3:00 p.m. (EST)
1-866-362-9768
940-609-8246#

Special Call of All OMA Policy Committees, presented by the OMA Government Affairs Committee

Thursday, June 29, 2017

AGENDA

Welcome & Introductions	**Chris Hess,** Director, Public Affairs, Eaton Corporation; Committee Chair
Staff Report on State Government • **State Budget Status** • **Energy** • **Environment** • **Human Resources** • **Safety & Workers' Comp** • **Tax Policy** • **Leadership / Misc**	**Ryan Augsburger**, OMA Staff **Rob Brundrett**, OMA Staff **Committee Members**
OMA Counsel's Report	**Chris Slagle,** Partner, Bricker & Eckler LLP

2017 Government Affairs Committee Calendar
Meetings will begin at 9:30 a.m.

Tuesday, August 29, (Note Cleveland location)
Wednesday, November 29

Public Policy "Hot Topics"
June 29, 2017

Overview

With the budget process nearly complete, the General Assembly is poised to begin a summer recess until September. Session and committees are expected to resume in September.

Top legislative advocacy issues for the OMA this year include unemployment compensation solvency reforms; protection of competitive electric generation; opposition to electric utility bailouts; and support for pro-manufacturing tax reforms contained in the budget. Several new priority issues have arisen in the past few weeks.

Budget

Budget legislation funds state government for a two-year biennium. Budget legislation is also a vehicle for hundreds of permanent and temporary law changes….some germane and some less germane.

The Ohio Constitution requires the General Assembly and the Governor to approve a balanced budget by midnight on Friday, June 30, the end of the state's 2017 fiscal year. The Governor has line-item veto authority but will have limited time to exercise the authority because the General Assembly just completed the bill Wednesday June 28.

Budget legislation was initially proposed by the Executive branch in late January and then the General Assembly has made revisions ever since including many hundreds this week when the House and Senate accepted a new version of the budget negotiated by a conference committee. The main state budget is called House Bill 49. A high level fact page is included.

The end of the budget process marks an important milestone in the legislative session and in political influence of term-limited state leaders.

Electric Utilities Seek $Billions / Support Re-Monopolizing Generation Charges

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

Not satisfied with the action by the PUCO, FirstEnergy, AEP and other electric utilities are advocating for a series of legislative proposals forcing customers to pay billions in new above-market charges. Numerous hearings were held in May and June. The OMA is opposing these pro-utility proposals:

- **Nuke Plant Bailout - *Zero-Emissions Nuclear ZEN*** HB178 (Rep. DeVitis)/ SB 128 (Sens. Eklund & LaRose) **STALLED**
- **OVEC Bailout – *National Security Generation Assets*** HB 247 (Reps. R. Smith & Carfagna) / SB 155 (Sens. Peterson & Terhar) **STALLED**
- **Prop-Up Utility's Credit Rating Bailout** Senate-added amendment to budget HB 49 **REMOVED**

HB 247, Protect Competitive Electric Markets
Representative Mark Romanchuk (R-Ontario) has introduced House Bill 247 to protect electric markets. See included resource material. The OMA is working with other customer organization to support the legislation. Contact staff to learn more how your company can support this important legislation to protect customers.

The OMA has been a proponent of markets, supporting the original deregulation legislation and opposing utility profit subsidy schemes that distort the market and result in new above-market charges on manufacturers. Several noteworthy studies have demonstrated how the market delivers lower prices, choice and innovation without compromising reliability.

New Employer Liability Exposure REMOVED
The Senate amended the budget to create a new civil cause of action that could be used against employers that attempt to restrict firearms in workplace parking lots.

If a business or private employer is found liable, a court may award compensatory damages and other relief, including attorney's fees, according to this memo by OMA general counsel, Bricker & Eckler.

The memo notes that passage of SB199, the "bring your gun to work bill," which became effective earlier this year, was bad for Ohio employers' private property rights, but that "(t)he creation of a new private right of action for allegedly aggrieved employees is potentially worse."

OMA signed onto a letter to House and Senate leadership with numerous other Ohio business organizations urging the removal of the provisions. The organizations wrote: " … language now included in ORC 2923.1210 that was passed last year and opposed by many of our organizations allows individuals to store firearms in their privately-owned vehicles on employer property under certain circumstances. Amendment SC5837, which is both overly broad and vague, would exacerbate this problem by adding significant liability for all property owners and employers throughout the state." The Conference Committee removed the problematic provision.

Unemployment Compensation
Last year the legislature passed a provision (included in House Bill 390) guaranteeing that the state's unemployment compensation loan would be paid back to the federal government by the November deadline. By paying the loan off a year early the business community is expected to save over $400 million in federal penalties. Unfortunately a solvency package aimed at shoring up the state's unemployment trust fund and correcting the underlying issue was not passed during lame duck. Business and labor had been working with Representative Schuring and Senator Peterson on a budget solution to the problem, however this item was NOT INCLUDED in the final version of the budget.

Tax Policy
Governor Kasich introduced his final budget proposal in later January. The bill once again contained sweeping changes to the tax code. As the budget hearings progressed the state's fiscal outlook became increasingly dimmer. By the time the Senate passed their version the state was looking at a $1 billion budget deficit.

Stripped from the bill was the centerpiece of the governor's proposal; reducing the personal income tax. However several other provisions of note were added to the bill by the House and Senate.

- **Municipal Income Tax Collection** and Throwback Rule

- **BTA Appeals**: The Supreme Court of Ohio pushed a Senate amendment to remove appeals from the Board of Tax Appeals from going directly to the Supreme Court. The OMA conveyed concerns to the Court. In the end, the Conference Committee adopted a compromise allowing parties to ask to have the appeals transferred to the Supreme Court.

Workers' Comp & Industrial Commission
The BWC budget was introduced as House Bill 27. The bill made numerous policy changes. Due to the changes the bill was more controversial than normal. Two main items of note generated much of the controversy:

- Reducing the statute of limitations – the bill reduced the amount of years an injured worker has to report a workplace related injury from the current two years to one year.
- Illegal aliens – the House included a provision that made it impossible for an injured illegal alien to receive workers' compensation. The Senate removed the provision from the final version of the bill.

House Bill 49 includes a provision which would set terrible precedent regarding employers' dollars. The budget allows OBM to transfer 2% of the BWC and IC budgets to the GRF to run state government operations. Those dollars come from premiums and assessments. They are reserved for injured workers. OMA is looking at all options to oppose this item.

Environment
Along with the budget, priority legislation from Ohio EPA was passed in the final weeks of June. Senate Bill 2 a priority water bill by Ohio EPA was passed by both chambers. The bill is of note because it contains a provision removing slag from waste definitions under Ohio's clean water statute.

House Bill 49 contained to major environmental issues of note. First was the removing the fees for alternative daily cover. Second was creating a new statutory process for creating TMDLs in response to an Ohio Supreme Court decision.

Race for Ohio Leadership in 2018
Jockeying for statewide office is underway in the race for US Senator, governor, attorney general, auditor, secretary of state and treasurer. Look for opportunities at the OMA to meet the candidates over the next couple years.

House Bill 49 - State Budget Impact

ISSUE AREA	WHAT	RESULT	AMENDMENTS
ENERGY			
Electric distribution utility rate adjustments	Permits the PUCO to consider a utility's credit rating when testing an Electric Security Plan. Allows the PUCO to upwardly adjust rates that a utility can charge so that they achieve and maintain an minimum credit rating.	Taken out during Conference Committee - Victory	
Wind farm set backs	Changed and modified the current wind set back laws in Ohio.	Taken out during Conference Committee	
Kilowatt-Hour tax: exempt electricity used in chlor-alkali manufacturing processes	Exempts from kilowatt-hour taxation any use of electricity by a qualified end user in a chlor-alkali manufacturing. If the electricity is received from a municipal electric company, the end user must first obtain the consent of the legislative authority of the municipal corporation that owns or operates the utility	Stayed in during Conference Committee	
ENVIRONMENT			
Alternative daily cover	Exempts solid waste that EPA approves as alternative daily cover and that is used as alternative daily cover from fees otherwise applicable to solid waste under current law.	Stayed in during Conference Committee - Victory	
Total maximum daily load	Authorizes EPA to establish a new administrative procedures that apply to the development of TMDLs, including but not limited to, providing opportunities for interested parties to provide input during the development of a TMDL. The law specifies it is to supercede the Ohio Supreme Court case dealing with TMDLs.	Added during Conference Committee - Victory	

HUMAN RESOURCES			
Storage of firearm in privately owned motor vehicle - employer liability	Created a civil cause of action against a business who establishes or maintains a policy that prohibits a concealed handgun licensee from transporting or storinga firearm or ammunition in the person's private vehicle. Permits the court to award, damages, fees, and injunctive relief.	Amended during Conference Committee - Victory	Amended to only allow for injunctive relief
SAFETY AND WORKERS' COMPENSATION			
Cash transfer from BWC and IC budgets to the GRF	Authorizes OBM to transfer cash each fiscal year from the BWC and IC, limiting the amounts to no more than 2% of each fund's total FY2017 appropriation, to the GRF.	Stayed in during Conference Committee - Loss	
TAX			
State level municipal taxation of business profits	Allow businesses to file a single annual or estimated tax return through the Ohio Business Gateway on which the business can report and pay the total tax due to all of the municipalities in which the business earned net profits. The bill also elimintated the throw-back rule.	Amended during Conference Committee - Victory	Amended to reduce the administrative fee.
Appeals of Board of Tax Appeals decisions	Removes authority to appeal BTA cases directly to Ohio Supreme Court.	Amended during Conference Committee - Mix	Amended to authorize a party to request that the appeal be transferred to the Ohio Supreme Court if the appeal involves a substantial constitutional question.

House Bill 27 - Workers' Compensation Budget Impact

ISSUE AREA	WHAT	RESULT
Statute of limitations for injury or death claims	Decreases the amount of time a person has to initiate a workers' compensation claim based on an employee's injury or death to one year after an employee sustains an injury or dies from two years under current law.	Retained in bill - Victory
Illegal aliens and unauthorized aliens	Prohibits an illegal or unauthorized alien from receiving compensation or benefits under Ohio's Workers' Compensation Law.	Removed from bill

FOR IMMEDIATE RELEASE
June 28, 2017

CONTACT
Eric Burkland (614) 224-5111
Ryan Augsburger (614) 348-1227

OMA Responds to Legislature's Elimination of Electric Utility Credit Rating Provision in State Budget Bill

(Columbus, OH): Eric Burkland, president of The Ohio Manufacturers' Association (OMA), issued the following statement today commenting on Conference Committee action this week to remove from the State Budget Bill (House Bill 49) a provision that would have enabled electric utilities to ask the Public Utilities Commission of Ohio (PUCO) to approve customer rate increases to shore up the utilities' credit ratings:

> "The OMA commends the Conference Committee for recognizing that enabling Ohio's electric utilities to raise customers' electric rates to bolster the utilities' credit ratings is bad public policy.
>
> Eliminating this provision from the budget bill will thwart the utilities' latest ploy to seek a financial bailout by their customers by shifting ordinary business risk from shareholders to ratepayers."

# # #

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

June 22, 2017

Hon. Ryan Smith, Representative
Chair, House Finance Committee

Hon. Scott Oelslager, Senator
Chair, Senate Finance Committee

Hon. Scott Ryan, Representative

Hon. Gayle Manning, Senator

Hon. Jack Cera, Representative

Hon. Mike Skindell, Senator

Re: Senate Omnibus Budget Language Enabling Electric Utility Rate Increases

Dear Members of the Conference Committee on House Bill 49:

We respectfully ask your consideration to remove from the Senate version of the budget bill a late, anti-consumer addition that enables utilities to increase electric rates for Ohio families and businesses based on maintaining utility credit ratings.

The undersigned write on behalf of Ohio residential utility consumers, many businesses that make products in Ohio and employ people, residential and business aggregation consumers, and others.
The new language passed by the Senate will enable utilities to charge Ohio families and businesses many millions of dollars in subsidies to support utility credit ratings.

The proposed language that should be removed from the budget bill does not merely codify current PUCO practice, as apparently is claimed by an electric utility. In fact, the language reverses rulings of the Ohio Supreme Court, that last year overturned PUCO decisions allowing utility charges to customers for financial stability for electric utilities: https://supremecourt.ohio.gov/rod/docs/pdf/0/2016/2016-ohio-1608.pdf (at page 9); https://supremecourt.ohio.gov/rod/docs/pdf/0/2016/2016-ohio-3490.pdf. Additionally, the Senate language could interfere with customer appeals now pending in the Ohio Supreme Court, to protect Ohioans from electric rate increases.

Also, just last fall, the PUCO approved a proposal to collect $204 million per year in subsidy charges from FirstEnergy's captive customers when FirstEnergy faced a credit downgrade due to business decisions and competitive market issues affecting its unregulated affiliate. That PUCO decision will likely be appealed to the Ohio Supreme Court, to protect customers from higher

electric bills, because it is an unlawful generation subsidy under current Ohio law. And it allows the utility to collect unlawful transition charges long after the market development period ended under the 1999 deregulation law.

Moreover, there should be the opportunity to be heard on matters of this importance and impact to Ohio's utility consumers. This opportunity should start with the introduction of a stand-alone bill, LSC review, and then public testimony and input before a vote.

On behalf of the utility consumers we represent in the State of Ohio, we appreciate the opportunity to be heard on this important economic issue to our State, and respectfully request the Conference Committee to remove this provision.

Respectfully,

/s/ Bruce Weston, Agency Director
Office of the Ohio Consumers' Counsel

/s/ Charles W. Keiper, Executive Director
Northeast Ohio Public Energy Council

/s/ Chris Ferruso, Legislative Director
National Federation of Independent Businesses

/s/ Ryan Augsburger, Vice President and Managing Director of Public Policy Services
Ohio Manufacturers' Association

/s/ Jennifer Klein, President
Ohio Chemical Technology Council

/s/ Trey Addison, Associate State Director
AARP

Attachment A (proposed amendment)

cc: Governor Kasich

CARPENTER LIPPS & LELAND LLP

ATTORNEYS AT LAW

280 PLAZA, SUITE 1300
280 NORTH HIGH STREET
COLUMBUS, OHIO 43215

MEMORANDUM

TO: The Ohio Manufacturers' Association

FROM: Kimberly W. Bojko, Carpenter Lipps & Leland LLP

DATE: June 21, 2017

SUBJECT: Sub H.B. 49 "utility credit rating" amendment

Sub. H.B. 49 Amendment to R.C. 4928.143

The proposed statutory revisions included in the omnibus amendment (SC5466) do not codify current industry practice. The revisions allow a utility to obtain a financial integrity charge under an electric security plan (ESP) application. The revisions also specifically state that such a charge is not a transition charge and does not violate corporate separation laws. Specifically, the amendment makes two statutory revisions that are harmful to customers.

1) Proposed R.C. 4928.143(F) (line 251):

New language beginning at line 251 of SC5466, is very similar to attempts previously made by the Dayton Power & Light (DP&L) to modify PUCO ratemaking laws to add new riders on customers' electric bills if a utility's financial integrity is threatened. The bill allows the PUCO to establish a rider or upwardly adjust rates to ensure that the utility achieves and maintains a **minimum** credit rating. The language goes on to state that the amount of the rate adjustment would be an amount just and reasonable to achieve and maintain a **target** credit rating. **Target** credit rating is later defined as possibly being higher than a **minimum** credit rating. Thus, the bill language seems to contradict itself as to whether the PUCO is authorized to increase rates or add new riders at a level that achieves and maintains a minimum credit rating or something even higher, a target credit rating (also determined by the PUCO).

The legislative proposal specifically makes a legal determination that the rate adjustment does not constitute a transition charge and is not subject to other limitations set forth in existing Ohio law, including corporate separation prohibitions such as providing ratepayer monies to affiliated companies. This may effectively reverse recent Supreme Court decisions that were favorable to customers regarding transition charges and would moot current or imminent appeals regarding the PUCO's recent approval of FirstEnergy's credit support rider.

2) Proposed R.C. 4928.143(E) (line 218):

New language inserted beginning at line 218 of SC5466, permits the Public Utilities Commission of Ohio (PUCO) to modify the significantly excessive earnings test (SEET) that is required if an ESP lasts longer than 3 years. If the SEET test is conducted in year four of the ESP and if continuing the ESP will cause the utility to earn excessive profits, the PUCO may terminate the ESP. The amendment, however, allows the PUCO to consider the utility's credit rating when testing the ESP. In essence, authorizing the PUCO to find that the SEET test would not result in excessive earnings because of the utility's low credit rating as if a low credit rating somehow nullifies the utilities' excessive earnings. This is contradictory to the current law that requires the PUCO to find that the earnings will be excessive and terminate the ESP to prevent the utility from over earning in the future.

Remember, if the utility is found to have significantly excessive earnings under another provision in the law, those excessive earnings are required to be refunded to customers. Given that none of the utilities have ever invoked this provision and conducted this test since their ESPs have only been three years or shorter so as to preclude the necessity of such test, there is no way this amendment could be seen as codifying current practice as there has been no current practice to date. The only current practice surrounding a SEET test has been pursuant to R.C. 4928.143(F), where the PUCO conducts the SEET test after the end of the ESP to determine whether significantly excessive earnings occurred.

Conclusion:

The referenced budget amendment is a stunning request of the General Assembly by a utility company. The utilities continue to ask for more customer-paid subsidies due to an alleged fiscal crisis due to their parent company or affiliates' bad business decisions. **Once again the utilities are asking customers to bail them out, seeking to shift ordinary business risk from shareholders to ratepayers.**

June 13, 2017

Honorable Clifford A. Rosenberger
Speaker of the House

Honorable Larry Obhof
Senate President

Honorable William Seitz
Chair, House Public Utilities Committee

Honorable Bill Beagle
Chair, Senate Public Utilities Committee

State Representatives and Senators

RE: Ohio Electric Consumers' Opposition to OVEC Subsidy Legislation
H.B. 239 and S.B. 155

Dear Speaker Rosenberger, President Obhof, Chairmen Seitz and Beagle, and Members of the Ohio General Assembly:

We represent AARP-Ohio, Northeast Ohio Public Energy Council, Ohio Consumers' Counsel and Ohio Manufacturers' Association. Our organizations advocate on behalf of senior citizens, businesses that make products, and families in Ohio that will pay at least $104 million, and as much as $256 million (or more), per year in rate increases for decades if this legislation is passed. For the reasons stated below, we respectfully request the members of the General Assembly to table the House and Senate legislation.

1. This legislation that the utilities seek would be bad public policy for Ohio.

It has been Ohio's energy policy since 1999 that risks from deregulated power plants were to be borne by Ohio's electric utilities. Those utilities were paid by consumers about $9.6 billion from 1999 to 2010 in transition charges to assume those market risks. Importantly, against free market economics, the present bills pick winners and losers in Ohio's electric generation market. These bills favor keeping 65-year old uneconomic power plants in operation for decades to come. At the same time, tens of billions of dollars are being invested in Ohio to build new efficient natural gas plants in the state. Consistent with the 1999 policy, these natural gas plants are privately financed without customer-funded subsidies. The free markets envisioned by the General Assembly are working. But the bills would enable unnecessary governmental interference in those markets.

2. Consumers should not have to write a blank check to Ohio utilities.

The language in the bills permits collection of "all costs" from consumers, including "deferred costs." It is not known how much this will cost consumers. Consumers could pay for OVEC power plants for decades no matter how expensive it becomes to operate the units. The Legislative Service Commission estimates the cost to Ohioans could be as high as $256 million per year, and this figure does not include deferred costs.

Not only are the Cold War-era OVEC power plants inefficient, but they are saddled with over $1.4 billion in debt. This legislation incents the OVEC owners to operate the plants well beyond their useful life, and could even include consumer payment of the costs of decommissioning the plants when they close.

3. There should not be a costly Ohio approach to what is a regional or national issue.

The issue of aging baseload coal and nuclear plants in the country is being studied currently by the Department of Energy. There is also the possibility that incentives being considered by FERC might ultimately be implemented in some form by grid operators such as PJM. If the subject of these bills is an issue to be addressed, it is a national issue, and costs are appropriately borne by all customers, not just customers in one state (such as Ohio) where a particular plant is located. This is particularly the case for OVEC, which has two plants (in Ohio and in Indiana) that would receive customer-funded subsidies from only Ohioans under these bills.

In sum, the Legislature should table the discussion of these bills which as introduced can harm Ohio businesses and consumers. If the Legislature wishes to revisit this issue in the future, there is plenty of time to consider this issue. The OVEC operating agreement runs until 2040 and there are no announced plans to shut the plants down or not bid the plants into the PJM regional market.

Thank you for your consideration of our request.

Respectfully submitted,

AARP

Northeast Ohio Public Energy Council

Office of Ohio Consumers' Counsel

Ohio Manufacturers' Association

cc: Hon. John Kasich, Governor

Utilities Seek Another Bailout,
This Time for Obsolete "National Defense" Assets

Legislation was recently introduced in the Ohio General Assembly that would allow Ohio's investor-owned electric utilities (utilities) or their affiliates, who are part owners of the Ohio Valley Electric Corporation (OVEC) power plants, to collect from customers unwarranted subsidies to support the uneconomic power plants in which the utilities or their affiliates have an ownership stake, including an OVEC plant located in Indiana. The legislation would guarantee utilities recovery of all costs associated with the OVEC plants, including deferred costs. The legislation authorizes the utilities to collect these charges from all electricity users in Ohio under certain circumstances, which would remain in place until the assets are retired.

The utilities' rationale for the necessity of this request is a red herring. The OVEC plants are no different than any other electricity generation resource currently bidding into the wholesale market against other generation resources. What *is* different is that the OVEC plants are inefficient, produce expensive power and cannot get a foothold in the market. The utilities want the Ohio General Assembly to provide subsidies so they can ignore the market, keep the plants open, have Ohioans purchase power from the plants and pay prices that are higher than for other sources of electricity, and avoid having to write down the value of these plants – as they should have done years ago.

If approved, this would not be the utilities' first consumer-paid subsidy. Ohio's investor-owned utilities received $9.2 billion in "stranded assets" and "regulatory transition" payments from 2000 to 2010. Despite collecting these payments, utilities failed to write down their noncompetitive generating plants – including OVEC – which are the assets that were "stranded." Now the utilities want more.

This is utility regulation right out of the pages of Laura Numeroff's children's book *If You Give A Mouse A Cookie*, the classic tale of a mouse that gets the cookie it asks for, but always wants more. From 2000 to 2017, the utilities received $15.7 billion of cookies and are now asking for what some have estimated to be an additional $300 million per year for the life of the plants. Another source, the Ohio Legislative Service Commission (LSC), has estimated the costs paid by consumers to be potentially as high as $256.6 million per year for the 24-year period of the current OVEC contract.

Clearly, it's time to put a lid on the cookie jar.

Ohio ratepayers should not be required to support uneconomic power plants operating at barely half-capacity, such as the OVEC plants. Requiring customers in Ohio to pick up this tab would increase operating costs for Ohio's businesses and disadvantage these businesses compared to businesses in competing states with lower electricity costs. The subsidy would be levied on a significant segment of the population, including customers in AEP-Ohio, Dayton Power & Light, Duke Energy Ohio and FirstEnergy service territories.

Background

The Ohio Valley Electric Corporation is a company jointly owned by several electric utilities.[1] OVEC and its wholly owned subsidiary, Indiana-Kentucky Electric Corporation, own and operate two electricity generating complexes: Kyger Creek Power Plant, near Gallipolis, Ohio, and Clifty Creek Power Plant, near Madison, Indiana. Ohio's Kyger Creek complex has five electricity generating units, and Indiana's CliftyCreek complex has six generating units.

According to OVEC's website, OVEC was formed in the early 1950s by investor-owned utilities to generate electricity to meet the substantial electric power requirements of the uranium enrichment facilities then under construction by the Atomic Energy Commission (AEC) just south of Piketon, Ohio. Piketon's Portsmouth Gaseous Diffusion Plant was built from 1952 to 1956 and was one of the three large gaseous diffusion plants[2] constructed to produce enriched uranium to support the nation's nuclear weapons program and the U.S. Navy. For a short period of time much later, the Piketon plant produced enriched uranium for commercial nuclear reactors.

In October 1952, OVEC and the AEC entered into a 25-year power purchase agreement to ensure the availability of electricity to meet the needs of the Piketon plant. The agreement provided for excess generating capacity from OVEC (i.e., generation not needed by Piketon) to be available to the OVEC utility owners. The agreement was later extended through 2005.

However, with the Cold War ending in the early 1990s, the demand for enriched uranium for national defense purposes dropped. In September 2000, the U.S. Department of Energy (DOE) notified OVEC that the power purchase agreement with Piketon was being canceled. In May 2001, the Piketon plant ceased operations, with the remaining work going to Paducah, Kentucky, and Piketon relegated to "cold-standby" status. In 2003, the power agreement between OVEC and Piketon was terminated. Piketon's status was clarified in 2006 when the plant's status shifted from "cold-standby" to "cold-shutdown." In May 2011, the power agreement between OVEC and Piketon was amended to make OVEC's entire generating capacity available to the utility owners to supply other customers. The current power agreement extends to June 30, 2040. Today, the Piketon plant remains shut down and is preparing for decontamination and decommissioning.

The timing is critical. As far back as 2000 (prior to the implementation of electricity deregulation in Ohio), the utilities knew that OVEC's Kyger Creek and Clifty Creek Power Plants would no longer be used or needed to serve the demands of national defense.

What would the legislation do?

Essentially, what's being proposed is ***a new utility giveaway bill*** that would bail out OVEC based on the pretense of OVEC being a "national security asset" because it initially was created, in part, to provide electricity needed to produce enriched uranium to support the nation's nuclear weapons program.

Key provisions of the legislation include the following:

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[1]American Electric Power, Dayton Power & Light, Duke Energy Ohio and FirstEnergy Solutions all have equity stakes in OVEC.

[2]The other gaseous diffusion plants were in Paducah, Kentucky and Oak Ridge, Tennessee.

- Changes state policy to recognize OVEC resources as "national security generation" and preserves ongoing, yet unspecified, benefits associated with such resources.
- Guarantees cost recovery of all costs associated with OVEC, including deferred costs, which could potentially be substantial since the OVEC power plants are currently operating at partial load, they aren't efficient and they are likely losing money.
- Allows the PUCO no discretion – i.e., under the bill, the Commission must approve recovery for all costs.
- Approves cost recovery from customers of the utilities of all costs even if the OVEC ownership share is owned by an unregulated affiliate. The bill is silent as to how the affiliate will obtain the revenue from the utility to support its ownership share of OVEC.
- May allow a utility to serve its Standard Service Offer (SSO) with OVEC power
- Requires the Standard Service Offer (SSO) to include OVEC cost recovery.
- Allows a utility with an affiliate to use the affiliate-owned power to serve the utility's SSO – regardless of its price, regardless of the management practices of the operating utility, regardless of how it will affect regional markets for electricity generation, regardless whether an unregulated affiliate owns the share of OVEC, and regardless of whether the power is being produced from the Ohio-sited plant.
- Allows a utility to reopen and revise its current ESP to potentially collect more costs, even though the utility may already be receiving subsidies for OVEC.
- If the OVEC power is sold in the wholesale markets and revenues are credited to offset the costs to customers, the cost recovery rider will be non-bypassable. Although not stated, this implies that if OVEC power is used to supply the SSO, the cost recovery rider will be bypassable.

If the proposed legislation becomes law, and therefore, OVEC is getting full cost recovery for its operations, there would be no incentive for OVEC to operate more efficiently or compete on price in the wholesale market.

What's wrong with this picture?

The utilities and their affiliates want a subsidy to operate and maintain the OVEC power plants. They want Ohio customers, both businesses and individuals, to bail them out and support uneconomic power plants that are no longer used to support, or otherwise related to, national defense. These requests are unreasonable and unwarranted for a variety of reasons:

- Piketon no longer processes nuclear fuel for weapons, and hasn't for many years. It thus is not a national security asset. Such a claim is nothing more than "a rhetorical port in a financial storm."
- The utilities knew the risk of supplying Piketon from 2001 to 2006, and the closure of the defense facility should have been factored into the utilities' business decisions.
- The Piketon nuclear enrichment site was opened in 1952 and closed on September 30, 2006. The utilities were notified in 2000 that the contract with Piketon would be canceled. The contract terminated in 2003.
- The utilities have already been paid transition revenues to help transition to a fully competitive generation market.

- In other words, the utilities knew the risk involved, took money to offset the costs of stranded assets, and are now asking to be compensated for their bad debt.
- In 2016, Kyger Creek's annual output was 52 percent, while Clifty Creek's annual output was 44 percent. These two plants basically were running at, or less than half of, full load.
- If the utilities are pursuing a national defense rationale to offset their losses in the OVEC plants, the solution should be reached at the national level – i.e., the costs should be spread over the entire population.
- OVEC's capacity is 12.1 percent (or 289.9 MW) more than peak usage at Piketon. The additional 289.9 MW was built to service customers beyond Piketon and has continued to serve other customers after the closure of Piketon. This belies the argument that OVEC was built solely for national security purposes. And this is not a trivial amount – it's the equivalent of one generating unit.
- Under no circumstances should Ohio electricity users subsidize out-of-state power plants. Piketon's peak usage (before 2001) was 2,100 MW. Total OVEC capacity is 2,390 MW. Ohio-located Kryger Creek is 45.4 percent of OVEC capacity, and Indiana-located Clifty Creek is 54.5 percent of OVEC capacity. So, if the proposed subsidy is awarded to the utilities, the maximum subsidy should be based on 45.4 percent of 2,100 MW (i.e., Kyger Creek's share of peak usage), not 100 percent of OVEC's total capacity.
- No matter how you cut it, the legislative proposal is a subsidy for uncompetitive power. Subsidizing power produced with old, inefficient technologies should not be allowed.

What alternatives are there for addressing the problem?

Following are two ideas for resolving OVEC without rewarding OVEC's utility owners (using Kyger Creek as the example):

1. **Preferred approach.** Provide no subsidy and allow the markets to work. Allow the owners to decide whether to continue operating the OVEC units and sell the power into the wholesale market or sell the plants to a new owner at market value.

2. **Alternative approach.** If the owners cannot sell the plants, and the owners deem the plants to be unprofitable or uneconomic, and the owners decide to close the plants, the owners could seek assistance from the State of Ohio. The state could assist in the closure of the plants by forming a nonprofit Kyger Creek Decommissioning Corporation that could float bonds secured by a non-bypassable rider across Ohio ratepayers. This would be done only after OVEC turns over the title to the generating units free and clear for $1 to the Decommissioning Corporation. The transfer of assets must include on-site transmission equipment and connections. The site would then be owned free and clear by the Decommissioning Corporation, which could sell or lease the land for economic development purposes. Proceeds from the sale or lease of the site would be used to accelerate payment of the Decommissioning bonds.

   This alternative approach calls to mind the Troubled Asset Relief Program (TARP), which was signed into law in October 2008. TARP provided a vehicle for the U.S. Department of the Treasury to purchase toxic assets and equity from trouble financial institutions to strengthen the nation's financial sector. It was a key component of the government's actions to address the subprime mortgage crisis.

We've seen this movie before

The OVEC bailout proposal is the utilities' third attempt at forcing Ohioans to purchase above-market electricity. From 2014 through 2015 two utilities created regulatory mandated power purchase agreements to force Ohioans to consume power from their loss-making coal fired plants first. This included the OVEC plants. The PUCO agreed, but the Federal Energy Regulatory Commission stopped in its tracks this blatant attempt to re-monopolize the electricity generating market.

This year witnessed FirstEnergy's attempt to have Ohioans purchase expensive nuclear power first, with the prospect of Ohio electricity users being forced to bail out FirstEnergy's plant in Pennsylvania along with its two northern Ohio nuclear plants. That proposal is still in play.

Now we have a proposal that could funnel upwards of $300 million more per year, indefinitely, to the owners of both the Ohio and Indiana OVEC plants.

What's the bottom line?

There is no compelling argument for having Ohio ratepayers, electricity customers, pay for uneconomic generation assets. Ohio should not reward OVEC's utility owners with the subsidies they seek for several reasons:

- Under Ohio law, utilities are not allowed to own and operate generation assets.
- Utilities had multiple decades to write down the value of their OVEC plants.
- Utilities have already collected stranded costs associated with their OVEC generation assets.
- Utilities should not be rewarded for their bad business decisions.
- More than half (54.5 percent) of the OVEC assets are in Indiana. Ohio consumers should not be required to subsidize Clifty Creek in Indiana.
- Utilities should not be permitted to impose on customers even more above-market charges.

The mouse has consumed enough cookies.

# # #

FOR IMMEDIATE RELEASE
May 24, 2017

Diverse Coalition Supports Electric Consumer Protections of House Bill 247

Group says legislation addresses certain ratemaking provisions in current law that are anti-competitive and bad for electricity consumers and for Ohio's economy

(Columbus, OH): A diverse coalition of pro-competition consumer organizations announced its support for electric legislation (HB 247), sponsored by Rep. Mark Romanchuk, R-Ontario, which was introduced today in the Ohio General Assembly.

AARP Ohio (AARP), Northeast Ohio Public Energy Council (NOPEC), Office of the Ohio Consumers' Counsel (OCC), The Ohio Manufacturers' Association (OMA), and the Ohio Farm Bureau Federation (OFBF) jointly applauded the legislation, which they say will address anti-consumer provisions that date back to the implementation of Senate Bill 221 in 2008. That bill altered the regulatory structure under which Ohio's electric utilities operate, created new ratemaking provisions, and established policies to promote advanced and renewable energy.

"We applaud Representative Romanchuk for recognizing the need for consumer friendly legislation—AARP and its 1.5 million members across the State of Ohio will benefit from this legislation," said Trey Addison AARP Ohio Associate Director. "This bill will ensure that Ohio energy customers, especially those age 50-plus living on fixed incomes, are protected from unfair, above-market charges."

Ohio's transition to a competitive retail market for electricity generation has had success, and the benefits are well-documented. They include billions of dollars in savings for consumers, new natural gas-fired generation and more than adequate standby capacity to meet Ohio's peak needs. Nonetheless, certain ratemaking provisions in current law are anti-competitive and bad for consumers and for Ohio. HB 247 addresses the most anti-competitive and anti-consumer of these provisions.

"Lower electric prices in the competitive market should translate to lower electric bills for Ohio families and businesses," said Ohio Consumers' Counsel Bruce Weston. "But an obstacle to lower electric bills for Ohioans has been the 2008 energy law, which has favored utilities for rate increases with consumers paying more than the market price of electricity. The legislation introduced today is a major step toward consumer protection, by limiting the utilities' advantage in setting rates, by requiring refunds to consumers when utility charges are found to be improper and by relying on competitive markets more than monopolies for electricity."

Under current law, residential consumers in Ohio are paying higher electric rates than consumers in 33 states.

Rep. Romanchuk's bill solves three major problems for electric consumers:

1. HB 247 will eliminate “electric security plans” and reduce above-market charges for electricity. The electric security plans created in the 2008 law resulted in utilities charging customers above-market prices for electricity generation and favorable terms for utilities to obtain other rate increases. But Ohioans should be benefitting more from historically low prices for generation. Billions of dollars in customer savings from competition have been documented, and increased savings should result from the new legislation.

2. Presently, consumers have been denied millions of dollars in refunds when utility charges have been deemed unlawful by the Ohio Supreme Court. HB 247 will allow customers to obtain refunds of utility charges that have been collected from customers, if the Supreme Court of Ohio finds the charges to be improper.

3. Charges to consumers have resulted from the continuing relationship between monopoly utilities and their corporate affiliates that own power plants. HB 247 will clarify in the law that utilities and their affiliate organizations cannot own generation and, therefore, cannot layer generation-related charges on consumers’ electric bills.

“Manufacturers, like other energy-intensive businesses, rely on affordable, reliable electricity,” said Eric Burkland, president of the Ohio Manufacturers’ Association. “Enactment of HB 247 will help protect manufacturers from unwarranted, anti-competitive, above-market charges imposed by electric utilities. The major provisions of HB 247 will help protect the billions of dollars of savings that customers have realized thanks to Ohio’s competitive market for electricity. Continued savings will spur economic growth, attract new business investment from manufacturers, and benefit the communities where they operate.”

The major provisions of HB 247 will undo anti-consumer ratemaking provisions contained in the 2008 law (SB 221) by eliminating structures that work against consumer and market interests.

“Ohio Farm Bureau applauds Representative Romanchuk for introducing a consumer savings bill, and we are happy to support the bill throughout the legislative process on behalf of our members,” said Adam Sharp, executive vice president of the Ohio Farm Bureau Federation.

"Rep. Romanchuk is standing up for millions of Ohio consumers and small business owners with this legislation," said Chuck Keiper, executive director of NOPEC. "We stand with him in these efforts to let the free market work, saving Ohioans billions of dollars by giving them the freedom of energy choice."

# # #

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Electricity Ratemaking Reforms To Protect Consumers

The successes of Ohio's transition to a competitive market for electricity generation are now documented. They include billions of dollars in savings for standard-offer consumers, governmental aggregation and other shopping consumers, numerous robust new natural gas-fired generation plants planned and coming online, and more than adequate reserve margins for reliability as determined by the Regional Transmission Organization, PJM Interconnection.

Nonetheless, there are some ratemaking provisions in current law that are anti-competitive or unfair—and bad for consumers and Ohio's economy. A broad-based coalition of electricity consumers is working with legislators to resolve the concerns outlined in this document and thereby improve outcomes for consumers and for Ohio. The legislative solution we seek is enactment of House Bill 247 (Romanchuk, R-Ontario), which was introduced in the Ohio General Assembly on May 24, 2017.

PROBLEM #1: Customers Are Denied Refunds for Charges That Are Later Determined to Be Improper.

Current law allows a utility to keep what it has collected from customers, even if the Supreme Court of Ohio determines the charges were improper.

SOLUTION: House Bill 247 would allow refunds to customers for all charges that are later found to be improper by the Supreme Court of Ohio or other authority.

PROBLEM #2: Utility Charges to Customers Under Electric Security Plans (ESPs)

The ESPs, allowed in the 2008 energy law (SB 221), are enabling utilities to request of the Public Utilities Commission of Ohio (PUCO) customer charges that exceed market prices. The result: Ohioans may not benefit from the lower electric bills that should flow from the lower prices in competitive electricity markets. In Ohio's competitive electricity market, ESPs—essentially, rate plans for the supply and demand of electric generation—are unnecessary and should be eliminated. Instead, a market-based option should be used to price service to customers.

Eliminating ESPs will fix a number of provisions that are unfair and costly to Ohioans under current law, including the following:

- **Utilities Are Not Required to Refund Customers All of the Utilities' Excessive Profits.** Even if the PUCO determines that a monopoly electric utility has "excessive" profits, the utility is not required to return the excess profits to customers. Only if the utility's earnings are deemed "significantly excessive" is the utility required to refund the significantly excessive portion of profits to its customers.
- **Customers Are Charged for Non-Generation Charges in an ESP.** Utilities use ESPs to set the price of the standard service offer to customers. However, the law also permits a utility to propose additional distribution-related charges in an ESP. Utilities have used the law to collect a number of so-called distribution charges from customers through non-bypassable riders. (That is, customers cannot "shop around" charges that are non-bypassable.) But some of these riders have nothing to do with distribution service. For example, FirstEnergy

AARP

Ohio Farm Bureau

The National Federation of Independent Business/Ohio

Northeast Ohio Public Energy Council (NOPEC)

Office of the Ohio Consumers' Counsel

Ohio AgriBusiness Association

The Ohio Cast Metals Association

Ohio Chemistry Technology Council

Ohio Hotel & Lodging Association

The Ohio Manufacturers' Association

Ohio State Grange

was granted a "distribution modernization rider" to provide credit support to the corporation without a requirement to spend the consumers' payments on distribution modernization. That is not the way a competitive, free-market system should work.

- **Customers Are Not Protected from Paying Too Much for Service Under an ESP.** One consumer protection in the 2008 law provided that ESPs could not be approved unless the result is "more favorable in the aggregate" to customers when compared to the expected results from the market-rate option. But the PUCO has been considering both quantitative and qualitative factors to determine if the ESP is more favorable in the aggregate than a market rate—and the Supreme Court of Ohio has declined to prohibit the PUCO's approach. The consideration of qualitative factors can allow above-market charges, and that has undermined the consumer protection that prices in ESPs should compare favorably to market prices.
- **Utilities Can Veto Any PUCO-Ordered Modification to Their ESPs.** If a utility doesn't like a PUCO ruling that modifies its proposed ESP, the utility can withdraw its application. In effect, the 2008 law gave the utilities—but no other stakeholder—veto power in ESP cases. This is a decidedly anti-customer policy.

SOLUTION: House Bill 247 would eliminate language in Ohio law that permits utilities to file ESPs, which would eliminate above-market charges to customers now allowed in ESPs. Utilities then would provide customers the standard service offer through a competitive bidding process. Utilities' distribution rates would continue to be set through distribution rate cases by the PUCO. This approach would allow the PUCO to review all expenses and revenues when a utility seeks a distribution rate increase, instead of the current approach that allows utilities to add charges to customers' electric bills using single-issue riders.

PROBLEM #3: Customers Are Not Protected from Subsidizing the Operations of a Utility's Corporate Affiliate.

Prior to the 1999 deregulation law (Amended Substitute Senate Bill 3, enacted with strong bipartisan support), utilities owned and operated generation plants. SB 3 changed that, prohibiting utilities from owning generation. Rather than complete divestment of the generating plants, however, several of the utilities spun off the assets to a corporate affiliate. In recent years, the utilities have used the poor financial performance of their unregulated generation affiliates to seek above-market charges from captive customers.

SOLUTION: House Bill 247 would protect Ohio customers from new and expanded above-market charges by clarifying that Ohio's 1999 deregulation law means utilities and their affiliates cannot own generation.

The forgoing proposals will protect consumers by restoring balance in the ratemaking process through repeal of unfair provisions in the 2008 law and making other changes. The proposals will prevent anti-competitive results from the law. And, limiting above-market charges will free up money for business expansion and job creation, spurring Ohio's economy.

OHIO ALLIANCE FOR CIVIL JUSTICE

The Honorable Cliff Rosenberger
House District 91
77 S. High St.
14th Floor
Columbus, Ohio 43215

June 22, 2017

Dear Speaker Rosenberger:

On behalf of the Ohio Alliance for Civil Justice, we write to express our opposition to the amendment contained in the omnibus amendment to the Senate's substitute version of H.B. 49 (FY18-19 Biennium Budget). Amendment SC5837 proposes to add a civil cause of action to Ohio Revised Code ("R.C.") 2923.1210. This new civil cause of action negatively impacts any and ALL Ohio property owners, including business entities, homeowners and public and private employers. Additionally, the proposed cause of action damages civil justice reform because, at a minimum, employers will be forced to pay new defense costs.

Pursuant to this proposed new civil cause of action, a business entity, homeowner or other property owner, or public or private employer may be liable if such specified entity, person or employer, establishes, maintains, or enforces a policy or rule that prohibits, or effectively prohibits, a person with a valid concealed handgun license from transporting or storing a firearm or ammunition when the firearm and all ammunition stays inside the person's privately owned vehicle while the person is inside the vehicle, or each firearm and all ammunition is locked in the trunk, glove box, or other enclosed compartment or container within, or on, the person's privately owned vehicle and the vehicle is in a location where it is otherwise permitted to be.

Moreover, the proposed civil cause of action subjects employers to potential compensatory damages and/or any equitable relief, including injunctive relief that a court may find appropriate. If a plaintiff is successful in the cause of action, employers will also be forced to pay court costs and reasonable attorney's fees.

It is currently illegal, under Ohio law, for an employer to prohibit any person with a valid concealed handgun license from properly storing such firearm and ammunition in his or her vehicle on the employer's property. The omnibus amendment's proposed civil cause of action creates an easier path for employees to sue his/her employer. This will force employers to use their precious resources on defending such causes of action instead of using such resources on economic development and job growth.

This amendment language provides additional litigation opportunities for alleged aggrieved employees against employers in Ohio. This new unnecessary cause of action will provide incentives for plaintiffs to bring suits against employers in Ohio. Whether the case is won or lost, employers will be forced to spend additional resources defending such lawsuits and will potentially face significant damages.

On behalf of the Ohio Alliance for Civil Justice, we would urge your careful consideration and removal of the amendment before H.B. 49 in the Conference Committee deliberations. The amendment language is bad for Ohio business and will most certainly lead to additional litigation actions and significant costs.

We would be happy to answer any questions or engage in further discussion.

Sincerely,

Chris Ferruso
NFIB/Ohio
OACJ Chair

Ryan Augsburger
OMA
OACJ Vice Chair

Barbara Benton
OSCPA
OACJ Treasurer

Tim Maglione
OSMA
OACJ Secretary

Keith Lake
Ohio Chamber
OACJ Assistant Secretary

Sean McGlone
OHA
Member at Large

Lora Miller
OCRM
Member at Large

Cc: Members of the Ohio Senate

June 22, 2017

The Honorable Cliff Rosenberger
House District 91
77 South High Street, 14th Floor
Columbus, Ohio 43215

The Honorable Larry Obhof
Senate District 22
Ohio Statehouse
1 Capitol Square
Columbus, Ohio 43215

Dear Speaker Rosenberger and President Obhof,

On behalf of the tens of thousands of businesses we represent, the undersigned Ohio business associations write to you in opposition to an amendment added to House Bill 49 by the Senate that further infringes upon the private property rights of Ohio's business owners and adds significant additional liability for all of Ohio's property owners.

Ohio's concealed carry laws currently contain provisions to protect employers' ability to prohibit concealed weapons on their premises. As we did when these laws were first enacted, we continue to believe that current law allowing employers to prohibit weapons

and firearms on their property is critical and should be left to the discretion of individual employers. However, language now included in ORC 2923.1210 that was passed last year and opposed by many of our organizations allows individuals to store firearms in their privately-owned vehicles on employer property under certain circumstances.

Amendment SC5837, which is both overly broad and vague, would exacerbate this problem by adding significant liability for all property owners and employers throughout the state. The amendment allows any "injured" person, though that term is not defined in the statute, to be awarded compensatory damages, equitable relief, and even attorneys' fees and costs. Creating a new way to file a lawsuit against employers and private property owners is a step backward for Ohio's legal climate. Simply put, employers and property owners should not be subjected to this unfettered civil liability.

We believe that this amendment greatly impacts civil liability for business owners and private property owners and should be vetted in stand-alone legislation. For these reasons, we urge to you to remove this burdensome amendment.

Respectfully,

Andrea Ashley
VP of Government Relations
Associated General Contractors

Dennis Saunier
President & CEO
Canton Regional Chamber of Commerce

Don DePerro
President & CEO
Columbus Chamber of Commerce

Robert Lapp
President
Manufacturing Policy Alliance

Roger Geiger
Vice President/Executive Director
NFIB/Ohio

Zach Doran
President
Ohio Automobile Dealers Association

Jen Klein
President
Ohio Chemistry Technology Council

Gordon Gough
President & CEO
Ohio Council of Retail Merchants

Patrick Harris
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Ohio Credit Union League

Kristin Mullins
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Ohio State Bar Association

Angela VanFossen
Director, Legislative Affairs
Ohio Contractors Association

Thomas Balzer
President & CEO
Ohio Trucking Association
Ohio Association of Movers

Thomas Humphries
President & CEO
Youngstown/Warren Regional Chamber

CC: The Honorable Ryan Smith
The Honorable Scott Ryan
The Honorable Jack Cera
The Honorable Scott Oelslager
The Honorable Gayle Manning
The Honorable Michael Skindell
Merle Madrid, Director of Legislative Affairs, Governor John Kasich

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MEMORANDUM

TO: Ohio Manufacturers' Association
FROM: Bricker & Eckler LLP
DATE: June 21, 2017
RE: Senate Omnibus Amendment- Concealed Firearm Civil Cause of Action

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I. Senate Substitute H.B. 49 Omnibus Amendment Update.

Yesterday, the Senate unveiled the omnibus amendment to the Senate's substitute version of H.B. 49 (FY18-19 Biennium Budget). The omnibus amendment contains amendment SC5837, which proposes to add a civil cause of action to R.C. 2923.1210. The proposed amendment is attached to this report.

Pursuant to this proposed new civil cause of action, a business entity, property owner, or public or private employer may be liable if such specified entity, person or employer, establishes, maintains, or enforces a policy or rule that prohibits, or effectively prohibits, a person with a valid concealed handgun license from transporting or storing a firearm or ammunition when the firearm and all ammunition stays inside the person's privately owned vehicle while the person is inside the vehicle, or each firearm and all ammunition is locked in the trunk, glove box, or other enclosed compartment or container within, or on, the person's privately owned vehicle and the vehicle is in a location where it is otherwise permitted to be.

If such business entity, property owner, or public or private employer is found liable in this civil cause of action, a court may award compensatory damages and any equitable relief, including injunctive relief that a court may find appropriate. Additionally, if the plaintiff is successful in the cause of action, the court may grant costs and reasonable attorney's fees to the plaintiff after a hearing is held to determine the amount of the fees.

Overall, the amendment language in the state budget will provide additional litigation opportunities for alleged aggrieved employees against employers in Ohio. While we cannot calculate specifically the additional costs, we know that new causes of action provide incentives for the plaintiff's bar to bring suits against employers in Ohio. Whether the case is won or lost, employers and, specifically, OMA member companies who may be sued, will be forced to spend additional resources defending such lawsuits and to potentially face significant damage calculations to the extent the cases are won and/or settled.

II. Background on Current Concealed Handgun and Firearm Law.

During the 131nd General Assembly "lame duck" legislative session in December 2016, S.B. 199 emerged as an important piece of legislation because of its provisions relaxing Controlled Carry Weapons ("CCW") restrictions.

Of great interest to Ohio's business community, the bill originally contained language that extended protected class status to CCW permit holders under Ohio's employment anti-discrimination laws. The business community opposed this language extending protected class status. The bill also allowed concealed firearms in all state and local government buildings lacking security checkpoints, such as libraries and boards of elections. In the final remaining hours of the 2016 legislative session, the House of Representatives restored the abilities for political subdivisions to opt-in to allow concealed carry weapons inside government buildings through statute or ordinance.

Despite significant opposition from the business community, the General Assembly preserved language in S.B. 199 that blocks businesses from banning guns in locked vehicles in private, employer-owned parking lots. The OMA and every other major business group opposed this provision along with the aforementioned creation of a CCW protected class. At the end of the day, the parking lot language remained unchanged, but the General Assembly did eliminate the CCW protected class.

The Ohio Manufacturers' Association asked the Governor for a veto of this legislation. However, Governor Kasich signed S.B. 199 into law on December 19, 2016.

Now that S.B. 199 is effective, current Ohio law prohibits any business entity, property owner, or public or private employer from establishing, maintaining, or enforcing a policy or rule that prohibits or has the effect of prohibiting a valid concealed handgun licensee from transporting or storing a firearm or ammunition inside the person's privately owned motor vehicle while the person is present, or in the trunk, glove box, or other enclosed compartment or container in or on the motor vehicle, so long as the vehicle is in a location where it is otherwise permitted to be. R.C. 2923.1210(A).

The law was undated, per S.B. 199, to also protect any business entity, property owner, or employer from civil liability for damages, injuries, or death resulting from another person's actions involving a firearm or ammunition transported or stored in a motor vehicle, including from theft of a firearm from an employee's or invitee's automobile, unless the business entity, property owner, or public or private employer intentionally solicited or procured the other person's injurious actions.

III. Effect of Senate Substitute H.B. 49 Omnibus Amendment Concealed Handgun Gun Cause of Action on Current Law and Employers.

S.B. 199 created R.C. 2923.1210, which, as mentioned above, made it illegal for any business entity, property owner, or public or private employer to prohibit a valid concealed handgun

licensee from storing a firearm or ammunition, under certain specified circumstances, in such person's privately owned vehicle in any location where the vehicle is permitted to be such as a parking lot. Thus, if an employee, for example, is a valid concealed handgun licensee, he or she may store a firearm and ammunition in an enclosed compartment or container, within his or her vehicle anywhere that a vehicle is permitted to be on the employer's property.

Although, it is currently illegal for an employer to prohibit any person with a valid concealed handgun license from properly storing such firearm and ammunition in his or her vehicle on the employer's property, the omnibus amendment's proposed civil cause of action creates an easier path for such employees to sue his/her employer. Additionally, as stated above, the employer, if found liable, could be on the hook for compensatory damages or equitable or injunctive relief, which is subject to the court's discretion. Regardless of the result of the suit, employers will face the additional costs of legal expenses defending new litigation actions.

Thus, instead of simply maintaining the prohibition in the law as it currently is, the omnibus amendment paves a clear route to the courtroom for plaintiffs who wish to sue a business entity, property owner, or public or private employer for violating R.C. 2923.1210. The proposed omnibus amendment concealed handgun cause of action subjects employers to additional legal liability and costs.

The underlying language within SB 199 from 2016 was bad for Ohio employers, and, specifically the OMA. The creation of a new private right of action for allegedly aggrieved employees is potentially worse.

The Ohio Manufacturers' Association

June 14, 2017

The Honorable Bob Peterson
President Pro Tempore
Ohio Senate
Senate Building
1st Floor South, Rm. 138
Columbus, OH 43215

Re: Alternative Daily Cover Budget Amendment

Dear Senator Peterson:

The Ohio Manufacturers' Association appreciates and supports your efforts regarding Alternative Daily Cover (ADC). ADC is cover material other than earthen material which is placed on the surface of an active waste landfill at the end of each operating day to control fires, odors, blowing litter, scavenging and similar activities. Examples in Ohio of ADC are ag lime, foundry sand, coal combustion bottom ash, slag, and certain industrial residuals.

The amendment SC5373 helps create a stronger market for these materials. It encourages producers to work with their local landfills to beneficially reuse these materials. For years the fees associated with using ADC has stymied this market. This amendment would exempt the fees associated with these ADC materials in order to be beneficially reused.

Thank you for your support for this regulatory enhancement that will improve Ohio's manufacturing competitiveness by establishing a more open market for reuse of these materials.

Please do not hesitate to contact us if you would like to discuss this issue in greater detail.

Sincerely,

Rob Brundrett
Director, Public Policy Services

CC: Senator Oelslager

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Columbus, Ohio 43215-3005

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Bricker & Eckler
ATTORNEYS AT LAW

MEMORANDUM

TO: The Ohio Manufacturers Association

FROM: Frank Merrill, Bricker & Eckler LLP

DATE: June 15, 2017 (Revised)

RE: Proposed Total Maximum Daily Loads (TMDL) Law

On February 10, 2017, House Bill 49 was introduced into the Ohio House of Representatives. H.B. 49 included provisions for the revision of R.C. 6111.03 and addition of Ohio Revised Code 6111.561, in response to the March 24, 2015 Ohio Supreme Court decision in *Fairfield Cty. Bd. of Commrs. v. Nally*, 143 Ohio St.3d 93, 2015-Ohio-991. (These provisions can be found in H.B. 49 at pages 2972 through 2976). In the *Fairfield County* decision, the Supreme Court ruled that the Ohio EPA must adhere to Ohio's statutory rulemaking procedure prior to establishing pollutant limits for a body of water.

Since releasing H.B. 49, Ohio EPA has released several modified versions of the bill. On June 14, 2017, following a public comment period and several meetings with stakeholders in which The OMA took part, Ohio EPA submitted final revised bill language to Senator Troy Balderson, requesting that the language be included in the H.B. 49 Omnibus Amendment.

The Ohio Supreme Court Decision in *Fairfield Cty. Bd. of Commrs. v. Nally*:

The *Fairfield County* case stemmed from the Ohio EPA's issuance of a 2006 wastewater discharge renewal permit for the Tussing Road Water Reclamation Facility ("Tussing plant"), owned by Fairfield County, Ohio. Because the wastewater treatment plant discharges pollutants into nearby Blacklick Creek, part of the Big Walnut Creek watershed, the plant is required to obtain a National Pollutant Discharge Elimination System ("NPDES") permit from the Ohio EPA, pursuant to the federal Clean Water Act and state law. The Clean Water Act also requires each state to establish a total maximum daily load ("TMDL") for certain bodies of water. The TMDL establishes the maximum amount of a pollutant that may be discharged without causing the receiving body of water to violate water-quality standards.

Based upon Ohio EPA's TMDL for the Big Walnut Creek watershed, the renewal permit for the Tussing plant included a new condition limiting the discharge of phosphorus. The Ohio EPA imposed this new limit based on a survey in which the Ohio EPA collected biological and

chemical data for the area. Its survey suggested that the Tussing plant was contributing to a negative environmental situation in Blacklick Creek. Fairfield County appealed Ohio EPA's imposition of the new phosphorus limit in its NPDES permit to the Ohio Environmental Review Appeals Commission, and subsequent appeals were made to the Tenth District Court of Appeals and eventually the Ohio Supreme Court.

In the opinion, written by Justice Judith Ann Lanzinger, the Court held that a TMDL established by the Ohio EPA, pursuant to the Clean Water Act, is a "rule". Therefore, the Ohio EPA must abide by the procedures outlined in Ohio Revised Code ("R.C.") Chapter 119, which provide for, among other procedures, public notice, comments and a public hearing prior to a rule being adopted.

Justice Lanzinger explained that a TMDL is a "rule" as defined in R.C. 119.01 because it is a "standard" that has "a general and uniform operation" and creates new legal obligations. Although the TMDL was specific to the Tussing plant, the Court provided that "[t]he TMDL applies to all current and future discharges in the Big Walnut Creek watershed." The opinion further explains that "[r]equiring Ohio EPA to undertake rulemaking procedures before applying the new standards set forth in the TMDL ensures that all stakeholders in the watershed have an opportunity to express their views on the wisdom of the proposal and to contest its legality if they so desire." As a result, the phosphorus limit cannot be included as part of the Tussing plant's NPDES permit because it did not undergo the R.C. Chapter 119 administrative rulemaking process. Because the phosphorus TMDL was part of impermissible rulemaking, the standard for the Tussing plant was vacated, and the case was remanded to the Ohio EPA.

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

Final Proposed TMDL Bill Language

The bill outlines the scope of the Director of Ohio EPA's authority in establishing TMDLs for pollutants for each impaired water of the state or segment thereof as identified and listed in the Clean Water Act section 1313(d). It includes revisions to R.C. 3745.03 to require the environmental review appeals commission to adopt or amend regulations governing procedure to be followed to govern expedited hearings, expedited decisions, and stays. It also includes the addition of Revised Code Sections 6111.561 through 6111.564.

The proposed additions in R.C. 6111.561 clarify that the development, establishment, or modification of a TMDL is not subject to rule adoption, amendment, or rescission procedures pursuant to R.C. Chapters 106, 111, 199, and 121. Rather, the Director is to develop plans or actions necessary for implementing a TMDL in accordance with R.C. Chapter 6111. R.C. 6111.561 further sets forth that the establishment of a final TMDL by the director is not a final

action of the director and does not have the force and effect of law, but may be challenged in accordance with the provisions of R.C. 6111.564.

R.C. 6111.562 and 6111.563 contain provisions governing notice and opportunity for comment. R.C. 6111.562 obligates the director to provide notice and opportunity for input from potentially affected dischargers, county soil and water conservation districts, and other stakeholders at various enumerated stages of development of those TMDLs established after March 24, 2015, and that not less than 30 days shall be allowed for such input at each stage. Further, the director is to make available to stakeholders documentation that he relied upon during each stage of development of a TMDL. R.C. 6111.562 also sets forth the factors the director shall consider and evaluate when determining wasteload and load allocations, pollution control measures to achieve pollutant load reductions, and implementation plans and schedules for each TMDL.

R.C. 6111.563 obligates the director to prepare an official draft TMDL prior to establishing a final TMDL and plans and actions necessary for TMDL implementation. At a minimum, public notice of the official draft TMDL is to be provided to all individual NPDES permit holders that discharge into the water of the state to which the official draft TMDL relates, all significant industrial users listed in the permit holders' annual report, and any other stakeholder that has provided input in accordance with R.C. 6111.562. The time period for comment is to be not less than 60 days, and the director is to provide the opportunity for a public hearing on the official draft TMDL if there is significant public interest. Any modifications to a TMDL are subject to the same notice, comment, and public hearing requirements that apply to official draft TMDLs established after March 24, 2015.

R.C. 6111.563 further clarifies that any TMDL that is successfully challenged pursuant to R.C. 6111.564 is to be modified to conform to the final appeal decision of the highest tribunal of competent jurisdiction and resubmitted to US EPA for approval. The director is to consider the likelihood of a legal challenge based on comments received during the development of the TMDL and public comment period when establishing a compliance schedule in an NPDES permit to meet an effluent limit that is based on a TMDL. Finally, R.C. 6111.563 requires the Director to adopt rules by no later than December 31, 2018, to address the procedures for providing notice to stakeholders and criteria for determining significant public interest in TMDL development.

Lastly, R.C. 6111.564 addresses challenges to appeals of final TMDLs. A final TMDL may be challenged during the appeal of an NPDES permit containing TMDL-based effluent limits, pretreatment limits derived therefrom, or other terms and conditions before the environmental review appeals commission. If a publicly owned treatment works appeals a TMDL-based permit, R.C. 6111.564 directs the environmental review appeals commission to join as parties to the appeal (subject to the right of voluntary dismissal) all significant industrial users listed in those NPDES permit holders' annual pretreatment program reports who are known to discharge a significant amount of a pollutant limited by the TMDL into the publicly owned treatment works. Moreover, the director is to notify the NPDES permit holder and all significant industrial users of an NPDES permit issued in draft or final form to a publicly owned treatment

works that contains TMDL-based effluent limits, pretreatment limits derived therefrom, or other terms and conditions based on that TMDL.

In sum, the bill does not require that each and every TMDL go through formal rulemaking pursuant to R.C. Chapter 119. However, each TMDL, including modified TMDLs, must go through the public notice, public comment, and public hearing process. While the rule specifies that TMDLs are not final actions of the director, and therefore not independently appealable to ERAC, the rule allows for appeals to ERAC of any permit containing limits based on a TMDL, and specifies that indirect dischargers as well as direct dischargers may appeal. The rule therefore provides for due process considerations in a similar manner as the R.C. Chapter 119 process, while conserving the considerable amount of agency resources that would otherwise be spent on taking each and every TMDL through the formal R.C. Chapter 119 process.

6/23/2017

The Honorable Ryan Smith
Chairman, Ohio House Finance Committee
77 South High Street, 13th Floor
Columbus, OH 43215

The Honorable Scott Oelslager
Chairman, Ohio Senate Finance Committee
1 Capitol Square, 1st Floor
Columbus, OH 43215

Dear Chairman Smith and Chairman Oelslager:

The Ohio Manufacturers' Association (OMA) has long supported an efficient, competitive tax system in Ohio. Part of that efficient tax system includes the right that taxpayers and taxing authorities have to appeal a decision from the Board of Tax Appeals (BTA) directly to the Ohio Supreme Court.

The OMA has concerns with changes made to the direct tax appeal process in the Senate version of the state budget bill. Included in the Senate omnibus amendment and incorporated in House Bill 49 was a provision that removes the authority to appeal a decision of the BTA directly to the Ohio Supreme Court. Instead, such appeals are now to be filed with the appropriate court of appeals only. The amendment removed the current option of appealing directly to the Ohio Supreme Court that taxpayers have used to ensure a consistent and predictable tax system in the state of Ohio.

We have appreciated outreach from the Court in the past days and find their rationale for reform to be reasonable. The Court expressed a willingness to compromise on the language presently contained in the House Bill 49, however their suggested compromise does not go far enough.

Given the limited timeframe for review, we cannot at this time support the Court's efficiency proposal without maintaining direct appeals of important tax commissioner cases that determine far-reaching matters of tax law. We are happy to work with you and the Court to accomplish those changes now in the budget, or later in the session. Absent resolution of favorable compromise, we cannot support the proposed change and urge the Conference Committee to remove the provision.

Thank you and we would be happy to discuss this issue in more detail.

Sincerely,

Ryan Augsburger
Vice President and Managing Director

Rob Brundrett
Director

CC: House Bill 49 Conference Committee Members
Mike Buenger

June 22, 2017

The Honorable Cliff Rosenberger
Speaker, Ohio House of Representatives
77 South High Street, 14th Floor
Columbus, OH 43215

The Honorable Larry Obhof
President, Ohio Senate
1 Capitol Square, 2nd Floor
Columbus, OH 43215

Dear Speaker Rosenberger and President Obhof:

We are writing to express our strong opposition to a provision included in the Ohio Senate omnibus amendment (SC5425) to Substitute House Bill 49 allowing the Office of Budget and Management to transfer up to 2% of the Bureau of Workers' Compensation and Industrial Commission budgets (BWC & IC) to the General Revenue Fund (GRF). This language sets an extremely dangerous precedent of allowing the state to "raid" the budgets of these exclusively employer-funded agencies.

Unlike the main operating budget, appropriations for the BWC and IC operations are funded entirely by employer premiums and assessments. This amendment is asking Ohio's employers to subsidize all state operations in the form of their BWC premium payments.

In addition, this bad precedent would likely lead to future rate-making decisions that are beyond the actuarial needs of the Ohio BWC and IC, in order to balance upcoming operating budgets.

We are very concerned this language gives this and future administrations the go-ahead to siphon funds when budget shortfalls occur. There could also be a legal issue with directing funds to the GRF that are constitutionally set for the treatment of injured workers and promotion of safer workplaces.

Given these factors, we respectfully ask you to remove the language that permits the transfer of BWC and IC funds to the GRF from Substitute House Bill 49. Thank you for your consideration. Please feel free to contact us with any questions.

Sincerely,

Roger R. Geiger
Vice President, Executive Director
NFIB/Ohio

Andrew E. Doehrel
President & CEO
Ohio Chamber of Commerce

Gordon M. Gough
President & CEO
Ohio Council of Retail Merchants

Eric Burkland
President
Ohio Manufacturers' Association

cc: The Honorable Ryan Smith
The Honorable Scott Ryan
The Honorable Jack Cera
The Honorable Scott Oelslager
The Honorable Gayle Manning
The Honorable Michael Skindell
Merle Madrid, Director of Legislative Affairs, Ohio Governor John Kasich