

**9:30 a.m. (EST)**  
**1-866-362-9768**  
**940-609-8246#**

**OMA Government Affairs Committee**  
**March 2, 2016**



**AGENDA**

**Welcome & Introductions**

**Chris Hess**, Manager, Government Affairs,  
Eaton Corporation; Committee Chair

**National Association Reports**

**Stephen Norton, STERIS**  
**Committee Members**

**OMA Counsel's Report**

**Kurt Tunnell**, Managing Partner, Bricker & Eckler LLP,  
OMA General Counsel

**Staff Reports**

**Ryan Augsburger**, OMA Staff  
**Rob Brundrett**, OMA Staff  
**Committee Members**

**Discussion / Action Items**

- **Current OMA Action Alerts**
- **Unemployment comp HB 394**
- **Tax relief for temps HB 343**
- **Legal Challenge: Drug Pricing Initiated Statute**
- **Truck weight reform (SETA)**
- **Electric Power Purchase Agreements**
- **Employee engagement tools**
- **2016 OMA Election Guide**
- **2016 Elections Roundtable**

**Member Discussion**

**Special Presentation:**

RNC Convention Opportunities

**Hon. JoAnn Davidson**

**Tiffany Adams, NAM**

**Lunch – provided by OMA**

**2016 Government Affairs Committee  
Calendar**

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

Wednesday, March 2  
Wednesday, June 15  
Wednesday, August 31  
Wednesday, November 30

**Our thanks to today's meeting sponsor:**



## **Jo Ann Davidson**

The Jo Ann Davidson Ohio Leadership Institute  
37 West Broad Street, Suite 970  
Columbus, Ohio 43215

Before most women even thought of running for public office, Jo Ann Davidson had already decided to serve. She first ran for Reynoldsburg City Council in 1965 before any woman had been elected to council. She did not win. Undaunted, she ran again in the next election cycle. This time she won. She went on to serve ten years as a hardworking member of city council and become chair of its powerful finance committee.

Mrs. Davidson then successfully ran for a seat in the Ohio General Assembly where she served with great distinction for 20 years. She was elected by her peers to be the Speaker of the Ohio House of Representatives in January of 1995. During her historic service as the first woman Speaker from 1995 to 2000, she guided many important legislative initiatives through the Ohio General Assembly including welfare reform, electric deregulation and criminal justice reform.

In addition, Mrs. Davidson has extensive experience in the private sector. Prior to 1994, Davidson worked as Vice President of Special Programs for the Ohio Chamber of Commerce.

Mrs. Davidson holds honorary Doctor of Law degrees from Ohio University and Capital University, an honorary degree in Government Leadership from the University of Findlay, and an honorary Doctor of Public Administration degree from The Ohio State University. She serves on the Board of Trustees of the University of Findlay and Franklin University and is a former member of the Ohio State University Board of Trustees.

She formed her own consulting firm, JAD and Associates, and is doing consulting work on a broad range of issues involving public policy development and analysis, strategic planning and political campaigns. She served as Co-Chair of the Republican National Committee from 2005 to 2009.

# Tiffany Adams

## Vice President, Public Affairs



[Download Hi-Res Photo](#)

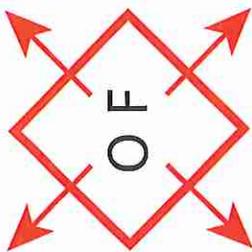
Tiffany N. Adams is vice president, public affairs for the National Association of Manufacturers (NAM) and has been with the NAM since 1992. She is the primary staff contact for the NAM's National Public Affairs Steering Committee (NPASC), a group of 150 leading corporate public affairs and government relations executives from the NAM's largest member companies who bolster the association's grassroots efforts and offer insight on NAM public policy positions and guidance on lobbying strategy. She also serves as the primary contact for the organization's Washington Representative community.

Ms. Adams oversees the association's Public Affairs Department, which executes the NAM's member and employee involvement programs, coordination of fly-ins, GOTV strategies and overall grassroots efforts. She also coordinates the organization's outside-the-beltway involvement activities for all NAM members. She has oversight for all NAM local, in-district events across the country and handles the association's congressional recognition and accountability program.

Ms. Adams completed her undergraduate work at Temple University in Philadelphia, Pa.

- See more at: <http://www.nam.org/Contact/Staff/Tiffany-Adams/#sthash.8botJcX.dpuf>

THE NATIONAL ASSOCIATION OF MANUFACTURERS'  
ANNUAL PUBLIC AFFAIRS CONFERENCE



**POINT**

APRIL

**VIEW**

2016



The NAM's Annual Public Affairs Conference is the perfect place to connect with public affairs and government relations executives from leading corporations and associations. This conference is a unique blend of information gathering, networking and professional development for executives just like you! From government relations to policy development, from advocacy to the current political landscape you are bound to gain valuable insights that will help lead you throughout the year. **You don't want to miss out!**

### WHY YOU SHOULD ATTEND?

**DISCOVER:** Gain insightful knowledge on the latest information regarding policy, advocacy and grassroots strategies.

**NETWORK:** Meet and build relationships with fellow public affairs and government relations executives from corporations and associations.

**INTERACT:** Talk with your colleagues, ask questions and participate in group discussions during our interactive sessions.



# AGENDA

## SUNDAY, APRIL 3

### Pre-Conference Activity - Golf Outing

12 Noon - 4:00 PM  
Oak Marsh Course

5:30 p.m.

### Registration and Check-In

6:00 p.m. - 7:00 p.m.

### State Government Relations Group Networking Reception

## MONDAY, APRIL 4

7:30 a.m. - 8:00 p.m.

### Registration and Check-In

8:00 a.m. - 8:30 a.m.

### State Government Relations Group Breakfast

8:30 a.m. - 10:00 a.m.

### Inaugural Planning - State Government Relations Group Session

Don't Miss Your Opportunity to be a part of the NAM's inaugural planning session of the newly formed State Government Relations Group. This session will provide state government relations executives an opportunity to participate in the shaping of the overall goals and objectives of this new group.

10:15 a.m. - 11:15 a.m.

### Managing State Contract Lobbyist - State Government Relations Group Session

Whether you are a beginner or a veteran, finding a contract lobbyist who is right for your company or association can be one of the most challenging tasks faced by state government relations executives. Join your fellow colleagues as we evaluate the effectiveness of contract lobbyist in advancing your priority issues as well as demonstrate the ROI for your government relations team.



# AGENDA

11:30 a.m. - 1:30 p.m.

### NPASC Quarterly Meeting and Luncheon (Open to NPASC members only)

2:00 p.m.

### Conference Welcome & Opening Session

2:30 p.m. - 4:00 p.m.

### Decision 2016: A Look at the Presidential Election

The countdown to the 2016 presidential election is on! Join us for an engaging panel discussion with well known pollsters as they candidly analyze the candidates vying for the Republican and Democratic nomination and the key issues that could shape the presidential race. This will be a unique opportunity to get an update on the races, in the heat of the contest.

4:15 p.m. - 5:45 p.m.

### International Outlook: A Manufacturer's Role

Join us as we discuss America's changing role in the world today. Manufacturers continue to face more barriers overseas than many of our competitors in Europe and Asia. Geopolitical risks are high for multinational businesses. From the foreign exchange level to terrorism, how can your company or association prepare for these risks? Your company's CEO's and C-Suites are focused on geopolitical threats and the global economy. This session will help you understand what other manufacturing leaders are watching.

6:00 - 7:00 p.m.

### Opening Reception

7:00-9:00 p.m.

### Opening Dinner with Guest Speaker



# AGENDA

## TUESDAY, APRIL 5

7:30 a.m. – 3:30 p.m.

**NAM Office Hours**

7:45 a.m. – 8:45 a.m. *(Breakfast Available at 7:30 a.m.)*

### **Breakfast Session 1**

#### **Professional Development Session: Planning for Your Retirement**

A comfortable and secure retirement is mostly everyone's dream. With some planning, a great retirement is indeed attainable. Learn how to balance the life you want to live today with the life you want to live in retirement. Hear and share ideas on new retirement realities as well as learn some common, yet avoidable mistakes that prevent many people from retiring on time.

8:00 a.m. – 8:45 a.m.

### **Breakfast Session 2**

#### **Networking Breakfast**

Designed to give conference attendees an opportunity to network, connect and meet new colleagues.

9:00 a.m. – 10:30 a.m.

### **Policy Speed Dating**

Hear and learn from NAM policy experts on current hot topics impacting the manufacturing community. These fast-paced "speed dating" sessions will give you an opportunity to rotate from one NAM policy expert to the next to hear firsthand what is going on in Washington on issues that are important to manufacturers. The three issue areas to be discussed will be finalized closer to the conference to ensure that the most timely and relevant issues are covered. During these lively discussions, you will be able to attend all three 30-minute sessions.

10:30 a.m. – 10:45 a.m.

### **Break**



# AGENDA

10:45 a.m. – 11:45 a.m.

### **Legal Trends**

Are you up to date on today's top litigation trends? Are there issues that you see as a potential risk to your company or association? Join us as we explore current litigation topics that the manufacturing sector is facing or could face in the future. This session will provide the opportunity to share experiences and perspectives on legal strategies and tactics used to advance policy objectives.

11:30 a.m. – 3:00 p.m.

### **Spouse/Guest Activity - Painting with a Twist**

Enjoy step-by-step instruction with experienced and enthusiastic local artists. You'll leave with a one-of-a-kind creation and new found talent you'll want to explore. Lunch will also be available prior to this activity for all registered spouses/guest.

11:45 a.m. – 12:00 p.m.

### **Break**

12:00 p.m. – 1:30 p.m.

### **Working Lunch: State Trends**

Get the latest insight on trends that may affect and change how you work in the coming year. During this session attendees will be asked to look at trends taking center stage in 2016, such as Right to Work, Economic Development and Genetically Modified Organisms (GMO). You will also have an opportunity to discuss trends directly affecting your work and trends that your colleagues are already addressing and its possible impact on your state.

1:30 p.m. – 1:45 p.m.

### **Break**



## AGENDA

1:45 p.m. – 3:15 p.m.

### **Fishbowl**

This dual session will give participants an opportunity to discuss issues on any given topic that may be keeping them awake at night. Are you facing a particular challenge or obstacle? Are you curious about an aspect of the NAM's policy or advocacy processes? No question will go unanswered! Submit questions anonymously for your corporate peers to answer during this session. We will have one fishbowl for corporation representatives and another fishbowl for association representatives.

3:15 p.m.

### **Free Afternoon**

6:00 p.m. – 7:00 p.m.

### **Reception**

7:00 p.m. – 9:00 p.m.

### **Dinner**

## WEDNESDAY, APRIL 6

7:30 a.m. – 11:30 am

### **NAM Office Hours**

7:30 a.m. – 8:00 a.m.

### **Breakfast**

8:15 a.m. – 9:15 a.m.

### **The Future of Advocacy**

While engaging in advocacy is something with which we are all familiar, how do we ensure that our message gets through to policymakers? With so many advocacy tools out there, how do you know if what you are doing is right or wrong? Will new-age advocacy tools lose their luster, and will traditional advocacy tools make a comeback? Hear from fellow manufacturers on case studies and best practices as we discuss engagement tactics that get results for your company or association.



## AGENDA

9:15 a.m. – 9:30 a.m.

### **Break**

9:30 a.m. – 10:45 a.m.

### **Navigating the Conventions One Party at a Time**

Speeches! Parties! Balloons and confetti! Get ready for the Republican National Convention in Cleveland and the Democratic National Convention in Philadelphia. Every four years, Republicans and Democrats have an opportunity to bring together their party delegates and supporters at the national level during their political conventions. While these conventions are fun to be a part of, convention planning and conducting a successful plan can't be an afterthought. This session will help you prepare for all that the conventions have to offer, from housing to credentials. Hear from seasoned convention goers and planners about what opportunities and pitfalls to look for and the best ways to get the most out of your company's or association's participation. Learn how to increase your return on investment and meet your convention goals.



# AGENDA

10:45 a.m. – 11:00 p.m.  
**Break**

11:00 a.m. – 12:00 p.m.  
**Economic Point of View**

What should we expect the economy to look like when Americans head to the polls on Election Day? Will unemployment be the lowest it has been since Bush and Gore faced off in 2000? From interest rates to gasoline prices, will voters feel better about where our country stands economically? These questions and more will be discussed as panelists provide their insights on where key economic variables will stand on November 8.

12:00 p.m.

**Conference Wrap-Up/Adjourn**



## HOTEL INFORMATION

### Omni Amelia Island Resort

39 Beach Lagoon Rd.  
Amelia Island, FL 32034  
(904) 261-6161

### Omni Amelia Island Resort Reservations

To make your hotel arrangements by phone, you may call the Omni Amelia Island Resort at (904) 261-6161 or toll free at (888) 444-6664 and ask for the National Association of Manufacturers group rate or click here to book online. The NAM special rate for this meeting is \$279, plus tax.

**The cut-off date for reservations is March 11, 2016**, however once the block is full (which may be before the cut-off date), you may not be able to receive the group rate.

### Check-In/Check-Out

Check-in: 4:00 p.m./Check-out: 11:00 a.m.

1:00 p.m. check-out may be available for \$75; after 1:00 p.m. full nightly rate applies



## TRAVEL INFORMATION

### AIRPORT:

Omni Amelia Island Resort is located approximately 45 minutes from the Jacksonville International Airport (JAX).

### GROUND TRANSPORTATION:

#### Taxi Service

Taxi service is available at approximately \$65 from the Jacksonville International Airport (JAX).

#### Airport Shuttle

Super Shuttle Service is also available starting at \$50 one way or \$80 round trip. Ticket booths are located on the lower level in the baggage claim area.

#### Rental Cars

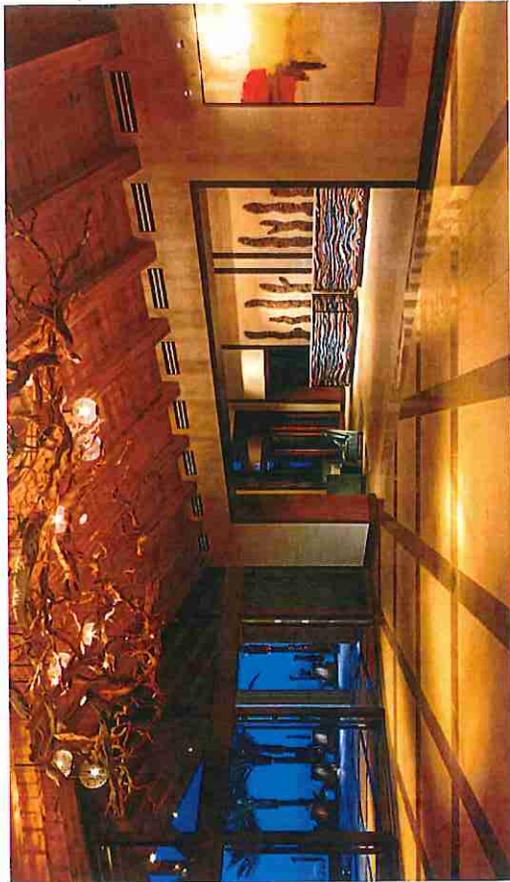
Rental car companies are available from major chains.

*\*All ground transportation services are located on the lower level of the terminal building adjacent to baggage claim.*

#### Parking

Complimentary self-parking is available at the hotel. Valet is available at the hotel for \$20 per evening.

If you require transportation assistance, or if you have other personal requests, please call Concierge Services at (904) 432-1467.



## CONFERENCE INFORMATION

### REGISTRATION FEES

**Member:** \$1,000

**Additional Member:** \$900

**Non-Member:** \$1,200

**Additional Non-Member:** \$1,100

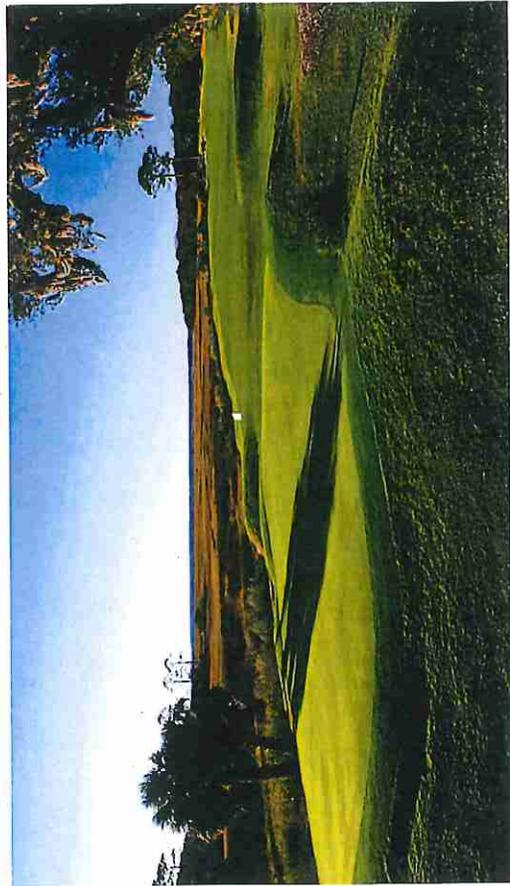
Please visit [www.nam.org/paconference2016](http://www.nam.org/paconference2016) to register for the NAM's Annual Public Affairs Conference.

*\*Please note registration does not include hotel accommodations.*

### Cancellation Policy:

A full refund will be granted for cancellations received on or before Monday, March 28th, 2015. No refunds will be granted after March 28. Substitutions are permitted at any time.





## GOLF OUTING

**Sunday, April 3**  
12 Noon - 4:00 PM  
Oak Marsh Course

Participant Fee: \$170 (includes green fees and boxed lunch)

The Oak Marsh Golf Course is one of the truly classic Pete Dye-designed golf courses in the world. The course, built in 1972 shortly after the completion of the Harbour Town Golf Links at Hilton Head Island, South Carolina, is noted for its tight fairways and small greens, meandering along serpentine salt marsh creeks and through the moss draped heritage oaks for which Amelia Island is famous.



## SPOUSE/GUEST INFORMATION

### Registration

\$300 (includes Monday night opening reception and dinner, Tuesday night reception and dinner and a group guest activity)

Spouses/guests are invited and encouraged to attend all meetings, meals and social functions during the conference. Please note, if you have a spouse/guest attending any part of the conference, they must pre-register. For more information, please contact NAM Public Affairs Associate Tracey D'Antuono at (202) 637-3122 or [tdantuono@nam.org](mailto:tdantuono@nam.org).

### Spouse/Guest Activity - Painting with a Twist

Tuesday, April 5, 2016  
11:30 a.m. - 3:00 p.m.

Enjoy step-by-step instruction with experienced and enthusiastic local artists. You'll leave with a one-of-a-kind creation and new found talent you'll want to explore. Lunch will also be available prior to this activity for all registered spouses/guest.



NATIONAL ASSOCIATION OF  
**M.** Manufacturers

[www.nam.org/paconference2016](http://www.nam.org/paconference2016)

Connect with Us



## **Public Policy “Hot Topics” March 2, 2016**

### **Overview**

The 131<sup>st</sup> General Assembly has been in session for the past month and a half following the holiday break. Both the House and the Senate will be absent for almost the entire month of March in order to campaign for the primary elections. Governor Kasich continues to travel the country advancing his presidential campaign.

### **General Assembly**

OMA priority legislation to reform unemployment compensation and provide tax relief to businesses employing temporary labor have continued to advance in the House. On the energy front, a couple proposals have manufacturers on the defensive. Unwise expansions of workers compensation benefits and health care coverage are being advanced by Republican lawmakers. The first half two months of 2016 have been eventful. Legislative activity is expected to slow beginning in June and unlikely to pick up again until after the November election.

### **President Kasich?**

John Kasich continues his presidential campaign. He finished second in the New Hampshire primary. Ohio holds its primary election on March 15. Governor Kasich announced if he does not win the Ohio primary he will not continue with his presidential campaign. See included information on how to contribute to the Kasich campaign or New Day super PAC.

### **Electricity Rates & Regulation**

Significant utility rate cases are pending at PUCO. Distribution utilities FirstEnergy and AEP have filed cases proposing affiliate power purchase agreements (PPAs) whereby the utility companies impose billions of dollars of new charges on customers to subsidize “uneconomic” generation owned by their affiliate generation company. Late last year, the proposals were modified to attract supporters including the PUCO staff. At this point the proposals became a proposed “settlement”. A new round of litigation followed.

The cases are highly controversial and have been heavily reported in the press. In the official proceedings at the PUCO have concluded and a final decision by the five-member commission is expected any day. The OMA has been an active opponent to the PPA proposed settlement fielding witness testimony. Contact staff for a copy of the OMA’s testimony in the cases.

In recent weeks the high-stakes utility case has spurred high dollar paid media campaigns being aired by competitive suppliers opposed to the PPAs and by utility companies supportive of the PPAs. Consumer groups including AARP are alerting members. Over 65,000 comments from concerned citizens have been filed with the PUCO. Several notable manufacturing leaders have filed their own comment.

### **Tax Policy**

Hearings have continued on the 2020 Tax Policy Study Commission. The OMA has testified twice on both how Ohio’s tax structure impacts manufacturing and on the impact of tax expenditures on Ohio’s manufacturers. More hearings will continue through 2016.

House Bill 343 which eliminates the sales tax on temporary employees is being prepared to be voted out of the House Economic and Workforce Development Committee.

## **Civil Justice**

Patent troll legislation continues to sit in the House Judiciary Committee. Budget amendment language to revise insurance subrogation law was enacted via Senate amendment last June.

## **Environment**

Federal proposals governing clean power plants under 111(d) of the Clean Air Act and to tighten the National Ambient Air Quality Standards (NAAQS) for ground-level ozone from the current 75 parts per billion have eclipsed traditional state environmental issues. As it stands now both proposals have been approved. The OMA led campaign to fight even more stringent ozone rules was successful in keeping the new standard at a much more pragmatic 70ppb.

## **Clean Power Plan / US EPA 111(d)**

As federal regulators finalized the Obama Administration new regulation on carbon dioxide emissions from power plants, advocacy action has been turning to the states to determine how individual states will comply with the standards. Ohio will be seeking an extension, and plans to hold regional meetings this year.

The U.S. Supreme Court issued a stay last month in the Clean Power Plan case, which was a major victory for manufacturers. The OMA and other business allies filed an amicus brief in support of the states who are fighting the regulation in court.

## **November General Election – Ballot Issues**

It's too early to say what will be in the November ballot, however several possible issues are being circulated including medical marijuana and prescription drug pricing. See counsel's report for more detail on possible ballot issues. The OMA filed a challenge in the initiated statute impacted drug pricing.

## **Marijuana Legalization**

Following the swift defeat of the Responsible Ohio ballot issue to legalize medical and recreational marijuana, proponents of legalization continue to look for avenues. See counsel's report for details on emerging ballot issues targeting "medical marijuana" only. OMA Board Chair Bill Sopko of William Sopko & Sons, was appointed to the House of Representatives Medical Marijuana Task Force. The Task Force has held several public meetings and faces a March 31 deadline to tender a report. The OMA will be offering testimony on the important employment law considerations.

## **Government Efficiency -- Grace Commission**

OMA President Burkland was tabbed by the Speaker of the House to serve on the Grace Commission to explore government processes ripe for improvement. The Commission has met several times during 2016.

## **Right to Work**

With the approval of right-to-work legislation in West Virginia following narrowly successful veto override, pressure would seem to be mounting on a similar proposal in the Buckeye State. Stay tuned.

## **Human Resources – unemployment taxes**

Together with the other "Big Five" major business groups, the OMA has retained expertise of the Strategic Services on Unemployment & Workers' Compensation to help the legislature develop a plan to correct Ohio's insolvent unemployment trust fund.

House Bill 394 was introduced by Rep. Barbara Sears. The bill is a comprehensive reform of Ohio's unemployment compensation program with a focus on making the system in Ohio solvent. The bill has had several hearings in the House Insurance Committee. The goal was to move the bill prior to the holiday recess. The House is now planning a work group with the Senate to ensure passage in later part of the year.

### **Workers' Comp & Industrial Commission**

The BWC board is preparing to accept another private sector rate cut next month. If approved, this will continue nearly a decade of annual reductions in premiums: A great success story for Ohio!

The OMA and other business groups have been pushing back on Senate Bill 5. The bill has not yet been approved by the full Senate. Senate Bill 5 provides PTSD benefits for first responders through their workers' compensation benefits. This would be a major shift in workers' compensation policy for the state. See the Safety and Workers' Comp report to learn about other majority-party bills pending that would alter the workers' compensation landscape granting expanded coverage and resulting costs.

### **2016 General Election**

Nearly a year out, new and old faces are surfacing for the Ohio General Assembly. Three vitally important seats on the Ohio Supreme Court will be at stake. As usual, the OMA will deliver election services in 2016. Reserve funds now to purchase an advertisement to spotlight your company in the [OMA Election Guide](#). The Guide is an invaluable resource for government officials and those who watch and influence state government. Candidates for statewide races in 2018 are lining up and the OMA will provide opportunities for manufacturers to become acquainted with them as elections draw near.

## Legal challenge concerning drug purchasing initiated statute filed at Ohio Supreme Court

**CONTACT:** Jenny Camper, 614 224 0658, [jcamper@lesiccamper.com](mailto:jcamper@lesiccamper.com)

Columbus, OH (February 29, 2016) – The Ohio Manufacturers' Association (OMA), the Ohio Chamber of Commerce and the Pharmaceutical Research & Manufacturers of America (PhRMA), along with electors Mr. Keith Lake of the Ohio Chamber and Mr. Ryan Augsburger of the OMA today filed a legal challenge with the Ohio Supreme Court asking the Court to invalidate specific part-petitions submitted as part of a proposed initiated statute regarding drug pricing in Ohio. The initiative was recently transmitted by the Ohio Secretary of State to the General Assembly.

“There is clear evidence that proponents broke the law to the point of signatures falling below the legal threshold of consideration,” said attorney Kurt Tunnell, Managing Partner of the Bricker & Eckler law firm, which filed the action. “Our clients believe the Court needs to consider this challenge and render a judgment.”

The California-based petitioners behind the proposal hired PCI Consultants, Inc., a Los Angeles-based company that offers petition management services nationwide. PCI engaged sub-contractors for the Ohio project. The challenge identifies four areas of Ohio law with which a number of petition circulators failed to comply, and alleges that the signatures collected by those circulators are invalid and should be stricken. When the signatures that were unlawfully obtained are stricken, the petition has insufficient signatures to be considered by the General Assembly.

Specifically, the legal challenge alleges that, in violation of Ohio law, petition circulators or those who coordinated or oversaw other petition circulators listed false permanent residence addresses, unlawfully altered part-petitions, submitted false circulator statements and in some cases, were ineligible to circulate petitions due to felony convictions.

The following provides additional details about each of these violations:

- **False permanent residence addresses.** Ohio law requires that every part-petition include a signed “circulator statement” that includes the circulator’s permanent residence address. Several circulators listed non-residential addresses as their permanent residence address (e.g., motels, a commercial warehouse and a commercial mailing and shipping center). These addresses do not meet the statutory requirement to list a permanent residence address, which was inserted by the Ohio General Assembly to address a series of problems that arose in previous statewide petition efforts. Because these circulators provided false circulator statements in violation of Ohio law, their part-petitions are invalid and should be stricken.
- **Unlawful alterations of part-petitions.** Ohio law strictly governs who may alter part-petitions, limiting this authorization to the circulator of that part-petition, the signer of the part-petition or an attorney-in-fact for a disabled voter.

Of the more than 10,000 part-petitions submitted, roughly 5,600 were found to be uniformly altered with a thick black marker. In sworn testimony before multiple county boards of elections, circulators testified that neither they nor the signers struck any signatures and one individual hired to coordinate signature gathering testified that she was instructed to mark

“bad” signatures that the petition company did not want to pay circulators to collect. The Court must invalidate all part-petitions where evidence demonstrates that signatures were unlawfully stricken.

- **False circulator statements.** As part of the “circulator statement,” Ohio law requires circulators to attest to the number of signatures contained on the part-petition and affirm that he or she witnessed every signature. Each part-petition allowed for a maximum of 28 signatures. On over 1,400 part-petitions, circulators attest to witnessing 28 signatures, but the part-petition actually contains fewer than 28 signatures. Evidence indicates that circulation companies either unlawfully completed the circulator statement for the circulator, or instructed the circulators to write the number “28” in the statement, thus leaving the petition open to having additional unwitnessed signatures included after the fact. As a result, over 1,400 part-petitions contain false circulator statements, with circulators attesting to witnessing more signatures than actually appear on the part-petition. Thus, those part-petitions are invalid.
- **Ineligible felon circulators.** Ohio law prohibits convicted felons from serving as petition circulators. The law states that unless and until the felon has completed his or her sentence and satisfied post-release control, that felon remains ineligible to circulate ballot issue petitions. Five individuals who served as petition circulators appear to be ineligible to circulate part-petitions because they are convicted felons who did not complete their sentence or satisfied post-release control. Therefore, the part-petitions submitted by those circulators are invalid.

In order to meet the requirements for transmission to the General Assembly, the initiative petitioners needed to collect a total of 91,677 signatures (or three percent of the total vote cast for the office of governor at the last gubernatorial election), which must include a requisite number of signatures from a minimum of 44 Ohio counties.

“In this case, a California-based organization is pushing a law change in Ohio and asking Ohio citizens to support it through an initiated statute,” Tunnell said. “The organization hired paid circulators, many of them from outside the state, to collect signatures from Ohio citizens. Ohioans have the right to expect that proposals presented to them in this manner are done so by responsible circulators who are following the law.”

The filing asks the Court to strike all part-petitions that were collected in violation of Ohio law. Once illegally gathered part-petitions are disqualified, the petition fails to meet the requirements of the Ohio Constitution. As a result, the submission of the petition to the General Assembly was premature and the petitioners will be given a chance to gather more signatures in a lawful manner and resubmit a petition that complies with Ohio law.

###

**Related documents: The filing may not be immediately available online with the Court, however reporters may access the filing and key documents here: <http://bit.ly/1QmKtSy>**

# RESERVE YOUR AD SPACE NOW!

You are a recognized supporter of Ohio's political and electoral processes. A critical way to be visible in 2016 is by promoting your organization in the **2016 Ohio Election Guide**.

## THE 2016 ELECTION GUIDE WILL FEATURE:

**10 FREE COPIES** of the 2016 Ohio Election Guide for every advertiser!

**ALL ADVERTISERS** recognized on OMA's Ohio Legislative District Guide, the website for understanding voting behavior, demographics and economics of Ohio's legislative districts.

Comprehensive profiles of the 2016 candidates for state legislative and congressional seats and statewide offices.

Profiles of the candidates for seats on the Ohio Supreme Court and Ohio's Courts of Appeals.

Legislative district maps.

**UPDATED** political indices by district. Understand how Republican- or Democrat-leaning each district is.

**UPDATED** demographic information for all Ohio legislative districts.

Campaign commentary from the House & Senate Republican and Democratic caucuses.

**UPDATED** economic profiles – including employment and payroll data by industry – for all Ohio legislative districts.





# 2016 OHIO ELECTION GUIDE Ad Reservation Form



- Back cover, full-page ..... \$3,500 *Sold!*
- Inside front cover, full-page ..... \$3,000 *Sold!*
- Inside back cover, full-page ..... \$3,000 *Sold!*
- Full-page, inside ..... \$1,500
- Half-page, inside ..... \$875

I prefer my advertisement be placed in the following section:

- Ohio Supreme Court
- Ohio Appeals Courts
- Ohio Congressional Districts
- Ohio Senate Districts
- Ohio House of Representatives Districts
- No preference

### SPACE RESERVATIONS:

To reserve your ad space, complete and return this form no later than **April 1, 2016** to Dan Noreen. Ad placement preferences will be on a first-come, first served basis. We will bill you in May 2016.

**Email:** dnoreen@ohiomfg.com

**Fax:** (614) 224-1012

Your Name: \_\_\_\_\_

Title: \_\_\_\_\_

Company/Organization: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Phone: \_\_\_\_\_

E-Mail: \_\_\_\_\_

### AD SPECS:

- Full page with bleed (4-color) = 8.25"W X 10.1875"H (plus 0.125" bleed)
- Full page interior, no bleed (2-color) = 7.25"W X 9"H
- Half page interior, no bleed (2-color) = 7.25"W x 4.5"H
- Hi-res PDFs, flattened TIFs (300 dpi) or EPS (type must be converted to outlines) files
- Inside/back cover ads are 4-color. Interior ads are 2-color: PMS 188 & black.

Send ad files to Lisa Cummings-Dye at LCummingsDye@ohiomfg.com by **April 29, 2016**

### MORE INFO?

Contact Dan Noreen at (614) 629-6816 or dnoreen@ohiomfg.com

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## Leadership

### [The Manufacturing Value Chain is Much Bigger than You Think!](#)

February 26, 2016

The Manufacturers Alliance for Productivity and Innovation (MAPI) just released a [study](#) that shows that the effect of manufacturing on the U.S. economy is much larger than traditional measures indicate.

Says MAPI: "The traditional finding is that manufacturers' proportion of gross domestic product (GDP) is only about 11% and manufacturing's share of economy-wide full-time equivalent employment is just 9%. Since this excludes manufacturing activities such as research and development, corporate management, logistics operations, and advertising and branding, those figures are merely the tip of the iceberg.

"... manufacturing's footprint is much larger than merely the value-added at the factory loading dock. Manufacturing plant activities lie near the center of a substantial and complex value chain that is composed of an upstream supply chain that gathers materials and services and a downstream sales chain that moves goods to market and sells and services goods. Manufactured goods are also intermediate inputs in nonmanufacturing industries' supply chains."

MAPI finds: "The manufactured goods value chain plus manufacturing for other industries' supply chains accounts for about one-third of GDP and employment in the United States. The domestic manufacturing value-added multiplier is 3.6, which is much higher than conventional calculations."

### [Marietta, Here the Governor Comes!](#)

February 26, 2016

Governor John Kasich [has announced](#) that his sixth annual State of the State address will be held in Marietta on April 6. The speech will begin at 7 p.m. at the Peoples Bank Theatre.

The governor started the popular new tradition of getting out of the state capital city for the State of the State in his second year. He's taken the show to Steubenville, Lima, Medina and Wilmington the past four years. He takes along his top executive talent and the entire General Assembly for a full day of events in the community.

### [Senator Obhof Gets Promotion](#)

February 26, 2016

Senator [Larry Obhof](#) (R-Medina) was elected Senate President Pro Tempore this week. Senator Obhof replaces Senator Chris Widener (R-Springfield) who resigned office this month. Obhof had been challenged by Senator [John Ecklund](#) (R-Chardon). Obhof is the favorite to become Senate president next session, when the current president, [Keith Faber](#), will be term-limited.

Sen. [Gayle Manning](#) (R-North Ridgeville) replaced Obhof as Senate majority whip.

Obhof and Manning are good friends of Ohio manufacturing.

Meanwhile, Senator [Bob Hackett](#) (R-London) was sworn in to fill Widener's vacant seat. Hackett had been one of the three state reps in the district.

### [Governor Reappoints Haque to PUCO](#)

February 26, 2016

Governor Kasich has appointed the highly-regarded [Asim Haque](#) to a second term at the Public Utilities Commission of Ohio (PUCO). Haque's term will run from April 2016 to April 2021.

Congratulations, Commissioner Haque!

### [Kasich Tops Rivals vs. Clinton in Ohio](#)

February 26, 2016

The [latest Quinnipiac poll](#) taken in Ohio shows Governor Kasich handily beating either Hillary Clinton (by 17%) or Bernie Sanders (by 19%) in a general election vote. He outdistances Trump, Rubio and Cruz in beating the Democrats. No Republican has ever gotten to the White House without carrying Ohio.

The poll shows Senator Rob Portman in a dead heat with former governor Ted Strickland.

## [Are You a Manufacturing Voter?](#)

February 26, 2016



We are an army of 12 million men and women who make things in America. If all 12 million of us vote, imagine the impact we could have in Ohio and in Washington.

In 2016, OMA and the National Association of Manufacturers (NAM) will combine forces to support the manufacturing vote.

Watch this [short video](#) to see how to register and/or have voting reminders emailed to you. In 2016 be a Manufacturing Voter!

Pass it on!!

## [OMA Signs onto Biotech Food Labeling Letter](#)

February 26, 2016

The [Coalition for Safe & Affordable Food](#) submitted [this letter](#) to Senator Sherrod Brown to express support for legislative language recently released by Senate Agriculture Committee Chairman Pat Roberts that promotes a national uniform solution for biotech labeling.

The letter says, "Biotechnology has led to increased crop yields, decreased use of pesticides, and lower food costs for consumers. Congress must ensure we avoid senseless mandates that will thwart agricultural advancement and hurt consumers—especially those low income Americans who can least afford to pay more to feed their families."

And, "Mandatory on-pack labeling of foods produced using biotechnology would mislead consumers and drive up their grocery bills."

## [State Offers Low Interest Business Loans](#)

February 26, 2016

The state's Regional 166 Direct Loan Program promotes economic development, business

expansion and job creation by providing financial assistance for allowable costs of eligible projects. The program provides low-interest loans to businesses creating new jobs or preserving existing employment opportunities.

Application collection and review, along with initial program approvals are handled by certified [local economic development agencies](#).

Allowable project costs include: Land and/or building purchase; Machinery & equipment purchase; Building construction and/or renovation costs; Long-term leasehold improvements; Ongoing businesses fixed asset purchase; Costs that can be capitalized which are directly related to a fixed-asset purchase. [Read more here](#).

## [To Insource or Outsource 3D Printing?](#)

February 26, 2016

An emerging challenge companies face is deciding whether to invest in 3D printing to bring additive manufacturing (AM) in-house or to outsource their printing needs.

According to a blog from Oh!Manufacturing, a division of PolymerOhio: "For operations that want to use AM for a few processes with a specific range of materials, or for those that want to make production parts, it may make sense to bring the ability in-house.

"For most other businesses, AM can be outsourced to a service bureau that can simply print and ship to them parts that match their specifications. Outsourcing will still most likely yield a significant cost savings, especially for those companies who are still experimenting with how AM can be integrated into their processes. It's a low-cost and low-risk way to try out various strategies and technologies and to learn from the experience of the supplier." [Read more](#).

## [WVA Becomes 26th Right to Work State](#)

February 19, 2016

On July 1, West Virginia will become the nation's 26th right-to-work state. On Friday, February 12, the West Virginia legislature, controlled by Republicans, overrode a veto of right-to-work legislation by Democratic Governor Earl Ray Tomblin.

West Virginia, long known as a union stronghold, joins two other Ohio neighbors, Indiana and Michigan, as the newest right-to-work states.

## [Ohio Supreme Court Fails to Act in Product Liability Case](#)

February 19, 2016

Last week, the Ohio Supreme Court declined to accept a discretionary appeal in *Zang v. Cones*. The OMA filed an [amicus curiae memorandum](#) urging the Court to accept the appeal on the following two propositions of law:

- 1) To survive summary judgment, R.C. 2307.75 requires a plaintiff in a products liability case to establish the availability of a technically and economically feasible alternative design.
- 2) In a design defect case under R.C. 2307.75, a lay witness with no experience and with no perception or first-hand knowledge of the product cannot offer witness opinion testimony as to the product's design or any feasible alternative design.

This case was brought by the family of a firefighter who died tragically in the line of duty. The family asserted a products liability claim against Motorola as the manufacturer of the emergency radio used by the firefighter at the time of her death. The trial court granted summary judgment in favor of Motorola, in large part because the plaintiffs' expert witness did not offer a technically and economically feasible alternative design as required in design defect cases under Ohio law. In addition, plaintiff's expert had no experience with and no personal or first-hand knowledge of the emergency radio at issue. The First District Court of Appeals reversed the trial court's decision and Motorola, as well as other defendants, appealed.

The Court missed an important opportunity to provide Ohio's lower courts with guidance and to reinforce that Ohio's product liability statutes should be applied as written. Ohio's product liability laws should be construed as written; OMA commends Motorola and its counsel for pursuing this matter which has important ramifications for product liability cases.

## [Technical & Financial Resources for Cuyahoga Co. Manufacturers](#)

February 19, 2016

A collaborative project between MAGNET, NASA Glenn, the City of Cleveland, and Cuyahoga County is geared toward small and mid-size manufacturers who want to solve their product challenges with the help of NASA subject matter experts.

Manufacturers interested in applying must be located in Cleveland or Cuyahoga County, have generated between \$5 and \$250 million in annual revenue, and

have a technical challenge that, if solved, will lead to additional revenue and jobs.

Selected finalists will also be able to take advantage of up to \$300,000 in low-interest loans provided by the county as well as the City of Cleveland.

For more information or help with the application process, contact MAGNET's [Megan Tomsik](#) at (216) 391-7752. The [application is here](#) and [more information is here](#).

## [Medical Marijuana Hearings Commence](#)

February 12, 2016

This week, the special committee established by Speaker [Cliff Rosenberger](#) (R-Clarksville) heard its first testimony. Both opponents and proponents gave testimony. The OMA plans to testify in two weeks.

Meanwhile, the national [Marijuana Policy Project](#), funded by marijuana business owners, is preparing to place the issue of medical marijuana on the ballot this fall, should the legislature fail to act (or, maybe if it acts). A prospectus from the group solicits \$25M from businesses that would "reap the benefit of successful passage." The group has been successful in other states.

And, the [Dayton Daily News reports](#) that a second group, called ARC Reaction, is soliciting "... for investors to pony up \$300,000 by Feb. 15 for initial research and chip in another \$1.5 million by March 1 and \$3.5 million more by April 1 to collect the 305,000 valid voter signatures required by early July to qualify for the statewide ballot."

Here's a [good rundown](#) on the two groups

## [Register So You Can Vote in the Presidential Primary](#)

February 12, 2016



The registration deadline to vote in the Ohio presidential primary is Tuesday, February 16. The primary is Tuesday, March 15.

Everything you need to register to vote, or update your voting information, is on the [Ohio Secretary of State website](#).

Get the word out to all manufacturing voters!

The deadline to register to vote in the General Election is Tuesday, October 11, and we'll remind you.

If you have facilities in other states, here are the election dates and [voter registration deadlines in all states](#).

### [Cera Joins House Democratic Leadership](#)

February 12, 2016

Rep. [Jack Cera](#) (D-Bellaire) has been elected to the position of House Whip, joining the leadership team of Democratic Leader [Fred Strahorn](#) (D-Dayton). He will serve as Assistant Whip. The opening occurred because of a shuffling of leadership spots due to the resignation of Whip [Kevin Boyce](#) (D-Columbus), who is running for Franklin County Commissioner.

Cera, the dean of House Democrats, understands that manufacturing is the engine of the Ohio economy; he is a long-time friend of the OMA.

### [Auto Dealers Seek New Protections](#)

February 12, 2016

The Ohio Senate is considering [Senate Bill 242](#) to revise the laws governing new motor vehicle franchise agreements.

The legislation is supported by the Ohio Auto Dealers Association that [says the bill](#) refines performance criteria by requiring auto manufacturers to take into account local market conditions. The Auto Dealers also testified that the bill would prohibit manufacturers from retaliating against dealers who exercise their rights under the new law changes.

Here is the [bill summary](#).

### [‘Common Sense Initiative’ Releases Report on Streamlining Regs](#)

February 5, 2016

This week, Lt. Governor Mary Taylor released her [2015 report](#) on the activity of the Common Sense Initiative (CSI), which she and the governor

established to streamline regulations on businesses in Ohio.

She reports, “CSI reviewed 2,316 rules, which were presented in 317 rule packages. Of these rules, 65 percent were either amended or rescinded. More notably, nearly half of the rule packages submitted to CSI for review in 2015 were tangibly impacted by the CSI review, either through the Early Stakeholder Outreach required as part of the CSI process or through additional changes made after the rules were submitted to CSI. These metrics demonstrate that the CSI rule review is having a significant and substantive influence on making Ohio’s rules more business-friendly.”

Learn more about the helpful CSI program [here](#).

### [Mark Your Calendar for 2016 OMA Policy Committee Meetings](#)

January 29, 2016

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.

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. 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.

### [NAM Takes New Policy Agenda on the Road](#)

January 29, 2016

This week, the National Association of Manufacturers (NAM) kicked off its 2016 State of Manufacturing Tour at the New Hampshire Institute of Politics. In the coming week, NAM will tour shop floors, training facilities, and schools across the country with a goal to shape the November election and the direction of the country.

NAM is unveiling its “Competing to Win: Manufacturers’ Agenda for Economic Growth and

American Exceptionalism.” This [new document](#) lays out actions for leaders to strengthen manufacturing and the entire economy. Visit NAM’s [Competing to Win website](#).

### [2016 RNC Sponsorship Opportunities](#)

January 29, 2016

The Ohio Republican Party has just finalized its 2016 RNC Convention sponsorship packages. [Here are the opportunities](#). Contact [Susan Waidner](#), Finance Director, Ohio Republican Party, at (614) 456-2041 for more information.

### [“Continued Challenges, a Few Bright Spots”](#)

January 29, 2016

OMA Connections Partner, Clark, Schaefer, Hackett, compiled several of the latest news headlines and economic reports, both national and regional, to [provide an update](#) on the current state of U.S. manufacturing.

### [OMA & Allies Set Record Straight on UC Reform](#)

January 22, 2016



Together with its business allies, the [OMA testified](#) on HB 394, the unemployment compensation reform bill, to set the record straight on erroneous and misleading testimony from the bill’s opponents (unions and certain social service agencies). The Ohio unemployment compensation fund is insolvent, resulting in higher and higher charges to Ohio’s job-generating businesses.

Two examples from the testimony that show the bill’s provisions are in line with other states’ programs:

Weekly benefit amount freeze: “Ohio’s current maximum weekly benefit amount is higher than the national average and higher than any surrounding

state except Pennsylvania. Nineteen states, including Michigan and Indiana, do not have automatic increases in the maximum weekly benefit amount. A freeze until Ohio’s trust fund is solvent is a reasonable response to address solvency.”

Reduction in number of weeks of allowed benefits from 26 to 12 – 20: “The recent trend among states addressing UI solvency has been to reduce the number of potential weeks of unemployment based on the total unemployment rate. Effective January 1, 2016, Missouri joined the growing list by changing to a sliding scale of 13 – 20 weeks. Other states with similar provisions include Kansas 16 – 26, Florida 12 – 23, Georgia 14 – 20, and North Carolina 12 – 20. Michigan and South Carolina also reduced their maximum number of weeks to 20 from 26.”

The testimony was presented by Doug Holmes, president of UWC in Washington, D.C., on behalf of the OMA, Ohio Chamber of Commerce, NFIB-Ohio, Ohio Farm Bureau, and Ohio Council of Retail Merchants.

### [Pharmaceutical Price Controls Going to the Ballot?](#)

January 22, 2016

A national foundation is advocating for state government control over the price of drugs. The AIDS Healthcare Foundation has filed paperwork with the Ohio Secretary of State to place an initiated statute on the November general election ballot.

Dubbed the Ohio Drug Price Relief Act, it attempts to require the state to pay no more for prescription drugs than is paid by the U.S. Department of Veterans Affairs. The Ohio proposal is similar to a California proposal.

The [Columbus Dispatch reports](#) on litigation surrounding the ballot proposal.

“The OMA takes a strong interest in any proposal by government to limit prices on manufactured goods,” said OMA’s Ryan Augsburger.

### [Cleveland Fed: 2016 Outlook “Mixed”](#)

January 22, 2016

The Federal Reserve Bank of Cleveland released its [outlook for 2016](#). It finds: “(Reports) are best interpreted as mixed, fundamentals (like employment growth) for the broader District economy are good. So despite the weakening sentiment of District contacts’ reports and the cautious tone of the stock market, we

continue to expect growth across the District in coming months.”

The bank researchers see three trends influencing the region’s economic growth:

1. The fall in energy prices has caused a significant slowdown in oil and gas exploration in the Marcellus and Utica Shales, though natural gas production remains at historic highs.
2. The rising value of the dollar and the weakness in oil and gas exploration have affected key District industries, including steelmaking. Steel producers are encountering difficulties even while domestic market users of District manufacturing products, namely construction and transportation equipment, are seeing growth.
3. Nationally and regionally, consumers are increasing purchases of durable goods, particularly automobiles, as their circumstances and balance sheets improve.

### [OMA Chairman Sopko Appointed to Medical Marijuana Task Force](#)

January 15, 2016



This week, Speaker of the House Cliff Rosenberger (R-Clarksville) appointed OMA Chairman of the Board Bill Sopko to a bipartisan medical marijuana task force. The Speaker announced the creation of the task force at an evening press conference yesterday, January 14.

The purpose of the task force is to gather information from medical experts, and others, as to the efficacy of medical marijuana and issues related to its possible legalization.

In its resolution opposing the marijuana legalization issue defeated in the General Election last year, the OMA board of directors urged the legislature to do a thorough review of the issue medical marijuana. The OMA appreciates the Speaker establishing this task force.

### [Time for Action \(long overdue\) on Unemployment Comp Reform](#)

January 15, 2016

This week the [House Insurance Committee](#) continued its hearings on [House Bill 394](#), the Unemployment Compensation Insurance Reform bill, sponsored by Rep. [Barbara Sears](#) (R-Monclova Township). The committee began reviewing potential amendment ideas brought forward by Rep. Sears to address portions of the bill that have drawn opposition, particularly from labor.

OMA [prepared this document](#) to shed light on what exactly HB 394 does – and does not – do.

Now is the time for member engagement: If you haven’t already, please contact your state representative and let them know they have your support for the reform measures contained in the bill. The easiest way to do this is by using the [email tools at the OMA’s Manufacturing Advocacy Center](#).

### [Business Leaders Stress Need for UC Reforms](#)

January 8, 2016

Ohio’s unemployment insurance (UI) system is in a state of crisis. The Ohio Unemployment Insurance Trust Fund, which is funded by employers and pays out benefits to qualifying jobless workers, is insolvent.

Representative Barbara Sears (R-Maumee) has introduced legislation, House Bill 394, to reform Ohio’s Unemployment Insurance law and address the solvency of the Ohio Unemployment Insurance Trust Fund.

The Toledo Blade ran [this op-ed](#) (Jan. 3, 2016) from OMA president Eric Burkland, who said, “Ohio’s unemployment insurance system is in crisis. It not only is insolvent; it is also a deterrent to job creation and retention. A bill before the General Assembly is a prudent and long overdue response to a clear need for reform.”

The Canton Repository [ran opposing opinions](#) (Jan. 4, 2016) drawn up by OMA’s director, Public Policy Services, Rob Brundrett and Policy Matters Ohio. Brundrett said: “Employers and employees must share the burden of ensuring a sound system for the future.”

Roger R. Geiger, vice president and Ohio executive director for the National Federation of Independent Business, also filed this [op-ed](#) to the Cincinnati Enquirer (Dec. 8, 2015), saying “Benefit payment amounts in Ohio are higher than the national average, and the federal unemployment tax imposed on Ohio employers exceeds that of all states except Connecticut.”

OMA members are encouraged to go on the record with their elected officials about the need for reforms; use the [easy email tools here](#).

### [AG Issues Economic Development Manual](#)

January 8, 2016

Last month, the Ohio Attorney General's Office [issued](#) its [2015 Ohio Economic Development Manual](#). The manual is designed to be a one-stop guide for businesses, elected officials, and economic development professionals who are interested in promoting business growth and job creation.

"Until now, there was no single publication or source that outlined all of the various economic development laws and programs in the state," said Attorney General Mike DeWine.

The manual is designed to provide users overviews on Ohio laws, tax systems, funding sources, and agencies that play a role in economic development throughout Ohio.

### [OMA Responds to UI Reform Opponents](#)

December 18, 2015

Recent legislative testimony from opponents (such as the Ohio AFL-CIO) of the unemployment compensation reforms in [HB 394](#) has, through a combination of overgeneralizations, omissions and factual inaccuracies, badly mischaracterized certain key provisions of the bill.

The OMA prepared a [document to set the record straight](#) by shedding light on what exactly HB 394 does – and does not – do. The document was delivered this week to all members of the Ohio House and to the media.

Ohio's unemployment compensation system is in a state of crisis, which is driving up costs for the state's job-creating businesses. The system is in dire need of reform, the kind of reform that state after state after state has undertaken, while Ohio has languished in system dysfunction.

Contact your state representatives and state senators now to urge reform now. Use the [OMA Manufacturing Advocacy Center](#) to do so.

### [November 2016 Races Taking Shape](#)

December 18, 2015

This week marked the deadline for candidates to file to run for state and federal offices.

As expected, John Kasich filed along with eleven other Republican presidential contenders.

U.S. Senator Rob Portman will face two challengers in a GOP primary.

More than twenty Congressional hopefuls filed to replace John Boehner in the 8th Congressional District. The [OMA's Legislative District Guide](#) calculated the district's Republican index at 60.42% in 2014.

Three seats are up for election on the Ohio Supreme Court. Chief Justice Maureen O'Connor will run unopposed for her final six-year term. Republican Court of Appeals Judge Pat DeWine of Cincinnati seeks to replace retiring Justice Paul Pfeifer. DeWine will face Democrat Court of Appeals Judge Cynthia Rice of Warren in the General Election.

In the race to succeed retiring Justice Judith Lanzinger, Republican Court of Appeals Judge Pat Fischer of Cincinnati will face off against Cuyahoga County Common Pleas Judge John O'Donnell, if he defeats a primary challenge by Republican Court of Appeals Judge Colleen O'Toole. The OMA-PAC has endorsed Judge Pat Fischer.

### [OMA Policy Committee Dates Set for 2016](#)

December 18, 2015

Through OMA Public Policy Committees, OMA members review, assess, propose and/or oppose legislation and regulations. This is your way to shape the legislative and regulatory environment, and keep up.

Policy committees exist for energy, environment, government affairs, safety & workers' compensation, and tax.

All members are welcome to join committees and participate in meetings in person or by phone, or simply monitor activity through email. Sign up at [My OMA](#); click on 'My Communities.'

### [General Assembly Sets First-Half 2016 Session Schedule](#)

December 18, 2015

The Ohio Senate and House are tentatively scheduled to return to full sessions Wednesday, January 20.

This week, the chambers released this [joint session schedule](#).

With the exception of some “if-needed” days in June, the chambers are scheduled to finish work for the first half of next year by the end of May. Thanks to *Gongwer News Service* for the content.

### [Speaker, Secretary of State Visit OMA Board](#)

December 11, 2015



House Speaker Cliff Rosenberger and Secretary of State Jon Husted discussed manufacturing issues with members of the OMA board of directors this week.

Rosenberger reflected on accomplishments of the House in his first year as Speaker. He also looked ahead on issues such as taxation, unemployment compensation reform, Right to Work, tort reform, and infrastructure. He described the OMA as one of the “most important historic organizations in Ohio.”

Husted reflected on the successes of defeating the marijuana monopolies at the ballot in November, as well as passing the legislative redistricting reforms in Issue 1. He thanked the OMA and its membership for leadership in these efforts.

### [OMA-PAC Board Endorses Judge Fischer for Supreme Court of Ohio](#)

December 11, 2015

At its meeting this week, the OMA Political Action Committee (OMA-PAC) voted to endorse Judge Patrick F. Fischer for the Supreme Court of Ohio.

Judge Fischer was elected to the Ohio First District Court of Appeals in November 2010. He was re-elected in 2012.

The OMA-PAC board acted at this time as Judge Fischer is expected to face a primary election contest on March 15, 2016. Should he prevail in his primary, he will run on the November 2016 ballot for one of three Supreme Court seats for which there will be an election.

Judge Fischer has dedicated himself to the practice of law for nearly 30 years. An honors graduate of Harvard Law School and Harvard College, he has been named to Best Lawyers in America®, one of the Top 50 Lawyers in Cincinnati, and one of the Top 100 Lawyers in Ohio. He was routinely named to Ohio Super Lawyers®. Judge Fischer was elected President of the Ohio State Bar Association, and served as same from 2012-2013. Read more about [Judge Pat Fischer](#).

### [General Assembly Heads Home, Gives Present to Plaintiffs’ Bar](#)

December 11, 2015

State lawmakers in Columbus completed action on dozens of bills and resolutions before beginning the holiday recess. They return in January.

Among last minute legislative actions, Senate leaders again passed legislation to alter complex Ohio insurance subrogation law to revise the order of payments and processes in certain types of disputes, including torts.

The law change was initially enacted in the state budget in late June but could be subject to a lawsuit over the single-subject rule. Therefore this week, Senate leaders packaged the subrogation amendment with [House Bill 259](#), which more closely deals with insurance law and might withstand a possible single-subject lawsuit challenge.

The OMA [opposed the amendment](#) in the budget and would have opposed this more recent amendment had the Senate been more transparent.

### [Grace Commission Holds First Meeting](#)

December 11, 2015



Pictured: Rep. Kirk Schuring and OMA president Eric Burkland

The Grace Commission appointed by House and Senate leadership had its first meeting this week. The commission is charged with reviewing all 2015 expenditures in order to identify ways to find cost savings through executive action or legislation, and to determine areas needing greater managerial accountability and administrative controls.

The commission is co-chaired by Rep. Kirk Schuring (R-Canton) and Sen. Bill Coley (R-West Chester). OMA director Dave Johnson, CEO, Summitville Tiles, Inc., and OMA President Eric Burkland were appointed to the committee by Speaker Cliff Rosenberger. Also on the committee are: Rep. Nathan Manning (R-North Ridgeville), Sen. Dave Burke (R-Marysville), Mercer County Economic Development Director Jared Ebbing, Columbus Partnership CEO Alex Fischer, former GOP Sen. Mark Wagoner and former GOP Rep. Lynn Wachtmann.

### [Food Manufacturers Announce SmartLabel Program](#)

December 11, 2015

Earlier this month, the Grocery Manufacturers' Association proposed its "Smart Label" initiative to provide consumers with more information about the food they eat. By using electronic technologies (e.g. on-package QR code, web search, etc.), SmartLabel will give grocery shoppers access to data on 350 quality traits ranging from allergens to genetically modified ingredients. [Read more.](#)

The New York Times [connected](#) the new voluntary label proposal to the intense lobbying of Congress for passage of the Safe and Accurate Food Labeling Act. Passed by the U.S. House of Representatives in July, the bill is now being considered in the U.S. Senate. The bill would establish a national standard for food labeling.

The OMA supports the act to prevent a patchwork of state food labeling laws. Use the easy email tools at

the [Manufacturing Advocacy Center](#) to urge Senators Portman and Brown to vote for the act.

### [Unions, Social Service Agencies Line Up Against UC Reform](#)

December 4, 2015

As expected, labor unions and social service agencies lined up to testify before the House Insurance Committee to oppose unemployment compensation reforms contained in [HB 394](#).

The state's unemployment compensation trust fund is broke. Employers are paying higher and higher penalties to the federal government for loans that the feds made to keep the Ohio system afloat.

The opponents' solution? Make job-producing employers pay even more.

One notable proponent testified this week: the Ohio Trucking Association. The association noted that trucking firms pay high unemployment premiums despite low unemployment and a truck driver shortage of 48,000 nationally. He said truckers want to hire the unemployed.

### [Manufacturers Visit with House Finance Chair](#)

December 4, 2015



Pictured: OMA Gov't. Affairs Committee Chair, Chris Hess, Director, Public Affairs, Eaton Corp., and Rep. Ryan Smith

Members of the OMA's Government Affairs Committee held their final scheduled meeting of 2015 this week. The committee visited with Governor Kasich's Chief Lobbyist Merle Madrid and with Rep. [Ryan Smith](#) (R-Bidwell), Chair, House Finance Committee.

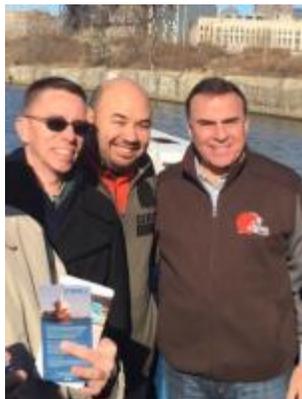
Both policymakers predicted legislation would advance in 2016 to fund public capital projects, and both also seemed open to a mid-biennium review process (a mini-budget) in the new year.

Rep. Smith thanked the OMA for its role in the defeat of the marijuana legalization constitutional amendment.

The OMA Government Affairs Committee will hold its first meeting of 2016 on [March 2](#) at 9:30 a.m. All members can join the committee and participate in meetings in person and by phone, or simply monitor activity through email. Sign up at [My OMA](#).

### [Legislators Learn about Maritime Port Funding Needs](#)

December 4, 2015



Pictured: State Rep. Mike Dovilla, Speaker of the House Cliff Rosenberger, and Brown's fan Rep. Kirk Schuring

OMA staff joined with the Port of Cleveland to host lawmakers in touring the Cuyahoga River shipping channel.

Speaker Clifford Rosenberger led a delegation of state lawmakers on the fact-finding visit.

Significant capital improvements are needed to protect the shipping channel; geologists say a portion of the riverbed is likely to collapse into the channel unless bulkheads are built. Contact OMA's [Ryan Augsburger](#) to learn more about how your company can promote maritime port funding.

### [OMA Service Check Up](#)

December 4, 2015

To get the most from your OMA membership, make sure you're getting everything you want – but *only* what you want – by visiting [My OMA](#).

At [My OMA](#), everyone in your company can:

- Manage their membership profile
- Subscribe to OMA services
- Set OMA email preferences
- Register for OMA events, and more.

Get the word out!

## Miscellaneous Legislation of Interest to Manufacturers

Prepared by: The Ohio Manufacturers' Association  
Report created on March 1, 2016

- HB3 BUSINESS FILING FEES-JOBS WEBSITE** (DERICKSON T, ROMANCHUK M) To reduce certain business filing fees charged and collected by the Secretary of State and to specify that Ohio-based companies are to have access to appropriate features of the OhioMeansJobs web site.  
*Current Status:* 6/25/2015 - **SIGNED BY GOVERNOR**; eff. 9/24/15  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-3>
- HB10 ATTORNEY TRANSPARENCY** (BUTLER, JR. J) To provide transparency in contracts between the state and private attorneys.  
*Current Status:* 3/17/2015 - House Government Accountability and Oversight, (Third Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-10>
- HB17 EMERGENCY CIVIL IMMUNITY** (BLESSING III L, LANDIS A) To provide civil immunity for architects, contractors, engineers, surveyors, and tradespersons providing volunteer services during a declared emergency.  
*Current Status:* 2/14/2016 - **SIGNED BY GOVERNOR**; eff. in 90 days  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-17>
- HB42 LOCAL GOVERNMENT FUND** (GERBERRY R, CERA J) To require that, for fiscal year 2016 and each fiscal year thereafter, the Local Government Fund must receive the same proportion of state tax revenue that the Fund received in fiscal year 2005.  
*Current Status:* 2/11/2015 - Referred to Committee House Finance  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-42>
- HB46 GOVERNMENT EXPENDITURE DATABASE** (DOVILLA M) To require the Treasurer of State to establish the Ohio State Government Expenditure Database.  
*Current Status:* 10/13/2015 - Senate Finance, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-46>
- HB49 AIRLINE-AIR FREIGHT COMMISSION** (BARNES, JR. J) To create the Commercial Airline and Air Freight Commission.  
*Current Status:* 4/14/2015 - House Transportation and Infrastructure, (Third Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-49>
- HB53 TRANSPORTATION BUDGET** (GROSSMAN C) To make appropriations for programs related to transportation and public safety for the biennium beginning July 1, 2015, and ending June 30, 2017, and to provide authorization and conditions for the operation of those programs.  
*Current Status:* 4/1/2015 - **SIGNED BY GOVERNOR**; eff. 7/1/2015; certain provisions effective other dates  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation->

[summary?id=GA131-HB-53](https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-53)

- HB64 OPERATING BUDGET (SMITH R)** To make operating appropriations for the biennium beginning July 1, 2015, and ending June 30, 2017, and to provide authorization and conditions for the operation of state programs.  
*Current Status:* 6/30/2015 - **SIGNED BY GOVERNOR**; eff. 6/30/15; certain provisions effective 9/29/2015, other dates  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-64>
- HB68 ALCOHOL-BY-VOLUME (RAMOS D)** To allow beer manufacturers to manufacture beer containing not more than 21% of alcohol by volume beginning on the effective date of this act, and, beginning one year after the effective date of this act, to allow the sale and distribution of beer containing not more than 21% of alcohol by volume in this state by increasing the legally permitted alcohol content of beer from 12% to 21%.  
*Current Status:* 10/6/2015 - House Government Accountability and Oversight, (Third Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-68>
- HB100 VEHICLE WEIGHT LIMITS (SLABY M, PATMON B)** To require that a vehicle with a gross vehicle weight rating or an actual gross vehicle weight of more than 10,000 pounds be driven only in either of the two right-hand lanes of a freeway with three lanes of travel in the same direction, except in limited circumstances.  
*Current Status:* 3/24/2015 - House Transportation and Infrastructure, (Second Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-100>
- HB109 STATE HEALTH BENEFIT EXCHANGE (STINZIANO M, ANTONIO N)** To create the Ohio Health Benefit Exchange.  
*Current Status:* 4/28/2015 - House Insurance, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-109>
- HB126 NUISANCE LAW (KUNZE S, LELAND D)** To expand nuisance law to include any real property on which an offense of violence has occurred or is occurring.  
*Current Status:* 12/8/2015 - House Judiciary, (Second Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-126>
- HB130 PUBLIC RECORDS-DATA BOARD (HAGAN C, DUFFEY M)** To create the DataOhio Board, to specify requirements for posting public records online, to require the Auditor of State to adopt rules regarding a uniform accounting system for public offices, to establish an online catalog of public data at data.Ohio.gov, to establish the Local Government Information Exchange Grant Program, and to make an appropriation.  
*Current Status:* 12/2/2015 - House Finance, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-130>
- HB145 STEM PARTNERSHIP PROGRAM (MCCOLLEY R, HOWSE S)** To establish the STEM Public-Private Partnership Pilot Program to provide high school students the opportunity to

receive education in a targeted industry while simultaneously earning high school and college credit and to make an appropriation.

**Current Status:** 4/14/2015 - Referred to Committee House Finance

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-145>

**HB153**      **PRESIDENTIAL PRIMARY DATE** (DOVILLA M) To change the date on which presidential primary elections are held.

**Current Status:** 6/10/2015 - **SIGNED BY GOVERNOR**; eff. 9/9/2015

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-153>

**HB175**      **GLOBAL MARKET PROGRAM** (BARNES, JR. J) To establish the "Access to Global Market Opportunities for Ohio Manufactured Products Program" to be composed of the "Ohio Global Leadership Initiative" and the "Global Initiative on International Relations" to create new, untapped global markets for Ohio businesses and thereby promote job creation.

**Current Status:** 5/27/2015 - House Economic and Workforce Development, (Third Hearing)

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-175>

**HB189**      **VOTER IDENTIFICATION** (BRENNER A) To revise the law concerning the identification an elector must provide in order to cast absent voter's ballots, to vote in person at a polling place, or to cast a provisional ballot.

**Current Status:** 5/12/2015 - Referred to Committee House Government Accountability and Oversight

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-189>

**HB194**      **PATENT INFRINGEMENT** (ROEGNER K) To prohibit a person from engaging in the widespread sending of bad faith, objectively baseless communications of patent infringement and to authorize the Attorney General to investigate and institute a civil action if the Attorney General believes a person has made such assertions of patent infringement.

**Current Status:** 5/26/2015 - House Judiciary, (First Hearing)

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-194>

**HB233**      **REDEVELOPMENT DISTRICTS** (SCHURING K) To authorize municipal corporations to create downtown redevelopment districts and innovation districts for the purposes of promoting the rehabilitation of historic buildings, creating jobs, encouraging economic development in commercial and mixed-use areas, and supporting grants and loans to technology-oriented and other businesses.

**Current Status:** 2/23/2016 - Senate Ways and Means, (Third Hearing)

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-233>

**HB263**      **JUDICIAL-COUNTY SALARY INCREASES** (ROGERS J, CELEBREZZE N) To increase judicial salaries and the salaries of county elected officials, township trustees, township fiscal officers, and boards of elections members, to reinstate the annual cost of living adjustment to their salaries, and to make appropriations.

**Current Status:** 6/23/2015 - Referred to Committee House Government

Accountability and Oversight

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-263>

- HB280**      **BALANCED BUDGET COMPACT** (KRAUS S, KOEHLER K) To adopt the Compact for a Balanced Budget and to declare an emergency.  
**Current Status:** 6/30/2015 - Introduced  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-280>
- HB282**      **PREVAILING WAGE LAW** (ROEGNER K, HOOD R) To repeal Section 509.70 of Am. H.B. 497 of the 130th General Assembly to repeal the Prevailing Wage Law.  
**Current Status:** 9/16/2015 - Referred to Committee House Commerce and Labor  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-282>
- HB350**      **AUTISM TREATMENT-COVERAGE** (GROSSMAN C, TERHAR L) To mandate coverage of autism treatment.  
**Current Status:** 2/9/2016 - House Government Accountability and Oversight, (Fourth Hearing)  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-350>
- HJR2**        **REDISTRICTING-CONGRESSIONAL DISTRICTS** (CLYDE K, CURTIN M) To revise the redistricting process for congressional districts.  
**Current Status:** 3/3/2015 - Referred to Committee House Government Accountability and Oversight  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HJR-2>
- HJR4**        **ANTI-MONOPOLY-CONSTITUTIONAL AMENDMENTS** (SMITH R) Proposing to amend sections of Article II of the Constitution of the State of Ohio to prohibit an initiated constitutional amendment that would grant a monopoly or a special economic interest, privilege, benefit, right, or license to any person or entity and to modify the procedure to propose a law or a constitutional amendment by initiative petition.  
**Current Status:** 7/1/2015 - Filed with Secretary of State  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HJR-4>
- HR25**        **HONORING THE MIDMARK CORPORATION** (BUCHY J) Honoring the Midmark Corporation on its One Hundredth Anniversary.  
**Current Status:** 2/25/2015 - Introduced  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HR-25>
- SB22**        **LOCAL GOVERNMENT FUND-ALLOCATION INCREASE** (TAVARES C) To increase monthly allocations to the Local Government Fund from 1.66% to 3.68% of the total tax revenue credited to the GRF each month.  
**Current Status:** 2/4/2015 - Referred to Committee Senate Finance  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-22>

- SB26 BUSINESS FILING FEES (OBHOF L)** To reduce certain business filing fees charged and collected by the Secretary of State and to specify that Ohio-based companies are to have access to appropriate features of the OhioMeansJobs web site.  
*Current Status:* 4/15/2015 - House Economic and Workforce Development, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-26>
- SB38 STATE-ATTORNEY CONTRACTS (SEITZ B)** To provide transparency in contracts between the state and private attorneys.  
*Current Status:* 5/12/2015 - **SIGNED BY GOVERNOR**; eff. 8/12/2015  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-38>
- SB57 TOWNSHIP ROAD REGULATION (EKLUND J)** To authorize counties to adopt resolutions regulating motor vehicle traffic on county and township roads.  
*Current Status:* 3/3/2015 - Senate State and Local Government, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-57>
- SB79 FELONY-JOB APPLICATION (WILLIAMS S)** To prohibit employers from including on an employment application any question concerning whether an applicant has been convicted of or pleaded guilty to a felony.  
*Current Status:* 3/4/2015 - Referred to Committee Senate Transportation, Commerce and Labor  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-79>
- SB87 MINIMUM WAGE (TAVARES C)** To require that domestic workers be paid the minimum wage, as provided in Section 34a of Article II, Ohio Constitution.  
*Current Status:* 3/4/2015 - Referred to Committee Senate Transportation, Commerce and Labor  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-87>
- SB135 RARE DISEASE-OUT OF POCKET COST (CAFARO C, JONES S)** To limit the out-of-pocket cost to an individual covered by a health plan for drugs used to treat rare diseases.  
*Current Status:* 10/20/2015 - Senate Insurance, (Second Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-135>
- SB181 LIMITED LIABILITY COMPANY LAW (OBHOF L, SCHIAVONI J)** To declare the policy of the Limited Liability Company Law generally to give maximum effect to freedom of contract, and to make other changes regarding corporations and limited liability companies.  
*Current Status:* 2/24/2016 - **PASSED BY HOUSE**; Vote 94-0  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-181>
- SB199 HANDGUN LICENSE-ACTIVE MILITARY (UECKER J)** To specify that an active duty member of the U.S. Armed Forces: (1) does not need a concealed handgun license to carry a handgun concealed if the member is carrying valid military identification and a certificate indicating successful small arms qualification; and (2) may be sold or furnished a handgun if

the member has received military or equivalent small arms training.

**Current Status:** 10/7/2015 - Senate Civil Justice, (Second Hearing)

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-199>

- SB210**      **TOWNSHIP ROAD CONSTRUCTION (BALDERSON T)** To increase the monetary thresholds above which competitive bidding is required for township road construction, repair, or maintenance contracts
- Current Status:** 9/15/2015 - Referred to Committee Senate State and Local Government
- State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-210>
- SB218**      **FAIR ACT (TAVARES C)** 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:** 10/7/2015 - Referred to Committee Senate Transportation, Commerce and Labor
- State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-218>
- SB242**      **MOTOR VEHICLE-FRANCHISE AGREEMENTS (UECKER J, COLEY W)** To revise the law governing new motor vehicle franchise agreements.
- Current Status:** 1/27/2016 - Senate Transportation, Commerce and Labor, (Second Hearing)
- State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-242>
- SB245**      **MALNUTRITION PREVENTION COMMISSION (MANNING G)** To create the Malnutrition Prevention Commission to study malnutrition among older adults.
- Current Status:** 2/10/2016 - Senate Health and Human Services, (First Hearing)
- State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-245>
- SCR3**      **CONGRESSIONAL FAST-TRACK OPPOSITION (SCHIAVONI J, GENTILE L)** To urge the Congress of the United States, and in particular the Ohio Congressional delegation, to vote against Fast Track Legislation.
- Current Status:** 4/22/2015 - Referred to Committee Senate Transportation, Commerce and Labor
- State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SCR-3>
- SJR1**      **PUBLIC OFFICE COMPENSATION COMMISSION (FABER K)** Proposing to amend Sections 4, 20, and 31 of Article II, Section 19 of Article III, and Section 6 of Article IV and to enact Section 20a of Article II of the Constitution of the State of Ohio to establish the Public Office Compensation Commission.
- Current Status:** 6/24/2015 - House Government Accountability and Oversight, (Second Hearing)
- State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SJR-1>
- SJR2**      **CONGRESSIONAL REDISTRICTING (LAROSE F, SAWYER T)** Proposing to enact

Sections 1, 2, 3, 4, 5, 6, 7, and 8 of Article XIX of the Constitution of the State of Ohio to revise the redistricting process for congressional districts.

**Current Status:** 9/15/2015 - Referred to Committee Senate Government Oversight and Reform

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SJR-2>



# Ohio Legislative Service Commission

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## Bill Analysis

Amanda M. Ferguson

### **S.B. 242**

131st General Assembly  
(As Introduced)

Sens. Uecker and Coley

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### **BILL SUMMARY**

- Modifies the method for calculating the amount that a new motor vehicle franchisor must pay to a franchisee as compensation for fulfilling a warranty or recall obligation.
- Specifies that the failure of a franchisee to achieve performance criteria that do not take into account local market conditions is not sufficient good cause for terminating, cancelling, or failing to continue or renew a franchise agreement.
- Prohibits a franchisor from unfairly changing or amending a franchisee's allotment of motor vehicles or quota, sales expectancy, or sales penetration without considering local market conditions.
- Prohibits a franchisor from changing a franchisee's geographic area of responsibility without reasonable cause and consideration of local market conditions.
- Prohibits a franchisor from establishing any performance standard or program for measuring franchisee performance that may have a material impact on a franchisee that does not take into account local market conditions.

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### **CONTENT AND OPERATION**

#### **Overview**

The bill modifies the law governing motor vehicle franchise agreements and the relationship between franchisors and franchisees. A franchisor is a new motor vehicle manufacturer, remanufacturer, or distributor who supplies new motor vehicles to a franchisee under a franchise agreement. A franchisee is a person who receives new

motor vehicles from a franchisor under a franchise agreement and who offers, sells, and provides service for such new motor vehicles to the general public.<sup>1</sup>

### **Compensating franchisees for warranty and recall obligations**

Under current law, a franchisor is required to fulfill warranty and recall obligations to repair and service motor vehicles and all parts and components manufactured for installation in a motor vehicle. A franchisor also must compensate each of its franchisees for labor and parts used to fulfill warranty and recall obligations at rates not less than the rates charged by the franchisee to its retail customers for like service and parts for nonwarranty work. The bill instead requires a franchisor to compensate its franchisees as follows:

(1) For labor, the franchisee's retail hourly rate, multiplied by the time allocated for the work as published in the same nationally recognized labor time study guide used by the franchisee to calculate its retail labor times;

(2) For parts, the manufacturer's suggested retail price as published in the most recent edition of the franchisor's price guide.<sup>2</sup>

The bill also specifies that a franchisor is prohibited from doing any of the following: (1) assessing penalties, surcharges, or similar costs to a franchisee, (2) transferring or shifting any costs to a franchisee, (3) limiting allocation of vehicles or parts to a franchisee, or (4) otherwise directly or indirectly taking retaliatory action against a franchisee based on any franchisee's exercise of its right to compensation. However, the bill specifically states that the provision above does not prohibit a franchisor from increasing the price of a vehicle or part in the normal course of business.<sup>3</sup>

### **Cause to terminate or fail to continue a franchise**

Current law specifies a number of factors that must be considered by a franchisor in determining whether there is good cause to terminate, cancel, or fail to continue or renew a franchise agreement.<sup>4</sup> Further, current law specifies factors that do not constitute sufficient good cause to take such an action.<sup>5</sup> One factor that does not

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<sup>1</sup> R.C. 4517.01(U) and (V).

<sup>2</sup> R.C. 4517.52(A) and (B).

<sup>3</sup> R.C. 4517.52(C).

<sup>4</sup> R.C. 4517.55(A).

<sup>5</sup> R.C. 4517.55(B).

constitute sufficient good cause is the failure of the franchisee to achieve any unreasonable or discriminatory performance criteria. The bill specifies that for purposes of this factor, performance criteria that do not take into account local market conditions are deemed unreasonable. As a result, the failure of a franchisee to achieve performance criteria that do not take into account local market conditions is not sufficient good cause for terminating, cancelling, or failing to continue or renew a franchise agreement.<sup>6</sup>

The bill specifies that "local market conditions" includes but is not limited to factors beyond the control of the franchisee, such as:

- (1) The proximity of other motor vehicle dealers and the brands sold by such dealers;
- (2) The proximity of manufacturing facilities for motor vehicles, parts, and accessories;
- (3) The buying patterns of motor vehicle purchasers;
- (4) Traffic patterns and customer drive time and drive distance;
- (5) The population, demographics, geography, topography, and employment and unemployment rate of the relevant market area; and
- (6) Changes in any of the factors listed above.<sup>7</sup>

### **Prohibited actions by a franchisor**

Current law prohibits a franchisor from taking specified actions regardless of the terms, provisions, or conditions of any agreement, franchise, or waiver. The bill modifies two such prohibitions. The first prohibition currently specifies that no franchisor may "unfairly change or amend unilaterally a franchisee's allotment of motor vehicles or quota, sales expectancy, or sales penetration without reasonable cause." The bill adds that none of those changes may be made without consideration of local market conditions (defined above). The bill also prohibits a franchisor from changing a franchisee's geographic area of responsibility without reasonable cause and consideration of local market conditions.<sup>8</sup>

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<sup>6</sup> R.C. 4517.55(B)(5).

<sup>7</sup> R.C. 4517.01(MM).

<sup>8</sup> R.C. 4517.59(A)(6).

The second prohibition currently specifies that no franchisor may "establish any performance standard or program for measuring franchisee performance that may have a material impact on a franchisee that is not fair, reasonable, and equitable." The bill modifies this prohibition by adding that such a performance standard or program cannot be established without taking into account local market conditions.<sup>9</sup>

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## HISTORY

ACTION	DATE
Introduced	11-12-15

S0242-I-131.docx/ejs

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<sup>9</sup> R.C. 4517.59(A)(24).





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## MEMORANDUM

TO: Ohio Manufacturers' Association  
Government Affairs Committee

FROM: Bricker & Eckler LLP

DATE: March 2, 2016

RE: Legislative, Judicial Report

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### I. March 2016 Government Affairs Committee Counsel Report.

Please find below several political and legislative efforts we have been monitoring for the OMA.

### II. Ballot Issues.

Marijuana Legalization: A proposal from Better for Ohio was certified by the Attorney General's office as having a "fair and truthful" summary and by the Ballot Board as being a single issue. The amendment would allow for medical and recreational use of marijuana for persons 21 years of age or older. The proposal would allow a person to grow up to 8 marijuana plants and would create the Ohio Marijuana Control Commission as the regulating entity. The Better for Ohio plan provides for 40 licensed locations for Marijuana Growth, Cultivation and Extraction facilities.

Better for Ohio did not meet the July 1 deadline for submitting sufficient valid signatures for the November 2015 ballot. We have not seen additional activity from this group pursuing a place on the 2016 ballot.

Ohioans to End Prohibition's "Cannabis Control Amendment" was also certified by the Attorney General and the Ballot Board and missed the July 1, 2015 deadline for signatures to place the measure on the November 2015 ballot. The group has indicated its intention to try to go forward in 2016. The goal of the "Cannabis Control Amendment" is to "end the prohibition of...Cannabis and control all of its personal, medical, noncommercial, industrial and agricultural forms, uses, and applications, including marijuana and industrial hemp." The amendment would allow those age 21 and over to grow up to six plants and possess up to 100 grams of marijuana, and would allow caregivers of those using medical marijuana to grow up to 12 plants and possess up to 200 grams of marijuana.

The Marijuana Policy Project has proposed an amendment to legalize medical marijuana. This national organization has hired Ohio consultants for this

effort, including the Vice President of Ohio Rights Group, which was previously involved in its own legalization efforts. The amendment will legalize medical marijuana and enumerate a list of qualifying conditions, including chronic pain and post-traumatic stress disorder (“PTSD”). The amendment will allow patients and caregivers to possess and grow personal-use amounts of medical marijuana. Five licenses will be created to grow, process, test, distribute and sell marijuana, all of which have accompanying license fees to pay for the administration of the licensure program. The amendment caps the number of large-scale marijuana cultivators (those with a grow site of up to 25,000 square feet) at 15. The number of smaller growers is not limited. While marijuana sales will be subject to sales taxes, no special tax or excise tax is contemplated. The amendment has not yet been submitted to the Ohio Attorney General’s office to begin the ballot initiative process.

Responsible Ohioans for Cannabis is proposing the End Ohio Cannabis Prohibition Act, although language has not been submitted to the Ohio Attorney General’s office or Secretary of State’s office to officially begin the ballot issue process.

The End Ohio Cannabis Prohibition Act is a general legalization of marijuana and allows any person age 18 or older to use cannabis products for personal use; minors may use for medical reasons. The amendment will prohibit testing for cannabis metabolites as a requirement for employment, insurance, and any licenses and from being considered in determining other impairment or intoxication; a person cannot be considered under the influence of cannabis solely because of the presence of metabolites. Sales exceeding \$400 per year are subject to taxes. The Ohio Department of Agriculture will issue licenses and have oversight authority. Non-commercial production is limited to 24 plants per person, for up to 4 people per household. The proposal includes amnesty and expungement for offenses no longer illegal under the Act.

Ohio Medical Cannabis Care LLC submitted the Ohio Medical Cannabis Amendment to the Ohio Attorney General’s office for review on January 13, 2016. The Attorney General rejected the submission on January 22, 2016, saying that he was unable to certify the summary as a fair and truthful statement of the proposed amendment. The group may revise the summary and resubmit for consideration.

Minimum Wage: The Attorney General and Ballot Board have certified the Ohio Fair Wage Amendment to increase Ohio’s minimum wage. The issue, which is supported by the group Stand Up Ohio, will increase the minimum wage to \$10.00 per hour on January 1, 2017. After that, the minimum wage will increase by 50 cents every following January 1<sup>st</sup> until it reaches \$12.00 per hour. Once it reaches \$12.00 per hour, the minimum wage will be annually adjusted for inflation. The amendment also proposes a change to minimum wage as it applies to tipped employees. For tipped employees, the proposal will increase minimum wage to \$6.00 per hour on January 1, 2017. Every January 1<sup>st</sup> thereafter, the minimum wage for tipped employees will increase by \$1.00 until it reaches the full minimum wage paid to non-tipped employees, at which point it will be annually adjusted for inflation. Stand Up Ohio is now collecting signatures in hopes of placing this issue on the 2016 fall ballot.

Strengthening Term Limits on State Legislators: A proposal to further limit Ohio legislative terms has been certified by the Attorney General and Ballot Board. The amendment, which is supported by the group Eight is Enough, would amend the Ohio Constitution to state that no person shall hold any combination of elected legislative offices for more than 12 years, and no person shall hold the same legislative office for more than 8 years. Currently, a person may hold the same legislative office for no more than 8 years, but legislators frequently move back and forth between the House of Representatives and the Senate to indefinitely stay in office.

Ohio Clean Energy Initiative: The Ohio Clean Energy Amendment is being proposed by Yes for Ohio's Energy Future. This marks the 5<sup>th</sup> attempt the group has made with this ballot initiative. The amendment provides for the issuance of general obligation bonds for clean energy initiatives and economic and development purposes. Under the proposal, the Ohio General Assembly would be required to provide for the issuance of these bonds – totaling \$1.3 billion principal each fiscal year for the 10 years after the amendment is adopted. The Ohio Energy Initiative Commission LLC, a limited liability corporation registered in the State of Delaware, would have sole responsibility for awarding funds to projects.

The proposal was certified by the Attorney General's office on November 2, 2015 as having a fair and truthful summary. The Ohio Ballot Board chose to split the proposal into two issues: one contains the core of the Ohio Clean Energy Amendment. The other is a section in the proposal which states that, if part of the amendment is deemed invalid or void, the petitioner shall be permitted to submit subsequent petitions to repair the invalid or void portions with just 1,000 signatures. This section appears to be an attempt to circumvent the normal ballot issue process in the future.

Questions have also been raised as to how Issue 2 from the November 2015 ballot may impact the Ohio Clean Energy Initiative. The amendment provides for \$65 million annually for the administration of the Ohio Energy Initiative Commission. Since the Ohio Energy Initiative Commission is a private entity, and because no other private entity would have the opportunity to provide the services or receive the \$65 million payment, this may run afoul of the anti-monopoly provisions in Issue 2.

This issue, however, will not be decided until Yes for Ohio's Energy Future collects signatures to place the issue on the ballot and the measure is back before the Ohio Ballot Board.

Automatic Voter Registration: The Ohio Motor Voter Automatic Registration was submitted to the Ohio Attorney General's office on February 16, 2016. The amendment would require the Ohio Bureau of Motor Vehicles to automatically register eligible Ohioans to vote whenever they apply for, renew, update or replace an Ohio driver's license, learner's permit, or identification card unless the individual affirmatively opts out of registration. Currently, Ohio has an "opt in" system for registering voters at the Bureau of Motor Vehicles. The Attorney General rejected the petition, concluding that he was unable to certify the summary as a fair and truthful representation of the proposed amendment.

### III. Initiated Statutes.

Fresh Start Act: ResponsibleOhio, the group that proposed a 2015 ballot initiative to legalize marijuana in the state, was also behind a proposed initiated statute. The “Fresh Start Act” was certified by the Attorney General’s Office as having a “fair and truthful” summary and by the Ballot Board as being a single issue. On November 6, 2015, the Ohio Secretary of State certified that petitioners have gathered the required 117,418 valid signatures needed to place the matter before the Ohio General Assembly.

The measure proposed amendments to various sections of the Ohio Revised Code to allow persons convicted of certain drug offenses, conspiracy, attempt to commit an offense, complicity, possessing criminal tools, or corrupt activity to have the conviction expunged if the offense is no longer a crime in Ohio. The act also amended Ohio’s public records laws to prohibit government entities from disclosing information about expunged convictions and would prohibit employers from asking applicants about these.

The Secretary of State transmitted the act to the Ohio General Assembly in January 2016, but backers asked the legislature to withhold consideration of the bill following the creation of medical marijuana study committees in both legislative chambers.

Ohio Drug Price Relief Act: The Ohio Drug Price Relief Act is an initiated statute to enact Section 194.01 of the Ohio Revised Code. The proposal would prohibit the State of Ohio from entering any agreement for the purchase of prescription drugs or agree to pay, directly or indirectly, for prescription drugs unless the next cost is the same or lower than the lowest price paid for the same drug by the U.S. Department of Veterans Services. The proposal is backed by the AIDS Health Care Foundation, a Los Angeles-based organization and world’s largest provider of drugs and health care for HIV/AIDS.

The Ohio Secretary of State transmitted the act to the General Assembly on February 4, 2016. The legislature has four months to enact the legislation or the petitioners may collect additional signatures to place the issue on the November 2016 ballot. Litigation on this issue is ongoing.

On February 29, 2016 the Ohio Manufacturers’ Association, the Ohio Chamber of Commerce and the Pharmaceutical Research & Manufacturers of America, along with electors Keith Lake and Ryan Augsburger, filed a challenge in the Ohio Supreme Court asking the Court to invalidate part-petitions submitted as part of the Ohio Drug Price Relief Act effort. The challenge alleges that, in violation of Ohio law, petition circulators and those who coordinated and oversaw the petition effort, listed false permanent residence addresses, unlawfully altered part-petitions, submitted false circulator statements and, in some cases, were ineligible to circulate petitions due to felony convictions. If the Court invalidates all part-petitions that were collected in violation of Ohio law, initiative petitioners will have fallen short of the Constitutional requirements for submitting a petition to the Ohio General Assembly.

#### IV. Pending Legislation (2015-2016).

H.B. 194 – Ohio Patent Troll Legislation: H.B. 194 is the re-introduction of H.B. 573 from the

previous General Assembly. The bill, sponsored by Representative Kristina Roegner (R-Hudson), revises Ohio law to curb the extortionary practices of certain non-practicing patent owners pejoratively referred to as “patent trolls.” Generally, H.B. 194 would proscribe the “widespread sending of bad faith, objectively baseless” demand letters to “intended recipients” alleging patent infringement. The bill also would empower the Ohio Attorney General to investigate and bring civil actions against violators. This bill has received one hearing in the House Judiciary Committee.

As a group, OMA is comprised of members who are not only the recipients of patent troll demand letters but also are patent owners and therefore, may have the need to enforce patents themselves. As such, we have worked with OMA’s legislative affairs director and representatives of OMA member Proctor & Gamble to turn the conversation from the original language in former H.B. 573 supported by interest groups comprised of predominantly non-patent owners such as the Ohio Bankers League and Ohio Retailers Association, towards an alternative bill that seeks to reduce unintended consequences impacting patent owners, among other issues.

As introduced, H.B. 194 is a substantial improvement over H.B. 573. H.B. 194 is more narrowly tailored to the activities of true patent trolls. H.B. 194 also includes less ambiguity in its language and creates a generally less onerous compliance burden for Ohio manufacturers and other patent owners.

We have participated in several interested parties meetings with the OMA and legislators to discuss the bill and proposed amendments. We continue to monitor problematic proposals from Representative Jim Butler (R-Oakwood) to set up an Ohio administrative regime to review patent infringement demand letters or to strengthen the bill against all parties other than the pharmaceutical industry. We also continue to monitor for any alternative draft language that may be interpreted by the courts as providing an inherent private right of action.

H.B. 350 – Autism Coverage: Representatives Cheryl Grossman (R-Grove City) and Lou Terhar (R-Cincinnati) have introduced H.B. 350 to require health plans to provide coverage for screening, diagnosis, and treatment of autism spectrum disorder. The bill was referred to the House Government Accountability & Oversight Committee where it has had four hearings. Autism Speaks, the Center for Autism Spectrum Disorders at Nationwide Children’s Hospital, and families and individuals impacted by autism spoke in favor of the legislation. Opponents include the Ohio Chamber of Commerce, NFIB-Ohio, and the Ohio Association of Health Plans. Opponents expressed concerns with the cost of the mandate and the burden placed on businesses as the result of rising health care costs for services that employees may not want or need.

*(Attached, please find a detailed overview and analysis of H.B. 350 from Kevin Burns)*

H.B. 394—Unemployment Compensation: Representative Barbara Sears (R-Maumee) introduced H.B. 394 to reform Ohio’s unemployment compensation system. Primarily, the bill changes the calculation of the minimum safe level (“MSL”), which is used to determine solvency of the Unemployment Compensation Fund (“the Fund”). The bill proposes to increase the

taxable wage base for employer contributions from \$9,000 to \$11,000 for any year when the Fund is at or below 50% of the MSL. The rate will be lowered to \$9,000 and the new employer rate for non-construction employers will decrease from 2.7% to 1% for contribution periods following a computation date on which the Fund is at or above MSL.

The bill requires an individual to have earned wages in at least two of the three prior calendar quarters to establish a “base period” for eligibility for unemployment benefits. The bill will also require drug testing in certain circumstances and limits an individual’s benefits period from 26 weeks to a range of 12 to 20 weeks. If the Fund is at or below 50% of MSL, the maximum weekly benefit amounts are frozen at the prior year’s level.

The bill is currently pending in the House Insurance Committee where it has had six hearings. Proponents of the legislation include the Ohio Manufacturers’ Association, Ohio Chamber of Commerce, NFIB-Ohio, Ohio Council of Retail Merchants, and the Ohio Farm Bureau.

During a January 2016 hearing, a substitute bill was accepted by the House Committee. Changes included in the substitute bill include a provision that will allow an appeal for workers denied benefits because they were terminated for violating company handbook policies. The substitute bill also sets Social Security offsets at 50% and addresses concerns raised by the construction industry about high seasonal rates of unemployment.

S.B. 171 – Uniform Interstate Depositions and Discovery Act: Senator Seitz has introduced Senate Bill 171, which would repeal current Ohio Revised Code section 2319.09 and replace it with the Uniform Interstate Depositions and Discovery Act. This model legislation from The National Conference of Commissioners on Uniform State Laws provides procedures for courts in one state to issue subpoenas for out-of-state depositions. Under the act, litigants may present the clerk of the court located in the state where discoverable materials are sought with a subpoena issued by a court in the trial state. The clerk will issue a subpoena for service on the person or entity indicated on the original subpoena. This will eliminate certain costs currently incurred, including the need for obtaining local counsel in the discovery state.

Thirty-five states and the U.S. Virgin Islands have already adopted the Act and four states, including Ohio, have introduced legislation to adopt. The Act is approved by the American Bar Association and suggested state legislation by the Council of State Governments. S.B. 171 has had two hearings in the Senate Civil Justice Committee. Speaking in favor of the legislation, a member of the Ohio State Bar Association’s Family Law Committee stated the bill will provide consistency and clear rules for out-of-state discovery and depositions. The Uniform Law Commission called S.B. 171 “simple and efficient.”

S.B. 201 – Nuisance Law: Senator Jim Hughes (R-Columbus) introduced S.B. 201 to expand nuisance law to apply to any real property, including vacant land, on which an offense of violence has occurred or is occurring. Under continuing law not changed by the bill, the Ohio Attorney General, or the chief legal officer of a political subdivision, is authorized to bring legal action to require the abatement of a nuisance. These proceedings may result in property being unavailable for use for one year and the imposition of fines and taxes. Senator Hughes said in his

sponsor testimony that he introduced the bill after he was contacted by the City of Columbus. The City said that there are sites and structures in the city that have been the location of multiple stabbings, shootings and other violent offenses, but the city is currently unable to remedy these nuisance locations under current law. The bill was introduced on August 10, 2015 and has had three hearings in the Senate Civil Justice Committee.

S.B. 208 – Small Business Tax Deduction: S.B. 208 was introduced by Senator Bill Beagle (R-Tipp City) to correct the small business income tax reduction contained in House Bill 64, the FY2016-2017 biennial budget bill, that would have caused some small businesses to pay a higher tax rate in 2015 when a reduction was intended. S.B. 208 corrected the issue and also modified the commercial activity tax (“CAT”) exclusion for a New Albany business park. The bill made changes to the method for phasing out payments that school districts received to reimburse them for their loss of tangible personal property taxes. This provision was in response to language contained in H.B. 64 that was vetoed by Governor John Kasich. S.B. 208 was signed by the Governor on November 15, 2015.

S.J.R. 2 – Congressional Redistricting: S.J.R. 2 was introduced by Senator Frank LaRose (R-Copley) and Senator Tom Sawyer (D-Akron) to create a new process for congressional redistricting. The plan mirrors Issue 1 from the November 2015 ballot. It proposes a seven-member panel to draw new districts: the governor, auditor, secretary of state, and four legislative members appointed by the majority and minority parties in each chamber. For a map to be used for the full 10-year cycle, the plan would need approval from two minority party members. Without those two votes, the map would only be used for 4 years, at which point the panel would reconvene to draw a new map. The proposal also includes language to prevent maps from being drawn to favor one party over another.

If approved by the Ohio General Assembly, the issue would be put before voters as a statewide ballot issue. S.J.R. 2 was referred to the Government Oversight & Reform Committee on September 15, 2015 but has not yet had a first hearing.

H.J.R. 2, sponsored by Democratic Representatives Mike Curtin (D-Columbus) and Kathleen Clyde (D-Kent) also proposes changing the congressional redistricting process. This bill has been pending in the House since March 2015, but has not received a hearing.

#### V. 2016 Legislative Priorities – AP Forum.

On Thursday, February 11, 2016, Ohio General Assembly Leaders participated in the 2016 Legislative Preview Session with the Associated Press.

2016 Presidential Race: In response to questions about the impact that Governor John Kasich’s presidential run has had on the work of the Ohio General Assembly, House Speaker Cliff Rosenberger (R-Clarksville) stated that Governor Kasich’s presidential run has “not stopped the House one iota. We talk anytime.” Speaker Rosenberger reiterated that the legislative calendar is not dependent on the presidential race and Governor Kasich would not ask lawmakers to support or oppose policies in accordance with his platform. Senate President Faber (R-Celina) agreed

with Speaker Rosenberger's sentiments, while Senate Minority Leader Joe Schiavoni (D-Youngstown) quipped that the "governor doesn't call me to ask about legislation." Senator Schiavoni noted he believes the General Assembly will address more "feel-good" bills in 2016.

Lt. Gov. Mary Taylor also does not think Governor Kasich's run will slow down the Governor's agenda in Ohio.

The chairmen of both the Ohio Republican Party and the Ohio Democratic Party also gave their thoughts about the 2016 presidential campaign. Chairman Matt Borges of the Ohio Republican Party stated that the Ohio Republican Party endorsed Kasich for president. The Ohio Democratic Party has not yet endorsed either Senators Sanders or Clinton. Chairman Borges stated that he does not believe Trump will be the nominee, however if Trump wins the nomination, Borges believes he will defeat Sanders in the general election.

Severance Tax: Leaders from both parties agreed that now is not the time for Ohio to increase its severance tax due to current market conditions and negative results in North Dakota and Oklahoma. All leaders agreed that any future tax increases should benefit the local communities where the resources are removed instead of going toward an income tax cut.

Congressional Redistricting: Leaders in both legislative chambers agreed that restoring public faith in the election process is a priority. Senate President Keith Faber (R-Celina) highlighted S.J.R. 2, which was introduced by Senator Frank LaRose (R-Copley) and Senator Tom Sawyer (D-Akron). The bill proposes a new method for redrawing Congressional districts and moves authority away from the legislature and to a new entity. The bill is modeled on language in Issue 1, which was passed by voters in November 2015 and reforms the process for drawing General Assembly districts.

Secretary of State Jon Husted called the congressional redistricting process "outdated." Treasurer Josh Mandel, Auditor Dave Yost and Attorney General Mike DeWine all agreed with the Secretary.

Clean Power Plan & Renewable Energy Freeze: President Faber stated that the recent U.S. Supreme Court's decision to stay the clean power plan gives Ohio time to find a solution on the freeze on energy efficiency and renewable standards. House Minority Leader Fred Strahorn (D-Dayton) said he continues to oppose the freeze because renewable energy could save ratepayers billions of dollars and put Ohio in front of the industry. Senator Troy Balderson (R-Zanesville) is likely to introduce legislation this spring that will include an end date for Ohio's freeze to renewable energy mandates. Legislators have been in talks with the Kasich Administration about the bill following the U.S. Supreme Court decision in February 2016 to put the Clean Power Plan on hold. Without any legislative action, the freeze will end in December 2016.

Education "Deregulation": Several leaders noted recent issues at the Ohio Department of Education and highlighted legislative proposals on school standards and accountability. President Faber said he would like to see S.B. 3 move forward and give control back to local districts by freeing some high-performing districts from state requirements. Representative Strahorn stated

he hopes the General Assembly will make some changes to give schools more discretion in educating students. Senator Schiavoni questioned the commitment of his Republican colleagues to local control and criticized legislation that put the low-performing Youngstown City Schools under the direction of a CEO.

Local Hiring Quotas: Ohio Republican leaders said they oppose placing mandates on companies to require hiring a certain number of local employees for work on publicly-funded projects. Ohio Democratic leaders are in favor of such a quota, but would allow an exception if a company can demonstrate a shortage of qualified local employees.

Medical Marijuana: Speaker Rosenberger stated that he is not a proponent of recreational or marijuana use, but is willing to learn more about the impacts of medical marijuana before considering legislation to legalize use. President Faber echoed Speaker Rosenberger's views, while Senator Schiavoni believes that Ohio should be moving more quickly to legalize medical marijuana.

Lt. Gov. Taylor said she is unsure what Ohio should do, but after talking with doctors, believes that the state should do what the medical community thinks is best on medical marijuana use. Secretary Husted and Auditor Yost were also in agreement that the use of medical marijuana may be appropriate in some cases.

#### VI. Ohio 2020 Tax Policy Study Commission.

The Ohio 2020 Tax Policy Study Commission met December 15, 2015; January 20, 2016 and February 24, 2016. The Commission is charged with reviewing the state's tax structure and policies and making recommendations in a number of areas.

During the December meeting, John Minor presented testimony on behalf of JobsOhio, emphasizing the importance of lower tax rates and increased competitiveness through Ohio's tax structure. The Ohio Farm Bureau also presented testimony highlighting the importance of an accurate and fair Current Agricultural Use Valuation ("CAUV") formula. In response to a question from the Commission, the Farm Bureau also noted concerns with increased property taxes at a local level and expressed interest in working on state policy to avoid shifting taxes from the state to the local level.

In January, Mark Engel presented testimony on behalf of the OMA. His testimony highlighted the four principles of "good tax policy": (1) certainty, with clearly defined revenue classes and members; (2) equitable, with no winners and losers; (3) simple, or easy to understand, easy to comply with, and easy to make payment on; and (4) transparent, with a clear relationship to the true cost of government. He noted the successful phase-out of the tangible personal property tax and phase-in of the commercial activity tax ("CAT"). He also told the commission that, in making reforms, the state should not engage in tax shifting or moving taxes from one person and shifting them to the benefits or exemptions of another. He also encouraged a full review of Ohio's severance tax policy.

The Commission also received testimony from the Greater Cleveland Partnership, which urged the Commission to carefully consider the implications of expanding the sales tax base or increasing the sales tax rate.

On February 24, 2016, the Commission met to discuss tax expenditures. The Department of Taxation spoke generally about the definition of a “tax expenditure” and outlined the Tax Expenditure Report that is included as an appendix to the state’s biennial budget. Testimony from the Buckeye Institute focused on the problems with tax expenditures – especially on narrowly tailored carve-outs that only impact very specific groups, stating that the government “should not pick winners and losers” through carve-outs and exemptions to Ohio’s tax structure. Other groups advocated for periodic review of Ohio’s tax expenditures and evaluation of those that may serve some greater purpose (such as drawing in and retaining business in the state or preventing double taxation).

#### VII. Legislative Medical Marijuana Task Forces.

Both chambers of the Ohio Legislature have created committees to study the issue of medical marijuana, following the failure of Issue 3 on the November 2015 ballot and amid continued ballot initiative efforts by groups seeking to legalize the substance.

The House Task Force, which is chaired by Representative Kirk Schuring (R-Canton), has held three hearings and heard testimony on the legalization of marijuana for medicinal use. Proponents of legalization include individuals who suffer from conditions for which marijuana may be used as a treatment. A pediatric neurologist and director of the Complex Epilepsy Clinic of Nationwide Children’s Hospital also spoke as a proponent of legalization. Law enforcement officials have testified as opponents, citing concerns with crime and Ohio’s current opioid abuse epidemic.

We continue to work with the OMA on testimony for an upcoming meeting of the House Task Force, to discuss implications of marijuana legalization for employers in the state.

The Senate effort, which is led by Senator Dave Burke (R-Marysville) and Senator Kenny Yuko (D-Richmond Hts.) conducted a three-city listening tour in early 2016 and is now contemplating legislation that may result from that tour. As with the House Task Force, the Senate committee heard from parents of children with conditions that may be helped by medicinal cannabis and veterans who believe the drug could help with post-traumatic stress disorder (“PTSD”).

#### VIII. Litigation Update.

Chiquita Brands International, Inc. v. National Union Fire Ins. Co. of Pittsburgh, PA, 1<sup>st</sup> Dist. Case No. C-140492.

In late November of 2014, the OMA (along with several other companies) filed an amicus merit brief in support of Chiquita in a case involving an insurance coverage battle. This dispute began in 2007 when Chiquita notified its insurance carrier, National Union, of certain underlying tort

actions and demanded that National Union honor its coverage obligations. National Union sent a reservation of rights letter in which it agreed to participate in Chiquita's defense but purported to "reserve the right to seek reimbursement from Chiquita for attorneys' fees or costs incurred with regard to allegations and/or claims for which there is no coverage." National Union did not pay any amount to defend Chiquita under the reservation of rights letter. Years later, the trial court determined that National Union had a duty to defend Chiquita. Thereafter, National Union began paying Chiquita's defense costs and did so for years under this interim order. National Union paid more than \$9 million before the trial court entered final judgment on December 16, 2011. After the December 16, 2011 entry, National Union paid an additional \$2.5 million in defense payments for Chiquita until the First District Court of Appeals reversed.

Upon remand, National Union sought and obtained a declaration that it was entitled to reimbursement of the amount it had paid to defend Chiquita (\$11.7 million). Chiquita appealed to the First District Court of Appeals and formed an amici coalition to support its position that the trial court erred in requiring it to reimburse National Union. The amici have asserted that the trial court erred for several reasons, including that (1) the payments were voluntarily made to satisfy Chiquita's interim judgment against National Union and, therefore, the issue is moot and National Union cannot recoup the payments; (2) under Ohio law, an insurer cannot create an implied in-fact contract that allows it to seek reimbursement of defense costs (for which the policy does not provide); and (3) even if an insurer could create an implied in-fact contract for reimbursement of defense costs it paid, National Union's reservation of rights letter did not do so because, among other things, there was a lack of consideration.

The purpose of the amicus brief was to support current Ohio law which holds that an insurer's duty to defend is broader than its duty to indemnify and to preserve the rights of policyholders to collect and retain amounts due them under the defense coverages of their policies – even in cases where the insurers ultimately are determined not to have a duty to indemnify. Unfortunately, the court of appeals denied the motion for leave to file an amicus brief. As a result, the amicus brief filed by the OMA and others will not be considered by the Court.

Oral argument was held on April 28, 2015. On December 30, 2015, the Court of Appeals issued its decision and held that where "(1) an insurer does not provide a defense until after a court has entered judgment declaring that the insurer has a duty to defend, (2) the insured demands that the insurer provide a defense, (3) the insurer provides the defense under a reservation-of-rights starting that it may seek to be reimbursed, and later (4) an appellate court determines that a duty-to-defend never existed, then (5) the insurer is entitled to be reimbursed for its defense-cost expenditures under a theory of restitution." *Chiquita Brands Int'l v. Nat'l Union Fire Ins. Co.*, 2015-Ohio-5477. Moreover, the court found that Chiquita's argument that the trial court erred when it held that National Union was entitled to reimbursement as the prevailing party on appeal was moot. Finally, the court overruled Chiquita's second assignment of error that the trial court erred when it determined that National Union was entitled to prejudgment interest calculated from the date that it made each payment, instead of from the date of the court of appeals decision in *Chiquita I. Id.*

*Navistar, Inc. v. Levin*, Sup. Ct. No. 2014-0140.

The OMA filed an amicus brief in support of the taxpayer in *Navistar, Inc. v. Levin*, Sup. Ct. No. 2014-0140. The case involves the credit against the CAT for net operating loss carryforwards contained in R.C. 5751.53. The statute provides a credit for deferred franchise tax assets net of any associated valuation reserve recorded on its books and records as of the last day of the taxpayer's taxable year ending in 2004 (the "amortizable amount"). Any taxpayer wishing to claim the credit had to file a report notifying the tax commissioner of its amortizable amount by June 30, 2006. The Tax Commissioner had until June 30, 2010, to audit the report any make any correction to it.

Navistar timely filed its report and claimed an amortizable amount based upon its books and records. However, in December 2007 it restated its financial statements for the years ending in 2003-2005. This restatement caused Navistar to increase its valuation reserve, causing its amortizable amount to be reduced to \$0. Upon audit, the Tax Commissioner reduced Navistar's credit accordingly. The BTA upheld the action and Navistar appealed to the Supreme Court.

On appeal, Navistar and OMA argued there is no authority for the Tax Commissioner to alter an otherwise correct amortizable amount due to events occurring after the date the report was due in 2006. Rather, that official's authority is limited to correcting mistakes existing as of the date of the report was filed. The Tax Commissioner argued that because the records were restated for FYE 2004, he could reduce the amortizable amount accordingly.

Oral argument was held on May 6, 2015. We were permitted to participate in oral argument, but due to the number of questions asked of Navistar's counsel, our time was limited. On August 18, 2015, the Court vacated the judgment and remanded the case back to the BTA with instructions to consider the evidence presented by Navistar regarding whether its records were kept according to GAAP. Upon remand, the BTA did so, concluded that the records did not comply with GAAP, and upheld the denial of the credit.

*(Please also see the attached overview and detailed analysis from OMA Tax Counsel Mark Engel on the Navistar decision.)*

*Newegg, Inc. v. Testa*, Sup. Ct. No. 2015-0483.

On October 20, 2015, the OMA joined an amicus brief with the Ohio State Medical Association, Ohio Dental Association and Ohio Chemistry Technology Council in support of Tax Commissioner Joe Testa. The case is before the Ohio Supreme Court on appeal from the Ohio Board of Tax Appeals. This case involves application of the commercial activity tax and the Board of Tax Appeals' upholding the "bright-line presence" test provided for in R.C. 5751.01(H) and (I). On January 7, 2016, the Ohio Supreme Court accepted the case for oral argument.

*(Attached, please find a copy of the amicus brief from OMA Tax Counsel Mark Engel.)*

*Linert v. Ford Motor Company*, Sup. Ct. No. 2014-1940.

On August 17, 2015, the OMA joined an amicus brief with the National Association of Manufacturers, the Chamber of Commerce of the United States of America, the Ohio Chamber

of Commerce and others in a product liability case that was appealed from the Seventh District Court of Appeals.

The decision of the Seventh District requires manufacturers selling products in Ohio to warn consumers, post-sale, of any known risk in using a product, even if the product is not defective. In its decision, the court of appeals interpreted R.C. 2307.76 in a way that is not only contrary to the plain language of the statute, but also to the substantial weight of authority from courts around the country that have adopted post-sale duties to warn.

In light of the court of appeals decision, manufacturers now have a disincentive against selling to Ohio consumers because any subsequent product improvement triggers a duty to warn every prior purchaser of the product, regardless of the likelihood or seriousness of the “risk” posed. Amici, including the OMA, argue that the Seventh District’s decision imposes an “innovation tax” in Ohio.

Briefing has been completed and oral argument was held on January 5, 2016.

Zang v. Cones, Sup. Ct. No. 2015-1576.

The Ohio Manufacturers’ Association submitted an amicus curiae memorandum in support of jurisdiction in *Zang v. Cones*, a product liability case involving Motorola as the manufacturer of the emergency radio used by a firefighter at the time of her death in the line of duty. The OMA urged the Court to accept the appeal on the following two propositions of law:

- 1) To survive summary judgment, R.C. 2307.75 requires a plaintiff in a products liability case to establish the availability of a technically and economically feasible alternative design.
- 2) In a design defect case under R.C. 2307.75, a lay witness with no experience and with no perception or first-hand knowledge of the product cannot offer witness opinion testimony as to the product’s design or any feasible alternative design.

The Ohio Supreme Court recently declined to accept jurisdiction in the case.

#### IX. Ohio Constitutional Modernization Commission.

The Ohio Constitutional Modernization Commission (“OCMC”), which was created in 2011, continues its work studying the Constitution of Ohio and is considering changes to update various Constitutional sections and provisions.

Created in 2011 by H.B. 188, the commission was scheduled to wrap up its work by July 1, 2021. However, during the 2015 budget process, the Ohio General Assembly shortened the timeline for the Commission’s work, moving the conclusion of the Commission up to January 1, 2018

The full Commission met on December 10, 2015 and voted to adopt the Education, Public Institutions & Local Government Committee’s report and recommendation to not change Article

VI, Section I of the Ohio Constitution. Article VI, Section 1 covers funds for religious and educational purposes. The Commission also voted to adopt the Committee's report and recommendation to retain Article VI, Section 2, related to school funding, in its current form.

The Commission met again on January 14, 2016 to consider two recommendations from the Bill of Rights & Voting Committee. The first recommendation suggested no change to Article I, Section 20 of the Ohio Constitution governing Powers Reserved to the People and was accepted with little discussion and no witnesses. The second recommendation to make no changes to Article V, Section 4 governing Exclusion from Franchise for Felony Conviction garnered more discussion regarding felons' voting rights. However, the Commission voted 20-2 to accept the Committee's recommendation.

Bill of Rights & Voting Committee: The Bill of Rights & Voting Committee discussed "mental incapacity" at its November meeting and approved new wording to remove the words "idiot" and "insane person" from the section. The final language approved by the Committee for Article V, Section 6 reads: "The General Assembly shall provide under law that no person who has been determined to lack the mental capacity to vote shall have the rights and privileges of an elector during the time of incapacity."

The Committee met on December 10, 2015 to vote on the language again before sending it to the Coordinating Committee which would then send it to the full Commission. However, the Committee did not vote because committee member Karla Bell, who suggested removing "under the law" and adding "legally" before "determined," was not present the meeting. The Committee plans on resolving these issues at its next meeting.

Constitutional Revision & Updating Committee: The Constitutional Revision & Updating Committee met on January 14, 2016. The Committee considered language to change the initiated statute process. The proposal eliminates the supplemental signature gathering portion of the initiated statute process. The proposal also creates a safe harbor provision to prevent the General Assembly from altering or repealing a law passed by voters on the initiated statute process for at least three years, unless it has two thirds support. The draft also includes an increase in the initial number of signatures needed, from the current 3% to 5% of the vote cast for the last gubernatorial election.

The Committee discussed how the initiated statute proposal is impacted by the Ohio Constitution's single-subject rule, whether the Ohio Supreme Court should have original jurisdiction on challenges to laws passed by initiated statutes, and what should happen if the General Assembly passes an amended version of the proposed initiated statute. The Committee members will consider the proposed language and come back with suggestions to improve it based on the meeting. The Committee may take testimony on the language at the next meeting.

Legislative Branch & Executive Branch Committee: The Legislative Branch & Executive Branch Committee met on January 14, 2016. The Committee could be in a position to vote at its next meeting to recommend a reform plan to Ohio's congressional redistricting plan. The recommendation will be based on two plans currently in the Legislature: H.J.R. 2 sponsored by

Representatives Kathleen Clyde (D-Kent) and Mike Curtin (D-Columbus) and S.J.R. 2 sponsored by Senators Frank LaRose (R-Copley) and Tom Sawyer (D-Akron). Both plans take the process approved by voters as a part of Issue 1 that reformed the General Assembly redistricting process and apply it to the congressional redistricting process. This would include having the panel that draws the state legislative lines also draw the congressional lines. The Committee heard from four witnesses who all encouraged reforms to end gerrymandering of congressional districts.

Coordinating Committee: The Coordinating Committee met on January 14, 2016 and voted to forward the two alternative proposals from the Legislative Branch & Executive Branch Committee regarding the election and terms of state legislators to the full Commission for its consideration. The Legislative Branch & Executive Branch Committee had previously approved sending two term limit extension proposals to the full commission in April 2015. Both proposals extend term limits from 8 to 12 years, but one proposal applied to current lawmakers while the other one does not. The Coordinating Committee had previously questioned whether it should forward the competing proposals before the full Commission and had tabled the matter during its December 2015 meeting.



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## Ohio Supreme Court Decides BTA Must Consider All Evidence Presented in Resolving Whether Any Error Existed in Computing NOL Credit Against the CAT

By Mark A. Engel, Esq.  
Bricker & Eckler LLP

The Ohio Supreme Court issued a decision this week finding that the deadline for notifying the Tax Commissioner of the amount a taxpayer intended to claim as a credit against the commercial activity tax (“CAT”) for net operating losses (“NOLs”) accrued under the former franchise tax, did not preclude the tax commissioner from adjusting the amounts reflected in the notice. However, perhaps signaling an ultimate taxpayer win, because the Board of Tax Appeals (“BTA”) failed to determine whether in fact there was an error in the original notice, the Court vacated the BTA’s decision and remanded the case with instructions to make such a determination without conducting an additional hearing. In doing so, it pointed to extensive evidence submitted by the taxpayer in support of its position that was not discussed by the BTA. It also limited the evidence that may be considered on behalf of the Tax Commissioner *Navistar, Inc. v. Testa*, Slip Opinion 2015-3283, decided August 19, 2015.

The NOL Credit: In 2005, Ohio enacted legislation to phase out the corporation franchise and tangible personal property taxes and to replace them with the CAT. As part of the CAT, a credit was provided based on net operating losses incurred under the franchise tax. In order to claim the credit, taxpayers had to file a report by June 30, 2006, indicating the value of their Ohio NOLs net of any valuation allowance as of fiscal year ending in 2004.

Navistar filed the requisite report on time. However, at the time it was undergoing a restatement of its financial statements for fiscal year 2004 and notified the Tax Commissioner of that fact. Subsequently, it restated its financial statements. As part of the restatement, Navistar increased its valuation allowance for deferred taxes to 100 percent, which reduced the amount of its CAT credit to \$0. Upon audit, the Tax Commissioner exercised his authority to correct errors and reduced the amount of the credit to zero. Navistar appealed to the BTA, where it argued that the Tax Commissioner did not have the authority to change the amount of the credit because there was no error made in the original valuation allowance. Absent an error, the Tax Commissioner had no authority to change the amount of the credit.

The BTA Decision: At the BTA, Navistar introduced evidence from three different experts to the effect that its original calculation of the valuation allowance complied with generally accepted accounting principles (“GAAP”) and was, therefore correct. The Tax Commissioner relied upon Navistar’s amended 10-K report, which contained a statement that it had not applied GAAP correctly. Navistar had also filed a lawsuit against its former

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accounting firm alleging fraud in the preparation of its financial statements and the Tax Commissioner submitted a copy of the Complaint as evidence in the case. Finally, the Tax Commissioner relied upon an expert who testified that based upon the 10-K filing and the contents of the Complaint, Navistar had not complied with GAAP in establishing its valuation allowance. Therefore, its credit report contained an error that could be corrected.

The BTA upheld the action of the Tax Commissioner. Without discussing the testimony of Navistar's witnesses, the BTA concluded that the Tax Commissioner did have the authority to change the amount, and that based upon the 10-K filing Navistar's original calculation was in error. However, while it admitted the Complaint into evidence, the BTA refused to find that it constituted a statement against interest and limited its use at the hearing. Navistar appealed that decision to the Supreme Court.

The Supreme Court Decision: The Supreme Court vacated the decision of the BTA. First, it agreed with the Tax Commissioner that under R.C. 5751.53, that official had the authority to revise the amount of the credit, but only if there was an error in the original calculation. It also agreed that the books and records used to compute the amount of the credit must be kept in accordance with GAAP.

Nevertheless, the Court found the BTA's decision to be unreasonable and unlawful. The BTA specifically referred to the statement in Navistar's 10-K report in finding that Navistar had failed to satisfy GAAP in computing the amount of the credit. However, the BTA failed to discuss the testimony of Navistar's witnesses to the contrary. The Court therefore remanded the case to the BTA to "carefully consider and weigh all pertinent evidence" before determining whether Navistar's original calculation complied with GAAP.

The Court also noted that while the Complaint had been submitted into evidence, the BTA had rejected the Tax Commissioner's argument that the Complaint constituted a statement against interest. While the Complaint was admitted into evidence, the hearing examiner had strictly limited its use at the hearing. The ruling by the hearing examiner regarding the Complaint was not modified or reversed by the BTA; therefore, that ruling stood. Because the Tax Commissioner failed to file a cross-appeal contesting the ruling on the Complaint, he was deemed to waive his right to rely upon the Complaint.

The Court instructed the BTA to consider all the evidence in accordance with the Court's opinion and determine, without further hearing, whether the valuation allowance originally reported by Navistar complied with GAAP. If it did, then the BTA must reverse the Tax Commissioner's final determination. If it finds the original calculation did not comply with GAAP, the BTA must affirm that final determination.

Comments: The Court clearly instructed the BTA to consider all the evidence on the matter of whether the valuation allowance complied with GAAP. What is interesting, however, is its holding that the Complaint may not be used as evidence in that determination. That holding will

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clearly limit the evidence in the record that is favorable to the Tax Commissioner's position. Its expert relied in large part upon the Complaint in concluding that Navistar had not complied with GAAP. In the absence of independent evidence to the contrary, the BTA's finding will largely depend upon the credibility of Navistar's three expert witnesses. Their testimony was largely unrefuted and their qualifications were not seriously challenged.

The OMA filed an amicus brief with the Court. Much of the analysis set forth in the amicus brief found its way into the Court's decision regarding the discussion of the law, as well as the characterization of the evidence introduced by Navistar and its importance in determining whether or not error in fact existed.



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## MEMORANDUM

### ATTORNEY-CLIENT PRIVILEGED

**TO:** Ohio Manufacturer's Association  
**FROM:** Bricker & Eckler LLP  
**DATE:** November 30, 2015  
**RE:** H.B. 305 – Memorandum on Autism Coverage in Ohio and Impact of H.B. 350

---

### ISSUES

1. Is coverage for the treatment of Autism Spectrum Disorder an Essential Health Benefit (“EHB”) for health plans in Ohio?
2. What is the potential impact of H.B. 350, 131st Gen. Assemb., Reg. Sess. (Ohio 2015) [hereinafter H.B. 350]?

### CONCLUSIONS

1. On December 26, 2012, Governor John Kasich signed a directive (the “Directive”) making coverage for Autism Spectrum Disorder an EHB.
2. As an EHB, coverage for Autism Spectrum Disorder under the Directive applies only to new plans issued in the small group and individual markets in Ohio.
3. Similarly to the Directive, H.B. 350 would require coverage for Autism Spectrum Disorder, however, H.B. 350 would apply to large group plans, all grandfathered plans, and sickness and accident plans.
4. As an additional benefit that plans must provide, H.B. 350 may increase employer health care costs.
5. Unlike some state-mandated benefits, the Patient Protection and Affordable Care Act (“PPACA”) will not require Ohio to subsidize the increased health care costs resulting from H.B. 350.

## ANALYSIS

### **I. Coverage for Autism Spectrum Disorder an EHB**

Under PPACA, EHBs are benefits that must be provided by new health plans offered in the small group and individual markets. Patient Protection and Affordable Care Act, Pub. L. No. 111-148, § 1301(a), 124 Stat. 119, 162 (2010) [hereinafter PPACA]; 45 C.F.R. § 155.150(a). PPACA provides a statutory list of federally-mandated EHBs. PPACA § 1302. Included in this list is a category of benefits termed “Habilitative Services.” Regulations issued under PPACA give states authority to define the benefits that comprise this EHB. 45 C.F.R. § 156.110(f).

On December 26, 2012, Governor John Kasich signed the Directive exercising this authority. The Directive defines coverage for Autism Spectrum Disorder as a Habilitative Service, and therefore, makes such coverage a federally-mandated EHB. Office of the Governor, Habilitative Services Letter (Ohio Dec. 26, 2012). Under the Directive, if a child, defined as an individual up to age twenty-one, is diagnosed with Autism Spectrum Disorder, a health plan must provide: speech and occupational therapy; clinical therapeutic intervention; and mental or behavior outpatient services. Id.

To understand the Directive, it is important to note its limited impact. Large group plans and grandfathered plans are not required to provide coverage for EHBs. See PPACA § 1301(a); 45 C.F.R. § 155.150(a); PPACA § 1251. Therefore, the Directive only impacts new plans issued in the small group and individual markets, as these are the plans required by PPACA to provide EHBs.

### **II. The Impact of H.B. 350**

H.B. 350, if enacted, would serve as a complement to the Directive. It would apply to all health plans offered in the large group market, all grandfathered health plans offered individual and small group markets, and to sickness and accident plans issued in Ohio. H.B. 350, § 1751.84; H.B. 350, § 3923.84. For all of these plans, H.B. 350 would mandate coverage for children under the age of twenty-one for the “screening, diagnosis, and treatment” of Autism Spectrum Disorder. Similarly to the Directive, these benefits include: speech or occupational therapy; clinical therapeutic intervention; and mental or behavior outpatient services. Id.

Employers who obtain health insurance for their employees through the small group market will generally not be impacted by H.B. 350. Yet, due to the Directive, these plans will likely already provide benefits for the treatment of Autism Spectrum Disorder. The only exception is if an employer offers a grandfathered small group plan. While the Directive did not reach these plans, H.B. 350 would now require grandfathered small group plans to provide coverage for Autism Spectrum Disorder. This increase in coverage could lead to increased premiums for a limited number of employers in the small group market.

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Page 3

H.B. 350 would have its most significant impact on employers in the large group market. It would require all health care plans obtained in the large group market to provide coverage for Autism Spectrum Disorder, regardless of a plan's grandfathered status. This expansion in mandated coverage will likely increase health care cost for large employers.

It is important to note that Ohio will not be required to provide a subsidy to cover the additional insurance costs created by H.B. 350. Under certain circumstances, states may be required to pay individuals or health insurance issuers a subsidy if the state requires new small group or individual plans to provide benefits in excess of the federally-mandated EHBs. 45 C.F.R. § 155.170(b). However, because large group and grandfathered plans are the only health plans impacted by H.B. 350, Ohio will not be required to offset the additional costs of this proposed legislation.

### **III. Conclusion**

H.B. 350 would require large group health plans, grandfathered health plans, and sickness and accident plans to provide coverage for Autism Spectrum Disorder. This proposed legislation would represent an increase in the benefits that plans must provide, and thus it could potentially increase the cost of the plans impacted. Furthermore, the state would not be required under PPACA to subsidize the cost of providing these additional benefits.

KTB:tflec

**From:** Info [<mailto:info@ohiociviljustice.org>]  
**Sent:** Monday, February 29, 2016 11:16 AM  
**To:** Ryan Augsburger  
**Subject:** Ohio Alliance for Civil Justice: Update & Invoice

Dear Alliance Member:

Thank you for your past support of the Ohio Alliance for Civil Justice (Alliance). While this past year has been relatively quiet with regard to tort reform legislation, we are preparing for some potential legislative opportunities in 2016, and more importantly we are ready to commence our Supreme Court Education Initiative.

Since 2002 the Alliance has conducted its Supreme Court Education Initiative which offers Alliance members information for newsletters, emails and other publications to educate as many Ohioans as possible about the upcoming Ohio Supreme Court elections.

This year the task takes on increased importance due to the fact that Ohio voters will be selecting two new Ohio Supreme Court justices in November with the retirements of current Justices Judith Ann Lanzinger of Toledo and Paul Pfeifer of Bucyrus.

Given the impenetrable media attention that will be focused on the presidential and US Senate race in Ohio, a grassroots education initiative on the Ohio Supreme Court elections will be vital to ensure Ohio voters – your members and employees - are adequately educated on these important candidates.

Fortunately since the 2002 election the philosophical position of the Ohio Supreme Court has been relatively objective and reasoned and the Ohio judicial environment has been rated as stable and predictable. However complacency in the 2016 judicial elections could impel the undoing of much of the tort reform progress made in this state and jeopardize this stability. It only takes one lost seat on the Court to begin to significantly de-stabilize the judicial environment in Ohio.

Our priorities have not changed and in the coming weeks we will provide you with materials that identify the Ohio Supreme Court candidates who are most likely to work to:

- Promote a healthy economic climate for Ohio;
- Stop frivolous lawsuits against businesses and professionals; and
- Interpret the law, not make new laws.

On the legislative front the Alliance is supporting [SB 268](#) which was recently introduced by Sen. Bill Seitz (R-Cincinnati) and is designed to overhaul the state's employment discrimination laws. Ohio's current employment discrimination law is very different from both its federal counterpart and the similar laws of other states to the point that it places Ohio at a competitive business disadvantage.

The Alliance believes SB 268 will restore balance and predictability for Ohio employers, while, at the same time, preserve the crucial right of employees to be free from discrimination in the workplace.

Among its key reforms, SB 268:

- Creates a universal 365-day statute of limitations for all employment discrimination claims.
- Eliminates individual statutory liability for managers and supervisors.
- Caps noneconomic and punitive damages based on the size of the employer.
- Unifies the filing of age discrimination claims to the same procedures and remedies as all other protected classes.
- Requires individuals to elect between filing an administrative charge with the Ohio Civil Rights Commission or filing a discrimination lawsuit in court, with the filing of the former tolling the statute of limitations for the latter.
- Prioritizes mediation and conciliation for all charges filed with the OCRC, such that all but the most difficult of cases can be resolved efficiently and cost-effectively.
- Establishes an affirmative defense to claims not alleging an adverse, tangible employment action, when 1) the employer exercised reasonable care to prevent or promptly correct the alleged unlawful discriminatory practice or harassing behavior, and 2) the employee failed to take advantage of any preventive or corrective opportunities provided by the employer or to otherwise avoid the alleged harm.

While we can be gratified by our legislative gains in the area of lawsuit abuse and the relatively stable and predictable judicial environment in Ohio, we've not forgotten our lesson from the past, and the Alliance continues to ensure any legal challenges to tort reform measures do not go without a strong and united legal defense. Thus the Alliance remains on full-alert for cases moving through the Ohio judicial system that could impact Ohio tort laws to the detriment of our state's economic competitiveness.

Recently the Alliance filed an amicus brief in the Ohio Supreme Court case titled *Simpkins v. Grace Brethren Church of Delaware* to defend the noneconomic damage limitations enacted in tort reform legislation (Am. Sub. SB 80) in 2005.

Attached is a copy of the Alliance amicus brief in this case and your continued support will be imperative to making sure the Alliance can continue to defend against future legal challenges that jeopardize our state's legal climate.

Also attached to this email is your organization's 2016 membership invoice. We are hopeful to have your continued support.

We will likely schedule a general membership meeting in the near future and we encourage you to contact us if you have any questions or if you have any relevant issue or case to call to our attention.

Respectfully,  
 OACJ Leadership:  
 Chris Ferruso, NFIB/Ohio  
 Ryan Augsburger, Ohio Manufacturers' Association  
 Barbara Benton, Ohio Society of CPAs  
 Tim Maglione, Ohio State Medical Association  
 Lora Miller, Ohio Council of Retail Merchants  
 Sean McGlone, Ohio Hospital Association  
 Keith Lake, Ohio Chamber of Commerce

# CHAIRMAN MATTHEW J. BORGES -OHIO REPUBLICAN PARTY-

## MEMORANDUM

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ATTN: Ryan Augsburger, Ohio Manufacturer's Association  
FROM: Matt Borges, Chairman  
Ohio Republican Party  
RE: Convention Week Corporate Sponsor Opportunities  
DATE: February 18, 2016

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With the Republican convention happening in Cleveland in just five months, I can say without a doubt that this year will be unlike any other in Ohio politics. Preparations have been taking place for quite some time and I'm glad to be able to share some exciting opportunities for you to take a leading role in making it a success.

Enclosed, please find a description of corporate sponsor packages including being a member of the exclusive "Ohio Welcoming Committee", as well as the different sponsorship levels for the individual events that are being planned to honor some of our most distinguished Ohio Republicans.

As proud Ohioans, we all want to make sure the 2016 Republican convention experience is the best ever for our guests. Your involvement is an important part of making sure that the events for our guests surrounding the convention are dynamic, inclusive and unforgettable.

We are currently finalizing the details for some of the events that will be happening throughout the week. For further information on the schedule of events or more details on becoming a sponsor, please do not hesitate to contact me or Amy Kerschner (614-595-2646).

Thank you for taking a leadership role in making this week an unmatched success. I look forward to talking with you soon.



# Ohio Convention Committee 2016

## Corporate Sponsorship Opportunities

*As of 2.1.16*

### Ohio Welcoming Committee - \$100,000 Sponsorship Level

- Top billing at Ohio Convention Committee 2016 events;
- Corporate representatives act as hosts/greeters at events;
- Recognition on all sponsor signage;
- Invitations to other Ohio convention-related events;
- Priority consideration for reservations for 4 rooms at Ohio hotel;\*\*
- Priority consideration for 5 credentials for one convention session;\*\*
- Priority consideration for 5 complimentary transportation passes for entire convention week;\*\*
- 5 tickets to Major Donor/Corporate Sponsor event.

### Event Sponsor - \$50,000 Sponsorship Level

- Top billing at one major Ohio Convention Committee 2016 event;
- Corporate representatives act as hosts/greeters at event;
- Recognition on all sponsor signage;
- Invitations to other Ohio convention-related events;
- Priority consideration for reservations for 3 rooms at Ohio hotel;\*\*
- Priority consideration for 4 credentials for one convention session;\*\*
- Priority consideration for 4 complimentary transportation passes for entire convention week;\*\*
- 4 tickets to Major Donor/Corporate Sponsor event.

### Event Co-Sponsor - \$25,000 Sponsorship Level

- Shared billing at one major Ohio Convention Committee 2016 event;
- Corporate representatives act as co-hosts/greeters at event;
- Recognition on all sponsor signage;
- Invitations to other Ohio convention-related events;
- Priority consideration for reservations for 2 rooms at Ohio hotel;\*\*
- Priority consideration for 3 credentials for one convention session;\*\*
- Priority consideration 3 complimentary transportation passes for entire convention week;\*\*
- 3 tickets to Major Donor/Corporate Sponsor Dinner.

**\*\* These details have not been finalized and no guarantees can be made at this time. Sponsors will be given priority consideration for remaining rooms and passes available.**

*No corporate funds will be used to provide subsistence or travel to any delegate or for any other political purpose. All funds provided to Ohio Convention Committee 2016 will be used in full compliance with state and federal campaign finance and ethics laws.*

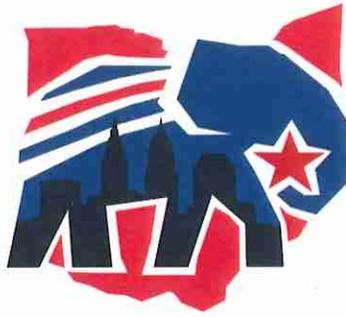
## Event Patron - \$15,000 Sponsorship Level

- Shared billing at one major Ohio Convention Committee 2016 event;
- Recognition on all corporate signage;
- Invitations to other Ohio convention-related events;
- Priority consideration for reservations for 1 rooms at Ohio hotel;\*\*
- Priority consideration for 2 credentials for one convention session;\*\*
- Priority consideration for 2 complimentary transportation passes for entire convention week;\*\*
- 2 tickets to Major Donor/Corporate Sponsor Dinner



**\*\* These details have not been finalized and no guarantees can be made at this time. Sponsors will be given priority consideration for remaining rooms and passes available.**

*No corporate funds will be used to provide subsistence or travel to any delegate or for any other political purpose. All funds provided to Ohio Convention Committee 2016 will be used in full compliance with state and federal campaign finance and ethics laws.*



# Ohio Convention Committee 2016

## Corporate Sponsorship Commitment Form

*Please indicate your sponsorship level:*

- Ohio Welcoming Committee: \$100,000 Sponsorship Level
- Event Sponsor: \$50,000 Sponsorship Level
- Event Co-Sponsor: \$25,000 Sponsorship Level
- Event Patron: \$15,000 Sponsorship Level

*Check if you have a preference on which day you would like to sponsor an event:*  
\_\_\_ **Monday** \_\_\_ **Tuesday** \_\_\_ **Wednesday** \_\_\_ **Thursday**

---

*Please complete the following information:*

**Name(s):** \_\_\_\_\_

**Company:** \_\_\_\_\_

**Address:** \_\_\_\_\_

\_\_\_\_\_

**Phone:** \_\_\_\_\_ **Email:** \_\_\_\_\_

- Enclosed is my check, made payable to: Ohio Convention Committee 2016.  
*Mailing address:* 2168 Sutter Parkway; Dublin, Ohio 43016

**For questions or additional information, please contact:**  
Amy Kerschner | 614-595-2646 | amykerschner@outlook.com

***Thank you for your support!***

*No corporate funds will be used to provide subsistence or travel to any delegate or for any other political purpose. All funds provided to Ohio Convention Committee 2016, LLC will be used in full compliance with state and federal campaign finance and ethics laws.*

# Ohio Delegation

## Official Sponsorship Opportunities 2016 Republican National Convention

July 18-21, 2016 ★ Cleveland, Ohio



### Available Ohio Delegation Event Sponsorship Opportunities:

- Monday, July 18 Ohio Delegation Breakfast featuring TBA  
Chairman's Circle Luncheon (Ohio Delegation VIPs and sponsors only)
- Tuesday, July 19 Ohio Delegation Breakfast featuring TBA  
Chairman's Circle Luncheon (Ohio Delegation VIPs and sponsors only)
- Wednesday, July 20 Ohio Delegation Breakfast featuring TBA  
Chairman's Circle Luncheon (Ohio Delegation VIPs and sponsors only)
- Thursday, July 21 Ohio Delegation Breakfast featuring TBA  
Chairman's Circle Luncheon (Ohio Delegation VIPs and sponsors only)



### Delegation Convention Week Sponsor - \$50,000

**Response Deadline and \$25,000 down payment due: March 31, 2016**

Combination of personal funds of up to \$10,000 maximum per person (\$20,000 per couple) to the ORP Federal Account; or combination of support including a \$5,000 maximum PAC contribution to the ORP Federal Account

- Top billing at all Ohio delegation events;
- Representatives act as hosts/greeters at events if desired;
- Recognition on all sponsor signage and commemorative program;
- 5 guaranteed hotel rooms for the week (lodging costs paid separately);
- 5 complimentary delegation transportation passes for convention week;
- 5 Ohio Delegation Commemorative Credentials to attend all Ohio delegation convention activities for the week;
- Priority consideration for convention session passes\*\*;
- 5 passes to all Chairman's Circle Luncheons exclusively for sponsors and Ohio Delegation VIPs only;
- Opportunity to include provided or \*\*ORP produced promotional materials in daily delegation gift bags.

### Delegation Event Co-Sponsor - \$25,000

**Response Deadline and \$10,000 down payment due: March 31, 2016**

Combination of personal funds of up to \$10,000 maximum per person (\$20,000 per couple) to the ORP Federal Account; or combination of personal funds including a \$5,000 maximum PAC contribution to the ORP Federal Account

- Shared billing at one major delegation event;
- Representatives act as co-hosts/greeters at event if desired;
- Recognition on all sponsor signage and commemorative program;
- 4 guaranteed hotel rooms for the week (lodging costs paid separately)
- 4 complimentary delegation transportation passes for convention week;
- 4 Ohio Delegation Commemorative Credentials to attend all Ohio delegation convention activities for the week
- Priority consideration for convention session passes\*\*;
- 4 passes to all Chairman's Circle Luncheons exclusively for sponsors and Ohio Delegation VIPs only;
- Opportunity to include provided or \*\*ORP produced promotional materials in one daily delegation gift bag.

## Delegation Event Host - \$15,000

**Response Deadline and \$5,000 down payment due: March 31, 2016**

\$10,000 maximum personal contribution to the ORP Federal Account; or combination of personal funds and up to a \$5,000 maximum PAC contribution to the ORP Federal Account

- Shared billing at one major delegation event;
- Recognition on all sponsor signage and commemorative program;
- 3 guaranteed hotel rooms for the week (lodging costs paid separately)
- 3 complimentary delegation transportation passes for convention week;
- 3 Ohio Delegation Commemorative Credentials to attend all Ohio delegation convention activities for the week
- Priority consideration for convention session passes\*\*;
- 3 passes to all Chairman's Circle Luncheons exclusively for sponsors and Ohio Delegation VIPs only;
- Opportunity to include provided or \*\*ORP produced promotional materials in one daily delegation gift bag.

## Delegation Event Patron - \$10,000

**Response Deadline and \$2,500 down payment due: March 31, 2016**

\$10,000 maximum personal contribution to the ORP Federal Account; or combination of personal funds and up to a \$5,000 maximum PAC contribution to the ORP Federal Account

- Shared billing at one major delegation event;
- Recognition on all sponsor signage and commemorative program;
- 2 guaranteed hotel rooms for the week (lodging costs paid separately)
- 2 complimentary delegation transportation passes for convention week;
- 2 Ohio Delegation Commemorative Credentials to attend all Ohio delegation convention activities for the week
- Priority consideration for convention session passes\*\*;
- 2 passes to all Chairman's Circle Luncheons exclusively for sponsors and Ohio Delegation VIPs only;
- Opportunity to include provided or \*\*ORP produced promotional materials in one daily delegation gift bag.

**\*\*CONVENTION SESSION PASSES (note as of 1/26/16):** all sponsors are guaranteed exclusive priority consideration for convention session passes.

**\*\*ORP PRODUCED PROMOTIONAL MATERIALS:** Sponsors may separately purchase and design their own promotional materials for daily gift bags through the Ohio Republican Party. Please contact ORP Finance Director Susan Waidner to design your own promotional item for daily gift bags.

## Additional Ohio Delegation Sponsorship Opportunities

### Lanyard Sponsor - \$15,000 (Three sponsorship opportunities available)

**Response Deadline and \$5,000 down payment due: March 31, 2016**

\$10,000 maximum personal contribution to the ORP Federal Account; or combination of personal funds and up to a \$5,000 maximum PAC contribution to the ORP Federal Account

- Shared recognition on official Ohio Delegation credential lanyard;
- Recognition on all sponsor signage and commemorative program;
- 3 guaranteed hotel rooms for the week (lodging costs paid separately)
- 3 complimentary delegation transportation passes for convention week;
- 3 Ohio Delegation Commemorative Credentials to attend all Ohio delegation convention activities for the week
- Priority consideration for convention session passes\*\*;
- 3 passes to all Chairman's Circle Luncheons exclusively for sponsors and Ohio Delegation VIPs only;
- Opportunity to include provided or \*\*ORP produced promotional materials in one daily delegation gift bag.

## **Credential Sponsor - \$10,000** (15 sponsorship opportunities available)

**Response Deadline and \$2,500 down payment due: March 31, 2016**

\$10,000 maximum personal contribution to the ORP Federal Account; or combination of personal funds and up to a \$5,000 maximum PAC contribution to the ORP Federal Account

- Shared recognition on one official daily Ohio Delegation commemorative credential;
- Recognition on all sponsor signage and commemorative program;
- 2 guaranteed hotel rooms for the week (lodging costs paid separately)
- 2 complimentary delegation transportation passes for convention week;
- 2 Ohio Delegation Commemorative Credentials to attend all Ohio delegation convention activities for the week
- Priority consideration for convention session passes\*\*;
- 2 passes to all Chairman's Circle Luncheons exclusively for sponsors and Ohio Delegation VIPs only;
- Opportunity to include provided or \*\*ORP produced promotional materials in one daily delegation gift bag.

## **Daily Gift Bag Sponsor - \$5,000** (multiple sponsorship opportunities available)

**Response Deadline and \$2,500 down payment due: March 31, 2016**

- Shared billing on one daily delegation gift bag;
- Recognition on all sponsor signage and commemorative program;
- 1 guaranteed hotel room for the week (lodging costs paid separately);
- 1 complimentary delegation transportation pass for convention week;
- 1 Ohio Delegation Commemorative Credential to attend all Ohio delegation convention activities for the week
- Priority consideration for convention session pass\*\*;
- 1 pass to all Chairman's Circle Luncheons exclusively for sponsors and Ohio Delegation VIPs only;
- Opportunity to put provided or \*\*produced promotional materials in delegation gift bag.

## **Commemorative Program Advertiser**

**Response Deadline and payment due: March 31, 2016**

- Half page advertisement in the official delegation commemorative program - \$1,000
- Quarter page advertisement in the official delegation commemorative program - \$500
- Business Card size advertisement in the official delegation commemorative program - \$250

## **Transportation-Only Package - \$500 per person**

**Response Deadline and payment due: March 31, 2016**

- Bus pass for the entire convention week to all Ohio Delegation Events requiring transportation;

**\*\*CONVENTION SESSION PASSES (note as of 2/19/16):** all sponsors are guaranteed exclusive priority consideration for convention session passes.

**\*\*ORP PRODUCED PROMOTIONAL MATERIALS:** Sponsors may separately purchase and design their own promotional materials for daily gift bags through the Ohio Republican Party. Please contact ORP Finance Director Susan Waidner to design your own promotional item for daily gift bags.

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# ★Ohio Delegation★

## SPONSORSHIP RESPONSE FORM



**Convention Week Sponsor - \$50,000**  
Response deadline and \$25,000 down payment **due March 31**

**Event Co-Sponsor - \$25,000**  
Response deadline and \$10,000 down payment **due March 31**

**Event Host - \$15,000**  
Response deadline and \$5,000 down payment **due March 31**

**Event Patron - \$10,000**  
Response deadline and \$2,500 down payment **due March 31**

**Lanyard Sponsor - \$15,000**  
Response deadline and \$5,000 down payment **due March 31**

**Credential Sponsor - \$10,000**  
Response deadline and \$2,500 down payment **due March 31**

**Daily Gift Bag Sponsor- \$5,000**  
Response deadline and \$2,500 down payment **due March 31**

**Commemorative Program Advertiser**  
Response deadline and payment **due March 31**

Half Page - \$1,000      Business Card - \$250  
Quarter Page - \$500

**Transportation-Only Package - \$500**  
Response deadline and \$25,000 down **due March 31**

**LODGING:** The Ohio Republican Party is pleased to offer lodging to all of our Sponsors and to our Honorary Delegates. For your convenience, the Ohio Republican Party will reserve your requested room(s) at our Ohio delegation lodging assigned in early 2016. **These rooms cannot be booked directly with the hotels. \*\*Please note all lodging costs are paid separately as described above in sponsorship materials. Please select the type and total number of rooms to hold with your reservation.**

QUANTITY based on your sponsorship level *All rooms are non-smoking.*

Single Room (1 person)       Triple Room (3 people/2 beds)      Special requests (please circle each requested):  
 Double Room (2 people/1 bed)       Quad Room (4 people/2 beds)      • Handicap-Accessible Room  
 Double Room (2 people/2 beds)      • Other \_\_\_\_\_

Sponsor Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ ST: \_\_\_\_\_ ZIP: \_\_\_\_\_

Cell Phone: \_\_\_\_\_ Home Phone: \_\_\_\_\_ Work Phone: \_\_\_\_\_

Email: \_\_\_\_\_ Employer /Occupation: \_\_\_\_\_

**Please make personal or PAC contributions payable to the: Ohio Republican Party.** Please mail your contribution to: The Ohio Republican Party, Attn: Susan Waidner, 211 S. Fifth Street, Columbus, OH 43215. **If you have questions, or for more information, please call ORP Finance Director Susan Waidner at (614) 456-2041 or waidner@ohiogop.org.** To donate via credit card, please complete the information below:

Please circle one:      **Visa    MasterCard    American Express    Discover**

Name on Card: \_\_\_\_\_

Amount \$: \_\_\_\_\_ Signature \_\_\_\_\_

Card #: \_\_\_\_\_ Exp.: \_\_\_\_\_ ZIP Code: \_\_\_\_\_

**Please email this form to waidner@ohiogop.org or fax to (614) 232-8842.**

*Contributions to the Ohio Republican Party are not tax deductible for Federal or State income tax purposes. Contributions will be used for federal purposes, pursuant to federal law and are subject to the federal contribution limit of \$10,000 per individual. Corporate gifts associated with this program are not permissible under federal law. All funds solicited in connection with this program are by the Ohio Republican Party. Contributions directly to the Ohio Republican Party's Federal Account from corporations, labor organizations, national banks, federal government contractors, and foreign nationals without "green cards" are prohibited under federal law. Federal law requires us to use our best efforts to collect and report the name, address, occupation, and employer of any individual whose contributions aggregate in excess of \$200 in a calendar year.*

**To: OMA Government Affairs Committee**  
**From: Ryan Augsburger / Rob Brundrett**  
**Re: Energy Public Policy Report**  
**Date: March 2, 2016**

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## **Overview**

2016 is a presidential election year. We expect most legislative activity to occur by June with a post-election, "lame-duck" session to follow in November. Energy matters most discussed among policymakers include ongoing PUCO rate cases governing electricity and the General Assembly's report on alternative energy standards, presently frozen in Ohio.

## **Electricity Rates and Regulation**

Significant utility rate cases are pending at PUCO. Distribution utilities FirstEnergy and AEP have filed cases proposing affiliate power purchase agreements (PPAs) whereby the utility companies impose billions of dollars of new charges on customers to subsidize "uneconomic" generation owned by their affiliate generation company. Late last year, the proposals were modified to attract supporters including the PUCO staff. At this point the proposals became a proposed "settlement". A new round of litigation followed. The cases are highly controversial and have been heavily reported in the press. In the official proceedings at the PUCO have concluded and a final decision by the five-member commission is expected any day. The OMA has been an active opponent to the PPA proposed settlement fielding witness testimony. Contact staff for a copy of the OMA's testimony in the cases.

In recent weeks the high-stakes utility case has spurred high dollar paid media campaigns being aired by competitive suppliers opposed to the PPAs and by utility companies supportive of the PPAs. Consumer groups including AARP are alerting members. Over 65,000 comments from concerned citizens have been filed with the PUCO. Several notable manufacturing leaders have filed their own comment.

## **Clean Power Plan / Federal Greenhouse Gas Regulations / 111(d)**

US EPA issued a final rule in early August. The OMA filed comment together with the NAM and individually. Ohio EPA and the PUCO filed comment on behalf of the state as did the Ohio attorney general. The gist of the testimony: as proposed, 111(d) revisions are unworkable. Litigation on the rule is expected to delay effectiveness. If the provision goes into effect, states will need to adopt "state implementation plans" that will impose regulations on emissions to attain the federal goals. Ohio regulators intend to seek extension. The OMA is conducting research on the many ramifications of the CPP.

The US Supreme Court recently granted the stay requested in the Attorneys General lawsuit meaning that implementation steps will dependent upon legal finding. This week, the OMA joined with the National Association of Manufacturers and the U.S. Chamber in filing an amicus brief to highlight economic concerns with the Plan.

## **Natural Gas Infrastructure**

The OMA has expressed public support for the Rover Pipeline and Nexus Pipeline. Billions of dollars of pipeline investment are underway by several different developers. Additionally the OMA has participated in discussions with JobsOhio and representatives of America Natural Gas Alliance to consider measures to spur industrial delivery off new transmission investments. Research recently conducted by Cleveland State University may be helpful in this vein. Natural

gas production continues to grow in the Buckeye state even with depressed pricing. Officials at JobsOhio have revisited their desire to advance the issue.

### **Transmission Charge Increase**

Ratepayers within the AEP-Ohio service territory may have noticed a jump in on their electricity bills this summer. The increase is attributed to a new rider called the Basic Transmission Cost Rider (BTCR) that went into effect on June 1, 2015.

While lawyers for the OMA Energy Group contested the new rider, it was ultimately approved by the PUCO. Since the implementation of the new rider in June, some members (specifically, AEP-Ohio GS-2 and GS-3 customers) have seen a significant increase in their transmission costs.

### **Polar Vortex *Pass-Through* Charges**

Generation customers of First Energy Solutions (FES) were notified by the provider that they would be billed for a regulatory event associated with the polar vortex power shortages in January 2014. The one-time charge is outside the terms of the contract. If allowed by regulators, the charges would result in an unfavorable precedent for all customers. Several OMA members are working collectively to contest the charges. Recent rulings at the PUCO have been positive for this complaint, now two years have elapsed.

### **Energy Efficiency Legislation**

Legislation was enacted last year (SB 310) to revise Ohio's energy standards. The issue has been reported and discussed at OMA meetings for over three years.

SB 310 froze the alternative energy standards for two years and created a legislative study committee to assess the impacts of the standards. A report was issued in September recommending an indefinite freeze. Governor Kasich subsequently commented that indefinite freeze was unacceptable, and that he did not favor the existing standards either. Legislation could come later this year.

Meanwhile, AEP and FirstEnergy have addressed plans for future renewable and energy efficiency programs in their PPA settlements in spite of the uncertain governing statutes...a move that has angered some in the General Assembly.

### **Manufactured Gas Plant Remediation Costs**

No legislative activity to report. A decision by the Ohio Supreme Court is expected. A provision of the utility PPA settlements has ramifications on this type of cost-recovery.

### **kWh Tax Revisions?**

Stalled legislative proposals to modify the tax revenue generated by power plants (via the tangible personal property tax) may be creeping into discussions to modify the kilowatt hour tax which is paid by customers. In contrast, the tangible personal property tax is paid by power plants. NO VISIBLE ACTION.



## **Proposed Power Purchase Agreement Riders: Bailouts for FirstEnergy and AEP, Higher Prices for Electric Consumers**

### **EXECUTIVE BRIEFING**

The Ohio distribution utilities of FirstEnergy (FE) and American Electric Power (AEP) have recently negotiated settlements with the Staff of the Public Utilities Commission of Ohio (PUCO) and several intervenors<sup>1</sup> for approval of non-bypassable Power Purchase Agreement (PPA) riders that all customers in each utility's service territory, respectively, would be required to pay to subsidize certain generating facilities owned partially or wholly by the utility or its unregulated competitive generation affiliates. The settlement also seeks approval of FE's Electric Security Plan (ESP) and other provisions. Specifically:

- FE's proposed ESP includes a rider that would allow FE to collect costs associated with a PPA with its unregulated competitive generation affiliate, FirstEnergy Solutions (FES), for power from FES's Sammis coal-fired generating plant, Davis-Besse nuclear generating plant, and its share of Ohio Valley Electric Corporation (OVEC) generating plants. FE seeks approval of its proposed rider for an eight-year period (June 2016 through May 2024), shortened from an initial request for a 15-year term.
- AEP's proposed settlement would allow AEP to purchase electricity from twenty coal-fired power plant units in which AEP or its affiliate has an ownership share at prices guaranteed to keep those plants profitable, including the output of AEP's entitlement share of the OVEC generating plants. If the settlement is approved, AEP has committed to convert two coal-fired power plant units to natural gas co-firing by December 31, 2017 if AEP receives cost recovery approval from the PUCO. AEP also would facilitate the largest investment in wind and solar power in Ohio history (projects that would be funded by yet-to-be-determined surcharges on customers' bills). AEP seeks approval of the costs associated with its Purchase Power arrangement for the same eight-year period as FE.

In both cases, PUCO staff initially rejected FE's and AEP's PPA proposals but ultimately agreed to amended versions of the PPAs (as well as other provisions) after behind-closed-doors negotiations with small groups of stakeholders, many of whose support was contingent on predefined financial benefits. If approved by the PUCO, the stipulated deals would represent a significant retreat from Ohio's 16-year transition to a competitive retail electricity marketplace.

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<sup>1</sup>Signatory intervenor parties for the FE stipulation include the Ohio Energy Group, Nucor Steel, Material Sciences, Kroger, COSE, AICUO, AEP, City of Akron, Cleveland Housing Network, Consumer Protection Association, Council for Economic Opportunities in Greater Cleveland, Citizens Coalition, International Brotherhood of Electrical Workers Local 245, OPAE, and EnerNOC. Signatory intervenors for the AEP stipulation include the Ohio Energy Group, Ohio Power Company, Ohio Hospital Association, Mid-Atlantic Renewable Energy Coalition, Ohio Partners for Affordable Energy, Buckeye Power, Sierra Club, Direct Energy, First Energy Solutions, and Interstate Gas Supply.

## **How the PPAs and Proposed Riders Work**

PPAs are a strategy to secure customer subsidization of older, increasingly uneconomic power generation plants owned by a utility or its competitive affiliate. Under a PPA, utilities agree to buy all the power they are entitled to from designated plants at prices guaranteed to keep the units profitable. Utilities claim it is in customers' best interest to keep otherwise uneconomic coal (and sometimes nuclear) plants running for the foreseeable future even though electricity generated by burning coal currently is more expensive than electricity generated by burning natural gas.

FE and AEP are seeking regulatory approval to sell into the PJM wholesale market all of the generation output to which they are entitled from their existing OVEC generation agreements and proposed PPAs with their affiliates at rates that may be higher – or lower – than the price FE or AEP pays for the OVEC/PPA generation. If the PUCO approves the proposed PPAs, the difference between the PJM market price and the OVEC/PPA contract price, whether it is a net cost or a net benefit, would be passed on to customers.

In other words, if the PJM market price is higher than the price FE or AEP pays for generation through its contracts, the resulting net increase in revenue would be reflected as a credit on customers' bills; alternatively, if the market price is lower than the price FE or AEP pays, customers would pay the net cost in the form of a surcharge. So, if coal-generated electricity continues to be more expensive than natural gas-generated electricity, customers would pay the extra costs. The utilities are always made whole and guaranteed recovery of the costs associated with their generation under the contracts with their affiliates.

The proposed PPA riders are non-bypassable. They would be paid by all customers in each utility's service territory – regardless of whether the customer purchases its generation service from the utility or a competitive generation supplier, unless a customer receives an exemption from the PUCO.

## **Expected Impact on Customers**

Approval of the PPAs will impose increased energy costs on manufacturers without commensurate benefits; constrain customer choice and competitive opportunities for non-utility generators; and thwart development of future advanced and renewable energy technologies.

Cost estimates of the PPAs vary by stakeholder and by underlying assumptions. While agreeing that natural gas prices will affect electricity prices, the stakeholders do not agree on how to forecast natural gas prices. The same is true for electric capacity prices, electric load, etc. Generally, utilities assume pricing scenarios for most underlying assumptions that create favorable cost views for the consumer. Other stakeholders using more realistic assumptions have estimated higher costs and detrimental impacts on customers.

- **FE Projected Impact:** FE has projected that customers could save \$561 million over the eight-year duration of the PPA. The Ohio Consumers' Counsel has estimated that the settlement could cost consumers \$3.9 billion.
- **AEP Projected Impact:** AEP has projected that customers could save \$721 million over the eight-year life of the PPA. The Ohio Consumers' Counsel has estimated that the settlement could cost consumers \$2 billion.

**For both FE and AEP, the proposed PPA riders include customer-subsidized guaranteed profits of 10.38 percent return on equity.**

The tables below show estimates of the PPA costs to small, medium, large and extra-large manufacturers. For FE, annual cost estimates are based on FE’s own estimates of costs for the first three years of its PPA. AEP’s annual cost estimates, as well as estimated total eight-year costs for both FE and AEP, are based on estimates from an Ohio Consumers’ Counsel expert.

Manufacturer Size	Consumption (kWh/year)	FirstEnergy	
		Annual Cost Estimate	Total for 8-Year ESP
Small (~\$100k/yr in electricity costs)	1,000,000	\$2,843	\$29,410
Medium (~\$600k/yr in electricity costs)	7,500,000	\$21,322	\$220,574
Large (~\$6 million/yr in electricity costs)	100,000,000	\$284,296	\$2,940,991
Extra Large	1,000,000,000	\$2,842,958	\$29,409,914

Manufacturer Size	Consumption (kWh/year)	AEP	
		Annual Cost Estimate	Total for 8-Year ESP
Small (~\$100k/yr in electricity costs)	1,000,000	\$4,614	\$36,908
Medium (~\$600k/yr in electricity costs)	7,500,000	\$34,602	\$276,814
Large (~\$6 million/yr in electricity costs)	100,000,000	\$461,356	\$3,690,850
Extra Large	1,000,000,000	\$4,613,562	\$36,908,497

If FE or AEP sells or transfers a plant included in its PPA, the rider continues unless the PUCO terminates it. There is no provision to terminate the rider if a plant retires; therefore, customers would be exposed to potential future retirement costs. Even if the rider is overturned by the Supreme Court of Ohio, refunds to customers are prohibited.

In addition to costs associated with the PPAs, both settlements contain other provisions that will increase costs to consumers. For example:

- FE’s settlement would create new customer costs associated with grid modernization, distribution capital investments, energy efficiency programs (including financial incentives for utilities), battery storage, renewable energy investments (wind and solar), lost distribution revenue due to decoupling, low-income customer programs, events such as the “polar vortex” of 2014, and a new “straight-fixed-variable” rate design. Additionally, renewable energy resources could receive, in effect, their own PPA through another new non-bypassable rider. FE also would seek support from the PUCO to lobby the federal government for wholesale market changes that could stall investment in new, competitive electric generation in Ohio and the regional electricity market.
- AEP’s settlement would create new customer costs associated with grid modernization, distribution capital investments, energy efficiency programs (including financial incentives for utilities), battery storage, and low-income customer programs. AEP also would seek support from the PUCO to lobby the federal government for wholesale market changes that could stall investment in new, competitive electric generation in Ohio and the region.

### **What the Utilities Say: A hedge against market price volatility**

Utilities characterize the proposed PPAs as a useful “hedge” or insurance policy against market volatility, which they claim will protect consumers over the long term. FE and AEP argue that a possible shortage of generation in Ohio and throughout PJM may cause increases in both energy and capacity prices and threaten reliability. FE has testified that its affiliate-owned generation units may not be economical and may be required to shut down if FE’s PPA proposal to have customers pay the costs to run those units is rejected by the PUCO. Utilities contend that the PPAs will help ensure that coal-fired and nuclear power plants continue to operate so Ohio will continue to have adequate supplies of generation.

### **What Concerned Stakeholders Say: A subsidized bailout for utility business decisions**

Opponents of the proposed PPAs regard them as nothing more than a large-scale government and consumer bailout of FE and AEP, which already have received billions of dollars in stranded cost recovery from their customers as part of Ohio’s transition to a competitive retail electricity market. Opponents believe utilities are seeking relief from financial pressures caused in part by the combination of an aging and increasingly uneconomical generation fleet; new supplies of natural gas driving down the price of power; and increased growth of energy efficiency, demand response programs and renewable energy – as well as bad business decisions by the regulated utilities and their competitive generation affiliates.

The proposed PPAs, opponents say, are an attempt by FE and AEP to secure, through regulatory intervention and customer subsidies, guaranteed profits and cost recovery for selected generation assets regardless of the market value of the power produced by those assets and regardless of their operational, maintenance and environmental compliance costs. Opponents believe the PPAs represent an unwarranted shifting of cost and risk from utility shareholders to utility customers, a reversal that is inconsistent with the intent of Ohio’s electric restructuring law. In competitive markets, investors – not consumers – bear the risk of bad business decisions.

### **Reasons OMA Energy Group Opposes FE’s and AEP’s Proposed PPAs**

The Ohio Manufacturers’ Association Energy Group opposes FE’s and AEP’s proposed PPAs for the following reasons:

- **Customers will pay higher prices.** FE and AEP acknowledge that the proposed PPAs may result in higher costs for customers in the short term, but claim the locked-in PPA price will produce benefits in the long run. Numerous intervenors in the ESP cases contend, however, that the PPAs will result in a net cost for customers over the long run.
- **Customers will pay a generation surcharge with no new benefits.** Customers will not receive any certain or guaranteed benefits. The only “guarantee” is for the utility and/or its affiliate – a guaranteed 10.38 percent rate of return and guaranteed full cost recovery. Although FE and AEP claim that their settlements include a “risk-sharing mechanism,” the alleged commitment by the utilities to include a credit of \$10 million in year five of the PPA rider, which will be increased by \$10 million each additional year through May 31, 2024, is not a guarantee that customers will receive at least \$100 million in credits; nor is it a guarantee that FE and AEP will have to fund any portion of the \$100 million in credits. If the utilities’ projections come to fruition, the credits customers will receive in years five through eight are expected to exceed the “guaranteed” credits, resulting in no additional credits being provided to customers by the utility. The provision also does not guarantee

that customers will not pay a charge during years five through eight. Thus, if customers are required to pay \$20 million in year five, the “credit” would offset that charge, but customers would still be required to pay \$10 million. In other words, customers are in no way guaranteed to receive a credit in years five through eight.

- **Customers will be forced to pay twice for generation service.** If the PPAs are allowed, customers will pay twice for electricity – first, for the power they purchase from their incumbent utility or their alternative supplier, and then additionally via a PPA surcharge. This amounts to an unfair tax on customers that already have procured a supply of power from a competitive retail electricity supplier.
- **Customers will lose access to lowest available market prices.** The proposed PPAs will deny customers the ability to purchase electricity at the lowest price available in the competitive market, putting Ohio businesses at a disadvantage *vis a vis* competitors in surrounding states that do not face similar non-bypassable generation charges.
- **Customers will have fewer choices.** By providing AEP, FE and/or their affiliates with what essentially is a “guaranteed rate of return” for generation plants owned by competitive suppliers, the proposed PPAs are inconsistent with Ohio’s transition to a competitive market for electricity. This anti-competitive step backward will thwart supplier participation in the Ohio market – participation that currently is helping to drive innovation and keep electricity prices low.
- **Ohio will suffer economic harm from the resulting disincentive to invest in new generation.** New sources of generation (e.g., natural gas) will not have the benefit of the PPA “subsidies” that have been proposed for power produced by certain inefficient and uneconomic generation plants in Ohio. This competitive disadvantage will serve as a disincentive to new generation investment in our state and region, which ultimately will drive prices upward and undermine economic development and job creation.

Additionally, as noted above, PUCO staff initially rejected FE’s and AEP’s proposals. Staff ultimately agreed to amended versions of the PPAs after behind-closed-doors negotiations with what OMA Energy Group consultant and Ohio State University economist Dr. Edward (Ned) Hill has described, in FE’s case, as a “redistributive coalition” – a relatively small group that promotes policies for their mutual own benefit. This excerpt from Dr. Hill’s August 10, 2015, testimony before the PUCO regarding FE’s ESP is instructive:

“The redistributive coalition was assembled to present to the Commission and to the public the façade not only of broad support the ESP IV, but of a broad range of benefits flowing to the classes of customers represented by the Signatory or Non-opposing Parties. The stipulations and testimony are careful to state that the participation of the members of the redistributive coalition indicates broad support and benefits flowing to the classes that they represent. Unfortunately, the benefits only flow to the Signatory or Non-opposing Parties.”

A facade of broad support from a few pretending to represent the many is an unsound, unjustifiable basis for crafting public policy.

# # #

# The Columbus Dispatch

Thursday February 18, 2016 6:47 AM

The Public Utilities Commission of Ohio (PUCO) should reject the Affiliate Power Purchase Agreements proposed by American Electric Power and FirstEnergy as bailouts and bad public policy.

These proposals are about paying above-free-market rates for about 30 percent of the electricity AEP and FirstEnergy generate in Ohio. And, the proposals will transfer all of the business risk in operating these units from the companies' stockholders and management to all electricity users in their territories—even if they are not customers of the utility.

What is now before the PUCO is a combination of lemon socialism and corporate welfare. The utilities' losses will be paid by de facto taxes imposed by the PUCO on all ratepayers in their service areas, while AEP and FirstEnergy demand an extraordinarily high, risk-free rate of return.

The Office of the Ohio Consumers' Counsel estimates that the PPAs in the FirstEnergy and AEP stipulations alone are likely to cost Ohio's household and business ratepayers \$5.5 billion over the eight-year period covered by the stipulation. This number is in stark contrast to the utilities' combined estimate of \$1.3 billion in "savings" over the same period.

Why is there a \$6.8 billion difference in these two numbers? It largely is due to assumptions about the future cost of natural gas. The Consumers' Counsel used current forecasts of the price of natural gas that are based on futures contracts. FirstEnergy used 2014 data and AEP used 2013 numbers. Why? It can only be because more current data would hurt their case. Additionally, the utilities assume increases in natural gas costs after the third year that are not supported by any current market data.

The Consumers' Counsel has no reason to stack the deck against the utilities. The utilities themselves

acknowledge they have a problem. FirstEnergy states in its application that the two plants in question are losing money and likely to do so for at least the first three years covered by the deal. AEP executives testify that their plants are "on the economic bubble." Both companies show losses in the early years of the PPA, and I cannot see the financial miracle that is supposed to occur in the fourth year. Finally, both utilities have invested more than a year of time and effort to jam these Affiliate PPAs through the PUCO. They are doing so for a reason.

The utilities will argue that 10.38 percent is their normal regulated rate of return, but there is a major difference with Affiliate PPAs: They are free of business risk. All ratepayers in the service territories must pay whether they are customers of the utility or not.

The PPAs should be thought of as eight-year, risk-free bonds. Recently, eight-year revenue bonds issued by public authorities, which are about as risky as the PPAs, had coupon rates of return of 5 percent. The proposal before the PUCO is for a rate of return that is nearly double that.

That's not all. The proposals provide for another risk-free pool of cash for the utilities. The AEP plan states it will purchase 500 megawatts of wind-generated power and 400 megawatts of solar power as long as battery resources to store the power become part of the rate base and all costs can be recovered through an affiliate PPA. FirstEnergy's commitment to green energy includes investments in battery technologies at a 10.88 percent rate of return, and 100 megawatt solar-power generation coupled, of course, with another affiliate PPA. Rates of return for the wind and solar projects are not specified.

This is nice money if you can get it, giving a new meaning to "green energy."

*Ned Hill is Professor of Public Affairs and City & Regional Planning at The John Glenn College of Public Affairs at The Ohio State University.*

**FirstEnergy just asks for too much**  
**By Michael Douglas**  
**Beacon Journal editorial page editor**

Published: January 23, 2016 - 08:56 PM | Updated: January 25, 2016 - 10:27 AM

From afar, FirstEnergy makes more easily the villain. Up close, it gets more complicated, those of us in Akron, especially, aware of the many civic endeavors the power company supports, not to mention its 2,500 employees in Summit County, many at the headquarters downtown.

Are the good deeds just part of laying a veneer of corporate citizenship? That money for the levy campaigns of the Akron Public Schools has been real, crucial and substantial.

So, how, then, to measure the current FirstEnergy request before the Public Utilities Commission of Ohio? The company is asking the commission to approve subsidies, out of the pockets of ratepayers, to support the operation of the Sammis coal-fired power plant and the Davis-Besse nuclear power plant. Critics have declared the plan, among other things, a “bailout,” “outrageous,” “corporate welfare” and “lemon socialism.”

The company has opened the way to the harsh assessments. Its request amounts to its third position on deregulating the power industry since the concept arrived in Ohio 17 years ago. FirstEnergy opposed deregulation when state lawmakers weighed whether to take the leap. Once they jumped at the Statehouse, the company embraced the idea, even jabbing competitors for failing to do so with the same zeal. Now the market has turned, abundant natural gas resulting in lower prices, and FirstEnergy wants help from the regulators in the form of guaranteed revenue the next eight years.

Ballsy? Well, yes.

In its case for the request, the company cites the value of stability in the power market, Sammis and Davis-Besse providing large and steady supplies of electricity. Close the plants, and those in nearby communities would face job losses and other harmful results.

FirstEnergy projects that though consumers would see higher bills upfront, they would benefit overall through credits as electricity prices eventually increase. The company has added sweeteners. It would revive energy efficiency programs it shut down. It would provide a renewable energy component. It sets the goal of reducing by 2045 its carbon emissions across all of its operations 90 percent below 2005 levels.

That last commitment essentially mirrors the consensus of climate scientists. Keeping the carbon-free Davis-Besse plant in operation will help in meeting new federal rules for reducing carbon emissions.

So what is not to like? FirstEnergy just asks for too much.

It defines the benefits too narrowly. The proposal shifts considerable risk from shareholders to consumers. The Ohio Manufacturers Association has calculated that the proposal would cost manufacturers from \$2,800 a year to \$2.8 million a year, depending on the size of operation.

Belden Brick and Cooper Tire argue that they would rather take the lower prices now than see whether promised credits arrive.

PJM manages the flow of electricity. It maintains a power cushion of 15 percent to 20 percent, suggesting that the question of stable supply is exaggerated. What concerns some economists is that the FirstEnergy guarantees (American Electric Power has a similar plan) would bring distortions to the market. Competitors would face a disadvantage, and may seek their own protection, inviting the balkanization of the grid, defeating economies of scale.

The FirstEnergy proposal includes parts that surfaced late and deserve closer examination. One involves modernizing the transmission grid. That is a worthy pursuit, obviously. Yet it has advanced without hard numbers or the usual shared analyses of costs and other factors.

The same goes for restructuring the fixed monthly customer charge. FirstEnergy wants it reworked in a dramatic way, critics raising credible worries about discouraging the pursuit of energy efficiency.

Add how FirstEnergy would count efficiency gains. It does not put the necessary emphasis on achieving new advances. The renewable energy provisions are problematic in their own ways.

The utility business can seem like Wall Street, things so complicated they appear designed to conceal. In this case, the outlines are simple enough. FirstEnergy wants something big. Which raises the question: What is it willing to give?

Ideally, the state would have a mechanism or the leadership to craft an energy strategy that strives to balance interests, say, a financial hedge for FirstEnergy complemented by unfreezing the renewable energy and efficiency standards. What the state does have is the Public Utilities Commission. It must ensure the public benefits sufficiently and concretely. That is hard to see now.

Douglas is the Beacon Journal editorial page editor. He can be reached at 330-996-3514 or emailed at [mdouglas@thebeaconjournal.com](mailto:mdouglas@thebeaconjournal.com).

FILE



P. O. BOX 1388, PORTSMOUTH, OHIO 45662  
740-354-3183  
FAX 740-353-1504

January 7, 2016

Public Utility Commission of Ohio  
180 East Broad Street  
Columbus, OH 43215

RE: Opposed to Purchase Power Agreement Rider for American Electric Power

Dear PUCO:

OSCO operates three energy-intensive manufacturing plants in Ohio that produce cast metal parts for heating, air conditioning, transportation and power transmission industries. Low cost and reliably-supplied electricity is a critical resource for our Company.

We are both shocked and distressed that the Ohio PUCO is giving serious consideration to the Purchase Power Agreement (PPA) proposed by our utility, American Electric Power (AEP). The PPA is a complete reversal of about 15 years of migration toward deregulating electric generation in our state and provides an unjustified wind-fall for AEP. Clearly, such a large subsidization of AEP is going to cost OSCO and every consumer in their service territory dearly.

We estimate the direct annual increase to our Company from approval of the PPA will be approximately \$345,000. Why are we and other consumers potentially going to be made to pay this large premium for generation assets that cannot provide electricity economically and guarantee AEP a rate of return on those generation assets that we have already paid for via "stranded costs" several times already?

It is sad that the Ohio's regulatory process works in the manner it does. I will never forget my attendance at an AEP-sponsored event back at the time of the first SEP plan, when asked about justifying an irrational 15%/15%/15% year-over-year rate increase AEP's Chairman gave no justification what-so-ever but simply said, "I hope our lawyers (i.e., AEP) are better than your lawyers (i.e., in front of the PUCO)." I can only admire the creativity, legal prowess and political savvy displayed by our utility company in getting everything they can from the customer base. Obviously, they have the money and the know-how to work the system and are very effective at doing so.

Please understand that a decision to approve the AEP's PPA proposal will significantly impair OSCO's ability to compete in today's marketplace. I ask that you reject their proposal.

Thank you for considering my comments.

Sincerely,

*John Burke*  
John Burke  
CEO

CC: Governor John Kasich  
Senator Joe Uecker  
Representative Terry Johnson

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3

FILE



COOPER TIRE & RUBBER COMPANY  
701 Lima Avenue - Findlay, OH 45840

THOMAS N. LAUSE  
VICE PRESIDENT & TREASURER

(419) 427-4741

January 13, 2016

The Public Utilities Commission of Ohio  
180 East Broad Street  
Columbus, OH 43215

Subject: Cases 14-1693-EL-RDR (AEP); 14-1297-EL-SSO (First Energy)

To The Public Utilities Commission of Ohio,

Attached is the letter pertaining to Cases 14-1693-EL-RDR (AEP); 14-1297-EL-SSO (First Energy), sent by our CEO, Roy Armes, to key parties and we felt it was appropriate to share this letter with The Public Utilities Commission of Ohio.

Sincerely,

Cooper Tire & Rubber Company

*Thomas N. Lause*

Thomas N. Lause  
Vice President & Treasurer

TNL/jmp

Attachment

cc: Anthony Smith  
Frank Schrum  
Ryan Augsburg

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2016 JAN 15 PM 1:36  
PUCO

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**COOPERTIRES**

Cooper Tire & Rubber Company  
701 Liza Avenue - Findlay, OH 45846-2915

Telephone: (419) 433-1321  
Facsimile: (419) 420-6050  
Internet: www.zbnyretire.com

ROY V. ARMES  
CHAIRMAN  
CH - EXECUTIVE OFFICER  
PH - USRA

January 11, 2016

Office of the Governor  
Honorable John Kasich  
77 S. High Street - 30th Floor  
Columbus, OH 43215

Dear Governor Kasich,

I am writing to urge you to act to prevent the Public Utilities Commission of Ohio from approving the recently negotiated settlements of FirstEnergy and AEP. These settlements will enable the utilities to implement costly Power Purchase Agreement riders (PPAs) and other cost-driving provisions that will make it more difficult for Cooper Tire and other Ohio manufacturers to remain competitive in the global markets. Should the PUCO approve the deals, both FirstEnergy and AEP will be able to collect fees over 8 years from all of their customers to subsidize their uneconomical generation assets, thus protecting these utility companies from cost and risk, and also guaranteeing their profits by requiring customers to reward the utilities with significant profit margins on these otherwise uneconomic assets. Ohio's Consumers' Counsel has estimated that the FirstEnergy settlement could cost manufacturers and consumers \$3.9 billion over the eight-year duration of the PPAs, and the AEP settlement could cost manufacturers and consumers \$2 billion. We have estimated the specific impact on Cooper Tire's Ohio operations and it is significant and impactful.

These proposed PPAs serve only to benefit First Energy and AEP while severely compromising the competitiveness of all Ohio manufacturers and other businesses who must use these providers for their electricity needs. The PPAs would allow First Energy & AEP to run unproductive and non-competitive operations and then simply pass these costs onto their customers. Even worse, these PPAs would actually allow First Energy & AEP to become less productive and they would simply be able to pass these costs (plus a guaranteed profit margin) on to their customers. Thus while the entire utility deregulation efforts of 16 years ago were meant to enhance productivity within the utility industry, these proposed agreements would actually move the entire state back to an era of uncompetitiveness.

In an industry like the global tire industry, where margins are extremely tight and business is won or lost based on cost competitiveness, forcing our Findlay, Ohio tire

plant, our Findlay, Ohio mold manufacturing plant, our Findlay, Ohio technical centers and our Findlay, Ohio corporate headquarters to bear these higher cost burdens adds risk to our business in Ohio and impedes our ability to sustain or grow our operations here. Every day, Cooper Tire competes for business with other American manufacturers, and with foreign manufacturers from lower cost parts of the world. Every day, Cooper Tire strives to sustain and improve its cost competitiveness through innovation, improved productivity and in some unfortunate cases, staff reductions....all to stay competitive in the global market. And every day, Cooper determines where to allocate its production and resources among its global network of facilities, with cost being a significant factor. To give First Energy & AEP a blank check with these proposed PPAs is fundamentally wrong and a severely incorrect direction for our great state. Approval of these agreements will put Cooper Tire's Ohio facilities at a competitive disadvantage compared to other states, as electricity costs are a significant part of our expenses.

The PUCO is expected to act in early 2016. We respectfully request that you express your opposition of these PPAs to the PUCO. Cooper Tire would be glad to discuss this issue in more detail so as to provide you with greater context and details if you should so desire. Please feel free to contact me (419-424-4363; rvarmes@coopertire.com) or our General Counsel Steve Zamansky (419-420-6059; szamansky@coopertire.com) if you have any questions or would like to discuss this matter further.

Respectfully yours,

Roy V. Armes  
Chairman, Chief Executive Officer & President  
Cooper Tire & Rubber Company

RVA/smd

cc: Wayne Struble  
Senator Cliff Hite  
Representative Robert Sprague

FILE

MARK R. GRINDLEY

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2016 JAN 19 PM 2:48

PUCO

January 13, 2016

CHIEF OPERATING OFFICER  
PLASKOLITE, LLC

Public Utilities Commission of Ohio  
180 East Broad Street  
Columbus, OH 43215

RE: Cases 14-1693-EL-RDR (AEP); 14-1297-EL-SSO (FirstEnergy)

Dear PUCO:

We are writing this letter to you to express our serious and grave concerns about the imminent PUCO settlement on the Power Purchase Agreements (PPA) with First Energy and AEP. This PUCO settlement will require Plaskolite, along with all the other residential, commercial and industrial ratepayers in Ohio, to subsidize the unprofitable power plants of these two utilities, and it is uncompetitive, costly, and unjust by fair business practices.

If approved, this action will hinder competition in the Ohio electric market, including the entry of well-managed, competitive power plants into Ohio, regardless of whether they are fueled by coal, natural gas, nuclear or renewables. As a result, Ohio will, over time, be left with uncompetitive, old, inefficient power plants that will likely not be able to meet the tightening EPA emission standards (e.g., Clean Power Plan). Rather than improving the reliability of the electric grid, once these uncompetitive power plants are "shut down" by the EPA regulations, the reliability and stability of the electric grid would be adversely affected. This PPA settlement, if approved, will also set a legal precedent and open-the door for these utilities, along with the other investor-owned utilities, to pass on all their uncompetitive operations to the Ohio ratepayers through an "affiliated PPA".

Plaskolite has manufacturing plants in Columbus and Zanesville with a combined total of 400 employees. We are poised to aggressively grow our Ohio operations this year and in the coming years. Electricity is our largest utility cost, so the PUCO PPA settlement will negatively affect our competitiveness in the market place. Our Ohio plants are within the AEP service area, and we estimate that this PPA settlement will cost us almost

PLASKOLITE, LLC  
COLUMBUS, OH 43216  
614/294-3381  
FAX 614/297-7218  
Email: Mark.Grindley@plaskolite.com

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FILE



David W. Johnson  
President and CEO

Public Utilities Commission of Ohio  
180 E Broad Street  
Columbus, Ohio 43215

RE: Cases 14-1693-EL-RDR (AEP); 14-1297-EL-SSO (FirstEnergy)

Dear PUCO:

I want to go on record as strongly opposing the recent negotiated settlements that I gather the staff of the PUCO have concluded with First Energy and American Electric Power, at the expense of Ohio's consumers and small to mid-sized companies.

It is my understanding that the First Energy settlement will cost consumers in Ohio an estimated \$3.9 Billion over the eight year period of the agreement while the AEP settlement will cost its consumer customers as much as \$2 Billion for that same period of time. Meanwhile, these two utility monopolies will be guaranteed a 10.368% return on equity. What a deal...for the utilities!

These two utility monopolies have already received billions of dollars in so called "stranded cost recovery" from their customers as part of Ohio's transition to a competitive retail electricity market. This new settlement merely shifts more costs and more risk from utility shareholders to utility customers, which is patently inconsistent with the intent of Ohio's electric restructuring law.

As it is, the KWH generation costs that we are absorbing today at Summitville Tiles, Inc. are already some 50% higher than they were just six years ago. The distribution component of our electricity costs have increased by a staggering 100% during the same period of time. Additionally, we have been socked with three new monthly charges since 2008: the retail stability rider, the deferred asset phase-in rider, and the phase-in recovery rider - utility charges which did not even exist six years ago. Added to this will be these new charges, costing Summitville Tiles tens of thousands of dollars, with no compensating benefits...all the while the big utilities are raking in excessive, state-guaranteed profits.

Nobody that I know in business is happy about these "sweet heart" settlements with Ohio's utility monopolies. It is bad for Ohio's business climate, it will make Ohio uncompetitive even with neighboring states, and put a dagger in the heart of everything John Kasich has done to make Ohio strong again. I urge that the PUCO kill the Power Purchase Agreement Riders.

Sincerely yours,

*[Signature]*  
David W. Johnson  
CEO - Summitville Tiles, Inc.

CC: Governor Kasich  
Speaker Rosenberger  
Senate President Fisher

Summitville Tiles Inc. • Summitville, Ohio 43082  
(830) 223-1511 • Fax: (830) 223-1414 • E-mail: djohnson@summitville.com

2016 FEB 5 AM 11:34  
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FILE



Government Relations

701 Pennsylvania Avenue, NW • Suite 750 • Washington, DC 20004

LUKE M. HARMS  
Senior Manager, Government Relations

January 25, 2016

Public Utilities Commission of Ohio  
180 East Broad Street  
Columbus, OH 43215

RE: Cases 14-1683-EL-RDR; 14-1297-EL-SSO

Dear PUCO:

Find attached correspondence by Mr. Jeffrey Noel on behalf of Whirlpool Corporation regarding the referenced cases pending review by the Public Utilities Commission of Ohio. I trust you will contact us if you have questions or need further information.

Sincerely,

Luke M. Harms  
Senior Manager, Government Relations

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2016 FEB -5 AM 11:34

PUCO

\$300,000 per year for our Ohio operations, or an estimated \$2,400,000 over the 8-year ESP. It is hard for us to fathom having to pay this extra, significant cost to continue getting electricity dispatched to our Ohio operations, and to know that this amount will be subsidizing one or more unprofitable AEP power plants, even though our electricity does not come from any of these AEP power plants.

We are very disappointed in PUCO's support of this PPA settlement for it demonstrates that our state government is "utility-friendly" to the exclusion of the residents and businesses of Ohio. We strongly urge you to reconsider and to disapprove this settlement decision to allow the First Energy and AEP PPAs, which will roll the Ohio electric markets, make the regional electric grid less stable, and increase the cost of electricity in Ohio.

Sincerely,

MRC/jmc

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Phone: +1 202 639 9420 • Fax: +1 202 639 9421 • Luke\_M\_Harms@whirlpool.com



ADMINISTRATIVE CENTER ■ BENTON HARBOR, MICHIGAN 49022

JEFFREY NOEL  
CORPORATE VICE PRESIDENT  
COMMUNICATIONS AND PUBLIC AFFAIRS

January 25, 2016

Public Utilities Commission of Ohio  
180 East Broad Street  
Columbus, Ohio 43215

Dear Commission:

Whirlpool Corporation strongly urges you to oppose the negotiated settlements of FirstEnergy and AEP that will allow for the implementation of Power Purchase Agreement (PPA) riders and other cost-driving provisions.

Whirlpool is the number one appliance manufacturer in the world, with more than 70,000 employees in Ohio. Whirlpool operates five manufacturing facilities with more than 10,000 employees. Our facilities are located in Marion, Findlay, Clyde, Ottawa and Greenville.

Approval of the FirstEnergy and AEP settlements will allow both utilities to collect costs, via non-bypassable riders from all customers, to subsidize uneconomical generation plants. These actions would guarantee the profits and cost recovery of FirstEnergy and AEP, and transfer all cost risk to customers for a period of eight years.

According to the Ohio's Consumers' Counsel, these two settlements could cost consumers \$5.9 billion over the eight-year duration. These settlements would constrain competition with no commensurate benefits to consumers.

Competitive electricity markets in Ohio are working for the benefit of all Ohio electricity customers; these deals would be a major setback. Whirlpool Corporation strongly urges the commission to protect competition and ensure electricity customers are not forced to subsidize uncompetitive generation plants.

Please contact me if you have any questions or if I may provide additional information.

Sincerely,

Jeffrey Noel  
JN/whl

FILE



February 1, 2016

The Public Utilities Commission of Ohio  
180 East Broad Street  
Columbus, OH 43215

Subject: Case 14-1297-EL-SSO (FirstEnergy)  
To the Public Utilities Commission of Ohio (PUCO):

Attached is a letter on behalf of the BASF Corporation facility located in Elyria regarding the referenced case pending review by the PUCO. Please contact me if you have questions.

Sincerely,

Michele Barney  
Site Director

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Telephone: 419-223-3741  
Fax: 419-223-2639

BASF Corporation  
127 E. St. Clair  
Bridle, Ohio 43035-5229 USA



February 1, 2016

The Public Utilities Commission of Ohio  
180 East Broad Street  
Columbus, OH 43215

Dear PUCO Commissioners:

The BASF Corporation facility in Elyria, Ohio understands that the commission is considering a draft settlement with FirstEnergy that, according to the Ohio Consumers Counsel, could cost consumers as much as \$3.9 billion. We respectfully ask that the draft settlement not be approved.

BASF Corporation is the largest affiliate of BASF SE and the second largest producer and marketer of chemicals and related products in North America. At BASF, we create chemistry and have been doing so for 150 years. As the world's leading chemical company, we combine economic success with environmental protection and social responsibility. Through science and innovation we enable our customers in nearly every industry to meet the current and future needs of society. Our Elyria facility contributes to this mission through the production of metal based catalysts and of cathode materials that are used in the lithium-ion batteries that power full electric and plug-in hybrid vehicles. BASF has 10 facilities in Ohio, including the site in Elyria.

The BASF site in Elyria is among the FirstEnergy customers that would be impacted if the draft settlement is adopted. We do not accept the premise for these proposed rate increases via an eight year power purchase agreement, i.e. to subsidize aging and under-utilized generating plants. This runs counter to Ohio's status as deregulated energy market that allows customers to choose their energy suppliers and thereby promote competitive rates. Competitive rates in turn have helped to generate business investment in Ohio, especially for the business of chemistry, which is energy-intensive. Chemistry is the second largest manufacturing industry in Ohio.

Thank you for your consideration. We once again ask that the draft settlement not be approved and instead the commission continue to focus efforts on promoting competitive energy rates in Ohio.

Sincerely,

*Michele Barney*

Michele Barney  
Site Director

BASF Corporation  
220 Pine Street  
Elyria, Ohio 44035-5228 USA  
Telephone: 440.322.2741  
Fax: 440.322.2830

3M Home Care Division

1301 Lowell Street  
Elyria, OH 44035

February 12, 2016

Public Utilities Commission of Ohio  
180 East Broad Street  
Columbus, OH 43215

RE: Opposition Comment to PPA Cases 14-1693-EL-RDR; 14-1297-EL-SSO

Dear PUCO:

I am writing in regards to the Purchase Power Agreement Cases with First Energy and the PUCO. First Energy, AEP and a small group of others have negotiated certain benefits that will enable the utilities to implement costly Power Purchase Agreement (PPA) riders and other cost-driving provisions.

Should the PUCO approve the deals, both utilities will be able to collect costs (via non-passable PPA riders) from all of their customers to subsidize their uneconomical generation assets, thus protecting the utilities from cost risk and guaranteeing their profits and cost recovery. All of this is at the cost of their customers for an eight-year term.

Ohio's Consumers' Counsel has estimated that the FirstEnergy settlement could cost consumers \$3.9 billion over the eight-year duration of the PPA, and the AEP settlement could cost consumers \$2 billion.

Based on our current energy usage the impact from this change will increase the 3M Elyria Electric bill by 11% per month. This is money that could be used in a more productive fashion at the 3M Elyria site. Over the past couple of years 3M Elyria has been proactive regarding our energy usage. We have made capital investments with the specific goal of reducing our energy consumption. The result from the invested capital has reduced our electrical usage by 750,000 kW per year. Should the PUCO approve the deals, these investment dollars for energy reduction may be side tracked toward paying the higher energy rates.

If approved by the full PUCO, these deals will put an unnecessary and anti-competitive layer of costs on consumers with no commensurate benefits, constrain competition, and dampen technological innovation in Ohio. In addition, both settlements contain other provisions that will increase costs to consumers.

The markets for electricity in Ohio are working to the benefit of consumers. These deals are a massive setback to the consumer-friendly efficiency of those markets. Please protect Ohio manufacturers and all consumers in FirstEnergy and AEP territories, the lion's share of the state in terms of utilities, from this substantial bailout/giveaway.

Regards,  
John Akey

3M Elyria Plant Manager

cc: Senator Gayle Manning  
Representative Nathan Manning



February 4, 2016

Public Utilities Commission of Ohio (PUCO)  
180 East Broad Street  
Columbus, OH 43216

**RE: Opposition Comment to PPA Cases 14-1693-EL-RDR; 14-1297-EL-SSO**

Dear Public Utilities Commission of Ohio:

I am writing to urge you to act to reject the negotiated settlements of FirstEnergy and AEP (and a small group of others who have negotiated certain benefits) to enable the utilities to implement unwarranted and costly Power Purchase Agreement (PPA) riders and other cost-driving provisions.

Should the Public Utilities Commission of Ohio (PUCO) approve the deals, both utilities can use riders to collect costs from all of their customers to subsidize their generation assets they have determined are otherwise uneconomical. In an unprecedented request in an unregulated market, they propose to protect the utility shareholders from cost risk and to guarantee profits and cost recovery for eight years at the expense of their customers and to the detriment of the Ohio economy.

The State of Ohio has chosen to deregulate its electricity markets, a process that has worked well for both the consumer and the utilities. During the ups in the market, the Ohio utilities made exceptional profits. Now that there is a downturn in the markets, these same utilities are looking to take advantage of the system by not having their shareholders bear any of the financial risk associated with their prior business decisions.

Ohio's Consumers' Counsel estimated the FirstEnergy proposal could cost consumers \$3.9 billion over eight years, while the AEP proposal could cost consumers \$2 billion. ArcelorMittal would face cost increases of more than \$20 million in that eight year span, with no concomitant benefits.

The timing could not be worse. As a company, we've been transparent about the challenges facing our USA business and our industry. Global steel overcapacity has resulted in a flood of record-level imports that have eroded the increase in demand we would normally experience from an improving U.S. economy. The influx of imports has drastically reduced domestic steel pricing, with hot-rolled coil spot pricing down by more than 40 percent since Q1 2014. In the United States alone, the steel industry has announced a temporary or permanent loss of more than 12,000 jobs in 2015.

We have been forced to implement a number of cost savings initiatives including a reduction in purchasing, supplier and operating costs and a revised health care plan for our salaried employees. We are also working hard to improve our business performance through strategies that include asset optimization planning, stronger trade enforcement to battle the flood of unfairly traded imports, and labor negotiations with the United Steelworkers.

ArcelorMittal Cleveland  
3060 Eggers Avenue  
Cleveland, Ohio 44105  
USA

T +1 216 426 6000  
F +1 216 426 6019  
www.arcelormittal.com

(continued)

The loss of tens of millions of dollars over the next several years could have a significant impact on the 3,000 jobs we provide in Ohio, take away from innovation and reduce scarce capital investments, hurting the long-term viability of our Ohio facilities and our USA business.

If PUCO approves these proposals, it will not only increase costs to customers, but open the door to other proposals that undermine the very basis of deregulation. Such a decision may result in the following: discourage good management practices; constrain competition; and dampen technological innovation in Ohio.

The markets for electricity in Ohio are currently working to the benefit of consumers. The proposals on the table will harm the consumer-friendly efficiency of Ohio's markets and important energy-intensive manufacturers like ArcelorMittal.

Sincerely,

Eric Hauge  
Vice President & General Manager  
ArcelorMittal Cleveland

cc:

- Honorable John Kasich, Ohio Governor
- Wayne Struble, Chief of Staff to the Governor
- Jai Chabria, Senior Advisor to the Governor
- Honorable Tom Patton, Ohio Senate
- Honorable Michael J. Skindell, Ohio Senate
- Honorable Sandra R. Williams, Ohio Senate
- Honorable Kenny Yuko, Ohio Senate
- Honorable John Barnes, Jr., Ohio House of Representatives
- Honorable Janine R. Boyd, Ohio House of Representatives
- Honorable Nicholas J. Celabrezze, Ohio House of Representatives
- Honorable Mike Doviola, Ohio House of Representatives
- Honorable Stephanie D. Howse, Ohio House of Representatives
- Honorable Bill Patmon, Ohio House of Representatives
- Honorable Martin J. Sweeney, Ohio House of Representatives

ArcelorMittal Cleveland  
3060 Eggers Avenue  
Cleveland, Ohio 44105  
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www.arcelormittal.com

FILE



Kenworth Truck Company  
P.O. Box 348  
44 Kenworth Drive  
Chillicothe, Ohio 43001-0348  
(614) 774-5111  
A DIVISION OF INDOOR

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2016 FEB 25 AM 10:28

February 15, 2016

Public Utilities Commission of Ohio  
180 East Broad Street  
Columbus, OH 43215

RE: Opposition Comment to PPA Cases 14-1693-EL-RDR; 14-1297-EL-SSO

Dear PUCO:

I am writing to urge you to reject the negotiated settlements of FirstEnergy and AEP (and a small group of others who have negotiated certain benefits) that will enable the utilities to implement costly Power Purchase Agreement (PPA) riders and other cost-driving provisions.

Should the PUCO approve the deals, both utilities will be able to collect costs (via non-bypassable PPA riders) from all of their customers to subsidize their uneconomical generation assets. This will protect the utilities from cost risk and guarantee their profits and cost recovery, while putting the burden on the backs of their customers for an eight-year term.

Ohio's Consumers' Counsel has estimated that the FirstEnergy settlement could cost consumers \$3.9 billion over the eight-year duration of the PPA, and the AEP settlement could cost consumers \$2 billion.

Our company consumes approximately 45,000,000 kWh/year. We estimate the new rider will cost us millions of dollars over the eight-year term of the case. That is money that could be used on more productive purposes such as capital investment to increase production capacity, plant investment for new product introductions, or continuing to provide above average wage and benefit packages to our 1,800+ employee workforce.

If approved by the full PUCO, these deals will put an unnecessary and anti-competitive layer of costs on consumers with no commensurate benefits, constrain competition, and dampen technological innovation in Ohio. In addition, both settlements contain other provisions that will increase costs to consumers.

The markets for electricity in Ohio are working to the benefit of consumers. These deals are a massive setback to the consumer-friendly efficiency of those markets.

Please protect Ohio manufacturers and all consumers in FirstEnergy and AEP territories from this substantial gateway.

*Judy K. McTigue*  
Judy K. McTigue  
Kenworth - Plant Manager

cc: The Honorable John Kasich  
The Honorable Bob Peterson  
The Honorable Gary Scherer



February 15, 2016

Public Utilities Commission of Ohio  
180 East Broad Street  
Columbus, OH 43215

RE: Opposition Comment to PPA Cases 14-1693-EL-RDR; 14-1297-EL-SSO

Dear PUCO:

I am writing to urge you to reject the negotiated settlements of FirstEnergy and AEP (and a small group of others who have negotiated certain benefits) that will enable the utilities to implement costly Power Purchase Agreement (PPA) riders and other cost-driving provisions.

Should the PUCO approve the deals, both utilities will be able to collect costs (via non-bypassable PPA riders) from all of their customers to subsidize their uneconomical generation assets, thus protecting the utilities from cost risk and guaranteeing their profits and cost recovery and put it all on the backs of their customers for an eight-year term. Ohio's consumers' Counsel has estimated that the FirstEnergy settlement could cost consumers \$3.9 billion over the eight-year duration of the PPA, and the AEP settlement could cost consumers \$2 billion.

For Graphic Packaging International, we estimate the additional costs of this new rider to be \$5 million over the eight-year term of the case. That is real money that could be used on more productive purposes and reinvested in the state of Ohio.

Graphic Packaging International ("GPI") is North America's largest manufacturer of folding cartons and a leading manufacturer of packaging for consumer products. GPI has 7 paperboard mills, 44 converting plants, 3 machinery facilities and 12,000 employees worldwide. GPI employs over 600 team members in our three facilities across the state of Ohio.

If approved by the full PUCO, these deals will put an unnecessary and anti-competitive layer of costs on consumers with no commensurate benefits, constrain competition, and dampen technological innovation in Ohio. In addition, both settlements contain other provisions that will increase costs to consumers.

Ohio has seen resurgence in manufacturing in part to positive electricity markets. These deals impose a massive setback to the growing economy and to Graphic Packaging International's success in Ohio.

Please protect Ohio manufacturers and all consumers in FirstEnergy and AEP territories, the lion's share of the state in terms of utilities, from this substantial bailout/giveaway.

*Spencer H. Meurer*  
Spencer H. Meurer  
VP Supply Chain

cc: Governor John Kasich  
Senator Coley  
Senator Burke  
Senator Patton  
Representative Pelanda  
Representative Desickson  
Representative Amelski

1500 Riveredge Parkway NW - Suite 100 - Atlanta GA 30328  
Phone: 770-240-7200 - FAX: 770-952-8751

9

PPG Industries  
www.ppg.com

Bryan Luns  
Vice President  
Corporate and Government Affairs  
412.434.2181  
Bryan.Luns@ppg.com

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PPG Industries

Bringing innovation to the surface™



Campbell Soup Supply Company  
12773 State Route 110  
Napoleon, OH 43545

February 18, 2016

Public Utilities Commission of Ohio  
180 East Broad Street  
Columbus, OH 43215

RE: Opposition Comment to PPA Cases 14-1693-EL-RDR; 14-1297-EL-SSO

Dear PUCO:

I am writing to urge you to act to reject the negotiated settlements of FirstEnergy and AEP (and a small group of others who have negotiated certain benefits) that will enable the utilities to implement costly Power Purchase Agreement (PPA) riders and other cost-driving provisions.

Should the PUCO approve the deals, both utilities will be able to collect costs (via nonbypassable PPA riders) from all of their customers to subsidize their uneconomical generation assets, thus protecting the utilities from cost risk and guaranteeing their profits and cost recovery, and put it all on the backs of their customers for an eight-year term. Ohio's Consumers' Counsel has estimated that the FirstEnergy settlement could cost consumers \$3.9 billion over the eight-year duration of the PPA, and the AEP settlement could cost consumers \$2 billion.

Our company consumes approximately 100,000,000 kWh/year. We estimate the additional costs of this new rider to be \$5,000,000 over the eight year term of the case. That is real money that could be used on more productive purposes such as capital investment, infrastructure improvements, and training investments that would help secure and grow jobs at our manufacturing plants that today employ more than 2000 Ohioans in Napoleon and Willard.

If approved by the full PUCO, these deals will put an unnecessary and anti-competitive layer of costs on consumers with no commensurate benefits, constrain competition, and dampen technological innovation in Ohio. In addition, both settlements contain other provisions that will increase costs to consumers.

The markets for electricity in Ohio are working to the benefit of consumers. These deals are a massive setback to the consumer-friendly efficiency of those markets.

As a resident of this state, and a manufacturing leader dedicated to insuring our Ohio operations remain competitive, I ask that you please protect Ohio manufacturers and all consumers in FirstEnergy and AEP territories from this substantial bailout/giveaway.

Mark Cacciatore  
Vice President, Manufacturing – Campbell Americas Simple Meals & Beverages

cc: Governor John Kasich  
State Senator Clifford Hite  
State Representative Robert McColley

February 20, 2016  
Public Utilities Commission of Ohio  
180 East Broad Street  
Columbus, OH 43215

RE: Opposition Comment to PPA Cases 14-1693-EL-RDR; 14-1297-EL-SSO

Dear PUCO:

I am writing to ask that you reject the negotiated settlements of FirstEnergy and AEP that will enable the utilities to implement costly Power Purchase Agreement (PPA) riders and other cost-driving provisions.

PPG, a Fortune 200 company and a leading manufacturer of paints and coatings, has deep roots in Ohio. PPG has eight manufacturing locations across the state, as well as 3,000+ employees supporting high-tech, advanced manufacturing.

Should the PUCO approve the deals, both utilities will be able to collect costs (via non-bypassable PPA riders) from all of their customers to subsidize their generation assets, thus protecting the utilities from cost risk and guaranteeing their profits and cost recovery.

Ohio's Consumers' Counsel has estimated that the FirstEnergy settlement could cost consumers \$3.9 billion over the eight-year duration of the PPA, and the AEP settlement could cost consumers \$2 billion. PPG estimates the additional costs of this new rider to be over \$600,000 during the eight year term of the case.

The markets for electricity in Ohio are working to the benefit of consumers. These deals are a setback to the consumer-friendly efficiency of those markets. Please support Ohio manufacturers in FirstEnergy and AEP territories by not supporting this deal.

In the meantime, if I am able to serve as a resource on this important issue, I may be reached at (412) 434-2181.

Sincerely,

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business.  
Technician R Date Processed FEB 25 2016

FILE



Robert J. Wells  
Senior Vice President  
Corporate Communications  
and Public Affairs  
Phone: 216.366.2344  
Fax: 216.366.2344  
Email: rjwells@sherwin.com

Carl Johnson  
PPG Director of Manufacturing, Americas  
Automotive Refinish  
Delaware, Ohio

Keith Schneider  
PPG Plant Manager  
Automotive OEM  
Cleveland, Ohio

Bryan Iams  
Vice President  
Corporate and Government Affairs  
Pittsburgh, Pennsylvania

RECEIVED-DRINKETING DIV  
2016 FEB 23 PM 3:29  
PUCO

February 22, 2016

Public Utilities Commission of Ohio  
180 East Broad St  
Columbus, OH 43215

RE: **Opposition Comment to PPA Cases 14-1693-EL-RDR;  
14-1297-EL-SSO**

Dear PUCO:

I am writing to urge you to act to reject the negotiated settlements of FirstEnergy and AEP (and a small group of others who have negotiated certain benefits) that will enable the utilities to implement costly Power Purchase Agreement (PPA) riders and other cost-driving provisions.

Should the PUCO approve the deals, both utilities will be able to collect costs (via non-bypassable PPA riders) from all of their customers to subsidize their uneconomical generation assets, thus protecting the utilities from cost risk and guaranteeing their profits and cost recovery. And put it all on the backs of their customers for an eight-year term.

Ohio's Consumers' Counsel has estimated that the FirstEnergy settlement could cost consumers \$3.9 billion over the eight-year duration of the PPA, and the AEP settlement could cost consumers \$2 billion.

Our company consumes approximately 16,381,149 kWh/year with AEP and 50,223,474 kWh/year with FirstEnergy. We estimate the additional costs of this new rider to be \$734,301 with AEP and \$2,504,645 with FirstEnergy over the eight year term of the case. That is real money that could be used on more productive purposes. For example, it would fund the opening of 10 new Sherwin-Williams paint stores in Ohio, which translates to about 60 new jobs.

If approved by the full PUCO, these deals will put an unnecessary and anti-competitive layer of costs on consumers with no commensurate benefits, constrain competition, and dampen technological innovation in Ohio. In addition, both settlements contain other provisions that will increase costs to consumers.

This is to certify that the signed copy is an accurate and complete reproduction of the document delivered to the Public Utilities Commission on February 23, 2016.  
Technician

The Sherwin-Williams Company 101 W. Prospect Avenue, Cleveland, OH 44115-1075



FILE



Navistar, Inc.  
2701 Navistar Drive  
Leisle, IL 60532, USA  
P: 664-414-2641  
W: navistar.com

Jacqueline W. Galb  
Director, Government Relations

Public Utilities Commission of Ohio  
February 22, 2016  
Page 2

The markets for electricity in Ohio are working to the benefit of consumers. These deals are a massive setback to the consumer-friendly efficiency of those markets.

Please protect Ohio manufacturers and all consumers in FirstEnergy and AEP territories, the lion's share of the state in terms of utilities, from this substantial bailout/giveaway.

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2016 FEB 23 AM 10:29  
PUCO

February 23, 2016

Public Utilities Commission of Ohio  
180 East Broad Street  
Columbus, OH 43215

RE: Opposition Comment to PPA Cases 14-1693-EL-RDR; 14-1297-EL-SSO

Dear PUCO:

I am writing on behalf of Navistar, Inc. to request you to reject the negotiated settlements of FirstEnergy and AEP (and a small group of others who have negotiated certain benefits) that will enable the utilities to implement costly Power Purchase Agreement (PPA) riders and other cost-driving provisions.

Navistar is a commercial truck, bus and diesel engine manufacturer that operates and employs over 1000 employees in Springfield, OH. The community has been a cornerstone in the company's manufacturing footprint for over 100 years, having played an important role in producing some of the safest and best quality medium and heavy duty trucks.

Should the PUCO approve the deals, both utilities will be able to collect costs (via non-bypassable PPA riders) from all of their customers to subsidize their uneconomical generation assets, thus protecting the utilities from cost risk and guaranteeing their profits and cost recovery, passing onto their customers for an eight-year term.

Navistar is one of those customers of First Energy that could be impacted by this proposed partnership. Our Springfield facility consumes approximately 70,000,000 kWh/year. We estimate the additional costs of this new rider to be over \$3 million during the eight year term of the case. Forcing company leadership to redirect valuable capital resources away from reinvestment in the plant and training our employees to produce market leading commercial trucks.

If approved by the full PUCO, these deals will put an unnecessary and anti-competitive layer of costs on consumers with no commensurate benefits, constrain competition, and dampen technological innovation in Ohio. In addition, both settlements contain other provisions that will increase costs to consumers. Ohio's Consumers' Counsel has estimated that the FirstEnergy settlement could cost consumers \$3.9 billion over the eight-year duration of the PPA, and the AEP settlement could cost consumers \$2 billion.

The markets for electricity in Ohio are working to the benefit of consumers. These deals are a massive setback to the consumer-friendly efficiency of those markets. Please protect Ohio manufacturers and all consumers in FirstEnergy and AEP territories, the lion's share of the state in terms of utilities, from this substantial giveaway.

Sincerely,

Sincerely,  
  
Robert J. Wells

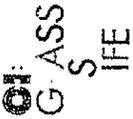
RJW/kj

cc: Governor John Kasich  
Representative Marcia Fudge  
Senator Sherrod Brown

W-8

FILE

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2016 FEB 25 AM 10:28  
PUCO



Shaun McMackin  
Vice President  
Operations & Engineering  
1 Michael Owens Way  
Perrysburg, OH 43051  
1-567-338-9227  
Shaun.McMackin@oi.com

February 24, 2016

Chairman Andre T. Porter  
The Public Utilities Commission of Ohio  
180 East Broad Street  
Columbus, OH 43215

RE: Opposition Comment to PPA Cases 14-1693-EL-RDR; 14-1297-EL-SSO

Dear Chairman Porter and Commissioners:

On behalf of Owens-Illinois, Inc., I write to oppose the negotiated settlements of FirstEnergy and AEP that will enable the utilities to implement costly Power Purchase Agreement (PPA) riders and other cost-driving provisions that harm manufacturers and consumers alike. As a major Ohio energy user, O-I is sensitive to the competitive electricity markets on a daily basis and believes the proposed agreements will only harm manufacturers operating in the state.

Ohio is home to our global headquarters and research and development center (both located in Perrysburg) and a glass manufacturing plant in Zanesville. O-I has over 1,000 employees in the state. O-I is a customer of both AEP and FirstEnergy.

The proposed settlements and resultant price increases will threaten the competitive advantage Ohio has compared to other states in the region; further, it could force manufacturers to reallocate much needed capital for operational and other investments. Specifically O-I will realize an approximate annual increase of \$400,000, totaling over \$3.2 million over the next eight years.

Should the Commission approve the settlements, both utilities will be able to collect costs (via non-bypassable PPA riders) from all of their customers to subsidize their uneconomical generation assets, thus protecting the utilities from cost risk and guaranteeing their cost recovery. This represents a step backwards in Ohio's transition to a competitive market for electricity.

The Office of the Ohio Consumers' Counsel has estimated that the FirstEnergy settlement could cost consumers \$3.9 billion over the eight-year duration of the PPA, and the AEP settlement could cost consumers \$2 billion. Ohio manufacturers and consumers in FirstEnergy and AEP territories should not bear the cost of these settlements. In the interest of keeping Ohio energy prices competitive, O-I urges the Commission to reject the proposed settlements.

Sincerely,

Shaun McMackin  
Vice President  
Operations & Engineering

oi.com glassisife.com

oi.com glassisife.com



Ashland Performance Materials

Date: February 29, 2016

Public Utilities Commission of Ohio  
180 E. Broad St.  
Columbus, Ohio 43215

1220 S. Metcalf Street  
Lima, OH 45804

Re: Opposition Comment to PPA Cases 14-1693-EL-RDR, 14-1297-EL-SSO

Dear PUCO:

I am writing you to urge you to reject the negotiated settlements of First Energy and AEP that will enable the utilities to implement costly Power Purchase Agreements (PPA) riders and other cost driving provisions.

Should these riders be approved, these utilities will be able to collect costs from all of their customers to subsidize uneconomical generation assets, protecting the utilities from cost risk and guaranteeing their profits and cost recovery over an eight year period.

Based on our future estimates of electricity usage and the calculated impact of the rider, Ashland Lima's electricity costs will rise by over \$250,000 per year for each of the next eight years. As a commodity chemical producer, we compete on a global basis and neither our North American nor overseas competition will be facing such an increase. As a result other cuts in operating expenditures will need to be made in order to maintain the profitability of this facility.

As operating costs increase, the ability of this facility to attract capital for continuing operations and growth will be impacted.

We understand that changes in electricity marketing and the regulatory environment impact our electric utilities. As mentioned above, our business faces similar challenges, and we need to continue to improve our operations to remain competitive, without the assistance of guarantees from our customers to achieve a fixed rate of return on assets.

If approved by the PUCO, these deals will add costs for Ohio consumers and impact innovation, growth and jobs in the state by diverting dollars away from those areas to subsidize the utilities' less efficient assets.

Please consider this request to protect all industry and consumers in the state from this substantial increase in electricity costs.

Sincerely,

Charles Gasperetti, Plant Manager  
Ashland Lima Plant

cc: Governor John Kasich  
State Senator Keith Faber  
State Representative Robert Cupp

## Energy

### [Commentary: Would FirstEnergy and AEP Rate Plans be Good for Consumers? No](#)

February 19, 2016

Dr. Ned Hill, Professor of Public Affairs and City & Regional Planning at The John Glenn College of Public Affairs at The Ohio State University, is a frequent consultant to the OMA on a wide variety of manufacturing competitive issues.

Here he is on the record in a [Columbus Dispatch op-ed](#) about the Power Purchase Agreements proposed to the Public Utilities Commission of Ohio by AEP and FirstEnergy: “These proposals are about paying above-free-market rates for about 30 percent of the electricity AEP and FirstEnergy generate in Ohio. And, the proposals will transfer all of the business risk in operating these units from the companies’ stockholders and management to all electricity users in their territories—even if they are not customers of the utility.”

### [PPA Case Proponents & Opponents Take to Airwaves](#)

February 19, 2016

The battle continues in the media while the Public Utilities Commission of Ohio (PUCO) evaluates proposed FirstEnergy and AEP Power Purchase Agreement (PPA) case settlements.

Here are TV/radio spots in which the [Alliance for Energy Choice](#), a group of independent power producers, takes some pokes at the utilities’ requests for guaranteed profits.

Here is [FirstEnergy’s comeback](#). [And AEP’s](#).

### [SCOTUS Delays Clean Power Plan](#)

February 12, 2016

The Supreme Court of the United States (SCOTUS) this week granted a stay of the Obama administration’s Clean Power Plan (CPP) regulation of greenhouse gas (GHG) emissions from the electric utility sector. This decision delays the implementation of the rule until the courts have the opportunity to determine the plan’s legality.

The case against the plan is pending before the D.C. Circuit Court, where arguments will be heard June

2. A decision is possible in 2016, but might not be made until 2017.

Meanwhile, there is some legal question about whether the state implementation deadlines (the first is September of this year) are tolled until a final legal resolution is achieved. Read more on that [here](#).

### [Manufacturers Oppose Subsidies for Utilities](#)

February 12, 2016

ArcelorMittal, Whirlpool, BASF, William Sopko & Sons Co., Summitville Tiles, The Belden Brick Co., Cooper Tire & Rubber Co., and Sheoga Hardwood Flooring and Paneling Co. were among companies that sent a letter to the PUCO urging it to reject a request by AEP and FirstEnergy that would raise electric rates for up to eight years to subsidize some of their inefficient power plants.

The Cleveland Plain Dealer [summarized the arguments](#) made by these industry leaders.

Concerned manufacturers should send a letter to the PUCO to convey your opposition to the bad deals. This [alert](#) will give you tips on how to calculate your potential costs and file your letter.

### [New Study, Same Result: FE Plan Would Cost \\$4B](#)

February 12, 2016

A [new study](#) by the [Institute for Energy Economics & Financial Analysis](#) (IEEFA) has analyzed the effects of FirstEnergy’s proposal to utility regulators to allow it to pass long-term costs and risks of three aging coal-fired plants and one aging nuclear plant onto captive customers of the utility.

The report finds that: “FirstEnergy is using greatly inflated forecasts of future natural gas prices and PJM electricity market prices to justify its proposal.”

And, “FirstEnergy’s proposal—under an uninflated, reasonable natural gas price outlook—would in truth result in a net cost to ratepayers of approximately \$4 billion, rather than the net \$561 million gain that the company promises.

“IEEFA concludes that FirstEnergy proposal is a bad deal for Ohio customers and would lock Ohio into subsidizing the continued operation of aging and uneconomic power plants while hindering opportunities for lower cost and cleaner energy

resources that could provide jobs and significant economic benefits for the state.”

IEEFA proposes: “... rather than propping up these struggling plants, Ohio policymakers work instead for an orderly transition away from outmoded energy generation by supporting the development of cleaner, modern and more efficient resources.”

### [OMA Energy Efficiency Peer Network Kicks Off 2016 Programming](#)

February 12, 2016

The OMA [Energy Efficiency Peer Network](#) (EEPN) is gearing up for 2016, and will include: plant tours, peer-learning webinars, do-it-yourself tools, and up to 3 hours of no-charge technical assistance & consulting. The EEPN is open to all manufacturing members of the OMA at no charge.

The first EEPN event is a plant tour on [Friday, March 18](#) at [F&P America](#), an ISO/TS-16949 and ISO 14001 Certified Tier-One International Automotive Systems Supplier in Troy, Ohio. (Max. of 20 participants; no direct competitors.)

[Join the EEPN](#) to get all event invitations. Questions? Contact OMA’s energy engineer, [John Seryak](#).

### [PJM and its Market Monitor: AEP Proposal Will Hurt Customers and Investment](#)

February 5, 2016

PJM, the regional transmission organization (RTO) and administrator of the wholesale power markets in Ohio this week filed a [post-hearing brief](#) expressing concerns about the negative effects on electricity markets of AEP’s power purchase agreement (PPA) case pending before the Public Utilities Commission of Ohio (PUCO).

PJM said of its reason for filing, “(Addressing faults in the proposal) is critical in order to send the right signal as to Ohio’s interest in attracting competitive generation to meet the state’s future economic development needs. Silence on this issue will only make it harder for investors in new generation to view Ohio as a place where their investment is welcome and can compete fairly with existing legacy generation of the sort covered by the Stipulation.”

As to the claim that system reliability will be threatened if the PPA is not approved, PJM wrote, “There has been significant new generation entry that,

combined with demand response and imports within PJM’s capacity import limit, has consistently kept PJM’s reserve margins on target. Indeed, as various witnesses noted, there are several substantial new plants under construction or proposed for Ohio.”

PJM Independent Market Monitor Dr. Joseph Bowring also [filed a brief](#), in which he stated, “The purpose of the PPA Rider is to transfer the costs and market risks associated with the PPA Rider Units from AEP’s shareholders to AEP’s ratepayers. AEP has not demonstrated and cannot demonstrate why customers should bear these costs and take these risks, if a well-informed generation owner is not willing to do so.”

### [OMA to PUCO: Protect Electricity Market](#)

February 5, 2016

Manufacturers, and other electricity consumers, have benefited from Ohio’s move to a deregulated electricity market. This week, the OMA Energy Group [filed a brief](#) in the AEP case which would undermine the market and force large costs on its customers for the next eight years for no benefit.

“Electricity is a critical cost component for manufacturers in producing their products. By allowing manufacturers to shop for their electricity supply, and having suppliers compete to provide that electricity, the cost component compared to what would otherwise be available to manufacturers under the utilities’ tariffed rates has come down. The downward pressure on prices created by a competitive market should be fostered,” the OMA Energy Group wrote in its brief.

Yet, the brief states, “If accepted, the (proposal) ... will saddle distribution customers with the generation costs of a fleet of aging and expensive coal units and threaten to erase the gains made by Ohio manufacturers and other consumers in the competitive market. That outcome is unfaithful to the General Assembly’s unambiguous market-based directive and will thwart the state’s effectiveness in the global economy. Indeed, as one of the top generators of electricity in the nation, the harms to Ohio could be especially painful. Given the interconnectedness of the electrical grid and the competitive markets, these harms will have ripple effects beyond Ohio’s borders.”

## [SCOTUS Saves Demand Response](#)

February 5, 2016



Last week the U.S. Supreme Court breathed new life into “demand response” programs across the nation. Specifically, in a 6-2 decision the justices upheld the Federal Energy Regulatory Commission’s authority to regulate wholesale demand response programs. Therefore, Ohio energy consumers can continue to participate in the PJM demand response programs.

Read more about benefits of participating in demand response programs in this [OMA Energy Guide blog](#).

Each month [OMA Energy Guide posts a blog](#) with energy news, purchasing and management advice. [Subscribe at My OMA](#).

### [Use OMA Calculator to Estimate Your Cost of Utility Deals](#)

January 29, 2016

Litigation continues at the Public Utilities Commission of Ohio (PUCO) regarding proposed FirstEnergy and AEP “power purchase agreement” (PPA) case settlements.

The PUCO is expected to decide the cases in the coming months.

If the PUCO approves the utilities’ proposals, all customers in each utility’s service territory would be required to pay non-bypassable PPA riders.

[Use this calculator](#) to estimate what your company might pay.

Concerned members should send a letter (on company letterhead) to the PUCO to express opposition. Include the case numbers in the subject line: PPA Cases 14-1693-EL-RDR; 14-1297-EL-SSO, and [email to the PUCO](#).

[Here’s a model letter](#) that you can customize and send. Please consider sending a copy of your letter to Governor Kasich and to your state representative

and state senator, as well as to OMA’s [Ryan Augsburger](#).

## [“FirstEnergy Just Asks for Too Much”](#)

January 29, 2016

“FirstEnergy just asks for too much” is what Akron Beacon Journal editorial page editor, Michael Douglas, says of the FirstEnergy request before the Public Utilities Commission of Ohio.

“It defines the benefits too narrowly. The proposal shifts considerable risk from shareholders to consumers.”

What he’s talking about is FirstEnergy’s request of the regulators to provide guaranteed revenue for the next eight years in the form of a Power Purchase Agreement whereby the utility would purchase power from its own generation plants at customer-subsidized prices.

[Read the January 23 editorial here](#).

## [Parties Ask FERC to Review Power Purchase Agreements](#)

January 29, 2016

This week John Funk of the Plain Dealer [reported](#) that the Electric Power Supply Association and the Retail Energy Supply Association have asked for an immediate [FERC review of AEP](#) and FirstEnergy special deals called “power purchase agreements” that are before the Public Utilities Commission of Ohio (PUCO). And, separately, the Office of the Ohio Consumers’ Counsel has [filed its own objections](#) with the FERC this week.

The complaining parties say that the utilities’ proposals do not meet the competitive standards the PUCO established in previous cases and are disruptive to the electricity market.

## [PUCO Commissioner to be Appointed](#)

January 29, 2016

The Public Utilities Commission of Ohio (PUCO) Nominating Council [met this week](#) to interview applicants for the position of commissioner of the PUCO to fill a five-year term commencing on April 11, 2016.

The Nominating Council subsequently selected four candidates to submit to Gov. John R. Kasich for his

consideration: Asim Z. Haque, who currently holds the seat that is up for appointment, Robert E. Burns, Alan L. Erenrich, and Allan Sears.

The PUCO Nominating Council is a broad-based, 12-member panel charged with screening candidates for the position of commissioner.

### [“Everyone is Unhappy”](#)

January 22, 2016

The board of the Ohio Consumers’ Counsel released a report this week that it titled, [“Everyone is Unhappy.”](#)

Referring to the state’s electricity system, the board noted that “thirty-two states have cheaper electricity for residential consumers than Ohio,” and that among the states that have enacted some form of generation deregulation Ohio’s “rate of cost increase stands alone as the highest.”

“So what to do? Consumers have grounds to be unhappy, commerce and business have grounds to be unhappy, and utility executives and stockholders have grounds to be unhappy. In fact, they all might have grounds to be very unhappy in the future, if some analysts are correct and the investor-owned utilities plunge into a death spiral,” wrote the board.

The group calls for the legislative creation of a task force to study reforms in Ohio electricity law.

### [Leaders Oppose AEP & FirstEnergy Power Purchase Agreements](#)

January 22, 2016

CEOs of some of the country’s largest competitive electric suppliers traveled to Columbus this week to meet with state leaders to express their opposition to AEP and FirstEnergy utility power purchase agreement settlement proposals before the PUCO that will guarantee utility profits and bypass competitive bidding for electricity.

[As reported in The Columbus Dispatch:](#) “The number one biggest lie is that it’s going to save consumers money,” said Robert Flexon, president and CEO of Dynegy, a Houston-based electricity company that owns power plants in Ohio.

The [Findlay Courier](#) highlighted [a Jan. 11 letter](#) to Governor Kasich from Cooper Tire & Rubber Co. Chairman, CEO & President, Roy Armes, who urges the rejection of the subsidy proposals.

OSCO Industries, Inc. CEO, John Burke, [sent a letter to the PUCO](#) saying: “... AEP’s PPA proposal will significantly impair OSCO’s ability to compete in today’s marketplace.” And, “The PPA is a complete reversal of about 15 years of migration toward deregulating electric generation in our state and provides an unjustified wind-fall for AEP.”

### [PUCO Will Hear “2014 Polar Vortex” Complaint Against FES](#)

January 22, 2016

In the FirstEnergy Solutions (FES) RTO Expense Surcharge Case, the Public Utilities Commission of Ohio (PUCO) denied FES’ motion to dismiss the complaint that was filed by numerous OMA members (complainants). Complainants alleged that FES unlawfully passed through charges associated with the 2014 polar vortex.

The PUCO also granted the complainants’ request to prevent termination of service and ordered that the case be set for an evidentiary hearing. Contact OMA’s [Ryan Augsburger](#) for more information.

### [OMA Engages Media on Electricity Cost Increase Proposals](#)

January 15, 2016

This week the OMA held a media briefing on the pending AEP and FirstEnergy applications for Power Purchase Agreements (PPAs). OMA Energy Group expert witnesses joined with manufacturing member representatives to describe how the proposed agreements will add significant costs to manufacturers, while constraining market competition for electric generation.

Hannah News Service, Inc. [reported concerns expressed by Dr. Edward “Ned” Hill](#), an economist with The Ohio State University. [Ohio Public Radio featured Brad Belden](#), Director, Support Services, The Belden Brick Company, who said it is unfair for manufacturers to shoulder the cost of the utility companies’ subsidies, after already paying for the transition to a competitive electricity market in Ohio.

Also this week, [as reported in the Cleveland Plain Dealer](#), competitive electric supplier Dynegy, an opponent to the PPA settlements, submitted a proposal to the PUCO to supply the contested electricity at a savings of \$5 billion over the PPA subsidy proposals.

If you haven’t already, [consider expressing your concern](#) regarding the costs of the PPA proposals

([see your estimated impact here](#)) to your elected officials.

### [Act Now to Prevent Electricity Cost Increases](#)

January 8, 2016

A projected \$6 billion in additional electricity costs are at stake in two cases pending before the Public Utilities Commission of Ohio (PUCO). Each case would provide massive subsidies, at customer expense, to FirstEnergy and AEP for power plants that are not clearing the markets in competitive auctions.

These cases are on a political fast track. It is critical for manufacturers to act now to urge defeat of the utility proposals. Use the [tools of OMA Manufacturing Action Center](#) to communicate to public officials.

Read an [analysis of potential costs](#) you might pay. And, read an [executive briefing](#) and [talking points](#) on the matter.

### [PUCO, the 2015 Holiday Scrooge](#)

January 8, 2016

The Public Utilities Commission of Ohio (PUCO) said “bah, humbug” to the holidays and moved to fast track consideration of the pending power purchase agreement cases of both FirstEnergy and AEP. The process is now so rushed that observers are questioning the effect on stakeholders’ rights of due process.

The [OMA Energy Group](#) worked through the holidays to prepare and file additional testimony in both cases.

In [supplemental testimony](#) to the FirstEnergy case, OSU economist Dr. Edward (Ned) Hill said: “(The proposal) re-imposes an oligopoly in the electric generation market,” deterring new entry and hurting long term reliability.

Also in [supplemental testimony](#) in that case, OMA consulting engineer John Seryak said: “(The new stipulation) creates costs and precedents for years to come.” He noted a lack of “thorough, transparent cost analysis,” which should be a minimum requirement for PUCO consideration of the proposal.

In the AEP case, [Hill testified](#): “Typically, if a market participant cannot compete in a competitive market, it will fail. Subsidizing an existing market participant in the hope that it may be able to compete at some point in the future is not in the public interest, nor is it good

public policy. It will only deter entry and keep prices higher than they would otherwise be in a competitive market.”

And, Seryak in the AEP case [testified](#) that the renewable energy proposed in the case, which would be financed by a non-bypassable rider (that is, every AEP customer would have to pay, including those who have shopped competitively for power), would cause many customers to pay twice for energy.

### [Exelon Offers Power at \\$2 Billion Less than FirstEnergy](#)

January 8, 2016

In [bombshell testimony](#) in the FirstEnergy power purchase agreement case before the Public Utilities Commission of Ohio (PUCO), Exelon offered power at a cost \$2 billion less than FirstEnergy is proposing, over the eight-year term of the proposal.

Exelon opposes the FirstEnergy proposal and suggested that the PUCO should let the competitive marketplace set prices. It noted that other competitors might have a better price than even Exelon.

### [Sierra Club and AEP Make Deal: To Increase Electricity Costs](#)

December 18, 2015

This week, the Sierra Club and AEP, with a few other parties, including PUCO staff, [announced a deal](#) in the AEP case pending before the Public Utilities Commission of Ohio (PUCO), a deal that will cost consumers billions of dollars, according to the Sierra Club’s [own statements](#) before the PUCO.

The deal would shift the risks of operating AEP’s uneconomical plants to consumers. The state’s [consumers’ counsel](#) estimates this will cost consumers \$2 billion over the life of the proposal.

The deal now also says AEP will install 400 megawatts of solar and 500 megawatts of wind power by 2020. No mention of costs, which will all be born by customers.

The new deal is worse for customers than the initial costly proposal. Not only will customers be mandated to subsidize uneconomical old coal generating plants, but also customers will be saddled with large costs for the solar and wind generation, which’ll be at least partly owned by the utility.

The markets for electricity in Ohio are working to the benefit of consumers. This deal is a massive setback to the consumer-friendly efficiency of those markets. If approved by the full PUCO, it will put an unnecessary and anti-competitive layer of costs on consumers, constrain competition, and dampen technological innovation in Ohio.

### [Timeline Set in FirstEnergy Settlement](#)

December 11, 2015

Last week Public Utilities Commission of Ohio (PUCO) staff stunned interested parties when they entered into an agreement with FirstEnergy in the company's request for customer subsidies to pay for certain uneconomic generation assets, bypassing the competitive marketplace.

This week the regulators at the PUCO set a hearing schedule to consider the settlement proposal. The settlement proposal needs to be approved by a majority of the five-member commission. The five commissioners are appointees of Governor Kasich.

The hearings will commence on January 14, 2016. The OMA Energy Group has opposed the FirstEnergy rate proposal; OMA Energy Group will participate in the hearings. The Cleveland Plain Dealer [reported](#) on the development and says FirstEnergy hopes to have the settlement approved by February 10.

### [Ohio Oil and Natural Gas Production Reaches New Highs](#)

December 11, 2015

As of the third quarter of 2015, Ohio's horizontal shall wells produced 15,707,339 barrels of oil and 651,193,106 Mcf of natural gas, [according to the Ohio Department of Natural Resources](#). The quarterly production continues to set new drilling records in the Buckeye state.

Ohio's horizontal shale wells have produced more oil and gas in the first nine months of this year than all of Ohio's wells produced in 2014. In 2014, Ohio's wells produced 15,062,912 barrels of oil and 512,964,465 Mcf of gas.

All horizontal production reports [can be found here](#).

### [PUCO Staff Supports FirstEnergy Bailout](#)

December 4, 2015

In an abrupt about face, the staff of the Public Utilities Commission of Ohio (PUCO) filed an agreement with FirstEnergy this week that'll put the risk of operating two old and uncompetitive generating units on the backs of customers.

The agreement would provide for a power purchase agreement between FirstEnergy Solutions (the unregulated generation affiliate of FirstEnergy) and the FirstEnergy distribution company. The agreement would be in place for eight years. That is, the distribution company would be mandated to buy power from the affiliated company, rather than have the affiliated company compete in electricity auctions.

Customers in Ohio are benefiting from an electricity market place that is working to provide lower prices and more market options. This agreement, if eventually approved by the PUCO commissioners, would add a new layer of mandated costs onto customers. It is estimated to cost \$3.9 billion over the eight years.

This would be a giant step backward for Ohio's economy, and particularly to cost-sensitive manufacturers.

Read more about this in [this article](#) by the Columbus Dispatch's Dan Gearino and [this article](#) by the Cleveland Plain Dealer's John Funk.

### [Double Digit Annual Increases Forecast for CPP](#)

December 4, 2015

NERA Economic Consulting, using its proprietary energy/economy modeling software, [projects U.S. electricity costs](#) increases of between 11% and 14% annually from 2022 to 2033 under the Clean Power Plan (CPP).

The forecast assumes states will use the "mass base" compliance mechanism. It models both intra-state and regional compliance strategies.

NERA finds that annual average expenditures increase between \$29 and \$39 billion/year for that time period. It concludes that, by 2031, annual CO<sup>2</sup> emissions are 36% to 37% lower than they were in 2005.

## Energy Legislation

Prepared by: The Ohio Manufacturers' Association  
Report created on March 1, 2016

- HB8**      **OIL-GAS LAW** (HAGAN C) To revise provisions in the Oil and Gas Law governing unit operation, including requiring unit operation of land for which the Department of Transportation owns the mineral rights.  
*Current Status:* 4/14/2015 - Senate Energy and Natural Resources, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-8>
- HB23**      **OIL-GAS LEASE INCOME** (AMSTUTZ R) To use one-half of any income from oil and gas leases on state land to fund temporary income tax reductions, to modify the law governing the use of new Ohio use tax collections, and to require the Director of Budget and Management to recommend whether or not income tax rates should be permanently reduced.  
*Current Status:* 11/18/2015 - Senate Ways and Means, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-23>
- HB64**      **OPERATING BUDGET** (SMITH R) To make operating appropriations for the biennium beginning July 1, 2015, and ending June 30, 2017, and to provide authorization and conditions for the operation of state programs.  
*Current Status:* 6/30/2015 - **SIGNED BY GOVERNOR**; eff. 6/30/15; certain provisions effective 9/29/2015, other dates  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-64>
- HB72**      **ENERGY IMPROVEMENT DISTRICTS** (CONDITT M) To authorize port authorities to create energy special improvement districts for the purpose of developing and implementing plans for special energy improvement projects and to alter the law governing such districts that are governed by a nonprofit corporation.  
*Current Status:* 5/6/2015 - **BILL AMENDED**, House Public Utilities, (Fourth Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-72>
- HB83**      **OIL-GAS ROYALTY STATEMENT** (CERA J) To require the owner of an oil or gas well to provide a royalty statement to the holder of the royalty interest when the owner makes payment to the holder.  
*Current Status:* 3/10/2015 - House Energy and Natural Resources, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-83>
- HB122**      **PUBLIC UTILITIES COMMISSION MEMBERSHIP** (LELAND D) To require that each major political party be represented on the Public Utilities Commission, to specify that not more than three commissioners may belong to or be affiliated with the same major political party, and to require that Public Utilities Commission Nominating Council lists of nominees include individuals who, if selected, ensure that each major political party is represented on the Commission.  
*Current Status:* 3/24/2015 - Referred to Committee House Government

Accountability and Oversight

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-122>

- HB162 SEVERANCE TAX RATES (CERA J)** To change the basis, rates, and revenue distribution of the severance tax on oil and gas, to create a grant program to encourage compressed natural gas as a motor vehicle fuel, to authorize an income tax credit for landowners holding an oil or gas royalty interest, and to exclude some oil and gas sale receipts from the commercial activity tax base.  
**Current Status:** 5/12/2015 - House Ways and Means, (First Hearing)  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-162>
- HB176 GAS-FUEL CONVERSION PROGRAM (HALL D, O'BRIEN S)** To create the Gaseous Fuel Vehicle Conversion Program, to allow a credit against the income or commercial activity tax for the purchase or conversion of an alternative fuel vehicle, to reduce the amount of sales tax due on the purchase or lease of a qualifying electric vehicle by up to \$500, to apply the motor fuel tax to the distribution or sale of compressed natural gas, to authorize a temporary, partial motor fuel tax exemption for sales of compressed natural gas used as motor fuel, and to make an appropriation.  
**Current Status:** 11/18/2015 - **REPORTED OUT**, House Finance, (First Hearing)  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-176>
- HB190 WIND FARM SETBACKS-COUNTY (BURKLEY T, BROWN T)** To permit counties to adopt resolutions establishing an alternative setback for wind farms and to extend by five years the deadlines for obtaining the qualified energy project tax exemption.  
**Current Status:** 11/18/2015 - **SUBSTITUTE BILL ACCEPTED**, House Public Utilities, (Second Hearing)  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-190>
- HB214 PUBLIC IMPROVEMENT-PIPING MATERIAL (THOMPSON A)** To restrict when a public authority may preference a particular type of piping material for certain public improvements.  
**Current Status:** 6/9/2015 - House Energy and Natural Resources, (First Hearing)  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-214>
- HB349 STATE EMISSIONS PLAN (SMITH R, GINTER T)** To require the Environmental Protection Agency to submit a state plan governing carbon dioxide emissions to the General Assembly prior to submitting it to the United States Environmental Protection Agency, and to declare an emergency.  
**Current Status:** 12/8/2015 - House Energy and Natural Resources, (Third Hearing)  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-349>
- HB390 NATURAL GAS-TAX EXEMPTION (SCHAFFER T, RETHERFORD W)** To exempt the sale of natural gas by a municipal gas company from the sales and use tax.  
**Current Status:** 2/24/2016 - **PASSED BY HOUSE**; Vote 93-0  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-390>

[summary?id=GA131-HB-390](https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-390)

- HB472**      **RENEWABLE-EFFICIENCY ENERGY REQUIREMENTS** (STRAHORN F) To unfreeze the requirements for renewable energy, energy efficiency, and peak demand reduction, to permit changes in and Public Utilities Commission action on electric distribution utility portfolio plans in 2016, to revise the setback requirement for economically significant wind farms, and to repeal the setback requirement for wind farms of fifty megawatts or more.  
*Current Status:* 2/23/2016 - Referred to Committee House Public Utilities  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-472>
- HB473**      **UTILITY SERVICE TAX-LEVY** (AMSTUTZ R) To require voter approval before a county may levy a new utilities services tax, to allow small businesses to count employees of related or affiliated entities towards satisfying the employment criteria of the business investment tax credit, to permit a bad debt refund for cigarette and tobacco product excise taxes paid when a purchaser fails to pay a dealer for the cigarettes or tobacco products and the unpaid amount is charged off as uncollectible by the dealer.  
*Current Status:* 2/23/2016 - Introduced  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-473>
- HCR7**      **TAX EXEMPT MUNICIPAL BONDS** (SPRAGUE R) To urge the President and the Congress of the United States to preserve the tax-exempt status of municipal bonds.  
*Current Status:* 2/23/2016 - Referred to Committee Senate Ways and Means  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HCR-7>
- HCR9**      **SUSTAINABLE ENERGY-ABUNDANCE PLAN** (BAKER N) To establish a sustainable energy-abundance plan for Ohio to meet future Ohio energy needs with affordable, abundant, and environmentally friendly energy.  
*Current Status:* 6/17/2015 - **ADOPTED BY SENATE**; Vote 32-1  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HCR-9>
- SB45**      **LAKE ERIE SHORELINE IMPROVEMENT** (SKINDELL M, EKLUND J) To authorize the creation of a special improvement district to facilitate Lake Erie shoreline improvement.  
*Current Status:* 3/17/2015 - Senate Energy and Natural Resources, (Second Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-45>
- SB46**      **LAKE ERIE DRILLING BAN** (SKINDELL M) To ban the taking or removal of oil or natural gas from and under the bed of Lake Erie.  
*Current Status:* 2/18/2015 - Referred to Committee Senate Energy and Natural Resources  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-46>
- SB47**      **DEEP WELL BRINE INJECTION PROHIBITION** (SKINDELL M) To prohibit land application and deep well injection of brine, to prohibit the conversion of wells, and to eliminate the injection fee that is levied under the Oil and Gas Law.  
*Current Status:* 2/18/2015 - Referred to Committee Senate Energy and Natural

Resources

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-47>

- SB58**      **CONDITIONAL SEWAGE CONNECTION (PETERSON B)** To authorize a property owner whose property is served by a household sewage treatment system to elect not to connect to a private sewerage system, a county sewer, or a regional sewerage system under specified conditions.  
**Current Status:** 3/4/2015 - Referred to Committee Senate Energy and Natural Resources  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-58>
- SB100**     **SALES TAX HOLIDAY-ENERGY STAR (BROWN E)** To provide a three-day sales tax "holiday" each April during which sales of qualifying Energy Star products are exempt from sales and use taxes.  
**Current Status:** 3/4/2015 - Referred to Committee Senate Ways and Means  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-100>
- SB120**     **OIL-GAS LAW REVISION (SCHIAVONI J)** To revise enforcement of the Oil and Gas Law, including increasing criminal penalties and requiring revocation of permits for violations of that Law relating to improper disposal of brine.  
**Current Status:** 3/10/2015 - Referred to Committee Senate Energy and Natural Resources  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-120>
- SB164**     **UTILITY SMART METER CONSENT (JORDAN K)** To require electric distribution utilities to obtain a customer's consent prior to installing a smart meter on the customer's property  
**Current Status:** 5/27/2015 - Referred to Committee Senate Public Utilities  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-164>
- SB166**     **HORIZONTAL WELL EMERGENCY PLAN (GENTILE L)** To require the owner of a horizontal well to develop and implement an emergency response plan for the purpose of responding to emergencies.  
**Current Status:** 10/7/2015 - Senate Energy and Natural Resources, (First Hearing)  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-166>
- SB185**     **SPECIAL IMPROVEMENT DISTRICTS (SEITZ B)** To revise the law governing special improvement districts created for the purpose of developing and implementing plans for special energy improvement projects.  
**Current Status:** 10/7/2015 - **BILL AMENDED**, Senate Energy and Natural Resources, (Third Hearing)  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-185>
- SCR6**      **EXPORT-CRUDE OIL (BALDERSON T)** The urge the U.S. Congress to lift the prohibition on the export of crude oil from the United States.

**Current Status:** 12/8/2015 - **ADOPTED BY HOUSE**; Vote 67-24

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SCR-6>

**TO: OMA Government Affairs Committee**  
**FROM: Ryan Augsburger / Rob Brundrett**  
**RE: Environment Public Policy Report**  
**DATE: March 2, 2016**

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### **Overview**

The General Assembly returned to Columbus in late January after its holiday break. Environmental discussions continued to be dominated by federal regulations most significantly the Clean Power Plan. State action likewise continues to be dominated in the regulatory process.

### **General Assembly News and Legislation**

#### **House Bill 349 – State Emissions Plan**

Representatives R. Smith (R-Bidwell) and Ginter (R-Salem) introduced HB 349 which requires the Environmental Protection Agency to submit a state plan governing carbon dioxide emissions to the General Assembly prior to submitting it to the United States Environmental Protection Agency, and to declare an emergency. There is a concern if this bill gets enacted that the General Assembly may not approve the agency's plan. If that happens there is a real chance Ohio would be forced to comply with the federal plan. The bill had a third hearing in December.

### **Regulations**

#### **Ozone – U.S. EPA**

Last fall the Obama administration and U.S. EPA announced the final ozone rule which established a new ground-level ozone standard for the country. The rule tightened the already stringent standard of 75 parts per billion (ppb) down to 70 ppb.

The administration had threatened to set the standard at 65 or even 60 ppb. Thank you to OMA members who made Ohio's manufacturing voice heard during the OMA led campaign to fight the ozone rule here in Ohio.

Litigation continues at the federal level as do discussion regarding background ozone which complicates the matter further for manufacturers operating in areas of high foreign ozone.

#### **U.S. EPA 111(d)**

Last August the U.S. EPA proposed its final rules for carbon emissions from the nation's power plants. The rules were proposed under section 111(d) of the Clean Air Act.

The rule proposes a national reduction in power plant carbon emissions by 2030, from a base year of 2012. This means a 37% reduction for Ohio.

EPA revised the building block model in response to legal uncertainties. The new "building blocks" are: reducing the carbon intensity of electricity generation by improving the heat rate of existing coal-fired power plants; substituting increased electricity generation from lower-emitting existing natural gas plants for reduced generation from higher-emitting coal-fired plants; and substituting increased electricity generation from renewable energy sources.

The timetable for implementing these vast rules is aggressive: States will be required to submit a final plan, or an initial submittal with an extension request, by September 6, 2016. Ohio EPA has indicated it will be seeking an extension from the federal government, which would set Ohio's rulemaking a year behind the federal schedule as currently published.

Last month The Supreme Court of the United States granted a stay of the Obama administration's Clean Power Plan (CPP) regulation of greenhouse gas (GHG) emissions from the electric utility sector. That decision delays the implementation of the rule until the courts have the opportunity to determine the plan's legality.

The case against the plan is pending before the D.C. Circuit Court, where arguments will be heard June 2. A decision is possible in 2016, but might not be made until 2017.

Last week the OMA joined more than 160 business groups throughout the country in filing an amicus brief in the U.S. Court of Appeals for the D.C. Circuit in support of a lawsuit by states and industry to overturn U.S. EPA's "Clean Power Plan."

The brief outlines major legal and economic concerns with the rule, arguing that U.S. EPA trampled the rights of states to determine their own energy mix and implement environmental standards in a manner tailored to their own circumstances.

The court is likely to issue a decision later this year. From there, the challenge is expected to make its way to the U.S. Supreme Court, which previously issued a stay to halt all implementation and enforcement actions on the rule until it has the opportunity to hear the case.

In December Ohio EPA and the Public Utilities Commission of Ohio (PUCO) jointly held an informational kick-off meeting to discuss the state's planning for federal Clean Power Plan (CPP) compliance. Ohio EPA Director Craig Butler led the discussion along with PUCO Commissioner Asim Haque.

There will be at least five regional hearings in the early part of 2016 to allow stakeholders to weigh in on the issue. Ohio EPA and the PUCO provided this document of implementation issues to consider. Ohio EPA has not commented whether the decision by the Supreme Court changes the timeframe of the regional meetings.

#### Waters of the U.S. Stay

A divided Sixth Circuit issued a nationwide stay against the enforcement the so-called "waters of the United States" regulation. The regulation was issued by the U.S. EPA and the U.S. Army Corps of Engineers. The regulations defined the scope of "waters of the U.S." to be subject to federal regulatory jurisdiction under the Clean Water Act.

#### Universal Waste

At the end of 2012 Ohio EPA solicited comments through the early stakeholder outreach program on the expansion of universal waste in Ohio. The agency wanted to examine whether additional hazardous wastes should be designated as universal wastes and specifically if hazardous waste aerosol cans and spent antifreeze should be designated universal wastes. The OMA submitted initial comments on this topic requesting certain paint and paint related wastes.

The OMA was approached by Ohio EPA to see what sort of backing the expansion of universal waste would have among members. Last year the OMA put together a working group to work with Ohio EPA on this topic. The group submitted a document to Ohio EPA last fall and submitted rule language earlier this year.

Most recently the group sent clarifying information to the agency describing the different types of wastes that are expected to be covered under the rule change. At last contact the agency is working on draft rules for aerosol cans, spent antifreeze, and paint and paint related wastes.

#### National Pollutant Discharge Elimination System (NPDES) permit program

Ohio EPA has announced its Early Stakeholder Outreach (ESO) process for Chapter 3745-33 of the Ohio Administrative Code which contains the administrative and technical requirements for writing and obtaining wastewater discharge permits under the National Pollutant Discharge Elimination System (NPDES) permit program.

Ohio EPA will begin drafting rules in the near future.

#### **Other Notes**

##### Lead Contamination

Ohio EPA has been under pressure regarding the Village of Sebring. Lead was found in the village drinking water. There was a problem in notifying the village regarding the contamination in a timely manner. In the light of Flint, Michigan's issues Ohio EPA responded by firing several employees and demoting others.

##### Ohio EPA Open Houses

Ohio EPA announced they will begin holding open houses in each of the district offices. These meetings will be led by Director Butler. The first meeting is planned at the central office in March.

# *Supreme Court Deals Blow to Obama's Efforts to Regulate Coal Emissions*

By ADAM LIPTAK and CORAL DAVENPORT FEB. 9, 2016



Steam rises from the stacks of the coal-fired Jim Bridger Power Plant outside Point of the Rocks, Wyo., in 2014. Credit Jim Urquhart/Reuters Advertisement

WASHINGTON — In a major setback for [President Obama's climate change](#) agenda, the [Supreme Court](#) on Tuesday temporarily blocked the administration's effort to combat global warming by regulating emissions from coal-fired power plants.

The brief order was not the last word on the case, which is most likely to return to the [Supreme Court](#) after an appeals court considers an expedited challenge [from 29 states](#) and dozens of corporations and industry groups.

But the Supreme Court's willingness to issue a stay while the case proceeds was an early hint that the program could face a skeptical reception from the justices.

The 5-to-4 vote, with the court's four liberal members dissenting, was unprecedented — the Supreme Court had never before granted a request to halt a regulation before review by a federal appeals court.

“It's a stunning development,” Jody Freeman, a Harvard law professor and former environmental legal counsel to the Obama administration, said in an email. She added that “the order certainly indicates a high degree of initial judicial skepticism from five justices on the court,” and that the ruling would raise serious questions from nations that signed on to the landmark Paris climate change pact in December.

In negotiating that deal, which requires every country to enact policies to lower emissions, Mr. Obama pointed to the power plant rule as evidence that the United States would take ambitious action, and that other countries should follow.

The White House said in a statement that it disagreed with the court's decision and remained confident that it would ultimately prevail. “The administration will continue to take aggressive steps to make forward progress to reduce carbon emissions,” it said.

Opponents of Mr. Obama's climate policy called the court's action historic.

“We are thrilled that the Supreme Court realized the rule's immediate impact and froze its implementation, protecting workers and saving countless dollars as our fight against its legality continues,” said Patrick Morrissey, the attorney general of West Virginia, which has led the 29-state legal challenge.

“There's a lot of people who are celebrating,” said Jeff Holmstead, a lawyer with Bracewell & Giuliani, a firm representing energy companies, which are party to the lawsuit. “It sends a pretty strong signal that ultimately it's pretty likely to be invalidated.”

The challenged regulation, which was [issued last summer by the Environmental Protection Agency](#), requires states to make major cuts to greenhouse gas pollution created by electric power plants, the nation's largest source of such emissions. The plan could transform the nation's electricity system, cutting emissions from existing power plants by a third by 2030, from a 2005 baseline, by closing hundreds

of heavily polluting coal-fired plants and increasing production of wind and [solar power](#).

“Climate change is the most significant environmental challenge of our day, and it is already affecting national public health, welfare and the environment,” Solicitor General Donald B. Verrilli Jr. wrote in a brief urging the Supreme Court to reject a request for a stay while the case moves forward.

The regulation calls for states to submit compliance plans by September, though they may seek a two-year extension. The first deadline for power plants to reduce their emissions is in 2022, with full compliance not required until 2030.

The states challenging the regulation, led mostly by Republicans and many with economies that rely on coal mining or coal-fired power, sued to stop what they called “the most far-reaching and burdensome rule the E.P.A. has ever forced onto the states.”

A three-judge panel of the United States Court of Appeals for the District of Columbia Circuit in January unanimously refused to grant a stay.

The court did expedite the case and will hear arguments on June 2, which is fast by the standards of complex litigation.

The states urged the Supreme Court to take immediate action to block what they called a “power grab” under which “the federal environmental regulator seeks to reorganize the energy grids in nearly every state in the nation.” Though the first emission reduction obligations do not take effect until 2022, the states said they had already started to spend money and shift resources.

[Eighteen states](#), mostly led by Democrats, opposed the request for a stay, saying they were “continuing to experience climate-change harms firsthand — including increased flooding, more severe storms, wildfires and droughts.” Those harms are “lasting and irreversible,” they said, and “any stay that results in further delay in emissions reductions would compound the harms.”

In a second filing seeking a stay, coal companies and trade associations represented by Laurence H. Tribe, a law professor at Harvard, said the court should act to stop a “targeted attack on the coal industry” that will “artificially eliminate buyers of coal, forcing the coal industry to curtail production, idle operations, lay off workers and close mines.”

The E.P.A., represented by Mr. Verrilli, called the requests for a stay “extraordinary and unprecedented.” The states challenging the administration’s plan, he said, could point to no case in which the Supreme Court had “granted a stay of a generally applicable regulation pending initial judicial review in the court of appeals.” In a later brief, the states conceded that point.

Mr. Verrilli said judicial review of the plan, including by the Supreme Court, will be complete before the first deadline for emissions reductions in 2022.

“There is no reason to suppose that states’ duties under the rule will be especially onerous,” Mr. Verrilli wrote. “A state can elect not to prepare a plan at all, but instead may allow E.P.A. to develop and implement a federal plan for sources in that state.”

The two sides differed about whether current declines in coal mining and coal-fired power generation are attributable to the administration’s plan. “Some of the nation’s largest coal companies have declared bankruptcy, due in no small part to the rule,” a group of utilities told the justices.

A coalition of environmental groups and companies that produce and rely on wind and [solar power](#) said other factors were to blame for coal’s decline.

“These changes include the abundant supply of relatively inexpensive natural gas, the increasing cost-competitiveness of electricity from renewable generation sources such as solar and wind power, the deployment of low-cost energy efficiency and other demand-side measures, and increasing consumer demand for advanced energy,” they wrote

## U.S. EPA Announces Final Clean Power Plan

On August 3, 2015 U.S. EPA released the final version of the Clean Power Plan (CPP) under section 111(d) of the Clean Air Act (CAA) which regulates CO<sub>2</sub> emissions from existing coal-fired and natural gas-fired electricity generating units (EGUs). Concurrent with the CPP release was the final version of the New Source Performance Standards (NSPS) for fossil-fuel fired power plants under 111(b) of the Clean Air Act and the proposed the Federal Implementation Plan (FIP) and Model Rules for states that do not submit an acceptable implementation plan under 111(d).

### Timing

Submittals	Dates
State Plan or initial submittal with extension request	September 6, 2016
Progress Update, for states with extensions	September 6, 2017
State Plan, for states with extensions	September 6, 2018
Milestone (Status) Report	July 1, 2021
Interim and Final Goal Periods	Reporting
Interim goal performance period (2022-2029)	
- Interim Step 1 Period (2022-2024)	July 1, 2025
- Interim Step 2 Period (2025-2027)	July 1, 2028
- Interim Step 3 Period (2028-2029)	July 1, 2030
Interim Goal (2022-2029)	July 1, 2030
Final Goal (2030)	July 1, 2032 and every 2 years beyond

### Ohio Targets

	Rate Based (lbs CO <sub>2</sub> /MWh)	Mass Based (tons CO <sub>2</sub> )
2012 Baseline	1,900	102,239,220
Proposed CPP	1,338	-
Interim Period 2022-2029	1,383	82,526,513
Final Goal 2030+	1,190	73,769,806

### What is Ohio doing?

- Analyzing the final rule and exploring appropriate next steps for Ohio.
- Developing comments to U.S. EPA on their proposed Federal Plan and Model Rules.
- Pursuing a 2-year state plan extension request.
- Conducting outreach and engagement efforts for Ohio.

### Would you like to provide input?

- Please submit to Ohio EPA at [111drulecomments@epa.ohio.gov](mailto:111drulecomments@epa.ohio.gov).
- Relevant information for Ohio interested parties regarding the CPP – [epa.ohio.gov/dapc/111drule.aspx](http://epa.ohio.gov/dapc/111drule.aspx)
- U.S. EPA's Clean Power Plan – <http://www2.epa.gov/cleanpowerplan>

## Environment

### [OMA Joins Dozens in Amicus Brief Against Clean Power Plan](#)

February 26, 2016

This week the OMA joined more than 160 business groups throughout the country in filing an [amicus brief](#) in the U.S. Court of Appeals for the D.C. Circuit in support of a lawsuit by states and industry to overturn U.S. EPA's "Clean Power Plan."

The brief outlines major legal and economic concerns with the rule, arguing that U.S. EPA trampled the rights of states to determine their own energy mix and implement environmental standards in a manner tailored to their own circumstances.

The court is likely to issue a decision later this year. From there, the challenge is expected to make its way to the U.S. Supreme Court, which previously issued a stay to halt all implementation and enforcement actions on the rule until it has the opportunity to hear the case.

### [Ohio EPA Launches STREAMS Surface Water Permitting System](#)

February 26, 2016

Ohio EPA recently launched its new [Surface Water Tracking, Reporting and Electronic Application Management System](#) (STREAMS). The goal of the system is to reduce turnaround time for surface water discharge general permits to two business days.

The new STREAMS system uses a smart document online that catches errors before the application is complete, and documents are submitted electronically to the agency, minimizing data entry time. Payments can be made electronically, and permit holders can also submit monitoring reports electronically.

Every general permit is still reviewed by agency staff to ensure the applicant meets the criteria to qualify, but STREAMS makes the permitting processing more efficient, shaving valuable days off the process.

### [Central Ohio EPA Open House with Director Butler](#)

February 26, 2016

Ohio EPA Director Craig Butler is holding an open house event from 1:00-5:00 p.m. on March 24, 2016 at the agency's central office, 50 W. Town Street, Columbus, Ohio. Director Butler will share his priorities, answer questions and discuss his initiative to consolidate Ohio EPA's business and community assistance resources under its newly reorganized Division of Environmental and Financial Assistance.

This is the first of what Ohio EPA hopes will be a series of open house events planned for various locations around Ohio. This first event is targeted to businesses that interact with Ohio EPA's Central District Office, including those in Delaware, Fairfield, Fayette, Franklin, Knox, Licking, Madison, Morrow, Pickaway and Union counties. This event should be particularly helpful to small and medium-sized businesses that seek environmental compliance assistance.

[Go here to learn more and register.](#)

### [Air Report Due Next Week](#)

February 12, 2016

Friendly reminder: For regulated entities, there are a number of Ohio EPA environmental air compliance reports coming due in the coming months. The next one is the Permit Evaluation Report – Air Services (PER).

This report is required of all facilities that have had a PTIO issued that was effective during the reporting period. Don't forget to check the issued PTIO for reporting requirements that may need to be met as part of completing the PER. The PER is due on February 16 for facilities with a reporting period of January 1 to December 31.

If you need assistance, please visit [Ohio EPA Air Services](#) or contact: Air Services Access: [Linda Lazich](#) (614) 644-3626; Air Services Software Support, Emissions Reporting or Facility Profile: [Safaa El-Oraby](#) (614) 644-3571; eBusiness Center PIN or Password: eBiz Helpdesk (877) 372-2499.

### [Ohio EPA Publishes New Resource Guide](#)

January 22, 2016

Ohio EPA's Division of Environmental & Financial Assistance has just published its [Resource Guide](#), an overview of technical, compliance and financial

assistance programs and resources to help Ohio communities and businesses with their environmental needs.

### [Ohio EPA Calls for Comment on Wastewater Discharge Permitting](#)

January 8, 2016

Ohio EPA has announced its [Early Stakeholder Outreach](#) (ESO) process for Chapter 3745-33 of the Ohio Administrative Code which contains the administrative and technical requirements for writing and obtaining wastewater discharge permits under the National Pollutant Discharge Elimination System (NPDES) permit program.

This is an opportunity to shape the rules before EPA staff draft language. By sharing your comments early in the process, Ohio EPA can consider potential impacts.

ESO comments are due by Monday, February 8, 2016 via [email](#), fax (614) 644-2745, or mail: Rule Coordinator, Ohio EPA, Division of Surface Water, P.O. Box 1049, Columbus, OH 43216-1049

Contact OMA's [Rob Brundrett](#) to share your thoughts on this issue.

### [Hazardous Waste Reports Due to Ohio EPA March 1](#)

January 8, 2016

Ohio EPA 2015 Hazardous Waste Reports are due on March 1, 2016. This report is required of any facility that generated more than 2200 pounds of hazardous waste (or 2.2 lbs. of acute hazardous waste) in any calendar month in 2015.

For 2015 there are no changes to the reporting process, which means no changes to the eBusiness Center data entry screens or paper forms. The only change for this year's report is the exclusion of the Waste Code U202. This code, indicating saccharin, is no longer considered a hazardous waste.

Ohio EPA is encouraging all businesses that have filed on paper, to consider using the eDRUMS reporting site. The eDRUMS software has many features that help you prepare the report quickly and more accurately than on paper, including the ability to copy a previous year's report as a starting point for a new report, even if you haven't filed electronically in the past.

If you have questions please contact [Thomas Babb](#), Ohio EPA Hazardous Waste Report Coordinator, at (614) 914-2527.

### [WestRock's Bulzan Given OMA's Babington Award](#)

December 11, 2015



Pictured: Rob Brundrett, OMA director, Public Policy Services, and Joe Bulzan, Environmental Manager, WestRock, Coshocton

The OMA staff has an award, the Babington, that it presents to member volunteers who make an exceptional contribution on behalf of Ohio's manufacturers. OMA director of Public Policy Services, Rob Brundrett, selected Joe Bulzan, Environmental Manager, WestRock, Coshocton, to receive this recognition during OMA's board of directors meeting this week.

Joe has chaired the OMA environment committee since 2006, providing countless hours of volunteer service to lead the committee through many complex policy issues, including boiler MACT, Ohio air regulation, federal ozone rules, water nutrient issues and more.

Coincidentally, the OMA Babington award is named for Bill Babington, plant manager of the former Stone Container plant in Coshocton, now WestRock, for his selfless volunteerism on behalf of Ohio's manufacturers through the OMA.

Joe will pass the committee chair gavel at the [March 8, 2016](#) OMA environment committee meeting. All members can join the committee and participate in meetings in person and by phone, or simply monitor activity through email. Sign up at [My OMA](#).

### [House Continues to Debate General Assembly Role in Clean Power Plan Compliance Plan](#)

December 11, 2015

The House Energy and Natural Resources Committee continued its hearings on [House Bill 349](#), which would require Ohio EPA to submit a state plan for federal Clean Power Plan compliance to the General Assembly before submitting it to the U.S. EPA.

The Buckeye Institute [testified](#): “The bill rightly requires the General Assembly to approve a final state plan, which will enhance transparency and accountability in Ohio’s section 111(d) compliance process.”

Chairman [Al Landis](#) (R-Dover) indicated that it is his intent to have Ohio EPA testify on the bill. With the House concluding its business for the year this week, the bill will likely have its next hearing in the new year.

### [Ohio EPA and PUCO Hold Kick-off Meeting on Clean Power Plan](#)

December 4, 2015

This week Ohio EPA and the Public Utilities Commission of Ohio (PUCO) jointly held an [informational kick-off meeting](#) to discuss the state’s planning for federal [Clean Power Plan](#) (CPP) compliance. Ohio EPA Director Craig Butler led the discussion along with PUCO Commissioner Asim Haque.

Butler told stakeholders that Ohio will submit an application for an extension to develop its state implementation plan.

There will be at least five regional hearings in the early part of 2016 to allow stakeholders to weigh in on the issue. Ohio EPA and the PUCO provided this document of [implementation issues to consider](#).

**Environment Legislation**  
Prepared by: The Ohio Manufacturers' Association  
Report created on March 1, 2016

- HB61**      **LAKE ERIE FERTILIZER-DREDGING** (BUCHY J, HALL D) To generally prohibit the application of fertilizer or manure in Lake Erie's western basin on frozen ground or saturated soil and during certain weather conditions, and to prohibit a person, beginning July 1, 2020, from depositing dredged material in Ohio's portion of Lake Erie and its direct tributaries.  
*Current Status:* 3/17/2015 - Referred to Committee Senate Agriculture  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-61>
- HB64**      **OPERATING BUDGET** (SMITH R) To make operating appropriations for the biennium beginning July 1, 2015, and ending June 30, 2017, and to provide authorization and conditions for the operation of state programs.  
*Current Status:* 6/30/2015 - **SIGNED BY GOVERNOR**; eff. 6/30/15; certain provisions effective 9/29/2015, other dates  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-64>
- HB101**      **HAB MITIGATION** (HALL D) To establish requirements governing the training of employees of publicly owned treatment works and public water systems to monitor and test for harmful algae, the development of emergency plans by certain public water systems to respond to harmful algal blooms, and the development of an early warning system for harmful algal blooms.  
*Current Status:* 3/24/2015 - House Agriculture and Rural Development, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-101>
- HB214**      **PUBLIC IMPROVEMENT-PIPING MATERIAL** (THOMPSON A) To restrict when a public authority may preference a particular type of piping material for certain public improvements.  
*Current Status:* 6/9/2015 - House Energy and Natural Resources, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-214>
- HB349**      **STATE EMISSIONS PLAN** (SMITH R, GINTER T) To require the Environmental Protection Agency to submit a state plan governing carbon dioxide emissions to the General Assembly prior to submitting it to the United States Environmental Protection Agency, and to declare an emergency.  
*Current Status:* 12/8/2015 - House Energy and Natural Resources, (Third Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-349>
- HB377**      **PRIVATE EMPLOYEES-REQUIRED DUES** (BRINKMAN T) To prohibit any requirement that employees of private employers join or pay dues to any employee organization and to establish civil and criminal penalties against employers who violate that prohibition.  
*Current Status:* 12/1/2015 - House Commerce and Labor, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-377>

- HCR11**      **GOVERNOR-WATER QUALITY EFFORTS** (HALL D) To commend Governor John Kasich on his efforts to improve the water quality of Lake Erie and to affirm the Governor's ability to form an interstate compact with other states in furtherance of this objective.  
*Current Status:* 1/26/2016 - Senate Agriculture, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HCR-11>
- HCR27**      **WATER QUALITY IMPROVEMENT** (PATTERSON J, HILL B) To commend Ohio's agriculture community, educational institutions, and environmental advocacy organizations on their efforts to improve the water quality of Lake Erie and its tributaries and to encourage them as well as state, county, and municipal leaders to continue to work towards continued water quality improvement.  
*Current Status:* 9/30/2015 - Referred to Committee House Agriculture and Rural Development  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HCR-27>
- SB1**        **GREAT LAKES-HARMFUL ALGAE** (GARDNER R, PETERSON B) To transfer the administration and enforcement of the Agricultural Pollution Abatement Program from the Department of Natural Resources to the Department of Agriculture.  
*Current Status:* 4/2/2015 - **SIGNED BY GOVERNOR**; eff. 7/3/2015  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-1>
- SB16**      **WATERSHEDS-FERTILIZER APPLICATION** (BROWN E) To require applicators of fertilizer or manure to comply with specified requirements and to authorize the Director of Environmental Protection to study and calculate nutrient loading to Ohio watersheds from point and nonpoint sources.  
*Current Status:* 2/10/2015 - Senate Agriculture, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-16>
- SB46**      **LAKE ERIE DRILLING BAN** (SKINDELL M) To ban the taking or removal of oil or natural gas from and under the bed of Lake Erie.  
*Current Status:* 2/18/2015 - Referred to Committee Senate Energy and Natural Resources  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-46>
- SB47**      **DEEP WELL BRINE INJECTION PROHIBITION** (SKINDELL M) To prohibit land application and deep well injection of brine, to prohibit the conversion of wells, and to eliminate the injection fee that is levied under the Oil and Gas Law.  
*Current Status:* 2/18/2015 - Referred to Committee Senate Energy and Natural Resources  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-47>
- SB114**     **MICROCYSTIN LEVELS-PUBLIC WATER** (SKINDELL M) To establish requirements and procedures pertaining to levels of microcystin in public water systems.  
*Current Status:* 3/10/2015 - Referred to Committee Senate Health and Human Services

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-114>

**SB150**      **MOTOR FUEL DISPOSAL (HITE C)** To create a qualified immunity for the dispensing of incompatible motor fuel.

**Current Status:** 6/24/2015 - Senate Civil Justice, (Second Hearing)

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-150>

**SB269**      **PUBLIC WATER SYSTEM-LEAD CONTAMINATION (SCHIAVONI J)** To require a public water system to provide notice of lead contamination not later than thirty days after becoming aware that lead contamination may effect the system's drinking water.

**Current Status:** 2/10/2016 - Referred to Committee Senate Energy and Natural Resources

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-269>

**To: OMA Government Affairs Committee**  
**From: Ryan Augsburger / Rob Brundrett**  
**Re: Human Resources Update**  
**Date: March 2, 2016**

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### **Overview**

Unemployment insurance tax rates remain a hot topic for employers. As other states solve their debt issues, Ohio continues to only pay down the interest on the debt. Without paying off the principle, FUTA tax rates continue to increase. The House has taken the lead and introduced a bill supported by the business community which addresses only the solvency issue. It does not address the remaining outstanding debt. Other new employment law bills have recently been introduced.

### **General Assembly News and Legislation**

#### **Senate Bill 268 – employment discrimination reform**

Senator Bill Seitz (R-Cincinnati), proposes to comprehensively overhaul Ohio's employment discrimination statutes in a manner that would benefit employers and bring Ohio's laws more in line with federal discrimination laws, but would continue to provide individuals avenues to assert state law discrimination violations.

This bill would bring Ohio's statute in line with its federal counterpart by eliminating personal liability for managers and supervisors.

The bill also seeks to reduce the timeframe to file an employment discrimination lawsuit in court to one year and apply it to all discrimination claims. Today, depending on the type of claim, individuals have between 180 days and six years to file.

#### **House Bill 350 – autism mandate**

The House of Representatives are entertaining a new health care mandate bill. The bill requires autism coverage be expanded to all large group employer health plans and other health plans that were grandfathered and grandmothers under the Affordable Care Act. The OMA provided a letter to the committee outlining concerns with the current bill. The bill has had four committee hearings. The last hearing was in early February.

#### **House Bill 377 – Right to Work**

Representative Brinkman (R – Mt. Lookout) introduced HB 377 which would prohibit any requirement that employees of private employers join or pay dues to any employee organization and to establish civil and criminal penalties against employers who violate that prohibition. This is also known as the Right to Work bill. This version of Right to Work had one hearing in December. It was scheduled for a second hearing in February but was removed from the hearing calendar.

West Virginia became our latest neighbor joining Michigan and Indiana to embrace right to work by passing the bill and overriding the governor's veto. There still seems to be no momentum in passing Right to Work in Ohio at least at this time. Once election season passes there might be an opportunity for the bill to have some hearings and movement.

### House Bill 394 - Unemployment Compensation Tax Changes

Finally a long anticipated unemployment reform bill was introduced by Rep. Barbara Sears (R – Maumee) as HB 394. As every Ohio manufacturer knows, unemployment taxes are high and have been increasing.

The Ohio unemployment trust fund is insolvent and still owes the federal government \$775 million. This circumstance has for years triggered penalties that employers must pay, and the fund is in a dangerous position in light of any future recession.

House Bill 394 offers a reasonable, balanced package of unemployment insurance law reforms designed to address the current insolvency of Ohio's Unemployment Insurance Trust Fund (UI Trust Fund). The bill contains a combination of unemployment tax, benefit and integrity provisions that in the aggregate will improve solvency by tightening alignment of benefit costs and contribution revenues while building a significant fund balance, over time, that will be sufficient to avoid subjecting Ohio to increased federal taxes and penalties related to unemployment insurance.

Among the major reforms proposed in the legislation are the following:

**Temporary Increase in State Unemployment Tax Base.** HB 394 would increase the state unemployment tax base from \$9,000 to \$11,000 when the UI Trust Fund balance is below 50 percent of the 1.0 Average High Cost Model solvency level and continue the increase until the UI Trust Fund reaches 1.0 Average High Cost Model. The state tax base will be reduced back to \$9,000 when the UI Trust Fund equals or exceeds the 1.0 AHCM solvency level. If the balance dips below 50 percent of the solvency level in future years, the tax base will automatically return to the \$11,000 level.

**Reduction of Number of Potential Weeks of Unemployment Insurance.** HB 394 would change the determination of the total number of weeks of unemployment compensation potentially available to twice a year, based on Ohio's seasonally adjusted three-month total unemployment rate, before January and June. A sliding scale would set the number as low as 12 weeks when the rate is 5.5 percent or below, and up to 20 weeks if the rate is 9 percent or above. Ohio currently uses a sliding scale ranging from 20 to 26 weeks.

**Temporary Freeze on the Maximum Weekly Benefit Amount.** HB 394 would effectively freeze maximum weekly benefit dollar amounts at a level not to exceed 50 percent of the statewide average weekly wage for the first year that the UI Trust Fund was less than the Minimum Safe Level (MSL), and would continue those maximums until the year after the UI Trust Fund was at or above the MSL.

**Dependency.** To align with the majority of states, HB 394 would repeal Ohio's current dependency provision that increases the weekly benefit amount provided to claimants who have higher wages and dependents.

**Drug Testing.** HB 394 provides language under which the Ohio Department of Job and Family Services may (a) request information of applicants for unemployment compensation about the results of past drug tests, (b) conduct drug tests for controlled substances, and (c) disqualify individuals within the narrow limitations of federal law.

Collectively, the HB 394 reforms position Ohio in line with surrounding states and states with whom we compete for investment and jobs.

House Republicans initially indicated they would pass the bill prior to 2016. The bill's passage has been delayed several times. Recently House and Senate leaders indicated an unofficial working group of three House and three Senate members to hash out differences to have the bill ready to move in time for lame duck. There are some concerns with this process but there is a real opportunity to get reform passed. Please continue voicing your support of HB 394 and unemployment compensation reform.

House Bill 492 – expansion of workforce voucher program

Representatives Niraj Antani (R-Miamisburg) and Bill Reineke (R-Tiffin) introduced House Bill 429, which would allow automotive technicians and motor vehicle technicians employed at retail stores to be eligible to participate in the state's Incumbent Workforce Voucher Program.

This program is administered by the Ohio Development Services Agency and provides grants to employers for incumbent workforce training.

This bill would create an expansion of the very popular program. It was designed to support targeted growth industries, including advanced manufacturing, automotive, and food processing, among others.

The General Assembly allocated \$7.5 million in both fiscal years, 2016 and 2017, for the program.

There is concern by adding more and more jobs to the list of qualifying occupations then the money allocated becomes diluted and ineffective in training in demand jobs.



**Senate Bill 268 - Employment Discrimination Reform**  
**Ohio Manufacturers' Association**  
**Betsy Swift and Jill Bigler, Bricker & Eckler LLP**  
**February 22, 2016**

Senate Bill 268, which Senator Bill Seitz (R-Cincinnati) recently introduced, proposes to comprehensively overhaul Ohio's employment discrimination statutes in a manner that would benefit employers and bring Ohio's laws more in line with federal discrimination laws, but would continue to provide individuals avenues to assert state law discrimination violations. We have highlighted the key provisions below.

- **Adopt a 1-year statute of limitations for all employment discrimination claims.**

Current law: Depending on the type of claim, individuals currently have between 180 days and six years to file an employment discrimination lawsuit in court.

Proposed change: This bill seeks to reduce that timeframe to one year and apply it to *all* discrimination claims. *See* R.C. 4112.052(B); R.C. 4112.99(C). This will provide consistency to the discrimination statutes and bring Ohio more in line with federal discrimination laws, which have a much shorter statute of limitations than Ohio's 6 year period.

In addition to shortening the timeframe for filing employment discrimination claims, the bill also creates a one-year statute of limitation for other employment-related claims filed against employers, including promissory estoppel, breach of implied contract, and intentional infliction of emotional distress. *See* R.C. 2305.071(B).

- **Eliminate personal liability for managers and supervisors.**

Current law: Managers and supervisors can be held personally liable for their own discriminatory acts under Ohio's employment discrimination statutes. This is the case despite the fact that federal discrimination statutes (e.g., Title VII, ADA) do not provide for such liability. Frequently, managers and supervisors are named individually in lawsuits.

Proposed change: This bill would bring Ohio's statute in line with its federal counterpart by eliminating personal liability for managers and supervisors. Section R.C. 4112.08(A) states that no person may bring an employment discrimination claim against supervisors, managers, or other employees. Additionally, "employer" is no longer defined to include any person acting directly or indirectly in the interest of an employer. *See* R.C. 4112.01(A)(2).

While opponents of the bill have expressed concern that eliminating individual liability for managers and supervisors will protect sexual harassers, this is not the case. The bill states that it does not intend to abrogate statutory claims that may exist outside Chapter 4112 or any common-law remedies, such as claims for assault, battery, and intentional infliction of emotional distress. And, employers will continue to be exposed to liability for the unlawful acts of their supervisors and managers.

- **Cap non-economic and punitive damages based on the size of the employer.**

Current law: There are no caps on the amount of damages an employee can recover against the employer.

Proposed change: If the employer employs 4 – 100 employees, non-economic and punitive damages are capped at \$50,000. If the employer employs 101 – 200 employees, non-economic and punitive damages are capped at \$100,000. If the employer employs 201 – 500 employees, non-economic and punitive damages are capped at \$200,000. If the employer employs more than 500 employees, non-economic and punitive damages are capped at \$300,000. *See* R.C. 4112.14. These caps are consistent with the caps set by the Civil Rights Act of 1991 for federal discrimination claims.

- **Age discrimination claims are subject to the same procedures and remedies as every other protected class.**

Current law: Chapter 4112 contains four different ways an employee can file an age discrimination claim against an employer, each with a different statute of limitations, different procedures, and different remedies. Because there is no reason to treat age differently than other protected classes, these statutes create unnecessary complications and confusion for both employers and employees.

Proposed change: By eliminating the specific age discrimination provisions (Sections 4112.02(N) and 4112.14), age discrimination claims would be treated the same as every other type of employment discrimination claim in Ohio. This change would bring much-needed clarity to age discrimination claims.

- **Require individuals to elect between filing an administrative charge with the Ohio Civil Rights Commission (OCRC) or filing a discrimination lawsuit in court.**

Current law: Except for age discrimination claims, an individual can elect to file a charge of discrimination with the OCRC and/or file a lawsuit in court. Some age discrimination claims, however, are subject to an election of remedies. In those cases, an individual must elect between filing a charge of discrimination with the OCRC or filing a lawsuit, but cannot do both.

Proposed change: The bill provides that if an individual files any charge of discrimination with the OCRC, the individual is then prohibited from bringing a civil action that is based, in whole or in part, on the same allegations and practices *and* the charge is still pending with the OCRC. *See* R.C. 4112.04(A)(11)(a); R.C. 4112.053(B). The individual is not prohibited from

filing a lawsuit in court once the charge is no longer pending with the OCRC, and the statute of limitations to file a lawsuit is tolled while the charge is pending. *See* R.C. 4112.053(C).

Conversely, an individual may not file a charge of discrimination if he or she has brought a lawsuit that is pending and is based, in whole or in part, on the same allegations and practices. *See* R.C. 4112.053(A).

The purpose of requiring an individual to elect his or her remedies is to prevent an employer from having to defend a case in two different forums and to prevent an individual from recovering twice for a single wrong.

- **Offer mediation only *after* the OCRC determines there is probable cause that discrimination has occurred.**

Current law: The OCRC currently offers the parties the option of engaging in mediation as the first step after a charge is filed, but before the OCRC conducts its investigation. On average, the OCRC successfully resolves a high percentage of all cases that choose mediation.

Proposed change: The bill provides for mediation through the OCRC only *after* the OCRC determines there is probable cause to find discrimination. *See* R.C. 4112.051(E)(1). In the event the parties do not agree to mediate, the OCRC will attempt to eliminate the alleged unlawful discriminatory practices by informal methods of conference, conciliation, and persuasion. The reality of the latter process is often a demand by the OCRC for the employer to provide a “make whole” remedy to the individual.

While delaying mediation until after the OCRC determines that the charge has merit might discourage some individuals from filing baseless charges with the hope of getting a quick settlement (although not all individuals have this level of understanding of the process), employers would have incurred the time and expense of responding to a charge before the possibility of OCRC mediation. That said, there is nothing preventing the parties from resolving the charge early on in the process without the assistance of the OCRC.

- **Establish a statutory affirmative defense to discrimination claims where the alleged unlawful discriminatory practice does not result in an adverse, tangible employment action against the individual.**

Current law: There are no statutory affirmative defenses available to employers under Ohio’s discrimination statutes. However, a common law defense is available to employers as a result of two U.S. Supreme Court cases: *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998) and *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742 (1998). This defense is colloquially referred to as the *Faragher-Ellerth* defense and is commonly raised in federal court proceedings in response to harassment or hostile work environment claims.

Proposed change: The bill provides employers with a statutory affirmative defense to discrimination claims if the alleged unlawful discriminatory practice did not result in an “adverse, tangible employment action” and the employer proves: (1) the employer exercised

reasonable care to prevent or promptly correct the unlawful discriminatory practice or behavior; *and* (2) the employee alleging the unlawful discriminatory practice unreasonably failed to take advantage of any preventative or corrective opportunities provided by the employer, utilize a complaint procedure, or to avoid harm otherwise. *See* R.C. 4112.054(B)(1) and (B)(2). An “adverse, tangible employment action” means an action resulting in “material economic detriment such as failure to hire or promote, firing, or demotion.” R.C. 4112.054(A).

For the employer to show that it exercised reasonable care, it must show that it promulgated an applicable, reasonable anti-discrimination or anti-harassment policy that includes a complaint procedure, provided that the employer does all of the following: (a) publishes and distributes the policy to employees and managers; (b) informs employees about the prohibited conduct and complaint procedure; (c) publishes and enforces a reasonable policy prohibiting retaliation for reporting, participating in investigations, or opposing harassment or discrimination; (d) acts upon internal complaints concerning discrimination, harassment, or hostile work environments in a prompt and reasonable manner; and (e) enables an employee alleging discrimination, harassment, or a hostile work environment to pursue a complaint through individuals that are not the individual or individuals that are alleged to have committed such violations. *See* R.C. 4112.054(B)(1).

The affirmative defense is not available if the employee can show that use of the preventative or corrective opportunities provided by the employer would have been futile, or as mentioned above, the alleged unlawful practice resulted in an adverse, tangible employment action. *See* R.C. 4112.054(C) and R.C. 4112.054(A), respectively.

The bill essentially codifies the *Faragher-Ellerth* defense and expands it to apply to all forms of discrimination. As stated by proponents of the bill, the purpose of the defense is to encourage employers to implement meaningful anti-discrimination policies and foster a work environment that is fair and tolerant. This defense will give human resources professionals the first opportunity to resolve personnel complaints and rectify detrimental workplace behavior before it results in costly litigation.

Chairman of the Board  
**WILLIAM E. SOPKO**  
President, William Sopko & Sons Co., Inc.



President  
**ERIC L. BURKLAND**

January 25, 2016

The Honorable Tim Brown  
Chairman, Government Accountability and Oversight Committee  
Ohio House of Representatives  
77 S. High St., 13th Floor  
Columbus, OH 43215

**Re: H.B. 350 – Autism Treatment**

Dear Chairman Brown:

I write to provide The Ohio Manufacturers' Association's (OMA) perspective on health insurance-related mandates in the context of House Bill 350.

The OMA has historically opposed health insurance-related mandates because they increase cost and limit flexibility for employers that seek to provide health care plans for their employees. Our position has been to allow the market, not the government, to drive the features and benefits of health care insurance products.

As you well know, changes to current Ohio health insurance laws, e.g. House Bill 350, need to be considered in light of the provisions of the Affordable Healthcare Act (ACA).

Under the ACA, states have the authority to define the benefits that comprise Essential Health Benefits (EHB). On December 26, 2012, Governor Kasich signed a Directive exercising this authority. The Directive defined coverage for Autism Spectrum Disorder as a Habilitative Service, thus making such coverage a federally mandated EHB. Under the Directive, per ACA, only large group plans and grandfathered plans were not required to provide coverage for EHBs.

House Bill 350 would require autism coverage for large group plans and all grandfathered and "grandmothered" health plans offered in individual and small group markets and to sickness and accident plans issued in Ohio.

In theory, grandfathered plans could be around indefinitely if affected employers are committed to maintaining their plans and can afford to do so. In fact, most of the grandfathered plans have already vanished because employers could not afford to keep the terms of their grandfathered plans. The federal government strictly defined the limited changes a grandfathered plan could make. In the near future these plans will be virtually extinct.

"Grandmothered" plans are those that are individual and small employer plans up to 50 employees that did not maintain grandfathered status, and were scheduled to move to ACA plans upon renewal in 2014. These plans fell under "Transitional Relief" and were given extensions all the way through renewal of October 2016. These grandmothered plans that renew in October 2016 will now be able to maintain their "Transitional Relief" until renewal of October 2017. These plans will be effectively governed by the ACA and require EHB coverage at the expiration of the "Transitional Relief" period.

Therefore, we'll focus on our concern for employers using large group plans, especially the smaller employers who continue to provide such insurance coverage. Any mandated change to the current requirements increases their costs, and thus the potential for employers to discontinue their plans, sending their employees to the open market. This removes workers' bargaining power with insurance companies, and they will have to settle for higher-priced insurance with less coverage and fewer benefits.

While we recognize Representatives Grossman and Terhar for their hard work on this issue, and especially drafting the bill to ensure that Ohio will not be required to provide a subsidy to cover the additional insurance costs created by the bill; it seems counterproductive to add requirements to plans that will a) no longer be in the market and b) to group plans that can hardly bear more cost. Especially as Ohio already requires exchange plans to cover the targeted health benefits.

An affordable health care system is essential to protect Ohio manufacturers' most valuable asset, their workforces. This proposed legislation would represent an increase in the benefits that plans *must* provide, and thus increase the cost of the plans impacted.

Thank you for considering our position. I am available for further discussion. My contact information is [rbrundrett@ohiomfg.com](mailto:rbrundrett@ohiomfg.com) or (614) 629-6814.

Sincerely,



Robert Brundrett  
Director, Public Policy Services

CC: Representative Grossman  
Representative Terhar  
Government Accountability and Oversight Committee Members



# Ohio Legislative Service Commission

## Bill Analysis

Kelly Bomba

### H.B. 377

131st General Assembly  
(As Introduced)

**Reps.** Brinkman, Roegner, Hood, Thompson, Buchy, Becker, Vitale, Zeltwanger, Schaffer, McColley

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## BILL SUMMARY

- Prohibits a private sector employer from requiring an employee to become or remain a member of, or to pay any dues, fees, assessments, or other charges to, an employee organization.
- Prohibits a private sector employer from requiring an employee to pay any amount to a charity or other third party in lieu of paying dues, fees, assessments, or other charges to an employee organization.
- Prohibits a private sector employer from deducting from an employee's compensation any dues, fees, assessments, or other charges to be held for or paid over to an employee organization unless the employer first receives a written authorization.
- Makes an agreement between a private sector employer and an employee organization that violates the bill's prohibitions void and unenforceable.
- Establishes criminal and civil penalties for violating the bill's prohibitions.
- Creates and requires the posting of an employee freedom of choice notice.

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## CONTENT AND OPERATION

### Requirement to join or pay dues to an employee organization

#### The bill

The bill prohibits any private sector employer from recklessly doing any of the following:

(1) Requiring any employee to become or remain a member of any employee organization (essentially, a union);

(2) Requiring any employee to pay any dues, fees, assessments, or other charges to an employee organization;

(3) Requiring an employee to pay any amount to a charity or other third party in lieu of paying dues, fees, assessments, or other charges to an employee organization;

(4) Deducting from the wages, earnings, or compensation of any employee any dues, fees, assessments, or other charges to be held for or paid over to an employee organization unless the employer first receives a written authorization for those deductions as provided under "**Written authorization**," below.

Additionally, the bill prohibits a private sector employer and an employee organization from entering into an oral or written agreement, contract, or promise that violates the prohibitions described above. Any such agreement, contract, or promise is void and unenforceable.<sup>1</sup>

## **Background**

Collective bargaining involves an employer and employees reaching an agreement with respect to rates of pay, wages, hours of employment, or other conditions of employment. Collective bargaining in the private sector, with certain exceptions, is governed by the federal National Labor Relations Act<sup>2</sup> (NLRA). Currently, under the NLRA, a private sector employer may require either of the following as a condition of employment:

(1) An employee to join the employee organization that represents the employer's employees 30 days after the date the employee begins employment;

(2) An employee who is not a member of the employee organization but is covered by an agreement between the employer and an employee organization to pay agency, or "fair share," fees to the employee organization.

However, the NLRA expressly permits a state to have a law that prohibits requiring employee organization membership as a condition of employment.<sup>3</sup> (See

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<sup>1</sup> R.C. 4119.04.

<sup>2</sup> 29 United States Code (U.S.C.) 151 et seq.

<sup>3</sup> 29 U.S.C. 158(a)(3) and 164(b) and *International Union of United Assn. of Journeymen & Apprentices of Plumbing & Pipefitting Industry v. NLRB*, 675 F.2d 1257 (D.C. Cir. 1982).

**COMMENT** for a discussion with respect to the effect of the NLRA on the bill's other provisions.)

## Written authorization

Under the bill, a private sector employee may authorize the employee's employer to deduct from the employee's wages, earnings, or compensation any dues, fees, assessments, or other charges of any kind to be held for or paid over to an employee organization. The authorization must be in writing and signed by the employee. Every employer that receives a written authorization from an employee must promptly notify the employee, in writing, that the employee may revoke the authorization at any time by providing the employer with a written notice of the revocation. The revocation takes effect 30 days after the employer receives the revocation.<sup>4</sup>

## Remedies

### Criminal penalty

Any person may file a complaint alleging a violation of the prohibitions described under "**Requirement to join or pay dues to an employee organization**," above, with the Attorney General. The Attorney General must investigate any complaints of an alleged violation. If, based on that investigation, the Attorney General has reasonable cause to believe that an employer has violated those prohibitions, the Attorney General must prosecute the employer for the violation. Under the bill, an employer or employee organization that violates those prohibitions is guilty of a misdemeanor, punishable by imprisonment up to 90 days, a fine up to \$1,000, or both.<sup>5</sup>

### Civil actions

Additionally, under the bill any person who is injured or is likely to be injured as a result of a violation of prohibitions described under "**Requirement to join or pay dues to an employee organization**," above may bring a lawsuit in the court of common pleas in the county in which the violation is alleged to have occurred, and may obtain injunctive relief and recover any actual damages the person sustained as a result of the violation or threatened violation. However, a court does not have jurisdiction to grant injunctive relief under this provision that specifically or generally prohibits a person from doing any of the following:

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<sup>4</sup> R.C. 4119.05.

<sup>5</sup> R.C. 4119.08 and 4119.99.



(1) Ceasing or refusing to perform work or to remain in an employment relationship, regardless of a promise to do the work or to remain in the relationship;

(2) Becoming or remaining a member of an employer or employee organization, regardless of a promise not to do so as described in continuing law (such a promise is void and unenforceable under continuing law);

(3) Paying or giving to, or withholding from, another person anything of value, including money, insurance, or strike or unemployment benefits;

(4) Helping, by lawful means, another person to bring or defend against a lawsuit similar to a lawsuit under the bill in any federal or state court;

(5) Publicizing, obtaining, or communicating information about the existence of or a fact involved in a labor dispute by any method that does not involve the act or threat of a breach of the peace, fraud, or violence, including advertising, speaking, and patrolling, with intimidation or coercion, a public street or other place where a person lawfully may be present;

(6) Ceasing to patronize another person or to employ another person;

(7) Assembling peacefully to do or to organize an act listed in (1) to (6) above;

(8) Advising or giving another person notice of an intent to do an act listed in (1) to (7) above;

(9) Agreeing with another person to do or not to do an act listed in (1) to (8) above;

(10) Advising, inducing, or urging another person, without the act or threat of fraud or violence, to do an act listed in (1) to (9) above, regardless of a promise not to join or remain a member of an employee organization (such a promise is void under continuing law);

(11) Performing an act listed in (1) to (10) above in concert with another person on the ground that the persons are engaged in an unlawful conspiracy.<sup>6</sup>

### **Employee freedom of choice notice**

The bill requires a private sector employer to post in a conspicuous place and keep continuously displayed the notice described below. An employer must provide a

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<sup>6</sup> R.C. 4119.07, by reference to R.C. 4113.02, not in the bill.

copy of the notice to each employee at the time the employee is first hired or rehired after a lapse of the employee's employment with that employer. The notice must read as follows:

Under Ohio law, an employee who is employed by a private employer may choose whether to join an employee organization without penalty. It is unlawful for an employer and an employee organization to enter into a contract or agreement that requires employees to join or belong to an employee organization. It also is unlawful for a private employer to require employees to pay dues, fees, or charges of any kind to an employee organization as a condition of obtaining or keeping a job or to require any employee to pay any amount to a charity or other third party in lieu of paying dues, fees, assessments, or other charges to an employee organization. A private employer may not discharge or otherwise discriminate against an employee because the employee joined or refused to join an employee organization.<sup>7</sup>

## **Scope**

The bill applies to all collective bargaining agreements entered into on or after the bill's effective date.<sup>8</sup>

## **General Assembly findings and policy**

Under the bill, the General Assembly finds that governmental authority allows and encourages employers to organize in corporate and other forms of capital control, and, in dealing with these employers, an employee who is not represented by an employee organization is helpless to exercise liberty of contract or to protect personal freedom of labor and thus is helpless to obtain acceptable terms and conditions of employment. The policy of Ohio, under the bill, is that the negotiation of terms and conditions of private sector employment should result from voluntary agreement between an employer and the employer's employees. Therefore, each employee must be fully free to associate, organize, and designate a representative, as the employee chooses, for the negotiation of the terms and conditions of employment in the private sector and must be free from coercion, interference, or restraint by the employee's

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<sup>7</sup> R.C. 4119.06.

<sup>8</sup> Section 2.



employer or an agent of the employee's employer in designating a representative, self-organizing, or other concerted activity for the purpose of collective bargaining or other mutual aid or protection.

The policy of Ohio, under the bill, is that each employee must be fully free to decide whether to associate, organize, designate a representative, or join or assist an employee organization.<sup>9</sup>

## Definitions

The bill defines the following terms:

(1) "Employee" means any person who performs a service for wages or other remuneration for an employer.

(2) "Employee organization" means any labor or bona fide organization in which employees participate and that exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, hours, terms, and other conditions of employment.

(3) "Employer" means any person who has one or more employees and includes an employer's agent, but does not include any of the following:

- The United States or any corporation wholly owned by the United States;
- Any federal reserve bank;
- Any person subject to the federal Railway Labor Act;
- The state or any state agency or instrumentality;
- Any municipal corporation, county, township, school district, or other political subdivision;
- Any agency or instrumentality of a municipal corporation, county, township, school district, or other political subdivision.

(4) "Injunctive relief" includes a permanent injunction, a temporary injunction, or a temporary restraining order.

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<sup>9</sup> R.C. 4119.02.

(5) "Labor dispute" includes any controversy, regardless of whether the disputants stand in the proximate relation of employee or employer, that concerns any of the following:

- The terms or conditions of employment;
- Employment relations;
- The association or representation of persons in negotiations for the purpose of setting, maintaining, or changing the terms or conditions of employment;
- Any other controversy arising out of the respective interests of the relationship between an employee and an employer.<sup>10</sup>

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## COMMENT

Any state regulation of the right of private employers and employees to bargain collectively runs the risk of conflicting with, and potentially being preempted by, the NLRA. Enacted in the 1930s, the NLRA does not contain an express preemption provision. Nevertheless, the U.S. Supreme Court has interpreted the NLRA as having broad and comprehensive applications to the field of private sector collective bargaining, and but for a few narrowly drawn exceptions, the NLRA takes supremacy over state law.

The Court has held that, when a state purports to regulate activities that are protected by section 7 of the NLRA<sup>11</sup> governing labor-management relations (e.g., the right to bargain collectively) or that constitute an unfair labor practice under section 8,<sup>12</sup> the state jurisdiction must yield to the federal law.<sup>13</sup> Another type of federal preemption, the so-called "*Machinists* preemption," prohibits state and local regulation of areas that have been left "to be controlled by the free play of economic forces."<sup>14</sup>

While states are not totally excluded from activities affecting private sector labor relations, federal preemption likely would be invoked whenever a court thought a very real potential of conflict between federal law and the state regulation existed.

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<sup>10</sup> R.C. 4119.01, by reference to R.C. 4113.51, not in the bill.

<sup>11</sup> 29 U.S.C. 157.

<sup>12</sup> 29 U.S.C. 158.

<sup>13</sup> *San Diego Bldg. Trades Council, Millmen's Union Local 2020 v. J.S. Garmon*, 359 U.S. 236, 244 (1959).

<sup>14</sup> *Lodge 76, Internatl. Assn. of Machinists and Aerospace Workers, AFL-CIO v. Wisconsin Emp. Relations Comm.*, 427 U.S. 132 (1976).

Preemption under the NLRA is inappropriate only if the conduct at issue is a peripheral federal concern, or if the conduct involves a significant state interest that heavily outweighs the interests of the National Labor Relations Board in maintaining exclusive jurisdiction.<sup>15</sup> When it is not clear whether the particular labor-relations activity being regulated by a state is covered under the NLRA, state courts are not the primary tribunals to adjudicate such issues. Rather, the National Labor Relations Board retains sole jurisdiction over matters concerning or potentially concerning the NLRA.<sup>16</sup>

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## HISTORY

ACTION	DATE
Introduced	10-22-15

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<sup>15</sup> *Garmon*, 359 U.S. at 243-244.

<sup>16</sup> *Garmon* at 244-245.





## The Case for Unemployment Insurance Reform in Ohio

### EXECUTIVE SUMMARY

#### Introduction

Ohio's unemployment insurance (UI) system is in a state of crisis. The Ohio Unemployment Insurance Trust Fund, which is funded by employers and pays out benefits to qualifying jobless workers, is insolvent. The benefits the system pays out are substantially out of balance with the tax receipts it takes in to fund it. The system is nearly \$775 million in debt to the federal government – money it borrowed to keep paying benefits during and after the Great Recession of 2008. As a result, Ohio's system is dangerously unstable and a deterrent to economic development. Reforms are urgently needed to update and strengthen Ohio's UI program for the benefit of Ohio's employers, employees and economy. Most specifically, Ohio's Unemployment Insurance Trust Fund is not likely to recover solvency before the next recession unless the state takes action to pay off its outstanding federal unemployment compensation loan balance and better aligns benefits with contributions to build a balance.

#### How the System Works<sup>1</sup>

The Social Security Act of 1935 (SSA) created a federal-state unemployment insurance program to (a) provide temporary, partial wage replacement to individuals out of work, generally through no fault of their own, and (2) promote economic stability by maintaining a steady flow of dollars throughout the economy even when there is widespread unemployment.<sup>2</sup> The UI system historically has been forward funded – i.e., a sufficient positive balance is needed in the state unemployment trust fund to avoid having to borrow to pay benefits resulting from a reasonably foreseeable economic downturn.

To be eligible for unemployment benefits, jobless workers must demonstrate “workforce attachment,” usually measured by a work requirement (e.g., number of weeks of work) and/or a wage requirement (e.g., dollar amount of wages earned). Individuals also must be able, available and actively seeking work. Each state has a different formula for determining the amount of workforce attachment needed to obtain UI benefits from the state.

The UI program is a federal-state partnership conforming to federal requirements and administered by state agencies under state law. The Office of Unemployment Insurance Operations at the Ohio Department of Job and Family Services (ODJFS) administers Ohio's UI program. Administrative funds for ODJFS are allocated by the federal government from federal payroll taxes employers pay to the Internal Revenue Service.

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<sup>1</sup> This section of the document borrows heavily from a U.S. Department of Labor publication, *Unemployment Compensation: Federal-State Partnership*, April 2015.

<sup>2</sup> <http://www.bizfilings.com/toolkit/sbg/office-hr/managing-the-workplace/unemployment-benefits-system-info.aspx>

## **Financing the Program**

Unemployment compensation paid to unemployed workers is financed largely through both federal and state unemployment taxes paid by employers. Just three states – Alaska, New Jersey and Pennsylvania – collect UI taxes from employees.

UI taxes are based on various factors, including the wages employers pay their employees, the type and size of the business, and the number and amount of unemployment claims filed against the business.

- At the federal level, the Federal Unemployment Tax Act (FUTA) imposes a single flat rate payroll tax on the first \$7,000 of wages employers pay each employee in a year. The current FUTA tax rate is 6.0 percent. However, employers can earn credits against their FUTA tax to reflect the state employment taxes they pay. Employers who pay their State Unemployment Tax Act (SUTA) taxes in a timely manner under an approved state unemployment compensation program can earn a credit of up to 5.4 percent against the 6.0 percent, resulting in an effective tax rate of 0.6 percent. These states are also eligible to receive federal grants to cover the costs of administering the program through federal appropriations. Additionally, funds from the FUTA-funded Federal Unemployment Account reimburse the state unemployment trust fund for 50 percent of charges for “extended” unemployment benefits when extended benefits are triggered by periods of high unemployment.
- At the state level, each state determines its own SUTA tax rates. Some states apply various formulas to determine the taxable wage base; others use a percentage of the state’s average annual wage; and a few simply follow the FUTA wage base of \$7,000. In 2014, SUTA tax rates ranged from 0.0 percent to 2.6 percent for minimum rates, and from 5.4 percent to 10.89 percent for maximum rates. All but a handful of states’ wage bases exceeded the FUTA minimum requirement of \$7,000. In 2014, Ohio’s SUTA base was \$9,000, with a minimum contribution rate of 0.3 percent and a maximum contribution rate of 8.60 percent.

The state assigns or computes a specific individually determined UI tax rate for each employer annually. Every state uses some kind of “experience rating” system to determine the rate. Generally, the fewer the claims, the lower the rate the business pays in state UI taxes.

States lacking sufficient funds to pay their required unemployment benefits are authorized by Title XII of the SSA to request advances (i.e., loans) from the FUTA’s federal loan fund account, the Federal Unemployment Account. If not repaid, these loans carry interest that must be paid from sources other than the state UI trust fund.

## **Impact of the Great Recession**

The Great Recession of 2008 was the nation’s longest and deepest since the Great Depression of the 1930s. A majority of states did not have sufficient balances in their state unemployment trust funds to pay benefits without requesting advances (i.e., loans) from the federal government to assure that unemployment compensation benefits were paid. Ohio was among the states hardest hit by the recession.

The Recession was much greater than expected, wiping out positive unemployment trust fund balances across the country and in Ohio. Automatic tax trigger provisions in Ohio law designed

to address a milder recession were insufficient to meet the increased benefit payout. The size of the deficit after the Recession was too great to make up with benefit cuts or tax increases alone and even years after the Recession, benefit payments each year continue to be nearly as high as unemployment contribution revenue.

The unemployment insurance tax burden in Ohio generally increased as a result of the Recession as claims experience increased, the payroll against which experience was determined was reduced, and Ohio became subject to the FUTA offset credit reductions under federal law. As the economy slowly recovered with increased payrolls and reduced claims experience, experience rates improved and the average state unemployment insurance contribution was reduced. ***However, the FUTA tax has continued to increase as Ohio's Title XII loan has not been repaid.***

The impact in Ohio has been severe. Ohio's unemployment trust fund balance has been a negative number as of the end of the second quarter every year since 2009. ***Today, the Ohio Unemployment Insurance Trust Fund is insolvent.***

### **Responses to Insolvency**

In response to the threat of insolvency, states have taken various actions to bolster tax revenue and reduce benefit outlay, including the following:

- Eliminating outstanding loan debt to the federal government by obtaining bank loans and/or using bonds to finance the debt through the private sector
- Enacting solvency legislation with a combination of benefit cuts and tax increases to eliminate Title XII debt and better align benefit costs with revenue over the long term
- Reducing the number of potential weeks of unemployment compensation
- Increasing tax bases
- Revising contribution rate schedules
- Reducing maximum weekly benefit amounts
- Enacting more aggressive integrity measures to identify and collect additional revenue through benefit overpayment recovery and contribution collection improvements

***Ohio, however, is one of a small number of states with significant outstanding federal debt that have chosen not to enact solvency measures,*** instead allowing automatic FUTA penalties to continue to increase to provide the revenue needed to reduce the state's outstanding debt.

This is a dangerous path to follow. Failure to pay off a state's outstanding FUTA debt has costly consequences. Under federal law, if a state has an outstanding Title XII loan balance on January 1 for two consecutive years, and the full amount of the loan is not repaid by November 10 of the second year, the 5.4 percent FUTA tax credit for employers in that state will be reduced annually by 0.3 percent for each succeeding year until the loan is repaid. From the third year onward, additional reductions in the FUTA offset credit may be imposed. States that continue to have outstanding loan balances over five years in a row are subject to an even greater FUTA tax increase as a penalty for not having addressed solvency through increases in taxes and/or cuts in benefits.

## **Why Ohio Needs Unemployment Insurance Reform**

Currently, Ohio ranks poorly on many important unemployment insurance program metrics. For example:

- Ohio's Unemployment Insurance Trust Fund is insolvent.
- Ohio's outstanding Title XII debt is approximately \$775 million – nearly equal to the cost of unemployment insurance benefit payments for an entire year. Only California has a larger unpaid Title XII loan debt balance.
- Ohio is one of a small number of states with significant outstanding federal debt that have chosen not to enact solvency measures.
- Employers in Ohio currently pay higher total costs associated with unemployment compensation than employers in most other states, while benefit payment amounts in Ohio are higher than the national average. This makes Ohio a high-cost, high-benefit state.
- The FUTA tax paid by Ohio employers has continued to increase as Ohio's Title XII loan has not been repaid.
- Ohio is one of just four states currently subject to higher FUTA penalty rates and potentially subject to an additional Benefit Cost Rate (BCR) penalty in 2015 for having outstanding loan balances five years in a row and failing to address insolvency.
- Ohio failed to pay off the state's outstanding FUTA debt before November 10, 2015, triggering an additional reduction in the FUTA offset credit for employers in Ohio. This will result in Ohio employers paying higher FUTA taxes for 2015 – at least an additional \$105 per employee, on top of the normal \$42 per employee.

Ohio's UI trust fund is not likely to recover solvency before the next recession unless the state takes action to pay off its outstanding federal loan balance and better align benefits with contributions to build a balance in anticipation of the next recession.

## **Conclusion**

***Ohio's Unemployment Insurance Trust Fund must be made solvent before the next recession*** – not only to manage the repayment of Ohio's remaining Title XII loan balance but also to align benefit and contributions to build an adequate unemployment trust fund balance. The best solvency plan is one that also includes a focus on job creation because increased employment not only increases contributions but also reduces benefit payout. For that reason, rates also should be in line with surrounding states and states with which Ohio competes to attract and retain new business.

Unemployment insurance policy reform priorities should focus on eliminating the state's current unemployment trust fund debt, aligning benefit payout with contribution revenue, and building a balance in the unemployment trust fund sufficient to avoid triggering automatic FUTA tax increases that have significantly increased unemployment taxes for Ohio employers since the Great Recession of 2008. A vital first step for Ohio should be to pay off of the remaining Title XII loan balance to eliminate the FUTA tax increase as soon as possible.

# # #



## House Bill 394: Selected Major Provisions at Glance

House Bill 394 offers a reasonable, balanced package of unemployment insurance law reforms designed to address the current insolvency of Ohio's Unemployment Insurance Trust Fund (UI Trust Fund). The bill contains a combination of unemployment tax, benefit and integrity provisions that in the aggregate will improve solvency by tightening alignment of benefit costs and contribution revenues while building a significant fund balance, over time, that will be sufficient to avoid subjecting Ohio to increased federal taxes and penalties related to unemployment insurance.

Among the major reforms proposed in the legislation are the following:

- **Temporary Increase in State Unemployment Tax Base.** HB 394 would increase the state unemployment tax base from \$9,000 to \$11,000 when the UI Trust Fund balance is below 50 percent of the 1.0 Average High Cost Model solvency level and continue the increase until the UI Trust Fund reaches 1.0 Average High Cost Model. The state tax base will be reduced back to \$9,000 when the UI Trust Fund equals or exceeds the 1.0 AHCM solvency level. If the balance dips below 50 percent of the solvency level in future years, the tax base will automatically return to the \$11,000 level.
- **Reduction of Number of Potential Weeks of Unemployment Insurance.** HB 394 would change the determination of the total number of weeks of unemployment compensation potentially available to twice a year, based on Ohio's seasonally adjusted three-month total unemployment rate, before January and June. A sliding scale would set the number as low as 12 weeks when the rate is 5.5 percent or below, and up to 20 weeks if the rate is 9 percent or above. Ohio currently uses a sliding scale ranging from 20 to 26 weeks.
- **Temporary Freeze on the Maximum Weekly Benefit Amount.** HB 394 would effectively freeze maximum weekly benefit dollar amounts at a level not to exceed 50 percent of the statewide average weekly wage for the first year that the UI Trust Fund was less than the Minimum Safe Level (MSL), and would continue those maximums until the year after the UI Trust Fund was at or above the MSL.
- **Dependency.** To align with the majority of states, HB 394 would repeal Ohio's current dependency provision that increases the weekly benefit amount provided to claimants who have higher wages and dependents.
- **Drug Testing.** HB 394 provides language under which the Ohio Department of Job and Family Services may (a) request information of applicants for unemployment compensation about the results of past drug tests, (b) conduct drug tests for controlled substances, and (c) disqualify individuals within the narrow limitations of federal law.

HB 394 addresses a number of additional issues that impact UI Trust Fund solvency, including constructive lockout exceptions in labor disputes, standards for determining just cause for termination and quits without just cause, coordination of unemployment compensation benefits with Social Security retirement benefits, enhanced fraud penalties and collection, and improved non-fraud overpayment collection, among others. Collectively, the HB 394 reforms position Ohio in line with surrounding states and states with whom we compete for investment and jobs.



**BEFORE THE INSURANCE COMMITTEE  
THE OHIO HOUSE OF REPRESENTATIVES  
REPRESENTATIVE BOB HACKETT, CHAIRMAN**

**HOUSE BILL 394  
ADDITIONAL TESTIMONY  
OF  
DOUG HOLMES  
PRESIDENT  
UWC – STRATEGIC SERVICES ON UNEMPLOYMENT & WORKERS'  
COMPENSATION**

**JANUARY 19, 2016**

Chairman Hackett, Vice Chair LaTourette, Ranking Member Bishoff and members of the committee, thank you once again for the opportunity to testify on House Bill 394. My name is Doug Holmes and I am the President of UWC - Strategic Services on Unemployment & Workers' Compensation (UWC). UWC was established in 1933 and is a broad-based national association exclusively devoted to the issues of national unemployment insurance and workers' compensation public policy. I am here today to testify in support of House Bill 394 on behalf of The Ohio Manufacturers' Association, Ohio Chamber of Commerce, National Federation of Independent Businesses – Ohio, The Ohio Council of Retail Merchants, and the Ohio Farm Bureau.

I testify today to provide additional information as you consider potential amendments to the bill and to respond to some of the concerns raised by opponents of provisions in the bill.

**There is no tax reduction in HB 394.** Contrary to the suggestion of some opponents, the bill includes a 22% state unemployment tax increase beginning in 2018 that will remain each year that Ohio's trust fund is below the minimum safe level based on the solvency guideline of the U.S. Department of Labor.

Projections with respect to total revenue on an annual basis in the years from 2018 to 2025 assume no recession. When benefit payout is reduced during economic expansions, state unemployment contribution rates go down just as these experience rates increase in response to benefit increases. This is not a tax increase or decrease, but the functioning of an insurance system.

Ohio's UI trust fund insolvency was primarily caused by dramatic increases in benefit payout beginning in 2008 through 2011. From the third quarter of 2008 to the third quarter of 2009, benefit payout doubled from \$1.4 billion to nearly \$3.0 billion on an annual basis. Benefit payout continued at very high levels for 2010 (\$2.3 billion) and 2011 (\$1.8 billion). The trust fund rapidly went broke and the state was forced to borrow to pay benefits.

During this period there was no legislation to reduce weekly benefit amounts or the duration of benefits or any other tightening of benefit payment amounts despite the significant imbalance. The average weekly benefit amount increased each year from 2011 to 2015, from \$291.66 to \$338.73.

**Except for interest on the outstanding loans from the federal government, employers in Ohio have born the entire cost of the insolvency of the fund.**

Employer state unemployment taxes increased from \$1.1 billion in 2009 to \$1.5 billion for 2011 before going down slightly with improved benefit claims experience to \$1.48 billion for 2012 and \$1.2 billion for 2013.

The primary increased cost to employers began in 2011 with the imposition of Federal Unemployment Tax Act (FUTA) increases triggered by the outstanding federal loan. Beginning in 2011, employer FUTA taxes increased from \$42 to \$63 per employee and each year since the FUTA tax has increased an additional \$21 per employee. The 2015 FUTA taxes to be paid in full by January 31, 2016 will be \$147 per employee instead of the normal \$42 per employee. For 2016 the FUTA tax is projected to go up again to \$168 per employee, 400% higher than the normal FUTA rate and the second highest FUTA tax rate for employers of any state in the country. Only Connecticut has a higher FUTA tax rate.

Since 2011 Ohio employers paid more than \$963 million in additional FUTA taxes and are projected to pay \$501 million more in 2016 and \$597 million more in 2017. In total, it is projected that employers will have paid over \$2 billion in additional FUTA taxes due to the outstanding loan balance.

The opponents to HB 394 raise concerns about cuts to their various constituencies similar to concerns that have been raised time and again when UI solvency legislation has been considered in Ohio and in other states. In reviewing previous testimony I do not recall any witness suggesting areas that may be cut on the benefit side, and in fact, at least one witness suggested that employer taxes should be even higher and benefits increased.

HB 394 is a thoughtful, serious, well-reasoned and balanced approach to addressing the challenging topic of unemployment trust fund solvency.

I have additional comments with respect to some of the testimony from opponents and amendments being considered to HB 394 as introduced.

### **Collection Authority**

There was some opposition to the increases in the time in which fraud may be prosecuted and/or the time within which overpayments may be ordered and/or collected. These provisions are consistent with provisions in other states. According to the U.S. Department of Labor, 26 states currently have no limitation on the time within which fraud overpayments may be collected through offset and 16 states have no limitation on the time during which non-fraud overpayments may be collected through offset. Current statutory limitations in Ohio unduly restrict efforts by ODJFS in the identification and collection of overpayments, and result in millions of dollars in overpayments not being pursued and/or effectively written off when they remain collectible.

The annual mutualized account report prepared by ODJFS for 2015 shows that \$19,879,369 in overpaid benefits were not recovered. HB 394 provides increased flexibility and time for ODJFS to more effectively administer the overpayment identification and collection functions to improve integrity and the solvency of the trust fund.

## **Construction Employment**

### **Earnings Requirement**

The issue of cyclical employment in the construction industry is not unique to Ohio and has been addressed by many states including states with colder climates. At least 30 states (including Alaska, Idaho, Illinois, New Hampshire, New York, North Dakota, Pennsylvania, South Dakota, Vermont and Wyoming) require wages in at least two quarters during the individual's base period. Indiana and Kentucky require that there must be wages in at least two of the most recent quarters in the base period.

The language in AM 1514x1 effectively responds to opponent concerns by minimizing the impact on employees in the construction industry while providing a more meaningful workforce attachment requirement that is similar to other states. By changing from requiring earnings in at least three quarters in the base period to two of the most recent three quarters in the base period, the new test would not adversely impact construction workers because of the effect of the alternative base period and the likelihood that any worker attached to the construction industry would be able to qualify monetarily.

A worker who becomes unemployed in January who qualified with earnings in the regular base period of the four quarters ending in September would need only to have some earnings of any amount in two quarters within the period that includes April, May, June, July, August and September – all clearly within the outdoor construction season. Those who did not qualify because of insufficient earnings in the regular base period could qualify using the alternative base period of the four quarters ending in December. They would have still two quarters in which to have some earnings of any amount.

### **Waiting Week**

The amendment language in AM 1513 effectively responds to the concern that individuals in the construction industry would choose not to accept very short term spot work if they would be denied unemployment compensation for the following week. That provision was deleted and replaced by language that would require an additional waiting week within a benefit year only when an individual failed to timely file claims for three consecutive weeks. This amendment is consistent with sound claims management practice in identifying individuals who have not continued to be unemployed and will assist in avoiding fraudulent claims and finding identity theft when individuals use stolen social security numbers to file claims.

### **Number of Potential Weeks of Unemployment**

The recent trend among states addressing UI solvency has been to reduce the number of potential weeks of unemployment based on the total unemployment rate. Effective January 1, 2016, Missouri joined the growing list by changing to a sliding scale of 13 – 20 weeks. Other states with similar provisions include Kansas 16 -26, Florida 12-23, Georgia 14 -20, and North Carolina 12 -20. Michigan and South Carolina also reduced their maximum number of weeks to 20 from 26.

The number of potential weeks is a primary driver of insolvency, particularly when individuals work partial years and then exhaust 26 weeks of benefits before returning to work. This pattern not only negatively impacts the balance in the unemployment trust fund, but can have the effect of increasing taxes for all employers.

### **Mutualized Tax**

The mutualized tax that is part of Ohio's unemployment law imposes a flat tax of up to 0.5% to cover payments from the unemployment trust fund that are not chargeable to employer accounts or are benefit overpayments that are uncollectible. As a result of the 1980s recession in which large amounts of benefit payments were effectively written off and charged to the mutualized account, the account became seriously negative. Legislation was enacted to credit the account with the FUTA tax revenue from the increased FUTA tax for the purpose of assisting in reducing the negative balance in the account. The account now has a very high positive balance so that an additional mutualized tax is not imposed under state law. The balance is now positive because employers paid more in FUTA taxes.

### **Weekly Benefit Amount Freeze**

Ohio's current maximum weekly benefit amount is higher than the national average and higher than any surrounding state except Pennsylvania. Nineteen states, including Michigan and Indiana, do not have automatic increases in the maximum weekly benefit amount. A freeze until Ohio's trust fund is solvent is a reasonable response to address solvency.

### **Number of unemployed workers paid benefits compared to total unemployed**

It is a positive feature of Ohio's system that a lower percentage of the total workforce is being paid unemployment compensation. Lower percentages are indicative of recovery from recessions while higher percentages indicate recessionary periods. The purpose of the employment security system is to enable unemployed workers to find work. The goal is not to maximize the number of individuals receiving unemployment and the number of weeks of benefits paid.

Ohio's lower duration rate on average is due to a relatively high percentage of the workforce engaged in employment in which there are short term layoffs, typically in manufacturing. The effect of a larger number of short term periods of unemployment is to bring down the overall average duration and exhaustion rate. Despite these positives, the UI trust fund is significantly insolvent.

### **Social Security Offset**

The language in AM 1557 effectively responds to concern with respect to the offset of social security retirement payments against unemployment compensation payments. As part of the overall solvency package this appropriately provides that 50% of the Social Security payment should be offset. This is consistent with federal law that requires offset under 26 USC 3304 (a) (15) and permits states to reduce the amount of the offset in light of contributions made by the individual. As individuals contribute 50%

of the payroll tax that is dedicated to pay for Social Security retirement benefits, it is logical to provide for a 50% offset against unemployment compensation. Minnesota currently provides for a 50% offset.

### **Federal Conformity and Compliance**

We would remind the committee that Ohio's system must meet federal conformity and compliance criteria. The unemployment insurance system is bound to follow federal requirements in order for states to qualify to receive federal grants to administer the program and bound to provide for uniform treatment of individuals in employment with respect to benefit eligibility. Federal conformity and compliance should be clearly met to avoid the consequence of loss of federal administrative funding and/or the employer offset credit against the FUTA tax.

A provision which results in Ohio not meeting the requirements of 26 USC 3304 would result in employers in the state losing the full offset credit against the FUTA tax. The normal FUTA rate of 0.6% on the first \$7,000 would increase to 6.0% so that the FUTA tax would immediately increase from \$42 per employee to \$420 per employee.

We caution the committee as you consider amendments to HB 394 to be mindful of the amendments' impact on solvency and to assure that Ohio's system remains in compliance and conformity with federal law as determined by the U.S. Department of Labor.

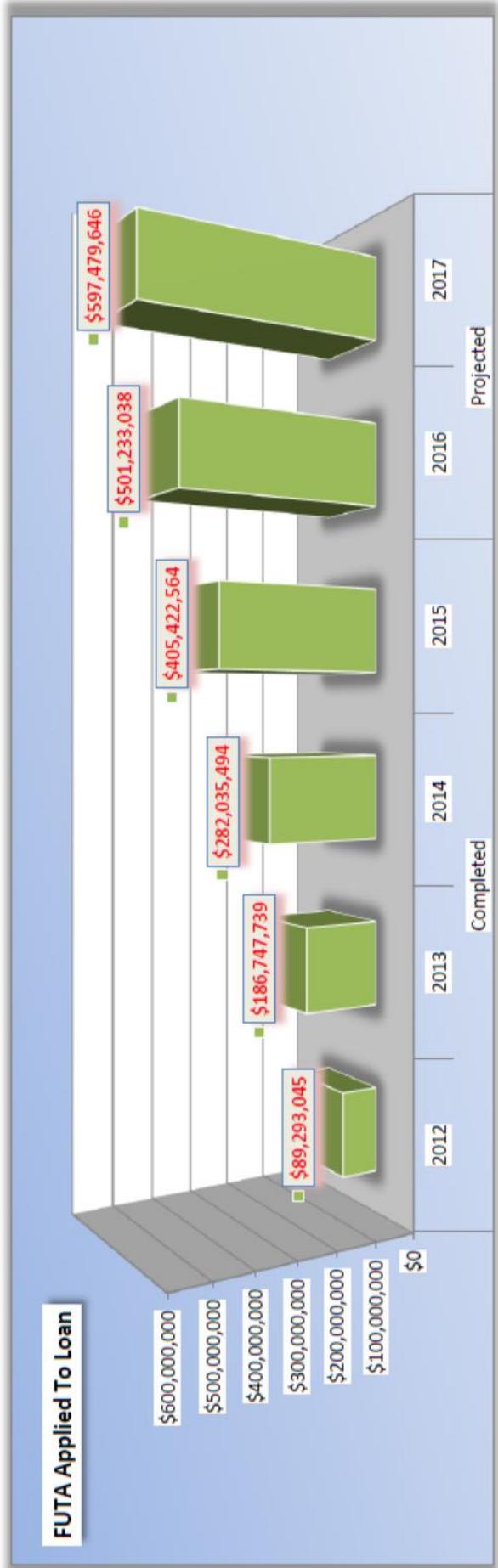
I once again appreciate the opportunity to testify and hope this additional testimony will assist you as you further consider HB 394.

# FUTA Credit Reductions 2012-2017

FUTA Offset Credit	Completed					Projected	
	2012	2013	2014	2015	2016	2017	
01-JAN	\$0.00	\$186,167.99	\$296,057.15	\$128,030.51	\$317,460.60	\$378,419.28	
02-FEB	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	
03-MAR	\$42,547,463.45	\$98,254,025.81	\$147,320,708.95	\$229,279,454.52	\$269,157,095.18	\$320,840,554.49	
04-APR	\$27,062,771.87	\$63,312,015.53	\$0.00	\$120,978,073.86	\$148,659,187.63	\$177,204,671.28	
05-MAY	\$15,029,395.75	\$21,190,824.40	\$74,415,230.12	\$45,131,970.18	\$72,344,254.30	\$86,235,774.86	
06-JUN	\$2,031,596.04	\$1,614,451.71	\$57,715,430.06	\$4,756,946.21	\$4,371,314.69	\$5,210,693.14	
07-JUL	\$1,836,991.60	\$400,872.62	\$567,448.35	\$3,414,568.78	\$2,620,973.96	\$3,124,252.54	
08-AUG	\$637,061.77	\$0.00	\$145,781.70	\$209,792.73	\$731,402.40	\$871,846.06	
09-SEP	\$9,293.67	\$932,473.30	\$467,005.37	\$0.00	\$1,122,823.44	\$1,338,427.64	
10-OCT	\$64,021.22	\$0.00	\$518,431.15	\$101.14	\$544,179.15	\$648,672.25	
11-NOV	\$0.00	\$563,325.55	\$452,998.64	\$0.00	\$949,540.98	\$1,131,871.53	
12-DEC	\$74,449.98	\$293,581.71	\$136,402.18	\$1,523,566.42	\$414,805.80	\$494,456.67	
<b>Grand Total</b>	<b>\$89,293,045.35</b>	<b>\$186,747,738.62</b>	<b>\$282,035,493.71</b>	<b>\$405,422,564.35</b>	<b>\$501,233,038.12</b>	<b>\$597,479,646.74</b>	
Credit Reductions	0.3%	0.6%	0.9%	1.2%	1.5%	1.8%	
Average Per 0.3% reduction 2012-2015	\$94,508,596.75						

\*Figures in blue are projected amounts

\*\*Projected Loan Payoff March 2017. Any additional funds collected from FUTA Credit Reduction after loan payoff will go to Ohio UI Trust Fund



## Human Resources

### [Ohio Employment Discrimination Reform Bill Introduced](#)

February 26, 2016

[Senate Bill 268](#), sponsored by Senator [Bill Seitz](#) (R-Cincinnati), proposes to comprehensively overhaul Ohio's employment discrimination statutes in a manner that would benefit employers and bring Ohio's laws more in line with federal discrimination laws, but would continue to provide individuals avenues to assert state law discrimination violations.

This bill would bring Ohio's statute in line with its federal counterpart by eliminating personal liability for managers and supervisors.

The bill also seeks to reduce the timeframe to file an employment discrimination lawsuit in court to one year and apply it to all discrimination claims. Today, depending on the type of claim, individuals have between 180 days and six years to file.

OMA counsel [Betsy Swift](#) and [Jill Bigler](#) of Bricker & Eckler have highlighted the [key provisions in this summary](#).

### [Interns for Central Ohio Manufacturers](#)

February 26, 2016

The Ohio Department of Higher Education "Ohio Means Internships and Co-ops" program (OMIC) funds co-located and regular student internships in advanced manufacturing.

The Columbus Region LIFT OMIC program offers 30 co-located and 50 regular internships for manufacturers to access Columbus region community college, Ohio Technical Center, and university students and faculty to work closely with them on manufacturing projects.

The co-located internships are affiliated with the federal Lightweight Innovations for Tomorrow (LIFT) program. More information is [available here](#).

### [Court Holds Company Can Reject Terms, Conditions of Expired Collective Bargaining Agreement](#)

February 19, 2016

OMA Connections Partner, Barnes & Thornburg, reported that the Third Circuit Court of Appeals recently provided a win to employers.

The National Labor Relations Board (NLRB) requires employers to adhere to the terms and conditions of an expired collective bargaining agreement either until a new agreement has been reached or the parties achieve impasse.

However, the court's recent decision in *In re Trump Entertainment Resorts Inc.*, held that companies can reject a collective bargaining agreement under certain conditions. [Read more here](#).

### [Resources for Hiring Military Veterans](#)

February 12, 2016

While it may seem intuitive that military veteran job candidates can possess technical training, leadership, adaptability, and other transferrable skills, some employers are unsure how to add veterans to their team. Several local and national organizations focus on connecting veterans with employers. [Read more](#).

### [EEOC Proposes to Collect Wage Data from Large Employers](#)

February 5, 2016

More productivity-sapping regulations proposed: OMA Connections Partner, Dinsmore, reports that starting September 30, 2017, the U.S. Equal Employment Opportunity Commission (EEOC) [plans](#) to collect pay data from employers with more than 100 employees in an attempt to reveal potentially discriminatory pay practices, particularly with respect to women and ethnic minorities.

Through a proposed revision to the Employer Information Report (EEO-1), covered employers will be required to report the number of employees by race, gender, and ethnicity who are paid within each of the proposed 12 pay bands, including the number of hours the reported employees worked in the applicable time period. [Read more from Dinsmore](#).

### [Are You a Joint Employer?](#)

January 29, 2016

OMA Connections Partner, Bricker & Eckler LLP, notes that " ... today's businesses use a variety of organizational and staffing models to run their operations. They may share workers with other employers, engage independent contractors or use staffing agencies to supplement their

workforce. Although organizations may not consider workers who provide services under these arrangements to be employees in the traditional sense of the term, under the Department of Labor's Wage and Hour Division's (DOL) recent [Administrator's Interpretation](#) (AI), they may still be responsible for complying with the applicable employment laws as a joint employer."

"In the AI, DOL states that it is taking an expansive interpretation of the term "employ" to ensure the scope of employment relationships and joint employment is "as broad as possible." Thus, it is likely that DOL will increasingly find that joint employment exists.

"All employers should be aware of DOL's standards for determining joint employment status and the consequences of being deemed a joint employer." [Read more from Bricker.](#)

### [OMA Opposes Health Care Mandate Bill](#)

January 29, 2016

This week the OMA filed a letter with Rep. [Tim Brown](#) (R-Perrysburg), Chairman, House Government Accountability and Oversight Committee, to oppose [House Bill 350](#), which would mandate autism coverage for certain types of health care plans where autism benefits are not already mandated.

[In its letter](#), OMA explained: "The OMA has historically opposed health insurance-related mandates because they increase cost and limit flexibility for employers that seek to provide health care plans for their employees. Our position has been to allow the market, not the government, to drive the features and benefits of health care insurance products."

### [Expansion of Workforce Voucher Program Introduced](#)

January 29, 2016

This week, Reps. [Niraj Antani](#) (R-Miamisburg) and [Bill Reineke](#) (R-Tiffin) provided [sponsor testimony](#) on [House Bill 429](#), which would allow automotive technicians and motor vehicle technicians employed at retail stores to be eligible to participate in the state's Incumbent Workforce Voucher Program.

This program is administered by the Ohio Development Services Agency and provides grants to employers for incumbent workforce training.

This bill would create an expansion of the very popular program. It was designed to support targeted growth industries, including advanced manufacturing, automotive, and food processing, among others.

The General Assembly allocated \$7.5 million in both fiscal years, 2016 and 2017, for the program.

### [President Obama Proposes Major Expansion of Unemployment Benefits](#)

January 22, 2016

Last week President Obama proposed a [series of measures](#) that would mandate new wage support and unemployment compensation to be paid by states through unemployment insurance trust funds and federal grants.

The proposal has three core elements that would:

1. Provide wage insurance that would replace half of lost wages, up to \$10,000 over two years. Displaced workers making less than \$50,000 who were with their prior employer for at least three years would be able to qualify.
2. Expand coverage to part-time, many low-income, and intermittent workers, and workers who leave work for compelling family reasons.
3. Make it easier for companies to avoid lay-offs through work-sharing, while incentivizing states to offer and allow retraining for workers on UI or to provide relocation vouchers or subsidized employment. It would expand intensive career counseling to the long-term unemployed, discouraged, and part-time workers.

The plan contains additional features including requiring states to maintain adequate reserves, provide 26 weeks of coverage, and provide resources for career navigators.

### [2016 Employment Forms – Free & Legally Reviewed](#)

January 8, 2016

OMA provides several free up-to-date reproducible forms to assist your human resource department, managers and supervisors. These forms comply with federal and Ohio laws and have been reviewed by OMA counsel, Bricker & Eckler LLP, for compliance as recently as December 2015.

The reproducible forms offered are: Application for Employment, Absentee Calendar/Bi-monthly Absence Review, and Vacation Schedule. State & federal posting requirements are also available.

Please read the special instructions to employers to help protect your company when using these forms. [See HR Tools on this web page.](#)

### [NLRB Invalidates Another Personnel Policy](#)

January 8, 2016

The National Labor Relations Board (NLRB) recently held that an employer's prohibition on the use of recording devices in the workplace is unlawful. The *Whole Foods* case is the latest example of the NLRB expanding its interpretation of Section 7 to invalidate employer workplace rules.

[Read more](#) from OMA Connections Partner, Barnes & Thornburg LLP.

### [Congress Delays ACA "Cadillac Tax" Until 2020](#)

January 8, 2016

OMA Connections Partner, [Bricker & Eckler LLP](#), reported that on December 18, 2015, when Congress passed the Consolidated Appropriations Act of 2016, it included a two-year delay of the Affordable Care Act's (ACA) 40% excise tax on high-cost employer-sponsored health plans (the so-called "Cadillac Tax").

When originally enacted, the Cadillac Tax was to be implemented in 2018, however, its effect has now been delayed until 2020.

Per Bricker: "In addition, the Appropriations Act also impacts the tax treatment of any liability incurred under the Cadillac Tax. While originally classified as a non-deductible tax, the Appropriations Act provides that liability for the Cadillac Tax can now qualify as a deductible expense. Although the Cadillac Tax has not been repealed, employers that have been planning for its eventual implementation now have additional time to prepare."

### [Interns for Central Ohio Employers](#)

December 18, 2015

The [TEC Institute](#) at The Ohio State University is placing approximately 10 graduate and five undergraduate interns in central Ohio businesses in summer 2016. If you are interested in a potential intern, please see more information about the [Wheeler graduate](#) or [Wolstein undergraduate](#) intern programs. Requests are due January 8, 2016.

### [NAM Studies Affect of ACA "Cadillac" Tax](#)

December 11, 2015

The Affordable Care Act implemented a tax on employee health care benefits that is set to go into effect in January 2018. A new study commissioned by the National Association of Manufacturers (NAM), *Heads Up: A Tax on Employee Benefits Is Coming Your Way*, analyzes the economic impact of this 40% percent tax on health benefits under several scenarios. Findings include:

- The accelerating nature of the tax will prompt many employers to continually increase cost sharing and/or eliminate benefits.
- If health insurance premium prices increase moderately, the tax would hit almost 30% of manufacturers' plans by 2025 and more than 80% by 2035.
- Virtually all employers would end up facing the tax at some point.
- Job losses from the tax could total 2.6 million by 2035, and real personal income in 2014 dollars would be reduced by almost \$3,800 per household.
- The economic tax burden would reduce GDP by 1.7% by 2035.

[Read more from NAM.](#)

### [Autism Mandate has First Hearing](#)

December 11, 2015

This week the House Government Accountability and Oversight Committee heard sponsor testimony on [House Bill 350](#), which requires autism coverage be expanded to all large group employer health plans and other health plans that were grandfathered under the Affordable Care Act.

Reps. [Cheryl Grossman](#) (R-Grove City) and [Lou Terhar](#) (R-Cincinnati) provided joint sponsor testimony. Grossman [testified](#): "Insurers in Ohio are not required to provide coverage for this treatment if the affected individual is covered by a fully insured large group plan or a grandfathered plan in the small group or individual markets."

Rep. Terhar's [testimony](#) also went to the coverage gap.

The OMA has produced this [analysis](#) of the measure, which says: "This proposed legislation would represent an increase in the benefits that plans must provide, and thus it could potentially increase the cost of the plans impacted. Furthermore, the state would

not be required under ACA to subsidize the cost of providing these additional benefits.” OMA’s [Rob Brundrett](#) has the lead on this bill.

### [Right to Work Gets Hearings](#)

December 4, 2015

Labor union members packed the House Commerce and Labor Committee this week for a hearing on a right-to-work bill, [HB 377](#), sponsored by Rep. [Tom Brinkman](#) (R-Cincinnati).

Brinkman said: “Our neighboring states of Michigan and Indiana have passed right to work and Ohio would be the 26th state to do so, after Wisconsin in March of this year. In the global economy when companies are considering places to move or expand into, Ohio must be able to compete with Michigan, Indiana and Wisconsin for those jobs. Right to work is long overdue here in Ohio.”

Separately, Speaker Cliff Rosenberger said he is supportive of the concept, but has not yet decided if the bill will get a floor vote.

### [New Autism Coverage Mandate Bill in the House](#)

December 4, 2015

In October, Reps. [Cheryl Grossman](#) (R-Grove City) and [Lou Terhar](#) (R-Cincinnati) introduced the latest version of the autism insurance mandate bill, [House Bill 350](#). This version looks to fill in the coverage gaps left in the wake of Governor Kasich’s directive from December 2012.

In December 2012, Governor Kasich signed a directive defining Autism Spectrum Disorder as a Habilitative Service, therefore making coverage a federally-mandated Essential Health Benefit per the Affordable Care Act.

However, the directive was limited in that it applied mainly to individual and small group plans. House Bill 350 would require plans not addressed per the directive to cover Autism Spectrum Disorder, including large group plans and small group grandfathered plans.

Here’s an [analysis of the bill](#) by OMA counsel, Bricker and Eckler. Please share this information with your human resources department, and contact OMA’s [Rob Brundrett](#) with any concerns regarding the legislation.

## Human Resources, Health Care & Employment Law Legislation

Prepared by: The Ohio Manufacturers' Association

Report created on March 1, 2016

- HB64 OPERATING BUDGET** (SMITH R) To make operating appropriations for the biennium beginning July 1, 2015, and ending June 30, 2017, and to provide authorization and conditions for the operation of state programs.  
*Current Status:* 6/30/2015 - **SIGNED BY GOVERNOR**; eff. 6/30/15; certain provisions effective 9/29/2015, other dates  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-64>
- HB350 AUTISM TREATMENT-COVERAGE** (GROSSMAN C, TERHAR L) To mandate coverage of autism treatment.  
*Current Status:* 2/9/2016 - House Government Accountability and Oversight, (Fourth Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-350>
- HB355 EMPLOYEE DEFINITION** (RETFERFORD W) To create a generally uniform definition of employee for specified labor laws and to prohibit employee misclassification under those laws.  
*Current Status:* 11/4/2015 - House State Government, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-355>
- HB368 HEALTH INSURANCE LIMITS-EXCLUSIONS** (SEARS B) To make changes to the health coverage benefit limits and coverage exclusions for life and health insurance guaranty associations.  
*Current Status:* 11/4/2015 - House Insurance, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-368>
- HB429 AUTOMOTIVE TECHNICIANS-TRAINING** (ANTANI N, REINEKE W) Regarding employers of automotive technicians and motor vehicle technicians participating in the Incumbent Workforce Training Voucher Program.  
*Current Status:* 2/24/2016 - **REPORTED OUT AS AMENDED**, House Economic and Workforce Development, (Third Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-429>
- HB467 UNEMPLOYMENT COMPENSATION FUND** (BUTLER, JR. J) To establish a loan from the Budget Stabilization Fund to the Unemployment Compensation Fund, to require the Director of Job and Family Services to recommend a program to incentivize the purchase of private unemployment insurance, and to require a study on the solvency of the Unemployment Compensation Fund.  
*Current Status:* 2/16/2016 - Introduced  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-467>
- SB25 MINIMUM WAGE** (YUKO K) To raise the minimum wage; to raise the salary threshold above which certain employees are exempt from the overtime law; and to create a uniform standard to determine whether an individual performing services for an employer is an

employee of that employer.

**Current Status:** 6/24/2015 - Senate Transportation, Commerce and Labor, (First Hearing)

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-25>

**SB137**      **OHIO HEALTH CARE PLAN** (SKINDELL M, TAVARES C) To establish and operate the Ohio Health Care Plan to provide universal health care coverage to all Ohio residents.

**Current Status:** 4/14/2015 - Referred to Committee Senate Insurance

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-137>

**SB180**      **ANTI DISCRIMINATION-EMPLOYMENT** (UECKER J) To prohibit an employer from discharging or otherwise discriminating against a person who exercises a constitutional or statutory right within the person's private real property or motor vehicle.

**Current Status:** 10/7/2015 - Senate Civil Justice, (Second Hearing)

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-180>

**SB268**      **STATUTE OF LIMITATIONS-EMPLOYER** (SEITZ B) To modify Ohio civil rights laws related to employment and the statute of limitations for other specified claims against an employer.

**Current Status:** 2/10/2016 - Referred to Committee Senate Civil Justice

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-268>

**TO: OMA Government Affairs Committee**  
**FROM: Ryan Augsburger / Rob Brundrett**  
**RE: Safety and Workers' Compensation Report**  
**DATE: March 2, 2016**

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### **Overview**

The General Assembly began holding hearings in late January after it returned from its holiday break. With this being an election year, they will only be in session for a brief period in February and March. After the March primary there will be a fairly heavy session schedule for April and May before the members leave for the summer to campaign. The Governor continues his presidential campaign which indirectly has an impact on the legislature. There continues to be action on the legislative front regarding bills impacting the Bureau of Workers' Compensation.

### **Legislation and Rules**

#### **Senate Bill 5 – mental / mental**

State Senators Tom Patton (R-Strongsville) and Edna Brown (D-Toledo) introduced Senate Bill 5. The bill would allow emergency first responders to receive workers' compensation benefits for PTSD even if they do not have an accompanying physical work injury. This would go against how Ohio's workers' comp system has historically operated.

"Mental/mental," as the provision is called, would go against the workers' compensation principle that benefits must be tied to a compensable physical illness or injury. The measure would increase complexity and cost for public employers and allow certain employees to receive benefits not available to others. It also would be a terrible precedent facing private sector employers.

This would be a major change for public employers and possibly private employers in the future. The Senate passed a similar measure three times last year, only to be rebuffed by the House on each occasion.

The Senate heard powerful testimony from Administrator Buehrer but nonetheless passed the bill out of committee with only one no vote (Uecker). The bill was referred and passed unanimously from the Senate Finance Committee. However the bill has been re-referred to Senate Finance for further consideration. There have been two contentious interested party meetings with both sides entrenched with their positions.

Senator Patton remains focused on passing the bill.

#### **Senate Bill 27 / House Bill 292 – firefighter cancer**

Senator Tom Patton (R-Strongsville) and Representative Christina Hagan introduced companion bills that would assume a firefighter with certain types of defined cancers contracted those cancers within their working conditions. The bills are limited strictly to firefighters.

Senator Patton's bill, SB 27 had a third hearing in the Senate Insurance committee in February. The bill will likely be voted out of committee when the Senate comes back to session following the primary campaign break.

HB 292 had its sponsor testimony in October.

#### Senate Bill 149 – Loss of use

To make an individual who has lost the use of a body part due to a brain injury or spinal cord injury eligible for partial disability and permanent total disability compensation under the Workers' Compensation Law. The minority sponsored bill has not had a hearing and is not expected to move.

#### House Bill 205 – Private Insurance

Rep. Mike Henne introduced HB 205 which would allow employers with more than 1,000 employees, as well as workers' compensation groups managed by third party administrators to purchase workers' compensation coverage in the private market.

In the fall Rep. Henne introduced a sub bill. The sub bill deletes all the language of the original bill and replaces it with a provision that would totally eliminate the employee threshold for self-insurance. Currently the BWC can already waive this provision for companies with strong financials due to an OMA budget amendment several years ago. The provision is unneeded. There is a chance this bill will be amended into HB 207.

#### House Bill 206 – Industrial Commission Statistics

Rep. Henne introduced HB 206 which requires the Industrial Commission to compile and maintain statistics on workers' compensation hearing decisions and hearing officers. The IC is adamant this is problematic and is searching for allies to fight Rep. Henne on the bill.

#### House Bill 207 – Subrogation

Reps. Henne and Robert McColley introduced HB 207 which would insulate employers from the cost of a claim during litigation when there is third party involvement. The bill was voted out of the House last fall and has been assigned to the Senate Insurance committee where it awaits hearings. The OMA supports the bill and has testified in support. The bill had its first hearing last month in the Senate. It is being positioned as main piece of several workers comp clean up bills.

#### House Bill 355 – employee misclassification

Rep. Wes Retherford (R – Hamilton) has introduced a bill, HB 355, that would turn the Bureau of Workers' Compensation (BWC) into an agency that would police businesses in their classifications of employees and independent contractors.

Under the bill, the BWC would be authorized to enter and inspect all of the offices and job sites maintained by an employer who is the subject of a complaint that an employer is misclassifying an employee. The BWC would be authorized to issue stop work orders and fines.

For many many years, organized labor has attempted to create a de facto Department of Labor at the state level. That's what this one is after. It is a really bad idea.

The OMA participated in an interested party meeting and reiterated its position that the bill is a bad idea and should be shelved.

## **BWC Agency Notes**

### Self Insured PEO's

The BWC is working on legislative language that would require the agency to put a true experience rate on companies who leave a self insured PEO. Currently companies leave with a clean experience rate. This change would more accurately reflect a company's risk. This provision is targeted to be included in HB 207.

### Other States Coverage

The BWC is issuing rules for out of state coverage. The program is expected to come on line in the next couple of months.

## **Ballot Issues**

### Marijuana Ballot Issues

Issue 2 passed at the ballot box in November. Issue 2 prevents monopoly interests from amending the state constitution for self serving interests.

Issue 3 – the ResponsibleOhio ballot issue that would have legalized medical and recreational marijuana was soundly defeated by Ohioans. The OMA was against Issue 3. Thank you to all the members who gave to the OMA advocacy fund to help defeat the Issue.

The House has put together a taskforce to study the medical marijuana issue. OMA Board Chairman Bill Sopko sits on the taskforce for the OMA.

Several new ballot issues have been designed to hit the ballot in November 2016. This will continue to be an issue in Ohio until legislation is put forward to deal with this issue one way or the other.

Chairman of the Board  
**WILLIAM E. SOPKO**  
President, William Sopko & Sons Co., Inc.



President  
**ERIC L. BURKLAND**

February 22, 2016

The Honorable Jay Hottinger  
Chairman, Senate Insurance Committee  
Senate Building  
1 Capitol Square, Ground Floor  
Columbus, OH 43215

**Re: Senate Bill 27**

Dear Chairman Hottinger:

I write to provide The Ohio Manufacturers' Association's (OMA) perspective on Senate Bill 27.

Senate Bill 27 says a firefighter, who is disabled as result of certain specified cancers outlined in the bill, is presumed to have incurred the cancer while performing his or her work-related duties. They would be eligible to receive Ohio workers' compensation benefits without the requirement of a medical examination linking the disease to their firefighting work duties.

It is the OMA's understanding that Ohio workers' compensation laws currently allow a firefighter to receive treatment for cancers incurred in the line of duty. The difference is that today the law *does not presume* these outlined cancers were work-related. Currently, it is the responsibility of the firefighter to receive a medical exam that links the illness to work duties.

OMA's focus on the proposed legislation is on the potential cost and how it could impact other occupations, public and private.

The Ohio Bureau of Workers' Compensation issued an actuarial report last year estimating the cost impact of Senate Bill 27. While the Bureau concedes it would be hard to predict the exact impact, it states that there could be an increase of an estimated \$75 million for local governments.

There is also a concern about carving out just one type of employee who is exposed to carcinogens. More study on the impact on public and private sector employees would be prudent.

Thank you for considering our thoughts. I am available for further discussion and look forward to more dialogue. My contact information is [rbrundrett@ohiomfg.com](mailto:rbrundrett@ohiomfg.com) or (614) 629-6814.

Sincerely,

A handwritten signature in blue ink that reads "Robert A. Brundrett".

Robert Brundrett  
Director, Public Policy Services  
The Ohio Manufacturers' Association



December 4, 2015

The Honorable Ron Maag  
Chairman, State Government Committee  
Ohio House of Representatives  
77 S. High St., 13<sup>th</sup> floor  
Columbus, OH 43215

**Re: House Bill 355**

Dear Chairman Maag:

The Ohio Manufacturers' Association (OMA) appreciates the opportunity to comment on House Bill 355. The OMA and its legal counsel have recently completed a review of the bill.

As currently drafted, the bill authorizes the Bureau of Workers' Compensation (BWC) to enter and inspect all offices and job sites maintained by an employer that is the subject of a complaint of misclassifying an employee. The bill further allows the BWC to issue stop work orders and fines.

Through the years, the OMA has steadfastly opposed bills that inappropriately broaden the authority and scope of various agencies. This bill contains multiple problematic provisions. We urge the committee and bill sponsor to shelve House Bill 355 and work with interested parties to craft a bill that narrowly addresses whatever real issues may be at hand.

Thank you for considering our perspective. I would be happy to discuss this further at your convenience.

Respectfully,

A handwritten signature in blue ink that reads "Rob Brundrett".

Rob Brundrett  
Director, Public Policy Services

[rbrundrett@ohiomfg.com](mailto:rbrundrett@ohiomfg.com)

Direct: (614) 629-6814

cc: The Honorable Wes Retherford



February 19, 2016

The Honorable Wes Retherford  
Ohio House of Representatives  
77 S. High St., 13<sup>th</sup> floor  
Columbus, OH 43215

**Re: House Bill 355**

Dear Representative Retherford:

The Ohio Manufacturers' Association (OMA) appreciated the opportunity to share our concerns regarding House Bill 355 at the recent interested party meeting. As a follow up to that meeting, we'd like to provide additional comment for your consideration.

The OMA continues to oppose bills that inappropriately broaden the authority and scope of various state agencies. This bill still contains multiple problematic provisions, and the OMA still remains opposed to the bill as currently pending.

We think a better approach would be a thorough review of the current laws and regulations that address the issue of misclassifying employees. It is the OMA's hope that after such a review, a clearer path will emerge that will speak to the narrow instance proponents of the legislation wish to address.

In the meantime, we appreciate the opportunity to work with you and the committee to review Ohio's current legal structures intended to combat employee misclassification.

Thank you for considering our perspective. I would be happy to discuss this further at your convenience.

Respectfully,

A handwritten signature in blue ink that reads "Rob Brundrett".

Rob Brundrett  
Director, Public Policy Services  
[rbrundrett@ohiomfg.com](mailto:rbrundrett@ohiomfg.com)  
Direct: (614) 629-6814

cc: The Honorable Ron Maag

## Safety and Workers' Compensation

### [BWC Considers 8.6% Overall Rate Reduction](#)

February 26, 2016

Actuaries of the Ohio Bureau of Workers' Compensation (BWC) are recommending to the BWC Board of Directors an [8.6% reduction](#) in total private sector premium.

If approved, this will continue nearly a decade of annual reductions in premiums: A great success story for Ohio!

The actual premium paid by individual employers depends on a number of factors, including the expected future costs in their industry, their recent claims history, and their participation in various programs. Look to the OMA Workers' Compensation Services team for more information as this process unfolds.

### [BWC Billing "True-Up" Comes in July](#)

February 19, 2016

The last step in the Bureau of Workers' Compensation transition to prospective billing of premium is the payroll true-up coming in July.

True-up is a new process that requires employers to report their actual payroll for the previous policy year and reconcile any differences in premium paid. This is an important step that is necessary for BWC to accurately calculate your premium. It's also critical to maintaining your policy and your participation in your current rating plan or discount programs.

BWC will remove employers from their current rating plan or discount program if it does not receive a payroll true-up by the due date. Any outstanding payroll true-ups will render the employer ineligible for participation in future rating plans or discount programs until the all outstanding payroll true-ups are complete.

Employers must complete the true-up report even if their payroll for the year matches the estimate received from BWC.

Your policy year 2015 payroll true-up notice will be sent July 1 and your report will be due by August 15. Reports must be submitted online or by phone at 1-800-644-6292.

The BWC encourages you to create an e-account that allows you to manage your policy, pay bills and complete the payroll true-up. [Learn how to create an e-account here.](#)

### [Proponent Testimony Heard on Self-Insurance Bill](#)

February 12, 2016

Substitute [House Bill 205](#) had its first [proponent testimony](#) hearing this week in the House Insurance Committee. The bill would remove the minimum number of employees an employer must have in order to apply to become self-insured for workers' compensation in Ohio.

The BWC already has the authority to waive the minimum employee requirement as long as the company's financial position meets the agency's requirements. That change was the result of an OMA-driven amendment to the state budget bill.

House Bill 205, therefore, is not essential for financially strong companies with fewer than 500 employees to apply for self-insurance. Contact OMA's [Jeremy SESCO](#) to discuss a self-insured analysis for your company.

### [Ohio Safety Congress is March 9-11](#)

February 12, 2016

BWC's Ohio Safety Congress & Expo is the largest and longest-running occupational safety, health and workers' compensation event in Ohio. More than 6,000 attendees are expected to attend to learn techniques for injury and illness prevention, rehabilitation, and return-to-work. Safety services, industrial supplies, safety equipment and gear will be on display in the Expo Marketplace. [Check it all out here.](#)

### [BWC Offers Online Streaming Safety Video Service](#)

February 12, 2016

BWC has partnered with several safety video vendors to offer access to a selection of online streaming videos covering a range of popular safety topics. Ohio employers have access 24 hours a day seven days a week, giving them the freedom and flexibility to view videos at their convenience.

Support your safety program with this resource. [Here are the details.](#)

## [BWC Premium Due March 2](#)

February 12, 2016

State fund employers: If you are paying your BWC workers' compensation premium on a bi-monthly basis and haven't already paid it, your payment is due March 2. Questions? Ask OMA's [Brian Jackson](#).

## [BWC Tweaks Premium Billing Lead Time](#)

February 5, 2016

Last week the Bureau of Workers' Compensation (BWC) board of directors approved a change to its timing of sending premium invoices.

The BWC will send invoices at least 23 days prior to the due date, which is down from at least 29 days.

The BWC had originally proposed a minimum 18-day lead time; however, OMA objected to this on behalf of members as too short.

Here's the [amended rule and billing chart](#) (see page 8) which shows the new invoicing schedule which starts June 1.

## [Employers Must Post OSHA 300A Starting Feb. 1](#)

January 22, 2016

OSHA reminds employers to post OSHA's [Form 300A](#) which summarizes the total number of job-related injuries and illnesses logged during 2015. The summary must be posted between Feb. 1 and April 30, 2016, and should be displayed in a common area where notices to employees are usually posted.

Employers with 10 or fewer employees and employers in specific low-hazard industries are normally exempt from federal OSHA injury and illness recordkeeping and posting requirements.

Due to changes in OSHA's recordkeeping requirements that went into effect Jan. 1, 2015, certain previously exempt industries are now covered. Here are [exempt](#) and [newly covered](#) industries. Visit OSHA's [Recordkeeping Rule webpage](#) for more information on recordkeeping requirements.

## [Registration Open for Ohio Safety Congress & Expo 2016](#)

January 15, 2016

Registration is now open for the Ohio Bureau of Workers' Compensation (BWC) [2016 Safety Congress and Expo](#) (OSC16), March 9-11 at the Greater Columbus Convention Center.

BWC annually hosts the largest regional safety and health conference in the U.S. to help Ohio employers prevent workplace injuries and achieve better outcomes for injured workers. There is no cost for Ohio employers and their employees to attend the event.

OSC16 offers more than 200 educational sessions, 225 exhibitors and free [continuing education credits](#). Those attending Safety Congress can learn to prevent workplace injuries and illnesses, achieve better outcomes for injured workers, reduce workers' compensation claims costs and keep Ohio's workforce healthy and productive.

## [A Reminder about Mandatory OSHA Notification of Serious Injury](#)

January 15, 2016

All employers are [required to notify OSHA](#) when an employee is killed on the job or suffers a work-related hospitalization, amputation, or loss of an eye.

A fatality must be reported within 8 hours. An in-patient hospitalization, amputation, or eye loss must be reported within 24 hours.

To make a report, call the nearest [OSHA office](#) or the OSHA 24-hour hotline at 1-800-321-6742, or [report online](#).

Be prepared to supply: Business name; names of employee(s) affected; location and time of the incident; brief description of the incident; contact person and phone number.

## [¿Tiene preguntas? ¿Necesita ayuda? ¡Estamos aquí para ayudarle!](#)

January 15, 2016

The Ohio Bureau of Workers' Compensation this week announced a new resource for Spanish speaking employers and injured workers at this [web page](#).

Customers seeking assistance can reach Spanish speaking staff daily from 7:30 a.m. to 5:30 p.m. through BWC's contact center at 1-800-644-6292.

The page also links to Spanish language forms needed to establish and maintain workers' compensation insurance coverage, report a workplace injury and manage a claim.

### ["Vastly Improved and Better Prepared"](#)

January 8, 2016

Before the holiday break, the Ohio Bureau of Workers' Compensation (BWC) board of directors reached a milestone. On December 18, 2015, it conducted its 100th meeting since it was established in 2007.

The 11-member board is an independent body comprised of members who represent the interests of Ohio workers, employers and the public at large, and lend their professional expertise to overseeing the agency's operations.

The BWC is noticeably better managed, and has become a competitive Ohio advantage. [Read more from the BWC.](#)

### [BWC CEO Reflects on Agency Improvements](#)

January 8, 2016

"... I've focused during my last five years as the leader of the Ohio Bureau of Workers' Compensation (BWC) on forming partnerships with all of our customers, who at times have contrasting views but all strive to maintain a system that is financially strong, does not impose a barrier to economic growth and is dedicated to caring for Ohio's workers," said Steve Buehrer, Administrator & CEO, Ohio Bureau of Workers' Compensation, [in this guest column.](#)

### [BWC Premium Due Date is Dec. 31](#)

December 11, 2015

State fund employers: If you are paying premium on a bi-monthly basis and you haven't already paid it – your BWC premium payment is due soon:

<b>Premium bill dates</b>	<b>Payment due dates</b>
December 1, 2015	December 31, 2015
February 1, 2016	March 2, 2016
April 1, 2016	May 2, 2016

Please note: There are significant consequences for payment lapses of 40 days or more, including lack of coverage and disqualification from group discount programs.

If you have any questions about this, please contact OMA's [Brian Jackson.](#)

### [BWC to Offer "Other States" Coverage Policy](#)

December 4, 2015

A new coverage option [recently approved](#) by the Ohio Bureau of Workers' Compensation (BWC) board of directors will simplify workers' compensation for businesses with employees who work in other states.

Workers' compensation laws vary by state and the new Other States' Coverage will help ensure that Ohioans injured on the job will be covered regardless of where they are injured.

While BWC generally provides coverage for employees working temporarily outside of Ohio, complications can arise when the injured worker files a claim in another state. Treatment can be delayed and businesses can be subject to penalties by the other state. By contracting with an insurer licensed in other states, BWC will be able to offer an option that ensures proper coverage regardless of jurisdiction.

A law enacted last year granted BWC the authority to contract with an insurer to provide this coverage, and the board approved the rules governing the optional policy offering designed by BWC. The policy offering is expected to be in place in the first half of 2016.

Interested employers will apply directly to BWC, which will determine eligibility and the premium cost for the optional coverage. The vendor will issue a policy to cover out-of-state exposures and respond to any claims filed out of state.

### [OMA-Supported Subrogation Bill Moves Out of House](#)

December 4, 2015

This week the House of Representatives unanimously approved [House Bill 207](#), sponsored by Reps. [Mike Henne](#) (R-Clayton) and [Robert McColey](#) (R-Napoleon). The bill would enable claims costs to be charged to the Bureau Workers' Compensation (BWC) surplus fund, rather than a state fund employer's experience, in the event of a motor vehicle accident-related workers' compensation claim that is likely to be subrogated by a third party.

OMA Safety and Workers' Compensation Chairman Larry Holmes, Sr. V.P., Finance, Fort Recovery Industries, Inc., provided proponent testimony on behalf of the OMA earlier this fall during committee hearings. The bill now goes to the Senate.

### [BWC Ties Claim Reduction to Safety Awareness](#)

December 4, 2015

The Bureau of Workers' Compensation (BWC) [recently reported out](#) reductions in claims and employer costs: "In FY 15, BWC approved 81,348 medical-only claims and 11,870 lost time claims compared to 89,505 medical-only and 13,296 lost-time claims in FY 11. This drop in claims has helped BWC reduce employer rates. Since 2011 private business rates have been reduced 21.4 percent overall, while public employers have seen a reduction of 26.5 percent.

"Ohio's safety record is echoed in recent figures released by the Bureau of Labor and Statistics, which continue to show Ohio's injury rate is below the national average. Those statistics, from 2014, show Ohio's injury rate is 2.9 injuries per 100 workers, compared to a national average of 3.4 injuries per 100 workers. Ohio's rate is lower than all its neighboring states including Michigan (3.7), Indiana (4.0), Kentucky (3.8), West Virginia (4.1) and Pennsylvania (3.6)."

BWC credits, in part, its [safety grant program](#): "More than 570 Ohio employers have received, or are in the process of receiving, nearly \$15 million in safety grants ... BWC expects to finish awarding its Fiscal Year 2016 grants in the next few weeks to applications already in hand. This will be the quickest the money has been awarded since the amount of available dollars was tripled by Governor John R. Kasich three years ago."

BWC is no longer accepting applications for this year; however, employers can begin applying for \$15 million in FY 2017 funds in April 2016.

### [OMA Sets 2016 Safety Webinar Calendar](#)

December 4, 2015

Each month the OMA holds a one-hour safety webinar, typically the first Thursday at 10:00 a.m.

The [2016 calendar of safety webinars](#) is set. The topics were selected based on member input to a recent survey.

Register at [My OMA](#) or call us at (800) 662-4463. To receive webinar announcements, subscribe to Safety & Workers' Compensation under My Communities at [My OMA](#).

The Bureau of Workers' Compensation (BWC) requires employers that participate in a group experience rating or group retrospective rating plan, and that sustain a claim, to complete two hours of safety training or complete BWC's online accident analysis form and associated accident analysis course. Each of these webinars qualifies for one-hour of BWC-mandated training.

**Workers' Compensation Legislation**  
Prepared by: The Ohio Manufacturers' Association  
Report created on March 1, 2016

- HB51**      **INDUSTRIAL COMMISSION BUDGET** (HACKETT R) To make appropriations for the Industrial Commission for the biennium beginning July 1, 2015, and ending June 30, 2017, and to provide authorization and conditions for the operation of Commission programs.  
*Current Status:* 6/30/2015 - **SIGNED BY GOVERNOR**; eff. 6/30/2015; certain provisions effective 9/29/2015  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-51>
- HB52**      **WORKERS' COMPENSATION BUDGET** (HACKETT R) To make changes to the Workers' Compensation Law, to make appropriations for the Bureau of Workers' Compensation for the biennium beginning July 1, 2015, and ending June 30, 2017, and to provide authorization and conditions for the operation of the Bureau's programs.  
*Current Status:* 6/30/2015 - **SIGNED BY GOVERNOR**; eff. 6/30/2015; certain provisions effective 9/29/2015, other dates  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-52>
- HB64**      **OPERATING BUDGET** (SMITH R) To make operating appropriations for the biennium beginning July 1, 2015, and ending June 30, 2017, and to provide authorization and conditions for the operation of state programs.  
*Current Status:* 6/30/2015 - **SIGNED BY GOVERNOR**; eff. 6/30/15; certain provisions effective 9/29/2015, other dates  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-64>
- HB205**      **SELF-INSURING EMPLOYERS** (HENNE M, RETHERFORD W) To modify the requirements for an employer to become a self-insuring employer for purposes of the Workers' Compensation Law, to transfer authority over the workers' compensation self-insurance program to the Superintendent of Insurance, and to allow certain employers and groups of employers to obtain workers' compensation coverage from a private workers' compensation insurer.  
*Current Status:* 2/9/2016 - House Insurance, (Third Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-205>
- HB206**      **INDUSTRIAL COMMISSION-CLAIM STATISTICS** (HENNE M) To require the Industrial Commission to keep statistics on individual hearing decisions of contested workers' compensation claims.  
*Current Status:* 6/9/2015 - House Insurance, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-206>
- HB207**      **WORKERS' COMPENSATION-SURPLUS FUND** (HENNE M, MCCOLLEY R) To allow a state fund employer to have a workers' compensation claim that is likely to be subrogated by a third party paid from the surplus fund account in the state insurance fund rather than charged to the employer's experience.  
*Current Status:* 2/23/2016 - Senate Insurance, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-207>

- HB292**      **FIREFIGHTER COMPENSATION** (HAGAN C) To provide that a firefighter who is disabled as a result of specified types of cancer is presumed for purposes of the laws governing workers' compensation and the Ohio Police and Fire Pension Fund to have incurred the cancer while performing official duties as a firefighter.  
*Current Status:* 10/6/2015 - House Insurance, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-292>
- HB355**      **EMPLOYEE DEFINITION** (RETFERFORD W) To create a generally uniform definition of employee for specified labor laws and to prohibit employee misclassification under those laws.  
*Current Status:* 11/4/2015 - House State Government, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-355>
- SB5**      **WORKERS' COMPENSATION-PTSD** (PATTON T, BROWN E) To make peace officers, firefighters, and emergency medical workers diagnosed with post-traumatic stress disorder arising from employment without an accompanying physical injury eligible for compensation and benefits under Ohio's Workers' Compensation Law.  
*Current Status:* 10/13/2015 - **REPORTED OUT AS AMENDED**, Senate Finance, (Sixth Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-5>
- SB27**      **WORKERS' COMPENSATION-FIREFIGHTER CANCER** (PATTON T) To provide that a firefighter who is disabled as a result of specified types of cancer is presumed for purposes of the laws governing workers' compensation and the Ohio Police and Fire Pension Fund to have incurred the cancer while performing official duties as a firefighter.  
*Current Status:* 2/23/2016 - Senate Insurance, (Third Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-27>
- SB149**      **WORKERS' COMPENSATION-BRAIN-SPINAL CORD INJURY** (SCHIAVONI J) To make an individual who has lost the use of a body part due to a brain injury or spinal cord injury eligible for partial disability and permanent total disability compensation under the Workers' Compensation Law.  
*Current Status:* 4/22/2015 - Referred to Committee Senate Transportation, Commerce and Labor  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-149>

**TO: OMA Government Affairs Committee**  
**FROM: Ryan Augsburger / Rob Brundrett**  
**SUBJECT: Tax Public Policy Report**  
**DATE: March 2, 2016**

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### **Overview**

The General Assembly will be returning after the primary campaign season. The biggest news on the tax front continues to be the 2020 Tax Policy Study Commission. A capital bill is also in the works and will be introduced in the near future.

### **State Financial Condition**

Real GDP growth slowed to 0.7% in the fourth quarter, down from 2.0% in the third quarter. Real GDP was only 1.8% higher than a year earlier.

U.S. employment increased by 151,000 jobs in January. The unemployment rate decreased 0.1 percentage point to 4.9%. The labor force participation rate increased to 62.7%.

Ohio nonfarm payroll employment increased by 15,200 jobs in December, and is up by 82,700 jobs year-to-date. The Ohio unemployment rate increased to 4.7% in December, up from the low for the expansion of 4.4% in October.

Leading economic indicators weakened further, but continue to point toward uninterrupted economic expansion. Recent data indicate that growth is continuing at a slow pace in the first quarter.

### **Tax Legislation**

#### **House Bill 9 – tax expenditure review committee**

HB 9 was introduced by Representative Boose (R-Norwalk). The bill creates a Tax Expenditure Review Committee that would periodically review existing and proposed tax expenditures. The Senate had a watered down version of this committee operate during the budget process. The OMA testified several times in front of the committee to discuss why certain tax expenditures were important and why others should be removed from Ohio's tax code. This bill has passed the House and had its third hearing in the Senate last month.

#### **Senate Bill 88 – CAT credit**

Sponsored by Sen. Charleta Tavares (D-Columbus) would create tax credits, including CAT credits, for the employment of individuals who have been convicted of criminal offenses. The bill has not had any hearings.

#### **House Bill 102 – CAT credit**

House Bill 102 sponsored by Reps. Niraj Antani (R-Miamisburg) and Hearcel Craig (D-Columbus), would provide a bid preference for state contracts to a veteran-owned business and would have authorize a personal income and CAT credit for a business that hires and employs a veteran for at least one year. However the sponsors

introduced a substitute version of the bill at its first hearing removing the CAT provisions from the bill.

#### House Bill 176 – CAT credit

House Bill 176 sponsored by Reps. Hall (R-Millersburg) and O'Brien (D-Bazetta) creates the Gaseous Fuel Vehicle Conversion Program. The bill allows a credit against the income or commercial activity tax for the purchase or conversion of alternative fuel vehicle. It reduces the amount of sales tax due on the purchase or lease of a qualifying electric vehicle by up to \$500. It applies the motor fuel tax to the distribution or sale of compressed natural gas. The bill also authorizes a temporary, partial motor fuel tax exemption for sales of compressed natural gas used as motor fuel. The bill was introduced last year, but stalled in the legislative process. Earlier this year it was passed out of House Ways and Means Committee. The bill was recently passed from Finance Committee and is waiting full House action.

#### House Bill 182 – JEDDs reorganization

House Bill 182 sponsored by Representative Schuring (R-Canton) would revise the law governing the creation and operation of joint economic development districts (JEDDs) and enterprise zones. Amongst the changes the bill establishes a procedure permitting the owner of a business operating in the unincorporated territory of a JEDD to apply for exemption from the JEDD income tax on behalf of the business and its employees. The bill was voted out of the House unanimously and has been assigned to Senate committee.

#### Senate Bill 198 – non-resident municipal income tax

SB 198 was introduced by Senator Jordan (R-Ostrander). The bill prohibits 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. This bill has opposition from Ohio's cities and villages. It had its first hearing two weeks ago in the Senate.

#### Senate Bill 208 / House Bill 326 – budget income tax correction bills

The House and Senate were hoping to have finished bills at this point in October that would repair an error in the business tax deduction passed in the state budget bill earlier this year.

The intent was to help small businesses reduce their taxes by creating a 75% income tax deduction on the first \$250,000 of pass-through business income, then charge a 3% flat tax on income greater than \$250,000. But the budget bill language did not match the intent and would actually cause a tax increase for some businesses.

Companion bills SB 208 and HB 326 were drafted to correct the error. However, the fix was in need of a fix itself. The two new bills created their own unintended consequences and failed to address all possible tax increases.

Because of the delay in the fix, the Senate added several provisions to these bills. One of the amendments was a provision that expanded the CAT carveout created in the state budget for an integrated supply chain for a light manufacturing company. The OMA opposed this amendment.

#### House Bill 232 – seller use tax collection

HB 232 was introduced by Representatives Grossman (R-Grove City) and Scherer (R-Circleville). The bill prescribes new criteria for determining whether sellers are presumed to have substantial nexus with Ohio and therefore required to register to collect use tax to allow sellers presumed to have substantial nexus rebut that presumption, and to require a person, before the person enters into a sale of goods contract with the state, to register, along with the person's affiliates, to collect use tax.

#### Senate Bill 246 / House Bill 398 – CAUV

These companion bills were introduced in both the House and Senate to address the CAUV agricultural property tax. Ag property is taxed at a different rate than other real property. Ag property is not taxed at its commercial value but instead at its ag value. The current tax has increased pressure on farmers and they are lobbying to have the formula changed.

#### Senate Bill 264 / House Bill 454 – permanent holiday sales tax

Last year Ohio passed a pilot project to exempt sales tax during one week of back to school shopping. There is interest in making that a permanent tax break. The Ohio Senate quickly passed its version last month.

#### House Bill 343 – remove sale tax on temp employees

HB 343 was introduced by Representatives Romanchuk (R-Mansfield) and Young (R-Leroy Township). The bill would exempt employment services and employment placement services from sales and use tax.

This is a priority tax issue for manufacturers who in Ohio must pay sales tax on their temporary employees. The OMA has strongly advocated for this tax relief for manufacturers over the past two budget cycles.

The OMA and OMA members provided proponent testimony on the bill in the winter. The bill is being prepared for a committee vote after the primary break.

#### House Bill 355 – employee misidentification

Rep. Wes Retherford (R – Hamilton) has introduced a bill, HB 355, that would turn the Bureau of Workers' Compensation (BWC) into an agency that would police businesses in their classifications of employees and independent contractors.

Under the bill, the BWC would be authorized to enter and inspect all of the offices and job sites maintained by an employer who is the subject of a complaint that an employer is misclassifying an employee. The BWC would be authorized to issue stop work orders and fines.

For many many years, organized labor has attempted to create a de facto Department of Labor at the state level. That's what this one is after. It is a really bad idea.

There have been two interested stakeholder meetings regarding the bill. The OMA has weighed in on several occasions regarding the provisions in the bill.

#### **Tax News**

#### **2020 Tax Commission**

The 2020 Tax Commission continues to hold hearings. The Commission created in the state budget is looking at Ohio's entire taxing system. At their first hearing they released a report on the severance tax. The second hearing they heard testimony from an economist and several small businesses.

The OMA has testified twice in front of the panel. The first time the OMA testified generally on taxes and the impact Ohio's tax structure has on manufacturer as a whole. The second time OMA was asked to testify regarding tax expenditures.

The panel will continue to hold hearings throughout 2016. The March hearing is going to cover the topic of historic tax credits.

#### CAT Amicus

The OMA is working with allies in filing an amicus brief on behalf of the state. The issue revolves around three online/catalogue retailers who have failed to pay CAT although they do business in the state of Ohio. The coalition is producing a brief, outlining the importance of the CAT to Ohio and Ohio businesses. A real threat exists if these types of companies are excluded from the CAT; the base erodes and more pressure is put on the low rate, resulting in a possible rate increase.

The three separate cases have been consolidated into one hearing. The date for oral argument has not been set.



# Ohio Legislative Service Commission

## Bill Analysis

Joe McDaniels

### H.B. 343

131st General Assembly  
(As Introduced)

**Reps.** Young and Romanchuk, Antani, Becker, Brenner, Cupp, Hood, LaTourette, Rezabek, Sprague, Thompson, Vitale

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## BILL SUMMARY

- Exempts employment services and employment placement services from sales and use tax.

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## CONTENT AND OPERATION

### Sales and use tax exemption for employment services

The bill exempts employment services and employment placement services from sales and use tax beginning January 1, 2016. Under continuing law, the sale or use of services is generally not taxable unless expressly made subject to the tax.<sup>1</sup> Employment services and employment placement services have been explicitly subject to the tax since 1993.<sup>2</sup>

Under current law, taxable "employment services" are transactions in which a service-provider furnishes personnel to perform work under the supervision or control of the purchaser. The personnel may be assigned to a purchaser for a short period of time or on a long-term basis. The personnel are paid by the service-provider or a third party that supplies the personnel to the service-provider. Transactions between members of an affiliated group, medical and health care services, contracting and subcontracting services, and the permanent assignment of an employee over a contract of at least one year are not taxable "employment services" for sales and use tax

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<sup>1</sup> R.C. 5739.01(B).

<sup>2</sup> Ohio Department of Taxation, "ST 1993-08 – Employment Service," available at: [http://www.tax.ohio.gov/sales\\_and\\_use/information\\_releases/st199308.aspx](http://www.tax.ohio.gov/sales_and_use/information_releases/st199308.aspx) (last accessed October 1, 2015).

purposes. Furthermore, if employment services are supplied by a third party to a service-provider, and then by the service-provider to a purchaser, only the transaction between the service-provider and the purchaser is taxable. The hallmark of employment services are personnel that work under the direction or control of a purchaser but are employed and paid by the service-provider (or a third party that provided the personnel to the service-provider).<sup>3</sup>

Current law defines "employment placement services" as a transaction in which a service-provider locates employment for a job-seeker or locates an employee to fill an available position.<sup>4</sup>

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## HISTORY

ACTION	DATE
Introduced	09-28-15

H0343-I-131.docx/ks

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<sup>3</sup> R.C. 5739.01(JJ).

<sup>4</sup> R.C. 5739.01(KK).





**BEFORE THE 2020 TAX POLICY STUDY COMMISSION OF THE OHIO GENERAL  
ASSEMBLY**

**SENATOR BOB PETERSON AND REPRESENTATIVE JEFF MCCLAIN**

**CO-CHAIRMEN**

**TESTIMONY  
OF  
MARK ENGEL  
BRICKER & ECKLER LLP  
OMA TAX COUNSEL**

**JANUARY 20, 2016**

Mr. Chairman and members of the Committee, my name is Mark Engel. I'm the Partner in charge of Bricker & Eckler's Cincinnati-Dayton office; my practice is focused on taxation issues, with concentrated experience in all aspects of state and local taxation, including tax planning, compliance, and litigation in sales and use, income, commercial activity, public utility, and property taxation as well as economic development. I also serve as tax counsel for The Ohio Manufacturers' Association (OMA). I'm testifying today on behalf of OMA. The OMA was created in 1910 to advocate for Ohio's manufacturers. Its mission is to protect and grow Ohio manufacturing.

For Ohio to be successful in a global economy, the state's tax structure must encourage investment and growth and be competitive nationally and internationally. A globally competitive tax system is characterized by (a) certainty, (b) equity, (c) simplicity and (d) transparency. Economy of collections and convenience of payment also are important considerations.

Generally, manufacturers support efforts to broaden the business tax base, which enables lower rates. To preserve the integrity of the broad tax base and ensure fairness, credits and exemptions should be reduced and discouraged. The objects of taxation must be clearly defined. Where needed, government incentives are best structured as grants rather than as tax credits. And, in general, earmarking and dedicating general tax revenues to specific purposes should be discouraged.

It is poor tax policy to single out any one segment of the economy or group of taxpayers to bear the cost of tax relief for the general population. Similarly, except to resolve existing inequality, or in cases of other policy imperatives, Ohio tax policy should not create a windfall for any group of taxpayers at the expense of other groups of taxpayers.

Compliance and administration of any tax should be as simple and inexpensive as possible for taxpayers and tax administrators alike.

Good tax policy also generates necessary revenues to support the essential functions of government. To ensure transparency regarding the true cost of government and the rate of its growth, however, funding government programs with fee revenue instead of general fund revenue should be discouraged. Good budgeting and spending restraint at all levels of government are vital to ensure a competitive tax environment.

Major tax reforms approved by the Ohio General Assembly in 2005 and additional reforms from 2011-2015 have led to significant improvements to a tax system that was for many years widely regarded as outdated. Reforms included reducing overall tax rates, eliminating tax on investment, broadening the tax base, providing more stable and predictable revenues, and simplifying compliance.

The elimination of the tangible personal property tax, the corporate franchise tax, and the estate tax has strengthened the competitiveness of Ohio's tax system. So has the reduction of the personal income tax rate as well as the creation of a broad-based, low-rate commercial activity tax.

## **2005 Tax Reform**

Prior to 2005, Ohio's tax structure was essentially unchanged since the 1930s. At that time, Ohio's economy was driven by agriculture and manufacturing. Its tax structure reflected that economy. The major taxes were the real property tax, the sales and use taxes, the tax on tangible personal property used in business, and the corporation franchise tax measured on net worth. However, the franchise tax and the tangible personal property tax, especially, both hit capital-intensive industries harder than others and had to be paid whether the entity made, or lost, money. Thus, the manufacturing sector paid an inordinately high level of state tax when compared with other segments of the economy.

As services made up a larger share of Ohio's economy over the years, the inequality in the state tax burden between manufacturing and other segments of the economy was exacerbated. Many service sector concerns operate without a significant investment in capital; hence, their tangible personal property and net worth franchise tax liabilities were minimal. Many of these services can manipulate their finances to minimize income; as a result, little income tax was generated. In addition, many of these new service entities were organized as pass-through entities that were not subject to the franchise tax. As the demand for state services grew, the only recourse was to raise existing tax rates on existing taxpayers. In many cases, that meant an increasing tax burden for Ohio manufacturers.

Paradoxically, Ohio continued to add exemptions from, and exceptions to, the various taxes during this time. As a result, Ohio was saddled with a number of taxes that had high nominal rates, but struggled to raise sufficient levels of revenue for governmental operations. The discrepancies between taxpayers and economic segments also increased and compliance with the existing taxes became more complicated.

## **Calls for Reform**

During the 1960s, calls for reform in Ohio's tax structure began. Over the years, various band aids were applied to Ohio's tax structure in order to attempt to reduce its inequalities. At the same time, Ohio continued to enact exemptions from, or exceptions to, the various taxes, thereby creating increasing disparity and complexity.

With the dawn of a new millennium, calls for tax reform increased. Dr. Ned Hill of Cleveland State University independently conducted a study that examined the impact of state tax policy on Ohio's economy and called for the elimination of the tangible personal property tax and existing dual-based franchise tax, to be replaced with a broad-based, low-rate tax based on payroll. The study demonstrated how capital-intensive segments of the economy, such as manufacturing, construction, and mining, paid anywhere from three to 11 times more state taxes than did members of many service industries.

## **Tax Reform Enacted**

Finally, in early 2005, true tax reform was proposed. The goals of tax reform were:

- Eliminate tax on investment and shift to the taxation of consumption;

- Broaden the over-all business tax base;
- Reduce over-all business tax rates;
- Provide a more stable and predictable flow of revenue; and
- Simplify compliance.

The result was a comprehensive overhaul of Ohio's tax system by H.B. 66. As enacted, the bill:

- Eliminated the tangible personal property tax on new investment in manufacturing and phased out the tax on all general business property over 4 years;
- Phased out the corporation franchise tax for most corporations over 5 years;
- Phased in a 21 percent reduction in personal income tax rates ratably over 5 years (the last reduction was delayed 2 years in 2009 in an effort to balance the state budget, but was implemented in 2011); and
- Enacted the commercial activity tax ("CAT"), a broad-based, low-rate tax measured by gross receipts from virtually all business activities and entities.

H.B. 66 became law in June 2005. Although generally opposed to gross receipts taxes because of their compounding nature, the broad base due to limited exclusions and the low rate caused many skeptical taxpayers to warm to the tax as the net savings over the former franchise and personal property taxes became clear. In addition, compliance costs were slashed as taxpayers no longer had to undertake the arduous process of preparing personal property tax returns or corporation franchise tax reports.

### **Results of Tax Reform**

Due to the phased implementation of the provisions of H.B. 66 and the general economic slowdown that has gripped the country over the past few years, questions have been raised regarding the effectiveness of the tax reform efforts. OMA has been at the forefront in demonstrating that, indeed, the effort was worthwhile.

- In 2009, Ohio won Site Selection magazine's "Governor's Cup" for an unprecedented fourth consecutive year. The Governor's Cup is awarded annually to the state having the most major business expansions in the nation.
- A January 2009 Ernst & Young study indicated that Ohio's business tax burden rated between 18th and 23rd best among states on three different scales of comparison. Another Ernst & Young study conducted for the Ohio Business Development Coalition showed that Ohio had the lowest effective tax rates on new capital investment in the Midwest.
- The Small Business & Entrepreneurship Council's Business Tax Index in 2008 rated Ohio's state tax system as 14th best nationally.

- In March 2010 the Federation of Tax Administrations released an analysis of new data from the U.S. Census Bureau showing that for FY 2009, Ohio's per capita state tax burden was the 16th lowest; as a percentage of personal income, the burden was the 18th lowest.
- In April 2011, Ernst & Young and the Council on State Taxation issued a report entitled "Competitiveness of State and Local Business Taxes on New Investment" in which they concluded that Ohio had the third lowest rate of state and local taxation on new business investment. The report laid this result directly at the feet of the 2005 tax reform law.
- In early 2013, Site Selection Magazine honored Ohio as having the 5th most favorable tax climate for mature firms and the 3rd most favorable tax climate for new firms for fiscal year 2012.
- Finally, according to the Ohio Department of Taxation, Ohio is one of only six states that do not tax corporate profits, and one of 10 that do not tax business personal property.

### **Commercial Activity Tax**

Much has been debated regarding the commercial activity tax (CAT). For manufacturers, while the tax is not perfect, it has done much to spur growth and investment in Ohio's largest industry.

According to Ohio Department of Taxation Fiscal Year 2014 Commercial Activity Tax Returns data, manufacturers made up the second-largest group of CAT taxpayers, representing 10.2 percent of all taxpayers (retail trade is the largest).

And, manufacturers pay 26.8 percent of the state's total – far more than any other group (in terms of CAT revenues based only on the 0.26 percent CAT rate for gross receipts in excess of \$1 million).

In addition, CAT filers with taxable gross receipts of \$1 million or less accounted for 66.7 percent of all filers in fiscal year 2014, but only 0.7 percent of the total liability for that period.

As noted above, some of the most important aspects of the CAT are its broad base, its low rate, and its broad application to business entities. Those attributes can only be maintained when the state stands firm against pleas for individual carve-outs and exemptions.

When it was first enacted, there were few exclusions from the CAT and only four credits. The tax expenditure associated with those exclusions in 2009, the first year the tax was fully phased in, was approximately \$300 million. Those exclusions were built into the tax as enacted and the 0.26 percent rate was established with those exclusions in mind.

In its fiscal year 2014 tax expenditure report, the Department of Taxation lists a larger number of exclusions and credits to the CAT. The total cost of those expenditures is over \$600 million! Thus, in just 10 years, additional credits and exclusions were added to the tax that doubled the amount of the tax expenditure.

The CAT is a stable tax. Although it is a gross receipts tax that pyramids along the economic chain, it is tolerated because of its broad base and low, low rate. However, in less than 10 years, tax expenditures associated with the tax have doubled. One wonders how much longer chipping away at the base can continue before the calls to increase the rate become too loud to ignore. Ohio traveled down this path before with the franchise and personal property taxes. The trip was a disaster. Ohio should not venture down that path again with the CAT.

The CAT was enacted as a tax on commercial activity. All enterprises engaged in such activity should be paying the CAT; in fact, equality in the burden of taxation demands that they all remain subject to the tax.

### **Personal Income Tax**

As noted earlier, sound tax policy dictates that any tax should have a broad base, a low rate, and few exclusions in order to minimize economic distortion. OMA applauds recent efforts to reduce Ohio's personal income tax rates. However, it is concerned that those efforts have typically been tied to a proposal to increase the sales tax, particularly on business consumption. This tax-shifting is not beneficial and may be counter-productive as businesses and consumers adjust to higher and higher sales tax rates. Rather, if income tax rates are to be reduced further, exclusions and exemptions from the personal income tax ought to be re-examined. If rates are reduced, the need for those exclusions and exemptions disappears. This would provide a broader base and a lower rate for all taxpayers, reduce overall taxes, and avoid the problems of tax-shifting.

Ohio currently relies upon a number of taxes of general application to fund its operations. Tax-shifting and other efforts to reduce or increase reliance on any of those taxes should be considered with great caution. One only needs to consider the crisis in Nevada in 2008, or the current crisis in Alaska, to recognize the problems of over-reliance on any one tax. Just as a broad base is important for any single tax, a broad base of general taxes is equally important for the fiscal welfare of Ohio.

### **Sales and Use Taxes**

Ohio's sales tax was first enacted as a temporary measure in the depths of the Great Depression in the 1930s. At that time, it was conceived as a tax on final personal consumption of tangible goods. One year after initial enactment, the use tax was enacted; the two taxes were made permanent and the first exemption for machinery and equipment used to produce tangible personal property for sale by manufacturing was added. Similar exclusions were made for other activities that, similarly, resulted in the production of goods that would be subject to the tax upon final sale.

The rationale for these exclusions is simple: The taxes are intended to be imposed upon the final consumption of goods and, now, those selected services that are subject to tax. Intermediate transactions prior to the final sale of the product, including the acquisition of machinery and equipment and the raw materials that are incorporated into the final product, are not intended to be taxed. The basis for this is four-fold:

First, imposing the tax on intermediate transactions (sometimes called business inputs) causes the tax to be imposed at each step in the production of a good. This causes the tax to pyramid at each step of the economic ladder, resulting in an effective tax rate that may be much higher than the statutory rate. For example, in conjunction with the 1994 tax study commissioned by the General Assembly, the staff provided an example in which a sales tax rate of 6.5 percent applied to two stages of production resulted in an effective tax rate of 9.5 percent at the time of the final retail sale.<sup>1</sup>

Second, imposing the tax on business inputs increases the cost of doing business through the higher prices that result from the tax. Business generally will respond to higher costs in a combination of three ways: It may decide to charge higher prices; it may pay lower wages to workers (or expatriate those positions elsewhere); or it may provide a lower return on investment to owners.<sup>2</sup>

Third, direct inputs lead to the production of more valuable goods that are ultimately subject to the tax.

Fourth, the provision has economic development implications. Every single state that surrounds Ohio has a sales tax. Every one of those states has some sort of exemption from the tax for machinery and equipment used in the production of tangible goods to be sold by manufacturers. Moreover, the *1994 Study* also found that lower rates of taxation on business equipment increase the rate of business formation of smaller firms. Thus, imposing the sales tax on manufacturing machinery and equipment puts Ohio at a disadvantage from an economic development perspective.<sup>3</sup>

The application of sales and use taxes to business inputs has been the subject of comment on at least two prior occasions in Ohio. In 1982, the *Final Report and Recommendations of the Joint Committee to Study State Taxes* (114th General Assembly, December 1982), pp. 15-16 concluded that the taxes should be imposed broadly on consumer spending, but very selectively on business spending. Similarly, the *1994 Study* at p. 5-4 and the 1994 Staff Report at p. 27 both recognized that the sales tax should only be imposed upon the final consumer and that business inputs should not be taxed at all. The taxation of business inputs should be avoided because doing so leads to multiple levels of taxation and economic disadvantages. Moreover, the *1994 Report* concluded that if the sales tax is extended to services, there should be liberal exemptions for transactions between businesses.

However, this does not mean that manufacturers do not pay sales and use taxes in Ohio. Manufacturers purchase and use many goods and services that are not included in the manufacturing exemptions. Those items include machinery and equipment that is used before manufacturing begins, or after it ends; cleaning equipment and supplies; maintenance and repair equipment and supplies; storage facilities; most safety items; and office supplies and

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<sup>1</sup> Roy Bahl, Ed., *Taxation and Economic Development: A Blueprint for Tax Reform in Ohio* (Battelle press 1994), p. 277-278 ("1994 Staff Report.").

<sup>2</sup> *Taxation and Economic Development in Ohio: A Blueprint for the Future*, final Report of the Commission to Study the Ohio Economy and Tax Structure (December 23, 1994), p. iii ("1994 Study").

<sup>3</sup> *Id.*, at p. 5-4.

equipment and motor vehicles. As a result, manufacturers pay millions of dollars in sales and use taxes annually to the state of Ohio.

According to the 2014 Annual Report of the Ohio Department of Taxation, manufacturers as an economic segment paid more than \$410,000,000 in sales and use taxes directly to the state of Ohio. This is in addition to the untold millions of tax dollars that were paid to, and reported by, vendors and retailers located in Ohio. It appears that in terms of tax directly owed to the state, as opposed to tax that is collected from others, manufacturing is one of the largest payers of sales and use taxes in the state.

Since 2005, Ohio has attempted to move away from the taxation of business investment. It eliminated the tax on business tangible personal property. It eliminated the net worth base of the corporation franchise tax. And, it excludes from the commercial activity tax, receipts in the nature of a return on investment. As noted earlier in my remarks, the purchase of machinery and equipment by manufacturers is not final consumption. Rather, it reflects an investment in the business. The sales tax exemption for manufacturing machinery and equipment is consistent with this policy.

Imposing the sales tax on business inputs, including manufacturing machinery and equipment (and labor) is contrary to sound tax policy. As previous tax study commissions have concluded,<sup>4</sup> good tax policy is based on simplicity, equity, stability, neutrality and competitiveness. Removing the exemption and subjecting those purchases to tax will render the tax more opaque, more complex, and less fair as final consumers who are less economically advantaged will pay an even higher proportion of their family income in sales taxes. Removing the exemption violates the principles of neutrality and competitiveness as it results in higher costs, which may influence economic decisions and competitiveness. Taken together, all these factors may in fact render the tax less stable.

### **Exclusion of Tax on Services as Manufacturing Inputs**

There are two specific cases in which the sales or use tax should be amended to exclude specific manufacturing service inputs. I'll briefly describe the recommendations:

Ohio does not impose sales or use taxes (or the CAT) on the wages paid to employees. Just as wages are not subject to such taxes; and business inputs, such as ingredients, machinery and equipment, are exempted from the sales and use taxes, so too should amounts paid for temporary employees engaged in manufacturing activities that are otherwise exempt from the tax. Such employees are a business input; the sales tax should not apply to transactions by which such labor is obtained.

House Bill 343 currently pending in the House would address this issue for all employers. However manufacturers have especially solid policy reasons for this exclusion.

Effective January 1993 in order to fill a hole in the state budget, employment services were added as a taxable service by a conference committee facing a midnight deadline to reach

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<sup>4</sup> 1994 Study, p. 5-1; *Report of the Committee to Study State and Local Taxes* (March 1, 2003), p. 6.

agreement on a new budget. A taxable “employment service” includes any transaction in which a person provides personnel to perform work under the supervision or control of another, whether on a short- or long-term basis, where the personnel are paid by the person who provided them. The entire amount paid for the service serves as the base on which the tax is calculated.

Many manufacturers assumed that the existing manufacturing exemption, which exempted purchases of machinery and equipment used to produce tangible personal property for sale in a continuous manufacturing operation, would also cover workers on the manufacturing floor that operated the exempt equipment. Manufacturers and other purchasers of employment services also believed that in appropriate circumstances the services would be resold. After protracted litigation, they were disabused of both notions.

Another area that served fertile for litigation was the exclusion for employees that were “permanently assigned” to the purchaser. As noted previously, there were two conditions to this exclusion. First, the employees had to be provided pursuant to an agreement of a least a year in duration. Second, the agreement had to “specify” that the employees were provided to the purchaser on a “permanent” basis.

This provision likewise resulted in a flood of litigation.

The Department of Taxation continues to pursue employment services aggressively. It argues that employee turnover is a sign that the employees are not permanently assigned. It also takes the position that an agreement must set forth the name of every single employee covered by the agreement, and that if any of the employees provided under an agreement are not provided on an indefinite basis, then the entire agreement is tainted and none of the employees qualify for the exclusion.

In recent audits, the Department takes the position that virtually any transaction involving personnel is a taxable employment service. Thus, transactions in which outside consultants are retained to provide services, such as computer and software design, engineering, or a skilled trade, are routinely picked up on audit as employment services.

### **The Tax on Employment Services Should Be Repealed**

House Bill 343 proposes to do away with the tax on employment services completely. The bill deletes “employment services” from the list of taxable transactions in R.C. 5739.01(B)(3)(k); it deletes the definition of “employment services” found in R.C. 5739.01(JJ); and deletes reference to the provision in other statutes.

Repeal of this provision reflects sound policy.

First, repeal is consistent with the recent efforts of Ohio’s tax policy to move away from the taxation of economic investment and towards personal consumption. Manufacturers invest in manufacturing machinery and equipment in order to expand or maintain their capacity to provide jobs and to produce a product for sale, a product that in most cases will be subject to the sales and use taxes when it is sold and used. Similarly, it invests in workers for the same reasons.

Since 2005, Ohio has attempted to move away from the taxation of business investment. It eliminated the tax on business tangible personal property. It eliminated the net worth base of the corporation franchise tax. And, it excludes from the commercial activity tax, receipts in the nature of a return on investment, including labor costs. Repealing the sales tax on employment services is consistent with this policy.

Second, imposing the sales tax on business inputs such as manufacturing machinery and equipment and labor is contrary to sound tax policy. As previous tax study commissions have concluded, good tax policy is based on simplicity, equity, stability, neutrality and competitiveness. Subjecting employment services to tax renders the tax more opaque, more complex, and less fair as final consumers who are less economically advantaged pay an even higher proportion of their family income in sales taxes. The tax on employment services violates the principles of neutrality and competitiveness as it results in higher costs, which may influence economic decisions and competitiveness. Taken together, all these factors may in fact render the tax less stable.

Just as wages are not subject to sales and use taxes; and business inputs, such as ingredients, machinery and equipment, are exempted from the sales and use taxes, so too should amounts paid for temporary employees engaged in manufacturing activities be excluded from the tax. Employees are a business input; the sales tax should not apply to transactions by which such labor is obtained.

Third, the provision has generated more and more litigation as the Department has taken increasingly aggressive positions with respect to it. The provision is neither clear, nor is it easy to administer.

An additional issue is that Ohio also taxes industrial janitorial and maintenance services. Manufacturers' production facilities and the equipment components of their production processes require continuous repair and maintenance. Without the required cleaning, repairs and maintenance the machinery breaks down and fails to produce acceptable products for sale to customers. Cleaning industrial assets is absolutely critical to the manufacturing process. It is a necessary business input and sales tax should not apply.

### **Severance Tax**

While I am sure this commission will be taking a deeper dive into the severance tax issue, the OMA would like to take a couple of brief moments to touch on the issue.

The OMA recognizes that Ohio's current severance tax structure makes Ohio very competitive, one of the most competitive and drilling-friendly states according to provided data. We note the severance tax provisions in Ohio law, having first been enacted in 1971, are 40 years old and have not been materially updated. More extensive benchmarking of effective tax rates on the measure of energy severed would be helpful to inform policy decisions.

Even though new manufacturing investment does not qualify for cost recovery, the OMA recognizes the commonplace nature of cost recovery offered by other states to the oil and gas industry and does not object to some competitive level of cost recovery to spur new investment.

We note that a severance tax is an excise tax. An excise tax is typically upon a specified activity in order to help defray some special costs associated with that activity. In the case of the severance tax, those special costs might include regulatory, environmental, and health concerns, as well as infrastructure concerns for the communities in which the activity takes place. However, good tax policy demands that such a tax should not be used to fund a wide-scale reduction in some other tax of general application.

## **Conclusion**

The OMA supports tax policy that supplies sufficient revenue for the execution of necessary state services in a manner that stimulates economic growth, investment and job creation. Tax policy should encourage growth of capital, and growth in jobs in Ohio.

Manufacturing is the largest contributor to the state's GDP, contributing more than 17.5 percent. The success of Ohio manufacturing – through its vast network of in-state customers and suppliers - large global firms and their local supply chains - enhances the economic vitality of all other Ohio industries and Ohioans' quality of life. Reducing tax rates in a manner that treats all taxpayers fairly should be encouraged.

Thank you very much for the opportunity to comment and provide input to this commission. Ohio's manufacturers are prepared to help improve the business climate in the state. We look forward to continuing our partnership with the administration and the General Assembly.

I'll be pleased to answer any questions you may have.



**BEFORE THE 2020 TAX POLICY STUDY COMMISSION OF THE OHIO GENERAL  
ASSEMBLY**

**SENATOR BOB PETERSON AND REPRESENTATIVE JEFF MCCLAIN  
CO-CHAIRMEN**

**TESTIMONY  
OF  
MARK ENGEL  
BRICKER & ECKLER LLP  
OMA TAX COUNSEL**

**FEBRUARY 24, 2016**

Senator Peterson, Representative McClain and members of the Commission, my name is Mark Engel. I'm the Partner in charge of Bricker & Eckler's Cincinnati-Dayton office. My practice is focused on taxation issues, with concentrated experience in all aspects of state and local taxation, including tax planning, compliance, and litigation in sales and use, income, commercial activity, public utility, and property taxation as well as economic development. I also serve as tax counsel for The Ohio Manufacturers' Association (OMA). I'm testifying today on behalf of OMA regarding tax expenditures and the Commercial Activity Tax (CAT). The OMA was created in 1910 to advocate for Ohio's manufacturers; today, it has 1400 members. Its mission is to protect and grow Ohio manufacturing.

**Background:**

For Ohio to be successful in a global economy, the state's tax structure must encourage investment and growth and be competitive nationally and internationally. A globally competitive tax system is characterized by (a) certainty, (b) equity, (c) simplicity and (d) transparency. Economy of collections and convenience of payment also are important considerations.

Prior to 2005, Ohio's tax structure was essentially unchanged since the 1930s. The major taxes were the real property tax, the sales and use taxes, the tax on tangible personal property used in business, and the corporation franchise tax measured on net worth. However, the franchise tax and the tangible personal property tax, especially, both hit capital-intensive industries harder than other industries and had to be paid whether the entity made, or lost, money. Thus, the manufacturing sector paid an inordinately high level of state tax when compared with other segments of the economy.

As services made up a larger share of Ohio's economy over the years, the inequality in the state tax burden between manufacturing and other segments of the economy was exacerbated. Many service sector concerns operate without a significant investment in capital; hence, their tangible personal property and net worth franchise tax liabilities were minimal. Many of these services operate on more slender margins or can manipulate their finances to minimize income; as a result, little income tax was

generated. In addition, many of these new service entities were organized as pass-through entities that were not subject to the franchise tax. As the demand for state services grew, the only recourse was to raise existing tax rates on existing taxpayers. In many cases, that meant an increasing tax burden for Ohio manufacturers.

Paradoxically, Ohio continued to add exemptions from, and exceptions to, the various taxes during this time. As a result, Ohio was saddled with a number of taxes that had high nominal rates, but struggled to raise sufficient levels of revenue for governmental operations. The discrepancies between taxpayers and economic segments also increased and compliance with the existing taxes became more complicated.

The large and increasing number of exemptions and exclusions, added over the years in order to render the franchise, personal property and sales and use taxes less onerous, narrowed the bases of those taxes. Accompanied by the relentless rise in tax rates, the taxes were not only inefficient, but also discriminatory against businesses with heavy investment in capital.

### **Tax Reform Enacted**

Over the years, calls increased to reform Ohio's tax system to render it more fair and competitive. Finally, in early 2005, true tax reform was proposed. The goals of tax reform were:

- Eliminate the taxation of investment and shift to the taxation of consumption;
- Broaden the over-all business tax base;
- Reduce over-all business tax rates;
- Improve fairness;
- Provide a more stable and predictable flow of revenue; and
- Simplify compliance.

The result was a comprehensive overhaul of Ohio's tax system by H.B. 66. As enacted, the bill:

- Eliminated the tangible personal property tax on new investment in manufacturing and phased out the tax on all general business property over 4 years;
- Phased out the corporation franchise tax for most corporations over 5 years;
- Phased in a 21% reduction in personal income tax rates ratably over 5 years (the last reduction was delayed 2 years in 2009 in an effort to balance the state budget, but was implemented in 2011); and
- Enacted the commercial activity tax ("CAT"), a broad-based, low-rate tax measured by gross receipts from virtually all business activities and entities.

H.B. 66 became law in June 2005. Although generally opposed to gross receipts taxes because of their compounding nature, taxpayers warmed to the CAT as the net savings over the former franchise and personal property taxes became clear due to the broad base, limited exclusions, and the low rate.<sup>1</sup> In addition, compliance costs were slashed as taxpayers no longer had to undertake the arduous process of preparing personal property tax returns or corporation franchise tax reports.

Many tax expenditures spring from the desire of policymakers to manage the economy, control economic behavior, or provide special favors through taxation. Regardless of how well-intentioned those efforts may be, tax expenditures can and do create undesirable consequences. They often reduce certainty, as many create questions as to who may benefit from them, and the extent of the benefit. They reduce equity, resulting in government picking winners and losers. Tax expenditures increase complexity and reduce transparency as taxpayers and tax administrators attempt to implement them. In short, they are bad tax policy and their use should be minimized. In fact, by minimizing them, the base is broadened and the need for special treatment is reduced.

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<sup>1</sup> Manufacturers remain the largest category of CAT taxpayers. See Exhibit A, attached.

## **CAT Tax Expenditures:**

Tax reform notwithstanding, Ohio has continued on its relentless march towards more tax exclusions, even as it enacted the CAT, raised sales tax rates and broadened the base, and continued to cut income tax rates. As noted many times, some of the most important aspects of the CAT are its broad base, its low rate, and its broad application to virtually all business entities. Those attributes can only be maintained when the state stands firm against pleas for individual carve-outs and exemptions.

When it was first enacted, there were approximately 25 exclusions from the CAT and only four credits. The tax expenditure associated with those exclusions in 2010, the first year the tax was fully phased in, totaled approximately \$300 million. Those exclusions were built into the tax as enacted and the 0.26 percent rate was established with those exclusions in mind.

In its fiscal year 2014 tax expenditure report, the Department of Taxation lists a larger number of exclusions and credits to the CAT. The CAT now lists approximately 36 exclusions and is subject to 7 credits. The total cost of those expenditures, without consideration of the credits, is over \$600 million! Thus, in just 10 years, additional credits and exclusions were added to the tax that doubled the amount of the tax expenditure.

The CAT is a stable tax. Although it is a gross receipts tax that pyramids along the economic chain, it is tolerated because of its broad base and low, low rate. However, in less than 10 years, tax expenditures associated with the tax have doubled. One wonders how much longer chipping away at the base can continue before the calls to increase the rate become too loud to ignore. Ohio traveled down this path before with the franchise and personal property taxes. The trip was a disaster. Ohio should not venture down that path again with the CAT.

The CAT was enacted as a tax on commercial activity. All enterprises engaged in such activity should be paying the CAT; in fact, equality in the burden of taxation demands

that they all remain subject to the tax. Exemptions, exclusions and credits violate the rule of equality and render the tax less clear and more complicated.

### **Sales and Use Tax Expenditures**

Ohio's sales tax was first enacted as a temporary measure in the depths of the Great Depression in the 1930s. At that time, it was conceived as a tax on the final personal consumption of tangible goods. One year after initial enactment, the use tax was enacted, the two taxes were made permanent and the first exemption for machinery and equipment used to produce tangible personal property for sale by manufacturing was added. Similar exclusions were made for other activities that, similarly, resulted in the production of goods that would be subject to the tax upon final sale.

The rationale for these exclusions is simple: The taxes are intended to be imposed upon the final personal consumption of goods and, now, those selected services that are subject to tax. Intermediate transactions prior to the final sale of the product, including the acquisition of machinery and equipment and the raw materials that are incorporated into the final product, are not intended to be taxed.<sup>2</sup> The economic basis for this principle is four-fold:

First, imposing the tax on intermediate transactions (sometimes called business inputs) causes the tax to be imposed at each step in the production of a good. This causes the tax to pyramid at each step of the economic ladder, resulting in an effective tax rate that may be much higher than the statutory rate. For example, in conjunction with the 1994 tax study commissioned by the General Assembly, the staff provided an example in which a sales tax rate of 6.5 percent applied to two stages of production resulted in an effective tax rate of 9.5 percent at the time of the final retail sale.<sup>3</sup>

Second, imposing the tax on business inputs increases the cost of doing business through the higher costs that result from the tax. Business generally will respond to

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<sup>2</sup> The exclusion for business inputs does not mean that manufacturers do not pay significant amounts of sales and use taxes. See Exhibit B, attached.

<sup>3</sup> Roy Bahl, Ed., *Taxation and Economic Development: A Blueprint for Tax Reform in Ohio* (Battelle Press 1994), p. 277-278 (the "1994 Staff Report").

higher costs in a combination of three ways: It may decide to charge higher prices; it may pay lower wages to workers (or expatriate those positions elsewhere); or it may provide a lower return on investment to owners.<sup>4</sup> Such an impact by taxes on economic decisions should be minimized.

Third, direct inputs lead to the production of more valuable goods that are ultimately subject to the tax. Thus, the tax on the final product is maximized.

Fourth, the provision has economic development implications. Every single state that surrounds Ohio has a sales tax. Every one of those states has some sort of exemption from the tax for machinery and equipment used in the production of tangible goods to be sold by manufacturers. Moreover, the *1994 Study* also found that lower rates of taxation on business equipment increase the rate of business formation of smaller firms. Thus, imposing the sales tax on manufacturing machinery and equipment puts Ohio at a disadvantage from an economic development perspective and may actually reduce small business formation.<sup>5</sup>

The application of sales and use taxes to business inputs has been the subject of comment on at least two prior occasions in which taxes in Ohio were studied. In 1982, the *Final Report and Recommendations of the Joint Committee to Study State Taxes* (114<sup>th</sup> General Assembly, December 1982), pp. 15-16 concluded that sales and use taxes should be imposed broadly on consumer spending, but very selectively on business spending. Similarly, the *1994 Study* at p. 5-4 and the *1994 Staff Report* at p. 27 both recognized that the sales tax should only be imposed upon the final consumer and that business inputs should not be taxed at all. The taxation of business inputs should be avoided because doing so leads to multiple levels of taxation and economic disadvantages. Moreover, the *1994 Report* concluded that if the sales tax is extended to services, there should be liberal exemptions for transactions between businesses.

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<sup>4</sup> *Taxation and Economic Development in Ohio: A Blueprint for the Future*, Final Report of the Commission to Study the Ohio Economy and Tax Structure (December 23, 1994), p. iii (“*1994 Study*”).

<sup>5</sup> *Id.*, at p. 5-4.

The taxes are intended to apply to final, personal consumption. When the taxes were conceived, that meant primarily the purchases of tangible personal property by individuals. While some business purchases, such as office equipment and supplies, were subjected to taxation, business inputs that contributed to the production of a product, the sale of which would subsequently be subject to sales or use tax, were excluded. Other than the sale of food, few other exemptions existed.

Over the years, a number of exclusions have been added to the taxes. While many of them represent transactions involving business inputs, a majority of them represent exclusions of another nature. Today, R.C. 5739.02(B) contains 53 subdivisions providing for exclusions from the tax. One subdivision alone, subdivision (B)(42), contains 15 separate exclusions! Other exclusions are scattered throughout the Revised Code. And, this does not include the number of consumer services that are not even included in the tax base.

Business consumption is taxed under the CAT. The sales and use taxes are intended to apply to personal consumption of final goods and services. If the bases of those taxes are broadened accordingly, especially with respect to services, and exclusions and exemptions are limited, the rates can be lowered, further reducing the need for additional exclusions.

### **Personal Income Tax Expenditures**

The personal income tax was enacted in the early 1970s as an additional, stable source of revenue. Over the years, the number of exclusions and credits has mushroomed as well, and the rates were driven upwards. Even though rates have dropped about 35 percent since the 2005 tax reform, R.C. 5747.01(A) still provides for about 22 deductions or exclusions for calculating Ohio taxable income. R.C. 5747.98 lists 38 separate credits that may be taken against the tax.

Many exclusions and deductions to the sales and income taxes have a social basis. The personal income tax credit for retirement income and medical premiums are just two examples. Many exclusions serve laudatory purposes, but the result is a system of

taxes that is complicated, favors some taxpayers over others, and results in ever-higher tax rates on those who are left paying the bills. Ohio may be further ahead to lower the rates and let everybody help pay for the government services that they all use.

### **Summary:**

Since the enactment of tax reform in 2005, OMA has maintained a principled, consistent approach to tax policy in Ohio. That approach insists on certainty, equity, simplicity, and transparency. The erosion of the tax reform legislation, in the form of carve-outs, exclusions, and ear-marks, reduces certainty, creates disparity by selecting winners and losers, renders the tax code more complicated, and reduces transparency as it becomes more difficult to determine who is entitled to which exclusions.

Everybody has a story; everybody has a reason why one tax or another is not fair to them. However, one cannot have an efficient and fair tax system that is different for every taxpayer. Nor is it fair to tax some segments of the economy at levels that are 10 times higher than those imposed on other segments. The 2005 tax reform legislation was directed at trying to reduce that inequity on a tax system-wide basis. Every time an exclusion or exemption from the CAT, the sales and use taxes, or the personal income tax is created, that increases the tax burden on everybody else. The solution isn't a tax system made of Swiss cheese; we tried that already, and it didn't work.

It is time to stop the madness. Rather than continuing to enact exclusions that render the taxes less and less fair, more and more complicated, and result in higher and higher tax rates for taxpayers, OMA suggests that a better approach may be to broaden the bases as appropriate, reduce the number of exclusions and reducing over-all tax rates. If rates are reduced, the necessity for the special tax treatment afforded by exclusions that are not economically based, and that are contrary to the very purpose of the tax, is reduced significantly. The result is a tax system that comprises one or more taxes with a broad base, a low rate tax, that is simple to enforce and simple to follow, and that treats all taxpayers the same.

Thank you very much for the opportunity to appear here today. I'd be pleased to answer any questions that any of you might have.

## EXHIBIT A

### **CAT and Manufacturers:**

According to Ohio Department of Taxation Fiscal Year 2015 Commercial Activity Tax Returns data, manufacturers made up the second-largest group of CAT taxpayers, representing 10.5% of all taxpayers (retail trade is the largest).

And, manufacturers pay 26.1% of the state's total – far more than any other group (in terms of CAT revenues based only on the 0.26% CAT rate for gross receipts in excess of \$1 million).

In addition, CAT filers with taxable gross receipts of \$1 million or less accounted for 66.3% of all filers in fiscal year 2014, but less than 1% of the total liability for that period.

## EXHIBIT B

### **Sales Tax and Manufacturers:**

Despite the exemption for machinery and equipment enjoyed by manufacturers, this does not mean that manufacturers do not pay sales and use taxes in Ohio.

Manufacturers purchase and use many goods and services that are not included in the manufacturing exemptions. Those items include machinery and equipment that is used before manufacturing begins, or after it ends; cleaning equipment and supplies; maintenance and repair equipment and supplies; storage facilities; most safety items; and office supplies and equipment and motor vehicles. It also includes automatic data processing, computer and electronic information services, and temporary employment and employment placement services. As a result, manufacturers pay millions of dollars in sales and use taxes annually to the state of Ohio.

According to the 2015 Annual Report of the Ohio Department of Taxation, manufacturers as an economic segment paid more than \$426,000,000 in sales and use taxes directly to the state of Ohio. This is in addition to the untold millions of tax dollars that were paid to, and reported by, vendors and retailers located in Ohio. It appears that in terms of tax owed to the state, as opposed to tax that is collected from others, manufacturing is one of the largest payers of sales and use taxes in the state.



## **Foregone Revenue from CAT Exclusions, Deductions and Credits**

Below are estimates of revenue foregone in FY 2017 by the state General Revenue Fund from various CAT exclusions, deductions and credits.<sup>1</sup> Dollar amounts are millions.

Exclusion of first \$1 million of taxable gross receipts	\$267.8
Qualified distribution center receipts exclusion	\$164.6
Job creation credit	\$88.1
Job retention tax credit	\$29.6
Credit for increased qualified research and development expenses	\$28.6
Agricultural receipts	\$14.0
Casino receipts in excess of "gross casino revenue"	>\$10.0 <sup>2</sup>
Credit for net operating loss carry forwards and other deferred tax assets	\$7.1
Professional employer organization exclusion	\$5.4
State and federal cigarette tax exclusion	\$3.5
Consumer product integrated supply chain exclusion	\$3.0 <sup>3</sup>
Motor vehicle transfer exclusion	\$2.0
Exclusion of certain services to financial institutions	\$1.9
Exclusion of real estate brokerage gross receipts not retained	\$1.5
Research and development loan program credit	\$1.5
State and federal alcoholic beverage excise tax exclusion	\$1.1
Exemption for pre-1972 trusts	<\$1.0 <sup>4</sup>
Anti-neoplastic drug exclusion	<\$1.0
Horse racing taxes and purse exclusion	<\$1.0
Receipts from sale of uranium from qualifying uranium enrichment zone	<\$1.0
Providing public services exclusion	No Estimate Available
Petroleum receipts <sup>5</sup>	No Estimate Available
Motion picture credit	No Estimate Available
<b>Estimated Total Foregone Revenues</b>	<b>More than \$629.7 million</b>

NOTE: Actual total foregone revenues will be higher than estimated total foregone revenues, which reflect indefinite revenues for casino receipts and undetermined revenues for the public services exclusion, petroleum receipts and motion picture credit.

<sup>1</sup> Unless otherwise noted, the source for the data listed above is the Ohio Department of Taxation Tax Expenditure Report (Fiscal Years 2016-2017).

<sup>2</sup> Ohio Legislative Service Commission estimates foregone revenue from casino receipts in excess of "gross casino revenue" will be "tens of millions of dollars."

<sup>3</sup> Ohio Legislative Service Commission, Senate Bill 208 Fiscal Note as Enacted, 2015.

<sup>4</sup> The Ohio Department of Taxation Tax Expenditure Report provides only general "less than \$1 million" estimates for six items in this list (rather than precise estimates as provided for the other items). For this reason, we have chosen not to include any foregone revenue for the six items with estimated foregone revenues of less than \$1 million each.

<sup>5</sup> Motor vehicle fuel dealers pay a one-time tax of 0.65% on their sales of petroleum products.

## Tax

### [OMA Provides Insight to 2020 Tax Policy Study Commission](#)

February 26, 2016

The General Assembly's 2020 Tax Study Policy Commission held a hearing this week focused on tax expenditures. Tax expenditures are revenues that the state forgoes due to tax exclusions, credits and deductions.

OMA tax counsel, [Mark Engel](#) of Bricker & Eckler, provided a historic review of Ohio business tax policy and OMA's perspective on tax expenditures.

In his testimony Mr. Engel explained how tax carve outs and credits taken against the commercial activity tax (CAT) have more than doubled from \$300 million to more than \$600 million since the CAT's enactment in 2005. He said, "The erosion of the tax reform legislation, in the form of carve-outs, exclusions, and ear-marks, reduces certainty, creates disparity by selecting winners and losers, renders the tax code more complicated, and reduces transparency as it becomes more difficult to determine who is entitled to which exclusions."

His testimony also supported the tax policy and principles of the manufacturing exemption to the sales and use tax: "The taxation of business inputs should be avoided because doing so leads to multiple levels of taxation and economic disadvantages." [You can read all of Mr. Engel's testimony here.](#)

### [Eligible Businesses Can Claim Research Credit to Offset Alternative Minimum Tax](#)

February 5, 2016

If your business is working to create new or improved products or processes, and has historically been susceptible to the alternative minimum tax, 2016 may just be a game changing year for your research credit. [Read more](#) from OMA Connections Partner, Tax Credits Group.

### [Bill to Eliminate Sales Tax on Temp. Employment Services Gets More Support](#)

January 29, 2016

This week, the House Economic and Workforce Development Committee heard more proponent testimony for House Bill 343, which would eliminate sales tax on temporary employment services. [NFIB](#)

and the [Associated Builders and Contractors](#) offered their support of the bill.

This is sound policy. Use the easy email tools at the [OMA Manufacturing Advocacy Center](#) to ask House committee members to advance the bill.

### [OMA Testifies on Ohio Tax Policy](#)

January 22, 2016

OMA tax counsel, [Mark Engel](#) of Bricker & Eckler, [testified this week](#) before the House 2020 Tax Committee, which is charged with taking a long-term view of Ohio tax policy and opportunities to improve it.

Reflecting on tax policy reforms of the past few years, Engel said: "Major tax reforms approved by the Ohio General Assembly in 2005 and additional reforms from 2011-2015 have led to significant improvements to a tax system that was for many years widely regarded as outdated. Reforms included reducing overall tax rates, eliminating tax on investment, broadening the tax base, providing more stable and predictable revenues, and simplifying compliance.

"The elimination of the tangible personal property tax, the corporate franchise tax, and the estate tax has strengthened the competitiveness of Ohio's tax system. So has the reduction of the personal income tax rate as well as the creation of a broad-based, low-rate commercial activity tax."

He reviewed Ohio's mix of business taxes and urged caution in paying for lowering one type of tax by raising another. He also called for elimination of the sales tax on employment services and on industrial janitorial and maintenance services.

### [FASB's Technical Agenda for 2016](#)

January 15, 2016

Upcoming changes to the accounting standards might affect the information you report on your company's financial statements, including how it's presented and what details are disclosed.

The Financial Accounting Standards Board (FASB) establishes the standards for public and private companies to follow when they issue financial statements in accordance with U.S. Generally Accepted Accounting Principles (GAAP).

[Here's an overview](#) from OMA Connections Partner, Clark, Schaefer, Hackett, of what the FASB is currently working on.

### [Congress Makes R&D Tax Credit Permanent](#)

January 8, 2016

OMA Connections Partner, Tax Credit Group, [reported](#) that after more than three decades of year-to-year uncertainty, Congress has made the R&D tax credit permanent as the result of passage of the [Protecting Americans from Tax Hikes \(PATH\) Act of 2015](#).

The congressional deal also brings back the concept of an “AMT turnoff” which allows small businesses to take the R&D tax credit against their alternative minimum tax liability.

### [And .... Gives this Sack of Business Tax “Gifts”](#)

January 8, 2016

OMA Connections Partner, Clark Schaefer Hackett, [breaks down](#) several provisions in particular of the Protecting Americans from Tax Hikes Act of 2015 (the PATH Act) that may produce significant tax savings for businesses in 2015 and beyond. President Obama signed the act into law on December 18, 2015.

Many popular tax breaks — including some highly valued by businesses — become permanent, while others are extended through 2016 or 2019.

OMA members who manufacture medical devices will appreciate the halt of the 2.3% excise tax on the sale of medical devices in 2016 and 2017.

### [2015 ACA Reporting Deadlines Extended](#)

January 8, 2016

And, OMA Connections Partner, Clark, Schaefer, Hackett (CSH), reports that, on December 28, the IRS issued [a notice](#) that extends the 2015 due dates for information that insurers and self-insured employers are required to report to comply with the Affordable Care Act (ACA).

Specifically, the notice provided the following extensions:

- The due date for providing the 2015 forms 1095-B and 1095-C to full-time employees has been extended from January 31, 2016, until March 31, 2016.
- The due date for filing the 2015 forms 1094-B, 1095-

B, 1094-C, and 1095-C with the IRS has been extended from February 29, 2016, to May 31, 2016 if not filing electronically, and from March 31, 2016, to June 30, 2016 if filing electronically.

Here's a [webinar-on-demand from CSH](#) about ACA reporting requirements.

The IRS has posted [eight facts about the new ACA information statements](#) that will be issued for insurance offer and coverage by employers and health care coverage providers.

### [Blank Forms W-2, W-3 & 1099 No Longer at Taxpayer Assistance Centers](#)

January 8, 2016

The IRS says: Don't wait until the last minute to get blank Forms W-2, W-3 or 1099. The demand for paper tax products is declining because of an increase in e-filing and the availability of products online. Therefore, the IRS will no longer stock Forms W-2, W-3 and 1099 in Taxpayer Assistance Centers. The forms, which are used by small business owners, can be ordered online or by telephone and mailed directly to the taxpayer's home or business address.

To order online, go to the IRS' Online Ordering for Information Returns and Employer Returns [website](#). To order by phone, call the IRS at: 1-800-829-3676.

The Social Security Administration also offers an online option to create and file electronic Forms W-2. File Forms W-2/W-2c and W-3/W-3c electronically by visiting the Social Security Administration's Employer Reporting Instructions and Information [website](#) to create and file electronic fill-in versions of Forms W-2 and W-3.

### [JobsOhio and Farm Bureau Talk Taxes to 2020 Tax Policy Commission](#)

December 18, 2015

This week the 2020 Tax Policy Commission, established by the General Assembly, continued hearings on the state's overall tax climate. JobsOhio and the Ohio Farm Bureau offered testimony about how their constituents are impacted by Ohio tax policy.

John Minor, President and CIO of JobsOhio, [said](#), “... we target industries that help drive the state's economy and provide job growth opportunities; industries like advanced manufacturing, biohealth,

food processing, IT, automotive and aerospace, financial services and shale energy.”

Brandon Kern, Director of State Policy, Ohio Farm Bureau [provided an overview](#) of how various Ohio taxes impact farmers. He used the opportunity to describe how the Current Agricultural Use Valuation tax (CAUV), which measures the value of land for its agricultural use, could be improved. Mr. Kern noted that most Ohio farmers are not excessively negatively impacted by the commercial activity tax.

### [Taxpayers Rejoice over Proposed R&D Credit Legislation](#)

December 18, 2015

OMA Connections Partner, Tax Credit Group, reports that the Consolidated Appropriations Act of 2016 contains a provision for a permanent research and development tax credit. In addition, new rules would allow taxpayers with gross receipts less than \$50 million dollars to utilize the credit to offset Alternative Minimum Tax liability.

Also, for certain startup phase businesses, the credit could be used to offset payroll tax liability. ([Click here to learn more about the proposed legislation.](#))

With these new provisions included in this legislation, there will be a massive expansion of companies who can now take advantage of this incentive. [Read more](#) from Tax Credit Group.

Additionally, OMA Connections Partner, GBQ Partners, [reports which provisions](#) may become permanent or just extended.

### [House Continues to Debate Sales Tax on Temporary Workers](#)

December 4, 2015

This week the House Economic and Workforce Development Committee continued its debate on [House Bill 343](#). The bill, supported by the OMA, would eliminate the state sales tax on temporary employees.

Opponents, including local governments, liberal think tanks, and social advocates, offered testimony this week. They expressed concerns ranging from an increase in the temporary workforce to less funding for local governments. Here’s the opponent testimony of [Policy Matters Ohio](#) and the [County Commissioners Association of Ohio](#).

Committee members pushed back and questioned why the tax was ever assessed in the first place and reiterated it is harmful to Ohio’s competitiveness.

## Taxation Legislation

Prepared by: The Ohio Manufacturers' Association  
Report created on March 1, 2016

- HB9**      **TAX EXPENDITURE REVIEW COMMITTEE** (BOOSE T) To create a Tax Expenditure Review Committee for the purpose of periodically reviewing existing and proposed tax expenditures.  
*Current Status:* 2/23/2016 - Senate Ways and Means, (Third Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-9>
- HB12**      **TIF-INCENTIVE DISTRICTS** (BUTLER, JR. J, BURKLEY T) To establish a procedure by which political subdivisions proposing a tax increment financing (TIF) incentive district are required to provide notice to the record owner of each parcel within the proposed incentive district before creating the district.  
*Current Status:* 2/16/2016 - House Ways and Means, (Third Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-12>
- HB19**      **INTERNAL REVENUE CODE** (SCHERER G) To expressly incorporate changes in the Internal Revenue Code since March 22, 2013 into Ohio law and to declare an emergency.  
*Current Status:* 4/1/2015 - **SIGNED BY GOVERNOR**; eff. 4/1/2015  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-19>
- HB26**      **COIN SALES-USE TAX EXEMPTION** (MAAG R, HAGAN C) To exempt from sales and use taxes the sale or use of investment metal bullion and coins.  
*Current Status:* 11/18/2015 - Senate Ways and Means, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-26>
- HB32**      **AIRCRAFT-MOTOR FUEL EXCISE TAX** (PERALES R) To subject the receipt of motor fuel used to operate aircraft to the motor fuel excise taxes rather than the sales and use taxes and to require a percentage of motor fuel excise tax revenue to be used for airport improvements.  
*Current Status:* 2/10/2015 - Referred to Committee House Ways and Means  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-32>
- HB64**      **OPERATING BUDGET** (SMITH R) To make operating appropriations for the biennium beginning July 1, 2015, and ending June 30, 2017, and to provide authorization and conditions for the operation of state programs.  
*Current Status:* 6/30/2015 - **SIGNED BY GOVERNOR**; eff. 6/30/15; certain provisions effective 9/29/2015, other dates  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-64>
- HB65**      **TAX-EXPENDITURE APPRAISAL** (DRIEHAUS D) To provide for the periodic appraisal of the effectiveness of tax expenditures.  
*Current Status:* 3/24/2015 - House Ways and Means, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-65>

- HB84**      **MUNICIPAL TAX-CIVIL ACTIONS** (SPRAGUE R, SWEENEY M) To require civil actions by taxpayers related to municipal income taxes be brought against the municipal corporation imposing the tax rather than the municipal corporation's tax administrator.  
*Current Status:* 3/24/2015 - House Ways and Means, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-84>
- HB99**      **INCOME TAX-SCHOOL FUNDING** (CURTIN M) To require that an amount equal to state income tax collections, less amounts contributed to the Ohio political party fund via the income tax checkoff, be distributed for the support of elementary, secondary, vocational, and special education programs.  
*Current Status:* 5/5/2015 - House Ways and Means, (Second Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-99>
- HB102**     **VETERAN-OWNED BUSINESSES** (CRAIG H, ANTANI N) To provide a bid preference for state contracts to a veteran-owned business and to authorize a personal income and commercial activity tax credit for a business that hires and employs a veteran for at least one year.  
*Current Status:* 4/28/2015 - House Ways and Means, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-102>
- HB162**     **SEVERANCE TAX RATES** (CERA J) To change the basis, rates, and revenue distribution of the severance tax on oil and gas, to create a grant program to encourage compressed natural gas as a motor vehicle fuel, to authorize an income tax credit for landowners holding an oil or gas royalty interest, and to exclude some oil and gas sale receipts from the commercial activity tax base.  
*Current Status:* 5/12/2015 - House Ways and Means, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-162>
- HB176**     **GAS-FUEL CONVERSION PROGRAM** (HALL D, O'BRIEN S) To create the Gaseous Fuel Vehicle Conversion Program, to allow a credit against the income or commercial activity tax for the purchase or conversion of an alternative fuel vehicle, to reduce the amount of sales tax due on the purchase or lease of a qualifying electric vehicle by up to \$500, to apply the motor fuel tax to the distribution or sale of compressed natural gas, to authorize a temporary, partial motor fuel tax exemption for sales of compressed natural gas used as motor fuel, and to make an appropriation.  
*Current Status:* 11/18/2015 - **REPORTED OUT**, House Finance, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-176>
- HB232**     **SELLER-USE TAX COLLECTION** (GROSSMAN C, SCHERER G) To prescribe new criteria for determining whether sellers are presumed to have substantial nexus with Ohio and therefore required to register to collect use tax, to allow sellers presumed to have substantial nexus to rebut that presumption, and to require a person, before the person enters into a sale of goods contract with the state, to register, along with the person's affiliates, to collect use tax.  
*Current Status:* 6/2/2015 - Referred to Committee House Ways and Means  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-232>

- HB269**      **INCOME TAX-SOUND RECORDING** (SMITH K, LATOURETTE S) To authorize a refundable income tax credit for individual investors in a sound recording production company equal to a portion of the company's costs for a recording production or recording infrastructure project in Ohio.  
*Current Status:* 2/16/2016 - House Ways and Means, (Second Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-269>
- HB280**      **BALANCED BUDGET COMPACT** (KRAUS S, KOEHLER K) To adopt the Compact for a Balanced Budget and to declare an emergency.  
*Current Status:* 6/30/2015 - Introduced  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-280>
- HB308**      **TEXTBOOKS-TAX EXEMPTION** (DUFFEY M, STINZIANO M) To exempt from sales and use tax textbooks purchased by post-secondary students.  
*Current Status:* 10/21/2015 - House Ways and Means, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-308>
- HB326**      **TAX LAW-JOINT FILING** (AMSTUTZ R, MCCLAIN J) To make technical changes to the state income tax law, to modify the requirements for receiving the joint filing credit, and to provide that, for the 2015 taxable year, any taxable business income under \$125,000 for married taxpayers filing separately or \$250,000 for other taxpayers is subject to the graduated tax rates applicable to nonbusiness income, while business income in excess of those amounts remains subject to the existing 3% flat tax.  
*Current Status:* 10/26/2015 - House Ways and Means, (Fifth Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-326>
- HB343**      **EMPLOYMENT SERVICES-TAX EXEMPT** (YOUNG R, ROMANCHUK M) To exempt employment services and employment placement services from sales and use tax.  
*Current Status:* 2/24/2016 - House Economic and Workforce Development, (Seventh Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-343>
- HB358**      **TAX DEDUCTION-SAVINGS ACCOUNTS** (DEVER J, CONDITT M) To allow an income tax deduction for contributions to ABLE savings accounts.  
*Current Status:* 1/20/2016 - House Ways and Means, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-358>
- HB369**      **BALANCED BUDGET COMPACT** (KOEHLER K, HAMBLEY S) To adopt the Compact for a Balanced Budget and to declare an emergency.  
*Current Status:* 2/9/2016 - House Government Accountability and Oversight, (Second Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-369>
- HB390**      **NATURAL GAS-TAX EXEMPTION** (SCHAFFER T, RETHERFORD W) To exempt the sale of natural gas by a municipal gas company from the sales and use tax.

**Current Status:** 2/24/2016 - **PASSED BY HOUSE**; Vote 93-0  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-390>

**HB398 CAUV COMPUTATION (HILL B)** To require that the computation of the capitalization rate for the purposes of determining CAUV of agricultural land be computed using a method that excludes appreciation and equity buildup.

**Current Status:** 1/20/2016 - Referred to Committee House Government Accountability and Oversight

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-398>

**HB454 SALES TAX HOLIDAY-PERMANENT (PATTERSON J)** To provide for a permanent three-day sales tax "holiday" each August during which sales of back-to-school clothing and school supplies are exempt from sales and use taxes.

**Current Status:** 2/23/2016 - Referred to Committee House Ways and Means

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-454>

**HB466 TAX-EXEMPT-DIGITAL ADVERTISING (SMITH R)** To specifically exempt digital advertising services from sales and use tax.

**Current Status:** 2/23/2016 - Referred to Committee House Ways and Means

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-466>

**HB467 UNEMPLOYMENT COMPENSATION FUND (BUTLER, JR. J)** To establish a loan from the Budget Stabilization Fund to the Unemployment Compensation Fund, to require the Director of Job and Family Services to recommend a program to incentivize the purchase of private unemployment insurance, and to require a study on the solvency of the Unemployment Compensation Fund.

**Current Status:** 2/16/2016 - Introduced

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-467>

**HB473 UTILITY SERVICE TAX-LEVY (AMSTUTZ R)** To require voter approval before a county may levy a new utilities services tax, to allow small businesses to count employees of related or affiliated entities towards satisfying the employment criteria of the business investment tax credit, to permit a bad debt refund for cigarette and tobacco product excise taxes paid when a purchaser fails to pay a dealer for the cigarettes or tobacco products and the unpaid amount is charged off as uncollectible by the dealer.

**Current Status:** 2/23/2016 - Introduced

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-473>

**HB475 MOTION PICTURE-TAX CREDIT (SCHURING K)** To authorize motion picture companies to transfer the authority to claim refundable motion picture tax credits to other persons, to adjust how the credit is calculated, to increase the total amount of credits that may be awarded per year, to remove the limit on the maximum credit amount that may be awarded to a motion picture, and to create a job training program for resident film crew members.

**Current Status:** 2/23/2016 - Introduced

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-475>

- SB2**            **INTERNAL REVENUE SERVICE-INCORPORATE CHANGES** (PETERSON B) To expressly incorporate changes in the Internal Revenue Code since March 22, 2013, into Ohio law, and to declare an emergency.  
*Current Status:* 2/14/2016 - **SIGNED BY GOVERNOR**; eff. 2/14/2016  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-2>
- SB12**            **INCOME TAX CREDIT-SCIENCE RELATED DEGREE** (HOTTINGER J) To grant an income tax credit to individuals who earn degrees in science, technology, engineering, or math-based fields of study.  
*Current Status:* 2/4/2015 - Referred to Committee Senate Ways and Means  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-12>
- SB18**            **TAX CREDIT-NATIONAL GUARD EMPLOYMENT** (GENTILE L) To authorize a refundable income tax credit for employers that hire one or more qualified veterans or members of the National Guard or reserves.  
*Current Status:* 2/4/2015 - Referred to Committee Senate Ways and Means  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-18>
- SB21**            **EARNED INCOME TAX CREDIT RESTRICTION** (SKINDELL M) To remove the income restriction on the earned income tax credit and to make the credit refundable beginning in 2015.  
*Current Status:* 2/4/2015 - Referred to Committee Senate Ways and Means  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-21>
- SB40**            **ECONOMIC DEVELOPMENT TAX CREDIT** (BEAGLE B) To authorize tax credits for contributions of money to economic and infrastructure development projects undertaken by local governments and non-profit corporations.  
*Current Status:* 6/10/2015 - Senate Ways and Means, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-40>
- SB41**            **NEW MARKETS TAX CREDIT QUALIFICATIONS** (BEAGLE B, TAVARES C) To modify the qualifications for the New Markets Tax Credit and the schedule for receiving the credit.  
*Current Status:* 6/3/2015 - Senate Ways and Means, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-41>
- SB52**            **AIRCRAFT FUEL EXCISE TAX** (BEAGLE B) To subject the receipt of motor fuel used to operate aircraft to the motor fuel excise taxes rather than the sales and use taxes and to require a percentage of motor fuel excise tax revenue to be used for airport improvements.  
*Current Status:* 2/18/2015 - Referred to Committee Senate Ways and Means  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-52>
- SB88**            **FELON EMPLOYMENT TAX CREDIT** (TAVARES C, THOMAS C) To create a tax credit for the employment of individuals who have been convicted of criminal offenses.  
*Current Status:* 3/4/2015 - Referred to Committee Senate Ways and Means

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-88>

- SB100 SALES TAX HOLIDAY-ENERGY STAR (BROWN E)** To provide a three-day sales tax "holiday" each April during which sales of qualifying Energy Star products are exempt from sales and use taxes.  
**Current Status:** 3/4/2015 - Referred to Committee Senate Ways and Means  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-100>
- SB198 NON-RESIDENT MUNICIPAL INCOME TAX (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:** 9/29/2015 - Senate State and Local Government, (First Hearing)  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-198>
- SB208 STATE INCOME TAX (BEAGLE B)** To make technical changes to the state income tax law, to modify the requirements for receiving the joint filing credit.  
**Current Status:** 11/15/2015 - **SIGNED BY GOVERNOR**; Eff. 2/15/2016, Certain provisions effective 11/15/2015  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-208>
- SB209 OHIO RURAL JOBS ACT (HITE C)** To enact the "Ohio Rural Jobs Act" which authorizes a nonrefundable tax credit for insurance companies that invest in rural business growth funds, which are certified to provide capital to rural and agricultural businesses.  
**Current Status:** 12/8/2015 - House Agriculture and Rural Development, (Second Hearing)  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-209>
- SB235 INCREASED VALUE-PROPERTY TAX (BEAGLE B, COLEY W)** To exempt from property tax the increased value of property on which industrial or commercial development is planned until construction of new commercial or industrial facilities at the property commences.  
**Current Status:** 1/20/2016 - Senate Ways and Means, (Second Hearing)  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-235>
- SB246 CAUV COMPUTATION-CAPITALIZATION RATE (HITE C)** To require that the computation of the capitalization rate for the purposes of determining CAUV of agricultural land be computed using a method that excludes appreciation and equity buildup.  
**Current Status:** 12/9/2015 - Referred to Committee Senate Ways and Means  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-246>
- SB260 CAPITAL REAPPROPRIATIONS (COLEY W)** To make capital reappropriations for the biennium ending June 30, 2018.  
**Current Status:** 2/21/2016 - **SIGNED BY GOVERNOR**; eff. 7/1/2016  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-260>