

9:30 a.m. (EST)
Via Zoom



Government Affairs Committee

June 15, 2021

Table of Contents

Meeting Agenda	2
Committee Attendee Roster	3
Bios	
• Frank LaRose, Ohio Secretary of State	5
Hot Topics	6
Ohio Elections Bill Article	18
Discussion Issues	
• HB 283 – Distracted Driving	21
• State Budget Issues	27
• HB 6 Repeal and Fallout	28
• HB 248 – Vaccination Bill	32
• HB 235 – Forced Union Bill	35
• HB 68 – Contracts Bill	44
• SB 52 – Renewable Energy Bill	49
OMA Staff Reports	
• Energy	50
• Tax	81
• Safety and Workers' Compensation	100
• Environment	107
• Human Resources	120
OMA Counsel's Report	133

2021 Government Affairs Committee Calendar

Meetings begin at 9:30 a.m.
Wednesday, August 25
Thursday, November 18

Our Meeting Sponsor:



9:30 a.m. (EST)
Via Zoom



Government Affairs Committee Agenda
June 15, 2021

Welcome & Introductions

Scott Corbitt, Region Vice President, Anheuser-Busch,
Committee Chair

NAM Update

Todd Shelton, National Association of Manufacturers

COVID-19 Information

Rob Brundrett, OMA Staff

Ohio Elections Bill

Chris Slagle, Partner, Bricker & Eckler LLP, OMA General
Counsel

Guest Speaker

Frank LaRose, Ohio Secretary of State

Elections Update

OMA Staff
Kevin DeWine, CBD Advisors

Discussion Topics

- HB 283 – Distracted Driving
- State Budget Issues
- HB 6 Repeal and Fallout
- HB 248 – Vaccination Bill
- HB 235 – Forced Union Bill
- HB 68 – Contracts Bill
- SB 52 – Renewable Energy Bill

Committee Members

Chad Wilson, Associate Vice President, Nationwide Insurance
Rob Brundrett, OMA Staff
Rachael Carl, OMA Staff

Staff Reports

- Energy
- Tax
- Safety and Workers' Compensation
- Environment
- Human Resources

OMA Staff

OMA Counsel's Report

- Redistricting
- Supreme Court

Chris Slagle, Partner, Bricker & Eckler LLP, OMA General
Counsel

2021 Government Affairs Committee
Calendar

Our Meeting Sponsor:

Meetings begin at 9:30 a.m.

Wednesday, August 25
Thursday, November 18



Nationwide[®]
is on your side

OMA Government Affairs Committee - June 2021

Name	Company	Location
Mary Beth Arensberg, PhD, RD, LD,FADA	Abbott Nutrition	Columbus, OH United States
Ryan R. Augsburger	The Ohio Manufacturers' Association	Columbus, OH United States
James T. Batchelder	The M K Morse Company	Canton, OH United States
Dex Battista	Magna International	Troy, MI United States
Ann Bedford	PPG	Pittsburgh, PA United States
Bradley H. Belden	The Belden Brick Company	Canton, OH United States
Michael Bennett	Stellantis	Washington, DC United States
Clint Blume	Haviland Drainage Products Co.	Haviland, OH United States
Kimberly W. Bojko	Carpenter Lipps & Leland LLP	Columbus, OH United States
Terry Boose	Norwalk Concrete Industries	Norwalk, OH United States
Ruth Bradley	Tyson Foods, Inc.	Springdale, AR United States
Daniel Bremer	Honda of America Manufacturing, Inc.	Marysville, OH United States
Conner Brintlinger	American Structurepoint	Columbus, OH
Kyle Brun, Intern	The Ohio Manufacturers' Association	Columbus, OH United States
Rob Brundrett	The Ohio Manufacturers' Association	Columbus, OH United States
Elizabeth Buehner	Applied Specialties Inc.	Avon Lake, OH United States
Rachael Carl	The Ohio Manufacturers' Association	Columbus, OH United States
Brent Chaney	Vistra Energy	Irving, TX United States
Kellie Chenault	T O S O H SMD	Grove City, OH United States
Scott Corbitt	Anheuser-Busch Companies	Columbus, OH United States
Susan Corfman, MJ	The J.M. Smucker Company PO#: 19560	Orrville, OH United States
Sara Corona	Crown Equipment Corporation	New Bremen, OH United States
Andrew P. Corsig	Pharmaceutical Research and Manufacturers of America (PhRMA)	Cincinnati, OH United States
Nicholas D'Angelo	Eaton	Cleveland, OH United States
Kevin DeWine	Crown Equipment Corporation C/o CBD Advisors	Beavercreek Township, OH United States
Bobbi Dillon	The Procter & Gamble Company	Cincinnati, OH United States
Steve Dimon	AMG Vanadium LLC C/o 21 Consulting, LLC	Columbus, OH United States
Ray Drake	UPS	Carol Stream, IL United States
Joseph F. Dutt	Summitville Laboratories	Minerva, OH United States
Ania Ediger	Cleveland-Cliffs Cleveland Works LLC	Cleveland, OH United States
Heidi Erm	Owens Corning	Toledo, OH United States
Drew Felz	General Mills, Inc. - DC	Washington, DC United States
Chris Flaig	MCM CPAs & Advisors	Cincinnati, OH United States
Tayte French Lutz	French Oil Mill Machinery Company	Piqua, OH United States
Scott Frens	Fort Recovery Industries Inc.	Fort Recovery, OH United States
Jason Gonzalez	DuPont	Cleveland, OH United States
Luke M. Harms	Whirlpool Corporation	Washington, DC United States
Michael E. Heltzer	B A S F Corporation	Florham Park, NJ United States
Lawrence D. Holmes	Fort Recovery Industries Inc..	Greenville, OH United States
Lisa Hornish	Cooper Farms - Cooked Meats	Van Wert, OH United States
Dan Hutcheson	Sugar Creek Packing Company	Dayton, OH United States
Stephen F. Irwin	DuPont	Circleville, OH United States
Matthew F. Johnston	Worthington Industries, Inc.	Columbus, OH United States
Jamie Karl	The Ohio Manufacturers' Association	Columbus, OH United States
Kathryn L. Kelley	The Ohio State University	Columbus, OH United States
Stephen B. Kittredge	Owens Corning	Washington, DC United States
Timothy Ling	Plaskolite	Columbus, OH United States
Jessica A. Lloyd, MBA	Brilex Industries Inc.	Youngstown, OH United States
Linda M. Martens	Johnson & Johnson	New Albany, OH United States
Chris Masciantonio	U S Steel Corporation	Pittsburgh, PA United States
Dustin McMillan	McMillanCo LLC	Columbus, OH United States
David Merritt	Danone North America	Minster, OH United States
Clarence Mingo	T. Marzetti Company	Westerville, OH United States
Theresa Mullen	CliftonLarsonAllen, LLP	Canton, OH United States
Ramola Musante	The Sherwin-Williams Company	Washington, DC United States
Jeffrey J. Oravitz	Arsenal Capital Partners	Lima, OH United States
Kevin Orr	Pfizer, Inc.	Dublin, OH United States

OMA Government Affairs Committee - June 2021

Name	Company	Location
Rick Platt	Heath-Newark-Licking County Port Authority	Heath, OH United States
Linda Pocock	International Metal Hose Company	Bellevue, OH United States
Jeffrey W. Reed	American Honda Motor Company	Marysville, OH United States
Andrew Robreno	Ferrero U.S.A, Inc.	Washington, DC United States
Heather Rutz	Cenovus	Lima, OH USA
Edward G. Sagebiel	Eli Lilly and CompanyLillyPAC & Employee Grassroots	Indianapolis, IN United States
Jim Samuel	NRG Energy Inc. C/o Capitol Integrity Group	Columbus, OH United States
Stacey Schultz	Sugar Creek Packing Company	Cincinnati, OH United States
Christine Schwartz	American Honda Motor Company	Marysville, OH United States
Maxim Serezhin	Standard Power Group Ohio	New York, NY United States
Brian M. Sernulka	O-I Glass, Inc.	Perrysburg, OH United States
Todd Shelton	National Association of Manufacturers	Lancaster, OH United States
Christopher N. Slagle	Bricker & Eckler LLP	Columbus, OH United States
Gretchen Spear	International Paper	Bloomington, MN United States
Michael L. Squillace	Dinsmore & Shohl	Columbus, OH United States
Duane Steelman	Zaclon, LLC	Cleveland, OH United States
Samantha Summers	Whirlpool Corporation	Washington, DC United States
Whitney Tull	STERIS Corporation	Washington, DC United States
Jeffrey C. Turgeon	Zaclon, LLC	Cleveland, OH United States
April Vanover	FASTLANE/UDRI	Dayton, OH United States
Raymond Wayne	Heritage Thermal Services	East Liverpool, OH United States
Matthew Wells	WestRock	Richmond, VA United States
Chad Wilson	Nationwide	Columbus, OH United States

Total Participants 80



Frank LaRose took office as Ohio's 51st Secretary of State on January 14th, 2019. Prior to being elected to statewide office, he served two terms in the State Senate representing the 27th Senate District in northeast Ohio.

As Ohio's Secretary of State, LaRose is doing his part to deliver a thriving democracy and a prosperous economy. In his role as Ohio's chief elections officer, he's working to ensure Ohio's elections are secure, accurate and accessible. He is also supporting Ohio entrepreneurs as the sole authority to receive and approve articles of incorporation for Ohio businesses.

In the legislature, LaRose spearheaded efforts to increase government transparency and efficiency, particularly in the areas of elections administration and regulatory reform.

Among numerous recognitions, LaRose was named the Legislator of the Year in 2016 by the Ohio Association of Election Officials in recognition of his support and commitment to improving Ohio's election process. He is currently serving a two-year term within the Aspen Institute as a Rodel Fellow – a bipartisan group of America's rising political stars brought together to promote greater civil discourse. In May 2019, LaRose was presented the Business Champion Award by the Ohio Chapter of the National Association of Women Business Owners.

LaRose developed his strong work ethic and sense of responsibility at a young age while working on a small family-owned farm in northeast Ohio. After graduating from Copley High School, LaRose fulfilled a lifelong dream by enlisting in the United States Army with the 101st Airborne, and ultimately served in the U.S. Special Forces as a Green Beret. During his decade in uniform around the globe, LaRose received numerous commendations and honors, including the Bronze Star.

LaRose continues to give back to his community since entering public service. He is the Jr. Vice Commander of the Fairlawn VFW and, as an Eagle Scout himself, Frank now serves on the executive board for his local Boy Scouts of America Council.

LaRose, a native of northeast Ohio, graduated from The Ohio State University with a degree in Consumer Affairs and Business. He and his wife, Lauren, live in Columbus with their three daughters.

Public Policy “Hot Topics” June 15, 2021

Overview

While the shadow of HB 6 still hangs overhead, the General Assembly is working to put the final touches on the state operating budget, HB 110. The bill, which funds state government operations and makes a plethora of policy changes, must be signed into law by the governor at the end of June. The OMA advocacy team has been engaging lawmakers in both the House and Senate to work on pro-manufacturing policies that support the OMA’s mission.

Former House Speaker Larry Householder continues to walk the halls of the Statehouse. In spite of numerous calls to resign, the former speaker continues to hold his elected position as a state representative. There has been talk about expelling the former speaker but the votes are not there to remove him from office. The HB 6 bribery scandal is still in the investigation stages, but there is an expectation that more individuals will be arrested in the coming months. FirstEnergy announced they are in discussion with the U.S. Prosecutor’s Office regarding a deferred prosecution agreement.

COVID-19 infections continue to drop with more and more Ohioans receiving the vaccination. This week, the governor lifted most of the remaining health and safety orders. The General Assembly was prepared to remove the orders by statute if they did not end when they did.

Other issues that have taken priority over the past quarter include the workers’ comp and industrial commission budgets, workforce development, withholding taxes, and anti-business measures.

COVID-19 Response

Recently, the Governor lifted almost all health orders, except those regarding nursing homes, assisted living facilities, and testing/reporting generally. With the orders gone, DeWine is hoping those who are not fully vaccinated will continue to wear masks indoors and follow other preventative measures; more importantly, he is hoping they will get vaccinated.

To incentivize Ohioans, he started the Vax-a-Million drawings, which have garnered a lot of national attention and copycats and just as much criticism inside Ohio. Legislators on both sides of the aisle have criticized the governor for the lottery. Despite the criticism, the drawings have continued.

COVID-19-related legislation continues to be introduced. The OMA joined a coalition of Ohio health care and business organizations to voice concerns over HB 248. HB 248 would prohibit any public or private entity (i.e. businesses, schools, childcare facilities, universities, hospitals) from mandating or requesting an individual get any vaccine, or from requiring or requesting an individual’s vaccine status. The bill strips employers’ rights to implement safety measures meant to protect their workforce, clients, and others.

Elections

Ohio has two open congressional seats to fill. Fourteen candidates filed to replace former Congressman Steve Stivers who resigned this spring to become President and CEO of the Ohio Chamber of Commerce. Of the 14 candidates who filed in the Republican-leaning district, only one received Stivers’ endorsement. Stivers cited Jeff LaRe’s (a current state representative from Violet Township) background in law enforcement as a key component that sets him apart from the rest. Ten other Republicans are still in the mix, which includes Sens. Bob Peterson (R-Sabina), Sen. Stephanie Kunze (R-Hilliard), and former Rep. Ron Hood (R-Ashville). Rep. Allison Russo (D-Upper Arlington) is one of two Democrats that have also filed for this race.

The race to fill Marcia Fudge's 11th district seat is also heating up. Fudge left her seat in March to join President Biden's cabinet as the U.S. Secretary of Housing and Urban Development. 15 individuals have filed for the primary ballot in that race. Former Democratic state lawmakers, Nina Turner, Shirley Smith, Jeff Johnson, and John Barnes have all filed.

The primary elections will take place August 3, and the winners of the general election on November 2, will serve the remaining terms and will need to run for re-election in 2022.

Also in the elections realm, the House introduced an elections reform bill, House Bill 294. The bill sponsors are touting it as a modernization bill while some others call the measure over-reaching. HB 294 would make a litany of changes to Ohio's elections laws, with provisions addressing drop boxes, voter registration, absentee voting, and voter identification. These topics almost always spark debate, and during its one and only hearing so far, the bill even prompted a walkout by Democratic members.

Redistricting

2021 is a big year for Ohio's district maps. Every 10 years, the Ohio General Assembly and Congressional districts are redrawn.

The Ohio Redistricting Commission has until September 15 to approve new state legislative maps, comprising 99 House districts and 33 Senate districts. But the commission needs the census data to come up with a final plan. The map would need approval from commissioners representing the minority party of the House and Senate, which are the Democrats, in order to go into effect for ten years. A map can still be approved without minority party support but would only last four years.

The deadline for a new Congressional district map, a process that begins with the Ohio General Assembly, is later in the year. Ohio will lose a Congressional seat and go from 16 members to 15 in the U.S. House of Representatives.

Reducing Regulatory Restrictions

The regulatory reform bill was re-introduced to reduce regulatory restrictions within the Ohio Administrative Code. SB 9 would require state agencies to reduce 30% of these restrictions by June 30, 2025, and it would cap the agencies from adopting additional regulatory restrictions above the 30% reduction.

It is important to ensure that the regulations promulgated are necessary, non-duplicative, and the least burdensome possible while still providing their intended protections. With the current draft of the bill, a required reduction in regulatory restrictions would not allow for the intended purposes of the rules. For example, rules promulgated by the Ohio EPA for the purposes of implementing an Ohio program that otherwise would be run by the federal EPA would face a 30% slash in their rule inventory. This would put those Ohio programs out of compliance with the feds and force EPA programs to revert back to the federal EPA. Certain types of regulations need further consideration from the legislature on the appropriate way to reduce regulatory restrictions.

Workforce Development

Workforce development remains a top priority for Ohio manufacturers even in the time of COVID-19. Former OMA President Eric Burkland has transitioned to lead the OMA's Foundation and its workforce arm. OMA has expanded its network of Industry Sector Partnerships over the past year. The state operating budget as introduced retained the sector partnership grant line item. However, both chambers have each included an earmark to this competitively awarded grant. While the Senate decided to add additional funding for their set-aside, earmarks compromise the purpose of the merit-based grant program. The OMA will be working to keep the program as introduced.

Ohio Manufacturing Alliance and Onshoring

In 2020, OMA supported the Ohio Manufacturing Alliance to produce needed emergency protective equipment. That work was celebrated regularly by Governor DeWine and Lt. Governor Husted.

The OMA has been working with partners to develop a reshoring strategy with the state. An OMA Board Committee has focused on this work. Manufacturing sectors targeted include defense, medical, automotive, and communications among others.

State Operating Budget

The Ohio House put their touches on the state operating budget including a 2% income tax cut that would cost \$380 million over the life of the two-year budget. The Ohio Senate this week increased that cut to 5% totaling \$874 million.

The Senate included an OMA priority – eliminating the sales tax on temporary employment. This tax has long been in the crosshairs of this organization since it was first enacted in the early 1990s.

The Senate will continue to make changes to the bill over the next week before the two chambers meet to iron out the final details in conference committee. Law requires the budget to be signed before the end of June.

Bureau of Workers' Compensation/Industrial Commission Budget

The BWC and IC budgets are both finally making it to the finish line. Both agencies are requesting a slight increase in appropriations, but no major policy initiatives were initially included in their proposal. The IC's budget was recently signed into law and the BWC's budget is expected to be on the governor's desk very soon. While the IC budget received no substantive amendments, the BWC budget picked up a few goodies along the way. The bill includes a few reforms, such as reducing the statute of limitations for occupational disease claims from two years to one year, preventing claimants who were previously denied a permanent disability benefit from reapplying unless there is a change in circumstances, and aligning permanent partial disability filing timelines for temporary total disability compensation and for claims where wages are paid in lieu of compensation.

Immunity Legislation

HB 606 was approved by the General Assembly in August. The OMA-supported legislation covers employers against exposure and also covers the manufacturer of emergency protective equipment or components. The bill's protections only last until September of 2021. There is some support to extend the provisions and discussions are ongoing in the state budget process.

Prompt Pay on Private Contracts

In an 86-10 vote, the House trampled on the right of private businesses to freely negotiate payment terms in construction contracts by approving HB 68, which was opposed by the OMA.

The bill requires the state to set payment terms in construction contracts and allows for a potential windfall against manufacturers. It eliminates the right to negotiate payment terms and instead requires all construction contracts to be paid within 30 days. The bill also establishes new penalties by imposing an 18% annual interest rate on payments not made within 30 days.

The fight will continue in the Senate led by the OMA with other like-minded allies.

Tax Policy

In a major victory for Ohio manufacturers, the Senate included a provision in their latest version of the state's budget bill to exempt the sales tax for employment services and employment placement services. The elimination of this tax has been a longtime priority issue for Ohio's manufacturers. OMA's advocacy team worked closely with the Senate to craft the budget amendment. We know

more changes to the budget bill are possible since the budget process isn't over until June 30, so we will be working to ensure this provision stays put until the very end.

Also in their version of the budget bill, the Senate provided much-needed certainty for employers in terms of withholding for municipal income taxes. At the onset of the pandemic, the OMA was able to win a provision to allow companies to their current local withholding tax practice. The withholding provision has been in the spotlight over the last year, being subject to multiple lawsuits by the Buckeye Institute and having several bills introduced to repeal the provision in state law. With the withholding provision set to sunset in late summer/early fall, the OMA has worked with the legislature to extend the provision through the end of the year. This new sunset date is currently pending in one standalone bill and it is now included in the budget. We continue to engage the legislature and push for the passage of this extension.

Finally, the Senate took another OMA amendment to modify the approval requirements for the Job Retention Tax Credit (JRTC). Since its creation in 2014, exactly zero JRTCs have been approved even after changes were made to the credit in the last budget bill. The OMA continues to work with the Department Services Agency (DSA) to understand their hesitation to recommend these credits. In an attempt to sway them, we worked to draft an amendment adding certain criteria for DSA to consider, when recommending a JRTC to the Board of Tax Appeals. These considerations, not requirements, will hopefully give DSA the comfort they need to approve JRTCs and foster job retention through increased capital investment in Ohio.

HB 6 Repeal and Bribery Scandal

The OMA remains the most vocal critic of HB 6 and continues to push for repeal of all anti-customer provisions from HB 6. The legislature passed HB 128 that begins the work of repealing several of HB 6's anti-customer provisions. HB 128 eliminated the nuclear subsidy provisions of HB 6 which cost customers up to \$150M per year. The bill also eliminated the HB 6 decoupling provision, which tied FirstEnergy's future profits to record year 2018 regardless of the amount of power sold, about \$978M annually. The bill also revoked a change made to the Significantly Excessive Earnings Test, which benefited only FirstEnergy by allowing the company to combine profits across three of its companies to avoid customer refunds from its overly profitable company.

The bill did retain HB 6's subsidies for utility-scale solar projects and the two OVEC coal plants. The OMA continues to press for the elimination of these subsidies as well, especially the ill-conceived OVEC subsidy. Senator Mark Romanchuk has introduced SB 117 which would eliminate the OVEC subsidies, and the OMA is a strong proponent.

The investigation continues into the HB 6 bribery scandal. Two of the five persons arrested in connection with the scandal have pled guilty along with the Generation Now dark money group. One of the individuals charged has committed suicide. Only former Speaker Larry Householder and lobbyist Matt Borges continue to insist on their innocence.

FirstEnergy Corp fired CEO Chuck Jones and several other senior managers. The energy holding company notified investors of the possibility of coming criminal charges even though Jones had insisted the company acted "ethically" and did not participate in any wrongdoing. There is speculation that more indictments are coming in the near future. Including the possibility of Sam Randazzo the former PUCO chairman whose home was raided by the FBI late last year and is identified in documents as have receiving a payment in the millions from FirstEnergy.

Environment

On Jan. 19, 2021, the Sierra Club, the Ohio Environmental Council, and two individuals filed a petition for review with the Sixth Circuit Court of Appeals, seeking review of U.S. EPA's final rule removing the air pollution nuisance rule from Ohio's State Implementation Plan (SIP).

The removal of the air pollution nuisance rule from Ohio's SIP allows Ohio EPA to discontinue its practice of including a nuisance provision as a standard term and condition within each air permit it issues. In practice, the inclusion of the nuisance provision within Ohio EPA's air permits allows for the filing of a citizen suit alleging that a facility is in violation of the nuisance provision, even if Ohio EPA determines the facility does not operate as a nuisance.

On Feb. 18, the OMA moved to intervene in the Sixth Circuit appeal in support of the EPA's removal of the nuisance rule from Ohio's SIP. The State of Ohio has also moved to intervene in support of the agency's action.

Unemployment Compensation

The COVID-19 pandemic has made one state agency the star of the show, and not for good reasons. With an unprecedented number of individuals not working due to government orders and the number of individuals eligible to receive benefits being expanded, the Department of Jobs & Family Services (JFS) felt a strain on their administrative infrastructure and processes for Ohio's unemployment insurance system.

In the beginning, applicants faced extremely long wait times to talk to customer services reps or even get their claims processed. As they were fixing staffing and infrastructure issues, fraudulent claims and overpayments began to surface. From the start of the pandemic until now, JFS has paid out roughly \$6 billion in traditional unemployment claims and almost \$11 billion in Pandemic Unemployment Assistance (PUA) claims. Of the nearly \$17 billion in claims, \$2.1 billion has been identified as fraud or overpayments.

In addition to lax controls and compliance failures, the system also faced another problem: the state's Unemployment Trust Fund was running out of money. To make up the gap, the state borrowed \$1.47 billion from the feds. This trust fund has long been plagued and hasn't been solvent since 1974. The Governor has followed the OMA's lead in requesting the state to use a portion of federal American Rescue Plan Act dollars to pay off the loan before interest begins accruing in January. But paying off the loan won't fix the solvency issue. The General Assembly has shown interest in addressing the long-term structural problems.

In related news, the Governor recently announced that Ohio will be ending its participation in the federal PUA program, effective June 26th. The OMA had been lobbying for this change with the administration. While these additional benefits served their purpose at the height of the pandemic, announcing their conclusion is the right thing to do to protect Ohio's economy.

Miscellaneous Legislation of Interest to Manufacturers

Prepared by: The Ohio Manufacturers' Association
Report created on June 14, 2021

- HB2** **REGARDS BROADBAND EXPANSION** (CARFAGNA R, STEWART B) Regarding broadband expansion, including access to electric cooperative easements and facilities, to make an appropriation, and to declare an emergency.
Current Status: 5/17/2021 - **SIGNED BY GOVERNOR**; eff. immediately
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-2>
- HB13** **MODIFY THE CAMPAIGN FINANCE LAW** (GRENDALL D, FRAIZER M) To modify the campaign finance law and to declare an emergency.
Current Status: 4/15/2021 - House Government Oversight, (Second Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-13>
- HB68** **PRIVATE CONTRACTOR PAYMENT** (CROSS J, SWEENEY B) To require owners of private construction projects to timely pay a contractor.
Current Status: 5/26/2021 - Referred to Committee Senate Workforce and Higher Education
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-68>
- HB69** **INCREASE STATE MINIMUM WAGE** (KELLY B, JARRELLS D) To increase the state minimum wage.
Current Status: 2/10/2021 - Referred to Committee House Commerce and Labor
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-69>
- HB74** **ENACT FY22-23 TRANSPORTATION BUDGET** (OELSLAGER S) To make appropriations for programs related to transportation and public safety for the biennium beginning July 1, 2021, and ending June 30, 2023, and to provide authorization and conditions for the operation of those programs.
Current Status: 3/31/2021 - **SIGNED BY GOVERNOR**; eff. immediately
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-74>
- HB90** **OVERSIGHT OF GOVERNOR'S AND HEALTH ORDERS** (WIGGAM S, EDWARDS J) To establish legislative oversight of the Governor's executive orders, certain public health orders, and emergency rules, including by establishing the Ohio Health Oversight and Advisory Committee.
Current Status: 2/24/2021 - **SUBSTITUTE BILL ACCEPTED**, House State and Local Government, (Third Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-90>
- HB110** **OPERATING BUDGET** (OELSLAGER S) To make operating appropriations for the biennium beginning July 1, 2021, and ending June 30, 2023, to levy taxes, and to provide authorization and conditions for the operation of state programs.

Current Status: 6/15/2021 - , (First Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-110>

HB111 **ALTER USE OF CELLPHONES WHILE DRIVING LAWS** (LIGHTBODY M) To alter the law governing the use of a handheld electronic wireless communications device while driving.

Current Status: 5/11/2021 - House Transportation and Public Safety, (First Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-111>

HB149 **JUDICIAL CANDIDATES-PARTY BALLOT DESIGNATION** (SWEARINGEN D, STEWART B) To require certain judicial candidates to appear on the ballot with a party designation.

Current Status: 6/10/2021 - **REPORTED OUT**, House Government Oversight, (Fifth Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-149>

HB153 **PRESCRIPTION DRUGS, MEDICATION SWITCHING** (LISTON B, CARRUTHERS S) Regarding prescription drugs and medication switching.

Current Status: 6/16/2021 - House Insurance, (Third Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-153>

HB167 **PROVIDE RENT, UTILITY ASSISTANCE** (OELSLAGER S) To provide rent and utility assistance and to make an appropriation.

Current Status: 5/11/2021 - **SIGNED BY GOVERNOR**; eff. immediately

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-167>

HB168 **PROVIDE GRANTS - BUSINESSES, FAIRS, CHILD CARE, VETERAN HOMES** (FRAIZER M, LOYCHIK M) To provide grants to businesses, local fairs, child care providers, and veterans homes and to make an appropriation.

Current Status: 4/21/2021 - Referred to Committee Senate Finance

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-168>

HB169 **PROVIDE GRANTS - BARS, RESTAURANTS, LODGING INDUSTRY** (CUTRONA A, SWEARINGEN D) To provide grants to bars and restaurants and the lodging industry and to make an appropriation.

Current Status: 4/21/2021 - Referred to Committee Senate Finance

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-169>

HB177 **ALLOW GOVERNMENTS TO USE BLOCKCHAIN** (CARFAGNA R, FRAIZER M) To allow a governmental entity to utilize distributed ledger technology, including blockchain technology.

Current Status: 5/6/2021 - **PASSED BY HOUSE**; Vote 95-2

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-177>

HB199 REMOVE CAP FOR NONECONOMIC LOSS - RAPE VICTIMS (BOGGS K, RUSSO A) To remove the cap on damages for noneconomic loss when a victim of rape or assault brings a tort action.

Current Status: 4/27/2021 - House Civil Justice, (First Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-199>

HB227 REGARDING CONCEALED WEAPONS (BRINKMAN T, JORDAN K) To rename a concealed handgun license as a concealed weapons license, to allow a concealed weapons licensee to carry concealed all deadly weapons not otherwise prohibited by law, to expand state preemption of firearms regulation to include all deadly weapons, to repeal a notice requirement for licensees stopped for law enforcement purposes, to authorize expungement of related convictions, and to allow a person age 21 or older to carry a concealed deadly weapon without a license.

Current Status: 5/20/2021 - **SUBSTITUTE BILL ACCEPTED**, House Government Oversight, (Second Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-227>

HB235 HIGH HAZARD TRAINING CERTIFICATION ACT (SWEARINGEN D, BALDRIDGE B) To enact the High Hazard Training Certification (HHTC) Act regarding construction services performed under a contract at a stationary source.

Current Status: 5/19/2021 - House Commerce and Labor, (First Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-235>

HB267 LIMIT PUBLIC HEALTH ORDERS (JORDAN K) To limit the duration of public health orders and to allow the General Assembly to act via concurrent resolution in response to a public health emergency if the Governor or Department of Health does not.

Current Status: 5/4/2021 - Referred to Committee House State and Local Government

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-267>

HB269 REPEAL SB22 (GALONSKI T) To repeal the version of Section 3 of S.B. 22 of the 134th General Assembly scheduled to take effect on June 23, 2021, to repeal the changes made by S.B. 22 of the 134th General Assembly to the laws governing legislative oversight of certain orders and rules issued by the executive branch, including the establishment of the Ohio Health Oversight and Advisory Committee, and to declare an emergency.

Current Status: 5/4/2021 - Referred to Committee House State and Local Government

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-269>

HB272 TRANSPARENCY IN THIRD-PARTY SELLERS (PLUMMER P, GHANBARI H) Regarding transparency by large-volume third-party sellers in online marketplaces.

Current Status: 6/9/2021 - **BILL AMENDED**, House Commerce and Labor, (Second Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-272>

HB283 **EXPAND DISTRACTED DRIVING LAWS** (ABRAMS C, LAMPTON B) To expand the texting while driving prohibition to a general prohibition against using an electronic wireless communications device while driving, with certain exceptions, and to create data collection requirements based on associated violations of the distracted driving laws.

Current Status: 6/10/2021 - **SUBSTITUTE BILL ACCEPTED**, House Criminal Justice, (Second Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-283>

HB286 **AGENCY ORDER APPEAL - LOCAL COURT OF COMMON PLEAS** (SEITZ B) To change the venue in which appeal from an agency order is proper to the local court of common pleas.

Current Status: 6/8/2021 - **BILL AMENDED**, House Civil Justice, (Third Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-286>

HB294 **OHIO ELECTION SECURITY, MODERNIZATION ACT** (SEITZ B, RAY S) To enact the Ohio Election Security and Modernization Act to create an automated voter registration and verification system, to modify the law governing absent voting, and to make other changes to the Election Law.

Current Status: 6/17/2021 - House Government Oversight, (Second Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-294>

HB295 **REGARDING CONSTITUTIONALITY OF FEDERAL ACTIONS** (JORDAN K) Regarding the constitutionality of federal actions.

Current Status: 5/11/2021 - Referred to Committee House Government Oversight

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-295>

HB296 **MODIFY VOTER REGISTRATION** (LEPORE-HAGAN M, LISTON B) To modify the law governing voter registration and the method of conducting elections.

Current Status: 5/12/2021 - Referred to Committee House Government Oversight

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-296>

HB306 **OHIO ANTI-CORRUPTION ACT** (SWEENEY B, RUSSO A) To modify the campaign finance law, and to name this act the Ohio Anti-Corruption Act.

Current Status: 5/12/2021 - Referred to Committee House Government Oversight

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-306>

- HB310** **ESTABLISH VIRTUAL TESTIMONY** (KELLY B, MILLER A) To require that a committee of the General Assembly establish a means of hearing virtual testimony.
Current Status: 5/19/2021 - Referred to Committee House Government Oversight
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-310>
- HCR21** **RESCIND CERTAIN ORDERS, RULES** (WIGGAM S, FERGUSON R) To rescind certain orders and rules in whole or in part.
Current Status: 5/19/2021 - Referred to Committee House Government Oversight
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HCR-21>
- HR47** **REPLACE FLEET OF POSTAL SERVICE VEHICLES** (MILLER J, O'BRIEN M) To express support for the need for a replacement fleet of United States Postal Service vehicles that meets the climate goals of the United States, protects critical supply chains, and promotes a cleaner, more stable future for a burgeoning 21st century domestic vehicle industry.
Current Status: 5/11/2021 - House Transportation and Public Safety, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HR-47>
- SB8** **BROADBAND-ELECTRIC COOPERATIVE EASEMENTS** (MCCOLLEY R) Regarding broadband expansion, including access to electric cooperative easements and facilities, and to make an appropriation.
Current Status: 2/17/2021 - Referred to Committee House Finance
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-8>
- SB9** **REDUCE REGULATIONS** (MCCOLLEY R, ROEGNER K) To require certain agencies to reduce the number of regulatory restrictions in their administrative rules.
Current Status: 5/20/2021 - House Government Oversight, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-9>
- SB13** **SHORTEN PERIOD OF LIMITATIONS-CONTRACTS** (LANG G) To shorten the period of limitations for actions upon a contract; to make changes to the borrowing statute pertaining to applicable periods of limitations; and to establish a statute of repose for a legal malpractice action.
Current Status: 3/11/2021 - **SIGNED BY GOVERNOR**; eff. 90 days
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-13>
- SB22** **LEGISLATIVE OVERSIGHT-PUBLIC HEALTH ORDERS** (JOHNSON T, MCCOLLEY R) To establish legislative oversight of orders issued by the executive branch, including by establishing the Ohio Health Oversight and Advisory Committee.
Current Status: 3/24/2021 - Consideration of Governor's Veto; House Overrides Veto, Vote 62-35

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-22>

- SB80** **JUDGES-PARTY DESIGNATION ON BALLOT** (GAVARONE T, CIRINO J) To require certain judicial candidates to appear on the ballot with a party designation.
Current Status: 5/4/2021 - Referred to Committee House Government Oversight
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-80>
- SB94** **NON-RECOURSE CIVIL LITIGATION** (WILSON S) To amend the law regarding the non-recourse civil litigation advance business.
Current Status: 3/31/2021 - Senate Judiciary, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-94>
- SB101** **ELECTRIC VEHICLE MANUFACTURERS-DEALERSHIPS** (RULLI M) To permit a manufacturer of all-electric motor vehicles to operate one or more dealerships in this state.
Current Status: 5/5/2021 - Senate Transportation, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-101>
- SB108** **PANDEMIC RELIEF-BARS, RESTAURANTS, LODGING** (HUFFMAN S, ROMANCHUK M) To provide grants to bars and restaurants and the lodging industry and to make an appropriation.
Current Status: 5/17/2021 - **SIGNED BY GOVERNOR**; eff. 90 days
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-108>
- SB109** **PANDEMIC RELIEF-BUSINESS, CHILD CARE, VETERANS** (MANNING N, RULLI M) To provide grants to businesses, local fairs, child care providers, and veterans homes and to make an appropriation.
Current Status: 5/17/2021 - **SIGNED BY GOVERNOR**; eff. 90 days
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-109>
- SB110** **RENT, UTILITY ASSISTANCE** (O'BRIEN S, WILSON S) To provide rent and utility assistance and to make an appropriation.
Current Status: 3/24/2021 - Referred to Committee House Finance
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-110>
- SB114** **SALES TAX EXEMPTION-DIAPERS** (ANTANI N) To exempt from sales and use tax the sale of child and adult diapers.
Current Status: 3/31/2021 - Senate Ways and Means, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-114>
- SB121** **DIAPER NEED AWARENESS** (MAHARATH T) To designate the last week of September as "Diaper Need Awareness Week."

Current Status: 3/10/2021 - Referred to Committee Senate Health
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-121>

SB146 **PREVENT BID PRIORITY-HIGHWAY PAVEMENT** (ANTANI N) To require the Director of Transportation to adopt rules that prevent any particular type of highway pavement from receiving priority in the highway construction bidding process.

Current Status: 6/16/2021 - Senate Transportation, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-146>

SB161 **SURGICAL SMOKE** (BRENNER A) Regarding surgical smoke.

Current Status: 4/21/2021 - Referred to Committee Senate Health
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-161>

SB179 **REQUIRE VIRTUAL TESTIMONY** (THOMAS C) To require that a committee of the General Assembly establish a means of hearing virtual testimony.

Current Status: 5/19/2021 - Referred to Committee Senate Government Oversight and Reform
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-179>

SB184 **LARGE VOLUME ONLINE SELLERS** (LANG G, RULLI M) Regarding transparency by large-volume third-party sellers in online marketplaces.

Current Status: 5/26/2021 - Referred to Committee Senate Financial Institutions and Technology
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-184>

SCR5 **DENOUNCE RACISM AND DISCRIMINATION-COVID-19** (MAHARATH T, THOMAS C) To denounce all forms of stigmatization, racism, and discrimination occurring as a result of the COVID-19 pandemic.

Current Status: 3/24/2021 - Referred to Committee Senate Health
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SCR-5>

Here's what the proposed Ohio voting reform bill would do

Some state Republican lawmakers want to change the way Ohioans vote, and they're taking some heat for it.

By: [Courtney Francisco](#)

Posted at 6:44 PM, May 07, 2021

and last updated 12:40 PM, May 10, 2021

CINCINNATI — Some state Republican lawmakers want to change the way Ohioans vote, and they're taking some heat for it.

Democrats say House Bill 294 -- [the proposed 174-page voting law reform bill](#) -- would corrupt the voting process.

The COVID-19 pandemic brought out more absentee and early voters, and this bill would change how parts of that process work.

Among about a dozen changes to current voting protocol, the bill would limit ballot dropbox locations to three per county and remove an absentee voter's ability to correct their ballot if it was submitted incorrectly.

Here's a full rundown of the proposed changes:

- Automates voter registration through the Bureau of Motor Vehicles
- Gives each county board of elections three dropboxes
- Requires boards of elections to test voting machines and prevents voters from being purged from the voter rolls if they took part in recent election activity, like signing a petition
- Requires voters to put their absentee ballot in the return envelope, not the ID envelope. If they mess that up, they cannot fix it.
- Allows anyone 17-years or older to take part in precinct volunteering, not just those who are seniors in high school
- Considers ballot harvesting election fraud

- Allows voters to request an absentee ballot online. They must show two forms of ID.
- Absentee voters must use driver's licenses or state ID numbers if they have them. If not, they can use Social Security numbers and other permissible forms of ID.
- Allows voters to use electronic versions of bank statements or utility bills instead of hard copies as a form of ID
- Requires voters to mail their absentee ballots 10 days before the election instead of three
- Lawmakers must authorize the secretary of state to pay for absentee ballot postage.
- Stops in-person absentee voting the Monday before Election Day but spreads those hours across other early voting days

"Republicans have control of the legislature to be able to really squeeze the vice on the voting process," said University of Cincinnati political science professor Dr. David Niven.

The legislation, introduced Thursday, calls for prohibiting off-site ballot drop boxes and eliminates a day of early voting and spreads those hours across the previous early voting days. Democrats criticize that. The bill also would add some conveniences to elections, including an online absentee ballot request system and automated voter registration.

Its sponsor, Republican state Rep. Bill Seitz, R-Cincinnati, says the sweeping overhaul isn't suppressive but incorporates changes advocated by both parties, as well as elections officials and voting rights advocates. It comes despite a smooth 2020 election.

Secretary of State Frank LaRose said boards of elections across the state asked for many of these changes.

“It creates online absentee ballot requests to make it easier to submit an absentee ballot. What it does is creates an automated voter registration process so we can get more people registered to vote and more accurately,” LaRose said.

Seitz declined to comment for this story.

State Rep. Catherine Ingram, D-Cincinnati, said, “We are reinventing ways to restrict (the vote) to make it seem like we're doing everything we can and we're just trying to eliminate fraud.”

Niven said the bill would "unquestionably (create) voter hurdles."

"It's unbalanced. It's making it harder to vote. In particular, it's making it hard to vote absentee. There's no way around that."



CASE STATEMENT:

Distracted Driving

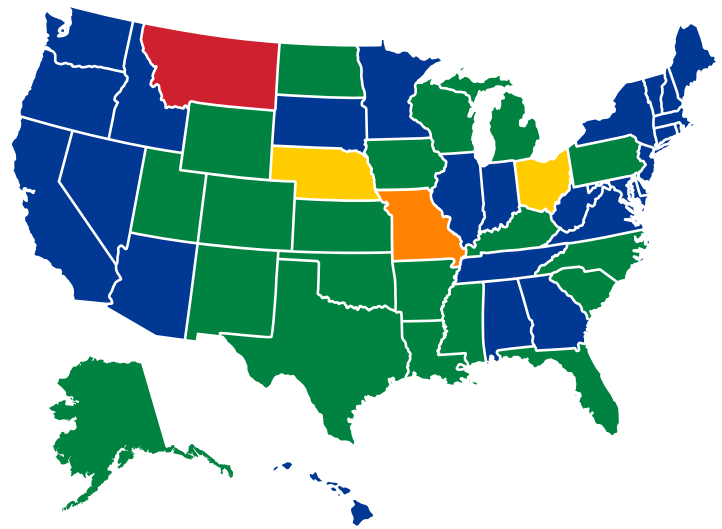
FIX OUR ROADS OHIO

Fix Our Roads Ohio (FOR Ohio) is a diverse coalition of Ohioans with a shared interest in the future of our state's economy and our quality of life. With more than 75 members from across the state, FOR Ohio's membership includes representatives of the transportation construction, engineering and planning industry, motorists, truckers, law enforcement and safety organizations, local governments, public transit, insurers, and state and local business groups. Formed in 2018, FOR Ohio's initial mission was to educate state leaders on the critical needs of Ohio's decaying transportation infrastructure, and to advocate for increased funding for state and local highways, roads and bridges and for an increase in state support for local transit. With strong support from Governor Mike DeWine, who was quick to recognize this critical need, the Ohio General Assembly passed bipartisan legislation that delivered substantial new revenue for state and local roadways with an overdue adjustment in Ohio's motor vehicle fuel tax, accompanied by new fees on electric-powered and hybrid vehicles and increased appropriations for public transit.

FOR Ohio now turns its eye to a pressing problem in our state that affects us all – distracted driving. Despite increased public awareness and education efforts, distracted driving continues to needlessly injure and

claim the lives of thousands of Americans every year. Ohio trails the majority of states in enacting primary enforcement hands-free laws and must address this growing concern.

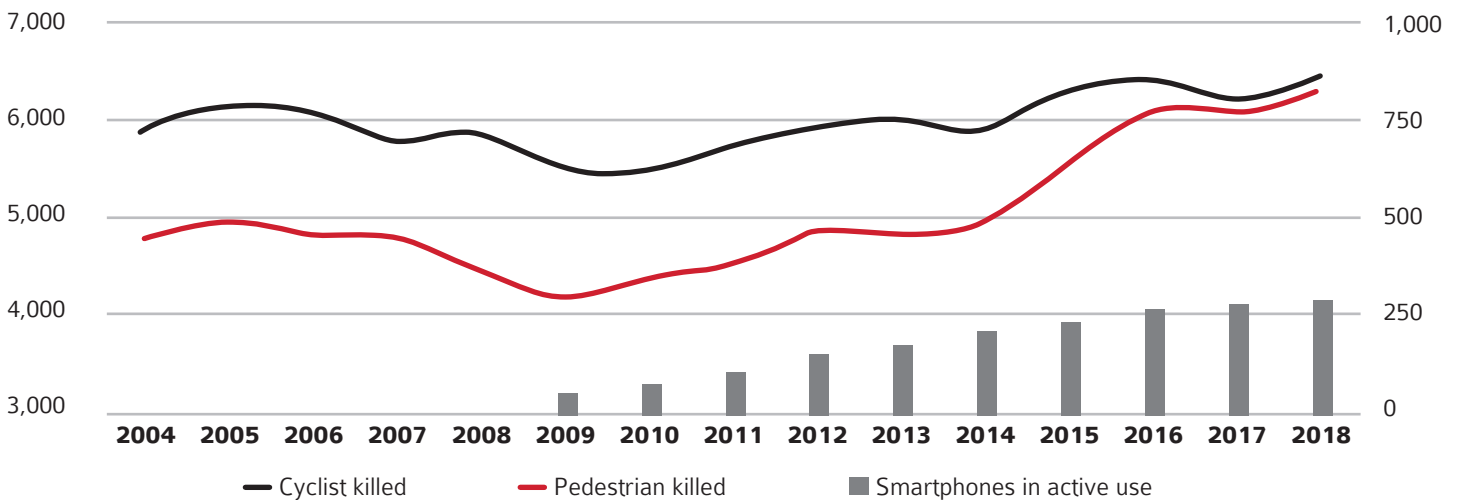
Distracted Driving & Hands-Free Laws in U.S.



- Primary Enforcement (All Handheld Devices, All Drivers)
- Primary Enforcement (No Texting, All Drivers)
- Secondary Enforcement (No Texting, All Drivers)
- Primary Enforcement (No Texting, Young Drivers)
- No Law Limiting Cell Phone Use

Source: National Conference of State Legislatures

Smartphones & Human Casualties in the U.S.



The graph above pairs the annual pedestrian and cyclist fatalities reported by NHTSA alongside the introduction and rise of smartphone use in the U.S. Seen over a longer time scale, the impact of the smartphone on the loss of life is dramatic and appears to be directly correlated.

DISTRACTED DRIVING

Current Ohio Law

With some exceptions, Ohio law currently prohibits all drivers from texting while driving. For adults, it's a secondary offense, meaning law enforcement cannot stop an adult driver solely for violating this law. For drivers under 18 years, the law is a primary offense, and they can be stopped for this violation alone.

Existing state law has proven difficult to enforce because a patchwork of local laws has created confusion for Ohio drivers. Despite a ban on texting while driving, crashes in Ohio continue to rise. An updated distracted driving law is needed to account for increasingly advanced technology and to provide consistency for Ohio motorists. Drivers must have their eyes and their minds on their own safety on the road and that of other motorists – not on texting, emailing, social media and other distractions caused by holding a phone.

Statistics

In 2018, more than 2,800 people nationwide were killed in crashes involving a distracted driver, and nearly 400,000 more were injured. According to the Ohio State Highway Patrol, more than 91,000 distracted driving crashes occurred in Ohio from 2013 through 2019, resulting in more than 47,000 injuries and 305 deaths. The actual number of distracted driving crashes, injuries, and deaths are likely much higher because distracted driving goes largely underreported. Mobile telematics data suggest that 40% of all trips involve significant cellphone distraction, and that 19% of crashes are attributable to phone-based distraction.

Fatalities in Ohio have risen six of the past seven years, and overall crashes in Ohio remain persistently high at a time when vehicles themselves are getting safer. In 2020, travel in Ohio was down about 17% and traffic deaths rose 7% compared to 2019. Ohio ended 2020 with 1,237 traffic deaths—82 more than the 1,155 reported in 2019. This rise is directly correlated to more people now having smartphones, leading to an increase in active distraction while behind the wheel. Reducing this active distraction will help save lives.

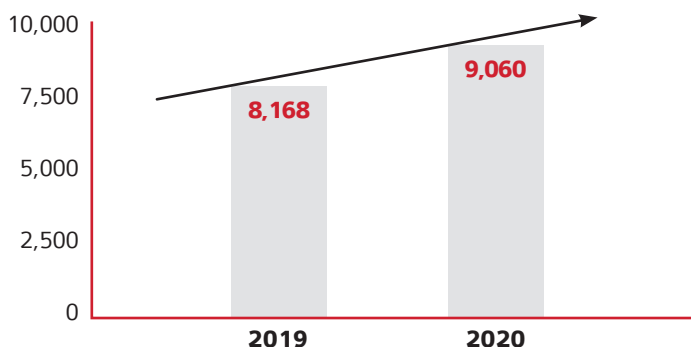
In addition to causing injuries and claiming lives, distracted driving is costly. Each traffic death costs Ohio about \$1.7 million and each serious injury \$157,000 in monetary losses associated with medical care, emergency services, property damage and lost productivity (ODOT). These costs are incurred by both insured and uninsured motorists across Ohio.

In line with its mission to keep Ohio roads safe for all, FOR Ohio supports specific policies that would modernize Ohio's texting law to a hands-free law.

In addition to causing injuries and claiming lives, distracted driving is costly. Each traffic death costs Ohio about \$1.7 million and each serious injury \$157,000 in monetary losses associated with medical care, emergency services, property damage and lost productivity (ODOT). These costs are incurred by the insured and uninsured motorists across Ohio.

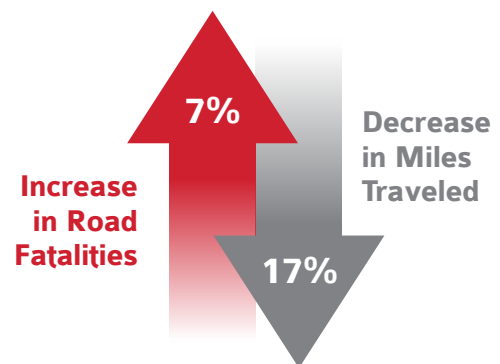
In line with its mission to keep Ohio roads safe for all, FOR Ohio supports specific policies that would modernize Ohio's texting law to a hands-free law.

Ohio State Highway Patrol Reported Distracted Driving Violations



Source: ODOT

State Comparison for Miles Traveled & Fatalities in 2019-2020



Source: ODOT

What have other states done?

Distracted drivers endanger not only themselves, but everyone around them—including other motorists, road construction workers, and pedestrians. Recent research by the AAA Foundation for Traffic Safety shows that most drivers support laws against distracted driving, with 75% supporting laws against holding and talking on a cell phone while driving. Surveys in other states also demonstrate overwhelming support for hands-free laws to deter distracted driving.

Forty-four states have passed various distracted driving laws. A review of crash statistics shows that states with hands-free laws with primary enforcement for all drivers have seen reductions in traffic deaths, many within two years after passing and enforcing new laws.

Policy Recommendations Supported by FOR Ohio

Based on the recommendations of the Ohio Distracted Driving Task Force and the ongoing work of the Distracted Driving Advisory Council, FOR Ohio is supporting positive changes to Ohio law regarding the problem of distracted driving, including a statewide hands-free law.

Hands-free. Prohibit vehicle operators from writing a message (text, email, etc.), posting on social media, viewing videos or images, manually entering data into a website or application, or broadcasting videos or images. Exceptions may include emergency situations, first responders, when a vehicle is stationary and outside a lane of travel, GPS (as long as the driver is not inputting data into the device, i.e., plot trip before driving); “single swipe” as long as the device is not supported by the body; and using voice activated technology (Alexa, Siri, etc.).

Education. Require driver education courses to include curriculum about the dangers of distracted driving and Ohio distracted driving laws.

Primary Enforcement & Penalties. Make distracted driving a primary offense, meaning law enforcement officers may issue a citation any time they see a motorist engaging in prohibited behavior, with suggested penalties outlined in the table below. FOR Ohio supports enhanced penalties for violations that occur in construction zones.

Suggested Penalties for a Primary Enforcement Hands-Free Law

	POINTS		FINES
	Unclassified Misdemeanor	>30 mph	
55 mph zone / >10 mph:		4 points	
55 mph zone / >5 mph		4 points	
No excessive speed:		2 points	
All other moving violations where driver was distracted		4 points	
Property Damage and/or Injury	First-degree misdemeanor and possible suspension		
Serious Injury and/or Death	Treated as vehicular assault/vehicular homicide Equivalent to an OVI offense 3rd degree felony or above		

Hands-Free Laws Decrease Fatalities (from a year before passage to two years after)



Washington
down 22.3%



West Virginia
down 23.3%



Hawaii
down 27.4%



California
down 31.1%



Washington, D.C.
down 45.5%

Source: ODOT

FIX OUR ROADS OHIO COALITION

Fix Our Roads Ohio (FOR Ohio) is a coalition of stakeholders united in support of Ohio's transportation future. This includes supporting efforts to secure critical funding for Ohio's transportation infrastructure, as well as advocating for laws that encourage safe driving habits for all motorists sharing Ohio's roads and highways.

LOCAL GOVERNMENT

Ohio Municipal League
County Commissioners Association of Ohio
Ohio Council of County Officials
County Engineers Association of Ohio
Ohio Township Association
Ohio Mayors Alliance
Northeast Ohio Mayors and City Managers Association
Cuyahoga County Mayors and City Managers Association
Central Ohio Mayors and Managers Association
Ohio Rural Development Alliance
Ohio Public Transit Association

PUBLIC SAFETY

Ohio Fire Chiefs' Association
Buckeye State Sheriffs' Association
Emergency Management Association of Ohio
Ohio Association of Public Safety Directors

BUSINESS

Cincinnati USA Regional Chamber
Columbus Chamber of Commerce
Greater Akron Chamber Of Commerce
Dayton Area Chamber of Commerce
Toledo Regional Chamber of Commerce
Youngstown/Warren Regional Chamber of Commerce
Ohio Hotel and Lodging Association
AAA Clubs of Ohio
Dayton Area Logistics Association
Ohio Restaurant Association
Ohio Manufacturers' Association
Clean Fuels Ohio
UPS
Ohio Chemistry Technology Council
FedEx
Ohio Coal Association
Ohio Insurance Institute
Ohio Corn & Wheat Growers Association
Ohio Agribusiness Association
Ohio Insurance Agents Association
Nationwide
State Auto Insurance Companies
Westfield
Ohio Business Roundtable
AT&T
Ohio's Electric Cooperatives
Ohio Insurance Agents Association
American Property Casualty Insurance Association
Lyft
Ohio Auto Dealers Association
Ohio Farm Bureau Federation

TRANSPORTATION

American Council of Engineering Companies of Ohio
Flexible Pavements of Ohio
Ohio Trucking Association
Ohio Aggregates and Industrial Minerals Association
Ohio Contractors Association
Transportation Advocacy Group of Northwest Ohio
Ohio Association of Movers
Ohio Prestressers Association
American Society of Civil Engineers
Ohio Concrete
UNITED Equipment Dealers Association
Ohio Equipment Distributors Association
COTA
CSX Transportation, Inc.

REGIONAL COUNCILS

Ohio Association of Regional Councils
Akron Metropolitan Area Transportation Study (AMATS)
Belomar Regional Council and Interstate Planning Commission
Brooke-Hancock Jefferson Metropolitan Planning Commission
Buckeye Hills Regional Council
Clark County-Springfield Transportation Coordinating Committee
Eastgate Regional Council of Governments
Erie County Regional Planning Commission
KYOVA Interstate Planning Commission
Licking County Planning Commission; Licking County Area Transportation Study
Lima-Allen County Regional Planning Commission
Logan-Union Champaign Regional Planning Commission
Maumee Valley Planning Organization
Miami Valley Regional Planning Commission (MVRPC)
Mid-Ohio Regional Planning Commission (MORPC)
Mid-Ohio Valley Regional Council
Northeast Ohio Areawide Coordinating Agency (NOACA)
Northeast Ohio Four-County Regional Planning & Development Organization
Ohio Mid-Eastern Governments Association
Ohio Valley Regional Development Commission
Richland County Regional Planning Commission
Stark County Regional Planning Commission
Toledo Metropolitan Area Council of Governments (TMACOG)
Wood-Washington-Wirt Interstate Planning Commission

LABOR

The Fraternal Order of Police, Ohio
Ohio Laborers' District Council
International Union of Operating Engineers Local 18
Indiana-Kentucky-Ohio Regional Council of Carpenters



For more information about Ohio's transportation infrastructure, visit us today at [FixOurRoadsOhio.com](https://www.FixOurRoadsOhio.com)

Poll shows Ohio drivers strongly favor new law to prevent distracted driving

A new public opinion survey finds that distracted driving is the number one concern for Ohio drivers, and an overwhelming majority support stricter laws to keep Ohio roads safe.

The survey found that distracted driving is *the* major worry for Ohio drivers by a two-to-one margin over drunk driving (48%-22%). This concern holds true regardless of age, partisanship, political ideology or region of the state.

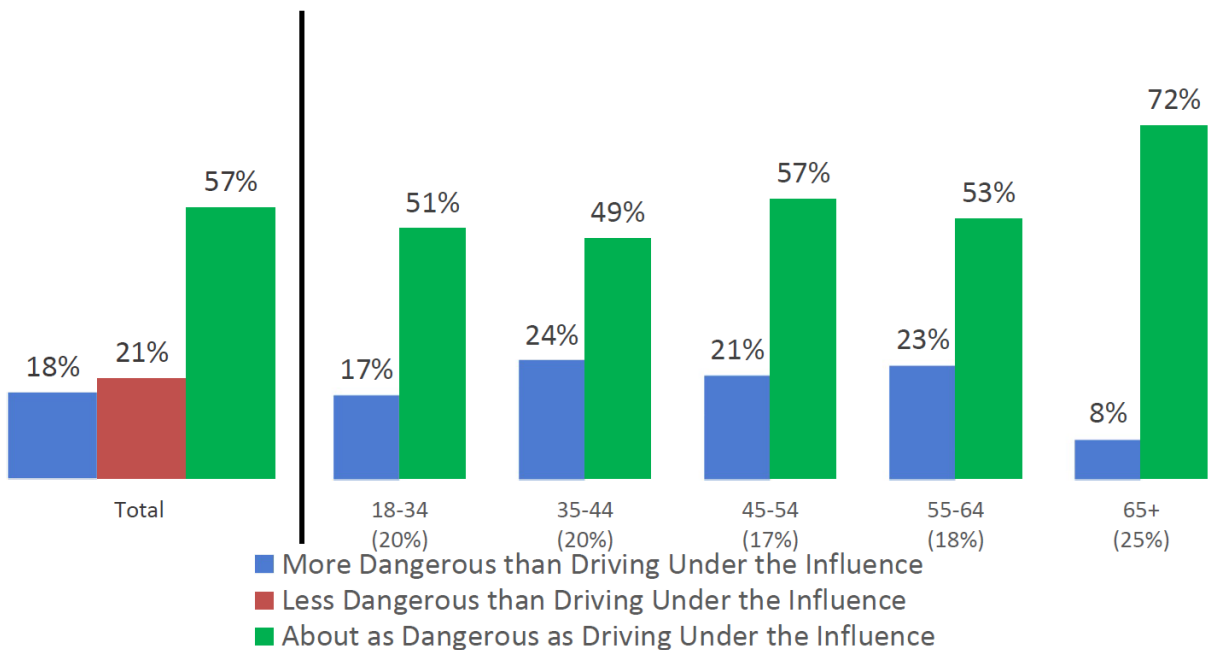
More than 50% of Ohio drivers say they see another driver using their hand-held phone while driving “nearly every time they go out” (22%) or “most times they go out” (31%). Fully 75% say that using a hand-held cell phone is more dangerous (18%) or just as dangerous (57%) as driving under the influence of drugs or alcohol.

This sentiment is shared by Ohio drivers across all age groups.

When Ohio drivers are asked about a potential new state law dealing with distracted driving, they support it by a wide 78%-15% margin, with fully 45% saying they strongly favor it. Support for the new law cuts across age groups, media markets, political ideology and partisanship, as well as ethnicity. The vast majority (88%) of Ohio drivers say they would be willing to obey the new law, and overwhelmingly reject the notion that the law is not needed – again, holding true across partisanship, ideology, age, ethnicity and region.

Click [here](#) to see the full survey presentation, or visit <https://fixourroadsOhio.com/distracted-driving/>.

Fully 75% of Ohio drivers believe that using a hand-held phone while driving is either “more dangerous” or “just as dangerous” as driving under the influence.



Do you believe that distracted driving by drivers who use their hand-held cell phones while they drive is more dangerous than driving under the influence, less dangerous, or about as dangerous as driving under the influence?



Ohio House Bill 110 – State Operating Budget

As Passed By Senate – Tax: Sales tax exemption for sales of employment services

Exempts employment services (providing personnel to perform work under the supervision and control of the purchaser) and employment placement services (locating employment for a job-seeker or locating job candidates for an employer) from sales and use tax.

Fiscal effect: Reduces sales tax revenue in FY 2022 to the GRF by \$92.4 million, the LGF and the PLF by a combined \$3.2 million and by \$25.6 million to counties and transit authorities. Reduces sales tax revenue in FY 2023 to the GRF by \$138.6 million, the LGF and the PLF by a combined \$4.8 million and by \$38.5 million to counties and transit authorities. Estimates are from the Department of Taxation.

Ohio Tax on Temporary Manufacturing Labor

- Ten states with sales tax on temp employees – OH, CT, IA, DE, PA, WV, HI, NM, SD, and WA (also Washington D.C.)
- OH, CT, IA, PA, WV (DC) – tax using sales tax
- DE, HI, NM, SD, WA – use either gross receipts or other non-sales tax
- Ohio is the only state using sales tax that taxes both the service fee and wages

Householder Expulsion Hearing Explores ‘Disorderly Conduct’ Standard

The House Rules and Reference Committee debated what if any limits exist on the chamber’s authority to expel a colleague for “disorderly conduct” and distinctions between that process and criminal proceedings, as the House finally brought internal debates on Rep. Larry Householder’s (R-Glenford) future out in the open.

The committee heard sponsor testimony Thursday on two resolutions seeking to expel Householder because of his involvement in the 133-HB6 scandal -- HR69, sponsored by Reps. Brian Stewart (R-Ashville) and Mark Fraizer (R-Newark), and HR70, sponsored by Reps. Michele Lepore-Hagan (D-Youngstown) and Jeffrey Crossman (D-Parma).

A further hearing is scheduled for 4 p.m. Tuesday, when Householder is invited to appear. House Speaker Bob Cupp (R-Lima), who chairs the committee, said the panel will also accept written comments if Householder so chooses. Cupp simply described the process and recognized members for questions during Thursday’s two-hour hearing, posing no questions of his own to the resolutions’ sponsors. He has repeatedly called for Householder to resign in the past.

The two pairs of sponsors made similar points in testimony Thursday: that the allegations against Householder are serious enough to cast a shadow over the chamber; that while he maintains his innocence, the allegations of a bribery conspiracy are corroborated by the guilty pleas of co-defendants; and that House members have broad discretion to determine whether Householder’s actions are worthy of expulsion.

Expulsion power rests in Article II, Section 6 of the Ohio Constitution, which states each chamber “shall be the judge of the election, returns and qualifications of its own members” and “may punish its members for disorderly conduct and, with the concurrence of two-thirds of the members elected hereto, expel a member, but not the second time for the same cause.”

“If money laundering, racketeering and bribery do not qualify as disorderly conduct, then virtually nothing ever could. Selling legislation in this honorable House, especially while serving as speaker, is most certainly disorderly conduct,” said Stewart.

“Rep. Householder is under indictment for selling legislation, and Ohioans cannot fathom how he remains in a position to continue to introduce legislation under these circumstances,” he said.

“These actions clearly demonstrate a disruption of business through the disorderly conduct of a member and a breach of his privileges,” said Fraizer.

Lepore-Hagan summarized a variety of dictionary definitions for disorderly conduct, from “offensive to public order” to “lawless and disreputable” to “contrary to public order

or morality,” asking rhetorically if taking \$60 million in dark money payments in exchange for shepherding a \$1 billion-plus utility bailout to passage -- as alleged in federal court -- fits those descriptions.

“Of course it does. And that is why it’s totally appropriate and absolutely necessary that we expel Mr. Householder now,” she said.

Crossman said North Dakota, Missouri and Idaho’s Republican-controlled legislatures have expelled members -- or seen them resign with expulsion imminent -- in recent months, while Ohio’s has gone nearly a year without acting since the scandal erupted into public view. (See *The Hannah Report*, 7/21/20.)

“Members here should be embarrassed that this has taken this long to bring the question of Rep. Householder’s professional misconduct up for discussion here,” said Crossman, who recounted Democrats’ previous attempts to force the conversation.

Cupp deferred action last session given the constitutional language on the inability to expel someone twice for the same conduct, since Householder was unopposed for election in 2020 and ultimately he prevailed again. This year Cupp has said little definitive about the case, referencing ongoing discussions within the GOP caucus.

Crossman said the chamber should go further and also pass anti-corruption measures like HB214 (Crossman-Lepore-Hagan) and HB306 (Sweeney-Russo).

Crossman noted that a teacher, lawyer, police officer or social worker facing serious accusations would know they could face professional discipline separate from any criminal proceedings against them.

“It’s the same idea that members of the bar are held to, the same standard. If the lawyers in our state are held to a standard where even the appearance of impropriety is enough to justify professional sanctions, certainly the members of this chamber that craft the legislation that lawyers have to argue about in court should be held to a similar if not more stringent standard,” Crossman said.

Rep. Richard Brown (D-Canal Winchester) asked Stewart to respond to claims that the constitution’s disorderly conduct language refers only to that occurring on the House floor. Stewart said nothing in the plain text describes such a limit, and referenced reporting on the last successful expulsion effort in the 19th century, which involved one member punching another in the face.

“I would offer that I think that would be far less disruptive and far less disorderly to this body than selling legislation,” he said.

Rep. Kristin Boggs (D-Columbus) asked how the scandal has affected the Republicans’ reputation in their own communities. Stewart said he hadn’t asked for Householder’s endorsement or financial support, and when the allegations emerged, he donated the

contributions to charity. He said many members were not privy to what Householder was doing, and argued the expulsion resolution along with lawmakers' votes to repeal parts of HB6 are avenues to restoring public trust.

Rep. Bill Seitz (R-Cincinnati) said Stewart's expansive definition of disorderly conduct reminded him of the broad language Democrats in Congress used to impeach former President Donald Trump. He instead suggested they look to how lawmakers had defined disorderly conduct in statute.

Referencing Seitz' mention of the Trump impeachment, Stewart replied, "These [charges] were brought by President Donald Trump's hand-picked U.S. attorney."

"This is not cancel culture, this is law enforcement," Stewart said.

As to the statutory definition of disorderly conduct, Stewart said constitutional framers could have further defined the term in Article II, Section 6 but did not.

"There's a reason that this provision has not been invoked more since the Civil War. It's because in every other instance, almost every other instance where someone is accused or indicted for crimes of this nature, they have the good sense to resign," Stewart said.

Brown called Seitz' use of the statutory definition for disorderly conduct "a red herring," pointing to the constitutional language stating lawmakers "shall be the judge" of their colleagues' qualifications.

Rep. Rick Carfagna (R-Westerville) noted the existence of distinct constitutional sections for removal of members -- one on expulsion for disorderly conduct, the other on removal following a felony conviction.

"I don't see any requirement here that even a conviction is necessary for disorderly conduct," he said.

Stewart agreed with Carfagna's interpretation. "If you have two separate provisions that cover separate areas, they were intended to be separate, they were intended to address different situations," he said, citing rules of statutory and constitutional construction.

Carfagna also sought to distinguish the Householder case from past cases involving drunken driving or securities violations that raised questions about lawmakers' private lives and personal integrity. "The difference here would be the charges under question have a spillover impact on this entire body ... they call into question the very integrity of the legislative process that we all participate in," he said.

Stewart again concurred, saying the conduct in question "directly flows from the exercise of authority as speaker of the House."

Rep. Tim Ginter (R-Salem) asked if the committee deliberations offer sufficient due process. Stewart said he commended Cupp for laying out the hearing process but said the constitutional section in question doesn't address it. "Due process is required before we deprive people of life, liberty and property. I don't believe we're doing that here. It is a privilege to serve in the Ohio House," Stewart said.

Seitz said a key difference between others who've suffered professional repercussions over HB6 -- he mentioned ousted FirstEnergy CEO Chuck Jones and former PUCU Chairman Sam Randazzo, who resigned -- is that Householder was re-elected by his constituents despite the very public airing of charges against him.

Stewart pointed out Householder's lack of a general election opponent, discounting the chances of the write-in campaigns against him and noting an "unusually large degree of undervotes" in the race for that seat. "We think that's a pretty clear statement that they wanted to register their disapproval," Stewart said.

Rep. Don Jones (R-Freeport) expressed fears of the precedent to be set by expelling a member under an expansive definition of disorderly conduct. "Is there a fear if we're going to leave it very broad, the next time it doesn't have to be at this level, that we're going to start to expel members because they hurt our feelings or they did something that didn't sit well with us politically?" Jones asked.

Stewart pointed to the length of time it had taken just to get to Thursday's hearing. "We are not too concerned that the slippery slope is very slippery," he said.

"If it's caused this much angst and handwringing to expel a member for selling legislation, we're not too concerned we're going to be booting members out for hurting our feelings or jaywalking," Stewart said.

Jones said he's had elected officials from Householder's district tell him they think he's suffering a witch hunt for stepping on toes, suggesting the sponsors go talk to elected officials in Coshocton County who'd declined to sign a letter signed by other officials urging Householder's ouster. Stewart asked Jones to identify them and suggested in the age of social media they could easily have made their opinions known.

"I'm not willing to credit people with that opinion if they're not willing to express it themselves," Stewart said.

Story originally published in *The Hannah Report* on June 10, 2021. Copyright 2021 Hannah News Service, Inc.



Ohio Children's Hospital Association
Saving, protecting and enhancing children's lives



THE OHIO STATE UNIVERSITY
WEXNER MEDICAL CENTER



Ohio State Medical Association



Ohio Business Roundtable



OHIO NURSES ASSOCIATION
THE VOICE OF OHIO'S REGISTERED NURSES



Bio Biotechnology Innovation Organization

Cleveland Clinic

COLUMBUS PARTNERSHIP

DAYTON
Area Chamber of Commerce



PROMEDICA
RUSSELL J. EBEID
CHILDREN'S HOSPITAL

The Ohio Manufacturers' ASSOCIATION



ACCP | Ohio Chapter
American College of Physicians
Leading Internal Medicine, Improving Lives

Akron Children's Hospital

Ohio Hematology Oncology Society



Columbus Medical Association

OCALI

Inspiring Change for People with Disabilities

Groundwork

children's defense fund ohio

Ohio ACEP
American College of Emergency Physicians
Advocacy | Education | Leadership

OAAPN

OHIO

Ohio Chapter
INCORPORATED IN OHIO

buckeye health plan.
Your Guide to Better Health™



University Hospitals

Rainbow Babies & Children's Hospital

American Academy of Pediatrics
DEDICATED TO THE HEALTH OF ALL CHILDREN™

Cincinnati Children's

SummaCare



AMCNO
The Academy of Medicine of Cleveland & Northern Ohio

MGMA OHIO



OAFP

dayton children's



NATIONWIDE CHILDREN'S
When your child needs a hospital, everything matters.™

OHCA
OHIO HEALTH CARE ASSOCIATION

OhioHealth

OHIO OSTEOPATHIC ASSOCIATION

Arthritis Foundation

Ohio Association of Rheumatology

ACS Chapters | Ohio



OHIO PSYCHIATRIC PHYSICIANS ASSOCIATION

MOLINA HEALTHCARE

CHARITABLE HEALTHCARE NETWORK
Ohio: Stronger. Healthier. Together.



Ohio CHAPTER

PROCEED TO NEXT PAGE



Monday, June 7, 2021

To: Members of the Ohio House Health Committee
 Re: HB 248-11

Dear Ohio House Health Committee,

As organizations representing 1.7 million+ Ohioans, we are gravely concerned by HB 248-11, legislation that **puts ALL Ohioans, including children, at risk**. Among us are physicians, nurses, health commissioners, hospitals and business owners, who feel moved to firmly voice our shared concerns. At its core, this proposal would **destroy our current public health framework that prevents outbreaks of potentially lethal diseases, threaten the stability of our economy as it recovers from a devastating pandemic, and jeopardize the way we live, learn, work and celebrate life**.

The legislature has heard that this bill's purpose is to prevent the COVID-19 vaccine from becoming mandatory, but HB 248-11 applies to ALL immunizations, including childhood vaccines. If passed, **this legislation has the potential to reverse decades of immunity from life-threatening, but vaccine-preventable diseases** such as measles, mumps, hepatitis, meningitis and polio. In fact, the words "COVID-19" or "coronavirus" are not found anywhere in the bill.

PROCEED TO NEXT PAGE

This legislation would also take away the rights of individuals who have businesses in Ohio to implement important safety measures meant to protect their employees, clients, and others. Many businesses have seen enormous fallout as a result of the pandemic and are working to rebuild and move forward. Business owners should each retain the right to carefully evaluate the unique circumstances they face and make their own determinations about what is best for keeping the workplace healthy and their overall recovery.

As current Ohio law allows for school immunization exemptions to decline vaccinations for medical, religious, or reasons of conscience (known as the philosophical exemption), and most businesses allow for flexibility in regard to vaccinations, we question the need for HB 248-11. This overly broad proposal would further strip away accountability and compassion for our fellow Ohioans, and cause severe disruption to our state's health, economy, and way of life. **It is our urgent plea that HB 248-11 be rejected, to protect the vitality of Ohio's children and families and avoid disastrous consequences for the future of our state.**

Respectfully,

Academy of Medicine of Cincinnati

Akron Children's Hospital

American Cancer Society Cancer Action Network, Inc.

American College of Emergency Physicians

American College of Physicians

American College of Surgeons - Ohio

Anthem

Arthritis Foundation

Association of Ohio Health Commissioners

BASA – Ohio's Superintendent Association

Bio Ohio

Biotechnology Innovation Organization (BIO)

Buckeye Health Plan

CancerCare

CardinalHealth

Center for Dignity in Healthcare for People with Disabilities

Central Ohio Primary Care Physicians

Charitable Healthcare Network

Children's Defense Fund

Cincinnati Children's Hospital Medical Center

Cleveland Clinic

Columbus Medical Association

Columbus Partnership

Dayton Area Chamber of Commerce

Dayton Children's Hospital

Greater Dayton Area Hospital Association

Groundwork Ohio

Immunize Ohio

Medical Group Management Association

Molina Healthcare

Montgomery County Medical Society

Mount Carmel Health System

National Association of Pediatric Nurse Practitioners

National Patient Advocate Foundation

Nationwide Children's Hospital

National Hispanic Medical Association

Ohio Chapter - American Academy of Pediatrics

Ohio Academy of Family Physicians

Ohio Alliance of Boys and Girls Clubs

Ohio American College of Emergency Physicians

Ohio Association of Advanced Practice Nurses

Ohio Association of Community Health Centers

Ohio Association of Child Care Providers

Ohio Association of Community Health Centers

Ohio Association of Health Plans

Ohio Association of Rheumatology

Ohio Association of School Nurses

Ohio Association of Elementary School Administrators

Ohio Association of Secondary School Administrators

Ohio Business Roundtable

OCALI

Ohio Chamber of Commerce

Ohio Chapter – American College of Cardiology

Ohio Children's Hospital Association

Ohio College Health Association

Ohio Counseling Association

Ohio Coroners Association

Ohio Counseling Association

Ohio Dermatological Association

Ohio Health Care Association

Ohio Health

Ohio Hematology Oncology Society

Ohio Hospital Association

Ohio Manufacturers' Association

Ohio Nurses Association

Ohio Orthopaedic Society

Ohio Osteopathic Association

Ohio Pharmacists Association

Ohio Psychiatric Physicians Association

Ohio Public Health Association

Ohio Society of Pathologists

Ohio Society for Respiratory Care

Ohio State Coroners Association

Ohio State Medical Association

Premier Health

ProMedica Russell J. Ebeid Children's Hospital

Retire Safe

SummaCare

The Academy of Medicine of Cleveland & Northern Ohio

The Aids Institute

The American College of Obstetricians and Gynecologists

The Ohio Foot & Ankle Medical Association

The Ohio State University Wexner Medical Center

Triage Cancer

TriHealth

UC Health

UH Rainbow Babies and Children's Hospital

University of Cincinnati Center for Excellence in Developmental Disabilities



www.lsc.ohio.gov

OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
and Drafting

Legislative Budget
Office

H.B. 235
134th General Assembly

Bill Analysis

Version: As Introduced

Primary Sponsors: Reps. Swearingen and Baldrige

Paul Luzzi, Attorney

SUMMARY

- Requires a contractor or subcontractor that performs construction services on a building, structure, facility, or installation that emits or may emit certain regulated air pollutants (“stationary source”) to perform the services using individuals who meet specific training requirements.
- Allows a contractor or subcontractor to complete the services using individuals who do not satisfy the training requirements under certain conditions outside of the contractor’s or subcontractor’s control.
- Requires a contractor or subcontractor to keep records and file reports demonstrating that the contractor or subcontractor is using individuals that satisfy the bill’s training requirements to perform construction services at a stationary source.
- Requires an owner or operator of a stationary source to contract for construction services on the stationary source only with contractors who use individuals that satisfy the bill’s training requirements and subcontract with only subcontractors whose workers satisfy the requirements.
- Requires an owner or operator to, within a specific time period, provide written notice to the Director when the owner or operator believes that a contractor or subcontractor is failing or has failed to use individuals that satisfy the bill’s training requirements.
- Subjects contractors, subcontractors, owners, and operators that violate the bill to civil penalties of up to \$10,000 per violation and requires the Director to investigate possible violations.
- Authorizes the Director to adopt rules to administer and enforce the bill.

DETAILED ANALYSIS

The bill, known as the High Hazard Training Certification Act, applies to construction services performed on “stationary sources,” which are buildings, structures, facilities, and installations that emit or may emit regulated air pollutants or any pollutant listed in the “Clean Air Act” other than emissions resulting directly from internal combustion engines. Its requirements apply to a stationary source even if the stationary source is offline for the purpose of being revamped or renewed.¹

Examples of stationary sources include certain factories, refineries, boilers, and power plants. The Clean Air Act directs the U.S. Environmental Protection Agency to control emissions from stationary sources by developing and implementing standards and guidelines.²

Staffing requirements for construction at stationary sources

Unless one of the exceptions described below applies, the bill requires a contractor or subcontractor that performs construction services on a stationary source to use only the following individuals to perform the services:

- **Class A skilled journeypersons:** Individuals who graduate from a registered apprenticeship program and complete a 30-hour training course in safety and health hazard recognition and prevention approved by the federal Occupational Safety and Health Administration (OSHA);
- **Class B skilled journeypersons:** Individuals who complete the 30-hour OSHA approved safety and health hazard recognition and prevention training course and who acquire at least 10,000 hours of experience in the occupation or trade in which the individual is providing or assigned to provide construction services at the stationary source;
- **Apprentices:** Individuals who are participating in a registered apprenticeship program to learn a skilled occupation pursuant to a registered apprenticeship agreement.³

A “registered apprenticeship program” is any of the following programs:

- A program that trains an individual for a trade or occupation through paid on-the-job training and related instruction that has been registered by the U.S. Department of Labor’s Office of Apprenticeship as meeting certain minimum standards under federal law;
- An apprenticeship program registered by the Ohio Department of Job and Family Services (JFS);

¹ R.C. 4145.01(I) and Section 3.

² See 42 United States Code (U.S.C.) 85 *et seq.* and EPA, *Stationary Sources of Air Pollution*, available [here](#).

³ R.C. 4145.01(A), (F), and (G), 4145.02, and 4145.03(B)(1).

- An apprenticeship program registered by a state apprenticeship agency of another state that has been authorized to register apprenticeship programs for federal purposes under that state’s laws.

A registered apprenticeship program may include any apprenticeship program subject to the “Employee Retirement Income Security Act of 1974” or an apprenticeship program supported through an employer’s general funds. However, a registered apprenticeship program does not include an Industry-Recognized Apprenticeship Program (IRAP). An IRAP is an apprenticeship developed or delivered by a trade or industry group, corporation, nonprofit organization, educational institution, union, or joint labor-management organization that results in an industry-recognized credential.⁴

Implementation schedule

A contractor or subcontractor must comply with the following implementation schedule with respect to the proportion of employees who meet the classifications described above:

- Beginning on January 1, 2022, at least 45% class A skilled journeypersons or apprentices and 55% class B skilled journeypersons;
- Beginning on January 1, 2023, at least 65% class A skilled journeypersons or apprentices and 35% class B skilled journeypersons;
- Beginning on January 1, 2024, at least 80% class A skilled journeypersons or apprentices and 20% class B skilled journeypersons.⁵

Exceptions

The bill exempts an individual from the requirement to be a class A or class B skilled journeyperson or apprentice if the individual is employed as a project superintendent, project manager, engineer, or clerical employee and the individual does not perform construction services.

Additionally, a contractor or subcontractor is not required to comply with the bill’s staffing requirements and implementation schedule under either of the following circumstances:

- The contractor or subcontractor requests qualified individuals from a hiring hall or referral system that dispatches individuals who are class A or class B skilled journeypersons or apprentices and, because of workforce shortages, the contractor or subcontractor is unable to obtain sufficient qualified individuals within 48 hours (not including Saturdays, Sundays, or legal holidays) after the request;

⁴ R.C. 4145.01(E) and R.C. 4139.01, not in the bill; *see also* 29 U.S.C. 1001, *et seq.* and 29 Code of Federal Regulations (C.F.R.) 29.2 and 29.20.

⁵ R.C. 4145.03(B)(2) and (3).

- An emergency during or after which compliance is impracticable, including an emergency that requires immediate action to prevent imminent harm to public health, public safety, or the environment.⁶

Recordkeeping

The bill requires each contractor and subcontractor that performs construction services on a stationary source to keep the following records for a period of not less than three years after the construction services have been completed:

- Payroll records for all individuals who performed construction services;
- Apprenticeship records;
- Copies of the reports described below.

The Director of Commerce or the Attorney General may request to inspect the records any time during the three years a contractor or subcontractor must keep them. A contractor or subcontractor must make the records available no later than seven days from the date the Director or Attorney General makes the request.⁷

Reports

Contractor compliance reports

A contractor subject to the bill's staffing requirement must prepare a quarterly compliance report for each calendar quarter during which the contractor provided construction services at a stationary source. The contractor must submit each report to the Director not later than 30 days after the last day of the calendar quarter and a final report to the Director not later than 30 days after construction services under a contract are completed. Each report must include all of the following information with respect to the calendar quarter covered by the report:

- The contractor's name and address;
- The name and title of the individual preparing the report on behalf of the contractor;
- The name and address of the owner or operator of the stationary source at which construction services were performed;
- The name of the project and project number, if any;
- The total dollar value of the contract;
- The name and address of all subcontractors involved in providing construction services at the stationary source;

⁶ R.C. 4145.03(B)(4) and (C).

⁷ R.C. 4145.05.

- The total number of class A and class B skilled journeypersons and apprentices who performed construction services;
- The name and address of each registered apprenticeship program from which class A skilled journeypersons graduated and each registered apprenticeship program that provided training to apprentices;
- A certification that the contractor complied with the bill's staffing requirements and implementation schedule;
- All of the following:
 - The total number of class A skilled journeypersons who performed construction services;
 - The total number of class B skilled journeypersons who performed construction services;
 - The total number of apprentices who performed construction services;
 - The numbers of class A and class B skilled journeypersons and apprentices represented as a percent of the total number of class A and class B skilled journeypersons and apprentices who performed construction services.

When the contractor submits a report to the Director, the contractor must provide a copy to the owner or operator of the stationary source at which the services were provided.⁸

The Director must create and make available a form on which a contractor can include the information required in the contractor's compliance report. Not later than 30 days after a report is submitted to the Director, the Director must publicly post it on the Department of Commerce's website.⁹

Subcontractor workforce report

Not later than ten days after the end of each calendar quarter, a subcontractor subject to the bill's staffing requirement must submit a workforce report to each contractor for which the subcontractor provided construction services at a stationary source. Each report must include the following information regarding individuals who performed construction services during that calendar quarter:

- The total number of class A and class B skilled journeypersons and apprentices who performed construction services;
- The total number of class A skilled journeypersons and apprentices who performed construction services;

⁸ R.C. 4145.06.

⁹ R.C. 4145.11(B).

- The total number of class B skilled journeypersons who performed construction services and the means by which the subcontractor verified that each class B skilled journeyperson has satisfied the experience requirement to be considered a class B skilled journeyperson;
- The name and address of each registered apprenticeship program from which class A skilled journeypersons graduated and each registered apprenticeship program that provided training to apprentices.¹⁰

Owner and operator obligations

An owner or operator of a stationary source that contracts for construction services at the stationary source on or after the bill's effective date must do both of the following:

- Engage only a contractor that complies with the bill's staffing requirements for construction services at stationary sources;
- Require, in the contract, that the contractor use only subcontractors that comply with the bill's staffing requirements when providing services at the stationary sources.¹¹

If an owner or operator believes that a contractor or subcontractor has failed to comply with the implementation schedule described above, the owner or operator must notify the Director in writing. The notice must be provided no later than seven days after the date on which the owner or operator first believes a contractor or subcontractor has failed to comply. The owner or operator must include all of the following in the notice:

- A summary describing the contractor's or subcontractor's alleged noncompliance, including the applicable dates of noncompliance and degree to which the contractor or subcontractor has allowed the proportion of the contractor's or subcontractor's employees performing construction services to deviate from the implementation schedule;
- The corrective actions, if any, that the owner or operator has taken to ensure the contractor or subcontractor is complying with the implementation schedule, and the date by which the owner or operator expects the contractor or subcontractor to comply with the implementation schedule.¹²

Prohibitions

The bill prohibits the owner or operator of a stationary source from doing any of the following:

¹⁰ R.C. 4145.07.

¹¹ R.C. 4145.03(A).

¹² R.C. 4145.04.

- Failing to enter a contract that complies with the requirements described in “**Owner and operator obligations,**” above;
- Failing to provide written notice to the Director within the specified time when the owner or operator believes that a contractor or subcontractor has failed to comply with the bill’s staffing requirements;
- Submitting a notice to the Director that contains false or inaccurate information.

The bill also prohibits a contractor or subcontractor from doing any of the following:

- Failing to comply with the bill’s staffing requirements for construction services at stationary sources;
- Failing to maintain the records required by the bill;
- Failing to make the required records available for inspection by the Director or the Attorney General within the required timeframe;
- Failing to file the reports required by the bill or submitting a false or inaccurate report.¹³

An owner or operator, contractor, or subcontractor that violates any of the prohibitions listed above is subject to a civil penalty of not more than \$10,000 for each violation. Each day a contractor or subcontractor fails to comply with the bill’s staffing requirements at a stationary source counts as a separate violation. Each day an owner or operator is party to a contract that violates the bill counts as a separate violation.¹⁴

Enforcement

Any person who believes an owner or operator, contractor, or subcontractor has violated the prohibitions described above may file a written complaint with the Director. On receiving a complaint, the Director may investigate the alleged violation. The Director also may investigate whether an owner or operator, contractor, or subcontractor has violated the bill’s prohibitions on the Director’s own initiative.

If the Director determines after an investigation that reasonable grounds exist to believe a violation has occurred, the Director must provide notice and hold a hearing in compliance with the Administrative Procedure Act.¹⁵

After a hearing, if the Director determines a violation has occurred, the Director must order the offender to correct the violation. The offender must remedy the violation not later than 30 days after the Director issues the order. An offender that fails to remedy a violation within the time period specified is subject to the civil penalty described above. The Attorney General may, on behalf of the Director, sue in a court of competent jurisdiction to enforce a

¹³ R.C. 4145.08.

¹⁴ R.C. 4145.10.

¹⁵ R.C. Chapter 119.

violation. If the Attorney General prevails in a suit, the court must award court costs and reasonable attorney's fees to the Attorney General.

A civil penalty assessed under the bill and any court costs and attorney's fees recovered are paid into the state treasury to the credit of the Industrial Compliance Operating Fund created under continuing law. The fund is used to pay the Division of Industrial Compliance's proportionate share of the Department of Commerce's administrative costs.¹⁶

The bill authorizes the Director to adopt rules, in accordance with the Administrative Procedure Act, to administer and enforce the bill.¹⁷

The Director may delegate the Director's enforcement duties under the bill to the Superintendent of the Industrial Compliance. The Superintendent must exercise the Director's powers and perform the delegated duties.¹⁸

Purpose and findings

The bill states that its purpose is to protect public health and safety by requiring minimum training and skill standards for persons performing construction services on certain high hazard facilities where inferior or faulty work practices can pose serious risks to the public and result in potentially catastrophic consequences. The bill also contains a detailed list of legislative findings. LSC staff did not verify the substance of those findings.¹⁹

Additional definitions

The bill defines the following terms:

- "Construction" means all service performed at a stationary source, including maintenance, repair, assembly, disassembly, alteration, demolition, modernization, and installation services;
- "Contractor" means any person who undertakes construction at a stationary source under a contract with an owner or operator;
- "Owner or operator" means a person who owns or operates a stationary source at which the person engages in activities described in code 324110 of the 2017 North American Industry Classification System and at which the person engages in one or more covered processes for which the person is required to prepare and submit a risk management plan under the "Clean Air Act," but does not include a person who controls the means of engaging in oil and gas extraction operations;

¹⁶ R.C. 4145.09, with conforming change in R.C. 121.084.

¹⁷ R.C. 4145.11(A).

¹⁸ R.C. 121.083.

¹⁹ R.C. 4145.12 and Section 4.

- “Subcontractor” means any person who undertakes construction at a stationary source under a contract with any person other than an owner or operator.²⁰

HISTORY

Action	Date
Introduced	03-25-21

H0235-I-134/ts

²⁰ R.C. 4145.01.



May 7, 2021

The Honorable Bob Cupp
Speaker of the House
Ohio House of Representatives
77 S. High St., 14th Floor
Columbus, OH 43215

RE: House Bill 68 – Opposition

Dear Speaker Cupp:

One of the pillars of a free-market economy is freedom of contract. Virtually every private construction contract is a freely negotiated agreement that sets forth the payment terms in detail and sets agreed upon consequences for late payment or failure to pay, typically with reasonable interest rates and/or other penalties. House Bill 68, which was recently voted out of Commerce and Labor Committee, destroys the idea of freely negotiated contracts.

In general terms the bill requires that the owners of *private construction projects* – including manufacturers and retailers that are building, improving, or maintaining facilities in Ohio -- pay contractors within 30 days of receiving an application for payment from the contractor. The bill also contains provisions wherein late payments would be subject to a punitive 18% interest rate plus potential attorneys' fees and costs.

We are not aware of systemic late payments coming from manufacturing or retailer projects, and thus do not understand the conditions for this proposed legislation.

Our members seek to have their facilities up and running as soon as possible and cannot risk the delays that come with late or missed payments to contractors. Furthermore, an owner who fails to timely pay a prime contractor risks having subcontractors walk off the job because of the inability of the prime contractor to pay them, and the prime contractor also has the ability to file a mechanic's lien against the property for failure to pay. Imposing the onerous requirements set forth in HB 68 on all owners because of anecdotal stories of late payments, with no substantial body of data to support a systemic payment problem, is an unnecessary intrusion into private contracts between sophisticated parties.

HB 68 allows the state to step in and set the terms of a contract with a potential windfall to one of the parties at the expense of the other. The provisions contained in the bill are far from industry standards negotiated today in both terms of time allowed to pay and the dollar amount of penalties.

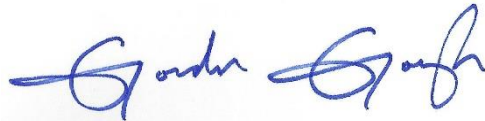
Members of our organizations negotiate and engage in countless contracts every year. They have embedded processes to comply with the terms of each contract whether that is for the construction of a new facility, the purchase of inventory, or supplying manufactured parts to an OEM. HB 68 rejects the concept of freedom of contract which has governed the majority of private transactions in this state and substitutes a state-sponsored version with terms and penalties much more punitive – and we would argue unnecessarily so -- than what exists in the marketplace.

We respectfully request that you prevent the bill from receiving a floor vote. Please feel free to contact either of us with questions. We would be happy to provide further information.

Sincerely,



Ryan Augsburger
President
The Ohio Manufacturers' Association



Gordon Gough
President and CEO
The Ohio Council of Retail Merchants

CC: Rep. Cross
Rep. Sweeney
Rep. Stein
Christine Morrison



**BEFORE THE HOUSE COMMERCE AND LABOR COMMITTEE
REPRESENTATIVE DICK STEIN, CHAIRMAN**

**TESTIMONY
OF
CHRIS MCCLOSKEY
PARTNER, BRICKER & ECKLER LLP**

MARCH 17, 2021

Mr. Chairman and members of the House Commerce and Labor Committee, my name is Chris McCloskey. I practice with the law firm of Bricker & Eckler, where I chair the firm's Public Sector Industry Group and am a partner in its Construction Law Group as well. Our firm works with and serves as counsel to both the Ohio Hospital Association (OHA) and The Ohio Manufacturers' Association (OMA).

Established in 1915, OHA is the nation's first state-level hospital association. OHA exists to collaborate with member hospitals and health systems to ensure a healthy Ohio. OHA currently represents 240 hospitals and 14 health systems throughout Ohio.

The OMA was created in 1910 to advocate for Ohio's manufacturers; today, it has nearly 1,300 members. Its mission is to protect and grow Ohio manufacturing.

Thank you for the opportunity to provide opponent testimony on House Bill 68 (HB 68). We also appreciate the conversations and discussions we have had over the past week with both the sponsors and proponents of the legislation. It is our hope that a practical solution to our concerns can be found.

HB 68 would require that the owners of private construction projects -- including manufacturers and health care operators that are building, improving, or maintaining facilities in Ohio -- to pay contractors within 30 days of receiving an application for payment from the contractor or, if there is a process of certification of a payment application by a design professional, within 30 days after the payment application has been certified, whichever is later. HB 68 also contains provisions wherein late payments would be subject to a punitive 18% interest rate plus potential attorneys' fees and costs.

One of the pillars of a free-market economy is freedom of contract. Virtually every private construction contract is a freely negotiated agreement that sets forth the payment terms in detail and sets agreed upon consequences for late payment or failure to pay, typically with reasonable interest rates and/or other penalties. We are not aware of systemic late payments coming from manufacturing or health care projects, and thus do not understand the conditions for this proposed legislation. Our members seek to have their facilities up and running as soon as possible and cannot risk the delays that come with late or missed payments to contractors. Furthermore, an owner who fails to timely pay a prime contractor risks having subcontractors walk off the job because of the inability of the prime contractor to pay them, and the prime contractor also has the ability to file a mechanic's lien against the property for failure to pay. Both of these possibilities are strong incentives for an owner to timely pay a contractor according to the terms of their negotiated agreement. To impose the onerous requirements set forth in HB 68 on all owners because of anecdotal stories of late payments, with no

substantial body of data to support a systemic payment problem, is an unnecessary intrusion into private contracts between two sophisticated parties.

HB 68 allows the state to step in and set the terms of a contract with a potential windfall to one of the parties at the expense of the other. The provisions contained in the bill are far from industry standards negotiated today in both terms of time allowed to pay and the amount of penalties.

The OMA's and OHA's members negotiate and engage in countless contracts every year. They have embedded processes to comply with the terms of each contract whether that is for the construction of a new facility, the purchase of life-saving medical equipment, or supplying manufactured parts to an OEM. HB 68 rejects the concept of freedom of contract which has governed the majority of private transactions in this state and substitutes a state-sponsored version with terms and penalties much more punitive – and we would argue unnecessarily so -- than what exists in the marketplace.

We appreciate the opportunity to share our concerns with the bill as drafted and look forward to continuing our dialogue with the bill sponsors and the committee. Thank you. I would be happy to try to answer any questions.

Chairman of the Board
JANE M. NEAL
Senior Vice President, AMG Vanadium, LLC

President
RYAN AUGSBURGER



March 23, 2021

The Honorable Bob Peterson
Chairman
Energy and Public Utilities Committee
Ohio Senate
1 Capitol Square
1st Floor South, Rm. 138
Columbus, Ohio 43215

RE: Senate Bill 52 – Written Opponent Testimony

Dear Chairman Peterson:

The Ohio Manufacturers' Association (OMA) appreciates the opportunity to provide written opponent testimony on Senate Bill 52 (SB 52). SB 52 creates a referendum process that would allow townships impacted by large scale solar or wind power projects to either approve or reject such projects approved by the Ohio Power Siting Board.

The development of both solar and wind power in Ohio – as in other states -- has continued to increase over the past decade as companies and citizens demand sustainable and cleaner options for their electricity generation. Ohio's statewide approval process, managed by the Ohio Power Siting Board, has been an effective mechanism to site such projects, weighing the pros and cons for the state and its citizens. For clarity, uniformity of policy, and economy of process, the OMA urges a statewide approach for such projects and decisions.

There are already multiple avenues during the review process for interested parties to either provide input to -- or formally intervene in and participate in -- cases to ensure their positions are considered by the Board. Pancaking approvals and bogging processes with multiple layers of decision making is costly and inefficient. As drafted, SB 52 is not the optimum solution if the desired goal is to maximize local input.

Thank you very much for the opportunity to submit this written testimony. I'd be pleased to try to answer any questions that you might have; please contact me at rbrundrett@ohiomfg.com or (614) 629-6814.

Sincerely,

A handwritten signature in blue ink that reads "Rob Brundrett".

Rob Brundrett
Managing Director, Public Policy Services

To: OMA Government Affairs Committee
From: Rob Brundrett / Rachael Carl
Re: Energy Public Policy Report
Date: June 15, 2021

Overview

Energy legislation continues to be a hot ticket in the 134th General Assembly. Since the beginning of the year we have seen numerous pieces of legislation introduced covering a wide range of topics. Final repeal of the anti-customer provisions of House Bill 6 remains a priority. OVEC remains as the last large piece of repeal for the scandal laden bill.

Other bills such as electric security plan repeal, refunds, and wind and solar siting continue to be debated in both the House and Senate.

Bob Peterson has stepped down as chairman of the senate energy and public utilities committee. He was replaced by Rob McColley from northwest Ohio.

Governor DeWine appointed former judge Jenifer French to the PUCO replacing former chairman Sam Randazzo who resigned after being raided by the FBI in conjunction with the House Bill 6 scandal.

General Assembly News and Legislation

Bribery and Corruption at the Statehouse Update

The legal fallout of House Bill 6 continues. Since the press conference on July 21, and the initial five arrests including then Speaker Larry Householder, Ohio has seen guilty pleas from two individuals and one guilty plea from Generation Now a dark money group funded by the Ohio utilities.

Leadership at FirstEnergy has been terminated, the Ohio PUCO Chairman Sam Randazzo resigned his position when he was tied to the investigation and the Ohio Attorney General Dave Yost aggressively pursued litigation against FirstEnergy to stop portions of House Bill 6.

FirstEnergy has notified the press that the company is in the process of negotiating a potential deferred prosecution settlement. There still has not been an appointed replacement for former U.S. Prosecutor David DeVillers who submitted his resignation with the change in administrations.

Most recently AEP was subpoenaed by the U.S. Securities and Exchange Commission, to review records of the company's role in HB 6.

House Bill 10 – Repeal House Bill 6

The bill sponsored by Democrat David Leland is loosely modeled on House Bill 772 from the previous General Assembly. The bill would repeal the majority of provisions from House Bill 6 including, the nuclear subsidies, decoupling, and OVEC. It would replace the efficiency rider programs with optional market-based approaches details to be determined. The bill has had one hearing but did generate some buzz when it was first introduced.

Senate Bill 10 – Repeal Decoupling and SEET

The Ohio Senate unanimously passed Senate Bill 10 — the OMA-supported bill introduced by Sen. Mark Romanchuk (R-Mansfield) to repeal House Bill 6's decoupling provision, which

allowed FirstEnergy to lock in annual guaranteed revenue at record-setting 2018 levels (\$978 million).

SB 10 also repealed the “significantly excessive earnings” provision authorized in the last state budget (HB 166). That change to the so-called SEET test had allowed FirstEnergy to combine profits across its three companies, offsetting “significantly excessive” Ohio Edison gains with those from less profitable companies, thereby avoiding related customer refunds.

Under SB 10, revenue collected under these provisions would be refunded. Anticipated decoupling costs for customers were estimated at \$17 million for 2020 and more than \$101 million for 2021 for all customer classes. SEET refund amounts are yet to be determined. SB 10’s provisions were passed as part of HB 128 which repealed portions of HB 6.

House Bill 18 – Straight Repeal of House Bill 6

Rep. Lanese reintroduced her straight repeal bill she also sponsored in the fall of 2020. The straightforward bill repeals all of House Bill 6 in its entirety. It would have the effect of setting Ohio’s energy law landscape back to how it was prior to House Bill 6. The bill has had sponsor testimony in the House.

Senate Bill 32 – Electric Car Charging Station Grant Rebate

The bill sponsored by Senator Rulli requires that the Ohio Department of Transportation creates an electric car charging station grant and rebate. The bill has had one hearing in the Senate.

Senate Bill 44 – Repeal Portions of House Bill 6

Senate Bill 44 is the vehicle the Senate choose to repeal the nuclear credit portions of House Bill 6. While a good first step in righting some of the wrongs over the past two years the bill still fell woefully short of providing comprehensive protections for customers. The OMA provided interested party testimony and pointed out the shortcomings of the bill and encouraged the Ohio Senate to push harder to repeal OVEC and the entire Clean Air Fund. The bill passed out of Senate unanimously. The House included portions of this bill in HB 128 the partial repeal bill vehicle.

House Bill 47 – Electric Car Charging Station Grant Rebate

House Bill 47 requires the Ohio Department of Transportation to create an electric car charging station grant and rebate. It is a companion bill to Senate Bill 32. The bill has had two hearings.

Senate Bill 52 – Wind and Solar Referendum

This controversial bill and its House companion as originally drafted would have allowed local referendums on wind and solar projects at the local level. It would have allowed the local populations to override Ohio’s Power Siting Board which right now has the authority of siting energy generation projects.

The OMA and numerous business groups have opposed the bill in both the House and Senate committees.

A sub bill was proposed passed in the Senate that would remove the referendum but add more hoops for developers to jump through to get a project approved. County commissioners would have the authority to stop projects on the front end and townships would be able to appeal to prove projects that are at the Power Siting Board are more detrimental than not.

Senate Bill 89 – Renewable Energy

Sen. Matt Dolan (R-Chagrin Falls) introduced Senate Bill 89 to make an 8.5% renewable portfolio standard (RPS) permanent. Dolan told the media that the bill represents a compromise necessitated by the passage of House Bill 6, which lowers Ohio's renewable energy benchmarks from 12.5% to 8.5% by 2026 and terminates the RPS in 2027.

An 8.5% RPS would not be affected by FERC's Minimum Offer Price Ruling (MOPR). Any RPS exceeding 8.5% would be subject to the MOPR (due to state subsidies), impairing new renewable projects' ability to compete for PJM capacity revenue. In contrast, the growing market of private corporate renewable energy purchases will not be subject to the MOPR ruling.

The bill has an uphill battle with his fellow Republicans but portions of the bill may find a way through the legislature. The bill did have a first hearing this month.

Senate Bill 117 – OVEC Repeal

Brad Belden, president of The Belden Brick Company and chair of the OMA Energy Committee, testified on behalf of the OMA in support of Senate Bill 117 — legislation to repeal House Bill 6's \$700 million ratepayer-funded subsidy for two Ohio Valley Electric Corporation (OVEC) coal plants, one of which is in Indiana. The bill would also refund customers the charges borne since HB 6 took effect.

The OMA has been on the frontlines advocating for the repeal of anti-customer provisions included in HB 6 including, the nuclear subsidies and decoupling provision. The OVEC subsidies are one of the last pieces of HB 6's anti-market policy that remains in law. Customers will be on the hook for these subsidies through 2030 without action by state lawmakers.

The OMA continues to build pressure for the legislature to repeal this final piece of anti-customer HB 6.

Senate Bill 118 – Solar Subsidy Repeal

Sen. Romanchuk introduced SB 118 to rollback \$20 million a year in payments to five solar projects – another subsidy folded into the corrupt HB 6. Originally HB 128 eliminated the subsidy. The House reinserted the subsidy as part of the committee process.

House Bill 118 – Wind and Solar Referendum

This is the House companion to Senate Bill 52. The bill has had four hearings. The OMA provided opponent testimony on the bill. A new sub bill is pending. The Senate has taken the lead on the issue. The Senate is expected to act before the end of session this summer with the House to follow its lead.

Senate Bill 127 – Natural Gas Bans

The bill's intent is to prevent local governments from blocking or limiting the use of natural gas from citizens and businesses. The bill is a companion to HB 201. The OMA has notified the sponsors that as drafted there may be unintended consequences. The OMA has engaged with the House and is working the sponsors to improve the bill.

House Bill 128 – Repeal Portions of House Bill 6

Gov. Mike DeWine signed HB 128, which cancels out the nuclear subsidy provisions of HB 6 (133rd General Assembly), originally targeted to support the Davis-Besse and Perry nuclear plants to the tune of up to \$150M/year.

HB 128 also removed the costly HB 6 “decoupling” provision, which tied FirstEnergy future profits to record year 2018 regardless of the amount of power sold, about \$978M annually. The new law also revoked a change made to the Significantly Excessive Earnings Test, which benefited only FirstEnergy by allowing the company to combine profits across three of its companies to avoid customer refunds from its overly profitable company.

The new bill retains HB 6’s subsidies for utility-scale solar projects and for two coal plants (one in Ohio, one in Indiana), leaving the door open for more corrective action that could cancel these subsidies that work against ratepayers.

The bill was voted unanimously in the Senate 33-0, 86-7 in the House originally, but then the House unanimously (89-0) concurred with the Senate amendments. HB 128 was sponsored by Reps. James Hoops (R-Napoleon) and Dick Stein (R-Norwalk)

House Bill 192 – Prohibit Energy Generation

The bill prohibits counties, townships, and municipal corporations from prohibiting energy generation from fossil fuels and gas pipelines. The House has had three hearings on this bill.

House Bill 201 – Natural Gas Bans

The House passed House Bill 201, legislation designed to prohibit local governments from banning or blocking consumers from obtaining natural gas hookups. The OMA worked with the bill sponsor and other interested parties to ensure the intent of the bill matched its language.

The bill has had multiple hearings in the Senate. The OMA became a bill supporter after successfully securing several changes in the House to clarify the bill’s intent and protect customers.

House Bill 260 – Electric Charge Refunds

The bill would require the refund of improper and illegal electric charges. The OMA is a strong proponent of the bill. Since 2009 utilities have wrongfully collected over \$1.5 billion from ratepayers. This bill will require refunds to customers within a year of being deemed improper.

House Bill 271 – Natural Gas Infrastructure

This month the House had sponsor testimony on House Bill 271, legislation that would establish a grant and loan program to coordinate and expand access to natural gas. The program would be funded by excess revenue in the Oil and Gas Well Fund and/or future appropriations made by the General Assembly. Businesses, non-profits, and local governments would be eligible to apply for funding.

House Bill 317 – Electric Security Plan Repeal

Earlier this month Rep. Shane Wilkin (R-Hillsboro) introduced House Bill 317. At the macro level, HB 317 would eliminate electric security plans (ESPs).

The ESP process was originally established to ensure electricity prices would not increase too much as utilities continued the transition to a mature de-regulated market. Since its creation, however, the ESP process has turned into a mechanism that regulated utilities use to increase costs through numerous above-market charges added to customers’ bills. The proposal would eliminate ESPs and require utilities to provide standard service offers under a competitive market-rate offer. The bill would also allow utilities to implement economic development and job-retention programs under the market-rate offer, while allowing utilities to apply to the PUCO to recover non-bypassable costs of those unlimited programs.

The OMA is engaged on the bill and met with House leaders. There is concern that the bill might allow for unintentional alternatives for utility riders. The OMA has shared information with the House on potential repeal language.

PUCO News

Senate Confirms French as PUCO Chair

This month, the Ohio Senate voted 31-0 to confirm Jenifer French as the new chair of the Public Utilities Commission of Ohio (PUCO). In a recent interview with Gongwer News Service, French says she aims to restore the public's trust in the PUCO after former chair Sam Randazzo's resignation last November. French said that among the PUCO's priorities are four ongoing investigations into FirstEnergy's operations in relation to the passage of HB 6.

News and Notes

PJM's First Capacity Auction in Three Years Yields Low Electricity Prices

PJM — the grid operator whose service area includes Ohio — has completed its first Base Residual Auction (BRA) for capacity in three years for the 2022/23 delivery year. The BRA had been delayed while the Federal Energy Regulatory Commission (FERC) created new rules to discourage state subsidies from influencing competitive market pricing.

This spring's auction was the first to implement FERC's Minimum Offer Price Rule (MOPR) — and may be the only auction to do so. Natural gas-fueled generation, nuclear, solar, wind, and energy efficiency all cleared more megawatts in this auction, while coal plants experienced a significant reduction. The resulting BRA capacity price was \$50/MW-day — the lowest capacity price in nine years. The BRA procured a 19.9% reserve margin, far exceeding PJM's reliability target of 14.5%. Duke Energy's Ohio customers will pay a slightly higher — but still low — capacity price of \$71.69/MW-day.

Missing out on the low market prices and marked increase in low and no-carbon generation was Dominion Energy, which pulled out of the market, apparently to increase its renewable energy supply.

FirstEnergy Reverses – Will Refund Controversial Decoupling Charges

FirstEnergy announced it will return \$26M in decoupling charges collected from customers under the 2019 HB 6 law. The company voluntarily halted collections earlier this year under a settlement with Attorney General Dave Yost. The OMA Energy Group has been an active voice in legal proceedings, partnering with the Attorney General and Office of Consumers' Counsel, consistently advocating for refund of decoupling dollars.

FirstEnergy originally indicated it would not refund the \$30M it collected under the authority of HB 6. Noting that the company is not refunding all ill-gotten gains, Ohio's Consumers' Counsel Bruce Weston said that Ohio should not allow FirstEnergy to walk away from HB 6 with even a penny of consumers' money.

AG Yost Announces Decoupling Deal With FirstEnergy

On Feb. 1, Attorney General Dave Yost announced a "long-term settlement" with FirstEnergy, which has agreed to stop using a House Bill 6-authorized decoupling rider that would cost customers an extra \$102 million this year.

In a recent radio interview, Yost said FirstEnergy would ask the Public Utilities Commission of Ohio (PUCO) to zero out the decoupling rider. Shortly after, the PUCO announced that the

decoupling rates for FirstEnergy's Ohio distribution utilities had indeed been set to zero. (This tracker shows FirstEnergy has already collected \$27 million from the rider over the past year.)

This legal development comes after the OMA for nearly two years led efforts to oppose HB 6 — including its decoupling mechanism, which had guaranteed FirstEnergy and its subsidiary, Energy Harbor, profits of at least \$978 million in gross annual revenues.

It's also the second recent HB 6-related setback for FirstEnergy. In late December, a Franklin County judge ordered that \$170 million per year in HB 6's customer-funded subsidies could not be collected from customer bills. The OMA helped lead legal efforts to stop the collection of the new subsidies.

Substantial Increase Hitting Natural Gas Bills

Last summer, Columbia Gas Transmission — also known as TCO — filed a rate case proposal with the Federal Energy Regulatory Commission (FERC) to recoup roughly \$3 billion in transmission-related expenses. As filed, the proposal could increase transmission charges by as much as 78%.

Direct shippers and customers of natural gas-distribution utilities served by TCO are already seeing the increase in their bills. (Increased charges are subject to refund based on final terms.) For gas-intensive manufacturers, this added cost may be quite significant.

The OMA Energy Group (OMAEG) has intervened in this case to protect manufacturers' interests, specifically to reduce the proposed rate increase and eliminate any new penalties or operating restrictions. Only parties that intervened last year have legal standing to influence the outcome. Contact OMA staff to learn how you can support the OMA's litigation efforts. The OMA Energy Group has joined an industrial coalition to pushback on proposals to hike natural gas shipping costs.

Study: Line 5 Shutdown Would Cost Ohio \$13.7B

If Michigan Gov. Gretchen Whitmer (D) succeeds in shutting down Enbridge Energy's Line 5 — the continental Canadian pipeline that transports more than half million barrels of light crude oil and natural gas liquids a day — it would have a much greater impact on Ohio's economy than those of surrounding states, a new study finds.

The report, conducted by the Consumer Energy Alliance, finds that Ohio could lose up to \$13.7 billion in economic activity, \$147.9 million in state revenue, and more than 20,000 jobs from the shutdown. The economic losses would be four times those suffered by Michigan, the study says, and more than six times the impact on Indiana or Pennsylvania.



**BEFORE THE SENATE ENERGY AND PUBLIC UTILITIES COMMITTEE
SENATOR BOB PETERSON, CHAIRMAN
TESTIMONY
OF
BRAD BELDEN
PRESIDENT, THE BELDEN BRICK COMPANY**

MAY 12, 2021

Mr. Chairman and members of the Senate Energy and Public Utilities Committee, thank you for the opportunity to present proponent testimony for Senate Bill 117 (SB 117).

My name is Brad Belden. I am the President of the Belden Brick Company headquartered in Canton with production facilities in the village of Sugarcreek. Our company is an industry-leader in architectural brick and ceramic building materials.

I am testifying today on behalf of my company but also on behalf of The Ohio Manufacturers' Association (OMA). Our company is an active member of the OMA and I serve as the chairman of the OMA's Energy Committee, and I am a director on the OMA board as well.

The OMA represents approximately 1,300 manufacturing members – of all sizes, in all manufacturing segments, and in all parts of Ohio.

It is impossible to competitively operate a modern manufacturing facility without economical and reliable power. Our membership includes many of the largest, most sophisticated energy users in the state. Some of our members consume the same amount of electricity as a medium-sized city. In short, energy is very important to Ohio's manufacturing competitiveness.

Access to reliable, economical energy is critical to all manufacturers. For that reason, companies like mine are always seeking cost-effective energy solutions. We are constantly looking for ways to reduce our electricity costs because money we save by reducing our energy spend is money we can reinvest in our business, in our employees, in our facilities and in product innovations—as well as in the communities in which we live.

Also critical to Ohio manufacturers are energy policies that support energy markets, free from market manipulation, that allow consumers to access the cost and innovation benefits of competition.

The OMA was an ardent opponent of House Bill 6 (HB 6). OMA and its members testified numerous times in opposition to the anti-consumer and anti-competitive provisions of the bill now tied to the pending bribery investigation by the Southern District of Ohio's U.S. Prosecutor's Office.

Our organization has come before this committee multiple times this year to testify in support of legislation that would repeal the harmful provisions of HB 6. We are once again before you to request this body eliminate one of the last remaining anti-consumer pieces of that scandal ridden bill.

SB 117 is a straightforward bill that does several things. The bill ends the subsidies included in HB 6 for the Ohio Valley Electric Corporation (OVEC) and the two 1950's

era coal plants it owns, Kyger Creek in Ohio and Clifty Creek in Indiana, and it will refund the charges Ohio ratepayers have borne since the OVEC provisions from HB 6 went into effect.

Also the bill would prevent the revival of any OVEC charges that existed prior to HB 6. Several riders had been approved by the PUCO that were set to expire in the coming years. HB 6 extended the expiration of those charges, expanded the number of customers charged, and modified how the charges are applied.

Our estimate of the subsidies for the two OVEC coal plants for the entire term of the subsidy created by House Bill 6 is approximately \$700 million. This cost comes with no benefit to customers. In fact, the subsidies are not even helping OVEC improve. OVEC's energy output is down 40% since 2010, its employment is down 20%, its emissions are still high, and its financial losses could continue for another 19 years.

At the time of HB 6's passage some proponents testified that the OVEC charges were merely codifying Ohio case law. That was not accurate then, or now.

While it is true the Supreme Court of Ohio in 2018 upheld a PUCO ruling allowing AEP to collect OVEC subsidies from AEP customers, that case was in the context of the PUCO approving an Electric Security Plan or ESP and was limited to the term of the ESP. As such, those customer charges were scheduled to drop off when the ESP term concludes on May 31, 2024. HB 6 enabled the owners of OVEC to impose ongoing new charges June 1, 2024 and thereafter.

Some have argued that HB 6 is acceptable because of cost caps imposed in the bill for certain customers, but the owners of OVEC are allowed to defer any uncollected charges that exceed the caps, plus interest. Moreover, this deferral of uncollected costs will be due in 2030 and will be a significant ratepayer cost that will have to be paid at that time in full, plus interest. Additionally, small and medium manufacturers and commercial customers did not receive such a comparable cost cap. In fact, Ohio ratepayer subsidies to OVEC have *increased* since the passage of HB 6. This is because as OVEC's financial performance continues to worsen, ratepayer subsidies increase to pick up the costs.

HB 6 also expanded who pays for the OVEC subsidies. For the first time, FirstEnergy customers are now on the hook to subsidize the two aging plants which includes the aforementioned Indiana plant. In short, the OVEC charges contained in HB 6 legalized another new and unnecessary energy tax on Ohio businesses and families.

The cost of the OVEC subsidies for Belden Brick this year will be about \$26,000. Our company, like many manufacturers, has expanded over time and has multiple electric meters. Because of this, our company is paying more for OVEC than other companies

many times our size whose operation is under a single meter. Because HB 6 did nothing to reduce OVEC subsidies; for each business that had their OVEC costs capped by HB 6, another had their costs increased. Why create losers and winners amongst electric customers, when the OVEC subsidy can be eliminated entirely?

This body has moved in the right direction since the beginning of the year by eliminating the Significantly Excessive Earnings Test modifications made in the previous budget, eliminating the decoupling changes made by HB 6, and eliminating the nuclear subsidies in HB 6. SB 117 provides an opportunity to continue to do the right thing by eliminating the onerous and expanded OVEC subsidies that were included in the HB 6 scheme.

I have attached to my testimony a memo done by OMA consultant RunnerStone regarding OVEC. I would highly encourage all the members to take some time and read through the memo.

I am pleased also to be joined by Kim Bojko of the Carpenter Lipps & Leland law firm. Kim serves as the OMA's chief energy counsel, representing industry positions before the state and federal regulatory commissions and John Seryak the CEO of RunnerStone, LLC who provides energy and engineering consulting for the OMA. Kim and John are able to help me respond to any questions you may have.

Chairman, members of the committee, again thank you for the time today, this concludes my prepared remarks.

MEMORANDUM

Date: November 12, 2020
To: The Ohio Manufacturers' Association
From: John Seryak, PE and Peter Worley
RE: Ohio's Costly – and Worsening – OVEC Situation

House Bill 6 (HB 6) created a statewide customer subsidy for the Ohio Valley Electric Corporation (OVEC), which owns two 1950s-era coal power plants, Kyger Creek in Ohio and Clifty Creek in Indiana. The OVEC power plants previously realized PUCO-approved subsidies for three Ohio electric distribution utilities with ownership interests in OVEC. The OVEC coal plants have been selling electricity for less than it costs to generate it since 2012, and Ohioans had already been forced to pay about \$159 million in subsidies to the plants through 2019. An immediate halt to OVEC subsidies would lower customer costs, reduce carbon dioxide emissions, and bolster market competition.

OVEC almost certainly will remain uneconomical through 2030, the term of its HB 6 subsidy, costing Ohioans an estimated \$700 million. And yet this is not the end: OVEC has a power agreement and debt through 2040. OVEC's owners, including the three Ohio electric distribution utilities, have repeatedly sought subsidies to cover OVEC's losses in Ohio – and if asked to foot the bill again at these rates, Ohioans would be on the hook for another possible \$700 million from 2031-2040. Policymakers should anticipate that the OVEC owners will seek additional subsidies in 2030. The potential cost to Ohio ratepayers of this government-approved support that could span

Expensive Subsidies, Poor Performance

- OVEC sells power for less than it costs it to generate – and has since 2012.
- State subsidies could amount to \$1.5 billion in charges to Ohio's consumers through 2040.
- \$159 million in customer-paid subsidies have been collected through 2019 under Ohio's previous subsidy scheme.
- ~\$700 million in potential Ohio customer-paid subsidies due to HB 6 are projected to be paid through 2030.
- Another ~\$700 million in future subsidies are potentially necessary to maintain OVEC operations from 2031 through 2040.
- OVEC has had a 39% reduction in power output since 2010.
- OVEC has reduced its employment 20% since 2015.
- OVEC's carbon emissions are equivalent to two nuclear power plants' worth of emissions offset.
- PUCO audit ineffectual; OVEC ignores audit findings, running at a financial loss and forgoing market revenue, while continuing to receive cost recovery and profit.



several decades could be around \$1.5 billion, but possibly more.

These customer subsidies have done nothing to improve OVEC's performance, which remains poor, and runs counter to Ohio's energy policy aims. OVEC sells electricity for less than it costs to generate it. OVEC estimates its energy output this year will be 39% less than in 2010. Its carbon dioxide emissions offset that of two nuclear plants' worth of emission-less electricity. OVEC employment is down 20% since 2015. And OVEC has failed to make improvements noted in a PUCO audit, with no consequence.

HB 6's statewide treatment of OVEC was to shift subsidies from certain customers to others, while increasing the overall total cost of OVEC subsidies to Ohioans over time, as compared to previous PUCO-approved OVEC subsidies. This policy framework of "which bad subsidy design is best?" is a false choice and worsened the overall situation. The real question before policymakers should be how to prevent Ohio customers from being forced to subsidize old, uneconomical power plants, one of which isn't even located in Ohio. Of critical importance to policymakers should be whether, absent subsidies, the OVEC owners will make decisions about OVEC that would be in their own financial best interest.

In the remainder of this memorandum, we demonstrate OVEC's chronic underperformance, the costs to Ohioans thus far, potential costs going forward, and how these subsidies have had no positive effect as OVEC's power output which continues to decline.

Ohioans Subsidized \$159 Million of OVEC's \$1.3 Billion Loss from 2012-2019

OVEC's two coal plants are uneconomical. From 2012 to 2019, their average weighted price of electricity was approximately 34% more expensive than the market price. The OVEC average price was approximately \$59/MWh,¹ while the average competitive market price in Ohio was \$44/MWh.² This is about a \$1.3 billion total loss for OVEC. Ohio's electric distribution utilities own about 38%

¹ Production weighted average. OVEC Annual Report Documents under Section "Power Costs." For example, 2019 Annual Report: <https://www.ovec.com/FinancialStatements/AnnualReport-2019-Signed.pdf>

² The OVEC and PJM prices include Energy and Capacity. Energy price is the PJM RTO load-weighted LMP price. Capacity price is the PJM RTO Base Residual Auction price (assuming OVEC had all of its 2,350 MW of capacity clear.) Prices do not include Ancillary Services because OVEC does not attempt to sell them into PJM currently.

of OVEC,³ and thus their pro-rated share of this loss is about \$493 million.⁴ Ohio customers have covered approximately \$159 million of those losses through 2019.⁵

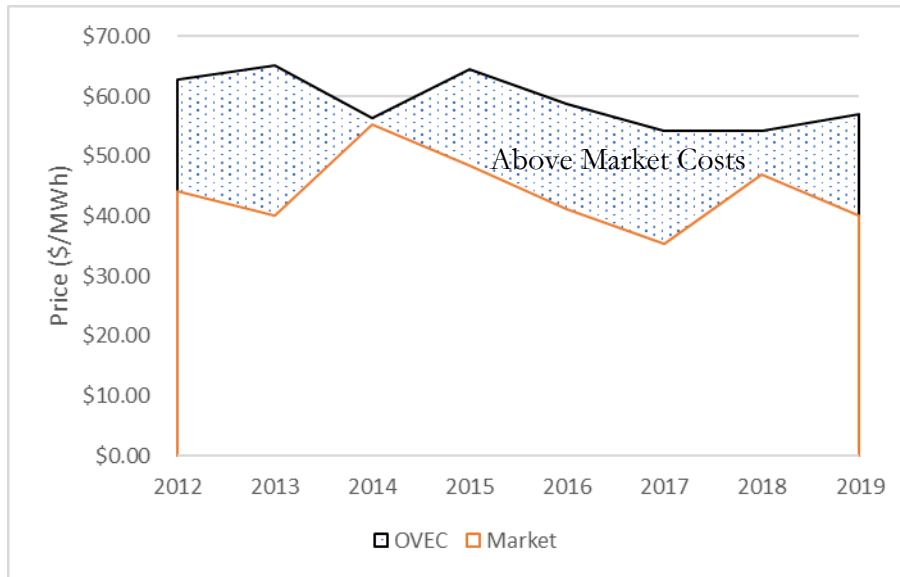


Figure 1. OVEC Price of Electricity vs. PJM Wholesale Market Price of Electricity

³ Dayton Power and Light Co. (DP&L) owns 4.9%, Duke Energy Ohio (Duke) owns 9%, Energy Harbor Corp. owns 4.85%, and Ohio Power Co. (AEP Ohio) owns 19.93%. <https://www.ovec.com/FinancialStatements/AnnualReport-2019-Signed.pdf>

⁴ Each year the difference in OVEC price and market price was multiplied by OVEC's production. The years were summed and then multiplied by 38%, which is how much Ohio's customers were responsible for prior to HB 6. Prior to HB 6, Ohio customers were responsible for their utility's percentage share in the OVEC power participation benefits and requirements: AEP Ohio (a.k.a Ohio Power) has 19.93%, DP&L has 4.90%, and Duke has 9.00%. These percentages come from OVEC's 2019 Annual Report (page 2 of PDF). We assume these percentages were not considerably different in previous years. <https://www.ovec.com/FinancialStatements/AnnualReport-2019-Signed.pdf>

⁵ \$113.8 million through AEP Ohio's Rider PPA from 2017-2019; \$16.4 million through DP&L's Reconciliation Rider from 2017-2019; \$28.3 million through Duke's Rider PSR.

Year	PJM Wholesale		
	OVEC Price (\$/MWh)	Market Price (\$/MWh)	Price Difference (OVEC minus PJM)
2012	\$62.87	\$44.25	\$18.62
2013	\$65.18	\$40.00	\$25.18
2014	\$56.38	\$55.23	\$1.15
2015	\$64.40	\$48.50	\$15.90
2016	\$58.66	\$41.14	\$17.52
2017	\$54.27	\$35.33	\$18.94
2018	\$54.29	\$46.84	\$7.45
2019	\$57.04	\$40.11	\$16.93
8-yr weighted average	\$58.84	\$43.87	\$14.97

Table 1. OVEC Price of Electricity vs. PJM Wholesale Market Price of Electricity

The combined production of the two OVEC plants has decreased 23% over the past decade from 14,600,000 MWh in 2010 to 11,200,000 MWh in 2019.⁶ OVEC expects its production to decrease further in 2020 down to 9,000,000 MWh,⁷ which amounts to a 39% less electricity generated than in 2010.

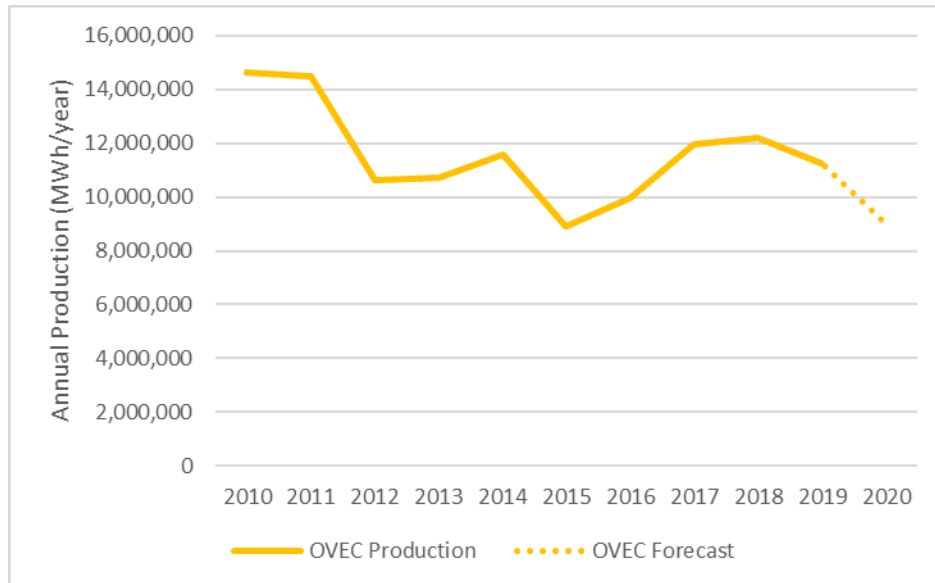


Figure 2. OVEC Electricity Production

⁶ Form EIA-923: <https://www.eia.gov/electricity/data/eia923/>

⁷ OVEC 2019 Annual Report; page 4 of PDF: <https://www.ovec.com/FinancialStatements/AnnualReport-2019-Signed.pdf>



Year	Annual Production (MWh/year)		
	Clifty Creek	Kyger Creek	OVEC Production
2010	7,898,624	6,740,162	14,638,786
2011	7,948,267	6,514,656	14,462,923
2012	5,945,617	4,688,606	10,634,223
2013	5,610,367	5,129,185	10,739,552
2014	6,062,463	5,493,736	11,556,199
2015	5,225,154	3,681,044	8,906,198
2016	5,030,848	4,934,172	9,965,020
2017	6,037,635	5,899,969	11,937,604
2018	6,369,305	5,801,085	12,170,390
2019	5,722,979	5,515,010	11,237,989
2020			9,000,000

Table 2. OVEC Electricity Production

The company has reduced the number of employees by 20% from 738 in 2015 down to 591 in 2019.⁸ Lastly, OVEC is a high carbon emitting plant, emitting on average 12 million tons of carbon dioxide per year, which is roughly equivalent to the amount of carbon dioxide savings that the Davis Besse and Perry nuclear plants could claim as compared to PJM’s marginal electricity emissions averages.⁹ To put in context, the electricity market in Ohio over this period emitted approximately 30% less per MWh than OVEC.¹⁰

Ohio Policy Mandates Ohioans to Subsidize OVEC for the Next Decade, ~\$700 Million Cost at Current Rates

Prior to 2019, the PUCO authorized AEP Ohio, Duke, and DP&L to add charges to customers’ bills to subsidize the OVEC plants.¹¹ The PUCO permitted the utilities not only to charge customers for prudently incurred costs at the plants, but also to earn a profit no matter how well the plants operated.¹² The PUCO authorized DP&L to charge customers through 2023, AEP Ohio though

⁸ OVEC 2019 Annual Report, page 45 of PDF: <https://www.ovec.com/FinancialStatements/AnnualReport-2019-Signed.pdf>

⁹ Form EIA-923, OVEC plant average emissions of 12,225,169 tons CO₂/year; Davis Besse and Perry nuclear plant average generation of 12,798,134 MWh/year x 0.73 tons CO₂/MWh (PJM marginal off-peak emissions rate) = 12,798,134 tons CO₂/year

¹⁰ From PJM Reports, using Table 2 - Marginal Off-Peak Emissions
<https://www.pjm.com/~media/library/reports-notice/special-reports/20160318-2015-emissions-report.ashx>
<https://www.pjm.com/~media/library/reports-notice/special-reports/2019/2019-emissions-report.ashx?la=en>

¹¹ They were authorized in utility Electric Security Plans (ESP). The corresponding PUCO cases were for AEP Ohio 16-1652-EL-SSO; for DP&L 16-395-EL-SSO; for Duke 17-1263-EL-SSO

¹² FERC Form 1 (page 30 of PDF) “The Companies have continued and expect to continue to operate pursuant to the cost-plus rate of return recovery provisions at least to June 30, 2040”



2024, and Duke through 2025. HB 6 created a new subsidy, which supplanted the previously approved PUCO subsidies. HB 6 expanded the OVEC subsidy to include recovery of losses for Energy Harbor (in addition to AEP Ohio, Duke, and DP&L), extended the subsidy through 2030, and recovered the cost of the subsidy from all ratepayers in the state.

DP&L and Duke estimated they would each need approximately \$10.6 million to cover their losses in OVEC for the year of 2019.¹³ AEP Ohio calculated it would need \$49.1 million.¹⁴ Together, the costs amount to \$70.3 million. If OVEC continues to operate like it did in 2019 compared to the market, Ohio ratepayers would end up paying \$703 million to subsidize OVEC through 2030.

The HB 6 subsidy amount fluctuates yearly based on OVEC's operational costs and wholesale electric market prices. In a study, the Institute for Energy Economics and Financial Analysis (IEEFA) forecasted that OVEC's operational costs would continue to rise, while market prices would remain low, resulting in \$110 million per year in subsidies or \$1.1 billion over the decade.¹⁵ Ohio's Legislative Service Commission has also estimated \$703 million in costs charged to customers. Subsequently, the \$703 million estimate could be conservative because other factors can affect OVEC's profitability, including if OVEC fails to clear PJM's capacity auction, if OVEC continues to lose efficiency as it ages (OVEC is over 65 years old), and if utilities increase capital investment in the OVEC plants.

OVEC Has Outstanding Debt through 2040

HB 6 is silent on OVEC's future after 2030. Still, AEP Ohio, DP&L, and Duke all are part of an inter-company power agreement with OVEC through 2040. And the agreement permits OVEC to sell electricity for less than what it costs to generate. Furthermore, OVEC has \$570 million of debt due between 2031-2040.¹⁶ If the trend in Ohio policy to cover the costs of OVEC's uncompetitive

¹³ Based on DP&L's "Reconciliation Rider"; PUCO Case 18-1379-EL-RDR; DP&L projected their OVEC net-costs on 9/2018 for 10/2018-11/2019; <https://dis.puc.state.oh.us/TiffToPDF/A1001001A18I14B61728G01403.pdf> (page 4 of PDF)

Based on Duke's "Price Stabilization Rider (Rider PSR)"; PUCO Case 19-447-EL-RDR; Duke projected their OVEC net-costs on 2/2019 for 1/2019-12/2019; <https://dis.puc.state.oh.us/TiffToPDF/A1001001A19B28B45404G05311.pdf> (page 3 of PDF)

¹⁴ Based on AEP Ohio's "Power Purchase Agreement (PPA) Rider"; PUCO Case 18-1392-EL-RDR; AEP Ohio calculated their actual OVEC net-costs for 1/2019-12/2019. See Figure 16 in London Economic International's audit of the rider. <http://dis.puc.state.oh.us/TiffToPDF/A1001001A20I17B31207C02236.pdf> (page 36 of PDF)

¹⁵ IEEFA 2017 Report <https://ieefa.org/wp-content/uploads/2017/06/Dont-Bail-Out-Retire-OVEC-Coal-Plants.pdf> (page 11 of PDF)

¹⁶ OVEC 2019 Annual Report; page 18 of PDF: <https://www.ovec.com/FinancialStatements/AnnualReport-2019-Signed.pdf>



business continues, Ohioans could be charged for \$220 million of the debt as well as the continued losses in the power markets.¹⁷

If Ohio’s distribution utilities continue to lose \$70.3 million per year on OVEC in the 2031-2040 timeframe, that is an additional \$703 million that Ohio’s ratepayers will likely be asked to subsidize.

PUCO Audit Findings Have Not Affected OVEC Business Practices

In an audit of the AEP Ohio PPA Rider, London Economics International identified several business decisions by OVEC that were questionable, and possibly could be deemed imprudent. This audit appears to be ineffectual – the PUCO has not reduced payments to AEP Ohio for possibly imprudent decisions regarding the OVEC operations, has not compelled OVEC to operate differently, and indeed OVEC has not changed important business practices that could lower costs to customers.

First, as explained previously, OVEC sells electricity into the market at prices that are less than what it costs to generate the power, accumulating losses. A PUCO-contracted audit of OVEC highlighted this issue, stating that OVEC should “carefully consider when and whether the must-run offer strategy is optimal, as it appears that in some months, it may result in negative energy earnings for the plants.”¹⁸ However, OVEC did not adopt this operational recommendation.

Second, OVEC delayed exploring the ability to earn additional market revenue through PJM’s Ancillary Services market, despite the previous PUCO audit recommending it.¹⁹ Again, this foregone revenue was not deducted from the costs that Ohioans are forced to pay to the utilities for OVEC.

Third, OVEC makes capital investments that may not be economically justified given the revenues it receives from the electricity market. In 2011-2013, OVEC made capital investments, creating debt, in a new scrubber system that cost \$1,000,000,000.²⁰ This, among other investments, the PUCO 2020 audit questioned: “... this does not imply that the level of capital spending is justified by the revenues earned in PJM. Most coal plants of similar size ... in PJM have either announced or are planning for deactivation due to economic issues and aging problems and are therefore having limited capital investment.”²¹

¹⁷ Relevant Ohio utilities are responsible for 38% of the OVEC Power Participation Benefits and Requirements. OVEC 2019 Annual Report (page 2 of PDF) AEP Ohio (a.k.a Ohio Power) has 19.93%. Dayton Power and Light has 4.90%. Duke Energy Ohio has 9.00%. Energy Harbor has 4.85%.

¹⁸ London Economic International’s audit of the AEP Ohio PPA Rider., Case No. 18-1759-EL-RDR, Page 53 of PDF.

¹⁹ London Economic International’s audit of the AEP Ohio PPA Rider, Case No. 18-1759-EL-RDR, Page 53 of PDF.

²⁰ IEEFA 2017 Report
<https://ieefa.org/wp-content/uploads/2017/06/Dont-Bail-Out-Retire-OVEC-Coal-Plants.pdf> (page 3 of PDF)

²¹ London Economic International’s audit of the AEP Ohio PPA Rider, Case No. 18-1759-EL-RDR (page 97 of PDF)

Chairman of the Board
JANE M. NEAL
Senior Vice President, AMG Vanadium, LLC

President
RYAN AUGSBURGER



May 26, 2021

The Honorable Jim Hoops
Chairman
Energy and Public Utilities Committee
77 S. High St., 11th Floor
Columbus, Ohio 43215

RE: House Bill 260 – Written Proponent Testimony

Dear Chairman Hoops:

The Ohio Manufacturers' Association (OMA) appreciates the opportunity to provide written proponent testimony on House Bill 260 (HB 260). HB 260 requires the refund of electric utility charges that have been found to be improper by the Supreme Court of Ohio or any other relevant authority. These refunds shall take place within one year of the final determination.

HB 260 offers a solution to put illegitimately collected money back in the pockets of customers. The amount of above-market charges that have been collected from customers, then later deemed to be unlawful by the Supreme Court of Ohio, is significant. The Office of the Ohio Consumers' Counsel has identified more than \$1.5 billion in wrongful charges since 2009.

If Ohio utilities are authorized to collect charges that are later deemed to be unlawful by the Court, HB 260 requires the money to be refunded to customers, not retained by utilities as a windfall. While OMA believes that the PUCO already has the authority to protect consumers by ordering refunds through the utilities' tariffs; HB 260, if enacted, will codify the PUCO's authority to order refunds and will place the utilities on notice that charges will be collected from customers subject to refund if the charges are later found to be unlawful.

Thank you very much for the opportunity to submit this written testimony. I'd be pleased to try to answer any questions that you might have; please contact me at rbrundrett@ohiomfg.com or (614) 629-6814.

Sincerely,

A handwritten signature in blue ink that reads "Rob Brundrett".

Rob Brundrett
Managing Director, Public Policy Services

Chairman of the Board
JANE M. NEAL
Senior Vice President, AMG Vanadium, LLC

President
RYAN AUGSBURGER



May 25, 2021

The Honorable Rob McColley
Chairman
Senate Energy and Public Utilities
Ohio Senate
1 Capitol Square
2nd Floor N., Rm. 222
Columbus, Ohio 43215

RE: House Bill 201 – Written Proponent Testimony

Dear Chairman McColley:

The Ohio Manufacturers' Association (OMA) represents Ohio's robust manufacturing sector. We boast approximately 1,300 members – of all sizes. As you well know, affordable and reliable energy is integral to the productivity of these manufacturers. OMA's membership includes many of the largest, most sophisticated energy users in the state. Some of our members consume the same amount of electricity as a medium-sized city. In short, energy is of paramount importance to Ohio's manufacturing competitiveness; therefore, Ohio's energy policy is of great significance to us.

The OMA appreciates the opportunity to provide testimony on House Bill 201 (HB 201). In general terms HB 201 provides that every person has the right to obtain available natural gas and prohibits local governments from enacting laws, rules, or codes that limit the use of, prohibit, or prevent residential, commercial, or industrial consumers from obtaining distribution service or retail natural gas service that would otherwise be available to a person under Ohio's public utility law and regulations.

The OMA is supportive of the legislation and its intent to ensure that manufacturing facilities have access to affordable and reliable natural gas service. It is imperative that Ohio manufacturers continue to have access to natural gas supplies. Our organization has worked closely with the bill sponsor and other proponents of the legislation to ensure that the language matches the intent. We initially had some concern about potential unintended consequences given the original language. These concerns were mostly addressed during the House committee process.

Energy policy is critical to Ohio's ability to attract business investment, stimulate economic growth, and spur job creation – especially in manufacturing. We believe that the current version of HB 201 helps ensure Ohio's manufacturers will continue to have access to reliable and economical energy sources.

Thank you very much for the opportunity to submit this written testimony. I'd be pleased to try to answer any questions that you might have; please contact me at rbrundrett@ohiomfg.com or (614) 629-6814.

Sincerely,

A handwritten signature in blue ink that reads "Robert A. Brundrett". The signature is written in a cursive style with a large, stylized initial "R".

Rob Brundrett
Managing Director, Public Policy Services

Chairman of the Board
JANE M. NEAL
Senior Vice President, AMG Vanadium, LLC

President
RYAN AUGSBURGER



June 8, 2021

The Honorable Rob McColley
Chairman
Senate Energy and Public Utilities
Ohio Senate
1 Capitol Square
2nd Floor N., Rm. 222
Columbus, Ohio 43215

RE: Senate Resolution 41 – Written Proponent Testimony

Dear Chairman McColley:

Thank you for the opportunity to provide written proponent testimony for Senate Resolution 41 (SR 41). SR 41 implores the governor of Michigan and the director of the Michigan Department of Natural Resources to exercise all efforts to keep the Enbridge Line 5 pipeline operating.

The Enbridge Line 5 pipeline is a major oil pipeline that carries petroleum from Canada across the United States via the Midwest and notably through the Straits of Mackinac. This vital pipeline ships oil directly to multiple Ohio oil refineries, which provide resources for countless manufacturers in Ohio and throughout the United States. Shutting down the pipeline -- as threatened by Michigan's governor -- would cause serious economic damage to Ohio refineries and would create a disruptive ripple effect throughout Ohio's economy. We, therefore, urge the committee to quickly pass SR 41.

Thank you very much for the opportunity to submit this written testimony. I'd be pleased to try to answer any questions that you might have; please contact me at rbrundrett@ohiomfg.com or (614) 629-6814.

Sincerely,

A handwritten signature in blue ink that reads "Rob Brundrett".

Rob Brundrett
Managing Director, Public Policy Services



www.lsc.ohio.gov

OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
and Drafting

Legislative Budget
Office

H.B. 317
134th General Assembly

Bill Analysis

Version: As Introduced

Primary Sponsor: Rep. Wilkin

Kathleen A. Luikart, Research Analyst

SUMMARY

- Repeals electric security plans (ESPs) under which an electric distribution utility (EDU) provides customers in its certified territory a standard service offer (SSO) of retail electric services.
- Requires EDUs to offer SSOs under a market rate offer (MRO) as generally provided in current law.
- Permits EDUs to implement economic development and job retention programs under an MRO and to apply to the Public Utilities Commission to recover nonbypassable prudently incurred costs of those programs and allocate the costs across all customers of the EDU and EDUs in the same holding company system.
- Allows ESPs in effect on the bill's effective date to continue in accordance with applicable PUCO orders and rules and any law that existed prior to the bill's effective date until (1) the ESPs' specified termination dates or (2) for ESPs without a specified termination date, not later than January 1, 2024.
- Prohibits EDUs from extending an ESP or applying for a new ESP after it terminates.
- Changes provisions of ongoing law to reflect the repeal of ESPs by removing references to ESPs or, for certain provisions, applying the ESP law to these provisions as they existed before the bill's effective date.

DETAILED ANALYSIS

Repeal of electric security plans (ESPs)

The bill repeals electric security plans (ESPs), one of the options in the competitive electric service law under which an electric distribution utility (EDU) provides customers a standard service offer (SSO). And, the bill amends the law to require, rather than permit, EDUs to offer SSOs under market rate offers (MROs). EDUs currently may provide an SSO through an

ESP or an MRO. However, no EDUs currently are operating under an MRO. The ESP repeal means that, under the bill, an MRO is an EDU's only option for offering an SSO to customers.

An SSO is an offer of competitive retail electric services necessary to maintain essential electric service that EDUs are required to provide consumers. The bill retains that description but removes the word "competitive."

Under ongoing law, an EDU is required to provide an SSO to customers within its certified territory. The customers are those who have not (1) shopped for an electric generation supplier or (2) obtained a new supplier after the customers' supplier defaulted.¹

Status of existing ESPs

Although the bill repeals the ESP law, the bill does not terminate ESPs that are in effect on the bill's effective date. Under the bill, an EDU with an existing ESP may continue the plan as follows:

- Until the plan's termination date, if the ESP has a specified termination date;
- Until not later than January 1, 2024, if the ESP does not have a specified termination date.²

The ESPs that continue must operate in accordance with all applicable Public Utilities Commission (PUCO) orders and rules and any law that existed and applied to the ESP prior to the bill's effective date. The bill prohibits an EDU from extending an ESP after its termination, and prohibits the EDU from applying for a new ESP.³

Changes to reflect ESP repeal

Because it eliminates ESPs, the bill repeals the provisions of ESP law, including those regarding the PUCO application and approval process for ESPs; application requirements; the supply and pricing of electric generation services; and extensive cost recovery provisions allowed under ESPs, including, for example, recovery of prudently incurred costs and allowances for construction work in progress.⁴

Under the bill, cross references to the ESP law are removed from several sections of ongoing law, including provisions of the corporate separation law; governmental aggregation of retail electric loads by townships, counties, and municipal corporations; the securitization of certain phase-in costs of an EDU and the issuance of phase-in-recovery bonds under a PUCO-issued financing order; and the requirements for winning bids under the competitive

¹ R.C. 4928.141, 4928.142(A), and 4928.143; R.C. 4928.03, not in the bill.

² Section 3(A)(1).

³ Section 3(A)(2).

⁴ R.C. 4928.141 and 4928.143.

procurement process for electric service for percentage of income payment plan program customers.⁵

Possible clarity issues

The bill removes, from an exception clause in the corporate separation law, the cross references to Revised Code sections 4928.31 to 4928.40, the sections pertaining to the transition to competitive retail electric service. Although the transition to competitive service has already taken place, these sections are nominally in effect. Removing the cross reference to them from Revised Code Section 4928.17 may cause confusion in the section's statutory construction.⁶

The bill does not remove or amend all references to ESPs in the governmental aggregation law – specifically the provision allowing a legislative authority under an aggregation to elect not to receive any standby service under an ESP. Because two references to ESPs remain unchanged in the bill, it is unclear how standby service would be affected.⁷

Transitional provisions for existing ESPs

SSO as default service

The bill specifies that, if a customer's chosen electric supplier fails to supply that electric service within an EDU's certified territory, the customer's service will default to the SSO service offered by the EDU either under an MRO or the ESP *as* that *ESP* existed prior to the bill's effective date and that is still in effect. Although not expressly stated by the bill, once an ESP that is in effect prior to the bill's effective date terminates, the default SSO service will be the SSO service offered under an MRO, since the bill specifies that ESPs may not continue after they terminate.

Under the competitive retail electric service law, a retail electric customer in Ohio may select a provider to supply the customer's electric generation service. If the provider fails to provide that service to customers within an EDU's certified territory, then the provider's customers will default to the EDU's SSO until the customers choose an alternate provider to supply electric generation service. Under ongoing law a supplier is deemed to have failed to provide electric service if any of four specified conditions are met, one of which is that the supplier's certification as a competitive electric supplier has been suspended, conditionally rescinded, or rescinded.⁸

⁵ R.C. 4928.17, 4928.20, 4928.23, 4928.231, 4928.232, and 4928.542.

⁶ R.C. 4928.17(A).

⁷ R.C. 4928.20(J).

⁸ R.C. 4928.14 and Section 3(A)(2); R.C. 4928.03, not in the bill.

Phase-in of EDU price or rate

Current law allows PUCO to authorize any just and reasonable phase-in of an EDU rate or price as PUCO determines is necessary to ensure rate or price stability for consumers. Under the bill, such an order applies to ESP rates or prices under the ESP law as it existed prior to the bill's effective date. Ongoing law, unchanged by the bill, permits PUCO, for rate or price stability, to establish a phase-in of an EDU rate or price under an MRO as necessary.⁹

Legacy generation resource

The bill retains the prohibition against an EDU using the output from a legacy generation resource in supplying its SSO under an ESP, but specifies that the prohibition applies to ESPs under the ESP law as it existed prior to the effective date of the bill's ESP repeal.

Ongoing law (1) authorizes PUCO to establish a nonbypassable rate mechanism for a legacy generation resource (including Ohio Valley Electric Corporation (OVEC) facilities), and (2) requires that an EDU bid the output from a legacy generation resource into the wholesale market. The bill retains the prohibition against an EDU using the output of a legacy generation resource in supplying an SSO under an MRO.¹⁰

Electric securitization and financing orders

Under the law governing the securitization of certain phase-in costs of an EDU and the issuance of phase-in-recovery bonds under a PUCO-issued financing order, "phase-in costs" include costs authorized by PUCO to be securitized or deferred as regulatory assets under ratemaking proceedings and proceedings for MROs and ESPs. The bill modifies "phase-in costs" to (1) include costs securitized or deferred as regulatory assets under MRO, and ESP proceedings as the law existed prior to the effective date of the bill and (2) exclude certain other costs authorized under an ESP and the ESP law as it existed prior to the effective date of the bill or certain electric generating facility costs approved for recovery according to the SSO, MRO, and ESP law as it existed prior to the effective date of the bill.

The bill specifies that financing order application information required by PUCO and restated or incorporated by reference that an EDU filed with PUCO under the law governing SSOs, MROs, and ESPs may include filings made under the law as it existed prior to the effective date of the bill.

Under the electric securitization law, parties that participated in proceedings before PUCO in which phase-in costs were approved under MROs, and ESPs, have standing to participate in proceedings for financing orders. The bill amends this provision to include proceedings for phase-in cost approvals under the law governing SSOs, MROs, and ESPs as they existed prior to the bill's effective date.¹¹

⁹ R.C. 4928.144.

¹⁰ R.C. 4928.148(B).

¹¹ R.C. 4928.23(J), 4928.231(C), and 4928.232(A).

Percentage of income payment plan program

The percentage of income payment plan program law specifies that winning bids selected during the process to procure the competitive retail electric service supply for low-income customers must reduce the cost of the program relative to the otherwise applicable SSO under an MRO and ESP. The bill changes the provision to apply to an MRO or an otherwise applicable ESP under the ESP law as it existed prior to the effective date of the bill.¹²

Changes affecting the market rate offer (MRO)

The bill generally retains the MRO process under current law, which provides for (1) the EDU to file an application with PUCO that meets requirements regarding access to the transmission grid, a market monitoring function, and a published source of pricing information prior to initiating a competitive bidding process for the MRO, (2) the MRO to be competitively bid in accordance with certain requirements under continuing law, (3) PUCO to determine within 90 days of the application's filing date whether the EDU and its MRO meet the above requirements, (4) the EDU to initiate its competitive bidding process if the PUCO determines all those requirements are met, and (5) PUCO to select the EDU's MRO from the least-cost bid winner or winners.¹³

Economic and job retention programs

In a provision newly applied to an MRO under the bill, an EDU is permitted to implement economic development and job retention programs under an SSO offered through an MRO. This provision currently applies to ESPs. The bill also allows the EDU to apply to PUCO to recover nonbypassable prudently incurred costs of these programs and allocate the program costs across all classes of customers of the utility and those of EDUs in the same holding company system.¹⁴

Eliminated MRO provisions

The bill eliminates the following provisions from the MRO requirements under current law:

- The 150-day competitive bidding process delay imposed because of the following circumstances:
 - The EDU remedied a deficiency in its MRO application and competitive bidding process that the PUCO has approved;
 - An ESP application was filed simultaneously with the MRO application.
- The blended price requirements for EDUs that directly owned operating generating facilities that were used and useful as of July 31, 2008.

¹² R.C. 4928.542(B).

¹³ R.C. 4928.142(A) to (C).

¹⁴ R.C. 4928.143.

- The restriction that an EDU may not ever file or be required to file an ESP application if its initial MRO application is approved.¹⁵

PUCO rules

The bill permits PUCO to amend its rules to meet the requirements of continuing an existing ESP until its termination, to repeal ESPs, and to meet the changes made by the bill.¹⁶

HISTORY

Action	Date
Introduced	05-18-21

H0317-I-134/ts

¹⁵ R.C. 4928.142(B)(3) and (D) to (F).

¹⁶ Section 3(B).

Energy Legislation

Prepared by: The Ohio Manufacturers' Association
Report created on June 14, 2021

- HB10** **REPEAL HB6 - REVISE ELECTRIC UTILITY SERVICE LAW** (LELAND D) To repeal Section 5 of H.B. 6 of the 133rd General Assembly to make changes regarding electric utility service law, to allow the implementation of energy waste reduction programs, and to repeal certain provisions of H.B. 6 of the 133rd General Assembly.
Current Status: 2/17/2021 - House Public Utilities, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-10>
- HB18** **REPEAL HB6** (LANESE L) Repeal HB 6 of the 133rd GA
Current Status: 2/17/2021 - House Public Utilities, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-18>
- HB47** **ELECTRIC CAR CHARGING STATION GRANT REBATE** (LOYCHIK M) To require the Director of Transportation to establish an electric vehicle charging station grant rebate program and to make an appropriation.
Current Status: 6/15/2021 - House Transportation and Public Safety, (Third Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-47>
- HB87** **EXEMPT UTILITY SUPPLY CONTRACTS FROM 10-YEAR MAXIMUM** (STEPHENS J, JOHN M) To exempt county utility supply contracts entered into under a joint purchasing program from the 10-year maximum period for such contracts and to declare an emergency.
Current Status: 5/17/2021 - **SIGNED BY GOVERNOR**; eff. Immediately
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-87>
- HB118** **REVISE CERTAIN WIND FARM/SOLAR FACILITY LAWS** (RIEDEL C, STEIN D) To require inclusion of safety specifications in wind farm certificate applications, to modify wind turbine setbacks, and to permit a township referendum vote on certain wind farm and solar facility certificates.
Current Status: 5/12/2021 - **SUBSTITUTE BILL ACCEPTED**, House Public Utilities, (Fourth Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-118>
- HB128** **REPEAL HB6** (HOOPS J, STEIN D) To make changes regarding electric utility service law, to repeal certain provisions of H.B. 6 of the 133rd General Assembly, and to provide refunds to retail electric customers in the state.
Current Status: 3/31/2021 - **SIGNED BY GOVERNOR**; eff. 90 days
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-128>
- HB152** **REVISE LAW GOVERNING UNIT OPERATION** (STEWART B, GINTER T) To revise the law governing unit operation.
Current Status: 6/16/2021 - House Energy and Natural Resources, (Third Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-152>

- HB192 PROHIBIT LOCAL GOVERNMENTS FROM STOPPING CERTAIN ENERGY GENERATION (CUTRONA A)** To prohibit counties, townships, and municipal corporations from prohibiting energy generation from fossil fuels and gas pipelines.
Current Status: 5/6/2021 - House Energy and Natural Resources, (Third Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-192>
- HB201 PREVENT LOCAL GOVERNMENTS FROM LIMITING NATURAL GAS USE (STEPHENS J)** To prevent local governments from limiting use of natural gas and propane.
Current Status: 6/15/2021 - Senate Energy and Public Utilities, (Fourth Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-201>
- HB260 REQUIRE REFUNDS FOR IMPROPER UTILITY CHARGES (LANESE L, TROY D)** To require refunds to utility customers who have been improperly charged.
Current Status: 5/26/2021 - House Public Utilities, (Second Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-260>
- HB271 ESTABLISH NATURAL GAS INFRASTRUCTURE PROGRAM (EDWARDS J)** To establish a natural gas infrastructure development program and fund to help meet Ohio's natural gas supply needs.
Current Status: 5/6/2021 - House Energy and Natural Resources, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-271>
- HB273 CONSUMERS' COUNSEL OPERATING CALL CENTER (O'BRIEN M)** To amend Section 245.10 of H.B. 166 of the 133rd General Assembly to remove the prohibition on the Office of the Consumers' Counsel operating a call center and to make an appropriation.
Current Status: 5/4/2021 - Referred to Committee House Finance
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-273>
- HB299 CONSUMER UTILITY BILLING TRANSPARENCY ACT (SKINDELL M)** To enact "The Consumer Utility Billing Transparency Act" requiring the itemization of all riders, charges, taxes, and other costs on certain utility bills.
Current Status: 5/19/2021 - House Public Utilities, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-299>
- HB300 BAN OIL/NATURAL GAS EXTRACTION FROM LAKE ERIE BED (SKINDELL M)** To to ban the taking or removal of oil or natural gas from and under the bed of Lake Erie.
Current Status: 5/20/2021 - House Energy and Natural Resources, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-300>

- HB317 REPEAL ELECTRIC SECURITY PLANS (WILKIN S)** To repeal electric security plans and make other changes to the law regarding competitive retail electric service.
Current Status: 5/26/2021 - House Public Utilities, (Second Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-317>
- SB8 BROADBAND-ELECTRIC COOPERATIVE EASEMENTS (MCCOLLEY R)** Regarding broadband expansion, including access to electric cooperative easements and facilities, and to make an appropriation.
Current Status: 2/17/2021 - Referred to Committee House Finance
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-8>
- SB10 REFUNDS TO ELECTRIC CUSTOMERS (ROMANCHUK M)** To terminate any approved decoupling mechanism, to modify the significantly excessive earnings determination for an electric security plan, and to provide refunds to retail electric customers in the state.
Current Status: 2/24/2021 - Referred to Committee House Public Utilities
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-10>
- SB20 COUNTY UTILITY SUPPLY CONTRACTS (HACKETT R)** To exempt county utility supply contracts entered into under a joint purchasing program from the 10-year maximum period for such contracts and to declare an emergency.
Current Status: 3/24/2021 - Referred to Committee House State and Local Government
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-20>
- SB29 ELIMINATE AUTO ENROLLMENT-UTILITY AGGREGATION (HOAGLAND F)** To eliminate automatic enrollment in governmental electric and natural gas aggregation programs.
Current Status: 2/23/2021 - Senate Energy and Public Utilities, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-29>
- SB32 ELECTRIC VEHICLE CHARGING STATION (RULLI M)** To require the Director of Transportation to establish an electric vehicle charging station grant rebate program and to make an appropriation.
Current Status: 2/17/2021 - Senate Transportation, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-32>
- SB44 REVISE HB6 FROM 133RD G.A. (RULLI M, CIRINO J)** To repeal the nuclear resource credit payment provisions, and amend, and rename as solar resource, the renewable resource credit payment provisions of H.B. 6 of the 133rd General Assembly.
Current Status: 3/9/2021 - Referred to Committee House Public Utilities
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-44>
- SB52 WIND TURBINE SETBACKS (REINEKE W, MCCOLLEY R)** To require inclusion of safety specifications in wind farm certificate applications, to modify wind turbine setbacks, and to permit a township referendum vote on certain wind farm and solar facility certificates.

Current Status: 6/16/2021 - House Public Utilities, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-52>

SB89 **RENEWABLE ENERGY (DOLAN M)** To extend the renewable portfolio standard, increase solar energy benchmarks, and extend the property tax exemption for qualified energy projects that use renewable energy resources.

Current Status: 5/12/2021 - Senate Energy and Public Utilities, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-89>

SB95 **REGULATE UTILITY RESELLERS (MAHARATH T)** To require refunds to utility customers who have been improperly charged and to regulate certain resellers of utility service.

Current Status: 3/31/2021 - Senate Energy and Public Utilities, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-95>

SB117 **REPEAL LEGACY GENERATION PROVISIONS-HB6 (ROMANCHUK M, CRAIG H)** To repeal the legacy generation resource provisions of H.B. 6 of the 133rd General Assembly and provide customers refunds.

Current Status: 6/15/2021 - Senate Energy and Public Utilities, (Second Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-117>

SB118 **REPEAL RENEWABLE RESOURCE CREDITS-HB6 (ROMANCHUK M)** To repeal the renewable resource credit payment provisions enacted under H.B. 6 of the 133rd General Assembly.

Current Status: 3/31/2021 - Senate Energy and Public Utilities, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-118>

SB127 **PREVENT LOCALITIES-LIMIT USE OF NATURAL GAS (LANG G, RULLI M)** To prevent local governments from limiting use of natural gas.

Current Status: 5/12/2021 - Senate Energy and Public Utilities, (Second Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-127>

TO: OMA Government Affairs Committee
FROM: Rob Brundrett / Rachael Carl
SUBJECT: Tax & Finance Public Policy Report
DATE: June 15, 2021

Overview

During the first few months of this General Assembly, the legislature has been (almost) entirely devoted to clearing the June 30th finish line for the state's biennial operating budget.

The legislature is in the final stages of discussions for House Bill 110, the state's biennium operating budget. With only conference committee left, the House, Senate, and Governor will decide the fate of several important provisions. While school funding remains a big topic, we are working to keep several OMA-supported measures in the bill. Most notably, the elimination of Ohio's sales tax on employment services used by businesses to hire temporary or permanent workers. The elimination of this tax has been a longtime priority for Ohio manufacturers; the Buckeye State is one of the few states that still burdens employers with this additional tax.

In addition to repealing the sales tax on employment services, House Bill 110 also tackles the withholding tax issue. There is strong disagreement on the issue of refunds, but there is general agreement to repeal the temporary language at the end of the current tax year (December 31, 2021), which is the date the Senate included in their version of the bill.

The two chambers have roughly two weeks left to settle their differences and send the bill governor's desk for signature by June 30th.

Another big-ticket item that we will be watching is a new pot of federal relief money coming from the American Rescue Plan Act (ARPA). Putting aside the funds flowing to the locals, the state is expected to receive roughly \$5.4 billion in ARPA funding. While this money will be handled outside the budget bill, it is certainly garnered some attention. Two concepts for use of ARPA funds have floated to the surface: paying for broadband expansion and paying back the state's nearly \$1.5 billion debt to the federal government for unemployment compensation.

Tax & Finance Legislation

Senate Bill 18 – Internal Revenue Code Conformity

Senate Bill 18 brought Ohio's tax laws into conformity with changes made to the Internal Revenue Code. The Senate bill as enacted included an amendment that would clarify the application of the CAT. The language ensured that both BWC rebates and federal PPP Loan proceeds are not considered gross receipts for purposes of the CAT.

Senate Bill 18 was signed by the governor with an emergency clause on March 31st in order to be enacted in time to apply for the 2020 tax year.

Senate Bill 19 – Tax Exemption for Wetland Mitigation

Senator Tim Schaffer (R-Lancaster) introduced a bill to exempt certain privately owned wetlands from property tax. A qualifying property would have to be under a wetland mitigation project and be owned by a 501(c)(3) organized for the purpose of natural resources protection, preservation, restoration, or enhancement of water quality. The bill passed the Senate in late February and has had two hearings so far in the House Ways & Means Committee.

Senate Bill 45 – State & Local Tax Inducements

Senators Bob Peterson (R-Washington Court House) and Stephanie Kunze (R-Hilliard) re-introduced legislation from the last General Assembly. Senate Bill 45 would enhance state and local tax inducements for businesses making substantial fixed asset and employment investments and their suppliers. The bill would provide a CAT credit for the integrated supply chain to a qualifying project.

The bill has had two hearings in the Senate Ways & Means Committee, and the OMA has submitted a letter with like-minded allies regarding protecting the integrity of the CAT.

Senate Bill 62 – Commerce & Taxation

As a companion bill to House Bill 133, Senate Bill 62 would have made numerous changes to Ohio's Residential Mortgage Loan Act and in addition, require credit reporting agencies to provide credit reports to businesses, similar to credit reports to individuals. Of note for OMA members, the bill included a temporary provision to allow property owners to seek a change in assessed property value if they believe the value of their property has depreciated due to the pandemic.

This legislation is no longer being pushed since House Bill 133 was signed by the Governor in May and the language regarding property owners' ability to challenge their appraisal due to COVID-19 damages was amended into Senate Bill 57, which was signed in April.

Senate Bill 97 – Municipal Income Tax Withholding

Introduced by Sen. Kristina Roegner (R-Hudson), Senate Bill 97 would codify a specific date to sunset Sec. 29 from the last General Assembly's House Bill 197.

As a refresher, Sec. 29 from House Bill 197 has allowed manufacturers and other Ohio businesses to continue withholding employees' income tax from the business' principal location and not employees' homes.

With many Ohioans working remotely due to COVID-19, the General Assembly acted wisely to save businesses the burden, expense, and compliance nightmare of revamping their tax systems in the midst of the pandemic.

Last summer, legislators and interested parties began discussing a repeal of the provision in House Bill 197 so that withholdings would be redirected to the local governments of an employee's home address if he/she is working remotely. The Senate Ways & Means Committee amended the bill to align with the OMA's advocacy efforts and the bill would sunset Sec. 29 on December 31, 2021, and return to pre-COVID-19 withholding rules on January 1, 2022.

The bill has received one hearing in the Senate, but the House has passed similar legislation, House Bill 157, which is now also under consideration in the Senate.

Senate Bill 98 – Tax Exemption

Sponsored by Sen. Niraj Antani (R-Miamisburg), Senate Bill 98 would provide a sales tax exemption to transportation and warehousing businesses for the sales involving transporting finished goods from the manufacturing facility to a retail destination or transporting goods between distribution facility locations. This bill has yet to receive a first hearing.

Senate Bill 108 – Provides Grants to Bars, Restaurants, & Lodging

Enacted in May, Senate Bill 108 directs federal funds received under the Coronavirus Aid, Relief, and Economic Security (CARES) Act to certain industries. This bill appropriates \$100 million in grants for bars and restaurants and another \$25 million in grants to the lodging industry.

Senate Bill 109 – Provides Grants to Businesses, Fairs, Child Care, & Veteran Homes

Also enacted in May, Senate Bill 109 is providing \$556.9 million in federal CARES Act funds to be used for grants to businesses and child care providers impacted by COVID-19, for food assistance and other assistance programs, and for local fairs and Ohio Veterans Homes.

Senate Bill 110 – Provides Rent & Utility Assistance

This bill is no longer being pushed since its companion, House Bill 167, was signed into law in May.

House Bill 45 – Tax Amnesty Program

This bill would establish a tax amnesty period from April 1, 2021, to May 31, 2021. During this period, the Tax Commissioner must waive any interest and penalties if a taxpayer pays the full amount of their delinquent taxes or fees. House Bill 45 has had one hearing in the House Ways & Means Committee.

House Bill 47 – Electric Vehicle Charging Station Grant

Newcomer Representative Mike Loychik (R-Cortland) introduced his first bill recently, House Bill 47. The bill would require the Ohio Department of Transportation to establish a rebate grant program for the installation of certain electric vehicle charging stations. It would also appropriate \$10 million to the program for both fiscal year 2022 and fiscal year 2023. The bill has received two hearings in the House Transportation & Public Safety Committee.

House Bill 48 – Internal Revenue Code Conformity

As a companion to Senate Bill 18, Representatives Bill Roemer (R-Richfield) and Gail Pavliga (R-Atwater) introduced House Bill 48. Since Senate Bill has passed both chambers and been signed by the Governor, this bill is no longer being pushed.

House Bill 74 – State Transportation Budget

On March 25th, the General Assembly wrapped up their work on a two-year \$8.3 billion transportation measure, with the governor signing shortly thereafter for enactment by March 31st. This bill allocates monies from the federal government and state fuel tax for highway construction and maintenance. It also funds the state Department of Transportation, Highway Patrol, and Bureau of Motor Vehicles.

House Bill 86 – Bonus Depreciation Adjustments

Introduced by Rep. Bill Roemer (R-Richfield), House Bill 86 would temporarily suspend, for taxable years 2020 and 2021, special provisions related to Ohio's bonus depreciation adjustments in years when a taxpayer has a net operating loss. This bill has received two hearings in the House Ways & Means Committee.

House Bill 124 – Equalize Pass-Through Entity Withholding

House Bill 124 would reduce tax withholding rates for pass-through entities by equalizing the withholding rate with their income tax rate of taxable income. The has received one hearing in the House Ways & Means Committee for sponsor testimony from Reps. Bill Roemer (R-Richfield) and Bob Young (R-Green).

House Bill 157 – Municipal Income Tax Withholding

Similar to Senate Bill 97, House Bill 157 would codify a specific date to sunset Sec. 29 from last General Assembly's House Bill 197. As introduced by Reps. Kris Jordan (R-Ostrander) and Jay Edwards (R-Nelsonville), the bill would have immediately repealed this temporary provision. However, as passed by the House in late May, the bill would sunset Sec. 29 on December 31, 2021, and return to pre-COVID-19 withholding rules on January 1, 2022.

House Bill 157 is now pending before the Senate.

House Bill 165 – Tax Credit for Retail Sale of Ethanol Fuel

House Bill 165, sponsored by Rep. Riordan McClain (R-Upper Sandusky), attempts to encourage fuel retailers to sell higher blends of ethanol at the pump. The bill would authorize a temporary tax credit, for four years, for the retail sale of high-ethanol blend motor fuel, and just like Senate Bill 45, one of those credits can be taken against the CAT.

The bill has had three hearings in the House Ways & Means Committee, and the OMA has submitted a letter with like-minded allies regarding protecting the integrity of the CAT.

House Bill 167 – Provides Rent & Utility Assistance

Signed into law in May, House Bill 167 will provide \$465 million in assistance to households unable to pay rent and utilities due to the COVID-19 pandemic. These funds were established through the federal Consolidated Appropriations Act and will flow through Ohio's Community Action Agencies to provide assistance to Ohioans.

House Bill 168 – Provides Grants to Businesses, Fairs, Child Care, & Veteran Homes

House Bill 168 is no longer being pushed since its companion bill, Senate Bill 109, was enacted in May.

House Bill 169 – Provides Grants to Bars, Restaurants, & Lodging Industry

Similar to House Bill 168, this bill is not moving forward since its companion, Senate Bill 108, was enacted in May.

House Bill 174 – Tax Deduction for Certain Capital Gains

In an attempt to encourage economic activity, House Bill 174 would allow for a deduction against state income tax for all or a portion of capital gains received by investors in

certain Ohio-based venture capital operating companies. The bill has received just one hearing so far in the House Economic & Workforce Development Committee for sponsor testimony by Reps. Laura Lanese (R-Grove City) and Jon Cross (R-Kenton).

House Bill 197 – Income Tax Credit for Training CDL Drivers

Reps. Reggie Stolfus (R-Paris Township) and Rodney Creech (R-W. Alexandria) introduced House Bill 197 in hopes of increasing training opportunities for new truck drivers and addressing the truck driver shortage. The bill would allow a nonrefundable income tax credit of up to \$25,000/year for employers in their expenses related to training employees to operate a commercial vehicle. House Bill 197 has had three hearings in the House Ways & Means Committee.

House Bill 234 – Repeals the CAT

If enacted, House Bill 234 would eliminate the CAT effective in calendar year 2026. The bill provides for a 5-year phase-out of the tax beginning in calendar year 2022 and reducing the percentage by 20% each year until its completely repealed. We are all anxiously awaiting the first hearing on this bill from sponsors Reps. Jennifer Gross (R-West Chester) and Riordan McClain (R-Upper Sandusky), as it has not been scheduled yet. While repealing a CAT would be a marvelous victory, we doubt an elimination of the CAT wouldn't lead to replacing the state's lost revenue with some other type of tax. We will have to watch this one very closely.

House Bill 264 – Municipal Tax Withholding

The debate on how to treat municipal income tax withholdings post-pandemic continues. Similar to House Bill 157, House Bill 264 would extend the temporary withholding provision in Sec. 29. Unlike House Bill 157, House Bill 264 would extend the sunset of this provision until December 31, 2022. During debates on this issue, some legislators and interested parties continue to ask for the end date of the temporary withholding provision to be pushed out even further. They have concerns about the refunds employees might request and how the loss of revenue will impact cities.

This bill has not received its first hearing yet for sponsor testimony by Reps. Monique Smith (D-Fairview Park) and Lisa Sobecki (D-Toledo).

House Bill 292 – Sales Tax Exemption for Electric Vehicles

Sponsored by Reps. Lisa Sobecki (D-Toledo) and Al Cutrona (R-Canfield), House Bill 292 would create a temporary sales tax exemption, for sales on electric vehicles (EV) on or before December 31, 2026. Although raw materials of a manufactured item that will be sold are already exempt, this language may be a bit broader since the exemption in the bill states that you do not need to be “producing” the electric vehicle for sale.

While this may not be the bill sponsors' intent, the sponsors did intentionally include another provision to create the Electric Vehicle Commission. The 7-member commission would provide an annual report that would evaluate factors like the inventory of existing EV manufacturing facilities, inventory of workforce for the EV industry, and determining which traditional auto manufacturing facilities should be transitioned into EV facilities, among other topics.

This bill has not received a first hearing yet.

Tax & Finance News

The U.S. is in the Middle of the Pack for Corporate Tax Rates

President Joe Biden has pointed to corporate tax rates as one way to raise federal revenue, while critics of that plan — including the National Association of Manufacturers — have said doing so would make the U.S. much less competitive and cost American jobs.

HowMuch.net has stated that the U.S. is currently in the middle of the pack with a top statutory corporate tax rate of 25.77%. Meanwhile, the Tax Foundation notes that corporate rates globally have declined over the past four decades.

Combined Rates for Federal Taxes

On Capitol Hill, the Joint Committee on Taxation (JCT) has released data showing what Americans pay in their combined federal taxes based on their income level. As reported by the Tax Foundation — using data from 2018, the most recent year available — the JCT says the bottom 50% of income earners faced an average rate of 6.3% compared to 32.9% for the top 0.01% of earners.

The Tax Foundation notes that the income tax is the most progressive aspect of the federal tax system, providing an effective rate of -2% for the bottom half of earners when factoring refundable tax credits.

More Federal Dollars Coming to Ohio

The U.S. Department of Treasury announced that Ohio will receive nearly \$5.4 billion as part of the \$1.9 trillion American Rescue Plan (ARP) Act. Another \$6.6 billion will be sent to Ohio counties, cities, and townships. In all, 37 Ohio cities and townships and all 88 counties will receive funding.

Ohio Attorney General Dave Yost criticized the Treasury Department for including in its guidance the ARP's restriction that forbids states from providing tax relief if they accept the federal funds. A federal judge has ruled that Yost may proceed with his lawsuit challenging Congress' stipulation that the ARP funding can't be used, directly or indirectly, to offset state tax cuts

Inflation Gauges Show Big Jump from One Year Ago

According to new federal data, U.S. inflation accelerated at its fastest pace since 2008 with the Consumer Price Index (CPI) spiking 4.2% from a year ago. The index for used cars and trucks rose 10% percent in April, the largest one-month increase since tracking began in 1953.

Meanwhile, the Producer Price Index spiked 6.2% for the 12 months ended in April, the largest increase since the Bureau of Labor Statistics started tracking the data.

Biden's Far-Reaching Tax Overhaul Plan

Last month, President Joe Biden announced his \$1.8 trillion American Families Plan, the third step in his "Build Back Better" policy initiative. This followed an earlier announcement of the president's proposed \$2.3 trillion American Jobs Plan, which would

be funded with the “Made in America” tax plan. These plans propose major changes to the federal tax system, including tax increases on both individuals and businesses.

Manufacturers Respond to Biden’s Proposed Tax Hikes

The Biden administration has announced details on two major initiatives — one to fund a massive expansion of social and educational programs; the other to fund new infrastructure spending.

National Association of Manufacturers President and CEO Jay Timmons has reacted to President Joe Biden’s address to Congress. Timmons says manufacturers want to work with the administration to achieve historic infrastructure investment and other priorities, but cautions that “raising taxes on manufacturers — including many small businesses that pay at the individual rate — would stop our recovery in its tracks” and cost American jobs. He also warns against enacting anti-worker policies like the PRO Act.

Ohio’s Top Combined Cap Gains Rates Would Soar to 48% Under Biden Plan

President Biden’s American Family Plan includes a big increase in the top federal tax rate on long-term capital gains and qualified dividends, from 23.8% today to 39.6%. This would bring the top federal rate to highs not seen since the 1920s — an obvious disincentive to invest, including for many Ohio manufacturers.

The non-partisan Tax Foundation reports that under the Biden plan, the maximum federal rate on capital gains would be 43.4% when including the net investment income tax. This means Ohio’s maximum combined capital gains rate would soar from the current 28.6% to 48.2%.

Federal Taxes, Spending, Deficit Set Records in First Half of FY2021

Federal tax receipts, spending, and the federal deficit all set records in the first six months of fiscal 2021 (October through March), according to a U.S. Treasury Department monthly statement. Federal tax revenues climbed to a record \$1.7 trillion in the October-through-March period, while federal spending climbed to \$3.41 trillion. This fiscal year’s October-through-March spending was up 42% compared to the previous year.

June 1, 2021

Contact: Jamie Karl
Managing Director, Communication Services
(614) 674-5546
jkarl@ohiomfg.com



Ohio Manufacturers Support Tax Provisions in Senate Budget

COLUMBUS, Ohio – The Ohio Manufacturers' Association (OMA) today signaled its support for key tax provisions included in the Senate version of the state's proposed biennial budget (House Bill 110).

As unveiled by Senate leaders, the budget would eliminate Ohio's sales tax on employment services used by businesses to hire temporary or permanent workers. The elimination of this tax has been a longtime priority for Ohio manufacturers; the Buckeye State is one of the few states that still burdens employers with this additional tax.

The Senate budget also includes a 5% across-the-board income tax cut. This would benefit small- and mid-sized employers that pay tax on business income through the owner's individual income taxes.

"The tax provisions in the Senate version of the budget are critical to the long-term competitiveness of Ohio manufacturing," said OMA President Ryan Augsburger.

"We thank Ohio's legislative leaders for recognizing that it's time to end the state's unfair tax on employers that utilize employment services – especially in this time of severe workforce shortages. Labor is a significant cost of doing business. Eliminating this tax will encourage job growth and expansion in the post-pandemic recovery.

"We also appreciate the leadership of the House to reduce the individual income tax burden, as well as the Senate's work to expand the House's reduction. If enacted, this will promote a pro-growth climate, signaling to the rest of the nation – and the world – that Ohio is open for business."

###

The Ohio Manufacturers' Association is Ohio's largest statewide business association comprised solely of manufacturers. Established in 1910, the OMA's mission is protect and grow Ohio manufacturing. It represents manufacturers of all sizes in every subsector of the industry. Manufacturing is Ohio's largest economic sector, employing 700,000 Ohioans and contributing more than \$110 billion annually to the state's economy. Visit ohiomfg.com – or follow us on [LinkedIn](#), [Twitter](#), and [Facebook](#).

Municipal income tax: temporarily relocated employees (From HB197 LSC Final Analysis)

The act specifies that, for municipal income tax purposes, employees who must, as the result of the COVID-19 emergency, report to a temporary worksite, including their home, are temporarily considered to be working at their otherwise principal place of work, i.e., the location where the employee reports for work on “a regular and ordinary basis.” This treatment affects which municipal corporation the employer must withhold income taxes for, which municipal corporation may tax the employee’s pay, and whether and how much of the employer’s own income is subject to a municipality’s income tax. In effect, considering this income to be earned in the location of the employee’s principal place of work potentially allows the employer to avoid withholding taxes for that employee in the municipality where the employee’s temporary worksite is located and prevents the employer from becoming subject to that municipality’s income tax. It also potentially prevents the employee from being taxed on that income by that municipality, unless the employee is a resident of that municipality. (Resident municipalities may tax individual taxpayers on their entire income, regardless of where the income is earned.)

Under continuing law, a nonresident employee may work in a municipality for up to 20 days per year without the employer becoming subject to that municipality’s tax withholding requirements and the employee becoming subject to that municipality’s income tax. And, if an employee does not exceed the 20-day threshold, that employee’s pay is not counted toward the business’s payroll factor, one of three factors – along with property and sales – that determines whether, and the extent to which, an employer’s own income is subject to the municipality’s tax on net profits.

The Buckeye Institute Appeals Columbus Municipal Income Tax Case

May 27, 2021

Columbus, OH – On Wednesday, The Buckeye Institute filed its **appeal** with Ohio’s Tenth District Court of Appeals in ***Buckeye v. Kilgore***—the case challenging the constitutionality of localities taxing the income of nonresidents who did not work within the city of Columbus due to the pandemic.

“The Buckeye Institute asked the Ohio Court of Appeals to reaffirm what the Ohio Supreme Court has already **recognized** time and again: that the Due Process Clause requires local taxation of nonresidents to be based upon where any work was *actually* performed,” said Jay R. Carson, senior litigator at The Buckeye Institute. “The Buckeye Institute’s employees—along with thousands of others across Ohio—had municipal income taxes unlawfully taken from them during Ohio’s stay-at-home order and throughout the pandemic. Although it is certainly understandable that the legislature wanted to preserve the status quo during an emergency, constitutional protections must still apply.”

Buckeye v. Kilgore was **filed** by The Buckeye Institute on July 2, 2020, in Franklin County Common Pleas Court against the city of Columbus and the state of Ohio on behalf of itself and three of its employees: Rea S. Hederman, Jr. of Powell, Greg R. Lawson of Westerville, and Joe Nichols of Newark Township. The case was **dismissed** on April 27, 2021, and Buckeye’s **notice of appeal** was filed April 28, 2021.

The Buckeye Institute has filed four other cases similarly challenging House Bill 197’s unconstitutional overreach.

- ***Denison v. Kilgore*** was filed in Franklin County Court of Common Pleas in February 2021 and settled in favor of Buckeye’s client Mr. Denison in April 2021.
- ***Schaad v. Alder*** was filed in Hamilton County Court of Common Pleas in February 2021.
- ***Curcio v. Hufford*** was filed in Lucas County Court of Common Pleas in March 2021.
- ***Morsy v. Dumas*** was filed in Cuyahoga County Court of Common Pleas in April 2021.

The Buckeye Institute also filed an **amicus brief** in *New Hampshire v. Massachusetts* with the U.S. Supreme Court to protect Granite Staters from unconstitutional taxation by Massachusetts.

###



**BEFORE THE HOUSE WAYS AND MEANS COMMITTEE
REPRESENTATIVE DEREK MERRIN, CHAIRMAN**

**TESTIMONY
OF
RACHAEL CARL
THE OHIO MANUFACTURERS' ASSOCIATION**

MARCH 16, 2021

Mr. Chairman and members of the House Ways and Means Committee, my name is Rachael Carl, and I am the director of public policy services for The Ohio Manufacturers' Association (OMA). I appreciate the opportunity to provide testimony on House Bill 157.

The OMA was created in 1910 to advocate for Ohio's manufacturers; today, it has nearly 1,300 members. Its mission is to protect and grow Ohio manufacturing.

Prior to the temporary provisions passed in House Bill 197 of the 133rd General Assembly, employers withheld an employee's municipal income tax in the municipality where the employee was performing services, with an exception for "occasional entrants." The occasional entrant rule states that employers do not have to withhold municipal income tax for employees performing services in a city or village for fewer than 20 total days.

Very early in the COVID-19 pandemic, Ohio manufacturers reached out to the OMA regarding local income tax withholding compliance, citing the administrative impacts if they had to withhold municipal income tax locally for workers who were sent home to work remotely. Many businesses at the request of the state – at least temporarily – sent home employees whose jobs could be performed remotely. Consequently, working from home would trigger the occasional entrant rule.

Recognizing that businesses would face a substantial burden in terms of expense and administrative compliance, to revamp their tax systems in the midst of the pandemic, the OMA engaged with the General Assembly to support language in House Bill 197 that would temporarily allow employers to continue to withhold employees' municipal income tax from their principal place of work. This provision is set to remain in effect during the governor's state of emergency Executive Order plus thirty additional days. At the time, no one considered that we would be here a year later debating the issue.

House Bill 157 proposes an immediate repeal of this temporary provision in law. However, the issue is not as simple as a straight repeal. There are a number of issues to resolve: 1) where should the withholding take place and under what circumstances, and 2) should employees be allowed to claim refunds while working remotely in 2020? The OMA has consistently advocated – for the sake of streamlined compliance – to allow companies to continue to withhold from the original place of work. We have not weighed in on the question of refunds, but certainly sympathize with employees as they file their returns and refund requests.

Significant consideration should be given before returning to the previous law. Companies are concerned that their payroll staff and systems will not be able to handle required withholding and income tax changes without ample lead time, and they are concerned about making substantial changes in the middle of any tax year. Further, employers need time to account for ongoing variables, such as vaccine availability for their workforces and hybrid work arrangements (i.e. working some days in the office and others working remotely).

We would ask this committee and the sponsors to thoughtfully review all the options to ensure a smooth transition on this issue in a post-pandemic workplace.

Thank you. I would be happy to answer any questions.



May 18, 2021

The Honorable Derek Merrin
Chairman
House Ways and Means Committee
Vern Riffe Center
77 South High Street, 13th floor
Columbus, OH 43215

RE: House Bill 157 – Written Proponent Testimony

Dear Chairman Merrin:

The Ohio Manufacturers' Association (OMA) appreciates the opportunity to provide written proponent testimony on the recently accepted substitute version of House Bill 157.

As noted in testimony previously provided to this committee, very early in the COVID-19 pandemic, the OMA engaged with the General Assembly to support Section 29 of House Bill 197 from the 133rd General Assembly that would temporarily allow employers to continue withholding employees' municipal income tax from their principal place of work for the duration of the governor's state of emergency Executive Order plus thirty additional days. Absent the enactment of this temporary provision, companies would have faced a substantial burden in terms of expense and administrative compliance to revamp their tax systems in the midst of the pandemic.

Substitute House Bill 157 would provide a date certain for ending Section 29 of House Bill 197. By placing that date at the end of this tax year, it gives employers the necessary certainty to prepare for a return-to-work. This runway will allow them to make required changes to their payroll systems in order to comply with the withholding income tax changes and to account for ongoing variables, such as vaccine availability for their workforces and hybrid work arrangements (i.e. working some days in the office and others working remotely). Further, the substitute bill simplifies the documentation that an employer can be asked to provide when an employee files a refund application. Under this provision, a municipality may only require that an employer verify which days an employee was working at their principal place of work. This change would reduce the administrative burden of an employer having to verify from where the employee was working during the pandemic.

The OMA appreciates the committee's thoughtful review of this legislation as we work to ensure a smooth transition on this issue in a post-pandemic workplace. We ask for your support of this bill.

Sincerely,

A handwritten signature in blue ink that reads "Rob Brundrett".

Rob Brundrett
Managing Director, Public Policy Services

Taxation Legislation
Prepared by: The Ohio Manufacturers' Association
Report created on June 14, 2021

- HB45** **TAX AMNESTY PROGRAM** (WEST T, ROEMER B) To require the Tax Commissioner to administer a temporary amnesty program from April 1, 2021, to May 31, 2021, with respect to delinquent state taxes and fees, to repeal Section 1 of this act on June 1, 2021, and to declare an emergency.
Current Status: 5/4/2021 - House Ways and Means, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-45>
- HB47** **ELECTRIC CAR CHARGING STATION GRANT REBATE** (LOYCHIK M) To require the Director of Transportation to establish an electric vehicle charging station grant rebate program and to make an appropriation.
Current Status: 6/15/2021 - House Transportation and Public Safety, (Third Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-47>
- HB48** **INTERNAL REVENUE CODE CHANGES** (ROEMER B, PAVLIGA G) To expressly incorporate changes in the Internal Revenue Code since March 27, 2020, into Ohio law and to declare an emergency.
Current Status: 2/9/2021 - House Ways and Means, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-48>
- HB74** **ENACT FY22-23 TRANSPORTATION BUDGET** (OELSLAGER S) To make appropriations for programs related to transportation and public safety for the biennium beginning July 1, 2021, and ending June 30, 2023, and to provide authorization and conditions for the operation of those programs.
Current Status: 3/31/2021 - **SIGNED BY GOVERNOR**; eff. immediately
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-74>
- HB86** **BONUS DEPRECIATION ADJUSTMENTS FOR CERTAIN TAXPAYERS** (ROEMER B) To temporarily suspend provisions relating to bonus depreciation adjustments for a taxpayer with a federal net operating loss.
Current Status: 5/25/2021 - House Ways and Means, (Second Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-86>
- HB110** **OPERATING BUDGET** (OELSLAGER S) To make operating appropriations for the biennium beginning July 1, 2021, and ending June 30, 2023, to levy taxes, and to provide authorization and conditions for the operation of state programs.
Current Status: 6/15/2021 - , (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-110>
- HB124** **EQUALIZE PASS-THROUGH ENTITY WITHHOLDING** (ROEMER B, YOUNG B) To equalize the pass-through entity withholding and the business income tax rate.
Current Status: 2/23/2021 - House Ways and Means, (First Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-124>

- HB157** **MODIFY MUNICIPAL INCOME TAX RULES - COVID WFH** (JORDAN K, EDWARDS J) To amend Section 29 of H.B. 197 of the 133rd General Assembly to modify municipal income tax employer withholding rules for COVID-19-related work-from-home employees.
Current Status: 6/2/2021 - Referred to Committee Senate Ways and Means
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-157>
- HB165** **ALLOW TEMPORARY TAX CREDIT FOR SALE OF CERTAIN MOTOR FUEL** (MCCLAIN R) To temporarily authorize a nonrefundable tax credit for the retail sale of high-ethanol blend motor fuel.
Current Status: 6/15/2021 - House Ways and Means, (Fourth Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-165>
- HB167** **PROVIDE RENT, UTILITY ASSISTANCE** (OELSLAGER S) To provide rent and utility assistance and to make an appropriation.
Current Status: 5/11/2021 - **SIGNED BY GOVERNOR**; eff. immediately
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-167>
- HB168** **PROVIDE GRANTS - BUSINESSES, FAIRS, CHILD CARE, VETERAN HOMES** (FRAIZER M, LOYCHIK M) To provide grants to businesses, local fairs, child care providers, and veterans homes and to make an appropriation.
Current Status: 4/21/2021 - Referred to Committee Senate Finance
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-168>
- HB169** **PROVIDE GRANTS - BARS, RESTAURANTS, LODGING INDUSTRY** (CUTRONA A, SWEARINGEN D) To provide grants to bars and restaurants and the lodging industry and to make an appropriation.
Current Status: 4/21/2021 - Referred to Committee Senate Finance
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-169>
- HB174** **AUTHORIZE INCOME TAX DEDUCTION FOR CERTAIN CAPITAL GAINS** (CROSS J, LANESE L) To authorize an income tax deduction for capital gains received by investors in certain Ohio-based venture capital operating companies.
Current Status: 3/24/2021 - House Economic and Workforce Development, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-174>
- HB197** **INCOME TAX CREDIT - TRAINING COMMERCIAL VEHICLE OPERATOR** (STOLTZFUS R, CREECH R) To authorize an income tax credit for an employer's expenses to train a commercial vehicle operator.
Current Status: 6/8/2021 - **REPORTED OUT AS AMENDED**, House Ways and Means, (Fourth Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-197>

- HB234 REPEAL THE COMMERCIAL ACTIVITY TAX (GROSS J, MCCLAIN R)** To repeal the commercial activity tax with a five-year phase-out.
Current Status: 4/14/2021 - Referred to Committee House Ways and Means
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-234>
- HB264 MODIFY TAX RULE FOR EMPLOYEES OF TEMPORARY WORKSITE (SMITH M, SOBECKI L)** To amend Section 29 of H.B. 197 of the 133rd General Assembly to modify the municipal income tax withholding rule for employees working at a temporary worksite.
Current Status: 4/22/2021 - Referred to Committee House Ways and Means
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-264>
- HB292 TEMPORARY SALES TAX EXEMPTION FOR ELECTRIC VEHICLES (SOBECKI L, CUTRONA A)** To create a temporary sales tax exemption for electric vehicle production parts and to create the Electric Vehicle Commission.
Current Status: 5/11/2021 - Referred to Committee House Transportation and Public Safety
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-292>
- HCR8 CREATE JOINT SELECT COMMITTEE ON UC FRAUD (GRENDALL D)** To create the Joint Select Investigative Committee on Unemployment Compensation Fraud.
Current Status: 3/24/2021 - Referred to Committee House Government Oversight
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HCR-8>
- HR35 CREATE HOUSE SELECT COMMITTEE ON PROPERTY TAX EDUCATION, REFORM (TROY D)** To authorize the creation of the temporary House Select Committee on Property Tax Education and Reform.
Current Status: 5/18/2021 - House Ways and Means, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HR-35>
- SB18 INTERNAL REVENUE CODE (ROEGNER K, SCHAFFER T)** To expressly incorporate changes in the Internal Revenue Code since March 27, 2020, into Ohio law, to exclude certain loan amounts forgiven under federal law from the commercial activity tax, to authorize a commercial activity tax exclusion for Bureau of Workers' Compensation dividends paid to employers, and to declare an emergency.
Current Status: 3/31/2021 - **SIGNED BY GOVERNOR**; eff. immediately
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-18>
- SB19 WETLAND MITIGATION-PROPERTY TAX (SCHAFFER T)** To establish a property tax exemption for certain property used for wetland mitigation projects.
Current Status: 6/15/2021 - House Ways and Means, (Fourth Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-19>

- SB45** **TAX INDUCEMENTS CERTAIN BUSINESSES** (PETERSON B, KUNZE S) To enhance state and local tax inducements for businesses making substantial fixed asset and employment investments and their suppliers.
Current Status: 2/23/2021 - Senate Ways and Means, (Third Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-45>
- SB62** **COMMERCE AND TAXATION** (HACKETT R) Relating to commerce and taxation.
Current Status: 3/23/2021 - Senate Financial Institutions and Technology, (Third Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-62>
- SB97** **MUNICIPAL INCOME TAX-WORK FROM HOME** (ROEGNER K) To modify municipal income tax employer withholding rules for COVID-19-related work-from-home employees
Current Status: 5/12/2021 - Senate Ways and Means, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-97>
- SB98** **SALES TAX EXEMPTION** (ANTANI N) To exempt from sales and use tax things used primarily to move completed manufactured products or general merchandise.
Current Status: 3/3/2021 - Referred to Committee Senate Ways and Means
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-98>
- SB108** **PANDEMIC RELIEF-BARS, RESTAURANTS, LODGING** (HUFFMAN S, ROMANCHUK M) To provide grants to bars and restaurants and the lodging industry and to make an appropriation.
Current Status: 5/17/2021 - **SIGNED BY GOVERNOR**; eff. 90 days
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-108>
- SB109** **PANDEMIC RELIEF-BUSINESS, CHILD CARE, VETERANS** (MANNING N, RULLI M) To provide grants to businesses, local fairs, child care providers, and veterans homes and to make an appropriation.
Current Status: 5/17/2021 - **SIGNED BY GOVERNOR**; eff. 90 days
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-109>
- SB110** **RENT, UTILITY ASSISTANCE** (O'BRIEN S, WILSON S) To provide rent and utility assistance and to make an appropriation.
Current Status: 3/24/2021 - Referred to Committee House Finance
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-110>
- SB114** **SALES TAX EXEMPTION-DIAPERS** (ANTANI N) To exempt from sales and use tax the sale of child and adult diapers.
Current Status: 3/31/2021 - Senate Ways and Means, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-114>

SB171

REGULATE SALE OF BRINE FROM OIL/GAS OPERATIONS (HOAGLAND F, RULLI M) To establish conditions and requirements for the sale of brine from oil or gas operations as a commodity and to exempt that commodity from requirements otherwise applicable to brine.

Current Status: 5/25/2021 - Senate Agriculture and Natural Resources, (Second Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-171>

SR21

URGE CONGRESS-INCREASE PANDEMIC UNEMPLOYMENT (HACKETT R, REINEKE W) Urge Congress increase pandemic unemployment program security.

Current Status: 3/10/2021 - **ADOPTED BY SENATE**; Vote 33-0

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SR-21>

TO: OMA Safety and Workers' Compensation Committee
FROM: Rob Brundrett / Rachael Carl
RE: Safety & Workers' Compensation Public Policy Report
DATE: June 15, 2021

Overview

OSHA was busy last week releasing the long-awaited COVID-19 Emergency Temporary Standard (ETS) – which only applies to the health care industry – and issuing updated guidance. The new guidance comes on the heels of the latest recommendations from the CDC. Except for workplace settings covered by OSHA's ETS, most employers no longer need to take steps to protect their workers from COVID-19 exposure in the workplace where all employees are fully vaccinated. Employers should still take steps to protect unvaccinated or otherwise at-risk workers in their workplaces.

Also keeping busy, the House decided to not concur on the Senate's changes to the BWC's operating budget. Although the Industrial Commission's budget was recently signed by the governor, the BWC's budget hit a snag. The fight brews on over what information journalists should have access to regarding workers' compensation claimants. The BWC budget will now head to conference committee and hopefully finish up before the June 30th deadline.

Lastly, the BWC is working on a new rule to exclude COVID-19 claims from an employer's experience rating. At the end of May, the Bureau's Actuary Committee had a first reading of a proposed rule change. In an executive summary provided by the Bureau, they noted that experience rating is intended to measure an employer's success in maintaining a safe workplace. Further stating that using COVID-19 claims as a predictor of safety practices and future claims is unreliable and that when catastrophes (such as a pandemic) arise, they generally have been excluded in the experience rating process. The BWC is expected to have another reading this month and then send the rule through the formal rule-making process with JCARR.

Legislation and Rules

House Bill 17 – Workers' Compensation in Firefighter Cancer Claims

This bill would make changes to how compensation and benefits are paid out to a firefighter who contracted cancer. If the claim is paid from the state insurance fund, it shall be paid from the surplus fund account. If it is paid by a self-insuring employer, the amount would be paid from compensation that the employer reports to the Bureau of Workers' Compensation Administrator. So far, the bill has received one hearing in the House Insurance Committee.

House Bill 75 – State's Bureau of Workers' Compensation Budget

Picking up some amendments in the House, House Bill 75 includes several noteworthy reforms that have the OMA's support, including:

- Reducing the statute of limitations for occupational disease claims from two years to one year;
- Preventing claimants who were previously denied a permanent disability benefit from reapplying unless there is a change in circumstances; and
- Aligning permanent partial disability filing timelines for temporary total disability compensation and for claims where wages are paid in lieu of compensation.

Unfortunately, the bill also picked up some amendments in the Senate – one of which created some ruckus. The Senate included an amendment to walk back a provision in another recently passed bill dealing with public records. The provision would have allowed journalists to access the names of workers' compensation claimants, but the Senate decided that was too much.

The bill will now head to conference committee to settle the difference.

House Bill 76 – State's Industrial Commission Budget

As expected, the Commission's requested budget included no big policy changes nor big increases in appropriation. The bill was signed by the governor earlier this month.

House Bill 311 – Expand EEG/TMS Pilot Program

House Bill 311 is a companion bill to Senate Bill 153 (see more description below), and has yet to receive any hearings.

Senate Bill 66 – Career Pathways Apprentice Program

The bill would establish the Career Pathways Apprentice Program. The program would create partnerships between schools, businesses, and communities to develop career pathways for apprenticeships in various fields, including manufacturing, information technology, and healthcare, among others. The bill has had one hearing in the Senate Workforce & Higher Education Committee.

Senate Bill 69 – Noncredit Career-Technical Programs

This bill would require that career or technical certification programs offered at a community college be counted as a credit toward an associate degree in a related field. The Chancellor of Higher Education would establish the policies necessary for awarding those credits. The bill has had one hearing in the Senate Workforce & Higher Education Committee.

Senate Bill 153 – Expand EEG/TMS Pilot Program

Senate Bill 153 would allow for the continuation and expansion of the Transcranial Magnetic Stimulation (TMS) program funded in the state's previous operating budget. The expansion includes the requirement that EEG be used in combination with TMS treatments and allows for more participants to use this type of treatment. In a topic near and dear to the bill sponsor's heart, this pilot program was created to help veterans and first responders who suffer from PTSD.

The bill passed out of the Senate earlier this month and has also been amended into House Bill 110, the state's operating budget.

BWC Agency Notes

BWC True-Up Begins July 1

Beginning July 1, the Bureau of Workers' Compensation (BWC) will require Ohio employers to reconcile their actual payroll for the prior policy year, as well as any differences in premium paid.

If your business has not already done so, the BWC is encouraging employers to review their payroll estimates for the current policy year to avoid surprises in the amount they might owe on premiums.

BWC Studying Mutualizing COVID-19 Claim Costs

This week, the Bureau of Workers' Compensation's (BWC) Actuarial Committee had a first reading of a proposed rule change to exclude COVID-19 claims costs from an employer's experience rating calculation.

An executive summary provided by the bureau noted that experience rating is intended to measure an employer's success in maintaining a safe workplace. Further stating that using COVID-19 claims as an indicator of safety and a predictor of future claims is unreliable and that when catastrophes (e.g. a pandemic) arise, they generally have been excluded from the experience rating process.

BWC Industry-Specific Safety Program Changes Coming July 1

The BWC's Division of Safety and Hygiene (DSH) has modified the Industry-Specific Safety Program (ISSP) — a program to encourage employers to use the DSH's array of safety services in exchange for a 3% credit — effective July 1.

Following a DSH safety and health consultation, the employer will now complete DSH follow-up activities before the end of the program year to earn loss prevention activity credits. Follow-up activities may include responding to a DSH action plan or completing a post-training survey. Previously, employers completed a post-consultation survey (SH-29).

BWC Enhances Transitional Work Program

The Bureau of Workers' Compensation (BWC) has enhanced its Transitional Work Grant (TWG) program for employers that actively participate in the recovery and return to work of their employees.

Beginning June 1, employers became eligible for a TWG every five years (instead of only one time). The 3:1 grant match reimbursement requirement has been removed. Grant reimbursement is now 100% of the submitted invoice up to the employer's maximum awarded grant, which is based on number of employees.

Unused grant monies are referred to as Implementation Funds and are available to use until the grant expires. Implementation funds can be used to purchase services needed to facilitate the transitional work program, including health and safety services related to COVID-19.

Safety Issues

OSHA Updates COVID-19 Workplace Guidance

OSHA has released new guidance in response to the CDC's recently revised recommendations for vaccinated and unvaccinated workers. The changes focus protections on unvaccinated and otherwise at-risk workers.

OSHA Finalizes 'Top 10' Citations List

OSHA recently published its "Top 10 Most Frequently Cited Standards" for 2020. The annual list is a good reminder for employers and managers to re-evaluate their workplace safety practices. Meanwhile, OSHA also recently updated its enforcement summary for 2020. Citations include:

- Fall Protection
- Hazard Communication Standard

- Respiratory Protection
- Scaffolding
- Ladders
- Control of Hazardous Energy (lockout/tagout)
- Powered Industrial Trucks
- Fall Protection–Training Requirements
- Eye and Face Protection
- Machinery and Machine Guarding



OSHA National News Release

U.S. Department of Labor

June 10, 2021

**US Department of Labor's OSHA issues emergency temporary standard
to protect health care workers from the coronavirus**
OSHA also releases new guidance for all industries

WASHINGTON, DC – The U.S. Department of Labor's Occupational Safety and Health Administration has announced it will issue an [emergency temporary standard](#) to protect healthcare workers from contracting coronavirus. The standard focuses on healthcare workers most likely to have contact with someone infected with the virus. OSHA announced the new standard alongside new general industry guidance, both of which are aligned with Centers for Disease Control and Prevention guidance

"Too many of our frontline healthcare workers continue to be at high risk of contracting the coronavirus," said U.S. Secretary of Labor Marty Walsh. "As I said when I came to the department, we must follow the science. This standard follows the science, and will provide increased protections for those whose health is at heightened risk from coronavirus while they provide us with critical healthcare services. Given the pace of vaccinations, this standard, along with the guidance OSHA, the CDC and other agencies have released, will help us protect frontline healthcare workers and end this pandemic once and for all."

The emergency temporary standard establishes new requirements for settings where employees provide healthcare or health care support services, including skilled nursing homes and home healthcare, with some exemptions for healthcare providers who screen out patients who may have COVID-19. OSHA will update the standard, if necessary, to align with CDC guidelines and changes in the pandemic.

"This standard is necessary to give our healthcare workers deeply needed protections," said Acting Assistant Secretary of Labor for Occupational Safety and Health Jim Frederick. "This tailored standard allows OSHA to help the workers most in danger of contracting the virus, while the updated guidance will give other businesses across the country the information they need to help protect unvaccinated workers and continue mitigating spread in the workplace."

In addition to the healthcare-focused ETS, OSHA is issuing [updated guidance](#) to help employers and workers in other industries protect workers who are still not vaccinated, with a special emphasis on other industries noted for prolonged close-contacts like meat processing, manufacturing, seafood, and grocery and high-volume retail.

The health care emergency temporary standard is aimed at protecting workers facing the highest coronavirus hazards—those working in health care settings where suspected or confirmed coronavirus patients are treated. This includes employees in hospitals, nursing homes, and assisted living facilities; emergency responders; home health care workers; and employees in ambulatory care settings where suspected or confirmed coronavirus patients are treated.

The standard will require non-exempt facilities to conduct a hazard assessment and have a written plan to mitigate virus spread, and requires healthcare employers to provide some employees with N95 respirators or other personal protective equipment. In addition, covered employers must ensure 6 feet of distance between workers. In situations where this is not possible, employers should erect barriers between employees where feasible.

The standard also requires covered employees to provide workers with paid time off to get vaccinated and to recover from any side effects. Covered employees who have coronavirus or who may be contagious must work remotely or otherwise be separated from other workers if possible, or be given paid time off up to \$1400 per week. For most businesses with fewer than 500 employees, tax credits in the American Rescue Plan may be reimbursed through these provisions.

The ETS exempts fully vaccinated workers from masking, distancing and barrier requirements when in well-defined areas where there is no reasonable expectation that any person will be present with suspected or confirmed coronavirus.

The ETS is effective immediately upon publication in the Federal Register. Employers must comply with most provisions within 14 days and with the remaining provisions within 30 days. OSHA will use its enforcement discretion to avoid citing employers who miss a compliance deadline but are making a good faith effort to comply with the ETS. OSHA will continue to monitor trends in coronavirus transmission.

Under the Occupational Safety and Health Act of 1970, employers are responsible for providing safe and healthful workplaces for their employees. OSHA's role is to help ensure these conditions for America's workers by setting and enforcing standards, and providing training, education and assistance. [Learn more about OSHA.](#)

###

Media Contact:

Denisha Braxton, 202-693-5061, braxton.denisha.i@dol.gov
Amanda McClure, 202-693-4675, mcclure.amanda.c@dol.gov

Release Number: 21-355-NAT

U.S. Department of Labor news materials are accessible at <http://www.dol.gov>. The department's [Reasonable Accommodation Resource Center](#) converts departmental information and documents into alternative formats, which include Braille and large print. For alternative format requests, please contact the department at (202) 693-7828 (voice) or (800) 877-8339 (federal relay).

Workers' Compensation Legislation
Prepared by: The Ohio Manufacturers' Association
Report created on June 14, 2021

- HB17** **WORKERS' COMPENSATION IN FIREFIGHTER CANCER CLAIMS** (PATTON T) Regarding charging workers' compensation experience in firefighter cancer claims.
Current Status: 3/10/2021 - House Insurance, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-17>
- HB75** **ENACT FY22-23 WORKERS' COMPENSATION BUDGET** (OELSLAGER S) To make appropriations for the Bureau of Workers' Compensation for the biennium beginning July 1, 2021, and ending June 30, 2023, to provide authorization and conditions for the operation of the Bureau's programs, and to make changes to the Workers' Compensation Law.
Current Status: 6/10/2021 - Consideration of Senate Amendments; House Does Not Concur, Vote 34-60
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-75>
- HB76** **ENACT FY22-23 INDUSTRIAL COMMISSION BUDGET** (OELSLAGER S) To make appropriations for the Industrial Commission for the biennium beginning July 1, 2021, and ending June 30, 2023, and to provide authorization and conditions for the operation of Commission programs.
Current Status: 6/2/2021 - **SIGNED BY GOVERNOR**; eff. July 1, 2021
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-76>
- HB311** **EXPAND EEG/ TMS PILOT PROGRAM** (GHANBARI H, MILLER A) To expand the Electroencephalogram (EEG) Transcranial Magnetic Stimulation (TMS) Pilot Program and to make an appropriation.
Current Status: 5/19/2021 - Referred to Committee House Finance
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-311>
- SB66** **CAREER PATHWAYS APPRENTICE PROGRAM** (WILLIAMS S) To establish a career pathways apprentice program.
Current Status: 3/10/2021 - Senate Workforce and Higher Education, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-66>
- SB69** **NONCREDIT CAREER-TECHNICAL PROGRAMS** (WILLIAMS S) Regarding noncredit career-technical programs at community colleges and state community colleges.
Current Status: 3/24/2021 - Senate Workforce and Higher Education, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-69>
- SB153** **TMS PILOT PROGRAM** (HOAGLAND F) To expand the Electroencephalogram Transcranial Magnetic Stimulation Pilot Program and to make an appropriation.
Current Status: 6/9/2021 - **PASSED BY SENATE**; Vote 33-0
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-153>

TO: OMA Government Affairs Committee
FROM: Rob Brundrett / Rachael Carl
RE: Environment Public Policy Report
DATE: June 15, 2021

Overview

Ohio EPA continues to remain relatively silent on major policy pushes at the statehouse. The DeWine administration remains focused on H2Ohio as its major environmental priority.

State agency staff is expected to return to the office now that state health orders are being revised and eliminated. With the return to work it is expected to see an increase in onsite state environmental audits.

Ohio EPA has not asked for any major changes in the state budget nor is any expected. Both Cleveland and Cincinnati are in nonattainment for the 2015 ozone standard. Ohio EPA is working and reviewing regulations for the escalated restrictions that come with the designation.

General Assembly News and Legislation

Senate Bill 9 – Regulatory Reform

SB 9 is the regulatory reform bill. Portions of the bill were passed in the 133rd GA's operating budget bill. The current bill requires an inventory of all regulatory restrictions from agencies in Ohio. The agencies then must reduce these rules by 30% by 2025. The OMA continues to try and work with the bill sponsors on an amendment that would make federal program requirements exempt from the rule inventory. The concern is if Ohio eliminates the program requirements, Ohio manufacturers would then be regulated by the federal agencies as opposed to the local Ohio agencies. Initial conversations with the House committee have been good.

Senate Bill 84 – Clean Ohio Revitalization Program

SB 84 expands the list of applicants eligible to apply for Clean Ohio Revitalization Fund grants to include a county land reutilization corporation. It also directs deferred payments the state receives from JobsOhio to the Clean Ohio Revitalization Fund. The bill has gotten some press in the past week and has had two hearings in the Senate.

House Bill 110 - State Operating Budget

Much of the legislative bandwidth is consumed by the state operating budget. One of the major goals outlined by the DeWine administration in the bill's introduction was a continuation of the H2Ohio program. The Governor's team set aside \$240 million in HB 110 for the program. This was a \$60 million increase over the previous budget.

The House supported the majority the administration's request for the EPA budget. Both chambers have provided funds for continuing H2Ohio projects. The House restored the provision that requires Ohio EPA fees need to be reauthorized every couple of years.

Finally, the Senate extended the state's preemption laws on auxiliary containers. That provision, if it survives conference committee, is expected to meet the Governor's veto pen.

House Bill 143 – Clean Ohio Program

HB 143 is the companion bill to SB 84. It has not had any hearings yet in the House.

Senate Bill 143 – Adopt Aluminum MCL

SB 143 would require Ohio EPA to adopt a maximum contaminant level (MCL) for aluminum in drinking water of 0.2 milligrams per liter. The agency would need to consider factors such as other state MCLs and studies. The bill has had three hearings in the House.

House Bill 155 – Land Reutilization Nuisance Abatement Program

HB 155 creates the Land Reutilization Nuisance Abatement Program to fund the abatement of nuisance structures on blighted property. It provides \$100 million over the biennium. The bill is not expected to move out of committee.

House Bill 158 – Prohibit Use of Certain Firefighting Foam

SB 158 supported by the chemical industry would prohibit the use of Class B firefighting foam containing intentionally added PFAS chemicals for testing purposes (unless certain measures are implemented) or for training purposes. Ohio has seen a surge in PFAS interest including a statewide drinking water assessment. This bill is one way help alleviate the release of PFAS chemicals, when they are not needed. The bill was passed by the full House and is expected to have its first hearing in the Senate this week.

House Bill 175 – Deregulate Certain Ephemeral Water Features

HB 175 is set for its third hearing this week. The bill excludes ephemeral features from water pollution control programs, including the section 401 water quality certification program. It also specifies that an ephemeral feature is a surface water flowing or pooling only in direct response to precipitation, such as rain or snow. Finally, the bill eliminates the section 401 water quality certification review fee that applies to ephemeral streams (currently \$5 per linear foot of stream to be impacted, or \$200, whichever is greater). These types of water issues continue to spring up in the General Assembly and are garnering more national attention.

In a rare step, Ohio EPA Director Laurie Stevenson testified in opposition to the bill.

Senate Joint Resolution 2 – Clean Water Bonds

SJR2 proposes to submit to the Ohio voters for approval at the November general election, a constitutional amendment authorizing the state to issue up to \$1 billion in general obligation bonds for clean water improvements; up to \$100 million in bonds may be issued per year, in addition to amounts previously authorized but unissued. It has had no hearings.

Regulations

Cincinnati and Cleveland in Non- Attainment for Ozone and Ohio EPA Looks to Make Changes to Nitrogen Oxide Emission Rules as a Result

As expected, the Cincinnati and Cleveland non-attainment areas did not meet the ozone standard by the end of the 2020 ozone season. In addition, neither area qualified for the one-year extension. In anticipation of a “bump-up” to moderate non-attainment, Ohio EPA has issued an “Early Stakeholder Outreach” regarding emissions of nitrogen oxides.

The Cleveland and Cincinnati areas are currently classified as marginal non-attainment areas under the 2015 ozone standard. The areas are required to meet the ozone standard by Aug. 3, 2021 based on monitoring data collected during the 2018-2020 ozone monitoring seasons, which extend from March 1 to Oct. 31 each year. Based on ozone monitoring data through Oct. 31, 2020, Ohio EPA anticipates that the Cleveland and Cincinnati areas will fail to meet the ozone standard by Aug. 3, 2021, as required.

OMA to California Environmental Office: No to Prop 65 Amendments

The OMA joined organizations across the country this week in writing the state of California to ask for the withdrawal of proposed amendments to labeling requirements under Prop. 65.

The letter said: “To ... ensure that the supply chain is not disrupted at this critical time, the Office of Environmental Health Hazard Assessment should withdraw the misguided proposal to amend Proposition 65 short-form warning requirements.”

OMA Submits Comments on Great Miami River Loading Analysis Plan

The OMA submitted comments on Ohio EPA’s Draft Loading Analysis Plan – Lower Great Miami River and Selected Tributaries Watershed. The draft plan presents the proposed approach of Ohio EPA for the Lower Great Miami River Total Maximum Daily Load (TMDL). The OMA focused its comments on the adaptive management approach and a tailored scope for future TMDLs.

Ohio EPA / U.S. EPA Agency News

Ohio EPA Completes PFAS Testing and New Federal Actions

At the end of last year Ohio EPA announced it had received the final test results for the presence of certain per- and polyfluoroalkyl substances (PFAS) in drinking water from public water systems, bringing to a close the agency’s statewide sampling initiative under Ohio’s PFAS Action Plan.

Ohio EPA Director Laurie Stevenson noted that roughly 94% of the nearly 1,550 public drinking water systems tested “revealed no detection of PFAS compounds,” while “low levels of PFAS compounds, well below the health advisory level, were detected in 6% of systems.” The testing found only two public water systems exceeding the state’s action level; those systems are being remedied by Ohio EPA.

At the federal level the outgoing Trump administration announced new steps to address per- and polyfluoroalkyl substances (PFAS). The agency released a final regulatory determination finding that the two best-studied chemicals in the family, PFOA and PFOS, should be regulated in drinking water, launching the years-long process of developing a Safe Drinking Water Act limit.

The EPA also proposed requiring drinking water utilities to test for 29 types of PFAS as part of the next round of mandatory, nationwide sampling that will occur between 2023 and 2025.

The U.S. EPA also recommended requiring many manufacturing sites, wastewater plants, and other facilities to monitor wastewater for PFAS, used by various industrial sectors to manufacture numerous products.

Last General Assembly Ohio saw a proposed bill establishing an MCL for certain PFAS chemicals in drinking water. That bill did not move, but new legislation and regulation is expected.

The OMA has created a working group to address PFAS-related issues and possible impacts to manufacturers. If you would like to learn more or participate, contact the OMA’s Rob Brundrett.

State AGs Sue Biden Administration Over ‘Social Costs’ of Greenhouse Gases

A dozen attorneys general — including Ohio AG Dave Yost — are suing the Biden administration for increasing the cost of greenhouse gas emissions. The group says only Congress has authority to boost the price tag, which has been raised from \$7 per metric ton to the Obama-era level of \$50 until the administration figures out what it considers the “social costs” of carbon dioxide, methane, and nitrous oxide emissions, according to TheHill.com.

The administration’s working group has established preliminary cost figures at about \$9.5 trillion a year. The lawsuit says the higher costs will cause serious harm to U.S. industry.

OMA Intervenes in Appeal of U.S. EPA’s Removal of Air Nuisance Rule

On Jan. 19, 2021, the Sierra Club, the Ohio Environmental Council, and two individuals filed a petition for review with the Sixth Circuit Court of Appeals, seeking review of U.S. EPA’s final rule removing the air pollution nuisance rule from Ohio’s State Implementation Plan (SIP).

The removal of the air pollution nuisance rule from Ohio’s SIP allows Ohio EPA to discontinue its practice of including a nuisance provision as a standard term and condition within each air permit it issues. In practice, the inclusion of the nuisance provision within Ohio EPA’s air permits allows for the filing of a citizen suit alleging that a facility is in violation of the nuisance provision, even if Ohio EPA determines the facility does not operate as a nuisance.

On Feb. 18, the OMA moved to intervene in the Sixth Circuit appeal in support of the EPA’s removal of the nuisance rule from Ohio’s SIP. The State of Ohio has also moved to intervene in support of the agency’s action.

Biden Administration Reverts to Obama-era Rules on Quantifying Impact of GHG Emissions

The White House Council on Environmental Quality has published a Federal Register Notice rescinding the Trump administration’s June 2019 “Draft National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions.” As explained by the National Association of Manufacturers, this action reinstates the Obama-era guidance directing federal agencies on how to measure greenhouse gas (GHG) emissions under the National Environmental Policy Act.

“As a result, substantial changes in how federal agencies weigh the impacts of GHG emissions and effects of climate change when issuing project approvals and making other major decisions are on the horizon,” wrote one law firm.

Find out more about what our regional offices are doing for environmental justice in your community!

Region 1 (CT, MA, ME, NH, RI, VT)
5 Post Office Square - Suite 100
Boston, MA 02109
Phone: 617-918-1111

Region 2 (NY, NJ, PR, VI)
290 Broadway, 26th Floor
New York, NY 10007
Phone: 212-637-3000

Region 3 (MD, DE, DC, PA, VA, WV)
1650 Arch Street
Philadelphia, PA 19103
Phone: 215-814-5000

Region 4 (AL, FL, GA, KY, MS, NC, SC, TN)
61 Forsyth Street, SW
Atlanta, GA 30303
Phone: 404-562-9900

Region 5 (IL, IN, MI, MN, OH, WI)
77 West Jackson Blvd. (MC T-175)
Chicago, IL 60604-3507
Phone: 312-353-2000

Region 6 (AR, LA, NM, OK, TX)
1445 Ross Ave, Suite 1200
Dallas, TX 75202-2733
Phone: 214-665-2200

Region 7 (IA, KS, MO, NE)
11201 Renner Blvd.
Kansas City, KS 66219
Phone: 913-551-7003

Region 8 (CO, MT, ND, SD, UT, WY)
1595 Wynkoop Street
Denver, CO 80202-1129
Phone: 303-312-6312

Region 9 (CA, AZ, HI, NV, Pacific Islands)
75 Hawthorne Street
San Francisco, CA 94105
Phone: 415-947-8000

Region 10 (AK, ID, OR, WA)
1200 Sixth Ave (MD-142)
Seattle, WA 98101
Phone: 206-553-1200

Tools and Products for Environmental Justice Action

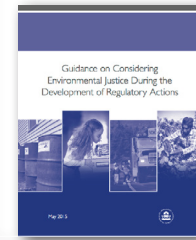
OEJ programs have established the following tools and resources to facilitate and support the incorporation of environmental justice considerations into agency actions. These cross-cutting efforts aim to create consistency and clarity around how EPA identifies and addresses environmental justice concerns.

EJSCREEN

To better meet the Agency's responsibilities related to the protection of public health and the environment, EPA has developed an environmental justice mapping and screening tool. EJSCREEN provides users with a nationally consistent dataset and approach for combining environmental and demographic indicators. EPA made this tool publicly available online to be more transparent about how we consider environmental justice in our work, assist our stakeholders in making informed decisions, and create a common starting point for dialogue with partners and the public. It can be found at: <https://www.epa.gov/ejscreen>.

Policy

EPA released two documents related to the consideration of environmental justice during rulemaking processes. The first of these, *Guidance on Considering Environmental Justice During the Development of an Action*, fosters an understanding and ensures consistency by EPA staff as they consider environmental justice during rulemaking actions. The second document, *Technical Guidance for Assessing Environmental Justice in Regulatory Analysis*, provides the technical underpinnings to fully consider environmental justice during rulemakings. Both documents can be found on <https://www.epa.gov/environmentaljustice>.

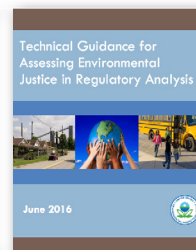


Training and Workshops

OEJ provides training and coordinates workshops for internal and external stakeholders on a broad range of issues relating to environmental justice and equitable development. OEJ ensures that Agency staff are trained on the most current data and resources available for the successful integration of environmental justice principles in their work. OEJ continually engages the public and other governmental partners to enhance the tools, methods, and practices for full integration and consideration of environmental justice concerns.

Science

Science plays an important role in providing a strong basis for action to protect the health and environment of populations that may be especially vulnerable to environmental hazards. EPA's new technical guidance for assessing environmental justice in regulatory actions was developed with participation from the public. OEJ is working with the Office of Research and Development to implement a new Environmental Justice Research Roadmap, which integrates environmental justice-related research across six National Research Programs. To read about these scientific developments, visit: <https://www.epa.gov/environmentaljustice/ej-2020-resources#documents>



Environmental Justice Legal Tools

The Legal Tools Development document, developed by EPA's Office of General Counsel, provides an overview of several discretionary legal authorities that EPA may consider using to more fully ensure that its programs, policies, and activities fully protect human health and the environment in minority and low-income communities. Some of the tools identified are already in use today; others have not yet been applied in an environmental justice setting. EJ Legal Tools is not a document prescribing when and how the Agency should undertake specific actions.



About the Office of Environmental Justice

For over 25 years, OEJ has worked to address the disproportionately adverse human health and environmental impacts in overburdened communities by integrating environmental justice considerations throughout the Agency.

Created in 1992, the Office of Environmental Justice (OEJ) coordinates Agency efforts to address the needs of vulnerable populations by decreasing environmental burdens, increasing environmental benefits, and working collaboratively to build healthy, sustainable communities. OEJ provides financial and technical assistance to communities working constructively and collaboratively to address environmental justice issues. The Office also works with local, state, and federal governments; tribal governments; community organizations; business and industry; and academia, to establish partnerships seeking to achieve protection from environmental and health hazards for all people regardless of race, color, national origin, or income.

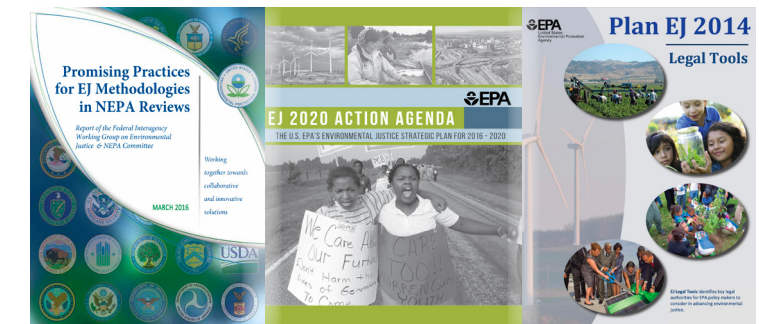
To accomplish this mission, OEJ has created the following programs, policies, and activities to assist communities in building their capacity; to better engage federal agencies to help them understand environmental justice issues; to incorporate the voices of communities into agency decisions; and to provide tools and resources for promoting the principles of environmental justice.

Strategic Opportunities for Advancing Environmental Justice

An integral part of the Agency's mission is to focus our attention on the environmental and public health challenges that face our nation's minority, low-income, tribal, and indigenous populations. Our approach is both collaborative and strategic – working with partners to create holistic solutions that make a difference in communities through better policies, tools, and application of resources. These approaches have been captured through successive EJ strategic plans for the Agency.

The first of these plans largely focused on the creation of better tools, policies, and guidance to fill important gaps. Currently we are focused on three main strategic areas.

- We strive to strengthen and expand our governmental partnerships, particularly focused on the proactive efforts of state, tribal, and local governments to advance environmental justice.
- We are also focused on the implementation and use of the tools and guidance created previously in a way that is measurable and significant.
- We endeavor to demonstrate measurable progress on significant issues, including reducing disparities in childhood blood lead levels and working to ensure that all people served by small community and tribal water systems have drinking water that meets applicable health-based standards.



For More Information

To find out more about the Office of Environmental Justice, please call 202-564-2515, or visit: www.epa.gov/environmentaljustice

Call the EJ Hotline for a direct way to provide feedback and ask questions related to environmental justice. Call the Hotline at 1-800-962-6215 or email ejhotline@epa.gov.

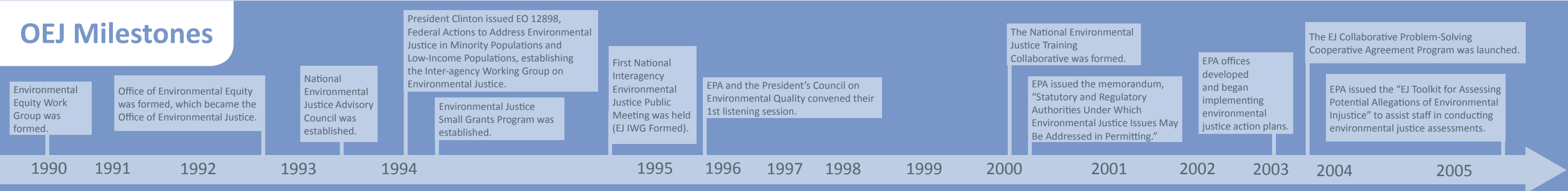
Pub Number
Date

Did You
Know?

November 2, 2017 marks the 25th anniversary of the creation of the EPA's Office of Environmental Justice.



OEJ Milestones



Environmental Justice Integration

The EPA actively seeks to incorporate the principles of environmental justice at all levels of the Agency. In addition to developing a strategic plan that directly support the integration of environmental justice considerations internally and with other federal officials, the Agency partners with federal, state, local, and tribal departments, as well as with other stakeholders in communities, business and industry, academia, etc., to assist in the consideration and incorporation of environmental justice into their practices and processes.

The Federal Interagency Working Group on Environmental Justice (EJ IWG)

The EJ IWG works to integrate the principles of environmental justice through the collaboration of 17 federal agencies and White House offices. Through the EJ IWG, the federal government assists overburdened and under-served communities in the implementation of comprehensive solutions to local environmental and human health challenges. The EJ IWG strives to ensure the federal government is: accessible to communities and other stakeholders working to address environmental justice concerns; aware of the environmental justice issues confronting communities to facilitate coordinated and collaborative federal assistance; and accountable to explain federal efforts to achieve environmental justice.

International Human Rights & Rights of Indigenous Peoples

EPA collaborates with the U.S. State Department and other federal agencies to engage other countries in sharing best practices and approaches to provide environmental and public health protection to vulnerable populations. EPA conducts this work to help fulfill the U.S. international human rights treaty obligations.

National Environmental Policy Act (NEPA)

NEPA provides a framework to foster effective, efficient, and consistent consideration of environmental justice for decision-making on federal actions that affect the environment and human health. The Promising Practices for Environmental Justice Methodologies in NEPA Reviews, a compilation of approaches gleaned from a 4-year review of agency practices by more than 200 federal NEPA practitioners, consists of nine sections that provide guiding principles and specific steps to consider during the NEPA process. Federal agencies are implementing the Promising Practices through a variety of mechanisms, including cross-department briefings and trainings, publications (e.g. articles, FAQs), and stakeholder engagement.

Title VI of the Civil Rights Act of 1964

In accordance with Title VI of the Civil Rights Act of 1964, each federal agency is required to ensure that all programs or activities receiving federal financial assistance do not discriminate against recipients in any way based on race, color, or national origin. OEJ works closely with the EPA's External Civil Rights Compliance Office to share best practices, lessons learned, approaches, and tools to help prevent or resolve potential civil rights complaints.

Direct Support

The EPA provides direct support through financial and technical assistance to vulnerable, low-income, minority, and tribal communities seeking to understand and develop holistic solutions to their environmental and public health challenges. These resources are allocated to improve the quality of the air, land, and water so that communities may live, work, play, pray, and go to school in healthier, more sustainable environments.

Financial Resources for Creating Healthy, Sustainable & Equitable Communities

OEJ works directly with communities to implement solutions that address local environmental and health concerns. The Office provides financial assistance through two opportunities:

- the Environmental Justice Small Grants Program, which supports small projects that assist communities as they develop their visions for revitalization.
- the Collaborative Problem-Solving Cooperative Agreement Program, which supports implementation level projects as communities seek to apply holistic solutions to their most pressing challenges.

These competitive grant opportunities support overburdened and underserved populations and create self-sustaining, community-based partnerships to improve local environments and public health. As of 2016, since its inception, the Office has awarded more than \$36 million in financial assistance to nearly 1500 community-based organizations.

To find out more about either of the financial assistance programs or the impact made by funded projects please visit: <https://www.epa.gov/environmentaljustice/environmental-justice-grants-funding-and-technical-assistance>

Technical Assistance Services for Communities (TASC) Program

Through the EPA's national Technical Assistance Services for Communities (TASC) program, communities enhance their ability to be meaningfully involved in the decision making process by learning how to better understand the science, regulations, and policies of environmental issues and EPA actions. The TASC program benefits communities by explaining technical findings and answering community questions, helping them understand complex environmental issues, and supporting their active roles in protecting healthy communities and advancing environmental protection. The TASC program can also provide opportunities for environmental education, bring diverse groups together, and strengthen community engagement.

TASC services can include: information assistance and expertise, community education, information assistance needs evaluation, and plan development other assistance to help community members work together to participate effectively in environmental decision-making.

Partnerships and Engagement

The EPA recognizes the necessity of meaningfully engaging stakeholders, such as through public participation, in an effort to sustain partnerships and involve those who are affected in the decision-making process so that future decisions may best serve the interests of our most vulnerable communities. The Agency continues to encourage public stakeholder engagement as a critical component of community revitalization.

National Environmental Justice Advisory Council (NEJAC)

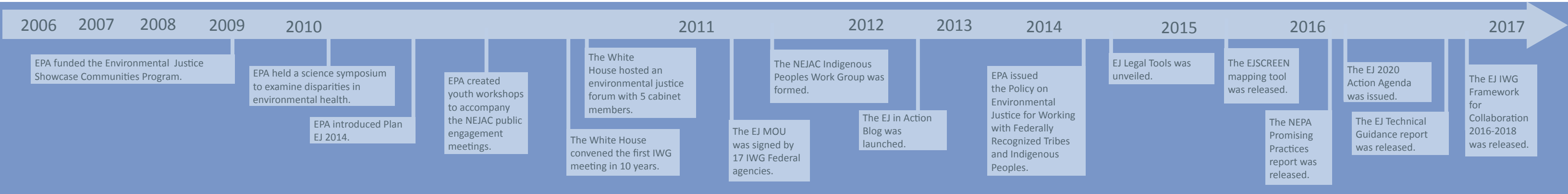
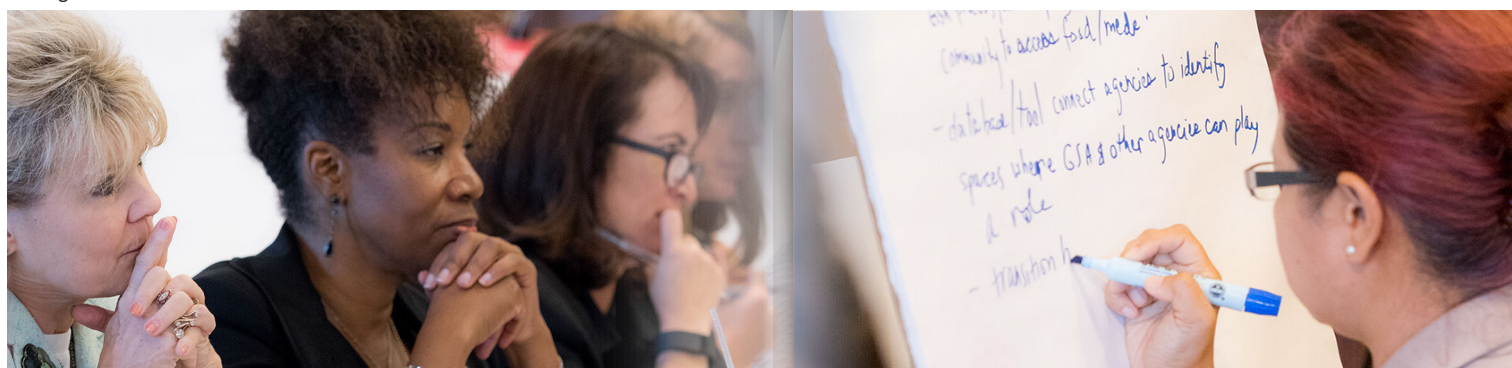
The mission of NEJAC is to provide independent advice and recommendations to the EPA Administrator about broad, crosscutting issues related to environmental justice. NEJAC also holds public meetings to receive comments, questions, and recommendations regarding environmental justice issues. Since 1993, NEJAC has developed dozens of recommendation reports and advice letters to help the agency better address the needs of disadvantaged and underserved communities.

To read NEJAC's reports or the twenty-year retrospective of its activities and impact, visit: <https://www.epa.gov/environmentaljustice/nejac>

Tribal Consultation & Indigenous People's Engagement

To engage more effectively with federally-recognized tribes and all other indigenous peoples on their priority environmental and public health concerns, the Agency is working to implement the EPA Policy on Environmental Justice for Working with Federally Recognized Tribes and Indigenous Peoples. Under the leadership of OEJ, EPA is implementing this Policy in coordination and collaboration with tribes, other federal agencies, states, indigenous organizations, and all other interested stakeholders, as well as addressing issues raised within the context of international human rights treaty obligations.

To learn more about OEJ's efforts on addressing tribal and indigenous environmental and public health issues, visit: <https://www.epa.gov/environmentaljustice/environmental-justice-tribes-and-indigenous-peoples>.





March 22, 2021

Submitted Via Electronic Mail (EPATMDL@epa.ohio.gov)

TMDL Program
Ohio EPA, Division of Surface Water
P.O. Box 1049
Columbus, Ohio 43216-1049

Re: Comments on the *Draft Loading Analysis Plan – Lower Great Miami River and Selected Tributaries Watershed*

Dear Sir or Madam,

On February 19, 2021, the Ohio Environmental Protection Agency (Ohio EPA) published the *Draft Loading Analysis Plan – Lower Great Miami River and Selected Tributaries Watershed* (Draft Plan) and opened a public comment period on the Draft Plan through March 22, 2021. The Draft Plan presents the proposed approach of Ohio EPA for the Lower Great Miami River (Lower GMR) Total Maximum Daily Load (TMDL). The Ohio Manufacturers' Association (OMA) appreciates the opportunity to submit these comments regarding the Draft Plan.

The OMA represents more than 1,300 members throughout Ohio. For more than 100 years, the OMA has supported reasonable, necessary, and transparent regulation that promotes the health and well-being of Ohio's citizens and the environment. Manufacturers across the state are actively engaged in protecting and improving the health of Ohio's important water resources, including lakes and reservoirs throughout the state, while supporting a vibrant and healthy economy. As detailed in these comments, a number of OMA members have a vital interest in, and the potential to have their operations impacted by, the Draft Plan, either directly through operations in the watershed or indirectly by the precedents potentially established by the Draft Plan.

1. Adaptive Management Approach

OMA supports the adaptive management approach to the Lower GMR that provides a methodical process for monitoring the improvements that result from the ongoing phosphorus load reductions by the two large publicly-owned treatment works (Dayton and Montgomery County) (POTWs). Once the POTWs complete the ongoing upgrades (expected to be summer 2022), the adaptive management approach must allow time for the river to experience the full benefits of this reduced nutrient enrichment before Ohio EPA performs further monitoring for purposes of evaluating attainment of water quality standards.

On this point, while we agree with Ohio EPA's general approach, we believe the LAP should be revised to clarify that these river improvements will likely continue for many years beyond the completion of the POTW upgrades in 2022 – and that follow-up sampling should not occur until a reasonable window has been afforded for improvements in the receiving water. As drafted, the

LAP appears to suggest that the benefits will be measurable in 2021 (which we gather is an error because it falls before the upgrades are even completed). In summary, we request that the LAP be updated to reflect that reassessment of the Lower GMR for aquatic life use will not occur until after the river has had sufficient time (in years) to allow the full benefits of the POTW load reductions to be reflected in the river conditions. (See LAP at 11.) As noted in the LAP, a TMDL will only be developed if necessary after this period of improvement and the new round of sampling and after development of a new LAP for the Lower GMR.

2. Tailored Scope of any Future TMDL

If, after adequate time for recovery, the Lower GMR still has segments exhibiting impairments, any future TMDL must be narrowly and carefully tailored as necessary to address only those specific impairments. The Lower GMR is a very large watershed that includes many segments that are already in full attainment of water quality standards, especially in the downstream reaches, and furthermore these reaches show signs of continued improvement in water quality. It would be arbitrary and unnecessary for any future TMDL to impose load reductions or other restrictions on dischargers to waters in the Lower GMR that are attaining the applicable water quality standards. Furthermore, any TMDL requirements in impaired segments must address the primary cause of the impairment before imposing load reductions on the small dischargers.

We appreciate that Ohio EPA will develop a new LAP in the future if impairments remain after the POTW upgrades are complete and the river has time to recover. We look forward to the opportunity to review and comment on future drafts of the LAP for the Lower GMR and reserve all rights to provide further comment at that time.

We very much appreciate the opportunity to comment on the Draft Plan. Please contact me at (614) 629-6814 or rbrundrett@ohiomfg.com should you have any questions regarding the OMA's comments.

Sincerely,



Rob Brundrett
Managing Director, Public Policy Services

cc: Julianne Kurdila, Chair, OMA Environment Committee
Christine Schirra, Esq., Bricker & Eckler LLP



March 15, 2021

VIA Electronic Mail (damico.genevieve@epa.gov)

United States Environmental Protection Agency, Region 5
Air Programs Branch (AR-18)
77 West Jackson Boulevard
Chicago, Illinois 60604

Re: Docket ID No. EPA-R05-OAR-2020-0559; Comments on EPA's Proposed Approval of Revision to Ohio's State Implementation Plan (SIP)

Dear Sir/Madam:

Pursuant to the Environmental Protection Agency's (EPA) notice issued on February 11, 2021 (86 FR 9039), The Ohio Manufacturers' Association (OMA) is hereby providing EPA with written comments to EPA's proposed rule to approve paragraph (F)(2)(b)(iv) of Ohio Revised Code (ORC) 3704.03 into Ohio's State Implementation Plan ("SIP") under the Clean Air Act.

The OMA is dedicated to protecting and growing manufacturing in Ohio. The OMA represents over 1,300 manufacturers in every industry throughout Ohio. For more than 100 years, the OMA has supported reasonable, necessary and transparent environmental regulations that promote the health and well-being of Ohio's citizens. The OMA appreciates the opportunity to comment on EPA's proposed rule.

The OMA's members are routinely impacted by Ohio EPA's air pollution control laws and rules, including the provisions governing air pollution control permits to install, and ORC 3704.03(F)(2)(b)(iv) in particular. The OMA fully supports EPA's proposal to approve paragraph (F)(2)(b)(iv) of ORC 3704.03 into Ohio's SIP.

The OMA appreciates the opportunity to comment, and thanks EPA for its consideration of these comments.

Sincerely,

A handwritten signature in blue ink that reads "Rob Brundrett". The signature is written in a cursive, flowing style.

Rob Brundrett
Managing Director, Public Policy Services

cc: Julianne Kurdila, Committee Chair
Christine Rideout Schirra, Esq.



June 10, 2021

Submitted Via Electronic Mail (EPATMDL@epa.ohio.gov)

Ohio EPA, Division of Surface Water
P.O. Box 1049
Columbus, Ohio 43216-1049

Re: Comments on the *Draft Quality Assurance Project Plan for the Biological and Water Quality Study of the Lower Great Miami River and Selected Tributaries Watershed*

Dear Sir or Madam,

On May 12, 2021, the Ohio Environmental Protection Agency (Ohio EPA) published the *Draft Quality Assurance Project Plan for the Biological and Water Quality Study of the Lower Great Miami River and Selected Tributaries Watershed* (Draft Plan) and opened a public comment period on the Draft Plan through June 11, 2021. The Draft Plan presents a proposed sampling plan to be undertaken this year by the Ohio EPA in the Lower Great Miami River (Lower GMR) and in the associated tributary of Dick's Creek. The proposal indicates that this sampling is within step one of a Total Maximum Daily Load (TMDL) development for the Lower GMR. The Ohio Manufacturers' Association (OMA) appreciates the opportunity to submit these comments regarding the Draft Plan.

The OMA represents more than 1,300 members throughout Ohio. For more than 100 years, OMA has supported reasonable, necessary, and transparent regulation that promotes the health and well-being of Ohio's citizens and the environment. Manufacturers across the state are actively engaged in protecting and improving the health of Ohio's important water resources, including rivers, lakes and reservoirs throughout the state, while supporting a vibrant and healthy economy. As detailed in these comments, a number of OMA members have a vital interest in, and the potential to have their operations impacted by, the Draft Plan, either directly through operations in the watershed or indirectly by the precedents potentially established by the Draft Plan.

1. Adaptive Management Approach

As we outlined in our March 22, 2021 comments on the Draft Loading Analysis Plan (LAP), OMA supports the adaptive management approach to the Lower GMR that provides a methodical process for monitoring the improvements that result from the ongoing phosphorus load reductions by the two large publicly-owned treatment works (Dayton and Montgomery County) (POTWs). Once the POTWs complete the ongoing upgrades (expected to be summer 2022), the adaptive management approach must allow time for the river to experience the full benefits of this reduced nutrient enrichment before Ohio EPA performs further monitoring for purposes of evaluating attainment of water quality standards.

Consistent with this approach, we believe that the proposed 2021 sampling in the Lower GMR outlined in the Draft Plan is premature and contrary to the adaptive management approach established by the LAP. The sampling would not generate functional assessment data, since the data would reflect conditions before the largest dischargers complete their upgrades and before the river has time to recover following those improvements. In summary, we request that the Draft Plan be updated to reflect that reassessment of the Lower GMR for attainment of water quality standards should not occur until after the river has had sufficient time (in years) to allow the full benefits of the POTW load reductions to be reflected in the river conditions. As noted in the LAP, a TMDL will only be developed if necessary after this period of improvement and a subsequent new round of sampling and after development of a new LAP for the Lower GMR.

2. Tailored Scope of any Future TMDL

As OMA discussed in our March 22, 2021 comments, if, after adequate time for recovery, the Lower GMR still has segments exhibiting impairments, any future TMDL must be narrowly and carefully tailored as necessary to address only those specific impairments. The Lower GMR is a very large watershed that includes many segments that are already in full attainment of water quality standards, especially in the downstream reaches, and furthermore these reaches show signs of continued improvement in water quality. It would be arbitrary and unnecessary for any future TMDL to impose load reductions or other restrictions on dischargers to waters in the Lower GMR that are attaining the applicable water quality standards. Furthermore, any TMDL requirements in impaired segments must address the primary cause of the impairment before imposing load reductions on the small dischargers.

Looking ahead, we appreciate that Ohio EPA will develop a new LAP in the future if impairments remain after the POTW upgrades are complete and the river has time to recover. We look forward to the opportunity to review and comment on future drafts of the LAP for the Lower GMR, should an LAP be necessary, and reserve all rights to provide further comment at that time.

We very much appreciate the opportunity to comment on the Draft Plan. Please contact me at (614) 629-6814 or rbrundrett@ohiomfg.com should you have any questions regarding these comments.

Sincerely,



Rob Brundrett
Managing Director, Public Policy Services

cc: Julianne Kurdila, Chair, OMA Environment Committee
Christine Schirra, Esq., Bricker & Eckler LLP

Environment Legislation
Prepared by: The Ohio Manufacturers' Association
Report created on June 14, 2021

- HB143** **REGARDS THE CLEAN OHIO PROGRAM (HILLYER B)** Relating to the Clean Ohio Program and to make an appropriation.
Current Status: 2/24/2021 - Referred to Committee House Finance
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-143>
- HB152** **REVISE LAW GOVERNING UNIT OPERATION (STEWART B, GINTER T)** To revise the law governing unit operation.
Current Status: 6/16/2021 - House Energy and Natural Resources, (Third Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-152>
- HB155** **LAND REUTILIZATION NUISANCE ABATEMENT PROGRAM (UPCHURCH T, SMITH M)** To create the Land Reutilization Nuisance Abatement Program and to make an appropriation.
Current Status: 6/16/2021 - House Economic and Workforce Development, (Fourth Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-155>
- HB158** **PROHIBIT USE OF CERTAIN FIREFIGHTING FOAM FOR TESTING/TRAINING (BALDRIDGE B)** To prohibit the use of class B firefighting foam containing intentionally added PFAS chemicals for testing and training purposes.
Current Status: 6/15/2021 - Senate Veterans and Public Safety, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-158>
- HB175** **DEREGULATE CERTAIN EPHEMERAL WATER FEATURES (HILLYER B)** To deregulate certain ephemeral water features under various water pollution control laws.
Current Status: 5/25/2021 - **BILL AMENDED**, House Agriculture and Conservation, (Fourth Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-175>
- HB251** **CREATE INDOOR MOLD PROGRAM (MILLER J, RUSSO A)** To require the Director of Health to establish an indoor mold program.
Current Status: 4/14/2021 - Referred to Committee House Health
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-251>
- HB300** **BAN OIL/NATURAL GAS EXTRACTION FROM LAKE ERIE BED (SKINDELL M)** To to ban the taking or removal of oil or natural gas from and under the bed of Lake Erie.
Current Status: 5/20/2021 - House Energy and Natural Resources, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-300>

- HR56** **URGE CONGRESS TO ELIMINATE E-CHECK PROGRAM** (PAVLIGA G, GRENDELL D) To respectfully urge the United States Congress and the President to amend the Federal Clean Air Act to eliminate the requirement to implement the E-Check Program and direct the Administrator of USEPA to begin new rule-making procedures under the Administrative Procedure Act to repeal and replace the 2015 National Ambient Air Quality Standards; to respectfully urge the United States Congress and the President to pass legislation to achieve improvements in air quality more efficiently while allowing companies to innovate and help the economy grow; to urge the Administrator of USEPA to alleviate burdensome requirements of the E-Check Program and the Clean Air Act if the United States Congress and the President fail to act; and to encourage OEPA to explore alternatives to E-Check in Ohio.
Current Status: 6/10/2021 - **ADOPTED BY HOUSE**; Vote 62-29
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HR-56>
- SB83** **BROWNFIELDS** (WILLIAMS S, RULLI M) To require the Ohio Environmental Protection Agency to conduct a study to determine where brownfield sites are located in this state and to make an appropriation.
Current Status: 6/15/2021 - House Agriculture and Conservation, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-83>
- SB84** **CLEAN OHIO REVITALIZATION FUND** (WILLIAMS S, RULLI M) To make changes to the law relating to the Clean Ohio Revitalization Fund.
Current Status: 3/23/2021 - Senate Agriculture and Natural Resources, (Second Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-84>
- SB143** **ADOPT MAXIMUM CONTAMINANT LEVEL-ALUMINUM** (O'BRIEN S) To require the Director of Environmental Protection to adopt a maximum contaminant level for aluminum in drinking water.
Current Status: 6/15/2021 - Senate Agriculture and Natural Resources, (Third Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-143>
- SB171** **REGULATE SALE OF BRINE FROM OIL/GAS OPERATIONS** (HOAGLAND F, RULLI M) To establish conditions and requirements for the sale of brine from oil or gas operations as a commodity and to exempt that commodity from requirements otherwise applicable to brine.
Current Status: 5/25/2021 - Senate Agriculture and Natural Resources, (Second Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-171>
- SJR2** **PERMIT BONDS-CLEAN WATER IMPROVEMENTS** (GAVARONE T, YUKO K) Proposing to enact Section 2t of Article VIII of the Constitution of the State of Ohio to permit the issuance of general obligation bonds to fund clean water improvements.
Current Status: 4/21/2021 - Referred to Committee Senate Finance
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SJR-2>

To: OMA Government Affairs Committee
From: Rob Brundrett / Rachael Carl
Re: Human Resources Public Policy Report
Date: June 15, 2021

Overview

Due to the COVID-19 pandemic, Ohio has found itself with unprecedented increases in unemployment. The unemployment compensation system blew through what little reserves it contained and Ohio made a request to borrow from the federal government to ensure that state payments would still be made to claim filers.

Recently, the Governor followed the OMA's lead in requesting the state to use a portion of federal American Rescue Plan Act dollars to pay off the nearly \$1.5 billion loan before interest begins accruing in January. But paying off the loan won't fix the solvency issue. The General Assembly has shown interest in addressing the long-term structural problems that have plagued the system since the 1970s.

In related news, the Governor recently announced that Ohio will be ending its participation in the federal PUA program, effective June 26th. The OMA had been lobbying for this change with the administration. While these additional benefits served their purpose at the height of the pandemic, announcing their conclusion is the right thing to do to protect Ohio's economy.

Also front of mind for the legislature is legislation related to the pandemic. One such bill, House Bill 248, would prohibit any public or private entity (i.e. businesses, schools, childcare facilities, universities, hospitals) from mandating or requesting an individual get any vaccine, or from requiring or requesting an individual's vaccine status. Many of these pieces of legislation are touted as freedom of choice bills; however, these anti-business bills essentially strip employers' rights to implement safety measures meant to protect their workforce, clients, and others.

General Assembly News and Legislation

House Bill 122 – Telehealth Services

This bill would expand telemedicine services to apply to more health care professionals. House Bill 122 would also prohibit health plans from imposing cost-sharing for telehealth services that exceed cost-sharing costs for in-person visits. The bill unanimously passed the House and is now pending before the Senate Health Committee.

House Bill 125 – Health Insurance Premiums/Benefits

The bill would codify in state law certain provisions within the federal Patient Protection and Affordable Care Act. Such provisions include limits on premium charges, cost-sharing limits, preexisting condition exclusions, etc. House Bill 125 has received one hearing in the House.

House Bill 135 – Health Insurance Cost-Sharing Practices

The bill would require insurers to apply amounts paid by or on behalf of covered individuals toward cost-sharing requirements. House Bill 135 passed out of the House Health Committee and is pending a House Floor vote.

House Bill 139 – Collection of Unemployment Overpayments

This bill would allow the Ohio Department of Job and Family Services to waive the collection of unemployment benefit overpayments (except for instances of fraud) if the overpayment was

made between March 15, 2020, and April 30, 2021. The bill has received one hearing in the House Insurance Committee.

House Bill 156 – Employment Practices for Retail Food Establishments

House Bill 156 would limit retail food establishment employers' hiring practices. It would specify terms like when an employer can hire additional employees, how far in advance a work schedule has to be given, when an employer has to pay an employee for a missed shift, etc. This bill has not received a hearing yet.

House Bill 160 – Health Care Cost Estimates

This bill would require certain health care providers and health plan issuers to provide to patients a cost estimate for nonemergency health care products, services, or procedures before each is provided. House Bill 160 has received one hearing in the House Insurance Committee.

House Bill 187 – Require Paystubs

The bill would require employers to provide their employees with pay stubs that include certain information from the pay period such as the total wages earned and any wage deductions or additions. House Bill 187 was reported out of House Commerce & Labor Committee and now awaits a House Floor vote.

House Bill 189 – Require Coverage of PANDAS, PANS

House Bill 189 would require health plan issuers and the Medicaid program to cover treatments and services related to Pediatric Autoimmune Neuropsychiatric Disorders Associated with Streptococcal Infections and Pediatric Acute-onset Neuropsychiatric Syndrome. The bill has had one hearing in the House Health Committee.

House Bill 232 – Ohio Equal Pay Act

This bill would require government entities to evaluate their employees' pay scales to ensure compensation is based on skills, responsibilities, and working conditions across job categories. It would also require vendors doing business with the state to obtain an Equal Pay Certificate, certifying that women at the companies are equal opportunities. The bill has not received any hearings so far.

House Bill 233 – Anonymous Reporting for Wage Discrimination

House Bill 233 would require the Ohio Civil Rights Commission to establish a system for individuals to anonymously report wage discrimination. It has not received any hearings yet.

House Bill 248 – Vaccine Choice Act

House Bill 248 would prohibit any public or private entity (i.e. businesses, schools, childcare facilities, universities, hospitals) from mandating or requesting an individual get any vaccine, not just the COVID-19 vaccine, or from requiring or requesting an individual's vaccine status. In essence, this bill would strip employers' rights to implement important safety measures meant to protect their workforce, clients, and others.

This bill has garnered quite a bit of attention recently. Even national news outlets have picked up the hearings on this bill, noting the misinformation and conspiracies that the proponents of the bill have been spreading. The OMA has joined a coalition of Ohio health care and business organizations to voice concerns to members of the House Health Committee over this bill.

House Bill 253 – Vaccine Passports

The bill would prohibit government entities from requiring individuals to show proof of their COVID-19 vaccination. House Bill 253 has received one hearing so far.

Senate Bill 47 – Overtime Pay Exemptions

The bill would exempt an employer from paying overtime wages when an employee is traveling to and from a worksite, when an employee is engaged in activities that are preliminary or postliminary to their principal activities, or when an employee is engaged in activities requiring insubstantial or insignificant period of time beyond their scheduled work hours. Senate Bill 47 has received three hearings in the Senate Ways & Means Committee.

Senate Bill 51 – Increase Minimum Wage

This bill would incrementally increase the state's minimum wage to \$15 per hour by 2025. It would also allow local authorities to establish higher minimum wage requirements.

Senate Bill 68 – Felony Conviction on Job Application

This bill would prohibit employers from asking on a job application any question on whether an applicant has been convicted or plead guilty to a felony.

Senate Bill 70 – Salary History on Job Application

The bill would prohibit employers from requesting prospective employee's wages or salary history.

Senate Bill 116 – Proof of Identity for Unemployment

In an effort to tamp down on fraud, Senate Bill 116 would require beneficiaries to provide proof of identification at a local employment office before their unemployment payments can begin. So far, this bill has received two hearings in the Senate.

Senate Bill 119 – Ohio Fairness Act

This bill would add sexual orientation and gender identity or expression to the state's anti-discrimination laws designed to protect people from unfair labor, housing, and other discrimination. Senate Bill 119 has yet to receive a first hearing.

Senate Bill 153 – Expand EEG/TMS Pilot Program

Senate Bill 153 would allow for the continuation and expansion of the Transcranial Magnetic Stimulation (TMS) program funded in the state's previous operating budget. The expansion includes the requirement that EEG be used in combination with TMS treatments and allows for more participants to use this type of treatment. In a topic near and dear to the bill sponsor's heart, this pilot program was created to help veterans and first responders who suffer from PTSD.

The bill passed out of the Senate earlier this month and has also been amended into House Bill 110, the state's operating budget.

Workforce Services

The OMA continues to remain heavily involved in developing a manufacturing workforce for the future. OMA's Workforce Roadmap for 2021 is attached. If your company is looking to engage on workforce please reach out to OMA staff.

TechCred

Through the first eight rounds of funding, 1,310 Ohio employers have been awarded, supporting 23,723 technology-focused credentials to be earned by Ohio employees. The majority of approved applicants have been manufacturers.

Sector Partnership Grants

Partnership Grants are funded for both years in the proposed budget. Last year, the state only awarded one year of grants due to funding issues with COVID-19. Eight OMA-endorsed sector partnerships received grants totaling more than half of the funding awarded.

Manufacturing Mentorship Program

Late last year, Ohio's long-awaited Manufacturing Mentorship Program went live. Under the program, which was driven by the OMA and created in the previous state operating budget (House Bill 166), Ohio manufacturers are now able to employ 16- and 17-year-olds on a part-time basis in manufacturing occupations.

The program aims to expose youth to the many viable, rewarding careers in the industry while strengthening the workforce development pipeline. To participate, manufacturing employers must:

- Set a duration of employment;
- Assign a mentor to the minor;
- Provide required training; and
- Encourage participation in career tech programs.

The OMA has created a short reference document for any manufacturer that wants to take advantage of the new program. The document contains a link to a standardized form from the Ohio Department of Commerce to simplify the recording requirements.

May 13, 2021

Contact: Jamie Karl
Managing Director, Communication Services
(614) 674-5546
jkarl@ohiomfg.com



Ohio Manufacturers Support Governor's Call to End Supplemental Unemployment Benefits

COLUMBUS, Ohio – The Ohio Manufacturers' Association has voiced its support for pandemic-related actions recently announced by Gov. Mike DeWine, including ending the state's participation in the federal government's supplemental unemployment benefits program as the economy continues to re-open.

"Manufacturers are driving this economic recovery," said OMA President Ryan Augsburger. "But even with the strong demand for manufactured goods, widespread labor shortages could seriously impede our progress. We thank Gov. DeWine for listening to the business community and taking action to address the workforce shortage."

"With Ohio's low 4.7% unemployment rate, the supplemental unemployment benefits provided by the federal government are an obstacle to filling the tens of thousands of manufacturing job openings across the state. These benefits are playing a major role in preventing Ohio's factories from operating at full capacity. Manufacturing offers hundreds of thousands of family-sustaining careers that boost Ohio's economic output and grow our communities. While these additional benefits served their purpose at the height of the pandemic, announcing their conclusion is the right thing to do to protect Ohio's economy."

Regarding Gov. DeWine's plans to lift the state's coronavirus health orders on June 2, Augsburger said manufacturers have been at the forefront of efforts to improve workplace safety since the earliest days of the pandemic.

"Gov. DeWine and Lt. Gov. Husted are to be commended for their ongoing leadership during this difficult chapter and their willingness to work with the employer community. Throughout the pandemic, Ohio manufacturers have led the way in workplace safety, all while supplying the nation and the world with needed goods."

"From devising innovative safety protocols to encouraging employees to get vaccinated, Ohio manufacturers have put the well-being of their employees atop their priority list – and they will continue to do so. Ohio manufacturers appreciate the administration's confidence in the industry to maintain a healthy workforce."

###

The Ohio Manufacturers' Association is Ohio's largest statewide business association comprised solely of manufacturers. Established in 1910, the OMA's mission is protect and grow Ohio manufacturing. It represents manufacturers of all sizes in every subsector of the industry. Manufacturing is Ohio's largest economic sector, employing 700,000 Ohioans and contributing more than \$110 billion annually to the state's economy. Visit ohiomfg.com – or follow us on [LinkedIn](#), [Twitter](#), and [Facebook](#).



FACT SHEET: OHIO'S MANUFACTURING MENTORSHIP PROGRAM INTRODUCES YOUNG PEOPLE TO MANUFACTURING CAREERS, BUILDS WORKFORCE PIPELINE

The Ohio Manufacturers' Association (OMA) advocated for legislation that would enable Ohio's 16- and 17-year old students to work on a part-time basis in Ohio's manufacturing industry as a way to showcase the many viable careers in the industry, while strengthening the workforce development pipeline for manufacturers.

Legislation enabling the Manufacturing Mentorship Program was passed in House Bill 166, the state's 2019-2021 operating budget, and became available to Ohio's youth and manufacturing employers in August 2020.

Before this provision was passed by the legislature, only students aged 16 and 17 could work in the manufacturing sector if they were part of a "bona fide educational program." (Ohio's Career and Technical Center programs are typically considered bona fide, as are other school programs that have been approved by the Ohio Department of Education.)

The Manufacturing Mentorship Program enables **any** 16- or 17-year-old student to work in a manufacturing setting **without** being enrolled in a specific "bona fide educational program."

How does the program work?

These are the activities that participating employers are required to execute:

1. Provide the minor with required training (detailed below).
2. Assign the minor to a mentor who provides direct and close supervision when the minor is engaged in workplace activity.
3. Encourage the minor to participate in a career-technical education program such as one approved by the Ohio Department of Education (if they are not already).
4. Comply with all applicable state and federal laws and regulations related to the employment of minors.
5. Maintain records sufficient to document the satisfaction of all criteria established by the program under the law (section 4109.22 of the Ohio Revised Code).
 - a. Maintain documents for no less than two years following the employment of the minor or after the minor turns 18, whichever is later.
 - b. Make the documents available to the director of the Ohio Department of Commerce or the director's designee upon request.

The Ohio Department of Commerce has created **this document** for ease of compliance with any record requirements.

Specific training requirements for students in the program:

1. Completion of a 10-hour course in general industry safety and health hazard recognition and prevention approved by the U.S. Department of Labor Occupational Safety and Health Administration (OSHA);
2. Instruction on how to operate the specific tools the minor will use during employment;
3. Training on the general safety and health hazards to which the minor may be exposed at the minor's workplace;
4. Training on the value of safety and management commitment; and
5. Information on the employer's drug testing policy.

If a minor has already successfully completed a 10-hour OSHA course, the minor *may* participate in an OSHA-approved 30-hour course in general industry safety and health hazard recognition and prevention.

Participating employers are responsible for all costs associated with training. If the minor provides proof of OSHA required training within the six months prior to employment, then the employer is not required to pay for new OSHA training.

Ensuring safety: Restrictions on tools operated by minors

The law requires that the Ohio Department of Commerce specify a list of tools that a minor, who is 16- or 17-years old, may operate during his or her employment in a manufacturing occupation. The director is required to use the manual issued by the Wage and Hour Division of the U.S. Department of Labor titled the “Field Operations Handbook” when developing the list.

The law prohibits an employer from permitting a minor who is not participating in the Manufacturing Mentorship Program from operating a tool on the list developed by the Ohio Department of Commerce. (An employer is prohibited from permitting a minor, regardless of their participation in the Manufacturing Mentorship Program, to operate a tool that is prohibited for use by minors of that age under the Fair Labor Standards Act.)

Tools permitted for Manufacturing Mentorship Program Participants

The following tools may be used by minors 16 and 17 years of age if they are participants in the Manufacturing Mentorship Program:

General tools:

1. Pipe and bolt threading machine;
2. Pipe nipple and automatic pipe nipple machines;
3. Certain electric carts used as a means of transportation in large industrial plants and at railroad stations, as long as they are not driven on public roads;
4. Riding mowers or golf carts in a warehouse setting, as long as they are not driven on public roads;
5. Powered contour measuring instruments; and
6. Multi-axis type robotic equipment.

Tools permitted with conditions:

1. Welding tools only while under direct supervision;
2. Waterjet cutting machines with devices for fully automatic feeding and ejection and with a fixed guard that prevents operators or helpers from placing any part of their bodies in the point-of-operation area;
3. Computer numerical control (CNC) machines while under direct supervision;
4. Production press machines that are not already listed as a specific prohibition or exception in Chapter 4101:9-2 of the Administrative Code, so long as those devices include fully automatic feeding and ejection and a fixed guard that prevents operators or helpers from placing any part of their bodies in the point-of-operation area;
5. Plastics molding machines when fitted with the proper guarding and are not manually fed;
6. Plastics extruders while under direct supervision; and
7. Soldering irons while under direct supervision.

Tools restricted by type of use:

1. Certain tools that require the placing of material on a moving chain or in a hopper or slide for automatic feeding, such as:
 - a. Band resaw only when it incorporates the use of a chain feed and there is no direct interaction with the tool;
 - b. Automatic nailing machine only when it incorporates the use of a hopper, belt, or chain feed, and there is no direct interaction with the tool;
2. Automatic wire-stitching machines only when it incorporates the use of a hopper or chain feed and there is no direct interaction with the tool; and
3. Tools designed for carrying or moving nonhazardous material from one machine to another (hike-a-way).

Miscellaneous Tools:

Any other tools that are permitted under the Fair Labor Standards Act and are not specifically prohibited by section 4109.05 or the Revised Code or the rules adopted thereunder.

Starting Your Manufacturing Mentorship Program

Manufacturers that are ready and willing to follow the Manufacturing Mentorship Program requirements described in this document and in Section 4109.22 of the Ohio Revised Code may implement their programs.

MMP Compliance Checklist

Pursuant to section 4109.22 of the Revised Code, the manufacturing mentorship program was created to provide minors age sixteen or seventeen years of age real-world experience in manufacturing occupations in Ohio. To be compliant with this program, an employer employing a minor must do all of the following:

- **Determine the duration of the minor's employment:**

- Does the employer have a signed agreement between the minor's legal guardian and a representative of the employer stating the employment duration? Yes No
- What is the format of this agreement? Where is the agreement maintained?

_____ _____ Signature of Employer's Representative: _____ Date: _____

- **Assign the minor a mentor to provide direct supervision while the minor is engaged in any workplace activity:**

- Has the minor been assigned a mentor? Yes No
- Provide the name, title, contact information, and agreement with the mentor.

Name, Title, and Contact Information: _____
Is an agreement in place with the mentor? Yes <input type="checkbox"/> No <input type="checkbox"/> Type of agreement: _____
Signature of Mentor: _____ Date: _____

- **Provide the minor with the following training or obtain proof that the minor has previously completed the required training within the six-month period immediately before the beginning of employment:**

- OSHA-approved 10-hour general safety training; or OSHA-approved 30-hour industry-specific safety training if the minor has previously completed an OSHA - approved 10-hour course.

Completion Date _____

- Instructions on operation of specific tools to be used during employment.

Completion Date _____

- General safety and health hazards to which the minor may be exposed at the workplace. Completion Date _____
- The value of safety and management commitment. Completion Date _____
- Information on the employer's drug testing policy. Completion Date _____

[Proof of completed training should be attached to this checklist]

- **Encourage the minor to participate in a career-technical education program approved by the Ohio Department of Education if the minor is not already participating in such a program when employment begins:**
 - Has the minor been given information about career-technical education programs available in the field and geographic area? Yes No List the programs that have been described and attach any promotional information provided to the minor to this checklist.

<hr style="border: none; border-top: 1px solid black; margin-bottom: 5px;"/> <hr style="border: none; border-top: 1px solid black; margin-bottom: 5px;"/>
Signature of Employer's Representative: _____ Date: _____

- **Ensure compliance with all applicable state and federal laws and regulations relating to the employment of minors:**
 - Attach a copy of the minor's State of Ohio work permit, if applicable, to this checklist.

Pursuant to rule 4101:9-2-02.1 of the Ohio Administrative Code, employers are required to maintain records sufficient to document the satisfaction of all criteria established in section 4109.22 of the Revised Code for no less than two years following the employment of the minor or after the minor turns eighteen. Accordingly, it is recommended that this checklist and supporting documents be used for that purposed and be maintained for that period of time.

Signature of Employer's Representative: _____ Date: _____

Signature of Employee: _____ Date: _____

Signature of Employee's Legal Guardian: _____ Date: _____

**Please note that these are steps recommended by the Bureau of Wage and Hour to ensure compliance with this program, other documentation or evidence of compliance may also be acceptable to the Bureau on case-by-case basis.*

Human Resources, Health Care & Employment Law Legislation

Prepared by: The Ohio Manufacturers' Association

Report created on June 14, 2021

- HB122 TELEHEALTH SERVICES** (FRAIZER M, HOLMES A) To establish and modify requirements regarding the provision of telehealth services.
Current Status: 4/21/2021 - Referred to Committee Senate Health
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-122>
- HB125 HEALTH INSURANCE PREMIUMS/ BENEFITS** (CROSSMAN J, LIGHTBODY M) Regarding health insurance premiums and benefits.
Current Status: 2/24/2021 - House Insurance, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-125>
- HB135 PROHIBIT CERTAIN HEALTH INSURANCE COST-SHARING PRACTICES** (MANCHESTER S, WEST T) To prohibit certain health insurance cost-sharing practices.
Current Status: 3/16/2021 - **REPORTED OUT**, House Health, (Third Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-135>
- HB139 WAIVE COLLECTION OF CERTAIN UNEMPLOYMENT OVERPAYMENTS** (SOBECKI L, CROSSMAN J) To allow the Director of Job and Family Services to waive the collection of certain unemployment benefit overpayments and to declare an emergency.
Current Status: 3/24/2021 - House Insurance, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-139>
- HB156 REGULATE EMPLOYMENT PRACTICES OF CERTAIN RETAIL/FOOD EMPLOYERS** (SKINDELL M, KELLY B) To regulate employment practices of formula retail and food services establishment employers and contractors and to require the purchaser of a formula retail or food services establishment to retain certain employees.
Current Status: 3/3/2021 - Referred to Committee House Commerce and Labor
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-156>
- HB160 HEALTH CARE COST ESTIMATES** (HOLMES A) Regarding the provision of health care cost estimates.
Current Status: 3/10/2021 - House Insurance, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-160>
- HB187 EARNINGS, DEDUCTIONS STATEMENTS** (KELLY B, LIPPS S) To require an employer to provide earnings and deductions statements to each of the employer's employees.
Current Status: 6/9/2021 - **REPORTED OUT**, House Commerce and Labor, (Third Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-187>
- HB189 REQUIRE COVERAGE OF PANDAS, PANS** (YOUNG B) To require health plan issuers and the Medicaid program to cover treatments and services related to Pediatric

Autoimmune Neuropsychiatric Disorders Associated with Streptococcal Infections and Pediatric Acute-onset Neuropsychiatric Syndrome.

Current Status: 4/20/2021 - House Health, (First Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-189>

- HB232** **OHIO EQUAL PAY ACT** (HOWSE S, MIRANDA J) To enact the Ohio Equal Pay Act to address wage disparities in public and private employment.
Current Status: 4/14/2021 - Referred to Committee House Commerce and Labor
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-232>
- HB233** **REQUIRE ANONYMOUS SYSTEM TO REPORT WAGE DISCRIMINATION** (BOYD J, CRAWLEY E) To require the Ohio Civil Rights Commission to establish a system for individuals to anonymously report wage discrimination.
Current Status: 4/14/2021 - Referred to Committee House Commerce and Labor
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-233>
- HB248** **VACCINE CHOICE ACT** (GROSS J) To authorize an individual to decline a vaccination and to name this act the Vaccine Choice and Anti-Discrimination Act.
Current Status: 6/15/2021 - House Health, (Fourth Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-248>
- HB253** **REGARDS PROOF OF COVID-19 VACCINATIONS** (CUTRONA A) Regarding proof of COVID-19 vaccinations.
Current Status: 5/18/2021 - **BILL AMENDED**, House Health, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-253>
- HCR8** **CREATE JOINT SELECT COMMITTEE ON UC FRAUD** (GRENDALL D) To create the Joint Select Investigative Committee on Unemployment Compensation Fraud.
Current Status: 3/24/2021 - Referred to Committee House Government Oversight
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HCR-8>
- HCR10** **URGE CONGRESS ENACT PROTECTING THE RIGHT TO ORGANIZE ACT OF 2021** (KELLY B, SOBECKI L) To urge the Congress of the United States to enact the Protecting the Right to Organize Act of 2021.
Current Status: 4/14/2021 - Referred to Committee House Commerce and Labor
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HCR-10>
- HCR16** **ENCOURAGE GENDER EQUITY, DIVERSITY IN LEADERSHIP.** (WEST T, RUSSO A) To encourage equitable and diverse gender representation on the boards and in senior management of Ohio companies and institutions.
Current Status: 4/22/2021 - Referred to Committee House Commerce and Labor
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HCR-16>

- SB47** **OVERTIME PAY-EXEMPTIONS** (BRENNER A, PETERSON B) To except traveling to and from a worksite and performing certain routine tasks from the overtime pay requirement.
Current Status: 5/12/2021 - **BILL AMENDED**, Senate Ways and Means, (Third Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-47>
- SB51** **INCREASE MINIMUM WAGE** (THOMAS C, CRAIG H) To increase the state minimum wage and to allow municipalities, townships, and counties to establish higher minimum wage requirements.
Current Status: 3/10/2021 - Senate Workforce and Higher Education, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-51>
- SB68** **PROHIBIT JOB APPLICATION-ASK ABOUT FELONY CONVICTION** (WILLIAMS S) To prohibit private employers from including on an employment application any question concerning whether an applicant has been convicted of or pleaded guilty to a felony.
Current Status: 3/10/2021 - Senate Workforce and Higher Education, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-68>
- SB70** **PROHIBIT ASKING JOB APPLICANT'S SALARY HISTORY** (MAHARATH T) To prohibit employers from seeking a prospective employee's wage or salary history.
Current Status: 3/17/2021 - Senate Small Business and Economic Opportunity, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-70>
- SB116** **PROOF OF IDENTITY-UNEMPLOYMENT** (HACKETT R, REINEKE W) To require a person to provide proof of identity at a local employment office before receiving unemployment compensation or pandemic unemployment assistance and to declare an emergency.
Current Status: 3/24/2021 - Senate Insurance, (Second Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-116>
- SB119** **PROHIBIT DISCRIMINATION-SEXUAL ORIENTATION, GENDER** (ANTONIO N, RULLI M) To enact the Ohio Fairness Act to prohibit discrimination on the basis of sexual orientation or gender identity or expression, to add mediation as an informal method that the Ohio Civil Rights Commission may use, and to uphold existing religious exemptions under Ohio's Civil Rights Law.
Current Status: 3/10/2021 - Referred to Committee Senate Government Oversight and Reform
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-119>
- SB153** **TMS PILOT PROGRAM** (HOAGLAND F) To expand the Electroencephalogram Transcranial Magnetic Stimulation Pilot Program and to make an appropriation.
Current Status: 6/9/2021 - **PASSED BY SENATE**; Vote 33-0

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-153>

SB177 **REQUIRE ACCOMMODATIONS-PREGNANT WORKERS** (MAHARATH T) To enact the Ohio Pregnant Workers Fairness Act to generally require employers to make reasonable accommodations for employees who are pregnant or breastfeeding.

Current Status: 5/11/2021 - Introduced

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-177>

SR21 **URGE CONGRESS-INCREASE PANDEMIC UNEMPLOYMENT** (HACKETT R, REINEKE W) Urge Congress increase pandemic unemployment program security.

Current Status: 3/10/2021 - **ADOPTED BY SENATE**; Vote 33-0

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SR-21>



MEMORANDUM

TO: Ohio Manufacturers' Association
Government Affairs Committee

FROM: Bricker and Eckler LLP
Christopher N. Slagle, OMA General Counsel

DATE: June 15, 2021

RE: June 2021 OMA Government Affairs Committee Counsel Report

I. June 2021 Government Affairs Committee Counsel Report.

Please find below several political, legislative, and judicial efforts our Firm has been monitoring for the OMA.

II. Statewide Ballot Issues Overview.

The next opportunity for statewide ballot issues is the November General Election. Statewide ballot issue committees must submit their petition of signatures to be placed on the 2021 general election ballot by or on June 30, 2021. All ballot issues certified by both the Attorney General and the Ohio Ballot Board can collect signatures to be placed on the upcoming general election ballot. One constitutional amendment initiative petition was submitted on May 2, 2021 to the Attorney General's office, which would create a civil cause of action for deprivation of constitutional rights against the state, local government entities including law enforcement agencies and educational institutions. On May 12, 2021, Attorney General Yost rejected the petition because the summary did not accurately capture the proposed amendment's contents.

III. Pending Legislation (2021-2022).

The House and Senate remain busy with budget discussions. After two rounds of amendments, the Senate Finance Committee favorably reported House Bill 110, the biennial budget, and the full chamber passed the spending measure on June 9. The Senate changes to H.B. 110 includes:

- Increase the proposed personal income tax cut to 5% from the House's proposed 2% tax cut. The proposed tax cut is worth an estimated \$874 million;
- Overhaul of the education funding formula from House version; approximately \$6.95 billion in General Revenue Fund dollars going toward K-12 foundation funding in Fiscal Year 2022 and \$7.09 billion in FY 2023;

- Eliminate sales tax on employment services, an estimated savings of \$303 million for employers over the biennium;
- Eliminate a \$190 Million appropriation for broadband residential grant program, established under H.B. 2;
- Require candidates for Chief Justice, Justice of the Ohio Supreme Court or judge of a court of appeals nominated at a primary election to appear with a political party designation on the ballot in the General Election;
- Create a process for the Court of Claims to handle allegations of Open Meetings Law violations;
- Remove House-added legislative oversight committees of federal COVID relief aid and career pathways and workforce training programs;
- Eliminate the proposed extension of the emergency authorization for electronic/digital meetings for public entities, which expires on July 1, 2021;
- Places limitations on local governments that provide broadband access;
- Expands eligibility for the Rural Industrial Park Loan Program to projects located in any rural area;
- Appropriates \$11 million in FY '22 and \$12 million in FY '23 for the Ohio Maritime Assistance Program to issue grants to qualifying port authorities;
- Provides additional guidelines for the \$10 million in meat processing grants; and
- Added changes to language currently in the budget aimed at improving the process to lease state land for oil and gas development.

Conference Committee on H.B. 110 is scheduled to begin on June 15, 2021. As with custom, members of the conference committee are the House and Senate Finance Chairs, Vice-Chairs, and Ranking Members. These members are House Finance Chair Scott Oelslager (R-Canton), House Finance Vice-Chair Phil Plummer (R-Dayton), House Finance Ranking Member Erica Crawley (D-Columbus), Senate Finance Chair Matt Dolan (R-Chagrin Falls), Senate Finance Vice-Chair Theresa Gavarone (R-Bowling Green), and Senate Finance Ranking Member Vernon Sykes (D-Akron).

Repealing House Bill 6 Efforts. After the previous General Assembly failed to address H.B. 6, many House and Senate members reintroduced legislation to repeal all or portions of H.B. 6 including:

- House Bill 10 is sponsored by Representative David Leland (D-Columbus). The measure would repeal and refund the subsidies, as well as the decoupling charges. It would also repeal Ohio Valley Electric Corp. cost recovery and revoke changes to the Home Energy Assistance Program while creating a new Energy Waste reduction program. The bill was introduced on February 3, 2021 and was referred to the Senate Public Utilities Committee. The bill received its first hearing on February 17, 2021.

- House Bill 18 is sponsored by Representative Laura Lanese (R-Grove City). The bill fully repeals H.B. 6. Therefore, Ohio's energy efficiency program and renewable energy portfolio standards would be reinstated if H.B. 18 is enacted. The bill was introduced on February 3, 2021 and was referred to the Senate Public Utilities Committee. The bill received its first hearing on February 17, 2021.
- House Bill 57 is sponsored by Representative Michael Skindell (D-Lakewood) and Representative Michael O'Brien (D-Warren). Identical to H.B. 18, H.B. 57 will repeal all provisions enacted by H.B. 6. Ohio's energy efficient program and renewable portfolio standards would return to the levels required before H.B. 6 was enacted. The bill was introduced on February 3, 2021 and was referred to the Senate Public Utilities Committee. The bill received its first hearing on February 17, 2021.
- House Bill 58 is sponsored by Representative Michael Skindell (D-Lakewood) and Representative Sedrick Denson (D-Cincinnati). If enacted, the bill will repeal the budget provision that allowed the Public Utilities Commission of Ohio (PUCO), in its significantly excessive earnings test (SEET) reviews for annual ESP adjustments, to consider, "directly or indirectly, the revenue, expenses, or earnings of" any EDU affiliate that is an Ohio EDU. The bill revives prior law that prohibits PUCO from considering these factors for "any affiliate or parent company". The bill was introduced on February 3, 2021 and was referred to the Senate Public Utilities Committee. The bill received its first hearing on February 17, 2021.
- House Bill 128 is sponsored by Representative Jim Hoops (R-Napoleon) and Representative Dick Stein (R-Norwalk). This bill was coined as the House plan to repeal H.B. 6. H.B. 128 fully repeals the nuclear subsidies that were enacted under H.B. 6. The bill also eliminates the decoupling provisions enacted in H.B. 6 and the prior budget change to the significantly excessive earnings test (SEET) that FirstEnergy benefited from. The bill does not touch the OVEC benefits received in H.B. 6. Lastly, the bill requires the Ohio Power Siting Board to issue a report to lawmakers by Dec. 1, 2021, on transmission projects and spending. The bill was introduced on February 16, 2021 and referred the House Public Utilities Committee. After the bill receiving an amendments to restore the solar subsidies, the House Public Utilities Committee reported the bill out of committee in March. Following, the House approved the measure during session on March 10, 2021 with a vote of 86-7. The bill moved to the Senate, where it was referred to the Senate Energy and Public Utilities Committee. The committee quickly amended the bill and sent it to the Senate floor a week later. The Senate approved the measure with a 33-0 vote. Then, the House concurred with the Senate amendments, and the Governor signed it into law on March 31, 2021.

- Senate Bill 10 is sponsored by Representative Mark Romanchuk (R-Ontario). S.B. 10 terminates the decoupling mechanism that provided benefits to FirstEnergy. All funds collected under the mechanism in 2019 must be refunded to customers. Additionally, the bill also repeals the budget provision that allowed the PUCO to consider earnings of EDUs affiliates in Ohio during its revenue review under the SEET. All funds collected attributable to the PUCO's SEET review must be refunded to customers. The bill was introduced on January 21, 2021 and referred to the Senate Energy and Public Utilities Committee. After three hearings, the committee unanimously reported the bill out of committee on February 9, 2021. The following week, the Senate unanimously passed the legislation. The House Public Utilities Committee held one hearing on the bill on February 23, 2021. However, the vehicle for this legislation became H.B. 128.
- Senate Bill 44 is sponsored by Senator Michael Rulli (R-Salem) and Senator Jerry Cerino (R-Kirtland). S.B. 44 eliminates the nuclear subsidies that were enacted under H.B. 6. However, the bill keeps the solar subsidies that were created under H.B. 6. The bill was introduced on February 2, 2021 and received three hearings in the Senate Energy and Public Utilities Committee before being voted out of committee on February 23, 2021. The Senate passed the bill on March 2, 2021, and the House referred the bill to the House Public Utilities Committee, where it received on hearing on March 9, 2021.
- Senate Bill 117 is sponsored by Senators Mark Romanchuk (R-Ontario) and Hearcel Craig (D- Columbus). The bill repeals the legacy generation resource provisions of H.B. 6 and provides customers refunds. The legacy generation resource provisions directly benefits the Ohio Valley Electric Corporation (OVEC). Thus far, the bill has received two hearings in the Senate Energy and Public Utilities Committee. The bill is scheduled for opposition testimony on Tuesday, June 15.
- Senate Bill 118 is sponsored by Senator Mark Romanchuk (R- Ontario). S.B. 118 repeals the renewable resource credit payment provisions of H.B. 6. The bill was introduced on March 9, 2021 and received one hearing in the Senate Energy and Public Utilities Committee on March 31, 2021.

Ultimately, the House and Senate chose H.B. 128 to be the vehicle to repeal the nuclear subsidies enacted under H.B. 6. Governor DeWine signed the bill into law on March 31, 2021 and the bill becomes effective 90 days after his signature.

Unemployment Compensation. No legislation has been introduced to this general assembly regarding unemployment compensation. However, many House members have asked cabinet members of the Administration during their budget testimony how much unemployment compensation fraud has cost the state during the recent months. Senate President Matt Huffman

(R-Lima) told the Gongwer News Service he wants a long-term solvency plan included in the state budget. However, Speaker Bob Cupp (R- Lima) told Gongwer after the House passed the budget bill, H.B. 110, that the unemployment compensation issue was too complicated to be addressed in the budget. We will continue to monitor House Bill 110 for any provisions which address the solvency issue.

Other legislation was introduced regarding the fraud occurring in the unemployment compensation system during the pandemic. Representative Diane Grendell (R- Chesterland) introduced House Concurrent Resolution 8, which creates the Joint Select Investigative Committee on Unemployment Compensation Fraud. The concurrent resolution was introduced March 24, 2021 and referred to the House Government Oversight Committee. So far, the concurrent resolution has received no hearings in committee.

Senator Bob Hackett (R- London) and Senator Bill Reineke (R- Tiffin) introduced Senate Resolution 21, which urges the federal government to increase the Pandemic Unemployment Assistance program's security against fraudulent actors, both internationally and domestically. The resolution was adopted by the Senate on March 10, 2021 by a vote for 33-0.

H.B. 68 - Payment to Construction Contractors. Representative Jon Cross (R-Kenton) and Representative Bride Sweeney (D-Cleveland) reintroduced House Bill 380 language on February 4, 2021. House Bill 68 was referred to House Commerce and Labor Committee. H.B. 68 received four hearings in committee, and was passed out of committee on May 5, 2021. Following the House considered the legislation on the floor, and passed it with a vote of 86-10 on May 19, 2021. The Senate referred the bill to the Senate Workforce and Higher Education Committee. Generally, H.B. 68 requires owners of commercial and public construction projects to pay contractors within 30 days after receiving a request for payment. If a payment is not timely made, then an 18% annual interest rate will be applied to the amount owed. This modification to the Prompt Pay Act would include private owners in the act. Currently, the act only addresses payments amongst contractors, subcontractors, material suppliers, and laborers.

State Minimum Wage. Representative Brigid Kelly (D-Cincinnati) and Representative Dontavius Jarrells (D-Columbus) reintroduced legislation to increase Ohio's minimum wage. House Bill 69 increases the minimum wage to ten dollars per hour beginning January 1, 2022. Every year after Ohio's minimum wage will increase by one dollar until 2027 when minimum wage would reach fifteen dollars per hour. The bill was introduced on February 9, 2021 and was referred to the House Commerce and Labor committee.

Senator Cecil Thomas (D-Cincinnati) and Senator Hearcel Craig (D- Columbus) introduced similar legislation to increase Ohio's minimum wage, Senate Bill 51. S.B. 51 increase the minimum wage to twelve dollars per hour beginning January 1, 2022. Every year after Ohio's minimum wage will increase by one dollar until 2025 when its hits fifteen dollars per hour. S.B. 51 also allows any municipal corporation, township, or county may establish a higher minimum

than the state's minimum wage. If the employer is subject to both a municipality's minimum wage and the state's minimum wage, the employer must pay their employees the highest minimum wage they are subject to. The bill was introduced on February 9, 2021 and was referred to the Senate Workforce and Higher Education Committee. The bill received its first hearing on March 10, 2021.

Local Referendum on New Energy Generation Sites. Two bills were introduced that grants the capability to invalidate an Ohio Power Siting Board certificate for wind and solar projects via a voter referendum. Representative Craig Riedel (R-Defiance) and Representative Dick Stein (R-Norwalk) introduced House Bill 118 on February 18, 2021. The bill was referred to the House Public Utilities Committee and received four hearings so far. A substitute bill was adopted during its latest hearing. The substitute bill allows township trustees to adopt a resolution designating all or part of their community as an energy development district. The township community would then vote to approve or deny that designation. If a community is not designated as an energy development district, then a developer cannot construct a utility facility in the area. Additionally, townships can adopt a resolution opposing a power siting board certificate, and the power siting board must determine the application for certificate will not serve the public interest if such a resolution is adopted by the township the project will be located in. Applications already pending on the bill's effective date will be subject to such resolutions.

Senator Bill Reineke (R-Tiffin) and Senator Rob McColley (R-Napoleon) introduced Senate Bill 52 on February 9, 2021. S.B. 52 was referred to the Senate Energy and Public Utilities Committee. A substitute bill was adopted to reflect the substitute bill of H.B. 118 on May 19, 2021. However, during the bill's fifth hearing on May 25, the committee adopted another substitute bill to S.B. 52.

Under the second substitute bill, a renewable developer must hold a public meeting in the community where the project will be located at nine months before submitting the project application. After the meeting, the county commissioners have a 90 day window to either do nothing, pass a resolution banning the project, or pass a resolution limiting the geographic area of the project. The bill also allows county commissioners to pass a resolution stating the community is closed or open to wind and solar projects. Lastly, the substitute bill permits for county commissioners or board of township trustees to submit a resolution to the power siting board in opposition to the project on the grounds it is not of public benefit or necessity. The resolution creates a rebuttable presumption that the project is not for the public benefit or necessity. Developers and the opposing governments then present evidence either opposing or supporting the resolution to the Siting Board. Developers remain in opposition to the bill, and business groups are in discussions with Legislators to strive for better language to allow for energy development in Ohio. During the bill's final hearing in committee, the committee accepted a final amendment that removed the rebuttable presumption provision and added two additional ad hoc members to the Ohio Power Siting Board— one county commissioner and one township trustee from the project area.

The committee reported the bill out on June 2, 2021 by a vote of 7-5. Later the same day, the full Senate considered the bill and passed it with 20-13 vote. The House referred S.B. 52 to the House Public Utilities Committee, where it is scheduled for its first hearing on Wednesday, June 16.

S.B. 68 Prohibits Felony Question on Job Applications. Senator Sandra Williams (D-Cleveland) introduced S.B. 68, which prohibits private employers from including on an employment application any question concerning whether an applicant has been convicted of or pleaded guilty to a felony. This bill was introduced on February 17, 2021, and was referred to the Senate Workforce and Higher Education Committee. The bill received sponsor testimony on March 10, 2021.

Municipal Income Tax Rules. Representatives Kris Jordan (R- Delaware) and Jay Edwards (R-Athens) introduced House Bill 157, which modifies and extends, until December 31, 2021, a temporary rule governing the municipal income taxation of employees who are working at a temporary worksite, including their home, due to the COVID-19 pandemic. Employers can continue to withhold taxes in the municipality of the employees traditional work site, instead of the temporary at home worksite until December 31, 2021. The bill also temporarily shields employers from certain penalties associated with withholding municipal income tax as long as the employer withholds such tax for an employee's principal place of work. The bill received six hearings in House Ways and Means Committee before a substitute bill was reported out of the committee on May 18, 2021. H.B. 157 was considered on the House floor on May 26, 2021 and passed by a vote of 63-31. The language of H.B. 157 was added by the Senate in the substitute bill for H.B. 110 on June 1, 2021.

Legislation related to the same topic was introduced in the Senate, Senate Bill 97. Senator Kristina Roegner (R- Hudson) introduced S.B. 97 on February 24, 2021. The bill was referred to the Senate Ways and Means and received sponsor testimony on May 12, 2021. S.B. 97 repeals the temporary municipal income taxation rule for employees who are working from home due to COVID-19.

House Democrats, Representatives Monique Smith (D- Fairview Park) and Lisa Sobecki (D- Toledo), introduced House Bill 264, which extends the temporary provision in law allowing employers to withhold taxes in the employees traditional worksite, rather than the location of their home, to the later of 30 days after the end of the state of emergency or December 31, 2022. The bill was referred to the House Ways and Means Committee, but has not received a hearing.

Anti-Discrimination. Similar to legislation introduced in the 133rd General Assembly, Representatives Brett Hillyer (R- Uhrichsville) and Michael Skindell (D- Lakewood) introduced House Bill 208, which prohibits discrimination on basis of sexual orientation or gender identity or expression. H.B. 208 was referred to the House Commerce and Labor Committee on March 1, 2021.

Identical legislation was introduced in the Senate by Senator Nicki Antonio (D- Lakewood) and Senator Michael Rulli (R- Salem). Senate Bill 119 was referred to the Senate Government Oversight and Reform Committee, and no hearings have been scheduled.

IV. Tort Reform.

Counsel is currently monitoring various tort reform legislative efforts and await the possible re-introduction of certain civil justice legislative items from prior legislative cycles. Thus far, the 134th General Assembly has kept Ohio within the same bounds of tort reform, and continues to discuss how to change the laws to be better for businesses in Ohio.

Third Party Litigation Funding. Senator Steve Wilson (R-Maineville) reintroduced the non-recourse civil litigation legislation, S.B. 94. Specifically, the bill requires a company engaged in the business of non-recourse civil litigation advance in Ohio to register with the Superintendent of Financial Institutions in the Department of Commerce. The bill was referred to Senate Judiciary Committee, and received sponsor testimony on March 31, 2021.

Statute of Limitations on Contracts. Senator George Lang (R-West Chester) introduced S.B. 13 on January 21, 2021, which mirrors H.B. 251 from the previous General Assembly. The legislation shortens Ohio's statute of limitations for actions brought related to contracts. The Senate quickly acted on the bill by referring it and passing it out of the Senate Judiciary Committee within a week. S.B. 13 was considered by the full Senate on February 3, 2021 and passed unanimously out of the chamber. Following, the House referred S.B. 13 to the House Civil Justice Committee on February 10, 2021. The bill received two hearings and was voted out of the committee on February 23, 2021. The House passed the bill on February 25, 2021 with a vote of 94-0. The bill was delivered to Governor DeWine and he signed the bill into law on March 16, 2021. The bill becomes effective 90 days after the Governor's signature.

Representative Brett Hillyer (R-Uhrichsville) introduced similar legislation to S.B. 13, House Bill 53, on February 3, 2021. The bill was referred to the House Civil Justice Committee, but has not received a first hearing.

V. Ohio's Redistricting Efforts

Ohio's Redistricting process will look different this year due to the 2015 and 2018 constitutional amendments that alter how the general assembly districts and congressional districts will be drawn.

Ohio's General Assembly districts, including the 33 Senate Districts and 99 House Districts, will be drawn by a seven-member Ohio Redistricting Commission, as established in a 2015 constitutional amendment. The commission includes Governor Mike DeWine, State Auditor

Keith Faber, Secretary of State Frank LaRose and two appointees from each chamber of the General Assembly. The Commission will include five Republicans and two Democrats. A bipartisan vote is required to approve a map. Any legal challenge against the map drawn must be filed at the Ohio Supreme Court.

Ohio's Congressional district boundaries will be drawn by the full General Assembly, as established in a 2018 constitutional amendment. To adopt a map, lawmakers must approve districts with a sufficient bipartisan supermajority. If the required supermajority is not reached, the process then passes to the Ohio Redistricting Commission. If the commission is unable to adopt a plan with sufficient bipartisan support, the General Assembly is again empowered to draw districts, although a lower majority is required. Any legal challenge must be filed at the Ohio Supreme Court.

In mid-February, the U.S. Census Bureau announced that it would not meet the legal deadline of March 31, 2021 to release the census data, citing the effects of the COVID-19 pandemic. Instead, the U.S. Census data set a new deadline of September 30, 2021. Census data gives states their overall population, which allows for new general assembly districts and congressional district lines to be drawn. On February 25, Ohio's Attorney General Dave Yost (R) filed a case in the Sixth Circuit U.S. District Court in the Southern District of Ohio for injunctive relief against Secretary Coggins of the U.S. Department of Commerce (Case No. 3:21-cv-64).

In the complaint for injunctive and mandamus relief, Attorney General Yost argues that under Ohio's Constitution, the Ohio Redistricting Commission must finalize its work on the general assembly districts by September 1. Ohio's Redistricting Commission will not be able to meet the constitutional deadline if the Commission does not receive the data until September 30, 2021 as previously announced by the U.S. Census Bureau. Additionally, Ohio's general assembly is supposed to finalize congressional districts by September 30, 2021. Although, the Ohio Constitution spells out other options if the general assembly or the Redistricting Commission is unable to finalize the districts maps by the deadlines, these other options were created if members could not agree on the districts line. Therefore, Ohio will be harmed because it will not be able to utilize the new processes properly for drawing fair district maps. The Attorney General requests the court to either: (1) set aside the Census Bureau's unlawful decision; and (2) issue an injunction either prohibiting the defendants from delaying the release of Ohio's redistricting data beyond March 31, 2021, or else requiring the defendants to provide the State with Ohio's population data at the earliest date this Court deems equitable. Alternatively, the State of Ohio seeks a writ of mandamus requiring the Secretary to meet the statutory March 31 deadline.

The Sixth Circuit U.S. District Court dismissed the case on March 24, 2021 citing the state did not have standing because the state did not establish an injury in fact. Attorney General Yost appealed the District court's decision to the Sixth Circuit Court of Appeals. The Sixth Circuit Court of Appeals ruled on May 18, 2021 that the state did in fact meet all three requirements for standing. The court of appeals remanded the case back to the district court and ordered it to treat the matter

expediently and hold a hearing to determine what if, any, remedy is appropriate. Days later, Attorney General Yost announced a settlement agreement reached with the U.S. Census Bureau. The settlement agreement requires the bureau to release population data by August 16, 2021. The bureau will also need to provide biweekly updates confirming that it remains on track to meet the August deadline.

VI. Political Updates

Senate Race. The 2022 Senate race for the open seat being vacated by retiring U.S. Senator Rob Portman continues to heat up with additional candidates on both sides of the aisle. Thus far, Republicans will have a crowded primary including: former State Treasurer Josh Mandel former Ohio Republican Party chair Jane Timken, Mike Gibbons, and Bernie Moreno. Several other Republicans are exploring running such as J.D. Vance and Senator Matt Dolan (R- Chagrin Falls). So far in the Democratic primary, only Congressman Tim Ryan (D- Niles) has announced his candidacy for the Senate seat.

15th Congressional District Race. On April 19, Congressman Steve Stivers announced he was resigning from the 15th Congressional District seat effective May 16, 2021 to become President and CEO of the Ohio Chamber of Commerce. The primary for the 15th congressional district seat will be held on August 3, 2021 and the general election will be held on November 2, 2021. Several notable candidates filed petitions to run for this seat including:

- State Senator Stephanie Kunze (R- Hilliard)
- State Senator Bob Peterson (R- Washington Court House)
- State Representative Jeff LaRe (R- Canal Winchester)
- State Representative Brian Stewart (R- Ashville)
- State Representative Allison Russo (D- Upper Arlington)
- Former State Representative Ron Hood (R- Ashville)
- Veteran Lobbyist Mike Carey (R- Columbus)

Other candidates include John Adams (R- Grove City), Eric Clark (R- London), Thad Cooperidder (R- Thornville), Ruth Edmonds (R- Columbus), Thomas Hwang (R- Waverly), Omar Tarazi (R- Hilliard), and Greg Betts (D- Hilliard).

Former Congressman Steve Stivers recently endorsed Jeff LaRe (R- Canal Winchester) to replace him and represent the 15th Congressional District.

Party Designation for Judicial Candidates. House and Senate Republican members introduced legislation to require certain judicial candidates to place their party designation after their names on the ballot. Senator Teresa Gavarone (R-Bowling Green) and Senator Jerry Cerino (R-Kirtland) introduced Senate Bill 80 on February 23, 2021. S.B. 80 received three hearings in Senate Local Government and Elections Committee before being reported on March 23, 2021. The Senate

considered and passed the bill on April 21, 2021. After passing the Senate, the bill was sent to the House and referred to the House Government Oversight Committee. The Senate amended H.B. 110, the biennial budget, to include language of S.B. 80.

Representative D.J. Swearingen (R-Huron) and Representative Brian Stewart (R-Circleville) introduced similar legislation in the House, H.B. 149. H.B.149 received five hearings in House Government Oversight Committee and the committee reported the bill out on June 10, 2021. Counsel will continue monitoring the status of this legislation due to the Court's composition being an important element to Ohio's business climate remaining stable.

VII. Litigation and Amicus Activity Update

a. Monitored Cases

- 1) *State of Ohio v. Du Pont de Nemours and Co.*, Washington County Common Pleas Court, No. 18OT000032 (February 8, 2018)

On February 8, 2018, Ohio Attorney General Mike DeWine filed a lawsuit against DuPont and the Chemours Company in the Washington County Common Pleas Court alleging that the company released perfluorooctanoic acid (PFOA) from its 1,200 acre facility on the Ohio River for decades, all while knowing the harm the toxic chemical posed to people and the environment.

The complaint cites a 2017 University of Cincinnati study that found residents of the Mid-Ohio River Valley had elevated levels of PFOA. The state further alleges that at least 150,000 pounds of the chemical used to manufacture Teflon products was put into the Ohio River in the 1980s and an additional 350,000 pounds was discharged into the river in the 1990s. The complaint alleges that DuPont negligently caused environment contamination and created a public nuisance through its release of PFOA in the air, soil, and water.

The state is asking for (1) a declaration of DuPont's duty to compensate the state for expenses related to the contamination from the chemical; (2) damages for injury to the state's natural resources; (3) an award of present and future costs to clean up the contamination; and (4) restitution damages for profits DuPont obtained through the conduct alleged in the complaint.

On April 12, 2018, Defendants each filed a motion to dismiss. DuPont argues that the court lacks jurisdiction because the US EPA consent orders preempt such claims and that the state lacks standing. Defendant Chemours Company's motion to dismiss argues that the state failed to state a claim upon which relief can be granted against Chemours. On May 14, 2018, the state filed its memoranda in opposition to Defendants' motions to dismiss. The motions to dismiss have been fully-briefed and argument was held on July 20, 2018, but the Court has not yet decided any of them.

On October 12, 2018, the Little Hocking Water Association (“Little Hocking”) filed a motion to intervene as a plaintiff. The State opposed the motion. This motion has been fully-briefed and the parties are awaiting the Court’s decision.

In January 2019, this case was assigned to Judge Timothy Hogan, a retired judge from Hamilton County, Ohio. In late February, Plaintiff requested a status conference with the Court in late March to address the pending motion to dismiss, the pending motion to intervene, and to discuss a scheduling order.

On June 4, 2019, the court denied the Defendants’ motions to dismiss and also denied Little Hocking’s motion to intervene. Little Hocking filed a motion for reconsideration, which awaits the court’s decision.

On July 5, 2019, Little Hocking also appealed from the June 4 decision denying its motion to intervene. This appeal is pending in the Fourth District Court of Appeals, designated as Case No. 19CA000015. On July 25, the Court of Appeals ordered Appellant to file a memorandum addressing the issue of jurisdiction. Ultimately, the appeal was dismissed for lack of a final appealable order.

On July 29, 2019, Plaintiff filed an amended complaint to add claims for actual and constructive fraudulent transfer under the Uniform Fraudulent Transfer Act, R.C. 1336.01, *et seq.* On August 28, 2019, Defendant filed a motion to separate and stay Plaintiff’s claims for actual and constructive fraudulent transfer. The State opposed this motion. On December 26, 2019, the Court denied this motion. On January 15, 2020, Defendants filed their answers to the amended complaint.

On March 12, 2020, the court granted Plaintiff’s motion to compel discovery. The court indicated that it was not impressed with some of the Defendants’ objections to discovery and stated that, “discovery, if obstructed, shall be met with punishing sanctions.”

In the past few months, several subpoenas for records have been served and objections to some of them have been filed.

A new case scheduling order was issued on October 16, 2020, which sets the following deadlines: (1) fact discovery – February 26, 2021; (2) expert discovery – November 30, 2021; and (3) dispositive motions – January 15, 2022. The trial is scheduled to begin on April 4, 2022.

Also, on October 16, 2020, the Court found Defendants to be in noncompliance with some of its previous orders. It ordered Defendants to produce all documents responsive to Plaintiff’s First Request for Production of Documents without regard to privilege. If the State intends to use a document, then Defendants may assert a privilege and seek an *in camera* review.

On October 23, 2020, DuPont appealed from the October 16 order to the extent it requires the production of privileged information. It also filed an emergency motion for stay pending the

outcome of the appeal. Plaintiff opposed the motion to stay. To date there has been no ruling on the motion to stay.

On November 2, 2020, Plaintiff filed a motion for leave to file its second amended complaint due to DuPont's corporate reorganization and alleged attempt to transfer its assets. DuPont opposed this motion. To date there has been no ruling on the motion for leave to file a second amended complaint.

On December 22, 2020, the Court ordered Defendants to produce the Corporate Environmental Database and other items listed in Plaintiff's December 2, 2020 letter. The court further indicated that failure to comply by December 15, 2020 "will result in an evidentiary sanction."

Judge Hogan retired, effective December 31, 2020 and withdrew from the case. Retired Judge Richard McMonagle was assigned as the presiding judge for this cases effective February 1, 2021.

On April 1, 2021, Defendants moved to dismiss Plaintiff's unjust enrichment claim, which was denied on May 12. Also on April 1, 2021, Defendants moved to join the Ohio EPA and its Director as real parties in interest. This motion was denied on May 17.

On April 26, 2021, Defendants Corteva, Inc. and DuPont de Nemours, Inc. moved to dismiss the complaint for lack of jurisdiction.

On May 10, 2021, Plaintiffs moved for partial summary judgment on the assumption of liabilities of Corteva Inc. and DuPont de Nemours, Inc.

On May 17, 2021, the court amended the scheduling order. The trial is now scheduled for November 1, 2022.

- 2) *State of Ohio v. Purdue Pharma L.P., et al.*, Ross County Common Pleas Court, No. 17CI000261

On May 31, 2017, Ohio Attorney General Mike DeWine filed an action in Ross County Common Pleas Court against several manufacturers of opioids, including Purdue Pharma (which sold OxyContin) and Endo Health Solutions (which sold Percocet). The lawsuit alleges that the defendant drug companies violated the Ohio Consumer Sales Practices Act and created a public nuisance by disseminating false and misleading statements about the benefits and risks of opioids. The suit alleges that the defendant drug companies' conduct increased the prescription of opioids and fueled Ohio's opioid crisis. Among other remedies, the State seeks an injunction to stop continued misrepresentations and damages for the money the State spent on opioids.

The drug company Defendants moved to dismiss the complaint and sought a stay of discovery. The motions to dismiss are fully-briefed. On March 28, 2018, the trial court denied

Defendants' motion to stay discovery pending the results of the multi-district litigation, but granted their motion to stay discovery pending the trial court's ruling on the motions to dismiss. On April 30, 2018, the trial court held oral argument on Defendants' motions to dismiss (and other pending motions).

On August 22, 2018, the trial court denied all motions to dismiss. It also vacated the stay on discovery, allowing discovery to proceed. Defendants have filed answers. The Court held a status conference on April 5, 2019. In early May, the Defendants filed a motion to compel discovery from the State. The State opposed this motion and it is fully briefed.

The case was scheduled for a multi-week trial, beginning on August 10, 2019, but no trial commenced on that date. Since May 2019, there have been numerous filings to compel the State, its agencies, and the governor's office to provide discovery. As of November 8, 2019, the court had not decided these discovery disputes. Several subpoenas *duces tecum* have been served on third parties.

On September 12, 2019, the State moved for leave to file an Amended Complaint, which was granted. On September 16, 2019, Purdue Pharma filed a notice of suggestion of bankruptcy and automatic stay of proceedings. The State moved to sever the claims against Purdue Pharma. The case is proceeding against the remaining Defendants. Defendants filed answers to the amended complaint on November 1, 2019. Several subpoenas have been served on third-parties and third-party discovery is ongoing. On February 25, 2020, the State filed its First Amended Complaint.

On April 3, 2020, a motion to compel the State to comply with agreed procedures for the production of documents was filed. This motion has been fully-briefed, but has not yet been decided.

On August 28, 2020, Defendant Mallinckrodt filed a Motion to Dismiss the First Amended Complaint. The motion has not yet been decided.

On October 13, 2020, Mallinckrodt filed a Notice of Suggestion of Pendency of Bankruptcy and Automatic Stay of Proceedings. On October 15, 2020, the State moved for an order severing the claims against Mallinckrodt. The parties continue to engage in third-party discovery; several subpoenas for records and motions to have been filed.

On February 26, 2021, the State, Janssen Pharmaceuticals, Inc., and Johnson & Johnson entered into a 60-day stipulated stay of discovery in contemplation of settlement. This stipulated agreement does not affect proceedings against any other Defendant. A joint notice regarding this stipulated stay was filed on April 26, 2021 permitting the parties another 60 days to stay discovery in contemplation of settlement.

The remaining parties continue to engage in discovery and have filed motions to compel discovery and motions for protective orders precluding or limiting discovery.

3) *State of Ohio v. McKesson Corporation, et al.*, Madison County Common Pleas Court, No. CVH20180055

On February 26, 2018, Ohio Attorney General Mike DeWine filed an action in Madison County Common Pleas Court against the following distributors of opioids: McKesson Corporation, Cardinal Health, Inc., AmerisourceBergen Drug Corporation, and Miami-Luken, Inc. The lawsuit alleges, among other things, that these distributors acted irresponsibly in oversupplying the market in and around Ohio with opioids and failed to report suspicious orders to the U.S. Drug Enforcement Agency and the Ohio Board of Pharmacy. The suit alleges that these companies should have known that the volume of opioids supplied far exceeded what could responsibly be used in Ohio, thereby fueling Ohio's opioid epidemic.

The State seeks a number of remedies, including punitive damages and compensatory damages for increased costs Ohio incurred for criminal justice, healthcare, social services, and education related to the opioid epidemic.

On May 30, 2018, Amerisource Bergen Drug Corp., Cardinal Health, Inc. and McKesson Corp. filed a joint Civ.R. 12(B)(6) motion to dismiss the complaint. On June 1, 2018, Miami-Luken, Inc. filed a Civ.R. 12(B)(6) motion to dismiss the complaint. The motions to dismiss are fully-briefed and awaiting a decision.

In January and February 2019, two Defendants filed motions to compel the State to provide discovery responses. These Defendants assert that the State's objections to the discovery responses are baseless. The State opposed the motions to compel. The Court denied the motions to compel.

On May 20, 2019, the Court denied the Defendants' motions to dismiss. Answers were filed on July 3, 2019. Also on July 3, 2019, the State filed a motion seeking an order to prohibit speaking objections during depositions. On July 15, 2019, the Court granted this motion. Defendants have filed several pro hac vice motions to admit out-of-state counsel to participate in this case. On July 25, 2019, the Court entered a stipulated protective order.

Several non-party Defendants that have been served with subpoenas (such as the Office of Budget and Department of Public Safety) have moved to quash them and for protective orders. Discovery disputes have resulted in multiple motions to compel and motions for protective orders. Notably, the Court denied McKesson's third motion for a protective order and ordered it to present a corporate representative for a Rule 30(B)(5) deposition. The Court granted the Defendants': (1) motions to compel the State to respond to discovery requests relating to damages, fact witnesses, and expenditures; and (2) motions to compel the production of documents from several state agencies. Some briefing has been held in abeyance due to COVID-19.

On May 29, 2020, McKesson moved for leave to file under seal its motion to preclude evidence of certain damages. On June 1, 2020, McKesson moved to reopen discovery. On June 1, 2020, the Court reset some discovery deadlines, but kept the trial date of October 19, 2020.

On June 29, 2020, the Court granted the motion to preclude certain damages. As a result of this ruling, the State may not offer evidence or argument concerning any damages incurred before 2006.

On July 31, 2020, Defendants filed their motions for summary judgment under seal. The motions assert that summary judgment in favor of Defendants is appropriate on the following grounds: (1) failure to prove an element of the public nuisance and negligence claims; (2) failure to establish proximate cause; (3) Plaintiff's claims are abrogated by the Ohio Product Liability Act; and (4) Plaintiff cannot establish damages. On August 31, 2020, Plaintiff filed a motion for leave under seal its memorandum opposing Defendants' motion for summary judgment, which was granted. The trial is scheduled to begin on March 8, 2021.

Plaintiff opposed Defendant's summary judgment motions on September 9, 2020. On September 18, 2020, Defendants filed their reply memoranda in support of summary judgment. On August 10, 2020, the Court denied McKesson's motion to reopen fact discovery.

On August 24, 2020, Defendants filed a motion to defer the trial date due to the ongoing COVID-19 pandemic. On August 28, 2020, the Court filed an entry designating the Madison County Fairgrounds as the venue for trial, due to the size of the Madison County Courthouse and COVID-19 considerations. The March 8, 2021 trial was continued and is now scheduled for September 7, 2021.

Plaintiffs opposed Defendants' summary judgment motions on September 9, 2020. On September 18, 2020, Defendants filed their reply memoranda in support of summary judgment.

On January 5, 2021, the court set a tentative hearing date of July 27, 2021 for the motions for summary judgment.

4) Global Opioid Settlement

On October 21, 2019, Distribution companies AmerisourceBergen, McKesson, Cardinal Health and drug manufacturer Teva Pharmaceuticals reached a \$260 million settlement with the adverse parties in the combined cases to be heard in Cleveland, Ohio. The distribution companies will pay the counties \$215 million, while Teva will pay \$20 million and donate \$25 million to Suboxone. After the settlement amounts were announced, Governor DeWine and Attorney General Yost conducted an informal meeting with local and county leaders to discuss the settlement funds being spread across the counties. Attorney General Yost had previously pressed the Legislature for a statutory change to allow the Attorney General's office to control cases that affect the public of Ohio. Even those efforts failed, Attorney General Yost still pressed for the state's involvement to allow all counties to receive sufficient funds and avoid disparity among

separate county suits. After several months of these negotiations, Governor DeWine announced a framework for how the dollars may be distributed. On February 13, 2020, Governor DeWine stated the preliminary proposal will give 30% to local governments upfront and 15% to the state. The remaining 55% will go into a trust controlled largely by local entities, with the proceeds of the trust supporting ongoing efforts to battle addiction. Governor DeWine also stated more of the state's portion may be allocated to the trust to help battle addiction issues in Ohio in the future. The counties and municipalities involved have until March 6th to agree to the "One Ohio" plan. Attorney General Yost and Governor DeWine have publicly stated their optimism for the plan to be adopted. As of March 12, 2020, 73 of the state's 88 county governments agreed to the One Ohio plan. Attorney General Yost stressed that other entities may join even though it is beyond the original deadline to agree of March 6th.

The State of Ohio is still pursuing separate lawsuits against drug makers and distributors, including Cardinal Health in Madison counties. Trials for the case was delayed until March 2021. Then, the Judge delayed the trial until September 2021. Another separate lawsuit against pharmacies was set to go to trial in November, but Judge Polster cancelled the trial due the pandemic and rescheduled the trial to May of 2021. In December of 2020, Judge Polster notified parties in the case that the trial delayed again due to concerns with safety and the pandemic. The new trial date is October 4, 2021.

5) *Hardwick v. 3M Company*, U.S. District Court, Southern District of Ohio, Eastern Division, Case No. 2:18-cv-1185

Fifteen years ago, the Supreme Court of Ohio was asked to consider whether class certification under Civ.R. 23 (B)(2) (which applies to injunctive relief) is proper in an action seeking to establish a medical-monitoring fund for employees who alleged they had been exposed to beryllium dust and fumes. *See Wilson v. Brush Wellman, Inc.*, 103 Ohio St.3d 538 (2004). The Court's analysis focused on whether the relief requested, medical monitoring, was primarily compensatory or injunctive. The Court noted that, "depending on the nature of the precise relief sought and the circumstances of the particular case, many courts have declined to certify medical monitoring classes when joined with requests for funding and compensation." *Id.* at 542. And, that is what the *Wilson* plaintiffs sought both compensation and funding for medical-monitoring relief. After carefully analyzing the criteria for class certification, the Court concluded that plaintiffs did not meet the standard for class certification under Civ.R. 23 (B)(2).

Brush-Wellman is still the last word from the Supreme Court of Ohio on the issue of medical-monitoring relief in a class action.

But, on September 30, 2019, an Ohio federal court may have opened the door to such relief in the future. In *Hardwick v. 3M Company*, Case No. 2:18-cv-1185, the Court denied the Defendants' motion to dismiss a class action complaint focused on PFAS (per- and polyfluoroalkyl substances). According to the U.S. EPA, PFAS are a group of man-made chemicals that have been manufactured and used in a variety of industries around the world since the 1940s. The two most

extensively produced PFAS (PFOA and PFOS) are persistent in the environment and in the human body. The named Plaintiff in the *Hardwick* case, a firefighter for more than 40 years, alleges that he used firefighting foams that contained PFAS. Because PFAS are so prevalent, if this class is certified, it may be only the tip of the iceberg on PFAS class actions seeking damages and medical-monitoring relief, which likely would need to be funded for decades.

After the Court denied the motions to dismiss, some of the Defendants filed answers and some filed a motion for reconsideration. The Court denied the motion for reconsideration on the issue of personal jurisdiction. On September 1, 2020, Defendant Daikin Industries filed a petition for permission to appeal the personal jurisdiction issue under 28 U.S.C. §1292(b). The Court denied permission to appeal this issue on February 17, 2021.

On April 30 2020, the District Court entered a preliminary pretrial order based on the parties Rule 26(f) report, which required the parties to (1) submit letters by May 20, 2020, regarding the timing of Plaintiff's motion for class certification, and (2) serve initial disclosures by May 30, 2020. The pretrial order indicated that a discovery schedule will not be issued until the yet-to-be-filed motion for class certification is determined.

On July 31, 2020, Plaintiffs moved for class certification. Defendants filed their response opposing class certification on December 14, 2020. Plaintiffs filed a reply on March 12, 2021. The motion for class certification has not yet been decided.

Subpoenas for documents have been served upon third-parties.

- 6) PFAS cases against DuPont de Nemours Inc., *U.S. District Court, Southern District of Ohio, Eastern Division, Case No. 2:17-cv-00998*; and U.S. Sixth Circuit Court of Appeals, Case No. 21-3418

Thousands of cases were filed against DuPont alleging that the company contaminated drinking water for years by discharging toxic chemicals known as PFAS into the water from one of its plants along the Ohio River. Plaintiffs allege that the exposure from the chemicals lead to a greater risk of developing six types of illnesses: testicular cancer, kidney cancer, thyroid disease, ulcerative colitis, high cholesterol, and preeclampsia. Shortly after some of cases went to trial a few years ago, DuPont settled cases involving more than 3,500 victims for \$670.7 million.

There is a 60-person group of Plaintiffs suffering from testicular and kidney cancer whose claims have not been settled. Two of these cases went to trial in 2020 (involving a woman with kidney cancer and a man with testicular cancer) and found no basis for punitive damages to be awarded. The jury deadlocked in the kidney cancer case. DuPont filed a motion for new trial on April 24, 2020 and filed a motion to clarify the record on appeal on June 9, 2020. The motion for new trial has not yet been addressed, nor has DuPont filed an appeal. Therefore, this case is ongoing.

On February 24, 2020, the Plaintiffs filed a motion for judgment as a matter of law and Defendants filed a motion for judgment as a matter of law. On September 8, 2020, the court granted Plaintiffs' motion and denied Defendants' motion.

On December 31, 2020, the court denied DuPont's motion for mistrial (filed on March 3, 2020) and renewed motion for a mistrial as to Travis and Julie Abbott (also filed on March 3, 2020).

On April 3, 2021, the court granted DuPont's unopposed motion for continuation of the stay of execution of judgment.

On April 27, 2021, DuPont appealed to the Sixth Circuit Court of Appeals. Per the briefing schedule, appellant's brief is due on June 30, 2021 and appellee's brief is due on July 30, 2021.

b. Amicus Cases

- 1) *Thompson, et al. v. Governor DeWine, et al.*, Sixth Circuit Court of Appeals, Case No. 20-3526; and U.S. Supreme Court, Case No. 20-1072

On May 19, 2020, Judge Sargus, a federal district judge in the Southern District of Ohio, issued a decision in a case involving three sets of petitioners attempting to get measures on the November 2020 ballot. The petitioners are obtaining signatures in support of two statewide initiative petitions to change the Ohio Constitution (the Safe and Secure Election Amendment and the Raising the Wage Amendment). The third group of petitioners is seeking to change local laws to decriminalize marijuana possession in several southeastern Ohio cities.

The petitioners sued Governor DeWine, Director of Health Acton, and Secretary of State LaRose alleging that the state requirements to get their petitions to the ballot coupled with the "stay at home order" violate their First Amendment rights under the U.S. Constitution. Judge Sargus granted a preliminary injunction in favor of the petitioners, enjoining the enforcement of Ohio's requirements that all petitions be signed in ink and witnessed by the petition circulator, and extended the deadline (set forth in the Ohio Constitution) for filing signatures in support of the statewide initiative petitions from July 1, 2020 to July 31, 2020. The District Court's order also required the State to accept electronically-signed and witnessed signatures (even though this has never been done before in Ohio) and to meet and confer with petitioners to work out any technical or security issues related to the on-line collection of signatures.

The State appealed the decision to the Sixth Circuit Court of Appeals the next day and moved to stay the District Court's order. The State also moved to have the appeal heard en banc (i.e., by the full court).

The Ohio Manufacturers' Association (along with other statewide business organizations) filed a motion for leave to support the State's motion to stay as amicus curiae. Among other things, the OMA argued that requirements at issue – signing in ink and having signatures witnessed by

the circulator – prevent fraud and should be strictly complied with. The OMA also argued that the District Court’s decision extending the deadline for filing the signatures to July 31, 2020 eliminated the constitutional right to challenge signatures/the petition because objections are required to be filed on July 31, 2020 under the Ohio Constitution.

On May 26, 2020, the Sixth Circuit granted the motion to stay the District Court’s decision. As a result, petitioners are not able to gather signatures electronically and the deadline for gathering signatures and submitting them to the Secretary of State is July 1, 2020 again.

The motion for en banc consideration was denied on June 16, 2020. The next day, the Court set a briefing schedule requiring the State’s brief to be filed no later than July 27, 2020 and the Appellees’ briefs to be filed no later than August 26, 2020. The State filed its brief on July 17 and the OMA and other amici filed their motion for leave to file their brief (with the brief attached) on July 2, 2020.

On August 20, 2020, the statewide petitioners (supporting ballot issues for raising the minimum wage and amending the Ohio Constitution’s election provisions) moved to withdraw from the appeal. The State agreed not to object to the motion on the condition that the statewide petitioners dismiss the underlying lawsuit and they agreed to do so. The appeal is still being pursued by the local initiative petitioners who are seeking to enact ordinances in Akron and other political subdivisions to decriminalize marijuana possession.

When the local initiative petitioners filed their brief, they added counsel from the Sidley Austin law firm and added Oliver B. Hall from the Center for Competitive Democracy. The State filed its reply brief on September 3, 2020.

On September 16, 2020, the Sixth Circuit Court of Appeals issued a per curiam opinion reversing the District Court’s decision granting a preliminary injunction. As a result, the local initiative petitioners were not able to present the initiative to voters on the November 2020 ballot. The Court’s issued a mandate on October 8, 2020.

On February 9, 2021, the local initiative petitioners filed a petition for a writ of certiorari to the U.S. Supreme Court. (A late filing was permitted under the U.S. Supreme Court’s interim rules in effect during the coronavirus pandemic.) The State responded on April 7, 2021. The U.S. Supreme Court denied the petition for a writ of certiorari on April 19, 2021.

VIII. Update to the Tax Counsel’s Report.

Tax Counsel Justin Cook provided an update from the June Tax Counsel’s Report.

1. Selected Proposed Legislation:

H.B. 157. As of the time of this writing, H.B. 157 has passed a committee vote, and it is expected to be voted upon by the House of Representatives in the very near future. H.B. 157 addresses municipal income tax withholding during the pandemic.

As many will recall, Ohio enacted H.B. 197 in March of 2020. Section 29 of the act temporarily modified the municipal income withholding rules. It provided that employees working from home during the pandemic would be deemed to be performing services at their principal place of work, meaning employers would continue withholding in the municipality where employees would typically report for work under normal circumstances. On its face, however, the rule in Section 29 is only triggered if the employee “is required to report for employment duties because of the [Governor’s Declaration of Emergency]” at an alternate location.

Because the pandemic has lasted much longer than anyone anticipated, several issues have arisen with respect to H.B. 197. The most controversial relates to whether employees working from home (outside of a city) may claim a refund for taxes withheld by their employer. Other issues include whether Section 29 even applies where employers permit (but do not require) employees to work from home.

H.B. 157, if adopted, would do the following on these issues and more:

- Under the bill, employees are deemed to be working at their principal place of work if they are working at an alternate location “in response to the COVID-19 pandemic.” Employees must no longer be “required” to work from an alternate location in order for the temporary withholding rule to apply.
- For tax periods beginning on or after January 1, 2021, the rule deeming an employee to be performing services at his or her principal place of work would only apply for purposes of withholding and net profit tax calculation. Thus, this would allow employees working from a home outside of a city to seek refunds in 2021, but likely not 2020.
- Employers under H.B. 157 could only be required to verify the number of days a particular employee worked at his or her principal place of work. Nothing else may be required of the employer to process an employee refund claim.
- H.B. 157 also adds a safe harbor for employers that applied Section 29 of H.B. 197 potentially too broadly (e.g., to cover withholding for employees permitted, but not required, to work from home). The bill provides that if an employer withheld and remitted municipal income tax from an employee’s qualifying wages earned between March 9, 2020, and December 31, 2021, to the municipal corporation in which the employee’s principal place of work is located, the employer shall not be assessed any tax, penalty, or interest by any other municipal corporation for failure

to situs or apportion those wages to the other municipal corporation for municipal net profit tax purposes or for failure to withhold municipal income tax from such wages to the other municipal corporation.

Please note that these temporary withholding measures are subject to ongoing legal challenges.

H.B. 110. Ohio's budget bill for FY 2022-2023 includes a number of proposed changes to the tax laws. The most significant are set forth below.

- The bill would slightly reduce individual tax rates applicable to non-business income. Current non-business income rates range from 2.850% to 4.797%. Under the bill, rates would range between 2.793% and 4.701%.
- The bill would amend R.C. 5751.03 to require the minimum CAT be calculated based on the prior year's gross receipts.
- The bill would extend Ohio's Qualified Energy Project abatement program by two years.

H.B. 234. H.B. 234, introduced on March 25, 2021, is currently before the House of Representatives' Ways and Means Committee. The bill would gradually phase-out the commercial activity tax ("CAT") over tax years 2022 through 2025. In 2022, 80% of otherwise taxable gross receipts would be subject to CAT. This would be reduced by 20% each year, ending with no CAT imposed for year 2026.

2. Selected Legislation:

S.B. 18. S.B. 18, effective March 31, 2021, made a number of changes to Ohio's tax laws. These changes include:

- Incorporation of federal tax code changes effective after March 27, 2020.
- Adoption of several CAT carve outs from taxable gross receipts—loan forgiveness for the second tranche of PPP loans and BWC dividends paid to employers in 2020 and 2021.
- Reduction of the pass-through entity tax withholding rate to be consistent with the business tax rate.

3. Judicial Actions:

a. Court of Common Pleas

The Buckeye Institute, et al. v. Columbus City Auditor, et al., Franklin C.P. No. 20 CV 004301 (Apr. 27, 2021). The Buckeye Institute (the “Institute”) and several employees filed a lawsuit challenging the constitutionality of Section 29 of H.B. 197, the temporary municipal income tax withholding provision discussed above. The Court of Common Pleas, in April, ruled in favor of the City of Columbus to uphold H.B. 197. In its analysis, the court noted that even though employees may be working from a location outside of the city, the Institute still received the benefit of those services at its headquarters in Columbus. The court also found the legislature has wide-reaching authority in this area, noting the “General Assembly enjoys the authority to establish municipal income allocation rules among Ohio taxing authorities.” The court further noted that similar rules have long-existed; for example, under the 20-day occasional entrant rules, withholding does not always coincide with the location where personal services are performed. Therefore, the court upheld H.B. 197.

The case, however, remains active. The Institute filed an immediate notice of appeal.

b. Ohio Board of Tax Appeals

Nascar Holdings, Inc. v. McClain, BTA No. 2015-263, 2021 WL 1406067 (Apr. 5, 2021). The BTA rejected Nascar’s proposed method of sourcing gross receipts for purposes of the CAT. The gross receipts at issue dealt with revenue from broadcast rights and licensing of other intangible property rights.

c. Ohio Supreme Court

N.A.T. Transportation, Inc. v. McClain, 2021-Ohio-1374, --- N.E.3d --- (2021). The Court held that hauling garbage under a contract specifying where the waste must be delivered constitutes hauling property of others. Thus, trucks purchased for this purposes may be exempt from sales tax as used in transportation for hire. On the other hand, hauling residential waste where there is no set delivery location is not transportation for hire under the sales tax code.