

OMA Government Affairs Committee

June 6, 2012



AGENDA

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|---|---|
| Welcome & Self-Introductions | Jeff Fritz of DuPont Committee Chair |
| Federal Minute: Brief Report on National Issues by National Partners | Barry Doggett of Eaton Corp. Regional NAM Vice Chair |
| OMA Counsel's Report | Kurt Tunnell, Managing Partner, Bricker & Eckler, LLP |
| Staff Reports | Ryan Augsburg, OMA Staff Kevin Schmidt, OMA Staff Committee Members |
| Special Report: Ballot Preview and Battleground Statehouse Contests | Benjamin Yoho Executive Director, Ohio House Republican Organizational Committee Vaughn Flasher, Ohio Republican Senate Campaign Committee |
| Special Report: NLRB and Employment Law Trends of Concern | Jim Stone, Partner, Jackson Lewis, LLP |
| Special Guest: | Jason Mauk, Ohio Senate Chief of Staff |
| Discussion / Action Agenda | <ul style="list-style-type: none">• Electricity Rate Activity – AEP Cases• U.S. Global Leadership Coalition• Tax Reform Amicus Brief Beaver Excavating Company v. Testa• Shale Energy Update• Ohio Steel Council and Steel Pipe Monitoring Program (HB 559)• Unemployment Trust Fund Solvency Policy Options• OMA Elections Services• Employee Communication Needs• OMA PAC Endorsements |

Committee Meetings begin at 10:00 a.m. and conclude by 1:00 p.m. Lunch will be served. Please RSVP to attend meetings by contacting Judy: jthompson@ohiomfg.com or (614) 224-5111 or toll free at (800) 662-4463. Indicate if you will be participating in-person or by phone.

PUBLIC POLICY SERVICES REPORT – EXECUTIVE SUMMARY

June 2012

Political Environment

Political activity will continue to occupy center stage during the 2012 presidential election year. The defeat of collective bargaining reforms (state issue 2) on the ballot last November is still on the minds of policymakers, who seem to be exercising caution in controversy or law changes that might elicit referendum or impact the general election.

Statehouse Activity

Early this year, Governor Kasich outlined a “mid-biennium review” (MBR) process, resembling a budget process. In the ensuing months, administrative agencies unveiled MBR plans and the House and Senate conducted a legislative process to consider the proposals. Several far-reaching policy changes were incorporated.

Following months of intense legislative activity, the House and Senate began the summer recess after May 23. They are expected to conduct official business very sporadically until after the November election. Bills and resolutions not completed already face an uncertain fate in the post-election lame duck session.

Red Flag Issue

OMA advocacy remains focused principally on energy issues. The OMA remains especially attuned to regulatory activity at the PUCO that will determine electricity competitiveness in the AEP service territory. See energy section. Contact staff to learn more.

Electric Utility Rate Cases – Moving Towards Deregulation

The PUCO recently agreed to let AEP-Ohio increase capacity rates through July 2. This comes in response to AEP-Ohio’s request to allow it to continue charging the first 21% of shopping customer load \$146 per megawatt day (MW/D) for capacity and the rest of its customers \$255 MW/D. Capacity is the fixed charge customers pay to ensure there is a power plant available to generate electricity.

While this is characterized by AEP-Ohio and the PUCO as a “status quo” action, it represents an increase for customers who have shopped and are in “fixed price” contracts with suppliers.

Utility companies have taken to the airwaves to influence state regulators on this case, illustrating the high stakes at risk. This rate case exemplifies the need for electricity-intensive companies to become involved in regulatory activity. Ask OMA staff how to get more involved.

MBR (Mid-Biennium Review)

A package of nearly a dozen Administration-conceived bills were introduced in mid-March and have dominated statehouse activity throughout the Spring. See tax section for summary of tax, economic development and shale gas tax issues dealt with in the MBRs. See energy section for summary of energy MBR which revised waste energy recovery and combined heat and power provisions, also adopting shale gas industry regulations. Some MBR bills were finalized, others such as the “financial services MBR” which would have imposed new tax consequences

on finance companies held by manufacturers, stalled out. Read more about financial services MBR in the tax section.

A controversial proposal to increase severance taxes on gas and petroleum in order to provide income tax relief was stripped by anti-tax legislators. We will hear more about this proposal.

Workforce development and school funding and school measurement were topics of other MBRs that stalled.

November Elections

2012 is the first year for candidates to run in newly revised district boundaries. The OMA staff is busy compiling the OMA Election Guide to spotlight state legislative and other contests. Endorsement activity is underway by the OMA PAC. Additionally the OMA invites member input of your employee communication needs.

In addition to candidate races, paper work has been filed for several ballot proposals. A proposal to advance statewide workplace freedom (right-to-work) has been filed by self-described TEA party leaders. Workplace freedom is more likely to emerge in 2013. A proposal to revise the Ohio Constitution to allow for medical marijuana would impede employers' safety and drug policies (presentation scheduled at OMA Safety Committee meeting June 21).

Shale Gas

The Hill organized and hosted an "Ohio Energy Jobs Summit" in Columbus on May 2. The summit was sponsored by American Petroleum Institute, American Iron & Steel Institute, and American Chemistry Council and their state affiliates. Industry leaders and political leaders shared insights on the economic impact of anticipated energy resources. Also see energy section.

Civil Justice

Some civil justice business finished...some unfinished.

Finished:

- SB 224 (Obhof) to revise the statute of limitations for actions to be brought against breach of business contracts from 15 years down to 8 years, an OMA Key Vote.
- SB 202 (Seitz) to enact ATRA / ALEC model legislation to clarify trespasser liability to combat new trend of frivolous litigation targeting business

Unfinished:

- HB 380 (Blessing) reduces exposure in asbestos claims made against asbestos trusts just short of passage. Push for passage in November.
- SB 143, legislation to adopt a state false claims act which creates a new cause of action, exposing government contractors to more frivolous lawsuits. Attorney General pushing a compromise version that remains problematic.

Three Supreme Court seats are up in 2012. Incumbents Terrence O'Donnell, Robert Cupp and Yvette McGee Brown are all running to retain their seats on the Supreme Court.

JobsOhio – Economic Development

Governor Kasich's top priority has been to restructure state economic development functions. The umbrella corporation, JobsOhio, was launched in late 2011. The remaining elements of the state development department are to be renamed the Development Services Agency. Regional partners, such as Columbus 2020 and TeamNEO, will serve as the front door to companies for attraction and retention. Funding for economic development will come from liquor proceeds.

Leadership

Brookings: The Geography of Manufacturing

A recent Brookings [study](#), “Locating American Manufacturing: Trends in the Geography of Production,” finds: “The long-term shift of manufacturing jobs toward the South came to a halt in the first decade of the 21st century, while the Midwest had the fastest manufacturing job gains over the last two years. Between 2000 and 2010 both the Midwest and the South lost about 34 percent of their manufacturing jobs, while between the first quarter of 2010 and the fourth quarter of 2011 the Midwest saw a manufacturing job gain of 5.2 percent while the South saw a gain of 2.2 percent.”

Brookings hosted a conference, “Going Global: Boosting Ohio's Economic Future,” to examine implications of the research findings to Ohio. [Watch a webcast](#) of the proceedings.

06/01/2012

Steel Seeks Country of Origin Designation for Oil Country Tubular Goods

The House Agriculture & Natural Resources Committee this week heard testimony of House Bill 559, which would require pipeline operations involved in the exploration, development, and gathering of natural gas in Ohio to report the country of origin and manufacture of the tubular steel products used for natural gas development. The Senate had added a similar provision to the governor's mid biennium review energy bill (Senate Bill 315), but the House removed it before passing the bill earlier this month.

Chris Masciantonio, General Manager - Governmental Affairs, US Steel Corporation, [testified](#) in support, saying: “Requiring disclosure of the country of production and manufacture of steel products used in the natural gas industry will provide greater transparency as to the origins of the steel pipe products, and that the steel being utilized in Ohio was subjected to required quality and integrity testing in the countries of origin and manufacturer-certifying that the tubular product is meeting API/ISO qualifications. Collection and disclosure of this

information will ensure that Ohio's natural gas exploration and distribution systems are safe and of the highest quality.”

Representative Al Landis (R-Dover), a co-sponsor of the bill said the coming drilling boom in Ohio's Utica Shale formation offers a huge opportunity to revitalize the state's steel industry. Reporting the origin of the tubular steel products used in pipelines will help promote the use of domestic product, he said.

Co-sponsor Representative Christina Hagan (R-Uniontown) said the proposal would encourage operators to use the highest quality steel for Ohio's gas and oil operations to ensure the safety for residents and consumers.

Ryan Augsburger, Managing Director, OMA Public Policy Services, testified in support of the bill on behalf of the OMA noting how purchasing mandates, product preferences, and marketing programs are currently on the books as means and methods to support select products. “House Bill 559 will help to ensure that energy is extracted and gathered safely and will promote American industry without imposing any form of purchasing mandates,” said the OMA staffer.

06/01/2012

OMA Government Affairs Committee to Meet June 6

All OMA members are invited to participate in person or by phone in next week's Government Affairs Committee meeting in the OMA offices on Wednesday, June 6 from 10:00 a.m. through 1:00 p.m., with lunch provided. [Register](#) for in person or call in attendance.

The agenda includes: a November general election preview from the caucuses, highlighting key candidates and issues; an update on the Mid-Biennium Budget Review (MBR), the Governor's priority legislation currently pending in the General Assembly; guest presenters from OMA Connections Partner, Jackson Lewis LLP, will talk about recent National Labor Relations Board activity and employment law litigation trends of concern to manufacturers; and shale energy updates – where and how have the Ohio initiatives taken hold and how can manufacturers “plug into” opportunities?

All OMA policy committee meetings are free of charge to OMA members. Policy meetings are held regularly in the interest areas of: energy, environment, government affairs, tax, and safety & workers' compensation. [Go to My OMA](#) to customize your management communities of interest; you will receive relevant policy committee invitations and materials right to your inbox.

06/01/2012

Fresh Facts about Economic Impact of Ohio Manufacturing

[Ohio Manufacturing Counts](#), a report published by the OMA to provide Ohioans with an understanding of the importance of manufacturing to the economic future of our state, has just been updated.

The 2012 report contains more than 30 pages of easy-to-read facts about Ohio manufacturing, including: manufacturing is the largest contributor to state GDP at almost 17%; manufacturing has the highest total annual payroll of any industry sector, chemical manufacturing provides the highest annual average wage among manufacturing industries; more than 96,000 workers manufacture transportation equipment in Ohio; and Ohio is first, second or third among states in the production of more than 80 NAICS manufacturing categories.

Please share this publication with your local officials, schools, media, employees, customers and stakeholders as proof that Ohio is still powered by manufacturing.

06/01/2012

Civil Justice Reforms Batting .500

As lawmakers headed home for an extended recess, one civil justice reform was completed while another stalled. The House completed action on [SB 224](#) (Obhof, R-Montville Twp.) to shorten the statute of limitations on business contracts. The OMA issued a [key vote alert](#) in support of SB 224.

The fate of legislation to add important disclosures on claims in asbestos cases may now hang in the balance. The Senate left

unfinished work on [HB 380](#) (Blessing, R-Cincinnati). The OMA, along with other business groups, had [expressed strong support](#) for the bill and this week met with Senate leaders to urge completion.

05/25/2012

Justice Stratton to Retire

A fixture on the Ohio Supreme Court since 1996, Justice Evelyn Lundberg Stratton [announced](#) this week that she would retire by the end of the year, allowing Governor Kasich to appoint a replacement. In her resignation letter, Justice Stratton referred to her involvement in providing mental health services to offenders and assisting veterans in the criminal justice system as occupying "a place of growing importance in my life and I have decided to dedicate myself to them even more so, not only here in Ohio but also on a national level."

Having endorsed Justice Stratton's candidacy three times, the OMA thanks Justice Stratton for her service and wishes her well in her future pursuits.

05/25/2012

General Assembly Heads Home for Summer

After several months of frenetically paced legislative hearings, the Ohio House of Representatives and the Ohio Senate completed most business Thursday night and left town. The House is scheduled to return for a couple days in mid-June and the Senate may also. Recent activity was dominated by a first ever mid-biennium review (MBR) process that yielded numerous bills and resolutions. Click to view [legislative schedule](#).

05/25/2012

Benchmark Your Company's Innovation "Quotient"

Again this year, OMA encourages members to participate in an innovation practices benchmarking study by the CPAs and consultants of OMA Connections Partner, Plante Moran. The 15 minute survey is aimed at Midwest manufacturing and business leaders.

The [survey](#), live now through mid-June, is designed to uncover the factors that allow an organization to innovate. Complete the survey to see what your company's strengths and areas to watch are with respect to the important competitive factor of innovation.

Survey participants will receive a customized report ranking their results with benchmarks developed via the study. All individual responses are confidential. Participants are automatically entered into a drawing for an iPad*.

**No purchase is necessary to win. The winner must be age 18 or older. Offer ends 06/15/2012. To enter and for a complete listing of official rules and alternative method of entry, visit the [Innovation Quotient Survey website](#). Void where prohibited.*

05/18/2012

Senate Acts to Improve Business Contract Law

The Ohio Senate approved by a vote of 32-0 [Senate Bill 224](#) (Obhof, R-Montville Twp.) this week which would shorten Ohio's statute of limitations for written contracts from 15 years to eight years.

The OMA [supported](#) this legislation in committee and issued a [Key Vote Alert](#) this week noting that Kentucky is the only other state with a statute of limitations as long and that eight years more closely aligns Ohio with other states.

05/11/2012

Board Composition: Compare Your Board to Benchmarks

How do your board's demographics in terms of age, gender, and ethnicity compare with those reported by (i) public companies in the Society of Corporate Secretaries and Governance Professionals' "2011 Board Practices Report" and (ii) the S&P 500 as shown in Spencer Stuart's "2011 Board Index"? [Read more here](#). From OMA Connections Partner, Bricker & Eckler LLP.

05/10/2012

No Surprise, It's a Dogfight in Ohio

The latest Quinnipiac poll (May 3) finds Mitt Romney bouncing back among voters in Ohio. He's now in a dead heat with President Obama in the Buckeye State. Romney's also tied with the president in another swing state, Florida.

Read the poll's Ohio [crosstabs and trends](#).

05/04/2012

Romney to Visit Euclid Manufacturer on Monday

Mitt Romney will bring his campaign to STAMCO in Euclid on Monday. The metal stamping company will play host to a shop-floor presentation by the Republican standard-bearer.

OMA members are invited to attend and should plan to arrive by 11:00 a.m. [Click for event details](#). RSVP required.

STAMCO President Bill Sopko is a member of the OMA Board of Directors.

05/04/2012

Extended Producer Responsibility Legislation Considered

Legislation to require recycling by manufacturers of electronic products was considered again this week by a Senate [panel](#). The OMA [conveyed concerns](#) to the panel of legislators in a letter.

[Read more](#) about this potential government mandate.

05/04/2012

CEO Survey Ranks Ohio 35th In Business Climate

In Chief Executive magazine's eighth annual survey of CEO opinion of best and worst states in which to do business, Ohio [ranked](#) 35th, up six spots from the last survey.

Texas easily clinched the No. 1 rank, the eighth successive time it has done so. California ranked dead last for the eighth consecutive year.

CEOs were asked to grade states in which they do business among a variety of areas, including tax and regulation, quality of workforce and living environment.

05/04/2012

The Future of Manufacturing

Talent, the ability to innovate and the strategic use of public policy will play a significant role in defining manufacturing sector competitiveness in developed and emerging economies going forward, finds [The Future of Manufacturing](#), a new report by the World Economic Forum.

Written in collaboration with Deloitte Touche Tohmatsu Limited, the study finds that “the global manufacturing ecosystem is undergoing a dramatic transformation, with many emerging economies developing significant manufacturing and innovation capabilities, enabling them to produce increasingly complex products, leading to the globalization of manufacturing supply chains. Fading labour rate arbitrage, exposure to currency volatility, sovereign debt pressures and emerging protectionist policies will be countervailing forces to further globalization of manufacturing value chains.”

Regarding strategic focus for policymakers, the report suggests; “With an estimated 10 million jobs with manufacturing organizations worldwide that cannot be filled today due to a growing skills gap, the report identifies talent as one of the key differentiators that will define the future of the sector. The other top differentiators identified in the report include the strategic use of public policy and the ability to innovate.”

04/27/2012

Ohio Steel Council Member Talk to Policymakers about the Strength of Ohio Steel

The Ohio Steel Council, which was formed in June 2011, held its first legislative reception in Columbus this week to bring the Ohio steel story to the attention of state lawmakers and officials.

Ohio is the second largest steel producing state in America, behind only Indiana. In 2010, more than 9 million net tons of steel was manufactured in Ohio, about 10 percent of all steel produced in the U.S.

As Ohio's steel industry voice, the Council wants lawmakers to know that Ohio's steel sector is recovering from the Great Recession faster than the U.S. average, but that its recovery remains fragile. The industry is particularly interested in Ohio energy and environmental policies that support growth. Policy principles the Council embraces include: reliable, affordable and predictably priced energy and environmental regulations with scientific consensus, careful cost-benefit analysis and commonsense enforcement.

Ohio's steel industries, including raw steel and fabricated metal product manufacturing, employ more than 115,000 workers.

The chairman and president of the Council is Sal Miraglia, president – steel business, The Timken Company. The Council has 15 member



companies. The OMA is the Council's association management services supplier.

Pictured is (right) Ohio Steel Council member Ed Forshey, Plant Manager, AMG Vanadium, Cambridge, Ohio with State Representative Brian Hill (R-Zanesville).

04/20/2012

OMA Urges Reauthorization of Export-Import Bank

OMA president Eric Burkland joined Export-Import Bank chairman Fred Hochberg and U.S. Senator Sherrod Brown in a media event on the issue of reauthorization of the U.S. Export-Import Bank. The bank is on a temporary extension of its authorization, which ends May 31.

[Burkland shared](#) examples of Ohio manufacturers' reliance on the financing

services of the bank. Those examples were OMA member companies Summitville Tiles in Salem, Zaclon in Cleveland, Middletown Tube Works in Middletown, Nook Industries in Cleveland, and Ford Company with numerous Ohio operations.

Burkland said: "These Ohio manufacturers, and many others, rely on the Ex-Im Bank. So, too, do their employees. That's why we support reauthorization of Ex-Im."

For more information on this issue, visit the National Association of Manufacturers' [Ex-Im webpages](#).

04/20/2012

Steel Production 2011: China Nearly Half of Global Output

The World Steel Association [compilation](#) of global steel production in 2011 shows U.S. output at 86,247,000 metric tons. Total global production was 1,490,060,000 metric tons. China's output? 683,265,000 metric tons.

04/20/2012

Medical Malpractice Costs Decline Again: Tort Reforms Working

The Ohio Department of Insurance (ODI) recently [released](#) its sixth annual "Ohio Medical Professional Liability Closed Claim Report." The good news: Ohio medical liability closed claims are down 41 percent since the enactment of tort reform legislation in 2005.

Claims in the state dropped 11 percent from 2009 to 2010, the latest year in which data is available. The ODI report once again confirms that tort reform is working in Ohio. In addition to the reduction in claims, medical liability premiums have decreased 25 percent since 2006.

04/20/2012

Ohio State Political Party Chairs Now Batting .500

Ohio Democratic Party chairman Chris Redfern [survived](#) a challenge to his leadership this

week. A majority of a 66-member central committee voted for current chairman Chris Redfern over challenger Tony Giardini, the party chair in Lorain County. Giardini had been backed by a couple of labor unions, including the United Auto Workers of America.

Redfern will now lead the party in its effort to get an Ohio win in this year's presidential campaign. He'll also likely lead the party in the 2014 gubernatorial campaign.

His Republican counterpart, Kevin DeWine, will not be doing either; he announced last week his resignation under pressure from Governor Kasich.

04/13/2012

ALEC Ranks Ohio Economic Performance: Pretty Poor

The conservative American Legislative Exchange Council (ALEC) says Ohio ranked 49th among the states in past economic performance and 37th in forward-looking outlook, according to a report it released this week.

The study reviewed states' personal income growth, population migration, and employment figures over the past 10 years to determine the past economic performance.

To find the economic outlook ranking, ALEC reviewed 15 state policy factors deemed important to future growth, including tax rates, tax burdens, proportion of public employees, minimum wage, workers' compensation costs, union requirements, and other variables.

[This report](#), "Rich States, Poor States," is in its fifth addition. Its lead author is Arthur Laffer, a Columbiana County native who is known as "the godfather of supply-side economics."

04/13/2012

Ohio GOP Leader Resigns Under Pressure

This week Ohio Republican Party chairman Kevin Dewine [resigned](#). He'd been under pressure from Governor John Kasich and his allies in a bitter fight for control of the state party.

DeWine, 44, will step down at the April 13 meeting of the party central committee. It is expected that former party boss Bob Bennett, 73, will step in as party chairman on an interim basis.

04/06/2012

OMA PAC Endorses Justices Cupp and O'Donnell

The OMA Political Action Committee this week voted to endorse Ohio Supreme Court Justices [Bob Cupp](#) and [Terrence O'Donnell](#) for reelection this fall.

Justice Cupp was elected to the Supreme Court in 2006. Prior to that, he served on the Ohio Court of Appeals, 3rd Appellate District, which comprises 17 counties in northwest and west central Ohio. Before becoming a judge, Justice Cupp served 16 years as a member of the Ohio Senate, beginning in 1985 and ending in 2000 with the advent of Ohio's legislative term limits. Before his election to the General Assembly, Justice Cupp served as a Lima city prosecutor and assistant director of law from 1976 to 1980 and twice was elected Allen County commissioner.

Justice O'Donnell joined the Supreme Court in 2003. He began his judicial career in 1980 on the Cuyahoga County Common Pleas Court, the busiest trial court in Ohio, and served there for 14 years until his election to the Eighth District Court of Appeals in 1994. He served there for eight years, and subsequently served as a visiting trial court judge in various counties throughout the state before joining the Supreme Court in 2003.

"Justice Cupp and Justice O'Donnell have served on the Ohio Supreme Court with distinction," said OMA PAC Chairman Hoy Frakes. "Both are judges of experience, integrity and fairness. We urge their reelection to the court."

03/30/2012

"Blood Sucking Vampire Economists are (un)Dead Wrong Once Again"

In its March [National Economic Outlook Executive Summary](#), chief economist for OMA

Connections Partner, PNC Bank, colorfully reports: "Those blood sucking vampire economists are (un)dead wrong once again. This good economic data is enough to drive those vampire economists batty! It is a shame that these bad news economist bears cannot be sued for malpractice, like other legitimate professionals, which would both systematically expose their poor forecast track record in the past three years and possibly serve as a deterrent to their headline-making persistently pessimistic projections. But I guess it's Caveat Emptor when it comes to economic forecasters, yours truly excluded of course!"

Check out the positive economic news in the summary above; you can check PNC's latest economic reporting and analysis at any time [here](#).

03/23/2012

Economic Impact of U.S. Steel Industry—Big

[A just-released report](#) commissioned by the American Iron and Steel Institute (AISI) finds that the steel industry supported more than one million U.S. jobs in 2011.

Based on the estimated 2011 direct steel sector employment of 150,700, the report states that "the steel sector supported 1,022,099 jobs in the U.S. economy, contributed over \$101 billion in value added and \$246 billion in gross output. Based on tax multipliers utilized in the analysis, during 2011 the steel sector generated nearly \$23 billion in local, state and federal taxes."

Read the key findings.

03/23/2012

Case Western Survey: Good and Ugly Sides of Automotive Supply Chain

Because the automotive supply chain came under intense pressure during the recession of the late part of the last decade, a team of researchers from Case Western Reserve University undertook a study to understand the industry's problems and its solutions.

In a nutshell, the study finds that management practices greatly matter: "Firms engaging in

quality circles and preventative maintenance performed far better than their peers who didn't engage in these practices." [Here's a summary.](#)

03/23/2012

Extended Producer Responsibility (EPR) Debated

When the OMA Government Affairs Committee met this week in Columbus, a top discussion was a trend by states to adopt patchwork regulations mandating certain product manufacturers institute and fund a "take-back" waste and recycling program when the products' useful lives conclude.

This concept, known as extended producer responsibility (EPR), has roots in [current legislation](#) targeting computer manufacturers. "The bill today may be limited to computer products but once a state framework exists, other products and industries will be targeted tomorrow. You could easily see regulations broadened to include cars or



appliances or packaging," said OMA committee member, Luke Harms, of Whirlpool.

Committee members also visited with Ohio EPA Director Scott Nally and Ohio Supreme Court Justice Robert Cupp. Pictured are Lee Anderson of General Mills, Justice Cupp, John Komor of General Mills, and Ben LaRocco of P&G. The committee meets next on June 6 in Columbus at 10:00 a.m. [Register](#) today.

03/16/2012

Ohio Food Manufacturing Targeted by State for Growth

More than two dozen [food manufacturers](#) gathered at the OMA to dialogue with top state officials about efforts to protect and foster



manufacturing investment among food and food supply manufacturers.

David Daniels, the recently appointed director of the Ohio Department of Agriculture participated in the dialogue; food manufacturers are regulated by the Department. John Minor from [JobsOhio](#), described the state's economic development strategy to build "[food processing](#)".

"These forums are important opportunities for industry leaders to come together and dialogue with elected and appointed state leaders. I commend OMA for leading this dialogue and look forward to having them continuing this forum periodically," said Lee Anderson of General Mills who attended the dialogue.

03/16/2012

Romney Squeaks By

Mitt Romney won the Ohio Republican primary this week, barely. Romney picked up 37.95% of the vote. Rick Santorum came in with 37.07%. Romney gained 456,205 votes; Santorum was supported by 445,697 Ohioans.

Romney's strength came generally in urban areas. Santorum's support was deepest in non-metropolitan counties. Romney won a plurality in ten congressional districts. Santorum picked up the other six districts.

Newt Gingrich was an also-ran in all areas of the state. So was Ron Paul.

You can [map](#) the [results](#) by county here.

03/09/2012

Kucinich and Schmidt Booted

In closely watched congressional primaries, two incumbents were defeated this week.

In the Democratic primary for the new Ninth District, incumbent Marci Kaptur [clobbered](#) incumbent Dennis Kucinich (they were put into the same district in the redistricting process). Kaptur gained 56.44% of the vote to Kucinich's 39.74%. She overwhelmed Kucinich

in her native Toledo area. Kucinich won only his native Cuyahoga county.

In the Republican race for southwestern Ohio's Second District incumbent, and perennially challenged, Jean Schmidt was [upset](#) by newcomer Brad Wenstrup. Wenstrup picked up 48.79%; Schmidt gained 42.76%.

In a third closely watched race, the Democratic contest for the new Third District in the Columbus area, Joyce Beatty [emerged](#) victorious with 38.01% of the vote. She defeated former congresswoman Mary Jo Kilroy and two other candidates.

03/09/2012

Right-to-Work: How do Ohioans See It?

Find out by participating in the OMA Government Affairs Committee next week. The campaign manager for Ohio's right-to-work ballot initiative will present an election analysis of the proposal. Pollster Hans Kaiser of Moore Information will share polling on the measure and related trends.

The OMA Government Affairs Committee meets on March 14 at 10:00 a.m. [Click](#) to view meeting information. [Register](#) (login and select Events) to attend (or RSVP to [Judy Thompson](#)).

03/09/2012

OMA Members Will Face Off in Ohio House Race

Mark Romanchuk of OMA member company PR Machine Works, Inc., picked up 68% of [the vote](#) in the Republican primary for Ohio House District 2. The district encompasses all of Richland County. Congratulations, Mark!

In the November General Election, Mark will square off against incumbent Representative Jay Goyal of OMA member company Goyal Industries, Inc.

03/09/2012

Ohio Wins Site Selection's 2011 Governor's Cup

Site Selection magazine awards [the Governor's Cup](#) to the top ranking state according to its success in attracting capital investment projects that meet one or more of these three criteria: a minimum investment of \$1 million, creation of 50 or more new jobs, and new facility construction or floor space of at least 20,000 sq. ft.

Ohio has reclaimed the Governor's Cup from Texas, which won it in 2010. Ohio reported 498 qualified projects for 2011, a 30+ percent increase from its 376 projects logged in 2010. Texas finished second with 464 projects, followed by Pennsylvania (453), North Carolina (310) and Virginia (273).

According to Site Selection: "All five top states, and many others, recorded substantial increases in new plant activity for 2011, reflecting keen interest on the part of capital investors to get busy with expansion plans in general and, in many cases, to move operations back to the U.S. in light of decreasing labor cost benefits associated with offshore strategies and heightened logistics costs related to non-U.S. operations."

03/09/2012

Calling All Ohio Food Manufacturers

The OMA is organizing a round table dialogue with state officials interested in promoting economic development among food and food supply manufacturers.

Top Kasich administration officials want to connect with OMA member companies that manufacture food products in order to generate investment and economic development ideas.

The round table will be held in Columbus on Tuesday, March 13. Spots are still available. Please contact the OMA's [John Laughman](#) for details.

03/02/2012

Primary Election Day is March 6

Ohio's Secretary of State site has the [official list](#) of statewide candidates, and visit the [OMA Voting Toolkit](#) for additional information.

03/02/2012

Two University Polls Show Ohio Momentum for Santorum

[The Ohio Poll](#) of likely voters conducted by the University of Cincinnati shows presidential candidate Rick Santorum leading opponent Mitt Romney by 11 percentage points; however, nearly half (47 percent) of primary voters say they may change their minds between now and the primary election day.

A [poll](#) released by Quinnipiac University shows Romney trailing Santorum by 7 percentage points. The Quinnipiac poll shows 45 percent of voters might still change their mind.

Pollsters from both organizations have presented to the [OMA Government Affairs Committee](#) in the recent past. OMA members are invited to attend the March 14 OMA Government Affairs Committee to hear primary election result analysis..

03/02/2012

An Economist's Viewpoint of the 2012 Election

Since 2000, Moody's Analytics has been modeling the outcome of presidential elections based on forecasts for economic growth. Moody's has produced its [model](#) for the 2012 presidential election. The Moody's model projects the re-election of President Barack Obama.

Moody's points to Ohio, Florida and Virginia as the three key states for the president: "Given a normal degree of uncertainty, the probabilities in these three states are almost equally balanced ... the model suggests that an Obama win in any of these three key swing states will likely nail down a second term for him."

For Republicans, "... the model predicts an uphill battle this year. Even if the GOP nominee wins

two out of three in Florida, Ohio and Virginia, he will still need to capture at least three smaller states now projected to go Democratic to win the presidency."

Here is a sweeping caveat: "While the Moody's Analytics election model has a good track record, it is not a guarantee, and it does not incorporate the impact of global geopolitical events such as wars or natural disasters, or of the personal leadership qualities of presidential candidates or their running mates."

03/02/2012

Compare the practices of your board with this benchmark

How do your board practices compare with other private and public companies? This is the first of nine posts that look at board selection, recruitment, and composition as well as other things you can use to benchmark your board's governance practices. Using the "2011 Board Practices Report," we will review survey results from both public and private companies to help you evaluate your organization's governance strategies. [Read more here.](#)

03/01/2012

Miscellaneous Legislation of Interest to Manufacturers
Prepared by: The Ohio Manufacturers' Association
Report created on June 4, 2012

- HB1** **JOBSONIO** (DUFFEY M) To authorize the Governor to create JobsOhio, a nonprofit economic development corporation.
Current Status: 2/18/2011 - **SIGNED BY GOVERNOR**; Eff. 2/18/2011
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_1
- HB2** **PERFORMANCE AUDITING** (SNITCHLER T) To require performance auditing of most state agencies.
Current Status: 3/8/2011 - Referred to Committee Senate Finance
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_2
- HB9** **UNIFORM COMMERCIAL CODE** (COLEY II W) To adopt revisions to the general provisions and documents of title portions of the Uniform Commercial Code that were recommended by the National Conference of Commissioners on Uniform State Laws.
Current Status: 3/30/2011 - **SIGNED BY GOVERNOR**; Eff. 6/29/2011
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_9
- HB48** **CORPORATIONS** (MECKLENBORG R) To make changes to the law governing corporations dissenting shareholders, the dissolution of a corporation, rights to indemnification or advancement of expenses, directors' fiduciary duties, and recording of corporate mortgages.
Current Status: 2/2/2012 - **SIGNED BY GOVERNOR**; Eff. 5/4/2012
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_48
- HB55** **CAMPAIGN CONTRIBUTIONS** (GOYAL J, MURRAY D) To regulate independent expenditures by corporations, labor organizations, and entities the primary purpose of which are to accept corporate or labor organization funds for use in making independent expenditures and to prohibit contributions made for the purpose of influencing a ballot issue from being made to or accepting by an entity that is not subject to campaign finance reporting requirements.
Current Status: 2/1/2011 - Referred to Committee House State Government and Elections
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_55
- HB82** **PUCO-MOTOR VEHICLE REGULATIONS** (GROSSMAN C, BOOSE T) To prescribe the applicability of federal regulations adopted by the Public Utilities Commission of Ohio to certain motor vehicles.
Current Status: 3/16/2011 - House Public Utilities, (Second Hearing)
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_82
- HB94** **SMALL BUSINESS RULE REVIEW PROCESS** (ROEGNER K, THOMPSON A) To adopt a new small business rule review process.
Current Status: 2/24/2011 - House Economic and Small Business Development, (Second Hearing)
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_94
- HB102** **LABOR REQUIREMENTS** (YOUNG R) To prohibit state agencies from requiring or prohibiting certain labor requirements as a condition of performing public works and to prohibit the appropriation of state funds for public works when political subdivisions require or prohibit certain labor requirements.
Current Status: 5/11/2011 - **REPORTED OUT AS AMENDED**, House Commerce, Labor & Technology, (Fourth Hearing)
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_102
- HB112** **ENGINE COOLANT/ANTIFREEZE** (GROSSMAN C, LETSON T) To require the inclusion of a bittering agent in engine coolant and antifreeze.
Current Status: 5/18/2011 - **REPORTED OUT**, House Transportation, Public Safety and

Homeland Security, (Fourth Hearing)

State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_112

- HB114** **TRANSPORTATION BUDGET** (MCGREGOR R) To make appropriations for programs related to transportation and public safety for the biennium beginning July 1, 2011, and ending June 30, 2013, and to provide authorization and conditions for the operation of those programs.
Current Status: 7/13/2011 - HB114 had a provision amended by SB187
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_114
- HB123** **WORKERS' COMPENSATION BUDGET** (HOTTINGER J) To allow the administrator of Workers' Compensation to waive criteria certain public employers must satisfy to become self-insuring employers; to require bills for medical and vocational rehabilitation services in claims that are ultimately denied to be paid from the Surplus Fund Account under specified circumstances; to make appropriations for the Bureau of Workers' Compensation and for the Workers' Compensation Council for the biennium beginning July 1, 2011, and ending June 30, 2013; and to provide authorization and conditions for the operation of the Bureau's and the Council's programs.
Current Status: 4/25/2011 - **SIGNED BY GOVERNOR**; Some provisions eff. 4/25/11; others 7/29/11
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_123
- HB124** **INDUSTRIAL COMMISSION BUDGET** (HOTTINGER J) To set appropriations for the Industrial Commission for the biennium beginning July 1, 2011, and ending June 30, 2013, and to provide authorization and conditions for the operation of Commission programs.
Current Status: 4/25/2011 - **SIGNED BY GOVERNOR**; Eff. 4/25/11
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_124
- HB153** **BIENNIAL BUDGET** (AMSTUTZ R) To make operating appropriations for the biennium beginning July 1, 2011, and ending June 30, 2013, and to provide authorization and conditions for the operation of state programs.
Current Status: 6/30/2011 - **SIGNED BY GOVERNOR**; Effective 6/30/2011; some sections different dates, 7 line item vetos
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_153
- HB168** **CAREER TRAINING WORKFORCE DEVELOPMENT GRANT** (CAREY, JR. J) To establish the Career Training Workforce Development Grant Program and to allocate a portion of casino license fees to finance the program.
Current Status: 4/7/2011 - House Economic and Small Business Development, (Second Hearing)
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_168
- HB170** **ACTIONS ON CONTRACTS** (MECKLENBORG R) To shorten the period of limitations for actions upon a contract in writing.
Current Status: 6/28/2011 - Referred to Committee Senate Judiciary - Civil Justice
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_170
- HB188** **OHIO CONSTITUTIONAL MODERNIZATION COMMISSION** (BATCHELDER W) To establish the Ohio Constitutional Modernization Commission and to make an appropriation.
Current Status: 7/15/2011 - **SIGNED BY GOVERNOR**; Eff, 10/17/2011
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_188
- HB199** **STATE BUDGET-AGGREGATE REVENUE** (BECK P) To prohibit the Governor from proposing and the General Assembly from enacting a state budget with aggregate general revenue fund appropriations that exceed ninety-five per cent of the total money received in aggregate revenue.
Current Status: 4/12/2011 - Referred to Committee House Financial Institutions, Housing and Urban Development
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_199

- HB200** **INCOME TAX DEDUCTION FOR NET CAPITAL GAINS** (BECK P) To allow an income tax deduction of up to ten thousand dollars for net capital gains.
Current Status: 4/12/2011 - Referred to Committee House Ways and Means
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_200
- HB238** **REFINERS/WHOLESALERS OF PETROLEUM** (GERBERRY R, HAGAN R) To require refiners and wholesalers of petroleum products to submit monthly reports to the Director of Commerce regarding petroleum products shipped into, used in, and exported from this state and to create the Gasoline Practices Oversight Commission for the period ending December 31, 2013.
Current Status: 5/25/2011 - Referred to Committee House State Government and Elections
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_238
- HB240** **OHIO SUSTAINABLE FOOD ADVISORY COUNCIL** (WEDDINGTON C, AMSTUTZ R) To create the Ohio Sustainable Food Advisory Council to address program and policy considerations regarding the development of a sustainable food economy in Ohio.
Current Status: 5/25/2011 - Referred to Committee House Agriculture and Natural Resources
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_240
- HB250** **PORTABLE ELECTRONICS INSURANCE** (HACKETT R) To establish requirements and procedures for issuing portable electronics insurance.
Current Status: 12/21/2011 - **SIGNED BY GOVERNOR**; Eff. 3/22/2012
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_250
- HB264** **SUNSET REVIEW COMMITTEE** (BURKE D, GROSSMAN C) To implement the recommendations of the Sunset Review Committee by abolishing, terminating, transferring, or renewing various agencies and by reestablishing the Sunset Review Committee but postponing its operation until the 131st General Assembly, to terminate the operation of certain provisions of this act on December 31, 2016; to declare an emergency.
Current Status: 6/22/2011 - House State Government and Elections, (Second Hearing)
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_264
- HB318** **ELIMINATE MARCH PRIMARY ELECTIONS** (BLESSING L, O'BRIEN S) To set two separate primary elections in 2012 for presidential and congressional races.
Current Status: 10/21/2011 - **SIGNED BY GOVERNOR**; Eff. 1/20/2012
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_318
- HB319** **CONGRESSIONAL DISTRICT BOUNDARIES** (HUFFMAN M) To establish Congressional district boundaries for the state based on the 2010 decennial census of Ohio.
Current Status: 9/26/2011 - **SIGNED BY GOVERNOR**; Eff. 9/26/2011
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_319
- HB337** **COMMERCIAL DRIVERS' LICENSES** (ROSENBERGER C) To make changes in the law governing commercial drivers' licenses, including hazardous material endorsements, medical certification requirements, disqualifications, conviction records, and establishing texting while driving as a serious traffic violation, to exclude certain components from the prohibited length dimensions of specified types of vehicles, to revise the law governing self-sufficiency contracts established under the Ohio Works First program, to eliminate requirements that the Department of Job and Family Services employ, contract with, or designate only attorneys to make decisions in appeals regarding family services programs, to temporarily extend the look-back period from two years to three years for determining whether a state "on" indicator exists based on the total unemployment rate for purposes of state extended unemployment benefits, and to declare an emergency.
Current Status: 1/27/2012 - **SIGNED BY GOVERNOR**; Eff. 1/27/2012
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_337

- HB344** **OHIO INTERNATIONAL INITIATIVE** (BARNES, JR. J) To establish the Ohio International Initiative by creating the "SellOhio Global Initiative" with in the Department of Development and the Global Initiative on International Relations within the General Assembly to create new, untapped global markets for Ohio businesses and thereby promote job creation, and to make an appropriation.
Current Status: 11/15/2011 - House Finance and Appropriations, (First Hearing)
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_344
- HB380** **ASBESTOS EXPOSURE COMPENSATION** (BLESSING L) To require claimants in asbestos tort actions to make certain disclosures pertaining to asbestos trust claims that have been submitted to asbestos trust entities for the purpose of compensating the claimant for asbestos exposure.
Current Status: 5/22/2012 - Senate Judiciary, (Seventh Hearing)
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_380
- HB412** **HEALTH BENEFIT EXCHANGE AGENCY** (ANTONIO N, CARNEY J) To establish the Ohio Health Benefit Exchange Agency and to establish the Ohio Health Benefit Exchange Program consisting of an exchange for individual coverage and a Small Business Health Options Program.
Current Status: 1/17/2012 - Referred to Committee House Health and Aging
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_412
- HB421** **PHYSICIANS CIVIL IMMUNITY** (SLABY L, O'BRIEN S) To grant civil immunity to physicians who report a patient's use of a drug of abuse or other condition not involving such use to specified persons or entities, to exclude the making of those reports from the grounds for disciplinary action against physicians, and to apply the civil immunity of physicians who report to an employer in the business of public transportation an employee's use of a drug of abuse or other condition not involving such use to any violation of a patient's privacy rights.
Current Status: 5/23/2012 - **REPORTED OUT AS AMENDED**, House Criminal Justice, (Seventh Hearing)
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_421
- HB479** **OHIO LEGACY TRUST ACT** (HAGAN C, BLESSING L) To adopt the Ohio Legacy Trust Act.
Current Status: 5/22/2012 - **SUBSTITUTE BILL ACCEPTED & REPORTED OUT AS AMENDED**, House Judiciary and Ethics, (Fourth Hearing)
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_479
- HB487** **MBR-MID-BIENNIUM REVIEW BUDGET** (AMSTUTZ R) To make operating and other appropriations, to levy taxes and provide for implementation of those levies, and to provide authorization and conditions for the operation of state programs.
Current Status: 5/31/2012 - Sent to Governor for Signature
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_487
- HB489** **STATE DEVELOPMENT OMNIBUS REORGANIZATION** (DOVILLA M, HAGAN C) To rename the Department of Development the "Development Services Agency"; to establish the Office of TourismOhio within the Development Services Agency, create the TourismOhio Advisory Board, and establish a pilot program to test a new funding mechanism for the state's travel and tourism marketing; to modify the operation of JobsOhio; to makes changes to the Capital Access Loan Program Fund and to allow transfers to the Capital Access Loan Program Fund from the Minority Business Enterprise Loan Fund; to increase the membership of the Ohio Tax Credit Authority and provide for projects that were started prior to receiving a tax credit; to modify reporting requirements under the Voluntary Action Program; to require the Director of Development Services to administer federal funds received for Brownfields revitalization purposes; to terminate the Water and Sewer Commission; to terminate the Development Financing Advisory Council as of July 1, 2012; to increase the membership of the Third Frontier Commission; and to make an appropriation.
Current Status: 5/1/2012 - Referred to Committee Senate Finance
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_489
- HB539** **STATE WORKFORCE POLICY BOARD-ONE-STOP SYSTEM** (DERICKSON T, THOMPSON A) To make changes to the composition and responsibilities of the State Workforce Policy Board and to the

One-stop System of workforce development.

Current Status: 5/10/2012 - House Economic and Small Business Development, (First Hearing)

State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_539

HB540 GOVERNOR'S OFFICE OF WORKFORCE TRANSFORMATION (NEWBOLD C, SLABY M) To authorize the Governor's Office of Workforce Transformation to create a web site to help link energy companies with trained workers.

Current Status: 5/10/2012 - House Economic and Small Business Development, (First Hearing)

State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_540

HB559 DISCLOSURE-STEEL PRODUCTS ORIGIN COUNTRY (LANDIS A, HAGAN C) To require operators and pipeline companies to disclose the country in which oil country tubular goods steel products were manufactured.

Current Status: 6/6/2012 - House Agriculture and Natural Resources, (Second Hearing)

State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_559

HCR3 HEALTH COVERAGE TAX CREDIT (O'BRIEN S) To request the members of the United States Congress to reauthorize and continue the Health Coverage Tax Credit (HCTC) enhancements including provisions related to the monthly reimbursement program, the qualified family members program, and Voluntary Employee Beneficiary Associations (VEBAs).

Current Status: 2/10/2011 - Referred to Committee House Finance and Appropriations

State Bill Page: http://www.legislature.state.oh.us/res.cfm?ID=129_HCR_3

HCR10 F-35 JOINT STRIKE FIGHTER (BUBP D, MARTIN J) To urge the Congress of the United States to continue the full funding and production of the F-35 Joint Strike Fighter.

Current Status: 5/18/2011 - **REPORTED OUT**, House Veteran's Affairs, (Second Hearing)

State Bill Page: http://www.legislature.state.oh.us/res.cfm?ID=129_HCR_10

HCR21 PENSION BENEFITS-RETIRED STEELWORKERS (SLESNICK S, RAMOS D) To declare the state of Ohio's support of its steelworkers in urging the President and the Congress of the United States to ensure that the Pension Benefit Guarantee Corporation is fully funded and properly administered to pay pension benefits to retired steelworkers and their spouses.

Current Status: 3/28/2012 - **REPORTED OUT AS AMENDED**, House Health and Aging, (Second Hearing)

State Bill Page: http://www.legislature.state.oh.us/res.cfm?ID=129_HCR_21

HCR33 FEDERAL WORKFORCE INVESTMENT ACT (DERICKSON T) To urge the Congress of the United States to take action on the federal Workforce Investment Act to allow states greater flexibility to address current economic realities.

Current Status: 5/10/2012 - Senate Ways & Means & Economic Development, (First Hearing)

State Bill Page: http://www.legislature.state.oh.us/res.cfm?ID=129_HCR_33

HR292 SKILLED WORKFORCE RECOGNITION MONTH (ADAMS R) To designate the month of March 2012 as "Skilled Workforce Recognition Month" in Ohio.

Current Status: 3/28/2012 - **ADOPTED BY HOUSE**; Vote 86-0

State Bill Page: http://www.legislature.state.oh.us/res.cfm?ID=129_HR_292

HR384 CHINESE CURRENCY MANIPULATION (DOVILLA M) To memorialize the President and Congress of the United States of the effect of Chinese currency manipulation and to urge the President to cite China as a currency manipulator.

Current Status: 5/23/2012 - **REPORTED OUT**, House State Government and Elections, (Second Hearing)

State Bill Page: http://www.legislature.state.oh.us/res.cfm?ID=129_HR_384

- SB2 REGULATORY REFORM (HUGHES J)** To evaluate the economic impact of agency rules and regulations on small business in Ohio.
Current Status: 3/4/2011 - **SIGNED BY GOVERNOR**; Eff. 6/7/2011; some sections 1/1/2012
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_2
- SB11 GOVERNMENT REGULATION PROCESS (CAFARO C)** To enact the Common Sense Regulation Act to improve state agency regulatory processes, especially as they relate to small businesses, to require state departments to develop customer service training programs, and to require the Director of Environmental Protection to provide environmental regulatory compliance assistance to small businesses.
Current Status: 2/2/2011 - Referred to Committee Senate Government Oversight & Reform
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_11
- SB12 SMALL BUSINESS SET ASIDE (KEARNEY E)** To generally require that state agencies set aside a certain amount of purchases for which only small business enterprises may compete.
Current Status: 2/2/2011 - Referred to Committee Senate State & Local Government & Veterans Affairs
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_12
- SB73 NONBEVERAGE FOOD MANUFACTURERS (MANNING G)** To allow manufacturers of nonbeverage food products to purchase at wholesale beer and intoxicating liquor from A and B liquor permit holders.
Current Status: 4/21/2011 - **SIGNED BY GOVERNOR**; Eff. 7/22/2011
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_73
- SB89 LABOR REQUIREMENTS (JORDAN K)** To prohibit state agencies from requiring or prohibiting certain labor requirements as a condition of performing public works and prohibit the appropriations of state funds for public works when political subdivisions require or prohibit certain labor.
Current Status: 3/8/2011 - Referred to Committee Senate Joint Committee on Agency Rule Review
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_89
- SB98 FEDERAL IMMIGRATION LAWS (STEWART J)** To direct the Attorney General to pursue a memorandum of agreement that permits the enforcement of federal immigration laws in this state by law enforcement officers.
Current Status: 4/13/2011 - Senate State & Local Government & Veterans Affairs, (First Hearing)
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_98
- SB140 BITTERING AGENT IN ENGINE COOLANT (BACON K, SKINDELL M)** To require the inclusion of a bittering agent in engine coolant and antifreeze.
Current Status: 11/15/2011 - Senate Judiciary, (Second Hearing)
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_140
- SB143 RECOVERY-FRAUD AGAINST THE STATE (HUGHES J, OELSLAGER S)** To provide for the recovery of damages and civil penalties for defrauding the state of money or property and to authorize private persons to bring qui tam civil actions in the name of the state to remedy the frauds.
Current Status: 5/8/2012 - Senate Judiciary, (Sixth Hearing)
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_143
- SB171 SUNSET REVIEW COMMITTEE RECOMMENDATIONS (GILLMOR K)** To implement the recommendations of the Sunset Review Committee by abolishing, terminating, transferring, or renewing various agencies and reestablishing the Sunset Review Committee but postponing operation until the 131st General Assembly, and to declare an emergency.

Current Status: 6/30/2011 - **SIGNED BY GOVERNOR**; Eff. 6/30/2011
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_171

- SB193** **SCRAP METAL DEALERS** (SEITZ B) To require scrap metal dealers to take and keep as part of the sales record a photograph of each person selling or giving an article to the dealer.
Current Status: 5/24/2012 - Informally Passed
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_193
- SB200** **EDISON JOBS DEVELOPMENT PROGRAM** (HUGHES J) To create the Edison Jobs Development Program within the Department of Development and to make an appropriation.
Current Status: 12/6/2011 - Senate Finance, (First Hearing)
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_200
- SB217** **MARCH PRIMARY ELECTIONS** (FABER K) To eliminate March primary elections in presidential election years by requiring all primary elections to be conducted on the first Tuesday after the first Monday in May, and to declare an emergency.
Current Status: 9/20/2011 - Referred to Committee Senate Government Oversight & Reform
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_217
- SB224** **WRITTEN CONTRACTS** (OBHOF L) To shorten the period of limitations for actions upon a contract in writing.
Current Status: 5/24/2012 - **PASSED BY HOUSE**; Votes 86-0
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_224
- SB231** **SEXUAL/GENDER DISCRIMINATION** (SKINDELL M, TAVARES C) To prohibit discrimination on the basis of sexual orientation or gender identity.
Current Status: 11/16/2011 - Senate Judiciary, (First Hearing)
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_231
- SB246** **PORTABLE ELECTRONICS INSURANCE** (BACON K) To establish requirements and procedures for issuing portable electronics insurance.
Current Status: 11/29/2011 - Senate Insurance, Commerce & Labor, (First Hearing)
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_246
- SB253** **ELECTRONIC WASTE ADVISORY COUNCIL** (LEHNER P) To establish a recycling program for covered electronic devices, to create the Electronic Waste Advisory Council to evaluate and make recommendations and prepare a report concerning recycling of those devices, and to terminate the Council on July 1, 2015.
Current Status: 5/1/2012 - Senate Agriculture, Environment & Natural Resources, (Third Hearing)
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_253
- SB256** **RIGHT TO CURE AGREEMENT** (COLEY W) To allow suppliers and consumers to enter into a Right to Cure agreement.
Current Status: 12/13/2011 - Senate Insurance, Commerce & Labor, (First Hearing)
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_256
- SB289** **COGENERATION TECHNOLOGY** (COLEY W) To include cogeneration technology using waste or byproduct gas from an air contaminant source as a renewable energy resource.
Current Status: 4/13/2012 - **SIGNED BY GOVERNOR**; Eff. 7/16/2012
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_289
- SCR10** **CONSUMER PROTECTION ACT** (TURNER N) To request the Commissioners of the United States Commodity Futures Trading Commission act with all possible, yet prudent, haste to develop and implement the uniform transparency rules and speculative trading limits authorized under the Dodd-

Frank Wall Street Reform and Consumer Protection Act of 2010.

Current Status: 6/15/2011 - Senate Financial Institutions, (First Hearing)

State Bill Page: http://www.legislature.state.oh.us/res.cfm?ID=129_SCR_10

SR198

SKILLED WORKFORCE RECOGNITION MONTH (WIDENER C, BEAGLE B) To designate the month of March 2012 as "Skilled Workforce Recognition Month" in Ohio.

Current Status: 3/21/2012 - **ADOPTED BY SENATE**; Vote 33-0

State Bill Page: http://www.legislature.state.oh.us/res.cfm?ID=129_SR_198



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ATTORNEY-CLIENT PRIVILEGED
CONFIDENTIAL MEMORANDUM

To: Ohio Alliance for Civil Justice

From: Bricker & Eckler LLP

Re: Pending Legislation

Date: April 26, 2012

Senate Bill 143 – False Claims Act

The legislation enacts new Ohio Revised Code 2747 providing that any person who knowingly presents a false or fraudulent claim, false record, or statement in a fraudulent claim to the State of Ohio is liable to the State for three (3) times the amount of damages that the State sustains because of the damage, costs of any action to recover those damages, and a civil penalty of \$5,500 to \$11,000 for each violation. Lesser penalties are provided for those who cooperate in False Claims Act investigations.

The Attorney General is authorized to bring civil actions against violations of False Claims provisions. Senate Bill 143 provides for Whistleblower civil suits against violators whereby whistleblowers stand to receive between 15 to 30 percent of damages (depending on AG intervention) and penalties collected. The statute of limitations under the legislation is 6 years (or 3 years after the date when the facts materials to the right of action are known or reasonably should have been known by the AG, but in no event longer than 10 years after the violation occurred, whichever is last. Retroactive application of claims is permitted as long as the statute of limitations has not expired.

The State of Ohio and federal governments would split under a 60/40 arrangement (increased from the current 50/50 recovery as provided for in current law).

House Bill 170 / Senate Bill 224. Statute of Limitations Revisions

House Bill 170 and companion Senate Bill 224 legislation reduces Ohio's statutes of limitations for written contracts from 15 years to 6 years. Ohio is one of only two states (Kentucky) that permit 15 year statutes of limitations for breach of written contracts.

Senate Bill 52. Offers of Judgment

The legislation requests the Ohio Supreme Court to amend Rule 68 of the Ohio Rules of Civil Procedure to provide for the following with respect to offers of judgment. Rule 68 would be amended to say that more than 10 days before trial the party defending an action may provide to the plaintiff an offer of judgment with costs, which may be accepted and filed with the clerk to enter the judgment. Unaccepted offers of judgment are considered withdrawn and unaccepted offers are not admissible as evidence.

If a party's certain liability has been determined, but remaining liability is left for additional proceedings, an offer of judgment may be made on the remaining liability. An offering party may be forced to pay costs incurred after an offer was made if the final judgment is not more favorable than the unaccepted offer.

Senate Bill 202. Trespasser Liability

Senate Bill 202 clarifies the responsibilities for a possessor of real property in tort for death or injuries to trespassers. The revisions specify that the owner of real property is liable to a trespasser if the possessor of such property knows, should know or believe that a trespasser is in a position of peril and the possessor of such property fails to exercise ordinary care to avoid causing the injury, death, or loss.

Possessors of property are liable in tort for trespass for injuries to children caused by artificial conditions on the property if the possessor knows or has reason to know children are likely to trespass, the condition involves an unreasonable risk to those children, the children, because of their age, do not recognize the risk involved, the utility of maintaining the artificial condition is

slight, and the possessor fails to exercise reasonable care to eliminate the risks of the artificial condition.

Possessors of real property are liable to adults to attempt to rescue children who trespass on property due to the artificial condition. Senate Bill 202 does not create new causes of action, additional immunities or defenses established in statute or common law, or civil liabilities in statute or established in common law. Criminal liabilities are unaffected and immunities or defenses for self-defense or defenses of third persons are likewise unaffected.

The Supreme Court of Ohio & The Ohio Judicial System

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May 22, 2012 Justice Stratton Announces Retirement

The second longest serving justice on the Ohio Supreme Court, Evelyn Lundberg Stratton, announced today her intention to retire by the end of the year.

Appointed to the Ohio Supreme Court by then-Gov. George Voinovich, she assumed office on March 7, 1996. Ohio voters elected Justice Stratton to three six-year terms on the court, the most recent in 2008. Her current term was to expire on January 1, 2015.

Justice Stratton began her legal career as a trial lawyer in the courtrooms of central Ohio. In 1989, she was the first woman to be elected judge of the Franklin County Common Pleas Court, where she became known as “The Velvet Hammer” for her approach to sentencing in serious felony cases.

In her resignation letter, Justice Stratton referred to her involvement in providing mental health services to offenders and assisting veterans in the criminal justice system as occupying “a place of growing importance in my life and I have decided to dedicate myself to them even more so, not only here in Ohio but also on a national level.

“Therefore, after a great deal of thoughtful deliberation, I have decided to pursue a different course in my life,” she continued. “My heart tells me this is the right decision. For this reason I will be tendering my resignation as Justice at the end of this year.”

Over the years, her work has resulted in many honors such as the Congressional Coalition on Adoption’s Angels Award, the U.S. Department of Health & Human Services’ Adoption Excellence Award, and an Ellis Island Medal of Honor.

Chief Justice Maureen O’Connor, who has served on the court with Justice Stratton for a decade, said she was sorry to see her colleague retire but grateful that her service to the citizens of Ohio will continue.

“Without a doubt, Justice Stratton is a fine judge and will be missed as a member of the court,” Chief Justice O’Connor said. “I wish her nothing but success as she pursues a new calling to improve the lives of many Ohioans who need a tireless advocate.”

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UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Jun 01, 2012
LEONARD GREEN, Clerk

IN RE: WHIRLPOOL CORPORATION FRONT-LOADING WASHER
PRODUCTS LIABILITY LITIGATION,

GINA GLAZER, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS
SIMILARLY SITUATED, ET AL.,

Plaintiffs-Appellees,

v.

WHIRLPOOL CORPORATION,

Defendant-Appellant.

ORDER

Upon consideration of the motions of the Business Roundtable, Chamber of Commerce of the United States, National Association of Manufacturers, DRI-The Voice of the Defense Bar, Association of Home Appliance Manufacturers, Ohio Manufacturers' Association, Ohio Business Roundtable, Product Liability Advisory Council, the Ohio Chamber of Commerce, and Ohio Council of Retail Merchants for leave to file a brief as amicus/amici curiae in support of Whirlpool Corporation's petition for rehearing en banc,

It is ORDERED that the motions be and they hereby are DENIED.

ENTERED BY ORDER OF THE COURT



Leonard Green, Clerk



Michael T. Williams
303.244.1867
williams@wtotrial.com

June 3, 2012

Leonard Green, Clerk
Office of the Clerk
United States Court of Appeals for the Sixth Circuit
540 Potter Stewart U.S. Courthouse
100 E. Fifth Street
Cincinnati, Ohio 45202

Re: *Gina Glazer et al. v. Whirlpool Corporation*
Case No. 10-4188 (petition for rehearing en banc pending before full Court)

Dear Mr. Green:

Whirlpool submits to the en banc Court as supplemental authority the hearing Panel's extraordinary June 1, 2012, Order summarily denying five motions by 10 of the leading national business and professional organizations for leave to file amicus/amici curiae briefs in support of Whirlpool's Petition for Rehearing En Banc. (Order, Doc. No. 006111323876.) The Panel's Order further shows the need for en banc review and, absent this letter, would deprive the full Court of learning the substantial amici interests in this case.

The amici motions were filed by the Chamber of Commerce of the United States of America, National Association of Manufacturers, Business Roundtable, Product Liability Advisory Council, DRI – The Voice of the Defense Bar, Association of Home Appliance Manufacturers, Ohio Chamber of Commerce, Ohio Council of Retail Merchants, Ohio Manufacturers' Association, and Ohio Business Roundtable. The Panel's Order denying the motions is important to the full Court's consideration of the need for en banc review because the amici briefs address multiple Panel errors that Whirlpool could not adequately address in its Petition and that seriously distort class certification law in this Circuit. (*Compare, e.g.*, Pet. at 10-11 (discussing conflict between Panel's Opinion and other Sixth Circuit decisions) *with* Br. of the Business Roundtable *et al.*, Doc. # 006111310192, at 5-6 (discussing circuit split created by the Panel's Opinion).)

During the past five years, this Circuit has granted at least 193 motions for leave to file amicus briefs in approximately 142 cases, has denied only 14 such motions in 11 other cases, and has never denied any such motion filed by one of the nation's leading business or professional organizations. Further, the Court frequently allows amicus briefs in support of petitions for rehearing en banc. *See, e.g.*, *Sander v. Gray TV Group, Inc.*, No. 10-6120, Order dated May 9, 2012; *Brown v. Cassens Transport Co.*, No. 10-2334, Order dated May 3, 2012; *Ward v. Wilbanks*, No. 10-2100, Order dated Mar. 5, 2012.

WheelerTriggO'Donnell LLP

Leonard Green, Clerk

June 3, 2012

Page 2

Whirlpool has concurrently filed a motion for expedited reconsideration of the Order or, in the alternative, to circulate the amici motions to the full Court.

Respectfully submitted,



Michael T. Williams

cc: Chief Judge Alice M. Batchelder
Malcolm E. Wheeler
Jonathan D. Selbin
F. Daniel Balmert
John H. Beisner
Galen D. Bellamy
Anthony O'Malley
Joel S. Neckers

No. 10-4188

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Jun 01, 2012
LEONARD GREEN, Clerk

IN RE: WHIRLPOOL CORPORATION FRONT-LOADING WASHER
PRODUCTS LIABILITY LITIGATION,

GINA GLAZER, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS
SIMILARLY SITUATED, ET AL.,

Plaintiffs-Appellees,

v.

WHIRLPOOL CORPORATION,

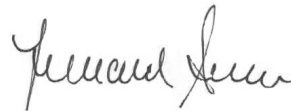
Defendant-Appellant.

ORDER

Upon consideration of the motions of the Business Roundtable, Chamber of Commerce of the United States, National Association of Manufacturers, DRI-The Voice of the Defense Bar, Association of Home Appliance Manufacturers, Ohio Manufacturers' Association, Ohio Business Roundtable, Product Liability Advisory Council, the Ohio Chamber of Commerce, and Ohio Council of Retail Merchants for leave to file a brief as amicus/amici curiae in support of Whirlpool Corporation's petition for rehearing en banc,

It is ORDERED that the motions be and they hereby are DENIED.

ENTERED BY ORDER OF THE COURT



Leonard Green, Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Leonard Green
Clerk

100 EAST FIFTH STREET, ROOM 540
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988

Tel. (513) 564-7000
www.ca6.uscourts.gov

Filed: June 01, 2012

Mr. John Beisner
Mr. J. Philip Calabrese
Ms. Mary Massaron Ross
Ms. Anne M. Sferra
Mr. Brian A Troyer

Re: Case No. 10-4188, *In re: Gina Glazer, et al v. Whirlpool Corporation*
Originating Case No. : 08-wp-65000

Dear Counsel,

The Court issued the enclosed Order today in this case.

Sincerely yours,

s/Beverly L. Harris
En Banc Coordinator
Direct Dial No. 513-564-7077

cc: Mr. Francis Daniel Balmert
Mr. Galen D. Bellamy
Mr. Pierre H. Bergeron
Ms. Robin Sue Conrad
Mr. Jason L. Lichtman
Mr. Joel S. Neckers
Mr. Anthony J. O'Malley
Ms. Emily Elizabeth Black Root
Mr. Jonathan D. Selbin
Ms. Geri M. Smith
Mr. Malcolm Edward Wheeler
Mr. Michael Timothy Williams

OMA in the Courts

Amicus Briefing Activity Summary

Glazer v. Whirlpool

OMA filed a motion for leave to file an amicus brief in the US Court of Appeals (6th Circuit) in a case impacting the proper application and development of class-action case law so as to not make Ohio federal courts a hot bed for class actions and to avoid encouraging more frivolous litigation.

The case involves Whirlpool's high-efficiency front-loading washers, many of which have been built in Clyde, Ohio, which provide undisputed consumer benefits in terms of excellent cleaning, capacity, gentleness, water conservation, and energy conservation, and which have been among *Consumer Reports* top five ranked clothes washers for 10 consecutive years, and which also have excellent reliability and low repair rates as reported in *Consumer Reports*. These machines are Whirlpool's flagship appliance, bar none. Nonetheless, the class-action plaintiffs' lawyers allege that all of the dozens of different models built since 2001 are uniformly defective because they accumulate excessive mold and produce moldy odors, even though the evidence shows less than 1.0% of all owners of the products reported any such problem, and even though Whirlpool's evidence shows that odors are caused by users' failure to follow the products' instructions.

If left unchecked, the Sixth Circuit's decision will increase costs and defer investments in consumer-relevant innovation by bringing all consumers into a defined "class" action, even when no adverse impact or problem exists. Counsel believes the decision represents a misapplication of prevailing law and creates legal precedent that undermines the ability of U.S. and Ohio businesses to grow and add employment in this country.

On May 18, the OMA and several other state and national trade associations petitioned the court for rehearing en banc. On June 1, the Sixth Circuit denied all of the amici motions for leave to file a brief in support of en banc review. This was unexpected as the Court almost always grants such motions. It is also troubling as the decision was made by the same three-judge panel that issued the decision Whirlpool is attempting to have reviewed by the full court. As a result of the panel's decision, the full court may never see the amicus briefs.

On June 3 Whirlpool filed a motion for reconsideration (which will be decided by the same three-judge panel) as well as a "supplemental authority" letter. (Both are attached.) The letter apprises the full court of the panel's decision denying leave to amici and shows how unusual this decision is.

Beaver Excavating Company v. Ohio Tax Commissioner

Again acting to defend business tax reforms enacted in 2005, the OMA [filed an amicus brief](#) in an Ohio Supreme Court case to defend the state's commercial activities tax (CAT).

In the current case, *Beaver Excavating Company v. Joseph Testa* (Ohio Tax Commission), CAT challengers say that receipts generated by motor fuel sales are "related to" gas taxes, and thus trigger a constitutional violation (Section 5a). The lower courts have ruled there is no violation, but gas stations and road building interests are now appealing to the Supreme Court. The Ohio Tax Department is defending the tax.

The OMA joined with the Ohio Society of CPAs in filing an amicus brief in support of the state's defense of the CAT. "There is no justification for creating a favored class of taxpayers who will no longer pay any general business tax," writes OMA tax counsel, Mark Engel of Bricker & Eckler LLP, in the brief.

The challenge to the tax is based not on the "no tax on food" amendment, but on the constitutional clause

(Art. XII, Sec. 5a) that requires gasoline taxes and drivers'-license fees to be dedicated to highway funding and related purposes. Just as the Grocers claimed that the CAT was a "tax on food," because some gross receipts were generated by food sales, the challengers here say that receipts generated by motor fuel sales are "related to" gas taxes, and thus trigger Section 5a. That, we think, is wrong, and the courts below agreed. But it gets worse. The challengers do not seek to have some CAT revenue sent to the highway fund instead of the CAT's usual flow in GRF and local govt. etc. – they want the tax "invalidated" and not even imposed as applied to receipts "related to" fuel sales. That would be a hole in the CAT, and the "related" language could be unpredictable enough to lead to even more chipping away.

In a similar case two years ago the grocery store industry claimed that the CAT was a "tax on food," because some gross receipts were generated by food sales. [Link to case docket.](#) The brief was filed on May 9. Counsel expects a decision by the end of the year.

Mercy Medical Center v. Aultman Health Foundation

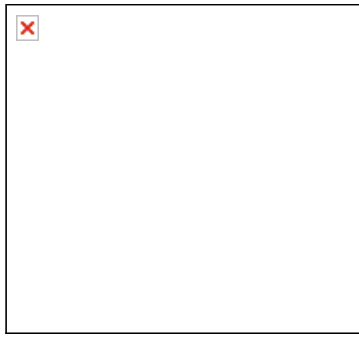
On April 19, the OMA filed an amicus brief with the Ohio Supreme Court to urge the court to accept the appeal in order to review the case to define the proper scope of liability under Ohio's Pattern of Corrupt Activity ("POCA") statutes and to restore the limitations on when the corporate veil can be pierced between related entities.

In December, 2007, a competitor of Aultman Hospital, Mercy Medical Center ("Mercy"), filed a lawsuit against all of the Aultman entities, including AultCare Corporation, which sells health insurance plans and services, and Aultman Hospital. The lawsuit primarily challenged a broker incentive compensation program.

The lawsuit went to trial in the Spring of 2010. Mercy sought \$110,000,000 in damages, which were subject to statutory trebling under some of the claims. Six claims were submitted to the jury. The jury returned a verdict in favor of the Aultman Defendants on five of the six claims, finding that the broker incentive compensation program did not constitute an antitrust violation, tortious interference with Mercy's business, a deceptive trade practice, unfair competition or a civil conspiracy. The jury found in favor of Mercy on one claim, brought under Ohio's Pattern of Corrupt Activity ("POCA") statute, and awarded Mercy \$6,148,000 in "actual damages" on that claim. POCA is Ohio's version of the federal RICO statute.

In addition to other issues, Aultman appealed the jury's verdict on the POCA claim to the Court of Appeals. Court of Appeals issued its Decision on March 5, 2012 affirming the jury verdict under POCA.

Significantly for the business community, the Decision expanded the breadth of POCA, and therefore the potential for abusive civil litigation under POCA



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Previous Election Results

Ohio Supreme Court

Ohio voters will have the rare chance to vote for three members of the state's highest court in 2012.

They don't always garner as much attention that races higher on the ticket get, but elections for the Ohio Supreme Court have just as significant an impact on your job, your family and your economic future as any other election. That's because the courts have the power to rule on laws enacted by the legislature and enforced by the executive branch. When justices are elected who feel that the power of the courts are beyond that of the other two branches, they go even further – using the Supreme Court as a tool to set their own policy and in effect enact their own laws.

[Q&A: Why should you care about Supreme Court races?](#)

Through the hard work of organizations interested in protecting jobs and future economic opportunities in our state, recent Supreme Court elections have produced favorable results for those seeking conservative values and judicial restraint from our state's highest court.

Terms of the members of the Ohio Supreme Court

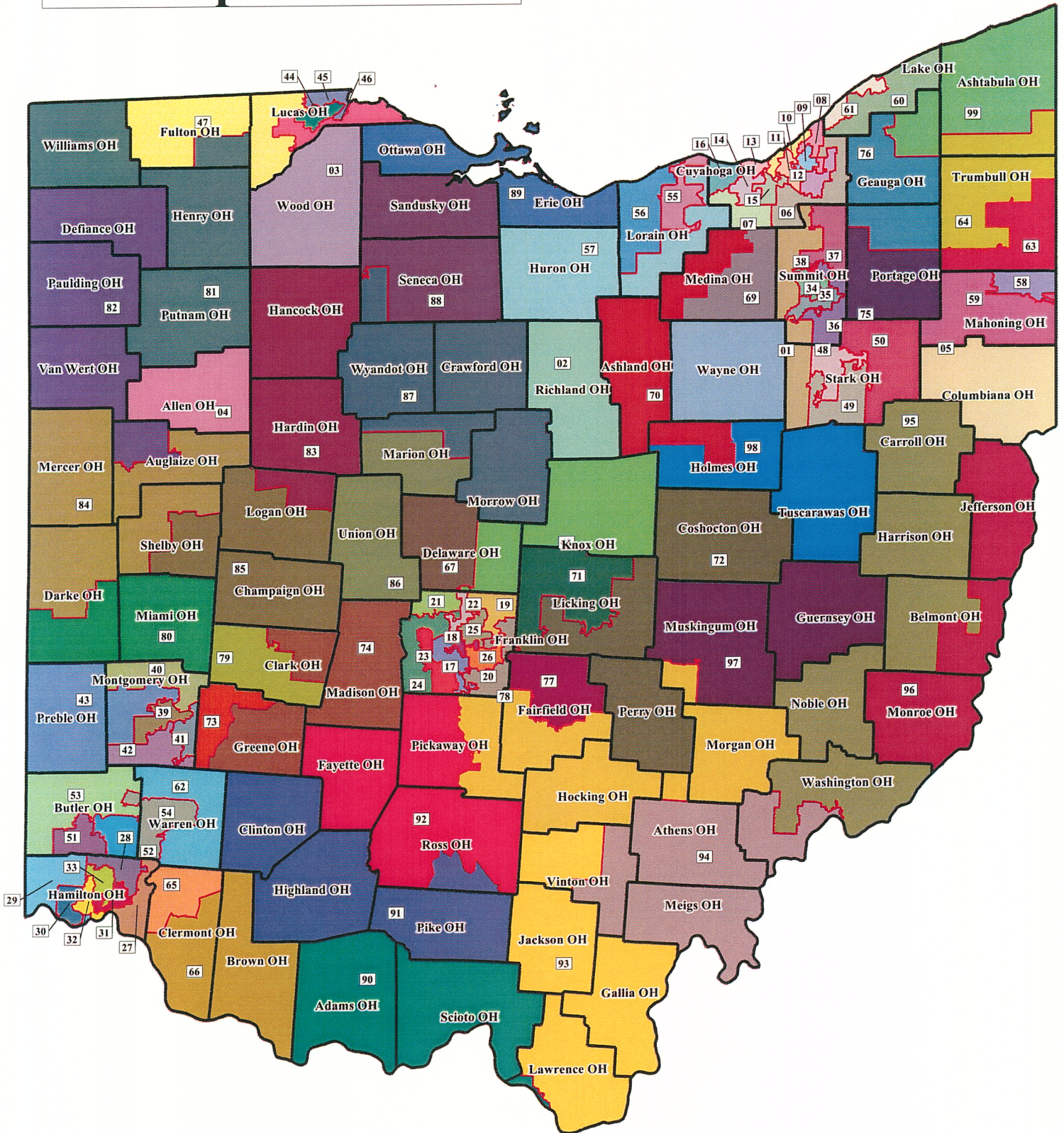
| Justice | End of Current Term | Previous Election | Next Election |
|----------------------------------|---------------------|-------------------|---------------|
| Maureen O'Connor (Chief Justice) | 12/31/2016 | 2010 | 2016 |
| Paul Pfeifer | 1/1/2017 | 2010 | 2016* |
| Judith Lanzinger | 12/31/2016 | 2010 | 2016* |
| Evelyn Lundberg Stratton | 1/1/2015 | 2008 | 2014 |
| Robert Cupp | 1/1/2013 | 2006 | 2012 |
| Yvette McGee Brown | 12/31/2012 | N/A ¹ | 2012 |
| Terrence O'Donnell | 12/31/2012 | 2006 | 2012 |

* Justices Pfeifer and Lanzinger are unable to run for re-election to the Ohio Supreme Court due to age limits

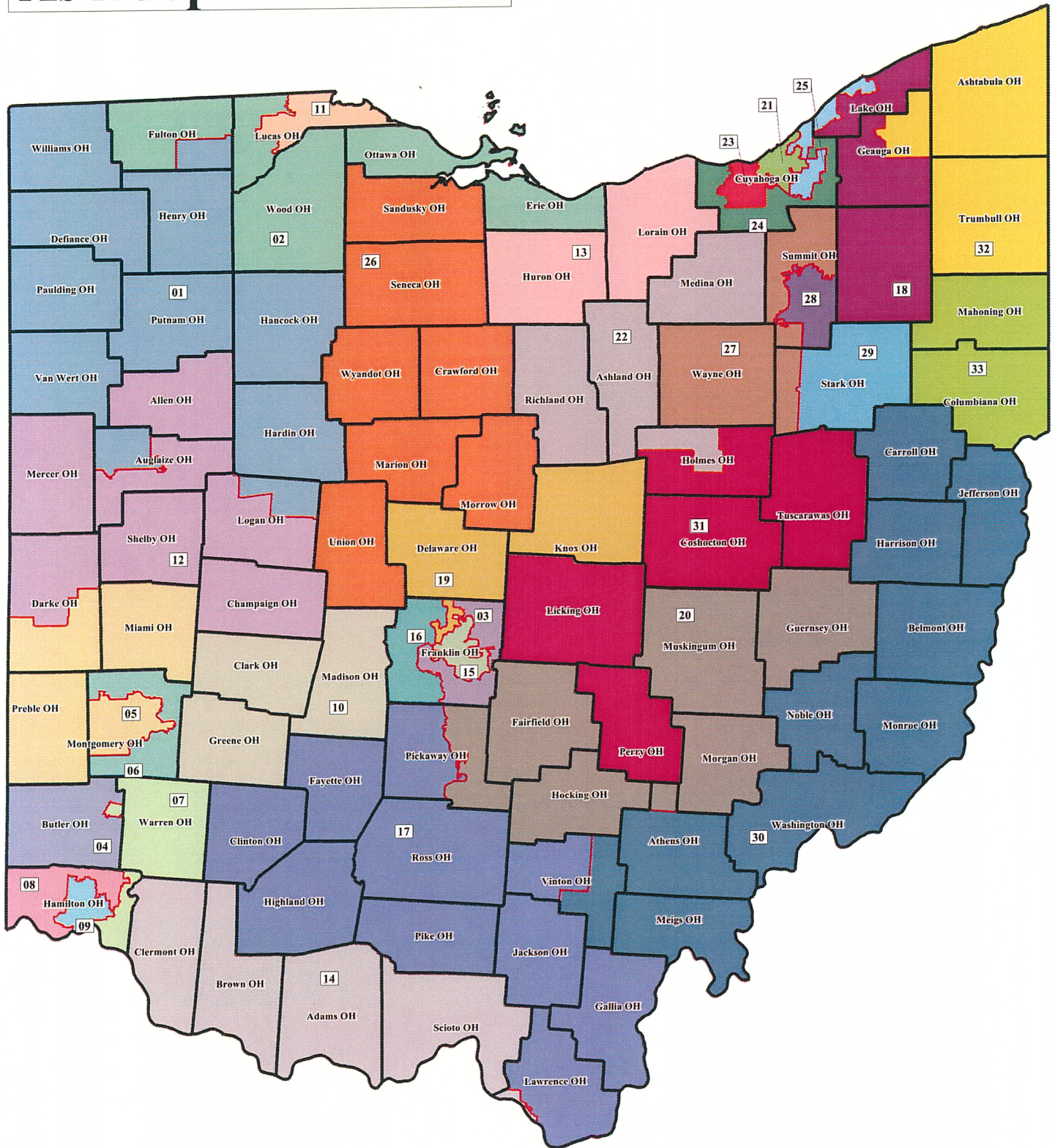
¹ Justice Brown was appointed by Governor Strickland in December 2010, due to the vacancy left by Maureen O'Connor's election as Chief Justice in November 2010

- The Chief Justice and six Justices are elected to six-year terms on a nonpartisan ballot.
- Appointments are made by the Governor for vacancies that occur between elections.
- A person must be an attorney with at least six years of experience in the practice of law to serve on the Ohio Supreme Court.

Ohio House Districts As Adopted



Ohio Senate Districts As Adopted



Possible Ballot Issues – 2012

**Must be submitted to the Ohio Secretary of State by July 4 to be on the ballot in Nov. 2012 (125 days prior to the election)*

- Workforce Freedom Act – constitutional amendment/right to work initiative
- Ohio Medical Cannabis Amendment – constitutional amendment/legalize marihuana for medical purposes and make other changes
- Ohio Alternative Treatment – constitutional amendment/legalize marihuana for medical purposes and make other changes
- “Personhood” Amendment – constitutional amendment/outlaw abortion by giving legal status to fertilized human eggs, providing them the same rights as a person
- Dog Auctions – this is an initiated statute to make it illegal for anyone to auction or raffle a dog in Ohio. It also would prohibit bringing dogs into the state for sale or trade that were acquired by auction or raffle elsewhere. It was filed with the General Assembly for consideration earlier this year, but was not acted upon. Thus, proponents may gather additional signatures to place it on the ballot.
- Repeal Ban on Gay Marriage – this constitutional amendment would repeal the DOMA amendment, which was adopted in 2004 with 61.7% approval by the voters.
- Ohio Clean Energy Initiative - a constitutional amendment requiring the state to issue \$1.3 billion in bonds each fiscal year through FY23. The money could be spent to support energy infrastructure related to solar, wind, biomass, battery technology and geothermal sources; research and development; and site and facility development for clean energy. Environmental groups opposing.
- Redistricting Reform – initiated by Voters First Ohio, this constitutional amendment would create an Independent Citizens Commission to draw congressional and state legislative districts. The Citizens Commission will include equal numbers of Republicans, Democrats and independents, and the approval of at least seven of the twelve members of the commission will be required for the adoption of any plan. Districts will be required to geographically compact and competitive.



Hannah News Guide to New Districts, Incumbents

The following is a guide to the incumbents in new state and federal legislative maps created by the Ohio Apportionment Board and HB319 (Huffman). Incumbents are listed with their party and the number of the previous district they represented. "Open" designates a new district in which there is no current incumbent.

Ohio House of Representatives Districts

| New Dist | Incumbent (Party-Current District) | Dist. | Incumbent (Party-Current District) |
|----------|--|-------|---|
| 1 | Ron Amstutz (R-3) | 44 | Michael Ashford (D-48) |
| 2 | Jay Goyal (D-73) | 45 | Open |
| 3 | Randy Gardner (R-6) | 46 | Teresa Fedor (D-47), Matt Szollosi (D-49) |
| 4 | Matt Huffman (R-4) | 47 | Barbara Sears (R-46) |
| 5 | Craig Newbold (R-1) | 48 | Kirk Schuring (R-51) |
| 6 | Marlene Anielski (R-17) | 49 | Stephen Slesnick (D-52) |
| 7 | Mike Dovilla (R-18) | 50 | Christina Hagan (R-50) |
| 8 | Kenny Yuko (D-7), Armond Budish (D-8) | 51 | Courtney Combs (R-54) |
| 9 | Barbara Boyd (D-9) | 52 | Margaret Conditt (R-55) |
| 10 | Bill Patmon (D-10) | 53 | Tim Derickson (R-53) |
| 11 | Sandra Williams (D-11) | 54 | Peter Beck (R-67) |
| 12 | John Barnes Jr. (D-12) | 55 | Matt Lundy (D-57) |
| 13 | Nickie Antonio (D-13) | 56 | Dan Ramos (D-56) |
| 14 | Mike Foley (D-14) | 57 | Terry Boose (R-58) |
| 15 | Tim DeGeeter (D-15) | 58 | Robert Hagan (D-60) |
| 16 | Nan Baker (R-16) | 59 | Ron Gerberry (D-59) |
| 17 | Open | 60 | Lorraine Fende (D-62) |
| 18 | Michael Stinziano (D-25), Ted Celeste (D-24) | 61 | Ron Young (R-63) |
| 19 | Anne Gonzales (R-19), Nancy Garland (D-20) | 62 | Ron Maag (R-35) |
| 20 | Open | 63 | Sean O'Brien (D-65) |
| 21 | Mike Duffey (R-21) | 64 | Tom Letson (D-64) |
| 22 | John Carney (D-22) | 65 | Joseph Uecker (R-66) |
| 23 | Cheryl Grossman (R-23) | 66 | Danny Bulp (R-88) |
| 24 | Open | 67 | Andrew Brenner (R-2) |
| 25 | Carlton Weddington (D-27) | 68 | Margaret Ann Ruhl (R-90) |
| 26 | Tracy Heard (D-26) | 69 | William Batchelder (R-69) |
| 27 | Peter Stautberg (R-34) | 70 | David Hall (R-97) |
| 28 | Connie Pillich (D-28) | 71 | Jay Hottinger (R-71) |
| 29 | Lou Blessing (R-29) | 72 | Bill Hayes (R-91) |
| 30 | Lou Terhar (R-30), Denise Driehaus (D-31) | 73 | Jarrod Martin (R-70) |
| 31 | Open | 74 | Bob Hackett (R-84) |
| 32 | Dale Mallory (D-32) | 75 | Kathleen Clyde (D-68) |
| 33 | Alicia Reece (D-33) | 76 | Richard Hollington (R-98) |
| 34 | Zack Milkovich (D-45) | 77 | Gerald Stebelton (R-5) |
| 35 | Vernon Sykes (D-44) | 78 | Open |
| 36 | Todd McKenney (R-43) | 79 | Ross McGregor (R-72) |
| 37 | Kristina Roegner (R-42) | 80 | Richard Adams (R-79) |
| 38 | Lynn Slaby (R-41) | 81 | Lynn Wachtmann (R-75) |
| 39 | Clayton Luckie (D-39) | 82 | Bruce Goodwin (R-74) |
| 40 | Michael Henne (R-36) | 83 | Robert Sprague (R-76) |
| 41 | Jim Butler (R-37) | 84 | Jim Buchy (R-77) |
| 42 | Terry Blair (R-38) | 85 | John Adams (R-78) |
| 43 | Roland Winburn (D-40) | 86 | Dorothy Pelanda (R-83) |

Ohio House of Representatives Districts Cont.

| New Dist | Incumbent (Party-Current District) | Dist. | Incumbent (Party-Current District) |
|----------|------------------------------------|-------|--|
| 87 | Jeffrey McClain (R-82) | 94 | Debbie Phillips (D-92) |
| 88 | Rex Damschroder (R-81) | 95 | Mark Okey (D-61), Andy Thompson (R-93) |
| 89 | Dennis Murray (D-80) | 96 | Lou Gentile (D-95) |
| 90 | Terry Johnson (R-89) | 97 | Brian Hill (R-94) |
| 91 | Cliff Rosenberger (R-86) | 98 | Al Landis (R-96) |
| 92 | Bob Peterson (R-85) | 99 | Casey Kozlowski (R-99) |
| 93 | John Carey (R-87) | | |

Ohio Senate Districts

| New Dist | Incumbent (Party-Current District) | Dist. | Incumbent (Party-Current District) |
|----------|------------------------------------|-------|---|
| 1 | Cliff Hite (R-1) | 18 | To Be Appointed |
| 2 | Mark Wagoner (R-2) | 19 | Kris Jordan (R-19) |
| 3 | Kevin Bacon (R-3) | 20 | Troy Balderson (R-20) |
| 4 | Bill Coley (R-7) | 21 | Shirley Smith (D-21) |
| 5 | Bill Beagle (R-5) | 22 | Larry Obhof (R-22) |
| 6 | Peggy Lehner (R-6) | 23 | Michael Skindell (D-23) |
| 7 | Shannon Jones (R-7) | 24 | Tom Patton (R-24) |
| 8 | Bill Seitz (R-8) | 25 | Nina Turner (D-25) |
| 9 | Eric Kearney (D-9) | 26 | Dave Burke (R-26) |
| 10 | Chris Widener (R-10) | 27 | Frank LaRose (R-27) |
| 11 | Edna Brown (D-11) | 28 | Tom Sawyer (D-28) |
| 12 | Keith Faber (R-12) | 29 | Scott Oelsager (R-29) |
| 13 | Gayle Manning (R-13) | 30 | Open |
| 14 | Tom Niehaus (R-14) | 31 | Tim Schaffer (R-31) |
| 15 | Charleta Tavares (D-15) | 32 | Capri Cafaro (D-32) |
| 16 | Jim Hughes (R-16) | 33 | Jason Wilson (D-30), Joe Schiavoni (D-33) |
| 17 | David Daniels (R-17) | | |

Ohio Congressional Districts

| New Dist | Incumbent (Party-Current District) | Dist. | Incumbent (Party-Current District) |
|----------|------------------------------------|-------|--|
| 1 | Steve Chabot (R-1) | 9 | Marcy Kaptur (D-9), Dennis Kucinich (D-10) |
| 2 | Jean Schmidt (R-2) | 10 | Michael Turner (R-3), Steve Austria (R-7) |
| 3 | Open | 11 | Marcia Fudge (D-11) |
| 4 | Jim Jordan (R-4) | 12 | Pat Tiberi (R-12) |
| 5 | Bob Latta (R-5) | 13 | Tim Ryan (D-17) |
| 6 | Bill Johnson (R-6) | 14 | Steven LaTourette (R-14) |
| 7 | Bob Gibbs (R-18) | 15 | Steve Stivers (R-15) |
| 8 | John Boehner (R-8) | 16 | Betty Sutton (D-13), Jim Rennaci (R-16) |



May 18, 2012

The Honorable Peter Stautberg
Chairman, House Public Utilities Commission
Ohio House of Representatives
77 S. High St., 11th floor
Columbus, OH 43215

RE: S.B. 315 – Ohio Steel Industry Supports Pipe Monitoring

Dear Chairman Stautberg:

As the House continues work on S.B. 315, I write on behalf of Ohio's steel manufacturers. Overall, members of the Ohio Steel Council (OSC) are pleased to support the spirit of the legislation. Energy is among the top opportunities and threats to Ohio steelmakers. To that end we write to share comments on an important issue.

An issue of great interest to Ohio's steelmakers is the steel pipe monitoring program to promote safety and Ohio manufacturing jobs. This provision provides for a record keeping system of the country of origin for manufactured tubular steel products used in the exploration, gathering and transportation of natural gas or hazardous liquids.

Keeping such a record of the infrastructure materials used in the development of the Marcellus and Utica shale would provide Ohioans a better sense of safety knowing where the products are manufactured and that they are meeting the appropriate safety certifications and specifications under Ohio and federal law.

The provision is in part in response to foreign pipe products illegally dumped in the United States from various points of origin and which do not meet appropriate safety standards. The Amendment will not create additional costs and could encourage the use of domestically made tubular steel products – much of which are manufactured here in the State of Ohio.

May 18, 2012
Page 2 of 2

Thank you for your interest in our perspectives.

Sincerely,

A handwritten signature in blue ink, appearing to read "Sal Miraglia". The signature is fluid and cursive, with the first name "Sal" being particularly prominent.

Sal Miraglia
President – Steel Business
The Timken Company
President/Chairman of the Board, Ohio Steel Council

Cc: Honorable William Batchelder, Speaker of the House

About the Ohio Steel Council Comprised of steel producers, processors and suppliers, the Ohio Steel Council serves as the voice of the steel industry in Ohio. By promoting the benefits of a healthy steel sector, the Council strives to educate key constituents about the industry's overall importance and significant economic impact. A participant in the legislative process, the Ohio Steel Council provides insight on policy issues, including their potential effects on Ohio's steel industry and the state's economy. Additional information about the Ohio Steel Council is available at www.ohiosteelcouncil.org.

Ohio Steel Council Members: AK Steel Corporation, AMG Vanadium, ArcelorMittal, Charter Steel, Cliffs Natural Resources, Inc., Eramet Marietta, Inc., Nucor Steel Marion, Inc., Republic Steel, Stein, Inc., The Timken Company, Tata Steel, Tube City IMS, US Steel Corporation, V&M Star, Wheeling & Lake Erie Railway

Employee Communications/Political Action Interview Guide

Getting on the same page ...

I want to ask you some questions and gain your opinions about what I will call “employee communication/political action activities.” By “employee communication activities,” I mean communication activities that your company might undertake to educate your employees in a non-partisan fashion about public policy issues and legislation and candidates for certain elected offices.

Some companies do this to help employees understand how public policy issues and candidates might affect their communities, the competitiveness of their employer and therefore, the long-term security of their jobs.

The OMA is interested in your opinions about employee communications programs in order to shape any program it might offer to members this year or in the future.

1. Please describe your company’s current or past employee communication activities.
2. Who or what organizations support your program? Or is it all managed internally?
3. How do you distribute information to employees within your company?
4. To what employee audiences do you distribute information?
5. What would you say is your company’s leadership position or philosophy on employee communication activities?
6. What are the most effective activities you undertake? Why do you think this?
7. What are your company’s issues or problems in executing your employee communications program?
8. If OMA could do just one thing to support your employee communications activities, what would it be?



Ohio Advisory Committee

| | |
|------------------------------|---|
| Peter Ahern | President, The Axios Foundation |
| Wayne Baller | Managing Director, UBS Baller Financial Group |
| Joyce Beatty | Former Minority Leader, Ohio House of Representatives |
| Marilyn Brown | Board President, Franklin County Commissioners |
| Jennifer Brunner | Secretary of State, State of Ohio (2007-2011) |
| William I. Brustein | Vice Provost for Global Strategies & International Affairs, The Ohio State University |
| Erin Cordle | Catholic Relief Services Director, Catholic Diocese of Columbus |
| Michael Dalby | President & CEO, Columbus Chamber |
| Joseph Dehner | Attorney, Frost Brown Todd LLC |
| Dr. Larry Dosser | President & CEO, Mound Laser & Photonics Center Inc. |
| Joyce Garver Keller | Executive Director, Ohio Jewish Communities |
| Deborah Gross | President/Owner, DGross Consulting; Immediate Past President, Dayton Defense |
| Richard K. Herrmann | Director, Mershon Center for International Security Studies, The Ohio State University |
| Rev. Callon W. Holloway, Jr. | Bishop, South Ohio Synod, Evangelical Lutheran Church in America |
| Bruce Johnson | President & CEO, Inter-University Council of Ohio; Lieutenant Governor, State of Ohio (2005-2006) |
| Rock Jones | President, Ohio Wesleyan University |
| Ken Lanci | Chairman & CEO, Consolidated Graphics |
| John Lewis, Jr. | Vice President & COO, BioOhio |
| Stephen Lyons | Vice President, Columbus Partnership |
| Ty D. Marsh | Former President and CEO, Columbus Chamber |
| Larry D. Marshall | Health Commissioner, Meigs County; U.S. Army (ret.) |
| Terry Martell | Director of Operations & Business Development, Akron Global Business Accelerator |
| Jibril Mohamed | Executive Director, SomaliCan |
| Rev. Robert Molsberry | Ohio Conference Minister, United Church of Christ |
| Donald Plusquellic | Mayor, City of Akron (1987- present) |
| Jason Riveiro | Ohio State Director, League of United Latin American Citizens (LULAC) |
| Deborah Schultz | President, Trans-Borders Solutions |
| Mike Slaughter | Lead Pastor, Ginghamburg Church |
| Hon. Bob Taft | Governor, Ohio (1999-2007) |
| Charleta Tavares | Senator, Ohio State Senate |
| Patrick Terrien | President & CEO, Columbus Council on World Affairs |
| Colonel Frank A. Titus | U.S. Air Force (ret.); United Nations Association (Columbus Chapter) |
| Rev. Rebecca J. Tollefson | Executive Director, Ohio Council of Churches |
| Steve Tugend | Former Vice President, Government Relations, Columbus Chamber |
| Dr. Charles Wise | Director, John Glenn School of Public Affairs, The Ohio State University |

Ohio: Benefits of the International Affairs Budget



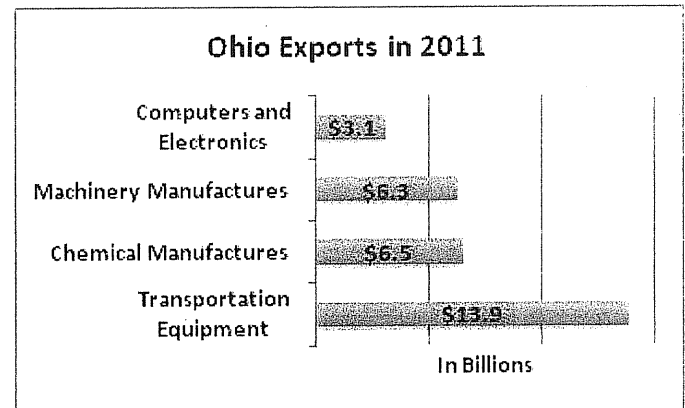
Ohio is reaching out across the world to grow its economy, but its heartland location is what makes it such an attractive place to do business. With the fourth-largest rail line and airport infrastructure in the nation, Ohio's private, public, and international transportation lines connect businesses with the needs of a changing global economy.

Job Creation

- Trade supported nearly **1,400,000** jobs in Ohio in 2010, or **21%** of total jobs, a **11%** gain over the last eight years.
- **27%** of all manufacturing workers in Ohio depended on exports for their jobs.
- In 2010, **229,500** people in Ohio were employed by affiliates of companies that are at least 50% foreign-owned.

Exports and Growth

- Ohio exported over **\$46.4 billion** in goods and services to foreign markets in 2011. Ohio's largest market in 2011 was Canada (\$18.7 billion) followed by Mexico (\$4.1 billion), China (\$2.7 billion), France (\$2.4 billion), and Brazil (\$1.7 billion).
- In 2009, around **12,369 companies** exported goods from Ohio. Of these, **90% were small- and medium-sized enterprises** with fewer than 500 employees.
- Agricultural exports are important to Ohio's economy, totaling more than **\$2.9 billion** annually.
- Over the last four years, the U.S. Export-Import Bank has financed over **\$1.3 billion** in exports from 193 companies in 73 communities in Ohio.
- Since 1971, the Overseas Private Investment Corporation has invested over **\$1,417,000,000** in companies throughout the state of Ohio.



Education and Research

- In 2009-2010, more than **10,763 Ohio students** studied abroad.
- During 2011, close to **24,709 international students** were enrolled in Ohio colleges and universities and contributed nearly **\$662.4 million** to the Ohio economy.

Global Engagement

- Since 1961, **6,728 Peace Corps volunteers** from Ohio have served in dozens of countries overseas.



For sources, please visit www.usglc.org/ohio

The International Affairs Budget: Supporting Recovery in Ohio



As the U.S. continues its economic recovery, exports are playing an important role in creating new jobs. With 95 percent of the world's consumers living outside of the United States, it is increasingly clear that America's economic prosperity is linked to the world economy. The International Affairs Budget increases economic opportunities, promotes our business interests around the world, and creates American jobs through increased exports.

According to the Department of Commerce, U.S. exports supported an estimated **9.2 million** jobs in 2010. In Ohio, metropolitan areas like Columbus account for over **\$7.9 billion** in exports annually, and over **74,000 jobs** in Cincinnati are supported by exports.

Ohio Exporters Partnering with the U.S. Government

General Electric Company
Metal Seal & Products, Inc.
Rolls-Royce Energy Systems
HPE, Inc.
Crown Battery Manufacturing Company
Q-Lab Corporation
Anglo American Hardwood, LLC
Kentrox, Inc.
Western States Machine Company
Stride Tool, Inc.
Consolidated Metal Products
Middletown Tube Works, Inc.
Aluminum Line Products Company
Atricare, Inc.
Briskheat Corporation
William R. Hauge, Inc.
GFS Chemicals, Inc.
Fecon, Inc.

Top Ohio Exports

Civilian Aircraft
Soybeans
Rubber
Automobile Parts and Accessories
Tractor Trailers and Semi-Trailers
Gas Turbines
Refrigeration Compressors

Key Facts:

- In the last seven years, Ohio manufacturing exports rose more than twice as fast as the state's overall economy.
- Ohio ranked 9th among exporting state in 2011.
- In 2011, 216 countries and territories imported goods from Ohio, eight of which purchased over \$1 billion in total exports.
- Cincinnati's GE Engine Services, Inc. has generated over \$192 million in exports as a result of Export-Import Bank loans.



For more information, please visit www.usglc.org/ohio

May 29, 2012

Eric Burkland
President
The Ohio Manufacturers' Association
33 N. High Street, 6th floor
Columbus, Ohio 43215

Dear Mr. Burkland:

As an influential leader in your state, we would like to invite you to serve on the U.S. Global Leadership Coalition's Ohio Advisory Committee. The U.S. Global Leadership Coalition (USGLC) is a broad-based influential network of 400 businesses and NGOs; national security and foreign policy experts; and business, faith-based, academic and community leaders in all 50 states who support a smart power approach of elevating diplomacy and development alongside defense in order to build a better, safer world.

The USGLC works in our nation's capital and across the country to educate and inspire support from the American public and policymakers on the importance of America's civilian-led tools of diplomacy and development.

As a member of the USGLC's Ohio Advisory Committee, we would ask that you lend your name in public support of our foreign policy initiative.

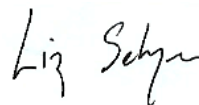
Your membership will entitle you to be part of several educational and training events around the state featuring prominent foreign policy and national security experts as well as access to the latest information on developments in foreign affairs. We hope that as a member of our Ohio Advisory Committee you will take advantage of as many of these opportunities as possible.

As you are aware, today's increasingly interconnected world requires strong U.S. moral and pragmatic leadership to strengthen democratic governance, harness economic potential, alleviate global poverty and improve human conditions. We hope you will join us in this important opportunity. We would be happy to answer any questions you may have. For more information, you can visit our website at www.usglc.org.

Sincerely,



George Ingram
Chairman



Liz Schray
Executive Director

ENERGY

To: OMA Government Affairs Committee
From: Kevin Schmidt, OMA Staff
Re: Energy Update
Date: 6/6/2012

1. AEP-Ohio Rate Cases

AEP-Ohio has a number of rate cases before the PUCO now that if decided poorly could significantly undermine manufacturing competitiveness in its service territories. The OMA has prepared a separate document detailing these cases which can be found in your packet.

2. Senate Bill 315 Energy MBR

The Ohio House of Representatives passed [Senate Bill 315](#) (Jones, R-Springboro), which makes several modifications to Ohio law related to oil and gas exploration and Ohio's renewable energy portfolio standard. The Ohio Senate agreed to the changes, avoiding a conference committee.

Notable changes the House made were: (a) clarifying that doctors are not barred from sharing proprietary information about chemicals used in the fracking process when treating patients; (b) limiting the university loophole for the qualification of combined heat and power projects as renewable energy to only the University of Cincinnati and Kent State, and (c) removing a provision important to manufacturing and the Ohio steel industry that would have required the disclosure of the country of origin of certain tubular steel products. These products have been dumped in Ohio in the past, resulting in the shutdown of Ohio steel mills.

A detailed analysis of SB 315 will be developed by OMA energy counsel at Bricker & Eckler, and the OMA Energy committee will review at its upcoming meeting on June 13th at the OMA. [Click here](#) to register.

3. Shale Update

Ohio continues to be hub for shale development. While natural gas markets are low and expected to stay that way resulting in gas wells being uneconomic, Ohio's abundant Utica shale is expected to continue to drive growth in the sector. The Utica shale is thought to contain vast reserves of oil and other materials that provide for much more lucrative revenue streams.

Other items of interest regarding shale are the changes made to Ohio law in Senate Bill 315 regarding exploration and production industries. A full summary of the changes made by SB 315 is in your packet.

Energy Management

PUCO Allows AEP to Raise Rates

This week the PUCO [agreed](#) to let AEP-Ohio increase capacity rates through July 2. This is in response to AEP-Ohio's request to allow it to continue charging the first 21% of shopping customer load \$146 dollars per megawatt day (MW/D) for capacity and the rest of its customers \$255 MW/D. Capacity is the fixed charge customers pay to ensure there is a power plant available to generate electricity.

While this is characterized by AEP Ohio and the PUCO as a "status quo" action, it represents an increase for customers who have shopped and are in "fixed price" contracts with suppliers. Fixed price contracts are generally predicated on the customer getting market rates for capacity over the term of the contract. Market rates, starting today, drop to \$16.47 MW/D for capacity. Had the PUCO not extended the \$146 MW/D capacity charge, shopping customers would get the \$16.47 price. The \$130 difference will likely be passed along to customers by the certified retail electric suppliers with whom they contracted.

[Click here](#) to read a full analysis of the two AEP Ohio rate cases. Contact [Kevin Schmidt](#) at the OMA with questions.

06/01/2012

Capacity Price Auction Results: A Mixed Bag for Ohio

PJM's capacity auction for the 2015-2016 delivery year (June 1 through May 31) resulted in higher than expected prices for FirstEnergy's service territory and lower than expected prices for AEP-Ohio's. Capacity is the fixed price customers' pay to ensure there is enough power plant generating capacity available. Due to a number of expected power plant closures, FirstEnergy's capacity price result came in at \$357 per megawatt day. AEP-Ohio's capacity price result was a much more moderate \$136 per megawatt day.

It should be noted that the price for AEP-Ohio's service territory is lower than the lowest offered

price (\$146 per megawatt day) in AEP-Ohio's rate case currently before the PUCO, and that price comes with an additional non-bypassable rider. The OMA will be discussing the implications of the auction results at the upcoming OMA Energy Committee meeting on June 13th at the OMA. [Click here](#) to register. To read about the importance of capacity prices, how they affect your electric bill, and how AEP-Ohio's plan will affect its customers, [click here](#).

05/25/2012

Legislature Passes Governor's Energy Legislation

The Ohio House of Representatives passed [Senate Bill 315](#) (Jones, R-Springboro), which makes several modifications to Ohio law related to oil and gas exploration and Ohio's renewable energy portfolio standard. The Ohio Senate agreed to the changes, avoiding a conference committee.

Notable changes the House made were: (a) clarifying that doctors are not barred from sharing proprietary information about chemicals used in the fracking process when treating patients; (b) limiting the university loophole for the qualification of combined heat and power projects as renewable energy to only the University of Cincinnati and Kent State, and (c) removing a provision important to manufacturing and the Ohio steel industry that would have required the disclosure of the country of origin of certain tubular steel products. These products have been dumped in Ohio in the past, resulting in the shutdown of Ohio steel mills.

A detailed analysis of SB 315 will be developed by OMA energy counsel at Bricker & Eckler, and the OMA Energy committee will review at its upcoming meeting on June 13th at the OMA. [Click here](#) to register.

05/25/2012

Manufacturing Opposition to AEP Proposals Gains Attention

Manufacturers that purchase their electricity in the AEP Ohio service territory are concerned about cases pending at the state Public Utilities Commission of Ohio (PUCO) that will have

significant impact on electricity prices for Ohio businesses and residents. In its editorial, "[Unhappy Customers](#)," the Akron Beacon Journal this week took note of OMA members who have voiced concerns to the PUCO.

Meanwhile AEP and FirstEnergy continue high profile media campaigns designed to influence the outcome. The OMA has produced an [analysis](#) to inform manufacturers what is at stake and how to take action.

05/25/2012

NAM Working to Kill Utility MACT Regulation in U.S. Senate

The National Association of Manufacturers (NAM) Director of Energy & Resources Policy, Alicia Meads, reported this week that a broad coalition is working to support Sen. Jim Inhofe's (R-OK) effort to repeal the U.S. EPA's costly Utility MACT regulation. Senator Inhofe's resolution is a privileged Senate motion and only needs a simple majority to pass.

The U.S. House of Representatives has already passed legislation (H.R. 2401) that would delay the implementation of the Utility MACT rule. Manufacturers encourage the Senate to pass similar legislation that either delays or nullifies the regulation.

NAM has prepared a brief [summary](#) of the Utility MACT issue, and OMA Connections Partner, American Coalition for Clean Coal Electricity (ACCCE), has underwritten this one-page economic [impact briefing](#).

05/18/2012

Duke Energy Ohio Customers: Lighting Incentive Deadline Approaching

Duke Energy Ohio reminds its customers they can earn cash incentives by replacing T12 lighting fixtures with more efficient T8 or T5 lighting systems, but the last day to purchase standard T8 or T5 lighting systems that qualify for [Duke Energy Incentives](#) is July 15, 2012.

Duke Energy estimates that a lighting upgrade can save an estimated 30 percent on the cost of electricity and have on one- to three-year payback.

Other important dates for this program are: T8 or T5 lighting system must be operable by October 15, 2012 and the application for the [cash incentive](#) must be submitted by January 15, 2013.

05/18/2012

Governor's Energy Policy Legislation Moving Quickly

Substitute Senate Bill 315 (SB 315) ([Jones](#), R-Springboro) continued its quick move through the Ohio General Assembly this week. It passed out of the Senate and received its first hearing in the House Public Utilities Committee on Tuesday. If House plans hold up, SB 315 will be voted out of the House committee as soon as next Tuesday.

In making its way out of the Senate, Sub. SB 315 received a number of notable changes: 1) addition of a new steel pipe monitoring program that requires the country of origin be disclosed for pipe used in the exploration, gathering or transportation of natural gas to ensure that quality tubular steel products that meet industry standard product specifications are used, 2) removal of all combined heat and power (CHP) projects (except for Ohio university projects) from the definition of renewable energy; and 3) the addition of a provision that allows CHP and waste energy recovery (WER) projects completed only after the effective date of SB 315 to be counted towards an electric distribution utility's energy efficiency standard. (This provision negatively modifies current law which allows mercantile customers to count projects completed within the last three years towards a utility's energy efficiency standard and receive compensation.)

A full [summary](#) of the legislation as it stands today has been prepared by OMA energy counsel, Bricker and Eckler LLP.

05/18/2012

Governor's Energy Policy Continues to Advance

[Senate Bill 315](#), the governor's energy policy legislation, had several changes via substitute bill this week. Notable provisions of the

legislation include: expedited, automatic approval for gas pipelines less than five miles in length, customer-sited waste energy recovery projects, and small electric transmission lines.

The legislation is expected to move out of the Senate next week. OMA energy counsel, Bricker & Eckler LLP, has summarized the legislation, including content in the substitute bill, [here](#).

05/11/2012

OMA Comments on CoGen Amendment

Several Ohio senators have proposed an [amendment](#) to [Senate Bill 315](#), the Governor's energy proposal, that would restrict combined heat and power (CHP) systems from qualifying as a renewable energy resource.

CHP refers to co-production of electricity and useful thermal energy. This is distinct from a waste energy recovery (WER) system which generates electricity from exhaust heat or other sources. Like wind and solar power, both sources harness energy that would otherwise be wasted. The intent of the governor's proposal is to provide parity to CHP and WER with wind and solar when it comes to obtaining renewable energy credits.

[An analysis](#) by OMA energy counsel, Bricker Eckler LLP, motivated the OMA to issue a [letter](#) of concern over the amendment, noting that the governor's proposal "simply puts CHP and WER on a level playing field with wind and solar and provides more options for Ohio customers to generate clean power."

05/11/2012

OMA Members File Testimony Against AEP Ohio Rate Increases

Six OMA members filed testimony in AEP Ohio's Electric Security Plan case, which seeks to increase rates on customers. Representatives from Summitville Tiles, Whirlpool, the Lima Refining Company, AMG-Vanadium, the Belden Brick Company, and OSCO Industries detailed what the impact of AEP Ohio's proposal will be on their companies. The central provision of AEP Ohio's plan is to manipulate the price of "capacity" that electric suppliers must pay AEP Ohio. Capacity refers to the charge that is paid

to have a power plant available to produce electricity and is passed through to customers.

Dave Johnson, Chairman and CEO of Summitville Tile, noted "After a decade of restructuring, downsizing and right-sizing our company, we had hoped to finally be able to provide modest wage increases for our employees – many of whom have gone without wage increases for nearly a decade. However, facing the prospect of a \$100,000 per year increase in electricity costs, wage increases may have to take a back seat to electricity increases."

The market price of capacity is going to dip to a low of roughly \$17 per MW/Day on June 1st. AEP Ohio's proposal would, at best, keep this charge at its current price of \$146 per MW/Day and at worst increase it to \$355 per MW/Day. OMA's Kevin Schmidt said, "While the likelihood of the PUCO approving AEP Ohio's \$355 request is slim, keeping the status quo and forcing customers to continue at \$146 is a significant problem and will deny customers the current low market rates."

This proposal has significant ramifications for customers who have already elected to shop. Those contracts for what consumers believe to be fixed price products likely allow prices to increase to cover the costs of AEP Ohio's capacity. Contact [Kevin Schmidt](#) to learn more about how your company might be affected.

05/11/2012

Industry Leaders Talk Shale

OMA members participated in the [Ohio Energy Jobs Summit](#) this week which focused on the economic impact anticipated from Ohio shale plays.

Ward "Tim" Timken, Jr., Chairman of The Timken Company, spoke about the importance of shale opportunities both on demand for products in the supply chain and on the positive impact on energy costs. Doug Mathews, Vice President of Tubular Operations for U.S. Steel, detailed the ripple effect shale plays will have in revitalizing Ohio manufacturing.

Other industry leaders included Joseph Carrabba, Chairman and President of Cliffs

Natural Resources, Jody Bevilaqua, Executive Vice President of Momentive Performance Materials Holdings, and Gary Heminger, President and CEO of Marathon Petroleum Corp.

Read coverage and view video in [The Hill](#).

05/04/2012

AG Joins Challenge to U.S. EPA Mercury Rule

Ohio Attorney General Mike DeWine joined in the recent [multi-state challenge](#) to the U.S. EPA's rule covering Mercury and Air Toxics Standards (MATS).

DeWine is concerned the timeframe in which the new MATS are to be met is too short. The timeframe will make it difficult for regulated facilities to meet the requirements and for the state EPA to effectively confirm and monitor compliance within the three to four years allowed. And, Ohio utilities have indicated that they will have to limit, and shut down, operations of smaller units in order to fully comply, reducing electricity supply and driving up prices.

05/04/2012

Governor Kasich Defends CoGeneration

This week Governor John Kasich [defended](#) his proposal to put cogeneration technologies on the same "renewable" playing field as wind energy. [Senate Bill 315](#), the governor's energy policy legislation, would allow waste energy recovery systems and combined heat and power systems to qualify as renewable energy within the state's renewable energy standards. The OMA suggested these changes in a [white paper](#) submitted to the governor's office last year.

Wind energy advocates have recently taken aim at these changes, arguing they would undermine the economics of their own projects. Governor Kasich's response: "Our goal ought to be a cleaner environment, and whatever moves us to a cleaner environment ought to be a part of it."

Meanwhile, the Ohio Senate Public Utilities Committee this week moved forward on the governor's proposal. This week the committee adopted a substitute bill that made a number of

[modifications](#), mostly dealing with natural gas pipeline regulation. Chairwoman Shannon Jones (R-Springboro) said that additional amendments may be made next week when the committee is expected to act on the legislation.

05/04/2012

Five OMA Members Take Stand Against AEP Capacity Charge Proposal

Stepping into the habitat of lawyers and paid expert witnesses, five OMA members, customers of AEP Ohio, this week took the stand at a hearing at the Public Utilities Commission of Ohio to oppose AEP Ohio's proposal to increase charges, substantially, for use of its capacity.

It is highly unusual for customers to appear at these hearings, and an indication of the matter's significance to manufacturers. The cost to these five companies alone will be in the tens of millions of dollars. The consequences for all manufacturers in the AEP Ohio operating territory: an untold amount of investment- and job-destroying new costs.

Special thanks to the five manufacturers who took the stand to stand up for manufacturing: Ed Forshey of AMG Vanadium in Cambridge, John Burke of OSCO in Portsmouth, Rick Walters of Lima Refining in Lima, John Siefker for Whirlpool's Findlay facility, and Brad Belden of Belden Brick in Canton.

If you have operations in the AEP Ohio operating footprint and you have not looked into the effect of this case on your operations, do so right away. Contact [Kevin Schmidt](#) to have the OMA run the numbers for you.

04/27/2012

OMA Testifies in Support of Governor's Co-Gen Proposal

The OMA's Kevin Schmidt this week [testified](#) in support of [SB 315](#), which is an energy policy proposal contained in Governor Kasich's "mid-biennium review" of budgets and policies. The bill would modify Ohio's renewable energy requirements and energy efficiency requirements to specifically include waste

energy recovery projects. The OMA proposed this policy to the governor in follow-up to his energy summit conducted earlier this year.

Schmidt said: "Allowing cogeneration to be included as renewable energy would create an additional revenue stream for manufacturers through long-term Renewable Energy Certificate (REC) contracts with utilities. Including cogeneration in Ohio's energy efficiency requirements would allow utilities to provide financing for manufacturers' waste energy recovery projects in exchange for counting the energy efficiency gains toward the utilities' benchmarks."

"In both cases, the result would be to mitigate by some significant measure the capital costs of implementing waste energy recovery technologies," Schmidt continued. "By facilitating private-sector investment in waste energy recovery projects, these specific provisions of SB 315 would strengthen the state's manufacturing base, reduce our reliance on imported power, shrink our collective carbon footprint by producing carbon-free electricity generation."

04/27/2012

FES Strikes Back at AEP in Media

AEP Ohio launched a [media strike](#) against FirstEnergy Solutions (FES) last week. This week [FES struck back](#).

AEP Ohio's message: FES seeks "unfair and artificially low prices" to buy AEP Ohio power and sell it to its customers in AEP Ohio operating territory at a "significant profit."

The FES message: "AEP is lobbying to limit your choices, raise customer prices and increase its profits."

This uncommon media skirmish is a sign of the level of stakes in the AEP Ohio rate cases pending before the Ohio Public Utilities Commission: Those stakes are very high for manufacturers and other customers, as well as for the utilities. Contact [Kevin Schmidt](#) at the OMA for information.

04/27/2012

Ohio's Journey to Electricity Competition

Competitive electricity markets offer potential benefits to customers. In effective competitive markets, power suppliers compete against each other to provide electric services at the lowest price – giving customers choices, helping to keep electricity affordable, helping to ensure adequate supplies of reliable power and driving innovation that results in new products and services. A healthy electricity market is essential to sustaining manufacturing competitiveness, attracting business investment and spurring economic growth and job creation.

Ohio's Landmark Electric Restructuring Legislation

During the last few decades, the electric power industry has transitioned from highly regulated, local monopolies that provide customers with a complete package of electric services to a mix of competitive companies providing the generation component of electric service (the power itself), with local utilities continuing to deliver the power to homes and businesses (the distribution).

Ohio adopted its version of "competitive electric restructuring" with the passage of Senate Bill 3 in 1999. This legislation initially froze electricity rates through 2005 and, for the first time, allowed retail customers of Ohio's investor-owned electric utilities to shop for alternative suppliers of the generation portion of their electricity service.

Retail competition was slow to emerge in Ohio. Instead of allowing the competitive retail market to develop through the initial five-year "market development period" as had been contemplated by the Ohio General Assembly, the Public Utilities Commission of Ohio (PUCO) and Ohio's electric utilities developed "rate stabilization plans" (RSPs) that extended then-current rates for another two to three years (with adjustments for fuel and other non-bypassable generation-related costs). The RSPs essentially brought Ohio's slowly developing competitive retail market to a halt except for very limited competitive opportunities.

Ohio's "Hybrid Approach" to Setting Electric Rates

As the utilities' rate stabilization plans neared expiration, concerns about protecting consumers in a competitive market lingered and a nearly

year-long debate ensued about the appropriate model to meet the needs of Ohio consumers after 2008.

In August 2007, then-Governor Ted Strickland announced his Energy, Jobs and Progress Plan, which advanced four major energy policy goals: (1) keep electricity rates stable and predictable; (2) support development of advanced and renewable energy technologies, (3) increase electricity conservation efforts and (4) modernize Ohio's electric infrastructure.

Parts of the Governor's proposal were incorporated into Senate Bill 221, which was enacted May 1, 2008. Instead of relying on the competitive market to establish retail generation rates, SB 221 introduced a so-called "hybrid approach" that gave the PUCO broad authority to (a) negotiate "electric security plans" (ESPs) with utilities, in which the price of electricity generation would be based on a cost-of-service proposal from the utility, or (b) allow the utilities to implement a market-rate offer (MRO), in which retail rates would be set in part through a competitive bidding process. To approve a utility's ESP, the PUCO must find the ESP proposal to be more favorable "in the aggregate" than the pricing, terms and conditions under an MRO. During 2008 and early 2009, the utilities had ESPs approved by the PUCO. The hybrid approach also led to the use of a competitive bidding process to set retail rates within an ESP.

SB 221 also created alternative energy portfolio standards (for advanced and renewable energy sources) and energy efficiency requirements.

Current Status of Electricity Competition in Ohio

Today in Ohio, with limited exceptions, both residential and business customers can shop the marketplace and choose a competitive retail electricity supplier to provide the generation component of their electric service. The local electric utility still delivers power to all customers, even those who have switched to an alternative generation supplier. In addition, the local utility remains obligated to provide a Standard Service Offer (SSO) for customers who choose not to switch suppliers.

Robust retail competition exists across much of Ohio – and is growing. Nearly 1.8 million customers in Ohio already have switched from their local electric utility company to another supplier and collectively are saving millions of

dollars on their electric bills. Competitive retail suppliers are providing about half of all the electricity used in Ohio. As of December 31, 2011, about 78 percent of the electricity purchased in FirstEnergy's service territory at the retail level was being provided by competitive suppliers; in Duke Energy Ohio's service territory, competitive suppliers were providing almost 68 percent of power purchased by retail customers.

Recent developments in several utility rate cases are moving Ohio even further along the path to a competitive retail market for electricity. Under PUCO-approved electric security plans, SSO generation rates for FirstEnergy and Duke Energy Ohio are being bid competitively. Rate plans for AEP Ohio and Dayton Power & Light have been submitted to the PUCO and are under review.

Ohio's journey to a competitive electricity marketplace has been halting at times, but electricity customers in Ohio already are benefitting from competition, and recent PUCO decisions are accelerating the state's transition to a competitive electricity model.

04/26/2012

OMA Supports Smart Energy Policy

The Ohio House Agriculture and Natural Resources Committee heard testimony this week on [House Resolution 305](#) which urges President Obama to open up areas for oil and gas exploration on the northern coast of Alaska, grant permits for oil and natural gas exploration in the Gulf of Mexico on a timely basis, and permit the Keystone XL pipeline project.

In a [letter](#) of support for the resolution, the OMA's Kevin Schmidt noted that Ohio is uniquely situated to benefit from these actions: "Ohio is the seventh largest refining state in the union and ships well over \$6 billion dollars in product from its petroleum refineries each year. Additionally, Ohio is the second largest producer of steel pipe, a critical component to a safe and environmentally protective oil and natural gas industry."

04/20/2012

Governor's Energy Policy Receives Hearings

The governor's energy policy legislation ([Senate Bill 315](#)) received a hearing this week in the Senate Energy and Public Utilities Committee. An analysis prepared by OMA energy counsel at [Bricker & Eckler](#) can be found [here](#).

The legislation would broaden the Public Utilities Commission of Ohio's jurisdiction over natural gas pipelines and would include on-site generation technologies in the renewable and energy efficiency mandates for utilities.

Implemented correctly, the renewable and energy efficiency mandates will help Ohio's grid become more stable and resilient. The inclusion on-site generation will benefit manufacturers who have the ability to use combined heat and power systems, waste energy recovery systems (for example, waste heat or bio digesters) and a host of other technologies that produce electricity on-site.

04/20/2012

Beyond Boom and Bust for "Clean Tech"

Amid the debate about subsidization of clean energy technology ("clean tech") Brookings has released a [report](#) that proposes a middle course. "Beyond Boom and Bust: Putting Clean Tech On a Path To Subsidy Independence" recommends a phased elimination of subsidies designed to accelerate technological development and cost reductions.

"Many of today's existing subsidies and clean energy programs, after all, are poorly optimized, characterized by a boom and bust cycle of aid and withdrawal, or in need of thorough revision thanks to either recent progress in the price and performance of subsidized technologies or the mounting fiscal burden imposed by some programs," suggests the report. "The end of the present policy regime therefore offers the opportunity to implement smart reforms that not only avoid a potential "clean tech crash" but also accelerate technological progress and more effectively utilize taxpayer resources."

04/20/2012

AEP Takes to the Airwaves

In the ongoing debate about how much AEP Ohio can charge its customers, the company took the unusual step of airing [television ads](#) against its in-state rival, FirstEnergy Solutions (FES).

AEP Ohio seems to have created a new organization, Fair Energy Ohio, to advocate its position with the public. On its website, Fair Energy Ohio claims: "First Energy Solutions and other suppliers are asking the Public Utilities Commission of Ohio (PUCO) for unfair and artificially low prices (referred to as capacity charges) so they can buy AEP Ohio's power, undercut AEP Ohio's rates, and still make a significant profit through their sales to customers."

The OMA opposes AEP Ohio's position in its capacity charge case.

04/20/2012

Free Energy Audits for Qualified Industrial Facilities

The University of Dayton Industrial Assessment Center, with funds from the U.S. Department of Energy, has helped more than 850 small- to mid-sized industries reduce energy costs. A small team of faculty and graduate students trained in industrial energy best practices spend a day in qualified facilities and compile customized recommendations for reducing energy costs.

Typical energy savings opportunities reduce annual energy usage, cost and associated carbon emissions by 10 to 15 percent.

[Here](#) are the qualifications and contact information for this free energy assessment.

04/13/2012

O.U. Convenes Shale Supply Chain Conference

The Voinovich School of Ohio University hosted the "Ohio Shale Energy 2012: Discovering Supply Chain Opportunities" conference this past Wednesday in Cambridge. [The event](#)

brought together more than 500 business people interested in becoming suppliers to the shale energy industry in Ohio. Coverage of the event can be found [here](#).

04/13/2012

Governor Kasich: Climate Change a Problem

The Columbus Dispatch reported this week that Governor Kasich went off script to discuss climate change. The governor stated, "This isn't popular to always say, but I believe there is a problem with climates, climate change in the atmosphere."

This comment was made while the governor spoke about his energy policy, which includes support for: capturing waste heat, clean-coal technology and shale drilling. [Click here](#) to read the full article.

04/13/2012

2011 Ohio DNR Shale Production Reports Available

The Ohio Department of Natural (DNR) resources recently released the 2011 Utica shale production [report](#). On its [website](#) DNR notes that the "... reported volumes of oil are lower than estimated, but higher than conventional wells" and "Gas production is significant, even with the early production numbers." The agency also reports that "... it is very unlikely that the wells are being produced at anything near capacity."

04/06/2012

Dayton Power & Light Files its Rate Plan

Dayton Power and Light (DP&L) filed its new rate plan last Friday at the Public Utilities Commission of Ohio. The plan would move them along the same path toward market pricing as Duke Energy Ohio and AEP-Ohio have gone in recent months.

Over a five year timeframe, the plan would transition DP&L's standard service offer rate, the rate customers pay if they do not shop, from a cost-based rate to a market-based rate. A detailed memo of the plan can be found [here](#).

In addition to market transition, DP&L is asking for at least one rider that doesn't appear to be authorized by Ohio law. Finally, even though DP&L would transition its pricing structure to a market-based one, it is not proposing to sell its generating assets. The OMA is a party to this case through the OMA Energy Group.

Click [here](#) to learn more about how you might engage to protect your energy interests.

The electricity markets in Ohio have changed dramatically. Read a brief [whitepaper](#) about the changes and their consequences.

04/06/2012

AEP Files New Rate Plan

Last Friday, AEP [filed](#) a new rate plan (an "Electric Security Plan" or ESP, in the language of the statute) that would affect its customers from the time of its approval (maybe late summer of this year) to June 1, 2015. Its previously approved rate plan was rejected by the Public Utilities Commission (PUCO) after a public outcry against its price increases.

Counsel to the OMA Energy Group, Lisa McAlister of Bricker & Eckler LLP, [summarizes](#) the AEP filing: "Under the plan, there are limited base generation rate increases but there is the addition of a nonbypassable "Rate Stability Rider" and new distribution rate increases that combine to increase rates on average 4.5% in the first year, and then, with the addition of the Phase In Recovery Rider in the second year, the rates increase an incremental 3.77% on average, and finally, increase an additional 0.25% in year three."

Counsel continues: "The shopping is very limited and would require the same queuing process as the ESP settlement. AEP-Ohio also proposes to...hold an energy only auction for 5% of its load immediately upon approval of the Revised ESP ..., an energy only auction for 100% of its load in January 2015, and a competitive bidding process (auction) for capacity and energy for June 1, 2015."

In a separate case before the PUCO, AEP is asking for a \$355/MW-day capacity rate for all shopping customers. In its ESP case, AEP

proposes a capacity rate of \$146 for customers that have already shopped, and \$255 for all others, if the PUCO approves the ESP without modification.

AEP-Ohio states that if AEP-Ohio got the \$355/MW-D rate, it would not request any base generation rate increase for its standard service customers and would provide a “meaningful” shopping credit. The effect of this would, effectively, freeze customers’ ability to shop load to competitive suppliers for the duration of the ESP.

04/06/2012

OMA Members Testify Against AEP Capacity Charge Proposal

On behalf of the OMA, five OMA member companies presented testimony to the Public Utilities Commission of Ohio (PUCO) in opposition to the pending AEP proposal to increase its “capacity charge.” Testifying were: Lima Refining Company, OSCO, Belden Brick, AMG Vanadium, and Whirlpool. These companies are a range of manufacturing operations by size, industry and electricity load. Some of the companies have “shopped” generation load; others have not.

AEP has asked the PUCO for authority to charge all competitive suppliers of electricity to its distribution customers a price of \$355/MW-day. AEP claims that this price is its cost of capacity, and that any price less than that would be unfair and financially destructive to the company. The current market price of capacity is \$146 (market capacity prices are set by auction). The market price will drop to \$16 on June 1.

Rick Walters of the Lima Refining Company testified: “As a long-standing customer of AEP-Ohio, Lima (Refining Company) needs reliable service. We also understand that AEP-Ohio needs to be fairly compensated for the service it provides. However, when AEP-Ohio’s proposal is viewed in the larger context, we feel like AEP-Ohio charged market rates for capacity when the market rates were above AEP-Ohio’s costs but, now, when the market prices are at historic lows, AEP-Ohio is using “costs” to justify rate increases. Worse yet, AEP-Ohio will revert to market prices in 2015, when, as I understand it,

market prices are predicted to increase again. In other words, we think AEP-Ohio’s proposal lacks balance and fairness. This is particularly true when the proposal undermines our ability to manage the risk of rate impacts by shopping with a competitive supplier.”

A hearing on the matter is scheduled for April 17. It is expected that the PUCO will act prior to May 31.

04/06/2012

Blast Furnace Co-Generation Bill Makes its Way to Governor

The Ohio House of Representatives passed [Senate Bill 289](#) this week which would allow one blast furnace co-generation project in the state to qualify for renewable energy credits. The Air Products project in Middletown will produce 110 megawatts of power using the off-gas from a blast furnace.

The bill came under fire from wind advocates who argued that the inclusion of industrial cogeneration facilities in the renewable energy market will kill the value of Ohio renewable energy credits.

03/30/2012

Governor’s Energy Proposal Receives its First Hearing – CoGen and Shale

Governor Kasich’s energy policy proposal, Senate Bill 315 (Jones, R-Springboro), received its first hearing this week before the Senate Public Utilities Committee. Chairman Todd Snitchler of the Public Utilities Commission of Ohio (PUCO) and Director Jim Zehringer of the Ohio Department of Natural Resources (DNR) provided testimony.

Chairman Snitchler used the time to [discuss](#) how the proposed changes would allow on-site generation technologies, such as combined heat and power and waste energy recovery systems, to qualify for either the renewable energy standard or the energy efficiency standard, but not both. The chairman stated that the PUCO believes that the inclusion of more technology options for utilities to meet the standards would lower compliance costs.

Director Zehringer [spoke](#) about additional regulations that were being proposed, including the first cradle-to-grave reporting system of "fracking" fluid in the nation. The director also produced a number of visual aids on Ohio's regulations, [including well construction, Ohio drilling regulations](#), and one on [industrial and regulatory responsibilities](#).

03/30/2012

Snapshot of Midwest Manufacturing Energy Use

The World Resource Institute (WRI) has released a [study](#), "Midwest Manufacturing Snapshot: Energy Use and Efficiency Policies," that for the first time estimates manufacturing subsector-specific energy use in 10 Midwest states.

Writes WRI: "The workforce and economies of Midwestern states are more reliant on manufacturing than in any other U.S. region. Like the U.S. as a whole, during the past decade, the Midwest lost one-third of its total manufacturing workforce. With the central focus of state governments on economic development, there is a growing interest in understanding how industrial energy efficiency investments could contribute to regional economic recovery and long-term competitiveness for U.S. manufacturers."

Detailed manufacturing energy-use and economic activity data are presented alongside state-by-state policy summaries, giving a snapshot of where energy is being used and current state approaches for reducing energy-related costs and emissions.

Read more about the [Ohio data](#). In the most recent year of the data, Ohio manufacturing consumed 20% of total energy used by Midwest manufacturers, more than any other Midwestern state.

03/23/2012

AEP to Hold Forum Today on New Rate Case

AEP-Ohio plans to hold a [forum](#) at the Public Utilities Commission of Ohio (PUCO) today to discuss its modified rate plan. AEP-Ohio's previously approved rate plan was revoked by

the PUCO recently after customers complained to the PUCO of large and unexpected rate increases.

The OMA will be attending the event and intervening in the rate case. Contact [Kevin Schmidt](#) at the OMA to share concerns and get more information.

03/23/2012

AEP Confirms it Will Shutter Plants

In response to U.S. EPA regulations, [AEP confirmed](#) with regional power grid operators that it will be shutting down power plants that generate more than 4,600 megawatts. AEP was required to notify the grid operator of these plant shut downs so the upcoming capacity auction would reflect the reduced supply from the plants.

The auction will set capacity prices for 2015. Capacity is a component of generation price and reflects the cost to have power plants available to generate electricity to meet market needs.

03/23/2012

Senate Passes Even Narrower Blast Furnace CoGen Bill

The Ohio Senate passed Senate Bill 289 this week to allow one blast furnace cogeneration project to qualify as a renewable energy resource under Ohio's renewable energy portfolio standard. This would allow this project owner to sell renewable energy credits (RECs) to enhance the project economics.

The legislation sparked a debate with wind energy advocates who noted that these projects could oversupply the marketplace for RECs. In response to these concerns the legislation was narrowed so that only one blast furnace in Ohio could qualify.

A brief summary of the legislation prepared by OMA energy counsel at [Bricker and Eckler](#) can be found [here](#).

03/23/2012

FirstEnergy to Keep 800 MW of Generation Operational

FirstEnergy recently [announced](#) that it will put on line 800 megawatts (MW) of natural gas fired generation in Eastlake, Ohio to help ensure reliable electric service in its Ohio service region. Earlier this year, FirstEnergy had announced that its generation holding company would retire six older coal-fired power plants, including the Eastlake plant.

The plant shut down plans are in response to U.S. EPA's continued crack down on affordable coal-fired electricity. The plant shut downs are sparking growing fear of future supply shortages.

03/16/2012

Energy Policy Included Mid-Biennium Review

The MBR will address a package of proposed energy reforms. Legislative hearings on these measures will commence next week. The administration hopes for passage before the summer recess.

Specifics have yet to be introduced in bill-form, however Governor Kasich released a [summary document](#) outlining 10 energy "pillars" that include: shale; electricity generation; electricity transmission and distribution; cogeneration/waste heat recovery; workforce training; compressed natural gas (CNG)/alternative fuels; energy efficiency; coal; regulatory reform; and renewables.

Pillar 4 proposed to qualify cogeneration technologies as "renewable energy source" and allows electric utilities to use cogeneration to meet "alternative efficiency standards." Pillar 6 calls for Ohio to join a multi-state agreement to develop a regional CNG refueling infrastructure. Pillar 8 proposes spending \$30 million for coal research on carbon capture.

03/16/2012

PUCO Acts on AEP Rate Case

By order issued Wednesday, the Public Utilities Commission of Ohio (PUCO) required certain

AEP customers to pay higher than market rates for AEP "capacity" through May 31st. The effect of this order is to protect AEP from its retail competitors for three and one-half months. AEP had asked the commission to set a capacity rate of \$255 per megawatt day. This is more than double the current market rate of \$116, set by annual regional auctions (the rate is set to go to \$16 on June 1). "Capacity" rates are charges for use of a utility's infrastructure. Exempted from this order are the first 21% of load of each customer class that shops (the industrial class block is apparently full), and customers in governmental aggregation groups approved on or before November 8, 2011.

The commission ordered hearings to begin no later than April 17 to determine a long-term compensation mechanism for capacity.

Also, the commission said it "expects that AEP-Ohio will look to recent commission precedent for guidance in formulating its modified ESP in considering how to best ensure its customers have market-based standard service offer pricing in an efficient and expeditious manner." This seems to tell AEP to look to the recently approved Duke case for direction.

OMA energy counsel Bricker & Eckler LLC, prepared a summary of the actions which can be found [here](#).

Please contact [Kevin Schmidt](#) to find out how you might participate in this process moving forward.

03/09/2012

Pipeline Developer at Odds with Ohio

A developer of an ethane pipeline is [trying](#) to avoid state jurisdiction and push thousands of barrels of ethane a day to Texas. Rather than feed Ohio industry, Houston-based Enterprise Products' planned pipeline would start in Pennsylvania and run through Ohio to transport the resource to Texas where it says the demand is the greatest.

Ethane comes out of the ground along with natural gas and is a valuable product in plastics manufacturing. If ethane is considered a gas, Ohio has jurisdiction over the development of the pipeline; if it is considered a liquid, Ohio

does not. Since ethane is only a liquid under pressure the state is asserting jurisdiction.

03/02/2012

Governor Previews Energy Legislation

In the first of a series of meetings, this one in Cleveland, Governor Kasich [previewed](#) elements of energy legislation to be introduced in the General Assembly in March with a June target for passing the package.

The governor outlined ten "pillars" of the proposed energy policy: shale, generation, electricity transmission and distribution, workforce training, compressed natural gas (CNG) & alternative fuels, cogeneration/waste heat recovery, energy efficiency, coal, regulatory reform, and renewables.

03/02/2012

Battle Looms Over AEP-Ohio's Rates

In the wake of the Public Utility Commission of Ohio (PUCO) decision last week to revoke the previously approved AEP-Ohio (AEP) rate plan, AEP has filed motions both at the PUCO ([motion](#)) and at the Federal Energy Regulatory Commission (FERC) ([motion](#)) seeking permission to charge "cost based" rates for its capacity rather than "market" rates. Capacity refers to the cost that a utility incurs to have power plants available to serve its customers. It makes up an important portion of the generation rate.

In its filings, AEP claims that if its requested relief is not granted the result will be "confiscatory," as it will be required to supply its capacity to third-party competitor suppliers below cost. In a Columbus Dispatch [article](#) this week, AEP indicated that without cost-based capacity rates, it will be forced to consider all options - including laying off employees, stopping investments in Ohio, and potentially moving its headquarters.

In response to AEP's motion, FirstEnergy Solutions, a third party supplier, filed a [challenge](#) to AEP's request noting that until January 1, 2012, AEP has historically charged customers market rates for capacity. FES argued: there is no mechanism in law for AEP to "cherry pick"

portions of the rejected rate plan and that its request should be denied.

The PUCO agenda does not have the issue docketed for next week.

03/02/2012

New Ohio Shale Study: 65,000 New Jobs by 2014

A new study of the potential economic effects of the Ohio oil and gas shale beds finds: "By 2014 the incremental economic activity in the state of Ohio from that year's expected expenditure of \$6.4 billion in oil and gas field development is expected to result in 65,680 jobs and \$3.3 billion in labor income, or an average income of \$50,225 per job."

The study modeled economic impacts through 2014. The estimated results: "The models indicate that outputs are expected to amount to nearly ten billion dollars per year by 2014, with another \$500 million in tax revenue generated. It is expected that these numbers are likely to continue in this range in the years following 2014, although leasing and midstream infrastructure activity will significantly slow down."

The researchers, a team from Cleveland State University, The Ohio State University and Marietta College, believe the estimates are conservative and will change as more data from the Utica formation becomes available. 03/01/2012

03/02/2012

Energy Legislation
Prepared by: The Ohio Manufacturers' Association
Report created on June 4, 2012

- HB51** **MUNICIPAL UTILITIES** (SNITCHLER T) To require a municipal utility supplying surplus electricity to nonresidents to provide written notice of termination one year before terminating the service.
Current Status: 2/1/2011 - Referred to Committee House Public Utilities
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_51
- HB73** **TRANSPORTATION OF NUCLEAR MATERIALS** (YOUNG R) To require payment of only the cost of police escort services for the highway transportation of limited amounts of certain nuclear materials.
Current Status: 3/2/2011 - **REPORTED OUT**, House Transportation, Public Safety and Homeland Security, (Third Hearing)
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_73
- HB95** **NATURAL GAS RATES** (STAUTBERG P) To permit certain rate-calculation adjustments for natural gas companies, eliminate public notice requirements for rate cases, and for natural gas companies, to make other regulatory changes concerning audits, alternative rate plans, and forecast reports, and allowing applications for natural gas company capital expenditure programs.
Current Status: 6/2/2011 - **SIGNED BY GOVERNOR**; Eff. 9/9/2011
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_95
- HB133** **OIL AND GAS LEASING/DRILLING ON STATE LAND** (ADAMS J) To create the Oil and Gas Leasing Board and to establish a procedure by which the Board may enter into leases for oil and gas production on land owned or under the control of a state agency for the purpose of providing funding for capital and operating costs for the agency.
Current Status: 6/30/2011 - **SIGNED BY GOVERNOR**; Eff. 9/30/2011
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_133
- HB204** **ADVANCED ENERGY FUND** (FOLEY M) To reimburse the Advanced Energy Fund revenue rider on retail electric distribution service rates and to clarify how Advanced Energy Fund grant amounts are to be determined.
Current Status: 5/25/2011 - House Public Utilities, (Second Hearing)
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_204
- HB297** **MOTOR FUEL QUALITY TESTING** (WEDDINGTON C, FENDE L) To require the Department of Agriculture to establish a motor fuel quality testing program under which county auditors may conduct such testing.
Current Status: 4/18/2012 - House Agriculture and Natural Resources, (First Hearing)
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_297
- HB304** **LAKE ERIE OIL/NATURAL GAS** (ANTONIO N) To ban the taking or removal of oil or natural gas from and under the bed of Lake Erie.
Current Status: 4/18/2012 - House Agriculture and Natural Resources, (First Hearing)
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_304
- HB306** **BUILDING STANDARDS** (PILLICH C) To require a building or structure constructed using state capital budget moneys to adhere to certain energy efficiency and building standards and to encourage the use of Ohio-produced products.
Current Status: 9/13/2011 - Referred to Committee House State Government and Elections
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_306
- HB310** **ELECTRIC VEHICLE SALES TAX REDUCTION** (GOODWIN B) To reduce the amount of sales tax due on the purchase or lease of a qualifying electric vehicle by up to \$2,000.
Current Status: 11/16/2011 - House Ways and Means, (Second Hearing)

State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_310

- HB345** **STIMULATION OF OIL AND GAS WELLS** (DRIEHAUS D, HEARD T) Establishes a moratorium on horizontal stimulation of oil and gas wells until the USEPA publishes a report containing the results of a study of the relationship of hydraulic fracturing to drinking water resources and the Chief of the Division of Oil and Gas Resources Management issues a report analyzing how Ohio's rules address issues raised in the USEPA report.
Current Status: 4/18/2012 - House Agriculture and Natural Resources, (First Hearing)
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_345
- HB351** **WELL STIMULATION/BRINE DISPOSAL** (ANTONIO N, FEDOR T) To establish requirements governing well stimulation, brine disposal and water that is used in the drilling/operation of oil and gas wells, including a requirement that oil and gas permittees pay a seven per cent overriding royalty for each well that is stimulated.
Current Status: 11/9/2011 - Referred to Committee House Agriculture and Natural Resources
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_351
- HB364** **SECURITIZATION COSTS STANDARDS-ELECTRIC UTILITIES** (ROEGNER K, DUFFEY M) To establish standards for the securitization of costs for electric distribution utilities.
Current Status: 12/21/2011 - **SIGNED BY GOVERNOR**; Eff. 3/22/2012
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_364
- HB418** **FRACKING MORATORIUM** (HAGAN R) To establish a moratorium until January 1, 2015, on the disposal by injection into an underground formation of brine and other waste substances associated with the exploration or development of oil and gas resources.
Current Status: 4/18/2012 - House Agriculture and Natural Resources, (First Hearing)
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_418
- HB443** **RENEWABLE ENERGY RESOURCE** (CONDITT M) To include cogeneration technology using waste or byproduct gas from an air contaminant source as a renewable energy resource.
Current Status: 3/28/2012 - House Public Utilities, (Fourth Hearing)
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_443
- HB464** **WELL STIMULATION REQUIREMENTS** (FOLEY M) To prohibit well stimulation unless all methane gas released as a result of the proposed stimulation of the well is captured by the owner of the well or the owner's authorized representative and to revise other requirements governing well stimulation.
Current Status: 4/18/2012 - House Agriculture and Natural Resources, (First Hearing)
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_464
- HB528** **OIL-GAS LEASES** (CARNEY J, OKEY M) To require the lessee of an oil and gas lease to provide monthly oil and gas production statements, to specify the minimum information that must be included in a monthly statement, and to establish procedures and requirements in accordance with which a lessor may conduct an audit of the lessee's records and documents related to production or post-production costs under the lease.
Current Status: 5/8/2012 - Referred to Committee House Agriculture and Natural Resources
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_528
- HB537** **SAFETY STANDARDS ENFORCEMENT-OIL AND GAS DRILLING** (HAGAN R) To authorize a political subdivision to enact and enforce health and safety standards for oil and gas drilling and exploration, and to revise the setback requirements in the Oil and Gas Law.
Current Status: 5/8/2012 - Referred to Committee House Agriculture and Natural Resources
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_537
- HCR3** **HEALTH COVERAGE TAX CREDIT** (O'BRIEN S) To request the members of the United States

Congress to reauthorize and continue the Health Coverage Tax Credit (HCTC) enhancements including provisions related to the monthly reimbursement program, the qualified family members program, and Voluntary Employee Beneficiary Associations (VEBAs).

Current Status: 2/10/2011 - Referred to Committee House Finance and Appropriations

State Bill Page: http://www.legislature.state.oh.us/res.cfm?ID=129_HCR_3

- HR4** **URANIUM ENRICHMENT (ROSENBERGER C)** To urge the President of the United States to direct the United States Department of Energy to ensure the continuation of the uranium enrichment work being developed by USEC, Inc. at its Piketon, Ohio plant by granting USEC's application for a federal loan guarantee and to direct the Secretary of Energy to strongly consider providing federal funding assistance for the Clean Energy Park Demonstration Project.
- Current Status:** 4/12/2011 - Referred to Committee Senate State & Local Government & Veterans Affairs
- State Bill Page:** http://www.legislature.state.oh.us/res.cfm?ID=129_HCR_4
- HCR12** **ENCOURAGE DOMESTIC PRODUCTION OF COAL (THOMPSON A)** To urge the Administration of President Barack Obama to reconsider proposals to increase taxes on producers of coal, natural gas, and petroleum and instead commit to adopting policies that encourage domestic production of these important resources.
- Current Status:** 6/15/2011 - Referred to Committee Senate Agriculture, Environment & Natural Resources
- State Bill Page:** http://www.legislature.state.oh.us/res.cfm?ID=129_HCR_12
- HR97** **TRANSCANADA KEYSTONE XL PIPELINE PROJECT (SEARS B)** To urge Congress to support the continued and increased importation of oil derived from Canadian oil sands and urge Congress to ask the U.S. Secretary of State to approve the TransCanada Keystone XL pipeline project from Alberta to Oklahoma.
- Current Status:** 6/15/2011 - **ADOPTED BY HOUSE**; Vote 92-0
- State Bill Page:** http://www.legislature.state.oh.us/res.cfm?ID=129_HR_97
- HR305** **OIL AND GAS EXPLORATION (DOVILLA M)** To urge the Administration of President Barack Obama to allow oil and natural gas production off the northern coast of Alaska, to grant permits for oil and natural gas exploration in the Gulf of Mexico on a timely basis, and to grant a presidential permit to allow the construction of the Keystone XL pipeline project.
- Current Status:** 5/24/2012 - **ADOPTED BY HOUSE**; Votes 60-28
- State Bill Page:** http://www.legislature.state.oh.us/res.cfm?ID=129_HR_305
- SB75** **ELECTRICITY CUSTOMER DISCOUNTS (PATTON T)** To restore discounts for customers using electricity to heat their homes and for electric, load-management programs, to specify that those discounts run with the land and may be transferred, to provide for refunds to customers whose rate discounts were modified or discounted, and to declare an emergency.
- Current Status:** 9/27/2011 - Senate Energy & Public Utilities, (First Hearing)
- State Bill Page:** http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_75
- SB78** **NATURAL GAS LAKE ERIE (SKINDELL M)** To ban the taking or removal of oil or natural gas from and under the bed of Lake Erie.
- Current Status:** 2/23/2011 - Referred to Committee Senate Agriculture, Environment & Natural Resources
- State Bill Page:** http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_78
- SB108** **OIL & GAS LEASING (JORDAN K)** To create the Oil and Gas Leasing Board and to establish a procedure by which the Board may enter into leases for oil and gas production on land owned or under the control of a state agency for the purpose of providing funding for capital and operating costs for the agency.
- Current Status:** 3/29/2011 - Senate Agriculture, Environment & Natural Resources, (Third Hearing)
- State Bill Page:** http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_108

- SB188** **ALTERNATIVE FUEL FACILITY** (PATTON T) To allow a credit against the personal income tax or commercial activity tax for the installation of an alternative fuel facility.
Current Status: 9/22/2011 - Senate Ways & Means & Economic Development, (First Hearing)
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_188
- SB198** **MOTOR FUEL QUALITY TESTING PROGRAM** (TAVARES C) To require the Department of Agriculture to establish a motor fuel quality testing program under which county auditors may conduct such testing.
Current Status: 9/20/2011 - Referred to Committee Senate Agriculture, Environment & Natural Resources
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_198
- SB209** **ELECTRIC VEHICLE SALES TAX REDUCTION** (HITE C, TURNER N) To reduce the amount of sales tax due on the purchase or lease of a qualifying electric vehicle by up to \$2,000.
Current Status: 9/22/2011 - Senate Ways & Means & Economic Development, (First Hearing)
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_209
- SB242** **RENEWABLE ENERGY CREDITS** (PATTON T) To specify that renewable energy resources do not have to be converted to electricity to receive renewable energy credits.
Current Status: 3/28/2012 - Senate Energy & Public Utilities, (First Hearing)
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_242
- SB248** **ELECTRIC DISTRIBUTION UTILITIES** (BALDERSON T) To establish standards for the securitization of costs for electric distribution utilities.
Current Status: 1/24/2012 - Referred to Committee House Public Utilities
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_248
- SB289** **COGENERATION TECHNOLOGY** (COLEY W) To include cogeneration technology using waste or byproduct gas from an air contaminant source as a renewable energy resource.
Current Status: 4/13/2012 - **SIGNED BY GOVERNOR**; Eff. 7/16/2012
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_289
- SB296** **OIL & GAS INDUSTRY JOB TRAINING** (BALDERSON T) To establish state funding for job training related or ancillary to the oil and gas industry and to make an appropriation.
Current Status: 2/14/2012 - Referred to Committee Senate Finance
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_296
- SB315** **MBR-MID-BIENNIUM REVIEW - ENERGY** (JONES S) To make changes to the energy and natural resources laws and related programs of the state.
Current Status: 5/31/2012 - Sent to Governor for Signature
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_315
- SCR4** **URANIUM ENRICHMENT** (DANIELS D) To urge the President of the United States to direct the United States Department of Energy to ensure the continuation of the uranium enrichment work being developed by USEC, Inc. at its Piketon, Ohio plant by granting USEC's application for a federal loan guarantee and to direct the Secretary of Energy to strongly consider providing federal funding assistance for the Clean Energy Park Demonstration Project.
Current Status: 6/15/2011 - **ADOPTED BY HOUSE**; Vote 87-6
State Bill Page: http://www.legislature.state.oh.us/res.cfm?ID=129_SCR_4
- SR69** **TRANSCANADA KEYSTONE COAST EXPANSION PROJECT** (WAGONER M) To urge Congress to support the continued and increased importation of oil derived from Canadian oil sands and urge Congress to take the U.S. Secretary of State to approve the TransCanada Keystone Coast Expansion pipeline project.

Current Status: 1/18/2012 - **ADOPTED BY SENATE**; Vote 25-7

State Bill Page: http://www.legislature.state.oh.us/res.cfm?ID=129_SR_69



AEP Ohio's Electricity Rate Case & Capacity Pricing Case: What Manufacturers & Policymakers Need to Know

AEP Ohio currently has two important cases before the Public Utilities Commission of Ohio (PUCO) that will have significant impact on electricity prices for Ohio businesses and residents:

- **Rate case.** This case deals with the default pricing, or Standard Service Offer (SSO) pricing, for customers that choose not to shop in AEP Ohio's service territory for the years 2012-2015. (It should be noted, however, that rates for customers who already are shopping or who choose to shop in the future also may be impacted.)
- **Capacity pricing case.** This case deals with the price that AEP Ohio may charge competitive retail electric service ("CRES") providers until June 1, 2015 for using its capacity to serve customers in AEP Ohio's service territory who already are shopping or who choose to shop in the future.

(While these are separate cases being adjudicated independently, there is some overlap. In particular, capacity charges are addressed in proposals submitted by AEP in both cases.)

For our state – and for a manufacturing industry that contributes more than any other to Ohio's GDP and is one of the major drivers of Ohio's economic recovery – the stakes are incredibly high. For these reasons, The Ohio Manufacturers' Association (OMA) urges affected parties, particularly manufacturers in AEP Ohio's service territory, to take the time to learn about these two cases and to evaluate their potential impact on their companies' operational costs and competitiveness. The OMA has prepared this document to assist manufacturers, policymakers and others in understanding (a) what AEP Ohio has proposed, (b) what the likely impact of those proposals would be, and (c) what outcomes would best serve the interests of manufacturers, businesses in general and our state as a whole.

Note: Throughout this document, you will see references to PJM and RPM in discussions of the capacity prices¹ AEP Ohio charges CRES providers who serve customers in AEP Ohio's service territory.

- **PJM** is a neutral, independent regional transmission organization that coordinates the movement of wholesale electricity across the grid in 13 states, including Ohio, and the District of Columbia.
- **RPM** stands for Reliability Pricing Model. This is an auction process PJM uses to set market prices for capacity in the PJM region. Prices are set for three years ahead and are designed to send long-term price signals to the marketplace to attract needed investments for maintaining existing generation assets and encouraging development of new sources of capacity.

¹ "Capacity" is part of a customer's electricity generation rate (along with the cost of the energy itself) and is associated with the costs an electric utility incurs to have enough power to meet demand in its service territory. In AEP Ohio's service territory, competitive retail electric service ("CRES") providers are required to pay a "capacity charge" to AEP Ohio for the right to use the utility's generation capacity to serve customers in its territory. In other service territories, CRES providers self supply and pay a capacity charge that is determined by an auction.

Serious Shortcomings, Serious Concerns

AEP Ohio's ESP and capacity pricing proposals are problematic in a number of important ways:

- **AEP Ohio's proposed rate plan and capacity pricing would significantly restrict the ability of customers in its service territory to shop and save money.** To serve customers in AEP Ohio's service territory, competitive suppliers must pay a capacity charge to AEP Ohio – a charge that gets passed on to customers. By demanding artificially high prices for capacity – more than 20 times higher than the PJM RPM market rate in some cases – AEP Ohio will price competitive suppliers out of the market because the above-market capacity charges will offset most or all of the savings a competitive supplier can offer customers.

As a result, few suppliers will enter AEP Ohio's service territory, which means customers will have fewer choices. **As a result, only a fraction of AEP Ohio's customers likely will be able to shop and save money – and, in many cases, customers who already have shopped could see significant increases or the termination of existing contracts.** This is likely even for customers who have signed multi-year, fixed-price contracts with competitive suppliers because those contracts (a) were based on the assumption – and the assurance of state policy – that CRES suppliers would have access to low PJM RPM prices, and (b) contain provisions that permit the supplier to pass on to the customer any costs required by a state regulatory body. **In effect, the capacity charges AEP Ohio has proposed would function like a tax on shopping.**

- **At a time when capacity charges are at historical lows, customers in AEP Ohio's service territory would pay prices that are substantially higher than auction-determined PJM RPM market prices readily available to customers in all other regions of Ohio.** PJM RPM prices (i.e., the market price) for capacity are as follows:
 - June 2011 – May 2012: \$116/MW-D ²
 - June 2012 – May 2013: \$16/MW-D
 - June 2013 – May 2014: \$28/MW-D
 - June 2014 – May 2015: \$126/MW-D
 - June 2015 – May 2016: \$136/MW-D

On June 1, 2012, the market price for capacity dropped to \$16/MW-D. And yet, AEP Ohio has proposed that competitive suppliers – and their customers – pay capacity charges as high as \$355/MW-D, which is more than 2,000% higher than the market rate for capacity that Ohio customers outside of AEP Ohio's service territory will be paying over the next 12 months. **This is why urgent action is needed to resolve the two AEP Ohio cases.**

Every day that goes by without resolution of these two cases is another day that customers in AEP Ohio's service territory lose out on the opportunity for significant savings presented by historic low market prices for capacity – savings that DP&L, Duke Energy Ohio and FirstEnergy customers will enjoy. Access to low electricity rates should not be a function of where in the state customers live or their businesses are located.

- **AEP Ohio's capacity cost proposal will deny customers access to market rates when market rates are low, but subject customers to market rates when they are high.** In the past, AEP Ohio has charged the PJM auction price for capacity when those rates were higher than AEP's capacity costs. Now, with the PJM auction prices dropping

²MW/D = MegaWatt day.

to historic lows over the next several years, AEP Ohio seeks to charge what it claims are its actual “costs,” which would be significantly higher than the PJM auction prices for capacity. AEP Ohio seeks then to revert to using the PJM RPM mechanism to determine capacity prices starting June 1, 2015, when the PJM RPM price for capacity will rise to \$136/MW-D and likely continue to rise thereafter.

- **AEP Ohio characterized its request for an “extension” of its initial interim capacity pricing as “maintaining the status quo,” which is inaccurate and misleading.** The initial interim capacity pricing structure the PUCO approved in March 2012 (the then-PJM RPM price of \$146/MW-D for a limited, initial block of customers and \$255/MW-D for all other customers) was scheduled to expire May 31, 2012. AEP Ohio requested an “extension” of those rates to maintain what the utility called “the status quo”– and the PUCO approved extending the interim rates through July 2, 2012, or until the Commission decides the case. However, continuing the two-tier interim pricing of \$146/MW-D and \$255/MW-D clearly represents a significant increase for the first customer group given that the PJM RPM price dropped to \$16/MW-D on June 1, 2012.
- **AEP Ohio’s “discounted” capacity price would in effect be “paid for” by a new charge that all customers would be required to pay.** AEP Ohio offers what it calls “discounted” capacity pricing (i.e., lower than the \$355/MG-D it says is its actual capacity cost) if the PUCO approves all other terms of the utility’s Electric Security Plan (ESP). But AEP Ohio would take back a portion of the so-called “savings” through a nonbypassable Rate Stability Rider that all customers would be required to pay. The rider would be set at a level that would generate enough revenue to produce a 10.5% return on equity for AEP Ohio.
- **AEP Ohio’s request to collect \$284 million in transition costs through its proposed nonbypassable Rate Stability Rider is unlawful.** AEP claims it is entitled to collect transition costs (also called “stranded costs”) in exchange for its commitment to move to fully competitive markets by 2015. However, Ohio’s electric utilities were permitted to recover transition costs only during a clearly specified recovery period established in Ohio’s electric restructuring legislation (Senate Bill 3). By law, that recovery period ended on December 31, 2010.
- **AEP Ohio has not demonstrated a need for the magnitude of economic relief it is asking customers to subsidize.** While AEP Ohio has provided estimates of the economic harm it claims it will suffer under certain shopping scenarios if its capacity pricing proposal is not approved by the PUCO, recent judicial and regulatory rulings have found that AEP Ohio has actually over-collected from its customers in recent years. In 2011, the Ohio Supreme Court found that AEP Ohio’s rate plan for 2009-2011 included more than \$500 million in charges not supported by the evidence presented to the PUCO. Further, in 2009, AEP Ohio’s Columbus Southern Power company earned profits in excess of the PUCO’s significantly excessive earnings threshold of 17.6%, resulting in the utility being ordered to return \$43 million to customers.
- **This is not just an electricity issue – it’s an economic development and economic recovery issue.** Ohio needs jobs now. The PUCO has stated that market prices for electricity is the policy direction that the state should take and move quickly to achieve. With that understanding, this is no time to be burdening job creators with unnecessarily high, above-market prices for electricity, which for many manufacturers, in particular, is a major cost driver. Ensuring that customers across Ohio can take advantage of historically low capacity prices and have access to the lowest possible competitive electricity rates will help stimulate and sustain economic growth.

Bottom Line Impact

The overall impact of what AEP Ohio has proposed would be to slow the transition to electricity competition, drive alternative suppliers out of Ohio and inhibit customers' ability to manage the risk of rate impacts by shopping with competitive suppliers. This, in effect, would hold customers captive to above-market rates. The combination of AEP Ohio's capacity pricing proposal and Rate Stability Rider would increase electricity costs substantially for customers, with some energy intensive manufacturers facing multi-million dollar increases – increases that would undermine companies' competitiveness and diminish the resources available for capital investments, process improvements, worker training and job retention and creation.

For companies that work diligently to remove nickels and dimes from their operational costs in order to stay competitive, AEP Ohio's proposed increases – which would add dollars to production costs – would be counterproductive and negatively impact decision-making about future Ohio investment and job creation.

Desired Outcomes

The mission of the OMA is to protect and grow Ohio manufacturing. Because manufacturing is the engine that drives Ohio's economy, a strong manufacturing sector is essential to a strong Ohio – and to our state's continued economic recovery.

Energy policy can enhance – or hinder – Ohio's ability to attract business investment, stimulate economic growth and spur job creation generally, but especially in manufacturing. And manufacturers need more than just competitively priced power – they need predictable, stable pricing, and they need strong utility partners committed to optimizing outcomes for all parties.

State leaders and the PUCO have made it clear that Ohio is committed to continuing down the path to fully competitive markets for electricity. That being the case, the OMA believes Ohio's transition to retail competition and market-based rates should be done in a way that:

1. **Moves AEP to market-based rates as quickly as possible** so customers in AEP Ohio's service territory can reap the benefits of historically low retail generation and capacity rates that are now available; and
2. **Relies on known forward capacity prices of the PJM RPM auction process** that sets capacity pricing three years ahead so businesses can effectively manage the risk associated with their electricity costs.

AEP Ohio's ESP and capacity pricing proposals contain significant obstacles to realizing these objectives. Most notably, AEP Ohio requests to (a) use a cost-based approach to set capacity prices at artificially high levels far exceeding the RPM price for capacity, which essentially would block customer shopping and negatively impact existing competitive contracts, and (b) disregard the outcomes of the PJM RPM auction process that has been expressly adopted by the PUCO as Ohio's mechanism for determining capacity pricing – and on which many business's long-term planning and electricity service contracts have been based. For these reasons, both AEP Ohio proposals should be rejected.

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Two Appendices follow:

1. AEP Ohio's Rate Case: General Chronology & Selected Highlights
2. AEP Ohio's Capacity Pricing Case: General Chronology & Selected Highlights

APPENDIX 1

AEP Ohio's Rate Case: General Chronology & Selected Highlights

Background: In January 2011, AEP Ohio filed an application with the PUCO for a 29-month ESP that would establish SSO pricing for AEP Ohio customers choosing not to shop. The plan, which would have begun on January 1, 2012, featured a quasi cost-based rate approach. After extensive negotiations, a settlement offer emerged in August 2011 that reflected a market-based rate approach. In September 2011, 22 parties, including the OMA, agreed to a settlement framework. Initially, the PUCO adopted the settlement with some changes. On February 23, 2012, however, the Commission reversed its decision, rejecting the settlement, and ordered AEP Ohio to submit a new filing – while also reaffirming its commitment to competitive markets.

Highlights of AEP Ohio's revised (current) proposal: On March 30, 2012, AEP Ohio filed a revised ESP proposal with the PUCO. The plan would begin upon PUCO approval (expected later this summer) and end on June 1, 2015. Among the key provisions are the following:

- Overall rate increases, on average, of 4.50%, 3.77% and 0.25% over three years (actual increases would vary by customer)
- Limited base generation rate increases and new distribution rate increases
- Several new nonbypassable riders, most notably a Retail Stability Rider (RSR) that all customers (those who shop as well as those who don't) would pay. The RSR is designed to make AEP Ohio mostly whole for the difference between (a) what the utility says is the full actual costs of its capacity and (b) what the utility calls the "discounted" capacity charge its revised ESP proposes – a shortfall AEP Ohio estimates to be about \$95 million.
- Two options for capacity costs:
 1. A \$355/MW-D capacity rate for all customers – those who shop as well as those who don't (The \$355/MW-D rate was originally proposed in December 2010 as part of AEP Ohio's separate capacity pricing case, described below.)
 2. A two-tiered "discounted" capacity pricing approach that features a first-come, first-served queuing process, in which capacity costs would be \$146/MW-D for Tier 1 customers and \$255/MW-D for Tier 2 customers
 - In 2012, Tier 1 would comprise 21% of all load by customer class, plus all existing residential government aggregation
 - In 2013, Tier 1 would comprise 31% of all load by customer class, including government aggregation
 - In 2014 and through May 2015, Tier 1 would comprise 41% of all load by customer class, including government aggregation

AEP Ohio has indicated that if all other terms of its revised ESP and its corporate separation case are approved by the PUCO, AEP Ohio would abandon the higher-priced (\$355/MW-D) Option 1 and implement the "discounted" Option 2.

- AEP Ohio would transition to market, with full corporate separation of its generating assets from its wires business, and would use a competitive bid process to determine both energy and capacity pricing, by June 1, 2015.

While the revised ESP case is being considered by the PUCO, AEP Ohio rates have reverted to December 2011 levels.

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APPENDIX 2

AEP Ohio's Capacity Pricing Case: General Chronology & Selected Highlights

Background: In November 2010, AEP Ohio filed an application with the Federal Energy Regulatory Commission (FERC) seeking to change the mechanism used to determine the capacity price AEP Ohio can charge competitive retail electric suppliers for the right to use its system to deliver electricity to shopping customers in its service territory. The current mechanism was (and still is) PJM RPM competitive auctions. AEP Ohio sought authority to change from this market-based model to a cost-based mechanism. The cost-based mechanism AEP Ohio proposed would result in a capacity pricing rate of \$355/MW-D.

The FERC denied AEP Ohio's application, and the capacity issue was put on hold during negotiations related to the utility's first ESP. In February 2011, following the PUCO's rejection of the ESP, AEP Ohio asked the Commission to approve one of two proposed alternative mechanisms for establishing capacity pricing in AEP Ohio's service territory. Both options were two-tiered, first-come, first-served schemes in which Tier 1 customers would receive PJM RPM pricing and Tier 2 customers would pay capacity charges of \$255/MW-D.

PUCO Response: In March 2012, the PUCO approved AEP Ohio's request for an interim period only, directing AEP Ohio to charge the following capacity prices until May 31, 2012:

- The first 21% of each customer class (residential, commercial and industrial) that shopped on or before September 2011 were entitled to receive the PJM RPM price (or market capacity price), which at the time was \$146/MW-D (but which dropped to \$16/MW-D on June 1, 2012).
- All customers of governmental aggregations approved on or before November 8, 2011 also were entitled to receive PJM RPM pricing for capacity.
- For all other shopping customers, AEP Ohio was permitted to charge \$255/MW-D. (For customers who chose not to shop, the capacity charge remained embedded in their Standard Service Offer rate.)

On April 30, 2012, AEP Ohio asked the PUCO to approve a request to extend the interim capacity pricing framework the Commission approved in March beyond its scheduled expiration date of May 31, 2012. The utility's stated rationale for this request was twofold: (1) an extension of the temporary capacity pricing would protect AEP Ohio from significant economic harm, and (2) it would minimize customer uncertainty and confusion. It merits noting here, however, that what AEP characterized as a request to "preserve the status quo" was actually a request to charge customers significantly higher interim capacity prices than the PJM RPM price of \$16/MW-D beginning June 1, 2012. Nonetheless, the PUCO approved AEP Ohio's request to extend the interim capacity rates of \$146/MW-D and \$255/MW-D through July 2, 2012, or until the Commission decides the case.

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Ohio House Speaker Bill Batchelder (R)

Ohio Senator Lou Gentile (D), Ranking Minority Member of the Senate Agriculture & Natural Resources
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State Representative Dave Hall (R), Chairman of House Agriculture and Natural Resources Committee

Special Remarks by:

Congressman Bill Johnson (R-OH)

Energy Jobs Summit Policy Panel:

Doug Matthews, Vice President, Tubular Operations, US Steel Corporation

Jeff Daniels, Professor, School of Earth Sciences, The Ohio State University

Jerry James, President, Ohio Oil and Gas Association

Jack Shaner, Deputy Director, Ohio Environmental Council

CEO Roundtable Discussion:

with introductory remarks by Joseph A. Carrabba,
Chairman, President, & CEO of Cliffs Natural Resources Inc.;
Vice Chairman, AISI

Gary R. Heminger, President and CEO, Marathon Petroleum Corporation

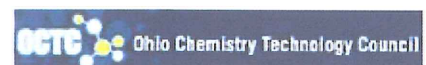
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News To Use And Share

Ohio Shale Energy Highlights

From the Ohio Energy Resource Alliance

June 4, 2012

New Study: Fracking Does Not Impact Drinking Water

Chesapeake Energy Corp. has released a new report by a consulting firm that looks at drinking water in Pennsylvania's Bradford County and finds no links between natural gas drilling and water impacts. The 360-page study was done for Chesapeake Energy by Weston Solutions.

Weston Solutions drew split samples from 15 Bradford County drinking water wells that were being collected and tested by the U.S. Environmental Protection Agency in late 2011. The agency is conducting a multi-year study of hydraulic fracturing or fracking and drinking water.

A preliminary analysis is due out in late 2012 -- with a final report scheduled to be released in 2014. You can read more including the full Weston Solutions' report by clicking [here](#). [The Akron Beacon Journal \(5/31/12\)](#)

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Doing Latest Big Thing Right

Kasich, others talk shale drilling

YANKEE LAKE - People in the Mahoning and Shenango valleys have long hoped for something to take the place of the steel industry that once was the area's economic lifeblood.

The natural gas and other resources trapped in the Utica shale thousands of feet beneath the region is the latest big thing billed to cause a boom here. It's time to get prepared for the "gas rush" that's coming, but, "I don't think we should get ahead of ourselves," Ohio Gov. John Kasich said.

The forum was organized by state Rep. Sean O'Brien, Brookfield, D-63rd District, and was sponsored by the American Petroleum Institute. There were 250 people invited to the forum, and they

included township, county and state officials, business leaders and oil and gas industry executives. "The idea is to get everybody on the same page," O'Brien said. "We know we have a big opportunity. How do we maximize the benefits while trying to minimize the risks? Our idea is 'How to develop this resource?'" [The Sharon Herald \(6/1/12\)](#)

Shale Gas Boom Could Bring Manufacturing Jobs Back To U.S., Economists Say

CLEVELAND -- The shale gas boom hitting Ohio, Pennsylvania and several other states could provide a major advantage to manufacturers in the United States -- cheap energy that could significantly cut the costs to produce goods here, according to a group of economists.



Cleveland Fed President and Chief Executive Sandra Pianalto said manufacturing businesses have been leading the economic recovery in the United States for the past two years, but she added that job growth hasn't been as strong as profit and sales growth. To add jobs, the sector needs to attract new manufacturers and bring production back to the United States from other countries. That's where shale gas and cheap energy could come in. [The Cleveland Plain Dealer \(6/1/12\)](#)

Jobs, Jobs, Jobs!

Youngstown Vindicator Editorial

The Mahoning Valley is positioned to benefit greatly in terms of job creation as the shale boom commences. These new jobs can be broken into four classifications: drilling operations, supply chain production, supply chain transportation, and ancillary support positions. Drilling operations jobs refer to rig operators, to land men that get leases signed, to injection well operators. Many of these jobs are currently being performed by workers experienced in the industry and many are imported into the area to perform this specialized work.

Supply chain production jobs are related to the manufacturing of supplies and tools needed to facilitate drilling and brine disposal operations. The most widely reported example in the valley is V&M Steel expansion project, which supplies steel pipe used in horizontal

well drilling. V&M has stated they will create roughly 350 new manufacturing jobs once this expansion is complete. Exterran Energy Solutions LP of Houston is expected to create a new manufacturing facility on Salts Springs Road. Exterran is expected to employ 400 to 500 workers. These are but two examples. Many supply chain production jobs are filled by Valley residents with specialized, technical and manufacturing skills. [The Youngstown Vindicator \(5/31/12\)](#)

Scio Area Lands Major Natural-Gas Processing Hub

The facility is expected to be one of the largest of its kind in eastern Ohio

CADIZ - A natural-gas processing hub being developed in a partnership between Chesapeake Midstream Development, M3 Midstream and EV Energy Partners will be located on state Route 151 northwest of Scio, a North Township trustee has told Harrison County commissioners.

According to the companies, the Harrison facility will consist of natural-gas gathering and compression facilities constructed and operated by Chesapeake, as well as processing natural-gas liquid fractionation, loading and terminal facilities constructed and operated by Momentum. The hub will receive and process natural-gas liquids, such as propane and butane, that are being extracted from Ohio's Utica Shale. The facility is expected to be one of the largest of its kind in eastern Ohio and will create 50 to 125 jobs. [The Times Leader \(6/1/12\)](#)

Shale Of The Century

The "golden age of gas" could be cleaner than greens think

AMERICA'S "unconventional" gas boom continues to amaze. Between 2005 and 2010 the country's shale-gas industry, which produces natural gas from shale rock by bombarding it with water and chemicals-a technique known as hydraulic fracturing, or "fracking"-grew by 45% a year. As a proportion of America's overall gas production shale gas has increased from 4% in 2005 to 24% today. America produces more gas than it knows what to do with. Its storage facilities are rapidly filling, and its gas price (prices for gas, unlike oil, are set regionally) has collapsed. Last month it dipped below \$2 per million British thermal units (mBtu): less than a sixth of the pre-boom price and too low for producers to break even.

Those are problems most European and Asian countries, which respectively pay roughly four and six times more for their gas, would relish. America's gas boom confers a huge economic advantage. It

has created hundreds of thousands of jobs, directly and indirectly. And it has rejuvenated several industries, including petrochemicals, where ethane produced from natural gas is a feedstock. ([The Economist \(6/2/12\)](#))

The Ohio Energy Resource Alliance is comprised of Ohio Petroleum Council (OPC), a division of the American Petroleum Institute (API); the Ohio Oil & Gas Association (OOGA); the Ohio Oil & Gas Energy Education Program (OOGEEP); Energy In Depth - Ohio (EID OHIO), and the Buckeye Energy Forum.

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Ohio General Assembly Passes Far-Reaching Energy Bill: Governor Kasich Set to Sign Bill Into Law

On March 22, 2012, Governor John Kasich proposed comprehensive energy legislation to make changes to state energy policy, many related to the shale boom in eastern Ohio. Introduced as “Senate Bill 315,” nearly six weeks later, the Ohio Senate approved a revised version of the bill. On May 24, 2012, the Ohio House approved the bill, and the Senate concurred in the changes. The bill is now on its way to Governor Kasich’s desk and he indicates he will sign it into law. SB 315 will take effect ninety days (90) later.

The bill addresses, among other things, Ohio’s oil and gas statutes, regulatory jurisdiction over natural gas pipelines, and how to incentivize “cogeneration” facilities. A copy of the bill can be found at: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_315. This article summarizes the bill’s key provisions.

I. Ohio’s Oil and Gas Statutes (Ohio Revised Code Chapter 1509)

Ohio Revised Code (“R.C.”) Chapter 1509 and associated regulations govern oil and gas operations in Ohio and establish the regulatory scheme under which the Ohio Department of Natural Resources (“ODNR”), through its Division of Oil and Gas Resources Management, regulates such activities. SB 315 revises R.C. 1509.01 et seq. to account for the technologies currently being used in Ohio, including horizontal drilling and hydraulic fracturing.

Definitions: In order to account for shale drilling operations in Ohio, a number of definitions were added or revised. The initial version of the bill modified the definition of “gas” to include both wet gas and dry gas. The General Assembly, however, returned to the existing definition of “gas” in the final version of SB 315. But, in order to account for the liquid hydrocarbons being produced in Ohio, SB 315 also modifies the definition of “condensate” to include “liquid hydrocarbons separated at or near the well pad or along the gas production or gathering system prior to gas processing.” R.C. 1509.01(D).

Horizontal Wells: One of the overarching changes made in SB 315 was to subject horizontal well drilling operations to ODNR’s existing permitting and regulatory scheme. To accomplish this task, SB 315 adopts a new definition for the phrase “horizontal well.” R.C. 1509.01(A)(GG) defines a “horizontal well” as an oil and gas well “in which the wellbore reaches a horizontal or near horizontal position in the Point Pleasant, Utica, or Marcellus formation and the well is stimulated.” R.C. 1509.1(GG). The references to specific geologic formations were added in the revisions made by the Ohio Senate.

Other revisions relating to horizontal well drilling activities include:

- **Road Use Maintenance Agreements:** A new application for a horizontal well will require the applicant to provide either: (i) a copy of a road use maintenance agreement “containing reasonable terms” with the relevant public official(s); or (ii) an affidavit indicating that the applicant was unable to enter such an agreement despite good-faith efforts. R.C. 1509.06(A)(11)(b).

- Insurance: The owner of a horizontal well must obtain at least \$5 million in liability insurance from an insurance company authorized to sell insurance in Ohio to “pay for damages for injury to persons or damage to property caused by the production operations.” The insurance policy(ies) must also “include a reasonable level of coverage available for an environmental endorsement.” R.C. 1509.07(A)(2). And, such coverage must be maintained for the life of the well. R.C. 1509.07(A)(3).
- Quarterly Reports: Although the as-introduced version of SB 315 required production results from horizontal wells to be submitted to ODNR on a quarterly basis, the final version of SB 315 clarifies that horizontal wells will remain subject to annual reporting requirements. R.C. 1509.11(A). Notably, amendments by the Ohio Senate removed language requiring that production reports include statistics for oil, dry gas, wet gas, condensate and brine.
- Administrative Rules: SB 315 gives ODNR the power to promulgate rules relating to horizontal wells and their production facilities. R.C. 1509.03.

Well Permits: A new requirement added to SB 315 requires ODNR to post notice on its website of each well permit within two (2) business days of permit approval. R.C. 1509.06.

Protection of Public and Private Water Supplies: Permit applications to ODNR for oil and gas drilling operations must now identify the source of groundwater and/or surface water that will be used in a well’s production operations (*e.g.*, hydraulic fracturing operations), and specifically state whether the water will be withdrawn from the Lake Erie or Ohio River watersheds. R.C. 1509.06(A)(8). Estimated water withdrawal rates (including specific estimates for the amount of recycled water used) and volumes also must be stated and updated if any information changes. R.C. 1509.06(A)(8)(a). Such information must be updated if it changes prior to the commencement of production operations. R.C. 1509.16(J). ODNR is expected to promulgate additional regulations relating to the protection of public and private water supplies. R.C. 1509.03(A)(2).

Water Sampling and Testing: When submitting a well application, the applicant now must submit pre-drilling water sampling/testing results if: (i) the well is being drilled in an urbanized area; or (ii) the permit is to drill a new horizontal well. For wells drilled in an urbanized area, water sampling must be completed for all water wells located within 300 feet of the proposed horizontal well prior to the start of drilling operations. R.C. 1509.06(A)(8)(b). For new horizontal wells, water sampling must be completed for all water wells located within 1,500 feet of the proposed horizontal well. But, ODNR retains the authority to revise the distance. R.C. 1509.06(A)(8)(c). All water sampling must be done in accordance with certain best management practices for pre-drilling water sampling adopted by ODNR.

Disclosure of Fluids: R.C. 1509.10 requires any person drilling an oil and gas well to submit a well completion report to ODNR within 60 days after the completion of drilling operations. New requirements in SB 315 require the disclosure to ODNR of fluids and other products used during the hydraulic fracturing process.

The final version of SB 315 requires that certain information be submitted to ODNR regarding the fluids and other products used to facilitate and/or stimulate the well, including information about the trade name and total amount of all products, fluids and other substances (other than cement). See R.C. 1509.10(A)(9)(a) and 1509.10(A)(10)(a). Well owners also must submit a list of all chemicals intentionally added to the products, fluids and/or substances (including the chemical abstracts service number and

maximum concentration), subject to an expansive trade secret exception explained below. R.C. 1509.09(A)(9)(a) and 1509.09(A)(10)(a). Such disclosures must be made as part of the well completion report submitted to ODNR or through a chemical disclosure registry (e.g., www.fracfocus.org). R.C. 1509.09(F)(2).

In terms of the trade secret exception to the disclosure requirement, the final version of SB 315 allows the owner of a well to designate certain information on the well completion report as a trade secret, including the “identity, amount, concentration, or purpose” of such fluids or products. R.C. 1509.10(I). Additional language included in the final version of SB 315 provides that a property owner or other interested person can challenge the trade secret designation by filing a civil lawsuit in the Franklin County Common Pleas Court. R.C. 1509.10(I)(2).

To the extent ODNR does not have a material safety data sheet for any fluid identified by a well owner, such a sheet must be submitted to ODNR for posting on its website. R.C. 1509.10(E) and (G). All chemical compounds provided to ODNR under R.C. Chapter 1509 also must be provided to medical professionals if requested and needed to “assist in the diagnosis of an individual who was affected by an incident associated with the production operations of a well.” R.C. 1509.10(H)(1). Although such medical professionals are required to keep the trade secret information confidential, disclosure is contemplated if required by law or medical ethical standards. R.C. 1509.10(H)(2).

All records relating to the disclosure of fluids or products used to facilitate and/or stimulate the well are subject to a two-year recordkeeping requirement. R.C. 1509.10(J)(2).

Injection Wells: SB 315 adds new requirements to R.C. 1509.22 regarding applications for the injection of brine or other waste substances (e.g., disposal in Class II injection wells). In particular, R.C. 1509.22(D)(2) gives ODNR the power to establish rules governing the testing of reservoirs to determine their suitability for injection, the maximum allowable injection pressure, the total depth allowed, and other issues relating to public health and safety. In addition, R.C. 1509.22(D)(1)(c) provides for the electronic reporting of information regarding shipments of brine and other waste substances on a quarterly basis.

Fees for Injection Wells: SB 315 moves the location of the fee structure associated with injection wells from R.C. 1509.221 to R.C. 1509.22(H), and modifies it. For fluids produced in the ODNR Division of Oil and Gas regulatory district where the injection well is located (or an adjoining regulatory district), the fee remains the same (5 cents per barrel), which eliminated an initial proposed increase in the fee to 10 cents per barrel. R.C. 1509.22(H)(1)(a). For fluids produced outside of the ODNR Division of Oil and Gas regulatory district where the injection well is located or an adjoining regulatory district (e.g., produced fluids from other states), the fee remains the same (20 cents per barrel), which eliminated an initial proposed increase in fees to one dollar (\$1.00) per barrel. R.C. 1509.22(H)(1)(b). The maximum number of barrels per well that can be subject to the fees identified above is 500,000 barrels. R.C. 1509.22(H)(2). To the extent the owner of an injection well receives fluids from Ohio and other states, the fees are first applied to the out-of-state fluids. R.C. 1509.22(H)(2). The owner of an injection well permitted by ODNR is required to collect the injection fees, but can retain three percent (3%) of the amount collected, with the remainder being turned over to ODNR and deposited in the oil and gas well fund. R.C. 1509.22(H)(3).

100-Year Floodplain: SB 315 allows ODNR to evaluate the need for site-specific permit conditions for wells to be located within the 100-year floodplain or within the “five-year time of travel associated with a public drinking water system.” R.C. 1509.06(H)(2).

Unitization Under R.C. 1509.28: For unitization applications under R.C. 1509.28, SB 315 requires a non-refundable fee to be paid to ODNR in the amount of \$10,000.

Reports, Test Results, Fees Submitted to ODNR: One addition to SB 315 provides well owners with some leeway in submitting reports, test results and fees to ODNR that are required under R.C. Chapter 1509. More specifically, ODNR may grant an extension of time up to 60 days for submitting such reports, test results, or fees. R.C. 1509.04(B)(1)(a). And, even if a well owner fails to timely submit a report, test result, or fee, an administrative violation will only be issued by ODNR if the well owner fails to respond within thirty (30) days of notice of such non-compliance. R.C. 1509.04(B)(1)(b).

Cooperative Agreements with ODNR: R.C. 1509.02 now provides the Chief of ODNR’s Division of Oil and Gas Management the power to enter into cooperative agreements with other state agencies for advisory and consultative purposes. The revisions to this portion of the bill in Sub-SB 315 explain that cooperating agencies do not have any authority to administer or enforce provisions in R.C. Chapter 1509.

State Fire Marshal: A new provision added to the final version of SB 315 gives the state fire marshal and the board of building standards exclusive authority over the adoption and enforcement of fire safety standards relating to the construction at a shale oil processing premise of any structure subject to the nonresidential building codes established in R.C. 3781.10. A shale oil processing premise is defined as “a single parcel or contiguous parcels of real estate, including any structures, facilities, appurtenances, equipment, devices, and activities...where the processing of substances extracted from the Point Pleasant, Utica, and Marcellus formations occurs at a natural gas liquids fractionation or natural gas processing facility.” However, this term does not include a well pad or production operation. R.C. 3737.832.

II. PUCO and OPSB Jurisdiction Over Natural Gas Pipelines

Definition of Public Utilities: Modifications by the Ohio Senate to SB 315 explained that a pipeline company “engaged in the business of the transport associated with gathering lines, raw natural gas liquids, or finished product natural gas liquids” is not subject to PUCO jurisdiction. In addition, SB 315 clarified that producers or gatherers of Ohio-produced natural gas and raw natural gas liquids can apply for an exemption from jurisdiction of the Public Utilities Commission of Ohio (“PUCO”). R.C. 4905.03(A)(5). This regulatory exemption, which is set forth in R.C. 4929.041, was amended as part of Governor Kasich’s midyear budget review, Amended Substitute House Bill 487 (“HB 487”). As part of HB 487, the regulatory exemption was expanded to allow natural gas companies to seek a regulatory exemption (from compliance with certain portions of Chapter 4905 of the Ohio Revised Code) for investments in gathering facilities placed in service before or after January 1, 2010. R.C. 4929.041(B).

PUCO Jurisdiction Over Natural Gas Gathering Pipelines and Processing Plants: SB 315 updates the authority of the PUCO over gas gathering pipelines (defined as those “not regulated under the Natural Gas Pipeline Safety Act and the rules adopted by the United States Department of Transportation pursuant to the Natural Gas Pipeline Safety Act” including those “used to collect and transport raw natural gas from a well facility to the inlet of a gas processing plant” and that can be “upstream or downstream from a wet natural

gas compressor station”) and gas processing plants (defined as a “plant that processes raw natural gas into merchantable products, including transmission quality gas or natural gas liquids and also may include a plant that treats raw natural gas to remove impurities such as carbon dioxide, helium, nitrogen or water”). R.C. 4906.03(D) and (E).

As initially proposed in SB 315, the new regulatory scheme categorized gas gathering pipelines as either high pressure or low pressure. Modifications by the Ohio Senate, however, removed this distinction. Instead, the final version of SB 315 requires gas gathering pipelines and processing plant gas stub pipelines used for the transportation of gas from a horizontal well to: comply with the pipeline safety provisions in 49 CFR 192, subpart (C); control corrosion; establish and follow damage prevention and public education programs; establish the MAOP (maximum pressure at which a pipeline can be operated) of the pipeline; install and maintain pipeline markers; and perform leakage surveys. R.C. 4905.911(A).

OPSB Jurisdiction Over Natural Gas Gathering Pipelines: The Ohio Power Siting Board (“OPSB”) retains jurisdiction over “major utility facilities.” Revisions to the definition of “major utility facilities” in SB 315 expand the OPSB’s jurisdiction over natural gas pipelines. Previously, the OPSB oversaw the permitting of natural gas transmission lines capable of transporting natural gas at pressures greater than 125 psi. Changes in SB 315 expand the types of natural gas pipelines subject to the OPSB’s jurisdiction to include any natural gas pipeline longer than 500 feet, with an outside diameter greater than nine (9) inches and capable of transporting natural gas at pressures greater than 125 psi. A prior version of the bill also subjected natural gas pipelines designed for or capable of transporting natural gas at pressures greater than 300 psi to OPSB jurisdiction, but this was removed by the Ohio Senate.

The statutory changes also expand the list of pipelines or facilities not subject to the OPSB’s jurisdiction, including: (i) gas gathering lines, gas gathering pipelines and processing plant gas stub pipelines as defined in R.C. 4905.90 as well as associated facilities; (ii) gas processing plants as defined in R.C. 4905.90; (iii) natural gas liquids finished product pipelines; (iv) pipelines transporting natural gas liquids from a processing plant to either a natural gas liquids fractionation plant; (v) natural gas liquids fractionation plants; and (vi) compressor stations used by certain pipelines. R.C. 4906.01(B)(2).

Expedited Review: A new provision in R.C. Chapter 4906 requires the OPSB to expedite its review of certain applications. More specifically, the OPSB must expedite its review of applications involving: (i) electric transmission lines shorter than two (2) miles long, primarily needed to attract or meet the requirements of a specific customer or specific customers, and necessary for reliability purposes as a result of the retirement or shutdown of an electric generation facility in Ohio; (ii) an electric generation facility “that used waste heat or natural gas” and is primarily located within an existing industrial facility’s boundary; (iii) a gas pipeline shorter than five (5) miles long or primarily needed to meet the requirements of a specific customer or specific customers. R.C. 4906.03(F).

Miscellaneous OPSB Provisions: The final version of SB 315 amends an old requirement in R.C. 4906.05(A)(6) so that applicants to the OPSB are now required to file their application no more than five (5) years prior to the planned start of construction. The prior version of the statute required the application to be filed not less than one year before the planned start of construction. In addition, new language was added to R.C. 4906.10(A) allowing an applicant to withdraw its OPSB certificate if not satisfied with the conditions imposed by the OPSB.

III. Amendments to Senate Bill 221's Alternative Energy Portfolio Standard

Classification of Co-Generation Systems: SB 315 promotes “waste energy recovery” (“WER”) and “combined heat and power” (“CHP”) projects by qualifying them for use by Ohio’s investor-owned utilities in order to meet certain portfolio standard requirements under Senate Bill 221 (“SB 221”), Ohio’s energy law passed in 2008. Specifically, SB 315 allows WER systems to qualify as either “renewable energy” or “energy efficiency” resources, thereby allowing them to be used to satisfy requirements under: (i) Ohio’s renewable portfolio standard (“RPS”)—which requires the state’s investor-owned utilities to procure twelve and one-half percent (12.5%) of their energy from renewable energy resources by 2025; or (ii) SB 221’s energy efficiency standards, which require utilities to achieve cumulative energy savings of twenty-two percent (22%) by 2025.

WER and CHP Defined: SB 315 makes a clear distinction between WER and CHP. The bill defines “waste energy recovery system” as a facility that generates electricity through the conversion of energy from either: (i) exhaust heat from engines or manufacturing, industrial commercial, or institutional sites, except for exhaust heat from a facility whose primary purpose is the generation of electricity; or, (ii) reduction of pressure in gas pipelines before gas is distributed through the pipeline, provided that the conversion of energy to electricity is achieved without using additional fossil fuels.” R.C. 4928.01(36). Generally, WER systems capture waste energy from an industrial or commercial process, but do not introduce additional fossil fuel sources. On the other hand, “combined heat and power system” is defined as the coproduction of electricity and useful thermal energy from the same fuel source designed to achieve thermal-efficiency levels of at least sixty percent (60%) with at least twenty percent (20%) of the system’s total useful energy in the form of thermal energy. CHP systems often introduce additional fossil fuel energy sources (e.g., natural gas, oil, or coal).

The definitions of WER and CHP are important because SB 315 allows WER project owners to choose whether to qualify a system as a renewable energy or energy efficiency resource (they cannot be used for both purposes). Under the bill, CHP projects qualify to meet Ohio’s energy efficiency requirements but not the renewable targets. Specifically, SB 315:

- States that the energy policy of the State includes encouraging “innovation and market access for cost-effective supply- and demand-side retail electric service including . . . waste energy recovery systems.” R.C. 4928.02(D).
- Allows an electric distribution utility’s energy efficiency programs to include WER systems and CHP systems placed in service or retrofitted after the effective date of the law. R.C. 4928.66(A)(1)(a). However, certain CHP systems sited at a state institution of higher education, and placed in service between January 1, 2002 and December 31, 2004, may also qualify as energy efficiency resources.
- Allows a utility to meet its renewable energy targets by counting the effects of WER systems placed in service or retrofitted after the effective date of the law. Similar to the exception for universities mentioned above, certain CHP systems sited at a state institution of higher education and placed in service between January 1, 2002 and December 31, 2004, may also qualify as renewable energy resources. R.C. 4928.64(A)(37)(a).

University of Cincinnati / Kent State University Exception: Though otherwise clearly distinguishing between WER and CHP, the bill creates a limited carve-out to allow CHP systems at two state

universities to qualify as waste energy recovery systems and therefore be eligible to meet utility renewable energy targets. The bill includes in the definition of waste energy recovery “a facility at a state institution of higher education that recovers waste heat from electricity-producing engines or combustion turbines and that simultaneously uses the recovered heat to produce steam,” if it was placed in service “between January 1, 2002, and December 31, 2004.” This limited provision will allow the University of Cincinnati and Kent State University to sell renewable energy credits from their fossil fuel fired CHP systems.

Advanced Energy Resource: SB 221 requires twenty-five percent (25%) of all kilowatt hours of electricity sold by electric distribution utilities and electric services companies in Ohio be obtained from “alternative energy resources” by 2025. Of the “25 percent by 2025” requirement, one-half must be generated from “advanced energy resources.” Within this context, SB 315 modifies the definition of Advanced Energy Resource to include: (i) “Any new, retrofitted, refueled, or repowered generating facility located in Ohio, including a simple or combined-cycle natural gas generating facility or a generating facility that uses biomass, coal, nuclear energy, or any other fuel as its input;” or (ii) “any uprated capacity of an existing generating facility if the uprated capacity results from the deployment of advanced technology.”

III. Miscellaneous

SB 315 also contains a number of other provisions relating to the state’s energy and environmental policies. A brief summary of those provisions follows.

Support for Natural Gas Vehicles: The bill supports the wider adoption of natural-gas powered vehicles, including for the fleet owned by the State of Ohio. The bill orders the PUCO and Ohio Department of Transportation (“ODOT”) to analyze the cost effectiveness of purchasing vehicles that run on compressed natural gas and converting certain state vehicles to natural gas engines. The PUCO and ODOT must produce a joint report on their findings for state legislators no later than January 30, 2013. The bill also authorizes the PUCO and ODOT to work with other states to develop a multi-state study on the development of compressed natural gas infrastructure for transportation. R.C. 4928.72.

Green Pricing Programs: SB 315 authorizes the PUCO to periodically review any green pricing program offered in this state as part of competitive retail electric service. At the conclusion of a review, the PUCO may make recommendations to improve or expand the program subject. R.C. 4928.70.

PUCO Study: SB 315 requires that the PUCO study whether increased energy efficiency, demand response, generation, and transmission provide increased opportunities for customer choice. The PUCO shall include in the study an evaluation of emerging technologies. The PUCO shall commence the study no later than eighteen months after the effective date of this section. At the conclusion of the study, the PUCO shall prepare a report of its findings and make the report available on its web site. R.C. 4928.71.

Energy Education Organization: The final version of SB 315 removed a provision relating to the creation of energy education organizations, which were proposed to be non-profit corporations committed to providing energy education activities.

Energy Projects for State-Owned Buildings: SB 315 updates and amends a number of provisions relating to energy- and water-saving measures in state-owned buildings. The bill provides that the life-cycle cost

analysis required for state-funded facility projects include a review of co-generation as an energy source if the estimated construction cost of a project exceeds \$50 million. R.C. 123.011(C). The bill also expands the definition of “energy conservation measure” to include:

- Installation or modification of trigeneration systems that produce heat and cooling, as well as electricity, for use primarily within a building or complex of buildings. R.C. 156.01(B)(9).
- Installation or modification of systems that harvest renewable energy from solar, wind, water, biomass, bio-gas, or geothermal sources, for use primarily within a building or complex of buildings. R.C. 156.01(B)(10).
- Retro-commissioning or recommissioning energy-related systems to verify that they are installed and calibrated to optimize energy and operational performance within a building or complex of buildings. R.C. 156.01(B)(11).
- Consolidation, virtualization, and optimization of computer servers, data storage devices, or other information technology hardware and infrastructure. R.C. 156.01(B)(12).

The phrase “water conservation measure” is modified to include any other modification, installation, or remodeling approved by the Director of the Department of Administrative Services (“DAS”) as a water conservation measure for one or more buildings owned by either the state or a state institution of higher learning that implements the water conservation measure in consultation with the Director of DAS. R.C. 156.01(F)(7). The approval of the board of trustees of a state institution of higher education is no longer required. Any installment payment contract entered into for the implementation of one or more energy- or water-saving measures will be eligible for financing provided through the Ohio Air Quality Development Authority. R.C. 156.04(D).

Alternative Fuel Transportation Program: SB 315 expands the alternative fuel transportation grant program to allow the Director of Development to issue loans. R.C. 122.075(B). The program will now receive additional funding from investment earnings in the advanced energy research and development taxable fund. R.C. 122.075(E).

PUCO Review: SB 315 established that the PUCO shall consult with electric distribution utilities to review the distribution infrastructure in this state and shall consult with regional transmission organizations and entities that own or control transmission facilities to review the transmission infrastructure in this state. The PUCO shall evaluate the distribution and transmission infrastructure and shall order any necessary upgrades, additions, or improvements to ensure adequate and reliable service, enable new electric generation, and promote new industry in this state. R.C. 4928.111. However, the final version of SB 315 removed the PUCO’s ability to order such upgrades, additions, and improvements.

DJFS Office of Workforce Development: SB 315 provides that the Office of Workforce Development within the Ohio Department of Job and Family Services shall comprehensively review the direct and indirect economic impact of businesses engaged in the production of horizontal wells in this state and, based on its findings, prepare an annual Ohio workforce report. R.C. 6301.12.

Phase-In-Recovery Property: An addition to the final version of SB 315 provides that, although the transfer and ownership of phase-in-recovery property and the imposition, charging, collection, and receipt of phase-in-recovery revenues by public utilities under R.C. 4928.33 are exempt from taxes and similar charges, such an exception does not prohibit the levying of the commercial activity tax. R.C. 4928.314.

Anhydrous Ammonia for Agricultural Purposes: The final version of SB 315 mandates that the director of agriculture adopt and enforce uniform rules governing the storing and handling of fertilizers, and for safety in the design, construction, location, installation, or operation of equipment for storing, handling, transporting, and utilizing anhydrous ammonia, aqueous ammonia, or other solutions for use as agricultural fertilizers. Such rulemaking previously was discretionary for the director. Specifically to anhydrous ammonia used for agricultural purposes, SB 315 requires that such rules establish standards and procedures for the approval/disapproval relating to the design and construction of storage facilities. Accordingly, on and after the effective date of SB 315, no person shall construct an anhydrous ammonia storage facility used for agricultural purposes without applying for and receiving approval from the director of agriculture. R.C. 905.40 and R.C. 905.41.

For more information on Substitute Senate Bill 315, please contact Terrence O'Donnell at 614.227.2345 (todonnell@bricker.com), Glenn Krassen at 216.523.5469 (gkrassen@bricker.com), Chris Slagle at 614.227.8826 (cslagle@bricker.com), Matt Warnock at 614.227.2388 (mwarnock@bricker.com), or Thomas Siwo at 614.227.2389 (tsiwo@bricker.com).

ENVIRONMENT

To: OMA Government Affairs Committee
From: Kevin Schmidt, OMA Staff
Re: Environment Update
Date: 6/6/2012

1. Air Permitting Reform Protected by the Courts

On May 25, 2012, the Sixth Circuit U.S. Court of Appeals reinstated the ten-ton Best Available Technology (“BAT”) rule which permits the director of Ohio EPA to issue permits to smaller emission sources, those that produce less than ten tons of emissions per year, without first determining whether those sources will employ BAT. BAT is an Ohio-only requirement that, in many instances, inhibits operational flexibility.

The recent decision reverses a win by the Sierra Club in the lower U.S. District Court for the Southern District of Ohio that ordered Ohio EPA to enforce BAT requirements for all emitters, even those that emitted ten tons or less. OMA participated in the case by issuing a brief in support of Ohio EPA's position against the Sierra Club.

Ohio manufacturers can now again utilize the ten-ton BAT exemption that was originally part of Senate Bill 265, enacted in 2006. A summary of the decision from OMA's environmental counsel, Bricker & Eckler LLP, can be found [here](#).

2. Extended Producer Responsibility

Senator [Peggy Lehner's](#) (R-Kettering) legislation, [Senate Bill 253](#), would create post-consumer recycling liability for manufacturers of certain electronic products. Additionally, the measure allows an advisory council to recommend other products for inclusion in the mandate.

Earlier this year, the OMA delivered a [letter](#) to the sponsor and chairman of the committee last week to communicate opposition to this mandate. It has come to the OMA's attention that this matter is unlikely to move while the manufacturing community roundly opposes it.

1. Great Lakes Compact

House Bill 473 finally cleared the legislature and in substantially similar form to an earlier version that was vetoed by the Governor. While some modifications were made to how much water can be pulled out of high-quality streams most businesses will be relatively unaffected by the regulations due to expansive grandfathering provisions.

Environment Management

Victory In the Courts for Low-Emissions Manufacturers

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06/01/2012

Legislature Passes (Finally) Great Lakes Compact Legislation

The Ohio legislature sent language implementing the Great Lakes Compact to the Governor's office again this week. This is the second time this has happened in the last 12 months. The Governor surprised everyone and vetoed the last legislation, claiming it was not protective enough of Lake Erie and its associated watershed. The second version, House Bill 473 (Wachtmann, R-Napoleon), made some modifications to how businesses can withdraw water from certain streams and waterways, among other things. Businesses already in operation will be grandfathered.

05/25/2012

Ohio EPA Omnibus Bill Sent to Governor

Ohio EPA's omnibus legislation, [Senate Bill 294](#) (Schaffer, R-Lancaster), cleared the legislature this week amid a flurry of activity. The legislation makes a number of changes to environmental law in Ohio, including the expansion of confidentiality provisions regarding companies seeking the assistance of Ohio's office of compliance assistance and pollution prevention (OCAPP). For more information on OCAPP, [click here](#).

SB 294 will be discussed in detail at the upcoming OMA Environment committee meeting on June 28th at the OMA. [Click here](#) to register.

05/25/2012

U.S. EPA Resources for Materials & Waste Exchanges

Materials and waste exchanges are markets for buying and selling reusable and recyclable commodities. In general, waste exchanges tend to handle hazardous materials and industrial process waste while materials exchanges handle nonhazardous items.

U.S. EPA has made an effort to provide a comprehensive, accurate list of exchanges, including [International](#) and National Material Exchanges and [State](#) Specific Exchanges.

05/18/2012

Ohio EPA Helps Businesses Source Recyclers

Ohio EPA maintains a [search function](#) for businesses to find recyclers and other environmental service providers. Users can search 42 categories as well as by county. Example categories are: anti-freeze recycling services, battery recycler/brokers and disposal facilities, drum re-conditioners and recyclers, metal recyclers, Ohio commercial facilities accepting hazardous wastes, used oil recyclers, and wood waste and pallet recyclers.

05/18/2012

OMA Works to Improve Paint Waste Regulations

The OMA staff has participated in recent discussions with Ohio EPA regarding the classification of paint and paint-related wastes. Multiple OMA members have suggested that reclassifying paint and paint-related wastes as “universal waste,” rather than “hazardous waste,” as [Texas has done](#) with U.S. EPA approval, would improve the regulatory climate in Ohio.

These wastes are generally recycled in an industrial setting; reclassifying this waste would improve the recycling options for the consumer sector and improve the regulatory environment for the industrial sector. The administration has signaled that this change should go through the [Common Sense Initiative process](#), a process designed to identify and implement regulatory improvements. Contact [Kevin Schmidt](#) at the OMA to learn more.

05/11/2012

Truce Reached on the Great Lakes Compact

The governor's office reached an agreement with the legislature and the business community this week on the Great Lakes Compact (Compact). The Compact is a new regulatory scheme meant to protect the Great Lakes water resource from being shipped outside of the region. The governor, in a surprise move, last year vetoed legislation that would have implemented the Compact in Ohio.

[A press release](#) from the governor's office this week noted "[The bill](#) [House Bill 473] provides tough protections for Lake Erie and its tributary streams, complies with or exceeds the Compact, and is consistent with actions taken by other Great Lakes states and provinces named in the Compact."

It is expected that environmentalists will push for changes to the legislation; however, with the administration on board it is likely the bill will pass without additional modifications.

04/20/2012

U.S. Supreme Court Sides With Regulated Community

In a recent decision ([Sackett v. EPA](#)) the U.S. Supreme Court unanimously ruled that property owners have a right to judicial review of U.S. EPA orders, a right until now unavailable. The National Association of Manufacturers (NAM) filed an [amicus brief](#) in this case and stated: “EPA orders such as this one essentially coerce alleged violators into compliance, denying due process.”

This decision is important for manufacturers because it allows companies that may be facing unreasonable and unenforceable enforcement actions the option of judicial review before incurring penalties.

OMA environmental counsel Bricker & Eckler LLP has put together a [summary](#) of this important decision.

03/30/2012

Ohio Shale Energy 2012 Conference to be Held in Cambridge on April 11

To help local businesses discover opportunities in the shale supply chain, Ohio University and its partners are hosting a [regional event](#) for businesses interested in becoming suppliers to the shale energy industry in Ohio.

“This event will provide insight for small and large businesses about what it takes to get your foot in the door of the oil and gas industry,” said Jo Sexton, president of the Cambridge Area Chamber of Commerce. “We have a mix of industry experts and local experience that promises to be valuable for all attendees interested in entering the supply chain.”

Keynote speaker Michael Levett, senior director and vice board chair for CDC Development Solutions (CDS), will focus on what it takes to grow a successful industry in Ohio that benefits the state.

Attendees will be entered into the Ohio Shale Supply Chain Database.

For additional information and to pre-register for the conference, visit www.ohioshaleenergy.com.

03/30/2012

Chemical Reduction Program and Assistance from Ohio EPA

Ohio [EPA reports](#) that it is seeking partnerships with Ohio industries for the 2025 Safer Chemistry Challenge Program (SCCP), a new voluntary initiative of the National Pollution Prevention Roundtable. The goal is to reduce the use of selected chemicals by 25 percent by 2025.

The challenge is designed to encourage industry to reduce the use of chemicals through source reduction measures, including making changes in production processes or adopting new technologies, using cleaner processes that avoid use or generation of toxic chemicals and changing raw materials to include low toxicity materials that degrade into harmless substances in the environment.

Ohio EPA's Office of Compliance Assistance and Pollution Prevention (OCAPP), the non-regulatory arm of Ohio EPA, is available to advise and offer technical assistance toward finding and implementing chemical reduction initiatives.

The chemicals of high national concern include heavy metals such as lead, mercury and chromium, and other common industrial chemicals such as perchloroethylene, phthalates and formaldehyde. However, participating companies target chemicals based on their own priorities.

Go here for details or call OCAPP at (614) 644-3469 or (800) 329-7518.

03/30/2012

Top Experts Speak on Greenhouse Gas Reporting

Last week a panel of Ohio and national experts participated in a webinar hosted by the Ohio University Voinovich School of Leadership and Public Affairs: "U.S. EPA's Greenhouse Gas Reporting (GHG): Navigating the Process and Understanding the Impacts – Part II."

The purpose of the session, second in the series, was to explore how the U.S. EPA GHG

reporting program is affecting Ohio companies. Program PowerPoint presentations are linked as follows: [Kevin Crist](#), Director, Center for Air Quality, Ohio University, [Bob Hodanbosi](#), Chief, Division of Air Pollution Control, Ohio EPA, [Sean Hogan](#), Senior Analyst, U.S. EPA Greenhouse Gas Reporting Program/Office of Atmospheric Programs, and [Andrew D. Shroads](#), QEP, Senior Air Quality Specialist/Regional Director, Sanford Cohen & Associates, Inc.

The session was moderated by Michael Zimmer, Executive in Residence, Ohio University Voinovich School of Leadership and Public Affairs.

03/16/2012

Industry Wins Legal Challenge

The Environmental Review and Appeals Commission recently issued a ruling on an appeal to legislation that improved the air permitting process at Ohio EPA. Supported by the OMA, [Senate Bill 265](#) passed in 2006; it clarified permit requirements and improved consistency throughout the district offices.

The Sierra Club appealed the rules. The OMA intervened in the appeal to defend the law.

A summary of the ERAC ruling can be found [here](#). This is a victory for science-based standards and common sense regulations.

03/09/2012

Great Lakes Compact Still Undecided

With the legislature set to make its second try ([House Bill 473](#)) at passing enabling legislation for the state to sign on to the Great Lakes Compact, the governor's office is still not on board. Kasich spokesman Scott Milburn noted that there are issues to be discussed before the legislation will receive the support of the administration.

A top issue yet to be resolved apparently is how "high quality streams" will be handled. The legislation as it stands now uses a 90-day average to measure the water withdrawals from these types of water sources. Some parties are

working to remove this averaging. Media coverage can be found [here](#).

03/09/2012

Opportunity to Shape Renovation of Solid Waste Law

Ohio EPA has initiated a detailed review of Ohio's comprehensive solid waste law, frequently referred to as House Bill (H.B.) 592 and is inviting interested parties to participate in the process.

A kickoff [webinar](#) will take place on Friday, March 9 from 10:00 a.m. – noon.

H.B. 592, passed in 1988, still serves as the foundation for Ohio's current solid waste management system, including the design and operation of solid waste landfills, the existence and makeup of Solid Waste Management Districts (SWMDs), the State Solid Waste Management Plan, and solid waste fees. In the 20 years since passage of H.B. 592, the landscape of solid waste management has changed and Ohio EPA believes that it's time to evaluate the law for improvement opportunities. Thus, stakeholder involvement is critical.

Ohio EPA has designed an open and inclusive review process, beginning with this launch webinar. The agency will be seeking the opinions of interested parties from the local, state and national level. The process will include informal information gathering, open discussion and meetings, research and an eventual legislative initiative. Ohio EPA will maintain a [web site](#) dedicated to this review to inform interested parties and the public.

If you are unable to attend the webinar, but would like to know more about the process or meet with Ohio EPA on the topic, please email [Christopher Germain](#) or call (614) 728-5371.

03/02/2012

Act on this Opportunity to Modify Harmful Boiler MACT Rule

In March 2011, the U. S. EPA finalized a rule, commonly known as Boiler MACT, that would create unreasonable emissions limits on

industrial and commercial boilers and process heaters. Due to significant regulated community concerns, the EPA stayed implementation. On January 9, the D.C. District Court struck down the EPA's stay, creating uncertainty for manufacturers as they work to either install new boilers or retrofit existing units.

The National Association of Manufacturers (NAM) is calling for manufacturers to contact their senators to urge support for the [EPA Regulatory Relief Act](#) as an amendment to the Senate transportation bill. This amendment, already passed by the House, gives federal regulators additional time to develop achievable rules governing emissions from industrial, commercial and institutional boilers and incinerators.

Access NAM resources [here](#).

03/02/2012

Environment Legislation
Prepared by: The Ohio Manufacturers' Association
Report created on June 4, 2012

- HB10** **REMEDIATION OF CONTAMINATED SITE (SEARS B)** To authorize refundable tax credits for the completion of a voluntary action to remediate a contaminated site and for the return of such sites to productive use, and to exempt persons through 2017 who have issued covenants not to sue under the Voluntary Action Program from certain fees and penalties for one year after the issuance of such a covenant.
Current Status: 3/2/2011 - House Ways and Means, (Fifth Hearing)
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_10
- HB133** **OIL AND GAS LEASING/DRILLING ON STATE LAND (ADAMS J)** To create the Oil and Gas Leasing Board and to establish a procedure by which the Board may enter into leases for oil and gas production on land owned or under the control of a state agency for the purpose of providing funding for capital and operating costs for the agency.
Current Status: 6/30/2011 - **SIGNED BY GOVERNOR**; Eff. 9/30/2011
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_133
- HB231** **LAKE ERIE WATERS (WACHTMANN L)** To establish a program for the issuance of permits for the withdrawal and consumptive use of waters from the Lake Erie basin.
Current Status: 7/15/2011 - **VETOED BY GOVERNOR**
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_231
- HB257** **LAKE ERIE WATERS (MURRAY D)** To establish a program for the regulation of withdrawals and consumptive uses of waters from the Lake Erie basin.
Current Status: 4/18/2012 - House Agriculture and Natural Resources, (First Hearing)
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_257
- HB304** **LAKE ERIE OIL/NATURAL GAS (ANTONIO N)** To ban the taking or removal of oil or natural gas from and under the bed of Lake Erie.
Current Status: 4/18/2012 - House Agriculture and Natural Resources, (First Hearing)
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_304
- HB473** **GREAT LAKES COMPACT (WACHTMANN L)** To establish a program for the issuance of permits for the withdrawal and consumptive use of waters from the Lake Erie basin and to establish other requirements related to the implementation of the Great Lakes-St. Lawrence River Basin Water Resources Compact.
Current Status: 5/31/2012 - Sent to Governor for Signature
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_473
- HB480** **BPA EXPOSURE HAZARDS (DRIEHAUS D, RAMOS D)** Regarding the possible hazards of fetal exposure to the chemical bisphenol-A (BPA).
Current Status: 3/14/2012 - Referred to Committee House Health and Aging
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_480
- HCR9** **PROPOSED AIR POLLUTION TRANSPORT RULE (THOMPSON A)** To urge the Congress, the President of the United States, and the United Environmental Protection Agency to immediately suspend the Proposed Air Pollution Transport Rule.
Current Status: 5/17/2011 - **REPORTED OUT**, House Agriculture and Natural Resources, (Third Hearing)
State Bill Page: http://www.legislature.state.oh.us/res.cfm?ID=129_HCR_9
- HCR49** **MERCURY AND AIR TOXICS STANDARDS RULE (THOMPSON A)** To urge the Congress of the United States to adopt S.J. Resolution 37, which disapproves the United States Environmental Protection Agency's Mercury and Air Toxics Standards Rule.

Current Status: 5/23/2012 - Referred to Committee House Agriculture and Natural Resources

State Bill Page: http://www.legislature.state.oh.us/res.cfm?ID=129_HCR_49

- HR48** **STREAM PROTECTION RULE (LANDIS A)** To express opposition to the implementation of the stream protection rule and environmental impact statement of the Office of Surface Mining, Reclamation, and Enforcement in the U.S. Department of the Interior.
Current Status: 6/23/2011 - Re-Referred to Committee
State Bill Page: http://www.legislature.state.oh.us/res.cfm?ID=129_HR_48
- SB22** **NPDES PERMITS SEWAGE SYSTEMS (SCHAFFER T)** To require the Director of Environmental Protection to consider, to the extent allowable under the Federal Water Pollution Control Act, specified factors before issuing NPDES permits for sewerage systems, requiring and approving long-term control plans for wet weather discharges from sewerage systems, and enforcing provisions of that Act as applied to sewerage systems.
Current Status: 6/30/2011 - **SIGNED BY GOVERNOR**; Eff. 9/30/2011
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_22
- SB140** **BITTERING AGENT IN ENGINE COOLANT (BACON K, SKINDELL M)** To require the inclusion of a bittering agent in engine coolant and antifreeze.
Current Status: 11/15/2011 - Senate Judiciary, (Second Hearing)
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_140
- SB186** **WITHDRAWALS OF LAKE ERIE WATERS (SKINDELL M)** To establish a program for the regulation of withdrawals and consumptive uses of waters from the Lake Erie basin.
Current Status: 6/15/2011 - Referred to Committee Senate Agriculture, Environment & Natural Resources
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_186
- SB290** **RECYCLING (JONES S)** To exempt source separated recyclable materials from the definition of "solid wastes" and to prohibit a solid waste management district from spending district money to purchase or operate assets for recycling purposes when two or more privately owned companies offer to provide or are providing recycling services for recyclable materials that are generated in the district.
Current Status: 2/14/2012 - Senate Agriculture, Environment & Natural Resources, (Second Hearing)
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_290
- SB294** **ENVIRONMENTAL PROTECTION LAW (SCHAFFER T)** To revise the laws governing environmental protection.
Current Status: 5/31/2012 - Sent to Governor for Signature
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_294
- SB328** **GOVERNOR'S AWARD-ENVIRONMENTAL STEWARDSHIP (BALDERSON T)** To establish the Governor's Award for Environmental Stewardship to be awarded annually to the company or person involved in the oil and gas industry that best represented wise environmental stewardship during the previous one-year period.
Current Status: 5/23/2012 - Referred to Committee House Agriculture and Natural Resources
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_328

HUMAN RESOURCES

Human Resources Management

Bill Will Ban Text Messaging While Driving

The General Assembly has passed a bill (House Bill 99) banning writing, sending, or reading a text message on a handheld electronic wireless communications device while driving. An electronic wireless communications device includes a wireless telephone, a text-messaging device, a laptop or tablet computer, and other similar devices. Governor Kasich has indicated that he will sign the bill into law, making Ohio the 39th state in the nation to ban texting while driving.

To promote safe driving habits and avoid liability for vehicular accidents caused by employees while driving within the scope of their employment, employers should develop written policies on safe and lawful use of handheld electronic wireless communications devices and provide employees with education on the risks of using such technology while driving.

[Here's an analysis](#) of the measure, with implications and tips for employers, developed by OMA Connections Partner, Jackson Lewis.

06/01/2012

Shared Work Program Approved

An impasse was resolved this week allowing HB 484 (Duffey, R-Worthington) to advance by a [vote](#) of 81-15. The bill modifies unemployment compensation laws to create an optional new "short-time unemployment compensation" program in which shared work benefits would be funded by the federal government through the middle of 2015.

"This concept, also known as shared work compensation, offers an alternative to employers facing a reduction in work force. Instead of laying off employees, the employer reduces the hours of work each week among a specific group of employees," said Scott Blue, plant manager of Kenworth, [testifying](#) on behalf of the OMA.

The OMA issued a [key vote alert](#) in support of HB 484. In recent weeks, labor advocates sought union approval before an employer could

utilize the program. The OMA took a strong stance against the provision since it was unnecessary and unprecedented.

05/25/2012

Smoking Ban Upheld By Supreme Court

In a unanimous decision, the Ohio Supreme Court affirmed a ruling by the Tenth District Court of Appeals that Ohio's Smoke Free Workplace Act is constitutional. OMA legal counsel Bricker & Eckler has prepared a brief client bulletin to highlight what employers should be aware of. Click to [view the bulletin](#) and learn more about the ruling.

05/25/2012

NLRB "Ambush Election" Rule Invalidated by Court

Here's the latest development in the case against the National Labor Relations Board (NLRB or Board) "ambush election" rule, which went into effect April 30: Judge James E. Boasberg of the U.S. District Court for the District of Columbia issued a ruling in the U.S. Chamber and Coalition for a Democratic Workplace (CDW) motion for summary judgment. The judge sided with the Chamber and CDW and ruled the NLRB election rule invalid. This decision nullifies the rule in its entirety.

Here is a copy of the [judge's decision](#), the [order](#) and [NLRB's statement](#).

The rule would have compressed the time between the filing of a petition for representation and an actual election date. It also would have deferred until after a unionizing election certain pre-election rights that were previously available to employers, effectively rendering them moot.

Trauger said, "This is a significant win for employers and employees around the country who would have been forced to make an important decision about whether to join a union without adequate time to consider all the information available."

Judge Boasberg's ruling was based on the fact that the NLRB did not have a quorum of three members when it voted on the final rule.

In a [briefing](#) from OMA Connections Partner, Jackson Lewis, we learn: The District Court determined that when the election rule actually was adopted on December 16, 2011, only two members (Chairman Mark G. Pearce and former Member Craig Becker) participated, voting electronically through the agency's Judicial Case Management System to adopt the rule. Judge Boasberg found that one member (Member Brian Hayes) did not respond to the Board's electronic invitation.

Per Trauger: It is unclear what the Board intends to do in light of this most recent development; there appear to be two options: appeal the ruling or reissue the rule with the current Board members. Appealing the rule would likely take until October or November to get a Court ruling. Re-voting on the rule would be more expedient, but would be subject to legal challenges to the procedurally questionable recess appointments of three Board members in January.

05/18/2012

Employers and Franchises Beware: GPS Tracking May Result in Liability

In January, the Supreme Court ruled that law enforcement must obtain a valid search warrant prior to placing a GPS tracking device on a suspect's vehicle. In *United States v. Jones*, Case No. 10-1259, the Supreme Court determined that placing the GPS on a suspect's vehicle violated the Fourth Amendment, which protects against unreasonable searches and seizures. The Fourth Amendment applies only to actions taken by those acting on behalf of federal, state or local government; however, the Supreme Court's decision may apply to the actions of franchises that track the movements of employees. [Read more](#). *From OMA Connections Partner, Roetzel & Andress.*

05/18/2012

The Hidden Dangers in Severance and Employment Agreements

When contemplating whether to terminate an employee, employers should review severance and employment agreements that provide for payment of severance benefits. OMA

Connections Partner, Bricker & Eckler LLP, reveals the [hidden dangers](#) that may be lurking.

05/11/2012

EEOC Determines that Discrimination Laws Protect Transgender Employees

On April 23, the EEOC issued an opinion determining "that intentional discrimination against a transgender individual because that person is transgender is, by definition, discrimination 'based...on sex,' and such discrimination therefore violates Title VII." In [this case](#), a woman claimed she was denied a contractor job with the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) after the agency learned she underwent a procedure to change her gender from man to woman. The woman originally applied for the position as a man and was informed she was virtually guaranteed the job. After the ATF learned of her procedure, it informed her that funding for her position had been cut. She later learned the ATF hired someone else for the job. *From OMA Connections Partner, Credit to Roetzel & Andress.*

05/07/2012

New EEOC Guidance on Employers' Use of Criminal Records

The EEOC recently published guidance on the use of arrest and conviction records in employment decisions under Title VII. Read this [Bricker and Eckler Human Resources Bulletin](#) to learn about the EEOC's restrictive view on the use of criminal records, so you can make process changes to comply with the EEOC guidance.

05/04/2012

NAM Aims for Pension Funding Stabilization

For several months, the National Association of Manufacturers (NAM) and a number of companies and business trade associations have worked in support of an industry proposal to provide pension funding stabilization through a "smoothing" of interest rates and in opposition to efforts to increase premiums to the Pension Benefit Guaranty Corporation (PBGC).

NAM has now established the Pension Coalition and is soliciting names of companies and associations that support these efforts for a coalition letter. The coalition aims to have Congress understand that without a change in policy to adjust for historically low interest rates, companies will be limited in their ability to invest and expand and continue to compete in the global marketplace.

To sign on to the letter, [click here](#).

05/04/2012

Columbus State Offers Logistics Training Program for Central Ohio Employers

Columbus State Community College has developed the LogisticsART (Attracting Retaining Talent) program to train and prepare entry- to mid-level positions in warehouse, distribution and related logistics positions for employers in Delaware, Franklin, Fairfield, Madison, Morrow, Licking, Pickaway and Union counties.

The [LogisticsART](#) program delivers coursework which is recognized nationally and locally by industry experts. Participating employers receive immediate access to a pool of candidates whose skills are tailored to industry. Participants receive three weeks of training in logistics industry basics and modern technology including warehouse management system, RF scanning and forklifts.

There is no cost to businesses or participants. The LogisticsART program is funded through a \$4.6 million dollar Department of Labor grant awarded to Columbus State Community College.

05/04/2012

Kenworth Presents Testimony for Shared Work Unemployment Comp

On behalf of the OMA, Scott Blue, Plant Manager at the Kenworth Truck Assembly Plant in Chillicothe, [testified](#) in writing this week before the House Commerce, Labor and Technology Committee on [HB 484](#). The bill would modify unemployment compensation laws to provide employers greater flexibility when faced with

difficult staffing decisions. The legislation enacts a new "short-time unemployment compensation" program.

Blue said: "This concept, also known as shared work compensation, offers an alternative to employers facing a reduction in work force. Instead of laying off employees, the employer reduces the hours of work each week among a specific group of employees."

Noting current temporary federal law which the bill seeks to take advantage of, Blue stated: "Through the middle of 2015, shared work benefits would be funded by the federal government. In other words, over the next three years, this program would benefit both Ohio employers and employees without significant downside for either group. And because employer participation in a shared work plan is voluntary, when the federal funding ends, employers can simply choose not to participate and avoid the potentially harmful effect on their unemployment tax rate."

04/27/2012

"Ambush Election" Rule Stands after Senate Action Fails

The National Association of Manufacturers (NAM) reported that the U.S. Senate voted 45-54 along party lines this week to reject Senator Mike Enzi's (R – WY) Resolution of Disapproval on the National Labor Relations Board's so-called "ambush election" rule. The rules streamlining the union election process passed late last year and take effect on April 30. Had the Resolution of Disapproval passed, the new rules would have been blocked from implementation.

According to NAM, under procedures established under current law, the median number of days it takes to hold a union representation election is 38. The new regulation gives employers as few as 20 days during which to inform employees about any pending election. Additionally, employers forgo their rights to have certain pre-election disputes adjudicated until after an election has taken place.

In addition to this vote, the NAM, as part of the Coalition for a Democratic Workplace, is

awaiting the federal court's decision in a motion for injunction on the rule taking effect on April 30.

04/27/2012

NAM Files Amicus Brief Opposing "Micro" Bargaining Units

This week the National Association of Manufacturers (NAM) was among parties filing an amicus brief with the U.S. Court of Appeals for the Sixth Circuit urging the Court to overturn a new National Labor Relations Board (NLRB) rule that makes it much easier to create "exceedingly small collective bargaining units in a workplace."

The rule, announced by the NLRB in the Specialty Healthcare case, allows a group of employees to select the bargaining unit they want, as long as the unit is defined as workers who share a "community of interest" (e.g. same job description). The decision overturns decades of well-established labor law by permitting the formation of these small bargaining units which could halt production in any one plant or business if one of these groups decided to strike. We'll follow NAM's reporting on the progress of the appeal in the federal court.

04/27/2012

Circuit Courts Differ on NLRB Posting Rule: U.S. Court of Appeals Stays April 30 Requirement

On Tuesday of this week, the U.S. Court of Appeals granted a [motion of injunction](#) to delay the effective date of the National Labor Relations Board (NLRB) posting notice requirement. The posting notice, which enumerates employees' rights to unionize, was to be posted by virtually all employers effective April 30; but the Court of Appeals has stayed the rule for an undetermined amount of time in order to adjudicate the matter.

As a result, employers are not required to post the NLRB poster on or before April 30.

Earlier in the week, National Association of Manufacturers (NAM) vice president of human resource policy, Joe Trauger, reported that the

Circuit Court in South Carolina had issued a ruling in a second lawsuit regarding the National Labor Relations Board (NLRB) posting notice rule. The Court ruled the NLRB did not have the authority to require employers to post a notice in the workplace about employee rights to unionize. This suit was brought by the U.S. Chamber of Commerce and the state chamber.

NAM filed the first lawsuit against the posting notice regulation in D.C. Circuit Court presenting the same arguments about the NLRB's lack of authority to enjoin employers to post the notice; the judge in that case ruled the NLRB can require employers to post the notice.

The South Carolina decision split the Circuits and the U.S. Court of Appeals has granted injunctive relief. NAM-led legal proceedings have resulted in two prior implementation delays.

OMA Connections Partner, Jackson Lewis, offered this [analysis](#) of the South Carolina decision.

04/20/2012

NLRB's "Quickie Election" Rule Scheduled to Take Effect on April 30

OMA Connections Partner, [Jackson Lewis LLP](#), reports that the National Labor Relations Board (NLRB) final rule amending its union election process is scheduled to take effect on April 30, 2012.

According to Jim Stone, managing partner of the Cleveland office of Jackson Lewis, The "quickie election" rule will significantly change the process for contesting petitions for union elections and limit an employer's opportunities to challenge the process before an election is held. It also will limit an employer's opportunity to communicate with its employees over issues of union representation before a vote is taken."

The final rule eliminates pre-election rights of employees and employers in order to shorten the time before a representation election takes place. According to Stone, "By eliminating the possibility of appealing issues pre-election, the time between the filing of an NLRB election petition and an election will be reduced significantly. Our best current estimate is that

the time will be reduced so that there may now be approximately 28-35 days between the filing of the election petition and the election.”

Jackson Lewis posted an [analysis](#) of the major rule provisions when it became final in late 2011.

04/13/2012

NLRB Mandates New Poster to be Displayed by April 30

As of April 30, 2012, most private sector employers will be required to [post a notice](#) advising employees of their rights under the National Labor Relations Act.

There were several unsuccessful legal attempts to reverse this rule and appeals are pending, but nothing that would disturb or delay the notice posting requirement.

OMA Connections Partner, Jackson Lewis, a national employment law firm with Ohio offices, is advising that employers need to post the required National Labor Relations Board (NLRB) “Notice of Employee Rights” poster by April 30, 2012.

The U.S. District Court for the District of Columbia, which had been considering legal challenges to the poster, ruled in March that the NLRB was within its authority to require employers to post the poster. The court did rule that some of the harsher penalties proposed by the NLRB for failure to post were overbroad; however, the basic requirement to post was upheld.

Jim Stone, managing partner of the Jackson Lewis Cleveland office said, “Some employers use “all in one” posters, which combine all required postings, including the new NLRB poster, into one large document and this is specifically permitted by the NLRB and will “tend to moderate” any dramatic effect from putting up the poster.”

04/13/2012

Pay Employees for Training Time, with Few Exceptions

On the heels of a Department of Labor action against a restaurant chain, OMA Connections

Partner, Roetzel and Andress LLP, [reminds employers](#) when training time must be compensated and the specific cases when training time does not need to be compensated.

Compensation of training time generates significant litigation under the Fair Labor Standards Act. Most training time is work time. Employers must compensate employees for training that occurs during an employee’s regular shift, as well as training that is required by the employer.

Training time does not need to be counted as work time if: 1) it occurs outside of an employee’s normal work schedule; 2) the training is entirely voluntary (there must be no pressure from the employer and no adverse consequences for failing to attend); 3) the training is not directly related to the employee’s current job (typically it is designed to qualify the employee for advancement); and 4) the employee performs no other work during the training.

04/13/2012

“Short-Time Unemployment Comp” Introduced

State Representative [Mike Duffey](#) (R – Worthington) recently introduced legislation to modify unemployment compensation laws to provide employers greater flexibility when faced with difficult staffing decisions. [HB 484](#) is intended to enact a new “short-time unemployment compensation” program.

“The apparent goals of the proposed program would be for employers to keep more people employed by reducing their employees’ hours in lieu of layoffs, and to provide employees increased opportunity to receive unemployment benefits. The new program would allow more employees to qualify for benefits, because employees could receive benefits even if their hours are reduced by only 10%,” said OMA counsel, [Cavett Kreps](#), of Bricker & Eckler LLP.

OMA will work to support passage of the bipartisan legislation. Members interested in supporting or testifying should [contact the OMA](#).

04/06/2012

Pink Slip Protection: Former Employees Have Employment Rights Too

Last week the [U.S. 4th Circuit ruled](#) that a former employee may enjoy legal protection under Title VII of the Civil Rights Act. The court ruled in favor of a former Virginia county employee who alleged she was offered a less favorable severance package because she is a woman. *Gerner v. Cnty. of Chesterfield, Va.*, 765 F.Supp.2d 770. *From OMA Connections Partner, Roetzel & Andress*

03/23/2012

Couple of Workforce Development Initiatives Outlined

Governor Kasich used the “mid-biennium review” to [propose](#) a few workforce development initiatives. None appear to focus directly on manufacturing workforce.

Proposed is an online resource to match training with demand for jobs in the oil and gas industries growing with the shale formation drilling. Two programs would be created to help people find jobs: one for the developmentally disabled and another for veterans. And, a “Learn to Earn” program would be established to allow those currently collecting unemployment to train with an employer while still receiving unemployment.

The review also referenced the previously announced revamping of the Executive Workforce Board which aims to “better align programs, and increase access for both employers and job seekers to obtain the training they need.”

03/16/2012

March Madness Pools Happen: How to Keep it Legally In Bounds

OMA Connections Partner, Roetzel & Andress, has a few [tips](#) for keeping workplace “March Madness” pools above board.

03/16/2012

NLRB’s Notice Posting Upheld by D.C. Federal Judge

On March 2, Judge Amy Berman Jackson [ruled](#) against the National Association of Manufacturers (NAM) in its lawsuit against the National Labor Relations Board (NLRB) regarding its employer posting requirement. The [posting](#) describes employees’ rights under the National Labor Relations Act and must be posted by virtually all employers by April 30 of this year. NAM’s suit challenged the NLRB’s jurisdiction to require the posting.

Judge Jackson ruled that the NLRB does have the authority to require employers to post the notice it finalized in August.

The poster rule not only requires an employer to put up the poster, but it also establishes that if the poster isn’t put up that would be, in and of itself, an unfair labor practice. Additionally, under the current law there is a six month statute of limitations to bring an unfair labor charge before the Board. The rule, as issued, would allow this limitation to be waived in certain circumstances.

The judge, in her decision, said that although the Board can require the poster, it cannot create the unfair labor practice and cannot waive the statute of limitations.

NAM’s Joe Trauger, Vice President, Human Resources Policy, said, “Most concerning about this ruling is that it appears that if an employer does not post and an unfair labor practice complaint is subsequently lodged against them, the NLRB can use failure to post as evidence of anti-union animus.”

This week. NAM, joined by the Coalition for a Democratic Workplace, the National Federation of Independent Business and the National Right to Work, decided to appeal the decision and also filed a motion with Judge Jackson requesting the rule not take effect until the appeal is decided. NAM continues to believe the facts and the law are on employers’ side in the case.

03/09/2012

Medical Marijuana Ballot Issues: A Concern for Manufacturers

Two pending ballot issues propose amendments to the Ohio Constitution that would make it legal for certain individuals to grow, process, distribute, purchase, sell and use marijuana and related paraphernalia in Ohio for certain medical reasons. Both the “Ohio Alternative Treatment Amendment” and the “Ohio Medical Cannabis Amendment” have been approved by the Ohio Attorney General and the Ballot Board, meaning that both petitions are now eligible to be circulated throughout Ohio for signatures.

Writes OMA counsel, Bricker & Eckler LLC, in a [memorandum](#) developed for OMA members: “(B)oth Amendments would restrict, either expressly or indirectly, the ability of Ohio manufacturers to test and/or discipline their employees for using or being under the influence of marijuana in the workplace. Additionally, the Amendments would raise a variety of legal and practical uncertainties for Ohio manufacturers regarding testing and discipline for marijuana use. Although some of those questions may be answered through subsequent administrative regulations authorized under both Amendments, inevitably, there will be questions that will only be answered following expensive and time-consuming litigation.”

03/09/2012

Human Resources, Health Care & Employment Law Legislation
Prepared by: The Ohio Manufacturers' Association
Report created on June 4, 2012

- HB7** **POST-VIABILITY ABORTIONS** (FENDE L) To revise the criminal laws governing post-viability abortions.
Current Status: 2/2/2011 - House Health and Aging, (First Hearing)
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_7
- HB11** **PATIENT PROTECTION AND AFFORDABLE CARE ACT** (SEARS B) To prohibit state departments and agencies from implementing or enforcing a provision of the federal Patient Protection and Affordable Care Act without meeting certain conditions.
Current Status: 2/23/2011 - House Health and Aging, (Second Hearing)
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_11
- HB61** **COMPENSATORY TIME OFF** (THOMPSON A, MARTIN J) To give private employers the option to offer and employees the option to accrue and use compensatory time off in lieu of monetary overtime compensation.
Current Status: 2/24/2011 - **SUBSTITUTE BILL ACCEPTED & REPORTED OUT**, House Economic and Small Business Development, (Fourth Hearing)
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_61
- HB63** **ABORTION - PREGNANT MINOR** (YOUNG R, SLABY L) To revise the procedures governing a hearing by which a court may permit a pregnant minor to have an abortion and to require a court to make its findings with respect to such a hearing by clear and convincing evidence.
Current Status: 11/4/2011 - **SIGNED BY GOVERNOR**; 'Eff. 2/3/12
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_63
- HB78** **POST VIABILITY ABORTIONS** (UECKER J, ROEGNER K) To review the criminal laws governing post-viability abortions.
Current Status: 7/20/2011 - **SIGNED BY GOVERNOR**; Eff. 10/20/2011
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_78
- HB79** **INSURANCE COVERAGE - ABORTIONS** (BUBP D, UECKER J) To prohibit qualified health plans for providing coverage for certain abortions.
Current Status: 12/21/2011 - **SIGNED BY GOVERNOR**; Eff. 3/22/12
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_79
- HB85** **HEALTH INSURANCE** (HACKETT R, SEARS B) To prohibit requiring an individual to obtain or maintain health insurance.
Current Status: 2/23/2011 - House Health and Aging, (Second Hearing)
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_85
- HB125** **ABORTION** (WACHTMANN L) To generally prohibit an abortion of an unborn human individual with a detectable fetal heartbeat.
Current Status: 12/14/2011 - Senate Health, Human Services & Aging, (Third Hearing)
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_125
- HB131** **EMPLOYMENT RELATED MATTERS** (REECE A) To prohibit employers from using a consumer report or investigative consumer report for employment purposes.
Current Status: 5/11/2011 - House Commerce, Labor & Technology, (First Hearing)
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_131
- HB137** **UNIFORM DEFINITION OF EMPLOYEE** (PHILLIPS D, DRIEHAUS D) To create a generally uniform definition of employee for specified labor laws and to create a uniform standard to determine whether an individual performing services for an employer is an employee of that employer.

Current Status: 5/25/2011 - House Commerce, Labor & Technology, (First Hearing)
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_137

HB230 **EMPLOYMENT APPLICATION QUESTIONS (WILLIAMS S)** To prohibit employers from including on an employment application any question concerning whether an applicant has pleaded guilty to or been convicted of a felony.

Current Status: 6/1/2011 - House Commerce, Labor & Technology, (First Hearing)
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_230

HB257 **LAKE ERIE WATERS (MURRAY D)** To establish a program for the regulation of withdrawals and consumptive uses of waters from the Lake Erie basin.

Current Status: 4/18/2012 - House Agriculture and Natural Resources, (First Hearing)
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_257

HB376 **HEALTH INSURANCE COVERAGE-AUTISM (CELESTE T, GARLAND N)** To prohibit health insurers from excluding coverage for specified services for individuals diagnosed with an autism spectrum disorder.

Current Status: 11/29/2011 - Referred to Committee House Health and Aging
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_376

HB412 **HEALTH BENEFIT EXCHANGE AGENCY (ANTONIO N, CARNEY J)** To establish the Ohio Health Benefit Exchange Agency and to establish the Ohio Health Benefit Exchange Program consisting of an exchange for individual coverage and a Small Business Health Options Program.

Current Status: 1/17/2012 - Referred to Committee House Health and Aging
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_412

HB484 **SHORT-TIME UNEMPLOYMENT COMPENSATION PROGRAM (DUFFEY M)** To create the short-time unemployment compensation program.

Current Status: 5/24/2012 - **PASSED BY HOUSE**; Votes 80-15
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_484

HCR3 **HEALTH COVERAGE TAX CREDIT (O'BRIEN S)** To request the members of the United States Congress to reauthorize and continue the Health Coverage Tax Credit (HCTC) enhancements including provisions related to the monthly reimbursement program, the qualified family members program, and Voluntary Employee Beneficiary Associations (VEBAs).

Current Status: 2/10/2011 - Referred to Committee House Finance and Appropriations
State Bill Page: http://www.legislature.state.oh.us/res.cfm?ID=129_HCR_3

HJR2 **HEALTH CARE COVERAGE (MAAG R, SEARS B)** To preserve the freedom of Ohioans to choose their health care and health care coverage.

Current Status: 3/23/2011 - **REPORTED OUT**, House Health and Aging, (Third Hearing)
State Bill Page: http://www.legislature.state.oh.us/res.cfm?ID=129_HJR_2

SB30 **EMPLOYMENT DISCRIMINATION CREDIT HISTORY (TAVARES C)** To specify that discrimination by an employer against any person because of the person's credit history is an unlawful discriminatory practice under the Ohio Civil Rights Law.

Current Status: 3/9/2011 - Senate Judiciary - Civil Justice, (First Hearing)
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_30

SB35 **MOBILE DEVICE OPERATION MOTOR VEHICLE (TAVARES C)** To prohibit driving a vehicle while using a handheld or manually operated mobile communication device and to establish the violation as a secondary traffic offense.

Current Status: 2/2/2011 - Referred to Committee Senate Highways & Transportation
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_35

SB55 **HEALTH INSURANCE PAYMENTS (TAVARES C)** To prohibit health insurers from denying payment

for a service during or after the performance of the service if the insurer provided prior written authorization for the service.

Current Status: 9/20/2011 - Senate Insurance, Commerce & Labor, (First Hearing)

State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_55

SB62 **COMPENSATORY TIME OFF (BEAGLE B)** To give private sector employers the option to offer and employees the option to accrue and use compensatory time off in lieu of monetary overtime compensation.

Current Status: 2/16/2011 - Referred to Committee Senate Insurance, Commerce & Labor

State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_62

SB107 **UNIFORM DEFINITION OF EMPLOYEE (SKINDELL M)** To create a generally uniform definition of employee for specified labor laws and to create a uniform standard to determine whether an individual performing services for an employer is an employee of that employer.

Current Status: 11/29/2011 - Senate Insurance, Commerce & Labor, (First Hearing)

State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_107

SB112 **OHIO HEALTH CARE PLAN (SKINDELL M)** To establish and operate the Ohio Health Care Plan to provide universal health care coverage to all Ohio residents.

Current Status: 11/29/2011 - Senate Insurance, Commerce & Labor, (First Hearing)

State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_112

SB189 **HEALTH CARE COMPACT (GRENDLELL T)** To join the Health Care Compact.

Current Status: 6/21/2011 - Referred to Committee Senate Insurance, Commerce & Labor

State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_189

SB351 **ELECTRONIC PRIVACY PROTECTION-EMPLOYEES (TAVARES C)** To prohibit employers, employment agencies, personnel placement services, and labor organizations from requiring an applicant or employee to provide access to private electronic accounts of the applicant or employee.

Current Status: 5/24/2012 - Introduced

State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_351

SCR13 **CONTRACEPTIVE DRUGS INCLUDE HEALTH INSURANCE (TAVARES C)** To urge the Secretary of the United States Department of Health and Human Services to include all federally approved prescription contraceptive drugs and devices in the list of women's preventive health services that must be covered by new health insurance plans.

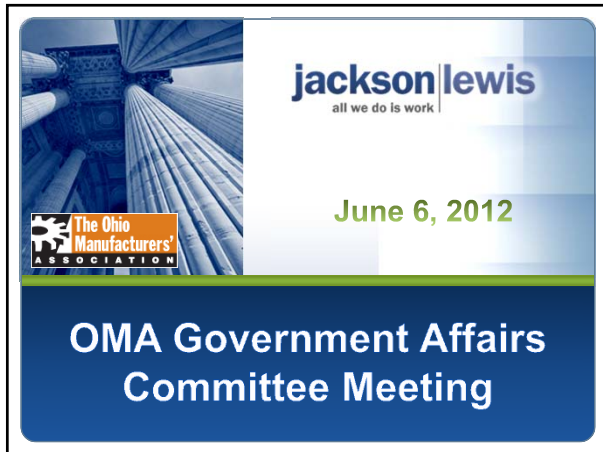
Current Status: 6/28/2011 - Referred to Committee Senate State & Local Government & Veterans Affairs

State Bill Page: http://www.legislature.state.oh.us/res.cfm?ID=129_SCR_13

SJR1 **HEALTH CARE COVERAGE (GRENDLELL T)** To preserve the freedom of Ohioans to choose their health care and health care coverage.


Current Status: 6/22/2011 - BILL FAILED; Vote 59-39 (60 votes needed to pass)

State Bill Page: http://www.legislature.state.oh.us/res.cfm?ID=129_SJR_1



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June 6, 2012



**OMA Government Affairs
Committee Meeting**



Introduction

**Jackson Lewis LLP is the
HR Connections Partner for OMA**



**Preventive Strategies and
Positive Solutions for the Workplace.**



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**NLRB Update and
Current Litigation Trends**

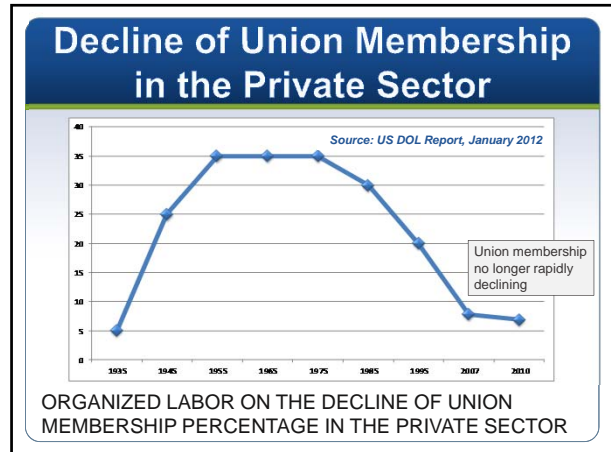


NLRB Update:

**New Rules and Initiatives
Create Significant Challenges
for All Employers**

What We Will Discuss Today

- Redefining “bargaining units” to union advantage
- The NLRB’s mandatory notice posting rule - **ON HOLD!** (would have been effective on April 30, 2012)
- Changes to NLRB election rules and procedures – **IN LIMBO!**
- Restrictions on arbitration agreements prohibiting class actions or group employment claims
- Continued NLRB restrictions on employer social media policies
- Sweeping new remedies for ULPs and other violations



Current NLRB Board

- Mark Pearce – union lawyer
- Sharon Block – union lawyer
- Richard Griffin – union lawyer
- Brain Hayes – management lawyer
- Terence Flynn – management lawyer – **Resigned on May 26; resignation effective July 24, 2012**

Likely Results of NLRB Changes

- Increased organizing
- More NLRB petitions
- More union election victories
- Increase in unfair labor practice charges
- Increase in NLRB “protected concerted activity” charges in non-union settings

Redefining the Bargaining Unit

Specialty Healthcare case (8/26/11):

- Employer wanted to expand unit of CNAs to include other service and maintenance employees.
- NLRB said no, contrary to years of precedent
- Now must prove “overwhelming community of interest” to expand unit; otherwise almost any reasonable unit offered by unions is acceptable
- Smaller units much more likely

Redefining the Bargaining Unit

Specialty Healthcare... the Impact:

- Units of few employees are much easier for unions to organize and win elections
- One department or one job title is now legally fair game
- Employers could have multiple units, multiple unions, multiple bargaining contracts
- Opens the door to organizing in “non-traditional” industries (offices, small facilities, tech centers)
- Increased organizing widely anticipated based on changes in the law

Redefining the Bargaining Unit

Recommendations for employer consideration - what you can legally do now:

- Conduct a bargaining unit analysis
- Determine who qualifies as supervisors under the NLRA
- Consider a legal HR assessment – policies, procedures, etc.
- Take pro-active steps to create legally effective “best practices” to eliminate workplace issues

ON HOLD

NLRB Notice Rule



Employee Rights
Under the National Labor Relations Act

- **NEW** mandatory posting: **Employee Rights**
- Would have been effective **April 30, 2012**
- Covers most private sector employers – with or without unions
- On hold, pending appeal
- Decision expected fall 2012

ON HOLD

NLRB Notice Rule

South Carolina (*Chamber of Commerce v. NLRB*, D.S.C., No. 11-cv-2516) April 17, 2012 decision:

“The court finds that the Board lacks the authority to promulgate the notice-posting rule.”

- Conflicts with previous federal court decision from Washington DC.

ON HOLD

NLRB Notice Rule

Washington, D.C. (*Nat'l Ass'n of Mfrs. v. NLRB*, D.D.C., No. 11-cv-1629):

GRANTED an injunction, pending appeal

- The NLRB cannot enforce the rule while the D.C. case is on appeal
- Appellate hearings are set for September 2012
- Decision is expected fall 2012, at the earliest

?

Accelerated Election Rule

- The NLRB passed a final rule on union elections on 12/22/11.
- The rule went into effect on 4/30/2012. **Rule set aside on May 14, 2012.**



?

Accelerated Election Rule

Washington, D.C. (*Chamber of Commerce v. NLRB*, D.D.C., No. 11-2262 (JEB), May 14, 2012):

GRANTED Plaintiff's motion for summary judgment; set aside the accelerated election rule

- **Holding:** The final election rule was promulgated without the requisite quorum, thus the NLRB exceeded its authority in passing it
- The court found that only 2 Board members participated in the vote, not the required 3 members

Accelerated Election Rule

What you need to know about the district court holding invalidating the rule:

- The court did not reach the arguments on the merits of the rule, but indicated that had a quorum participated in its promulgation, the rule may have been found "perfectly lawful"
- Unless or until a properly constituted quorum of Board members passes the rule, representation elections will have to continue under the old procedures
- In all likelihood, a new vote on the rule will not end the controversy; renewed legal challenges almost certainly will follow such a re-issuance

Accelerated Election Rule

- **NLRB Press Release (May 15, 2012):** "About 150 election petitions were filed under the new procedures. Many of those petitions resulted in election agreements, while several have gone to hearing. All parties involved in the 150 cases will be contacted and given the opportunity to continue processing the case from its current posture rather than re-initiating the case under the prior procedure."

Accelerated Election Rule

What you need to know about the rule if it is passed (and upheld) in its current form:

- Expedites the union election process... elections within 30-40 days (reduced by about 2 weeks)
- Shrinks employers' legal options to affect the composition of the voting employee-unit
- Reduces an employer's ability to communicate lawfully with prospective voters so that employees can make a fully informed choice in any election

Accelerated Election Rule

Potential Impact:

- Accelerates processing of petitions
- Streamlined process
- Unit issues resolved more often post-election
- Eliminates pre-election briefs
- Bars pre-election appeals

? **Accelerated Election Rule**

What are the legal ramifications?

- Accelerated elections predicted to help unions organize more employees
- Lawful, factual and honest employer education of voters regarding unions typically reduces employee union support because employees hear both sides
- Cutting the “campaign” period reduces opportunity for lawful, effective employee education

Social Media & Concerted Activity

- NLRA protects **concerted activity** by employees. Applies equally to both unionized and union-free workplaces
- Employees are protected against retaliation for discussing or complaining about terms and conditions of employment
- **Protected concerted activity:** 2 or more employees act together to attempt to improve their terms and conditions of employment

Social Media & Concerted Activity

- Employees are talking about companies online – like it or not:
 - Including, for example, social media sites, blogs and text messages
- For employees, a social media policy outlines corporate guidelines and principles for online communications, including limitations on release of trade secrets, competitive information or denigrating the company



Social Media & Concerted Activity

Fired because of Facebook®: social media policies and the NLRB:

- NLRB extends **concerted activity** to social media; Board reviewing 129 cases involving Twitter, Facebook, YouTube and other forms of social media and electronic communication



Social Media & Concerted Activity

The NLRB's concerted activity focus implicates and may constrain many policies, such as:

| | |
|--|--------------------------------------|
| 1. Access (off-duty employees and third parties) | 6. Non-Harassment, Civility |
| 2. Confidentiality | 7. Confidentiality of Investigations |
| 3. Communications, Media | 8. Non-Disparagement & Gossip |
| 4. Corporate Code of Conduct | 9. E-Communications & Computers |
| 5. Dress Code (uniform, buttons, etc.) | 10. Solicitation and Distribution |

Tips for Lawful and Effective Policies

Recommendations for employer consideration - what you can do...

- Maintain lawful policies in light of recent NLRB actions
- Tips for a legally effective communications policy in light of NLRB's new policing efforts:
 - Avoid overly broad provisions that could be reasonably construed to prohibit protected conduct
 - Consider adding a specific disclaimer limiting the policy provisions so that they do not hinder employees' right to engage in protected concerted activity

Tips for Lawful and Effective Policies

Recommendations for employer consideration - what you can do...

- Encourage responsible use of the Internet when discussing the company or its employees
- Convey that harassment, bullying, discrimination or retaliation that would not be permissible in the workplace is not permissible between co-workers online, even if it is done after hours, from home and on home computers
- Review social media and other policies regularly in light of changes in technology and in the law

Sweeping New Remedies

Not business as usual anymore:

- To remedy ULPs, posting and a commitment not to "violate" the Act again is no longer enough!
- ULP posting remedy expanded – often required to post notices electronically
- NLRB Acting GC Lafe Solomon has urged regional officials to seek "special remedies" in ULP complaints for alleged violations committed by employers during union organizing drives

Sweeping New Remedies

- Additional remedies for adverse impact on employee/union communication:
 - Requiring that the union be given access to company bulletin boards and computer networks for union communications
 - Requiring that employee names and addresses, including e-mail addresses, be provided to the union



Sweeping New Remedies

- Aggressive remedies suggested for ULPs that have a "severe impact" on union's ability to communicate:
 - Mandate union access to workplace to meet with employees in non-work areas during non-work time, and
 - Allow the union equal time to respond to company speeches and deliver speeches of their own, or time to give a pre-election address to workers

Dealing with the Activist NLRB

Recommendations for employer consideration - lawful compliance and best practices:

- Develop a strategic, comprehensive, integrated labor relations plan
- Ohio employers should stay active in employer organizations that will oppose the efforts to over-politicize the NLRB and keep the NLRB from overhauling procedures to help unions organize



Dealing With The Activist NLRB

Recommendations for employer consideration - lawful compliance and best practices:

- Review policies and practices to ensure lawful best practices
- Review handbooks and social media policies to comply with rapidly changing legal requirements
- Stay up-to-date on legal developments so you can comply pro-actively!



Update:

Current Litigation Trends

Most Common Class and Collective Action Cases

- FLSA cases
 - 7,008 FLSA cases filed year ending March 31, 2011
 - Increase of 15% from the prior year
 - Increase of 357% from 2001
- Class actions most likely filed (70% of all FLSA cases)
 - California, Florida, Illinois, New York, and Texas
- Class and collective actions in Ohio are growing rapidly

Collective Action Lawsuits Under the FLSA, ADEA & EPA

- Collective actions under the FLSA, ADEA or EPA must follow the procedure set out in § 216(b) of the FLSA
- At the notice stage, Plaintiffs must make a modest factual showing that the putative class members were "similarly situated"
 - If so, the court will grant "conditional certification"
- At the second stage, although not specifically defined by § 216(b), the "similarly situated" standard is higher
- Opt-in

In re Novartis Wage and Hour Litigation (2d Cir. 2010)

- The Second Circuit held that plaintiff pharmaceutical sales representatives were not exempted from the FLSA's overtime pay requirements because they are not outside salesmen or bona fide administrative employees
- Although the potential application of the highly compensated exemption was not discussed by the Second Circuit, even a high level of compensation may not be a defense should a claim for misclassification be initiated

Collective Action Waivers Under the FLSA

- **The Issue:** Can employees waive the right to bring a collective action under the FLSA?
- Before *Concepcion*, the 3rd, 4th, 5th, 9th and 11th Circuits upheld class action waivers in FLSA cases
- Since *Concepcion*, the 3rd Circuit has upheld a class waiver (*Quillon v. Tenet HealthSystem* (3/14/12))
- Disagreement exists in the Second Circuit
 - **No:** *Raniere v. Citigroup* (SDNY – 11/22/11); *Sutherland v. Ernst & Young* (SDNY – 1/13/12)
 - **Yes:** *LaVoice v. UBS Financial Services* (SDNY – 1/13/12)

What is Systemic Discrimination?

- According to the EEOC, systemic discrimination is “a pattern or practice, policy, or class case where the alleged discrimination has a broad impact on an industry, profession, company or geographic area.”
- The NLRB is not the only agency that has an activist agenda. The EEOC in some ways has been more aggressive than the NLRB, with less employer opposition

Are EEO “Systemic Discrimination” Claims the Next Wave of Employment Class Actions?

- Employers’ increasing use of robust HRIS and applicant tracking systems have made it easier for the EEOC and plaintiffs’ counsel to obtain data
- Also, employers increasingly rely on third-parties to administer important employee selection processes, such as pre-employment tests, background and credit checks and drug screens

Technology and Class Action Claims

- EEO systemic discrimination claims are based on one of two theories of discrimination
 - Disparate Impact Discrimination
 - Pattern or Practice Discrimination
- Under both theories, statistics are the primary basis for plaintiffs alleging there is a systemic problem
- The huge amounts of data in employers HRIS and other electronic systems can easily be analyzed to uncover statistical “red flags”

The EEOC is on the Hunt for Systemic Discrimination

- The EEOC's Strategic Plan for years 2012-2016 approved on February 22, 2012
- Targeting widespread patterns or practices of discrimination
- Started in 2005 with its Systemic Discrimination Task Force
- One Charge can launch into a class action
- Respond to every charge knowing that the EEOC is looking for more
- EEOC requests are getting broader and more onerous

EEOC's Systemic Investigations Today

- In FY 2011, 580 systemic investigations, involving more than 2,000 charges, were undertaken
- In FY 2011, EEOC completed work on 235 systemic investigations (up from 165 in FY 2010)
- 96 systemic investigations were resolved with probable cause determinations, with 35 settlements or conciliation agreements yielding a total recovery of \$9.6 million
- At the close of FY 2011, EEOC had 63 active cases involving challenges to alleged systemic discrimination
- Commissioners' Charges were up from 39 charges in FY 2010 to 47 charges in FY 2011

EEOC's Focus on Finding Systemic Discrimination: Practical Implications

- As part of its Systemic Discrimination Initiative, the EEOC increasingly has focused on converting single charging party claims into class action-style investigations
- As a result, "garden variety" individual EEOC charges often grow into EEOC systemic investigations of employers' company-wide HR processes
- Oftentimes, the employer's response to the charge is the "trigger" for the systemic investigation
 - "We treated the Charging Party just like all others" or "pursuant to our consistently applied policy" defenses can now open the door to a systemic focus

EEOC Systemic Discrimination "Hot Spots"

- EEOC and private plaintiffs' counsel are focusing on the following areas today:
 - Pre-employment tests
 - Criminal background checks
 - Credit reports
 - Drug screens
 - "Inflexible" leave and no-fault attendance policies
 - Pay systems
 - Promotion policies

Recent EEOC Systemic Discrimination Cases

- **EEOC v. Outback Steakhouse of Florida, Inc. – Gender Discrimination**
 - EEOC alleged pattern or practice of discrimination against women by failing to hire and promote them into management positions and by providing inferior job assignments. **Consent decree \$19 million for 3,000 class members.**
- **EEOC v. Albertson's LLC fka Albertson's, Inc. – Race Discrimination**
 - EEOC alleged pattern or practice of discrimination against black and Hispanic employees. **Consent decree \$8.9 million distributed to 168 class members.**

Recent EEOC Systemic Discrimination Cases

- **EEOC v. Wal-Mart Stores, Inc. – Gender Discrimination**
 - EEOC alleged Wal-Mart failed to hire women for order-filler positions in its Kentucky distribution center because of gender. **Consent decree \$11.7 million to approximately 4,000 claimants.**

EEOC Setbacks

EEOC v. Burlington Northern Santa Fe Railroad (10th Cir. 2012)

- Trial Court denied EEOC's request to enforce administrative subpoena
- Court of Appeals affirmed, describing EEOC's request for information as "incredibly broad"
- "Not every charge of discrimination warrants a pattern or practice investigation"
- Information sought was not relevant to the specific charge
- EEOC "had no jurisdiction or power to seek it"

Sex Discrimination Class Action: *Velez v. Novartis Corp.* (2d. Cir. 2010)

- **The largest sex discrimination case to go to a jury**
- A jury awarded \$250 million in punitive damages to a class of 5,600 current and former U.S. female employees who accused the company of discriminating against them with respect to pay, promotions, and pregnancy.
- The jury awarded an additional \$3.4 million in compensatory damages to the twelve named female class members.

**Sex Discrimination Class Action:
Velez v. Novartis Corp. (2d. Cir. 2010)**

- Novartis agreed to settle the case for \$152.5 million:
 - \$60 million in back pay; \$40 million in compensatory damages
 - Novartis won't oppose \$40 million request for attorneys fees
 - Novartis agreed to spend \$22.5 million over three years to:
 - improve its personnel policies
 - revise its sexual harassment policies and training
 - strengthen its employee complaint process
 - hire an outside specialist to help identify gender pay disparities, and
 - revise its performance management process

**Certifying a Class Action:
Wal-Mart Stores, Inc. v. Dukes (2011)**

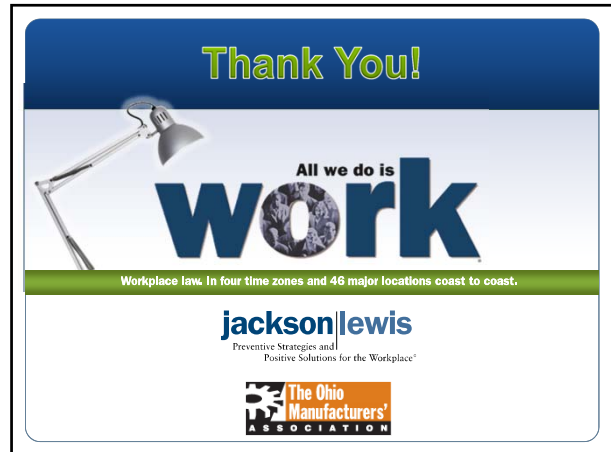
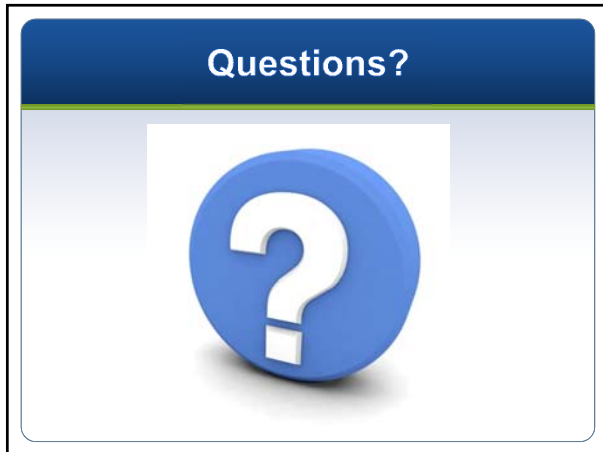
- The U.S. Supreme Court's Holdings:
 - By 5-4 majority, Court held plaintiffs failed to prove claims of putative class members share common questions of law or fact under FRCP 23(a)(2).
 - Court unanimously rejected certification under FRCP 23(b)(2) on the grounds that it does not apply to claims for monetary relief, at least where the monetary relief is not incidental to the injunctive or declaratory relief sought.

**Certifying a Class Action:
Wal-Mart Stores, Inc. v. Dukes (2011)**

- The Court focused on commonality.
- Merely raising common questions insufficient; must establish that common answers
- "Without some glue holding the alleged reasons for all those decisions together, it will be impossible to say that examination of all the class members' claims for relief will produce a common answer to the crucial question *why was I disfavored?*"

Impact of *Dukes*

- As of April 13, 2012, there were 773 reported cases citing *Dukes*
- Many cases involve motions to decertify where the class was certified pre-*Dukes*



KEY VOTE ALERT



Vote YES on Sub. H.B. 484

The OMA urges support for Substitute House Bill 484, legislation to modify unemployment compensation laws to provide employers with greater flexibility when faced with difficult staffing decisions. The legislation enacts a new “short-time unemployment compensation” program.

The OMA communicated support to members of the House Commerce and Labor Committee, providing a practical example of how the bill will avert layoffs when manufacturers experience slow-downs. The OMA supports HB 484 for the following reasons:

- The current state unemployment system already provides for partial benefits following a reduction in hours, but for the employee to qualify to receive such benefits the employee typically must experience a reduction in hours of more than 50%. A shared work plan would allow more employees to qualify for benefits, because employees could receive benefits if their hours are reduced by only 10%.
- Over the next three years, this program would benefit both Ohio employers and employees without significant downside for either group. The bill takes advantage of recently approved federal law to authorize and temporarily fund state shared work programs. Through the middle of 2015, shared work benefits would be funded by the federal government.
- The program is voluntary. When federal funding ends, employers can simply choose not to participate and avoid the potentially harmful effect on their unemployment tax rate.
- Other states including Texas and Washington, both have short term unemployment benefits and Ohio manufacturers find themselves facing competitive decisions with operations in other states in the absence of this legislation.
- The legislation is a win/win/win for employers, employees and communities.

The OMA considers this to be a Key Vote Vote YES on Sub. H.B. 484

TAX

PUBLIC POLICY REPORT – Tax Policy

TO: OMA Government Affairs Committee
FROM: Ryan Augsburger, OMA Staff
DATE: June 6, 2012
SUBJECT: TAX POLICY HIGHLIGHTS

Overview

The state operates on a two-year budget cycle. The budget was completed last June. A mid-biennium budget review (MBR) was conducted earlier this year. The process was similar to a budget process with a wide range of policy changes contained.

State Budget and Financial Condition

State revenue in recent months continues to come in at or above estimates. OBM is exercising caution regarding non-tax receipts but reported strong economic indicators for the month of May. For fiscal 2012 to date, tax collections are \$926 million (6.4%) higher than at the same point in 2011. The largest contributors to the year-over-year growth are the non-auto sales tax, personal income tax, and the commercial activities tax.

Mid Biennium Review

Governor Kasich intended for the MBR process to finance further tax relief. The General Assembly had other ideas. Cuts and revenue enhancement proposed by the governor were reportedly replaced by state representatives and senators with spending increases. The reported winner: nursing home operators. Governor Kasich is expected use line-item veto authority to strike some of the increased expenditures. Tax highlights of interest to manufacturers:

- HB 487 “Main MBR”: Expands eligibility of sales and use tax exemption for aerospace industry test and research material; revises county auditors’ authority in estimating property value. ENACTED Awaiting Governor Action by 6/11
- HB 505 Board Tax Appeals legislation introduced to respond to the backlog and generally inefficient case management at the Ohio Board of Tax Appeals. The backlog has gotten even worse in recent years. STALLED
- HB 510 Financial Institutions MBR would replace corporate franchise tax revenue with CAT revenue paid by financial services businesses. Picks winners and losers among financial services sector and got bogged down. Manufacturers with financial services business units oppose the proposal as written for subjecting them to the corporate franchise tax. STALLED
- HB 511 revamps some business tax credit programs. The bill will sunset the Industrial Technology and Enterprise Advisory Council and transfer functions to the Third Frontier Commission and Development Department. The ceiling for available Technology Investment Tax Credits is boosted in the bill from \$45 million to \$51 million. Other provisions of the bill would alter the Ohio Venture Capital Authority and the New Markets Tax Credit. STALLED
- Shale Tax / Personal Income Tax -- The Governor has not dropped plans to pursue legislation on severance tax expansions to cover forms of liquid gas and petroleum derivatives and to hike certain gas severance tax rates. Additional

revenue could top \$500 million annually in a few short years. Revenues would finance a personal income tax relief fund. STALLED

Estate Tax Repeal

The Estate Tax was repealed as a rider to the state budget with a 2013 effective date so it will not shortchange revenue collection in the FY12, FY13 biennium. The OMA advocated in support of repeal. This was a significant policy gain during the current General Assembly.

House Study Committee

Late last year a legislative study committee met numerous times to hear from parties about tax policy. OMA Tax Counsel Mark Engel of Bricker & Eckler appeared before the panel and described the rationale and merits of tax reform.

The chairman of the Ohio House Tax Structure Study Committee, Rep. John Adams (R-Sidney), the House majority whip and chairman of the committee issued the report recommending modifications to the CAT to establish a tax liability of the lesser of two calculations: the tax on gross receipts, as established by the current CAT law, or a tax on net income.

Municipal Tax Collection

For much of 2011, a concept to consolidate local income tax collections was rumored with apparent support from the Administration. The project seems to now be more focused on uniformity rather than consolidation. The OMA is partnering with other business and professional groups to support the effort.

Pending Legislation

A few very modest reforms have advanced, often with much fanfare.

- HB18 takes aim at the problem of vacant buildings by creating a financial incentive for businesses to occupy a vacant building.
- HB 436 creates the SiteOhio certification program within the Department of Development to pre-qualify certain sites for redevelopment.
- HB 521 was later incorporated into MBR legislation and renews and expands eligible tax credits available to incentivize filming motion pictures in Ohio. Credits are available against personal income and corporate franchise tax.
- HB 327 allows home-based employers to qualify for the Job Creation Tax Credit and Job Retention Tax Credit.

Pending Litigation

The OMA and the Ohio Society of CPAs filed an amicus brief in defense of the state commercial activity tax. Road construction interests are seeking CAT invalidation arguing the CAT is an excise tax. A decision is expected by the end of the year.

Tax Amnesty Program

A general amnesty program is available to taxpayers to pay back taxes without interest. The amnesty programs runs May 1 through June 15.

Unemployment Compensation

Like many states, Ohio's fund to pay unemployment compensation claims was depleted in early 2010. The state has borrowed federal funds (\$2.3 billion) that will need to be paid back. States were required to begin paying interest by September 2011 (nearly \$300 in interest alone in the 2012/13 biennial budget).

Ohio employers are seeing FUTA increases to repay the federal loans. Legislation to revise the state fund could be coupled with benefit revisions. No action to report.

JobsOhio

Priority legislation last year created a non-profit corporation called JobsOhio to coordinate state economic development activity. Structural, legal, and financial negotiations have transpired and the new entity is up and running with staff. Further legislation is expected later this year.

Ohio Tax Competitiveness

Ohio revamped business tax code continues to win praise. Most recently the Tax Foundation study, Location Matters ranked Ohio fifth (best) overall for mature operations and third (best) overall for newly established operations.

There have been rumors of policymakers favoring wholesale change to the business tax code, underscoring the need of manufacturing leaders to continue to talk up the reforms. Contact OMA staff for talking points.

Tax Management

Municipal Income Tax Uniformity Debated

Before lawmakers left town for the summer, the House Ways and Means Committee heard from groups on a proposal to adopt uniform definitions and tax practices governing municipal income tax collection. The OMA is [partnering](#) with other business and professional groups to support the effort. Hannah News Service [reported](#) on the hearing and quotes committee chairman, Representative Peter Beck (R – Cincinnati), as saying he hopes legislation can be advanced by the end of the year.

05/25/2012

Lawmakers Advance SiteOhio Program

An Ohio Senate panel has advanced [legislation](#) to create the SiteOhio certification program within the Department of Development to certify and market eligible commercial, industrial, and manufacturing sites and facilities. Final action is expected soon.

OMA Tax Counsel Mark Engel of Bricker & Eckler LLP points out that this economic development program is most likely to appeal to manufacturers not currently located in state and those that have already made the decision to change locations. Here's Mark's [summary](#).

05/18/2012

Study Indicates Proposed Shale Gas Tax Can Compete with Other States

The Ohio Business Roundtable this week released an [Ernst & Young](#) analysis of Governor Kasich's severance tax adjustments. The study compared state and local taxation of oil and gas activities with other states including Michigan, Pennsylvania and West Virginia as well as leading shale-rich states of Arkansas, Texas, North Dakota, and Oklahoma.

The study concludes that should the proposed severance tax be adopted, Ohio's effective tax rate would still rank lowest among these competitor states, and by a wide margin.

The Governor proposes to use the new revenue to fund personal income tax reductions. The General Assembly has [signaled](#) opposition to any form of tax increase.

05/18/2012

OMA Defends CAT Against Road Builders' Court Challenge

Again acting to defend business tax reforms enacted in 2005, the OMA this week [filed an amicus brief](#) in an Ohio Supreme Court case to defend the state's commercial activities tax (CAT).

In the current case, Beaver Excavating Company v. Joseph Testa (Ohio Tax Commission), CAT challengers say that receipts generated by motor fuel sales are "related to" gas taxes, and thus trigger a constitutional violation (Section 5a). The lower courts have ruled there is no violation, but gas stations and road building interests are now appealing to the Supreme Court. The Ohio Tax Department is defending the tax.

The OMA joined with the Ohio Society of CPAs in filing an amicus brief in support of the state's defense of the CAT. "There is no justification for creating a favored class of taxpayers who will no longer pay any general business tax," writes OMA tax counsel, Mark Engel of Bricker & Eckler LLP, in the brief.

In a similar case two years ago the grocery store industry claimed that the CAT was a "tax on food," because some gross receipts were generated by food sales. [Link to case docket.](#)

05/11/2012

Tax Credits for Movie Making Expanded

The Ohio House and Senate are poised to complete an expansion of a tax credit program to incentivize filming motion pictures in Ohio. Dubbed the "movie tax credit bill," [HB 521](#) (Dovilla, R-Berea) modifies the tax credit which can be taken against the personal income tax or the corporation franchise tax.

A northeast Ohio business priority, the [legislation](#) increases the maximum total amount of tax credits allowed for completion of motion

pictures certified as tax credit-eligible productions from \$20 million to \$40 million every two years.

Proponents of the legislation point to a [study](#) conducted by Cleveland State University that found the incentive has yielded a positive return on investment for Ohio.

Because the corporation franchise tax no longer applies to nonfinancial corporations, in effect the credit against that tax is not subtracted from any tax liability; it is essentially a means of awarding the credit amount in the form in which a refundable tax credit would be paid if the tax still applied to all corporations.

Identical legislation, sponsored by Senator Tom Patton (R-Strongsville), has passed the Ohio Senate.

05/11/2012

Calvert Qualifies HB626, Promises More Legislation

After a two-hour hearing in which Democrats and Republicans debated everything from tax simplification to revenue projections to increased local spending, the sponsor of capital gains tax cuts in HB626 (Calvert) conceded to Hannah News Wednesday (07/19) there may well be better ways to take advantage of the growing Rainy Day fund, and said to "stay tuned."

The proposal by Rep. Charles Calvert (R-Medina) has drawn a spirited if somewhat predictable response from the minority over the past several weeks, in which Democrats have accused Republicans of favoring wealthy investors over the average taxpayer. Provisions in HB626 would cut the capital gains rate in half by 2009 and thereafter, with a disproportionate chunk of the money, say critics, going to the richest one percent with incomes exceeding \$800,000.

The minority took careful aim at the proposal Wednesday, its members addressing various issues raised by tax cuts and proposed economic stimulus. Rep. Fred Strahorn (D-Dayton) asked whether claims around the privileged weren't accurate.

"When you look at gross statistics, you come up

with one kind of analysis," said Calvert. "I try to look at it on a more individual basis. A person in a relatively low tax bracket might inherit stock and then have to pay much higher rates with the sale of equities to pay for nursing home care or other needs."

Strahorn pressed him on the point, asking whether that scenario was truly representative of HB626's larger impact.

"On the macro level, yes," the sponsor acknowledged, "it has a greater benefit for wealthier people."

Calvert also agreed with the Democrat that corporate leaders like Microsoft's Bill Gates did not cite state tax policies as their primary concern in site location, but rather quality workforce and quality of life. The sponsor would later part with Rep. Mike Skindell (D-Lakewood), however, on the question of whether Ohioans fleeing the state were more concerned about tax rates or "the weather." As to the reliability of budget projections undergirding the sponsor's call for overall tax cuts, Calvert told Strahorn Ohio now has one of the highest bond ratings in the nation.

Skindell took the Republican to task over past tax policies leaving various revenue streams like "swiss cheese."

"This is your second carve-out in a number of weeks," said the Democrat, pointing to historic building credits in HB149 (Calvert). "Aren't we doing the same thing to the income tax that we did to the corporate franchise tax?"

Calvert suggested the answer was "in the eye of the beholder," telling Rep. Steve Driehaus (DCincinnati) afterward that more private capital was in fact what businesses and entrepreneurs wanted, as opposed to state money through tax credits and venture capital funds.

Rep. Peter Ujvagi (D-Toledo) turned the focus to a possible trickle-down effect on local communities.

"Do you have any quantifiable model on the degree to which reduced state dollars will be 'kicked down' to local governments, who then feel more pressure on schools and other services?" asked the Toledo lawmaker.

Calvert questioned whether the entire premise had any merit at all.

Chairwoman Sally Kilbane (R-Rocky River) had weighed in several times with more general observations on the impact of tax policy, saying aside from the precise destination of investment dollars freed up by a capital gains tax cut, such measures served to alleviate pressure on economic development overall.

Calvert picked up on the sentiment in a follow-up interview with Hannah News.

"There are a number of related proposals that will likely be offered in the Legislature," he said, having fielded earlier questions on the possibility of an alternative roll-back of the half-cent sales tax hike. "I'm not saying this is the best idea. It's one way to lower taxes and free up capital, which we said we would do with increased state revenues. I just want to get the conversation going so that we can have some debate on these issues. Look for another proposal from me in the near future."

05/07/2012

Are Your State Taxes in Arrears?

The Ohio Department of Taxation announced a general tax amnesty program to allow individuals and businesses to pay back taxes without penalties or interest. Payments need to be made during the program time limits which runs from May 1 through June 15.

Amnesty programs can be good opportunities to correct unreported or underreported taxes. Click to [learn more](#) or talk to your tax advisors.

04/27/2012

Tax Credit Changes Contemplated

Among Governor Kasich's priority mid-biennium review (MBR) legislation is [HB 511](#) to revamp some business tax credit programs. The bill will sunset the Industrial Technology and Enterprise Advisory Council and transfer functions to the Third Frontier Commission and Development Department.

The ceiling for available Technology Investment Tax Credits is boosted in the bill from \$45 million

to \$51 million. Other provisions of the bill would alter the Ohio Venture Capital Authority and the New Markets Tax Credit.

The [Ohio Department of Development](#) and other witnesses told the panel of state senators considering the bill that the Governor's proposal will boost economic investment.

OMA Tax Policy Committee will review these and other tax policy changes at the [July 19 meeting](#). Save the date.

04/27/2012

Senators Introduce Business Tax Credit Legislation

Two tax bills of interest were recently introduced in the Senate.

[SB 320](#) (J. Eklund – Geauga & Lake County) proposes to extend the enterprise zone program another year, to October 15, 2013. Currently, the program is scheduled to sunset October 15, 2012. Existing incentives will remain in force, but local jurisdictions will no longer be able to grant new incentives. The main incentive available under this program is real property tax abatement, quite useful for manufacturers. Read Senator Eklund's [press release](#).

[SB 322](#) (L. Gentile – Jefferson County) creates a new income tax credit for manufacturers who either expand production at a facility, or restart production at a facility that has been idle for at least 12 months; and increase payroll by \$750,000 within 6 months. Senator Gentile has requested OMA support for his legislation; the bill will be discussed at the OMA Tax Committee summer meeting on July 19. Save the date.

04/20/2012

House Majority Whip Adams Calls for CAT Change

The chairman of the Ohio House Tax Structure Study Committee issued a report proposing alteration of Ohio's business taxes. The report reflects the recommendations of Rep. John Adams (R-Sidney), the House majority whip and chairman of the committee. The recommendations "could serve as a springboard

for legislative initiatives,” said Adams in a [House press release](#). The OMA presented [testimony](#) to the panel in September.

[The full report](#) references testimony of special interests, such as petroleum dealers, grocers and grain industries, who used the study committee process to lobby for exemption from the commercial activities tax (CAT). The chairman recommended modifying the CAT to establish a tax liability of the lesser of two calculations: the tax on gross receipts, as established by the current CAT law, or a tax on net income.

“That recommendation defeats the entire purpose of the very positive package of tax reforms enacted in 2005 and phased-in through 2011, which eliminated a dysfunctional corporate income tax and repealed the punitive tangible personal property taxes,” commented the OMA’s Ryan Augsburger.

Due to legislative term limits most lawmakers now serving were not around the General Assembly in 2005.

04/20/2012

Board of Tax Appeals Reform Proposed (Finally)

As part of the mid-biennium review (MBR) process underway in the General Assembly this month, [HB 505](#) was introduced to respond to the backlog and generally inefficient case management at the Ohio Board of Tax Appeals. The backlog has gotten even worse in recent years.

Click to view a [summary](#) of the bill by OMA Tax Counsel Mark Engel of Bricker & Eckler. The need for system reforms has been discussed at OMA Tax Committee meetings for some time.

04/20/2012

Dems Respond to DeWine Ad, Start War of Words

The negative advertising in the U.S. Senate race is going full force with nearly four months to go to the election.

The Ohio Democratic Party unveiled its

response to a recent ad by U.S. Sen. Mike DeWine that attacked his opponent, U.S. Rep. Sherrod Brown, for being “weak on national security.”

The new ad criticizes DeWine for using 9/11 images in his advertisement and tries to paint him as being weak on security.

The party also put out a statement criticizing DeWine for his negative ad, saying negative campaigning is not new to DeWine and highlighting a series of ads he ran against former U.S. Sen. John Glenn when he ran in 1992.

“Mike DeWine should be ashamed of exploiting the hallowed ground of 9/11 for his partisan purposes,” said party Chair Chris Redfern in a statement. “When you look at his own voting record, as a member of the Senate Intelligence Committee, his exploitation of 9/11 and attacks on Sherrod Brown show how out of touch he really is with his own responsibility for homeland security issues.”

The Ohio Republican Party responded by releasing excerpts of media stories about Brown’s voting record on national security.

“The Democrats are trying to paint over a rusty bucket,” Ohio Republican Party Chairman Bob Bennett said in a statement. “Sherrod Brown can gloss over his pathetic record on national security, but the truth will eventually eat its way through. Brown has done more to leave our country vulnerable to terrorism than nearly anyone in the U.S. House. Anyone who looks at his record on national security knows it’s toxic, even his fellow Democrats.”

The preceding article is an excerpt from The Hannah Report, Ohio’s daily legislative newsletter providing independent, timely and comprehensive coverage of state government. For more information, please contact Hannah News Service at 614.228.3113.

04/18/2012

A Progressive’s View of the “Mid-Biennial Review”

The progressive Policy Matters Ohio last week produced a [study](#) of Governor Kasich’s “mid-

biennial review" legislation, House Bill 487.

Its editorial view: "Even though there is no budget shortfall, Ohio Gov. John Kasich and House Republicans propose squeezing \$95 million out of Ohio's current budget without using the money to restore critical services. The bill does not include a defined plan for use of the funds cut from various agencies."

Separately, in response to the mid-biennial review, a coalition of 150 organizations, [One Ohio Now](#), is calling for corporations and wealthy Ohioans to pay "their fair share" of taxes. It is not clear just exactly what the group's definition of "fair" is.

04/13/2012

Manufacturers to President: Reauthorize Ex-Im Bank

The OMA joined NAM and more than 300 other organizations in a [letter](#) to U.S. House and Senate leaders urging passage of legislation reauthorizing the charter of the U.S. Export-Import Bank (Ex-Im).

The organizations wrote: "The Ex-Im Bank is the only tool American manufacturers have to counter the huge sums of export financing – many hundreds of billions of dollars – that other governments provide their exporters. If American manufacturers lose access to the Ex-Im Bank, our ability to compete globally will be severely curtailed. Companies large and small will be disadvantaged, and their customers may turn to foreign competitors that have support from aggressive foreign export credit agencies. America's manufacturers cannot afford to be defenseless in today's global marketplace."

During FY2011, Ex-Im Bank supported more than \$40 billion in export sales from more than 3,600 U.S. companies, supporting approximately 290,000 export-related American jobs. The Bank also set a record in its support of small business. More than 85 percent of the Bank's transactions last year directly supported small businesses.

The Ex-Im Bank's charter expired on September 30, 2011, and the Bank is currently operating under an extension that expires on May 31. Ex-Im Bank generates enough fees to offset its

costs and contributes the remaining surplus to the U.S. Treasury.

Take action through this [NAM Alert](#).

04/06/2012

Home-Based Employer Tax Credits Created

A house panel this week voted to advance [HB 327](#) to allow home-based business employers to qualify for the Job Creation Tax Credit and Job Retention Tax Credit. Traditionally, the [JCTC and the JRTC](#) have been most often utilized by larger employers. [Representative Anne Gonzales'](#) (R – Columbus) legislation creates a pilot program allowing home-based employers to also claim the credit against the business' Commercial Activity Tax (CAT).

03/23/2012

Uniformity of Municipal Income Tax Sought

The OMA this week participated in a kick-off of the [Municipal Income Tax Uniformity Coalition](#) which was formed to advocate for a single, uniform municipal income tax code that all Ohio municipalities would be required to follow.

A uniform municipal income tax code would include a uniform definition of income, withholding, penalties and interest and all related rules and regulations other than tax rate and reciprocity credit rate.

Municipalities have historically opposed efforts to centralize tax codes.

03/23/2012

Shale Tax Hikes, Income Tax Reduction Shelved

[As reported](#) last week, a package of bills dubbed the "mid-biennium (budget) review" (MBR) were introduced. This week, opposition to some of the governor's proposals hardened.

The proposal to hike severance tax rates and broaden the severance tax base has drawn fire from House Republicans. The additional revenue from the severance tax would fund personal income tax reductions starting in a few

years.

Members of the Republican-controlled House are balking at the combined tax proposals and have removed the severance tax increases from the bill, at least for now. A [Columbus Dispatch article](#) reporting on the development highlighted anti-tax pledges signed by numerous Ohio lawmakers.

Separately, the proposal to alleviate backlogs at the Board of Tax Appeals is being withdrawn at the request of the tax department, citing additional agency concerns about provisions that “need more work.”

Read the [tax commissioner's testimony](#) which addresses all of the administration's MBR tax proposals.

03/23/2012

Ten Reasons to Sell Your Business in 2012

The refrain of Kenny Rodgers' popular song "The Gambler" may hold a smattering of advice for business owners who have been thinking about selling their businesses: *You got to now when to hold' em, know when to fold 'em, Know when to walk away and know when to run.* In [this article](#) I will present ten reasons why 2012 might be the very best year for you to cash in your chips and walk away. *From OMA Connections Partner: Grove Rutter, CPA, ABV, CVA, BVAL, CBI, Mergers, Acquisitions and Valuations.*

03/23/2012

Income Tax Reductions Would Be Fueled by Severance Taxes

In his “mid-biennial review,” Governor Kasich [proposed](#) personal income tax cuts that would be funded by increases in the state severance taxes on crude oil and natural gas liquids produced by the high-volume horizontal wells like those used in Ohio's Utica and Marcellus shale formations. When Ohio reaches peak production, income tax cuts could reach \$500 million annually, according to the administration.

Here is how it would work: “New revenue will be deposited in a special income tax reduction fund and be used to reduce all Ohio income tax

brackets the following tax year. As oil and gas production and prices increase, so will the amount of the income tax cut for Ohioans. The opposite is, of course, also true. Production from high-volume horizontal wells is expected to ramp up gradually, generating modest revenue initially, but then increase dramatically in the following years to produce significant income tax cuts.”

Currently, Ohio levies no severance tax on natural gas liquids; the proposal would set a rate of 1.5% (price x production) in the first year, and 4% after that. The same rate would apply to crude oil from these wells. Tax rates on natural gas from conventional wells would be reduced under the proposal.

03/16/2012

Ohio Ranks High in Tax Competitiveness

In [Location Matters](#), A Comparative Analysis of State Tax Costs on Business, produced by the Tax Foundation in collaboration with KPMG, Ohio is reported to be more competitive than most states. In fact, [Ohio](#) ranks fifth with respect to state tax costs on mature firms and third for costs on new firms. Ohio outpaces its five bordering neighbor states in business tax competitiveness, which are, in order of tax attractiveness: Kentucky, Michigan, Indiana, West Virginia and Pennsylvania.

The study set out to develop and publish a landmark, apples-to-apples comparison of corporate tax costs in the 50 states. Tax Foundation economists designed seven model firms, and KPMG modeling experts calculated each firm's tax bill in each state. The study accounts for all business taxes: corporate income taxes, property taxes, sales taxes, unemployment insurance taxes, capital stock taxes, inventory taxes, and gross receipts taxes. Additionally, each firm was modeled twice in each state: once as a new firm eligible for tax incentives, and once as a mature firm not eligible for such incentives.

“The appropriate conclusion is that Ohio's brave tax reforms of the last decade are paying big dividends,” said OMA president, Eric Burkland.

03/09/2012

House Democrats Call for Taxes on Shale

Two Ohio House members, Mike Foley (D-Cleveland) and Bob Hagan (D-Youngstown), are pushing to have the state increase its severance tax on natural gas. They suggest the state modify its severance tax from a per-unit tax (3 cents per thousand cubic feet) to percentage of the market value of the gas (7-percent of the market value).

The representatives also suggest dedicating 1.5% of the tax to the Local Impact Protection Fund and .5 percent to the Advanced Energy Fund. More can be found [here](#). No legislation has yet been introduced.

Governor Kasich [noted](#) earlier this year that he would propose an “impact fee” to cover the cost of infrastructure damage caused by oil and gas extraction and an expansion of the state’s severance tax so that it includes natural-gas liquids, such as propane.

03/02/2012

Economic Development: Manufacturing Site Certifications

Proposed as an additional tool in the state’s economic development toolbox, [HB 436](#) would create a state program that “certifies” industrial sites as ready-for-development. The certification process is intended to shorten the search for suitable sites for firms looking to land operations in Ohio.

The measure is sponsored by Representatives Cheryl Grossman (R – Grove City) and Marlene Anielski (R – Walton Hills).

This week a Columbus area economic development organization [testified](#) in support of the measure, likening it to a similar program in the Carolinas that has improved state competitiveness. [OMA member feedback is invited](#).

03/02/2012

Taxation Legislation
Prepared by: The Ohio Manufacturers' Association
Report created on June 4, 2012

- HB1** **JOBSONIO** (DUFFEY M) To authorize the Governor to create JobsOhio, a nonprofit economic development corporation.
Current Status: 2/18/2011 - **SIGNED BY GOVERNOR**; Eff. 2/18/2011
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_1
- HB3** **REPEAL ESTATE TAX** (GROSSMAN C, HOTTINGER J) To repeal the estate tax for the estates of individuals dying on or after January 1, 2011.
Current Status: 2/16/2011 - **REPORTED OUT**, House Ways and Means, (Fourth Hearing)
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_3
- HB8** **TAX PROMPT REMITTANCE DISCOUNT** (BLAIR T) To increase the sales and use tax prompt remittance discount and to authorize a discount for prompt remittance of income tax withholding.
Current Status: 1/11/2011 - Referred to Committee House Ways and Means
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_8
- HB10** **REMEDICATION OF CONTAMINATED SITE** (SEARS B) To authorize refundable tax credits for the completion of a voluntary action to remediate a contaminated site and for the return of such sites to productive use, and to exempt persons through 2017 who have issued covenants not to sue under the Voluntary Action Program from certain fees and penalties for one year after the issuance of such a covenant.
Current Status: 3/2/2011 - House Ways and Means, (Fifth Hearing)
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_10
- HB17** **TAX CREDIT FOR HIRING UNEMPLOYED** (BAKER N) To authorize a \$2,400 income tax withholding credit for an employer that hires and employs a previously unemployed individual.
Current Status: 1/11/2011 - Referred to Committee House Ways and Means
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_17
- HB18** **TAX CREDIT - EXPANDING BUSINESSES** (BAKER N) To authorize a nonrefundable tax credit for a business that increases payroll and expands into a vacant facility.
Current Status: 5/4/2012 - **SIGNED BY GOVERNOR**; Eff. 8/6/2012 Section 2 Eff. 5/4/2012
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_18
- HB43** **OHIO VENTURE CAPITAL AUTHORITY** (GOYAL J, WILLIAMS S) To increase the annual and aggregate limit on the amount of tax credits the Ohio Venture Capital Authority may authorize.
Current Status: 1/26/2011 - Referred to Committee House Economic and Small Business Development
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_43
- HB44** **SMALL BUSINESS WORKING CAPITAL LOAN PROGRAM** (GOYAL J, GARLAND N) To create the Small Business Working Capital Loan Program.
Current Status: 1/26/2011 - Referred to Committee House Economic and Small Business Development
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_44
- HB58** **INTERNAL REVENUE CODE** (BECK P) To expressly incorporate changes in the Internal Revenue Code since December 15, 2010, into Ohio law.
Current Status: 3/7/2011 - **SIGNED BY GOVERNOR**; eff. 3/7/2011
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_58

- HB81** **PERFORMANCE BUDGETING** (SNITCHLER T) To require performance budgeting by most state agencies.
Current Status: 2/22/2011 - House State Government and Elections, (Second Hearing)
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_81
- HB98** **INCOME TAX RATE FOR 70 1/2 YEARS OR OLDER** (HOLLINGTON R) To reduce the maximum effective income tax rate applicable to unearned income of persons age 70 1/2 years or older to 1% beginning in 2013.
Current Status: 3/30/2011 - House Ways and Means, (Fourth Hearing)
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_98
- HB101** **JOB CREATION/RETENTION CREDITS** (WILLIAMS S) To provide for a six-year trial period in which taxpayers may include a limited number of the taxpayer's employees who work from home and whose rate of pay is at least three times the federal minimum wage as employees employed in the project for purposes of the job creation and retention credits if the recipient of the credit provides a specified level of capital investment, and to require the Director of Development to issue a report at the end of the six-year period.
Current Status: 6/1/2011 - House Ways and Means, (First Hearing)
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_101
- HB111** **TAX DEDUCTION-SMALL BUSINESS** (WILLIAMS S) To authorize an income tax deduction for small business owners' reinvestment of undistributed profits in business property, employee training, or research and development.
Current Status: 5/11/2011 - House Ways and Means, (First Hearing)
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_111
- HB114** **TRANSPORTATION BUDGET** (MCGREGOR R) To make appropriations for programs related to transportation and public safety for the biennium beginning July 1, 2011, and ending June 30, 2013, and to provide authorization and conditions for the operation of those programs.
Current Status: 7/13/2011 - HB114 had a provision amended by SB187
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_114
- HB134** **CAPITAL GAINS INVESTMENTS** (SCHURING K) To reduce the income tax rate on capital gains reinvested in Ohio-based investments.
Current Status: 6/1/2011 - House Ways and Means, (Fourth Hearing)
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_134
- HB153** **BIENNIAL BUDGET** (AMSTUTZ R) To make operating appropriations for the biennium beginning July 1, 2011, and ending June 30, 2013, and to provide authorization and conditions for the operation of state programs.
Current Status: 6/30/2011 - **SIGNED BY GOVERNOR**; Effective 6/30/2011; some sections different dates, 7 line item vetos
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_153
- HB198** **PROPERTY TAX COMPLAINTS** (COLEY II W) To permit property tax complaints to be initiated only by the property owner.
Current Status: 5/12/2011 - House Financial Institutions, Housing and Urban Development, (Second Hearing)
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_198
- HB220** **CAT TAX CREDIT INVESTMENT LOSSES** (BECK P, BAKER N) To allow a refundable commercial activity tax credit for investment losses recognized by foreign entrepreneur investors who invest in certain projects in Ohio.
Current Status: 6/23/2011 - House Economic and Small Business Development, (Sixth Hearing)
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_220

- HB258** **APPRENTICESHIP PROGRAMS** (GROSSMAN C, DOVILLA M) To exempt from taxation for five years the earned income of an individual who obtains journeyman status or a baccalaureate degree and works in Ohio; and to prohibit the Apprenticeship Council from adopting standards for apprenticeship ratios that are stricter than those requirements specified in the federal regulations governing apprenticeship programs and from discriminating against open or merit shops.
Current Status: 2/8/2012 - **BILL AMENDED**, House Ways and Means, (Third Hearing)
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_258
- HB261** **ALTERNATIVE FUEL FACILITY** (MCGREGOR R) To allow a credit against the personal income tax or commercial activity tax for the installation of an alternative fuel facility.
Current Status: 9/21/2011 - House Ways and Means, (Second Hearing)
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_261
- HB310** **ELECTRIC VEHICLE SALES TAX REDUCTION** (GOODWIN B) To reduce the amount of sales tax due on the purchase or lease of a qualifying electric vehicle by up to \$2,000.
Current Status: 11/16/2011 - House Ways and Means, (Second Hearing)
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_310
- HB327** **JOB CREATION-RETENTION TAX CREDIT** (GONZALES A) To provide for a six-year trial period in which taxpayers may receive a job creation or job retention tax credit for the employment of home-based employees and to require the Director of Development to issue a report at the end of the six-year period.
Current Status: 5/31/2012 - Sent to Governor for Signature
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_327
- HB365** **ENHANCED FEDERAL INCOME TAX DEPRECIATION DEDUCTION** (BECK P) To allow taxpayers who claim an enhanced federal income tax depreciation deduction to reduce the amount of the deduction the taxpayer must add-back for Ohio income tax purposes if the taxpayer increases payroll in the year the enhanced federal deduction is taken.
Current Status: 5/10/2012 - **REPORTED OUT**, Senate Ways & Means & Economic Development, (Fourth Hearing)
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_365
- HB446** **TAX EXPENDITURES EFFECTIVENESS** (DRIEHAUS D, FOLEY M) To provide for an appraisal of the effectiveness of tax expenditures.
Current Status: 2/14/2012 - Referred to Committee House Finance and Appropriations
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_446
- HB487** **MBR-MID-BIENNIUM REVIEW BUDGET** (AMSTUTZ R) To make operating and other appropriations, to levy taxes and provide for implementation of those levies, and to provide authorization and conditions for the operation of state programs.
Current Status: 5/31/2012 - Sent to Governor for Signature
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_487
- HB508** **MBR-TAX LAW CHANGES** (BECK P) To make changes to the laws governing the assessment, levy, and collection of taxes in the state.
Current Status: 5/31/2012 - Sent to Governor for Signature
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_508
- HB510** **MBR-FINANCIAL INSTITUTIONS TAX** (AMSTUTZ R) To impose a new tax on financial institutions, effective January 1, 2014, and to provide that such institutions are no longer subject to the corporation franchise tax or dealers in intangibles tax after 2013.
Current Status: 5/24/2012 - Senate Ways & Means & Economic Development, (Second Hearing)
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_510
- HB511** **MBR-TAX CREDIT ADMINISTRATION CHANGES** (BECK P, GONZALES A) To make various

changes to the administration of the investment tax credit, the venture capital loan loss tax credit, and the New Markets tax credit, including the increase of the maximum amount of the investment tax credit and the venture capital loan loss tax credit, the elimination of the Industrial Technology and Enterprise Advisory Councils, and the acceleration of the receipt of New Markets tax credit installments.

Current Status: 5/23/2012 - **PASSED BY HOUSE**; Vote 91-5

State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_511

- HB534** **THIRD FRONTIER COMMISSION GRANTS** (SCHURING K) To authorize the Third Frontier Commission to award grants related to the establishment and operation of data centers and the development of a high speed fiber optic network in the state, and to authorize a kilowatt-hour excise tax reduction for electric distribution companies supplying such centers at a discounted rate.
Current Status: 5/16/2012 - House Public Utilities, (First Hearing)
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_534
- HB536** **BUSINESS PROPERTY TAX EXEMPTION** (GERBERRY R) To allow a board of township trustees to reduce the percentage or term of a property tax exemption granted to a business under a tax increment financing agreement if the business fails to create the number of new jobs the business agreed to create in the agreement.
Current Status: 5/8/2012 - Referred to Committee House Ways and Means
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_536
- HB558** **NEW MARKETS TAX CREDIT** (BECK P) To make various changes to the administration of the New Markets tax credit, including the acceleration of the receipt of New Markets tax credit installments, allowing community development entities to make credit-eligible investments in a low-income community business that derives 15% or more of its annual revenue from renting or selling real estate, eliminating the requirement to calculate adjusted purchase price of investments in calculating the amount of the credit, permitting entities to identify qualifying equity investments from any community development entity, and clarifying that the maximum allowable credit for each investor is \$1 million.
Current Status: 5/24/2012 - Referred to Committee House Ways and Means
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_558
- HB559** **DISCLOSURE-STEEL PRODUCTS ORIGIN COUNTRY** (LANDIS A, HAGAN C) To require operators and pipeline companies to disclose the country in which oil country tubular goods steel products were manufactured.
Current Status: 6/6/2012 - House Agriculture and Natural Resources, (Second Hearing)
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_559
- SB1** **JOB OHIO** (WAGONER M) To authorize the creation of JobsOhio, the non-profit economic development corporation.
Current Status: 2/2/2011 - Referred to Committee Senate Finance
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_1
- SB4** **PERFORMANCE AUDITS OF STATE AGENCIES** (SCHAFFER T) To require the Auditor of State to conduct performance audits of certain state agencies.
Current Status: 4/5/2011 - **SIGNED BY GOVERNOR**; Eff. 4/5/2011
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_4
- SB5** **COLLECTIVE BARGAINING REFORM** (JONES S) To make changes to Ohio's Collective Bargaining Law, which was first enacted in 1983.
Current Status: 11/8/2011 - Repealed by Voter Referendum
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_5
- SB6** **JOB RETENTION TAX CREDIT** (PATTON T) To authorize a refundable job retention tax credit.
Current Status: 2/22/2011 - SB6 became part of HB58
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_6

- SB7** **IRS TAX CHANGES** (OBHOF L) To expressly incorporate changes in the Internal Revenue Code since December 15, 2010, into Ohio law, and to declare an emergency.
Current Status: 2/17/2011 - Senate Ways & Means & Economic Development, (Second Hearing)
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_7
- SB12** **SMALL BUSINESS SET ASIDE** (KEARNEY E) To generally require that state agencies set aside a certain amount of purchases for which only small business enterprises may compete.
Current Status: 2/2/2011 - Referred to Committee Senate State & Local Government & Veterans Affairs
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_12
- SB13** **UNEMPLOYMENT MODERNIZATION TASK FORCE** (SCHIAVONI J) To allow an individual to receive unemployment compensation benefits for unemployment related to domestic abuse or compelling family circumstances, to allow an individual to receive unemployment training extension benefits under specified conditions, and to create the Unemployment Modernization Review Task Force.
Current Status: 3/22/2011 - Senate Insurance, Commerce & Labor, (First Hearing)
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_13
- SB47** **CAT TAX CREDIT GROCERY STORES** (KEARNEY E) To authorize a commercial activity tax credit for underserved community grocery stores.
Current Status: 2/17/2011 - Senate Ways & Means & Economic Development, (First Hearing)
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_47
- SB58** **TAX CREDIT EMPLOYMENT CONVICTED FELONS** (TAVARES C) To create a tax credit for the employment of individuals who have been convicted of felonies.
Current Status: 2/10/2011 - Senate Ways & Means & Economic Development, (First Hearing)
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_58
- SB90** **ESTATE TAX** (JORDAN K) To repeal the estate tax for the estates of individuals dying on or after January 1, 2011.
Current Status: 4/14/2011 - **REPORTED OUT AS AMENDED**, Senate Ways & Means & Economic Development, (Fifth Hearing)
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_90
- SB115** **PROPERTY SALE GAINS** (KEARNEY E) To exempt from income taxation any gains from the sale of Ohio property used in a trade or business and held for at least two years.
Current Status: 3/24/2011 - Senate Ways & Means & Economic Development, (First Hearing)
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_115
- SB188** **ALTERNATIVE FUEL FACILITY** (PATTON T) To allow a credit against the personal income tax or commercial activity tax for the installation of an alternative fuel facility.
Current Status: 9/22/2011 - Senate Ways & Means & Economic Development, (First Hearing)
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_188
- SB200** **EDISON JOBS DEVELOPMENT PROGRAM** (HUGHES J) To create the Edison Jobs Development Program within the Department of Development and to make an appropriation.
Current Status: 12/6/2011 - Senate Finance, (First Hearing)
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_200
- SB206** **TAX CREDIT-TEMP EMPLOYMENT AGENCY HIRES** (SCHAFER T) To allow taxpayers to count

employees employed through a temporary or professional employment agency toward the payroll and income tax withholding requirements of the job creation and job retention tax credits.

Current Status: 9/20/2011 - Referred to Committee Senate Ways & Means & Economic Development

State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_206

SB209 **ELECTRIC VEHICLE SALES TAX REDUCTION** (HITE C, TURNER N) To reduce the amount of sales tax due on the purchase or lease of a qualifying electric vehicle by up to \$2,000.

Current Status: 9/22/2011 - Senate Ways & Means & Economic Development, (First Hearing)

State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_209

SB256 **RIGHT TO CURE AGREEMENT** (COLEY W) To allow suppliers and consumers to enter into a Right to Cure agreement.

Current Status: 12/13/2011 - Senate Insurance, Commerce & Labor, (First Hearing)

State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_256

SB265 **BUDGET STABILIZATION FUND BALANCE** (BACON K) To increase the balance that must exist in the Budget Stabilization Fund, from 5% to 10% of the General Revenue Fund revenue, before revenue surpluses are applied to income tax reductions.

Current Status: 3/20/2012 - Senate Finance, (Second Hearing)

State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_265

SB278 **ECONOMIC DEVELOPMENT** (KEARNEY E, TURNER N) To authorize programs and tax credits to encourage the hiring of unemployed individuals, to make changes to the Unemployment Compensation Law, to authorize grants and tax credits for the rehabilitation of distressed areas and the expansion of broadband connections to rural areas, to create a revolving loan fund and a bonding program for small businesses, to make changes to the Minority Business Bonding Program, and to make an appropriation.

Current Status: 1/18/2012 - Referred to Committee Senate Finance

State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_278

SB327 **NEW MARKETS TAX CREDIT** (BEAGLE B, TAVARES C) To prohibit the New Markets Tax Credit from increasing a claimant's retaliatory tax on foreign insurance companies, to increase the total annual and individual amount of credits that may be awarded, to give a noncompliant entity six months to cure its noncompliance before claimed credits are recaptured, to allow community development entities to make credit-eligible investments in a business that derives 15% or more of its annual revenue from renting or selling real estate, and to prescribe an application process for the credits in which approval is based on the date an application is submitted.

Current Status: 5/24/2012 - Senate Ways & Means & Economic Development, (Fourth Hearing)

State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_327

SB331 **OHIO MOTION PICTURE TAX CREDIT** (PATTON T) To increase the maximum total amount of tax credits allowed per year for completion of motion pictures certified as tax credit-eligible productions.

Current Status: 5/8/2012 - Referred to Committee House Ways and Means

State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_331

WORKERS' COMPENSATION

TO: OMA Government Affairs Committee
FROM: Ryan Augsburger
DATE: June 6, 2012
SUBJ: Safety and Workers' Comp Policy Update

Overview

2012 is a presidential campaign year. It appears the opportunity for meaningful policy reforms has passed. Following the defeat of state issue 2, a victory for labor groups, state leaders have backtracked from legislative reform efforts. Policymakers are wary of enacting reform legislation that could be overturned by opponents in a referendum.

Legislation

In late January, Ohio Speaker of the House William Batchelder announced his priorities included "plans to reform the BWC, building upon existing reforms to go further in assisting injured workers while identifying other cost-saving possibilities."

A package of workers comp bills (HB 516, HB 517, and HB 518) were introduced in mid-April amid a press conference and expedited schedule for hearings. Within days, the bills were pulled from the committee calendar in the Ohio House. No official reason was given.

The measures are opposed by trial lawyers and labor unions. The bills are supported by Bureau of Workers' Compensation Administrator Steve Buehrer. The OMA supports HB 517.

The bills, and particularly the main reform measure (HB 517), provide common sense improvements in the medical system that supports injured workers. The legislation would bring the Ohio system close to the 21st century in its use of modern tools for care management, tools that are used by all health insurance and disability insurance carriers in the U.S., including provider panels and provider outcome measurements.

It is a continuing shame to Ohio that the state's workers' compensation system remains mired in an outdated and costly medical care management program that so often fails both injured workers and employers.

In other business PEO legislation remains mired in the House. The Ohio Senate concluded work on SB 139 (Hughes, R-Columbus) to enact financial safeguards against PEOs, sending the measure to the Ohio House where the bill sits today.

SB 323 (Seitz, R-Cincinnati) would prohibit illegal and unauthorized aliens from receiving compensation and certain benefits under Ohio's Workers' Compensation Law. The bill has not advanced. The OMA Safety & Workers Comp Committee reviewed this bill at their February meeting.

Opportunities for administrative actions to change the rules and operating procedures of the BWC seem to be more likely than legislation.

Bureau of Workers' Compensation

Among administrative reforms already enacted is the premium discount program, *GrowOhio* created earlier this year for new employers to the state. More recently, a rule package known as the *Destination: Excellence Program* will streamline existing premium discount programs such as discounts for instituting drug-free safety programs, utilizing vocational rehab services, and clarifying limitations on stacked discounts, and deductible programs.

The package is intended to simplify these and other existing programs while instituting new discount programs for making electronic payments and awarding new grant funds for employers and employees in returning injured workers to work.

A discount to promote wellness programs was also instituted earlier this year. See attached news and analysis. Also see article detailing BWC program to restrict pharmacy formularies.

Unemployment Compensation

Like many states, Ohio's fund to pay unemployment compensation claims was depleted in early 2010. The state has borrowed federal funds (\$2.3 billion). Minimum repayments were required beginning September 2011 (nearly \$300 in interest alone in the 2012/13 biennial budget). Eventually Ohio employers could see a premium increase to repay the federal loans and restore the state fund, probably coupled with cost cuts. That will require law change and is unlikely until after the election.

Some employers with high experience ratings will see FUTA tax increases as long as the state is in arrears.

Privatization / Competition: No action to report of a House drafted legislative proposal or on Senate study activity on the topic. The business community has been slow to embrace possible systemic changes, potentially because there is *no good data* available to model the effects.

Safety and Workers' Compensation Management

BWC Proposes Assessment Changes to Self-Insured Employers

In its May meeting, Ohio Bureau of Workers' Compensation directors heard a [recommendation](#) from Chief Actuary Christopher Carlson to amend certain categories of assessments paid by Ohio's self-insured employers as of July 1, 2012.

Specifically, the Mandatory Surplus Fund, which funds the costs of defaulted employers' claims with injury dates prior to 1987, is projected to be in the red by \$3 million by the end of 2013 if the funding rate is not increased. The proposed change is from \$0.030 to \$0.069 (all assessments are computed per \$1 of paid compensation to injured workers reported for calendar year 2011).

Meanwhile, the assessment rate for the mandatory Self Insured Employer Guaranty Fund, which funds the costs of defaulted employers' claims with injury dates after 1986, is proposed to decrease from \$0.0527 to \$0.040.

The net effect of these mandatory assessment changes is an increase of \$0.0263.

There is also a recommended decrease in the assessment for employers that participate in the optional Disallowed Claim Reimbursement Fund, which reimburses self-insured employers for claims costs ordered by the Industrial Commission but that are ultimately denied. The assessment is proposed to be reduced from \$0.0334 to \$0.0300.

06/01/2012

Average BWC Rate to Drop for State Fund Manufacturers

At its May meeting, the Bureau of Workers' Compensation board of directors looked at [proposed base rate changes](#) for the 2012-2013 policy year by industry class. The average base rate (per \$100 of reported payroll) manufacturers will pay beginning July 1, 2012 under the proposed scheme is \$2.71, which is 1.8 percent lower than the current average

manufacturing base rate. The board is expected to take action on the proposed rates at its June meeting.

Of the ten classifications of employers in the BWC system, manufacturers will pay the fifth highest average base rate (per \$100 of reported payroll), behind transportation (\$6.57), construction (\$3.95), extraction (\$3.50), and agriculture (\$3.10). The overall system-wide average base rate is expected to be \$1.43.

06/01/2012

BWC and IC Propose Administrative Fee Reductions to Employers

Last week the Bureau of Workers' Compensation (BWC) board of directors reviewed a recommendation to reduce assessments for the Administrative Cost Fund, which funds the operating expenditures of BWC. [BWC reported](#): Cost savings initiatives in recent years are allowing for the recommended 3% decrease in the assessment for private employers. The amount employers pay into the Administrative Cost Fund is calculated as a percentage of their premium. The board will vote on the Administrative Cost Fund proposal during its next meeting scheduled for June 15, 2012.

[In separate news](#), the Industrial Commission of Ohio has proposed lower administrative rates. Ohio employers pay assessments that are used to fund the administrative operations of the Industrial Commission of Ohio. Periodically, the Commission examines rates and related operational costs. The current Administrative Cost Fund Rate for calendar year 2012 for private employers is 2.10 percent; the proposed rate for calendar year 2013 is 2.03 percent.

06/01/2012

Final Push for BWC Premium Saving Safety Program Enrollment

The Bureau of Workers' Compensation (BWC) is making a final push for [Industry Specific Safety Program](#) applications. The program rewards participating employers with a three-percent premium discount. The application deadline for this program, as well as the [Transitional Work Bonus](#) program, is May 25, 2012.

Not all employers are eligible for all programs; check OMA's BWC program eligibility [guide](#).

Questions can be directed to the [BWC](#) or to OMA's [Georgia Booth](#), [Jay Kemo](#), or [Barb Raduege](#).

05/18/2012

BWC Awards \$350,000 in Safety Grants

The Ohio Bureau of Workers' Compensation (BWC) has awarded safety intervention grants to [16 Ohio employers](#) totaling more than \$350,000. BWC designed the [Safety Intervention Grant Program](#) to help reduce illnesses and injuries and to research and establish best practices for accident and injury prevention.

Ohio employers are eligible for the grants, which include a 2-to-1 matching amount up to a maximum of \$40,000 for a total of \$60,000: \$20,000 from the employer and \$40,000 from BWC. Quarterly data reports and follow-up case studies help BWC determine the effectiveness of employers' safety interventions and establish best practices for other employers.

05/11/2012

Hold July 17 for Haz Com 2012 and GHS Webinar

OSHA has modified the Hazard Communication Standard (HCS) to adopt the Globally Harmonized System (GHS) to improve safety and health of workers through more effective communications on chemical hazards.

The GHS is an international approach to hazard communication, providing agreed criteria for classification of chemical hazards, and a standardized approach to label elements and safety data sheets.

The regulation requirements will be phased in during the next three years, starting with training compliance in 2013. [Here is a one-page summary](#) from OMA Connections Partner, Safex.

OMA has scheduled a 90-minute webinar on Tuesday, July 17 from 10:00 – 11:30 a.m. to

help members understand the new standard and compliance obligations. Pencil it in now; registration will begin later this month.

05/04/2012

Bill Would Deny Workers' Comp for Illegal Aliens

If Senator Bill Seitz (R-Cincinnati) has his way, illegal aliens would be denied workers' compensation benefits and could be subject to prosecution for fraud by the Bureau of Workers' Compensation. Under [SB 323](#), workers would need to file a new employment disclosure form to certify that they are authorized to work in the U.S.

[Senator Seitz testified](#) that the bill will deter illegal aliens from seeking work in Ohio, and that, with Ohio's 7.5% unemployment rate, jobs should be reserved for U.S. citizens and legal immigrants. The senator noted that several states have legislated against illegal aliens' receipt of state workers' compensation benefits, including Wyoming, Idaho and Florida.

05/04/2012

BWC Extends Deadline for Program Enrollment

Earlier this year, the Bureau of Workers' Compensation (BWC) rolled out a package of new and existing programs called Destination Excellence that is intended to save employers money, improve safety and facilitate injured worker return to work. Multiple components of the program had an April 30 enrollment deadline. The BWC has [extended](#) the enrollment deadline until May 25 for two of the programs: Industry-Specific Safety Program and Transition Work Bonus Program.

Not all employers are eligible for all programs. To make it simpler for employers to understand their BWC program eligibility, OMA has created a useful [web page](#).

For more information, contact [Georgia Booth](#), [Jay Kemo](#), or [Barb Raduege](#) for details.

05/04/2012

MCO Open Enrollment Started This Week

Every two years the Ohio Bureau of Workers' Compensation (BWC) holds a period of [open enrollment](#) during which every state fund employer can elect a new Managed Care Organization (MCO). The 2012 open enrollment period is April 30 to May 25. The role of the MCO is to provide medical management for employees who have an illness or injury that is covered by BWC workers' compensation insurance.

The OMA's endorsed MCO is Health Management Solutions (HMS). OMA and HMS are independent entities and have no common ownership; OMA selected HMS based entirely on its quality of service. The BWC provides an MCO [report card](#) to help employers distinguish MCOs' quality of service; the most heavily weighted metric on report card results is an MCO's rate of safe, effective return-to-work. BWC has also created an MCO [selection guide](#) for employers.

OMA encourages manufacturers to take this opportunity to [switch to HMS](#). One important activity HMS performs is aggressively seeking out potentially inappropriate prescription drug costs in employees' claims and initiating Drug Utilization Reviews from the BWC. Finding expenses for drugs that are medically unnecessary for the treatment of the allowed conditions in a claim may result in credit adjustments to employers' experience.

When electing a new MCO, the employer records are automatically transferred from the existing to the new MCO, with no disruption in service. MCOs are compensated by the BWC through a portion of employers' premiums.

05/04/2012

BWC Actuary Says Net Zero Base Rate Change in 2012

OMA's Jay Kemo, who attended the Bureau of Workers' Compensation (BWC) actuarial committee of its board this week, reported that there is expected to be no overall movement in base rates for 2012.

The BWC's actuarial firm, Deloitte Consulting LLP, prepared a [rate analysis](#) that BWC's Chief

Actuarial Officer, Christopher Carlson, used to develop his 2012 rate recommendations. In a [memo](#) to BWC Administrator, Steve Buehrer, Carlson wrote, "I recommend the BWC establish rates which result in no overall statewide rate change for private employers for the policy year starting July 1, 2012. I believe this approach will result in an actuarially sound rate level and will meet the requirement to set the lowest possible rates of premium consistent with the maintenance of a solvent state insurance fund."

While the 500-plus base rates will be calculated individually and while each rate may experience a change, the overall effect is expected to be neutral. Carlson advises that: "Actual changes at the employer level could vary significantly based upon their actual experience, employee classification, expected loss amounts and participation or not in a group rating plan." Actual rates will be formally acted upon by the BWC board in the coming months.

04/27/2012

Further Approved Diagnostic Testing Does Not Justify Continued Temporary Total Benefits

OMA Connections Partner, Roetzel & Andress LLP, issued an [analysis](#) on an Ohio court case that finds favorably for employers in a workers' compensation case in which the claimant has reached maximum medical improvement: In State ex rel. Huffman v. Industrial Commission, the claimant argued that he was entitled to the extension of temporary total disability (TTD) compensation based upon the authorization by the Industrial Commission of Ohio of diagnostic testing recommended by the claimant's physicians to further medically treat him for an injury in an allowed claim.

At the time of this authorization, the Ohio Bureau of Workers' Compensation (BWC) was requesting that the claimant be declared to have reached maximum medical improvement under the allowed conditions at that time. The claimant argued that termination of TTD compensation would be premature in light of this authorization, and that he was entitled to continued TTD compensation during the course of this testing.

The Tenth District Court of Appeals disagreed

with the claimant's rationale, citing *State ex rel. Jackson Tube Serv., Inc. v. Indus. Comm.*, where the claimant was entitled to the continued payment of TTD compensation only if the claimant's allowed conditions had not reached maximum medical improvement.

Per Roetzel, it has been the common practice before the Industrial Commission of Ohio that if any additional medical treatment is authorized the termination of TTD is not indicated. This case, therefore, is a welcome development, applicable to cases where the claimant has reached maximum medical improvement.

04/27/2012

House Cancels Hearings on WC Reforms

Introduced last week with a press conference and scheduled for hearings this week, workers' compensation reform legislation was pulled from the committee calendar in the Ohio House. No official reason was given.

The measures are opposed by trial lawyers and labor unions. The bills are supported by Bureau of Workers' Compensation Administrator Steve Buehrer, who provided excellent testimony last week.

The bills, and particularly the main reform measure (HB 517), provide common sense improvements in the medical system that supports injured workers. The legislation would bring the Ohio system close to the 21st century in its use of modern tools for care management, tools that are used by all health insurance and disability insurance carriers in the U.S., including provider panels and provider outcome measurements.

It is a continuing shame to Ohio that the state's workers' compensation system remains mired in an outdated and costly medical care management program that so often fails both injured workers and employers.

[Read a brief summary](#) of the bills prepared by counsel to OMA, Cavett Kreps of Bricker & Eckler, LLC.

04/27/2012

Open Wound to Hands & Fingers Continue to be Leading Injury

Among the OMA's Workers' Compensation Services customers, open wounds to hands and fingers continue to be the most common injuries that lead to workers' compensation claims.

In 2011, there were 400 such cases. In every year tested, this is the leading injury, by number of incidences.

The second and third most prevalent injuries leading to claims in 2011 were: contusion to shoulder, arm, elbow or hand (185 claims) and sprain to lumbar region (97 claims).

The Bureau of Workers' Compensation (BWC) Division of Safety & Hygiene offers no-charge [safety training](#) for all state fund employers, including a few web courses, specifically [Preventing Cuts & Lacerations](#) and [Avoiding Back Trauma](#).

While these specific courses may be applicable, the best approach to safety is, of course, systematic. If you need help establishing or improving your overall safety management practices, do consider the safety [consulting services](#) of the BWC, also available at no-charge.

Let us know if you need help accessing any BWC services. Contact [Georgia Booth](#), [Jay Kemo](#), or [Barb Raduege](#).

04/27/2012

Long-Awaited Workers' Comp Reforms Proposed

Ohio House Republicans this week introduced a package of three bills ([HB 516](#), [HB 517](#), [HB 518](#)) aiming to provide improve the Ohio workers' compensation system. The legislation would produce much needed reforms of the medical services provided to injured workers, improving care and cost.

Sponsored by Rep. Barbara Sears (R-Monclova Twp.), HB 517 would require the Bureau of Workers' Compensation (BWC) to "issue a report grading quality outcomes of medical care organizations (MCOs) and providers within the BWC system—including return-to-work rates—to

encourage proper competition between MCOs and providers to ensure that injured workers receive the highest quality care possible. It also obligates the BWC contract with MCOs to create a network of providers that meet quality benchmarks, as well as directions for injured workers to choose a provider focused on return-to-work 45 days following an injury.”

HB 516, also sponsored by Rep. Sears, would “protect injured workers and strengthen the BWC by giving the BWC the authority to decertify providers that present a danger to public health and safety, protect the integrity of BWC fraud investigations by keeping investigation records confidential until the close of an investigation, and require provider decertification appeals to be made in the Franklin County Court of Common Pleas.”

These reforms have been long sought by the OMA. They are opposed by organized labor and the trial bar.

View the press conference on the bills [here](#).

04/20/2012

Employer Ordered to Shut Down for Egregious Premium Lapse Violations

OMA Connections Partner, Roetzel & Andress, [reported](#) that a judge in Cuyahoga County, Ohio recently ordered Gray Container, a 55-gallon drum manufacturer, to discontinue its operations for repeatedly refusing to maintain workers' compensation coverage. The injunction against Gray Container, requested by the Ohio Bureau of Workers' Compensation (BWC), was filed to protect the company's current employees. Gray Container has appealed the ruling to the Eighth District Court of Appeals.

04/20/2012

Court Sides with Employer on OSHA Recordkeeping Violation Statute of Limitations

OMA Connections Partner, Roetzel and Andress LLP, [reports](#) that on April 6, 2012, the D.C. Circuit Court of Appeals reversed a longstanding precedent regarding the statute of limitations for violating the Occupational Safety and Health Administration's (OSHA) recordkeeping

requirements. In *AKM LLC v. Secretary of Labor*, the court ruled that the statute of limitations for such violations is six months rather than five years.

Per Roetzel: OSHA requires employers to record information about employees' work-related injuries in three ways. Employers must (1) prepare an incident report and a separate injury log within seven days of learning that an injury occurred; (2) prepare a year-end summary report, certified by a company executive, of all recordable injuries during the calendar year; and (3) save all of these documents for five years.

The court decided that recording violations are tied to the date of incident, not to the end of the five year retention requirement.

Roetzel attorney Nathan Pangrace blogged, “This decision is a rare piece of good news for the business community in a time where each passing week brings news of increased OSHA enforcement. The court's decision reverses a longstanding OSHA precedent and is a significant victory for employers.”

04/13/2012

April 30 Enrollment Deadline for BWC Money-Saving Programs

There are some programs of the Bureau of Workers' Compensation (BWC) that might save your company money which have an upcoming April 30 enrollment deadline.

Employers that will not be participating in any BWC alternate rating plans as of July 1, 2012, (i.e. group experience rating or group retrospective rating) might consider the [Drug Free Safety Plan](#), [Industry Specific Safety program](#), [Transitional Work program](#), and/or [Deductible programs](#).

Employers that will be participating in a group experience rating plan as of July 1, 2012, might consider: Drug Free Safety Plan, Industry Specific Safety program, and/or Transitional Work program.

OMA workers' compensation [account managers](#), [Georgia Booth](#), [Jay Kemo](#), or [Barb Raduege](#) can help you further if you have questions.

04/13/2012

OSHA Asks Enforcement Agents to Scrutinize Safety Incentive Programs

The Occupational Health & Safety Administration (OSHA) released a [memorandum](#) to its field compliance officers and whistleblower investigative staff to provide guidance on several employer practices that “can discourage employee reports of injuries,” including safety incentive programs.

Retaliating against a worker for reporting an injury or illness is illegal discrimination. OSHA indicates it has observed “... that the potential for unlawful discrimination ... may increase when management or supervisory bonuses are linked to lower reported injury rates.”

OSHA said that some employers establish programs that unintentionally or intentionally provide employees incentive to not report injuries. Therefore, OSHA’s guidance to its staff: such safety incentive programs are to be scrutinized as being a potential violation of OSHA’s Section 11(c) in that some incentive programs could constitute unlawful discrimination/retaliatory action against workers who do report injuries. In addition, the programs also are viewed as potentially constituting an “employer’s failure to report injuries” and thus a violation of the recordkeeping standard as well.

OMA Connections Partner, Calfee, prepared [this alert](#) on the matter.

04/13/2012

Ohio High Court Clarifies Unemployment Benefits Not Used to Calculate Workers’ Comp Awards

Regarding [State ex rel. Warner v. Indus. Comm.](#), OMA counsel, Cavett Kreps, of Bricker & Eckler LLP, explains: “The Ohio Supreme Court clarified average weekly wage (AWW) calculations when an injured worker had a period of unemployment during the year preceding a work injury. Typically, the AWW is calculated by dividing the total wages for the year prior to the injury by 52 weeks. But an exception to this rule excludes the weeks that correspond with “any period of unemployment due to sickness, industrial depression, strike,

lockout, or other cause beyond the employee's control.”

Per Kreps: “The court explained that a period of seasonal unemployment may be subtracted from the 52 week standard if the injured worker demonstrates that the weeks of unemployment were beyond the injured worker's control. Although receipt of unemployment benefits is contingent on demonstrating some efforts to seek employment, the court found that an injured worker must independently convince the Industrial Commission that the injured worker's unemployment was beyond the injured worker's control. The court also explained that the amount of unemployment benefits received is not included in the total wages calculation when calculating the AWW.”

Employers with seasonal employees will want to note this case.

04/06/2012

OSHA Modifies the Hazard Communication Standard to Adopt the GHS

The Occupational Health and Safety Administration (OSHA) has modified the Hazard Communication Standard (HCS) to adopt the Globally Harmonized System (GHS). This change is intended to improve worker safety and health through more effective chemical hazard communications.

According to, Dianne Grote Adams, president of OMA Connections Partner, Safex, “The Globally Harmonized System (GHS) is an international approach to hazard communication, providing agreed criteria for classification of chemical hazards, and a standardized approach to label elements and safety data sheets. The regulation requirements are planned to be phased in during the next three years.”

Employers will need to train employees on the new label elements and safety data sheets by December 1, 2013, with compliance milestones in 2015 and full compliance by 2016.

[According to OSHA](#): “During the transition period to the effective completion dates noted in the standard, chemical manufacturers, importers, distributors and employers may comply with either 29 Code of Federal Regulations

1910.1200 (the final standard), the current standard or both.”

The 850+ page rule can be found [here](#).

03/23/2012

2012 Ohio Safety Congress & Expo Coming March 27-29

[The Ohio Safety Congress & Expo](#) is the largest and longest-running occupational safety, health and workers' compensation event in the Midwest. The event is free and offers high quality keynote speakers, extensive educational sessions, and the Expo Marketplace features occupational safety products, services and innovations. This year's event is March 27 to 29 at the Greater Columbus Convention Center.

03/02/2012

BWC Administrator Buehrer Testifies on Progress and Goals

Administrator Steve Buehrer of the Ohio Bureau of Workers' Compensation (BWC) [updated](#) a House committee this week on new programs developed by the BWC over the past year. Among those described by the administrator were the Grow Ohio program (for new businesses), an expanded safety council discount program (for companies that join local safety councils), and a wellness grant program (providing up to \$15,000 for company wellness programs). He also noted expanded anti-fraud activity, a focus on prescription drug abuse and cuts in administrative costs.

Administrator Buehrer said: “While these are significant steps in the right direction, further reform is needed to address some troubling trends. Despite Ohio trends that show the number of workers' compensation claims falling and with it the overall medical spend, claim costs are rising precipitously, with the average medical and indemnity cost per claim rising at a much faster rate than other states across the country.”

The administrator told the committee that “my immediate goal is to focus on return to work and achieving the best possible outcomes for our injured workers. In these efforts we are currently focusing on areas to improve outcomes

such as triaging claims, medical management, vocational rehabilitation and settlements”.

03/02/2012

OSHA Hazard Communication Standard Changes Probable

The White House Office of Budget Management has reportedly completed its review of OSHA's final rule to align its hazard communication standard with the United Nation's Globally Harmonized System (GHS).

If enacted, the rule would change the criteria by which companies classify hazards, compile safety data sheets, and train their workers on hazardous chemicals.

OSHA is expected to publish its final rule in the Federal Register. If and when enacted, OMA will have learning opportunities for members on the new rule. *3/01/2012*

03/02/2012

Workers' Compensation Legislation
Prepared by: The Ohio Manufacturers' Association
Report created on June 4, 2012

- HB123** **WORKERS' COMPENSATION BUDGET** (HOTTINGER J) To allow the administrator of Workers' Compensation to waive criteria certain public employers must satisfy to become self-insuring employers; to require bills for medical and vocational rehabilitation services in claims that are ultimately denied to be paid from the Surplus Fund Account under specified circumstances; to make appropriations for the Bureau of Workers' Compensation and for the Workers' Compensation Council for the biennium beginning July 1, 2011, and ending June 30, 2013; and to provide authorization and conditions for the operation of the Bureau's and the Council's programs.
Current Status: 4/25/2011 - **SIGNED BY GOVERNOR**; Some provisions eff. 4/25/11; others 7/29/11
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_123
- HB124** **INDUSTRIAL COMMISSION BUDGET** (HOTTINGER J) To set appropriations for the Industrial Commission for the biennium beginning July 1, 2011, and ending June 30, 2013, and to provide authorization and conditions for the operation of Commission programs.
Current Status: 4/25/2011 - **SIGNED BY GOVERNOR**; Eff. 4/25/11
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_124
- HB186** **PROFESSIONAL EMPLOYER ORGANIZATION LAW** (ADAMS R) To establish certain financial capacity requirements for professional employer organizations, clarify rights and liabilities of professional employer organizations and client employers, and to make other changes to the professional employer organization law.
Current Status: 6/1/2011 - **BILL AMENDED**, House Commerce, Labor & Technology, (Third Hearing)
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_186
- HB252** **IMMIGRATION STATUS-CONVICTED FELON** (YOUNG R) To require a prosecuting attorney to ask the Immigration and Naturalization Service of the United States to verify or ascertain the immigration status of an offender who has been convicted of or pleaded guilty to a felony, to require a prosecuting attorney if the INS informs the prosecutor that the offender is an illegal alien to notify the alleged felon's employer, the Department of Job and Family Services, the Registrar of Motor Vehicles, and the Secretary of State, to make illegal aliens ineligible for certain state public benefits, and to prohibit the Registrar of Motor Vehicles from issuing a driver's license to an alleged felon with respect to whom a prosecuting attorney has given the Registrar the above notice and require the Registrar to cancel any driver's licenses issued to such an alleged felon.
Current Status: 6/8/2011 - Referred to Committee House Transportation, Public Safety and Homeland Security
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_252
- HB516** **WORKERS' COMPENSATION LAW** (HENNE M, HOTTINGER J) To make changes to Ohio's Workers' Compensation Law.
Current Status: 4/19/2012 - House Workers' Compensation Subcommittee, (First Hearing)
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_516
- HB517** **WORKERS' COMPENSATION LAW CHANGES** (SEARS B, NEWBOLD C) To allow the Administrator of Workers' Compensation to pay for specified medical benefits during an earlier time frame, to require a workers' compensation claimant that refuses or unreasonably delays treatment without good cause to forfeit compensation and benefits during the time period of refusal or delay, to make changes to the health partnership program, and to make other changes to the Workers' Compensation Law.
Current Status: 4/19/2012 - House Workers' Compensation Subcommittee, (First Hearing)
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_517

- HB518** **WORKERS' COMPENSATION-HEALTH PARTNERSHIP PROGRAM** (SEARS B, LANDIS A) To statutorily allow the Bureau of Workers' Compensation to summarily suspend a provider's certification to participate in the Health Partnership Program, to specify procedures for that suspension, and to exempt documents, reports, and evidence pertaining to a workers' compensation fraud investigation from the Public Records Law.
Current Status: 4/19/2012 - House Workers' Compensation Subcommittee, (First Hearing)
State Bill Page: <http://www.legislature.state.oh.us/bills.cfm?ID=129> **HB 518**
- HB522** **SERVICE PROVIDER-CERTAIN MOTOR TRANSPORTATION COMPANIES** (MCGREGOR R) To establish a test to determine whether an individual providing services for or on behalf of certain motor transportation companies is considered an employee under Ohio's Overtime, Workers' Compensation, and Unemployment Compensation Laws.
Current Status: 4/24/2012 - Referred to Committee House Commerce, Labor & Technology
State Bill Page: <http://www.legislature.state.oh.us/bills.cfm?ID=129> **HB 522**
- SB139** **PROFESSIONAL EMPLOYER ORGANIZATION LAW** (HUGHES J) To establish certain financial capacity requirements for professional employer organizations, clarify rights and liabilities of professional employer organizations and client employers, and make other changes to the professional employer organization law.
Current Status: 5/16/2012 - House Commerce, Labor & Technology, (Third Hearing)
State Bill Page: <http://www.legislature.state.oh.us/bills.cfm?ID=129> **SB 139**