

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

OMA Government Affairs Committee

November 30, 2016

AGENDA

Welcome & Introductions

National Association Reports

- Highlights of activity from national groups such as NAM, GMA, PMA, NTMA, ACC, Foundries, Autos

OMA Counsel's Report

Staff Reports

Discussion / Action Items

- Above-Market Electricity Charges and Reregulation
- Unemployment Comp
- Legal Challenge: Drug Pricing Initiated Statute
- Truck weight reform (SETA)
- Energy Standards Legislation
- 2017 Budget & Taxes Outlook

Special Presentation:

- *Post-election analysis. We've invited a panel of Ohio's in-the-know experts to discuss what's ahead in national and Ohio politics & policies based on election outcomes*

Lunch – provided by OMA

2017 Government Affairs Committee Calendar

Meetings will begin at 9:30 a.m.

Wednesday, March 15

Wednesday, June 7

Tuesday, August 29 (in Cleveland, details TBD)

Wednesday, November 29



Christopher Hess, Committee Chair
Director, Public Affairs, Eaton

Committee Members

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

Ryan Augsburger, OMA Staff

Rob Brundrett, OMA Staff

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

Member Discussion

Bob Paduchik, Trump Ohio Campaign
Kevin DeWine, OMA Member, Past GOP Chair
David W. Johnson, Summitville Tiles
Kurt Tunnell, Bricker & Eckler

Our thanks to today's meeting sponsor:



Public Policy “Hot Topics” November 30, 2016

Overview

The General Election results surprised many partisan Republicans and Democrats. Donald Trump racked up an impressive electoral win helping to carry down ticket Republicans to victory allowing statehouse Republicans to pick up one-seat in both the Ohio House and the Ohio Senate setting records for majority control.

The “lame duck” post-election legislative session is underway and will conclude by mid-December. Top issues of interest to manufacturers include unemployment compensation system solvency, electric re-regulation, energy standards, and more targeted legislative reforms like unsafe used tire legislation and autonomous vehicle testing legislation. Other surprise amendments develop every day.

Unemployment Compensation

In late May 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. Both the House and Senate have promised to make unemployment trust fund solvency a priority in lame duck.

The short-term plan uses the state’s unclaimed funds to provide a loan to make the payoff. Employers will be assessed a surcharge in 2017 to pay the loan back. By paying off the debt early employers will see an overall savings in 2017.

Ohio recently certified the remaining debt at \$274 million. Ohio is poised to pay off the debt at any time. Our best information indicates that the state will use a 0.6% rate to develop the surcharge, which would be \$54 per employee. This would net an approximate savings of \$72 per employee next year.

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.

A joint committee established over the summer held five hearings on unemployment compensation. Representative Schuring and Senator Peterson have worked together to draft a bill that is to be introduced in the House this week. The bill is said to be a balanced approach to reach solvency. See OMA Human Resources section report for more information.

Electric Utilities Seek \$Billions and Support “Reregulation”

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. The OMA Energy Group (OMAEG) opposed the proposal in every chapter and will continue to seek reversal in appeal. Other utilities have made a similar filing now pending at the PUCO.

AEP and FirstEnergy are calling for legislative *reregulation* or *restructuring*. In 1999, with the passage of Senate Bill 3, Ohio began a transition to deregulated generation. That transition which has taken over 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.

Minimum Wage

A Cleveland municipal ordinance would hike minimum wage to \$15 per hour for employers in the municipality. The legality of such a proposal is questionable. Ohio Attorney General DeWine issued an opinion stating that proposals like the Cleveland one are illegal. It appears that the ballot issued in Cleveland is stalled until 2017. The General Assembly is considering preemption language clarifying minimum wage in Ohio during lame duck. The OMA staff has been participating in a coalition of opponents. For more information see the OMA human resources section report.

Tax Policy

Hearings have continued on the 2020 Tax Policy Study Commission. The OMA has testified twice on both how Ohio's tax structure impacts manufacturing and on the impact of tax expenditures on Ohio's manufacturers. The Commission had two hearings in the recent months.

House Bill 343 which eliminates the sales tax on temporary employees was voted out of the House Economic and Workforce Development Committee against opposition from the Department of Taxation. The issue has been a long time OMA priority.

Budget Shortfall

State agencies are already planning for the next biennial budget which the Governor will deliver to the General Assembly in late January. State budget bills are traditionally the legislative vehicle that contains proposals for tax revisions. The OMB Director has informed policy makers and the public to expect a \$1.5 billion shortfall related to Medicaid. That will require belt-tightening or new revenue. In prior Kaisch budgets, manufacturers have expressed concerns with revenue proposals.

Clean Power Plan / U.S. EPA 111(d)

US EPA issued a final rule in August 2015. Appeals have delayed implementation. The OMA filed comment together with the NAM and individually. Oral argument occurred was held last month.

While there was much speculation about the CPP's ability to survive legal scrutiny, the survival is now in question following Donald Trump's election. If / when federal carbon emissions regulation goes online, states will likely need to develop state implementation plans. Ohio policymakers have chosen to hold off on state regulations. See Environment Report.

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.

Civil Justice

Patent troll legislation is pending in the House, but limited action is expected. Consensus seems to be forming that a federal solution is preferable.

Workers’ Comp & Industrial Commission

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

2016 General Election

When the 132nd Ohio General Assembly is sworn in early next year, it will have an even larger Republican majority than today. The Senate Republicans picked up the seat of Democrat incumbent Lou Gentile (D-Steubenville) of the 30th district with the election of freshman Frank Hoagland (R-Adena). The Senate becomes 24 Republicans and 9 Democrats.

The House Republicans advanced their majority, 66-33, by picking up Republican Jay Edwards (R-Nelsonville) in the 94th district open seat race.

The candidates endorsed by the OMA-PAC were victorious. In just the last week Judge Pat Fischer’s victory in an open seat contest on the Ohio Supreme Court was made official after counting the provisional ballots. Judge Pat DeWine, son of Attorney General Mike DeWine, topped his opponent by 8% to join the high court. Maureen O’Connor was unopposed for a second six-year term as chief justice.

Race for Ohio Leadership in 2018

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

PUBLIC POLICY GOALS: KEY MANUFACTURING TALKING POINTS

An Efficient, Competitive Ohio Tax System

Ohio's tax system must encourage investment and growth and be competitive nationally and internationally. A competitive tax system is characterized by (a) certainty, (b) equity, (c) simplicity, (d) transparency, as well as (e) economy of collections and convenience of payment.

A Lean, Productive Workers' Compensation System

An efficient and effective workers' compensation system benefits workers, employers, and the state's economy and is built on these principles: (a) injured workers receive prompt benefits that are adequate for returning to work quickly and safely, (b) rates are established on actuarial principles without political influences, (c) the system has with well-functioning insurance mechanisms, including reserving and investment practices that assure fund solvency and stability, (d) the disability management practices are best-in-class and improve service and outcomes for injured workers while lowering employer costs, and (e) the system roots out fraud, whether by employers, workers or providers.

Access to Reliable, Economical, Diverse Energy Resources

Energy policy can enhance—or hinder—Ohio's ability to attract business investment, stimulate economic growth and spur job creation, especially in manufacturing. State and federal energy policies must (a) ensure access to reliable, economical sources of energy, (b) support the development of a diverse energy resource mix, and (c) conserve energy to preserve our natural resources, while lowering cost. Policies should assure well-functioning markets that stimulate innovation and reduce costs.

A Fair, Stable, Predictable Civil Justice System

A state's legal climate can be a major inducement or deterrent to business investment, growth and job creation. Ohio's civil justice system must be rational, fair and predictable. Manufacturers must be free to innovate and pursue market opportunities without fear of unreasonable exposure to costly lawsuits, while injured parties must have full recourse to appropriate measures of justice.

A Modern Infrastructure

Investments in modern infrastructure secure jobs for the near and long term. Ohio's multi-modal transportation infrastructure, including roads, bridges, rails and ports—as well as broadband—needs to be state of the art to support our manufacturing economy. Preserving access to and responsibly managing Ohio's water sources are fundamental. And, the state must support a pipeline infrastructure that delivers abundant energy resources from Utica and Marcellus shale plays to Ohio manufacturers and other markets.

Science-based, Technologically Achievable, and Economically Reasonable Environmental Regulations

Effective environmental regulations: (a) provide clarity, predictability and consistency, (b) are based on scientific consensus, (c) provide for common sense enforcement, and (d) incorporate careful cost-benefit analysis as part of the policymaking process. Policymakers should exercise restraint in establishing state environmental regulations that exceed federal standards. And, manufacturers understand that fair and reasonable regulations must be balanced with responsible stewardship of our natural resources.

An Adequate & Skilled Workforce

Sustained growth in manufacturing requires a sufficient population of workers who have appropriate hard and soft skills. Among initiatives that will foster talent development: (a) state policy and budgeting that supports manufacturing workforce development, (b) a system of cataloging Ohio's workforce development assets, accessible to both employers and workers, (c) adoption of industry recognized credentials, and (d) expansion of cooperative education, internships and apprenticeships.

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MEMORANDUM

TO: Ohio Manufacturers' Association
Government Affairs Committee
FROM: Bricker & Eckler LLP
DATE: November 30, 2016
RE: Winter 2016 Legislative & Judicial Report

I. November 2016 Government Affairs Committee Counsel Report.

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

II. Ballot Issues (Updated November 2016).

2016 General Election Outcomes: We have attached a more comprehensive Post-Election Day Memo to this report for your review.

Overview – November 2016 / No Statewide Ballot Issues: For the first time in several election cycles, there were no statewide issues set for the November 8, 2016 presidential election. Once the legislature approved medical marijuana earlier in 2016, the proponents of a continued statewide ballot issues withdrew a proposed Constitutional amendment on the subject (*see additional details below*).

The other statewide issue most likely for the 2016 ballot was the Ohio Drug Price Relief Act (“ODPRA”) – 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*).

Proposed Constitutional Amendment: Supreme Court Term Limits: Attorney General Mike DeWine certified a proposed constitutional amendment to impose term limits on Ohio Supreme Court justices and to exempt lawmakers from legal privileges. Ethics First—You Decide Ohio PAC’s proposal calls for the creation of two new constitutional provisions to (1) prohibit one from being elected or appointed to the Supreme Court if he or she has served nine or more consecutive years as a judge on the Supreme Court and (2) ensure that all laws that apply to the people of Ohio and its political subdivisions also apply equally to the members and employees of the General Assembly.

The proposal went to the Ballot Board after it was certified by the Attorney General. On November 7, 2016, the members of the ballot board agreed to a

motion from Senator Bill Coley (R-Liberty Twp.) that the proposal must be divided into two separate issues. Secretary of State Jon Husted publicly voiced his frustration at the fact the proponents regularly fail to appear before the board to field questions or argue their case. The group has recently adopted the name “the Committee to Impose Term Limits on the Supreme Court and to Preclude Special Legal States for Members and Employees of the Ohio General Assembly.” The Committee will now have to gather 305,591 signatures for each ballot item.

Marijuana Legalization: Following the passage of H.B. 523 (Rep. Steve Huffman, R-Tipp City), it now seems clear that the myriad constitutional ballot measures proposing to legalize/regulation marijuana in Ohio have ended – at least for now. The proposal from Ohioans for Medical Marijuana certified for the November 2016 ballot was suspended and signatures due to the Secretary of State for placement on the 2016 ballot were not filed on July 6, 2016. Various interest groups are now working through the new regulatory and administrative process in Ohio for medical marijuana access in 2019. The Department of Commerce is the lead agency managing the myriad state administrative rules set to be enacted in the first half of 2017. The Medical Marijuana Advisory Committee which was created in H.B. 523 is supposed to be the first stop for rules to the drug’s control system. The Committee met in November and is planning to meet at least once more before the end of the year.

Minimum Wage: The Ohio Fair Wage Amendment efforts have also ended and the proponents did not file the necessary signatures by July 6, 2016 to obtain placement on the 2016 ballot. The issue would have increased the minimum wage to \$10.00 per hour on January 1, 2017 and increased it by 50 cents every following January 1st until it reached \$12.00 per hour. Once it reached \$12.00 per hour, the minimum wage would annually adjust for inflation. Given the failure to file July 6, 2016 signatures, for this issue to be proposed in the future, it must go back through the entire process for possible ballot access.

Strengthening Term Limits on State Legislators: The proposal to further limit Ohio legislative terms also failed to move forward in 2016 and would need to be restarted to continue in the future. The effort would amend the Ohio Constitution prohibiting anyone from holding any combination of elected legislative offices for more than 12 years, and no person shall hold the same legislative office for more than 8 years. Currently, term limits are no more than 8 years, but legislators frequently move back and forth between the House of Representatives and the Senate to indefinitely stay in office.

Ohio Clean Energy Initiative: The Ohio Clean Energy Amendment also failed to proceed to the 2016 ballot and must start over if it is proposed again. The recent effort was the 5th attempt by Yes for Ohio’s Energy Future at ballot access. The amendment was a \$14 billion proposal (\$1.3 billion in bonds for 10 years) for developing alternative energy sources. Ohio’s major utilities, the Ohio Chamber of Commerce, and others came out in opposition. It is yet unknown if the group will attempt the effort a 6th time.

III. Initiated Statutes.

Ohio Drug Price Relief Act: The Ohio Drug Price Relief Act is an initiated statute 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 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 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.

IV. Pending Legislation (2015-2016).

H.B. 194 – Ohio Patent Troll Legislation: H.B. 194 is the re-introduction of H.B. 573 from the previous General Assembly. The bill, sponsored by Representative Kristina Progener (R-Hudson), revises Ohio law to curb the extortionary practices of certain non-practicing patent owners pejoratively referred to as “patent trolls.” Generally, H.B. 194 would proscribe the “widespread sending of bad faith, objectively baseless” demand letters to “intended recipients” alleging patent infringement. The bill also would empower the Ohio Attorney General to

investigate and bring civil actions against violators. To date, this bill has received one hearing in the House Judiciary Committee.

We have worked with OMA’s legislative affairs director and representatives of OMA member Proctor & Gamble, we are working towards steering the conversation to an alternative bill that seeks to reduce unintended consequences impacting “legitimate” patent owners. We have participated in several interested parties meetings with the OMA and legislators to discuss the bill and have proposed amendments. We continue to monitor problematic proposals from Representative Jim Butler (R-Oakwood) to set up an Ohio administrative regime to review patent infringement demand letters or to strengthen the bill against all parties other than the pharmaceutical industry. We also continue to monitor for any alternative draft language that may be interpreted by the courts as providing an inherent private right of action.

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

The House Government Accountability & Oversight Committee voted on May 25, 2016 and the bill was approved by an 8-4 vote.

H.B. 394—Unemployment Compensation: In an effort to reform Ohio’s unemployment compensation system, this bill sponsored by Rep. Barbara Sears (R-Maumee) would change the calculation of the minimum safe level (“MSL”) used to determine solvency of the Unemployment Compensation Fund (“the Fund”). The bill would also increase to the taxable wage base for employer contributions from \$9,000 to \$11,000 for any year when the Fund is at or below 50% of the MSL in addition to lowering the base to \$9,000 and the new employer rate for non-construction employers from 2.7% to 1% when the Fund is at or above the MSL.

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

Proponents of the legislation include the Ohio Manufacturers’ Association, Ohio Chamber of Commerce, NFIB-Ohio, Ohio Council of Retail Merchants, and the Ohio Farm Bureau.

During a January 2016 hearing, a substitute bill was accepted by the House Committee. Changes included in the substitute bill include a provision that will allow an appeal for workers denied benefits because they were terminated for violating company handbook policies. The substitute

bill also sets Social Security offsets at 50% and addresses concerns raised by the construction industry about high seasonal rates of unemployment.

The bill has received six hearings in the House Insurance Committee to no avail. In response to the concerns raised by opposition groups, an informal group comprising members of both houses was created to seek a compromise. The major points of contention that the group is discussing are the provisions that reduce the maximum timeframe for claiming benefits, the total number of weeks a person is eligible for, and the Social Security offset provision. Changes in these areas are expected to be made, though Rep. Sears has predicted that the overall framework of the bill will remain the same.

Rep. Sears, this summer left the Ohio House to join Governor Kasich's Office of Health Transformation. On August 3, Speaker Rosenberger announced that finalizing H.B. 394 is his top priority for the upcoming November-December 2016 "lame duck" legislative session with Rep. Kirk Schering (R-Canton) taking the lead on moving H.B. 394 the final way through the process. As of this morning, the House Insurance Committee was to have a committee hearing on November 29, 2016, but HB 394 was removed from the Committee agenda. We will continue to monitor and will keep the OMA updated with additional details.

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

Thirty-five states and the U.S. Virgin Islands have already adopted the Act and four states, including Ohio, have introduced legislation to adopt. The Act is approved by the American Bar Association and suggested state legislation by the Council of State Governments. Sen. Seitz noted in his remarks to the House Judiciary Committee that the current Ohio law dates to 1953 and that "the discovery process has radically changed over the last 62 years," hence the need for the update legislation. John Van Door, executive director of the Ohio Association for Justice, praised the bill's adoption of a national model that "establishes simple procedures for courts in one state to issue subpoenas for out-of-state depositions."

The bill was passed in the Senate on April 20 by a 33-0 vote. Following three committee hearings in the House, the bill passed the May 24 vote 88-0. The bill was delivered to the Governor's on June 8 for his signature.

S.B. 201 – Nuisance Law: Senator Jim Hughes (R-Columbus) introduced S.B. 201 to expand nuisance law to apply to any real property, including vacant land, on which an offense of violence has occurred or is occurring. Under continuing law not changed by the bill, the Ohio

Attorney General, or the chief legal officer of a political subdivision, is authorized to bring legal action to require the abatement of a nuisance. These proceedings may result in property being unavailable for use for one year and the imposition of fines and taxes. Senator Hughes said in his sponsor testimony that he introduced the bill after he was contacted by the City of Columbus. The City said that there are sites and structures in the city that have been the location of multiple stabbings, shootings and other violent offenses, but the city is currently unable to remedy these nuisance locations under current law. The bill was introduced on August 10, 2015 and has had three hearings in the Senate Civil Justice Committee.

S.B. 268 – Employment Law: Senator Bill Seitz (R-Cincinnati) introduced S.B. 268 to modify Ohio civil rights laws related to employment and the statute of limitations for other specified claims against an employer. Business groups lined up behind this bill to overhaul the state's employment discrimination laws. Several groups testified to the Senate Civil Justice Committee in May that the bill will create more certainty by bringing the state's unemployment discrimination laws in line with federal standards. The bill would create a one-year statute of limitations on all employee discrimination claims, eliminate individual statutory liability for managers and supervisors and cap non-economic and punitive damages based on the size of the employer. The Ohio Chamber of Commerce supports this legislation and has told legislators that current law puts Ohio businesses at a disadvantage. The bill will have its third hearing in the Senate Civil Justice Committee on November 30, 2016. We will keep the OMA updated with additional details.

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

If approved by the Ohio General Assembly, the issue would be put before voters as a statewide ballot issue. S.J.R. 2 was referred to the Government Oversight & Reform Committee on September 15, 2015. S.J.R. 2 will have its first committee hearing in the Senate Government Oversight & Reform Committee on November 30, 2016.

H.J.R. 2, sponsored by Democratic Representatives Mike Curtin (D-Columbus) and Kathleen Clyde (D-Kent) also proposes changing the congressional redistricting process. This bill had its first committee hearing in the House Government Accountability & Oversight Committee on November 15, 2016. House and Senate leaders have said the issue is not a priority for this legislative session. This prompted voter advocate groups to vow to pursue their own citizen initiative should the legislature fail to act this year.

V. Taxation Update

The 2020 Tax Policy Commission continues to meet monthly. OMA has testified twice, once regarding general tax policy considerations, and once regarding tax credits. Co-Chair Jeff McClain is being replaced by new House Ways and means Chair Tiff Schaffer. The commission plans to have some recommendations ready for the next budget.

P&G and Gillette are seeking review by the SCOTUS of a decision out of California regarding the apportionment of income and whether a state can decide to depart from the terms of the Multistate Tax Compact. Under the compact, member states agree to apportion income using the standard equally-weighted three factors of property, payroll and sales. Many states have begun weighting the sales factor more heavily as an inducement to taxpayers to invest and hire in their states. The Compact gives taxpayers the option of using either method. California ruled that even though it is a member to the company, it may be statute preclude a taxpayer from using the standard formula. The taxpayers argue that a state that is a member of the compact may not selectively decide which terms to follow. P&G/Gillette are seeking help from Ohio business associations and the Ohio Attorney General in getting the appeal accepted by the SCOTUS for review. Earlier this year, we met with AG DeWine, seeking support from his office. It was a good meeting and he promised to do what he and his staff felt it could to support the effort, but since Ohio does not directly have a dog in the fight (it is not a member of the compact and does not have a corporate income tax), it wants to make sure its involvement is important.

VI. Medical Marijuana Legislation (H.B. 523)

House Bill 523, which legalizes marijuana for medicinal purposes was signed into law by Governor Kasich on June 8, 2016.

H.B. 523, sponsored by Rep. Steve Huffman (R-Tipp City), created a “Medical Marijuana Control Commission” under the Department of Commerce, with the various regulatory responsibility out over three different agencies: The Board of Pharmacy, State Medical Board, and the Department of Commerce.

Under the new law, in order to use marijuana, a patient will need a prescription from his or her doctor. The doctor’s prescription is limited to a maximum of 90 days, at which point the patient would need to return to the doctor to get a renewal. Patients are only allowed to use marijuana in vapor form, smoking the drug remains illegal. A registry of both patients and caregivers will be created.

In addition to needing a prescription from a licensed physician, the marijuana itself can only be grown by a licensed cultivator and sold by a licensed retailer. The law requires independent testing by licensed laboratories to ensure the safety of the products. Legislators noted that marijuana, like any crop, can be affected negatively by pesticides or mold, for example. As to actual regulations regarding the cultivation of the plant, the law leaves those specifics to the newly-created commission, but the law provides that townships may regulate or prohibit the location of cultivation, processing, or retail sites.

The administrative agency rule-making process and various regulatory frameworks are just now being started with additional rules to be in place in 2017 for eventual full regulatory measures and the dispensing of medical marijuana under strict controls in effect in 2018 and 2019. In August 2016, the federal government announced that it would not reclassify marijuana as a Schedule 2 substance keeping it as a federally banned, illegal drug under the current FDA, DEA, and other applicable federal rules for Schedule 1 drugs. This decision continues to create challenges for states that have enacted medical marijuana laws, federally-regulated financial institutions, and other interested groups from engaging in the state-based regulatory processes given the ongoing unknowns on possible federal criminal enforcement. In fact, the Ohio Supreme Court’s Board of Professional Conduct released an advisory opinion effectively prohibiting members of the Ohio Bar from advising clients on certain aspects of the medical marijuana industry now purportedly legal under state law.

In September, the Ohio Supreme Court placed an amendment to the Ohio Rules of Professional Conduct clarifying the ethical responsibilities of lawyers under the state’s new medical marijuana law. The new rule allows lawyers to counsel or assist a client regarding conduct expressly permitted under Sub. H.B. 523 authorizing the use of marijuana for medical purposes and any state statutes, rules, orders or other provisions implementing the act.

As stated above, the Department of Commerce will be taking the lead on the rulemaking and released draft rules for cultivators in November to the Medical Marijuana Advisory Committee. Pursuant to the draft rules, the Department would be authorized to issue up to 12 licenses for Level I cultivators, and up to six Level II licenses until September 8, 2018. After that date, more licenses may be issued at the Commerce director’s discretion. The rules will have to go through both the Common Sense Initiative and Joint Committee on Agency Rule Review processes.

VII. Litigation Update.

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 that thousands of part-petitions submitted by the Committee contained false circulator 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 Generally 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 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 cannot be counted. In short, the Committee is asking 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 is seeking placement on the 2017 ballot, it moved the Court for expedited consideration and the Court granted the motion. Under the expedited schedule, all briefing 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 assert that the instant action is an improper attack on the judgment in the Challenge case and raise 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 accept for verification the supplementary petitions. If those contain valid signatures the Court ordered the matter to be paced on the November 2017 general-election ballot.

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

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

The Court heard oral arguments on May 3, 2016. The Court issued an opinion on November 17, 2016. See *Newegg, Inc. v. Testa*, Slip Opinion No. 2016-Ohio-7762. Relying on *Crutchfield Corp. v. Testa*, 2016-Ohio-7760 which was decided as a companion case to *Newegg*, the Court rejected Newegg's contention that the commercial activity tax statutes should be construed to preclude the assessments at issue. The *Crutchfield* Court held that the physical presence of an interstate business within Ohio is not a necessary condition for imposing the obligations of the CAT law, given that the \$500,000 sales-receipts threshold adequately assures that the taxpayer's nexus with Ohio is substantial pursuant to R.C. 5751.01(H)(3) and (I)(3). The *Newegg* Court applied the *Crutchfield* holding to resolve Newegg's constitutional challenge under the Commerce Clause. As such, the Court affirmed the decision of the Board of Tax Appeals and upheld the commercial activity tax assessments against Newegg.

A separate more detailed summary and analysis of the *Crutchfield* decision is submitted and attached to this report by tax counsel, Mark Engel.

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

On August 17, 2015, the OMA joined an amicus brief with the National Association of Manufacturers, the Chamber of Commerce of the United States of America, the Ohio Chamber of Commerce and others in a product liability case that was appealed from the Seventh District Court of Appeals.

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

In light of the court of appeals decision, manufacturers now have a disincentive against selling to Ohio consumers because any subsequent product improvement triggers a duty to warn every prior purchaser of the product, regardless of the likelihood or seriousness of the "risk" posed.

Amici, including the OMA, argue that the Seventh District’s decision imposes an “innovation tax” in Ohio.

Oral argument was held on January 5, 2016 and we are awaiting the opinion from the Supreme Court.

Lucarell v. Nationwide Mutual Insurance Company, Sup. Ct. No. 2014-1940.

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:

- (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.

Briefing on this appeal has not yet begun.

Sunoco Pipeline v. Carol Teeter, Trustee, Ohio 7th 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 now pending before the Ohio Seventh District Court of Appeals, in Youngstown. The OMA urges the Court of Appeals to uphold the ruling of a Harrison County trial court in the case, *Sunoco Pipeline v. Carol A. Teter, Trustee*.

At issue is when a pipeline developer may invoke Ohio’s eminent domain statute to site the pipeline. Landowners have 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.

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 9, 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.

VIII. 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.

Bill of Rights & Voting Committee: As mentioned above, the Bill of Rights & Voting Committee’s main focus has been on the franchise of those with “mental incapacity.” At the most recent meeting of the Committee, a memorandum regarding whether the Ohio Constitution should contain an explicit “right to privacy” was circulated to the members in addition to one on the mental capacity to vote.

Constitutional Revision & Updating Committee: The Constitutional Revision & Updating Committee spent its March and May 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 meetings.

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.

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.

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.

The Plain Dealer Cleveland.com

Proposed Ohio Drug Price Relief Act would not work, health policy experts say

By Jackie Borchardt, cleveland.com October 03, 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.](#)



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MEMORANDUM

TO: Ohio Manufacturers' Association
Government Affairs Committee

FROM: Bricker & Eckler's Government Relations Team

DATE: November 9, 2016, *updated* November 25, 2016

RE: 2016 Post-General Election Update

On November 8, 2016, Ohio voters cast ballots in the 2016 general election. Federal offices — including President, U.S. Senate and Ohio Supreme Court — were all on the ballot, as were seats in the Ohio General Assembly. Many counties in Ohio and around the country reported record-breaking early voter turnout, adding to the historic nature of this election.

Here is Bricker & Eckler's overview of the highlights from the general election and details on races of particular interest. ([Click here](#) for an online version of this summary.)

Presidential

After quite an unusual election cycle, Donald J. Trump and his running mate Mike Pence clinched the presidential race after claiming many of the country's swing states, including Ohio, which was won by over 400,000 votes. In a year with record high absentee ballots, the Trump/Pence campaign carried counties that haven't been won by Republicans since the 1920s. President-elect Trump won 52.05 percent of the Ohio vote and Hillary Clinton won 43.51 percent of the vote.

U.S. Senate

Incumbent Senator Rob Portman (R) prevailed over former Governor Ted Strickland (D) in the race for U.S. Senate in Ohio, winning 58.32 percent to 36.92 percent. Senator Portman took a significant lead in the polls over Strickland in the weeks leading up to the election. Portman and Strickland also faced Joseph DeMare of the Green Party and Thomas William Connors and Scott Rupert of the Independent Party. Each received 1.62 percent, 1.72 percent and 1.43 percent of the vote, respectively. Senator Portman has held Ohio's Senate seat since 2011.

U.S. House of Representatives

Republicans retained control of the U.S. House of Representatives. Ohio U.S. Representatives Marcia Fudge (D), Marcy Kaptur (D), Pat Tiberi (R), Mike Turner (R), David Joyce (R), Tim Ryan (D), Steve Stivers (R) and Jim Renacci (R) all won re-election. Steve Chabot (R), Brad Wenstrup (R), Joyce Beatty (D), Jim Jordan (R), Bob Latta (R), Bob Gibbs (R), and Warren Davidson (R) were also successful.

Ohio Supreme Court

Judge Pat DeWine (R) of the 1st District Court of Appeals in Cincinnati prevailed over Judge Cynthia Rice (D) of the 11th District Court of Appeals in Northwest Ohio to fill Justice Paul Pfeifer's (R) seat on the Ohio Supreme Court bench. (Justice Pfeifer was barred from seeking another term due to his age.) Judge DeWine, the son of former U.S. Senator and current Ohio Attorney General Mike DeWine, came away with the win,

obtaining 56.42 percent of the votes.

Additionally, Judge Pat Fischer (R) of the 1st District Court of Appeals in Cincinnati defeated Cuyahoga County Common Pleas Judge John O'Donnell in the race to fill Justice Judith Lanzinger's (R) seat. (Lanzinger must also retire due to Ohio's age requirement.) Although the race was too close to call on Election Day with over 260,000 provisional ballots and uncounted absentee ballots left outstanding, Judge O'Donnell conceded to Judge Fischer on November 25, 2016. Judge Fischer defeated Judge O'Donnell by a large enough margin to avoid an automatic recount.

Chief Justice Maureen O'Connor was uncontested in her bid for re-election.

Pre-election, the court was dominated by Republicans 6-1. With the election of Judges DeWine, Fischer and O'Connor, this will remain the same.

Court of Appeals

Incumbent Judge Peter Stautberg (R) was challenged by Marilyn Zayas-Davis (D) for one of the six judge positions on the 1st District Court of Appeals. Zayas-Davis received 50.28 percent of the vote and Stautberg received 49.72 percent of the vote.

Judge William Zimmerman (R) ran against Randall Basinger (D) for the 3rd District Court of Appeals seat and handily won with 63.06 percent of the vote.

Earning 66.40 percent of the vote, incumbent Judge Matt McFarland (R) prevailed over Valerie Gerlach (D) for the 4th District Court of Appeals race.

Earle Wise (D) came out on top in his close race against Judge David Gormley (R) for the 5th District Court of Appeals. Wise acquired 52.03 percent of the vote.

The race for Ohio's 6th District Court of Appeals involved Lucas County Common Pleas Judge Gary Cook (D) and Christine Mayle (R). Christine Mayle won with 52.8 percent of the vote.

With 59.28 percent of the vote, Thomas Teodosio (D) beat Diana Stevenson (R) for a seat on the 9th District Court of Appeals.

The 11th District Court of Appeals race was between Ron Tamburrino (R) and incumbent Judge Thomas Wright (D). Incumbent Judge Thomas Wright was successful, earning 52.15 percent of the vote.

Franklin County Prosecutor

For the first time in 16 years, Franklin County Prosecutor Ron O'Brien was challenged in his race to retain the county's top law job. O'Brien prevailed, receiving 49 percent of the vote. Democratic Columbus City Council President Zach Klein made this race a competitive one. The two attorneys were vying for control of the office responsible for prosecuting charges against state law makers referred by the Ohio Ethics Commission. Klein received 45 percent of the vote. O'Brien has been prosecutor since 1996 and is Franklin County's longest serving prosecutor in history. Klein has experience as an assistant attorney general for Ohio, a special assistant U.S. attorney and a lawyer in private practice in addition to serving on City Council. In the end, Ron O'Brien was victorious.

Hamilton County Commissioners

With 58.12 percent of the vote, Commissioner Todd Portune (D) won re-election against Anderson Township Trustee Andrew Pappas (R).

Dennis Deters (R) ran against Denise Driehaus (D) for the other Hamilton County Commissioner seat but lost by less than 2,000 votes. Driehaus received 50.23 percent of the vote, while Deters received 49.77 percent.

Ohio House and Senate: Republican Majority

In the Ohio House, the Republican majority increased to 66 seats, up 1 from the current 65. This is the single largest Republican majority in the history of the Ohio legislature. Similarly, in the Ohio Senate, with Frank Hoagland's victory over incumbent Lou Gentile, the Ohio Senate majority, in the upcoming 132nd General Assembly, will be at 24 Republican seats — also the largest Republican majority in the history of the Ohio Senate. These are historic margins within the 2017-2018 Ohio General Assembly.

Ohio House of Representatives: New Republican Seats

Jay Edwards (R) gained a Republican seat in the 94th House District when he defeated Sarah Grace (D) with 57.82 percent of the vote.

Ohio House of Representatives: Races of Interest

Incumbent Representative Andy Thompson (R-Marietta) of the 95th House District prevailed over Ginny Favede (D) with 61.80 percent of the vote.

The open seat race for the 23rd House District between Laura Lanese (R) and Lee Schreiner (D) went to Luran Lanese with 57.78 percent of the vote.

Incumbent Representative Steve Arndt (R-Port Clinton) of the 89th House District ran against Lawrence Hartlaub (D) and won. Representative Arndt earned 60.85 percent of the vote.

With 60.49 percent, incumbent Representative Jeff Rezabek (R-Clayton) defeated David Sparks (D) in what was predicted to be a close race for 43rd House District.

Appointed incumbent Representative Theresa Gavarone (R-Bowling Green) of the 3rd House District faced Kelly Wicks (D) in a district which was vulnerable to party turnover. Theresa Gavarone was ultimately successful with 59.05 percent of the vote.

With 71.08 percent of the vote, incumbent Representative Tim Ginter (R-Salem) ran against John Dyce (D) for the 5th House District and won.

Battling over an open seat, former U.S. Senator Sherrod Brown staffer Tommy Greene faced Republican Cuyahoga County Councilman Dave Greenspan in the 16th House District. Dave Greenspan won.

Ohio Senate

Incumbent Senator Lou Gentile (D-Steubenville) ran against Frank Hoagland (R) in the race for the 30th Senate District and lost. Hoagland received 52.84 percent of the vote while Gentile received 47.16 percent in a district strongly buoyed by President-elect Trump's turnout.

With 59.02 percent, incumbent Representative Stephanie Kunze (R-Hilliard) defeated Cathy Johnson (D) for the 16th Senate District.

Matt Dolan (R) beat Emily Hagan (D) in the race for the 24th Senate District, receiving 58.22 percent of the vote.

Ohio House of Representatives Candidates (Election winners are in bold.)

District Number	Incumbent	Republican	Democrat	Other
2	Mark Romanchuk	Mark Romanchuk	Brittany Bowman	
3	Theresa Gavarone	Theresa Gavarone	Kelly Wicks	
5	Tim Ginter	Tim Ginter	John Dyce	
6	Marlene Anielski	Marlene Anielski	Phillip Robinson	
8	Kent Smith	Cassandra McDonald	Kent Smith	
9	Janine Boyd	Joe Miller	Janine Boyd	
11	Stephanie Howse	Shalira Taylor	Stephanie Howse	
16		Dave Greenspan	Tommy Greene	
17		John Rush	Adam Miller	
18	Kristin Boggs	David Todd	Kristin Boggs	Constance Gadell Newton (G)
19	Anne Gonzales	Anne Gonzales	Michael Johnston	
20	Heather Bishoff	Lisa Schacht	Heather Bishoff	
21	Mike Duffey	Mike Duffey	Ryan Koch	
22	David Leland	Linda Jarrett	David Leland	
23		Laura Lanese	Lee Schreiner	
24		Jim Hughes	Kristopher Keller	
25		Seth Golding	Bernadine Kent	Napoleon Bell (I)
26	Hearcel Craig	Kenneth Collins	Hearcel Craig	
27	Tom Brinkman	Tom Brinkman	Joe Otis	
28	Jonathan Dever	Jonathan Dever	Jessica Miranda	
30		Bill Seitz	Mark Childers	
31		Mary Yeager	Brigid Kelly	
32		Matthew Wahlert	Catherine Ingram	
33	Alicia Reece	David Miller	Alicia Reece	
34	Emilia Sykes	Gene Littlefield	Emilia Sykes	
35	Greta Johnson	Aimee Cooper	Greta Johnson	
36	Tony DeVitis	Tony DeVitis	Bobby McDowall	
37	Kristina Roegner	Kristina Roegner	Casey Weinstein	
38	Marilyn Slaby	Marilyn Slaby	Judith Lynn Lee	
40	Michael Henne	Michael Henne	Dave Richards	
41	Jim Butler	Jim Butler	Jimmy Calhoun	
42	Niraj Antani	Niraj Antani	Pat Merris	
43	Jeff Rezabek	Jeff Rezabek	David Sparks	
44	Mike Ashford	John Insco	Mike Ashford	
45	Teresa Fedor	Jim Nowak	Teresa Fedor	
46	Michael Sheehy	Diane Skaff	Michael Sheehy	
47	Derek Merrin	Derek Merrin	Lauri Cooper	
49		Dan McMasters	Thomas West	
50		Christina Hagan	John Juergensen	
51	Wes Retherford	Wes Retherford	Johnny Hamilton	
53		Candice Keller	Suzi Rubin	
54	Paul Zeltwanger	Paul Zeltwanger	Rick Smith	
55	Nathan Manning	Nathan Manning	Kelly Mencke	
56	Dan Ramos	Jessie Mae Tower	Dan Ramos	
57		Dick Stein	Tom Dunlap	

District Number	Incumbent	Republican	Democrat	Other
58	Michele Lepore-Hagan	Corrine Sanderson	Michele Lepore-Hagan	Andrea Mahone (I)
59	John Boccieri	Don Manning	John Boccieri	
60	John Rogers	Robert Rule	John Rogers	
61	Ron Young	Ron Young	Rick Walker	
62		Scott Lipps	Samuel Ronan	
63		Devon Stanley	Glenn Holmes	
64	Michael O'Brien	Martha Yoder	Michael O'Brien	
65	John Becker	John Becker	Jerod Weber	
66	Doug Green	Doug Green	Ken McNeely	
67	Andy Brenner	Andy Brenner	Janet Breneman	
68		Rick Carfagna	John Russell	
69	Steve Hambley	Steve Hambley	Frank Zona	
70		Darrell Kick	Luke Brewer	
71	Scott Ryan	Scott Ryan	Joseph Begeny	
72		Larry Householder	John Carlisle	
73	Rick Perales	Rick Perales	Brian Housh	
74	Bill Dean	Bill Dean	Barabara Niemeyer	
75	Kathleen Clyde	Jim Lutz	Kathleen Clyde	
76	Sarah LaTourette	Sarah LaTourette	Terri McIntee	
77	Tim Schaffer	Tim Schaffer	Bradley Nicodemus	
79	Kyle Koehler	Kyle Koehler	Alex Wendt	
83	Robert Sprague	Robert Sprague	Mary Harshfield	
84		Keith Faber	Ed Huff	
86	Dorothy Pelanda	Dorothy Pelanda	Scott Crider	
89	Steven Arndt	Steven Arndt	Lawrence Hartlaub	
94		Jay Edwards	Sarah Grace	
95	Andy Thompson	Andy Thompson	Ginny Favede	
98	Al Landis	Al Landis	Jeremiah Johnson	

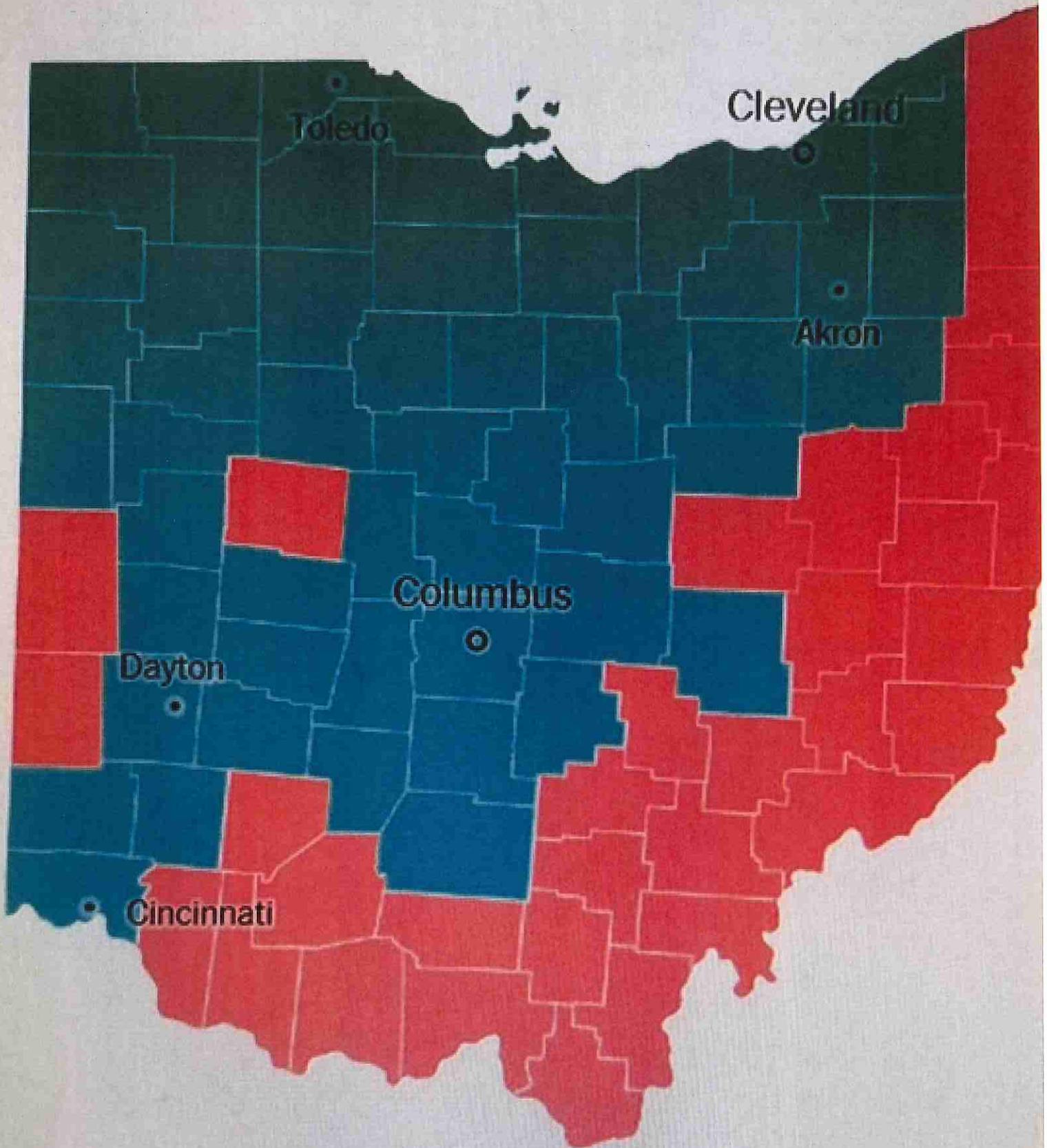
Ohio Senate Candidates

(Election winners are in bold.)

District Number	Incumbent	Republican	Democrat	Other
2	Randy Gardner	Randy Gardner	Kirk Halliday	
4	Bill Coley	Bill Coley	Joseph Kinne	
6	Peggy Lehner	Peggy Lehner	Albert Griggs	
8		Lou Terhar	Mary Rose Lierman	
10	Bob Hackett	Bob Hackett	Matthew Kirk	
14	Joe Uecker	Joe Uecker	Charlie Carlier	
16		Stephanie Kunze	Cathy Johnson	
18	John Eklund	John Eklund	Wiley Runnestrand	
22	Larry Obhof	Larry Obhof	Christopher King	
24		Matt Dolan	Emily Hagan	
28		Jonathan Schulz	Vernon Sykes	

District Number	Incumbent	Republican	Democrat	Other
30	<i>Lou Gentile</i>	Frank Hoagland	Lou Gentile	
32		Rob Allen	Sean O'Brien	

Results from the November 9, 2016, election are still unofficial with absentee and provisional ballots still being processed and yet to be counted on or before the official certification deadline.



LEADER ■ Kasich ■ Trump

Leadership

[Lawmakers: Fix Insolvent Unemployment Insurance Trust Fund Now](#)

November 18, 2016

Steps were taken in 2016 via House Bill 390 to pay off the outstanding federal debt that Ohio incurred in the Great Recession. But, no legislation was passed that corrected the conditions that caused Ohio to incur such a large federal debt, and which subjected employers to mounting FUTA taxes.

Penalty provisions were included in House Bill 390 that have the potential to dramatically increase taxes on employers. The penalty provisions will not go away until new solvency legislation is passed.

[Go here to learn](#) a bit more about the solvency problem and the balanced approach OMA is backing. Then, [use the easy email tools here](#) to tell your state representative and senator why having a solvent unemployment compensation trust fund helps you grow your business and provide jobs.

This legislative session ends next month. If the General Assembly does not pass solvency measures before session ends, the whole process would need to start from scratch with a new legislature. Ask your elected officials to finish the job on a solvent UI trust fund.

Contact OMA's [Rob Brundrett](#) with questions or for help contacting your elected officials. 11/15/2016

[132nd General Assembly Leadership Announced](#)

November 18, 2016

Members of the Senate Republican Caucus in the upcoming General Assembly voted this week to elect Sen. Larry Obhof (R-Medina) as the next senate president. He succeeds Sen. Keith Faber (R-Celina), who is term-limited in the chamber.

Obhof's leadership team is reported to include: Sen. Bob Peterson (R-Sabina) as president pro tem; Sen. Randy Gardner (R-Bowling Green) as majority floor leader and Sen. Gayle Manning (R-N. Ridgeville) as majority whip.

Senate Democrats meanwhile reelected Senate Minority Leader Joe Schiavoni (D-Boardman), Assistant Minority Leader Sen. Charleta B. Tavares (D-Columbus), Minority Whip Sen. Edna Brown (D-

Toledo) and Assistant Minority Whip Sen. Cecil Thomas (D-Cincinnati).

Last week majority Republicans in the House voted to retain Speaker Cliff Rosenberger (R-Clarksville). His leadership team will be Rep. Kirk Schuring (R-Canton) as speaker pro tem, Rep. Dorothy Pelanda (R-Marysville) in the role of majority floor leader, Rep. Sarah LaTourette (R-Bainbridge Twp.) as assistant majority floor leader, Sen. Tom Patton (R-Strongsville) as majority whip and Rep. Rob McColley (R-Napoleon) as assistant majority whip.

House Democrats will retain Minority Leader Fred Strahorn (D-Dayton), Assistant Minority Leader Rep. Nicholas Celebrezze (D-Parma), Minority Whip Rep. Nickie Antonio (D-Lakewood) and Assistant Minority Whip Rep. Jack Cera (D-Bellaire). 11/16/2016

[Crib Bumper Pad Manufacturing Ban](#)

November 18, 2016

The OMA worked this week with the [Juvenile Products Manufacturers Association](#) (JPMA) on [SB 332](#) (Jones, R-Springboro), a bill that would, among other things, ban the manufacturer or sale of crib bumper pads in Ohio.

[JPMA testified](#) that crib bumper pads and many other products are regulated by the federal Consumer Product Safety Commission. ASTM F1917-12 Standard Consumer Safety Performance Specification for Infant Bedding and Accessories, JPMA said, is the widely recognized safety standard for crib bumper pads. JPMA asked that products meeting federal standards be allowed to be manufactured and sold in Ohio.

OMA opposes state-level product manufacturing regulation, when appropriate national standards exist. 11/17/2016

[Manufacturers: We Are the Solution](#)

November 11, 2016

A group of leaders from more than 1,000 manufacturing businesses and associations, including the OMA, wrote a "[unity letter](#)" to President-elect Trump the day after this week's election.

"We believe in an exceptional America. We believe we are stronger as a nation when we are united. And, we believe we, as business leaders, all have a unique

responsibility to bring our country back together again—a responsibility we wholeheartedly embrace,” wrote the leaders.

“The days after a hard-fought presidential election have traditionally been a time to mend the divisions in our country, with political parties and nominees moving beyond the harshness of the campaign season and putting our nation, and our democratic system, first before all else. You can count on us to help lead the way in bringing about that healing and reconciliation,” they committed.

In a [press release](#), NAM president Jay Timmons noted the centrality of American manufacturing to the election: “This election makes clear that Americans agree that manufacturing is the nation’s priority. They want our industry to lead the world and create more jobs. They know that when manufacturing is strong, America is strong. It will be up to us to channel that enthusiasm towards the right policies.” 11/9/2016

[General Assembly Increases Republican Majorities in Both Chambers](#)

November 11, 2016

When the 132nd Ohio General Assembly is sworn in early next year, it will have an even larger Republican majority than it does now.

The Senate Republicans picked up the seat of Democrat incumbent Lou Gentile (D-Steubenville) of the 30th district with the election of freshman Frank Hoagland (R- Adena). The Senate becomes 24 Republicans and 9 Democrats.

The House Republicans advanced their majority, 66-33, by picking up Republican Jay Edwards (R-Nelsonville) in the 94th district open seat race. 11/10/2016

[OMA-PAC Endorsed Supreme Court Candidates Win](#)

November 11, 2016

The candidates endorsed by the OMA-PAC board of directors were victorious Tuesday, so far.

Judge Pat Fischer, at the end of a long night, edged his opponent by a mere 24,000 votes. However, Secretary of State Jon Husted says there are 158,000 provisional ballots and 103,000 absentee ballots yet to be counted.

Judge Pat DeWine, son of Attorney General Mike DeWine, topped his opponent by 8%. Maureen

O’Connor was unopposed for a second six-year term as chief justice. 11/10/2016

[Meet the Freshmen](#)

November 11, 2016

Seven Senate freshmen and 24 House freshmen will go to work in January.

You can [see who they are here](#).

Some names will be familiar as a number of legislators who were term limited in one chamber successfully ran for a seat in the other, or have sat out for at least four years. Eleven of the 31 freshmen have previously served in the General Assembly.

Additionally, freshman Reps. Theresa Gavarone (R-Bowling Green) and Derek Merrin (R-Maumee) had been appointed to their seats back in August, and each won their November race. 11/10/2016

[A Recap of the Election Nationally](#)

November 11, 2016

Ned Monroe senior vice president of external relations of the National Association of Manufacturers put together a nice slide deck overview of the general election nationally. It’s a good quick way to see how America voted. Check it out [here](#). 11/10/2016

[Campaign Donors Favor Republicans in Ohio Legislative Races](#)

November 11, 2016

A *Columbus Dispatch* [campaign finance analysis](#) shows Ohio Republicans raised more money from donors than Democrats in a nearly 3-to-1 ratio, and the newspaper lists the most generous organizations and individual donors. 11/8/2016

[Support for Sens. Brown & Portman on Fair Trade](#)

November 11, 2016

In a letter to the editor of Crain’s Cleveland Business, OMA’s Ryan Augsburger, VP and Managing Director, Public Policy Services, recognizes recent work by Senators Sherrod Brown and Rob Portman in the defense of fair trade. Their work protects Ohio and U.S. manufacturing jobs. [Read the letter here](#). 11/7/2016

[University Resources for Business Conference, November 17](#)

November 11, 2016

A half-day conference is offered by the Office of Ohio Attorney General Mike DeWine and The Ohio State University. It's entitled, "[Growing Your Business: The Untapped Resources of Ohio's Universities.](#)"

The event will provide participants with advice and information about the resources available from Ohio's colleges and universities and [will include panel discussions](#) on sponsored research, workforce development, raising capital, and working with technology transfer offices.

Lunch will follow the panel discussions and will feature a keynote address by Andrew Deye, Director of Strategy for JobsOhio.

The conference is Thursday, November 17 at the Ohio Union on The Ohio State University campus, with opening remarks beginning at 9:00 a.m. and lunch concluding by 1:00 p.m. There is no charge. *11/10/2016*

[REGISTER NOW!](#) 

[Haven't Voted Yet? Take Our Cheat Sheet to the Poll](#)

November 4, 2016



The Ohio Manufacturers' Association Political Action Committee (OMA-PAC) [endorsed these Ohio House and Senate candidates](#) for election.

The three Supreme Court of Ohio candidates endorsed by OMA-PAC are Chief Justice Maureen O'Connor, Judge Pat Fischer and Judge Pat DeWine.

Candidate and district details are in the [2016 Ohio Election Guide](#).

The [NAM's Voter Guide is here](#). *10/31/2016*

[Get Election Results with Manufacturers' Perspective](#)

November 4, 2016

On election night, the National Association of Manufacturers (NAM) team will be reporting election results live from its HQ as they come in from around the nation. If you would like to receive real-time election night results via email from the NAM Election Night War Room, [click here](#). *11/2/2016*

[Trump Leads in Ohio](#)

November 4, 2016

In the latest [Quinnipiac swing state poll](#), Donald Trump has moved into a lead in Ohio of 46-41% over Hillary Clinton, with Libertarian candidate Gary Johnson pulling in 5%. Trump and Clinton were deadlocked at 45% each in the university's Oct. 17 survey.

Ohio early voters back Clinton 58-32%. Trump's Ohio lead is built on his 48-38% lead among men, compared to Clinton's 44-44% tie among women, and an overwhelming 48-30% lead among independent voters.

In three other battleground states, Clinton now leads Mr. Trump in Florida by 46-45%, in Pennsylvania by 48-43%, and in North Carolina by 47-44%, according to Quinnipiac. *11/2/2016*

[Marijuana on the Ballot in 9 States](#)

November 4, 2016

Marijuana legalization in one form or another is on the ballot in nine states throughout the nation next week.

OMA Connections Partner, Frantz Ward, has tallied up the referendums. Seven states seek to expand what is already legal and two states seek to enter the medical marijuana field. [Here is a recap](#) of what is on the ballot and where the current polling stands in these states. *10/31/2016*

[Site Selection Ranks Ohio's Business Climate Third Overall](#)

November 4, 2016

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. 11/3/2016

[Regional Accounting Firm Compiling Manufacturing Economic Report](#)

November 4, 2016

The Manufacturing Industry Group of OMA Connections Partner, Schneider Downs, invites participation in its 2016 Annual Economic Survey of the manufacturing industry. This is the sixth year for its survey; the goal is to provide manufacturers with a snapshot of the industry’s performance over the last year.

This survey takes approximately 10 minutes to complete and is anonymous. Responses are kindly requested by November 7, 2016. [Start survey here](#). Download [last year’s survey here](#). 11/1/2016

[A Good Friend Retires](#)

October 28, 2016



Pictured: Brad Belden, Dave Johnson, Rep. Kirk Schuring, Bill Belden, Bill Sopko, and Eric Burkland

Manufacturers and Rep. Kirk Schuring gathered this week to honor Bill Belden, Jr., retiring chairman and CEO of [The Belden Brick Company](#), Canton.

Rep. Schuring presented Bill with a [proclamation of recognition](#) on behalf of the Ohio House of Representatives.

Bill has lead the Belden Brick Co. since 1983 as president and later chairman and CEO. He is well known in the Canton area and beyond for his involvement in civic and charitable works. He served as a director of the OMA board since 1999.

Godspeed, Bill, thank you for your generous service to the community of Ohio manufacturers. 10/25/2016

[Bill Introduced to Regulate Autonomous Cars](#)

October 28, 2016

The Ohio legislature has entered into the business of regulating the future of automobile travel. This week Reps. [Cheryl Grossman](#) (R-Grove City) and [Bill Reineke](#) (R-Tiffin) introduced [House Bill 608](#) which authorizes the use of autonomous vehicles on Ohio’s roadways under certain requirements and requires the Ohio Department of Transportation to produce a report evaluating whether additional legislative or regulatory actions are necessary for the purpose of ensuring the safe testing of autonomous vehicles.

If you have an interest in this bill, please contact OMA’s [Rob Brundrett](#). 10/27/2016

[OMA Urges Action on Unemployment Compensation Reform](#)

October 21, 2016

This week, OMA Safety and Workers’ Compensation Committee Chairman, Larry Holmes, VP, Finance, Ft. Recovery Industries, and Rob Brundrett, Director, Public Policy Services, OMA, [testified](#) before the House and Senate Joint Committee on Unemployment Compensation Reform.

Chairman Holmes focused on the importance of passing new trust fund solvency measures to prevent future federal tax penalties on employers and Brundrett focused on options the state should consider when debating the issue, including bonding future debt, exempting benefits from state taxes, and applying an accurate solvency standard.

The committee will meet once more in early November. The OMA and its business allies are urging action on the reform measure, HB 394, during the lame duck session following election day. 10/20/2016

[“Lame Duck” Session Schedule Set](#)

October 21, 2016

This week Ohio Speaker of the House Cliff Rosenberger [announced a revised session schedule](#) post the November election. The “lame duck” session will last just a few (likely very busy) weeks before the House and Senate adjourn and the new General Assembly is seated in early January.

The OMA top priority for lame duck is passage of HB 394 to fix the solvency of Ohio’s unemployment compensation system. *10/20/2016*

[Obama Administration Releases Report on American Manufacturing](#)

October 21, 2016

This month, October 2016, Manufacturing Month, the Obama Administration takes stock of the U.S. manufacturing sector in a new report released by the National Economic Council.

Here’s the report: [Revitalizing American Manufacturing – The Obama Administration’s Progress in Establishing a Foundation for Manufacturing Leadership](#). *10/14/2016*

[Ohio Federal Research Network Focuses on Manufacturing at Nov. Event](#)

October 21, 2016

The purpose of the Ohio Federal Research Network (OFRN) is to organize research initiatives within Ohio’s university system and Ohio’s four federal labs (AFRL, NAMRU-D, NASA GRC, NASIC) to grow Ohio’s research talent base, attract outside public and private investment, and retain and create new jobs.

Central to this mission are Centers of Excellence (COE); six centers have been established with funding for research projects with high commercialization potential. One such center is the Materials & Advanced Manufacturing Center of Excellence.

On November 10, manufacturers are invited to an event at TechSolve in Cincinnati to learn more about the OFRN resources and opportunities. The keynote speaker is Dr. Ajay Misra, Chief, Materials and Structures Division at NASA Glenn Research Center, who will share thoughts on the importance of the Ohio Federal Research Network and “what’s in it for you.”

[Find more information here](#). *10/14/2016*

[Manufacturers Push Infrastructure Improvement Agenda](#)

October 14, 2016

The National Association of Manufacturers (NAM) and OMA this week released “[Building to Win](#),” a new initiative focused on our nation’s failing infrastructure.

Both major party presidential candidates have indicated their desire to address our infrastructure needs in 2017. The NAM and OMA will work collaboratively to encourage the next president and lawmakers in Ohio to address the most pressing infrastructure priorities.

In a joint release, OMA President Eric Burkland said, “Among OMA’s top policy goals is a modern, job-supporting infrastructure. We must invest in updating and expanding our multi-modal transportation infrastructure, including roads, bridges, rails and ports, as well as our water treatment systems. Infrastructure improvement is a state and federal priority for manufacturing.”

[Please see the full release and key recommendations of the initiative here](#). *10/12/2016*

[Judges Fischer, DeWine and O’Connor for Supreme Court](#)

October 14, 2016



The Ohio Manufacturers’ Association Political Action Committee (OMA-PAC), chaired by Scott Balogh, President & CEO, Mar-Bal Corp., has endorsed Judges Pat Fischer and Pat DeWine for Supreme Court of Ohio.

OMA-PAC also endorsed Chief Justice Maureen O’Connor, who has no opposition in her race.

The OMA-PAC board vetted these candidates and backs them as the best choices for stability and predictability for Ohio manufacturers. 10/7/2016

Pictured: Judge Pat Fischer and Ryan Augsburger, VP & Managing Director, OMA Public Policy Services

[Gov. Kasich Defends Trans-Pacific Trade Partnership – Here’s Why](#)

October 14, 2016

In his opinion piece run this week in the Washington Post, Gov. Kasich lays out his rationale for passing the Trans-Pacific Partnership (TPP).

He says of Congress, “How they vote on the Trans-Pacific Partnership (TPP) trade agreement will affect the course of the United States’ security, prosperity and global influence for the rest of the 21st century and determine whether we advance or retreat from our leadership role at a time of worldwide turmoil and uncertainty.”

[Read it all here.](#) 10/13/2016

[Women in Manufacturing Study: Sound off!](#)

October 14, 2016

The National Association of Manufacturers (NAM), the Manufacturing Institute, and Deloitte are conducting a study to identify the impact that women in manufacturing have in their companies and in their communities across various roles.

[Please provide your insights](#) into factors that either attract or deter women in manufacturing. It will take just a few minutes.

Forward to your network; a significant response is hoped for.

You may be interested in a study that NAM, The Manufacturing Institute, APICS and Deloitte released last year, [Minding the Manufacturing Gender Gap](#), which focused on trends and strategies to recruit, retain and advance women in manufacturing. 10/12/2016

[Ohio International Market Access Grant for Exporters](#)

October 14, 2016

The Ohio International Market Access Grant for Exporters (IMAGE), funded by the state of Ohio and the U.S. Small Business Administration (SBA), is designed to increase exports and create jobs.

The IMAGE grant offers financial assistance for small businesses to promote their products and services in international markets. The grant will provide a 50% reimbursement up to \$10,000 per fiscal year for qualifying activities. Read [more about it here.](#) 10/11/2016

[Biggest MFG DAY Ever](#)

October 7, 2016



Did you ever think you'd live to see the day when the whole nation celebrates manufacturing?!

In just five short years MFG DAY has grown from a modest celebration with 240 events in 37 states to a North American phenomenon with nearly 3,000 events.

Happy MFG DAY and month to you. Here are [all the companies](#) that enrolled their Ohio events on the MFG DAY website.

As of today, there are at least 179! 10/6/2016

[OMA in the Courts: Don't Expand Punitive Damages!](#)

October 7, 2016

Earlier this year, the OMA joined with other business interests to file an amicus brief urging the Supreme Court of Ohio to reconsider a legal question in which punitive damages are sought in a breach of contract dispute.

This summer the [court agreed](#) to consider the appeal from the 7th District Court of Appeals in Mahoning County.

Last week the OMA [filed an amicus brief](#) in the merit stage of the case urging the court to correct an unwise lower court ruling that threatens to allow punitive damages in non-tort cases. 10/6/2016

[Register for Post-Election Conference](#)

October 7, 2016

Impact Ohio Post Election Conference, Thursday, November 10, offers an immediate and unrehearsed review of the election as well as a view forward to the upcoming session of the Ohio General Assembly.

What do the the leaders of the Ohio General Assembly expect to happen in the 132nd General Assembly? What will the priorities be in the next state budget? How is health care evolving? What about transportation and education?

Find out at the 2016 Post Election Conference. It will be the first post-election opportunity to hear directly from those who will shape Ohio's policy and political agenda for the upcoming biennium. This event is supported by OMA. [More here.](#) 10/4/2016

[Special Election 2016 Leadership Briefing Issue](#)

October 7, 2016

We hope you saw the special Manufacturers' Election issue of Leadership Briefing sent earlier this week. It contained the OMA-PAC endorsed candidates, manufacturers' policy resources, non-partisan get-out-the-vote tools for your facility, and more. If you missed it, [check it out here](#) and pass it on! 10/3/2016

[OMA Establishes Public Policy Goals](#)

September 30, 2016

OMA has just updated its [Public Policy Framework for Action](#), a summary of Ohio manufacturers' major policy principles and goals. These priorities will strengthen Ohio manufacturing; they provide the agenda for manufacturing advocacy.

Use this tool in your communications with your stakeholders and elected officials. Use it with your Ohio House and Senate candidates so they hit the ground running in January.

There is also a one-page ["talking points"](#) version. 9/23/2016

[Ohio is Crazy for MFG DAY](#)

September 30, 2016



We thought you'd be interested in checking out [all the companies](#) hosting Manufacturing Day events in Ohio. As of today, there are 144! Wow! 9/29/2016

[The Good, the Bad, the Worst Dressed](#)

September 30, 2016

Columbus Monthly just released results of a survey of Statehouse insiders, rating state legislators on various categories: most effective, best orator, least humorous, most arrogant, hardest working, and lots more.

The results are great water cooler topics around capital square. For a fun read, go [here](#). 9/26/2016

[Vote for Our Kids \(video\)](#)

September 30, 2016



The effects of the decisions we make about our nation's leaders on November 8 will be felt for decades, and generations, to come.

Here's [a new video](#) from the National Association of Manufacturers (NAM) about what's at stake for manufacturing voters in this election.

Also check out the NAM [2016 Voter Guides](#) for your federal candidates. The Voter Guides highlight the positions of candidates for president and the U.S. House and Senate side by side in a clear, readable format.

Share the NAM Voter Guides and video with your co-workers, family and friends to help inspire all voters to

go to the polls to secure a stable future for manufacturing in America. 9/27/2016

[NAM Ranks Pro-Manufacturing Members of Congress](#)

September 30, 2016

The National Association of Manufacturers' (NAM) member-led Key Vote Advisory Committee has established the key votes that determine the [NAM Award for Manufacturing Legislative Excellence](#). The award is given to members of the U.S. House and Senate who have a 70% or higher rating on key manufacturing votes in the 2015-2016 114th Congress Voting Record.

This award is not a political endorsement, but rather an opportunity for manufacturers to recognize those legislators who consistently support the manufacturing agenda.

Ohio members of Congress who won the award are: Sen. Rob Portman (R-OH), Steve Chabot (R-OH-1), Brad Wenstrup (R-OH-2), Jim Jordan (R-OH-4), Robert Latta (R-OH-5), Bill Johnson (R-OH-6), Bob Gibbs (R-OH-7), Warren Davidson (R-OH-8), Michael Turner (R-OH-10), Patrick Tiberi (R-OH-12), David Joyce (R-OH-14), Steve Stivers (R-OH-15), and James Renacci (R-OH-16).

You are encouraged to contact these members of Congress to thank them for their support of American manufacturing. And, if your member of Congress did not support the manufacturing legislative agenda, consider reaching out to help them understand the importance of manufacturing issues. 9/29/2016

[New NAM-OMA Study Documents High Cost of Labor Regulations](#)

September 23, 2016

The National Association of Manufacturers (NAM) and OMA [released a new study](#) this week that "outlines the destructive legacy this administration's relentless labor regulatory agenda will leave for manufacturers, their employees and the communities in which they live."

The study estimated that regulations on issues such as contractor blacklisting, employee overtime, silica, union elections and injury and illness reporting will not only result in hundreds of millions of hours of paperwork, but will also come at a price tag of more than \$80 billion in compliance costs over the next 10 years.

According to the study, recent labor regulations from the administration will cost the following over the next 10 years:

- \$81.6 billion in compliance costs
- 155,700 lost jobs
- 411 million hours of paperwork

Key findings include the following:

- The pace of labor rulemaking in the waning months of the Obama presidency will easily exceed that of the previous three two-term presidencies.
- On average, the Obama administration's Department of Labor finalized nearly twice as many major labor regulations per year than the previous four administrations.

9/22/2016

[Governor Kasich Proclaims October 2016 Manufacturing Month](#)

September 23, 2016



Governor Kasich and Lt. Governor Mary Taylor have issued a [resolution](#) proclaiming October 2016 as Manufacturing Month.

[Check out all the proclamations on the MFG DAY site.](#) 9/23/2016

Pictured: Scott Balogh, President & CEO, Mar-Bal, Inc., and First Vice Chairman, OMA, and Lt. Governor Mary Taylor

[OMA Files Amicus Brief in Asbestos "Take home" Exposure Case](#)

September 23, 2016

This week the OMA [filed an amicus brief](#) with the Supreme Court of Ohio that asks the high court to consider a lower court decision that is detrimental to asbestos injury defense.

The issue that the amicus brief will ask the Ohio Supreme Court to take up deals with what constitutes

a “substantial factor” in the context of asbestos related litigation. Plaintiff-Appellee relied on what is commonly referred to as the “each and every fiber theory of liability” or cumulative exposure liability, which goes to the element of substantial contributing factor in tort cases. Under this theory the plaintiffs’ medical experts argue that every exposure to asbestos is significant since it adds to the cumulative exposure, which is what causes mesothelioma (or any other asbestos related disease).

Ohio Revised Code 2307.96 defines what constitutes a substantial factor and it was added to the revised Code so that plaintiffs cannot keep defendant manufacturers in a case if they assert only a brief, insignificant exposure to asbestos from that manufacturer’s product. The courts in Ohio have been ignoring that issue and holding manufacturers in cases even for brief insignificant claimed exposures.

The “each and every fiber theory of liability” and what is required to be a substantial contributing factor in causing a disease is being litigated across the country and not just in Ohio. The issue also has implications in many areas outside asbestos litigation such as chemical exposures, radiation exposures, ingestion of food additives, etc. 9/22/2016

[Gov. Kasich & Bob Gates to Discuss America’s Role in the World – Register Now to Attend](#)

September 23, 2016

Growing global challenges — from Syria to ISIS to Zika — impact America’s economic and security interests every day. Hear Governor John Kasich and former Secretary of Defense Robert Gates discuss why America’s role in the world matters for this election and beyond.

The event is offered by the U.S. Global Leadership Coalition and co-sponsored by OMA. It will be held on Wednesday, September 28, 2016, noon – 1:30 p.m. at the Greater Columbus Convention Center, 400 N. High Street, Columbus, OH. The event includes lunch. [There is no charge but you must register.](#) 9/22/2016

[NAM Releases Q3 Manufacturers’ Outlook Survey: Cautiously Encouraging](#)

September 16, 2016

According to the National Association of Manufacturers (NAM) latest [Manufacturers’ Outlook Survey](#), out this week, “... sentiment appears to have stabilized after several quarters of declining assessments about the economic outlook, and the latest data appear to mostly back that assertion up,

but with some caveats. Indeed, economic challenges continue in the sector, among them being concerns over rising health care costs and dampening perceived growth rates over the next 12 months despite some progress in this release.

“Large manufacturers were more upbeat about their company’s outlook this quarter, but small and medium-sized manufacturers experienced declines in their outlook in this survey. Overall, one could characterize manufacturers’ current economic outlook as cautiously encouraging, but still less-than-desired and highly varied by firm size and export sales growth expectations.”

And, “In this survey, 61.0 percent of manufacturers are either somewhat or very positive about their own company’s outlook, easing slightly from 61.7 percent who said the same thing in June. Yet, the outlook remained stronger than at the end of last year and the beginning of this year, marking some progress from earlier softness. At the same time, this marks the fifth consecutive quarter when positive responses about the outlook have fallen below the historic average of 73.0 percent.” 9/14/2016

[Joint Committee Hears from Labor on Unemployment Compensation Reforms](#)

September 16, 2016

The House and Senate Joint Committee on Unemployment Compensation Reform heard testimony this week from a myriad of social activists, labor unions, and others regarding the state’s unemployment system.

One of the left leaning groups, Policy Matters Ohio, [outlined its proposal](#) for the state’s unemployment compensation system, including the largest increase to employers in Ohio unemployment insurance history – 55% – to finance benefits.

Much of the rest of the testimony from the various groups misconstrued proposals contained in House Bill 394, a pending bill of unemployment compensation reforms, through a combination of overgeneralizations, omissions and factual inaccuracies. Three more hearings will be held throughout October and November. 9/15/2016

[New MFG DAY Marketing Resources for Hosts](#)

September 16, 2016



#MFGDAY16

MFG DAY just added a new resource to the Host Dashboard — an event promotion kit that comes with some practical marketing tools — such as an email, social media profile graphics, and prewritten social media posts — designed to help event hosts raise awareness for their MFG DAY events.

Registered [hosts can log in to their accounts](#) and start promoting their events with these out-of-the-box materials in minutes.

It's not too late to register an event. [More here!](#) 9/15/2016

[MFG DAY Goes to the Races](#)

September 16, 2016

For the fourth year in a row, the No. 22 Shell-Pennzoil Ford Fusion will feature the MFG DAY logo during the first race of the NASCAR Sprint Cup Series! This year's Chase kicks off at the Chicagoland Speedway on Sunday, Sept. 18. Follow No. 22 Shell-Pennzoil Ford Fusion driver [Joey Logano on Twitter](#) and root for him and MFG DAY this Sunday! 9/15/2016

[JobsOhio Offers New 'Investing in Ohio' Guide](#)

September 16, 2016

JobsOhio has a new guide to capital investment in our state, Investing in Ohio. The guide is a detailed, 100+ page selling tool that profiles the state by region, industries, resources and funding, among other information.

Investors will find a business climate overview, information on sources of venture funding, logistics, and a statistical profile of Ohio.

For more information, including links to download or request a copy of the guide, [click here](#). 9/14/2016

[Your Vote for Supreme Court Judges Matters](#)

September 9, 2016

Political columnist Tom Suddes recently wrote: "In 2012, when Ohioans re-elected Barack Obama

president, 70.5 percent of the state's registered voters turned out to vote. But turnout in 2012's three Ohio Supreme Court contests ranged from 50 percent to 52 percent. And in 2014, when Ohioans re-elected Republican John Kasich governor, statewide turnout was 40.6 percent. (Agreed, that was abnormally low thanks to the non-campaign of Kasich's Democratic challenger, Ed FitzGerald.) Meanwhile, in 2014's Ohio Supreme Court contests, turnout was roughly 33 percent. That is, there was big voter drop-off."

Supreme Court rulings have far-reaching effects on all Ohioans and deal with things like public education, tax rates, workers' compensation, product liability, utility rates – and the list goes on and on.

That is why the [Ohio Alliance for Civil Justice](#), of which the OMA is a member, is [seeking to educate](#) as many Ohioans as possible about the upcoming Supreme Court of Ohio elections.

Early voting in Ohio begins October 12. So, it is time for manufacturing leaders to get out the message on how important it is to get to know the Supreme Court candidates, and to vote.

There are two open Ohio Supreme Court seats on the ballot this November and Chief Justice Maureen O'Connor is unopposed in her race. Three Supreme Court of Ohio races will be on your ballot.

The OMA-PAC board voted to endorse these candidates: Chief Justice Maureen O'Connor, Judge Pat Fischer, and Judge Pat DeWine. 9/6/2016

[Former Defense Secretary Bob Gates to Speak](#)

September 9, 2016

Growing global challenges — from Syria to ISIS to Zika — impact America's economic and security interests every day. Join former Secretary of Defense Robert Gates, one of the most respected national security experts, to discuss why America's role in the world matters for this election and beyond.

The event is offered by the [U.S. Global Leadership Coalition](#) and co-sponsored by OMA. It will be held on Wednesday, September 28, 2016, noon – 1:30 p.m. at the Greater Columbus Convention Center, 400 N. High Street, Columbus, OH. The event includes lunch. There is no charge but [you must register](#). 9/6/2016

[SOS Certifies Cure Petitions for Drug Price Relief Act](#)

September 9, 2016

Ohio Secretary of State, Jon Husted, [certified](#) more than 12,000 valid signatures this week from the cure petitions related to the Ohio Drug Price Relief Act. The Secretary also filed a notice with the Ohio Supreme Court that the initiative has been submitted to the Ohio General Assembly for a four-month review period, which ends on/about January 6, 2017. The petitioning committee would then be free to collect supplemental signatures in the 90 days following the end of that review period. Meanwhile, litigation continues in the Supreme Court which may or may not alter the process.

Jenny Camper, of Lesic & Camper, commented on behalf of the Ohio Chamber, OMA and PhRMA: "The proposed initiated statute would trigger massive changes to existing drug purchasing processes of the state and designated state-related programs, including Medicaid, that negotiate and purchase prescription medications on behalf of Ohio residents. Some statewide organizations and healthcare experts are concerned that the proposal, if enacted, is unworkable and will force a lengthy and complex litigation and bureaucratic quagmire." 9/7/2016

[A Labor Day Salute to Ohio Manufacturers](#)

September 2, 2016

The [economic impact](#) of Ohioans working in manufacturing cannot be stated enough!

- Manufacturing is the largest of the 20 sectors of Ohio's economy.
- Ohio manufacturing contributes 17% to Ohio GDP.
- Half of all new business startups in Ohio are manufacturers.
- There are more than 14,000 manufacturing firms in Ohio employing more than 700,000 people.
- More than one out of every 10 Ohioans works in manufacturing.

From your OMA staff: Have a safe and enjoyable Labor Day holiday weekend! 9/1/2016

[Congressman Jim Renacci Addresses OMA Committee](#)

September 2, 2016



Congressman Jim Renacci (R-Wadsworth) met with the OMA Government Affairs Committee this week. Renacci presented his [comprehensive tax reform proposal](#) to the committee. The congressman noted that the U.S. has the highest corporate tax rate in the world, constraining the economy and suppressing job growth.

Renacci would eliminate the corporate income tax, and tax pass-through entities at a rate of 0%. He would have only three personal income tax brackets, and two deductions and two credits. He would create a consumption-based business activity tax to make the package revenue neutral.

The committee meeting was hosted by committee chairman Chris Hess, Eaton Corp.'s director, Public Affairs, at the new and incredible Eaton Center campus in Beechwood. Thank you Chairman Hess and Eaton for the hospitality! 9/1/2016

[State Pays Off Unemployment Compensation Debt](#)

September 2, 2016

This week Ohio officially paid off its unemployment compensation debt to the federal government. The remaining balance of \$217,787,913 was paid on Tuesday.

Since the start of the Great Recession in 2008 Ohio borrowed \$3.4 billion from the federal government in order to pay the state's unemployment obligations. Had the debt not been retired, employers faced a potential FUTA obligation of \$168 per employee this year, an increase from \$42 per employee.

The OMA worked with lawmakers to pass House Bill 390 this summer which ensured the state would retire the debt in 2016. The OMA and its allies continue to work on reforms that will ensure the solvency of the state's unemployment compensation system and

prevent borrowing from the federal government in a future economic downturn. *9/1/2016*

[Ohio Manufacturing Workforce Reaches Six-Year High](#)

September 2, 2016

OMA is a state-level partner of Lightweight Innovations for Tomorrow, [LIFT](#), a public-private partnership committed to the development and deployment of advanced lightweight metal manufacturing technologies, and implementing education and training initiatives to better prepare the workforce today and in the future.

LIFT has just released [a new Ohio report](#) that quantifies employer demand and employment trends for Q2 2016.

- The advanced manufacturing workforce in Ohio reached a six-year high with more than 730,000 workers employed.
- Employers posted more than 19,000 job ads for Ohio advanced manufacturing occupations during Q2 2016.
- Maintenance and repair workers represented the most in-demand occupation in Ohio with more than 2,700 online job ads during Q2 2016.

Manufacturing is Ohio's largest economic sector, producing 17% of Ohio's GDP, and that's why the skills and employment analysis is of broad interest to Ohioans. [Here is the LIFT press release.](#) *8/31/2016*

[More Legal Action on "Ohio Drug Price Relief Act"](#)

September 2, 2016

On August 15, 2016, the Supreme Court of Ohio issued a decision in an action brought by the OMA, the Ohio Chamber and PhRMA challenging petition circulation practices in connection with the Ohio Drug Price Relief Act. The court held, among other things, that that thousands of part-petitions submitted by the committee backing the proposal contained false circulator attestations, did not comply with Ohio law, and contained an overcounting of signatures that constituted "an open invitation to fraud." 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.

Two days after the court issued its decision, the committee filed a mandamus action in the Supreme Court of Ohio seeking to recover more than 25,000

signatures that had previously been stricken by the Secretary and county boards of elections because signatures had been deleted by persons not authorized to do so.

Because the OMA, the Ohio Chamber, and PhRMA have a substantial interest in defending the judgment they obtained in the Challenge Proceeding, they jointly filed an [amicus curiae brief](#) in this lawsuit which concluded: "This new mandamus action is the wrong proceeding, at the wrong time, and seeks the wrong remedy." Here's a [summary](#) of the filed brief by OMA counsel, Bricker & Eckler. *8/30/2016*

Miscellaneous Legislation of Interest to Manufacturers

Prepared by: The Ohio Manufacturers' Association
Report created on November 29, 2016

- HB3 BUSINESS FILING FEES-JOBS WEBSITE** (DERICKSON T, ROMANCHUK M) To reduce certain business filing fees charged and collected by the Secretary of State and to specify that Ohio-based companies are to have access to appropriate features of the OhioMeansJobs web site.
Current Status: 6/25/2015 - **SIGNED BY GOVERNOR**; eff. 9/24/15
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-3>
- HB10 ATTORNEY TRANSPARENCY** (BUTLER, JR. J) To provide transparency in contracts between the state and private attorneys.
Current Status: 3/17/2015 - House Government Accountability and Oversight, (Third Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-10>
- HB17 EMERGENCY CIVIL IMMUNITY** (BLESSING III L, LANDIS A) To provide civil immunity for architects, contractors, engineers, surveyors, and tradespersons providing volunteer services during a declared emergency.
Current Status: 2/14/2016 - **SIGNED BY GOVERNOR**; eff. 5/17/16
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-17>
- HB42 LOCAL GOVERNMENT FUND** (GERBERRY R, CERA J) To require that, for fiscal year 2016 and each fiscal year thereafter, the Local Government Fund must receive the same proportion of state tax revenue that the Fund received in fiscal year 2005.
Current Status: 2/11/2015 - Referred to Committee House Finance
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-42>
- HB46 GOVERNMENT EXPENDITURE DATABASE** (DOVILLA M) To require the Treasurer of State to establish the Ohio State Government Expenditure Database.
Current Status: 10/13/2015 - Senate Finance, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-46>
- HB49 AIRLINE-AIR FREIGHT COMMISSION** (BARNES, JR. J) To create the Commercial Airline and Air Freight Commission.
Current Status: 4/14/2015 - House Transportation and Infrastructure, (Third Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-49>
- HB53 TRANSPORTATION BUDGET** (GROSSMAN C) To make appropriations for programs related to transportation and public safety for the biennium beginning July 1, 2015, and ending June 30, 2017, and to provide authorization and conditions for the operation of those programs.
Current Status: 4/1/2015 - **SIGNED BY GOVERNOR**; eff. 7/1/15; certain provisions effective other dates
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation->

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

- HB64 OPERATING BUDGET** (SMITH R) To make operating appropriations for the biennium beginning July 1, 2015, and ending June 30, 2017, and to provide authorization and conditions for the operation of state programs.
Current Status: 6/30/2015 - **SIGNED BY GOVERNOR**; eff. 6/30/15; certain provisions effective 9/29/15, other dates
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-64>
- HB68 ALCOHOL-BY-VOLUME** (RAMOS D) To allow beer manufacturers to manufacture beer containing not more than 21% of alcohol by volume beginning on the effective date of this act, and, beginning one year after the effective date of this act, to allow the sale and distribution of beer containing not more than 21% of alcohol by volume in this state by increasing the legally permitted alcohol content of beer from 12% to 21%.
Current Status: 10/6/2015 - House Government Accountability and Oversight, (Third Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-68>
- HB100 VEHICLE WEIGHT LIMITS** (SLABY M, PATMON B) To require that a vehicle with a gross vehicle weight rating or an actual gross vehicle weight of more than 10,000 pounds be driven only in either of the two right-hand lanes of a freeway with three lanes of travel in the same direction, except in limited circumstances.
Current Status: 3/24/2015 - House Transportation and Infrastructure, (Second Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-100>
- HB109 STATE HEALTH BENEFIT EXCHANGE** (STINZIANO M, ANTONIO N) To create the Ohio Health Benefit Exchange.
Current Status: 4/28/2015 - House Insurance, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-109>
- HB126 NUISANCE LAW** (KUNZE S, LELAND D) To expand nuisance law to include any real property on which an offense of violence has occurred or is occurring.
Current Status: 12/8/2015 - House Judiciary, (Second Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-126>
- HB130 PUBLIC RECORDS-DATA BOARD** (HAGAN C, DUFFEY M) To create the DataOhio Board, to specify requirements for posting public records online, to require the Auditor of State to adopt rules regarding a uniform accounting system for public offices, to establish an online catalog of public data at data.Ohio.gov, to establish the Local Government Information Exchange Grant Program, and to make an appropriation.
Current Status: 9/28/2016 - Referred to Committee Senate Finance
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-130>
- HB145 STEM PARTNERSHIP PROGRAM** (MCCOLLEY R, HOWSE S) To establish the STEM Public-Private Partnership Pilot Program to provide high school students the opportunity to

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

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

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

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

Current Status: 6/10/2015 - **SIGNED BY GOVERNOR**; eff. 9/9/15

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

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

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

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

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

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

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

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

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

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

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

Current Status: 5/6/2016 - **SIGNED BY GOVERNOR**; eff. 8/5/16

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

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

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

Accountability and Oversight

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

- HB280** **BALANCED BUDGET COMPACT** (KRAUS S, KOEHLER K) To adopt the Compact for a Balanced Budget and to declare an emergency.
Current Status: 11/10/2016 - Referred to Committee House State Government
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-280>
- HB282** **PREVAILING WAGE LAW** (ROEGNER K, HOOD R) To repeal Section 509.70 of Am. H.B. 497 of the 130th General Assembly to repeal the Prevailing Wage Law.
Current Status: 9/16/2015 - Referred to Committee House Commerce and Labor
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-282>
- HB350** **AUTISM TREATMENT-COVERAGE** (GROSSMAN C, TERHAR L) To mandate coverage of autism treatment.
Current Status: 5/25/2016 - **REPORTED OUT**, House Government Accountability and Oversight, (Fifth Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-350>
- HB502** **CAMPAIGN FINANCE** (BECKER J) To modify the Campaign Finance Law.
Current Status: 11/15/2016 - House Government Accountability and Oversight, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-502>
- HB503** **AGENCY RULE-MAKING** (DUFFEY M) To reform agency rule-making and legislative review thereof.
Current Status: 5/24/2016 - House Government Accountability and Oversight, (Fifth Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-503>
- HB505** **BIOLOGICAL PRODUCTS-PHARMACISTS** (HUFFMAN S, PELANDA D) Regarding the regulation of biological products and the substitution of interchangeable biological products when dispensed by pharmacists.
Current Status: 11/30/2016 - Senate Health and Human Services, (Fourth Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-505>
- HB506** **JOBSONIO-AUDITS** (JOHNSON G, SMITH K) To allow the Auditor of State to conduct full audits of JobsOhio, to require all nonprofit economic development corporations that receive public funds to make annual disclosures related to both their public and private funds, and to require that JobsOhio submit a quarterly progress report detailing all of its active projects.
Current Status: 4/13/2016 - Referred to Committee House Government Accountability and Oversight
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-506>

- HB558** **DOMESTIC STEEL USE** (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: 11/30/2016 - House State Government, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-558>
- HB574** **USED TIRE INSTALLATION** (SPRAGUE R, DEVITIS A) To prohibit the installation of unsafe used tires on certain motor vehicles.
Current Status: 11/29/2016 - House Commerce and Labor, (Second Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-574>
- HB581** **LIMITED LIABILITY COMPANIES** (DEVER J, REINEKE W) To permit and regulate managers, members, and interests of series limited liability companies.
Current Status: 11/29/2016 - House Judiciary, (Second Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-581>
- HB601** **DEFINITION-MICROBUSINESS** (PELANDA D) To create a statutory definition of "microbusiness."
Current Status: 11/29/2016 - House Commerce and Labor, (Second Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-601>
- HB608** **AUTONOMOUS VEHICLES** (GROSSMAN C, REINEKE W) To authorize a manufacturer of autonomous vehicles or autonomous technology to operate autonomous vehicles on public roads and highways in accordance with specified requirements, and to require the Director of Transportation to produce a report discussing whether additional legislative or regulatory actions are necessary for purposes of ensuring the safe testing of autonomous vehicles.
Current Status: 11/10/2016 - Referred to Committee House Transportation and Infrastructure
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-608>
- HJR2** **REDISTRICTING-CONGRESSIONAL DISTRICTS** (CLYDE K, CURTIN M) To revise the redistricting process for congressional districts.
Current Status: 11/15/2016 - House Government Accountability and Oversight, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HJR-2>
- HJR4** **ANTI-MONOPOLY-CONSTITUTIONAL AMENDMENTS** (SMITH R) Proposing to amend sections of Article II of the Constitution of the State of Ohio to prohibit an initiated constitutional amendment that would grant a monopoly or a special economic interest, privilege, benefit, right, or license to any person or entity and to modify the procedure to propose a law or a constitutional amendment by initiative petition.
Current Status: 7/1/2015 - Filed with Secretary of State
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HJR-4>

- HR25 HONORING THE MIDMARK CORPORATION** (BUCHY J) Honoring the Midmark Corporation on its One Hundredth Anniversary.
Current Status: 2/25/2015 - Introduced
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HR-25>
- HR428 CANCER DRUGS-COST-AVAILABILITY** (ANTONIO N, LATOURETTE S) To urge the Congress of the United States, the United States Food and Drug Administration, and the National Institutes of Health to address the cost and availability of cancer drugs.
Current Status: 5/24/2016 - Referred to Committee House Health and Aging
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HR-428>
- SB22 LOCAL GOVERNMENT FUND-ALLOCATION INCREASE** (TAVARES C) To increase monthly allocations to the Local Government Fund from 1.66% to 3.68% of the total tax revenue credited to the GRF each month.
Current Status: 5/3/2016 - Senate Finance, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-22>
- SB26 BUSINESS FILING FEES** (OBHOF L) To reduce certain business filing fees charged and collected by the Secretary of State and to specify that Ohio-based companies are to have access to appropriate features of the OhioMeansJobs web site.
Current Status: 4/15/2015 - House Economic and Workforce Development, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-26>
- SB38 STATE-ATTORNEY CONTRACTS** (SEITZ B) To provide transparency in contracts between the state and private attorneys.
Current Status: 5/12/2015 - **SIGNED BY GOVERNOR**; eff. 8/12/15
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-38>
- SB57 TOWNSHIP ROAD REGULATION** (EKLUND J) To authorize counties to adopt resolutions regulating motor vehicle traffic on county and township roads.
Current Status: 3/3/2015 - Senate State and Local Government, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-57>
- SB79 FELONY-JOB APPLICATION** (WILLIAMS S) To prohibit employers from including on an employment application any question concerning whether an applicant has been convicted of or pleaded guilty to a felony.
Current Status: 3/4/2015 - Referred to Committee Senate Transportation, Commerce and Labor
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-79>
- SB87 MINIMUM WAGE** (TAVARES C) To require that domestic workers be paid the minimum wage, as provided in Section 34a of Article II, Ohio Constitution.
Current Status: 3/4/2015 - Referred to Committee Senate Transportation, Commerce and Labor

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-87>

- SB135** **RARE DISEASE-OUT OF POCKET COST** (CAFARO C, JONES S) To limit the out-of-pocket cost to an individual covered by a health plan for drugs used to treat rare diseases.
Current Status: 10/20/2015 - Senate Insurance, (Second Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-135>
- SB181** **LIMITED LIABILITY COMPANY LAW** (OBHOF L, SCHIAVONI J) To declare the policy of the Limited Liability Company Law generally to give maximum effect to freedom of contract, and to make other changes regarding corporations and limited liability companies.
Current Status: 4/5/2016 - **SIGNED BY GOVERNOR**; eff. 90 days
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-181>
- SB199** **HANDGUN LICENSE-ACTIVE MILITARY** (UECKER J) To specify that an active duty member of the U.S. Armed Forces: (1) does not need a concealed handgun license to carry a handgun concealed if the member is carrying valid military identification and a certificate indicating successful small arms qualification; and (2) may be sold or furnished a handgun if the member has received military or equivalent small arms training.
Current Status: 11/29/2016 - **BILL AMENDED**, House State Government, (Fourth Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-199>
- SB210** **TOWNSHIP ROAD CONSTRUCTION** (BALDERSON T) To increase the monetary thresholds above which competitive bidding is required for township road construction, repair, or maintenance contracts
Current Status: 9/15/2015 - Referred to Committee Senate State and Local Government
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-210>
- SB218** **FAIR ACT** (TAVARES C) To enact the "Fair and Acceptable Income Required (FAIR) Act" and to revise the enforcement of the prohibitions against discrimination in the payment of wages.
Current Status: 10/7/2015 - Referred to Committee Senate Transportation, Commerce and Labor
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-218>
- SB242** **MOTOR VEHICLE-FRANCHISE AGREEMENTS** (UECKER J, COLEY W) To revise the law governing new motor vehicle franchise agreements.
Current Status: 6/14/2016 - **SIGNED BY GOVERNOR**; eff. 9/14/16
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-242>
- SB245** **MALNUTRITION PREVENTION COMMISSION** (MANNING G) To create the Malnutrition Prevention Commission to study malnutrition among older adults.
Current Status: 11/16/2016 - House Health and Aging, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation->

[summary?id=GA131-SB-245](https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-245)

- SB303** **AGENCY RULE MAKING REFORM-LEGISLATIVE REVIEW** (UECKER J) To reform agency rule-making and legislative review thereof.
Current Status: 4/27/2016 - Senate Government Oversight and Reform, (Second Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-303>
- SB336** **UNSAFE CAR TIRE INSTALLATION** (HITE C, LAROSE F) To prohibit the installation of unsafe used tires on certain motor vehicles.
Current Status: 11/30/2016 - Senate Government Oversight and Reform, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-336>
- SCR3** **CONGRESSIONAL FAST-TRACK OPPOSITION** (SCHIAVONI J, GENTILE L) To urge the Congress of the United States, and in particular the Ohio Congressional delegation, to vote against Fast Track Legislation.
Current Status: 4/22/2015 - Referred to Committee Senate Transportation, Commerce and Labor
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SCR-3>
- SJR1** **PUBLIC OFFICE COMPENSATION COMMISSION** (FABER K) Proposing to amend Sections 4, 20, and 31 of Article II, Section 19 of Article III, and Section 6 of Article IV and to enact Section 20a of Article II of the Constitution of the State of Ohio to establish the Public Office Compensation Commission.
Current Status: 5/25/2016 - House Government Accountability and Oversight, (Seventh Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SJR-1>
- SJR2** **CONGRESSIONAL REDISTRICTING** (LAROSE F, SAWYER T) Proposing to enact Sections 1, 2, 3, 4, 5, 6, 7, and 8 of Article XIX of the Constitution of the State of Ohio to revise the redistricting process for congressional districts.
Current Status: 11/30/2016 - Senate Government Oversight and Reform, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SJR-2>

To: OMA Government Affairs Committee
From: Ryan Augsburger / Rob Brundrett
Re: Energy Public Policy Report
Date: November 30, 2016

Overview

Following the election, lawmakers returned to the Statehouse for a short post-election, or “lame-duck” session. The prospect for energy policies to be addressed via legislation later this year is very real.

Also since our prior meeting, the PUCO has awarded FirstEnergy a partial bailout of \$1 billion. Other utilities are following suit.

Meanwhile utility companies are lobbying for reregulation of power generation in Ohio, a reversal from Ohio’s deregulation law.

PUCO Gives FirstEnergy Subsidy / Sets Precedent

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 that was later blocked by the FERC after the PUCO approved in last March.

The OMA Energy Group (OMAEG) opposed the proposal in every chapter and will continue to seek reversal in appeal. See Counsel’s report. See media clippings. Dayton Power & Light has made a very similar filing now pending at the PUCO.

Reregulation

AEP and FirstEnergy are calling for legislative *reregulation* or *restructuring*. Details of a restructuring proposal are not yet clear but legislative leaders have signaled that they will not act on the controversial issue in 2016; however, it may be considered in the 2017-2018 legislative session. 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. The company reported profit on its regulated distribution activities were higher in Ohio than anywhere else.

FirstEnergy, long a champion of competition has publicly switched positions and is now calling for reregulation. Like AEP, it is meeting with legislators.

In 1999, with the passage of Senate Bill 3, Ohio began a transition to deregulated generation. That transition which has taken over 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.

Financial Integrity Bailouts

Earlier this year 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. In effect, the law change authorizes the FirstEnergy subsidy recently awarded and other utility subsidies such as the latest DP&L proposal. The utility is lobbying for the legislative change during the post-election session.

PUCO Appointment

Governor Kasich appointed veteran energy attorney Howard Petricoff to the vacancy on the PUCO created by the departure of Commissioner Andre Porter. Senate President Keith Faber has questioned the qualifications of the Governor's appointee and has hinted the Senate may refuse confirmation, a step required of gubernatorial appointments. The OMA has expressed support for Commissioner Petricoff. It's the worst kept secret around capitol square that utilities don't like the pick because of his past work in support of competitive energy suppliers. Still pending.

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

US EPA issued a final rule in August 2015. Appeals have delayed implementation. The OMA filed comment together with the NAM and individually. Oral argument occurred was held last month.

While there was much speculation about the CPP's ability to survive legal scrutiny, the survival is now in question following the surprise election results. If / when federal carbon emissions regulation goes online, states will likely need to develop state implementation plans. Ohio policymakers have chosen to hold off on state regulations.

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. 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. See attached presentation materials by JobsOhio on the new cracker project in Belmont County.

Energy Efficiency Legislation

Legislation was enacted in 2014 to revise Ohio's energy standards which required utilities to deliver a certain amount of efficiency from customers and to procure a certain amount of renewable generation. The issue has been reported and discussed at OMA meetings for over three years.

SB 310 froze the alternative energy standards for two years and created a legislative study committee to assess the impacts of the standards. A report was issued in September 2015 recommending an indefinite freeze. Governor Kasich subsequently commented that indefinite freeze was unacceptable, and that he did not favor the existing standards either. Without legislative revision, the freeze is scheduled to lift the first of 2017. Senator Seitz has introduced SB 320 to revise some provisions and to extend the freeze for another three years. In contrast Representative Amstutz (#2 ranked member of the House) introduced HB 524 which makes the freeze more permanent. Hearings on both bills are ongoing this week. There is a significant legislative support to act before year end.

Energy

[Job Killing \\$29.4 Billion Subsidy?](#)

November 18, 2016

Ohio utility proposals to “re-regulate” would cost Ohio electricity consumers \$29.4 billion, the OMA Energy Committee was told this week.

Bill Siderewicz, President of Clean Energy Future, a developer of natural gas generation facilities, **spoke with the committee** about the costs of subsidizing Ohio utilities versus relying on the existing energy markets. He said utility proposals would cost consumers \$14.4 billion in subsidization of older coal units, and \$15 billion for “mandatory construction of new gas-fired plants by inefficient utilities.”

He noted that low cost, abundant local natural gas has been the “spark plug” for the development of new independent power producer power generation in Ohio. He counts 12 natural gas generation projects under development in the state with a whopping 10,836 MW of capacity.

He said that the Utica shale formation is currently sized at 3,192 trillion cubic feet. “If every Ohio based mega watt of generation ran on Utica gas, we have a 2,660 year fuel supply,” according to Siderewicz. *11/17/2016*

[Some Corps. Want Reinstatement of Renewable Energy Requirements](#)

November 11, 2016

John Rego, Partner, with OMA Connections Partner, Jones Day, [summarizes the state of play](#) with respect to the state’s two-year energy efficiency mandate freeze.

He says: “With the end of the two-year freeze approaching, bills have been introduced in the Ohio General Assembly that would reduce or completely eliminate the renewable energy standards. ... On October 25, 2016, nine companies, ranging from Whirlpool Corporation to Nestlé to Gap Inc., ... urge(d) Ohio lawmakers to lift the freeze and restore the 2008 renewable standards. The companies argued that such standards, particularly energy efficiency mandates, would help them meet their corporate sustainability goals, while saving money and attracting clean energy producers to the state.”

And: “For his part, Governor Kasich has vowed to veto any effort to extend the freeze or kill the renewable requirements entirely, although he has signaled a willingness to replace the 2008 standards with less stringent

requirements. Since the 2008 standards will automatically be reinstated absent new legislation before the end of the year, Kasich seems to have a strong hand to play.” *11/10/2016*

[Duke Energy Can Collect that \\$19M After All](#)

November 4, 2016

The Public Utilities Commission of Ohio last week reversed its prior decision thus permitting Duke Energy in Ohio to recover \$19.75 million in “shared savings” incentives.

The commission granted Duke’s application for rehearing of its 2013 shared savings recovery case, overturning its previous ruling which held that Duke’s use of banked savings to claim a shared savings incentive was improper.

On May 20, 2015, the commission issued an order determining, among other things, that Duke may only use its banked savings to reach energy efficiency/demand reduction benchmarks. Accordingly, Duke was not permitted to use banked savings to claim a shared savings incentive. Last week’s action reverses this. Duke will collect the \$19.75M through an increase in the existing EE/PDR rider. *10/31/2016*

[PJM Visits with OMA Members](#)

November 4, 2016



PJM Interconnection’s (PJM) Paul Sotkiewicz, Ph.D., Consulting Economist, recently presented PJM regional results, as well as the Ohio-specific results, of Clean Power Plan modeling the organization has executed. Kerry Stroup, PJM’s Manager, State Government Policy, also participated.

PJM is a regional transmission organization (RTO) that coordinates the movement of wholesale electricity in all or parts of 13 states, including Ohio, and the District of Columbia. As a neutral, independent party, PJM operates a competitive wholesale electricity market and manages the high-

voltage electricity grid to ensure reliability for more than 61 million people. 11/01/2016

Pictured – PJM's Manager, State Government Policy Kerry Stroup, PJM's Consulting Economist Paul Sotkiewicz, OMA president Eric Burkland, and VP, Administrative Services, The Belden Brick Co., Brad Belden

[OMA Energy Efficiency Tour at Anheuser-Busch](#)

November 4, 2016



OMA members who participate in OMA's [Energy Efficiency Peer Network \(EEPN\)](#) took a plant tour this week, hosted by OMA member, Anheuser-Busch Companies, Columbus. Multiple energy efficiency projects were showcased.

In addition to periodically touring plants, the EEPN gets together several times a year via web meeting to discuss a variety of energy efficiency technologies and case studies. The group is facilitated by OMA's consulting energy engineering partner, [Go Sustainable Energy LLC](#).

Interested? [Sign up here](#). There is no cost for OMA members and we'll keep you posted about 2017 activities. 11/2/2016

[\\$1.5 Billion Possibly at Stake in DP&L Case](#)

October 28, 2016

Dayton Power and Light has requested that a new "Distribution Modernization Rider" (DMR) provide it \$145 million per year for seven years in non-bypassable riders (the customer cannot "shop" around the rider cost).

If the DMR is grossed up for taxes as it was in the recent PUCO-approved FirstEnergy proceeding, and assuming a 35% corporate tax rate, the request increases to \$223.1 million annually. Multiplied by seven years, it would result in a total cost of \$1.5 billion.

See how this proposed rider would affect manufacturers with varying electricity usage [here](#). 10/27/2016

[Energy Scenario Planning: Efficiency Investments Lower Costs](#)

October 28, 2016

A recently released study shows investments in energy efficiency lower electricity costs better than do other scenarios modelled. The study, "[Four Paths to Ohio's Energy Future](#)," was commissioned by [Advanced Energy Economy](#).

The study looked at four scenarios for investment in Ohio energy systems, and projected costs for 2030. A scenario heavy in energy efficiency investments lowers costs 1.71 cents/kWh from a base case without efficiency investments. 10/27/2016

[\\$14.57 Billion, and Counting, in Above-Market Charges](#)

October 21, 2016

In 1999, Ohio moved to allow customers to shop for electricity generation in order to establish the benefits of competition for the state and its economy.

Since that time, through various riders approved by the Public Utilities Commission of Ohio (PUCO), customers have paid [\\$14.57 billion in above-market charges](#) to the state's utilities. That is, \$14.57 billion more than the costs customers paid for the actual electricity they bought from competitive suppliers.

The PUCO just approved another \$1 billion in above-market charges for FirstEnergy. Dayton Power and Light has proposed to the PUCO another \$1.5 billion in charges. That'd be a total of \$16 billion if the DP&L proposal would be approved.

For manufacturers, these riders drain away precious cash that could be used for investment and innovation in Ohio, creating more jobs and more prosperity. Join the [OMA Energy Group](#) to help stop this economic madness. 10/17/2016

[How the \\$1 B FirstEnergy Approved Subsidy Impacts Manufacturers](#)

October 21, 2016

Last week the Public Utilities Commission of Ohio approved a \$1 billion subsidy of FirstEnergy by customers. The ruling will cost customers \$204 annually for, likely, five years.

Very large consumers of electricity look to see costs from the rider of \$18 million, large users \$1.9 million, and medium-sized consumers \$140,000 over the period.

See a breakdown by usage [here](#). The OMA Energy Group opposed this costly subsidy, and will continue to litigate it, now that the PUCO has acted. *10/17/2016*

[PUCO OKs up to \\$1B in New Costs for FirstEnergy Customers](#)

October 14, 2016

This week the Public Utilities Commission of Ohio (PUCO) approved a new “grid modernization” rider that amounts to an unwarranted subsidy for FirstEnergy that will stifle competition, drive electricity costs up and harm manufacturing competitiveness.

Eric Burkland, OMA president, [issued a statement](#) commenting on the PUCO decision to allow FirstEnergy to collect up to \$1 billion in above-market customer charges:

“Today’s decision by the PUCO to give FirstEnergy a subsidy through a “grid modernization” rider is a setback for electricity consumers in Ohio. If implemented, the rider essentially will serve as another new tax, potentially costing families and businesses \$1 billion, while also setting a precedent for the PUCO to grant above-market customer charges to the state’s other utilities to bolster utilities’ financials.

“These unwarranted new costs will put another strain on the budgets of families, particularly those least advantaged, and will harm the competitiveness of businesses, especially those that are energy intensive.

“What do these electricity customers get for the new costs? Pretty much nothing. The customers are being asked to pay FirstEnergy with no direct consumer benefits. The rider is called a “grid modernization rider,” but requires FirstEnergy to do nothing to actually modernize the grid.

“Customers are paying to prop up the finances of a failing company. FirstEnergy should address its own financial troubles by using methods manufacturers and other businesses are required to use – cut costs, sell assets, sell equity – rather than rely on a customer bailout.” *10/12/2016*

[DP&L Proposes New \\$1 Billion Rider](#)

October 14, 2016

Dayton Power and Light (DP&L) has amended its Electric Security Plan application to the Public Utilities Commission (PUCO), proposing a \$145 million per year “distribution modernization rider.”

The utility says that the rider is necessary to allow it to maintain its financial integrity and to access equity and

debt capital in order to finance transmission and distribution infrastructure modernization investments. DP&L also stated that the cash flow from the rider will be used to pay interest obligations on existing debt, make discretionary debt prepayments, and allow DP&L to make capital expenditures to maintain the company’s transmission and distribution infrastructure.

The Ohio Consumers’ Counsel estimates the newly requested rider would cost Dayton-area consumers \$1.01 billion over seven years.

The OMA Energy Group is an intervenor in the case to protect manufacturers’ interests. *10/13/2016*

[Beer! Plant tour!](#)

October 14, 2016

The OMA [Energy Efficiency Peer Network](#) (EEPN) has scheduled its next plant tour for [Wednesday, November 2](#) at the Anheuser-Busch Brewery in Columbus, Ohio.

The tour will focus on energy efficiency and sustainability initiatives. Highlights will include brew kettle heat recovery; ammonia refrigeration efficiency; and compressed air pressure reduction.

Steel-toed shoes, hard hat, & safety glasses required. Limited hard hats and shoe covers available onsite.

Please register promptly as there are limited spaces remaining. [Register here](#). *10/11/2016*

[More Gas-Fired Electricity Generation Planned for Ohio](#)

October 7, 2016

According to the [Cadiz Times Recorder](#), EmberClear Corp. of Houston intends to build a gas-fired power plant near Cadiz in Harrison County. This would be the latest in a series of new gas-fired plants that seek to take advantage of plentiful shale gas.

The company plans a 1,000 megawatt plant on about 60 acres in the Harrison County Industrial Park. The project could provide for the electricity needs of about 1,000,000 houses.

It could take up to three years to obtain regulatory permits before a construction timeline would be developed. The project would lead to a projected investment of \$900 million and provide work for an estimated 500 construction workers and 30 permanent workers. *10/6/2016*

[DP&L Lobbying to Protect Utilities from Business Risk](#)

September 30, 2016

Executives from Dayton Power & Light (DP&L) are lobbying state lawmakers for a legislative proposal that will be harmful for customers. The utility wants the General Assembly to adopt legislation during the brief post-election lame duck session that would modify PUCO rate-making laws and provide more authority to the regulator. In the package is authority to add new riders on customers' electric bills if a utility's fiscal integrity is threatened.

The legislative proposal would also allow utilities to charge customers "transition charges" outside the scope of law today, effectively reversing recent Supreme Court decisions that were favorable to customers. [Read more from OMA Energy Counsel](#), Carpenter Lipps & Leland.

It's a stunning request of the General Assembly by a utility company. The DP&L legislative proposal is similar to the PUCO proposal of FirstEnergy which asks for up to \$8.9 billion in customer-paid subsidies due to its threatened fiscal integrity. Both the FirstEnergy rate case and the DP&L legislative proposal seek to shift ordinary business risk from shareholders to ratepayers.

The OMA Energy Committee will cover this and many manufacturers' energy issues at its meeting on November 17. [Members can register here](#). 9/29/2016

[Energy Standards Legislation Heats Up](#)

September 30, 2016

State-established electric utility energy efficiency and renewable energy standards were frozen by legislation in 2013. The freeze is due to expire in early 2017. Some lawmakers are eager to act on the issue during the upcoming lame duck legislative session. This week, Governor Kasich renewed his intention to veto any bill that weakens or eliminates the standards. [Read more in the Cleveland Plain Dealer](#).

The governor was reacting to a [plan recently updated](#) by Senator Bill Seitz, Chair of the Senate Public Utilities Committee, that would end the freeze in December while softening the "standards" into "goals" and make other changes. 9/29/2016

[AEP Ohio's Incentive Auction Coming Soon – Get Your Cash](#)

September 30, 2016

Manufacturers can bid for larger incentives for their efficiency projects in AEP Ohio's upcoming

[Bid4Efficiency auction](#). The auction provides a mechanism for manufacturers to earn efficiency incentives that are greater than AEP's \$25,000 maximum.

To receive incentives above the \$25K cap, AEP Ohio's Bid4Efficiency program offers a reverse auction where entities start at \$0.08/kWh saved for incentives, and then bid down to the price at which they are willing to take an incentive.

An RFQ submittal is necessary to secure AEP pre-approval to participate in the auctions; RFQs are due by October 14, 2016. The RFQ is short, requests only basic information, and can be completed in a short period of time.

Multiple auctions will be held between Nov. 7-11. Auctions will be for different sized pots of money for both lighting and custom project kWh savings. A customer may only win one auction.

OMA's energy consultant is ready to help you navigate the process, assist with completing the RFQ, and can advise you on a bidding strategy. Contact [John Seryak](#) for further assistance as a benefit of your OMA membership. 9/27/2016

[Crown Battery, Nissin Brake Recognized for Energy Efficiency Savings](#)

September 30, 2016

New [case studies](#) of Ohio manufacturers Crown Battery and Nissin Brake by the Alliance for Industrial Efficiency highlight the potential of energy efficiency savings. "My advice to other manufacturers? You need to take advantage of this," said Matt Culbertson, energy engineer for Crown Battery.

According to the case studies, Crown Battery is saving \$150,000-\$210,000 annually, and engages plant workers by awarding "Save a Buck Dynasty" t-shirts to those with energy saving ideas. Nissin Brake has saved a cumulative \$3.4 million in energy costs since 2008.

Energy efficiency savings like these have the potential to add up to an eye-popping \$298 billion for the U.S. manufacturing sector through 2030, [according to a study](#) simultaneously [released by the Alliance](#). The study investigated how manufacturing energy-efficiency can serve as a low-cost resource if carbon regulations come to fruition. Ohio ranked 5th in terms of cumulative cost saving potential and 2nd in terms of emission reduction potential. 9/28/2016

[Natural Gas Production Booming in Utica](#)

September 30, 2016

The U.S. Energy Information Administration this week [released new data](#) on oil and gas production in the Utica shale play, indicating that energy developers are increasingly focused on natural gas.

It said: “The rapid growth in Utica/Point Pleasant natural gas production since 2012 is attributable to increases in drilling efficiency, proximity to markets, improvements in business processes, resource targeting in stacked plays, and the lengthening of horizontal laterals. Relatively low oil prices and expansions in natural gas infrastructure make the natural gas-rich portions of the reservoir more desirable for development, and therefore, increasingly the target for operators.”

Monthly natural gas production from Utica wells increased from 0.1 billion cubic feet per day (Bcf/d) in December 2012 to more than 3.5 Bcf/d in June 2016. Oil production increased from 4,400 barrels per day (b/d) to nearly 76,000 b/d over the same period. *9/26/2016*

[AEP Sells Three Ohio Plants](#)

September 16, 2016

AEP this week [announced the sale](#) of three of its Ohio plants, and one in Indiana. The assets went for \$2.2 billion. The plants have a capacity of 5,200 megawatts.

The Ohio plants are the gas-fired Waterford Energy Center and Darby Generating Station and the coal-fired James M. Gavin Plant. The purchasers are private equity firms Blackstone Group LP and ArcLight Capital Partners LLC.

AEP indicated it is focused on its regulated business, and not merchant power. The company has several other merchant power plants in Ohio that were not included in the sale. *9/15/2016*

[FirstEnergy Should Not Get Something for Nothing](#)

September 9, 2016

In a welcome development, the [Cleveland Plain Dealer editorialized](#) this week: “FirstEnergy should not get something for nothing from its customers.”

The editorial notes the Ohio Consumers’ Counsel filing: “When all is said and done, [Ohio] consumers could be charged up to nearly \$8.9 billion [over nearly eight years] to support the financial integrity of FirstEnergy Corp.”

The paper references a [Bloomberg story](#) that FirstEnergy “wants compensation of as much as \$568 million (a year) for the added impact of salaries, vendor purchases and local employee spending in Akron.” The company says that, if customers don’t pay that subsidy, Akron could lose its corporate headquarters.

The Plain Dealer: “No one wants to see Akron lose a headquarters. But it’s not the responsibility of Ohio ratepayers to insulate FirstEnergy’s stockholders from the possibility that decisions made by FirstEnergy’s managers could invite a corporate takeover.”

Well said. *9/8/2016*

[AEP CEO Says Sale of Generating Units in Final Stages](#)

September 9, 2016

AEP CEO Nick Akins tells Bloomberg TV that AEP is in the “final stages” of selling its Ohio generating units. He reports “robust interest” in the assets.

Meanwhile, he indicates the company is working with the Ohio legislature to “restructure” the Ohio electricity markets. To AEP, “restructuring” means having new AEP generation (solar, wind, natural gas) paid for by consumers via non-bypassable riders, even if the consumers buy their electricity from an AEP competitor.

Watch the Bloomberg TV interview with the AEP CEO [here](#). *9/8/2016*

[Heads the Utility Wins, Tails the Customers Lose](#)

September 2, 2016

Recently, Ohio manufacturers, and other electricity consumers, won an important case at the Supreme Court of Ohio, which invalidated a surcharge that the Public Utilities Commission of Ohio (PUCO) had approved for DP&L. The court’s decision invalidated the rider because it enabled DP&L to recover “transition revenue.” Transition revenue under Ohio law was to end in 2005 (“transition” refers to the system’s transition from regulated generation to a competitive market).

On August 26, the PUCO acted to essentially overturn the customer-benefiting decision of the Supreme Court. Following the PUCO’s logic, if a utility suffers an adverse ruling on appeal that benefits customers, the utility could then counteract the effects of the court’s ruling by

simply requesting to terminate its current rate plan and revert back to a prior one, or any combination thereof, whichever is more favorable to the utility.

For customers, it is: Heads the utility wins, tails the customers lose. There appears to be basically no way to win a legal appeal, if this PUCO action holds.

You can [read the details in this memo](#) from Carpenter, Lipps & Leland, OMA energy counsel. 8/30/2016

[PJM Wholesale Electricity Markets Competitive](#)

September 2, 2016

PJM Interconnection's wholesale electricity markets produced competitive results during the first six months of 2016, according to the [2016 Quarterly State of the Market Report for PJM: January through June](#), according to Monitoring Analytics, LLC, the Independent Market Monitor for PJM.

The market monitor found that energy market prices decreased significantly from the first six months of 2015 as a result of lower fuel prices and lower demand. The load-weighted average real-time price was 36% lower in the first six months of 2016 than in the first six months of 2015, \$27.09 per MWh versus \$42.30 per MWh.

PJM average real-time load in the first six months of 2016 decreased by 5.3% from the first six months of 2015, from 90,586 MW to 85,800 MW.

Energy prices in PJM in the first six months of 2016 were set, on average, by units operating at, or close to, their short run marginal costs. This is evidence, said the market monitor, of generally competitive behavior and resulted in a competitive market outcome. 8/30/2016

[Commissioner Petricoff Visits OMA Energy Committee](#)

August 26, 2016



Howard Petricoff, the newest commissioner on the Public Utilities Commission of Ohio, visited with the OMA Energy Committee this week. He provided a look at his background and perspectives on the work of the commission.

The OMA was a big supporter of Petricoff's appointment by Governor Kasich. 8/25/2016

Pictured: OMA Energy Committee Chair, Brad Belden, VP Administrative Services, The Belden Brick Co., PUCO Commissioner Howard Petricoff, and OMA energy counsel, Kim Bojko, Carpenter, Lipps & Leland LLP

[AEP's Ohio Power Company Customers See Increase in Rider, OMA Energy Group Acts](#)

August 26, 2016

For AEP's Ohio Power customers, the Phase-In Recovery Rider (PIRR) was recently increased by an average of \$0.003211, from \$0.004072 to \$0.007282 per kWh. (The PIRR for Columbus Southern Power customers of AEP Ohio's is unchanged at \$0.)

Here is a [detailed memo](#) from OMA energy consultant, Runnerstone LLC, which includes the projected incremental costs to small, medium, large and extra large power users over the lifetime of the rider increase, estimates from \$8K to \$8M, depending on usage.

OMA Energy Group applied for rehearing of the PUCO order, stating that "The Commission erred by violating the prohibition against retroactive ratemaking when it authorized AEP Ohio to collect carrying charges at its weighted Average Cost of Capital through the Phase-In Recovery Rider for a past period beginning in September 2012."

The PUCO has yet to issue an entry on rehearing addressing the retroactive ratemaking concerns raised by OMA Energy Group and other parties. 8/25/2016

[Ohio Produces AEP's Highest ROE](#)

August 26, 2016

AEP [reports to investors](#) that its Ohio operations produce its highest rate of return on equity. For the year ending June 20, 2016, Ohio produced an ROE of 13.3%. That compares, for example, to Kentucky at 6.5%, Oklahoma at 8.6%, and Texas at 9.4%. 8/25/2016

Energy Legislation

Prepared by: The Ohio Manufacturers' Association
Report created on November 29, 2016

- HB8** **OIL-GAS LAW** (HAGAN C) To revise provisions in the Oil and Gas Law governing unit operation, including requiring unit operation of land for which the Department of Transportation owns the mineral rights.
Current Status: 4/14/2015 - Senate Energy and Natural Resources, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-8>
- HB23** **OIL-GAS LEASE INCOME** (AMSTUTZ R) To use one-half of any income from oil and gas leases on state land to fund temporary income tax reductions, to modify the law governing the use of new Ohio use tax collections, and to require the Director of Budget and Management to recommend whether or not income tax rates should be permanently reduced.
Current Status: 11/18/2015 - Senate Ways and Means, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-23>
- HB64** **OPERATING BUDGET** (SMITH R) To make operating appropriations for the biennium beginning July 1, 2015, and ending June 30, 2017, and to provide authorization and conditions for the operation of state programs.
Current Status: 6/30/2015 - **SIGNED BY GOVERNOR**; eff. 6/30/15; certain provisions effective 9/29/15, other dates
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-64>
- HB72** **ENERGY IMPROVEMENT DISTRICTS** (CONDITT M) To authorize port authorities to create energy special improvement districts for the purpose of developing and implementing plans for special energy improvement projects and to alter the law governing such districts that are governed by a nonprofit corporation.
Current Status: 11/30/2016 - House Public Utilities, (Fifth Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-72>
- HB83** **OIL-GAS ROYALTY STATEMENT** (CERA J) To require the owner of an oil or gas well to provide a royalty statement to the holder of the royalty interest when the owner makes payment to the holder.
Current Status: 3/10/2015 - House Energy and Natural Resources, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-83>
- HB122** **PUBLIC UTILITIES COMMISSION MEMBERSHIP** (LELAND D) To require that each major political party be represented on the Public Utilities Commission, to specify that not more than three commissioners may belong to or be affiliated with the same major political party, and to require that Public Utilities Commission Nominating Council lists of nominees include individuals who, if selected, ensure that each major political party is represented on the Commission.
Current Status: 3/24/2015 - Referred to Committee House Government Accountability and Oversight

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-122>

HB162 SEVERANCE TAX RATES (CERA J) To change the basis, rates, and revenue distribution of the severance tax on oil and gas, to create a grant program to encourage compressed natural gas as a motor vehicle fuel, to authorize an income tax credit for landowners holding an oil or gas royalty interest, and to exclude some oil and gas sale receipts from the commercial activity tax base.

Current Status: 5/12/2015 - House Ways and Means, (First Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-162>

HB176 GAS-FUEL CONVERSION PROGRAM (HALL D, O'BRIEN S) To create the Gaseous Fuel Vehicle Conversion Program, to allow a credit against the income or commercial activity tax for the purchase or conversion of an alternative fuel vehicle, to reduce the amount of sales tax due on the purchase or lease of a qualifying electric vehicle by up to \$500, to apply the motor fuel tax to the distribution or sale of compressed natural gas, to authorize a temporary, partial motor fuel tax exemption for sales of compressed natural gas used as motor fuel, and to make an appropriation.

Current Status: 11/18/2015 - **REPORTED OUT**, House Finance, (First Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-176>

HB190 WIND FARM SETBACKS-COUNTY (BURKLEY T, BROWN T) To create an alternative wind farm setback in cases where a process has been initiated to interconnect the wind farm to a transmission system and the wind farm is in the Ohio wind corridor.

Current Status: 5/18/2016 - **SUBSTITUTE BILL ACCEPTED**, House Public Utilities, (Third Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-190>

HB214 PUBLIC IMPROVEMENT-PIPING MATERIAL (THOMPSON A) To restrict when a public authority may preference a particular type of piping material for certain public improvements.

Current Status: 5/24/2016 - House Energy and Natural Resources, (Third Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-214>

HB349 STATE EMISSIONS PLAN (SMITH R, GINTER T) To require the Environmental Protection Agency to submit a state plan governing carbon dioxide emissions to the General Assembly prior to submitting it to the United States Environmental Protection Agency, and to declare an emergency.

Current Status: 12/8/2015 - House Energy and Natural Resources, (Third Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-349>

HB390 NATURAL GAS-ET AL (SCHAFFER T, RETHERFORD W) To provide authorization and conditions for the operation of state programs and to make appropriations.

Current Status: 6/28/2016 - **SIGNED BY GOVERNOR**; eff. 9/28/16; certain provisions effective on other dates

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

[summary?id=GA131-HB-390](#)

- HB472 RENEWABLE-EFFICIENCY ENERGY REQUIREMENTS (STRAHORN F)** To unfreeze the requirements for renewable energy, energy efficiency, and peak demand reduction, to permit changes in and Public Utilities Commission action on electric distribution utility portfolio plans in 2016, to revise the setback requirement for economically significant wind farms, and to repeal the setback requirement for wind farms of fifty megawatts or more.
Current Status: 2/23/2016 - Referred to Committee House Public Utilities
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-472>
- HB473 UTILITY SERVICE TAX-LEVY (AMSTUTZ R)** To require voter approval before a county may levy a new utilities services tax, to allow small businesses to count employees of related or affiliated entities towards satisfying the employment criteria of the business investment tax credit, to permit a bad debt refund for cigarette and tobacco product excise taxes paid when a purchaser fails to pay a dealer for the cigarettes or tobacco products and the unpaid amount is charged off as uncollectible by the dealer.
Current Status: 5/17/2016 - House Ways and Means, (Fourth Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-473>
- HB489 MINE FUNDS (CERA J)** To credit a portion of the money derived from the Kilowatt-Hour Tax Receipts Fund to the Abandoned Mine Reclamation Fund, the Acid Mine Drainage Abatement and Treatment Fund, and the Mine Safety Fund and to make other changes to those funds.
Current Status: 5/10/2016 - House Ways and Means, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-489>
- HB515 HEATING FUELS-SALES TAX (PATTERSON J, CERA J)** To exempt from sales and use taxation the bulk sale of firewood and certain other heating fuels, and to reimburse the Local Government Fund and Public Library Fund and county and transit sales tax collections for the resulting revenue losses.
Current Status: 4/26/2016 - Referred to Committee House Ways and Means
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-515>
- HB522 INJECTION WELLS (PHILLIPS D)** To prohibit injection of brine and other waste substances except in class I injection wells, to prohibit the conversion of oil and gas wells, to require municipal or township approval prior to the issuance of an oil or gas well permit, and to levy a fee on the injection of brine and other waste substances into a class I injection well.
Current Status: 4/26/2016 - Referred to Committee House Energy and Natural Resources
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-522>
- HB540 OIL-GAS WELL FUND REVENUE (CERA J)** 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 and fire departments.
Current Status: 5/17/2016 - Referred to Committee House Finance
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-540>

- HB541 STATE AGENCY-CLEAN POWER PLAN (LANDIS A)** To prohibit any state agency from implementing the federal "Clean Power Plan."
Current Status: 5/4/2016 - Referred to Committee House Energy and Natural Resources
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-541>
- HB554 RENEWABLE ENERGY REQUIREMENTS (AMSTUTZ R)** To revise the requirements for renewable energy, energy efficiency savings, and peak demand reduction and to revise provisions governing which customers can opt out of related programs.
Current Status: 11/30/2016 - House Public Utilities, (Third Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-554>
- HCR7 TAX EXEMPT MUNICIPAL BONDS (SPRAGUE R)** To urge the President and the Congress of the United States to preserve the tax-exempt status of municipal bonds.
Current Status: 5/11/2016 - **ADOPTED BY SENATE**; Vote 33-0
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HCR-7>
- HCR9 SUSTAINABLE ENERGY-ABUNDANCE PLAN (BAKER N)** To establish a sustainable energy-abundance plan for Ohio to meet future Ohio energy needs with affordable, abundant, and environmentally friendly energy.
Current Status: 6/17/2015 - **ADOPTED BY SENATE**; Vote 32-1
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HCR-9>
- SB45 LAKE ERIE SHORELINE IMPROVEMENT (SKINDELL M, EKLUND J)** To authorize the creation of a special improvement district to facilitate Lake Erie shoreline improvement.
Current Status: 3/17/2015 - Senate Energy and Natural Resources, (Second Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-45>
- SB46 LAKE ERIE DRILLING BAN (SKINDELL M)** To ban the taking or removal of oil or natural gas from and under the bed of Lake Erie.
Current Status: 5/11/2016 - Senate Energy and Natural Resources, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-46>
- SB47 DEEP WELL BRINE INJECTION PROHIBITION (SKINDELL M)** To prohibit land application and deep well injection of brine, to prohibit the conversion of wells, and to eliminate the injection fee that is levied under the Oil and Gas Law.
Current Status: 5/11/2016 - Senate Energy and Natural Resources, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-47>
- SB58 CONDITIONAL SEWAGE CONNECTION (PETERSON B)** To authorize a property owner whose property is served by a household sewage treatment system to elect not to connect

to a private sewerage system, a county sewer, or a regional sewerage system under specified conditions.

Current Status: 3/4/2015 - Referred to Committee Senate Energy and Natural Resources

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-58>

SB100 SALES TAX HOLIDAY-ENERGY STAR (BROWN E) To provide a three-day sales tax "holiday" each April during which sales of qualifying Energy Star products are exempt from sales and use taxes.

Current Status: 9/28/2016 - Senate Ways and Means, (First Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-100>

SB120 OIL-GAS LAW REVISION (SCHIAVONI J) To revise enforcement of the Oil and Gas Law, including increasing criminal penalties and requiring revocation of permits for violations of that Law relating to improper disposal of brine.

Current Status: 3/10/2015 - Referred to Committee Senate Energy and Natural Resources

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-120>

SB164 UTILITY SMART METER CONSENT (JORDAN K) To require electric distribution utilities to obtain a customer's consent prior to installing a smart meter on the customer's property

Current Status: 5/27/2015 - Referred to Committee Senate Public Utilities

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-164>

SB166 HORIZONTAL WELL EMERGENCY PLAN (GENTILE L) To require the owner of a horizontal well to develop and implement an emergency response plan for the purpose of responding to emergencies.

Current Status: 10/7/2015 - Senate Energy and Natural Resources, (First Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-166>

SB185 SPECIAL IMPROVEMENT DISTRICTS (SEITZ B) To revise the law governing special improvement districts created for the purpose of developing and implementing plans for special energy improvement projects.

Current Status: 5/25/2016 - **REPORTED OUT AS AMENDED**, Senate Energy and Natural Resources, (Fifth Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-185>

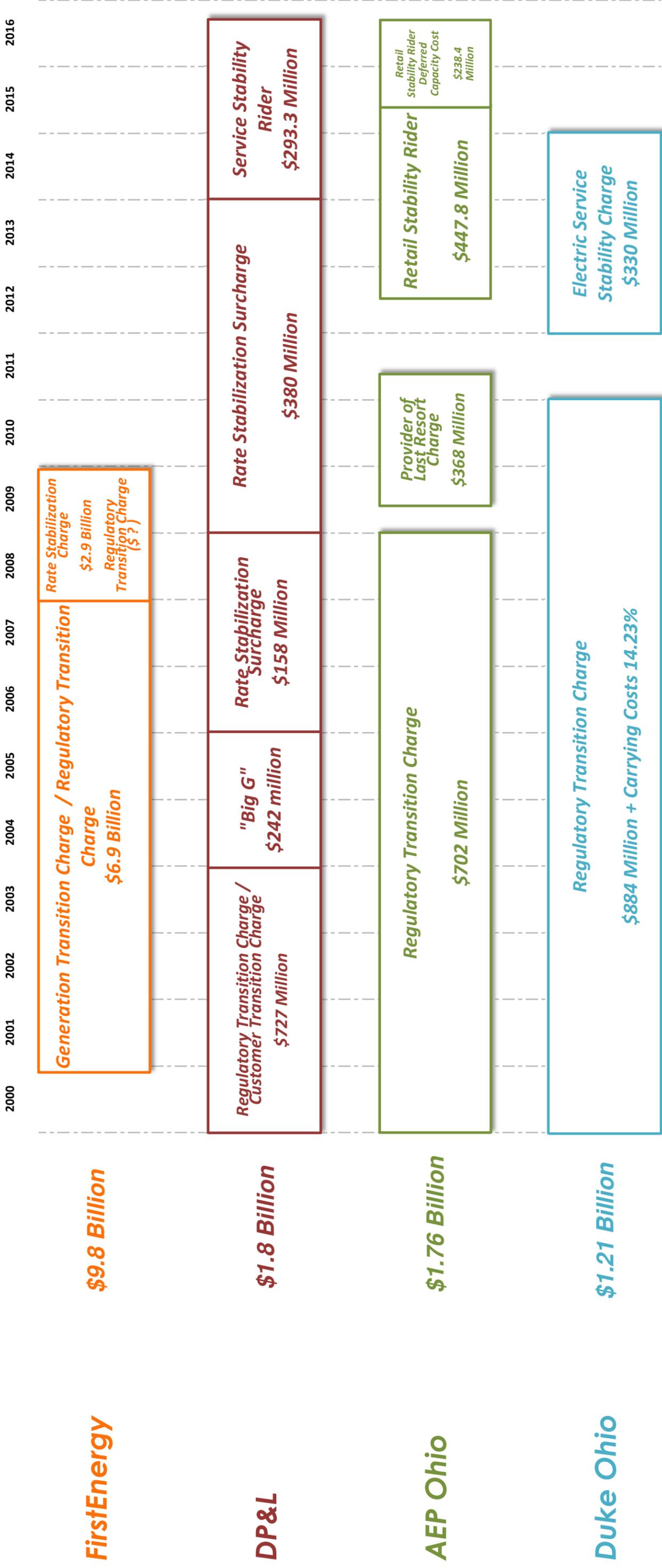
SB320 RENEWABLE ENERGY (SEITZ B) To revise the requirements for renewable energy, energy efficiency, and peak demand reduction, to permit property owners to petition municipal corporations and townships for the purpose of developing and implementing special energy improvement projects.

Current Status: 11/29/2016 - Senate Energy and Natural Resources, (Fourth Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-320>

- SB325** **ELECTRICAL DISTRIBUTION-RENEWABLE REQUIREMENT** (JORDAN K) To repeal the requirement that electric distribution utilities and electric services companies provide 12.5% of their retail power supplies from qualifying renewable energy resources by 2027.
Current Status: 5/4/2016 - Referred to Committee Senate Energy and Natural Resources
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-325>
- SB327** **OIL-GAS LAW REVISION** (BALDERSON T) To revise provisions in the Oil and Gas Law governing unit operation and to specify that the discounted cash flow formula used to value certain producing oil and gas reserves for property tax purposes is the only method for valuing all oil and gas reserves.
Current Status: 5/11/2016 - Referred to Committee Senate State and Local Government
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-327>
- SCR6** **EXPORT-CRUDE OIL** (BALDERSON T) The urge the U.S. Congress to lift the prohibition on the export of crude oil from the United States.
Current Status: 12/8/2015 - **ADOPTED BY HOUSE**; Vote 67-24
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SCR-6>

SUBSIDY SCORECARD - ELECTRIC UTILITY CHARGES TO OHIOANS (2000 - Sept. 2016)



FirstEnergy
\$9.8 Billion

DP&L
\$1.8 Billion

AEP Ohio
\$1.76 Billion

Duke Ohio
\$1.21 Billion

\$14.57 Billion



Tuesday, November 15, 2016

FirstEnergy, Opponents Request PUCO Rehearing In PPA Case

FirstEnergy and a handful of interested parties are requesting a rehearing in a long-running case that last month resulted in the Public Utilities Commission of Ohio approving a new rider to fund the company's grid modernization efforts.

Last month, the PUCO rejected the company's proposal for a scaled-down, "virtual" Power Purchase Agreement in favor of a staff-recommended \$132.5 million a year Distribution Modernization Rider. (See **Gongwer Ohio Report, October 12, 2016**)

But the company, which labeled the PUCO's decision last month "disappointing," argues the order was unlawful in part because it did not adopt the companies' suggested modifications - a failure "likely to undercut the ability of the rider to achieve its stated purpose."

Among the company's other claims are that the PUCO failed to account for the economic benefits of requiring the company's headquarters to remain in Toledo, used a 14.5% rather than 15% debt ratio in its calculations when calculating the rider, improperly used a four-year average for CFO to debt ratios rather than the advised three-year average, and committed other errors.

"The commission's adoption of Rider DMR is amply supported by the record," FirstEnergy wrote. "Yet, given the commission's stated desire to further grid modernization by shoring up the companies' finances, and derivatively their credit ratings, the specifics of the rider as adopted not only fail to accomplish the commission's stated objectives but, in fact, run counter to them."

Monday was the filing deadline for the company and interested parties to urge the PUCO to take back up the case that has already stretched more than two years.

Also requesting a rehearing were the Ohio Manufacturers' Association energy Group, IGS Energy, the Northeast Ohio Public Energy Council, the Ohio Consumers' Counsel and the Northwest Aggregation Coalition, the Ohio Energy Group, PJM Power Providers Group and the Electric Power Supply Association, the Cleveland Municipal School District, Nucor Steel Marion Inc., the Sierra Club, and, in a joint filing, the Ohio Environmental Council, the Environmental Defense Fund and the Environmental Law and Policy Center.

The OCC estimates the new rider will generate about \$612 million from customers over three years, with the option of a two-year extension, and that the charge is "destined to not fulfill its state purpose." As such, the group argues, the new rider is an unlawful transition charge.

"The Credit Support Rider funds are supposed to 'jump start' FirstEnergy's investment in grid modernization," the OCC wrote. "But FirstEnergy is not required to use the funds this way. So the funds may actually be used to bailout FirstEnergy's parent, FirstEnergy Corp. or its unregulated generation affiliate, FirstEnergy Solutions."

During the hearing process, opponents expressed concern at the lack of a requirement that the money raised by the DMR or the company's proposed retail rate stability rider would have to remain within the companies - a common concern in Monday's filings.

OMA urged the commission to deny implementation of the rider because it "operates as an unlawful subsidy to FirstEnergy Corp., harms economic development in the state, and does not advance the policy of the state of Ohio to ensure diversity of electricity supplies and suppliers, or prompt competitive retail generation choices.

"Not only does Rider DMR violate a number of Ohio laws and regulation regarding the provisions of electric service, but it also has a detrimental effect on the ability of Ohio businesses to effectively manage their costs, make sound investment decisions and expand operations in the state of Ohio," the group continued. "The domino effect is an increase in prices for consumers and negative consequences for businesses...as they may be forced to close or reduce operations due to increased costs."

OEC, the EDF and the ELPC argue the panel's decision was unlawful in that it provides no restriction requiring the funds to be used for grid modernization and is inconsistent with PUCO precedent.

And the Sierra Club argued the PUCO lacked jurisdiction to consider the DMR on rehearing, while similarly arguing the new rider to an unlawful transition charge. The Sierra Club claims the rider won't incentivize grid modernization and that the conditions placed on the rider are "illusory and unenforceable."

"...The commission approved the DMR even though the record demonstrates this rider is unjust, unreasonable, and not beneficial to customers," the group argued.

The PJM group and the EPSA similarly criticized the PUCO for not restricting DMR revenues from subsidizing the companies' generation affiliate and argued the commission's determination the previously proposed RRS rider is a "limitation on consumer shopping" is unreasonable and unlawful.

"The commission can and should correct its errors before utility customers are forced to give their money to FirstEnergy Corp. and its competitive affiliate," the groups argued.

The Cleveland Municipal School District argued the rider is aimed at boosting the company's sagging credit rating rather than supporting grid modernization. With FirstEnergy recently announcing a strategic review that could result in the sale of any or all of its 13 plants, the CMSD said the rider could have no effect on boosting that credit rating. (See **Gongwer Ohio Report, November 7, 2016**)

"Does the commission really want to subject customers to the risk that they will have pay hundreds of millions of dollars via Rider DMR and, at the end of the day, will have absolutely nothing to show for it?" CMSD argued. "The commission should grant rehearing on this ground and should remove Rider DMR as an element of ESP IV."

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
Small (~\$100k/yr in electricity costs)	1,000,000	\$3,747	\$26,229	\$17,049
Medium (~\$600k/yr in electricity costs)	7,500,000	\$28,102	\$196,714	\$127,864
Large (~\$6 million/yr in electricity costs)	100,000,000	\$374,694	\$2,622,855	\$1,704,856
Extra large	1,000,000,000	\$3,746,936	\$26,228,553	\$17,048,560
Territory total		~\$203 Million	~\$1.43 Billion	~\$927.5 Million

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

FirstEnergy has Already Collected Billions of Dollars in Above-Market Charges

Through its various rate cases approved by the Public Utilities Commission of Ohio (PUCO), FirstEnergy has collected more than \$9 billion in above-market charges from its customers from 2001 through 2010.

Time Period	PUCO-Approved Above-Market Charges	Amount
2001-2010	Generation Transition Charge/Regulatory Transition Charge	\$6.9 Billion
2008-2009	Rate Stabilization Charge	\$2.9 Billion
2008-2009	Regulatory Transition Charge	Not quantified
2001-2010	TOTAL	~9.8 Billion
2017-2022	Distribution Modernization Rider	~927.5 Million

Source: Office of Ohio's Consumers' Counsel

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RYAN AUGSBURGER

VICE PRESIDENT AND MANAGING DIRECTOR OF PUBLIC POLICY SERVICES

November 29, 2016

Dear Ryan,

DP&L Files Proposal for \$1B from Customers over Seven Years

Dayton Power & Light (DP&L) has filed a proposal with 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 more than \$1 billion over seven years. The rider will not be by-passable by shopping to another generation supplier.

For manufacturers, these above-market riders drain away precious cash that could be used for investment and innovation, creating more jobs and more prosperity.

In 1999, Ohio moved to allow customers to shop for electricity generation in order to establish the benefits of competition. Since that time, through various riders approved by the PUCO, DP&L customers have already paid \$1.8 billion in above-market charges.

The DP&L proposal will be litigated before the PUCO beginning December 2016. The [OMA Energy Group](#) will be actively opposing the measure. The stakes are high. The PUCO recently approved a \$1 billion subsidy for FirstEnergy that will cost its customers \$204 million annually for, likely, five years.

Estimate your company's potential cost

We have estimated your potential cost, by volume of electricity usage. [Click here](#).

Protect your company

Your letters (on company letterhead) and emails are useful; however, **I can't overstress the value of making a phone call to or arranging a meeting** with the following state leaders to express opposition to this proposal:

- Governor Kasich ([contact information](#))
- Your state senator ([look up here](#))
- Your state representative ([look up here](#))
- Local chamber of commerce executive

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

Please let me know how I might support your efforts, and please let me know of outreach you may make. **Thank you so much** for throwing your support behind this critical manufacturing competitiveness issue.

Sincerely,

Page 70 of 166

Approximate Estimated Costs to Manufacturers for DP&L's Proposed 7-Year Rider

Manufacturer Size	Consumption (kWh/year)	DP&L	
		Annual Cost Estimate	Total for 7 year DMR
Small (~\$100k/yr in electricity costs)	1,000,000	\$10,333	\$72,337
Medium (~\$600k/yr in electricity costs)	7,500,000	\$77,503	\$542,527
Large (~\$6 million/yr in electricity costs)	100,000,000	\$1,033,385	\$7,233,696
Extra large	1,000,000,000	\$10,333,851	\$72,336,958
Territory total		~\$145 Million	~\$1.015 Billion

Dayton Power and Light has requested that its Distribution Modernization Rider (DMR) provide \$145 million per year for seven years.

Dayton Power & Light has Already Collected Billions of Dollars in Above-Market Charges

Through its various rate cases approved by the Public Utilities Commission of Ohio (PUCO), DP&L has collected \$1.8 billion in above-market charges from its customers from 2000 through 2016.

Time Period	PUCO-Approved Above-Market Charges	Amount
2000-2003	Regulatory Transition Charge/Customer Transition Charge	\$727 Million
2004-2005	"Big G"	\$242 Million
2006-2008	Rate Stabilization Surcharge	\$158 Million
2009-2013	Rate Stabilization Surcharge	\$380 Million
2014-2016	Service Stability Rider	\$293.3 Million
2000-2016	TOTAL	\$1.8 Billion
2017-2024	Proposed "Distribution Modernization Rider"	~\$1.015 Billion

Source: Office of Ohio's Consumers' Counsel

COMPANY LETTERHEAD

DATE

Public Utilities Commission of Ohio
ATTN: IAD
180 E. Broad Street
Columbus, Ohio 43215-3793

RE: Opposition Comment to DP&L ESP Case 16-0395-EL-SSO, et. al re: Credit Support Rider

Dear PUCO:

I am writing on behalf of **YOUR COMPANY NAME** to request that you reject the proposal by the Dayton Power and Light Company (DP&L) that would impose on our company new above-market costs.

INSERT PARAGRAPH ABOUT YOUR COMPANY

Should the PUCO approve its application, DP&L will be able to collect costs (via a non-bypassable credit support or DMR rider) from all its customers to subsidize its finances, making customers the financial guarantors of a publicly traded company, and effectively insuring utility companies from business risk with customer dollars.

COMPANY NAME is directly impacted by this proposal. Our facility(ies) in the DP&L territory consume(s) approximately **XXX** kWh/year. We estimate the additional costs of this new rider to be more than **\$XXX** dollars during the proposed seven year term of the ESP.

If approved, the new rider will add costs to Ohio consumers and negatively impact innovation, growth and jobs and subsidize poor management decisions of the utility company.

As a manufacturer we must ensure that our Ohio operations remain competitive. Please protect the competitiveness of Ohio's economy and protect all consumers in DP&L's territory from this unwarranted rate hike, which is tantamount to a "give-away."

Sincerely,

NAME
TITLE

cc: Governor John Kasich ([contact information](#))
State Senator ([look up here](#))
State Representative ([look up here](#))
Local Chamber of Commerce Executive

BRIEF

Report: Re-regulating markets could risk \$15B in savings for Ohio customers

By **Robert Walton** • Nov. 21, 2016

Dive Brief:

- Deregulation of Ohio's power markets has been a boon to customers, with a new report finding ratepayers saved \$15 billion from 2011 to 2015 and could see similar benefits over the next five years, the Cleveland Plain Dealer reports.
- The report, from the Northeast Ohio Public Energy Council, comes as the state is considering re-regulating its power markets and investor-owned utilities are struggling to cope with low gas prices that have left some coal plants unprofitable.
- The Plain Dealer reports the new savings analysis was released just ahead of a planned meeting between Republicans in the Ohio House of Representatives, FirstEnergy and American Electric Power, and independent power producers.

Dive Insight:

Power companies in Ohio are working to press lawmakers to re-regulate the state's electricity market, and The Plain Dealer reports utility officials and Republicans in the state's legislature were getting together last week to consider how to move forward. Cheap gas has thrown the sector into

turmoil, with the largest utilities saying they will shut down or sell several plants that are no longer profitable.

But according to the Northeast Ohio Public Energy Council, re-regulating the state's power markets would rob consumers of billions in anticipated benefits. The group says consumer ability to shop for power supplies, combined competition from efficient gas plants, has put pressure on utilities' standard offer. But while the price of generation has fallen, NOPEC said the cost of delivery has risen, obscuring some benefits.

"Unfortunately, the regulated portion of electricity ... has been trending upward at the same time that competition has been pushing the generation portion of the costs down," the report concluded. "As a result, the overall cost of electricity has not fully reflected the savings achieved through deregulation."

Both First Energy and American Electric Power have said they are considering selling or shuttering plants, if a solution cannot be reached. Ohio utilities have made several attempts to win support for struggling generation. Over the summer, the Ohio Supreme Court rejected DP&L's Service Stability Rider, aimed at easing the transition to a competitive market.

Last month, the Public Utilities Commission of Ohio rejected a virtual power purchase agreement proposed by FirstEnergy, and instead approved a Distribution Modernization Rider that was about half the size requested. The utility responded by saying it may sell more than dozen power plants within the next 18 months, including several nuclear plants. Similarly, AEP has said it is working to sell several coal plants if they cannot be made profitable.

Recommended Reading:

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Deregulation shaved \$15 billion from Ohio electric bills, lawmakers to meet Friday to re-regulate [↗](#)



THE OHIO STATE UNIVERSITY

JOHN GLENN COLLEGE OF PUBLIC AFFAIRS

Prepared by:
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November 2016

Prepared for:
Northeast Ohio Public
Energy Council



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ELECTRICITY CUSTOMER CHOICE IN OHIO: HOW COMPETITION HAS OUTPERFORMED TRADITIONAL MONOPOLY REGULATION

EXECUTIVE SUMMARY

It took nearly a decade of sorting out regulatory problems, but by 2011 deregulation of electricity in Ohio began to work exactly how economic theory projected it would. Since 2011, a robust retail market for electricity has developed in Ohio. As a result, deregulation of electricity has saved consumers an average of \$3 billion per year, for a total of \$15 billion over five years. Moreover, it is projected to continue to save consumers nearly that amount for the next five years, through 2020, totaling another \$15 billion in savings. Further, the Midwestern deregulated states (Ohio, Pennsylvania and Illinois) have, over time, outperformed their regulated Midwestern neighbors (Michigan, Indiana and Wisconsin) in terms of constraining electricity costs for consumers.

This study was undertaken to assess the effects that deregulation of electricity generation has had on electricity prices in Ohio. Deregulation has recently become controversial in Ohio as a result of several of Ohio's investor-owned utilities ("IOUs") having sought price supports for their uncompetitive generation facilities. The IOUs sought these supports even though Ohio had deregulated the generation side of the electricity business in 2001.

The utilities argued that the price supports were necessary because without them, major existing generation facilities would be shut down, threatening grid reliability and increasing price volatility. In short, competition in Ohio had become a problem for its IOUs, whose aging generation fleet was struggling to remain competitive. Accordingly, Ohio's IOUs sought, and received, authority from the Public Utilities Commission of Ohio (PUCO) to assess ratepayers with additional fees to subsidize the flagging generation fleets.

The Federal Regulatory Commission subsequently ruled that the proposed price supports, which would have been passed through to ratepayers as a rider on the regulated side, were illegal, finding that they were inconsistent with deregulated markets and threatened to undermine regional wholesale electricity markets. Consequently, the IOUs have begun to argue through media and other venues that Ohio should abandon its deregulated electricity markets in favor of the traditional fully regulated monopoly model that American utilities have followed for most of the 20th century.

Such a strategy, however, would cost Ohio's ratepayers significantly. The research contained in this Study demonstrates that Ohio consumers have realized billions of dollars in savings in each of the past five years due to the deregulation of electricity generation. The savings have been realized in part because Ohio's IOUs have begun setting their electricity generation standard service offers (SSO, also called "Price to Compare," or "PTC") through competitive auctions, and in part because Ohio's consumers (over 70%) have been able to shop for their electricity loads. Further, these savings are in keeping with the trends seen by other states that have switched to competitive electricity generation.

These results are consistent with research to date looking at the effects of deregulation, which have tended to find that deregulation reduces electricity prices. As has been done with other

studies, this Study relied on data from the Energy Information Agency, comparing similarly situated states in the Midwest, namely Ohio, Illinois and Pennsylvania (deregulated) against Wisconsin, Indiana and Michigan (regulated). However, the Study differed from most prior studies in two important ways. First, the Study Team used difference-in-difference statistical modeling to control for variables that would affect electricity price (e.g. time-related trends). Second, the Study Team assessed savings due to shopping.

The reason why prior studies have not sought to evaluate savings from shopping is that the data supporting such a study is not publicly available. The Study Team resolved this problem by organizing the shopping data into two sets: mercantile (greater than 700,000 kWh/year consumption) and non-mercantile (less than 700,000 kWh/year). For the latter, the Study Team assumed a savings rate of 6% for residential shoppers and 4% for commercial shoppers off of the Price to Compare. These sorts of rates have generally been available from aggregators in Ohio in the past five years. For the former, the Study Team used data sets aggregated from private data banks held by local brokers who track electricity procurement by their clients.

Analysis of the pricing data demonstrates that Ohio ratepayers have avoided nearly \$15 billion in the past five years in result of competition. Of this, around \$3 billion is from shopping, 4/5 of which is from mercantile and 1/5 from non-mercantile shopping.

Total Shopping Savings from Mercantile and Non-Mercantile Markets, 2011-2015 (millions of dollars)

Year	Mercantile	Non-Mercantile	Total
2011	\$391.60	\$105.1	\$496.70
2012	\$324.69	\$118.6	\$443.29
2013	\$600.81	\$143.3	\$744.11
2014	\$664.21	\$160.0	\$824.21
2015	\$487.19	\$157.8	\$645.19
Total	\$2,468.50	\$684.80	\$3,153.30

In addition to shopping savings, an additional \$12 billion was saved by Ohio’s ratepayers between 2011-2015 as a result of using deregulation strategies to set the Standard Service Offer (Price to Compare). These savings inured to all customers of the IOUs, regardless of whether they shopped.

Total savings due to deregulation was around \$3 billion per year between 2011 and 2015.

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

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

Ohio has also seen significant price drops in the standard service offers since moving to 100% auctions to set the Price to Compare (as opposed to cost-based accounting). As these standard service auctions mature, we might expect that the available “headroom” (the difference between the price to compare and the price that commercial retail providers can offer) will be diminished. Accordingly, shopping savings in Ohio may not increase significantly going forward, if the standard service auction process has fully matured. In 2015 shoppers saved around \$645 million off of the SSO. If we assume that 2015 represents a mature auction market, we can forecast additional savings from deregulation going forward by adding this amount to the savings generated through the SSO auctions.

Using the \$645 million/year savings, along with the PUCO long term projections for electricity consumption to forecast savings from the standard service offer auctions, the Study Team forecasts that Ohio’s ratepayers will save around \$2.98 billion/year for the next five years from deregulation, totaling \$14.9 billion. Projected savings for 2016-2020 are as follows:

Total Projected Savings Due to Deregulation in Ohio, 2016-2020 (millions of dollars)

Year	Shopping Savings	SSO Auction Savings	Total Savings
2016	\$645	\$2,333	\$2,844
2017	\$645	\$2,338	\$2,829
2018	\$645	\$2,343	\$2,833
2019	\$645	\$2,349	\$2,839
2020	\$645	\$2,354	\$2,844
Total	\$3,225	\$11,717	\$14,942

Unfortunately, the regulated portion of electricity – called “non-bypassable costs” (distribution, transmission and various riders) -- have been trending upwards at the same time that competition has been pushing the generation portion of the costs down. As a result, the overall cost of electricity has not fully reflected the savings achieved through deregulation.

However, reregulating the generation portion of electricity will not reverse the rising costs of distribution and other non-bypassable charges. This only makes the argument for deregulation more compelling, since deregulation has been most responsible for the relatively low cost of electricity in Ohio. There exists no public policy basis for reregulating generation in Ohio.

TO: OMA Government Affairs Committee
FROM: Ryan Augsburger / Rob Brundrett
RE: Environment Public Policy Report
DATE: November 30, 2016

Overview

The summer remained a quiet time for environmental policy efforts. This month Ohio EPA continued to focus on passing the second part of its MBR package. The bill remains ripe to be a vehicle for any environment related policies in the lame duck session.

Ohio EPA continues to work on regulations including universal waste and the industrial storm water general permit which the agency just released for stakeholder feedback.

General Assembly News and Legislation

Senate Bill 51 - Multiple Chemical Sensitivity Month

Senator Skindell (D-Lakewood) introduced SB 51, which would designate May as "Multiple Chemical Sensitivity Month."

Senator Skindell justified the bill citing research in 2003 indicating that more than 12% of the U.S. population was affected with severe multiple chemical sensitivity.

Manufacturers interested in this legislation are encouraged to participate in the OMA Environment Committee.

Senate Bill 269 – Public Water System Lead Contamination

Senate Minority Leader Schiavoni introduced SB 269 in response to the Sebring water crisis. The bill would require a public water system to provide notice of lead contamination not later than thirty days after becoming aware that lead contamination may affect the system's drinking water, requires the Director of Environmental Protection to provide the notice if the public water system fails to provide it, requires employees of the Environmental Protection Agency to provide continuing assistance to a public water system that fails to provide the required notice of lead contamination, and requires the Director to adopt rules that increase the monitoring frequency for lead and copper under specified circumstances. The bill had its first hearing in mid-April.

Senate Bill 333 – Water MBR II

Senator Hite (R-Findlay) introduced the second Ohio EPA MBR late in May. The bill was recently referred to the Senate Energy and Natural Resources Committee. The agency wanted to get the bill introduced before the legislature left for the summer and campaign season. The bill builds on House Bill 512 and the state's combatting of lead and other water issues.

Ohio EPA held numerous interested party meetings over the summer regarding this bill. The bill had its third hearing in the Senate this week and is poised to be moved out of committee. The bill remains a target to become a vehicle for any environment related policy issues in lame duck.

House Bill 349 – State Emissions Plan

Representatives R. Smith (R-Bidwell) and Ginter (R-Salem) introduced HB 349 which requires the Environmental Protection Agency to submit a state plan governing carbon dioxide emissions to the General Assembly prior to submitting it to the United States Environmental Protection Agency, and to declare an emergency. There is a concern if this bill gets enacted that the General Assembly may not approve the agency's plan. If that happens there is a real chance

Ohio would be forced to comply with the federal plan. The bill had a third hearing in December. It did not receive any attention during the first half of 2016. With the Clean Power Plan litigation and the uncertainty surrounding the plan with President-elect Trump, this bill is not expected to see action.

House bill 512 – Water MBR I

Representative Tim Ginter (R-Columbiana County) introduced HB 512 which established requirements governing lead and copper testing for community and nontransient noncommunity water systems, revised the law governing lead contamination from plumbing fixtures, made appropriations to the Facilities Construction Commission for purposes of providing grants for lead fixture replacement in eligible schools, and revised the laws governing the Water Pollution Control Loan and Drinking Water Assistance Funds. The bill which is considered Ohio EPA MBR I was heavily focused on combating the increased levels of lead in Ohio's drinking water. The bill was passed prior to the legislature leaving for the summer.

House Bill 541 – Clean Power Plan Implementation

Representative Landis (R-Dover) introduced HB 541. The bill would prohibit any state agency from implementing the federal "Clean Power Plan." This is a model bill that is being introduced around the country to prevent any state from implementing the federal CPP. While the bill has not had any hearings, it is mostly seen as a symbolic gesture. Currently the plan has been stayed by the Supreme Court until litigation is settled.

Regulations

Ozone – U.S. EPA

Last fall the Obama administration and U.S. EPA announced the final ozone rule which established a new ground-level ozone standard for the country. The rule tightened the already stringent standard of 75 parts per billion (ppb) down to 70 ppb.

The National Association of Manufacturers has sued U.S. EPA over the regulations.

U.S. EPA 111(d)

Last August the U.S. EPA proposed its final rules for carbon emissions from the nation's power plants. The rules were proposed under section 111(d) of the Clean Air Act.

The rule proposes a national reduction in power plant carbon emissions by 2030, from a base year of 2012. This means a 37% reduction for Ohio.

EPA revised the building block model in response to legal uncertainties. The new "building blocks" are: reducing the carbon intensity of electricity generation by improving the heat rate of existing coal-fired power plants; substituting increased electricity generation from lower-emitting existing natural gas plants for reduced generation from higher-emitting coal-fired plants; and substituting increased electricity generation from renewable energy sources.

The original timetable for implementing these vast rules was aggressive: States were required to submit a final plan, or an initial submittal with an extension request, by September 6, 2016. Ohio EPA originally indicated it would seek an extension from the federal government, which would set Ohio's rulemaking a year behind the federal schedule as currently published.

The Supreme Court of the United States granted a stay of the Obama administration's Clean Power Plan (CPP) regulation of greenhouse gas (GHG) emissions from the electric utility sector.

That decision delays the implementation of the rule until the courts have the opportunity to determine the plan's legality.

The OMA joined more than 160 business groups throughout the country in filing an amicus brief in the U.S. Court of Appeals for the D.C. Circuit in support of a lawsuit by states and industry to overturn U.S. EPA's "Clean Power Plan."

The last week in September the Court of Appeals for the D.C. Circuit heard oral arguments on the federal Clean Power Plan (CPP) proposed by U.S. EPA.

Ross Eisenberg, Vice President, Energy and Resources Policy, National Association of Manufacturers, commented: "... The Manufacturers' Center for Legal Action, joined by a manufacturing coalition of more than a dozen other national trade groups, argued that the Environmental Protection Agency (EPA) imposed regulations on electric utility companies that is not authorized by, and contradicts specific provisions of the Clean Air Act. Manufacturers' primary concerns with the CPP are its potential impacts to energy costs and the precedent the rule would have on the future regulation of other manufacturing sectors.

"While the D.C. Circuit Court's ultimate decision will be of great importance, it will likely not be the end of the litigation road for the CPP. As NAM Deputy General Counsel Quentin Riegel noted, "this case has all the earmarks of a major case that will wind up in the Supreme Court, probably in the fall of 2017." Stay tuned.

More questions were introduced into the equation with the election of Donald Trump in November. It is yet to be determined just what exactly will happen to the plan under the new administration.

Waters of the U.S. Stay

A divided Sixth Circuit issued a nationwide stay against the enforcement the so-called "waters of the United States" regulation. The regulation was issued by the U.S. EPA and the U.S. Army Corps of Engineers. The regulations defined the scope of "waters of the U.S." to be subject to federal regulatory jurisdiction under the Clean Water Act.

Attorney General Mike DeWine, on behalf of the State of Ohio and 30 other states, filed a brief in the U.S. Court of Appeals for the Sixth Circuit with regard to Murray Energy Corporation, et al. v. U.S. Environmental Protection Agency, et al.

This litigation resulted from efforts by the U.S. EPA and the U.S. Army Corps of Engineers to re-define, by rule, the definition of "waters of the United States" (WOTUS) under the Clean Water Act. If successful in their efforts, the U.S. EPA and the U.S. Army Corps of Engineers would expand the definition of "waters of the United States" to reach even remote and isolated waters, including such features as normally dry stream beds and other occasionally damp ground.

Our attorney general argues that the rule goes far beyond what was intended by Congress when it passed the Clean Water Act, and that a state-based approach to protection of waterways would be much more effective

Industrial Storm Water Permits

The OMA has been working with Ohio EPA regarding the next iteration of Ohio's multi-sector general permit for storm water. OMA has worked with Ohio EPA over the summer and fall on

several issues impacting manufacturers. Ohio EPA just released the draft of the regulation and the OMA team is currently reviewing the proposal.

Universal Waste

At the end of 2012 Ohio EPA solicited comments through the early stakeholder outreach program on the expansion of universal waste in Ohio. The agency wanted to examine whether additional hazardous wastes should be designated as universal wastes and specifically if hazardous waste aerosol cans and spent antifreeze should be designated universal wastes. The OMA submitted initial comments on this topic requesting certain paint and paint related wastes.

The OMA was approached by Ohio EPA to see what sort of backing the expansion of universal waste would have among members. Last year the OMA put together a working group to work with Ohio EPA on this topic.

Most recently the group sent clarifying information to the agency describing the different types of wastes that are expected to be covered under the rule change.

Director Butler told the OMA Board in March that he remains fully committed to getting the universal waste rules completed in 2016. The rules were finally released for interested party review last week.

National Pollutant Discharge Elimination System (NPDES) permit program

Ohio EPA has announced its Early Stakeholder Outreach (ESO) process for Chapter 3745-33 of the Ohio Administrative Code which contains the administrative and technical requirements for writing and obtaining wastewater discharge permits under the National Pollutant Discharge Elimination System (NPDES) permit program.

Ohio EPA will begin drafting rules in the near future.

Beneficial Use Rules

In late July, Ohio EPA released its public notice of its proposed rulemaking governing beneficial use. This rule package was started in the summer of 2012. The purpose of the new rules is to establish a regulatory program pertaining to the beneficial use of solid wastes, and other wastes, regulated pursuant to Ohio Revised Code Chapters 3734 and 6111.

Startup, Shutdown, and Malfunction Emissions Comments

The OMA and other business allies submitted formal comments to Ohio EPA regarding the agency's rulemaking in the response to U.S. EPA's finding of "substantial inadequacy" and state implementation plan (SIP) call to amend provisions applying to excess emissions during startup, shutdown and malfunction (SSM) periods. The OMA and its allies originally filed comments in 2013 to U.S. EPA in opposition to its proposed SSM SIP Call.

Ohio EPA Drafts Rules on Particulate Matter Standards

Ohio EPA issued notice of its review of Ohio Administrative Code Rules pertaining to "Particulate Matter Standards." Major revisions include removing regulation and emission limits for air pollution sources that are located at facilities that have been completely and permanently shut down. The rules also provide an additional compliance option for facilities that are required to use a continuous opacity monitor (COM) to determine compliance with visible emissions requirements.

In situations where a COM would not provide accurate visible emissions determinations, such as air contaminant sources that are controlled by wet scrubbers, operators may install a particulate matter continuous monitor (CEM).

The rule will also require the air contaminant source to comply with a particulate emissions limit of 0.030 pounds of particulate emissions per million British thermal units of heat input.



TRANSFORMING OHIO FOR JOBS + GROWTH

2016 MID-BIENNIUM REVIEW

IMPROVING WATER QUALITY IN OHIO

Protecting Lake Erie and All Our Drinking Water Sources, Providing Community and Business Assistance and Streamlining Government

Under the Kasich Administration, Ohio has invested more than \$3.5 billion to tackle key infrastructure issues in order to improve water quality statewide. Protecting Lake Erie and Ohio's other drinking water sources continues to be a priority. Provisions in Governor Kasich's 2016 Mid-Biennium Review will strengthen that commitment.

Strengthening Efforts to Protect Lake Erie: The Lake Erie Commission can be an effective catalyst in helping Ohio meet its commitments under the binational Great Lakes Water Quality Agreement to reduce phosphorus in Lake Erie's Western Basin 40 percent by 2025 and in efforts to identify and support programs to enable the beneficial use of dredged materials. MBR provisions update the Lake Erie Commission's existing statutes to achieve these goals, while refocusing the commission's efforts on its Lake Erie Protection and Restoration Strategy.

Encouraging Better Use of Dredge Materials: The MBR provides a straightforward regulatory framework for the safe and beneficial reuse of material dredged from federal navigation channels. Potential users and marketers of dredged material will have defined criteria for classifying this material.

Requiring Financial Assurance for Privately Owned Water Systems: When the owner of a private water system shows an unwillingness or inability to make repairs to ensure safe drinking water, the Ohio EPA will be provided tools to fix the problem, while requiring financial assurance from new or modified private water systems that ensures they have the ability to make needed repairs.

Strengthening Ohio's Certified Water Quality Professional Program: Based on consultation with stakeholders, the MBR will further strengthen the new Certified Water Quality Professional provisions that were established in last year's operating budget.

Giving the Ohio EPA Director Authority to Address Water Quality Certification: The MBR clarifies the Ohio EPA director's authority to waive, transfer, revoke or – at the request of the permit holder – to modify a 401 water quality certification. Currently, state statute allows only for approval and denial.

Aligning State and Federal Laws for Approval of Certain Pretreatment Permits: To make Ohio statutes consistent with federal law, MBR language will allow the state EPA director, in lieu of the U.S. EPA, to issue a permit to an entity discharging into a privately owned treatment works.

Requiring Ongoing Asset Management Efforts by Public Water Systems: The MBR addresses recurring asset management problems seen at some public water systems, including deferred maintenance, lack of management oversight and inadequate historical records of water lines or maps of service areas. These issues too often result in extended periods of water-use restrictions or having no water at all available for system users. MBR language requires public water systems to demonstrate ongoing technical, financial and managerial capability by implementing an asset management program. This is a priority to ensure safe and reliable drinking water for Ohio citizens.

PROTECTING OHIO'S ENVIRONMENT

Ensuring Responsible Disposal of Construction and Demolition Debris: Over the past several years, a large number of illegal construction and demolition debris (C&DD) disposal sites have begun operating under the premise of “processing” C&DD materials to then be resold, an activity that is currently unregulated in Ohio. However, many times in these instances the material is being collected and then abandoned, leaving local communities and the state to bear the cost of cleanup and mitigation of potential hazards. Provisions in this MBR legislation will establish regulatory oversight of C&DD processing facilities to ensure these materials are properly managed and disposed of in an environmentally responsible manner.

Strengthening the State's Ability to Clean Up Abandoned Landfills: To strengthen the Ohio EPA's ability to evaluate and clean up abandoned landfills, this MBR language will clarify the agency's authority to – among other things – gain site access, conduct investigations, and take samples at these sites.

BOTTOM LINE: Government regulations should first protect Ohioans from acute threats to water quality, such as lead in drinking water supplies or private water system owners who do not provide a dependable or safe water supply. At the same time, a common sense approach is needed to provide balance between helping communities and businesses address water quality issues and streamlining burdensome rules while protecting public health and the environment.



Environment

[Energy and Environmental Ramifications of Trump Election](#)

November 18, 2016

While some of President-elect Trump's priorities in the environmental and energy policy areas are largely uncontroversial—such as continuing the push toward U.S. energy independence—the new administration is likely to encounter pushback on the more contentious elements of its agenda, including the revival of the Keystone Pipeline Project and the withdrawal from international climate change efforts such as the Paris Agreement.

This [Commentary](#) from OMA Connections Partner Jones Day explains the practical and logistical issues Mr. Trump can expect as he pursues his policy goals, along with the related implications for the energy sector. 11/17/2016

[Zero Waste Event Planning](#)

November 11, 2016

Ever hold employee or community events? Ohio EPA's Division of Environmental and Financial Assistance (DEFA) [developed this guide](#) to help event planners reduce waste through recycling, composting and source minimization. This general resource guide that can be applied to a wide variety of small and large events, held at inside or outside venues.

A zero waste event minimizes the amount of waste going to a landfill by diverting materials for re-use, recycling or composting. An event is typically considered to be zero waste if at least 90% of the waste generated is diverted. 11/10/2016

[AG DeWine Files Arguments Against U.S. EPA on "WOTUS"](#)

November 4, 2016

Attorney General Mike DeWine, on behalf of the State of Ohio and 30 other states, [filed a brief](#) this week in the U.S. Court of Appeals for the Sixth Circuit with regard to *Murray Energy Corporation, et al. v. U.S. Environmental Protection Agency, et al.*

This litigation resulted from efforts by the U.S. EPA and the U.S. Army Corps of Engineers to re-define, by rule, the definition of "waters of the United States"

(WOTUS) under the Clean Water Act. If successful in their efforts, the U.S. EPA and the U.S. Army Corps of Engineers would expand the definition of "waters of the United States" to reach even remote and isolated waters, including such features as normally dry stream beds and other occasionally damp ground.

Our attorney general argues that the rule goes far beyond what was intended by Congress when it passed the Clean Water Act, and that a state-based approach to protection of waterways would be much more effective. 11/2/2016

[Midwest Environmental Compliance Conference Draws Nice Crowd](#)

November 4, 2016



More than 300 members of the regulated community and EPA agency staff gathered in Chicago this week for the second annual Midwest Environmental Compliance Conference.

"We know of nothing like it anywhere for gathering current compliance information and support, and making important connections," said OMA's Rob Brundrett, director, Public Policy Services. OMA is a conference sponsor. 11/3/2016

Pictured: Julianne Kurdila, Lead Specialist, Environmental Compliance & Policy, ArcelorMittal & Chair, OMA Environment Committee, with Greg Bertelsen, Senior Director, Energy and Resources Policy at The National Association of Manufacturers

[Ohio EPA Director Brings Good News to OMA Environment Committee](#)

October 21, 2016



On Wednesday, Ohio EPA Director Craig Butler visited the OMA Environment Committee to discuss members' issues of concern.

He brought good news: Both the Industrial Storm Water Permit and the new Universal Waste Rules should be coming out in the very near future. Members of the committee, and staff, have worked hard on these issues for months.

The director talked about other agency priorities, including the continuing fight against algal blooms on Ohio's surface water, most importantly Lake Erie, and continuing to lead the charge against the Army Corps of Engineers on Port of Cleveland dredging, which is vital to Ohio's manufacturers. 10/20/2016

Pictured: Ohio EPA Director Craig Butler at OMA

[Ohio EPA Taking Applications for Recycling Grants](#)

October 21, 2016

Ohio EPA is now accepting applications for four types of recycling related grants to be awarded in 2017. Grant applications for all programs are due February 3, 2017.

To assist potential applicants, Ohio EPA will host an informational meeting on Thursday, October 26, 2016, to explain eligibility requirements and the grant application process. In addition, Ohio EPA will also hold an informational webinar on November 16, 2016.

Through its Recycling and Litter Prevention Grant program, Ohio EPA administers grants that support

statewide source reduction, recycling, market development, litter prevention and scrap tire recycling efforts. Read [more here](#). 10/17/2016

[Last Call for Fall Region 5 Environmental Compliance Conference](#)

October 21, 2016



We know of no better forum to gather knowledge about environmental compliance, permitting, enforcement, and other critical environmental issues that impact Ohio facilities than the Midwest Environmental Compliance Conference.

The event is hosted by state business and manufacturing associations, including the OMA, and supported by EPA and state agencies.

Use registration code 'OMA' to receive your discount. [Register here](#).

Environment Legislation
Prepared by: The Ohio Manufacturers' Association
Report created on November 29, 2016

- HB61** **LAKE ERIE FERTILIZER-DREDGING** (BUCHY J, HALL D) To generally prohibit the application of fertilizer or manure in Lake Erie's western basin on frozen ground or saturated soil and during certain weather conditions, and to prohibit a person, beginning July 1, 2020, from depositing dredged material in Ohio's portion of Lake Erie and its direct tributaries.
Current Status: 3/17/2015 - Referred to Committee Senate Agriculture
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-61>
- HB64** **OPERATING BUDGET** (SMITH R) To make operating appropriations for the biennium beginning July 1, 2015, and ending June 30, 2017, and to provide authorization and conditions for the operation of state programs.
Current Status: 6/30/2015 - **SIGNED BY GOVERNOR**; eff. 6/30/15; certain provisions effective 9/29/15, other dates
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-64>
- HB101** **HAB MITIGATION** (HALL D) To establish requirements governing the training of employees of publicly owned treatment works and public water systems to monitor and test for harmful algae, the development of emergency plans by certain public water systems to respond to harmful algal blooms, and the development of an early warning system for harmful algal blooms.
Current Status: 3/24/2015 - House Agriculture and Rural Development, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-101>
- HB214** **PUBLIC IMPROVEMENT-PIPING MATERIAL** (THOMPSON A) To restrict when a public authority may preference a particular type of piping material for certain public improvements.
Current Status: 5/24/2016 - House Energy and Natural Resources, (Third Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-214>
- HB349** **STATE EMISSIONS PLAN** (SMITH R, GINTER T) To require the Environmental Protection Agency to submit a state plan governing carbon dioxide emissions to the General Assembly prior to submitting it to the United States Environmental Protection Agency, and to declare an emergency.
Current Status: 12/8/2015 - House Energy and Natural Resources, (Third Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-349>
- HB377** **PRIVATE EMPLOYEES-REQUIRED DUES** (BRINKMAN T) To prohibit any requirement that employees of private employers join or pay dues to any employee organization and to establish civil and criminal penalties against employers who violate that prohibition.
Current Status: 12/1/2015 - House Commerce and Labor, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation->

[summary?id=GA131-HB-377](#)

- HB512** **MBR-WATER SYSTEM TESTING** (GINTER T) To establish requirements governing lead and copper testing for community and nontransient noncommunity water systems.
Current Status: 6/9/2016 - **SIGNED BY GOVERNOR**; eff. 9/9/16
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-512>
- HB522** **INJECTION WELLS** (PHILLIPS D) To prohibit injection of brine and other waste substances except in class I injection wells, to prohibit the conversion of oil and gas wells, to require municipal or township approval prior to the issuance of an oil or gas well permit, and to levy a fee on the injection of brine and other waste substances into a class I injection well.
Current Status: 4/26/2016 - Referred to Committee House Energy and Natural Resources
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-522>
- HB541** **STATE AGENCY-CLEAN POWER PLAN** (LANDIS A) To prohibit any state agency from implementing the federal "Clean Power Plan."
Current Status: 5/4/2016 - Referred to Committee House Energy and Natural Resources
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-541>
- HB551** **SANITARIANS-FOOD INSPECTIONS** (HILL B) To require the Director of Agriculture and the Director of Health to adopt rules governing reviews of registered sanitarians and sanitarians-in-training who conduct inspections of retail food establishments and food service operations.
Current Status: 11/17/2016 - House State Government, (Second Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-551>
- HB607** **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: 11/10/2016 - Referred to Committee House Agriculture and Rural Development
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-607>
- HCR11** **GOVERNOR-WATER QUALITY EFFORTS** (HALL D) To commend Governor John Kasich on his efforts to improve the water quality of Lake Erie and to affirm the Governor's ability to form an interstate compact with other states in furtherance of this objective.
Current Status: 1/26/2016 - Senate Agriculture, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HCR-11>
- HCR27** **WATER QUALITY IMPROVEMENT** (PATTERSON J, HILL B) To commend Ohio's agriculture community, educational institutions, and environmental advocacy organizations on their efforts to improve the water quality of Lake Erie and its tributaries and to encourage

them as well as state, county, and municipal leaders to continue to work towards continued water quality improvement.

Current Status: 9/30/2015 - Referred to Committee House Agriculture and Rural Development

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HCR-27>

- SB1** **GREAT LAKES-HARMFUL ALGAE** (GARDNER R, PETERSON B) To transfer the administration and enforcement of the Agricultural Pollution Abatement Program from the Department of Natural Resources to the Department of Agriculture.
- Current Status:** 4/2/2015 - **SIGNED BY GOVERNOR**; eff. 7/3/15
- State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-1>
- SB16** **WATERSHEDS-FERTILIZER APPLICATION** (BROWN E) To require applicators of fertilizer or manure to comply with specified requirements and to authorize the Director of Environmental Protection to study and calculate nutrient loading to Ohio watersheds from point and nonpoint sources.
- Current Status:** 2/10/2015 - Senate Agriculture, (First Hearing)
- State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-16>
- SB46** **LAKE ERIE DRILLING BAN** (SKINDELL M) To ban the taking or removal of oil or natural gas from and under the bed of Lake Erie.
- Current Status:** 5/11/2016 - Senate Energy and Natural Resources, (First Hearing)
- State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-46>
- SB47** **DEEP WELL BRINE INJECTION PROHIBITION** (SKINDELL M) To prohibit land application and deep well injection of brine, to prohibit the conversion of wells, and to eliminate the injection fee that is levied under the Oil and Gas Law.
- Current Status:** 5/11/2016 - Senate Energy and Natural Resources, (First Hearing)
- State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-47>
- SB114** **MICROCYSTIN LEVELS-PUBLIC WATER** (SKINDELL M) To establish requirements and procedures pertaining to levels of microcystin in public water systems.
- Current Status:** 4/13/2016 - Senate Health and Human Services, (First Hearing)
- State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-114>
- SB150** **MOTOR FUEL DISPOSAL** (HITE C) To create a qualified immunity for the dispensing of incompatible motor fuel.
- Current Status:** 6/24/2015 - Senate Civil Justice, (Second Hearing)
- State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-150>
- SB269** **PUBLIC WATER SYSTEM-LEAD CONTAMINATION** (SCHIAVONI J) To require a public water system to provide notice of lead contamination not later than thirty days after becoming aware that lead contamination may effect the system's drinking water.

Current Status: 4/12/2016 - Senate Energy and Natural Resources, (First Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-269>

SB293 **MBR-NATURAL RESOURCES** (BALDERSON T) To revise specified laws relating to natural resources.

Current Status: 6/14/2016 - **SIGNED BY GOVERNOR**; eff. 9/14/16

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-293>

SCR18 **U.S. EPA-RACE COMPETITION VEHICLES** (LAROSE F) To urge the Administrator of the United States Environmental Protection Agency to retract proposed regulations concerning competitive race vehicles that are used solely for competition.

Current Status: 4/12/2016 - Referred to Committee Senate Energy and Natural Resources

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SCR-18>

To: OMA Government Affairs Committee
From: Ryan Augsburger / Rob Brundrett
Re: Human Resources Update
Date: November 30, 2016

Overview

Unemployment insurance debt and solvency remain a hot topic for employers. The General Assembly moved to ensure that the state's unemployment compensation debt will be paid off prior to the next increase in FUTA penalties however questions still surround the solvency of the system. However the General Assembly continues to work on solvency legislation with the pressure mounting as time continues to run down.

General Assembly News and Legislation

Senate Bill 268 – employment discrimination reform

Senator Bill Seitz (R-Cincinnati) proposes to comprehensively overhaul Ohio's employment discrimination statutes in a manner that would benefit employers and bring Ohio's laws more in line with federal discrimination laws, but would continue to provide individuals avenues to assert state law discrimination violations.

This bill would bring Ohio's statute in line with its federal counterpart by eliminating personal liability for managers and supervisors.

The bill also seeks to reduce the timeframe to file an employment discrimination lawsuit in court to one year and apply it to all discrimination claims. Today, depending on the type of claim, individuals have between 180 days and six years to file. The OMA provided written testimony and verbal testimony at the proponent hearing.

The bill is having its third hearing and a possible committee vote today.

Senate Bill 301 – accommodation bill

Senate Bill 301 requires employers to provide certain accommodations for conditions related to an employee's pregnancy.

The association opposes creating a new class of protected employees when the class already has protections under the law. Both the Pregnancy Discrimination Act and the Americans with Disability Act provide protections in current law for conditions related to an employee's pregnancy.

A substitute bill is being offered in committee today.

House Bill 350 – autism mandate

The House of Representatives are entertaining a new health care mandate bill. The bill requires autism coverage be expanded to all large group employer health plans and other health plans that were grandfathered and grandmothers under the Affordable Care Act. The OMA provided a letter to the committee outlining concerns with the current bill. The bill was voted out of committee at the end of May.

House Bill 377 – Right to Work

Representative Brinkman (R – Mt. Lookout) introduced HB 377 which would prohibit any requirement that employees of private employers join or pay dues to any employee organization

and to establish civil and criminal penalties against employers who violate that prohibition. This is also known as the Right to Work bill. This version of Right to Work had one hearing in December. It was scheduled for a second hearing in February but was removed from the hearing calendar.

West Virginia became our latest neighbor joining Michigan and Indiana to embrace right to work by passing the bill and overriding the governor's veto. There still seems to be no momentum in passing Right to Work in Ohio at least at this time. Once election season passes there might be an opportunity for the bill to have some hearings and movement.

House Bill 394 - Unemployment Compensation Tax Changes

A long anticipated unemployment reform bill was introduced by Rep. Barbara Sears (R – Maumee) as HB 394. As every Ohio manufacturer knows, unemployment taxes are high and have been increasing.

The Ohio unemployment trust fund is insolvent and still owes the federal government \$275 million. This circumstance has for years triggered penalties that employers must pay, and the fund is in a dangerous position in light of any future recession.

House Bill 394 offers a reasonable, balanced package of unemployment insurance law reforms designed to address the current insolvency of Ohio's Unemployment Insurance Trust Fund (UI Trust Fund). The bill contains a combination of unemployment tax, benefit and integrity provisions that in the aggregate will improve solvency by tightening alignment of benefit costs and contribution revenues while building a significant fund balance, over time, that will be sufficient to avoid subjecting Ohio to increased federal taxes and penalties related to unemployment insurance.

Among the major reforms proposed in the legislation are the following:

Temporary Increase in State Unemployment Tax Base. HB 394 would increase the state unemployment tax base from \$9,000 to \$11,000 when the UI Trust Fund balance is below 50 percent of the 1.0 Average High Cost Model solvency level and continue the increase until the UI Trust Fund reaches 1.0 Average High Cost Model. The state tax base will be reduced back to \$9,000 when the UI Trust Fund equals or exceeds the 1.0 AHCM solvency level. If the balance dips below 50 percent of the solvency level in future years, the tax base will automatically return to the \$11,000 level.

Reduction of Number of Potential Weeks of Unemployment Insurance. HB 394 would change the determination of the total number of weeks of unemployment compensation potentially available to twice a year, based on Ohio's seasonally adjusted three-month total unemployment rate, before January and June. A sliding scale would set the number as low as 12 weeks when the rate is 5.5 percent or below, and up to 20 weeks if the rate is 9 percent or above. Ohio currently uses a sliding scale ranging from 20 to 26 weeks.

Temporary Freeze on the Maximum Weekly Benefit Amount. HB 394 would effectively freeze maximum weekly benefit dollar amounts at a level not to exceed 50 percent of the statewide average weekly wage for the first year that the UI Trust Fund was less than the Minimum Safe Level (MSL), and would continue those maximums until the year after the UI Trust Fund was at or above the MSL.

Dependency. To align with the majority of states, HB 394 would repeal Ohio's current dependency provision that increases the weekly benefit amount provided to claimants who have higher wages and dependents.

Drug Testing. HB 394 provides language under which the Ohio Department of Job and Family Services may (a) request information of applicants for unemployment compensation about the results of past drug tests, (b) conduct drug tests for controlled substances, and (c) disqualify individuals within the narrow limitations of federal law.

Collectively, the HB 394 reforms position Ohio in line with surrounding states and states with whom we compete for investment and jobs.

House Republicans initially indicated they would pass the bill prior to 2016. The bill's passage has been delayed several times. The House and Senate established a working group around the bill.

House Bill 390 – unemployment compensation pay off

The General Assembly used HB 390 as the vehicle to address the state's unemployment compensation debt. The General Assembly agreed to a deal with the intention to eliminate the state's recession-era unemployment compensation debt to the federal government. The move supported by the OMA and other business allies will potentially save Ohio's businesses more than \$400 million in FUTA penalties. Without this fix employers were staring at a possible \$168 per employee penalty to be paid in 2017.

The new plan will borrow from the state's unclaimed funds to pay off the debt in November 2016. Then employers will repay the state-backed loan by paying a per employee surcharge in 2017.

While the General Assembly addressed the short term debt issue, the new plan does not address the long term solvency of the system due to the structural imbalance that contributed to the heavy borrowing.

House Bill 492 – expansion of workforce voucher program

Representatives Niraj Antani (R-Miamisburg) and Bill Reineke (R-Tiffin) introduced House Bill 429, which would allow automotive technicians and motor vehicle technicians employed at retail stores to be eligible to participate in the state's Incumbent Workforce Voucher Program.

This program is administered by the Ohio Development Services Agency and provides grants to employers for incumbent workforce training.

This bill would create an expansion of the very popular program. It was designed to support targeted growth industries, including advanced manufacturing, automotive, and food processing, among others.

The General Assembly allocated \$7.5 million in fiscal years, 2016 and 2017, for the program.

There is concern by adding more and more jobs to the list of qualifying occupations then the money allocated becomes diluted and ineffective in training in demand jobs.

The bill was passed at the end of May.

Unemployment Compensation Solvency Hearings

The House and Senate announced a joint committee to convene and hold hearings regarding the state's unemployment compensation system. The committee follows the work already done by the working group established to study House Bill 394. The committee met five times between August and November. The goal was to hear all viewpoints regarding the system and to hash out an acceptable bill to stabilize Ohio's system. Senator Peterson and Representative Schuring are co-chairs the committee. The OMA testified.

A new bill is expected to be introduced this week. The bill is expected to have both compromises from the employer and employee communities for a balanced budget.

Unemployment Compensation System Surcharge

Ohio recently certified the amount owed to the federal government at \$274 million. This could be paid off in the very near future. However no exact date is set.

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.

If there is a repayment state surcharge for 2017 of 0.6% (which is what the best current intel would suggest) 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.

Remember that the 0.6% state surcharge will not show up on the FUTA tax Form 940. It will show up as an item on the quarterly state UI tax statements beginning with the first quarter of 2017 and due in April of 2017.

Cleveland Minimum Wage

A proposal to set Cleveland's minimum wage at \$15 an hour missed its chance at the November ballot. However the citizen ordinance initiative will more than likely have a second life on one of 2017's ballots. The proposal would set Cleveland's minimum wage at \$15. As drafted this would happen immediately. Businesses point out that this would make the city less competitive with the surrounding areas that are not impacted by the ordinance.

Several big city law departments issued statement suggesting cities setting their own minimum wage rates are unconstitutional. Ohio Attorney General DeWine issue an opinion concluding that the initiative or any of its type is likely illegal.

Youngstown Part Time Workers' Rights Amendment

City voters approved a charter amendment that would govern how companies schedule and pay part-time employees.

Among its provisions is establishing a commission, funded by taxpayers, to monitor enforcement. Other components include:

- An employer would have to provide its part-time employees who request it, at least two weeks' notice of their work schedules.
- An employer would not be able to require a part-time employee to be on-call, except for one mutually agreed-to shift per week. Either party could cancel that shift at least 48 hours before the shift is to start.

- Employers would provide part-time employees with the same starting hourly wage as that provided to starting full-time employees who hold jobs that require equal skill, effort and responsibility, and that are performed under similar working conditions.
- Employers would provide part-time employees with proportional access to employer-provided paid and unpaid time off, including sick leave, personal leave and vacation leave.

OSHA Drug Testing

Manufacturers and manufacturing advocates remained concerned with new drug testing provisions as well as the incentive program provisions OSHA included in the preamble of the final injury and illness rule.

NAM challenged these aspects in federal court and have filed a preliminary injunction to stop this from going into effect. Coincidentally, OSHA moved the effective date of the rule from Aug 1 to Nov 1. It is anticipated that OSHA will issue some sort of guidance memo when the effective date arrives, but we are hopeful we will win on the injunction, which will push all of this out even further. We plan to incorporate the reporting requirements into our complaint as well.

In their complaint, the National Association of Manufacturers and other industry groups allege the anti-retaliation provisions go too far in limiting post-accident drug testing. Generally, the new rule prohibits employers from using drug testing, or the threat of drug testing, as a form of retaliation against employees who report injuries or illnesses. The plaintiffs argue this provision is an overreach of the agency's authority and limiting such tests will hamper an employer's recourse to keep their workplace safe. The suit seeks a preliminary injunction prohibiting OSHA from implementing the anti-retaliation provision limiting drug testing.

Overtime Rule Injunction

A federal judge in Texas put halted the Department of Labor's (DOL's) new federal overtime rule, which would have doubled the Fair Labor Standards Act's (FLSA's) salary threshold for exemption from overtime pay.

Twenty-one states filed an emergency motion for a preliminary injunction in October to halt the rule. They claimed that the DOL exceeded its authority by raising the salary threshold too high and by providing for automatic adjustments to the threshold every three years.

The overtime rule will not take effect as planned Dec. 1, but it could still be implemented later down the road. Employers may continue to follow the existing overtime regulations until a decision is reached.



**UNEMPLOYMENT COMPENSATION REFORM JOINT COMMITTEE
SENATOR BOB PETERSON AND REPRESENTATIVE KIRK SCHURING,
CO-CHAIRMEN**

**TESTIMONY
OF
LARRY HOLMES
VICE PRESIDENT, FINANCE
FORT RECOVERY INDUSTRIES
OMA CHAIRMAN, SAFETY AND WORKERS' COMPENSATION COMMITTEE
AND
ROB BRUNDRETT
DIRECTOR, PUBLIC POLICY SERVICES
THE OHIO MANUFACTURERS' ASSOCIATION**

OCTOBER 20, 2016

Chairman Peterson, Chairman Schuring and members of the Committee, my name is Larry Holmes. I'm Vice President of Finance at Fort Recovery Industries. Fort Recovery Industries, headquartered in Fort Recovery, Ohio, manufactures superior die cast hardware and components for market-leading manufacturers worldwide. I also serve as the Chairman of The Ohio Manufacturers' Association's (OMA) Safety and Workers' Compensation Committee. I'm testifying today to give a manufacturer's perspective regarding the current lack of solvency in Ohio's unemployment compensation system.

Ohio's unemployment insurance trust fund, which is funded by employers and pays benefits to qualifying jobless workers, is insolvent. The benefits the system pays out are substantially out of balance with the tax receipts it takes in to fund it. Prior to the passage of House Bill 390 this past summer which allowed the state to use unclaimed funds to eliminate Ohio's unemployment compensation debt obligations to the federal government, Ohio was one of only three states that still owed money to the federal government due to Title XII loan borrowing. I personally thank each of the elected officials on this committee, along with Senate President Keith Faber, Ft. Recovery Industries' state senator, and Speaker Cliff Rosenberger for passing the legislation that enabled the debt to be retired prior to November of this year.

The Great Recession of 2008 was the nation's longest and deepest since the Great Depression of the 1930s. A majority of states including Ohio did not have sufficient balances in their state unemployment trust funds to pay benefits without requesting advances from the federal government to assure that unemployment compensation benefits were paid. Ohio was among the states hardest hit by the recession.

Because of the borrowing, Ohio employers regardless of their experience rate, began repaying the more than \$3 billion back to the federal government. The failure to have sufficient funds in the trust fund cost employers dearly over the past years. Because Ohio was unable to pay off the full loan amount by November 10 of the second year following borrowing, the 5.4% FUTA tax *credit* employers in Ohio received was reduced annually as a penalty mechanism to incent federal debt repayment. At Ft. Recovery

industries our per person federal FUTA tax liabilities went from \$42 per person to \$147 per person this past year. The increases alone cost us \$165,000 over the years since the penalty took effect.

As this committee continues its important work to find a balanced approach to achieve sustained system solvency; I would like to urge members to pass legislation in the near future. House Bill 390 contained a penalty provision that states that if Ohio borrows funds from the federal government to cover future unemployment compensation liabilities, all employers are subject to an immediate contribution rate increase as determined by the Director of the Ohio Department of Jobs and Family Services, in an amount up to $\frac{1}{2}$ of 1%, for the purpose of eliminating the principal on any outstanding loan balance. This provision will be removed upon passage of new fund-solvency legislation.

Finally, the best solvency plan is one that includes a focus on job creation because increased employment not only increases contributions but also reduces benefit payout. For that reason we need to be sure that Ohio's rates are in line with surrounding states and states with which Ohio competes to attract and retain new businesses. I see this firsthand being a manufacturer who operates on the Ohio-Indiana border and with operations in both states.

Again thank you for the opportunity to share these thoughts and I will be happy to try to answer any questions you have following Rob's testimony.

Chairman Schuring, Chairman Peterson and members of the Committee. Thank you for the opportunity to testify today regarding Ohio's unemployment compensation insurance system. My name is Rob Brundrett, and I am Director, Public Policy Services for The Ohio Manufacturers' Association (OMA). The OMA was created in 1910 to advocate for Ohio's manufacturers; today, it has more than 1,400 members. Its mission is to protect and grow Ohio manufacturing.

Ohio's unemployment trust fund is among the least solvent in the country. If it were not for the recent payment made by the state of Ohio enabled by House Bill 390, I would be standing before you today discussing a potential \$168 per employee penalty staring employers in the face.

The unemployment insurance (UI) burden in Ohio generally increased as a result of the Great Recession, as claims experience increased, the payroll against which experience was determined was reduced, and Ohio became subject to the FUTA offset credit reductions under federal law. As the economy slowly recovered with increased payrolls and reduced claims experience, experience rates improved and the average state UI premium was reduced. However the FUTA tax continued to increase as Ohio's Title XII loan was not repaid.

Experience rate reductions were restrained due to tax increases automatically triggered by the state's failure to meet Ohio's Minimum Safe Level (MSL) standard for UI trust fund solvency. This solvency provision results in the maximum contribution rate for Ohio employers being increased to 8.6%, although the maximum rate on the base rate schedule is just 6.7%. Therefore, businesses experienced triple the pain: 1) an increase in base rates, 2) Minimum Safe Level tax triggers, and 3) FUTA penalties.

The OMA encourages this committee to review all the information that has been offered before this committee and during the House Bill 394 process as it works to craft legislation that responsibly addresses the solvency issue.

Ohio has already taken some action to help both employers and employees. Several years ago under the leadership of Senator Peterson and Representative Scherer, Ohio enacted House Bill 37. That bill created Ohio's Shared Work program. Under the program an employer can reduce the number of hours worked by employees in lieu of layoffs, and those employees can qualify for unemployment compensation benefits from the state to offset their reduced hours. This has been a proven and successful program to help alleviate the burdens caused by mass layoffs.

One issue that has not been addressed through testimony at this committee – to our knowledge - is the option to bond any future UI debt. Bonding is not the preferred solution advocated by the OMA; however, it would be irresponsible to not acknowledge the option that other states have successfully used to address solvency issues.

While Ohio was one of many states that borrowed money from the federal government, due to Ohio's constitution, the state was unable to entertain the option of issuing bonds to pay off the debt in order for employers to avoid the burdensome increase in FUTA penalties.

Ohio tried this before. Amended Substitute House Bill 171 effective July 1, 1987 directed the Ohio Treasurer to issue bonds to repay outstanding advances made by the federal government to the Ohio unemployment compensation program, to pay interest on advances and to reimburse the general revenue fund for interest paid.

However the Ohio Supreme Court denied a mandamus action. The Court in a 4-3 decision held that the law allowing for the issuance of bonds was unconstitutional under Sections 1,2, and 3 of Article VIII of the Ohio Constitution and further that the "special fund" exception created by the Supreme Court in a prior decision also did not allow for the type of bonding directed in the bill.

During the past recession eight states (Arizona, Colorado, Idaho, Illinois, Michigan, Nevada, Pennsylvania, and Texas) turned to bonding in order to avoid onerous federal penalties. By bonding the debt, the states were able to take advantage of lower interest rates saving the states and employers money.

For example the Texas statute allows for the preemptive issuance of bonds if the state is in the position that borrowing from the federal government is likely. The statute allows the state to make the decision whether to issue bonds or borrow money from the federal government depending on various factors, most importantly the prevailing interest rates. In some instances this option also allows states time to review their solvency provisions so neither drastic cuts nor huge tax increases are rushed through in a moment of panic.

We acknowledge that passing bonding language with any solvency package would require a change in Ohio's Constitution; a ballot initiative moved by the General Assembly would have the best chance of passing in a referendum.

A second issue that has not been addressed or offered to the OMA's knowledge during the discussions on UI is exempting unemployment compensation from the state income tax, thus keeping more benefits in the pockets of qualified recipients. State taxation of unemployment benefits varies. Of the 41 states that tax wage income, six states completely exempt unemployment benefits from tax (California, New Jersey, Oregon, Montana, Pennsylvania, and Virginia). Two states (Indiana and Wisconsin) partially exempt a fixed dollar amount of benefits from state income tax but tax the rest. The remaining states fully tax unemployment benefits.

Finally the OMA would like to comment on the definition of solvency standard. A lot has been said regarding 1.0 of the Average High Cost Multiple (ACHM). This is the solvency standard used in House Bill 394 and in the model advocated by Policy Matters Ohio. The primary U.S. Department of Labor (DOL) solvency guideline recommends states maintain a trust fund balance equal to or exceeding one and one-half times the High Cost Multiple determined by taking the historically highest claims activity in the state for a year and multiplying by 1.5. However even DOL determined this standard is unrealistically high.

Instead it often refers to the aforementioned 1.0 AHCM. This is determined by reviewing claims over the most recent 20 years, or last three recessionary periods, and sets the solvency goal at the average of the three highest years of claims.

Meanwhile, Ohio has traditionally used Ohio's Minimum Safe Level (MSL) as its standard for solvency. This standard was birthed out of the recession in the early 1980s. The MSL sets the minimal solvency at an amount to cover a reasonably foreseeable recession without building up a trust fund balance that would only be needed for the historically deepest recession. There is no universally agreed upon calculation for what the optimum solvency target should be. The OMA believes the truest solvency number falls somewhere short of 1.0 AHCM.

In conclusion, unemployment insurance policy reform priorities should focus on eliminating the state's current unemployment trust fund debt, aligning benefit payout with contribution revenue, and building a balance in the unemployment trust fund sufficient to avoid triggering automatic FUTA tax increases that have significantly increased unemployment taxes for Ohio employers since the Great Recession of 2008. The first step was to pay off the remaining Title XII loan balance, which the General Assembly achieved this summer. The OMA and its members thank and appreciate the leadership of the General Assembly in accomplishing that pay off. Now it is imperative to pass a solvency bill in order to protect Ohio's employers and employees from being subjected to onerous federal penalties during any future economic recession.

Thank you and Mr. Holmes and I would be happy to answer any questions you might have.



**TESTIMONY
OF
DOUG HOLMES
PRESIDENT
UWC – STRATEGIC SERVICES ON UNEMPLOYMENT
& WORKERS' COMPENSATION**

NOVEMBER 3, 2016

Chairman Peterson, Chairman Schuring, and members of the committee, thank you for the opportunity to testify before you today. My name is Doug Holmes and I am the President of UWC - Strategic Services on Unemployment & Workers' Compensation (UWC). I testified previously before the Insurance Committee of the House of Representatives on November 18, 2015 and on January 19, 2016.

UWC was established in 1933 and is a broad-based national association exclusively devoted to the issues of national unemployment insurance and workers' compensation public policy. I am here today to testify on behalf of The Ohio Manufacturers' Association, Ohio Chamber of Commerce, National Federation of Independent Businesses – Ohio, The Ohio Council of Retail Merchants, and the Ohio Farm Bureau.

First, permit me to thank the House and Senate in developing and enacting HB 390 to address the immediate need to avoid additional dramatic increases in the Federal Unemployment Tax for 2016 and 2017. This legislation was a very important first step to eliminate the outstanding federal loan debt and to set the stage for longer term solvency measures in anticipation of the next recession.

We appreciate the leadership of Representative Sears who started the conversation on Unemployment Insurance (UI) solvency reform, the House Insurance Committee and this committee in conducting a series of hearings and giving careful attention to UI solvency.

During my tenure with the Ohio Department of Job and Family Services and the Ohio Bureau of Employment Services from 1984 to 2005 I supervised or served directly as the Secretary of the Unemployment Compensation Advisory Council. During the span of 21 years the UCAC addressed many solvency challenges after recessions and in anticipation of the next recession.

I was involved in assisting the Ohio General Assembly and business and labor leaders in crafting successful responses to - or in anticipation of - the recessions of the early 1980s, 1992 and 2002. In all cases the legislative solution incorporated a balanced approach that included additional revenue and reductions in benefit payout.

The first step always included an assessment of the current status of the fund, the tax burden, and projections of what was needed to pay benefits. It is helpful at this point to take a look at the trust fund with updated information. With the enactment of HB 390 and an additional year of reduced benefit payout, the trust fund balance has improved, yet we are also one year closer to the next recession and the differential between contribution revenue and benefit payout on an annual basis. Additional solvency measures are clearly needed in order to produce a positive balance sufficient to withstand a recession without having to once again borrow from the federal unemployment account or secure some other financing.

According to the U.S. Department of Labor Quarterly Data Summary for the 2nd quarter of 2016, Ohio collected \$1.1 billion in revenue for the year ending June 30, 2016 and paid \$967 million in unemployment compensation. Assuming that the current trust fund balance after repayment of the outstanding Title XII loan is \$500 million, a net positive annual addition to the trust fund balance of just

\$130 million per year is clearly not sufficient to generate the balance needed to reach a minimum safe level under current law of \$2.7 billion or the even higher federal 1.0 Average High Cost Model level.

To get to a solvency level of \$2.7 billion at the current rate of recovery would take approximately 16 years and the next recession is likely much sooner than that. The options to generate that much additional revenue and/or reduction in benefits in such a short period of time are frankly distasteful as a matter of policy and can significantly impact employers, unemployed workers and the Ohio economy.

HB 394 included significant tax and benefit measures in recognition of the size of the problem to be solved and borrowed from solvency measures in other states that had been successful. Each state, however, is different, with a different industrial mix and employment base.

Ohio is not the only state that is still not prepared for the next recession. As we meet today, seven years after the end of the recession of 2008-09, the country is still recovering, and unemployment insurance trust fund balances in most states are not sufficient to withstand a reasonably foreseeable recession. As of the second quarter of 2016, only 17 states had unemployment trust fund balances that met or exceeded the U.S. Department of Labor suggested solvency level, but all of them are smaller states – the largest being the state of Washington. None of the top 11 largest industrialized states meet the 1.0 AHCM solvency guideline and are unlikely to reach that level.

California	\$3.1 billion outstanding Title XII debt
New York	0.04
Pennsylvania	Outstanding Bond debt
Illinois	Outstanding Bond debt
Ohio	Recently paid off Title XII debt – outstanding state loan to be repaid in 2017
Michigan	Outstanding Bond debt
Florida	0.88
Texas	Outstanding Bond debt
Massachusetts	0.27
New Jersey	0.33
North Carolina	0.57

The only large states approaching a 1.0 AHCM are the states that took dramatic steps to reduce unemployment compensation benefit payout: Florida and North Carolina.

As a practical matter, a review over a period of decades shows that larger states have chosen not to require trust fund balances of 1.0 AHCM because the increased tax burden to reach that level would

place them at a competitive disadvantage with other industrialized states and the world market. A review of Ohio's unemployment trust fund history shows that a trust fund balance of between 0.6 and 0.7 times AHCM was sufficient to withstand the recessions in the early 1990s and 2002.

Increasing taxes at rates that are greater than competing states in order to reach 1.0 AHCM will impact the cost to Ohio employers of hiring new employees and could result in the loss of new employers who choose to locate in lower tax states.

Although steps taken in HB 390 improved the immediate unemployment trust fund balance, Ohio is still among the least solvent states in the country. Only California and the Virgin Islands have outstanding federal loan balances.

Many states with outstanding federal loan debt due to the 2008 recession took action to improve trust fund solvency in order to avoid the imposition of federal tax increases and to improve solvency in anticipation of the next recession. The responses included reductions in benefit payout, improved integrity, increased state tax bases and rates, state loans and appropriations, private bank loans and revenue bonds.

Ohio's long term imbalance is driven principally by 1) maximum weekly benefit amounts that are higher than the national average and higher than most surrounding states, 2) the automatic increase in the maximum weekly benefit amount tied to increases in the statewide average weekly wage, 3) the availability of up to 26 weeks of unemployment compensation, and 4) a relatively low tax base. Ohio's tax base at \$9,000 is below the national average and slightly below tax bases in surrounding states. There are also a number of claims eligibility and integrity measures that could improve the solvency of the fund. Measures to improve the effective collection of overpayments and prosecution of fraud are available.

Clearly, it is imperative that Ohio take steps to improve the solvency of its unemployment trust to better align benefits and contributions, and build a significant balance in the state's trust fund before the next recession. Although the state may be later in the economic cycle than other states to act, choosing not to address state trust fund solvency in advance of the next recession risks that the trust fund will become depleted requiring the state to borrow and the state or employers to pay interest on federal loans or opt to enact bond authority and pay debt service. In the second year of an outstanding federal debt the FUTA tax increases that were just eliminated through the enactment of HB 390 would once again begin to increase until federal loan balances were paid off.

A number of measures should be considered in developing the solvency package. Based on best practices from other states, below are options to consider.

1. Freeze and/or Limit Maximum Weekly Benefit Amounts

Limitations on increases in the Maximum Weekly Benefit Amount to be provided are commonly imposed as one of the possible solvency measures. Ohio enacted limitations as part of solvency measures in response to the recession of the late 1970s and early 1980s. Many states have automatic

increases in maximum weekly benefit amounts tied to the statewide average weekly wage, but 18 states have specific dollar maximums that do not automatically go up with the state average weekly wage. The automatic increase in maximum weekly benefit amounts is a significant cost driver for the UI system and contributed to Ohio's current insolvency.

Freezing maximum weekly benefit dollar amounts or limiting the maximum to a lower percentage of the statewide average weekly wage for new applications filed for weeks beginning on and after January 1, 2018 would reduce benefit payout and can be modeled to project savings. The 50% of Statewide Average Weekly Wage (SAWW) is already generally the maximum amount for claimants, except higher wage earners who have dependents. By applying a freeze or a 50% of SAWW limitation to new applications filed for weeks beginning on or after January 1, 2018, no current claimants would see a reduction in weekly benefit amount through the end of their current benefit years.

2. Repeal Higher Maximum Benefit Amounts for High Wage Claimants with Dependents

Ohio is one of only 14 states that has some form of dependency provision which increases the weekly benefit amount that is provided to claimants with dependents. Unlike most of the 14 states, Ohio law only provides for higher maximum benefit amounts for those who have average weekly wages during their base periods that are higher than the statewide average weekly wage.

The dependency provision is not required by federal law, no additional administrative funding is provided for the staff needed to determine the various classifications of dependency, and the time taken for dependency determinations makes it more difficult to determine eligibility within the expedited time frame expected for UI claims.

The repeal of this provision will save benefit payout, simplify administration, and will not impact low wage claimants.

3. Increase the State Unemployment Tax Base Effective January 1, 2018

An increase in the state unemployment tax base to \$11,000 from \$9,000 would be consistent with the trend in other states addressing solvency and produce dedicated additional revenue to improve the solvency of the unemployment trust. This increase of 22% in tax base will place Ohio's tax base higher than all surrounding states except West Virginia.

Raising the tax base even higher may raise additional revenue but would put Ohio at a disadvantage in attracting new business and keeping existing employers from moving to lower cost states.

4. Set a Reasonable Minimum Safe Level for the UI Trust Fund

Although the U.S. Department of Labor Guideline recommends a positive balance of 1.0 Average High Cost Multiple (AHCM), the tax increases and/or benefit reductions required to meet this level would place Ohio at a disadvantage in attracting new employers and retaining existing Ohio businesses and the increases in tax and/or cuts in benefits would be too great before the beginning of the next recession. A review of the history of the trust fund demonstrates that a minimum safe level set under current law

was sufficient to respond to a reasonably foreseeable recession. In the event of a much larger recession, Ohio and the other larger industrial states would all respond with significant measures as necessary to finance benefits. There is a need to build a significant balance in preparation for the next recession; however, building excessive balances through state UI tax increases takes money away from investment in job creation by employers.

At this point in the economic cycle I recommend gradual increases in tax base and reductions in benefit eligibility, with careful ongoing review of the trust fund balance and the status of the trust fund. It is unlikely that the state will be able to avoid borrowing to pay benefits as a result of a significant recession. Additional adjustments may be needed in response to the next recession.

5. Adjust the Range of the Number of Potential Weeks of Unemployment Compensation

In response to the Great Recession many states enacted changes to the number of potential weeks of unemployment compensation that would be available to individuals filing for unemployment compensation and a number of states tied the number of potential weeks of benefits to the state unemployment rate.

Michigan	20 weeks
Missouri	20 weeks
Kansas	16-26 weeks depending on total unemployment rate
Arkansas	25 weeks
Florida	12-23 depending on total unemployment rate
Georgia	14-20 depending on total unemployment rate
North Carolina	12-20 depending on total unemployment rate
South Carolina	20 weeks

Current Ohio law uses a sliding scale of the number of weeks based on the number of base period qualifying weeks from 20 to 26. Because a qualifying week is any week with respect to which wages are paid or earned the percentage of claimants with fewer potential weeks of less than 26 is very small.

A change in the determination of the total number of weeks potentially available twice a year based on the state seasonally adjusted three month total unemployment rate before January and July would be consistent with changes made in other states tied to the total unemployment rate. A sliding scale which sets the number from as low as 12 weeks when the rate is 5.5% or below up to 20 weeks if the rate is 9% or higher would follow the practice established in North Carolina. Experience with other states adopting these sliding scales has shown a significant reduction in benefit payout and a reduction in the average duration of unemployment. Such a provision would more quickly align benefit payments with contribution revenue and assist in building a positive balance in the unemployment trust fund.

A change similar to Michigan, Missouri and South Carolina would be to set a single maximum at 20 weeks. Such a provision would reduce benefit payments to some degree without impacting the majority of claimants. The average duration of unemployment compensation in Ohio as of the 2nd quarter of 2016 was 14.5 weeks.

6. Consider Exempting Unemployment Compensation from State Income Tax

Unemployment compensation is not uniformly subject to state income tax. The policy underpinning for states choosing not to subject unemployment compensation to taxation is that the payments are not being made to individuals for services performed and that to subject them to taxation would reduce their value as temporary wage replacement while individuals were unemployed and searching for work.

Although federal law requires that unemployment compensation be treated as income and states generally follow federal law in defining that which is subject to taxation as income, some states elected not to tax unemployment compensation as income under state law.

According to a Tax Foundation study, of the 41 states that tax wage income, 5 states completely exempt unemployment benefits from tax (California, New Jersey, Oregon, Pennsylvania, and Virginia). Two states partially exempt a fixed dollar amount of benefits from state income tax but tax the rest.

An amendment to provide that state unemployment compensation is not taxable as income under state law would increase the wage replacement value of the benefits without negatively impacting the state unemployment trust fund.

There would be some additional administrative expense associated with the different treatment for state income tax purposes and there could be an impact on state revenue; however, it would also reduce the impact in net benefits that otherwise may be imposed in solvency measures.

7. Improve Overpayment Collection

Current law requires that non-fraud overpayment determinations must be made within three years after the end of the benefit year in which benefits were claimed. This period is shorter than many other states, restricting agencies from determining overpayments to be collected. A period to six years would be more consistent with best practices in other states.

Current law requires that if non-fraud overpayment amounts are not repaid or recovered within three years from the date of the director's order becoming final, the agency shall initiate no further action to collect the overpaid benefits and cancel the amounts not recovered.

This three year limitation restricts overpayment collection, particularly when the agency is able to locate the individual and finds that the individual is once again claiming unemployment compensation and/or has significant resources with which to make repayment.

Removing the artificial time frame for collection in favor of discretion by ODJFS to use best practices in collection enables more effective overpayment identification and collection. It will reduce the amount of overpayments that should not have been written off and improve the solvency of the UI Trust Fund.

A review of the annual Mutualized Account report for the period ending June 30, 2015 shows that approximately \$6 million in uncollected benefit overpayments were written off. Permitting ODJFS to extend the period of collection would reduce the annual write off and improve trust fund solvency.

8. Eliminate Double Payment Of Wage Replacement When Unemployment Compensation is Claimed for the Same Week as Workers' Compensation Total Disability and/or Social Security Disability

To be eligible to be paid unemployment compensation under federal law an individual must be able to work, available to work and actively seeking work during each week that he or she claims unemployment compensation. Despite this requirement, individuals who have been determined unable to work for a week or weeks for purposes of workers' compensation or Social Security Disability have been found to claim all of these benefits for the same week, resulting in some cases in more in wage replacement than the wages to be replaced. This can result in discouraging individuals from recovering from disabilities and seeking work. It also unduly costs the UI trust fund.

A requirement that no individual may be paid unemployment compensation for a week if the individual was determined not to be able to work for that week for purposes of workers' compensation or Social Security Disability Insurance not only encourages individuals to recover and seek work but also reduces the unnecessary payment of benefits from the UI trust fund.

To the extent that individuals may be partially disabled and still able to work, consideration may be given to permit them to claim unemployment compensation reduced by workers' compensation and disability payments that may be allocated to weeks of unemployment compensation claimed.

9. Require Sustained Workforce Attachment to Qualify for Benefits

Many states require that individuals have a significant attachment to the workforce with employment in multiple quarters of the base period. Most states, including Ohio, have an alternative base period (ABP) provision that enables more individuals to qualify to establish benefit rights and/or uses the most recent quarterly wages in determining whether an individual is eligible to establish a benefit year in which the individual may be paid unemployment compensation for weeks claimed.

The ABP provisions generally were enacted in recognition that in some cases individuals had more recent work prior to becoming unemployed that was not captured in states that used the first four of the most recently completed calendar quarters. In Ohio, if the number of qualifying weeks and/or wages paid in the four quarter period is not sufficient to qualify for benefit rights the agency will review the **most recently completed four quarters** prior to the filing of the application for benefits by the individual in determining eligibility.

Ohio enacted its ABP provision in the late 1980s in response to concerns expressed by workers, particularly in the construction industry, in recognition that work in the industry may fluctuate from quarter to quarter and that capturing more recent employment in these cases would be more representative of the individual work history immediately prior to an individual becoming unemployed.

For example, a “regular” base period for an individual filing an application in November would be the four quarters ending June of 2016. If the individual did not have sufficient weeks or wages in that period the agency would examine the weeks and wages in the most recently completed four calendar quarters (the four quarters ending September 30th).

The effect of the ABP generally is to qualify more individuals for unemployment compensation and has the effect of increasing the average weekly benefit amounts of those who qualify because of more recent wage information.

A requirement that an individual have wages (earn remuneration) in at least two of the most recently completed three calendar quarters in the individual’s base period, whether it is the regular or alternative base period, would ensure that there is a recent significant attachment to the workforce as part of the determination to qualify to establish benefit rights. Such a provision would have minimal impact on whether an individual had sufficient weeks or wages in the regular or alternative base period.

Another option in many states is to require that a certain amount of wages or a percentage of base period wages be earned outside the high quarter. Pennsylvania, for example, has required that an individual have worked at least 18 weeks in his or her base period and have at least 49.5% of base period earnings in other than the high quarter. Indiana requires that an individual have wages of at least \$2,500 in the last two quarters.

10. Enhance Fraud Penalties, Prosecution, and Overpayment Collection

The current law requires that if ODJFS finds fraudulent misrepresentation by an applicant for unemployment compensation that the director shall reject or cancel the applicant’s entire weekly claim for benefits that was fraudulently claimed or the entire benefit rights if the fraud was in connection with the application; however, the authority to make such determinations is limited to four years after the end of the benefit year in which the fraudulent misrepresentation was made.

Removing the limitation within which the fraudulent determinations may be made and giving broader discretion to ODJFS would assist in the identification and prosecution of fraudulent claims.

The current law requires that if there is misrepresentation in the determination of benefit rights ODJFS shall impose two penalty weeks to be canceled for payment for each week of fraud. The penalty applies for six years after the discovery of the misrepresentation.

This specific time limitation for the imposition of the penalty weeks should be amended to remove the statutory six year limitation on the period of time for administrative or legal proceedings for the collection of fraudulently claimed benefits or interest due on such benefits. The provision requiring that such amounts not be filed as liens and be canceled as uncollectible should also be deleted.

These integrity provisions will enable a more active and sustained collection effort, including greater coordination with the IRS through the Treasury Offset Program under which uncollected benefit amounts may be collected through offset against federal income tax refunds. The provisions will also enable the agency to be more aggressive in prosecution of fraud.

11. Deny Benefit Payments for a Week when a Claimant Cannot Verify that the Claimant Continues to be Unemployed after Additional Employment

Ohio currently requires that an individual serve a waiting week in establishing benefit rights and claiming the first week during his or her benefit year. A similar waiting week is not currently required when an individual returns to work full time during his or her benefit year after claiming weeks of unemployment compensation. The reporting of additional employment or an extended period during an individual's benefit in which the claimant does not claim benefits may raise an issue for review by the agency to determine whether the individual continues to be unemployed so as to be eligible to be paid unemployment compensation for subsequent weeks.

The imposition of a waiting week to be served after a break in claiming benefits of three consecutive weeks during his benefit year before claiming subsequent weeks of unemployment compensation would assist in reducing the number of individuals who are employed full time while claiming unemployment compensation and assist in identifying fraud and identity theft earlier during the benefit year.

Another alternative to address this issue may be to require individuals who do not have a return to work date and fail to file claims for benefits for three consecutive weeks to report to the UI agency as a condition of being paid unemployment compensation for the ensuing week. This would still provide a vehicle to identify fraud and identity theft while enabling individuals who continue to be unemployed to receive compensation.

12. Clarify Labor Dispute Disqualification Provisions

Individuals who participate in labor disputes in which they withhold their labor pending the outcome of a dispute with their employer are generally disqualified from unemployment compensation as they have voluntarily made themselves unavailable for work. The labor dispute disqualification typically is applied for any weeks for which the unemployment of the individual is due to the labor dispute.

Ohio is among a small number of states in which the statute and case law provide a constructive "lock out" exception. Case law in Ohio has created the theory of constructive lock out in which courts review the negotiations between employers and unions to determine which party took steps to effectively cause the unemployment. Did the employer insist on its final proposal and notify employees that they were permanently replaced? Did the union bargain in good faith and assure that bargaining unit members were at all times willing to return to work under the terms of employment pending final agreement?

The result of "constructive" lock out case law construing the statute has been that individuals participating in labor disputes that otherwise would be disqualified have been paid benefits. Statutory language that would more specifically define "lock out" to mean the physical denial of entry by an employer to a factory, establishment, or other premises would be helpful in clarifying when the labor dispute denial would not apply. It would also be helpful to adopt in statute the case law standard that a "lock out" does not include an employer taking reasonable steps to secure and protect a factory, establishment, or other premises from sabotage.

13. Provide Clarification of the Standard to Determine Just Cause for Termination

Ohio Supreme Court case law has established the precedent that if an individual is not suitable for a position because the individual did not perform the work required, the employer made known the employer's expectations at the time of hiring, and the expectations were reasonable and did not change since hiring, the individual is at fault and may be discharged for just cause and be disqualified from benefits. This standard is not well known, resulting in inconsistent application of the law.

A clear statement of this standard is needed. Also, a clear codification of policy is needed to state that it is just cause to terminate individuals from employment when they violate the terms of an employee handbook provided to them as part of the terms or conditions of employment.

An individual who is absent from work for a period of three consecutive work days without notifying the employer should be considered to have quit work without just cause. This is consistent with general policy concerning job abandonment. Codification of all of these provisions will be helpful in providing notice to employers and employees about the standards to be applied.

14. Clarify Work Search Requirements

Claimants are required to be actively seeking work as a condition of being eligible for unemployment compensation and they must accept work offered. However, federal law requires that an individual not be disqualified for refusal to accept new work if it is not in the local area.

The administration of this provision is difficult given the different travel expectations for jobs that are available to claimants. Specific authority to ODJFS to adopt rules to define "unreasonable distance" and "locality" would be helpful.

15. Avoid Paying More in Unemployment than an Individual Earned in Wages

Federal law and current state law require that there be a reduction in the weekly benefit amount payable to a claimant for periodic Social Security payments. Federal law also, however, permits states to limit the reduction if a claimant made a contribution to social security and is receiving a retirement payment.

The current law results in some individuals receiving nearly as much or more in the combined UI wage replacement and social security retirement benefits than their average weekly wage during the base period.

A review of Ohio's current provision which provides for no offset should be reviewed as part of the examination of measures to improve UI trust fund solvency.

16. Reduce the New Employer Tax Rate to Attract New Business

Federal law permits states to provide for a 1.0% new employer rate. A number of states have included this low new employer rate, other than for employers in the construction industry, as part of efforts to attract new employers to the state. A 1.0% new employer rate was recently adopted in North Carolina.

The average unemployment tax rate for employers in the construction industry is typically higher than the general average unemployment tax rate. Excluding the construction industry avoids the potential that out of state contractors who are new to the state may underbid existing construction contractors in the state due to the reduced new employer tax rate.

Although enacting this provision would reduce revenue to some degree from new employers, over the long term this provision may increase revenue if it enables the state to attract new employers who would otherwise not be operating in Ohio.

Coordination with HB 390

With the enactment of HB 390 to provide funding to pay off the remaining federal loan it was recognized that provisions in the Act would be amended with the enactment of longer term solvency legislation.

Section 4141.25 (B) (7) (a) should be amended to provide that the imposition of increased contribution rates in the event that the trust fund has a remaining balance due in Title XII loan amounts as of the computation are to be determined only for the following calendar year and that this review and determination should be made by the Director of ODJFS each year as of the computation date at a rate sufficient to pay off the balance prior to November 10th of the following year. The current language would require that the rate increase determination continue after the computation date until the earlier of the principal on any outstanding balance is eliminated or the director determining that the total credits allowable against the FUTA tax would be fully reduced for that calendar year. The amount of the rate increase and the timing of its imposition and termination should be amended to be more specific and consistent with the normal contribution rate determination and effective date processes.

Section 4141.25 (B) (8) should also be amended to provide that the additional contributions required by divisions (B) (6) and (B) (7), if any, should be credited to individual employer accounts instead of 50% to the mutualized account and 50% to individual employer accounts. The mutualized account balance is currently very high and additional credits are not needed for the account.

The new Section 4141.251 (D) should be amended to assure that in the event that an employer makes a payment that is insufficient to pay the amount of contributions due and the amount of the surcharge to pay interest that the partial payment be first applied to the employer's individual account, followed by the mutualized account and then to pay the surcharge. This amendment will assure that a federal issue is not raised with respect to amounts received being immediately deposited in the state unemployment trust fund.

Conclusion

There has been considerable testimony raising issues with various provisions of HB 394, and modifications to the language of that bill as introduced and in substitute form should be considered in finalizing legislation to address solvency. Amendments to address provisions in HB 390 should also be considered in finalizing the legislation. The need for comprehensive UI solvency now is greater than ever

as we approach the likelihood of an economic downturn in the near term. Significant solvency measures are required with respect to benefit pay-out, contributions to be paid and integrity.

We urge this committee to finalize its deliberations and proceed with solvency legislation.



What OSHA's New Rule Means for Drug Testing

(Summer 2016) On May 12, 2016, the Occupational Safety & Health Administration (OSHA) announced a new ruling that may impact your company's post-accident drug testing requirements. The rule establishes new regulations for the electronic reporting of employee injury and illness. In the future, the results from employers' reports will be posted on a public website established by OSHA and accessible to the general public – confidential information will not be available. The rule, "Improve Tracking of Workplace Injuries and Illnesses" becomes effective November 1, 2016.

One objective of the new rule is to ensure that employees understand their right to report work-related injuries and illnesses free from discouragement, retaliation or perception of punishment. Specifically, employers must

- inform employees of their right to report work-related injuries and illnesses,
- inform employees about the company's "reasonable procedures" for prompt and accurate reporting, and
- take appropriate measures to prevent actions or the perception that there can be adverse action or discrimination against employees for making these reports.

All this toward improving the rate and accuracy of injury and illness reporting.

Employers found violating the new rule could face penalties of up to \$7,000 per violation or up to \$70,000 for willful violations. These penalties will increase substantially in November 2016, when they are expected to be as high as \$12,471 per violation and \$124,712 for willful violations.

OSHA's commentary foreshadows how it intends to enforce the rule on several issues. The regulation language does not specifically address post-accident drug testing but does address it in this commentary. The agency is concerned that broad-based post-accident drug testing may be seen as retaliatory and deter proper reporting.

OSHA's commentary goes on to say that employers' post-accident testing should only occur when "employee drug use is likely to have contributed to the incident, and for which the drug test can accurately identify impairment caused by drug use." Examples given that lack the likelihood drug abuse was the cause included allergic reactions, animal or insect bites, back or muscle strains caused by over exertion, carpal tunnel syndrome, injury caused by the lack of machine guarding or a machine or tool malfunction, and diabetic episodes.

Intersection with Other Authorities

It is important to note, the concerns of this commentary have no impact on post-accident testing mandated by federal regulations (e.g., Department of Transportation) or directed by state workers' compensation laws (e.g., premium reduction laws such as Ohio's Drug-Free Safety Program or HB 80 requirements).

The Ohio Bureau of Workers' Compensation reached out to OSHA for clarification and received confirmation that "employers complying with state or local requirements to drug test would not be in violation of the new requirements." Further, OSHA expressly stated, "If an employer has the program in place to meet the [Ohio] Drug-Free Safety Plan requirements and earn the premium reduction, the program would not be in violation of 1904.35."

Remaining Confusion

The rule's commentary raises other confounding concerns pertaining to post-accident testing which OSHA will hopefully address in forthcoming compliance directives:

- The commentary states that reasonable suspicion is not required for post-accident testing, but it is unclear what they mean when they use the phrase, "reasonable possibility" that drugs were a contributing factor to the incident or accident. Providing examples of injuries or illness with no plausible connection to drug and alcohol abuse is helpful and makes sense that drug testing not occur. But what about injuries that clearly could have been caused by an employee if he or she was under the influence of a prohibited substance?
- OSHA's comment that the post-accident test should, "... accurately identify impairment caused by drug use" is confusing. Urine testing, long considered the gold standard in scientific analysis and for legal defensibility, only detects use, not impairment. In fact, one of the challenging conundrums about all drug testing is the lack of evidence-based, scientific, standardized levels which unilaterally constitute impairment. These standards have only been established for alcohol testing.
- OSHA is concerned that an employer's broad application of post-accident testing may be perceived by some employees as punitive. Yet, if it is a universally and objectively applied method of operation against written practices at a company and, therefore, non-discretionary, couldn't the new rule open the door to a cry from employees about discrimination? What's stopping an employee who knows he or she will test positive from crying, "punitive" when asked to take a test following an incident or accident?

OSHA's anticipated directives may clarify some of these questions, however, this ruling will surely be challenged.

But as we await guidance from issued directives, given OSHA's commentary, we suggest it is prudent for employers who do not have an exemption from this issue of the rule (that is, federal or state post-accident compliance requirements) to confirm the status of their drug testing policies following an accident. Such policies should be narrowly tailored so that post-accident drug testing is tied to situations in which an employee likely caused or contributed to the accident. Furthermore, post-accident testing needs to be operationally designed and implemented in a way not considered retaliatory, punitive or discouraging for workplace illness or injury reporting. It is also prudent to consider testing methodology that affirms recent illegal drug use (such as oral fluids testing).

Working Partners® is working closely with its law firm Littler, Mendelson, P.C., the largest employment law firm in the world. We will be supporting our readership and provide resources to our clients as the dust settles and directives from OSHA are received and interpreted. If you have questions in the meantime, be sure to call our offices at 614-337-8200.

###

Human Resources

[Changes Coming for Part-Time Employees in Youngstown](#)

November 18, 2016

On November 8, 2016, voters in Youngstown approved a measure to amend their city charter and provide a “Part-Time Workers’ Bill of Rights,” which will impose significant added requirements on employers of part-time workers throughout the city.

The bill will not take effect until after election results have been certified by the Mahoning County Board of Elections.

OMA Connections Partner, Frantz Ward, has [summarized the bill’s provisions here](#). 11/14/2016

[Know the Military Leave Law, Including these Lesser Known Provisions](#)

November 11, 2016

As we honor our veterans and think about our uniformed military personnel on this Veterans’ Day, it’s a good time to refresh our understanding of the Uniformed Services Employment and Reemployment Rights Act (USERRA) that provides protections to reservists and active military personnel.

Joelle Khouzam, Partner, with OMA Connections Partner, Bricker & Eckler, posts a good review of the law, including some under-recognized provisions.

She writes: “While employers may be familiar with these basic protections and the details that surround them, many companies are unaware of the escalator clause. This provision requires that returning service members be reemployed in the job that they would have attained had they not been absent for military service, with the same seniority, status and pay, and other rights and benefits determined by seniority. ... In effect, it is generally impermissible to treat the employee as if there has been a break in service.”

And: “... USERRA’s disability protections require employers to make reasonable accommodations and to provide convalescing employees up to two years from the date of completion of service to return to their jobs or apply for reemployment.”

Read [more from Joelle here](#). 11/10/2016

[Clinton vs. Trump on Key Labor & Employment Issues](#)

November 4, 2016

What’s ahead on major employment law issues such as paid family and medical leave, federal minimum wage, and equal pay?

OMA Connections Partner, Frantz Ward, has prepared this [side-by-side comparison of the presidential candidates’ plans](#). 11/2/2016

[Bringing Manufacturing into the Classroom](#)

November 4, 2016

The [Alliance for Working Together](#) Foundation (AWT), a nonprofit organization based in Mentor, has a mission to promote the development of careers in manufacturing to benefit Ohio’s manufacturing community.

Partnering with [Edge Factor](#), AWT is [supporting 51 public and private middle and high schools](#) in Lake and Geauga counties with access to Edge Factor’s platform of cinematic, story-driven media and interactive resources called eduFACTOR.

Edge Factor creates interactive resources to raise awareness and guide students toward pathways in career and technical education and manufacturing, available through eduFACTOR memberships. 11/3/2016

[Nationwide Injunction Imposed on “Blacklisting” Reg](#)

October 28, 2016

Judge Marcia A. Crone of the Eastern District of Texas granted a nationwide injunction for the majority of the “Fair Pay and Safe Workplaces” regulation, otherwise known as “Blacklisting.”

The regulation, finalized in August, places extensive and burdensome new reporting requirements on federal contractors by requiring contractors to report any labor law “violation,” even if it is a mere allegation. The regulation would have gone into effect this week if the judge had not ruled.

The only area where the preliminary injunction was not granted is the January 1, 2017 implementation of the “Paycheck Transparency” provision.

Manufacturers are pleased that Judge Crone enjoined the implementation of this regulation that would have far-reaching negative impacts on companies with federal contracts. The National Association of Manufacturers will continue the fight in the courts and on Capitol Hill to turn back the growing wave of federal regulations that hamper growth. 10/26/2016

[Guidance about New Federal Overtime Rule](#)

October 14, 2016

OMA Connections Partner, Clark Schaefer Hackett, reminds employers that new overtime eligibility regulations are set to take effect December 1. The new regulations include the following changes:

- Employees who earn less than \$913 per week (or \$47,476 annually) will now generally be eligible for overtime pay. The old minimum threshold was \$23,660 annually.
- The salary threshold will automatically update every three years, reaching more than \$51,000 in January 2020 by Labor Department estimates.
- Bonuses and commissions can satisfy up to 10% of the new salary level.

But there's a wrinkle. The new overtime regulations were set to become effective December 1, 2016. However, on September 28, 2016, the U.S. House voted and passed a bill (H.R. 6094) that would delay the effective date to June 1, 2017. With Congress adjourned until mid-November, the U.S. Senate will have very little time to vote during its lame duck session on the bill. Even if it passes in the Senate, most expect President Obama to veto the act, thus putting the December 1, 2016 date back in to effect.

Therefore, Clark Schaefer Hackett advises that businesses should continue to prepare for the overtime rules as though there were no legal challenges, as they are far from certain to succeed. The rules as of now are still set to take effect December 1, 2016.

[Here's guidance from Clark Schaefer Hackett.](#) 10/12/2016

[Ohio Minimum Wage Increase Effective January 1, 2017](#)

October 7, 2016

Effective January 1, 2017, the Ohio minimum wage will increase by 5 cents, from \$8.10 per hour to \$8.15 per hour.

Ohio employers with annual gross receipts of more than \$299,000 (previously \$297,000) must pay the Ohio minimum wage. (Ohio employers with annual gross receipts of \$299,000 or less must pay the federal minimum wage, which is currently \$7.25 per hour.)

Ohio's minimum wage is tied to the rate of inflation as measured by the Consumer Price Index.

Get your Ohio [minimum wage poster](#) with 2017 rates here. Thank you to OMA Connections Partner, [Bricker & Eckler](#), for the information. 10/3/2016

[Hardin Co. Area Manufacturers: Focus Group Opportunity](#)

October 7, 2016

[Ohio Manufacturing Institute](#) (OMI) invites manufacturers in and around Hardin County to participate in a focus group on the skills needed for engineering technologists at all levels.

This is one of a series of focus groups OMI is conducting throughout the state.

The next one is on Wednesday, October 26, 9:00 - 11:00 a.m. at the Hardin County Chamber & Business Alliance, 225 S. Detroit Street, Kenton, OH 43326.

Findings and recommendations will be presented to state policymakers.

If you are interested in participating, please contact OMI's [Kathryn Kelley](#) at (614) 688-4116. 10/6/2016

[DOL Finalized Federal Contractor Paid Sick Leave](#)

October 7, 2016

On September 7, 2015, President Obama signed Executive Order 13706, Establishing Paid Sick Leave for Federal Contractors (EO). The executive order requires certain employers that contract with the federal government to provide their employees with up to seven days of paid sick leave annually, including for family care and absences resulting from domestic violence, sexual assault, and stalking.

The Department of Labor (DOL) has finalized the federal contractor paid leave rule and [has provided this fact sheet](#).

The rule will take effect on November 28. *9/30/2016*

[Another Billion Dollar Federal Reg](#)

October 7, 2016

Last week the Equal Employment Opportunity Commission (EEOC) [announced](#) it finalized the proposal to now include employee pay data in the annual Employer Information Form (EEO-1) submitted to the agency. Private employers and federal contractors with 100 or more employees will have to report employee wage data from employees' W-2s.

The ostensible rationale is to address discriminatory pay practices.

The EEO-1 report will be due for the first time with pay data on March 31, 2018, and the EEO-1 will be due every March 31 thereafter.

The recently released NAM Labor Study indicates this form change will cost manufacturers "\$1.9 Billion with 18 million hours of paperwork over the next ten years."

EEOC has [published a fact sheet](#). *9/30/2016*

[Manufacturing Workforce Conference is Oct. 28](#)

September 30, 2016

The Ohio Engineering Technology Educators Association (OETEA) has planned a conference – Building Ohio's Future Workforce – on Friday, October 28 from 10:00 a.m. – 3:00 p.m. at the Columbus State Community College, Workforce Development Building.

The focus of this conference is increasing the number of youth in engineering technologies, starting in high school and through higher education, to meet the needs of Ohio manufacturers.

The conference presents a model first employed by Honda, which has since been replicated at other key industries, and provides a framework that can be adapted by attendees to meet the skilled workforce demands of Ohio's advanced manufacturing.

Here is a [draft agenda](#) and a [one-pager](#) about OETEA. [You can register here](#).

[School "Report Card Chaos"](#)

September 30, 2016

The state recently released testing results for Ohio's schools and school districts. Scores dropped dramatically from prior years, causing confusion and uncertainty for parents and communities.

The Cleveland Plain Dealer has built comparative databases, and narrative, to help us all better understand what's happened and how our schools stack up.

Click [here](#) to find a comparison of your district's scores to all the scores across the state.

Click [here](#) to see a calculation of how your school has performed on state tests the last five years, compared to the average scores of other schools.

And, learn how Ohio reached "report card chaos" [here](#).

The paper advises: "Don't look for grades or for how many points more or less your school scored. Scoring has changed so much from year to year that a direct comparison is hard. These charts instead give a statistical look at how much scores deviated from the average test results statewide in each of those years." *9/26/2016*

[21 States File Lawsuit Challenging the Changes to the Overtime Exemption Rule](#)

September 23, 2016

OMA Connections Partner, Dinsmore, posted that " ... officials from 21 states filed suit in the Eastern District of Texas challenging the constitutionality of the Department of Labor's overtime exemption rule changes. These changes were announced in May of this year and will raise the minimum salary level for the executive, administrative and professional employee exemptions to \$47,476 per year, more than double the current minimum salary. This new threshold becomes effective on December 1, 2016."

And: "Although this lawsuit is an important development, employers are well-advised to continue examining the classification of members of their workforce in accordance with the changes announced by the FLSA in May. Employers should continue working on plans to ensure compliance by December 1, 2016."

[Read more from Dinsmore about the legal challenge](#). *9/22/2016*

[Ohio Incumbent Workforce Training Voucher Program Offers New Round of Funding](#)

September 23, 2016

Thousands of Ohio employees have received training to advance their careers through the Ohio Incumbent Workforce Training Voucher Program, and now that number will increase because round five is rapidly approaching.

Training in the following high-demand fields is eligible: Advanced Manufacturing, Aerospace and Aviation, Automotive Manufacturing, Automotive Technicians, BioHealth, Corporate Headquarters, Energy, Financial Services, Food Processing, Information Technology and Services, Polymers and Chemicals, Logistics, or Research and Development.

Training opportunities include, but are not limited to, operational skills training, certification processes and equipment training. Training can occur at the employer's facility, the provider's training facility or at a third-party site.

The Ohio Development Services Agency reimburses qualifying employers for up to 50% of the eligible training costs, up to \$4,000 per employee, after 1) the employer pays the full cost of the training, and 2) the employee successfully completes the training. The maximum amount an employer may qualify for in a fiscal year is \$75,000. The company must be in operation for at least 12 months in Ohio to participate.

Eligible businesses can begin the online application process on September 26, 2016 and will have three weeks to gather the necessary information to complete their application. The online applications will be accepted on a first-come, first-served basis and can be submitted beginning at 10:00 a.m. on October 14, 2016.

[Learn more here.](#) 9/22/2016

[ODE Releases School Report Cards](#)

September 16, 2016

The Department of Education (ODE) has released [2015-16 state report cards results](#) revealing how schools did in the first year of taking new standardized tests and meeting what are considered to be more rigorous standards.

"Ohio has raised expectations for students to reflect what is necessary for them to be successful in college, careers and life. This year's report cards and the grades we're seeing reflect a system in transition,"

Superintendent of Public Instruction [Paolo DeMaria](#) [said in a media statement.](#)

According to ODE, Ohio School Report Cards give your community a clear picture of the progress of your district and schools in raising achievement and preparing students for the future. The information measures district and school performance in the areas most critical to success in learning. Ohio School Report Cards data shows educators, school administrators and families where their schools are succeeding as well as areas where they need to improve. 9/15/2016

[Be Careful when Counting Mandatory Overtime as Leave Under FMLA](#)

September 16, 2016

OMA Connections Partner, Frantz Ward, posts that the issue of calculating mandatory overtime as part of an employee's FMLA leave entitlement was recently addressed by the United States Court of Appeals for the Eighth Circuit in *Hernandez v. Bridgestone Ams. Tire Operations*.

In the case, "... the Court held that employer ... had improperly interfered with the employee's FMLA rights because, in calculating the number of hours to which the employee was entitled under FMLA, the employer did not include mandatory overtime."

[Read more here.](#) 9/15/2016

[EEOC Issues Enforcement Guidance on Retaliation](#)

September 2, 2016

OMA Connections Partner, Dinsmore, [reports](#) that allegations of retaliation account for approximately 45% of all charges received by the Equal Employment Opportunity Commission (EEOC), making retaliation the most frequently alleged basis for discrimination.

On August 29, 2016, the EEOC issued its final [Enforcement Guidance on Retaliation and Related Issues](#) to replace its 1998 Compliance Manual section on retaliation.

The EEOC has issued two accompanying documents: a [question-and-answer publication](#) that summarizes the guidance, and a [Small Business Fact Sheet](#) that condenses the major points in the guidance.

Dinsmore summarizes: "Claims of retaliation show no sign of letting up, so employers are encouraged to review the new Guidance to understand the EEOC's position on retaliation." 8/31/2016

Human Resources, Health Care & Employment Law Legislation

Prepared by: The Ohio Manufacturers' Association
Report created on November 29, 2016

- HB64 OPERATING BUDGET** (SMITH R) To make operating appropriations for the biennium beginning July 1, 2015, and ending June 30, 2017, and to provide authorization and conditions for the operation of state programs.
Current Status: 6/30/2015 - **SIGNED BY GOVERNOR**; eff. 6/30/15; certain provisions effective 9/29/15, other dates
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-64>
- HB350 AUTISM TREATMENT-COVERAGE** (GROSSMAN C, TERHAR L) To mandate coverage of autism treatment.
Current Status: 5/25/2016 - **REPORTED OUT**, House Government Accountability and Oversight, (Fifth Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-350>
- HB355 EMPLOYEE DEFINITION** (RETFERFORD W) To create a generally uniform definition of employee for specified labor laws and to prohibit employee misclassification under those laws.
Current Status: 11/4/2015 - House State Government, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-355>
- HB368 HEALTH INSURANCE LIMITS-EXCLUSIONS** (SEARS B) To make changes to the health coverage benefit limits and coverage exclusions for life and health insurance guaranty associations.
Current Status: 11/4/2015 - House Insurance, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-368>
- HB429 AUTOMOTIVE TECHNICIANS-TRAINING** (ANTANI N, REINEKE W) To allow employers of automotive technicians and motor vehicle technicians to participate in the Incumbent Workforce Training Voucher Program, to revise what constitutes treatment of hazardous waste, to define and regulate autocycles for purposes of the Motor Vehicles Law, and to amend the versions of sections of the Revised Code that are scheduled to take effect January 1, 2017, to continue the provisions of this act on and after that effective date.
Current Status: 6/14/2016 - **SIGNED BY GOVERNOR**; eff. 9/14/16
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-429>
- HB467 UNEMPLOYMENT COMPENSATION FUND** (BUTLER, JR. J) To establish a loan from the Budget Stabilization Fund to the Unemployment Compensation Fund, to require the Director of Job and Family Services to recommend a program to incentivize the purchase of private unemployment insurance, and to require a study on the solvency of the Unemployment Compensation Fund.
Current Status: 4/13/2016 - Referred to Committee House Insurance
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-467>
- HB486 MINIMUM WAGE** (SMITH K, CRAIG H) To increase the state minimum wage to ten dollars

and ten cents per hour beginning January 1, 2017.

Current Status: 11/15/2016 - House Commerce and Labor, (First Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-486>

HB500 **CASE MANAGEMENT EMPLOYMENT PROGRAM** (ARNDT S) To revise the Comprehensive Case Management and Employment Program, to establish a case management pilot program, to transfer cash from the Economic Development Program Fund (Fund 5JC0) to the Case Management Pilot Program Fund (Fund 5SK0), and to make an appropriation.

Current Status: 4/26/2016 - House Finance, (First Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-500>

HB511 **FAMILY-MEDICAL LEAVE ACT** (KUHNS C, BOYD J) To establish family and medical leave insurance benefits to provide paid leave to allow an individual to address the individual's own serious health condition, to care for a family member, or to bond with a new child and to exempt those benefits from personal income tax.

Current Status: 4/26/2016 - Referred to Committee House Insurance

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-511>

HB523 **MEDICAL MARIJUANA** (HUFFMAN S) To authorize the use of marijuana for medical purposes and to establish the Medical Marijuana Control Program.

Current Status: 6/8/2016 - **SIGNED BY GOVERNOR**; eff. 9/8/16

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-523>

HB535 **EMPLOYMENT PROTECTION-NATIONAL GUARD** (PERALES R) To extend employment and reemployment protection to a person who is a member of another state's national guard or organized militia and who is employed in Ohio.

Current Status: 11/29/2016 - Referred to Committee Senate State and Local Government

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-535>

HB537 **DISCRIMINATION-SEXUAL ORIENTATION** (HAYES B) To make discrimination in housing or employment on the basis of sexual orientation an unlawful discriminatory practice; to provide specified protections for religious expression and beliefs about marriage, family, and sexuality; and to prohibit an elected official who solemnizes marriages from refusing to solemnize a marriage of two persons who have been granted a marriage license.

Current Status: 5/10/2016 - House Community and Family Advancement, (First Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-537>

SB25 **MINIMUM WAGE** (YUKO K) To raise the minimum wage; to raise the salary threshold above which certain employees are exempt from the overtime law; and to create a uniform standard to determine whether an individual performing services for an employer is an employee of that employer.

Current Status: 6/24/2015 - Senate Transportation, Commerce and Labor, (First Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-25>

- SB137** **OHIO HEALTH CARE PLAN** (SKINDELL M, TAVARES C) To establish and operate the Ohio Health Care Plan to provide universal health care coverage to all Ohio residents.
Current Status: 4/14/2015 - Referred to Committee Senate Insurance
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-137>
- SB180** **ANTI DISCRIMINATION-EMPLOYMENT** (UECKER J) To prohibit an employer from discharging or otherwise discriminating against a person who exercises a constitutional or statutory right within the person's private real property or motor vehicle.
Current Status: 10/7/2015 - Senate Civil Justice, (Second Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-180>
- SB245** **MALNUTRITION PREVENTION COMMISSION** (MANNING G) To create the Malnutrition Prevention Commission to study malnutrition among older adults.
Current Status: 11/16/2016 - House Health and Aging, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-245>
- SB268** **STATUTE OF LIMITATIONS-EMPLOYER** (SEITZ B) To modify Ohio civil rights laws related to employment and the statute of limitations for other specified claims against an employer.
Current Status: 11/30/2016 - Senate Civil Justice, (Third Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-268>
- SB301** **PREGNANCY REASONABLE ACCOMMODATION ACT** (JONES S, CAFARO C) To enact the "Pregnancy Reasonable Accommodation Act" to generally require employers to make reasonable accommodations for employees who are pregnant or breastfeeding.
Current Status: 11/30/2016 - Senate Civil Justice, (Fourth Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-301>
- SB307** **FAMILY-MEDICAL LEAVE ACT** (CAFARO C) To establish family and medical leave insurance benefits to provide paid leave to allow an individual to address the individual's own serious health condition, to care for a family member, or to bond with a new child and to exempt those benefits from personal income tax.
Current Status: 5/11/2016 - Senate Transportation, Commerce and Labor, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-307>
- SB318** **OHIO CIVIL RIGHTS LAW** (SKINDELL M, TAVARES C) To prohibit discrimination on the basis of sexual orientation or gender identity or expression.
Current Status: 4/27/2016 - Referred to Committee Senate Civil Justice
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-318>

TO: OMA Government Affairs Committee
FROM: Ryan Augsburger / Rob Brundrett
RE: Safety and Workers' Compensation Report
DATE: November 30, 2016

Overview

The BWC continues a smooth transition from former Administrator Buehrer to current Administrator Morrison. The Bureau is not planning any major legislative actions in lame duck. However they continue review and propose changes to the state fund group rating programs. The OMA remains involved in ensuring that any changes made to the system are actuarially sound.

Legislation and Rules

Senate Bill 5 – mental / mental

State Senators Tom Patton (R-Strongsville) and Edna Brown (D-Toledo) introduced Senate Bill 5. The bill would allow emergency first responders to receive workers' compensation benefits for PTSD even if they do not have an accompanying physical work injury. This would go against how Ohio's workers' comp system has historically operated.

"Mental/mental," as the provision is called, would go against the workers' compensation principle that benefits must be tied to a compensable physical illness or injury. The measure would increase complexity and cost for public employers and allow certain employees to receive benefits not available to others. It also would be a terrible precedent facing private sector employers.

The Senate heard powerful testimony from former Administrator Buehrer but nonetheless passed the bill out of committee with only one no vote (Uecker). The bill was referred and passed unanimously from the Senate Finance Committee. However the bill has been re-referred to Senate Finance for further consideration. There have been two contentious interested party meetings with both sides entrenched with their positions.

Senator Patton remains focused on passing the bill. There is concern with this bill being used as a bargaining chip in lame duck session.

Senate Bill 27 / House Bill 292 – firefighter cancer

Senator Tom Patton (R-Strongsville) and Representative Christina Hagan introduced companion bills that would assume a firefighter with certain types of defined cancers contracted those cancers within their working conditions.

Senate Bill 27 passed unanimously through the Senate Insurance Committee and off the Senate floor 32-1. The bill provides 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.

The House made several major changes in the past month including, increasing from three to six years the required amount of hazardous duty a firefighter has to work in order for the presumption created by the bill to apply and specifying that the presumption

created by the bill is rebuttable if the firefighter is 75 years old or older or in other specified situations.

The House is poised to pass the bill either this week or next week.

Senate Bill 149 – Loss of use

To make an individual who has lost the use of a body part due to a brain injury or spinal cord injury eligible for partial disability and permanent total disability compensation under the Workers' Compensation Law. The minority sponsored bill has not had a hearing and is not expected to move.

House Bill 205 – Private Insurance

Rep. Mike Henne introduced HB 205 which would allow employers with more than 1,000 employees, as well as workers' compensation groups managed by third party administrators to purchase workers' compensation coverage in the private market.

In the fall Rep. Henne introduced a sub bill. The sub bill deletes all the language of the original bill and replaces it with a provision that would totally eliminate the employee threshold for self-insurance. Currently the BWC can already waive this provision for companies with strong financials due to an OMA budget amendment several years ago. The provision is unneeded. This was amended into House Bill 207.

House Bill 206 – Industrial Commission Statistics

Rep. Henne introduced HB 206 which requires the Industrial Commission to compile and maintain statistics on workers' compensation hearing decisions and hearing officers. The IC is adamant this is problematic and is searching for allies to fight Rep. Henne on the bill.

House Bill 207 – Subrogation

Reps. Henne and Robert McColley introduced HB 207. The bill enables claims costs to be charged to the Bureau of Workers' Compensation (BWC) surplus fund rather than a state fund employer's experience when a motor vehicle accident-related workers' compensation claim is likely to be subrogated by a third party.

House Bill 207 cleared both the Senate floor and House concurrence. The OMA was a supporter of the legislation. OMA Safety and Workers' Compensation Chairman Larry Holmes, Sr. V.P., Finance, Fort Recovery Industries, Inc., provided proponent testimony on behalf of the OMA last fall during committee hearings.

The Senate added an amendment which would assign a true experience rating to companies who leave a self-insured PEO or self-insured status and are returning to the state fund. A second amendment was added that eliminated the 500 person threshold for self-insured status.

House Bill 355 – employee misclassification

Rep. Wes Retherford (R – Hamilton) has introduced a bill, HB 355, that would turn the Bureau of Workers' Compensation (BWC) into an agency that would police businesses in their classifications of employees and independent contractors.

Under the bill, the BWC would be authorized to enter and inspect all of the offices and job sites maintained by an employer who is the subject of a complaint that an employer

is misclassifying an employee. The BWC would be authorized to issue stop work orders and fines.

For many many years, organized labor has attempted to create a de facto Department of Labor at the state level. That's what this one is after. It is a really bad idea.

The OMA participated in an interested party meeting and reiterated its position that the bill is a bad idea and should be shelved.

House Bill 390 – Unemployment Compensation Payment

The General Assembly used HB 390 as the vehicle to address the state's unemployment compensation debt. The General Assembly agreed to a deal with the intention to eliminate the state's recession-era unemployment compensation debt to the federal government. The move supported by the OMA and other business allies will potentially save Ohio's businesses more than \$400 million in FUTA penalties. Without this fix employers were staring at a possible \$168 per employee penalty to be paid in 2017.

The new plan will borrow from the state's unclaimed funds to pay off the debt in November 2016. Then employers will repay the state-backed loan by paying a per employee surcharge in 2017.

While the General Assembly addressed the short term debt issue, the new plan does not address the long term solvency of the system due to the structural imbalance that contributed to the heavy borrowing.

House Bill 394 - Unemployment Compensation Tax Changes

Finally a long anticipated unemployment reform bill was introduced by Rep. Barbara Sears (R – Maumee) as HB 394. As every Ohio manufacturer knows, unemployment taxes are high and have been increasing.

The Ohio unemployment trust fund is insolvent and still owes the federal government \$775 million. This circumstance has for years triggered penalties that employers must pay, and the fund is in a dangerous position in light of any future recession.

House Bill 394 offers a reasonable, balanced package of unemployment insurance law reforms designed to address the current insolvency of Ohio's Unemployment Insurance Trust Fund (UI Trust Fund). The bill contains a combination of unemployment tax, benefit and integrity provisions that in the aggregate will improve solvency by tightening alignment of benefit costs and contribution revenues while building a significant fund balance, over time, that will be sufficient to avoid subjecting Ohio to increased federal taxes and penalties related to unemployment insurance.

Among the major reforms proposed in the legislation are the following:

Temporary Increase in State Unemployment Tax Base. HB 394 would increase the state unemployment tax base from \$9,000 to \$11,000 when the UI Trust Fund balance is below 50 percent of the 1.0 Average High Cost Model solvency level and continue the increase until the UI Trust Fund reaches 1.0 Average High Cost Model. The state tax base will be reduced back to \$9,000 when the UI Trust Fund equals or exceeds the 1.0 AHCM solvency level. If the balance dips below 50 percent of the solvency level in future years, the tax base will automatically return to the \$11,000 level.

Reduction of Number of Potential Weeks of Unemployment Insurance. HB 394 would change the determination of the total number of weeks of unemployment compensation potentially available to twice a year, based on Ohio's seasonally adjusted three-month total unemployment rate, before January and June. A sliding scale would set the number as low as 12 weeks when the rate is 5.5 percent or below, and up to 20 weeks if the rate is 9 percent or above. Ohio currently uses a sliding scale ranging from 20 to 26 weeks.

Temporary Freeze on the Maximum Weekly Benefit Amount. HB 394 would effectively freeze maximum weekly benefit dollar amounts at a level not to exceed 50 percent of the statewide average weekly wage for the first year that the UI Trust Fund was less than the Minimum Safe Level (MSL), and would continue those maximums until the year after the UI Trust Fund was at or above the MSL.

Dependency. To align with the majority of states, HB 394 would repeal Ohio's current dependency provision that increases the weekly benefit amount provided to claimants who have higher wages and dependents.

Drug Testing. HB 394 provides language under which the Ohio Department of Job and Family Services may (a) request information of applicants for unemployment compensation about the results of past drug tests, (b) conduct drug tests for controlled substances, and (c) disqualify individuals within the narrow limitations of federal law.

Collectively, the HB 394 reforms position Ohio in line with surrounding states and states with whom we compete for investment and jobs.

House Bill 523

On May 10, 2016, the Ohio House of Representatives voted 71 to 26 to legalize medical marijuana in Ohio. This vote follows a series of public meetings held by the House's Medical Marijuana Task Force earlier this year, the bill's introduction on April 14, 2016, and vigorous committee debate and amendments.

The Senate passed the bill in late May 18-15, needing bipartisan support to push the bill over the finish line. The measure seeks to address Ohioan's apparent support for the concept of medical marijuana, but builds in regulatory controls that are missing citizen-initiated measures that hope to gain enough signatures be on the November ballot.

While not the best scenario for manufacturers, the legislations is a much more responsible step with the opportunity to improve the law compared to the irresponsible actions of getting marijuana enshrined in the Ohio constitution. Passage of the bill which is much more business friendly then the ballot options convinced the greatest ballot threat (MPP) to suspend their campaign.

Medical marijuana is not expected to be officially available in Ohio for at least another year.

BWC Agency Notes

New Chief Legal Counsel

Ohio Bureau of Workers' Compensation announced the appointment of Kevin Cogan as the bureau's Chief Legal Counsel.

Cogan will be a member of BWC's executive staff, responsible for coordinating all legal activities for BWC, providing legal advice and assistance, and acting as chief ethics officer for the agency.

Cogan has been an attorney with the Jones Day law firm in Columbus and has served as special counsel to Ohio Attorney General Mike DeWine, a role he also served under former Attorney General Jim Petro. His litigation experience includes corporate control contests and shareholder disputes, securities fraud, insurance coverage disputes, environmental litigation, real estate controversies and disputes relating to asset and stock purchase agreements.

Governor John Kasich appointed Cogan to the Ohio Lake Erie Commission in 2013. He is a trustee and past president of the Board of Trustees of the Franklin Park Conservatory and Botanical Gardens. He was named an Ohio Super Lawyer, a 2016 Lawyer of the Year by Best Lawyers in America and one of America's leading lawyers for business by Chambers USA.

BWC Names New Legislative Director

Ohio Bureau of Workers' Compensation (BWC) Administrator & CEO Sarah Morrison announced that Elle Decot has joined the agency as its legislative director.

Decot will be charged with representing BWC at the Statehouse, working with lawmakers on legislation effecting Ohio's workers' compensation system and responding to constituent and customer questions and concerns.

She joined BWC on June 13, filling a role vacated by Kelly Carey, who left the bureau in April for a job in the private sector.

BWC Reports Decline in Workplace Injuries

Dr. Abe Al-Tarawneh, Superintendent of the Bureau of Workers' Compensation (BWC) Division of Safety and Hygiene, reported a 16.7 percent decrease in the rate of private sector injuries in the BWC system between calendar years 2010 and 2014.

The Bureau of Labor Statistics Survey of Occupational Injuries and Illnesses shows the rest of the nation experienced an 8.6 percent drop over the same time period. During that period, total injuries in Ohio's BWC system dropped from 105,568 to 95,802, a decrease made more significant considering a 7.5 percent growth in employment during the same time period.

Dr. Al-Tarawneh's report highlights the effectiveness of Ohio's occupational health and safety programs and services in preventing injuries. The Division of Safety and Hygiene increased the number of employers utilizing one or more of its services by 70 percent between 2009 and 2015.

BWC has Scheduled Major System Upgrade

To modernize operations and improve customer service, the Bureau of Worker' Compensation (BWC) replaced its core claims and policy management systems this November. The new system is up and running with relatively few setbacks.

Medical Marijuana and its IMPACT ON BWC

What does OHIO'S medical marijuana LAW SAY?

House Bill 523, effective Sept. 8, 2016, legalizes medical marijuana in Ohio for certain medical conditions, including pain that is either chronic and severe or intractable, PTSD, and traumatic brain injuries. At this time, the only legal forms of medical marijuana will be edibles, oils, patches, plant material and tinctures. Vaporization is permitted. It cannot be smoked or combusted. Home growth is prohibited.

The Ohio Department of Commerce is tasked with regulating the licensure of medical marijuana cultivators and processors, as well as the laboratories that test medical marijuana. The state of Ohio Board of Pharmacy will license retail dispensaries and register patients and their caregivers. Additionally, the State Medical Board of Ohio will regulate physicians' requirements and procedures for applying for and maintaining certificates to recommend medical marijuana and maintain the list of conditions for which medical marijuana can be recommended.

What is the IMPACT of the new law ON BWC?

The impact of the new law on BWC and its programs is limited. It does not adversely affect the Drug-free Safety Program, will not require BWC to pay for patient access to marijuana, and expressly states that an employee under the influence of marijuana is not covered by workers' compensation.

Specifically:

- 1 Nothing in the law requires an employer to accommodate an employee's use of medical marijuana;
- 2 The law does NOT prohibit an employer from refusing to hire, discharging, or taking an adverse employment action because of a person's use of medical marijuana;
- 3 The law specifies that marijuana is covered under "rebuttable presumption." In general, this means that an employee whose injury was the result of being intoxicated or under the influence of marijuana is not eligible for workers' compensation. This is the case regardless of whether the marijuana use is recommended by a physician;
- 4 While the law does not specifically address reimbursement for medical marijuana recommended for injured workers, Ohio law already has rules and statutes in place that limit what medications are reimbursable by BWC.
 - Administrative code provides that drugs covered by BWC are limited to those that are approved by the United States Food and Drug Administration. Marijuana has not been approved by the FDA and remains a Schedule I illegal drug under federal law.
 - BWC-funded prescriptions must be dispensed by a registered pharmacist from an enrolled provider. Medical marijuana will be dispensed from retail marijuana dispensaries, not from enrolled pharmacies.
 - BWC only reimburses drugs that are on its pharmaceutical formulary, which is a complete list of medications approved for reimbursement by BWC. Drugs not on the list are not eligible for reimbursement, and under BWC's current rules, it cannot be included in the formulary, nor is it otherwise eligible for reimbursement.

What can EMPLOYERS DO?

The best way employers can protect their workers and themselves is to establish a **drug-free workplace**, or, if they already have one, to review and update it if necessary. This is important because certain sections of the new law reference the use of medical marijuana in violation of an employer's drug-free workplace policy, zero-tolerance policy or other formal program or policy regulating the use of medical marijuana. For what this means to your specific workplace, consult your human resources or legal department.

Oct. 3, 2016

Morrison appoints Kevin Cogan BWC's chief legal counsel

COLUMBUS – Ohio Bureau of Workers' Compensation (BWC) Administrator/CEO Sarah Morrison announced today the appointment of Kevin Cogan as the bureau's Chief Legal Counsel.

Cogan will be a member of BWC's executive staff, responsible for coordinating all legal activities for BWC, providing legal advice and assistance, and acting as chief ethics officer for the agency. He succeeds Morrison, who served in that role from 2012 until her appointment in April to Administrator/CEO.

"Kevin is an experienced trial lawyer," said Morrison. "He has represented clients in complex civil litigation in state, federal, and bankruptcy courts throughout the United States. We are pleased to have him at BWC to help manage the challenges of complex workers' compensation law."

Cogan has been an attorney with the Jones Day law firm in Columbus and has served as special counsel to Ohio Attorney General Mike DeWine, a role he also served under former Attorney General Jim Petro. His litigation experience includes corporate control contests and shareholder disputes, securities fraud, insurance coverage disputes, environmental litigation, real estate controversies and disputes relating to asset and stock purchase agreements.

Governor John Kasich appointed Cogan to the Ohio Lake Erie Commission in 2013. He is a trustee and past president of the Board of Trustees of the Franklin Park Conservatory and Botanical Gardens. He was named an Ohio Super Lawyer, a 2016 Lawyer of the Year by Best Lawyers in America and one of America's leading lawyers for business by Chambers USA.

Cogan began his duties at BWC today.

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 **@OhioBWC**

For immediate release: June 28, 2016

Decot appointed BWC legislative director

COLUMBUS - Ohio Bureau of Workers' Compensation (BWC) Administrator/CEO Sarah Morrison today announced Elle Decot has joined the agency as its legislative director.

Decot, who joined the administration of Gov. John Kasich in 2011, will be charged with representing BWC at the Statehouse, working with lawmakers on legislation effecting Ohio's workers' compensation system and responding to constituent/customer questions and concerns.

"We are thrilled to have Elle join our executive team and serve in this important role," said Morrison. "She brings the kind of skills and experience we need to be our point person at the Statehouse, working with lawmakers and the Governor's office to craft legislation that best serves injured workers and public and private employers across this state."

Born and raised in nearby Marysville, Ohio, Decot (pronounced DECK-O) attended The Ohio State University, where she majored in political science with a focus in Arabic. After graduation, Decot joined the Kasich administration as a constituent aide and rose through the years to the role of legislative liaison in March 2014. In that role, she collaborated with policy heads on high-profile pieces of legislation, such as The Youngstown Educational Plan, the privatization of several state prisons and the overhaul of Ohio's concealed carry firearm laws.

Decot worked with the General Assembly to ensure passage of the Governor's policy initiatives, including the State Budget and Mid-Biennium Review. She cultivated ongoing relationships with elected officials, trade associations, interest groups and key stakeholders as a representative of the Governor.

Decot also recently served as deputy political director of New Day for America. She joined BWC on June 13, filling a role vacated by Kelly Carey, who left the bureau in April for a job in the private sector.

A photo of Decot can be found [here](#).

Follow BWC on [Twitter](#).

###

Safety & Workers' Compensation

[BWC Recognizes International Fraud Awareness Week](#)

November 18, 2016

The Ohio Bureau of Workers' Compensation (BWC) and its Special Investigations Department (SID) [are celebrating International Fraud Awareness Week](#), November 13-19.

Created in 1993, SID is staffed with 118 agents, supervisors and support personnel. The department works out of 11 offices across the state and investigates hundreds of fraud cases a year, from workers who fake injuries to physicians running pill mills. Agents are armed with smart phones and sophisticated investigatory devices they don't talk about publicly.

In 23 years, SID has identified more than \$1.7 billion in savings.

To report workers' comp. fraud in Ohio, [click here](#) or call the fraud hotline at 1-800-644-6292. 11/17/2016

[BWC Amends Rule about Medical Provider Authority at OMA Request](#)

November 18, 2016

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. 11/17/2016

[BWC Upgrading Systems this Weekend](#)

November 11, 2016

By the time you are reading this, the Ohio Bureau of Workers' Compensation (BWC) will have already begun a systems upgrade that will impact services to its customers through the Veterans Day weekend. The upgrade will modernize operations and improve customer service with the replacement of BWC's core claims and policy management systems.

Beginning yesterday afternoon, Nov. 10, many BWC systems, including web and call center services, were unavailable. It is anticipated normal operations will resume on Tuesday, Nov. 15. 11/9/2016

[New OSHA Reg. and Post-Accident Drug Testing](#)

November 11, 2016

The Occupational Safety & Health Administration (OSHA) recently released information to explain how its May 2016 ruling, the New Electronic Accident Reporting Rule (29 CFR 1904.35), impacts post-accident drug testing.

As a result, OMA Connections Partner, Working Partners® has posted guidance on how to consider your post-accident drug testing policy and practices. [Read it here](#). 11/10/2016

[Workers' Comp. Group Experience Rating Deadline is Nov. 14](#)

November 4, 2016

OMA's workers' compensation Group Experience Rating plan deadline for enrollment is Monday, November 14. Be sure to lock in your workers' compensation premium savings!

For members opting for OMA's Group Retrospective Rating program, your deadline for enrollment is January 24, 2017.

All members are invited to contact OMA's [Jeremy SESCO](#) or [Brian Jackson](#) for advice about the best combination of plans and services for your company. 11/2/2016

[BWC's Morrison Appoints New Field Operations Chief](#)

October 28, 2016

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."

A photo of Dexter [can be found here](#). 10/25/2016

[Major BWC Upgrades Scheduled November 10-14](#)

October 21, 2016

To modernize operations and improve customer service, the Bureau of Workers' Compensation (BWC) will replace its core claims and policy management systems next month. The transition will occur over Veterans Day weekend, Nov. 10-14.

[Here is a timeline of key dates](#).

BWC anticipates resuming normal operations on Tuesday, Nov. 15.

BWC encourages employers to complete any time-sensitive transactions in advance of the transition. For information throughout the transition, follow BWC on Twitter [@OhioBWC](#). 10/14/2016

[Ohio Achieves 11th Lowest Workers' Compensation Rates among States](#)

October 21, 2016

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. 10/20/2016

[OSHA Publishes New Safety Program Guidelines](#)

October 21, 2016

OSHA has recently updated its [Guidelines for Safety and Health Programs](#), first released 30 years ago, to "reflect changes in the economy, workplaces, and evolving safety and health issues."

The new [recommended practices](#) present a "step-by-step approach to implementing a safety and health program, built around seven core elements that make up a successful program." 10/19/2016

[OSHA Delays Anti-Retaliation Provisions Again](#)

October 21, 2016

OSHA has again delayed enforcement of the anti-retaliation provisions in its [injury and illness tracking rule](#) until Dec. 1, 2016.

The U.S. District Court for the Northern District of Texas requested the delay to allow additional time to consider a motion challenging the new provisions. The anti-retaliation provisions were originally scheduled to begin Aug. 10, 2016, but were previously delayed until Nov. 10 to allow time for outreach to the regulated community.

Per OSHA: "Under the rule, employers are required to inform workers of their right to report work-related injuries and illnesses without fear of retaliation; implement procedures for reporting injuries and illnesses that are reasonable and do not deter workers from reporting; and incorporate the existing statutory prohibition on retaliating against workers for reporting injuries and illnesses." 10/19/2016

[A Serious Top 10](#)

October 21, 2016

Every October, OSHA releases a preliminary list of the [10 most frequently cited safety and health violations](#) for the fiscal year, compiled from nearly 32,000 inspections of workplaces by federal OSHA staff.

The list rarely changes; included this year are:

1. Fall protection
2. Hazard communication
3. Scaffolds
4. Respiratory protection
5. Lockout/tagout
6. Powered industrial trucks
7. Ladders
8. Machine guarding
9. Electrical wiring
10. Electrical, general requirements

[OSHA](#) and the [BWC Division of Safety & Hygiene](#) have plentiful, excellent safety resources. Also, see the OMA [2017 schedule of safety webinars](#) and visit the [OMA video Library](#) (login to My OMA to access) for lots of recorded safety content. 10/19/2016

[BWC Safety Grants Going to the Dogs](#)

October 14, 2016



Ohio Bureau of Workers' Compensation (BWC) Administrator/CEO Sarah Morrison visited Rosehill Veterinary Hospital, Reynoldsburg, to recognize the company for its commitment to safety of its workers and the family pet. The hospital received a \$40,000 BWC Safety

Intervention Grant to protect its employees from injuries associated with x-raying animals; it invested in a digital radiography and x-ray table.

Of course you don't x-ray pets in your manufacturing facility but consider how you could improve safety by investing in equipment that reduces your risks and exposures.

BWC's Safety Intervention Grant Program assists Ohio employers in purchasing equipment to substantially reduce or eliminate injuries and illnesses associated with a particular task or operation. Learn more [about the program here](#) and view stories of previous grant recipients at [BWC's YouTube channel](#). 10/13/2016

[New Workers' Comp. Opioid Prescribing Rule Effective](#)

October 7, 2016

The Bureau of Workers' Compensation's (BWC) new [rule governing the prescribing of opioids](#) to treat Ohioans injured on the job took effect last week.

The changes target the prevention of opioid dependence by encouraging appropriate prescribing by physicians certified by the BWC.

Reimbursement for opioid prescriptions will now be limited to claims in which current best medical practices are followed. Those practices include the development of an individualized treatment plan, risk assessment and close monitoring of the progress and improvement in function of the worker.

BWC will also now provide treatment for opioid dependence that arises from the use of opioid medications covered by BWC. Finally, a new peer-review process addresses a prescriber's failure to comply with best practices. Corrective action steps range from warning letters to decertifying physicians from BWC's network of approved providers.

Through BWC pharmacy improvements, total opioid doses have decreased by 18.9 million, or 44 percent, since 2010. 9/30/2016

[BWC Administrator Appoints Chief Legal Counsel](#)

October 7, 2016

Ohio Bureau of Workers' Compensation (BWC) Administrator/CEO Sarah Morrison announced the appointment of Kevin Cogan as the bureau's Chief Legal Counsel.

Cogan will be a member of BWC's executive staff, responsible for coordinating all legal activities for BWC, providing legal advice and assistance, and acting as chief ethics officer for the agency. He succeeds Morrison, who served in that role from 2012 until her appointment in April to Administrator/CEO.

[Read more](#) from the BWC. 10/3/2016

[OMA Safety & Workers' Comp Meeting: Pot, Safety, and a Good Lunch](#)

October 7, 2016

Please consider attending or calling in to the last scheduled OMA Safety & Workers' Compensation Committee meeting of 2016. We'll meet on Wednesday, October 12 from 10:00 a.m. until 1:00 p.m. at the OMA offices and there will be a nice networking lunch.

We will cover the latest updates on legislation and regulatory actions impacting Ohio's manufacturers, including:

- An expert panel will discuss the legalization of medical marijuana and effects on employers' operations
- OSHA update: Increased OSHA penalties and OSHA reporting rule changes presented by Dianne Grote Adams, president of OMA Connections Partner, Safex

 Register Now

[New Safety Fact Sheets from OSHA](#)

October 7, 2016

OSHA has released two fact sheets that stress the importance of tracking metrics and investigating potential hazards to prevent workplace injuries, illnesses and fatalities.

The [Importance of Root Cause Analysis During Incident Investigation](#) urges employers to investigate incidents that nearly led to a worker injury and find ways to prevent similar incidents.

The [Use of Metrics in Process Safety Management Facilities](#) provides employers with a list metrics, or measurements, tracked by facilities in OSHA's Voluntary Protection Programs that handle highly hazardous chemicals. 10/3/2016

[BWC Reports Decline in Workplace Injuries, Increase in Safety Service Utilization](#)

September 30, 2016

Dr. Abe Al-Tarawneh, Superintendent of the Bureau of Workers' Compensation (BWC) Division of Safety and Hygiene, [reported a 16.7 percent decrease](#) in the rate of private sector injuries in the BWC system between calendar years 2010 and 2014.

The Bureau of Labor Statistics Survey of Occupational Injuries and Illnesses shows the rest of the nation experienced an 8.6 percent drop over the same time period. During that period, total injuries in Ohio's BWC system dropped from 105,568 to 95,802, a decrease made more significant considering a 7.5 percent growth in employment during the same time period.

Dr. Al-Tarawneh's report highlights the effectiveness of Ohio's occupational health and safety programs and services in preventing injuries. The Division of Safety and Hygiene increased the number of employers utilizing one or more of its services by 70 percent between 2009 and 2015. 9/23/2016

[No Valid Injury Needed for Workers' Compensation Retaliation Claim](#)

September 30, 2016

OMA Connections Partner, Frantz Ward, posted that the Ohio Supreme Court recently held that employees need not prove they were actually injured on the job to prevail in a retaliation claim.

Franz Ward writes: "Employers should already be aware that, under Ohio law, they may not discharge or take punitive action against an employee for filing a workers' compensation claim after sustaining an injury at work. The Ohio Supreme Court recently issued a decision that will deter employers from disciplining even employees who file bogus workers' compensation claims. In *Onderko v. Sierra Lobo, Inc.*, ... the Court held that a Plaintiff in a retaliatory discharge claim is not required to prove that he or she was injured on the job, but only that he or she was discharged for filing a workers' compensation claim."

And advises that: "*Onderko* is one of a series of cases that have broadened the strike zone for retaliation plaintiffs. The case instructs employers to use caution when disciplining or discharging an employee who has filed an unsuccessful workers' compensation claim, even where the claim appears to be bogus. To take such adverse action, the employer must have a legitimate non-retaliatory reason unrelated to the

employee's exercise of his or her rights under the workers' compensation statutes."

[Read more about the case from Frantz Ward. 9/23/2016](#)

[BWC has Scheduled Major System Upgrade](#)

September 16, 2016

To modernize operations and improve customer service, the Bureau of Worker Compensation (BWC) will replace its core claims and policy management systems this November. The transition to this new system will occur over Veterans' Day weekend, Nov. 10 – 14. Beginning the afternoon of Nov. 10, many BWC systems, including web and phone services, will be unavailable. In addition, some employer-related systems will have limited functionality beginning at 5 p.m. Nov. 9. Normal operations resume on Tuesday, Nov. 15.

Specific information on outages will be forthcoming as the transition date approaches.

BWC's goal is to make this transition as seamless as possible for its customers. This includes ensuring the transition does not disrupt compensation for injured workers. Steps BWC has taken to minimize disruption include thorough system testing, extensive employee training and practice, and timing the transition with a three-day holiday weekend. 9/15/2016

[Last Call for BWC True Up. Seriously.](#)

September 16, 2016

August 15 marked the close of the true-up period for private employers to report their actual payroll for the last year. However, because this is a new process associated with the transition to prospective billing, BWC has established a grace period until Sept. 29 to ensure all employers are able to complete this requirement.

Employers that do not complete payroll reports will be removed from all BWC programs in which they currently participate and become ineligible for future program participation. In addition, they will have their estimated annual premium increased by 10% and certified to the Ohio Attorney General's office.

Visit BWC's website to [learn how to create an e-account](#). For true-up instructions, [please visit this link](#). The payroll true-up may also be completed through the call center at 1-800-644-6292.

[OSHA Increases Maximum Penalties](#)

September 9, 2016

OSHA Increases Maximum Penalties

OMA Connections Partner, Safex, advises that OSHA recently raised its penalties. The new penalties took effect August 2, 2016. Any citations issued by OSHA on or after this date will be subject to the new penalties if the related violations occurred after November 2, 2015. 9/7/2016

Type of Violation	Former Maximum Penalty	New Maximum Penalty
Serious (Other-Than-Serious Posting Requirements)	\$7,000 per violation	\$12,471 per violation
Failure to Abate	\$7,000 per day beyond the abatement date	\$12,471 per day beyond the abatement date
Willful or Repeated	\$70,000 per violation	\$124,709 per violation

[NE Ohio Safety Expo is October 14](#)

September 9, 2016

The 2016 NE Ohio Safety Expo offers educational opportunities for safety and health programs, continuing education and discount program credits, and a variety of local and regional exhibitors.

The conference is Friday, October 14, 2016 at the Trumbull Career & Technical Center, 528 Educational Highway, Warren OH 44483. [Learn more here.](#) 9/7/2016

[BWC Provides True-up Grace Period](#)

September 2, 2016

The deadline for private employers to submit their payroll true-up report to the Bureau of Workers' Compensation (BWC) was August 15. However, because this is a new process, the BWC has

extended a grace period until September 29 to ensure all private employers are able to complete this requirement.

If you haven't yet submitted your BWC true-up, [learn more here](#). 8/30/2016

[BWC on Medical Marijuana as Treatment for Workplace Injury](#)

September 2, 2016

With the passage of medical marijuana legislation in Ohio, the Bureau of Workers' Compensation (BWC) has received many questions about whether medical marijuana can be used in the medical treatment of an injured worker.

Per the BWC: "For purposes of medical treatment in a workers' compensation claim, we cannot include the use of medical marijuana as part of an injured worker's treatment plan.

There are several legal barriers to using medical marijuana in the management of the medical portion of a workers' compensation claim in Ohio. First, Ohio law prohibits us from reimbursing for medications that are not FDA-approved. At this time, no form of medical marijuana is FDA-approved.

"Second, Ohio law prohibits us from reimbursing for medications that we do not include in our drug formulary. Our formulary does not include medical marijuana as a prescribed medication eligible for reimbursement.

"While the Ohio Legislature has legalized medical marijuana in Ohio for some purposes, these specific provisions of Ohio law prevent the State Insurance Fund from reimbursing for medical marijuana in a workers' compensation claim." 8/30/2016

[Ohio Lays Groundwork for Medical Marijuana Control Program](#)

September 2, 2016

House Bill 523, effective on September 8, 2016, legalizes medical marijuana in Ohio. The Ohio Medical Marijuana Control Program will allow people with certain medical conditions, upon the recommendation of an Ohio-licensed physician certified by the State Medical Board, to purchase and use medical marijuana.

While the legislation set a basic framework for the program, it left the task of establishing specific rules and guidelines for the cultivation, processing, testing, dispensing and medical use of marijuana to different

state agencies. This [website](#) is designed to keep Ohioans informed about the development of Ohio's Medical Marijuana Control Program, including important timelines in the rule-making process and the announcement of opportunities for public input. 8/30/2016

Workers' Compensation Legislation
Prepared by: The Ohio Manufacturers' Association
Report created on November 29, 2016

- HB51** **INDUSTRIAL COMMISSION BUDGET** (HACKETT R) To make appropriations for the Industrial Commission for the biennium beginning July 1, 2015, and ending June 30, 2017, and to provide authorization and conditions for the operation of Commission programs.
Current Status: 6/30/2015 - **SIGNED BY GOVERNOR**; eff. 6/30/15; certain provisions effective 9/29/15
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-51>
- HB52** **WORKERS' COMPENSATION BUDGET** (HACKETT R) To make changes to the Workers' Compensation Law, to make appropriations for the Bureau of Workers' Compensation for the biennium beginning July 1, 2015, and ending June 30, 2017, and to provide authorization and conditions for the operation of the Bureau's programs.
Current Status: 6/30/2015 - **SIGNED BY GOVERNOR**; eff. 6/30/15; certain provisions effective 9/29/15, other dates
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-52>
- HB64** **OPERATING BUDGET** (SMITH R) To make operating appropriations for the biennium beginning July 1, 2015, and ending June 30, 2017, and to provide authorization and conditions for the operation of state programs.
Current Status: 6/30/2015 - **SIGNED BY GOVERNOR**; eff. 6/30/15; certain provisions effective 9/29/15, other dates
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-64>
- HB205** **SELF-INSURING EMPLOYERS** (HENNE M, RETHERFORD W) To modify the requirements for an employer to become a self-insuring employer for purposes of the Workers' Compensation Law, to transfer authority over the workers' compensation self-insurance program to the Superintendent of Insurance, and to allow certain employers and groups of employers to obtain workers' compensation coverage from a private workers' compensation insurer.
Current Status: 2/9/2016 - House Insurance, (Third Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-205>
- HB206** **INDUSTRIAL COMMISSION-CLAIM STATISTICS** (HENNE M) To require the Industrial Commission to keep statistics on individual hearing decisions of contested workers' compensation claims.
Current Status: 6/9/2015 - House Insurance, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-206>
- HB207** **WORKERS' COMPENSATION-SURPLUS FUND** (HENNE M, MCCOLLEY R) To allow a state fund employer to have a workers' compensation claim that is likely to be subrogated by a third party paid from the surplus fund account in the state insurance fund rather than charged to the employer's experience.
Current Status: 5/31/2016 - **SIGNED BY GOVERNOR**; eff. 8/31/16
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-207>

- HB292** **FIREFIGHTER COMPENSATION** (HAGAN C) To provide that a firefighter who is disabled as a result of specified types of cancer is presumed for purposes of the laws governing workers' compensation and the Ohio Police and Fire Pension Fund to have incurred the cancer while performing official duties as a firefighter.
Current Status: 10/6/2015 - House Insurance, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-292>
- HB355** **EMPLOYEE DEFINITION** (RETFERFORD W) To create a generally uniform definition of employee for specified labor laws and to prohibit employee misclassification under those laws.
Current Status: 11/4/2015 - House State Government, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-355>
- HB510** **PNEUMOCONIOSIS-WORKERS' COMPENSATION** (CERA J) To modify workers' compensation benefit amounts for occupational pneumoconiosis claims and to create the Occupational Pneumoconiosis Board to determine medical findings for such claims.
Current Status: 4/13/2016 - Referred to Committee House Insurance
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-510>
- SB5** **WORKERS' COMPENSATION-PTSD** (PATTON T, BROWN E) To make peace officers, firefighters, and emergency medical workers diagnosed with post-traumatic stress disorder arising from employment without an accompanying physical injury eligible for compensation and benefits under Ohio's Workers' Compensation Law.
Current Status: 10/13/2015 - **REPORTED OUT AS AMENDED**, Senate Finance, (Sixth Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-5>
- SB27** **WORKERS' COMPENSATION-FIREFIGHTER CANCER** (PATTON T) To provide that a firefighter who is disabled as a result of specified types of cancer is presumed for purposes of the laws governing workers' compensation and the Ohio Police and Fire Pension Fund to have incurred the cancer while performing official duties as a firefighter.
Current Status: 11/29/2016 - House Insurance, (Third Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-27>
- SB149** **WORKERS' COMPENSATION-BRAIN-SPINAL CORD INJURY** (SCHIAVONI J) To make an individual who has lost the use of a body part due to a brain injury or spinal cord injury eligible for partial disability and permanent total disability compensation under the Workers' Compensation Law.
Current Status: 4/22/2015 - Referred to Committee Senate Transportation, Commerce and Labor
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-149>

TO: OMA Government Affairs Committee
FROM: Ryan Augsburger / Rob Brundrett
SUBJECT: Tax Public Policy Report
DATE: November 30, 2016

Overview

This fall the Administration will begin to prepare Governor Kasich's final budget. The biggest issue concerns a budget hole estimated around \$1.5 billion as a result of Medicaid tax changes. There is a good chance that any new budget proposal may include a personal income tax reduction. Regardless of what policy provisions are included in the introduced budget it is expected to be a very tight budget. How the budget hole and a possible income tax reduction are paid remains a mystery.

Tax Legislation

2020 Tax Policy Study Commission

The Study Commission continues to hold hearings to discuss the various aspects of Ohio's tax climate. The OMA has testified twice before the committee. First the OMA testified on general tax conditions and impacts on manufacturing. The second time, the OMA testified specifically on tax credits.

Representative Tim Schaffer replaced the now resigned Jeff McClain as Co-Chairman of the commission.

The Study Commission plans to have some recommendations for the next budget, and has already released a study on the historic rehabilitation tax credit.

After much inaction over the summer, the commission has held meetings in the past two months.

House Bill 9 – tax expenditure review committee

HB 9 was introduced by Representative Boose (R-Norwalk). The bill creates a Tax Expenditure Review Committee that would periodically review existing and proposed tax expenditures. The bill was voted out of the Senate on May 25. However due to an amendment dealing with controlling board, the bill has been held up.

Senate Bill 88 – CAT credit

Sponsored by Sen. Charleta Tavares (D-Columbus) would create tax credits, including CAT credits, for the employment of individuals who have been convicted of criminal offenses. The bill has not had any hearings. Nor is it expected to move.

House Bill 102 – CAT credit

House Bill 102 sponsored by Reps. Niraj Antani (R-Miamisburg) and Hearcel Craig (D-Columbus), would provide a bid preference for state contracts to a veteran-owned business and would have authorize a personal income and CAT credit for a business that hires and employs a veteran for at least one year. However the sponsors introduced a substitute version of the bill at its first hearing removing the CAT provisions from the bill. The bill only received a first hearing for sponsor testimony last year.

House Bill 176 – CAT credit

House Bill 176 sponsored by Reps. Hall (R-Millersburg) and O'Brien (D-Bazetta) creates the Gaseous Fuel Vehicle Conversion Program. The bill allows a credit against the income or commercial activity tax for the purchase or conversion of alternative fuel vehicle. It reduces the amount of sales tax due on the purchase or lease of a qualifying electric vehicle by up to \$500. It applies the motor fuel tax to the distribution or sale of compressed natural gas. The bill also authorizes a temporary, partial motor fuel tax exemption for sales of compressed natural gas used as motor fuel. The bill was introduced in the previous General Assembly, but stalled in the legislative process. Earlier this year it was passed out of House Ways and Means Committee. The bill was re-referred to Finance Committee and voted out of committee last November.

An alternative fuel vehicle conversion grant program was included in House Bill 390. The OMA has long advocated for grant programs in place of tax credits.

Senate Bill 198 – non-resident municipal income tax

SB 198 was introduced by Senator Jordan (R-Ostrander). The bill prohibits municipal corporations from levying an income tax on nonresidents' compensation for personal services or on net profits from a sole proprietorship owned by a nonresident. This bill has opposition from Ohio's cities and villages. The bill had one hearing last fall. It is not expected to move.

House Bill 232 – seller use tax collection

HB 232 was introduced by Representatives Grossman (R-Grove City) and Scherer (R-Circleville). The bill prescribes new criteria for determining whether sellers are presumed to have substantial nexus with Ohio and therefore required to register to collect use tax to allow sellers presumed to have substantial nexus rebut that presumption, and to require a person, before the person enters into a sale of goods contract with the state, to register, along with the person's affiliates, to collect use tax. The bill has not had a hearing.

Senate Bill 235 – increased value property tax

Senate Bill 235 was introduced by Senators Beagle (R-Tipp City) and Coley (R-Liberty Township) and would exempt from property tax the increased value of property on which industrial or commercial development is planned until construction of new commercial or industrial facilities at the property commences. The bill was passed by the Senate in late May and is supported by local chambers of commerce. The bill is expected to have two hearings this week with a committee vote on Thursday.

Senate Bill 246 / House Bill 398 – change the CAUV computation

Senator Hite (R-Findley) and Representative Hill (R-Zanesville) introduced companion bills 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.

The bill is proving to be controversial due to the fact that agriculture land is already taxed at a reduced rate compared to residential and commercial property. The Senate and House bills have had multiple hearings to vet the issue.

The Senate version is expected to clear committee this week. The House Speaker announced he would not pass the bill this year.

Senate Bill 288 – income tax for pass through entities reform

SB 288 was introduced by Senator Eklund (R-Munson Township). The bill revises the law governing how taxes on income from pass-through entities is to be reported and paid by the entities and their investors. The bill has had two official hearings. Interested party meetings have continued through the summer.

Senate Bill 289 / House Bill 475 – increase the motion picture tax credit

The motion picture tax credit companion bills sponsored by Senator Patton (R-Strongsville) and Representative Schuring (R-Canton) would expand the current motion picture tax credit. The bills would be applied against the current credit against the commercial activity tax. A version of HB 475 was amended into HB 390 and passed.

House Bill 343 – remove sale tax on temp employees

HB 343 was introduced by Representatives Romanchuk (R-Mansfield) and Young (R-Leroy Township). The bill would exempt employment services and employment placement services from sales and use tax.

This is a priority tax issue for manufacturers who in Ohio must pay sales tax on their temporary employees. The OMA has strongly advocated for this tax relief for manufacturers over the past two budget cycles.

The bill was finally voted out of House Committee during an extremely busy May.

The OMA and members Whirlpool and Cargill testified in support of the measure last fall.

The bill was re-referred back to committee.

House Bill 355 – employee misidentification

Rep. Wes Retherford (R – Hamilton) introduced a bill, HB 355, that would turn the Bureau of Workers' Compensation (BWC) into an agency that would police businesses in their classifications of employees and independent contractors.

Under the bill, the BWC would be authorized to enter and inspect all of the offices and job sites maintained by an employer who is the subject of a complaint that an employer is misclassifying an employee. The BWC would be authorized to issue stop work orders and fines.

For many many years, organized labor has attempted to create a de facto Department of Labor at the state level. That's what this one is after. It is a really bad idea.

There have been two interested stakeholder meetings regarding the bill. The OMA has weighed in on several occasions regarding the provisions in the bill.

House Bill 390 – unemployment compensation pay off

During the May legislative session HB 390 morphed into a catch all for tax and finance provisions. Two bills important to manufacturers were amended into HB 390, and one stand-alone provision was also included.

The bill incorporated the portions of HB 473 that required voter approval before a county may levy a new utilities services tax. The amendment was in response to a controversy that occurred in Hamilton County when the commissioners attempted to levy the tax without the input of the voters.

Second, the bill incorporated HB 475 and expanded the motion picture tax credit. The General Assembly approved the amendment to House Bill 390 which expanded Ohio's current motion picture tax credit. The action would have increased the total amount of credits that may be awarded from \$20 million per fiscal year to \$75 million per fiscal year. The vast majority of the claimed credits are taken against the commercial activity tax (CAT).

The legislature scaled back the proposal, opposed by the OMA, by almost half by reducing the amount of allowable credits to \$40 million per fiscal year and disallowing any carryover of credits if less than \$40 million is awarded in any year.

OMA opposes carve outs and credits to the CAT as they threaten its broad-base and low rate.

Finally the General Assembly used HB 390 as the vehicle to address the state's unemployment compensation debt. The General Assembly agreed to a deal with the intention to eliminate the state's recession-era unemployment compensation debt to the federal government. The move supported by the OMA and other business allies will potentially save Ohio's businesses more than \$400 million in FUTA penalties. Without this fix employers were staring at a possible \$168 per employee penalty to be paid in 2017.

The new plan will borrow from the state's unclaimed funds to pay off the debt in November 2016. Then employers will repay the state-backed loan by paying a per employee surcharge in 2017.

House Bill 394 – unemployment compensation reform

HB 394 was introduced last November by Representative Sears (R-Monclova Township). The bill is a priority for the business community. Ohio is one of two states that continue to carry debt owed to the federal government due to its insolvent unemployment trust fund. The bill offers a balanced package of reforms to pay off the debt and build solvency in the system to prevent another major solvency issue in the next recession.

The bill has had multiple hearings in the House Insurance Committee. The OMA and its business allies hired a national expert to testify and set the record straight regarding the provisions of the bill to the General Assembly.

House and Senate leaders have established a Joint Unemployment Compensation Reform Committee to hear testimony on how to address the system's lack of solvency.

The OMA testified twice at the hearings urging the legislature to find a workable solution during the lame duck period.

House Bill 467 – unemployment compensation debt

HB 467 was introduced by Representative Butler (R-Oakwood). The bill establishes a loan from the Budget Stabilization Fund to the Unemployment Compensation Fund, to require the Director of Job and Family Services to recommend a program to incentivize the purchase of private unemployment insurance, and to require a study on the solvency of the Unemployment Compensation Fund. However, while the bill finds a way to pay off the debt prior to November 2016, it does nothing to address the long term solvency issues of the fund.

House Bill 491 – CAT tax credit pilot program

HB 491 was introduced by Representative Anielski (R-Walton Hills). The bill creates a five-year pilot program whereby taxpayers with facilities in this state with activated foreign trade zone status may claim a nonrefundable commercial activity tax credit equal to the amount redeployed by the taxpayer to job creation or other specified projects.

The bill has had two hearings.

Tax News

Budget Concerns

Since 2005, Ohio has been charging taxes on services provided through Medicaid managed-care organizations to take advantage of federal matching funds. A portion of the money is returned to the managed-care organizations to hold them harmless.

The state started off charging a 5.5 percent franchise tax, until federal officials said in 2009 that was no longer permissible. So then-Gov. Ted Strickland switched it to a sales tax, which is now 5.75 percent.

That allowed counties and transit authorities, through their piggyback sales taxes, to also benefit from the expansion.

But in July 2014, the federal Centers for Medicare & Medicaid Services said applying a tax only to managed-care companies dealing with Medicaid was not allowed. Ohio has until the end of this budget cycle to fix it — June 30, 2017.

Attorney General

Just prior to the 4th of July holiday, Ohio Attorney General Mike DeWine filed an amicus brief requesting certiorari from the United States Supreme Court in the case *Gillette Co. v. Franchise Tax Board*. The case involves whether member states may ignore provisions of the Multistate Tax Compact, in this case to the detriment of taxpayers. The Attorney General focuses the state's arguments on the compact/contract issue and its importance to states in general. The broader implications of this case and the impacts and precedent it could set for other state compacts could prove troublesome for both manufacturers and states. The case is of critical importance for manufacturers and we truly appreciate the Attorney General's willingness to engage the U.S. Supreme Court in this matter.

Last month, the U.S. Supreme Court declined to accept the appeal of the California Supreme Court decision brought by the Gillette Company. The court's refusal to hear the case means that the California decision remains the law of that state.

Tax Commissioner Visit with Members

Ohio Tax Commissioner Joe Testa visited with OMA members to discuss how the state's tax policy impacts Ohio manufacturers.

The group advanced concepts for consideration in Ohio's operating budget which will be written next year as well as ways to improve the tax code to make Ohio more competitive for manufacturing.

Members reiterated the OMA tax principles and described how the 2005 tax reforms continue to benefit manufacturing in the state.

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.



Ohio Legislative Service Commission

Jean J. Botomogno

Fiscal Note & Local Impact Statement

Bill: H.B. 343 of the 131st G.A. **Date:** May 31, 2016
Status: As Reported by House Economic and Workforce Development **Sponsor:** Reps. Romanchuk and Young

Local Impact Statement Procedure Required: Yes

Contents: To exempt sales of employment services and employment placement services from the sales and use tax beginning July 1, 2017

State Fiscal Highlights

STATE FUND	FY 2017	FY 2018	FUTURE YEARS
General Revenue Fund			
Revenues	- 0 -	Loss of \$164 million	Loss of \$169 million in FY 2019. Losses are likely to grow in ensuing years
Expenditures	- 0 -	- 0 -	- 0 -

Note: The state fiscal year is July 1 through June 30. For example, FY 2016 is July 1, 2015 – June 30, 2016.

- The bill reduces the sales and use tax base, and thus decreases sales and use tax revenue starting in FY 2018.
- State sales and use tax receipts are deposited in the GRF which would bear the majority of the revenue loss. Any reduction to GRF tax receipts would also reduce the amount distributed to the Local Government Fund (LGF) and Public Library Fund (PLF) as these local funds receive distributions from GRF tax receipts.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2016	FY 2017	FUTURE YEARS
Counties, municipalities, townships, and public libraries (LGF and PLF)			
Revenues	- 0 -	Potential loss	Loss of \$5.6 million in FY 2018. Losses are likely to grow in ensuing years
Expenditures	- 0 -	- 0 -	- 0 -
Counties and Transit Authorities			
Revenues	- 0 -	Potential loss	Loss of \$41.5 million in FY 2018. Losses are likely to grow in ensuing years
Expenditures	- 0 -	- 0 -	- 0 -

Note: For most local governments, the fiscal year is the calendar year. The school district fiscal year is July 1 through June 30.

- The bill reduces revenue from local permissive county and transit authority sales taxes. Those taxes share the same base as the state sales and use tax.
 - Receipts from the state sales and use tax are deposited in the GRF. A share of GRF tax revenues is distributed under permanent law to the LGF and PLF. Thus, any reduction to GRF tax receipts would also reduce the amount distributed to the LGF and PLF.
-

Detailed Fiscal Analysis

Under current law, the sale or use of services is generally not taxable unless expressly made subject to the sales tax; and employment services and employment placement services have been explicitly subject to the tax since 1993. Employment services are transactions in which a service provider furnishes personnel to perform work under the supervision or control of the purchaser. The personnel may be assigned to the purchaser for a short period of time or on a long-term basis, and are paid by the service provider or a third party that supplies the personnel to the service provider. Generally, if employment services are supplied by a third party to a service provider, and then by the service provider to a purchaser, only the transaction between the service provider and the purchaser is taxable. H.B. 343 would exempt all taxable employment and employment placement services beginning July 1, 2017, thus affecting sales tax revenue starting in FY 2018.

Sales taxes on employment services are generally remitted by businesses with North American Industry Classification System (NAICS) codes starting with 5613. These would include employment placement agencies (NAICS 561311), executive search services firms (NAICS 561312), temporary help services firms (NAICS 561320), and professional employer organization firms (NAICS 561330). Additionally, certain users of employment services and employment placement services pay use taxes directly to the state. Roughly \$155 million was collected from the state sales and use tax on employment and employment placement services in FY 2015, according to the Department of Taxation.

Separately, data from the U.S. Census Bureau suggest revenue from establishments in the administrative and support services industries (NAICS 561) which declined during the last economic recession grew about 6% per year, on average, in the most recent years.¹ Assuming a revenue growth rate of 3% for firms in the employment and employment placement services in Ohio, the potential revenue from the sales and use tax on employment services might be about \$169 million in FY 2018 and \$174

¹ Nationwide, revenue growth at businesses in the Administrative and Support Services sector (NAICS 561), which includes firms relevant to the bill, was about 6% per year between 2011 and 2014, according to the 2014 Service Annual Survey and administrative data from the Economic Census.

million in FY 2019, and possibly higher depending on the growth of the industry. The amounts above would also correspond to the potential revenue loss from H.B. 343, which is likely to increase in future years, though the magnitude of the increases would depend on the business cycle.²

Receipts from the state sales and use tax are deposited into the GRF. Under permanent law, a portion of GRF tax receipts is subsequently transferred to the Local Government Fund (LGF) and the Public Library Fund (PLF). Under permanent law, the GRF would receive 96.68% of sales tax revenue, and the LGF and the PLF 1.66% each.³ Thus, the GRF loss would be about \$164 million in FY 2018. Reduced distributions to the LGF and PLF would be about \$2.8 million for each local government fund. In FY 2019, estimated revenue losses from the bill would be about \$169 million to the GRF, and \$2.9 million each for the LGF and the PLF.

Local permissive county and transit authority sales taxes share the same tax base as the state sales tax, and are approximately 24.5% of state sales tax revenues. Thus, the revenue loss to local governments from permissive county and transit authority sales and use taxes from H.B. 343 would be about \$41.5 million in FY 2018 and \$42.7 million in FY 2019. Adding those amounts to the potential revenue losses to the LGF and the PLF, revenue reductions to local governments would total \$47.1 million in FY 2018 and \$48.5 million in FY 2019, and are likely to grow in future years.

HB0343HR.docx/ts

² Though a small share of nonfarm payroll employment (2.1% in 2014), the temporary help industry plays an outsized role in workforce adjustment during recessions and recoveries. Generally, during recessions, companies increase their use of temporary help, lengthen existing temporary help assignments, or reduce hiring from their pool of temporary workers in response to economic uncertainty. The reverse tends to occur in periods of economic recovery.

³ Under temporary provision in H.B. 64, the budget act for the current biennium, the PLF share would be 1.70%, instead of 1.66%.

Medicaid tax change to cost Ohio, counties

Nearly 3 million Ohioans are enrolled in Medicaid, the government health insurance program for the poor and disabled. Debate over the next two-year state budget won't start for seven months, but state officials already are wrestling with a looming billion-dollar budget hole, plus a \$400 million local funding hit that includes bus services.

Federal regulators are putting an end to a state sales tax structure that allowed Ohio to collect hundreds of millions of dollars per year in federal Medicaid matching funds. That has Gov. John Kasich and legislative leaders staring at a \$1.1 billion state funding loss in the next two-year budget.

Plus, the average county is looking at a loss of 7.5 percent of its sales tax collections, based on 2015 state figures. A number of rural counties, including Pickaway, would see sales tax losses exceeding 10 percent.

Meanwhile, the Central Ohio Transit Authority stands to lose about \$8 million a year.

"The dollar amounts are considerable," said Suzanne Dulaney, executive director of the County Commissioners Association of Ohio, noting that 60 percent of county budgets are spent on criminal justice and safety.

"The (Kasich) administration told our members that they understand the impact on counties and plan to take that into account," she said. "We've also heard from lawmakers who have cautioned counties to budget conservatively because of this issue."

Tim Keen, the state budget director, said the change essentially will wipe out half of the state's projected tax revenue growth and could mean significant county cuts that "we must take into account."

"This is a significant budget issue for the state, counties and transit authorities that we have to try to work through," he said.

Since 2005, Ohio has been charging taxes on services provided through Medicaid managed-care organizations to take advantage of federal matching funds. A portion of the money is returned to the managed-care organizations to hold them harmless.

The state started off charging a 5.5 percent franchise tax, until federal officials said in 2009 that was no longer permissible. So then-Gov. Ted Strickland switched it to a sales tax, which is now 5.75 percent.

That allowed counties and transit authorities, through their piggyback sales taxes, to also benefit from the expansion.

But in July 2014, the federal Centers for Medicare & Medicaid Services said applying a tax only to managed-care companies dealing with Medicaid was not allowed. Ohio has until the end of this budget cycle to fix it — June 30, 2017.

“People have been aware of the fact that it was at risk,” said John Corlett, Ohio’s former Medicaid director who is now executive director of the Center for Community Solutions, a policy research group based in Cleveland. “There are ways to address it. None of them will be universally popular or easy.”

Starting July 1, 2017, Ohio will no longer charge a Medicaid sales tax that is expected to net the state \$558 million in fiscal year 2018. Over the two-year budget, the net state loss is projected at \$1.1 billion, plus nearly \$400 million in county and transit authority sales taxes.

Roughly 80 percent of the local funding loss hits counties — Franklin County would see a hit of about \$20 million per year. Ohio's eight regional transit authorities would lose about \$39 million per year, as critics note that the state already ranks 47th in public transportation funding, spending 63 cents per person on transit.

The annual loss for COTA would top 6 percent of its total sales tax revenue. Based on 2015 figures, the loss equates to more than 70,000 hours of service, said Marty Stutz, COTA spokesman.

“We would have to be proactive about budgeting to make sure the implications are considered,” he said. “It will be a challenge for us.”

Since the Great Recession, not only have counties grown more reliant on sales tax revenue, but those sales tax receipts have increasingly been made up of Medicaid services. In 2013, counties got \$81 million from Medicaid sales taxes, 4.9 percent of their total sales taxes. But with Kasich's expansion of Medicaid coverage and the push to increase managed care, that revenue rose to \$148 million by 2015, 7.5 percent of the total, and would reach about \$160 million by 2018.

While sales tax revenue has seen steady growth, other county revenue sources have been largely flat, adding to concerns about the looming cut.

The state has options to make up its money. Corlett pointed to the hospital franchise fee, which also draws down federal dollars.

“If you look around the state, I don’t think there’s a hospital that’s losing money,” he said.

Last year, Kasich’s initial two-year budget proposed increasing the hospital fee from 2.66 percent to 3 percent. House Republicans pushed it to 4 percent, which would have netted the state \$1 billion over two years.

Senate Republicans later stripped out the fee increase, and the rate was left unchanged.

Keen would not comment on the hospital fee or other options, such as increasing the health-insuring corporation tax or expanding the sales tax to private managed-care operations.

“We’re assessing a range of potential solutions, but we’re very early in our analysis,” he said.

Ohio is not alone in its troubles. Pennsylvania, Michigan and California already have addressed how they tax Medicaid managed care in various ways over the past seven months.

Keen said his office is looking at those states, while counties keep an eye on Keen.

“Redistributing a new revenue stream back to 88 counties is more challenging than sending it into one state general fund,” Dulaney said.

jsiegel@dispatch.com

Site Selection's 2016 Top State Business Climate Rankings

Overall Rank	State	Survey Rank	Comp. Rank	2015 NP Rank	2015 NP Rank PC	2016 NP Rank	2016 NP Rank PC	Mature Firm TI Rank	New Firm TI Rank	Final Total Points
1	Georgia	3	7	7	16	1	4	3	6	97
2	North Carolina	5	2	4	7	4	10	7	13	94
3	Ohio	11	8	2	3	8	13	5	3	90
T4	Tennessee	4	3	11	13	6	8	29	29	89
T4	Texas	1	1	1	11	15	34	12	42	89
6	Virginia	6	13	9	18	2	3	11	39	87
T7	Louisiana	13	11	13	6	5	2	10	2	84
T7	South Carolina	2	18	19	19	11	9	32	34	84
9	Alabama	8	16	15	10	19	20	13	19	83
10	Indiana	6	6	10	12	17	21	43	15	82
11	Florida	9	9	14	41	10	23	19	36	75
12	Oklahoma	14	28	23	15	20	18	16	5	74
13	Utah	10	24	32	30	29	22	6	10	73
14	Kentucky	28	5	5	1	7	6	18	7	69
T15	Illinois	24	14	3	4	3	11	45	24	68
T15	Iowa	19	10	21	8	12	7	40	41	68
T15	Michigan	27	4	6	14	8	12	25	25	68
T18	Arizona	15	22	25	33	14	19	14	31	67
T18	Mississippi	12	25	30	25	20	14	37	21	67
20	Nebraska	36	12	16	2	13	1	9	1	60
21	Nevada	18	15	28	21	38	36	4	38	59
22	South Dakota	26	21	36	9	46	46	2	11	54
23	Kansas	20	17	20	5	38	37	47	48	52
24	New York	17	29	18	43	24	41	42	37	49
25	Wisconsin	34	26	17	20	31	33	35	4	47

NP - New Plant, PC - Per Capita, TI - Tax Index, 2016 Figures from Jan. - Aug. 2016
 Source: Conway Projects Database

Tax

[OMA Gets Win in Supreme Court](#)

November 18, 2016

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. The court's decision in the lead case, *Crutchfield, Inc. v. Testa*, can be found [here](#). 11/17/2016

[What does a Trump Presidency Mean for Your Taxes?](#)

November 11, 2016

OMA Connections Partner, Clark Schaefer Hackett, posts what President-elect Trump's tax reform plan for individuals and businesses might include. [Read it here](#). 11/10/2016

[New Tax Guides Offered](#)

November 4, 2016

OMA Connections Partner, RSM US, has compiled [2016 Year-end Tax Considerations for Businesses](#) to help companies make informed decisions related to year-end tax planning.

RSM has also published this [2016 Year-end State and Local Tax Considerations](#) guide as well as this [2017 Tax Planning Guide](#). 11/1/2016

[Final and Temporary Section 385 Regulations Published](#)

October 28, 2016

OMA Connections Partner, GBQ, writes that on October 21, 2016, final and temporary regulations under Section 385 were published which address related party financing instruments.

Per GBQ: "The regulations were much-anticipated and contain numerous changes from their original proposed form, addressing comments and concerns raised by practitioners. The initially proposed regulations, released April 4, 2016, were intended to address earnings stripping and the use of cross border debt to reduce U.S. income tax. But, it is important to note that the proposed regulations were not limited to these transactions and could also have an impact on related party debt transactions structured exclusively in the U.S. or solely outside of the U.S."

[Here's more from GBQ.](#)

And, this will be a topic of discussion when the OMA Tax Committee meets on Wednesday, November 9. [Dorothy Coleman](#), Vice President of Tax and Domestic Economic Policy at the National Association of Manufacturers (NAM) will present. [Register here](#) for in-person or phone-in participation. 10/25/2016

[S Corp. vs. C Corp. – Time to Switch?](#)

October 28, 2016

OMA Connections Partner, MCM CPAs & Advisors, writes that the Protecting Americans from Tax Hikes (PATH) Act of 2015 made some taxpayer-friendly provisions permanent — including the shortened recognition period for companies that convert from C Corporation to S Corporation status.

According to MCM, this change is causing many manufacturers and distributors to re-evaluate their corporate status, and many companies are electing Subchapter S status to gain enhanced flexibility in business decisions and to lower taxes.

MCM offers [these important issues](#) to consider before you convert. 10/25/2016

[IRS Issues New Regs for Partnerships](#)

October 21, 2016

OMA Connections Partner, Clark Schaefer Hackett (CSH), posts that the IRS targets partnership transactions and liabilities with new regulations: "Under the new guidance, more property transactions between partners and partnerships are likely to be classified as disguised sales — and, therefore, subject to taxes — than under the previous IRS guidance. The guidance also curbs the use of so-called leveraged partnership transactions to avoid paying taxes."

Read more from CSH about [the new regulations here](#). 10/19/2016

[OMA on the Record for Federal Corporate Tax Reform](#)

October 14, 2016



This week the Cleveland Plain Dealer published a letter to the editor from OMA's [Rob Brundrett](#), Director, Public Policy Services, urging the next president to undertake corporate federal tax reform.

He said: "Until we unshackle the nation's job creators from the costly, complex and outdated tax code, the U.S. will continue to lose out on new investment.

"The U.S. has the highest corporate tax rate among the industrialized world. Our businesses are burdened with a combined federal and state rate of 39.1 percent. Compare this to the global average rate of 24.1 percent and it's no surprise that American businesses are reducing investment at home and moving overseas for more favorable tax conditions."

[Read the full letter here](#). 10/13/2016

[U.S. Supreme Court Declines Manufacturer's Appeal](#)

October 14, 2016

This week, the U.S. Supreme Court [declined to accept an appeal](#) of a California Supreme Court decision brought by the Gillette Company. The case sought to resolve whether the State of California could retroactively revoke its participation in the multistate tax compact and deny taxpayers the choice of schemes to apportion income among the states in which they do business.

The OMA had prevailed upon Ohio Attorney General Mike DeWine to file an amicus brief with the high court in support of Gillette's request, which he did.

The court's refusal to hear the case means that the California decision remains the law of that state.

This issue arises in several other states as taxpayers seek to take advantage of the apportionment method that most beneficially reduces their income in high-tax states. 10/13/2016

["Pro Growth" vs. "Fair Tax"](#)

October 14, 2016

OMA Connections Partner, GBQ Partners, summarizes highlights of Trump's and Clinton's [tax policy proposals here](#). 10/11/2016

[You Can Get R&D Tax Credit Retrospectively](#)

October 7, 2016

Manufacturers now know that developing new or improved products or processes can qualify them for the Research & Development Tax Credit, but did you know that eligible companies generally have at least 3 years from the date you filed your tax return to claim the credit via an amended return?

This means you may be able to regain funds paid from 2015, 2014, and 2013 to the federal government.

In addition, Ohio offers an R&D tax credit incentive. If your business qualifies for the federal credit, there is a chance you may also qualify for state tax savings.

[Read more](#) from OMA Connections Partner, Tax Credit Group. 10/3/2016

[Ohio 2020 Tax Policy Study Commission Holds Hearing](#)

September 30, 2016

This week the Ohio 2020 Tax Policy Study Commission and its freshly appointed co-chairman, [Rep. Tim Schaffer](#) (R-Lancaster) held its first hearing since the spring. The commission, which was created in the last budget bill, continues to hear from groups and individuals regarding all matters of Ohio tax policy.

This week the commission heard from a variety of witnesses testifying on multiple aspects of Ohio's tax code including income tax, sales tax, business taxes, and tax credits. The witnesses included OMA friend and respected economist Dr. Ned Hill, [who testified](#) on (1) Ohio's fiscal system, (2) the quality of local

government fiscal data, (3) tax revenue and future business cycles, and (4) tax credit programs.

Testimony was also provided by the [Ohio Municipal League](#), [Policy Matters Ohio](#), [Council of State Taxation](#), and a coalition of [Ohio mayors](#). Hearings are scheduled to continue through the remainder of the year. 9/29/2016

[Due Date Changes for 2016 Tax Returns](#)

September 30, 2016

OMA Connections Partner, GBQ Partners, posts this: "As part of the short-term highway funding extension passed by the Senate in late July, tax return due dates for certain filers have changed for the 2017 filing season (2016 tax returns). The new law applies to returns for tax years beginning after December 31, 2015 with one exception: C-Corporations with fiscal years ending on June 30th have ten extra years to make the change."

[Read more from GBQ here.](#) 9/27/2016

[What? No lab coats?](#)

September 30, 2016

Despite the value the R&D tax credit can offer, many businesses that have qualifying expenses incorrectly assume they don't qualify. You don't need sophisticated research facilities or PhDs in lab coats to be eligible. This [overview from](#) OMA Connections Partner, Clark Schaefer Hackett, can help you determine whether your company could be missing out on this profit boosting opportunity. 9/27/2016

[Members Give Tax Reform Input to Commissioner Testa](#)

September 23, 2016



This week [Ohio Tax Commissioner Joe Testa](#) visited with OMA members to discuss how the state's tax policy impacts Ohio manufacturers.

The group advanced concepts for consideration in Ohio's operating budget which will be written next

year as well as ways to improve the tax code to make Ohio more competitive for manufacturing.

Members reiterated the [OMA tax principles](#) and described how the 2005 tax reforms continue to benefit manufacturing in the state. 9/22/2015

[Tax Changes for Ohio Businesses and Individuals](#)

September 9, 2016

OMA Connections Partner, Clark Schaefer Hackett, [posted this item](#) about tax changes that occurred in 2016 that affect Ohio businesses and individuals. Among them are municipal tax reforms and occasional entrant treatment. 9/6/2016

[New Deadlines for 2016 Wage Reports](#)

September 9, 2016

The new Jan. 31, 2017, deadline for filing W-2s, W-3s and 1099-MISC (Box 7) reports with the Social Security Administration or the IRS may catch many companies unprepared this year. The new deadline was enacted as part of HR 2029, the Consolidated Appropriations Act of 2016, late last year.

The new filing deadline now matches the deadline for providing information to employees or independent contractors so that the IRS is armed with employer information to confirm individual income tax reporting.

Read more from OMA Connections Partner, RSM US, [here.](#) 9/6/2016

Taxation Legislation

Prepared by: The Ohio Manufacturers' Association
Report created on November 29, 2016

- HB9 TAX EXPENDITURE REVIEW COMMITTEE** (BOOSE T) To create a Tax Expenditure Review Committee for the purpose of periodically reviewing existing and proposed tax expenditures.
Current Status: 11/29/2016 - Consideration of Senate Amendments; House Does Not Concur, Vote 1-94
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-9>
- HB12 TIF-INCENTIVE DISTRICTS** (BUTLER, JR. J, BURKLEY T) To establish a procedure by which political subdivisions proposing a tax increment financing (TIF) incentive district are required to provide notice to the record owner of each parcel within the proposed incentive district before creating the district.
Current Status: 11/30/2016 - Senate Ways and Means, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-12>
- HB19 INTERNAL REVENUE CODE** (SCHERER G) To expressly incorporate changes in the Internal Revenue Code since March 22, 2013 into Ohio law and to declare an emergency.
Current Status: 4/1/2015 - **SIGNED BY GOVERNOR**; eff. 4/1/15
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-19>
- HB26 COIN SALES-USE TAX EXEMPTION** (MAAG R, HAGAN C) To exempt from sales and use taxes the sale or use of investment metal bullion and coins.
Current Status: 11/18/2015 - Senate Ways and Means, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-26>
- HB32 AIRCRAFT-MOTOR FUEL EXCISE TAX** (PERALES R) To subject the receipt of motor fuel used to operate aircraft to the motor fuel excise taxes rather than the sales and use taxes and to require a percentage of motor fuel excise tax revenue to be used for airport improvements.
Current Status: 2/10/2015 - Referred to Committee House Ways and Means
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-32>
- HB64 OPERATING BUDGET** (SMITH R) To make operating appropriations for the biennium beginning July 1, 2015, and ending June 30, 2017, and to provide authorization and conditions for the operation of state programs.
Current Status: 6/30/2015 - **SIGNED BY GOVERNOR**; eff. 6/30/15; certain provisions effective 9/29/15, other dates
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-64>
- HB65 TAX-EXPENDITURE APPRAISAL** (DRIEHAUS D) To provide for the periodic appraisal of the effectiveness of tax expenditures.
Current Status: 3/24/2015 - House Ways and Means, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-65>

- HB84** **MUNICIPAL TAX-CIVIL ACTIONS** (SPRAGUE R, SWEENEY M) To require civil actions by taxpayers related to municipal income taxes be brought against the municipal corporation imposing the tax rather than the municipal corporation's tax administrator.
Current Status: 3/24/2015 - House Ways and Means, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-84>
- HB99** **INCOME TAX-SCHOOL FUNDING** (CURTIN M) To require that an amount equal to state income tax collections, less amounts contributed to the Ohio political party fund via the income tax checkoff, be distributed for the support of elementary, secondary, vocational, and special education programs.
Current Status: 5/5/2015 - House Ways and Means, (Second Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-99>
- HB102** **VETERAN-OWNED BUSINESSES** (CRAIG H, ANTANI N) To provide a bid preference for state contracts to a veteran-owned business and to authorize a personal income and commercial activity tax credit for a business that hires and employs a veteran for at least one year.
Current Status: 4/28/2015 - House Ways and Means, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-102>
- HB162** **SEVERANCE TAX RATES** (CERA J) To change the basis, rates, and revenue distribution of the severance tax on oil and gas, to create a grant program to encourage compressed natural gas as a motor vehicle fuel, to authorize an income tax credit for landowners holding an oil or gas royalty interest, and to exclude some oil and gas sale receipts from the commercial activity tax base.
Current Status: 5/12/2015 - House Ways and Means, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-162>
- HB176** **GAS-FUEL CONVERSION PROGRAM** (HALL D, O'BRIEN S) To create the Gaseous Fuel Vehicle Conversion Program, to allow a credit against the income or commercial activity tax for the purchase or conversion of an alternative fuel vehicle, to reduce the amount of sales tax due on the purchase or lease of a qualifying electric vehicle by up to \$500, to apply the motor fuel tax to the distribution or sale of compressed natural gas, to authorize a temporary, partial motor fuel tax exemption for sales of compressed natural gas used as motor fuel, and to make an appropriation.
Current Status: 11/18/2015 - **REPORTED OUT**, House Finance, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-176>
- HB232** **SELLER-USE TAX COLLECTION** (GROSSMAN C, SCHERER G) To prescribe new criteria for determining whether sellers are presumed to have substantial nexus with Ohio and therefore required to register to collect use tax, to allow sellers presumed to have substantial nexus to rebut that presumption, and to require a person, before the person enters into a sale of goods contract with the state, to register, along with the person's affiliates, to collect use tax.
Current Status: 6/2/2015 - Referred to Committee House Ways and Means
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-232>

- HB269** **INCOME TAX-SOUND RECORDING** (SMITH K, LATOURETTE S) To authorize a refundable income tax credit for individual investors in a sound recording production company equal to a portion of the company's costs for a recording production or recording infrastructure project in Ohio.
Current Status: 2/16/2016 - House Ways and Means, (Second Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-269>
- HB280** **BALANCED BUDGET COMPACT** (KRAUS S, KOEHLER K) To adopt the Compact for a Balanced Budget and to declare an emergency.
Current Status: 11/10/2016 - Referred to Committee House State Government
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-280>
- HB308** **TEXTBOOKS-TAX EXEMPTION** (DUFFEY M, STINZIANO M) To exempt from sales and use tax textbooks purchased by post-secondary students.
Current Status: 10/21/2015 - House Ways and Means, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-308>
- HB326** **TAX LAW-JOINT FILING** (AMSTUTZ R, MCCLAIN J) To make technical changes to the state income tax law, to modify the requirements for receiving the joint filing credit, and to provide that, for the 2015 taxable year, any taxable business income under \$125,000 for married taxpayers filing separately or \$250,000 for other taxpayers is subject to the graduated tax rates applicable to nonbusiness income, while business income in excess of those amounts remains subject to the existing 3% flat tax.
Current Status: 10/26/2015 - House Ways and Means, (Fifth Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-326>
- HB343** **EMPLOYMENT SERVICES-TAX EXEMPT** (YOUNG R, ROMANCHUK M) To exempt employment services and employment placement services from sales and use tax.
Current Status: 11/15/2016 - Re-Referred to Committee
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-343>
- HB358** **TAX DEDUCTION-SAVINGS ACCOUNTS** (DEVER J, CONDITT M) To allow an income tax deduction for contributions to ABLE savings accounts.
Current Status: 4/19/2016 - House Ways and Means, (Second Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-358>
- HB369** **BALANCED BUDGET COMPACT** (KOEHLER K, HAMBLEY S) To adopt the Compact for a Balanced Budget and to declare an emergency.
Current Status: 5/24/2016 - House Government Accountability and Oversight, (Third Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-369>
- HB390** **NATURAL GAS-ET AL** (SCHAFFER T, RETHERFORD W) To provide authorization and conditions for the operation of state programs and to make appropriations.

Current Status: 6/28/2016 - **SIGNED BY GOVERNOR**; eff. 9/28/16; certain provisions effective on other dates

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-390>

HB398 CAUV COMPUTATION (HILL B) To require that the computation of the capitalization rate for the purposes of determining CAUV of agricultural land be computed using a method that excludes appreciation and equity buildup.

Current Status: 5/3/2016 - House Government Accountability and Oversight, (Second Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-398>

HB454 SALES TAX HOLIDAY-PERMANENT (PATTERSON J) To provide for a permanent three-day sales tax "holiday" each August during which sales of back-to-school clothing and school supplies are exempt from sales and use taxes.

Current Status: 2/23/2016 - Referred to Committee House Ways and Means

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-454>

HB466 TAX-EXEMPT-DIGITAL ADVERTISING (SMITH R) To specifically exempt digital advertising services from sales and use tax.

Current Status: 7/12/2016 - **SIGNED BY GOVERNOR**; eff. 10/12/16

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-466>

HB467 UNEMPLOYMENT COMPENSATION FUND (BUTLER, JR. J) To establish a loan from the Budget Stabilization Fund to the Unemployment Compensation Fund, to require the Director of Job and Family Services to recommend a program to incentivize the purchase of private unemployment insurance, and to require a study on the solvency of the Unemployment Compensation Fund.

Current Status: 4/13/2016 - Referred to Committee House Insurance

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-467>

HB473 UTILITY SERVICE TAX-LEVY (AMSTUTZ R) To require voter approval before a county may levy a new utilities services tax, to allow small businesses to count employees of related or affiliated entities towards satisfying the employment criteria of the business investment tax credit, to permit a bad debt refund for cigarette and tobacco product excise taxes paid when a purchaser fails to pay a dealer for the cigarettes or tobacco products and the unpaid amount is charged off as uncollectible by the dealer.

Current Status: 5/17/2016 - House Ways and Means, (Fourth Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-473>

HB475 MOTION PICTURE-TAX CREDIT (SCHURING K) To authorize motion picture companies to transfer the authority to claim refundable motion picture tax credits to other persons, to adjust how the credit is calculated, to increase the total amount of credits that may be awarded per year, to remove the limit on the maximum credit amount that may be awarded to a motion picture, and to create a job training program for resident film crew members.

Current Status: 5/24/2016 - **REPORTED OUT AS AMENDED**, House Finance, (Fourth Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-475>

- HB484** **TAX-EXEMPT PRODUCTS** (SYKES E, CERA J) To exempt from sales and use tax the sale of nonprescription human drugs, feminine hygiene products associated with menstruation, and disposable baby diapers, to reimburse the Local Government Fund and Public Library Fund and county and transit sales and use tax collections for any revenue lost due to those exemptions, and to create the Legislative Commission on Middle Class Economic Strength to study proposed income, sales, or use tax legislation that changes the proportionate tax burden among income classes or other classes.
Current Status: 4/13/2016 - Referred to Committee House Ways and Means
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-484>
- HB485** **INCOME TAX DEDUCTION-TUITION** (RAMOS D) To reinstate the state income tax deduction for qualified higher education tuition and fee payments that expired December 31, 2005.
Current Status: 4/13/2016 - Referred to Committee House Ways and Means
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-485>
- HB489** **MINE FUNDS** (CERA J) To credit a portion of the money derived from the Kilowatt-Hour Tax Receipts Fund to the Abandoned Mine Reclamation Fund, the Acid Mine Drainage Abatement and Treatment Fund, and the Mine Safety Fund and to make other changes to those funds.
Current Status: 5/10/2016 - House Ways and Means, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-489>
- HB491** **TAX CREDIT-PILOT PROGRAM** (ANIELSKI M) To establish a five-year pilot program whereby taxpayers with facilities in this state with activated foreign trade zone status may claim a nonrefundable commercial activity tax credit equal to the amount redeployed by the taxpayer to job creation or other specified projects.
Current Status: 5/24/2016 - House Ways and Means, (Second Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-491>
- HB492** **CAPITAL IMPROVEMENT-PILOT** (ROGERS J, DRIEHAUS D) To create the Supplemental State Capital Improvements Pilot Program funded by a temporary transfer from the Budget Stabilization Fund and to make an appropriation.
Current Status: 11/16/2016 - House Finance, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-492>
- HB515** **HEATING FUELS-SALES TAX** (PATTERSON J, CERA J) To exempt from sales and use taxation the bulk sale of firewood and certain other heating fuels, and to reimburse the Local Government Fund and Public Library Fund and county and transit sales tax collections for the resulting revenue losses.
Current Status: 4/26/2016 - Referred to Committee House Ways and Means
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-515>

- HB547** **MBR-OBM** (SMITH R) To provide authorization and conditions for the operation of state programs and to make appropriations.
Current Status: 5/24/2016 - **SUBSTITUTE BILL ACCEPTED**, House Finance, (Fourth Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-547>
- HB563** **INCOME TAX-LAYOFFS** (RAMOS D) To provide for payments to municipalities or school districts for their lost income tax revenue after a business lays off 50 or more employees within their jurisdiction.
Current Status: 11/10/2016 - Referred to Committee House Finance
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-563>
- HB565** **TAX CREDIT-STUDENT LOANS** (RAMOS D) To allow a credit against the income tax or commercial activity tax for graduates or employers who make payments on student loans obtained by the graduate to earn a degree from an Ohio college or university.
Current Status: 11/10/2016 - Referred to Committee House Ways and Means
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-565>
- HB599** **FINANCIAL INSTITUTIONS-TAX RATE** (AMSTUTZ R) To repeal the financial institutions tax rate adjustment mechanism scheduled for tax year 2017 and to declare an emergency.
Current Status: 11/10/2016 - Referred to Committee House Ways and Means
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-599>
- HB600** **FINANCIAL INSTITUTIONS-ADJUSTMENT** (AMSTUTZ R) To make a technical correction to the financial institutions tax rate adjustment mechanism for tax year 2017 and to declare an emergency.
Current Status: 11/10/2016 - Referred to Committee House Ways and Means
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-600>
- SB2** **INTERNAL REVENUE SERVICE-INCORPORATE CHANGES** (PETERSON B) To expressly incorporate changes in the Internal Revenue Code since March 22, 2013, into Ohio law, and to declare an emergency.
Current Status: 2/14/2016 - **SIGNED BY GOVERNOR**; eff. 2/14/16
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-2>
- SB12** **INCOME TAX CREDIT-SCIENCE RELATED DEGREE** (HOTTINGER J) To grant an income tax credit to individuals who earn degrees in science, technology, engineering, or math-based fields of study.
Current Status: 2/4/2015 - Referred to Committee Senate Ways and Means
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-12>
- SB18** **TAX CREDIT-NATIONAL GUARD EMPLOYMENT** (GENTILE L) To authorize a refundable income tax credit for employers that hire one or more qualified veterans or members of the National Guard or reserves.
Current Status: 4/27/2016 - Senate Ways and Means, (First Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-18>

- SB21** **EARNED INCOME TAX CREDIT RESTRICTION** (SKINDELL M) To remove the income restriction on the earned income tax credit and to make the credit refundable beginning in 2015.
Current Status: 11/30/2016 - Senate Ways and Means, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-21>
- SB40** **ECONOMIC DEVELOPMENT TAX CREDIT** (BEAGLE B) To authorize tax credits for contributions of money to economic and infrastructure development projects undertaken by local governments and non-profit corporations.
Current Status: 6/10/2015 - Senate Ways and Means, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-40>
- SB41** **NEW MARKETS TAX CREDIT QUALIFICATIONS** (BEAGLE B, TAVARES C) To modify the qualifications for the New Markets Tax Credit and the schedule for receiving the credit.
Current Status: 6/3/2015 - Senate Ways and Means, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-41>
- SB52** **AIRCRAFT FUEL EXCISE TAX** (BEAGLE B) To subject the receipt of motor fuel used to operate aircraft to the motor fuel excise taxes rather than the sales and use taxes and to require a percentage of motor fuel excise tax revenue to be used for airport improvements.
Current Status: 2/18/2015 - Referred to Committee Senate Ways and Means
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-52>
- SB88** **FELON EMPLOYMENT TAX CREDIT** (TAVARES C, THOMAS C) To create a tax credit for the employment of individuals who have been convicted of criminal offenses.
Current Status: 9/28/2016 - Senate Ways and Means, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-88>
- SB100** **SALES TAX HOLIDAY-ENERGY STAR** (BROWN E) To provide a three-day sales tax "holiday" each April during which sales of qualifying Energy Star products are exempt from sales and use taxes.
Current Status: 9/28/2016 - Senate Ways and Means, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-100>
- SB198** **NON-RESIDENT MUNICIPAL INCOME TAX** (JORDAN K) To prohibit municipal corporations from levying an income tax on nonresidents' compensation for personal services or on net profits from a sole proprietorship owned by a nonresident.
Current Status: 9/29/2015 - Senate State and Local Government, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-198>
- SB208** **STATE INCOME TAX** (BEAGLE B) To make technical changes to the state income tax law, to modify the requirements for receiving the joint filing credit.

Current Status: 11/15/2015 - **SIGNED BY GOVERNOR**; Eff. 2/15/16; certain provisions effective 11/15/15

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-208>

SB209 **OHIO RURAL JOBS ACT** (HITE C) To enact the "Ohio Rural Jobs Act" which authorizes a nonrefundable tax credit for insurance companies that invest in rural business growth funds, which are certified to provide capital to rural and agricultural businesses.

Current Status: 12/8/2015 - House Agriculture and Rural Development, (Second Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-209>

SB235 **INCREASED VALUE-PROPERTY TAX** (BEAGLE B, COLEY W) To exempt from property tax the increased value of property on which industrial or commercial development is planned until construction of new commercial or industrial facilities at the property commences.

Current Status: 12/1/2016 - House Finance, (Fourth Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-235>

SB246 **CAUV COMPUTATION-CAPITALIZATION RATE** (HITE C) To require that the computation of the capitalization rate for the purposes of determining CAUV of agricultural land be computed using a method that excludes appreciation and equity buildup.

Current Status: 11/30/2016 - Senate Ways and Means, (Fifth Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-246>

SB260 **CAPITAL REAPPROPRIATIONS** (COLEY W) To make capital reappropriations for the biennium ending June 30, 2018.

Current Status: 2/21/2016 - **SIGNED BY GOVERNOR**; eff. 5/23/2016

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-260>

SB288 **INCOME TAX-PASS THROUGH ENTITIES** (EKLUND J) To revise the law governing how taxes on income from pass-through entities is to be reported and paid by the entities and their investors.

Current Status: 11/30/2016 - Senate Ways and Means, (Fourth Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-288>

SB289 **MOTION PICTURE TAX CREDIT** (PATTON T) To increase the overall cap on the motion picture tax credit from \$40 million per fiscal biennium to \$100 million for the current fiscal biennium and \$160 million for all subsequent biennia.

Current Status: 4/12/2016 - Referred to Committee Senate Ways and Means

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-289>

SB302 **PROPERTY TAX EXEMPTION-MILITARY VETERANS-DISABLED** (SCHIAVONI J, GENTILE L) To exempt from property taxation the primary residence of military veterans who are disabled.

Current Status: 11/30/2016 - Senate Ways and Means, (First Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-302>

SB305 **TAX CERTIFICATES-SALE PROHIBITION** (WILLIAMS S) To prohibit the sale of tax certificates for parcels owned by a person sixty-five years of age or older and that include the primary residence of the owner.

Current Status: 9/28/2016 - Senate Ways and Means, (First Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-305>

SB310 **CAPITAL APPROPRIATIONS** (OELSLAGER S) To make capital appropriations and changes to the law governing capital projects for the biennium ending June 30, 2018.

Current Status: 5/17/2016 - **SIGNED BY GOVERNOR**; eff. 8/16/16, certain provisions effective 7/1/16

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-310>