electric distribution utilities that own shares in the Ohio Valley Electric Corporation.

Below is a general outline of the process and procedure for initiating a referendum.

A. Initial Filing with Secretary of State and Attorney General

(Ohio Constitution Article II, Section 1c; Revised Code Sections 3501.05; 3519.01; 3519.02; 3519.05; 3505.062)

1. Petitioners designate committee of 3 to 5 persons for future representation. Written petition filed with Secretary of State and Attorney General;
 - a.) 1000 valid signatures of Ohio electors.
 - b.) Summary of the law or sections subject of referendum.
 - c.) Full text of law or sections subject to referendum.
 - d.) Secretary of State to verify signatures within 10 days of filing & compare proposed law for referral to actual enactment.
2. Attorney General to certify that summary is "fair & truthful" statement of law or section to be referred.

B. Signature Totals, Petition Filing, & Certification

(Ohio Constitution Article II, Section 1c and 1g; Revised Code Sections 3519.10; 3519.14; 3519.16; 3501.38)

1. 265,774 valid signatures needed (6% of votes cast in 2018 gubernatorial election).
2. Also – statewide signature distribution – 3% of votes cast in that county in 2018 gubernatorial election needed from 44 of 88 counties.
3. Petitions must be filed within 90 days after law signed by Governor and filed with Secretary of State.
 - a.) In *Thornton v. Salak* (2006), 112 Ohio St. 3d 254, the Ohio Supreme Court made clear that the referendum period "embraces ninety full days, such that legislation filed with the Secretary of State is subject to a referendum petition at least until midnight of the ninetieth day." One does not get an extra day / next business day because of the weekend or holiday.
 - b.) If enough signatures are submitted to the Secretary of State before the effective date, the bill cannot go into effect until it is approved by the voters, or the

referendum petition is disqualified through some other legal action. Thus, a referendum attempt will at least temporarily delay the effective date of the bill, even if the referendum is ultimately unsuccessful at the polls.

4. The Secretary of State must determine sufficiency of signatures not later than 105 days before the election.
5. If signatures invalid – petitioners have 10 additional days to “cure” defect and file additional signatures.
6. The Secretary of State will determine sufficiency of additional signatures not later than 65 days before the election
7. Any challenge to original petitions or signatures must be filed not later than 95 days before the election.
8. Supreme Court must rule not later than 85 days before the election, if not they are deemed valid.
9. Any challenge to additional signatures must be filed not later than 55 days before the election. The Supreme Court must rule on those signatures not later than 45 days before the election, otherwise they are deemed valid.

C. Petition Format & Circulation Requirements

(Ohio Constitution Article II, Section 1c; Revised Code Sections 3503.06; 3501.381)

1. Petitions to contain signatures of Ohio electors.
2. Circulators must be permanent Ohio residents (no out-of-state circulators permitted).
3. Circulators must complete the circulator affidavit / Form 15

D. Other Deadlines

(Ohio Constitution Article II, Sections 1c and 1g; Revised Code Sections 3505.62; 3519.03)

1. Any referendum petition filed after 125 days before the next election will be placed on the ballot at the regular or general election that occurs over a year later.
2. The Ohio Ballot Board must prescribe the ballot language for the referendum and certify it to the Secretary of State not later than 75 days before the election.
3. The committee named on the petition may prepare and file an argument and/or explanation in favor of the proposed referendum not later than the 80th day before the election. The General Assembly, or the Governor if the General Assembly is not in session, must name persons to prepare the argument and/or explanation in favor of the law to be referred. All arguments and/or explanations must be 300 words or less and must be filed with the Secretary of State not later than 80 days before the election.
4. If the committee or the persons named by the General Assembly or Governor fail to prepare or timely file the argument and/or explanation, the Secretary of State must notify the Ohio Ballot Board, which must prepare or designate a group to prepare the

arguments and/or explanation. The argument and/or explanation must be filed with the Secretary of State not later than 75 days before the election.

E. Exceptions to Referendum

(Ohio Constitution Article II, Section 1d)

1. Overview

- a. The Ohio Constitution reserves the power of referendum to the people except in the case of “laws providing for tax levies, appropriations for the current expenses of the state government and state institutions, and emergency laws necessary for the immediate preservation of the public peace, health or safety. . .” Article II, Section 1d. Thus, there three primary exceptions to the right to referendum: 1) tax levies; 2) appropriations; and 3) emergency laws.
- b. The Ohio Supreme Court has repeatedly held that it must “liberally construe the powers of initiative and referendum to effectuate the rights reserved.” *State ex rel. Evans v. Blackwell*, 111 Ohio St.3d 1, 2006-Ohio-4334, 854 N.E.2d 1025, ¶ 32. The Court often cites its “duty to liberally construe election laws in favor of the right to vote” and allows matters to proceed to the ballot in the absence of clear argument to the contrary. *State ex rel. Myles v. Brunner*, 120 Ohio St.3d 328, 2008-Ohio-5097, 899 N.E.2d 120, ¶ 26, fn. 2, quoting *State ex rel. Barletta v. Fersch*, 99 Ohio St.3d 295, 2003-Ohio-3629, 791 N.E.2d 452, ¶ 22
- c. The Court similarly applies this reasoning specifically to the right to place a referendum on the ballot unless the law in question “is plainly and persuasively. . . excepted from the operation of the referendum.” *State ex rel. Keller v. Forney* (1923), 108 Ohio St. 463, 467–468, 141 N.E. 16. With that backdrop, if a challenge to a referendum is raised, the Court will review the legislation that is subject to a referendum attempt very closely and will allow a referendum to proceed absent a compelling reason to apply one or more of the following specific constitutional exceptions.

2. Emergency Laws

- a. Ohio Courts give deference to the General Assembly as to the reasons for determining that an emergency exists. “It does not appear that the reasons [for declaring an emergency], so long as they were satisfactory to two-thirds of all the members elected to each branch, were all-controlling, for the explanation does not refer to them.” *State ex rel. Durbin v. Smith*, 102 Ohio St. 591, 598, 133 N.E. 457, 459 (1921).

3. Appropriations

- a. An appropriation is “an authorization granted by the general assembly to make expenditures and to incur obligations for specific purposes.” R.C. 131.01(F). An “appropriation” is an action that authorizes “the expenditure of public moneys and stipulating the amount, manner, and purpose of the various items of expenditure.” *State ex rel. Akron Edn. Assn. v. Essex* (1976), 47 Ohio St.2d 47, 49, 1 O.O.3d 28, 351 N.E.2d 118.
- b. However, to withstand a referendum challenge, the appropriation must also be “inextricably tied” to the statute being referred. *State ex rel. LetOhioVote.org v. Brunner*, 2009-Ohio-4900, 123 Ohio St. 3d 322, 916 N.E.2d 462. Not only is an appropriation necessary, but the appropriation must be “part of an interdependent and legally inseparable package of legislation that appropriated funds.” *Id.*, citing *Kelly v. Marylanders for Sports Sanity, Inc.* (1987), 310 Md. 437, 530 A.2d 245.
- c. The Ohio Supreme Court has ruled on several occasions that any change to “the permanent law of the state is subject to referendum * * * even though the law also contains a section providing for an appropriation for the current expenses of the state government and state institutions which under Section 1d, Article II, becomes immediately effective.” *State ex rel. Ohio AFL–CIO v. Voinovich* (1994), 69 Ohio St.3d 225, 236, 631 N.E.2d 582, quoting *State ex rel. Riffe v. Brown* (1977), 51 Ohio St.2d 149, 167, 5 O.O.3d 125, 365 N.E.2d 876 (O’Neill, C.J., dissenting). See also *State ex rel. LetOhioVote.org v. Brunner*, 2009-Ohio-4900 ¶ 48, further finding that changes to permanent law were not appropriations because they “do not expire in two years and are designed to become a permanent part of state law for purposes of generating state income.”

4. Tax levies

- a. Ohio courts have limited application of the Article II Section 1d exception for tax levy laws “to an actual self-executing levy of taxes [which] is not synonymous with laws ‘relating’ to tax levies, or ‘pertaining’ to tax levies, or ‘concerning’ tax levies.” *State ex rel. Keller v. Forney* (1923) 108 Ohio St. 463, 141 N.E. 16. Similarly, in *State ex rel. Taft v. Franklin Cty. Court of Common Pleas* (1998), 81 Ohio St.3d 480, 483, 692 N.E.2d 560 the Court held that an act that authorized a vote to determine whether taxes should be levied did not actually levy a tax, and thus was subject to referendum. See

also *State ex rel. Schwartz v. Brown*, 32 Ohio St. 2d 1, 288 N.E.2d 819 (1972), finding that a proposed constitutional amendment limiting the General Assembly's power to levy a tax was not a citizen action that was prohibited by Article II Section 1d.

- b. An opponent might argue that the “tax” imposed in the proposed legislation is actually a fee or other charge that does not rise to the level of a ‘tax levy.’ Previous Attorneys General have reviewed matters related to unemployment taxes and concluded that “the forceable exaction of employer contributions to the unemployment compensation fund are taxes for purposes of Ohio Const. art. II, § 1d, which provides that laws providing for tax levies shall go into immediate effect, and are not subject to referendum.” 2007 Ohio Op. Att’y Gen. 2-99 (2007), citing 1943 Op. Att’y Gen. No. 6207, p. 378, 382, internal quotations omitted. See also, 2004 Ohio Op. Att’y Gen. 2-232.

The petitioners, Ohioans Against Corporate Bailouts, filed an initial 1,000 signatures and a summary of the law to be referred with the Ohio Secretary of State and the Ohio Attorney General on July 30, 2019. The Attorney General reviews the summary and determines whether it represents a “fair and truthful” summary of the law. On August 12, 2019, the Attorney General rejected the summary, citing 21 inconsistencies or omissions of material provision of the law. The Petitioners resubmitted on XXX. A copy of the Attorney General’s letter to the petitioners and the revised summary are included in the counsel’s report.

We are also aware that the law firm of Zeiger, Tigges, and Little sent a letter to legal counsel for the Ohio Secretary of State, included in the counsel’s report, arguing that a referendum petition on H.B. 6 should be rejected pursuant to R.C. 3501.39(A)(4) because H.B. 6 is a “law providing for a tax levy.” The Secretary has not made any such determination as of the date of this report.



Ohio and Federal Contribution Limits, Campaign Finance Reporting Calendars and Lobbyist Reporting Deadlines

OHIO CAMPAIGN CONTRIBUTION LIMITS (effective through February 24, 2021)

From To Per Election Period unless otherwise footnoted	INDIVIDUAL Must be 7 years of age or older	PACs PCEs	COUNTY PARTY State Candidate Fund	COUNTY PARTY Other Account ⁸	STATE PARTY State Candidate Fund	LEGISLATIVE CAMPAIGN FUND	CAMPAIGN COMMITTEE (includes local)
Statewide	\$13,292.35	\$13,292.35	\$332,308.77 ¹²	\$3,323.09 ⁹	\$749,688.58 ⁷	PROHIBITED	\$13,292.35
Senate	\$13,292.35	\$13,292.35	\$13,292.35 ¹ \$149,538.95 ²	\$3,323.09 ⁹	\$149,538.95 ⁷	\$74,437.16 ⁶ \$149,538.95 ⁶	\$13,292.35
House	\$13,292.35	\$13,292.35	\$13,292.35 ¹ \$74,437.16 ²	\$3,323.09 ⁹	\$74,437.16 ⁷	\$38,556.54 ⁶ \$74,437.16 ⁶	\$13,292.35
State Party State Candidate Fund	\$39,877.05 ³	\$39,877.05 ³	No Limit	PROHIBITED	No Limit	No Limit	\$39,877.05 ⁵
Legislative Campaign Fund	\$19,938.53 ³	\$19,938.53 ³	No Limit	PROHIBITED	No Limit	PROHIBITED	\$19,938.53 ⁵
County Party State Candidate Fund	\$13,292.35 ¹⁰	PROHIBITED	PROHIBITED	PROHIBITED	No Limit	No Limit	\$13,292.35 ⁴
PACs/PCEs	\$13,292.35 ³	\$13,292.35 ¹³	\$13,292.35 ¹¹	\$13,292.35 ¹¹	\$13,292.35 ¹¹	PROHIBITED	\$13,292.35 ³

This chart is intended to be a general guide and does not include every statutory provision relating to contribution limits.

- ¹ These limits apply to contributions given to a campaign committee which is not a 'designated state campaign committee.'
- ² These limits apply to cash or cash equivalents, not in-kind. The campaign committee of a House or a Senate candidate which is a 'designated state campaign committee' may accept, in aggregate, from any one or a combination of state candidate funds of county political parties \$66,461.75 and \$132,970.17, respectively, in an election period.
- ³ These limits are per calendar year.
- ⁴ This limit is per calendar year and may only be made if the campaign committee's candidate will appear on a ballot in that county or is an officeholder representing any part of that county.
- ⁵ These limits are per calendar year and do not apply to contributions given by a 'designated state campaign committee.'
- ⁶ These limits apply to cash or cash equivalents, not in-kind. The smaller limit is for the primary election period and the larger limit is for the general election period.
- ⁷ These limits apply to cash or cash equivalents, not in-kind.
- ⁸ These limits apply to political parties in counties having a population of less than 150,000 that do not establish a State Candidate Fund. 'Other Account' does not include an account that contains moneys received from the Ohio Political Party Fund (Restricted Fund).
- ⁹ Recipients of county party non-State Candidate Fund contributions must be campaign committees for statewide candidates or a 'designated state campaign committee.'
- ¹⁰ This limit is per calendar year. Contributions to a County Party SCF are restricted to individuals residing in the county or 'designated state campaign committees' of the County Party SCF.
- ¹¹ These limits are per calendar year and apply to the aggregate of contributions given by the national, state and county level of a political party.
- ¹² A campaign committee for a statewide candidate may accept not more than this amount, in aggregate, from any one or a combination of state candidate funds of county political parties in an election period.
- ¹³ This limit is per calendar year and does not apply to contributions made to or received by one or more PACs that are affiliated.

2019 STATE OF OHIO CAMPAIGN FINANCE REPORTING CALENDAR

Report Type	Due Date	Reporting Period
Pre-Primary	April 25, 2019	Through April 17, 2019
Post-Primary	June 14, 2019	Through June 7, 2019
Semiannual	July 31, 2019	Through June 30, 2019
Pre-General	October 24, 2019	Through October 16, 2019
Post-General	December 13, 2019	Through December 6, 2019
2019 Annual	January 31, 2020	Through December 31, 2019

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OHIO JUDICIAL CONTRIBUTION LIMITS

Court	Individual		Organization		Political Party	
	Primary	General	Primary	General	Primary	General
Supreme Court	\$3,800	\$3,800	\$7,000	\$7,000	\$189,500	\$347,600
Court of Appeals	\$1,300	\$1,300	\$3,800	\$3,800	\$37,900	\$75,900
Common Pleas, Municipal and County Court	\$600	\$600	\$3,800	\$3,800	\$37,900	\$75,900
Court with a population of 750,000 or less	\$600	\$600	\$3,800	\$3,800	\$31,600	\$63,600

Please note that primary limits apply only if the judicial candidate has a contested primary. If there is no contested primary, the general election limits apply throughout the permissible fundraising period.

2019-2020 FEDERAL CONTRIBUTION LIMITS

Donors	Candidate Committee	PAC ¹ (SSF-Nonconnected)	State/District/Local Party Committee	National Party Committee
Individual	\$2,800* per election	\$5,000 per year	\$10,000 per year (combined)	\$35,500* per year
Candidate Committee	\$2,000 per election	\$5,000 per year	Unlimited transfers	Unlimited transfers
PAC Multicandidate	\$5,000 per election	\$5,000 per year	\$5,000 per year (combined)	\$15,000 per year
PAC Nonmulticandidate	\$2,800 per election	\$5,000 per year	\$10,000 per year (combined)	\$35,500* per year
State/District/Local/Party Committee	\$5,000 per election (combined)	\$5,000 per year (combined)	Unlimited transfers	Unlimited transfers
National Party Committee	\$5,000 per election ²	\$5,000 per year	Unlimited transfers	Unlimited transfers

* Indexed for inflation in odd-numbered years.

¹ "PAC" here refers to a committee that makes contributions to other federal PACs. Independent-expenditure-only PACs, sometimes called super PACs, may accept unlimited contributions, including from corporations and labor organizations.

² Additionally, a national party committee and its Senatorial campaign committee may contribute up to \$49,600 combined per campaign to each Senate candidate.

2019 FEDERAL CAMPAIGN FINANCE QUARTERLY REPORT CALENDAR FOR PACS*

Report Type	Due Date	Reporting Period
April Quarterly	April 15, 2019	through March 31, 2019
July Quarterly	July 15, 2019	April 1–June 30, 2019
October Quarterly	October 15, 2019	July 1–September 30, 2019
Year-End	January 31, 2020	October 1–December 31, 2019

2019 OHIO LOBBYIST/EMPLOYER OF LOBBYISTS REPORTING CALENDAR

Report Type	Due Date	Reporting Period
January–April 2019	May 31, 2019	January 1–April 30, 2019
May–August 2019	September 30, 2019	May 1–August 31, 2019
September–December 2019	January 31, 2020	September 1–December 31, 2019

* Federal special elections will trigger additional reporting requirements.

FEDERAL LOBBYIST REPORTING CALENDAR

Report Type	Due Date	Reporting Dates/Period
Quarterly Activity Reports	April 22, 2019	First Quarter January 1–March 31, 2019
	July 22, 2019	Second Quarter April 1–June 30, 2019
	October 21, 2019	Third Quarter July 1–September 30, 2019
	January 20, 2020	Fourth Quarter October 1–December 31, 2019
Contribution Reports	July 30, 2019	Mid-Year January 1–June 30, 2019
	January 30, 2020	Year-End July 1–December 31, 2019

For more information, contact Maria Armstrong at 614.227.8821 or marmstrong@bricker.com, Brock Miskimen at 614.227.2340 or bmiskimen@bricker.com, or Matt Koppitch at 614.277.8824 at mkoppitch@bricker.com.

To: OMA Government Affairs Committee
From: Ryan Augsburger / Rob Brundrett
Re: Energy Policy Report
Date: August 22, 2019

Overview

Final legislative action on House Bill 6, far-reaching electricity regulation legislation, occurred in mid-July. Everything surrounding HB 6 was supercharged. The bill in its final form will distort electricity markets denying customers of the long-term benefits of competition. New costs, some known and some unknown, will hit customers of all sizes. The legislative skirmish lasted just over three months.

The OMA has been an opponent to the policy changes that require customers to subsidize power plants that are not needed. The OMA is prepared to advocate to protect manufacturing interests in the implementation of the bill. Energy policy will be a top issue area for the entire 2019-2020 legislative session.

Nuke Bailout – House Bill 6 Becomes Law

After being panned by dozens of important stakeholders, legislation to subsidize the uneconomical nuclear power plants stalled out last session. FirstEnergy Corp.'s (FE) unregulated subsidiary, FirstEnergy Solutions (FES), owns Ohio's two nuclear power plants among a portfolio of generation that has been considered uneconomic. Hence, they sought government bailout in various forms over the past five years. Those efforts were repelled.

Then following the 2018 General Election and ensuing legislative leadership election, House Bill 6 was introduced in late April. The bill was extensively revised in order to win support of electric utilities. Mostly this was accomplished with the addition of a bailout subsidy for two old, uneconomic coal power plants (including one power plant in Indiana). These plants are owned by the Ohio Valley Electrical Corporation which is owned by a group of utilities and other energy companies. The bill also largely orders a stop to Ohio's utility run energy efficiency programs and renewable energy standards.

Throughout the many versions of the bill, OMA staff and retained experts have produced extensive analysis for the membership and engaged the membership. In the end, the bill was narrowly approved by both the House and the Senate. Votes for the divisive bill were not along partisan lines. In the aftermath, several media outlets reported or editorialized on the political activity surrounding the bill. It is believed that proponents spent more money to support HB 6 than any other piece of legislation in modern history.

Many OMA members actively engaged to advocate against the bill and the OMA voice was among the most impactful during the legislative debate. The OMA issued *key vote* alerts. See included HB 6 vote list.

Proponents of the bill made claims that simply were not true, however lulled many policymakers and other stakeholders into thinking the bill was actually a good thing for Ohio. Mark these words – HB 6 is only a win if you are FirstEnergy, FirstEnergy Solutions, OVEC, or their shareholders. Everyone else loses. The bill is done but the issue is not going away.

HB 6 Referendum

An effort is underway to repeal HB 6 via state referendum. The initial phase of signature collection is underway. If successful, the issue could be placed on the November 2020 General Election ballot. A presentation on the referendum effort is planned for the August 22 OMA government affairs committee meeting.

The proponents of HB 6 proved they will invest significant resources to support the bill. As such, the cost of a referendum challenge will be significant. Resource material is included. We have already seen a glimpse of the messaging by supporters of the bill. Expect claims of lower customer costs, coupled with the need for fuel diversity and China-bashing.

FES Bankruptcy

Simultaneous to the legislative theater, FES filed for bankruptcy protection in March 2018. Shortly thereafter the bankrupt company notified regulators of its intent to shutter the power plants in a few years.

A settlement between FE, FES, and the stakeholders is still pending approval. The plant owners together with concerned local government leaders have used the plant closure announcements to lever political support for state and federal bailouts. The beneficiaries of any possible bailout would seem to include speculative investors (hedge funds), former parent FE, and local governments hoping to prevent local job loss and tax revenue.

Government attorneys and judges have expressed concern to FE and FES of their continued liability for decommissioning costs at some point in the future. More recently, FES informed the bankruptcy court that the company would not recognize the terms of the company's collective bargaining agreement. An irony since unionized workers were prominent spokespeople for the bill during the legislative process.

HB 6 Implementation – What Next?

Unless a referendum is duly filed, the provisions of HB 6 go into effect mid-October. An abundance of rulemakings and determinations must be made by the PUCO and other state agencies. The OMA Energy Group will be participating in those proceedings to protect manufacturing interests. Members are invited to support this effort.

An analysis by OMA Energy Engineering partner RunnerStone explains how the soon-to-be-subsidized generation will be walled off from the PJM capacity market and a state construct will likely be required to facilitate the purchase of the subsidized electrons...this move is believed to hike customer costs. Stay tuned for the sequel to HB 6.

Trump Administration Favors Nuke and Coal Bailouts

For nearly two years, some nuclear and coal interests have had success in lobbying the federal government to order nuclear and coal (as specified) power plant bailouts on a national basis. The Trump Administration backed away from plans to require customers to subsidize unprofitable power plants under the guise of national security or resiliency. The government involvement bears continued scrutiny. DOE Secretary Perry told a groups of lawmakers at an ALEC meeting mid-August that preservation of nuclear generation is important for US fuel diversity.

PJM Opines on Resiliency

Throughout the recent legislative subsidy debates at the General Assembly, grid operator PJM Interconnect had been clear to dispel the myths of poor fuel diversity and electric supply shortages affecting "reliability." However, more recently, PJM issued a report justifying some possible basis for grid "resiliency." The OMA has an analysis on current PJM activity but further proceedings at PJM will be needed for clarity. Remarkably, PJM has postponed indefinitely the planned energy auction to assess how the market can fairly operate in the face of widening market manipulation via state subsidies.

Utility Seeks to Shift Risk from Shareholders to Customers

The regulated monopoly electric distribution utility (EDU) AEP Ohio has a controversial application pending at the PUCO to allow the utility to develop in-state renewable energy generation. If the application is approved, customers will be required to pay an additional rider on their power bill to subsidize the renewable energy projects.

The case is not about renewable energy which is flourishing in Ohio as a result of increasingly favorable market attributes. To the contrary, the case is about whether a utility should be allowed to violate a prohibition of an EDU controlling generation rather than being the agnostic distributor for power. Ohio

deregulated the generation of electricity decoupling it from distribution twenty years ago. As such, the proposal is anti-competitive.

There is nothing preventing AEP Ohio's parent company (AEP) or an unregulated affiliate from developing the same renewable project while taking on ordinary business risk instead of offloading the company's (shareholders') risk to the captive customers. In fact, AEP recently announced they would invest over a billion dollars to develop renewable generation following rejection of similar proposals in other states. The OMA Energy Group has been a leading opponent of the proposal at the PUCO.

House Bill 6 now contains language to change the law to authorize this sort of activity. The costs to customers can be significant. This is yet another erosion to the marketplace. See HB 6 analyses.

Protecting Competitive Electric Markets

In 1999, with the passage of Senate Bill 3, Ohio began a transition to deregulated generation. That transition has delivered customer choice, cost-savings and innovation. One of the main tenets of deregulation was forcing then-integrated utility companies to sell or spin-off their generation. "Stranded costs" and other above-market surcharge constructs enabled the utilities to have their generation paid for by Ohioans for a second time. HB 6 represents yet another above-market payment to utilities and power plant owners by customers who realize no benefit.

The OMA has been a proponent of markets, supporting the original deregulation legislation and opposing utility profit subsidy schemes that distort the market and result in new above-market charges on manufacturers' electric bills. Several noteworthy studies have demonstrated how the market delivers lower prices, choice and innovation without compromising reliability. NOPEC just issued an updated study that pegs customer savings at \$24 billion over eight years. With the passage of HB 6, competitive markets are under attack in Ohio.

OVEC Bailout

Last session, the OMA opposed legislation to provide over one hundred million dollars per year to the owners of aging coal plants (one in Ohio and one in Indiana) operated by the Ohio Valley Electric Corporation (OVEC). The OMA had also opposed subsidies for OVEC in rate cases at the PUCO. In a decision by the Supreme Court in late 2018, the Court effectively allowed utilities to collect the rider to subsidize OVEC under terms of a specific Electric Security Plan (ESP). An OVEC bailout for the out years beyond the terms specified in the Court decision is now included in HB 6.

Excessive Earnings

With all eyes on HB 6, lobbyists for FirstEnergy also won House approval of a provision that allows the Akron-based electric distribution utility to earn more profit. The OMA opposed the provision and urged lawmakers to remove it in both the House and Senate. The consequence: all FirstEnergy service customers will not get relief from overpayment.

Pro-Utility Legislation Ready for Hearings

With HB 6 completed and a robust legislative session calendar for the remainder of 2019, other pro-utility legislation may now advance:

- HB 104 (Stein) establishes the Ohio nuclear development authority to spur investment in modular and advanced nuclear technologies.
- HB 246 (Vitale) placeholder legislation to modernize the PUCO and Office of Consumers' Counsel.
- HB 247 (Stein) expand the authority of a utility to offer customer-focused energy services or products under the justification of smart grid technology and opens to door to new nonbypassable

riders to pay for the buildout. The bill significantly erodes market protections on the books since deregulation or longer.

Federal Tax Reform Reduces Electric Prices, Finally

It took utilities in Ohio longer to pass along savings to customers stemming from federal tax reform last winter. The OMA Energy Group has been active in these proceedings. Ask staff how your company can support the work of the OMA Energy Group.

PowerForward and Goldplating

Over the past few years, the PUCO undertook a study of future grid technologies. The study and resulting report bear the brand, PowerForward. In the months since the report was finalized, a collaborative has been meeting. Utilities are using the findings in PowerForward to justify new mandated customer payment requests to produce “grid modernization.” The OMA Energy Group is watching out for goldplating in these proceedings.

Ohio electric utility executives have been announcing to investors their bold new initiatives to upgrade their grid infrastructure touting costs in the tens of billions of dollars. These transmission and distribution costs, if allowed by federal and state regulators, will layer new costs onto customers. The OMA Energy Group will be monitoring utility requests and will be commenting on the need and benefit of improvements to customers. Utility applications for customer cost-recovery that fail to provide offsetting customer benefits will be met with scrutiny and possible objection by this organization.

On-Site Generation Taxed in Ohio

The Ohio Department of Taxation is sending out tax bills to third parties operating on-site generation, be it wind, solar or onsite gas generation. The Department contends that a customer who generates power should pay generation tax the same as a utility. The Department’s basis for collecting the tax is tenuous. Legislation was introduced in HB 6 that goes a long way at addressing the issue for on-site wind. The OMA supports a legislative correction for all forms of onsite generation.

OMA Appeals Utility Subsidies

Kim Bojko, Chief Counsel for the OMA Energy Group (OMAEG) presented oral argument before the Supreme Court of Ohio challenging customer charges in the FirstEnergy DMR case. Like other recent rate cases and litigation, customer power costs are heavily impacted by these cases. Your company can strengthen the association’s efforts. Contact staff for information on joining the OMAEG. See included memo.

Energy Standards Legislation

After six years of back and forth policy battles, HB 6 appears to have dismantled the standards for efficiency and renewable energy. Siting requirements for large scale wind generation projects are not part of the debate. See HB 6 analysis documents.

Energy

Study: Electric Utility Riders, Subsidies Could Cost Ohio Billions

August 16, 2019



New **research** shows Ohio's deregulated electricity markets have saved the state's ratepayers nearly \$24 billion over the past eight years, or roughly \$3 billion a year. Conducted by researchers at The Ohio State University and Cleveland State University — and commissioned by the Northeast Ohio Public Energy Council (NOPEC) — the study shows that competition has driven down average electricity prices in deregulated Midwestern states, while their regulated peers have seen steady price increases.

Unfortunately, the research also finds that Ohio's investor-owned utility companies are chipping away at those customer savings through the use of subsidies, surcharges, and riders. This is occurring as efforts have intensified to re-regulate electricity markets. See the **whitepaper** and **executive summary**. 8/12/2019

Industry Accounts for One-Third of Ohio's Energy Use

August 9, 2019

Why is the OMA passionate about energy policy? Because manufacturers and other industrial users account for nearly one-third of Ohio's total energy consumption — including motor fuel and electricity. The U.S. Energy Information Administration (EIA) has posted its most recent breakdown of **Ohio's energy consumption**. Key facts include:

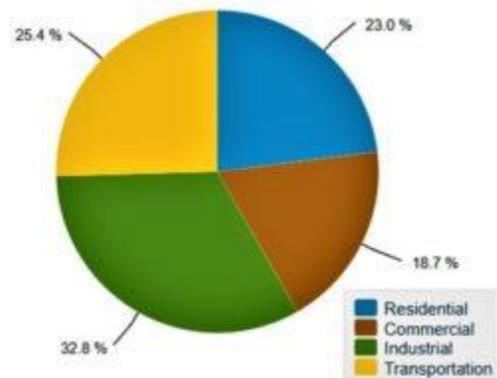
- Ohio's industrial sector is a major user of **natural gas**.

- As of April, Ohio's average **industrial electric rate** was 6.26 cents/kWh compared to 6.53 cents/kWh nationally.
- Ohio is the **third-largest coal-consuming state** after Texas and Indiana, and nearly 90% of the coal consumed in Ohio is used for electric power generation. Nationwide, coal-fired generation **continues** to be retired.

As stated in the OMA's **Public Policy Competitiveness Agenda**, energy policy can enhance — or hinder — Ohio's ability to attract business investment, stimulate economic growth, and spur job creation. This is especially true in manufacturing. 8/5/2019

Ohio Energy Consumption by End-Use Sector, 2017

August 9, 2019



eia Source: Energy Information Administration, State Energy Data System

Remember to Thank Lawmakers Who Voted 'No' on HB 6

August 9, 2019

Last month, during the final days of legislative action on **House Bill 6** — the nuclear bailout bill — 70 Ohio lawmakers from the House and Senate voted to approve the power plant subsidy package. However, another **50 lawmakers** stood firm and voted against the bill. The votes were not along partisan lines and lawmakers from both parties were pressured

heavily by their leadership, as well as multiple stakeholders.

This was a difficult vote, so hearing directly from constituents will mean a great deal to every lawmaker. If your state representative or senator voted “no” on HB 6, take a moment to send him/her a note of thanks. You can find your state lawmakers [here](#). 8/5/2019

HB 6 Referendum Process Now Underway August 2, 2019

Just over a week since the nuclear bailout bill (**House Bill 6**) was approved by the General Assembly and signed into law, efforts are underway to ask Ohio voters to invalidate the legislation.

A group called Ohioans Against Corporate Bailouts is conducting a referendum campaign. This week, it filed **initial paperwork** with the Ohio Attorney General. If the petition language is approved, more than 265,000 signatures must be collected to put the issue on the November 2020 ballot. The group is not yet disclosing specific supporters of the referendum effort, but they expect many HB 6 opponents to continue voicing their concerns about the law.

Here's **more information** on Ohio's referendum process. 8/1/2019

Feds Halt Electrical Power Sale Due to State Subsidies August 2, 2019



The decision of Ohio lawmakers to subsidize nuclear and select other power plants is already negatively affecting the wholesale operation of the regionally administered power markets. Two days after Ohio enacted its nuclear bailout under HB 6, federal policymakers ordered PJM Interconnect — the nation's largest power grid

operator, whose territory includes all of Ohio — to indefinitely delay an auction to set power prices.

According to **Bloomberg**, “The halt lays bare the gridlock within the federal energy commission as it grapples with hundreds of millions of dollars in out-of-market subsidies that some states are creating to rescue foundering nuclear power plants.” Bloomberg notes that while some power generators have warned that state bailouts are skewing the results of auctions, the Trump administration has pressed for aid to “money-losing reactors and coal units in the name of grid resilience.”

The OMA's energy engineer has **analyzed** this situation, which will be discussed at the **Aug. 29 meeting** of the OMA Energy Committee in suburban Cleveland. 8/1/2019

OMA Energy Committee to Meet in Mayfield Heights August 2, 2019

The OMA Energy Committee will hit the road for its Aug. 29 meeting, convening in the Cleveland metro area. This is the perfect opportunity for members to gather information and weigh in on the latest energy developments affecting Ohio's manufacturers. Rockwell Automation in **Mayfield Heights** will host the 10 a.m. to 1 p.m. meeting. A networking lunch will be included. As always, there is no charge to attend and the meeting is open to all OMA members. **Register here** or call (800) 662-4463. 8/1/2019

House Votes to Send HB 6 to Governor DeWine July 26, 2019



Last Sunday, July 21, Ohio House Speaker **Larry Householder** (R-Glenford) gave notice of a House session for Tuesday morning,

July 23, to hold a vote on **House Bill 6**, the nuclear power plant bailout. After the Ohio Senate **narrowly approved** the measure late last week, the House needed to concur with Senate amendments to send it to Gov. Mike DeWine. The House voted to accept the Senate amendments with just 51 “yes” votes, one vote more than the minimum required.

See how your state representative **voted**, and read a list of **major concerns** with the bill as it stands. Leading up to Tuesday’s vote, statewide media **reported** that a state aircraft had been scheduled to pick up lawmakers from a meeting in Chicago to ensure enough votes in favor of HB 6. The flight was later cancelled. *7/25/2019*

Governor Signs HB 6

July 26, 2019

Approximately two hours after the House passed HB 6, Gov. Mike DeWine signed the nuclear power bailout into law. The OMA, with the Office of the Ohio Consumers’ Counsel, had **written the governor** earlier to urge him to veto the legislation that will redistribute Ohioans’ monies to Wall Street hedge funds. The politically influential AARP also urged a veto. *7/25/2019*

What Does HB 6 Mean for Ohio Manufacturers?

July 26, 2019

Aside from the obvious new charges that customers will be forced to pay to subsidize two nuclear facilities and two old coal power plants, HB 6 grants significant new authority to state officials to interfere in competitive power markets. Under HB 6, the Public Utilities Commission of Ohio (PUCO) will have sweeping new authority to determine new charges on customers’ power bills. The OMA Energy Group will be participating in upcoming rate making and rule making. All manufacturers are invited to **join this effort** to protect their interests.

Prior to the House vote earlier this week, the OMA dispatched an **alert** to House members detailing key reasons to oppose HB 6. While proponent lawmakers dismissed the concerns, investors have already **warned** they will abandon a planned \$500 million expansion of a natural gas power plant in Troy due to the bailout legislation. Read the OMA’s **myths-versus-facts document** on HB 6. Join the discussion at the OMA Energy Committee

meeting in **Mayfield Heights, Aug. 29. 7/25/2019**

Referendum on HB 6?

July 26, 2019

The Ohio Constitution allows citizens to initiate a **referendum** at the ballot box to repeal bills enacted by the Ohio General Assembly. The process for initiating a referendum on HB 6 has already begun by one group calling itself Ohioans Against Corporate Bailouts. The OMA staff is evaluating the proposal. Should the signature collection effort succeed, the item would be added to the November 2020 ballot, which will feature the presidential race. Members of the OMA Government Affairs Committee will discuss this issue in some depth at the **Aug. 22 meeting. 7/25/2019**

Senate OKs Nuke Plant Bailout on 19-12 Vote

July 19, 2019



Wednesday night, the Ohio Senate voted 19-12 to approve **House Bill 6**, legislation that will heavily subsidize Ohio’s two nuclear power plants, along with two coal-fired plants — one of which is in Indiana! The vote followed hours of rancorous debate and a **KEY VOTE ALERT** issued by the OMA, urging senators to vote no. Find out how your state senator **voted**.

In his floor speech, Senate Energy & Public Utilities Committee Chair **Steve Wilson** (R-Maineville) said that “the real winners of this legislation is the ratepayer.” Ratepayer groups, including the OMA, oppose HB 6 because it will require Ohio businesses and families to pay hundreds of millions of dollars in new charges annually, while distorting the energy marketplace — which has been delivering lower generation costs and innovation.

Others who spoke in support of the legislation included Sens. Theresa Gavarone, Sandra Williams, Dave Burke, John Eklund, Lou Terhar, and Minority Leader Kenny Yuko. Speaking against the bill were Sens. Joe Uecker, Cecil Thomas, and Bill Coley. **Watch the Senate floor debate** beginning at the 1:51:35 mark. *7/18/2019*

Nuke Bailout: What's Next?

July 19, 2019

The **current version of House Bill 6** now returns to the House for a concurrence vote to approve the Senate amendments. The House had planned to concur Wednesday night, but instead adjourned around 8 p.m. — apparently because they **lacked the votes** to get the 50-vote majority needed to send it to the governor.

House Speaker Larry Householder may try again as early as July 25 to get final approval for the legislation. The OMA has issued a **Key Vote Alert to all state representatives** urging a “no” vote on the concurrence of HB 6.

After the House concurs, the bill will be presented to Gov. Mike DeWine, who has made statements that he favors efforts to protect the jobs at the power plants. The OMA joined forces with the Office of the Ohio Consumers' Counsel in sending a **letter to the governor**, urging him to veto HB 6 to protect Ohio businesses and families.

Take some time over the next week to **call your state representative** (ideally on their mobile phone) to let them know you oppose HB 6 and urge them to do the same. Equally important, call or write your state senator to thank them if they voted no. *7/18/2019*

Senate Amendments to HB 6 Raise More Questions

July 19, 2019

During this week's debate on HB 6, a **floor amendment** was added to delay the bill's subsidy collections and payments to power plants by one year (until 2021). This raises further questions about the need for the bill. For weeks, nuke plant owners contended that customer funds were needed by July 17 to prevent the plants from decommissioning.

Others have questioned the wisdom of passing a “bailout” now, considering the state could wait for the FirstEnergy Solutions bankruptcy proceedings to be completed soon so that lawmakers would be able to see the real financial need, if any. The OMA's **profitability analysis** finds that the nuke plants are in fact going to be profitable after bankruptcy.

Before advancing HB 6 to the full Senate, the Energy and Public Utilities Committee adopted several **other amendments** — some of which add financial protections for utilities at ratepayers' expense, such as the new decoupling mechanism and OVEC revision. A provision was also inserted to allow mid-sized industrial customers to opt-out of paying the energy efficiency rider, but the benefit is fleeting since utility-managed energy efficiency programs will be discontinued under the bill. Also of interest was an added provision allowing mercantile customers to enter into power purchase agreements with distribution utility companies.

The **OMA Energy Group** will be reviewing all the Senate changes at their July meeting. *7/18/2019*

New Budget Gives FirstEnergy Permission to Keep 'Significantly Excessive' Profits

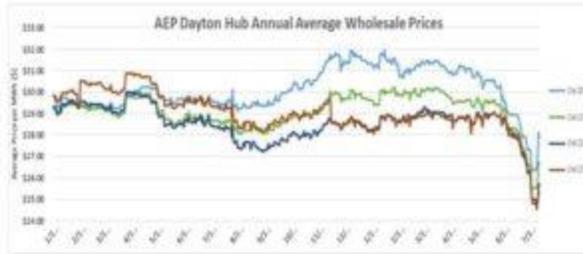
July 19, 2019

Among the thousands of law changes made by the new state budget (**HB 166**) is a utility-friendly provision that allows FirstEnergy distribution utility companies to keep even more profit rather than return excessive earnings to customers.

The House added the provision in its version of the budget, and the Senate retained the language. The OMA **lobbied** lawmakers in both chambers to remove the unfair provision. *7/18/2019*

Analysis: Abundant Natural Gas Supplies Spur Lower Electricity Costs for Ohio

July 19, 2019



In energy — like all other sectors of the economy — the free marketplace works, if politicians allow it. That fact was proved again last month when Ohio’s wholesale electricity prices **reached new lows** before rebounding slightly.

According to analysis from OMA Connections Partner **Scioto Energy**, the decline started in June as forward prices dramatically dropped 10% and ended the month with a decline of 8%. The experts at Scioto Energy say this is a new era in wholesale electricity pricing for Ohio as the abundant natural gas in the shale reserves — along with expanded gas storage inventories — have “set the market for the steep decline to all-time lows, now trading an average of only \$25 per MWh all the way out through 2024.” 7/15/2019

Key Lawmaker: Senate ‘on Track’ to Pass Nuclear Bailout Bill
July 12, 2019

With negotiations between Ohio’s House and Senate holding up passage of the new two-year budget, the nuclear bailout bill (**House Bill 6**) is part of the horse-trading between the state’s big three leaders — the governor, speaker of the House, and Senate president. If HB 6 is approved in present form, ratepayers will see higher electricity costs, while Ohio’s energy markets will suffer from market distortion and decreased investment in new generation.

The OMA — a strong opponent of HB 6 — has urged senators to strengthen the bill’s audit provisions to protect ratepayers. However, that has not been among the proposed amendments so far. A recent column in **National Review** highlights how the nuke plants’ hedge fund owners have refused to accept an amendment that would make the facilities open their books and prove they are unprofitable in order to receive subsidies. “That pretty much says it all,” concludes author Travis Kavulla of the R Street Institute, a free-market think tank.

This week, **Sen. Steve Wilson** (R-Maineville), chair of the Senate Energy and Public Utilities Committee, said things are “still on track” for HB 6 to be passed out of the Senate yet this month. **Hannah News Service** reported that the chairman believes Senate leadership still supports the bill.

While there is still time, manufacturers should **contact their state legislators** — especially senators — and tell them NO on the nuke bailout! 7/11/2019

Nuclear Subsidy Bill Continues to Linger in Senate
July 2, 2019

The Senate Energy and Public Utilities Committee met over the weekend to hear more testimony on House Bill 6, the nuclear bailout bill, but adjourned without an up-or-down vote on the legislation.

The committee did, however, adopt two minor amendments to the legislation. One amendment, offered by committee Chair **Sen. Steve Wilson** (R-Maineville), would allow the Public Utilities Commission of Ohio (PUCO) to modify its rules to ensure businesses with multiple meters are not charged for each meter. That change was requested by the commission to address **concerns raised by the OMA**.

It was evident to Statehouse observers that the failure to pass a new state budget — which is supposed to be passed no later than June 30, as required by the Ohio Constitution — was tied to HB 6, which is the top priority of Ohio House **Speaker Larry Householder**.

If HB 6 is approved in present form, ratepayers will see higher electricity costs, while Ohio’s energy markets will suffer costly distortion and decreased investment in new generation.

While there is still time, manufacturers should **contact their state legislators** and tell them NO on the nuke bailout! Make your senator your priority contact. 7/1/2019

U.S. Oil Output Tops 12M Barrels a Day for First Time
July 2, 2019

Last Friday, a **federal report** showed that U.S. crude oil production soared to new heights in April, hitting 12.16 million barrels a day. Booming shale production has allowed U.S. oil output to overtake that of Saudi Arabia and Russia, thereby helping to stabilize energy costs for manufacturers and other businesses. Overall, Ohio is currently the 13th leading state for crude oil production, and the **fifth largest producer** of natural gas. 7/1/2019

Senate Improves Energy Bill; Vote Imminent

June 28, 2019

The Ohio Senate Energy and Public Utilities Committee this week held additional hearings on House Bill 6, the nuclear bailout legislation. Committee Chair **Steve Wilson** (R-Warren County) unveiled a new version of the bill Wednesday afternoon. The Senate's **substitute version** of HB 6 makes a number of improvements to the House-passed bill, including some that were suggested by the OMA.

Most notably, the Senate version installs guardrails around the bailout payments to ensure ratepayer funds are actually needed to maintain power plant operations. For example, unlike House language that authorized an audit only of the "Clean Air Credit" program itself, the Senate bill would require plant owner FirstEnergy Solutions to "promptly and fully" provide "any document, information, data, or other request" from the PUCO or its advisers. Failure to do so would result in suspension of the subsidy.

At this week's hearing, the OMA provided **opponent testimony** since the bill would still distort the electricity market in Ohio, and would continue to subject manufacturers to new costs — known and unknown — without providing offsetting benefits. The Senate committee is expected to vote on its version of HB 6 today (June 28) and final passage will likely come Saturday or Sunday.

Look for another update on HB 6 in the July 2 edition of OMA's *Leadership Briefing*. 6/27/2019

OMA Leaders Testify Before Senate Panel to Oppose Nuclear Bailout Legislation

June 21, 2019



A panel of OMA members appeared before the Senate Energy & Public Utilities Committee on Tuesday, June 18, to share reasons why House Bill 6 is bad for manufacturers.

OMA Energy Committee Chair Brad Belden, president of **Belden Brick Co.** of Canton, **told senators** the bill would directly increase his company's electricity costs. Belden said, "There are a lot of moving parts in HB 6 and the math is not as simple as some would have us believe. For Belden Brick, we estimate the net direct cost of the Clean Air Program, OVEC subsidies and increased capacity costs — minus the renewable portfolio standard costs — is about \$40,000 per year, plus a lot of other blank checks that could dwarf the cost increase I just shared with you."

David Johnson, CEO of **Summitville Tiles** in Columbiana County, **reminded lawmakers** of the importance of deregulating Ohio's generation segment. The former OMA chairman noted that Ohio started the deregulation process two decades ago, and that it has produced upwards of \$3 billion in savings per year for Ohio's ratepayers.

Anthony Smith, global energy coordinator for **Cooper Tire and Rubber** in Findlay, highlighted how the bill also provides subsidies for the utility owners of two coal power plants, including one in Indiana.

He **informed senators** that newly updated cost estimates show that under HB 6, ratepayers would be charged an additional \$488 million. His testimony included a rebuttal of several myths espoused by bill supporters. 6/18/2019

Testifying against House Bill 6 this week were OMA members (from left) David Johnson of Summitville Tiles, Brad Belden of Belden Brick

Co., and Anthony Smith of Cooper Tire and Rubber.

Analysis: HB 6 Could Boost Plants' Profits by Over \$330M Annually

June 21, 2019



As unbelievable as it sounds, House Bill 6 would create windfall profits for Ohio's two nuclear plants by as much as \$338.5 million per year — or more than \$2 billion over the six-year term of HB 6's "Clean Air Program."

Electric ratepayers across Ohio would be left holding the bill.

The OMA has produced an independent analysis of the nuclear plants' potential profitability under HB 6. **Read this document** to better understand how the bill would create multiple compensation mechanisms for these plants; trigger special treatment of the plants' capacity revenue; and make changes in wholesale electricity markets to create even more revenue.

Under the guise of "clean air," this bill is nothing but an audacious money grab. 6/20/2019

Take Action Now to Prevent Nuke Bailout

June 21, 2019

We reported last week how a dark money group known as Generation Now has continued its **advertising blitz** in support of the nuclear bailout bill, all in hopes of convincing state senators to pass the legislation before the summer break. It is expected the Senate could vote soon on HB 6. The OMA remains a strong opponent of the bill, but senators need to hear directly from manufacturers. **Call your state senator** and tell him/her that your business and household cannot afford to provide more

subsidies to electric utilities. (Here is **more information** on the bill for you to communicate with your senator.) 6/20/2019

Poll: Nuclear Bailout Has Strong, Bipartisan Opposition

June 21, 2019



Speaks

A **new public poll** released this week shows that 7 in 10 Ohio voters are opposed to House Bill 6, the nuclear bailout bill. The opposition is strongly bipartisan with 73% of Republicans, 67% of Democrats, and 73% of independents against the plan. The poll also found:

- * 88% of respondents believe that FirstEnergy Solutions should be subject to review of their financial records by the legislature before another vote on the bill.

- * 82% of respondents believe the bill would hurt senior citizens and families living on fixed incomes.

- * 82% of respondents oppose allowing money from the fund going to help bail out a plant in Indiana.

- * 62% of respondents believe new utility costs could hurt manufacturers across the state, also impacting jobs.

Paid for by API Ohio and overseen by The Harris Poll, the survey was conducted from June 7-12 by telephone. It has a sampling error of +/- 3.4%. 6/18/2019

Supreme Court Ruling Brings Big Victory for FirstEnergy Ratepayers & OMA Energy Group

June 21, 2019

The Supreme Court of Ohio **ruled** Wednesday that customers of FirstEnergy Ohio utilities have

been overcharged by hundreds of millions of dollars since 2017. In a 4-3 decision, the Court said the Public Utilities Commission of Ohio (PUCO) improperly authorized the utilities to impose surcharges for grid modernization subsidies, and ordered the charges to be removed immediately.

Click here for a summary of the decision.

An estimated \$450 million has already been unlawfully collected from FirstEnergy customers, according to OMA's energy experts (\$204 million in 2017; \$168 million in 2018; and \$84 million for the first half of 2019). Under current state law, none of this nearly half-billion dollars is refundable to customers.

Fortunately, the foregone costs or savings brought by this week's legal victory is approximately \$84 million — and the Court's ruling prevents FirstEnergy from possibly collecting another \$336 million during 2020-21, had PUCO approved a pending request to extend the surcharge.

The OMA Energy Group **led the legal challenge** to remove the distribution modernization rider (DMR).

This week's Court decision comes as FirstEnergy continues to urge lawmakers to include **a provision** in the state budget (**House Bill 166**) that would allow its operating companies to keep "significantly excessive profits" rather than issuing refunds to more than a million customers, including manufacturers.

Congrats to the OMA Energy Group legal team on this week's important legal win. 6/19/2019



OMA Energy Counsel Kim Bojko led the efforts on behalf of the OMA Energy Group to remove

the unlawful surcharges imposed on FirstEnergy ratepayers.

Nuclear Bailout Debate Heats Up in Senate

June 14, 2019

State senators this week heard testimony from the sponsors of **House Bill 6**, the nuclear power plant bailout legislation. Reps. **Jamie Callender** (R-Concord) and **Shane Wilkin** (R-Hillsboro) told members of the Senate Energy and Natural Resources Committee that HB 6 would result in cleaner air and reduced power costs. Both senators were peppered with questions from concerned lawmakers who correctly exposed that the bill would do nothing to address air pollutants and would actually increase customer costs.

Senators on the panel were equally skeptical of proponent witnesses who came forward in support of handouts for nuclear power and certain coal-fired plants. An **OMA analysis** shows that the owners (hedge funds) of the nuclear power plants stand to earn a minimum profit of \$176 million per year as a result of the subsidy. Interestingly, the beneficiaries did not come forward to offer testimony, instead relying on allies and suppliers to make their plea.

Also this week, Generation Now — a dark money group — has continued its **advertising blitz** in support of the bailout bill in hopes of swaying senators. It is expected that the Senate could vote on HB 6 in the coming days. The OMA remains a strong opponent of the bill, but **senators need to hear directly from manufacturers** who will be exposed to new costs. Call your state senator and tell him/her that your business and household cannot afford HB 6. (Here is **more information** on the bill.) 6/13/2019

From Your Pocket to Theirs: Nuke Subsidies Unwarranted

June 14, 2019



PJM Modeling Shows Nuclear Subsidies Mean Higher Net Costs for Ratepayers

June 7, 2019

Asim Haque, an executive at PJM Interconnection, this week presented informational **testimony** before the Ohio Senate Energy and Public Utilities Committee. PJM's data provides a more accurate understanding of the new costs facing electric ratepayers under **House Bill 6**, as passed by the House last week. Moreover, PJM's modeled scenarios demonstrate how HB 6 will stunt new investment in natural gas generation and increase energy market costs.

Even though the **PJM modeling** examined only the wholesale market — and not the increased costs spurred by changes to the capacity auction — it still shows that ratepayers would experience a net increase in electricity costs due to the subsidies proposed by the nuclear bailout legislation.

A spokesperson for Ohio's residential consumer advocate, the Office of the Ohio Consumers' Counsel, interpreted PJM's data by saying, "Consumers in the region would save more than \$1.5 billion in 2023 alone if the nuclear plants in Ohio and Pennsylvania are shut down and expected new, efficient power plants are built. PJM's findings for consumer savings from power plant competition confirm that a competitive generation market is better for millions of Ohio consumers (as opposed to) charging them for bailouts and subsidies under HB 6." 6/6/2019

The House-passed plan to create ratepayer-funded subsidies for Ohio's nuclear power plants (House Bill 6) will discourage independent power plant developers from building new electricity generation in the Buckeye State, despite the ongoing shale boom. That's according to **new analysis** by energy expert Susanne Buckley, managing partner at **Scioto Energy**, an OMA Connections Partner.

Buckley says that HB 6 tells potential developers who are considering Ohio: "Beware! The playing field is not level. Participate at your own risk as we favor your competition."

She adds, "(T)he bottom line is that customers would be forced to subsidize two nuclear plants that are not profitable on their own by paying them \$176 million per year." At the same time, the bill would "gut" the existing renewable energy and energy efficiency programs. 6/10/2019

Energy Legislation

Prepared by: The Ohio Manufacturers' Association
Report created on August 20, 2019

- HB6** **CLEAN AIR PROGRAM** (CALLENDER J, WILKIN S) To create the Ohio Clean Air Program, to facilitate and encourage electricity production and use from clean air resources, and to proactively engage the buying power of consumers in this state for the purpose of improving air quality in this state.
Current Status: 7/23/2019 - **SIGNED BY GOVERNOR**; Eff. 90 days,
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-6>
- HB20** **SOLAR PANEL LIMITATIONS** (BLESSING III L) To prohibit condominium, homeowners, and neighborhood associations from imposing unreasonable limitations on the installation of solar collector systems on the roof or exterior walls of improvements.
Current Status: 6/26/2019 - House State and Local Government, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-20>
- HB55** **OIL AND GAS WELL ROYALTY STATEMENTS** (CERA J) To require the owner of an oil or gas well to provide a royalty statement to the royalty interest holder when the owner makes payment to the holder.
Current Status: 2/26/2019 - House Energy and Natural Resources, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-55>
- HB94** **LAKE ERIE DRILLING** (SKINDELL M) To ban the taking or removal of oil or natural gas from and under the bed of Lake Erie.
Current Status: 3/5/2019 - Referred to Committee House Energy and Natural Resources
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-94>
- HB95** **BRINE-CONVERSION OF WELLS** (SKINDELL M) To alter the Oil and Gas Law with respect to brine and the conversion of wells.
Current Status: 3/5/2019 - Referred to Committee House Energy and Natural Resources
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-95>
- HB104** **NUCLEAR DEVELOPMENT** (STEIN D) To enact the Advanced Nuclear Technology Helping Energize Mankind (ANTHEM) Act by establishing the Ohio Nuclear Development Authority and the Ohio Nuclear Development Consortium and authorizing tax credits for investments therein.
Current Status: 6/18/2019 - House Energy and Natural Resources, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-104>
- HB223** **WIND SETBACKS** (STRAHORN F, SKINDELL M) To alter the minimum setback requirement for wind farms of five or more megawatts.
Current Status: 5/8/2019 - Referred to Committee House Public Utilities

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-223>

HB245 **PROPERTY TAX EXEMPTION TIMELINES** (SMITH J) To remove the current deadlines by which an owner or lessee of a qualified energy project must apply for a property tax exemption.

Current Status: 5/21/2019 - Referred to Committee House Energy and Natural Resources

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-245>

HB246 **PUCO/OCC REFORM** (VITALE N) To reform and modernize the Public Utilities Commission and the Consumers' Counsel.

Current Status: 5/21/2019 - Referred to Committee House Public Utilities

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-246>

HB247 **RETAIL ELECTRIC SERVICE LAW** (STEIN D) Regarding the competitive retail electric service law.

Current Status: 6/19/2019 - House Public Utilities, (First Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-247>

HB260 **CLEAN ENERGY JOBS** (DENSON S, WEINSTEIN C) To maintain operations of certified clean air resources, establish the Ohio generation and jobs incentive program and the energy performance and waste reduction program, and make changes regarding wind turbine siting.

Current Status: 5/28/2019 - Referred to Committee House Energy and Natural Resources

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-260>

SB86 **UTILITY SERVICE RESELLERS** (MAHARATH T) To regulate certain resellers of utility service.

Current Status: 3/12/2019 - Referred to Committee Senate Energy and Public Utilities

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-86>

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MEMORANDUM

TO: Ohio Manufacturers' Association Energy Group
FROM: Kim Bojko, Carpenter Lipps & Leland LLP
DATE: June 19, 2019
SUBJECT: Supreme Court Strikes Down FirstEnergy's Credit Support Rider

In a key win for Ohio consumers, the Supreme Court of Ohio today ruled that the Distribution Modernization Rider (DMR) or credit support rider approved as part of the FirstEnergy utilities'—the Ohio Edison Company, the Toledo Edison Company, and the Cleveland Electric Illuminating Company—electric security plan (ESP) is unlawful and unreasonable. The credit support rider was approved by the Public Utilities Commission of Ohio (PUCO), authorizing FirstEnergy to collect an above-market charge from customers in an amount between \$168 million and \$204 million per year for 2017 through 2019. The charge was approved under the guise that it would improve FirstEnergy's financial state and incentivize FirstEnergy to invest in distribution grid modernization efforts. In a 4-3 decision, the majority stated that the rider does not qualify as an incentive under Ohio law as there are no meaningful conditions attached to the funds collected from customers, and that there "are no discernable consequences or repercussions if FirstEnergy fails to comply with the conditions imposed for receiving DMR funds." The Court stated: "The PUCO staff's wishful thinking cannot take the place of real requirements, restrictions, or conditions imposed by the commission for the use of DMR funds."

Agreeing with OMAEG and others, the Court determined that the credit support rider was unlawful because it was approved as an incentive to undertake distribution modernization efforts; however, the rider did not actually provide any incentive to FirstEnergy because it did not require FirstEnergy to actually make distribution modernization investments as a condition of receiving the funds. The Court concluded that the PUCO's interpretation of Ohio law in approving the charge as an incentive was not reasonable or worthy of deference, stating that the PUCO's finding "lacks evidence and sound reasoning." In reaching its decision, the Court rejected the contention that audits could adequately protect customers as there was no remedy available if it was determined that FirstEnergy had misused the funds. Having struck down the provision on those grounds, the Court declined to address other assignments of error and alternative arguments advanced by OMAEG and others.

Unfortunately, the Court ruled that due to the lack of refund language in the approved tariff, it could not order or require a refund of the monies already collected from customers under the unlawful charge. The Court, however, instructed the PUCO to immediately remove the credit support

rider from FirstEnergy's ESP. The Court also left open the possibility that past collection under the rider could be addressed during the PUCO's administration of the Significantly Excessive Earning Test (SEET) for FirstEnergy. Lastly, the Court dismissed the parties' other grounds for appeal, including challenges to the Government Directives Recovery Rider and the Delivery Capital Recovery Rider.

In a concurring opinion, Justice DeWine stated that the PUCO's interpretation of the ESP statute should not be afforded any deference, and that the plain language of the statute should be controlling. Justice DeWine concluded that the rider was not a proper incentive under the law because it did not direct or incentivize FirstEnergy toward a particular course of action. Three justices (Justices O'Connor, Kennedy, and Fischer) dissented, advocating for a broader reading of the term "incentive" and arguing that the PUCO had been reasonable in interpreting Ohio law to authorize the rider.

Although FirstEnergy will be allowed to retain the monies unlawfully collected, which is approximately \$450 million, the Court's decision reversing the above-market charge is precedential. First, and foremost, the Court has asserted itself as a check against the PUCO's approval of baseless, unreasonable charges that are not specifically authorized in Ohio law, unambiguously holding that the PUCO is not entitled to unlimited deference and must ensure that proper ratepayer protections are established. Second, FirstEnergy's collection under the rider will cease in the immediate future and FirstEnergy customers will see a rate reduction. Third, the impact will also be felt in cases currently pending before the PUCO. FirstEnergy's pending application to extend the unlawful charge for two additional years should be rejected. Similarly, the Dayton Power and Light Company has its version of the credit support rider in place and has also applied to extend its rider. Both cases may be affected by the Court's decision. Lastly, it is important to note that the Ohio Energy Group (OEG) joined FirstEnergy in opposing OMAEG's appeal and supporting the PUCO's unlawful order and unlawful charge that cost customers millions of dollars.

We will, of course, continue to monitor the ripple effects of this crucial decision by the Court and will advocate that the PUCO honor the ruling when it considers future attempts by Ohio's utilities to assess above-market charges and extract millions of dollars from customers without committing to provide substantial benefits in return. Hopefully, customers will see benefits from today's decision for years to come.

EXECUTIVE SUMMARY



The purpose of this study is to provide an update to the research team's 2016 report "Electricity Customer Choice in Ohio: How Competition Has Outperformed Traditional Monopoly Regulation" using data for 2016 through 2018.

KEY FINDINGS AT A GLANCE:

Deregulated Markets Save Ohio Electricity Consumers Billions

- Since 2011, deregulation has saved Ohio consumers \$23.9 billion.
- The Study Team anticipates that savings will continue for the near term to be around \$3 billion per year. However, these savings may be lost, in whole or in part, if deregulated energy markets continue to be undermined by cross subsidies.

Competition Outperforms Monopoly Regulation

- Competition has driven down average electricity prices in deregulated Midwestern states while their regulated peers have seen a steady increase in price of generated electricity.

“Competitive markets have proven to be a powerful tool to deliver value to Ohio’s ratepayers. Efforts to undermine the efficiency of these markets...are a threat to Ohio’s economic development and wellbeing.”

—The Ohio State University and Cleveland State University Research Study

Total Savings Due to Deregulation in Ohio 2011-2015 (millions of dollars)

Year	Shopping	SSO Auction	Total
2011	\$496.70	\$2,395.00	\$2,891.70
2012	\$443.29	\$2,366.00	\$2,809.29
2013	\$744.11	\$2,342.00	\$3,086.11
2014	\$824.21	\$2,380.00	\$3,204.21
2015	\$645.19	\$2,339.00	\$2,984.19
Total	\$3,153.30	\$11,822.00	\$14,975.30

Below is the update analyzed pricing data from 2016-2018. Total savings over the three years was around \$9 billion.

Total Savings Due to Deregulation in Ohio 2016-2018 (millions of dollars)

Year	Shopping	SSO Auction	Total
2016	\$540.77	\$2,553.90	\$3,094.67
2017	\$403.59	\$2,502.10	\$2,905.69
2018	\$353.45	\$2,612.60	\$2,966.05
Total	\$1,297.81	\$7,668.60	\$8,966.41

Total Savings from Deregulation in Ohio 2011-2018 (millions of dollars)

Shopping	SSO	Total
\$4,451.11	\$19,490.60	\$23,941.71

1. Since 2011, deregulation has saved Ohio consumers \$23.9 billion. Of this total savings, \$19.5 billion resulted from competitive auctions driving down the price of the utilities' Price to Compare (PTC). These savings are realized by Ohio electric consumers who obtain their power from the default generation service that sets the price for this utility service. An additional \$4.4 billion has been saved by consumers who contracted with Competitive Retail Electric Service (CRES) providers or governmental aggregators and were able to negotiate electricity prices below the PTC.

The 2016 report analyzed data through 2015 and estimated that Ohio consumers had saved about \$3 billion per year, \$15 billion in total, through deregulation between 2011 and 2015. That report set forth two types of savings:

- “Shopping” are those costs avoided through purchasing electricity from a CRES provider, rather than defaulting into the Standard Service Offer (SSO) (used to create the PTC).
- “SSO Auction” are the savings resulting from utilities setting their SSOs through a competitive auction process, rather than the traditional cost-based accounting method that was used in Ohio before deregulation.

2. Competition has driven down average electricity prices in deregulated Midwestern states (Ohio, Pennsylvania, Illinois), while their regulated peers (Indiana, Michigan, Wisconsin) have seen a steady increase in price of generated electricity. Ratepayers in these regulated states are saddled with the cost of aging, uneconomic power plants, while competitive markets in the deregulated states have

incentivized investment into new efficient and cost-effective generation and have accessed wider multi-state markets for generated electricity. Deregulation has also led to the adoption of dynamic pricing programs and more renewable energy resource offerings.

Competitive markets have proven to be a powerful tool to deliver value to Ohio's ratepayers. Competitive rates are attractive to businesses looking to locate in Ohio. Any attempt to derail competitive generation markets would cause significant harm to all of Ohio's electric consumers and to Ohio's economy.

3. The Study Team anticipates that savings will continue for the near term to be around \$3 billion per year. However, these savings may be lost, in whole or in part, if deregulated energy markets continue to be undermined by cross subsidies of uncompetitive Investor Owned Utility (IOU) generation through Electric Distribution Utility (EDU) riders and surcharges, or through legislatively-mandated, above market Power Purchase Agreements (PPAs) and subsidies.

Despite the many benefits of competition, there have been continuing threats to deregulated electricity markets in Ohio. Investor Owned Utilities have used Ohio's regulatory system to obtain cross-subsidies to support their unprofitable generating facilities through riders and surcharges collected by their regulated Electric Distribution Companies on consumers' bills.

The costs charged to Ohio consumers through these riders and surcharges are not directly related to the purchase of electric power itself. These efforts have served to undermine the billions of dollars of benefits consumers have realized from competitive markets and have prevented consumers from realizing the full benefits from deregulation.

To read the full study and to learn more about how to support energy choice, go to www.saveenergychoiceohio.org.

ABOUT NOPEC

NOPEC (Northeast Ohio Public Energy Council) is a non-profit group of over 230 communities in 17 Ohio counties that negotiates lower utility rates for its members. As Ohio's largest public retail energy aggregator, NOPEC buys gas and electricity in bulk to help lower customers' utility bills. Since 2001, NOPEC has saved residents and businesses over \$300 million and awarded more than \$28 million in energy-efficiency grants to NOPEC member communities. For more information about NOPEC, visit www.nopec.org.





KEY VOTE ALERT

July 16, 2019

To: Members of the Ohio Senate

The OMA has deemed the vote of Substitute HB 6 to be an OMA Key Vote and will record this vote on the 133rd General Assembly How They Voted scorecard. The OMA urges you to vote “no” on Substitute HB 6, the nuclear power plant bailout.

The new substitute bill waters down the nuclear facility audit provision (now called a “retrospective review”) so much that it affords less than a fig leaf of protection for Ohio businesses and households. The OMA and others provided committee members with [suggested language](#) to provide openness and fairness, while also protecting confidentiality (routinely done in proceedings before the PUCO).

Absent such due process, there is no safeguard to protect Ohioans against subsidizing a profitable business. A profitability analysis (linked below) finds that the owners of Ohio’s two nuclear power plants will exit bankruptcy profitable, and that HB 6’s subsidy stream of \$150 million per year will possibly provide \$330 million per year in profits for the plants – or approximately \$2 billion over the six-year term of the “Clean Air Program.”

A broad coalition of organizations, businesses, consumer protection groups, and individuals oppose this bill because it would distort Ohio’s energy markets, impose new costs for Ohioans, deter investment in new electricity generation, subsidize uneconomic power facilities, and reverse the progress made by two decades of deregulation in the electric industry.

Specific concerns include:

- There would be multiple new costs, and new forms of costs, for manufacturers and other Ohio ratepayers – resulting in more than \$170 million in new energy expenses per year. There are many other cost drivers in the bill.
- The Senate substitute bill grants sweeping new regulatory authority to the PUCO to determine how to allocate unknown costs to the different rate classes via rate design. These are unknown costs that will stem from new government regulation.
- FirstEnergy distribution customers will see an entirely new charge to pay for OVEC, which operates two old coal power plants – including one in Indiana. While lower monthly caps have been provided to some ratepayers, all (including FirstEnergy customers) will be on the hook to pay the full amount of the costs associated with OVEC since the new statewide rider is still subject to final reconciliation (possibly with interest).

(Continued)

- Small and medium-sized businesses have no set monthly cost caps like other customer classes. As a result, small and medium-sized businesses could pay disproportionately to subsidize the nuclear power plants.
- Customer-financed bailouts / handouts to select power plants would distort power markets, which have been delivering cost-savings and innovation. This would make Ohio less competitive and less attractive to businesses.
- The bill does nothing to promote clean air. In fact, the bill will dismantle the mechanisms which have been reducing emissions.

The bill contains nothing to protect customers. Instead, it would protect investors who own the generation assets, providing them staggering profits.

The ratepayer-funded subsidies proposed by Substitute HB 6 would move Ohio in the wrong direction. **The OMA urges you to oppose Substitute HB 6!**

MORE INFORMATION

- [Analysis of July 15 Substitute Bill](#)
- [Nuclear Power Plant Profit Analysis under Substitute HB 6](#)
- [Testimony of Brad Belden, President of Belden Brick Co.](#)
- [Testimony of David Johnson, CEO of Summitville Tiles](#)
- [Testimony of Anthony Smith, Cooper Tire and Rubber](#)
- [FERC Rules on Subsidized Generation](#)

Thank you for considering these perspectives and voting “no” to protect Ohioans.

Sincerely,



Ryan Augsburger

Vice President & Managing Director of Public Policy

The Ohio Manufacturers' Association

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Mobile: (614) 348-1227

NAYS

<u>Gil Blair</u> (D)	<u>Kristin Boggs</u> (D)
<u>Janine R. Boyd</u> (D)	<u>Juanita Brent</u> (D)
<u>Richard Brown</u> (D)	<u>Randi Clites</u> (D)
<u>Erica C. Crawley</u> (D)	<u>Jeffrey Crossman</u> (D)
<u>Sedrick Denson</u> (D)	<u>Timothy Ginter</u> (R)
<u>Dave Greenspan</u> (R)	<u>Ron Hood</u> (R)
<u>Stephanie Howse</u> (D)	<u>Candice R. Keller</u> (R)
<u>Brigid Kelly</u> (D)	<u>J. Kyle Koehler</u> (R)
<u>Laura Lanese</u> (R)	<u>David Leland</u> (D)
<u>Michele Lepore-Hagan</u> (D)	<u>Mary Lightbody</u> (D)
<u>Beth Liston</u> (D)	<u>Susan Manchester</u> (R)
<u>Gayle Manning</u> (R)	<u>Riordan T. McClain</u> (R)
<u>Michael J. O'Brien</u> (D)	<u>Jena Powell</u> (R)
<u>Craig S. Riedel</u> (R)	<u>Phil Robinson</u> (D)
<u>Mark J. Romanchuk</u> (R)	<u>Scott K. Ryan</u> (R)
<u>Michael Skindell</u> (D)	<u>Ryan Smith</u> (R)
<u>Kent Smith</u> (D)	<u>Reggie Stoltzfus</u> (R)
<u>Fred Strahorn</u> (D)	<u>Bride Rose Sweeney</u> (D)
<u>Emilia Strong Sykes</u> (D)	<u>Casey Weinstein</u> (D)

SENATE

NAYS

<u>Nickie Antonio</u> (D)	<u>Bill Coley</u> (R)
<u>Hearcel Craig</u> (D)	<u>Stephen A. Huffman</u> (R)
<u>Stephanie Kunze</u> (R)	<u>Tina Maharath</u> (D)
<u>Rob McColley</u> (R)	<u>Sean O'Brien</u> (D)
<u>Michael A. Rulli</u> (R)	<u>Vernon Sykes</u> (D)
<u>Cecil Thomas</u> (D)	<u>Joe Uecker</u> (R)



MEMORANDUM

Date: August 20, 2019
To: The Ohio Manufacturers' Association
From: John Seryak, PE and Jordan Nader (RunnerStone, LLC)
RE: Amended Substitute House Bill 6 and the Nuclear and Renewable Generation Funds – Impact to Manufacturers

Amended Substitute House Bill No. 6 (H.B. 6) was recently signed into Ohio law. H.B. 6 significantly reworks Ohio's electricity policy in a way that substantially affects manufacturers. OMA energy counsel Kim Bojko has separately provided a legal analysis on what H.B. 6 does, and how it works.

In summary, H.B. 6 creates a \$150 million annual fund for nuclear power plants, a \$20 million annual fund for select solar power plants, extends a "power purchase agreement" for legacy, uneconomical coal plants in Indiana and Ohio that currently cost Ohioans tens of millions of dollars, defunds Ohio's competitive renewable portfolio standard, effectively eliminates Ohio's energy efficiency standards on investor-owned utilities, creates a mechanism for utility-backed renewable energy projects, and jeopardizes Ohio's participation in competitive wholesale electricity markets.

These changes in Ohio's electricity policy negatively impact three issues of interest to Ohio's manufacturers: cost, competition, and carbon-dioxide emissions.

Cost

H.B. 6 creates a net increase in customer costs, including the potential to increase manufacturers' electricity bills. First, and most obviously, H.B. 6 creates new customer charges

Impact of H.B. 6

- \$150 million/year in new subsidies for nuclear power, from 2021 through 2026
- Extends subsidies for legacy, uneconomic coal plants in Indiana and Ohio, which cost Ohio tens of millions of dollars each year through 2030
- \$20 million/year for select solar power projects, from 2021 through 2026
- Likely removes significant portions of Ohio generation and consumer load from competitive wholesale capacity auctions
- Likely to increase capacity prices
- Effectively eliminates renewable energy standards
- Utility efficiency programs
 - Continue through 2020
 - Mandate effectively eliminated starting in 2021
 - Subject to mercantile customer opt-out in 2020
- Creates reasonable arrangement mechanisms for trade-exposed industrial manufacturers



for the Nuclear Generation Fund and Renewable Generation Fund - \$10.20 per year for residential customers, \$28,800 /year for large consumers who use over 45 million kWh per year, and a charge to be determined later by the Public Utilities Commission of Ohio for other commercial and industrial businesses¹. Ohio’s four investor-owned utilities will be required to collect the combined \$170 million per year for the Nuclear Generation Fund and Renewable Generation Fund. Because residential customers and large consumers have prescribed, capped charges, all remaining revenue must be collected from small and mid-sized commercial and industrial businesses.

Second, H.B. 6 extends a subsidy for the Ohio Valley Electric Corporation (OVEC) through 2030. OVEC owns two legacy, uneconomical power plants, Clifty Creek in Indiana and Kyger Creek in Ohio. The OVEC subsidy currently collects tens of millions of dollars each year from customers of AEP Ohio, Duke, and DP&L. FirstEnergy customers would receive new charges to subsidize OVEC.

Third, H.B. 6 reduces Ohio’s Renewable Portfolio Standard from 12.5% by 2026, to 8.5%. It also eliminates a 0.5% by 2026 carve-out for solar energy projects, and creates a large-user opt-out of the compliance. The Renewable Portfolio Standard requires retail electric suppliers and electric distribution utilities to procure this percentage of their supply from renewable energy, and is currently at a 5.5% requirement in 2019. For context, we estimate that the renewable standards cost about \$40 million in 2017², and around \$60 million in 2019³.

Fourth, H.B. 6 directs the PUCO to authorize new power purchase agreements (PPA) for utility renewable energy and customer-sited renewable energy for 3-year terms or longer. The private market currently provides 3-year or greater terms for PPAs to customers who are seeking such projects.

Longer term, H.B. 6 will have an impact on wholesale electricity markets, and the impact could be severe and costly to manufacturers. The exact cost is still elusive. This is because of a domino-effect of state-level nuclear power plant subsidies has left the regional grid operator, PJM, without a FERC-approved capacity auction construct. Based on recommendations from FERC, electricity generators receiving funds from the Nuclear Generation Fund, or via a PPA, would be subject to a “bifurcated” capacity auction, in which the state of Ohio would likely set capacity prices for these power plants instead of PJM, and this potentially higher price would be flowed through to Ohioans.

On energy efficiency, the requirement for a utility to run an efficiency program is effectively eliminated, allowing utility run efficiency programs through 2020. Additionally, a “mercantile opt-out” of the efficiency programs would be enacted in 2020, wherein any customer that consumes over 700,000 kWh/year will be allowed to opt-out of paying into the efficiency programs, but will then not be allowed to receive financial assistance from the programs. While there is no allowance in

¹ Previous versions of H.B. 6 prescribed charges of \$180 per year per meter for commercial customers, and \$3,000 per year per meter for industrial customers. The per-account rate structure created issues for manufacturers that have multiple electric meters. It is not clear if the PUCO will adopt a rate structure similar to previous versions of H.B. 6, or something completely different.

² Renewable Portfolio Standard Report to the General Assembly by the Public Utilities Commission of Ohio for the 2017 Compliance Year.

³ Pro-rated from 2017’s RPS benchmark to the 2019 RPS benchmark. Costs would increase to \$142 million by 2026 at 2017 prices, though could be held in check if renewable energy credit prices fall.

H.B. 6 for utilities to continue offering energy-efficiency program, it does not expressly prohibit offering efficiency programs either. For context, during a previous legislative “freeze” of efficiency program requirements in 2015-16, AEP Ohio, Duke, and DP&L continued their programs, while FirstEnergy suspended theirs. In testimony on the original H.B. 6, AEP Ohio, Duke, and DP&L have all expressed interest in operating energy-efficiency programs. Manufacturers should note that there is sharp disagreement over whether efficiency programs represent a cost, or a net benefit, to customers.

Competition

H.B. 6 significantly erodes competition in electricity markets by subsidizing old nuclear and fossil fuel power plants, and favoring specific renewable energy projects over others. H.B. 6 creates subsidies for older generating technologies that have already received cost-recovery from Ohio’s ratepayers several times, are unable to compete in the wholesale electricity markets, and are announced for retirement.

Put another way, H.B. 6 creates subsidies to reverse the competitive electricity market formation that Ohio has supported for 20 years. This is serious - competitive electricity markets save Ohio’s manufacturers, businesses, and residents around \$3 billion per year⁴.

Carbon

H.B. 6 no longer explicitly discusses reduction in carbon or other emissions as objectives. However, purported environmental benefits have been used to justify H.B. 6. When considering carbon emissions, it is important to note several trends:

- Many global manufacturers and their supply chains are adopting greenhouse gas reduction goals, energy reduction goals, or renewable energy supply goals. Thus, the carbon intensity of the regional electric grid is important to a growing number of manufacturers. The carbon intensity of the electric grid counts towards a manufacturer’s internal accounting of Scope 2 emissions and thus impacts a manufacturer’s ability to meet their own corporate emissions reductions goals.
- The US has canceled implementation of the Clean Power Plan, and announced withdrawal from the global Paris Treaty. As a result, there is thus no current federal carbon emissions policy for electricity generation.
- States that have created their own carbon reduction policy for the electricity sector often join regional carbon markets to reduce costs, such as the Regional Greenhouse Gas Initiative comprised of mid-Atlantic and New England states.
- Competitive wholesale electricity markets produce efficiencies of several types, lowering not just cost but carbon emission as well, as producers reduce waste in order to stay competitive.

⁴ “Electricity Customer Choice in Ohio: How Competition Has Outperformed Traditional Monopoly Regulation”, Thomas, A., Bowen, W., Hill, E., Kanter, A., Lim, T. https://engagedscholarship.csuohio.edu/cgi/viewcontent.cgi?article=2420&context=urban_facpub

Thus, maintaining competitive markets is an important aspect of reducing wastes and improving efficiencies, as supported by multiple academic studies⁵.

- Ohio's existing diverse electricity generation mix is keeping costs low, as well as reducing emissions by 38% from 2005 levels⁶. This lower carbon transformation has occurred in a competitive wholesale electricity market.

In light of these trends, a state policy intended to cost-effectively reduce carbon dioxide emissions from the electric sector would likely have the following components:

- Preserve competitive electricity markets.
- Develop a carbon market, typically with regional partners and a fluctuating price.
- Allow broad competition for carbon credits that is technology neutral, and would include nuclear, large scale renewable energy, smaller scale renewable energy, behind-the-meter generation, and energy efficiency.

H.B. 6 does none of this, and in fact, subsidizes uneconomical coal plants. It could impair Ohio's already successful trend of reducing carbon-dioxide emissions in several ways. First, it erodes competitive electricity markets by introducing subsidies for specific technologies and plants. Even zero-carbon nuclear plants are shown to reduce more emissions when they are in competitive markets⁷. Second, H.B. 6 creates subsidies for the OVEC coal plants. Third, H.B. 6 eliminates support for renewable energy technologies and their significant associated emissions reductions.

In conclusion, H.B. 6 is a major reworking of Ohio's energy policy, and could result in significantly higher electricity prices for Ohio's manufacturers, would erode functioning electricity markets, and could even increase Ohio's carbon-dioxide and other emissions from the electricity sector.

⁵ Cicala, Steve. 2015. "When Does Regulation Distort Costs? Lessons from Fuel Procurement in US Electricity Generation." *American Economic Review*, 105 (1): 411-44

Fabrizio, Kira, R., Nancy L. Rose, and Catherine D. Wolfram. 2007. "Do Markets Reduce Costs? Assessing the Impact of Regulatory Restructuring on US Electric Generation Efficiency." *American Economic Review*, 97 (4): 1250-1277.

Craig, J. Dean, and Savage, S., 2013, "Market Restructuring, Competition and the Efficiency of Electricity Generation: Plant-level Evidence from the United States 1996 to 2006", *The Energy Journal*, 34 (1): 1-31

⁶ Ohio EPA letter to the US Environmental Protection Agency, Oct. 30th, 2018, Docket ID No. EPA-HQ-OAR-2017-0355

⁷ Davis, L., Wolfram, C., 2012. "Deregulation, Consolidation, and Efficiency: Evidence from US Nuclear Power," *American Economic Journal: Applied Economics*, American Economic Association, vol. 4(4), pages 194-225, October.



Summary of Major Concerns Senate Substitute HB 6

Updated 7/22/19

Unknown and New Costs

1. There are many **unknown costs and rate design issues** that are left to the PUCO's discretion to decide at some point in the future, especially for the non-residential classes.
2. Parties will have to litigate all of the **unknown cost allocation and rate design issues** and there could be cost shifting between all classes, especially the small to large commercial customers (certain costs are defined only for the residential class and the very large, self-assessor class).
3. **New costs** are created by the bill, including lost distribution revenue for new rate schedules, costs associated with existing renewable purchase power agreements, revenues associated with energy efficiency programs and lost distribution, and costs associated with old coal plants in Ohio and Indiana (**\$488 million in additional costs**).

Need for Nuclear Subsidies

1. Although requirements were added to the application process for the nuclear facilities to submit financial information, OAQDA does **not** have to consider the financials. Sec. 3706.41. Instead OAQDA is required to certify the facility regardless of what the financials reveal. Sec. 3706.43.
2. While it **appears** that a demonstration of need is required, it is not. It only requires information to be included in an application. It does not require OAQDA to make a need determination prior to approving the nuclear resource as a qualifying facility and giving credits.
3. Sec 3706.43 needs to be changed to be a requirement to demonstrate need **prior to** becoming certified, not merely an illusory requirement to provide information about a resource's need in its application.
4. All info provided in an application is deemed confidential. So no transparency of "need." Sec. 3706.431.

Monthly Clean Air Charge

1. For non-residential customers that are not self-assessors, no set monthly clean air charge is established, and it is unclear whether the charge will be on a per-customer or per-meter basis. Therefore, many commercial customers could end up paying a large monthly fee on a per-meter basis. It is an **unknown cost**.
2. Utilities in the aggregate must set a charge that generates **\$150M** statewide annually for nuclear credits **and \$20M** statewide annually for renewable credits (**total cost to customers annually = \$170M**).
3. Charge is reconciled annually. Clean air credit charge may continue beyond 12/31/26 for reconciliation purposes. Sec. 3706.46.
4. PUCO determines allocation between utilities and customer classes. Therefore, costs unknown.
5. Changed to per-customer monthly charge (at least for these 2 classes) and is capped for 2 customer classes:
 - a. Residential = \$.85
 - b. Industrial self-assessors = \$2,400.
 - c. Other Non-Residential = **No Cap**—just says the level and design shall be established by PUCO in a manner that avoids abrupt or excessive total net bill impacts for typical customers. All commercial customers that are not the very large industrial customers pay the remaining revenue requirement. Looks like they could pay the bulk of the \$170M. Does **not** say that this charge is assessed on a per-customer basis for majority of commercial customers.

“Audit”

1. **No audit**—it is called a PUCO **retrospective** management and financial review of the owner or operator of a resource and any resource that receives credits. This is paid by the fund (Sec. 3706.53 designates monies from the \$170M to pay it). Sec. 3706.61.
2. **No stakeholder process**. Explicitly excludes the review from PUCO hearing process. No due process. No transparency. The provision has been diluted by not calling it an audit and no due process was added.
3. If overpay, no refunds. It is a retrospective review that can only make prospective changes--any reductions are **prospective** only. Sec. 3706.61.
4. PUCO produces same report and will now make it public but no confidential data will be revealed. It will be a high-level summary report.
5. Adds back in concept of Strike Price and a reduction to nuclear credit if Market Price greater than Strike Price (**not** a genuine customer protection).
 - a. Market Price index = (projected energy prices using futures contracts for PJM AEP-Dayton hub + projected capacity prices using PJM's rest-of-RTO market clearing price)
 - b. Strike Price = \$46/mwh

- c. In order for there to be a reduction in the Clean Air Credit, the Market Price has to be greater than the Strike Price. The current market prices are low (in the low \$30/mwh range) so it is unlikely that the Market Price index will go over \$46/mwh in the foreseeable future.
6. Ability to decertify resource if need not determined through review was removed.
7. OAQDA **may** reduce or cease credits on a going forward basis if:
 - a. FERC or Nuclear Commission has established other incentive to continue operations,
 - b. 3706.43 is not met (but these are really just application requirements so only required to provide certain information in the resource's application),
 - c. owner applied to decommission resource before 5/1/26,
 - d. if Market Price exceeds Strike Price on the first day of June in the year when report is submitted then credit price adjustment is applied.
8. Specifically states that info given to PUCO by resource owners are not deemed public records and not subject to public records request. Sec. 3706.65.

OVEC

1. Added definition of prudently incurred costs related to legacy generation resource (this includes OVEC + possibly others?).
2. Recovery of costs incurred due to bankruptcy proceedings (i.e., FES' share of OVEC) are considered prudent. Sec 4928.01(A)(42).
3. Revises existing OVEC recovery riders to **statewide** recovery of costs through 2030 with final reconciliation and recovery of all costs "**that exist at that time.**" Therefore, all costs that have been incurred but not collected (over the caps) will be due on 12/31/30. This will be a large balloon payment due on 12/31/30, which will negatively impact customers.
4. The bill expands current OVEC recovery to all customers and expands recovery time period through 2030, subject to final reconciliation (currently, AEP's recovery is through 2024, Duke's is through 2025, and DP&L's is through 2023). Sec. 4928.148. **Adds approximately \$488 million in costs to customers.**
5. FirstEnergy customers will **now pay** the OVEC rider. This will be a **new cost** for FirstEnergy customers.
6. Prudence review for OVEC recovery is only every 3 years. Therefore, utilities will keep customer money that is over collected or that is deemed to be imprudent or unreasonable for 3 years until the next review.
7. PUCO to determine rate design for the recovery of OVEC costs in the future.

8. Establishes caps on the monthly charge or credit (including deferrals):
 - a. Res = \$1.50 per customer per month
 - b. Non-res = PUCO shall establish comparable monthly caps for each class at or below \$1,500 per customer.
9. Anything over the cap is deferred and **shall** be recovered as determined by the PUCO and subject to monthly caps until 12/31/30 when all costs deferred must be paid to the utilities. Again, this will be a large, unknown cost due on 12/31/30. The provision is silent as to whether interest may be also collected on the amount deferred. Sec. 4928.148(A)(2).
10. Given that FirstEnergy does not own OVEC, there is an added provision that says that the PUCO shall determine the manner in which charges collected under this section should be remitted.

Decoupling Mechanism

1. Creates **new costs** through a new rider by implementing a decoupling mechanism that decouples the base distribution rates for residential and commercial customers to the base distribution revenue AND revenue resulting from implementation of the EE statute (excluding program costs and shared savings) as of the 12-month period ending December 31, 2018. Sec. 4928.471.
2. The new rider will remain in effect indefinitely, until the utility applies for and receives approval of its next distribution rate case.
3. Excludes any utility from receiving a decoupling mechanism if the utility recently had a base distribution rate case and new rates became effective between December 31, 2018 and the effective date of the bill (e.g., Duke).

RPS

1. Reduced the amount of renewables required each year from 2020 through 2025, **but** expanded the renewable requirement until the end of 2026. Sec. 4928.64.
2. Allows recovery for existing long-term renewable purchase power agreements for RPS compliance through 12/31/32. The bill changed it to a guarantee recovery through 12/31/32, regardless as to whether the utility is still incurring costs and regardless of whether the costs are prudent. This could **add new costs** that would have otherwise ended. Sec. 4928.641.
3. In 2020, the PUCO is required to reduce the compliance baselines with the RPS by the amount of kwhs produced by the 5 solar projects that qualify to receive the clean air credit. This will significantly reduce the baselines when those projects are operating. Sec. 4928.642.
4. Retains language to further reduce the RPS and EE compliance baselines by self-assessing mercantile customers' load. Sec. 4928.644.
5. Any renewable project that receives the clean air credit cannot also sell its RECs.

EE

1. Modifies the EE standards to be an additional one percent of the baseline for years 2019-2020. Sec. 4928.66.
2. Extends all EDU EE programs to 12/31/20, but then terminates them on that date.
3. For extended programs, increases the existing EE budget for the utility to the annual average of all budgets that its EE program has been in effect. This creates **new, unknown costs**.
4. PUCO will calculate cumulative energy savings collectively achieved by all EDUs in the state as of 12/31/20 to determine if 17.5% of the baseline has been achieved. If not achieved, then PUCO will determine how further EE programs shall occur. Sec. 4928.66.
5. Cost recovery mechanisms shall terminate upon the date that the PUCO determines full compliance has been achieved subject to final reconciliation. Thus, **future EE costs unknown** and will be determined later by the PUCO.
6. Removed Sec. 4928.143 revised language that required cost recovery approved for EE programs and deferrals related to EE programs to be only for reasonable and prudently incurred costs.

ELEVEN MYTHS SURROUNDING SUB HOUSE BILL 6 (AS PASSED BY THE SENATE)

(This document was updated July 22, 2019.)

There are numerous myths surrounding Ohio’s legislation to bail out uneconomical nuclear power plants. Here are the top 11 myths – and the facts to set the record straight.

MYTH 1: SUB HB 6 IS ALL ABOUT CLEAN AIR – AND NOT A NUCLEAR BAILOUT FOR FIRSTENERGY SOLUTIONS.

FACT: THE BILL CANNOT BE MISTAKEN FOR ANYTHING OTHER THAN A BAILOUT.

- Sub HB 6 provides a Clean Air Credit to nuclear facilities (\$9.00 per MWh of generation) (Sec. 3706.45 and 3706.46) in the amount of \$150 million annually. FirstEnergy already received subsidies for its generation plants during the transition to a competitive market in the amount of \$6.9 billion. Sub HB 6 creates additional subsidies for two Ohio nuclear facilities that are currently in bankruptcy. After bankruptcy, it is estimated that the two Ohio nuclear facilities will become just as profitable as the other nuclear facilities that operate at a profit. (See table below.) Poor debt management should not be rewarded in the form of a corporate bailout.

Nuclear unit forward annual surplus (shortfall) (\$ in millions)

Surplus (Shortfall) (\$ in millions)			
	2019	2020	2021
Beaver Valley	\$134.3	\$93.5	\$84.7
Braidwood	\$106.4	\$80.3	\$51.7
Byron	\$104.3	\$78.6	\$50.6
Calvert Cliffs	\$131.0	\$99.0	\$89.3
Cook	\$95.8	\$48.4	\$41.9
Davis Besse	(\$26.9)	(\$47.8)	(\$45.6)
Dresden	\$97.3	\$76.4	\$53.8
Hope Creek	\$57.9	\$52.0	\$43.3
LaSalle	\$103.5	\$78.0	\$50.2
Limerick	\$112.2	\$100.5	\$83.8
North Anna	\$138.6	\$99.3	\$90.0
Peach Bottom	\$113.4	\$101.5	\$84.1
Perry	(\$22.6)	(\$49.6)	(\$47.8)
Quad Cities	\$61.3	\$42.2	\$20.9
Salem	\$114.6	\$102.8	\$85.5
Surry	\$120.5	\$85.6	\$77.6
Susquehanna	\$77.7	\$37.4	\$28.2
Three Mile Island	(\$56.9)	(\$69.6)	(\$72.3)

Source: PJM 2018 State of the Market, Table 7-42, at page 352 of Volume II

- The latest version of Sub HB 6 also provides subsidies to five large solar facilities in the amount of \$20 million annually and to the Ohio utilities for their direct or indirect ownership in old coal-generating plants, Ohio Valley Electric Corporation (OVEC), which includes one plant in Indiana and will cost customers over \$488 million more than current charges.

MYTH 2: SUB HB 6 WILL REDUCE COSTS.

FACT: SUB HB 6 WILL NOT REDUCE COSTS – IT ACTUALLY CREATES NEW COSTS.

- Sub HB 6 creates the Clean Air Charge that will collect \$170 million annually from customers in new charges.
- Sub HB 6 expands the existing OVEC rider through December 31, 2030 and to include costs associated with FirstEnergy's share for the OVEC plants, adding over \$488 million in costs to customers' bills. The charge will now be assessed to FirstEnergy customers, adding new costs to those customers.
- Sub HB 6 does not eliminate energy efficiency (EE) costs. The bill continues the existing EE programs through December 31, 2020 with increased budgets, and could possibly continue EE programs beyond 2020. **Allows costs associated with those programs to be collected from customers beyond December 31, 2020** if the EE programs continue and/or to reconcile cost recovery of the programs (Sec. 4928.66(F)).
- Sub HB 6 creates a new rider (decoupling mechanism) that will **continue to collect certain EE costs and may add new costs** (Sec. 4928.471). The new rider will continue until the utility's next base distribution rate case. The utility can collect the revenues it received for the 12 months ending December 31, 2018, associated with implementing EE programs, which includes lost distribution revenues. The rider appears to apply to commercial customers that opted out of paying the EE costs pursuant to R.C. 4928.6611, thereby **increasing some opt-out customers' bills**.
- Sub HB 6 will **increase wholesale capacity prices** by eliminating EE mandates that help suppress capacity prices. Also, Sub HB 6 erodes competition in electricity markets by subsidizing certain generating facilities at the expense of others, thereby increasing costs to customers.

MYTH 3: MANUFACTURERS CAN GET THE CLEAN AIR CREDITS OR OTHER FUNDS.

FACT: THAT'S JUST NOT GOING TO HAPPEN.

- The latest version of the bill clearly defines a Clean Air Resource as nuclear or solar facilities that are interconnected to PJM, and that are major utility facilities certified by the Ohio Power Siting Board prior to June 1, 2019, and the bill only provides for funding to Clean Air Resources (Sec. 3706.40). Therefore, manufacturers will not receive any monies from the Clean Air Fund.

MYTH 4: MANUFACTURERS WILL BE EXEMPTED FROM PAYING THE CLEAN AIR FEES.

FACT: MANUFACTURERS WILL NOT BE EXEMPTED.

- There are no longer any provisions in the bill that would exempt a manufacturer from paying the Clean Air Fees.

MYTH 5: COST TO MANUFACTURERS IS MINIMAL.**FACT: MANUFACTURERS' COSTS COULD INCREASE SUBSTANTIALLY.**

- The monthly charge to the majority of commercial customers to fund the Clean Air Fund is unknown and undefined as to whether it will be collected on a per-account or per-customer basis or whether it will be a flat monthly charge or a kwh charge (Sec. 3706.46). Typically, utilities assign an account to each meter belonging to a customer; manufacturers frequently have more than one meter. Thus, a large manufacturer with three accounts could be assessed multiple charges based on consumption.

MYTH 6: SUB HB 6 CREATES DIVERSITY OF GENERATING RESOURCES.**FACT: THE BILL REMOVES INCENTIVES TO INVEST IN A BROADER ENERGY PORTFOLIO.**

- If two Ohio nuclear plants, five solar facilities, and two old coal plants (one in Ohio and one in Indiana) receive subsidies and other resources do not receive subsidies, the four subsidized plants will likely be able to be dispatched by PJM, replacing other resources, which could include coal plants that recently invested to add scrubbers and emission control equipment. Unfairly subsidizing certain plants at the expense of all others may enable those subsidized plants to remain in the diversity mix, but could cause other resources to be eliminated from the mix.

MYTH 7: SUB HB 6 PROHIBITS GENERATING FACILITIES FROM RECEIVING MULTIPLE GOVERNMENT SUBSIDIES.**FACT: UNDER THE BILL, GENERATORS COULD GET MANY GOVERNMENT SUBSIDIES.**

- Sub HB 6 does not prohibit a facility from receiving multiple government subsidies. It does not specifically prohibit resources from receiving one or more state, federal, or municipal subsidies, or local tax abatements, and only permits, not requires, the Ohio Air Quality Development Authority to cease or reduce payments to nuclear facilities if FERC or NRC establish a monetary benefit or incentive payment to continue commercial operation of the plants. Moreover, Sub HB 6 allows a Clean Air Resource to receive a Clean Air Credit, while also allowing for increased capacity payments from PJM that could be triggered by Sub HB 6 (Sec. 3706.61).

MYTH 8: SUB HB 6 SWAPS MANDATES – OHIO'S ENERGY EFFICIENCY AND RENEWABLE PORTFOLIO STANDARDS ARE REPLACED BY A CLEAN AIR FUND.**FACT: MANUFACTURERS COULD GET STUCK PAYING FOR MULTIPLE MANDATES.**

- Sub HB 6 does not simply eliminate EE costs and replace with a lower Clean Air Fee. Rather, Sub HB 6 continues to collect costs associated with existing EE programs through December 31, 2020 and possibly beyond 2020, allows the utilities to collect costs and incentives associated with expanding collection of OVEC, and will assess other new charges to customers, including customers that opted out of EE programs (see Myth #2). Additionally, Sub HB 6 does not just affect the EE and Renewable Portfolio Standards (RPS) mandates. Sub HB 6 modifies the ratemaking statutes enacted to effectuate deregulation and allows utilities to add new above-market charges to customers' bills through their Electric Security Plans (ESPs). Sub HB 6 creates a mechanism for distribution utilities to re-enter the generation market, creating bad energy policies. Sub HB 6 is a step backwards for Ohio.

MYTH 9: SUB HB 6 REDUCES EMISSIONS IN OHIO.**FACT: THE CURRENT SYSTEM IS WORKING; SUB HB 6 COULD THWART OHIO'S PROGRESS.**

- Ohio's existing diverse electricity generation mix has already reduced emissions by 38 percent from 2005 levels. This lower carbon transformation has occurred in a competitive wholesale electricity market. Subsidizing older plants, including two coal plants, with older technologies that may otherwise retire and make way for newer technologies could result in increased carbon-dioxide emissions in Ohio.

MYTH 10: SUB HB 6 SUBSIDIES FOR OHIO VALLEY ELECTRIC CORPORATION (OVEC) ARE INSIGNIFICANT.**FACT: THE NEW OVEC SUBSIDY WILL COST OHIO FAMILIES AND BUSINESSES AT LEAST AN ADDITIONAL \$488 MILLION THROUGH 2030.**

- Total costs to Ohio ratepayers for OVEC under approved ESPs are approximately \$79 million per year.
- The modified OVEC subsidy will expand the duration of the current non-bypassable, above-market charges on customers' electric bills, will include costs associated with FirstEnergy's share of OVEC, and will be expanded to assess the charge on FirstEnergy's customers.(Sec. 4928.148).
- AEP Ohio will recover roughly \$38 million per year from customers under the approved ESP through May 31, 2024. Sub HB 6 would allow the company to recover an additional \$247 million between June 2024 and December 2030.
- Duke Energy Ohio will recover roughly \$32 million per year from customers under the approved ESP through May 31, 2025. Sub HB 6 would allow the company to recover an additional \$176 million between June 2025 and December 2030.
- The Dayton Power and Light Company will recover roughly \$9 million per year from customers under the approved ESP through November 1, 2023. Sub HB 6 would allow the company to recover an additional \$65 million between November 2023 and December 2030.
- Although the OVEC charge will be capped monthly through December 21, 2030, the charge is subject to final reconciliation on December 31, 2030, at which time customers will be responsible to pay all costs that have been deferred and that are due. Customers could be on the hook for a large lump sum payment on December 31, 2030 (Sec. 4928.148(A)(3)).

MYTH #11: SUB HB 6 SUPPORTS ONLY OHIO FACILITIES.**FACT: SUB HB6 WILL GIVE MILLIONS OF DOLLARS TO AN INDIANA COAL PLANT.**

- The bill does NOT require that the Legacy Generation Resources (OVEC) be in the state of Ohio to receive subsidies under Sub HB 6 (Sec. 4928.01(A)(41); 4928.148). One OVEC unit partially owned by the Ohio distribution utilities that will receive customer-funded subsidies from Ohioans under Sub HB 6 is in Indiana.



MEMORANDUM

Date: August 19, 2019
To: The Ohio Manufacturers' Association
From: Jordan Nader & John Seryak, PE (RunnerStone, LLC)
RE: FirstEnergy Solutions Corp. Recommended Changes to Wholesale Electricity Markets to Address Power Plant Subsidies

On October 2, 2018, FirstEnergy Solutions (FES) filed initial comments in a Federal Energy Regulatory Commission (FERC) proceeding¹ seeking to determine how best to address out-of-market revenues allocated to generators by states. FES's comments are of particular interest to Ohio's manufacturers, as the Amended Substitute House Bill (Sub. H.B.) 6 was recently signed into Ohio law would create just this – out-of-market revenues for FES' nuclear plants and other power plants. H.B. 6, if enacted, would trigger FERC's forthcoming capacity market rules on subsidized generation for Ohio.

Generally, the question at FERC is how, if at all, PJM's market rules should accommodate state policy decisions relating to generation. If resources that receive out-of-market subsidies from state policy decisions are allowed to participate in the PJM's market without proper safeguards, it will result in the exercise of market power and inefficient market outcomes for Ohio's manufacturers. FERC² has suggested that they would like to solve this issue by modifying the current capacity construct to become a "bifurcated capacity construct (P 161)" wherein subsidized resources will enter into a new "resource specific – fixed resource requirement (P 160)" (RS-FRR) and unsubsidized resources will compete in the traditional capacity auction but be subject to a more stringent minimum offer price rule (MOPR)³.

FES indicated in their initial comments that they support an expanded MOPR (MOPR-Ex) as well as

Impact of FES Recommendations to FERC Capacity Auction Order, as Triggered by H.B. 6

- FERC's recommendation addresses "unplanned reregulation", one subsidy and mandate at a time."
- Creates increased capacity charges
 - \$80 million/year for nuclear plants, using FES example prices
 - Other power plant subsidy recipients of could create additional increased capacity costs
- Would apply to all Ohio investor-owned utility ratepayers
- Would be additional costs to the \$150 million/year Nuclear Generation Fund
- Would not be capped – could cost very large manufacturers approximately \$320,000 /year additional
- FES claims: nuclear credits are "not intended to provide resources with sufficient revenue...to make continued operation economically viable"
- Would allow generators to opt-out of the wholesale capacity market and self-supply customers in a construct similar to a vertically-integrated monopoly utility.

¹ FERC Docket EL18-178

² FERC Order: <https://elibrary-backup.ferc.gov/idmws/common/OpenNat.asp?fileID=14961693>

³ FES Initial Comments: <https://elibrary-backup.ferc.gov/idmws/common/OpenNat.asp?fileID=15057409>



the RS-FRR (Pg 6). The RS-FRR path laid out by FES has potential pitfalls. An RS-FRR is similar to the current fixed resource requirement (FRR) alternative, however it is different in that the FRR allows utilities to opt out of the Reliability Pricing Model (RPM) and self-supply using contracted or owned generation within their territory. RS-FRR, in contrast, would allow specific resource types (ie, generators) to opt out of the RPM on the basis of states seeking to control the in-state generation mix. That is, the market opt-out decision would shift from customers to generators. FES recommends solutions to both the appropriate rate of compensation and how to pair load with this RS-FRR supply in their initial comments.

On the question of appropriate rate of compensation, FES recommends the amount of RS-FRR payment should be determined by the states and whatever factors are appropriate. This is in part due to the fact that the rate would be paid solely by the state’s retail ratepayers. However, if the state did not determine a rate, the RS-FRR generator could file to establish a rate at FERC or accept the default market rate. It is important to note that FES does not envision this payment to be a substitute for a subsidy payment the generator would be receiving for attributes of producing electricity. This is due to the subsidy payments being for environmental benefits, which FES sees as “not intended to provide resources with sufficient revenue, in the absence of a capacity payment, to make continued operation economically viable.”⁴ This suggests FES may view the RS-FRR to be a payment in addition to the potential “Nuclear Resource Credits” that Davis-Besse and Perry nuclear power plants would generate at \$9/MWh.

To address the pairing of load with this supply, FES recommends a few items. First, PJM should adjust the demand curves for each locational deliverability area (LDA) based on whether there is a RS-FRR resource in that area. Second, in order to charge load for the costs of the RS-FRR rate, FES recommends that in keeping with the state policy decisions that first created the RS-FRR rate, the costs should be expanded from the LDA to all ratepayers in the state. The costs would be charged as an average capacity rate to all load (aka, customers) in that state⁵. As an example of this proposal, the table below demonstrates the difference between capacity prices in Ohio for RPM auctions that have already been run based on the assumption that the placement of Ohio’s nuclear fleet of 2,150 MW on the RS-FRR rate would not have altered capacity price outcomes. Additionally, the table assumes that Ohio’s capacity obligation will remain flat for the next three years at 30,633 MW and that Ohio would settle on an RS-FRR rate of \$200/MW-day. This model is based upon the example that FES provided within their initial comments. The results suggest that Ohio would experience an increased annual cost of capacity of at least \$80 million.

Delivery Year	A Capacity Obligation (MW)	B Capacity Price (\$/MW-Day)	C Example RS-FRR Rate (\$/MW-Day)	D Ohio Nuclear Capacity (MW)	E Total Capacity Cost w/o RS-FRR	F Total Capacity Cost w/ RS-FRR*	G Increased Cost to Ohioians (\$)	
2019/2020 Ohio	30,633	\$100	\$200	2,150	\$1,118,111,749	\$1,196,586,749	\$78,475,000	
2020/2021 Ohio	30,633	\$77	\$200	2,150	\$855,690,921	\$952,584,004	\$96,893,083	
2021/2022	Ohio w/o FE	18,093	\$140	\$200	2,150	\$924,547,118	\$971,632,118	\$69,583,783
	FE only	12,540	\$171	\$200	2,150	\$784,213,304	\$806,712,086	

*F = [(A - D) x B + (C x D)] x 365 Days

Table 1: Increased Capacity Costs to Ohioans from Sub. H.B. 6 Triggering a PJM Capacity Auction Bifurcation, Based on FES Comment Price Estimates

⁴ Initial Comments of FirstEnergy Solutions Corp., Page 10

⁵ This is currently interpreted to mean all wholesale load that takes service from the PJM system. This may mean that in the State of Ohio, all municipal and cooperative electric companies would have their capacity prices adjusted to this average capacity price as well, not just investor owned utility ratepayers.



As stated previously, the RS-FRR payment is an additional capacity payment that would exist because a resource is receiving a subsidy as a result of a state policy and thus cannot participate in the RPM auction. The table following models the annual benefits to Davis-Besse and Perry nuclear power stations based on that assumption. The first column reflects the payments that each plant would receive under an RS-FRR rate of \$200/MW-day. The energy produced is based on EIA Form 923 for 2018⁶. The average LMP value is based on the 2018 State of the Market Report for PJM⁷. And the Nuclear Resource Credit is defined in H.B. 6. The difference in benefit to these two plants would currently amount to nearly \$250 million annually if H.B. 6 and RS-FRR were to be approved by the Ohio Legislature and FERC respectively.

Annual Payment	Capacity Payment w/o RS-FRR (\$)	Energy Produced (MWh)	Average LMP 2018 (\$/MWh)	Energy Payment (\$)	Clean Air Credit (\$/MWh)	Clean Air Payment (\$)	Status Quo (\$)
Davis-Besse	\$32,631,000	7,380,271	\$38.24	\$282,221,563	\$0.00	\$0	\$314,852,563
Perry	\$45,844,000	10,934,736	\$38.24	\$418,144,305	\$0.00	\$0	\$463,988,305
Total:							\$778,840,868
Annual Payment	Capacity Payment w/ RS-FRR (\$)	Energy Produced (MWh)	Average LMP 2018 (\$/MWh)	Energy Payment (\$)	Clean Air Credit (\$/MWh)	Clean Air Payment (\$)	HB 6 & RS-FRR
Davis-Besse	\$65,262,000	7,380,271	\$38.24	\$282,221,563	\$9.25	\$68,267,507	\$415,751,070
Perry	\$91,688,000	10,934,736	\$38.24	\$418,144,305	\$9.25	\$101,146,308	\$610,978,613
Total:							\$1,026,729,682
Increase:							\$247,888,815

Table 2: Increased Revenue to FES Nuclear Power Plants from HB 6 and RS-FRR Payment, Based on FES Comment Price Estimates

The last table shows the average capacity cost increase to various sized Ohio manufacturers for the three next delivery years.

Manufacturer Size	Annual Energy Use (kWh)	Average Monthly Demand (kW)	Average 3 Year Capacity Price (\$/MW-Day)	Average 3 Year Capacity Price for FE (\$/MW-Day)	Average 3 Year Capacity Price w/ RS-FRR (\$/MW-Day)	Average 3 Year Capacity Price for FE w/ RS-FRR (\$/MW-Day)	Average Annual Cost Increase to Ohio Manufacturer (\$/Year)	Average Annual Cost Increase to FE Manufacturer (\$/Year)
Small (Secondary Service)	1,000,000	190	\$ 106	\$ 116	\$ 113	\$ 123	\$ 527	\$ 476
Medium (Secondary Service)	7,500,000	1,142	\$ 106	\$ 116	\$ 113	\$ 123	\$ 3,170	\$ 2,862
Large (Primary Service)	100,000,000	12,684	\$ 106	\$ 116	\$ 113	\$ 123	\$ 35,207	\$ 31,790
Very Large (Sub/Transmission Service)	1,000,000,000	126,839	\$ 106	\$ 116	\$ 113	\$ 123	\$ 352,070	\$ 317,896

Table 3: Increased Cost of Capacity to Ohioans for Nuclear Plant Subsidies, Based on FES Comment Price Estimates

There are several caveats to the above analysis. First, FES’ price estimates within their comments to FERC may be conservative. While we believe they are suitable enough to ballpark a cost impact to Ohio’s manufacturers, which is critical to understanding HB 6, the RS-FRR, and other regulatory and policy changes, the cost impacts we detail here should be considered as estimates. Second, we account in this analysis only for the two Ohio FES nuclear plants. HB 6 creates subsidy payments for other generators, including uneconomical coal plants. Those plants could also be put into an RS-

⁶ <https://www.eia.gov/electricity/data/eia923/>

⁷ http://www.monitoringanalytics.com/reports/PJM_State_of_the_Market/2018.shtml



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FRR, and would increase Ohioan’s capacity costs even more. The same could be true for a distribution utility power purchase agreement for renewable energy facilities.

Lastly, FES’ comments respond to FERC’s recommendation that PJM’s capacity auction should implement an expanded MOPR and bifurcated auction. The scenario described in this memo is likely with H.B. 6 passage. This should not be confused with FERC approval of state policies to subsidize generation. In its order, FERC notably describes state actions as “unplanned reregulation,’ one subsidy and mandate at a time”. And, FERC further states that their order will ensure that PJM’s capacity construct “will not interfere with the states’ ability to choose the path of re-regulation, whether via a conscious policy decision or a simple failure to take steps to prevent reregulation as described on an unplanned basis”.⁸

⁸ FERC Order: <https://elibrary-backup.ferc.gov/idmws/common/OpenNat.asp?fileID=14961693>, Section 163



An Analysis of Ohio Nuclear Plant Profitability Under House Bill 6

The Ohio House of Representatives recently passed House Bill 6 (H.B. 6), a major rework of Ohio's electricity policy. H.B. 6 would significantly affect customer costs and how electricity markets function in Ohio. Energy counsel for The Ohio Manufacturers' Association (OMA), Kim Bojko of Carpenter Lipps & Leland, has separately provided a [legal analysis](#) on what H.B. 6 does and how it works.

In summary, H.B. 6 creates excessive profit for Ohio's nuclear plants of up to \$330 million per year over the six-year term of the Clean Air Program. In this memo we examine the nuclear plants' profitability, multiple compensation mechanisms for nuclear power plants in H.B. 6, how the bill would trigger special treatment of the nuclear plants' capacity revenue, and forthcoming changes in wholesale electricity markets that create additional revenue for nuclear plants.

Nuclear Plant Profitability

H.B. 6 was passed with the purported intent to keep Ohio's two nuclear power plants, Davis-Besse and Perry, up and running. The owner of these two nuclear plants, FirstEnergy Solutions (FES), is currently going through bankruptcy proceedings. However, FES is expected to emerge from bankruptcy financially solvent. And the financial well-being of FES is not necessarily reflective of the financial viability of its nuclear power plants. Thus, questions remain:

- How financially viable are the nuclear power plants presently?
- And will the nuclear power plants emerge from bankruptcy in a better financial position?

Ohio's Nuclear Plants' Excessive Profit Under House Bill 6

- Currently plants may not need financial support.
 - Dr. Paul Sotkiewicz estimates \$72 million annual profit presently.
- H.B. 6 may contribute to excessive profits of an estimated \$330 million a year.
 - Of that, \$150 million a year from Clean Air Credits.
- H.B.6 triggers changes in capacity auctions.
 - Plants removed from capacity auction - \$82 million a year.
 - Possible \$157 million a year in State of Ohio capacity revenue envisioned by FES.
- Other changes to PJM electricity market include energy market rule changes - \$33 million a year.

Two authoritative sources have addressed the nuclear power plants' profitability. PJM's Independent Market Monitor releases an annual "State of the Market" report, which includes financial surplus or shortfall of PJM's 18 nuclear power plants.

We have reproduced the Independent Market Monitor's estimates in the table below. The Monitor estimates that three of PJM's 18 nuclear plants are losing money, while the other 15 are profitable.

Table 7-42 Nuclear unit forward annual surplus (shortfall) (\$ in millions)⁵⁶

	Surplus (Shortfall) (\$ in millions)		
	2019	2020	2021
Beaver Valley	\$134.3	\$93.5	\$84.7
Braidwood	\$106.4	\$80.3	\$51.7
Byron	\$104.3	\$78.6	\$50.6
Calvert Cliffs	\$131.0	\$99.0	\$89.3
Cook	\$95.8	\$48.4	\$41.9
Davis Besse	(\$26.9)	(\$47.8)	(\$45.6)
Dresden	\$97.3	\$76.4	\$53.8
Hope Creek	\$57.9	\$52.0	\$43.3
LaSalle	\$103.5	\$78.0	\$50.2
Limerick	\$112.2	\$100.5	\$83.8
North Anna	\$138.6	\$99.3	\$90.0
Peach Bottom	\$113.4	\$101.5	\$84.1
Perry	(\$22.6)	(\$49.6)	(\$47.8)
Quad Cities	\$61.3	\$42.2	\$20.9
Salem	\$114.6	\$102.8	\$85.5
Surry	\$120.5	\$85.6	\$77.6
Susquehanna	\$77.7	\$37.4	\$28.2
Three Mile Island	(\$56.9)	(\$69.6)	(\$72.3)

Table 1: Independent Market Monitor Estimates of Nuclear Power Plant Annual Financial Surplus or Shortfall.

There are several insights to glean from this analysis. First, Ohio participates in the regional PJM electricity market, and most nuclear power resources in this market will continue to operate and be profitable. In other words, Ohio's access to low-carbon nuclear power is not significantly at risk.

Another insight is that FES's two Ohio nuclear plants are estimated to lose \$93 million in 2021. While this is a significant loss, it is substantially less than the \$165 million annual payment expected from the Clean Air Program created under H.B. 6.

Estimates of Nuclear Power Plant Annual Financial Surplus or Shortfall

The Independent Market Monitor cannot disclose specific power plant financial data, and so Table 1 presents estimates. Thus, the Monitor relies on average operating costs data from the Nuclear Energy Institute to estimate operating costs, as well as public data on

energy production and wholesale electricity market prices to estimate revenue. The estimated operating costs reflect typical single unit nuclear plant costs. If FES's nuclear plants are losing more money than this estimate, it would demonstrate that they are not operating their plants as efficiently as the industry average. This means the Clean Air Program would be compensating for below-average operating performance, not just the benefits of nuclear power.

Another separate financial analysis was completed by Dr. Paul Sotkiewicz, former chief economist for PJM. Dr. Sotkiewicz's financial analysis shows that post-bankruptcy, the Davis-Besse and Perry nuclear plants will likely turn an annual profit. Dr. Sotkiewicz estimates the annual profit to be \$28 million for Davis Besse and \$44 million for Perry, for a combined profit of \$72 million annually¹.

Dr. Sotkiewicz's estimates differ from the Independent Market Monitor's for two main reasons. First, Dr. Sotkiewicz accounts for the nuclear plants' financial situation post-bankruptcy. Second, Dr. Sotkiewicz relies on specific financial filings of these nuclear power plants.

These financial estimates call into question the following:

- Do the Davis-Besse and Perry nuclear power plants need financial assistance?
- Does the Clean Air Program over-compensate the nuclear power plants?
- Is the Clean Air Program compensating poor business decisions, in addition to the environmental benefits of nuclear power?

H.B. 6 Revenue Streams for Nuclear Plants

H.B. 6 creates a Clean Air Program, financed by charges applied to each customer of an Ohio investor-owned utility (AEP Ohio, DP&L, Duke, and the FirstEnergy companies). Each year the Clean Air Program will pay \$9 for each MWh of electricity produced by nuclear power plants. According to the U.S. Energy Information Administration (EIA), over the past three years, Davis-Besse produced 7,216,607 MWh on average, and Perry generated 10,390,121 MWh on average. However, HB 6 provides for total compensation to the nuclear plants at \$150 million per year.

Therefore, it is estimated that under the Clean Air Program, the nuclear plants would be compensated as follows:

7,216,607 MWh (Davis-Besse) + 10,390,121 MWh (Perry) = 17,606,728 MWh

17,606,728 MWh x \$9 /MWh (Clean Air Credit) = \$158,460,552/year

Annual compensation = \$150,000,000 /year

Nuclear power plant output will vary from year to year, depending on the plants' refueling schedule and up-time.

¹ "The Market and Financial Position of Nuclear Resources in Ohio", Dr. Paul Sotkiewicz, E-Cubed Policy Associations, LLC. Table 12

H.B. 6 Triggered Capacity Auction Changes

H.B. 6 not only sets into sequence a series of reactions in the wholesale electricity market, which will affect Ohio's electricity prices, but also how the nuclear power plants are compensated for electricity, and the level of that compensation. At the heart of this set of reactions are forthcoming changes to PJM's electric capacity auction. The capacity auction is the mechanism by which PJM assures enough electricity resources are available for the grid system at times of peak demand. Please note that capacity payments are an important part of overall economic viability for a power plant.

However, PJM is also charged with ensuring a fair and level playing field for power plants competing for capacity payments. This is especially true now, as PJM is consistently exceeding its reliability goal and there is an abundance of power plants on the grid, with even more new entrants waiting.

With this abundance of generation, uneconomic power plants may be unable to compete and receive a capacity payment. As a result, some uneconomic power plants are seeking subsidies from their respective states to remain viable. This undermines the integrity of the market. And the Federal Energy Regulatory Commission (FERC) has thus deemed PJM's capacity auction as unjust and unreasonable. FERC has issued guidelines, with time for comment, that essentially will wall-off generating plants that receive materially significant state subsidies from participating the PJM's capacity auction.

In simple terms, if H.B. 6 passes, Ohio's nuclear power plants would be removed from PJM's capacity auction, and they would lose the ability to earn this revenue. We estimate this lost revenue potential at around \$82 million a year, as shown in the calculation below:

894 MW (Davis-Besse) + 1,256 MW (Perry) = 2,150 MW (combined capacity)
2,150 MW x \$105 /MW-day (3-year average capacity price) x 365 days/year = \$82 million/year

This is a real, probable, and possibly unintended consequence of H.B. 6 – that Ohio's nuclear power plants will be ineligible to compete in wholesale capacity auctions and will likely be further impaired financially by this loss in revenue. This is probably an untenable financial position for the nuclear plants.

Fortunately, there is no need for speculation. FirstEnergy Solutions has already provided comment on these rules, including advice on how Ohio can make up for this unexpected loss of revenue. Specifically, FES states that credits for zero emissions for nuclear plants are "not intended to provide resources with sufficient revenue, in the absence of a capacity payment, to make continued operation viable"².

This is to say, FES intends to ask for capacity payments in addition to Clean Air Credit payments. Because PJM will not provide these capacity payments, the state of Ohio would need to do so, and Ohio ratepayers would need to cover this cost. FES has provided an example of around \$200 /MW-day compensation for capacity. At this rate, Ohio would need to create the following additional revenue for the nuclear power plants:

² FERC Docket EL18-178, Initial Comments of FirstEnergy Solutions Corp., Page 10

2,150 MW x \$200 /MW-day (3-year average capacity price) x 365 days/year = \$157 million/year

Note: H.B. 6 does not create a mechanism for Ohio to set capacity prices, collect the costs from ratepayers, or pay the payment to generators.

Other Changes in PJM's Electricity Market

While the nuclear plants will not be eligible for capacity payments from PJM, they will still participate in PJM's energy markets, which compensate generators for the electricity they produce, as opposed to the peak capacity. The energy markets, too, are undergoing rule changes that are expected to create increased revenue for nuclear power plants – specifically, changes to the Operating Reserve Demand Curve included in PJM's Price Formation Filing.

According to the Independent Market Monitor, nuclear power plants will receive an additional \$15,344 /MW-year³ due to changes in the Operating Reserve Demand Curve. This would create an additional \$33 million/year for Ohio's nuclear power plants:

2,150 MW x \$15,344 /MW-year = \$33 million/year

PJM is also investigating carbon pricing for its market. While it is too early to say if a rule would pass, how it would work, and what revenue it would create for Ohio's nuclear plants, one can assume there is the possibility of future payments for carbon-free generation.

Excessive Profits Potential

H.B. 6 thus sets up significant excessive profit potential for Ohio's nuclear plants. For example, should the nuclear power plants be profitable post-bankruptcy, and should Ohio create a capacity payment to replace PJM's for the nuclear plant, Ohio's nuclear plants would have the following annual profits:

\$72 million/year (post-bankruptcy profit) + \$150 million/year (Clean Air Program revenue) - \$82 million/year (capacity auction lost revenue) + \$157 million/year (Ohio set capacity revenue) + \$33 million/year (PJM price formation changes) = \$330 million/year

If we use the Independent Market Monitor's estimates of the two nuclear plants' financial losses – and we assume that Ohio does not create a capacity price and payment mechanism for the plants – the net annual profits of the nuclear plants under H.B. 6 are still \$16.5 million.

Conclusions and Findings

Based on the above data, Ohio policymakers should take into consideration the following questions:

- Do the nuclear plants truly need financial support, post-bankruptcy?

³ Monitoring Analytics, "ORDC Simulation Results: Version 2", Table 20.

- Does H.B. 6 create excessive profits for the nuclear power plants?
- Can Ohio's payments to the nuclear power plants be lowered if the plants start receiving additional revenue from energy markets?
- Will Ohio be asked, or required, to create a capacity payment mechanism for the nuclear power plants to replace the probable loss of PJM capacity payments to the nuclear power plants?

One bailout can raise the cost of electricity at a single manufacturing facility by over \$1 million per year.

Competitive power generation yields innovation, reduces costs, and puts investment risk on suppliers. Markets excel by letting competitive forces drive low-cost investment and the exit of outmoded production. This has resulted in hundreds of billions of dollars in economic benefits.

Some states have arrested this progress by bailing out unprofitable plants in response to intense lobbying efforts by owners. None of their arguments justify subsidies. Bailouts undermine valid policy objectives like advancing economic development and innovation.

Rewarding subsidy-seekers has resulted in subsidy contagion, especially for unprofitable coal and nuclear plants. Even profitable nuclear plants now claim they need subsidies to continue. State nuclear bailouts alone cost consumers billions in added costs per year.

Manufacturers compete in tight markets to remain profitable. They expect their electricity suppliers to do the same.

The Effects of Power Plant Bailouts

- **Stunts economic development.** Forcing productive businesses to subsidize unproductive ones prevents capital reallocation to valuable activities.
- **No reliability or resilience benefits.** Beneficiaries of grid reliability, especially manufacturers, as well as grid operators all agree that bailouts provide no value.
- **Suppresses innovation.** Retaining outmoded technologies blocks new technologies, which stifles innovation and harms consumers and the environment.
- **Undermines risk management.** A premise of adopting markets was to have suppliers internalize risk, which proved effective. Bailouts shift risk to consumers.
- **Encouraging bad behavior.** States that reward subsidy-seekers motivate more of the same behavior.

The only path to an innovative, reliable, and affordable electricity system is to let markets work.

Experts Agree that Markets Work

“As a root cause of retirements, wholesale competition worked as intended, driving inefficient, high-cost generation out of the market.”

- Alison Silverstein, co-lead of the Energy Department’s report on electric reliability, 2017

“[Bailouts are] a tragedy for a capitalist society... and it’s a real tragedy for ratepayers, who... have paid for these plants over the course of their lifetime, and again for stranded costs.”

- Nora Brownell, former commissioner at the Federal Energy Regulatory Commission, 2018

“Rather than considering these retirements ‘premature,’ we view them to be consistent with the underlying economics of baseload plants in today’s regulatory and market environment.”

- Economists of the Brattle Group, 2016

“Subsidies are contagious. Competition in the markets could be replaced by competition to receive subsidies. PJM markets have no protection against this emergent threat. Accurate signals for entry and exit are necessary for well functioning and competitive markets.”

- Independent Market Monitor for PJM, 2017

An Ohio Energy Revolution

By TRAVIS KAVULLA

July 3, 2019 6:30 AM



(File photo: Carlo Allegri/Reuters) Consumers have benefitted from competition, but the state's legislators won't take 'yes' for an answer.

Ohio's legislature courageously voted to de-monopolize its electricity sector two decades ago. Since then, power generators have had to compete with one another for consumers' business, rather than having their prices fixed by utility regulators.

Public policy only rarely has direct, and positive, effects on the price of a major commodity. This is one of those policies. Ohio has outperformed its neighbors Indiana and Kentucky, where the electric power industry remains fully monopolized. Those states have seen electricity prices increase about 30 percent from 2008 to 2016. Ohioans'

bills have risen, but only by half that. Ohio's energy policy has allowed the state to capitalize on the massive Marcellus Shale gas fields that sit under Ohioans' feet. When customers are not on the hook to monopolies for multi-decadal investments in power plants, capital more easily recirculates into newer, more efficient investments.

Now it's just a matter of convincing state legislators to accept the fruits of their policy. Rather than amplifying the benefits of low-cost energy, the state has diminished them by furnishing handouts to the state's erstwhile monopolies. Four of them — FirstEnergy, AEP, Duke, and Dayton Power & Light — have through legislation and regulation extracted more than \$15 billion in subsidies since the state's ostensible "deregulation," according to the Ohio Consumer Counsel.

Many of those fees show up on customers' bills cloaked in happy-sounding euphemisms such as "rate stabilization surcharge." Just last month, Ohio's supreme court tossed out the latest of these subsidies, a \$168-million-per-year "grid modernization surcharge." Ohio's utility regulator had labeled the fee an "incentive," but, as the court noted, the program had no requirement that the proceeds be spent on anything having to do with modernizing the grid. It was, plain and simple, a gambit to shuffle money to an actor that found itself on the losing end of Ohio's competitive electricity sector.

This year's grift, Ohio's House Bill 6, would direct north of \$1.2 billion in subsidies over the next six years to two nuclear plants as well as a pair of 64-year-old coal power plants owned by a consortium of utilities. Akron-based FirstEnergy and the leader of Ohio's house of representatives, Larry Householder, call this gambit the "Ohio Clean Air Program," a name in rather plain defiance of what the bill actually does. Speaker Householder has pieced together a political coalition that depends on labor unions, who joined with Republican legislators to secure his position as speaker earlier this year. One of the main backers of the Householder faction is FirstEnergy.

In the legislative cram-down that has attended H.B. 6, the bill's utility and labor-union proponents have mouthed a number of weak arguments, hoping to give the bailout some plausible reasoning. None of them have stuck.

First, H.B. 6's sponsors said that if nuclear power plants went out of business, power prices would rise. This is a bizarre argument: Subsidize power plants or else consumers will have to pay more. It is true that the market today is oversupplied with power resources, and if some close, prices will tighten. But the wholesale market operator, PJM, has studied the issue and anticipates total consumer savings of \$1.6 billion if the nuclear plants in danger of closing are replaced by natural gas generators.

Furthermore, it is not even clear that Ohio's nuclear plants are unprofitable and would close without subsidies. The plants' going-forward costs appear to be below the anticipated market price of electricity. One analysis, by Paul Sotkiewicz, among the nation's leading

energy economists, projects that the nuclear plants will earn \$700 million over the next decade. H.B. 6 would more than double those profits. FirstEnergy disputes Sotkiewicz's report but refuses to accept an amendment that would pay out subsidies only if the plant owners open up their books and prove they are unprofitable. That pretty much says it all.

Flailing, H.B. 6 boosters have also claimed that the bill merely rebalances the playing field after years of renewable subsidies. They've got a right to complain about those. Yet according to the Ohio Public Utilities Commission, the renewable surcharge is less than the H.B. 6 surcharge would be for all but one of the electric utilities in the state. In any case, if the legislature wants to repeal renewable subsidies, then it should do so. But don't use the savings to fund other subsidies. Give them back to customers.

The fix was in for H.B. 6 in Ohio's House, where it sailed to passage early last month despite overwhelming public opposition in committee hearings. The state's governor, Mike DeWine, has suggested he will sign it. But as each bad argument for H.B. 6 has fallen flat, Ohio's senators show signs of skepticism. A more principled bunch of conservatives, they have the task of holding the line on Ohio's successful, if always besieged, experiment in electricity competition.



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Columbus Dispatch

August 2, 2019

<https://www.dispatch.com/opinion/20190802/editorial-more-you-learn-worse-house-bill-6-looks>

Editorial: The more you learn, the worse House Bill 6 looks

By now, readers might be tired of hearing about the **state law just passed** to bail out two FirstEnergy Solutions nuclear plants and greatly undermine the development of renewable energy in Ohio. We recognize that, but bear with us: The whole exercise has been such a textbook example of legislative abuse that it should be studied, so that perhaps Ohioans won't tolerate it the next time lawmakers are determined to serve moneyed interests over the public good.

The law itself is awful — forcing all Ohio electricity ratepayers to bail out old and uncompetitive nuclear and coal plants even as it drastically undercuts the development of renewable energy in the state, all but guaranteeing Ohio dirtier air and a trailing role in a major industry of the future.

Factor in the \$1.65 million in campaign cash that utilities spread around the Statehouse to cultivate support, plus a multimillion-dollar advertising blitz and you get a monumentally discouraging view of How a Bill Becomes a Law.

Dispatch Reporter Randy Ludlow's **story** on Sunday laid out the campaign contributions, with data compiled by the Energy and Policy Institute: Starting in 2017, FirstEnergy Corp. and its employees gave nearly \$1 million to state representatives and senators, Gov. Mike DeWine, other officeholders, political action committees and political parties.

The remaining \$650,000 or so came from AEP, Dayton Power & Light and Duke Energy, all of which own shares in two 1950s-era coal plants that also will be propped up by the new law.

Looking at giving by all utilities and only to House members, 40 of the 53 who initially voted yes on House Bill 6 received a total of nearly \$323,000.

House Speaker Larry Householder's ties to FirstEnergy are extensive, and he made passage of HB 6 a top priority. He received \$30,000 from AEP and \$24,415 from FirstEnergy, but the utilities also helped him indirectly, with large contributions to House candidates who would support his bid to become speaker.

All spring, lawmakers rushed to get the bill passed because FirstEnergy Solutions declared that it had to have a bailout secured by June 30 or it would be forced to begin the process of shutting the plants down.

The unseemly rush to do the company's bidding reached its peak on July 22, as the next day's final vote approached. It was going to be close, and three "yes" votes — Reps. Bob Cupp of Lima, Jim Butler of Oakwood and Tom Brinkman of Cincinnati — were in Chicago for a conference.

So urgent was the need to get them back to Columbus for the vote that Householder apparently proposed, and DeWine's office agreed, to **send a state plane** to fetch them, at a cost to taxpayers of nearly \$5,700.

Thanks to a tipster, word of the extravagance got out, the flight was canceled late on the night before the vote and the lawmakers somehow got back to town without the private plane.

HB 6 passed by a single vote and Ohio is stuck with what one critic called "the worst energy bill of the 21st century."

Other states, including New York, Illinois and New Jersey, have bailed out their old nuclear plants, but only Ohio's legislature has seen fit to also sabotage the future of renewable energy while at it.

It is not a distinction to be proud of.

W00,0001

**Petition for Submission to the Secretary of State and Attorney
General for Certification of Summary for Referendum Petition**

as required under Ohio Revised Code § 3519.01(B)

RECEIVED

AUG 16 2019

PROPOSED SUMMARY

Amended Substitute House Bill No. 6 (the "Act") enacts, amends, and repeals sections of the Ohio ~~Ohio Attorney General~~ **Constitutional Offices Section**

The Act enacts ORC §§ 3706.40 through 3706.65, which provide as follows:

- ORC § 3706.40 defines the terms used in §§ 3706.40 through 3706.65, including a "qualifying nuclear resource," which means an electric generating facility in Ohio fueled by nuclear power; a "qualifying renewable resource," which means an electric generating facility in Ohio that (i) uses or will use solar energy as the primary energy source, (ii) obtained a construction certificate from the power siting board prior to June 1, 2019, and (iii) is connected with the transmission grid controlled by PJM Interconnection LLC; and an "electric distribution utility," which means an electric utility that supplies at least retail electric distribution service
- ORC § 3706.41 establishes the process for a qualifying nuclear or renewable resource to submit an application to the Ohio air quality development authority (the "Authority") in order to receive payments for credits through the nuclear or renewable generation funds and provides that: (i) applications must be received by February 1, 2020, and must include all of the following information from the qualifying nuclear resource: financial, certified cost and revenue projections through 2026, operation and maintenance expenses, fuel and spent-fuel expenses, nonfuel capital expenses, fully allocated overhead costs, any other information that demonstrates that the resource is projected not to continue being operational, and the cost of operational risks and market risks that would be avoided by ceasing operation of the resource; and (ii) "operational risks" include the risk that operational costs could be higher than anticipated because of future regulatory mandates or equipment failures and the risk that per-megawatt-hour costs will be higher than anticipated because of a lower than expected capacity factor; and "market risks" include risks of forced outages and the associated costs arising from contractual obligations, and that power may not be sold at projected levels
- ORC § 3706.43 establishes (i) the procedure for review and approval of an application for nuclear or renewable credits by a qualifying resource; (ii) that the Authority would have until March 31, 2020, to review and approve an application; (iii) that an application for renewable credits shall be approved if the resource meets the qualifying renewable resource definition; and (iv) that an application for nuclear credits shall be approved if: the resource meets the qualifying nuclear resource definition; the application meets the requirements for an application for a qualifying nuclear resource; and the operator of the resource maintains a principal place of business in Ohio and a substantial business presence in Ohio
- ORC § 3706.431 provides that financial and proprietary information received from qualifying nuclear resources in their applications is confidential and not a public record
- ORC § 3706.45 requires (i) qualifying nuclear and renewable resources whose applications were approved to report their megawatt hours generated on a quarterly basis to the Authority, and (ii) the Authority to issue one credit for each megawatt hour reported to, and approved by, the Authority, at a default price of \$9 for a renewable energy credit and \$9 for a nuclear credit, unless the amount for a nuclear credit has been reduced as a result of an annual review of a nuclear resource
- ORC § 3706.46 requires:
 - all electric distribution utilities in Ohio to collect a monthly charge from its retail customers from 2021 through 2027 that will accumulate \$150 million annually for the nuclear generation fund and \$20 million annually for the renewable generation fund, which collection is permitted to go beyond 2027 if necessary to pay for earned credits from the generation funds, but only so long as is reasonably necessary to reconcile the actual revenue needed;
 - the Ohio public utilities commission (the "Commission") to: (i) prescribe the method of allocation or assignment for collection of revenue by each utility based on number of customers and/or kilowatt sales; and (ii) ensure the monthly charge does not exceed \$0.85 (85 cents) for residential customers, \$2,400 for eligible industrial customers, and that abrupt or excessive total bills for all other nonresidential customers are avoided;
 - that the level and structure of the charge authorized shall be through a process that is not for an increase in any rate, joint rate, toll, classification, charge, or rental; and
 - the charges authorized by the Commission under this section to be subject to adjustment so as to reconcile actual revenue collected with the revenue needed annually for the nuclear and renewable generation funds, and the Commission to authorize the utilities to establish accounting methods for doing so

- ORC § 3706.49 provides (i) for the creation of the nuclear generation fund and the renewable generation fund, into which the revenue from the monthly customer charges shall be deposited as apportioned by the Act and which shall gain interest; (ii) that the interest generated by each fund shall be retained by each respective fund and used for the purposes as set forth in ORC §§ 3706.40 to 3706.65; (iii) that the funds and their generated interest shall be in the custody of the state treasurer but neither shall be part of the state treasury; and (iv) that the state treasurer shall distribute the money in the funds as directed by the Authority in consultation with the Commission
- ORC § 3706.53 apportions the revenue collected through the utility charges between the nuclear generation fund, which shall receive 88.25% of the funds collected, and the renewable generation fund, which shall receive 11.75% of the funds collected, and this apportionment is subject to adjustment by the Commission in accordance with ORC § 3706.61
- ORC § 3706.55 requires the Authority to (i) direct the state treasurer to remit money from the generation funds between April 2021 and January 2028 to qualifying resources in amounts equivalent to the credits earned by the resource during the quarter that ended twelve months prior to the last day of the previous quarter multiplied by the credit price, provided there is sufficient money in the relevant funds; and (ii) determine, in consultation with the Commission, the manner in which any amounts remaining in the funds as of December 31, 2027, after distributions have been made through January 21, 2028, shall be refunded to customers
- ORC § 3706.59 provides that:
 - if money in the nuclear generation fund is insufficient to cover payment for earned nuclear credits, the Authority shall direct the Ohio Treasurer to remit money from the fund not later than 21 days after the close of any quarter in which an owner or operator was not fully compensated, to pay for the unpaid credits;
 - if money in the renewable generation fund is insufficient to cover payment of earned renewable credits, the Authority shall direct the Ohio Treasurer to prorate the payments and make up payments for unpaid credits in future quarters before making payments for additional earned credits
- ORC § 3706.61 requires:
 - the Commission: (i) to conduct annual retrospective reviews between 2021 and 2027 of the finances and management of the owners or operators of qualified resources receiving payments from the nuclear generation fund; (ii) to submit a report summarizing the findings of each annual review to the legislature and the Authority; and (iii) to make the reports available to the public;
 - owners or operators of qualified resources to provide all information, data, and documents requested for the reviews by the Commission, and allows for the suspension of payments for nuclear credits for any material failure to timely and fully respond, until the failure is cured to the Commission's satisfaction;
 - the Authority, in consultation with the Commission, to consider the findings in the annual review, and permits it to reduce or cease payments out of the nuclear generation fund if the nuclear resource: (i) receives adequate federal funding for operations; (ii) loses its qualified status or if the operator fails to maintain both a principal place of business in Ohio and substantial business presence in Ohio; (iii) applies, before May 1, 2027, to decommission the resource; or (iv) if the market price index exceeds the strike price on June 1 of the year in which the report was submitted;
 - the Commission, upon a determination by the Authority to make reductions to payments out of the nuclear generation fund based on the annual review, to do all of the following, as necessary, made through a process that the Commission determines is not for an increase in any rate, joint rate, toll, classification, charge, or rental: (i) reduce revenue requirements; (ii) reduce the charge or charges from customers; (iii) adjust the percentage of funds allocated to the nuclear and renewable generation funds; and (iv) reduce nuclear credit prices, except when the Authority has reduced the price because the market price index exceeded the strike price on June 1 of the year in which the report was submitted; and
 - the Commission, if payments for nuclear credits are suspended or cease under this section, to instruct the electric distribution utilities to accordingly suspend or cease billing and collecting customer charges under the newly enacted ORC § 3706.46
- ORC § 3706.63 requires the Authority to adopt rules to implement and administer the nuclear generation fund and renewable generation fund
- ORC § 3706.65 permits the Authority to use resources of the Commission to establish and administer the nuclear and renewable generation funds, and provides that any information, data, and equipment will not become a public record as a result of being shared with the Authority

The Act also:

- amends the definition of “net metering system” in ORC § 4928.01 to provide that a facility located on an industrial customer-generator’s premises that produces energy using wind, has a capacity of less than 20 megawatts, and is intended to offset the industrial customer-generator’s electricity requirements, must be sized so as not to exceed 100% of the industrial customer-generator’s annual electric requirements at the time of interconnection, and adds two new definitions in the same section, as follows:
 - “legacy generation resource” is defined to mean all generating facilities owned directly or indirectly by a corporation formed prior to 1960 by investor-owned utilities for the original purpose of providing power to the federal government for the nation’s defense or national interests, including the Ohio valley electric corporation; and
 - “prudently incurred costs related to a legacy generation resource” is defined to mean costs of a power agreement related to a legacy generation resource (i) minus certain revenue, return on investment, and debt-recovery if the resource retires early; (ii) including bankruptcy costs of sponsors or co-owners of the resource not otherwise recovered; and (iii) provided that where net revenues exceed net costs, those excess revenues shall be credited to customers
- enacts ORC § 4928.148, which requires:
 - the Commission to: (i) establish a nonbypassable, statewide cost-recovery charge beginning in 2020, which shall replace existing riders with the same purpose and may not exceed \$1.50 per month for residential customers or \$1,500 per month for all other customer classes; and (ii) establish the rate mechanism, determine what costs can be recovered, and provide for the rate design, discontinuation, and remittance of charges for utilities without ownership interests in a legacy generation resource;
 - the Commission to: (i) review the prudence and reasonableness of the actions of electric distribution utilities with ownership interests in the legacy generation resource and excluding from recovery those costs that the Commission deems imprudent and unreasonable, with the initial determination to be made in 2021 and again in 2024, 2027, and 2030 regarding the prudence and reasonableness of such actions during the three calendar years that preceded the year in which the determination is made; and (ii) provide for the discontinuation, subject to final reconciliation, of the nonbypassable rate mechanism on December 31, 2030; and
 - electric distribution utilities, including those in the same holding company, to bid all output from a legacy generation resource into the wholesale market and not use the output in supplying its standard service offer provided under ORC § 4928.142 or § 4928.143
- enacts ORC § 4928.47, which authorizes electric distribution utilities to enter into contracts with mercantile customers to construct customer-sited renewable energy resources while requiring them to pay all costs associated with such a resource themselves
- enacts ORC § 4928.471, which provides that: (i) an electric distribution utility may file an application with the Commission to implement a decoupling mechanism for the 2019 calendar year and each calendar year thereafter based on 2018 revenue from base distribution and energy efficiency programs; (ii) such a mechanism would recover revenue equal to revenue from 2018, adjusted annually to reconcile over- or under-recovery from the prior year, enabling the utility to recover the same revenue every year; (iii) approval of an application that results in double recovery is forbidden; and (iv) the section does not apply to utilities with base distribution rates that became effective between December 31, 2018, and the effective date of the Act
- amends ORC § 4928.64 to: (i) reduce the portion of the electricity supply required to be generated by qualifying renewable energy resources by 2026 from 12.5% to 8.5% of total sold kilowatt hours; (ii) reduce the renewable energy portion for 2020 from 6.5% to 5.5%, for 2021 from 7.5% to 6%, for 2022 from 8.5% to 6.5%, for 2023 from 9.5% to 7%, for 2024 from 10.5% to 7.5%, and for 2025 from 11.5% to 8%; and (iii) reduce the minimum requirement of kilowatt hours that must be generated from solar energy to 0% for 2020 to 2026
- amends ORC § 4928.641 to permit continued cost-recovery for electric distribution utilities that entered into contracts to procure renewable energy resources before April 1, 2014, through an existing bypassable charge from customers through a fixed date of December 31, 2032, instead of until the prudently incurred costs are fully recovered, regardless of the amendments to ORC § 4928.64 reducing renewable energy requirements
- enacts ORC § 4928.642, which requires the Commission to reduce the number of kilowatt hours required to be produced by qualifying renewable energy resources for all electric distribution utilities and electric service companies by allocating the total amount of qualifying kilowatt hours produced during the previous year among all such utilities and companies in proportion to their baseline for that year, and subtracting that allocation for each such utility’s or company’s amount

- amends ORC § 4928.644 to require the Commission to lower the baseline for calculating an electric distribution utility's or an electric service company's compliance with the qualified renewable energy resource requirements of ORC § 4928.64 by excluding from the calculation the load and usage of self-assessing purchasers under ORC § 5727.81(C); and exempt those purchasers from bypassable charges imposed by electric distribution utilities in compliance with the amendments to ORC § 4928.64 reducing renewable energy requirements
- amends ORC § 4928.645 to prohibit a qualifying renewable resource that has been issued a renewable energy credit for any megawatt hour from the new renewable generation fund (as provided in ORC § 3706.45) from obtaining a renewable energy credit for the same hour under this section
- amends ORC § 4928.66 to:
 - provide that the annual savings requirements for years 2017 through 2020 shall be an additional one percent of the baseline and eliminate the two percent increases for each year after 2020 provided in current law;
 - define "portfolio plan" for this section as the energy efficiency and peak reduction program required by the Commission and extend portfolio plans that expire between the effective date of this Act and December 31, 2020, to December 31, 2020, and increase the budget of those plans accordingly;
 - require the Commission to determine the cumulative energy savings collectively achieved since 2009 by all electric distribution utilities in Ohio as of December 31, 2020, including excess energy efficiency savings and peak demand reduction under ORC § 4928.662, and calculating a baseline equal to the average of the total kilowatts hours sold by all electric distribution utilities in Ohio in calendar years 2018 to 2020, excluding certain loads and usages described in this section;
 - deem electric distribution utilities in full compliance with this section if the cumulative energy savings are at least 17.5% of baseline, and provide that if the cumulative savings are not at least 17.5% of baseline, then the Commission will determine how to implement additional programs to achieve 17.5% savings and full compliance with other requirements of the section will be deemed achieved by a date established by the Commission regardless of any other provision in this section; and
 - terminate cost-recovery mechanisms authorized by the Commission for compliance with this section upon the date that full compliance of this section is deemed, except those necessary to reconcile revenue collected with the allowable cost of compliance
- amends ORC § 4928.6610 to change the definition of "customer" to include, as of January 1, 2020, mercantile customers, and "portfolio plan" to include plans implemented by the Commission to increase cumulative energy savings under the mandated energy efficiency programs in ORC § 4928.66
- enacts ORC § 4928.75 to require the director of development services to submit a waiver request to the Federal Government each fiscal year to spend 25% of funds from federal low-income home energy assistance programs on weatherization services, beginning in fiscal year 2021
- enacts ORC § 4928.80, which (i) requires electric distribution utilities to file with the public utilities Commission a rate schedule applicable to county fairs and agricultural societies that includes either a fixed monthly service fee or an energy charge per kilowatt-hour; (ii) prohibits the minimum monthly charge from exceeding the fixed monthly service fee and prohibit customers from being subjected to demand-based riders; and (iii) allows electric distribution utilities to be eligible to recover lost revenue from customer migration to this new rate schedule
- enacts ORC § 5727.231 to prohibit (i) the assessment of electric company property that is any part of a qualifying nuclear resource receiving payment for nuclear resource credits at less than its taxable value as of the effective date of the Act; (ii) the electric company from valuing such property at less than its taxable value or filing a petition for reassessment seeking a reduction in taxable value; and (iii) the tax commissioner from granting such a reduction
- amends ORC § 5727.75 to (i) allow qualified energy projects of 20 megawatts or greater, instead of 5 megawatts or greater, to be exempted from property taxation with the formal approval of a board of county commissioners of the county in which property of the project is located, either through 2021, if the project is built between January 1, 2009, and January 1, 2021, and uses renewable resources, or indefinitely if the project is placed into service before January 1, 2021, and uses clean coal, advanced nuclear, or cogeneration technology; (ii) require the owner or lessee of such qualified energy projects to repair affected public infrastructure and train and equip emergency responders; and (iii) require qualified energy projects of greater than 20 megawatts, instead of greater than 2 megawatts, to facilitate certain career training
- amends the definition of "small wind farms" in ORC §§ 303.213, 519.213, and 713.081 to mean wind turbines and associated facilities that are not subject to the jurisdiction of the power siting board

- amends the definition of “economically significant wind farm” in ORC § 4906.13 to exclude wind turbines that are designed to provide electricity to a single customer at a single location that are capable of producing less than twenty megawatts
- repeals ORC § 4928.6616, which requires (i) an electric distribution utility that has opted out of its portfolio plan benefits to submit reports to the Commission summarizing any action the utility may consider taking to reduce energy intensity; and (ii) the Commission to suspend the utility’s opt out if it finds that it has failed to achieve a substantial cumulative reduction in energy intensity
- provides that the increase of capacity to 20 megawatts for qualified energy projects applies to energy projects that are certified by the director of development services on or after the effective date of the Act or that have a nameplate capacity of less than five megawatts on the effective date of the Act
- provides that 25% of funds from federal low-income home energy assistance programs obtained under the newly enacted ORC § 4928.75 may be spent on weatherization services as determined by the director of development services

COMMITTEE TO REPRESENT THE PETITIONERS

The following persons are designated as a committee to represent the petitioners in all matters relating to the petition or its circulation:

David J. Eckert
1639 Glenn Ave.
Columbus, OH 43212

Trevor J. Vessels
63 South Riverview Street
Dublin, OH 43017

Brandon Sean Lynaugh
1299 Avondale Avenue
Columbus, OH 43212

Ohio

Interviewing: June 7 – 12, 2019
Respondents: 801 Ohio Registered Votes
Method: Telephone
Weighting: Results are weighted to be representative of registered voters in Ohio.
Sampling Error: +/- 3.4% at 95% confidence

Q1 Do you approve or disapprove of the work the Ohio General Assembly has done this year in Columbus?

	Total	Party ID		
		GOP	Ind	Dem
Base	801	209	200	303
Approve	27%	46%	24%	19%
Disapprove	25%	13%	38%	27%
Don't know	48%	41%	38%	53%

Q2 House Bill 6 is a bill in the Ohio General Assembly that is entitled the "Ohio Clean Air Program". If the program becomes law, it will be funded through a monthly fee that will be charged to all utility customers in the state, adding up to nearly \$200 Million every year. How familiar are you with House Bill 6?

	Total	Party ID		
		GOP	Ind	Dem
Base	801	209	200	303
FAMILIAR (NET)	22%	24%	25%	21%
Very familiar	3%	4%	4%	3%
Somewhat familiar	19%	20%	21%	18%
NOT FAMILIAR (NET)	76%	76%	72%	79%
Not very familiar	23%	20%	26%	27%
Not at all familiar	53%	56%	46%	52%
Don't know	1%	*	3%	*

Q3 It is projected that most of the \$200 Million every year will go to nuclear power plants owned by a corporation named FirstEnergy Solutions. Do you support or oppose charging Ohio utility customers a monthly fee to give FirstEnergy Solutions most of the \$200 Million from this program every year?

	Total	Party ID		
		GOP	Ind	Dem
Base	801	209	200	303
SUPPORT (NET)	19%	18%	17%	21%
Strongly support	5%	5%	5%	5%
Somewhat support	14%	13%	12%	16%
OPPOSE (NET)	70%	73%	73%	67%
Somewhat oppose	21%	24%	24%	17%
Strongly oppose	49%	49%	49%	50%
Don't know	12%	9%	10%	12%

Q4 As you may know, some groups oppose House Bill 6 because they believe it will saddle all Ohioans with a new, unfair and unnecessary annual \$200 Million nuclear bailout tax. They are particularly worried about those Ohioans who are senior citizens or living on fixed incomes. Do you agree or disagree that imposing a monthly fee on all utility customers in the state could hurt people and families living on fixed incomes?

	Total	Party ID		
		GOP	Ind	Dem
Base	801	209	200	303
AGREE (NET)	82%	89%	81%	82%
Strongly agree	58%	68%	59%	52%
Somewhat agree	24%	21%	22%	30%
DISAGREE (NET)	12%	8%	13%	14%
Somewhat disagree	5%	2%	7%	6%
Strongly disagree	7%	6%	6%	8%
Don't know	5%	3%	5%	3%

Q5 Some groups also oppose House Bill 6 because they believe it creates new costs for manufacturing plants here in Ohio, and those new costs could hurt manufacturers – large and small – across the state. Do you agree or disagree that imposing a monthly fee on all utility customers could hurt the state’s manufacturing sector and impact jobs in the state?

	Total	Party ID		
		GOP	Ind	Dem
Base	801	209	200	303
AGREE (NET)	62%	68%	68%	55%
Strongly agree	31%	36%	33%	26%
Somewhat agree	31%	32%	35%	29%
DISAGREE (NET)	26%	27%	24%	31%
Somewhat disagree	14%	13%	16%	15%
Strongly disagree	12%	14%	8%	16%
Don't know	11%	6%	8%	15%

Q6 House Bill 6 may also allow money collected from Ohio utility customers to be used to bailout a coal plant over in Indiana. Do you support or oppose allowing money collected from utility customers in Ohio to help bailout a plant over in Indiana?

	Total	Party ID		
		GOP	Ind	Dem
Base	801	209	200	303
SUPPORT (NET)	10%	11%	8%	11%
Strongly support	3%	5%	2%	3%
Somewhat support	7%	6%	6%	8%
OPPOSE (NET)	82%	83%	84%	86%
Somewhat oppose	19%	22%	17%	17%
Strongly oppose	63%	61%	67%	69%
Don't know	7%	5%	9%	3%

Q7 Some groups believe that before the state legislature decides whether or not to subsidize FirstEnergy Solution’s nuclear plants, the legislature should require the company to open its financial records for review. Do you agree or disagree that the state legislature should require the company to open its financial records for review?

	Total	Party ID		
		GOP	Ind	Dem
Base	801	209	200	303
AGREE (NET)	88%	83%	89%	91%
Strongly agree	75%	68%	77%	80%
Somewhat agree	13%	15%	12%	11%
DISAGREE (NET)	9%	15%	6%	8%
Somewhat disagree	4%	7%	3%	4%
Strongly disagree	5%	8%	3%	4%
Don't know	3%	2%	5%	1%

DEMOGRAPHICS

Gender

	Total
Base	801
Male	49%
Female	51%

Political Party

	Total
Base	801
REPUBLICAN (NET)	28%
Strong Republican	18%
Not-so-strong Republican	9%
INDEPENDENT (NET)	24%
Lean Republican	7%
Lean Democrat	10%
Do not lean either way	6%
DEMOCRAT (NET)	36%
Strong Democrat	25%
Not-so-strong Democrat	9%
Other	9%
Not sure	2%
Decline to answer	1%

Ideology

	Total
Base	801
CONSERVATIVE (NET)	47%
Very conservative	20%
Somewhat conservative	27%
Neither	5%
LIBERAL (NET)	45%
Somewhat liberal	28%
Very liberal	17%
Don't know/Refused	3%

Age

	Total
Base	801
18 – 34	27%
35 – 64	48%
65+	19%
Don't know/Refused	5%

Education

	Total
Base	801
HIGH SCHOOL OR LESS (NET)	34%
Less than high school	4%
High school graduate	30%
ATTENDED COLLEGE OR COLLEGE DEGREE (NET)	53%
Some college	23%
Associate's degree	8%
College graduate	22%
Post-graduate	12%
Don't know/Refused	*

Race/Ethnicity

	Total
Base	801
White	79%
Black or African American	12%
Hispanic	2%
Asian or Pacific Islander	1%
Native American or Alaskan Native	*
Some other race	5%
Don't know/Refused	2%

Household Income

	Total
Base	801
Less than \$5,000	2%
\$5,000 but less than \$10,000	2%
\$10,000 but less than \$15,000	2%
\$15,000 but less than \$20,000	4%
\$20,000 but less than \$25,000	3%
\$25,000 but less than \$30,000	3%
\$30,000 but less than \$35,000	4%
\$35,000 but less than \$40,000	5%
\$40,000 but less than \$50,000	5%
\$50,000 but less than \$60,000	5%
\$60,000 but less than \$75,000	8%
\$75,000 but less than \$80,000	5%
\$80,000 but less than \$100,000	8%
\$100,000 or more	28%
Don't know/Refused	17%

OHIOANS AGAINST CORPORATE BAILOUTS LLC

EIN 84-2419335

YES. I would like to make a \$_____ contribution to Ohioans Against Corporate Bailouts LLC.

Contribute by wire transfer:

Chain Bridge Bank, N.A
1445-A Laughlin Ave.
McLean, VA 22101
Account Number: 2100139670
Routing Number: 056009479

Beneficiary Address/Phone:
8913 Cincinnati-Dayton Road
West Chester, OH 45069
513.577.7395

Contribute by check:

Ohioans Against Corporate Bailouts
8913 Cincinnati-Dayton Road
West Chester, OH 45069

For additional information or with questions, please contact:

Brandon Lynaugh
614.946.7965
lynaugh@battlegroundstrategy.com

Please provide the following information (for reporting purposes):

Name(s) of contributor(s)* _____

Address: _____

Employer: _____

Occupation: _____

*Contributions by one person in the name of another are prohibited. The name of the contributor identified above should match the name on the check. If the check is from a joint bank account, only the name of the signer will be reported as the contributor. For wire transfers, please check the box below.

I hereby certify that the name listed above is the name of the person making the contribution as it appears on the bank account from which the wire transfer is being made.

Additional information (will not be publicly reported):

E-mail: _____

Mobile Phone: _____

Home Phone: _____

Work Phone: _____

Ohioans Against Corporate Bailouts LLC (OACB) is an Ohio nonprofit limited liability company exempt from taxation as a social welfare organization under Section 501(c)(4) of the Internal Revenue Code. Its mission is to oppose the passage of HB 6 and, if HB 6 becomes law, to exercise the citizens' right of referendum to refer the law to Ohio voters for approval or rejection in November 2020.

OACB may accept unlimited contributions from any source, including individuals, corporations, limited liability companies, trade associations, labor organizations, and political organizations. Contributions to OACB are not required to be publicly disclosed. However, if HB 6 becomes law, OACB intends to register with the Ohio Secretary of State as a ballot issue political action committee and disclose all contributions, including those received prior to registering as a ballot issue PAC.

The IRS does not allow contributions to OACB to be deducted as charitable contributions for federal income tax purposes.

Request for Taxpayer Identification Number and Certification

**Give Form to the
 requester. Do not
 send to the IRS.**

▶ Go to www.irs.gov/FormW9 for instructions and the latest information.

Print or type. See Specific Instructions on page 3.	<p>1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank. Ohioans Against Corporate Bailouts LLC</p> <p>2 Business name/disregarded entity name, if different from above</p> <p>3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only one of the following seven boxes.</p> <p><input type="checkbox"/> Individual/sole proprietor or single-member LLC <input type="checkbox"/> C Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate</p> <p><input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ▶ _____</p> <p>Note: Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is not disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner.</p> <p><input checked="" type="checkbox"/> Other (see instructions) ▶ nonprofit LLC / tax-exempt social welfare organization</p>	<p>4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):</p> <p>Exempt payee code (if any) _____</p> <p>Exemption from FATCA reporting code (if any) _____</p> <p><small>(Applies to accounts maintained outside the U.S.)</small></p>
	<p>5 Address (number, street, and apt. or suite no.) See instructions. 8913 Cincinnati-Dayton Road</p> <p>6 City, state, and ZIP code West Chester, OH 45069</p>	<p>Requester's name and address (optional)</p>
	<p>7 List account number(s) here (optional)</p>	

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

Note: If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number									
				-			-		
or									
Employer identification number									
8	4	-	2	4	1	9	3	3	5

Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
- I am a U.S. citizen or other U.S. person (defined below); and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign Here	Signature of U.S. person ▶	Date ▶ 7/18/19
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General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/FormW9.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, later.

TO: OMA Government Affairs Committee
FROM: Ryan Augsburger / Rob Brundrett
RE: Environment Public Policy Report
DATE: August 22, 2019

Overview

No major environmental legislation has been introduced this General Assembly. Ohio EPA played a secondary role in the state budget discussions that stretched past the June 30 deadline into mid-July. Several EPA changes were included in the bill, most notably LEBOR defense. H2Ohio received a funding commitment from the General Assembly and that program should begin to take a more solid shape in the fall.

OMA continues to be heavily engaged at the agency level regarding rules and regulations that impact Ohio's manufacturers.

General Assembly News and Legislation

Senate Bill 2 – Statewide Watershed Planning

The bill creates and funds a comprehensive statewide watershed planning structure to be implemented by local soil and water conservation districts to encourage efficient crop growth, soil conservation and water protection methods.

The Senate saw this as a complement to the Governor's H2Ohio program and that H2Ohio funding will be used for the newly created Statewide Watershed Planning and Management Program.

With the passage of the state budget which outlines much of H2Ohio and its funding, it is hard to believe this bill will have much action in the future.

House Bill 7 – H2Ohio Trust Fund

The bill creates the H2Ohio Trust Fund for the protection and preservation of Ohio's water quality. It would create the H2Ohio Advisory Council to disburse money from the Fund for water quality programs, and to create the H2Ohio Endowment Board to make recommendations to the Treasurer of State regarding the issuance of securities to pay for costs related to the purposes of the Fund.

The House initially removed most of the funding for H2Ohio from the state budget. However the funding was reinserted during House and Senate discussions along with other H2Ohio framework provisions.

Senate Bill 50 – Increase Solid Waste Disposal Fee

Senator Eklund has reintroduced Senate Bill 50. The bill would increase one of the state fees levied on the transfer or disposal of solid waste in Ohio. The proceeds of this increase will be deposited into the Soil and Water Conservation District Assistance Fund. Last General Assembly the OMA worked with allies to oppose the fee increase. Recently the Soil and Water Conservation Districts have been the point agency on any new water programs to battle nutrient runoff. The bill has had two hearings. The budget bill provided increased state funding to the soil and water conservation districts.

House Bill 94 – Lake Erie Drilling Ban

HB 94 bans the taking or removal of oil or natural gas from and under the bed of Lake Erie.

House Bill 166 – State Operating Budget

Governor DeWine introduced his budget bill on March 15. Included in the budget bill was the framework for the new H2Ohio fund. That fund would be used to increase Ohio water quality throughout the state.

Originally introduced the initiative would provide funding of as much as \$900 million over ten years to protect Ohio's water quality spread over three agencies, EPA, Agriculture, and Natural Resources.

Investments would be made in programs affecting state waters including Lake Erie and other rivers, lakes, and waterways. Efforts could include pollution prevention, land-based management programs, water-based restoration programs, as well as science, research and measurement.

The General Assembly decided to fund the initiative with the \$172 million "H2Ohio fund," aimed at protecting Lake Erie, other state waterways, and community water projects. The administration has begun to form a strategy on how best to administer the dollars, while promising "more public discussions in the next few weeks."

Approximately \$46 million of the fund will be dedicated to wetland restoration to help to prevent nutrient run-off that contributes to algal blooms. The budget requires the Lake Erie Commission to coordinate with state agencies and boards to submit an annual report to the governor and legislature on H2Ohio spending during the prior fiscal year.

Also included in the state budget was an amendment that provided that nature or any ecosystem does not have standing to participate or bring an action in a court of common pleas, and prohibited any person on behalf of an ecosystem or nature from bringing or intervening in an action in such court. This amendment supported by the OMA was in direct response to the Lake Erie Bill of Rights which was passed earlier this year in Toledo.

House Bill 242 – Container Use Restriction

The bill authorizes the use of an auxiliary container for any purpose, to prohibit the imposition of a tax or fee on those containers, and to apply existing anti-littering law to those containers.

This so-called bag bill is aimed at providing uniformity across the state regarding packaging and other products that have been ground zero for local government bans. The OMA provided strong support in committee.

Regulations

Reminder: Meeting with EPA Officials Set for Oct. 10 in Chicago

This is a reminder that the OMA has partnered with the law firm of Steptoe & Johnson to host a meeting with senior management of U.S. EPA Region V and Ohio EPA. The meeting — set for Oct. 10 at the U.S. EPA offices in Chicago — will feature updates on all major program areas, followed by a Q&A session. All OMA manufacturing members are welcome, but due to security and limited seating, you need to reserve your spot early. Please contact the OMA's Rob Brundrett to save your spot. You must RSVP to be admitted.

OMA: Air Pollution Rules Need Clarity

Last month the OMA submitted comments in response to the Ohio EPA's air pollution rules. The comments were made as part of the agency's Early Stakeholder Outreach program.

The OMA used the opportunity to share its concern over ambiguity in the current air pollution rules, and suggested the need for more clarity — specifically regarding the attainment and maintenance of the National Ambient Air Quality Standards. Because of the significant impact that air pollution regulations can have on manufacturers, the OMA requested that the association “be included in any work groups or future discussions on amendments to these rules.”

OMA Files Comments on NY Ozone Air Quality Case

On March 12, 2018, the State of New York filed a petition under Section 126 of the federal Clean Air Act naming approximately 350 sources of nitrogen oxides emissions in Illinois, Indiana, Kentucky, Maryland, Michigan, Ohio, Pennsylvania, Virginia, and West Virginia as contributing to violations of the ozone air quality standards in New York. On May 20, 2019, U.S. EPA proposed to deny the petition. The OMA filed comments at U.S. EPA supporting the denial of the petition.

OMA Comments on Ohio EPA’s Water Quality Standards – Human Health Criteria

In May the OMA submitted comments in response to Ohio EPA’s draft revisions to Ohio’s water quality standards for human health criteria set forth in Ohio Administrative Code Rules 3745-1-32, -33, and -34. Among the comments the OMA noted that the potential impacts of these draft rule amendments to the business community have the potential to be highly significant, particularly if more stringent permit limitations or permit limitations for entirely new criteria are imposed through NPDES permits directly or through more stringent indirect discharge limitations on discharges sent to POTWs.

OMA Comments on ORSANCO’s Proposed Revisions to Pollution Control Standards

Earlier this year, the OMA submitted comments pertaining to the Ohio River Valley Water Sanitation Commission (ORSANCO) and potential revisions to the commission’s pollution control standards (PCS).

In its comments, the OMA expressed concerns that differences between ORSANCO’s standards and those of the Clean Water Act “can and do lead to confusion for the manufacturing community” and that “there is often no effective way to question or challenge the appropriateness or applicability of the underlying PCS in specific permitting situations.” OMA recommended that the PCS should be removed from the ORSANCO program.

OMA Submits Comments on WOTUS Revisions

Earlier this spring, the OMA weighed in with comments on the Trump Administration’s efforts to rewrite the federal water pollution rule known as the Waters of the United States (WOTUS) — which defines the scope of federal regulatory jurisdiction under the Clean Water Act (CWA).

Because the courts have rejected the Trump Administration’s effort to suspend operation of Obama-era revisions to WOTUS, the Environmental Protection Agency and U.S. Army Corps of Engineers have proposed a narrower rule that may survive judicial scrutiny. The Trump Administration’s WOTUS definition is more restrained and observes traditional limits on the scope of federal power. The public comment period ended this week.

In its comments, the OMA wrote, “The proposed rule strikes an appropriate balance between protecting waters and wetlands, and providing clarity and predictability to stakeholders and regulators,” and would curtail the regulatory “creep” of WOTUS as it affects manufacturing activity. Additionally, the OMA suggested possible improvements to the proposed rule changes,

including in the areas of stormwater control features, waste treatment systems, traditional navigable waters, tributaries and ditches.

OMA Comments on Ohio EPA Biocriteria

Earlier this year the OMA submitted general comments in response to Ohio EPA's Early Stakeholder Outreach for its Application of Biological Survey Data to Development of Water Quality Based Effluent Limitations (OAC 3745-2-03).

The new rule is intended to provide clarification and additional detail regarding when and how the biocriteria narrative should be used, as well as define what information is needed by Ohio EPA in order evaluate a request to use the biocriteria narrative.

Ohio EPA Agency News

N / A

_____ moved to amend as follows:

1 In line 122 of the title, after "2151.455," insert
2 "2305.011,"

3 In line 281, after "2151.455," insert "2305.011,"

4 After line 12268, insert:

5 "Sec. 2305.011. (A) As used in this section:

6 (1) "Nature" means the phenomena of the physical world
7 collectively, including plants, animals, the landscape, other
8 features and products of the earth, the natural environment or
9 wilderness, and generally areas that are not human or human
10 creations, have not been substantially altered by humans, or
11 that persist despite human intervention.

12 (2) "Ecosystem" means a complex community of living
13 organisms in conjunction with their physical environments, all
14 interacting and linked together as a system through nutrient
15 cycles and energy flows in a particular unit of space.

16 (B) Nature or any ecosystem does not have standing to
17 participate in or bring an action in any court of common pleas.

18 (C) (1) No person, on behalf of or representing nature or an
19 ecosystem, shall bring an action in any court of common pleas.



**BEFORE THE STATE AND LOCAL GOVERNMENT COMMITTEE
OF THE OHIO HOUSE OF REPRESENTATIVES
REPRESENTATIVE SCOTT WIGGAM, CHAIRMAN**

**TESTIMONY
OF
ROB BRUNDRETT
DIRECTOR, PUBLIC POLICY SERVICES
THE OHIO MANUFACTURERS' ASSOCIATION**

JUNE 5, 2019

Mr. Chairman and members of the House State and Local Government Committee, my name is Rob Brundrett and I am director of public policy services at the Ohio Manufacturers' Association (OMA). Thank you for the opportunity to provide proponent testimony on House Bill 242.

The OMA was created in 1910 to advocate for Ohio's manufacturers; today, it has nearly 1,400 members. Its mission is to protect and grow Ohio manufacturing.

Manufacturing is the largest of the state's 20 primary industry sectors. Manufacturing contributed more than \$108 billion in GDP according to the most recent data. This amounts to nearly 18% of the state's economy. According to the most recent federal data, more than 700,000 Ohioans work in manufacturing.

Ohio is home to:

- 34 stationary paper manufacturers (more than any other state);
- 28 plastic bottle manufacturers (also more than any other state);
- 30 paper board container manufacturers (second most in U.S.);
- 28 plastics packaging film and sheet establishments (second most in U.S.); and
- 66 paper bag and coated-and-treated paper manufacturers (third most in U.S.).

These manufacturers alone produce more than \$5 billion in output for the Buckeye State. These same manufacturers employ more than 12,500 Ohioans with an average annual wage of nearly \$54,000. These are solid, family-sustaining jobs.

Moreover, these businesses supply packaging products to many of our state's other manufacturers in sectors such as food and beverage production, consumer products, and appliances. Additionally, manufacturing is an enormous consumer when it comes to utilizing recycled materials, fostering conservation and employing sustainable business practices.

Ohio manufacturers make a wide variety of world-class products. So when local jurisdictions in our state enact restrictions or outright bans on certain products or product content; or impose mandates to label certain products; or place a tax on certain products, it makes it very difficult for Ohio manufacturers to comply here at home, much less in the global economy.

This is why the OMA routinely advocates mitigating locally-imposed restrictions, mandates and taxes. In many cases these types of regulations are most appropriately adopted at the federal government level so as to not disadvantage businesses in one state over businesses in another state.

For these reasons, the OMA favors House Bill 242. We must ensure that taxes, fees and regulations on packaging are adopted uniformly and not via a cumbersome patchwork of local mandates that would make Ohio a less friendly climate for manufacturing.

We thank Representatives Lang and Jones for sponsoring this important legislation to protect and grow Ohio manufacturing. We urge your prompt passage of House Bill 242.

Thank you. I would be happy to answer any questions.



July 19, 2019

VIA Electronic Mail (paul.braun@epa.ohio.gov)

Mr. Paul Braun
Ohio EPA Division of Air Pollution Control
P.O. Box 1049
Columbus, OH 43216-1019
paul.braun@epa.ohio.gov

Re: **Comments on Ohio EPA's *Early Stakeholder Outreach – OAC Chapter 3745-15 – General Provisions***

Dear Sir:

Pursuant to Ohio EPA's June 19, 2019 Public Notice, the Ohio Manufacturers' Association (OMA) is hereby providing Ohio EPA with written comments to Ohio EPA's Early Stakeholder Outreach notification pertaining to Ohio Administrative Code Chapter 3745-15, the general provisions on air pollution control for Ohio EPA.

The OMA is dedicated to protecting and growing manufacturing in Ohio. The OMA represents over 1,400 manufacturers in every industry throughout Ohio. For more than 100 years, the OMA has supported reasonable, necessary and transparent environmental regulations that promote the health and well-being of Ohio's citizens. The OMA appreciates the opportunity to comment on these rules at this Early Stakeholder Outreach stage.

OAC Chapter 3745-15 Generally

The rules set forth in OAC Chapter 3745-15 are significant and have widespread impacts across the state, as they are applicable to all sources of air pollution in the state of Ohio. Consequently, any draft amendments to these rules that Ohio EPA proposes will be of great interest and import to the OMA and its members. The OMA therefore respectfully requests to be included in any workgroups or future discussions on amendments to these rules.

OAC 3745-15-07

More specifically, when considering updates to OAC 3745-15-07, the OMA offers several considerations for Ohio EPA to take into account. The rule as written is ambiguous in several important respects. When considering how to improve the current language of OAC 3745-15-07, the OMA urges Ohio EPA to consider and clarify the purpose of the rule, for example, how the rule relates to the attainment and

maintenance of the National Ambient Air Quality Standards (NAAQS), and whether the rule is intended to regulate criteria air pollutants.

OAC 3745-15-07 is incorporated into Ohio EPA's statement implementation plan ("SIP"), and measures to control non-criteria air pollutants may not legally be made part of a SIP. See EPA Memo from Michael James to EPA Regional Counsel, February 9, 1979. To the extent that OAC 3745-15-07 is intended to regulate criteria air pollutants, Ohio EPA should clarify how it relates to other limitations on criteria air pollutants, e.g., emissions authorized by rules, orders, or permit terms under the Clean Air Act or Ohio's Air Pollution Control laws and rules. OAC 3745-15-07(A) declares certain emissions to be a "public nuisance," and under longstanding Ohio law, "[w]hat the law sanctions cannot be held to be a public nuisance." *Allen Freight Lines v. Consol. Rail Corp.*, 64 Ohio St. 3d 274, 277, 595 N.E.2d 855, 857 (1992) (quoting *Mingo Junction v. Sheline*, 130 Ohio St. 34 (1935), at paragraph three of the syllabus).

Similarly, the rule should provide more certainty to regulated entities on how to comply with the rule. It is well-established law that before a regulated entity is subject to civil or criminal sanctions, it must be clear how the entity is expected to comply. See *United States v. Trident Seafoods Corporation*, 60 F.3rd 556 (9th Cir. 1995). However, as written, Ohio EPA's expectations for how a regulated entity is to comply with OAC 3745-15-07 are vague. For example, an entity that is in compliance with its emissions limits for criteria air pollutants should also be in compliance with the rule. However, the rule as written fails to provide clarity to regulated entities in this regard. This is particularly important because regulated entities can become unwitting targets of citizen suit actions for pollutants and activities that cannot legally be regulated under the nuisance rule by virtue of its inclusion in the SIP.

The OMA would like to thank Ohio EPA for the opportunity to comment. We look forward to working with the agency as these comments are taken under consideration and at future stages of this rulemaking.

Sincerely,



Rob Brundrett
Director, Public Policy Services

cc: Julianne Kurdila, Committee Chair
Christine Rideout Schirra, Esq.



July 11, 2019

The Honorable Andrew R. Wheeler
Administrator
U.S. Environmental Protection Agency
Mail Code 1101A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Re: **Docket ID No. EPA-HQ-OAR-2018-0170**

Dear Administrator Wheeler:

The Ohio Manufacturers' Association (OMA) is writing in support of the Environmental Protection Agency's (EPA) proposed denial of the petition submitted by the state of New York pursuant to Section 126 of the Clean Air Act (CAA). (84 Fed. Reg. 22787, May 20, 2019). The OMA represents over 1,400 manufacturers in every industry throughout Ohio, and is dedicated to protecting and growing manufacturing in Ohio. For more than 100 years, the OMA has supported reasonable, necessary and transparent environmental regulations that promote the health and well-being of Ohio's citizens. The petition targets numerous facilities in Ohio, including facilities owned and/or operated by members of the OMA, and also more generally raises concerns as a matter of policy. Accordingly, the OMA appreciates the opportunity to comment on the petition.

New York's petition requests that the EPA make a finding that emissions from more than 350 identified sources located in the states of Illinois, Indiana, Kentucky, Maryland, Michigan, Ohio, Pennsylvania, Virginia, and West Virginia from several different industry sectors significantly contribute to nonattainment and interfere with maintenance of the 2008 and 2015 ozone national ambient air quality standards (NAAQS) in Chautauqua County and the New York Metropolitan Area (NYMA), in violation of the good neighbor provision of the CAA. As EPA correctly notes, the burden is on the petitioner in the first instance to demonstrate that the statutory threshold has been met. The OMA agrees with EPA's conclusion that New York has not met its statutory burden to demonstrate that the group of identified sources emits or would emit in violation of the good neighbor provision for the 2008 or 2015 ozone NAAQS in Chautauqua County and the NYMA.

CAA Section 126 first requires New York to demonstrate that issues with ozone attainment exist downwind; only then may New York assert and attempt to justify a claim against upwind sources. As EPA finds, New York has failed to demonstrate that it has attainment issues as required by Section 126. The petition fails to include any analysis to indicate that Chautauqua County may be violating or have difficulty

maintaining the 2008 or 2015 ozone NAAQS either currently or in a relevant future year. Instead, the petition simply points to a previous designation of nonattainment, and includes no projections or any other analyses to illustrate future air quality problems. Similarly, New York fails to meet its burden to demonstrate that the NYMA will have a nonattainment or maintenance problem in the NYMA in any relevant future year regarding the 2008 (and, we believe, 2015) ozone NAAQS. New York fails to use observed and modeled future air quality concentrations to evaluate whether there will be air quality issues in future years, in support of its petition.

EPA also correctly concludes that the petition likewise fails to demonstrate any link between non-attainment in New York with any one or more particular upwind sources with regard to the respective NAAQS in either Chautauqua County or NYMA. The petition is insufficient to show that any source or group of sources in any of the named states will significantly contribute to nonattainment or interfere with maintenance in Chautauqua County or the NYMA relative to the 2008 and 2015 ozone NAAQS. Nor has New York provided any justification that its identification of such a large, undifferentiated number of sources located in numerous upwind states constitutes a “group of stationary sources” within the context of Section 126(b). While the petition asks EPA to evaluate and implement source-specific emissions limits for each source, it fails to demonstrate cost-effective emission controls that could be deployed. New York completely fails to justify its assertion that the named facilities should make certain reductions, instead arbitrarily naming facilities that appear to have larger emissions than other facilities. Petitioner’s failure to demonstrate how relevant cost and air quality factors should be weighed to determine an appropriate level of control for the named sources is an additional, independent basis for denial of the petition. Consequently, the OMA supports EPA’s proposal to deny the petition as to all named sources in all named upwind states because New York has not met its burden to demonstrate that the sources emit or would emit in violation of the good neighbor provision with respect to either the 2008 or 2015 ozone NAAQS.

Additionally, New York’s petition ignores the effectiveness of the economic investment by Ohio sources in controlling NOx emissions to satisfy federal requirements such as the Cross State Air Pollution Rule (CSAPR) and state requirements to install the best available technology for certain new projects. Indeed, based on the latest available emissions inventory and air quality modeling data, EPA already has determined that CSAPR alone fully addresses interstate transport issues for the 2008 ozone NAAQS (81 FR 65878, December 6, 2018). It would be poor public policy to decide that investments made in reliance on the sufficiency of these measures are now inadequate.

In light of the above, the significantly more stringent emissions limits on hundreds of stationary sources that the petition seeks to impose are wholly unjustified. These stringent emission limits would be burdensome to Ohio’s manufacturing base, could indirectly increase costs on millions of consumers, and overall hamper economic development while providing no meaningful environmental benefit, all for no justifiable reason. As EPA’s own projections show, existing regulatory requirements are serving to

achieve decreases in ambient air quality concentrations of criteria pollutants as intended.

For all of the above reasons, the OMA supports EPA's proposed denial of New York's petition.

The OMA thanks EPA for the opportunity to comment on the proposed denial and for its consideration of these comments.

Sincerely,



Rob Brundrett
Director, Public Policy Services

cc: Julianne Kurdila, Committee Chair
Christine Rideout Schirra, Esq.

Environment

Aug. 21 Webinar Will Address New Rules on Hazardous Waste August 16, 2019

The U.S. Environmental Protection Agency has finalized the Hazardous Waste Generator Improvements Rule. The main objectives of the rule-making are to update the generator regulations, provide flexibility in hazardous waste management, and close regulatory gaps.

On Aug. 21, the Ohio EPA will host a **webinar for manufacturers** and others to learn about where this regulatory change is in the Ohio rule-making procedure and how the new provisions apply to generators. *8/15/2019*

Reminder: 'Manufacturers Only' Meeting with EPA Officials Set for Oct. 10 in Chicago August 9, 2019

This is a reminder that the OMA has partnered with the law firm of Steptoe & Johnson to host a manufacturers meeting with senior management of U.S. EPA Region V and Ohio EPA. The meeting — set for Oct. 10 at the U.S. EPA offices in Chicago — will feature updates on all major program areas, followed by a Q&A session. All OMA manufacturing members are welcome, but due to security and limited seating, you need to reserve your spot early. Please contact the OMA's **Rob Brundrett** to save your spot. You must RSVP to be admitted. *8/8/2019*

Budget Halts Enforcement of Lake Erie Bill of Rights August 2, 2019

In early 2019, Toledo's voters passed the Lake Erie Bill of Rights (LEBOR) — an amendment to the city charter that declares Lake Erie and its watershed have enforceable legal rights to “exist, flourish and naturally evolve.” It prohibits any corporation (defined to include any business) or government from violating these rights, and it allows the city or any resident of the city to sue in state court to enforce these rights and prohibition.

The LEBOR initiative is similar to other community proposals seeking to establish legally enforceable rights for natural resources.

Many corporations or entities could be impacted by the LEBOR's enactment — especially businesses that have an Ohio EPA-issued water discharge permit authorizing them to conduct operations within the Lake Erie watershed.

The OMA was able to help secure an **amendment** in the recently enacted state budget to declare that “nature or any ecosystem does not have standing to participate or bring an action in any court.” The amendment also prohibits any person on behalf of nature or an ecosystem from bringing an action in court. The inclusion of this language in the final budget is a big win, especially for any permit-holding manufacturer in the Lake Erie basin. *8/1/2019*

OMA, Business Allies Work Together on Air Regulations August 2, 2019

As **reported** last week, the OMA recently submitted comments in response to Ohio EPA's **Early Stakeholder Outreach** on the agency's five-year rule review of air pollution regulations. The OMA also **teamed up** with some business allies to ensure the agency was aware of the broad-based support for specific suggestions to the current regulations. The OMA will continue to work with Ohio EPA as changes to the rules are developed. *8/1/2019*

At a Glance: H2Ohio Fund July 26, 2019



The State of Ohio's new main operating budget (**House Bill 166**) — passed and signed last week — created a \$172 million “H₂Ohio fund,” aimed at protecting Lake Erie, other state waterways, and community water projects. The fund is a priority of Gov. Mike DeWine, whose administration has begun to form a strategy on how best to administer the dollars, while promising “more public discussions in the next few weeks.”

Approximately \$46 million of the fund will be dedicated to wetland restoration to help to prevent nutrient run-off that contributes to algal blooms. The budget requires the Lake Erie Commission to coordinate with state agencies and boards to submit an annual report to the governor and legislature on H₂O spending during the prior fiscal year.

Learn more at the administration's H₂O [website](#). 7/24/2019

Manufacturers Only: Oct. 10 Meeting with EPA Officials July 26, 2019

Again this year, the OMA has partnered with the law firm of **Steptoe & Johnson** to host a manufacturers' meeting with senior management of U.S. EPA Region V and Ohio EPA. The meeting — set for Thursday, Oct. 10, at the U.S. EPA offices in Chicago — will feature updates on all major program areas, followed by a Q&A session.

Attendees of last year's meeting found it valuable in terms of learning more about EPA policies and practices, while building relationships with agency management and staff. All OMA manufacturing members are welcome; however, due to security and limited seating, you need to reserve your spot early.

Please contact the OMA's **Rob Brundrett** to save your spot. Only those who RSVP can be admitted. 7/24/2019

OMA: Air Pollution Rules Need Clarity July 26, 2019

Late last week, the OMA submitted **comments** in response to the Ohio EPA's air pollution rules. The comments were made as part of the agency's Early Stakeholder Outreach program.

The OMA used the opportunity to share its concern over ambiguity in the current air pollution rules, and suggested the need for more clarity — specifically regarding the attainment and maintenance of the National Ambient Air Quality Standards. Because of the significant impact that air pollution regulations can have on manufacturers, the OMA requested that the association "be included in any work groups or

future discussions on amendments to these rules." 7/23/2019

OMA Files Comments on NY Ozone Air Quality Case July 19, 2019

On March 12, 2018, the State of New York filed a **petition** under Section 126 of the federal Clean Air Act naming approximately 350 sources of nitrogen oxides emissions in Illinois, Indiana, Kentucky, Maryland, Michigan, Ohio, Pennsylvania, Virginia, and West Virginia as contributing to violations of the ozone air quality standards in New York. On May 20, 2019, U.S. EPA **proposed** to deny the petition. The OMA **filed comments** at U.S. EPA supporting the denial of the petition. 7/17/2019

Aquatic Life Monitoring Stakeholder Recording Available July 19, 2019

On July 10, 2019, Ohio EPA's Division of Surface Water hosted a webinar introducing the enhanced two-pronged approach to surveying and monitoring aquatic life in Ohio's streams and rivers. A recording of the webinar and the presentation are now available on the agency's [website](#). Comments and questions regarding this approach are **being accepted** by the Ohio EPA through Aug. 12, 2019. For more details, contact the OMA's **Rob Brundrett**. 7/18/2019

Analysis: Uncertainty Surrounding WOTUS Likely to Continue July 12, 2019

OMA Connections Partner **Dinsmore** has published **its analysis** regarding the uncertainty surrounding "waters of the United States" (WOTUS) under the federal Clean Water Act. The issue became a key topic of concern for manufacturers when the Obama administration issued its overreaching WOTUS rule in 2015. In 2017, President Donald Trump issued an executive order instructing EPA to rescind the Obama-era rule, which was also **contested legally**.

Dinsmore says the EPA's current administrator, **Andrew Wheeler** — an Ohio native — has said the new WOTUS definition proposed last February is "focused on providing regulatory certainty and clarity that every

American can understand.” But the EPA’s new definition, which is scheduled to be published as a final rule in December 2019, is widely expected to face significant legal challenges. 7/10/2019

Online Platform that Helps Businesses Recycle & Reuse Adds More Options July 2, 2019

There have been recent additions to the **Ohio Materials Marketplace** — a free online platform that allows businesses to connect and find reuse and recycling solutions for waste and by-product materials. According to a notice from the Ohio EPA, several new materials have been added to the marketplace, including: cardboard gaylords, used garnet, diatomaceous earth, uncured polymer, collapsible wire containers, salt brine, and more. 7/1/2019

Pre-Emption Bill Addressing Auxiliary Containers Advances to Full House June 28, 2019



At least 13 states (shown above in red) have already passed legislation to restrict political subdivisions from regulating the use of auxiliary containers. Source: National Conference of State Legislatures

State legislation that would pre-empt local governments from banning or taxing the sale, use, or consumption of auxiliary containers (such as single-use plastic or paper bags) was advanced to the full House this week. The House State and Local Government Committee **voted 8-6** to approve **House Bill 242**, although passage by the full House before fall is unlikely due to the upcoming summer recess.

The bill comes after Cuyahoga County banned most large retailers from distributing single-use plastic bags. Bexley near Columbus and Orange

Village near Cleveland have passed their own plastic-bag bans, while cities like Cincinnati have explored taxing them to discourage their use.

The **OMA supports** HB 242. When local jurisdictions enact restrictions or outright bans on certain products or product content — or impose mandates to label certain products, or place a tax on certain products — it makes it difficult for Ohio manufacturers to comply. Nationwide, **13 states** have already passed pre-emption laws similar to HB 242 to avoid a patchwork of local restrictions. 6/27/2019

Ohio EPA to Hold Meetings on Water Quality Monitoring June 21, 2019

Next month, Ohio EPA will introduce its **new, two-pronged approach** for **water quality monitoring**. They will be soliciting feedback on which project areas to prioritize for sampling, as well as other matters. Meetings will be held across the state on Wednesday, July 10, from 9 a.m. to 12 p.m. Locations for these meetings include:

Northwest – Toledo Metropolitan Area Council of Governments
300 Martin Luther King Jr. Drive, Suite 300
Toledo, OH 43604

Southwest – Miami Valley Regional Planning Commission
10 North Ludlow Street, Suite 700
Dayton, OH 45402

Ohio-Kentucky-Indiana Regional Council of Governments
720 East Pete Rose Way, Suite 420
Cincinnati, OH 45202

Central – Ohio Department of Transportation Office of Aviation
2829 West Dublin-Granville Road
Columbus, OH 43235

Northeast – Ohio EPA Northeast District Office
2110 East Aurora Road
Twinsburg, OH 44087

Southeast – Ohio EPA Southeast District Office
2195 Front Street
Logan, OH 43138

Please RSVP to **Kathryn Hamilton** by July 3, 2019 with your name, organization, and the location where you will attend. Bring a valid photo I.D. on the day of the event. **Click here** to e-mail your comments or questions to Ohio EPA staff. 6/20/2019

Ohio EPA Stakeholder Input Opportunities June 21, 2019

Ohio EPA is offering stakeholders the chance to provide the agency with input on the following:

- Division of Materials and Waste Management (DMWM), **Construction and Demolition Debris (C&DD) Rules.** Comments due June 24.
- Division of Air Pollution Control (DAPC), OAC Chapter 3745-23, “**Nitrogen Oxide Standards.**” Comments due June 25.
- Division of Air Pollution Control (DAPC), **Accidental Release Prevention Rules**, OAC 3745-104-01 through 3745-104-53. Comments due June 26.
- Division of Materials and Waste Management (DMWM), “**Rule 13,**” OAC Rule 3745-27-13. Comments due July 3.
- Division of Air Pollution Control (DAPC), **Ohio’s Emergency Episode Rules and Ambient Air Quality Standards Rules**, OAC Chapter 3745-25. Comments due July 12.
- Division of Air Pollution Control (DAPC), **Revisions to Rules** in OAC Chapter 3745-14 (Phase 2) Nitrogen Oxide (NOx) Budget Program Rules. Comments due and public hearing July 16.
- Division of Materials and Waste Management (DMWM), **Municipal Solid**

Waste Landfill Rules, OAC 3745-27

6/20/2019. Comments due July 22.

Please contact the OMA’s **Rob Brundrett** with questions. 6/20/2019

Ohio EPA’s Air Quality Chief Presents to OMA Environment Committee June 14, 2019

Bob Hodanbosi, the longtime chief of **air pollution control** at Ohio EPA, was the keynote speaker at this week’s meeting of the OMA Environment Committee.

In his presentation, Hodanbosi briefed members on progress made to improve Ohio’s air quality and ensure compliance. In the categories of 24-hour particulate matter, nitrogen dioxide (NO₂), carbon monoxide (CO), and lead, the entire state is designated as “in attainment” with federal clean air standards. However, portions of Ohio are designated as in non-attainment for annual particulate matter, sulfur dioxide (SO₂), and ozone.

Other highlights from the meeting included an update on federal and state issues, as well as a report from OMA Environmental Counsel **Frank Merrill** of Bricker & Eckler LLP.

The OMA Environment Committee, chaired by Julianne Kurdila of ArcelorMittal, will meet again **October 23**. 6/12/2019



The Ohio EPA’s Bob Hodanbosi briefs OMA members on the state’s air quality efforts.

U.S. EPA Aims to Update Rule on Ignitable Liquid Waste June 14, 2019

In early April, the U.S. EPA published its proposed “Modernizing Ignitable Liquids Determinations” rule in the Federal Register. The rule has been described as an effort to update certain aspects of the regulations to

determine whether a waste is hazardous based on the characteristic of ignitability as defined at the federal level. For more on what this may mean for manufacturers, see **new analysis** by **Dinsmore**, an OMA Connections Partner. *6/12/2019*

**OMA Testifies in Support of ‘Auxiliary Container’ Pre-Emption Bill
June 7, 2019**

The OMA this week provided proponent **testimony** on **House Bill 242**, legislation that **would prohibit** local governments from imposing a tax, fee, assessment, or other charge on auxiliary containers (e.g., a plastic or paper bag) — as well as the sale, use, or consumption of auxiliary containers, or on the basis of receipts received from the sale of auxiliary containers.

There are currently more than 300 laws pending in state legislatures that would regulate or ban certain types a packaging.

As the OMA stated in its **testimony**, “Ohio manufacturers make a wide variety of world-class products. So when local jurisdictions in our state enact restrictions or outright bans on certain products or product content; or impose mandates to label certain products; or place a tax on certain products, it makes it very difficult for Ohio manufacturers to comply here at home, much less in the global economy.” *6/6/2019*

Environment Legislation
Prepared by: The Ohio Manufacturers' Association
Report created on August 20, 2019

- HB7** **H2OHIO PROGRAM** (GHANBARI H, PATTERSON J) To create the H2Ohio Trust Fund for the protection and preservation of Ohio's water quality, to create the H2Ohio Advisory Council to establish priorities for use of the Fund for water quality programs, and to authorize the Ohio Water Development Authority to invest the money in the Fund and to make recommendations to the Treasurer of State regarding the issuance of securities to pay for costs related to the purposes of the Fund.
Current Status: 7/17/2019 - Referred to Committee Senate Finance
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-7>
- HB94** **LAKE ERIE DRILLING** (SKINDELL M) To ban the taking or removal of oil or natural gas from and under the bed of Lake Erie.
Current Status: 3/5/2019 - Referred to Committee House Energy and Natural Resources
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-94>
- HB95** **BRINE-CONVERSION OF WELLS** (SKINDELL M) To alter the Oil and Gas Law with respect to brine and the conversion of wells.
Current Status: 3/5/2019 - Referred to Committee House Energy and Natural Resources
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-95>
- HB246** **PUCO/OCC REFORM** (VITALE N) To reform and modernize the Public Utilities Commission and the Consumers' Counsel.
Current Status: 5/21/2019 - Referred to Committee House Public Utilities
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-246>
- SB2** **STATEWIDE WATERSHED PLANNING** (PETERSON B, DOLAN M) To create a statewide watershed planning structure for watershed programs to be implemented by local soil and water conservation districts.
Current Status: 6/19/2019 - Referred to Committee House Energy and Natural Resources
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-2>
- SB50** **INCREASE SOLID WASTE DISPOSAL FEE** (EKLUND J) To increase state solid waste disposal fee that is deposited into the Soil and Water Conservation District Assistance Fund, and to make an appropriation.
Current Status: 4/2/2019 - Senate Finance, (Second Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-50>

To: OMA Government Affairs Committee
From: Ryan Augsburger / Rob Brundrett
Re: Human Resources Report
Date: August 22, 2019

Overview

The OMA remains laser focused on workforce development and has propped up a network of manufacturing led industry sector partnerships throughout Ohio. Lt. Governor Husted who is operating as point man on workforce issues for the new administration, has taken notice to what the OMA has created and is actively supporting the OMA partnerships. The OMA encourages all manufacturers to participate to help solving the workforce shortage.

The Governor and Lt. Governor heavily supported OMA workforce priorities with the state budget including money for sector partnerships and industry recognized credentials.

General Assembly News and Legislation

House Bill 2 – Credential Assistance Program

The budget bill included money for credential assistance and industry sector partnerships. The House removed the funding language from the budget bill and introduce a piece of legislation based on the budget recommendations. HB 2 is a priority workforce bill in the House. The OMA is supportive of the purpose of the legislation and is working with the bill sponsors to ensure that the money allocated will be used in programs that support the OMA industry sector partnership network.

The House and Senate shifted gears in conference committee and included all workforce funding in the budget bill but implementation language remains with HB 2. That bill is expected to receive Senate action in the fall.

House Bill 4 – Industry Credentialing and Office of Workforce Transformation

The bill would allow the Governor's Office of Workforce Transformation to act as a liaison between industry and the Department of Education when developing and applying for new credentials. The bill has passed the House.

Senate Bill 9 – Health Plan Claim Information

The bill requires a health plan issuer, beginning in July 2020, to release specific information to a requesting group policyholder. This information includes, net claims data paid or incurred by month, monthly enrollment data, monthly prescription claims information, and, for paid claims over \$30,000, the amount paid toward each claim and claimant health condition. The bill has passed the Senate and is waiting under the black line in the House.

Senate Bill 11 – Ohio Fairness Act

The bill prohibits discrimination on the basis of sexual orientation or gender identity or expression. The bill adds mediation to the list of informal methods by which the Ohio Civil Rights Commission may use to induce compliance with Ohio's Civil Rights Law before instituting a formal hearing. The bill also upholds existing religious exemptions under Ohio's Civil Rights Law. OMA was supportive of the House version in the previous General Assembly. The Senate has held three hearings on the bill.

House Bill 21 – Unemployment Comp: Mass Layoffs

The bill would grant an additional 25 weeks of unemployment benefits to an individual who was laid off or separated from their most recent employment as part of a group of 75 or more individuals who were laid off or separated by the same employer within a seven-day period due to lack of work. The bill is a major concern for manufacturers and other businesses who fund the unemployment system.

House Bill 34 – State and Local Minimum Wage Increase

The bill would increase the state minimum wage and to allow municipalities, townships, and counties to establish higher minimum wage requirements.

House Bill 91 – Family Medical Leave

The bill would establish family and medical leave insurance benefits. The bill has had one hearing in the House.

House Bill 166 – State Operating Budget

The budget provides \$5 million for industry sector partnerships and an additional \$30 million for TechCred which is a program for upskilling incumbent and prospective workers with short term industry recognized credentials.

The budget also created a manufacturing mentorship program allowing 16 and 17 year olds to work in a manufacturing facility part time. The bill now allows these minors to work at a manufacturing facility without being attached a bone fide educational program.

The OMA also pushed for a continuation of the unemployment compensation compromise but the House removed the item from the budget.

House Bill 221 – Wage Discrimination Complaints

The bill would require the Ohio Civil Rights Commission to establish a system for individuals to make anonymous complaints regarding wage discrimination. It has had three hearing in the House.

Medical Marijuana

After a delay on January 16, 2019 medical marijuana officially went on sale across the state of Ohio for patients who have a recommendation from their physician. Manufacturers should make sure their drug and smoking policies are up to date and should work with an expert if they have questions on how they should comply with the new law and program.

Workforce Services

Ohio Manufacturers' Workforce Summit 2019 – Inviting Sponsors Now

Organizations that are committed to the skill and talent development of Ohio's manufacturing industry can show their support by sponsoring Ohio Manufacturers' Workforce Summit 2019.

The summit – now in its third year – attracts 500 Ohio manufacturers, policymakers, K-12, community college and university leaders, economic development professionals and workforce development suppliers. It is a day of networking, learning, exchanging and building Ohio's manufacturing talent system.

This year, the summit will be held on Tuesday, October 29, 2019 at the Greater Columbus Convention Center.

Contact OMA's Dan Noreen to discuss your sponsor options and benefits. There is a package for every budget.

2019 OMA Workforce Roadmap

To address Ohio manufacturers' number one concern, OMA has committed to making Ohio the recognized national leader in talent development.

The change strategy is systemic, statewide change centered on **industry-led sector partnerships**: local or regional organizations – led by manufacturers – that include state and local partners from education, economic development and workforce organizations. The sector partners collaborate to create customer-driven alignment around their priority workforce issues. A system of three committees guides and informs the work:

- Leadership Committee, made up of OMA board member company representatives and invited industry leaders, charged with driving the OMA workforce agenda.
- Intermediary Committee, which includes a representative from each manufacturing sector partnership in Ohio.
- State Agency Committee, which includes representatives from the Governor's Office of Workforce Transformation, Ohio Department of Higher Education (ODHE), Ohio Department of Education (ODE), Ohio Department of Veterans Services, Ohio Development Services Agency, and the Ohio Department of Jobs and Family Services (ODJFS) and JobsOhio.

The committees organize work in four major areas:

- Leadership / Sector Partnership Capacity Building: Through technical assistance and best practices sharing, increase industry champions' and partnerships' abilities to drive systems change
- Policy Development: Amplify the voice of manufacturers with lawmakers and public officials
- Marketing and Communication: Leverage the **Making Ohio** brand to elevate awareness and interest in manufacturing careers
- Education Innovation: Increase public/private collaborations that train and educate the manufacturing workforce of tomorrow

Making Ohio: Ohio Manufacturing Careers Get Their Own Brand/Website

Last year the OMA debuted Making Ohio, a new website designed to help Ohioans understand that exciting, secure and fulfilling manufacturing careers are available.

OMA recently undertook comprehensive research to understand working-age Ohioans' attitudes and beliefs about Ohio manufacturing jobs and careers. We learned:

- Perceptions of manufacturing are generally favorable, but lack clarity.
- Job seekers expect detailed information.

- Pay, benefits, and job stability messages are well-received.



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and Drafting

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Office

H.B. 2 133rd General Assembly	<h2 style="margin: 0;">Bill Analysis</h2> <p style="margin: 0; font-size: small;">Click here for H.B. 2's Fiscal Note</p>
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Version: As Passed by the House

Primary Sponsors: Reps. Cross and Lepore-Hagan

Kailey Henry, Research Associate

SUMMARY

- Creates the TechCred Program to provide reimbursements to eligible employers for training costs for both incumbent and prospective employees to earn a microcredential, which generally is an industry-recognized credential or certificate that may be completed in not more than one year.
- Creates the Individual Microcredential Assistance Program to provide an eligible individual a grant to pay for training costs to earn a microcredential.
- Requires the Director of Development Services to develop a grant program to support industry sector partnerships and regional sector partnerships in consultation with the Governor's Office of Workforce Transformation.
- Requires the Director to submit to the General Assembly an annual report providing specified information regarding the workforce development programs created under the bill on August 1 each year.
- Makes an appropriation.

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DETAILED ANALYSIS

TechCred Program

The bill creates the TechCred Program to provide reimbursements to employers for training costs for incumbent and prospective employees to earn a microcredential. A “microcredential” is an industry-recognized credential or certificate that an individual may complete in not more than one year and that is approved by the Chancellor of Higher Education. The Chancellor must adopt rules in accordance with the Administrative Procedure Act¹ establishing a list of approved Ohio training providers and the microcredentials offered by those providers. The Development Services Agency (DSA) must develop the TechCred Program in consultation with the Governor’s Office of Workforce Transformation (OWT) and the Department of Higher Education.²

¹ R.C. Chapter 119.

² R.C. 122.178(A), (B), and (D).

Participation in the program

Application

An employer seeking to participate in the TechCred Program must submit to the Director of Development Services during the application period established by the Director in rule an application that includes all of the following information:

1. Proof that the employer is registered to do business in Ohio;
2. Proof that the employer is current on all tax obligations to the state;
3. Proof that the employer is in compliance with all environmental regulations applicable to the employer;
4. The name of the training provider from which an employee will receive the training and earn the microcredential;
5. The training's cost;
6. The positions for which earning the microcredential will make an employee qualified or the occupational skill set that the employee will acquire on completing the training;
7. The address of the facility or location at which the employee is expected to be employed after completing the training;
8. Any other information the Director requires.

The employer also may submit information regarding the estimated wage after completing the training and earning the microcredential or any other information the employer wishes to provide to the Director.³

Director considerations

The bill requires the Director to consider all applications to participate in the TechCred Program submitted during the application period after the period ends. The Director must consider the following factors in determining whether to approve an application:

- The training program's duration;
- The training's cost;
- An employee's estimated wage after completing the training and earning the microcredential;
- Whether approving an application will promote regional diversity in apportioning reimbursements uniformly across Ohio using the regions established under the bill (see "**Regions**," below);

³ R.C. 122.178(C) and (I).

- Any other factors the Director considers relevant in determining whether to approve an application.

The Director may adopt rules establishing priority guidelines for approving reimbursement applications. The Director cannot approve an application unless the training provider and microcredentials identified in the application are included in the Chancellor's list or if the employer has violated the Minimum Fair Wage Standards Law⁴ within the four fiscal years immediately preceding the application date. If the Director approves an application for participation, the approval is valid for the fiscal year as designated by the Director. An employer that participates in the program that wishes to participate in the program in any subsequent fiscal year must reapply in the same manner as in the previous fiscal year.⁵

Regions

The bill establishes seven regions within Ohio for purposes of determining regional diversity in apportioning reimbursements uniformly across Ohio under the TechCred Program. The following constitute separate regions:

- The counties of Allen, Crawford, Defiance, Fulton, Hancock, Hardin, Henry, Lucas, Ottawa, Paulding, Putnam, Sandusky, Seneca, Van Wert, Williams, Wood, and Wyandot are one region;
- The counties of Ashland, Ashtabula, Columbiana, Cuyahoga, Erie, Geauga, Huron, Lake, Lorain, Mahoning, Medina, Portage, Richland, Stark, Summit, Trumbull, Tuscarawas, and Wayne are one region;
- The counties of Auglaize, Champaign, Clark, Clinton, Darke, Fayette, Greene, Mercer, Miami, Montgomery, Preble, and Shelby are one region;
- The counties of Delaware, Fairfield, Franklin, Knox, Licking, Logan, Madison, Marion, Morrow, Pickaway, and Union are one region;
- The counties of Adams, Athens, Gallia, Highland, Hocking, Jackson, Lawrence, Meigs, Pike, Ross, Scioto, and Vinton are one region;
- The counties of Belmont, Carroll, Coshocton, Guernsey, Harrison, Holmes, Jefferson, Monroe, Morgan, Muskingum, Noble, Perry, and Washington are one region;
- The counties of Brown, Butler, Clermont, Hamilton, and Warren are one region.⁶

⁴ R.C. Chapter 4111.

⁵ R.C. 122.178(D), (G), and (I).

⁶ R.C. 122.178(G).

Reimbursement applications and amount

Each participating employer seeking reimbursement for training costs for an incumbent or prospective employee under the TechCred Program must submit an application to the Director. The application must include all of the following information for each employee:

1. The employee's name and position, if applicable, at the time of submitting the application;
2. The actual amount the employer paid to the training provider for the training;
3. Evidence that the employee earned a microcredential;
4. Evidence that the employee is an Ohio resident.

The amount of a reimbursement for each microcredential an employee receives must be at least \$500 but not more than \$2,000.⁷

Prohibition

The bill prohibits an employer from requiring an employee who receives a microcredential because the employer participated in and received a reimbursement through the employer's participation in the TechCred Program to accept or continue employment with the employer.⁸

Powers and duties

The Director must do both of the following regarding the Program's operation:

1. Create an application to participate in the TechCred Program and a reimbursement application;
2. Create a website with the applications for and information regarding the TechCred Program.

The Director may adopt rules regarding the operation of the program as the Director considers necessary to administer the program.

The bill also requires OWT to include on its website either (1) the applications for and information regarding the TechCred Program or (2) an Internet link to the website created by the Director.⁹

Appropriation

The bill appropriates \$12.3 million in FY 2020 and FY 2021 for reimbursements under the TechCred Program. The following amounts are allocated for and awardable in each fiscal year to businesses depending on the number of employees employed by the business:

⁷ R.C. 122.178(E).

⁸ R.C. 122.178(F).

⁹ R.C. 122.178(H) and (I).

1. For businesses with 50 or fewer employees, not more than \$4.1 million;
2. For businesses with between 51 and 200 employees, not more than \$4.1 million; and
3. For businesses with 201 or more employees, not more than \$4.1 million.

The Director, in each fiscal year of the biennium, may request Controlling Board approval to reallocate unused portions from one or two of the above funding tiers to one or two of the other tiers if the full amount allocated under the other tier has been approved for reimbursements under the program.¹⁰

Individual Microcredential Assistance Program

The bill creates the Individual Microcredential Assistance Program (IMAP) to provide an eligible individual a grant to pay for training costs to earn a microcredential.¹¹

Grant applications

Application requirements

An individual seeking to participate in IMAP must submit an application to the Director. The individual must include all of the following information in the application:

1. The individual's name and address at which the individual resides;
2. The name of the individual's employer at the time of applying, if applicable;
3. Proof that the individual is an Ohio resident;
4. Proof of the individual's total income during the prior calendar year;
5. The name of the microcredential that the individual is seeking to obtain;
6. The name of the training provider from which the individual will receive training to earn the microcredential and proof that the individual was accepted into the training provider's program to earn the microcredential;
7. The training's cost;
8. Any other information the Director requires.¹²

Director considerations

The Director must consider the following factors in determining whether to approve an application:

- The training program's duration;
- The training's cost;

¹⁰ Section 3.

¹¹ R.C. 122.1710(B).

¹² R.C. 122.1710(C).

- Whether approving an application will promote regional diversity in apportioning grants uniformly across Ohio (the Director must use the regions established in the bill; see “**Regions**,” above);
- The individual’s financial need for the grant based on the individual’s total income from the prior calendar year.

The bill prohibits the Director from approving an application unless the training provider and microcredentials identified in the application are included in the Chancellor’s list. The Director may adopt rules establishing priority guidelines for approving applications.¹³

Grant amount, disbursement, and recoupment

If the Director approves a grant application, the Director must do both of the following:

- Notify in writing the individual and the training provider of the approval;
- Disburse a grant directly to the training provider to cover the cost of the training program in an amount that is not less than \$500 and not more than \$2,000.

If the Director denies the application, the Director must notify the individual in writing.

If an individual fails to complete the training for which a grant was disbursed and does not earn a microcredential from the training provider, the training provider must refund the entire grant amount to the Director. If the training provider is a public institution, it must forward the individual’s name and the refunded grant amount to the Attorney General for collection. If the training provider is a private institution, after refunding the grant, the training provider may sue to recover damages equal to the grant amount disbursed to the training provider.¹⁴

Income tax

The bill allows an individual to deduct from the individual’s adjusted gross income for Ohio income tax purposes any amount included in the individual’s federal adjusted gross income attributable to payments made to cover the cost of a training program for the individual under IMAP. This deduction is allowed to the extent it is not already otherwise allowable as a deduction or exclusion in computing Ohio adjusted gross income for the taxable year.¹⁵

Director powers and duties

The Director must create an application to participate in and receive a grant under IMAP. The Director also must create and distribute a survey to each individual who successfully earned a microcredential because of an IMAP grant inquiring as to the individual’s occupation and wages at the time of completing the survey.

¹³ R.C.122.1710(D) and (I).

¹⁴ R.C. 122.1710(E) and (F), by reference to R.C. 131.02, not in the bill.

¹⁵ R.C. 5747.01(A)(34).

In addition to the duties described above, the bill requires the Director to create a website through which an individual may apply to a training provider for acceptance into a microcredential training program and that includes the following content:

- The application for and information regarding IMAP;
- The Chancellor’s list of approved training providers and microcredentials;
- A database that does all of the following:
 - Allows a user to search for a microcredential by name and produces results that display the training providers that offer training to earn that microcredential and the training provider’s address;
 - Allows a user to search by zip code and produces results that display both the microcredentials offered and training providers located within and near that zip code and allows a user to filter training providers by distance in relation to that zip code;
 - Allows a user to access a listing of every microcredential offered by each approved training provider.

The Director must include on the DSA website, and the OWT must include on OWT’s website and the OhioMeansJobs website, either (1) all of the content available on the website the Director creates, or (2) an Internet link to that website.

The Director may adopt rules as the Director considers necessary to implement IMAP.¹⁶

Public records exemption

The bill exempts from the Public Records Law an individual’s personal information included in an application the Director receives in connection with IMAP. However, the Director may use an individual’s personal information as necessary to complete the annual report the Director must submit to the General Assembly under the bill (see “**Annual report**,” below).¹⁷

Appropriation

The bill appropriates \$2.5 million in FY 2020 and FY 2021 for grants awarded under IMAP.¹⁸

Industry sector partnership grant program

The bill requires the Director to develop a grant program to support industry sector partnerships and regional sector partnerships in consultation with OWT. An “industry sector partnership” is a workforce collaborative that organizes key leaders and stakeholders of an

¹⁶ R.C. 122.1710(G), (H), and (I).

¹⁷ R.C. 122.1710(J), by reference to R.C. 149.43, not in the bill.

¹⁸ Section 3.

industry cluster into a working group that focuses on achieving a shared goal of meeting the industry cluster's human resources needs. A "regional sector partnership" is a regional or statewide workforce collaborative that organizes multiple industry sector partnerships into a working group that focuses on achieving a shared goal of meeting the human resources needs of a region or statewide. The Director may adopt rules as the Director considers necessary to administer the program.¹⁹

The bill permits a collaboration of multiple employers of an industry cluster to organize and lead an industry sector partnership by convening or acting in partnership with representatives of businesses, employers, or other institutions of an industry cluster, including small- and medium-sized employers where practicable. It also permits a collaboration of multiple industry sector partnerships to convene or act in partnership together as a regional sector partnership.

An industry sector partnership may include representatives of one or more of the following:

- A school district;
- A state institution of higher education;
- An Ohio technical center;
- An independent college or university;
- The state or a local government;
- A state or local economic or workforce development agency;
- A state or local workforce development board;
- The Department of Job and Family Services;
- A business, trade, or industry association;
- A charitable organization;
- An economic development organization;
- A nonprofit or community-based organization or intermediary;
- The Ohio State University Extension Division or the Central State University Extension Program;
- Any other organization that the industry sector partnership considers necessary to further the shared goal of meeting the industry cluster's human resources needs.²⁰

¹⁹ R.C. 122.179(A), (C), and (E).

²⁰ R.C. 122.179(B), by reference to R.C. 3335.16, not in the bill.

Grant applications and awards

The Director must establish a system for evaluating and scoring grant applications that prioritizes collaborative community-based solutions, including regional sector partnerships. The Director must award a grant to an industry sector partnership or regional sector partnership that submits a complete application for funding that does both of the following:

1. Describes the activities under “**Permissible grant uses,**” below, that the partnership will use the grant funds to support;
2. Meets the scoring criteria established by the Director.²¹

Permissible grant uses

An industry sector partnership or regional sector partnership may use a grant awarded under the program to do any of the following activities:

1. Hire employees to coordinate industry sector partnership or regional sector partnership activities;
2. Develop curricula or other educational resources to support the industry sector partnership or regional sector partnership;
3. Market the industry sector partnership or regional sector partnership and opportunities the partnership creates for workforce development activities;
4. Any other activity approved under rules adopted by the Director.²²

Appropriation

The bill appropriates \$2.5 million in FY 2020 and FY 2021 for grants under the program.²³

Annual report

The bill requires the Director to submit to the General Assembly a written report that compiles and includes information regarding the TechCred, IMAP, and industry sector partnership and regional sector partnership programs created under the bill. The report is due on August 1 each year. In reporting on regional information, the Director must use the regions established by the bill (see “**Regions,**” above).²⁴

TechCred Program

The Director must include the following information in the report regarding the TechCred Program:

²¹ R.C. 122.179(D).

²² R.C. 122.179(C).

²³ Section 3.

²⁴ R.C. 122.1711(A) and (B).

- The average percent rate change of wages during the previous year, if any, for employees who earned a microcredential categorized by microcredentials earned in each region and statewide;
- The average percent rate change of wages during the previous years, if any, for employees who earned a microcredential categorized by the region in which employees reside and statewide;
- The average annual wages paid to positions for which holding a microcredential or having the occupational skills acquired through obtaining a microcredential is required, categorized by each region and statewide;
- The rate of change during the previous year of unemployment categorized by each region and statewide;
- The Chancellor's list of approved training providers and microcredentials, categorized by each region and statewide;
- A demographic analysis of employees who earned a microcredential under the program based on each employee's race and gender;
- A demographic analysis of employers who received a reimbursement through the program based on each employer's race and gender;
- Any other information the Director wishes to include.²⁵

IMAP

The Director must include the following information in the report regarding IMAP:

- The average percent rate change of wages during the previous year, if any, for individuals who earned a microcredential categorized by microcredentials earned in each region and statewide;
- The average percent rate change of wages during the previous years, if any, for individuals who earned a microcredential categorized by the region in which individuals reside and statewide;
- The average annual wages paid to positions for which holding a microcredential or having the occupational skills acquired through obtaining a microcredential is required, categorized by each region and statewide;
- A demographic analysis of individuals who earned a microcredential under IMAP based on each individual's race and gender;
- An analysis, categorized by each region and statewide, of the results of the surveys the Director distributed to each individual who successfully earned a microcredential under

²⁵ R.C. 122.1711(A)(1).

IMAP regarding the individual's occupation and wages at the time of completing the survey;

- The rate of completion for each approved microcredential categorized by region and statewide;
- Any other information the Director wishes to include.²⁶

Industry and regional sector partnership program

The Director must include the following information in the report regarding the grant program to support industry sector partnerships and regional sector partnerships:

- A list, categorized by region and statewide, of each industry sector partnership and regional sector partnership to which a grant was awarded;
- A list detailing the member composition of each industry sector partnership and regional sector partnership to which a grant was awarded, including each employer and representative of an industry cluster;
- Information regarding the activities described under "**Permissible grant uses,**" above for which an industry sector partnership and regional sector partnership used the awarded grants.²⁷

Marketing requirement and appropriation

The bill requires the Director to market the TechCred, IMAP, and industry sector partnership and regional sector partnership programs. The bill appropriates \$200,000 in FY 2020 and FY 2021 for that purpose.²⁸

Appropriation rollover

The Director is required, on July 1, 2020, or as soon as possible thereafter, to certify to the Director of Budget and Management the unexpended, unencumbered balance of all appropriation amounts under the bill from FY 2020. The bill reappropriates that certified amount for FY 2021.²⁹

²⁶ R.C. 122.1711(A)(2).

²⁷ R.C. 122.1711(A)(3).

²⁸ R.C. 122.1711(C) and Section 3.

²⁹ Section 3.

HISTORY

Action	Date
Introduced	05-13-19
Reported, H. Economic and Workforce Development	06-05-19
Re-referred to H. Finance	06-05-19
Reported, H. Finance	06-11-19
Passed House (92-3)	06-12-19

Ohio Manufacturers' Workforce Summit 2019

SPONSOR PACKAGES



WHAT: The 2019 Ohio Manufacturers' Workforce Summit

WHEN: Tuesday, October 29, 2019

WHERE: Greater Columbus Convention Center

WHO: Expected attendance of 500 Ohio manufacturers; policymakers; K-12, community college and university leaders; economic development professionals; and statewide workforce development suppliers

WHY: The purpose of the event is to provide resources, tools and support to manufacturers and their regional workforce partners/suppliers to improve the skills and supply of workers in Ohio's manufacturing industry.

THANK YOU! Your generous support will help develop and support the appropriately skilled workforce essential to Ohio manufacturing, for now and for the future.

PLATINUM - \$25,000

Platinum Sponsors will receive:

- Eight (8) complimentary registrations to the Summit
- Reserved table with logo signage
- Opportunity for a company executive to make remarks
- Recognition as Platinum Sponsor during the opening and closing remarks
- Primary placement of your company's name or logo on all pre-Summit communications, including invitations and reminder e-blasts that will be widely distributed throughout the state
- Primary recognition as Platinum Sponsor in Summit registration packet
- Opportunity to include corporate literature in materials provided to all Summit participants
- Opportunity to display corporate banner near the main stage (company to provide banner, dimensions to be determined by venue)
- Recognition as Platinum Sponsor on free-standing signs at Summit
- Primary placement of your company's logo on the Post-Summit Briefing Report

GOLD - \$15,000

Gold Sponsors will receive:

- Eight (8) complimentary registrations to the Summit
- Reserved table with logo signage
- Recognition as Gold Sponsor during the opening and closing remarks
- Placement of your company's name or logo on all pre-Summit communications, including invitations and reminder e-blasts that will be widely distributed throughout the state
- Recognition as Gold Sponsor in Summit registration packet
- Opportunity to include corporate literature in materials provided to all Summit participants
- Opportunity to display corporate banner (company to provide banner, dimensions to be determined by venue)
- Recognition as Gold Sponsor on free-standing signs at Summit
- Placement of your company's logo on the Post-Summit Briefing Report

From a 2018 Summit Participant:

"We love hearing about changing the misconceptions of the manufacturing industry and methods for creating talent pipelines early."

To secure your sponsor package, please contact:

Dan Noreen, Managing Director, Development • The Ohio Manufacturers' Association
dnoreen@ohiomfg.com • (614) 629-6816 • (800) 662-4463

SILVER - \$10,000

Silver Sponsors will receive:

- Eight (8) complimentary registrations to the Summit
- Reserved table with logo signage
- Recognition as Silver Sponsor during the opening and closing remarks
- Placement of your company's name or logo on all pre and post-Summit communications, including invitations and reminder e-blasts that will be widely distributed throughout the state
- Recognition as Silver Sponsor in Summit registration packet
- Opportunity to include corporate literature in materials provided to all Summit participants
- Recognition as Silver Sponsor on free-standing signs at Summit
- Placement of your company's logo on the Post-summit Briefing Report

BRONZE - \$5,000

Bronze Sponsors will receive:

- Eight (8) complimentary registrations to the Summit
- Reserved table with logo signage
- Recognition as Bronze Sponsor during the opening and closing remarks
- Placement of your company's name or logo on all pre and post-Summit communications, including invitations and reminder e-blasts that will be widely distributed throughout the state.
- Recognition as Bronze Sponsor in Summit registration packet
- Opportunity to include corporate literature in materials provided to all Summit participants
- Recognition as Bronze Sponsor on free-standing signs at Summit

LUNCH SPONSOR - \$10,000

Lunch Sponsor will receive:

- Eight (8) complimentary registrations to the Summit
- Reserved table with logo signage
- Recognition as a Lunch Sponsor during the opening and closing remarks
- Placement of your company's name or logo on all pre-Summit communications, including invitations and reminder e-blasts that will be widely distributed throughout the state
- Recognition as Lunch Sponsor in Summit registration packet
- Opportunity to include corporate literature in materials provided to all Summit participants
- Opportunity to display corporate banner near the lunch set-up (company to provide banner, dimensions to be determined by venue)
- Recognition as a Lunch Sponsor on free-standing signs near lunch set-up
- Placement of your company's logo on the Post-Summit Briefing Report

BREAKFAST SPONSOR - \$5,000

Breakfast Sponsor will receive:

- Five (5) complimentary registrations to the Summit (open seating)
- Recognition as Breakfast Sponsor during the opening remarks
- Placement of your company's name or logo on all pre-Summit communications, including invitations and reminder e-blasts that will be widely distributed throughout the state
- Recognition as Breakfast Sponsor in Summit registration packet
- Opportunity to include corporate literature in materials provided to all Summit participants
- Recognition as Breakfast Sponsor on free-standing signs near breakfast set-up

From a 2018 Summit Participant:

"I have enjoyed the large group speakers and panel discussions both years."

AFTERNOON BREAK SPONSOR - \$2,500

Afternoon Break Sponsor will receive:

- Five (5) complimentary registrations to the Summit (open seating)
- Recognition as Break Sponsor during the closing remarks
- Recognition as Break Sponsor in Summit registration packets
- Opportunity to include corporate literature in materials provided to all Summit participants
- Recognition as Break Sponsor on free-standing signs near break set-up

RESERVED TABLE SPONSORS - \$2,000

Limited to 10

Table Sponsors will receive:

- Eight (8) complimentary registrations to the Summit
- Reserved table with logo signage
- Company name listed in materials provided to all Summit participants

From a 2018 Summit Participant:

"I really enjoyed learning about the partnership and how manufacturers are getting involved with schools to educate on different avenues of jobs and career paths ... AWESOME stuff!!!"

RESERVE NOW!

Human Resources

Analysis: Minimizing Drug-Test Cheating August 16, 2019



What options are available to employers when an employee is suspected of cheating on a drug test? More importantly, how can companies prevent employees from cheating in the first place? OMA Connections Partner *Working Partners®* has published a “**real life incident**” recounting the suspicious circumstances surrounding the testing of a particular worker and how the incident could have been avoided. 8/13/2019

Executive Order Could Affect Employer Health Plans August 16, 2019

Earlier this summer, President Donald Trump signed an **executive order** aimed at improving price and quality transparency in health care, while protecting patients from surprise medical bills. The order also seeks to enhance patients’ control over their own health care resources through tax-preferred medical accounts. As a result, OMA Connections Partner One Source Advisors says the Treasury Department will soon issue guidance to expand access to high-deductible health plans. Additionally, the Treasury will propose regulations to increase the amount of funds that can carry over without penalty at the end of the year for flexible spending accounts.

Questions? Get in touch with **One Source Advisors**. The OMA will keep you posted on any new developments. 8/12/2019

Small, Mid-Sized Manufacturers Can Start No-Cost Wellness Program for Employees August 9, 2019



Your employees may be eligible for **Better You, Better Ohio!®** – a free health-and-wellness program for workers of small and mid-sized businesses engaged in higher-risk industries, including manufacturing. Administered by the Ohio Bureau of Workers’ Compensation (BWC), the program gives employers a chance to start a wellness program with no cost and no paperwork hassle.

Businesses with 150 or fewer employees are eligible if they do not have an established wellness program. The BWC can even arrange on-site biometric screenings for your employees. **Email the BWC** for more information. 8/6/2019

Legalization of CBD Oil May Mean More Employer Headaches August 9, 2019

OMA Connections Partner Bricker & Eckler has published new **analysis** of what Ohio’s legalization of products containing hemp-derived cannabidiol (CBD) means for employers. According to the firm’s experts, legalization under Ohio law does not alter employers’ obligations to drug-test certain employees under federal law. Pilots, CDL drivers, mass transit, pipeline industry workers, and many others in safety-sensitive positions are still subject to applicable random testing requirements, and covered employers must be mindful of these obligations. The analysis notes that a high enough quantity of CBD oil consumed through edibles, vaping, or other non-topical means could result in impairment and a positive drug test. 8/6/2019

Federal Court Blocks EEOC Guidance on Employers’ Use of Criminal History for Hiring August 9, 2019

The U.S. Court of Appeals for the Fifth Circuit this week upheld an earlier ruling that rejected

federal guidance for employers on hiring felons. The issue goes back to 2012, when the Obama administration's Equal Employment Opportunity Commission (EEOC) tried to make it easier for ex-convicts to find employment.

It its **analysis**, OMA Connections Partner Dinsmore says this week's opinion will "undoubtedly" result in widespread legal challenges to the EEOC's 2012 guidance. Nonetheless, "employers should take caution when devising a policy regarding the treatment of employees or applicants with criminal records" since the "applicability of the EEOC's guidance will likely be in flux for some time, and other laws remain which must be carefully considered when reviewing the criminal background of an employee or applicant — most notably the Fair Credit Reporting Act and state 'ban the box' laws." *8/8/2019*

NLRB Makes it Easier to Challenge Union Representation **August 2, 2019**

Employers, as well as unionized workers wishing to move on from their relationship with labor unions, recently received good news from the National Labor Relations Board (NLRB). On July 3, 2019, the board modified the legal framework that permits employers to stop bargaining prior to the expiration of a collective bargaining agreement, and announce they will eject the union when the contract ends. **Here** is analysis from OMA Connections Partner Bricker & Eckler. *7/30/2019*

What Legalization of CBD Products Means for Employers **August 2, 2019**

Gov. Mike DeWine this week signed into law **Senate Bill 57**, legalizing hemp and hemp-derived cannabidiol (CBD) products in Ohio. This means retailers can start selling hemp-derived CBD products and Ohio's Department of Agriculture can outline a program for farmers to start growing the crop.

Employers are raising questions about CBD, such as whether there is tetrahydrocannabinol (THC) in CBD products, or if CBD will show up on drug tests. OMA Connections Partner Working Partners® has published this **helpful video** and **infographic** to assist employers (and their employees) in navigating this touchy topic

as they work to maintain a drug-free workplace. *8/1/2019*

Toledo Bans Salary History Questions by Employers **July 26, 2019**

OMA Connections Partner Bricker & Eckler reports that Toledo recently joined the growing number of U.S. jurisdictions — including Cincinnati — to pass local ordinances prohibiting employers from asking applicants for salary history. According to the firm, the Toledo ordinance's stated purpose is to "reduce the pay inequality for all." It goes into effect June 25, 2020, so employers with operations in Toledo should begin reviewing and changing their applications and practices. **Here's more analysis** from Bricker & Eckler. *7/22/2019*

Shortening the Time Period for Employment Lawsuits **July 26, 2019**

There are steps that businesses can take to drastically reduce the time in which an employee (or former employee) can take legal action against their employer. According to OMA Connections Partner Franz Ward, well-drafted employer-employee agreements can provide employers with an important layer of added protection against many types of employment claims. To learn more, **click here**. *7/22/2019*

U.S. Labor Department Publishes New Guidance on Fair Labor Standards Act Issues **July 2, 2019**

The U.S. Department of Labor has published **new opinion letters** that address compliance issues related to the Fair Labor Standards Act (FLSA). The opinion letters issued on Monday include:

- Addressing the calculation of overtime pay for non-discretionary bonuses paid on a quarterly and annual basis.
- Addressing permissible rounding practices for calculating an employee's hours worked.

Opinion letters serve as a means by which the public can develop a clearer understanding of FLSA compliance. 7/1/2019

and often progressive leave policies can easily run afoul of such requirements.” 6/3/2019

NLRB Revises Rules Addressing Union Activity on Employer Property
June 21, 2019

In a 3-1 decision, the National Labor Relations Board recently ruled that employers may prohibit non-employee union representatives from soliciting or promoting union membership within common areas of an employer’s business — such as public restaurants and cafeterias — as long as the employer does so in a non-discriminatory manner. This action overruled 38 years of precedent. **See the analysis** from OMA Connections Partner and national law firm **Dinsmore** on this important policy change. 6/19/2019

Report: Generous Parental Leave Policies Trigger Discrimination Lawsuits
June 7, 2019



The labor law experts at OMA Connections Partner **Bricker & Eckler** have alerted clients about the increase in class action lawsuits by employees who claim they have been denied equal parental leave time.

Recently, JPMorgan Chase reached a tentative settlement with a male employee who took legal action because he was not offered the company’s 16-week paid parental leave for mothers who are primary caregivers. The employee’s gripe? He received only two weeks to bond with his newborn.

The attorneys at Bricker & Eckler write: “The recent uptick of lawsuits and settlements regarding unequal paid parental leave highlights the importance of understanding the different types of leave and ensuring that policies conform to the applicable laws. Well-intended

Human Resources, Health Care & Employment Law Legislation
Prepared by: The Ohio Manufacturers' Association
Report created on August 20, 2019

- HB21** **MASS LAYOFFS-UNEMPLOYMENT COMP** (HOLMES G, MILLER A) Regarding notices, resources, and benefits under the Unemployment Compensation Law when a mass layoff occurs.
Current Status: 2/12/2019 - Referred to Committee House Commerce and Labor
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-21>
- HB34** **STATE-LOCAL MINIMUM WAGE** (KELLY B) To increase the state minimum wage and to allow municipalities, townships, and counties to establish higher minimum wage requirements.
Current Status: 2/12/2019 - Referred to Committee House Commerce and Labor
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-34>
- HB38** **COMMERCIAL CREDIT REPORTING** (HILLYER B) To require a commercial credit reporting agency to provide credit reports to businesses and to establish a procedure whereby a business may dispute statements on the report.
Current Status: 6/4/2019 - **BILL AMENDED**, House Financial Institutions, (Fourth Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-38>
- HB78** **PREVAILING WAGE-PUBLIC IMPROVEMENTS** (RIEDEL C, MANCHESTER S) To allow political subdivisions, special districts, and state institutions of higher education to elect to apply the Prevailing Wage Law to public improvement projects.
Current Status: 2/20/2019 - Referred to Committee House Commerce and Labor
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-78>
- HB91** **FAMILY-MEDICAL LEAVE** (BOGGS K, BOYD J) To establish family and medical leave insurance benefits.
Current Status: 3/26/2019 - House Insurance, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-91>
- HB221** **WAGE DISCRIMINATION COMPLAINTS** (BOYD J, CRAWLEY E) To require the Ohio Civil Rights Commission to establish a system for individuals to make anonymous complaints regarding wage discrimination.
Current Status: 6/18/2019 - House Civil Justice, (Third Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-221>
- HB268** **VACCINES-EMPLOYMENT** (HOOD R, KENT B) To enact the "Medical Consumer Protection Act" to prohibit an employer from taking an adverse employment action against a person who has not been or will not be vaccinated.
Current Status: 6/4/2019 - Referred to Committee House Commerce and Labor
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-268>

- HB292** **UNIVERSAL HEALTH CARE COVERAGE** (SKINDELL M, KENT B) To establish and operate the Ohio Health Care Plan to provide universal health care coverage to all Ohio residents.
Current Status: 6/25/2019 - Referred to Committee House Health
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-292>
- HB304** **ELIMINATE SEX-BASED WAGE DISPARITIES** (CLITES R, HOWSE S) To enact the Ohio Equal Pay Act to require state contractors and economic incentive recipients to obtain an equal pay certificate, to require public employers to establish a job evaluation system to identify and eliminate sex-based wage disparities, to prohibit employers from seeking a prospective employee's wage or salary history, and to prohibit employer retaliation against an employee who discusses salary or wage rates with another employee.
Current Status: 6/30/2019 - Referred to Committee House Commerce and Labor
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-304>
- SB9** **HEALTH PLAN CLAIM INFORMATION** (HUFFMAN M) To require health plan issuers to release certain claim information to group plan policyholders.
Current Status: 5/7/2019 - **REPORTED OUT AS AMENDED**, House Insurance, (Third Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-9>
- SB11** **PROHIBIT DISCRIMINATION-SEXUAL ORIENTATION, GENDER IDENTITY** (ANTONIO N) To enact the Ohio Fairness Act to prohibit discrimination on the basis of sexual orientation or gender identity or expression, to add mediation as an informal method that the Ohio Civil Rights Commission may use, and to uphold existing religious exemptions under Ohio's Civil Rights Law.
Current Status: 5/22/2019 - Senate Judiciary, (Third Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-11>
- SB91** **FAMILY AND MEDICAL LEAVE** (MAHARATH T) To establish family and medical leave insurance benefits.
Current Status: 3/12/2019 - Referred to Committee Senate Insurance and Financial Institutions
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-91>
- SB92** **WAGE DISCRIMINATION** (MAHARATH T) To enact the "Fair and Acceptable Income Required (FAIR) Act" and to revise the enforcement of the prohibitions against discrimination in the payment of wages.
Current Status: 3/20/2019 - Senate General Government and Agency Review , (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-92>
- SB94** **PREGNANT WORKERS** (MAHARATH T) To enact the "Ohio Pregnant Workers Fairness Act" to generally require employers to make reasonable accommodations for employees who are pregnant or breastfeeding.

Current Status: 3/12/2019 - Referred to Committee Senate Government Oversight and Reform

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-94>

SB149 **EMPLOYEE WAGE HISTORY (MAHARATH T)** To prohibit employers from seeking a prospective employee's wage or salary history.

Current Status: 5/13/2019 - Introduced

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-149>

TO: OMA Government Affairs Committee
FROM: Ryan Augsburger / Rob Brundrett
RE: Safety and Workers' Compensation Report
DATE: August 22, 2019

Overview

Eight months into the new Administration and the BWC has already passed a 20% private employer rate cut starting this summer and announced \$1.5 billion back to employers.

The BWC budget became a political football and its passage was delayed until well after the June 30 deadline.

Legislation and Rules

House Bill 79 – Industrial Commission Budget

The often non-controversial Industrial Commission budget was the only budget to be passed and signed by the June 30th deadline. The bill due to its non controversial nature was signed by the Governor on June 27th, and contained only IC appropriations.

House Bill 80 – Bureau of Workers' Compensation Budget

Administrator McCloud provided her initial testimony on the BWC budget to the House Insurance Committee in February. The budget bill included a 7% increase in funding due to the extra pay period in 2019. The Insurance Committee passed the bill out of committee with no changes. The bill was rereferred to the Finance Committee for more debate since it contains appropriations.

The House Finance Committee provided a substitute version which was accepted. Included in that version was PTSD coverage for first responders. The business community has long opposed the so-called mental/mental provision because it challenges the longstanding precedent that physical injuries are required to receive workers' compensation. Also included was severe employee misclassification penalties and settlement changes. The OMA opposed the House revisions.

The Senate removed all the House added policy changes to the bill. The two chambers eventually agreed to changes and accepted a bill that did not include the policy changes.

Both the House and Senate have publicly stated they would like to approve PTSD in the fall. The OMA and other business groups have shopped a proposal that would provide benefits outside of the BWC system.

House Bill 308 – PTSD First Responders

The bill would provide workers' compensation and disability retirement for peace officers, firefighters, and emergency medical workers diagnosed with posttraumatic stress disorder arising from employment without an accompanying physical injury.

BWC Agency Notes

Yet Another Billion Back

Last month the BWC announced another billion back at OMA member Dynalab. The money would be Ohio's fifth investment return to private and public employers of at least \$1 billion since 2013 and sixth overall during that time. If approved manufacturers can begin expecting their checks later this year.

Jim Hughes to Chair Ohio's Industrial Commission

Gov. Mike DeWine appointed Jim Hughes of Upper Arlington (Franklin Co.) to the Industrial Commission of Ohio, which adjudicates workers' compensation disputes. Hughes' term begins July 1, 2019 and will end June 30, 2025. He will serve as chair of the commission when his term commences.

A Republican, Hughes was a member of the Ohio State Senate from 2008 to 2016, as well as a member of the Ohio House from 2000 to 2008. He has worked an assistant prosecutor for Franklin County.

BWC Rebranding?

Administrator McCloud sent a letter to stakeholders asking for Ohio BWC rebranding suggestions and opinions.

BWC Board Approves Largest Private Employer Rate Decrease in 60 Years

Earlier this year the Ohio Bureau of Workers' Compensation (BWC) Board of Directors approved a 20% reduction in the average premium rate it charges private employers, which is the largest rate cut in nearly 60 years.

Fewer workplace injuries and falling estimates of future medical costs are driving the recommendation.

The rate reduction is effective July 1 and is projected to save private employers \$244 million over premiums for fiscal year 2019.

Premiums paid to BWC not only cover health care and wages for injured workers, they support BWC's Safety & Hygiene Division, which offers grants, training, consultations and other services to help employers improve workplace safety.

The 20% rate cut represents an average statewide change. The actual premium paid by individual private employers depends on a number of factors, including the expected future claims costs in their industry, their company's recent claims history and their participation in various BWC rebate programs.

BWC Board Releases MCO Study

The board of directors recently heard a presentation on a second phase of a study of managed care organization (MCO) performance in the Ohio system.

Unlike 20 years ago when Governor Voinovich called the Ohio workers' compensation system the "silent killer of jobs," the Ohio system today is a national leader on any number of metrics, including medical.

However, that success comes at a cost. The study indicates that MCOs are paid 27% of total medical costs; meanwhile, benchmarks in from other programs are 15% of total costs for administrative costs.

That suggests a possible overpayment of \$70 to \$80 million for MCO services. Those costs, of course, are born by employers.

The BWC has established work groups to study this matter in detail.

Safety Issues

N / A



**BEFORE THE INSURANCE AND FINANCIAL INSTITUTIONS COMMITTEE
OF THE OHIO SENATE
SENATOR BOB HACKETT, CHAIRMAN**

**TESTIMONY
OF
ROB BRUNDRETT
DIRECTOR, PUBLIC POLICY SERVICES
THE OHIO MANUFACTURERS' ASSOCIATION**

JUNE 19, 2019

Mr. Chairman and members of the Committee, my name is Rob Brundrett. I am the Director of Public Policy Services for The Ohio Manufacturers' Association (OMA). Thank you for the opportunity to provide testimony today on House Bill 80. The OMA was created in 1910 to advocate for Ohio's manufacturers; today, it has nearly 1,400 members. Its mission is to protect and grow Ohio manufacturing.

Manufacturing is the largest of the Ohio's primary 20 industry sectors and contributes more than \$108 billion annually in GDP, according to the most recent federal data. This comprises nearly 18% of the state's economic output. More than 700,000 Ohioans work in manufacturing. In 2017, Ohio manufacturing employees earned, on average, more than \$74,000 in compensation, according to newly released figures.

Throughout the years, the OMA has consistently advocated for an efficient and effective workers' compensation system that benefits workers, employers, and the economy of the state.

The Ohio workers' compensation system was designed to compensate injured workers' physical injuries/illnesses and any mental conditions that arise as a result of such physical injuries/illnesses. The OMA has a history of opposing proposals that would permit PTSD compensation in cases in which there is no associated physical injury or illness. The adoption of a mental-only diagnosis would mark a significant change to the Ohio workers' compensation system.

Additionally, we are concerned about the potential expansion of workers' compensation beyond this provision's narrow target of first responders. We recognize that peace officers, firefighters, and emergency medical workers experience traumatic events. However, they are not alone in their willingness to undertake dangerous and essential jobs for the good of us all. If we erode the physical injury requirement for peace officers, firefighters, and emergency medical workers, it may be difficult to justify not doing the same for other professionals who seek equal treatment.

Once a fundamental parameter of the workers' compensation system – like the physical injury requirement – is compromised, the potential inroads into the program are endless. The result will be increased workers' compensation costs for public and private employers alike. The implications of those cost increases will be felt across the board and will impact Ohio's business climate. The increased costs could also affect our public employers' abilities to provide essential public safety functions.

In addition, given that mental health benefits have parity with physical health benefits under health insurance plans, it is important to have a broader conversation about

where PTSD arising out of employment would be most effectively and appropriately financed – private health insurance, a special workers’ compensation insurance PTSD fund outside of the current system, or a completely different model.

The bill also contains a provision prohibiting an employer’s right to negotiate settlement after the workers’ compensation claim is out of the employer’s experience. The purpose of settlement is to fully resolve an issue for all parties. The employer is still a party even if the claim is out of its experience. As pending the bill denies the employer this right in these circumstances.

Finally, the bill proposes creating an entirely new section of the Ohio Revised Code directing the superintendent of industrial compliance to establish the definition of employee and independent contractor for purposes of not only workers’ compensation, but also unemployment and tax purposes. While unemployment and tax are certainly outside the scope of a workers’ compensation bill, the proposed language unnecessarily creates an additional hearing process for employees to contest misclassifications before a tribunal that historically does not have the experience across these industries. If the superintendent finds a misclassification has occurred, its decision is not only binding on other administrative agencies, the superintendent “shall” assess a \$500 per day penalty on employers – even in the case of an honest mistake.

Thank you for the opportunity to testify. I am joined by OMA workers’ compensation counsel Sue Roudebush, we would be happy to answer any questions from the committee.



June 4, 2019

KEY VOTE ALERT

Vote No on House Bill 80 – BWC Budget

The Ohio Manufacturers' Association (OMA) is requesting your "No" vote in opposition to House Bill 80, the budget bill for the Ohio Bureau of Workers' Compensation.

House Bill 80 was amended in Finance Committee making mental or emotional impairment caused by post-traumatic stress disorder (PTSD) a compensable condition, even if there is no physical injury.

The Ohio workers' compensation system was designed to compensate injured workers' physical injuries/illnesses and any mental conditions that arise as a result of on the job physical injuries/illnesses.

The OMA opposes proposals that would permit PTSD compensation in cases in which there is no associated physical injury or illness. The adoption of a mental-only diagnosis would mark a significant change to the Ohio workers' compensation system.

This provision, if enacted, will inevitably result in increased workers' compensation costs for both public and private employers. The consequences of those cost increases will be felt across the Ohio economy and will negatively impact Ohio's business climate.

For these reasons, the OMA deems House Bill 80 to be a KEY VOTE.

Thank you.

Handwritten signature of Ryan Augsburger in blue ink.

Ryan Augsburger
Managing Director of Public Policy
614-629-6817

Handwritten signature of Rob Brundrett in blue ink.

Rob Brundrett
Director of Public Policy
614-629-6814



THE OHIO COUNCIL OF

Retail Merchants
The voice of retail since 1922



OHIO CHAMBER
of COMMERCE

June 26, 2019

The Honorable Bob Hackett
Chairman, Insurance and Financial Institutions Committee
Ohio Senate
1 Capitol Square
Columbus, Ohio 43215

Dear Chairman Hackett:

Our organizations, on behalf of our members, write to you today to encourage the Senate Insurance and Financial Institutions Committee to pass the substitute version of House Bill 80 which was accepted this morning in committee without any new amendments.

Collectively we have long advocated for a workers' compensation system in Ohio that benefits workers, employers, and the economy of the state. Over the past decade the Ohio Bureau of Workers' Compensation has continued to make strides in medical outcomes and actuarial soundness.

We feel that the version currently pending in committee best achieves these goals. Making any further changes to the bill at this point in time has the possibility to derail the important services and operations from the Bureau that both injured workers and their employers depend.

At this time, we respectfully ask that the Senate Insurance and Financial Institutions Committee reject any new amendments to House Bill 80.

CC: President Larry Obhof
Senate Insurance and Financial Institutions Committee Members
Vanessa McMahon

Safety & Workers' Compensation

New Details on OSHA's On-Site Consultation Program

August 16, 2019



A new **brochure** from OSHA explains how the agency's no-cost and confidential **On-Site Consultation Program** can help businesses reduce the likelihood of worker injuries or illnesses, and help save on workers' compensation costs. In Ohio, the **BWC administers this program**. The consultation is confidential. According to OSHA, no citations or penalties will be issued — and your only obligation is to correct serious job safety and health hazards. *8/12/2019*

Hiring Security for Your Workplace? Read This First

August 16, 2019

This month's tragedies in Dayton and El Paso — which mirrored events that have become far too common since the late 1990s — have more employers looking at hiring their own private security. In Ohio, security services are required to be licensed through the Ohio Department of Public Safety's (ODPS) and its Ohio Homeland Security division.

If you are considering hiring contract security for your business, or currently use such services, the ODPS encourages you to use its Private Investigator and Security Guard Services (PISGS) as an informal resource. This will help ensure that a company is operating legally in Ohio, and that security guards are properly trained and registered. See more **here** or call (614) 466-4130. *8/12/2019*

BWC Taking Applications for Safety Innovation Awards

August 9, 2019

The Ohio Bureau of Workers' Compensation (BWC) is taking applications from Ohio employers for its annual Safety Innovation Awards, which recognize employers for innovative and creative solutions to reduce the risk of injuries and illnesses in the workplace. Applications are due Sept. 30, 2019. Innovations can include advanced technologies, creative use of existing equipment, or unique processes and practices. Cash awards range from \$6,000 for first place to \$1,500 for honorable mention. Here is **more information**. *8/5/2019*

Responding to an Active Violence Situation in the Workplace

August 9, 2019

It has been a tough week in Ohio and the rest of the nation following the acts of evil in Dayton and El Paso. If you would like to help the families impacted by this tragedy, consider donating to **The Dayton Foundation**.

While no employer wants to think about such acts of violence occurring at the workplace, preparing employees can save lives through increased awareness, emergency action plans, and trained response protocols. Last fall, the OMA — in partnership with its safety consultant, Safex — hosted a webinar featuring Lt. Paul Ohl, SWAT platoon commander with the Columbus Division of Police, who discussed effective planning considerations for an active violence situation in the workplace. This recorded webinar is **available now**, free to all OMA members. *8/5/2019*

True-Up Report Deadline is August 15

August 9, 2019

Time is almost up for Ohio's private employers to complete their payroll **"true-up" report**. Be sure to complete this action by Thursday, Aug. 15. It is an important and necessary step that allows the Ohio Bureau of Workers' Compensation (BWC) to accurately calculate premiums. It's also critical to maintaining your policy and participation in current rating plans or discount programs. If you have questions, contact **Brian Jackson**, managing director of **OMA's Workers' Compensation Services**. *8/8/2019*

Only Two Weeks Left to File Your 'True-Up' Report

August 2, 2019



Private employers in Ohio have until Thursday, Aug. 15 to complete their **payroll "true-up" report**. This is an important and necessary step that allows the Ohio Bureau of Workers' Compensation (BWC) to accurately calculate premiums. It's also critical to maintaining your policy and participation in current rating plans or discount programs.

If you have questions, contact **Brian Jackson**, managing director of **OMA's Workers' Compensation Services** — the only workers' compensation service provider exclusively serving Ohio's manufacturers. If you're not already using the OMA for your workers' compensation needs, you can easily request a service proposal [here](#). 7/9/2019

Workers' Comp Rates Drop 20% on Average

August 2, 2019

The Ohio Bureau of Workers' Compensation (**BWC**) reports that a 20% reduction in the average premium rate collected from private employers went into effect July 1. This is the BWC's largest rate reduction in nearly 60 years, and is estimated to save private employers \$244 million in FY 2020. The rate relief is attributed to safer workplaces, as well as the continued lower inflation of medical costs. 7/31/2019

General Assembly Passes a 'Clean' BWC Budget; PTSD Language is Removed

July 19, 2019

This week, the House and Senate finalized **House Bill 80**, the Bureau of Workers' Compensation (BWC) budget. Last month, the General Assembly failed to pass the bill and instead approved a short-term funding solution, while the two chambers continued to negotiate on key differences.

Approved in early June, the House version of HB 80 was loaded with major policy changes

that would have had detrimental impacts on the manufacturing community — including provisions to allow expanded PTSD coverage and benefits; changes to the settlement process; and new employee misclassification definitions.

The Senate eliminated the harmful House provisions in their version of HB 80. In the **conference committee**, the House and Senate agreed to the Senate version, while an amendment to include PTSD was defeated. The OMA worked to remove the harmful provisions to protect Ohio manufacturing. 7/17/2019

Deadline Approaching for Workers' Comp 'True-Up'

July 12, 2019



Private employers in Ohio have until Aug. 15 to complete their "true-up" reports, an important and necessary step that allows the Ohio Bureau of Workers' Compensation (BWC) to accurately calculate premiums.

The true-up process, which is simple to do at BWC's **"My Policy" page**, requires employers to report their actual payroll for the previous policy year to reconcile any differences in premium paid. This action is critical to maintaining your policy and participation in current rating plans or discount programs. Employers must complete the true-up report even if their payroll for the year matches the estimate received from BWC.

If you have questions, contact **Brian Jackson**, managing director of **OMA's Workers' Compensation Services** — the only workers' compensation service provider exclusively serving Ohio's manufacturers. If you're not already using the OMA for your workers' comp. needs, you can easily request a service proposal [here](#). 7/9/2019

PTSD Remains a Sticking Point in Delayed BWC Budget

July 2, 2019

The legislature failed to meet Sunday's deadline for passing a final budget measure (**House Bill 80**) for the Ohio Bureau of Workers' Compensation (BWC). As a result, lawmakers extended the BWC's current funding for 30 days, after the House voted to not concur with the Senate amendments to the budget legislation.

The Senate-passed version of HB 80 contained none of the **controversial provisions** included by the House, such as employee misclassification language, expanded workers' comp coverage for PTSD for first responders without a qualifying physical injury, and settlement provisions that would be harmful to manufacturers. House leadership has insisted on keeping the PTSD and misclassification provisions in the bill.

OMA members should **contact their state senator and state representative** — urging him/her to accept the Senate version of HB 80. Including the controversial PTSD language in the bill would create a fundamental shift in Ohio's workers' compensation law, which currently requires a physical injury before allowing any mental health claims. Most troubling, it would establish a precedent for future PTSD expansion to include private employers. If this happened, workers' compensation premiums for Ohio manufacturers would increase dramatically. 7/1/2019

Workers' Comp Board OKs \$1.5B in Rebates for Employers

July 2, 2019



On Friday, the **board of directors** for the Ohio Bureau of Workers' Compensation (BWC) approved \$1.5 billion in rebates for approximately 180,000 private and public employers across the state. Employers should receive their rebate checks sometime this fall. This latest rebate, proposed by Gov. Mike DeWine in May, represents roughly 88% of the premiums employers paid for the policy year that ended June 30, 2018. It marks the fifth time in the last six years that the system has returned at

least \$1 billion to employers due to favorable investment returns, fewer injury claims, and operational efficiencies.

"In total, BWC has saved employers nearly \$10 billion in workers' comp costs through dividends, credits, rate reductions and greater efficiencies since 2011," according to the agency's **news release**. 7/1/2019

Senate Passes Clean Workers' Comp Budget Bill

June 28, 2019

This week, the Ohio Senate unanimously passed a stripped-down version of **House Bill 80**, the Bureau of Workers' Compensation (BWC) budget bill. During the committee process, the Senate removed all **controversial provisions** added by the House, returning the bill to its appropriation roots. Among the items the Senate removed were an employee misclassification provision, expanded Workers' Comp coverage for PTSD, and settlement provisions that were harmful to Ohio's manufacturers.

The House has yet to vote on concurrence of the Senate amendments. If the House does not concur with the changes, a conference committee will be appointed and would face an extremely tight deadline to reach final approval by 11:59 p.m. Sunday, June 30.

Late Thursday, Speaker **Larry Householder** (R-Glenford) said the House would prepare a continuing budget resolution — a temporary funding measure — in case House and Senate conferees failed to reach a timely agreement on HB 80 and the mainline state budget (House Bill 166). 6/27/2019

OMA Testifies Against BWC Budget Bill

June 21, 2019

This week, the **OMA testified** as an opponent to the Ohio Bureau of Workers' Compensation (BWC) budget bill (**House Bill 80**), appearing before the Senate Finance and Financial Institutions Committee. The bill, as passed by the House, contains a variety of anti-business provisions, including the expansion of workers' compensation benefits for mental or emotional impairment caused by PTSD for first responders — even in the absence of a physical injury. The

Senate has indicated that a new substitute version of the bill will be adopted next week. HB 80 needs to be passed no later than June 30 to ensure continued funding for the BWC. 6/20/2019

Industrial Commission Budget Clears General Assembly

June 21, 2019

On Wednesday, the Senate unanimously passed **House Bill 79**, the Industrial Commission budget. Typically, the Industrial Commission budget is the least controversial of the state's four budget bills — which also include the transportation, BWC, and main operating bills. This year was no exception as the bill moved through the House and Senate with zero opposition. HB 79 provides the operating funds for the **Ohio Industrial Commission**, which serves as the adjudicating body for employers and employees on disputed workers' compensation claims. 6/20/2019

Questions Linger About PTSD Expansion as Senate Takes Up Workers' Comp Budget

June 14, 2019



This week, the Senate Insurance and Financial Institutions Committee began its work on **House Bill 80**, the Ohio Bureau of Workers' Compensation (BWC) budget.

As we **reported** last week, the House-passed version of HB 80 contains a variety of provisions that would be detrimental to Ohio's business climate. This includes the expansion of workers' comp benefits for mental or emotional impairment caused by post-traumatic stress disorder (PTSD) for first responders — even when there is no physical injury. Other harmful

provisions include restricting an employer's right to negotiate settlement terms; eliminating the current definition of an employee; and penalizing employers for accidentally misclassifying employees.

At this week's Senate hearing, bill sponsor **Rep. Scott Oelslager** provided **testimony** and BWC Administrator Stephanie McCloud provided **testimony** on behalf the BWC. The bill is expected to have multiple hearings over the next week. The OMA and other business allies continue to oppose the bill based on the House's harmful changes. 6/13/2019

Analysis: Citizenship Provision in Workers' Comp Budget Could Result in 'Unintended Consequences'

June 14, 2019

As previously **reported**, the Ohio House last week passed its version (**House Bill 80**) of the state's workers' compensation budget, but not before a controversial, immigration-related amendment was added at the last minute. The bill is now before the Senate for consideration.

The OMA's Connections Partner **Franz Ward** has **analyzed** the citizenship provision in HB 80, which would "require injured workers to identify themselves as either a U.S. citizen, non-citizen authorized worker, or an illegal or unauthorized alien when filing a workers' compensation claim in Ohio." According to the firm, "while the amendment does not go so far as to expressly prohibit illegal aliens from receiving workers' compensation benefits, it does state that claimants who provide false information, including regarding their citizenship status, will be ineligible to receive such benefits and may be prosecuted for workers' compensation fraud under Ohio law."

Supporters say "the collected data will be useful in making future law and policy decisions going forward," while critics worry the language will discourage injury claims by undocumented immigrants, thereby resulting "unintended consequences." For example, one fear is that undocumented injured workers could "seek out medical treatment in emergency rooms without either health insurance or, due to this amendment, workers' compensation coverage, resulting in unpaid medical bills and costs

getting passed along to Ohio taxpayers and people with health insurance.” 6/11/2019

Free Safety Awareness Materials Now Available

June 14, 2019



June is National Safety Month — 30 days that have been designed to raise awareness about the leading causes of injury and death at work and elsewhere. To help raise awareness among your employees, the National Safety Council is offering free materials, including posters, tip sheets, articles, special offers, social graphics, and more. Visit the [NSC website](#) to receive these free safety-related items. 6/10/2019

House Passes Workers’ Comp Budget with PTSD Expansion

June 7, 2019

Despite objections raised by business organizations – including the OMA – the House on June 5 passed its version of the Ohio Bureau of Workers’ Compensation (BWC) budget under **House Bill 80**. As **passed by the House**, the measure would make several changes to Ohio’s BWC law that would negatively affect the business climate, including expanding workers’ comp benefits for mental or emotional impairment caused by post-traumatic stress disorder (PTSD) for first responders, even when there is no physical injury.

HB 80 would create a fundamental shift in Ohio’s workers’ compensation law, which currently requires a physical injury before allowing any mental health claims. Most troubling, it would establish a precedent for future workers’ comp expansion that affects private employers. If this happened, workers’ compensation premiums for Ohio manufacturers would increase dramatically.

Among HB 80’s other changes that would be detrimental to the business community are:

- Restricting an employer’s right to negotiate settlement terms;
- Eliminating the definition of employee for the purposes of workers’ comp, unemployment comp, and tax; and
- Authorizing the bureaucracy to develop its own definition and punitive powers to penalize employers for even mistakenly misclassifying an employee.

Earlier this week, the OMA provided **opponent testimony** on the bill, and sent a **key vote alert** to all House members, urging a “no” vote. Now, following its **passage in the House**, HB 80 will be considered in the Senate. The bill is required to be passed and signed by the governor prior to July 1.

The OMA will continue to advocate for the removal of these harmful provisions in the upper chamber. Members should reach out to **their state senator**, urging him/her to oppose HB 80 as passed by the House. 6/6/2019

OMA Publishes OSHA Response Guide

June 7, 2019



To help members understand and react to a variety of OSHA situations, the OMA has created this **OSHA Response FAQ publication**, authored by OMA Connections Partners **Safex** and **Bricker & Eckler**. Members who buy OMA Workers’ Compensation Services (WCS) will find the guide – and all OMA’s workers’ comp resources – on their WCS Dashboard. Learn more about OMA WCS [here](#). 6/3/2019

BWC Publishes 2019 MCO Report Card

June 7, 2019

The Ohio Bureau of Workers' Compensation has created the **MCO Report Card** so employers can evaluate their managed care organization's (MCO) performance. MCOs manage the medical portion of a workers' compensation claim to ensure that injured workers receive quality medical care.

The annual report card provides information on MCOs' key performance indicators (KPIs) — intended to measure medical management quality, safe return-to-work strategies, and service timeliness. This year's report card is based on assessments between Jan. 1 and Dec. 31, 2018.

Every two years, during an open enrollment period, employers can choose any MCO that best suits their company's needs. The next open enrollment period will be in 2020. If you don't know your MCO, use this **BWC Employer/MCO look-up**. *6/4/2019*

Self-Insured Employer Workshops Set for August

June 7, 2019

This August, the Bureau of Workers' Compensation will offer workshops for self-insuring employers and their representatives. This series will feature panels of experts to discuss relationships and interactions between injured workers and employers to achieve the best results for everyone involved in the claims process. The meetings are set for the following dates:

- Tuesday, Aug. 13, 2019, from 10 a.m. to noon (Columbus)
- Wednesday, Aug. 14, 2019, from 10 a.m. to noon (Cleveland)
- Wednesday, Aug. 21, 2019, from 10 a.m. to noon (Cincinnati)

Information regarding past and future workshops is **available here**. *6/1/2019*

BWC Improving Self-Insured Employer Web Page

June 7, 2019

The Bureau of Workers' Compensation (BWC) Self-Insured Department is developing an at-a-glance self-insured policy portal page, which is

expected to be ready by early summer. Feedback from self-insuring employers indicated the page has been cumbersome when navigating for service offerings on the BWC website. The new page will provide a dashboard to access frequently used items, including policy demographic information, coverage status, renewal, SI-40 reporting and invoice details.

You can let the BWC know what you would like to see on this policy portal page by **emailing here**. *6/1/2019*

BWC Extends Deadline for Rebate Program Participants

June 7, 2019

The deadline for employers participating in the Ohio Bureau of Workers' Compensation 7/1/18 Policy Activity Rebate (PAR) program to complete the required activities has been extended to June 19. Participants must complete the activities to receive the 50% premium bonus, capped at \$2,000. Employers can review their progress and update their activity completion **here**. *6/1/2019*

Workers' Compensation Legislation
Prepared by: The Ohio Manufacturers' Association
Report created on August 20, 2019

- HB79** **INDUSTRIAL COMMISSION BUDGET** (OELSLAGER S) To make appropriations for the Industrial Commission for the biennium beginning July 1, 2019, and ending June 30, 2021, and to provide authorization and conditions for the operation of Commission programs.
Current Status: 6/27/2019 - **SIGNED BY GOVERNOR**; eff. 7/1/2019
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-79>
- HB80** **BWC BUDGET** (OELSLAGER S) To make appropriations for the Bureau of Workers' Compensation for the biennium beginning July 1, 2019, and ending June 30, 2021, and to provide authorization and conditions for the operation of the bureau's programs.
Current Status: 7/22/2019 - **SIGNED BY GOVERNOR**; Eff. Immediately
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-80>
- HB167** **OCCUPATIONAL LUNG CONDITIONS** (CERA J) To modify workers' compensation benefit amounts for occupational pneumoconiosis claims and to create the Occupational Pneumoconiosis Board to determine medical findings for such claims.
Current Status: 4/2/2019 - Referred to Committee House Commerce and Labor
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-167>
- HB308** **PTSD COVERAGE - FIRST RESPONDERS** (PATTON T) Concerning workers' compensation and disability retirement for peace officers, firefighters, and emergency medical workers diagnosed with posttraumatic stress disorder arising from employment without an accompanying physical injury.
Current Status: 6/28/2019 - Introduced
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-308>

TO: OMA Government Affairs Committee
FROM: Ryan Augsburger / Rob Brundrett
SUBJECT: Tax Public Policy Report
DATE: August 22, 2019

Overview

The state budget bill was the key tax bill over the first six months of the General Assembly. True to his word Governor DeWine introduced a bill with minimal tax implications. The House and Senate had different ideas and competing tax proposals were offered. At the end of the day an overall tax cut was agreed to and manufacturers had several provisions included to their benefit.

Tax Legislation

Senate Bill 8 – Ohio Opportunity Zone Tax Credits

The bill would authorize tax credits for investments in an Ohio Opportunity Zone. Federal law allows states to designate economically distressed areas. Once the zone is certified by the Secretary of the Treasury, certain investments made to benefit the zone are eligible for preferential federal tax treatment that meets certain criteria as "opportunity zones." The bill would allow state tax incentives to compliment the federal tax treatment. The CAT is not an included tax credit. The bill shot through the Senate and was passed by the full body earlier this month. The House has held two hearings on the bill. The budget bill included opportunity zone legislation.

House Bill 19 – Pink Tax Exemption

The bill would exempt from sales tax the sale of tampons and other feminine hygiene products associated with menstruation. The bill has had four hearings in the House Ways and Means Committee.

Senate Bill 37 – Motion Picture Tax Credit

The bill makes a variety of changes to the current motion picture tax credit and expands it to allow for more types of entertainment productions. There is no new money tied with this bill, however its sponsor, Senator Schuring has indicated he would like to see the credit more than double to \$100 million. The Senate voted out the bill after six hearings. No new money was included in the bill.

House Bill 60 – Diaper Sales Tax Exemption

The bill exempts from sales and use tax the sale of child and adult diapers. It has had three hearings in the House Ways and Means Committee.

House Bill 62 – Transportation Budget

The transportation budget bill makes appropriations for programs related to transportation and public safety for the biennium beginning July 1, 2019, and ending June 30, 2021.

The Governor, based on the recommendations from a diverse group of experts including OMA members, introduced a budget that would increase the motor vehicle fuel tax by 18 cents and would index the tax beginning in 2020.

The House gutted the Governor's proposal and instead passed a bifurcated tax rate. The House placed a 20 cent increase on diesel and a 10.7 cent increase on gasoline. The House included a new \$200 registration fee for electric vehicles and a \$100 fee for hybrid vehicles.

In better news the House removed the 150-mile radius restriction for travel under the special regional heavy hauling permit, thus allowing vehicles under the permit to travel further distances that exceed standard size and weight restrictions.

The Senate was adamant that the motor fuel tax should be lower. The Senate passed version included a 6 cent increase on the current motor vehicle fuel tax. Senators also lowered the registration fees by \$25 for electric and hybrid vehicles to \$175 and \$75 respectively.

This set up a showdown in conference committee on who would prevail and where the tax increase would be set. After much delay, including missing the statutory deadline, the House and Senate came to an agreement. The final bill version reinserted the bifurcated approach. Diesel fuel will be increased by 19 cents and gasoline by 10.5 cents. Electric vehicles will have a registration fee of \$200 and hybrids \$100.

The heavy haul permit survived, which will make overweight truck hauling less cumbersome in Ohio.

The OMA testified in support of the Governor's original proposals and a reasonable fee on electric vehicles. The OMA was adamantly opposed to any bifurcation of the fuel rates since truck companies simply pass on any fuel tax to business customers. OMA notified the conference committee of these problems along with working with other business groups to amplify the problems of a bifurcated rate.

House Bill 92 – County Sales Tax Voting

The bill would require voter approval of any increase in the rate of a county sales tax. The bill has had one hearing.

Senate Bill 95 – State and Local Tax Inducements

The bill will enhance state and local tax inducements for businesses making substantial fixed asset and employment investments and their suppliers. The bill provides a CAT credit the integrated supply chain to a qualifying project. The OMA submitted a letter with likeminded allies regarding protecting the integrity of the CAT. The Senate passed the bill.

Senate Bill 109 – Workforce Scholarship Program

SB 109 establishes the Workforce Scholarship Program. The bill would terminate the provisions of the Scholarship Program on December 31, 2023 and authorize tax credits for graduates of the Scholarship Program and their employers. The bill includes a CAT credit. It has had one hearing.

House Bill 134 – March Sales Tax Holiday

The bill provides a three-day sales tax "holiday" each March during which sales of qualifying Energy Star products are exempt from sales and use taxes.

Senate Bill 153 – Job Retention Tax Credit Manufacturer Eligibility

This bill was crafted by the OMA Tax Committee working with Chairman Dolan.

The purpose of Ohio's Job Retention Tax Credit ("JRTC"), as its name implies, is to foster job retention through increased capital investment in Ohio. However, over the years, too few Ohio job creators have taken advantage of the JRTC. The qualifying criteria with respect to applicants' minimum workforce size and capital investment threshold are too high and have been a barrier for most companies to apply for the credit.

In order to ensure we are supporting Ohio companies that are competing globally, this new legislation is designed to increase the number of manufacturers and eligible Foreign Trade Zone companies to apply for the JRTC, thereby creating an incentive for Ohio employers to make capital investments that preserve existing jobs.

The bill would:

- Allow companies headquartered in Foreign Trade Zones to be eligible to apply without meeting current payroll and employee count minimums
- Eliminate the minimum payroll size and number of employees required for manufacturers to apply for the JRTC
- Require a minimum capital investment for manufacturers of the lesser of \$50,000,000 or an amount equal to five percent of the tangible personal property at the project site
- Require manufacturers to maintain their FTE count during the term of the credit

While the bill does expand the number of companies and projects eligible to apply for a JRTC, it would not alter the existing cap on the amount of credits that may be awarded annually by the tax credit authority. In 2019, the JRTC is capped at \$130MM. Each year the cap increases by \$13MM until 2024. For 2024, and for each year thereafter, the maximum credits that may be awarded annually will be capped at \$195MM.

The bill had one hearing in the Senate and was included in the state operating budget.

House Bill 162 – Motion Picture Tax Credit

The bill increases the overall cap on the motion picture tax credit from \$40 million per fiscal year to \$100 million per fiscal biennium. The OMA has successfully fought a lonely battle recently against increasing this tax credit. It appears once again the General Assembly will try hard to increase this credit.

The bill has not had a hearing. It would appear that the House does not have much interest in expanding the amount of the credit since the House passed version of the budget bill eliminates the credit in its entirety.

House Bill 166 – State Operating Budget

On March 15th Governor DeWine unveiled his first operating budget. Unlike most recent budgets, this version did not include major tax reforms. Instead the Governor focused on investing in the following:

- Ohio's Workforce and Innovation
- Ohio's Local Communities
- Recovery
- Ohio's Children and Families
- Ohio's Natural Wonders

The final passed version made several major changes to the tax code impacting manufacturers.

Included in the final language were two priorities of the OMA Tax Committee, as well as a provision that was a priority for Ohio's general business community. Thank you to the members who worked on these efforts.

Key tax provisions affecting manufacturers include:

- **EXEMPTION FOR FOOD MANUFACTURERS:** Expands the sales-and-use tax exemption for cleaning equipment and supplies used to clean equipment that produces or processes food. The exemption, which had applied only to dairy food processors, will now be afforded to the makers of any food for human consumption.
- **CREDITS FOR CAPITAL INVESTMENT:** Expands eligibility for the state's Job Retention Tax Credit. Aimed at manufacturers, the provision expands eligibility based on new capital investment, as opposed to payroll or employee count.
- **BUSINESS INCOME TAX DEDUCTION:** Retains the business income tax deduction at the current level of \$250,000 for pass-through entities, as well as the 3% special flat tax rate for income above that threshold. Provides an across-the-board state income tax cut of 4%. The OMA worked with business allies to save the existing deduction, which at times seemed doomed during the process.

The budget does eliminate lawyers and lobbyists from taking advantage of the income tax deduction — a provision that could have **unintended consequences** for manufacturers, especially those who employ in-house counsel. The OMA will continue to study the issue to determine the impacts on manufacturers.

House Bill 175 – Tax Exemption on Goods Movement

The bill provides an exemption from sales and use tax for things used primarily to move completed manufactured products or general merchandise. The bill has been referred to the House Ways and Means Committee.

House Bill 197 – Tax Code Corrections

The bill would enact the Tax Code Streamlining and Correction Act to make technical and corrective changes to the laws governing taxation.

Tax News

Ohio Supreme Court Grants Jurisdiction to Hear Muni Tax Case

Earlier this month, the Ohio Supreme Court granted jurisdiction to hear the municipalities' appeals to the municipal income tax cases. The Court granted the appeal on the Home Rule amendment issue. The Court will now schedule oral arguments.



May 21, 2019

The Honorable Lou Terhar
Chairman
Senate Ways and Means Committee
Ohio Senate
1 Capitol Square
Columbus, OH 43215

Dear Chairman Terhar:

Since the inception of the commercial activity tax (CAT), The Ohio Manufacturers' Association, The Ohio Society of CPAs, Ohio State Bar Association, Ohio Chemistry Technology Council, Ohio State Medical Association, and Ohio Dental Association have been united in opposition to diluting the CAT base.

The CAT is a broad-based, low rate tax that applies to gross receipts from virtually all business activities conducted in Ohio. It was enacted to conform to the four main elements of sound tax policy: equality, simplicity of compliance, transparency, and minimal disruption in economic decisions. The CAT promotes equality in that it applies to virtually all business activity in the state. It is simple due to the minimal calculations needed to determine the tax base and relatively few credits or exclusions. It is relatively transparent, while there is some pyramiding that is ameliorated by the low rate. Finally, because of the broad base and low rate, it minimizes the intrusion of tax considerations in economic decisions.

Senate Bill 95 authorizes tax incentives for the operators and certain suppliers of a "megaproject," i.e., a development project with at least \$1 billion in investment or that creates at least \$75 million in Ohio payroll. One of the tax incentives is a CAT exclusion for gross receipts of a megaproject supplier from sales to a megaproject operator.

When the CAT was first enacted, there were few exclusions and credits from the CAT. The tax expenditure associated with those exclusions in 2010, the first year the tax was fully phased in, totaled approximately \$300 million. Those exclusions were built into the tax as enacted and the 0.26 percent rate was established with those exclusions in mind.

In its fiscal year 2018 tax expenditure report, the Department of Taxation lists a larger number of exclusions and credits to the CAT. The total cost of those expenditures, without consideration of the credits, is more than \$700 million! Thus, since its enactment, CAT credits and exclusions have doubled the amount of the tax expenditure.

□

The CAT was created to fix an archaic business taxing system in Ohio that was riddled with exemptions and credits. The old system failed to promote sound tax policy by eroding the tax base and piling disproportionate payments on certain industries.

Thank you for considering our position of preserving the broad-base, low-rate nature of the CAT with very few exclusions and weighing the potential consequences of new large credits.

Sincerely,

Rob Brundrett
The Ohio Manufacturers'
Association

Greg Saul
The Ohio Society of CPAs

Todd Book
Ohio State Bar Association

Joe Rosato
Ohio State Medical
Association

Jennifer Klein
Ohio Chemistry Technology
Council

David J. Owsiany
Ohio Dental Association



May 20, 2019

The Honorable Matt Dolan
Chairman, Finance Committee
Ohio Senate
1 Capitol Square, 1st Floor
Columbus, OH 43215

RE House Bill 166 – Sales Tax Exemption for Food Equipment and Other Manufacturing Cleaning Supplies and Services

Dear Chairman Dolan:

I write to express support for two tax provisions in the House-passed version of House Bill 166.

Ohio's sales tax was first enacted as a temporary measure in the depths of the Great Depression in the 1930s. At that time, it was conceived as a tax on final personal consumption of tangible goods. One year after initial enactment, the use tax was enacted; the two taxes were eventually made permanent, and the first exemption for machinery and equipment used to produce tangible personal property for sale by manufacturing was subsequently passed.

The rationale for exclusions is simple: Sales taxes are intended to be imposed upon the final consumption of goods and, now, also on certain services. Intermediate transactions preceding the final sale of the product, including the acquisition of machinery and equipment and the raw materials that are incorporated into the final product, are not intended to be taxed.

The current version of House Bill 166 includes two provisions that add much needed parity and clarity to the state's manufacturing sales and use tax exemption. The bill provides parity by exempting from sales tax the equipment and supplies used to clean equipment used to produce or process food for human consumption. Currently the law only allows the exemption if the food being produced or processed is a *dairy product*. Today, more than ever, it is important that food for human consumption is free from contamination and this provision provides parity for Ohio's booming food processing industry. In fact, Ohio is the largest frozen food processor in the country.

A second provision provides much needed clarity for the entire manufacturing sector. The House-passed version of House Bill 166 exempts from the sales and use tax any supplies or janitorial services purchased to clean machinery in a manufacturing facility. Manufacturers have found themselves being audited by - or in court against - the Ohio Department of Taxation over this issue as various administrations have had different interpretations of current law and policies. Without the required cleaning, repairs and maintenance, machinery breaks down and complicates the process of producing quality parts and products for sale to customers. Cleaning industrial assets is critical to the manufacturing process. As certainty is one of the most

important aspects of a prosperous business climate, codifying this sales exemption into law will eliminate the costly guessing game that has taken place.

These important revisions are extremely important for Ohio's manufacturers and their ability to compete to the highest level. Thank you for your work on this important bill. If you wish, please contact me at (614) 629-6814 or rbrundrett@ohiomfg.com to discuss further.

Sincerely,



Robert Brundrett
Director, Public Policy Services

CC: Larry Obhof, Ohio Senate President
Dave Burke, Vice Chairman, Finance Committee
Ray DiRossi, Director, Budget and Finance

TO: The Ohio Manufacturers' Association

FROM: Justin D. Cook, Esq. and Tyler J. Compton
Bricker & Eckler LLP

DATE: July 18, 2019

RE: House Bill 166 – Proposed Changes to Taxation of Business Income

Background

The 2019 biennial budget bill, House Bill 166, was signed Governor DeWine this morning. Within the bill are changes to the taxation of Business Income under R.C. Chapter 5747. These changes could potentially impact the manufacturing sector.

Business Income Tax under Current Law

Under R.C. Chapter 5747, Business Income receives favorable tax treatment. The first \$250,000 of Business Income earned by a taxpayer is deductible.¹ Any Business Income in excess of that amount is taxed at a flat rate of 3%.² Business Income means income arising from transactions, activities, and sources in the regular course of a trade or business operation.³ This includes the distributive or proportionate share of income from pass-through entities, including many partnerships, provided certain minimum ownership percentage thresholds are met.

Possible Impact of House Bill 166

House Bill 166 amends the definition of "Business Income" in R.C. 5747.01(B) to incorporate the concept of "*Eligible Business Income*" which, going forward, will be the type of income subject to the \$250,000 deduction and 3% flat tax rate. Eligible Business Income means Business Income excluding income from "a trade or business that

¹ R.C. 5747.01(A)(31)(b)

² R.C. 5747.02(A)(4)(a)

³ R.C. 5747.01(B)

performs” legal services provided by an active Ohio licensed attorney or in-house corporate counsel, or from businesses that perform lobbying activities. To be subject to the exclusion from Eligible Business Income, the amended statute does not require a business’s *primary* activity to be that of legal or lobbying services. Instead, the statutory language applies the exclusion broadly to all "income from businesses" that perform legal and lobbying services.

There is wide-spread concern that the breadth of this language will impact many businesses, including those whose primary activity is not that of legal or lobbying services. For example, many Ohio businesses, both large and small, employ in-house counsel or have employees register as lobbyists on behalf of the company. Any such businesses that provide distributive shares to its partners, including manufacturers, *may* lose the Business Income deduction and the 3% flat tax rate.

Such a broad impact does not appear to be the intent of the statute, as the synopsis prefacing the amendment indicates the changes will impact Business Income that “*arises* from...the practice of law.” The statutory language, however, is much broader.



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OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
and Drafting

Legislative Budget
Office

S.B. 153
133rd General Assembly

Bill Analysis

Version: As Introduced

Primary Sponsor: Sen. Dolan

Mackenzie Damon, Attorney

SUMMARY

- Modifies the employment and investment requirements that businesses must meet to receive a Job Retention Tax Credit (JRTC).

DETAILED ANALYSIS

Job Retention Tax Credit

The bill modifies the employment and investment requirements that businesses must meet to receive a Job Retention Tax Credit (JRTC).

Current requirements

Continuing law authorizes the JRTC for businesses that agree to make a minimum capital investment in Ohio and to retain a specified number of employees in connection with that capital project. The business must be engaged in either manufacturing or corporate administrative functions. To receive the tax credit, the business applies to the Tax Credit Authority, which reviews the application and offers a tax credit agreement. The credit will equal an agreed-upon percentage of the business' payroll, and can be allowed for up to 15 years.

To receive the credit, currently, a business must employ at least 500 employees or have an annual payroll in Ohio of at least \$35 million. In addition, for manufacturing projects, the business must make a capital investment in Ohio of at least \$50 million over three years. For corporate administrative projects, the investment must equal at least \$20 million.

The bill

The bill makes several changes to these requirements. First, the bill provides that, if a corporate administrative project is located in a foreign trade zone, the business does not have to meet the 500 employee or \$35 million in payroll requirement. The project must still involve an investment of at least \$20 million over three years.

For manufacturing projects, the bill entirely removes the requirement that a business have at least 500 employees or \$35 million in payroll. In addition, the bill modifies the \$50 million capital investment requirement, such that a manufacturer’s investment may equal either (a) \$50 million or (b) 5% of the net book value of the tangible personal property located at the project site on the last day of the three-year investment period.¹

HISTORY

Action	Date
Introduced	05-21-19

S0153-I-133/ks

¹ R.C. 122.171.

Tax

Ohio Tax Receipts Up Early in New Fiscal Year

August 16, 2019

With the new fiscal year underway, Ohio's state government tax receipts were up nearly \$30 million in July compared to July 2018.

The **Management's Monthly Financial Report**, published by the Office of Budget and Management, shows that year-over-year total receipts in the General Revenue Fund were \$2.96 billion — up \$249.9 million (9.2%). Revenue from the commercial activity tax was up \$14.5 million, or 28.3%, versus the previous July. The report also noted that Ohio's employment was higher by 28,800 jobs in June compared to a year earlier, with manufacturing employment growing by a net 5,200 jobs. *8/13/2019*

At A Glance: Property Taxes in Every U.S. County

August 9, 2019

Across the United States, property taxes are a significant source of local government revenue — and manufacturers represent a significant portion of property taxpayers. This week, the Tax Foundation published an **interactive map** that allows users to see the median property tax bill paid in every U.S. county during FY 2016, the most recent year available. In Ohio, the highest property tax burden was in Delaware County, with the median bill exceeding \$5,000. In several rural Ohio counties, the figure was less than \$1,000. *8/7/2019*

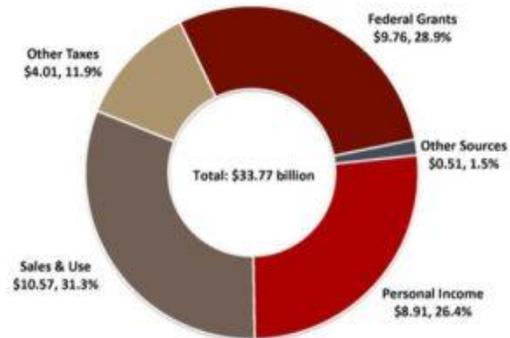
State Budget's Tax Provisions Summarized

August 2, 2019

Following the enactment of Ohio's new state budget last month, the OMA published summaries of key **tax-related provisions** impacting manufacturers. Now, OMA Connections Partner and accounting firm Clark Schaefer Hackett has compiled a comprehensive but easy-to-digest summary of the other notable tax provisions in the budget — including an opportunity zone credit and the 4% individual income tax rate reduction. See the **tax summary here**. *7/31/2019*

At a Glance: Ohio's State Spending & Tax Collection

August 2, 2019



Ohio's General Revenue Fund collected \$33.77 billion during FY2019, which ended June 30, 2019. (Source: Ohio Legislative Service Commission)

With the new state budget in place, the Ohio Legislative Service Commission has updated its **infographics** on budget-related topics. One particular graphic provides an **overview** of the General Revenue Fund (GRF), illustrating the state's funding sources and the primary recipients of state tax dollars.

In FY 2019, Ohio's Medicaid program consumed 45% of GRF dollars (more than \$15 billion), making the health care program for low-income residents the state's largest spending item. The next largest recipient was K-12 schools, which received about 24% of GRF dollars (more than \$8.1 billion). *7/29/2019*

Manufacturing-Related Tax Provisions in State Budget

July 19, 2019



The Ohio House and Senate this week settled **their differences on tax issues** in the two-year operating budget, **House Bill 166**.

Included in the final language were two priorities of the OMA Tax Committee, as well as a provision that was a priority for Ohio's general business community. Thank you to the members who worked on these efforts.

Key tax provisions affecting manufacturers include:

- **EXEMPTION FOR FOOD MANUFACTURERS:** Expands the sales-and-use tax exemption for cleaning equipment and supplies used to clean equipment that produces or processes food. The exemption, which had applied only to dairy food processors, will now be afforded to the makers of any food for human consumption.
- **CREDITS FOR CAPITAL INVESTMENT:** Expands eligibility for the state's Job Retention Tax Credit. Aimed at manufacturers, the provision expands eligibility based on new capital investment, as opposed to payroll or employee count.
- **BUSINESS INCOME TAX DEDUCTION:** Retains the business income tax deduction at the current level of \$250,000 for pass-through entities, as well as the 3% special flat tax rate for income above that threshold. Provides an across-the-board state income tax cut of 4%. The OMA worked with business allies to save the existing deduction, which at times seemed doomed during the process.

The budget does eliminate lawyers and lobbyists from taking advantage of the income tax deduction — a provision that could have **unintended consequences** for manufacturers, especially those who employ in-

house counsel. The OMA will continue to study the issue to determine the impacts on manufacturers. 7/17/2019

Potential Extension of Lease Accounting & CECL Implementation **July 19, 2019**

Up to this point, U.S. Generally Accepted Accounting Principles (GAAP) new lease accounting rules for non-public filers were to be applied for annual periods, beginning after Dec. 15, 2019. But OMA Connections Partner **Clark Schaefer Hackett** reports that the Financial Accounting Standards Board (FASB) voted this week to extend the non-public company implementation date for the new lease accounting rules for one additional year. Read more about this from CSH [here](#). 7/18/2019

Hurt by Tariffs? FTZ Designation May Provide Relief **July 2, 2019**

OMA Connections Partner **Clark Schaefer Hackett**, a CPA firm with locations across Ohio, recently **published insight** for manufacturers being negatively affected by tariffs. According to the firm, some companies are considering Foreign Trade Zones (FTZs) to provide some relief. An FTZ is a designated, restricted-access site in the U.S. that is legally considered outside of customs territory for the purpose of duties and taxes, so goods can be imported duty-free and without formal customs entry. While Chinese imports do not qualify for exemption under FTZ rules, companies importing from countries other than China may be able to benefit. Companies can establish a designated FTZ within their warehouse or facility, and products imported into the zone can then be mixed with U.S. sourced goods. 6/30/2019

Tax Calendar: Key Deadlines for Businesses in Q3 **July 2, 2019**

OMA Connections Partner GBQ has published a **list of key tax-related deadlines** for businesses during the third quarter of 2019. Keep in mind that this list isn't all-inclusive, so there may be additional deadlines that apply to you. 7/1/2019

JobsOhio Defends Commercial Activity Tax **June 28, 2019**

In a **post** at JobsOhio.com, Matt Waldo — a research and analysis expert at the nonprofit development agency — defends Ohio's Commercial Activity Tax (CAT). His comments come as the CAT has been criticized by the Washington, D.C.-based Tax Foundation. Waldo points out that analysis from other tax-focused organizations, as well as the results of recent business activity, indicate Ohio is one of the best states in the nation in which to do business. "Ohio's tax policy is about results, not philosophies," Waldo writes.

Ohio's broad, 0.26% flat CAT on business gross receipts above \$1 million was created by a 2005 law with **strong support from the OMA**. The same law phased out the tangible personal property tax — which taxed machinery, equipment and inventory — as well as the corporate franchise tax. It also lowered the state's personal income tax. Prior to the enactment of this tax reform, Ohio was at a major disadvantage in attracting new manufacturing due to the machinery and inventory tax. 6/26/2019

Finding Opportunities Amid Complex UNICAP Rules **June 28, 2019**

Last November, amid the aftermath of federal tax reform, the U.S. Treasury and IRS issued new rules addressing uniform capitalization (UNICAP). This provided companies an updated method for capitalizing inventory costs — and another tool that companies can consider to ensure simplicity, compliance, and tax efficiency. OMA Connections Partner **RSM** says manufacturers must evaluate the impact of these new rules, and has published a short paper to explore the **common myths around UNICAP**. 6/27/2019

Senate Moves Budget Bill with Tax Provisions **June 21, 2019**

The Senate on Thursday passed **House Bill 166**, the main operating budget bill for Ohio's state government. Included in the approved bill were **several tax changes**.

The Senate retained the House language providing a sales-and-use tax credit for equipment and supplies used to clean equipment that produces or processes food for human consumption. The Senate also expanded the eligibility for manufacturers wanting to take advantage of the Job Retention Tax Credit (JRTC) by removing certain thresholds and requiring a new capital investment.

The Senate version of the budget bill also moves Ohio's business income tax exemption back to the first \$250,000 of income for pass-through entities. However, the Senate did not reinsert language to allow a 3% flat tax rate for pass-through income exceeding \$250,000, as is the case under current law.

The bill now moves to a conference committee between the House and Senate to reconcile differences. 6/20/2019

Senate Panel Makes Mostly Positive Tax Changes in Latest Version of State Budget **June 14, 2019**

The Senate Finance Committee this week accepted a substitute version of **House Bill 166**, the state's two-year main operating budget. The substitute bill made a **variety of tax changes** to the House-passed version — including restoring the business income tax deduction. (As previously **reported**, the House-passed budget bill would reduce the business income tax deduction from the current \$250,000 to \$100,000.)

Under the current version of the Senate's budget bill, pass-through entities — including partnerships, LLCs, and sole proprietors — would continue to be exempt for the first \$250,000 of business income. However, the current 3% flat tax rate that is imposed on business income in excess of \$250,000 would go away beginning next year — and every dollar beyond the first \$250,000 would be taxed at a new top rate of 4.6%.

In other actions, the Senate removed the House's provision to exempt all manufacturers from sales-and-use tax on any supplies or janitorial services purchased to clean machinery in a manufacturing facility.

The Senate did, however, preserve the House-approved sales-and-use tax exemption for equipment and supplies used to clean

equipment that produces or processes food for human consumption. The Senate also expanded the eligibility for manufacturers wanting to take advantage of the Job Retention Tax Credit (JRTC) by removing certain thresholds and requiring a new capital investment.

Please contact your state senator and thank him/her for restoring the \$250,000 business income tax deduction; including eligibility expansion of the JRTC; and keeping the cleaning equipment-and-supplies tax exemption for food manufacturers in the budget bill. At the same time, urge senators to include the House-passed sales tax exemption for any supplies or janitorial services to clean manufacturing machinery — and to restore the 3% flat tax rate on business income over \$250,000.

The Senate will be making more changes to the budget bill early next week. The bill must be signed no later than June 30 for the appropriations to take effect on July 1, the first day of the new state fiscal year. 6/13/2019

OMA Tax Committee Briefed on Opportunity Zones

June 14, 2019

This week, the OMA Tax Committee held its second meeting of 2019. Guest speaker was Paul Nadin, a senior manager with Connections Partner **RSM** and its real estate group. Nadin **briefed members** on the federal Opportunity Zone program, enacted as part of the 2017 tax overhaul to encourage new investment in lower-income census tracts. To take advantage of the incentives in the Opportunity Zone program, investors must invest through a qualified Opportunity Fund. **Ohio** has 320 opportunity zones statewide. (So far, the incentives have been easier to apply to investments in real estate than in businesses, according to **The Pew Charitable Trusts**.)

Other highlights from the meeting included an update on federal and state tax-related policy issues, as well as a report from OMA Tax Counsel **Justin Cook** of Bricker & Eckler LLP. Chaired by Shay Music of The J.M. Smucker Co., the OMA Tax Committee will meet again **November 6**. 6/11/2019



Paul Nadin with RSM briefs the OMA's Tax Committee on the financial benefits of investing in designated Opportunity Zones.

Senate Finance Committee Holds Hearing on OMA-Backed Tax Credit Expansion **June 7, 2019**



This week, Senate Finance Committee Chairman **Matt Dolan** (R-Chagrin Falls) provided sponsor testimony on **Senate Bill 153** — an OMA-backed bill to expand eligibility for Ohio's Job Retention Tax Credit (JRTC).

This legislation was developed with considerable input from the OMA Tax and Finance Committee with the aim of encouraging more manufacturing capital investment. The bill would expand manufacturing eligibility for the JRTC by eliminating current thresholds for payroll size and number of employees. Under SB 153, a new minimum capital investment would be established and adjusted to the lesser of \$50 million or an amount equal to 5% of the tangible property at the facility site.

Members should **reach out** to their state senators to voice their support of the bill. 6/6/2019

IRS Wheels Out New Guidance on Company Cars
June 7, 2019

The federal Tax Cuts and Jobs Act (TCJA) amended IRC Section 168(k) to extend and modify bonus depreciation for business vehicles. Although the new tax rules for business vehicles are generally favorable, they can be challenging to implement. A **new article** from OMA Connections Partner Clark Schaefer Hackett will help steer you in the right direction. *6/4/2019*

10 Mistakes Business Owners Make When Exiting
June 7, 2019

OMA Connections Partner RSM has compiled a list of the 10 key mistakes that business owners make when contemplating whether to exit. Accord to the firm's experts, "Exiting your business, whether through sale or succession, can be fraught with stress. However, some of that anxiety can be alleviated by addressing 10 missteps business owners often make." See RSM's white paper by **clicking here**. *6/5/2019*

Taxation Legislation

Prepared by: The Ohio Manufacturers' Association
Report created on August 20, 2019

- HB17** **SURVIVING SPOUSES-HOMESTEAD EXEMPTION** (GINTER T) To allow an enhanced homestead exemption for surviving spouses of public safety personnel killed in the line of duty.
Current Status: 2/19/2019 - House Ways and Means, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-17>
- HB19** **PINK TAX EXEMPTION** (ANTANI N, KELLY B) To exempt from sales tax the sale of tampons and other feminine hygiene products associated with menstruation.
Current Status: 5/7/2019 - House Ways and Means, (Fourth Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-19>
- HB46** **STATE GOVT EXPENDITURE DATABASE** (GREENSPAN D) To require the Treasurer of State to establish the Ohio State Government Expenditure Database.
Current Status: 5/15/2019 - **REPORTED OUT**, House State and Local Government, (Fifth Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-46>
- HB47** **TAX COMPLAINTS-LEGAL ASSISTANCE FOUNDATION** (GREENSPAN D) To increase the time within which property tax complaints must be decided.
Current Status: 5/29/2019 - Referred to Committee Senate Ways and Means
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-47>
- HB54** **LGF TAX REVENUE INCREASE** (CERA J, ROGERS J) To increase the proportion of state tax revenue allocated to the Local Government Fund from 1.66% to 3.53% beginning July 1, 2019.
Current Status: 2/12/2019 - Referred to Committee House Ways and Means
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-54>
- HB56** **MINE SAFETY EXCISE TAX** (CERA J) To allocate 3.75% of kilowatt-hour excise tax revenue for mine reclamation, mine drainage abatement, and mine safety.
Current Status: 2/26/2019 - House Energy and Natural Resources, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-56>
- HB57** **HEATING SOURCES TAX EXEMPTION** (PATTERSON J, CERA J) To exempt certain heating sources from sales taxation and to hold local governments and libraries harmless from the revenue effect.
Current Status: 2/12/2019 - Referred to Committee House Ways and Means
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-57>
- HB60** **DIAPER SALES TAX EXEMPTION** (ANTANI N, KELLY B) To exempt from sales and use tax the sale of child and adult diapers.

Current Status: 3/19/2019 - House Ways and Means, (Third Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-60>

- HB62** **TRANSPORTATION BUDGET (OELSLAGER S)** To increase the rate of and modify the distribution of revenue from motor fuel excise taxes, to make appropriations for programs related to transportation and public safety for the biennium beginning July 1, 2019, and ending June 30, 2021, and to provide authorization and conditions for the operation of those programs.
Current Status: 4/3/2019 - **SIGNED BY GOVERNOR**; eff. 90 days, Taxes eff. 7/1/19
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-62>
- HB75** **PROPERTY VALUE CONTESTS (MERRIN D)** To require local governments that contest property values to formally pass an authorizing resolution for each contest and to notify property owners.
Current Status: 4/9/2019 - **REPORTED OUT**, House Ways and Means, (Fourth Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-75>
- HB92** **VOTE ON COUNTY SALES TAX (ANTANI N, SMITH J)** To require voter approval of any increase in the rate of a county sales tax.
Current Status: 3/13/2019 - House State and Local Government, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-92>
- HB109** **SAP EXTRACTION TAX BREAK (PATTERSON J, LATOURETTE S)** To authorize a property tax exemption for land used for commercial maple sap extraction.
Current Status: 3/5/2019 - Referred to Committee House Ways and Means
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-109>
- HB112** **TAX REMITTANCE-BAD DEBTS (SCHAFFER T)** To allow vendors to receive a refund of sales tax remitted for certain bad debts charged off as uncollectible by credit account lenders.
Current Status: 5/14/2019 - House Financial Institutions, (Second Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-112>
- HB121** **TAX CREDIT-CLASSROOM MATERIALS (SCHAFFER T)** To allow a credit against the personal income tax for amounts spent by teachers for instructional materials.
Current Status: 3/19/2019 - House Primary and Secondary Education, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-121>
- HB134** **MARCH SALES TAX HOLIDAY (ANTANI N, WEINSTEIN C)** To provide a three-day sales tax "holiday" each March during which sales of qualifying Energy Star products are exempt from sales and use taxes.
Current Status: 3/19/2019 - Referred to Committee House Ways and Means

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-134>

HB135 SALES TAX HOLIDAY EXPANSION (ANTANI N) To expand the class of products exempt from sales tax if bought during a sales tax holiday.

Current Status: 4/30/2019 - House Ways and Means, (First Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-135>

HB162 MOTION PICTURE TAX CREDIT (PATTON T) To increase the overall cap on the motion picture tax credit from \$40 million per fiscal year to \$100 million per fiscal biennium.

Current Status: 3/26/2019 - Referred to Committee House Finance

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-162>

HB166 OPERATING BUDGET (OELSLAGER S) To make operating appropriations for the biennium beginning July 1, 2019, and ending June 30, 2021, and to provide authorization and conditions for the operation of state programs.

Current Status: 7/18/2019 - **SIGNED BY GOVERNOR**; Eff. Immediately

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-166>

HB175 TAX EXEMPTION-GOODS MOVEMENT (ANTANI N) To exempt from sales and use tax things used primarily to move completed manufactured products or general merchandise.

Current Status: 4/2/2019 - Referred to Committee House Ways and Means

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-175>

HB183 TAX CREDIT-BEGINNING FARMERS (MANCHESTER S, PATTERSON J) To allow income tax credits for beginning farmers who participate in a financial management program and for businesses that sell or rent agricultural land, livestock, facilities, or equipment to beginning farmers.

Current Status: 4/30/2019 - House Agriculture and Rural Development, (Second Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-183>

HB187 TAX ISSUES-AUGUST (MERRIN D, WIGGAM S) To prohibit local tax-related proposals from appearing on an August special election ballot.

Current Status: 4/10/2019 - Referred to Committee House State and Local Government

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-187>

HB197 TAX CODE CORRECTIONS (POWELL J, MERRIN D) To enact the "Tax Code Streamlining and Correction Act" to make technical and corrective changes to the laws governing taxation.

Current Status: 5/7/2019 - House Ways and Means, (First Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-197>

- HB222** **CDL TRAINING TAX CREDIT** (STOLTZFUS R, HOWSE S) To authorize an income tax credit for an employer's expenses to train a commercial vehicle operator.
Current Status: 5/8/2019 - Referred to Committee House Ways and Means
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-222>
- HB245** **PROPERTY TAX EXEMPTION TIMELINES** (SMITH J) To remove the current deadlines by which an owner or lessee of a qualified energy project must apply for a property tax exemption.
Current Status: 5/21/2019 - Referred to Committee House Energy and Natural Resources
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-245>
- SB1** **REDUCE REGULATORY RESTRICTIONS** (MCCOLLEY R, ROEGNER K) To require certain agencies to reduce the number of regulatory restrictions and to continue the provision of this act on and after August 18, 2019.
Current Status: 6/12/2019 - House State and Local Government, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-1>
- SB8** **TAX CREDITS-OHIO OPPORTUNITY ZONE** (SCHURING K) To authorize tax credits for investments in an Ohio Opportunity Zone.
Current Status: 5/8/2019 - House Economic and Workforce Development, (Second Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-8>
- SB37** **MOTION PICTURE TAX CREDIT** (SCHURING K) To extend eligibility for and make other changes to the motion picture tax credit.
Current Status: 6/30/2019 - Referred to Committee House Finance
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-37>
- SB39** **MIXED USE DEVELOPMENT PROJECTS-TAX CREDIT** (SCHURING K) To authorize an insurance premiums tax credit for capital contributions to transformational mixed use development projects.
Current Status: 6/30/2019 - Referred to Committee House Economic and Workforce Development
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-39>
- SB95** **STATE AND LOCAL TAX INDUCEMENTS** (KUNZE S, PETERSON B) To enhance state and local tax inducements for businesses making substantial fixed asset and employment investments and their suppliers.
Current Status: 6/19/2019 - Referred to Committee House Ways and Means
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-95>
- SB109** **WORKFORCE SCHOLARSHIP PROGRAM** (SCHURING K) To establish the Workforce Scholarship Program, to terminate the provisions of the Scholarship Program on December

31, 2023, to authorize tax credits for graduates of the Scholarship Program and their employers, and to make an appropriation.

Current Status: 4/24/2019 - Senate Finance, (First Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-109>

SB125 **TAX DEDUCTION-529 PLANS** (HOTTINGER J, BRENNER A) To expand the income tax deduction allowed for contributions to Ohio's 529 education savings plans to include contributions to 529 plans established by other states.

Current Status: 4/10/2019 - Referred to Committee Senate Ways and Means

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-125>

SB132 **GAS TAX-LOCAL GOVERNMENT ALLOCATION** (WILLIAMS S) To modify the amount of revenue derived from any increase in the motor fuel tax rate that is allocated to local governments and to change the manner in which that revenue is divided between municipal corporations, counties, and townships.

Current Status: 5/1/2019 - Referred to Committee Senate Transportation, Commerce and Workforce

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-132>

SB153 **JOB RETENTION TAX CREDIT-ALTERNATIVE REQUIREMENTS** (DOLAN M) To permit manufacturers to meet alternative minimum employment and investment requirements to qualify for the Job Retention Tax Credit.

Current Status: 6/4/2019 - Senate Ways and Means, (First Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-153>