



**Government  
 Affairs  
 Committee  
 December 2, 2015**

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

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

**Government Affairs Committee Meeting Sponsor:**



# OMA Government Affairs Committee

December 2, 2015



## AGENDA

### Welcome & Introductions

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

### National Association Reports

### Committee Members

### OMA Counsel's Report

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

### Staff Reports

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

### Discussion / Action Items

### Member Discussion

- **Current OMA Action Alerts**
- **Unemployment comp HB 394**
- **Tax relief for temps HB 343**
- **Workers' comp coverage for PTSD**
- **General election analysis**
- **Truck weight reform (SETA)**
- **New electricity costs coming?**
- **Employee engagement tools**
- **2016 OMA Election Guide**
- **2016 RNC Convention in Cleveland**
- **2016 Elections Roundtable**

### Guest Presentation:

Governor's Office Priorities

**Merle Madrid**, Director of Legislative Affairs for Governor John Kasich

### Guest Presentation:

House Priorities and Election Analysis

**Representative Ryan Smith**, Chair Ohio House Finance Committee

### Guest Presentation:

Supreme Court Campaign Preview

**Honorable Pat Fischer**, First District Court of Appeals

**Lunch – provided by OMA**

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



# Hamilton County Court of Appeals

First Appellate District of Ohio



## **Judge Patrick F. Fischer**

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

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

Having represented both plaintiffs and defendants while an attorney, Judge Fischer knows the importance of being able to see and listen to both sides on an issue. Knowing and understanding the law as he does, Judge Fischer is keenly aware of how important it is that the law be applied properly to the facts in each case. The late Chief Justice of the Supreme Court of Ohio, Thomas Moyer, even named Judge Fischer to co-chair a task force which has made the Ohio judicial system more efficient and just. He currently serves on the Ohio Constitutional Modernization Commission, and is vice chair of its committee on the judicial branch.

As a respected member of the legal community, Judge Fischer also was elected by his peers to serve as President of the Cincinnati Bar Association for 2006-2007. He has served on the Ohio State Bar Association's Board of Governors, chaired its Budget and Headquarters Committee, and served on numerous other Ohio State Bar Association committees and task forces. He also has always had a deep and abiding interest in ethics and professionalism matters. Judge Fischer chaired the Cincinnati Bar Association's ethics and professional responsibility committee, as well as its professionalism committee. He served two terms on the Ohio Supreme Court's Commission on Professionalism, including serving as its vice chair.

Judge Fischer began his legal career with a clerkship for U.S. District Court Judge William Bertelsman, and in 1987 he began working for the law firm of Keating Muething & Klekamp in the trial department. Just 4 years later, he became a partner at Keating Muething & Klekamp.

In his free time, Judge Fischer has been a dedicated public servant who has served on numerous local boards [his license plate even reads: "2 Serv U"] including the Hamilton County Mental Health & Recovery Services Board, VISIONS Community Services Board, and St. Ursula Villa. He was a founding member of the Cincinnati Children's Museum Board. Judge Fischer and his wife Jane live in Pleasant Ridge where he served as President of the Pleasant Ridge Community Council. He is an active member of St. Xavier Catholic Church in downtown Cincinnati serving as both a Eucharistic minister and lector.

## Representative Ryan Smith

93<sup>rd</sup> House District

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State Representative Ryan Smith is currently serving his second term in the Ohio House of Representatives and currently services as the Chairman of the Finance Committee. He represents the 93<sup>rd</sup> House District, which includes Jackson and Gallia counties, as well as portions of Lawrence and Vinton counties.

Representative Smith obtaining his B.S. in Finance from The Ohio State University in 1995 and has worked as a financial adviser for 19 years.

Representative Smith maintains an active role in his community though civic involvement. In the past, he has served as president of the Gallia County Chamber of Commerce and the Gallia County Community Improvement Corporation. Representative Smith is a former member of the Gallipolis

School Board of Education and is active in his local church.

Representative Smith and his wife, Vicki, have been married for 18 years and are the proud parents of Grant, Blake, Kennedy and Camryn.





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**BRICKER & ECKLER LLP**  
100 South Third Street  
Columbus, OH 43215-4291  
MAIN: 614.227.2300  
FAX: 614.227.2390

www.bricker.com  
info@bricker.com

## MEMORANDUM

TO: Ohio Manufacturers' Association  
Government Affairs Committee

FROM: Bricker & Eckler LLP

DATE: December 2, 2015

RE: Legislative, Judicial Report

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### I. December 2015 Government Affairs Committee Counsel Report.

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

### II. Ballot Issues.

Issue 1 (Ohio General Assembly Redistricting): Issue 1 was approved by Ohio voters with 71.46% of the vote. The measure creates a new Ohio Redistricting Commission for the purpose of drawing new General Assembly districts. The Ohio Redistricting Commission will consist of the Governor, Auditor of State, Secretary of State, one person appointed by the Speaker of the House of Representatives, one person appointed by the House Minority Leader, one person appointed by the Senate President, and one person appointed by the Senate Minority Leader.

The Commission will convene every 10 years – in years ending in the numeral one – for the purpose of drawing new lines for General Assembly districts. The amendment requires the Commission to make a draft plan public and, before adopting a plan, to conduct a minimum of three public hearings to hear public input on the proposed plan.

The proposal requires the affirmative vote of four members of the Commission, including two minority party members, to adopt a new legislative map for the full 10 year term. The Commission must adopt a plan by September 1.

If the Commission fails to adopt a plan with bipartisan support by September 1, the commission must introduce a proposed general assembly district plan by a simple majority vote of the commission. Following the introduction of this proposed plan, the commission must hold an additional public hearing.

No later than September 15, the Commission must vote on the proposed plan. If the plan garners votes from two members of the minority party, it will

become effective for 10 years. If the plan is approved with a simple majority vote of the Commission, but without the required two votes from minority party members, then the plan is effective “until two general elections for the house of representatives have occurred under the plan.” At that point, the Commission will reconvene to redraw the districts.

In addition to detailing the process for the Ohio Redistricting Commission, the amendment also outlines the map-drawing process, including minimizing splits of political subdivisions. The amendment also states that no plan “shall be drawn primarily to favor or disfavor a political party” and that districts shall be compact.

Former Representatives Matt Huffman (R-Lima) and Vernon Sykes (D-Akron) served as co-chairs of the statewide ballot campaign.

In response to the success of Issue 1, Senator Frank LaRose (R-Copley) and Senator Tom Sawyer (D-Akron) have introduced Senate Joint Resolution 2, to create a new process for drawing congressional districts. Additional details about this proposal are below.

Issue 2 (Anti-Monopoly Amendment): Issue 2 was adopted with 51.58% of the vote. This amendment to Article II, §1e of the Ohio Constitution prohibits an initiated constitutional amendment that would grant a monopoly, oligopoly, or cartel, specify or determine a tax rate, or confer a commercial interest, right, or license to any person or nonpublic entity.

Issue 2 does not bar future initiative efforts, but creates a second layer for initiatives deemed by the Ballot Board to conflict with the anti-monopoly provision. In such event, the Board would place two questions on the ballot, one asking whether the petitioner should be granted an exception to the anti-monopoly provision and the second describing the proposed constitutional amendment. Only if both questions are approved by the voters would the proposed constitutional amendment take effect.

Issue 3 (ResponsibleOhio): A proposal from Responsible Ohio to allow persons aged 21 or older to use marijuana for personal or recreational purposes and to grow up to 4 plants for personal use was rejected by voters in November. The proposal provided for 10 site-specific locations for the commercial growth of marijuana and retail sales of marijuana at approximately 1,100 locations throughout the state. The amendment would have created the Marijuana Control Commission as the regulatory entity over the industry and made other changes, including providing for taxes on marijuana growth, cultivation, extraction, production and sale, and preemption of local zoning laws.

ResponsibleOhio has stated its intention to continue working towards marijuana legalization in the state, including as early as 2016 with another ballot initiative.

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

Better for Ohio did not meet the July 1 deadline for submitting sufficient valid signatures for the November 2015 ballot.

Ohioans to End Prohibition’s “Cannabis Control Amendment” was also certified by the Attorney General and the Ballot Board and missed the July 1 deadline for signatures. The group has indicated its intention to try to go forward in 2016. The goal of the “Cannabis Control Amendment” is to “end the prohibition of...Cannabis and control all of its personal, medical, noncommercial, industrial and agricultural forms, uses, and applications, including marijuana and industrial hemp.” The amendment would allow those age 21 and over to grow up to 6 plants and possess up to 100 grams of marijuana, and would allow caregivers of those using medical marijuana to grow up to 12 plants and possess up to 200 grams of marijuana.

Right to Work: Two right to work proposals were presented to the Ohio Constitutional Modernization Committee’s Coordinating Committee by Opportunity Ohio. The proposals would prohibit mandatory union membership at workplaces and would prohibit the use of public resources to assist a labor organization in collecting dues or service fees from the wages of public employees. The proposals appear to be stalled for now, as the Commission discusses its role in considering constitutional amendment proposals from the public.

Bottle Bill: A proposed amendment to require the Ohio General Assembly to enact laws to establish a 5-10 cent refundable deposit on all glass, metal and plastic containers sold at retail was certified by the Attorney General and the Ballot Board in October 2014. The proposals would allow consumers to return containers to receive cash back. It would also allow businesses to return containers, but stipulates that businesses must give 80 percent of the refund to the state to lower health and car insurance costs for residents. The group failed to gather sufficient valid signatures by July 1 and the amendment will not be on the November 2015 ballot.

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

increase by \$1.00 until it reaches the full minimum wage paid to non-tipped employees, at which point it will be annually adjusted for inflation. Stand Up Ohio is now collecting signatures in hopes of placing this issue on the 2016 fall ballot.

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

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

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

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

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

### III. Initiated Statutes.

Fresh Start Act: In addition to their work on Issue 3, ResponsibleOhio is also behind a proposed initiated statute. The "Fresh Start Act" has been certified by the Attorney General's Office as

having a “fair and truthful” summary and by the Ballot Board as being a single issue. On November 6, 2015, the Ohio Secretary of State certified that petitioners have gathered the required 117,418 valid signatures needed to place the matter before the Ohio General Assembly.

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

The Secretary of State will transmit the act to the Ohio General Assembly upon the commencement of the next legislative session in 2016. The legislature has four months to act on the proposal. If the legislature does not pass the law, passes it in an amended form, or takes no action, petitioners may gather additional signatures to place the issue on the ballot.

Ohio Drug Price Relief Act: The Ohio Drug Price Relief Act is an initiated statute to enact Section 194.01 of the Ohio Revised Code. The proposal would prohibit the State of Ohio from entering any agreement for the purchase of prescription drugs or agree to pay, directly or indirectly, for prescription drugs unless the 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 and world’s largest provider of drugs and health care for HIV/AIDS.

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

H.B. 194 -- Ohio Patent Troll Legislation: During the last legislative session we provided analysis of Ohio H.B. 573, a bill introduced by Representative Kristina Roegner (R-Hudson) 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.

Representative Roegner reintroduced legislation to curb these practices in H.B. 194. This bill has received one hearing in the House Judiciary Committee. Representative Roegner indicated that Senator Bill Seitz (R-Cincinnati) is working on companion legislation, but that bill has not yet been introduced.

We have participated as OMA’s counsel at three interested party meetings to discuss the proposed legislation. As a group, OMA is comprised of members who are not only the recipients of patent troll demand letters but also are patent owners and therefore, may have the need to

enforce patents themselves. As such, we have worked with OMA's legislative affairs director and representatives of OMA member Proctor & Gamble to turn the conversation from the original language in former H.B. 573 supported by interest groups comprised of predominantly non-patent owners such as the Ohio Bankers League and Ohio Retailers Association, towards an alternative bill that seeks to reduce unintended consequences impacting patent owners, among other issues.

As introduced, H.B. 194 is a substantial improvement over H.B. 573 and interim drafts that followed its introduction. H.B. 194 is relatively more narrowly tailored to the activities of true patent trolls. H.B. 194 also includes less ambiguity in its language and creates a generally less onerous compliance burden for Ohio manufacturers and other patent owners. The bill is highly similar in form and content to a draft proposed last term by Proctor & Gamble.

With the assistance of Senator Seitz, we were able to build support for these proposals at the February 11, 2015 interested party's meeting, while also discouraging several creative, though ultimately problematic proposals presented by Representative Butler, such as setting up an Ohio administrative regime to review patent infringement demand letters. Senator Seitz was also helpful in our efforts to rebut several proposals presented by the Ohio Retailers and Ohio Bankers League.

At the most recent meeting on May 26, which was again attended by Representative Roegner and Chairmen Butler, the other interested parties raised a number of the points from the February 11 meeting. The Pharmaceutical lobby joined our responses in support of maintaining language in the bill to ease the compliance obligation of legitimate patent owners. These included maintaining H.B. 194's limitation on its scope to only the "wide spread" sending of patent infringement demand letters and the continued inclusion of a safe harbor provision.

One potential concern is that Representative Butler appeared to be interested in exploring ways to strengthen the bill against all parties other than the pharmaceutical industry. He pointedly asked for more data from interested parties who have the need to send patent demand letters so that the bill could be further revised.

Prior to the meeting on February 11, we also provide OMA with legal analysis to the effect that, as worded, even the alternative draft language would still be at risk of being interpreted by the courts as providing an inherent private right of action. We continue that opinion. If OMA's preference remains to prevent a private right of action, our recommendation is to push for inclusion of an express prohibition rather than simply removing language that would have expressly provided the private right of action. This may potentially be achievable given the strong concerns Senator Seitz raised with the ability of Ohio courts to interpret patent-related subject matter and his proposal to further empower the Ohio Attorney General to interpret that statute. Also, in responding to a question from Representative Cupp at the bill's introduction as to whether the bill would allow for a private right of action, Representative Roegner stated her

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belief that enforcement would be limited to the Attorney General, who could investigate a case and file civil action.

H.B. 350 – Autism Coverage: Representatives Cheryl Grossman (R-Grove City) and Lou Terhar (R-Cincinnati) have introduced H.B. 350 to mandate coverage of autism treatment. The bill has been referred to the House Government Accountability & Oversight Committee.

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

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

Thirty-five states and the U.S. Virgin Islands have already adopted the Act and four states, including Ohio, have introduced legislation to adopt. The Act is approved by the American Bar Association and suggested state legislation by the Council of State Governments. S.B. 171 has not yet been referred to a committee or scheduled for a first hearing.

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 3 hearings in the Senate Civil Justice Committee.

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

for their loss of tangible personal property taxes. This provision was in response to language contained in H.B. 64 that was vetoed by Governor John Kasich. S.B. 208 was signed by the Governor on November 15, 2015.

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

If approved by the Ohio General Assembly, the issue would be put before voters as a statewide ballot issue.

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

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

The Ohio 2020 Tax Policy Study Commission met on October 22, 2015 and November 19, 2015 to begin its work. The Commission is charged with reviewing the state's tax structure and policies and making recommendations in a number of areas.

During its October meeting, the group heard from Ohio Department of Taxation Commissioner Joe Testa, who provided a breakdown of the state's tax system and revenues. Commissioner Testa spoke about how state and local taxes are administered and reported, and reported on the net of exemptions and credits for fiscal year 2015. In response to a question regarding how Ohio can move towards a flat tax, the Commissioner said that the Department could conduct research but that it would be very difficult to create a flat tax without creating winners and losers in the process.

Contrasting the testimony from Commissioner Testa, during the November meeting, the Commission heard from Professor Richard Vedder from Ohio University, who argued that a flat tax is possible for Ohio and that now is the time to move towards a flat tax, while the state has low unemployment, high surpluses, and is not in the middle of an economic crisis. The Commission also heard from two CPAs during the November meeting, both of whom spoke about sales tax, the commercial activity tax (CAT), and mentioned local tax burdens.

VI. Litigation Update.

Chiquita Brands International, Inc. v. National Union Fire Ins. Co. of Pittsburgh, PA, 1<sup>st</sup> Dist. Case No. C-1400492.

In late November of 2014, the OMA (along with several other companies) filed an amicus merit brief in support of Chiquita in a case involving an insurance coverage battle. This dispute began in 2007 when Chiquita notified its insurance carrier, National Union, of certain underlying tort actions and demanded that National Union honor its coverage obligations. National Union sent a reservation of rights letter in which it agreed to participate in Chiquita's defense but purported to "reserve the right to seek reimbursement from Chiquita for attorneys' fees or costs incurred with regard to allegations and/or claims for which there is no coverage." National Union did not pay any amount to defend Chiquita under the reservation of rights letter. Years later, the trial court determined that National Union had a duty to defend Chiquita. Thereafter, National Union began paying Chiquita's defense costs and did so for years under this interim order. National Union paid more than \$9 million before the trial court entered final judgment on December 16, 2011. After the December 16, 2011 entry, National Union paid an additional \$2.5 million in defense payments for Chiquita until the First District Court of Appeals reversed.

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

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

Oral argument was held on April 28, 2015. The court of appeals has not yet issued a decision.

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

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

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

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

Oral argument was held on May 6. We were permitted to participate in oral argument, but due to the number of questions asked of Navistar's counsel, our time was limited. On August 18, 2015, the Court vacated the judgment and remanded the case.

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

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

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

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

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

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

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

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

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

Briefing has been completed. Oral argument is scheduled for January 5, 2016.

## VII. Ohio Constitutional Modernization Commission.

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

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

The full Commission met in November to begin discussions on two recommendations from the Education, Public Institutions & Local Government Committee. Article VI, Section 1 addresses “Funds for Religious and Educational Purposes” and Section 2 is regarding “School Funds.” Both have been recommended for no change. No testimony was offered during the November meeting and final action is expected at the OCMC’s December meeting.

Bill of Rights & Voting Committee: The Bill of Rights & Voting Committee discussed “mental incapacity” at its November meeting and approved new wording to remove the words “idiot” and “insane person” from the section. The final language approved by the Committee for Article V, Section 6 reads: “The General Assembly shall provide under law that no person who has been determined to lack the mental capacity to vote shall have the rights and privileges of an elector during the time of incapacity.” Because numerous changes were made to the language, the final proposal will receive a third reading by the Committee at a later date.

Bricker & Eckler  
ATTORNEYS AT LAW

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Constitutional Revision & Updating Committee: A recommendation on improving Ohio's initiated statute process may be coming soon from the Constitutional Revision & Updating Committee. A proposal, which is currently being drafted by OCMC staff, will remove the supplemental signature gathering portion of the initiated statute process. This change would mean that, should the General Assembly fail to act on an initiated statute, the measure would go directly to the ballot. The draft will also include an increase in the initial number of signatures needed, from the current 3% to 5% of the vote cast for the last gubernatorial election. Finally, the proposal will include a safe harbor, to prevent the General Assembly from changing the provision for five years if approved by voters or require a two-thirds vote from each chamber.

Legislative Branch & Executive Branch Committee: The Legislative Branch & Executive Branch Committee met on November 12. At the meeting, some statements were made that the group intends to take up the matter of Congressional redistricting reform, following the success of Issue 1 on the November ballot. However, any action is unlikely to occur before the end of 2015.

The Committee also discussed the single subject rule and, specifically, the lingering issue of whether a violation of the rule invalidates only portions of a bill or a bill in its entirety. The Committee discussed whether a time frame for challenges for violations of the rule should be established – Ohio does not currently have a time limit, but 13 other states do.



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**BRICKER & ECKLER LLP**  
1001 Lakeside Avenue East  
Cleveland, OH 44114-1142  
MAIN: 216.523.5405  
FAX: 216.523.7071

www.bricker.com  
info@bricker.com

**Kevin T. Burns**  
216.523.5481  
kburns@bricker.com

## MEMORANDUM

### ATTORNEY-CLIENT PRIVILEGED

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

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### ISSUES

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

### CONCLUSIONS

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

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## ANALYSIS

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

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

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

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

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

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

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

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

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

### **III. Conclusion**

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

KTB:tflec

IN THE SUPREME COURT OF OHIO

NEWEGG, INC. :  
 Appellant, :  
 :  
 v. :  
 Case No. 15-0483 :  
 :  
 Appeal from the :  
 Ohio Board of Tax Appeals :  
 Case Nos. 2012-234 :  
 :  
 JOSEPH W. TESTA, :  
 Tax Commissioner of Ohio, :  
 :  
 Appellee. :

MERIT BRIEF OF AMICI CURIAE,  
 OHIO MANUFACTURERS' ASSOCIATION, OHIO STATE MEDICAL  
 ASSOCIATION, OHIO DENTAL ASSOCIATION, AND  
 OHIO CHEMISTRY TECHNOLOGY COUNCIL,  
 IN SUPPORT OF APPELLEE  
 JOSEPH W. TESTA, TAX COMMISSIONER OF OHIO

Mark A. Engel (0019486)  
 (Counsel of Record)  
 Anne Marie Sferra (0030855)  
 Bricker & Eckler LLP  
 9277 Centre Pointe Drive, Suite 100  
 West Chester, OH 45069  
 Tel: (513) 870-6700  
 Fax: (513) 870-6699  
[mengel@bricker.com](mailto:mengel@bricker.com)  
 Counsel for Amici Curiae,  
 Ohio Manufacturers' Association  
 Ohio State Medical Association  
 Ohio Dental Association, and  
 Ohio Chemistry Technology Council

Martin I. Eisenstein (PHV 1095-2015)  
 (Counsel of Record)  
 David W. Bertoni (PHV 2436-2015)  
 Matthew P. Schaefer (PHV 2399-2015)  
 Brann & Isaacson  
 184 Main Street  
 P.O. Box 3070  
 Lewiston, ME 04243-3070  
 Tele. 207.786.3566  
 Fax. 207.783.9325  
 Email: [miseisenstein@brannlaw.com](mailto:miseisenstein@brannlaw.com)

Michael DeWine (0009181)  
 Attorney General of Ohio  
 Christine T. Mesrirow (0015590)  
 (Counsel of Record)  
 Daniel W. Fausey (0079928)  
 Assistant Attorneys General  
 30 East Broad Street, 25th Floor  
 Columbus, Ohio 43215  
 Tele. 614-466-5967  
 Fax. 614-466-5087  
 Email: [Christine.mesrirow@ohioattorneygeneral.gov](mailto:Christine.mesrirow@ohioattorneygeneral.gov)  
 Counsel for Appellee

and

Edward J. Bernert (0025808)  
 Baker Hostetler  
 Capitol Square, Suite 2100  
 65 East State Street  
 Columbus, OH 43215-4260  
 Tel: 614.462.2687  
 Fax: 614.462.2616  
 Email: [ebarnert@bakerlaw.com](mailto:ebarnert@bakerlaw.com)  
 Counsel for Appellant  
 Newegg, Inc.

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#### STATEMENT OF INTEREST OF AMICI CURIAE

In June 2005, the General Assembly adopted a tax reform package – House Bill 66 (“H.B. 66”) designed to address the economic malaise that had afflicted Ohio for many years. In adopting H.B. 66, the General Assembly sought to replace Ohio’s antiquated tax system that “kills jobs and hinders economic growth” with one that promotes investment in the equipment and technology Ohio workers need to be efficient, productive, and competitive in the global economy.<sup>1</sup>

A critical component of this tax reform bill was a multi-year phase out of Ohio’s tangible personal property tax and the corporation franchise tax. Every major study of Ohio’s tax system over the past 40 years has acknowledged the anti-competitive nature of the tangible personal property tax and has called for adjustments to or wholesale elimination of this tax.<sup>2</sup> With its many loopholes, the corporation franchise tax was largely ineffective in generating revenue. Its net worth component also placed undue burden on capital-intensive and start-up businesses.<sup>3</sup> H.B. 66 replaced both the tangible personal property tax and the corporation franchise tax with a new commercial activity tax (the “CAT”). The CAT is a broad-based, low rate tax that applies to virtually all business activity in Ohio with annual gross receipts of \$150,000 or more.

Another important component of this tax reform package is the significant reduction in Ohio’s personal income tax. The top marginal rates, especially when combined with local income taxes, likewise provided an impediment to capital formation. Under H.B. 66, Ohio’s

<sup>1</sup> *Hearing on H.B. 66 Before the Fin. and Appropriations Comm. of the Ohio House of Representatives, 126<sup>th</sup> Gen. Assembly (March 8, 2005)* (testimony of David W. Johnson, President and CEO, Summitville Tiles, Inc. and Chairman of the Ohio Manufacturers’ Association).

<sup>2</sup> *Id.* See generally, Bahl, *Taxation & Economic Development: A Blueprint for Reform in Ohio* (1996), 55 (hereinafter *Bahl*).

<sup>3</sup> *Bahl*, at p. 54.

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high personal income tax is reduced 4.2 percent annually for five years. The 21 percent personal income tax reduction is especially important to the thousands of Amici’s members who are small business owners, as they essentially pay their business tax through their personal income tax. This reduction was also funded by the CAT.

Amici, The Ohio Manufacturers’ Association, Ohio State Medical Association, Ohio Dental Association, and Ohio Chemistry Technology Council, are statewide associations that represent diverse segments of Ohio’s economy. Collectively, Amici represent approximately 75,000 members, virtually all of whom conduct business in Ohio. Despite their diversity, Amici’s nearly 75,000 members have at least two things in common – they are Ohio taxpayers subject to Ohio’s CAT, and they are all vitally concerned with reversing Ohio’s economic malaise. As CAT taxpayers, they have a critical and substantial interest in ensuring that this tax is applied fairly and equitably. As business persons in Ohio, their economic vitality is inextricably tied to the economic climate of the state.

The decision of the Board of Tax Appeals upholding the “bright-line presence” test for nexus found in R.C. 5751.01(H) and (I) is important to all businesses in Ohio. This Court’s resolution of the issue will have far-reaching implications for economic development in Ohio, fairness among business taxpayers, certainty for Ohioans regarding their tax obligations, and stability for recipients of tax dollars so that they can budget and spend appropriately.

#### STATEMENT OF THE CASE AND FACTS

Amici adopt the Statement of the Case and Facts set forth in the Ohio Tax Commissioner’s Brief on the Merits.

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## ARGUMENT

### PROPOSITION OF LAW:

A taxpayer that has neither property nor employees within Ohio, but which exploits the market in Ohio such that it has more than \$500,000 in gross receipts from the sale of tangible goods shipped into Ohio, has "bright-line presence" as defined in R.C. 5751.01(I)(3) and therefore has substantial nexus with Ohio for purposes of the Commerce Clause of the Constitution of the United States.

A taxpayer that does not have a physical presence in Ohio may nevertheless have "bright-line presence" if its sales within the state exceed \$500,000 annually. "Bright-line presence" is considered to be substantial nexus sufficient for purposes of the Commerce Clause of the Constitution of the United States. Because Appellant had tens of millions of dollars from sales of tangible goods delivered in Ohio to Ohio customers, it has substantial nexus with Ohio and is subject to the CAT. Appellant's arguments to the contrary should be rejected and the decision of the Board of Tax Appeals, being reasonable and lawful, should be upheld.

### Ohio's Previous Tax Structure

Prior to 2005, Ohio's tax structure was essentially unchanged since the 1930s. At that time, Ohio's economy was driven by agriculture and manufacturing. Its tax structure reflected that economy. The major taxes were the real property tax, the sales and use taxes, the tax on tangible personal property used in business, and the corporation franchise tax measured on net worth. Both agriculture and manufacturing received exemptions from the sales tax for business inputs, since the tax was intended to apply to household consumption. However, both the franchise tax and the tangible personal property tax, especially, hit capital-intensive industries harder than others and had to be paid whether the entity made, or lost, money. Thus, the manufacturing sector paid an inordinately high level of state tax when compared with other segments of the economy.

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As services made up a larger share of Ohio's economy over the years, the inequality in the state tax burden between manufacturing and other segments of the economy was exacerbated. Many service sector concerns operate without a significant investment in capital; hence, their tangible personal property and net worth franchise tax liabilities were minimal. Many of these services operate on slender margins or can manipulate their finances to minimize income; as a result, little income tax was generated. In addition, many of these new service entities were organized as pass-through entities that were not subject to the franchise tax. As the demand for state services grew, the only recourse was to raise existing tax rates on existing taxpayers. In many cases, that meant an increasing tax burden for Ohio manufacturers.

Paradoxically, Ohio continued to add exemptions from, and exceptions to, the various taxes during this time. As a result, Ohio was saddled with a number of taxes that had high nominal rates, but struggled to raise sufficient levels of revenue for governmental operations. The discrepancies between taxpayers and economic segments also increased and compliance with the existing taxes became more complicated.

### Calls for Reform

During the 1960s, calls for reform in Ohio's tax structure began. Over the years, various band-aids were applied to Ohio's tax structure in order to attempt to reduce its inequalities. Differences in the assessment rate applied to various types of business tangible personal property were reduced or eliminated, and the over-all assessment percentage was reduced. In the early 1970s the net income tax base for the franchise tax and the personal income tax were enacted on the basis that they were perceived as "more fair" because they were based on ability to pay. Ohio's intangibles tax on investments was repealed during the early 1980s. A cap of \$150,000 was placed on the franchise tax liability of a taxpayer as measured by net worth in the early 1990s.

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At the same time, Ohio continued to enact exemptions from, or exceptions to, the various taxes, thereby creating increasing disparity and complexity.

With the dawn of a new millennium, calls for tax reform increased. Dr. Ned Hill of Cleveland State University independently conducted a study that examined the impact of state tax policy on Ohio's economy and called for the elimination of the tangible personal property tax and existing dual-based franchise tax, to be replaced with a broad-based, low-rate tax based on payroll. The study also showed how capital-intensive segments of the economy, such as manufacturing, construction, and mining, paid anywhere from 3 to 11 times more state taxes than did members of many service industries.

#### Tax Reform Enacted

Finally, in early 2005, true tax reform was proposed and accomplished. The goals of tax reform were:

- Eliminate tax on investment and shift to a greater reliance on the taxation of consumption, consistent with the second and third bullets, below;
- Broaden the over-all business tax base;
- Reduce over-all business tax rates;
- Provide a more stable and predictable flow of revenue; and
- Simplify compliance.

The result was H.B. 66 - a comprehensive overhaul of Ohio's tax system. As enacted, the bill:

- Eliminated the tangible personal property tax on new investment in manufacturing and phased out the tax on all general business property over 4 years;
- Phased out the corporation franchise tax for most corporations over 5 years;

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- Phased in a 21% reduction in personal income tax rates ratably over 5 years (the last reduction was delayed 2 years in 2009 in an effort to balance the state budget, but was implemented in 2011), a reduction enjoyed by the owners of pass-through entities; and
- Enactment of the commercial activity tax ("CAT"), a broad-based, low-rate tax measured by gross receipts from virtually all business activities and entities.

House Bill 66 became law in June 2005. Although generally opposed to gross receipts taxes because of their compounding nature, most manufacturers and many other taxpayers soon found that the savings from replacing the onerous and complex taxes on tangible personal property and corporation franchise with the extremely broad-based, low-rate and comparatively simple CAT made up for the policy misgivings regarding a gross receipts tax. In addition, compliance costs were slashed as taxpayers no longer had to undertake the arduous process of preparing personal property tax returns or corporation franchise tax reports.

#### Results of Tax Reform

Due to the phased implementation of the provisions of House Bill 66 and the general economic slowdown that has gripped the country over the past few years, questions have been raised regarding the effectiveness of the tax reform efforts. Indeed, the effort was worthwhile.

- In 2009, Ohio won Site Selection magazine's "Governor's Cup" for an unprecedented fourth consecutive year. The Governor's Cup is awarded annually to the state having the most major business expansions in the nation.
- Following intervening years of strong showings, Ohio finished second in Site Selection magazine's "Governor's Cup" in both the total number of economic development projects, as well as the number of projects per capita, in both 2013 and 2014.

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- A January 2009 Ernst & Young study indicated that Ohio's business tax burden rated between 18<sup>th</sup> and 23<sup>rd</sup> best on 3 different scales of comparison. Another Ernst & Young study conducted for the Ohio Business Development Coalition showed that Ohio had the lowest effective tax rates on new capital investment in the Midwest.
- The Small Business & Entrepreneurship Council's Business Tax Index in 2008 rated Ohio's state tax system as 14<sup>th</sup> best nationally.
- In March 2010 the Federation of Tax Administrations released an analysis of new data from the U.S. Census Bureau showing that for FY 2009, Ohio's per capita state tax burden was the 16<sup>th</sup> lowest; as a percentage of personal income, the burden was the 18<sup>th</sup> lowest.
- In April 2011, Ernst & Young and the Council on State Taxation issued a report entitled "Competitiveness of State and Local Business Taxes on New Investment" in which they concluded that Ohio had the third lowest rate of state and local taxation on new business investment. The report laid this result directly at the feet of the 2005 tax reform law.
- In early 2013, Site Selection Magazine honored Ohio as having the 5<sup>th</sup> most favorable tax climate for mature firms and the 3<sup>rd</sup> most favorable tax climate for new firms for fiscal year 2012.
- Finally, according to the Ohio Department of Taxation, Ohio is one of only 6 states that do not tax corporate profits, and one of 10 that do not tax business personal property. The major tax reforms approved by the Ohio General Assembly in 2005 led to significant improvements to a tax system that was for many years widely regarded as obsolete. As previously mentioned these reforms reduced overall tax rates, eliminated tax on investment, and

broadened the tax base, all of which have provided more stable and predictable revenues, simplified compliance and provided fairness among business segments.

The most competitive aspects of the CAT are its broad base, its low rate, its broad application to virtually all business entities, and its simplicity. The CAT treats everybody the same. Taxpayers within and without Ohio are subjected to the same sourcing rules. With respect to receipts from sales of tangible personal property, if the property is ultimately received by the purchaser in Ohio, then the receipts associated with that transaction are sourced in Ohio. If the property is received by the purchaser outside Ohio, then the receipts are sourced outside Ohio. The success stories referenced earlier in this brief could not have happened with a different tax. For the CAT to remain workable, a broad base and a low rate are critical.

#### The R.C. 5751.01 Nexus Provisions

The Board of Tax Appeals ("BTA") held that Appellant, having more than \$500,000 in taxable gross receipts from sales of tangible personal property delivered to customers in Ohio, satisfied the "bright-line presence" test for nexus under R.C. 5751.01(H) and (I). Not only is that decision reasonable and lawful, but the Appellant has "nexus aplenty" for purposes of the Commerce Clause of the United States Constitution. Therefore, the BTA's decision should be upheld by this Court.

The CAT is imposed upon each person with taxable gross receipts for the privilege of doing business in Ohio, including persons having substantial nexus with this state. R.C. 5751.02. A person has taxable gross receipts if the receipts are sourced to Ohio under the rules set forth in R.C. 5751.033. See R.C. 5751.01(G). Under R.C. 5751.033(E), receipts from the sale of tangible personal property are sourced to Ohio if the property is received in Ohio by the purchaser after all transportation has ended.

R.C. 5751.01(F)(3) provides in part that a person has "substantial nexus with this state" if the person has bright-line presence in the state. R.C. 5751.01(I) provides:

"A person has 'bright-line presence' in this state for a reporting period and for the remaining portion of the calendar year if any of the following applies. The person:

- "(1) Has at any time during the calendar year property in this state with an aggregate value of at least fifty thousand dollars \* \* \*.
- "(2) Has during the calendar year payroll in this state of at least fifty thousand dollars. \* \* \*.
- "(3) Has during the calendar year taxable gross receipts of at least five hundred thousand dollars.
- "(4) Has at any time during the calendar year within this state at least twenty-five per cent of the person's total property, total payroll, or total gross receipts.
- "(5) Is domiciled in this state as an individual or for corporate, commercial, or other business purposes."

In this case the basic facts are not in dispute. Appellant has neither property, nor payroll, in Ohio. The Appellant is not domiciled in Ohio. The Appellant does have millions of dollars of gross receipts from the sale of tangible personal property received by purchasers within Ohio. Clearly, Appellant has "bright-line presence" within Ohio. On the face of R.C. 5751.02, Appellant is liable for the CAT on its taxable gross receipts. Based upon these uncontroverted facts and the plain language of the statute, the BTA found that Appellant was liable for the CAT on its taxable gross receipts. That decision is reasonable and lawful, and it should be affirmed. For its part, Appellant does not contest the facts, or the substance of the law. Instead, it argues that the "bright-line presence" standard is an insufficient basis for imposing the CAT

under the Commerce Clause of the Constitution of the United States. It argues that for Commerce Clause purposes, a taxpayer must have substantial nexus with a state before the state may impose a tax liability. Further, it asserts that a taxpayer may only have substantial nexus with a state by having some sort of physical presence within the state. Stated another way, a taxpayer must have property within a state, or it must have people acting upon its behalf, within a state, in order to have a physical presence.

Amici agree generally with the arguments raised by the Tax Commissioner in its brief and will not repeat them here. However, Amici do wish to make two points with respect to the Appellant's arguments.

Article I, § 8, clause 3 of the Constitution of the United States expressly authorizes Congress to "regulate Commerce with foreign Nations, and among the several States." Ever since the Court decided *Gibbons v. Ogden*, 22 U.S. 1, 9 Wheat. 1, 6 L.Ed. 23 (1824), the Court has recognized that this provision contains not only an affirmative grant of power to Congress to regulate interstate commerce, but also a negative aspect. This "dormant Commerce Clause" prohibits states from taking action that has the effect of discriminating against, or interfering with, interstate commerce, even if Congress has not taken any affirmative action. *Oklahoma Tax Comm'n v. Jefferson Lines, Inc.*, 514 U.S. 175, 179, 115 S.Ct. 1331, 131 L.Ed. 2d 261 (1995). A tax that either provides a direct commercial advantage to local business or subjects interstate commerce to the burden of "multiple taxation" may be found to discriminate against interstate commerce. *Northwestern States Portland Cement Co. v. Minnesota*, 358 U.S. 450, 458, 79 S.Ct. 357, 3 L.Ed. 2d 421 (1959).

In analyzing a claim under the Commerce Clause, the Court has adopted a four-pronged analysis. The tax passes muster under this analysis if it:

- 1) is applied to an activity that has a substantial nexus with the taxing state;
- 2) is fairly apportioned;
- 3) does not discriminate against interstate commerce; and
- 4) is fairly related to the services provided by the State.

*Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 51 L.Ed. 2d 326, 97 S.Ct. 1076 (1977). In this case Appellant complains that the CAT and "bright-line presence" fall short on the first requirement.

In its brief, Appellant relies upon a number of cases for the proposition that with respect to gross receipts taxes, a physical presence is required in order for this first prong of *Complete Auto Transit, Inc.* to be satisfied. Amici agree that in each of those cited cases, the taxpayer in question did indeed have a physical presence. However, in none of those cases did the Court state that a physical presence was the *sine qua non* for finding that a substantial nexus existed. In point of fact, as the Court itself recognized in *Quill Corp. v. North Dakota*, 504 U.S. 298, 314, 112 S.Ct. 1904, 119 L.Ed. 2d 91 (1992), it has not yet applied the physical presence test in the context of any tax other than sales and use taxes and has yet to address the question that is presented here: Whether there is a level of economic presence within a state that gives rise to a substantial nexus for purposes of the commerce clause analysis.

Second, in evaluating whether the all-encompassing collection of data by Appellant, which enable it to transact sales of tangible personal property to customers in the Ohio market to the tune of multiples of tens of millions of dollars annually constitutes a substantial nexus with Ohio, the Court should remain mindful of the purpose of the commerce clause. Simply put, the question is whether the imposition of the CAT to this Appellant in any way provides a direct commercial advantage to any local business, or subjects interstate commerce to the burden of

multiple taxation. If it does not, then Amici submit that the substantial nexus exists and the statutory scheme is valid.

Appellant has not alleged that the CAT discriminates against it, or that it provides an economic benefit to local business. That is because it cannot. All receipts are sourced in the same manner. In the case of receipts from sales of tangible personal property, if the goods are ultimately delivered to the purchaser in Ohio, then the receipts are sourced here. If the goods are ultimately delivered to the purchaser outside Ohio, then the receipts are not sourced here.

That leaves the question of whether Appellant has a substantial nexus with Ohio and what that means. Appellant maintains a market in Ohio that results in sales worth multiple tens of millions of dollars to customers located in Ohio. It does this through the pervasive collection of data about its market and customers that is possible through the use of advanced technology. In fact, the collection of those data and its lightning-fast response to them allows the Appellant to tailor its information and sales efforts to the changing whims of each individual customer and to maximize its sales efforts, all within fractions of seconds. It is difficult to imagine a more substantial nexus with Ohio.

The question to consider is how, exactly, the presence of a single sales representative or employee, is more substantial to Appellant's ability to establish, maintain, and expand its market in Ohio. In today's environment, the use of technology provides a more substantial presence than the mere presence of any individual taking orders by hand and mailing them to the mail office for confirmation. How would a finding of insufficient nexus in this case promote the purposes of the Commerce Clause? The fact is that it does not.

#### CONCLUSION

The CAT was enacted in 2005 as part of a comprehensive and much-needed reform of the system by which business is taxed in Ohio. Its broad base, low rate, transparency, and ease

of compliance and enforcement have all contributed to making Ohio a better place to live and to work. Much of the economic recovery that Ohio has enjoyed is attributable, at least in part, to the CAT.

The Appellant generates tens of millions of dollars from its sales of tangible personal property that is delivered to customers located in Ohio. The Board of Tax Appeals found that the Appellant had substantial nexus as provided in R.C. 5751.01(D) and R.C. 5751.02. That decision is both reasonable and lawful, and it should be affirmed.

Respectfully submitted,

/s/ Mark A. Engel  
Mark A. Engel (0019486)  
(Counsel of Record)  
Anne Marie Sferra (0030855)  
Bricker & Eckler LLP  
9277 Centre Pointe Drive, Suite 100  
West Chester, OH 45069  
Telephone: 513.870.6565  
Facsimile: 513.870.6699  
Email: [mengel@bricker.com](mailto:mengel@bricker.com)  
Attorneys for Amici Curiae  
Ohio Manufacturers Association  
Ohio State Medical Association  
Ohio Chemistry Technology Counsel  
Ohio Dental Association

### CERTIFICATE OF SERVICE

I certify that copies of the foregoing Merit Brief of Amici Curiae was delivered by electronic mail and mailed by U.S. mail this 20th day of October 2015 to the following:

Michael DeWine (0009181)  
Attorney General of Ohio  
Christine T. Mesrow (0015590)  
(Counsel of Record)  
Daniel W. Fausey (0079928)  
Assistant Attorneys General  
30 East Broad Street, 25th Floor  
Columbus, Ohio 43215  
Tele. 614-466-5967  
Fax. 614-466-5087  
Email: [Christine.mesrow@ohioattorneygeneral.gov](mailto:Christine.mesrow@ohioattorneygeneral.gov)

Martin I. Eisenstein (PHV 1095-2015)  
(Counsel of Record)  
David W. Bertoni (PHV 2436-2015)  
Matthew P. Schaefer (PHV 2399-2015)  
Brann & Isaacson  
184 Main Street  
P.O. Box 3070  
Leviston, ME 04243-3070  
Tele. 207.786.3566  
Fax. 207.783.9325  
Email: [miseinstein@brannlaw.com](mailto:miseinstein@brannlaw.com)

and

Counsel for Appellee  
Joseph W. Testa, Ohio Tax Commissioner

Edward J. Bernert (0025808)  
Baker Hostetler  
Capitol Square, Suite 2100  
65 East State Street  
Columbus, OH 43215-4260  
Tel: 614.462.2687  
Fax: 614.462.2616  
Email: [ebertner@bakerlaw.com](mailto:ebertner@bakerlaw.com)

Counsel for Appellant  
Newegg, Inc.

/s/ Mark A. Engel  
Mark A. Engel (0019486)  
Bricker & Eckler LLP  
Attorneys for Amici Curiae

## Public Policy “Hot Topics” December 2, 2015

### Overview

The 131<sup>st</sup> General Assembly has been in session for the past two months. Only a few session days remain. The November election saw the defeat of a proposal to legalize recreational and medical marijuana. Governor Kasich continues to travel the country advancing his presidential campaign.

### General Assembly

OMA priority legislation to reform unemployment compensation and provide tax relief to businesses employing temporary labor have advanced. On the energy front, a couple proposals have manufacturers on the defensive. Unwise expansions of workers compensation benefits and health care coverage are being advanced by Republican lawmakers. The first half of 2016 looks to be eventful.

### President Kasich?

John Kasich continues his presidential campaign. His rise in the polls in New Hampshire has continued. The Ohio primary election will be held on March 15.

### Tax Policy

Corrective legislation needed to ensure small businesses saw tax reductions instead of tax increases in 2015 due to drafting errors was rushed through. The OMA supported the bill. The Senate added an amendment to expand the CAT carve-out created in the state budget for an integrated supply chain for a light manufacturing company. The OMA opposed this amendment. Dozens of manufacturers wrote letters and made calls to express concern for the amendment. See tax policy report for background on the 2020 Tax Commission, severance tax,

### Civil Justice

Business advocates were disappointed at an eleventh-hour budget amendment affecting insurance subrogation. Patent troll legislation is slowly pending.

### Environment

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

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

As federal regulators finalized the Obama Administration new regulation on carbon dioxide emissions from power plants, advocacy action has been turning to the states to determine how individual states will comply with the standards. Ohio will be seeking an extension, however stakeholder meetings organized by Ohio EPA begin December 2. See Environment Report.

### November General Election – Ballot Issues

Earlier this year, after careful study and consideration, the OMA board of directors [voted to endorse State Issue 1](#) to change the manner in which Ohio draws boundaries for state legislator districts. The OMA board [endorsed passage of State Issue 2](#) to restrict special interests from creating monopoly businesses via Constitutional amendment. And, the board urged defeat of

State Issue 3, the Constitutional amendment to legalize medical and recreational marijuana. Ohio voters approved the legislative redistricting measure and Ohioans voted 2 to 1 against marijuana legalization. See post-election report.

### **Human Resources – unemployment taxes**

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

House Bill 394 was introduced by Rep. Barbara Sears. The bill is a comprehensive reform of Ohio’s unemployment compensation program with a focus on making the system in Ohio solvent. The bill has had several hearings in the House Insurance Committee. The goal was to move the bill prior to the holiday recess. However it looks like the House is positioning itself for a mid-January floor vote. See HR section.

### **Workers’ Comp & Industrial Commission**

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

### **Electricity Rate Making**

Significant utility rate cases are pending at PUCO. Distribution utilities have filed cases proposing power purchase agreements (PPAs). The cases are highly controversial and have been reported in the press. Regulators have taken steps this week to grant utility power purchase agreement proposals. FirstEnergy is attempting to obtain massive subsidies from customers for two of its largest power plants. The [OMA Energy Group](#) has intervened in the case to oppose the FirstEnergy subsidies. It seems likely now that, if it fails at the PUCO, the company might seek a form of a bailout from the General Assembly.

### **Utility Tax Shifting?**

Stalled legislative proposals to modify the tax revenue generated by power plants (via the tangible personal property tax) may be creeping into discussions to modify the kilowatt hour tax which is paid by customers. In contrast, the tangible personal property tax is paid by power plants.

### **Energy Efficiency Legislation**

Legislation was enacted last year (SB 310) to revise Ohio’s energy standards. The issue has been reported and discussed at OMA meetings for some time. SB 310 froze the alternative energy standards for two years and created a legislative study committee to assess the impacts of the standards. The study committee co-chairs issued a report with recommendations in September, most notably recommending energy standards be discontinued. See Energy section for an OMA analysis of the recommendations.

### **2016 General Election**

Nearly a year out, new and old faces are surfacing for the Ohio General Assembly. Three vitally important seats on the Ohio Supreme Court will be at stake. As usual, the OMA will deliver election services in 2016. Reserve funds now to purchase an advertisement to spotlight your company in the [OMA Election Guide](#). The Guide is an invaluable resource for government

officials and those who watch and influence state government. Candidates for statewide races in 2018 are lining up and the OMA will provide opportunities for manufacturers to become acquainted with them as elections draw near.

If this e-mail does not display properly, [click here](#) to view our online version.

To ensure continued delivery of this e-mail, please add OMA@informz.net to your e-mail address book.



## GOVERNMENT AFFAIRS

November 4, 2015

Dear :

### ***Ohioans decided!***

In this off-year election, most of the ballot was devoted to local government elections, local judges, school boards and tax levies. However, three important statewide ballot issues were presented to Ohio voters. The OMA adopted a position on all three ballot issues.

### ***BALLOT ISSUES***

Earlier this year, after careful study and consideration, the OMA board of directors [voted to endorse State Issue 1](#) to change the manner in which Ohio draws boundaries for state legislator districts. The OMA board [endorsed passage of State Issue 2](#) to restrict special interests from creating monopoly businesses via Constitutional amendment. And, the board urged defeat of State Issue 3, the Constitutional amendment to legalize medical and recreational marijuana.

### ***RESULTS (with 98.54% precincts counted)***

Issue 1 – Approved 71.49%

Issue 2 – Approved 51.69%%

Issue 3 – Rejected 64.14%

[View official results](#) from the Ohio Secretary of State

### ***OMA CAMPAIGNS***

OMA-endorsed positions prevailed on all three statewide constitutional amendments. In addition to adopting formal positions, the OMA invested time and resources in support of Issues 1 and 2 and in opposition of Issue 3. The OMA was a leading member of the *Ohioans Against Marijuana Monopolies* campaign to defeat issue 3 and contributed toward paid advertising, including this [TV spot](#).

### ***OMA COMMENTS***

Even though the proponents for Issue 3 were exceptionally well-funded, and replete with celebrity supporters, they did a poor job of mustering turnout. It was widely expected they would conduct an aggressive GOTV initiative, however it never emerged. Some questioned why proponents of marijuana would run a campaign during an off-year election. Had these ballot issues been up during a presidential election year, a larger voter turnout may have resulted in a different outcome.

It's possible, even likely, that a ballot issue to legalize marijuana will reappear in future years. Absent efforts by Ohio's elected leaders to proactively address both the substantive issue of medical marijuana legalization and ballot reform, unwelcome business schemes will continue to advance in Ohio.

However, the wide margin of defeat may give pause to future ballot attempts. Passage of Issue 2 will serve as a deterrent to ballot issues structured as monopolies. Manufacturers should keep pressure on public officials to advance a Constitutional amendment to require a super

majority in order to amend Ohio's Constitution.

Additionally, the OMA board resolved: "... the Ohio General Assembly to study the effects of medical marijuana and to recommend a process for the consideration of appropriate medical protocols established by certified medical professionals as a part of any potential legalization including specific recommendations on workplace safety considerations and guidelines."

### **MANUFACTURERS TAKE ACTION**

The OMA Advocacy Fund helps manufacturers mutualize costs to advance common opportunities and to thwart common threats, such as State Issue 3. Numerous manufacturing leaders affected yesterday's election results through their financial contributions. Thank you for your leadership! While most overt Issue 3 campaign activity is now complete, you can still make a contribution to the OMA Advocacy Fund which may contribute to any remaining Issue 3 campaign expense and generally augments the OMA's public policy advocacy.

### **SAVE THE DATE**

Please hold [Wednesday, December 2](#) for the OMA Government Affairs Committee meeting. We'll meet from 9:30 a.m. until 1:00 p.m. (with lunch provided by the OMA) at the [OMA office](#).

A call-in option will be available at: **(866) 362-9768, 940-609-8246#**

Please [register here](#) for in-person or call-in attendance. (Or you can email [Denise Locke](#) or call her at (800) 662-4463.)

Our committee chairman, Mr. Chris Hess, Manager, Government Affairs, Eaton Corporation, and I look forward to seeing you.

#### **[Ryan Augsburger](#)**

Vice President and Managing Director  
OMA Public Policy Services  
[raugsburger@ohiomfg.com](mailto:raugsburger@ohiomfg.com)  
Toll free: (800) 662-4463  
Direct: (614) 629-6817  
Cell: (614) 348-1227

**December 2 meeting sponsored by OMA  
Connections Partner:**



The Ohio Manufacturers' Association | 33 North High Street | Columbus, OH 43215

If you have consented to receive OMA emails, you may withdraw it. Please [click here](#) to unsubscribe from all OMA emails, or write us at the above address.

To update your OMA profile and email preferences, please [click here](#).

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## Leadership

### Contact Your Legislators: Fix Unemployment Comp System

Ohio's unemployment insurance (UI) system is in a state of crisis. The Ohio Unemployment Insurance Trust Fund is insolvent. And, Ohio employers are paying higher and higher premiums because of federal penalties related to the fund's insolvency.

Reforms are urgently needed to update and strengthen Ohio's UI program for the benefit of Ohio employers, employees and economy. Ohio's Unemployment Insurance Trust Fund is not likely to recover solvency before the next recession, unless the state better aligns benefits with contributions to build a balance.

Rep. Barbara Sears has introduced [HB 394](#) to fix the system. Members of the Ohio House of Representatives need to hear from manufacturers to support the bill. Use the [OMA Manufacturing Advocacy Center](#) to contact your representatives immediately.

Read an OMA [summary of the bill](#), and a [one-pager on its highlights](#). 11/18/2015

### OMA Urges Unemployment Compensation Reform

The OMA, together with the state's other four major business groups, [presented testimony](#) to the House Insurance Committee to urge passage of [HB 394](#), the unemployment compensation reform bill, introduced last week by Rep. Barbara Sears (R-Maumee).

Testifying for the OMA, the Ohio Farm Bureau, the Ohio Chamber of Commerce, the Ohio Council of Retail Merchants, and the National Federation of Independent Businesses-Ohio was Doug Holmes, president of the Washington, D.C. based UWC-Strategic Services for Unemployment and Worker's Compensation. Holmes, an Ohio native, is widely regarded as the preeminent expert on unemployment compensation nationally.

"Ohio is among the least solvent states in the country with a current negative unemployment trust fund balance of approximately \$775 million. Only California, Connecticut, Ohio and the Virgin Islands have outstanding federal loan balances, and only California has a higher negative balance in its trust fund account than Ohio," testified Holmes.

He stated: "Ohio employers now pay a higher FUTA tax rate than employers in any other state except Connecticut. Instead of the normal rate of \$42 per

employee Ohio employers for 2015 are paying \$147 per employee. Based on trust fund projections for 2016, this federal tax will increase again next year to at least \$168 per employee."

"(I)t is imperative that Ohio take steps to improve the solvency of its unemployment trust to eliminate the remaining outstanding federal debt, better align benefits and contributions, and build a significant balance in the state's trust fund before the next recession...choosing not to address state trust fund solvency in advance of the next recession risks that the FUTA tax will continue to increase up to \$420 per employee in addition to increases in the state unemployment tax driven by increased claims," Holmes said. 11/18/2015

### Finally, an Unemployment Comp Reform Bill

This week, a long anticipated unemployment reform bill was introduced by Rep. [Barbara Sears](#) (R - Maumee) as [HB 394](#). As every Ohio manufacturer knows, unemployment taxes are high and have been increasing.

The Ohio unemployment trust fund is insolvent and still owes the federal government \$775 million. This circumstance has for years triggered penalties that employers must pay, and the fund is in a dangerous position in light of any future recession.

In testimony before the House Insurance Committee Rep. Sears said: "It is important that we insure a structural sound unemployment insurance compensation program to lend consistency to our businesses, to allow us to move our unemployment system to an employment system."

The bill contains an impressive number of overdue reforms. We'll provide members with a complete analysis of the bill's provisions next week.

Meanwhile, here are a few documents Rep. Sears presented to the committee: a [breakdown](#) of the bill, a [bill analysis](#) from the Legislative Service Commission, a [glossary of terms](#), and an [impact analysis](#). 11/10/2015

### The Case for Unemployment Insurance Reform in Ohio

This week, the OMA sent a policy primer, "[The Case for Unemployment Insurance Reform in Ohio](#)," to all 99 members of the Ohio House of Representatives.

The OMA wrote: "Ohio's unemployment insurance (UI) system is in a state of crisis. The Ohio Unemployment Insurance Trust Fund, which is funded by employers and pays out benefits to qualifying jobless workers, is insolvent. The benefits the system pays out are substantially out of balance with the tax receipts it takes in to fund it.

"The system is nearly \$775 million in debt to the federal government – money it borrowed to keep paying benefits during and after the Great Recession of 2008. As a result, Ohio's system is dangerously unstable and a deterrent to economic development. Reforms are urgently needed to update and strengthen Ohio's UI program for the benefit of Ohio's employers, employees and economy.

"Most specifically, Ohio's Unemployment Insurance Trust Fund is not likely to recover solvency before the next recession unless the state takes action to pay off its outstanding federal unemployment compensation loan balance and better aligns benefits with contributions to build a balance."

The OMA proposed a series of policy options for reform. Read an executive summary of the policy primer [here](#). 11/11/2015

## OMA Turns 105



It all started at two o'clock on November 10, 1910, in Parlor B of the Chittenden Hotel in Columbus, where 17 prominent Ohio manufacturers, responding to a letter of invitation from Colonel J. G. Battelle, gathered to form "an association of manufacturers."

In short order, the group adopted a Constitution based on the mission "to promote the general welfare of productive industries in the State of Ohio" and "to keep prominently before the public the importance of such industries for the general prosperity of the State."

Our gratitude to our members who are the lifeblood of the only organization that protects and grows Ohio manufacturing. The work of the OMA - by and

on behalf of its members - is as critical and relevant today as it was on November 10, 1910.

Read more about the early beginnings of the [OMA here](#). 11/9/2015

## Ohioans Decided



"**NO-HIGH-O**" read the above-the-fold headline in the Dayton Daily News this week summarizing Ohioans' resounding defeat of Issue 3, the ballot issue to legalize medical and recreational marijuana.

In spite of having a huge money advantage from would-be marijuana monopolist investors, Ohioans saw through the irresponsible business scheme. At the same time, Ohio voters narrowly approved Issue 2 to prevent monopoly businesses from being created by constitutional amendment.

The electorate also approved Issue 1 to revise the way Ohio draws state legislative districts in response to criticism over gerrymandering abuse and opaque processes.

Ohio voters affirmed the OMA-endorsed position on all three ballot issues. Read more about the election in this [OMA post-election summary](#). 11/5/2015

*Credit: Columbus Dispatch, November 5, 2015*

## U.S. House Fails to Pass Safe Trucking Act

An OMA-backed amendment that would have given states the flexibility to permit more productive, six-axle trucks on Interstate highways within their borders failed 187-236 this week in the U.S. House of Representatives. The National Association of Manufacturers marked the amendment as a key vote.

Manufacturers were actively pursuing approval of 91,000 pound, six-axle trucks for Interstate highway use.

"In spite of substantial support by a wide-ranging business coalition, the railroad lobby-backed opponents again prevailed using misinformation and

scare tactics,” commented OMA’s Ryan Augsburger. “We thank the many advocates who worked tirelessly in support of the Ribble (R-WI-8) amendment and we’ll continue pursuing the measure as opportunities present themselves.” 11/4/2015

### Ex-Im Bank Makes Progress in Congress

Last week, in an amendment to the pending federal transportation bill, a bipartisan majority in the U.S. House of Representatives voted to renew the U.S. Export-Import Bank. The bank’s charter was allowed to expire at the end of June. The amendment reauthorizes the bank through September 2019. Efforts in Washington to derail the reauthorization continue but have been unsuccessful so far.

The OMA has been a long-standing proponent of the bank’s renewal as a necessary financing tool to help Ohio manufacturers compete internationally. In 2014, the bank supported more than \$250 million in Ohio exports – more than 60% of which were small business transactions.

Here’s how the Ex-Im Bank [impacts jobs in Ohio](#); data are organized by Congressional district. Also, visit the National Association of Manufacturers [Ex-Im Bank resource center](#). 11/5/2015

### Federal Funds Awarded to Improve Ohio Rural Transit

Ohio has been [awarded \\$6.8 million](#) in federal funds to improve transit in rural areas according to a [release](#) by U.S. Senator Sherrod Brown. The funds are awarded through the U.S. Department of Transportation Investment Generating Economic Recovery (TIGER) program and will be distributed to the Ohio Department of Transportation Transit Tech Ohio project to improve transit service scheduling and communications.

Manufacturers in rural areas may want to work with transit agencies to utilize the funds to increase workforce transportation options. 11/5/2015

### Burkland Appointed to Commission to Review Government Expenditures

OMA President Eric Burkland has been [appointed](#) by Speaker Cliff Rosenberger to sit on the [Grace Commission](#) established in House Bill 64 earlier this session. The 10-member Commission is charged with evaluating expenditures of state government for FY 2015 and identifying opportunities for more efficient delivery of government services.

The Grace Commission is modeled after The President’s Private Sector Survey on Cost Control that was created by President Ronald Reagan in 1982, named after its chairman. 11/5/2015

### Ohio Ranked 5th in State Business Climate

Site Selection Magazine’s [2015 Top State Business Climate Rankings](#) scores Ohio as the nation’s fifth best business climate. The top ranked state is Georgia, followed by North Carolina, Kentucky and Louisiana.

Indiana is the only other midwestern state in the top ten, ranking 9th. Michigan ranked 16th. 11/4/2015

### Act Today! Urge U.S. Representatives to Pass Safe Trucking Act

It is expected that the Highway Bill will be on the floor of the U.S. House next week, and member action can help secure a vote on an OMA-backed amendment that would give states the flexibility to permit more productive, six-axle trucks on Interstate highways within their borders.

Manufacturers are actively pursuing approval of 91,000 pound, six-axle trucks for Interstate highway use.

If trucking efficiency is critical to your business, please use the easy email tools at the OMA [Manufacturing Action Center](#) to urge your U.S. representative to vote for this measure. 10/28/2015

Tuesday, November 3



We’d be remiss if we didn’t remind members a final time to participate in the General Election on Tuesday, November 3.

The OMA board of directors has endorsed the following positions on the three state ballot issues: **Yes on Issue 1** to create more fair and competitive Ohio House & Senate districts; **Yes on Issue 2** to prevent commercial monopoly interests from being

amended into the Ohio Constitution; and **No on Issue 3** to prevent marijuana growing monopolies from being amended into the state constitution.

Let's protect and grow Ohio! 10/29/2015

### No on Issue 3 Resources



A small number of wealthy investors are trying to create a marijuana monopoly for their own personal profit by passing State Issue 3, a proposed constitutional amendment on the November 3 statewide ballot.

Issue 3 carries serious consequences for Ohio workplaces. Take the time to learn more about how it will affect your families, friends, and co-workers.

Here is a [flier](#), an [FAQ](#) and a [TV spot](#) with more information. 10/29/2015

### Best States for Business: Ohio 15th

Forbes released its annual "[Best States for Business](#)." Ohio ranked 15th.

The top three states are Utah, North Carolina and Nebraska. The lowest three are West Virginia, Mississippi and Maine.

Ohio ranked well in quality of life, economic climate and regulatory climate. The state didn't do so well with the measures for labor supply and growth prospects. 10/26/2015

### Where is Additive Manufacturing Going?

Originally conceived as a mechanism for rapid prototyping and now cited by some as the next industrial revolution, additive manufacturing (AM) is increasingly used to deliver final products.

[EWI](#) has created a [new guide](#) that briefly explores the technology's growth and evolution and includes a checklist that can be used to evaluate your company's AM readiness. 10/27/2015

### Registered Voters Split on Marijuana Issue

A University of Akron [poll of registered voters](#) conducted in September shows that these voters are dead split on Issue 3, the ballot issue that would legalize recreational and medical marijuana through a constitutionally established marijuana monopoly.

The poll finds registered voters are split 46% opposed and 46% in support with 8% undecided.

A poll of registered voters is not the same as a poll of likely voters. What counts is who decides to come out and vote. That's what is going to decide this issue: Who votes. 10/21/2015

### "What I Learned in Colorado"

Mike DeWine, Ohio Attorney General, is passionate about the issue of legalization of marijuana. Here's a column he recently wrote: "As a former county prosecutor, I feel that the best way to get the truth about something is to get out and observe it firsthand. Ohioans will vote on a Constitutional amendment to authorize recreational marijuana on November 3rd, so I decided to take a trip to Colorado, where they've legalized marijuana, to meet with law enforcement, school officials, parents, doctors, and business owners.

"The message I heard from this diverse group of people was unequivocal: "Don't legalize marijuana." [Here are some of the things I learned ...](#)" 10/19/2015

### State Issue 1 Enjoys Bipartisan Support: Vote Yes!



Not often you see this lately, right? The political parties working together closely on an issue. Issue 1 proposes changes to the way General Assembly districts are drawn, aiming to make the districts more fairly represent the political makeup of the state and its localities.

Both the Republican and Democratic parties support Issue 1. So does the OMA Board of Directors.

Find out more about the issue [here](#). Pass it on to your own networks. 10/19/2015

### Lt. Governor Taylor Eyes Gubernatorial Bid

Lt. Governor Mary Taylor this week indicated she is interested in running for governor in 2018. She created a non-profit, "Onward Ohio," and has sought for it 527 tax-exempt status from the IRS, which allows it to raise money for political purposes.

Ohio Attorney General Mike DeWine and Secretary of State Jon Husted are also seen as likely contenders for Ohio's top executive office.

Should Kasich win the presidency next year, Taylor would be elevated to the governor's office, but still have to run for election in 2018. 10/22/2015

### U.S. Senate Starts Work on GMO Labeling Bill

This week the U.S. Senate Committee on Agriculture held a hearing on [biotechnology in the food and agriculture sectors](#).

OMA supports a national, non-GMO labeling standard, as provided for in the Safe and Accurate Food Labeling Act of 2015, [H.R. 1599](#), that the U.S. House passed, rather than an expensive patchwork of state labeling laws.

Ohio Senator Bob Peterson (R-Sabina) wrote this [letter of support](#) to Senators Brown and Portman, and Rep. Ryan Smith (R-Bidwell) filed this [letter of support](#) with the senators.

Interested members can quickly and easily ask Senators Brown and Portman to create a national non-GMO labeling standard, similar to the National Organic Program, at the OMA's [Manufacturing Advocacy Center](#). 10/20/2015

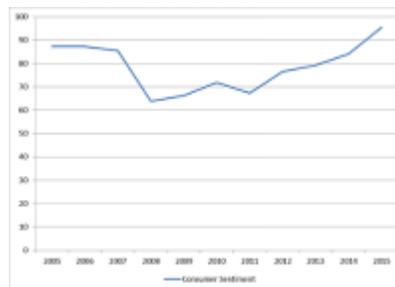
### Global Manufacturing Footprint 2020

The Manufacturers Alliance for Productivity and Innovation (MAPI) and Deloitte just released a study of location decision trends, [Footprint 2020. Expansion and Optimization Approaches for U.S. Manufacturers](#).

We are all aware that: "A seismic shift in manufacturing location trends has occurred over the past 20 years as manufacturers sought to take advantage of labor arbitrage opportunities and gain access to raw materials, while accommodating an increasingly more global customer base."

Now, the researchers find that a "next shift in manufacturing locations is imminent." The study seeks to "to understand trends driving global manufacturing footprint strategy shifts and to identify the next generation of locations manufacturers are considering as markets and strategic imperatives evolve." 10/19/2015

### Highest Consumer Optimism in 10 Years



In [this economic outlook](#), OMA Connections Partner, Clark Schaefer Hackett, says: "Considering we have the highest consumer confidence since 2005 with the fact that household financial obligations are the lowest level they have been since 2005, and average consumer FICO credit scores are at their highest point since 2005 (as reported by Fair Isaac Corporation), you see multiple positive economic trends forming and correlating."

And, "... we probably won't see the double-digit or near-double-digit growth that we have historically seen. But perhaps a silver lining to this is the likelihood that we won't see the high inflation that usually accompanies high GDP growth either." 10/22/2015

### Washington is Obsolete

"[Washington is Obsolete](#)." That's the title of an op-ed Governor Kasich wrote in the Washington Post this week.

"The biggest problem with America's economy is called Washington. The anemic growth we have today isn't because the federal government failed to do enough but because it succeeded in doing too much," writes Kasich.

Read the op-ed. It's good. See if you don't agree with our blunt governor. 10/15/2015

## Polling on Pot and Portman

Quinnipiac University's most recent poll finds that the majority of Ohioans favor legalization of medical and recreational marijuana. Ohio voters support legalizing personal marijuana use 53 - 44%. Men support it 59 - 38%. Women are divided, with 47% in favor and 49% opposed. Voters support legalized medical marijuana use 90 - 9%.

It is important to note that this is polling on pot, and not the pot initiative, Issue 3, on the Ohio General Election ballot next month.

The poll also surveyed voter preference in the 2016 U.S. Senate race finding former Governor Ted Strickland enjoys a 3% advantage over incumbent Republican Rob Portman. Peter Brown of Quinnipiac said, "Conventional wisdom says Sen. Rob Portman's 50 - 27 percent job approval rating should make him a safe bet for reelection. But a second term is far from a sure thing." Portman polled at 43% and Strickland attracted 46% of those polled.

[Read more](#) polling results. 10/15/2015

## Not Too Late to Register for Dayton Advanced Manufacturing Technology Show - Oct. 21-22

Every year, manufacturers in Ohio connect with top manufacturing suppliers at [AMTS](#) over a 2-day period at the Dayton Airport Expo Center to:

- Scout the latest manufacturing solutions, technology, and machinery
- Connect with industry professionals, exchange ideas, and keep a pulse on upcoming trends
- Hear from industry-leaders at informative technical seminars and educational sessions

With more than 170 exhibitors displaying equipment, products and services and more than 3,000 attendees, [AMTS](#) is the premier manufacturing show in the region. Admission is FREE with pre-registration, or \$10 at the door the day of the show. 10/14/2015

## 'State of Manufacturing' Event Focuses on Northeast Ohio Manufacturers - Nov. 19

Magnet and PNC Bank are hosting an important discussion, [The State of Manufacturing, Important](#)

[Trends Affecting Northeast Ohio Manufacturers](#), on Thursday, November 19 in Cleveland.

Guest speakers include: PNC economist, Gus Faucher; OSU economist and good friend of the OMA, Dr. Ned Hill; and ERC's Marty Moderski on compensation trends. There is an optional tour of OMA member company, Jergens, Inc.

[Register here](#). The first 50 people who register will receive a FREE copy of Malcolm Gladwell's best seller, *Outliers: The Story of Success*. 10/14/2015

## Manufacturing Industry Benchmarking Opportunity

OMA Connections Partner, [Schneider Downs](#), invites you to participate in its [Annual Economic Survey of the Manufacturing Industry](#). This is the fifth year for the survey whose goal is to provide a snapshot of the industry's performance over the last year.

This survey will take approximately 10 minutes to complete and is anonymous. Responses are kindly requested by November 6, 2015.

The 2015 results will be available in December; here are the [2014 Manufacturing Economic Survey](#) results.

Please contact [John Popies](#) at Schneider Downs for more information at (412) 697-5201. 10/15/2015

## Yes on 1 & 2, No on 3

Early and absentee voting by mail started on Tuesday, October 6; Ohioans are already casting ballots in the November 3 General Election. Here's the positions that the OMA board of directors took on the three state ballot issues:

Yes on Issue 1 - the proposed Constitutional amendment that would replace the existing highly partisan process for drawing Ohio House and Senate districts with a more transparent, bipartisan process. Voter approval of Issue 1 will result in fairer, more geographically compact and politically competitive elections. Those changes in turn will result in a stronger democracy and a more engaged citizenry - outcomes that will serve all Ohioans well. [Yes for Issue 1 website](#)

Yes on Issue 2 - the Constitutional amendment placed on the statewide ballot by the Ohio General Assembly that would prohibit citizen petition-initiated Constitutional amendments that grant business monopolies for the economic benefit of certain individuals or entities.

No on Issue 3 - the Constitutional amendment that would legalize medical and recreational marijuana and grant 10 monopolistic growing licenses to those financing the campaign. The board opposes this ballot issue on the grounds that granting what in effect are business monopolies would undermine free-market competition and potentially also compromise workplace safety. [No on Issue 3 website](#)

For more information, visit the OMA's [Manufacturing Advocacy Center](#). 10/6/2015

### Anti Marijuana Monopoly Coalition Releases Commercial



This week the No on Issue 3 campaign placed a spot on digital platforms, and will be rolling it out in additional channels.

[You can watch it here.](#)

Thank you to OMA members who have made contributions to help defeat State Issue 3. Please pass the spot on to your networks. 10/8/2015

### Ohio Associations Campaign for Safe Trucking Act

The OMA and eight other state trade associations in Ohio delivered a [joint letter](#) to Ohio's Congressional delegation last week urging the state's representatives in Washington to approve the federal Safe Trucking Act.

Joining the OMA were: Ohio Aggregates & Industrial Materials Association; Ohio AgriBusiness Association; Ohio Cattlemen's Association; Ohio Corn & Wheat Growers Association; Ohio Farm Bureau; Ohio Forestry Association; Ohio Pork Council; and Ohio Soybean Association.

The associations also issued this joint [media statement](#): "The Safe Trucking Act is a commonsense solution to outdated weight limits for trucks that are forcing shippers to put more vehicles

on the road and wasting fuel with partial loads. By giving states the authority to allow heavier trucks equipped with six axles, rather than the typical five, to access designated interstate highways, the proposed legislation will safely boost the efficiency and productivity of our nation's transportation network while driving economic growth. Passage of the Safe Trucking Act will result in lower overall shipping costs, safer roads and less environmental impact. We urge the Congress to approve the legislation with dispatch."

For more information, contact OMA's [Ryan Augsburger](#) or visit the OMA's [Manufacturing Advocacy Center](#) to weigh in with your federal elected officials. 10/6/2015

### This is MFG DAY!



The national movement to mark the first Friday of each October as Manufacturing Day is bearing fruit. Last year, MFG DAY exceeded all expectations with a total of 1,679 officially registered events across North America. This year, there are 2,259 - and counting - events registered, which exceeds the 2015 goal of 2,000. In Ohio alone, 164 events are planned.

OMA president Eric Burkland said, "The coolest thing about this is that it is not an event, but a drumbeat, a cause that has momentum in Ohio and the U.S. that is changing attitudes about the realities of modern American manufacturing."

If you're planning an event and haven't yet had a chance to register it, please [go here](#). The process takes just 5-10 minutes. An event on any day up to December 31, 2015 is eligible. 10/2/2015

### Two New House Members Sworn In

This week the House of Representatives swore in two new members. Rep. [Steven Arndt](#) was selected by House Republicans to replace former [89th House district](#) legislator Rep. Steve Kraus, who was disqualified from serving due to a felony conviction earlier this summer. Arndt has served as an Ottawa County commissioner for 27 years.

Also sworn in this week was Rep. [John Bocchieri](#), a Democrat. Bocchieri is a former state and federal lawmaker who is filling the seat vacated by longtime Rep. Ron Gerberry of the [59th House district](#), who resigned this year under a cloud of campaign finance violations. 10/1/2015

### **OMA Asks Court to Defend Product Liability Law**

This week, the OMA filed an [amicus brief](#) in support of Motorola Inc. that asks the Ohio Supreme Court to reconsider a ruling by the Ohio First Appellate District. At issue are the litigation processes used in product liability disputes, including alternative design, and designated expert witness testimony.

[Anne Marie Sferra](#), Bricker & Eckler counsel for the OMA wrote: "If the First District's decision is permitted to stand, a plaintiff could ask anyone—despite a complete lack of knowledge of the product—to render opinion testimony on the design of any sophisticated product in order to establish liability against a manufacturer. That is not what the Ohio Rules of Evidence or our civil justice system permit, nor should they."

The outcome affects all product makers in general and affects manufacturers of protective gear used by first responders most directly. A decision is expected by the end of the year. 10/1/2015

### **OMA Keeping an Eye on Proposed Nuisance Law**

This week Senator [Jim Hughes](#) (R-Columbus) presented [sponsor testimony](#) on [SB 201](#), which would expand Ohio's nuisance law to apply to any real property, including vacant land, on which an offense of violence has occurred or is occurring. The OMA will be monitoring the bill to ensure manufacturers' properties are protected. 10/1/2015

### **Contribute to 'No on Issue 3' Campaign to Defeat Marijuana, Monopolies**

State Issue 3 would amend the Ohio Constitution by legalizing medical and recreational marijuana and granting monopolistic growing licenses to ten investors who are financing the pro-marijuana monopoly campaign. The OMA board of directors voted to oppose Issue 3.

Issue 3 supporters are waging an aggressive, expensive campaign to persuade Ohio voters to approve marijuana legalization and monopolies. A campaign to defeat Issue 3 has been formed, and the OMA is helping to steer that effort. Our campaign's research shows while marijuana legalization initially may be popular with Ohio voters, when they get a

little information about the specific shortcomings of Issue 3, their support often turns to opposition. Our campaign experts believe Issue 3 can be defeated if the campaign can attract adequate financial resources to execute an effective advertising and media campaign.

The threat is real, but preventable, if Ohio manufacturers join with other concerned businesses, groups and individuals to support a media campaign to defeat Issue 3. Early voting begins in just days. Contributions are needed now so the campaign can develop advertising resources and communication tools.

There are no contribution limits and corporations may provide unlimited support to a ballot issue campaign. Please refer to this [contribution guidance memo](#) by OMA counsel, Bricker & Eckler LLP, to help you determine which of the following two methods is best for your company:

Go to the [No on Issue 3 website](#), click on the 'Contribute' button and follow on-screen prompts, or to contribute toward the OMA's broader public policy initiatives including its support of the No on 3 issue, write your check to **OMA Advocacy Fund** and mail to: OMA Advocacy Fund, 33 N. High St. – 6<sup>th</sup> floor, Columbus Ohio 43215-3005. 9/23/2015

### **Grants for Exporting Available**

The [IMAGE program](#) (International Market Access Grants for Exporters), funded by the Ohio Office of Export Assistance and the U.S. Small Business Administration, offers financial assistance for small businesses to promote their products and services in international markets. The grant will provide a 50% reimbursement up to \$10,000 per fiscal year for qualifying activities.

There is no application deadline. Grant funding is available on a first-come first serve basis. All activities must be pre-approved prior to commencement. Deadline to complete proposed activities is September 29, 2016. 9/23/2015

### **OMA Promotes Truck Weight Reform to Congressman Gibbs**

The OMA reinforced its long-standing position of support of improved transportation productivity in [a letter](#) to Congressman Bob Gibbs (R-Holmes County). In its letter, the OMA made the case to support H.R. 3488, the [SAFE Trucking Act](#), which would give states the option to set Interstate System truck weight limits up to 91,000 pounds for vehicles equipped with six axles, as opposed to the typical five axles.

Congress is poised to consider the measure very soon. Interested manufacturers can learn more and support the measure at the OMA [Manufacturing Advocacy Center](#). 9/24/2015

### **SOS Husted Announces Two Initiatives in Support of Emerging Businesses**



As part of an ongoing effort to ensure Ohio is the preferred location for entrepreneurs, Ohio Secretary of State Jon Husted this week [announced](#) the rollout of two initiatives: his office is partnering with Google to help new businesses get off the ground, and the legislature made a 21% cut in new business filing fees, effective September 24, 2015.

Google's "Let's Put Our Cities on the Map" program helps small businesses access various free tools, such as information on how they can build a website, reserve a free domain name, have their office locations registered with Google's map and search features and advice from industry experts.

Earlier this year, the legislature passed HB 3, which reduces fees associated with starting a new business in Ohio. OMA supported the measure. 9/24/2015

### **Late Night with Seth Meyer and John Kasich**

Governor Kasich was on Late Night with Seth Meyer this week. Our governor gained a new campaign contributor on the show: Meyer.

Watch it [here](#). 9/23/2015

### **OMA Endorses State Issue 1, Proposal for Drawing House & Senate Districts**

The Ohio Manufacturers' Association (OMA) board of directors this week voted to endorse the proposed constitutional amendment that will appear on the November ballot as [State Issue 1](#). OMA issued [this statement](#) from President Eric Burkland:

"The OMA Board of Directors today endorsed State Issue 1, the proposed constitutional amendment that would replace the existing highly partisan process for drawing Ohio House and Senate districts with a more transparent, bipartisan process.

Voter approval of Issue 1 will result in fairer, more geographically compact and politically competitive elections. Those changes in turn will result in a stronger democracy and a more engaged citizenry – outcomes that will serve all Ohioans well.

Issue 1 offers a commonsense proposal for addressing a longstanding obstacle to truly representational government in our state. This redistricting reform initiative is long overdue. The OMA urges Ohioans to vote 'Yes' on Issue 1." 9/15/2015

### **OMA Board Elects New Directors**

At its quarterly meeting this week, the OMA board of directors elected two new members.

Jerry L. Good is the plant manager of the Circleville, Ohio DuPont plant. Jerry has a B.S. degree in chemical engineering from Purdue University and has worked in a wide variety of leadership positions, as well as locations, for DuPont since 1979.

Steven M. Gruber is the president and COO of Nidec Minster Corporation, Minster, Ohio. Steven has a B.S. degree in physics from Xavier University, an M.S. in mechanical engineering from the University of Cincinnati, and an M.B.A. from Wright State University. He has served in a variety of management roles at Nidec Minster since 1987.

All OMA members benefit from the depth of experience and talent the all-volunteer board brings to bear on OMA policies and operations. 9/15/2015

### **Victory at Supreme Court on Marijuana Ballot Language**

The Ohio Supreme Court this week [upheld key language](#) in Issue 3, the proposed constitutional amendment that would establish a marijuana monopoly in Ohio.

ResponsibleOhio, the front group for the aspiring monopolists, had challenged the language developed by Secretary of State Jon Husted and the Ohio Ballot Board.

Opponents of the issue won on the major points: (1) the issue would create a "monopoly," (2) it proposes "recreational" use; (3) "exclusive rights" are

endowed to select organizations; (4) it creates special tax rates for the monopoly; and the (5) it puts limitations on the General Assembly. 9/17/2015

### **Steven Colbert Takes Pot Shot at Marijuana Proposal**

Comedian Steven Colbert this week took some pot shots at the pending Ohio marijuana monopoly proposal and its mascot, Buddie.

Watch a [four-minute segment](#) of his show, Late Night with Steven Colbert. 9/17/2015

### **Unemployment Comp. Reform on Tap in General Assembly this Fall**

As the legislative summer recess draws to a close, Ohio's House and Senate will resume session, the Senate beginning next week. Hearings and votes are expected throughout October and November. Here is the [session calendar](#).

Notably for manufacturers, on tap is a useful unemployment compensation reform. Rep. [Barbara Sears](#) (R-Sylvania) intends to fashion a proposal to temporarily increase unemployment taxes and reduce benefits until Ohio's \$875 million debt to the federal government is repaid, alleviating pressure on employers to pay larger penalties.

Sears, a member of the House leadership team, said, "It (the legislation) protects the plan but doesn't take any more dollars than we absolutely need." 9/17/2015

### **Advanced Manufacturing Technology Show is Oct. 21-22**

The Dayton Region Manufacturers Association annually puts on the Advanced Manufacturing Technology Show (AMTS). The unique event provides more than 30,000 square feet of exhibition space showcasing the latest products and technologies shaping the future of manufacturing.

This year's event is Wednesday, October 21, 2015 and Thursday, October 22, 2015 at the Dayton Airport Expo Center.

Admission and parking are free. [Learn more here](#). 9/16/2015

### **Midwest Green Fleet Forum Next Week**

Manufacturers are invited to attend the Midwest Green Fleet Forum next week (September 23 and 24) in Columbus. Here's the [agenda](#).

This event will attract a national audience of fleet professionals interested in evaluating a variety of green fleet options and implementation steps. Tours of Honda and Parker Hannifin manufacturing plants are offered.

OMA members are eligible to receive a [registration discount](#). 9/17/2015

### **OMA Participates in Marijuana Issue Amicus Brief**

The OMA this week joined with the state's other major business groups in an [amicus brief](#) before the Ohio Supreme Court. The brief supports Secretary of State Jon Husted's ballot title language on Issue 3, which proposes a monopoly for marijuana cultivation and sales in Ohio.

Responsible Ohio, the front group for the would-be marijuana monopolists, is challenging the wording, saying that, among other things, the use of the word "monopoly" in the language is misleading.

The brief demonstrates that "The ballot title provides voters a true, impartial and clear synopsis of the proposed amendment - which grants a monopoly for the commercial production and sale of marijuana for recreational and medicinal use." 9/9/2015

### **Act Now to Support Federal Truck Weight Reform**

The Safe, Flexible and Efficient Trucking Act (Safe Trucking Act), federal legislation introduced this week by Rep. Reid Ribble (R-WI), would give states the flexibility to permit more productive, six-axle trucks on Interstate highways within their borders.

Manufacturers working through the [Coalition for Transportation Productivity](#) (CTP), a group of 200 manufacturers, shippers, carriers and allied associations, are actively pursuing approval of 91,000 pound, six-axle trucks for Interstate highway use.

CTP has developed a [Safe Trucking Act fact sheet](#).

Manufacturers are urged to express support for the Safe Trucking Act to their members of the U.S. House right away. Visit the [CTP](#) or the [OMA Manufacturing Action Center](#) for tools to easily take action. 9/10/2015

## French Oil Mill Machinery Co. Hosts Manufacturing Forum



OMA director, Dan French, Chairman of the Board & CEO of [The French Oil Mill Machinery Co.](#), Piqua, this week hosted local manufacturers at the Piqua Country Club to hear public policy updates from OMA staff.

OMA president, Eric Burkland, Managing Director, Public Policy Services, Ryan Augsburger, and Director, Public Policy Services, Rob Brundrett covered a range of [policy topics](#), including the three issues that will be put before voters on the November General Election ballot.

As rationale for hosting the gathering, French commented, "As manufacturers and citizens, we can lose more money in one day in Washington or Columbus, than we can make all year working hard at home in our companies. We need to join together to stay alert and participate in what our political leaders are doing *to or for us.*" *9/10/2015*

### Food Manufacturers Have a Full Plate

OMA Connections Partner, McGladrey, annually fields its Food and Beverage Industry Survey, capturing the business strategies and concerns of, this year, almost 180 industry executives nationwide, 35% of which are manufacturers/processors.

The 2015 survey indicated improving profitability was a major focus, and many companies are pursuing multiple strategies to address consumer tastes and a stubborn economy. Survey respondents said they would be implementing these strategies to grow profits: 1) diversifying product offerings, sales channels and marketing strategies; 2) innovating to meet consumer tastes for more specialty products,

including natural and organic, healthy or locally sourced food and drinks; and 3) using social media to promote these products.

Another priority area includes preserving company reputation. Specifically, respondents indicated concern about the effects of product recalls on their reputations.

Read the [executive overview](#) and download the [survey report](#). *9/9/2015*

### \$1B Proposed for Ohio Water Infrastructure

Ohio Senate Minority Leader Joe Schiavoni (D-Boardman) introduced [Senate Joint Resolution 3](#) (SJR 3), proposing a \$1 billion bond program to improve water infrastructure in the state. SJR 3 would allow the General Assembly to grant up to \$100 million in state bonds "to preserve and expand sewer and water systems across the state" each fiscal year for the next 10 years.

That money could be used "for acquisition, construction, reconstruction, expansion, improvement, planning or equipping costs related to wastewater treatment systems; water supply systems; and storm water and sanitary collection, storage and treatment facilities."

The bond program would need to be supported by Ohio voters. *9/9/2015*

### Almost 1.8 to 1

In the U.S., those employed by government in August of this year outnumbered those employed in the manufacturing sector by almost 1.8 to 1, according to the Bureau of Labor Statistics.

There were 21,995,000 employed by government and 12,329,000 employed in manufacturing.

Government has out-employed manufacturing in America since August 1989. The gap has gotten bigger through the years.

Read more on the sorry statistics [here](#). *9/10/2015*

### Engineering Work to Start on \$5.7B Ethane Cracker

Yesterday, the CEO of Thailand-based PTT Global Chemical, Supattanapong Punmeechaow, joined Governor Kasich in a Statehouse press conference [to announce](#) the start of \$100 million in design and

engineering work for a \$5.7 billion ethane cracker in Belmont County.

PTT Global and partner Marubeni Corp. of Tokyo have been exploring the possibility of building the petrochemical complex on the 130-acre FirstEnergy Corp. R.E. Burger Plant (now retired) and some adjoining property along the Ohio River.

Following a year of engineering work, the firms will make a go/no go decision on the project. It's one of three cracker plants being considered in Ohio, West Virginia and Pennsylvania. 9/3/2015

### Senate Leaders Visit with OMA Government Affairs Leaders



This week, three of the four leaders of the Ohio Senate Republican caucus visited with leaders from the OMA Government Affairs Committee to discuss policy affecting Ohio manufacturers. Meeting with the manufacturing leaders were President Keith Faber (R – Celina), President Pro Tempore Chris Widener (R – Springfield), and Majority Whip Larry Obhof (R – Medina).

The group had a wide-ranging conversation about the massive economic activity taking place in Ohio manufacturing and the effects of specific public policies on economic growth and prosperity. 9/2/2015

*Pictured: Arthur Pang, Corporate and Government Affairs, P P G Industries, Inc. and Senate President Keith Faber*

### Do You Skip Judges on the Ballot? You're not Alone and Here's Help

Ohio Supreme Court [Chief Justice Maureen O'Connor](#) has brought together the League of Women Voters of Ohio, the Ohio State Bar Association, the Ray C. Bliss Institute of Applied Politics at the University of Akron, the Ohio Newspaper Association, and the Ohio Association of Broadcasters to better educate

Ohioans about judges and the Ohio court system, as well as to increase voter participation in judicial elections.

Launched on September 1, [Judicial Votes Count](#) is a voter education website committed to providing Ohio voters with information to make informed choices about judicial candidates, including: why the candidates are running and their legal experience.

[Judicial Votes Count](#) is intended to be a lasting initiative beginning with the 2015 election and will provide judicial candidate information for both the primary and general elections.

On Nov. 3, 2015, voters will elect judges for municipal courts only. During this election, 29 Ohio counties have judicial races on the ballot.

The Chief Justice's improvement plan also includes ballot-topping, odd-year court elections and increased judicial qualifications, which require constitutional amendments and are being discussed in the context of the [Ohio Constitutional Modernization Commission](#). 9/3/2015

### MFG DAY is in 4 Weeks



Manufacturing Day is Friday, October 2. There is still time to get involved by hosting an event at your facility.

The number of Manufacturing Day events being held is growing every year; this year's goal is 2,250 events.

The Manufacturing Day partners have created a [toolkit](#) that provides everything you will need to plan and execute an amazing Manufacturing Day event. [Registering your event](#) is easy.

Please don't hesitate to reach out directly to the Manufacturing Day staff. Contact [Christopher Glen](#), Director, Public Affairs and Grassroots Advocacy, (202) 637-3121. 9/2/2015

## Miscellaneous Legislation of Interest to Manufactures

Prepared by: The Ohio Manufacturers' Association

Report created on December 1, 2015

- 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. 90 days  
*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:* 4/22/2015 - Senate Civil Justice, (Third Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-17>
- HB42 LOCAL GOVERNMENT FUND** (GERBERRY R, CERA J) To require that, for fiscal year 2016 and each fiscal year thereafter, the Local Government Fund must receive the same proportion of state tax revenue that the Fund received in fiscal year 2005.  
*Current Status:* 2/11/2015 - Referred to Committee House Finance  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-42>
- HB46 GOVERNMENT EXPENDITURE DATABASE** (DOVILLA M) To require the Treasurer of State to establish the Ohio State Government Expenditure Database.  
*Current Status:* 10/13/2015 - Senate Finance, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-46>
- HB49 AIRLINE-AIR FREIGHT COMMISSION** (BARNES, JR. J) To create the Commercial Airline and Air Freight Commission.  
*Current Status:* 4/14/2015 - House Transportation and Infrastructure, (Third Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-49>
- HB53 TRANSPORTATION BUDGET** (GROSSMAN C) To make appropriations for programs related to transportation and public safety for the biennium beginning July 1, 2015, and ending June 30, 2017, and to provide authorization and conditions for the operation of those programs.  
*Current Status:* 4/1/2015 - **SIGNED BY GOVERNOR**; eff. 7/1/2015  
*State Bill Page:* <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. 7/1/15  
*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:* 9/29/2015 - **SUBSTITUTE BILL ACCEPTED**, House Judiciary, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-126>
- HB130 PUBLIC RECORDS-DATA BOARD (HAGAN C, DUFFEY M)** To create the DataOhio Board, to specify requirements for posting public records online, to require the Auditor of State to adopt rules regarding a uniform accounting system for public offices, to establish an online catalog of public data at data.Ohio.gov, to establish the Local Government Information Exchange Grant Program, and to make an appropriation.  
*Current Status:* 12/2/2015 - House Finance, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-130>
- HB145 STEM PARTNERSHIP PROGRAM (MCCOLLEY R, HOWSE S)** To establish the STEM Public-Private Partnership Pilot Program to provide high school students the opportunity to receive education in a targeted industry while simultaneously earning high school and

college credit and to make an appropriation.

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

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

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

**Current Status:** 6/10/2015 - **SIGNED BY GOVERNOR**

**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:** 11/10/2015 - Referred to Committee Senate Ways and Means

**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:* 10/6/2015 - Referred to Committee House Government Accountability and Oversight  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-350>
- HJR2**        **REDISTRICTING-CONGRESSIONAL DISTRICTS** (CLYDE K, CURTIN M) To revise the redistricting process for congressional districts.  
*Current Status:* 3/3/2015 - Referred to Committee House Government Accountability and Oversight  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HJR-2>
- HJR4**        **ANTI-MONOPOLY-CONSTITUTIONAL AMENDMENTS** (SMITH R) Proposing to amend sections of Article II of the Constitution of the State of Ohio to prohibit an initiated constitutional amendment that would grant a monopoly or a special economic interest, privilege, benefit, right, or license to any person or entity and to modify the procedure to propose a law or a constitutional amendment by initiative petition.  
*Current Status:* 7/1/2015 - Filed with Secretary of State  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HJR-4>
- HR25**        **HONORING THE MIDMARK CORPORATION** (BUCHY J) Honoring the Midmark Corporation on its One Hundredth Anniversary.  
*Current Status:* 2/25/2015 - Introduced  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HR-25>
- SB22**        **LOCAL GOVERNMENT FUND-ALLOCATION INCREASE** (TAVARES C) To increase monthly allocations to the Local Government Fund from 1.66% to 3.68% of the total tax revenue credited to the GRF each month.  
*Current Status:* 2/4/2015 - Referred to Committee Senate Finance  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-22>
- SB26**        **BUSINESS FILING FEES** (OBHOF L) To reduce certain business filing fees charged and

collected by the Secretary of State and to specify that Ohio-based companies are to have access to appropriate features of the OhioMeansJobs web site.

**Current Status:** 4/15/2015 - House Economic and Workforce Development, (First Hearing)

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-26>

- SB38 STATE-ATTORNEY CONTRACTS (SEITZ B)** To provide transparency in contracts between the state and private attorneys.  
**Current Status:** 5/12/2015 - **SIGNED BY GOVERNOR**; eff. 8/12/2015  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-38>
- SB57 TOWNSHIP ROAD REGULATION (EKLUND J)** To authorize counties to adopt resolutions regulating motor vehicle traffic on county and township roads.  
**Current Status:** 3/3/2015 - Senate State and Local Government, (First Hearing)  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-57>
- SB79 FELONY-JOB APPLICATION (WILLIAMS S)** To prohibit employers from including on an employment application any question concerning whether an applicant has been convicted of or pleaded guilty to a felony.  
**Current Status:** 3/4/2015 - Referred to Committee Senate Transportation, Commerce and Labor  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-79>
- SB87 MINIMUM WAGE (TAVARES C)** To require that domestic workers be paid the minimum wage, as provided in Section 34a of Article II, Ohio Constitution.  
**Current Status:** 3/4/2015 - Referred to Committee Senate Transportation, Commerce and Labor  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-87>
- SB135 RARE DISEASE-OUT OF POCKET COST (CAFARO C, JONES S)** To limit the out-of-pocket cost to an individual covered by a health plan for drugs used to treat rare diseases.  
**Current Status:** 10/20/2015 - Senate Insurance, (Second Hearing)  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-135>
- SB181 LIMITED LIABILITY COMPANY LAW (OBHOF L, SCHIAVONI J)** To declare the policy of the Limited Liability Company Law generally to give maximum effect to freedom of contract, and to make other changes regarding corporations and limited liability companies.  
**Current Status:** 11/17/2015 - House Judiciary, (First Hearing)  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-181>
- SB199 HANDGUN LICENSE-ACTIVE MILITARY (UECKER J)** To specify that an active duty member of the U.S. Armed Forces: (1) does not need a concealed handgun license to carry a handgun concealed if the member is carrying valid military identification and a certificate indicating successful small arms qualification; and (2) may be sold or furnished a handgun if the member has received military or equivalent small arms training.

**Current Status:** 10/7/2015 - Senate Civil Justice, (Second Hearing)  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-199>

**SB210**      **TOWNSHIP ROAD CONSTRUCTION (BALDERSON T)** To increase the monetary thresholds above which competitive bidding is required for township road construction, repair, or maintenance contracts

**Current Status:** 9/15/2015 - Referred to Committee Senate State and Local Government

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-210>

**SB218**      **FAIR ACT (TAVARES C)** To enact the "Fair and Acceptable Income Required (FAIR) Act" and to revise the enforcement of the prohibitions against discrimination in the payment of wages.

**Current Status:** 10/7/2015 - Referred to Committee Senate Transportation, Commerce and Labor

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-218>

**SCR3**      **CONGRESSIONAL FAST-TRACK OPPOSITION (SCHIAVONI J, GENTILE L)** To urge the Congress of the United States, and in particular the Ohio Congressional delegation, to vote against Fast Track Legislation.

**Current Status:** 4/22/2015 - Referred to Committee Senate Transportation, Commerce and Labor

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SCR-3>

**SJR1**      **PUBLIC OFFICE COMPENSATION COMMISSION (FABER K)** Proposing to amend Sections 4, 20, and 31 of Article II, Section 19 of Article III, and Section 6 of Article IV and to enact Section 20a of Article II of the Constitution of the State of Ohio to establish the Public Office Compensation Commission.

**Current Status:** 6/24/2015 - House Government Accountability and Oversight, (Second Hearing)

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SJR-1>

**SJR2**      **CONGRESSIONAL REDISTRICTING (LAROSE F, SAWYER T)** Proposing to enact Sections 1, 2, 3, 4, 5, 6, 7, and 8 of Article XIX of the Constitution of the State of Ohio to revise the redistricting process for congressional districts.

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

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

**To: OMA Government Affairs Committee**  
**From: Ryan Augsburger / Rob Brundrett**  
**Re: Energy Public Policy Report**  
**Date: December 2, 2015**

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## **Overview**

The General Assembly returned to the statehouse in September and is wrapping up priority items before the holiday recess. Energy matters most discussed among policymakers include ongoing PUCO rate cases governing electricity and the General Assembly's report on alternative energy standards, presently frozen in Ohio. 2016 is a presidential election year. We expect most legislative activity to occur by June.

## **Electricity Rates and Regulation**

Significant utility rate cases are pending at PUCO. Distribution utilities have filed cases proposing power purchase agreements (PPAs). The cases are highly controversial and have been reported in the press. Contact staff for a copy of the OMA's testimony in the cases.

Pressure is building on regulators to approve the utility power purchase agreement proposals. In contrast competitive supplier Dynegy has promised to appeal a rumored "settlement with PUCO" to the Supreme Court further contributing to uncertain future rate structures.

FirstEnergy is attempting to obtain massive subsidies from customers for two of its largest power plants for 15 years in a case pending before the Public Utilities Commission of Ohio (PUCO). The OMA Energy Group has intervened in the case to oppose the FirstEnergy subsidies. It seems likely now that, if it fails at the PUCO, the company might seek a form of a bailout from the General Assembly.

## **kWh Tax Revisions?**

Stalled legislative proposals to modify the tax revenue generated by power plants (via the tangible personal property tax) may be creeping into discussions to modify the kilowatt hour tax which is paid by customers. In contrast, the tangible personal property tax is paid by power plants.

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

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

## **Natural Gas Infrastructure**

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

### **Transmission Charge Increase**

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

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

### **Energy Efficiency Legislation**

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

SB 310 froze the alternative energy standards for two years and created a legislative study committee to assess the impacts of the standards. The study committee held their last meeting in July and will now fashion a report. The committee is co-chaired by Senator Troy Balderson and Representative Kristina Roegner. A report was issued in September and is enclosed. Also find enclosed an OMA analysis of the recommendations for manufacturers.

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

No legislative activity evident. The OMA intervened in Duke Energy's gas distribution case before the PUCO case and is appealing the unfavorable decision. The Ohio Supreme Court is expected to rule on the merits late 2015 / early 2016.

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

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

## Energy

### PPA Settlement Discussions Underway

The Public Utilities Commission of Ohio (PUCO) Chief of Staff Jason Rafeld told the OMA Energy Committee this week that settlement discussions between the PUCO staff and both AEP and FirstEnergy have resulted in a potential structure for settlements in the utilities' Power Purchase Agreement (PPA) cases. To say the least, this is a new development of significant import to Ohio manufacturers.

The PPA cases propose that the monopoly distribution utilities would lock in long-term contracts for power from certain plants owned by their unregulated subsidiaries, not competitive sourcing, thus shifting the financial risks of operating the plants to the utilities' customers.

Rafeld was unable to discuss specifics of the structure, as they are confidential under PUCO rules. Intervenors in the cases, such as the OMA Energy Group (which opposes the costly utility proposals), have been invited to begin meeting with the PUCO staff and the utilities immediately. 11/19/2015

### OMA Energy Committee Meets, Sets 2016 Calendar



In their meeting this week, OMA Energy Committee members heard presentations from Kevin Wade of Honda on a recent [CHP conversion project](#) that is projected to reduce CO<sup>2</sup> emissions by 20 million pounds a year, and from Iryna Lendel, Ph.D., and Andy Thomas, J.D., of Cleveland State University on a [recent, large study](#) on the development opportunities of Ohio's shale developments.

Richard Ricks of NiSource presented the quarterly [natural gas update](#), and Susanne Buckley of Scioto Energy provided the quarterly [energy market update](#).

If you or a colleague are interested in energy issues that affect manufacturing, consider joining the OMA Energy Community at [My OMA](#). Quarterly meetings are held in person in Columbus and are accessible via phone. Members receive all meeting materials whether they register for meetings or not. Here's the 2016 meeting calendar (click to add to yours): [February 25](#), [May 26](#), [August 25](#), and [November 17](#). Meetings are from 10:00 a.m. - 1:00 p.m. and include a yummy lunch. 11/19/2015

*Pictured: OMA Energy Committee Chair, Brad Belden, Director of Support Services, The Belden Brick Company, Jason Rafeld, PUCO Chief of Staff, and looking on, OMA President Eric Burkland*

### CNG Bill Moves Ahead

This week the House Finance Committee voted unanimously to approve [House Bill 176](#), which makes a [variety of changes](#) to Ohio law including subjecting compressed natural gas (CNG) to the motor fuel tax, exempting gross receipts of CNG from the commercial activity tax, and authorizing a nonrefundable income tax or commercial activity tax credit for the purchase of new alternative fuel vehicles.

This clears the way for a potential floor vote by the full House. A similar bill was passed by the House in the 130th General Assembly but ran out of gas in the Senate. 11/19/2015

### OMA Energy Efficiency Peer Network - Nov. 11 Web Meeting: Compressed Air Systems

The OMA [Energy Efficiency Peer Network](#) will meet via webinar on [Wednesday, November 11](#), from 10:00 - 11:00 a.m. The topic of the meeting is: Low-Cost/No-Cost Compressed Air System Analysis.

This webinar will help you evaluate and tackle common low-cost/no-cost energy savings opportunities in compressed air systems. Members from Anheuser-Busch, Cooper Tire, and Crown Battery will share compressed-air energy-saving changes they've made in their plants. There is also a compressed air system metering kit that EEPN members can borrow to use on their own systems.

The OMA EEPN is open to all OMA manufacturing members at no additional charge. [Register here](#) or email [Peter Kleinhenz](#) at Go Sustainable Energy for more information. 11/5/2015

### Ohio Challenges Clean Power Plan

Ohio Attorney General Mike DeWine joined with attorneys general and regulators from 23 other states in [filing a legal challenge](#) to the Obama administration's "Clean Power Plan." The states filed the suit the same day on which the plan's final rule was published in the Federal Register.

The states say the U.S. EPA "lacks authority under Section 111(d) of the Clean Air Act to force States to fundamentally restructure their electric grids ... (t)he rule is also illegal because it seeks to require States to regulate coal-fired power plants under Section 111(d) of the Clean Air Act even though the EPA already regulates those same plants under Section 112 of the Act. Double regulation is prohibited by the [Clean Air Act](#)." Page 4 of 13

The suit is before the D.C. Circuit Court of Appeals, which considers all lawsuits under the Clean Air Act. *10/26/2015*

### **Study Rates States on Energy Efficiency**

This week the American Council for Energy Efficiency Economy (ACEEE) issued its [annual state scorecard](#), ranking states for policies that drive energy efficiency utilization. California and Massachusetts rate highest for their state policies which are driven in part to reduce greenhouse gas emissions.

According to the ACEEE report, 20 states climbed in their rankings: "Maryland, Illinois, the District of Columbia, and Texas deserve recognition for improvement over the past year. Maryland increased its commitment to energy efficiency in 2015 by establishing new, more aggressive energy savings targets for utilities. Illinois is one of the first states to adopt the newest building energy codes, and has increased the amount of energy efficiency available to utilities through procurement agreements with the Illinois Power Agency. Like Illinois, Texas has been aggressive in adopting the latest building energy codes, and has also taken notable actions to ensure code compliance across the state."

Ohio fell two spots to 27. [View the Ohio scorecard](#). *10/22/2015*

### **Ohio and Neighbors Pool Resources to Support Gas Drilling**

Earlier this month, Ohio joined forces with West Virginia and Pennsylvania to enter into a cooperative agreement to promote shale gas development in the three-state region. The agreement is intended to prevent the states from competing against each other in the race to attract investment.

Governor Kasich [announced](#) that state resources to provide marketing assistance, training and workforce development, as well as infrastructure investment, are all addressed in the agreement.

According to an Associated Press [article](#), the U.S. Energy Information Administration reports the three states have had 85% of the increase in U.S. natural gas production since January 2012. *10/22/2015*

### **Energy Standards Study Committee Releases Report**

A joint committee of the legislature established to study the state's energy efficiency and renewable energy standards released its report within the past week.

The committee made five basic recommendations. The implications of these general recommendations for manufacturing are: some costly, some potentially good, and some uncertain.

Read an analysis of the report [here](#). *10/8/2015*

### **House Wants Oversight of Ohio's Clean Power Plan Compliance**

Leading House Republicans have introduced legislation, [HB 349](#), which would require the Ohio EPA to submit its eventual plan for meeting the requirements of the federal Clean Power Plan to the Ohio General Assembly for approval. Under the bill, each chamber of the legislature would be able to reject the EPA plan and prohibit the agency from submitting it to the U.S. EPA.

The bill lays out a series of matters that the Ohio EPA must consider in constructing its compliance plan, including assuring that its plan is a "least cost compliance approach to benefit consumers of electricity." *10/8/2015*

### **Ohio Senate Urges Feds to Export Oil**

The Senate this week approved [Senate Concurrent Resolution 6](#) to urge Congress to repeal the federal ban on the export of crude oil, sponsored by Senator [Troy Balderson](#) (R-Zanesville). The non-binding resolution received bipartisan support. The U.S. House of Representatives is expected to consider lifting the ban. *10/8/2015*

### **Energy Mandates Study Committee Releases its Report**

The Energy Mandates Study Committee this week published its [report](#). The committee was created by SB 310 of the 130th General Assembly to study Ohio's renewable energy, energy efficiency, and peak demand reduction mandates enacted into law by SB 221 of the 127th General Assembly. The Study Committee consisted of members of the Ohio House and Senate and the chairperson of the Public Utilities Commission of Ohio.

SB 310 froze Ohio's energy efficiency standards at 2014 levels for two years, 2015 and 2016, and provided that annual energy efficiency benchmarks would resume in 2017 on the same schedule outlined in SB 221, if the legislature did not act to further freeze, reduce, or eliminate the standards.

The committee has reported out five recommendations that the General Assembly can now adopt in whole or in part, or not at all.

The recommendations include: 1) Extend the SB 310 freeze indefinitely; 2) Provide an expedited process at the PUCO for the review of new utility plans for energy efficiency; 3) Investigate and ensure maximum credit for all of Ohio's energy initiatives; 4) Switch from energy mandates to energy incentives; and 5) Declare that the General Assembly retains statutory authority with respect to energy policy and dispatch protocols.

The media reported that the indefinite freeze was not favorably received by Governor Kasich. [Page 55 of 213](#) reported as saying: "A continued freeze of Ohio's

energy standards is unacceptable and we stand willing to work with the Ohio General Assembly to craft a bill that supports a diverse mix of reliable, low-cost energy sources while preserving the gains we have made in the state's economy."

The OMA agrees with the governor: Energy efficiency is the lowest cost energy resource and should be a part of a diverse energy resource mix. 9/30/2015

### OMA's Energy Efficiency Peer Network Tours Crown Battery



Last month, OMA members participating in OMA's Energy Efficiency Peer Network (EEPN) toured Crown Battery in Fremont to see energy efficiency innovations.

Earlier this year, EEPN members toured Honda.

OMA members can participate in this energy work group led by OMA's energy engineering partner, John Seryak of Go Sustainable Energy LLC, to access the most up-to-date information in the areas of combined heat and power, waste heat recovery, and energy efficiency.

The work group meets via web-conference bi-monthly and undertakes plant tours periodically. [Learn more and sign up here.](#) 10/1/2015

### PUCO Staff Opposes FirstEnergy Rate Proposal

In a welcome development, the staff of the Public Utilities Commission of Ohio (PUCO) [filed testimony](#) recommending the agency deny FirstEnergy's proposal to guarantee profits from a handful of power plants by having customers subsidize them.

PUCO Senior Energy Specialist Hisham Choueiki said in testimony, "Staff recommends that the Commission deny rider RRS as it is currently proposed." The staff left the door open to an alternate approach to the utility's current proposal.

The OMA Energy Group opposes the utility's proposed plan, which would be costly to consumers and would constrain competition. 9/24/2015

### DOE Calls for Doubling Energy Productivity

The U.S. Department of Energy (DOE) released a new report that proposes a roadmap for doubling U.S. energy productivity by 2030.

The report, "[Accelerate Energy Productivity 2030: A Strategic Roadmap for American Energy Innovation, Economic Growth, and Competitiveness](#)," models six strategies to achieve the goal. The model indicates the strategies would contribute "in aggregate to a net increase of \$922 billion in U.S. GDP by 2030. This is primarily supported by an increase of \$753 billion in household expenditures and by a \$169 billion increase in investment in products and services that increase energy efficiency." 9/22/2015

### OMA Energy Group Opposes AEP "Massive Subsidy"

Ohio State University economist Edward W. (Ned) Hill [testified](#) on behalf of the [OMA Energy Group](#) in opposition to AEP-Ohio's rate case before the Public Utilities Commission of Ohio.

Hill stated: "AEP-Ohio's strategy to utilize a power purchase agreement as a massive subsidy from ratepayers to fund AEP-Ohio's non-regulated subsidiary's uneconomic electric generating units is flawed. Such a proposal, if implemented, would fundamentally distort the electricity wholesale energy markets. It would shift the financial risk of operating generation plants onto AEP-Ohio's ratepayers, placing the risk of market failure squarely on AEP-Ohio's distribution consumers. This would fundamentally undermine the intent of the Ohio General Assembly when it restructured Ohio's electricity markets in 1999."

Noting the particularly harmful effect on manufacturing, Hill further testified: "Research conducted at the Levin College shows that in 2010, Ohio had the highest level of manufacturing activity among the Midwestern states. Ohio's energy intensive industries are prominent parts of the state's economic base; these include primary metals, petroleum and coal products, chemicals, food processing, nonmetallic mineral production, paper manufacturing, and wood products. AEP Ohio's proposal would have significant negative effects on the manufacturing productivity of firms throughout these sectors." 9/14/2015

### EPA's Butler Goes to Congress Over Clean Power Plan

Last Friday, Ohio EPA Director [Craig Butler](#) testified before the U.S. House of Representatives Committee on Science, Space and Technology Subcommittee on Environment.

Director Butler's [testimony](#) focused on the final Clean Power Plan (CPP) issued by U.S. EPA earlier this summer. The director said, "With unresolved legal challenges, along with substantial changes between the draft and final proposal, U.S. EPA should hold off

on implementing the final CPP until legal challenges are resolved or reissue the final CPP as a proposed action.”

The director also made reference to a [letter](#) from Governor John Kasich to President Obama requesting that the CPP implementation be suspended until the legal challenges are resolved. *9/17/2015*

### **Ohio Oil/Gas Production Breaks Records**

During the second quarter of 2015, Ohio's horizontal shale wells produced 5,578,255 barrels of oil and 221 billion cubic feet of natural gas, [reports](#) the Ohio Department of Natural Resources.

These numbers break all previous production reporting records, going back 100 years.

Oil production increased by more than 3.1 million barrels and gas production increased by more than 133 billion cubic feet compared to the second quarter of 2014. *9/17/2015*

### **FirstEnergy Cost Projections Off the Mark**

Hearings continue this week at the [PUCO](#) on FirstEnergy's proposal to charge customers a rider, which the monopoly electric distribution company would use to purchase power from its unregulated generation companies. The OMA Energy Group opposes the proposal as a subsidized bailout of uncompetitive coal and nuclear power plants.

This week, FirstEnergy's own expert witness conceded that his projections, which the utility used to formulate the rate plan, were off, and in some cases significantly. In this [article](#), Cleveland Plain Dealer reporter John Funk notes that Ohio's deregulation laws are designed to require distribution utility companies to conduct power auctions and buy the cheapest available electricity on the open market. Not so if regulators approve FirstEnergy's proposal.

Learn more about the work of the [OMA Energy Group](#) in PUCO case intervention to protect manufacturers' cost of energy. Contact OMA's [Dan Noreen](#) or [Ryan Augsburger](#). *9/10/2015*

### **Calling Supporters of Nexus Pipeline Project**

Regulatory approvals are underway for the construction of the [NEXUS](#) interstate pipeline. The project will transport gas from Marcellus and Utica regions to markets including Michigan and Ontario, Canada. Since natural gas is a regional commodity, these types of projects can provide energy pricing stability to the entire region.

Member companies can show their support of the project in a number of ways. Use this [NEXUS supporter form](#) and return a scanned copy via email to OMA's [Ryan Augsburger](#). *9/3/2015*

### **Hearings Continue on FirstEnergy Power Purchase Agreement**

For months, an Ohio distribution utility company, FirstEnergy, has sought permission from state regulators to charge customers a rider to use to purchase power from a FirstEnergy subsidiary, FirstEnergy Solutions, for a long-term power purchase agreement. If approved, the utility's application would mean the monopoly distribution utility would lock in a long-term contract for its unregulated subsidiary that was not competitively sourced.

In [reporting](#) on the hearings, Cleveland Plain Dealer reporter John Funk cited this FirstEnergy witness testimony: "... customers also would be on the hook for about half of any improvements or upgrades FirstEnergy Solutions makes at the plants -- including a rate of return of just over 11 percent."

The [OMA Energy Group](#) is a party to the case at the PUCO and opposes the anti-free market scheme. *9/3/2015*

## Energy Legislation

Prepared by: The Ohio Manufacturers' Association  
Report created on December 1, 2015

- 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. 7/1/15  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-64>
- HB72**      **ENERGY IMPROVEMENT DISTRICTS** (CONDITT M) To authorize port authorities to create energy special improvement districts for the purpose of developing and implementing plans for special energy improvement projects and to alter the law governing such districts that are governed by a nonprofit corporation.  
*Current Status:* 5/6/2015 - **BILL AMENDED**, House Public Utilities, (Fourth Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-72>
- HB83**      **OIL-GAS ROYALTY STATEMENT** (CERA J) To require the owner of an oil or gas well to provide a royalty statement to the holder of the royalty interest when the owner makes payment to the holder.  
*Current Status:* 3/10/2015 - House Energy and Natural Resources, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-83>
- HB122**      **PUBLIC UTILITIES COMMISSION MEMBERSHIP** (LELAND D) To require that each major political party be represented on the Public Utilities Commission, to specify that not more than three commissioners may belong to or be affiliated with the same major political party, and to require that Public Utilities Commission Nominating Council lists of nominees include individuals who, if selected, ensure that each major political party is represented on the Commission.  
*Current Status:* 3/24/2015 - Referred to Committee House Government Accountability and Oversight

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

- HB162 SEVERANCE TAX RATES (CERA J)** To change the basis, rates, and revenue distribution of the severance tax on oil and gas, to create a grant program to encourage compressed natural gas as a motor vehicle fuel, to authorize an income tax credit for landowners holding an oil or gas royalty interest, and to exclude some oil and gas sale receipts from the commercial activity tax base.  
**Current Status:** 5/12/2015 - House Ways and Means, (First Hearing)  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-162>
- HB176 GAS-FUEL CONVERSION PROGRAM (HALL D, O'BRIEN S)** To create the Gaseous Fuel Vehicle Conversion Program, to allow a credit against the income or commercial activity tax for the purchase or conversion of an alternative fuel vehicle, to reduce the amount of sales tax due on the purchase or lease of a qualifying electric vehicle by up to \$500, to apply the motor fuel tax to the distribution or sale of compressed natural gas, to authorize a temporary, partial motor fuel tax exemption for sales of compressed natural gas used as motor fuel, and to make an appropriation.  
**Current Status:** 11/18/2015 - **REPORTED OUT**, House Finance, (First Hearing)  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-176>
- HB190 WIND FARM SETBACKS-COUNTY (BURKLEY T, BROWN T)** To permit counties to adopt resolutions establishing an alternative setback for wind farms and to extend by five years the deadlines for obtaining the qualified energy project tax exemption.  
**Current Status:** 11/18/2015 - **SUBSTITUTE BILL ACCEPTED**, House Public Utilities, (Second Hearing)  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-190>
- HB214 PUBLIC IMPROVEMENT-PIPING MATERIAL (THOMPSON A)** To restrict when a public authority may preference a particular type of piping material for certain public improvements.  
**Current Status:** 6/9/2015 - House Energy and Natural Resources, (First Hearing)  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-214>
- HB349 STATE EMISSIONS PLAN (SMITH R, GINTER T)** To require the Environmental Protection Agency to submit a state plan governing carbon dioxide emissions to the General Assembly prior to submitting it to the United States Environmental Protection Agency, and to declare an emergency.  
**Current Status:** 12/1/2015 - House Energy and Natural Resources, (Second Hearing)  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-349>
- HB390 NATURAL GAS-TAX EXEMPTION (SCHAFFER T, RETHERFORD W)** To exempt the sale of natural gas by a municipal gas company from the sales and use tax.  
**Current Status:** 12/1/2015 - House Ways and Means, (First Hearing)  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-390>

- 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:* 6/16/2015 - **REPORTED OUT**, House Local Government, (Third Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HCR-7>
- HCR9**      **SUSTAINABLE ENERGY-ABUNDANCE PLAN** (BAKER N) To establish a sustainable energy-abundance plan for Ohio to meet future Ohio energy needs with affordable, abundant, and environmentally friendly energy.  
*Current Status:* 6/17/2015 - **ADOPTED BY SENATE**; Vote 32-1  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HCR-9>
- SB45**      **LAKE ERIE SHORELINE IMPROVEMENT** (SKINDELL M, EKLUND J) To authorize the creation of a special improvement district to facilitate Lake Erie shoreline improvement.  
*Current Status:* 3/17/2015 - Senate Energy and Natural Resources, (Second Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-45>
- SB46**      **LAKE ERIE DRILLING BAN** (SKINDELL M) To ban the taking or removal of oil or natural gas from and under the bed of Lake Erie.  
*Current Status:* 2/18/2015 - Referred to Committee Senate Energy and Natural Resources  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-46>
- SB47**      **DEEP WELL BRINE INJECTION PROHIBITION** (SKINDELL M) To prohibit land application and deep well injection of brine, to prohibit the conversion of wells, and to eliminate the injection fee that is levied under the Oil and Gas Law.  
*Current Status:* 2/18/2015 - Referred to Committee Senate Energy and Natural Resources  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-47>
- SB58**      **CONDITIONAL SEWAGE CONNECTION** (PETERSON B) To authorize a property owner whose property is served by a household sewage treatment system to elect not to connect to a private sewerage system, a county sewer, or a regional sewerage system under specified conditions.  
*Current Status:* 3/4/2015 - Referred to Committee Senate Energy and Natural Resources  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-58>
- SB100**      **SALES TAX HOLIDAY-ENERGY STAR** (BROWN E) To provide a three-day sales tax "holiday" each April during which sales of qualifying Energy Star products are exempt from sales and use taxes.  
*Current Status:* 3/4/2015 - Referred to Committee Senate Ways and Means  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-100>

- SB120**      **OIL-GAS LAW REVISION** (SCHIAVONI J) To revise enforcement of the Oil and Gas Law, including increasing criminal penalties and requiring revocation of permits for violations of that Law relating to improper disposal of brine.  
*Current Status:* 3/10/2015 - Referred to Committee Senate Energy and Natural Resources  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-120>
- SB164**      **UTILITY SMART METER CONSENT** (JORDAN K) To require electric distribution utilities to obtain a customer's consent prior to installing a smart meter on the customer's property  
*Current Status:* 5/27/2015 - Referred to Committee Senate Public Utilities  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-164>
- SB166**      **HORIZONTAL WELL EMERGENCY PLAN** (GENTILE L) To require the owner of a horizontal well to develop and implement an emergency response plan for the purpose of responding to emergencies.  
*Current Status:* 10/7/2015 - Senate Energy and Natural Resources, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-166>
- SB185**      **SPECIAL IMPROVEMENT DISTRICTS** (SEITZ B) To revise the law governing special improvement districts created for the purpose of developing and implementing plans for special energy improvement projects.  
*Current Status:* 10/7/2015 - **BILL AMENDED**, Senate Energy and Natural Resources, (Third Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-185>
- SCR6**      **EXPORT-CRUDE OIL** (BALDERSON T) The urge the U.S. Congress to lift the prohibition on the export of crude oil from the United States.  
*Current Status:* 12/1/2015 - House Energy and Natural Resources, (Second Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SCR-6>



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## MEMORANDUM

Date: October 6, 2015  
To: Ohio Manufacturers' Association  
RE: Energy Mandates Study Committee report analysis

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On September 30<sup>th</sup>, the Energy Mandates Study Committee (EMSC) issued its Co-Chairs' Report<sup>1</sup>, a summary of testimony, findings, and recommendations stemming from eight public hearings across the past 11 months. The EMSC was charged with researching the renewable energy, energy-efficiency, and peak-demand reduction standards set forth in 2008 by Senate Bill (SB) 221 and subsequently paused for a two-year period in 2014 by SB 310. The EMSC is comprised of 12 legislators, 6 state Senators and 6 state Representatives from the Republican and Democratic parties, as well as the PUCO Chairman Andre Porter as an ex officio nonvoting member of the committee.

Following is an analysis of the EMSC Co-Chairs' Report, highlighting recommendations and findings of interest to manufacturers.

### **Recommendations**

The EMSC Co-Chairs Report made five recommendations to the Ohio General Assembly.

1. **Extend the SB 310 Freeze Indefinitely**

Indefinitely freezing the renewable energy and energy-efficiency standards (the Standards) is the centerpiece of the report. The authors cite the federal EPA's pending Clean Power Plan (CPP) regulations to reduce carbon dioxide emissions from the electric sector as reason for the recommendation. The CPP relies heavily on renewable energy and energy-efficiency as tools for states to comply with their carbon reduction targets. The CPP is being legally challenged. The authors conclude that indefinite suspension of the Standards provides the Ohio EPA with "maximum flexibility" to devise a State Implementation Plan to comply with the CPP, should it survive legal challenges.

Of concern to manufacturers is how an indefinite freeze would affect electricity costs, and CPP compliance costs. Notably, the CPP references a baseline year of 2012, meaning that efficiency and renewable energy installed today and in the near term would count towards compliance under the CPP<sup>2</sup>. Thus, future compliance costs could be significantly higher if the Standards are suspended as recommended. Additionally, multiple studies have shown energy-efficiency programs to suppress the price of electricity. This price suppression benefit would not exist if the efficiency standards are suspended.

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<sup>1</sup> The full report can be downloaded here: <http://emsc.legislature.ohio.gov/Assets/Reports/emsc-final-report.pdf>

<sup>2</sup> <http://111d.naseo.org/Data/Sites/5/media/documents/energy-efficiency-in-the-clean-power-plan-fact-sheet.pdf>



2. Provide an Expedited Process at the PUCO for the Review of New Utility Plans for Energy Efficiency

The authors recommend an expedited approval process at the PUCO for utility energy-efficiency program filings, whether the Standards are frozen or not. During the existing two-year freeze, three of Ohio's four electric utilities have continued offering efficiency programs voluntarily, while the 4<sup>th</sup> – FirstEnergy – is offering programs that have costs but little in the way of benefits to manufacturers. Thus, there is a clear need for a robust PUCO process that incorporates stakeholder input to provide checks on utility interests. The OMA Energy Group regularly intervenes in these cases on behalf of manufacturers. Expedited approval processes at the PUCO could impair the ability of the OMA EG to protect manufacturing interest.

Additionally, the authors recommend expanding the stream-lined opt-out to all mercantile customers. SB 310 created a large-user opt-out, such that sub-transmission and transmission customers may forgo paying into utility energy-efficiency programs, and would also not be eligible to receive incentives for efficiency projects. For smaller users, a “mercantile self-direct” mechanism exists. The mercantile self-direct option allows manufacturers to forgo paying into utility efficiency programs if the manufacturer self-performs.

OMA has been a strong supporter of the mercantile self-direct option, as it provides flexibility to manufacturers. However, the streamlined opt-out as designed can create several issues of concern to manufacturers. First, it has the practical effect of reducing the quantity of efficiency capacity bid into PJM's capacity auctions, which in turn increases wholesale capacity prices. Second, a poorly designed opt-out can create cascading cost-shifting between manufacturers. This is because a utilities cost-recovery of efficiency program costs and profit is lagged from when the cost occurs. In practice, this is resulting in costs allotted to large users being unpaid, and shifted to medium and small users. While an opt-out has merit, and the spirit of providing manufacturer flexibility is right, a poorly designed opt-out can unintentionally create additional costs to Ohio's manufacturers.

3. Investigate and Ensure Maximum Credit for All of Ohio's Energy Initiatives

This recommendation contains two points of interest to manufacturers. First, the authors recommend allowing electricity generated by Combined Heat and Power (CHP) using renewable fuels to be an eligible renewable energy technology. If the CHP plant did not use renewable fuel, it would still be an eligible energy-efficiency technology. As it is written, this is a practical recommendation.

Second, the authors recommend counting all possible past energy-efficiency gains since 2008 towards compliance with the energy-efficiency standards. There are nuances to this recommendation that need to be considered carefully. Energy-efficiency gains that have not already been counted towards utilities' standards are those that have been completely financed by customers. In regards to the CPP, the carbon dioxide emissions from these projects should be counted for compliance, and would likely be eligible for those



implemented in 2012 or after. They would not be eligible as a capacity resource in PJM. All this said, there is no inherent need for the utility to serve the role as aggregator of these efficiency savings. In fact, this can be detrimental to manufacturers. For example, FirstEnergy has implemented a similar effort whereby they “capture” customer-financed efficiency. This program is costing ratepayers \$6 million, with no resulting benefit. Moreover, it is unclear if the carbon reduction attribute is taken by the utility without payment. In any case, the decision on how to monetize energy-efficiency attributes created by the manufacturer should be at the sole discretion of the manufacturer. Thus, this recommendation potentially creates costs to manufacturers, while infringing on manufacturer rights.

4. Switch from Energy Mandates to Energy Incentives

The authors recommend replacing mandated efficiency goals for the utilities with the ability for utilities to offer voluntary programs, coupled with incentives and expanded opportunities for customers. As mentioned, three of the four utilities have continued offering efficiency programs to customers, in spite of the two-year freeze. This suggests that well-run utilities view energy-efficiency services as a strategic part of their future business model. There are two potential consequences of allowing voluntary programs with an incentive, however. First, Ohio’s utilities enjoy one of the highest profit margins on efficiency programs in the nation. While it is logical to allow some profit collection for this service, utilities outside of Ohio perform similarly well with much lower financial incentives. The discretion of how much profit margin to allow utilities to collect is best determined at the PUCO, where manufacturer interests can be represented and subject matter experts can debate an appropriate profit margin. In contrast, the recommendation of the EMSC to codify in law extremely high profit margins for utilities is not in manufacturers’ interests. Second, voluntary programs provide significant leverage to the utility in the PUCO approval process, at the cost of manufacturers and other ratepayers. While some Ohio utilities have shown considerable responsibility with their efficiency programs, others would most likely use this increased leverage to create outcomes detrimental to manufacturers.

The remainder of the topics in this recommendation concern expanded ways for customers to implement energy-efficiency and renewable energy. This includes streamlined rules for site-specific Property Assessed Clean Energy (PACE), and market based energy-efficiency certification instruments. These provisions and others, if written correctly, have the potential to create additional benefits to manufacturers, lower costs, while laying the groundwork for innovation and entrepreneurialism in the advanced energy sector.

5. Declare that the General Assembly Retains Statutory Authority with Respect to Energy Policy and Dispatch Protocols

This provision limits the statutory authority of the Ohio EPA to create requirements to comply with the CPP without authority from the General Assembly.



## **Findings**

The prominent finding that underlies much of the report recommendations is a summary of costs associated with the Standards. The summary shows that costs dramatically vary for efficiency from utility to utility, and costs for renewable energy credits are more expensive when sourced from Ohio-based renewable projects.

There are several major issues with the findings presented. First, only costs of the standards are considered. Numerous studies have showed that the Standards, energy-efficiency in particular, create substantial direct and universal benefits to manufacturers. While several witnesses attested to this fact, the EMSC did not consider financial benefits at all in their report. Moreover, the costs blend together the cost of the standards plus the high-profit margins utilities recover. This confounds the separate issues of whether efficiency program costs are appropriate, with whether the profit-margin utilities enjoy is appropriate. Finally, current and future costs of compliance were calculated referencing average costs from a recent month. The costs of the standards vary quite significantly from year to year though, meaning the method used by the EMSC may not reflect actual average costs.

# FirstEnergy electrical rate plan: what you need to know

By John Funk, The Plain Dealer

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on December 01, 2015 at 1:58 PM, updated December 01, 2015 at 4:50 PM



Smoke stacks rise from behind coal piles at the coal-fired Sammis power plant in Jefferson County's Stratton, Ohio. FirstEnergy Corp. has asked the Public Utilities Commission of Ohio to agree to a rate plan designed to support continued operations at Sammis while stabilizing Northeast Ohioans' electricity rates, but critics say the plan will end up costing ratepayers, not saving them money as FirstEnergy contends. *Gary Tramontina, Special to The Plain Dealer, 2001*

AKRON, Ohio -- FirstEnergy's proposed rate plan is still far from being approved. Its chances of approval in some form are good, however, despite a legion of opponents including the Northeast Ohio Public Energy Council, or NOPEC, and the Ohio Consumers' Counsel.

Here are key points of the plan the company negotiated privately with the staff of the Public Utilities Commission of Ohio over the last month and [released](#) Tuesday:

- Monthly bills will be higher, especially during the first three and a half years, because customers will be helping to subsidize two old FirstEnergy power plants that cannot make electricity as cheaply as new gas-fired plants owned by competitors.

- FirstEnergy says that for customers who use 750 kilowatt-hours of power a month, the increase would be just \$3.25 monthly for the first 31 months after the plan is approved. Opponents think most households use more power than 750 kilowatt-hours a month and would therefore pay more.
- The increases will be higher for commercial and industrial customers, but the company has not provided specific calculations.
- FirstEnergy figures the added charges will total \$400 million overall for its nearly 2 million Ohio customers. NOPEC and the Consumers' Counsel say the charges over the eight-year life of the plan will cost customers an extra \$3.9 billion.
- The company counters that after four years, the arrangement will flip and customers will see rebates on their monthly bills because natural gas prices will then be higher than coal and enriched uranium. That's debatable. And will continue to be.

Other issues in the proposal include:

- A commitment from the company to rebuild and modernize the wires and equipment delivering power to homes and businesses. Customers will pay for that in increased delivery charges. Nobody has figured out what that charge will be because the company has not provided a total cost for system-wide upgrades.
- A promise from the company to re-start customer energy efficiency programs FirstEnergy shut down when state laws requiring such programs were frozen a year ago. The still-to-be-described new programs would not have to meet any state minimum goals.
- A promise to try to cut carbon dioxide emissions from its power plants by up to 90 percent by 2045 when compared to 2005 levels. Opponents charge the goal is non-binding, and means little.
- A change in how First Energy figures delivery charges. It would do away with charges that are based on how much power a customer buys, and instead bill customers a fixed charge no matter how little or how much electricity they use. Environmental and consumer groups view that as a disincentive to conserve and invest in energy efficiency.

**TO: OMA Government Affairs Committee**  
**FROM: Ryan Augsburger / Rob Brundrett**  
**RE: Environment Public Policy Report**  
**DATE: December 2, 2015**

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### **Overview**

The General Assembly returned to Columbus in late September to a full slate of committee hearings. The most pressing issues are related to taxes and corrections to the income tax cut included in the state budget.

Environmental discussions continued to be dominated by federal regulations including waters of the U.S., the Clean Power Plan, and a new ozone standard. The OMA led a statewide effort to mitigate the damage regarding the ozone plan and is engaging with state regulators and its national allies to determine the best course of action forward in Ohio regarding the Clean Power Plan.

### **General Assembly News and Legislation**

#### **House Bill 64 – State Budget Bill**

Ohio EPA's budget did not include any fee increases; however, the agency did extend existing fees for its air, surface water, drinking water and materials and waste management divisions, and to reallocate materials and waste management funding to support its focus on business assistance, compliance assistance and pollution prevention.

The director also was successful in creating the Certified Water Quality Professional program that will allow a prequalified, third party private-sector evaluation and assessment of wetlands and streams for water quality certification and Isolated Wetland Permit applications.

The agency also received authority to request chemical information that may include confidential trade secret information in the event of an emergency. Ohio EPA emergency response staff responds 24/7, 365 to environmental spills and disasters and coordinates mitigation and cleanup efforts with local, state and federal partners. The change allows Ohio EPA to ask for information from companies during an emergency and share that information with others, such as water treatment plant operators who have an immediate public health or safety interest to protect.

Two OMA amendments were included in the House version of bill that would exempt slag from the definition of industrial waste, and the second amendment would exempt clay and shale structural products from solid waste and industrial waste statutes. The clay and shale amendment survived the budget process. The slag amendment was removed at the last minute with a guarantee from the agency that they would work quickly to find a solution suitable for the industry.

#### **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. This has had two hearings in the House. Ohio EPA has indicated concerns with the proposal.

## Regulations

### Ozone – U.S. EPA

After months of manufacturers and other stakeholders pressuring the White House, the Obama administration and U.S. EPA announced the final rule which establishes a new ground-level ozone standard for the country. The rule tightens the already stringent standard of 75 parts per billion (ppb) down to 70 ppb.

The administration had threatened to set the standard at 65 or even 60 ppb. At these levels the impact on Ohio's economy would have been devastating with an estimated gross state product loss of \$23 billion from 2017 – 2040 and between \$804 million to \$156 billion in compliance costs. The impact at 70 ppb will have its own economic consequences.

In a joint statement from the National Association of Manufacturers (NAM) and OMA, OMA president Eric Burkland said, "Currently, only one of Ohio's eight metro areas – Canton – currently meets the 70 ppb standard. The economic consequences of this rule will make for tough choices for Ohio's manufacturers and businesses. This rule will without any doubt stunt investment in job creating economic growth in Ohio and the nation."

Thank you to OMA members who made Ohio's manufacturing voice heard. OMA will continue to work with our national allies including the NAM and elected officials to protect Ohio manufacturing.

### U.S. EPA 111(d)

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

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

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

The timetable for implementing these vast rules is aggressive: States will be required to submit a final plan, or an initial submittal with an extension request, by September 6, 2016.

Ohio EPA has indicated it will be asking the federal government for an extension. It plans to have an informational meeting on December 2. This meeting will be followed by regional meeting throughout the state in 2016.

### 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.

### Electronic Reporting and Recordkeeping Requirements for New Source Performance Standards

The OMA filed comments on U.S. EPA's Proposed "Electronic Reporting and Recordkeeping Requirements for New Source Performance Standards." The proposal would mandate that certain information be submitted via U.S. EPA's "Compliance and Emissions Data Reporting Interface," accessed through U.S. EPA's Central Data Exchange.

The proposed new reporting format, and the filing dictates tied to it, duplicate and conflict with existing electronic reporting under the NSPS program. The proposed new reporting dictates are in addition to, not in lieu of, existing federally enforceable state permit terms that implement the same underlying NSPS reporting provisions.

#### Asbestos Labeling

On May 8, the OMA requested Ohio EPA clarification regarding the recent change in the Occupational Safety & Health Administration (OSHA) requirements for labeling asbestos waste containers. Sign changes are required effective June 1, 2015.

On May 21, Ohio EPA director Craig Butler responded to the OMA that the new OSHA requirements can flow through the current state administrative code. So, there will be no dual requirement in the state.

The director said he's directed his staff to create new Standard Operating Guidance on the matter to document this helpful and timely decision.

#### Beneficial Use

Last year Ohio EPA released draft permits for foundry sand and alum sludge. Earlier this year U.S. EPA and the Dept. of AG released a risk assessment concluding that silica-based spent foundry sands from iron, steel and aluminum foundries, when used in certain soil-related applications, are protective of human health and the environment, and yield environmental benefits.

Ohio EPA also released an Early Stakeholder Outreach document on "co-products" and "by-products" last spring. The overall goal of these would be to eventually compliment a beneficial use system and make it clear certain products are not wastes subject to beneficial use regulation. Ohio EPA continues to allude that they want to include slag in this program. OMA will continue to look for avenues to ensure slag is not included in the final rules.

Earlier this year Ohio EPA released the long anticipated draft beneficial use rules for public comment. The rules cover: foundry sands; material resulting from treatment of water supply for drinking or industrial purposes that are a solid waste, industrial waste, or other waste; wastes used as fuel or ingredient in a combustion unit; and dredged materials. Noticeably absent was any rule regarding slag.

The agency continues to work on the proposal.

#### Universal Waste

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

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

Most recently the group sent clarifying information to the agency describing the different types of wastes that are expected to be covered under the rule change. At last contact the agency still planned to release a second ESO on aerosol cans, paint and paint related wastes and spent anitfreeze.

#### Water Nutrient Work Group

Ohio EPA has been working on reducing the amount of nutrients that enter Ohio's waterways. The OMA has two members on the working group Ohio EPA created to review the issue. The group submitted final comments to Ohio EPA and is awaiting Ohio EPA's rule draft in response to the group's findings.

#### **Other Notes**

##### Ohio Supreme Court Decision Invalidates TMDLs

On March 24, 2015, the Ohio Supreme Court, in a 5-2 vote, issued a decision invalidating a phosphorus limit that was imposed on a Fairfield County wastewater treatment plant. The decision in *Fairfield Cty. Bd. Of Commrs. v. Nally*, provides that the Ohio EPA must adhere to Ohio's statutory rulemaking procedure prior to establishing pollutant limits for a body of water.

In his concurring opinion, Justice Terrence O'Donnell provided that the "decision is far-reaching in that Ohio EPA has issued 1,761 TMDLs\* for watercourses throughout Ohio, including 132 TMDLs for phosphorus alone," none of which have been promulgated through the R.C. 119 administrative process. "[T]hus the majority's decision invalidates all of them, leaving the enforceability of numerous permits in question."

\*The total maximum daily load (TMDL) establishes the maximum amount of a pollutant that may be discharged for certain bodies of water without causing the receiving body of water to violate water-quality standards.



## U.S. EPA Announces Final Clean Power Plan

On August 3, 2015, U.S. EPA released the final version of the Clean Power Plan (CPP) under section 111(d) of the Clean Air Act (CAA) which regulates CO<sub>2</sub> emissions from existing coal-fired and natural gas-fired electricity generating units (EGUs).

Concurrent with the CPP release was the final version of the New Source Performance Standards (NSPS) for fossil-fuel fired power plants under 111(b) of the Clean Air Act and the proposed Federal Implementation Plan (FIP) and Model Rules for states that do not submit an acceptable implementation plan under 111(d). The proposed FIP and Model Rules will have a 90-day comment period once it is published in the Federal Register.

### Timing

Submittals	Dates
State Plan or initial submittal with extension request	September 6, 2016
Progress Update, for states with extensions	September 6, 2017
State Plan, for states with extensions	September 6, 2018
Milestone (Status) Report	July 1, 2021
Interim and Final Goal Periods	Reporting
Interim goal performance period (2022-2029)	
- Interim Step 1 Period (2022-2024)	July 1, 2025
- Interim Step 2 Period (2025-2027)	July 1, 2028
- Interim Step 3 Period (2028-2029)	July 1, 2030
Interim Goal (2022-2029)	July 1, 2030
Final Goal (2030)	July 1, 2032 and every 2 years beyond

### Ohio Targets

	Rate Based (lbs CO <sub>2</sub> /MWh)	Mass Based (tons CO <sub>2</sub> )
2012 Baseline	1,900	102,239,220
Proposed CPP	1,338	-
Interim Period 2022-2029	1,383	82,526,513
Final Goal 2030+	1,190	73,769,806

### What does this mean for Ohio?

While Ohio reduced carbon emission 30% from coal-fired electricity generation between 2005 and 2014, additional reductions are necessary. It is too soon to predict what impact the final CPP will have on Ohio-based electricity generation, grid reliability, and wholesale electricity costs for consumers.

### What is Ohio doing?

- Analyzing the final rule and exploring appropriate next steps for Ohio.
- Developing comments to U.S. EPA on its proposed Federal Plan and Model Rules.
- Pursuing a two-year state plan extension request.
- Developing outreach and engagement efforts for Ohio.

## Clean Power Plan: State at a Glance

### Ohio

In the final Clean Power Plan (CPP), EPA is establishing interim and final carbon dioxide emission performance rates for the two types of electric generating units - steam electric and natural gas fired power plants - under Section 111(d) of the Clean Air Act. The CPP also establishes state-specific interim and final goals for each state, based on these limits and each state's mix of power plants. The goals are expressed in two ways—rate-based and mass-based— either of which can be used by the state in its plan. States that choose a mass-based goal must assure that carbon pollution reductions from existing units achieved under the Clean Power Plan do not lead to increases in emissions from new sources. EPA is offering an option to simplify this requirement for states developing plans to achieve mass-based goals. If a state chooses this route, its state planning requirements are streamlined, avoiding the need to meet additional plan requirements and include additional elements.

EPA has a "goal visualizer" tool on the web at [www.epa.gov/cleanpowerplanttoolbox](http://www.epa.gov/cleanpowerplanttoolbox) that walks through the exact calculations for Ohio.

#### Ohio's Interim (2022-2029) and Final Goals (2030)

OHIO			
	CO <sub>2</sub> Rate (lbs/Net MWh)	CO <sub>2</sub> Emissions (short tons)	
2012 Historic <sup>1</sup>	1,900	102,239,220	
2020 Projections (without CPP)	1,742	103,946,835	
	Rate-based Goal	Mass-based Goal (annual average CO <sub>2</sub> emissions in short tons)	Mass Goal (Existing) & New Source Complement
Interim Period 2022-2029	1,383	82,526,513	83,476,510
Interim Step 1 Period 2022-2024 <sup>2</sup>	1,501	88,512,313	88,902,150
Interim Step 2 Period 2025-2027 <sup>3</sup>	1,353	80,704,944	82,020,069
Interim Step 3 Period 2028-2029 <sup>4</sup>	1,252	76,280,168	77,522,714
Final Goal 2030 and Beyond	1,190	73,769,806	74,607,975

1. EPA made some targeted baseline adjustments at the state level to address commenter concerns about the representativeness of baseline-year data. These are highlighted in the CO<sub>2</sub> Emission Performance Rate and Goal Computation TSD.

2, 3, 4. Note that states may elect to set their own milestones for Interim Step Periods 1, 2, and 3 as long as they meet the interim and final goals articulated in the emission guidelines. In its state plan, the state must define its interim step milestones and demonstrate how it will achieve these milestones, as well as the interim goal and final goal. See section VIII.B of the final rule preamble for more information.

The final Clean Power Plan goals for Ohio look different from the proposed goals – the 2030 goal looks more stringent, and the interim goal looks more stringent.

#### States' goals fall in a narrower band, reflecting a more consistent approach among sources and states.

At final, all state goals fall in a range between 771 pounds per megawatt-hour (states that have only natural gas plants) to 1,305 pounds per megawatt-hour (states that only have coal/oil plants). A state's goal is based on how many of each of the two types of plants are in the state.

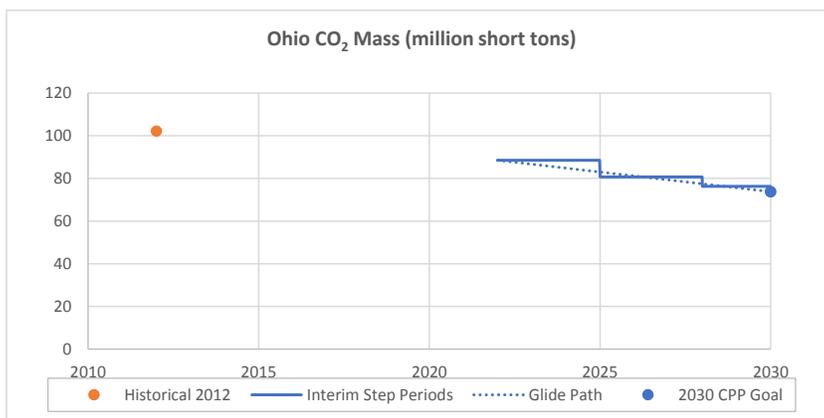
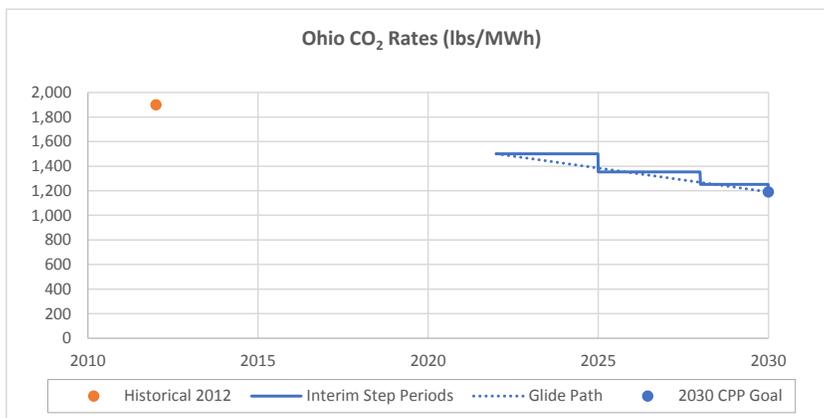
The goals are much closer together than at proposal. Compared to proposal, the highest (least stringent) goals got tighter, and the lowest (most stringent) goals got looser.

- o Ohio's 2030 goal is 1,190 pounds per megawatt-hour. That's in the middle of this range, meaning Ohio has one of the moderate state goals, compared to other state goals in the final Clean Power Plan.
- o Ohio's step 1 interim goal of 1,501 pounds per megawatt-hour reflects changes EPA made to provide a smoother glide path and less of a "cliff" at the beginning of the program.

The 2012 baseline for Ohio was adjusted to be more representative, based on information that came in during the comment period.

**Pathway to 2030:** While EPA’s projections show Ohio and its power plants will need to continue to work to reduce CO<sub>2</sub> emissions and take additional action to reach its goal in 2030, these rates – and that state goal – are reasonable and achievable because no plant and no state has to meet them alone or all at once. They are designed to be met as part of the grid and over time. In fact, the rates themselves, and Ohio’s goal, reflect the inherent flexibility in the way the power system operates and the variety of ways in which the electricity system can deliver a broad range of opportunities for compliance for power plants and states. EPA made improvements in the final rule specifically for the purpose of ensuring that states and power plants could rely on the electricity system’s inherent flexibility and the changes already under way in the power sector to find affordable pathways to compliance.

- o **Flexibility in state plans and easier access to trading programs.** States can use EPA’s model trading rules or write their own plan that includes trading with other “trading-ready” states, whether they are using a mass- or rate-based plan.
- o **Clean Energy Incentive Program available for early investments.** This program supports renewable energy projects – and energy efficiency in low-income communities – in 2020 and 2021.
- o **The period for mandatory reductions begins in 2022, and there is a smoother glide path to 2030.** The glide path gradually “steps” down the amount of carbon pollution. Note that states may elect to set their own milestones for interim step periods 1, 2 and 3 as long as they meet the interim goal overall or “on average” over the course of the interim period, and meet the final goals, established in the emission guidelines. To accomplish this, in its state plan, the state must define its interim step milestones and demonstrate how it will achieve these milestones, as well as the overall interim, and final, goals.
- o **Energy efficiency available for compliance.** Demand-side EE is an important, proven strategy that states and utilities are already widely using, and that can substantially and cost-effectively lower CO<sub>2</sub> emissions from the power sector. EPA anticipates that, thanks to their low costs and large potential in every state and region, demand-side EE programs will be a significant component of state compliance plans under the Clean Power Plan. The CPP’s flexible compliance options allow states to fully deploy EE to help meet their state goals.



Regional Point of Contact for Questions:

Alexis Cain / EPA Region 5  
 312-886-7018  
 cain.alexis@epa.gov

Updated 8/3/2015 5:15 PM

# Clean Power Plan Timeline

15 Years

- January 1, 2030 - CO<sub>2</sub> Emission Goals met

Summer  
2015

- August 3, 2015 - Final Clean Power Plan

1 Year

- September 6, 2016 - States submit initial state plan

3 Years

- September 6, 2018 - States submit final state plan

7 Years

- January 1, 2022 - Compliance period begins



FOR IMMEDIATE RELEASE  
October 1, 2015

CONTACT:  
[Mallory Micetich](#) at NAM (202) 637-3085

## **New Ozone Rule Will Inflict Pain on Manufacturers** ***Business and Manufacturers Across Ohio***

Washington, D.C. and Columbus, OH, October 1, 2015 – Today, The Ohio Manufacturers' Association (OMA) President Eric Burkland, the National Association of Manufacturers (NAM) President and CEO Jay Timmons and Neenah Enterprises, Inc. President and CEO and NAM Small and Medium Manufacturers Group Chair Tom Riordan, who represent manufacturers and business across the United States and Ohio issued the following statements on the Environmental Protection Agency's new ozone regulation:

"Today, the Obama Administration finalized a rule that is overly burdensome, costly and misguided," said Timmons. "For months, the Administration threatened to impose on manufacturers an even harsher rule, with even more devastating consequences. After an unprecedented level of outreach by manufacturers and other stakeholders, the worst-case scenario was avoided. However, make no mistake: The new ozone standard will inflict pain on companies that build things in America—and destroy job opportunities for American workers. Now it's time for Congress to step up and take a stand for working families."

"We know that this regulation could have been worse, but it still feels like a punch in the gut," said Riordan. "Manufacturers are tough and resilient, but when Washington puts politics above job creation, we still pay a price. Now manufacturers across this country, especially smaller companies, will be forced to choose between navigating this rule and hiring new workers, between complying with Washington's mandates and giving raises for their employees."

"Currently, only one of Ohio's eight metro areas - Canton - currently meets the 70 ppb standard," said Burkland. "The economic consequences of this rule will make for tough choices for Ohio's manufacturers and businesses. This rule will without any doubt stunt investment in job creating economic growth in Ohio and the nation."

To learn more about the real impacts to manufacturers, visit the NAM [website](#).

-###-

**About OMA:** The mission of The Ohio Manufacturers' Association is to protect and grow Ohio manufacturing. Through the OMA, manufacturers and manufacturing stakeholders work directly with members of the Ohio General Assembly, state regulatory agencies, the judiciary community and statewide media with the sole focus of improving business conditions for manufacturers in Ohio. Visit us at [www.ohiomfg.com](http://www.ohiomfg.com).

**About NAM:** The National Association of Manufacturers (NAM) is the largest manufacturing association

in the United States, representing small and large manufacturers in every industrial sector and in all 50 states. Manufacturing employs more than 12 million men and women, contributes \$2.09 trillion to the U.S. economy annually, has the largest economic impact of any major sector and accounts for more than three-quarters of private-sector research and development. The NAM is the powerful voice of the manufacturing community and the leading advocate for a policy agenda that helps manufacturers compete in the global economy and create jobs across the United States. For more information about the National Association of Manufacturers or to follow us on Shopfloor, Twitter and Facebook, please visit [www.nam.org](http://www.nam.org).

## Revised Ozone Standard

City	2010-2012 Data	2011-2013 Data	2012-2014 Data	% above standard (2012-2014)		
				at 70 ppb	at 65 ppb	at 60 ppb
Canton	78	76	70	0.0%	7.7%	16.7%
Cleveland	83	80	78	11.4%	20.0%	30.0%
Columbus	82	80	75	7.1%	15.4%	25.0%
Cincinnati	85	81	75	7.1%	15.4%	25.0%
Dayton	78	76	72	2.9%	10.8%	20.0%
Lima	74	73	71	1.4%	9.2%	18.3%
Toledo	77	74	71	1.4%	9.2%	18.3%
Youngstown- Warren	79	76	72	2.9%	10.3%	20.0%



# Ohio Legislative Service Commission

## Bill Analysis

Helena Traner

### **Sub. H.B. 349**

131st General Assembly  
(LSC 131 1721-2)  
(As Proposed)

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#### **BILL SUMMARY**

- Prohibits the Director of Environmental Protection from submitting a state plan regarding greenhouse gas emissions to the U.S. Environmental Protection Agency (USEPA) without the express approval of the General Assembly.
- Specifies that a state plan approved by the General Assembly remains in effect only to the extent that specific federal emission guidelines are in effect.
- Requires the Director to submit a timely initial submittal and a progress report to the USEPA as required by applicable federal regulations.
- Specifically requires the Director to develop, evaluate, and provide a proposed state plan for consideration to the General Assembly.
- Requires the proposed state plan to maximize flexibility for the state and minimize adverse impacts on the cost and reliability of electricity, employment, and the economy of Ohio.
- Requires the Director, before submitting the proposed state plan to the General Assembly, to develop and evaluate four specified state plan options.
- Requires the Director, with respect to each state plan option, to analyze eight factors, including projected impacts on energy cost and reliability, market-based considerations in achieving performance standards, and negative impacts to the competitiveness of manufacturing in Ohio.
- Requires the Director to satisfy all applicable federal requirements regarding public comment and involvement when developing the proposed state plan.

- Requires the Director to provide the proposed state plan with a report containing the state plan options and their analyses to the General Assembly in sufficient time to meet any deadlines established by USEPA.
- Declares an emergency.

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## CONTENT AND OPERATION

The bill prohibits the Director of Environmental Protection from submitting a state plan, or a part of a plan or revision, regarding greenhouse gas emissions to the U.S. Environmental Protection Agency (USEPA) without the express approval of the General Assembly.<sup>1</sup> It also specifies that a state plan approved by the General Assembly under the bill remains in effect only to the extent that specific federal emission guidelines are in effect.<sup>2</sup>

The bill then requires the Director to submit a timely initial submittal and a progress report to the USEPA as required by federal regulations governing emission guidelines for greenhouse gas emissions and compliance times for electric utility generating units that specify what must be included in an initial submittal. The federal regulations refer to greenhouse gases and define what constitutes those gases. The bill specifically requires the Director to develop, evaluate, and provide a proposed state plan for consideration to the General Assembly.<sup>3</sup> The proposed state plan must maximize flexibility for the state and minimize adverse impacts on the cost and reliability of electricity, employment, and the economy of Ohio consistent with applicable law.<sup>4</sup>

The bill requires the Director, before submitting the proposed state plan to the General Assembly, to develop and evaluate all of the following state plan options:

(1) An option that is identical to USEPA's final model federal implementation plan and trading rules;

(2) An option that is consistent with and no more stringent than emission guidelines established in federal regulations;

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<sup>1</sup> R.C. 3704.10(G).

<sup>2</sup> R.C. 3704.10(H).

<sup>3</sup> R.C. 3704.10(A).

<sup>4</sup> R.C. 3704.10(B).

(3) An option that requires no greater reduction in aggregate emissions than the level that the USEPA found could be achieved at power plants in Ohio through heat rate improvement measures; and

(4) An option that is less stringent than the emission guidelines to the extent the Director finds, for power plants on a case-by-case basis or for classes of power plants, that any of the following applies:

--There is an unreasonable cost of control resulting from a plant's age, location, or basic process design;

--It is physically impossible to install necessary control equipment; or

--Other factors exist that are specific to the power plant or class of power plants that make application of a less stringent standard significantly more reasonable.<sup>5</sup>

The bill also requires the Director, with respect to each state plan option described above, to analyze all of the following factors:

(1) Whether legislation or other changes to state law are required;

(2) Consumer impacts, including any disproportionate impacts of energy price increases on lower-income individuals;

(3) Nonair quality health and environmental impacts;

(4) Projected impacts on energy cost and reliability;

(5) Market-based considerations in achieving performance standards;

(6) Impacts of closing a generating unit, including economic consequences such as expected job losses or shifts at the unit and in fossil fuel production areas and any other worker dislocations;

(7) Negative impacts to the competitiveness of manufacturing in Ohio; and

(8) Revenue impacts on affected municipal corporations, townships, counties, and school districts.<sup>6</sup>

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<sup>5</sup> R.C. 3704.10(C).

<sup>6</sup> R.C. 3704.10(D).

The bill requires the Director to satisfy all applicable federal requirements regarding public comment and involvement when developing the proposed state plan.<sup>7</sup> Finally, it requires the Director to provide the proposed state plan together with a report containing the state plan options and their analyses to the General Assembly in sufficient time to meet any deadlines established by USEPA.<sup>8</sup>

Stating that the time-consuming development of a response to federal regulations governing carbon dioxide emissions must be commenced immediately in order to ensure the protection of the health and safety of Ohio's citizens, the bill declares an emergency.<sup>9</sup>

H0349-PROP-131.docx/emr

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<sup>7</sup> R.C. 3704.10(E).

<sup>8</sup> R.C. 3704.10(F).

<sup>9</sup> Section 2.



## Environment

### Ohio EPA and PUCO Announce First Clean Power Plan Public Meeting

This week Ohio EPA and the Public Utilities Commission of Ohio (PUCO) [announced](#) an informational session on December 2, 2015 for interested parties on the Clean Power Plan (CPP). Ohio EPA and the PUCO will explain Clean Power Plan requirements, Ohio's plan to engage interested parties, and answer any initial questions.

Five additional regional listening sessions will be held in 2016. These sessions are designed to provide the public an opportunity to submit verbal and/or written testimony.

More information about Ohio's approach to the CPP can be found [online](#). Questions regarding the information session can be sent to Ohio EPA's [Adam Ward](#), [Erica Fetty](#) or [general 111\(d\) mailbox](#). 11/19/2015

### House wants Authority Over Ohio's Clean Power Plan Plan

This week Reps. [Ryan Smith](#) (R-Bidwell) and [Tim Ginter](#) (R-Salem) provided [sponsor testimony](#) for [House Bill 349](#). The bill proposes that no state implementation plan concerning the Clean Power Plan (CPP) can be submitted to the U.S. EPA without the express approval of the Ohio General Assembly.

This is highly atypical as current state implementation plans need no approval from the legislature.

If the General Assembly does not approve the Ohio EPA state implementation plan, Ohio would most likely be regulated by a federal implementation plan.

If you would like more information on the CPP and Ohio's response, please contact OMA's [Rob Brundrett](#). 11/19/2015

### Extension Most Likely Avenue for Ohio's CPP Response

Like many states, Ohio is pursuing legal options to combat the Obama administration's Clean Power Plan (CPP). Ohio Attorney General Mike DeWine has [filed a legal challenge](#) to the entirety of the plan.

Meanwhile, Ohio EPA is considering how it will respond to Ohio's CPP state implementation plan. The agency will engage in statewide stakeholder outreach, which will likely include regional

meetings. Ohio is almost certain to request an extension of time to submit its state plan. The agency will use the extra time to coordinate plans with surrounding states and stakeholders. That extension request is due September 2016.

We will continue to update the membership as the stakeholder process ramps up in Ohio so that manufacturers' concerns are on record. 11/12/2015

### OMA Members Hear from EPA Region V Regulators at Chicago Conference



Last week OMA members invaded Chicago for the Midwest Environmental Compliance Conference to hear from U.S. EPA Region V and Midwest state environmental regulators regarding the most important environmental issues facing manufacturers.

Numerous OMA member companies were among the presenters on issues ranging from water quality to the Clean Power Plan to Title V permits.

If you missed the conference this year, make plans now to join your fellow manufacturers in Chicago next October 27-28. 11/5/2015

*Pictured: Ohio EPA Deputy Director, Laurie Stevenson, and OMA director, Jim Krimmel, President & CEO, Zaclon*

## "Massive Federal Overreach"



Panelists at this week's OMA Environment Committee agreed: The Clean Power Plan is a "massive federal overreach."

Discussing the plan with committee members were Asim Z. Haque, Commissioner, Public Utilities Commission of Ohio; Fred Nelson, Senior Advisor and Director of Major Litigation, Ohio Attorney General Office; Adam Ward, Assistant Chief, Ohio EPA, Air Pollution Control; and (by phone) Ross Eisenberg, Vice President, Energy and Resources Policy, National Association of Manufacturers.

The Ohio speakers discussed the two-track approach that the state is taking. One, challenge the legality of the plan in court. Two, study compliance options to determine the approach that will provide Ohioans with reliable and cost-effective power.

NAM's Eisenberg noted that the next American president will be able to have a tremendous impact on this rule. A reminder of the importance of voting.

Panelists also suggested manufacturers begin to "think beyond business as usual" and develop plans for protecting themselves from the worst possible effects of the plan, should it withstand legal challenge.

The final rule will be filed today. Lawsuits will begin immediately. 10/22/2015

*Pictured L to R, Fred Nelson, Adam Ward, and Asim Haque*

## Upcoming Ohio EPA 2016 Recycling & Litter Prevention Grant Informational Meetings

Ohio EPA will host an informational meeting on the 2016 Recycling & Litter Prevention Grant application process on Thursday, October 29 at 10:00 a.m. at the Ohio Department of Natural Resources, 2045 Morse Road, Columbus, OH 43229, Assembly Center (Building E). There is no registration required; however, those attending are required to bring a

photo ID. In addition, an informational webinar will be held on November 18, 2015 (please [see more here](#)).

Competitive grants provide opportunities for communities, local governments, businesses and nonprofit organizations to establish and implement recycling, market development, litter prevention and scrap tire recycling programs.

Grant applications for all programs are due February 1, 2016. Grant awards will be announced in April 2016, with funding available in July 2016. Additional information can be found [here](#) or by contacting [Chet Chaney](#), Environmental Supervisor, Ohio EPA at (614) 728-0043 or [Marie Barnett](#), Grants Administrator, Ohio EPA at (614) 705-1019. 10/11/2015

## Ozone Regs & Clean Power Plan on Upcoming Committee Agenda

The OMA Environment Committee meeting on [Thursday, October 22](#) has a number of hot topics on its agenda, including:

- Updates on the newly established U.S. EPA ground-level ozone 70 ppb regulation
- A case study presentation from Honda about its sustainability efforts, recently recognized by Ohio EPA's Encouraging Environmental Excellence (E3) program at the Gold level
- And, these experts will discuss the state of the federal Clean Power Plan and Ohio's potential plan:
  - Commissioner **Asim Z. Haque**, Public Utilities Commission of Ohio
  - **Fred Nelson**, Senior Advisor to Ohio Attorney General Mike DeWine
  - **Adam Ward**, Assistant Chief, Ohio EPA, Air Pollution Control
  - A representative from the National Association of Manufacturers

The committee meets from 10:00 a.m. until 1:00 p.m. at the [OMA offices](#) (with lunch provided by OMA), and a call-in option is available at: **866-362-9768, 552-970-8972#**.

There is no charge, but OMA members must register for both call-in and in-person attendance. [Register here](#) or email [Denise Locke](#) or call her (800) 662-4463. 10/8/2015

## Obama Administration Set New Ozone Standard at 70 PPB

After months of manufacturers and other stakeholders pressuring the White House, this week the Obama administration and U.S. EPA announced the final rule which establishes a new ground-level ozone standard for the country. The rule tightens the already stringent standard of 75 parts per billion (ppb) down to 70 ppb.

The administration had threatened to set the standard at 65 or even 60 ppb. At these levels the impact on Ohio's economy would have been devastating with an estimated gross state product loss of \$23 billion from 2017 – 2040 and between \$804 million to \$156 billion in compliance costs. The impact at 70 ppb will have its own economic consequences.

In a [joint statement](#) from the National Association of Manufacturers (NAM) and OMA, OMA president Eric Burkland said, "Currently, only one of Ohio's eight metro areas - Canton - currently meets the 70 ppb standard. The economic consequences of this rule will make for tough choices for Ohio's manufacturers and businesses. This rule will without any doubt stunt investment in job creating economic growth in Ohio and the nation."

Thank you to OMA members who made Ohio's manufacturing voice heard. OMA will continue to work with our national allies including the NAM and elected officials to protect Ohio manufacturing. 10/1/2015

[U.S. EPA final rule](#)  
[U.S. EPA impact analysis](#)  
[U.S. EPA maps & tables](#)

### Region 5 Environmental Compliance Conference is Oct. 29-30



OMA and its counterpart associations in the Midwest are hosting the Midwest Environmental Compliance Conference on October 29-30 in Chicago with support from the U.S. EPA and state EPAs.

This is the most comprehensive learning event for Region 5 that we know of, and is intended to respond to the increasingly difficult task of environmental compliance, permitting, and enforcement issues that impact Midwest facilities.

[Check it all out here.](#) Please use registration code "OMA" to receive the discount for regulated entities. 9/28/2015

### Check out "Permit Wizard"

The Ohio EPA has launched a new tool, "[Permit Wizard](#)," that helps businesses determine whether environmental permits, licenses or registrations are needed.

The online tool walks the user through some questions and produces a results summary that identifies the permits, licenses or registrations likely needed, in addition to links for helpful resources and points of contact. 9/23/2015

### Brundrett Debates Ozone Standard Reduction

This week the OMA's Rob Brundrett was a guest on National Public Radio's Sound of Ideas in Cleveland to [discuss the proposed ozone standards](#) and the catastrophic impacts this regulation could have on Ohio manufacturing.

The proposed standard could become the most expensive regulation ever proposed. A study released by the National Association of Manufacturers projects that, if the rule is finalized at the proposed 65 parts per billion, Ohio would suffer \$23 billion in gross product loss from 2017-2040, lose more than 22,000 jobs per year, and expend a whopping \$840 million in compliance. 9/17/2015

### OMA Director on the Record Against Ozone Regs

Jim Krimmel, president and CEO of OMA member, [Zaclon LLC](#), Cleveland, OMA board member, and former OMA board chairman, wrote this [letter to the Plain Dealer editor](#) about what the U.S. EPA proposal to reduce ground-level ozone would mean for Ohio manufacturing and his company.

Jim writes, "Because the new ozone benchmark would be extremely problematic, if not impossible, to reach, all of Ohio would be categorized as a "non-attainment" area. For Zaclon and others, that would trigger economic penalties on new investment and development, plant expansions and job creation. Ohio could also see a virtual standstill in highway expansion and road building projects."

Thank you, Jim, for your leadership on this significant issue. 9/10/2015

### Ozone Rule Would Choke Out Ohio Jobs

Last week the Center for Regulatory Solutions released [a study](#) demonstrating the catastrophic damage to Ohio's economy if the Obama Administration and U.S. EPA's proposed ozone regulation takes effect. The study found that by

lowering the standard from 75 parts per billion (ppb) into the 65 to 70 ppb range, the EPA would cause, with a single action, at least 34 counties in Ohio to be in violation of federal law.

These are some of Ohio's most populated counties, concentrated around the Cleveland and Cincinnati metropolitan areas, but a number of Ohio's rural counties may be dragged into nonattainment as well. Together, these 34 counties are home to 77% of the state's population, 84% of Ohio's GDP, and 80% of state employment.

This proposed regulation continues to be a major threat to Ohio's manufacturers and to Ohio's economy as a whole.

OMA members can go on the record about this issue with their federal elected officials [here](#). 9/3/2015

### **Summitville Tiles, Inc. CEO Dave Johnson on Federal Ozone Proposal**



David W. Johnson, CEO of OMA member Summitville Tiles, Inc., Summitville, OMA board member and former OMA board chairman, wrote this [opinion](#) about what the U.S. EPA proposal to reduce ground-level ozone would mean for Ohio manufacturing and his company.

He said, "This new ozone standard, slated to go into effect in less than 90 days, will slam existing manufacturers with new "maintenance costs" that could jeopardize the very viability of an enterprise. Plants located in what the EPA calls "non-attainment" zones will not be able to expand without: A) a reduction in emissions; or B) the shutdown of operations from other plants in a given area. Plans for new plants and/or the expansion of existing plants will just be shelved."

"Meanwhile, by the EPA's own public admission, concentrations of ozone have actually declined by 33% from 1980 to 2013, even as the US population

has increased by almost 40% over that period of time and the US economy more than doubled in size just since 1990. Why the urgent need now, then, to impose such a draconian new regulatory scheme? This makes no economic sense...nor even any environmental sense... whatsoever." 9/2/2015

### **Youngstown Mayor Opposes Ozone Proposal**

Late in August, Youngstown Mayor John McNally sent a [letter](#) to the White House outlining his concerns with the new proposed federal ozone standards, which call for a reduction in ground-level ozone from the current 75 parts per billion (ppb) to a range of 70 to 65 ppb. Thank you, Mayor McNally! 9/3/2015

**Environment Legislation**  
Prepared by: The Ohio Manufacturers' Association  
Report created on December 1, 2015

- HB61**      **LAKE ERIE FERTILIZER-DREDGING** (BUCHY J, HALL D) To generally prohibit the application of fertilizer or manure in Lake Erie's western basin on frozen ground or saturated soil and during certain weather conditions, and to prohibit a person, beginning July 1, 2020, from depositing dredged material in Ohio's portion of Lake Erie and its direct tributaries.  
*Current Status:* 3/17/2015 - Referred to Committee Senate Agriculture  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-61>
- HB64**      **OPERATING BUDGET** (SMITH R) To make operating appropriations for the biennium beginning July 1, 2015, and ending June 30, 2017, and to provide authorization and conditions for the operation of state programs.  
*Current Status:* 6/30/2015 - **SIGNED BY GOVERNOR**; Eff. 7/1/15  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-64>
- HB101**      **HAB MITIGATION** (HALL D) To establish requirements governing the training of employees of publicly owned treatment works and public water systems to monitor and test for harmful algae, the development of emergency plans by certain public water systems to respond to harmful algal blooms, and the development of an early warning system for harmful algal blooms.  
*Current Status:* 3/24/2015 - House Agriculture and Rural Development, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-101>
- HB214**      **PUBLIC IMPROVEMENT-PIPING MATERIAL** (THOMPSON A) To restrict when a public authority may preference a particular type of piping material for certain public improvements.  
*Current Status:* 6/9/2015 - House Energy and Natural Resources, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-214>
- HB349**      **STATE EMISSIONS PLAN** (SMITH R, GINTER T) To require the Environmental Protection Agency to submit a state plan governing carbon dioxide emissions to the General Assembly prior to submitting it to the United States Environmental Protection Agency, and to declare an emergency.  
*Current Status:* 12/1/2015 - House Energy and Natural Resources, (Second Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-349>
- HB377**      **PRIVATE EMPLOYEES-REQUIRED DUES** (BRINKMAN T) To prohibit any requirement that employees of private employers join or pay dues to any employee organization and to establish civil and criminal penalties against employers who violate that prohibition.  
*Current Status:* 12/1/2015 - House Commerce and Labor, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-377>

- HCR11**      **GOVERNOR-WATER QUALITY EFFORTS** (HALL D) To commend Governor John Kasich on his efforts to improve the water quality of Lake Erie and to affirm the Governor's ability to form an interstate compact with other states in furtherance of this objective.  
*Current Status:* 10/7/2015 - Referred to Committee Senate Agriculture  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HCR-11>
- HCR27**      **WATER QUALITY IMPROVEMENT** (PATTERSON J, HILL B) To commend Ohio's agriculture community, educational institutions, and environmental advocacy organizations on their efforts to improve the water quality of Lake Erie and its tributaries and to encourage them as well as state, county, and municipal leaders to continue to work towards continued water quality improvement.  
*Current Status:* 9/30/2015 - Referred to Committee House Agriculture and Rural Development  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HCR-27>
- SB1**        **GREAT LAKES-HARMFUL ALGAE** (GARDNER R, PETERSON B) To transfer the administration and enforcement of the Agricultural Pollution Abatement Program from the Department of Natural Resources to the Department of Agriculture.  
*Current Status:* 4/2/2015 - **SIGNED BY GOVERNOR**; eff. 7/3/2015  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-1>
- SB16**      **WATERSHEDS-FERTILIZER APPLICATION** (BROWN E) To require applicators of fertilizer or manure to comply with specified requirements and to authorize the Director of Environmental Protection to study and calculate nutrient loading to Ohio watersheds from point and nonpoint sources.  
*Current Status:* 2/10/2015 - Senate Agriculture, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-16>
- SB46**      **LAKE ERIE DRILLING BAN** (SKINDELL M) To ban the taking or removal of oil or natural gas from and under the bed of Lake Erie.  
*Current Status:* 2/18/2015 - Referred to Committee Senate Energy and Natural Resources  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-46>
- SB47**      **DEEP WELL BRINE INJECTION PROHIBITION** (SKINDELL M) To prohibit land application and deep well injection of brine, to prohibit the conversion of wells, and to eliminate the injection fee that is levied under the Oil and Gas Law.  
*Current Status:* 2/18/2015 - Referred to Committee Senate Energy and Natural Resources  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-47>
- SB114**     **MICROCYSTIN LEVELS-PUBLIC WATER** (SKINDELL M) To establish requirements and procedures pertaining to levels of microcystin in public water systems.  
*Current Status:* 3/10/2015 - Referred to Committee Senate Health and Human Services  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation->

[summary?id=GA131-SB-114](#)

**SB150**      **MOTOR FUEL DISPOSAL (HITE C)** To create a qualified immunity for the dispensing of incompatible motor fuel.

**Current Status:** 6/24/2015 - Senate Civil Justice, (Second Hearing)

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-150>

**To: OMA Government Affairs Committee**  
**From: Ryan Augsburger / Rob Brundrett**  
**Re: Human Resources Update**  
**Date: December 2, 2015**

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### **Overview**

Unemployment insurance tax rates remain a hot topic for employers. As other states solve their debt issues, Ohio continues to only pay down the interest on the debt. Without paying off the principle, FUTA tax rates will continue to increase. The House and Senate continue to have internal discussions on how best to address the issue. A fix was not included in the state budget that was passed earlier this summer. The House has taken the lead and introduced a bill supported by the business community which addresses only the solvency issue. It does not address the remaining outstanding debt.

### **General Assembly News and Legislation**

#### **House Bill 64**

The state budget appropriated dollars to pay the interest on Ohio's unemployment compensation debt to the federal government.

#### **House Bill 394 - Unemployment Compensation Tax Changes**

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

The Ohio unemployment trust fund is insolvent and still owes the federal government \$775 million. This circumstance has for years triggered penalties that employers must pay, and the fund is in a dangerous position in light of any future recession.

In testimony before the House Insurance Committee Rep. Sears said: "It is important that we insure a structural sound unemployment insurance compensation program to lend consistency to our businesses, to allow us to move our unemployment system to an employment system."

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

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

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

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

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

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

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

HB 394 addresses a number of additional issues that impact UI Trust Fund solvency, including constructive lockout exceptions in labor disputes, standards for determining just cause for termination and quits without just cause, coordination of unemployment compensation benefits with Social Security retirement benefits, enhanced fraud penalties and collection, and improved non-fraud overpayment collection, among others. Collectively, the HB 394 reforms position Ohio in line with surrounding states and states with whom we compete for investment and jobs.



## The Case for Unemployment Insurance Reform in Ohio

### EXECUTIVE SUMMARY

#### Introduction

Ohio's unemployment insurance (UI) system is in a state of crisis. The Ohio Unemployment Insurance Trust Fund, which is funded by employers and pays out benefits to qualifying jobless workers, is insolvent. The benefits the system pays out are substantially out of balance with the tax receipts it takes in to fund it. The system is nearly \$775 million in debt to the federal government – money it borrowed to keep paying benefits during and after the Great Recession of 2008. As a result, Ohio's system is dangerously unstable and a deterrent to economic development. Reforms are urgently needed to update and strengthen Ohio's UI program for the benefit of Ohio's employers, employees and economy. Most specifically, Ohio's Unemployment Insurance Trust Fund is not likely to recover solvency before the next recession unless the state takes action to pay off its outstanding federal unemployment compensation loan balance and better aligns benefits with contributions to build a balance.

#### How the System Works<sup>1</sup>

The Social Security Act of 1935 (SSA) created a federal-state unemployment insurance program to (a) provide temporary, partial wage replacement to individuals out of work, generally through no fault of their own, and (2) promote economic stability by maintaining a steady flow of dollars throughout the economy even when there is widespread unemployment.<sup>2</sup> The UI system historically has been forward funded – i.e., a sufficient positive balance is needed in the state unemployment trust fund to avoid having to borrow to pay benefits resulting from a reasonably foreseeable economic downturn.

To be eligible for unemployment benefits, jobless workers must demonstrate “workforce attachment,” usually measured by a work requirement (e.g., number of weeks of work) and/or a wage requirement (e.g., dollar amount of wages earned). Individuals also must be able, available and actively seeking work. Each state has a different formula for determining the amount of workforce attachment needed to obtain UI benefits from the state.

The UI program is a federal-state partnership conforming to federal requirements and administered by state agencies under state law. The Office of Unemployment Insurance Operations at the Ohio Department of Job and Family Services (ODJFS) administers Ohio's UI program. Administrative funds for ODJFS are allocated by the federal government from federal payroll taxes employers pay to the Internal Revenue Service.

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<sup>1</sup> This section of the document borrows heavily from a U.S. Department of Labor publication, *Unemployment Compensation: Federal-State Partnership*, April 2015.

<sup>2</sup> <http://www.bizfilings.com/toolkit/sbg/office-hr/managing-the-workplace/unemployment-benefits-system-info.aspx>

## **Financing the Program**

Unemployment compensation paid to unemployed workers is financed largely through both federal and state unemployment taxes paid by employers. Just three states – Alaska, New Jersey and Pennsylvania – collect UI taxes from employees.

UI taxes are based on various factors, including the wages employers pay their employees, the type and size of the business, and the number and amount of unemployment claims filed against the business.

- At the federal level, the Federal Unemployment Tax Act (FUTA) imposes a single flat rate payroll tax on the first \$7,000 of wages employers pay each employee in a year. The current FUTA tax rate is 6.0 percent. However, employers can earn credits against their FUTA tax to reflect the state employment taxes they pay. Employers who pay their State Unemployment Tax Act (SUTA) taxes in a timely manner under an approved state unemployment compensation program can earn a credit of up to 5.4 percent against the 6.0 percent, resulting in an effective tax rate of 0.6 percent. These states are also eligible to receive federal grants to cover the costs of administering the program through federal appropriations. Additionally, funds from the FUTA-funded Federal Unemployment Account reimburse the state unemployment trust fund for 50 percent of charges for “extended” unemployment benefits when extended benefits are triggered by periods of high unemployment.
- At the state level, each state determines its own SUTA tax rates. Some states apply various formulas to determine the taxable wage base; others use a percentage of the state’s average annual wage; and a few simply follow the FUTA wage base of \$7,000. In 2014, SUTA tax rates ranged from 0.0 percent to 2.6 percent for minimum rates, and from 5.4 percent to 10.89 percent for maximum rates. All but a handful of states’ wage bases exceeded the FUTA minimum requirement of \$7,000. In 2014, Ohio’s SUTA base was \$9,000, with a minimum contribution rate of 0.3 percent and a maximum contribution rate of 8.60 percent.

The state assigns or computes a specific individually determined UI tax rate for each employer annually. Every state uses some kind of “experience rating” system to determine the rate. Generally, the fewer the claims, the lower the rate the business pays in state UI taxes.

States lacking sufficient funds to pay their required unemployment benefits are authorized by Title XII of the SSA to request advances (i.e., loans) from the FUTA’s federal loan fund account, the Federal Unemployment Account. If not repaid, these loans carry interest that must be paid from sources other than the state UI trust fund.

## **Impact of the Great Recession**

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

The Recession was much greater than expected, wiping out positive unemployment trust fund balances across the country and in Ohio. Automatic tax trigger provisions in Ohio law designed

to address a milder recession were insufficient to meet the increased benefit payout. The size of the deficit after the Recession was too great to make up with benefit cuts or tax increases alone and even years after the Recession, benefit payments each year continue to be nearly as high as unemployment contribution revenue.

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

The impact in Ohio has been severe. Ohio's unemployment trust fund balance has been a negative number as of the end of the second quarter every year since 2009. ***Today, the Ohio Unemployment Insurance Trust Fund is insolvent.***

### **Responses to Insolvency**

In response to the threat of insolvency, states have taken various actions to bolster tax revenue and reduce benefit outlay, including the following:

- Eliminating outstanding loan debt to the federal government by obtaining bank loans and/or using bonds to finance the debt through the private sector
- Enacting solvency legislation with a combination of benefit cuts and tax increases to eliminate Title XII debt and better align benefit costs with revenue over the long term
- Reducing the number of potential weeks of unemployment compensation
- Increasing tax bases
- Revising contribution rate schedules
- Reducing maximum weekly benefit amounts
- Enacting more aggressive integrity measures to identify and collect additional revenue through benefit overpayment recovery and contribution collection improvements

***Ohio, however, is one of a small number of states with significant outstanding federal debt that have chosen not to enact solvency measures,*** instead allowing automatic FUTA penalties to continue to increase to provide the revenue needed to reduce the state's outstanding debt.

This is a dangerous path to follow. Failure to pay off a state's outstanding FUTA debt has costly consequences. Under federal law, if a state has an outstanding Title XII loan balance on January 1 for two consecutive years, and the full amount of the loan is not repaid by November 10 of the second year, the 5.4 percent FUTA tax credit for employers in that state will be reduced annually by 0.3 percent for each succeeding year until the loan is repaid. From the third year onward, additional reductions in the FUTA offset credit may be imposed. States that continue to have outstanding loan balances over five years in a row are subject to an even greater FUTA tax increase as a penalty for not having addressed solvency through increases in taxes and/or cuts in benefits.

## Why Ohio Needs Unemployment Insurance Reform

Currently, Ohio ranks poorly on many important unemployment insurance program metrics. For example:

- Ohio's Unemployment Insurance Trust Fund is insolvent.
- Ohio's outstanding Title XII debt is approximately \$775 million – nearly equal to the cost of unemployment insurance benefit payments for an entire year. Only California has a larger unpaid Title XII loan debt balance.
- Ohio is one of a small number of states with significant outstanding federal debt that have chosen not to enact solvency measures.
- Employers in Ohio currently pay higher total costs associated with unemployment compensation than employers in most other states, while benefit payment amounts in Ohio are higher than the national average. This makes Ohio a high-cost, high-benefit state.
- The FUTA tax paid by Ohio employers has continued to increase as Ohio's Title XII loan has not been repaid.
- Ohio is one of just four states currently subject to higher FUTA penalty rates and potentially subject to an additional Benefit Cost Rate (BCR) penalty in 2015 for having outstanding loan balances five years in a row and failing to address insolvency.
- Ohio failed to pay off the state's outstanding FUTA debt before November 10, 2015, triggering an additional reduction in the FUTA offset credit for employers in Ohio. This will result in Ohio employers paying higher FUTA taxes for 2015 – at least an additional \$105 per employee, on top of the normal \$42 per employee.

Ohio's UI trust fund is not likely to recover solvency before the next recession unless the state takes action to pay off its outstanding federal loan balance and better align benefits with contributions to build a balance in anticipation of the next recession.

## Conclusion

***Ohio's Unemployment Insurance Trust Fund must be made solvent before the next recession*** – not only to manage the repayment of Ohio's remaining Title XII loan balance but also to align benefit and contributions to build an adequate unemployment trust fund balance. The best solvency plan is one that also includes a focus on job creation because increased employment not only increases contributions but also reduces benefit payout. For that reason, rates also should be in line with surrounding states and states with which Ohio competes to attract and retain new business.

Unemployment insurance policy reform priorities should focus on eliminating the state's current unemployment trust fund debt, aligning benefit payout with contribution revenue, and building a balance in the unemployment trust fund sufficient to avoid triggering automatic FUTA tax increases that have significantly increased unemployment taxes for Ohio employers since the Great Recession of 2008. A vital first step for Ohio should be to pay off of the remaining Title XII loan balance to eliminate the FUTA tax increase as soon as possible.

# # #



## House Bill 394: Selected Major Provisions at Glance

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

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

- **Temporary Increase in State Unemployment Tax Base.** HB 394 would increase the state unemployment tax base from \$9,000 to \$11,000 when the UI Trust Fund balance is below 50 percent of the 1.0 Average High Cost Model solvency level and continue the increase until the UI Trust Fund reaches 1.0 Average High Cost Model. The state tax base will be reduced back to \$9,000 when the UI Trust Fund equals or exceeds the 1.0 AHCM solvency level. If the balance dips below 50 percent of the solvency level in future years, the tax base will automatically return to the \$11,000 level.
- **Reduction of Number of Potential Weeks of Unemployment Insurance.** HB 394 would change the determination of the total number of weeks of unemployment compensation potentially available to twice a year, based on Ohio's seasonally adjusted three-month total unemployment rate, before January and June. A sliding scale would set the number as low as 12 weeks when the rate is 5.5 percent or below, and up to 20 weeks if the rate is 9 percent or above. Ohio currently uses a sliding scale ranging from 20 to 26 weeks.
- **Temporary Freeze on the Maximum Weekly Benefit Amount.** HB 394 would effectively freeze maximum weekly benefit dollar amounts at a level not to exceed 50 percent of the statewide average weekly wage for the first year that the UI Trust Fund was less than the Minimum Safe Level (MSL), and would continue those maximums until the year after the UI Trust Fund was at or above the MSL.
- **Dependency.** To align with the majority of states, HB 394 would repeal Ohio's current dependency provision that increases the weekly benefit amount provided to claimants who have higher wages and dependents.
- **Drug Testing.** HB 394 provides language under which the Ohio Department of Job and Family Services may (a) request information of applicants for unemployment compensation about the results of past drug tests, (b) conduct drug tests for controlled substances, and (c) disqualify individuals within the narrow limitations of federal law.

HB 394 addresses a number of additional issues that impact UI Trust Fund solvency, including constructive lockout exceptions in labor disputes, standards for determining just cause for termination and quits without just cause, coordination of unemployment compensation benefits with Social Security retirement benefits, enhanced fraud penalties and collection, and improved non-fraud overpayment collection, among others. Collectively, the HB 394 reforms position Ohio in line with surrounding states and states with whom we compete for investment and jobs.



**BEFORE THE INSURANCE COMMITTEE  
THE OHIO HOUSE OF REPRESENTATIVES  
REPRESENTATIVE BOB HACKETT, CHAIRMAN**

**HOUSE BILL 394  
TESTIMONY  
OF  
DOUG HOLMES  
PRESIDENT  
UWC – STRATEGIC SERVICES ON UNEMPLOYMENT & WORKERS'  
COMPENSATION**

**NOVEMBER 18, 2015**

Chairman Hackett, Vice Chair LaTourette, Ranking Member Bishoff and members of the committee thank you for the opportunity to testify before you this afternoon on House Bill 394. My name is Doug Holmes and I am the President of UWC - Strategic Services on Unemployment & Workers' Compensation (UWC). UWC was established in 1933 and is a broad-based national association exclusively devoted to the issues of national unemployment insurance and workers' compensation public policy. I am here today to testify as a proponent of House Bill 394 on behalf of The Ohio Manufacturers' Association, Ohio Chamber of Commerce, National Federation of Independent Businesses – Ohio, The Ohio Council of Retail Merchants, and the Ohio Farm Bureau.

I have spent most of my professional career over the last thirty years in the analysis of public policy, drafting of legislation and regulation of the Federal/State Unemployment Insurance program. In my current position I provide subject matter expertise and testify before congressional committees and am often called upon by state legislatures to testify on unemployment insurance issues.

Much of my experience was here in Ohio serving in various capacities, including Deputy Director of ODJFS, Deputy Administrator of the Ohio Bureau of Employment Services (OBES), Director of the Unemployment Compensation Division at OBES, Unemployment Legal Counsel, Secretary of the Unemployment Compensation Advisory Council, and going back to 1981 as Legal Counsel to the House Judiciary and Criminal Justice Committee. I am originally from Worthington Ohio.

We appreciate the leadership of this committee and the leadership of Representative Sears in introducing HB 394. This bill is a thoughtful, serious, well-reasoned and balanced approach to addressing the challenging topic of unemployment trust fund solvency. The bill incorporates best practices from other states in reducing benefit costs and carefully times increases in employer contributions under state law with the elimination of increased federal tax rates to increase revenue but avoid significant spikes in the total cost associated unemployment insurance. It also sets a new solvency goal against which to measure solvency efforts in cost reduction and tax revenue over time.

When enacted, HB 394 will ensure that Ohio is able to build a significant positive balance and be prepared for the next recession. It also minimizes the risk that employers in the state will once again be hit with significant federal unemployment tax increases.

As we meet today, six years after the end of the recession of 2008-09, the country is still recovering, and unemployment insurance trust fund balances in most states are not sufficient to withstand a reasonably foreseeable recession. Only 17 states have unemployment trust fund balances that meet or exceed the US Department of Labor suggested solvency level.

Ohio is among the least solvent states in the country with a current negative unemployment trust fund balance of approximately -\$775 million. Only California, Connecticut, Ohio and the Virgin Islands have outstanding federal loan balances, and only California has a higher negative balance in its trust fund account than Ohio.

Because the negative balance in Ohio's unemployment trust fund has continued for many years, federal law designed to penalize states for failure to maintain solvent trust funds has triggered significant increases in the net federal unemployment tax rates paid by Ohio employers. Ohio employers now pay a higher FUTA tax rate than employers in any other state except Connecticut. Instead of the normal rate of \$42 per employee Ohio employers for 2015 are paying \$147 per employee. Based on trust fund projections for 2016, this federal tax will increase again next year to at least \$168 per employee.

These federal penalty tax increases not only put Ohio at a disadvantage in attracting new business but are also inconsistent with experience rate insurance principles that are the basis of the state unemployment contribution rate system. Because the FUTA tax is imposed as a flat rate on the first \$7,000 of wages paid in a calendar year per employee, even employers who have laid off no employees are hit with a per employee additional tax of \$105 in 2015.

Many states with outstanding federal loan debt due to the 2008 recession took action to improve trust fund solvency in order to avoid the imposition of these federal tax increases and to improve solvency in anticipation of the next recession. The responses included reductions in benefit payout, improved integrity, increased state tax bases and rates, state loans and appropriations, private bank loans and revenue bonds.

In many states, including Ohio, unemployment trust fund balances prior to the recession were not sufficient to cover the increase in claims load. Even after years of economic recovery, benefit payout and state unemployment tax revenue are not aligned to significantly improve the trust fund balance.

Ohio's long term imbalance is driven principally by 1) maximum weekly benefit amounts that are higher than the national average and higher than most surrounding states, 2) the automatic increase in the maximum weekly benefit amount tied to increases in the statewide average weekly wage, and 3) the availability of up to 26 weeks of unemployment compensation. Ohio's tax base at \$9,000 is below the national average and slightly below tax bases in surrounding states. There are also a number of claims eligibility and integrity measures that could improve the solvency of the fund by reducing cases in which individuals receive multiple sources of wage replacement support. Measures to improve the effective collection of overpayments and prosecution of fraud are available.

Clearly, it is imperative that Ohio take steps to improve the solvency of its unemployment trust to eliminate the remaining outstanding federal debt, better align benefits and contributions, and build a significant balance in the state's trust fund before the next recession. Although the state may be later in the economic cycle than other states to act, choosing not to address state trust fund solvency in advance of the next recession risks that the FUTA tax will continue to increase up to \$420 per employee in addition to increases in the state unemployment tax driven by increased claims.

HB 394 provides for a number of significant improvements as part of the broad based solvency package described below.

**Eliminates double payment of wage replacement when unemployment compensation is claimed for the same week an individual is paid workers' compensation or Social Security Disability.**

The proposal would require that no individual may be paid unemployment compensation if the individual received workers compensation other than compensation for permanent partial disability. The bill also would require that unemployment compensation not be paid for a week if the individual receives SSDI benefit payment for the week.

These provisions will eliminate double payment of wage replacement to individuals who have been determined not to be able to work and reduce cost for the Ohio unemployment trust fund.

**Provides for a State Unemployment Tax Base Increase Effective after the FUTA Tax Reduction**

The bill proposes an increase in the state unemployment tax base to \$11,000 from \$9,000 to be effective when the unemployment trust fund balance is below 50% of the 1.0 Average High Cost Model solvency level and continues the increase until the trust fund reaches 1.0 Average High Cost Model. The first year for the tax increase is projected to begin January 1, 2018. This timing should avoid employers paying the significantly higher FUTA taxes for the same period that higher state unemployment taxes are imposed, reducing the cost increase related to unemployment compensation.

The additional FUTA revenue in 2016 and 2017, along with an improved economy, should be sufficient to retire the outstanding loan amount.

The state tax base increase will be reduced back to \$9,000 when the trust fund equals or exceeds the 1.0 AHCM solvency level, and if the balance dips below 50% of the solvency level in future years the tax base will automatically return to the \$11,000 level. This provides an automatic solvency feature to increase revenue earlier in the economic cycle when there are signs of recession and before the trust fund dips below zero balance.

**Requires Sustained Workforce Attachment to Qualify for Benefits**

Many states require that individuals have a significant attachment to the workforce with employment in multiple quarters of the base period.

The bill adds a requirement that an individual earn remuneration in at least three calendar quarters in the individual's base period. This will ensure a meaningful workforce attachment as part of the determination of whether the individual may qualify to establish a benefit year and improve the solvency of the UI trust fund.

**Reduces the New Employer Tax Rate to Attract New Business When the UI Trust Fund is Solvent**

The bill provides for a 1.0% new employer rate for employers other than those in the construction industry, but only once the state has reached the MSL. The limitation seeks to assure that the state trust fund is solvent before providing for the lower 1.0% new employer rate to attract more business to the state. Over the long term this provision may increase revenue through increased taxable payroll.

### **Increases the Minimum Safe Level for the UI Trust Fund to the US Department of Labor Guideline**

The bill would modify the definition of the Minimum Safe Level (MSL) using the US Department of Labor Guideline that recommends a positive balance of 1.0 Average High Cost Multiple (AHCM). Adoption of the 1.0 AHCM sets a financing goal that will be recognized as sound by the US Department of Labor and place Ohio in position to potentially qualify for interest free federal cash flow loans. There is a need to build a significant balance in preparation for the next recession; however, building excessive balances through state UI tax increases takes money away from investment by employers in creating jobs. The bill recognizes the need to avoid excess trust fund balances and provides for the automatic reduction in the tax base once the MSL is reached.

### **Adds a Waiting Week after Additional Employment**

HB 394 would require a waiting week after a week an individual is paid wages more than the full weekly unemployment compensation amount. Individuals who take part time work for which they are paid amounts less than the total weekly benefit amount would not be affected in continuing to file partial unemployment claims.

The number of waiting weeks and the circumstances in which they are required are determined by each state. Early in the history of UI many states had multiple waiting weeks. Although most states currently have one waiting week at the beginning of a benefit year, adding a waiting week after additional employment will reduce benefit payout. It may also improve detection of fraud earlier in a claims series and reduce the chances of identity theft.

The bill would improve UI trust solvency and ensure that individuals who return to work and subsequently become unemployed serve an additional waiting week before being paid unemployment compensation.

### **Revises Labor Dispute Disqualification Provisions**

Individuals who participate in labor disputes in which they withhold their labor pending the outcome of a dispute with their employer are generally disqualified from unemployment compensation as they have voluntarily made themselves unavailable for work. The labor dispute disqualification typically is applied for any weeks for which the unemployment of the individual is due to the labor dispute.

Ohio is among a small number of states in which the statute and case law provide a constructive “lock out” exception. Case law in Ohio has created the theory of constructive lock out in which courts review the negotiations between employers and unions to determine which party took steps to effectively cause the unemployment. Did the employer insist on its final proposal and notify employees that they were permanently replaced? Did the union bargain in good faith and assure that bargaining unit members were at all times willing to return to work under the terms of employment pending final agreement?

The result of “constructive” lock out case law construing the statute has been that individuals participating in labor disputes that otherwise would be disqualified have been paid benefits. The

proposal would remove the specific “lock out” exception and special limitation language leaving the general labor dispute provision that is common with many states.

#### **Provides Clarification of the Standard to Determine Just Cause for Termination**

Ohio Supreme Court case law has established the precedent that if an individual is not suitable for a position because the individual did not perform the work required, the employer made known the employer’s expectations at the time of hiring, and the expectations were reasonable and did not change since hiring, the individual is at fault and may be discharged for just cause and be disqualified from benefits. This standard is not well known, resulting in inconsistent application of the law.

The bill seeks to codify case law to provide a clear statement of this standard. In addition, the bill codifies the generally accepted policy that individuals who violate the terms of an employee handbook provided to the individual in connection with the individual’s employment may be terminated for just cause.

The bill also provides that an individual who is absent from work for a period of three consecutive work days without notifying the employer is considered to have quit work without just cause. This is consistent with general policy concerning job abandonment. Codification of all of these provisions will be helpful in providing notice to employers and employees about the standards to be applied.

#### **Clarifies Work Search Requirements**

Claimants are required to be actively seeking work as a condition of being eligible for unemployment compensation and they must accept work offered. However, federal law requires that an individual not be disqualified for refusal to accept new work if it is not in the local area.

The administration of this provision is difficult given the different travel expectations for jobs that are available to claimants. The bill provides direction to JFS to adopt rules to define “unreasonable distance” and “locality”.

#### **Permits the Department of Job and Family Services to Test for Controlled Substances in the Limited Circumstances Prescribed by the US Department of Labor**

In 2012, Congress enacted narrow authority under which state agencies administering unemployment insurance may request information from claimants about the results of past tests for controlled substances, conduct tests for controlled substances and disqualify individuals who fail drug tests.

The bill provides language under which JFS may proceed to request information of applicants for unemployment compensation and conduct drug tests for controlled substances and disqualify individuals within the narrow limitations of federal law.

This provision will assist in encouraging applicants not to use illegal controlled substances and to be drug free when applying for unemployment compensation and seeking work.

### **Repeals Higher Maximum Benefit Amounts for High Wage Claimants with Dependents**

Ohio is one of only 14 states that have some form of dependency provision which increases the weekly benefit amount that is provided to claimants with dependents. Unlike most of the 14 states, Ohio law only provides for higher maximum benefit amounts for those who have higher wages and dependents.

The dependency provision is not required by federal law, no additional administrative funding is provided for the staff needed to determine the various classifications of dependency, and the time taken for dependency determinations makes it more difficult to determine eligibility within the expedited time frame expected for UI claims.

The repeal of this provision will save benefit payout, simplify administration, and will not impact low wage claimants.

### **Temporarily Freezes Maximum Weekly Benefit Amounts**

Limitations on increases in the Maximum Weekly Benefit Amount to be provided are commonly imposed as one of the possible solvency measures. Ohio enacted limitations as part of solvency measures in response to the recession of the late 1970s and early 1980s. Many states have automatic increases in maximum weekly benefit amounts tied to the statewide average weekly wage, but eighteen states have specific dollar maximums that do not automatically go up with the state average weekly wage. The automatic increase in maximum weekly benefit amounts is a significant cost driver for the UI system and contributed to Ohio's current insolvency.

The bill would effectively freeze maximum weekly benefit dollar amounts at not to exceed 50% of the statewide average weekly wage for the first year that the unemployment trust fund was less than the minimum safe level and continue those maximums until the year after the fund was at or above the minimum safe level. The maximum weekly benefit amount would likely go up the year after the fund reached MSL and then be automatically frozen at the increased levels if the MSL was not met the following year. In this way the maximum weekly benefit amount increases with the statewide weekly wage as long as the fund is healthy but is automatically frozen when it is not.

The automatic restraint on the maximum weekly benefit amount will assist in reducing benefit costs in a timely way and reduce the risk of insolvency during an economic downturn.

### **Reduces Benefits for Overlapping Social Security Payments**

Federal law and current state law require that there be a reduction in the weekly benefit amount payable to a claimant for periodic Social Security payments. Federal law also, however, permits states to limit the reduction if a claimant made a contribution to social security and is receiving a retirement payment.

The cost to Ohio's unemployment trust fund of not reducing unemployment compensation for social security payments is significant. The current law results in some individuals receiving nearly as much or

more in the combined UI wage replacement and social security retirement benefits than their average weekly wage during the base period.

The bill removes this special added limitation and would improve solvency of the UI trust fund.

### **Reduces the Range in the Number of Potential Weeks of Unemployment Compensation**

In response to the Great Recession many states enacted changes to the number of potential weeks of unemployment compensation that would be available to individuals filing for unemployment compensation. A number of states tied the number of potential weeks of benefits to the state unemployment rate.

Current Ohio law uses a sliding scale of the number of weeks based on the number of base period qualifying weeks from 20 to 26.

The bill would change the determination of the total number of weeks potentially available twice a year based on the state seasonally adjusted three month total unemployment rate before January and July. The sliding scale sets the number from as low as 12 weeks when the rate is 5.5% or below up to 20 weeks if the rate is 9% or higher.

Experience with other states adopting these sliding scales has shown a significant reduction in benefit payout and a reduction in the average duration of unemployment.

Such a provision would more quickly align benefit payments with contribution revenue and assist in building a positive balance in the unemployment trust fund.

### **Enhances Fraud Penalties, Prosecution, and Overpayment Collection**

The current law requires that if JFS finds fraudulent misrepresentation by an applicant for unemployment compensation that the Director shall reject or cancel the applicant's entire weekly claim for benefits that was fraudulently claimed or the entire benefit rights if the fraud was in connection with the application, however, the authority to make such determinations is limited to four years after the end of the benefit year in which the fraudulent misrepresentation was made.

The bill removes the specific period within which the fraudulent determination may be made and gives broader discretion to JFS.

The current law requires that if there is misrepresentation in the determination of benefit rights JFS shall impose two penalty weeks to be canceled for payment for each week of fraud. The penalty applies for six years after the discovery of the misrepresentation.

The bill removes the specific time limitation for the imposition of the penalty weeks.

The bill removes the six year limitation on the period of time for administrative or legal proceedings for the collection of fraudulently claimed benefits or interest due on such benefits. It also deletes the provision requiring that such amounts not be filed as liens and be canceled as uncollectible.

These integrity provisions will enable a more active and sustained collection effort, including greater coordination with the IRS through the Treasury Offset Program under which uncollected benefit amounts may be collected through offset against federal income tax refunds. The provisions will also enable the agency to be more aggressive in prosecution of fraud.

### **Improves Non-Fraud Overpayment Collection**

Current law requires that non-fraud overpayment determinations must be made within three years after the end of the benefit year in which benefits were claimed. The bill extends the period to six years.

Current law requires that if non-fraud overpayment amounts are not repaid or recovered within three years from the date of the director's order becoming final, the agency shall initiate no further action to collect the overpaid benefits and cancel the amounts not recovered.

This three year limitation unduly restricts overpayment collection, particularly when the agency is able to locate the individual and finds that the individual is once again claiming unemployment compensation and/or has significant resources with which to make repayment.

The bill removes the artificial time frame for collection in favor of discretion by JFS to use best practices in collection. It will reduce the amount of overpayments that should not have been written off and improve the solvency of the UI Trust Fund

### **Conclusion**

HB 394 provides a reform package that will successfully address the current insolvency of Ohio's unemployment trust fund. The package is well balanced and will enable Ohio to significantly improve the solvency of the trust fund over the next five years and avoid the imposition of increased federal unemployment tax penalties that would otherwise be imposed.

We urge your support for this bill.

# **Unemployment Insurance Reform Needed Now**

**By Eric Burkland**

Ohio's unemployment insurance system is in a state of crisis.

The Ohio Unemployment Insurance Trust Fund, which is funded by employers and pays out benefits to qualifying jobless workers, is insolvent. The benefits the system pays out far exceed the tax receipts it takes in to fund the program.

The trust fund's balance has been a negative number every year since 2009. Today, Ohio's unemployment system is nearly \$775 million in debt to the federal government. That's money the state borrowed in order to keep paying benefits to unemployed workers during and after the Great Recession of 2008.

Just two other states – California and Connecticut – have negative federal loan balances for unemployment claims. Only California has a larger negative trust fund balance than Ohio.

Federal law penalizes states that fail to maintain solvent unemployment trust funds. Carrying negative trust fund balances over many years triggers significant increases in the net federal unemployment tax rates paid by employers.

As a result, Ohio employers now pay a higher federal unemployment tax rate than employers in any other state except Connecticut. The normal rate is \$42 per employee. Ohio employers, however, are paying \$147 per employee for 2015. And projections for 2016 indicate that number will rise to at least \$168 per employee.

Another factor exacerbating the situation is that, on balance, unemployment benefits in Ohio are richer than those in other states.

Many states have taken action to improve their trust fund solvency in order to avoid these automatic federal unemployment tax increases. States have modified and in some cases reduced benefits, increased state tax bases and rates, appropriated dollars from state general revenue funds, secured private bank loans, and even sold revenue bonds.

Until now, Ohio has failed to take similar steps.

House Bill 394, sponsored by State Representative Barbara Sears and recently introduced in the Ohio General Assembly, is a reasonable package of reforms designed to address Ohio's solvency problem. The bill offers a balanced combination of unemployment tax increases, benefit modifications and integrity provisions that together will improve solvency.

For example, HB 394 includes a temporary increase in employers' state unemployment taxable wage base, from \$9,000 to \$11,000, and links the employer tax rate to whether the state has a "minimum safe level" of reserves in its trust fund.

HB 394 also modifies the number of potential weeks of unemployment compensation from the current range of 20 to 26 weeks to a sliding scale of 12 to 20 weeks, based on the state's unemployment rate. For example, in times of high unemployment, the maximum number of weeks will be as high as 20. Most claimants under current law do not claim the full 20-26 weeks. Over the last five years, the "benefit exhaustion rate" for claimants in Ohio – that is, the percentage of claimants who use the maximum number of weeks available for unemployment compensation – has ranged from a high of 49 percent in 2010 to a low of 28 percent in 2015.

The bill also temporarily freezes maximum weekly benefit amounts at the current level – but only until the state trust fund becomes solvent. Even when capped at the current maximum (without dependency provisions that provide additional benefits for workers with dependents, which are uncommon among states), Ohio's current maximum weekly benefit amount is higher than that of Michigan, Indiana and Kentucky.

These and additional HB 394 reforms are consistent with other states that have undertaken necessary efforts to address unemployment trust fund solvency concerns – and consistent with states with which Ohio competes for investment and jobs.

Ohio's goal must be nothing less than making the state's trust fund solvent before the next recession. Failure to do so is a risk Ohio cannot afford to make. Inaction will put Ohio's employers, workers and economy at risk.

Enactment of HB 394 will address the current insolvency of Ohio's Unemployment Insurance Trust Fund. The proposed reforms will improve alignment of benefit payout and contribution revenues, and will help build a trust fund balance sufficient to avoid triggering automatic federal tax increases that have significantly increased unemployment costs for Ohio employers since 2008.

In its current state, Ohio's unemployment insurance system is not only insolvent – it's a deterrent to job creation and retention. HB 394 is a prudent and long overdue response to a clear need for reform.

# # #

*Eric Burkland is president of The Ohio Manufacturers' Association.*

Chairman of the Board  
**WILLIAM E. SOPKO**  
President, William Sopko & Sons Co., Inc.

President  
**ERIC L. BURKLAND**



November 18, 2015

The Honorable Cliff Rosenberger, Speaker of the House  
Ohio House of Representatives  
77 South High Street  
14th Floor  
Columbus OH 43215

Dear Representative Rosenberger:

Last week OMA president Eric Burkland sent you a letter together with a policy primer and an executive summary on the case for unemployment insurance reform in Ohio. His message: Ohio's unemployment insurance (UI) system is in a state of crisis.

Also last week, Representative Barbara Sears introduced House Bill 394 to reform Ohio's UI law and address the solvency of the Ohio Unemployment Insurance Trust Fund.

HB 394 includes a number of unemployment tax, benefit and integrity provisions that taken together will improve the solvency of the fund and build a significant positive balance over time sufficient to avoid the state being subject to increased federal provisions, taxes and penalties.

Today, subject matter expert, Doug Holmes, President of UWC, the national organization serving as the voice of business in unemployment and workers' compensation policy and legislation, testified in the House Insurance Committee on behalf of Ohio business organizations: The Ohio Manufacturers' Association, Ohio Chamber of Commerce, Ohio Farm Bureau, NFIB – Ohio, and The Ohio Council of Retail Merchants.

Mr. Holmes serves as the President of the National Foundation for Unemployment Compensation and Workers' Compensation, a research foundation which publishes annual comparisons of state unemployment and workers' compensation laws. He is the preeminent authority on the subject.

We've attached Mr. Holmes' testimony as well as a bill summary and analysis of HB 394. We ask for your support of HB 394 and respectfully request swift action in order to fix our broken unemployment insurance program and to protect workers and our economy.

We'd be pleased to address your questions.

Sincerely,



**Ryan Augsburger**  
Vice President & Managing Director  
Public Policy Services  
[raugsburger@ohiomfg.com](mailto:raugsburger@ohiomfg.com)  
Direct: (614) 629-6817



**Rob Brundrett**  
Managing Director  
Public Policy Services  
[rbrundrett@ohiomfg.com](mailto:rbrundrett@ohiomfg.com)  
Direct: (614) 629-6814

enclosures

Chairman of the Board  
**WILLIAM E. SOPKO**  
President, William Sopko & Sons Co., Inc.

President  
**ERIC L. BURKLAND**



November 11, 2015

The Honorable Cliff Rosenberger, Speaker of the House  
Ohio House of Representatives  
77 South High Street  
14th Floor  
Columbus OH 43215

Dear Representative Rosenberger:

Ohio's unemployment insurance (UI) system is in a state of crisis. The Ohio Unemployment Insurance Trust Fund, which is funded by employers and pays out benefits to qualifying jobless workers, is insolvent. The benefits the system pays out are substantially out of balance with the tax receipts it takes in to fund it.

The system is nearly \$775 million in debt to the federal government – money it borrowed to keep paying benefits during and after the Great Recession of 2008. As a result, Ohio's system is dangerously unstable and a deterrent to economic development. Reforms are urgently needed to update and strengthen Ohio's UI program for the benefit of Ohio's employers, employees and economy.

We've attached a policy primer, and an executive summary, on the case for unemployment insurance reform in Ohio. We hope you will agree that it is time to act to fix our broken unemployment insurance program to protect workers and our economy in anticipation of any future recession.

I'd be happy to answer questions you have. Contact me at [eburkland@ohiomfg.com](mailto:eburkland@ohiomfg.com) or (614) 224-5111.

Sincerely,

A handwritten signature in blue ink that reads "Eric L. Burkland".

Eric L. Burkland

## Human Resources

### OMA Says "No" to PBGC Premium Increases

The OMA joined with more than 100 organizations in a letter urging Congress to oppose any further increases in premiums paid to the Pension Benefit Guaranty Corporation (PBGC) by sponsors of single-employer defined benefit plans, noting increases would "only add unneeded uncertainty for employers, stifle job creation, and encourage sponsors to exit the defined benefit pension system."

The groups wrote: "The premium increases included in the budget deal recently enacted by Congress come on top of nearly \$17 billion in premium increases already imposed over the last three years. Prior to this year's increases, Congress had already more than tripled the flat rate premium from \$19 per participant to \$64 per participant. Such premiums will rise another 25 percent to \$80 a participant under the current budget deal. Under prior increases, the variable rate premium had also tripled from \$9 per \$1,000 of underfunding to \$30 per \$1,000 of underfunding and now will increase another 36 percent to \$41 per participant as a result of the recent budget deal." 11/17/2015

### Illinois Goes to (Medical) Pot

OMA Connections Partner, Dinsmore, updates us about The Compassionate Use of Medical Cannabis Pilot Program Act (Compassionate Use Act) that was signed by Illinois Governor Quinn on August 1, 2013 and went into effect on January 1, 2014. The Compassionate Use Act legalizes the use of medical marijuana in Illinois by qualifying individuals.

On Monday, November 9, 2015, sales of medical cannabis began at eight dispensaries located throughout the state. According to estimates from the Illinois Department of Public Health, there are currently over 3,000 qualifying individuals in Illinois.

Helpfully to Ohio manufacturers thinking through the implications of marijuana legalization, [Dinsmore describes some of the issues](#) with which Illinois employers are grappling. 11/13/2015

### MEP Program Offers Financial Assistance to Hire Interns

The Manufacturing Extension Partnership (MEP) Internship Program makes it easier for manufacturing companies to offer high-quality internships to local high school students. Internships are a great way to expose students to potential careers, give them

hands-on industry experience and recruit future employees.

Check out OH!Manufacturing's blog, [Today's Students are Tomorrow's Future: MEP Internship Program Returns](#), to learn more about this program and how to apply. 11/19/2015

### RSM Manufacturing & Distribution Executive Summit Nov. 18, Columbus

The 2015 RSM (formerly McGladrey) Manufacturing & Distribution Executive Summit - Columbus, on Wednesday, November 18, will feature:

- Highlights from RSM's 2015 Manufacturing & Distribution Monitor survey
- Keynote speaker, Eugenio Aleman, Senior Economist, Wells Fargo Bank
- And panelists Bob Grote, CEO, Grote Company; Jeffrey Wahl, Global Corporate Partner, Squire Patton Boggs, and Mukesh Patel, International Tax, RSM

[Register here!](#) 11/9/2015

### OMA Webinars to Discuss Marijuana Issues for Employers

Ohio just dodged the marijuana legalization bullet, but already pot proponents are planning their next legalization push, and the General Assembly may undertake a medicinal marijuana proposal.

To help you understand workplace policies and practices you can implement now, OMA will offer a webinar on two dates, [November 12](#) and [November 17](#) (click for details), that will help participants:

- Understand who is doing what to legalize pot in Ohio;
- Learn about workplace issues in other states with legalized marijuana;
- Identify ways to maximize workplace policies and safety now so that you're ready if and when marijuana legalization is passed by Ohio voters. 11/5/2015

### Ohio Minimum Wage Increase May be Heading to the Ballot

You may be seeing signature collectors walking the streets of Ohio again. Ohio's [Ballot Board](#) certified a [proposed Constitutional amendment](#) that would raise Ohio's minimum wage. Supporters need roughly 306,000 signatures to place the issue on the ballot in 2016.

The amendment would increase the minimum wage for non-tipped workers to \$10 an hour on January 1, 2017, with 50 cent increments each year to \$12 an hour by 2021. Post 2021 it would be adjusted annually for inflation. Tipped employees would receive \$6 an hour beginning January 1, 2017. 11/5/2015

### **Manufacturing Industry Retirement Plan Benchmarking Data**

OMA Connections Partner, [Saling, Simms Associates](#), an independent registered investment advisor, suggested members might be interested in the following industry benchmarking data from a survey conducted by Franklin Templeton Investments: [Manufacturing: Industrial Products](#) and [Manufacturing: Consumer Products](#). 11/5/2015

### **Advice for Holiday Party Planners**

It won't be long before we're planning holiday parties. OMA Connections Partner, Working Partners®, has some tips on whether or not to serve alcohol and advice to limit company liability if you do. [Read about it here](#). 11/5/2015

### **EPA, OSHA, NLRB: Next WC?**

Some federal Democratic lawmakers are asking the Obama administration to do for workers' compensation what it has done with the EPA, OSHA and NLRB: create broad federal regulatory authority without any statutory authority.

The lawmakers seek [federal oversight and regulation](#) of state workers' compensation programs. They claim, in the absence of any appropriate data and analysis, that the states, when they reform their workers' comp systems, are dumping costs onto the federal Social Security Disability Insurance (SSDI) trust fund (which is insolvent).

So, the folks that bankrupted the SSDI trust fund now want to do their magic on the state workers' comp systems. 10/26/2015

### **IRS Issues Limits for 2016 Retirements Plans**

OMA Connections Partner, Dinsmore, reported that on October 21, 2015, the Internal Revenue Service issued cost of living adjustments to various limits applicable to qualified retirement plans and individual retirement accounts for the 2016 year.

In general, the pension plan limitations will not change for 2016 because the increase in the cost-of-living

index did not meet the statutory thresholds that trigger their adjustment.

[Here is a comparison](#) of selected limits for plan years 2014, 2015, and 2016. 10/28/2015

### **Resources for Issue 3, Marijuana & the Workplace**

What might passage of marijuana laws mean to your business? Whether it's Issue 3 in 2015 or other legislative efforts that may come next year, is your company ready to address the changing legal landscape? Are there actions you can take now to protect your business, regardless of the Issue 3 outcome? Here are resources to support the concerns and questions you have:

OMA Connections Partner, Working Partners®, has mounted an [Issue 3 Resource Center](#) that contains five 90-second videos and articles for use by you and your employees. These materials were paid for in part by the Ohio Governor's Office under the Business Impact Zone.

OMA counsel, Bricker & Eckler LLP, has established an [Ohio Marijuana Initiative Resource Center](#).

And, OMA will offer a webinar on two dates, [November 12](#) and [November 17](#) (click for details), that will help participants:

- Understand what the Issue 3 Constitutional amendment provides for in terms of marijuana legalization and the timetable for potential implementation;
- Understand how the Ohio Issue 3 Constitutional amendment differs from federal law and from other states' laws;
- Learn about workplace issues in other states with legalized marijuana;
- Identify ways to maximize workplace policies and safety now so that you're ready if and when marijuana legalization is passed by Ohio voters. 10/13/2015

### **Autism Mandate Bill Introduced**

Last week Reps. [Cheryl Grossman](#) (R-Grove City) and [Louis Terhar](#) (R-Cincinnati) introduced [HB 350](#), which would mandate coverage of autism treatment in health insurance. Under a directive from Governor Kasich several years ago, the Essential Health Benefits package for plans in Ohio are currently required to provide autism coverage. There is some question as to how this new bill will impact the governor's previous directive. 10/8/2015

## Technical Training Opportunity for Central Ohio Employers

In partnership with local manufacturers, Columbus State Community College (CSCC) has developed a new training program of non-credit courses in a variety of electrical and mechanical systems and processes. The program is housed in the Integrated Systems Technology lab of the CSCC Engineering Department. Companies can send as few as one student for valuable training.

An informational briefing on the offerings is planned for Friday, Oct 30 at CSCC. Learn [more here](#) or contact [Gary Walzer](#) of OH!Manufacturing. 10/8/2015

## No Increase in Ohio Minimum Wage in 2016

Ohio's minimum wage will remain flat for 2016 at \$8.10 per hour for non-tipped employees (and \$4.05 per hour for tipped employees). The minimum wage applies to employees of businesses with annual gross receipts of at least \$297,000 per year.

The state minimum wage is tied to the federal Consumer Price Index for urban wage earners and clerical workers for the 12 months before September. That index showed a decline of 0.3 percent from Sept. 1, 2014, to Aug. 31, 2015.

For employees at companies with annual receipts of \$297,000 or less (and for 14- and 15-year-olds), the minimum wage is \$7.25 per hour. Those hourly wages are set by Congress. 9/28/2015

## Another Health Care Mandate

Bipartisan legislation has been introduced to put another mandate into our health care system. [SB 135](#), introduced by Sen. Shannon Jones (R-Cincinnati) and Sen. Capri Cafaro (D-Youngstown), would cap the amount of co-pays on specialty drugs.

The bill prohibits health plan issuers from imposing cost sharing for specialty drugs of more than \$150 for a one-month supply. A specialty drug is defined, among other things, as: a drug that is prescribed for an individual with a complex or chronic medical condition or a rare medical condition; a drug that costs \$600 or more for up to a 30-day supply; and, a drug that is not typically stocked at retail pharmacies.

The legislation apparently assumes there is such a thing as a free lunch. The OMA opposes SB 135. 9/24/2015

## Workforce Training Money Available: First Come, First Served

More than 122,000 Ohio employees have already been trained through the Ohio Incumbent Workforce Training Voucher Program, and now that number will increase because round four is right around the corner. Online applications will be available beginning September 28, 2015.

Training in the following high-demand fields is eligible: Advanced Manufacturing, Aerospace and Aviation, Automotive, Back Office, BioHealth, Corporate Headquarters, Energy, Financial Services, Food Processing, Information Technology and Services, Logistics, Polymers and Chemicals, and Research and Development. Training opportunities include, but are not limited to, operational skills training, certification processes and equipment training. Training can occur at the employer's facility, at provider's training facility or at a third-party site.

The Ohio Development Services Agency will reimburse qualifying employers up to 50% of eligible training costs, up to \$4,000 per employee, after 1) the employer pays the full cost of the training, and 2) the employee successfully completes the training. The maximum amount an employer may qualify for in a fiscal year is \$100,000.

Employers can begin the online process on September 28, 2015 and will have more than two weeks to gather the necessary information to complete their applications. The online applications will be accepted on a first-come, first-served basis and can be submitted beginning at 10:00 a.m. on October 14, 2015.

[Here's more information](#) about the Ohio Incumbent Workforce Training Voucher Program. For additional assistance, contact [Shannon Vanderpool](#) at (614) 644-8560 or [Jennifer Spohr](#) at (614) 466-4184. 9/14/2015

## Paid Sick Leave Mandate on Federal Contractors

This week President Obama signed an [Executive Order](#) that mandates that all federal contractors, subcontractors and lower-tiered subcontractors provide "one hour of paid sick time for every 30 hours worked." The paid sick leave may be used for illness or for other reasons similar to those in the Family and Medical Leave Act (FMLA). The sick time may be carried over to the next year and will impact approximately 300,000 workers.

This initiative is nearly identical as the "The Healthy Families Act," which, after failing last year, has been reintroduced in both the House and the Senate by

Senator Patty Murray (D-WA) and Congresswoman Rosa DeLauro (D-CT).

Here's an [analysis of the measure](#) from OMA Connections Partner, Roetzel.

According to Joe Trauger, Vice President of Human Resources Policy, the National Association of Manufacturing, these bills have little to no chance of moving, so the Administration is giving the proposal life through an Executive Order levied on federal contractors.

The Department of Labor will issue regulations by September 30, 2016 to be effective by January 1, 2017. *9/9/2015*

### **NAM Files Concerns on Overtime Pay Rules**

Last week the National Association of Manufacturers (NAM) [filed comments](#) with the Department of Labor (DOL) regarding its proposed changes to the rules governing overtime pay under the Fair Labor Standards Act (FLSA).

Under the FLSA, if an employee works more than 40 hours a week, he/she is entitled to overtime pay. There is a two-part test in order to exempt an employee from receiving overtime pay. First, the employee has to earn more than a certain amount per week/year. Second, he/she has to hold a position that falls within what is known as a "white collar" exemption, where the employee performs duties that are executive, administrative, or professional in nature. This is known as the "duties test." The Obama Administration's proposal seeks to increase the salary threshold from \$455/week (\$23,660 per year) to \$970/week (\$50,440 per year).

The NAM urges the DOL to withdraw the proposed rule in part because "the proposed increase to the minimum salary threshold...represents an extreme upward departure from historical levels through the 77-year history of the FLSA."

NAM highlighted these additional concerns:

- The proposed rule fails to account for the extreme effect the proposed salary threshold will have in different regions of the country.
- The proposed rule fails to address the full impact on employers, particularly small businesses.
- The contemplated annual revisions to the salary threshold are contrary to the Fair Labor Standards Act and barred by the Administrative Procedure Act.

- The proposed rule will: not raise the earnings of the workers it purports to help; damage employee morale; increase, not decrease litigation; and
- The proposed rule does not support any revision to the primary duties standard or to the concurrent duties concept. *9/4/2015*

### **Ohio Marijuana Initiative Resource Center for Employers is Up**

The ResponsibleOhio political action committee has filed a mandamus action, asking the Supreme Court to change the state Ballot Board's wording of its initiative to legalize recreational and medical marijuana (Issue 3). If approved by voters, Issue 3 would not only legalize marijuana use but would permanently constitutionalize a growers' monopoly for the 10 backers of the measure.

Competing ballot Issue 2 seeks to block passage of Issue 3, on the basis that Ohio's Constitution should not grant monopolies. The Ohio Manufacturers' Association board of directors voted in support of Issue 2.

For more information about the lawsuit, the day-to-day developments leading up to the November election, and how they affect employers, OMA counsel, Bricker & Eckler, has established this [Ohio Marijuana Initiative Resource Center](#). *9/1/2015*

### **NLRB OKs Employee E-Signatures on Union Representation Petitions**

This week, National Labor Relations Board General Counsel, Richard Griffin, issued a [memorandum](#), allowing for the collection and submission of electronic signatures for union representation petitions. Per Joe Trauger, Vice President of Human Resource Policy for the National Association of Manufacturers (NAM), "This will undoubtedly make it easier for unions to collect signatures for representation petitions."

Trauger notes these provisions:

- The employee has electronically signed a document purporting to state the employee's views regarding union representation; and,
- The petitioner has accurately transmitted the document to the Regional Director.
- As is with handwritten signatures, electronic signatures will be presumed valid, unless evidence is presented questioning the signatures authenticity, which could lead to the Regional Director opening up an investigation.

And, electronic signatures must contain the signer's name, but will also include the signer's email, or other known contact information, the signer's telephone number, the language to which the signer agreed, the date the signature was submitted and the name of the employer. Submissions with private information, such as social security numbers, or dates of birth will be returned to the petitioner.

This provision is effective immediately, but handwritten signatures may still be submitted. *9/3/2015*

## Human Resources, Health Care & Employment Law Legislation

Prepared by: The Ohio Manufacturers' Association

Report created on December 1, 2015

- 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. 7/1/15  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-64>
- HB350**      **AUTISM TREATMENT-COVERAGE** (GROSSMAN C, TERHAR L) To mandate coverage of autism treatment.  
*Current Status:* 10/6/2015 - Referred to Committee House Government Accountability and Oversight  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-350>
- HB355**      **EMPLOYEE DEFINITION** (RETFERFORD W) To create a generally uniform definition of employee for specified labor laws and to prohibit employee misclassification under those laws.  
*Current Status:* 11/4/2015 - House State Government, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-355>
- HB368**      **HEALTH INSURANCE LIMITS-EXCLUSIONS** (SEARS B) To make changes to the health coverage benefit limits and coverage exclusions for life and health insurance guaranty associations.  
*Current Status:* 11/4/2015 - House Insurance, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-368>
- SB25**      **MINIMUM WAGE** (YUKO K) To raise the minimum wage; to raise the salary threshold above which certain employees are exempt from the overtime law; and to create a uniform standard to determine whether an individual performing services for an employer is an employee of that employer.  
*Current Status:* 6/24/2015 - Senate Transportation, Commerce and Labor, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-25>
- SB137**      **OHIO HEALTH CARE PLAN** (SKINDELL M, TAVARES C) To establish and operate the Ohio Health Care Plan to provide universal health care coverage to all Ohio residents.  
*Current Status:* 4/14/2015 - Referred to Committee Senate Insurance  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-137>
- SB180**      **ANTI DISCRIMINATION-EMPLOYMENT** (UECKER J) To prohibit an employer from discharging or otherwise discriminating against a person who exercises a constitutional or statutory right within the person's private real property or motor vehicle.  
*Current Status:* 10/7/2015 - Senate Civil Justice, (Second Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-180>



**TO: OMA Government Affairs Committee**  
**FROM: Ryan Augsburger / Rob Brundrett**  
**RE: Safety and Workers' Compensation Report**  
**DATE: December 2, 2015**

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### **Overview**

The General Assembly recently returned from their summer hiatus. Both the House and the Senate have begun hearings on legislation for the fall term. There are several workers' comp bills that will be receiving attention over the next several months.

The BWC has remained engaged with providing information and expertise on a variety of bills. The information has proven very helpful as the General Assembly continues to debate issues such as PTSD, presumptive cancer, and subrogation.

### **Legislation and Rules**

#### **Senate Bill 5 – mental / mental**

State Senators Tom Patton (R-Strongsville) and Edna Brown (D-Toledo) have introduced Senate Bill 5. The bill would allow emergency first responders to receive workers' compensation benefits for PTSD even if they do not have an accompanying physical work injury. This would go against how Ohio's workers' comp system has historically operated.

"Mental/mental," as the provision is called, would go against the workers' compensation principle that benefits must be tied to a compensable physical illness or injury. The measure would increase complexity and cost for public employers and allow certain employees to receive benefits not available to others. It also would be a terrible precedent facing private sector employers.

This would be a major change for public employers and possibly private employers in the future. The Senate passed a similar measure three times last year, only to be rebuffed by the House on each occasion.

The Senate heard powerful testimony from Administrator Buehrer but nonetheless passed the bill out of committee with only one no vote (Uecker). However the bill was referred to Senate Finance because of the price tag and has had several hearings, and one interested party meeting.

The Senate Finance Committee voted the bill from committee only to have it rereferred. A second IP meeting was conducting with the Senate letting the stakeholders know it was their intention to move the bill off the floor.

#### **Senate Bill 27 / House Bill 292 – firefighter cancer**

Senator Tom Patton (R-Strongsville) and Representative Christina Hagan have introduced companion bills that would assume a firefighter with certain types of defined cancers contracted those cancers within their working conditions. The bills are limited strictly to firefighters.

#### Senate Bill 149 – Loss of use

To make an individual who has lost the use of a body part due to a brain injury or spinal cord injury eligible for partial disability and permanent total disability compensation under the Workers' Compensation Law. The minority sponsored bill has not had a hearing and is not expected to move.

#### House Bill 205 – Private Insurance

Rep. Mike Henne introduced HB 205 which would allow employers with more than 1,000 employees, as well as workers' compensation groups managed by third party administrators to purchase workers' compensation coverage in the private market. The bill is not expected to move, but is expected to have several hearings.

A sub bill was recently introduced stripping the bill of its previous contents. The new version removes the provision requiring 500 employees before an employer can apply for self insurance.

#### House Bill 206 – Industrial Commission Statistics

Rep. Henne introduced HB 206 which requires the Industrial Commission to compile and maintain statistics on workers' compensation hearing decisions and hearing officers. The IC is adamant this is problematic and is searching for allies to fight Rep. Henne on the bill.

#### House Bill 207 – Subrogation

Reps. Henne and Robert McColley introduced HB 207 which would insulate employers from the cost of a claim during litigation when there is third party involvement. The bill had proponent testimony this week. The OMA supports the bill. The bill is expected to be voted out of the House in the near future.

#### House Bill 355 – Employee Misclassification

Rep. Wes Retherford (R – Hamilton) has introduced a bill, HB 355, that would turn the Bureau of Workers' Compensation (BWC) into an agency that would police businesses in their classifications of employees and independent contractors.

Under the bill, the BWC would be authorized to enter and inspect all of the offices and job sites maintained by an employer who is the subject of a complaint that an employer is misclassifying an employee. The BWC would be authorized to issue stop work orders and fines.

For many many years, organized labor has attempted to create a de facto Department of Labor at the state level. That's what this one is after. It is a really bad idea.

### **BWC Agency Notes**

#### Successor Liability

The BWC recently created an AC-4 form for companies to use when purchasing other businesses. The form allows the purchaser to view the workers' comp liabilities attached to the company that is subject of the acquisition.

The BWC is also looking at ways to mitigate experience rates, when good performing companies purchase poor performing companies.



June 17, 2015

The Honorable Keith Faber  
President, Ohio Senate  
Ohio Statehouse  
Columbus, Ohio 43215

The Honorable Scott Oelslager  
Chair, Senate Finance Committee  
Ohio Statehouse  
Columbus, Ohio 43215

Dear President Faber and Chairman Oelslager:

The above organizations, on behalf of our members, write in opposition to sections 4123.01 and 4123.86 in the Main Operating Budget FY2016-FY2017 (Sub. H.B. 64) which would allow peace officers, firefighters, and emergency medical workers to become eligible for workers' compensation benefits for the condition of post-traumatic stress disorder (PTSD) without the requirement that a compensable physical injury must precede and cause the psychological condition.

This initiative is a drastic departure from current statute which prohibits workers' compensation claims for purely mental conditions. Given the proposed changes, we have multiple concerns, which include, the costs forced upon the Bureau of Workers' Compensation (BWC) and employers, as well as, the propensity for various fairness and equal protection arguments.

First, we are concerned about the costs to the public employers, and ultimately, all employers. When a fundamental parameter of the workers' compensation system, such as the physical injury requirement is compromised, the potential for future liabilities to the program are endless, and the result will be increased workers' compensation costs for both public and private employers. The BWC testified before multiple Senate committees that this bill could nearly double public employer premiums. These increased costs could affect our public employers' abilities to provide essential public safety functions.

Next, the language of the proposed bill leaves employers vulnerable to equal protections arguments. We are concerned about the precedent of including only a narrow subset of workers, and how this could eventually be expanded to Ohio's workforce as a whole. If we erode the physical injury requirement for peace officers, firefighters, and emergency medical workers, it will be difficult to justify not including other professionals who seek equal treatment.

We are also concerned about singling out PTSD as the only compensable psychological condition. Selecting one psychological condition to the exclusion of all others—much like selecting only a few occupations—will undoubtedly provoke equal protection challenges in Ohio's courts.

We believe this is not the proper time for the proposed change because other avenues exist that offer solutions to this problem without exposing the BWC, and ultimately the business community, to future, uncertain liabilities. Some of these solutions include: the healthcare system, Employee Assistance Programs, or collective bargaining.

For these reasons, the above organizations ask you to remove these sections from the Main Operating Budget. Thank you for your consideration of our concerns.

cc: Ohio Senate  
Ohio House of Representatives



# Ohio Legislative Service Commission

## Bill Analysis

Nick Thomas

### **S.B. 27**

131st General Assembly  
(As Introduced)

**Sens.** Patton, LaRose, Skindell, Hughes, Schiavoni, Tavares

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## **BILL SUMMARY**

- Provides that a firefighter who is disabled as a result of specified types of cancer is presumed for purposes of the laws governing workers' compensation and the Ohio Police and Fire Pension Fund (OP&F) to have incurred the cancer while performing his or her official duties.
- Allows for the presumption created in the bill to be rebutted upon the presentation of competent or affirmative evidence to the contrary.
- Allows, for the purposes of OP&F disability, for the bill's presumption to be rebutted if the cancer was revealed during the firefighter's entrance physical examination.

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## **CONTENT AND OPERATION**

### **Presumption of illness incurred while performing official duties**

The bill creates a presumption that a member of the Ohio Police and Fire Pension Fund (OP&F) who is a member of a fire department and who incurs and is disabled by the following types of cancer incurred the cancer while performing the member's official duties:

- Cancer of the lung, brain, kidney, bladder, rectum, stomach, skin, or prostate;
- Non-Hodgkin's lymphoma;
- Leukemia;

- Multiple myeloma;
- Testicular or colorectal cancer.

Firefighters must have been assigned to at least three years of hazardous duty for the presumption to apply.<sup>1</sup> "Hazardous duty" means duty performed under circumstances in which an accident could result in serious injury or death.<sup>2</sup>

The bill also creates the same presumption for firefighters in the Workers' Compensation Law. The cancers listed above are included in the list of occupational diseases that are compensable under current Law.<sup>3</sup>

### Rebuttal of the presumption

The bill provides that the presumption created by the bill can be rebutted upon the presentation of competent, in the case of the OP&F, or affirmative evidence, in the case of workers' compensation, to the contrary of the presumption.<sup>4</sup> The presumption can also be rebutted if any evidence of the cancer appeared on the physical examination passed by the member upon entry to the fire department.<sup>5</sup> Note, however, that this second avenue of rebuttal applies only to OP&F.

### Application

The bill applies only to applications for disability benefits filed on or after the bill's effective date and to workers' compensation claims arising on or after the bill's effective date.<sup>6</sup>

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## HISTORY

ACTION	DATE
Introduced	02-09-15

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<sup>1</sup> R.C. 742.38(D)(3)(b).

<sup>2</sup> R.C. 742.38(D) and 4123.68(X), by reference to 5 C.F.R. 550.902.

<sup>3</sup> R.C. 4123.68(X), with a conforming change in R.C. 4123.57(D).

<sup>4</sup> R.C. 742.38(D)(3)(b) and 4123.68(X).

<sup>5</sup> R.C. 742.38(D)(3)(b).

<sup>6</sup> Sections 3 and 4 of the bill.





# Ohio Legislative Service Commission

## Bill Analysis

Erika Padgett

### H.B. 292

131st General Assembly  
(As Introduced)

**Reps.** Hagan, Patmon, Bishoff, Hambley, Grossman, Leland, Terhar, Manning, Perales

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### BILL SUMMARY

- Creates a statutory presumption that a firefighter who is disabled as a result of specified types of cancer incurred the cancer while performing his or her official duties, for purposes of the laws governing workers' compensation and Ohio Police and Fire Pension Fund (OP&F) disability.
- Allows for the presumption created in the bill to be rebutted upon the presentation of evidence to the contrary.
- Specifies that in the contest of workers' compensation, the presumption applies to a volunteer firefighter only if the five years of hazardous duty constitutes firefighting duties and not emergency medical services.
- Allows, for the purposes of OP&F disability, for the bill's presumption to be rebutted if the cancer was revealed during the firefighter's entrance physical examination.
- Permits certain firefighter appointing authorities to require a physical examination of any applicant applying on or after the bill's effective date to include screening for the existence of the cancers listed in the bill.
- Requires the appointing authority of certain local entities to develop procedures to determine whether the physical examination of an applicant who applies to become a volunteer firefighter is to include the existence of the cancers listed in the bill.

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## CONTENT AND OPERATION

### Presumption of illness incurred while performing official duties

The bill creates a presumption that a member of the Ohio Police and Fire Pension Fund (OP&F) who is a member of a fire department and who incurs and is disabled by the following types of cancer incurred the cancer while performing the member's official duties:

- Cancer of the breast, bone, lung, brain, kidney, bladder, skin, prostate, scrotum, testicle, cervix, ovary, or uterus;
- Gastrointestinal cancer, including cancers of the anus, colon, bile duct, esophagus, liver, pancreas, peritoneal cavity, rectum, small intestine, and stomach;
- Laryngeal, hypopharyngeal, nasopharyngeal, pharyngeal, or tracheal cancer;
- Hodgkin's or non-Hodgkin's lymphoma;
- Leukemia;
- Multiple myeloma;
- Mesothelioma;
- Soft tissue sarcoma.

Firefighters must have been assigned to at least five years of hazardous duty for the presumption to apply.<sup>1</sup> "Hazardous duty" means duty performed under circumstances in which an accident could result in serious injury or death.<sup>2</sup>

The bill also creates the same presumption for firefighters in the Workers' Compensation Law. The cancers listed above are included in the list of occupational diseases that are compensable under current Law.<sup>3</sup> However, the bill specifies that in the context of workers' compensation, the presumption applies to a volunteer firefighter only if the five years of hazardous duty constitutes firefighting duties and not

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<sup>1</sup> R.C. 742.38(D)(3)(b).

<sup>2</sup> R.C. 742.38(D) and 4123.68(X), by reference to 5 C.F.R. 550.902.

<sup>3</sup> R.C. 4123.68(X), with a conforming change in R.C. 4123.57(D).

emergency medical services (medical services performed by first responders, emergency medical technicians, and paramedics, including services performed before and during transport of a patient).<sup>4</sup>

### **Rebuttal of the presumption**

The bill provides that the presumption created by the bill can be rebutted upon the presentation of competent, in the case of the OP&F, or affirmative evidence, in the case of workers' compensation, to the contrary of the presumption.<sup>5</sup> The presumption can also be rebutted if any evidence of the cancer appeared on the physical examination passed by the member upon entry to the fire department.<sup>6</sup> Note, however, that this second avenue of rebuttal applies only to OP&F.

### **Application**

The presumption created by the bill applies only to applications for disability benefits filed on or after the bill's effective date and to workers' compensation claims arising on or after the bill's effective date.<sup>7</sup>

## **Physical examination to test for certain cancers**

### **Civil service positions**

Ohio's current civil service laws require, before original civil service appointment as a firefighter, an applicant to be at least 18 years of age and pass a physical examination given by a health professional no more than 180 days before appointment.

The bill permits the civil service appointing authority to require a physical examination of any applicant applying on or after the bill's effective date to include screening for the existence of the cancers listed in the bill (see "**Presumption of illness incurred while performing official duties**"). If the applicant passes the physical examination, the examining health professional must certify that the applicant meets the physical requirements necessary for the position.<sup>8</sup> A health professional is a person who holds a certificate or license in Ohio to practice medicine and surgery or

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<sup>4</sup> R.C. 4123.68(X)(2) and R.C. 4765.01, not in the bill.

<sup>5</sup> R.C. 742.38(D)(3)(b) and 4123.68(X).

<sup>6</sup> R.C. 742.38(D)(3)(b).

<sup>7</sup> Sections 3 and 4 of the bill.

<sup>8</sup> R.C. 124.42(B) and (C).



osteopathic medicine and surgery or to practice as a physician assistant, clinical nurse specialist, certified nurse practitioner, or certified nurse-midwife.<sup>9</sup>

### **Local appointing authorities**

The bill establishes similar requirements pertaining to applicants seeking appointment in the fire department of a township or municipal corporation or in a joint fire and ambulance district. These requirements apply to the board of trustees of a joint fire and ambulance district (joint between a township and a municipal corporation or joint between two or more townships or two or more municipal corporations), a board of township trustees, a city fire department, or the legislative authority of a village (collectively referred to as "local appointing authorities").<sup>10</sup>

The bill requires each applicant seeking appointment as a paid or volunteer firefighter by a local appointing authority to undergo a physical examination conducted by a health professional showing that the person meets the physical requirements necessary for the position. For an applicant who applies on or after the bill's effective date, the bill permits a local appointing authority to require the physical examination to include a screening for the cancers listed in the bill. The bill requires the local appointing authority to develop procedures to determine whether the physical examination of an applicant who applies to become a volunteer firefighter is to include the existence of the cancers listed in the bill.<sup>11</sup>

The bill also specifies that if a municipal corporation has annexed township property and is offering employment to firefighters, the municipal corporation may require the physical examination of an applicant who applies after the bill's effective date to include screening for the cancers listed in the bill.<sup>12</sup>

Current law only requires physical examination of an applicant seeking appointment as a volunteer firefighter in a township or a village.<sup>13</sup>

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<sup>9</sup> R.C. 124.42(A), 505.375(G)(3), 505.38(A), 737.08(A), and 737.22(D).

<sup>10</sup> R.C. Chapters 505. and 737.

<sup>11</sup> R.C. 505.375(D), 505.38(D) and (E), 737.08(E), and 737.22(C), with conforming changes in R.C. 505.374 and 4766.09.

<sup>12</sup> R.C. 709.012(B)(2).

<sup>13</sup> R.C. 505.38(D)(1) and 737.22(C)(1).



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## HISTORY

ACTION

DATE

Introduced

07-22-15

H0292-I-131.docx/ks





**BEFORE THE INSURANCE COMMITTEE  
OF THE HOUSE OF REPRESENTATIVES  
REPRESENTATIVE BOB HACKETT, CHAIRMAN**

**TESTIMONY  
OF  
LARRY HOLMES  
FORT RECOVERY INDUSTRIES  
OMA CHAIRMAN, SAFETY AND WORKERS' COMPENSATION COMMITTEE**

**OCTOBER 6, 2015**

Mr. Chairman and members of the Committee, my name is Larry Holmes. I'm Vice President of Finance at Fort Recovery Industries. Fort Recovery Industries, headquartered in Fort Recovery, Ohio, manufactures superior die cast hardware and components for market-leading manufacturers worldwide. I also serve as the Chairman of The Ohio Manufacturers' Association's (OMA) Safety and Workers' Compensation Committee. I'm testifying today on behalf of the OMA on House Bill 207. The OMA was created in 1910 to advocate for Ohio's manufacturers; today, it has 1400 members. Its mission is to protect and grow Ohio manufacturing.

First I would like to thank Representatives Henne and McColley for introducing this piece of legislation. The issue of subrogation in workers' compensation has long been an issue of concern for employers. House Bill 207 provides a common sense approach to address a concern employers have regarding motor vehicle accidents and their claims experience rating and costs.

House Bill 207 would allow an employer to request that a worker's comp claim resulting from a motor vehicle accident in which the employer was not at fault, and which is likely to be subrogated, to be paid from the Bureau of Workers' Compensation (BWC) surplus fund and not be charged to the employer's experience.

Allowing the claim to initially be charged to the surplus fund will relieve negative consequences that employers face in these situations today. For example, the subrogation process can take a very long time, during which time the claim costs affect the employer's experience rating and premium, and further, in some cases, recoveries are less than the claim costs assigned. In the current system when these claims are charged to an employer's experience, it can often lead to an employer being removed from its group rating program and its premiums increase significantly. In the extreme, the possibility of closing shop is real due to increases in workers' compensation costs.

As drafted, the narrow tailoring of House Bill 207 is a positive step to create fair treatment of motor vehicle related claim costs where the employer is not at fault. This legislation has no ill affect whatsoever on the systems that ensure that Ohio's workers receive the best available treatment to get them healthy and back to work.

Thank you. I'll be pleased to attempt to answer any questions you may have.



# Ohio Legislative Service Commission

## Bill Analysis

Kelly Bomba

### H.B. 355

131st General Assembly  
(As Introduced)

**Reps.** Retherford, Maag, Young, Blessing, Henne, Cera, S. O'Brien

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## BILL SUMMARY

- Requires the Administrator of Workers' Compensation to adopt rules, consistent with the common law rules used by the Internal Revenue Service, to establish a test for determining who is an "employee" for purposes of the Workers' Compensation Law, the Unemployment Compensation Law, and the Income Tax Law.
- Prohibits an employer from negligently failing to consider an individual who is an employee under the rules adopted by the Administrator under the bill to be an employee for purposes of those laws.
- Creates civil penalties for an employer who violates the bill's employee misclassification prohibition and criminal penalties if the employer violates the prohibition again within a five-year period.
- Requires the Administrator to administer and enforce the bill's provisions.
- Requires the Administrator to issue a stop work order, requiring cessation of all business operations, against an employer if, after an investigation, the Administrator determines that reasonable evidence exists that the employer violated the employee misclassification prohibition.
- Creates civil penalties for an employer who violates a stop work order.
- Makes a determination by the Administrator that an employer has misclassified an employee as an independent contractor binding on the Director of Job and Family Services and the Tax Commissioner unless the individual is otherwise not considered an employee under the applicable law.

- Creates the Employee Classification Fund, and requires the Administrator to use the Fund to administer and enforce the bill.

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## CONTENT AND OPERATION

### Definition of "employee"

Currently, the Workers' Compensation Law, the Unemployment Compensation Law, and the Income Tax Law have a different or no definition of "employee" for purposes of the law and have different tests to determine whether an individual performing services for another is covered by that law (all of the tests generally examine who directs and controls the services performed to determine employee status). The bill requires the Administrator of Workers' Compensation to adopt rules, consistent with the common law rules for determining an employer-employee relationship used by the Internal Revenue Service (IRS), to establish a test for determining whether an individual is an employee or independent contractor for purposes of those laws.<sup>1</sup>

#### IRS test

The IRS uses what is known as the "common law test" to determine independent contractor status (this test was formerly known as the 20-factor test, but the IRS consolidated some of the factors). This 11-factor test is used for federal income tax and federal unemployment tax purposes.<sup>2</sup> The test is divided into three categories: behavioral control, financial control, and the type of relationship of the parties.

**Behavioral control** – this category determines whether the business has a right to direct and control how a worker does the task for which the worker is hired. Two factors are included in this category:

(1) Instructions that the business gives to the worker – an employee is generally subject to the business' instructions about when, where, and how to work.

(2) Training that the business gives to the worker – an employee may be trained to perform services in a particular manner, while an independent contractor ordinarily uses the contractor's own methods.

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<sup>1</sup> R.C. 4175.01.

<sup>2</sup> See U.S. Department of Labor, Conformity Requirements for State UC Laws, [http://workforcesecurity.doleta.gov/unemploy/pdf/uilaws\\_coverage.pdf](http://workforcesecurity.doleta.gov/unemploy/pdf/uilaws_coverage.pdf) (November 1, 2015).



**Financial control** – this category determines whether the business has a right to control the business aspects of the worker's job. This category contains the following five factors:

(1) The extent to which the worker has unreimbursed business expenses – an independent contractor is more likely to have unreimbursed expenses.

(2) The extent of the worker's investment – an independent contractor often invests in the contractor's own equipment, facilities, and tools to perform the services, rather than that equipment, facility, or tools being provided by the employer.

(3) The extent to which the worker makes the worker's services available to the relevant market – an independent contractor is free to seek out further business opportunities.

(4) How the business pays the worker – an independent contractor is generally paid a flat fee for the contractor's services, while an employee is paid a set wage over a period of time (i.e., hourly, monthly, annually).

(5) The extent to which the worker can realize a profit or loss – an independent contractor can make a profit or loss.

**Type of relationship between the worker and employer** – this category consists of the following four factors:

(1) A written contract exists describing the relationship the parties intend to create.

(2) Whether the business provides the worker with employee-type benefits such as insurance, a pension plan, vacation pay, or sick pay.

(3) Whether the relationship is permanent.

(4) The extent to which services performed by the worker are a key aspect of the company's regular business.<sup>3</sup>

### **Current law tests**

Currently, the following tests are used to determine whether an individual is an employee or independent contractor for purposes of the following laws:

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<sup>3</sup> U.S. Internal Revenue Service, Publication 15-A (2015) Employer's Supplemental Tax Guide, [www.irs.gov/pub/irs-pdf/p15a.pdf](http://www.irs.gov/pub/irs-pdf/p15a.pdf) (November 1, 2015).

(1) For the Income Tax Law and the Unemployment Compensation Law, variations of the common law test;<sup>4</sup>

(2) For the Workers' Compensation Law, whether the employer reserves the right to control the means and manner of doing the work.<sup>5</sup>

All of the tests used largely base the determination of independent contractor status on how much direction and control the "employer" has over the individual performing the services.

## **Changes to the definition of "employee" under specified labor laws**

### **Unemployment Compensation Law**

Under the bill, for purposes of the Unemployment Compensation Law, "employee" has the same meaning as described above, unless the services performed by the individual do not constitute "employment" as defined in the Unemployment Compensation Law.<sup>6</sup> "Employee" is not currently statutorily defined for purposes of the Unemployment Compensation Law. The Unemployment Compensation Law, however, does define "employment" for purposes of that law. Continuing law generally defines "employment" as service performed by an individual for remuneration under any contract of hire including service performed by a corporate officer, without regard to whether the service is executive, managerial, or manual in nature, and without regard to whether the officer is a stockholder or a member of the board of directors of the corporation, unless it is shown to the satisfaction of the Director of Job and Family Services (the JFS Director administers the Unemployment Compensation Law) that the individual has been and will continue to be free from direction or control over the performance of the service, both under a contract of service and in fact. The bill removes a provision that requires the JFS Director to adopt rules to define "direction or control" and instead requires the JFS Director to base any determination that an individual is free from direction or control upon a determination made by the Administrator pursuant to the bill.<sup>7</sup>

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<sup>4</sup> See U.S. Department of Labor, Conformity Requirements for State UC Laws, [http://workforsecurity.doleta.gov/unemploy/pdf/uilaws\\_coverage.pdf](http://workforsecurity.doleta.gov/unemploy/pdf/uilaws_coverage.pdf) (accessed November 1, 2015); Ohio Department of Taxation, Frequently Asked Questions, <http://www.tax.ohio.gov/faq.aspx> (accessed November 1, 2015); R.C. 4141.01; and Ohio Administrative Code 4141-3-05.

<sup>5</sup> *Gillum v. Industrial Comm.*, 141 Ohio St. 373, 374 (1943). See also *Bostic v. Connor*, 37 Ohio St.3d 144 (1988).

<sup>6</sup> R.C. 4141.01(EE).

<sup>7</sup> R.C. 4141.01(B)(1).



Under continuing law, the Unemployment Compensation Law lists specific services that are included and excluded in the definition of "employment." The bill removes the current law test to determine whether construction services provided by an individual are considered employment, under which the services are employment if ten out of 20 criteria are satisfied.<sup>8</sup>

### **Workers' Compensation Law**

Ohio's Workers' Compensation Law covers most employees in the public and private sector. Volunteer police officers and firefighters are currently covered (generally volunteers are not covered), and off-duty police, fire, and first responders are covered under certain circumstances. The bill largely replaces the definition of employee under the Workers' Compensation Law with the bill's definition but maintains coverage for the off-duty police, fire, and other first responders. However, because the bill requires factors related to financial control in the test for whether an individual is an employee, it appears that the bill removes coverage for volunteer police officers and firefighters.<sup>9</sup> Under continuing law, the state or a political subdivision may contract with the Bureau of Workers' Compensation for coverage of volunteer police officers and firefighters who would not otherwise be covered.<sup>10</sup>

The bill retains the current law exceptions to the definition of "employee." However, because of the bill's new definition of "employee," it is unclear whether the continuing law exceptions are necessary to exclude certain individuals from the definition of "employee" for workers' compensation purposes, such as an individual incorporated as a corporation. But by retaining the exceptions, the bill retains the ability of such an individual to elect to obtain coverage under the Workers' Compensation Law if the individual is otherwise able to do so.

Similar to the Unemployment Compensation Law, the bill also eliminates the current law requirement that every individual who performs labor or provides services pursuant to a construction contract is an "employee" if at least ten of 20 specified criteria apply.<sup>11</sup>

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<sup>8</sup> R.C. 4141.01(B)(2)(k).

<sup>9</sup> R.C. 4121.01 and 4123.01(A), with conforming changes in R.C. 1349.61 and 4123.026.

<sup>10</sup> R.C. 4123.03, not in the bill.

<sup>11</sup> R.C. 4123.01(A).



## **Income Tax Law**

"Employee" is not currently statutorily defined for purposes of the Income Tax Law. The Income Tax Law currently follows the IRS test.<sup>12</sup> The bill specifies that "employee" means an individual who is an employee under the rules adopted by the Administrator pursuant to the bill.<sup>13</sup>

## **Prohibition regarding misclassifying employees**

The bill prohibits an employer from negligently failing to consider an individual who is an employee under the rules adopted by the Administrator to be an employee for purposes of the Workers' Compensation Law, the Unemployment Compensation Law, and the Income Tax Law.<sup>14</sup>

An employer who violates the prohibition is subject to civil penalties from the Administrator (see "**Disciplinary actions**," below). For any subsequent violation of the prohibition within five years after the date the employer previously was assessed a civil penalty for a violation or five years after the date the employer was convicted of or pleaded guilty to a violation, the employer is guilty of specified criminal penalties (see "**Criminal penalties**," below).

## **Enforcement and administration of the misclassification prohibition**

The bill requires the Administrator to enforce the bill's employee misclassification prohibition. The Administrator must adopt reasonable rules in accordance with Ohio's Administrative Procedure Act to implement and administer the bill, including rules to establish an expedited hearing process for an employer against whom a stop work order is issued (see "**Stop work orders**," below).<sup>15</sup>

## **Complaints, investigations, hearings**

The bill allows an individual to file a complaint with the Administrator against an employer if the individual reasonably believes that the employer is in violation of the bill's employee misclassification prohibition. The bill requires the Administrator to conduct an investigation into whether the employer violated the bill's prohibition upon receipt of a complaint.

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<sup>12</sup> Ohio Department of Taxation, Frequently Asked Questions, <http://www.tax.ohio.gov/faq.aspx> (November 1, 2015).

<sup>13</sup> R.C. 5747.01(HH).

<sup>14</sup> R.C. 4175.02.

<sup>15</sup> R.C. 4175.03.



The Administrator may do all of the following in investigating a complaint:

- (1) Enter and inspect, at all reasonable times, all of the offices and job sites maintained by the employer who is the subject of the complaint;
- (2) Examine and copy business records;
- (3) Compel, by subpoena, the attendance and testimony of witnesses and the production of books, payroll, records, papers, and other evidence;
- (4) Administer oaths to witnesses.<sup>16</sup>

If, after an investigation, the Administrator determines that reasonable evidence exists that an employer has violated the bill's employee misclassification prohibition, the bill requires the Administrator to do both of the following:

- (1) Within 72 hours after the determination, issue a stop work order against the employer (see "**Stop work orders**," below);
- (2) Within seven days after the determination, send a written notice to the employer who is the subject of the investigation in the same manner as prescribed in the Administrative Procedure Act for licensees, except that the notice must specify that a hearing will be held and must specify the date, time, and place of the hearing.

The bill requires the Administrator to hold a hearing regarding an alleged violation in the same manner prescribed for an adjudication hearing under the Administrative Procedure Act. The bill specifies that, if an employer who allegedly committed a violation of the bill's employee misclassification prohibition fails to appear for a hearing, the Administrator may make a determination without the employer's appearance or request the court of common pleas of the county where the alleged violation occurred to compel the employer to appear before the Administrator for a hearing.

If the Administrator, after a hearing, determines a violation has occurred, the Administrator must discipline the employer in accordance with the bill (see "**Disciplinary actions**," below). An employer may appeal the Administrator's determination in accordance with the Administrative Procedure Act, but the bill specifies that a stop work order issued under the bill is not subject to suspension by the court during the pendency of that appeal.

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<sup>16</sup> R.C. 4175.04.

The Administrator's determination that an employer has misclassified an employee as an independent contractor is binding on the JFS Director and the Tax Commissioner unless the individual is otherwise not considered to be an employee under the applicable law. However, nothing in the bill limits or otherwise constrains the Administrator's duties and powers under the Workers' Compensation Law, the JFS Director's duties and powers under the Unemployment Compensation Law, or the Tax Commissioner's duties and powers under the Income Tax Law.<sup>17</sup>

### **Disciplinary actions**

If, after a hearing, the Administrator determines that an employer has violated the bill's employee misclassification prohibition, the Administrator is required to do all of the following:

(1) Notify the JFS Director and the Tax Commissioner, each of whom must determine whether the employer's violation results in the employer not complying with the requirements of the Unemployment Compensation Law or the Income Tax Law, as applicable;

(2) Continue to enforce the stop work order issued against the employer in accordance with the bill (see "**Stop work orders**," below);

(3) Assess against the employer a penalty of \$5,000 for each employee the employer misclassified as an independent contractor in violation of the bill's prohibition.

Additionally, the bill allows the Administrator to assess an additional amount against an employer who has previously violated the bill's employee misclassification prohibition.<sup>18</sup>

### **Stop work orders**

The bill requires the Administrator to issue a stop work order, requiring the cessation of all business operations, against an employer if after an investigation the Administrator determines that reasonable evidence exists that an employer has violated the bill's employee misclassification prohibition. A stop work order applies to all worksites in Ohio for which the Administrator determined that reasonable evidence exists that the employer has violated that prohibition. The stop work order takes effect when the order is served upon the employer. However, if the Administrator's

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<sup>17</sup> R.C. 4175.05.

<sup>18</sup> R.C. 4175.06.

determination applies to only one of the employer's worksites, the bill allows the Administrator to serve a stop work order on the particular worksite by posting a copy of the order in a conspicuous location at the worksite. In that case, the stop work order takes effect for the particular worksite upon service at the worksite.

The Administrator must assess a penalty of \$5,000 against an employer for each day that the employer conducts business operations in violation of a stop work order.

The bill limits a stop work order to the work of the employer for whom the Administrator makes a determination as described above, except a stop work order or penalty issued for violating a stop work order applies to any successor corporation or business entity that has one or more of the same principles or officers as the employer against whom the stop work order was issued and is engaged in the same or similar trade or activity as that employer. The bill specifies that it cannot be construed to require any work performed by someone other than the employer or the employer's employees to cease.

A stop work order remains in effect until the Administrator issues an order to release the stop work order. The bill requires the Administrator to issue an order of release upon either of the following events:

(1) The Administrator determines that the employer did not violate the employee misclassification prohibition after a hearing held in accordance with the bill;

(2) If the Administrator determined that the employer did violate the employee misclassification prohibition after such a hearing, the Administrator determines that the employer is no longer in violation and has paid any penalty assessed under the bill.

The bill allows the Administrator to issue an order of conditional release from a stop work order upon a finding that the employer is no longer in violation of the bill's employee misclassification prohibition and has agreed to remit period payments of any penalty assessed under the bill pursuant to a payment agreement schedule with the Administrator. A payment agreement schedule must require an initial payment of at least \$1,000. If an employer fails to meet any term or condition of a penalty payment agreement, the bill requires the Administrator to immediately reinstate a stop work order and requires the entire unpaid balance of the penalty to immediately become due.

The bill allows the Administrator to require an employer, as a condition of release from a stop work order, to file periodic reports with the Administrator to demonstrate the employer's continued compliance with the bill for a probationary

period that cannot exceed two years from the date the Administrator issues the release order.<sup>19</sup>

### **Criminal penalties**

For any subsequent violation of the employee misclassification prohibition within five years after the date the employer previously was assessed a civil penalty for violating that prohibition or five years after the date the employer was convicted of or pleaded guilty to violating that prohibition, the employer is guilty of the following:

(1) If the amount the employer is liable for due to the violation is less than \$20,000, a third degree felony;

(2) If the amount the employer is liable for due to the violation is \$20,000 or more, but less than \$100,000, a second degree felony;

(3) If the amount is \$100,000 or more, a first degree felony.<sup>20</sup>

### **Employee Classification Fund**

The bill creates in the state treasury the Employee Classification Fund. The Administrator must deposit all moneys the Administrator receives under the bill, including civil penalties, into the Fund. The Administrator must use the Fund for the administration, investigation, and other expenses incurred in carrying out the Administrator's powers and duties under the bill.<sup>21</sup>

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## **HISTORY**

<b>ACTION</b>	<b>DATE</b>
Introduced	10-06-15

H0355-I-131.docx/ks

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<sup>19</sup> R.C. 4175.061.

<sup>20</sup> R.C. 4175.99.

<sup>21</sup> R.C. 4175.07.





To: Mark Flanders, Director, Legislative Service Commission  
Senator Gayle Manning, Chair, Senate Transportation, Commerce and Labor Committee  
Senator Jay Hottinger, Chair, Senate Insurance Committee  
Representative Bob Hackett, Chair, House Insurance Committee

From: Nicholas W. Zuk, Chair, Ohio Bureau of Workers' Compensation (BWC) Board of Directors

Date: July 13, 2015

Re: ORC 4121.125 Actuarial Analysis of Pending Legislation

ORC 4121.125 (C)(6) and (7) require the BWC Board of Directors to have prepared, by or under the supervision of an actuary, an actuarial analysis of any introduced legislation expected to have a measurable financial impact on the workers' compensation system, and to submit that report to the legislative service commission and the standing committees of the house of representatives and the senate with primary responsibility for the workers' compensation legislation.

On June 25, 2015 the BWC Actuarial Committee reviewed the analysis presented by BWC's chief actuary for the items below, and recommended that the BWC Board of Directors remit the results pursuant to the revised code.

**Senate Bill 5 (Patton/ Brown)** would make peace officers, firefighters, and emergency medical workers diagnosed with post-traumatic stress disorder arising from employment, without an accompanying physical injury, eligible for compensation and benefits under Ohio's Workers' Compensation Law.

*Summary (See Attachment A): BWC's analysis is based upon the assumption that the national average of 18% of first responders filing for PTSD benefits at any one point in time. Based on this percentage, we estimate that it would cost approximately \$182 million a year for impacted employers. Because the majority of first responders are covered by public employers this change would approximately double the amounts that the public employers currently pay in premium. Please note the potential cost could be even higher than BWC's estimate. BWC used 18% of the covered parties experiencing PTSD while other information has shown up to 36% reported PTSD cases in other states. There is also an expectation that PTSD related costs will be higher for the first year due to the condition being newly compensable under workers' compensation*

**Senate Bill 27 (Patton)** would provide that a firefighter who is disabled as a result of specified types of cancer is presumed to have incurred the cancer while performing his or her official duties as a firefighter for purposes of the laws governing workers' compensation and the Ohio Police and Fire Pension Fund.

*Summary (See Attachment B): The National Council on Compensation Insurance (NCCI), which is the leading organization focused on workers' compensation research and actuarial analysis, expects that the enactment of this presumption in workers' compensation systems will result in*

*increases in workers' compensation costs. The extent of such increase is hard to predict due to significant data limitations. Using the data available to BWC, the attached analysis estimates that an additional 568 claims would be covered annually, at a total annual cost of approximately \$75,345,000.*

**House Bill 205 (Henne, Retherford)** would modify the requirements for an employer to become a self-insuring employer for purposes of the Workers' Compensation Law. The legislation would transfer authority over the workers' compensation self-insurance program to the Superintendent of Insurance, and allow certain employers and groups of employers to obtain workers' compensation coverage from a private workers' compensation insurer.

*Summary: While House Bill 205 affects the operation of the workers' compensation system, it is not possible to perform an actuarial analysis of these proposed changes on required premium collections due to the fact that BWC does not have information or data sufficient to quantify how ODI would run the self-insured program or the number of employers and groups of employers that would choose to be insured by private insurers.*

**House Bill 207 (Henne, McColley)** would allow a state fund employer to have their workers' compensation claim costs paid from the surplus fund account in the state insurance fund rather than charged to the employer's experience, in cases where that claim is a motor vehicle-related claim that is likely to be subrogated against a third party.

*Summary (See Attachment C): On a statewide rate level basis, there would be minimal impact to the estimated overall future costs to the state fund. The analysis suggests the impact to overall base rates from the change in experience modifiers will be immaterial. There may however, be an impact to the experience modification applied to the premiums of a specific employer with subject motor vehicle related claims.*

ATTACHMENT A

**Senate Bill 5 (Patton, Brown)- Post-Traumatic Stress Disorder Coverage for First Responders**

# PTSD Cost Estimates

3-20-2015

# Estimated Cost:

**\$182,746,120**

Per year once the program has matured

# Assumptions

- 18% of first responders have PTSD at any one time

# Assumption Source

- “PTSD is an occupational hazard for emergency medical services personnel, who are routinely and frequently exposed to their patients’ trauma and suffering,” states a article published in 2006 by the University of Washington School of Public Health & Community Medicine. It references studies that have reported 15% to 20% of EMS personnel have PTSD.

# Assumption Source

- The American Journal of Psychiatry published a German study that indicated the prevalence of PTSD symptoms in firefighters at 18.2%.

<http://ajp.psychiatryonline.org/doi/abs/10.1176/ajp.155.12.1727>

# Assumptions

Occupation	#	Avg Salary	Avg Annual TT
Ambulance Drivers	1,080	\$21,280	\$14,449
EMS	10,130	\$29,630	\$20,119
Firefighters	33,491	\$40,029	\$31,206*
Police	35,399	\$52,490	\$39,169**

Average 52 weeks missed from work

\* Used AWW for volunteer firefighters

\*\* Used FWW for part time/special police

# Assumptions

Treatment Year	Medical*	Pharmacological	Treatment
1	\$6,869	\$2,500	\$9,369
2	\$4,361	\$2,500	\$6,861
3	\$2,181	\$2,500	\$4,681
4	\$2,181	\$2,500	\$4,681
5	\$2,181	\$2,500	\$4,681

Average 5 years of treatment

\*Includes individual and/or family therapy sessions and E&M visits tapering throughout treatment period.

# Assumption Source

- The National Comorbidity Survey found that the median duration of PTSD is 3 years for those who got treatment and 5.3 years for those that did not get treatment...the study found that 1/3 of patients with PTSD never fully go “into remission” after many years regardless of whether they received treatment. Note: Based on DSM-3 definition.

# Cost in Any One Year

Occupation	Treatment	Indemnity	Total
Ambulance Drivers	\$1,180,588	\$563,511	\$1,744,099
EMS	\$11,049,090	\$7,343,333	\$18,392,423
Firefighters	\$36,507,405	\$37,634,107	\$74,141,512
Police	\$38,565,866	\$49,901,791	\$88,467,657
Total	\$87,302,949	\$95,442,742	\$182,745,691

# Not Included in Assumptions

- Any in-patient hospitalizations
- Any treatment/pharmacy beyond 5 years
- Any coverage for “partial” PTSD benefits
- Any PTD benefits
- Any medical or wage inflation

# Estimates on Inflation

- If we assume 1% inflation for medical treatment and 8% inflation for pharmacy, we could expect that we would see medical treatment cost increases of about 4% or \$3-\$4 million per year
- If we assume 2% inflation in AWW, we would see another \$1.5 to \$2 million increase in indemnity cost per year

# Assumption Change Impacts

Assumption Change	New Estimate	Change
10% not 18% rate	\$101,566,920	-\$81,178,771
25% not 18% rate	\$253,847,383	\$71,101,692
26 not 52 weeks missed from work	\$135,548,256	-\$47,197,435
104 not 52 weeks missed from work	\$277,140,560	\$94,394,869
20 not 52 weeks missed from work	\$124,656,540	-\$58,089,151

# Assumption Change Impacts

Assumption Change	New Estimate	Change
4 not 5 years treatment	\$169,247,014	-\$13,498,677
3 not 5 years treatment	\$155,748,336	-\$26,997,355
Half the medical treatment intensity (5 yrs but half the # visits, same Rx)	\$157,119,216	-\$25,626,475
3 not 5 years, half of medical treatment intensity (same Rx)	\$136,410,539	-\$46,335,152

# From SB 5 Fiscal Note

Using information from SB 5 fiscal note, over 4 years treatment and assumptions of 52 weeks missed time

Rate	LSC Medical	LSC Indemnity	LSC Total
10% rate or 2,950 new/year	\$59,590,000	\$82,428,120	\$142,018,120
15% rate or 4,425 new/year	\$89,385,000	\$123,642,180	\$213,027,180
BWC Estimate	\$87,302,949	\$95,442,742	\$182,745,691

ATTACHMENT B

**Senate Bill 27 (Patton)- Presumptive Cancer Coverage for Firefighters**

## Actuarial Commentary on Senate Bill 27 - Presumptive Cancer Coverage for Firefighters

Senate Bill 27 would provide “occupational disease coverage” to firefighters with at least three years of hazardous active duty. In order to develop an estimate of the annual cost related to the presumptive cancer coverage mandated by Senate Bill 27, it is necessary to make a number of assumptions. In this commentary, BWC provides the assumptions upon which our estimates are based.

The following summarizes the estimated potential annual impact from this bill, based on four classifications of firefighters:

Classification of Firefighter	Expected Annual Claims	Projected Potential Annual Costs
Active Career	30.23	\$9,920,000
Retired Career	141.43	\$12,830,000
Active Volunteer	69.87	\$22,930,000
Retired Volunteer	326.95	\$29,665,000
<b>Total</b>	<b>568.48</b>	<b>\$75,345,000</b>

Based on data of current manual classifications within the state fund, we estimate that 80 percent of the costs fall to the Taxing Districts covered by the State Insurance Fund, 5 percent are private employers covered by the State Insurance Fund and the remaining 15 percent would fall to the self-insured employers.

One overarching assumption we must make involves when coverage is triggered. There are at least two triggers of coverage in an occupational disease claim. The first would be the last date of exposure. The second would be the date of diagnosis. A third possible trigger would be the first date of exposure, which typically is used to determine which party is financially responsible for providing benefits.

The bill is silent with respect to the trigger of coverage, so in developing our estimates, we have assumed that the trigger of coverage is the date of diagnosis, per our normal practice. As such, any diagnosis of cancer prior to the effective date of this bill would not be included in this coverage expansion (pre-existing condition). If exposure prior to the date of this bill triggers coverage for cancer at any time in the future, there is a significant liability above our stated estimates created by the bill. If that is not the intent of the legislation, clarifying language would be helpful.

It should be noted that we have assumed that upon reaching the sixth year anniversary of diagnosis, the firefighter has either returned to active employment or is deceased and that no further related medical costs are incurred. No provision in our estimates is included for payment of temporary total disability benefits beyond five years, new awards of death benefits beyond five years, or any payment of permanent total disability benefits beyond five years. In this respect, our estimates may be considered low with respect to the total future costs.

Additional areas where BWC made assumptions to develop this estimate include the following:

- The number of exposed firefighters both current and retired/career and volunteer
- The assumed wage benefit level
- The duration of benefit
- The average annual incidence of cancer rate
- The survival rate for years one through five post diagnosis
- The adjusted risk for firefighters
- The medical treatment cost including
  - Initial treatment
  - Continuing treatment
  - Treatment during last year of life

- The costs to be covered by the State Insurance Fund include:
  - Medical costs
  - Wage replacement – temporary total disability benefit (TTD)
  - Survivor benefits
    - Funeral expenses
    - Wage replacement (Death Benefit)

The remainder of this document provides specific details on our assumptions and analysis.

### **Estimation of Subject Population of Firefighters**

As mentioned above, we have developed estimates for the following four segments of firefighters:

1. Active career firefighters
2. Retired career firefighters
3. Active volunteer firefighters
4. Retired volunteer firefighters

We relied upon information from two sources:

- a. US Fire Department Census - FEMA website, Census Last Updated: February 26, 2015
- b. Ohio Police & Fire Pension Fund; Jan. 1, 2014 Actuarial Valuation of Pension Benefits - Oct. 2014

The FEMA data provided a summary of the number of active (both career and volunteer) firefighters in the state of Ohio to be 42,125. The Pension Fund report provided information that there are 12,720 active firefighter members of the Pension Fund and 8,372 retired career firefighter members. We used the Pension Fund figures for those two categories. By using the Pension Fund figures, we are attempting to reflect the impact of the three years of hazardous duty requirement. The Pension Fund data was also used to provide an age distribution of the firefighters.

To estimate the number of active volunteer firefighters, we subtracted the Pension Fund active member figure from the FEMA figure to develop an estimate of 29,405 active volunteer firefighters.

Finally to develop an estimate the number of retired volunteer firefighters, we assumed the same ratio of retired career to active career firefighters applied to retired volunteer to active volunteer firefighters. Roughly 40 percent of the Pension Fund members are retired and 60 percent are currently active. Using that same relationship on the estimated 29,405 active volunteer firefighter figures, we develop an estimate the number of retired volunteer firefighters of 19,354.

Thus, the current population of firefighters, active and retired, career and volunteer, approaches 70,000.

**Estimated Presumptive Cancer Costs – Active Career Firefighters**

Below are the key assumptions made in our estimate of the policy year costs for active career firefighters as a result of Senate Bill 27:

<b>Active Career Firefighters</b>	
Number of Firefighters	12,720
Expected Average Number of Diagnoses	30.23
Average Annual Salary	\$50,000
Average First year Benefit - TTD	\$17,287
Average Annual Benefit – TTD (Years 2 – 5)	\$33,350
Percentage with Beneficiaries	70%
Mortality Percentage due to Cancer for Medical Benefits Estimate	80%
Funeral Benefit Payment	\$5,500
Assumed Age of Surviving Partner	45
Average Annual Death Benefit	\$33,350
Assumed Treatment Horizon	5 years

The following table provides the estimated annual medical costs related to the various types of cancer.

<b>Active Career Firefighters Cancer Diagnosis Average Annual Medical Cost of Cancer Treatment <sup>(1)</sup> Age Less Than 65</b>				
			<b>Last Year of Life</b>	
<b>Type of Diagnosis</b>	<b>Initial Year</b>	<b>Continuing Years</b>	<b>Cancer death</b>	<b>Other cause</b>
Brain and Other Nervous System	\$138,300	\$9,434	\$201,366	\$67,914
Colorectal	\$62,174	\$4,595	\$128,507	\$15,068
Kidney and Renal Pelvis	\$46,048	\$6,018	\$117,123	\$19,142
Leukemia	\$43,243	\$10,249	\$199,774	\$35,941
Lung and Bronchus	\$73,062	\$7,591	\$142,977	\$25,008
Melanoma of the Skin	\$6,524	\$1,951	\$93,654	\$546
Myeloma	\$41,161	\$7,363	\$97,473	\$25,758
Non-Hodgkin Lymphoma	\$41,161	\$7,363	\$97,473	\$25,758
Prostate	\$23,652	\$3,201	\$93,363	\$5,370
Stomach	\$94,144	\$4,282	\$160,695	\$25,800
Testis	\$41,161	\$7,363	\$97,473	\$25,758
Urinary Bladder	\$25,152	\$4,677	\$113,659	\$8,446

Shown on the table below are the assumed survival rates and mortality percentage during the five year treatment window. This table is followed by a table of the cancer incidence rates for the United States population at large.

<b>Cancer Diagnosis Assumed Survival and Mortality Rates <sup>(2)</sup></b>							
<b>Type of Diagnosis</b>	<b>Annual Survival Rate in Year</b>						<b>Died during 5 years</b>
	<b>0</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	
Brain and Other Nervous System	100.0%	57.7%	42.4%	37.2%	34.4%	32.6%	67.4%
Colorectal	100.0%	83.5%	75.9%	70.6%	66.9%	64.1%	35.9%
Kidney and Renal Pelvis	100.0%	81.7%	76.1%	72.7%	70.0%	67.8%	32.2%
Leukemia	100.0%	72.3%	64.5%	60.4%	57.2%	54.6%	45.4%
Lung and Bronchus	100.0%	38.5%	23.8%	18.4%	15.5%	13.8%	86.2%
Melanoma of the Skin	100.0%	96.8%	94.1%	92.1%	90.7%	89.7%	10.3%
Other - Myeloma	100.0%	75.6%	64.0%	54.5%	46.6%	40.2%	59.8%
Non-Hodgkin Lymphoma	100.0%	76.2%	70.0%	66.5%	63.9%	61.5%	38.5%
Prostate	100.0%	99.5%	99.1%	98.8%	98.6%	98.4%	1.6%
Stomach	100.0%	49.3%	35.0%	29.4%	26.5%	24.6%	75.4%
Testis	100.0%	97.8%	96.6%	95.9%	95.8%	95.7%	4.3%
Urinary Bladder	100.0%	91.7%	87.2%	84.6%	82.5%	80.8%	19.2%

**Cancer sites include invasive cases only unless otherwise noted.  
The annual survival estimates are calculated using monthly intervals.**

<b>US Population Cancer Incidence Rate Per 100,000 <sup>(3)</sup></b>									
<b>Type of Diagnosis</b>	<b>AGE</b>								
	<b>20-24</b>	<b>25-29</b>	<b>30-34</b>	<b>35-39</b>	<b>40-44</b>	<b>45-49</b>	<b>50-54</b>	<b>55-59</b>	<b>Over 60</b>
Brain and Other Nervous System	2.6	3.5	4.0	4.4	5.5	7.1	9.2	12.4	16.5
Colorectal	1.0	2.3	5.0	9.5	18.5	33.3	63.1	83.6	116.6
Kidney and Renal Pelvis	0.5	1.2	3.1	6.5	12.2	20.1	30.8	44.6	60.7
Leukemia	2.9	3.1	3.6	4.7	6.2	9.1	13.4	20.5	31.2
Lung and Bronchus	0.4	0.6	1.3	3.1	9.4	28.1	63.7	114.9	195.8
Melanoma of the Skin	2.1	4.3	7.0	10.1	14.1	21.0	30.0	42.0	59.2
Myeloma	0.1	0.1	0.4	1.0	2.3	4.1	7.3	12.2	18.6
Non-Hodgkin Lymphoma	3.0	4.0	5.5	8.2	12.2	17.8	25.2	35.8	50.6
Prostate	0.0	0.0	0.1	1.2	11.0	46.8	151.5	319.4	536.0
Stomach	0.2	0.5	1.0	1.8	3.2	5.7	9.7	14.2	22.2
Testis	9.6	13.9	13.6	11.2	8.4	6.3	4.3	2.8	1.7
Urinary Bladder	0.3	0.6	1.2	2.3	4.7	10.8	22.2	41.9	74.4

In order to adjust the cancer incidence rates from a general population basis to an Ohio firefighter incidence basis, we have used the following adjustment factors.

<b>Adjustment Factors from US Population to Ohio Firefighter <sup>(4), (5)</sup></b>				
<b>Type of Diagnosis</b>	<b>Estimated Annual Active Career Firefighter Claimants*</b>	<b>Ohio Rate/ National Rate</b>	<b>Firefighter Adjustment Based on NIOSH data - SIR</b>	<b>Adjusted Estimated Annual Active Career Firefighter Claimants</b>
Brain and Other Nervous System	0.84	1.039	1.02	0.89
Colorectal	3.90	1.025	1.18	4.72
Kidney and Renal Pelvis	2.17	0.990	1.27	2.72
Leukemia	1.10	0.871	0.94	0.90
Lung and Bronchus	3.94	1.218	1.12	5.37
Melanoma of the Skin	2.35	0.832	0.87	1.70
Myeloma	0.50	0.880	0.72	0.31
Non-Hodgkin Lymphoma	1.99	0.946	0.99	1.87
Prostate	9.08	0.919	1.03	8.60
Stomach	0.66	0.817	1.15	0.62
Testis	1.06	0.945	0.75	0.75
Urinary Bladder	1.51	1.044	1.12	1.76
Total	29.10			30.23
<b>* assuming US cancer incident rate</b>				

Based upon all of the assumptions and adjustments displayed above, we have developed an estimated cost for claims diagnosed during a policy year over an assumed five year treatment horizon.

<b>Active Career Firefighters</b>						
<b>Cost Estimate over Five Year Treatment Horizon</b>						
<b>SITE</b>	<b>Adjusted Estimated Annual Claimants</b>	<b>Medical Cost</b>	<b>Funeral Costs</b>	<b>5 Yr TTD Costs</b>	<b>Death Benefit Cost</b>	<b>Total Estimated Costs</b>
Brain and Other Nervous System	0.89	\$187,453	\$3,288	\$59,161	\$232,684	\$482,586
Colorectal	4.72	\$484,739	\$9,324	\$527,171	\$659,872	\$1,681,107
Kidney and Renal Pelvis	2.72	\$234,958	\$4,823	\$309,393	\$341,360	\$890,534
Leukemia	0.90	\$118,653	\$2,256	\$87,431	\$159,646	\$367,986
Lung and Bronchus	5.37	\$733,039	\$25,467	\$214,516	\$1,802,410	\$2,775,432
Melanoma of the Skin	1.70	\$36,116	\$965	\$239,322	\$68,316	\$344,719
Myeloma	0.31	\$30,110	\$1,032	\$28,103	\$73,052	\$132,297
Non-Hodgkin Lymphoma	1.87	\$154,287	\$3,953	\$196,047	\$279,750	\$634,036
Prostate	8.60	\$321,393	\$756	\$1,281,952	\$53,540	\$1,657,641
Stomach	0.62	\$94,439	\$2,574	\$34,468	\$182,139	\$313,619
Testis	0.75	\$54,348	\$178	\$109,678	\$12,616	\$176,821
Urinary Bladder	1.76	\$99,632	\$1,862	\$229,416	\$131,748	\$462,658
Total	30.23	\$2,549,167	\$56,477	\$3,316,657	\$3,997,134	\$9,919,435

**Estimated Presumptive Cancer Costs – Retired Career Firefighters**

Below are the key assumptions made in our estimate of the policy year costs for retired career firefighters as a result of Senate Bill 27:

<b>Retired Career Firefighters</b>	
Number of Firefighters	8,372
Expected Average Number of Diagnoses	141.43
Average Annual Salary	\$50,000
Average First year Benefit - TTD	\$17,287
Average Annual Benefit – TTD (Years 2 – 5)	\$33,350
Percentage Receiving TTD Benefits	20%
Percentage with Beneficiaries	10%
Mortality Percentage due to Cancer for Medical Benefits Estimate	80%
Funeral Benefit Payment	\$5,500
Assumed Age of Surviving Partner	70
Average Annual Death Benefit	\$33,350
Assumed Treatment Horizon	5 years

The following table provides the estimated annual medical costs related to the various types of cancer for retired career firefighters. We have assumed that the medical costs are in line with diagnosis after 65 years of age.

<b>Retired Career Firefighters Cancer Diagnosis Average Annual Medical Cost of Cancer Treatment <sup>(1)</sup> Age Over 65</b>				
			<b>Last Year of Life</b>	
<b>Type of Diagnosis</b>	<b>Initial Year</b>	<b>Continuing Years</b>	<b>Cancer death</b>	<b>Other cause</b>
Brain and Other Nervous System	\$115,250	\$9,434	\$134,244	\$67,914
Colorectal	\$51,812	\$4,595	\$85,671	\$15,068
Kidney and Renal Pelvis	\$38,374	\$6,018	\$78,082	\$19,142
Leukemia	\$36,036	\$10,249	\$133,183	\$35,941
Lung and Bronchus	\$60,885	\$7,591	\$95,318	\$25,008
Melanoma of the Skin	\$5,437	\$1,951	\$62,436	\$546
Myeloma	\$41,161	\$7,363	\$97,473	\$25,758
Non-Hodgkin Lymphoma	\$41,161	\$7,363	\$97,473	\$25,758
Prostate	\$19,710	\$3,201	\$62,242	\$5,370
Stomach	\$78,453	\$4,282	\$107,130	\$25,800
Testis	\$41,161	\$7,363	\$97,473	\$25,758
Urinary Bladder	\$20,960	\$4,677	\$75,772	\$8,446

Shown on the table below are the assumed survival rates and mortality percentage during the five year treatment window. This table is the same table used for the active career firefighters. This table is followed by a table of the cancer incidence rates for the United States population at large.

<b>Cancer Diagnosis Assumed Survival and Mortality Rates <sup>(2)</sup></b>							
<b>Type of Diagnosis</b>	<b>Annual Survival Rate</b>						<b>Died during 5 years</b>
	<b>0</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	
Brain and Other Nervous System	100.0%	57.7%	42.4%	37.2%	34.4%	32.6%	67.4%
Colorectal	100.0%	83.5%	75.9%	70.6%	66.9%	64.1%	35.9%
Kidney and Renal Pelvis	100.0%	81.7%	76.1%	72.7%	70.0%	67.8%	32.2%
Leukemia	100.0%	72.3%	64.5%	60.4%	57.2%	54.6%	45.4%
Lung and Bronchus	100.0%	38.5%	23.8%	18.4%	15.5%	13.8%	86.2%
Melanoma of the Skin	100.0%	96.8%	94.1%	92.1%	90.7%	89.7%	10.3%
Myeloma	100.0%	75.6%	64.0%	54.5%	46.6%	40.2%	59.8%
Non-Hodgkin Lymphoma	100.0%	76.2%	70.0%	66.5%	63.9%	61.5%	38.5%
Prostate	100.0%	99.5%	99.1%	98.8%	98.6%	98.4%	1.6%
Stomach	100.0%	49.3%	35.0%	29.4%	26.5%	24.6%	75.4%
Testis	100.0%	97.8%	96.6%	95.9%	95.8%	95.7%	4.3%
Urinary Bladder	100.0%	91.7%	87.2%	84.6%	82.5%	80.8%	19.2%

**Cancer sites include invasive cases only unless otherwise noted.  
The annual survival estimates are calculated using monthly intervals.**

<b>US Population Cancer Incidence Rate Per 100,000 <sup>(3)</sup></b>									
<b>Type of Diagnosis</b>	<b>AGE</b>								
	<b>45-49</b>	<b>50-54</b>	<b>55-59</b>	<b>60-64</b>	<b>65-69</b>	<b>70-74</b>	<b>75-79</b>	<b>80-84</b>	<b>85+</b>
Brain and Other Nervous System	7.1	9.2	12.4	16.5	20.5	23.5	27.2	27.2	24.8
Colorectal	33.3	63.1	83.6	116.6	174.6	225.5	278.8	328.6	367.2
Kidney and Renal Pelvis	20.1	30.8	44.6	60.7	82.8	92.9	99.4	98.1	82.3
Leukemia	9.1	13.4	20.5	31.2	47.2	65.2	87.1	110.8	126.9
Lung and Bronchus	28.1	63.7	114.9	195.8	333.3	450.7	548.9	576.2	478.4
Melanoma of the Skin	21.0	30.0	42.0	59.2	80.2	101.3	127.3	147.2	155.2
Myeloma	4.1	7.3	12.2	18.6	28.0	37.6	46.7	52.0	51.2
Non-Hodgkin Lymphoma	17.8	25.2	35.8	50.6	74.6	96.5	124.2	143.2	145.2
Prostate	46.8	151.5	319.4	536.0	800.9	845.6	752.4	562.0	493.1
Stomach	5.7	9.7	14.2	22.2	32.3	43.8	55.1	62.6	71.4
Testis	6.3	4.3	2.8	1.7	1.3	1.1	1.2	0.9	1.2
Urinary Bladder	10.8	22.2	41.9	74.4	129.1	188.1	260.1	325.4	364.4

In order to adjust the cancer incidence rates from a general population basis to an Ohio firefighter incidence basis, we have used the following adjustment factors which are the same as used with the active career firefighter data.

<b>Adjustment Factors from US Population to Ohio Firefighter <sup>(4), (5)</sup></b>				
<b>Type of Diagnosis</b>	<b>Estimated Annual Retired Career Firefighter Claimants*</b>	<b>Ohio Rate/ National Rate</b>	<b>Firefighter Adjustment Based on NIOSH data - SIR</b>	<b>Adjusted Estimated Annual Retired Career Firefighter Claimants</b>
Brain and Other Nervous System	1.60	1.039	1.02	1.70
Colorectal	14.87	1.025	1.18	17.99
Kidney and Renal Pelvis	5.98	0.990	1.27	7.52
Leukemia	4.39	0.871	0.94	3.59
Lung and Bronchus	26.01	1.218	1.12	35.48
Melanoma of the Skin	6.87	0.832	0.87	4.97
Myeloma	2.34	0.880	0.72	1.48
Non-Hodgkin Lymphoma	6.37	0.946	0.99	5.96
Prostate	48.46	0.919	1.03	45.88
Stomach	2.82	0.817	1.15	2.65
Testis	0.16	0.945	0.75	0.12
Urinary Bladder	12.05	1.044	1.12	14.09
Total	131.93			141.43
<b>*assuming US cancer incident rate</b>				

Based upon all of the assumptions and adjustments displayed above, we have developed an estimated cost for claims diagnosed during a policy year over an assumed five year treatment horizon.

<b>Retired Career Firefighters Cost Estimate over Five Year Treatment Horizon</b>						
<b>SITE</b>	<b>Adjusted Estimated Annual Claimants</b>	<b>Medical Cost</b>	<b>Funeral Costs</b>	<b>5 Yr TT Costs</b>	<b>Death Benefit Cost</b>	<b>Total Estimated Costs</b>
Brain and Other Nervous System	1.70	\$251,528	\$6,298	\$22,668	\$41,087	\$321,581
Colorectal	17.99	\$1,240,222	\$35,516	\$401,628	\$231,682	\$1,909,048
Kidney and Renal Pelvis	7.52	\$396,548	\$13,327	\$170,971	\$86,933	\$667,779
Leukemia	3.59	\$279,128	\$8,971	\$69,546	\$58,523	\$416,168
Lung and Bronchus	35.48	\$3,316,603	\$168,201	\$283,362	\$1,097,228	\$4,865,394
Melanoma of the Skin	4.97	\$51,796	\$2,816	\$139,648	\$18,371	\$212,631
Myeloma	1.48	\$120,016	\$4,884	\$26,592	\$31,857	\$183,348
Non-Hodgkin Lymphoma	5.96	\$377,998	\$12,631	\$125,293	\$82,395	\$598,316
Prostate	45.88	\$937,073	\$4,037	\$1,368,319	\$26,336	\$2,335,765
Stomach	2.65	\$284,011	\$10,988	\$29,433	\$71,678	\$396,111
Testis	0.12	\$5,043	\$27	\$3,348	\$178	\$8,596
Urinary Bladder	14.09	\$439,281	\$14,876	\$366,666	\$97,040	\$917,863
Total	141.43	\$7,699,245	\$282,573	\$3,007,475	\$1,843,308	\$12,832,600

**Estimated Presumptive Cancer Costs – Active Volunteer Firefighters**

Using the same assumptions as the Active Career Firefighters, we have developed the following annual policy year cost estimate based upon a population estimate of 29,400 Active Volunteer Firefighters:

<b>Active Volunteer Firefighters</b>						
<b>Cost Estimate over Five Year Treatment Horizon</b>						
<b>SITE</b>	<b>Adjusted Estimated Annual Claimants</b>	<b>Medical Cost</b>	<b>Funeral Costs</b>	<b>5 Yr TT Costs</b>	<b>Death Benefit Cost</b>	<b>Total Estimated Costs</b>
Brain and Other Nervous System	2.05	\$433,337	\$7,600	\$136,764	\$537,899	\$1,115,600
Colorectal	10.92	\$1,120,578	\$21,553	\$1,218,669	\$1,525,436	\$3,886,237
Kidney and Renal Pelvis	6.30	\$543,155	\$11,150	\$715,228	\$789,128	\$2,058,661
Leukemia	2.09	\$274,292	\$5,215	\$202,115	\$369,057	\$850,678
Lung and Bronchus	12.42	\$1,694,577	\$58,872	\$495,899	\$4,166,656	\$6,416,004
Melanoma of the Skin	3.94	\$83,489	\$2,231	\$553,243	\$157,927	\$796,891
Myeloma	0.73	\$69,606	\$2,386	\$64,965	\$168,875	\$305,832
Non-Hodgkin Lymphoma	4.32	\$356,668	\$9,137	\$453,204	\$646,701	\$1,465,711
Prostate	19.87	\$742,968	\$1,749	\$2,963,506	\$123,769	\$3,831,991
Stomach	1.43	\$218,315	\$5,949	\$79,680	\$421,053	\$724,997
Testis	1.74	\$125,638	\$412	\$253,545	\$29,165	\$408,760
Urinary Bladder	4.08	\$230,322	\$4,303	\$530,343	\$304,564	\$1,069,532
<b>Total</b>	<b>69.87</b>	<b>\$5,892,945</b>	<b>\$130,559</b>	<b>\$7,667,161</b>	<b>\$9,240,230</b>	<b>\$22,930,895</b>

**Estimated Presumptive Cancer Costs – Retired Volunteer Firefighters**

Using the same assumptions as the Retired Career Firefighters, we have developed the following annual policy year cost estimate based upon a population estimate of 19,350 Retired Volunteer Firefighters. We have assumed that the ratio of active volunteer firefighters to active career firefighters of 2.31 to 1.0 also holds true for the relationship between retired volunteer firefighters to retired career firefighters.

<b>Retired Volunteer Firefighters</b>						
<b>Cost Estimate over Five Year Treatment Horizon</b>						
<b>SITE</b>	<b>Adjusted Estimated Annual Claimants</b>	<b>Medical Cost</b>	<b>Funeral Costs</b>	<b>5 Yr TT Costs</b>	<b>Death Benefit Cost</b>	<b>Total Estimated Costs</b>
Brain and Other Nervous System	3.93	\$581,460	\$14,560	\$52,402	\$94,981	\$743,403
Colorectal	41.58	\$2,867,038	\$82,103	\$928,448	\$535,583	\$4,413,172
Kidney and Renal Pelvis	17.40	\$916,706	\$30,807	\$395,236	\$200,965	\$1,543,715
Leukemia	8.31	\$645,264	\$20,739	\$160,770	\$135,289	\$962,062
Lung and Bronchus	82.01	\$7,667,037	\$388,833	\$655,052	\$2,536,477	\$11,247,399
Melanoma of the Skin	11.49	\$119,737	\$6,510	\$322,827	\$42,469	\$491,542
Myeloma	3.43	\$277,442	\$11,289	\$61,474	\$73,643	\$423,848
Non-Hodgkin Lymphoma	13.79	\$873,823	\$29,199	\$289,642	\$190,473	\$1,383,136
Prostate	106.06	\$2,166,244	\$9,333	\$3,163,162	\$60,882	\$5,399,621
Stomach	6.13	\$656,552	\$25,401	\$68,042	\$165,700	\$915,694
Testis	0.27	\$11,658	\$63	\$7,741	\$410	\$19,872
Urinary Bladder	32.57	\$1,015,491	\$34,389	\$847,626	\$224,330	\$2,121,836
<b>Total</b>	<b>326.95</b>	<b>\$17,798,452</b>	<b>\$653,227</b>	<b>\$6,952,420</b>	<b>\$4,261,200</b>	<b>\$29,665,300</b>

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2. Survival and Mortality Rates

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<http://seer.cancer.gov/faststats/selections.php?run=runit&output=2&data=4&statistic=5&year=201506&race=1&sex=2&age=1&series=cancer&cancer=76;18;20;86;72;90>

3. Incidence of Cancer

The United States Cancer Statistics: Incidence and Mortality Web-based report  
National Program of Cancer Registries (NPCR)  
Average annual cancer rate - Male, 2007-2011, All races;  
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4. Ohio Cancer Adjustment

Cancer in Ohio 2014; Ohio Department of Health; Table 2; pg. 12

5. NIOSH Adjustment

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### Qualifications

This commentary is submitted by Christopher S. Carlson, FCAS, MAAA, Chief Actuarial Officer of the Ohio Bureau of Workers' Compensation. Mr. Carlson meets the continuing education requirements of the American Academy of Actuaries and the Casualty Actuarial Society to issue this actuarial report.

### Reliance

In developing these estimates, a majority of the research and estimation model development was performed by Erwin Grabisna, Teresa Arms and Dr. Rick Percy. Their efforts on this project have been invaluable to the completion of the estimate and have relied upon heavily in developing this report.

ATTACHMENT C

**House Bill 207 (Henne, McColley)- Subrogated workers' compensation claims**

## **Actuarial Commentary on House Bill 207- Subrogated Claims**

House Bill 207 would alter the treatment of loss amounts in development of an employer's experience modification factor resulting from an auto (motor vehicle) accident where a third party (other than the employer or the employees) was found to be at-fault/ financially responsible.

In order to provide a context around the potential scope of this issue, during the 27 month period between January 1, 2013 and March 31, 2015, there were 5,253 subrogation referrals to the BWC related to motor vehicle accidents.

We have not performed a comprehensive actuarial analysis. This effort would require:

- identifying previous claims that would have been excluded from the employer's experience, re-developing the expected loss rates by manual classification,
- re-estimating all employer's experience modification factors, re-development of the uniform off-balance factor and subsequent revised base rates and
- recalculating the employer's premiums and comparing them with their previous premium.

We also would be unable to estimate the full impact due to the potential that an employer under this proposed treatment could have been included in and rated as part of group in the group rating program.

We provide this commentary with respect to the anticipated impact to the statewide rate level indications, the manual classification expected loss rates and employer experience modification factors and the manual classification base rates.

### **Statewide Rate Level**

On an overall statewide rate level basis, there would not be any impact to the estimated future costs in the program (private employer or public employer – taxing district). Thus, we anticipate no impact to the overall statewide premium level of either program as a result of this bill.

### **Manual Classification Expected Loss Rates and Employer Experience Modification Factors**

The impact from implementation of this proposed change would primarily be felt in the experience modification factor of employers whose employees have been involved in an auto accident, where another party was found to be at-fault/responsible. These employers' experience modification factor will be lower under the proposed bill than it is in the current system – both before any subrogation is received by the BWC as well as after. We note that actual subrogation receipts by the BWC are most typically less than the full value paid on an individual claim due to the law that governs subrogation recoveries by the BWC.

The exclusion of the claim costs from these not at-fault claims from the experience rating process will result in slightly lower historical manual classification expected loss rates – the average historical experience period costs per \$100 of payroll in each manual classification. The expected loss rates are used as a benchmark or comparative average in determining whether an employer's historical experience was less than or greater than the average. These lower historical expected loss rates will also result in slightly higher experience modification factors for employers without these types of claims in their experience but not materially so. The lower historical expected loss rates might also cause some employers to be placed in a lower expected loss/credibility band than they otherwise would be. For very few employers possibly affected in this way, their experience modification factor would increase, if they were credit rated, and decrease, if they were debit rated.

### **Manual Classification Base Rates**

We note that the current and future manual classification base rates include a provision for all expected costs regardless of whether the historical costs are included or excluded in the experience modification factor calculation process. There may possibly be a very small impact from this proposed legislation to the manual classification base rates from the overall movement in the average experience modification factor. While we have not done an extensive analysis, we think that the impact to the manual classification base rates from this change in the development of the employer experience modification factors will not be material.

### **Qualifications**

This commentary is submitted by Christopher S. Carlson, FCAS, MAAA, Chief Actuarial Officer of the Ohio Bureau of Workers' Compensation. Mr. Carlson meets the continuing education requirements of the American Academy of Actuaries and the Casualty Actuarial Society to issue this actuarial report.

## Safety & Workers' Compensation

### OSHA Empowered to Increase Fines

OMA Connections Partner, Frantz Ward, reports that on November 2, 2015, when President Obama signed the Bipartisan Budget Act (Act) of 2015 into law, a little-noticed change also went into law. The Act changes the Federal Civil Penalties Inflation Adjustment Act of 1990 which specifically removed OSHA from the list of agencies that are exempt from having the ability to raise fines. In other words, before this new law, OSHA's fines stayed the same until Congress changed them. According to Frantz Ward, OSHA will raise them right away and will increase them every year.

[Read more from Frantz Ward](#) about how this will affect employers charged with OSHA violations. 11/16/2015

### Turn BWC into a Policing Agency?

Rep. Wes Retherford (R - Hamilton) has introduced a bill, [HB 355](#), that would turn the Bureau of Workers' Compensation (BWC) into an agency that would police businesses in their classifications of employees and independent contractors.

Under the bill, the BWC would be authorized to enter and inspect all of the offices and job sites maintained by an employer who is the subject of a complaint that an employer is misclassifying an employee. The BWC would be authorized to issue stop work orders and fines.

For many many years, organized labor has attempted to create a de facto Department of Labor at the state level. That's what this one is after. It is a really bad idea. 11/10/2015

### Firefighters' Cancer Bill Receives Proponent Hearing

This week [Senate Bill 27](#), sponsored by Senator [Tom Patton](#) (R-Strongsville) had its first hearing for proponent testimony. The bill provides that a firefighter who is disabled as a result of specified types of cancer is presumed to have incurred the cancer while performing his or her job duties, thus creating eligibility for workers' compensation benefits.

The bill allows that the presumption can be rebutted if it can be proven that the cancer was directly caused by working conditions. This is the opposite of Ohio's asbestos statute which has become a national model. The cancers covered under the bill include: cancers of the lung, brain, kidney, bladder, rectum,

stomach, skin, or prostate; Non-Hodgkin's lymphoma; leukemia; multiple myeloma; and testicular or colorectal cancer.

The Bureau of Workers' Compensation (BWC) produced an actuarial [analysis](#) of several bills including SB 27. BWC estimates an additional 568 claims annually at an approximate cost of \$75,345,000. Much like SB 5, a pending bill that would provide workers' compensation benefits for psychiatric claims of first responders where there is not also a corresponding physical injury/illness, this bill would create a major shift in Ohio's workers' compensation laws. 11/12/2015

### "A room full of rabbits"

This month the insurance industry trade website, Risk & Insurance, profiled the Ohio Bureau of Workers' Compensation, describing its turnaround from a drain on the Ohio economy to a responsive business partner under the leadership of Administrator/CEO Steve Buehrer. [Read it here](#). 11/5/2015

### Major Workers' Comp Case Could be Headed to Ohio Supreme Court

Last month, Ohio's Eighth Appellate District affirmed the lower court's opinion in *Ferguson v. State of Ohio*, agreeing that a portion of ORC 4123.512 that prohibits an employee from unilaterally dismissing an employer's workers' compensation appeal is unconstitutional. What does this mean for manufacturers?

If the statute is found to be unconstitutional by the Supreme Court, an employee will be permitted to dismiss their complaint, thus delaying the employer's appeal for up to three years. During those three years the employee would still be eligible to receive benefits and compensation related to the claim, which would adversely impact the employer's claims costs, group-participation status, and/or premiums.

If the employer eventually prevails in these situations, the employer may or may not be reimbursed the costs via the Bureau of Workers' Compensation's surplus fund. However the damage to the employer's premiums and group-participation status cannot be reversed.

This is a critical case for the business community. If you are interested in learning more about the case and what you can do to support a favorable employer outcome, contact OMA's [Rob Brundrett](#). 11/5/2015

## BWC Announces Semi-Finalists of Safety Innovations Competition

The Ohio Bureau of Workers' Compensation (BWC) announced this week the nine Ohio employers that are semi-finalists in the annual Safety Innovations Competition, which recognizes employers that implement innovative solutions to reduce the risk of workplace injuries and illnesses. The competition helps foster innovation in occupational injury/illness prevention and encourages employers to share their creative solutions to reducing the risk of injury for their employees.

A panel of safety, ergonomics and industrial hygiene specialists from the BWC Division of Safety and Hygiene selected the nine semi-finalists after reviewing applications from employers across Ohio. They scored the applications on the several criteria, including risk reduction, innovativeness, cost savings and potential impact.

The finalists include OMA members Midmark Corp., Versailles (Darke County), for its automatic guided carts, and Whitacre Greer Co., Alliance (Stark County), for its bin area material feed air cannons.

Cash prizes ranging from \$1,000 to \$6,000 will be awarded to five finalists based on judges' scoring during BWC Safety Congress and Expo 2016 in March. 11/4/2015

## OSHA Prepares to Target Safety Incentive Programs

OMA Connections Partner, Roetzel, reported that the Occupational Safety and Health Administration (OSHA) has announced that it will issue a final rule this fall that may make safety incentive programs, which reward employees for low accident levels, illegal. Such a rule was recently sent to the Office of Management and Budget for review, meaning its issuance may be imminent.

OSHA has long frowned upon safety incentive programs, as such programs can encourage employees to not report accidents or injuries.

More government overreach. [Read more](#) from Roetzel. 10/26/2015

## BWC Certificate to be Issued Each May



We recently asked the BWC if there will be any change in the employer Certificate of Workers' Compensation now that the system is billing prospectively.

BWC: Private employers will get a certificate of coverage once a year in May now. There is one noteworthy change in the language on the certificate – that's underlined below:

"This certifies that the employer listed below participates in the Ohio State Insurance Fund as required by law. Therefore, the employer is entitled to the rights and benefits of the fund for the period specified. This certificate is only valid if premiums and assessments, including installments, are paid by the applicable due date. To verify coverage, visit [BWC](#), or call 1-800-644-6292." 10/29/2015

## Some State Fund Employers Still Need to Report Payroll to Secure Premium Credit

In order to receive the BWC 100% premium credit for the period Jan. 1, 2015 thru June 30, 2015, employers had to file their payroll report for that period with BWC by Aug. 31, 2015. Employers that did not file the report had the premium for that period estimated and invoiced to them October 1, 2015.

There is still time to resolve the estimated premium billing. Policyholders can use the BWC website to report the actual payroll for the referenced period. Once reported BWC will reverse the estimated premium, post the actual premium and post the transition credit to all eligible policies.

Employers that do not resolve this are subject to certification to the Ohio Attorney General for final collection of the outstanding premium. BWC will certify outstanding estimates the first week of November. Policies certified to the Ohio Attorney General will be required to pay collection fees and

interest calculated on the certified amount. Also, employers may jeopardize their eligibility for group participation for policy year 2016, may lose the transition credit and be required to pay the premium in full, and may jeopardize their eligibility for alternative rating programs for policy year 2016.

Let us know if you have any questions. Contact OMA's [Brian Jackson](#) or [Holly Miller](#) at (800) 662-4463. 10/22/2015

### **Drug-free Program for Fayette, Highland, Pickaway, Pike & Ross Co. Employers**

OMA Connections Partner, Working Partners®, is working with county Mental Health & Recovery Services Boards to provide programs designed to secure the economic stability of local communities by growing a drug-free workforce. Offerings include:

- Classroom course and individual consultation to develop a company-specific and legally-sound drug-free workplace policy and program.
- Community-based assistance for prospective and current employees who are dealing with substance abuse issues.
- Access to discounted drug-testing, employee education, supervisor training and on-going technical assistance.
- Assistance with applying for BWC's Drug-Free Safety Program and Safety Grants.

This program is for employers who want to implement an effective drug-free workplace program or update an existing program. To learn more, contact [Regina Bond](#) at Working Partners at (614) 337-8200. 10/21/2015

### **OMA Members Take Action Against Workers' Comp Bill**

When this week the Senate Finance committee voted to send [Senate Bill 5](#) to the Senate floor for a vote, OMA alerted members and many took action with their state senators to oppose the bill that would allow workers' compensation claims for posttraumatic stress disorder (PTSD) for first responders where there are no physical injuries.

In the long history of workers' compensation in Ohio, mental conditions have only been allowed when coincident with physical injuries or illnesses. Such conditions are covered in health insurance, not workers' compensation. Other types of occupations beyond police and firefighters witness trauma and will inevitably push for the same benefit.

The OMA and all other major Ohio business organizations as well as many local government organizations oppose SB 5.

A floor vote remains pending. If you haven't already, use the fast and easy tools at the [OMA's Manufacturing Advocacy Center](#) to let your Ohio senator know that this bill will add complexity and cost to the Ohio workers' compensation system. 10/15/2015

### **Workers' Comp Subrogation Bill Moves Forward**

[House Bill 207](#) was voted out of the House Insurance committee this week. This bill would allow an employer to request that a workers' compensation claim resulting from a motor vehicle accident in which the employer was not at fault, and which is likely to be subrogated, to be paid from the BWC surplus fund and not be charged to the employer's experience.

OMA supports this bill. 10/15/2015

### **BWC Leadership Visits OMA Committee**



This week, Bureau of Workers' Compensation (BWC) Administrator & CEO Stephen Buehrer and Interim Director, Self Insured Department, Dave Sievert updated OMA Safety & Workers' Compensation committee members about the breadth of initiatives the agency has in the works.

Buehrer noted that Ohio's ongoing reform efforts continue to bring fruit in continuing reductions in premium levels, large rebates to employers, significantly lower claims volumes, more and more use of BWC safety programs, and a reduction in opiate prescription volume.

The most recent major accomplishment is the transition to prospective billing, which Buehrer said overall went very well. 10/8/2015

## OMA Testifies on Useful Workers' Comp Subrogation Bill

Larry Holmes, Vice President of Finance, Fort Recovery Industries and Chairman of OMA's Safety and Workers' Compensation Committee [testified](#) this week as a proponent of HB 207. The bill addresses a concern employers have regarding motor vehicle accidents and their Bureau of Workers' Compensation (BWC) claims experience rating and costs.

House Bill 207 would allow an employer to request that a workers' compensation claim resulting from a motor vehicle accident in which the employer was not at fault, and which is likely to be subrogated, to be paid from the BWC surplus fund and not be charged to the employer's experience.

The bill was introduced by Reps. [Mike Henne](#) (R-Clayton) and [Robert McColley](#) (R-Napoleon).  
*10/6/2015*

## 2015 Top 10 OSHA Violations Announced

In September OSHA [announced](#) the preliminary Top 10 most frequently cited workplace safety violations for fiscal year 2015.

National Safety Council President and CEO Deborah A.P. Hersman said, "The OSHA Top 10 list is a roadmap that identifies the hazards you want to avoid on the journey to safety excellence."

The Top 10 for FY 2015 are: 1) Fall Protection (1926.501); 2) Hazard communication (1910.1200); 3) Scaffolding (1926.451); 4) Respiratory Protection (1910.134); 5) Lockout/Tagout (1910.147); 6) Powered Industrial Trucks (1910.178); 7) Ladders (1926.1053); 8) Electrical – Wiring Methods (1910.305); 9) Machine Guarding (1910.212); 10) Electrical – General Requirements (1910.303).

The final report on the Top 10 violations for 2015 will be published in December. Preliminary figures as of Sept. 8, 2015.

OMA uses this data, as well as member input, to plan monthly safety webinars. [Sign up here](#) for the November 5 lockout/tagout webinar and the December 3 webinar on building safety buy-in. Also check out all the recorded webinars in the [OMA Video Library](#) (use your My OMA login). *10/5/2015*

## Northeast Ohio Safety Conference & Expo October 16

The Ohio Bureau of Workers' Compensation (BWC) Northeast Safety Conference and Expo in Ashtabula on Oct. 16 at Jefferson Area High School, 207 W. Mulberry St., Jefferson, Ohio will offer area employers an opportunity to learn about improving the safety and health their workforce.

The conference will feature 38 sessions that focus on improving the safety, well-being and quality of life of workers. Attendees can also visit the expo floor to connect with safety service providers, safety equipment suppliers and area health care providers. Employers can earn credit for BWC programs for attending certain classes.

[Learn more here](#) or contact BWC's [David Costantino](#) at 330-301-5825. Advanced registration ends Friday, Oct. 9. *9/30/2015*

## BWC Proposes Changes to Group Retrospective Rating Program

The Ohio Bureau of Workers' Compensation (BWC) has proposed to its board of directors a change to its private employer Group Retrospective Rating Program effective for policy year July 1, 2016 to June 30, 2017.

According to the BWC, "Investigations into the basic premium factors and loss development factors for the Group Retrospective Rating Program have revealed that it is necessary to add a provision for Managed Care Organization (MCO) expenses within the calculated premiums. We propose to adjust the Loss Development Factors in the Group Retrospective Rating Program for Private Employers beginning July 1st, 2016 by 12.4%. This increase represents the provision for the MCO costs on the developed losses.

"The impact of this change is estimated to increase the final overall premium income from the Private Employer Group Retrospective Rating Program by 6.3% annually, or approximately \$15.4 million annually."

OMA's Brian Jackson, Managing Director, Workers' Compensation Services, has calculated the projected effect for OMA's two 2016/17 Group Retrospective Rating groups. Group 2016-1 is expected to have a small reduction in its projected premium refund, from 59.4% to 56.9%. The projected refund for OMA's Group 2016-2 is 22.1%, down from 27.5%.

OMA agrees with the BWC's proposed change as it more accurately accounts for the agency's costs.

Contact OMA's [Brian Jackson](#) with any questions. 9/22/2015

### **New BWC Training Site will Serve NW Ohio**

Ohio Bureau of Workers' Compensation (BWC) Administrator/CEO Steve Buehrer this week announced the opening of a new workplace health and safety training center located at Northwest State Community College in Archbold (Fulton County). The BWC has [12 established training center locations](#) that offer continuing-education courses on occupational safety and health to prevent accidents and injuries in Ohio workplaces.

The BWC's partnership with Northwest State Community College expands its educational and safety reach in northwest Ohio.

Classes at the new center begin September 16. 9/15/2015

### **BWC Adds One Minute Videos**

Check out BWC's new minute-long how-to videos for quick guidance on:

- [How to create an e-account](#)
- [Who is my Claim Service Specialist \(CSS\)?](#) 9/16/2015

The Bureau of Workers' Compensation (BWC) offered these recent updates and tips regarding its new invoicing practices: "If you have received an invoice from BWC with a Sept. 18 due date, it's because your company had not paid the initial invoice due Aug. 31 when BWC ran its invoices for September.

"Due to BWC's 30-day invoice cycle, the bureau must run invoices about 14 days prior to them going out to employers. For this reason, you may have received an invoice the first couple days of September despite paying your bill on time at the end of August. You can access the most current information for your policy by visiting BWC's [website](#) and logging into your e-account.

"Don't have a BWC e-account? Create one [here](#).

"To avoid a lapse in coverage, do not wait until Sept. 18 to make this payment for your policy. Remember, employers are responsible for any and all claims costs for injuries that occur during a period of lapsed coverage."

Contact OMA's [Brian Jackson](#) with your questions. 9/9/2015

**Workers' Compensation Legislation**  
Prepared by: The Ohio Manufacturers' Association  
Report created on December 1, 2015

- HB51**      **INDUSTRIAL COMMISSION BUDGET** (HACKETT R) To make appropriations for the Industrial Commission for the biennium beginning July 1, 2015, and ending June 30, 2017, and to provide authorization and conditions for the operation of Commission programs.  
*Current Status:* 6/30/2015 - **SIGNED BY GOVERNOR**; eff. 7/1/15; various sections effective 90 days  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-51>
- HB52**      **WORKERS' COMPENSATION BUDGET** (HACKETT R) To make changes to the Workers' Compensation Law, to make appropriations for the Bureau of Workers' Compensation for the biennium beginning July 1, 2015, and ending June 30, 2017, and to provide authorization and conditions for the operation of the Bureau's programs.  
*Current Status:* 6/30/2015 - **SIGNED BY GOVERNOR**; Eff. 7/1/15; certain sections effective in 90 days  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-52>
- HB64**      **OPERATING BUDGET** (SMITH R) To make operating appropriations for the biennium beginning July 1, 2015, and ending June 30, 2017, and to provide authorization and conditions for the operation of state programs.  
*Current Status:* 6/30/2015 - **SIGNED BY GOVERNOR**; Eff. 7/1/15  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-64>
- HB205**      **SELF-INSURING EMPLOYERS** (HENNE M, RETHERFORD W) To modify the requirements for an employer to become a self-insuring employer for purposes of the Workers' Compensation Law, to transfer authority over the workers' compensation self-insurance program to the Superintendent of Insurance, and to allow certain employers and groups of employers to obtain workers' compensation coverage from a private workers' compensation insurer.  
*Current Status:* 11/24/2015 - **SUBSTITUTE BILL ACCEPTED**, House Insurance, (Second Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-205>
- HB206**      **INDUSTRIAL COMMISSION-CLAIM STATISTICS** (HENNE M) To require the Industrial Commission to keep statistics on individual hearing decisions of contested workers' compensation claims.  
*Current Status:* 6/9/2015 - House Insurance, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-206>
- HB207**      **WORKERS' COMPENSATION-SURPLUS FUND** (HENNE M, MCCOLLEY R) To allow a state fund employer to have a workers' compensation claim that is likely to be subrogated by a third party paid from the surplus fund account in the state insurance fund rather than charged to the employer's experience.  
*Current Status:* 12/1/2015 - **PASSED BY HOUSE**; Vote 94-0  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-207>

- HB292**      **FIREFIGHTER COMPENSATION** (HAGAN C) To provide that a firefighter who is disabled as a result of specified types of cancer is presumed for purposes of the laws governing workers' compensation and the Ohio Police and Fire Pension Fund to have incurred the cancer while performing official duties as a firefighter.  
*Current Status:* 10/6/2015 - House Insurance, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-292>
- HB355**      **EMPLOYEE DEFINITION** (RETFERFORD W) To create a generally uniform definition of employee for specified labor laws and to prohibit employee misclassification under those laws.  
*Current Status:* 11/4/2015 - House State Government, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-355>
- SB5**      **WORKERS' COMPENSATION-PTSD** (PATTON T, BROWN E) To make peace officers, firefighters, and emergency medical workers diagnosed with post-traumatic stress disorder arising from employment without an accompanying physical injury eligible for compensation and benefits under Ohio's Workers' Compensation Law.  
*Current Status:* 10/13/2015 - **REPORTED OUT AS AMENDED**, Senate Finance, (Sixth Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-5>
- SB27**      **WORKERS' COMPENSATION-FIREFIGHTER CANCER** (PATTON T) To provide that a firefighter who is disabled as a result of specified types of cancer is presumed for purposes of the laws governing workers' compensation and the Ohio Police and Fire Pension Fund to have incurred the cancer while performing official duties as a firefighter.  
*Current Status:* 11/10/2015 - Senate Insurance, (Second Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-27>
- SB149**      **WORKERS' COMPENSATION-BRAIN-SPINAL CORD INJURY** (SCHIAVONI J) To make an individual who has lost the use of a body part due to a brain injury or spinal cord injury eligible for partial disability and permanent total disability compensation under the Workers' Compensation Law.  
*Current Status:* 4/22/2015 - Referred to Committee Senate Transportation, Commerce and Labor  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-149>

**TO: OMA Government Affairs Committee**  
**FROM: Ryan Augsburger / Rob Brundrett**  
**SUBJECT: Tax Public Policy Report**  
**DATE: December 2, 2015**

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### **Overview**

The General Assembly is back and having full committee hearings. Several different tax issues have already popped up this fall including bills that remove the tax on temp services and ones that expand current CAT carveouts.

### **State Financial Condition**

Real GDP growth slowed to 1.5% in the third quarter, or 2.0% on a year-over-year basis.

U.S. employment increased by 271,000 jobs in October. The unemployment rate decreased 0.1 percentage points to 5.0%.

Ohio nonfarm payroll employment decreased by 8,600 jobs in September, but is up by 32,100 jobs year-to-date. The Ohio unemployment rate decreased to 4.5% in September – the lowest level since August 2001.

Leading economic indicators continue to point toward modest, uninterrupted economic expansion. Recent data indicate that growth is continuing in the fourth quarter at a faster pace than over the summer.

### **Tax Legislation**

#### **House Bill 9 – tax expenditure review committee**

HB 9 was introduced by Representative Boose (R-Norwalk). The bill creates a Tax Expenditure Review Committee that would periodically review existing and proposed tax expenditures. The Senate had a watered down version of this committee operate during the budget process. The OMA testified several times in front of the committee to discuss why certain tax expenditures were important and why others should be removed from Ohio's tax code. This bill has passed the House and has had several hearings in the Senate.

#### **Senate Bill 88 – CAT credit**

Sponsored by Sen. Charleta Tavares (D-Columbus) would create tax credits, including CAT credits, for the employment of individuals who have been convicted of criminal offenses. The bill has not had any hearings.

#### **House Bill 102 – CAT credit**

House Bill 102 sponsored by Reps. Niraj Antani (R-Miamisburg) and Hearcel Craig (D-Columbus), would provide a bid preference for state contracts to a veteran-owned business and would have authorize a personal income and CAT credit for a business that hires and employs a veteran for at least one year. However the sponsors introduced a substitute version of the bill at its first hearing removing the CAT provisions from the bill.

#### House Bill 176 – CAT credit

House Bill 176 sponsored by Reps. Hall (R-Millersburg) and O'Brien (D-Bazetta) creates the Gaseous Fuel Vehicle Conversion Program. The bill allows a credit against the income or commercial activity tax for the purchase or conversion of alternative fuel vehicle. It reduces the amount of sales tax due on the purchase or lease of a qualifying electric vehicle by up to \$500. It applies the motor fuel tax to the distribution or sale of compressed natural gas. The bill also authorizes a temporary, partial motor fuel tax exemption for sales of compressed natural gas used as motor fuel. The bill was introduced last year, but stalled in the legislative process. Earlier this year it was passed out of House Ways and Means Committee. The bill was recently passed from Finance Committee and will be scheduled for a full floor vote.

#### House Bill 182 – JEDDs reorganization

House Bill 182 sponsored by Representative Schuring (R-Canton) would revise the law governing the creation and operation of joint economic development districts (JEDDs) and enterprise zones. Amongst the changes the bill establishes a procedure permitting the owner of a business operating in the unincorporated territory of a JEDD to apply for exemption from the JEDD income tax on behalf of the business and its employees. A sub bill was just accepted in the House.

#### Senate Bill 198 – non-resident municipal income tax

SB 198 was introduced by Senator Jordan (R-Ostrander). The bill prohibits municipal corporations from levying an income tax on nonresidents' compensation for personal services or on net profits from a sole proprietorship owned by a nonresident. This bill has opposition from Ohio's cities and villages. It had its first hearing two weeks ago in the Senate.

#### Senate Bill 208 / House Bill 326 – budget income tax correction bills

The House and Senate were hoping to have finished bills at this point in October that would repair an error in the business tax deduction passed in the state budget bill earlier this year.

The intent was to help small businesses reduce their taxes by creating a 75% income tax deduction on the first \$250,000 of pass-through business income, then charge a 3% flat tax on income greater than \$250,000. But the budget bill language did not match the intent and would actually cause a tax increase for some businesses.

Companion bills SB 208 and HB 326 were drafted to correct the error. However, the fix was in need of a fix itself. The two new bills created their own unintended consequences and failed to address all possible tax increases.

Because of the delay in the fix, the Senate added several provisions to these bills. One of the amendments was a provision that expanded the CAT carveout created in the state budget for an integrated supply chain for a light manufacturing company. The OMA opposed this amendment.

#### House Bill 232 – seller use tax collection

HB 232 was introduced by Representatives Grossman (R-Grove City) and Scherer (R-Circleville). The bill prescribes new criteria for determining whether sellers are presumed to have substantial nexus with Ohio and therefore required to register to collect use tax

to allow sellers presumed to have substantial nexus rebut that presumption, and to require a person, before the person enters into a sale of goods contract with the state, to register, along with the person's affiliates, to collect use tax.

#### House Bill 343 – remove sale tax on temp employees

HB 343 was introduced by Representatives Romanchuk (R-Mansfield) and Young (R-Leroy Township). The bill would exempt employment services and employment placement services from sales and use tax.

This is a priority tax issue for manufacturers who in Ohio must pay sales tax on their temporary employees. The OMA has strongly advocated for this tax relief for manufacturers over the past two budget cycles.

The OMA and OMA members provided proponent testimony on the bill several weeks ago.

#### **Tax News**

##### 2020 Tax Commission

The 2020 Tax Commission has had several hearings. The Commission created in the state budget is looking at Ohio's entire taxing system. At their first hearing they released a report on the severance tax. The second hearing they heard testimony from an economist and several small businesses.

##### CAT Amicus

The OMA is working with allies in filing an amicus brief on behalf of the state. The issue revolves around three online/catalogue retailers who have failed to pay CAT although they do business in the state of Ohio. The coalition is producing a brief outlining the importance of the CAT to Ohio and Ohio businesses. A real threat exists if these types of companies are excluded from the CAT; the base erodes and more pressure is put on the low rate, resulting in a possible rate increase.

##### Tax Department Updates Direct Pay Permit

The Ohio Department of Taxation announced it will be sending staff to meet with businesses that hold direct pay permits for sales and use tax. The department reviewed the permit pay program and determined many companies were overpaying their liabilities.

The department will be working with permit holders to set bookkeeping benchmarks that allow for more accurate assessments of tax liabilities. All permit holders will be contacted by letter and a follow-up phone call to arrange a meeting to review their direct pay program.

If you have questions, contact the Department of Taxation at (614) 466-8099.



# Ohio Legislative Service Commission

## Bill Analysis

Joe McDaniels

### H.B. 343

131st General Assembly  
(As Introduced)

**Reps.** Young and Romanchuk, Antani, Becker, Brenner, Cupp, Hood, LaTourette, Rezabek, Sprague, Thompson, Vitale

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## BILL SUMMARY

- Exempts employment services and employment placement services from sales and use tax.

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## CONTENT AND OPERATION

### Sales and use tax exemption for employment services

The bill exempts employment services and employment placement services from sales and use tax beginning January 1, 2016. Under continuing law, the sale or use of services is generally not taxable unless expressly made subject to the tax.<sup>1</sup> Employment services and employment placement services have been explicitly subject to the tax since 1993.<sup>2</sup>

Under current law, taxable "employment services" are transactions in which a service-provider furnishes personnel to perform work under the supervision or control of the purchaser. The personnel may be assigned to a purchaser for a short period of time or on a long-term basis. The personnel are paid by the service-provider or a third party that supplies the personnel to the service-provider. Transactions between members of an affiliated group, medical and health care services, contracting and subcontracting services, and the permanent assignment of an employee over a contract of at least one year are not taxable "employment services" for sales and use tax

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<sup>1</sup> R.C. 5739.01(B).

<sup>2</sup> Ohio Department of Taxation, "ST 1993-08 – Employment Service," available at: [http://www.tax.ohio.gov/sales\\_and\\_use/information\\_releases/st199308.aspx](http://www.tax.ohio.gov/sales_and_use/information_releases/st199308.aspx) (last accessed October 1, 2015).

purposes. Furthermore, if employment services are supplied by a third party to a service-provider, and then by the service-provider to a purchaser, only the transaction between the service-provider and the purchaser is taxable. The hallmark of employment services are personnel that work under the direction or control of a purchaser but are employed and paid by the service-provider (or a third party that provided the personnel to the service-provider).<sup>3</sup>

Current law defines "employment placement services" as a transaction in which a service-provider locates employment for a job-seeker or locates an employee to fill an available position.<sup>4</sup>

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## HISTORY

ACTION	DATE
Introduced	09-28-15

H0343-I-131.docx/ks

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<sup>3</sup> R.C. 5739.01(JJ).

<sup>4</sup> R.C. 5739.01(KK).





**BEFORE THE ECONOMIC AND WORKFORCE DEVELOPMENT COMMITTEE  
THE OHIO HOUSE OF REPRESENTATIVES  
REPRESENTATIVE NAN BAKER, CHAIR**

**HOUSE BILL 343  
TESTIMONY  
OF  
LUKE HARMS  
SENIOR MANAGER, GOVERNMENT RELATIONS  
WHIRLPOOL CORPORATION**

**NOVEMBER 18, 2015**

Chair Baker and members of the Committee, my name is Luke Harms. I'm Senior Manager of Government Relations at Whirlpool Corporation. Whirlpool is the number one appliance manufacturer in the world, with approximately 100,000 employees and 70 manufacturing and technology centers. Here in Ohio, Whirlpool has five manufacturing facilities with approximately 10,000 employees.

I'm testifying here today on behalf of The Ohio Manufacturers' Association (OMA) with respect to House Bill 343, which proposes to repeal the sales tax on employment services. The OMA was created in 1910 to advocate for Ohio's manufacturers; today, it has 1400 members. Its mission is to protect and grow Ohio manufacturing.

Today I will provide you with background information about the existing sales tax exemption provided to manufacturers with respect to the purchase and use of machinery and equipment used in a manufacturing operation to produce tangible personal property for sale. I will cover the sound policy reasons to extend such tax treatment to employment services.

### **Ohio's Sales and Use Taxes**

Ohio's sales tax was first enacted as a temporary measure in the depths of the Great Depression in the 1930s. At that time, it was conceived as a tax on final personal consumption of tangible goods. One year after initial enactment, the use tax was enacted; the two taxes were made permanent and the first exemption for machinery and equipment used to produce tangible personal property for sale by manufacturing was added. Similar exclusions were made for other activities that, similarly, resulted in the production of goods that would be subject to the tax upon final sale.

The rationale for these exclusions is simple: The taxes are intended to be imposed upon the final consumption of goods and, now, those selected services that are subject to tax. Intermediate transactions prior to the final sale of the product, including the acquisition of machinery and equipment and the raw materials that are incorporated into the final product, are not intended to be taxed. The basis for this is four-fold:

First, imposing the tax on intermediate transactions (sometimes called business inputs) causes the tax to be imposed at each step in the production of a good. This causes the tax to pyramid at each step of the economic ladder, resulting in an effective tax rate that may be much higher than the statutory rate. For example, in conjunction with the 1994 tax study commissioned by the General Assembly, the staff provided an example in which a sales tax rate of 6.5 percent applied to two stages of production resulted in an effective tax rate of 9.5 percent at the time of the final retail sale.<sup>1</sup>

Second, imposing the tax on business inputs increases the cost of doing business through the higher prices that result from the tax. Business generally will respond to higher costs in combination of three ways: It may decide to charge higher prices; it may pay lower wages to workers (or expatriate those positions elsewhere); or it may provide a lower return on investment to owners.<sup>2</sup>

Third, direct inputs lead to the production of more valuable goods that are ultimately subject to the tax.

Fourth, the provision has economic development implications. Every single state that surrounds Ohio has a sales tax. Every one of those states has some sort of exemption from the tax for machinery and equipment used in the production of tangible goods to be sold by manufacturers. Moreover, the *1994 Study* also found that lower rates of taxation on business equipment increase the rate of business formation of smaller firms. Thus, imposing the sales tax on manufacturing machinery and equipment puts Ohio at a disadvantage from an economic development perspective.<sup>3</sup>

The application of sales and use taxes to business inputs has been the subject of comment on at least two prior occasions in Ohio. In 1982, the Final Report and Recommendations of the Joint Committee to Study State Taxes (114<sup>th</sup> General

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<sup>1</sup> Roy Bahl, Ed., *Taxation and Economic Development: A Blueprint for Tax Reform in Ohio* (Battelle Press 1994), p. 277-278 (the "1994 Staff Report").

<sup>2</sup> *Taxation and Economic Development in Ohio: A Blueprint for the Future*, Final Report of the Commission to Study the Ohio Economy and Tax Structure (December 23, 1994), p. iii ("1994 Study").

<sup>3</sup> *Id.*, at p. 5-4.

Assembly, December 1982), pp. 15-16 concluded that the taxes should be imposed broadly on consumer spending, but very selectively on business spending. Similarly, the *1994 Study* at p. 5-4 and the *1994 Staff Report* at p. 27 both recognized that the sales tax should only be imposed upon the final consumer and that business inputs should not be taxed at all. The taxation of business inputs should be avoided because doing so leads to multiple levels of taxation and economic disadvantages. Moreover, the *1994 Report* concluded that if the sales tax is extended to services, there should be liberal exemptions for transactions between businesses.

### **Manufacturing Exemptions for Tangible Personal Property Is Not Absolute**

Manufacturers enjoy exemption for three categories of purchases:

- Machinery and equipment used primarily during and in the manufacturing process
- Ingredients and materials that are incorporated into the final product that is produced for sale
- Packages and packaging equipment

However, this does not mean that manufacturers do not pay sales and use taxes in Ohio. Manufacturers purchase and use many goods and services that are not included in the manufacturing exemptions. Those items include machinery and equipment that is used before manufacturing begins, or after it ends; cleaning equipment and supplies; maintenance and repair equipment and supplies; storage facilities; most safety items; and office supplies and equipment and motor vehicles. As a result, manufacturers pay millions of dollars in sales and use taxes annually to the state of Ohio.

According to the 2014 Annual Report of the Ohio Department of Taxation, manufacturers as an economic segment paid more than \$410,000,000 in sales and use taxes directly to the state of Ohio. This is in addition to the untold millions of tax dollars that were paid to, and reported by, vendors and retailers located in Ohio. It appears that in terms of tax directly owed to the state, as opposed to tax that is collected from others, manufacturing is one of the largest payers of sales and use taxes in the state.

## **The Tax on Employment Services**

Effective January 1993, in order to fill a hole in the state budget, employment services were added as a taxable service by a conference committee facing a midnight deadline to reach agreement on a new budget. A taxable “employment service” included any transaction in which a person provides personnel to perform work under the supervision or control of another, whether on a short- or long-term basis, where the personnel are paid by the person who provided them. The entire amount paid for the service served as the base on which the tax was calculated.

Originally, four categories of transactions were excluded from the definition. Those four categories include:

- Transactions between members of an affiliated group;
- Persons providing medical and health care services;
- Persons providing contracting and subcontracting services; and
- Persons assigned to another pursuant to a contract of at least a year in duration that specifies that each employee covered by the agreement is “permanently” assigned to the purchaser.

A fifth category, involving services that were resold, was later added to the statute.

The tax generated a great deal of revenue, more than was expected, and the Department became more and more aggressive when it came to auditing the issue. The result was increased uncertainty on the part of business and increased time and expense in litigation responding to the aggressive enforcement activities of the Department.

For example, many manufacturers had begun employing temporary labor as a means of providing extra flexibility in meeting their workforce needs. Whether on a “temp-to-hire” basis, or as a means of meeting temporary up-ticks in production activities, manufacturers increasingly turned to vendors of temporary employees to fill those needs. Not surprisingly, many of those manufacturers assumed that the existing manufacturing exemption, which exempted purchases of machinery and equipment

used to produce tangible personal property for sale in a continuous manufacturing operation, would also cover workers on the manufacturing floor that operated the exempt equipment. Manufacturers and other purchasers of employment services also believed that in appropriate circumstances the services would be resold. After protracted litigation, they were soon disabused of both notions.

Another area that served fertile for litigation was the exclusion for employees that were “permanently assigned” to the purchaser. As noted previously, there were two conditions to this exclusion. First, the employees had to be provided pursuant to an agreement of a least a year in duration. Second, the agreement had to “specify” that the employees were provided to the purchaser on a “permanent” basis.

This provision likewise resulted in a flood of litigation involving issues such as

- Whether the agreement had to be written, or whether an oral agreement would suffice.
- The length of the term of the agreement, especially those that renewed or were cancelable at will.
- The meaning of the requirement that employees be “permanently assigned” to the purchaser.
- Whether the mere recitation of language in a service agreement that employees were permanently assigned was sufficient; or whether the course of conduct between the parties also had to establish that the positions were indeed indefinite.

The Department of Taxation continues to pursue employment services aggressively. It argues that employee turnover is a sign that the employees are not permanently assigned. It also takes the position that an agreement must set forth the name of every employee covered by the agreement, and that if any of the employees provided under an agreement are not provided on an indefinite basis, then the entire agreement is tainted and none of the employees qualify for the exclusion.

In recent audits, the Department takes the position that virtually any transaction involving personnel was a taxable employment service. Thus, transactions in which outside consultants are retained to provide services, such as computer and software design, an engineer, or a skilled tradesperson, are routinely picked up on audit as employment services.

### **The Tax on Employment Services Should Be Repealed**

House Bill 343 proposes to do away with the tax on employment services completely. The bill deletes “employment services” from the list of taxable transactions in R.C. 5739.01(B)(3)(k); it deletes the definition of “employment services” found in R.C. 5739.01(JJ); and deletes reference to the provision in other statutes.

Repeal of this provision reflects sound policy.

First, repeal is consistent with the recent efforts of Ohio tax policy to move away from the taxation of economic investment and towards personal consumption. Manufacturers invest in manufacturing machinery and equipment in order to expand or maintain their capacity to provide jobs and to produce a product for sale, a product that in most cases will be subject to the sales and use taxes when it is sold and used.

Since 2005, Ohio has attempted to move away from the taxation of business investment. It eliminated the tax on business tangible personal property. It eliminated the net worth base of the corporation franchise tax. And, it excludes from the commercial activity tax, receipts in the nature of a return on investment, including labor costs. Repealing the sales tax on employment services is consistent with this policy.

Second, imposing the sales tax on business inputs, including manufacturing machinery and equipment and labor is contrary to sound tax policy. As previous tax study commissions<sup>4</sup> have concluded, good tax policy is based on simplicity, equity, stability, neutrality and competitiveness. Subjecting employment services to tax renders the tax more opaque, more complex, and less fair as final consumers who are less

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<sup>4</sup> 1994 Study, p. 5-1; *Report of the Committee to Study State and Local Taxes*, March 1, 2003, p. 6.

economically advantaged pay an even higher proportion of their family income in sales taxes. The tax on employment services violates the principles of neutrality and competitiveness as it results in higher costs, which may influence economic decisions and competitiveness. Taken together, all these factors may in fact render the tax less stable.

Just as wages are not subject to sales and use taxes; and business inputs, such as ingredients, machinery and equipment, are exempted from the sales and use taxes, so too should amounts paid for temporary employees engaged in manufacturing activities be excluded from the tax. Employees are a business input; the sales tax should not apply to transactions by which such labor is obtained.

Third, the provision has generated more and more litigation as the Department has taken increasingly aggressive positions with respect to it. The provision is neither clear, nor is it easy to administer.

Temporary employment services play a critical role for manufacturers. At Whirlpool, temporary employees help the company manage seasonal demand changes for appliances. For example, our KitchenAid small appliance factory in Greenville has much higher shipment levels in the months leading up to the holiday season and our major appliance factories in Clyde, Marion, Findlay and Ottawa also see a significant uptick in shipments in the summer, driven by increased home construction and renovations. Temporary employment services not only help us avoid layoffs, but they help recruit skilled workers, many of whom eventually become Whirlpool employees. We compete in a competitive global environment. The products we produce here in Ohio must compete every day with imported appliances from Mexico, China and many other countries.

In conclusion, the impact of H.B. 343, to repeal the imposition of sales and use taxes on temporary employment services is not only founded on sound tax and economic policy, but will help Ohio manufacturers like Whirlpool to remain globally competitive. The sales and use taxes are intended to be taxes on ultimate household consumption; they are not intended to apply to business inputs or to intermediate transactions. Applying

the taxes to transactions involving the investment in labor, especially in labor to operate manufacturing machinery and equipment increases the cost of the goods that are produced, negatively impacts economic decisions, and may place Ohio at a disadvantage when it comes to economic development. That isn't good policy. It ought not to be the policy of Ohio.

Thank you. I'll be pleased to answer any questions you may have.



# Ohio Legislative Service Commission

## Bill Analysis

Sam Benham

### **Sub. S.B. 208\*** 131st General Assembly (As Reported by H. Ways & Means)

**Sens.** Beagle, Peterson, Bacon, Coley, Faber, Gardner, Hite, Hottinger, Jones, LaRose, Lehner, Manning, Obhof, Oelslager, Patton, Seitz, Uecker, Widener

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## **BILL SUMMARY**

- Provides that, for taxable years beginning in 2015, any taxable business income under \$250,000 (or \$125,000 for spouses filing separate returns) is subject to graduated tax rates similar to those applicable to nonbusiness income and not higher than 3%, while any business income in excess of those amounts remains subject to the recently enacted 3% flat tax rate.
- Specifies that a taxpayer may apply personal exemptions and tax credits to reduce the taxpayer's tax on business income, tax on nonbusiness income, or both.
- Modifies the commercial activity tax exclusion for receipts from the sale of certain consumer products within an integrated supply chain.
- Changes the method for phasing out payments that school districts receive to reimburse them for their loss of tangible personal property taxes and requires a one-year supplemental payment to some school districts adversely affected by the current reimbursement method.
- Repeals obsolete sections of the Income Tax Law relating to expired tax credits.

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\* This analysis was prepared before the report of the House Ways & Means Committee appeared in the House Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

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## CONTENT AND OPERATION

### Business income tax rates for 2015

The bill modifies the tax rates applicable to certain business income for taxable years beginning in 2015. This modification relates to recent changes made in Am. Sub. H.B. 64 of the 131st General Assembly, which increased the business income deduction and substituted a 3% flat tax rate on business income for the tiered tax rate brackets that previously applied to such income, while maintaining those tiered rate brackets for nonbusiness income.

Under current law, as modified by H.B. 64, all business income in excess of the business income deduction is subject to a 3% flat rate. For taxable years beginning in 2015, the business income deduction equals 75% of the taxpayer's first \$250,000 of business income (\$125,000 for spouses filing separate returns). For taxable years beginning in 2016 or thereafter, the deduction increases to 100% of the taxpayer's first \$250,000 (or \$125,000) of business income.

H.B. 64's imposition of a 3% flat tax for the 2015 taxable year could result in a subsection of taxpayers paying more tax for that taxable year than they otherwise would have absent H.B. 64. Without the H.B. 64 changes, taxpayers would have received a business income deduction equal to 50% of the taxpayer's first \$250,000 of business income (\$125,000 for spouses filing separately), and the amount remaining would have been subject to the tiered tax rate brackets. A taxpayer's combined income (both nonbusiness income and business income remaining after the 50% deduction) of around \$20,900 or less would have fallen into a tax bracket with a rate lower than 3%. After H.B. 64, however, any of that taxpayer's business income remaining after the 75% business deduction is subject to a flat 3% rate.

In order to avoid this result, the bill provides that, for taxable years beginning in 2015, the portion of a taxpayer's business income that is under \$250,000 (\$125,000 for spouses filing separately) and that is not reduced by the business income deduction will be subject to tiered brackets. The brackets are identical to the tiered brackets applicable to nonbusiness income, except with respect to income above \$41,700. As illustrated below, the marginal tax rate applicable to nonbusiness income over \$41,700 is 3.465% or higher. By contrast, the bill caps the marginal rate applicable to business income over \$41,700 at 3%.



2015 Nonbusiness Income Tax Rates	
\$5,200 or less	.495%
More than \$5,200 but not more than \$10,400	.990% of the amount in excess of \$5,200
More than \$10,400 but not more than \$15,650	1.980% of the amount in excess of \$10,400
More than \$15,650 but not more than \$20,900	2.476% of the amount in excess of \$15,650
More than \$20,900 but not more than \$41,700	2.969% of the amount in excess of \$20,900
More than \$41,700 but not more than \$83,350	3.465% of the amount in excess of \$41,700
More than \$83,350 but not more than \$104,250	3.960% of the amount in excess of \$83,350
More than \$104,250 but not more than \$208,500	4.597% of the amount in excess of \$104,250
More than \$208,500	4.997% of the amount in excess of \$208,500

2015 Business Income Tax Rates	
\$5,200 or less	.495%
More than \$5,200 but not more than \$10,400	.990% of the amount in excess of \$5,200
More than \$10,400 but not more than \$15,650	1.980% of the amount in excess of \$10,400
More than \$15,650 but not more than \$20,900	2.476% of the amount in excess of \$15,650
More than \$20,900 but not more than \$41,700	2.969% of the amount in excess of \$20,900
More than \$41,700	3% of the amount in excess of \$41,700

As a whole, the bill's modification ensures that no taxpayer will pay a higher marginal tax rate on business income for the 2015 taxable year than the taxpayer otherwise would have if H.B. 64 had not been enacted.<sup>1</sup>

## Use of income tax personal exemptions and tax credits

### Personal exemptions

The bill clarifies that a taxpayer may use the taxpayer's personal exemptions to reduce either taxable nonbusiness income or taxable business income (or both). Current

<sup>1</sup> R.C. 5747.01(A)(31) and (HH) and 5747.02.



law, as amended by H.B. 64, explicitly allows personal exemptions to be applied only against nonbusiness income.<sup>2</sup>

Under continuing law, taxpayers are allowed a personal exemption for the taxpayer, the taxpayer's spouse, and any dependents. The exemption amounts for 2014 equal \$2,200 for taxpayers with an Ohio adjusted gross income (OAGI) of less than \$40,000, \$1,950 for taxpayers with an OAGI between \$40,000 and \$80,000, and \$1,700 for taxpayers with an OAGI of more than \$80,000.

### **Credits**

The bill also allows taxpayers to claim income tax credits against tax liability arising from either business income or nonbusiness income. Current law, as amended by H.B. 64, limits the application of certain credits to either a taxpayer's business income tax liability or nonbusiness income tax liability, as applicable. (For example, the joint filing credit currently may be applied only against a nonbusiness income tax liability.)<sup>3</sup>

### **Exclusion for health and beauty product supply chain receipts**

Continuing law excludes, for purposes of calculating the base of the commercial activity tax (CAT), receipts from sales of beauty, health, personal care, or aromatic products (including candles), or packaging or components of those products (collectively referred to as "qualified property"), when the sales are between businesses within an integrated supply chain ("integrated supply chain vendors"). (The CAT is levied on the basis of a business' taxable gross receipts.) To qualify for the exclusion, a vendor must provide certain services within an area of land located in New Albany, Ohio. The exclusion applies retroactively to CAT periods beginning in 2011 and later.

The bill makes several changes to this exclusion. First, the bill changes the categories of receipts and sales that qualify for the exclusion. Under current law, an "integrated supply chain" is two or more integrated supply chain vendors that systematically collaborate and coordinate business operations with a retailer on the flow of goods from the point of their material sourcing through their delivery to a retailer; retailers themselves are specifically excluded from the integrated supply chain. The bill authorizes the retailer to be included as part of an integrated supply chain, thus enabling receipts from sales to the retailer to qualify for the exclusion.<sup>4</sup> The bill also expands the existing definition of retailer to include not only a person engaged

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<sup>2</sup> R.C. 5747.02(A)(4)(b).

<sup>3</sup> R.C. 5709.65, 5709.66, 5747.05, 5747.054, 5747.055, 5747.056, 5747.059, 5747.22, 5747.27, 5747.28, 5747.29, 5747.331, 5747.37, 5747.65, 5747.66, 5747.71, 5747.75, 5747.76, 5747.80, 5747.81, and 5747.98.

<sup>4</sup> R.C. 5751.01(F)(2)(jj)(i), (iii), and (v).



primarily in making retail sales, but also any person consolidated or combined with such a person for purposes of paying the CAT. Those consolidated or combined persons are considered retailers even if they themselves are not primarily engaged in making retail sales.<sup>5</sup> The bill also expands the definition of qualified property by (1) including finished retail products, and (2) no longer requiring packaging to be incorporated into the finished retail product in order to be considered qualified property, but limits the definition by excluding machinery, furniture, and fixtures.<sup>6</sup>

Second, the bill adjusts the services that may qualify a vendor for the exclusion. Under continuing law, receipts may be excluded only if the vendor provides "integrated supply chain services" within its integrated supply chain. Currently, such services encompass manufacturing, processing, and packaging goods that will become finished retail products. The bill expands these services to also include procuring raw materials that will become finished retail products but also specifies that the finished goods must be capable of being sold by a retailer in the same integrated supply chain.<sup>7</sup>

Third, in addition to authorizing integrated supply chain vendors to exclude receipts from the sale of qualified property as under current law, the bill authorizes vendors to exclude receipts from the sale of integrated supply chain services to another vendor or retailer in the supply chain. The bill also clarifies that excludable receipts do not include receipts of a person outside the supply chain from selling raw materials to a member of the supply chain, or receipts of a supply chain member from sales to persons outside the supply chain.<sup>8</sup>

Fourth, the bill requires each retailer with integrated supply chain vendors that would qualify for the exclusion to annually submit a list to the Tax Commissioner identifying those vendors for the upcoming year.<sup>9</sup> Upon receipt of the list, the Commissioner must issue a certificate to each vendor and the retailer entitling the vendors to exclude their supply chain receipts for that year. The bill requires the retailer to notify the Tax Commissioner of any changes to the list and requires the

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<sup>5</sup> R.C. 5751.01(F)(2)(jj)(vii).

<sup>6</sup> R.C. 5751.01(F)(2)(jj)(ii).

<sup>7</sup> R.C. 5751.01(F)(2)(jj)(vi).

<sup>8</sup> R.C. 5751.01(F)(2)(jj)(i).

<sup>9</sup> If the retailer is a member of a group of related companies that file CAT reports as a combined or consolidated group, the list must be submitted by the company that is responsible for filing CAT reports for the group (the "reporting person.")

Commissioner to issue revised certificates, including the effective date of any change. Vendors are not eligible for the exclusion unless they appear on the list for that year.<sup>10</sup>

The bill requires the retailer to furnish a list of persons that were or are integrated supply chain vendors of the retailer between 2011 and 2016. The list authorizes listed vendors to obtain retroactive refunds for those years or to prospectively take the exclusion for 2016 tax periods. The retailer must submit the list by December 1, 2015.<sup>11</sup>

Fifth, the bill adjusts the potential geographical area in which integrated supply chain services must be provided to qualify a vendor for the exclusion. Under current law, to qualify for the exclusion, vendors in the same supply chain must provide supply chain services within the same parcel or contiguous parcels of land of between 400 and 700 acres located in a county with a 2010 population between 165,001 and 170,000 (i.e., Licking County) and a city with a 2010 population between 7,501 and 8,000 (i.e., New Albany). The bill (1) removes the requirement that such parcels be contiguous, (2) requires that the acreage be located within the corporate limits of New Albany as they existed on September 29, 2015, (3) requires that the supply chain existed on September 29, 2015, and (4) removes the maximum acreage limitation—instead requiring the total area to exceed 100 acres.<sup>12</sup>

Sixth, the bill prohibits a business from excluding receipts in an integrated supply chain from the sale of qualified property related to prescription drugs, durable medical equipment, mobility enhancing equipment, or a prosthetic device.<sup>13</sup>

Finally, the bill removes the requirement that an integrated supply chain vendor have receipts from sales within an integrated supply chain as a "direct" member of that supply chain to qualify for the exclusion.<sup>14</sup>

### **TPP replacement payments to school districts**

The bill changes the schedule for phasing out payments that school districts receive to reimburse them for the previous termination or reduction of taxes on tangible personal property.<sup>15</sup> The reimbursement partly compensates for property tax revenue

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<sup>10</sup> R.C. 5751.01(F)(2)(jj)(v).

<sup>11</sup> Section 6.

<sup>12</sup> R.C. 5751.01(F)(2)(jj)(viii).

<sup>13</sup> R.C. 5751.01(F)(2)(jj)(iv).

<sup>14</sup> R.C. 5751.01(F)(2)(jj)(iii).

<sup>15</sup> R.C. 5709.92.



reductions brought about by legislated reductions in the taxable value of property used by electric, natural gas, and telephone utilities and the termination of taxes on tangible personal property used in business. The bill affects payments that are based on tax losses from local operating levies that are imposed at a fixed millage rate (i.e., not emergency levies or bond levies); such levies constitute the largest class of reimbursable levies (about 75% of all school district and JVSD reimbursement payments).

### Current law

Under current law as recently enacted by H.B. 64, reimbursement for such fixed-rate levies is being phased down at a pace governed by how much those payments were for FY 2015 as a percentage of a school district's total operating revenue.<sup>16</sup> Payments are phased out more quickly for districts whose FY 2015 replacement payments are a relatively small percentage of their total resources. The phase-out also incorporates a tax-raising capacity factor designed to continue relatively greater payments for more years for districts that have relatively lower personal income and per-pupil property wealth. For districts in the middle 20% (third quintile) of tax capacity, the replacement payment will be made in FY 2016 only if and to the extent that the FY 2015 payment represents more than 1.5% of the district's total resources; in FY 2017, the percentage increases from 1.5% to 3%, and it increases by an increment of 1.5% each year thereafter. The initial percentage is 2% for districts in the highest tax capacity quintile, 1.75% for those in the next-highest quintile, 1.25% for the second-lowest quintile, and 1% for the lowest quintile. The initial percentage is 2% for all joint vocational school districts.

**Example.** As an example of current law's phase-down schedule, consider a district in the middle tax capacity quintile whose FY 2015 reimbursement payment for fixed-rate operating levies was about \$2.7 million, which was about 6.3% of its total operating revenue of about \$42.4 million. As a district in the middle tax capacity quintile, its FY 2016 phase-out percentage is 1.5%. Its FY 2016 payment for fixed-rate operating levies will equal its FY 2015 payment for such levies minus 1.5% of its total operating revenue. Thus:

$$\begin{aligned}\text{FY 2016 payment} &= [ \$2.7 \text{ million} - (1.5\% \times \$42.4 \text{ million}) ] \\ &= [ \$2.7 \text{ million} - \$636,000 ] \\ &= \$2,064,000\end{aligned}$$

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<sup>16</sup> Total operating revenue (named "total resources" in the law) is based on tax year 2014 operating levy taxes and FY 2015 state education aid, reimbursements for operating and nondebt levies, income taxes, and casino tax revenue.



The district's FY 2017 payment equals its FY 2015 payment minus 3% of its total operating revenue:

$$\begin{aligned}\text{FY 2017 payment} &= [ \$2.7 \text{ million} - (3\% \times \$42.4 \text{ million}) ] \\ &= \$1,428,000\end{aligned}$$

The FY 2018 payment, using a 4.5% phase-out percentage, equals \$792,000. In FY 2019, when the percentage is 6%, the payment equals \$156,000. No payment is made to the district after FY 2019 for fixed-rate operating levies because that year's phase-out percentage (7.5%), when multiplied by the district's total operating revenue, yields an amount that exceeds the district's FY 2015 reimbursement for those levies.

### **FY 2017 supplement**

For FY 2017, the bill maintains the existing reimbursement framework, but provides for a separate "supplemental" payment for city, local, and exempted village school districts. The payment guarantees that the combined amount of state foundation funding and TPP reimbursement for fixed-rate operating levies that a district receives in fiscal year 2017 will equal at least 96% of the combined amount of state foundation funding and TPP reimbursement for fixed-rate operating levies that the district received in FY 2015.<sup>17</sup>

### **Proposed phase-down beginning FY 2018**

The bill replaces, beginning in FY 2018, the current phase-down schedule with one that phases the payments down each year solely on the basis of a fixed portion of each school district's taxable property valuation. Specifically, reimbursement payments would begin to decline in FY 2018 by  $\frac{1}{16}$  of 1% of a district's taxable property valuation averaged over the three-year period from 2014 to 2016. ( $\frac{1}{16}$  of 1% is the equivalent of  $\frac{5}{8}$  mills per dollar of valuation, or 0.0625%). In FY 2019, the payment would equal the FY 2018 payment minus 0.0625% of the three-year average valuation, and each succeeding year's payment would equal the immediately preceding year's payment minus 0.0625% of the three-year average valuation until the payment amount reaches zero.

**Example.** Consider the school district in the preceding example of current law's operation, and assume it has a three-year average total taxable value for 2014 – 2016 of

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<sup>17</sup> H.B. 64 of the 131st General Assembly included a similar provision authorizing supplemental payments guaranteeing that, in both FY 2016 and 2017, a district receive combined state foundation funding and TPP reimbursement for fixed-rate operating levies equal to at least 100% of the combined amount of state foundation funding and TPP reimbursement for fixed-rate operating levies the district received in FY 2015. However, the Governor vetoed the supplemental payment authorized for FY 2017.

\$475 million.  $\frac{1}{16}$  of 1% of this amount is \$296,400. Under the bill, the FY 2018 payment equals its FY 2017 payment reduced by this amount:

$$\text{FY 2018 payment} = \$1,428,000 - \$296,400 = \$1,131,600$$

Its FY 2019 payment will equal its FY 2018 payment minus the same \$296,400:

$$\text{FY 2019 payment} = \$1,131,600 - \$296,400 = \$835,200$$

Its payments will be reduced by \$296,400 each year through FY 2021, when it receives its final payment of \$242,400. In FY 2022, it will no longer receive a reimbursement for its fixed-rate operating levies.<sup>18</sup>

### **Removal of expired tax credits**

The bill also removes several obsolete sections of the Income Tax Law that relate to income tax credits that have expired. The expired tax credits are:

- (1) The credit for retailers of alternative fuel;
- (2) The credit for payment of tangible personal property taxes for property used in manufacturing or refining;
- (3) The credit for businesses that increase their export sales;
- (4) The credits for purchasers of new manufacturing machinery or equipment in 1995 or 1996;
- (5) The credit for economic development of a distressed area;
- (6) The credits for employers that provide day-care for children of employees, establish a day-care center for employees' children, or reimburse employees for day-care expenses;
- (7) The credit for purchases of lights and reflectors for installation on agricultural tractors to comply with statutory lighting and reflector requirements;
- (8) The credit for the payment of certain employee training costs.<sup>19</sup>

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<sup>18</sup> The examples in this analysis are not intended to reflect the typical or average difference between current law's payment outcomes and payment outcomes under the bill.

<sup>19</sup> R.C. 5733.48, 5747.051, 5747.057, 5747.26, 5747.261, 5747.31, 5747.32, 5747.34, 5747.35, 5747.36, 5747.38, 5747.39, and 5747.77 (repealed); R.C. 9.66, 122.16, 122.172, 122.173, 5733.33, 5733.42, 5733.98, 5747.21, 5747.212, and 5747.22 (amended to remove cross-references).



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## HISTORY

ACTION	DATE
Introduced	09-03-15
Reported, S. Ways & Means	10-21-15
Passed Senate (33-0)	10-21-15
Reported, H. Ways & Means	---

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## Tax

### OMA Members Testify to Eliminate Sales Tax on Temps



This week representatives from OMA member companies Cargill, Inc. and Whirlpool Corporation testified on behalf of the OMA in support of House Bill 343 before the House Economic and Workforce Development Committee. The bill eliminates the sales tax on temporary employment services, something the OMA has pushed during the past several General Assemblies.

In his [testimony](#), Don Brown, State Government Relations, Cargill, Inc. stated: "As Cargill evaluates growth and investment at existing Cargill facilities to meet growing customer demands, Ohio locations are at a disadvantage to similar locations in other states where employment services are not taxed. Ohio is a clear outlier on the taxability of employment services. HB 343 addresses a competitiveness issue."

Luke Harms, Senior Manager, Government Relations, Whirlpool Corporation, [testified](#): "The impact of H.B. 343, to repeal the imposition of sales and use taxes on temporary employment services is not only founded on sound tax and economic policy, but will help Ohio manufacturers like Whirlpool to remain globally competitive." 11/19/2015

*Pictured: Don Brown, State Government Relations, Cargill, Inc. and Luke Harms, Sr. Mgr., Government Relations, Whirlpool Corporation*

### 2020 Tax Commission Hears Testimony from Econ. Professor

This week, the General Assembly 2020 Tax Commission heard from Dr. Richard Vedder, Distinguished Professor of Economics Emeritus at

Ohio University, who provided [testimony](#) about Ohio's tax system.

He said, "This is a good time to be examining our tax system. We are not in the midst of a fiscal crisis requiring hasty emergency action. The state's economy is in decent shape, although we are in long-term national economic slowdown of historic proportions that no doubt will adversely impact on our fiscal future. The enormous rise of unfunded federal liabilities reflecting not only a huge national debt but also unsustainably large entitlement programs will also adversely impact us."

The commission which was created in the current state budget is in the process of reviewing Ohio's revenue system including all taxes. The commission will make recommendations about how Ohio can improve its tax system and promote economic growth. 11/19/2015

### Budget Act Eliminates Strategies for Maximizing Social Security Payout

OMA Connections Partner, Clark Schaefer Hackett, reports that the Bipartisan Budget Act of 2015 contains a provision that can significantly affect the retirement planning of many Americans. It eliminates two strategies that many married couples have used to maximize Social Security benefits. [Read about it here](#). 11/19/2015

### A Big CAT Exemption Goes to the Governor

[SB 208](#) (Beagle, R-Tipp City), which fixes an unintentional income tax hike in last session's income tax reduction bill, was passed this week by the General Assembly and is on the way to the governor's desk.

Unfortunately, the bill contains a commercial activities tax (CAT) exemption for personal care products within an integrated supply chain. The exemption is apparently designed to benefit one company: L Brands (owner of Bath & Body Works) in New Albany. The exemption is anti-competitive, and, along with other CAT carve-outs and exemptions, will put pressure on the rate for other taxpayers in the future.

The bill also partially restores funding to local school districts for tangible personal property taxes phased out in the major tax reforms of 2005. 10/28/2015

## Senate Passes Significant CAT Exemption

This week, the Senate passed SB 208 with an amendment that again erodes the base of the commercial activity tax (CAT) by creating a new, very broad CAT exemption, thereby setting a precedent potentially ruinous to the tax.

The amendment expands a CAT exemption that was passed within HB 64, the state budget bill enacted earlier in 2015, that applied to a defined situation: personal care products sold within integrated supply chain. The current law excludes certain taxable gross receipts of a manufacturer, supplier, or distributor of beauty, health, personal care, or aromatic products which meet a certain criteria. This new amendment would greatly expand this exclusion to a broad array of businesses.

OMA tax counsel Mark Engel of Bricker & Eckler LLP provides [more detail here](#). In sum, he says: "Bottom line is that this provision picks a winner and gives it a huge advantage over its competition: The CAT no longer applies to intermediate transactions, thereby lowering its prices. There is no reason this model couldn't, or shouldn't, be implemented for any other nonintegrated manufacturing operation. There goes the CAT."

Thank you to those members who went on record with their senators. 10/20/2015

## OMA Files Three Amicus Briefs to Defend CAT

This week the OMA along with the Ohio State Medical Association, Ohio Dental Association, and Ohio Chemistry and Technology Council filed three amicus briefs ([Crutchfield, Inc.](#), [Mason Companies, Inc.](#), and [Newegg, Inc.](#)) at the Supreme Court of Ohio in support of the Department of Taxation.

At issue are three companies challenging the state's authority to collect commercial activity tax (CAT) when the companies do not have a physical presence in Ohio. The three companies in question do business in Ohio and sell their products in Ohio.

The amicus brief argues that the issue in the case, allowing companies that enjoy the benefits of doing business in Ohio to the tune of tens of millions of dollars with no physical presence escape paying CAT, would undermine the tax structure and penalize companies who choose to physically operate in Ohio. 10/22/2015

## 2020 Tax Policy Commission Convenes First Meeting

The 2020 Tax Policy Commission established earlier this year in the state budget met for the first time this week.

The Commission is chaired by Senator [Bob Peterson](#) (R-Sabina) and Rep. [Jeff McClain](#) (R-Upper Sandusky). Agenda items included a review of the operations and purpose of the Commission and an overview of the state taxing structure by Tax Commissioner [Joe Testa](#).

The Commission also heard [Recommendations and Information Collected by the Informal Working Group on Ohio's Oil and Gas Industry and Severance Tax](#), a report required by the state budget. The working group recommended a market based "trigger," a phase-in of severance tax increases contingent on economic trends. 10/22/2015

## Ohio Dept. of Tax Offers Free Virtual Tax Academy Nov. 18

The Ohio Virtual Tax Academy (OVTA) is a free event of the Ohio Department of Taxation designed to provide tax-related information to business owners. Attorneys and accountants are also invited to attend and can earn up to 3 CLE credits and up to 3.5 CPE credits.

The next OVTA is November 18, 2015; topics include:

- General Changes in Personal Income Tax for Tax Year 2015
- The Small Business Exclusion and New Calculation on Business Income
- Tax Withholding and Use of Employment Services

[More information and registration here.](#) 10/20/2015

## House Committee Weighs Killing Tax on Temporary Workers - Act Now

The House Economic and Workforce Development committee has taken up [HB 343](#), a bill that would exempt employment services and employment placement services from sales and use tax. The measure was introduced by Reps. [Mark Romanchuk](#) (R-Mansfield) and [Ron Young](#) (R-Leroy Township).

This is a priority tax issue for manufacturers who in Ohio must pay sales tax on their temporary employees.

Here is a [memo](#) from OMA tax counsel, Mark Engel of Bricker & Eckler LLP, that describes Ohio's history regarding taxing temporary employees and he summarizes OMA's longstanding position.

In testimony, OMA has said: "Just as wages are not subject to sales or use or commercial activity taxes, and business inputs, such as ingredients, machinery and equipment, are exempted from the sales and use taxes, so too should amounts paid for temporary employees engaged in manufacturing activities that are otherwise exempt from the tax. Such employees are a business input; the sales tax should not apply to transactions by which such labor is obtained."

Here's Rep. Romanchuk's [testimony](#) and Rep. Young's [testimony](#) on the bill.

If temporary workers factor into your workforce expenses, use the easy email tools at the OMA's [Manufacturing Advocacy Center](#) to communicate your support for the bill to the House committee members hearing the bill. *10/13/2015*

### **Gearing Up For the ACA's Information Reporting Requirements**

OMA Connections Partner, GBQ Partners, offers [this advice](#): "Starting in 2016, applicable large employers (ALEs, or employers with 50 or more full-time employees or the equivalent) under the Affordable Care Act (ACA) will have to file Forms 1094-C and 1095-C to provide information to the IRS and plan participants regarding their health care benefits for the previous year. Both the forms and their instructions are now available for ALEs to study and begin preparations for required filings ...

"... And even ALEs exempt from the ACA's shared-responsibility ("play or pay") provision for 2015 (that is, ALEs with 50 to 99 full-timers or the equivalent who meet certain eligibility requirements) are still subject to the information reporting requirements in relation to their 2015 health care benefits."

Consult your tax advisor for assistance in navigating the ACA's requirements to avoid penalties and properly report benefits. If you're not an ALE, your tax advisor can determine whether you qualify for a tax credit for providing coverage. *10/13/2015*

### **Uncertainty Around Federal Tax Extender Package**

Here's what OMA Connections Partner, Clark, Schaefer, Hackett, predicts for the tax extender package in Congress:

"The House Ways and Means Committee recently approved legislation to permanently extend several tax breaks, including the following popular business incentives: 50 percent bonus depreciation; Exemption from U.S. taxation for foreign active financing income; Look-through treatment for payments between related controlled foreign corporations; 15-year recovery period for qualified leasehold improvement property, qualified restaurant property and qualified retail improvement property.

"This follows the Ways and Means Committee approval of legislation to permanently extend the research tax credit and section 179 expensing.

"Neither of these proposals have been brought to the House floor for a vote. Several recent attempts to permanently extend the most popular tax incentives have failed because members of Congress have been unable to agree on budget priorities. Even though the administration and Congressional leaders have all stated they support the permanent extension of certain popular tax breaks, they have been unable to agree on how to pay for them. The tactics of repeated "symbolic" votes and threats of government shutdown to advance political agendas also cause delays in voting on tax legislation. Ultimately, it is likely that sometime in very late December, Congress will enact a short-term extenders package that will be retroactive to Jan. 1, 2015, and effective through Dec. 31, 2016." *10/6/2016*

### **House Introduces Tax Relief on Temporary Workers**

This week Reps. [Mark Romanchuk](#) (R-Mansfield) and [Ron Young](#) (R-Leroy Township) introduced legislation, [HB 343](#), that would exempt employment services and employment placement services from sales and use tax.

This is a priority tax issue for manufacturers who in Ohio must pay sales tax on their temporary employees. The OMA has strongly advocated for this tax relief for manufacturers over the past two budget cycles. *10/1/2015*

### **Fiscal Year 2016 Travel Per Diem Rates Now Available**

OMA Connections Partner, GBQ Partners LLC, reports that the IRS recently updated the per diem rates for business travel for fiscal year 2016, which started on October 1, 2015.

Additionally, GBQ reports that the IRS offers simpler alternatives that may be worthwhile for some companies. For example, instead of reimbursing

employees for their actual expenses for lodging, meals and incidentals while traveling, employers may pay them a per diem amount, based on IRS-approved rates that vary from locality to locality.

[Read more.](#) 9/29/2015

### **The Fix is In ... Sort of**

The House and Senate were hoping to have a near-finished bill this week that would repair an error in the business tax deduction passed in the state budget bill earlier this year.

The intent was to help small businesses reduce their taxes by creating a 75% income tax deduction on the first \$250,000 of pass-through business income, then charge a 3% flat tax on income greater than \$250,000. But the budget bill language did not match the intent and would actually cause a tax increase for some businesses.

Companion bills [SB 208](#) and [HB 326](#) were drafted to correct the error. The OMA submitted letters to both the [House](#) and [Senate](#) encouraging passage of the bills to fix the problem.

However, the fix is in need of a fix itself. The two new bills create their own unintended consequences and fail to address all possible tax increases. Both chambers are aware of the issue and are working to correct the errors. 9/24/2015

### **How is Road Work Funded?**

The Tax Foundation has taken a look at the share of road infrastructure expenditures funded by tolls, user fees, and user taxes in the states. The foundation believes that user fees and user taxes should provide the bulk of the financing for road work.

Ohio ranks 16th among the states in reliance on user fees and taxes, with 52% of road funding coming from them.

Take a look at the U.S. map [here](#). 9/22/2015

### **Bill Introduced to Repair Small Business Tax Foible**

The General Assembly is taking swift action this month to fix an error in the state budget that would leave certain Ohio business owners facing a tax increase this year. Senator [Bill Beagle](#) (R-Tipp City) has introduced [SB 208](#) and companion legislation has been introduced in the House.

The budget was supposed to reduce the tax on business income above \$250,000 to a flat 3% rate. However the final version of the bill reads that the 3% rate applies to all taxable business income, not just income above \$250,000. For some taxpayers, this 3% is higher than the current graduated tax rate.

In his [brief testimony](#), Beagle said, "This clarifying language ensures Ohio's business owners will receive the full tax relief intended by House Bill 64."

The legislature is moving to fix this quickly in order for the hike on some businesses not to take effect. 9/10/2015

### **OMA and Members Sign on to Tax Extender Letter to Congress**

The OMA and more than 2,000 other companies, associations and organizations urged Congress in [this letter](#) to "act immediately on a seamless, multiyear or permanent extension of expired and expiring tax provisions, including appropriate enhancements."

These tax provisions are critical to U.S. jobs and the broader economy. The letter states: "Failure to extend these provisions is a tax increase. It will inject instability and uncertainty into the economy and weaken confidence in the employment marketplace. Acting promptly on this matter will provide important predictability necessary for economic growth." 9/10/2015

## Taxation Legislation

Prepared by: The Ohio Manufacturers' Association  
Report created on December 1, 2015

- HB9**      **TAX EXPENDITURE REVIEW COMMITTEE** (BOOSE T) To create a Tax Expenditure Review Committee for the purpose of periodically reviewing existing and proposed tax expenditures.  
*Current Status:* 10/7/2015 - Senate Ways and Means, (Second Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-9>
- HB12**      **TIF-INCENTIVE DISTRICTS** (BUTLER, JR. J, BURKLEY T) To establish a procedure by which political subdivisions proposing a tax increment financing (TIF) incentive district are required to provide notice to the record owner of each parcel within the proposed incentive district before creating the district.  
*Current Status:* 3/17/2015 - House Ways and Means, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-12>
- HB19**      **INTERNAL REVENUE CODE** (SCHERER G) To expressly incorporate changes in the Internal Revenue Code since March 22, 2013 into Ohio law and to declare an emergency.  
*Current Status:* 4/1/2015 - **SIGNED BY GOVERNOR**; eff. 4/1/215  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-19>
- HB26**      **COIN SALES-USE TAX EXEMPTION** (MAAG R, HAGAN C) To exempt from sales and use taxes the sale or use of investment metal bullion and coins.  
*Current Status:* 11/18/2015 - Senate Ways and Means, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-26>
- HB32**      **AIRCRAFT-MOTOR FUEL EXCISE TAX** (PERALES R) To subject the receipt of motor fuel used to operate aircraft to the motor fuel excise taxes rather than the sales and use taxes and to require a percentage of motor fuel excise tax revenue to be used for airport improvements.  
*Current Status:* 2/10/2015 - Referred to Committee House Ways and Means  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-32>
- HB64**      **OPERATING BUDGET** (SMITH R) To make operating appropriations for the biennium beginning July 1, 2015, and ending June 30, 2017, and to provide authorization and conditions for the operation of state programs.  
*Current Status:* 6/30/2015 - **SIGNED BY GOVERNOR**; Eff. 7/1/15  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-64>
- HB65**      **TAX-EXPENDITURE APPRAISAL** (DRIEHAUS D) To provide for the periodic appraisal of the effectiveness of tax expenditures.  
*Current Status:* 3/24/2015 - House Ways and Means, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-65>
- HB84**      **MUNICIPAL TAX-CIVIL ACTIONS** (SPRAGUE R, SWEENEY M) To require civil actions by

taxpayers related to municipal income taxes be brought against the municipal corporation imposing the tax rather than the municipal corporation's tax administrator.

**Current Status:** 3/24/2015 - House Ways and Means, (First Hearing)

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-84>

**HB99**      **INCOME TAX-SCHOOL FUNDING (CURTIN M)** To require that an amount equal to state income tax collections, less amounts contributed to the Ohio political party fund via the income tax checkoff, be distributed for the support of elementary, secondary, vocational, and special education programs.

**Current Status:** 5/5/2015 - House Ways and Means, (Second Hearing)

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-99>

**HB102**      **VETERAN-OWNED BUSINESSES (CRAIG H, ANTANI N)** To provide a bid preference for state contracts to a veteran-owned business and to authorize a personal income and commercial activity tax credit for a business that hires and employs a veteran for at least one year.

**Current Status:** 4/28/2015 - House Ways and Means, (First Hearing)

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-102>

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

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

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

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

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

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

**HB232**      **SELLER-USE TAX COLLECTION (GROSSMAN C, SCHERER G)** To prescribe new criteria for determining whether sellers are presumed to have substantial nexus with Ohio and therefore required to register to collect use tax, to allow sellers presumed to have substantial nexus to rebut that presumption, and to require a person, before the person enters into a sale of goods contract with the state, to register, along with the person's affiliates, to collect use tax.

**Current Status:** 6/2/2015 - Referred to Committee House Ways and Means

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-232>

**HB269**      **INCOME TAX-SOUND RECORDING (SMITH K, LATOURETTE S)** To authorize a

refundable income tax credit for individual investors in a sound recording production company equal to a portion of the company's costs for a recording production or recording infrastructure project in Ohio.

**Current Status:** 9/30/2015 - Referred to Committee House Ways and Means

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

- HB280**      **BALANCED BUDGET COMPACT** (KRAUS S, KOEHLER K) To adopt the Compact for a Balanced Budget and to declare an emergency.  
**Current Status:** 6/30/2015 - Introduced  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-280>
- HB308**      **TEXTBOOKS-TAX EXEMPTION** (DUFFEY M, STINZIANO M) To exempt from sales and use tax textbooks purchased by post-secondary students.  
**Current Status:** 10/21/2015 - House Ways and Means, (First Hearing)  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-308>
- HB326**      **TAX LAW-JOINT FILING** (AMSTUTZ R, MCCLAIN J) To make technical changes to the state income tax law, to modify the requirements for receiving the joint filing credit, and to provide that, for the 2015 taxable year, any taxable business income under \$125,000 for married taxpayers filing separately or \$250,000 for other taxpayers is subject to the graduated tax rates applicable to nonbusiness income, while business income in excess of those amounts remains subject to the existing 3% flat tax.  
**Current Status:** 10/26/2015 - House Ways and Means, (Fifth Hearing)  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-326>
- HB343**      **EMPLOYMENT SERVICES-TAX EXEMPT** (YOUNG R, ROMANCHUK M) To exempt employment services and employment placement services from sales and use tax.  
**Current Status:** 12/2/2015 - House Economic and Workforce Development, (Third Hearing)  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-343>
- HB358**      **TAX DEDUCTION-SAVINGS ACCOUNTS** (DEVER J, CONDITT M) To allow an income tax deduction for contributions to ABLE savings accounts.  
**Current Status:** 10/26/2015 - Referred to Committee House Ways and Means  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-358>
- HB369**      **BALANCED BUDGET COMPACT** (KOEHLER K, HAMBLEY S) To adopt the Compact for a Balanced Budget and to declare an emergency.  
**Current Status:** 12/1/2015 - House Government Accountability and Oversight, (First Hearing)  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-369>
- HB390**      **NATURAL GAS-TAX EXEMPTION** (SCHAFFER T, RETHERFORD W) To exempt the sale of natural gas by a municipal gas company from the sales and use tax.  
**Current Status:** 12/1/2015 - House Ways and Means, (First Hearing)

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-390>

- HB398 CAUV COMPUTATION (HILL B)** To require that the computation of the capitalization rate for the purposes of determining CAUV of agricultural land be computed using a method that excludes appreciation and equity buildup.  
**Current Status:** 11/17/2015 - Introduced  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-398>
- SB2 INTERNAL REVENUE SERVICE-INCORPORATE CHANGES (PETERSON B)** To expressly incorporate changes in the Internal Revenue Code since March 22, 2013, into Ohio law, and to declare an emergency.  
**Current Status:** 2/18/2015 - Referred to Committee House Ways and Means  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-2>
- SB12 INCOME TAX CREDIT-SCIENCE RELATED DEGREE (HOTTINGER J)** To grant an income tax credit to individuals who earn degrees in science, technology, engineering, or math-based fields of study.  
**Current Status:** 2/4/2015 - Referred to Committee Senate Ways and Means  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-12>
- SB18 TAX CREDIT-NATIONAL GUARD EMPLOYMENT (GENTILE L)** To authorize a refundable income tax credit for employers that hire one or more qualified veterans or members of the National Guard or reserves.  
**Current Status:** 2/4/2015 - Referred to Committee Senate Ways and Means  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-18>
- SB21 EARNED INCOME TAX CREDIT RESTRICTION (SKINDELL M)** To remove the income restriction on the earned income tax credit and to make the credit refundable beginning in 2015.  
**Current Status:** 2/4/2015 - Referred to Committee Senate Ways and Means  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-21>
- SB40 ECONOMIC DEVELOPMENT TAX CREDIT (BEAGLE B)** To authorize tax credits for contributions of money to economic and infrastructure development projects undertaken by local governments and non-profit corporations.  
**Current Status:** 6/10/2015 - Senate Ways and Means, (First Hearing)  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-40>
- SB41 NEW MARKETS TAX CREDIT QUALIFICATIONS (BEAGLE B, TAVARES C)** To modify the qualifications for the New Markets Tax Credit and the schedule for receiving the credit.  
**Current Status:** 6/3/2015 - Senate Ways and Means, (First Hearing)  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-41>
- SB52 AIRCRAFT FUEL EXCISE TAX (BEAGLE B)** To subject the receipt of motor fuel used to

operate aircraft to the motor fuel excise taxes rather than the sales and use taxes and to require a percentage of motor fuel excise tax revenue to be used for airport improvements.

**Current Status:** 2/18/2015 - Referred to Committee Senate Ways and Means

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-52>

**SB88**      **FELON EMPLOYMENT TAX CREDIT** (TAVARES C, THOMAS C) To create a tax credit for the employment of individuals who have been convicted of criminal offenses.

**Current Status:** 3/4/2015 - Referred to Committee Senate Ways and Means

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-88>

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

**Current Status:** 3/4/2015 - Referred to Committee Senate Ways and Means

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

**SB198**      **NON-RESIDENT MUNICIPAL INCOME TAX** (JORDAN K) To prohibit municipal corporations from levying an income tax on nonresidents' compensation for personal services or on net profits from a sole proprietorship owned by a nonresident.

**Current Status:** 9/29/2015 - Senate State and Local Government, (First Hearing)

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-198>

**SB208**      **STATE INCOME TAX** (BEAGLE B) To make technical changes to the state income tax law, to modify the requirements for receiving the joint filing credit.

**Current Status:** 11/15/2015 - **SIGNED BY GOVERNOR**; Eff. 90 days

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-208>

**SB209**      **OHIO RURAL JOBS ACT** (HITE C) To enact the "Ohio Rural Jobs Act" which authorizes a nonrefundable tax credit for insurance companies that invest in rural business growth funds, which are certified to provide capital to rural and agricultural businesses.

**Current Status:** 12/1/2015 - House Agriculture and Rural Development, (First Hearing)

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-209>

**SB235**      **INCREASED VALUE-PROPERTY TAX** (BEAGLE B, COLEY W) To exempt from property tax the increased value of property on which industrial or commercial development is planned until construction of new commercial or industrial facilities at the property commences.

**Current Status:** 11/10/2015 - Referred to Committee Senate Ways and Means

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-235>

**SB246**      **CAUV COMPUTATION-CAPITALIZATION RATE** (HITE C) To require that the computation of the capitalization rate for the purposes of determining CAUV of agricultural land be computed using a method that excludes appreciation and equity buildup.

**Current Status:** 11/18/2015 - Introduced

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-246>