

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

**OMA Government Affairs  
Committee**  
August 31, 2016



**AGENDA**

**Welcome & Introductions**

**Christopher Hess, Committee Chair**  
Director, Public Affairs, Eaton

**National Association Reports**

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

**Committee Members**

**OMA Counsel's Report**

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

**Staff Reports**

**Ryan Augsburger**, OMA Staff  
**Rob Brundrett**, OMA Staff  
**Kimberly Bojko**, Partner, Carpenter Lipps & Leland,  
OMA Energy Counsel

**Discussion / Action Items**

- Above-Market Electricity Charges and Reregulation
- Unemployment Comp
- Legal Challenge: Drug Pricing Initiated Statute
- Truck weight reform (SETA)
- Employee engagement tools
- 2016 OMA Election Services
- Campaigns and Elections
- Battleground Legislative Contests

**Member Discussion**

**Special Presentation:**

- *Perspectives from the U.S. House of Representatives*

**Congressman Jim Renacci, 16th District**

**Lunch – provided by OMA**

**2016 Government Affairs Committee  
Calendar**  
*Meetings will begin at 9:30 a.m.*

**Wednesday, August 31 (Cleveland location)**  
**Wednesday, November 30**

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





**Rep. James Renacci**  
**Representative from Ohio's 16<sup>th</sup> District**

Jim Renacci was elected to the United States House of Representatives in November of 2010 and is serving his third term representing the 16th district of Ohio. Currently he serves on the House Ways and Means Committee and the House Budget Committee.

Jim grew up in a working class, union family in western Pennsylvania—his father was a railroad worker and his mother was a nurse. He was the first in his family to graduate from college and paid his own way through school by working a wide range of jobs, including as a truck driver, a mechanic and on a road crew. In 1980 he received his Bachelor's Degree in Business Administration from Indiana University of Pennsylvania.

After graduating college, Jim became a Certified Public Accountant and went to work for Grant Thornton in Pittsburgh, specializing in their health care accounting practice. In 1983, Jim left Pittsburgh for Wadsworth, OH, where he founded LTC Management Services, a company that owned, operated and managed nursing facilities throughout the region. Jim also founded a CPA firm in 1989, along with several other business ventures. Throughout his 30-year business career Jim owned and operated over 60 entities, created more than 1,500 jobs and employed over 3,000 people.

In addition to his work helping grow northeast Ohio's economy as a private sector business owner, Jim has also dedicated much of his life to public service. He spent five years as a volunteer firefighter in Wadsworth, served on the city's Planning Commission, Board of Zoning Appeals and was later elected to two terms as President of the City Council. In 2004, Jim was elected Mayor of Wadsworth, where he successfully balanced the city's \$80 million dollar budget and converted a multi-million dollar deficit into a surplus, without raising taxes.

Outside of his work in the business world and public service, Jim and his wife Tina have raised three children, one daughter and two sons. Jim is a faithful member of his local Parish and has ushered in Mass for over twenty years. For Jim, serving in Congress is an opportunity to give back to his country and his community, while seeking to advance the common sense conservative principles we need to restore strength to our economy and accountability to our government. He is deeply proud of his working class roots, where he learned the value of hard work and developed his unyielding commitment to preserving the American Dream. He is honored to serve the people of the 16th district as their voice in Washington and hopes to continue his work with both Republicans and Democrats to help our nation meet the many challenges it faces today.

# Measure 97: A New Tax That Would Cost Consumers Billions With No Guarantee Where the Money Would Be Spent

An initiative on the November 2016 statewide ballot, Measure 97 would impose \$6 billion in new taxes on the sales of products and services that Oregonians buy every day.

FACTS

Oregon consumers, as well as small businesses, should be very concerned about this costly and damaging proposal. If passed by voters, Measure 97 would impose a huge new tax on many products and services sold in Oregon.

A study by the nonpartisan Legislative Revenue Office (LRO) concluded that most of this tax on sales would end up being paid by Oregon consumers through higher prices on nearly everything we buy – including gasoline, utilities, clothing, medicine, and even food – **costing the average Oregon household over \$600 every year.**

Measure 97 does nothing to guarantee the new tax revenues will go to schools, healthcare, or senior services. The new taxes from this measure would be paid into the state General Fund, giving the politicians and bureaucrats a blank check to spend billions of dollars as they please, with no accountability to the public.

This measure's \$6 billion tax increase on companies' sales in Oregon would badly damage our state's economy and job market. In fact, the in-depth LRO study concluded that **this giant tax increase would result in over 38,000 lost private sector jobs in Oregon.**

[continued]

## **Editorial: [Measure 97] would only hurt those it aims to help**

"The \$6.1 billion it would raise each biennium would come from one of the most regressive forms of taxation. [Measure 97] would have its largest proportional impact on low- and medium-income families in this state. The basic problem with [Measure 97] is that it behaves like a sales tax, but it doesn't exclude all the items normally exempted from sales taxes."

—Portland Tribune, 5/26/16

[www.Defeat97.com](http://www.Defeat97.com)



**NO on 97**  
**Defeat the Tax**  
**on Oregon Sales**

Because this would be a new tax on gross sales – not profits – businesses would be required to pay the tax on their total revenues, regardless of whether they make a large profit, a small profit, or no profit at all. That would mean many employers would have to raise prices or cut jobs, or both.

For many products sold in Oregon, this measure would add a new tax at each step in the production process.

By the time an Oregon product goes from a manufacturer to a distributor and then to a retailer in the state, it may have been taxed multiple times before finally reaching the consumer. This type of “tax

on a tax” would make Oregon products more expensive, and would make Oregon companies less competitive.

So what does Measure 97 mean for small businesses and consumers? It means higher costs for Oregon products and services, as well as damaging economic impacts that could threaten the recent economic improvements we have worked so hard to achieve.

**Editorial: Beware of sales tax lurking in disguise**

“[Measure 97] resembles a sales tax and will be most burdensome to the low-income Oregonians who can least afford to pay.”

—Portland Tribune, 11/12/15

**Editorial: [Measure 97] will act as a sales tax, state says**

“...[Measure 97] would give Oregonians a hidden sales tax unaccompanied by measures that would make the tax system work better or legislators spend more responsibly. It’s the worst of all possible worlds.”

—The Oregonian, 5/23/16

**BUSINESS/ORGANIZATION COALITION MEMBER FORM**

My business/organization is **opposed** to the new \$6 billion tax increase on Oregon sales on the November 2016 statewide ballot. You may list my business/organization publicly as a member of Defeat the Tax on Oregon Sales – the growing coalition of Oregon consumers, taxpayers, small and large businesses, and organizations who are coming together to oppose this damaging initiative.

NAME OF BUSINESS OR ORGANIZATION _____		
MAILING ADDRESS _____	CITY, STATE, ZIP _____	
NAME OF OFFICER SIGNING (PLEASE PRINT) _____	CONTACT PERSON FOR YOUR BUSINESS/ORGANIZATION _____	
TITLE OF OFFICER SIGNING _____	DAYTIME PHONE NUMBER OF CONTACT PERSON _____	
SIGNATURE OF OFFICER _____	DATE SIGNED _____	CELL PHONE NUMBER OF CONTACT PERSON _____
NUMBER OF MEMBERS / EMPLOYEES _____	E-MAIL ADDRESS OF CONTACT PERSON _____	

If yours is a business group, how many Oregon jobs do your members provide? \_\_\_\_\_

Please check the applicable boxes below:

- Our business/organization is willing to help in other ways. Please call the contact person designated above to let us know what we can do to help.
- In addition to listing our business/organization as a member, please add my name (the signing officer) to the list of individual coalition members.

**Please return this completed form to: Defeat the Tax on Oregon Sales  
 PO Box 5275, Portland, OR 97208 • Phone: (877) 575-9950 • Fax: (877) 703-3367  
 info@Defeat97.com**

## **Public Policy “Hot Topics” August 31, 2016**

### **Overview**

All eyes were on northeast Ohio during the past quarter as the RNC came to Cleveland to nominate Donald Trump. Trump won the nomination and Cleveland won rave reviews from Ohioans as well as national audiences. As a presidential election year, 2016 is more about campaigns and elections and less so about policy making. At the statehouse, while some noteworthy laws and regulations have advanced before a summer recess, no further legislative activity is expected until after the election. Anticipate a busy post-election session. During the past quarter, OMA resources have been most focused on electricity rate-making and passage of legislation to provide short-term and long-term solvency of unemployment compensation.

### **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. 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.

House Bill 394 was introduced by Rep. Barbara Sears. The bill is a comprehensive reform of Ohio’s unemployment compensation program with a focus on making the system in Ohio solvent. A new joint committee was seated and is holding hearings on the system through early November. They had the first hearing last Thursday. See OMA Human Resources section report for more information.

### **Electric Utilities Seek \$Billions and Support “Reregulation”**

Significant regulation and legislation is in play that governs the price and supply of electric generation. Akron utility FirstEnergy shocked interested parties this summer when they modified their rate case and are now seeking up to \$8 billion from customers in their service territory to subsidize their balance sheet.

Meanwhile the FirstEnergy CEO has announced the company will seek reregulation of electric generation as a state policy. AEP’s CEO has made the same announcement. Other utilities may be attempting to revise state law in the remaining months of 2016 to remove important customer protections. See the energy public policy report for more detail.

The OMA has been a leading opponent of the PUCO cases litigating against the utility proposals. The OMA Energy Group directs the OMA legal team strategy and has been quite busy this quarter.

### **Medical Marijuana Legalization**

Before recessing for the summer, a bill moved through both legislative chambers with lightning speed in an attempt to preempt a new ballot proposal to legalize “medical marijuana.” It worked. Backers of the legalization effort announced in late May they would withdraw the ballot push. 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.

### **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 may consider 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 has not met over the summer.

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.

### **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.

### **Environment**

The federal Clean Power Plan / U.S. EPA 111(d) which increases regulation on carbon emissions from power plants continues to be the major environmental issue. Ohio announced previously it would be seeking an extension to develop a state plan. Earlier this year the U.S. Supreme Court issued a stay in the case, which was a major victory for manufacturers. The OMA and other business allies filed an amicus brief in support of the states that are fighting regulation in the court. The oral arguments were delayed until later in the summer to be heard in front of the court. A decision isn’t expected until the end of the year at the earliest.

### **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.”

### **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**

During election years, the OMA publishes the authoritative OMA Election Guide chronicling candidate profiles with economic and demographic statistics. The Guide was distributed in early August to policymakers, journalists, lobbyists and members. The OMA also publishes an updated economic profile in “Manufacturing Counts.” An updated policy priorities document as well as an employer to employee communication resource tools are available to members.

The OMA PAC has made endorsements of candidates for Ohio Supreme Court and Ohio General Assembly. A second round of endorsements is expected by mid-September. Among those endorsed were Chief Justice Maureen O’Connor, Judge Pat Fischer and Judge Pat DeWine for the other open seats on the Supreme Court.

### **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. Expect an interesting game of musical chairs.

## Leadership

### [New Unemployment Compensation Committee Created](#)

August 19, 2016

The House and Senate this week [created a joint legislative committee](#) to reform Ohio's unemployment compensation system, which has for years been actuarially unsound and has cost employers millions of dollars in federal penalties.

The "Unemployment Compensation Reform Joint Committee" will be co-chaired by Sen. Bob Peterson (R-Sabina) and Rep. Kirk Schuring (R-Canton).

Other members of the committee are: Sen. Randy Gardner (R-Bowling Green), Sen. Bill Seitz (R-Cincinnati), Sen. Kenny Yuko (D-Richmond Hts.), Rep. Bob Cupp (R-Lima), Rep. Gary Scherer (R-Circleville), and Rep. Jack Cera (D-Bellaire).

The committee has scheduled five meetings: Aug. 25, Sept. 15, Oct. 6, Oct. 20 and Nov. 3.

### [Drug Price Proposal Not Headed to the Ballot](#)

August 19, 2016

A Supreme Court of Ohio decision has, for now, stymied a national foundation, AIDS Healthcare Foundation of Los Angeles, that was working toward placing an initiated statute on the November general election ballot that would cap prices on prescription drugs purchased by the state.

The proposed Ohio Drug Price Relief Act would require Ohio agencies to pay no more for drugs than paid by the U.S. Department of Veterans Affairs.

OMA, among others, brought a lawsuit to contest the validity of the signatures and petitions filed by paid circulators.

The court found that 10,303 signatures were invalid because the circulators violated Ohio law. If sufficient valid signatures are collected within the court's specified time period to cure the deficiency, then the petition can be resubmitted to the General Assembly for its consideration. It is expected that the proposed law will be presented to electors in 2017.

OMA's interest in the matter in addition to the irregularity of the petitioning process is opposition to government limiting prices on manufactured

goods. Here's [OMA's media statement](#) on the decision.

### [Women in Manufacturing Award Nominations Now Open](#)

August 19, 2016



The Science, Technology, Engineering and Production (STEP) Ahead initiative honors and promotes the role of women in manufacturing through recognition, research, and leadership. The [STEP Ahead Awards](#) recognize women at all levels of manufacturing, from the factory floor to the C-suite.

These awards illustrate the widespread impact women have on shaping the industry, whether they are running the company, designing the next big product, or testing innovations on the shop floor.

Nominees will be selected by The Manufacturing Institute STEP Awards Review Committee. Review eligibility and [nominate that special someone here!](#)

### [For Friends of American Manufacturing Only!](#)

August 12, 2016

The National Association of Manufacturers (NAM) invites all friends of manufacturing to join a grassroots network in support of American manufacturing: [Friends of Manufacturing](#).

Friends of Manufacturing says: "We realize the vital role that manufacturing plays in each and every community, big or small, throughout the United States. From the millions of jobs we support, to the products we make that are the envy of the world, America depends on manufacturing. ...

"But Manufacturing in America is under threat. Whether by government policies that favor special interests, or by foreign companies and governments that break the rules, our ability to compete and put more Americans to work in good-paying jobs is getting harder each and every day.

"We believe that all Friends of Manufacturing ... should have a say in government policies that affect their livelihood.

"We believe that government should make it easier, not harder, for manufacturers to grow and succeed. And we believe that our elected representatives should be held accountable for the decisions they make."

By joining at no cost or obligation, Friends of Manufacturing will let you know when issues that are critical to our well-being are being debated in Washington, and what you can do about it.

[Sign up here](#). Pass it on! This is designed to engage an army of supporters of American manufacturing.

### [Let's Talk Manufacturing Public Policy Goals for Ohio](#)

August 12, 2016

OMA has prepared this [manufacturing public policy goals talking points](#) one-pager. Use it when working with your elected officials and community groups. It summarizes key policies that will make a good difference for Ohio manufacturing.

Find more tools and resources that you can use to support Ohio manufacturing at [OMA's Election Center](#).

### [Polls Shows Clinton Leading Trump in Ohio, Portman Pulling Away](#)

August 12, 2016

In the latest polls by Quinnipiac University released this week, Hillary Clinton appears to have wrested the advantage from Donald Trump. [The poll](#) shows Clinton narrowly ahead of the New York businessman 49% – 45%.

In the Ohio U.S. Senate race which had been in a dead heat for many months, the [new poll](#) shows Republican incumbent Rob Portman pulling away from Democrat challenger Ted Strickland, 49% – 40%.

### [OMA-PAC Announces Endorsed Candidates](#)

August 5, 2016

The Ohio Manufacturers' Association Political Action Committee (OMA-PAC), chaired by Scott Balogh, President & CEO, Mar-Bal, Inc., has [released its initial list of endorsed House and Senate candidates](#) for election in November, as well as endorsed candidates for the Supreme Court of Ohio.

In all, 14 Senate candidates, nine incumbents and five candidates for open seats, got the nod. Forty-six incumbent House members and six candidates for open House seats, are backed by OMA-PAC.

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 contained in the [2016 Ohio Election Guide](#). The General Election [voter registration](#) deadline in Ohio is October 11, 2016. [Check here](#) for other states.

### [Thank you, Rep. Steve LaTourette](#)

August 5, 2016

OMA joins the [community](#) saddened by the death of former Congress member Steven L. LaTourette, who passed away this week at age 62. He represented the citizens of the most northeast counties of Ohio, the 14th Congressional District. He was a wonderful advocate for Ohio, Ohio business, and common sense public policy.

### [What Rust Belt?](#)

August 5, 2016

"They call it the Rust Belt for a reason: because everything is rusting and rotting," said Republican presidential nominee Donald Trump while stumping in Ohio this week.

Ohio manufacturers of course know better, and for the specific facts about the strength of the Ohio manufacturing economy, see OMA's new edition of [Ohio Manufacturing Counts](#), 20 pages of good news about the effect of manufacturing on the state's economy.

The Akron Beacon Journal [editorial board](#) reacted to Trump's remark: "Actually, Ohio is a manufacturing behemoth, among the top five states in annual output, and production levels have been climbing, the leading sectors transportation equipment, fabricated metals, chemicals and machinery."

### [House Seats Two New Members](#)

August 5, 2016

The House took a brief pause from campaign activity this week to return to Columbus to seat two new members. [Theresa Gavarone](#) (R-Bowling Green) and [Derrick Merrin](#) (R-Monclavia Twp.) were appointed to

fill vacancies in the [3<sup>rd</sup> and 47<sup>th</sup> House Districts](#), respectively.

Gavarone was selected by a House Republican screening committee to replace former representative Tim Brown who resigned to take a job with the Toledo Metropolitan Area Council of Governments. Merrin won the Republican primary for the 47<sup>th</sup> House District, the seat held by term-limited Rep. Barbara Sears (R-Sylvania). Sears vacated her seat early to take a position with the Governor's Office of Health Transformation.

### [OMA President Elected Chairman of State Manufacturers Organization](#)

August 5, 2016

OMA president Eric L. Burkland was elected chairman of the Council of State Manufacturers' Associations when it met this week in Biloxi, MS. The council holds leadership conferences that are attended by leading manufacturing trade association CEOs to learn, share and exchange ideas on how to more effectively manage their associations and advocate for American manufacturing. Eric will serve a two year term.

### ["Why would students choose manufacturing if they've never even been exposed to it?"](#)

August 5, 2016



While MFG DAY is an opportunity for people of all ages and from all walks of life to learn something about manufacturing through first-hand personal experience, the real focus is about providing guidance to students that can help them when it comes time to make career decisions.

As this [new MFG DAY video](#) says: "Why would students choose manufacturing if they've never even been exposed to it?"

This week the number of events for #mfgday16 topped 500 – the first benchmark on the way to the goal of 3,000 events.

Right now Ohio is leading with the most events, closely followed by Michigan and California!

### [Ohio Supreme Court Accepts Jurisdiction on Punitive Damages and Prevention of Performance Issues](#)

August 5, 2016

OMA Connections Partner, Frantz Ward, [posted](#) that on July 27, 2016, the Ohio Supreme Court accepted for review an appeal filed by Nationwide Mutual Insurance Company from a Seventh District Court of Appeals decision that it contends "fundamentally alters the law of contracts, fraud, and punitive damages in Ohio, affecting nearly every business transaction in the state."

The underlying case transpired following the end of a business relationship between Nationwide and a former agent. Nationwide urged the Ohio Supreme Court to review the case to decide several fundamental issues about business transactions raised in the appellate court decision.

OMA was one of several organizations that filed an amicus curiae brief urging the Ohio Supreme Court to accept jurisdiction.

Per Franz Ward: "Having accepted jurisdiction, the Ohio Supreme Court now must grapple with the availability of punitive damages in the context of a breach of contract claim and application of the prevention of performance doctrine to signed legal releases. Depending on the outcome, the allocation of business and contract risks throughout Ohio could drastically change."

### [Obama Signs National Food Labeling Bill](#)

August 5, 2016

President Obama signed into law last week a bill which will [require labeling](#) of genetically modified ingredients. This legislation was supported by OMA's food manufacturing members who wanted a national labeling standard as opposed to a state by state patchwork of laws with which to comply.

The legislation passed by Congress two weeks ago will require most food packages to carry a text label, a symbol or an electronic code readable by smartphone that indicates whether the food contains genetically modified organisms, or GMOs.

The U.S. Agriculture Department has two years to write the rules, which will nullify a Vermont law that took effect earlier this summer.

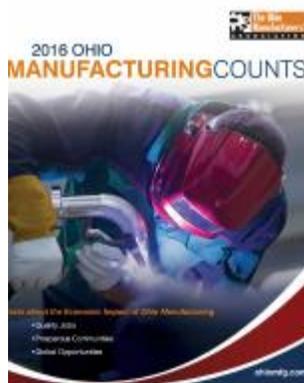


included representatives from OMA member companies: Christopher Connor, Executive Chairman, The Sherwin-Williams Co.; Alexander Cutler, Retired Chairman and CEO, Eaton Corporation; and Chris Kelly, Partner in Charge, Jones Day.

Congratulations to the host committee and all the Ohio communities and citizens who made Cleveland – and Ohio – shine this week!

### [Here's Fresh Ohio Manufacturing Economic Data](#)

July 22, 2016



Ohio is powered by manufacturing. This is not just something we say; we're backed up by data!

At almost 17%, manufacturing's contribution to Ohio's GDP is greater than that of any other industry sector.

Ohio manufacturing has a payroll of \$39 billion, the highest total annual wages of any Ohio industry sector.

OMA prepared [2016 Ohio Manufacturing Counts](#) – 20 pages of data about Ohio manufacturing – to provide Ohioans with an understanding of the importance of manufacturing to the state's economy.

### [391 Events and Counting ...](#)



July 22, 2016

Manufacturing Day<sup>SM</sup> is a celebration of modern manufacturing meant to inspire the next generation of manufacturers. Although Manufacturing Day officially

occurs on the first Friday in October—this year is Oct 7, 2016—any day can be a Manufacturing Day.

All events should be registered on [this site](#) no matter what date they are scheduled. Registered event hosts have access to all of the free event planning and execution resources created by the national co-producers.

### [It's Finally Here ... RNC Convention in Cleveland](#)

July 15, 2016

Tens of thousands of party faithful, media, and others will descend on Cleveland beginning this weekend. Many statewide officeholders will host events for Ohio delegates and supporters. Regarding action inside the convention hall, the RNC has announced this [list of speakers](#). [WSJ.com](#) commentator Jerry Seib notes that host state governor, John Kasich, has not accepted or declined any speaking roles.

About getting around town: The Secret Service has authority to close or restrict traffic routes based on security needs; however, ODOT has prepared this [handy resource](#) of planned closures and restrictions. Please note guidance for special overweight permitting.

### [Clinton-Trump Dead Heat Continues in Ohio](#)

July 15, 2016

In its [July 13, 2016 swing state poll](#), Quinnipiac University finds that in Ohio, Clinton and Trump are tied 41 – 41 percent, compared to a 40 – 40 percent tie June 21.

According to the poll, gender and racial gaps continue to divide Ohio voters. Men back Trump 47 – 33 percent, while women go to Clinton 48 – 35 percent. White voters go Republican 46 – 35 percent, while non-white voters go Democratic 69 – 15 percent.

The Swing State Poll focuses on Florida, Ohio and Pennsylvania because since 1960 no candidate has won the presidential race without taking at least two of these three states. Needless to say: more to come.

## [Portman Takes Lead in Senate Race](#)

July 15, 2016

A [Quinnipiac poll](#) released this week shows Senator Rob Portman leading former Governor Ted Strickland, 47-40 percent, in Ohio's U.S. Senate race.

The poll, covering swing state Senate races in Ohio, Florida, and Pennsylvania, noted: "The numbers seem to be breaking the Republican way in the battle for control of the U.S. Senate, at least when it comes to the critical swing states of Florida, Ohio and Pennsylvania."

## [Uniform Food Labeling Bill Passes](#)

July 15, 2016

This week, by a vote of 316-117, the U.S. House of Representatives approved [SR 764](#) requiring manufacturers to label products made with genetically engineered ingredients. Late last week the U.S. Senate voted the measure 63-30, sending the bill to the House. The president is expected to sign the bill into law as soon as this weekend.

OMA members support the bill that will prevent an inconsistent patchwork of state laws from governing food and beverage labeling. Vermont had passed such a law that went into effect on July 1.

Both Ohio Senators voted for the measure and Senator Brown has been credited with aiding in negotiations. Most of Ohio's congressional representatives voted yes; [click to view a complete list](#).

A leader of the effort, OMA member, Derek Crawford, Corporate & Government Affairs, The KraftHeinz Company, said that thanks are in order for our elected representatives who voted to approve the measure. Congratulations to members who provided leadership on this important issue!

## [700,000 Ohioans Work in Manufacturing – Let's Make Sure They Vote](#)

July 15, 2016

Anyone can register to vote at [ManufacturingVoters](#), a non-partisan website created by OMA with assistance from the National Association of Manufacturers.

To help get the word out in your facility, here's a good "manufacturing voter" [poster](#) you can print and reproduce. It's just one of many non-partisan GOTV

tools for manufacturers at the [OMA 2016 Election Center](#).

## [Government Price Control Measure Fails to Make Ballot](#)

July 8, 2016

The deadline for issues to be included on the 2016 General Election ballot has come and gone. Proponents of the "Drug Price Relief Act," as well as the numerous other ballot issues, have now missed the deadline to get their issues on the 2016 ballot.

Thus, no statewide ballot issues are expected to be on the 2016 ballot, unusual in a presidential election year in Ohio.

In the case of the drug-pricing constitutional amendment, the OMA played a leading role in contesting the validity of certain signatures collected by paid petition circulators. The Cleveland Plain Dealer [reported](#) proponents on drug-pricing plan to pursue the 2017 ballot.

## [Republican Convention Poses Transport Interruptions](#)

July 8, 2016

The [Akron Beacon Journal reported](#) on Secret Service security plans to require private planes to be diverted to Akron and Youngstown during the Republican convention in Cleveland (July 17 through July 22). Less well-documented are anticipated interruptions of road closures which could interfere with shipping needs.

Manufacturers located near downtown Cleveland may be at particular risk of permitted truck movement limitations during the convention. A list of [planned closures and restrictions](#) was released by the convention host committee, but additional closures can be made by the Secret Service and others at any time. Plan accordingly.

## [House Adds August Session Date](#)

July 8, 2016

Last week House Speaker [Cliff Rosenberger](#) (R-Clarksville) added a session date for Tuesday, Aug. 2, to take care of some legislative housekeeping. The session will include filling the vacancies for the 3rd and 47th House districts after Reps. Barbara Sears

(R-Maumee) and Tim Brown (R-Bowling Green) resigned.

The Speaker also announced a screening panel will be formed to fill Brown's seat. More details will be released regarding logistics for the screening panel.

### [Defend Trade Secrets Act of 2016](#)

July 8, 2016

On May 11, President Obama signed a new law that creates a federal cause of action for misappropriation of trade secrets. The Defend Trade Secrets Act of 2016 (DTSA) places trade secrets on more even footing with other types of intellectual property, including copyrights, patents, and trademarks, and allows trade secret owners to seek redress in federal court for violations of their rights, without having to prove a separate basis for jurisdiction. The DTSA is an important leap forward for businesses seeking to protect their proprietary information.

[Read more](#) from OMA Connections Partner, Roetzel

### [OMA Files Brief on Prescription Drug Ballot Issue](#)

July 1, 2016

This week, the OMA filed a [brief](#) in the ongoing Ohio Supreme Court litigation challenging the unlawful and potentially fraudulent signature collection and petition circulation efforts of an initiated statute purportedly filed to lower the price of prescription drugs.

For years, the OMA has fought these sorts of special interest groups and their mostly out of state signature collection companies who routinely violate Ohio law during the process of collecting signatures to put something on an election ballot. The current legal action, filed along with the Ohio Chamber and the Pharmaceutical Research & Manufacturers of America (PhRMA), challenges the egregious signature collection methods on the current initiated statute and hopefully clarifies Ohio law for future ballot drives – if you want to try to change the Ohio Constitution or our laws, you have to follow the law and play by the rules.

The Ohio Supreme Court is expected to reach a decision in the case sometime this summer.

### [What will be the Impact of Brexit on Your Company?](#)

July 1, 2016

OMA Connections Partners are already providing content about the potential impacts of the separation of Great Britain from the European Union (Brexit).

Here is an [article from Dinsmore](#) about the impact on intellectual property, patents, trademarks & designs.

Clark, Schaefer, Hackett is offering a webinar on July 12: [Understanding the Impact of Brexit Vote](#).

### [U.S. Senate Agriculture Committee Moves Good Labeling Bill](#)

July 1, 2016

Last week, the Senate Agriculture Committee announced a deal to establish a national labeling standard for foods with genetically modified ingredients.

Grocery Manufacturers Association president and CEO Pamela Bailey said, "This bipartisan agreement ensures consumers across the nation can get clear, consistent information about their food and beverage ingredients and prevents a patchwork of confusing and costly state labeling laws."

Senator Sherrod Brown and Senator Rob Portman were both helpful in supporting this deal.

OMA has been a proponent of a national labeling standard, and will sign onto Coalition for Safe & Affordable Food Coalition letter to Senate leadership to urge a rapid affirmative floor vote.

### [OMA-PAC Endorses Ohio Supreme Court Candidates](#)

June 24, 2016

When it met this week, the OMA-PAC board of directors voted to endorse three candidates for the Supreme Court of Ohio in the November 2016 General Election: incumbent Chief Justice Maureen O'Connor, who is running unopposed, Appeals Court Judge Pat DeWine, and Appeals Court Judge Pat Fischer.

"The court can have a tremendous impact on the business climate in Ohio, and these highly qualified judges are the best candidates for Ohio's manufacturers and businesses. Each candidate is committed to upholding the Constitution and strictly interpreting the law, not legislating from the bench. Ohioans have a right to have laws applied as they were written for a predictable system of justice," said OMA-PAC Chairman, Scott Balogh, President & CEO, Mar-Bal, Inc

[Read more here.](#)

### [OMA Staff Presents Volunteer Service Award to Brad Belden](#)

June 24, 2016



During the OMA board of directors meeting this week, Ryan Augsburger, OMA Vice President and Managing Director, Public Policy Services, presented the OMA's Babington Award to Brad Belden, Vice President, Administrative Services, The Belden Brick Company.

The OMA's Babington Award is a staff award presented to members who go above and beyond in their volunteer service to Ohio manufacturing.

Brad has gone out of his way to learn the intricacies of Ohio's energy landscape and volunteers untold hours as the chairman of both the OMA Energy Committee and the OMA Energy Group. Augsburger said, "Brad has a natural talent to communicate industry concerns and opportunities."

### [OMA Board Presents Legacy Awards](#)

June 24, 2016



Pictured: John Seryak, Bill Sopko, Chairman, OMA board of directors, and Dr. Ned Hill.

The OMA Legacy Award is presented by the OMA board of directors to individuals who have significantly supported Ohio manufacturing.

At its meeting this week, the OMA board presented Legacy Awards to two outstanding experts who have been invaluable in supporting OMA's energy issue advocacy.

John Seryak, PE, CEO, Go Sustainable Energy, LLC, is OMA's energy engineering consultant. John is a leading Ohio expert in energy efficiency and energy technologies. He often is called upon to provide expertise to OMA's energy policy formation. He also manages OMA's Energy Efficiency Peer Network which supports plant engineers and maintenance staff in energy management technologies.

Dr. Edward (Ned) Hill, Professor, Public Affairs & City & Regional Planning, The Ohio State University, John Glenn College, is the state's foremost economist and has supported OMA policy formation on multiple issues for numerous years. He has recently provided critical expertise to developing OMA's energy policy.

### [Show Us Your Sticker!](#)

June 24, 2016



Order "Freedom Jobs Manufacturing" stickers for your employees at the OMA's [2016 Election Center](#), where you'll find this and all sorts of no-charge tools to support your company's get-out-the-vote efforts.

## [What Recent Swing State Polling Says about Ohioans](#)

June 24, 2016

The Quinnipiac Swing State Poll focuses on Florida, Ohio and Pennsylvania because since 1960 no candidate has won the presidential race without taking at least two of these three states.

The [poll results released this week](#) show:

- Gender, age and racial gaps mark the Ohio U.S. Senate race. Portman leads 46 – 37 percent among men, 48 – 36 percent among white voters and 51 – 34 percent among voters over 65 years old.
- Strickland leads 46 – 39 percent among women, 69 – 15 percent among non-white voters and 46 – 27 percent among voters 18 to 34 years old.

Ohio women are moving to Clinton in greater numbers, from 43 – 36 percent over Trump May 10 to 48 – 31 percent today. There is little change in Trump's support among men, 51 – 36 percent in May and 49 – 32 percent today. He leads 76 – 6 percent among Republicans and 41 – 32 percent among independent voters, while Democrats back Clinton 80 – 9 percent.

## [Attention News Junkies!](#)

June 24, 2016

Can you never get enough news? We have just the thing. OMA Daily News Clips!

Every day we clip stories from Ohio and national news sources, compile them into a quick-scan digest, and deliver them to your inbox by 8:45 a.m.

If you like keeping up on news that affects manufacturing competitiveness – elections & campaigns, economic development, energy & environment, politics, and more, [subscribe to OMA Daily News Clips right here](#). It's a benefit of your OMA membership!

## [We've Lost a Dear Friend](#)

June 17, 2016

With the passing of George Voinovich, we've lost Ohio manufacturing's greatest advocate, and a dear friend.

The most successful politician in the state's history (forty years of service at the local, state and federal level), Senator Voinovich was a good man, in every sense of those words. He led with conviction, caring and high standards. And, good old fashioned Buckeye hard work.

The OMA worked closely with Senator Voinovich throughout his public career, and continued to do so after his retirement (he never stopped working). Senator Voinovich worked hard to grow Ohio's industrial economy at each of his jobs. He focused on attracting manufacturing investment and creating manufacturing jobs. And, he got things done.

Those of us that work for and through the OMA are greatly saddened with the Senator's passing. It was a great privilege to work with him, and a great joy to share in the work of some of his accomplishments. We've lost a dear friend, but not the things, so many things, that he built in his lifetime.

## [OMA Announces Partnership with LIFT](#)

June 17, 2016

This week the [Ohio Manufacturers' Association](#) (OMA) and Lightweight Innovations for Tomorrow, [LIFT](#), announced their Ohio-based partnership.

LIFT is a public-private partnership committed to advanced lightweight metal manufacturing technologies and implementing education and training initiatives to better prepare the manufacturing workforce.

Almost without exception, manufacturers with whom OMA interacts claim that finding adequate numbers of skilled workers is their number one issue.

By working with LIFT, and other organizations focused on addressing manufacturing workforce development, OMA executes its mission to protect and grow Ohio manufacturing.

[Here is our press release](#) and a [Fact sheet: LIFT & state manufacturers' associations partnership](#). We'll keep members posted about specific opportunities created by the partnership.

## [Encourage Your Employees to Vote, Poster for Your Use](#)

June 17, 2016

Study after study has shown that employees want and trust information from their employers on voting and elections.

[Here's a poster](#) you can display to communicate that you believe every employee in your company should exercise his or her right to vote.

Lots more get out the vote tools for employers can be found at [OMA's 2016 Election Center](#).

### [OMA Hosted Food Manufacturers and Government Affairs Committee](#)

June 17, 2016



Pictured: Derek L. Crawford, Corporate & Government Affairs, The Kraft Heinz Company

This week the OMA hosted members at two forums: OMA's annual Food Manufacturers & Suppliers meeting and the quarterly meeting of the OMA Government Affairs Committee.

In the food manufacturers' event, panel discussions focused on top industry legislative and regulatory issues, including food labeling requirements and potential regulations on sugar and salt in food products. The well attended meeting underscores the importance of Ohio's food manufacturing industry, which provides jobs for 58,400 Ohioans. Derek Crawford, Corporate & Government Affairs, The Kraft Heinz Company, chaired the forum.

The OMA Government Affairs committee heard, among a variety of legislative updates, an Ohio election presentation from Ohio House Republicans, Michael Dittoe and Kenny Street, as well as Matt Carle, Executive Director of New Day for America, John Kasich's Super PAC.

All members are welcome to join the OMA Government Affairs Committee. [Subscribe to your communities of interest here](#).

### [Rep. Brown Steps Down](#)

June 17, 2016

Rep. [Tim Brown](#) (R-Bowling Green) will resign his House seat next month to take a new job as president of the Toledo Metropolitan Area Council of Governments. House Republicans will have the opportunity to appoint his successor in the [3rd House District](#) seat.

### [Finish the Job on Export-Import Bank](#)

June 17, 2016

In [this commentary](#), Ryan Augsburger, vice president and managing director, OMA Public Policy Services, explains the role and function of the Export-Import Bank, how it's hung up by Congress, and what needs to happen next for the agency to resume assisting Ohio manufacturers

## Miscellaneous Legislation of Interest to Manufacturers

Prepared by: The Ohio Manufacturers' Association  
Report created on August 26, 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:** 5/18/2016 - **PASSED BY HOUSE**; Vote 96-0  
**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:** 6/30/2015 - Introduced  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-280>
- HB282**      **PREVAILING WAGE LAW** (ROEGNER K, HOOD R) To repeal Section 509.70 of Am. H.B. 497 of the 130th General Assembly to repeal the Prevailing Wage Law.  
**Current Status:** 9/16/2015 - Referred to Committee House Commerce and Labor  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-282>
- HB350**      **AUTISM TREATMENT-COVERAGE** (GROSSMAN C, TERHAR L) To mandate coverage of autism treatment.  
**Current Status:** 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:** 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-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:** 5/17/2016 - Referred to Committee Senate Health and Human Services  
**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:* 5/11/2016 - Introduced  
*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:* 5/23/2016 - Introduced  
*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:* 6/6/2016 - Introduced  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-581>
- HJR2**        **REDISTRICTING-CONGRESSIONAL DISTRICTS** (CLYDE K, CURTIN M) To revise the redistricting process for congressional districts.  
*Current Status:* 3/3/2015 - Referred to Committee House Government Accountability and Oversight  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HJR-2>
- HJR4**        **ANTI-MONOPOLY-CONSTITUTIONAL AMENDMENTS** (SMITH R) Proposing to amend sections of Article II of the Constitution of the State of Ohio to prohibit an initiated constitutional amendment that would grant a monopoly or a special economic interest, privilege, benefit, right, or license to any person or entity and to modify the procedure to propose a law or a constitutional amendment by initiative petition.  
*Current Status:* 7/1/2015 - Filed with Secretary of State  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HJR-4>
- HR25**        **HONORING THE MIDMARK CORPORATION** (BUCHY J) Honoring the Midmark Corporation on its One Hundredth Anniversary.  
*Current Status:* 2/25/2015 - Introduced  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HR-25>
- 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:* 5/11/2016 - House State Government, (First 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:* 5/4/2016 - **PASSED BY SENATE**; Vote 33-0  
*State Bill Page:* <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:* 5/24/2016 - Introduced  
*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:** 9/15/2015 - Referred to Committee Senate Government Oversight and Reform

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

# 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: August 26, 2016  
RE: Fall 2016 Legislative & Judicial Report

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### I. August 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 August 2016).

Overview – November 2016 / No Statewide Ballot Issues: For the first time in several election cycles, there are 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*).

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.

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 1<sup>st</sup> 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 5<sup>th</sup> 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 6<sup>th</sup> 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 signature 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 have also 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. That effort is still pending.

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 unasked when given the opportunity in the future.

We expect the continuing ODPRA litigation to be resolved sometime in September 2017 and will keep the OMA updated with additional details.

#### 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.

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.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 but has not yet had a first hearing.

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

## V. 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. We met last week 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.

A separate, more detail tax report is being submitted by OMA Tax Counsel Mark Engel.

#### 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. The Ohio Supreme Court recently announced it is taking a closer look at that advisory opinion.

## 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 General Assembly and the four-month period for the General Assembly’s consideration of the proposed law will start at that time.

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

On August 25, 2016, Relators filed a motion for reconsideration, asking the Court to reconsider the part of its decision relating to circulator Fifi Harper’s address. Relators contend that the Court’s decision is contrary to its precedent, the legislature’s intent in requiring circulator’s to list their residential addresses, and the evidence presented. The Committee has until September 6, 2016 to respond to this motion.

*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.”

Because the Court has put this case on an extremely expedited schedule, it is anticipated that the Court will decide the case in the near future.

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 session was pretty lively and we expect a decision will be forthcoming in the fall. If the taxpayer is successful, the portion of that tax that requires out of state taxpayers with no physical presence in Ohio, but with gross sales in excess of \$500,000 to pay the tax, will be struck down.

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 7<sup>th</sup> District Court of Appeals, Case No. 16 HA 0002 and 16 HA 0005.

On May 16, 2016, together with other business interests, the OMA filed an amicus brief in a case 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. The case is pending and decisional before the 7<sup>th</sup> District with a ruling likely this summer. We will let you know as soon as more information from the Court becomes available.

#### 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.

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.



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## MEMORANDUM

To: OMA Government Affairs Committee  
From: Bricker & Eckler LLP  
Date: August 29, 2016  
Re: Counsel Report – Supplemental Information  
2016 Ohio Courts of Appeals Races of Importance

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### I. Introduction.

As a supplemental to the August 31, 2016 Counsel Report to the OMA Government Affairs Committee, please find the below overview of a few key campaigns for judicial races on Ohio's Courts of Appeals. As you know, and in addition to the campaigns for Ohio Supreme Court, many litigation actions involving issues important to Ohio manufacturers and Ohio businesses, in general, end with initial appeals to Ohio's intermediate appellate courts. Thus, it is always important to carefully review the candidates in these important races. Here are a few of the key Courts of Appeals races in Ohio in 2016.

### II. Contested Ohio Courts of Appeals Cases of Importance.

#### a. 1<sup>st</sup> District Courts of Appeals (Term ending 2/9/2019).

i. Judge Peter Stautberg (R-Cincinnati) v. Marilyn Zayas-Davis (D-Cincinnati).

J. Stautberg is a former member of the Ohio House of Representatives and attorney with Fifth Third Bank appointed to the 1<sup>st</sup> District Court of Appeals by Governor John Kasich. Zayas-Davis is an attorney and adjunct faculty member at UC Law School, in private practice, P&G, and with the Hamilton County public defender's office.

#### b. 4<sup>th</sup> District Court of Appeals (Term ending 2/9/2017).

i. Judge Matt McFarland (R-Sciotoville) v. Valarie Gerlach (D-Portsmouth).

J. McFarland was first elected to the 4<sup>th</sup> District Court of Appeals in November 2004 and ran unopposed and was re-elected to the 4<sup>th</sup> District Court of Appeals in November 2010. He is seeking re-election to a third 6-year term. Gerlach is an attorney in private practice in Portsmouth winning the 2016 Democratic primary for the opportunity to face off against J. McFarland.

#### c. 5<sup>th</sup> District Court of Appeals (Term ending 2/9/2017).

i. Judge David Gormley (R-Delaware) v. Earle Wise (D-North Canton).

J. Gormley currently serves on the Delaware County Court of Common Pleas and is a former Delaware Municipal Court Judge, former State Solicitor under Attorney General Betty Montgomery, Director of Legal Resources for the Ohio Supreme Court, and attorney in private practice (Jenner & Block – Chicago). Wise is an attorney in private practice in Canton, the largest county in the 5<sup>th</sup> District (which encompasses 15 counties in north central Ohio). Wise has also served as an assistant county public defender, assistant county prosecutor, and deputy director of the Stark County Board of Elections.

d. 6<sup>th</sup> District Court of Appeals (unexpired term ending 2/9/2017).

i. Judge Gary Cook (D-Toledo) v. Christine Mayle (R-Perrysburg).

This 6<sup>th</sup> District Court of Appeals race only recently became competitive after current Court of Appeals Judge Jack Puffenberger, who was running for re-election in 2016 unopposed, withdrew his name from the ballot this summer. Doing so permitted the local county Democratic and Republican parties to select new candidates for the November 2016 ballot. J. Cook is a sitting member of the Lucas County Court of Common Pleas. Mayle is a first time candidate and is a lawyer in private practice in Perrysburg.

e. 11<sup>th</sup> District Court of Appeals (Term ending 2/9/2017).

i. Judge Thomas Wright (D-Howland) v. Ron Tamburrino (R-Rock Creek).

J. Wright was elected to the 11<sup>th</sup> District Court of Appeals in 2010 and is seeking re-election to a second 6-year term. Tamburrino is an attorney in private practice and currently serves as Associate Counsel for The Sherwin Williams Company.



**FOR IMMEDIATE RELEASE**  
June 23, 2016

**Contact: Ryan Augsburger**  
(614) 224-5111

## **Ohio Manufacturers' Association Political Action Committee Endorses Slate for Supreme Court of Ohio**

*OMA-PAC Endorses O'Connor, DeWine and Fischer*

COLUMBUS - The Ohio Manufacturers' Association Political Action Committee (OMA-PAC) board of directors today announced its endorsement of three candidates for the Supreme Court of Ohio in the November 2016 General Election: incumbent Chief Justice Maureen O'Connor, who is running unopposed, Appeals Court Judge Pat DeWine, and Appeals Court Judge Pat Fischer.

"The court can have a tremendous impact on the business climate in Ohio, and these highly qualified judges are the best candidates for Ohio's manufacturers and businesses. Each candidate is committed to upholding the Constitution and strictly interpreting the law, not legislating from the bench. Ohioans have a right to have laws applied as they were written for a predictable system of justice," said OMA-PAC Chairman, Scott Balogh, President & CEO, Mar-Bal, Inc.

He added, "In addition, they are each committed to making our courts run efficiently, so that parties can have their legal issues resolved and resume their businesses and lives. We encourage Ohioans to vote for O'Connor, DeWine and Fischer this fall."

*The mission of The Ohio Manufacturers' Association is to protect and grow Ohio manufacturing.*

###

# OMA-PAC 2016 ENDORSED CANDIDATES

The following candidates for election have been endorsed by The Ohio Manufacturers' Association Political Action Committee (OMA-PAC).

## Supreme Court of Ohio Races

Maureen O'Connor for Chief Justice . . . (R-Akron)  
 Pat Fischer . . . . . (R-Cincinnati)  
 Pat DeWine . . . . . (R-Cincinnati)

## Ohio Senate Races (open seats)

District	Candidate	Party/City
8 . . . . .	Lou Terhar . . . . .	(R-Cincinnati)
12 . . . . .	Matt Huffman . . . . .	(R-Lima)
16 . . . . .	Stephanie Kunze . . . . .	(R-Hilliard)
24 . . . . .	Matt Dolan . . . . .	(R-Chagrin Falls)
32 . . . . .	Sean O'Brien . . . . .	(D-Cortland)

## Ohio Senate Races (incumbents)

District	Candidate	Party/City
2 . . . . .	Randy Gardner . . . . .	(R-Bowling Green)
4 . . . . .	Bill Coley . . . . .	(R-Middletown)
6 . . . . .	Peggy Lehner . . . . .	(R-Kettering)
10 . . . . .	Bob Hackett . . . . .	(R-London)
14 . . . . .	Joe Uecker . . . . .	(R-Loveland)
18 . . . . .	John Eklund . . . . .	(R-Chardon)
20 . . . . .	Troy Balderson . . . . .	(R-Zanesville)
22 . . . . .	Larry Obhof . . . . .	(R-Medina)
26 . . . . .	Dave Burke . . . . .	(R-Marysville)

## Ohio House Races (open seats)

District	Candidate	Party/City
16 . . . . .	Dave Greenspan . . . . .	(R-Westlake)
24 . . . . .	Jim Hughes . . . . .	(R-Columbus)
30 . . . . .	Bill Seitz . . . . .	(R-Cincinnati)
62 . . . . .	Scott Lipps . . . . .	(R-Franklin)
68 . . . . .	Rick Carfagna . . . . .	(R-Westerville)
84 . . . . .	Keith Faber . . . . .	(R-Celina)

## Ohio House Races (incumbents)

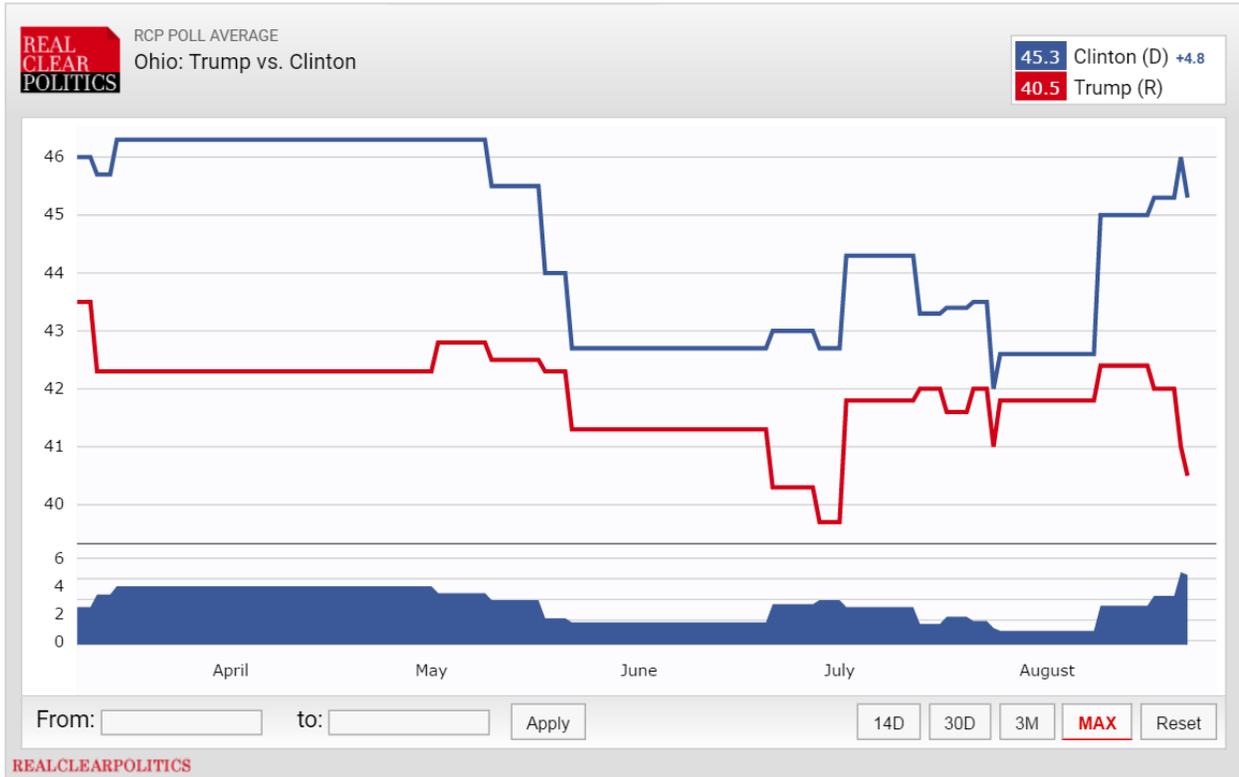
District	Candidate	Party/City
2 . . . . .	Mark Romanchuk . . . . .	(R-Mansfield)
4 . . . . .	Bob Cupp . . . . .	(R-Lima)
5 . . . . .	Tim Ginter . . . . .	(R-Salem)
6 . . . . .	Marlene Anielski . . . . .	(R-Walton Hills)
10 . . . . .	Bill Patmon . . . . .	(D-Cleveland)
12 . . . . .	John Barnes . . . . .	(D-Cleveland)
14 . . . . .	Martin Sweeney . . . . .	(D-Cleveland)
19 . . . . .	Anne Gonzales . . . . .	(R-Westerville)
21 . . . . .	Mike Duffey . . . . .	(R-Worthington)
28 . . . . .	Jonathan Dever . . . . .	(R-Cincinnati)
29 . . . . .	Louis Blessing III . . . . .	(R-Cincinnati)
36 . . . . .	Anthony DeVitis . . . . .	(R-Uniontown)
37 . . . . .	Kristina Roegner . . . . .	(R-Hudson)
38 . . . . .	Marilyn Slaby . . . . .	(R-Copley)
40 . . . . .	Michael Henne . . . . .	(R-Clayton)
41 . . . . .	Jim Butler . . . . .	(R-Dayton)
42 . . . . .	Niraj Antani . . . . .	(R-Miamisburg)
43 . . . . .	Jeffrey Rezabek . . . . .	(R-Dayton)
48 . . . . .	Kirk Schuring . . . . .	(R-Canton)
50 . . . . .	Christina Hagan . . . . .	(R-Alliance)
51 . . . . .	Wes Retherford . . . . .	(R-Hamilton)
52 . . . . .	Margaret Conditt . . . . .	(R-Hamilton)
55 . . . . .	Nathan Manning . . . . .	(R-North Ridgeville)
60 . . . . .	John Rogers . . . . .	(D-Mentor-on-the-Lake)
61 . . . . .	Ron Young . . . . .	(R-Leroy)
66 . . . . .	Doug Green . . . . .	(R-Mount Orab)
67 . . . . .	Andrew Brenner . . . . .	(R-Powell)
69 . . . . .	Steve Hambley . . . . .	(R-Brunswick)
71 . . . . .	Scott Ryan . . . . .	(R-Newark)
73 . . . . .	Rick Perales . . . . .	(R-Beavercreek)
76 . . . . .	Sarah LaTourette . . . . .	(R-Chagrin Falls)
77 . . . . .	Tim Schaffer . . . . .	(R-Lancaster)
79 . . . . .	Kyle Koehler . . . . .	(R-Springfield)
80 . . . . .	Stephen Huffman . . . . .	(R-Tipp City)
81 . . . . .	Robert McColley . . . . .	(R-Napoleon)
83 . . . . .	Robert Sprague . . . . .	(R-Findlay)
86 . . . . .	Dorothy Pelanda . . . . .	(R-Marysville)
88 . . . . .	Bill Reineke . . . . .	(R-Tiffin)
89 . . . . .	Steven Arndt . . . . .	(R-Port Clinton)
90 . . . . .	Terry Johnson . . . . .	(R-McDermott)
91 . . . . .	Cliff Rosenberger . . . . .	(R-Clarksville)
92 . . . . .	Gary Scherer . . . . .	(R-Circleville)
93 . . . . .	Ryan Smith . . . . .	(R-Bidwell)
95 . . . . .	Andy Thompson . . . . .	(R-Marietta)
97 . . . . .	Brian Hill . . . . .	(R-Zanesville)
98 . . . . .	Al Landis . . . . .	(R-Dover)

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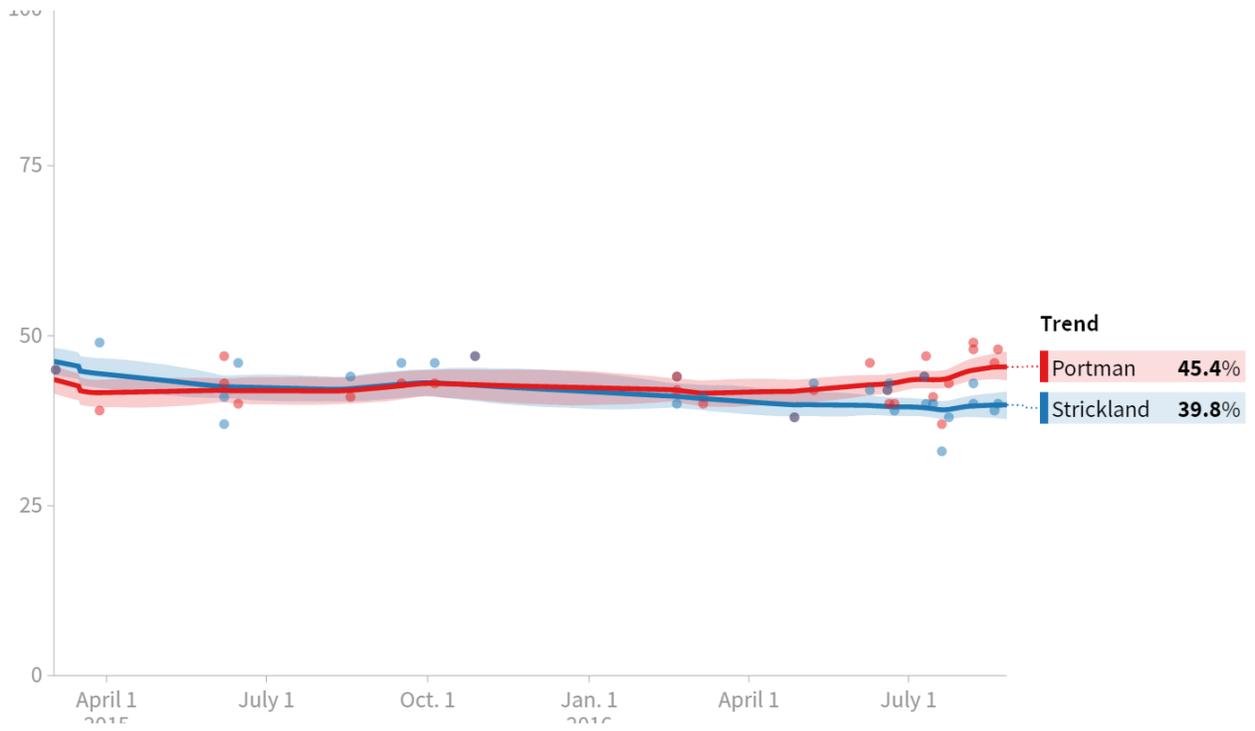


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# Presidential Race Polling Data 8/26/2016



# Ohio Senate Race Polling Data 8/26/2016



**To: OMA Government Affairs Committee**  
**From: Ryan Augsburger / Rob Brundrett**  
**Re: Energy Public Policy Report**  
**Date: August 31, 2016**

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### **Overview**

2016 is a presidential election year, as such a relatively light legislative agenda is forecast. After the election, lawmakers will return to the Statehouse for a short post-election, or “lame-duck” session. The prospect for energy policy to be addressed via legislation later this year is very real.

Also over the summer, utility company leaders have made statements to investors and policymakers in the wake of the FERC ruling to block the PPAs and other rulings by the Ohio Supreme Court that are favorable for customers. The utilities are in effect calling for reregulation of power generation in Ohio, a reversal from Ohio’s deregulation law.

### **PUCO Weighs Utility Subsidy Proposals**

After the FERC ruling in April prevented FirstEnergy’s power purchase agreement subsidy, the Akron utility revised its proposal. Initially it sought \$4 billion in customer subsidies in the “virtual PPA” case. The OMA Energy Group (OMAEG) opposed the proposal. OMA member Thomas Lause, Vice President and Treasurer of Cooper Tire served as our witness. His testimony is appended to counsel’s report.

The PUCO staff then recommended a more modest subsidy proposal amounting to \$131 million per year. The OMAEG testified in opposition to that proposal. Then, FirstEnergy requested up to \$8.9 billion in customer subsidy over 8 years. The OMAEG filed testimony in opposition to that proposal. We thank Tom and Cooper Tire for their extraordinary leadership on behalf of Ohio manufacturers! If FirstEnergy wins a subsidy, other utilities are expected to follow suit.

### **Reregulation**

Perhaps a *plan B* to hedge bets if the PUCO doesn’t give utilities enough subsidies from customers, 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.

AEP’s CEO has stated that if the General Assembly fails to act by spring 2017, then the Columbus-based utility will sell its generation fleet. The company has developed a concept paper it is using in meetings with policymakers and stakeholders. Meanwhile, 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 addition, Dayton Power & Light is rumored to have been shopping a legislative proposal to reverse a Supreme Court decision that fairly protects customers from transition charges.

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.

### **PUCO Appointment**

Governor Kasich appointed veteran energy attorney Howard Petricoff to the vacancy on the PUCO created by the departure of Commissioner Andre Porter (Mr. Porter assumed a position with MISO). 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.

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

US EPA issued a final rule in August 2015. The OMA filed comment together with the NAM and individually. Ohio EPA and the PUCO filed comment on behalf of the state as did the Ohio attorney general. The gist of the testimony: as proposed, 111(d) revisions are unworkable. Litigation on the rule is expected to delay effectiveness. If the provision goes into effect, states will need to adopt “state implementation plans” that will impose regulations on emissions to attain the federal goals. Ohio regulators intend to seek extension. The OMA is conducting research on the many ramifications of the CPP.

The US Supreme Court recently granted the stay requested in the Attorneys General lawsuit meaning that implementation steps will dependent upon legal finding. Early this year, the OMA joined with the National Association of Manufacturers and the U.S. Chamber in filing an amicus brief to highlight economic concerns with the Plan. Many legal scholars believe that the passing of Justice Scalia portends survival of the Clean Power Plan.

### **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. Additionally the OMA has participated in discussions with JobsOhio and representatives of America Natural Gas Alliance to consider measures to spur industrial delivery off new transmission investments. Research recently conducted by Cleveland State University may be helpful in this vein. Natural gas production continues to grow in the Buckeye state even with depressed pricing. Officials at JobsOhio have revisited their desire to advance the issue. JobsOhio will be on hand at the Nov 17 meeting of the OMA energy committee to brief members 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 were held on both bills in the Spring. It is unclear if or when these bills may advance.

Meanwhile, utilities have addressed plans for future renewable and energy efficiency programs in their PPA settlements and in plan extension applications in spite of the uncertain governing statutes...a move that angered some in the General Assembly. The OMA is an active party in the cases.

## Energy

### [AEP Seeks Legislation to Protect Itself from Competition](#)

August 19, 2016

AEP is approaching the legislature with a proposal to protect its plants from competition. It apparently is seeking to have a bill passed in the first quarter of 2017 that would place surcharges on customers to finance the plants. Customers would not be able to “shop around” the charges.

This is the latest effort by Ohio utilities to distort Ohio’s competitive electricity marketplace, and to deprive consumers of its benefits.

Read more in [a story](#) in Columbus Business First.

### [Is Measuring & Reporting Energy Savings a Brainer?](#)

August 19, 2016

The OMA [Energy Efficiency Peer Network](#) (EEPN) will hold a one-hour webinar on [Friday, September 16](#), from 10:00 – 11:00 a.m. – Measuring & Reporting Energy Savings in Manufacturing Facilities. OMA manufacturing members welcome.

Forty percent of Ohio manufacturers have established energy reduction goals. And increasingly, manufacturers’ suppliers are being asked to set energy goals and to measure and report progress. But with changing production levels, weather, and energy prices, it’s difficult to set, measure, and report on energy savings goals.

This webinar will provide a basis for measuring energy savings while factoring out changes in price, weather, and production.

Our subject matter expert is [Dr. Kelly Kissock](#), Ph.D, P.E., Professor and Chair, Department of Mechanical and Aerospace Engineering, University of Dayton (UD).

Dr. Kissock has led the UD Industrial Assessment Center for the past 20 years, during which time the center has provided 476 no-cost energy audits to small and medium manufacturers. Dr. Kissock is credited with pioneering the measurement of energy savings in manufacturing facilities. His work is widely regarded and is used by U.S. EPA’s EnergyStar Portfolio Manager as well as the Evaluation

Verification Organization, which publishes on energy savings measurement and methods.

[Register here](#).

### [FirstEnergy Intends to Pursue Electricity Re-Regulation](#)

August 12, 2016

Late last month, FirstEnergy announced plans to bolster its finances by issuing \$500 million in new stock which will be purchased by the company’s pension fund. At the same time, the company asked regulators to approve a new subsidy request of nearly \$9 billion paid by new above-market charges on customer bills. The OMA Energy Group has been opposing the proposal pending at the Public Utilities Commission of Ohio (PUCO). A decision could come as soon as September.

Meanwhile, the Cleveland Plain Dealer [reported](#) on statements made by FirstEnergy CEO Charles Jones in a July 29th investor call indicating that the company’s goal now is to persuade the state to re-regulate electric utilities. [Listen to the investor call](#) and hear the CEO describe how FirstEnergy is not succeeding in the competitive generation market.

Re-regulation (meaning taking away customers’ right to shop) would require legislative approval by the Ohio General Assembly and would reverse the deregulated generation market enacted in 1999. Last week, Senate President Keith Faber (R-Celina) said that any electricity structural reform would be a discussion for the next legislative session that begins in January 2017.

### [Rover Pipeline Makes FERC Progress](#)

August 5, 2016

[According to the Coalition for the Expansion of Pipeline Infrastructure](#), of which OMA is a member, “... the Federal Energy Regulatory Commission (FERC) released a final environmental impact statement for the Rover Pipeline, the next step in the process of the federal review process. FERC concluded that construction and operation of the Rover Pipeline will create minimal environmental impacts, which will be effectively mitigated through the extensive planning and coordination enacted by the Rover team.

” ... With FERC having concluded its environmental impact statement, the agency now has asked other

federal agencies to complete their comments before a certificate can be issued for the project. ... The Coalition expects the final certificate for Rover to be issued in the fall of 2016, after which construction will commence. ...”

### [Goldman Downgrades FirstEnergy](#)

July 29, 2016

Goldman Sachs this week [downgraded](#) FirstEnergy stock from “neutral” to “sell.”

FirstEnergy has a cash problem; at risk is its investment grade bond status. Goldman speculates that the company will need to issue additional stock to raise more than \$1 billion.

Meanwhile, FirstEnergy continues to push for a massive bailout by customers. Recently, PUCO staff had recommended a customer-paid, above-market subsidy of \$131 million a year for three to five years. In rebuttal testimony this week, FirstEnergy said it needs \$558 million a year from customers for the next eight years, or \$4.46 billion, to keep an investment grade bond rating.

However, information that surfaced in depositions reveals that FirstEnergy is actually seeking almost double this amount. (See related story.)

### [FirstEnergy Stuns with New Ask for Subsidy](#)

July 29, 2016

This week, in response to a proposal submitted by the Staff of the Public Utilities Commission of Ohio, FirstEnergy filed another customer-paid subsidy proposal to the PUCO asking regulators to approve more than \$4.46 billion in above-market customer charges over the next eight years as a subsidy to buffer FirstEnergy’s precarious balance sheet.

Energy lawyers participating in the proceedings this week were shocked to learn that in addition to requesting \$558 million annually from customers (\$4.46 billion over an eight-year term) for credit support for FirstEnergy Corp., FirstEnergy is seeking an additional customer surcharge in exchange for FirstEnergy Corp.’s commitment to maintain its corporate headquarters and nexus of operations in Akron, Ohio. This additional charge could cost customers up to an additional \$568 million per year for eight years. If approved, FirstEnergy’s new proposal could cost FirstEnergy’s Ohio distribution customers up to \$1.126 billion per year (\$558 million + up to \$568 million) for eight years.

[FirstEnergy testimony](#) states that: “The annual amount would equal the \$558 million associated with the credit support of jump-start grid modernization and the additional amount not [to] exceed the economic development value outline[d] by Company witness Sarah Murley arising from having the FirstEnergy Corp. headquarters and nexus of operations in Akron, Ohio.” In [her testimony](#), Ms. Murley quantifies the economic development value at \$568 million per year.

The OMA Energy Group has been litigating against unjustified customer paid subsidies. Tom Lause, VP, Treasurer, Cooper Tire & Rubber Co., [recently testified in opposition](#) to a FirstEnergy aid package proposed by PUCO staff. Contact OMA’s [Ryan Augsburger](#) to learn more how your company can support the effort to protect Ohio manufacturing competitiveness.

### [Ohio Natural Gas Production Topic of RNC/DNC Conventions](#)

July 29, 2016

During both the RNC and DNC conventions, the American Petroleum Institute (API) held opportunities for party leaders to learn more about important domestic energy industry trends.

In conjunction with the RNC convention in Cleveland last week, API described how [Ohio natural gas production is up](#) nearly one thousand percent since 2005. The organization also shared statistics detailing how increased natural gas is yielding [economic benefits](#) to Ohio.

API President and CEO Jack Gerard was on hand to share how the increased use of natural gas has [lowered carbon emissions](#) from electric power generation throughout Ohio. Here’s [Mr. Gerard’s speech](#).

### [Exxon Mobil to Present 50 Year Energy Forecast to OMA Energy Committee](#)

July 29, 2016

Mark your calendar to attend the OMA Energy Committee on [Thursday, August 25](#) to hear a number of good energy topics including:

- Exxon Mobil 50 year energy forecast
- Updates on PUCO cases that affect your cost of electricity, including FirstEnergy’s pending proposals
- Best energy management practices
- Electricity & natural gas market reports

You can come in person (the meeting will be held at the [OMA office](#) and includes a nice lunch) or via call-in.

There is no charge; [register here](#).

### [OMA Testifies at PUCO Against FirstEnergy Bailout](#)

July 22, 2016



Pictured: Tom Lause, VP, Treasurer, Cooper Tire & Rubber Co.

Whereas PUCO staff has recommended denial of FirstEnergy's rider proposal, a "virtual" power purchase agreement that could cost customers \$3.6 billion, staff has recommended the creation of a "distribution modernization rider" that would allow FirstEnergy to annually recover \$131 million per year from customers over the next three years, with a potential two year extension.

One of the stated purposes of staff's proposal is to enable FirstEnergy to maintain an investment grade rating.

[Testifying before the PUCO](#) last week on behalf of the OMA Energy Group, Cooper Tire & Rubber Co. Vice President, Treasurer, Tom Lause, said: "... The corporate bailout proposed by Staff will actually diminish diversity of supply and suppliers and limit consumers' effective choices over the selection of those supplies and suppliers over the longer term. ... The Commission should allow the competitive markets to work and not provide competitive advantages to certain generators.

"... Currently, it is my understanding that there are significant new generation resources scheduled to come online and a healthy capacity reserve margin in the PJM market; therefore, there is no need to raise funds to support one generator's business over another.

"... Rather than receive a bailout from customers under the Staff's Proposal, FirstEnergy Corp., similar to all other public companies, should be required to consider and make financial business decisions that would allow it to sustain an investment grade credit rating. ..."

### [OMA Group Tours Energy Efficiency Innovations](#)

July 22, 2016



This week the [OMA Energy Efficiency Peer Network](#) (EENP) visited The Dannon Company and the Village of Minster solar field to see innovative energy efficiency installations.

If you'd be interested in participating in future plant tours and other EENP activities, [click here](#). Manufacturing members are invited and there is no charge.

### [Senate Grills Governor's PUCO Appointee](#)

July 15, 2016

This week the Senate Public Utilities Committee held a hearing to consider Governor Kasich's recent appointment to the Public Utilities Commission of Ohio (PUCO), M. Howard Petricoff.

Members of the Senate peppered Mr. Petricoff with questions about possible conflicts of interest.

Mr. Petricoff, a respected utility lawyer who recently retired from the Vorys law firm, adeptly handled the questions but the Senate Committee Chair did not call for a confirmation vote.

Committee Chairman Senator Bill Seitz told the media that Senate confirmation would likely occur sometime this summer.

The [OMA wrote](#) to Senate President Faber in support of Mr. Petricoff's appointment. Some utilities are advocating against Petricoff's appointment since he has represented competitive electricity suppliers.

### [Come on Our Plant Tour: Dannon Company & Village of Minster Solar Field](#)

July 15, 2016

The OMA [Energy Efficiency Peer Network](#) (EEPN) has scheduled a plant tour on [Wednesday, July 20](#) at the [Dannon Company, Inc. 216 Southgate Dr.](#), Minster, Ohio 45865. The tour will focus on energy efficiency and sustainability initiatives. A hosted lunch will follow the tour. The event starts at 9:30 a.m. and concludes at 1:00 p.m.

But wait, there's more! The Village of Minster has graciously agreed to host a tour for the OMA EEPN of its 3 MW solar array and 7 MW lithium-ion battery, the [first municipal electric solar-battery system in the U.S.](#) This tour will immediately follow the Dannon tour. Interested members can caravan to the solar site at 1:30 p.m. for a 1-hour tour and discussion.

Spaces are limited; please register by close of business *today, July 15th*. [Register here](#) or [contact Peter Kleinhenz](#).

### [Good News, Bad News from PUCO Staff](#)

July 8, 2016

PUCO staff has recommended denial of FirstEnergy's rider proposal, a "virtual" power purchase agreement that could cost customers \$3.6 billion. That's the good news.

Staff said the proposed rider does not preserve resource diversity in the state, does not protect Ohio's local economies from harms associated with plant closures, and could interfere with FERC's authority over the wholesale markets.

Here's the bad news: Staff recommended the creation of a "distribution modernization rider" that would allow FirstEnergy to annually recover \$131 million from customers over the next three years. One of the stated purposes of staff's proposal is to enable FirstEnergy's parent company to maintain an investment grade rating. One of the conditions attached to staff's proposal is that FirstEnergy must maintain its corporate headquarters in Akron.

So, the pretense that the proposal was to keep generating plants in operation to protect customers from future price increases is gone. It is a bailout. Just as the OMA Energy Group and others have said from the beginning.

The OMA Energy Group will continue its opposition. Customers should not be on the hook for FirstEnergy's poor business decisions for its generation subsidiary.

### [Senate Sets Hearing on Petricoff Appointment](#)

July 8, 2016

Hours after Governor John Kasich appointed veteran energy lawyer Howard Petricoff to the Public Utilities Commission of Ohio, the Ohio Senate President called for formal hearings to determine Petricoff's qualifications.

In his [press statement](#), Senator Keith Faber said: "Senators have expressed some concerns about Mr. Petricoff's inability to hear many of the cases pending before the commission due to conflicts of interest involving past legal work."

The Senate Public Utilities Committee [will meet on Tuesday, July 12](#), to consider the appointment.

Rumor has it some utility companies are advocating against the Petricoff pick.

The [OMA supports](#) the appointment of Petricoff, who is eminently qualified, by Governor Kasich.

### [OMA Member, Cooper Tire & Rubber, Testifies Against FirstEnergy Proposal](#)

July 1, 2016

The OMA Energy Group and a diverse array of interests filed testimony in opposition to FirstEnergy's bailout proposal pending before the PUCO.

OMA Energy Group witness Tom Lause, VP of Treasury & Tax, Cooper Tire & Rubber Company, [characterized](#) the proposal as a corporate bailout and explained that it will have the same negative impact on customers as the original rider proposal. He further explained that the corporate bailout requested by FirstEnergy will make businesses less competitive in the global economy and will thwart their ability to take advantage of low market prices offered by competitive suppliers.

Discovery in the case is ongoing.

### [Supreme Court of Ohio Reverses PUCO Approval of DP&L Rider](#)

July 1, 2016

This week, in a [one-sentence decision](#), the Supreme Court of Ohio reversed the PUCO's approval of Dayton Power and Light's (DP&L) Service Stability Rider (SSR).

DP&L had claimed that the SSR was necessary to make up for lost revenue due to increased customer switching, declining wholesale prices, and declining capacity prices. But opponents argued that the SSR was impermissible because it enabled DP&L to collect transition revenue or its equivalent.

The court did not provide a detailed rationale to justify its reversal of the PUCO; instead, the court simply cited to its decision involving AEP from a few months ago where it found that the PUCO erred in authorizing AEP to collect the equivalent of transition revenue through a charge that was similar to DP&L's SSR.

It is estimated that DP&L has so far collected about \$250 million through the SSR and that another \$80 million remains to be collected.

### [Plant Tour of Dannon Company, Inc., Minster – You're Invited](#)

July 1, 2016

The OMA [Energy Efficiency Peer Network](#) (EPPN) has scheduled its next plant tour for [Wednesday, July 20](#) at the [Dannon Company, Inc. 216 Southgate Dr.](#), Minster, Ohio 45865.

The tour will focus on energy efficiency and sustainability initiatives. Highlights will include corporate sustainability goals in energy, CO<sub>2</sub> emissions and water. A hosted lunch will follow the tour.

The event starts at 9:30 a.m. and concludes at 1:00 p.m. Please register prior to July 15th. [Register here](#) or [contact Peter Kleinhenz](#).

### [OMA Supports Governor's PUCO Appointment](#)

June 24, 2016

Eric Burkland, OMA president, issued the following statement today supporting Governor Kasich's decision to appoint M. Howard Petricoff to the Public Utilities Commission of Ohio:

"Petricoff's appointment to the PUCO is positive and welcome news for Ohio manufacturers. He brings to his new post at the Commission more than three decades of valuable institutional history and deep industry expertise that will enable him to fairly and effectively balance the needs of energy customers and energy suppliers alike. We look forward to working with Commissioner Petricoff on the energy issues that matter to manufacturers."

[Read more from OMA.](#)

### [Ohio is Attracting New Power Generation](#)

June 24, 2016

AEP Ohio, FirstEnergy and Dayton Power & Light argue that if Ohio does not act to approve their proposed above-market cost riders pending at the PUCO, their affiliated generation facilities will shut down, threatening the availability and affordability of electricity for Ohioans. They claim that adequate supplies of generation can be assured only if customers pay certain above-market charges to subsidize continued operation of their unprofitable power plants.

The truth of the matter is that major new power plant projects are in various stages of development throughout Ohio. Nearly 65 GW of new generation has been built since 2000, and more than 25 GW is committed to be built in the next four years.

[Here's a look at those investments.](#)

### [OMA Goes to FERC \(again\) to Block FirstEnergy](#)

June 24, 2016

The OMA Energy Group again [filed comments](#) before the Federal Energy Regulatory Commission (FERC), which had previously blocked the Ohio-approved power purchase agreements (PPA) from going into effect. Since that decision in late April, FirstEnergy has modified its subsidy proposal to remove the problematic affiliate PPA and replace it with a virtual PPA. OMA Energy Group continues to oppose FirstEnergy's unlawful attempts to collect subsidies from ratepayers.

"The implementation of the virtual PPA will bestow upon FirstEnergy Ohio regulated utilities and likely their parent company and/or FirstEnergy's Ohio market-regulated affiliates at least \$3.6 billion in revenues from Ohio customers," said OMA Energy Group counsel Kimberly Bojko of Carpenter Lipps & Leland in the OMA motion to intervene.

### [PUCO Nominating Council Narrows Field](#)

June 17, 2016

The Public Utilities Commission of Ohio (PUCO) Nominating Council [this week submitted](#) the names of four finalists to be considered by Gov. John Kasich for the position of commissioner to fill an unexpired term ending April 10, 2020.

The Nominating Council recommended the following individuals: Sam Gerhardstein, Dave Hall, M. Howard Petricoff, and Gregory Williams.

The PUCO Nominating Council is a broad-based 12-member panel charged with screening candidates for the position of commissioner.

### [\\$8 Billion in Above-Market Charges, Already](#)

June 10, 2016

Take a look at [this infographic](#) that shows that FirstEnergy and AEP have collected – or will collect – more than \$8 billion in above-market charges from their customers from 2001-2018 as the generation market moved through the deregulation process. That is, by regulatory fiat their customers paid, or will pay, \$8 billion above the market.

This is no way to have a competitive, job-producing industrial economy.

Now, as you know, FirstEnergy and AEP Ohio continue to attempt to secure more non-bypassable customer subsidization of the utilities' uneconomic power plants. What they asked for would have resulted in another \$6 billion in above-market charges.

Isn't it time to stop punishing customers and allow the markets to work?

### [Shell Commits to Western PA Cracker](#)

June 10, 2016

In big news for the region, Shell this week [announced its commitment](#) to build an ethane cracker in western Pennsylvania on the Ohio River. The announcement comes five years after Shell initially indicated the plant's potential siting in the region.

The company expects to begin construction in 18 months and production in the early 2020s. Shell indicates the plant will produce annually 1.6 million tons of polyethylene from ethane coming from the Marcellus and Utica shales. It's a multi-billion dollar project is projected to create 6,000 construction jobs and 600 permanent jobs at the cracker.

### [Upcoming: Webinar about NEXUS Gas Pipeline Project](#)

June 10, 2016

The NEXUS Pipeline stands to benefit manufacturers in Ohio and throughout the Midwest. Access to reliable, affordable energy is a big competitive issue for Ohio manufacturers.

OMA is [hosting a webinar](#) with OMA Connections Partner, NEXUS, on [Thursday, June 16](#) to brief manufacturers about the proposed project and how manufacturers can supply NEXUS project needs; whenever possible, NEXUS is committed to using local suppliers. [Details here](#).

### [Threats to Ohio's Competitive Market for Electricity](#)

June 3, 2016

Ongoing efforts by FirstEnergy (FE) and AEP Ohio (AEP) to secure non-bypassable customer subsidization of the utilities' uneconomic power plants put the benefits of Ohio's and the region's electricity markets at risk.

In continuing its opposition to the utilities' proposals to secure guaranteed profits for their uneconomic generation assets, the [OMA Energy Group](#) is standing up to protect energy markets. The utilities' efforts to add non-bypassable charges to the market-based price of power would cause electricity customers to pay above market prices, undermining the competitiveness of the state's industrial economy.

[Read an issue brief here](#). Contact OMA's [Ryan Augsburger](#) for more information.

### [AEP Asks PUCO to Extend Rate Plan](#)

June 3, 2016

On May 13, AEP filed an application to extend and revise its current electric security plan (ESP) through May 2024. This amended ESP proposal is an outgrowth of AEP's PPA settlement case.

OMA Energy Counsel [Kim Bojko](#) of Carpenter Lipps & Leland has prepared [a summary](#) of AEP's proposal.

## Energy Legislation

Prepared by: The Ohio Manufacturers' Association  
Report created on August 24, 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:* 5/6/2015 - **BILL AMENDED**, House Public Utilities, (Fourth Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-72>
- HB83**      **OIL-GAS ROYALTY STATEMENT** (CERA J) To require the owner of an oil or gas well to provide a royalty statement to the holder of the royalty interest when the owner makes payment to the holder.  
*Current Status:* 3/10/2015 - House Energy and Natural Resources, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-83>
- HB122**      **PUBLIC UTILITIES COMMISSION MEMBERSHIP** (LELAND D) To require that each major political party be represented on the Public Utilities Commission, to specify that not more than three commissioners may belong to or be affiliated with the same major political party, and to require that Public Utilities Commission Nominating Council lists of nominees include individuals who, if selected, ensure that each major political party is represented on the Commission.  
*Current Status:* 3/24/2015 - Referred to Committee House Government

Accountability and Oversight

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

- HB162 SEVERANCE TAX RATES (CERA J)** To change the basis, rates, and revenue distribution of the severance tax on oil and gas, to create a grant program to encourage compressed natural gas as a motor vehicle fuel, to authorize an income tax credit for landowners holding an oil or gas royalty interest, and to exclude some oil and gas sale receipts from the commercial activity tax base.  
**Current Status:** 5/12/2015 - House Ways and Means, (First Hearing)  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-162>
- HB176 GAS-FUEL CONVERSION PROGRAM (HALL D, O'BRIEN S)** To create the Gaseous Fuel Vehicle Conversion Program, to allow a credit against the income or commercial activity tax for the purchase or conversion of an alternative fuel vehicle, to reduce the amount of sales tax due on the purchase or lease of a qualifying electric vehicle by up to \$500, to apply the motor fuel tax to the distribution or sale of compressed natural gas, to authorize a temporary, partial motor fuel tax exemption for sales of compressed natural gas used as motor fuel, and to make an appropriation.  
**Current Status:** 11/18/2015 - **REPORTED OUT**, House Finance, (First Hearing)  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-176>
- HB190 WIND FARM SETBACKS-COUNTY (BURKLEY T, BROWN T)** To 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

**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](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:* 5/11/2016 - House Public Utilities, (First 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:** 3/4/2015 - Referred to Committee Senate Ways and Means

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

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

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

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

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

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

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

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

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

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

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

**Current Status:** 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:** 5/11/2016 - Senate Energy and Natural Resources, (First Hearing)

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

[summary?id=GA131-SB-320](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>



## Threats to Ohio's Competitive Market for Electricity

Recent developments in Ohio's regulatory framework for electricity generation demonstrate the need for continued vigilance, analysis and advocacy by the OMA Energy Group (OMAEG) and manufacturers across Ohio.

### What's all the fuss about?

On March 31, 2016, the Public Utilities Commission of Ohio (PUCO) approved proposals from FirstEnergy (FE) and American Electric Power (AEP) to create non-bypassable Power Purchase Agreement (PPA) riders. The PPAs would force all customers in each utility's service territory to pay a monthly charge to subsidize the continued operation of certain uneconomic generating facilities owned partially or wholly by the utilities or their regulated competitive generation affiliates. Customers would be forced to pay an extra charge on their monthly electric bill to provide the utilities guaranteed levels of profit from aging, uneconomic power plants – even when cheaper power is available and/or a customer purchases its generation service from an alternative supplier.

Expert witnesses found that over the next eight years, the PPAs could cost FE customers \$3.6 billion and AEP customers \$2 billion.

Multiple parties, including the OMAEG, supported a complaint concerning the PPAs to the Federal Energy Regulatory Commission (FERC). On April 27, 2016, in a victory for Ohio manufacturers, the FERC ruled that the FE and AEP PPAs would need to undergo additional federal review before they could be enacted. The purpose of the additional review would be to determine if enactment of the PPAs would result in "market abuse" from subjecting electricity customers to non-bypassable, above-market charges from the utilities' competitive affiliates.

### Here we go again.

FE and AEP both have filed for rehearings of the PUCO decisions, but they have responded to the FERC ruling in markedly different ways.

Through what may be described as a kind of verbal sleight of hand, FE has proposed a new non-bypassable rider – what it calls a financial "hedging" mechanism – that its customers would, as in FE's original PPA proposal, be unable to avoid paying. Basically, FE is asking the PUCO to completely forget about the PPAs the utility had previously proposed to generate profits from otherwise unprofitable power plants – while also seeking PUCO approval of FE's request to collect the same additional monthly subsidy from its customers that the utility had proposed in its PPA.

Under FE's latest proposal, its customers would pay more when wholesale electricity prices are low; any credits that customers would have coming to them when wholesale prices are high would be paid by FE's regulated companies, which are paid by customers. In other words, customers would end up paying their credit to themselves with their own money.

In either case, the result is the same: an estimated \$3.6 billion bailout of FirstEnergy.

AEP, on the other hand, has responded to the FERC ruling by abandoning its request for a non-bypassable PPA rider (with one small exception) associated with coal plants. Further, AEP indicated it may seek to sell its Ohio power plants or move "very aggressively" to seek re-regulation of the retail electric market via legislative action at the Ohio General Assembly. Additionally, AEP has reiterated its commitment to develop 500 MW of wind energy and 400 MW of solar energy, but with a few caveats related to the modifications made by the PUCO, including insisting that any cost-recovery rider for renewable energy projects must be non-bypassable and owned in part by AEP affiliates.

### **Why do the utilities want these subsidies?**

The utilities increasingly have been painting doomsday scenarios for Ohio's energy future. They are dismissive of the role that PJM Interconnection plays as a regional transmission organization, arguing that PJM is not operating effectively and that Ohio would be better served by a more Ohio-centric position on electricity generation. They contend that if the state does not act soon to approve customer subsidization of certain obsolete, unprofitable power plants, these generation assets will be at risk of shutting down, in turn threatening the availability and affordability of power for Ohio customers.

The truth, however, is something more fundamental.

As Ohio has slowly transitioned from a regulated environment for electricity to a competitive market for electricity generation, utilities have failed to adapt their business models accordingly so they are positioned to thrive in a competitive market. In the last quarter of the 21<sup>st</sup>-century, U.S. manufacturers were forced to dramatically reinvent their operations in order to survive the onslaught of globalization – and we continue to do so today. This also has been the case in other deregulated industries such as transportation, trucking, airlines, banking, telecommunications and others.

The time has come for Ohio's electric utilities to undertake their own transformation.

### **Why should manufacturers be concerned?**

The OMA was one of the driving forces behind the first concerted effort to transition Ohio's retail electric market from regulation to competition, dating back to the passage of Senate Bill 3, Ohio's historic electric restructuring legislation, in 1999. That restructuring effort sought to secure safe, reliable, lowest-cost electricity for customers.

While the transition to “electric choice” has had its rocky moments, electricity customers in Ohio today enjoy unprecedented options for shopping for generation service. The competitive market is working. It’s delivering customer choice, new energy technologies, innovative energy services, and direct energy savings to customers – all while assuring energy reliability.

Efforts by FE and AEP to secure non-bypassable customer subsidization of the utilities’ uneconomic power plants put the benefits of electric choice at great risk. If FE and AEP are successful with the rehearings they have requested from the PUCO, electricity customers in Ohio can expect reduced ability to shop for the best available price and no option but to pay above-market prices for electricity whether they actually shop or not.

In continuing its opposition to the utilities’ proposals to secure guaranteed profits for their uneconomic generation assets, the OMAEG is standing up to protect what has long been the engine of economic growth and strength in Ohio and the nation: American free enterprise. The utilities’ efforts to add non-bypassable charges to the market-based price of power is the latest of repeated ploys by FE and AEP to try to mitigate the impact of their past poor business decisions and deny the benefits of free-market competition to customers in Ohio. More broadly, it also represents an ongoing strategy of the utilities to shift the financial risk associated with obsolete, uneconomic power plants from utility shareholders to utility customers.

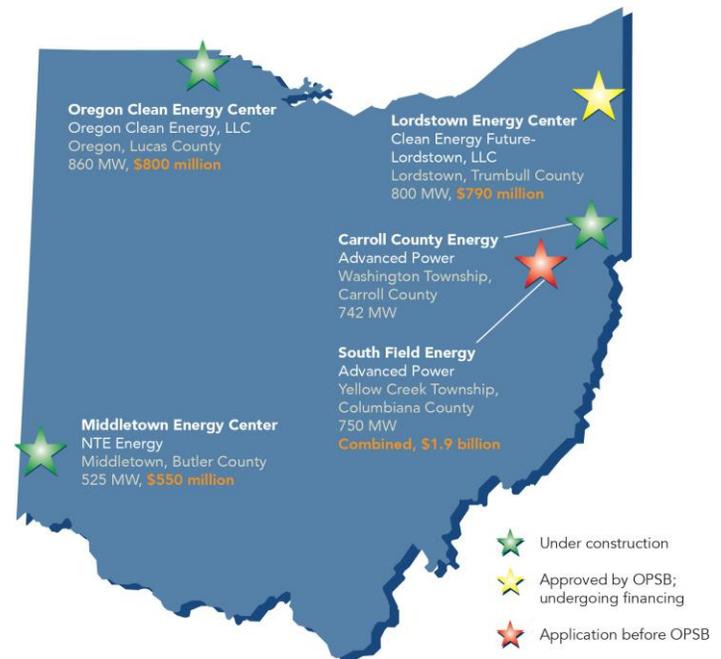
For all of these reasons, the OMAEG remains committed to sustained opposition to FE’s and AEP’s petitions to the PUCO for rehearings. We ask that OMA member manufacturers join our effort. To find out more, contact Ryan Augsburger at [raugsburger@ohiomfg.com](mailto:raugsburger@ohiomfg.com) or (800) 662-4463.

# # #

## Competitive Market is Attracting Substantial New Power Plant Investments in Ohio

In recent cases before the Public Utilities Commission of Ohio (PUCO), utility companies FirstEnergy (FE), American Electric Power (AEP) and Dayton Power & Light (DP&L) sought approval to create non-bypassable riders that would force all customers in each utility's service territory to pay a monthly charge to subsidize the continued operation of certain aging, uneconomic generating facilities owned partially or wholly by the utilities or their unregulated competitive generation affiliates.

*Customers would be forced to pay the extra charge even when cheaper power is available and/or customers purchase generation service from an alternative supplier.*



In March 2016, the PUCO approved FE's and AEP's proposals that expert witnesses said would cost FE and AEP customers nearly \$6 billion over eight years. One month later, the Federal Energy Regulatory Commission (FERC) held that FE and AEP could not transact any power sales under the underlying purchase power agreements without receiving further FERC approval, thereby effectively halting implementation of the proposals. The similar DP&L proposal is pending currently. In the meantime, FE and AEP have submitted new proposals to the PUCO that in varying degrees seek approval to collect from customers above-market charges similar to the previous proposals recently rejected by FERC.

Throughout these cases, the utilities have continued to argue that if Ohio does not act to approve their proposed above-market cost riders, their affiliated generation facilities will shut down, threatening the availability and affordability of electricity for Ohioans. The utilities claim that rejection of such riders would send a clear message to the marketplace discouraging utility investment in new generation assets in Ohio, further compromising our future energy security – and that adequate supplies of generation can be assured only if customers pay certain above-market charges to subsidize continued operation of the utilities' obsolete, unprofitable power plants.

**Don't be fooled by the myths that FE and AEP have perpetuated. Look at the facts and judge for yourself.**

The utilities continue to try to convince policymakers, regulators and customers that without guaranteed cost-recovery through some form of customer subsidization, investors will not be willing to take on the financial risk of building new generation plants in Ohio.

***That assertion is absolutely untrue.***

As the map on the preceding page shows, major new power plant investment projects are in various stages of development throughout Ohio. The total economic impact of these new investments can be measured in several ways:



Investment: **\$4 billion**



MW capacity: **3,677**



Job creation: **5,807**

Contrary to the utilities' assertions, **markets work**. PJM Interconnection LLC's (PJM) energy and capacity markets are sending price signals that **attract** investment in new generation.

### **“Iron in the Ground” Case Study: Oregon Clean Energy Center**

The Oregon Clean Energy Center in northwest Ohio will be a **newly built combined cycle gas turbine (“clean”) energy plant**. **Currently under construction**, the plant will provide clean, reliable and competitively priced power for customers.

- The Oregon Clean Energy Center was **developed and financed in direct response to the robust wholesale price signal** provided by PJM's capacity and energy markets.
- PJM **maintains reliability** of the electric power system within its footprint (including Ohio) **through market-based mechanisms**.
- The Oregon Clean Energy Center will contribute **more than \$800 million to the economies of the State of Ohio, Lucas County and the City of Oregon** from the facility's construction and during its first 20 years of operations – **without the need for any capital expenditures by government and without any customer subsidy**.
- Construction of the facility will create approximately 500 on-site construction jobs and approximately 450 indirect jobs in Lucas County, as well as approximately 350 additional indirect jobs across Ohio. **In total, the construction will create 1,300 new jobs in Ohio.**

- The **total economic impact of the facility's construction in Lucas County alone is \$36 million**, with an additional economic benefit of \$50 million across the state.
- **Operating the facility will create approximately 50 permanent jobs**, which will provide an additional \$20 million of economic impact in Ohio.

The willingness of Oregon Clean Energy Center investors to commit more than \$800 million to this Ohio-based project was predicated on investors' long-term confidence in PJM's competitive energy markets and Ohio's commitment to those markets. **The PUCO and, alternatively, the Ohio legislature must protect the open, competitive markets created by deregulation, which provide reliable, affordable power for Ohioans.**

### **Bottom line**

Policymakers and regulators should reject the efforts by some utilities and their allies to impose non-bypassable, above-market charges on customers as a means of incentivizing new generation. ***It isn't needed.***

Moreover, imposition of such charges by the PUCO would distort the free and competitive marketplace. Further, it would be unfair to companies that are taking investment risks by building new generation in the competitive market.

The fact is, real businesses **are** assuming risk and building new generation in Ohio – in spite of the fear-mongering rhetoric of the utilities. FE, AEP and DP&L would have us believe Ohio will not have adequate generation resources unless policymakers act to guarantee profits to the utilities or their unregulated affiliates and to subsidize the continued operation of aging, uneconomic power plants.

PJM has provided a workable competitive market to investors. **Nearly 65 GW of new generation has been built since 2000, and more than 25 GW is committed to be built in the next four years** (some, such as the Oregon Clean Energy Center, already under construction). It appears that investors believe that the PJM energy markets are working, which has led to new merchant investment activity.

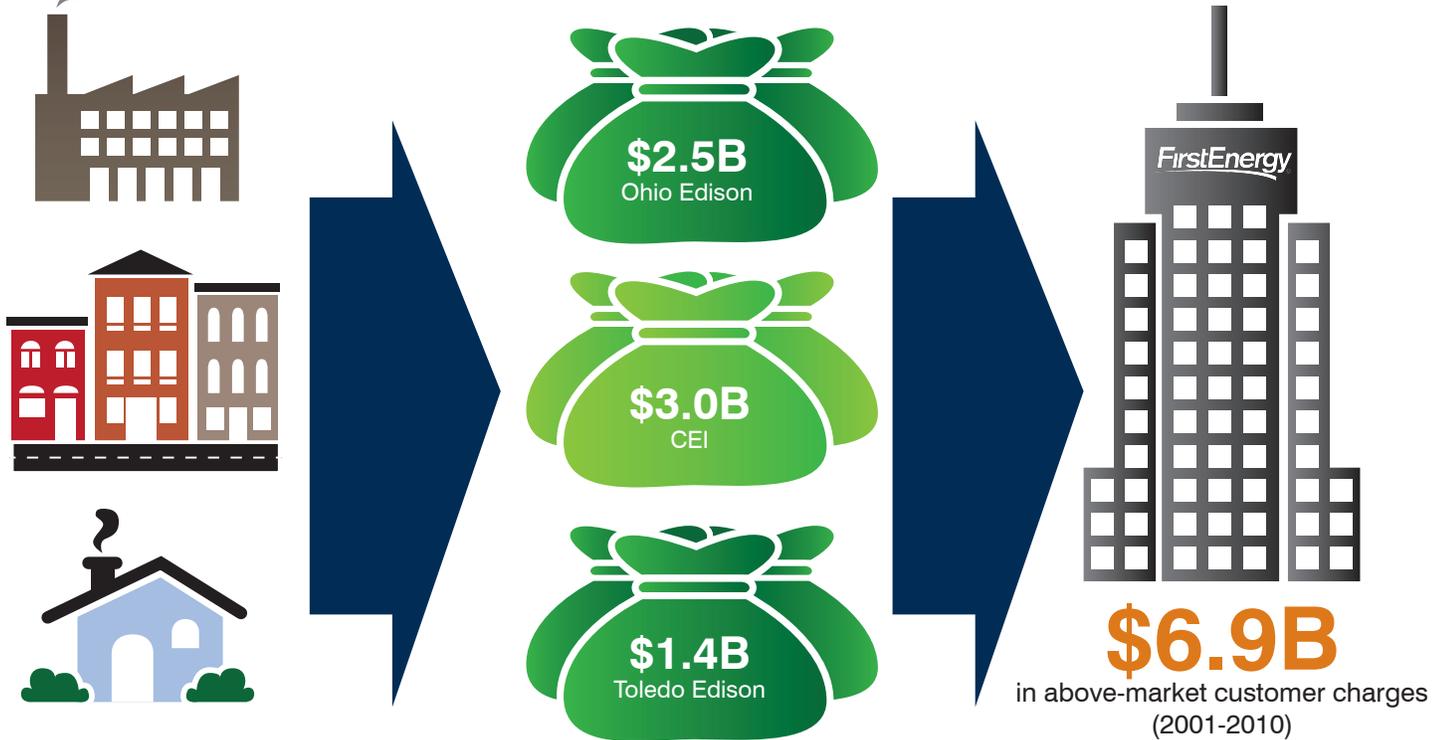
**As long as PJM continues to provide a level playing field, where all generators compete on equal footing in PJM's energy and capacity markets, investment will continue in the future.**

# # #

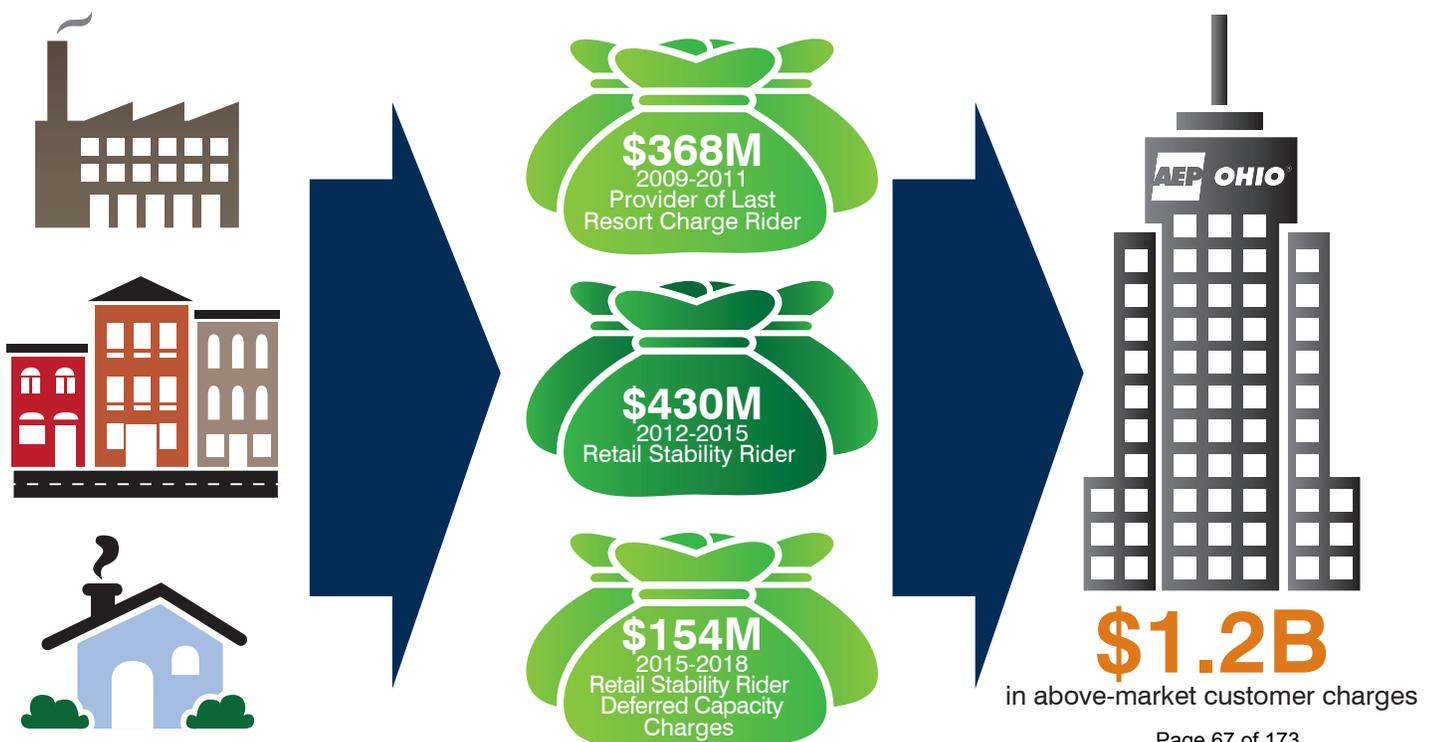
## AEP OHIO AND FIRSTENERGY HAVE COLLECTED BILLIONS OF DOLLARS IN ABOVE-MARKET CHARGES

Through their various rate cases approved by the Public Utilities Commission of Ohio (PUCO), both AEP Ohio and FirstEnergy have collected—or will collect—significant above-market charges from their customers.

### Estimated Above-Market Customer Charges to FirstEnergy



### Estimated Above-Market Customer Charges to AEP Ohio



# AEP CEO fighting to restructure the state's energy market because it's 'the right thing for Ohio'

Aug 5, 2016, 7:18am EDT

Tom Knox, Reporter *Columbus Business First*



AEP CEO Nick Akins

Some shareholders in [American Electric Power Company Inc.](#) may be fine if the utility ended its regulatory wrangling over its Ohio plants and just sold them, but the company's CEO says that's not the right thing to do for the state.

AEP is [closing in on selling one batch](#) of plants, and another is in the early stages, but first the Columbus utility is trying one more move, advocating for state legislation [to restructure Ohio's electric market](#).

"Some of our investors say, 'Just forget it,'" Akins told me last week after he updated analysts on AEP's Statehouse push. "'You can just sell it and move on and you'll be in great shape.' Well my point is – yeah, that may be true but it's not the right thing for Ohio. And for our customers and for the state of Ohio where I live, I don't want to see that happen.

"I want Ohio to be able to decide its own resources and its own time frame and its own construct and drive the solutions that we believe are right for the state," he said.

AEP (NYSE:AEP) wants to know by the first quarter of 2017 if the yet-to-be-introduced legislation stands a chance. It's an aggressive timetable for a proposal that [its rivals are watching closely](#), as I reported for this week's paper.

It's not just a financial issue for Akins, though. Those investors may want a quick and easy solution, but he said it's more than that: "It's a policy thing."

The utility has long [bemoaned the number of retiring coal plants](#) without enough new plants to replace them. Though it's a separate regional grid operator's job to ensure there's enough power flowing, Akins said the model needs tweaked. He wants a restructuring so AEP can feel secure building its own plants here.

"All these units are retiring," he said. "They're retiring the ones that are probably the most valuable to keep the system up and running and I don't want to see that. I don't want to see that for Ohio or any of our jurisdictions. I guess I'm probably too close to this but I can't understand why other people don't see what I see."

AEP's lobbyists will try to garner as much support as they can at the Statehouse, but there will be opponents. [Bob Flexon](#), CEO of Dynegy Inc. (NYSE:DYN), the Houston-based independent power producer with plants throughout Ohio, said in an email he has "no appetite" to support AEP's proposal.

As chairman of the Ohio Senate's Public Utilities Committee, Cincinnati Republican [Bill Seitz](#) is one of the more influential energy voices at the Statehouse. The AEP bill's success depends "on how much they want to bite off and on what degree of front-end support they can muster from all the interested parties," he said in an email.

"Certainly the issue will receive legislative consideration in 2017," he said, "but I have yet to see what 'it' is."

*Tom Knox covers Ohio State University, public policy, energy and manufacturing.*

# FirstEnergy raising \$500 million with new stock, asking the PUCO for up to \$8.9 billion in customer surcharges over eight years



FirstEnergy Corp. plans to have its pension fund buy new shares in the company to raise about \$500 million. The company is also seeking enormous increases in delivery charges. (*FirstEnergy*)



By John Funk, The Plain Dealer  
on July 29, 2016 at 4:36 PM, updated August 12, 2016 at 2:58 PM

AKRON --FirstEnergy's top executives confirmed today that the company intends to issue \$500 million worth of new stock and contribute those shares to the company's pension plan instead of cash. The fund does not currently own any company shares.

The acknowledgement that more shares will be issued -- diluting the value of existing stock -- comes as the company continues to wrangle with opponents in a case before state regulators that could cost customers as much as \$8.9 billion extra over the next eight years.

And it comes just hours after the company [reported](#) that it took a \$1.1 billion loss in the second quarter because its power plants are no longer competitive.

The company [plans to close](#) one plant and downsize another in 2020. It has taken an accounting write-off now to reflect the cost of those closings and on its entire fleet of power plants because of their expected future value.

Charles Jones, president and chief executive officer, mentioned the plan to substitute new shares for cash during a public teleconference Friday with financial analysts while discussing the company's outlook for the rest of this year. Click [here](#) to listen to a recording of that teleconference.

Jim Pearson, executive vice president and chief financial officer, later revealed in answer to an analyst's question that the company would issue the new shares to FirstEnergy's pension plan, which is well-funded.

Analysts repeatedly asked whether the company would sell off or "ring fence" its power plant subsidiaries in order to protect the corporation.

Jones said no such action was contemplated but also revealed that the company's goal now is to persuade the state to re-regulate electric utilities.

The credit worthiness of FirstEnergy's power plant companies has already put the company under the microscope at bond rating companies.

Moody's Investor Services on Friday [lowered its bond rating](#) for FirstEnergy Solutions from Baa3 to Ba2, alerting investors that FES bonds could be more risky.

Moody's also lowered its rating on Allegheny Energy Supply, the Pennsylvania company that is similar to FES. Moody's in April changed its outlook to negative on both subsidiaries and their parent FirstEnergy Corp.

Standard and Poor's put the subsidiaries on a negative watch a week ago. And this week Goldman Sachs [lowered its rating](#) of the stock from neutral to sell because, it reasoned, the company's power plants are going to earn less in the future.

In its case before the Public Utilities Commission of Ohio, FirstEnergy now appears to be asking for approval of up to \$1.1 billion in annual delivery surcharges, say opponents. Those charges would have to be paid by all customers, even those who buy their electricity from other companies.

If approved and spread evenly across all customers -- from residential to industrial -- the new charges would add \$477 a year to electric bills.

Opponents, particularly competing power companies, believe the PUCO may be leaning toward awarding FirstEnergy some level of surcharge in order to help the company maintain its investment status.

Earlier, the staff of the PUCO proposed adding a new surcharge that would ostensibly pay for modernizing FirstEnergy's delivery system -- though there were no guarantees that the money would have been earmarked solely for grid modernization. That would have added about \$131 million extra a year for three years.

The company said it needed about \$558 million to \$1.1 billion extra per year for eight years.

Earlier in the case, when the company wanted \$3.6 billion extra over eight years, the Ohio Consumers' Counsel calculated that it would add about \$100 a year to average residential bills for the next eight years -- the equivalent of [paying an extra monthly bill](#) every year.

Hearings continue next week, and the five-member commission is not expected to rule until September or October, said Jones.

The proposed extra delivery charges first appeared in a rate plan the company filed two years ago.

Initially, FirstEnergy proposed an arrangement that would have had customers directly subsidize the company's last coal-fired power plant in Ohio and its Davis-Besse nuclear power plant.

The argument was that the old plants could not at the time make power as cheaply as the new gas-fired power plants that dominate wholesale markets. FirstEnergy reasoned that within three or four years, natural gas prices would increase enough to make the old plants competitive again. At that point, customers were to get credits on their monthly bills.

Opponents, citing the latest gas [price projections](#) from the U.S. Energy Information Administration, argued that the price of natural gas will not significantly increase over the next 25 years.

The Consumers' Counsel, the Ohio Manufacturers' Association and opposing power companies appealed to the Federal Energy Regulatory Commission, which rejected that plan as a violation of federal rules that favor competitive markets.

#### *Clarifications:*

*The initial version of this article stated the company would sell the new stock to the pension plan. The company is issuing shares directly to the pension plan in place of making a required \$500 million cash payment to the plan. The fund is administered by an outside company, which may hold or sell the shares.*

*Also, In the last week, FirstEnergy has filed documents in the ongoing case at the PUCO in which a company witness states FirstEnergy wants an additional \$558 million annually for eight years, plus an additional amount "not to exceed the economic development value" of the company's corporate headquarters remaining in Akron. An economist retained by the company also recently testified that the headquarters has a \$568 million annual impact on the Ohio economy. In other words, the company is now asking for an increase of up to \$1.1 billion annually.*

# FirstEnergy Says Its Headquarters Is Worth \$568 Million to Ohio

Mark Drajem

**drajem**

August 29, 2016 — 5:00 AM EDT

FirstEnergy Corp., Ohio's homegrown utility with roots in the state that date to 1930, wants its customers to pay to ensure it stays there.

In the latest twist in a two-year battle for aid, the company has asked regulators to approve as much as \$568 million a year for eight years in customer surcharges to compensate for the economic impact of having its headquarters in Akron.

FirstEnergy is among utilities across the U.S. struggling amid flat demand and low power prices bought on by cheap natural gas, and growing supplies of solar and wind energy. That hasn't swayed manufacturers, consumer advocates and environmental groups who said they were left flabbergasted by the proposed hike.

"When they first told me that was in there, I thought it was a joke," said Eric Burkland, the president of the Ohio Manufacturers' Association, which opposes the fee increase.

"From a manufacturing ratepayer's perspective, it's just bizarre."



First Energy employees Hank Boka and Doug Colafella inspect the W.H. Sammis power plant in Ohio.

(Photo: Mark Drajem/Bloomberg)

While governments often offer tax breaks to lure businesses, Burkland said he was unaware of another utility asking ratepayers for payments tied to the company's headquarters. The company had initially asked the commission to approve a power-purchase agreement for its Sammis coal plant and Davis-Besse nuclear plant, which were struggling in the competitive regional power market.

In March of this year, the Public Utilities Commission of Ohio approved a settlement with FirstEnergy and American Electric Power Co., allowing them to pay above market rates for electricity from certain plants. The companies argued that allowing them to raise customer bills to keep coal and nuclear plants in operation would act as a hedge, and payoff for customers in the future once natural gas prices rebounded.

But a month later the Federal Energy Regulatory Commission announced a review of the contracts, saying it "has an independent role to ensure that wholesale sales of electric energy and capacity are just and reasonable."

After that decision, AEP announced it was dropping its bid for state aid, but FirstEnergy came back with a modified plan it said wouldn't require federal approval because it wasn't tied to purchases from specific power plants. Staff at the utilities commission counter-offered with something completely different: surcharges totaling \$131 million a year for three years to support the company's credit rating and boost grid modernization.

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FirstEnergy says it still prefers its plan but can live with the structure of the staff's plan if the amounts pledged to the company are increased. Instead of a total of \$393 million in aid, it should get \$558 million a year for nearly eight years, or \$4.5 billion. And on top of that, it wants compensation of as much as \$568 million for the added impact of

salaries, vendor purchases and local employee spending in Akron.

"They should weigh the value of keeping our nexus of operations" in Akron, Eileen Mikkelsen, vice president for rates and regulatory affairs at FirstEnergy, said in an interview. "If the commission thinks that is important to the state, they should recognize that in their order."

## \$8.9 Billion

A requirement of the staff's proposal is that FirstEnergy remain headquartered in the state, and the company would have to forfeit the benefits of the deal if it announces it's leaving, she said.

FirstEnergy's 1,360 employees and \$245 million annual payroll provide direct benefits to Akron and the state, according to Sarah Murley, an analyst with Applied Economics LLP hired by the utility. Indirectly, the company supports 2,047 jobs, and injects \$110 million a year in vendor purchases and \$162 million from employee spending into the local economy.

"When all is said and done, consumers could be charged up to nearly \$8.9 billion to support the financial integrity of FirstEnergy," the Ohio Consumers Office said in a [brief](#). "The record reflects no evidence that FirstEnergy plans to relocate its headquarters away from Akron."

In fact, the company [announced](#) last year that it signed a lease extension for its 19-story headquarters building, and "will remain in this downtown Akron location through June of 2025."

Opponents including rival power producers such as Dynegy Inc., have also questioned the rationale for the aid. When it first went to regulators, FirstEnergy said it was trying to help ensure a diversity of power sources, limit transmission costs, save coal-plant jobs and provide a rate hedge for customers.

"All of these benefits would be eliminated under modified (plan), to the great detriment of ratepayers and the public interest," Environmental Defense Fund said in its [brief](#) to the state commission. "The goals of these alternatives, simply put, are to put money in the hands of the shareholders and to make up for years of bad financial bets on fossil fuels and against clean and efficient energy."

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio )  
Edison Company, The Cleveland Electric )  
Illuminating Company, and The Toledo )  
Edison Company for Authority to ) Case No. 14-1297-EL-SSO  
Provide for a Standard Service Offer )  
Pursuant to R.C. 4928.143 in the Form of )  
an Electric Security Plan )

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**REBUTTAL TESTIMONY ON REHEARING OF  
THOMAS N. LAUSE  
ON BEHALF OF THE  
OHIO MANUFACTURERS' ASSOCIATION ENERGY GROUP**

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**July 15, 2016**

1 **Q. Please state your name, title, and business address.**

2 A. My name is Thomas N. Lause and I am employed by Cooper Tire & Rubber  
3 Company (Cooper Tire). My title is Vice President, Treasurer and my business  
4 address is 701 Lima Avenue, Findlay, Ohio, 45840.

5

6 **Q. Have you provided written testimony before in this proceeding?**

7 A. Yes, I provided written direct testimony on rehearing on June 23, 2016. My  
8 testimony addressed how the Modified Rider RRS Proposal is a virtual power  
9 purchase agreement (Virtual PPA) that continues to support the Companies'  
10 unregulated affiliate, FirstEnergy Solutions (FES), and other affiliates.<sup>1</sup> I  
11 explained that the Modified Rider RRS Proposal or Virtual PPA is unreasonable,  
12 unjust, harmful to manufacturers, and not a financial hedge for electric  
13 consumers. The Modified Rider RRS Proposal will also have a significant impact  
14 on the business decisions of many manufacturers in Ohio as manufacturers will be  
15 subject to increased electric costs and decreased certainty regarding their electric  
16 service.<sup>2</sup> I recommended that the Public Utilities Commission of Ohio  
17 (Commission) reject the Modified Rider RRS Proposal as bad public policy that  
18 does not benefit the public interest.<sup>3</sup>

19

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21

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<sup>1</sup> Direct Testimony on Rehearing of Thomas N. Lause at 7-8 (June 23, 2016).

<sup>2</sup> Id. at 11-12.

<sup>3</sup> Id. at 4, 12.

1 **Q. What is the purpose of your rebuttal testimony in this proceeding?**

2 A. The purpose of my rebuttal testimony on rehearing is to respond to the  
3 Commission Staff's rehearing testimony, address the new rider proposed by Staff  
4 of the Commission to provide credit support for FirstEnergy Corp. to maintain  
5 investment grade by the credit rating agencies (Staff's Proposal), and address  
6 whether it is an appropriate alternative to the Companies' Proposal that the  
7 Commission should consider. I agree with Staff that the Commission should deny  
8 the Modified Rider RRS Proposal.<sup>4</sup> I disagree with Staff's Proposal to provide  
9 credit support to FirstEnergy Corp. by charging Ohio customers \$131 million per  
10 year for three years with an opportunity to extend for two more years and do not  
11 believe that the Commission should consider it as a viable alternative.

12  
13 My testimony will show that Staff's Proposal amounts to nothing more than a  
14 bailout of FirstEnergy Corp. by Ohio's manufacturers, who will then become less  
15 competitive in the global marketplace as they are exposed to additional costs  
16 associated with their electric service needs. Staff's Proposal also sends an  
17 inappropriate and anticompetitive message to businesses looking to initiate or  
18 expand operations in the state of Ohio, as the bailout favors one Ohio company  
19 (FirstEnergy Corp.) over all others.

20  
21  
22  
23

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<sup>4</sup> Staff witness Choueiki Rehearing Testimony at 13 (June 29, 2016) (Choueiki Rehearing Testimony).

1 **Q. Are you familiar with Staff's Proposal?**

2 A. I have reviewed the testimony of Staff witnesses Buckley, Turkenton, and  
3 Choueiki and believe that I have a general understanding of the intent and  
4 objective of Staff's Proposal.

5

6 **Q. Can you describe the difference between the Modified Rider RRS Proposal**  
7 **and Staff's Proposal?**

8 A. The Modified Rider RRS Proposal or Virtual PPA is based on projected costs of  
9 FES' generating facilities netted against revenues received from projected  
10 generation output from the FES' generating facilities and capacity that is  
11 projected to clear multiplied by the actual energy and capacity prices in the PJM  
12 markets. The difference between the projected costs and the calculated revenue  
13 would be passed onto the Companies' customers through a non-bypassable rider.

14

15 Under Staff's Proposal, there is no reliance on the projected costs or projected  
16 output of FES' generation facilities, but the impact on customers is the same.  
17 Staff's Proposal provides credit support for the parent company and its  
18 unregulated subsidiaries, (including FES) at the expense of customers for at least  
19 three years. Both proposals are a corporate bailout of FirstEnergy Corp. in the  
20 form of a subsidy by Ohio consumers, which adds costs to consumers and all  
21 other Ohio businesses, making those businesses less competitive in the global  
22 economy.

23

24

1 **Q. What is Staff's stated rationale for providing at least \$393 million to the**  
2 **Companies from Ohio customers?**

3 A. Staff witness Buckley states that the revenues are needed to provide "support for  
4 [FirstEnergy Corp.] to maintain investment grade by the major credit rating  
5 agencies."<sup>5</sup>

6

7 **Q. Do you support Staff's Proposal?**

8 A. No. Speaking on behalf of OMAEG and its manufacturing members, such as  
9 Cooper Tire, we do not agree with the premise or intent of Staff's Proposal. We  
10 are opposed to providing any credit support and subsidies to FirstEnergy Corp.,  
11 and its subsidiaries, that are not regulated by the Commission and which result in  
12 additional costs to manufacturing customers.

13

14 **Q. Why do you disagree with customers providing credit support to FirstEnergy**  
15 **Corp. and its subsidiaries under Staff's Proposal?**

16 A. Staff's Proposal is a corporate bailout of an unregulated parent, FirstEnergy  
17 Corp., and its subsidiaries that will impact Ohio manufacturers by increasing their  
18 electric costs. Cooper Tire, as well as other manufacturers, operates in  
19 competitive markets that require manufacturers to produce high quality products  
20 at competitive costs so that the products can be sold into the markets at  
21 competitive prices. We compete against manufacturers from other states and

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<sup>5</sup> Staff witness Buckley Rehearing Testimony at 2 (June 29, 2016) (citation omitted) (Buckley Rehearing Testimony).

1 from low-cost countries. Therefore, if our costs increase, it makes it difficult to  
2 sustain, much less grow, our businesses.

3

4 I think it is important to note that Cooper Tire operates the only full scale light  
5 vehicle tire manufacturing plant in the state of Ohio. All of our competitors' light  
6 vehicle tire plants have been closed, mainly due to being cost-uncompetitive.  
7 Staff's Proposal results in additional costs to Ohio manufacturers, thereby  
8 impeding their ability to remain competitive in their own industries.

9

10 This credit support proposed by Staff, which is paid for by customers, sends an  
11 inappropriate message to all businesses in the state of Ohio and to those  
12 businesses who are considering starting operations in Ohio. By approving this  
13 corporate bailout, the Commission would, in essence, be picking winners and  
14 losers of businesses and industries operating in Ohio. Approval would also incent  
15 FirstEnergy Corp. to take large, unfounded risks in their unregulated businesses  
16 because the risks are being insured by captive ratepayers who are forced to pay  
17 costs associated with keeping FirstEnergy Corp. at an investment grade credit  
18 rating. Competitive market forces deliver a much more efficient and accurate  
19 outcome, which is good for economic growth and Ohio's consumers.

20

21

22

23

1 **Q. Will Staff's Proposal provide diversity of supply and suppliers as stated by**  
2 **Staff witness Turkenton?**<sup>6</sup>

3 A. No. The state policy referenced by Staff regarding diversity of supply and  
4 suppliers is to "[e]nsure diversity of electricity supplies and suppliers, by giving  
5 consumers effective choices over the selection of those supplies and suppliers and  
6 by encouraging the development of distributed and small generation facilities."<sup>7</sup>

7 The corporate bailout proposed by Staff will actually diminish diversity of supply  
8 and suppliers and limit consumers' effective choices over the selection of those  
9 supplies and suppliers over the longer term. If other generation companies see  
10 evidence that the Commission will provide large sums of money to support and  
11 sustain FirstEnergy Corp.,<sup>8</sup> and its subsidiaries, new entrants to the generation  
12 supply market will be deterred as FirstEnergy Corp. and its competitive  
13 subsidiaries are receiving a significant competitive advantage. The Commission  
14 should allow the competitive markets to work and not provide competitive  
15 advantages to certain generators. Currently, it is my understanding that there are  
16 significant new generation resources scheduled to come online and a healthy  
17 capacity reserve margin in the PJM market; therefore, there is no need to raise  
18 funds to support one generator's business over another.

19  
20

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<sup>6</sup> Staff witness Turkenton Rehearing Testimony at 4 (June 29, 2016); Choueiki Rehearing Testimony at 14.

<sup>7</sup> Section 4928.02(C), Ohio Revised Code.

<sup>8</sup> Buckley Rehearing Testimony at 2.

1 **Q. Does Staff's Proposal and stated conditions<sup>9</sup> promote economic development**  
2 **in the state of Ohio?**

3 A. No. Granting a bailout to one company, FirstEnergy Corp., has a much greater  
4 negative impact on the state of Ohio. An additional charge to customers only  
5 increases companies' manufacturing costs and prohibits companies from taking  
6 advantage of competitive market rates. Further, an additional charge to electricity  
7 prices will create increased costs for manufacturing companies, which will either  
8 be borne by customers or cause the companies to move production out of Ohio or  
9 go out of business as they cannot recover their costs. This could deter new  
10 business development in the state of Ohio as new companies looking to invest  
11 may choose to go elsewhere in light of increased or high electricity prices that are  
12 above market.

13

14 **Q. Do you believe Staff's Proposal will support investment in distribution grid**  
15 **modernization initiatives?**

16 A. No. Although Staff witness Choueiki states that the credit support provided to the  
17 Companies through Staff's Proposal will assist the Companies in receiving more  
18 favorable terms when accessing the capital markets, which will in turn allow the  
19 Companies to access funds to invest in distribution grid modernization,<sup>10</sup> there is  
20 no requirement that the Companies use the revenues from customers in this way.  
21 Forcing customers to provide over \$393 million to the Companies in the hopes  
22 that they will then invest in grid modernization initiatives provides no guarantee  
23 that the actual investment will occur.

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<sup>9</sup> Id. at 7.

<sup>10</sup> Choueiki Rehearing Testimony at 15.

1 Q. In lieu of Staff's Proposal, are there other actions that FirstEnergy Corp.  
2 could take to maintain its credit rating at investment grade?

3 A. Yes. FirstEnergy Corp. has failed to take the necessary actions required to  
4 manage its business. Management of a public company has the fiduciary  
5 responsibility to manage the business in the best interests of its shareholders. This  
6 means that if an investment grade credit rating is important to FirstEnergy Corp.  
7 (i.e., so it may prevent a possible drop in its stock price), the FirstEnergy Corp.  
8 management should be addressing its costs and cash flow issues proactively,  
9 similar to what all other public companies must do. Under the Modified Rider  
10 RRS Proposal, and now Staff's Proposal, FirstEnergy Corp. has no incentive to  
11 exercise fiscally responsible actions, but rather can rely on a strategy of receiving  
12 a corporate bailout by charging its customers higher rates (in turn making its  
13 customers uncompetitive). This is not only fiscally irresponsible, but also lacks in  
14 self accountability.

15

16 Rather than receive a bailout from customers under the Staff's Proposal,  
17 FirstEnergy Corp., similar to all other public companies, should be required to  
18 consider and make financial business decisions that would allow it to sustain an  
19 investment grade credit rating. I would expect a public company that received a  
20 negative rating action by two credit agencies (as explained by Staff witness  
21 Buckley<sup>11</sup>) to have already developed a plan for improving cash flows.

22

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<sup>11</sup> Buckley Rehearing Testimony at 4.

1 For example, some key areas that could be addressed are Selling General and  
2 Administrative (SG&A) costs, including advertising, headcounts, and executive  
3 compensation. Other significant cash flow opportunities are curtailing or  
4 rationalizing capital spending and possibly reviewing the level of dividend  
5 payments being made to shareholders. While painful, some companies need to  
6 sell off some assets or curtail a portion of their operations in order to improve  
7 future cash flows. These are the types of fiscally responsible actions that public  
8 companies should be prepared to take and I would expect these cost saving  
9 measures to occur prior to a company seeking a corporate bailout in the form of a  
10 subsidy from captive customers.

11

12 **Q. Do you have additional concerns with Staff's Proposal?**

13 Yes. Similar to concerns regarding the Modified Rider RRS Proposal (Virtual  
14 PPA), I have concerns with Staff's Proposal regarding how the proposed funds  
15 given to the Companies will be used. Given that all FirstEnergy Corp. entities are  
16 in the same tax jurisdiction (i.e., USA Corporate Tax), there is no impediment  
17 from a corporate tax perspective to move funds among subsidiaries of a company  
18 (as opposed to when companies move funds between foreign entities, which  
19 normally triggers cash tax payments). Staff's testimony fails to address how  
20 Staff's Proposal will guarantee that the revenue collected from the rider will not  
21 be used to support or bolster FES or other unregulated generator affiliates.

22  
23

1 **Q. Have your prior recommendations and conclusions with respect to the**  
2 **Modified Rider RRS Proposal by the Companies changed in any way as a**  
3 **result of Staff's Proposal?**

4 A. No. Regardless of Staff's Proposal, I continue to recommend that the  
5 Commission reject the Modified Rider RRS Proposal as unjust and unreasonable,  
6 bad public policy, and not in the public interest. Additionally, I recommend that  
7 the Commission reject Staff's Proposal for the same reasons.

8

9 **Q. What impact will Staff's Proposal have on manufacturers in the state of**  
10 **Ohio?**

11 A. OMAEG and its manufacturing companies firmly believe that if the Commission  
12 grants any form of a bailout to FirstEnergy Corp., it will have a domino effect as  
13 it will cause electric intensive manufacturers to become less competitive in the  
14 global marketplace. It will also establish bad public policy by sending a negative  
15 message to businesses looking to initiate or expand operations in the state of  
16 Ohio. From a statewide economic impact perspective, granting any form of a  
17 bailout to FirstEnergy Corp., and its subsidiaries, has a much greater negative  
18 impact on the state compared to forcing FirstEnergy Corp. to take the fiscally  
19 responsible actions that all other Ohio companies are forced to do.

20

21 **Q. Does this conclude your rebuttal testimony?**

22 A. Yes, but I reserve the right to supplement my testimony as new information  
23 becomes available.

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing document was served on July 15, 2016 by electronic mail upon the persons listed below.

/s/ Danielle Ghiloni Walter  
Danielle Ghiloni Walter

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**Summary: Testimony Rebuttal Testimony On Rehearing Of Thomas N. Lause On Behalf Of The Ohio Manufacturers' Association Energy Group electronically filed by Mrs. Kimberly W. Bojko on behalf of OMA Energy Group**

# Duke Energy's campaign contribution pipeline



[Carrie Blackmore Smith](mailto:csmith@enquirer.com), [csmith@enquirer.com](mailto:csmith@enquirer.com) 8:56 a.m. EDT August 21, 2016



(Photo: Enquirer file/Kareem Elgazzar)

If its political contributions are any indication, Duke Energy likes Republicans – the more powerful the better.

The Enquirer delved into donations from Duke's political action committee and individual employees as the corporation prepares to ask permission from the state to build the largest natural gas pipeline ever built in Hamilton County, a plan with swelling local opposition.

Duke plans to submit an application by Sept. 13.

## First, a little about the project

Duke hopes to construct a 12-14 mile, high-pressure natural gas pipeline through 14 Hamilton County communities, including densely populated parts

of Blue Ash, Norwood, Sycamore Township and parts of Cincinnati.

Opponents believe a pipeline should never be built in such a populated area, particularly because more stringent federal safety regulations are currently being worked out, in light of deadly explosions around the country.

Duke officials say this pipeline is necessary to keep up with future demands for natural gas. They share examples of large pipelines they've built successfully with good safety records.

They say this section of pipe is only in Ohio, so it is an intrastate pipeline and therefore falls within state jurisdiction.

## What The Enquirer did

The Enquirer decided to find out what kind of money Duke's employees, through their PAC or individually, gave to politicians along the proposed pipeline route. While the decision is ultimately up to an independent board, elected officials wield influence in many ways.

These are perfectly legal contributions and Duke has lots of other projects and reasons for financially supporting candidates. The Enquirer isn't suggesting

the company made these donations simply because of the ongoing pipeline debate.

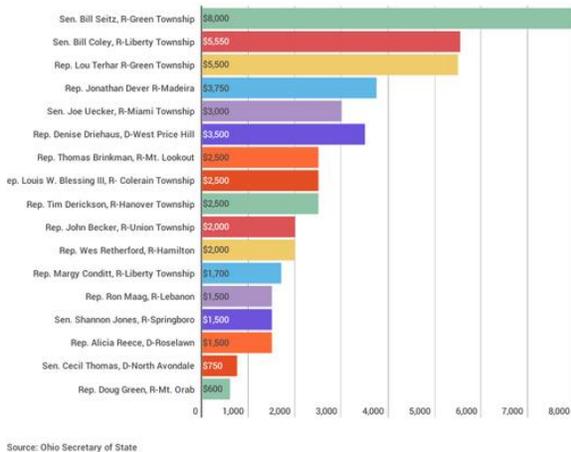
The fact that Duke gave to Republicans – and to the most powerful – is not surprising in itself. The GOP controls every statewide office and both houses in the General Assembly, something not expected to change this November.

Ohio Sen. Bill Seitz, R-Green Township, who is at the top of the list, called what he got "chump change."

A Duke spokesman said the findings indicate the Duke PAC believes these candidates best represent their values and understand what they need to do their work and want to keep them in office.

Here's what we found in a review of political contributions from January 2014 through July 2016.

## Who got what from Duke?



Here's what politicians representing Butler, Clermont, Hamilton and Warren counties got from Duke's PAC, according to an Enquirer review of donations from January 2014 to July 2016. *Infogr.am (Photo: Carrie Blackmore Smith)*

We found that nearly every state-level politician representing Southwest Ohio received some funding

from the Duke PAC and those with the most power in the state got the most money.

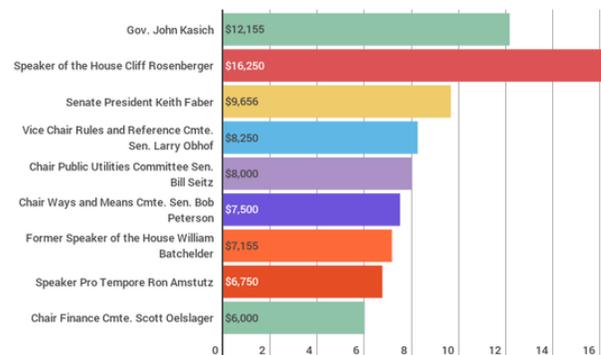
In all, the Duke PAC gave more than \$232,000 to political committees in Ohio from January 2014 to July 2016.

That's less than some other public utility PACs, including FirstEnergy's \$1.1 million, American Electric Power's \$450,465 and Time Warner Cable's \$448,091.

But it's far more than PACs for say, the University of Cincinnati or Procter & Gamble, which gave \$46,005 and \$23,500 respectively over the last 2½ years.

Every politician representing Southwest Ohio got a slice, with the exception of state representatives Christie Bryant Kuhns, D-Northside, and Paul Zeltwanger, R-Mason.

The 11 politicians below got 40 percent of Duke's donations and are the most powerful in the state.



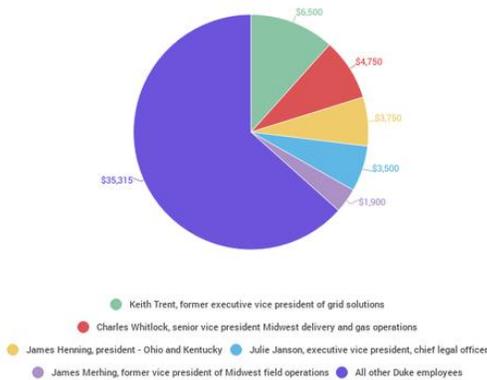
These 11 politicians, the most powerful in state government, got the most in campaign contributions from Duke, according to an Enquirer review of donations from January 2014 to July 2016. *Infogr.am (Photo: Carrie Blackmore Smith)*

## Duke employees up the ante

It's not only the Duke's PAC making campaign contributions. Duke employees make them, too.

One of the top donors in the last six years was James Henning, president of Duke Energy's utility operations in Ohio and Kentucky. Those who attended the pipeline panel discussion at the Sharonville Convention Center in July will recognize him.

He made personal donations to Gov. John Kasich, Senate President Keith Faber, former Speaker of the House William Batchelder and former State Rep. Peter Stautberg, a Republican from Anderson Township, who is now an appellate judge in Hamilton County.



Source: Ohio Secretary of State

Duke employees also made individual donations to Ohio politicians, according to an Enquirer review of political contributions from January 2014 to July 2016. [Infogr.am](#) (Photo: *Carrie Blackmore Smith*)

## Sen. Bill Seitz disappoints opponents

Pipeline opponents are frustrated with Sen. Bill Seitz, who has remained neutral on the topic.

Seitz said Duke has not yet filed an application with project specifics so doing so would be "premature."

Seitz lives in Green Township but he represents much of the area where the pipeline is proposed.

Other politicians with constituents affected by the routes, such as state representatives Jonathan Dever, a Republican, and Denise Driehaus, a Democrat, have declared their opposition. Hamilton County Commissioners and Cincinnati City Council have pledged to legally fight Duke if it moves forward with what has been suggested.

The full list of communities that could be affected is Blue Ash, Amberley Village, Golf Manor, Evendale, Madeira, Deer Park, Montgomery, Reading, Silverton, Sycamore Township, Norwood, Fairfax, Columbia Township and the Cincinnati neighborhoods of Madisonville and Pleasant Ridge.

As chair of the Senate's Public Utilities Committee, Seitz relationship with public utilities in the state is more complicated than most. His committee regulates and oversees providers of gas, electric, cable television and telephone services and it makes recommendations to the full Senate on the governor's appointments to the Public Utilities Commission of Ohio, which has the same staff as the Ohio Power Siting Board.

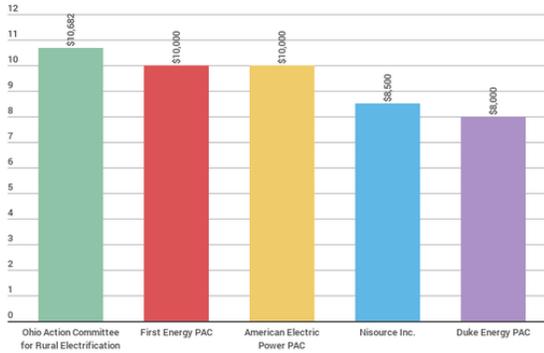
Those state employees are responsible for vetting Duke's proposal for the independent board to decide whether a large pipeline can be built.

Seitz argues "the legislature has absolutely nothing to do with the location of this pipeline."

"The more people print stories like this the more people see black helicopters where there are none," Seitz said.

All of his top contributors are tied to the gas and electric industry, but Seitz said that's likely true of any

politician who chairs the Senate or House public utilities committees.

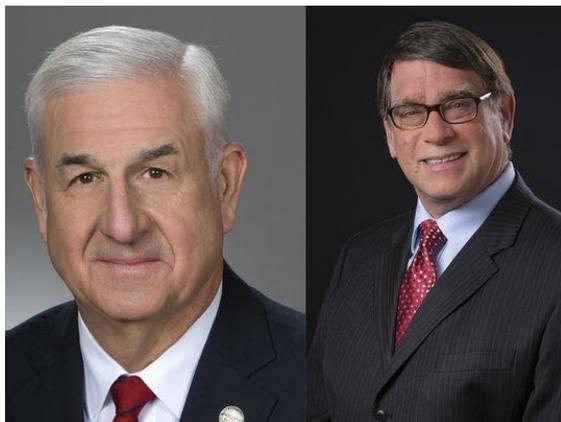


Source: Ohio Secretary of State

Duke Energy PAC was one of the five top donors to Sen. Bill Seitz's political committee. All of the top donors are in the electric and gas industries. *Infogr.am* (Photo: Carrie Blackmore Smith)

Seitz's term limit is up this year, so his influence going forward will change.

However, he and State Rep. Lou Terhar are running for one another's seats this fall. Unlike Seitz, Terhar has been in attendance at local pipeline meetings, including a meeting held by Neighbors Opposing the Pipeline Extension.



State Rep. Lou Terhar (left) and Sen. Bill Seitz are running for one another's seats this fall. (Photo: Provided/Meg Vogel)

Seitz said he could oppose it, but will reserve judgment until Duke submits its application, despite countless city, township and village leaders along the pipeline begging Duke to drop the idea altogether.

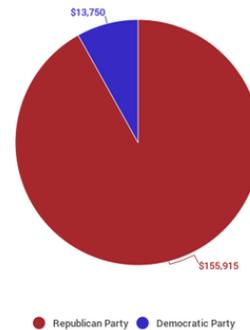
The public might also want to know, for context, how Duke contributions stack up next to other utility companies and local corporations.

When compared to other large utilities, the per customer breakdown is 18 cents from Duke; 55 cents from FirstEnergy (which serves much of Northern Ohio) and 30 cents from AEP (which serves Southeast and Central parts of Ohio).

## Republicans dominate

Not just the candidates, but also GOP organizations.

In fact, The Enquirer analysis showed more money was given to the Hamilton County GOP Golf Outing than to former Democratic Gov. Ted Strickland.

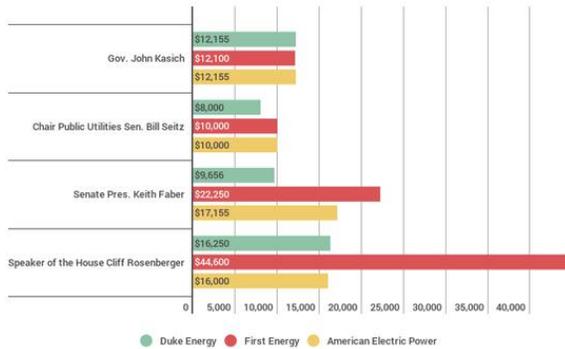


Source: Ohio Secretary of State

When reviewing party-affiliated contributions, Republicans got 92 percent of Duke Energy PAC's donations. *Infogr.am* (Photo: Carrie Blackmore Smith)

Brad Miller, spokesman for the Ohio House Republican Organizational Committee noted: "Any individual or group is free to contribute to political campaigns. But under no circumstances do campaign contributions dictate policy decisions."

## Other power companies donate more than Duke



Source: Ohio Secretary of State

Other power companies gave more to Ohio politicians than Duke's PAC, according to an Enquirer review of donations from January 2014 to July 2016. [Infogr.am](#) (Photo: Carrie Blackmore Smith)

The Enquirer also reviewed donations to local elected officials in the communities along the pipeline and

found no donations to any of them from the Duke PAC, aside from Cincinnati Mayor John Cranley, who got \$2,500 in the last 30 months.

Duke officials noted that the Duke PAC generates its donations from voluntary employee contributions and is one of over 3,800 federal PACs and thousands of state PACs.

Political "decisions affect our customers, employees and shareholders," said Lee J. Freedman, a spokesperson for Duke. "That's why it's critical that we help elect decision-makers who understand our industry and our point of view."

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8/1/16

### **FERC Clears Way for Next Stage of Rover Pipeline Approval**

*Release of the Final Environmental Impact Statement Greenlights Next Steps for Critical Regional Energy Infrastructure*

On Friday, the Federal Energy Regulatory Commission (FERC) released a final environmental impact statement (EIS) for the Rover Pipeline, the next step in the process of the federal review process. FERC concluded that construction and operation of the Rover Pipeline will create minimal environmental impacts, which will be effectively mitigated through the extensive planning and coordination enacted by the Rover team.

The Rover Pipeline has been under FERC review since the company filed its first request with the Commission in June 2014. This comprehensive EIS has taken into account feedback from a wide range of stakeholders, from local community members along the pipeline route to federal agencies working in coordination with FERC. Through more than a dozen public meetings in Ohio, Pennsylvania, West Virginia, and Michigan over the past two years, FERC was able to collect input on the project from all along the pipeline route. FERC's positive assessment of the project is testament to both the comprehensiveness of the FERC review process as well as Rover's thorough attention to detail in preparing its application.

"The Laborers International Union of North America (LIUNA) is incredibly excited to see FERC take this important next step in reviewing the Rover Pipeline. The project stands to create as many as 10,000 construction positions along the pipeline route, and many of these positions will be filled by hardworking members of LIUNA and other unions throughout the region. Among all these organizations, safety is the highest priority – ensuring the job will be done right, with minimal impacts to local communities," said Geno Alessandrini, business manager of the Michigan Laborers' District Council.

Once in operation, the Rover Pipeline will distribute natural gas to markets in Ohio, Michigan, West Virginia, and Pennsylvania. Access to this important resource will carry lasting benefits for manufacturers, businesses, and other energy consumers throughout the region.

As Ryan Augsburger, Vice President and Managing Director of Public Policy Services for the Ohio Manufacturers Association, related, “Access to affordable, domestically-produced natural gas is vital to the success of manufacturers in Ohio and other energy-intensive industries in the region. The Rover Pipeline will provide that access, significantly lowering overhead costs for our manufacturing plants. We can then pass those savings along to consumers, which is a true win-win for all.”

With FERC having concluded its environmental impact statement, the agency now has asked other federal agencies to complete their comments before a certificate can be issued for the project. The Coalition for the Expansion of Pipeline Infrastructure is encouraged that the Rover pipeline has reached this next stage in the review process of the Rover Pipeline. The Coalition expects the final certificate for Rover to be issued in the fall of 2016, after which construction will commence. We look forward to continuing to educate the public on the importance of the responsible development of our region’s energy infrastructure.

*About CEPI: The Coalition for the Expansion of Pipeline Infrastructure (CEPI) is a partnership of entities from the agriculture, business, manufacturing, and labor sectors whose goal is to educate and advocate for expanding responsibly constructed, local-jobs creating pipeline infrastructure in Michigan, Ohio, and West Virginia. Together it represents more than 20,000 individuals, farmers, and businesses from across Ohio and Michigan. Members of the coalition include the Laborers District Council of Ohio, Land Improvement Contractors Association – Michigan, Michigan Chemistry Council, Michigan Forest Products Council, Michigan Infrastructure and Transportation Association, Michigan Laborers’ District Council, Michigan Laborers-Employers Cooperation and Education Trust (LECET), Michigan Oil and Gas Association, Michigan State Grange, Ohio Association of Convenience Stores, Ohio Chamber of Commerce, Ohio Chemistry Technology Council, Ohio Council of Retail Merchants, Ohio Grocers Association, Ohio Hotel & Lodging Association, Ohio Manufacturers Association, Ohio Oil and Gas Association, Ohio State Grange, Operating Engineers Local 18, Pipeliners Local 798, United Association and the West Virginia Manufacturers Association. Visit us online at <http://www.expandpipelineinfrastructure.org>.*

**TO: OMA Government Affairs Committee**  
**FROM: Ryan Augsburger / Rob Brundrett**  
**RE: Environment Public Policy Report**  
**DATE: August 31, 2016**

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### **Overview**

The summer has remained a quiet time for environmental policy efforts. Ohio EPA continues 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, which the agency noted will be released for stakeholder feedback next month.

### **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 has not been referred to a 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 has held numerous interested party meetings over the summer regarding this bill. They are trying to eliminate any opposition to the bill prior to the beginning of lame duck session in November. The bill is 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 CPP pending at the Supreme Court 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 will be required to submit a final plan, or an initial submittal with an extension request, by September 6, 2016. Ohio EPA has indicated it will be seeking an extension from the federal government, which would set Ohio's rulemaking a year behind the federal schedule as currently published.

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."

In an unusual and surprising move, the D.C. Circuit Court of Appeals decided to bypass oral arguments scheduled on the case for June 2nd and instead hear the case before the full court (as opposed to a three person panel) on September 27th. It should be a relatively quiet summer regarding the CPP.

The court is likely to issue a decision later this year. From there, the challenge is expected to make its way to the U.S. Supreme Court, which previously issued a stay to halt all implementation and enforcement actions on the rule until it has the opportunity to hear the case.

Due to the stay Ohio EPA has decided against holding its regional meetings in 2016 as it initially had planned.

#### 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.

#### 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. Ohio EPA has allowed OMA to comment on provisions prior to a draft release to all interested parties. A new permit will be finalized prior to the end of the year.

#### 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 latest update from EPA indicates a draft will be circulated to interested parties the first couple weeks of September 2016.

### 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 filed comments in 2013 to U.S. EPA in opposition to its proposed SSM SIP Call.

### OMA Files Comments with U.S. EPA to Preserve Title V Affirmative Defense

The OMA and business allies filed comments and recommendations with the U.S. EPA in response to the agency's proposed removal of the emergency affirmative defense provision in the Title V permit program rules.

In some cases properly designed and maintained equipment fails due to reasons beyond the control of a manufacturer. Previously U.S. EPA allowed for emergency malfunctions to fall in the affirmative defense category. U.S. EPA is now proposing to remove the affirmative defense for emergencies from the Title V operating program rules.



## TRANSFORMING OHIO FOR JOBS + GROWTH

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### 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.