

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

## **OMA Government Affairs Committee**

**March 15, 2017**



### **AGENDA**

#### **Welcome & Introductions**

**Chris Hess**, Director, Public Affairs,  
Eaton Corporation; Committee Chair

#### **National Association Reports**

#### **Committee Members**

#### **OMA Counsel's Report**

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

#### **Panel Presentation:**

Electric Re-Monopolization

**Brad Belden**, Belden Brick

**Dr. Edward Ned Hill**, The Ohio State University

**Kim Bojko**, CLL LLP, OMA Energy Counsel

**Members**, OMA Energy Group

**Curt Steiner & Jen Detwiler**, Steiner Communications

#### **Staff Reports**

**Ryan Augsburger**, OMA Staff

**Rob Brundrett**, OMA Staff

#### **Committee Members**

#### **Discussion / Action Items**

- Drug Pricing Initiated Statute
- Truck efficiency / Freight policy
- Emerging 2018 Election Slate
- Federal Issues Roundtable  
(President Trump's focus on  
manufacturing, tax reform, health  
care reform, trade, immigration,  
ex-im bank, infrastructure, EPA)

**Andy Corsig**, PhRMA

#### **Committee Members**

#### **Lunch – provided by OMA**

#### **2017 Government Affairs Committee Calendar**

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

Wednesday, March 15

Wednesday, June 07

Tuesday, August 29, Cleveland

Wednesday, November 29

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



## Public Policy “Hot Topics” March 15, 2017

### Overview

The new General Assembly was seated in early January following a contentious lame duck session late last year. 2017 is a budget year. Deliberations on the state budget will consume much bandwidth through June.

Top advocacy issues for the OMA this year include continuation of unemployment compensation system reforms; preservation of electric generation market competition; and defense against unhelpful tax reforms.

### 132<sup>nd</sup> General Assembly

Speaker Cliff Rosenberger will lead the Ohio House for his second and final 2-year term. Representative Kirk Schuring of Canton was elected Speaker Pro-Tem. In the Senate Larry Obhof was elected President taking the place of Keith Faber. Senator Bob Peterson was elected President Pro-Tem.

### Electric Utilities Seek \$Billions and Support Re-Monopolization

Last year the PUCO set a new precedent in awarding utility companies with billion dollar subsidies to prop up the companies and their subsidiaries. The OMA Energy Group (OMAEG) opposed the FirstEnergy proposal and will seek reversal on appeal to the Supreme Court.

Not satisfied with the action by the PUCO, FirstEnergy and AEP are calling for legislative *reregulation* or *restructuring*. See energy section for specifics of their proposals.

The OMA has been a proponent of markets, supporting the original deregulation legislation and opposing utility profit subsidy schemes that distort the market and result in new above-market charges on manufacturers. Several noteworthy studies have demonstrated how the market delivers lower prices, choice and innovation without compromising reliability. Manufacturers will have an opportunity in 2017 to pool resources to preserve and improve customer benefits derived from market power.

### Unemployment Compensation

Last year the legislature passed a provision (included in House Bill 390) guaranteeing that the state’s unemployment compensation loan would be paid back to the federal government by the November deadline. By paying the loan off a year early the business community is expected to save over \$400 million in federal penalties. Unfortunately a solvency package aimed at shoring up the state’s unemployment trust fund and correcting the underlying issue was not passed during lame duck.

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. Business and labor is working with Representative Schuring on a budget solution to the problem. See OMA Human Resources section report for more information.

### Minimum Wage

Last year employers in Cleveland dodged a bullet against hiking minimum wage to \$15 per hour. While the legality of a local ordinance limiting wages was questionable, the lame duck

General Assembly passed preemption legislation preventing wage and other employment considerations. See human resources section for more.

### **Bring Your Gun to Work**

HB 199 was enacted by the lame duck General Assembly to allow persons to carry a secured firearm into a private parking lot, effectively trumping private property rights. The OMA and other business organizations lobbied against the measure to preserve employer rights. Though unable to stop the bill, we were able to improve the bill. See human resources report.

### **State Budget & Tax Policy**

Governor Kasich introduced his final budget proposal in late January. The budget is actually a series of different bills. The main operating budget is called House Bill 49. Voluminous budget bills will see hundreds of unrelated law changes impacting all sorts of policy issue areas. See attached OMA budget highlight document and see counsel's report.

House Bill 49 again contains tax reforms proposed by Governor Kasich to reduce personal income tax rates, while increasing the sales tax rate and expanding the sales tax base, while condensing the number of income tax brackets, and simplifying municipal tax collections.

It's a mixed bag. Soon the Ohio House will have their turn at making revisions to the bill. See the tax section for a complete summary.

### **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. The Administration has continued to remain out of the spotlight on this issue. Unions are running a quiet campaign to taint the term "right to work."

### **Medical Marijuana Legalization**

State policymakers are working to adopt needed regulations. Employers are learning about available rules to ensure a safe workplace. Contact OMA staff for resource materials.

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

The BWC and the Governor just announced a \$1 billion back rebate for all private and public employers. This is the third such rebate since 2013. If approved, checks should be in the mail by July. The BWC and IC have introduced their respective budgets for the 132<sup>nd</sup> General Assembly. Both are expected to move quickly.

### **Race for Ohio Leadership in 2018**

Jockeying for statewide office is underway in the race for US Senator, governor, attorney general, auditor, secretary of state and treasurer. Look for opportunities at the OMA to meet the candidates over the next couple years.



The NAM's Annual Public Affairs Conference focuses on grassroots involvement, best practices and policy initiatives over the course of two and a half days. This conference has become the annual gathering of public affairs and government relations executives from corporations and associations. Our upcoming conference will be held from March 26 - 28, 2017, in Las Vegas, Nevada.

[STATE GOVERNMENT RELATIONS GROUP](#)

The NAM's State Government Relations Group will meet following the Public Affairs Conference from Tuesday, March 28, at 2:30p.m. - Thursday, March 29, adjourning no later than noon.

**Who Should Attend:**

The State Government Relations Group is comprised of state-level government relations executives who are responsible for or work on state legislative issues.

The SGRG's mission is to provide an opportunity for state government relations executives to network and share information on best practices as well as exchange ideas and hear fresh perspectives on state legislative issues and trends.

<b>Annual Public Affairs Conference Fees:</b> <i>(Meeting will be held March 26-28, 2017)</i>	Member: \$1,100 Additional Member: \$1,000 Non-Member: \$1,300 Additional Non-Member: \$1,200
<b>State Government Relations Group (SGRG) Fee:</b> <i>(Meeting will be held March 28-29, 2017)</i>	\$300
<b>Conference and State Government Relations Group Fee:</b> <i>(Meeting will be held March 26-29, 2017)</i>	\$1,000
<b>Spouse/Guest Fee:</b> <b>(includes Sunday night opening Reception and dinner, Monday night Reception and group guest activity).</b>	\$350

Please note registration does not include hotel accommodations.

**Cancellation Policy:** A full refund will be granted for cancellations received on or before Monday, March 20, 2017. Substitutions are permitted at any time.

**2017**  
**State Government Relations Group Meeting**  
**March 28 -29**  
**Las Vegas, NV**

**Tuesday, March 28, 2017**

2:00 p.m.

**Registration and Meeting Check-In**

*Condessa Registration*

2:30 p.m. – 4:00 p.m.

**Changing Times....The State-Federal Relationship**

*Condessa 3*

*From healthcare reform to environmental regulations, having an effective partnership between the federal government and the states is imperative. Hear what it takes to achieve desired results from the Administration during a transition year.*

4:15 p.m. – 5:15 p.m.

**Professional Development Fishbowl**

*Condessa 3*

*What's keeping you awake at night? Are you facing a particular challenge or obstacle, such as mentoring new staff or using social media effectively to communicate with your legislators? Submit questions anonymously for your peers to answer during this session. No question will go unanswered!*

6:00 p.m. -7:30 p.m.

**SGRG Networking Reception**

*Condessa 3*

**Wednesday, March 29, 2017**

8:00 a.m. -9:30 a.m.

**Breakfast Session: Growing State Economies**

*Condessa 3*

*Hear the latest on the status of the U.S. economy and its effect on states and their budgets. What strategies are lawmakers using to stimulate the economy and create jobs within their respective states?*

- Ryan Sweet, Director of Real Time Economics, Moody's Analytics

9:45 a.m. – 10:45 a.m.

**Issue Discussion and Emerging Issues**

*Prior to our meeting, all State GR Group participants will be polled to determine the most pressing issues in their portfolios. This session will focus on the top three issues, discussed in a coalition-style format that will allow for a strategic review and information-sharing opportunity. We will also distribute and discuss what our SAG partners believe will be their state's #1 issue in the coming months.*

10:45 a.m. – 11:00 a.m.

**Wrap-Up**

**Adjourn**

**NAM's 2017 Annual Public Affairs Conference**  
**March 26-28, 2017**  
**The Cosmopolitan**  
**Las Vegas, Nevada**  
*Agenda*

**Sunday, March 26**

10:00 a.m. – 5:00 p.m.

**Registration and Conference Check-In**

12:00 p.m. – 2:00 p.m.

*Lunch available at 11:30 a.m.*

**NPASC Quarterly Meeting**  
***(Open to NPASC members only)***

2:30 p.m.

**Conference Welcome**

- Mike Roman, Senior Advisor, Federal Government Relations, Exxon Mobil Corporation and NPASC Chair
- Jay Timmons, President and CEO, NAM

**Policy Pathways: Effective Strategies in Dealing with a New Administration**

By the time of this conference, the Trump Administration will be quickly approaching the close of its first 100 days and undoubtedly there will be several issues that directly affect how manufacturers conduct their business. This session will examine the first 100 days and look ahead to the strategies needed to work effectively in this new political environment.

- Cindy Hayden, Director, Federal Government Affairs, Altria Corporate Services, Inc. – *Confirmed*
- Dan Murphy, General Counsel & Principal, BGR Group – *Confirmed*
- Aric Newhouse, Senior Vice President, Government Relations and Policy, NAM – *Moderator*

4:30 p.m. – 5:30 p.m.

**The Recipe for Manufacturing Job Growth**

Many Americans have become extremely apprehensive that the economy has not lived up to its promise over the years. While hoping for upward mobility and prosperity, the nation instead has undergone two recessions that were followed by recoveries in which economic growth returned but job growth lagged. What is needed to restore jobs in the manufacturing sector and throughout the country?

- Karl Hutter, President and Chief Executive Officer of Click Bond, Inc. – *Confirmed*
- John Lundgren, Special Advisor, Stanley Black & Decker, Inc. – *Confirmed*
- Jay Timmons, President and CEO, NAM – *Moderator*

6:00 p.m. – 7:00 p.m.

**Opening Reception**

7:00 p.m. – 9:00 p.m.

**Dinner**

**Monday, March 27**

7:30 a.m. – 3:30 p.m.

**NAM Office Hours**

8:00 a.m. – 9:00 a.m.

**Breakfast Session 1**

**Networking Breakfast sponsored by *Husch Blackwell***

This session is designed to give conference attendees an opportunity to network, connect and meet new colleagues.

**Breakfast Session 2**

**Professional Development Session: Leading an Effective Team**

Do you have what it takes to lead an effective team? Great teams are most often energized and productive, but on occasion, even the best team can be challenged and unmotivated. During this session, you will learn new strategies and techniques that will help in enhancing communication and trust as well as ways of aligning team members in an effort to plan, execute and deliver results.

9:15 a.m. – 10:15 a.m.

**Regulation Here, There and Everywhere**

Over the past eight years, we have seen a significant uptick in the potentially harmful regulations coming out of Washington. With a new administration, there will be an opportunity to roll back some of the burdensome regulations hurting manufacturers. Join us for an interactive discussion on how your company can influence the regulatory process and bring forth an environment that will create jobs and fuel economic growth.

- Thomas Lorenzen, Partner, Crowell Moring – *Confirmed*
- Jane Luxton, Partner, Clark Hill – *Confirmed*
- Ross Eisenberg, Vice President, Energy and Resources, NAM - *Moderator*

11:00 a.m. – 4:00 p.m.

**Spouse/Guest Activity**

*Spouses/guests are invited to the Sahra Spa & Hammam for a relaxing and rejuvenating day.*

10:30 a.m. – 11:45 a.m.

**It Takes Two to Tango: Priorities for Tax Reform**

In June of 2016, Republicans from the House Ways and Means Committee announced their intention to take up comprehensive tax reform. The plan, entitled “A Better Way for Tax Reform,” is touted as a 21<sup>st</sup> century tax code built for growth. *The Blueprint*, as it is commonly known, promises tax reform and relief but is it really a better way for manufacturers? And, what about the Senate? It takes two to tango ya know...

- Cathy Koch, Americas Tax Policy Leader, Ernst & Young LLP – *Confirmed*
- Warren Payne, Senior Advisor, Mayer Brown – *Confirmed*
- Dorothy Coleman, Vice President, Tax and Domestic Economic Policy – *Moderator*

12:00 p.m. – 1:30 p.m.

**Working Lunch: The Role of Social Media and Advocacy Platforms**

We all want to be heard. Social media can bring forth tremendous rewards for your company or association. Common platforms for advocacy include Facebook and Twitter, but new tools, such as Instagram, Tumblr and others, are making an impact. Are you using the social media platform that makes sense for getting out your organization’s message? Further, what steps should you take or *not* take if your company gets attacked or admonished on social media? This session will explore various ways to leverage your social media and implement impactful advocacy strategies.

- Jackie Barrieau Iacovazzi, Advocacy Manager, Global Government Relations, United Technologies Corp - *Confirmed*
- Jon Jones, Chief Digital Officer, Incite – *Confirmed*
- Erin Streeter, Senior Vice President, Communications – *Moderator*

1:45 p.m. – 4:00 p.m.

**Breakout Sessions – Policy Speed Dating**

Back by popular demand! Our fast-paced “speed dating” sessions will give you an opportunity to rotate from one NAM policy expert to the next to hear firsthand the issues impacting the manufacturing community, including health care, energy and tax policy. You will have an opportunity to attend all three 45-minute sessions.

- Robyn Boerstling, Vice President, Infrastructure, Innovation and Human Resources Policy
- Dorothy Coleman, Vice President, Tax and Domestic Economic Policy
- Ross Eisenberg, Vice President, Energy and Resources Policy

4:00 p.m.

**Free Afternoon**

6:00 p.m. – 7:00 p.m.

**Reception**

**Dinner On Your Own**

**Tuesday, March 28**

7:30 a.m. – 11:30 a.m.

**NAM Office Hours**

*Condesa Registration*

8:00 a.m. – 9:30 a.m.

**Breakfast Session**

**Trade: Sorting It All Out**

With the future of the North American Free Trade Agreement and Trans-Pacific Partnership up in the air with the new administration, what can manufacturers expect on the trade front—both here at home and globally? Join our experts as they outline what the Trump administration’s trade agenda could look like.

- Grant Aldonas, Principal Managing Director, Split Rock International – *Confirmed*
- Michael J. Smart, Managing Director, Rock Creek Global Advisors - *Confirmed*

- Linda Dempsey, Vice President, International Economic Affairs Policy – *Moderator*

9:45 a.m. – 11:00 a.m.

### **The Rise and Fall of Political Parties**

Media? Money? Special interest groups? Why have political parties lost their appeal? The 2016 elections created an even more polarized nation than ever before—so much so that a number of voters fell away from the traditional parties that dominated politics a few decades ago. But why? Join experts for an in-depth look at the past, present and future of political parties and what it means for our country.

- Mo Elleithee, Executive Director, Georgetown University Institute of Politics and Public Service – *Confirmed*
- Doug Heye, Republican Strategist – *Confirmed*
- Marc Scarduffa, Vice President, U.S. Government Relations, Pfizer Inc. - *Moderator*

11:00 a.m. – 11:30 a.m.

### **Advocacy in Action**

So now that you have gained insightful knowledge on the latest information regarding policy, advocacy and grassroots, learn how the NAM is advocating manufacturers' priorities and how you can best leverage NAM resources. From communication techniques to issue advocacy campaigns, hear first-hand how you can partner with the NAM in elevating and advancing the manufacturing agenda.

- Mike Roman, Mike Roman, Senior Advisor, Federal Government Relations, Exxon Mobil Corporation and NPASC Chair
- Jay Timmons, President and CEO, NAM

11:30 a.m.

**Adjourn**

## Leadership

### [EPA's Pruitt Brings Welcome Reform Message to the Nation's Manufacturers](#)

March 10, 2017



This week, new U.S. EPA administrator Scott Pruitt visited with the board of directors of the National Association of Manufacturers. Pruitt presented an encouraging message of reform of the nation's cumbersome and costly regulatory regime. One welcome theme of Pruitt was a call for more flexibility for the state to manage environmental regulations, rather than heavy-handed, one-size-fits-all federal mandates. 3/9/2017

*Pictured: OMA president Eric Burkland with U.S. EPA administrator Scott Pruitt*

### [6th Consecutive Year of Employment Growth in Manufacturing Jobs](#)

March 10, 2017

Lightweighting Innovations for Tomorrow ([LIFT](#)), an organization focused on promoting the lightweight advanced manufacturing industry and attracting jobs to it, recently [released its 4th quarter 2016 findings](#) about Ohio lightweighting-related jobs:

“Employer demand for advanced manufacturing jobs related to lightweight advanced manufacturing in Ohio, gauged by online job postings, fell by 1,000 ads between Q3 and Q4 2016. The 19,985 ads posted during Q4 represented an eight percent decrease from the 21,704 ads during Q3 2016. This level of postings falls 24 percent lower than the 31,000 postings a year ago during Q4 2015. Despite the drop, 2016 marked the sixth consecutive year of employment growth for lightweighting-related jobs in Ohio since the depths of the Great Recession in 2010. In 2010, only 651,800 Ohio workers were employed in lightweighting-related advanced manufacturing jobs, and in 2016, employment reached over 735,000, a 13 percent increase.”

Read [more here](#). OMA is LIFT's Ohio partner. 3/8/2017

### [JobsOhio Publishes Results, Looks Ahead](#)

March 10, 2017

JobsOhio just published its [2016 annual report and 2017 strategic plan](#).

Results for 2016 included commitments from companies totaling 20,603 new jobs, representing \$994 million in new payroll, as well as 76,773 retained jobs, representing \$4.3 billion in payroll, and \$4.6 billion in new capital investment.

JobsOhio is a private, non-profit corporation with a mission to drive job creation and new capital investment in Ohio through business attraction, retention and expansion efforts. 3/9/2017

### [NAM Recognition Event for Rep. Latta is March 31](#)

March 10, 2017



On Friday, March 31, Cooper Tire & Rubber Co. and the National Association of Manufacturers (NAM) will honor Rep. [Bob Latta](#) (R-OH-05), a recipient of the NAM Award for Manufacturing Legislative Excellence.

The event will take place at the Hilton Garden Inn Findlay, 1050 Interstate Drive West, Findlay, OH 45840, from 8:00 a.m. – 9:30 a.m.

The NAM Award for Manufacturing Legislative Excellence recognizes Rep. Latta's exemplary voting record in the 114th Congress and his solid support for a strong manufacturing economy.

Northwest Ohio manufacturers are encouraged to attend. [Register here](#). 3/8/2017

## [NAM 2017 State of Manufacturing Tour Stops in Ohio](#)

March 3, 2017



This week, the National Association of Manufacturers (NAM) 2017 State of Manufacturing Tour made stops at Honda, Anheuser-Busch, and Worthington Industries in central Ohio.

The [2017 tour](#) also made stops in Austin, New York City, Detroit, Pittsburgh and Madison.

The purpose of the tour is to reignite the American imagination of what's achievable in modern manufacturing.

*Pictured: OMA president Eric Burkland and NAM CEO Jay Timmons checking out the Acura NSX at Honda*

## [Women in Manufacturing Honored](#)

March 3, 2017

This week [The Manufacturing Institute](#) announced 130 women to be honored with the Women in Manufacturing STEP (Science, Technology, Engineering and Production) Ahead Award. STEP Ahead works to promote women in manufacturing.

For the fifth year anniversary, the STEP Ahead theme is "IMPACT." STEP Ahead women all across the U.S. have made a pledge to promote the importance of women in manufacturing, and have made an impact on their companies and communities.

[Here are the honorees.](#) An OMA shout out to each and every one of them! *3/2/2017*

## [Ohio 2nd & 3rd in Site Selection's 2016 Governor's Cup Standings](#)

March 3, 2017

Site Selection magazine has just turned in the [2016 Governor's Cup results](#).

Texas Gov. Greg Abbott claimed a fifth consecutive Governor's Cup for *total qualified projects*, 642 in 2016. Texas' winning streak began when it wrested first place from Ohio in 2009. Including for its 515 projects in 2016, the Buckeye State has placed second in total projects ever since. Rounding out the top five in this category are Illinois (434), North Carolina (289) and Georgia (271).

Nebraska Gov. Pete Ricketts claimed a Site Selection Governor's Cup by virtue of his state having the most capital investment projects *per capita*, 101 projects for 2016. Rounding out the top five in the per capita category are Kentucky (227), Ohio (515), Louisiana (169) and Illinois (434).

The Governor's Cups reflect yearly project totals as tracked by the Conway Projects Database. Qualifying projects must meet one or more of these criteria for inclusion in the database: a minimum capital investment of \$1 million, 20 or more new jobs created, and 20,000 or more square feet of new space. *3/2/2017*

## [OMA Urges Prevention of Unsafe Used Tire Installation](#)

March 3, 2017

Members of the Ohio House Economic Development, Commerce and Labor Committee heard proponent testimony this week on [HB 42](#), which revises Ohio's deceptive trade practices act to strengthen civil and criminal penalties related to the installation of unsafe used tires.

The legislation, jointly sponsored by Reps. [Robert Sprague](#) (R-Findlay) and [Anthony DiVitis](#) (R-Akron), is supported by rubber and tire manufacturers.

Here is the proponent [testimony OMA offered](#). *3/2/2017*

## [NAM Kicks Off 2017 State of Manufacturing Tour](#)

February 24, 2017

Jay Timmons, President and CEO of the National Association of Manufacturers (NAM), will tour

manufacturing facilities across six states to “show the country the true story of modern manufacturing and the incredible, rewarding careers we offer.”

The [2017 State of Manufacturing Tour](#) tour was kicked off in Austin, Texas earlier this week. Tour stops in Ohio include Honda, Anheuser-Busch, and Worthington Industries on Monday, February 27. Other states on the tour include New York, Michigan, Pennsylvania and Wisconsin. *2/22/2017*

### [Ex-Im Bank Requires Functioning Board](#)

February 24, 2017

While the U.S. Export-Import Bank, which is an important “lender of last resort” for industry, secured a long-term reauthorization in December 2015, the bank still lacks a quorum for its board of directors, leaving the agency unable to review and approve transactions over \$10 million.

All five board seats are currently open and will need to be confirmed by the U.S. Senate. The National Association of Manufacturers (NAM) is urging President Trump to take action to support the thousands of manufacturers that turn to the Ex-Im Bank for financing and insurance when the private sector cannot provide comparable tools.

NAM will also be urging members of the Senate Banking Committee to move quickly on consideration of nominees when the president announces them.

NAM is interested in identifying local exporters who plan to grow U.S. jobs if they can secure Ex-Im Bank financing support and in gathering examples of transactions in the pipeline that require bank board approval to move forward. Contact NAM's [Amy Rawlings](#). [More from NAM](#). *2/22/2017*

### [On the Road Again: Governor Taking State of State to Sandusky](#)

February 17, 2017

In preparation for his annual State of the State address, Governor Kasich [sent a letter](#) to the General Assembly requesting a joint session in Sandusky at 7:00 p.m. on April 4, 2017 at the Sandusky State Theatre.

The [proposal to convene the General Assembly in Sandusky](#) marks the sixth year in a row that Kasich has asked to hold State of the State outside of the Ohio Statehouse. In previous years the governor has delivered his address in Steubenville, Lima, Medina, Wilmington and Marietta. *2/13/2017*

### [NAM Event will Honor Rep. Steve Stivers](#)

February 17, 2017



On Thursday, February 23, PPG and the National Association of Manufacturers (NAM) will honor Rep. Steve Stivers (R-OH-15) a recipient of the NAM Award for Manufacturing Legislative Excellence. The event will take place at the PPG facility located at 559 Pittsburgh Road Circleville, OH 43113-9436. The program will begin promptly at 2:15 p.m.

The NAM Award for Manufacturing Legislative Excellence recognizes Representative Stivers' exemplary voting record in the 114th Congress and his solid support for a strong manufacturing economy and a forward-thinking manufacturing agenda.

The meeting will also include an informal discussion of key issues. [Register here](#). *2/14/2017*

### [Favorable Employment Discrimination Bill Gets First Hearing](#)

February 17, 2017

House Bill 2, recently introduced by Rep. [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 while continuing to provide individuals avenues to assert state law discrimination violations.

In [sponsor testimony](#) Rep. Seitz said, “Ohio is currently at a competitive disadvantage with employment discrimination laws which are substantially dissimilar to their counterparts at the federal level. Drastically differing state and federal laws create an administrative burden for employers and human resource professionals. Shaping Ohio law to mirror federal law will create greater predictability in matters of workplace discrimination for both employers and employees.” *2/16/2017*

## [OMA Opposes County Regulation of Motor Vehicles](#)

February 17, 2017

The OMA this week expressed caution to the sponsor of legislation that would empower county governments to regulate motor vehicles. Senator [John Eklund](#) (R-Chardon) introduced [SB 30](#); he [testified that the law change is needed](#) to clarify a 1993 Supreme Court decision that took away local regulatory authority.

In a [joint letter with other business organizations](#), the OMA contends that the bill “will enable and encourage a patchwork of differing county-wide traffic regulations making it difficult, inefficient, and unsafe to move goods throughout the state of Ohio.” *2/16/2017*

## [Interns Available for Your Export Project](#)

February 17, 2017

The Ohio Development Services Agency is searching for companies that are interested in exporting products into international markets. The [Ohio Export Internship Program](#) matches businesses with highly-motivated college students who have taken export-focused coursework.

This year, 50 students from 12 different Ohio universities have been selected to participate in the program. The Ohio Development Services Agency offers participating small to medium-sized businesses a 50% reimbursement for the wages of the intern.

The deadline for companies to apply is March 1, 2017. The summer internship runs from May 16 through August 11, 2017. Ohio companies [can apply here](#). The program is a partnership among the Ohio Development Services Agency, The Ohio State University and Youngstown State University. *2/13/2017*

## [State Budget Bill Arrives](#)

February 10, 2017

A little more than week after the governor’s budget roll out and press conference, the State Operating Budget Bill was officially [introduced as HB 49](#). The bill, which funds state government for two years and proposes numerous and significant policy changes, clocked in at 3,512 pages.

Administration officials continued to testify at the House Finance Committee this week on a variety of

the proposals, including the always controversial primary and secondary education funding portions of the bill, as well as tax proposals that include lowering personal income tax, increasing the sales tax and centralizing municipal income tax collections.

- [Testimony of Timothy Keen](#), Director, Office of Budget & Management, on education funding
- [Testimony of Paulo DeMaria](#), Superintendent of Public Instruction, on education funding
- [Testimony of John Carey](#), Chancellor, Department of Higher Education, on education funding
- [Testimony of Joe Testa](#), Ohio Tax Commissioner, on tax proposals

Testimony and hearings will continue through June. The legislature and governor have a deadline of June 30 to pass and sign the bill. *2/9/2017*

## [Kasich Produces His Final Biennial Budget](#)

February 3, 2017

On Monday, Governor Kasich unveiled his final biennial budget. His FY18-19 budget proposes to spend \$71.5 billion in FY18, a 4.4% increase from FY17, and \$72.8 billion in FY19, a 1.8% increase from FY18. Budget director Tim Keen called it the “most difficult” budget he’s ever put together due to “significant uncertainties we have faced.”

The governor seeks an aggregate increase of \$3.1 billion over the two years in sales and other taxes to pay for a 17% cut in revenues generated by the personal income tax.

In K-12 education, Kasich plans to increase funding by nearly \$200 million over the two years, or about 1% per year. School districts will see small increases or be flat-funded. District breakdowns will be available later. Districts that have lost more than 5% of their student population from 2011 to 2016 would see less funding.

Kasich would freeze tuition and other fees at Ohio’s public colleges and universities for two years.

The governor’s budget proposal will be put into bill form and introduced by a House member (the chairman of the House Finance Committee). The Finance Committee began hearings this week with testimony from administration officials. *1/30/2017*

## [General Assembly Introduces Priority Bills](#)

February 3, 2017

The House and Senate this week introduced their top ten priority bills for the 132<sup>nd</sup> General Assembly. These will be the first of probably 1,000 bills introduced over the next two years. Only a small percentage will be enacted as law.

The House, which had previously announced its top priority as dating violence, introduced [House Bill 1](#) to authorize the issuance of dating violence protection orders and to provide access to domestic violence shelters for victims of dating violence. Here are [more House priorities](#).

The [Senate's priority bills](#) include [Senate Bill 1](#), which deals with the ongoing opioid epidemic.

Other priority bills of interest include [House Bill 2](#) which deals with employment; [Senate Bill 2](#), which deals with EPA issues, including a long sought after beneficial slag amendment; [Senate Bill 3](#) covers workforce development issues; and [Senate Bill 6](#) concerns bridge infrastructure.

Committee hearings are tentatively scheduled to begin in earnest next week. We'll keep you posted here and in OMA policy committee meetings on the bills of interest to manufacturers. *2/2/2017*

## [Senate Seats Committees](#)

February 3, 2017

Senate President Larry Obhof (R-Medina) this week announced the chamber's committee structure and assignments, combining a handful of panels to achieve a net reduction of three standing committees from the last legislative session.

For the most part, committee chairs from the 131st General Assembly retained their posts, while Sen. Bill Beagle (R-Tipp City) was named chair of the Public Utilities Committee and Sen. John Eklund (R-Chardon) was named chair of the Ways & Means Committee.

See the [committee structure and assignments](#). *1/31/2017*

## [Speaker Rosenberger Announces Committee Membership](#)

February 3, 2017

Speaker Cliff Rosenberger this week [announced the make-up](#) of the House committees, the result of months of jockeying by members to sit on favorite committees.

Manufacturers will be particularly interested in the Finance, Ways and Means, Civil Justice, Economic Development, Commerce and Labor, Education and Career Readiness, Energy and Natural Resources, Health, Higher Education and Workforce Development, Insurance, Public Utilities, and Transportation and Public Safety committees.

Lots of places for manufacturing engagement in the Ohio House of Representatives! *1/31/2017*

## [A Chief Innovation Officer for the State](#)

February 3, 2017

In his biennial budget proposal, Governor Kasich seeks a new position in state government, a chief innovation officer. The position would oversee a new Ohio Institute of Technology. This office would seek to align research from private and public entities with the state's business interests in engineering, aerospace, robotics and the biomedical industry. It would receive a budget of \$750,000 a year. *1/31/2017*

## [AG Visits OMA](#)

February 3, 2017



Attorney General Mike DeWine visited the OMA this week to discuss policy matters of importance to Ohio business.

Here he is pictured reading a plaque honoring the memory of Jim McGregor, a long-time OMA director, OMA past chairman, and friend of the general. *2/2/2017*

### [Business Coalition to President: Thanks for Focus on Infrastructure](#)

February 3, 2017

The OMA joined the National Association of Manufacturers and a broad business coalition in a [letter to President Trump](#) thanking him for his support for infrastructure investment.

The letter stated: "An infrastructure initiative led by your administration is a generational opportunity to end the cycle of uncertainty that has plagued America's infrastructure network and usher in a new era of stability and improvements we so desperately need.

"However, this will take leadership and bold, innovative solutions. It is critical that your infrastructure plan not only encourages greater participation from the private sector in infrastructure projects and reduces needless red tape, but also provides real revenue for the Highway Trust Fund that will help the users and beneficiaries of America's transportation and freight network. Private financing, while important and needed, cannot replace the role of public funding and federal leadership." *2/1/2017*

### [Schneider Downs Publishes Manufacturers' Economic Survey Results](#)

February 3, 2017

The manufacturing group of OMA Connections Partner, Schneider Downs, recently published results of its 2016 manufacturers' economic survey.

The survey was fielded prior to the November presidential election and found: "... 72% (of respondents) indicating that a Hillary Clinton victory would have a negative impact on their business, while 53% responded that a Trump victory would have a positive impact."

Here is a [summary of the results](#) with insights from the Schneider Down professional staff. *1/30/2017*

### [State Budget to be Unveiled Next Week](#)

January 27, 2017

Governor Kasich will unveil his final two-year state budget next week. Budget bills allocate state funds for public purposes but they also frequently become vehicles for revisions to taxes and other laws.

In prior budget bills, Governor Kasich had proposed modification to business taxes, frequently with the goal of personal income tax reductions.

Tune-in Monday, January 30, at 1:00 p.m. to [watch the press conference](#). Official budget documents will be housed on the [Ohio Office of Budget & Management website](#).

OMA will provide analyses of budget bill provisions that directly affect manufacturers.

The [OMA Tax Committee](#) will take a deep dive into the tax and expenditure provisions within the budget with invited policymakers when it meets on February 16. Also, the OMA [Government Affairs Committee](#) will provide a budget status and manufacturing advocacy game plan at its March 15 meeting.

[Register to attend OMA committee meetings](#) in person or by phone. *1/26/2017*

### [Yost Unveils Fiscal Health Tool for Ohio's Local Governments](#)

January 27, 2017

This week Ohio Auditor of State Dave Yost [released a new tool](#) to help cities and counties assess their financial health. It is intended to provide an early warning system to municipalities to facilitate early identification of financial problems.

The new tool generates "financial health indicators" for all 247 cities and 88 Ohio counties. The auditor's office developed 17 early warning signs by analyzing cities that eventually entered fiscal emergency.

You can search the fiscal health of your city and county on [the state auditor's website](#). *1/26/2017*

## [Ohio Invests in Smart Mobility Technologies](#)

January 27, 2017

Governor Kasich announced this week a focus on “smart mobility” in his upcoming budget, including support for the development in Ohio of autonomous and connected vehicles, and drones.

In the announcement, the governor’s office stated: “For more than a century, Ohio has been at the heart of transportation manufacturing, innovation and research. Those ties grow stronger with each passing year and the innovations developed here will continue to build on our state’s historic role as a world leader in transportation technology.”

[Read the governor’s release.](#) 1/26/2017

## [Maritime Industry Day at the Capitol](#)

January 27, 2017

Ohio’s maritime ports and Great Lakes shipping companies were joined by the OMA in a maritime industry day at the Statehouse this week. The goal of the activity was to inform legislators about the under-appreciated importance of Great Lakes shipping to the state’s economy.

Almost 40 million tons of cargo move through Ohio’s Lake Erie ports each year: iron ore, coal, grain, and other products. This commerce generates \$3 billion in business revenue, and supports more than 28,000 Ohio jobs. Over the past five years, the industry has invested more than \$130 million in Ohio’s maritime infrastructure. 1/26/2017

## [Medical Marijuana: Not Open for Business in Ohio](#)

January 27, 2017

OMA Connections Partner, Frantz Ward, [reminds us about the implementation process](#) for medical marijuana in Ohio: “HB 523 became “law” on September 28, 2016. Regulations for cultivators are set to be finalized by May 6, 2017. Regulations for physicians, testing laboratories, processors, patients, caregivers, employees, and dispensaries are scheduled to be finalized on September 8, 2017.”

Per Frantz Ward: “Ohio has enacted a law that set forth a process that will make medical marijuana legal, but the details of that legalization are being phased in over a two-year period. This seems to have

resulted in marijuana being recommended and dispensed to, and consumed by, citizens of the State of Ohio before these practices are lawful. We are not aware of any criminal prosecutions arising out of this situation, however, and we do know that individuals are acting as if they believe it is legal to consume medical marijuana in Ohio. We would say it is not.” 1/25/2017

## [Thank You for Your Feedback](#)

January 27, 2017

We send all members a quick annual survey to understand the services you value and where we might improve service.

We really appreciate your responses. Our whole staff and the OMA board of directors see the results.

In 2016, our overall satisfaction score from our manufacturing members was 3.54 out of a possible 4.0; our associate members scored us 3.57 out of 4.0 last year.

One example of a change we made as a result of your input was that we held two of our policy committee meetings outside of Columbus last year – specifically in Canton and Cleveland – because you asked for more regional opportunities. It was a small step, but it was in direct response to you. We continue to look for ways to improve service and services based on your feedback.

To each of our members, thank you! 1/26/2017

## [NAM Reports the Extent of Regulatory Burden on Manufacturers](#)

January 20, 2017

As the incoming Trump administration prepares to roll back misguided federal regulations, the National Association of Manufacturers (NAM) has released a new study revealing the number of business and operational hurdles that manufacturers face on a daily basis as a result of the nation’s current regulatory structure.

The study, called “Holding Us Back: Regulation of the U.S. Manufacturing Sector,” is based on extensive interviews, a survey of the NAM membership and an analysis of hundreds of specific federal regulations.

Key findings include:

- Manufacturers face 297,696 restrictions on their operations from federal regulations.
- Eighty-seven percent of manufacturers surveyed say that if compliance costs were reduced permanently and significantly, they would invest the savings on hiring, increased salaries and wages, more R&D or capital replacement.
- Ninety-four percent of manufacturers surveyed say the regulatory burden has gotten higher in the last 5 years, with 72% saying “significantly higher.”

Read [more from NAM here](#). 1/18/2017

### [Senate Recommends Wilson to Replace Jones in 7th District](#)

January 20, 2017

This week the Ohio Senate announced the [recommendation of its screening committee](#) to appoint Steve Wilson to the vacant 7th district seat. Sen. Shannon Jones resigned the seat to become a Warren County commissioner. The district includes all of Warren and part of Hamilton and Butler counties.

Wilson is the former chief executive and current chairman of LCNB Corp. and LCNB National Bank. He serves on the board of trustees of his alma mater, Miami University, Oxford, and is vice chair of the Warren County Port Authority. He is a past chair of the American Bankers Association and the Ohio Bankers Association, former board member of the Federal Reserve Bank of Cleveland, as well as a former Naval Officer. He and his wife, Jill, reside in Maineville.

The 24-member Senate Republican caucus is responsible for appointing a temporary replacement to the seat. The caucus plans to meet by the end of January to accept the screening committee’s recommendation and seat the new member. 1/19/2017

### [Cuban Trade Mission Coming Up this Summer](#)

January 20, 2017

A delegation of Ohio business, trade associations, and elected officials will embark on a trade mission to Havana, Cuba this summer.

The Ohio delegation will focus on business opportunities in health care, higher education, agriculture, infrastructure, energy and alternative energy and exports of manufactured and consumer goods.

The itinerary will include meetings with U.S. Embassy officials, touring the Port of Mariel and special economic development zones, meetings with foreign ambassadors, Cuban entrepreneurs, and relevant Cuban ministries overseeing business sectors.

The delegation will be accompanied by Ohio-Cuba expert and attorney Luis Alcalde of Kegler Brown Hill + Ritter. Luis, a graduate of The Ohio State University, has spent years working on U.S. – Cuba legal and business relations and is a member of the [Engage Cuba Ohio Council](#).

If you have an interest in the trade mission, contact Luis Alcalde, Kegler Brown Hill + Ritter, at (614) 462-5480. 1/19/2017

### [Speaker Rosenberger Announces House Committee Leadership](#)

January 13, 2017

This week Speaker Cliff Rosenberger (R-Clarksville) [announced](#) House chairs and vice chairs for the chamber’s committees and subcommittees.

Of particular note, Rep. Ryan Smith (R-Bidwell) will continue to serve as chairman of the House Finance Committee for the 132nd General Assembly, after previously serving as chair in the 131st General Assembly.

The House Finance Committee is tasked with passing the state operating budget proposal, which will be unveiled by Governor John Kasich later this month.

Rep. Smith is serving his third term as representative of the 93rd House District, which includes Gallia and Jackson counties along with parts of Lawrence and Vinton counties.

Speaker Rosenberger also announced that Rep. Scott Ryan (R-Granville Township) will be appointed vice chair of the House Finance Committee. He is currently serving his second term as representative of the 71st House District.

Other chairs of committees of importance to manufacturers:

Economic Development, Commerce & Labor, Chair: Rep. Ron Young (R-Leroy Township), Vice chair: Rep. Anthony DeVitis (R-Green)

Education & Career Readiness, Chair: Rep. Andrew Brenner (R-Powell), Vice chair: Rep. Marilyn Slaby (R-Copley)

Energy & Natural Resources, Chair: Rep. Al Landis (R-Dover), Vice chair: Rep. Christina Hagan (R-Alliance)

Higher Education & Workforce Development, Chair: Rep. Mike Duffey (R-Worthington), Vice chair: Rep. Niraj Antani (R-Miamisburg)

Public Utilities, Chair: Rep. Bill Seitz (R-Cincinnati), Vice chair: Rep. Rick Carfagna (R-Genoa Township)

Transportation & Public Safety, Chair: Rep. Doug Green (R-Mt. Orab), Vice chair: Rep. Dave Greenspan (R-Westlake)

Ways & Means, Chair: Rep. Tim Schaffer (R-Lancaster), Vice chair: Rep. Gary Scherer (R-Circleville)

Full committee membership is expected to be announced later this month. 1/12/2017

### [Ohio Manufacturers See Progress on Unfair Dumping](#)

January 13, 2017

The United States International Trade Commission (USITC) [this week determined](#) “that a U.S. industry is materially injured by reason of imports of large residential washers from China that the U.S. Department of Commerce (Commerce) has determined are sold in the U.S. at less than fair value.”

All six Commissioners voted in the affirmative.

As a result of the USITC’s affirmative determinations, Commerce will issue an antidumping duty order on imports of these products from China.

Whirlpool [commended the decision](#): “Today the U.S. International Trade Commission unanimously ruled that Samsung and LG caused injury to the U.S. appliance industry by selling their China-produced washing machines in the U.S. for less than they cost to make.”

U.S. Senators Sherrod Brown (D-OH) and Rob Portman (R-OH), staunch advocates for fair trade, [applauded the USITC ruling](#).

Also this week, U.S. Senators Brown and Portman [recognized action](#) by the U.S. Trade Representative to launch a World Trade Organization case to crack down on China’s aluminum trade violations. 1/12/2017

### [132nd General Assembly Sworn In](#)

January 6, 2017

The members of the 132<sup>nd</sup> General Assembly were sworn in Tuesday at the Statehouse. New Senate President [Larry Obhof](#) (R-Medina) and returning Speaker [Cliff Rosenberger](#) (R-Clarksville) will be leading record-setting majority Republican caucuses over the next two years.

In speeches accepting their leadership posts, the lawmakers outlined their priorities. Senate President Obhof [expressed a desire](#) to reduce the number of regulations burdening Ohioans as well as an interest in cutting Ohio income taxes and reducing the number of Ohio income tax brackets. Speaker Rosenberger [said his priorities](#) include House Bill 1 which extends protection orders to victims of dating violence, improving Ohio’s education system, creating a standing committee on long term care, continuing the battle against addiction, and ensuring energy policies are market-based.

The General Assembly will go to work on the governor’s budget proposal in early February. 1/5/2017

### [OMA Policy Committees Ready to Take on 2017](#)

January 6, 2017

The community of manufacturers working together is the strength of the OMA.

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

[Read more about policy committees and see all 2017 in-person/call-in meeting dates.](#)

Manage your committee involvement at [My OMA](#) (click on My Communities tab).

Register for committee meetings at [My OMA](#) (click on Events in top navigation).

Thank you for your involvement in the OMA! 1/3/2017

### [Asbestos Injury Standard at Stake in Turner v. Union Carbide Corp.](#)

January 6, 2017

The OMA led an [amicus appearance](#) before the Supreme Court of Ohio to defend an important component of Ohio's asbestos injury law. At issue in the dispute against Union Carbide Corp. is whether a written health assessment by a competent medical authority is required in asbestos injury cases.

In a jurisdictional brief authored by OMA counsel [Anne Marie Sferra](#) of Bricker & Eckler, the OMA asks the court to consider an appeal of the 8th District Court of Appeals (Cleveland) citing House Bill 292, a comprehensive asbestos litigation bill, enacted in 2004 "that allowed claimants who have shown actual injury from asbestos exposure to pursue their claims while deferring the claims of those who have not, thereby preserving available resources for those who are actually sick from exposure to asbestos."

"The OMA worked hard to require written medical proof to establish injury from actual asbestos exposure, and we now ask Ohio's high court to preserve this important standard," commented OMA's Ryan Augsburger. 1/5/2017

### [Manufacturers' Post-Market Duty Clarified in Linert v. Ford Motor](#)

January 6, 2017

On December 29, the Supreme Court of Ohio [released its decision](#) in the case, *Linert v. Ford Motor Company*, ruling in favor of Ford and reversing the Ohio 12<sup>th</sup> District Court of Appeals (Middletown). The OMA together with other state and national groups filed an amicus brief in support of Ford. In the lengthy decision authored by Chief Justice Maureen O'Connor, the court held that the trial court properly refused to instruct the jury on the manufacturer's post-market duty to warn the consumer.

Justices O'Donnell, Lanzinger, Kennedy and French concurred; Justices Pfeifer and O'Neill dissented.

"The case addressed a manufacturer's post-market duty to warn consumers of product defects that come to the manufacturer's attention post-sale. The Ohio Supreme Court ruled that the duty did not apply in the

factual setting of the *Linert* case and that the trial court was correct in not instructing the jury on the issue. The decision is welcome news for Ford, and also creates a helpful law on the issue in Ohio," commented attorney [Chad Readler](#), Partner, Jones Day, who co-authored OMA's amicus brief. 1/5/2017

### [Southeast/Eastern Ohio Manufacturers Invited to Discuss Engineering Skill Needs](#)

January 6, 2017

The [Ohio Manufacturing Institute](#) (OMI) invites area manufacturers to participate in a focus group about skills needed for engineering technologists at all levels. Findings and recommendations will be presented to policymakers to support Ohio manufacturers.

OMI has conducted several focus groups throughout the state and is scheduling its next one on Thursday, January 19, 9:30-11:00 a.m., at Zane State – Cambridge.

Please contact [Kathryn Kelley](#), OMI managing director at (614) 688-4116 if you're interested in participating or learning more. 1/5/2017

### [Our Holiday Best to You](#)

December 22, 2016

Best wishes for a safe & peaceful holiday season from your OMA staff. *Leadership Briefing* will be back on January 6, 2017. Our office is closed on Friday, December 23 and will remain closed until we return to serve you on Monday, January 2.

### [Governor Signs Gun Bill](#)

December 22, 2016

This week, Governor Kasich signed Senate Bill 199, a controversial gun bill that expands Ohio's concealed carry laws. Under Senate Bill 199, public and private employers, business entities and property owners may not prohibit individuals with concealed carry licenses from transporting or storing firearms in their privately-owned vehicles.

Employers and business entities can continue to prohibit all individuals from carrying firearms or other weapons inside their buildings. Similarly, employers can prohibit employees from storing or carrying firearms inside company-owned or leased vehicles.

Senate Bill 199 also eliminates Ohio's current ban on carrying concealed firearms in daycare centers, aircraft and public areas of airport terminals before security checkpoints. The bill gives public and private colleges and universities the option to allow concealed carry firearms on campus and also gives the state and political subdivisions the ability to enact laws that would allow concealed carry firearms in certain government facilities.

Additionally, under the new law, active duty members of the U.S. Armed Forces do not need a concealed carry license to carry a firearm if the member is carrying valid military identification and documentation of successful completion of specified firearms training.

Employers should plan to review any policies impacted by the new law, which will take effect March 19, 2017. OMA opposed the bill. We recognize OMA counsel, Bricker & Eckler, [for its legal work](#) on the matter. 12/20/2016

## [132nd Ohio General Assembly to be Sworn in on Jan. 3, 2017 – Leaders Set Schedules](#)

December 22, 2016

Speaker of the Ohio House Clifford A. Rosenberger (R-Clarksville) announced the House legislative session schedule for the first half of 2017. Generally speaking, House session will be held Tuesdays at 11:00 a.m., Wednesdays at 1:30 p.m., and Thursdays at 1:00 p.m. Here's [the House calendar](#). Dates are subject to change.

The Senate's [session schedule for the first half of 2017](#) calls for the chamber to gradually increase its number of session days through June, when lawmakers are expected to finalize Gov. John Kasich's final biennial budget proposal.

Sen. Larry Obhof (R-Medina), who will become the president of the Senate in January, announced the chamber's first-half session schedule. The calendar calls for up to three session days in January, four days in February, nine in March, four in April, seven in May and twelve in June. The calendar also includes a number of committee hearing days. Sen. Obhof also scheduled three if-needed session days for mid-July.

Here's [a combined schedule](#). 12/20/2016

## Miscellaneous Legislation of Interest to Manufacturers

Prepared by: The Ohio Manufacturers' Association  
Report created on March 13, 2017

- HB5**      **MICROBUSINESS STATUTORY DEFINITION** (PELANDA D, GAVARONE T) To create a statutory definition of "microbusiness."  
*Current Status:* 3/1/2017 - **PASSED BY HOUSE**; Vote 96-0  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-5>
- HB20**      **COMPENSATORY DAMAGES CAP REMOVAL** (GONZALES A, BOGGS K) To remove the cap on the amount of compensatory damages that represents damages for noneconomic loss that is recoverable in a tort action when the tort action is brought by a victim of rape, felonious assault, aggravated assault, assault, or negligent assault.  
*Current Status:* 2/8/2017 - Referred to Committee House Government Accountability and Oversight  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-20>
- HB23**      **ALCOHOLIC ICE CREAM SALE** (PATTERSON J, BOGGS K) To allow A-4 liquor permit holders to manufacture and sell ice cream containing between one-half of one per cent and six per cent of alcohol by volume.  
*Current Status:* 2/8/2017 - Referred to Committee House Government Accountability and Oversight  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-23>
- HB26**      **TRANSPORTATION-PUBLIC SAFETY BUDGET** (MCCOLLEY R) To make appropriations for programs related to transportation and public safety for the biennium beginning July 1, 2017, and ending June 30, 2019, and to provide authorization and conditions for the operation of those programs.  
*Current Status:* 3/15/2017 - Senate Transportation, Commerce and Workforce, (Fifth Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-26>
- HB42**      **VEHICLE TIRE SAFETY** (SPRAGUE R, DEVITIS A) To prohibit the installation of unsafe used tires on certain motor vehicles.  
*Current Status:* 3/14/2017 - House Economic Development, Commerce and Labor, (Fourth Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-42>
- HB51**      **DEPARTMENT REVIEW SCHEDULE** (FABER K) To require standing committees of the General Assembly to establish a schedule for the periodic review and sunset of state departments that are currently in the Governor's cabinet, and to require that Auditor of State performance audits be scheduled to coincide with the periodic review.  
*Current Status:* 2/28/2017 - House State and Local Government, (Third Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-51>
- HB53**      **PUBLIC EMPLOYEES-MEMBER DUES** (BECKER J) To remove any requirement under the Public Employees Collective Bargaining Law that public employees join or pay dues to

any employee organization, to prohibit public employers from requiring public employees to join or pay dues to any employee organization, to prohibit an employee organization from being required to represent public employees who are not members of the employee organization, and to make an appropriation.

**Current Status:** 2/14/2017 - Referred to Committee House Finance

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-53>

**HB57 DOMESTIC STEEL REQUIREMENTS (BOCCIERI J, RAMOS D)** To require the use of domestic steel in construction, repair, or improvement projects involving certain buildings used by public schools, state institutions of higher education, and specified private colleges.

**Current Status:** 2/21/2017 - Referred to Committee House Economic Development, Commerce and Labor

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-57>

**SB6 OHIO BRIDGE PARTNERSHIP PROGRAM (HOAGLAND F)** To extend the Ohio Bridge Partnership Program through the end of fiscal year 2019 and to require the Director of Transportation to submit a report to the Governor, Senate, and House of Representatives recommending ways to continue to fund the program.

**Current Status:** 3/15/2017 - Senate Transportation, Commerce and Workforce, (Third Hearing)

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-6>

**SB30 VEHICLE RESOLUTIONS BY COUNTIES (EKLUND J)** To authorize counties to adopt resolutions regulating motor vehicle traffic on county and township roads.

**Current Status:** 2/14/2017 - Senate Local Government, Public Safety and Veterans Affairs, (First Hearing)

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-30>

**SB43 TOWNSHIP BUILDING CODES (BACON K)** To enable limited home rule townships to adopt building codes regardless of any similar codes adopted by the county in which the township resides.

**Current Status:** 3/7/2017 - Senate Local Government, Public Safety and Veterans Affairs, (First Hearing)

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-43>

**SB51 LAKE ERIE IMPROVEMENT DISTRICT (SKINDELL M, EKLUND J)** To authorize the creation of a special improvement district to facilitate Lake Erie shoreline improvement.

**Current Status:** 3/1/2017 - Senate Energy and Natural Resources, (First Hearing)

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-51>

**SB68 UNSAFE USED TIRES PROHIBITION (LAROSE F, HITE C)** To prohibit the installation of unsafe used tires on certain motor vehicles.

**Current Status:** 3/7/2017 - Senate Local Government, Public Safety and Veterans Affairs, (First Hearing)

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation->

[summary?id=GA132-SB-68](#)

**SB72**      **PREVAILING WAGE LAW (HUFFMAN M)** To allow political subdivisions, special districts, and state institutions of higher education to elect to apply the Prevailing Wage Law to public improvement projects.

**Current Status:** 3/7/2017 - Referred to Committee Senate Finance

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-72>

**SB79**      **STATE DEPARTMENTAL REVIEW SCHEDULE (JORDAN K)** To require standing committees of the General Assembly to establish a schedule for the periodic review and sunset of state departments that are currently in the Governor's cabinet, and to require that Auditor of State performance audits be scheduled to coincide with the periodic review.

**Current Status:** 3/15/2017 - Senate Government Oversight and Reform, (First Hearing)

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-79>

**SJR3**      **STATE CONGRESSIONAL REDISTRICTING (LAROSE F)** Proposing to amend the versions of Sections 1, 2, 3, 4, 6, 8, and 9 of Article XI that are scheduled to take effect January 1, 2021; to amend, for the purpose of adopting new section numbers as indicated in parentheses, the versions of Sections 1(2), 2(3), 3(5), 4(6), 5(7), 6(8), 7(9), 8(10), 9(11), and 10(12) of Article XI that are scheduled to take effect January 1, 2021; and to enact new Sections 1 and 4 of Article XI of the Constitution of the State of Ohio to revise the redistricting process for congressional districts.

**Current Status:** 3/7/2017 - Referred to Committee Senate Government Oversight and Reform

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SJR-3>



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## MEMORANDUM

TO: Ohio Manufacturers' Association  
Government Affairs Committee  
FROM: Bricker & Eckler LLP  
DATE: March 15, 2017  
RE: March 2017 OMA Government Affairs Committee Meeting

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### I. March 2017 Government Affairs Committee Counsel Report.

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

### II. Statewide Ballot Issues.

Overview – November 2017 Election Statewide Ballot Issues: As of March 2017, there is only one statewide ballot issue certified to the November 7, 2017 ballot. The Ohio Drug Price Relief Act (“ODPRA”) is the issue on which the OMA engaged in affirmative protest and litigation in the Ohio Supreme Court to uphold Ohio signature gathering and ballot access laws. Given the success of that litigation, the significant irregularities and unlawful activities by the proponents, and time itself, the ODPRA is now poised for the 2017 ballot (*see additional details below*).

Ohio Drug Price Relief Act: The Ohio Drug Price Relief Act is an initiated statute originally proposed for the 2016 ballot to 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 net 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 headed by controversial activist Michael Weinstein.

Please find a more detailed overview of the status of the Ohio Drug Price Relief Act and accompanying documents attached to this report.

Marsy's Law: Marsy's Law is a constitutional amendment proposal to strengthen Ohio's crime victim rights laws. Under Marsy's Law, victims or their families would have to be notified of any change in the status of the person accused of the crime. Victims and family members would also have the right to receive reasonable protection from the accused or any person acting on his or her behalf. In February, the supporters of Marsy's Law began collecting the hundreds of thousands of signatures necessary to put the measure before voters on the November 7, 2017 ballot. The supporters must

OMA Government Affairs Committee – Counsel Report

March 15, 2017

Page 2 of 11

collect at least 305,591 signatures of registered Ohio voters. Marsy's Law has successfully passed in California, Illinois, North Dakota and Montana. The Ohio Ballot Board has determined that the proposal constitutes a single issue.

Medical Marijuana: The Cleveland Plain Dealer published an article on March 9, 2017 reporting that there is support to put a measure on the November ballot to enshrine the right to use medical marijuana and grow industrial hemp in Ohio's Constitution despite the fact that medical marijuana is already legal in Ohio.

The constitutional amendment is called the Medicinal Cannabis and Industrial Hemp Amendment and would insert constitutional language to make sure that Ohio patients have access to marijuana and solidify the argument that marijuana is a states' rights issue. The supporters are trying to ramp up efforts to qualify the amendments for the November 7, 2017 ballot.

The amendment would grant Ohio adults the right to grow, use, process, and gift marijuana for medicinal purposes, and allow Ohioans to grow, process and sell industrial hemp for paper, clothing and all other legal purposes. The constitutional amendment would also require a "fair and transparent" process for awarding medical marijuana and hemp business licenses and invalidate use of blood and urine tests measuring cannabis metabolites and requires impairment be determined by other methods.

The amendment does not set limits on how many businesses could grow or sell cannabis or hemp but would allow the state to regulate the industry.

### III. H.B. 49 2018-2019 Operating Budget.

Governor Kasich revealed his administration's final budget proposal on January 30, 2017. Director of the Ohio Office of Budget and Management provided testimony to the House Finance committee on the Governor's proposed budget on February 7, 2018. H.B. 49 which contains the budget language was introduced in the House on February 8, 2017. Tax Commissioner Joe Testa gave testimony on the proposed budget's tax provisions to the House Finance Committee on February 9, 2017. H.B. 49 remains in the House Finance Committee. H.B. 49 will make its way through the House over the next two months. The Senate will likely receive the House version of H.B. 49 in early May.

### IV. Pending Legislation (2017-2018).

In addition to working on H.B. 49, the 132nd General Assembly has continued to introduce legislation of interest to the OMA. Below is a brief summary of recently introduced legislation Bricker & Eckler is tracking on behalf of the OMA.

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H.B. 2 – Civil Rights Laws: Representative Bill Seitz (R-Cincinnati) sponsored H.B. 2. The bill was introduced in the House on February 1, 2017 and referred to the House Economic Development, Commerce & Labor Committee. H.B. 2 has had four committee hearings. This bill modifies Ohio’s civil laws in a number of different ways. The OMA, Ohio Alliance for Civil Justice, Ohio Chamber of Commerce and NFIB submitted written proponent testimony to the House Economic Development, Commerce & Labor Committee. The Ohio Alliance for Civil Justice’s written proponent testimony is attached to this report for the Government Affairs Committee’s review.

The bill will promote a standardized way of handling discrimination claims, thus promoting consistency and predictability. H.B. 2 will limit forum shopping in litigation. This bill also standardizes the claims of potential age discrimination plaintiffs who currently only have six months to file claims. H.B. 2 creates an affirmative defense for employers who can demonstrate that they had an internal mechanism to redress complaints but that the complaint failed, without good reason, to avail him or herself of it.

H.B. 26 – Transportation Budget: This bill will make appropriations for programs related to transportation and public safety for the biennium beginning July 1, 2017 and ending June 30, 2019. H.B. 26 also provides the authorization and conditions for the operation of those programs. The bill is sponsored by Representative Rob McColley (R-Napoleon) and was introduced in the House on February 1, 2017. The bill had 10 hearings in the House Finance Committee. H.B. 26 passed in House on March 1, 2017 by a (83-13) vote. The bill has had three hearings in the Senate Transportation, Commerce, & Workforce Committee.

H.B. 27 – Bureau of Workers’ Compensation Budget: The Bureau of Workers’ Compensation Budget makes appropriations for the Bureau of Workers’ Compensation for the biennium beginning on July 1, 2017. The bill also provides authorization and conditions for the operation of the Bureau of Workers’ Compensation’s programs. Thus far, the bill has had three hearings in the House Insurance Committee which is chaired by Representative Tom Brinkman (R-Mt. Lookout). The spending plan totals \$566.5 million for the biennium, which is a small change from the previous budget.

Although H.B. 27 does not contain any major policy change, it does contain some alterations. The bill will speed up the process for those workers deemed eligible for temporary total disability to receive their compensation faster. Additionally, H.B. 27 allows the Bureau to dismiss an application when the Bureau is unable to schedule an appointment for an injured worker who failed to attend an appointment without notice or reason or if the injured worker misses two appointments with no notice.

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H.B. 28 – Industrial Commission Budget: The bill makes appropriations for the Industrial Commission for the biennium beginning on July 1, 2017 and provides authorization and conditions for the operation of the Commission’s programs. H.B. 28 is in the House Insurance Committee and has had two hearings. Chairman of the Industrial Commission Tim Bainbridge testified that the budget is 1.3% less than in the previous biennial budget. The total request is for \$103.6 million. The Industrial Commission is not supported by general revenue funds, but by a surcharge on employers’ workers’ compensation coverage.

H.B. 86 – Minimum Wage: This bill is sponsored by Representatives K. Smith (D-Euclid) and Craig (D-Columbus). This bill was introduced in the House on February 22, 2017. It was referred to the Economic Development, Commerce & Labor Committee. The bill has received no hearings. H.B. 86 would increase the state minimum wage to ten dollars and ten cents per hour beginning January 1, 2019.

H.B. 99 – Pneumoconiosis Claims: The bill is sponsored by Representative Jack Cera (D-Bellaire) and would modify workers’ compensation benefit amounts for occupational pneumoconiosis claims and would create the Occupational Pneumoconiosis Board to determine medical findings for such claims. It was introduced in the House on February 28, 2017 and was referred to the House Insurance Committee.

S.B. 14 – Domestic Workers: Senator Charletta Tavares (D-Lakewood) is the bill’s sponsor. The bill would require domestic workers be paid the higher of the minimum wage provided in Section 34a of Article II, Ohio Constitution, or the minimum wage provided in the Fair Labor Standards Act. S.B. 14 would also require that domestic workers be paid overtime wages and would make certain conduct directed toward a domestic worker an unlawful discriminatory practice. The bill would also require a weekly day of rest for domestic workers. S.B. 14 was introduced in the Senate on January 31, 2017 and was referred to the Transportation, Commerce & Workforce Committee.

S.B. 76 – Trespassing Notices: Senator Bill Coley (R-Middletown) introduced this bill in the Senate on February 27, 2017 by Senator Coley. The bill would amend the law governing criminal trespass to specify that placing purple paint marks on trees or posts constitutes posting notice in a manner reasonably calculated to come to the attention of potential intruders. The bill was referred to the Senate Judiciary Committee and has had one hearing on March 7, 2017.

S.B. 30 – Vehicle Traffic: Senator John Eklund (R-Cleveland) sponsored this bill. It was introduced in the Senate on February 6, 2017. S.B. 30 would authorize counties to adopt resolutions regulating motor vehicle traffic on county and township roads. The bill was referred to the Senate Local Government, Public Safety & Veterans Affairs Committee and has had one hearing on February 14, 2017.

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V. 2018 Statewide Political Update.

Many 2018 statewide candidates on both sides of the aisle have announced their candidacy. However, several rumored candidates have not yet announced their candidacy. Please find an overview of those candidates who have announced and those who are still rumored to announce their candidacy for the 2018 statewide election below.

U.S. Senate: Current Ohio Treasurer Josh Mandel has announced his candidacy for U.S. Senate. Mandel will be running against incumbent U.S. Senator Sherrod Brown. There have been rumors than current Ohio State Senator Matt Huffman, current Governor Josh Kasich, current U.S. Congressman Jim Renacci and current U.S. Congressman Pat Tiberi may also run for U.S. Senate in 2018. Additionally, former Ohio Treasurer and Secretary of State Ken Blackwell recently formed a new political action committee and Super PAC to explore a possible campaign for US Senate or Governor.

As for the Democrats, U.S. Senator Sherrod Brown will be running for reelection. Senator Brown has held that seat for 10 years.

Governor: On the Republican side, current Lt. Governor Mary Taylor announced that she is running for Governor of Ohio. Those Republicans rumored to run for Governor are current Attorney General Mike DeWine, current Secretary of State Jon Husted, and U.S. Congressman Jim Renacci.

On the Democratic side, both current Ohio Senate Minority Leader Joe Schiavoni; former Ohio State Representative, Connie Pillich; and former U.S. Congresswoman Betty Sutton have announced that they will run for Governor in 2018. Other rumored potential candidates are current director of the Consumer Financial Protection Bureau, Richard Cordray, former Mayor of Youngstown Jay Williams, Ohio Supreme Court Justice Bill O'Neill; current Hamilton County Commissioner, Todd Portune; former Ohio Secretary of State and current Tenth District Court of Appeals Judge Jennifer Brunner; former Mayor of Cincinnati, Jerry Springer; current Mayor of Dayton, Nan Whaley; and current Mayor of Cincinnati, John Cranley.

Secretary of State: Current Ohio State Representative Dorothy Pelanda has announced that she is running for Secretary of State. Current Ohio State Senator Frank LaRose will likely announce his candidacy for Secretary of State soon.

For the Democrats, current Ohio State Representatives Kathleen Clyde and Alicia Reece are rumored to run for Secretary of State

Attorney General: Current Ohio State Auditor David Yost announced that he will run to become the Ohio Attorney General in 2018.

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Former U.S. District Attorney Steve Dettelbach and Athens County Prosecutor Keller Blackburn are rumored Democrats to run for Ohio Attorney General.

Auditor: Current Ohio State Representative Keith Faber, who was previously the President of the Ohio Senate during the last General Assembly, has announced that he is running for Ohio State Auditor.

Democratic Lorain Mayor Chase Ritenauer is considering a run for Ohio Auditor.

Treasurer: Current Representative Robert Sprague announced recently that he is running for Ohio State Treasurer. Current Franklin County Auditor Clarence Mingo is rumored to also run for this position.

David Leland, a current democratic Ohio State Representative, is rumored to run for Ohio Treasurer.

Supreme Court: Currently none of the rumored Republican candidates for Supreme Court have announced their candidacy yet. However, Judge Craig Baldwin of the Fifth District Court of Appeals has been unofficially campaigning frequently. Also rumored to run for the Supreme Court are Fourth District Court of Appeals Judge Matt McFarland, Seventh District Court of Appeals Judge Mary DeGenaro and attorney Doug Cole. It is also expected that Judge Colleen O'Toole, who ran in an unsuccessful primary against Justice Pat Fischer in 2016, will again seek the Ohio Republican Party endorsement and campaign for Ohio Supreme Court in 2018.

Democrat, John O'Donnell who was unsuccessful in 2016 at gaining a seat on the Ohio Supreme Court will likely try again in 2018. Former Ohio Secretary of State and current Tenth District Court of Appeals Judge Jennifer Brunner is also rumored to run for the Ohio Supreme Court.

#### VI. 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 is scheduled to wrap up its work by January 1, 2018.

During the Commission’s March 2017 meeting, several recommendations were approved. The Commission unanimously, except for one new member abstaining, voted to approve all no-change recommendations for provisions concerning: loans for high education (Article VI, Section 5), the tuition credits program (Article VI, Section 6), and additional authorization of debt obligations (Article VIII, Sections 2I-2s).

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Bill of Rights & Voting Committee: During its February 2017 meeting, this Committee unanimously adopted the recommendation to insert the word “secret” into Article V, Section 2 of the Ohio Constitution. However during the Committee’s March 2017 meeting, this decision was reversed. The Committee also approved a no-change recommendation for Article V, Section 2a, which pertains to the appearance of names of candidates on the ballot.

Constitutional Revision & Updating Committee: The Constitutional Revision & Updating Committee spent its March and May 2016 meeting continuing its discussion to change the initiated statute process to eliminate the supplemental signature gathering portion of the initiated statute process as well as 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 has asked the Legislative Service Commission for help drafting the language that will be voted on and then possibly sent to the entire Commission. Members of the Committee continued the discussion of the Committee’s working session from the spring meetings regarding draft language during the Committee’s October and November 2016 meetings.

This Committee met in January and March 2017. The members of the Committee are planning to have a final draft of their proposal to reform the constitutional and statutory amendment process ready for the Committee’s April 2017 meeting. The current proposal would shift the ballot language writing process to the beginning of the timeline to spare petitioners time and money and reduce the potential for politically motivated decisions by the Ballot Board in crafting the ballot language. The Committee’s goal in making these changes, if adopted by the OCMC, the General Assembly and ultimately voters, is to push citizens to pursue the initiated statute route rather than pushing for a constitutional amendment. The current draft of the proposal regarding the constitutional amendment process would require petitioners to submit a petition signed by 1,000 electors to the secretary of state any time after the last day of May in an odd-numbered year and before the first day of June the following year.

Legislative Branch & Executive Branch Committee: The Legislative Branch & Executive Branch Committee continues to work on a reform proposal to Ohio’s congressional redistricting plan. A subcommittee was formed to take the 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) and reach a bipartisan compromise that could be approved by the Committee and sent to the Commission. However, it appears that the subcommittee has come to an impasse. The sticking point seems to be the issue of how many split counties or split political subdivisions would be allowable on a given map.

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The Committee met in February but lacked a quorum, leading members to agree to postpone discussion and a first reading of a draft report on Article II, Section 12-16, 26 and 28, which pertain to enacting laws. There were discussions and presentation of research regarding expanding legislative privilege to staff members of the General Assembly and how other states have handled this issue.

Finance, Taxation, and Economic Development Committee: The Finance, Taxation, and Economic Development Committee voted in their most recent meeting to present to the Commission a proposal that would eliminate reference to the “Sinking Fund.” The fund was originally created to oversee the retirement of canal and railroad debt and the Committee believes that the 1851 fund is now obsolete. The Committee’s proposal would keep the legislature’s debt limit at the current \$750,000, though there was suggestion to raise that ceiling given the increase in size of the State’s budget since 1851. At the Commission meeting held on September 8, 2016, the Commission moved to adopt the report and recommendation by Commission member Patrick F. Fischer and the Commission concluded that Article VIII, Sections 7, 8, 9, 10, and 11 should be repealed. The Commission also voted to adopt the report and recommendations for Article VIII, Sections 2b, 2c, 2d, 2e, 2f, 2g, 2h, 2i, 2j, and 2k, and also concluded that such sections be repealed and that proposed Sections 18 and 2t be adopted. The Committee has not yet met in 2017.

#### VII. Judicial & Amicus Activity Update.

New Supreme Court Justices: The Ohio Supreme Court gained two new justices in 2017. Justices Pat DeWine and Pat Fischer were sworn in to the Supreme Court in 2017 after successfully winning seats on the bench during the November 2016 election.

#### Litigation and Amicus Activity Update.

*Nationwide Mutual Insurance Company v. Lucarell*, 2016-Ohio-0585.

This litigation began in *Lucarell v. Nationwide Mut. Ins. Co.*, 2015-5286 in the Ohio Seventh District Court of Appeals in Mahoning County. Nationwide filed a jurisdictional appeal on April 18, 2016.

On April 18, 2016, the OMA, together with other business interest groups, filed a memorandum in support of jurisdiction, asking the Court to accept the appeal being pursued by Nationwide Mutual Insurance Company. On July 27, 2016, the Court agreed to accept Nationwide’s appeal.

The two propositions of law of interest to the OMA are:

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(1) An award of punitive damages is not available for breach of contract and is instead limited to independent claims based on tort.

(2) Prevention of performance is not an available defense to a fully executed release absent some other nonperformance-related contract defense that would make the release unenforceable.

Nationwide filed its merit brief on September 26, 2016 and Lucarell filed her merit brief on November 15, 2016. Nationwide filed its reply brief on December 23, 2016 and oral argument for the case is scheduled for Wednesday, April 5, 2017. Nationwide filed a motion to reschedule the oral argument however, this motion was denied.

*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, argued that the Seventh District’s decision imposes an “innovation tax” in Ohio.

Oral argument was held on January 5, 2016. On December 29, 2016 the Ohio Supreme Court issued a decision reversed and remanded the case to the trial court to reinstate its judgment in favor of appellant, Ford Motor Company. The Court held that the trial court properly refused to instruct the jury on the manufacturer’s post-market duty to warn the consumer. The Slip Opinion for the decision is No. 2016-Ohio-8445. Justices O’Donnell, Lanzinger, Kennedy and French concurred and Justices Pfeifer and O’Neill dissented. Appellee Linert filed a motion for reconsideration, however that motion was denied on February 22, 2017.

*Turner et al. v. Certain Teed Corporation, et al.*, 2017-Ohio-0004.

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The Ohio Eighth District Court of Appeals issued a decision in this case on November 17, 2016. Defendant-appellant, Union Carbide Corporation, appealed the trial court's decision denying its renewed motion for administration dismissal pursuant to R.C. 2307.92 and 2307.93. The plaintiff-appellee Turner was diagnosed with cancer and filed this lawsuit against Union Carbide and other defendants, alleging that his lung cancer was caused by his occupational exposure to asbestos as a drywall finisher.

The Eighth District held that in an asbestos exposure case, the determination of whether a plaintiff was a smoker was a threshold question that the trial court considered based on the evidence presented and determined prior to the plaintiff submitting prima facie evidence pursuant to R.C. 2307.92 and 2307.93. The Court also held that the trial court's finding that plaintiff here did not meet the statutory definition of a "smoker" was not against the manifest weight of the evidence, as the trial court found that the overwhelming majority of notations in the plaintiff's medical records supported his claim of no recent smoking history and that based on plaintiff's medical records, deposition testimony by the plaintiff and his physicians and affidavits of friends and relatives, it was more likely that mistakes were made in the notation in plaintiff's medical records indicating that he was a smoker or that he was, at best, an occasional cigar smoker.

On January 3, 2017, defendant-appellants, Union Carbide Corporation filed a notice of appeal in the Ohio Supreme Court. Union Carbide and other named defendants filed their memorandum in support of jurisdiction on that same day. The OMA, Ohio Chamber of Commerce, and Ohio Alliance for Civil Justice filed amicus curiae brief, attached to this report, on behalf of Union Carbide Corporation and other named defendant-appellants on January 3, 2017 as well. Plaintiff-appellee Turner filed his memorandum in response to jurisdiction on February 2, 2017. We will keep the OMA updated on the status of this case.

*Sunoco Pipeline v. Carole A. Teter, Trustee*, Ohio 7<sup>th</sup> District Court of Appeals, Case No. 16 HA 0002 and 16 HA 0005.

On May 16, 2016, together with other business interests, the OMA filed an amicus brief in a case then pending before the Ohio Seventh District Court of Appeals, in Youngstown. The OMA urged the Court of Appeals to uphold the ruling of a Harrison County trial court in the case, *Sunoco Pipeline, L.P., v. Carol A. Teter, Trustee*.

At issue was whether a pipeline developer may invoke Ohio's eminent domain statute to site the pipeline. Landowners challenged Sunoco's authority to use eminent domain to construct the Mariner East 2 project which will deliver natural gas liquids from the Marcellus and Utica shale in Ohio to points eastward.

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The OMA recognizes that pipelines are the safest, most reliable and cost effective means of transporting petroleum and petroleum products, which contributes to reliable and low-cost energy and raw materials for manufacturers.

On September 29, 2016, the Ohio Seventh District Court of Appeals issued an opinion in *Sunoco Pipeline L.P. v. Teter*, 2016-Ohio-7073 and affirmed the Harrison County trial court's decision. The Court of Appeals stated that all assignments of errors lacked merit.

On October 11, 2016, appellant Teter filed a notice of appeal and emergency motion to stay execution of court of appeals' judgement with the Ohio Supreme Court. On October 14, 2016 the Ohio Supreme Court granted the appellant Teter's motion to stay execution of Court of Appeals' judgement. On October 12, 2016, the Ohio Supreme Court issued an order that appellees Sunoco Pipeline file a response, if any, to appellant Teter's emergency motion by October 13, 2016. Appellees Sunoco Pipeline, L.P. filed a memorandum opposing appellant Teter's motion for stay.

Appellant Teter filed her memorandum in support of jurisdiction on November 14, 2016. The Ohio Farm Bureau Federation, Inc. and Harrison County Farm Bureau filed amicus curiae briefs on behalf of appellant Teter. On November 15, 2016 appellee Sunoco Pipeline L.P filed a motion to lift and strike the stay of execution of appellate court's judgement. The Ohio Supreme Court denied appellee's motions on December 28, 2016. Appellee Sunoco Pipeline L.P filed its memorandum in response to jurisdiction on December 14, 2016. The parties are currently waiting for the Ohio Supreme Court's decision regarding jurisdiction. We will keep the OMA updated on the status of this case.



# OHIO ALLIANCE FOR CIVIL JUSTICE



## OHIO ALLIANCE FOR CIVIL JUSTICE LETTER IN SUPPORT OF H.B. 2

The Ohio Alliance for Civil Justice was founded in the mid-1980s and has been dedicated to stopping lawsuit abuse and promoting a common-sense civil justice system in Ohio. The Alliance is comprised of representatives of several Ohio trade and professional associations, small and large businesses, medical groups, farmers, non-profit organizations and local government associations. The membership includes but is not limited to the National Federation of Independent Businesses of Ohio, the Ohio Chamber of Commerce, the Ohio Manufacturers' Association, the Ohio Council of Retail Merchants, the Ohio State Medical Association, the Ohio Society of CPAs, and the Ohio Hospital Association, to name a few.

H.B. 2 is much-needed in Ohio:

- First, it will promote a standardized way of handling discrimination claims, thus promoting consistency and predictability.
- Second, it limits forum shopping.
- Third, it limits the use of Ohio's individual-claim anomaly, often used merely to harass and humiliate individuals and force settlements.
- Fourth, it will allow the state to effectively use taxpayer dollars to limit duplicative administrative charges and lawsuits.

### H.B. 2 HELPS AVOID OUTLIERS AND PROMOTES MORE CONSISTENT LITIGATION OUTCOMES

There are notable differences between state and federal employment laws. One such difference is that under Ohio law, several different laws trigger age discrimination claims. And although Ohio's current statute of limitations for most claims is six years, one of the longest in the country, age is specifically carved out of that and is limited to six months. This makes no sense. The proposal for a one-year statute of limitations would eliminate confusion and level the playing field.

Another difference between state and federal law is the way the term "employer" is defined to determine who can be liable. The federal Southern District of Ohio and Sixth Circuit Court of Appeals have ruled that an "employer" is a company, not an individual: "The Sixth Circuit [ ] determined that an individual employee / supervisor may not be held personally liable under Title VII" [the federal workplace non-discrimination law.] *Wathen v. General Electric Co.*, 115 F.3d 400 (6th Cir. 1997)

However, in 1999, the Ohio Supreme Court in *Genaro v. Cent. Transport, Inc.*, 84 Ohio St.3d 293 (1999), held that an “employer” under Ohio Revised Code 4112.02, the corollary to Title VII, should include any “person acting directly **or indirectly** in the interest of an employer”, a much broader meaning. Even if the Court really only intended to hold decision-makers liable, an entry-level HR generalist who has sat in on a disciplinary or termination meeting but was not directly involved in a decision could be personally liable.

Why is this result a problem? A supervisor could theoretically have a judgment brought against her and risk losing her home or other personal property. Good people might be dis-incented from accepting promotions if they thought about the legal risk. The reality is that if there is liability, a company is the deep pocket, not an individual. Interestingly, in 2014, the Ohio Supreme Court expressly carved out **public-sector managers** from the individual-liability provision.

The *Genaro* case includes a dissent from Justice Lundberg Stratton, specifically calling for the General Assembly to remedy R.C. 4112.02(A) if its intent was to burden individual employees with potential liability.

Other states have specifically defined “employer” to not include individuals, or, to the contrary, to expressly include agents of the employer within this definition. The Ohio Revised Code demands more statutory clarity.

Anecdotally, opponents have claimed that carving out individuals means giving a free pass to “bad actors”, but opponents conveniently disregard that an individual can still be liable for **intentional acts**, including **civil assault, battery, and indecent exposure**, not to mention **criminal prosecution**, depending on the complained-of acts. Limiting individual liability will also not preclude plaintiffs from stating claims for **negligent retention** or **negligent supervision** against an employer that knowingly retains someone who has taken unlawful actions against a plaintiff.

### H.B. 2 LIMITS FORUM SHOPPING

This legislation is designed to curb forum shopping. Often, we see plaintiffs’ counsel choosing a forum, just based on the length of a statute of limitations, whether an individual can be named, or damage caps. This type of effort, in turn, increases the cost of defense, particularly for the company that indemnifies or pays for the individual or individuals to secure separate counsel.

### H.B. 2 LEVELS THE PLAYING FIELD

Ohio’s six-year statute of limitations is the longest in the country. Ohio’s statute of limitations results specifically as the legislature had not expressly enacted a statute of limitations for employment claims. In *Cosgrove v. Williamsburg of Cincinnati Management Co., Inc.*, the Court essentially backed into six years and then “...beseech[ed] the General Assembly to ... resolve..” this issue of defining the right statute of limitations legislatively. *Cosgrove v. Williamsburg of Cincinnati Management Co.*, 70 Ohio St. 3d 281 (1994).

Ohio is out of step with most of the country and also with the federal court system. The statutes of limitations of neighboring states typically range from 90 days to 1 year. Adopting H.B.

2 would also standardize the claims of potential age discrimination plaintiffs who currently only have six months to file.

Shortening the statute of limitations has other benefits. Claims brought much later tend to be less factually accurate, which can make it harder to defend against them. Sometimes witnesses have moved away. Even if witnesses are available, it is difficult to recall the details of what may have happened six years hence, or to have all the relevant personnel records. Requiring claims to be addressed more timely will ensure more fair results.

In addition, many other states also require that a plaintiff first exhaust his or her administrative remedies before filing a lawsuit. There is no such requirement in Ohio. H.B. 2 does not deprive a plaintiff of any substantive rights. It would toll the filing time of any individual who first pursues an administrative charge, and would also provide additional time to contemplate filing if an administrative decision is made close to the statutory filing deadline.

#### H.B. 2 PRESERVES/PROPERLY USES TAXPAYER DOLLARS IN AGENCY INVESTIGATIONS

H.B. 2 tries to make sure plaintiffs only get one bite at the apple: if an individual can obtain redress through a grievance mechanism or internal complaint procedure, it should do so before pursuing court action. This pre-suit requirement would help limit the backlog of OCRC cases and court dockets.

H.B. 2 also creates an affirmative defense for employers who can demonstrate that they had an internal mechanism to redress complaints but that the complainant failed, without good reason, to avail himself or herself of it. This affirmative defense is consistent with a long line of U.S. Supreme Court and Sixth Circuit cases designed to hold employers accountable for timely and fairly investigating and remedying known workplace problems.

#### H.B. 2'S DAMAGE CAPS ARE CONSISTENT WITH OTHER TORT ACTIONS IN OHIO

Ohio's absence of guidance to jurors about how to consider a plaintiff's case allows for inconsistent outcomes, unpredictability, and, potentially, runaway juries. By adopting the schedule of damages in Ohio's tort law, plaintiffs can be fairly compensated for economic and non-economic losses.

#### CONCLUSION

In conclusion, Ohio needs to be competitive and to get in step with other states and the federal court system. This bill does not inequitably disadvantage plaintiffs – it serves only to level the playing field. For these reasons, the Ohio Alliance for Civil Justice requests that you support H.B. 2.

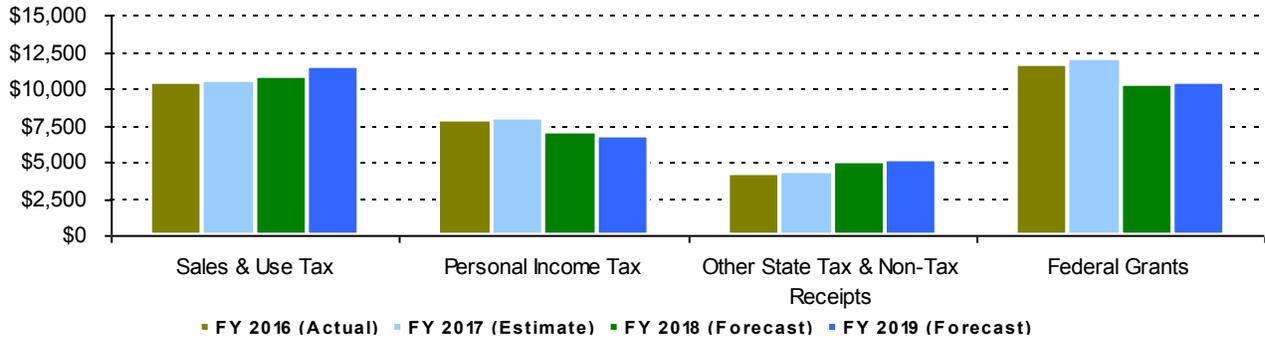


# Budget In Brief

## House Bill 49 – As Introduced

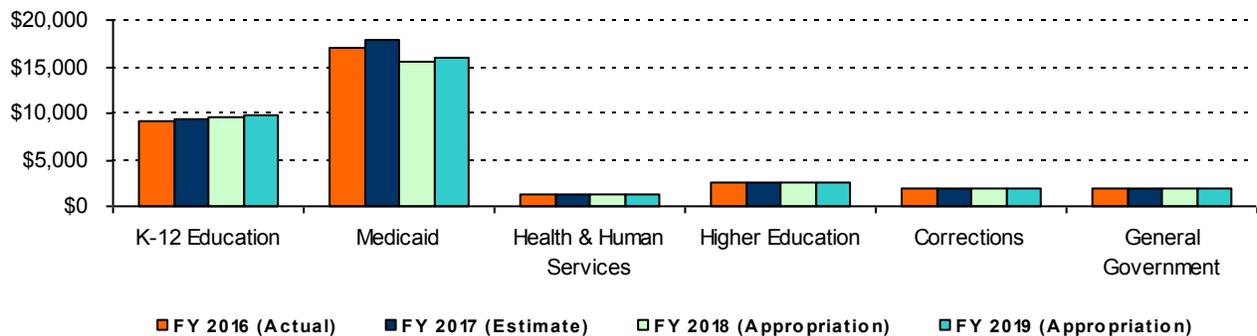
[www.lsc.ohio.gov](http://www.lsc.ohio.gov)

**GRF Revenues by Source**  
(\$ in millions)



Revenue Source	FY 2016 (Actual)	FY 2017 (Estimate)	FY 2018 (Forecast)	FY 2019 (Forecast)
Sales & Use Tax	\$10,348.0	\$10,548.3	\$10,853.8	\$11,549.3
Personal Income Tax	\$7,799.3	\$7,926.1	\$7,027.1	\$6,755.8
Other State Tax and Non-Tax Receipts	\$4,137.5	\$4,336.5	\$4,968.2	\$5,103.4
Federal Grants	\$11,645.7	\$12,078.7	\$10,261.2	\$10,458.1
<b>Total</b>	<b>\$33,930.5</b>	<b>\$34,889.6</b>	<b>\$33,110.3</b>	<b>\$33,866.6</b>

**State and Federal GRF Expenditures by Program Area**  
(\$ in millions)



Program Area	FY 2016 (Actual)	FY 2017 (Estimate)	FY 2018 (Appropriation)	FY 2019 (Appropriation)
K-12 Education	\$9,115.4	\$9,463.6	\$9,647.0	\$9,832.5
Medicaid	\$16,995.9	\$17,830.0	\$15,586.5	\$16,015.1
Health & Human Services	\$1,293.0	\$1,333.1	\$1,315.1	\$1,321.7
Higher Education	\$2,463.7	\$2,559.7	\$2,600.4	\$2,645.7
Corrections	\$1,818.7	\$1,909.3	\$1,965.8	\$1,999.9
General Government	\$1,909.3	\$1,972.3	\$1,983.0	\$2,008.1
<b>Total</b>	<b>\$33,595.9</b>	<b>\$35,067.9</b>	<b>\$33,097.8</b>	<b>\$33,823.1</b>

Note: Revenues may not equal expenditures due to factors such as carryover balances, encumbrances, and transfers.

## Appropriation Highlights

The executive budget provides state and federal GRF appropriations totaling \$33.10 billion for FY 2018, a decrease of 5.6%. This decrease is due entirely to moving Medicaid expenditures currently supported by the sales tax on Medicaid managed care companies and related federal reimbursements from the GRF into non-GRF funds. Beginning in FY 2018, this sales tax will be replaced by a health insuring corporation provider assessment. Revenues from this assessment and related federal reimbursements will be deposited into non-GRF funds. For FY 2019, state and federal GRF appropriations total \$33.82 billion, an increase of 2.2%. Excluding Medicaid, state and federal GRF federal appropriations increase by 1.6% in FY 2018 and 1.7% in FY 2019. Medicaid and K-12 Education account for 47.2% and 29.1%, respectively, of the biennial total state and federal GRF appropriations.

State-source GRF appropriations decrease by 0.8% in FY 2018 to \$22.82 billion and then increase by 2.3% to \$23.35 billion in FY 2019. K-12 Education and Medicaid represent 42.2% and 23.5%, respectively, of the biennial total. Across all funds, the appropriations total \$67.16 billion in FY 2018 and \$68.59 billion in FY 2019, increases of 4.7% and 2.1%, respectively.

### Medicaid and Other Human Services

- Across all funds in seven agencies, Medicaid funding totals \$27.96 billion in FY 2018 and \$28.71 billion in FY 2019, increases of 6.3% and 2.7%, respectively. Federal reimbursements account for just under 69% of the biennial total. Approximately 55.8% of total Medicaid funding is supported by state and federal GRF appropriations—\$15.59 billion in FY 2018 and \$16.02 billion in FY 2019. The state share of the GRF is \$5.31 billion in FY 2018 and \$5.54 billion in FY 2019.
- Beginning July 2018, managed care enrollment will be mandatory for the remaining (about 10% of the total) Medicaid recipients except individuals served by the Department of Developmental Disabilities, for whom managed care is optional.
- The executive budget requires childless, nonpregnant adults with modified adjusted gross income between 100% and 138% of the federal poverty guideline to pay a monthly premium of about \$20 beginning January 2018, subject to the federal government's approval. It assumes savings totaling \$52.6 million (\$1.2 million state share) in FY 2018 and \$184.7 million (\$8.5 million) in FY 2019.
- The executive budget increases home and community-based service opportunities, including creating about 1,300 additional state-funded waivers for individuals served by the Department of Developmental Disabilities. It anticipates additional costs of \$22.4 million (\$8.5 million state share) in FY 2018 and \$76.8 million (\$29.2 million) in FY 2019 for these services.
- The executive budget proposes several changes to provider payments, including reducing hospital reimbursements and moving nursing facility reimbursements into managed care. It assumes a total savings of \$209.5 million (\$86.2 million state share) in FY 2018 and \$469.9 million (\$185.4 million) in FY 2019.
- The executive budget increases funding for infant vitality by 72.9% to \$7.2 million in both FY 2018 and FY 2019 to allow for data analysis to better target areas with high incidences of infant mortality and to invest in programs to reduce the rate in these areas. It also earmarks \$1 million per year for colleges and universities to research infant mortality reduction issues and \$1 million per year for infant mortality health grants.
- Funding for adoption and other family and children services totals \$113.8 million per year, an increase of 31.8% (\$27.5 million) from FY 2017. The increase will be used to implement the extension of foster care payments to age 21 and a \$2 million per year earmark for Predictive Analytics to predict future outcomes and behaviors in high-risk foster care children.
- All Medicaid behavioral health services will be moved into managed care by January 1, 2018. The executive budget earmarks \$1 million per year for colleges and universities to research opiate addiction issues.

### K-12 Education

- The executive budget provides an estimated \$7.92 billion in FY 2018 and \$8.05 billion in FY 2019 for foundation aid, increases of 1.8% and 1.6%, respectively, for all students counted in their resident districts.
  - ◊ Formula continuation. The executive budget largely maintains the current school funding formula, using the same values for component calculations. The per pupil amount of the core opportunity grant remains at the FY 2017 level of \$6,000 in both FY 2018 and FY 2019. The state share of this aid continues to be determined by an index that depends on a district's valuation and, for districts with lower incomes, on median and average income. The index ranges from 90% to 5%.
  - ◊ Modification—pupil transportation. The minimum state share for this aid is decreased from 50% in FY 2017 to 37.5% in FY 2018 and 25.0% in FY 2019.
  - ◊ Modification—guarantee level and base. The executive budget moves a district's formula allocation guarantee base from the district's FY 2015 to FY 2017 allocation in both FY 2018 and FY 2019. However, the base will be reduced for districts with a 5% or higher decline in total enrollment between FY 2011 and FY 2016. The reduction is capped at 5% for districts with a total enrollment decrease of 10% or higher. For districts with a total enrollment decrease between 5% and 10%, the reduction will be up to 5% based on a sliding scale. The executive budget moves graduation and K-3 reading performance bonuses outside the guarantee. Career-technical education additional funding remains outside the guarantee.
  - ◊ Modification—cap. A district's formula allocation annual increase is capped at 5% in both FY 2018 and FY 2019, compared with a 7.5% cap in FY 2017. Capacity aid (targeting districts below the median in total property value) and transportation supplement (targeting low-density districts) are moved into the cap. Graduation and K-3 reading performance bonuses, along with career-technical education additional funding, continue to be exempt from the cap.
- The executive budget also maintains the current formula for joint vocational school districts (JVSDs) except for the gain cap change. The formula uses a 0.5-mill charge-off for core opportunity aid to derive each district's state share. Additional career-technical education funding continues to remain outside the guarantee and cap. Total JVSD formula aid is estimated at \$292.4 million in both FY 2018 and FY 2019, a slight decrease from FY 2017.
- The phase-down of the remaining reimbursements for school district and JVSD losses due to utility deregulation and the elimination of the tax on general business tangible personal property (TPP) continues. Appropriations for these reimbursements fall from \$244.4 million in FY 2017 to \$201.8 million in FY 2018 and \$162.7 million in FY 2019, decreases of 17.4% and 19.4%, respectively. The executive budget discontinues the TPP supplement (\$44 million in FY 2017), which offsets any decreases in reimbursements that are not offset by increases in formula aid.

## Appropriation Highlights

- The executive budget provides a total of \$90.3 million per year to fund early childhood education for lower income families, an increase of \$10.9 million (13.7%) from estimated spending level of \$79.4 million in FY 2017. It authorizes the establishment and evaluation of a parent choice pilot program for early childhood education.
- The executive budget continues to provide \$10 million per year for local networks of volunteers and organizations to sponsor career advising and mentoring for students in districts with high poverty rates and low graduation rates. Straight A Fund grants also continue at \$15 million per year.
- The executive budget provides GRF funding of \$38.4 million in FY 2018 and \$47.7 million in FY 2019, increases of \$6.9 million (21.9%) and \$9.3 million (24.2%), respectively, for the income-based EdChoice expansion. It maintains the FY 2017 scholarship amounts of \$6,000 for high school students and \$4,650 for elementary school students.
- The executive budget provides lottery profits of \$18 million per year for community school facilities, an increase of \$800,000 (4.7%) from FY 2017. Per pupil funding is \$200 for brick and mortar schools and \$25 for e-schools.

### Higher Education & Workforce Development

- The executive budget freezes in-state undergraduate tuition charged by state institutions of higher education at the FY 2017 levels for FY 2018 and FY 2019. It requires colleges and universities to provide undergraduate students textbooks in FY 2019 and authorizes an up to \$300 per student fee for this newly mandated service.
- The executive budget increases total state share of instruction (SSI) funding by 1.0% per year to \$2.00 billion in FY 2018 and \$2.02 billion in FY 2019. It earmarks \$1.54 billion in FY 2018 and \$1.55 billion in FY 2019 for universities and their regional campuses, of which 50% will be allocated based on degree completions, 30% for course completions, and the remainder for doctoral and medical education and other factors. The executive budget earmarks \$460.8 million in FY 2018 and \$465.4 million in FY 2019 for community and technical campuses, of which 50% will be distributed based on course completions and 25% each for success factors and completion milestones.
- The executive budget requires the development of “3+1” baccalaureate degree programs that will allow students to complete the equivalent of three years of studies at state community and technical colleges and then transfer to state universities to complete the final year of the student’s bachelor’s degree program. It also authorizes community and technical colleges to develop and offer certain in-demand applied bachelor’s degree programs.
- The executive budget provides \$5 million per year for the newly established Accelerated Completion of Technical Studies Program to encourage associate degree completion in fields that are either emerging or have in-demand jobs. Up to seven institutions will be selected to participate.
- The executive budget funds the Ohio College Opportunity Grant (OCOG), a need-based student financial aid program at \$100 million in FY 2018 and \$102 million in FY 2019, increases of 3.1% and 2.0%, respectively. The merit-based Choose Ohio First Scholarship is flat funded at \$16.7 million per year.
- The executive budget increases funding for the War Orphans Scholarships by 16.3% to \$8.2 million in FY 2018 and 3.7% to \$8.5 million in FY 2019. Funding for the National Guard Scholarship is at \$19.4 million per year, an increase of 2.7% over the FY 2017 level.
- The executive budget creates two new programs to increase degree completion. The Completion and Retention for Education Success Program is funded at \$425,000 in FY 2018 and \$875,000 in FY 2019. The Ohio Finish for Your Future Scholarship Program is funded at \$2 million in FY 2018 and \$4 million in FY 2019.

### Local Government and Other

- The executive budget provides \$206.8 million in FY 2018 to counties and transit authorities that will experience a revenue loss due to the repeal of the sales tax on Medicaid managed care companies. Permissive local sales tax shares same the tax base with the state sales tax, so they would lose revenue from the repeal.
- The remaining reimbursements for local government losses due to utility deregulation and the elimination of the TPP tax continues under the executive budget. Reimbursements will be reduced from \$50.5 million in FY 2017 to \$30.8 million in FY 2018 and \$16.7 million in FY 2019, decreases of 38.9% and 45.9%, respectively.
- The Local Government Fund will continue to share 1.66% of the total GRF tax revenues annually, the share for the Public Library Fund will revert back to 1.66%, down from a temporary increase to 1.70% in the current biennium. LGF and PLF will each receive \$381.8 million in FY 2018 and \$393.5 million in FY 2019. The executive budget proposes to distribute a portion of LGF funds based on a subdivision’s tax capacity and population.
- The executive budget provides non-GRF funding of \$3.2 million in FY 2018 and \$6.8 million in FY 2019 for the Department of Taxation to enable businesses to centrally file the municipal income taxes through the Department.
- The executive budget increases funding for community diversion programs, which are designed to reduce prison population growth, by 51.8% in FY 2018 to \$61.3 million and 32.2% in FY 2019 to \$81.1 million. It generally requires a 5th degree felony offender with a prison term of one year or less to serve the term in a community-based program.
- The executive budget creates, in the Attorney General’s budget, a new GRF debt service appropriation with about \$3.2 million per year to finance the replacement of the Bureau of Criminal Investigation’s criminal history and fingerprint systems at an estimated cost of \$25 million.
- The executive budget consolidates various regulatory boards and commissions. It funds three new boards—State Behavioral Health and Social Work Board (\$1.1 million in FY 2018 and \$2.6 million in FY 2019), State Physical Health Services Board (\$0.6 million and \$1.1 million), and State Vision and Hearing Professional Board (\$0.6 million and \$1.1 million)—to facilitate the consolidation of boards and commissions that will be under their purviews.
- The executive budget provides \$750,000 per year in GRF funding for the newly created Ohio Institute of Technology within the Governor’s Office to formulate and implement a state strategy for using technology, research, and development to benefit individuals and businesses across the state and state government operations.

# Total (State and Federal) GRF Appropriations by Agency

Agency	FY 2016 (Actual)	FY 2017 (Estimate)	FY 2018 (Appropriation)	FY 2019 (Appropriation)
Department of Medicaid	\$16,422,114,914	\$17,184,617,488	\$14,897,228,357	\$15,350,908,997
Department of Education	\$7,555,948,809	\$7,909,657,829	\$8,053,459,703	\$8,190,346,705
Department of Higher Education	\$2,463,677,864	\$2,559,679,898	\$2,600,361,098	\$2,645,724,672
Revenue Distribution Fund	\$1,791,524,177	\$1,788,500,000	\$1,821,100,000	\$1,845,100,000
Department of Rehabilitation and Correction	\$1,602,072,927	\$1,694,311,984	\$1,751,229,871	\$1,781,575,300
Department of Job and Family Services	\$785,670,949	\$806,358,814	\$810,609,700	\$761,921,884
Department of Developmental Disabilities	\$586,430,936	\$660,028,498	\$681,589,583	\$700,693,483
Department of Mental Health and Addiction Services	\$378,322,569	\$396,852,090	\$400,576,744	\$410,224,008
Ohio Facilities Construction Commission	\$409,844,803	\$396,208,444	\$415,347,200	\$445,956,900
Public Works Commission	\$249,183,065	\$256,830,944	\$266,184,800	\$262,768,900
Department of Youth Services	\$216,645,971	\$215,002,752	\$214,615,622	\$218,346,926
Department of Administrative Services	\$168,307,566	\$164,298,810	\$166,811,285	\$160,715,785
Judiciary/Supreme Court	\$146,047,771	\$159,092,818	\$166,111,608	\$174,504,475
Development Services Agency	\$133,875,528	\$137,347,858	\$135,376,257	\$146,189,757
Department of Natural Resources	\$101,949,067	\$96,734,904	\$108,821,022	\$110,826,834
Department of Health	\$84,477,028	\$83,127,888	\$79,803,089	\$81,303,089
Department of Taxation	\$69,529,343	\$70,607,949	\$67,940,382	\$70,607,949
Department of Veterans Services	\$36,524,141	\$53,985,011	\$39,817,405	\$37,901,819
Attorney General	\$46,273,514	\$46,379,355	\$49,920,969	\$49,926,169
Auditor of State	\$29,972,185	\$31,550,781	\$31,550,780	\$31,550,780
Legislative Service Commission	\$24,157,260	\$31,115,943	\$28,905,845	\$28,605,845
Ohio Public Defender Commission	\$27,483,049	\$28,593,017	\$29,013,017	\$29,573,017
House of Representatives	\$20,718,730	\$25,272,941	\$25,272,941	\$25,272,941
Department of Agriculture	\$17,913,129	\$24,623,114	\$22,316,371	\$24,530,924
Pension Subsidies	\$20,446,735	\$20,503,000	\$20,400,000	\$20,400,000
Department of Public Safety	\$18,273,102	\$19,478,543	\$19,798,338	\$21,021,519
Opportunities for Ohioans with Disabilities Agency	\$16,323,742	\$16,250,894	\$16,250,895	\$16,250,895
Senate	\$11,413,360	\$15,982,305	\$15,982,305	\$15,982,305
Department of Aging	\$15,474,929	\$15,801,468	\$15,551,468	\$15,551,468
Department of Transportation	\$10,890,720	\$15,311,997	\$14,309,348	\$15,309,348
Environmental Protection Agency	\$10,847,345	\$15,008,455	\$9,927,160	\$9,919,594
Ohio Arts Council	\$12,685,707	\$14,798,129	\$14,798,129	\$14,798,129
Ohio Historical Society	\$13,410,478	\$13,235,478	\$11,610,478	\$11,610,478
Treasurer of State	\$11,796,656	\$11,957,408	\$12,060,983	\$12,061,033
Ohio School for the Deaf	\$9,668,321	\$10,711,788	\$11,022,322	\$11,248,544
Ohio State School for the Blind	\$8,017,045	\$9,932,245	\$10,302,302	\$10,544,099
Broadcast Educational Media Commission	\$9,371,291	\$9,542,350	\$9,526,722	\$9,526,722
Adjutant General	\$7,962,089	\$9,423,464	\$8,806,255	\$8,806,255
State Library Board	\$5,986,660	\$5,909,328	\$5,909,328	\$5,909,328
Ohio Civil Rights Commission	\$5,567,540	\$5,684,556	\$5,116,100	\$5,684,556
Office of Budget and Management	\$3,773,468	\$4,995,643	\$5,745,643	\$5,970,643
Capitol Square Review and Advisory Board	\$3,606,319	\$3,908,964	\$4,214,424	\$4,214,424
State Employment Relations Board	\$3,482,527	\$3,887,270	\$3,862,270	\$3,887,270
Court of Claims	\$11,053,392	\$3,036,419	\$3,197,997	\$3,312,188
Office of the Governor	\$2,065,447	\$2,953,131	\$2,953,131	\$2,953,131
Commission on Minority Health	\$2,511,560	\$2,629,914	\$2,684,672	\$2,722,333
Secretary of State	\$2,139,715	\$2,612,422	\$0	\$0
Board of Tax Appeals	\$1,640,752	\$1,905,743	\$1,850,307	\$1,886,042
Veterans' Organizations	\$1,887,986	\$1,887,986	\$0	\$0
Ohio Elections Commission	\$335,690	\$1,731,077	\$424,988	\$441,849
Ethics Commission	\$1,420,808	\$1,457,245	\$1,457,245	\$1,724,311
Inspector General	\$1,328,623	\$1,401,581	\$1,401,581	\$1,401,581
Judicial Conference of Ohio	\$749,250	\$684,250	\$806,963	\$806,963
Joint Legislative Ethics Committee	\$518,787	\$663,761	\$550,000	\$550,000
Environmental Review Appeals Commission	\$564,451	\$620,617	\$620,617	\$620,617
Joint Committee on Agency Rule Review	\$413,993	\$512,253	\$512,253	\$512,253
Joint Education Oversight Committee	\$0	\$500,000	\$500,000	\$500,000
Joint Medicaid Oversight Committee	\$309,906	\$490,320	\$351,355	\$518,538
Controlling Board	\$0	\$475,000	\$0	\$0
Commission on Hispanic/Latino Affairs	\$432,575	\$425,289	\$459,170	\$474,624
Expositions Commission	\$392,420	\$375,000	\$375,000	\$375,000
Commission on Service and Volunteerism	\$309,646	\$322,547	\$322,547	\$322,547
Ohioana Library Association	\$155,000	\$160,000	\$175,000	\$180,000
<i>GRF – State</i>	\$21,895,047,781	\$22,997,305,812	\$22,819,219,978	\$23,346,741,958
<i>GRF – Federal</i>	\$11,700,845,550	\$12,070,641,158	\$10,278,580,968	\$10,476,333,789
<b>GRF – Total</b>	<b>\$33,595,893,331</b>	<b>\$35,067,946,970</b>	<b>\$33,097,800,946</b>	<b>\$33,823,075,747</b>
<b>Medicaid</b>				
<i>GRF – State</i>	\$5,328,371,359	\$5,797,961,335	\$5,307,955,449	\$5,538,802,773
<i>GRF – Federal</i>	\$11,667,488,774	\$12,032,002,758	\$10,278,580,968	\$10,476,333,789
<b>GRF – Total</b>	<b>\$16,995,860,133</b>	<b>\$17,829,964,093</b>	<b>\$15,586,536,417</b>	<b>\$16,015,136,562</b>
Non-GRF – Total	\$8,297,994,791	\$8,474,500,779	\$12,368,990,285	\$12,692,286,957
<b>All-Funds – Total</b>	<b>\$25,293,854,924</b>	<b>\$26,304,464,872</b>	<b>\$27,955,526,702</b>	<b>\$28,707,423,519</b>

**House Bill 49 - State Operating Budget**  
Representative Ryan Smith (R-Bidwell)

	ISSUE	DESCRIPTION	POSITION
<b>TAXATION</b>	<b>Municipal Tax Centralization</b>	Proposes centralized filing and payment of municipal income tax for businesses not individuals.	<b>Support</b>
	<b>Personal Income Tax</b>	Proposes to collapse the nine income tax brackets to five brackets. It would drop the top rate from 0.495 percent to 0.456.	<b>Support</b>
	<b>Sales Tax</b>	Proposes an increase in the sales tax rate from 5.75 percent to 6.25 percent. The bill also expands the sales tax to services such as cable tv, elective cosmetic surgery, lobbying, landscape design, interior design, travel packages and repossession services.	<b>Concern</b>
	<b>Commercial Activity Tax</b>	Proposes a minimum tax on goods sold through a Qualified Distribution Center. It also provides that interest on loans made in the normal course of a taxpayer's business are taxable.	<b>Watch</b>
	<b>Severance Tax</b>	Proposes an increase on oil and natural gas sold at the wellhead to 6.5 percent of the average quarterly price, while tax on natural gas and gas liquids and condensate sold downstream would be taxed at a rate of 4.5 percent of the average quarterly price.	<b>Watch</b>
<b>ENVIRONMENT</b>	<b>TMDL</b>	Requires Ohio EPA to provide for public comment when a TMDL is established, and such decisions would be appealable to the Environmental Review Appeals Commission. The bill also allows for appeals of existing National Pollutant Discharge Elimination System (NPDES) permits, which would remain enforceable.	<b>Watch</b>
<b>ENERGY</b>	<b>Grid Modernization</b>	Expands PUCO authority to look at grid best practices and directs agency to complete a study.	<b>Watch / Support</b>
<b>UNEMPLOYMENT COMPENSATION</b>	<b>Solvency Package</b>	Working to develop a solvency package to stabilize Ohio's unemployment compensation trust fund.	<b>Watch / Support</b>
<b>WORKFORCE DEVELOPMENT</b>	<b>Regional Workforce Models</b>	Requires the Governor's Office of Workforce Transformation, the Department of Education, and the Chancellor of Higher Education to develop a regional workforce collaboration model to provide career services to students.	<b>Watch</b>

**House Bill 26 - State Transportation Budget**  
Representative Robert McColley (R-Napoleon)

	ISSUE	DESCRIPTION	POSITION
<b>DEPARTMENT OF TRANSPORTATION</b>	<b>Division of Freight</b>	Establishes the ODOT Division of Freight, which is responsible for facilitating and coordinating multi-modal transportation to maximize the efficiency of and opportunities for the transportation of freight within Ohio.	<b>Support</b>



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## MEMORANDUM

**TO:** Ohio Manufacturers' Association  
Government Affairs Committee  
**FROM:** Bricker & Eckler LLP  
**DATE:** March 15, 2017  
**RE:** Ohio Drug Price Relief Act  
2016 Litigation Update & 2017 Campaign Outlook

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### I. Ohio Drug Price Relief Act.

The Ohio Drug Price Relief Act is an initiated statute originally proposed for the 2016 ballot to 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 net 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 headed by controversial activist Michael Weinstein.

Following initial questions and possible violations of Ohio election law, Ohio Secretary of State Jon Husted ordered county boards of elections to re-review the petitions and signatures in January 2016, which led to more than 35,000 additional signatures being stricken due to deletions or “strikethroughs” of signatures and unlawful circulator statements. The Ohio Secretary of State transmitted, “with reservations,” the ODPRA petition to the General Assembly on February 4, 2016.

On February 29, 2016 the Ohio Manufacturers' Association, the Ohio Chamber of Commerce and the Pharmaceutical Research & Manufacturers of America (PhRMA), 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 ODPRA. The challenge alleged 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. (More information about this litigation effort is included later in this report.)

When the Secretary of State submitted the proposal to the General Assembly, it had four months to take action on it. The General Assembly did not, and as such, triggered a second round of signature gathering.

While awaiting the Court's decision and despite the pending challenge, the proponents continued to collect supplemental signatures for possible

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submission by the July 6, 2016 deadline to place an issue on the 2016 ballot. It was anticipated that the proponents might still try to sue and gain access to this year's ballot. However, with only 30 days to collect an additional 91,677 valid signatures, the compressed timelines were too much for the proponents to overcome and second round signatures were not filed by July 6, 2016. On July 17, 2016, the proponents stated in a filing to the Ohio Supreme Court that they are now seeking to put the ODPRA on the November 2017 ballot.

On Monday, August 15, 2016, the Ohio Supreme Court ruled favorably to the OMA, Chamber, and PhRMA on some of the issues raised in the Challenge. The Court held that the proponents filed signatures that should not have been validated due to false circulator statements or attestations. The Court struck an additional 10,000+ signatures. Thus, the ODPRA, as initially filed, fell below the total valid signatures required by about 5,000 signatures. Given the deficiency, the Secretary of State should not have submitted the petition to the General Assembly for review in February 2016. The Court held that, if the proponents cure the signature defects, the petition would be resubmitted to the legislature and the four-month time period for the legislature to act will run again.

The Court allowed the proponents 10-days, until August 25, 2016, to “cure” the signature deficiency. On August 25, 2016, the proponents submitted more than 19,000 signatures to cure the 5,000 signature deficiency. The boards of elections will soon begin the process of reviewing the part-petitions and signatures for validity.

A huge victory for the OMA, Chamber, and PhRMA seeking to ensure Ohio signature gathering and petition process rules and regulations are properly followed.

However, the Court's decision left open a few holes regarding the striking of signatures by the Secretary of State thereby giving rise to additional and ongoing litigation by the ODPRA proponents. A recently filed lawsuit against the Secretary of State would seek to add back to the signature totals more than 25,000 signatures eliminated in Cuyahoga County, which would effectively reverse the Court's own ruling of August 15, eliminate the need for the Committee to cure any signatures deficiencies and therefore not have the issue sent back to the Ohio legislature for review. Still, the ODPRA would be on track for the 2017 ballot, but the Court's open-ended, ambiguous, somewhat confusing, and contradictory opinion gave the proponents the room needed to keep the litigation fight going.

The OMA, Chamber, and PhRMA filed an amicus brief in the new mandamus litigation supporting the Secretary of State and seeking to preserve the totality of the initial litigation victory. The OMA, Chamber, and PhRMA filed an affirmative Motion for Reconsideration with the Court seeking to clarify whether a commercial address and/or Post Office Box truly constitutes a residence address for purposes of Ohio Election Law. On September 9, 2016, the

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Ohio Supreme Court denied the relators’ motion for reconsideration or relief from judgment without publishing an opinion.

While the Court’s initial ruling in the protest was favorable, the convoluted nature of the decision could have the effect of undermining the significant efforts the OMA and others have taken to ensure that Ohio ballot access laws are fair, precise, and followed. The Court has left several unanswered questions that should not be left unasked when given the opportunity in the future. We now anticipate the ODPRA to be resolved by Ohio voters on the November 2017 statewide ballot with a significant campaign from both sides leading up to the 2017 election. For opponents of the ODRPA, a significant victory was attained in November 2016 as a virtually identical measure, Proposition 61, proposed by the Aids Healthcare Foundation was defeated in California.

## II. ODPRA – 2016 Litigation Overview.

*The Ohio Manufacturers’ Association, et al. v. Ohioans for Drug Price Relief Act, et al.*, Sup. Ct. No. 2016-313

On February 29, 2016 the Ohio Manufacturers’ Association, the Ohio Chamber of Commerce and the Pharmaceutical Research & Manufacturers of America (PhRMA), along with electors Keith Lake and Ryan Augsburg (collectively “Relators”), filed a challenge in the Ohio Supreme Court asking the Court to invalidate part-petitions submitted as part of the ODPRA. The challenge is against the Committee behind initiated legislation and the Secretary of State. (Both are required by court rule to be named as Respondents.) The challenge alleged that petition circulators and those who coordinated and oversaw the petition effort, (1) listed false permanent residence addresses, (2) unlawfully altered part-petitions, and (3) submitted false circulator statements, all in violation of Ohio law.

Proponents of the ODPRA (“the Committee”) filed a motion for judgment on the pleadings, asking the Court to resolve the case for lack of jurisdiction. On May 18, 2016, the Court denied the motion for judgment on the pleadings, thereby allowing the case to proceed. The Court issued a scheduling order which required all briefing to be completed by June 29, 2016.

Prior to filing their brief, Relators filed a motion for partial summary judgment, arguing that if the part-petitions of just one circulator (Fifi Harper) were invalidated on the ground that she used a false residence address, the Petition only qualifies in 43 counties and therefore, is insufficient (as it must qualify in 44 counties to be sufficient). On August 15, 2016, the Court denied this motion as moot in light of its ruling on all issues.

On August 15, 2016, the Court issued its decision. *Ohio Manufacturers’ Association v. Ohioans for Fair Drug Price Relief Act*, Slip Op. 2016-Ohio-5377. Among other things, the Court held that thousands of part-petitions submitted by the Committee contained false circulator

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attestations, did not comply with Ohio law, and contained an overcounting of signatures that constituted “an open invitation to fraud.” *Id.*, ¶ 44. The Court determined that the actions of the circulators were not “a case of minor or negligent miscounts,” but rather a series of “systematic overcounts” that left boards of elections with “no way to know how many signatures the circulators actually witnessed” and “no guarantee that someone did not later add the signatures of legitimate electors.” *Id.*

The Court also determined that although there was evidence of improper “strikethroughs” (i.e., deleted signatures) on thousands of part-petitions, Ohio law does not require those part-petitions to be invalidated.

Finally the Court held that some petition circulators did not comply with the requirement that they provide their permanent residential address and invalidated the petitions they circulated. But, the Court did not invalidate the petitions of Fifi Harper, finding that the commercial postal box she listed as her “permanent residence address” satisfied Ohio law.

Ultimately, the Court determined that “OMA has demonstrated that 10,303 signatures that were counted as valid should not have been counted” and found that the Petition was short by 5,044 signatures. *Id.*, ¶ 46. The Committee was permitted 10 days, until August 25, 2016, to “cure” this deficiency. The Court also held that if the deficiency is cured, the Secretary shall transmit the Petition to the General Assembly and the four-month period for the General Assembly’s consideration of the proposed law will start at that time.

On August 16, 2016, the Committee filed a motion for reconsideration, asking the Court to reconsider the part of its decision requiring the four-month legislative period to run again. Relators opposed this motion arguing, in essence, that because the Petition previously submitted was insufficient, the General Assembly was not required or permitted to consider it.

On August 25, 2016, Relators filed a motion for reconsideration, asking the Court to reconsider the part of its decision relating to circulator Fifi Harper’s address. Relators contend that the Court’s decision is contrary to its precedent, the legislature’s intent in requiring circulator’s to list their residential addresses, and the evidence presented. The Committee had until September 6, 2016 to respond to this motion. On September 9, 2016, the Ohio Supreme Court denied the relators’ motion for reconsideration or relief from judgment without publishing an opinion. *See Ohio Mfrs. Ass’n v. Ohioans for Drug Price Relief Act*, 146 Ohio St. 3d 1498 (2016).

*State ex rel. Jones v. Husted*, Sup. Ct. No. 2016-1235.

Two days after the Court issued its decision in the OMA’s challenge case (referenced immediately above); the Committee filed a mandamus action in the Ohio Supreme Court against the Secretary of State. In this action, the Committee sought to recover more than 25,000

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signatures that had previously been stricken by the Secretary and county boards of elections because the part-petitions contained signatures that had been stricken or deleted by persons not authorized to do so. The Committee cited to the Court’s ruling in the Challenge case as requiring this action since the Court held in the Challenge case that part-petitions that contained deleted signatures should not be invalidated in their entirety. Instead, the signature that was deleted could not be counted. In short, the Committee asked the Court to “undo” the deficiency judgment it had just issued. (This mandamus action was similar to a previous mandamus action brought by the Committee against the Secretary in March 2016. That case was dismissed by the Court, without prejudice, on June 15, 2016.)

Even though the Committee sought placement on the 2017 ballot, it moved the Court for expedited consideration and the Court granted the motion. Under the expedited schedule, all briefing had to be completed by August 26, 2016.

Because the OMA (along with the Ohio Chamber and PhRMA) have a substantial interest in defending the judgment they obtained in the challenge case, they filed an amicus curiae brief in this lawsuit. In their amicus brief, the OMA Parties asserted that the instant action is an improper attack on the judgment in the Challenge case and raised several procedural reasons why the action has no merit and should be dismissed. First, the Committee failed to utilize the only proper procedure for bringing its claims – a challenge action under the Ohio Constitution. Second, the relief the Committee seeks (a writ of mandamus) is not available because it has an adequate remedy at law. Third, by not bringing their claims sooner or asserting them in the OMA’s Challenge case, they are barred from bringing them now – after the Court has already ruled and determined the deficiency. As stated in the amicus brief, “This new mandamus action is the wrong proceeding, at the wrong time, and seeks the wrong remedy.”

The Ohio Supreme Court issued an opinion on September 9, 2016. *See State ex rel. Jones v. Husted*, 2016-Ohio-5752. The Court recognized their decision in *Ohio Mfrs. Assn.*, 2016-Ohio-5377 and stated that the Court’s finding in that case, that the 2015 petition contained an insufficient number of signatures, was based on limited evidence. The Court ordered Secretary of State Husted to validate 20,092 additional signatures from Cuyahoga County, 256 additional signatures from Adams County, 14 additional signatures from Drake County, 23 additional signatures from Hocking County, 67 additional signatures from Madison County, 18 additional signatures from Putnam County, 56 additional signatures from Union County, and 314 additional signatures from Delaware County.

As such, the Court determined that the evidence presented established that the petition filing exceeded the minimum-signature threshold. The Court further ordered Secretary of State Husted to rescind his September 6, 2016 transmission of the initiative to the General Assembly and ordered him to accept for verification the supplementary part-petitions. If those contain valid

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signatures the Court ordered the matter to be paced on the November 2017 general-election ballot.

III. Attachments.

We suggest that the OMA Government Affairs Committee recommend that the OMA Board take a position of opposition to the ODPRA because of the adverse effects the ODPRA will have on the manufacturers and all Ohioans. In addition to the presentation Andrew Corsig and Jenny Camper gave to the OMA Government Affairs Committee, we have attached two documents: (1) the Cleveland Plain Dealer Article “Proposed Ohio Drug Price Relief Act would not work, health policy experts say” and (2) the OH Rx Purchase Issue Brief from January 2017 “Proposed Statute on State Drug Purchasing in Ohio is Unworkable” to further explain why we believe a position of opposition to the ODPRA is in the best interest of the OMA, its members and all Ohioans.

## **Proposed Statute on State Drug Purchasing in Ohio is Unworkable** *Proposal to appear on 2017 Ohio statewide ballot was reviewed in expert study*

### **Background:**

A proposed initiated statute to change state prescription drug purchasing in Ohio will appear on the statewide ballot in November 2017. An expert report from Vorys Health Care Advisors (VHCA) and Health Management Associates (HMA) analyzed the proposal and concluded it would be difficult, if not impossible, to implement it.

The proposed initiated statute prohibits the state from entering into contracts where the “net cost” of a prescription drug purchased by the state is more than the “lowest price paid” by the U.S. Department of Veterans Affairs (VA). The proposal would dramatically change the current purchasing procedures followed by the state, and would effectively terminate existing rebates and discounts.

The VHCA and HMA report indicates the proposal is vague, with no clear definitions necessary for implementation. In addition, the proposed statute is benchmarked to the VA, which is a closed system that does not reveal drug pricing agreements or extend its processes to other public systems. As such, there would be little to nothing to be gained under the proposal. The analysts also concluded that should the proposal pass, it is unlikely that it would achieve its stated purposes of lowering prescription drug prices for consumers and it is likely that it would pose significant administrative burdens to the state, including the potential for ongoing litigation, as state agencies struggle to implement it.

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*“There would be little to nothing to be gained under the Act. Instead the state could see increased costs in administrative functions in an effort to comply, while at the same time losing valuable supplemental rebate arrangements currently in place with drug manufacturers.”*

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**Maureen Corcoran, VHCA President  
and Former Ohio Medicaid Director**

### **Defeated in California:**

A nearly identical version of the drug purchasing proposal, Proposition 61 (Prop 61), appeared on the November 2016 statewide ballot in California. Prop 61, which was defeated by voters 53.2 percent to 46.8 percent, was opposed by 200 organizations representing doctors, veterans, patient groups, labor unions, business organizations and more. Every major newspaper editorial board urged Californians to vote “no” on Prop 61 because they argued it would be virtually impossible to implement and could actually raise, not lower, prescription drug costs.

### **The proponents:**

The California-based AIDS Healthcare Foundation (AHF) authored the proposal and initiated it in Ohio and California. AHF is a billion-dollar, global operation that offers pharmacy and clinical services, and manages HMOs in certain areas.

**Impact to Ohioans:**

The proposed statute would apply to state programs that serve people in Ohio, including those on Medicaid, in state retirement programs and people in certain programs operated by the state, such as prisoners and the Ohio Bureau of Workers' Compensation, among others. The impact on those who are covered by the proposal could be negative. The proposal could actually increase prescription drugs costs for the state because it would invalidate many existing drug discount agreements that the state has negotiated for the impacted programs. Invalidating these agreements could also result in patients and providers having to go through a cumbersome prior approval process before receiving medicines, potentially delaying treatment or even a denial of coverage for needed medicines.

For approximately seven million Ohioans who use private insurance or other coverage, including veterans and their families who receive their health care through the VA, the proposal would likely increase costs. According to the VHCA and HMA report, it is conceivable that prices for non-targeted entities would go up and equally conceivable that those increases could be passed along to consumers in the form of higher prescription drug costs.

Because of the extreme difficulty to implement the proposed statute by the state departments and programs that directly or indirectly purchase pharmaceutical products, Ohioans could also experience increased costs through administrative burdens and potential lawsuits should the proposal pass and state officials are compelled to enact it.

**Conclusions:**

The experts who analyzed the proposal came to the following conclusions:

- The vague proposal makes it unlikely that the proposed statute could be implemented.
- The proposed statute would likely fail to reduce prescription drug costs for the state programs it covers and could actually increase costs and reduce patient access to needed medicines.
- It is likely the proposed statute would increase prescription drug costs for veterans and their families and those who have private insurance and other coverage.
- State agencies would need to take extreme measures in an attempt to comply with the mandate, which could also result in higher drug costs and limits on the availability of medicines for impacted individuals.

Download the full report [here](#).

###

**About the Report:**

The authors of this report were commissioned by the Pharmaceutical Research and Manufacturers of America (PhRMA) to conduct an independent, objective analysis of the likely impact of the proposed statute on the state and the people of Ohio. The analysis was generated following reviews of existing policy, comparative analysis, and a series of interviews with Ohio state agency officials.

## The Plain Dealer / Cleveland.com Proposed Ohio Drug Price Relief Act would not work, health policy experts say



A report from several Ohio health policy experts questioned whether the proposed Drug Price Relief Act would actually work if approved by voters in November 2017. *(Rich Pedroncelli, Associated Press)*



By Jackie Borchardt, cleveland.com October 3, 2016

COLUMBUS, Ohio -- A proposal to force Ohio pay less for prescription drugs won't work for many reasons, health policy experts said in a report released Monday.

The Ohio Drug Price Relief Act, a citizen-initiated statute slated for the November 2017 ballot, would require the state of Ohio to pay no more for prescription drugs than the U.S. Department of Veterans Affairs.

The report from Vorys Health Care Advisors and Health Management Associates, two health policy consulting firms, concluded that would be nearly impossible to implement because what drugs the VA buys and how much they cost is unknown and drug manufacturers are unlikely to negotiate lower prices.

The report was commissioned by Pharmaceutical Research and Manufacturers of America, a group that represents pharmaceutical companies and opposes the initiative. California-based AIDS Healthcare Foundation, which is backing the proposal, didn't immediately respond to request for comment on the report.

### **What does the report say?**

If the proposal were implemented, the report found, it might cause Medicaid and other state-assisted programs to lose agreements with drug manufacturers and thus stop offering those drugs to Ohioans.

That could have a ripple effect on Ohio cities, counties, school districts, health consortia and others that leverage drug purchasing power through the Ohio Rx Collaborative, the report warns.

"There would be little to nothing to be gained under the Act," Maureen Corcoran, Vorys Health Care Advisors president and former state Medicaid program director, said in a news release. "Instead the state could see increased costs in administrative functions in an effort to comply, while at the same time losing valuable supplemental rebate arrangements currently in place with drug manufacturers."

In addition to Medicaid, the report assumed the law would apply to about 4 million people using pharmacies and programs operated by the Ohio Department of Mental Health and Addiction Services, Department of Health, Department of Administrative Services, state employee retirement systems, the Ohio Bureau of Workers Compensation and the Ohio State University Wexner Medical Center.

### **Where does the proposal stand?**

The Drug Price Relief Act is backed by California-based AIDS Healthcare Foundation and its Ohio political action committee Ohioans for Fair Drug Prices. A similar initiative is on the ballot this year in California, and backers had hoped to also be on the ballot this year in Ohio.

But the group's initial batch of petition signatures were challenged by PhARMA and sent back for further review. That set back the timeline by a month, leaving backers about a month to collect a second batch of than 91,000 signatures of Ohio voters.

Meanwhile, Ohio Supreme Court justices invalidated thousands of the initial batch of signatures, forcing Ohioans for Fair Drug Prices to first submit additional signatures to meet that threshold before turning in signatures to put the measure on the ballot.

On Friday, Ohio Secretary of State Jon Husted certified the measure for the November 2017 ballot. It now goes to the bipartisan Ohio Ballot Board to draft the ballot language for the measure. The board has to do so no later than 75 days before the 2017 election.

*Mobile readers, click here to read the report.*

**To: OMA Government Affairs Committee**  
**From: Ryan Augsburger / Rob Brundrett**  
**Re: Energy Public Policy Report**  
**Date: March 15, 2017**

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### **Overview**

Another chapter of state government began in early January with the opening of the 132<sup>nd</sup> General Assembly. Just days before, Governor Kasich vetoed House Bill 554 that modified energy standards (both RPS and EERS). The veto angered legislative leaders. The new session is likely to see significant energy policy debates.

Also since our prior meeting, the PUCO has been considering a DP&L bailout request. The utility request is largely based on the \$1 billion bailout awarded to FirstEnergy in October.

Meanwhile utility companies are lobbying for re-monopolization benefits, a reversal from Ohio's deregulation law enacted in 1999.

### **PUCO Gives FirstEnergy Subsidy / Sets Precedent. DP&L Next in Line.**

The PUCO awarded FirstEnergy a \$1B plus subsidy to prop up the company and its affiliate. Far be it from the \$9B sought most recently by the Akron-based utility. Appeals will follow, but the PUCO effectively brought closure to the lengthy ESP application which initially included the power purchase agreement (PPA) that was later blocked by the FERC after the PUCO approved the PPA application last March.

The OMA Energy Group (OMAEG) opposed the proposal in every chapter and will continue to seek reversal in appeal. Dayton Power & Light has made a very similar filing now pending at the PUCO. The initial utility request was for over \$1 billion, but in recent weeks that subsidy figure topped \$625 million. See additional resource materials to learn more and take action.

### ***Re-Monopolization***

AEP and FirstEnergy are calling for legislation to provide *re-monopolization* of certain utility owned generation. Details of a restructuring proposal are not yet clear but legislative leaders have signaled that they are willing to consider the matter. Significant conversations are ongoing with state leaders.

AEP and FirstEnergy CEOs have asked policymakers to commit to law changes by spring 2017. Meanwhile, AEP sold their most valuable fleet of generation to Blackstone. AEP's regulated distribution utility business reported higher profit on its Ohio regulated distribution activities than anywhere else.

FirstEnergy, long a champion of competition has publicly switched positions and is now calling for customers to bailout their (subsidiary's) two nuclear power plants. They have been meeting with legislators hoping to emulate legislation enacted in NY or Illinois. See attached resource materials.

In 1999, with the passage of Senate Bill 3, Ohio began a transition to deregulated generation. That transition which has taken over a decade, has delivered customer choice, cost-savings and innovation. One of the main tenets of deregulation was forcing then-integrated utility companies to sell or spin-off their generation. "Stranded costs" and other above-market surcharge

constructs enabled the utilities to have their generation paid for by Ohioans for a second time. If approved in some form, the subsidy cases would have represented yet another above-market payment to utilities by customers who realize no benefit.

The OMA has been a proponent of markets, supporting the original deregulation legislation and opposing utility profit subsidy schemes that distort the market and result in new above-market charges on manufacturers.

Several noteworthy studies have demonstrated how the market delivers lower prices, choice and innovation without compromising reliability. See attached resource materials.

### ***Financial Integrity Bailouts***

In Spring of 2016, we reported on favorable Supreme Court decisions that protect customers from inappropriate utility overcharges. The Court decision pertained to both AEP and DP&L but also established precedent. Dayton Power & Light has developed a legislative proposal to reverse Supreme Court decision that fairly protects customers from transition charges. The legislative proposal would authorize PUCO to impose riders on customers' electric bills to fund a utility bailout any time a utility claims their "financial integrity" is threatened. No further visible activity.

### **PUCO Appointment**

Early this year, Governor Kasich appointed veteran energy attorney Howard Petricoff to a top PUCO staff position following the Senate's refusal to confirm his appointment.

More recently the Governor appointed Lawrence Friedeman and Daniel Conway to terms on the PUCO. Friedman has background with competitive energy supplier IGS Energy and Conway was most recently a regulatory attorney with a Columbus law firm.

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

Litigation over the regulations continues as the rule is officially still pending. While there was much speculation about the CPP's ability to survive legal scrutiny before the November election, it's clear the White House intends to rescind the rule-making.

### **Natural Gas Infrastructure**

The OMA continues to express industry support for the Rover Pipeline and Nexus Pipeline. Billions of dollars of pipeline investment are underway by several different developers. The Rover Pipeline secured FERC approval in early February. Natural gas production continues to grow in the Buckeye state even with depressed pricing. In fact, Ohio natural gas prices are among the lowest around the globe today.

### **Energy Standards Legislation**

The Governor acted on his threat to veto House Bill 554 last December. The bill weakened the energy standards that had been frozen since 2015 by then SB 310. The OMA had a technical analysis of HB 554 produced. Together with over fifty co-sponsors, Representative Bill Blessing introduced HB 114 which is very similar to the vetoed legislation. House leaders have expressed interest in expediting passage even though the Governor's concerns likely remain.

## Energy Legislation

Prepared by: The Ohio Manufacturers' Association  
Report created on March 13, 2017

- HB105 OIL AND GAS FUNDING LIMIT** (CERA J, HILL B) To limit the amount of revenue that may be credited to the Oil and Gas Well Fund and to allocate funds in excess of that amount to local governments, fire departments, and a grant program to encourage compressed natural gas as a motor vehicle fuel.  
*Current Status:* 3/2/2017 - Introduced  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-105>
- SB50 WELL 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:* 2/22/2017 - Senate Energy and Natural Resources, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-50>
- SB53 NATURAL GAS RESTRICTION** (SKINDELL M) To ban the taking or removal of oil or natural gas from and under the bed of Lake Erie.  
*Current Status:* 2/22/2017 - Senate Energy and Natural Resources, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-53>
- SB65 ENERGY STAR TAX HOLIDAY** (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:* 3/1/2017 - Senate Ways and Means, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-65>

## Energy

### [Ohio Electric Deregulation Saving Consumers \\$3 Billion a Year](#)

March 10, 2017

A recent whitepaper produced by OMA indicates that deregulation has dramatically lowered the generation rates offered to Ohio customers as cost-based ratemaking has been replaced by competitive market-based auctions.

Combined, shoppers and non-shoppers saved more than \$16 billion from 2011 to 2015 due to Ohio's move away from electric generation monopolies and to competitive markets.

There are additional documented benefits of deregulation including substantial investment in Ohio's energy infrastructure. Eight new natural gas-powered plants are in various stages of construction throughout Ohio. Four more are in various planning stages.

Improvements in energy efficiency and reliability have been secured. Reserve margins of capacity are steadily in the 20 percent range, which is in excess of the 15 percent target established by PJM Interconnection, the grid manager.

Read the whitepaper, [Competitive Markets for Electricity Deliver \\$3 Billion a Year in Savings to Ohio Electricity Consumers](#). 3/7/2017

### [Above-market Charges on Consumers: \\$15 Billion & Rising](#)

March 10, 2017

According to the Office of the Ohio Consumers' Counsel, from 2000 to 2016, Ohio's electric utilities collected \$14.67 billion in above-market charges from all customers regardless whether the customers were purchasing generation supply from a competitive supplier. Most of these charges were approved by the Public Utilities Commission of Ohio (PUCO) to help the utilities manage through the transition from regulated pricing to market-based pricing.

Utilities continue to prevail in PUCO cases, however, resulting in new non-bypassable riders on customers to generate revenue needed to ameliorate the utilities' (or their parent companies') cash-flow problems and/or improve their profitability. In late 2016, the PUCO issued two rulings authorizing the collection of more than \$1 billion of ratepayer money to prop up the corporate earnings of FirstEnergy and allowing an

"unknown" amount for subsidies for unregulated AEP Ohio generation. In addition, Dayton Power & Light has a pending PUCO case that if approved would cost its customers another \$625 million dollars over five years.

As consumers' generation charges are dropping in the market as a result of electric generation deregulation, their non-generation charges, which in some cases include dozens of nonbypassable riders, are on the rise – eating away at customers' overall savings with no corresponding benefits. These riders function as a new tax on families and businesses and are a drag on the state's economy.

Read more in this recent OMA whitepaper: [Ohio's Electric Utilities' Above-Market Charges Are Anti-Competitive For Ohio's Consumers](#). 3/7/2017

### [OMA EEPN Goes to Marietta](#)

March 10, 2017



This week, the OMA Energy Efficiency Peer Network (EEPN) toured a combined heat & power installation at Solvay Specialty Polymers USA, LLC in Marietta.

The EEPN schedules plant tours several times a year for members to see energy innovations.

If you'd be interested in joining the EEPN, just send an email to OMA's [Denise Locke](#), with your contact information.

Thank you, Solvay Specialty Polymers, for your generosity! 3/9/2017

## [OMA Argues on Behalf of Duke Customers at Supreme Court of Ohio](#)

March 3, 2017



Pictured: OMA energy counsel Kim Bojko of Carpenter Lipps & Leland, Larry Sauer of the Office of the Ohio Consumers' Council and Rob Brundrett of OMA staff

This week OMA's energy counsel, [Kim Bojko](#), of Carpenter Lipps & Leland, argued before the Supreme Court of Ohio on behalf of the Appellants requesting that it overturn a Public Utilities of Ohio (PUCO) order that awarded Duke \$55.5 million from customers for cleanup costs associated with two former manufactured gas plants that have not been in operation for 50-89 years.

Bojko stated that the PUCO improperly applied the ratemaking statutes in Ohio that do not permit recovery of expenses associated with plants that were not used and useful in rendering service to Duke's distribution customers during the test year.

OMA and the Office of the Ohio Consumers' Counsel, among others, appealed the PUCO decision three years ago. The court will render a decision in the near future.

## [FES Worth Less than its Debt](#)

February 24, 2017

On an [investor call](#) this week, FirstEnergy indicated that the company experienced a loss of \$6.2 billion in 2016 on sales of \$14.6 billion. CEO Chuck Jones discussed the possibility of bankruptcy for FirstEnergy Solution(FES), the generation-owning subsidiary of the company.

The company took a large write-down of its Ohio and Pennsylvania generating assets. FES is now valued at \$1.6 billion. It's total long-term debt is \$3 billion.

The CEO said FirstEnergy aims to exit the generating business by 2018. It will sell or close the plants, he indicated.

Meanwhile, the company is seeking legislation that would provide very large customer-paid subsidies for its two Ohio nuclear plants. Obviously, such subsidy mandates would make the plants more valuable to a purchaser. Just as obviously, the subsidies would punish ratepayers with no benefit. 2/23/2017

## [Upcoming Plant Tour of Combined Heat & Power Installation](#)

February 24, 2017

There is a growing interest among Ohio manufacturers to better understand the benefits, feasibility and hurdles to combined heat and power applications (CHP).

Therefore, the OMA [Energy Efficiency Peer Network](#) (EEPN) has scheduled its next plant tour for [Thursday, March 9](#) at the Solvay Specialty Polymers plant in Marietta, Ohio.

The Solvay Specialty Polymers facility in Marietta features a new combined heat and power plant. The tour is hosted by Solvay, Varo Engineers and DTE Energy Services.

Limited to 30 registrants; must be a manufacturing member of OMA to participate.

[See the event and registration details here.](#) 2/20/2017

## [DP&L Files Proposal for \\$625M from Customers over 5 Years](#)

February 17, 2017

Dayton Power & Light (DP&L) is litigating a proposal at the Public Utilities Commission of Ohio (PUCO) that, if approved, will allow it to impose more above-market charges on customers in its service area. The estimated cost of the rider is \$625 million over five years. The rider will not be by-passable by shopping with a competitive supplier.

DP&L intends to use the \$625 million to reduce its debt and allegedly invest in its grid; however, this is too large of a subsidy to bailout DP&L's parent, DPL Inc., and the holding company, AES. There are also many other proposed above-market charges embedded in the proposal that will cost customers even more money during the term of the proposal.

We have estimated the potential cost to DP&L customers. [Click here.](#) OMA energy counsel Carpenter Lipps & Leland has prepared [this analysis of the case.](#)

The [OMA Energy Group](#) is opposing the measure. OMA members can take action by making a phone call to or arranging a meeting with elected officials to express opposition to this proposal. Contact Governor Kasich ([contact information](#)) and your state senator and state representative ([look up here](#)).

Here is a [sample letter](#) (in Word) for communicating with elected officials. 2/14/2017

### [Governor Makes Appointments to PUCO](#)

February 17, 2017

Late this week Governor Kasich [announced the following appointments](#) to the Public Utilities Commission of Ohio:

Lawrence R. Friedeman of Waterville (Lucas Co.) will replace M. Howard Petricoff. Friedeman received his bachelor's degree and juris doctorate from University of Pittsburgh. He is currently Vice President of Regulatory Affairs and Compliance at IGS Energy.

Daniel R. Conway of Upper Arlington (Franklin Co.) replaces Lynn Slaby, whose term is expiring. Conway received his bachelor's degree from Miami University and his juris doctorate from the University of Michigan. He is currently an attorney at Porter, Wright, Morris and Arthur LLP and is an adjunct professor at The Ohio State University Law School. 2/16/2017

### [Ohioans Prefer Energy Choice](#)

February 10, 2017

A recent poll of Ohioans found support for the benefits of a deregulated energy marketplace. The Fallon Research firm was engaged by the Alliance for Energy Choice to measure Ohioans' attitudes and opinions about energy policies.

- 91.5% oppose changing Ohio law to allow utilities, like AEP and First Energy, to charge customers for the cost to build their new plants.
- 78.7% oppose a change in law that would eliminate the ability to shop for the best price for electric and natural gas service from a variety of providers and require customers to take services only from their local utility.
- 62% disagree that utility customers should pay the additional cost to support uneconomical power plants because it may preserve jobs in certain communities.

- 55.5% agree that Ohio should increase electric market competition, even if it means the elimination of the government-mandated electric utility monopoly that has existed for decades.

Here are [all the results](#). 2/6/2017

### [Rover Pipeline Gets Go Ahead from FERC](#)

February 10, 2017

Last week, the Federal Energy Regulatory Commission (FERC) issued a certificate of public convenience and necessity for the [Rover Pipeline](#) project. The Coalition for the Expansion of Pipeline Infrastructure (CEPI), of which OMA is a member, [applauded FERC](#) for releasing the certificate after two years of thorough review.

Once in operation, the Rover Pipeline will fill a critical need of natural gas producers in the Marcellus shale region. While production levels have steadily risen in recent years thanks to new extraction technologies, the ability to transport those resources to end markets has been lacking. Now, with the Rover Pipeline clearing a major regulatory hurdle, natural gas producers in Ohio, Pennsylvania, and West Virginia are one step closer to meeting demand for affordable, domestically-produced natural gas. 2/6/2017

### [Petricoff Back at PUCO](#)

February 3, 2017

Just a month after stepping down as a member of the Public Utilities Commission of Ohio (PUCO) amid pressure from Senate Republicans, M. Howard Petricoff has been hired in a top staff job at the PUCO.

As chief analyst of the PUCO, Petricoff will be in a key position to help the state agency balance the needs of customers with those of regulated public utilities in accordance with Ohio law.

Congratulations to Mr. Petricoff! 2/2/2017

### [Electric Re-Regulation or Surgical Strike?](#)

February 2, 2017

During a [recent investor call](#), AEP CEO Nicholas Akins commented about what a utility-driven re-regulation legislative proposal might look like saying, "There are already drafts of legislation circulating."

According to reporter John Funk of the Cleveland Plain Dealer [who summarized the AEP call](#), Akins said: “The companies have been looking for a way to escape the perils of market prices that come with deregulation or at the very least craft ‘surgical’ amendments to state laws that since 2000 have been gradually moving the industry into market-based pricing.”

Funk noted that AEP wants to build wind and solar farms and maybe new gas plants, and that FirstEnergy is interested in finding a way to subsidize its two nuclear power plants.

The OMA opposes customer paid subsidies to utilities for non-economic activity and has been fighting utilities’ proposals at the PUCO through its [OMA Energy Group](#). Markets, not regulators, deliver better service, price and innovation.

Join a discussion about re-regulation legislation potential at the February 9 meeting of the OMA Energy Committee. [Register here](#). 2/2/2017

### [Markets v Command-and-Control Regulation](#)

January 27, 2017

Are markets reducing the cost of electricity generation relative to command-and-control regulated dispatch? [This study from the University of Chicago](#) answers this question.

The study finds that markets reduce the cost of generating electricity by about \$3 billion per year through increased efficiencies and coordination both within and across areas.

By using the lowest-cost plants 10% more often, markets reduce the costs from using uneconomical units by 20% per year. Additionally, the cost reductions from trading electricity across regions increases by 20% per year.

The report concludes: “As policymakers are faced with the question of whether the de-regulation of electricity markets should be expanded or scaled back, these findings suggest the benefits realized by more efficient allocation of output through market-based dispatch have far outweighed any imperfections in the market system.” 1/26/2017

### [PUCO Nominating Council Sends Names to Governor](#)

January 27, 2017

The Public Utilities Commission of Ohio (PUCO) Nominating Council [this week submitted](#) the names of five finalists to be considered by Gov. John Kasich to fill two commissioner positions.

The Nominating Council recommended the following individuals to fill the unexpired term ending April 10, 2020: Daniel Conway, Lawrence Friedeman, J. Edward Hess and Raymond Lawton.

The Nominating Council also recommended Gregory Williams be included for consideration for the five-year term commencing on April 11, 2017 and end April 10, 2022, along with the remaining three individuals from above not selected by the governor.

The PUCO Nominating Council is a 12-member panel charged with screening candidates for the position of commissioner. 1/26/2017

### [24 Apply to PUCO](#)

January 20, 2017

Twenty four applicants for two open seats on the Public Utilities Commission of Ohio (PUCO) were submitted by the deadline earlier this month. The open seats are the result of the pending expiration of Commissioner Lynn Slaby’s term, which ends in April, and the resignation of Howard Petricoff, who chose to withdraw his nomination rather than risk his appointment being denied by the Senate.

Applicants include 10 Democrats, 10 Republicans and four independents

The PUCO’s 12-member nominating council will compile a short list of top candidates for interviews to take place next week. Finalists will then be forwarded to the governor who will make the appointments within 30 days of receiving the names.

State law prohibits any more than three members of the PUCO to be affiliated with either major party, but that’s a nonfactor given the committee’s current makeup; Gov. Kasich will be able to make appointments from applicants of any political affiliation. 1/19/2017

## [State Offers Low-Interest Loans for Energy Efficiency Projects](#)

January 13, 2017

Ohio's Energy Loan Fund is now accepting applications for low-interest financing to install efficiency measures that reduce energy by at least 15%. Technical assistance is available to help eligible applicants identify energy efficiency improvements in their facilities and to facilitate the required energy audit.

Loan amounts vary depending on the project and can be from \$250,000 up to \$2 million.

To apply, organizations must first register and [submit a letter of intent](#). Qualified applicants who submit a letter of intent will receive written instructions from Ohio Development Services Agency about how to access the online loan application.

Program guidelines and the application process [can be found here](#). Questions about the program can be [emailed here](#). *1/11/2017*

## [A Second PUCO Seat Opens](#)

January 13, 2017

[Commissioner Lynn Slaby](#) of Public Utilities Commission of Ohio has announced that he will not seek reappointment from Governor Kasich when his term expires this spring. Now, two of the five seats that need to be filled by the governor.

Late last year, Commissioner Howard Petricoff resigned when there were indications that the Senate might not confirm his appointment to the powerful agency. His appointment was opposed by some public utilities. *1/12/2017*

## [Governor Vetoes Energy Standards Bill](#)

January 6, 2017

Just days before the conclusion of the 131<sup>st</sup> General Assembly, Governor John Kasich vetoed House Bill 554, a bill that would have made the implementation of the state's energy standards optional for electric utilities, for two years.

Kasich had warned legislative leaders repeatedly that he would not accept legislation that weakens the standards or extends the already frozen phase-in schedule of renewable energy standards and energy efficiency standards. [Read the governor's reasons](#) for vetoing the bill.

After the veto, the General Assembly adjourned sine die, lacking the votes for an override. *1/5/2017*

## [Efficiency Project Rebate Money for OMA Members in AEP Ohio Territory](#)

January 6, 2017

OMA's energy partner, [Go Sustainable Energy](#), recently secured \$250,000 in rebates on behalf of Ohio manufacturers in [AEP Ohio's Bid4Efficiency](#) auction.

AEP Ohio holds the annual auction to create incentives for customer energy efficiency projects. Rebates awarded by the program are eligible to exceed AEP's \$25,000 rebate cap; projects will be compensated at \$0.043/kWh saved.

If your company is in AEP territory and you are completing or planning an efficiency project in 2017, please contact [John Seryak](#) to learn more. Funding will be available to OMA members on a first-come, first-served basis. *1/5/2017*

## COMPETITIVE MARKETS FOR ELECTRICITY DELIVER \$3 BILLION A YEAR IN SAVINGS TO OHIO ELECTRICITY CONSUMERS

*“The great danger to the consumer is the monopoly ... His most effective protection is free competition ... The consumer is protected from being exploited by one seller by the existence of another seller from whom he can buy and who is eager to sell to him. Alternative sources of supply protect the consumer far more effectively than all the Ralph Naders of the world.”*

~ Milton Friedman

Competitive electricity markets in Ohio are working and delivering cost savings and other benefits to customers across Ohio.

Over the past 17 years, since the enactment of Ohio Amended Substitute Senate Bill 3 (SB 3) in 1999, the restructuring of Ohio’s retail electricity marketplace has been implemented and refined.

The major premise of SB 3 was that competitive markets, rather than government regulation, would provide the choices, savings and other benefits that customers seek and value. This premise has been proven correct.

### COMPETITIVE MARKETS ARE WORKING WELL FOR OHIO ELECTRICITY CUSTOMERS

Ohio’s electric industry restructuring sought to secure safe, reliable, lowest-cost electricity for customers.

Electricity customers in Ohio today enjoy unprecedented options for shopping for generation service. The competitive market is working. It’s delivering customer choice, new energy technologies, innovative energy services, and direct energy savings to customers – all while assuring energy reliability.

### THE BENEFITS OF COMPETITION ARE NUMEROUS AND WELL-DOCUMENTED

Customers across the state are benefitting from competitive electricity markets in numerous ways:

**LOWER COSTS.** A recently completed analysis<sup>1</sup> of electricity prices in Ohio since 2011 found that deregulation has saved, and will continue to save, Ohio electricity customers an average of three billion dollars annually.

***Deregulation has dramatically lowered the generation rates offered to customers as cost-based ratemaking has been replaced by competitive market-based auctions. Under SB 3, for their customers who do not shop for electric generation on the retail market, electric distribution utilities are required to purchase electricity via competitive auctions. From 2011 through 2015, these auctions have saved non-shopping consumers \$12.9 billion.***

For those customers who shopped for generation from competitive suppliers in the retail market, there have been even greater savings. From 2011 through 2015, customers who are purchasing electricity from a competitive supplier conservatively realized an additional \$3.1 billion in cost savings compared to what was paid by customers who purchased generation from their incumbent utility.

Combined, then, shoppers and non-shoppers have saved more than \$16 billion since 2011 due to Ohio’s move away from electric generation monopolies and to competitive markets.

The transition to a competitive retail electric marketplace has allowed customers access to historically low energy prices driven by the natural gas shale boom and flattening demand for electricity. And in a free market, customers get the benefit, not the monopoly to which they have been captive.

<sup>1</sup> ELECTRICITY CUSTOMER CHOICE IN OHIO: How competition has outperformed traditional monopoly regulation, November 2016, Northeast Ohio Public Energy Council

**INVESTMENT & ECONOMIC GROWTH.** Free markets encourage entrepreneurship. Entrepreneurs drive investment. It is occurring in Ohio's electricity marketplace in a big way.

Eight new natural gas-powered plants are in various stages of construction throughout Ohio. Four more are in various planning stages.

The estimated collective capacity of the eight new plants is 8,242 MW, and they collectively represent a \$7.74 billion investment. This new capacity is enough to power 7,000,000 homes which is more than 1.5 times the entire population of Ohio.

The eight new plants also will generate an incredible demand for Ohio natural gas. It is estimated, conservatively, that for every 5,000 MW of new capacity, approximately \$20 billion of natural gas will be purchased over a 30-year period.<sup>2</sup>

PJM Interconnection is the Regional Transmission Organization that governs the grid that supplies Ohio and 13 other states and the District of Columbia. Its energy and capacity markets are sending clear price signals that are attracting substantial investment in new generation. And, by driving prices down, Ohio becomes more competitive.

**IMPROVED TECHNOLOGY AND ITS EFFICIENCY IN MAKING ELECTRICITY.** The markets drive technology investment and innovation. The markets are attracting to Ohio new technologies that improve energy generating efficiency, as measured by "heat rate," or the amount of BTUs needed to make a kWh of electricity. The favored base load power plant configuration in Ohio today is a water-cooled, 2-on-1 combined cycle, gas-fueled power plant, which is nearly twice as efficient as legacy coal-fired plants. This is important because enhanced efficiency conserves fuel and lowers wholesale energy prices for all consumers.

Markets also drive efficiency gains in already operating generation units. A study of 950 fossil-fuel power plants in the U.S. found that those in restructured, competitive markets increased their heat rate by 13 percent. This market-driven gain in power plant efficiency resulted in a reduction of up to 81 million tons of carbon dioxide nationally, equivalent to the amount of CO<sup>2</sup> produced by up to 14 million cars. The fuel efficiency gains were found to be from technical changes to the power plant, and organizational changes with the operating staff.<sup>3</sup> Yet another study found that nuclear plants in competitive territory gained 3 to 5 percent in efficiency compared to their regulated peers.<sup>4</sup>

And, consider the surging role of batteries in regulating the frequency of the electric grid. PJM has created markets to provide frequency regulation to keep local grids stable. As a result, in 2015, grid-scale batteries had already grown to provide 22 percent of the frequency regulation needed for the electric grid, from 16 percent in 2014. By the first half of 2016, the number of battery units rapidly expanded, and batteries now make up 42 percent of frequency regulation.<sup>5</sup>

<sup>2</sup> JobsOhio

<sup>3</sup> Craig, J. Dean, Savage, Scott., "Market Restructuring, Competition and the Efficiency of Electricity Generation: Plant-level Evidence from the United States 1996 to 2006.", <http://www.colorado.edu/Economics/papers/Wps-09/wp09-06/09-06CraigSavage.pdf>

<sup>4</sup> Fabrizio, K, Rose, N., and Wolfram, C., "Do Markets Reduce Costs? Assessing the Impact of Regulatory Restructuring on US Electric Generation Efficiency", <http://economics.mit.edu/files/9915>

<sup>5</sup> [http://www.monitoringanalytics.com/reports/PJM\\_State\\_of\\_the\\_Market/2016/2016q2-som-pjm-sec10.pdf](http://www.monitoringanalytics.com/reports/PJM_State_of_the_Market/2016/2016q2-som-pjm-sec10.pdf)

**IMPROVED RELIABILITY.** Competitive markets deliver reliable electricity supply. Ohio’s electric generators participate in a wholesale competitive market operated by the PJM Regional Transmission Organization. To ensure that reliable electricity supply is maintained, PJM conducts a forward-looking competitive auction for generation capacity. Generation capacity is the promise of an electric generator to be available to operate when the grid requires it. PJM goes so far as to literally equate capacity to reliability. PJM plays it safe, forecasting the peak capacity requirements of the grid in future years and aiming to procure a reserve margin of about 15 percent more than it actually needs. The results show that competitive auctions work. For the past five years, PJM has procured even more reserve margin than it has targeted, on average about 20 percent annually.<sup>6</sup>

The amount of PJM’s recent reserve margins exceeds the entire generating capabilities for all of Ohio.<sup>7</sup> That is to say, PJM’s auction has procured so much capacity, that even on the hottest of days, it has more than enough standby resources to meet all of Ohio’s capacity needs.

YEAR	RESERVE MARGIN
2019/20	22.40%
2018/19	19.80%
2017/18	19.70%
2016/17	21.10%
2015/16	20.20%

*PJM projected capacity reserve margin over five years*

## CONCLUSION

The promise of electricity markets has become reality in Ohio. Electricity markets are delivering the anticipated benefits:

- Driving electricity costs down – an estimated \$16 billion in savings from 2011 to 2015 for Ohio businesses and families
- Attracting substantial investment in new generation in Ohio – 8,242 MW of new generation and more in the planning pipeline
- Improving energy efficiency and reliability – reserve margins steadily in the 20 percent range with 13 percent gain in power plant efficiency

The policy has even greater promise for Ohio’s future, if state and federal policymakers will pursue public policy that protects competitive markets in Ohio and federally.

<sup>6</sup> Source: PJM Base Residual Auction reports, for example, see: <http://www.pjm.com/~media/markets-ops/rpm/rpm-auction-info/2019-2020-base-residual-auction-report.ashx>

<sup>7</sup> <https://www.eia.gov/electricity/state/ohio/index.cfm>

## COMPETITIVE MARKETS FOR ELECTRICITY DELIVER \$3 BILLION A YEAR IN SAVINGS TO OHIO ELECTRICITY CONSUMERS

### WHAT IS CAPACITY AND HOW DOES IT IMPACT ELECTRIC COSTS?

Capacity is part of a customer's electric generation rate, along with the cost of the energy itself, and is associated with the costs a generation supplier incurs to have enough power to meet demand in a particular area during peak times. Today, it accounts for around 12 percent of the total bill.

The cost of capacity is determined through a series of forward capacity auctions conducted by a Regional Transmission Organization (RTO), which coordinates power generation and transmission and transmission within a region and is responsible for grid operations and electric reliability. In Ohio, the RTO is PJM Interconnection (PJM). Customers pay for this via their generation supplier.

In general, constrained generation supplies drive auction prices up, which in turn signals the need to build new generation assets (or reduce demand). On the other hand, an excess of generation typically drives auction prices down, discouraging the construction of new power plants.

## OHIO'S ELECTRIC UTILITIES' ABOVE-MARKET CHARGES ARE ANTI-COMPETITIVE FOR OHIO'S CONSUMERS

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Ohio's 17-year transition from a regulated to a competitive market for electric generation is providing electric customers unprecedented options for shopping for – and saving on - generation service. The competitive market is working.

Market-based pricing is delivering customer choice, investment in new energy technologies, and innovative energy services. Competition is driving electricity costs down for families and businesses. Substantial investment in new generation is underway in our state, improving energy efficiency and reliability, and reducing environmental impacts.

***A recent study conducted jointly by Cleveland State University and The Ohio State University found that since 2011, electricity shoppers and non-shoppers in Ohio have saved more than \$16 billion as a result of market-priced electricity -- more than \$3 billion a year.***

Competitive markets dispatch the least cost power producer first and highest cost producer last in order to meet the instantaneous demand for energy. The hourly energy prices are set at the cost of the last plant dispatched to satisfy demand. With the demand for energy flat due to successful energy efficiency measures, uneconomic plants are not getting dispatched and, therefore, prices remain low. Independent generators and their lower-cost natural gas-fired power plants are further driving costs down (one benefit of Ohio's extensive shale gas deposits). Within this economic dispatch model traditional electric utilities heavily reliant on aging, uneconomic plants are finding it difficult to compete.

Deregulated pricing requires utilities to develop default rates (the rate paid by customers who choose not to shop) based on wholesale market prices for energy, rather than on the cost of goods, as was the case for decades. Electric generators with high costs due to aging, uneconomic power plants cannot recover enough revenues from market-based rates to recover their costs.

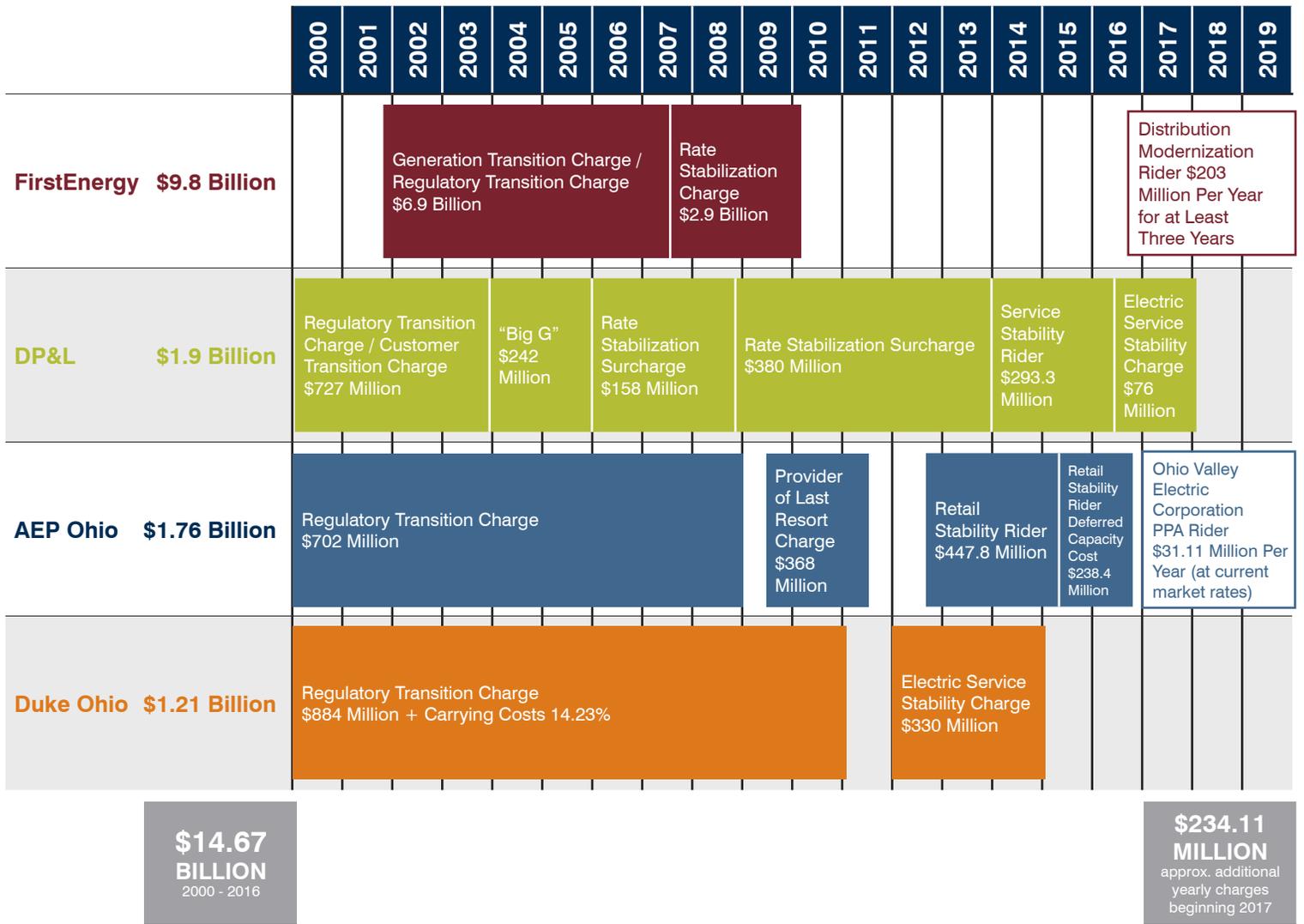
# OHIO'S ELECTRIC UTILITIES' ABOVE-MARKET CHARGES ARE ANTI-COMPETITIVE FOR OHIO'S CONSUMERS

In response, Ohio utilities are proposing to protect their futures in two major ways: (a) seeking legislation to return to a form of monopolistic electricity pricing, and, in the interim, (b) continuing to force customers to pay billions of dollars in above-market charges.

According to the Office of the Ohio Consumers' Counsel, from 2000 to 2016, Ohio's electric utilities collected \$14.67 billion in above-market charges from all customers regardless whether the customers were purchasing generation supply from a competitive supplier. Most of these charges were approved to help the utilities manage through the transition from regulated pricing to market-based pricing.

## SUBSIDY SCORECARD - ELECTRIC UTILITY CHARGES TO OHIOANS

PUCO-APPROVED ABOVE-MARKET ELECTRIC UTILITY CHARGES SINCE 2000



SOURCE: OFFICE OF OHIO CONSUMERS' COUNSEL

Utilities continue to prevail in Public Utilities Commission of Ohio (PUCO) cases, resulting in new non-bypassable riders on customers to generate revenue needed to ameliorate the utilities' (or their parent companies') cash-flow problems and/or improve their profitability. In late 2016, the PUCO issued two rulings authorizing the collection of more than \$1 billion of ratepayer money to prop up the corporate earnings of FirstEnergy and allowing an "unknown" amount for subsidies for unregulated AEP Ohio generation. In addition, Dayton Power & Light has a pending PUCO case that if approved would cost its customers another \$625 million over five years.

This most recent round of non-bypassable riders comes at a time when the market is delivering robust benefits. These cases were all filed to keep inefficient and uneconomic utility power plants operating, essentially to prop up the value of the corporations, with no associated consumer benefits. For example, the PUCO has acknowledged that FirstEnergy's PUCO-approved Distribution Modernization Rider will not fund any specific modernization projects, but, instead, is an incentive that will prop up FirstEnergy's credit rating.

### Approximate Estimated Costs to Manufacturers for FirstEnergy's Distribution Modernization Rider

Manufacturer Size	Consumption (kWh/year)	FirstEnergy		
		Annual Cost Estimate*	Total for 5-year DMR*	Total for 5-year DMR w/o tax gross up
<b>Small</b> (~\$100k/yr in electricity costs)	1,000,000	\$3,747	\$18,735	\$12,178
<b>Medium</b> (~\$600k/yr in electricity costs)	7,500,000	\$28,102	\$140,510	\$91,332
<b>Large</b> (~\$6 million/yr in electricity costs)	100,000,000	\$374,694	\$1,873,468	\$1,217,754
<b>Extra large</b>	1,000,000,000	\$3,746,936	\$18,734,681	\$12,177,543
<b>Territory total</b>		<b>~\$203 Million</b>	<b>~\$1.019 Billion</b>	<b>~\$662.5 Million</b>

\*Assumes 35% Corporate Tax Gross Up  
Distribution Modernization Rider approved by PUCO in October 2016

### Approximate Estimated Costs to Manufacturers for DP&L's Proposed Debt-Relief Settlement

Manufacturer Size	Consumption (kWh/year)	Estimated Annual DMR/DIR-B Cost (\$)	Estimated 5-year DMR/DIR-B Cost (\$)
<b>Small</b> (Secondary Service)	1,000,000	\$8,265	\$41,327
<b>Medium</b> (Secondary Service)	7,500,000	\$59,598	\$297,988
<b>Large</b> (Primary Service)	100,000,000	\$375,144	\$1,875,718
<b>Extra large</b>	1,000,000,000	\$3,749,744	\$18,748,719

Dayton Power & Light (DP&L) has requested that its Distribution Modernization Rider (DMR) and Distribution Investment Rider (DIR-B) provide \$125 million per year for five years.

## ABOVE-MARKET CHARGES ARE OFFSETTING LOWER GENERATION COSTS

A logical conclusion of seeing historically low wholesale and retail electricity generation prices might be that Ohioans have overall lower electric bills. But, in fact, due to the imposition of these non-generation-related utility charges, the overall cost of electricity is not going down. The utilities' non-bypassable above-market charges are dampening the benefits of lower deregulated generation costs.

## THERE IS NO SHORTAGE OF GENERATION

In recent cases before the PUCO, utilities have argued that if Ohio does not approve their proposed above-market cost riders, the utilities' affiliated generation facilities will shut down, threatening the availability and affordability of electricity for Ohioans. The utilities claim that rejection of proposed new riders would send a clear message to the marketplace discouraging investment in new generation assets in Ohio.

They claim this would further compromise our future energy security – and that adequate supplies of generation can be assured only if customers subsidize continued operation of obsolete, inefficient and unprofitable power plants. The utilities continue to try to convince policymakers, regulators and customers that without guaranteed cost-recovery through some form of customer subsidization, investors will not be willing to take on the financial risk of building new generation plants in Ohio.

This is wrong. Markets are working. The energy and capacity markets operated by PJM Interconnection (the Regional Transmission Operator that manages the electricity grid for Ohio and the region) are sending clear price signals that are attracting substantial investment in new generation. Eight new natural gas-powered plants are in various stages of construction throughout Ohio (and more are on the drawing board). And for the past five years, PJM has procured even more reserve margin than it has targeted. New generation is being built -- just not by Ohio's regulated electric utilities.

Additionally, subsidies for generators to ensure reliability already exist through the PJM construct. PJM provides additional compensation to a generation owner when a unit proposed for retirement must continue operating for reliability purposes. This mechanism is precise in its award of above-market rates to only those assets proven necessary for grid stability.

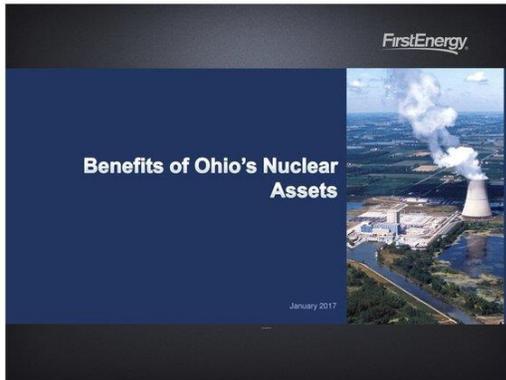
## PROTECT THE DEREGULATED GENERATION MARKET BENEFITS

***As consumers' generation charges are dropping, their non-generation charges, which in some cases include dozens of non-bypassable riders, are on the rise – eating away at customers' overall savings with no corresponding benefits. These riders function as a new tax on families and businesses and are a drag on the state's economy.***

Moving forward, Ohio needs to maintain the healthy operation of a robust competitive electric generation marketplace that is delivering price benefits to consumers and job-creating energy innovation for the state's economy. The PUCO and the Ohio General Assembly must protect the open, competitive markets created by electric industry restructuring.

# Cleveland Plain Dealer

## FirstEnergy rate increase for nuclear still shadowy but opponents lining up



FirstEnergy's nuclear subsidy proposal cannot be found on the company's website.

By John Funk, The Plain Dealer

Follow on Twitter

on March 07, 2017 at 1:58 PM, updated March 07, 2017 at 7:00 PM

CLEVELAND, Ohio -- FirstEnergy's plan to convince Ohio lawmakers they should save the company's nuclear reactors by funneling more money from customers to the company has still not seen the legislative light of day.

But for certain, the company [has shopped](#) its proposal to key lawmakers with a full-color, professional-looking, authoritative brochure that looks very much like an investor presentation.

[Benefits of Ohio's Nuclear Assets](#) has been circulating behind closed doors since January, according to the date on its title page.

The plan would increase customer monthly bills by at least 5 percent and raise an extra \$300 million a year for FirstEnergy. In perpetuity. And the increase would affect all customers, even those who buy power from competitors.

Yet, the 13-page document lawmakers are using to create legislation cannot be found on the energy company's website because, said spokeswoman Jennifer Young, some of the language may change. But it is a FirstEnergy document, she confirmed.

The Plain Dealer found the document on the Internet and downloaded a copy. It has since disappeared.

The booklet explains in some detail how important it will be for Ohio to keep FirstEnergy's Ohio-based Davis-Besse and Perry nuclear plants running, as well as its Pennsylvania-based Beaver Valley plant, even if the electricity is more expensive than market-based prices.

The argument for nuclear includes the familiar themes: Power plants support jobs, pay taxes, run around the clock, produce little if any carbon dioxide and add fuel diversity, meaning it would be risky to rely entirely on gas, coal, wind and solar.

But operating a nuclear plant is expensive. The solution, the company argues, is for the state to create "Zero Emission Credits," or ZECs, which are a nod to the environmental benefits of operating nuclear reactors.

Nuclear power is absolutely outdated and the wrong technology for today."

That's what similar programs in New York and Illinois are calling the subsidies. FirstEnergy is doing the same, however, it's giving the subsidy a slightly different acronym, ZEN, for Zero-Emissions Nuclear Resource Program.

The ZEN would be permanent, even if the company sells the plants and concentrates on

operating its regulated subsidiaries, local distribution and long-distance transmission companies. Many [top company executives insist they will do just that](#) by next year unless the state reverses 17 years of competition and puts power plants back under regulation.

Whenever FirstEnergy's plan emerges as a bill supported by GOP leadership, which some say could be this week, competing power companies have already lined up to oppose it and any other legislation that would undermine competitive markets that have driven down power prices over the last decade.

Dynegy and NRG, two Houston-based independent power companies that now operate coal-fired power plants in Ohio that the old utilities like FirstEnergy chose to sell rather than modernize, say they will oppose the legislation.

Abraham Silverman, vice president and deputy general counsel of NRG Energy, which owns and operates the Avon Lake plant FirstEnergy once owned, said ZECs are "a pure exercise in greed."

"We want educated customers who look at and evaluate these bailouts and see them as a bad deal to call their legislators and ...[regulators]," said Silverman, adding that nuclear power plants will disappear in a decade even if they are subsidized today.

"The competitive market saves rate payers billions of dollars a year, and is by far the best method of ensuring a safe, reliable and affordable grid," he said.

States looking at ZECs in addition to Ohio include New Jersey, Connecticut and Pennsylvania, said David Gaier, NRG's senior director of communications. New York and Illinois have already adopted ZEC programs, which NRG has challenged in federal court. "These things are spreading like the plague," Gaier said.

NRG, with a total power plant capacity of 47,000 megawatts, is ready to fight ZECs anywhere else they show up, Silverman added.

Dynegy's Dean Ellis, senior vice president for regulatory affairs, is working from the same play book.

"FirstEnergy's proposal is a handout scheme," he said. "The ZEC program is a stealth tax on Ohio citizens and businesses," he said in an interview. "It enriches FirstEnergy shareholders at the expense of Ohio's competitiveness."

Dynegy's power plants have a total capacity of more than 31,00 megawatts and include plants in Ohio with a total capacity of 6,500 megawatts.

Dynegy's coal and gas operations are up against the same foe as any nuclear plant -- wind farms that can underbid even gas-fired plants in some markets because of a federal subsidy. The federal production tax credit provides cash just for producing power. It will phase out over the next three years and disappear by 2020.

Ellis said gas will replace the least efficient coal and nuclear plants, not only because gas is the lowest priced fuel and likely to stay the lowest in this region, but because gas plants can more easily deal with growing wind and solar power because they can ramp up at a moment's notice.

"Nuclear power is absolutely outdated and the wrong technology for today," Ellis said. "We are seeing more and more renewables. They are intermittent [wind dies down and clouds block the sun]. Nuclear is on at full power or off."

Ellis noted that private developers are already building gas turbine plants in Ohio without subsidies from customers.

One of those gas developers is William Siderewicz of Boston, whose companies are

building plants in Lordstown and in Oregon, near Toledo. He is adamantly opposed to the nuclear subsidy and ready to explain why to anybody who will listen.

Siderewicz has already been in touch with PJM Interconnection, the grid manager in Ohio and 13 other states because its top executive Andrew Ott [has suggested](#) that if ZECs are created PJM rather than individual states ought to be in charge.

In a letter to Ott, and copied to The Plain Dealer, Siderewicz argued that the FirstEnergy plan would jack up the wholesale price of power from its nuclear plants to \$68 per megawatt-hour (6.8 cents per kilowatt-hour), or about 2.3 times the price of power from his gas turbine generators.

Siderewicz said the deal would put another economic albatross on northern Ohio, making it less competitive with the rest of the state.

"These plants are nothing more than a flashing billboard for FirstEnergy's continued mismanagement," Siderewicz wrote.

"What is the correct solution here? Simple. Put up the plants for auction and companies like FPL, Exelon, Southern, Entergy, as bidders can determine what the market value is, and buy them. FirstEnergy can take the appropriate write down. If the market price can not support a nuclear sale, close them down."

## FirstEnergy's dim idea



Published on March 13, 2017

*FirstEnergy thinks its Davis-Besse and Perry nuclear power plants are so wonderful that Ohioans should pay 5 percent more on their electric bills for the privilege of sharing a state with them.*



*The Davis-Besse Nuclear Power Station*

*Dean Ellis, of competing power producer Dynegy, calls the proposed "Zero-Emissions Nuclear Resource Program" "a stealth tax on Ohio citizens and businesses." He's got a point. Electric users would have to pay more whether they choose FirstEnergy's power or not, and the company is urging lawmakers to impose the scheme on the theory that it's in the public interest.*

*Is it?*

*The company wants Ohio to create a system of credits to reward it for the fact that nuclear plants don't emit gases. But coal and gas don't produce nuclear waste. And wind, solar, and hydroelectric power are cleaner than fossil fuels or nuclear power.*

*FirstEnergy also argues that unlike facilities that rely on wind and sunlight, nuclear plants operate around the clock. Does the company think coal and gas depend on good weather?*

*The company touts the jobs provided by nuclear plants. Every kind of electric production creates jobs. At the moment, natural gas is creating many more new jobs in America than nuclear power.*

*Moreover, the cost of electricity isn't only a charge to consumers. Businesses pay too. So making power costlier could help drive companies away from Ohio, and jobs with them.*

*So far, FirstEnergy's plan is a brochure, but sources tell the Cleveland Plain Dealer it could be legislation backed by GOP leaders very soon. It shouldn't be.*

**RELATED ITEMS EDITORIALS, FIRSTENERGY CORP, NUCLEAR POWER PLANTS, DAVIS-BESSE NUCLEAR POWER STATION**



From: Ned Hill

**SUBJECT: Knowing when competitive electric markets are working**

**Four outcomes** show if a market is successfully transitioning from being anti-competitive to competitive:

1. *Prices are lower:* Prices are lower than they would have been under previous conditions.
2. *New Investment is taking place:* Firms enter invest to take advantage of business opportunities or existing plant is recapitalized under new ownership.
3. *Uncompetitive plants close; balance sheets restructure:* Existing facilities, with higher cost operations leave the market or the balance sheets of existing firms are restructured to allow new investment.
4. *Generating system reliability Improves.*

**Competitive markets for electric generation have worked well:**

- Savings of \$3 billion a year compared to what prices would have been if electric generation remained a monopoly: \$645 million from shopping and \$2.3 billion from lower SSO auctions.
- The \$2.3 billion in savings from purchasing electricity for SSOs in competitive auctions represents a 15% savings for customers.<sup>1</sup>
- System reliability has improved; PJM Interconnect has a 22.4% generation reserve margin.<sup>2</sup>
- Investment in electric generation capacity is taking place in Ohio.
- Inefficient power plants are either closing or being sold to better capitalized or more efficient operators. These are primarily coal fired.

**Challenges exist** that will hurt both electricity users and the state's economic development:

- Increases in non-bypassable riders imposed by the PUCO are partially offsetting savings from competition in generating markets.
- At least two of the state's IOUs have large debts associated with financial investments that have not worked out. Electricity customers paid \$14.7 Billion in transition costs and other mandated above-market payments. These payments were intended to write down the value of uncompetitive generating assets.
  - FirstEnergy used the payments to purchase out-of-state power plants and to pay stockholders.
  - Arlington Virginia-based AES Corp purchased DP&L in June 2011 for \$3.5 Billion, which included DP&L's existing debt. AES is looking to the PUCO for a return on its takeover of an Ohio utility.
- Owners of Ohio-located non-competitive electric generating facilities are attempting to use political power to re-monopolize the generation markets, including natural gas and non-carbon based generation, and raise prices. All to offset the consequences of bad business decisions and investments and to preserve the value of stockholders' shares.

***Welcome to Ohio: Where lemon socialism creates crony capitalism.***

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<sup>1</sup> Separate estimates by William Bowen and Ned Hill

<sup>2</sup> PJM Interconnect at: <http://www.pjm.com/markets-and-operations/rpm.aspx>



February 28, 2017

From: Ned Hill

**SUBJECT: 14 conclusions on preserving a competitive electricity generation market**

1. **The utilities are attempting to re-monopolize the electricity generating industry in Ohio.**
  - Ohio's Investor Owned Utilities [IOUs] are attempting to balkanize and re-monopolize the electric generation industry.
  - The geography of the generating market consists of 12 states
  - The generating industry is regulated by the FERC.
  
2. **Re-monopolization of the electric generation assets in Ohio will result in the state's consumers purchasing the most expensive power first and the least expensive power last.**
  - Re-monopolizing the electricity generating market will result in regulatory-protected, highest priced, generation being purchased first, with the rest of the demand being satisfied from power from lower cost, competitive, suppliers at market rates. This is backwards.
  - The algebra of blended rates means that Ohio's consumers will be paying above-market rates for electricity if the generation market is re-monopolized.
  
3. **Competitive markets work** by having the lowest-cost supply purchased first and highest cost last. The last units purchased will earn the lowest profit from the sale. The last price offered sets the market price.
  - Markets work by having higher cost producers exit the market because of a lack of demand for their product while inducing lower cost producers to enter the market. Under re-monopolization this fundamental market mechanism will be thwarted. The result? Higher-cost, more inefficient generating assets remaining in the market at the expense of lower cost, more efficient, generating assets.
  - The risk of investment in new, more cost-effective capacity, will increase resulting in investments not being made because protected capacity will not exit the market.
  - Regulatory barriers to entry protect existing investors, harm consumers, and discriminate against potential investors.
  - Stockholders, bondholders, and senior management of the utilities with uncompetitive generating assets will be protected against losses while the wallets of electricity users will be forced open.
  
4. The **electricity generation system's reliability has improved** as PJM has gained experience with running competitive auction markets, and as investments in new, more efficient, generation has taken place to take advantage of new marketing opportunities.
  - After competitive markets became effective in 2011 the reserve margin in the PJM transmission grid has been near 20 percent. The latest reserve margin was 22.4%.
  - Preserving uncompetitive generating assets and having a *de facto* policy of purchase worst-first, or most expensive-first, generating capacity because it is owned and located in Ohio will result in diminished system reliability for two reasons:



- A balkanized generating market will lose the benefits of pooling across a large geographic region to offset localized spikes in demand or the unexpected shutdown of generating capacity.
  - Retaining less efficient generation capacity at the expense of new investment in more efficient generating capacity will result in diminished reliability.
5. **FERC is the body that is, and should be, regulating the multi-state electricity generating market.**
- The logic of deregulation that Ohio adopted rests on having a competitive market for electric generation across the multi-state PJM transmission grid.
  - Federal regulation of the generating market, coupled with a strong watchdog role played by the PUCO, protects Ohio's consumers from the political capture of the legislature or regulatory capture of the PUCO by the state's investor owner utilities.
6. **The benefits from deregulation that will be endangered by re-monopolization include:**
- **\$3 billion in Lost savings** compared to what prices would have been under monopolized generating markets: \$645 million from shopping and \$2.3 billion from SSO auctions.
  - The \$2.3 billion in SSO savings is 15% of what electricity prices would have been without competitive electric generating markets.
  - **Decreased** system reliability
  - **Lost** construction employment and associated positive economic spill-overs
  - **Decreased** employment among employers who use electricity and diminished competitive position for business locations due to increases in the relative cost of electricity.
  - **Lost** opportunity to lower carbon emissions
7. **Ohioans have paid twice for stranded assets. Why should they pay a third time?**
- From 2000 to 2016 Ohio's electricity users paid the state's IOUs **\$14.7 billion** in stranded asset payments, regulatory transition charges, rate stabilization charges, and other above market payments.
  - The PUCO recently approved riders for FirstEnergy worth an estimated **\$204 million a year and \$31 million a year for AEP for the years 2017 to 2019**. DP&L has a rate case before the PUCO looking for its payout.
  - The legislative expectation was that these payments would be used to write down the value of "stranded," that is economically uncompetitive, generating assets.
  - FirstEnergy used the stranded assets payments to purchase out-of-state coal-fired generating plants. Both FirstEnergy and DP&L are highly leveraged and the recent funds are being used to offset the consequences of bad business bets, too much debt, and a need to pay dividends.
  - DP&L was purchased by Arlington, Virginia based AES Corp in June 2011 for \$3.5 billion and on March 4, 2014 was reported by the RTO Insider to have "buyer's remorse."<sup>1</sup>
  - Lessons from the steel, auto, and aluminum industries show that subsidizing companies with balance sheet problems and over-valued assets does not work. Assets must be written down and the company needs to be restructured financially before it can become competitive.

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<sup>1</sup> Rich Heidorn and Ted Caddell. "AES: Buyer's Remorse on DPL Acquisition: May sell utility's generation." *RTO Insider*, March 4, 2014. <https://www.rtoinsider.com/aes-dpl-remorse-1403/>



- Public policy can learn much from reading three of Laura Numeroff's children's books *If You Give a Mouse a Cookie*, *If You Give a Moose a Muffin*, and *If You Give a Pig a Pancake*. It may take all three to drive the lesson home.
8. **Placing the generating fleets of IOUs into clearly identified subsidiaries and assigning the debt associated with generating fleet** to that subsidiary is a crucial step in creating a viable operating entity and unlocking the value of assets that are in their transmission and distribution businesses. The IOUs and their customers have to be freed from the dead weight of overvalued generating assets or debt issued to pay for over-valued assets that were acquired. [Or, in the case of DP&L the value of debt issued by its purchaser when AES Corp. purchased DP&L.]. These assets need to be marked down to their market value.
  9. **Ohio's electricity supply has not become more vulnerable, or less reliable, due to deregulation and the closure of some existing power plants.** Arguments have been made that Ohio will in some way become economically vulnerable by a potential loss of current generating assets. This is just wrong:
    - Since the early 1990s Ohio has, with one exception, been a net importer of electricity. The exceptional year was in 2006.
    - It is true that as competition in the market for electricity generation has taken root imports from outside Ohio in the PJM transmission grid have increased. However, that has occurred with a decrease in retail prices and an increase in system reliability. Lower prices and improved reliability are the two outcomes that the legislature expected when it passed the deregulation bill in 1999. Whether a power plant is located on the north or south bank of the Ohio does not matter to Ohio electricity users. Electrons do not come dressed in OSU scarlet and grey, OU green and white, Pitt black and gold, WVU blue and gold, or UK blue and white.
    - Investments in new generating capacity are being made in Ohio to take advantage of the ability to compete to sell electricity into the PLM's multistate generating market and to take advantage of the regional natural gas market. At present, 11,000 megawatts, or 11 gigawatts, of new natural gas fired generating capacity is either operating, under construction, permitted, or publicly announced but not yet in the regulatory approval process.
  10. **Ohio's fuel diversity is improving.** Throughout the ongoing campaign being conducted by the IOUs to re-monopolize the electric generating industry it has been asserted that fuel diversity will be impaired with the loss of uncompetitive coal-fired electric generating capacity.
    - Before deregulation occurred, the fuel mix used in generating electricity in Ohio was undiversified. In 2010 [the year before deregulated markets took hold] 82 percent of power generated was from coal, 11 percent nuclear, and 5 percent natural gas. This was 98 percent of production.
    - In 2015 the portfolio is more balanced and diversified than it was five years earlier: 59 percent coal, 14 percent nuclear, 23 percent natural gas for a total of 96 percent of production. Gains have been made in wind and utility solar.
    - Because the production of electricity using nuclear fuel is now the most expensive form of generation that source of generation is in danger.



11. **Nuclear power is the most expensive power produced today and it does *not* deserve a subsidy from Ohio's electric customers.** Nuclear power plants have had difficulty clearing capacity auctions and are providing the most expensive power in the regional market. FirstEnergy is lobbying for Ohio to follow in the footsteps of New York and Illinois to provide subsidies in the form of Zero Emission Credits to underwrite the generating costs. The benefit that is being sold to electricity users is electricity produced without carbon emissions. The reality it is yet another lifeline to FirstEnergy to prevent the financial effects of owning a high cost power plant. The IOUs are attempting to associate these plants with carbon reduction to justify subsidies. Doing so is bad state public policy because the problem of what to do with economically obsolete nuclear **is a national problem.**
- The benefits from carbon-free electricity generation from a nuclear plant do not stop at the Ohio border. The benefits from carbon reduction are enjoyed across the entire airshed. There is no reason why the cost of subsidy should be borne just by Ohio ratepayers but by all who enjoy the benefits from carbon reduction.
  - Nuclear power plants, as is true for any power plant, are part of the regional electricity power market. In the case of Ohio, this is the multistate PJM transmission territory. Having states protect significant power sources will disrupt the operation of a competitive market for power.
  - The federal government never delivered on its promise to find a solution for the life-time disposition of spent fuel rods and it has allowed nuclear power plants to operate without liability insurance protection, making surrounding property owners and state and local government *de facto* insurers of last resort in case of a disaster.
  - The ability of financially strapped IOUs to maintain and safely operate nuclear power plants is a genuine concern and subsidies designed to shore up their balance sheets are not a sustainable answer.
12. The IOUs are latching onto carbon reduction as a way to avoid writing down the costs of their dying nuclear assets. Their goal is to find a subsidy for the plants. They are offering carbon reduction as the rationale. This leads to the question: *Is this the most cost efficient and effective way to achieve carbon reductions?* The answer is **no**. A market should be established for carbon reduction so that goals are met in the least costly way to electricity users.
- PJM could establish a market for reducing carbon emissions. A market adjusted tax or permit will give price advantages and investment incentives to low-carbon and no-carbon generating technologies.
  - If that solution be nuclear, so be it, as long as the full costs of nuclear power production are covered.
  - If the solution is a combination of energy efficiency investments and wind, solar and natural gas production that is fine as well.
13. IOUs are offering to support carbon free electric generating technologies under three conditions.
- (1) Carbon-free generation that they invest in be subject to a regulatory guaranteed rate of return.
  - (2) Carbon-free generation that is not owned by the IOUs be placed under a regulatory regime.



And, (3) natural gas generation in the state of Ohio that is not owned by the IOUs be placed under a regulatory regime.

- Such actions will deter investment in carbon-reducing generation capacity because these actions will prevent existing high carbon output plants from leaving the market.
- Placing carbon-free and reduced carbon generating plants under regulatory control will not allow markets work to reduce their costs, thereby lowering demand for green energy.
- Regulation will effectively pull Ohio out of the competitive portion of the PJM auction markets resulting in (1) higher electricity prices for consumers, (2) reduce economic activity in the state, and (3) and reduced demand for carbon-free electricity generation and conservation.

14. Ohio's regulatory framework needs to allow for industry-scale proof of concept experiments in electricity generation, transmission, and distribution.

- These experiments should have a research and evaluation component associated with them and the technical results made public with both technical results and public benefits and costs enumerated.
- If the public is paying for the proof of concept experiment and no, or a limited amount of, private capital is invested then all data should be publicly available.
- Regulation should not be used to pre-monopolize new sources of generation.
- Experiments with technologies that could disrupt existing transmission and distribution technologies should be encouraged, especially if they disrupt the natural monopoly characteristics of those markets.

# Personal View: Allowing electricity markets to drive production reduces emissions, costs

Comments Email Print

December 04, 2016 Updated

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By CHRIS ZEIGLER

After a contentious, polarizing election season, it may seem as though Americans don't agree on much of anything. But, as political analysts continue to sort through the exit polls, some noteworthy areas of agreement emerge that could form the basis for consensus-based policy progress.

One of those issues is energy. A nationwide, election night poll of actual voters found that 80% of Americans support increased development of U.S. oil and natural gas resources, including 71% of Democrats, 94% of Republicans and 76% of independents.

Further, overwhelming majorities recognize that increased production can help achieve important priorities like job creation (86%) and lower energy costs (82%). Seventy-seven percent support natural gas' role in reducing greenhouse gas emissions.

Policymakers should take note of the connection between oil and natural gas production, economic benefits and emissions reductions. As Ohio lawmakers and the governor consider restructuring the state's renewable and energy efficiency portfolio mandates, it's important to recognize that clean, affordable and reliable natural gas produced right here in Ohio will significantly reduce power generation emissions at a lower cost than mandates.

The American Petroleum Institute's latest research shows that by the year 2030, CO2 emissions will be 30% lower than in 2005 if market forces are allowed to determine our generation portfolio. That's because natural gas-fired power plants produce less than half as much CO2 as coal plants. As older coal plants retire and new natural gas plants come online, emissions will automatically decrease, without costly mandates.

Thanks to our nation's great abundance of natural gas, gas-fired power plants are also the most cost-effective way to reduce CO2 emissions. Gas-fired plants are cheaper to build and maintain than wind, solar and nuclear generation.

Independent sources agree that natural gas prices will remain low and stable for many years. Natural gas prices are currently about \$3 per MMBtu and are forecast to remain near or below \$5 per MMBtu through the year 2040.

We have enough reliable, low-cost natural gas to meet demand for generations to come. As a result of continual improvements in drilling technology, the amount of recoverable natural gas reserves grows each year.

Technological improvements such as horizontal drilling are also allowing the industry to produce more natural gas with fewer rigs, reducing environmental impact. In 2015, on average, the industry operated just 200 rigs nationwide to produce nearly 75 billion cubic feet (Bcf) per day. That's a great improvement when compared with 2010, when over 900 rigs produced 58 Bcf per day.

We are already seeing the environmental benefits of natural gas-fired power plants. Earlier this year, natural gas surpassed coal in becoming the nation's leading power generation fuel source. In Ohio alone, over 6,000 megawatts of new, clean-burning natural gas-fired power plants are in various stages of development. That's enough electricity to power 6 million homes, with reduced emissions and lower costs for consumers.

Natural gas-fired power generation also makes renewable generation more practical to operate. When the wind isn't blowing or the sun isn't shining, natural gas plants are uniquely capable of rapid starts and ramping up to respond promptly to unplanned outages and changing power demands during the day. Natural gas power plants help fill in the gaps during nonproducing periods of renewable generation, ensuring consumers have reliable electricity around the clock.

For those customers who still prefer to maximize renewable energy sources, our state already has optional green energy pricing programs in which they can participate through their electric supplier. Green pricing programs in Ohio offer customers the opportunity to support alternative energy sources by paying a premium in addition to their regular utility bill, a market-based approach to supporting renewable energy without burdening all customers with the additional cost of mandates.

Utilizing more natural gas will also help create jobs and grow our economy. Ohio is fortunate to have enormous natural gas shale deposits. As more natural gas is used to produce electricity, demand for the resource will increase, providing a sustainable boost to Ohio's economy.

The simplest, most cost-effective way for Ohio leaders to reduce air emissions is to allow energy markets to work. Mandating renewables and energy efficiency may result in higher costs to reach emissions goals than if markets are allowed to drive power generation. As the benefits of new gas-fired generation take effect, CO2 emissions will automatically decline, giving us cleaner air at the lowest possible cost.

*Chris Zeigler is executive director of American Petroleum Institute - Ohio.*

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**OHIO STATEWIDE SURVEY**

*1/24/17 – 1/28/2017*

*N=801, +/- 3.46%*

**General Election Voters**

*(percentages may not add up to 100% due to rounding)*



www.FallonResearch.com

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*Generally speaking, would you say that Ohio is going in the right direction or has it gotten off onto the wrong track?*

- 53.9% Right direction
- 23.2 Wrong track
- 6.8 Mixed/both (volunteered)
- 16.1 Unsure/no answer

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*Currently, private energy development companies pay for many of the power plants under construction in Ohio without any financial obligation from you. As an alternative, would you support or oppose changing Ohio law to allow utilities, like AEP and First Energy, to charge you for the cost to build their new plants, even though the power might not even be used in Ohio?*

- 4% Support
- 91.5 Oppose
- 4.5 Unsure/no answer

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*Many fuel sources can be used to produce electricity, including coal, natural gas, nuclear, water, wind and solar sources, and all have different benefits and costs. Would you support or oppose a state program where the subsidies you pay for only go to one type of fuel source, instead of all of them?*

- 29.8% Support
- 59.7 Oppose
- 10.5 Unsure/no answer

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*Ohio law currently allows you to shop for the best price for electric and natural gas service from a variety of providers. Multiple studies have found that this has saved Ohioans billions of dollars over the last decade. Would you support or oppose a change in law that would eliminate the ability to choose and require customers to take services only from their local utility?*

- 16.5% Support
  - 78.7 Oppose
  - 4.8 Unsure/no answer
-

*Do you agree or disagree that Ohio should increase electric market competition, even if it means the elimination of the government-mandated electric utility monopoly that has existed for decades? Interviewer follow-up, if agree or disagree: Would you say that you strongly agree/disagree or just somewhat agree/disagree?*

**55.5% TOTAL AGREE**

24.9 Strongly agree  
30.6 Somewhat agree

**29.6% TOTAL DISAGREE**

18.9 Somewhat disagree  
10.7 Strongly disagree

14.9% Unsure/no answer

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*Do you agree or disagree that utility customers should pay the additional cost to support uneconomical power plants because it may preserve jobs in certain communities? Interviewer follow-up, if agree or disagree: Would you say that you strongly agree/disagree or just somewhat agree/disagree?*

**29% TOTAL AGREE**

8.2 Strongly agree  
20.8 Somewhat agree

**62% TOTAL DISAGREE**

28.4 Somewhat disagree  
33.6 Strongly disagree

9% Unsure/no answer

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**Finally, I have a few short questions for statistical purposes...**

*I would like to read you a list of age groups. Please stop me when I get to the one you are in.*

13.7% 18 to 29  
21.8 30 to 44  
27.5 45 to 59  
35.8 60 and older  
1.1 Unsure/no answer

---

*Which of the following do you consider to be your main race? Is it...*

77.6% White

13.6 African-American  
1.7 Hispanic/Latino  
.9 Asian/Indian...or...  
2.3 Something else  
.6 Mixed race (volunteered)  
3.3 Unsure/no answer

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*Gender:*

48% Male  
52 Female

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## OUR TEAM



**Curt Steiner, CEO**

**[curt@steinerpr.com](mailto:curt@steinerpr.com)**

**614-439-7240**

As CEO of Steiner Public Relations, veteran communicator Curt Steiner is well known in business, government, media and higher education circles. Steiner leads his high-performance communications and public affairs firm with vast experience in media strategy, press relations, communications, politics, reputation management, lobbying, campaign management, corporate consulting and government policy-making.

Steiner's services have been retained by many large businesses, including several Fortune 500 companies. Steiner has also worked with many statewide trade and professional organizations, numerous colleges and universities, major hospital systems, non-profit organizations and a variety of coalitions.

Steiner opened his current business in 2011, after serving as senior vice president at The Ohio State University for nearly seven years. While at Ohio State, Curt led the university's efforts in communications and marketing and in government relations.

Prior to coming to Ohio State, Curt headed Steiner/Lesic Communications and HMS Success Public Relations. Earlier, Steiner served as Chief of Staff, Communications Director and chief political strategist for Ohio Governor and Senator George Voinovich and Chief of Staff to Ohio House Speaker Jo Ann Davidson. Curt has been a senior advisor to many other government leaders, including Senator Rob Portman, Attorney General Mike DeWine, Congressman Patrick Tiberi, and former Congressman Steve LaTourette, as well as numerous other members of the Ohio General Assembly and the state and federal judiciary.

Steiner has advised corporate clients on media strategy, marketplace positioning and government relations. He has also served as a key policy and public relations advisor or campaign leader for coalitions promoting passage of statewide ballot issues and otherwise influencing public policy or public opinion.

Curt is a 1978 high honors graduate of Ohio University, where he studied communications, political science and English. He began his professional career as a news manager, producer and reporter for WOUB Radio and TV in Athens, Ohio. He arrived in Columbus in 1981 as an aide to the Ohio Senate leadership.

Curt is a member of the Ohio Broadcast Educational Media Commission, as an appointee of Governor John Kasich. Curt also serves on the Ohio Chamber of Commerce Board of Directors, the Capitol Square Foundation Board, and the Columbus Chamber Government Affairs Advisory Committee. He and his team are uniquely qualified to deliver powerful results for select clients. The firm offices are located on Capitol Square in downtown Columbus.



## Jen Detwiler, Vice President

[jen@steinerpr.com](mailto:jen@steinerpr.com)

614-565-6481

Jen is Vice President of Steiner Public Relations. She brings more than 20 years of experience in government, public policy and corporate communications. Her resume includes tours of duty as Director of Public Affairs and Communications Coordinator for the Ohio Auditor of State, Director of Communications for the Ohio House of Representatives, and Public Information Officer for the Ohio Attorney General.

In addition to serving as advisor and spokesperson for executive-level leaders, Jen has worked effectively with teams in developing and executing communications strategies and tactics in high-pressure situations, crisis media management and analytic problem-solving. Jen has cultivated long-standing positive relationships with local, state and national media and has high proficiency across a broad range of media channels. Her writing and editing skills apply in a wide range of formats, including corporate advertising and marketing, radio and television commercials, brochures, policy papers, annual reports, web sites, and training materials.



## Terry Donelon, Public Affairs Director

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216-970-9222

Terry is public affairs director with Steiner Public Relations. Prior to joining the firm, Terry was the legislative aide to State Representative Ryan Smith, chair of the House Finance Committee. He took a leave of absence from this role in 2015 to serve as assistant campaign manager and coalition director for Ohioans Against Marijuana Monopolies, a statewide ballot campaign committee that defeated a 2015 proposed constitutional amendment to create a marijuana monopoly in Ohio.

Terry also brings important political experience to the firm. He served on the campaign trail for the Ohio House Republican Organizational Committee, where he engaged in field organization, managed candidates across the state, and worked to improve committee grassroots data and analytics.

Terry began his career in public affairs as a staff page in the Ohio House of Representatives, eventually working his way up to Senior Legislative Aide for Speaker William G. Batchelder during his final year at The Ohio State University. Terry is a native of Cleveland, Ohio. He holds a bachelor's degree in political science and is a proud graduate of Saint Ignatius High School.


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## OUR WORK

### Ballot Issue – State Issue 3

Steiner Public Relations team members have played major roles in Ohio statewide ballot issue campaigns for three decades. In 2015, Steiner PR directed the campaign to defeat State Issue 3, a proposed constitutional amendment to legalize the sale and use of recreational and medical marijuana in Ohio.

The pro-marijuana campaign was well organized and amply funded. Given apparent shifts in public opinion and new policies adopted in other states, many expected the Ohio marijuana measure to pass. But under Steiner PR's leadership, *Ohioans Against Marijuana Monopolies* overcame a 10 to 1 campaign spending disadvantage and Issue 3 was defeated in a landslide, with 65% of Ohioans voting No in November.

Steiner PR assembled a bipartisan consulting team, oversaw message development, participated in building a coalition of 120-plus organizations

### Hillel International

Media Relations is a core offering of Steiner Public Relations. The Steiner PR team has decades of experience handling media outreach for many high profile enterprises. As a result, organizations and people often turn to Steiner PR when making a special announcement. On such example is Hillel International. Hillel engaged Steiner PR to globally deliver the message of its new President. Working on an expedited timetable and with a team of consultants in Washington DC, Steiner PR helped garner national and international attention across multiple communications channels.

Key work included media strategy and planning, sourcing multi-media production and distribution and reaching out to key media and opinion leader targets.

### Benefits of Shale Development (API)

The Steiner Public Relations team has years of experience creating effective communications strategies for statewide initiatives. The American Petroleum Institute engaged Steiner PR to launch an educational campaign about the economic benefits of shale oil and gas exploration to Ohio.

Steiner PR directed an effort to connect industry leaders with major metropolitan newspapers as well as those in communities where shale development is happening. We also developed and launched an educational website and weekly e-newsletter, and coordinated a grass tops letter-to-the-editor campaign to demonstrate third party support for shale oil and gas development in Ohio.

opposing Issue 3, handled media relations and made final campaign decisions.

## Higher Priority for Higher Education

For years, public higher education issues were a low priority at the Statehouse. Elevating higher education on the state's public policy agenda required a sustained effort.

We made direct and consistent contacts with elected officials, editorial boards and opinion leaders to emphasize the contributions of universities to the state's economy and quality of life. We also focused attention on the growing collaborations among public and private universities and between universities and business.

In addition, we recommended a structural change that would allow the Chancellor to be in a stronger position to articulate the needs of public higher education as a member of the Governor's Cabinet. House Bill 2, which passed unanimously in the Senate and with only two negative votes in the House, did just that. Higher education has risen on the public policy agenda, the state higher education funding formula has been revised and tuition increases have slowed dramatically.

## PhRMA (Pharmaceutical Research and Manufacturers of America)

## Construction Law Reform

For decades, Ohio's public universities complained that state-mandated restrictions on capital construction projects were costly and inefficient. Years of effort with media and policymakers finally broke through the government's resistance to change. In 2009, we won the opportunity to institute construction reform as a pilot project in association with Ohio State's billion-dollar Medical Center expansion. Then in 2011, Steiner PR helped finish the job. Our firm worked with the contracting industry and state administration to convince the legislature to permanently apply reforms to all state-associated projects.

## Flexible Pavements of Ohio

The asphalt pavement association industry in Ohio retained us to help them maintain their market

## State Issue 1: Drug Offenders Amendment

Facing a well-funded national campaign, which had succeeded in a number of other states, we overwhelmingly defeated a 2002 ballot initiative to change Ohio's constitution on sentencing drug offenders. We developed a compelling message based on polling and research, devised a strategic plan relying heavily on earned media, carefully integrated limited paid media, and used collateral materials effectively, especially the website. We collaborated with other consultants to create a large, diverse statewide grassroots coalition in opposition, including drug treatment organizations and leaders of both political parties. We succeeded in exposing the initiative's hidden weaknesses and reversed a widely held perception among key audiences, including the media, that the initiative was unbeatable. The initiative's 2-1 defeat at the polls positioned Ohio nationally as a firewall against similar measures and none has been introduced since.

When the Coalition for Affordable Prescription Drugs began an initiative petition drive to put prescription drug price control legislation before the Ohio General Assembly, we were retained by PhRMA to help manage strategy, execution and communications. The project involved a legal effort to challenge petition signatures. It also included outreach to media and key healthcare stakeholders on the impact of price controls on the development of new drugs. We created a 40-member statewide healthcare access coalition in three months and launched a patient clearinghouse of information about drug assistance programs already offered by the drug industry. Ultimately, these efforts were key to the successful negotiation between the Coalition and PhRMA, which resulted in new legislation and the launch in 2004 of Ohio's BestRx, a widely available drug discount card program.

share of the paving industry and counter an aggressive campaign by the concrete industry to reverse market trends. We organized the roll-out of a next-generation asphalt paving process. "Perpetual Pavement," by releasing an interactive CD-ROM and video news release, attracting media coverage of roadside news events and garnering follow-up coverage at the regional and national levels. We also produced facts and secured media that emphasized the superiority of asphalt over concrete as a paving material. Flexible Pavements celebrated its 40th anniversary with the achievement of its market goals, while the concrete campaign quietly faded.

**TO: OMA Government Affairs Committee**  
**FROM: Ryan Augsburger / Rob Brundrett**  
**RE: Environment Public Policy Report**  
**DATE: March 15, 2017**

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### **Overview**

Ohio EPA remains active on a variety of regulatory fronts. They are also proposing a few changes in the introduced budget. The House of Representatives is currently vetting those changes before sending the budget to the Ohio Senate. Ohio EPA continues to work on the industrial storm water permits and universal waste. Senate Bill 2 remains priority legislation for the agency.

### **General Assembly News and Legislation**

#### **Senate Bill 2 – Ohio EPA Water Bill**

Senator Cliff Hite (R-Findley) introduced Senate Bill 2. The bill was formerly the Ohio EPA Water MBR bill in the 131<sup>st</sup> General Assembly. That bill ran into some last minute controversy and was not passed during lame duck in 2016. The reintroduced version has had three non-controversial hearings in the Senate and is slated for a possible vote this week. Among the provisions is language that would exempt slag from Ohio's water statutes. The OMA and some OMA members provided proponent testimony for the bill.

#### **House Bill 49 – State Budget Bill**

The Governor's budget bill has had several hearings in the House of Representatives. Ohio EPA has several law changes proposed in the bill. Among items of interest includes language that responds to the Ohio Supreme Court's decision requiring all TMDLs go through the ORC 119 rule making process.

Under the bill, Ohio EPA is required to provide for public comment when a TMDL is established, and such decisions would be appealable to the Environmental Review Appeals Commission. The bill also allows for appeals of existing National Pollutant Discharge Elimination System (NPDES) permits that were based on TMDLs established before March 24, 2015, while retaining the enforceability of any TMDL established before March 25, 2015. This is a significant change for manufacturers with NPDES direct discharge permits to waters of the state.

Other changes include expansion of the local air agency statute, the authority to waive or reduce late payment penalties and fees, and to authorize explosive landfill gas monitoring. The House is expected to vote the bill in mid-April.

### **Regulations**

#### **Industrial Storm Water Permits**

In January the OMA submitted comments to Ohio EPA about its proposed renewal of its National Pollution Discharge Elimination System General Permit for Storm Water Discharges Associated with Industrial Activity.

The OMA commented about sampling, benchmark feasibility, alternative benchmarks and non-industrial pollutants, among other items. The OMA also led a business group coalition in providing additional comments to Ohio EPA. The OMA had a follow up call with the agency to discuss any questions the agency may have had regarding OMA comments.

Ohio EPA will review and respond to comments provided. The agency plans to finalize the permit this spring.

Ohio EPA is hosting a webinar focused on Ohio's new Industrial Storm Water General Permit on Wednesday March 29, at 1:00 p.m.

#### Universal Waste

The OMA-led initiative to expand Ohio EPA's definition of universal waste to include more items, among them, paint and paint-related wastes, took another step forward in December. The OMA working group submitted comments in reaction to Ohio EPA's universal waste proposal.

The OMA has been working closely with Ohio EPA over the past two years to expand Ohio's universal waste program to include items now considered hazardous wastes, thus providing waste management relief for Ohio manufacturers.

The OMA commented on a variety of issues from storage to transportation to management standards. If all goes according to plan, Ohio EPA will review and accept OMA's comments and issue a final rule in early 2017.

Thank you to the members who participated in drafting comments.

#### Ohio EPA Initiates PIT Interested Party Review

Ohio EPA has initiated an interested party review for draft amendments to Permits to Install and Plan Approvals for Water Pollution Control (OAC Chapter 3745-42).

Major updates being considered include: clarification of and additions to the list of exemptions from permit to install or plan approval applicability, and clarification of sewage holding tank prohibitions and restrictions. Minor revisions to the rules include updates to style, grammar and references.

The OMA submitted comments this week.

#### Startup, Shutdown, and Malfunction Emissions Comments

The OMA submitted two sets of comments to Ohio EPA's Interested Party Review draft amendment for Ohio's startup, shutdown, and malfunction (SSM) rules, issued in response to U.S. EPA's finding of "substantial inadequacy" and SIP Call to amend provisions applying to excess emissions during the SSM periods.

In the first set of comments, the OMA and business allies recommended: 1) modify the proposed definition of "malfunction" to remove the exclusion for equipment failures caused only in part by poor maintenance or careless operation; 2) modify the scheduled maintenance rule to allow owners or operators to continue operating when shutting down would be unsafe; 3) modify the malfunction rule to impose work practice standards during equipment failures; 4) expand the availability of alternative emission limits to minor sources; and 5) allow the adoption of alternative emission limits that are not equivalent to emission limits applicable during normal operation.

In the second set of comments, the OMA alone submitted detailed concerns about the regulations' adverse business impact, how the regulations were developed, and specific problematic language in the regulations.

## **Ohio EPA Agency News**

### **Ohio Materials Marketplace**

The Ohio EPA is inviting OMA members to participate in its newly launched Ohio Materials Marketplace with the objective to advance Ohio towards a circular material economy.

The free online platform enables Ohio businesses to list by-product and waste materials, as well as post requests for desired materials. The Materials Marketplace aims to assist manufacturers and other businesses in advancing their zero-landfill goals, decreasing greenhouse gas emissions, and reducing material and waste management costs.

Raw materials, by-products, and massive volumes are welcomed. Materials can range from computer monitors to waste paper to clay.



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## Ohio EPA's 2018-19 Biennial Budget

### *Ohio EPA's policy initiatives for the 2018-19 biennial budget*

#### **Improve efficiency and promote innovation at Ohio EPA**

**Consolidation of existing technical, compliance and financial assistance programs within Ohio EPA:** Memorialize in statute the consolidation of existing compliance, technical and financial assistance programs under a single division to create a "one-stop shop" within Ohio EPA for customers seeking resources to help them achieve compliance. Through a more efficient, coordinated and strategic approach to administering resources, Ohio EPA is better positioned to help more regulated entities with a greater level of service.

**Asbestos Certification Transfer from Ohio Department of Health (ODH) to Ohio EPA:** Currently, ODH certifies asbestos removal contractors and Ohio EPA regulates asbestos notification, including removal and disposal. The transfer will streamline the entire process into one agency and help ensure that those operators who are certified to remove asbestos in accordance with state and federal law are complying with the law. Creates a "one-stop shop" for contractors/operators/citizens; reduces onsite inspections from two state agencies to one; consolidates state field workers and staff to eliminate duplication and conflicts; and improves the asbestos compliance and enforcement that protects citizens from relying on known problematic companies and individuals.

**Update Local Air Agency Statute:** While updating the names and jurisdictions of the local air agencies that work with Ohio EPA's Division of Air Pollution Control, this language also improves efficiency by allowing the local air agencies to perform additional work in nearby counties.

**Authority to Waive or Reduce Late Payment Penalties and Environmental Fees:** Many of Ohio EPA's environmental fees have an additional late payment penalty established in the revised code to encourage on time payment. Situations arise where a late fee should be waived or reduced and this amendment would provide that opportunity to the director.

**Water Pollution Control Loan Fund (WPCLF) Administration:** Federal regulations allow WPCLF administrative fees to be used for water quality work throughout the state, while Ohio law is more restrictive to work related only to administering the water pollution control loan program. This amendment will allow Ohio EPA to use the funds in a manner consistent with existing federal regulations.

**Diesel Emission Reduction Grant Program (DERG):** Ohio EPA and Ohio Department of Transportation (ODOT) seek to continue the DERG program with spending of \$10 million each year at ODOT for administration of the awards.

**Authorize Explosive Landfill Gas Monitoring:** Expands the director's authority to enter and evaluate explosive gas generation and migration issues at any solid waste disposal facility or closed solid waste disposal facility. Authorizes the director to issue orders to responsible parties to address explosive gas formation and migration if he/she determines that there is a threat to human health, safety or the environment.

**Streamline the State Toxic Release Inventory Reporting:** Thousands of Ohio companies are required to submit annual chemical inventory reports to both U.S. EPA and Ohio EPA. This change recognizes the electronic reporting mechanism of U.S. EPA as simultaneously fulfilling the obligation of the state requirement, eliminates the state filing and fee, but retains Ohio EPA's authority to take enforcement action if a toxic release inventory violation occurs.

**Total Maximum Daily Loads (TMDLs):** In response to the Ohio Supreme Court's decision in *Fairfield County Board of Commissioners versus Nally*, 2015, reestablish the legal validity of TMDLs approved by U.S. EPA prior to that date (March 24, 2015) and exempt TMDLs from formal rulemaking in favor of more robust public involvement opportunities and due process requirements for those affected by TMDLs. The amendment provides a process to outline, review and approve current and future TMDLs. TMDLs are required by federal law to address waters not meeting water quality standards.

## Environmental Fund Transfers and Consolidation

- Federal Hazardous Waste Management Fund to the Federally Supported Cleanup and Response Fund.
- Federal Nonpoint Source Pollution Management Fund to the Federal Water Quality Protection Fund.
- Allow Ohio EPA to continue giving grants to area-wide planning agencies for water quality management planning activities.
- Replaces the mandatory transfer of \$.50 per ton from the annual Title V clean air emissions fee to the Small Business Assistance Fund managed by the Ohio Air Quality Development Authority (OAQDA), with a transfer on an as-needed basis. Transfer \$1.5 million back to the Title V program at Ohio EPA.
- Transfer up to \$3 million from the Scrap Tire Cleanup Fund to the Auto Emissions Test Fund to support oversight costs of the auto emissions test program (E-Check).

## Fiscal Budget Language Items

Ohio EPA will continue to exercise fiscal responsibility by not increasing fees.

**Extend Sunsets on Existing Ohio EPA Fees:** Ohio EPA's Division of Surface Water, Division of Air Pollution Control, Division of Drinking and Ground Waters and the Division of Materials and Waste Management are extending but not increasing their environmental program fees. Changes allow for a transfer of up to \$1 million instead of mandating the transfer from the Scrap Tire Abatement Program to the Scrap Tire Market Development Fund each fiscal year.

**Consolidation of NPDES Application and Issuance Fees:** This change would end the multiple billing requirements in the permit process and have a combined fee at the time of application. Combining application and issuance fees will result in no net fee increase to applicants; it simply makes the billing process easier, less confusing and provides a cost savings of check processing to the agency.

## Eliminate Obsolete Reports/Statutes

- Delete old Construction Grant references to a program that no longer exists.
- Delete references and the use of funds for cleanup and removal at Kirby tire site.
- Remove obsolete landfill permit-to-install submission requirements.
- Delete the obsolete authorizing language for the Clean Diesel School Bus Fund.
- Delete old Industrial Tax Certificate language.



## **MEMORANDUM**

**TO:** The Ohio Manufacturers Association

**FROM:** Frank Merrill, Bricker & Eckler LLP

**DATE:** March 7, 2017

**RE:** H.B. 49 Total Maximum Daily Loads (TMDL) Rule

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On February 10, 2017, House Bill 49 was introduced into the Ohio House of Representatives. H.B. 49 includes a provision for the addition of Ohio Revised Code 6111.561 in response to the March 24, 2015 Ohio Supreme Court decision in *Fairfield Cty. Bd. of Commrs. v. Nally*, 143 Ohio St.3d 93, 2015-Ohio-991. (This provision can be found in H.B. 49 at pages 2972 through 2976). In the *Fairfield County* decision, the Supreme Court ruled that the Ohio EPA must adhere to Ohio's statutory rulemaking procedure prior to establishing pollutant limits for a body of water.

### **The Ohio Supreme Court Decision in *Fairfield Cty. Bd. of Commrs. v. Nally*:**

The *Fairfield County* case stemmed from the Ohio EPA's issuance of a 2006 wastewater discharge renewal permit for the Tussing Road Water Reclamation Facility ("Tussing plant"), owned by Fairfield County, Ohio. Because the wastewater treatment plant discharges pollutants into nearby Blacklick Creek, part of the Big Walnut Creek watershed, the plant is required to obtain a National Pollutant Discharge Elimination System ("NPDES") permit from the Ohio EPA, pursuant to the federal Clean Water Act and state law. The Clean Water Act also requires each state to establish a total maximum daily load ("TMDL") for certain bodies of water. The TMDL establishes the maximum amount of a pollutant that may be discharged without causing the receiving body of water to violate water-quality standards.

Based upon Ohio EPA's TMDL for the Big Walnut Creek watershed, the renewal permit for the Tussing plant included a new condition limiting the discharge of phosphorus. The Ohio EPA imposed this new limit based on a survey in which the Ohio EPA collected biological and chemical data for the area. Its survey suggested that the Tussing plant was contributing to a negative environmental situation in Blacklick Creek. Fairfield County appealed Ohio EPA's imposition of the new phosphorus limit in its NPDES permit to the Ohio Environmental Review Appeals Commission, and subsequent appeals were made to the Tenth District Court of Appeals and eventually the Ohio Supreme Court.

In the opinion, written by Justice Judith Ann Lanzinger, the Court held that a TMDL established by the Ohio EPA, pursuant to the Clean Water Act, is a “rule”. Therefore, the Ohio EPA must abide by the procedures outlined in Ohio Revised Code (“R.C.”) Chapter 119, which provide for, among other procedures, public notice, comments and a public hearing prior to a rule being adopted.

Justice Lanzinger explained that a TMDL is a “rule” as defined in R.C. 119.01 because it is a “standard” that has “a general and uniform operation” and creates new legal obligations. Although the TMDL was specific to the Tussing plant, the Court provided that “[t]he TMDL applies to all current and future discharges in the Big Walnut Creek watershed.” The opinion further explains that “[r]equiring Ohio EPA to undertake rulemaking procedures before applying the new standards set forth in the TMDL ensures that all stakeholders in the watershed have an opportunity to express their views on the wisdom of the proposal and to contest its legality if they so desire.” As a result, the phosphorus limit cannot be included as part of the Tussing plant’s NPDES permit because it did not undergo the R.C. Chapter 119 administrative rulemaking process. Because the phosphorus TMDL was part of impermissible rulemaking, the standard for the Tussing plant was vacated, and the case was remanded to the Ohio EPA.

In his concurring opinion, Justice Terrence O’Donnell provided that the “decision is far-reaching in that Ohio EPA has issued 1,761 TMDLs for watercourses throughout Ohio, including 132 TMDLs for phosphorus alone”, none of which have been promulgated through the R.C. 119 administrative process. “[T]hus the majority’s decision invalidates all of them, leaving the enforceability of numerous permits in question.”

### **H.B. 49 – Pages 2972 to 2975**

House Bill 49 outlines the scope of the Director of Ohio EPA’s authority in establishing TMDLs for pollutants for each impaired water of the state or segment thereof as identified and listed in the Clean Water Act section 1313(d). The stated intent of the bill is to supersede the effect of the *Fairfield County* decision, excluding the TMDL process from rulemaking procedures and making the establishment of a final TMDL appealable to the Environmental Review Appeals Commission (ERAC).

The bill provides that TMDLs established by the Director and submitted to and approved by the U.S. EPA prior to March 24, 2015 (the date of the *Fairfield County* decision) will be valid and remain in full force and effect as approved. However, holders of NPDES permits that contain water quality based effluent limitations derived from a TMDL approved prior to March 24, 2015 may appeal the lawfulness and reasonableness of these permit limits in one of two ways: (1) filing an appeal with ERAC within 30 days of the first eligible NPDES permit renewal date subsequent to the effective date of the bill’s provision; or (2) seeking a modification of the water quality based effluent limitation in the NPDES permit from the Director, and, if such request is denied, appealing to ERAC.

The bill specifies that TMDLs developed after March 24, 2015 will not be subject to the formal rulemaking process pursuant to R.C. Chapters 106, 119, or 121. However, Ohio EPA shall provide opportunities for interested parties to provide input during the development of a

TMDL, including commenting on and meeting with interested parties. Prior to establishing a final TMDL, the Director is obligated to prepare an official draft TMDL and provide public notice, an opportunity for comment, and an opportunity for a public hearing on the draft TMDL, as well as prepare a written responsiveness summary of the comments submitted. Following this public notice and comment process and issuance of a final TMDL, the final TMDL is appealable to ERAC.

The bill further requires the Director to adopt rules pursuant to R.C. Chapter 119, by no later than December 31, 2018, that (1) allocate pollutant load between and among nonpoint sources and point sources in a TMDL report; (2) establish procedures and requirements for developing and issuing a new TMDL; (3) establish procedures and requirements for revising and updating a TMDL; and (4) establish procedures and requirements for validation of existing TMDLs following implementation and additional assessment.

In sum, the bill does not require that each and every TMDL go through formal rulemaking pursuant to R.C. Chapter 119. However, each TMDL must go through the public notice, public comment, and public hearing process, and is subject to appeal at ERAC, therefore providing for due process considerations in a similar manner as the R.C. Chapter 119 process, while conserving the considerable amount of agency resources that would otherwise be spent on taking each TMDL through the formal R.C. Chapter 119 process.

**Environment Legislation**  
Prepared by: The Ohio Manufacturers' Association  
Report created on March 13, 2017

- HB29**      **MUNICIPAL WATER RESERVOIR BUFFERS** (LELAND D, BOGGS K) To eliminate law authorizing the maintenance of buffers around municipal water reservoirs by contiguous property owners.  
*Current Status:* 2/8/2017 - Referred to Committee House Energy and Natural Resources  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-29>
- HB62**      **WATER QUALITY IMPROVEMENT** (PATTERSON J, SHEEHY M) To require the Director of Agriculture to adopt rules establishing the Ohio Water Quality Improvement Program, to exempt land enrolled in the Program from taxation, and to reimburse local taxing units for revenue lost due to that exemption.  
*Current Status:* 2/21/2017 - Referred to Committee House Agriculture and Rural Development  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-62>
- HCR4**      **ELIMINATE E-CHECK REQUIREMENT** (YOUNG R) To urge Congress to amend the Federal Clean Air Act to eliminate the requirement to implement the E-Check Program, to urge the Administrator of USEPA to alleviate burdensome requirements of the E-Check Program and the Clean Air Act if Congress fails to act, and to encourage OEPA to explore alternatives to E-Check.  
*Current Status:* 2/21/2017 - Referred to Committee House Federalism and Interstate Relations  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HCR-4>
- SB2**      **ENVIRONMENTAL PROTECTIONS LAWS** (HITE C) To revise specified laws relating to environmental protection.  
*Current Status:* 3/8/2017 - **REPORTED OUT AS AMENDED**, Senate Energy and Natural Resources, (Fourth Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-2>
- SB50**      **WELL 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:* 2/22/2017 - Senate Energy and Natural Resources, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-50>
- SB53**      **NATURAL GAS RESTRICTION** (SKINDELL M) To ban the taking or removal of oil or natural gas from and under the bed of Lake Erie.  
*Current Status:* 2/22/2017 - Senate Energy and Natural Resources, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-53>

**SJR4**

**CAPITAL IMPROVEMENTS FUNDING** (SCHIAVONI J) Proposing to enact Section 2t of Article VIII of the Constitution of the State of Ohio to permit the issuance of general obligation bonds to fund sewer and water capital improvements.

**Current Status:** 3/7/2017 - Referred to Committee Senate Finance

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SJR-4>

## Environment

### [OMA Environment Committee Hears from Ohio EPA](#)

March 10, 2017



Pictured: Laura Factor, Assistant Director, Ohio EPA

The OMA Environment Committee had a packed agenda this week. A major focus was water; a panel of manufacturers (The Scotts Miracle Gro Company, ArcelorMittal and Zaclon) discussed water management issues. Manufacturers lead the way in water stewardship, a fact that is not widely understood.

Laura Factor, Assistant Director, Ohio EPA, visited the committee members to discuss the agency's budget and its priorities for the coming year. A major issue in the budget is a requirement for the agency to fashion new rules on Total Maximum Daily Loads (TMDLs), in response to a recent court case.

The Clean Water Act also requires each state to establish a TMDL for certain bodies of water. The TMDL establishes the maximum amount of a pollutant that may be discharged without causing the receiving body of water to violate water-quality standards. The Ohio Supreme Court ruled that the Ohio EPA must adhere to Ohio's statutory rulemaking procedure prior to establishing TMDL's for a body of water. [Read an analysis](#) from OMA environmental counsel Frank Merrill of Bricker & Eckler.

The committee also received a federal environmental update from Greg Bertelsen, Senior Director, Energy and Resources Policy, National Association of Manufacturers. 3/9/2017

### [Got Scrap? Want Scrap? Ohio Materials Marketplace Launched!](#)

March 3, 2017

The Ohio EPA is inviting OMA members to participate in its newly launched [Ohio Materials Marketplace](#) with the objective to advance Ohio towards a circular material economy.

The free online platform enables Ohio businesses to list by-product and waste materials, as well as post requests for desired materials. The Materials Marketplace aims to assist manufacturers and other businesses in advancing their zero-landfill goals, decreasing greenhouse gas emissions, and reducing material and waste management costs.

Raw materials, by-products, and massive volumes are welcomed. Materials can range from computer monitors to waste paper to clay.

To inquire about joining, [click here](#). For further information, contact Ohio EPA's [Joseph Klatt](#) at (614) 705-1147. 2/24/2017

### [Calling Environmental Managers!](#)

March 3, 2017

The first OMA Environment Committee meeting of the year will be on [Wednesday, March 8](#), from 10:00 a.m. until 1:00 p.m. at the [OMA offices](#) (with a nice lunch provided by OMA).

- Ohio EPA Assistant Director, [Laura Factor](#), and Chief of Legislative Affairs, Greg Vergamini, will brief us on agency news and updates.
- [Greg Bertelsen](#), Senior Director, Energy and Resources Policy, National Association of Manufacturers, will provide an outlook of Ohio EPA under the Trump administration.
- We'll have a panel discussion focusing on manufacturers' water issues.
- And, we'll also have a state budget bill and legislative update.

Julianne Kurdila, Lead Specialist, Environmental Compliance & Policy, ArcelorMittal, is the committee chair.

Please [register here](#) for in-person or call-in attendance. 3/2/2017

### [Ohio EPA to Host Webinar on New Industrial Storm Water General Permit](#)

March 3, 2017

Ohio EPA is [hosting a webinar](#) focused on Ohio's new Industrial Storm Water General Permit on Wednesday March 29, at 1:00 p.m. The permit is expected to be renewed in early March 2017.

The webinar will include updates on changes from the previous general permit and resources for industrial storm water permit holders. 2/27/2017

### [OMA Advocates for Common Sense Regulation of Slag](#)

February 24, 2017



Pictured: Geoff Guss, Assistant Sales Manager, of OMA member McWane-Ductile-Ohio

OMA and OMA member McWane-Ductile presented testimony this week in support of SB 2, an environmental bill, to the Senate Energy and Natural Resources Committee.

In [written testimony](#), OMA's Rob Brundrett said: "... there is a provision in the bill that OMA has long advocated: common sense regulation of slag. The bill recognizes that slag is a valuable product and not a waste under Ohio's water laws. Senate Bill 2 exempts slag from excessive regulation while at the same time requiring that slag be used in a manner that conforms with appropriate water quality standards ..."

Geoff Guss, Assistant Sales Manager, McWane-Ductile-Ohio, [testified](#): "We think this bill will help improve the quality of our state's surface water, and also ensure residents of a failing water system that

the Ohio EPA will assist them in their time of need. In addition, as the second largest consumer of scrap steel in the state of Ohio, McWane Ductile is glad to see the reclassification of slag, a byproduct of our manufacturing process." 2/23/2017

### [Call for Entries! Important Annual Industrial Recycling Survey](#)

February 17, 2017

Ohio's solid waste management districts (SWMDs), in collaboration with the OMA and Ohio EPA invite you to participate in a statewide recycling survey. The purpose of the survey is to collect data about the amounts and the types of materials that Ohio businesses recycled in 2016.

Information obtained through this survey will be used to track progress toward local and state recycling goals, assess recycling infrastructure and determine the recycling needs of Ohio's businesses.

You will send your completed survey directly to your SWMD. The SWMD will combine the data from your business with data reported by other businesses. The combined data will be used to calculate recycling rates for the SWMD. The data collected by all SWMDs will be aggregated and used to calculate recycling rates for the state. OMA reports recycling data in this [annual report](#) (page 19).

To access the survey forms for your SWMD and to learn about your SWMD, [click here](#). If you experience difficulties using the webpage or have questions, contact Ohio EPA's [Ernest Stall](#) at (614) 728-5356. 2/13/2017

### [Budget Bill Makes Changes to TMDL Process](#)

February 17, 2017

House Bill 49, the state operating budget bill, includes provisions that propose how Ohio EPA would establish Total Maximum Daily Load (TMDL) limitations for Ohio's streams.

Under the bill, Ohio EPA is required to provide for public comment when a TMDL is established, and such decisions would be appealable to the Environmental Review Appeals Commission. The bill also allows for appeals of existing National Pollutant Discharge Elimination System (NPDES) permits that were based on TMDLs established before March 24, 2015, while retaining the enforceability of any TMDL established before March 25, 2015.

This is a significant change for manufacturers with NPDES direct discharge permits to waters of the state. Read more in [this HB 49 analysis](#). 2/16/2017

### [Ohio EPA Initiates PIT Interested Party Review](#)

February 17, 2017

Ohio EPA has [initiated an interested party review](#) for draft amendments to Permits to Install and Plan Approvals for Water Pollution Control (OAC Chapter 3745-42).

Major updates being considered include: clarification of and additions to the list of exemptions from permit to install or plan approval applicability, and clarification of sewage holding tank prohibitions and restrictions. Minor revisions to the rules include updates to style, grammar and references.

See [this fact sheet](#) for specific rule revisions. If you are interested in commenting, please contact OMA's [Rob Brundrett](#). Comments are due March 13. 2/16/2017

### [Slag Rocks!](#)

February 10, 2017

This week the Senate Energy and Natural Resources Committee heard [sponsor testimony](#) for SB 2 ([bill](#) and [analysis](#)), which deals with a range of environmental issues. Included in the bill is a provision the OMA has long advocated which exempts slag from certain requirements of the water pollution laws.

Senator [Cliff Hite](#) (R-Findlay), the bill's primary sponsor, and [Ohio EPA Director Craig Butler](#), provided [testimony](#). Many of the bill's provisions were carried over from Ohio EPA's Mid Biennium Review bill of the 131st General Assembly.

Proponent testimony is expected the week of February 20. The committee chairman has indicated he wishes to fast track the bill out of committee and to the Senate floor for a full vote. 2/9/2017

### [New Ohio EPA Publications Support Compliance](#)

February 10, 2017

Solvent Metal Cleaning and Environmental Rules – If you clean metals with solvents, you may be subject to state and federal environmental requirements for waste management, air pollution control and wastewater disposal. This [fact sheet](#) will help you

understand some of the environmental requirements that may apply to your company.

[Small Business Environmental Compliance Self-Assessment Guide](#) is intended to help small businesses understand and comply with environmental regulations. 2/8/2017

### [Ohio EPA Air Reporting Due Soon](#)

February 3, 2017

This week Ohio EPA [reminded Ohio companies](#) of upcoming annual air compliance reporting requirements due in the first half of 2017. Due dates that fall on weekends or holidays, where state agencies are closed for business, will be extended to the following business day. 2/2/2017

### [OMA Comments on Storm Water Permit to Ohio EPA](#)

January 20, 2017

This week the OMA [submitted comments](#) to Ohio EPA about its proposed renewal of its National Pollution Discharge Elimination System General Permit for Storm Water Discharges Associated with Industrial Activity.

The OMA commented about sampling, benchmark feasibility, alternative benchmarks and non-industrial pollutants, among other items. The OMA also led a business group coalition in providing [additional comments](#) to Ohio EPA.

Ohio EPA will review and respond to comments provided. The agency plans to finalize the permit by March. 1/19/2017

### [Ohio EPA to Host Webinar on New Industrial Storm Water General Permit](#)

January 13, 2017

Ohio EPA is [hosting a webinar](#) focused on Ohio's new Industrial Storm Water General Permit on Wednesday March 29, at 10:00 a.m. The permit is expected to be renewed in early March 2017.

The webinar will include updates on changes from the previous general permit and resources for industrial storm water permit holders.

Ohio EPA is still accepting written comments to the draft permit that was released in the fall. Comments

are due at Ohio EPA by Tuesday, January 17. [Rob Brundrett](#) is your OMA point of contact. 1/12/2017

### [OMA Submits Official Comments to Ohio EPA on Universal Waste](#)

December 22, 2016

The OMA-led initiative to expand Ohio EPA's definition of universal waste to include more items, among them, paint and paint-related wastes, took another step forward this week. The OMA working group [submitted comments](#) on Wednesday in reaction to Ohio EPA's universal waste proposal.

The OMA has been working closely with Ohio EPA over the past two years to expand Ohio's universal waste program to include items now considered hazardous wastes, thus providing waste management relief for Ohio manufacturers.

The OMA commented on a variety of issues from storage to transportation to management standards. If all goes according to plan, Ohio EPA will review and accept OMA's comments and issue a final rule in early 2017.

Thank you to the members who participated in drafting comments. 12/22/2016

### [OMA Files Comments on Startup, Shutdown, Malfunction Rules](#)

December 16, 2016

The OMA submitted two sets of comments to Ohio EPA's Interested Party Review draft amendment for Ohio's startup, shutdown, and malfunction (SSM) rules, issued in response to U.S. EPA's finding of "substantial inadequacy" and SIP Call to amend provisions applying to excess emissions during the SSM periods.

In the [first set of comments](#), the OMA and business allies recommended: 1) modify the proposed definition of "malfunction" to remove the exclusion for equipment failures caused only in part by poor maintenance or careless operation; 2) modify the scheduled maintenance rule to allow owners or operators to continue operating when shutting down would be unsafe; 3) modify the malfunction rule to impose work practice standards during equipment failures; 4) expand the availability of alternative emission limits to minor sources; and 5) allow the adoption of alternative emission limits that are not equivalent to emission limits applicable during normal operation.

In the [second set of comments](#), the OMA alone submitted detailed concerns about the regulations' adverse business impact, how the regulations were developed, and specific problematic language in the regulations. 12/15/2016

### [New Ohio EPA Waste Materials Marketplace](#)

December 9, 2016

Does your business have waste material or product that can be re-used by another business?

If you answered yes, then the new Ohio EPA Ohio Materials Marketplace launching in January 2017 might interest you. Material exchanges connect entities so they can re-use or recycle by-products or waste materials.

Questions about the new exchange can be directed to Ohio EPA's [Joseph Klatt](#) at (614) 644-3469. 12/5/2016

### [Complying with Your Air Permit](#)

December 9, 2016

You have identified equipment and processes at your facility that are sources of air pollution, and submitted applications for these sources to Ohio EPA or your local air agency. Now that you have received your air permit, have you met all your regulatory requirements under Ohio EPA's air program? Not exactly.

Your air permit is your written authorization from Ohio EPA (or local air agency) to install and operate equipment or conduct activities that release pollutants into the air. Your permit includes all conditions and requirements to operate your air pollution source in accordance with state and federal air quality requirements. This [article from Ohio EPA](#) will help you understand common air permit requirements and steps you can take to improve your compliance. 12/5/2016

### [Draft Rules Beneficially Reclassify Hazardous Waste as Universal Waste](#)

December 2, 2016

Ohio EPA has prepared a package of draft hazardous waste management rules pertaining to the classification of certain hazardous wastes as Ohio-specific universal wastes.

The new universal wastes include hazardous non-empty aerosol cans, hazardous antifreeze and hazardous paint and paint-related wastes.

The OMA has been instrumental in advancing these beneficial rules. Comments are due December 21, 2016. The draft rules and related documents are available for [download here](#); see the Interested Party Tab. Contact OMA's [Rob Brundrett](#) for more information. 12/1/2016

### [Draft Industrial Storm Water Permit Issued – Comment Period Opens](#)

December 2, 2016

On November 24, Ohio EPA issued a public notice that it will issue a draft general National Pollutant Discharge Elimination System (NPDES) permit for the statewide regulation of storm water associated with industrial activities.

The NPDES permit identifies who can be covered, how an entity obtains coverage, and how a permittee terminates coverage. The permit contains requirements for permittees to develop and implement a Storm Water Pollution Prevention Plan (SWP3) to minimize or eliminate the potential for contamination of storm water by industrial activities. The permit includes reporting requirements for all facilities and also contains analytical monitoring requirements for most facilities covered.

A public hearing is scheduled for January 9, 2017. Additionally, written comments can be submitted. All relevant [documents can be found here](#). OMA has been engaged with Ohio EPA on this issue and will file additional comments. Contact OMA's [Rob Brundrett](#) for more information. 12/1/2016

**To: OMA Government Affairs Committee**  
**From: Ryan Augsburger / Rob Brundrett**  
**Re: Human Resources Update**  
**Date: March 15, 2017**

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### **Overview**

Unemployment insurance solvency remains a major issue for the state of Ohio. Ohio continues to be ranked among the bottom states for solvency and for its system to be able to withstand a recession. The General Assembly moved to ensure that the state's unemployment compensation debt was paid off prior to the next scheduled increase in FUTA penalties however questions still surround the solvency of the system. The General Assembly is working with business and labor to address the solvency issue in the state budget.

### **General Assembly News and Legislation**

#### **Senate Bill 199 – guns in workplace**

Senate Bill 199 which was passed during lame duck takes effect on March 21. The bill revised the state's laws on where a concealed carry firearm licensee is allowed to take a gun. They are now allowed to have them in their vehicles on the property of their place of employment.

#### **Senate Bill 331 – preemption bill (131<sup>st</sup> General Assembly)**

Senate Bill 331 was originally designed to settle a dispute between Petland and Grove City. However important pro-business language was included during lame duck and was approved by the General Assembly. The bill in its final form clarified that local governments could not set their own minimum wage levels for private employers. It also included language blocking cities from placing requirements on companies regarding work location, schedules and benefits.

#### **House Bill 2 – employment discrimination reform**

Representative 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.

In written proponent testimony to the House Economic Development, Commerce, and Labor Committee, OMA's Rob Brundrett said: "... Ohio is at a competitive disadvantage with employment discrimination laws that are significantly different than federal laws and the laws of many other states. These differences between the state and federal laws create an administrative burden for Ohio's manufacturers and other Ohio employers. Bringing Ohio's laws in line with their federal counterparts creates a more predictable and consistent system for employers and employees alike, and does not disrupt individuals' avenues to assert discrimination violations.

"In the critical areas of statute of limitations, dual actions, individual supervisor liability, damages, affirmative defenses, and age discrimination, the bill improves Ohio's laws. We agree with other proponents that the bill encourages predictability, stability, and administrative efficiency, not only for Ohio manufacturers but also in terms of use of the state's resources. This legislation gives human resources professionals the first opportunity to resolve personnel complaints and rectify detrimental workplace behavior before it results in costly litigation."

The bill continues to have hearings in the House.

#### House Bill 53 – Public Employee Unions

House Bill 53 was introduced by Rep. John Becker (R-Union Twp.). The bill removes any requirement under the Public Employees Collective Bargaining Law that public employees join or pay dues to any employee organization. The bill also prohibits public employers from requiring public employees to join or pay dues to any employee organization and prohibits an employee organization from being required to represent public employees who are not members of the employee organization.

#### Unemployment Compensation System Surcharge

Ohio recently certified the amount owed to the federal government at \$274 million. This was paid off prior to the November deadline.

The payoff in 2016 would drop the FUTA per employee rate immediately from \$168 to \$42 per employee. Some employers may already have adjusted budgets expecting this reduction but most will see a reduction in cost realized in January 2017.

The repayment state surcharge was set for 2017 at 0.6% on the \$9,000 tax base. The cost would be \$54 per employee compared to the relative savings in reduced FUTA cost per employee of \$126 per employee.

A net savings per employee of \$72 per employee.

Chairman of the Board  
WILLIAM E. SOPKO  
President, William Sopko & Sons Co., Inc.



President  
ERIC L. BURKLAND

February 21, 2017

The Honorable Ron Young  
Chairman  
House Economic Development, Commerce, and Labor Committee  
77 S. High St  
13th Floor  
Columbus, OH 43215

**RE: House Bill 2 – Written Proponent Testimony**

Dear Chairman Young:

The Ohio Manufacturers' Association (OMA) appreciates the opportunity to provide written proponent testimony on behalf of House Bill 2. As Representative Seitz noted in his sponsor testimony, Ohio is at a competitive disadvantage with employment discrimination laws that are significantly different than federal laws and the laws of many other states. These differences between the state and federal laws create an administrative burden for Ohio's manufacturers and other Ohio employers. Bringing Ohio's laws in line with their federal counterparts creates a more predictable and consistent system for employers and employees alike, and does not disrupt individuals' avenues to assert discrimination violations.

In the critical areas of statute of limitations, dual actions, individual supervisor liability, damages, affirmative defenses, and age discrimination, the bill improves Ohio's laws. We agree with other proponents that the bill encourages predictability, stability, and administrative efficiency, not only for Ohio manufacturers but also in terms of use of the state's resources. This legislation gives human resources professionals the first opportunity to resolve personnel complaints and rectify detrimental workplace behavior before it results in costly litigation.

The OMA appreciates the time and effort Representative Seitz has invested in crafting this legislation and we encourage a swift, affirmative vote of the esteemed committee.

Sincerely,

A handwritten signature in blue ink that reads "Robert Brundrett".

Robert Brundrett  
Director, Public Policy Services  
The Ohio Manufacturers' Association

## Human Resources, Health Care & Employment Law Legislation

Prepared by: The Ohio Manufacturers' Association  
Report created on March 13, 2017

- HB2**      **CIVIL RIGHTS EMPLOYMENT LAW (SEITZ B)** To modify Ohio civil rights laws related to employment.  
*Current Status:* 3/14/2017 - House Economic Development, Commerce and Labor, (Fifth Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-2>
- HB53**      **PUBLIC EMPLOYEES-MEMBER DUES (BECKER J)** To remove any requirement under the Public Employees Collective Bargaining Law that public employees join or pay dues to any employee organization, to prohibit public employers from requiring public employees to join or pay dues to any employee organization, to prohibit an employee organization from being required to represent public employees who are not members of the employee organization, and to make an appropriation.  
*Current Status:* 2/14/2017 - Referred to Committee House Finance  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-53>
- HB86**      **MINIMUM WAGE INCREASE (SMITH K, CRAIG H)** To increase the state minimum wage to ten dollars and ten cents per hour beginning January 1, 2019.  
*Current Status:* 2/28/2017 - Referred to Committee House Economic Development, Commerce and Labor  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-86>
- SB3**      **WORKFORCE DEVELOPMENT (BEAGLE B, BALDERSON T)** To revise the laws governing the state's workforce development system, programs that may be offered by primary and secondary schools, certificates of qualification for employment, and the Opportunities for Ohioans with Disabilities Agency, and to designate the first week of May as In-Demand Jobs Week.  
*Current Status:* 3/14/2017 - Senate Transportation, Commerce and Workforce, (Second Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-3>
- SB14**      **MINIMUM WAGES AND OVERTIME (TAVARES C)** To require that domestic workers be paid the higher of the minimum wage provided in Section 34a of Article II, Ohio Constitution, or the minimum wage provided in the Fair Labor Standards Act, to require that domestic workers be paid overtime wages, to make certain conduct directed toward a domestic worker an unlawful discriminatory practice, and to require a weekly day of rest for domestic workers.  
*Current Status:* 2/1/2017 - Referred to Committee Senate Transportation, Commerce and Workforce  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-14>
- SB49**      **HIRING-FELONY CONVICTIONS (WILLIAMS S)** To prohibit private 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:* 2/15/2017 - Referred to Committee Senate Transportation,

Commerce and Workforce

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-49>

## Human Resources

### [USCIS Temporarily Suspends H-1B Premium Processing](#)

March 10, 2017

OMA Connections Partner, Dinsmore, advises: "On March 3, 2017, United States Citizenship and Immigration Services (USCIS) announced a temporary suspension of premium processing impacting all H-1B petitions received by USCIS beginning April 3, 2017. The suspension will be in place for up to six months, supposedly to permit the agency to prioritize pending H-1B cases that are outside of their normal processing time and to reduce the backlog of pending H-1B cases filed in 2016."

More [from Dinsmore here](#). 3/6/2017

### [Ohio New Gun Law is Effective March 21](#)

February 24, 2017

OMA Connections Partner, Barnes & Thornburg, reminds us that Ohio's new gun law, SB 199, that passed in the December 2016 lame duck session, goes into effect next month, on March 21. The bill revised the state's laws on where a concealed carry firearm licensee is allowed to take a gun.

According to Barnes & Thornburg, [here are the main points](#) Ohio business owners should remember about the new gun law. 2/17/2017

### [OMA Supports Aligning Ohio Employment Discrimination Laws with Federal Laws](#)

February 24, 2017

In [written testimony](#) this week to the House Economic Development, Commerce, and Labor Committee, OMA's Rob Brundrett said: "... Ohio is at a competitive disadvantage with employment discrimination laws that are significantly different than federal laws and the laws of many other states. These differences between the state and federal laws create an administrative burden for Ohio's manufacturers and other Ohio employers. Bringing Ohio's laws in line with their federal counterparts creates a more predictable and consistent system for employers and employees alike, and does not disrupt individuals' avenues to assert discrimination violations.

"In the critical areas of statute of limitations, dual actions, individual supervisor liability, damages, affirmative defenses, and age discrimination, the bill

improves Ohio's laws. We agree with other proponents that the bill encourages predictability, stability, and administrative efficiency, not only for Ohio manufacturers but also in terms of use of the state's resources. This legislation gives human resources professionals the first opportunity to resolve personnel complaints and rectify detrimental workplace behavior before it results in costly litigation."

The bill had its second hearing this week. 2/23/2017

### [With Focus on Immigration, Get I-9s in Compliance](#)

February 17, 2017

OMA Connections Partner, Frantz Ward, posts a timely notice about the importance of I-9 compliance: "In an Executive Order issued on January 25, 2017, titled "Enhancing Public Safety in the Interior of the United States," President Trump directed all executive agencies to prioritize the enforcement of U.S. immigration laws. Such enforcement will very likely include more frequent and significant audits and investigations of employers' I-9 compliance.

"... on January 21, 2017, the United States Citizenship and Immigration Services began requiring employers to use a new version of the I-9 form for all new hires. Employers who fail to use the proper form can be subject to civil penalties exceeding \$2,000 for every improper form used.

"Here is a [link to the new form](#) and instructions for completing it. Note that unlike prior versions, the instructions are now contained in a separate document and are more detailed."

Read [more from Frantz Ward](#). 2/14/2017

### [Allen, Auglaize and Hardin Count Employers – Help with Substance Abuse in the Workplace](#)

February 10, 2017

The Mental Health & Recovery Services Board of Allen, Auglaize and Hardin Counties and The Partnership for Violence Free Families have partnered with OMA member, Working Partners®, to help area employers respond to substance abuse in the workplace.

The program provides:

- Education about how to protect your business – legally and operationally – from the risks associated with substance abuse
- 1:1 technical assistance to create a substance abuse policy or help update your existing one
- Access to resources for assistance with prospective or current employees who are dealing with substance abuse issues
- Access to discounted drug-testing, employee education, supervisor training and ongoing technical assistance

Applications for scholarships are currently being accepted. Apply by March 8, 2017. To learn more or apply, contact [Regina Bond](#) at (614) 337-8200. 2/9/2017

**[LIFT Joins YSU University Research Foundation in Developing Advanced Manufacturing “Teaching Factory”](#)**

February 3, 2017



LIFT, Lightweight Innovations For Tomorrow, [has joined a partnership](#) among Mahoning Valley manufacturers, educators at all levels, and workforce developers, led by Youngstown State University Research Foundation (YSURF), to develop the Mahoning Valley Innovation & Commercialization Center (MVICC).

This public-private partnership will create an educational and entrepreneurial hub to share facilities, equipment, and instructors – all necessary to build the educated and skilled manufacturing workforce for the region.

The MVICC will serve as the first of its kind for the manufacturing industry, creating a “Teaching Factory” by replicating the concept of teaching hospitals across the U.S. The Teaching Factory will use shared equipment, facilities and training, all focused on the greater purpose of creating and shaping the talent of tomorrow and further developing incumbent workers today.

Students engaged in the program will earn stackable, portable credentials which can culminate in a certificate or degree. They will also have the option to

gain full-time employment with one of the many industry partners.

Here [is a fact sheet](#) on the initiative. 2/2/2017

**[ACA Requirements Remain in Effect](#)**

February 3, 2017

President Trump has [signed an executive order](#) calling upon federal administrative agencies to minimize the economic burden of the Affordable Care Act (ACA), pending repeal of the law.

According to OMA Connections Partner, One Source Advisors: “Until further guidance is issued or legislation is signed, however, all ACA requirements remain in effect, including penalties for noncompliance.

“The executive order specifically calls upon agencies to exercise authority and discretion to:

- Waive, defer, grant exemptions from, or delay the implementation of any ACA provision or requirement that would impose a fiscal or regulatory burden on states, individuals, health care providers, health insurers, and medical device and product producers (including fees, taxes, and penalties);
- Provide greater flexibility to states, and cooperate with them in implementing health care programs; and
- Encourage the development of a free and open market for the offering of health care services and health insurance.

“The executive order must be implemented in a manner consistent with applicable law, including the Administrative Procedure Act, which requires extended review of and public comment on any federal rules which may be proposed as a result of the executive order.” 2/2/2017

**[President Trump’s Executive Order – Impact on International Travel](#)**

February 3, 2017

On January 27, 2017, President Donald Trump signed an Executive Order titled, “Protecting the Nation from Terrorist Attacks by Foreign Nationals.” The stated purpose of the order is to increase screening of foreign nationals to better detect those individuals with “hostile attitudes” and potentially terroristic intents.

OMA Connections Partner, Dinsmore, [summarizes the order and provides a Q & A](#) about what this might mean for you and your employees. 1/30/2017

### [Data Collection Obligations for Government Contractors Updated](#)

February 3, 2017

OMA Connections Partner, Dinsmore, [reminds employers about a form change](#): "Since 2014, federal government contractors and subcontractors subject to affirmative action regulations have been required to invite applicants and employees to voluntarily self identify as an individual with a disability. The self identification process is designed to collect data for the purpose of measuring progress toward achieving equal employment opportunities for persons with disabilities. The self identification form prescribed by the Office of Federal Contract Compliance Programs (OFCCP) is the only form that can be used. The prescribed form has been renewed with an expiration date of January 31, 2020.

"Federal contractors must download the renewed form or update their electronic version of the form to reflect the new expiration date. No other changes have been made to the form. Contractors have until February 10 to implement the new form." 2/2/2017

### [H-1B Visa Filing Season Starts April 3, 2017](#)

January 13, 2017

Per OMA Connections Partner, Dinsmore, April 3, 2017 is the first day on which U.S. Citizenship and Immigration Services (USCIS) may accept H-1B specialty worker petitions for the next fiscal year beginning on October 1, 2017.

Due to the overwhelming demand for the annual allotment of 85,000 new H-1B slots, employers who wish to file new H-1B petitions for current or future employees should do so on April 3rd. The number of H-1B approvals requested by employers has reached the annual H-1B cap every year for more than 10 years. Last year, USCIS received 236,000 petitions within the first week, then conducted a random lottery to determine which petitions would garner the 85,000 slots.

Read more about this [from Dinsmore here](#). 1/12/2017

### [Minimum Wage in Ohio Increased January 1](#)

January 6, 2017

Effective January 1, 2017, the minimum wage in Ohio became \$8.15 per hour for non-tipped employees (\$4.08 per hour in addition to tips for tipped employees).

Employers are required to [post the minimum wage](#) and overtime information in a conspicuous place that can be accessed by employees, such as an employee break room or other common space.

See the current state and federal posting requirements and other useful human resources forms and guidance [on this OMA webpage](#) (scroll right side bar). 12/29/2016

### [New Law Enables Small Businesses to Offer Standalone HRAs](#)

January 6, 2017

President Obama signed into law the 21st Century Cures Act on December 13, 2016. OMA Connections Partner, Clark Schaefer Hackett, [posted this news](#) about the resulting small employer health care option: "... beginning January 1, 2017, qualified small employers can use Health Reimbursement Arrangements (HRAs) to reimburse employees who purchase individual insurance coverage, rather than providing employees with costly group health plans."

Cheri Gillfillan, President, [One Source Advisors](#), OMA's endorsed health care plan broker, said, "It will not impact many employers due to the restrictive parameters. It is newsworthy only in what it is NOT more than what it is. Many small employers that read about it will think they can reinstitute paying for employees' individual coverage premium as a deductible business expense. The Cures act does NOT provide for that in general."

For more information about how this may or may not benefit your company, contact [Cheri Gillfillan](#) or [Stacie Hoover](#) at One Source Advisors, an OMA Connections Partner 1/2/2017

### [2017 Employment Forms – Free and Legally Reviewed](#)

December 22, 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 2016.

The reproducible forms offered are: Application for Employment, Absentee Calendar/Bi-monthly Absence Review, and Vacation Schedule. Updated 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](#) (right sidebar). 12/16/2016

### [What's Going on with that Salary Level Rule?](#)

December 22, 2016

For those watching the U.S. Dept. of Labor (DOL) so-called "white collar overtime" rule, OMA Connections Partner, Bricker & Eckler, [provides this status update](#).

Bottom line: The Dec. 1 implementation date was stayed and the issue is tied up in court. Bricker advises employers to prepare for quick implementation of the rule in the event the Fifth Circuit does not uphold the preliminary injunction. However, that said, President-elect Trump's nominee to head the DOL is expected to undertake efforts to undo the rule if it becomes effective after the appeal process. Stay tuned — there are likely to be lots of changes impacting employers in 2017. 12/21/2016

### [Employee vs. Independent Contractor: U.S. DOL Issues Significant New Guidance](#)

December 22, 2016

OMA Connections Partner, Frantz Ward, posted this: "On December 19, the U.S. Department of Labor (DOL) issued comprehensive new guidance making it clear that it intends to continue to aggressively pursue employers who misclassify employees as independent contractors.

"The ... new guidance, entitled "Misclassification Affects Everyone," states the DOL's position that "The misclassification of employees as independent contractors is a huge problem for workers, employers who play by the rules and our economy." ... the definite direction of the DOL is to limit many common ways businesses use independent contractors rather than employees."

Read [more from Frantz Ward here](#). 12/21/2016

### [Medical Marijuana – State of Play in Ohio](#)

December 22, 2016

OMA Connections Partner Frantz Ward posted this update about the implementation of medical marijuana in Ohio: "On December 15, 2016, the Board of Pharmacy issued draft regulations placing a limit of 40 dispensary licenses, and providing for rules on obtaining dispensary licenses, operating dispensaries and licensing of employees. The State Medical Board regulations provided steps physicians have to undertake in order to be able to recommend medical marijuana. The Department of Commerce made some increases to cultivator limits."

These proposed regulations are nowhere near finalized because final rules are not due until September 8, 2017 for the Board of Pharmacy and State Medical Board, and May 6, 2017 for the Department of Commerce. Read [more from Frantz Ward](#). 12/20/2016

### [New ADA Wellness Program Notice Requirement Effective January 1](#)

December 16, 2016

Employers subject to the Americans with Disabilities Act (ADA)—generally those with 15 or more employees—that offer a wellness program that collects employee health information must provide a new notice to employees as of the first day of the plan year that begins on or after January 1, 2017.

Read [more about this from](#) the Equal Employment Opportunity Commission. 12/14/2016

### [Big Win for Business: Pre-emption of Municipal Wage and Hour Laws](#)

December 9, 2016

The General Assembly passed Senate Bill 331, a beneficial bill which will prohibit municipalities from passing wage and hour laws that differ from the state laws.

The [OMA provided testimony](#) that noted the bill will "prohibit local governments from establishing minimum wage rates different from the rate required by state law and granting private employers exclusive authority to establish policies concerning job related issues, such as hours and location of work, scheduling and fringe benefits."

Several Ohio cities have been considering municipal minimum wage laws, laws that regulate "predictive scheduling," and other constraints on employer's ability to manage human resources productively. If successful, these municipal laws would have

confronted Ohio employers with an unmanageable hodge-podge of local labor laws. *12/8/2016*

### [Autism Mandate Comes Alive in Lame Duck](#)

December 2, 2016

This week in a surprise move, the Ohio Senate amended a long-stalled autism mandate bill into an unrelated bill dealing with palliative care licensing (HB 470). This type of amendment activity frequently occurs during lame duck session before a General Assembly term is set to expire.

The bill did not advance, but is likely to be placed up for vote next week. As we have done in prior sessions, the [OMA has communicated concerns](#) about the autism mandate legislation. Concerned manufacturers can [contact your member of the Senate](#) and ask them to oppose the autism mandate contained in HB 470.

Here is a [summary of HB 470](#). *12/1/2016*

### [Nationwide Injunction Issued on "Overtime Rule"](#)

December 2, 2016

Last week, a Texas U.S. District Court judge issued a [nationwide injunction](#) preventing the implementation of the Department of Labor's (DOL) "Overtime Rule" previously set to take effect on December 1. This means the rule will not go into effect on December 1, not that it will never go into effect.

The court found that the DOL had likely exceeded its statutory authority in setting a salary threshold higher than necessary to exempt "any employee employed in a bona fide executive, administrative, or professional capacity." Because the current salary threshold increase was unlawful under the plain meaning of the statute, the DOL "also lacks the authority to implement the automatic updating mechanism."

While the DOL is likely to appeal the decision, the timing is such that the fate of the overtime rule is now in the hands of the 115th Congress and the incoming Trump administration.

Here is [a blog post](#) from OMA Connections Partner, Frantz Ward, on the situation.

The National Association of Manufacturers (NAM) will advocate with policymakers in Congress and on the transition team about the excessive costs to implement the rule, which it estimates at \$24 billion over the next 10 years. The NAM issued this [press release](#) on the decision. *11/28/2016*

### [U.S. Citizenship and Immigration Services Releases New I-9 Form](#)

December 2, 2016

The U.S. Citizenship and Immigration Services has just released a new I-9 form. This form must be used for new hires starting on or after January 22, 2017. Employers are not required to complete new forms for current employees.

The new form will allow employers to view instructions and to complete the information electronically through drop-down menus; however, the electronically completed forms will still need to be printed and signed by the employee and employer by hand. Some of the changes to highlight include revising the question asking about "other names used" to "other last names used," and asking the person completing the form to indicate if a preparer or translator was involved. In that case, the form allows space for the preparer/translator.

Here is a [sample of the new form](#). For questions, consider contacting OMA counsel, [Joelle Khouzam](#), of Bricker & Eckler. *11/22/2016*

### [Unexpected \(but limited\) ACA Reporting Relief](#)

December 2, 2016

On November 18, 2016, the IRS released Notice 2016-70, addressing insurer and employer reporting requirements under Sections 6055 and 6056 of the Internal Revenue Code. The primary impact of the notice is to extend the due date for providing employees with copies of Affordable Care Act (ACA) information returns. Furthermore, the notice provides relief to insurers and employers from certain penalties that would otherwise apply for returns containing incorrect or incomplete information.

[Read more](#) from OMA counsel, Bricker & Eckler. *11/29/2016*

**TO: OMA Government Affairs Committee**  
**FROM: Ryan Augsburger / Rob Brundrett**  
**RE: Safety and Workers' Compensation Report**  
**DATE: March 15, 2017**

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### **Overview**

The 132<sup>nd</sup> General Assembly was seated in January. The first flurry of bills did not include any major BWC or IC initiatives. Both agencies introduced their budget bills. Neither budget contained major changes for either agency. The two budget bills are typically passed quickly through both chambers. The big news is the billion dollar back announcement made by the Governor earlier this week.

### **Legislation and Rules**

#### **Senate Bill 27 – firefighter cancer**

During the final days of the 131<sup>st</sup> General Assembly Senate Bill 27, the “firefighter cancer bill,” was passed and signed into law, making it possible for firefighters with cancer to receive workers’ compensation benefits.

For workers’ compensation purposes, the bill presumes that firefighters who develop cancer contracted the disease while performing their firefighting duties.

The OMA worked to ensure the bill included protections against potential expansion to other industries.

#### **House Bill 27 – BWC budget bill**

The House of Representatives is currently debating the Bureau of Workers’ Compensation (BWC) budget bill. Last week Administrator and CEO Sarah Morrison defended the agency’s proposed budget, in testimony. Administrator Morrison testified that the budget request is flat from the previous budget and highlighted, that over the last six years, private employer rates have dropped an average of 28.2%, saving employers \$755 million. She presented the agency’s strategic priorities and accomplishments.

The bill proposes several policy changes that Morrison explained, including:

- Expediting compensation to employees awarded temporary total disability (TTD) where they don’t have ready access to required wage documentation, which delays their compensation. The BWC proposes to pay minimum calculable TTD payments to an injured worker until the calculation can be completed to determine the proper amount. BWC will subsequently true-up TTD compensation.
- Streamlining operations to dismiss the backlog of more than 20,000 suspended applications for permanent partial disability (PPD), so called “C-92” applications, while preserving injured workers rights to PPD. Currently, there is no mechanism to dismiss the C-92 application other than death of the injured worker.
- Allowing the agency and stakeholders to communicate electronically where appropriate, instead of by mail.

The House Insurance Committee is expected to accept a sub bill today.

### House Bill 28 – Industrial Commission budget bill

This week the Industrial Commission is outlining its budget request in front of the House Insurance Committee. The bill is non-controversial due to its lack of policy recommendations.

### **BWC Agency Notes**

#### Another Billion Back

On Monday Governor Kasich and the BWC announced another billion dollars back to public and private employers. This is the third such rebate to employers since 2013. If approved by the BWC board checks would begin going to employers as soon as early July.

#### BWC Telephone Security Changes

Businesses and injured workers who use the Ohio Bureau of Workers' Compensation's automated phone system, 1-800-644-6292, will see security changes intended to better protect their sensitive information.

Now callers will need more than just their policy or claim number. Injured workers will also be asked for the last four digits of their social security number and their date of injury. Businesses will be asked for their federal tax ID number (FEIN or SSN) and the ZIP code for the mailing address on the policy.

#### BWC Amends Rule about Medical Provider Authority at OMA Request

Previously, under Ohio Administrative Code, certified nurse practitioners, clinical nurse specialists, and physician assistants (CNP, etc.) were not permitted to provide an opinion regarding whether a claimant is temporarily and totally disabled. The BWC recently revised this rule to permit CNP, etc. to offer an opinion regarding temporary total disability for any initial period of disability throughout the length of the claim.

After consideration of OMA comments in direct response to the BWC's proposed changes, a CNP, etc. can only offer an opinion regarding temporary total disability if requested to do so within the first six weeks following the date of injury, and can only write a claimant off work or place them on light-duty for up to six weeks.

This language reconciles the BWC's intent to provide immediate care to an injured worker following a work-related injury and to be taken off work if necessary, with a manufacturer's needs to remain productive, profitable and efficient by requiring care with a licensed physician if the extent of disability is expected to go beyond six weeks.

#### BWC's Morrison Appoints New Field Operations Chief

Ohio Bureau of Workers' Compensation (BWC) Administrator & CEO Sarah Morrison announced the appointment of the bureau's new chief of field operations. Deborah Dexter, Ph.D., joined Morrison's senior leadership team on October 17.

As field operations chief, Dexter will lead BWC's Customer Services Division, overseeing injury management services, employer risk and safety services and the customer contact center, among other duties.

Dexter most recently worked as vice president of operations support for Dublin-based Cardinal Health, where she spent the last eight years focused largely on improving customer service. She held similar duties at Lucent Technologies from 1995 to 2007.

Dexter holds a bachelor's degree in business administration from The Ohio State University, two master's degrees and a doctorate in organization and management from Capella University. She's also the author of "You're Not too Big to Fail: A Proven Guide to Successful Organizational Change Management."

#### Ohio Achieves 11th Lowest Workers' Compensation Rates among States

The Bureau of Workers' Compensation (BWC) reports that Ohio's workers' compensation rates continue to improve in rankings among states. Based on a biennial study that compares national workers' compensation rates, the BWC reported: "The state's rates improved from 33rd in 2014 to 40th, making Ohio the 11th lowest among all states."

The "Oregon Study" ranks states from most expensive to least expensive. Ohio has continually improved since its rates were ranked third highest in the nation in 2008.

The Oregon Study, produced by the Oregon Department of Consumer & Business Services, compares each state's base rates across a selection of 50 widely used classification codes that are assigned by occupation to indicate their degree of risk.

Since the study was conducted, BWC reduced average rates for private employers another 8.6 percent. Further, the study does not account for the various money-saving BWC programs. When the base rate reductions and rebate programs are factored in, the actual amount collected by BWC averages \$1.22 per \$100 of payroll compared to the \$1.45 rate reflected in the study. The national median rate is \$1.84.

## **BWC**

### **FY 2018 – 2019 Budget Facts**

The Ohio Bureau of Workers' Compensation (BWC) is the largest state-funded workers' compensation insurance system in the nation, insuring more than 244,000 employers and managing care for Ohioans who are injured on the job. Funded through employer premiums and assessments, BWC operates with nearly 1,900 employees in 14 locations throughout Ohio. The agency approved more than 88,000 new claims and paid approximately \$1.6 billion in wage loss and medical benefits last year.

Over the last six years, BWC has become a national industry leader committed to fulfilling its mission to protect Ohio's workers and employers through the prevention, care and management of workplace injuries and illnesses at fair rates. BWC's proposed \$566.5 million Fiscal Year 2018-19 budget seeks to build on this progress by improving service, streamlining and modernizing operations, promoting workplace safety and keeping premiums low and stable so businesses can prosper.

Highlights of the proposed budget include:

***Expediting payments to injured workers*** - Injured workers must sometimes wait for benefit payments to begin as they collect the necessary paperwork for BWC to calculate payment amounts. This delay threatens to put many workers into dire financial straits. BWC proposes an expedited process that allows eligible injured workers to receive their compensation more quickly, without the red tape and bureaucracy. The law change would allow BWC to provide a minimum payment until their full weekly wage is determined.

***Waiving unnecessary medical exams*** - Injured workers receiving temporary total disability benefits must undergo a 90-day medical examination. This can be unnecessary for some injured workers who clearly need more time to recover before they'll be ready to return to work. To better meet the varying needs of injured workers, this proposal would authorize the administrator to waive the 90-day medical examination when all parties are in agreement.

***Closing dormant claims*** - Current law places applications for permanent partial disability on hold indefinitely if a worker fails to attend or reschedule the medical examination required to determine eligibility. The result is 20,000 applications, many more than a decade old, that remain open and incomplete. The requested change would enable BWC to dismiss these dormant claims and give applicants two years to re-file, ensuring no negative repercussion for those who still have viable claims.

***Eliminating outdated injury reporting requirements for physicians*** - Physicians are required by law to contact BWC only by mail if they believe their patient has contracted an occupational disease. Removal of this outdated requirement will eliminate a burden on physicians that prevents them from selecting the communication method that works best for their business.

***Reducing injuries in the public sector*** - The Public Employer Risk Reduction Program helps create safe and healthy working conditions for Ohio's 600,000 public employees. Proposed improvements to the program are designed to decrease injury rates among these workers, which outpace their counterparts in the private sector. We propose expanding the program to include firefighters, police officers and corrections officers, and giving BWC greater authority to conduct workplace inspections to prevent injuries from occurring.

# The third **BILLION** back

*Ohio Workers' Comp Rebates*

## **Giving Back to Ohio Business**

Each year, the Ohio Bureau of Workers' Compensation helps nearly 250,000 employers protect their employees. The premiums paid by Ohio's businesses and public employers help provide safety services to reduce workplace incidents and care to get injured workers back to work and back to life. An improving safety climate, good fiscal management and better than expected investment returns have resulted in the State Insurance Fund having a net position of more than \$9 billion. So, for the third time in four years, BWC is poised to return more than \$1 billion dollars to Ohio's private and public employers. Combined with nearly 30 percent in average rate cuts and \$3 billion in previous rebates and credits, this rebate would mean BWC will have helped return more than \$6 billion to Ohio's economy.

## **What does the proposal include?**

BWC is proposing a one-time rebate of approximately \$1 billion for private employers and public-taxing districts. This includes an estimated \$967 million to private employers and \$133 million to public employer taxing districts. In total more than 200,000 employers will receive rebates.

BWC is also considering an additional, significant investment in workplace wellness and safety. BWC has begun developing ideas to support this request and expects a proposal in April that will help significantly reduce workplace injuries.

To become effective, the proposal must go to the BWC Board of Directors for a first read on March 15, and then must have a second read and be approved by its board on April 28.

## **How much will employers receive and when?**

If approved at the board's April 28 meeting, most rebates would equal 66% of the employer's premium for the policy year ending June 30, 2016 (calendar year 2015 for public employers). If approved, BWC expects to begin sending checks in early July.

Private employers in the group-retro program will have their rebate amount calculated and paid following the 12-month premium calculation scheduled to occur in October 2017.

## **Who is eligible for the rebate?**

Both private employers and public employer taxing districts that pay into the State Insurance Fund are eligible for the rebate. Details of eligibility will be posted to [bwc.ohio.gov](http://bwc.ohio.gov) in the near future, but generally the employer must have been billed premium for the policy year ending June 30, 2016 (Dec. 31, 2015 for public employers), and be current in meeting their policy requirements. Employers with an outstanding BWC balance will have their rebate first applied to that balance. Employers that report through a Professional Employer Organization should receive their rebate from their PEO, which is required to pass a portion of the rebate on to their members.

## How is it possible that BWC has \$1 billion to provide rebates?

Despite a nearly 30 percent reduction in rates since 2011, the net position of BWC continues to grow. The State Insurance Fund's net position stands at \$9.6 billion as of Jan. 31. This is primarily due to strong investment returns. Annualized return of investments was 7 percent over the last three fiscal years, including a total net return of 5.8 percent in FY2016. BWC's expected annual investment return is four percent. Prudent fiscal management and declining claims also factor into BWC's financial strength.

## Will this impact BWC's ability to operate as normal and continue to care for injured workers?

No. Investments have performed so well, that even with the \$1 billion rebate, BWC's finances will remain very strong, so operations will continue as normal and injured workers will continue to receive the care they need to heal and return to work. In fact, we are developing a proposal to invest a significant amount into worker safety and wellness, which should benefit Ohio workers by further reducing workplace injuries. After the rebate, BWC will still have a net position of \$8.5 billion.

## What else has BWC done to help Ohio businesses?

Since the beginning of 2011, BWC has saved Ohio businesses \$4.8 billion through rebates, credits and rate reductions. That includes:

- Giving rebates of \$1 billion in 2013 and another \$1 billion in 2014.
- Providing \$1.2 billion in credits to transition to a modern billing system at no cost to employers.
- Reducing rates for private employers an average of 28.2%. That means BWC collected \$1.7 billion less from employers than had 2010 rates remained steady.
- Reducing rates for public employers an average of 29.6%, or \$334 million less than had 2010 rates remained steady.
- Moving from the state with the third highest private employer rates in the country in 2008 to the 11th lowest.

## BWC: A Partner for Economic Growth in Ohio

Initiatives since 2011 mean \$6.3 billion more for Ohio employers

### A grand bargain

Referred to as the Grand Bargain, workers' compensation systems were created to ensure injured workers received care and businesses were protected from lawsuits. During the past five years, Ohio's workers' compensation has proven to be a grand bargain for businesses and workers. Since 2011, BWC has saved employers more than \$6.3 billion in workers' comp costs and seen injury rates and claims drop dramatically.

### A force for economic growth

Ohio's employers need simplicity and savings. From a one-time-forgiveness program that erases penalties for simple mistakes to a new billing system that offers greater flexibility in making payments, BWC is making life simpler for employers. And, with overall rate decreases averaging more than 28 percent for private employers and nearly 30 percent for public employers, along with \$3 billion in rebates, Ohio business are seeing tremendous savings.

### A champion of safety

Safe workplaces mean lower premiums and, more importantly, more Ohioans returning to home safely each night. BWC has invested millions of additional dollars to make workplaces safer, and since 2011, injury claims have dropped by more than 9 percent. Ohio's injury rates are currently below the national average and lower than all its surrounding states.

### By the numbers

Premium reductions, rebates, safety grants and credits to modernize BWC's billing system have resulted in Ohio employers saving \$6,340,418,824.

Employer rate levels	Rate cuts
Private employers	Average rate 28.2% lower than in place on Dec. 31, 2010 Cumulative difference in premiums collected - \$1,697,000,000
Taxing districts	Average rate 29.6% lower than in place on Dec. 31, 2010 Cumulative difference in premiums collected - \$334,000,000
<b>Combined total</b>	<b>Cumulative difference in premiums collected - \$2,031,000,000</b>

Rebates	Rebates
Fiscal year 2013	\$965,635,975
Fiscal year 2015	\$1,013,171,352
Fiscal year 2016 (counties)	\$15,172,667
Fiscal year 2017 (proposed)	\$1,000,000,000
<b>Rebate total</b>	<b>\$2,993,979,994</b>

Safety grants							
Year	2011	2012	2013	2014	2015	2016	Total
Amount	\$3,718,122	\$2,929,124	\$3,993,469	\$14,841,235	\$14,956,903	\$14,999,977	<b>\$55,438,830</b>

Transition to prospective billing premium credits (actual amount pending completion of transition)	Credits
Private employers	\$1,064,000,000
Public taxing district employers	\$196,000,000
<b>Transition total</b>	<b>\$1,260,000,000</b>

**Total amount BWC has returned or saved Ohio employers (since 2011) \$6,340,418,824\***

\* (Assuming approval of 2017 Rebate)

**Workers' Compensation Legislation**  
Prepared by: The Ohio Manufacturers' Association  
Report created on March 13, 2017

- HB27**      **WORKERS' COMPENSATION BUDGET** (BRINKMAN T) To make changes to the Workers' Compensation Law, to make appropriations for the Bureau of Workers' Compensation for the biennium beginning July 1, 2017, and ending June 30, 2019, and to provide authorization and conditions for the operation of the Bureau's programs.  
*Current Status:* 3/15/2017 - House Insurance, (Fourth Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-27>
- HB28**      **INDUSTRIAL COMMISSION BUDGET** (BRINKMAN T) To make appropriations for the Industrial Commission for the biennium beginning July 1, 2017, and ending June 30, 2019, and to provide authorization and conditions for the operation of Commission programs.  
*Current Status:* 3/15/2017 - House Insurance, (Third Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-28>
- HB99**      **WORKERS COMPENSATION-PNEUMOCONIOSIS** (CERA J) To modify workers' compensation benefit amounts for occupational pneumoconiosis claims and to create the Occupational Pneumoconiosis Board to determine medical findings for such claims.  
*Current Status:* 3/7/2017 - Referred to Committee House Insurance  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-99>

## Safety & Workers' Compensation

### [Thank You for Stopping By! #OSC17](#)

March 10, 2017



Thank you OMA members for taking the time to stop by our booth at the Ohio Safety Congress & Expo this week. We were thrilled to see so many of our friends! 3/8/2017

### [Time Change Effects Your Safety!](#)

March 10, 2017



The loss of just one hour of sleep effects workplaces more than you may have considered.

- There is a 5.7-percent increase in workplace and occupational accidents and a 68-percent increase in the severity of those accidents on the Monday following DST change in March.
- There is a 17-percent increase in fatal traffic crashes on the Monday following DST change in March.
- There is a 5-percent increase in the heart attack rate in the first three weekdays following DST change in March.
- However, there's no significant increase in accidents or heart attacks during switch back to standard time in the fall. One-hour of additional sleep is a good thing.

Read [more from the BWC social media team](#) and stay safe next week! 3/9/2017

### [BWC Safety Innovation Awards Announced](#)

March 10, 2017

The Ohio Bureau of Workers' Compensation (BWC) this week presented individual awards of up to \$6,000 to five Ohio employers who developed innovative solutions to reduce potential workplace injuries.

The BWC's annual Safety Innovation Awards were presented during the 2017 Ohio Safety Congress & Expo, BWC's annual three-day occupational safety, health and workers' compensation conference at the Greater Columbus Convention Center.

The awards for this year's competition include:

- 1st place (\$6,000 award): ICP Adhesives and Sealants, Norton
- 2nd place (\$4,000 award): C&K Industrial Services Inc., Cleveland
- 3rd place (\$3,000 award): Holloway, Henderson & Martin LLC, Pickerington
- Honorable Mention (\$1,500 award): Suburban Steel Supply Company, Gahanna
- Honorable Mention (\$1,500 award): Ames Arboreal Group, Columbus

Holloway, Henderson & Martin LLC was also selected to receive the People's Choice Award by OSC17 attendees and will receive an additional \$1,000.

The five finalists showcased their innovations at the Safety Congress Expo Marketplace. A panel of independent judges evaluated and scored the innovations based on a number of criteria, including risk reduction, innovation, cost savings, potential for the innovation to be used by other employers and presentation quality.

Visit [BWC's YouTube Channel](#) to view videos highlighting each company's innovation, and read more on [BWC's website](#). 3/9/2017

### [Industrial Commission Chairman Presents Budget](#)

March 3, 2017

This week, Tim Bainbridge, Chairman of the Industrial Commission of Ohio (IC), [defended the agency's 2018-2019 budget request](#) before the House Insurance Committee. The IC adjudicates contested workers' compensation claims.

The budget request is \$103.6MM, a 1.3 % decrease from Fiscal Years 2016-2017.

Bainbridge testified: "As a non-general revenue fund agency, funded by an Administrative Cost Fund (ACF) surcharge to the employers' workers' compensation coverage base rate, the Industrial Commission continues to pass along savings in our daily operations to our customers.

"As an example of our efficiency, the Ohio Industrial Commission District Hearing Officer and Staff Hearing Officer claims were heard on average, at 35 days, with 93% meeting the statutory 52 day time frame. The Ohio Industrial Commission adjudicated more than 127,000 claims in Fiscal Year 2016, of which only 69 were advanced through a writ of mandamus to the Tenth District Court of Appeals.

"In Calendar Year 2016, there were 18 appeals filed with the Supreme Court. The Supreme Court issued 8 decisions, 7 of which affirmed the Industrial Commission, giving the Commission an 88 % affirmation rate.

"The Ohio Industrial Commission has reduced staff by 44% through attrition and technology upgrades from 643 positions in 1997 to 360 positions at the end of Calendar Year 2016, saving nearly \$46MM in cumulative payroll without sacrificing the quality of service to our customers." 3/2/2017

### [Last Call for Ohio Safety Congress 2017](#)

March 3, 2017



The Ohio Safety Congress & Expo is a one-stop shop for your safety, human resource and workers' compensation training. Continuing education credit is available for many professional designations.

Ohio Lt. Gov. Mary Taylor will kick off OSC17 during the opening general session Wednesday, March 8 at 9:45 a.m.

[Registration is free.](#) The event is March 8-10.

We'll be at booth **#434**. Enter our drawing for a nice prize and have a [Slim Jim](#) or two from Ohio manufacturer [Conagra Brands!](#) 2/28/2017

### [Effective Date of Beryllium Rule Pushed Back](#)

March 3, 2017

OSHA is [proposing to delay](#) the effective date of the rule entitled [Occupational Exposure to Beryllium](#), from March 21 to May 20 to allow for further review and consideration.

The extension is in keeping with a Jan. 20 White House memorandum that directed the review of any new or pending regulations. However, per OSHA, it would not affect the compliance dates of the beryllium rule, which begin on March 12, 2018. 3/2/2017

### [Sound Levels – There's an App for That](#)

March 3, 2017

The National Institute for Occupational Safety and Health (NIOSH) has developed a new, free mobile application for iOS devices that measures sound levels in workplaces.

The NIOSH Sound Level Meter app displays real-time noise exposure data based on NIOSH and OSHA limits. Visit the [app webpage](#) for more information. 3/2/2017

### [BWC Safety Councils Rebated almost \\$10 Million Last Year](#)

March 3, 2017

It pays to be an active member of your local safety council – literally.

Employers who are part of the Bureau of Workers' Compensation (BWC) [Safety Council Rebate Program](#) can earn up to a 4-percent annual rebate on their workers' compensation premium by fulfilling certain attendance and performance goals.

For the fiscal year ending June 30, 2016, almost 5,000 Ohio employers fulfilled the eligibility requirements necessary to earn that rebate and received a combined \$9.6 million dollars for their efforts.

Find the [safety council nearest you](#). More from [BWC here](#). 2/28/2017

## [Employers Receive \\$895,000 in Safety Grants](#)

March 3, 2017

Ohio Bureau of Workers' Compensation (BWC) Administrator/CEO Sarah Morrison announced that 34 employers will share more than \$895,000 in grants to purchase equipment designed to substantially reduce or eliminate workplace injuries and illnesses.

The Safety Intervention Grants were approved in January. Here is a [listing of recipients](#) by county, including descriptions of planned equipment purchases.

The Safety Intervention Grant program provides employers with a 3-to-1 match up to a maximum of \$40,000. Quarterly data reports and follow-up case studies help BWC determine the effectiveness of employers' safety interventions and establish best practices for accident and injury prevention. Learn more about the [Safety Intervention Grant Program](#). View success stories about previous grant recipients on BWC's [YouTube channel](#). 2/28/2017

## [BWC Administrator Presents Budget Bill](#)

February 24, 2017

This week Bureau of Workers' Compensation (BWC) Administrator and CEO Sarah Morrison defended the agency's proposed budget, [HB 27](#), in testimony. [Administrator Morrison testified](#) that the budget request is flat from the previous budget and highlighted, that over the last six years, private employer rates have dropped an average of 28.2%, saving employers \$755 million. She presented the agency's strategic priorities and accomplishments.

The bill proposes several policy changes that Morrison explained, including:

- Expediting compensation to employees awarded temporary total disability (TTD) where they don't have ready access to required wage documentation, which delays their compensation. The BWC proposes to pay minimum calculable TTD payments to an injured worker until the calculation can be completed to determine the proper amount. BWC will subsequently true-up TTD compensation.
- Streamlining operations to dismiss the backlog of more than 20,000 suspended applications for permanent partial disability (PPD), so called "C-92" applications, while preserving injured workers rights to PPD. Currently, there is no mechanism to dismiss

the C-92 application other than death of the injured worker.

- Allowing the agency and stakeholders to communicate electronically where appropriate, instead of by mail.

The House will continue hearings on the bill. 2/23/2017

## [OMA Tax Committee Hears Briefing on State Budget](#)

February 17, 2017

Businesses and injured workers who use the Ohio Bureau of Workers' Compensation's automated phone system, 1-800-644-6292, will see security changes intended to better protect their sensitive information.

Beginning this week, callers will need more than just their policy or claim number. Injured workers will also be asked for the last four digits of their social security number and their date of injury. Businesses will be asked for their federal tax ID number (FEIN or SSN) and the ZIP code for the mailing address on the policy. 2/13/2017

## [BWC and Industrial Commission Budgets Introduced](#)

February 10, 2017

The General Assembly has introduced both the [Bureau of Workers' Compensation \(BWC\) budget](#) (HB 27) and the [Industrial Commission budget](#) (HB 28). The bills, which are historically filed separately from the State Operating Budget, usually have a swift passage by the General Assembly.

A summary of policy changes in the introduced versions is included in this [comparison document](#), and BWC prepared this [summary of budget facts](#). Hearings are expected to begin shortly in the House. 2/9/2017

## [It's February! Post Your OSHA Form 300A](#)

February 3, 2017

Employers are reminded to post their [OSHA Form 300A](#), Summary of Work-Related Injuries and Illnesses, between February 1, 2017 and April 30, 2017. The Form 300A lists the total number of job-related injuries and illnesses that occurred during the previous year and must be posted even if no work-related injuries or illnesses occurred during the year.

It should be displayed in a common area where notices to employees are usually posted so that employees are aware of the injuries and illnesses occurring in the workplace.

A company executive must certify that he or she has examined the OSHA 300 Log and that he or she reasonably believes—based on his or her knowledge of the process by which the information was recorded—that the annual summary is correct and complete. 2/1/2017

### [Supreme Court Awards TTD, Disregards Violation of Work Rule](#)

February 3, 2017

In a 5-2 opinion of *State ex rel. Cordell v. Pallet Cos., Inc.*, the Supreme Court of Ohio found that the Ohio Industrial Commission abused its discretion by denying the claimant's application for temporary-total disability (TTD) compensation after he was terminated following a workplace injury for violation of a work rule that occurred before the injury and was discovered as a result of the injury.

This case, which involves an employee's violation of his employer's drug-free workplace policy, and subsequent compensable injury, is of interest to virtually all employers.

Justices O'Donnell and Kennedy dissented from the majority opinion.

Read a [summary of the facts and decision](#) from OMA counsel, [Sue Wetzel](#), of Bricker & Eckler. 1/31/2017

### [OSHA Issues Recommended Practices for Anti-Retaliation Programs](#)

January 27, 2017

Earlier this month, the Occupational Safety and Health Administration (OSHA) issued [Recommended Practices for Anti-Retaliation Programs](#).

OMA Connections Partner Frantz Ward [highlights some of the key items](#) recommended by OSHA for an effective anti-retaliation program and advises: "To the degree that OSHA applies this Guidance in connection with investigations of alleged retaliation, employers should have a record that they considered and, to the degree applicable to their circumstances, adopted recommendations from it." 1/23/2017

### [BWC Approves Safety Grants for 41 Employers](#)

January 27, 2017

Ohio Bureau of Workers' Compensation (BWC) Administrator/CEO Sarah Morrison this week announced 41 employers will share more than \$942,000 in grants to purchase equipment designed to substantially reduce or eliminate workplace injuries and illnesses.

The BWC commits \$15 million to the safety grant program each year.

Here is a [listing of recipients](#) by county, including descriptions of planned equipment purchases.

The Safety Intervention Grant program provides employers with a 3-to-1 matching amount up to a maximum of \$40,000. Quarterly data reports and follow-up case studies help BWC determine the effectiveness of employers' safety interventions and establish best practices for accident and injury prevention. Learn more about the [Safety Intervention Grant Program](#).

View stories about previous grant recipients on [BWC's YouTube channel](#). 1/25/2017

### [OSHA Issues Final Rule on Beryllium Exposure](#)

January 20, 2017

OSHA issued a rule on Jan. 6 that lowers workplace exposure to beryllium, a metal that can be hazardous to workers when particles are inhaled through dust or fumes during processing.

The new standards will lower the eight-hour permissible exposure limit to beryllium from 2.0 to 0.2 micrograms per cubic meter of air. When concentrations exceed those limits, employers will be required to take additional measures to protect workers.

The rule becomes effective on March 10, 2017, after which employers have one year to implement most provisions. For more information, see OSHA's [beryllium final rule webpage](#). 1/18/2017

## [Governor Signs Firefighter Cancer Bill into Law](#)

January 13, 2017

Last week, Governor Kasich signed Senate Bill 27, the “firefighter cancer bill,” into law, making it possible for firefighters with cancer to receive workers’ compensation benefits.

For workers’ compensation purposes, the bill presumes that firefighters who develop cancer contracted the disease while performing their firefighting duties.

The OMA worked to ensure the bill included protections against potential expansion to other industries.

OMA workers’ compensation counsel Sue Wetzel of Bricker & Eckler provides this [summary of the final bill](#). 1/12/2017

## [High Court Decision Overrides Bargained Provision](#)

January 6, 2017

In a recent Supreme Court of Ohio case, *State ex rel. BF Goodrich Co. v. Indus. Commission of Ohio*, the injured worker sought overtime compensation for the time she was in the employer’s light duty/restricted employee work program as a result of a workplace injury.

The terms of the program were determined by a collective-bargaining agreement that contained a provision that employees on light duty outside of their own job classification are not eligible for overtime.

Parties escalated the case through the judicial system until the high court eventually held that the claimant was eligible for wage-loss compensation because 1) she suffered a reduction in wages during the periods of time at issue, and 2) her placement in the light-duty program was causally related to the allowed conditions of her claims.

Read [more from OMA counsel](#), Sue Wetzel, of Bricker & Eckler. 12/29/2016

## [Give the Gift of Safety](#)

December 22, 2016



The BWC has you covered with gift ideas to keep your adventurers, do-it-yourselfers and loved ones safe and healthy throughout the year.

The safety experts from BWC’s Division of Safety & Hygiene have compiled this [Safety & Health Gift Guide](#) to help you give the gift that keeps on giving – safety and wellness.

The guide includes ideas for gifts to keep your friends and family safe at home and on the road. It also includes reminders about creating or reviewing plans in case of home emergencies.

Do you have weekend warriors at home? Check out ideas ranging from proper footwear and hearing protection to task lighting and eye safety.

How about outdoor adventurers? From harnesses and carabineers for rock climbers to gun safety classes for hunters, there are plenty of options to choose from.

Keep the kids safe with tips for buying the safest toys and products, from toddlers to teenagers.

Also read the travel tips to keep you safe when travelling over the river and through the woods to grandmother’s house.

BWC and OMA wish you a happy and SAFE holiday season and new year! 12/19/2016

## [New OSHA Posting Requirement](#)

December 22, 2016

OSHA issued a new rule, which takes effect January 1, 2017, requiring employers to notify employees of their right to report work-related injuries and illnesses free of retaliation. However, employers can meet the new rule requirement by posting the poster already required. [Here’s the required poster](#). 12/16/2016

## [Don't Overlook Coverage for Employees Who Travel Out of State](#)

December 16, 2016

Each state has different laws and requirements for workers' compensation coverage. Consider each state where you send employees, and make sure proper coverage is in place.

The Bureau of Workers' Compensation (BWC) works with a private insurer to offer optional coverage to employers with out-of-state exposures.

Through BWC's Other States Coverage, employers can secure coverage in 46 states to eliminate potential coverage gaps and compliance issues, which may arise when working out of state.

Contact the BWC's Other States Coverage unit at (614) 728-0535 or [via email](#). 12/14/2016

## [Supreme Court Disallows PTD and PPD in Same Claim](#)

December 9, 2016

The Supreme Court of Ohio this week ruled that an injured worker is not entitled to both permanent and total disability (PTD) compensation and permanent partial (PPD) compensation in the same claim.

The Supreme Court specifically found that state law does not permit an award of PPD compensation to an injured worker who has already been awarded PTD compensation in the same claim.

This is a great decision for employers who have been faced with paying both where the Industrial Commission ruled PTD compensation was based on either the physical or psychological conditions in a claim. Read [an analysis of the case](#) from OMA counsel, Sue Wetzel, of Bricker & Eckler. 12/8/2016

## [Hosed Down Firefighter Bill Approved](#)

December 9, 2016

In the midst of an action packed lame duck session the General Assembly passed [Senate Bill 27](#). The bill sponsored by Senator [Tom Patton](#) (R-Strongsville) originally provided that a firefighter who is disabled as a result of specified types of cancer is presumed to have incurred the cancer while performing his or her job duties, thus creating eligibility for workers' compensation benefits. After opposition from the

OMA and local government groups, the bill was improved in the House.

The bill cleared the final hurdles of the legislative process. It now creates the presumption that a firefighter is eligible for workers' compensation benefits if he or she contracts cancer and has been exposed in the line of duty to an agent classified by the International Agency for Research on Cancer as a Group 1 or 2A carcinogen. In order to qualify the firefighter must have been assigned to at least six years of hazardous duty, among other terms.

While the bill ([see analysis](#)) still creates a new allowance in workers' compensation law, OMA and its allies were successful in scaling back the precedent. 12/8/2016

## [OSHA Issues New Walking-Working Surface & Fall Protection Rule](#)

December 2, 2016

OSHA [issued a final rule](#) November 17 updating its 44-year old general industry Walking-Working Surfaces standard to protect workers from slip, trip, and fall hazards.

The final rule includes: "... revised and new provisions addressing, for example, fixed ladders; rope descent systems; fall protection systems and criteria, including personal fall protection systems; and training on fall hazards and fall protection systems. In addition, the final rule adds requirements on the design, performance, and use of personal fall protection systems."

OSHA estimates the final rule will prevent more than 5,800 injuries a year. The rule takes effect January 17, 2017. 12/1/2016

## [Supreme Court Upholds Industrial Commission, Favors Claimant](#)

December 2, 2016

The Supreme Court of Ohio issued a decision in the *Manpower of Dayton, Inc. v. Indus. Comm., et al.* in favor of the claimant, upholding the Industrial Commission's Order awarding claimant PTD compensation.

Claimant provided medical evidence indicating she was totally disabled as a direct result of her impairments from her industrial injury based on the allowed conditions. The Industrial Commission also had claimant examined, and it was determined that claimant had reached maximum medical improvement

and was incapable of engaging in sustained remunerative employment.

It does not appear from the record that the employer submitted any medical evidence of its own to contradict the medical evidence offered by claimant and the Industrial Commission. Instead, the employer attempted to argue the opinions were legally insufficient.

The Supreme Court of Ohio disagreed, finding the Industrial Commission is the sole evaluator regarding the weight and credibility of the evidence. The employer's request for a writ of mandamus was denied.

Sue Wetzel of OMA counsel, Bricker & Eckler, provides [more about the case](#). 11/29/2016

### [BWC Extended True-up Grace Period](#)

December 2, 2016

For employers that failed to true-up and pay their 2015 policy by the original grace period date of September 30, but did true up and pay by November 30, the Bureau of Workers' Compensation (BWC) will add them back to policy year 2016 premium discount programs and restore eligibility for policy year 2015 bonus programs.

Employers that complete the true-up and pay in the 59 days post November 30, 2016 can file an appeal for program cost relief via the BWC Governor's One Time Forgiveness policy. Read the BWC [policy true-up policy here](#).

Direct any questions to [BWC Employer Programs Unit](#) or to OMA's [Brian Jackson](#). 11/29/2016

**TO: OMA Government Affairs Committee**  
**FROM: Ryan Augsburger / Rob Brundrett**  
**SUBJECT: Tax Public Policy Report**  
**DATE: March 15, 2017**

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### **Overview**

After a year on the campaign trail the Governor has switched his focus to the final state budget proposal of his term. Many common themes were introduced in House Bill 49, including an expansion of the sales tax and a reduction of the income tax. The House and Senate will debate these proposals and add their own to the massive 3,500 page spending bill. Final action on the bill is required by June 30.

### **Tax Legislation**

#### **Senate Bill 9 – Sales Tax Holiday**

Senator Kevin Bacon introduced Senate Bill 9 which provides for a three-day sales tax "holiday" in August 2017 during which sales of clothing and school supplies are exempt from sales and use taxes. The holiday was passed and used in 2016 as well. The bill quickly passed the Senate and is now having hearings in the House.

#### **House Bill 26 – Transportation Budget**

Representative Rob McColley introduced House Bill 26, the state's transportation budget. The bill makes appropriations for programs related to transportation and public safety for the biennium and provides authorization and conditions for the operation of those programs. The bill moved through the House quickly and is having hearings in the Senate. One item of interest is the inclusion of the Division of Freight at ODOT. This new division would be focused on all modes of freight transportation.

#### **House Bill 27 – Workers' Compensation Budget**

Representative Tom Brinkman introduced House Bill 27, which is the BWC standalone budget. The bill makes changes to the Workers' Compensation Law, makes appropriations for the Bureau of Workers' Compensation, and provides authorization and conditions for the operation of the Bureau's programs. A sub bill is expected this week in House Insurance.

#### **House Bill 28 – Industrial Commission Budget**

Representative Tom Brinkman introduced House Bill 28, which is the Industrial Commission standalone budget. The bill makes appropriations for the Industrial Commission for the biennium, and provides authorization and conditions for the operation of Commission programs. The bill is expected to pass both Houses quickly.

#### **Senate Bill 36 – CAUV**

Senator Cliff Hite has reintroduced Senate Bill 36. SB 36 makes changes to the computation of the CAUV formula. CAUV is the alternative method for taxing agricultural property. The rate allows agricultural land to be taxed at the ag value of land as opposed to the commercial value of the land. The formula has proven to be controversial in the past. In recent years farmers have been seeing an increase in their

property tax due to a variety of reasons. Making changes to the current formula has proven controversial especially to residents and local governments.

#### House Bill 49 – State Operating Budget

The Governor outlined his final budget proposal the last week of January. The massive spending bill number over 3,500 pages was introduced formally last week. Included in the bill are several major tax proposals.

Again the Governor is going after additional income tax reductions in this budget. He proposed a nearly \$3.2 billion, 17% cut in income taxes over the two years beginning July 1. The number of income tax brackets would be reduced from nine to five. The top tax rate would drop to 4.33%.

The budget would increase personal income tax exemptions for those earning less than \$80,000. The administration said these changes would mean an additional 350,000 low-income Ohioans will pay no income tax.

Personal income taxes have been reduced in Ohio by 30% since 2005.

Governor Kasich would pay for his proposed personal income tax decrease with a concomitant increase in sales and other taxes.

The increases in the sales and other taxes would total about \$3.1 million. The sales tax rate would increase by 1/2% to 6.25%.

The sales tax base would expand to additional services such as television subscriptions, elective cosmetic surgery, lobbying, landscape design, interior design and decorating, travel package and tours and repossession services.

The budget proposes to increase the state's severance tax on oil and gas and raise taxes on cigarettes, beer and wine.

Finally as every business taxpayer knows, Ohio has an administratively burdensome, and costly, municipal tax system. Governor Kasich proposes to simplify its payment process.

He would streamline the process by having businesses file just one form for municipal taxes and make a single payment through the Ohio Business Gateway. The Ohio Department of Taxation would process payments and distribute revenues back to the appropriate local governments, just as it does for county sales taxes and school district income taxes.

This reform has been advocated by the OMA and its business allies, and opposed by the municipal lobby.

#### **Tax News**

##### 2020 Tax Policy Study Commission

The Commission wrapped up hearings in the fall. There is no word if and when a final report of recommendations will be delivered to the General Assembly.

### OMA Gets Win in Supreme Court

On Thursday Nov. 17, the Ohio Supreme Court issued its long-awaited decisions in three cases involving the application of the commercial activity tax to remote sellers. In a 5-2 decision, the court upheld Ohio's economic nexus standard and rejected the argument that a physical presence in the state was required by the commerce clause before a remote seller could be subject to the tax.

In part, the court held that the \$500,000 threshold of receipts was sufficiently substantial for commerce clause purposes. OMA filed an amicus brief in the cases, urging the Court to uphold the economic nexus provisions.

### Site Selection Ranks Ohio's Business Climate Third Overall

Ohio finished third overall in Site Selection's annual ranking of state business climates. Georgia and North Carolina were numbers one and two.

Fifty percent of the ranking is based on a survey of site selectors – corporate facility investors and site consultants — who indicate simply which states they deem to be the most business friendly. That's the subjective part. The other 50 percent — the objective side — is a combination of factors primarily based on announced project data that resides in the Conway Projects Database which credits areas with corporate facility projects of at least \$1 million in capital investment, 20 or more new jobs or new construction of at least 20,000 sq. ft.



# BUILDING FOR OHIO'S NEXT GENERATION

BUDGET OF THE STATE OF OHIO · FISCAL YEARS 2018–2019

## **STRENGTHENING OHIO'S JOBS-FRIENDLY CLIMATE**

Ohio has seen an impressive turn-around in its business climate over the past six years under the leadership of Governor John R. Kasich, receiving strong votes of confidence from a number of national surveys for the state's work to build a strong, business-friendly environment for job creation, capital investment and economic success. By continuing to focus on areas critical to long-lasting jobs growth, Ohio has seen the most improved business climate in the nation, creating nearly 450,000 new private sector jobs since the start of 2011 and bringing unemployment rates down to pre-recession levels.

### **Priority One: Preserving Ohio's Fiscal Stability with Conservative Budgeting**

The essential foundation of Ohio's economic turnaround and improved business climate is state government's fiscal stability. As a result, Kasich budgets have been among the strongest in the nation, and world-class corporations and small business operators alike are realizing that Ohio's stable state finances make it a welcoming place to do business and to have that business succeed. Then, as now, Ohio's jobs-friendly fiscal stability has been the result of conservative budgeting and restrained government spending in each of Gov. Kasich's three previous biennial budgets.

### **Developing a 21st Century Tax Plan to Drive More Job Creation**

Ohioans have enjoyed one the biggest tax cuts in the nation over the past six years with more \$5 billion in tax relief. These tax cuts have helped spur our state's economic recovery and made Ohio one of the nation's top states for job creation. In the last biennial budget, Ohio took major steps to eliminate income taxes for many small businesses and further reduce income tax rates for all Ohioans. Despite these most recent reforms, many elements of Ohio's tax system remain irrational and align poorly with today's consumer-driven economy.

- **Fewer Tax Brackets and Lower Tax Rates:** Currently, the rate at which an Ohio worker pays personal income taxes is based on nine income brackets. Governor Kasich is proposing to lower rates and reduce the number of brackets to five. This would greatly simplify Ohio's tax system and if adopted with other proposed income tax changes, would deliver a 17 percent income tax cut over fiscal years 2018 and 2019.

Current Brackets	Rates
0-\$5,250	0.495 %
\$5,250-\$10,500	0.990 %
\$10,500-\$15,800	1.980 %
\$15,800-\$21,100	2.476 %
\$21,100-\$42,100	2.969 %
\$42,100-\$84,200	3.465 %
\$84,200-\$105,300	3.960 %
\$105,300-\$210,600	4.597 %
More than \$210,500	4.997 %

New Income Brackets	Tax Rates 2017	Tax Rates 2018
Up to \$10,000	0.50%	0.456%
\$10,000 - \$25,000	1.50%	1.367%
\$25,000 - \$100,000	3.25%	2.963%
\$100,000 - \$200,000	4.25%	3.874%
More than \$200,000	4.75%	4.33%

- **New Tax Relief for Low- and Middle-Income Ohioans:** Ohio will cut taxes for low- and middle-income Ohioans by increasing the personal exemption for state income taxes, a reform that, with other income tax changes, will eliminate state income taxes for more than 350,000 lower income Ohio households. For those earning less than \$40,000 a year, the exemption increases from \$2,250 to \$3,000 in 2017, and for those earning between \$40,000 and \$80,000 a year, the exemption increases from \$2,000 to

\$2,500. In 2013, prior to Gov. Kasich’s initial tax cuts for low- and middle-income families, the exemption was \$1,700 for all taxpayers. In addition, the Governor’s proposal would expand the low income credit by increasing the level of income eligible to claim the credit from \$10,000 to \$15,000 of Ohio adjusted gross income, less personal exemptions. The low income credit eliminates tax liability for those who qualify.

- **Simplifying Municipal Tax Filing for Businesses to Encourage More Economic Growth:** Despite significant progress in recent years to address long-standing problems in Ohio’s municipal tax system, it remains cumbersome and costly as businesses are forced to comply with hundreds of different local tax systems. To save businesses the extra cost of computing and then filing “net profit” taxes with multiple municipalities, Ohio seeks to streamline the process by having businesses file just one form and a single payment online through the Ohio Business Gateway, with the Ohio Department of Taxation processing payments and distributing revenues back to the appropriate local government, just as it does for county sales taxes and school district income taxes. This is an important step toward bringing common sense to an outdated system and will save money for business taxpayers. It will also save money for municipalities. The Department estimates that by bringing economies of scale to the processing of this tax, it can reduce administrative costs for these communities by about \$9 million a year.
- **Moving Toward a Consumption-Based Tax System:** Leading economists believe that taxing income discourages investment and job creation. Continuing to move Ohio’s tax system from a significant reliance on income taxes and toward a greater reliance on consumption taxes will give Ohioans more control over how they are taxed and the taxes they pay, as well as better aligning the tax system with the growing service sector in our economy. This budget proposes increasing the sales tax by a half percent, from 5.75 percent to 6.25 percent, meaning consumers would pay an additional 50 cents on a \$100 purchase (while maintaining tax exemptions for groceries and prescriptions). The budget seeks to broaden Ohio’s sales tax base to certain discretionary services including cable TV subscriptions, elective cosmetic surgery/procedures, lobbying, landscape design, interior design and decorating, travel packages and tours, and repossession services.
  - **Tax Reform:** The governor’s budget continues to move Ohio’s tax system away from its excessive reliance on taxing income by moderately expanding and reforming the tax base of several other revenue streams, including:
  - **Increasing Tobacco Taxes:** Under this proposal, Ohio’s cigarette tax would go from \$1.60 to \$2.25 per pack; the tax on other tobacco products would rise to a rate equivalent to the tax on cigarettes. Vapor products (primarily e-cigarettes) would become subject to the tax levied on the other tobacco products.
  - **Aligning Ohio’s Outdated Alcohol Taxes with the Current Market:** Ohio’s tax on alcoholic beverages (excluding liquor), was last updated in 1992 and fails to reflect the fast-changing mix of alcohol products available in the marketplace today. Taxes on beer and wine will be adjusted for inflation that has eroded the tax base over more than two decades and be adjusted to better match the current alcohol industry and its offerings, a reform that will also help reduce income tax rates.
  - **Modernizing Ohio’s Oil and Gas Tax System:** Ohio currently has approximately 1,500 producing oil and gas shale wells. Just as Ohio has modernized its oil and gas regulations to keep pace with new drilling technologies, we must modernize the state’s tax system on oil and gas production, created more than 40 years ago. Ohio’s current severance tax is just 20 cents on a barrel of oil and 3 cents on an MCF (thousand cubic foot) unit of natural gas. The current structure did not anticipate Ohio’s highly valuable new natural gas liquids production. The governor proposes fixed rates for crude oil and natural gas of 6.5 percent when sold at the wellhead, and a lower rate of 4.5 percent for natural gas and natural gas liquids when sold at later stages of distribution. These rates are lower than those levied by other major state producers, such as Texas, Oklahoma and North Dakota, and will place Ohio squarely in the middle of the pack of all state rates. The difference in the proposed new rates makes an allowance for costs incurred with products sold beyond the wellhead as they are brought to market. All Ohioans will share in the benefits of our state’s oil and gas resources in the form of lower income taxes.

**NEW SEVERANCE TAX RATES ARE FAIR AND COMPETITIVE**

Product	Rates	
	At Wellhead	Downstream
Crude Oil	6.5%	N/A
Natural Gas	6.5%	4.5%

Natural Gas Liquids	N/A	4.5%
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### FY 2018 and FY 2019 Projected Tax Relief with Offsets

All figures in millions of dollars, rounded to the nearest million.

	FY2018	FY2019	Total
<b>State Income Tax Reduction (all changes)</b>	-1,244	-1,883	-3,127
<b>Cigarette and Other Tobacco Taxes</b>	312	346	658
<b>Broadening Base of Sales Tax**</b>	166	251	417
<b>Sales Tax to 6.25%</b>	560	879	1,439
<b>0.5% Increase on Base Expanders*</b>	12	18	30
<b>Commercial Activity Tax provisions</b>	8	25	33
<b>Oil and Gas Severance Tax</b>	137	311	448
<b>Modernizing Alcoholic Beverage Tax Rates</b>	26	30	56
<b>Repeal campaign contribution credit</b>	3	4	7
<b>TOTAL revenue increase</b>	1,224	1,864	3,088
<b>TOTAL net tax cut</b>	-20	-19	<b>\$39 million net cut over the biennium</b>

(\* totals reflect rate of 6.25%) (\*\* totals reflect rate of 5.75%)

- **Increasing Parity in the Commercial Activity Tax (CAT):** This proposal would correct an oversight in state tax law that allows certain companies in the business of lending money to completely avoid paying the CAT or other business tax on interest payments collected on loans. Separately, another proposal would ensure that suppliers of certain large warehouse and shipping operations – designated as Qualified Distribution Centers (QDC) – pay a minimum CAT liability on taxable gross receipts from transactions associated with the QDC. Companies inside and outside Ohio selling products to a QDC pay little or no CAT while other companies selling to non-QDC warehousing operations are required to pay the CAT on 100 percent of their taxable gross receipts from such sales. This proposal would subject a minimum of 10 percent of a supplier’s taxable gross receipts from sales to a QDC to the CAT.
- **Eliminating the Clutter in State Law for Those Who Pay Property Taxes:**
  - **Providing a Consistent Approach to Property Tax Appeals:** An Ohio taxpayer currently seeking to contest a property tax bill must begin by appealing at the county-level Board of Revision (BOR). Appeals of BOR decisions are taken directly to the state Board of Tax Appeals – with one exception. Confusingly, state law sends appeals regarding a penalty for not paying property tax to the Ohio Tax Commissioner. This proposal eliminates that inconsistency by taking the Tax Commissioner out of the process and instead directs all cases to the Board of Tax Appeals.
  - **Ensuring Uniformity for Property Tax Exemption Applications:** State universities often own property that qualifies for exemption from property taxes. To gain exempt status for certain types of qualifying property, universities presently need to apply for an exemption with the county auditor. This proposal would transfer the application and approval process from the county to the Ohio Tax Commissioner. This reform is supported by the County Auditors Association of Ohio.
  - **Eliminating Redundancy in State Law on Tax Exemption for Cemeteries:** Under current law, most cemeteries in Ohio are exempt from property taxes. However, language providing that exemption is redundantly described in five separate locations in the Ohio Revised Code (ORC). This measure would eliminate the redundant provisions and combine the necessary language in one section of the ORC.
- **Making Important Changes in Excise Tax Collection:**
  - **Simplifying a Property Owner’s Exemption for Personal Use of Natural Gas:** Ohio residents with a natural gas well on their property are entitled to personally use up to \$1,000 worth of their well’s production without paying severance tax on that portion. However, because most of these non-commercial wells are not equipped with meters to measure how much gas is extracted

and used, the owner can't know for certain whether tax is owed. This proposal would remove the \$1,000 limit and exempt all personal use of natural gas from the severance tax.

- Establishing a One-Stop Process for Severance Permit Applications: Ohio's severance tax law requires a permit to extract certain minerals. Taxpayers obtain their permits from the Ohio Department of Natural Resources (ODNR), but the law also allows them to get a permit from the Ohio Tax Commissioner. Currently, permits from ODNR are issued at no charge, but any issued by the Tax Commissioner require a fee. This reform would end this inconsistency by assigning issuance of all severance permits to ODNR and removing the Tax Commissioner from the process.
- Simplifying the Tax Return Process for Cigarette Wholesalers: Cigarette wholesalers have followed a cumbersome process of filing monthly tax schedules and a semi-annual reconciliation return to verify the inventory they have been reporting each month. This proposal would significantly reduce that paperwork burden by consolidating these reports on one monthly return.
- Eliminating Loopholes to Ensure Tax Payments Are Current: Before a liquor permit can be issued or renewed, the Department of Taxation checks to make sure the merchant doesn't owe sales or employer withholding taxes to the state. This provision would ensure that the merchant also is current on all excises taxes (e.g., tobacco taxes and alcoholic beverage taxes) before a permit is issued. Similarly, another proposed provision would authorize the Tax Commissioner to deny licenses to tire distributors, motor fuel dealers or tobacco distributors if they are delinquent with any tax payments.
- Making Truth a Requirement for Obtaining or Holding a License: This proposal would provide authority to deny or revoke a tax-related license if the application contains a fraudulent statement.

● **Updating Sales Tax Laws:**

- Eliminating Unneeded Paperwork from County Auditors: County auditors are now required to report a list of all vendor's licenses to the Ohio Department of Taxation. That report is no longer necessary because all state vendor's licenses are now obtained and registered electronically through the department.
- Bringing Sales Tax Brackets into the Computer Age: Before computers and electronic cash registers, Ohio law defined a series of tax brackets to help merchants determine how much sales tax to charge on a particular item (e.g., if there is a combined state/local sales tax rate of 7 percent, items priced between 8-21 cents are taxed one cent). Now retail technology computes the tax due based on the rate that exists in a particular county. This provision eliminates the obsolete brackets from the Ohio Revised Code.
- Ensuring Better Scrutiny of Habitually Late Taxpayers: Business taxpayers who repeatedly fail to remit sales tax they collect or neglect to file sales tax returns on time are placed in the Habitual Offenders Program (HOP) to help them maintain compliance. At times, some HOP participants will take money they have collected for the employer withholding tax and use it to pay the sales tax so that they remain current and compliant with HOP requirements. This proposal would require HOP taxpayers to be current with both sales tax and employer withholding tax obligations.

● **Making Other Common-Sense Tax Code Revisions:**

- Setting a Sensible Minimum before Collecting the Wireless 9-1-1 Charge: With this proposal, the state fee that helps pay for county 9-1-1 service would add a provision to require a one dollar minimum for collection or refund. This would make the Wireless 9-1-1 fee consistent with all other state taxes in this regard.

**BOTTOM LINE:** By making tax reform a priority each year of the Kasich Administration, Ohio has strengthened its ability to grow the economy and jobs in our state. With other states also cutting taxes and looking to keep themselves competitive, Ohio must continue to make its tax code friendlier to job creators and entrepreneurs, while helping Ohioans keep more of what they earn.



**H.B. 49: Fourth Verse, Same as the First**  
Mark A. Engel, Bricker & Eckler LLP

House Bill 49, the budget bill for the 2018-2019 biennium, was introduced in the Ohio House of Representatives. Like the three prior budget bills proposed by the Kasich administration, it contains a number of income, sales, alcohol and tobacco provisions. It also contains yet another proposal to increase the severance tax paid by the oil and gas industry and a proposal calling for centralized return filing and payment of municipal income tax by businesses. Over-all, the proposal nets to a slight tax decrease over the two years to Ohio taxpayers.

**Personal Income Tax**

No changes are proposed to the tax imposed on business income. However, the budget bill proposes to collapse the nine existing income tax brackets applicable to other income to five brackets. Current rates, starting at 0.495 percent and topping out at 4.997 percent for incomes above \$200,000, are reduced to 0.456 percent to 4.33 percent. The personal exemption for taxpayers with taxable income less than \$40,000 would increase from \$2,250 to \$3,000. For taxpayers with taxable income between \$40,000 and \$80,000, the exemption increases from \$2,000 to \$2,500. Finally, income limitation for taxpayers eligible for the low income credit is increased from \$10,000 to \$15,000 in adjusted gross income less personal exemptions.

**Municipal Income Tax**

Currently, entities doing business in multiple cities imposing an income tax on net profits must file returns and pay tax in each such city. Responding to compliance complaints, the bill includes a proposal for centralized filing and tax payment of municipal income tax for entities, but not for individuals. The existing provisions of R.C. Chapter 718 relating to the tax on net profits are excised from that chapter and dropped into a new chapter, R.C. Chapter 5718. Procedural provisions, such as estimated filings and payments, audit, assessment, and refund provisions, are duplicated in the new chapter. The so-called “throw-back” rule, by which certain sales of tangible goods delivered outside the city imposing the tax are included in the numerator of the receipts factor, is eliminated. Distributions of tax collected and earnings on investments are to be distributed to cities on the first day of March, June, September and December.

The provisions apply generally to any taxpayer that is not an individual. As compensation for its services, the state will retain one percent of all municipal income taxes collected.

These changes would be effective January 1, 2018.

**Sales Tax**

The state sales tax rate would be increased from 5.75 percent to 6.25 percent. In addition, the sales tax would be expanded to the following services:

- Cable television subscriptions
- Elective cosmetic surgery or procedures
- Lobbying
- Landscape design
- Interior design and decorating
- Travel packages and tours
- Repossession services

Transactions between members of an affiliated group of entities would not be subject to sales tax. These changes would be effective October 1, 2017.

Perhaps the biggest change is repealing Ohio’s sales tax brackets. Instead, vendors and sellers would compute the amount of tax due on a transaction by multiplying the price paid by the combined state and local tax rate in effect in the jurisdiction. The calculation is carried out to three decimal places and any time the last digit is above four, the amount is rounded up.

### **Alcohol and Tobacco Taxes**

Ohio’s tax on cigarettes would increase from \$1.60 to \$2.25 per pack, while the tax on other tobacco products would be raised to a rate equivalent to that of cigarettes. E cigarettes would also be subject to tax.

Tax rates are adjusted for beer and wine and will be indexed for inflation.

### **Oil and Gas Severance Tax**

As in previous bills, the administration proposes to increase the taxes on oil, gas, condensate and gas liquids. The tax on oil and natural gas sold at the wellhead would be imposed at 6.5 percent of the average quarterly price, while tax on natural gas and gas liquids and condensate sold downstream would be imposed at a rate of 4.5 percent of the average quarterly price.

### **Commercial Activity Tax**

While the bill does not propose to increase the rate of the tax, it does propose to impose a minimum tax with respect to goods sold through qualified distribution centers (“QDC”). Currently, taxpayers shipping goods through a QDC pay CAT based on the percentage of goods that are shipped from the QDC to customers in Ohio. The proposal insures that such taxpayers would pay tax on a minimum of ten percent of their sales from a QDC, even if less than ten percent of their sales are sold to customers in Ohio.

In addition, the exclusion from gross receipts for interest is modified to provide that interest on loans made in the normal course of a taxpayer’s business are taxable. This provision insures that CAT taxpayers who do not pay the financial institutions tax pay CAT on such receipts.

## **Miscellaneous**

The bill also provides for several minor or administrative changes. They include the following:

- Redirecting appeals of penalties for failing to pay property taxes from the Tax Commissioner to the Board of Tax Appeals
- Revise the process for obtaining exemptions with respect to property owned by state universities and property owned by cemetery associations
- Requires liquor license transferors to be current on filings and payments of all excise taxes, not just sales and withholding
- Permit revocation of various tax-related licenses for fraudulent statements

## **Comments**

In many respect, this budget proposal is similar to its predecessors: lower personal income taxes and increase other taxes to defray some of the cost. Previous general assemblies have been reluctant to shift taxes in such a manner, and early signs indicate the current general assembly may adhere to that position.

A portion of the sales tax extension to new services will apply to services consumed by business. One difference from prior proposals is that transactions between members of a related group of entities are excluded.

Centralized collection of municipal income taxes will be a contentious issue. Cities fear a loss of revenue and control with collection by the state; they are also unhappy with the fact moneys are distributed quarterly. On the other hand, the business community may push strongly for this or a similar provision.

Regarding the severance tax proposal, strong opposition is expected from the oil and gas industry. Local jurisdictions likewise may voice opposition because little, if any, of the increase will inure to their benefit.



March 7, 2017

The Honorable Tim Schaffer  
Chairman, Ways and Means Committee  
Ohio House of Representatives  
77 S. High St., 11<sup>th</sup> Floor  
Columbus, OH 43215

**RE House Bill 49 – Centralized Tax Collection Reform**

Dear Chairman Schaffer:

Historically Ohio has had one of the country's most administratively burdensome taxing structures, mostly attributable to Ohio's local income tax system. Ohio is one of a handful of states that taxes both individuals and businesses at the local level and the only state in which each municipal corporation makes its own rules and regulations. The administrative cost in time and money puts Ohio at a disadvantage compared to its peer states and diverts Ohio manufacturers' resources from productive activity.

In the past, The Ohio Manufacturers' Association (OMA) has advocated that Ohio adopt a consolidated and streamlined municipal income tax code that would create a uniform statewide standard. Despite the good progress made in House Bill 5 (130<sup>th</sup> General Assembly), Ohio's municipal tax system remains costly and cumbersome to manufacturers as they are still required to comply with a myriad of different local tax systems.

House Bill 49 would make Ohio's municipal income tax system simpler and more predictable, both important characteristics of a competitive tax system. The bill does two things in particular that manufacturers support. First, the bill seeks to minimize compliance costs associated with filing in multiple jurisdictions. The governor's proposal to centralize collection and administration for business filers would significantly reduce the time and cost associated with multiple net profit return filings. Second, the bill proposes to eliminate the "throwback" rule. This outdated rule discourages economic development; this punitive tax puts Ohio cities at a competitive disadvantage for attracting business investment.

These important reforms of Ohio's municipal income tax system will help increase Ohio's overall competitiveness. If you wish, please contact me at (614) 629-6814 or [rbrundrett@ohiomfg.com](mailto:rbrundrett@ohiomfg.com) to discuss further. Thank you for your work on this important bill.

Sincerely,

Robert Brundrett  
Director, Public Policy Services

## Ohio Court Upholds Economic Nexus Standard

Mark A. Engel  
Bricker & Eckler LLP

On November 17, 2016, the Ohio Supreme Court issued three decisions in which it held that remote sellers with no physical presence in the state were nevertheless subject to Ohio's commercial activity tax ("CAT"). In doing so, it rejected the taxpayers' arguments that the federal commerce clause required a physical presence in order to impose a tax for the privilege of doing business in the state and held that the substantial nexus requirement under the dormant federal commerce clause jurisprudence was satisfied by the substantial sales made by the taxpayers into the Ohio market. *Crutchfield Corp. v. Testa*, Slip Opinion No. 2016-Ohio-7760; *Mason Companies, Inc. v. Testa*, Slip Opinion No. 2016-Ohio -7768; *Newegg, Inc. v. Testa*, Slip Opinion No. 2016-Ohio-7762.

All three taxpayers make on-line retail sales into Ohio. During the tax years in question, those sales amounted to several million dollars each. Goods are shipped to the customers via third party common carriers. The parties agreed that none of the taxpayers had any property or payroll in Ohio; in fact, testimony in the record disclosed that Crutchfield intentionally avoided any sort of physical presence in any state but its home state of Virginia.

The commercial activity tax is a tax imposed upon the privilege of doing business in Ohio. It applies to any taxpayer having substantial nexus with Ohio, which includes "bright line presence" in Ohio. "Bright line presence" is defined to include having property or payroll in excess of \$50,000 during the year; receipts from sales to customers in Ohio in excess of \$500,000 during the year; or more than 25 percent of its property, payroll and sales for the year in Ohio.

The taxpayers argued that they must have substantial nexus with Ohio before Ohio may impose the CAT. Because they did not have a physical presence in Ohio, they asserted that they did not have substantial nexus with Ohio. Therefore, imposing the CAT upon them violated the commerce clause of the federal constitution.

In 5-2 decisions, the Court disagreed. It recognized that the jurisprudence of the U.S. Supreme Court indeed required a substantial nexus between a taxpayer and a state attempting to impose a tax in order to avoid the proscriptions of the commerce clause. However, the Court recognized that while the U.S. Supreme Court has imposed a physical presence test with respect to the collection obligations of a remote seller for sales tax, it has never extended that requirement to general business taxes. The Court stated: "We hold today that although a physical presence in the state may furnish a sufficient basis for finding a substantial nexus, Quill's holding that physical presence is a necessary condition for imposing the tax obligation does not apply to a business-privilege tax such as the CAT, as long as the privilege tax is imposed with an adequate quantitative standards that ensures that the taxpayer's nexus with the state is substantial." *Crutchfield*, Slip Opinion at ¶42. The Court concluded that the \$500,000 threshold was sufficient for that purpose.

The dissent agreed with the taxpayers. It argued that a physical presence was indeed necessary to satisfy the substantial nexus requirement under the commerce clause.

The taxpayers will have 90 days from the date the Court issues its mandate to decide whether to seek a discretionary review by the U.S. Supreme Court.

## Taxation Legislation

Prepared by: The Ohio Manufacturers' Association  
Report created on March 13, 2017

- HB11**      **INCORPORATING FEDERAL REVENUE CHANGES** (SCHERER G) To expressly incorporate changes in the Internal Revenue Code since February 14, 2016, into Ohio law.  
*Current Status:* 3/8/2017 - **PASSED BY SENATE**; Vote 32-0, Emergency Clause 32-0  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-11>
- HB49**      **OPERATING BUDGET** (SMITH R) Creates FY 2018-2019 main operating budget.  
*Current Status:* 3/16/2017 - House Finance State Government and Agency Review Subcommittee, (Eleventh Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-49>
- HB61**      **TAX EXEMPTION-FEMININE PRODUCTS** (JOHNSON G, KELLY B) To exempt from sales tax the sale of tampons and other feminine hygiene products associated with menstruation.  
*Current Status:* 2/21/2017 - Referred to Committee House Ways and Means  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-61>
- HB70**      **FUEL TAX TRANSPARENCY** (MERRIN D) To enact the "Fuel Tax Transparency Act" requiring stickers to be placed on retail service station pumps displaying the rates of federal and state taxes applicable to gasoline and diesel fuel.  
*Current Status:* 3/15/2017 - House Government Accountability and Oversight, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-70>
- HB86**      **MINIMUM WAGE INCREASE** (SMITH K, CRAIG H) To increase the state minimum wage to ten dollars and ten cents per hour beginning January 1, 2019.  
*Current Status:* 2/28/2017 - Referred to Committee House Economic Development, Commerce and Labor  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-86>
- HB89**      **AUGUST SALES TAX HOLIDAY** (PATTERSON J, KELLY B) To provide for a three-day sales tax "holiday" in August 2017 during which sales of clothing and school supplies are exempt from sales and use taxes.  
*Current Status:* 2/28/2017 - Referred to Committee House Ways and Means  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-89>
- HB104**      **TAX REFUND ON BAD DEBTS** (SCHAFFER T) To allow vendors to receive a refund of sales tax remitted for bad debts on private label credit accounts when the debt is charged off as uncollectible by the credit account lender.  
*Current Status:* 3/7/2017 - Referred to Committee House Financial Institutions, Housing and Urban Development  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-104>

- SB9**      **AUGUST TAX HOLIDAY (BACON K)** To provide for a three-day sales tax "holiday" in August 2017 during which sales of clothing and school supplies are exempt from sales and use taxes.  
*Current Status:* 3/14/2017 - House Ways and Means, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-9>
- SB36**      **AGRICULTURAL COMPUTATION (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 and to stipulate that CAUV land used for a conservation practice or enrolled in a federal land retirement or conservation program for at least three years must be valued at the lowest of the values assigned on the basis of soil type.  
*Current Status:* 3/8/2017 - Senate Ways and Means, (Fourth Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-36>
- SB65**      **ENERGY STAR TAX HOLIDAY (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:* 3/1/2017 - Senate Ways and Means, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-65>

## Tax

### [OMA Supports Centralized Municipal Tax Collection](#)

March 10, 2017

This week the OMA [submitted testimony](#) to the House Ways and Means Committee in support of a specific proposal in the governor's budget (HB 49) that would streamline and centralize the administration of net business tax.

Ohio has one of the country's most administratively burdensome taxing structures, mostly attributable to Ohio's local income tax system. Ohio is one of a handful of states that taxes both individuals and businesses at the local level and the only state in which each municipal corporation makes its own rules and regulations.

The administrative costs of the system put Ohio at a disadvantage compared to its peer states and diverts Ohio manufacturers' resources from productive activity. The proposal seeks to minimize compliance costs associated with filing in multiple jurisdictions.

The governor's proposal to centralize collection and administration for business filers would significantly reduce the time and cost associated with multiple net profit return filings. *3/9/2017*

### [House Ways and Means Committee Sets Budget Hearing Schedule](#)

March 3, 2017

Here's a peek at the House Ways and Means Committee [hearing schedule](#) to deal with HB 49, the state's biennial budget. *3/2/2017*

### [Federal Tax Reform "Blueprint" Described](#)

March 3, 2017

In a recent post, OMA Connections Partner, RSM US, updates us about the federal tax reform proposal known as the Blueprint:

"The Republican leadership of the House of Representatives, and the leadership of the Ways and Means Committee, have advanced an innovative tax reform proposal that is commonly referred to as the Blueprint. As expected of nearly all income tax reform proposals, it would reduce individual income tax rates and the number of tax brackets, paying for those rate reductions with a broadening of the tax base. For

example, the Blueprint would reduce the top individual income tax rate from 39.6 percent to 33 percent, eliminate the alternative minimum tax, and eliminate most individual, non-business deductions, other than those for mortgage interest and charitable donations. It does not appear that the existing social security tax on earnings above the "wage base" of approximately \$120,000 would be affected. The Blueprint's most important innovation, however, is its novel approach to the taxation of business and investment income, [described more fully here.](#)" *3/2/2017*

### [An Interesting Pro-Taxpayer Decision Against IRS](#)

February 24, 2017

The Sixth Circuit recently ruled that Roth IRAs that purchase shares of a Domestic International Sales Corporation (DISC) and have dividends returned to it cannot have those transactions recharacterized as excess contributions by the IRS. This is a significant win for taxpayers.

Read [more about this case](#) from OMA Connections Partner, MCM CPAs & Advisors. *2/22/2017*

### [OMA Tax Committee Hears Briefing on State Budget](#)

February 17, 2017



Pictured: Ohio Tax Commissioner Joe Testa

This week Ohio Department of Taxation Commissioner [Joe Testa](#), House Finance Committee Chairman [Ryan Smith](#) and House Ways and Means Committee Chairman [Tim Schaffer](#) met with the OMA Tax Committee to discuss [HB 49, the state operating budget](#), and more specifically, the tax proposals in the budget.

The governor's budget proposal is focused on driving down the income tax. The reduction in income tax would be paid for through a variety of other tax increases including the sales tax, cigarette taxes, beer and wine taxes, and a new severance tax.

The budget also proposes centralized collection for business municipal taxes, something the OMA has long advocated.

The budget wrangling must conclude in time for it to be signed into law no later than June 30.

For a front row seat regarding the state's tax developments, join the OMA Tax Committee at [My OMA, select My Communities](#). 2/16/2017

### [OMA Supports Kasich Proposal to Centralize Municipal Tax Collection](#)

February 10, 2017

Governor Kasich's 2017/18 biennial budget proposes to modernize the municipal tax system by centralizing administration at the state level: "To save businesses the extra cost of computing and then filing "net profit" taxes with multiple municipalities, Ohio seeks to streamline the process by having businesses file just one form and a single payment online through the Ohio Business Gateway, with the Ohio Department of Taxation processing payments and distributing revenues back to the appropriate local government, just as it does for county sales taxes and school district income taxes."

In a [memo of support](#) to the administration, OMA wrote: "This will relieve the current complicated and burdensome system of municipal income tax collection for businesses. It would be one more important step in advancing Ohio's business-friendliness. The OMA supports the governor's proposal to centralize municipal income tax collection administration." 2/9/2017

### [Kasich Wants Additional Income Tax Reductions](#)

February 3, 2017

Governor Kasich is going after additional income tax reductions in his last biennial budget.

He proposed a nearly \$3.2 billion, 17% cut in income taxes over the two years beginning July 1. The number of income tax brackets would be reduced from nine to five. The top tax rate would drop to 4.33%.

The budget would increase personal income tax exemptions for those earning less than \$80,000. The administration said these changes would mean an additional 350,000 low-income Ohioans will pay no income tax.

Personal income taxes have been reduced in Ohio by 30% since 2005. 1/30/2017

### [Governor Proposes Increases in Sales and Other Taxes](#)

February 3, 2017

Governor Kasich would pay for his proposed personal income tax decrease with a concomitant increase in sales and other taxes.

The increases in the sales and other taxes would total about \$3.1 million. The sales tax rate would increase by 1/2% to 6.25%.

The sales tax base would expand to additional services such as television subscriptions, elective cosmetic surgery, lobbying, landscape design, interior design and decorating, travel package and tours and repossession services.

The budget proposes to increase the state's severance tax on oil and gas and raise taxes on cigarettes, beer and wine.

Speaker Cliff Rosenberger stated that he is not keen on any "tax shifting." 1/30/2017

### [Budget Would Simplify Municipal Income Tax Payment](#)

February 3, 2017

As every business taxpayer knows, Ohio has an administratively burdensome, and costly, municipal tax system. Governor Kasich proposes to simplify its payment process.

He would streamline the process by having businesses file just one form for municipal taxes and make a single payment through the Ohio Business Gateway. The Ohio Department of Taxation would process payments and distribute revenues back to the appropriate local governments, just as it does for county sales taxes and school district income taxes.

This reform has been advocated by the OMA and its business allies, and opposed by the municipal lobby. 1/30/2017

## [2016 Tax Return Due Date Changes](#)

February 3, 2017

Tax season has arrived and this year's season comes with some due dates changes and new e-filing information disclosure requirements. OMA Connections Partner, GBQ, [summarizes](#) some of them. 1/31/2017

## [New Report on Merger & Acquisition Activity in the Manufacturing & Distribution Sector](#)

January 20, 2017

OMA Connections Partner, BDO, has just published its Q1 2017 review and outlook for merger and acquisition (M&A) activity among the manufacturing & distribution (M&D) sector.

BDO reports that: "M&A activity in the ... sector was down approximately 15 percent in 2016. A decline was expected after a record 2015, and amplified by the sluggish economy and a brutal election season, which delayed sale decisions."

And concludes: "... Valuations remain high at 9.0x EBITDA on average. Business owners are smart to invest in their employee base through apprenticeship programs, which will ultimately add value to their businesses when the time is right for a sale. The U.S. economy appears to be gaining steam, based on key measures such as GDP, the Institute for Supply Management (ISM) Index, unemployment, wage growth, and consumer confidence. All things considered, 2017 is ripe for an active year in terms of M&A activity in the M&D sector."

Read BDO's [full 4-page report here](#). 1/18/2017

## [FAQ about Asset Based Loans](#)

January 13, 2017

OMA Connections Partner, Bank of America Merrill Lynch, posts that asset-based lenders have generally found that, over time, the valuation of a borrower's assets remains stable over a variety of business and economic cycles. This makes calculating a borrower's credit capacity based on asset values a highly predictable way of providing capital. For these reasons, asset based loans are often viewed by lenders, for certain types of borrowers, as a more reliable form of lending than cash flow-based loans.

You can read the full [FAQ about asset based loans here](#).

For more information, contact [Mike D'Arienzo](#), Vice President, Sr. Business Relationship Manager, Bank of America Merrill Lynch, at (614) 918-7551. 1/9/2017

## [R&D Tax Credit Predictions for 2017](#)

January 6, 2017

From OMA Connections Partner, Tax Credits Group, a prediction that the Research and Development Tax Credit will continue to be considered a primary tool for helping U.S. businesses stay competitive against global competition, and therefore favorable changes will continue. Read [more from TCG here](#). 1/4/2017

## [Tax Tips Make Great Stocking Stuffers](#)

December 22, 2016

Well, not really. However, OMA Connections Partner, MCM CPAs & Advisors, has posted some year-end tax guidance, including [some details](#) on depreciation tax breaks available for the 2015 tax year and beyond. And [here is a post](#) about the comprehensive new lease accounting standard issued in early 2016.

And OMA Connections Partner, RSM, has [considered some actions](#) companies and individuals may want to take in anticipation of potential tax reforms under the Trump administration. 12/20/2016

## [IRS Extends ACA Reporting Deadline](#)

December 16, 2016

The IRS has again extended the deadline for employers subject to the Affordable Care Act's (ACA's) information reporting requirements to meet their obligations to employees. This is generally applicable to employers with 50 or more employees, or the equivalent.

Last year, the IRS extended the 2016 deadlines for reporting 2015 information, giving employers an additional two months to provide employees Form 1095-B, "Health Coverage," and Form 1095-C, "Employer-Provided Health Insurance Offer and Coverage."

The latest extension, however, extends the deadline for reporting 2016 information only 30 days, from January 31, 2017, to March 2, 2017. And, unlike the last extension, this one doesn't include the deadline for filing the required forms with the IRS.

[Read more](#) from OMA Connections Partner Clark Schaefer Hackett. 12/13/2016

[OH 2016 Income Tax Forms & Instructions Available Now](#)

December 16, 2016

2016 Individual and School District Income Tax forms and the instruction booklet are now available on the Ohio Department of Taxation's [webpage](#) under the "Forms" tab. *12/15/2016*

[Ohio Court Upholds Economic Nexus Standard](#)

December 2, 2016

On November 17, 2016, the Ohio Supreme Court issued three decisions in which it held that remote sellers with no physical presence in the state were nevertheless subject to Ohio's commercial activity tax (CAT).

OMA counsel, Mark Engel, Bricker & Eckler, [provides this short summary](#) of the case, which OMA considers a win.

Engel wrote that the court "... rejected the taxpayers' arguments that the federal commerce clause required a physical presence in order to impose a tax for the privilege of doing business in the state and held that the substantial nexus requirement under the dormant federal commerce clause jurisprudence was satisfied by the substantial sales made by the taxpayers into the Ohio market."

This is one to keep an eye on as the taxpayers will have 90 days from the date the court issues its mandate to decide whether to seek a discretionary review by the U.S. Supreme Court. *11/22/2016*