



**Government Affairs Committee Agenda**  
**March 4, 2020**

Welcome & Introductions

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

**Luke Harms**, Director of Government Relations, Whirlpool,  
Corp., Committee Vice Chair

NAM *Making America* Festival in Ohio

**Todd Shelton**, National Association of Manufacturers

OMA Counsel's Report

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

Staff Reports

**Ryan Augsburger**, OMA Staff

**Rob Brundrett**, OMA Staff

**John Seryak**, PE, Runnerstone LLC, OMA Energy Engineer

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

**Committee Members**

Guest Presenters

**Senator Matt Huffman**, (R – Lima) Majority Floor Leader

**Jeff Longstreth**, Political Advisor

**Discussion Agenda**

- Ohio Energy Policy – FERC Order
- PTSD Coverage under Workers' Comp
- OMA Workforce Opportunities
- Distracted Driving Legislation
- HB 380 Construction Contracts
- Health Care Cost Debate
- TruthAboutDarkWaters.com
- 2020 Legislative Outlook
- 2020 Political Outlook

**2020 Government Affairs Committee**  
**Calendar**

*Meetings begin at 9:30 a.m.*

Wednesday, March 4

Wednesday, June 3

Wednesday, August 19

Tuesday, November 10

**Our Meeting Sponsor:**





# SENATOR MATT HUFFMAN

OHIO SENATE



12TH DISTRICT



Senator Matt Huffman is currently serving his first term in the Ohio Senate, representing the 12th Senate district which includes all of Allen, Champaign, Mercer and Shelby counties, as well as portions of Auglaize, Darke and Logan counties. He previously served four terms in the Ohio House of Representatives, the last two in leadership positions, including being elected by his fellow legislators to serve as the second highest-ranking member, Speaker Pro Tempore.

Born and raised in Lima, Ohio, Senator Huffman has practiced law for the past 30 years in his family's private practice law firm in downtown Lima. He has been admitted to practice in all of the state and federal courts in Ohio and is an "AV" rated attorney by the Martindale-Hubbell rating service, the highest rating an attorney can receive. He has represented dozens of small businesses in West Central Ohio.

Senator Huffman began his public service on Lima City Council in 1992, serving until 2006, including the final seven years as City Council President. In 2007, he began his service in the Ohio House of Representatives. During his time in the Ohio Legislature, Senator Huffman championed bills to reform the medical delivery system, protect life at all stages and repeal common core. He has always maintained a strong commitment to the preservation of gun rights.

Senator Huffman has been a tireless advocate of removing unnecessary government regulations and fees and lowering taxes for all Ohioans; he defeated an income tax increase while on Lima City Council and supported the reduction of state income taxes on small business owners and the elimination of the Ohio estate tax. While in the Ohio House, he was named a "Guardian of Small Business" and earned three "Watchdog of the Treasury" awards.

Senator Huffman is deeply concerned about our nation's debt and was a primary sponsor of a resolution in the Ohio House to call for a convention of the states, as authorized by Article V of the U.S. Constitution, to propose a balanced budget amendment to the Constitution. He believes the states must take back the power they have relinquished to the federal government in order for our nation's debt crisis to be solved.

Senator Huffman is the fifth of nine children born to Lawrence and Shirley Huffman. He graduated from Lima Central Catholic High School in 1978. He then went on to earn his degree in Government from the University of Notre Dame in 1982 and his law degree from the University of Cincinnati School of Law in 1985.

Married for 30 years, Senator Huffman and his wife Sheryl (nee Simoneau) have made their home in Lima, where they have raised four children: Clare, Matthew, Ellen and Sam. His first grandchild, Margot Ann Haenszel, was born in June 2017. In addition to being members of St. Charles Church, he and Sheryl belong to several community organizations including Heartbeat of Lima and the Knights of Columbus.

**133rd General Assembly Committee Assignments:**

- Government Oversight & Reform Committee (Vice-Chair)
- Education Committee
- Energy & Public Utilities Committee
- Judiciary Committee
- Rules & Reference Committee
- Finance - Primary & Secondary Education Subcommittee

## Public Policy “Hot Topics” March 4, 2020

### Overview

Public policy activity has been slow to moderate since the Government Affairs Committee met in November. Recent top issues included state subsidies for power plants; workforce development; expansion of workers' comp benefits and targeted tax incentives.

### Legislative Branch Composition & Control

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

Lawmakers are expected to be in session sporadically through June, then return to the Statehouse in September.

### Legislative Priorities

A capital bill is expected to be passed prior to the summer recess. Also on the legislature's plate are education choice vouchers and the potential for criminal sentence reform.

### State Budget & Tax Policy

There is the potential of budget corrections bill later in the year. The OMA was able to get a bill introduced at the end of 2019 that would eliminate the sales tax on manufacturing temporary employment and will also eliminate the sales tax on manufacturing janitorial supplies and services. The bill would go a long way to increase Ohio's manufacturing competitiveness and add clarity to Ohio's manufacturing sales and use tax exemption.

Fifteen years after Ohio's business tax reform was passed, General Assembly members continue to introduce CAT credit bills at an alarming rate. This can be attributed to the massive turnover in the legislature since these reforms were first enacted.

### Electricity Bailouts / Market Distortion

After being denied new subsidy payments for many years, proponents of nuclear power plant bailouts succeeded last year, winning approval of HB 6. The bill transfers money from customers to power plant owners and in so doing, distorts markets. The OMA had been a leading opponent to HB 6 and the various prior subsidy attempts. This quarter the OMA energy group has been engaged in monitoring implementation. The Federal Energy Regulatory Commission (FERC) issued a ruling in late December tipping House Bill 6 on its head. See energy report.

### Ballot Issues

2020 is a presidential election year. Soon all eyes will turn to the national election. Numerous ballot issues appear to be headed to the Ohio ballot including issues: recreational marijuana legalization, minimum wage increase, and term limit reform. See counsel's report for more details. Some of the issues may foster electoral turnout.

### Ballot Reform

In November 2018, 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 however some legislators are advancing proposals. The proliferation of new ballot issues in 2020 is again triggering calls for reform.

### Workforce Development

A top priority for Ohio manufacturers, the OMA is in its fourth year supporting an industry sector partnership model on a regional basis to help enact systems change in workforce development. 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 was held October 29 and over 530 manufacturers and supporters attend the successful event.

The OMA was able to work the administration to create an Industry Sector Partnership grant program for manufacturers and their partners who are working in the sector partnership model.

Tech Cred continues to be a success and its second round of funding will close shortly. The program reimburses employers up to \$2,000 per employee (Capped at \$30,000 per employer) for employees working towards an industry recognized credential or certificate.

### **Environment**

Governor DeWine directed Ohio EPA and the Department of Health to develop an "action plan" for PFAS in Ohio with the focus of testing public and private water systems. This month the state will begin testing. Results will be posted in real time on a website operated by the state. The OMA Environment Committee has formed a work group for concerned companies who want to participate in the implementation of the Governor's PFAS order and PFAS issues moving forward.

The administration also remains focused on water quality across Ohio. The H2Ohio program introduced by the Governor was provided initial start up funding the state budget bill and will be administered by three state agencies, EPA, AG, and ODNR. In the fall the structure of the program was announced.

See environment report for all of these issues.

### **Unemployment Compensation**

After the failure of the General Assembly to address comprehensive unemployment compensation reform in the state budget it appears that manufacturers will see their unemployment taxes reduced in 2020. The temporary increase passed three years ago expired at the end of the year.

As noted in a recent newspaper article it does not appear that the House considers this a pressing 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 qi tam right for citizen initiated lawsuits of the State. We are watching this with concern. See counsel's report.

A motion picture released in late November and bombed at the box office demonized a large manufacturer. The film which was mostly full of dramatized fiction will likely increase civil lawsuits.

### **Workers' Comp Claims Expansion to Mental Injury**

After failing to include PTSD coverage for first-responders in the BWC budget bill, the House came back and passed HB 308. The PTSD extension sets a costly 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 since it is covered by healthcare plans. The OMA worked with other business groups to provide alternative coverage for Ohio's first responders but were rebuffed in the House. There is talk of expanding to private employers either through legislation or through the courts. Watch out!

### **Transportation Budget**

The Transportation Budget (House Bill 62) was completed in 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.

**Right to Work**

No action anticipated.

**Workers' Comp & Industrial Commission**

The BWC continues to give state fund employers massive rebates. Last year the BWC gave back \$1.5 billion. There is speculation that the state will be providing yet another rebate with reserves at an all time high.

## Leadership

### **OMA Takes Part in Ohio's Initial Prescription Drug Task Force Meeting February 28, 2020**



This week in Columbus, the Ohio Prescription Drug Transparency and Affordability Advisory Council held its initial **meeting**. Created last year during the state's budget negotiations, the 13-member panel includes the OMA, represented by Ryan Augsburger, OMA vice president and managing director of public policy services.

The council is charged with making recommendations to the governor and state lawmakers on ways to provide greater price transparency, while also ensuring that potentially life-saving medications are affordable and accessible. Recommendations are due by the end of June. *2/26/2020*

### **Six Steps Manufacturers Can Take to Prepare for the Effects of a Possible 'Coronavirus Downturn' February 28, 2020**

In an **Industry Week** article, Nada Sanders, Ph.D. — an expert in forecasting, analytics, global supply chain intelligence and sustainability — offers six steps that businesses, large and small, can take to develop an immediate response to threats posed by the coronavirus outbreak and to prepare for a possible larger-scale disruption. *2/27/2020*

### **Sen. Matt Huffman to Headline OMA's March 4 Government Affairs Committee February 28, 2020**

Senate Majority Floor Leader **Matt Huffman** (R-Lima) will keynote the OMA Government Affairs Committee on Wednesday, March 4, in Columbus. Sen. Huffman has been at the heart of the controversial school vouchers debate and will respond to members' questions. Also invited to address the committee is political operative

Jeff Longstreth, who will share his insights into this year's Ohio House races.

It's not too late for members to **register to attend** either in person or via phone. The meeting will held from 9:30 a.m. to 1 p.m., and includes lunch. *2/27/2020*

### **Distracted Driving Legislation Offered With Bipartisan Support February 28, 2020**

Bipartisan legislation was recently introduced to revise Ohio's motor vehicle laws in an effort to reduce traffic accidents caused by drivers distracted by smartphones and other electronic devices. Sponsored by Sens. **Stephanie Kunze** (R-Hilliard) and **Sean O'Brien** (D-Bazetta), **Senate Bill 285** — the "Hands-Free Ohio" plan — would significantly increase penalties for distracted drivers. Gov. Mike DeWine **announced** his support of the bill at a **press conference** earlier this month. The bill will be discussed at next week's **OMA Government Affairs Committee meeting**. *2/27/2020*

### **The Fourth Industrial Revolution: At the Intersection of Readiness and Responsibility February 28, 2020**

From Deloitte Global's recent survey of more than 2,000 C-suite executives: "Companies are beginning to understand the massive impact of Industry 4.0 and the role of technology in fundamentally transforming business models and processes." **Read the report**. *2/27/2020*

### **Ohio Leads the Way in Use of Self-Driving Shuttle February 28, 2020**

It's encouraging to see Ohio play a key role in developing autonomous vehicle technology. See **this report** on a pilot project in Columbus called Linden LEAP — the country's first public self-driving shuttle in a residential area. *2/27/2020*

### **Bill Would Impose 18% Rate on Late Payments for Construction Projects February 28, 2020**

Among the bills on the OMA's radar this session is **House Bill 380**, legislation that would require owners of private construction projects (including manufacturers who are building, improving or maintaining facilities in Ohio) to pay contractors within 30 days — or face a whopping 18% interest rate.

The OMA's legal counsel, Bricker & Eckler LLP, has published **this memo** to break down the bill's flawed approach, noting that HB 380 "fails to take into account the standard payment processes that currently exist under virtually every industry standard construction contract."

Concerned members are invited to **comment** and join the discussion at the March 4 OMA Government Affairs Committee meeting. *2/26/2020*

### **Looking for Help With Exporting? February 28, 2020**

As Ohio manufacturers look for new export opportunities, the U.S. Commercial Service (CS) — part of the U.S. Department of Commerce's International Trade Administration — wants OMA members to know it offers companies a full range of expertise in international trade.

With experts in more than 80 countries, CS provides free, personalized counseling at every step of your export journey — including in the areas of strategy and planning, financing and logistics, market entry and expansion, advocacy and dispute resolutions, and even eCommerce counseling. For more information, email **Darren Srebnick** or call (614) 273-5157. *2/25/2020*

### **Japan's Consul General Tsutomu Nakagawa Visits OMA February 21, 2020**



OMA President Eric Burkland and Consul General Tsutomu Nakagawa.

This week, Consul General Tsutomu Nakagawa from the Detroit office of the Consulate General of Japan dropped by the OMA. Among the issues discussed with OMA President Eric Burkland were Ohio's manufacturing economy, workforce development, automation and robotics, and free trade.

Japan's businesses are among Ohio's leading foreign investors. With **484 Japanese-owned facilities**, the Buckeye State has nearly 76,000 jobs as a direct result of Japanese investment. *2/20/2020*

### **Join DSA Director Mihalik to Learn About Ohio-Japan Partnership February 21, 2020**

Ohio Development Services Agency (DSA) Director Lydia Mihalik has announced that early next month, her agency will host representatives from Japan's Small and Medium Enterprises and Regional Innovation (**SME SUPPORT JAPAN**). The organization operates within Japan's Ministry of Economy, Trade and Industry.

Director Mihalik has invited OMA members to attend and learn how DSA's relationship with SME SUPPORT JAPAN can benefit Ohio businesses. The meeting will take place Wednesday, March 4, from 3 to 4:30 p.m. in conference rooms South B and C on the 31st floor of the Vern Riffe Center, 77 S. High St., Columbus. For more information, email **DSA**. *2/18/2020*

### **Survey: Ohio Manufacturers Optimistic About 2020 February 21, 2020**

Ohio manufacturers are optimistic about their 2020 growth prospects, with more than 70% expecting higher revenue this year. That's the finding from a new **statewide survey** of 673 Ohio manufacturers in more than 25 subsectors of the industry. Conducted by Northeast Ohio's MAGNET and the **Ohio Manufacturing Extension Partnership** (MEP), the survey also found:

- Retention and development of current employees — along with recruitment of new ones — is the top priority of Ohio manufacturers. In Northeast Ohio alone,

there are roughly 8,000 open manufacturing jobs today.

- Nearly 60% of Ohio manufacturers said the skilled worker shortage was the top factor hindering their growth, followed by rising health care costs (30%), retirement of current workers (26%), and the rising cost of raw materials (25%).
- Ohio manufacturers are falling behind on Industry 4.0 adoption, particularly small- and medium-sized firms.

Last week, MAGNET president and CEO Ethan Karp joined a panel of manufacturing executives to discuss the survey results at a City Club of Cleveland **forum**. Next month, on March 10, FASTLANE — West Central Ohio's MEP — will host an **event** to review the survey's findings. *2/17/2020*

### **Save the Date: OMA Food Day is May 20 February 21, 2020**

The OMA's Food and Beverage Manufacturers' Policy Council (also known as OMA Food Day) is set for May 20 at the brand new White Castle home office in Columbus. This event is for food and beverage manufacturers only. You can expect a day filled with expert insight and analysis on issues impacting Ohio's food and beverage industries. Seating is limited. **Register early** to ensure your spot! *2/20/2020*

### **OMA Members Eligible to Receive Significant UPS Shipping Discounts February 21, 2020**

One of the benefits of OMA membership is discounted shipping prices, thanks to the OMA's **partnership** with UPS. Members can save 50% on Domestic Next-Day/Deferred, 30% on Ground Commercial/Residential, 10% on Domestic Next-Day Air® Early, 75% or more on less-than-truckload freight shipments over 150 lbs., and up to 50% on additional services. Also, take advantage of UPS Smart Pickup® — a free service that uses innovative technology to automatically arrange a pickup only when you

have a package to ship. To enroll, **click here** or call 1-800-MEMBERS. *2/17/2020*

### **Gallup Surveys Small-Business Owners on 2020 Election February 14, 2020**

Gallup **reports** that small-business owners are highly engaged in the 2020 presidential election campaign, as 60% say they are paying "a lot" and 30% "some" attention to it.

According to findings from Gallup's Jan. 15-24 nationwide online survey of small-business owners, 60% approve of the job that Donald Trump is doing as president. When presented a list of six federal policy issues important to small businesses, taxes (32%) received the most mentions, followed by regulations (21%), health care (20%), tariffs (15%), climate change (7%), and immigration (5%). *2/11/2020*

### **Ohio's Leading Index Predicts Growth Over Next Six Months February 14, 2020**

This week, the Ohio Office of Budget and Management (OBM) released its **monthly financial report**. Findings include:

- The Leading Index for Ohio — which predicts growth over the next six months — increased to 1.3% in December, up slightly from 1.2% in November.
- In January, Ohio's general revenue fund exceeded revenue estimates by \$44.7 million (2.0%). Year-to-date tax revenues are \$138 million (1.0%) above forecasts.
- Ohio's manufacturing production increased 0.2% in December after a 1% increase the previous month.

OBM notes that the Purchasing Managers Index (PMI) increased to above the neutral level after five consecutive months of contraction, "suggesting the trend in manufacturing activity might be turning up." *2/10/2020*

## **As Coronavirus Spreads, so Does Risk to Supply Chains** **February 14, 2020**

The coronavirus is starting to affect the supply chains of critical industries across the globe. OMA Connections Partner RSM notes that roughly 30% of all imported manufacturing inputs in the U.S. came from China in 2015, so “the potential for a ripple effect across the world and to the middle market is enormous.” See **RSM’s analysis**. 2/13/2020

## **Worldwide Manufacturing Activity Expanded in January** **February 14, 2020**

The **J.P. Morgan Global Manufacturing PMI** expanded for the third straight month, rising to a nine-month high by increasing from 50.1 in December to 50.4 in January. This suggests the manufacturing sector last month was experiencing slight expansionary growth worldwide. However, the bulk of the sentiment surveys and economic data used by the study predated recent worries about the coronavirus and related production disruptions. 2/13/2020

## **Hearings Continue on Bill to Reduce Statute of Limitations for Contracts** **February 14, 2020**

This week, the Ohio Senate continued to hear testimony on **House Bill 251**. Supported by the OMA, the bill would reduce the statute of limitations for oral and written contracts. Under HB 251, the statute of limitations for written contracts would be reduced from the current eight years to six; for oral contracts, it would be reduced from six years to four. The OMA **testified in support** with the Ohio Alliance for Civil Justice. 2/13/2020

## **Preparing Your Employees for the 2020 Election** **February 7, 2020**

Ohio’s primary election is less than six weeks away — and there’s much at stake this election year. Studies show that employees trust information from their employers on voting and elections. You can provide non-partisan resources to your employees for the purposes of registering to vote or understanding the

elections overall. However, all communications should remain unbiased.

Take a moment to remind employees that the deadline to register to vote in Ohio’s March 17 primary election is Tuesday, Feb. 18. Ohioans can **register online**, or obtain a **form** to update their home address. Those who are unsure if they’re already registered can **check their voter registration** online.

There’s a lot of other useful voter information at the **Secretary of State’s website** — including how to request absentee ballots, as well as finding your polling place. 2/3/2020

## **MAGNET Showcases New Manufacturing Technology** **January 31, 2020**



This week, OMA staff participated in a ribbon cutting at the headquarters of Cleveland-based **MAGNET**, which is part of the Ohio Manufacturing Extension Partnership (Ohio MEP). The event marked the official opening of MAGNET’s “Manufacturing Technology Experience.”

Lt. Gov. Jon Husted, who oversees the Governor’s Office of Workforce Transformation, led the ceremony to showcase new “Industry 4.0” technologies — including collaborative robots, AI, AR/VR, machine vision, 3-D printing devices, and more.

Acquired with the help of state and federal funds, these advanced technologies will enhance MAGNET’s consulting and engineering work with Northeast Ohio’s small and mid-sized manufacturers. The new technology will also offer manufacturing executives a hands-on showroom to evaluate these technologies. View **pictures** of this week’s event, or **email MAGNET** to schedule your personal tour of the facility. 1/28/2020

*Leading this week’s ribbon cutting ceremony at MAGNET were (from left) Ethan Karp, president and CEO of MAGNET; Felix Brueck, MAGNET*

board chairman; Lt. Gov. Jon Husted; Robert “Bob” Smith, JobsOhio board chairman; and Eric Burkland, OMA president.

### **Senate Begins Hearings on Bill to Reduce Statute of Limitations on Contracts January 31, 2020**

The Ohio Senate this week heard **sponsor testimony** on **House Bill 251**. The bill, which is supported by the OMA and the business community, would **reduce the statute of limitations** for oral contracts from six years to four years — and for written contracts from eight years to six years.

As introduced, HB 251 would have reduced the statute of limitations for both types of contracts to three years. However, the House amended the bill after much discussion with the interested parties. The bill is expected to have several more hearings in the near term. 1/30/2020

### **A Look at Global Manufacturing Conditions January 31, 2020**

In its **latest issue** of *The Real Economy*, OMA Connections Partner RSM provides a snapshot of manufacturing conditions across the globe. The issue also examines the “equipment-as-a-service” concept in manufacturing, as well as consumer outlook for 2020. 1/28/2020

### **At a Glance: Economic Conditions in Ohio, Surrounding States January 31, 2020**

The Huntington National Bank, an OMA Connections Partner, has published its most recent **state economics report** — an overview of economic conditions in Ohio and neighboring states. As of December 2018, Ohio’s real GDP for all industries was \$2.42 trillion — seventh highest in the U.S. — while median household income was \$61,633. The state’s home price appreciation was above the national average as of September 2019, “reflecting strong housing markets overall.” 1/28/2020

### **Keeping an Eye on Iowa and its 2020 Election Decision January 31, 2020**

On Monday, Feb. 3, the 2020 Iowa Democratic caucuses will take place, kicking off the

nominating process in the Democratic Party presidential primaries. Interestingly, personal finance website WalletHub.com looked at 31 key measures — including sociodemographic, economic, educational and religious metrics — and **found that Iowa is an 89% match** with U.S. demographics. The Hawkeye State predicts 70% of Democratic nominees, the study shows. 1/30/2020

### **Ohio Sees Job Growth in Biopharmaceuticals January 31, 2020**

Ohio is recognized as a key manufacturing state for everything from transportation equipment, metal products, machinery, food products, plastics, rubber, mineral products, appliances and much more. Now, according to a **report** by *Area Development* magazine, Ohio is an emerging leader in biopharmaceutical manufacturing, too.

Last year, the Buckeye State was home to more than 5,500 biopharm jobs — good for 15th nationally. From 2015 through 2019, Ohio experienced the country’s fourth-largest job growth rate (15%) in this sector. 1/29/2020

### **NAM’s Timmons Delivers ‘State of Manufacturing’ Address January 24, 2020**



This week, during his “State of Manufacturing” address, National Association of Manufacturers (NAM) President and CEO Jay Timmons urged U.S. lawmakers to make permanent the 20% deduction for pass-through entities — a key provision in the 2017 federal tax law. Like other changes in the 2017 overhaul, the pass-through deduction is scheduled to expire at the end of 2025.

In other comments, Timmons credited the Trump administration for reaching a “phase one” trade deal with China, passing the U.S.-Mexico-Canada trade agreement, and making “progress on 91.5% of the regulations that NAM members identified as needing to be modernized.” Read Timmons’ **full address**. 1/22/2020

### **RSM: Stopped Production of Boeing’s 737 Max Expected to Hurt GDP** **January 24, 2020**

News this week that production of Boeing’s 737 Max **has been halted** until as late as mid-September will have consequences for the company’s supply chain, as well as the U.S. economy.

In a **recent post**, OMA Connections Partner RSM writes: “It cannot be overstated just how important the domestic and global supply chains associated with Boeing are to the small- and medium-sized businesses that populate the real economy.” The post includes an eye-opening infographic on the 737’s supply chain. 1/22/2020

### **USMCA Expected to Add 76,000 U.S. Automotive Manufacturing Jobs Over Five Years** **January 24, 2020**

As noted in the OMA’s “**Ohio Manufacturing Counts**” publication, automobile and auto-parts makers are among the drivers of Ohio’s economy. So it’s good to see the new United States-Mexico-Canada Agreement (USMCA) — approved last week by the U.S. Senate — is estimated to produce at least **76,000 additional jobs** in the auto and auto-parts manufacturing sector over the next five years, according to the U.S. Trade Representative’s office.

The OMA thanks Ohio’s U.S. Sens. Rob Portman and Sherrod Brown for **voting to approve** the USMCA, as well as Ohio’s U.S. House members who **voted to support** the modernization of America’s largest trade agreement. 1/21/2020

### **Where the Inflation is (and isn’t)** **January 24, 2020**

A **new report** by the U.S. Bureau of Labor Statistics shows that from 2018 to 2019, consumer prices for all items rose 2.3%. Among the categories showing a price decline were wholesale electricity and utility (piped) gas

service. Among the products or services exceeding the inflation average were medical care, prescription drugs, and hospital services. 1/21/2020

### **OMA Tracking More Than 100 Statehouse Bills** **January 17, 2020**

Next week, Ohio lawmakers return to Columbus, kicking off both chambers’ floor activity. This marks the second and final year of the 133rd General Assembly.

So far, the House and Senate together have introduced more than 700 bills. The OMA is tracking more than 100 of these measures due to their potential impact on manufacturers. **OMA’s bill tracking service** provides concise summaries and a status update on notable legislation. Bills are categorized by interest area. 1/15/2020

### **RSM: Manufacturing Trends to Watch** **January 17, 2020**

The new year offers some headwinds for manufacturers. But there are also multiple prospects for sustainability and growth. Check out **this analysis** from OMA Connections Partner RSM on the key trends facing manufacturing in 2020. 1/13/2020

### **Tips to Improve Supply Chain Management** **January 17, 2020**

What does successful supply chain management look like?

OMA Connections Partner Clark Schaefer Hackett has published **tips for optimizing your supply chain** and keeping your customers happy. 1/14/2020

### **Buy-Sell Agreements Can Protect Your Business** **January 17, 2020**

A buy-sell agreement — which formally documents the terms related to a business’ transfer of ownership interests — is one way to help ensure a successful business transition to protect your family in the event of premature death or disability. OMA Connections Partner

Plante & Moran has published **this summary** on how these agreements work and why they're important. *1/15/2020*

### **Presidential Candidates on Manufacturing Issues**

**January 17, 2020**

The Manufacturing Policy Initiative at Indiana University has published this **comparison** of the major presidential candidates and where they stand on key manufacturing issues. The publication will be updated throughout the 2020 campaign. *1/14/2020*

### **Gallup: U.S. More Purple than its Politics** **January 17, 2020**

A new **Gallup survey** finds 37% of Americans consider themselves conservative, followed by 35% who identify as moderates, and 24% as liberals. Gallup **also found** that slightly more Americans align with Democrats (47%) than with Republicans (42%). So it appears there's still middle ground in America. *1/13/2019*

### **Trends Turn More Positive for Ohio's Smaller and Mid-Sized Manufacturing Cities** **January 17, 2020**

There's some positive news for Ohio's smaller and mid-sized manufacturing communities in a **report** by the Greater Ohio Policy Center. The organization's research shows the state's "legacy cities" — industrial cities with populations greater than 20,000 in or near metro areas — are losing population at a much slower rate than during the six-year period following the Great Recession. At the same time, these cities have experienced less unemployment and poverty, and higher per-capita incomes. *1/13/2020*

### **Take Steps to Reduce Cyber Risks** **January 10, 2020**

This week, Texas state government said it experienced a spike in attempted cyberattacks from Iran on its agency networks at the rate of about **10,000 per minute**. Meanwhile, the U.S. Department of Homeland Security's Cybersecurity and Infrastructure Security Agency **issued an alert** calling for increased vigilance.

All of this comes after a **report** by IBM researchers that found cyberattacks had doubled in the first half of 2019. Half of those attacks were on manufacturers.

To help defend against cyber threats, review **this checklist** from OMA Connections Partner Clark Schaefer Hackett, as well as this **analysis** from Connections Partner RSM. If you haven't already done so, check out the OMA's recently recorded **cybersecurity webinar** presented by GBQ Partners. *1/8/2020*

### **U.S. Manufacturing Index Softened in December** **January 10, 2020**

OMA Connections Partner Plante & Moran **reports** on the latest ISM Manufacturing Index numbers, which showed the U.S. manufacturing sector unexpectedly weakened in December. The analysis points out that CEO confidence remains low, despite upbeat sentiment from consumers. Meanwhile, here are the latest **manufacturing job numbers from Ohio**. *1/6/2020*

### **Forbes: Ohio is Second-Best State for Quality of Life** **January 10, 2020**

In its latest **Best States for Business list**, Forbes has named Ohio as second best for quality of life. Factors considered were cost of living, school test performance, crime rates, culture and recreational opportunities.

The **Buckeye State** did not fare as well in Forbes' overall comparison — dropping nine spots from last year to 29th, after peaking at 11th in 2016. Hindering Ohio were its labor supply (41st) and growth prospects (44th). Ohio was 22nd for current economic conditions, 25th for business costs, and 26th for regulatory environment.

North Carolina was ranked the best state for business, followed by Texas and Utah. *1/8/2020*

### **At a Glance: Each State's Contribution to the U.S. Economy** **January 10, 2020**

There is a strong correlation between a state's manufacturing sector and the impact it has on America's overall economy. **This map** by cost information website HowMuch.net visualizes the

economic importance of each state by factoring the GDP of every U.S. county. In terms of both jobs and GDP, Ohio is the third-largest manufacturing state, trailing only California and Texas. *1/6/2020*

**Ohio House, Senate Will Return to Action  
Later This Month  
January 3, 2020**

The Ohio Legislature has published its **online session calendar** for 2020. Both the House and Senate will be back in action later this month. Because this is an election year, activity will be front-loaded through June. The General Assembly will break for campaigns through most of the fall, then return for a fast-paced lame duck session after the November election. *1/2/2020*

**Ohio to Hold Smart Mobility Summit in  
Youngstown  
January 3, 2020**

The Ohio Department of Transportation, along with DriveOhio and the Eastgate Regional Council of Governments, recently announced that an **automated and connected vehicle technology forum** will be held July 16-17, 2020 in Youngstown. Manufacturers with interests in automated, connected, electric and shared technologies can **learn more here**. *1/2/2020*

## Miscellaneous Legislation of Interest to Manufacturers

Prepared by: The Ohio Manufacturers' Association  
Report created on March 3, 2020

- 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:* 1/22/2020 - **SUBSTITUTE BILL ACCEPTED**, Senate General Government and Agency Review , (Seventh 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:* 1/22/2020 - Senate General Government and Agency Review , (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:** 2/5/2020 - Senate Agriculture and Natural Resources, (Third 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:** 12/4/2019 - **REPORTED OUT**, Senate Agriculture and Natural Resources, (Fourth 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:** 2/13/2020 - House Criminal Justice, (First Hearing)

**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:* 10/1/2019 - House Transportation and Public Safety, (Fourth 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:* 2/26/2020 - **REPORTED OUT**, House Civil Justice, (Sixth 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:* 2/12/2020 - Referred to Committee Senate Local Government, Public Safety and Veterans Affairs  
*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:* 2/12/2020 - Senate Judiciary, (Third Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-251>
- HB272**      **COURTS-EXERCISE OF JURISDICTION** (OELSLAGER S, HILLYER B) To expand the basis of a court's exercise of personal jurisdiction to include any basis consistent with the Ohio Constitution and the United States Constitution.  
*Current Status:* 2/26/2020 - Senate Judiciary, (Third Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-272>
- HB319**      **LOCAL CONTROL-FIREARMS** (WEST T, MILLER A) To restore local authority to generally regulate firearms-related conduct.  
*Current Status:* 9/24/2019 - Referred to Committee House State and Local Government  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-319>
- HB320**      **PENDING BACKGROUND CHECK-FIREARMS** (WEST T) To prohibit a federally licensed firearms dealer from transferring a firearm while a background check is pending unless 30 days have elapsed.  
*Current Status:* 9/24/2019 - Referred to Committee House State and Local Government  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-320>
- HB324**      **DAMAGES-ADJUST FOR INFLATION** (MILLER A) To raise the limitations on damages for noneconomic loss and punitive damages in certain tort actions based on adjustments for inflation from the year 2005 to 2019.  
*Current Status:* 9/24/2019 - Referred to Committee House Civil Justice  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-324>
- HB346**      **VAPE PRODUCT SALES** (PATTON T) To prohibit the sale of flavored electronic smoking devices and flavored vapor products and to establish a committee to study the health risks associated with such products.  
*Current Status:* 10/2/2019 - Referred to Committee House Health  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-346>
- HB347**      **VAPE PRODUCT RETAILERS** (PATTON T) To place restrictions on retailers of vapor products.

**Current Status:** 10/2/2019 - Referred to Committee House Health  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-347>

**HB369**      **SEXUAL, GENDER DISCRIMINATION** (HILLYER B, SKINDELL M) 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:** 2/4/2020 - House Civil Justice, (Second Hearing)  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-369>

**HB469**      **HEALTH INSURANCE COST-SHARING** (MANCHESTER S, WEST T) To prohibit certain health insurance cost-sharing practices.

**Current Status:** 2/18/2020 - House Health, (First Hearing)  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-469>

**HB472**      **CRIMINAL PERIOD OF LIMITATIONS - RAPE** (ROGERS J) To eliminate the period of limitations for the criminal prosecution of a person for rape.

**Current Status:** 1/28/2020 - Referred to Committee House Criminal Justice  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-472>

**HB476**      **EMINENT DOMAIN** (MANNING D, HAMBLEY S) To amend the law regarding eminent domain and to declare an emergency.

**Current Status:** 2/12/2020 - House State and Local Government, (First Hearing)  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-476>

**HB490**      **ELECTRIC/ HYBRID VEHICLE REGISTRATION FEES** (GREENSPAN D, SHEEHY M) To provide for the proration of the plug-in electric and hybrid motor vehicle registration fees.

**Current Status:** 2/11/2020 - Referred to Committee House Finance  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-490>

**HB499**      **MOTOR FUEL TESTING PROGRAM** (KELLY B, LANG G) To authorize a county to implement a motor fuel quality testing program.

**Current Status:** 2/19/2020 - Referred to Committee House Transportation and Public Safety  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-499>

**HB510**      **CRIMINAL PENALTIES - VEHICLE SAFETY** (PATTON T) To increase the criminal penalties associated with failing to secure a load on a vehicle.

**Current Status:** 2/18/2020 - Introduced  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-510>

**HB518**      **TORT ACTIONS - RAPE VICTIMS** (BOGGS K, RUSSO A) To remove the cap on damages for noneconomic loss when a victim of rape or assault brings a tort action.

**Current Status:** 2/19/2020 - Introduced

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-518>

**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:** 6/30/2019 - Referred to Committee House Civil Justice

**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:** 12/17/2019 - **BILL AMENDED**, Senate Judiciary, (Tenth 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:** 1/29/2020 - **REPORTED OUT**, House Public Utilities, (Seventh 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:** 10/25/2019 - **SIGNED BY GOVERNOR**; eff. 90 days

**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:* 11/13/2019 - Senate General Government and Agency Review , (Third 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:* 11/21/2019 - House Criminal Justice, (Second Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-140>
- SB182**      **RAISE MINIMUM AGE-FIREARM PURCHASES** (THOMAS C, LEHNER P) To raise the minimum age to purchase a firearm to age 21 and to increase the penalty for improperly furnishing firearms to an underage person.  
*Current Status:* 1/21/2020 - Senate Government Oversight and Reform, (Second Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-182>
- SB183**      **FIREARM TRANSFERS** (THOMAS C, LEHNER P) To require a firearm transfer to be made through a dealer, through a law enforcement agency, or pursuant to a specified exception, and to require a background check when a firearm is transferred.  
*Current Status:* 9/17/2019 - Senate Government Oversight and Reform, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-183>
- SB186**      **VOTER REGISTRATION** (MANNING N, SYKES V) To create a voter verification and registration system, to modify the requirements for the administration of the statewide voter registration database, and to allow electors to register as affiliated with a political party.  
*Current Status:* 2/25/2020 - Senate Government Oversight and Reform, (Second Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-186>

- SB204**      **AIRPORT DEVELOPMENT DISTRICT** (SCHURING K, SYKES V) To authorize the creation of an airport development district for the purpose of funding public infrastructure improvements and attracting airlines and additional flights to a qualifying airport.  
*Current Status:* 2/25/2020 - **SUBSTITUTE BILL ACCEPTED**, Senate Finance, (Third Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-204>
- SB231**      **INVESTIGATE INSULIN PRICING** (CRAIG H, ANTONIO N) To require the Attorney General to investigate insulin pricing and prepare and submit a report.  
*Current Status:* 2/25/2020 - Senate Finance Health and Medicaid Subcommittee, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-231>
- SB232**      **CAP COST SHARING-INSULIN DRUGS** (CRAIG H, ANTONIO N) To cap cost-sharing for prescription insulin drugs.  
*Current Status:* 2/25/2020 - Senate Finance Health and Medicaid Subcommittee, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-232>
- SB263**      **PBM PROHIBITIONS-REIMBURSEMENTS** (HACKETT R) To prohibit a pharmacy benefit manager from taking certain actions with respect to reimbursements made to health care providers that participate in the federal 340B Drug Pricing Program.  
*Current Status:* 2/25/2020 - Senate Finance, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-263>
- SB276**      **LIMITED LIABILITY COMPANIES** (ROEGNER K) To enact the Ohio Revised Limited Liability Company Act.  
*Current Status:* 2/12/2020 - Referred to Committee Senate Judiciary  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-276>
- SB279**      **PROHIBIT PHONES WHILE DRIVING** (MAHARATH T) To generally prohibit the use of electronic wireless devices while driving.  
*Current Status:* 2/12/2020 - Introduced  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-279>
- SB285**      **DISTRACTED DRIVING** (O'BRIEN S, KUNZE S) To revise the laws relative to distracted driving and the use of an electronic wireless communications device while driving.  
*Current Status:* 2/18/2020 - Introduced  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-285>
- 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:* 2/12/2020 - Senate Transportation, Commerce and Workforce, (First Hearing)

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SCR-2>

**SJR2**

**CONVENTION OF STATES (HUFFMAN M)** Application to the Congress of the United States for a Convention of the States under Article V of the Constitution of the United States that is limited to proposing amendments that impose fiscal restraints on the federal government, limit the power and jurisdiction of the federal government, and limit the terms of office for its officials and Members of Congress.

**Current Status:** 10/9/2019 - Referred to Committee Senate General Government and Agency Review

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SJR-2>



# OMA POLICY COMMITTEES ADVANCE OHIO MANUFACTURING

OMA policy committee meetings provide opportunities for you to work with colleagues, subject matter experts, policymakers and government agency staff to gain critical updates and to set policy priorities for Ohio manufacturing.

OMA has five standing policy committees: **energy, environment, government affairs, safety & workers' compensation and tax.**

## Join Management Communities that Support Your Work

To make sure you receive committee meeting notices and materials in your inbox, go to **My OMA** to subscribe to the management communities that interest you.

Each policy committee meets in person in the OMA offices in Columbus, and occasionally regionally. These meetings can also be joined by phone. The format for the meeting is typically a two-hour morning meeting, followed by an informal networking lunch provided by the OMA.

## 2020 OMA Policy Committee Meeting Calendar *(click dates to register)*

<b>Energy</b> 10:00 a.m. – 1:00 p.m.	<b>Environment</b> 10:00 a.m. – 1:00 p.m.	<b>Government Affairs</b> 9:30 a.m. – 1:00 p.m.	<b>Safety &amp; Workers' Compensation</b> 10:00 a.m. – 1:00 p.m.	<b>Tax</b> 10:00 a.m. – 1:00 p.m.
Thurs., March 12	Weds., February 12	Weds., March 4	Weds., February 26	Weds., February 19
Thurs., May 21	Thurs., May 28	Weds., June 3	Thurs., June 11	Weds., June 10
Weds. December 2	Tues., September 29	Weds., August 19	Weds., November 4	Weds., November 18
		Tues., November 10		

## Register for Meetings

For in-person or call-in attendance, click the dates above or call us at **(800) 662-4463**.

## Attending in person?

The Ohio Manufacturers' Association  
33 N. High St., 6th floor  
Columbus, Ohio 43215

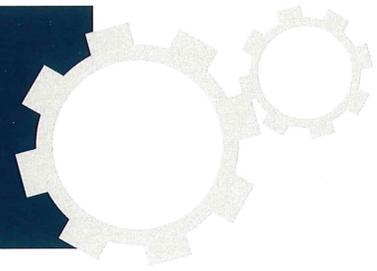
## Attending via phone?

We email you the call-in instructions once you register.

## More information?

Certainly! Call us at **(800) 662-4463** or email us at **oma@ohiomfg.com**.

# PolicyGoal:



## A Fair, Stable, Predictable Civil Justice System

For manufacturers to invest and grow in Ohio, and to compete globally, Ohio's civil justice system must be rational, fair and predictable. Manufacturers must be free to innovate and pursue market opportunities without fear of unreasonable exposure to costly lawsuits, while injured parties must have full recourse to appropriate measures of justice.

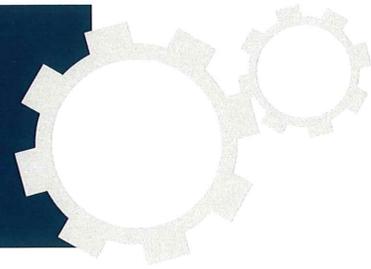
The OMA supports policy reforms that protect consumers without overly burdening businesses, while also positioning Ohio advantageously relative to other states. The association encourages policymakers to evaluate all proposed civil justice reforms by considering these questions:

- Will the policy fairly and appropriately protect and compensate injured parties without creating a "lottery mentality"?
- Will the policy increase—or decrease—litigation burdens and costs?
- Will the policy promote—or reduce—innovation?
- Will the policy attract—or discourage—investment?
- Will the policy stimulate—or stifle—growth and job creation?

Ohio has made great strides in reforming its civil justice system over the past decade, and longer. The primary aim of the state should be to preserve those tort reform gains, in areas such as punitive damages, successor liability, collateral sources and statute of repose, which are protecting consumers without unduly burdening businesses, while positioning Ohio as an attractive state for business investment.



# PolicyGoal:



## A Modern, Job-Supporting Infrastructure

Modern infrastructure is critical for today's advanced manufacturing economy. To remain competitive and maximize the economic benefits of Ohio's manufacturing strength, the state must invest in updating and expanding Ohio's multi-modal transportation infrastructure, including roads, bridges, rails and ports. Continued investment in these resources is critical to providing Ohio manufacturers with flexible, efficient, cost-effective shipping options.

Ohio's transportation infrastructure fund is declining at a time when traffic is increasing, construction and maintenance costs are escalating and fuel efficiency is climbing. Coupled with a fixed per gallon fuel tax that has not been adjusted since 2002, Ohio may not be able to sufficiently support its transportation infrastructure unless a long-term budget mechanism is created.

The state also must continue to support the development of a pipeline infrastructure that delivers the abundant energy resources from the Utica and Marcellus shale formations to Ohio manufacturers in all parts of the state and markets outside the state. This infrastructure produces a job-creating competitive advantage for Ohio.

### **INFRASTRUCTURE POLICY PRIORITIES INCLUDE THE FOLLOWING:**

Support the creation of an Ohio Division of Freight to focus regulatory attention on the logistics needs of manufacturers.

Support state and federal legislation, rules and regulations that safely provide greater flexibility and efficiency in truck movements.

Provide for funding sustainability of Ohio's transportation budget.

Support technology and workforce solutions that address the shortage of truck drivers.

Ensure Ohio's freshwater ports remain competitive and state-of-the-art in functionality. Advocate for appropriate facility maintenance including dredging to ensure navigability.

Preserve access to, and provide responsible management of, Ohio's sources of water.

Protect cyber infrastructure to safeguard data used by manufacturers and their customers and suppliers.



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PROTECTING & GROWING OHIO MANUFACTURING

FOR IMMEDIATE RELEASE

## Ohio Manufacturers' Association PAC Endorses Supreme Court Justices French, Kennedy

COLUMBUS, Ohio – The Ohio Manufacturers' Association Political Action Committee (OMA-PAC) has endorsed Justices Judith French and Sharon Kennedy in their 2020 re-election bids for the Supreme Court of Ohio.

Justice French joined the state's highest court in January 2013 and was elected to her first full term in 2014. Prior to her time at the Supreme Court, she served as a deputy director at the Ohio Environmental Protection Agency; assistant attorney general and chief counsel under Attorney General Betty Montgomery; chief legal counsel to Gov. Bob Taft; and judge on the Tenth District Court of Appeals.

Justice Kennedy is also in her second term on the Supreme Court, having joined in 2012. Prior to that, she served at the Butler County Court of Common Pleas, Domestic Relations Division. From 2005 until 2012, she was the administrative judge of the division.

The OMA-PAC's endorsement comes following a review of the justices' records of votes in cases of importance to the business community.

"The court can have a tremendous impact on the business climate in Ohio," said OMA-PAC Chairman Billy Vickers, president and CEO of the Dublin, Ohio-based manufacturing firm Modular Assembly Innovations - Great Lakes Assemblies (MAI-GLA).

"Justices French and Kennedy are the right choices for Ohio's manufacturers. Both are committed to upholding the Ohio Constitution and strictly interpreting the law, not legislating from the bench. We encourage Ohioans to vote for Justices French and Kennedy."

###

*The Ohio Manufacturers' Association is Ohio's largest statewide business association comprised solely of manufacturers. Established in 1910, the OMA's mission is protect and grow Ohio's manufacturing industry, while representing small to large manufacturers in every industrial sector. For more on the OMA, visit [www.ohiomfg.com](http://www.ohiomfg.com) – or follow us on [LinkedIn](#), [Twitter](#), and [Facebook](#).* Page 27

***For Immediate Release***

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## **Ohio Manufacturers' Association PAC Endorses Mark Romanchuk for Ohio Senate**

COLUMBUS, Ohio – The Ohio Manufacturers' Association Political Action Committee (OMA-PAC) has endorsed state Rep. Mark Romanchuk (R-Ontario) in his bid for Ohio's 22nd Senate District. The seat is currently held by Senate President Larry Obhof, who is term-limited. The district includes Richland, Ashland, Holmes, and Medina counties.

Mark and his wife Zoi own a manufacturing firm, PR Machine Works, in Mansfield. As a member of the Ohio House of Representatives, Mark has been a champion for the manufacturing community and has brought a strong business background to the General Assembly.

“Our goal is to help elect the most qualified candidates to protect and grow Ohio manufacturing,” said OMA-PAC Chairman Billy Vickers, president and CEO of the Dublin, Ohio-based manufacturing firm Modular Assembly Innovations - Great Lakes Assemblies (MAI-GLA). “With today's endorsement, we've taken an important step in accomplishing that goal.

“Mark Romanchuk supports the issues that are important to Ohio manufacturers and their employees – and he understands that a strong manufacturing sector leads to a healthier economy, good jobs, and improved quality of life for all Ohioans.”

Established in 1910, the OMA's mission is protect and grow Ohio's manufacturing industry, while representing small to large manufacturers in every industrial sector.

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## **Ohio Prescription Drug Transparency and Affordability Advisory Council Meeting**

February 26, 2020  
10:00 a.m. – 12:00 p.m.

Rhodes Office Tower  
30 E. Broad St., Room 1858  
Columbus, Ohio

### **AGENDA**

- 10:00 a.m. – 10:10 a.m. *Opening Remarks and Introductions***  
Ohio will provide welcome remarks and facilitate introductions.
- Matthew Damschroder, Director of the Ohio Department of Administrative Services
- 10:10 a.m. – 10:15 a.m. *NGA Health Overview & Pharmaceuticals Work with States***  
The National Governors Association will provide a brief overview of its Health Division and recent projects related to pharmaceuticals.
- Sandra Wilkniss, National Governors Association
- 10:15 a.m. – 11:00 a.m. *Understanding the Prescription Drug Supply and Financing Chain***  
Jane Horvath will provide a review of the prescription drug supply and financing chain, including key stakeholder issues and concerns. Presentation will be followed by Q&A and group discussion.
- Jane Horvath, Horvath Health Policy
- 11:00 a.m. – 11:45 a.m. *State Action Addressing Prescription Drug Access and Affordability***  
The National Governors Association will review the array of strategies states are pursuing to address prescription drug access and affordability. Presentation will be followed by Q&A and group discussion.
- Sandra Wilkniss, National Governors Association
  - Kate Johnson, National Governors Association
- 11:45 a.m. – 12:00 p.m. *Closing Remarks***  
Ohio will offer closing remarks and outline next steps.
- Matthew Damschroder, Director of the Ohio Department of Administrative Services

# Column: ‘Hands-free’ laws would make roads safer

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Posted Feb 11, 2020 at 4:16 AM

We’ve all been there, behind “that” driver. The one driving erratically with one hand on the wheel, the other hand holding a mobile device, looking down and typing, oblivious to the people he is endangering around him or in his own car.

And with the Cellular Telecommunications Industry Association telling us there are currently more than 1.2 wireless device subscriptions per American, the problem is only getting worse.

Some say distracted driving is on its way to becoming an even more pervasive threat than drunken driving.

The National Safety Council estimates that 1 in 4 motor vehicle crashes are attributable to mobile phone usage and we at Nationwide can attest first-hand that these types of crashes are increasing the frequency and severity of the claims we pay out to our members. With a recent average of 37,000 deaths per year on our roadways, countless lives could have been saved and many more serious, life-changing injuries prevented if drivers’ attitudes were changed about driving while holding a mobile device.

Compounding the issue is a patchwork of laws at the city, county and state levels across the country that make it difficult to prevent smartphone-related crashes. A recent study by the Ohio State University Risk Institute sponsored by the Ohio Department of Transportation reported that while driving under the influence of alcohol or drugs remains law enforcement’s No. 1 priority, mobile phone usage has now surpassed both seat-belt usage and speeding as an enforcement priority.

As a mutual insurance company that exists to serve and protect its members, we at Nationwide believe now is the time to bring consistency to roadways across the country. We feel a moral imperative to create a mindset where distracted driving is viewed as just as culturally unacceptable and undesirable as driving under the influence of alcohol or drugs.

That's why our organization is advocating for hands-free laws to be passed in all 50 states as soon as possible. Currently, only 21 states, including Georgia, Arizona, and Massachusetts and the District of Columbia, have such laws on the books. We believe that drivers should have their eyes on the roadways instead of emailing, texting, shopping, posting, liking, viewing, watching or any other distraction caused by holding a cellphone. Our own internal testing has shown that hands-free devices have the potential to reduce in-vehicle distraction by up to 40%.

The hands-free approach is practical and effective. A study by the Insurance Institute for Highway Safety and the Virginia Tech Transportation Institution confirmed that frequent cellphone users have more near misses and crashes. And the near-miss/crash rate nearly triples when handling the phone while driving.

A review of data provided by the National Highway Traffic Safety Administration to the Ohio Distracted Driving Task Force revealed that states implementing hands-free legislation experienced an average 15.3% decrease in fatality rates within two years after their law was enacted.

We are proud to support Gov. Mike DeWine's recent announcement to strengthen Ohio's distracted driving laws as developed by a statewide Distracted Driving Task Force. We believe so strongly in the hands-free approach that we are also urging the National Council of Insurance Legislators to draft model legislation that other states can consider for implementation across the country.

We support enabling law enforcement to ticket drivers who are holding a mobile device while operating a motor vehicle, including texting, viewing videos or images, entering data, talking or broadcasting content. We also believe it is reasonable to make exceptions for emergencies, for voice-activated technology like Alexa or Siri, for navigation and for “single swipe” activation as long as the device is not held by the driver.

Although hands-free is not risk free, these laws are practical, enforceable and have proved to be effective in reducing highway fatalities, saving lives, reducing auto crashes and making roads safer.

As a company committed to protecting people, businesses and futures with extraordinary care, we’re looking forward to working with officials across the country to raise awareness and to advocate for this change to keep all eyes on the road and both hands on the wheel.

In the meantime, please join me in putting down the phone as we share the roads.

*Kirt Walker is chief executive officer of Nationwide.*



MEMORANDUM

TO: Ohio Manufacturers' Association  
Government Affairs Committee

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

DATE: March 4, 2020

RE: March 2020 OMA Government Affairs Committee Report

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I. March 2020 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.

Currently, several statewide issues are attempting to qualify for the November 2020 general election.

Legalize Recreational Marijuana. Cleveland Plain Dealer reported that a group is working on a ballot initiative to legalize recreational marijuana. The ballot initiative will likely be introduced soon.

Lifetime General Assembly Term Limits. On February 19, 2020, a group titled Ohioans for Legislative Term Limits filed an initiative petition for a constitutional amendment that limits an individual from holding state elected office more than a total of 16 years. If the constitutional amendment is approved, only years of service beginning on or after January 1, 2021 will be considered in determining the individual's eligibility to take or hold office. In effect, this constitutional amendment will eliminate individuals from switching from each chamber. The Attorney General certified the petition on February 27, 2020. Now, the Ballot Board must determine if the amendment contains a single or multiple issue.

Secure and Fair Elections. On January 31, 2020, the Attorney General rejected the petitioner's, backed in part by the ACLU, summary that proposes amending the Ohio Constitution to allow same day voter registration in Ohio. However, the group refiled their initiative petition on February 10, 2020 for approval to collect signatures. Attorney General Yost announced the certification of their second attempt on February 20, 2020. The Ohio Ballot Board must determine if the amendment contains a single issue or multiple issues. For each separate issue determined

by the Ohio Ballot Board, the petitioners must collect signature for each issue from registered voters in each of 44 of Ohio's 88 counties equal to 5% of the total vote case in the county for the office of governor at the 2018 gubernatorial election. In addition, the total signatures collected statewide must equal 10% of the total vote cast for the office of governor in the 2018 election. The Ballot Board is scheduled to meet March 2, 2020 to review this amendment.

Raise the Wage Ohio. A labor backed group filed its summary on January 17, 2020 to amend the Ohio Constitution to raise the minimum wage to \$13 per hour by January 1, 2025. The Attorney General certified the petition on January 27, 2020 and following certification from the Ohio Ballot Board that the petition contains only one issue the petitioners can collect signatures to place the amendment on the ballot. For placement on the General Election Ballot, Raise the Wage Ohio must submit 442,958 signatures to the Secretary of State by July 4, 2020.

H.B. 6 Referendum. Petitioners, Ohioans Against Corporate Bailouts (OACB), seeking to overturn H.B. 6 failed to collect the required 265,744 signatures before the bill's effective date (October 22). Counsel reported previously regarding litigation surrounding the referendum effort. In the November 2019 report, two cases were currently pending. However, OACB filed a motion to dismiss its appeal in the federal court and a motion to dismiss their case in the Supreme Court of Ohio.

Gun Background Checks. Ohioans for Gun Safety has filed its summary, and the Attorney General certified the petitions on July 29, 2019. The group is free to collect an initial 132,000 signatures for an initiated statute closing perceived loopholes in background checks for certain firearms purchases. The signatures were due to the Secretary of State in late December 2019. The group held a "day of action" during the 2019 General Election in an effort to boost signature gathering efforts. But, on December 13, 2019, the group announced that it will wait and push for the initiative to be placed on November 2021 election.

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).

The General Assembly returned in January with committee hearings and full floor sessions. Both chambers continue introducing new legislation in 2020 even as the legislature is still tackling issues from the previous year. Both chambers are expected to slow down during the month of March due to the primary election. However, the Senate Republican incumbents do not have any contested primaries, and President Obhof has suggested the chamber may still conduct business in March. However, House Republican incumbent members, primarily recently appointed members,

have many contested primaries. Several House members are facing each other in primaries for open Senate seats. Therefore, the House will recess until after the primary election.

Employment Law Reform. Introduced in the 132<sup>nd</sup> 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 S.B. 1, 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 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 portion 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. However, the remainder of S.B. 1 that requires agencies to reduce their regulatory restrictions by 30% has yet to be enacted. S.B. 1 was scheduled for a second hearing on January 22, 2020, but the bill was removed from the committee’s agenda.

H.B. 6 - After Effects. Although, Ohioans Against Corporate Bailouts failed to place H.B. 6 on the ballot for a referendum, the effects of H.B. 6 continue to linger due to federal action. Specifically, the Federal Energy Regulatory Commission (FERC) directed PJM Interconnection, L.L.C. (PJM) to expand its Minimum Offer Price Rule (MOPR) to address state-subsidized electric generation resources, with certain exemptions. PJM will have to set minimum bids for state-subsidized generators in the capacity auction. FERC stated the ruling was to protect the competitive capacity market administered by PJM. FERC’s ruling will impact and may disable the nuclear plants ability to have a winning bid in the capacity auction if they receive subsidies authorized by H.B. 6. Many stakeholders and supporters of H.B. 6 have begun conversations on addressing the issue, however no legislation has been introduced and PJM has not issued new market rules in response to the FERC order. In addition, many stakeholders such the Public Utilities Commission of Ohio have moved for rehearing on the FERC docket. But, FERC is not required to accept motions for rehearing. We continue to monitor this issue closely.

H.B. 238 - Ohio Whistleblower Protection Law. This bill is sponsored by Representative Jack Cera (D-Bellaire) and Gary Scherer (R-Circleville). H.B. 238 was introduced on May 7, 2019 and was referred to the House Civil Justice Committee where it has had four 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.

During the fourth hearing of H.B. 238, Representative Patton (R- Strongsville) offered a substitute version of the bill. The committee accepted this version. Specifically, the substitute bill removes all mention of private sector in the language and complies with the jurisdiction of the Inspector General. The bill is still in committee awaiting a vote.

H.B. 352 - Employment Law Uniformity Act. Representative Jon Cross (R- Kenton) and Representative George Lang (R- West Chester) introduced H.B. 352 on October 1, 2019. H.B. 352 makes several changes to the process of the Ohio Civil Rights Commission. H.B. 352 also reduces the statute of limitations on civil actions for employment discrimination claims from six years to two years. This bill prohibits the dual action of filing an administrative claim with the Ohio Civil Rights Commission and filing a lawsuit. Instead, a claim for workplace discrimination must be filed with the Ohio Civil Rights Commission prior to commencing a lawsuit. H.B. 352 also eliminates personal liability for supervisors, managers or other employees of an employer unless the discriminatory act is outside the scope of employment, retaliation against the claimant or aides in a discriminatory practice. In addition, this bill codifies an affirmative defense, which provides an employer to rebut a claim if the employer can exhibit that it enacted anti-harassment policies and complaint procedures and the employee failed to utilize the policies and procedures. H.B. 352 also provides clarification on the available avenue of filing an age discrimination lawsuit. This bill was referred to the House Civil Justice Committee and has received three hearings.

H.B. 378 – Unemployment Compensation. This bill is sponsored by Representative Jon Crossman (D-Parma) and Michele Lepore-Hagan (D-Youngstown). H.B. 378 was introduced on October 22, 2019 and referred to the Ohio House Insurance Committee. The bill allows employees on strike to receive unemployment compensation. H.B. 378 contains an emergency clause; therefore, the bill would take immediate effect if it was signed by Governor DeWine. The legislation has not yet been heard by the House Insurance Committee.

H.B. 380 - Payment to Construction Contractors. Representative Jon Cross (R- Kenton) and Representative Bride Sweeney (D-Cleveland) introduced H.B. 380 on October 23, 2019. H.B. 380 was referred to House Commerce and Labor Committee on October 29, 2019. Thus far, H.B. 380 received three hearings. Generally, H.B. 380 requires owners of commercial and public construction projects to pay contractors within 35 days after receiving a request for payment. If a

payment is not timely made, then an 18% annual interest rate will be applied to the amount owed. This modification to the Prompt Pay Act would include project owners in the act. Currently, the act only addresses payments amongst contractors, subcontractors, material suppliers, and laborers. Attached is a memorandum analyzing the potential industry effects of H.B. 380.

Anti-Discrimination. S.B. 11, 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.

S.B. 11 was introduced on February 12, 2019 and is assigned to the Senate Judiciary Committee where it had its third hearing on May 22, 2019. This bill has received no further hearings as of the middle of February. 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.

Also, Representatives Brett Hillyer (R- Uhrichsville) and Michael Skindell (D- Lakewood) introduced similar legislation in the Ohio House on October 17, 2019. H.B. 369 was referred to the Ohio House Civil Justice Committee. H.B. 369 is nearly identical to S.B. 11; however, S.B. 11 includes a provision that makes any provision of a hiring hall contract unenforceable if it obligates a contractor to hire, only employees referred to the contractor by the union, unless within 30 days after the contract's execution the union has in effect procedures for referring qualified employees for hire without regard to sex. H.B. 369 has received two hearings, thus far. The second hearing on February 4, 2020 received nearly 300 pieces of written testimony in favor of the bill. However, several organizations provided in person testimony such as the Ohio Chamber of Commerce, Columbus Chamber of Commerce, Ohio Civil Rights Commission, Ohio State Bar Association, Ohio Realtors and Equitas Health Institute.

State Minimum Wage. Several bills to increase the state minimum wage are pending this general assembly. Representative Bridge Kelly (D-Cincinnati) introduced the first bill. H.B. 34 was introduced on February 12, 2019. This bill was referred to the House Commerce and Labor Committee. The bill has only received sponsor testimony. Specifically, the bill increases the state minimum wage to \$12.00 per hour beginning January 1, 2020. Then, the bill increases the statement minimum wage by \$1.00 each year following 2020, for three years. H.B. 34 also allows municipal corporations, townships or counties to establish within their respective jurisdiction a local minimum wage rate that exceeds the state minimum wage.

Following the introduction of H.B. 34, Senator Cecil Thomas (D- Cincinnati) and Senator Hearcel Craig (D- Columbus) introduced S.B. 90, which will increase the state minimum wage

and allow municipalities, townships and counties to establish a higher minimum wage requirement. S.B. 90 increases the state minimum wage to \$12.00 beginning January 1, 2020 and then increases the minimum wage by a \$1.00 each year for the following three years.

Last, Representative Kent Smith (D-Euclid) and Representative Lisa Sobecki (D- Toledo) introduced H.B. 391, which requires the state minimum wage to be raised to \$10.55 beginning January 1, 2021. This bill was referred to the House Commerce and Labor committee on November 12, 2019. The bill has not received any hearings after referral. This bill was introduced prior to the constitutional amendment petition filing with the Attorney General's office.

Although, all bills mentioned are primarily sponsored by Democrats in both Republican majority chambers, the ballot issue on increasing minimum wage may spark movement on the state minimum wage discussion.

State Occupational Licensing. Both chambers are considering legislation to allow automatic issuance of occupational licenses for license holders with an out of state license. Representative Jena Powell (R-Laura) and Representative George Lang (R-West Chester) introduced H.B. 432 and it has received two hearings in the House State and Local Government Committee. Senator Roegner (R-Hudson) and Senator McColley (R- Napoleon) introduced S.B. 246 and it has received five hearings in Senate General Government and Agency Review Committee. Both bills require a licensing authority to issue a license or government certification to an applicant if the applicant holds an out of state occupational license that allows the applicant to engage in same profession and at the same practice level as the license in Ohio. Both bills contain the restriction that the applicant's license must not have been revoked or surrendered in the previous jurisdiction due to negligence or intentional misconduct by the applicant.

Water Contaminant Legislation. Following federal trends, several bills have been introduced relating to water quality issues. Representative Wiggam (R- Wooster) introduced H.B. 427 on November 26, 2019. The bill was referred to the House Public Utilities Committee and has received one hearing for sponsor testimony.

H.B. 427 prohibits the Ohio EPA from adopting rules that require a public water system, in existence prior to the bill's effective date, to treat drinking water for secondary contaminants. The Ohio EPA may require treatment if the level of a secondary contaminant exceeds a health advisory limit established by the U.S. EPA. The bill defines a secondary contaminant as aluminum, chloride, color, copper, corrosivity, fluoride, foaming agents, iron, manganese, odor, pH, silver, sulfate, total dissolved solids, and zinc. Representative Wiggam stated in his sponsor testimony that the legislation is in response to the Ohio EPA's current rulemaking on public water systems and taste of water requirements. Representative Wiggam stated Ohio EPA's current rulemaking activities is not proscribed in the Revised Code.

H.B. 497 also was recently introduced in the House. This bill requires the Director of Ohio EPA to adopt rules establishing maximum allowable contaminant levels in drinking water and water quality standards for certain containments. H.B. 497 was introduced on February 6, 2020 and is sponsored by Representative Mary Lightbody (D- Westerville) and Representative Allison Russo (D- Upper Arlington). H.B. 497 was referred to House Health Committee and has yet to receive a hearing.

Although the two bills are entirely different, the introduction of both bills shows the Legislative engagement on the water contaminant issue. We will continue to monitor any legislative action on these bills and any new bills that are introduced.

H2Ohio Update. The biennial budget, H.B. 166, allocated \$172 million to the H2Ohio water quality plan. This funding mechanism also authorizes the Controlling Board in Fiscal Year 2021 to increase or appropriate dollars to support water protections vision and strategy. The Lake Erie Commission will coordinate with state agencies such as the Environmental Protection Agency, Department of Natural Resources, and Department of Agriculture to submit an annual report to the governor and legislature on H2Ohio spending and funds for each fiscal year.

After funding H2Ohio, Governor DeWine pivoted to establishing the strategy and implementation for the program. On November 14, 2019, Governor DeWine announced specifics of his H2Ohio plan. H2Ohio funds will help farmers implement a series of ten phosphorus reduction strategies. Implementation will begin in the Maumee watershed and eventually spread statewide. Participating farmers participate in a certification process in order to receive funds to assist in the implementation of the phosphorus reduction strategies. Utilization of the ten strategies is not a mandate.

In addition to reducing phosphorus run off, wetlands shall be established to assist in absorbing pollutants. H2Ohio also will address failing home septic systems and possible lead contamination in high-risk daycare centers and schools. The Ohio EPA will provide funds for infrastructure projects in disadvantaged communities to address these issues.

On November 22, 2019, ODNR unveiled six pending wetland projects to be created or rehabilitated through the H2Ohio water quality fund. These projects include Oak Openings Preserve in Lucas County, Sandusky Redhorse Bend in Sandusky County, Maumee Bay State Park Wetland in Lucas County, Grassy Island and Cullen Park Wetland restoration project in Lucas County, and Forder Bridge in Paulding County. On November 26, 2019, Ohio EPA announced an H2Ohio-backed project in Pomeroy, Ohio. Subsequently on December 6, 2019, Ohio EPA announced an infrastructure project in Williams County for the area of Kunkle. This project is also being funded by H2Ohio funds. On February 24, 2020, additional funds were announced for two water projects in Pike and Coshocton counties. \$1 million will be given to Pike Water Inc. to cover almost two-thirds of the cost of a \$1.6 million project involving the construction of 60,000 feet of drinking water lines. The remaining funding of \$500,000 will be put toward connecting the village

of West Lafayette to the city of Coshocton's drinking water system. Several more project will likely be announced.

In addition, the legislature is grappling with a future plan for H2Ohio through the debate and discourse over S.B. 2 and H.B. 7. S.B. 2 creates the Statewide Watershed Planning and Management Program under the administration of the Director of Agriculture. This program requires that the Director categorize watersheds and appoint at least one watershed planning and management coordinator to each categorized watershed. Whereas, H.B. 7 creates the H2Ohio Trust fund and the H2Ohio Advisory Council to disburse dollars from the trust fund for water quality programs. H.B. 7 also creates the H2Ohio Endowment Board, which allows the fund to accept donations, land, title to land and federal dollars. Both bills are pending in the opposite chambers and S.B. 2 has been amended from its original version passed in the House.

H.J.R. 2 – Prohibiting Certain Foreign Investment in Critical Infrastructure Located in Ohio. A joint resolution sponsored by Representatives Jamie Callender (R-Concord) and Don Manning (R-New Middletown), H.J.R. 2 seeks to place a constitutional amendment on the 2020 General Election ballot. Joint Resolutions require 3/5<sup>th</sup> majority votes by both chambers of the General Assembly to pass, meaning 60 votes in the House and 20 votes in the Senate. The proposal prohibits foreign businesses and individuals from having majority ownership interest in critical infrastructure located in Ohio. The resolution defines what “critical infrastructure” is subject to the resolution’s requirements and includes projects like power plants (coal, nuclear, and natural gas), water treatment plants, intrastate electric transmission lines, and intrastate natural gas pipelines. It also requires divestment of foreign investment in any critical infrastructure determined to be majority owned or controlled by foreign investment. Thus far, the House Energy and Natural Resources Committee has only held one hearing for sponsor testimony on H.J.R. 2.

#### 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. However, a draft is in the works between interested parties, especially those involved with the Ohio Alliance for Civil Justice. The draft will likely be released soon for review. However, timeline for introduction is still unknown.

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 this general assembly on May 21, 2019 as H.B. 251. H.B. 251 was referred to the House Civil Justice Committee. The House Civil Justice Committee conducted three hearings and then adopted a substitute bill, which was a compromise amongst stakeholders.

The introduced language changed the statute of limitations from eight years to three years for causes of action related to agreements in writing and changed the statute of limitations from six years to three years for causes of action related to agreements not in writing. Sub. H.B. 251 changes the statute of limitations from eight years to six years for causes of action related to agreements in writing and changed the statute of limitations from six years to four years for causes of action related to agreements not in writing. Additionally, the bill explicitly states that credit card accounts and claims for an account stated fall under a six year statute of limitations. The bill also clarifies that the borrowing statute in R.C. 2305.03(B) does not apply to contract actions.

H.B. 251 passed the Ohio House unanimously. Then, the bill was referred to the Senate Judiciary Committee. The committee has held three hearings on the bill thus far. No one has testified in opposition; however, Senator Coley asked several witnesses about the benefit to society that this bill provides. No other committee member has shown concerns with the bill. Conversations and interested party meetings continue around lowering the statute of limitations closer to the three years as in the original bill language. But, no compromise on lower the statute of limitations has been reached.

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.

On June 18, 2019, Representative Brent Hillyer (R-Uhrichsville) introduced H.B. 249. H.B. 249 will grant a victim of sexual misconduct committed during a specified period by a physician employed by a land grant university a right of action against the university. This bill has

received six hearings in the House Civil Justice Committee. We will continue to monitor the status of this bill as it moves through the legislative process.

Another bill was recently introduced to remove the cap on noneconomic damages for rape and assault victims. Representative Kristin Boggs (D- Grandview) and Representative Allison Russo (D- Upper Arlington) introduced H.B. 518 on February 19, 2020. H.B. 518 is not assigned to a committee yet. Specifically, H.B. 518 removes the cap on compensatory damages for the noneconomic loss that is recoverable in a tort action brought by a victim of rape, felonious assault, aggravated assault, assault, or negligent assault asserting any claim. We will continue to monitor these legislative efforts.

#### V. Political Updates.

2020 will be another exciting and busy election year due to the presidential general election in November 2020. Ohio's primary election is being held on Tuesday, March 17, 2020. Most Representatives have a primary opponent. However, most incumbent Senators are unopposed in their primary elections and are looking ahead to their general races. The end of year 2019 campaign finance report revealed the fundraising efforts of the current Supreme Court Justices Kennedy and French. Justice Kennedy raised \$660,000 and Justice French raised \$437,000. Both Justices face an opponent in the general election. Justice French's opponent, Judge Jennifer Brunner, raised \$59,851. Justice Kennedy's opponent, Judge John O'Donnell, raised \$15,935. If Justice Kennedy and Justice French are both not successful in their reelection efforts, the Court's composition could drastically change. These races are key to the business committee at-large and must be monitored closely.

Not only are the Ohio Supreme Court races important to the business community, these races could have lasting effects on the congressional redistricting efforts after the 2020 census. Several news reports have shown that national groups are targeting statehouse races in Ohio. The National Democratic Redistricting Committee is supported and led by Barack Obama and Eric Holder. Specifically, these efforts are aimed to change the majority at the Statehouse to have the long term effects on the congressional district map in the future years. If the Democratic Party gains two more seats on the Ohio Supreme Court and gains seats in both chambers of the Ohio legislature, the Democrats could control the congressional redistricting during the brand new process enacted through the ballot initiative in 2018. The current composition of the Court could be more favorable if the congressional maps are challenged after redistricting. If the composition changes and the Republicans maintain their majority in the Legislature, the congressional redistricting process could be an uphill battle to maintain the Republican majority in the congressional districts. The Ohio Supreme Court has a definitive role on how the congressional districts will be drawn and accepted for the 2022 election. Therefore, the November 2020 election is critical and could permanently change the political and business climate in Ohio.

VI. 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. Briefing on the motions for judgment on the pleadings was completed on September 6, 2019. A record hearing has been scheduled for January 28, 2020 before Judge Zouhary. Prior to the hearing, the court will forward questions to the parties which will serve as the agenda for the hearing.

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 29, 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.* On August 28, 2019, Defendant filed a motion to separate and stay Plaintiff's claims for actual and constructive fraudulent transfer. The State opposed this motion. To date, the Court has not ruled on it.

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 November 8, 2019, the court had not decided these discovery disputes. Several subpoenas *duces tecum* have been served on third parties.

On September 12, 2019, the state moved for leave to file an Amended Complaint, which was granted. On September 16, 2019, Purdue Pharma filed a notice of suggestion of bankruptcy and automatic stay of proceedings. The State moved to server the claims against Purdue Pharma. The case is proceeding against the remaining defendants.

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.

On July 25, 2019, the Court entered a stipulated protective order.

Several non-party defendants that have been served with subpoenas (such as the Office of Budget and Department of Public Safety) have moved to quash and for protective orders.

Trial is scheduled to commence on October 19, 2020.

## 5. Global Opioid Settlement

On October 21, 2019, Distribution companies AmerisourceBergen, McKesson, Cardinal Health and drug manufacturer Teva Pharmaceuticals reached a \$260 million settlement with the adverse parties in the combined cases to be heard in Cleveland, Ohio. The distribution companies will pay the counties \$215 million, while Teva will pay \$20 million and donate \$25 million to Suboxone. After the settlement amounts were announced, Governor DeWine and Attorney General Yost conducted an informal meeting with local and county leaders to discuss the settlement funds being spread across the counties. Attorney General Yost had previously pressed the Legislature for a statutory change to allow the Attorney General's office to control cases that affect the public of Ohio. Even those efforts failed, Attorney General Yost still pressed for the state's involvement to allow all counties to receive sufficient funds and avoid disparity among separate county suits. After several months of these negotiations, Governor DeWine announced a framework for how the dollars may be distributed. On February 13, 2020, Governor DeWine stated the preliminary proposal will give 30% to local governments upfront and 15% to the state. The remaining 55% will go into a trust controlled largely by local entities, with the proceeds of

the trust supporting ongoing efforts to battle addiction. Governor DeWine also stated more of the state's portion may be allocated to the trust to help battle addiction issues in the Ohio in the future. The counties and municipalities involved have until March 6<sup>th</sup> to agree to the "One Ohio" plan. Attorney General Yost and Governor DeWine have publicly stated their optimism for the plan to be adopted.

The state of Ohio is still pursuing separate lawsuits against drug makers and distributors, including Cardinal Health in Ross and Madison counties. These suits are set for trial later this year.

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 on July 29, 2019 and denied on September 17, 2019.

VII. Update to the Tax Counsel’s Report.

Tax Counsel Justin Cook provided an update from the September Tax Counsel’s Report.

A. New Legislation.

S.B. 26. S.B. 26, signed into law by Governor DeWine on November 6th, restored the business income deduction for attorneys and lobbyists. Earlier this year, H.B. 166 had amended the definition of “Business Income” in R.C. 5747.01(B) to incorporate the concept of “Eligible Business Income” which, going forward, would have been the type of income subject to the \$250,000 deduction and 3% flat tax rate. H.B. 166 defined Eligible Business Income to exclude income from “a trade or business that performs” legal services provided by an active Ohio licensed attorney or in-house corporate counsel, or from businesses that perform lobbying activities.

B. Proposed Legislation.

S.J.R. 3. This resolution proposes an amendment to Ohio’s constitution. The amendment would require a two-thirds vote in both the Ohio House and Senate to approve any increase in income tax rates.

H.B. 440. This bill was introduced in December of 2019 to eliminate sales tax on employment services where the individuals providing temporary labor operate manufacturing equipment. It also would eliminate sales tax on supplies and services to clean and maintain manufacturing equipment.

H.B. 449. H.B. 449 was introduced in the House on December 17, 2019 and referred to the House Ways and Means Committee on January 28, 2020. Under this bill, transferring more than 50% ownership in a pass-through entity that owns real property would be subject to real estate conveyance fees. The proposed legislation targets transactions where real estate is dropped into a newly formed entity and ownership in the new entity is transferred to the buyer (as opposed to directly conveying the underlying real estate). *See also Columbus City Schools Bd. of Edn. v. Franklin County Bd. of Revision*, Slip Opinion No. 2020-Ohio-353.

H.B. 467. Ohio imposes a withholding tax on non-residents’ distributive shares of income from a pass-through entity. The current withholding tax applies at either 8.5% or 5%, depending on the type of non-resident investor. The proposed bill would reduce the withholding rate to 4% across the board.

C. Judicial Actions.

Columbus City Schools Bd. of Edn. v. Franklin County Bd. of Revision, Slip Opinion No. 2020-Ohio-353. Palmer House Borrower, L.L.C. (the “LLC”) owned a 264-unit apartment complex located in New Albany (the “Apartment Complex”) and its related personal property. For property tax purposes, the Apartment Complex was initially valued at \$16,000,000 for tax year 2015. That same year, the LLC’s membership interests were sold for \$35,250,000. The local school board sought an increase in the Apartment Complex’s assessed value based on the LLC’s sale price. In its analysis, the Court noted the purchase and sale agreement was drafted as the sale of commercial real estate, and the transaction only took the form of an entity transfer due to an explicit provision in the agreement allowing seller to elect the “drop down LLC” form after execution of the agreement. As a result, the Court held that it was reasonable to treat the sale price of the LLC as the sale price of the Apartment Complex. Accordingly, it affirmed the BTA’s substantial increase in taxable value.

Karvo Paving Co. v. Testa, 2020-Ohio-371. The Ninth District Court of Appeals recently issued a decision in *Karvo Paving Co. v. Testa*, 9th Dist. Summit No. 28930, 2019-Ohio-3974 dealing with three separate claims for sales and use tax exemption (i.e., purchase for resale exemption, affiliated entity exception to employment services, and casual sale exemption). This decision is now on review to the Ohio Supreme Court for a jurisdictional issue. The Department argues the case should have been heard in the Tenth District Court of Appeals (as opposed to the Ninth).

Rockies Express Pipeline, L.L.C. v. McClain, Slip Opinion No. 2020-Ohio-410. The Ohio Supreme Court held that taxpayer’s gross receipts from transporting natural gas that entered taxpayer’s pipeline in Ohio and exited the pipeline in Ohio were taxable. Such receipts were not derived wholly from interstate activity.

Nissan North America, Inc. v. McClain, BTA No. 2016-1076 (October 9, 2019). Nissan North America was a very favorable decision for taxpayers. This case involved a claim for retroactive consolidated elected status for purposes of Ohio commercial activity tax (“CAT”). During periods under audit, Taxpayer engaged in many transactions with its related companies. Because Taxpayer did not have a consolidated status election in place, Tax Commissioner assessed CAT on a very large amount of Nissan’s intercompany transactions. Taxpayer subsequently filed a request with Tax Commissioner for retroactive consolidated status. Tax Commissioner denied Taxpayer’s request for retroactive relief, and Taxpayer appealed. In its analysis, the BTA noted that administrative regulations indicate Tax Commissioner may grant retroactive relief, but the regulations do not provide any specific requirements or guidelines for doing so. See Ohio Adm. Code 5703-29-02. Ultimately, the BTA agreed with Taxpayer and found Tax Commissioner’s denial of retroactive relief was appealable. Applying an abuse of discretion standard, the BTA reversed Tax Commissioner’s decision, finding his denial of retroactive relief unreasonable.

City of Athens et al. v. Testa, 2019-Ohio-277, 119 N.E.3d 469 (2019). The case involves the legality of H.B. 49, which established a system for centralized collection of municipal net profit taxes. While an Ohio Court of Appeals upheld the law, this case is on appeal to the Ohio Supreme Court.

D. Administrative Actions.

Information Release ST 1999-01. The Department of Taxation (the “Department”) revised Information Release ST 1999-01, attached, relating to the sales tax treatment of computer cabling. The Board of Tax Appeals recently held that CAT-5 and CAT-6 data cabling installed in a building are not “business fixtures.” As such, a contract for the sale and installation of this cabling in a commercial building was held to be a “construction contract” and exempt from Ohio sales and use tax. See *Nationwide Mut. Ins. Co. v. McClain*, BTA No. 2018-313, 2019 WL 5682231 (Oct. 22, 2019). The attached information release indicates the Department will abide by the BTA’s decision and apply it retroactively in many instances.

O.A.C. § 5703-29-02. The Department recently proposed changes to O.A.C. § 5703-29-02 in a reaction to the BTA’s recent decision in *Nissan North America, Inc. v. McClain*, BTA No. 2016-1076 (October 9, 2019), described above. The proposed changes to O.A.C. § 5703-29-02 would require a taxpayer to request retroactive relief prior to being contacted for a CAT audit. By comparison, in *Nissan*, the taxpayer was already under audit when they requested relief. The proposed changes would also limit relief to two instances. A taxpayer may seek relief by demonstrating its failure to file a timely election was due to clerical error. Alternatively, a taxpayer may also seek relief through a voluntary disclosure program.

## ATTORNEY-CLIENT PRIVILEGED MEMORANDUM

**To:** Ryan Augsburger, Ohio Manufacturers' Association

**From:** Bricker & Eckler LLP (Jack Rosati and Chris Slagle)

**RE:** **House Bill 380 – Potential Adverse Impact on Ohio Manufacturers of Proposed Amendment to O.R.C. 4113.61 Voiding the Standard Construction Contract Payment Process and Establishing a Punitive Interest Rate.**

**Date:** February 24, 2020

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### **How would HB 380 Modify Ohio Construction Law and What are the Potential Negative Impacts on Ohio Manufacturers?**

While it has largely flown under the radar, HB 380, as most recently amended, would require that the owners of private construction projects (including manufacturers building, improving, or maintaining facilities in Ohio) pay contractors within 30 days of receiving an application for payment from the contractor. Late payments would be subject to a punitive 18% interest rate. While many manufacturers will see the potential problems with this ill-conceived legislation on its face, it may be helpful to delineate some of the major concerns.

- 1) This legislation is a solution in search of a problem. Virtually every private construction contract is a freely negotiated agreement that sets forth the payment process in great detail and sets an agreed upon, reasonable interest rate for late payments. No one is holding a gun to the heads of the contractors to sign an unfair agreement. This is particularly so in today's construction marketplace where it is a seller's market. One of the pillars of a free market economy is freedom of contract. It is not appropriate for the legislature to negotiate contract terms by statute that provide a huge potential windfall to one of the parties at the expense of another party, who may not be well versed in Ohio statutory law. As will be elaborated below, if this legislation passes, a manufacturer could negotiate a contract with reasonable payment terms and a reasonable interest rate, and comply with those contract obligations, only to later find out that they have violated the law and now owe 18% interest.
- 2) The foregoing concern is compounded by the fact that the bill fails to take into account the standard payment processes that currently exist under virtually every industry standard construction contract. Every such contract provides that payment is not due until the architect or engineer has reviewed the contractor's payment application and certified that payment is due in the amount sought by the contractor.

For example, under AIA Document A201 – 2017, General Conditions of Contract, payment does not become due until the architect or engineer has reviewed the payment application submitted by the contractor, made sure that all the mechanics lien wavers are included, and has reviewed the work in place to confirm that the work has progressed to the degree represented by the contractor. Usually the application tracks a schedule of values or break down of the various portions of the project, the cost associated with each portion, and the percentage of completion for each portion. (See AIA Document A201 - 2017, Sections 9.2, 9.3, and 9.4, attached for convenience). Importantly, certification can be withheld, in whole or in part, if there are issues that need to be resolved (*Id.* Section 9.5). The timing of payment is set in the Agreement (*Id.* Section 9.6). If payment is late, the Contractor can make a claim for late payment plus interest at the negotiated rate or can stop performance of the Work (*Id.* Section 9.7). If HB 380 becomes law and if the agreed upon time for payment in the contract exceeds 30 days, an owner who is not in breach of its contract could still be penalized for exceeding the statutory deadline for payment.

- 3) HB 380 is not just a trap for unwary Owners who negotiate a contract in good faith, comply with its terms, and then have an 18% penalty sprung upon them. It will also have a chilling effect on economic development generally, and will have a negative impact on the attractiveness of Ohio to major manufacturers who might come to Ohio, meaning a potential loss of jobs not only for those who might be employed by the manufacturer, but by those who would have been employed to perform the construction. Far from addressing a real, pervasive problem, HB 380 will, in fact, create far worse and very real problems for Ohio manufacturers.

## ARTICLE 9 PAYMENTS AND COMPLETION

### § 9.1 Contract Sum

§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

### § 9.2 Schedule of Values

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

### § 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

### § 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

**§ 9.4.2** The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

### **§ 9.5 Decisions to Withhold Certification**

**§ 9.5.1** The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

**§ 9.5.2** When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

**§ 9.5.3** When the reasons for withholding certification are removed, certification will be made for amounts previously withheld.

**§ 9.5.4** If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

### **§ 9.6 Progress Payments**

**§ 9.6.1** After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

**§ 9.6.2** The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

§ 9.6.5 The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

### § 9.7 Failure of Payment

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

**To: OMA Government Affairs Committee**  
**From: Ryan Augsburger / Rob Brundrett**  
**Re: Energy Policy Report**  
**Date: March 4, 2020**

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## **Overview**

2019 was dominated by the controversial House Bill 6, far-reaching electricity regulation. The bill gained legislative approval in mid-summer, then survived an ineffective referendum effort. In the final days of 2019, the federal government issued a ruling, standing HB 6 on its head.

Other market distortion bills are pending in the legislature and energy policy will continue to be a top issue area for the entire 2019-2020 legislative session.

## **House Bill 6 Becomes Law**

Recall HB 6 which was rocketed through the General Assembly last year, provided subsidies for the owners of uneconomic power plants, namely the two nuclear power plants. The bill also notably provided a subsidy to the power plants owned by the Ohio Valley Electrical Corporation (OVEC). The bill also largely orders a stop to Ohio's utility-administered energy efficiency programs and renewable energy standards.

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.

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. Contact staff for extensive analysis.

## **HB 6 Implementation**

The provisions of HB 6 became effective in late-October. The bill delegated immense new authority and price-setting to the PUCO and other state agencies. The OMA Energy Group has been participating in those proceedings to protect manufacturing interests.

## **FERC Decision Tips HB 6 on its Head**

On December 19, the Federal Energy Regulatory Commission (FERC) issued an order to protect competitive wholesale electricity markets from subsidized power.

The order, which modifies and expands the Minimum Offer Price Rule (MOPR), was originally designed to prevent state subsidization of new natural gas generators. Under FERC's recent order, the expanded MOPR also applies to nuclear, coal, and renewable power plants that receive state subsidies. FERC did this to level the playing field.

The FERC order tips House Bill 6 on its head, according to our attached OMA analysis. OMA Energy Technical Consultant John Seryak of RunnerStone LLC warned of such market consequences last summer.

## **FES Bankruptcy**

A settlement between FE, FES, and the stakeholders was finalized in late February. Energy Harbor now owns the nuclear power plants and other generating facilities formerly owned by FirstEnergy. In the wake of the FERC ruling, they must determine next steps.

In 2019, the power plant owners together with concerned local government leaders had 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.

### **Post HB 6 Legislative Activity**

In the months since HB 6 was completed both the Ohio House and Ohio Senate appear poised to do more. Unfortunately, customer protection does not seem to be in store. Instead we are monitoring new proposals that will protect utilities and erode Ohio's deregulation law.

#### **House Bill 247**

Months after lawmakers gave utilities and other interests the opportunity to force captive ratepayers to pay for new generation, HB 247 would go further in allowing distribution utilities to offer services beyond distribution. It seems unnecessary and anti-market. One utility is aggressively lobbying for this bill and has asked their large manufacturing customers to pen a letter of support. Don't be fooled. The OMA has been communicating extensively about this threat. The OMA opposes HB 247.

#### **House Bill 246**

Is a placeholder bill to modernize the laws governing the PUCO and OCC. There has been a lot of speculation on what the bill may contain. Too early to know for certain. No action since last report.

#### **House Bill 104**

Introduced by Representative Dick Stein (R-Norwalk), HB 104 is intended to spur research and development of molten salt nuclear reactors in Ohio via state tax dollars. The bill also advances Ohio as a hub for radioactive wastes. The OMA has written the primary sponsor to convey concerns. Many other Republican legislators have co-sponsored this unwise legislation.

#### **House Joint Resolution 2**

Representatives Don Manning of Youngstown and Jamie Callender of Lake County recently provided proponent testimony on HJR 2 to place on the ballot an amendment to the Ohio Constitution to ban foreign interests from owning critical energy infrastructure. The move dovetails with the pro-HB 6 China-bashing campaign. Some believe the resolution is political retribution to referendum proponents.

In today's global economy, a state provision against foreign ownership seems unwise. Precedents abound for other commercial activity. For example, foreign interests invest heavily in manufacturing businesses in Ohio. No action since last report. Seems to have cooled down.

#### **Senate "Comprehensive" Energy Reform**

In mid-October Senate Energy & Public Utilities Chairman Steve Wilson (R-Maineville) signaled the Senate would focus on grid reliability as a central component in the Senate's comprehensive energy reform package. This is a curious, albeit familiar refrain from a policymaker since the grid is more reliable than ever today. The OMA fielded testimony on Tuesday, March 2.

### **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 stepped down at the end of the year, but his successor is expected to continue the stance perhaps more forcefully. Also of note Ohio-based coal company Murray Energy filed for bankruptcy protection in November.

### **PJM on Resiliency and Power Auctions Delayed**

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 in August 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. OVEC faces an apparent dilemma from the FERC MOPR decision.

### **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. The OMA supports a legislative correction for all forms of onsite generation. No further action.

**Energy Standards Legislation**

After six years of back and forth policy battles, HB 6 dismantled the standards for efficiency and renewable energy. Siting requirements for large scale wind generation projects were not part of the debate. HB 6 will now give monopoly distribution utilities an unfair advantage in building new renewable energy at captive customers expense. Energy efficiency programs are being wound down in short order, so manufacturers who are using rebates will want to claim them soon.

## Energy

### **EIA: Wind Surpasses Hydroelectric as Electricity Producer February 28, 2020**

In 2019, U.S. annual wind generation exceeded hydroelectric generation for the first time, according to a **report** this week from the U.S. Energy Information Administration. The agency notes that “wind capacity additions tend to come online during the fourth quarter of the year, most likely because of tax benefits.” 2/26/2020

### **Energy Efficiency Rebate Applications Due by September 30 February 28, 2020**

The Public Utilities Commission of Ohio is giving Ohio’s investor-owned utilities until Sept. 30 to accept applications for energy-efficiency rebates. The utilities will then have until Dec. 31 to wind down their energy efficiency programs, as required by House Bill 6. The elimination of the efficiency programs was used as justification for HB 6’s above-market charges, which are set to subsidize select coal, nuclear and solar power plants.

Manufacturers planning or implementing an energy efficiency project should file their rebate application as soon as possible — certainly no later than Sept. 30. The PUCO order applies to Ohio’s four investor-owned utilities: AEP Ohio, Duke, DP&L, and FirstEnergy.

The cost of the efficiency programs may persist into 2021 and be charged to customers via a rider. Manufacturers should consider opting out of this charge-with-no-benefit, as allowed by law. Contact OMA energy engineer **John Seryak** with questions or for assistance. 2/27/2020

### **February Natural Gas Price Hits Lowest Level in Nearly 20 Years February 21, 2020**

As noted last week in the **OMA’s Energy Guide**, natural gas prices are low — and they keep dropping. The U.S. Energy Information Administration **reports** that on Feb. 10, the near-month natural gas futures price closed at \$1.77 per MMBtu, the lowest February closing

price (in real terms) for the near-month contract since at least 2001. 2/17/2020

### **FirstEnergy CEO Expresses Sour Grapes on Deregulation February 14, 2020**

The CEO of FirstEnergy recently told financial analysts that he is ready to assist Ohio lawmakers in developing a new energy policy to subsidize nuclear power plants since the Federal Energy Regulatory Commission’s (FERC) December 2019 order seems to prevent the subsidies provided by House Bill 6.

As **reported** by *Utility Dive*, FirstEnergy’s Chuck Jones said state policymakers are generally unhappy with the results of utility deregulation, including PJM’s market system. Yet numerous studies detail how deregulation has successfully driven down wholesale electric power prices in Ohio. What’s really going on? To find out, join the **OMA Energy Committee meeting** on March 12.

If you haven’t already done so, check out the **OMA analysis** of FERC’s order on subsidized power and what it means for manufacturers. The order is intended to protect the marketplace via fair rules to foster competition. 2/13/2020

### **Crain’s Spotlights OMA Study on FERC Order February 14, 2020**

In case you missed it, **Crain’s Cleveland Business** last weekend published a **story** highlighting the OMA study of FERC’s recent order. Crain’s wrote: “Federal regulators have taken issue with Ohio’s subsidies for the Davis-Besse and Perry Nuclear plants — and may shut the plants out of the power grid’s capacity auctions.”

Through its December order, FERC expanded its Minimum Offer Price Rule (MOPR), which was originally intended to prevent state subsidization of new natural gas generators. Under FERC’s new order, the MOPR would apply to nuclear, coal and renewable power plants that receive state subsidies in order to maintain a competitive market. 2/10/2020

## **Be Wary of Power Generators Touting States' Rights** **February 14, 2020**

In the weeks since FERC issued its December 2019 order related to unfair subsidies for some power generators, numerous organizations have shared their reactions and filed appeals.

Todd Snitchler, a former PUCO chair and the current president of the Electric Power Supply Association (EPSA), authored **this column**, predicting that subsidy supporters and their allies will employ spin and accuse the federal government of overreach — saying the FERC is denying states of their due discretion to determine their own fuel mix. The fact is, states willingly surrendered that element of a planned economy in favor of a competitive market. Snitchler wrote: “Since restructuring, states have relied on, and benefited from, regional power markets — utilizing excess supply in other areas when their own supply may be insufficient — to ensure reliability at the lowest possible cost. Now looking to double-dip into taxpayer pockets and the market, certain generators have tried to convince politicians to layer one-off policies onto a regional/wholesale framework.” *2/13/2020*

## **Friedeman Re-Appointed to PUCO** **February 7, 2020**

Gov. Mike DeWine has re-appointed Lawrence Friedeman as commissioner on the Public Utilities Commission of Ohio (PUCO). Friedeman is the commission's sole Democrat. His new term will run from April 11, 2020 through April 10, 2025.

The PUCO's five commissioners regulate utility services, including electric and natural gas companies. *2/6/2020*

## **Renewables Expected to Surpass Coal, Nuclear in 2021** **February 7, 2020**

The U.S. Energy Information Administration **predicts** that the nation's electricity generation from renewable sources — such as wind, solar, and hydro — will surpass nuclear and coal generation next year. Nationwide, natural gas is expected to remain the leading source generation for the next quarter-century. *2/3/2020*

## **What FERC's Order on State-Subsidized Power Means for Manufacturers** **January 31, 2020**

More than a month after the Federal Energy Regulatory Commission (FERC) issued its landmark order to protect competitive wholesale electricity markets from subsidized power, stakeholders are gaining clarity into the outcome.

The order, which modifies and expands the Minimum Offer Price Rule (MOPR), was originally designed to prevent state subsidization of new natural gas generators. Under FERC's recent order, the expanded MOPR also applies to nuclear, coal, and renewable power plants that receive state subsidies. FERC did this to level the playing field.

The FERC order tips House Bill 6 on its head, according to **new OMA analysis**. In 2019, Ohio lawmakers rushed HB 6 through the legislative process, forcing Ohioans to subsidize two nuclear power plants, as well as select coal and renewable power facilities. OMA Energy Technical Consultant John Seryak of RunnerStone LLC **warned** of such market consequences last summer. Members are invited to **register** for the OMA Energy Committee's March 12 meeting for further analysis of this developing situation. *1/30/2020*

## **OMA Looks at Ohio's Energy Opportunities (and Risks)** **January 31, 2020**

In **an editorial** at Cleveland.com, OMA Vice President and Managing Director Ryan Augsburger spotlights the surge in Ohio's natural gas production and how it's benefiting manufacturers — especially as the fuel is increasingly used for electricity generation. But Augsburger says the Buckeye State's “electricity advantage is under siege as investor-owned utilities chip away at customer savings” — and as competitive gas-fired power generation projects are canceled due to the recent approval of House Bill 6, the nuclear bailout law. He reminds readers that the **OMA Energy Group** is working to “ensure access to the most economical sources of energy, while promoting efficiency that lowers costs for

manufacturers and strengthens grid resiliency." 1/27/2020

### **EIA: Only 22% of World's Electricity Will be Coal-Fired by 2050** **January 31, 2020**

Renewable sources will produce nearly half of the world's electricity generation by 2050, **according** to the U.S. Energy Information Administration. Coal-fired generation is expected to fall to 22% of the globe's electricity mix over the next 30 years. As of 2018, roughly half of **Ohio's electricity generation** was coal-fired and just 3% was classified as renewable. 1/27/2020

### **Four Finalists Nominated for Open PUCO Seat** **January 24, 2020**

The Public Utilities Commission of Ohio (PUCO) Nominating Council has submitted the names of **four finalists** to be considered by Gov. DeWine to fill a five-year PUCO term that begins April 11, 2020. Republican Gerardo Torres of Loveland was the top vote-getter. The governor has 30 days to make the appointment or request a new list. His pick is subject to Senate approval. The PUCO's five commissioners regulate utility services, including electric and natural gas companies. 1/23/2020

### **Will Nuke Plant Owners Ask for Even More Subsidies?** **January 17, 2020**

The future is uncertain for Ohio's two nuclear power plants — with or without the ratepayer-funded subsidies provided by House Bill 6. That's the takeaway from comments this week by PJM Interconnection's independent monitor, Joseph Bowring, president of Monitoring Analytics.

Hannah News Service **reports** that Bowring told the Ohio Consumers' Counsel Governing Board that Ohio's nuclear plants "could hemorrhage 10% to 20% of their revenue" due to a **December action** by the Federal Energy Regulatory Commission (FERC). Bowring defended FERC's decision to protect the competitive market. In its ruling, the commission

singled out Ohio as a leading proponent of energy subsidies.

If Energy Harbor Corporation (formerly FirstEnergy Solutions) experiences such a loss in revenue due to FERC's action in response to HB 6, Bowring warned that the utility could return to the General Assembly asking for additional subsidies. OMA energy engineers **largely anticipated** the FERC ruling to protect wholesale electricity markets. As early as last June, OMA recognized that wholesale market rules could open the door to potential **excessive profits** for the nuclear power plant owners on the backs of Ohio customers. 1/15/2020

### **Another Rider to Hit Ohio's Power Bills** **January 17, 2020**

Six months after the passage of House Bill 6, the Public Utilities Commission of Ohio (PUCO) this week gave approval to FirstEnergy utilities to impose a **new decoupling rider** on customer bills. Under the mechanism, if annual revenue in a given calendar year is less (or greater) than 2018's baseline revenue, FirstEnergy utilities will charge (or credit) the difference to customers through the decoupling rider. Why was 2018 used as the baseline? Because 2018 was among the warmest summers in history. Therefore, 2018 produced some of the highest revenue for the three FirstEnergy utilities. The rider will guarantee FirstEnergy companies the same amount of revenue received in 2018.

The PUCO this week acted on several other issues that will affect manufacturers' power bills. Make sure you are participating in the **OMA Energy Group** for the most comprehensive updates on PUCO activity. 1/16/2020

### **EIA: Wholesale Electricity Prices Fell 15%-30% in 2019** **January 17, 2020**

Wholesale electricity prices at major U.S. hubs were generally lower in 2019 than in 2018, except in Texas. The U.S. Energy Information Administration **reports** that average prices were 15% to 30% lower at most hubs — including the PJM marketplace that serves Ohio. Much of the price decline was due to lower natural gas prices. 1/14/2020

## **Wind, Solar Will Account for Much of 2020's New Electricity Generation** January 17, 2020

According to the U.S. Energy Information Administration's **latest inventory** of electric generators nationwide, 42 gigawatts (GW) of new capacity additions are expected to start commercial operation in 2020. Solar and wind represent almost 32 GW (76%) of these additions. Scheduled capacity retirements (11 GW) for 2020 will primarily be driven by coal (51%). 1/15/2020

## **Federal Regulators Crack Down on Power Subsidies** January 10, 2020

Late last year, regulators at the Federal Energy Regulatory Commission (FERC) issued a long-anticipated ruling to prevent subsidized power generation from distorting the wholesale market for electricity. In the PJM marketplace that serves Ohio customers, the ruling means the owners of Ohio's two nuclear power plants will encounter difficulty in selling their electric capacity into the wholesale market.

See **FERC's press release** on the ruling, which will likely be challenged in court. OMA energy experts are still reviewing the complex FERC action, but our initial read suggests the minimum offer price rule (MOPR) is a giant stick against state subsidies. The ruling appears to force generators to decide whether to take a state subsidy or freely participate in the wholesale market.

Ironically, Ohio's recently enacted House Bill 6 — which requires businesses and residential customers to subsidize nuclear generation, as well as select coal and renewable generation assets — will now deprive the nukes, OVEC, and the solar projects from competitive revenue in the wholesale market. This will make the subsidized resources either unviable or will shift more costs to ratepayers — depending on how the federal rule plays out.

Regardless, it appears that major customer impacts are in store. Plan to join the **OMA Energy Committee meeting** on March 12, after the dust has settled, to learn what this means for your business. 1/9/2020

## **OMA Energy Counsel Appointed to PUCO Nominating Council** January 10, 2020

The OMA's energy counsel, **Kim Bojko** of Carpenter Lipps & Leland LLP, was recently appointed to the Public Utilities Commission of Ohio (PUCO) Nominating Council. The PUCO's five commissioners regulate utility services, including electric and natural gas companies. Meanwhile, the PUCO is searching for a new commissioner to fill a five-year term that begins April 11. Gov. DeWine will soon select the new commissioner from a list of finalists offered by the nominating council. 1/6/2020

## **Study: Fracking Ban Would Cost Ohio 700,000 Jobs, \$245B Over Just Four Years** January 3, 2020

A **new study** by the U.S. Chamber's Global Energy Institute shows **Ohio** would lose 700,000 jobs and \$245 billion in GDP over just four years if a ban on fracking were imposed in the U.S. The report is part of the Institute's "**Energy Accountability Series.**"

According to the study, if such a ban were imposed in 2021, the average Ohioan would see their cost of living inflated by more than \$5,600 by 2025, while Ohio's total household income would fall \$119 billion. State and local governments across Ohio would experience a loss of \$20.6 billion in tax revenue.

Nationwide, a fracking ban would eliminate 19 million jobs and reduce U.S. GDP by \$7.1 trillion. Natural gas prices would leap by 324%, causing household energy bills to more than quadruple. By 2025, petroleum products such as gasoline and diesel would cost roughly double what they are today. 1/2/2020

## **Lower Electricity Generation Costs for 2020?** January 3, 2020

OMA Connections Partner Scioto Energy **reports** that Ohioans can expect lower costs for electricity generation in 2020, thanks to a 13% drop in the wholesale electricity market from this time last year. This is the result of continued strong natural gas production, as well as gas storage inventories returning to healthy levels.

While generation costs are going down, distribution and transmission costs are going up. Scioto Energy's experts say Ohio's controversial

House Bill 6, which is now law, will bring new charges to your utility delivery invoice in order to provide generous subsidies to nuclear and coal plants. These charges, however, are not expected to hit Ohio consumers until 2021. *1/2/2020*

**EIA Estimates CO2 Emissions Fell 2.2% in 2019**  
**January 3, 2020**

The U.S. Energy Information Association **forecasts** a 2.2% decrease in CO2 emissions for 2019, once all the data is collected for the past 12 months. The decrease is due almost solely to fewer emissions from coal. This is especially noteworthy considering the U.S. continues to **set records** for energy use. *1/2/2020*

## Energy Legislation

Prepared by: The Ohio Manufacturers' Association  
Report created on March 3, 2020

- 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. 10/22/19  
*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:* 9/17/2019 - House Energy and Natural Resources, (First Hearing)  
*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:* 9/17/2019 - House Energy and Natural Resources, (First Hearing)  
*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:* 2/19/2020 - **SUBSTITUTE BILL ACCEPTED**, House Energy and Natural Resources, (Fourth 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:** 10/23/2019 - House Public Utilities, (Third 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>
- HB401**      **TOWNSHIP REFERENDUM - WIND FARMS** (REINEKE W) To require inclusion of safety specifications in wind farm certificate applications, to modify wind turbine setbacks, and to permit a township referendum vote on certain wind farm certificates.  
**Current Status:** 12/3/2019 - House Energy and Natural Resources, (Third Hearing)  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-401>
- HB499**      **MOTOR FUEL TESTING PROGRAM** (KELLY B, LANG G) To authorize a county to implement a motor fuel quality testing program.  
**Current Status:** 2/19/2020 - Referred to Committee House Transportation and Public Safety  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-499>
- HJR2**      **CRITICAL INFRASTRUCTURE PROTECTION AMENDMENT** (MANNING D, CALLENDER J) Proposing to enact Section 12 of Article XV of the Constitution of the State of Ohio to provide Ohio critical infrastructure protection.  
**Current Status:** 10/30/2019 - House Energy and Natural Resources, (First Hearing)

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HJR-2>

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

**Current Status:** 12/10/2019 - Senate Energy and Public Utilities, (Third Hearing)

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

**SB234**      **WIND FARMS (MCCOLLEY R)** To require inclusion of safety specifications in wind farm certificate applications, to modify wind turbine setbacks, and to permit a township referendum vote on certain wind farm certificates.

**Current Status:** 2/11/2020 - Senate Energy and Public Utilities, (Third Hearing)

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-234>



# NEWS RELEASE

December 19, 2019

News Media Contact

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Docket Nos. EL16-49-000, EL18-178-000

## FERC Directs PJM to Expand Minimum Offer Price Rule

The Federal Energy Regulatory Commission (FERC) today acted to protect the competitive capacity market administered by PJM Interconnection, L.L.C. (PJM) by directing PJM to expand its current Minimum Offer Price Rule (MOPR) to address state-subsidized electric generation resources, with certain exemptions.

Today's action reaffirms and builds on FERC's June 29, 2018, order, which found that out-of-market payments provided, or required to be provided, by PJM states to support operation of certain generation resources threaten the competitiveness of PJM's capacity market. That order ruled PJM's open access transmission tariff is unjust and unreasonable because the MOPR failed to address the price-distorting impact of resources receiving out-of-market support.

"FERC is affirming our obligation to safeguard the competitiveness of the PJM capacity market," FERC Chairman Neil Chatterjee said. "I recognize, and wholeheartedly respect and support, states' exclusive authority to make choices about the types of generation they support and that get built to serve their communities. They still can do so under this order.

"But the Commission has a statutory obligation, and exclusive jurisdiction, to ensure the competitiveness of the markets we oversee," Chatterjee added. "An important aspect of competitive markets is that they provide a level playing field for all resources, and this order ensures just that within the PJM footprint."

PJM now has 90 days to comply with the order, and at that time is to provide the Commission with a new timeline for the next auction.

### Today's PJM MOPR Order At A Glance

- FERC built on PJM's April 2018 MOPR-Ex proposal to address the impact of state subsidies on the wholesale capacity market.
- FERC directed PJM to expand its MOPR to apply to any new or existing resource that receives, or is entitled to receive, a state subsidy, unless an exemption applies.
- FERC outlined the following exemptions from the expanded MOPR:
  - Existing renewable resources that are participating in state renewable portfolio programs;
  - Existing demand response, energy efficiency, and storage resources;
  - Existing self-supply resources; and
  - Competitive resources that do not receive state subsidies.

(more)

- FERC provided additional guidance regarding exemptions:
  - A new or existing resource that does not otherwise qualify for an exemption may seek a unit-specific exemption.
  - The expanded MOPR only applies to state-subsidized resources. Resources with federal subsidies will not be subject to the MOPR.
  
- FERC defined subsidies as:
  - A direct or indirect payment, concession, rebate, subsidy, non-bypassable consumer charge, or other financial benefit that is (1) a result of any action, mandated process, or sponsored process of a state government, a political subdivision or agency of a state, or an electric cooperative formed pursuant to state law, and that (2) is derived from or connected to the procurement of (a) electricity or electric generation capacity sold at wholesale in interstate commerce, or (b) an attribute of the generation process for electricity or electric generation capacity sold at wholesale in interstate commerce, or (3) will support the construction, development, or operation of a new or existing capacity resource, or (4) could have the effect of allowing a resource to clear in any PJM capacity auction
  
- FERC adopted an expanded MOPR rather than PJM's Resource Carve-Out (RCO) and Extended RCO proposals. FERC determined that those proposals would unacceptably distort the markets, inhibiting incentives for competitive investment in the PJM market over the long term. PJM's longstanding Fixed Resource Requirement Alternative remains unchanged in the PJM tariff.
  
- FERC gave PJM 90 days to comply.
  - PJM is to provide new auction timelines on compliance.

R-20-10

(30)



# FERC's December 2019 Order on State Subsidies

## *The Expanded Minimum Offer Price Rule and its Impact on Manufacturers, Markets, Ohio Energy Policy, and Electricity Generation Technology*

January 30, 2020

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The Federal Energy Regulatory Commission (FERC) issued an order on December 19, 2019 stating that

“... out-of-market payments provided, or required to be provided, by states to support the entry or continued operation of preferred generation resources threaten the competitiveness of the capacity market administered by PJM ...”.

FERC's order is a direct response to a trend of state subsidization of uneconomical power plants, including those benefitting from the recently passed Ohio House Bill 6 (HB6). The FERC order is a giant stick against state subsidies, and tips HB6 on its head: Rather than improve the economic position of select Ohio (and Indiana) power plants, the HB6 subsidies now jeopardizes these same power plants from competitively earned revenue in the wholesale electric capacity market. In fact, by charging Ohio's ratepayers hundreds of millions of dollars in annual subsidies for select power plants, about \$190 million in annual capacity revenue for these same generators is now at risk. Unfortunately, by favoring select power plants through subsidies, HB6 has created a financial liability for them.

To be clear, the select subsidized power plants can request, and may receive, a “Unit Specific Exemption” to earn capacity revenue. Or, these same power plants may request additional subsidies or financial support from the state.

The eventual effect of FERC's order on wholesale electricity prices is being debated, as is which type of generating technologies win or lose. But FERC's order is clear – if states like their subsidy plan, they can keep it – but the state and its ratepayers will bear the direct cost and consequences.

### **Impact to Manufacturers**

A significant concern to Ohio manufacturers is how the FERC order, in conjunction with HB6, impacts electricity costs. The FERC order does not stop Ohio from subsidizing select power plants. And thus, HB6's above-market charges for select nuclear, coal, and renewable energy projects will persist on manufacturers' electric bills.

However, the FERC order does create major changes to how electricity markets work and estimating the financial impact will take careful study. At this date, there is no agreement on the financial impact. Some parties warn that the FERC order could create significant

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additional electricity costs, while other parties suggest there may be no additional cost at all. Still others may argue that preservation of market forces is the ultimate cost protection, an assertion supported by market studies and academic literature. PJM and its Independent Market Monitor often conduct detailed simulations of the near-term effect of major policy changes and likely will do so for this FERC order.

Manufacturers should also be concerned about potential state responses to the FERC order, namely, a drive to create fixed resource requirement (FRR) entities. By creating an FRR, a state may attempt to create yet more out-of-market revenue streams for power plants. Not only would this increase charges even more on customers' electric bills, but it would further erode market protections.

While cost is a primary concern for all manufacturers, also of note in the FERC order is a problematic issue for manufacturers with regard to greenhouse gas (GHG) emissions reductions goals. The FERC order will apply to new renewable energy projects receiving state subsidies, including renewable energy credits (RECs) from a renewable portfolio standard (RPS). While the FERC order recognizes that renewable energy projects subscribed with corporate REC purchases should not be subject to the MOPR, it then states that "it is not possible" to distinguish a voluntary REC from a state-mandated REC. As such, without clarification, new corporately funded renewable energy projects could be deprived of capacity revenue unfairly.

### **Impact to Electricity Markets**

The FERC order is intended to protect functioning, competitive electricity markets. In general, competitive markets are desirable because they have been shown to produce lower electricity prices for consumers than cost-of-service regulation. Markets also tend to produce better resource efficiency, and thus lower emissions from power plants. This is all to say that an order to protect markets has inherent features that protect consumers and manufacturers.

However, FERC's order is complex, and it is not fully known how it will impact electricity prices in the short and long term. The order modifies and expands a mechanism called the Minimum Offer Price Rule (MOPR).

The MOPR was originally designed to prevent state subsidization of new natural gas generators entering the market. In contrast, the expanded MOPR will apply to new and existing power plants of any technological types that "receive, or are entitled to receive, certain out-of-market payments, with certain exemptions." This means that nuclear, coal, and renewable power plants that receive state subsidies or other non-bypassable rider support will be required to offer into PJM's capacity auction at a set minimum price or apply for a Unit Specific Exemption. New power plants will have one set of resource-specific prices, called Net CONE (Cost of New Entry). Existing power plants will have another set of resource-specific prices, called Net ACR (Avoidable Cost Rate). The application of these minimum price thresholds is meant to prevent a power plant from using a state subsidy to outbid its unsubsidized competition by offering an artificially low bid into PJM's capacity auction.

Table 1 shows PJM’s proposed Net CONE and Net ACR values<sup>1</sup>. Consider, in comparison, that PJM’s capacity auction clearing price over the past 15 years has been a minimum of \$16 to a maximum of \$174/MW-day, a median of \$110/MW-day. Thus, new and existing resources would need to have minimum offer prices of, at most, around \$110/MW-day to clear the capacity market at least half of the time. Given this low price, it is unlikely that new generating plants that receive or are entitled to receive state subsidies will be able to clear the PJM capacity auction on a regular basis, unless they apply for and receive a Unit Specific Exemption.

For existing resources, it is also unlikely that subsidized nuclear units will be able to clear the auction in most cases, and subsidized coal plants will likely only be able to clear the auction occasionally. New and existing demand response and energy-efficiency should be able to clear most auctions. As for renewable energy, new renewable energy would likely not be able to clear the auction, but existing renewable energy would.

Note that PJM is preparing updated Net CONE and Net ACR values which will be subject to FERC approval. These updated values will have meaningful bearing on how the FERC order plays out. Additionally, any resource may apply for a “Unit Specific Exemption,” in order to bid at a different price than Net CONE and Net ACR. Many resources that appear uneconomical based on Net CONE or Net ACR may in fact be economical based on their specific financial situation.

**Table 1: PJM Proposed Minimum Prices**

	New Resources - Net CONE (\$/MW-day)		Existing Resources - Net ACR (\$/MW-day)	
Nuclear - Single Unit	\$	1,451	\$	265
Nuclear - Double Unit	\$	1,451	\$	227
Coal	\$	1,023	\$	126
Combined Cycle - NG	\$	438	\$	1
Combustion Turbine - NG	\$	355	\$	31
Hydro	\$	1,066	\$	-
Solar PV	\$	387	\$	-
Onshore Wind	\$	2,489	\$	-
Offshore Wind	\$	4,327	\$	-
Demand (DR or EE)		\$29 - \$67	\$	-

The impact on electricity prices then depends on several things:

- How many MWs of power plants will be subject to the expanded MOPR, and effectively forced out of the capacity auction? The answer is not simple. Some power plants receiving or entitled to receive subsidies have already not cleared the auction. For example, Ohio’s nuclear power plants have not cleared the auction recently. Other power plants may choose to forgo their subsidy so they are

<sup>1</sup> PJM Communication, Table 2. <https://pjm.com/-/media/committees-groups/committees/mic/20190306/20190306-item-10-communication-regarding-mopr-related-requirements.ashx>

Net-ACR from: INITIAL SUBMISSION OF PJM INTERCONNECTION, L.L.C. Docket No. EL16-49-000, pages 118 & 120 of pdf. <https://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=15059002>

permitted to bid into the auction without the minimum offer price if the subsidy is lower in value than PJM's capacity payments. Or, perhaps some states will find their subsidization policies ineffective, and will eliminate them in the law so that their power plants may compete for capacity revenue. Finally, there exists a "Unit Specific Exemption" process with the MOPR. If a power plant can show that it does not need its subsidy to offer competitive capacity bids, then it may receive this exemption, and continue to receive capacity revenue. Ironically, if a power plant receives this exemption, it will be proof to state policymakers that the subsidy is not needed. For this reason, it should be considered requiring subsidized resources to apply for a Unit Specific Exemption.

- How many new power plants will enter the market due to the expanded MOPR? Again, this is not simply answered, but it is probable that increased amounts of new natural gas fired power plants will enter the market. Some parties' fear of increasing capacity prices come largely from the observation that by excluding subsidized power plants from PJM's capacity auction, the supply of power plants will decrease, while demand for power remains relatively the same. However, PJM has seen large amounts of power plant retirements in the last 15 years, with little impact on capacity prices. This is because as uneconomic power plants close, other power plants that are economic open. It is reasonable to expect that over some period of time, new economic generation will fill the gap and keep prices in check.

All told then, the goal of the FERC order appears to be to reinstate a functioning electric market and the order is designed to seriously discourage state subsidies' manipulation of the electric market. Power plants receiving unit-specific exemptions will have shown that their subsidy is unnecessary, and that they can compete without state subsidy support. Power plants that are subject to MOPR and do not clear the auction will have shown that they are uncompetitive and may need to return to the state for additional subsidies or cease operating. The resulting supply and demand in the market then will more closely match that of a competitive market absent state subsidies. And thus, the resulting price of wholesale electricity should match that of a competitive market.

A caveat is that in the short-term, there may be a mass exit of power plants that are subject to MOPR because of state subsidies. If there is an atypical quantity of exiting power plants, combined with a shorted development timeframe for new entrants, there is the possibility for short-term capacity price increase. Again, Ohio's manufacturers should wait for independent modeling of this financial impact.

The cost of state subsidies will still be borne by the residents of the state, until a state repeals its subsidy policy. And, creation and proliferation of FRR entities is an emerging risk.

### **Impact to Ohio's State Policy and Regulation of Power Plants**

FERC's order has significant impacts to the objectives of the recently passed HB6 in Ohio, and to other Ohio policies and regulations that create subsidies for select electrical power generators. Below we cover possible impacts to specific power plants and technologies in Ohio.

- Davis-Besse and Perry Nuclear Power Plants – The Davis-Besse and Perry nuclear power plants are entitled to receive a subsidy of \$9 per MWh generated from Ohio’s Nuclear Generation Fund, newly created by HB6. This will result in \$150 million of payments annually from Ohio ratepayers to these two nuclear power plants. However, the two nuclear power plants will be subject to the expanded MOPR. The combined capacity of the power plants is about 2,150 MW. At a typical PJM capacity auction price of around \$120 /MW-day, this equates to \$94 million of forgone annual capacity revenue for the two nuclear plants.

It is not clear whether Energy Harbor’s nuclear power plants could receive a Unit Specific Exemption. It is distinctly possible that these nuclear power plants are economical without the HB6 subsidy. If so, they *could* apply for a Unit Specific Exemption, and receive it. However, applying for a Unit Specific Exemption is a choice for Energy Harbor.

In any case, Ohio policymakers face difficult choices. At a minimum, requiring HB6 subsidized units to apply for a Unit Specific Exemption is logical. If subsidized units receive an exemption, then policymakers will need to reconsider whether to continue subsidies that a power plant doesn’t need. If a unit fails to receive an exemption, policymakers will need to reconsider whether to subsidize an uneconomical power plant.

- OVEC Coal Plants – The coal plants of the Ohio Valley Electric Corporation, which include the Kyger Creek plant in Ohio and the Clifty Creek plant in Indiana, will also be subject to the MOPR. There is a chance that they will not clear the PJM capacity auction. OVEC’s capacity is about 2,175 MW, and thus it will forego about \$95 million annually in capacity revenue. However, OVEC’s subsidy is not in the form of a fixed credit, but instead in a rider that passes a pro-rated percentage of its financial losses onto Ohio utilities. As a result, Ohio’s ratepayers will share in 38.68%<sup>2</sup> of this loss, or about \$36.7 million annually.

Because OVEC’s Ohio utility owners are insulated from any and all financial losses, it is probable this additional cost will simply be passed on to Ohio’s manufacturers and other ratepayers.

- HB6-Favored Solar Energy Plants – HB6 creates a Renewable Generation Fund which will pay \$9 per MWh for renewable energy credits (RECs) for select solar projects. These solar projects have not yet been built and will thus almost certainly be subject to the MOPR and are unlikely to clear the PJM capacity auction. Moreover, given the choice, solar photovoltaic (PV) projects may prefer to receive capacity revenue over the renewable energy credit revenue. For example, a 1 MW solar PV project in central Ohio would receive about \$12,500 in capacity revenue<sup>3</sup>. That same 1 MW of solar PV would receive \$11,150<sup>4</sup> from the Renewable Generation Fund. As such, renewable projects of any scale may choose to receive

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<sup>2</sup> OVEC Annual Report, cumulative percentage of Ohio investor-owned sponsoring companies: The Dayton Power and Light Company, Duke Energy Ohio, FirstEnergy Solutions, and Ohio Power Company.

<sup>3</sup> 1 MW nameplate x 0.2856 central Ohio capacity factor x \$120 /MW-day, typical x 365 days/year)

<sup>4</sup> 1 MW of ground-mounted fixed solar in central generates about 1,239 MWh/year, according to PV Watts. \$9 /MWh x 1,239 MWh/year = \$11,150 /year

PJM capacity revenue over HB6 subsidies.

Thus, HB6 could result in reduced revenue for these select solar projects, making them less competitive. The forgone capacity revenue from HB6's select solar projects would be about \$22 million per year.

- Sammis Coal Plant – The Sammis coal-fired power plant owned by the former FirstEnergy Solutions may also be subject to the FERC expanded MOPR because of HB6. At first, this may be surprising, as there is no direct mention or direct subsidy of the Sammis plant within HB6. However, the FERC order appears to catch within its scope sleight-of-hand with state subsidies. FERC states:

“... we consider a State Subsidy to be: a direct *or indirect* payment, concession, rebate, subsidy, non-bypassable consumer charge, or other financial benefit that is (1) a result of any action, mandated process, or sponsored process of a state government, a political subdivision or agency of a state ...”

Importantly, FirstEnergy Solutions had publicly credited the HB6 subsidies it is receiving for its nuclear plants for *indirectly* allowing it to subsidize the Sammis coal plant<sup>5</sup>. According to FES comments, the Sammis coal plant cleared 1,233 MW in the most recent PJM capacity action<sup>6</sup>. Thus, HB6 has indirectly put \$54 million in annual capacity revenue at risk for the Sammis coal plant.

- Existing Renewable Energy – Existing renewable energy projects will be exempt from the MOPR and will continue to be able to participate in PJM's capacity auction.
- New “Behind-the-Meter” Renewable Energy – New renewable energy projects that are customer-sited, behind-the-meter, will not be subject to the MOPR. This is because behind-the-meter generation would not bid into PJM's capacity auction anyways. Instead, behind-the-meter generation reduces a customer's capacity obligation. As such, behind-the-meter projects would be able to monetize both capacity value and voluntary or state-mandated renewable energy credits.
- New “Front-of-the-Meter” Renewable Energy – New, front-of-the-meter renewable energy will be subject to the MOPR. As shown in Table 1, solar PV has the second lowest Net CONE value of new resources, after natural gas combustion turbines. That said, it is unlikely that PJM's capacity market price will clear high enough that a solar PV or wind project could enter the capacity market at the Net CONE price. This gives renewable energy developers two options. First, they could choose to enter the market competitively, favoring capacity revenue over REC revenue and subsidies. Second, if new renewable energy plants do not require REC payments to be competitive, they may apply for a “Unit Specific Exemption” and bid into the capacity market at a lower price than Net CONE. This is distinctly possible, as renewable energy projects receive comparatively less of their revenue from capacity payments due to their intermittency and REC prices have dropped to just

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<sup>5</sup> “House Bill Six is really designed to support our nuclear plants, and all the money from that would go to those nuclear plants. But at the same time, it would make our company economically healthy enough that we would be able to look at other investments like investing in the Sammis Plant”, FES CEO John Judge, <https://wtov9.com/news/local/sammis-plant-may-not-close>

<sup>6</sup> <https://www.prnewswire.com/news-releases/firstenergy-solutions-comments-on-results-of-pjm-capacity-auction-300654549.html>

a few dollars per MWh. As renewable energy installation costs drop, their reliance on REC payments may be low enough that it does not affect the decision on whether to build the project or not, and thus competitive renewable energy projects may request and receive an exemption while preserving their REC payments.

- Energy Efficiency and Demand Response – Most new energy-efficiency and demand response capacity resources would have a Net CONE generally lower than a typical PJM capacity auction clearing price. That is to say, these new resources would have the MOPR applied to them but would still be able to clear the auction at their corresponding technology-specific Net CONE price. Moreover, existing efficiency and demand response resources would be able to continue to bid at any price. While there is some risk that new demand response and energy-efficiency resources may not clear the capacity auction in some years, this may be a manageable risk.

### **Impact to Technology Mix**

Of interest is how FERC's order expanding MOPR will affect the generation technology mix in the PJM territory. While the expanded MOPR is complicated and has nuances, it appears to effectively disincentivize subsidization of older, uneconomical power plants. In recent years, these subsidies have been targeted at coal and nuclear power plants. Newer emerging technologies such as renewables and load management will not be entirely unaffected by the MOPR, but are positioned to be able to continue to grow for a number of reasons, be it behind-the-meter applications, the Unit Specific Exemption, or simply because they no longer require state subsidies. Thus, the expanded MOPR is likely to reinforce the recent trend in electric generation technology mix – considerably more natural gas fired generation with some meaningful expansion of renewable energy and customer-load management, and considerably less coal-fired generation with some reduction in nuclear power.

***This analysis was prepared by John Seryak, PE, and Peter Worley of RunnerStone, LLC, Energy Technical Consultant to The Ohio Manufacturers' Association.***





## **PJM Monitor: FERC Order Clouds Nuclear Plants' Future, With or Without HB6 Subsidies**

PJM Interconnection's independent monitor told the Ohio Consumers' Counsel (OCC) Governing Board Tuesday that FirstEnergy Solutions' (FES) nuclear plants could hemorrhage 10–20 percent of their revenue under the Federal Energy Regulatory Commission's (FERC) December order expanding minimum capacity prices to subsidized generators, threatening Perry and Davis-Besse's future in the 13-state competitive market if they accept nuclear credits authorized by HB6 (Callender-Wilkin).

PJM Independent Market Monitor Joseph Bowring, president of Monitoring Analytics, reacted to FERC's Dec. 19 decision imposing PJM's minimum offer price rule (MOPR) on any generation plant that receives "or is entitled to receive" state subsidies, minus a few exceptions.

"The only two power plants in the PJM footprint that have economic problems are Perry and Davis-Besse," he told OCC's board. "Ohio has chosen to subsidize them. If they do not clear the capacity market" -- i.e., meet the MOPR -- "they would need to recover those dollars from the taxpayers of Ohio."

That assumes FES's 10–20 percent loss in capacity revenue would erode the benefits of HB6 nuclear credits. This in turn could send FirstEnergy Solutions back to the General Assembly for additional subsidies, Bowring said.

He said Perry and Davis-Besse's failure to meet the MOPR in PJM's last capacity auction is "not a fault of the market." Some Ohio legislators and energy stakeholders have argued that PJM undervalues nuclear energy's carbon reduction and fuel security, or "resiliency."

FERC's December ruling singles out Ohio as a leading proponent of energy subsidies.

"[A]n immediate threat to the competitiveness of the PJM capacity market is the decision by some states to employ out-of-market subsidies to prevent or delay the retirement of state-preferred resources that are unable to compete with more efficient generation. Moreover, certain states have chosen to enact additional programs even after the [earlier] June 2018 order issued," federal regulators said, citing the Ohio Clean Air Program of HB6.



“I am aware that the extension of the MOPR may prevent certain existing resources that states have recently chosen to subsidize from clearing PJM’s capacity auctions; however, the decision by certain states to support less economic or uneconomic resources in this manner cannot be permitted to prevent the new entry or continued operation of more economic generating capacity in the federally-regulated multi-state wholesale capacity market. New state policies that support the continued operation of existing uneconomic resources in PJM are just as disruptive to competitive wholesale market outcomes as earlier attempts to support preferred new gas-fired resources, which the commission prevented by eliminating the state mandate exemption for new resources in 2011,” said FERC.

Commission Chairman Neil Chatterjee followed with a statement highlighting the “price-distorting impact of resources receiving out-of-market support” while affirming states’ exclusive authority to subsidize certain generation technologies as a matter of public policy.

“But the commission has a statutory obligation, and exclusive jurisdiction, to ensure the competitiveness of the markets we oversee. An important aspect of competitive markets is that they provide a level playing field for all resources, and this order ensures just that within the PJM footprint,” Chatterjee said.

Bowring noted Tuesday that, unlike nuclear and coal generation, combined-cycle plants have flourished without government subsidies, and that Ohio’s low natural gas prices are leading the world.

The market monitor said FES nuclear plants, projected to lose \$424.5 million between 2019–2021, can respond to FERC’s order in one of three ways: (1) cease operations, (2) live or die with HB6 subsidies, or (3) convince PJM of something it could not or would not convince the General Assembly of -- that Perry and Davis-Besse will survive in a MOPR-dominated competitive market.

FERC has given PJM 90 days from its December order to impose minimum capacity pricing on subsidized generating plants. Parties in the case have until Tuesday, Jan. 21, however, to request a rehearing or clarification of its ruling, the latter which Bowring said PJM plans to submit.

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OPINION

## When states pick expensive policies under the guise of 'states' rights,' consumers pay

By Todd A. Snitchler

Published Jan. 23, 2020

*The following is a contributed article by Todd A. Snitchler, president and CEO of the Electric Power Supply Association (EPSA), and former chairman of the Public Utilities Commission of Ohio.*

Faced with a new federal ruling designed to protect consumers by ensuring power generators have to compete to provide reliable electricity at the lowest cost, some politicians are raising the battle cry of "states' rights," claiming the states' ability to choose their power generation mix is under threat.

These officials, under pressure from politically powerful utilities with large lobbying budgets, want to have their cake and eat it too: use taxpayer money to fund power generation projects that either are now able to compete without subsidies or are no longer economic, while leaning on the very same capacity markets they criticize to continue to provide grid reliability.

Politicians say this argument is about the environment and handout-seeking companies say they need the money to bring you clean energy. But don't be fooled. Acronyms like ZECs and FRRs and threats of pulling out of competitive markets are really about

propping up struggling nuclear and coal plants and shielding utility profits from competition.

The reality is this: The market has driven coal plant closures, lowered emissions, ushered in new technology, and lowered costs — forcing competitive power generators to perform at the highest level or bear the cost of poor planning. If state policymakers really want to put customers first, they should preserve the market while evaluating and supporting workable changes to account for environmental externalities.

As America's competitive power suppliers, who are actively building the grid of the future without subsidies, we say, "Let's have that conversation."

### **State-wholesale market conflicts**

The "states' rights" defense shouldn't be selectively applied. It's long been decided that when it comes to questions that cross state borders — such as our nation's vast, interconnected power grid — a federal decision-maker is the only entity able to make the call.

Since restructuring, states have relied on, and benefited from, regional power markets — utilizing excess supply in other areas when their own supply may be insufficient — to ensure reliability at the lowest possible cost. Now, looking to double dip in taxpayer pockets and the market, certain generators have tried to convince politicians to layer one-off policies onto a regional/wholesale framework.

This trend has created an unsustainable mess, which the Federal Energy Regulatory Commission (FERC) has the duty and authority to fix. FERC has the exclusive responsibility of ensuring wholesale power markets are just and reasonable and reconciling state policy

with a functioning regional market. And that's what the wrongfully-maligned Minimum Offer Price Rule (MOPR) decision is all about.

The inconsistency between state choices and wholesale power markets has reached a boiling point, and it's time someone closed the lid.

So far, Illinois, New Jersey, New York, Connecticut and Ohio have implemented a messy, expensive patchwork of legislation to provide subsidies for 50-year old nuclear and coal power plants — to the tune of billions of dollars — to artificially lower the price of those resources in the market. They claim support is needed because wholesale power markets do not compensate those resources for the environmental benefits they provide.

Oddly, the legislation only benefits certain nuclear power plants.

You'll recall politicians rushed to close New York's Indian Point facility, despite its many environmental benefits. Arguably, if carbon emissions are the concern, *all* nuclear facilities and *all* lower-emitting resources should be eligible for compensation for the environmental benefits they provide.

### **Regional market exit?**

Faced with the reality of paying for their costly policy choices, some states are threatening to walk away from the regional markets. While this is hopefully just a threat, consumers cannot risk losing the benefits these markets provide in the name of profits for monopoly utilities — and states can hardly afford the costs they will incur.

Ranking last nationwide when it comes to the amount of money on hand for an economic downturn or emergency, Illinois' "Rainy Day" fund has just enough to cover 0.1 days of spending, while New Jersey's fund has been empty since 2009. Meanwhile, Connecticut faces annual billion-dollar deficits.

Regional markets weren't designed to account for environmental considerations, but there's no reason they can't be adjusted to do so. Until we figure out the next steps to accomplish that goal, customers cannot risk losing the existing benefits markets like PJM and ISO-NE provide — and states currently don't have a better option.

Pulling out of the market to avoid the cost accountability and transparency provided by the MOPR, as suggested by some states and utilities, won't ensure better outcomes. It *will* be complicated and costly.

Risking blackouts or dramatic price increases in today's economy is a non-starter, and the capacity market ensures reliability. Today, regional power markets have abundant power reserves. This safety net will not last if the states continue to introduce policies that are inconsistent with wholesale power markets.

Private investors must have confidence that the markets in which they invest will provide the *opportunity* to compete fairly and recover costs. Constant revisions to market rules and new state policies only increase uncertainty and, unfortunately, may drive out private capital willing to invest. This asks taxpayers to foot the bill and risks shortages that will impact consumers.

## **Combating climate change**

EPSA supports efforts to combat climate change through transparent, open, and nondiscriminatory competitive markets, such as an economy-wide price on carbon, that allow all resources to compete to reduce carbon and other harmful emissions. Competitive markets that incorporate both environmental and reliability requirements will yield the lowest cost set of resources and technologies that jointly produce the greatest emission abatement while maintaining reliability.

A 20-year track record shows competitive wholesale markets and regional coordination provide the best path to sustainable environmental progress without harming reliability or dumping unfair costs on American families and businesses.

When states pursue expensive, inefficient, and ineffective energy and climate policies, who gets stuck with the bill?

It's not governors. It's not legislators or utility commissioners. It's certainly not utilities who make backroom deals to add charges for a costly power plant to your monthly bills.

The folks who *always* pay the price are taxpayers and customers who need reliable, affordable electricity to power their homes, run their small businesses, and access emergency services.

If states pull out of regional wholesale power markets, consumers are going to be the ones who bear the cost. There is a better way forward, but it requires real leadership and an honest assessment of the facts to create a durable regulatory framework for sustainable environmental progress.

EPSA stands prepared to lead on this issue and is looking for willing partners to shape tomorrow's energy market.

**Before**  
**The Joint Committee on Agency Rule Review**  
**In Opposition to The Ohio Air Quality Development Authority's**  
**Proposed Rules OAC 3706-4-01, 3706-4-02, 3706-4-03, 3706-4-04, 3706-4-05**

**Joint Testimony by:**

**Ryan Augsburger, Ohio Manufacturers' Association**

**Jeff Jacobson, Office of the Ohio Consumers' Counsel**

**December 9, 2019**

Hello Chair Callender and members of the Committee. Thank you for this opportunity to testify.

I am Ryan Augsburger, Vice President & Managing Director of Public Policy Services for the Ohio Manufacturers' Association (OMA). The OMA is Ohio's largest statewide business association comprised solely of manufacturers advocating to protect and grow manufacturing. And I am Jeff Jacobson of Strategic Insight Group, testifying on behalf of the Office of the Ohio Consumers' Counsel (OCC). OCC is the state's representative for millions of residential utility customers. Respectfully, this testimony is in opposition to proposed rules by the Ohio Air Quality Development Authority (OAQDA). The proposed rules are for implementing the nuclear and renewable power plant subsidies created by Am. Sub. House Bill 6 of the 133<sup>rd</sup> General Assembly (HB 6 Rules).

As stated in its Procedure Manual, the Joint Committee on Agency Rule Review (JCARR) reviews proposed new, amended and rescinded rules of state agencies to ensure they do not exceed their rule-making authority. JCARR can make a recommendation to invalidate rules if it finds a violation of one or more of the six items listed on its website.<sup>1</sup> The consumer concern presented in this testimony is that the OAQDA violated one of the six prongs in the submission of its proposed HB 6 Rules, being that there is a conflict with the legislative intent.

As background, HB 6 creates a subsidy for nuclear power plants and certain renewable power plants, at the expense of Ohio consumers. A qualifying power plant would receive a credit for each megawatt of electricity it produces.

In this regard, R.C. 3706.63 specifically states: "Not later than January 1, 2020, the Ohio air quality development authority shall adopt rules under Chapter 119. of the Revised Code that are necessary to implement sections 3706.40 to 3706.65 of the Revised Code." R.C. 3706.61(A) presents an opportunity for consumer protection, by requiring the Public Utilities Commission of Ohio (PUCO) to conduct a "retrospective management and financial review of the owner or operator..." of a qualifying nuclear power plant that receives the subsidies. R.C. 3706.61(D) states that OAQDA "shall consider the findings of the review and may cease or reduce payments

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<sup>1</sup> <http://www.jcarr.state.oh.us/about>

for nuclear resource credits...” under certain circumstances. Unfortunately for consumers, OAQDA’s proposed HB 6 Rules do not address this statutory intent for how it will incorporate the PUCO’s review (audit report) into its processes.

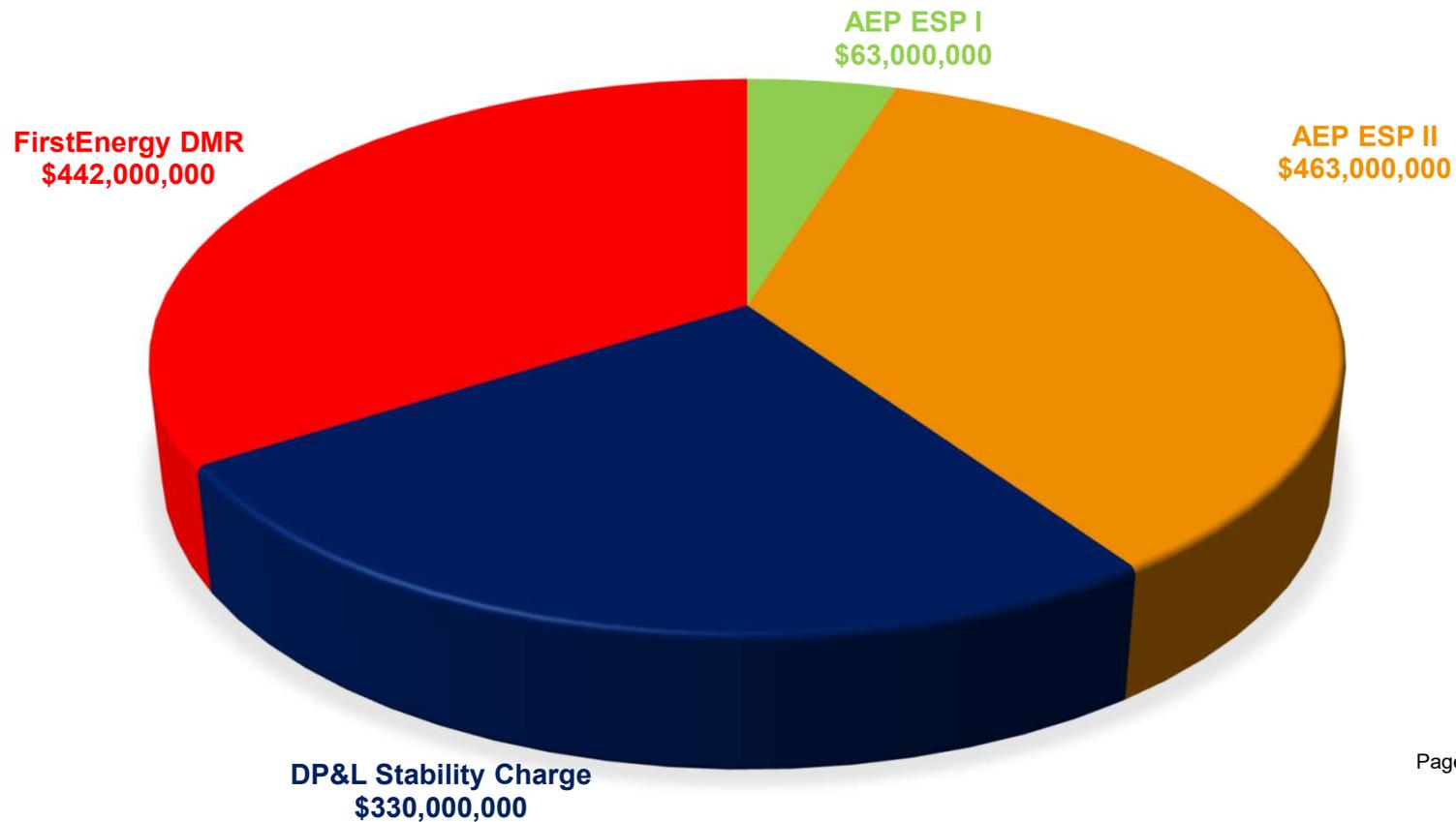
Therefore, the proposed HB 6 Rules should address how the OAQDA will incorporate the PUCO’s audit report into its processes. The OAQDA’s rules should include transparency and due process for public input on the use of the PUCO’s audit report.

If the PUCO’s audit report is left unaddressed by OAQDA’s rules, then consumers could be denied the protection of the audit in OAQDA’s processes. OAQDA should propose a rule allowing for refunds to consumers if they paid subsidy charges that are later identified in the audit report as improper. Just since 2009, Ohio electric consumers have been denied more than \$1 billion as a result of the PUCO failing to make utility charges -- that the Ohio Supreme Court later ruled to be unlawful -- subject to refund. (See attachment) In the absence of rules, the General Assembly’s statutory requirement for the PUCO to send an audit report to OAQDA could be relegated to meaninglessness for Ohio consumers. Simply put, the OAQDA’s rules do not provide for it to do anything at all with the audit report it receives from the PUCO, which is contrary to the statutory purpose of including the requirement.

In conclusion, please give consumers the protection of the PUCO audit report that is to be sent to OAQDA. The HB 6 Rules should be invalidated, toward achieving future rules that fulfill the legislative intent of HB 6 for the consumer protection of a PUCO audit that OAQDA reviews, considers and acts upon.

Thank you for your time and consideration.

## NON-REFUNDABLE CHARGES TO OHIOANS



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MEMORANDUM

**TO:** Ohio Manufacturers' Association Energy Group  
**FROM:** Kim Bojko, Carpenter Lipps & Leland LLP  
**DATE:** January 16, 2020  
**SUBJECT:** PUCO Authorizes FirstEnergy's Decoupling Rider

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HB 6 authorized a utility to apply to implement a revenue decoupling mechanism to recover lost revenue as a result of implementing energy-efficiency or energy-conservation programs within thirty days of the effective date of the new law (October 22, 2019). If implemented, each utility's annual revenue will be compared against the 2018 baseline revenue of the utility. If annual revenue in a given calendar year is less (or greater) than the 2018 baseline revenue, the utility will charge (or credit) the difference to customers through the decoupling rider. Thus, if the economy takes a downturn and the utility receives less revenue from its customers, the utility will always be guaranteed to receive the same amount of revenue as it did in 2018, which will continue until the utility files a new base distribution rate case.

On November 21, 2019, FirstEnergy was the only utility to file an application for approval of a decoupling mechanism. OMAEG and others intervened in the matter and argued 1) the PUCO should ensure that there is no double recovery of costs through the decoupling mechanism, including lost distribution revenue; and 2) that the PUCO should only approve decoupling based on actual costs, not projections, and 3) that any refunds are passed back or credited to customers. The PUCO Staff released a report that revealed why 2018 was likely chosen in the legislative process and included in HB 6 as the baseline for the decoupling mechanism. Stakeholders surmised that a utility's revenues must have been high for that year, but it was not clear exactly why. The PUCO Staff report explained that 2018 was the warmest summer in history for two of the FirstEnergy utilities and the second warmest for the other. Therefore, 2018 produced high revenue for the three FirstEnergy utilities. Based upon this information, Staff recommended that FirstEnergy weather normalize rates to reflect average weather to avoid large discrepancies through the years and minimize any rate impacts to customers based upon the unusual high temperatures in 2018. This weather adjustment is regularly used in ratemaking proceedings to normalize rates and is sound policy.

This week, the PUCO granted FirstEnergy's request for a decoupling mechanism and established a decoupling rider (called Rider CSR). The Commission approved FirstEnergy's application as filed, **rejecting** Staff's recommendation to weather normalize the 2018 baseline revenue due to the unusual

high temperatures in 2018. Staff's approach would have minimized the possibility of creating a large decoupling rider to make up for the difference in revenue between future years and 2018. Although Commissioner Conway expressed his sympathy for Staff's view, the PUCO did not order FirstEnergy to weather normalize the baseline. FirstEnergy will now be guaranteed to receive the level of revenues that it received in 2018 (during the warmest summer in history) each and every year, regardless of its operating and maintenance costs and the actual revenue received from customers for base distribution rates.

# PolicyGoal:



## Access to Reliable, Economical Energy Resources

Energy policy can enhance—or hinder—Ohio’s ability to attract business investment, stimulate economic growth and spur job creation, especially in manufacturing. State and federal energy policies must (a) ensure access to reliable, economical sources of energy, and (b) promote energy efficiency that lowers costs for manufacturers and strengthens grid resiliency.

The OMA’s energy policy advocacy efforts are guided by these principles:

- Energy markets free from market manipulation allow consumers to access the cost and innovation benefits of competition.
- Ohio’s traditional industrial capabilities enable global leadership in energy product innovation and manufacturing.
- Sustainable energy systems support the long-term viability of Ohio manufacturing.
- Effective government regulation recognizes technical and economic realities.

Shaping energy policy in Ohio that aligns with these principles will support manufacturing competitiveness, stimulate economic expansion and job creation, and foster environmental stewardship.

### **ENERGY POLICY PRIORITIES ARE:**

Assure an open and fair electricity generation marketplace, in which competition enables consumer choice, which, in turn, drives innovation.

Reform Public Utilities Commission of Ohio (PUCO) rate-making processes by eliminating electric security plans (ESPs) to protect manufacturers from above-market generation charges.

Correct Ohio case law that denies electric customers refunds from electric utilities for charges that are later determined to be improper by the Supreme Court of Ohio.

Design an economically sound policy framework for discounted rates for energy-intensive manufacturers that makes Ohio competitive with other states.

Oppose legislation and regulation that force customers to subsidize uneconomical generation, including nuclear and certain coal power plants.

Support deployment of customer-sited generation technologies, such as cogeneration, energy efficiency and demand-side management, in order to achieve least-cost and sustainable energy resources.

**TO: OMA Government Affairs Committee**  
**FROM: Ryan Augsburger / Rob Brundrett**  
**RE: Environment Public Policy Report**  
**DATE: March 4, 2020**

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### **Overview**

The legislature has not entertained any major or comprehensive environmental legislation through the first year of the 133<sup>rd</sup> General Assembly.

Starting in the fall, water issues once again rose to the top of the environmental agenda. In September Governor DeWine asked Ohio EPA and the Ohio Department of Health to develop a plan to review PFAS in Ohio's drinking water. The action plan was released in December.

Both the Lake Erie Commission and state released water actions plans aimed at reducing nutrient runoff into Ohio waterways, and especially Lake Erie.

Earlier this fall the Governor announced a more comprehensive plan for the new H2Ohio initiative.

The 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's goal is to create 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 bill specifically states that it is the General Assembly's intent to collaborate with organizations representing agriculture, conservation, the environment, and higher education to establish a certification program for farmers that utilize practices designed to minimize impacts to water quality.

The Senate sees the bill as a complementary piece of legislation to the work done in the budget on creating and funding H2Ohio. The House of Representatives has held for hearings on the Senate bill.

#### **House Bill 7 – H2Ohio Trust Fund**

The bill creates the H2Ohio Trust Fund for the protection and preservation, and restoration of the water quality of Ohio's lakes and rivers. It requires the Ohio Water Development Authority to act as trustee of the fund and grants them full powers to invest money. It also creates the H2Ohio Advisory Council to establish priorities for use of the fund for water quality initiatives.

The House initially removed most of the funding for H2Ohio from the state budget. However, the startup funding was reinserted during House and Senate discussions along with other H2Ohio framework provisions. The House passed the bill and it has received on hearing in the Senate back in the fall.

#### **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 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.

#### Senate Bill 222 – Container Use Restriction

The Senate version of House Bill 242 also authorizes the use of an auxiliary container for any purpose; it also prohibits the imposition of a tax or fee on those containers and applies existing anti-littering laws to those containers. The OMA provided proponent testimony on the bill in Senate committee.

#### 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. The bill passed the House 58-35. The Senate has yet to hold a hearing on the bill. Governor DeWine has come out a strong and vocal opponent of the bill.

### House Bill 328 – PFAS Firefighting Foam

The bill prevents testing and training with firefighting foam with PFAS added. The bill which is supported by the industry has received two hearings in the House.

### House Bill 497 – PFAS Drinking Standard

The bill would require the Director of Environmental Protection to adopt rules establishing maximum allowable contaminant levels in drinking water and water quality standards for certain contaminants (PFAS).

## **Regulations**

### Public Comment Period on Lake Erie Plan Closes Feb. 28

The Ohio Lake Erie Commission released its draft Lake Erie Protection and Restoration Plan 2020 (LEPR) for public comment. According to Ohio EPA, the LEPR, last published in 2016, “reflects actions that the Ohio Lake Erie Commission and its member agencies will take over the next several years to protect, preserve, and restore our Great Lake.” The OMA submitted comments.

### Update to Lake Erie Phosphorus Reduction Plan

State officials announced the release of an update to the Ohio Domestic Action Plan aimed at reducing phosphorus in Lake Erie under the bi-national Great Lakes Water Quality Agreement. It’s the first such iteration of the plan since Gov. DeWine’s H2Ohio program was enacted. The plan focuses on four aspects:

- Establishing science-based priorities for agricultural management practices and state programs to support H2Ohio efforts to encourage farmers to implement science-based best practices;
- The importance of wetland restoration and outlining ODNR efforts to create, restore, and enhance wetlands for nutrient reduction as part of H2Ohio;
- Updated actions for communities, including H2Ohio support for home sewage treatment system remediation;
- Integrating the role of watershed planning at the local level for siting projects to reduce nutrients efficiently, including a distribution of the load reduction throughout the Maumee River watershed based on the Ohio EPA Nutrient Mass Balance method.

Previous versions of the plan required Ohio EPA to pursue legislation that would require all treatment works discharging wastewater containing phosphorus to achieve at least a monthly average effluent concentration of 1 mg/L phosphorus. The OMA and its nutrient water working group worked tirelessly with Ohio EPA and others to ensure manufacturing is not disproportionately harmed by any new regulations on nutrients. OMA submitted comments.

### OMA Submits Comments on Industrial Waste Changes

The OMA submitted comments supporting Ohio EPA’s proposed amendments to merge the Industrial Waste Program and Residual Waste Programs, whereby non-hazardous, non-municipal waste streams will be called “industrial or manufacturing waste” or IMW. This change will result in the establishment of just two landfill classifications instead of the current four.

The OMA commented that it believes the approach to these updated classifications will allow for a more streamlined approach. We will continue to monitor the rule package for noteworthy changes.

### OMA Submits Comments on State Implementation Plan for Non-EGUs

The OMA submitted comments regarding Ohio's State Implementation Plan (SIP) revisions to approve alternative monitoring for non-existing electric utility generating units (EGUs).

In its comments, the OMA stated: "U.S. EPA's proposed rule would provide much-needed regulatory relief to large non-EGU boilers and turbines."

### EPA Approves new WOTUS Rule

In January the Army Corps of Engineers and U.S. EPA formally signed a new Waters of the United States (WOTUS) rule. The new rule is designed to bring more clarity. The OMA participated in a roundtable with new Region V Administrator Thiede in Columbus shortly after the new rule was announced.

The revised definition identifies four clear categories of waters that are federally regulated under the Clean Water Act: the territorial seas and traditional navigable waters, like the Atlantic Ocean and the Mississippi River; perennial and intermittent tributaries, such as College Creek, which flows to the James River near Williamsburg, Virginia; certain lakes, ponds, and impoundments, such as Children's Lake in Boiling Springs, Pennsylvania; and wetlands that are adjacent to jurisdictional waters.

These four categories protect the nation's navigable waters and the core tributary systems that flow into those waters.

In September, the U.S. EPA formally scrapped the Obama-era WOTUS rule. At the time the OMA formally supported the administration's proposed rule, which was more restrained and observed traditional limits on the scope of federal power.

### OMA: Air Pollution Rules Need Clarity

This summer 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."

### Ohio EPA Agency News

#### Kurt Thiede Appointed as U.S. EPA Region 5 Administrator

Earlier this year U.S. Environmental Protection Agency (EPA) Administrator Andrew Wheeler announced the appointment of Kurt Thiede of Wisconsin to become Region 5 administrator, overseeing environmental protection efforts in Minnesota, Wisconsin, Illinois, Michigan, Indiana and Ohio.

Thiede will succeed Cathy Stepp, who stepped down from her post in the Great Lakes region after several years of service to the agency. The OMA established a strong working relationship with Thiede during his time as chief of staff to Administrator Stepp. We're looking forward to continuing that relationship as he begins his new role.

### Governor Enters Fray on PFAS

Gov. Mike DeWine directed state agencies to analyze the prevalence of per- and polyfluoroalkyl substances (PFAS) in Ohio's drinking water. This action followed a Sept. 18 letter from Gov. DeWine and 14 other governors to federal lawmakers, calling for more comprehensive federal legislation on PFAS standards.

In December an action plan was released to study all of Ohio's drinking water for PFAS chemicals. The plan contains education and other support for communities who's water tests positive for certain PFAS chemicals. The OMA worked with the agency to ensure that the plan would be fairly developed as concerned to Ohio's manufacturers.

The debate over PFAS has become controversial as plaintiffs' lawyers aggressively attempt to litigate against manufacturers.

### New Movie Attacks Manufacturer, Ignores Science

The producers of a feature film that casts aspersions on a manufacturer in the Ohio River Valley region finally made its way into theaters and failed to become the critical darling it aspired to be. The film ignored sound science and truth in order to foster a trial-lawyer agenda and thoughtful movie public largely stayed away from the film.

For years, the OMA has worked to improve Ohio's legal climate from junk lawsuits that allege injury without proving causation. The OMA will be communicating to set the record straight and rebut the myths of this Hollywood fantasy. In doing so, we will also be defending our region's job-creators and employees who make great products.

Just recently the state of Michigan has filed a lawsuit in response to the discovery of certain PFAS chemicals in the drinking water of the state.

### OMA Members and US EPA Region V Meeting

OMA has partnered with the law firm of Steptoe and Johnson to host a manufacturers' meeting with senior management of U.S. EPA Region V and Ohio EPA.

The successful meeting took place in November at the Region V headquarters in Chicago. Thank you to all the members who participated. We are working to schedule the 2020 meeting with the new Region V Administrator!

## Lawmakers Seek Limits On Harmful Chemicals In Drinking Water

Supporters of a new bill to clamp down on harmful "forever chemicals" say the effort will complement Gov. Mike DeWine's recent call to explore the issue.

The plan (HB 497) from Rep. Mary Lightbody (D-Westerville) and Rep. Allison Russo (D-Upper Arlington) would require the state to establish maximum allowable contaminant levels for per- and polyfluoroalkyl substances in drinking water.

Commonly called PFAS, those chemicals are thought to negatively affect health through increased cancer risk, reduced fertility and other impacts, although their effects are not fully known.

"People across Ohio are being exposed to unsafe drinking water that is polluted with dangerous toxins and contaminants, putting our citizens' health and safety at risk simply by drinking the water that flows into their homes and public places," Rep. Russo said.

"Our legislature has an obligation to ensure every resident in every community of Ohio has access to safe and clean drinking water. By introducing the Safe Drinking Water Act, we can ensure Ohioans have safe drinking water, as well as set a national example for other states to follow."

Gov. DeWine in September called for a plan to assess how prevalent those chemicals are in the state. In December, the Environmental Protection Agency and the Department of Health announced that testing plan, which they called "the first step in learning if the chemicals have a widespread presence." (See Gongwer Ohio Report, December 2, 2019)

Building on that effort, the legislation would require the Environmental Protection Agency director to adopt rules establishing maximum levels for both drinking and surface water. Among specific chemicals to be policed include Chromium-6, the so-called "Erin Brockovich Chemical," and 1,4 dioxane.

"The scientific data being gathered on these dangerous toxins has created an imperative to address the need for clean water and the elimination of pollutants in our environment," Rep. Lightbody said.

"Recent changes in federal water standards make it critical that we set standards in Ohio to protect our water sources from 'forever' chemicals such as those in this bill. We serve communities across Ohio and future generations deserve advocates who act now in the best interests of their health and well-being."

In forming the rules, the OEPA director would be asked to consider limits adopted by other states, studies and scientific evidence, materials produced by the federal government and recent independent and government agency peer-reviewed studies.

The limits, which would be annually reviewed, must be protective of the public health and no less stringent than limits adopted by the federal government, according to the bill.

Peter Bucher, advocate for the Ohio Environmental Council Action Fund, cheered the introduction of the bill.

"Ohioans deserve clean and safe drinking water. We must protect water both at the source and the tap," he said.

"This legislation, combined with the DeWine Administration's PFAS Action Plan, moves Ohio one step closer to safeguarding communities from currently unregulated contaminants," he added.

## Michigan Suing 17 Companies Associated With State's PFAS Epidemic

[Attorney General Dana Nessel](#) announced this afternoon the state is suing 17 companies, including the Minnesota Mining and Manufacturing and Dupont, for their hand in spreading and contaminating Michigan waters and lands with per- and polyfluoroalkyl substances.

"We assert these 17 defendants knowingly ... used PFAS or PFAS containing products in such a way so as to cause harm to our state's natural resources and its residents," Ms. Nessel said, adding that the companies knew the chemical could cause cancer, destroy the environment and would be impossible to destroy.

Ms. Nessel also asserted the companies charged intentionally knew the harm PFAS caused and suppressed evidence which would prove the hazards it caused to human and environmental health, calling their actions "beyond unconscionable."

"These companies went to great length to promote the lie that PFAS was safe," Ms. Nessel said.

Also in attendance at Tuesday's press conference were [Governor Gretchen Whitmer](#) and Department of Environment, Great Lakes and Energy [Director Liesl Clark](#), along with members from the Michigan PFAS Action Response Team.

"It's time that these companies step up, take responsibility and address what has taken place," Ms. Whitmer said. "We cannot and will not stop until everyone has access to clean drinking water. ... We've made some real meaningful strides in this space, but we still have much work to do."

PFAS exposure to Michigan residents is primarily being done through ingesting water, though it has been found in fish, due to its ability to bioaccumulate in animals, as well as firefighting foam and certain plastics used to wrap fast food.

Ms. Clark said Michigan entered 2020 with more than 70 active PFAS sites within the state, many of which are abandoned manufacturing facilities. None have been fully remediated.



## Two Views on “Dark Waters”

In “Dark Waters,” Experience the Emotional Toll of an Attorney Fighting for Truth

By Chris Tavenor



As a public interest attorney at the Ohio Environmental Council (OEC), I've worked on water quality issues including PFOA and other perfluoroalkyl substances (PFAS). I'd heard Rob Bilott's story before — he was a speaker at the OEC's inaugural Ohio Public Interest Environmental Law Conference in 2018. We invited him to speak not only due to his Ohio connection, but because his lawsuits are incredibly important to the future of global human health. The science is certain on the dangers of PFOA, as revealed by Bilott's work — and we're just starting to recognize the risks of a thousand similar chemicals.

I expected Hollywood to approach PFOA with its usual hammer in “Dark Waters,” rather than with a scalpel. I was certain they would skirt over the details of the law, the legal system and the human health risks, instead crafting a fast-paced narrative intended to thrill and wow audiences with unrealistic farmomgering.

Instead, “Dark Waters” presents a harrowing, character-driven tale illustrating the stress and emotional toll of fighting against corporate-powers-that-be. Mark Ruffalo shines as Rob Bilott, the attorney . . . and Rob Bilott the scared son, and father, husband, and human seeking answers to murky questions. Anne Hathaway, playing Sarah Bilott, masterfully portrays a woman simultaneously supportive of the eccentricities of her ambitious husband while fighting against the sacrifices made in her own life.

Moviegoers may expect a tale of corporate espionage and chemical terror, but in reality, “Dark Waters” is all about Rob Bilott's real life. And it works. Rather than compress and combine legal narratives into a single case, “Dark Waters” shows the true scope of Bilott's fight against DuPont, starting in 1999 and ending the film in 2015. Sixteen years of legal battles - and those are only the fights shown in the film! Bilott's fight continues, even today.

From depositions to discovery, from procedural motions to oral arguments, “Dark Waters” explores the grueling path through the courts taken to unveil DuPont's treachery against the people of Parkersburg, West Virginia. At the same time, 16 years of fighting takes a toll both on Bilott and the people actually threatened by PFOA. “Dark Waters” is a film of details, including the unsung, emotional tragedies of the people Bilott fights to protect.

Through expert (albeit cliché) on-screen storytelling, we see the dangers presented by PFOA and other similar substances. In an archetypical dingy bar scene, a chemist draws on a notepad, showing Bilott the true nature of C8. Similarly, using real footage and photos from the original lawsuit protecting a farmer from DuPont, the film illustrates the risk to animals ingesting contaminated water. It also shows the political and cultural risks of pursuing restitution through the courts — and how long it can take to resolve complicated cases.

However, the movie truly shines through the portrayal of Bilott's personal experience fighting against the bad actors. Often personified by older, traditionalist attorneys (some employed by Taft itself, the firm for which Bilott still works), numerous antagonists push against Bilott's efforts to reveal the dangers of PFOA. And even as Sarah Bilott rallies behind her husband, she too expresses discomfort at his work. She sacrificed her career for him, and he might throw that away on a doomed crusade against a multi-billion dollar company? He puts stress upon himself, too, for he often doubts whether he's doing the right thing. It's brilliantly raw, visual storytelling. It's clean and concise, even when skipping year-to-year.

I give “Dark Waters” 3.5/4 stars. Rob Bilott dove into darkness, taking on a corporation with near-unlimited resources and holding them accountable to truth. It nearly killed him, but by the end of the movie, viewers will recognize why he never stopped fighting — and continues fighting to this day. Perhaps it'll inspire others to join the fight, too.

### About the Author

Chris Tavenor is the Ohio Environmental Council Law Center's staff attorney, supporting the legal and policy teams in their efforts to ensure clean air, clean water and clean energy for Ohio. In 2018, he co-authored a Petition for Rulemaking to the US EPA regarding PFOA and other PFAS, requesting regulations under the Safe Drinking Water Act and Clean Water Act. Tavenor is a graduate of the Ohio State University Moritz College of Law.

To learn more about Dark Waters and see an interview with attorney Rob Bilott, visit [OhioBar.org/DarkWaters](http://OhioBar.org/DarkWaters)

## “Dark Waters” Falls Flat

By Rob Brundrett



“To Kill a Mockingbird,” “12 Angry Men,” “A Few Good Men” and “My Cousin Vinny” can all rest easy. Their places in the pantheon of legal movies are safe for now. “Dark Waters” falls well short of earning a place among the great American legal dramas.

“Dark Waters” is the fictionalized account of attorney Rob Bilott’s legal battle against DuPont. The story takes place over 20 years, depicting impacts of the case on his law firm (managing partner played by Tim Robbins), family (wife played by Anne Hathaway), and health. The movie, based loosely on a New York Times Magazine article, works overtime to try to convince the audience that DuPont was negligent in its business practices and put the lives of its workers and communities along the Ohio River at risk. Bilott, played by a dour Mark Ruffalo, claims the company’s use of the compound, C8, which is part of the Perfluorooctanoic acid (PFAS) family of chemicals, is poisoning humans and animals in the Parkersburg, West Virginia community.

For those who might not be familiar, PFAS chemicals have been ubiquitous in modern life since at least the 1940s. Many items we rely on every day include these substances – including rainproof gear, carpet protectant, medical devices, aircraft, low-emissions vehicles and electronics. “Dark Waters” seeks to play on the public’s lack of knowledge about these substances to build fear and paranoia. However, many of the movie’s claims have been outright refuted.

“Dark Waters” wants to be a David versus Goliath story – but getting to the conclusion requires epic tolerance.

On one hand, the two-hour movie often drags as Bilott explains – at length – the case facts and legal minutia to whichever character happens to be stuck with him. In other moments, the production seeks desperately to spice things up with deception, danger and violence. The film uses everything from potential car bombs, to arson, to shady characters in trench coats in an attempt to keep viewers hanging around. Of course, anyone who has followed the real case knows that these dramatized events are simply that – creations to make the movie more sensational than your typical corporate civil litigation case.

The film purports that C8 contaminated a small farm and killed a cattle herd. While the farmer honestly believed this to be true, the facts showed otherwise. A 1999 investigative report, co-authored by leading scientists, veterinarians and the U.S. EPA, concluded that the cows died as a result of malnutrition, endophyte toxicity, pinkeye and copper deficiency – not C8 exposure. Specifically, the report concluded that the cattle had been fed fungus-containing food, which led to the endophyte toxicity.

The movie leads viewers to believe that PFAS and PFAS alone cause illness, cancer and birth defects. Like just about every other thing on the planet, either synthetic or naturally occurring, presence alone does not equate to toxicity. The movie fails to thoroughly disclose the results of the C8 Science Panel – the largest community health study ever conducted on these issues. This panel determined that there is no relationship between PFAS and birth

defects, yet this was a central theme of the movie.

It would be fascinating to hear what the people of Parkersburg think of this portrayal of their community and their lives. The movie casts the company as the worst type of villain and the local people as rubes. A group of West Virginia lawmakers recently decried images of people in the film as “literally toothless hillbillies.”

In its attempt to thrill audiences and drive an agenda, it puts forward a narrative that even the most hardcore fans of legal genres will question. If you came into the movie thinking that corporate America cares about nothing but profits this movie will certainly leave you feeling justified. But if you dig into the facts and history, sort the fact from the Hollywood fiction, you might just find yourself wondering what really happened along the Ohio river.

Lawmakers and regulators – both in Ohio and Washington – need to rely on sound science, and not Hollywood, as they consider how best to advance health and safety when it comes to environmental policy.

### About the Author

Rob Brundrett is the Director of Public Policy Services for The Ohio Manufacturers’ Association (OMA). In this role, Rob coordinates the OMA’s day-to-day lobbying efforts at the statehouse and before the executive branch. He works extensively with manufacturing leaders on a variety of issues impacting manufacturing including workers’ compensation, environment, healthcare, workforce and taxes.

# Governor DeWine Announces H2Ohio Water Quality Plan

Ohio Governor Mike DeWine today unveiled H2Ohio, a comprehensive, data-driven water quality plan to reduce harmful algal blooms, improve wastewater infrastructure, and prevent lead contamination.

**H2Ohio**  
**Targeted Priorities**  
[h2.ohio.gov](http://h2.ohio.gov)

**MIKE DEWINE**  
GOVERNOR OF OHIO  
[www.Governor.Ohio.gov](http://www.Governor.Ohio.gov)

**Reducing Phosphorus**

**Creating Wetlands**

**Addressing Failing Septic Systems**

**Preventing Lead Contamination**

“We have a moral obligation to preserve and protect our natural resources,” Governor DeWine said during a speech at the National Museum of the Great Lakes in Toledo. “My H2Ohio plan is a dedicated, holistic water quality strategy with long-lasting solutions to address the causes of Ohio’s water problems, not just the symptoms.”

Governor DeWine’s H2Ohio plan is an investment in targeted solutions to help reduce phosphorus runoff and prevent algal blooms through increased implementation of agricultural best practices and the creation of wetlands; improve wastewater infrastructure; replace failing home septic systems; and prevent lead contamination in high-risk daycare centers and schools. The Ohio General Assembly invested \$172 million in the plan in July, and since then, H2Ohio experts have been developing strategies for long-term, cost-effective, and permanent water quality solutions.

## Reducing Agricultural Phosphorus Runoff to Prevent Algal Blooms

The H2Ohio plan will invest substantially to help farmers reduce phosphorus runoff from commercial fertilizer and manure to prevent harmful algal blooms.

Algal blooms in Ohio’s lakes, rivers, and streams can threaten drinking water and impact the health of people and animals. Although studies have shown that phosphorus runoff from farms is the primary reason for algal blooms in Lake Erie, Ohio has not previously placed a significant focus on addressing this problem.

“Ohio has supported many programs to help farmers reduce nutrient loss over the years, but the state hasn’t done nearly enough, nor have previous plans focused enough, on reducing phosphorus runoff from agriculture,” said Governor DeWine. “That changes now.”

As a result of intensive scientific and economic studies, H2Ohio identified the 10 most effective and cost-efficient practices that have been proven to reduce agricultural phosphorus runoff. Through a certification process, H2Ohio will provide economic incentives to farmers who develop a nutrient management plan that includes a combination of the best practices listed below:

The graphic features the H2Ohio logo on the left, which includes a stylized water wave icon. To the right of the logo is the text "Phosphorus Reduction Best Practices" in a bold, blue font. Below this, a blue rectangular box contains a numbered list of 10 practices, arranged in two columns. The background of the graphic shows a rural farm scene with a green field, a red barn, and a white house under a clear blue sky. At the bottom of the graphic, there is a dark blue banner with the website "h2.ohio.gov" and "www.Governor.Ohio.gov" on the left, and the Governor of Ohio's seal and name "MIKE DEWINE GOVERNOR OF OHIO" on the right.

**H2Ohio Phosphorus Reduction Best Practices**

- 1 Soil testing
- 2 Variable-rate fertilization
- 3 Subsurface nutrient application
- 4 Manure incorporation
- 5 Conservation crop rotation
- 6 Cover crops
- 7 Drainage water management
- 8 Two-stage ditch construction
- 9 Edge-of-field buffers
- 10 Wetlands

h2.ohio.gov | www.Governor.Ohio.gov

MIKE DEWINE  
GOVERNOR OF OHIO

The H2Ohio phosphorus reduction plan will focus first on reducing runoff into the Maumee River Watershed and Lake Erie and will eventually be offered to other parts of the state in the future. Farmers in the Maumee River Watershed will be able to enroll in H2Ohio programs for funding incentives in time for spring 2020 planting.

“For now, we will not mandate the use of these best practices because we believe our strategy will lead to significant changes within our current laws,” said Governor DeWine. “By helping farmers implement these practices today, H2Ohio will ultimately save them money, increase their profits, and reduce their phosphorus runoff in the future. Although a decrease in Lake Erie algal blooms will take time, we must invest now if we want clean water for future generations.”

As part of the H2Ohio plan, counties in the Maumee River Watershed will each have a localized phosphorus target to help ensure accountability. Individualized nutrient management plans will also be developed for participating farms to identify which H2Ohio best practices will reduce the most phosphorus runoff at each location. Soil and Water Conservation District Offices in each county will lead local efforts to help farmers enroll in the H2Ohio program and to help them implement the H2Ohio best practices.

## H2Ohio Maumee River Watershed



The overall progress of the H2Ohio phosphorus reduction plan will be regularly assessed and aggregate data will be publicly available.

The plan was developed with input from a broad coalition of agriculture, education, research, conservation, and environmental partners. H2Ohio will be led by the Ohio Department of Agriculture, Ohio Department of Natural Resources, Ohio Environmental Protection Agency, and Lake Erie Commission with support from [the Ohio Agricultural Conservation Initiative](#), Ohio Farm Bureau, U.S. Department of Agriculture, and others. Several of the country's largest agribusiness operations, including Land O'Lakes, Nutrien, and The Andersons, have voiced support for the plan and have agreed to promote H2Ohio to their customers to help increase the number of acres enrolled in best practices.

[Learn about OACI](#)

## Ensuring Safe, Clean Water

### H2Ohio Protecting Ohio's Water



**Infrastructure**



**Septic Systems**



**Lead**

[h2.ohio.gov](#) | [www.Governor.Ohio.gov](#)



H2Ohio will address water and sewer needs in Ohio, including failing home septic systems in disadvantaged communities and possible lead contamination in high-risk daycare centers and schools.

“Ohio’s communities rely on clean drinking water and wastewater infrastructure to protect public health, provide for a high quality of life, and enable economic vitality,” said Governor DeWine. “It is wrong that Ohio children are potentially being exposed to lead in drinking water because of antiquated piping and fixtures in daycare centers or they can’t play outside because their backyards are covered in sewage from failing septic systems. H2Ohio is going to help.”

Under the direction of the Ohio Environmental Protection Agency, H2Ohio will fund infrastructure projects in disadvantaged communities to help ensure they have safe drinking water and quality sewer infrastructure.

H2Ohio will also help replace hundreds of failing home sewage treatment systems in low-income households to prevent the release of raw sewage onto property or into waterways.

Additionally, through a combination of state and federal funds, H2Ohio will assess lead exposure in daycare centers and schools in high-risk areas of Ohio and will help replace lead pipes and fixtures.

The Ohio EPA will announce detail

# H2Ohio Support for H2Ohio

## Ohio AgriBusiness Association

“Built on the success of the 4R Nutrient Stewardship Certification Program for agricultural retailers, we believe this program is a logical next step. We know that farmers are willing to invest in what they know will work, and this program will allow each farmer to evaluate their current level of conservation and determine which practices will work the best on their farm.”

– Chris Henney, President and CEO,  
Ohio Agribusiness Association

## Ohio Cattlemen's Association

“Ohio’s cattle farmers have been committed to good environmental stewardship, including maintaining healthy waterways, for generations. That’s why we proudly support Governor DeWine’s new H2Ohio program. It will provide the needed resources to implement science-based practices on our farms and demonstrate continuous improvement in addressing the state’s water quality challenges.”

– Elizabeth Harsh, Executive Director,  
Ohio Cattlemen’s Association

## Ohio Corn and Wheat Growers Association

“Farmers have been making significant investments in their farms to do their part to improve Ohio’s water quality because it is the right thing to do. By opening up H2Ohio resources to support farmers as they make continuous improvements to their operations, we are making the implementation of best practices accessible to every farmer.”

– Tadd Nicholson, executive director of the  
Ohio Corn & Wheat Growers Association

## Ohio Environmental Council

“We thank Governor DeWine for his leadership on H2Ohio. The investment to protect and improve Ohio’s water quality is long overdue and H2Ohio is a major advancement in the fight to provide all Ohioans with clean, safe, and affordable water. This is a good next step towards achieving this goal, which will require long-term investment, additional steps and additional collaboration. We look forward to continuing this important work alongside environmental, agricultural, academic and regulatory leaders to develop science-based, forward-thinking solutions that are good for people, good for our environment and good for our economy.”

– Heather Taylor-Miesle, executive director  
of the Ohio Environmental Council and  
co-chair of OACI

## Ohio Farm Bureau Federation

“H2Ohio takes on Ohio’s water quality issues with an aggressive plan of proven solutions. We appreciate Governor DeWine stepping up to provide funding to make the implementation of additional best management practices more economically feasible for farmers as they help achieve the overall goal of clean water across the state.”

– Frank Burkett III, President,  
Ohio Farm Bureau

## Ohio Federation of Soil and Water Conservation Districts

“An important part of the work that takes place at Ohio’s 88 soil and water conservation districts is to provide consultation to farmers and landowners on ways they can adopt conservation best practices. We are eager to bring a new tool, through the OACI app, to work with farmers to continuously enhance their water quality improvement initiatives.”

– Janelle Mead, CEO, Ohio Federation of  
Soil and Water Conservation Districts

s of new projects in the coming weeks.

# H2Ohio Support for H2Ohio

## “ Ohio Pork Council

“Ohio’s pig farmers are eager to participate in this science-based program that will push them toward their goal of continuously improving on-farm practices to preserve Ohio’s waterways. As an Ohio pig farmer, I believe the H2Ohio program will challenge farmers to make positive changes to benefit water quality.”

– Dave Shoup, President, Ohio Pork Council

## “ Ohio Soybean Association

“The H2Ohio plan is a comprehensive, positive step forward with input from agriculture, environmental groups, universities, and government agencies. The Ohio Soybean Association is proud to support Governor DeWine and his strategic vision, and look forward to seeing H2Ohio implemented for the benefit of all Ohioans.”

– Scott Metzger, Ohio Soybean Association president and soybean farmer from Ross County

## “ Ohio Poultry Association

“Ohio’s egg, chicken and turkey farmers have long recognized the important role we play in protecting the environment and addressing water quality issues. We are proud to support Governor DeWine’s H2Ohio plan that will provide resources and education that farmers need to implement science-based practices on their farms to support healthy waterways in our state.”

– Jim Chakeres, Executive Vice President, Ohio Poultry Association

## “ The Nature Conservancy

“H2Ohio represents a huge advancement in addressing the sources of Ohio’s water quality problems and we are especially pleased to see included in the plan natural solutions such as wetland creation and floodplain restoration, which will filter out nutrients and sediments that contribute to harmful algal blooms. To be successful, we agree with Governor DeWine that it will take time to achieve goals and that H2Ohio must have a dependable and longer-term source of funding. Monitoring of water quality over time, with accountability of fund recipients to continually improve until goals are reached, will be essential to success. We appreciate that this kind of approach is being discussed.”

– Bill Stanley, State Director, The Nature Conservancy in Ohio

## “ Nutrien

“Nutrien congratulates Governor DeWine on today’s announcement and looks forward to working with the Administration as a partner in the H2Ohio program. This is an important step to meet our shared goal of improved water quality in the state and particularly in the Western Lake Erie Basin. As an ag retailer in Ohio, we recognize our role in helping solve crucial environmental issues. We are proud to support the Ohio 4R Certification program and of our work with growers to increase crop input efficiency using innovative solutions. Through the Governor’s leadership and the H2Ohio program, we can expand sustainable farming practices and continue to improve the health of Lake Erie, while enhancing yields and strengthening Ohio’s agriculture economy.

– Nutrien

### **The Andersons**

"The Andersons believes that improving and protecting Ohio's waterways requires the collaborative efforts of government agencies, farmers, agribusinesses, universities and environmental groups. From what we've seen so far, we feel H2Ohio is a very promising initiative and will help bring the necessary parties together to find effective solutions."

– *The Andersons*

### **Ohio Sheep Improvement Association**

"The Ohio Sheep Improvement Association is proud of our growing industry and the need to increase our environmental stewardship as the demand for sheep, lamb and wool increases. Ohio sheep farmers support Governor DeWine and the unique collaboration to bring all agricultural industry groups to the table as we increase the adoption of on-farm best management practices."

– *Ohio Sheep Improvement Association*

### **Ohio Dairy Producers Association**

"Ohio dairy farmers are firmly committed to protecting Ohio's waterways. We are looking forward to working collaboratively with Governor DeWine and Ohio's agriculture and environmental leaders to identify and provide resources and education that our farmers need to implement science-based practices on their farms to ensure continued water quality improvements over time."

– *Scott Higgins, CEO of the Ohio Dairy Producers Association*

### **Environmental Defense Fund**

"Since day one, Governor DeWine has made water quality a cornerstone of his administration through the H2Ohio program and Environmental Defense Fund (EDF) supports his efforts. For more than 50 years, EDF has been guided by science and economics to find practical solutions to our nation's most serious environmental challenges and we look forward to collaborating with the DeWine administration in implementing H2Ohio to overcome urgent water quality challenges."

– *Mark W. Rupp, Environmental Defense Fund*

### **The Fertilizer Institute**

"The Fertilizer Institute supports the DeWine Administration's collaborative and comprehensive approach to water quality and soil health. TFI is committed to being more efficient and protective of our natural resources through minimizing nutrient loss, conserving and preserving water, and ensuring our products are properly handled and used. We look forward to being a part of the H2Ohio program as we encourage the widespread adoption of fertilizer best practices, through outreach and education of nutrient stewardship."

– *Lana Moody, The Fertilizer Institute*

### **Land O'Lakes, Inc.**

"As a farmer-owned cooperative, Land O'Lakes, Inc. believes strong collaboration is critical to address water quality and we applaud Governor DeWine and his Administration for engaging a wide range of stakeholders, including Land O'Lakes, in the H2Ohio Initiative. We look forward to further exploring opportunities to work together with the State of Ohio, with the aim of delivering water quality outcomes while helping Ohio farmers focus on the health of their business into the future."

– *Land O'Lakes, Inc.*



February 28, 2020

**Via Electronic Mail (lakeeriecommission@lakeerie.ohio.gov)**

Ohio Lake Erie Commission  
P.O. Box 1049  
Columbus, Ohio 43216

Re: Comments on the Ohio Lake Erie Commission's Draft *Lake Erie Protection and Restoration Plan 2020*

Dear Commissioners,

The Ohio Manufacturers' Association (OMA) represents more than 1,300 members throughout Ohio. For more than 100 years, the OMA has supported reasonable, necessary, and transparent regulation that promotes the health and well-being of Ohio's citizens and the environment. Manufacturers across the state are actively engaged in improving the health of one of Ohio's most important resources: Lake Erie.

Thank you for the opportunity to provide comments to the Ohio Lake Erie Commission's Draft *Lake Erie Protection and Restoration Plan 2020* (LEPR).

The OMA appreciates the extensive work and research that OLEC has performed to prepare the draft LEPR. Overall, the OMA is supportive of the general plan outlined in the draft. OMA supports Governor DeWine's H2Ohio initiative and its relationship with LEPR.

The OMA is glad to see and supports the establishment of metrics for each priority area and the continuation of a robust stakeholder engagement process as part of the plan. These features are outlined on page 31. The OMA would like to be involved with any stakeholder opportunities proposed by OLEC in order to ensure Ohio's manufacturers have access to the Commission throughout the plan's implementation.

The OMA appreciates the opportunity to comment on the draft plan and to share our thoughts at this stage. We would appreciate the opportunity to remain engaged with OLEC as an interested party throughout the development and implementation of the final draft.

If OLEC has any questions regarding the foregoing, please do not hesitate to contact me at (614) 629-6814 or [rbrundrett@ohiomfg.com](mailto:rbrundrett@ohiomfg.com), or OMA's environmental counsel, Frank Merrill of Bricker & Eckler LLP (614) 227-8871).

Sincerely,

A handwritten signature in blue ink that reads "Robert A. Brundrett". The signature is written in a cursive, flowing style.

Rob Brundrett  
Director, Public Policy Services

cc: Julianne Kurdila, OMA Environment Committee Chair  
Frank Merrill, Esq., Bricker & Eckler LLP



March 2, 2020

**VIA Electronic Mail (dap@lakeerie.ohio.gov)**

Ohio Lake Erie Commission  
P.O. Box 1049  
Columbus, Ohio 43216

Re: Comments on the Ohio Lake Erie Commission's Draft *Domestic Action Plan 2020*

Dear Commissioners,

Last month the Ohio Lake Erie Commission (OLEC) and the State of Ohio released an updated draft of Ohio's *Domestic Action Plan* to reduce phosphorus entering Lake Erie under the binational Great Lakes Water Quality Agreement. The draft is a continuation of the Western Basin of Lake Erie Collaboration Implementation Framework finalized by the State of Ohio in early 2017, and it supports Governor DeWine's H2Ohio plan which was released in the fall of 2019.

The OMA represents more than 1,300 members throughout the state. For more than 100 years, the OMA has supported reasonable, necessary, and transparent regulation that promotes the health and well-being of Ohio's citizens and the environment.

Over the past three years the OMA has remained engaged with Ohio's leaders as they drafted the state's previous *Domestic Action Plan* to ensure no undue negative effects on individual manufacturers or Ohio's manufacturing sector.

The OMA thanks both OLEC and the State of Ohio for the opportunity to provide comment on the draft *Domestic Action Plan 2020*. The OMA appreciates the significant work of OLEC in preparing and presenting the 2020 plan for comment. The OMA offers overall support for the presented plan, including the incorporation of an adaptive management philosophy, instead of a "one-size-fits-all" strategy, and the focus on addressing the primary sources of phosphorus through effective, evaluated management practices.

The focus of the 2020 draft around Governor's DeWine's H2Ohio plan is to be applauded. The new focus and coordination by the numerous state agencies has the opportunity to make real impacts on Lake Erie's water quality as outlined in four priorities:

- Establishing science-based priorities for agricultural best management practices and state programs that support H2Ohio efforts to encourage farmers to implement scientifically backed best practices;
- The importance of wetland restoration and outlining ODNR efforts to create, restore, and enhance wetlands for nutrient reduction as part of H2Ohio;
- Updated actions for communities including H2Ohio support for home sewage treatment system remediation;
- Integrating the role of watershed planning at the local level for siting projects to reduce nutrients efficiently, including a distribution of the load reduction throughout the Maumee River watershed based on the Ohio EPA Nutrient Mass Balance method.

Under “Strategies and Implementing Actions – Other Actions”, the draft Domestic Action Plan states: “The complete list of actions was provided in table form in an appendix in the Ohio DAP 1.0. We will redevelop this table as part of the final workup of this version of the Ohio DAP.”

The OMA requests that OLEC provide interested parties the opportunity to review the complete list of actions to be included in in the Domestic Action Plan 2020 prior to its finalization.

The OMA would also like to highlight the section entitled, “Public Involvement and Advisory Mechanisms.” OMA would like to be involved with all three concepts: Advisory Board, Annual Conference, and Ad Hoc. In particular, OMA appreciates the opportunity to provide input on the HUC12 load evaluations and any future load allocations in the Maumee River watershed. As previously stated the OMA remains committed to actively participating with OLEC on this 2020 plan and any future Domestic Action Plans.

If OLEC has any questions regarding the foregoing, please do not hesitate to contact me at (614) 629-6814 or [rbrundrett@ohiomfg.com](mailto:rbrundrett@ohiomfg.com), or OMA’s environmental counsel, Frank Merrill of Bricker & Eckler LLP (614) 227-8871).

Sincerely,



Rob Brundrett  
Director, Public Policy Services

cc: Julianne Kurdila, OMA Environment Committee Chair  
Frank Merrill, Esq., Bricker & Eckler LLP

## Environment

### **Cleveland Manufacturers Could See More Regulation Due to Federal Ozone Standards February 28, 2020**

Ohio EPA this week hosted its **second regional meeting** for interested parties, including manufacturers and the OMA, to discuss the likelihood that the Cleveland airshed will be bumped up from “marginal” to “moderate non-attainment” under the federal ozone standard. The standard was lowered to 70 parts per billion during the Obama administration. Earlier this month, Ohio EPA notified parties in the **Cincinnati area** of the same possibility.

A change in status will trigger additional compliance requirements under the federal Clean Air Act. One of the key components of additional regulatory restrictions would be emissions offsets, so that any new emissions creator would need to be set at the New Source Review offset ratio 1.15:1.

The OMA will continue to work with members and Ohio EPA on this important issue that could affect many of the state’s manufacturers and Ohio’s overall economy. *2/27/2020*

### **Trump Administration Plans Overhaul of NEPA Review Process February 28, 2020**

The White House Council on Environmental Quality has published a notice of proposed rulemaking reflecting changes to the implementation of the National Environmental Policy Act (NEPA). The proposed changes would streamline NEPA’s environmental review process and narrow how, and whether, federal agencies consider the effects of climate change in their review of energy and infrastructure projects.

OMA Connections Partner Jones Day, in its **quarterly update**, notes the proposed rule “will shorten the environmental review process and improve coordination between local, state and federal permitting agencies.” The public comment period is open until March 10, as the administration seeks to get the final rule published before the November election. *2/27/2020*

### **TMDL on the Horizon for Lake Erie February 21, 2020**

Last week, Ohio EPA released its draft “2020 Integrated Water Quality Monitoring and Assessment Report,” which is available for comment until March 13, 2020. This report is noteworthy because for the first time Ohio is identifying Lake Erie’s western basin as an “impaired” water. Due to this declaration, Ohio EPA is now committed to prepare a total maximum daily load (TMDL) analysis. **Learn more here.**

The OMA will be reviewing the report and preparing comments for members. The new TMDL has the potential to impact many manufacturers with operations in Northwest Ohio.

Ohio EPA will present information about the draft impaired waters list during the agency’s 2 p.m. webinar on Monday, March 2. The webinar can be viewed at Ohio EPA’s central office (50 West Town Street, Suite 700, in Columbus) or **online**. *2/20/2020*

### **Ohio EPA Launches ‘Ask an Expert’ February 21, 2020**

Ohio EPA’s Office of Compliance Assistance and Pollution Prevention (OCAPP) has created a new avenue for companies to receive free and confidential environmental assistance regarding regulatory concerns about air, waste, water, and other environmental requirements. This service is available Monday through Friday, from 10 a.m. to 12 p.m. — and from 1 p.m. to 3 p.m. To utilize this service, **click here**. *2/20/2020*

### **Webinar to Spotlight Ohio Plan to Reduce Phosphorus in Lake Erie February 21, 2020**

Ohio EPA has **announced** that the Ohio Lake Erie Commission will host a **webinar** on Monday, Feb. 24, from 4 to 5 p.m. to answer questions about the draft “Ohio Domestic Action Plan 2020,” released late last month. The plan seeks to reduce phosphorus from entering Lake Erie under the binational Great Lakes Water Quality Agreement in accord with Gov. DeWine’s H2Ohio plan. *2/19/2020*

## **At a Glance: America's Improved Air Quality February 21, 2020**

The U.S. EPA has published **this flier** showing that between 1970 and 2018, the combined emissions of the six common pollutants dropped by 74% across the U.S. This progress occurred as the economy expanded, Americans drove more miles, and the nation's population and energy use increased. Details are available on the U.S. EPA's **AirTrends website**. *2/18/2020*

## **Ozone Regs About to Choke Cincinnati, Cleveland Manufacturers? February 14, 2020**

This week, Ohio EPA hosted a meeting with interested parties, including the OMA, to discuss the likely possibility that Ohio's southwest region will soon be designated as an area in "**moderate non-attainment**" of the federal ozone standard — which was lowered to 70 parts per billion during the Obama administration.

The region's status change from "marginal" to "moderate" non-attainment will trigger additional compliance requirements under the federal Clean Air Act. This change in designation will likely result in NOx Reasonably Available Control Technology, VOC Control Technique Guidelines, emissions offsets, and other new programs to be initiated for Ohio to reach attainment.

A meeting is scheduled for later this month in Cleveland to address these same concerns, as Northeast Ohio also appears to be headed for a new designation of moderate non-attainment. The OMA will be working with members and Ohio EPA on this important issue, which could affect manufacturers and Ohio's overall economy. *2/13/2020*

## **Reporting Season is Here February 14, 2020**

The deadlines for filing Ohio EPA's hazardous waste and air reports are nearing.

The **Hazardous Waste Report** (HWR) is due March 1. (Because this is a Sunday, Ohio EPA will receive the reports on Monday, March 2.) The report is required of any facility that generated more than 2,200 pounds of hazardous waste (or 2.2 lbs. of acute hazardous waste) during any one calendar month in 2019.

Treatment, storage, and disposal facilities are also required to submit an HWR. Ohio EPA encourages electronic filing using **this site**. Meanwhile, some of the key deadlines for required air reports include:

- Feb. 18 – Permit Evaluation Report (for some facilities);
- April 15 – Annual Emissions Report;
- April 30 – Title V Compliance Certification; and
- April 30 – Quarterly Compliance Report.

Reminders of these annual reporting requirements were sent via U.S. mail last week. *2/13/2020*

## **New PFAS Bill Introduced in Ohio Legislature February 14, 2020**

Late last week, two freshman legislators Rep. **Mary Lightbody** (D-Westerville) and Rep. **Allison Russo** (D-Upper Arlington) introduced **House Bill 497**. The bill would require Ohio to set its own drinking water standard for per and polyfluoroalkyl chemicals — more commonly known as PFAS.

This group of chemicals has been manufactured since the 1940s for use in a variety of industries around the globe and in a wide range of products — from firefighting foam to stain-resistant carpets. PFAS are ubiquitous in the environment, and there is much debate and disputed science surrounding the potential effects of these chemicals.

Recently, Ohio Gov. Mike DeWine **ordered** Ohio EPA and the Ohio Department of Health to implement an **action plan** for the testing of more than 1,500 public water supplies. Instead of creating an Ohio standard, the state has shown deference to U.S. EPA in setting a national maximum containment level for PFAS. The OMA has been heavily engaged in this issue. Members interested in learning more should contact **Rob Brundrett**. *2/13/2020*

## **Ohio EPA's Compliance Conference Nearly Sold Out February 14, 2020**

The Ohio EPA reports that seats for the agency's annual **Compliance Assistance Conference**, set for March 31 – April 1, are nearly sold out. The event, to be held at the Greater Columbus Convention Center, will provide information and contacts to help businesses comply with state and federal environmental standards. Among the presenters will be U.S. EPA Region 5 Administrator **Kurt Thiede**. *2/13/2020*

**Public Comment Period on Lake Erie Plan Closes Feb. 28  
February 7, 2020**

The Ohio Lake Erie Commission has released its draft **Lake Erie Protection and Restoration Plan 2020** (LEPR) for public comment. According to Ohio EPA, the LEPR, last published in 2016, "reflects actions that the Ohio Lake Erie Commission and its member agencies will take over the next several years to protect, preserve, and restore our Great Lake." The public comment period on the plan will close Friday, Feb. 28. For details, see the Ohio EPA's **press release**. For questions, email the OMA's **Rob Brundrett**. *2/6/2020*

**Ensuring Compliance with Ohio's Stormwater Program  
February 7, 2020**

The Ohio Stormwater Association, in collaboration with Ohio EPA, is offering a **free webinar** to manufacturers who want to learn more about the permitting process for the agency's stormwater program. Set for 11 a.m. on Wednesday, Feb. 12, this one-hour event will feature best practices and tips on how to comply. *2/4/2020*

**Ohio EPA Compliance Assistance Conference Set for March 31 – April 1  
January 31, 2020**

Ohio EPA's **winter newsletter** reports that registration is open for the agency's annual **Compliance Assistance Conference**, set for March 31 – April 1, 2020 at the Greater Columbus Convention Center. The conference provides information and contacts to help your company comply with state and federal environmental standards. Among the event's presenters will be recently appointed U.S. EPA Region 5 Administrator **Kurt Thiede**. *1/27/2020*

**Update to Lake Erie Phosphorus Reduction Plan  
January 31, 2020**

State officials have **announced** the release of an **update** to the Ohio Domestic Action Plan aimed at reducing phosphorus in Lake Erie under the bi-national Great Lakes Water Quality Agreement. It's the first such iteration of the plan since Gov. DeWine's H2Ohio program was enacted. The plan focuses on four aspects:

- Establishing science-based priorities for agricultural management practices and state programs to support H2Ohio efforts to encourage farmers to implement science-based best practices;
- The importance of wetland restoration and outlining ODNR efforts to create, restore, and enhance wetlands for nutrient reduction as part of H2Ohio;
- Updated actions for communities, including H2Ohio support for home sewage treatment system remediation;
- Integrating the role of watershed planning at the local level for siting projects to reduce nutrients efficiently, including a distribution of the load reduction throughout the Maumee River watershed based on the Ohio EPA Nutrient Mass Balance method.

Previous versions of the plan required Ohio EPA to pursue legislation that would require all treatment works discharging wastewater containing phosphorus to achieve at least a monthly average effluent concentration of 1 mg/L phosphorus. The OMA and its nutrient water working group has worked tirelessly with Ohio EPA and others to ensure manufacturing is not disproportionately harmed by any new regulations on nutrients. Public comments can be **emailed** by March 2, 2020. *1/30/2020*

## **OMA Submits Comments on Industrial Waste Changes** **January 24, 2020**

This week, the OMA **submitted comments** supporting Ohio EPA's proposed amendments to merge the Industrial Waste Program and Residual Waste Programs, whereby non-hazardous, non-municipal waste streams will be called "industrial or manufacturing waste" or IMW. This change will result in the establishment of just two landfill classifications instead of the current four. The OMA commented that it believes the approach to these updated classifications will allow for a more streamlined approach. We will continue to monitor the rule package for noteworthy changes. *1/23/2020*

## **Despite the Expanding Economy, CO2 Emissions Expected to Decline Further** **January 24, 2020**

In its latest Short-Term Energy Outlook, the U.S. Energy Information Administration **forecasts** year-over-year decreases in energy-related carbon dioxide (CO2) emissions through 2021. After declining by 2.1% in 2019, energy-related CO2 emissions are expected to decrease by 2.0% in 2020, and again by 1.5% in 2021. *1/21/2020*

## **Charting Ohio's CO2 Emissions** **January 17, 2020**

The St. Louis Fed has published nearly 5,000 **new data series** examining the sources of energy-related CO2 emissions in the U.S. The data series from the U.S. Energy Information Administration show emissions by fuel type, sector, and state. Here's a look at **Ohio's industrial CO2 emissions**, which have dropped dramatically since 1980. *1/14/2020*

## **Honda R&D Earns Ohio EPA's Top Award** **January 17, 2020**

This week, Ohio EPA Director Laurie Stevenson **recognized** Honda R&D Americas, Inc. with the agency's platinum level environmental stewardship award. The company was bestowed with the honor due to its emphasis on waste reduction, community service and outreach.

Honda R&D Americas is Honda's second-largest R&D center in the world, located just outside Columbus in Raymond. *1/14/2020*

## **Kurt Thiede Appointed as U.S. EPA Region 5 Administrator** **January 10, 2020**

This week, U.S. Environmental Protection Agency (EPA) Administrator Andrew Wheeler **announced** the appointment of Kurt Thiede of Wisconsin to become Region 5 administrator, overseeing environmental protection efforts in Minnesota, Wisconsin, Illinois, Michigan, Indiana and Ohio. Thiede will succeed Cathy Stepp, who is stepping down from her post in the Great Lakes region after several years of service to the agency. The OMA established a strong working relationship with Thiede during his time as chief of staff to Administrator Stepp. We're looking forward to continuing that relationship as he begins his new role. *1/9/2019*

## **Key Scientist Debunks 'Dark Waters'** **January 10, 2020**

The movie "**Dark Waters**" continues to be exposed for the piece of sensationalism it is. This week, one of the six scientists who wrote a report on the 1999 cattle deaths featured in the movie took issue with the film.

In a **letter to the editor**, Robert H. Poppenga says the movie perpetuates falsehoods about science to sell movie tickets — noting that his team "concluded there was no evidence that chemical contamination was associated with the cattle's health problems, which instead resulted from poor nutrition and sub-par veterinary care." The movie, he says, "ignores scientific studies that are inconvenient to the filmmakers' narrative." *1/7/2020*

## **OMA's Rob Brundrett Reviews 'Dark Waters'** **January 3, 2020**

In late 2019, a movie called "Dark Waters" was released by Hollywood activists, and promoted by trial lawyers and anti-manufacturing interests. While the movie has been a box office bust, it has succeeded in its mission of misrepresenting manufacturing in the Ohio River Valley.

The OMA's Rob Brundrett, director of public policy services, recently reviewed the film at the request of the Ohio State Bar Association. The

association's magazine, *Ohio Lawyer*, has **published his critique**.

If you haven't already seen the OMA's "**Truth About Dark Waters**" website — which sets the record straight with fact sheets, videos, and a blog — be sure to do so. 1/2/2020

**Ohio Manufacturer: System of 'Jackpot Justice' Causing Financial Harm to U.S. Economy**  
**January 3, 2020**

Andrew O. Smith, CEO of Yenkin-Majestic Paint Corp. in Columbus, has also penned his thoughts on the movie "Dark Waters" and what he calls "a system of 'Jackpot Justice' where trial lawyers and special-interest groups extort huge payouts and regulate manufacturing through litigation."

In a Jan. 2 **guest editorial** published in *The Columbus Dispatch*, Smith wrote: "Lawsuits impose a cost on our country equal to roughly 9.4% of GDP or about \$2 trillion annually in dead-weight losses, showing up in higher costs for goods and services to the tune of \$6,000 for every man, woman and child in this country, every single year." 1/2/2020

**Environment Legislation**  
Prepared by: The Ohio Manufacturers' Association  
Report created on March 3, 2020

- 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:* 10/22/2019 - Senate Finance, (First Hearing)  
*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:* 9/17/2019 - House Energy and Natural Resources, (First Hearing)  
*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:* 9/17/2019 - House Energy and Natural Resources, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-95>
- 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:* 2/12/2020 - Referred to Committee Senate Local Government, Public Safety and Veterans Affairs  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-242>
- HB340**      **DRAINAGE LAW** (CUPP B) To revise the state's drainage laws.  
*Current Status:* 2/26/2020 - House State and Local Government, (Third Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-340>
- HB491**      **PLASTIC POLLUTION AWARENESS DAY** (CRAWLEY E) To designate the fifteenth day of February as "Plastic Pollution Awareness Day."  
*Current Status:* 2/11/2020 - Referred to Committee House State and Local Government  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-491>
- HB497**      **SAFE DRINKING WATER ACT** (LIGHTBODY M, RUSSO A) To require the Director of Environmental Protection to adopt rules establishing maximum allowable contaminant levels in drinking water and water quality standards for certain contaminants.  
*Current Status:* 2/11/2020 - Referred to Committee House Health

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-497>

- HB522**      **WASTE DISPOSAL - CONSERVANCY DISTRICTS** (SOBECKI L, SWEARINGEN D) To authorize conservancy districts to provide for the collection and disposal of solid waste.  
**Current Status:** 2/21/2020 - Introduced  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-522>
- HR247**      **AIR QUALITY STANDARDS** (ROEMER B) To respectfully urge Congress and President Donald Trump to amend the Federal Clean Air Act to eliminate the requirement to implement the E-Check Program and direct the Administrator of USEPA to begin new rule-making procedures under the Administrative Procedures Act to repeal and replace the 2015 National Ambient Air Quality Standards; to respectfully urge Congress and President Donald Trump to pass legislation to achieve improvements in air quality more efficiently while allowing companies to innovate and help the economy grow; to urge the Administrator of USEPA to alleviate burdensome requirements of the E-Check Program and the Clean Air Act if Congress and the President fail to act; and to encourage OEPA to explore alternatives to E-Check in Ohio.  
**Current Status:** 2/20/2020 - **PASSED BY HOUSE**; Vote 62-29  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HR-247>
- HR307**      **PLASTIC POLLUTION AWARENESS DAY** (CRAWLEY E) Designating Plastic Pollution Awareness Day in Ohio, February 15, 2020.  
**Current Status:** 2/4/2020 - Introduced  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HR-307>
- 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:** 2/19/2020 - **BILL AMENDED**, House Energy and Natural Resources, (Fifth Hearing)  
**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: March 4, 2020**

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### **Overview**

The corona virus remains a top issue for manufacturers as they work to secure alternative suppliers and ensure their employees remain safe from any potential outbreaks.

Workforce takes top priority around the statehouse and the OMA continues to work with its network for industry sector partnerships. OMA is working closely with Lt. Governor Husted and the administration to upskill manufacturers and reduce the skills gap for manufacturers in Ohio.

Last year the OMA hosted its third annual OMA Workforce Summit at the end of October. Over 530 manufacturers, educators, and workforce thought leaders attended to share information and learn from each other and the OMA's workforce roadmap. The OMA just released its 2020 workforce roadmap.

### **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. The Senate recently passed House Bill 2 from its Finance Committee and is awaiting a full floor vote which is expected as early as this week. The OMA was able to get several changes in the bill to benefit the statewide sector partnership network and industry sector partnership grant program.

#### **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 signed by the governor just after the new year.

#### **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 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 but none since last May.

#### House Concurrent Resolution 17 – Expand SNAP Benefits to Striking Workers

The Resolution Congress to expand Supplemental Nutrition Assistance Program eligibility to include the households of striking workers. The resolution has had one hearing in the House.

#### 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. The bill had one hearing last January.

#### House Bill 80 – BWC budget bill

The House passed version of the BWC budget bill included PTSD coverage for first responders. 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.

#### 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 Insurance has held two hearings and is expected to hold at least one more hearing.

#### Senate Bill 92 – Wage Discrimination

The bill would enact the "Fair and Acceptable Income Required (FAIR) Act" and revises the enforcement of the prohibitions against discrimination in the payment of wages. The bill had its first hearing last March.

#### Senate Bill 94 – Pregnant Workers

SB 94 creates the "Ohio Pregnant Workers Fairness Act" to generally require employers to make reasonable accommodations for employees who are pregnant or breastfeeding. The bill has had one hearing.

#### Senate Bill 149 – Employee Wage History

The bill prohibits employers from seeking a prospective employee's wage or salary history. The bill had its first hearing this January.

#### 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.

#### Senate Bill 201 – Alternate Employer Organizations

The bill creates alternative employer organizations. The AEO mirrors the functions of PEOs (Professional Employer Organizations) with the exception that an AEO must file federal payroll taxes under the tax identification number of its client instead of its own, which is the traditional model. The bill has had three hearings.

#### Senate Bill 207 – Drug Test for Unemployment Benefits

The bill requires unemployment benefit applicants to take a drug test under certain circumstances, to create the Ohio Works First drug testing pilot program, and to make an appropriation. The bill has had one hearing.

#### 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.

#### Senate Bill 282 – Unemployment Comp Complaints

The bill would require the Director of Job and Family Services to establish a process for employers to make complaints regarding unemployment compensation benefits.

#### House Bill 352 – Civil Rights Employment Law

The bill is Ohio's latest attempt to clean up its outdated and complex employment laws. The bill brings Ohio more closely in uniform with federal laws and includes the following changes:

Creates a uniform two-year statute of limitations for all employment discrimination claims.

- Unites the filing of age discrimination claims to the same procedures and remedies as all other protected classes.
- Eliminates individual statutory liability for managers and supervisors.
- Requires individuals file an administrative charge of discrimination with the Ohio Civil Rights Commission as a prerequisite to filing a discrimination lawsuit in court.
- Establishes certain affirmative defenses

#### House Bill 369 – Ohio Fairness Act

Much like its companion bill in the Senate, House Bill 369 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 is supportive of the Senate version and is supportive of the House version.

### House Bill 378 – Striking Employees Unemployment Compensation

The bill would provide unemployment benefits to striking workers. This would be a complete reversal of unemployment compensation law which is for workers who are unexpectedly out of work through no fault of their own. The OMA opposes this massive overreach.

### House Bill 508 – Unemployment Compensation: Domestic Violence Victims

The bill allows an individual to be eligible for unemployment compensation benefits for unemployment due to domestic violence.

### **Workforce Services**

More than 525 individuals from across Ohio took part in the OMA's third annual Ohio Manufacturers' Workforce Summit at the Greater Columbus Convention Center in Columbus.

Participants were provided new information about Ohio's existing workforce development efforts, as well as updated details about plans to create 5,000 apprenticeships statewide over the next four years. Individual breakout sessions — presented by workforce experts — shared strategies and best practices to grow manufacturing talent at the local level.

Other highlights included a keynote address by Ohio Development Services Agency Director Lydia Mihalik, as well as informative presentations on industry sector partnerships, automation and robotics, and how to engage non-traditional populations in manufacturing career pathways.

The OMA's fourth annual workforce summit will take place on October 28.

### TechCred

Last year the OMA helped secure funding to launch the TechCred program championed by the Lt. Governor.

Starting this week, Ohio employers who are interested in participating in the innovative TechCred program will have another opportunity to be reimbursed for upskilling their employees.

The program is overseen by the Governor's Office of Workforce Transformation and Lt. Gov. Jon Husted, who announced this week that during the January application period, 255 employer applications were approved, resulting in 1,611 credentials.

Under TechCred, employers receive up to \$2,000 for each current or new employee who earns a qualified credential (up to \$30,000 per employer, per funding round). Businesses of all sizes are eligible.

### Sector Partnership Grants

On Thursday, Jan. 23, Ohio Lt. Gov. Jon Husted announced the launch of the Industry Sector Partnership grant program. The program's development was spearheaded by the OMA to expand and enhance Ohio's partnerships and their workforce development efforts.

Established by House Bill 2 and funded through the state operating budget (HB 166), the program will invest \$5 million over two years to strengthen the state's network of industry sector partnerships.

The application period ends in the middle of March.

### Manufacturing Mentorship Program

The OMA lobbied hard in the budget for the creation of the Manufacturing Mentorship Program. The program allows 16 and 17 year olds to work in a manufacturing facility part time. For the first time minors will have the ability to work at a manufacturing facility without being attached a bone fide educational program. The Department of Commerce is working with the OMA and a workforce work group to develop the rules for the program.



# 2020 WORKFORCE ROADMAP:

Priorities for Systems Change in Workforce Development



## INTRODUCTION

### ACKNOWLEDGEMENTS

We would like to recognize our partners at Ohio TechNet and the Manufacturing Institute who contribute significantly to OMA's workforce strategy. We would also like to express our appreciation to the manufacturers, educators and workforce stakeholders who helped to identify the priorities and themes discussed in these pages.

### RECOGNITION OF SUPPORT

We thank these organizations that provided leadership-level support for OMA's Workforce Services:

#### PLATINUM LEVEL

- Dupont
- Honda
- The Ohio Manufacturing Extension Partnership (Ohio MEP)
- Pharmaceutical Research and Manufacturers of America (PhRMA)
- Standard Power

#### GOLD LEVEL

- Ohio TechNet

#### SILVER LEVEL

- Anheuser-Busch Companies

### PURPOSE OF THIS ROADMAP

The roadmap is intended to document OMA's 2020 workforce services strategy and action steps to facilitate skill development and talent acquisition among Ohio manufacturers.

OMA uses this roadmap to help communicate its strategy and plans with stakeholder audiences in order to facilitate collaboration, execution and learning.

## THE PROBLEM

Manufacturing is the second leading private employment sector in Ohio, following only health care and social assistance employment<sup>1</sup>. And, it is growing<sup>2</sup>. The biggest constraint to this growth, however, continues to be a significant disparity between the number of available jobs in manufacturing and the number of qualified applicants for them. The talent gap is driven by—at least—these key factors:

- A shrinking labor pool and increasing baby boomer retirements
- Rapid technology change that requires unprecedented levels of skill and training
- Competitive recruitment tactics from other sectors, which are in the same talent-constrained circumstances

In addition, manufacturing is still suffering from the misperception (or lack of awareness altogether) among young people, their parents and educators that it is not a thriving industry with challenging career opportunities and competitive pay. Further severing the connection between the workforce and the manufacturing industry is the absence of an efficient statewide training and recruiting system that brings together manufacturers, educators, community leaders and the public workforce system.

Many industry leaders, post-secondary and K-12 institutions are still working in isolation, focusing on their individual niches rather than in a larger collective system. Regionally, while a growing number of Ohio manufacturers have implemented industry-led regional sector partnerships to address workforce challenges, many manufacturers are still missing opportunities to collaborate with one another and with training providers to close the skill and talent gap. In order to meet the demands of the manufacturing sector and upskill the workforce, industry leaders must work with service and training providers to align local, regional and statewide assets to their requirements.

Partnerships like Ohio TechNet (OTN), a consortium of Ohio's post-secondary institutions focused on accelerating the readiness of adults for Ohio's manufacturing careers, are making progress in this kind of alignment, and, as such, are an integral part of OMA's workforce strategy.

<sup>1</sup>Source: Ohio Department of Job and Family Services, Office of Workforce Development, Ohio Labor Market Information, <http://ohiolmi.com/ces/lmr.htm>

<sup>2</sup>Source: Ohio Manufacturing Institute

## THE SOLUTION

OMA has embraced Industry Sector Partnerships (sector partnerships), as a model for addressing workforce development challenges through collaboration. Sector partnerships put employers in the driver's seat and have demonstrated effectiveness across the country. At least 29 states have adopted state policies in support of sector partnerships<sup>3</sup>. Manufacturers within a regional labor market work together to influence alignment around common solutions with education and training, economic and workforce development and community organizations. The key elements of sector partnerships include:

- Industry leadership (CEO/executive level) drives the agenda
- Manufacturers identify and collectively address priority issues with their workforce, economic development and education partners as a system
- All stakeholders pitch in to align resources and strengthen the community

Since 2016, OMA has worked with manufacturers and their partners across the state to create a network of sector partnerships and to help establish partnerships where none exists. Through OMA's efforts, the network of sector partnerships is becoming a collective voice for—and system of—the manufacturing industry's workforce development priorities and solutions.

OMA has developed proven strategies and tools to assist parties in forming and operating sector partnerships to address the manufacturing talent shortage. This is systems-level change that is intended to ultimately lead to a more effective way for parties to approach the workforce shortage.

<sup>3</sup>Source: National Skills Coalition. "Skills in the States: Sector Partnership Policy 50-State Scan." October 2017. <https://www.nationalskillscoalition.org/resources/publications/file/Sector-Partnership-Scan-1.pdf>

## OMA'S APPROACH

### EDUCATE AND ENGAGE

Through regional meetings, webinars, and an annual statewide summit, OMA shares the benefits of sector partnerships and showcases tools and best practices for sector partnerships to adopt. Through it all, OMA has emphasized the importance of approaching the workforce problem from the systems level so that every program, every initiative and every individual can be working toward the same goal: a coordinated talent system that helps ensure that Ohio manufacturers have access to the skilled workforce they need today and tomorrow.

To this end, the OMA has formed three workforce committees:

- 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 ("intermediary") from each manufacturing sector partnership in Ohio.
- State Agency Committee, which includes representatives from the Governor's Office of Workforce Transformation (OWT), Ohio Department of Higher Education (ODHE), Ohio Department of Education (ODE), Ohio Association of Community Colleges (OACC), Ohio Association of Career and Technical Centers (OACTE), Ohio Development Services Agency (ODSA), Ohio Department of Jobs and Family Services (ODJFS), JobsOhio, and others.

Through ongoing briefings and planning meetings, these committees and OMA collaborate and facilitate alignment across systems and with manufacturing industry requirements.

### IMPLEMENT

Through online resources such as case studies, worksheets, webinars, and technical assistance, the OMA provides industry champions and their partners with tools to increase participation in, and impact of, industry sector partnerships. Together with the committees described above, these activities are designed to foster a network of sector partnerships that share best practices and work

## SUMMARY OF PRIORITIES

through challenges together. OMA uses Key Performance Indicators developed by the Leadership Committee to measure the success of these activities (see Appendix A).

### IMPROVE

OMA is committed to helping manufacturers and manufacturing sector partnerships embrace continuous improvement, providing technical assistance, sharing resources, and capturing lessons learned through the committees described above. Again, the idea is to embed a workforce system in Ohio, trumping a disjointed set of unrelated programs.

At the first Ohio Manufacturers' Workforce Summit in 2017, regional breakout sessions and follow-up surveys allowed participants to identify concerns and potential solutions. From those, four priorities emerged. These continue to drive OMA's workforce strategy:

- **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 attract, train and educate the manufacturing workforce of tomorrow

### THEMES

Within each priority, OMA organizes activities around the following themes:

- **Industry-Recognized Credentials:** Expand awareness and attainment of industry-recognized credentials by educating manufacturers, intermediaries, and education providers about the value of credentials; advocate for policies that award credit for credentials; and align earn-and-learn programs with credentials
- **Career Pathways:** Adopt statewide pathways to ensure that programs and initiatives are aligned with industry demand and offer predictable career transitions for students
- **Partner Engagement:** Support industry champions and emerging sector partnerships as they ensure workforce, economic development, and education systems are fully engaged in sector partnership strategy
- **Fund Development and Sustainability:** Expand outreach to sponsors and philanthropic funders; build regional sector partnerships' ability to secure their own funding

## SYSTEMS CHANGE DIMENSIONS

In addition to the Priorities and Themes described above, all OMA workforce strategies are designed to support and advance the following systems change dimensions:

- **Industry-led sector partnerships:** manufacturers are at the table with a comprehensive set of partners to identify common issues, needs and goals as well as the strategies and priorities for solving them
- **A common set of industry credentials** used to illustrate specific skills and competencies needed and to validate students' and applicants' skill acquisition; a shared sense of understanding and value derived from using credentials as a translation tool between industry and partners
- **Shared career pathways** with credentials embedded at each level
- **Common work and learn strategies** identified by industry with their partners and prioritized by sector partnerships to maximize buy-in
- **Consensus on key performance indicators** to measure system performance through time

## STATE AND NATIONAL INITIATIVES

In 2019, the OMA Workforce Community saw its efforts supported through two significant programs, Ohio's TechCred program and the United States Department of Labor (USDOL) Scaling Apprenticeship Initiative.

### TECHCRED

Lt. Gov. Jon Husted, who oversees the Governor's Office of Workforce Transformation, in September 2019 launched the innovative TechCred program, which aims to enhance Ohio's skilled workforce by reimbursing employers who help current or new employees earn industry-recognized, technology-focused credentials. As manufacturing is Ohio's most productive economic sector, boosting Ohio's manufacturing talent pool is an important goal of the state program.

The OMA was a strong supporter of the provision in Ohio's budget that appropriated \$30 million to support this credentialing program. The state intends to fund 20,000 credentials over the next two years. Employers can receive up to \$2,000 for each current or new employee who earns an industry-recognized, technology-focused credential—and up to \$30,000 per funding round. Businesses of all sizes are eligible.

Recently, 219 additional credentials were added to the program in response to employer feedback. The OMA was involved in this effort to expand the list of TechCred credentials, which now stands at 379. New credentials include fields such as additive manufacturing and welding certification.

TechCred offsets the cost of training and upskilling the workforce and encourages manufacturers to embrace credentials as a method for doing so.

### SCALING APPRENTICESHIP

In the summer of 2019, the USDOL awarded a \$12M Scaling Apprenticeship Through Sector-Based Strategies grant to the Ohio Manufacturing Workforce Partnership (OMWP), a partnership of the OMA and Lorain County Community College, to train 5,000 apprentices statewide between July 2019 and July 2023. This workforce collaboration is led by OMA in partnership with Ohio TechNet, a consortium which currently represents 28 public institutions of higher education.

Industry sector partnerships are central to the Scaling Apprenticeship initiative. Working with local manufacturers, education providers, and workforce and economic development partners is key to the expansion and adoption of apprenticeships in production, machining, industrial maintenance, and welding career pathways. Building Industry 4.0 skills is also a focus.

Scaling Apprenticeship will infuse resources into Ohio's manufacturing workforce community, helping manufacturers develop new and incumbent workers' technical skills, reduce turnover, increase productivity, and lower the cost of recruitment.

### NEW IN 2020

To expand and enhance Ohio's workforce, the OMA recently led the effort to provide state funding for sector partnerships. Established through House Bill 2 and funded through the state operating budget, the Ohio Industry Sector Partnership Grant will invest \$5 million over two years to strengthen the state's network of industry sector partnerships. The OMA encourages manufacturing sector partnership to apply for these grants and is optimistic that the opportunity will infuse the manufacturing workforce community with resources in 2020.

## PRIORITY 1 – LEADERSHIP/SECTOR PARTNERSHIP CAPACITY BUILDING

Through technical assistance and best practices sharing, increase industry champions’ and sector partnerships’ abilities to drive systems change.

STRATEGIC ACTIONS	STATUS
Provide leadership training for industry champions participating in sector partnerships, including webinars on topics such as organizational governance and succession planning.	<b>ONGOING</b> The OMA continues to support industry champions with customized technical assistance and coaching. In 2020, webinars will focus on tools and best practices that can be applied to Scaling Apprenticeship implementation and other workforce solutions.
Create a structure and process for best practice sharing and networking across sector partnerships, intermediaries and other manufacturing workforce stakeholders.	<b>ONGOING</b> In addition to best practices sharing through the three workforce committees, in 2018, the OMA began to capture success stories in the form of case studies which are published on MakingOhio.com and showcase some of the innovative ways Ohio is addressing the workforce shortage.
Create and track sector partnership key performance indicators.	<b>ONGOING</b> With the Leadership Committee, OMA refined the Key Performance Indicators to align with Scaling Apprenticeship.
<p>Create a process that will categorize sector partnerships by level of development in order to:</p> <ul style="list-style-type: none"> <li>• Raise self-awareness of where a sector partnership is along a continuum of development</li> <li>• Facilitate continuous improvement</li> <li>• Introduce management (e.g. Baldrige) concepts</li> <li>• Build capacity to think in systems and process terms vs. initiatives or programs</li> <li>• Provide technical assistance and networking to help partnerships advance</li> </ul>	<b>COMPLETE</b> In 2019, OMA developed a set of “Endorsement Criteria” for sector partnerships that intermediaries and industry champions can use to measure their partnerships’ alignment with OMA-identified best practices. (See Appendix B for Endorsement Criteria.)
Educate manufacturers about the value and uses of industry-recognized credentials.	<b>ONGOING</b> Through TechCred and Scaling Apprenticeship, manufacturers’ attention to industry recognized credentials has increased. The OMA continues to develop tools to educate manufacturers and their partners on the value of credentials to measure students’, job seekers’, and current employees’ competency and proficiency in specific skill sets.
Provide training for leadership and intermediaries on how to customize and use statewide career pathways.	<b>IN PROGRESS</b> In 2019, the OMA worked with a small group of manufacturers to customize state-level, industry-driven career pathways. In 2020, these pathways will be incorporated into MakingOhio.com in an interactive format, and sector partnerships will be trained to use them to educate the community about manufacturing.
Educate industry champions on the role of various partners in sector partnerships and support emerging sector partnerships as they engage their local workforce development board, OhioMeansJobs staff, education partners, economic development agencies, community-based organizations, and other important stakeholders.	<b>ONGOING</b> The OMA and its sector partnership community continues to engage partners throughout the public workforce system. Initiatives such as Scaling Apprenticeship will bolster these activities as all parts of the workforce ecosystem are needed to effectively reach the goal of training 5,000 apprentices by 2023.

## PRIORITY 2 – POLICY DEVELOPMENT

### Amplify the voice of manufacturers with lawmakers and public officials.

STRATEGIC ACTIONS	STATUS
<p>Increase opportunities to leverage private investment with public and otherwise available funds. Conduct an ongoing opportunity scan for grant opportunities and leverage the roadmap to assess requests for support and partnership with external partners.</p>	<p><b>ONGOING</b> The OMA watches for local, state, and federal opportunities that offer funding for industry sector partnerships and brings those opportunities to the workforce community regularly. New legislation provides sector partnership grants that OMA encourages manufacturers to pursue. Fund development continues to be a priority in 2020.</p>
<p>Work with state agencies and service providers to align funding and reduce duplication of services; continue coordinating the State Agency Committee. This will include periodic briefings and ad hoc meetings to address priorities, opportunities and issues.</p>	<p><b>ONGOING</b> The OMA works closely with the Governor’s Office of Workforce Transformation and other state agencies to ensure new programs and initiatives will support manufacturing workforce priorities. Representatives from the OMA contribute to steering committees and other high-level advisory groups of the Ohio Department of Higher Education and Ohio Department of Education, among others.</p>
<p>Leverage OMA’s advocacy expertise to amplify the voice of manufacturers; identify those areas where manufacturers’ needs are not being considered and identify common barriers facing sector partnerships. Serve as the statewide advocate for manufacturing sector partnerships.</p>	<p><b>ONGOING</b> The Leadership and Intermediary Committees offer a forum for OMA to collect this feedback, which is then shared with the State Agency Committee. In addition, members of the OMA workforce community have provided testimony on the state budget as well as other relevant legislation.</p>
<p>Position OMA’s Leadership Committee as a statewide advisory board for education; centralize the source of manufacturers’ and intermediaries’ feedback and requests to education partners.</p>	<p><b>ONGOING</b> The Leadership Committee has taken on this role for the ODE and will continue to do so. For instance, in 2019, the Leadership Committee provided feedback on credentials being added to ODE’s approved list. It will do the same in 2020.</p>
<p>Ensure manufacturers’ preferred credentials are recognized by ODE and ODHE; explore opportunities to apply federal workforce funding to the cost of credentials.</p>	<p><b>ONGOING</b> The OMA is working closely with both agencies to ensure manufacturing credentials are added to approved lists. Through the OMA Robotics and Automation Task Force, the OMA is working with a cross-agency team to add new technology-focused credentials in a more efficient and streamlined manner. Finally, Scaling Apprenticeship offers federal funding to offset the cost of credentials earned through paid work-based learning programs.</p>
<p>Gain support of State Agency Committee and other key partners in the adoption of statewide manufacturing career pathways.</p>	<p><b>IN PROGRESS</b> The State Agency Committee has been briefed on OMA’s industry-driven career pathways. In 2020, the OMA will continue to encourage this committee to adopt the finalized pathways and share them widely through their channels.</p>
<p>Engage local workforce development boards and OhioMeansJobs staff, as well as economic development and other public partners, in sector partnership activity.</p>	<p><b>ONGOING</b> Through industry sector partnership meetings and activities, the OMA and its Workforce Community will engage workforce professionals across the state. For example, the OMA arranged for a panel of workforce professionals to present at a quarterly meeting of the Central Ohio Manufacturing Partnership (COMP) about available workforce services and funding. The OMA has added a regional workforce board director to the state agency committee in order to serve as a conduit to other boards across the state.</p>

## PRIORITY 3 – MARKETING AND COMMUNICATION

Leverage the Making Ohio brand to elevate awareness and interest in manufacturing careers.

STRATEGIC ACTIONS	STATUS
<p>Explore opportunities to attract underrepresented populations to the manufacturing industry including women, disabled, ex-offenders, and veterans.</p> <ul style="list-style-type: none"> <li>Partner with the National Association of Manufacturers (NAM) to create an Ohio-specific campaign for women</li> <li>Partner where practical with NAM's Creators Wanted initiative</li> </ul>	<p><b>IN PROGRESS</b></p> <p>OMA is working with NAM to leverage its national Creators Wanted campaign, which is designed to attract a younger audience to manufacturing careers. Curriculum and resources for engaging women in manufacturing jobs was added to OMA's SkillsCommons.org platform and shared across the network. In addition, the Scaling Apprenticeship initiative will help sector partnerships create strategies to effectively engage target populations including women, people of color, veterans, and others.</p>
<p>Create processes and operations to monitor and measure the impact of the Making Ohio brand, including:</p> <ul style="list-style-type: none"> <li>Provide technical assistance to regional partnerships interested in using Making Ohio assets; create a playbook to guide effective use of campaign assets</li> <li>Collect analytics through website and social media platforms</li> <li>Execute social media campaigns to targeted populations</li> <li>Train regional partners (including human resources representatives, college navigators, guidance counselors, and workforce service providers) to gather data about job seekers through their outreach efforts</li> <li>Define metrics of success, e.g. tracking enrollment in education and training programs related to manufacturing</li> </ul>	<p><b>IN PROGRESS</b></p> <p>Through the JobsOhio and the Mahoning Valley Manufacturers Coalition pilot in 2019, the OMA was able to identify opportunities for improved tracking and follow-up for individuals reached through Making Ohio marketing programs. These revised practices are also being tested through a campaign supported by MAGNET and JobsOhio in the Cleveland area, and will be replicated and improved in campaigns across Northwest Ohio.</p> <p>Outreach and recruitment resources through the Scaling Apprenticeship grant will further support the refinement of this process.</p>
<p>Update career pathways content on MakingOhio.com to reflect statewide manufacturing career pathways.</p>	<p><b>IN PROGRESS</b></p> <p>Designers and developers are working with the statewide career pathways to create interactive online pathways.</p>
<p>Encourage sector partnerships to engage their partners in deploying regional Making Ohio campaigns.</p>	<p><b>IN PROGRESS</b></p> <p>In 2019, Making Ohio assets were made available to sector partnerships; in all 11 entities have been approved and have received assets. Currently, the OMA is partnering with a marketing firm to create promotional material templates that can be customized with regional information.</p>
<p>Explore growing sponsorships to fund outreach initiatives.</p>	<p><b>ONGOING</b></p> <p>The OMA continues to approach philanthropic and corporate funders with sponsorship opportunities.</p>

## PRIORITY 4 – EDUCATION INNOVATION

Increase in public/private collaborations to train and educate the manufacturing workforce of tomorrow.

STRATEGIC ACTIONS	STATUS
<p>Continue to support Ohio TechNet and its education, workforce and industry partners as it engages employers, accelerates learning, expands work-based learning and provides supportive services for adults interested in manufacturing careers. Foster innovative collaborations among higher education institutions (high school, career tech, community college and universities) and industry that facilitate upskilling and degree or credential attainment of Ohioans aligned to in-demand manufacturing careers.</p>	<p><b>ONGOING</b> As described on page 5, OMA is partnering with Ohio TechNet to implement the Scaling Apprenticeship Initiative.</p>
<p>Engage education providers (K-16) in industry sector partnerships and increase alignment between employer needs and available programs:</p> <ul style="list-style-type: none"> <li>• Develop metrics to measure program alignment to industry needs</li> <li>• Improve best practice and resource sharing among providers</li> <li>• Create template(s) for capturing/sharing best practices</li> <li>• Adopt, curate, and promote Skills Commons resources</li> </ul>	<p><b>ONGOING</b> Through partnerships with ODE and ODHE, as well as the Ohio Association of Career and Technical Education, OMA continues to encourage education partners to participate in manufacturing workforce initiatives. Across the state, K-12 and post-secondary providers are becoming members of sector partnerships.</p>
<p>Establish processes to award college credit for industry-recognized credentials and to provide on-the-job training aligned to them as well.</p>	<p><b>IN PROGRESS</b> College credit aligned to on-the-job training is a desired outcome of the Scaling Apprenticeship initiative. Ohio TechNet has leadership responsibility for this strategy.</p>
<p><b>NEW:</b> Lead Automation and Robotics Task Force to ensure that Ohio's education and workforce systems are prepared to address the industry's rapidly changing needs related to Industry 4.0.</p>	<p>The Task Force, which is co-led by OMA and Lorain County Community College will:</p> <ol style="list-style-type: none"> <li>1) Create an asset map of educational resources (equipment, curriculum, instructors) related to Industry 4.0</li> <li>2) Increase the recognition of meaningful micro-credentials in automation and robotics</li> <li>3) Create automation and robotics career pathways</li> </ol>

## CALL TO ACTION

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While OMA is committed to making Ohio the recognized national leader in manufacturing talent development, there are a number of actions any interested party can take. Please consider doing one or more of the following:

- Email [workforce@ohiomfg.com](mailto:workforce@ohiomfg.com) to opt into the OMA Workforce Community to receive ongoing information, including webinar and event announcements
- Join your [local sector partnership](#)
- Request access to the Making Ohio image assets by visiting [makingohio.com/partners](http://makingohio.com/partners)
- Become a sponsor of OMA's workforce initiatives. Contact Dan Noreen, Managing Director, Development at [dnoreen@ohiomfg.com](mailto:dnoreen@ohiomfg.com)
- Explore the sector partnership tools available at [www.ohiomfg.com/workforce-services](http://www.ohiomfg.com/workforce-services)
- Contribute a [case study](#)
- Participate in an [upcoming webinar](#)

## APPENDICES

### APPENDIX A

#### Key Performance Indicators for OMA Workforce Roadmap: Priorities for Systems Change in Workforce Development

PRIORITY 1 – LEADERSHIP/ SECTOR PARTNERSHIP CAPACITY BUILDING	PRIORITY 2 – POLICY DEVELOPMENT	PRIORITY 3 – MARKETING AND COMMUNICATION	PRIORITY 4 – EDUCATION INNOVATION
Through technical assistance and best practice sharing, increase industry champions' and sector partnerships' abilities to drive systems change.	Amplify the voice of manufacturers with lawmakers and public officials.	Leverage the Making Ohio brand to elevate awareness and interest in manufacturing careers.	Increase in public/private collaborations to train and educate the manufacturing workforce of tomorrow.
Number of sector partnerships <i>(OMA data point)</i>	State sector partnership funds directed to manufacturing <i>(OWT data point)</i>	Social media and web analytics <i>(MakingOhio.com data)</i>	New and expanded apprenticeship programs <i>(as collected through Scaling Apprenticeship)</i>
Number of manufacturers involved in sector partnerships <i>(OMA data point)</i>	State and federal funds used to offset the cost of apprenticeship training (through TechCred and Scaling Apprenticeship)	Number of Scaling Apprenticeship participants enrolled	Number of industry-recognized credentials earned <i>(NAM Student Clearinghouse)</i>
Manufacturer Investment <i>(as measured through Scaling Apprenticeship matching funds)</i>	Development of policy recommendations aligned to manufacturer needs <i>(OMA data point)</i>	Number of manufacturers engaged in Scaling Apprenticeship	Employment and wage data <i>(as collected through Scaling Apprenticeship)</i>
County Coverage <i>(OMA data point)</i>		Number of students/potential job applicants engaged through: <ul style="list-style-type: none"> <li>• Speaking engagements</li> <li>• Events, tours, and competitions for K-12 and post-secondary students</li> <li>• MFG Day events held</li> </ul>	Automation and Robotics micro credentials recognized by state agencies

### APPENDIX B

#### Sector Partnership OMA Endorsement Criteria

- Industry-led
- Focused on a single industry (manufacturing)
- Regional, collaborative and systems-based approach
- Staffed by a neutral intermediary
- Dedicated to addressing Workforce Development issues
- Actively involved in OMA Workforce Community
- Priorities align with OMA Workforce Roadmap/KPIs
- Completed supply/demand analysis and strategic plan



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## Human Resources

### Coronavirus Update – Week Ending February 28

February 28, 2020

This week, it was **reported** that more than 200 Ohioans have been asked to self-quarantine after traveling to China. At last check, these individuals had not shown symptoms of the coronavirus (COVID-2019). On Thursday, Gov. Mike DeWine **ordered** state agencies to take several precautionary steps, noting that the threat of coronavirus in Ohio remained low and that there were no confirmed cases in the state.

COVID-19 has now spread to every continent, with the exception of Antarctica. Here is the **latest global count** of cases and deaths. Meanwhile, **human trials** for a vaccine will get underway within weeks.

The OMA continues to monitor updates from the **Ohio Department of Health**, as well as the latest **situation summaries** from the Centers for Disease Control and Prevention, which have published **this page** with information on how to spot symptoms of the disease and best practices to prevent its spread. *2/27/2020*

### NLRB Issues Joint-Employer Final Rule

February 28, 2020

This week, the National Labor Relations Board published a final rule returning to a tighter standard for determining when workers are considered to be jointly employed by two or more employers under the National Labor Relations Act. See the analyses by OMA Connections Partners **Bricker & Eckler** and **Frantz Ward**. The **National Association of Manufacturers** has also published its take on what the final rule means for manufacturers. *2/26/2020*

### Draft Mandatory Arbitration Agreements With Care

February 28, 2020

Employer-mandated arbitration agreements have been a hot topic in recent years. And despite their approval by the U.S. Supreme Court, employers still need to draft these agreements with care, according to **new guidance** from OMA Connections Partner Frantz Ward. *2/26/2020*

### Coronavirus Update

February 21, 2020

The Ohio Department of Health (ODH), in coordination with the Centers for Disease Control and Prevention, is closely monitoring the coronavirus (COVID-2019) outbreak. ODH's website features **this page** to provide updates on the virus, as well as a **fact sheet**. Also, there's **this website** that provides the latest global count of COVID-2019 cases and deaths. World health officials said Thursday that while the new virus has not yet spread widely around the world, a global outbreak could occur at any time.

With flu season in full swing, OMA Connections Partner Dinsmore has published guidance on **what employers need to know** regarding quarantines and preventing the spread of disease in the workplace. *2/20/2020*

### Manufacturing Employee Earnings Up 3.3% in Past Year

February 21, 2020

Over the past 12 months, average hourly earnings for all U.S. employees on private non-farm payrolls increased from \$27.58 to \$28.44, or 3.1%, according to the **U.S. Bureau of Labor Statistics**. Manufacturing outpaced the overall private sector with average hourly earnings expanding by 3.3%. *2/17/2020*

### What to Do When an Employee Brings Alcohol to Work?

February 21, 2020

Is possession always a violation at a drug-free workplace? Here's a **report** from OMA Connections Partner *Working Partners*® that details what one employer did when an unopened can of beer fell out of an employee's lunch bag. *2/18/2020*

### EEOC to Prioritize 'Robust' Compliance Assistance

February 14, 2020

According to a recent **announcement**, the U.S. Equal Employment Opportunity Commission (EEOC) seeks to improve its compliance assistance this year. Janet Dhillon, the EEOC's

new chair, said that to prevent discrimination in the workplace, the EEOC will conduct outreach to employers, especially the small business community; continue to build strong partnerships with employer and advocacy groups; and update some guidance documents and rescind others, such as those that exceed the EEOC's statutory authority. *2/12/2020*

## **Supporters of \$13 Minimum Wage Can Begin Collecting Signatures**

February 7, 2020

A **proposed constitutional amendment** to hike Ohio's minimum wage from \$8.70 to \$13 by 2025 is another step closer to being placed on the November ballot. This week, a coalition of public labor unions received the Ohio Ballot Board's approval to collect signatures. Supporters will need to gather nearly 443,000 valid petition signatures — a significantly **higher threshold** than that of the previous election cycle. If they do, and the amendment is approved by the majority of Ohio voters, the proposal would become effective 30 days after the election.

Only California and Washington State have imposed a minimum wage of \$13 or higher. For more, check out **this post** from OMA Connections Partner Frantz Ward. *2/5/2020*

## **Learn More About Ohio's Free Wellness Program for Smaller Employers**

February 7, 2020

*Better You, Better Ohio!*<sup>®</sup> is a free health-and-wellness program for workers of businesses with 150 or fewer employees 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 or paperwork hassle.

On Tuesday, Feb. 11, at 9:30 a.m., BWC will host a free 25-minute webinar so employers can learn more about this innovative program. **Register here.** *2/6/2020*

## **EEOC: Discrimination, Harassment Complaints Continue to Fall**

February 7, 2020

The U.S. Equal Employment Opportunity Commission **reports** that it received 72,675 workplace discrimination charges in its 2019 fiscal year, continuing a downward trend. Most categories of complaints saw lower numbers, including sexual harassment. Retaliation continued to be the most frequent charge filed with the agency, followed by disability, race and gender. *2/3/2020*

## **Court: Caring for Your Sister's Kids isn't FMLA-Eligible**

February 7, 2020

Recently, an Ohio federal court rejected an individual's claim of entitlement to FMLA leave in order to care for his sister's children. According to OMA Connections Partner Frantz Ward, this decision highlights the importance of reviewing and considering FMLA claims on an individual basis. **Read the details.** *2/3/2020*

## **DOL Updates Regular Wage Rate Rule**

February 7, 2020

The U.S. Department of Labor (DOL) **recently announced** a new final rule to clarify how to calculate an employee's regular wage rate under the Fair Labor Standards Act (FLSA). The rule became effective Jan. 15, 2020.

OMA Connections Partner **One Source Advisors** says the DOL's objective is to provide more certainty for employers who offer additional perks to their employees, but aren't sure whether these benefits should be counted as income under the FLSA. Employers should become familiar with the rule and adjust their payroll practices to account for this new guidance. *2/5/2020*

## **Ohio Minimum Wage Hike is a Step Closer to Ballot**

January 31, 2020

A **proposed constitutional amendment** to raise Ohio's minimum wage from \$8.70 to \$13 by 2025 has cleared its first hurdle as Attorney General Dave Yost this week **determined** the proposal to be a fair and truthful statement.

Filed by two public labor unions — the Service Employees International Union District 1199 and the Ohio Education Association — the proposal now goes before the Ballot Board. If OK'd by the board, nearly 443,000 valid petition signatures

will need to be gathered from at least 44 of Ohio's 88 counties before the question can go before voters in November.

Currently, only California and Washington State have imposed a minimum wage of \$13 or higher. *1/28/2020*

### **Ohio Bill Seeks to Cut Out-of-Pocket Prescription Costs**

January 31, 2020

New, bipartisan legislation (**House Bill 469**) in the Ohio House seeks to reduce out-of-pocket prescription costs by preventing insurers from prohibiting the use of co-pay assistance programs to cover a patients' share of the bill for brand-name drugs.

According to a **press release**, HB 469 — offered by Reps. **Susan Manchester** (R-Lakeview) and **Thomas West** (D-Canton) — would allow aid from co-pay assistance programs to count towards deductibles. Co-pay assistance can include manufacturers' coupons or donations from a church or charity.

Due to the implications for drugmakers, as well as employers and their employees, the OMA is closely following this issue. *1/27/2020*

### **Survey: Gen Xers Seek Well-Being Support from Employers**

January 31, 2020

Generation X — with its members having been born between 1965 and 1980 — is notably smaller than the generations that come before and after. Still, there are roughly 65 million Gen Xers in the U.S. workforce — and a large majority of them apparently want employers to play an active role in their health. According to **HR Dive**, a new survey shows employers can reinforce loyalty among Gen X employees by offering benefits that “meet their personal health and well-being needs.” *1/29/2020*

### **Coronavirus Update for Employers**

January 31, 2020

With the coronavirus dominating national and international news, OhioHealth is providing guidance for employers. People at the greatest risk of infection are those in Wuhan, China, or those who have traveled to Wuhan or other parts of China. If you were in China within the past 14 days and feel sick with fever, cough or

have difficulty breathing, you should seek medical attention. For more tips, including how to reduce exposure to all viruses at your workplace, **click here**. *1/30/2020*

### **Labor Groups Seek to Hike Ohio's Minimum Wage to \$13**

January 24, 2020

Under a proposed constitutional amendment **filed last week**, Ohio's minimum wage would increase nearly 50% to \$13 by 2025. The proposed amendment was filed by Ohio's two largest public labor unions. Attorney General Dave Yost has until Monday, Jan. 27, to determine if a summary of the amendment is a fair and truthful statement.

The state's minimum wage is currently \$8.70, compared to the federal standard of \$7.25. Ohio is **one of just seven states** in which the minimum wage is tied to inflation. Under the proposed amendment, Ohio's minimum wage would still be subject to inflation increases. *1/22/2020*

### **Private-Sector Union Membership Falls to 6.2%**

January 24, 2020

Union membership among America's wage and salary private-sector workers fell to a record low 6.2% last year, **according to data** from the Bureau of Labor Statistics (BLS). Meanwhile, the union membership rate for taxpayer-funded public workers was 33.6%. When public- and private-sector employee data were combined, union membership in the U.S. was still at a record low of 10.3%.

In 2019, 11.9% of Ohio workers belonged to labor unions, down 0.7% from the year before. Ohio remained **among the states** with the highest number of union members. *1/23/2020*

### **Reminder: New Federal Overtime Rule Now in Effect**

January 24, 2020

OMA Connections Partner Dinsmore has issued a **reminder** that on Jan. 1, the U.S. Department of Labor's (DOL) rule that makes 1.3 million more workers eligible for overtime pay took effect. **Here's what** DOL says you need to know about the changes and where to find compliance assistance resources. *1/22/2020*

## It's Now Easier for Small Employers to Offer Retirement Plans

January 24, 2020

In a new report, OMA Connections Partner Calfee says the new federal SECURE Act **increases small employers' access** to retirement plans. By allowing "Pooled Employer Plans" (PEPs), the new law enables small employers to offer their employees a tax-qualified savings plan with reduced costs, while providing employers with easier set-up, as well as improved administration and fiduciary oversight. *1/22/2020*

## At a Glance: Employee Access to Paid Leave Programs

January 24, 2020

The U.S. Bureau of Labor Statistics (BLS) has **published a slideshow** that examines workers' access to — and use of — paid leave benefits. The BLS data show that 66% of wage and salary workers had access to paid leave in 2017-18, up from 60% in 2011. In production-based industries, more than 70% of employees had access to paid leave. *1/22/2020*

## Report: For U.S. Manufacturers, Employee Compensation Costs Average \$40 an Hour

January 17, 2020

The U.S. Bureau of Labor Statistics **reports** that total employee compensation costs — across all private sector industries — averaged \$34.77 an hour as of September 2019. Total compensation costs for U.S. manufacturers were considerably higher, averaging \$40.01 per hour. That includes \$26.19 for wages and salaries, and \$13.81 for benefits. *1/14/2020*

## U.S. Labor Department Revises Joint Employer Rule

January 17, 2020

The U.S. Department of Labor (DOL) has announced its final rule regarding joint employer liability under the Fair Labor Standards Act. See the **analysis** by Roetzel, an OMA Connections Partner.

On its **Twitter feed**, the National Association of Manufacturers (NAM) said the new rule "is a win for manufacturers." *1/13/2020*

## Looking for Experience in Exporting?

January 17, 2020

If your company is pursuing international business, consider hiring a college intern with exporting expertise. The Ohio Development Services Agency will reimburse half of the full-time summer wages, up to \$3,600. Applications are now under review, so apply before the Feb. 1 deadline. **Learn more here.** *1/15/2020*

## Check Out OMA's Webinar on Employee Cannabis Use

January 17, 2020

According to a study reported by the **National Institute on Drug Abuse**, employees who tested positive for marijuana had 55% more industrial accidents, 85% more injuries, and 75% greater absenteeism compared to those who tested negative.

If cannabis use is among your workplace concerns, check out **this OMA on-demand webinar**, presented by our Connections Partner Roetzel & Andress. It addresses topics such as employers' rights when enforcing drug-free workplace policies, and how employee marijuana use impacts an employer's liability. *1/16/2020*

## Congress Makes Big Changes to Retirement Plans

January 10, 2020

In late December, President Trump signed into law a federal spending bill that included the Setting Every Community Up for Retirement Enhancement Act (the "SECURE Act"). This new law makes significant regulatory changes to retirement plans — including participation of part-time workers. OMA Connections Partner Calfee has produced a **comprehensive summary** of the law's key provisions that employers and plan sponsors should be familiar with. *1/7/2020*

## Summary of NLRB's Recent Actions

January 10, 2020

As we reported late last year, the National Labor Relations Board (NLRB) spent the last few weeks of 2019 issuing several decisions favorable to employers in both unionized and non-unionized workplaces. OMA Connections

Partner Calfee has published **this summary** of the NLRB's actions. *1/8/2020*

### **Reminder: HR Sample Forms Available on OMA's Website**

January 10, 2020

For the convenience of OMA members, we've updated our online library of commonly used human resources forms. Included are forms for employment application, performance evaluation, vacation schedules, state and federal posting requirements, and more. Reviewed by the OMA's legal counsel, Bricker & Eckler LLP, these forms are free and available on demand on the OMA's website (see the **right sidebar**). Read the instructions to ensure compliance with applicable laws. *1/6/2020*

### **Webinar: FMCSA Clearinghouse Explained**

January 10, 2020

Employers regulated by the Federal Motor Carrier Safety Administration (FMCSA) are now required to supply the agency with information about violations of federal drug and alcohol testing rules by employees as part of a new FMCSA Drug & Alcohol Clearinghouse. OMA Connections Partner *Working Partners®* is hosting a 30-minute **webinar** on Thursday, Jan. 16, to help you comply with the new requirements. *1/8/2020*

### **Just How Do Browns and Bengals Fans Cope?**

January 10, 2020

How tough was the football season for Cleveland and Cincinnati fans? So bad that the State Medical Board of Ohio **has been asked** to make Bengals or Browns fandom a condition that qualifies for treatment with medical marijuana.

That reminds us: On Wednesday, Jan. 15, from 10-11 a.m., the OMA will host a **webinar** presented by our Connections Partner Roetzel to explain the status of Ohio and federal law regarding employee use of cannabis, marijuana, hemp and Cannabidiol (CBD) products. *1/7/2020*

### **Ohio's Minimum Wage Now at \$8.70**

January 3, 2020

Ohio's hourly minimum wage **increased on Jan. 1**, rising to \$8.70 for non-tipped employees — up from \$8.55 in 2019. The new minimum applies to employers with annual gross receipts of more than \$319,000. The increase was mandated by a constitutional amendment approved by voters in 2006. Ohio is one of just seven states in which the minimum wage is based on the previous year's inflation rate. **Here's a look** at every state's minimum wage for 2020. *1/2/2020*

## Human Resources, Health Care & Employment Law Legislation

Prepared by: The Ohio Manufacturers' Association  
Report created on March 3, 2020

- 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:* 1/22/2020 - House Commerce and Labor, (First Hearing)  
*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:* 2/20/2020 - **PASSED BY HOUSE**; Vote 91-1  
*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:* 12/11/2019 - House Commerce and Labor, (First Hearing)  
*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:* 2/12/2020 - House Insurance, (Second 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:* 9/10/2019 - House Health, (First Hearing)  
*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>
- HB352**      **CIVIL RIGHTS EMPLOYMENT LAWS** (CROSS J, LANG G) To modify Ohio civil rights laws related to employment.  
*Current Status:* 12/10/2019 - House Civil Justice, (Third Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-352>
- HB369**      **SEXUAL, GENDER DISCRIMINATION** (HILLYER B, SKINDELL M) 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:* 2/4/2020 - House Civil Justice, (Second Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-369>
- HB378**      **STRIKING WORKER UNEMPLOYMENT BENEFIT** (CROSSMAN J, LEPORE-HAGAN M) To provide unemployment benefits to striking workers and to declare an emergency.  
*Current Status:* 10/23/2019 - Referred to Committee House Insurance  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-378>
- HB469**      **HEALTH INSURANCE COST-SHARING** (MANCHESTER S, WEST T) To prohibit certain health insurance cost-sharing practices.  
*Current Status:* 2/18/2020 - House Health, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-469>
- HB508**      **UNEMPLOYMENT COMPENSATION - DOMESTIC VIOLENCE VICTIMS** (CERA J, SWEENEY B) To allow an individual to be eligible for unemployment compensation benefits for unemployment due to domestic violence.  
*Current Status:* 2/19/2020 - Referred to Committee House Criminal Justice  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-508>

- HB512 INSURANCE COVERAGE - EPINEPHRINE, GLUCAGON (ROGERS J)** Regarding insurance and Medicaid coverage of epinephrine and glucagon.  
*Current Status:* 2/18/2020 - Introduced  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-512>
- HCR17 EXPAND SNAP TO STRIKERS (SOBECKI L, RUSSO A)** Urging Congress to expand Supplemental Nutrition Assistance Program eligibility to include the households of striking workers.  
*Current Status:* 2/11/2020 - House Health, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HCR-17>
- SB9 HEALTH PLAN CLAIM INFORMATION (HUFFMAN M)** To require health plan issuers to release certain claim information to group plan policyholders.  
*Current Status:* 2/26/2020 - Informally Passed  
*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:* 9/25/2019 - Senate Insurance and Financial Institutions, (First Hearing)  
*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:* 9/10/2019 - Senate Government Oversight and Reform, (First Hearing)  
*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:* 1/29/2020 - Senate Transportation, Commerce and Workforce, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-149>
- SB201**      **ALTERNATE EMPLOYER ORGANIZATIONS** (DOLAN M) To create alternate employer organizations.  
*Current Status:* 1/22/2020 - Senate Transportation, Commerce and Workforce, (Third Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-201>
- SB207**      **DRUG TESTS-UNEMPLOYMENT BENEFITS** (SCHAFFER T) To require unemployment benefit applicants to take a drug test under certain circumstances, to create the Ohio Works First drug testing pilot program, and to make an appropriation.  
*Current Status:* 11/13/2019 - Senate General Government and Agency Review , (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-207>
- SB254**      **MENTAL HEALTH BENEFIT PARITY** (GAVARONE T, O'BRIEN S) Regarding mental health and substance use disorder benefit parity.  
*Current Status:* 2/12/2020 - Senate Insurance and Financial Institutions, (Second Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-254>
- SB282**      **UNEMPLOYMENT COMP COMPLAINTS** (HOAGLAND F) To require the Director of Job and Family Services to establish a process for employers to make complaints regarding unemployment compensation benefits.  
*Current Status:* 2/14/2020 - Introduced  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-282>

**TO: OMA Government Affairs Committee**  
**FROM: Ryan Augsburger / Rob Brundrett**  
**RE: Safety and Workers' Compensation Report**  
**DATE: March 4, 2020**

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### **Overview**

Workers' compensation issues have been at the forefront of several legislative battles over the past 14 months. Speaker Householder has made several workers' compensation issues a priority in the House's agenda. Among these issues are expanding workers' compensation coverage to mental only claims and changing Ohio's misclassification employment laws.

The OMA has been working with allies to fight back against these unprecedented changes in workers' compensation law. However, the House once again passed first responder PTSD legislation this winter. Senate President Larry Obhof is quoted saying that he too is in favor of the coverage. More workers' compensation legislation is expected this year and lame duck session could be a tenuous time for the system.

The BWC Board of Directors voted to reduce private employers' premiums by an average of 13% for the next plan year.

### **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 30<sup>th</sup> deadline. The bill due to its non-controversial nature was signed by the Governor on June 27<sup>th</sup>, 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 shopped a proposal that would provide benefits outside of the BWC system.

#### **House Bill 81 – Workers' Comp for Bodily Fluid Exposure**

Originally the bill provided workers' compensation coverage of post-exposure medical diagnostic services for a detention facility employee's exposure to blood or bodily fluids.

The House expanded the bill to include several additional workers' compensation provisions that were in its version of the workers' comp budget bill before the Senate striped the bill to budget provisions only. Included in HB 81 by the House were:

- reducing the statute of limitations for violations of a specific safety rule (VSSR) from two years to one year;
- increasing the funeral expense benefit cap for inflation;
- changing rules for final claim settlement agreements;
- continuing jurisdiction changes; and
- clarifying the voluntary abandonment doctrine.

The OMA provided proponent testimony for these changes in both the House and Senate. The bill is awaiting a formal Senate floor vote.

#### House Bill 308 – PTSD First Responders

Earlier this month, on a 74-22 vote, the Ohio House passed House Bill 308, legislation that would provide first responders with workers' compensation benefits to treat post-traumatic stress disorder (PTSD) even when there's no physical injury. Under current Ohio law, only mental conditions stemming from on-the-job physical injuries/illnesses are eligible for workers' compensation benefits.

Due to the risk of substantial premium increases for employers, the OMA has long opposed any legislation that would permit PTSD compensation or other mental claims when there is no associated physical injury or illness. As the OMA noted in its "key vote alert" to House members, HB 308, 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."

The OMA and other business allies crafted a competing plan that would have provided first responders with the same coverages they would receive under workers' compensation that was more streamlined.

The bill now moves to the Senate, where Senate President Larry Obhof (R-Medina) has already been quoted saying he supports the legislation. Members who are concerned with this precedent setting legislation should reach out to their Senators and urge them to vote no on the bill.

#### **BWC Agency Notes**

##### Ohio Safety Congress Set for March 11-13 in Columbus

The Ohio Safety Congress and Expo is currently accepting registrations. This is the second-largest occupational safety, health, and workers' compensation event in the U.S. — and last year it attracted more than 8,000 attendees and 300 exhibitors.

This year's event will be March 11-13 at the Greater Columbus Convention Center. Safety Congress and registration are free — and there's even an online attendance option.

The OMA will have its workers' comp team on site — at booth #1024 — to discuss our unique, manufacturer-specific approach to workers' comp management. We will have a made-in-Ohio gift as a “thank you” for stopping by.

#### Billion Back Again?

This summer the BWC announced another billion back at OMA member Dynalab. The money is Ohio's fifth investment return to private and public employers of at least \$1 billion since 2013 and sixth overall during that time. Manufacturers can start expecting checks at any time.

#### BWC Rebranding?

Administrator McCloud sent a letter to stakeholders asking for Ohio BWC rebranding suggestions and opinions.

#### 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

##### BWC Safety Grants Expanded to \$70 Million

This week, the BWC was given approval by its board to spend \$70 million in fiscal years 2020 and 2021 on grants for Ohio employers to improve workplace safety. Funded by employer premiums, the Safety Grants program has already reached its 2020 appropriation of \$20 million.

##### Coronavirus and Influenza: Key Issues for Employers

February marks the peak of flu season. This year, flu concerns have been compounded with worries about the coronavirus. OMA Connections Partner Bricker & Eckler has published this guidance for employers seeking to maintain a healthy workforce during flu season and throughout the year.

##### Ohio's Latest Injuries and Illness Report Now Available

Ohio's 2018 Survey of Occupational Injuries and Illnesses report is now available. The report shows the number of cases involving days away from work in the private sector decreased 5% compared to the previous year. Sprains, strains, tears comprised more than 35% of reported injuries, followed by fractures (11.7%), cuts and lacerations (9%), and bruises and contusions (8.8%).

The rate of workplace injuries and illnesses for Ohio continues to be lower than the national average. Manufacturing reported a slight increase in the rate of injuries and illnesses, up from 3.1 to 3.2 cases per 100 full-time workers — but that's still less than the U.S. rate for manufacturing (3.4).

Overall in Ohio, agriculture — at 8.2 — had the highest total recordable case rate per 100 full-time workers.

## **BWC considers another rate cut for private employers**

13% rate reduction proposed to Board of Directors

NEWS RELEASE

Jan. 30, 2020

COLUMBUS — Ohio's private employers would pay nearly \$132 million less in premiums to the Ohio Bureau of Workers' Compensation next fiscal year under a 13% rate reduction proposed to the agency's Board of Directors today.

If approved, the reduction would mark the third rate cut in three years for private employers and the 11th since 2008. It is also the third largest cut in 60 years, following the largest (20%) last year.

"We feel it's appropriate to significantly reduce rates this year because our covered employees continue to experience fewer and less costly claims, and the recent medical inflation rate has been relatively low," said BWC Administrator/CEO Stephanie McCloud.

If approved by the board at its Feb. 28 meeting, the rate reduction would be effective July 1, saving private employers \$131.6 million over this year's premiums. It also would follow a 10% rate reduction for public employers — counties, cities, schools and others — that went into effect Jan. 1. Overall, the average rate levels for the 249,000 private and public Ohio employers in the BWC system are at their lowest in at least 40 years.

Premiums paid to BWC not only cover health care and lost wages for injured workers, they also support BWC's Safety & Hygiene Division, which offers training, consultations and other services to help employers improve workplace safety. Employer participation in these services has grown by more than 70% since 2010. Total annual claims, meanwhile, have fallen 19% over that time to 84,364 in 2019.

The proposed 13% rate cut represents an average statewide change and does not include the costs related to the administrative cost fund or other funds BWC administers. The actual premium paid by individual private employers depends on several factors, including the expected future claims costs in their industry, their company's recent claims history, and their participation in various BWC programs.

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February 5, 2020

The Honorable Bob Hackett  
Chairman, Senate Insurance and Financial Institutions Committee  
Ohio Senate  
1 Capitol Square  
Columbus, Ohio 43215

**RE: House Bill 81 – OMA Proponent Written Testimony**

Dear Chairman Hackett:

The OMA is pleased to offer proponent written testimony on House Bill 81. 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. House Bill 81 helps achieve these attributes of a well-run bureau of workers' compensation system.

House Bill 81 was amended in the House and includes several provisions that will improve the BWC. These provisions include:

- Amending the commencement of the continuing jurisdiction for the BWC and Industrial Commission;
- Revising the statute of limitations for filing a Violation of Specific Safety Rule (VSSR);
- Modifying the procedures for final settlement agreements; and
- Codifying of common law's voluntary abandonment doctrine.

We would like to thank Rep. Perales for his work on the original bill and the amended version and would urge the committee to quickly pass House Bill 81.

Sincerely,

Rob Brundrett  
Director, Public Policy Services



www.lsc.ohio.gov

# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
and Drafting

Legislative Budget  
Office

H.B. 308\*  
133<sup>rd</sup> General Assembly

## Bill Analysis

[Click here for H.B. 308's Fiscal Note](#)

**Version:** As Reported by House Insurance

**Primary Sponsor:** Rep. Patton

Paul Luzzi, Attorney

### SUMMARY

- Makes a peace officer, firefighter, or emergency medical worker who is diagnosed with post-traumatic stress disorder (PTSD) eligible to receive compensation and benefits under Ohio's Workers' Compensation Law, regardless of whether the person suffers an accompanying physical injury.
- Prohibits a claimant from receiving compensation or benefits under the Workers' Compensation Law for PTSD with no accompanying physical injury at the same time as the claimant is receiving a disability benefit from a state retirement system.

### DETAILED ANALYSIS

#### Workers' compensation coverage for PTSD

Under the bill, a peace officer, firefighter, or emergency medical worker who is diagnosed with post-traumatic stress disorder (PTSD), received in the course of and arising out of the person's employment as a peace officer, firefighter, or emergency medical worker, may be eligible to receive compensation and benefits under Ohio's Workers' Compensation Law, regardless of whether the PTSD is connected to a compensable physical injury.<sup>1</sup> Currently, an employee is not eligible to receive any compensation or benefits under Ohio Workers' Compensation Law for PTSD unless the PTSD arose from a compensable physical injury incurred by the employee.

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\* This analysis was prepared before the report of the House Insurance Committee appeared in the House Journal. Note that the legislative history may be incomplete.

<sup>1</sup> R.C. 4123.01(C), with conforming changes in R.C. 4123.01(A), 4123.026, and 4123.46.

Under the bill, a claimant is not entitled to compensation or benefits under the Workers' Compensation Law for PTSD as provided under the bill while the claimant receives a disability benefit or disability retirement, as appropriate, from the Public Employees Retirement System (PERS), the Ohio Police and Fire Pension Fund (OP&F), the School Employees Retirement System (SERS), or the State Highway Patrol Retirement System (SHPRS).<sup>2</sup>

If a claimant receives compensation or benefits under the Workers' Compensation Law for PTSD without an accompanying physical injury while the claimant receives a disability benefit or disability retirement from a retirement system, the bill allows the Administrator of Workers' Compensation or a self-insuring employer to collect both of the following from the claimant:

1. The amount of compensation or benefits paid to the claimant by the Administrator or the self-insuring employer pursuant to Workers' Compensation Law for the time period the claimant received disability benefits or a disability retirement from the retirement system;
2. Any interest, attorney's fees, and costs the Administrator or the self-insuring employer incurs in collecting that payment.<sup>3</sup>

On determining that a PERS, OP&F, SERS, or SHPRS member's PTSD without an accompanying physical injury qualifies the member for a disability benefit or disability retirement, the bill requires the appropriate retirement system to notify the Administrator of all of the following: the member's name, that the member's PTSD without accompanying physical injury qualifies the member for a disability benefit or disability retirement, the effective date of the member's disability benefit or disability retirement, and the date on which payments for the disability benefit or disability retirement commence. The bill exempts these reports from current law confidentiality requirements applicable to certain PERS, OP&F, SERS, or SHPRS records.<sup>4</sup>

### **Background – psychiatric conditions as “injuries”**

Other than injuries falling under specific exceptions (self-inflicted injuries or injuries caused by the employee's intoxication), Ohio's Workers' Compensation Law entitles every employee who is injured or contracts an occupational disease to receive compensation, benefits, or both on account of the injury or occupational disease.<sup>5</sup> Continuing law defines “injury” as any injury received in the course of, and arising out of, the injured employee's employment. Currently, psychiatric conditions generally are excluded from the definition of injury, except where:

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<sup>2</sup> R.C. 4123.87(A).

<sup>3</sup> R.C. 4123.87(B).

<sup>4</sup> R.C. 145.364, 742.391, 3309.402, and 5505.182.

<sup>5</sup> R.C. 4123.54, not in the bill.

1. The employee's psychiatric conditions have arisen from an injury or occupational disease sustained by that employee; or
2. The employee's psychiatric conditions have arisen from sexual conduct in which the employee was forced to engage or participate by threat of physical harm.<sup>6</sup>

Thus, under current law, an employee is not eligible to receive compensation or benefits under Ohio's Workers' Compensation Law for PTSD unless the PTSD arose from a compensable physical injury incurred by the employee.<sup>7</sup>

## **Background – PTSD**

PTSD is an illness caused by living through or seeing a traumatic event, such as war, a violent crime, or a bad accident. PTSD can cause flashbacks, trouble sleeping, thoughts of hurting oneself or others, angry outbursts, and feelings of worry, guilt, sadness, or loneliness. Signs of PTSD may start soon after a traumatic event or may start or intensify years after the event.<sup>8</sup>

## **Definitions**

Under continuing law, a "peace officer" means any of the following:

1. A sheriff or deputy sheriff;
2. A marshal or deputy marshal;
3. A member of the organized police department of any municipal corporation, including a member of the organized police department of a municipal corporation in an adjoining state serving in Ohio;
4. A member of a police force employed by a metropolitan housing authority;
5. A member of a police force employed by a regional transit authority;
6. A state university law enforcement officer;
7. An enforcement agent of the Department of Public Safety;
8. An employee of the Department of Taxation to whom investigation powers have been delegated under the Cigarette Tax Law;
9. An employee of the Department of Natural Resources who is a natural resources law enforcement staff officer, a forest-fire investigator, a natural resources officer, or a wildlife officer;

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<sup>6</sup> R.C. 4123.01(C).

<sup>7</sup> *Armstrong v. Jurgensen Co.*, 136 Ohio St.3d 58, 2013-Ohio-2237.

<sup>8</sup> National Institute of Mental Health, *Post-Traumatic Stress Disorder*, <https://www.nimh.nih.gov/health/topics/post-traumatic-stress-disorder-ptsd/index.shtml>.

10. A person designated to perform law enforcement duties in a park district or conservancy district or by a park commission;
11. A veterans' home police officer;
12. A special police officer employed by a port authority;
13. A township police constable;
14. A police officer of a township or joint police district;
15. A special police officer employed by a municipal corporation at a municipal airport or certain other municipal air navigation facilities;
16. The House of Representatives Sergeant at Arms, if the person has arrest authority, or an assistant House of Representatives Sergeant at Arms;
17. The Senate Sergeant at Arms or an assistant Senate Sergeant at Arms;
18. Certain Bureau of Criminal Identification and Investigation employees or officers;
19. A state fire marshal law enforcement officer;
20. The Superintendent and troopers of the State Highway Patrol, for specified purposes.<sup>9</sup>

Under continuing law, an "emergency medical worker" means any of the following persons, whether the person is paid or a volunteer, so long as the person is certified under Ohio law:

- A first responder;
- An emergency medical technician-basic;
- An emergency medical technician-intermediate;
- An emergency medical technician-paramedic.<sup>10</sup>

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## HISTORY

Action	Date
Introduced	06-28-19
Reported, H. Insurance	---

H0308-RH-133/ts

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<sup>9</sup> R.C. 4123.01(P), by reference to R.C. 2935.01, not in the bill.

<sup>10</sup> R.C. 4123.01(A) and (R).



January 28, 2020

The Honorable Tom Brinkman  
Chairman, House Insurance Committee  
Ohio House of Representatives  
77 S. High St., 11<sup>th</sup> floor  
Columbus, Ohio 43215

**RE: House Bill 308 – OMA Opponent Written Testimony**

Dear Chairman Brinkman:

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.

House Bill 308 would allow police, fire, and emergency medical workers to receive workers' compensation if that worker has been diagnosed with post-traumatic stress disorder (PTSD) regardless if there is an accompanying 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 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. 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 apart from a workplace physical injury/illness is 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. Recently there have been many conversations amongst interested parties about how to provide first responders appropriate and comprehensive PTSD treatment without eroding the fundamental parameter of workers' compensation – the physical injury requirement.

The OMA would urge the committee to not pass House Bill 308.

Sincerely,



Rob Brundrett  
Director, Public Policy Services



February 12, 2020

The Honorable Tom Brinkman  
Chairman, House Insurance Committee  
Ohio House of Representatives  
77 S. High St., 11th floor  
Columbus, Ohio 43215

Dear Chairman Brinkman:

Our organizations, on behalf of our members, write to you today to encourage the House Insurance Committee to vote no on Amended House Bill 308.

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.

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. Our organizations have a history of opposing proposals that would permit PTSD compensation where there is no associated physical injury or illness. The adoption of a mental-only diagnosis would create a significant departure to longstanding and clear precedent in Ohio workers' compensation system law.

Expanding PTSD coverage in the workers' compensation will lead to cost increases to Ohio's public and private employers. 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 apart from a workplace physical injury/illness is most effectively and appropriately financed -- health insurance, an emergency responder fund, or a separate PTSD benefits system as advocated by our collective organizations.

Therefore, we would respectfully ask that the House Insurance Committee delay voting on House Bill 308 or in the alternative vote no on House Bill 308 in order to find a solution that all interested parties can support.



February 12, 2020

## KEY VOTE ALERT

### Vote No on House Bill 308 – Workers' Compensation PTSD

The Ohio Manufacturers' Association (OMA) is requesting your "No" vote in opposition to House Bill 308.

House Bill 308 makes 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 308 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



February 19, 2020

Dear Select Members of the Ohio House of Representatives:

Our six business organizations, on behalf of employers across Ohio, would like to express our sincere gratitude for your tough vote against House Bill 308. We know your vote, at face value, can make it look like you are against the heroic men and women who serve as first responders, but we know nothing could be further from the truth! As Paul Harvey would say, "and now for the rest of the story."

We know your no vote on HB 308 was really a reflection of the significant unintended consequences of reversing 100 years of precedent could have on Ohio workers' compensation system, and due to your belief that there is a better way to solve the needs of first responders facing Post Traumatic Stress Disorder (PTSD).

As you know, this legislation is concerning to the business community because, if passed, it will erode the physical injury requirement for compensating mental conditions in Ohio's workers' compensation system. We believe our opposition to this issue has not been properly portrayed by some, so we hope this letter can provide you with more context and information about why we urged you to vote no on HB 308. Below you will find key points and misconceptions surrounding the PTSD issue:

- This legislation proposes a drastic departure from over 100 years of Ohio law requiring proof that a mental condition, such as depression or anxiety, arose from a physical injury suffered by the claimant before it can be considered compensable. Under this bill, an injured worker could become eligible for lifetime benefits for just witnessing something. Seeing something traumatic during the course of work which the individual believes caused a mental condition, could now make them eligible to receive treatment, paid time off, and even lifetime disability payments under the workers' compensation system – an insurance system paid for exclusively by Ohio employers.
- One of the biggest fears of this new mental-only allowance is that it opens the door to a costly expansion of this type of coverage to all workers. The day this bill is signed into law, workers' compensation trial lawyers will rush to courthouses across Ohio to claim, under the equal protection provisions of the Ohio Constitution, what's good for first responders is good for all Ohio workers. They will argue a truck driver who only witnessed a traffic

accident, a bank teller who witnessed a robbery, or an employee who witnessed an injury of a fellow worker should also be entitled to mental-only compensation. It is not hard to see how this would lead to a massive and potentially abusive expansion of workers' compensation coverage.

- We heard proponents of the bill claim they would not entertain other groups who want to make their employees eligible for mental-only benefits. The reality is the expansion of this coverage will likely not be left up to the state legislature, but rather will be determined by the court system as they are asked to apply an "equal protection" standard to all workers.
- Our organizations recognize the unique and stressful work environments of first responders. We have been working, in good faith, with representatives of the police and firefighters associations, to move forward with a bill that would provide the exact same coverages they were seeking in House Bill 308, but through a uniquely tailored insurance product for first responders outside the workers' compensation system. We supported a product that would provide comprehensive PTSD medical treatment and wage loss. This coverage would be as robust as any offered in the workers' compensation system but would be housed in the Ohio Department of Public Safety. The benefit of having this insurance product administered by this department is threefold:
  - The Ohio Department of Public Safety is an agency much better equipped to understand the unique needs of first responders and is headed by individuals who often were once first responders themselves.
  - It would be providing a streamlined and less bureaucratic process than the Ohio Bureau of Workers' Compensation, bypassing the adjudicatory processes of the Ohio Industrial Commission, allowing claims to be processed faster, have less opportunity for denial, and require appeals to be filed in the court of common pleas.
  - Finally, it would provide the critical legal "walled-off" protection so it could not easily be expanded into other private sector professions.
- Unfortunately, our attempts to work with proponents on an alternative PTSD coverage plan failed.
- Oftentimes during the discussions on PTSD, the issue is confused with military service. Please be aware PTSD benefits are provided for active military and veterans through the federal government, and this bill does not change those coverages.
- Finally, we cannot overlook the potential cost of this legislation. There have been varying cost assumptions over the years ranging from \$70 to \$100 million per year to cover public first responders, a cost counties, cities, villages, and townships would have to immediately cover in their workers' compensation premiums. The taxpayers of those communities will ultimately pay for this increase in benefits. The cost of this coverage would rise exponentially if all workers were eligible, and that enormous cost would fall on the backs of every Ohio employer.

Thank you again for your support of Ohio's business community with your tough vote on House Bill 308 last week.

## Safety & Workers' Compensation

### OMA Members Briefed on Impact of Workers' Compensation Fraud February 28, 2020

Studies show that fraud represents between 5% and 20% of all workers' compensation benefits paid — equal to between \$100 million and \$400 million of the medical and compensation payments made every year by the Ohio Bureau of Workers' Compensation (BWC). That was just one takeaway from this week's OMA Safety and Workers' Compensation Committee meeting, the first of 2020.

OMA members heard informative presentations from BWC officials on the bureau's **special investigations department** and its self-insured operations. Other highlights were updates on pending legislation, including a **proposal** to allow mental-only conditions — such as PTSD — to be covered under Ohio's workers' comp.

The committee's **next meeting** is scheduled for Thursday, June 11. All OMA members are welcome to register to participate either in person or by phone. 2/26/2020



Nearly 60 OMA members participated in this week's Safety & Workers' Compensation Committee meeting either in person or by phone.

### BWC Catch-All Bill is a Step Closer to Becoming Law February 28, 2020

This week, the Senate Insurance and Financial Institutions Committee passed **House Bill 81**. Supported by the OMA, the bill is a workers' compensation catch-all that makes a **variety of positive changes** to the system for manufacturers. HB 81 is expected to be voted on by the full Ohio Senate in the near future. 2/27/2020

### Recreational Pot Could Appear on Ohio Ballot Again February 28, 2020

Reports circulated this week that there's another effort afoot to legalize recreational marijuana in Ohio. According to **Cleveland.com**, supporters may attempt to place a proposed constitutional amendment before voters on the November 2020 ballot. In 2015, Ohioans rejected legalizing the recreational use of marijuana (State Issue 3) by a 64% to 36% margin. 2/26/2020

### Ohio Safety Congress Will Feature More Than 200 Educational Sessions (and an NFL Hall of Famer) February 28, 2020

In less than two weeks, **Ohio's 2020 Safety Congress and Expo** will be held at the Greater Columbus Convention Center. This March 11-13 event is the largest work-safety event in the U.S. and is free to attend. It offers more than 200 educational sessions, continuing education opportunities, credit toward BWC discount programs, and dynamic keynote speakers, including former Cincinnati Bengals star and NFL Hall of Famer Anthony Muñoz.

If you go, stop by the OMA's booth (#1024) to discuss our unique, manufacturer-specific approach to workers' comp management. We will have a small gift courtesy of OMA-member Crema Nut to say thanks for saying hello. 2/26/2020

### Ohio's Latest Injuries and Illness Report Now Available February 21, 2020

Ohio's 2018 Survey of Occupational Injuries and Illnesses report is **now available**. The report shows the number of cases involving days away from work in the private sector decreased 5% compared to the previous year. Sprains, strains, tears comprised more than 35% of reported injuries, followed by fractures (11.7%), cuts and lacerations (9%), and bruises and contusions (8.8%).

The rate of workplace injuries and illnesses for Ohio continues to be lower than the national average. Manufacturing reported a slight increase in the rate of injuries and illnesses, up

from 3.1 to 3.2 cases per 100 full-time workers — but that’s still less than the U.S. rate for manufacturing (3.4).

Overall in Ohio, agriculture — at 8.2 — had the highest total recordable case rate per 100 full-time workers. *2/18/2020*

### **OSHA Publications Available for Free Download**

February 21, 2020

Did you know OSHA provides all of its popular publications on its website, ready for free download? Many of the agency’s publications are available in languages other than English. **Click here** to see the most downloaded OSHA publications. *2/18/2020*

### **BWC Employer Webinar is February 27**

February 21, 2020

The BWC’s next employer webinar will be Thursday, Feb. 27, at 11:30 a.m. This free, 25-minute webinar will cover the role of the Ohio Industrial Commission, the \$15,000 Medical-Only Program, One-Time Forgiveness, eNews, important dates, and the BWC’s monthly safety tip. Register to **attend online** — or sign up to **attend in person** at your nearest BWC service office. *2/17/2020*

### **House Passes Workers’ Comp Expansion for PTSD Benefits**

February 14, 2020

This week, on a 74-22 vote, the Ohio House passed **House Bill 308**, legislation that would provide first responders with workers’ compensation benefits to treat post-traumatic stress disorder (PTSD) even when there’s no physical injury. Under current Ohio law, only mental conditions stemming from on-the-job physical injuries/illnesses are eligible for workers’ compensation benefits. Due to the risk of substantial premium increases for employers, the OMA has long opposed any legislation that would permit PTSD compensation or other mental claims when there is no associated physical injury or illness. As the OMA noted in its “**key vote alert**” to House members, HB 308, 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.”

The bill now moves to the Senate, where Senate President **Larry Obhof** (R-Medina) has already been quoted saying he supports the legislation. *2/13/2020*

### **Report: PTSD Legislation is Increasing Costs, Not Care**

February 14, 2020

In state legislatures across the U.S., there’s growing support to provide workers’ compensation benefits to first responders who are diagnosed with post-traumatic stress disorder (PTSD), even if there’s no physical injury. But according to an insurance publication, in states where benefits have been expanded, things aren’t going as intended as the changes are leaving some first responders without care — and municipalities “struggling to cover the costs.”

In its story, **Business Insurance** quotes several experts, including one who said: “The cost is extraordinary. The reality is that a large number of these claims ... are all heavily litigated or arbitrated, and a really high percentage of these claims are not readily paid.” *2/11/2020*

### **Coronavirus and Influenza: Key Issues for Employers**

February 14, 2020

February marks the peak of flu season. This year, flu concerns have been compounded with worries about the **coronavirus**. OMA Connections Partner Bricker & Eckler has published **this guidance** for employers seeking to maintain a healthy workforce during flu season and throughout the year. *2/12/2020*

### **BWC Safety Grants Expanded to \$70 Million**

February 14, 2020

This week, the BWC was **given approval** by its board to spend \$70 million in fiscal years 2020 and 2021 on grants for Ohio employers to improve workplace safety. Funded by employer premiums, the Safety Grants program has already reached its 2020 appropriation of \$20 million. *2/12/2020*

## **Senate Continues Hearings on Workers' Comp Bill**

February 7, 2020

This week, the Senate continued to hold hearings on **House Bill 81**, legislation that would make several changes to Ohio's workers' compensation laws. Some of the changes HB 81 would make include:

- reducing the statute of limitations for violations of a specific safety rule (VSSR) from two years to one year;
- increasing the funeral expense benefit cap for inflation;
- changing rules for final claim settlement agreements;
- continuing jurisdiction changes; and
- clarifying the voluntary abandonment doctrine.

The Senate Insurance and Financial Institutions Committee heard from a variety of witnesses, including the OMA, which provided **proponent testimony**. The bill is expected to receive further Senate consideration. *2/6/2020*

## **OSHA Website Addresses Coronavirus Protection**

February 7, 2020

The U.S. Department of Labor has produced **this webpage** to provide information to employers regarding the evolving coronavirus outbreak first identified in China.

The agency notes that there is no evidence of widespread transmission of the virus in the U.S. at this time. Still, it's worthwhile for employers to review the site, including its information on hazard recognition, control and prevention, and OSHA standards as they apply to the virus. *2/6/2020*

## **Another Workers' Comp Premium Cut for Ohio Employers?**

February 7, 2020

The Ohio Bureau of Workers' Compensation (BWC) has **announced** it's proposing another rate cut to premiums paid by private employers.

This one would be worth about \$132 million — if OK'd by the BWC board on Feb. 28. It would reduce private employers' rates by an average of 13% and take effect July 1. It would also mark the third cut in three years for private employers and the 11th since 2008.

This is a good thing for Ohio employers, as the drive toward actuarial principles has resulted in a competitive advantage for Ohio's state-run monopoly workers' comp system. *2/3/2020*

## **BWC Seeks to Increase Safety Grants to \$70 Million**

February 7, 2020

The BWC has **announced** it wants to increase funding for its Safety Grants program for employers by \$30 million over 2020 and 2021, bringing the total to \$70 million. The grants — worth as much as \$40,000 per employer — provide funds for training, wellness programs, and equipment intended to reduce the risk of workplace injuries and illness.

The application deadline for **safety grants** awarded this fiscal year is March 31. Applications for FY2021 grants will be accepted starting July 1. *2/3/2020*

## **New BWC Rule for Concussion-Related Injuries**

February 7, 2020

Last month, a new Ohio workers' compensation rule became effective with respect to the payment for treatment of concussion-related injuries. OMA Connections Partner Roetzel **reports** the BWC's new rule means "medical treatment for head related injuries that are suspect or minimal in nature — and which would have likely not been approved for medical treatment related to a concussion diagnosis prior to the enactment of the new rule — will now most likely be treated with less scrutiny by the BWC and be authorized for medical treatment." *2/3/2020*

## **Ohio House Poised to Approve Mental-Only Claims under Workers' Comp**

January 31, 2020

This week, **House Bill 308** — legislation to allow first responders to receive Ohio workers' compensation benefits if diagnosed with post-traumatic stress disorder (PTSD) — took one step closer to becoming law. If the bill is passed

and signed, it would mark the first time Ohio would allow a mental claim without an accompanying physical injury. Currently, the Ohio workers' compensation system prohibits so-called mental/mental claims.

**The OMA**, along with other business and local government groups, has long been opposed to any move towards mental/mental claims. In addition, the OMA has worked with numerous stakeholders to find alternative solutions to ensure that Ohio's first responders receive treatment for PTSD. The House Ways and Means Committee pushed aside those alternative solutions during opponent testimony this week. It is expected that the committee and the full House will approve the bill yet this winter. *1/30/2020*

### **First Senate Hearing Held on BWC Bill** January 31, 2020

On Wednesday, Jan. 29, the Ohio Senate held sponsor testimony on **House Bill 81**. As originally introduced, the bill would have provided corrections officers with workers' compensation coverage when exposed to bodily fluids on the job. The House **amended** the bill to allow for several other new workers' compensation provisions including: reducing the statute of limitations for violations of a specific safety rule (VSSR) from two years to one year; increasing funeral expenses; settlement changes; continuing jurisdiction changes; and clarifying the voluntary abandonment doctrine. Overall, the bill is a positive for manufacturers. *1/30/2020*

### **OMA Members are Finalists for BWC's Safety Awards** January 31, 2020

The Ohio Bureau of Workers' Compensation (BWC) has **announced** its five finalists for this year's Safety Innovation Awards. Among the finalists are OMA members Fort Amanda Specialties (Lima) and TFO Tech Co., LTD (Jeffersonville). The finalists are competing for cash awards — including a \$10,000 first place prize. They will be featured at the **Ohio Safety Congress and Expo** in mid-March. The BWC established the Safety Innovation Awards to encourage and recognize innovative solutions that reduce the risk of workplace injuries and illness. *1/28/2020*

### **Reminder: BWC Grants Available to Ohio Employers** January 24, 2020

The Ohio Bureau of Workers' Compensation (BWC) offers several grant options for Ohio employers, including the Safety Intervention Grant, Workplace Wellness Grant, and the Drug-Free Safety Program Grant. This is a reminder to OMA members to **take a look** at all available grant options and details about these programs. *1/21/2020*

### **Local Marijuana Laws Don't Change Employers' Drug-Free Workplace Rights** January 24, 2020

The Cleveland City Council recently proposed an ordinance to decriminalize marijuana possession. If Cleveland's proposed ordinance passes, it would join other Ohio cities such as Cincinnati, Columbus, Toledo, and Dayton in decriminalizing possession of small amounts of marijuana.

OMA Connections Partner Frantz Ward **reminds employers** that despite the trend, Ohio law allows employers to discipline, terminate, refuse to hire, or take other adverse action against individuals based on use, possession, or distribution of marijuana. Changes in local law are "not likely to impact Ohio employers who wish to maintain drug-free workplaces." *1/22/2020*

### **OSHA Announces New Maximum Penalties** January 17, 2020

OSHA has announced the maximum penalty amounts (adjusted for inflation) that it can assess after Jan. 15, 2020. See the penalty amounts **here**. *1/16/2020*

### **OMA Webinar Will Address OSHA Reporting Obligations** January 17, 2020

If you are new to OSHA records management — or you have employees who need an introductory course or refresher — the OMA is offering a **helpful webinar** on Feb. 6, from 10-11 a.m. EST.

Presented by experts at Safex, an OMA Connections Partner, this webinar will review OSHA recordkeeping requirements, including your obligations when reporting injuries. 1/14/2020

### **Free OSHA Certification Courses**

#### **Available**

January 17, 2020

Ohio BWC offers free OSHA certification courses to employers. According to its update, the bureau has several OSHA-10 and OSHA-30 workshops scheduled at various sites across Ohio. **Click here** to view the specific dates and locations, or to sign up for one of these free courses. 1/15/2020

### **Protect Your Workers' Comp Premium Savings**

January 10, 2020

If you haven't already done so, activate your OMA Group Retrospective Rating offer — or complete your payment — no later than Friday, Jan. 24. Renewing members, as well as new applicants, can find their 2020/21 Group Retrospective Rating offer on their **WCS dashboard**. Enrollment can be executed online via the dashboard; however, you will need to process your payment by check or credit card. If you have any questions, contact the OMA's **Brian Jackson** or your OMA workers' comp account manager — **Karen James, Melissa Ross** or **Juliet Walker**.

Note: If your company hasn't requested an OMA workers' comp premium savings proposal for the 2020/21 policy year, the OMA is accepting applications through Jan. 22. **Apply here**. 1/9/2020

### **Ohio Safety Congress Set for March 11-13 in Columbus**

January 10, 2020

The **Ohio Safety Congress and Expo** is currently accepting registrations. This is the second-largest occupational safety, health, and workers' compensation event in the U.S. — and last year it attracted more than 8,000 attendees and 300 exhibitors.

This year's event will be March 11-13 at the Greater Columbus Convention Center. Safety

Congress and **registration** are free — and there's even an **online attendance option**.

The OMA will have its workers' comp team on site — at booth #1024 — to discuss our unique, manufacturer-specific approach to workers' comp management. We will have a made-in-Ohio gift as a "thank you" for stopping by. 1/8/2020

### **BWC's 'Better You' Program Gets Makeover**

January 10, 2020

The new year has brought some changes to *Better You, Better Ohio!*<sup>®</sup> — the free health-and-wellness program for workers of businesses with 150 or fewer employees 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 or paperwork hassle.

The program's **new-and-improved homepage** includes timely information and helpful tools for users. A new **Wellness Champion Guide** can help employers jump-start their health and wellness programs by empowering workers to take on a more active role in the program. 1/8/2020

### **Latest Data Show Slight Uptick in Workplace Fatalities**

January 3, 2020

The U.S. Bureau of Labor Statistics reports that there were 5,250 fatal workplace injuries across all U.S. industries and ownerships in 2018, according to **updated data**. That's an increase of 103 from 2017. The fatality rate was unchanged from 2017 at 3.5 fatalities per 100,000 full-time workers.

In 2018, there were 96 fewer fatal falls, slips, and trips than in 2017. But this decrease was more than offset by an increase of 91 cases in fatal contact with objects and equipment — and an increase of 90 cases in exposure to harmful substances or environments. 1/2/2020

**Workers' Compensation Legislation**  
Prepared by: The Ohio Manufacturers' Association  
Report created on March 3, 2020

- 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. 6/27/19  
*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>
- HB81**      **WORKERS COMP-BODILY FLUID EXPOSURE** (PERALES R) Regarding Workers' Compensation coverage of post-exposure medical diagnostic services for a detention facility employee's exposure to another person's blood or bodily fluids.  
*Current Status:* 2/26/2020 - **REPORTED OUT AS AMENDED**, Senate Insurance and Financial Institutions, (Fourth Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-81>
- 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:* 2/12/2020 - House Commerce and Labor, (First Hearing)  
*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:* 2/26/2020 - Referred to Committee Senate General Government and Agency Review  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-308>
- HB330**      **FIREFIGHTER CANCER CLAIMS** (PATTON T) Regarding charging workers' compensation experience in firefighter cancer claims.  
*Current Status:* 10/22/2019 - House Insurance, (Second Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-330>

**TO: OMA Government Affairs Committee**  
**FROM: Ryan Augsburger / Rob Brundrett**  
**SUBJECT: Tax Public Policy Report**  
**DATE: March 4, 2020**

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### **Overview**

In 2019 the state budget bill dominated any potential major changes in tax law. The OMA and manufacturers were able to secure some big wins on the tax front working within the confines of the budget debate. Changes to manufacturing tax credits and exemptions were included in the final package.

The OMA continues to push for more tax changes in 2020 setting up for another hopeful state budget debate in 2021. It is expected that the General Assembly will continue to debate the merits of several major tax credits and manufacturers must remain vigilant in defending certain credits, the most important being the manufacturing sales and use exemption.

### **Tax Legislation**

#### **Senate Bill 8 – Ohio Opportunity Zone Tax Credits**

Originally the bill authorized tax credits for investments in Ohio Opportunity Zones. Federal laws allowed states to designate economically distressed areas as these Zones. The bill allowed state tax incentives to compliment the federal tax treatment for the Opportunity Zones. SB 8 quickly passed the Senate. Once in the House the legislation became part of the bigger budget bill.

#### **Senate Bill 26 – Tax Deductions for Teachers and Businesses**

The bill became a hodgepodge of tax proposals and used as the vehicle to restore tax provisions which were removed in the budget. The bill authorized a state income tax deduction for teachers' out-of-pocket expenses for professional development and classroom supplies. The bill also restored the business income deduction for lawyers and lobbyists and exempted feminine hygiene products from sales and use tax (the Pink Tax). The bill passed both the House and Senate in October.

#### **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. The OMA continues to be a vocal opponent over such tax credits.

#### **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

After much debate and disagreement between the two legislative chambers the final transportation bill included the terrible bifurcated fuel tax. Diesel fuel increased by 19 cents and gasoline by 10.5 cents. Electric vehicles required 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. The House Ways and Means Committee held their first hearing on the bill at the end of October and continue to debate the bill's merits.

#### 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 had its second hearing in early October.

#### 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. The bill had its first hearing in October.

#### 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 that certain members of the General Assembly will try hard for an increase.

The bill has not had a hearing. Speaker Householder has come out against this credit, most noticeably in the House version of the budget where the credit was eliminated.

#### House Bill 166 – State Operating Budget

The final passed version made several major changes to the tax code impacting manufacturers.

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. (see below)
- **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.

Job Retention Tax Credit Manufacturer Eligibility - This budget provision 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, the provision was 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 amendment:

- Allowed companies headquartered in Foreign Trade Zones to be eligible to apply without meeting current payroll and employee count minimums
- Eliminated the minimum payroll size and number of employees required for manufacturers to apply for the JRTC
- Required 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
- Required manufacturers to maintain their FTE count during the term of the credit

While the amendment did not expand the number of companies and projects eligible to apply for a JRTC, it did 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. Debate continues to rage within government and the economic development class as to how, when, and if the credit will be or should be utilized. The OMA has been working with manufacturers and others to push hard to this credit to be deployed by the administration and JobsOhio.

#### 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 and has had two hearings this fall.

#### 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. The bill was passed out of the House and has had three hearings in the Senate.

#### House Bill 222 – CDL Training Tax Credit

The bill provides an income tax credit for an employer's expenses to train a commercial vehicle operator. The bill is sitting below the black line in the House.

#### Senate Bill 257 – Electric Vehicle Tax Credit

Earlier this month, Sens. Michael Rulli (R-Salem) and Sean O'Brien (D-Bazetta) introduced Senate Bill 257, designed to make Ohio — and particularly the Mahoning Valley — the nation's leader in the electric vehicle revolution. The bill would create two different tax credits:

- A sales tax credit for the purchase of an electric vehicle; and
- An income tax and commercial activity tax credit for the purchase and installation of a charging station for an electric vehicle.

The bill has had two hearings in the Senate. The House is considering introducing a companion bill.

#### House Bill 378 – Striking Worker Unemployment Benefit

The bill would provide unemployment benefits to striking workers. This adds a new group of workers eligible to receive benefits in Ohio and would put even more stress on the system.

#### House Bill 440 – Abolish Tax on Manufacturing Temp Labor and Sales Tax on Manufacturing Janitorial Supplies and Equipment

House Bill 440 is an OMA-sponsored bill to eliminate the sales tax on temporary workers, while also eliminating the sales tax on industrial janitorial services purchased to clean machinery in a manufacturing facility.

Both provisions — longtime priorities of the OMA Tax Committee — are contained in House Bill 440, bipartisan legislation offered by State Reps. Sara Carruthers (R-Hamilton) and Jessica Miranda (D-Forest Park). HB 440 was referred to the House Ways and Means Committee; and had its first hearing in January.

Ohio remains one of a handful of states that taxes temporary workers and is the only state that double taxes those workers on both the service fee and wages. Eliminating the

sales tax on janitorial services would bring much-needed certainty for manufacturers and this type of service, which is often contested under the manufacturing sales and use tax exemption.

The OMA would like to hear from members who are willing to testify on the importance of this proposed tax change. Please contact Rob Brundrett if you or your company is interested in testifying or learning more about the bill.

#### House Bill 467 – Pass-Through Entity Tax Reduction

The bill reduces the pass-through entity withholding tax rate to four percent. It is expected to clear the House Ways and Means Committee this winter.

#### Senate Joint Resolution 3 – Require a Supermajority for an Income Tax Increase

Proposing to enact Section 7 of Article XII of the Constitution of the State of Ohio to require that any increase in income tax rates be approved by a supermajority of the membership of each house of the General Assembly.

### **Tax News**

#### Sales Tax Exemption for All Food Manufacturers Now in Effect

Good news for all food manufacturers! During last summer's debate on the state budget (House Bill 166), the OMA led tax changes for food manufacturers as lawmakers approved an expanded sales-and-use tax exemption for equipment and supplies used to clean equipment that produces or processes food for human consumption. (Previously, the exemption applied only to dairy food processors. Now it applies to all Ohio food manufacturers.)

The expanded exemption went into effect Oct. 1, 2019. Make sure you are tracking the necessary information.

#### Study: Ohio's Property Tax Burden on Businesses is Among Lowest in U.S.

An updated comparison by the Tax Foundation finds Ohio imposes the nation's ninth smallest property tax burden on businesses. The think tank cites a study that says nationwide, taxes on real, personal, and utility property account for 38% of all taxes paid by businesses to state and local governments.

#### Comparison Shows Ohio is Among the Best States for Corporate Taxpayers

A new map by the Tax Foundation illustrates Ohio's competitiveness by comparing the combined federal and state corporate tax rates of all 50 states. Only six states — Ohio, Nevada, South Dakota, Texas, Washington, and Wyoming — have no state corporate income tax. Corporations in these states are liable for only the federal tax rate of 21% (reduced from 35% by the 2017 Tax Cuts and Jobs Act).

Fifteen years ago, the OMA helped lead the repeal of Ohio's antiquated corporate franchise tax and tangible personal property tax. They were replaced with the manufacturing-friendly Commercial Activity Tax (CAT) — a gross receipts tax that imposes a single low rate of 0.26% on in-state sales, while out-of-state sales are exempt

#### Ohio's State-Local Sales Tax Slightly Higher than U.S. Average

Forty-five states collect a sales tax — and 38 of them, including Ohio, allow local governments to impose a sales tax of their own.

According to a new map by the Tax Foundation, Ohio's combined state-local average sales tax rate is 7.17%. That's 21st highest nationally and higher than any of Ohio's neighboring states. Ohio's state sales tax rate of 5.75% is around the U.S. average, coming in at 27th highest.

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. The OMA is joined a business group coalition and filed an amicus brief.

## **Job Retention Tax Credit (R.C. 121.171)**

The act modifies the employment and investment requirements that businesses must meet to receive a Job Retention Tax Credit (JRTC).

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.

Previously, to receive the credit, a business was required to employ at least 500 employees or have an annual payroll in Ohio of at least \$35 million. In addition, for manufacturing projects, the business had to 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 act makes several changes to these requirements. First, the act 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 payroll requirement. The project must still involve an investment of at least \$20 million over three years.

For manufacturing projects, the act entirely removes the requirement that a business have at least 500 employees or \$35 million payroll. In addition, the act 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.

## **OMA Jobs Retention Tax Credit – OMA Tax and Finance Committee**

### **Potential guardrails for the JRTC – per administration request**

- A. Comply with the statute and any regulations set forth by DSA
- B. Timeframe Criteria
  - Can only use the credit once every five years
  - Company/facility must have been located in Ohio for at least ten years
  - Must show that is imminent possibility the project could take place out of state
- C. Upgrade Requirements
  - Project must result in modernization or an increase in capacity at the facility
  - Project cannot be routine maintenance
  - If not a modernization or technology upgrade project must result in new product line
  - Project must increase efficiency by X amount
  - Prioritize supply chain companies investing in (CASE) Connectivity, Autonomous, Sharing and Electrification
  - Reward projects that purchase machinery and equipment from Ohio companies
- D. Other Consideration
  - If using JRTC other additional incentives are capped
  - Determine jobs retained by the manufacturer as a percentage of the communities total manufacturing jobs
  - DSA/JobsOhio should review the application in light of how a manufacturer makes their decision in where to invest



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# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
and Drafting

Legislative Budget  
Office

S.B. 257  
133<sup>rd</sup> General Assembly

## Bill Analysis

**Version:** As Introduced

**Primary Sponsors:** Sens. O'Brien and Rulli

Sam Benham, Attorney

### SUMMARY

- Authorizes, for five years, a sales tax credit for the purchase or lease of a plug-in electric motor vehicle.
- Authorizes, for five years, a nonrefundable income tax and commercial activity tax credit for the purchase and installation of a charging station for such a vehicle.

### DETAILED ANALYSIS

#### Electric vehicle tax incentives

The bill authorizes two temporary tax incentives for activities involving “plug-in electric vehicles,” which are defined as four-wheeled vehicles (1) designed for use on public highways, (2) required to be registered in Ohio, (3) able to reach speeds of at least 55 miles per hour, and (4) powered by a battery capable of being recharged from an external power source and storing at least four kilowatt hours of electricity.<sup>1</sup>

#### Sales tax credit for electric vehicle purchases

First, the bill authorizes a credit against the sales tax otherwise due on the purchase or lease of a plug-in electric vehicle. The credit for a vehicle purchased or leased for personal use is \$500 and applies only to one sale or lease of an electric vehicle by the purchaser per year. In contrast, the credit for a vehicle purchased or leased for use primarily in the purchaser’s business is \$1,000 and may apply to the purchase or lease of up to ten such vehicles per year. In either case, the credit may not exceed the tax due and applies only if the vehicle is legally

<sup>1</sup> R.C. 5739.025(D)(1)(a) to (d).

purchased or leased between the first day of the first month that begins after the bill's effective date and the five-year anniversary of that date.<sup>2</sup>

Continuing law levies state and local sales taxes on motor vehicle sales and leases. The state rate equals 5.75% of the purchase or lease price, and county and transit authority rates, which may not exceed 3%, currently range from 0.75% to 2.25%.<sup>3</sup> In a motor vehicle transaction, unlike the taxation of most other tangible personal property, the local sales tax rate of the jurisdiction in which the purchaser resides is applied instead of the local rate of the jurisdiction in which the vehicle is purchased or leased.<sup>4</sup>

### **Tax credits for charging stations**

The second tax incentive authorized by the bill is an income tax and commercial activity tax (CAT) credit for a taxpayer that purchases and installs on the taxpayer's premises an apparatus designed to charge the batteries of plug-in electric vehicles ("charging station"). The credit equals the lesser of \$1,500 or the cost of purchasing and installing the charging station. The credit may be claimed for the taxable year or tax period in which the installation occurs, but only applies to stations purchased after the bill's effective date and installed before the five-year anniversary of that date.

The credit is nonrefundable, but any unclaimed balance in excess of the taxpayer's tax liability may be carried forward and claimed in future years or tax periods. A taxpayer subject to both the income tax and the CAT may claim the credit against only one of those taxes.<sup>5</sup>

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## **HISTORY**

Action	Date
Introduced	12-23-19

S0257-I-133/ar

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<sup>2</sup> R.C. 5739.025(D).

<sup>3</sup> Ohio Department of Taxation, Total State and Local Sales Tax Rates, by County, Effective October 1, 2019, available at [https://www.tax.ohio.gov/Portals/0/tax\\_analysis/tax\\_data\\_series/sales\\_and\\_use/Salestaxmap.pdf](https://www.tax.ohio.gov/Portals/0/tax_analysis/tax_data_series/sales_and_use/Salestaxmap.pdf).

<sup>4</sup> R.C. 4505.06(B), not in the bill.

<sup>5</sup> R.C. 5747.79, 5747.98, 5751.55, and 5751.98.



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# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
and Drafting

Legislative Budget  
Office

H.B. 440  
133<sup>rd</sup> General Assembly

## Bill Analysis

**Version:** As Introduced

**Primary Sponsors:** Reps. Miranda and Carruthers

Michael Hinel, Attorney

### SUMMARY

- Exempts from sales and use tax the sale of employment services if the contract personnel operate manufacturing equipment used to produce items for sale.
- Exempts from sales and use tax supplies or services used to clean or maintain manufacturing machinery.

### DETAILED ANALYSIS

#### Manufacturing sales and use tax exemptions

Continuing law exempts from sales and use tax machinery, equipment, or other tangible personal property (TPP) used primarily in manufacturing to produce items for sale.<sup>1</sup> The bill authorizes two sales and use tax exemptions for certain services and TPP used in manufacturing but not exempt under current law.

#### Exemption for manufacturing employment services

Continuing law, with certain exceptions, imposes sales and use taxes on employment services – an arrangement in which contract labor is supplied to work for a third party purchaser on a temporary or long-term basis but where the worker remains the supplier's employee. The bill exempts the sale of employment services if the personnel supplied under the service contract operate machinery, equipment, or other property that is itself exempted under continuing law's manufacturing exemption.<sup>2</sup>

<sup>1</sup> R.C. 5739.02(B)(42)(g), not in the bill.

<sup>2</sup> R.C. 5739.01(JJ).

## Exemption for manufacturing cleaning supplies and services

The bill also exempts from sales and use tax any supplies or janitorial services purchased to clean machinery or other property involved in a continuous manufacturing operation, i.e., the process by which raw materials are transformed into a manufactured product. The bill categorizes those supplies and services with other currently exempt purchases used primarily in a manufacturing operation to produce items for sale. These cleaning supplies and services are not currently categorized as tax-exempt manufacturing operation purchases, except for equipment and supplies used to clean human food processing equipment.<sup>3</sup>

### Application

The bill's exemptions apply beginning on the first day of the first month that begins at least 30 days after the bill's effective date.<sup>4</sup>

### Technical amendment

The bill makes a technical correction to a section of the sales tax law by moving a definition ("peer-to-peer car sharing program") from the end of the section to an unoccupied division elsewhere in that section. The unoccupied division was left vacant of language as a result of a gubernatorial veto of a provision in H.B. 166.<sup>5</sup> The bill does not change the taxable status of peer-to-peer car sharing services.

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## HISTORY

Action	Date
Introduced	12-09-19

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H0440-I-133/ts

<sup>3</sup> R.C. 5739.011(B) and (C).

<sup>4</sup> Section 3 of the bill.

<sup>5</sup> R.C. 5739.01(TT) and (SSS); veto item number 22, H.B. 166.



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# OHIO LEGISLATIVE SERVICE COMMISSION

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Office

**H.B. 440**  
**133<sup>rd</sup> General Assembly**

## Fiscal Note & Local Impact Statement

[Click here for H.B. 440's Bill Analysis](#)

**Version:** As Introduced

**Primary Sponsors:** Reps. Miranda and Carruthers

**Local Impact Statement Procedure Required:** Yes

Eric Makela, Economist

### Highlights

Fund	FY 2021	FY 2022	Future Years
<b>State General Revenue Fund</b>			
Revenues	Loss of up to \$112.5 million	Loss of up to \$123.5 million	Losses to increase approximately 0.5% per year
<b>Local Government and Public Library funds</b>			
Revenues	Loss of up to \$1.9 million each	Loss of up to \$2.1 million each	Losses to increase approximately 0.5% per year
<b>Counties and transit authorities</b>			
Revenues	Loss of up to \$29.2 million	Loss of up to \$32.0 million	Losses to increase approximately 0.5% per year

Note: The state or school district fiscal year runs from July 1 through June 30 and is designated by the calendar year in which it ends. For other local governments, the fiscal year is identical to the calendar year. The estimates assume the tax becomes effective on July 1, 2020; FY 2021 revenue losses are for 11 months of tax collections. FY 2022 revenue losses can be calculated as the FY 2021 multiplied by (12/11) and 1.005.

- The bill provides a sales and use tax exemption for transactions where personnel are supplied by a third party employment services company; to qualify for the exemption, the personnel must operate tangible property in a manufacturing operation to produce tangible personal property.

- The bill also provides a sales and use tax exemption for purchases of equipment, supplies, and building and janitorial services to be used to clean machinery that is part of a continuous manufacturing operation.
- Revenue from the state sales and use tax is deposited into the GRF. Portions of GRF tax revenue (1.68% and 1.70%, respectively, during the current biennium) are subsequently transferred to the Local Government Fund (LGF) and Public Library Fund (PLF). Revenue to the LGF is distributed to counties, municipalities, and townships statewide, while revenue to the PLF is distributed primarily to public libraries.
- The estimates above assume the bill becomes effective at the beginning of FY 2021.
- Permissive county and regional transit authorities' sales and use taxes share the same tax base as the state sales and use tax. The exemptions would also reduce revenue to those political subdivisions. Due to the difference in fiscal year for counties and transit authorities, there would be a revenue loss during their FY 2020 of roughly half the amount shown for FY 2021.

## Detailed Analysis

H.B. 440 exempts the sale of employment services from Ohio's sales and use tax, provided the employment services are purchased to operate machinery, equipment, or other tangible products in the process of manufacturing tangible personal property. In addition, the bill exempts from the sales and use tax purchases of equipment, supplies, or building and janitorial services to be used in the cleaning or maintenance of machinery used in a continuous manufacturing operation. The exemptions apply to all purchases on or after the first day of the first month that begins at least 30 days after the bill's effective date.

### Fiscal effect

The fiscal effect estimates stated in this fiscal note were derived by the Ohio Department of Taxation (TAX). According to TAX, if the bill's provisions were to be enacted before March 2020, the bill could reduce GRF revenue by up to \$112.5 million starting in FY 2021. State collections of county and local permissive sales taxes are to decrease by up to \$29.2 million per year starting in FY 2021. Revenue to the Public Library Fund (PLF) and Local Government Fund (LGF), which receive 1.7% and 1.68% of GRF tax revenue respectively during the current biennium,<sup>1</sup> could be reduced by up to a combined \$3.9 million per fiscal year starting in FY 2021. LBO estimates the fiscal impact of the bill will increase by around 0.5% per year; this growth rate is roughly consistent with the TAX analysis, a janitorial supplies market research report,<sup>2</sup> and Bureau of Labor Statistics data on total compensation in the manufacturing industry.<sup>3</sup>

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<sup>1</sup> Under current law, the percentages will revert to the percentage in codified law, 1.66% for each fund, starting July 1, 2021.

<sup>2</sup> <https://www.ibisworld.com/united-states/market-research-reports/janitorial-equipment-supply-wholesaling-industry/>.

<sup>3</sup> <https://www.bls.gov/iag/tgs/iag31-33.htm>.

Sales and use tax payments are made monthly based on the preceding month's sales receipts. For this analysis, TAX assumed the bill becomes effective July 1, 2020, and due to time lags the revenue loss during FY 2021 is for only 11 months. The above information outlines the timeline for the revenue taken in by the state on behalf of political subdivisions during each state fiscal year. Transfers from the GRF to the LGF and PLF are made based on the previous month's tax revenue, and are therefore roughly based on the state fiscal year.

**51st House District**  
Portions of Butler County, including  
Hamilton and Fairfield, Ross  
Township and portions of Fairfield,  
Hanover and St. Clair townships

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**Sara P. Carruthers**  
Ohio State Representative

**Committees**

-Finance-  
-Finance Subcommittee on  
Transportation-  
-Health-  
-Primary & Secondary Education-

**Commissions/Councils/Boards**

-Commission on Infant Mortality-  
-Early Childhood Advisory Council-  
-Ohio Children's Trust Fund-  
-Ohio Arts Council-

**House Bill 440 Sponsor Testimony**  
**House Ways & Means Committee**  
**January 28, 2020**

Chairman Merrin, Vice Chairman LaRe, Ranking Member Rogers and members of the House Ways & Means Committee, thank you for the opportunity to speak on House Bill 440. I would also like to thank my joint sponsor, Representative Miranda. House Bill 440 is a straightforward bill that accomplishes two important and helpful aims of Ohio's manufacturers. First, it qualifies janitorial equipment, supplies, and services used to clean and maintain manufacturing equipment for the manufacturing sales and use tax exemption, and second, the bill repeals the sales tax on manufacturing staffing services.

Ohio is the third largest manufacturing state in the nation trailing only California and Texas. Over 700,000 Ohioans are employed in manufacturing and it is Ohio's largest industry sector measured by economic contribution, which is more than \$108 billion annually in GDP.

A sales tax is intended to be a tax on the ultimate consumption of a good; it is not intended to apply to business inputs. Applying sales and use tax to transactions essential to the manufacture of a good – or the investment in manufacturing machinery and equipment – increases the costs of the goods that are produced, negatively impacts economic decisions, and places Ohio at a disadvantage compared to other states when it comes to economic development. Taxing manufacturing inputs is poor tax policy and anticompetitive for Ohio.

House Bill 440 brings clarity and consistency to two of the more confusing aspects of Ohio's sales tax when it comes to manufacturing. Currently, Ohio taxes industrial janitorial services, supplies, and janitorial and maintenance equipment for the vast majority of manufacturers. Prior to last summer's passage of House Bill 166, only dairy food manufacturers received this exemption. House Bill 166 brought some parity to the law by extending that provision to all food manufacturers. However, the rest of manufacturing still falls outside the exemption. Manufacturers' production facilities and the equipment used in their production processes require continuous maintenance and repair. Without the required cleaning, repairs and maintenance, the machinery breaks down and fails to produce acceptable products for sale to consumers. Cleaning industrial assets is essential to the manufacturing process, regardless of the product produced. It is a necessary business input, and therefore, should fall under the sales tax exemption for personal property and services used to clean and maintain manufacturing

equipment. This change will bring clarity and consistency to the way auditors and taxpayers interpret the law. Often manufacturers and auditors fight over what exactly is considered maintenance and what is considered cleaning. A consistent statutory change will alleviate what is often a contentious disagreement. We would argue it's an unnecessary disagreement.

**Committees:**

Insurance  
Higher Education  
Transportation and Public Safety  
Economic and Workforce Development

**Boards and Commissions:**

Ohio Latino Affairs  
Southern Ohio Agriculture and Community  
Development

***Jessica E. Miranda***

*State Representative*

Chairman Merrin, Vice Chair LaRe, and Ranking Member Rogers

The Second half of HB 440 deals with Ohio's tax on staffing services. Prior to 1993 Ohio did not tax employment services. However, because of a state budget shortfall, the General Assembly at that time made the decision to tax staffing employment. Ever since then, Ohio's businesses have been at a disadvantage compared to the 49 other states. According to the Federation of Tax Administrators' survey, only ten states (and Washington D.C) have some type of tax on staffing labor. Of those ten, five states tax staffing services as a part of a gross receipts or business tax but not a sales tax. The other five states (and Washington DC), including Ohio, tax staffing services under their sales tax. Of these, Ohio is the only state that subjects the fee for the staffing service **and** the temporary employee's compensation to the tax. It is this double taxation that makes Ohio unique among the handful of states that tax staffing services. It should be noted that only two of Ohio's neighboring states, Pennsylvania and West Virginia, tax staffing employment. But none of the states Ohio traditionally competes against for new and retained manufacturing facilities—Michigan, Indiana, Illinois, North Carolina, South Carolina, Texas, Alabama, Georgia—tax staffing employment.

Ohio's manufacturers have been traditionally exempted from the sales and use tax for any tangible inputs that go into the manufacturing process. The purpose of this exemption is that a sales tax should only be applied to a finished good. Virtually every state that imposes a sales tax includes such an exemption in some form. There is no greater input in the manufacturing process than the people that go to work each day to produce the goods that we- and the world – all use. Taxing, and in Ohio's case, double taxing the labor is a detriment to Ohio's business and manufacturing climate. This issue has cost the state and taxpayers untold millions of dollars as each year disagreements and mistakes in contracting language force parties to settle their differences in court.

This bill would eliminate the out-of-date laws that has been riddled by numerous court battles. Ohio needs good tax policy and clarity in its tax laws. This bill brings both. Mr. Chairman thank you for your time. We would be more than happy to try to answer any questions. We will have other parties coming to testify on the bill who may be more appropriate to answer certain questions.

Pleasant Run Farm | Forest Park | Greenhills | Springdale | Sharonville | Evendale | Glendale  
Blue Ash | Reading | Deer Park | Montgomery | Sycamore Township | Madeira

## Tax

### Senate Considers CAT Credit for Electric Vehicles

February 28, 2020

Earlier this month, Sens. **Michael Rulli** (R-Salem) and **Sean O'Brien** (D-Bazetta) introduced **Senate Bill 257**, designed to make Ohio — and particularly the Mahoning Valley — the nation's leader in the electric vehicle revolution. The bill would create **two different tax credits**:

- A sales tax credit for the purchase of an electric vehicle; and
- An income tax and commercial activity tax credit for the purchase and installation of a charging station for an electronic vehicle.

The bill has had two hearings, including proponent testimony

from **GM** and **Ford**. *2/27/2020*

### Ohio Government Highly Dependent on Federal Funds

February 21, 2020

All 50 state governments receive large amounts of financial assistance from Washington. A **new comparison** by the Tax Foundation shows that the states most dependent on federal funds as of FY 2017 were Montana (46.1% of total the state's general revenue), Wyoming (44.5%), and Louisiana (43.7%).

Ohio made the top 20 list of dependent states, with nearly 34% of its total revenue from the federal government — although four of Ohio's five neighboring states were even more dependent on D.C. dollars. *2/17/2020*

### Business Tax Limits Have Increased for 2020

February 14, 2020

An array of tax-related limits that affect businesses are annually indexed for inflation — and many have increased for 2020. OMA Connections Partner Clark Schaefer Hackett has compiled **this list** of some of the indexed provisions that may be important to your business. *2/12/2020*

### Tackling B2B Payment Fraud

February 14, 2020

Payment fraud in business-to-business financial transactions is a growing problem. So that your business can better understand the risks — and take action to manage and mitigate those risks — OMA Connections Partner Huntington National Bank has published **this guide**. *2/11/2020*

### Cyber Insurance: Are You Covered?

February 14, 2020

More than two-thirds of businesses have had at least one cyberattack in the last two years, with half of those attacks targeted at small businesses. OMA Connections Partner Roetzel has posted **this guidance** on how to determine if your business has the correct type and amount of cyber insurance. *2/10/2020*

### Guidance on Final Regs for Opportunity Zones

February 14, 2020

Recently, the U.S. Treasury Department issued the last and final set of regulations relating to Opportunity Zones. This brings closure to almost two years of uncertainty with respect to certain provisions. OMA Connections Partner GBQ has shared **this article**, which summarizes the main takeaways from the final regulations, most of which are favorable to taxpayers.

Members may also be interested in this **free webinar** on Feb. 25, hosted by OMA Connections Partner CliftonLarsonAllen to review the final regulations on Opportunity Zones. *2/12/2020*

### Comparison Shows Ohio is Among the Best States for Corporate Taxpayers

February 7, 2020

A **new map** by the Tax Foundation illustrates Ohio's competitiveness by comparing the combined federal and state corporate tax rates of all 50 states. Only **six states** — Ohio, Nevada, South Dakota, Texas, Washington, and Wyoming — have no state corporate income tax. Corporations in these states are liable for

only the federal tax rate of 21% (reduced from 35% by the 2017 Tax Cuts and Jobs Act). Fifteen years ago, the OMA **helped lead** the repeal of Ohio's antiquated corporate franchise tax and tangible personal property tax. They were replaced with the manufacturing-friendly Commercial Activity Tax (CAT) — a gross receipts tax that imposes a single low rate of 0.26% on in-state sales, while out-of-state sales are exempt. *2/5/2020*

### **Manufacturers' Tax Relief Bill Gets First Hearing** **January 31, 2020**

On Tuesday, Jan. 28, Reps. **Sara Carruthers** (R-Hamilton) and **Jessica Miranda** (D-Forest Park) provided **sponsor testimony** to the House Ways and Means Committee during the first hearing for **House Bill 440**. The legislation **would exempt** temporary manufacturing labor from Ohio's sales and use tax. The bill would also expand the manufacturing sales-and-use tax exemption to include janitorial services and supplies used to clean machinery. The OMA, which worked to get bipartisan leadership to introduce HB 440, has long advocated for both of these changes to the tax code. The OMA Tax Committee has highlighted the issues as major hurdles for manufacturers.

Manufacturers who are interested in this topic or would like to provide support for HB 440 should contact **Rob Brundrett**, as well as attend the **Feb. 19 OMA Tax Committee meeting**. *1/30/2020*

### **2020 Tax Calendar Deadlines** **January 24, 2020**

To help you make sure you don't miss any important 2020 deadlines, OMA Connections Partner Clark Schaefer Hackett has provided **this summary** of when various tax-related forms, payments and other actions are due. *1/23/2020*

### **IRS Issues Guidance on Tax Credit for Fuel Used in Off-Road Equipment** **January 24, 2020**

OMA Connections Partner Schneider Downs **reports** that the IRS has provided guidance on requesting refunds for the Alternative Fuel Credit (more commonly known

as Propane Tax Credit and Compressed Natural Gas Tax Credit) for tax years 2018 and 2019. This credit was retroactively reinstated by the federal spending bill enacted in late 2019.

The credit enables taxpayers who use propane or liquefied petroleum gas for off-highway business use in equipment like forklifts, or compressed natural gas in vehicles, to receive a 50-cent per-gallon credit. There is a limited time to claim this credit for 2018 and 2019. For questions, **contact Schneider Downs**. *1/22/2020*

### **Ohio's State-Local Sales Tax Slightly Higher than U.S. Average** **January 17, 2020**

Forty-five **states** collect a sales tax — and 38 of them, including Ohio, allow local governments to impose a sales tax of their own. According to a **new map** by the Tax Foundation, Ohio's combined state-local average sales tax rate is 7.17%. That's 21st highest nationally and higher than any of Ohio's neighboring states. Ohio's state sales tax rate of 5.75% is around the U.S. average, coming in at 27th highest. *1/15/2020*

### **Ohio Revenue Slightly Below Estimate for December** **January 10, 2020**

Preliminary figures from the Ohio Office of Budget and Management (OBM) show December's state revenues came in just under (0.1%) estimates. Overall, the state collected nearly \$1.9 billion last month, with \$958 million from the combined sales tax and \$829 million from personal income tax.

The Commercial Activity Tax's December revenue trailed estimates by \$1.2 million (11.7%) — but for the fiscal year, it has collected \$22.7 million (2.9%) more than estimated.

For the fiscal year so far, the state has collected \$93.2 million (0.8%) above the forecast. See **more details** regarding Ohio's revenues and expenditures. *1/7/2020*

### **How Does Your County Spend its State Dollars?** **January 10, 2020**

In Fiscal Year 2019, Ohio's state government sent \$36.45 billion in subsidies and capital funds to Ohio's 88 counties. Thanks to a **report** from the Legislative Service Commission, Ohioans can see how those funds were distributed to their county. **This map** makes it easy to view the breakdown of dollars. *1/7/2020*

### **Federal Spending Package Extends Tax Provisions for Employers** **January 3, 2020**

Late last month, Congress reached an agreement on a massive, must-pass federal spending package. OMA Connections Partner Clark Schaefer Hackett has summarized the **key tax-related provisions** in the legislation, which extends certain income tax provisions that had either expired or were due to expire. The new legislation continues the following programs through 2020: Incentives for empowerment zones; the New Markets Tax Credit; employer tax credits for paid family and medical leave; and the Work Opportunity Tax Credit.

Meanwhile, OMA Connections Partner GBQ Partners reports that the funding legislation **repeals** the Affordable Care Act's so-called "Cadillac tax." *1/2/2020*

### **Ohio Gets High Marks for Unemployment Insurance** **January 3, 2020**

A new **comparison** by the Tax Foundation finds Ohio's unemployment insurance (UI) program is among the nation's best-structured UI systems. The think tank says: "The least-damaging UI tax systems are those that adhere closely to the federal taxable wage base, have low minimum and maximum tax rates on each rate schedule, avoid levying surtaxes or creating benefit add-ons, and have straightforward experience formulas and charging methods." For the past several years, Ohio has been a top 10 state in the Tax Foundation's UI comparison. *1/1/2020*

**Taxation Legislation**  
**Prepared by: The Ohio Manufacturers' Association**  
**Report created on March 3, 2020**

- 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:* 2/11/2020 - Senate 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:* 1/22/2020 - **SUBSTITUTE BILL ACCEPTED**, Senate General Government and Agency Review , (Seventh 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:* 10/22/2019 - Senate Ways and Means, (First Hearing)  
*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:* 2/4/2020 - House Ways and Means, (First Hearing)  
*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:** 2/12/2020 - Referred to Committee Senate Local Government, Public Safety and Veterans Affairs  
**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:** 1/28/2020 - House Ways and Means, (First Hearing)  
**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:** 10/29/2019 - House Ways and Means, (First Hearing)  
**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:** 11/5/2019 - House Ways and Means, (Second 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:** 10/22/2019 - House Ways and Means, (Second Hearing)  
**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:** 11/19/2019 - **REPORTED OUT AS AMENDED**, House Agriculture and Rural Development, (Fifth 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:** 2/25/2020 - **REPORTED OUT AS AMENDED**, Senate Ways and Means, (Fourth 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:** 2/20/2020 - **PASSED BY HOUSE**; Vote 91-1

**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>

**HB382** **PROHIBIT INCOME TAX-MUNICIPAL NONRESIDENTS (JORDAN K)** To prohibit municipal corporations from levying an income tax on nonresidents' compensation for personal services or on net profits from a sole proprietorship owned by a nonresident.

**Current Status:** 11/6/2019 - Referred to Committee House Ways and Means

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-382>

**HB410** **SALES TAX EXEMPTION - COLLEGE TEXTBOOKS (SWEENEY B, ANTANI N)** To exempt from sales and use tax textbooks purchased by post-secondary students.

**Current Status:** 12/10/2019 - House Ways and Means, (First Hearing)

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-410>

**HB440** **SALES TAX EXEMPTIONS-MANUFACTURING (MIRANDA J, CARRUTHERS S)** To authorize sales tax exemptions for property and services used to clean or maintain manufacturing machinery and for employment services used to operate manufacturing machinery.

**Current Status:** 1/28/2020 - House Ways and Means, (First Hearing)

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-440>

**HB467** **PASS-THROUGH ENTITY TAX REDUCTION (SCHERER G)** To reduce the pass-through entity withholding tax rate to four percent.

**Current Status:** 2/19/2020 - **SUBSTITUTE BILL ACCEPTED**, House Ways and Means, (Fourth Hearing)

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-467>

**HB490** **ELECTRIC/ HYBRID VEHICLE REGISTRATION FEES (GREENSPAN D, SHEEHY M)** To provide for the proration of the plug-in electric and hybrid motor vehicle registration fees.

**Current Status:** 2/11/2020 - Referred to Committee House Finance

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-490>

- HB507 DELINQUENT TAX LIEN PAYMENTS (MANNING D)** To prohibit enforcement of delinquent property tax liens against owner-occupied homesteads and to require that any delinquent tax be paid before the title to a homestead may be transferred.  
**Current Status:** 2/19/2020 - Referred to Committee House Ways and Means  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-507>
- HB523 STEM DEGREE LOAN REPAYMENT PROGRAM (PATTERSON J, CARFAGNA R)** to establish theSTEM Degree Loan Repayment Program, to authorize a refundable tax creditfor employers who make payments on student loans obtained by a graduate toearn a STEM degree, and to make an appropriation.  
**Current Status:** 2/21/2020 - Introduced  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-523>
- 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:** 2/12/2020 - **BILL AMENDED**, House Economic and Workforce Development, (Seventh Hearing)  
**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:** 11/19/2019 - House Ways and Means, (Second Hearing)  
**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:** 10/8/2019 - Senate Finance, (Second 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:** 2/26/2020 - **PASSED BY SENATE**; Vote 31-1  
**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>
- SB268**      **CAPITAL APPROPRIATION** (SYKES V) To modify the purpose of a capital appropriation.  
**Current Status:** 2/25/2020 - Senate Finance, (First Hearing)  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-268>
- SJR3**      **REQUIRE SUPERMAJORITY-INCOME TAX INCREASE** (BURKE D) Proposing to enact Section 7 of Article XII of the Constitution of the State of Ohio to require that any increase in income tax rates be approved by a supermajority of the membership of each house of the General Assembly.  
**Current Status:** 3/3/2020 - Senate Ways and Means, (Fourth Hearing)  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SJR-3>