

Aligning State and Federal Laws for Approval of Certain Pretreatment Permits: To make Ohio statutes consistent with federal law, MBR language will allow the state EPA director, in lieu of the U.S. EPA, to issue a permit to an entity discharging into a privately owned treatment works.

Requiring Ongoing Asset Management Efforts by Public Water Systems: The MBR addresses recurring asset management problems seen at some public water systems, including deferred maintenance, lack of management oversight and inadequate historical records of water lines or maps of service areas. These issues too often result in extended periods of water-use restrictions or having no water at all available for system users. MBR language requires public water systems to demonstrate ongoing technical, financial and managerial capability by implementing an asset management program. This is a priority to ensure safe and reliable drinking water for Ohio citizens.

PROTECTING OHIO'S ENVIRONMENT

Ensuring Responsible Disposal of Construction and Demolition Debris: Over the past several years, a large number of illegal construction and demolition debris (C&DD) disposal sites have begun operating under the premise of “processing” C&DD materials to then be resold, an activity that is currently unregulated in Ohio. However, many times in these instances the material is being collected and then abandoned, leaving local communities and the state to bear the cost of cleanup and mitigation of potential hazards. Provisions in this MBR legislation will establish regulatory oversight of C&DD processing facilities to ensure these materials are properly managed and disposed of in an environmentally responsible manner.

Strengthening the State's Ability to Clean Up Abandoned Landfills: To strengthen the Ohio EPA's ability to evaluate and clean up abandoned landfills, this MBR language will clarify the agency's authority to – among other things – gain site access, conduct investigations, and take samples at these sites.

BOTTOM LINE: Government regulations should first protect Ohioans from acute threats to water quality, such as lead in drinking water supplies or private water system owners who do not provide a dependable or safe water supply. At the same time, a common sense approach is needed to provide balance between helping communities and businesses address water quality issues and streamlining burdensome rules while protecting public health and the environment.



Robert L. Brubaker
rbrubaker@porterwright.com

Porter Wright
Morris & Arthur LLP
41 South High Street
Suites 2800-3200
Columbus, Ohio 43215-6194

Direct: 614-227-2033
Fax: 614-227-2100
Toll free: 800-533-2794

www.pwporterwright.com

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August 15, 2016

VIA E-MAIL: <http://www.regulations.gov>

Mr. Matthew Spangler
U.S. Environmental Protection Agency
Office of Air Quality Planning & Standards
Air Quality Planning Division (C504-05)
Research Triangle Park, NC 27711

RE: **Proposed Removal of Title V Emergency Affirmative
Defense Provisions from State Operating Permit Programs
and Federal Operating Permit Program
81 Fed. Reg. 38645 (June 14, 2016)
Docket ID No. EPA-HQ-OAR-2016-0186**

Dear Mr. Spangler:

Attached please find the Comments of The Ohio Chemistry Technology Council, The Ohio Chamber of Commerce, and The Ohio Manufacturers' Association on U.S. EPA's Proposed Removal of Title V Emergency Affirmative Defense Provisions from State Operating Permit Programs and Federal Operating Permit Program, 81 Fed. Reg. 38645 (June 14, 2016), Docket ID No. EPA-HQ-OAR-2016-0186.

Please direct to the undersigned counsel any questions regarding the attached comments.

Very truly yours,

Robert L. Brubaker

Robert L. Brubaker

Eric B. Gallon

Eric B. Gallon

Counsel for The Ohio Chemistry Technology Council and The Ohio Chamber of Commerce

Frank L. Merrill, by RLB

Frank L. Merrill

Environmental Counsel for The Ohio Manufacturers' Association

RLB/EBG:mkd
Attachment

**Comments of
The Ohio Chemistry Technology Council,
The Ohio Chamber of Commerce,
and
The Ohio Manufacturers' Association**

**Comments on EPA's proposed removal of
Title V affirmative defense provisions for emergencies
81 Fed. Reg. 38,645 (June 14, 2016)**

August 15, 2016

Introduction

The Ohio Chemistry Technology Council, the Ohio Chamber of Commerce, and the Ohio Manufacturers' Association (the "Commenters") respectfully submit the following recommendations in response to EPA's proposed removal of the emergency affirmative defense provisions in the Title V permit program rules in 40 CFR Parts 70 and 71 (81 Fed. Reg. 38,645 (June 14, 2016)).

The Ohio Chemistry Technology Council represents the interests of over 80 chemistry industry related companies that do business in Ohio. The Ohio Chamber of Commerce represents the interests of over 8,000 member companies, including manufacturers, utilities, and small businesses, in addition to hosting the Ohio Small Business Council. The Ohio Manufacturers' Association represents the interests of over 1,400 member companies to protect and grow Ohio manufacturing. The Commenters members are subject to regulation by Ohio's Clean Air Act State Implementation Plan (SIP) and fully-approved Title V operating permit program, and have a direct and substantial interest in the action proposed by EPA.

Properly designed and maintained equipment sometimes fails. This is especially true of increasingly ambitious, cutting-edge technology "forced" as a matter of Clean Air Act policy. It is also true of equipment exposed to extreme temperatures or pressures, abrasion, or other exceptionally harsh operating conditions. Lightning strikes can disable air pollution controls. A squirrel can knock out a transformer that supplies power to an electrostatic precipitator or baghouse. Computerized control systems crash from time to time. Sabotage or criminal mischief can create life-threatening danger that elevates safety considerations above all other priorities. Yet EPA has proposed to remove the affirmative defense for emergencies from the Title V operating program rules.

EPA has given two reasons for removing the "emergency" defense rules:

- 1) EPA deems the rules “inconsistent with the enforcement structure of the Clean Air Act”; and
- 2) EPA deems the rules inconsistent with two D.C. Circuit decisions involving rules promulgated under section 112 of the Clean Air Act: *NRDC v. EPA*, 749 F.3d 1055 (D.C. Cir. 2014) and *Sierra Club v. Johnson*, 551 F.3d 1019 (D.C. Cir. 2008).

Neither rationale justifies the proposed rule change. For the reasons provided below, the commenters respectfully request that EPA abandon its proposed rule changes or, at a minimum, narrow their scope so as not to prevent federal, state, and local air agencies from retaining the Title V affirmative defense for violations during emergency situations.

I. EPA’s newly-discovered “enforcement structure” of the Clean Air Act does not justify an abrupt departure from the historical interpretation and administration of the Act

Congress never aimed the Clean Air Act’s “enforcement structure” at prohibiting or punishing unavoidable, unwanted, and expensive emergencies and upsets. And it never required unattainable, absolute perfection for command-and-control technology. Instead, the structure and context of the Act as a whole emphasizes balance and nuance when promulgating technology-based standards. And neither *NRDC* nor *Sierra Club* justifies EPA’s proposed rulemaking. Indeed, EPA’s proposed rule change would go well beyond anything decided in those two D.C. Circuit cases. EPA’s broad and vague new notions of the “enforcement structure” of the Clean Air Act cannot be reconciled with congressional directives for standards that are “achievable” and “adequately demonstrated,” taking into account costs, and with EPA’s recognition throughout the history of the Clean Air Act, until now, that enforcement and penalties are not appropriate for unavoidable upsets or breakdowns.

II. The interests in finality and repose of 20-year-old approvals of State Title V permit programs outweigh any justification for a late-maturing policy preference to renege on those approvals

Title V permit holders have a compelling interest in predictability, finality, and repose with respect to EPA approval of state Title V permit programs. EPA approved Ohio’s Title V permit program, with the emergency circumstances provisions EPA invited in its Part 70 rules, more than 20 years ago. No one challenged those provisions when EPA adopted them (even though there were, at the time, myriad challenges to other parts of those rules) or when EPA gave final approval to those provisions in the Title V rules for Ohio and some forty-two other states.

Nothing in Title V or elsewhere in the Clean Air Act empowers or authorizes EPA to renege on its final approval of a state Title V permit program because EPA prefers a supposed “improvement” to what was already approved. Such instability would be inimical to the congressional design and purpose of Title V. It would also be highly disruptive to state and local governments and to entities subject to Title V permitting, both public and private.

State rulemakings to revise Title V permit program rules involve considerable costs and human resources. They are not to be undertaken lightly, on the basis of whimsical changes in policy preferences. The deluge of EPA's recent Clean Air Act rulemakings is already straining limited state resources; EPA should not further burden and divert those limited resources from much more important regulatory imperatives and priorities.

III. The proposal goes far beyond anything decided in the two D.C. Circuit cases relied upon for it

The case most relied upon for the proposed removal of the Title V emergency provisions is *NRDC*. That case is inapposite to the proposal in three significant ways. First, it involves private party citizen suit enforcement, not U.S. EPA or state environmental agency enforcement. Second, it involves rulemaking under section 112 of the Act, not section 110, 111, or Title V. And third, it involves a *timely* appeal of EPA rulemaking, not a reopening of settled law finalized over two decades ago.

NRDC's unremarkable holding is that, in the context of a challenge to a promulgated emission standard rule that establishes an enforceable compliance obligation, EPA cannot displace the exclusive jurisdiction of district courts to decide in a Clean Air Act citizen suit what, if any, remedy to provide for proven violations of that enforceable compliance obligation. *NRDC* does not prohibit any and all affirmative defenses under the Clean Air Act. Nor does it impair the inherent enforcement discretion vested in EPA and state agencies. It therefore provides no basis for changing the rules for *government* decisions to allow an affirmative defense in emergency situations, as opposed to private citizen suits. Second, *NRDC* arises in the context of CAA § 112; it did not involve the statutory or constitutional issues implicated by a strict anti-emergency interpretation of other parts of the Clean Air Act. Third, the case was a timely appeal under CAA § 307 from EPA's final rulemaking action. The Court did not opine on whether other citizen suit plaintiffs might have waived their rights to make similar arguments that were not raised in timely § 307 appeals of other Clean Air Act final actions.

The proposal uses, as an "alternative but additional justification," a stretched and strained over-reading of *Sierra Club*. EPA asserts that *Sierra Club* stands for the proposition that "the CAA requires that emission limitations must apply continuously and cannot contain exemptions, conditional or otherwise." However, the rationale in *Sierra Club* is anchored to the unique language of Clean Air Act § 112, and does not exist for the very different language and context applicable to Clean Air Act § 110 SIPs or § 111 NSPSs. Existing emission limitations in the Ohio SIP apply "continuously" to the performance criteria and operating modes to which they were designed and intended to apply. Even if *Sierra Club* "requires that emission limitations must apply continuously and cannot contain exemptions, conditional or otherwise," the word "continuously" does not mean constantly, every moment, in real time, during any and all operating modes, with or without a duly promulgated, reliable and reproducible method for testing compliance or non-compliance. Such an extreme, out-of-context interpretation of the word "continuously" is at odds with its origin in Clean Air Act § 302(k), where it was intended to prohibit "supplementary control systems." See 40 CFR 51.119; see also EPA's March 28,

2016 Initial Brief in *State of West Virginia v. EPA*, No. 15-1363, at p. 67. It certainly was not Ohio's legal interpretation when it promulgated technology-based SIP rules, or EPA's legal interpretation when it approved Ohio's SIP rules over the past 45 years.

IV. Any change to the Part 70/Part 71 affirmative defense provisions should be confined to private citizen suits

According to EPA, this rulemaking is primarily necessitated by the D.C. Circuit's ruling in *NRDC*. But *NRDC* concerns *private* (not government) suits, where a "violation" of an enforceable compliance obligation has been proven in an Article III court. *NRDC* stands for the proposition that when EPA promulgates an enforceable emission standard, EPA cannot remove an Article III court's jurisdiction to decide whether civil penalties are appropriate in a citizen suit to enforce that standard. If EPA decides it must make a revision to the affirmative defense provision for emergencies in the Title V permit program rules, despite the absence of any compelling need or deadline to do so, that change should be no more broad than the scope of the court's holding in *NRDC*. *NRDC* provides absolutely no basis for changing the criteria under which EPA or state agencies would grant an affirmative defense due to qualifying emergency circumstances. *NRDC* does not undermine the sound policy and common sense reasons for promulgating the Title V emergency provisions in the Part 70 and 71 rules in the first place, and for approving emergency defense provisions in Ohio's and other states' Title V permit programs two decades ago. EPA should withdraw its proposal altogether, or at the very least withdraw it and replace it with a proposal that only removes the affirmative defense in citizen suits.

Environment

[OMA Files Comments with U.S. EPA to Preserve Title V Affirmative Defense](#)

August 19, 2016

This week the OMA and business allies [filed comments and recommendations](#) with the U.S. EPA in response to the agency's proposed removal of the emergency affirmative defense provision in the Title V permit program rules.

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

[Ohio EPA to Hold Beneficial Use Rules Webinar](#)

August 12, 2016

Ohio EPA has scheduled a webinar about the [beneficial use rules](#) to give stakeholders an opportunity to ask questions and receive clarification prior to the public hearing. This webinar will be held on August 23, 2016, from 2:00 – 3:00 p.m. EST. The WebEx meeting number is 633 506 035. [Click this link to join the meeting](#). To call in, dial 1-614-230-0229 or 1-877-372-2917, then enter the meeting ID: 46467#.

[OMA Comments to Ohio EPA re. Startup, Shutdown, and Malfunction Emissions](#)

August 12, 2016

Last week the OMA and other business allies submitted [formal comments](#) to Ohio EPA regarding the agency's rulemaking in the response to U.S. EPA's finding of "substantial inadequacy" and state implementation plan (SIP) call to amend provisions applying to excess emissions during startup, shutdown and malfunction (SSM) periods. The OMA and its allies filed comments in 2013 to U.S. EPA in opposition to its proposed SSM SIP Call (combined at above link).

[At last! Ohio EPA Announces New Beneficial Use Rules](#)

July 29, 2016

This week Ohio EPA released its [public notice](#) of its proposed rulemaking governing beneficial use. This [rule package](#) was started in the summer of 2012. The purpose of the new rules is to establish a regulatory program pertaining to the beneficial use of solid wastes, and other wastes, regulated pursuant to Ohio Revised Code Chapters 3734 and 6111.

The public comment period will run until August 29, 2016. A public hearing on the proposed rules will be held on August 29, 2016 at 10:30 a.m. at Ohio EPA, Lazarus Government Center, 50 W. Town Street, Suite 700, Columbus, Ohio. If you have questions or comments please contact OMA's [Rob Brundrett](#).

[Registration open: Midwest Environmental Compliance Conference 2016](#)

July 29, 2016



Registration is open for the second annual [Midwest Environmental Compliance Conference](#) (MECC), sponsored by OMA, to be held November 1-3 at the Crowne Plaza Chicago O'Hare, Chicago, IL. Early bird pricing for the regulated community is \$450 through September 30.

This is the most comprehensive environmental compliance conference for the Midwest regulated community.

Please use code "OMA" when registering.

[Contact Your Senator on Ozone!](#)

July 8, 2016

The OMA continues to work with our national allies fighting the Obama administration's onerous new ozone standards. In this, we urge all manufacturers to sign [this petition](#) asking the U.S. Senate to consider and support S. 2882, the Ozone Standards Implementation Act.

The bill provides states and manufacturers more flexibility in implementing the U.S. EPA's 2015 ozone rule, while ensuring continued improvements in air quality and more regulatory certainty to promote investments and economic growth.

[Options for Completing RCRA C Site Identification Forms](#)

June 24, 2016

Facilities now have two additional options for completing the RCRA Subtitle C Site Identification (ID) form that is used for certain waste activity notification required by hazardous waste regulations. The new options are Site ID Form Wizard (Wizard) or U.S. EPA's myRCRAid service via its Central Data Exchange (CDX).

The Wizard is a web-based alternative geared to users who are new to the hazardous waste program and may not understand the terminology (however, anyone can use it). References to rule requirements and explanations are on each screen. Using the Wizard should produce fewer form errors and omissions, thereby decreasing Ohio EPA processing time. Once users have entered all the required information, they can print, sign, and mail the form to Ohio EPA.

The myRCRAid service requires a CDX account and can only be used for updating existing ID numbers, although U.S. EPA plans to allow new IDs to be requested via myRCRAid. Once approved, the user selects the ID Number to update and make changes to a pre-populated Site ID Form. The form is electronically signed and submitted for Ohio EPA processing.

To access these options and get more information, go to the [Notification of Regulated Waste Activity web page](#). Questions can be answered by [Notification Coordinator Alexis Andrews](#) at (614) 644-2621.

[Maybe You Don't Need an Air Permit!](#)

June 17, 2016

The Division of Environmental and Financial Assistance's Office of Compliance Assistance and Pollution Prevention within Ohio EPA offered this [handy advice](#) to manufacturers and businesses regarding emissions permits. The department outlines three different scenarios under which an air emission source could be exempt from permitting.

[U.S. EPA Responds to Summit Petroleum Corp. Decision](#)

June 17, 2016

On June 3, the U.S. EPA issued a final rule, with a revision to the regulations applicable to permitting of stationary sources of air pollution under the New Source Review and title V programs in the Clean Air Act.

The final rule is in response to *Summit Petroleum Corp. v. EPA* decision, which caused the meaning of the term "adjacent" to be in flux since 2012.

For more on this important rule [see this article](#) from OMA environmental counsel Bricker and Eckler.

[Ohio EPA Drafts Rules on Particulate Matter Standards](#)

June 17, 2016

Ohio EPA issued notice of its review of Ohio Administrative Code Rules pertaining to "Particulate Matter Standards." Major revisions include removing regulation and emission limits for air pollution sources that are located at facilities that have been completely and permanently shut down. The rules also provide an additional compliance option for facilities that are required to use a continuous opacity monitor (COM) to determine compliance with visible emissions requirements.

In situations where a COM would not provide accurate visible emissions determinations, such as air contaminant sources that are controlled by wet scrubbers, operators may install a particulate matter continuous monitor (CEM).

The rule will also require the air contaminant source to comply with a particulate emissions limit of 0.030 pounds of particulate emissions per million British thermal units of heat input.

For more information please [review the drafts at the Ohio EPA rule website](#).

[Ohio EPA Calls for Comments on Lead Particulates](#)

June 17, 2016

Ohio EPA has made available a draft for comment of amended rules in Ohio Administrative Code (OAC) chapter 3745-71, "Lead Emissions." This chapter includes standards for ascertaining, defining, and measuring ambient air quality for lead particulates.

Specifically, the Division of Air Pollution Control (DAPC) has requested comments on the draft rules and the draft business impact analysis (BIA) before DAPC proposes the rules to the Joint Committee on Agency Rule Review (JCARR).

DAPC will accept comments through Monday, July 18, 2016. Please see the [public notice](#), [draft business impact analysis](#), [synopsis of changes](#) and other documents at these links. Contact OMA's [Rob Brundrett](#) with questions.

[Ohio EPA Announces Permit to Install and NPDES Revisions](#)

June 17, 2016

Ohio EPA is [soliciting input](#) on draft rule revisions for its Permit to Install (PTI) program rules and one existing National Pollutant Discharge Elimination System (NPDES) program rule.

For more information you can review the rules and supporting documents at the [Ohio EPA rule website](#). Please contact OMA's [Rob Brundrett](#) for more information about the stakeholder feedback process.

Environment Legislation
Prepared by: The Ohio Manufacturers' Association
Report created on August 26, 2016

- HB61** **LAKE ERIE FERTILIZER-DREDGING** (BUCHY J, HALL D) To generally prohibit the application of fertilizer or manure in Lake Erie's western basin on frozen ground or saturated soil and during certain weather conditions, and to prohibit a person, beginning July 1, 2020, from depositing dredged material in Ohio's portion of Lake Erie and its direct tributaries.
Current Status: 3/17/2015 - Referred to Committee Senate Agriculture
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-61>
- HB64** **OPERATING BUDGET** (SMITH R) To make operating appropriations for the biennium beginning July 1, 2015, and ending June 30, 2017, and to provide authorization and conditions for the operation of state programs.
Current Status: 6/30/2015 - **SIGNED BY GOVERNOR**; eff. 6/30/15; certain provisions effective 9/29/15, other dates
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-64>
- HB101** **HAB MITIGATION** (HALL D) To establish requirements governing the training of employees of publicly owned treatment works and public water systems to monitor and test for harmful algae, the development of emergency plans by certain public water systems to respond to harmful algal blooms, and the development of an early warning system for harmful algal blooms.
Current Status: 3/24/2015 - House Agriculture and Rural Development, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-101>
- HB214** **PUBLIC IMPROVEMENT-PIPING MATERIAL** (THOMPSON A) To restrict when a public authority may preference a particular type of piping material for certain public improvements.
Current Status: 5/24/2016 - House Energy and Natural Resources, (Third Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-214>
- HB349** **STATE EMISSIONS PLAN** (SMITH R, GINTER T) To require the Environmental Protection Agency to submit a state plan governing carbon dioxide emissions to the General Assembly prior to submitting it to the United States Environmental Protection Agency, and to declare an emergency.
Current Status: 12/8/2015 - House Energy and Natural Resources, (Third Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-349>
- HB377** **PRIVATE EMPLOYEES-REQUIRED DUES** (BRINKMAN T) To prohibit any requirement that employees of private employers join or pay dues to any employee organization and to establish civil and criminal penalties against employers who violate that prohibition.
Current Status: 12/1/2015 - House Commerce and Labor, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation->

[summary?id=GA131-HB-377](#)

- HB512** **MBR-WATER SYSTEM TESTING** (GINTER T) To establish requirements governing lead and copper testing for community and nontransient noncommunity water systems.
Current Status: 6/9/2016 - **SIGNED BY GOVERNOR**; eff. 9/9/16
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-512>
- HB522** **INJECTION WELLS** (PHILLIPS D) To prohibit injection of brine and other waste substances except in class I injection wells, to prohibit the conversion of oil and gas wells, to require municipal or township approval prior to the issuance of an oil or gas well permit, and to levy a fee on the injection of brine and other waste substances into a class I injection well.
Current Status: 4/26/2016 - Referred to Committee House Energy and Natural Resources
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-522>
- HB541** **STATE AGENCY-CLEAN POWER PLAN** (LANDIS A) To prohibit any state agency from implementing the federal "Clean Power Plan."
Current Status: 5/4/2016 - Referred to Committee House Energy and Natural Resources
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-541>
- HB551** **SANITARIANS-FOOD INSPECTIONS** (HILL B) To require the Director of Agriculture and the Director of Health to adopt rules governing reviews of registered sanitarians and sanitarians-in-training who conduct inspections of retail food establishments and food service operations.
Current Status: 5/17/2016 - Referred to Committee House State Government
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-551>
- HCR11** **GOVERNOR-WATER QUALITY EFFORTS** (HALL D) To commend Governor John Kasich on his efforts to improve the water quality of Lake Erie and to affirm the Governor's ability to form an interstate compact with other states in furtherance of this objective.
Current Status: 1/26/2016 - Senate Agriculture, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HCR-11>
- HCR27** **WATER QUALITY IMPROVEMENT** (PATTERSON J, HILL B) To commend Ohio's agriculture community, educational institutions, and environmental advocacy organizations on their efforts to improve the water quality of Lake Erie and its tributaries and to encourage them as well as state, county, and municipal leaders to continue to work towards continued water quality improvement.
Current Status: 9/30/2015 - Referred to Committee House Agriculture and Rural Development
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HCR-27>
- SB1** **GREAT LAKES-HARMFUL ALGAE** (GARDNER R, PETERSON B) To transfer the administration and enforcement of the Agricultural Pollution Abatement Program from the

Department of Natural Resources to the Department of Agriculture.

Current Status: 4/2/2015 - **SIGNED BY GOVERNOR**; eff. 7/3/15

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

- SB16** **WATERSHEDS-FERTILIZER APPLICATION** (BROWN E) To require applicators of fertilizer or manure to comply with specified requirements and to authorize the Director of Environmental Protection to study and calculate nutrient loading to Ohio watersheds from point and nonpoint sources.
Current Status: 2/10/2015 - Senate Agriculture, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-16>
- SB46** **LAKE ERIE DRILLING BAN** (SKINDELL M) To ban the taking or removal of oil or natural gas from and under the bed of Lake Erie.
Current Status: 5/11/2016 - Senate Energy and Natural Resources, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-46>
- SB47** **DEEP WELL BRINE INJECTION PROHIBITION** (SKINDELL M) To prohibit land application and deep well injection of brine, to prohibit the conversion of wells, and to eliminate the injection fee that is levied under the Oil and Gas Law.
Current Status: 5/11/2016 - Senate Energy and Natural Resources, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-47>
- SB114** **MICROCYSTIN LEVELS-PUBLIC WATER** (SKINDELL M) To establish requirements and procedures pertaining to levels of microcystin in public water systems.
Current Status: 4/13/2016 - Senate Health and Human Services, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-114>
- SB150** **MOTOR FUEL DISPOSAL** (HITE C) To create a qualified immunity for the dispensing of incompatible motor fuel.
Current Status: 6/24/2015 - Senate Civil Justice, (Second Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-150>
- SB269** **PUBLIC WATER SYSTEM-LEAD CONTAMINATION** (SCHIAVONI J) To require a public water system to provide notice of lead contamination not later than thirty days after becoming aware that lead contamination may effect the system's drinking water.
Current Status: 4/12/2016 - Senate Energy and Natural Resources, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-269>
- SB293** **MBR-NATURAL RESOURCES** (BALDERSON T) To revise specified laws relating to natural resources.
Current Status: 6/14/2016 - **SIGNED BY GOVERNOR**; eff. 9/14/16
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation->

[summary?id=GA131-SB-293](#)

SCR18 **U.S. EPA-RACE COMPETITION VEHICLES** (LAROSE F) To urge the Administrator of the United States Environmental Protection Agency to retract proposed regulations concerning competitive race vehicles that are used solely for competition.

Current Status: 4/12/2016 - Referred to Committee Senate Energy and Natural Resources

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SCR-18>

To: OMA Government Affairs Committee
From: Ryan Augsburger / Rob Brundrett
Re: Human Resources Update
Date: August 31, 2016

Overview

Unemployment insurance debt and solvency remain a hot topic for employers. The General Assembly moved to ensure that the state's unemployment compensation debt will be paid off prior to the next increase in FUTA penalties however questions still surround the solvency of the system.

General Assembly News and Legislation

Senate Bill 268 – employment discrimination reform

Senator Bill Seitz (R-Cincinnati) proposes to comprehensively overhaul Ohio's employment discrimination statutes in a manner that would benefit employers and bring Ohio's laws more in line with federal discrimination laws, but would continue to provide individuals avenues to assert state law discrimination violations.

This bill would bring Ohio's statute in line with its federal counterpart by eliminating personal liability for managers and supervisors.

The bill also seeks to reduce the timeframe to file an employment discrimination lawsuit in court to one year and apply it to all discrimination claims. Today, depending on the type of claim, individuals have between 180 days and six years to file. The OMA provided written testimony and verbal testimony at the proponent hearing.

Senate Bill 301 – accommodation bill

Senate Bill 301 requires employers to provide certain accommodations for conditions related to an employee's pregnancy.

The association opposes creating a new class of protected employees when the class already has protections under the law. Both the Pregnancy Discrimination Act and the Americans with Disability Act provide protections in current law for conditions related to an employee's pregnancy.

House Bill 350 – autism mandate

The House of Representatives are entertaining a new health care mandate bill. The bill requires autism coverage be expanded to all large group employer health plans and other health plans that were grandfathered and grandmothers under the Affordable Care Act. The OMA provided a letter to the committee outlining concerns with the current bill. The bill was voted out of committee at the end of May.

House Bill 377 – Right to Work

Representative Brinkman (R – Mt. Lookout) introduced HB 377 which would prohibit any requirement that employees of private employers join or pay dues to any employee organization and to establish civil and criminal penalties against employers who violate that prohibition. This is also known as the Right to Work bill. This version of Right to Work had one hearing in December. It was scheduled for a second hearing in February but was removed from the hearing calendar.

West Virginia became our latest neighbor joining Michigan and Indiana to embrace right to work by passing the bill and overriding the governor's veto. There still seems to be no momentum in passing Right to Work in Ohio at least at this time. Once election season passes there might be an opportunity for the bill to have some hearings and movement.

House Bill 394 - Unemployment Compensation Tax Changes

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

The Ohio unemployment trust fund is insolvent and still owes the federal government \$275 million. This circumstance has for years triggered penalties that employers must pay, and the fund is in a dangerous position in light of any future recession.

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

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

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

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

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

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

Drug Testing. HB 394 provides language under which the Ohio Department of Job and Family Services may (a) request information of applicants for unemployment compensation about the

results of past drug tests, (b) conduct drug tests for controlled substances, and (c) disqualify individuals within the narrow limitations of federal law.

Collectively, the HB 394 reforms position Ohio in line with surrounding states and states with whom we compete for investment and jobs.

House Republicans initially indicated they would pass the bill prior to 2016. The bill's passage has been delayed several times. The House and Senate established a working group around the bill.

House Bill 390 – unemployment compensation pay off

The General Assembly used HB 390 as the vehicle to address the state's unemployment compensation debt. The General Assembly agreed to a deal with the intention to eliminate the state's recession-era unemployment compensation debt to the federal government. The move supported by the OMA and other business allies will potentially save Ohio's businesses more than \$400 million in FUTA penalties. Without this fix employers were staring at a possible \$168 per employee penalty to be paid in 2017.

The new plan will borrow from the state's unclaimed funds to pay off the debt in November 2016. Then employers will repay the state-backed loan by paying a per employee surcharge in 2017.

While the General Assembly addressed the short term debt issue, the new plan does not address the long term solvency of the system due to the structural imbalance that contributed to the heavy borrowing.

House Bill 492 – expansion of workforce voucher program

Representatives Niraj Antani (R-Miamisburg) and Bill Reineke (R-Tiffin) introduced House Bill 429, which would allow automotive technicians and motor vehicle technicians employed at retail stores to be eligible to participate in the state's Incumbent Workforce Voucher Program.

This program is administered by the Ohio Development Services Agency and provides grants to employers for incumbent workforce training.

This bill would create an expansion of the very popular program. It was designed to support targeted growth industries, including advanced manufacturing, automotive, and food processing, among others.

The General Assembly allocated \$7.5 million in fiscal years, 2016 and 2017, for the program.

There is concern by adding more and more jobs to the list of qualifying occupations then the money allocated becomes diluted and ineffective in training in demand jobs.

The bill was passed at the end of May.

Unemployment Compensation Solvency Hearings

The House and Senate announced a joint committee to convene and hold hearings regarding the state's unemployment compensation system. The committee follows the work already done by the working group established to study House Bill 394. The committee will meet five times between August and November. The goal is to hear all viewpoints regarding the system and to

hash out an acceptable bill to stabilize Ohio's system. Senator Peterson and Representative Schuring are co-chairs the committee.

Unemployment Compensation System Surcharge

Ohio recently certified the amount owed to the federal government at \$274 million. This could be paid off in the very near future. However no exact date is set.

The payoff in 2016 would drop the FUTA per employee rate immediately from \$168 to \$42 per employee. Some employers may already have adjusted budgets expecting this reduction but most will see a reduction in cost realized in January 2017.

If there is a repayment state surcharge for 2017 of 0.6% (which is what the best current intel would suggest) on the \$9,000 tax base the cost would be \$54 per employee compared to the relative savings in reduced FUTA cost per employee of \$126 per employee.

A net savings per employee of \$72 per employee.

Remember that the 0.6% state surcharge will not show up on the FUTA tax Form 940. It will show up as an item on the quarterly state UI tax statements beginning with the first quarter of 2017 and due in April of 2017.

Cleveland Minimum Wage

A proposal to set Cleveland's minimum wage at \$15 an hour missed its chance at the November ballot. However the citizen ordinance initiative will more than likely have a second life on one of 2017's ballots. The proposal would set Cleveland's minimum wage at \$15. As drafted this would happen immediately. Businesses point out that this would make the city less competitive with the surrounding areas that are not impacted by the ordinance.

Several big city law departments issued statement suggesting cities setting their own minimum wage rates are unconstitutional. Ohio Attorney General DeWine issue an opinion concluding that the initiative or any of its type is likely illegal.

Cleveland and Youngstown Part Time Workers' Rights Amendment

An initiative petition is forcing Cleveland City Council to put on the Nov. 8 ballot an amendment to the city charter that would force employers to give part-time workers wages and benefits comparable to full-time employees.

The amendment would make less flexible an employer's ability to schedule part-time workers, require employers to provide part-time workers equal, or at least pro-rated levels of vacation and sick time, and pro-rated eligibility for other benefits.

The ordinance also establishes a five-member part-time workers' rights commission to ensure that its provisions are upheld. The issue is being pushed by a Michigan movie theater owner.

OSHA Drug Testing

Manufacturers and manufacturing advocates remained concerned with new drug testing provisions as well as the incentive program provisions OSHA included in the preamble of the final injury and illness rule.

NAM challenged these aspects in federal court and have filed a preliminary injunction to stop this from going into effect. Coincidentally, OSHA moved the effective date of the rule from Aug 1

to Nov 1. It is anticipated that OSHA will issue some sort of guidance memo when the effective date arrives, but we are hopeful we will win on the injunction, which will push all of this out even further. We plan to incorporate the reporting requirements into our complaint as well.

In their complaint, the National Association of Manufacturers and other industry groups allege the anti-retaliation provisions go too far in limiting post-accident drug testing. Generally, the new rule prohibits employers from using drug testing, or the threat of drug testing, as a form of retaliation against employees who report injuries or illnesses. The plaintiffs argue this provision is an overreach of the agency's authority and limiting such tests will hamper an employer's recourse to keep their workplace safe. The suit seeks a preliminary injunction prohibiting OSHA from implementing the anti-retaliation provision limiting drug testing.

that conducts research related to marijuana as part of a research protocol approved by an institutional review board or equivalent entity.

Employment laws

Employment – generally

The bill provides that nothing in the bill concerning medical marijuana does any of the following:

(1) Requires an employer to permit or accommodate an employee's use, possession, or distribution of medical marijuana;

(2) Prohibits an employer from refusing to hire, discharging, disciplining, or otherwise taking an adverse employment action against a person with respect to hire, tenure, terms, conditions, or privileges of employment because of that person's use, possession, or distribution of medical marijuana;

(3) Prohibits an employer from establishing and enforcing a drug testing policy, drug-free workplace policy, or zero-tolerance drug policy;

(4) Interferes with any federal restrictions on employment, including U.S. Department of Transportation regulations;

(5) Permits a person to sue an employer for refusing to hire, discharging, disciplining, discriminating, retaliating, or otherwise taking an adverse employment action against a person with respect to hire, tenure, terms, conditions, or privileges of employment related to medical marijuana;

(6) Affects the authority of the Administrator of Workers' Compensation to grant rebates or discounts on premium rates to employers that participate in a drug-free workplace program established in accordance with rules adopted by the Administrator.¹⁰¹

Under continuing law, the Bureau of Workers' Compensation's Drug-Free Safety Program offers eligible employers a premium rebate for implementing a loss-prevention strategy addressing workplace use and misuse of alcohol and drugs. In addition to satisfying other requirements, the employer's program must include alcohol and drug testing, including (1) pre-employment and new-hire drug testing, (2) post-

¹⁰¹ R.C. 3796.28.



accident alcohol and drug testing, (3) reasonable suspicion alcohol and drug testing, and (4) return-to-duty and follow-up alcohol and other drug testing.¹⁰²

Unemployment eligibility

Under the bill, a person who is discharged from employment because of that person's use of medical marijuana is considered to have been discharged for just cause under the Unemployment Compensation Law if the person's use of medical marijuana violated an employer's drug-free workplace policy, zero-tolerance policy, or other formal program or policy regulating the use of medical marijuana.¹⁰³ If a person has been discharged for just cause in connection with the person's work, for purposes of that Law that person is ineligible to serve a waiting week or receive unemployment benefits for the duration of the person's unemployment. Under current law, failure of a drug test could be "just cause" for purposes of this provision.¹⁰⁴

Workers' compensation – rebuttable presumption

Eligibility

The Workers' Compensation Law compensates an employee or an employee's dependents for death, injuries, or occupational diseases occurring in the course of and arising out of the employee's employment. Under continuing law, an employee or dependent is ineligible if the employee's injury or occupational disease is purposely self-inflicted or is caused by the employee being intoxicated or under the influence of a controlled substance not prescribed by a physician where the intoxication or being under the influence of the controlled substance was the proximate cause of the injury.¹⁰⁵

The bill maintains an employee's or dependent's ineligibility for compensation and benefits if the employee was under the influence of marijuana and being under the influence of marijuana was the proximate cause of the injury. This applies regardless of whether the marijuana use is recommended by a physician.¹⁰⁶

Rebuttable presumption – current law

Under continuing law, a rebuttable presumption is established if an employee is intoxicated or under the influence of a controlled substance not prescribed by a

¹⁰² Ohio Administrative Code 4123-17-58.

¹⁰³ R.C. 3796.28.

¹⁰⁴ R.C. 4141.29, not in the bill.

¹⁰⁵ R.C. 4123.54.

¹⁰⁶ R.C. 4123.54.



physician and being intoxicated or under the influence of that controlled substance proximately caused an injury if either of the following applies:

--A qualifying chemical test is administered and the employee tests above certain levels for alcohol or certain controlled substances, including cannabinoids.

--The employee refuses to submit to a chemical test on the condition that the employee is given notice that refusal to submit to a qualifying chemical test may affect the employee's eligibility for compensation and benefits.¹⁰⁷

Under current law, a chemical test is considered a "qualifying chemical test" if it is administered to an employee after an injury under at least one of the following conditions: (1) when the employee's employer has reasonable cause to suspect that the employee may be intoxicated or under the influence of a controlled substance not prescribed by the employee's physician, (2) at a police officer's request because the officer has reasonable grounds to believe that the employee was operating a vehicle while intoxicated or under the influence of a controlled substance, or (3) at a physician's request.¹⁰⁸

"Reasonable cause" means evidence that an employee is or was using alcohol or a controlled substance drawn from specific, objective facts and reasonable inferences drawn from these facts in light of experience and training. These facts and inferences may be based on, but are not limited to, any of the following:

--Observable phenomena, such as direct observation of use, possession, or distribution of alcohol or a controlled substance, or of the physical symptoms of being under the influence of alcohol or a controlled substance;

--A pattern of abnormal conduct, erratic or aberrant behavior, or deteriorating work performance that appears to be related to the use of alcohol or a controlled substance, and does not appear to be attributable to other factors;

--The identification of an employee as the focus of a criminal investigation into unauthorized possession, use, or trafficking of a controlled substance;

--A report of use of alcohol or a controlled substance provided by a reliable and credible source;

¹⁰⁷ R.C. 4123.54.

¹⁰⁸ R.C. 4123.54.



The Case for Unemployment Insurance Reform in Ohio

EXECUTIVE SUMMARY

Introduction

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

How the System Works¹

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

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

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

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

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

Financing the Program

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

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

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

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

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

Impact of the Great Recession

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

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

to address a milder recession were insufficient to meet the increased benefit payout. The size of the deficit after the Recession was too great to make up with benefit cuts or tax increases alone and even years after the Recession, benefit payments each year continue to be nearly as high as unemployment contribution revenue.

The unemployment insurance tax burden in Ohio generally increased as a result of the Recession as claims experience increased, the payroll against which experience was determined was reduced, and Ohio became subject to the FUTA offset credit reductions under federal law. As the economy slowly recovered with increased payrolls and reduced claims experience, experience rates improved and the average state unemployment insurance contribution was reduced. ***However, the FUTA tax has continued to increase as Ohio's Title XII loan has not been repaid.***

The impact in Ohio has been severe. Ohio's unemployment trust fund balance has been a negative number as of the end of the second quarter every year since 2009. ***Today, the Ohio Unemployment Insurance Trust Fund is insolvent.***

Responses to Insolvency

In response to the threat of insolvency, states have taken various actions to bolster tax revenue and reduce benefit outlay, including the following:

- Eliminating outstanding loan debt to the federal government by obtaining bank loans and/or using bonds to finance the debt through the private sector
- Enacting solvency legislation with a combination of benefit cuts and tax increases to eliminate Title XII debt and better align benefit costs with revenue over the long term
- Reducing the number of potential weeks of unemployment compensation
- Increasing tax bases
- Revising contribution rate schedules
- Reducing maximum weekly benefit amounts
- Enacting more aggressive integrity measures to identify and collect additional revenue through benefit overpayment recovery and contribution collection improvements

Ohio, however, is one of a small number of states with significant outstanding federal debt that have chosen not to enact solvency measures, instead allowing automatic FUTA penalties to continue to increase to provide the revenue needed to reduce the state's outstanding debt.

This is a dangerous path to follow. Failure to pay off a state's outstanding FUTA debt has costly consequences. Under federal law, if a state has an outstanding Title XII loan balance on January 1 for two consecutive years, and the full amount of the loan is not repaid by November 10 of the second year, the 5.4 percent FUTA tax credit for employers in that state will be reduced annually by 0.3 percent for each succeeding year until the loan is repaid. From the third year onward, additional reductions in the FUTA offset credit may be imposed. States that continue to have outstanding loan balances over five years in a row are subject to an even greater FUTA tax increase as a penalty for not having addressed solvency through increases in taxes and/or cuts in benefits.

Why Ohio Needs Unemployment Insurance Reform

Currently, Ohio ranks poorly on many important unemployment insurance program metrics. For example:

- Ohio's Unemployment Insurance Trust Fund is insolvent.
- Ohio's outstanding Title XII debt is approximately \$775 million – nearly equal to the cost of unemployment insurance benefit payments for an entire year. Only California has a larger unpaid Title XII loan debt balance.
- Ohio is one of a small number of states with significant outstanding federal debt that have chosen not to enact solvency measures.
- Employers in Ohio currently pay higher total costs associated with unemployment compensation than employers in most other states, while benefit payment amounts in Ohio are higher than the national average. This makes Ohio a high-cost, high-benefit state.
- The FUTA tax paid by Ohio employers has continued to increase as Ohio's Title XII loan has not been repaid.
- Ohio is one of just four states currently subject to higher FUTA penalty rates and potentially subject to an additional Benefit Cost Rate (BCR) penalty in 2015 for having outstanding loan balances five years in a row and failing to address insolvency.
- Ohio failed to pay off the state's outstanding FUTA debt before November 10, 2015, triggering an additional reduction in the FUTA offset credit for employers in Ohio. This will result in Ohio employers paying higher FUTA taxes for 2015 – at least an additional \$105 per employee, on top of the normal \$42 per employee.

Ohio's UI trust fund is not likely to recover solvency before the next recession unless the state takes action to pay off its outstanding federal loan balance and better align benefits with contributions to build a balance in anticipation of the next recession.

Conclusion

Ohio's Unemployment Insurance Trust Fund must be made solvent before the next recession – not only to manage the repayment of Ohio's remaining Title XII loan balance but also to align benefit and contributions to build an adequate unemployment trust fund balance. The best solvency plan is one that also includes a focus on job creation because increased employment not only increases contributions but also reduces benefit payout. For that reason, rates also should be in line with surrounding states and states with which Ohio competes to attract and retain new business.

Unemployment insurance policy reform priorities should focus on eliminating the state's current unemployment trust fund debt, aligning benefit payout with contribution revenue, and building a balance in the unemployment trust fund sufficient to avoid triggering automatic FUTA tax increases that have significantly increased unemployment taxes for Ohio employers since the Great Recession of 2008. A vital first step for Ohio should be to pay off of the remaining Title XII loan balance to eliminate the FUTA tax increase as soon as possible.

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House Bill 394: Selected Major Provisions at Glance

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

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

- **Temporary Increase in State Unemployment Tax Base.** HB 394 would increase the state unemployment tax base from \$9,000 to \$11,000 when the UI Trust Fund balance is below 50 percent of the 1.0 Average High Cost Model solvency level and continue the increase until the UI Trust Fund reaches 1.0 Average High Cost Model. The state tax base will be reduced back to \$9,000 when the UI Trust Fund equals or exceeds the 1.0 AHCM solvency level. If the balance dips below 50 percent of the solvency level in future years, the tax base will automatically return to the \$11,000 level.
- **Reduction of Number of Potential Weeks of Unemployment Insurance.** HB 394 would change the determination of the total number of weeks of unemployment compensation potentially available to twice a year, based on Ohio's seasonally adjusted three-month total unemployment rate, before January and June. A sliding scale would set the number as low as 12 weeks when the rate is 5.5 percent or below, and up to 20 weeks if the rate is 9 percent or above. Ohio currently uses a sliding scale ranging from 20 to 26 weeks.
- **Temporary Freeze on the Maximum Weekly Benefit Amount.** HB 394 would effectively freeze maximum weekly benefit dollar amounts at a level not to exceed 50 percent of the statewide average weekly wage for the first year that the UI Trust Fund was less than the Minimum Safe Level (MSL), and would continue those maximums until the year after the UI Trust Fund was at or above the MSL.
- **Dependency.** To align with the majority of states, HB 394 would repeal Ohio's current dependency provision that increases the weekly benefit amount provided to claimants who have higher wages and dependents.
- **Drug Testing.** HB 394 provides language under which the Ohio Department of Job and Family Services may (a) request information of applicants for unemployment compensation about the results of past drug tests, (b) conduct drug tests for controlled substances, and (c) disqualify individuals within the narrow limitations of federal law.

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



KEITH FABER
PRESIDENT
OHIO SENATE



CLIFF ROSENBERGER
SPEAKER
OHIO HOUSE OF REPRESENTATIVES

For Immediate Release:
August 15, 2016

Ohio Senate and House Leaders Announce Unemployment Compensation Reform Joint Committee

COLUMBUS—Senate President Keith Faber (R-Celina) and Speaker of the Ohio House Clifford A. Rosenberger (R-Clarksville) today announced the creation of the Unemployment Compensation Reform Joint Committee that will be chaired by Senator Bob Peterson (R-Washington Court House) and Representative Kirk Schuring (R-Canton).

The group, which will be composed of House and Senate legislators, will be tasked with reviewing the stability and sustainability of Ohio's unemployment compensation system with the goal of determining what reforms may be needed to assure long-term solvency of the system. A major emphasis will be placed on receiving input from labor groups, the business community and Ohio's workforce.

"This is the second phase of a legislative effort to stabilize and modernize our unemployment compensation laws," President Faber said. "We started during the spring session by giving the governor's administration the authority to pay off our debt to the federal government, and now we're committed to improving the overall solvency of the unemployment compensation system. This committee will help us craft a bill for consideration during the upcoming fall session."

"Ensuring that Ohio's unemployment compensation system is sustainable is crucial for the continual growth of business in the state," Speaker Rosenberger said. "This is an important issue for Ohio's future and I want to thank Senate President Faber, as well as those on the committee, for their willingness to address this issue in a common-sense and collaborative way."

Meetings will be held on the following dates in the Ohio Statehouse in the House Finance Hearing Room (Statehouse Room 313):

August 25th
September 15th
October 6th
October 20th

November 3rd

Members appointed to the committee from the Ohio Senate include: Senators Randy Gardner (R-Bowling Green), Bill Seitz (R-Cincinnati) and Kenny Yuko (D-Euclid).

Members from the Ohio House appointed to the committee include: State Representatives Bob Cupp (R-Lima), Gary Scherer (R-Circleville) and Jack Cera (D-Bellaire).

More information regarding the committee will be forthcoming.

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For more information, contact Carolyn Best at (614) 644-1739 or Carolyn.Best@ohiohouse.gov; or John Fortney at (614) 466-7900 or John.Fortney@ohiosenate.gov

OSHA Delays Enforcement of New Rule's Anti-Retaliation Provisions

By ***Nathan Pangrace***, Associate

On July 13, 2016, the Occupational Safety and Health Administration (OSHA) announced it was delaying enforcement of the anti-retaliation provisions in its new injury and illness tracking rule. Generally, the new rule requires large employers to electronically submit information on workplace injuries to OSHA on an annual basis. OSHA intends to post the data it collects on its public website.

The new rule also includes whistleblower protections, which require employers to inform workers of their right to report work-related injuries and illnesses without fear of retaliation, and implement procedures for reporting injuries and illnesses that are reasonable and do not deter workers from reporting. The whistleblower protections were originally scheduled to begin August 10, 2016, but enforcement will now begin November 1, 2016. There is no change in the effective date for electronic reporting provisions.

According to OSHA, the three-month delay was necessary "to conduct additional outreach and provide educational materials and guidance for employers." More likely than not, however, the delay is due to a lawsuit recently filed against OSHA in Texas federal court over the new rule. (*TEXO ABC/AGC, et al. v. Thomas, et al.*, No. 3:16-CV-1998 (N.D. TX July 8, 2016)).

In their complaint, the National Association of Manufacturers and other industry groups allege the anti-retaliation provisions go too far in limiting post-accident drug testing. Generally, the new rule prohibits employers from using drug testing, or the threat of drug testing, as a form of retaliation against employees who report injuries or illnesses. The plaintiffs argue this provision is an overreach of the agency's authority and limiting such tests will hamper an employer's recourse to keep their workplace safe. The suit seeks a preliminary injunction prohibiting OSHA from implementing the anti-retaliation provision limiting drug testing.

We will keep you updated regarding the status of this lawsuit and any further delays in OSHA's new injury and illness tracking rule. Should you have any questions on this matter, please contact one of the listed Roetzel attorneys.

Author

Nathan Pangrace
npangrace@ralaw.com

Manager

Douglas E. Spiker
dspiker@ralaw.com

Additional Contacts

Matthew D. Austin
maustin@ralaw.com

Robert E. Blackham
rblackham@ralaw.com

Eric G. Bruestle
ebruestle@ralaw.com

Karen Adinolfi
kadinolfi@ralaw.com

Paul L. Jackson
pjackson@ralaw.com

Douglas M. Kennedy
dkennedy@ralaw.com

Denise M. Hasbrook
dhasbrook@ralaw.com

Marcus A. Pringle
mpringle@ralaw.com

Human Resources

[Department of Justice Issues a Proposed Rule to Expand Discrimination Investigations](#)

August 19, 2016

According to a post by the National Association of Manufacturers (NAM), this week the Department of Justice (DOJ) issued a notice of proposed rulemaking expanding its authority and investigative power over employment discrimination and the employment eligibility verification process.

Specifically, the proposed rule seeks to, among other things, expand the scope of activities during the employment verification process that could be deemed “discriminatory” as well as the definition of “discriminatory intent,” for employers. Additionally, the rule would repeal the statute of limitations by expanding the current time bar of 180 days to five years in which DOJ is able to bring an investigation against employers for alleged discrimination based on a variety of grounds including; citizenship, immigration status, national origin discrimination and unfair documentary practices.

Under the current law and practice, employers are found to have engaged in discriminatory behavior if there is intent to discriminate. This rule would essentially remove the requirement to show an employer’s intent. Further, it appears that extending the statute of limitations will give DOJ the leeway to keep investigations going in perpetuity, giving the agency even more leverage to force employers to submit to settle for large sums of money.

NAM is in the process of reviewing this proposed rule. If you care to comment on how this proposal will impact your company, email [Christine Scullion](#), Director, HR Policy, at NAM by Friday, August 26.

[New NLRB Decision Impacts Management Rights Clauses](#)

August 5, 2016

OMA Connections Partner, Frantz Ward, says that a recent decision from the National Labor Relations Board may make it more difficult for an employer to activate a management rights clause in a labor contract.

Here is the Frantz Ward [analysis](#) of *Graymont, PA, Inc. and Local Lodge D92*.

[Drug-free Workplace Support for Employers in Allen, Auglaize, Hardin, Pickaway & Ross Counties](#)

August 5, 2016

If you are a manufacturer in Allen, Auglaize, Hardin, Pickaway or Ross county and want help creating or enhancing your drug-free workplace program, help is on the way. This [community initiative](#) can help you :

- Learn how to legally and operationally protect your business from the risks associated with substance abuse;
- Obtain technical assistance to update your existing substance abuse policy or create a new one;
- Access resources to assist prospective or current employees dealing with substance abuse issues;
- Access discounted drug testing, employee education, supervisor training and ongoing technical assistance.

To learn more or apply, contact [Katie Lemke](#) at OMA Connections Partner, Working Partners®, at (614) 337-8200.

[OSHA Delays Enforcement of New Rule’s Anti-Retaliation Provisions](#)

July 29, 2016

According to OMA Connections Partner, Roetzel, “On July 13, 2016, the Occupational Safety and Health Administration (OSHA) announced it was delaying enforcement of the anti-retaliation provisions in its new injury and illness tracking rule. ...

“The new rule also includes whistleblower protections, which require employers to inform workers of their right to report work-related injuries and illnesses without fear of retaliation, and implement procedures for reporting injuries and illnesses that are reasonable and do not deter workers from reporting. The whistleblower protections were originally scheduled to begin August 10, 2016, but enforcement will now begin November 1, 2016. There is no change in the effective date for electronic reporting provisions.” ([Electronic reporting](#) begins in 2017.)

The delay is possibly related to a lawsuit that has been filed: “In their complaint, the National Association of Manufacturers and other industry

groups allege the anti-retaliation provisions go too far in limiting post-accident drug testing. ...”

[Read more from Roetzel.](#)

[**NLRB: Temporary Workers Can Join Bargaining Units with Regular Employees**](#)

July 15, 2016

OMA Connections Partner, Barnes & Thornburg, posts this: “... The NLRB (National Labor Relations Board) rendered its long-awaited opinion in *Miller & Anderson, Inc.* that, as many business groups feared, makes it easier for temporary employees (e.g., employees provided by staffing companies) to be placed in the same bargaining units as permanent employees.

“... Now, employer consent is no longer required for potential bargaining units that combine jointly employed and solely employed employees of a single user employer. In other words, regular employees (employed directly by the owner of the business) and temporary employees (supplied by an outside temporary staffing agency) can be in the same bargaining unit – and therefore vote together on representation.”

[Read more from Barnes & Thornburg here.](#)

[**Medical Marijuana and Your Workers' Compensation Program**](#)

July 15, 2016

House Bill 523, establishing a statutory right to the use of marijuana for medical purposes for qualifying medical conditions, becomes effective September 8, 2016.

OMA Connections Partner, Dinsmore, posted this article about the effect the new law on workers' compensation programs and claims. In short, workers' compensation policies and practices will not be immediately impacted. [Read more from Dinsmore.](#)

[**AG: Muni Minimum Wage Can't Exceed State's**](#)

July 8, 2016

The labor union (and allies) push for a \$15 minimum wage in some Ohio cities has hit an obstacle. Attorney General Mike DeWine issued an [advisory opinion](#) that cities may not set minimum wage levels in excess of the state minimum wage, pursuant to the state constitution.

In 1912, Ohio voters gave the Ohio legislature the authority to pass wage and hour laws statutorily. In 2006, voters passed a ballot initiative that put Ohio wage and hour law into the state constitution, and put in place minimum wage increases.

In his opinion, the Attorney General essentially says that a municipal ordinance cannot trump the state constitution, even under home rule.

This matter will undoubtedly end up in the Supreme Court of Ohio some day. Meanwhile, we are left with the irony that labor unions pushing the municipal minimum wage increases are the same ones that backed the statewide initiative that put the issue into the constitutional.

[**Millennials: Recruit, Engage & Develop the Next Generation of Leaders**](#)

July 1, 2016

OMA Connections Partner, Clark Schaefer Hackett, is presenting an afternoon event on July 12 in Columbus about recruiting, engaging, and developing the next generation of leaders – millennials.

OMA member, Bob Grote, CEO of the [Grote Company](#), will be one of the panelists.

[Learn more and register here.](#)

[**Ohio's New Medical Marijuana Law Summarized**](#)

June 17, 2016

On June 8, 2016, Ohio Gov. John Kasich signed a medical marijuana bill, Sub. H.B. 523, into law, making Ohio the 25th state to adopt some form of approval and regulation of medical marijuana.

Sub. H.B. 523, which underwent robust discussion and numerous amendments, attempts to balance a perceived acceptance by Ohioans to approve medical marijuana while getting ahead of various groups' efforts to permanently incorporate medical marijuana measures into the Ohio Constitution.

Following extensive House committee review, the House version introduced in April 2016 passed by a 70 to 25 vote. It incorporated many concepts discussed during a series of public meetings convened by the House's Medical Marijuana Task Force earlier this year. Although the Senate version passed by a much narrower version, the Senate amendments also incorporated public input.

The highlights of the final version are [summarized here](#) by OMA counsel, [Joelle Khouzam](#) of Bricker & Eckler.

[“Quickie elections” Upheld by 5th Circuit Court](#)

June 17, 2016

OMA Connections Partner, Bricker & Eckler, posted this: “On June 10, 2016, the U.S. Court of Appeals for the Fifth Circuit, which hears appeals from the federal courts of Florida, Georgia, Alabama, Mississippi, Louisiana and Texas, [dismissed a challenge](#) to the National Labor Relations Board’s “quickie election” rules brought by Associated Builders and Contractors, Inc.

“These rules, which took effect in April 2015, shortened the time between when a union files a petition to represent workers and when an election is held. This shortened period makes it more difficult for employers to inform their employees why union representation is not desirable.

“Associated Builders and Contractors, Inc. argued that the quickie election rules violated employers’ right to free speech and that the National Labor Relations Board lacks the rule-making authority to modify union election procedures. It also questioned the validity of the new hearing limitations and the new requirement that employers provide the union with personal employee cell phone numbers and emails.

“The Fifth Circuit rejected these claims, finding that the Board did not act arbitrarily or capriciously in adopting the new procedures.”

Human Resources, Health Care & Employment Law Legislation

Prepared by: The Ohio Manufacturers' Association
Report created on August 26, 2016

- HB64 OPERATING BUDGET** (SMITH R) To make operating appropriations for the biennium beginning July 1, 2015, and ending June 30, 2017, and to provide authorization and conditions for the operation of state programs.
Current Status: 6/30/2015 - **SIGNED BY GOVERNOR**; eff. 6/30/15; certain provisions effective 9/29/15, other dates
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-64>
- HB350 AUTISM TREATMENT-COVERAGE** (GROSSMAN C, TERHAR L) To mandate coverage of autism treatment.
Current Status: 5/25/2016 - **REPORTED OUT**, House Government Accountability and Oversight, (Fifth Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-350>
- HB355 EMPLOYEE DEFINITION** (RETFERFORD W) To create a generally uniform definition of employee for specified labor laws and to prohibit employee misclassification under those laws.
Current Status: 11/4/2015 - House State Government, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-355>
- HB368 HEALTH INSURANCE LIMITS-EXCLUSIONS** (SEARS B) To make changes to the health coverage benefit limits and coverage exclusions for life and health insurance guaranty associations.
Current Status: 11/4/2015 - House Insurance, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-368>
- HB429 AUTOMOTIVE TECHNICIANS-TRAINING** (ANTANI N, REINEKE W) To allow employers of automotive technicians and motor vehicle technicians to participate in the Incumbent Workforce Training Voucher Program, to revise what constitutes treatment of hazardous waste, to define and regulate autocycles for purposes of the Motor Vehicles Law, and to amend the versions of sections of the Revised Code that are scheduled to take effect January 1, 2017, to continue the provisions of this act on and after that effective date.
Current Status: 6/14/2016 - **SIGNED BY GOVERNOR**; eff. 9/14/16
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-429>
- HB467 UNEMPLOYMENT COMPENSATION FUND** (BUTLER, JR. J) To establish a loan from the Budget Stabilization Fund to the Unemployment Compensation Fund, to require the Director of Job and Family Services to recommend a program to incentivize the purchase of private unemployment insurance, and to require a study on the solvency of the Unemployment Compensation Fund.
Current Status: 4/13/2016 - Referred to Committee House Insurance
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-467>
- HB486 MINIMUM WAGE** (SMITH K, CRAIG H) To increase the state minimum wage to ten dollars

and ten cents per hour beginning January 1, 2017.

Current Status: 4/13/2016 - Referred to Committee House Commerce and Labor

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-486>

HB500 **CASE MANAGEMENT EMPLOYMENT PROGRAM** (ARNDT S) To revise the Comprehensive Case Management and Employment Program, to establish a case management pilot program, to transfer cash from the Economic Development Program Fund (Fund 5JC0) to the Case Management Pilot Program Fund (Fund 5SK0), and to make an appropriation.

Current Status: 4/26/2016 - House Finance, (First Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-500>

HB511 **FAMILY-MEDICAL LEAVE ACT** (KUHNS C, BOYD J) To establish family and medical leave insurance benefits to provide paid leave to allow an individual to address the individual's own serious health condition, to care for a family member, or to bond with a new child and to exempt those benefits from personal income tax.

Current Status: 4/26/2016 - Referred to Committee House Insurance

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-511>

HB523 **MEDICAL MARIJUANA** (HUFFMAN S) To authorize the use of marijuana for medical purposes and to establish the Medical Marijuana Control Program.

Current Status: 6/8/2016 - **SIGNED BY GOVERNOR**; eff. 9/8/16

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-523>

HB535 **EMPLOYMENT PROTECTION-NATIONAL GUARD** (PERALES R) To extend employment and reemployment protection to a person who is a member of another state's national guard or organized militia and who is employed in Ohio.

Current Status: 5/24/2016 - **REPORTED OUT**, House Commerce and Labor, (Third Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-535>

HB537 **DISCRIMINATION-SEXUAL ORIENTATION** (HAYES B) To make discrimination in housing or employment on the basis of sexual orientation an unlawful discriminatory practice; to provide specified protections for religious expression and beliefs about marriage, family, and sexuality; and to prohibit an elected official who solemnizes marriages from refusing to solemnize a marriage of two persons who have been granted a marriage license.

Current Status: 5/10/2016 - House Community and Family Advancement, (First Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-537>

SB25 **MINIMUM WAGE** (YUKO K) To raise the minimum wage; to raise the salary threshold above which certain employees are exempt from the overtime law; and to create a uniform standard to determine whether an individual performing services for an employer is an employee of that employer.

Current Status: 6/24/2015 - Senate Transportation, Commerce and Labor, (First Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-25>

- SB137** **OHIO HEALTH CARE PLAN** (SKINDELL M, TAVARES C) To establish and operate the Ohio Health Care Plan to provide universal health care coverage to all Ohio residents.
Current Status: 4/14/2015 - Referred to Committee Senate Insurance
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-137>
- SB180** **ANTI DISCRIMINATION-EMPLOYMENT** (UECKER J) To prohibit an employer from discharging or otherwise discriminating against a person who exercises a constitutional or statutory right within the person's private real property or motor vehicle.
Current Status: 10/7/2015 - Senate Civil Justice, (Second Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-180>
- SB245** **MALNUTRITION PREVENTION COMMISSION** (MANNING G) To create the Malnutrition Prevention Commission to study malnutrition among older adults.
Current Status: 5/4/2016 - **PASSED BY SENATE**; Vote 33-0
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-245>
- SB268** **STATUTE OF LIMITATIONS-EMPLOYER** (SEITZ B) To modify Ohio civil rights laws related to employment and the statute of limitations for other specified claims against an employer.
Current Status: 5/18/2016 - Senate Civil Justice, (Second Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-268>
- SB301** **PREGNANCY REASONABLE ACCOMMODATION ACT** (JONES S, CAFARO C) To enact the "Pregnancy Reasonable Accommodation Act" to generally require employers to make reasonable accommodations for employees who are pregnant or breastfeeding.
Current Status: 5/18/2016 - Senate Civil Justice, (Third Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-301>
- SB307** **FAMILY-MEDICAL LEAVE ACT** (CAFARO C) To establish family and medical leave insurance benefits to provide paid leave to allow an individual to address the individual's own serious health condition, to care for a family member, or to bond with a new child and to exempt those benefits from personal income tax.
Current Status: 5/11/2016 - Senate Transportation, Commerce and Labor, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-307>
- SB318** **OHIO CIVIL RIGHTS LAW** (SKINDELL M, TAVARES C) To prohibit discrimination on the basis of sexual orientation or gender identity or expression.
Current Status: 4/27/2016 - Referred to Committee Senate Civil Justice
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-318>

TO: OMA Government Affairs Committee
FROM: Ryan Augsburger / Rob Brundrett
RE: Safety and Workers' Compensation Report
DATE: August 31, 2016

Overview

The BWC continues a smooth transition from former Administrator Buehrer to current Administrator Morrison. At this time the Bureau is not planning any major legislative actions this fall. However they continue review and propose changes to the state fund group rating programs. The OMA remains involved in ensuring that any changes made to the system are actuarially sound.

Legislation and Rules

Senate Bill 5 – mental / mental

State Senators Tom Patton (R-Strongsville) and Edna Brown (D-Toledo) introduced Senate Bill 5. The bill would allow emergency first responders to receive workers' compensation benefits for PTSD even if they do not have an accompanying physical work injury. This would go against how Ohio's workers' comp system has historically operated.

“Mental/mental,” as the provision is called, would go against the workers' compensation principle that benefits must be tied to a compensable physical illness or injury. The measure would increase complexity and cost for public employers and allow certain employees to receive benefits not available to others. It also would be a terrible precedent facing private sector employers.

This would be a major change for public employers and possibly private employers in the future. The Senate passed a similar measure three times last year, only to be rebuffed by the House on each occasion.

The Senate heard powerful testimony from Administrator Buehrer but nonetheless passed the bill out of committee with only one no vote (Uecker). The bill was referred and passed unanimously from the Senate Finance Committee. However the bill has been re-referred to Senate Finance for further consideration. There have been two contentious interested party meetings with both sides entrenched with their positions.

Senator Patton remains focused on passing the bill. There is concern with this bill being used as a bargaining chip in lame duck session.

Senate Bill 27 / House Bill 292 – firefighter cancer

Senator Tom Patton (R-Strongsville) and Representative Christina Hagan introduced companion bills that would assume a firefighter with certain types of defined cancers contracted those cancers within their working conditions.

Last month Senate Bill 27 passed unanimously through the Senate Insurance Committee and off the Senate floor 32-1. The bill provides that a firefighter who is disabled as a result of specified types of cancer is presumed to have incurred the cancer while performing his or her job duties, thus creating eligibility for workers' compensation benefits.

The bill allows that the presumption can be rebutted if it can be proven that the cancer was directly caused by working conditions. This is the opposite of Ohio's asbestos statute which has become a national model. Originally the cancers covered under the bill include: cancers of the lung, brain, kidney, bladder, rectum, stomach, skin, or prostate; Non-Hodgkin's lymphoma; leukemia; multiple myeloma; and testicular or colorectal cancer. In committee, an amendment was added to include, breast, cervical, and uterine cancers to the bill.

BWC estimated an additional 568 claims annually at an approximate cost of \$75 million. Much like Senate Bill 5, this bill would create a major shift in Ohio's workers' compensation laws. The House has indicated that they might pass the bill in lame duck.

Senate Bill 149 – Loss of use

To make an individual who has lost the use of a body part due to a brain injury or spinal cord injury eligible for partial disability and permanent total disability compensation under the Workers' Compensation Law. The minority sponsored bill has not had a hearing and is not expected to move.

House Bill 205 – Private Insurance

Rep. Mike Henne introduced HB 205 which would allow employers with more than 1,000 employees, as well as workers' compensation groups managed by third party administrators to purchase workers' compensation coverage in the private market.

In the fall Rep. Henne introduced a sub bill. The sub bill deletes all the language of the original bill and replaces it with a provision that would totally eliminate the employee threshold for self-insurance. Currently the BWC can already waive this provision for companies with strong financials due to an OMA budget amendment several years ago. The provision is unneeded. This was amended into House Bill 207.

House Bill 206 – Industrial Commission Statistics

Rep. Henne introduced HB 206 which requires the Industrial Commission to compile and maintain statistics on workers' compensation hearing decisions and hearing officers. The IC is adamant this is problematic and is searching for allies to fight Rep. Henne on the bill.

House Bill 207 – Subrogation

Reps. Henne and Robert McColley introduced HB 207. The bill enables claims costs to be charged to the Bureau of Workers' Compensation (BWC) surplus fund rather than a state fund employer's experience when a motor vehicle accident-related workers' compensation claim is likely to be subrogated by a third party.

House Bill 207 cleared both the Senate floor and House concurrence. The OMA was a supporter of the legislation. OMA Safety and Workers' Compensation Chairman Larry Holmes, Sr. V.P., Finance, Fort Recovery Industries, Inc., provided proponent testimony on behalf of the OMA last fall during committee hearings.

The Senate added an amendment which would assign a true experience rating to companies who leave a self-insured PEO or self-insured status and are returning to the state fund. A second amendment was added that eliminated the 500 person threshold for self-insured status.

House Bill 355 – employee misclassification

Rep. Wes Retherford (R – Hamilton) has introduced a bill, HB 355, that would turn the Bureau of Workers' Compensation (BWC) into an agency that would police businesses in their classifications of employees and independent contractors.

Under the bill, the BWC would be authorized to enter and inspect all of the offices and job sites maintained by an employer who is the subject of a complaint that an employer is misclassifying an employee. The BWC would be authorized to issue stop work orders and fines.

For many many years, organized labor has attempted to create a de facto Department of Labor at the state level. That's what this one is after. It is a really bad idea.

The OMA participated in an interested party meeting and reiterated its position that the bill is a bad idea and should be shelved.

House Bill 523

On May 10, 2016, the Ohio House of Representatives voted 71 to 26 to legalize medical marijuana in Ohio. This vote follows a series of public meetings held by the House's Medical Marijuana Task Force earlier this year, the bill's introduction on April 14, 2016, and vigorous committee debate and amendments.

The Senate passed the bill in late May 18-15, needing bipartisan support to push the bill over the finish line. The measure seeks to address Ohioan's apparent support for the concept of medical marijuana, but builds in regulatory controls that are missing citizen-initiated measures that hope to gain enough signatures be on the November ballot.

While not the best scenario for manufacturers, the legislations is a much more responsible step with the opportunity to improve the law compared to the irresponsible actions of getting marijuana enshrined in the Ohio constitution. Passage of the bill which is much more business friendly then the ballot options convinced the greatest ballot threat (MPP) to suspend their campaign.

BWC Agency Notes

BWC Board Approves 8.6% Average Premium Reduction

The Ohio Bureau of Workers' Compensation (BWC) board of directors approved an 8.6% reduction in overall average rates for the state's private employers. The move will decrease projected annual premiums by \$113 million next year.

Over the past five years, Ohio's private and public sector employers have benefited from \$4.3 billion in rate cuts, rebates and credits.

The latest cuts for private employers will begin July 1. The reduction is an overall statewide average. The actual premium paid by individual private employers depends on a number of factors, including the expected future costs in their industry, their recent claims history, and their participation in various programs.



OHIO MEDICAL MARIJUANA LEGALIZATION– SUB. H.B. 523

On June 8, 2016, Ohio Gov. John Kasich signed a medical marijuana bill, Sub. H.B. 523, into law, making Ohio the 25th state to adopt some form of approval and regulation of medical marijuana.

Sub. H.B. 523, which underwent robust discussion and numerous amendments, attempts to balance a perceived acceptance by Ohioans to approve medical marijuana while getting ahead of various groups' efforts to permanently incorporate medical marijuana measures into the Ohio Constitution.

Following extensive House committee review, the House version introduced in April 2016 passed by a 70 to 25 vote. It incorporated many concepts discussed during a series of public meetings convened by the House's Medical Marijuana Task Force earlier this year. Although the Senate version passed by a much narrower version, the Senate amendments also incorporated public input. The highlights of the final version include the following components:

Legislative intent

Sub. H.B. 523 is intended to tax and regulate medical marijuana use and distribution, to recommend to Congress that marijuana be reclassified as a schedule II controlled substance, and to establish incentives for academic and medical research relating to medical marijuana.

Definition of medical marijuana

"Medical marijuana" is defined as marijuana (as currently defined by Ohio law) cultivated, processed, dispensed, tested, possessed, or used for a medical purpose.

Who will regulate medical marijuana in Ohio?

The governor will appoint a Medical Marijuana Advisory Commission within the state Board of Pharmacy to make recommendations to the Department of Commerce, the Pharmacy Board, and the Medical Board for a medical marijuana control program.

Within one year of the effective date of this law, the Department of Commerce will make rules, set standards, and establish best practices for this program. The program shall, in part:

- Establish application procedures, fees, disqualifying factors, and number of licenses for cultivators, processors, and retail dispensaries, based on population, number of patients, and geographic distribution, within 240 days of the effective date. Further, 15% of cultivators, processors, or labs are to be owned or controlled by residents who are members of economically disadvantaged groups;
- Determine how licenses will be renewed, suspended, or revoked, and how a suspension may be lifted;
- Regulate activities from taking place within 500 feet of schools, churches, libraries, playgrounds, parks;
- Create confidential databases to monitor medical marijuana from seed source through dispensing.

The state's existing Automated Rx Reporting System will be used to track the movement of dispensed medical marijuana.

The Pharmacy Board will regulate testing laboratories, and will also require licensed dispensaries to have a pharmacist on staff.

The Medical Board will regulate physicians who may recommend use.

Who may use medical marijuana?

The State Medical Board may determine additional conditions, but those who suffer from the following conditions may apply to become registered users: AIDS; amyotrophic lateral sclerosis; Alzheimer's disease; cancer; chronic traumatic encephalopathy; Crohn's disease; epilepsy or another seizure disorder; fibromyalgia; glaucoma; hepatitis C; inflammatory bowel disease; multiple sclerosis; pain that is chronic, severe, and intractable; Parkinson's disease; positive status for HIV; post-traumatic stress disorder; sickle cell anemia; spinal cord disease or injury; Tourette's syndrome; traumatic brain injury; and ulcerative colitis.

Before the implementation of sales of Ohio-grown product (*i.e.*, between September 2016 and sometime in late 2017 or early 2018), the Pharmacy Board may negotiate reciprocity agreements with other states where medical marijuana is legal to enable registered users and caregivers to purchase medical marijuana and transport it back into Ohio for use.

Registered users and caregivers are immune from arrest and prosecution for consuming medical marijuana in the form of edibles, oils, tinctures, patches, and vaporization (vaping will be limited to extracts from plants by approved sources with THC content of less than 70%). However, driving or using a vehicle while under the influence is not authorized.

Medical Recommendations

A qualifying physician may recommend – *not prescribe* -- that a patient consider medical marijuana to patients with whom a documented physician-patient relationship exists. Qualifying physicians may not personally furnish/dispense medical marijuana, or have any involvement in a medical-marijuana cultivating or retailing enterprise.

Physicians who wish to recommend medical marijuana will be registered and controlled through the Ohio State Medical Board, which will issue and may revoke certificates to recommend. They will be required to confidentially track the use and outcomes of medical marijuana recommendations. They will also be required to participate in continuing education courses.

A patient recommendation cannot be renewed more than three times for 90 days each, absent a physical examination. The physician must conform to confidential reporting requirements that track the effectiveness of use during the year covered by the recommendation and renewals.

Dispensing, Content Limits, Labeling, and Safety

The law permits dispensation of up to 90-day supplies of medical marijuana from licensed dispensaries, but prohibits cultivation for personal use.

Labeling must specify the tetrahydrocannabinol (THC) and cannabidiol ratios. The law imposes prohibitions on making products attractive to minors, and requires that dispensed product be inaccessible to minors.

Labs regulated by the Board of Pharmacy will test for potency, homogeneity, and contamination, and must report results.

The Pharmacy Board shall establish a toll-free line to respond to patients and medical providers about adverse reactions to medical marijuana.

Employment Considerations

Employers may test and take disciplinary action against employees who test positive for use of marijuana.

There is no requirement to accommodate an employee's use of medical marijuana, or to prohibit an employer from refusing to hire, discharging, or taking an adverse employment action because of a person's use of medical marijuana. Moreover, there is no provision for suing an employer who takes such actions.

A termination based on using medical marijuana is a discharge for just cause for unemployment purposes if it violates a written policy of the employer (i.e., a zero-tolerance substance abuse policy, or comparable policy against use of drugs), and would render the applicant for benefits ineligible.

The workers' compensation rebuttable presumption, allowing an employer to initially deny a claim in the event of a positive drug test and allowing the employee to dispute that denial at a hearing, could render an employee ineligible if being under the influence of marijuana was the proximate cause of the injury, regardless of whether its use is recommended by a physician.

The Ohio BWC can continue to grant premium rebates/discounts to employers that participate in the drug-free workplace program.

Zoning

Municipalities and townships may regulate or prohibit licensed retail dispensaries. Counties and townships may apply agricultural-use zoning limitations to regulate retail dispensaries in unincorporated territory.

Banking Services

The bill authorizes financial institutions to conduct business with licensed cultivators, processors, retail dispensaries, or labs.

Post-script

One day after the General Assembly passed Sub. H.B. 523, Ohioans for Medical Marijuana, the group seeking to place the medical marijuana issue before voters in November as a proposed constitutional amendment, suspended its effort to collect petition signatures. The group, backed by the national Marijuana Policy Project, said the changes made to the legislation were acceptable, despite not permitting smoking or home growing of medical marijuana.

Medical Marijuana and its IMPACT ON BWC

What does OHIO'S medical marijuana LAW SAY?

House Bill 523, effective Sept. 8, 2016, legalizes medical marijuana in Ohio for certain medical conditions, including pain that is either chronic and severe or intractable, PTSD, and traumatic brain injuries. At this time, the only legal forms of medical marijuana will be edibles, oils, patches, plant material and tinctures. Vaporization is permitted. It cannot be smoked or combusted. Home growth is prohibited.

The Ohio Department of Commerce is tasked with regulating the licensure of medical marijuana cultivators and processors, as well as the laboratories that test medical marijuana. The state of Ohio Board of Pharmacy will license retail dispensaries and register patients and their caregivers. Additionally, the State Medical Board of Ohio will regulate physicians' requirements and procedures for applying for and maintaining certificates to recommend medical marijuana and maintain the list of conditions for which medical marijuana can be recommended.

What is the IMPACT of the new law ON BWC?

The impact of the new law on BWC and its programs is limited. It does not adversely affect the Drug-free Safety Program, will not require BWC to pay for patient access to marijuana, and expressly states that an employee under the influence of marijuana is not covered by workers' compensation.

Specifically:

- 1 Nothing in the law requires an employer to accommodate an employee's use of medical marijuana;
- 2 The law does NOT prohibit an employer from refusing to hire, discharging, or taking an adverse employment action because of a person's use of medical marijuana;
- 3 The law specifies that marijuana is covered under "rebuttable presumption." In general, this means that an employee whose injury was the result of being intoxicated or under the influence of marijuana is not eligible for workers' compensation. This is the case regardless of whether the marijuana use is recommended by a physician;
- 4 While the law does not specifically address reimbursement for medical marijuana recommended for injured workers, Ohio law already has rules and statutes in place that limit what medications are reimbursable by BWC.
 - Administrative code provides that drugs covered by BWC are limited to those that are approved by the United States Food and Drug Administration. Marijuana has not been approved by the FDA and remains a Schedule I illegal drug under federal law.
 - BWC-funded prescriptions must be dispensed by a registered pharmacist from an enrolled provider. Medical marijuana will be dispensed from retail marijuana dispensaries, not from enrolled pharmacies.
 - BWC only reimburses drugs that are on its pharmaceutical formulary, which is a complete list of medications approved for reimbursement by BWC. Drugs not on the list are not eligible for reimbursement, and under BWC's current rules, it cannot be included in the formulary, nor is it otherwise eligible for reimbursement.

What can EMPLOYERS DO?

The best way employers can protect their workers and themselves is to establish a **drug-free workplace**, or, if they already have one, to review and update it if necessary. This is important because certain sections of the new law reference the use of medical marijuana in violation of an employer's drug-free workplace policy, zero-tolerance policy or other formal program or policy regulating the use of medical marijuana. For what this means to your specific workplace, consult your human resources or legal department.

Self-Insuring Assessments

Frequently Asked Questions

What funds do self-insuring employer assessments cover?

Self-Insured Surplus Fund (SIS) – This fund covers claim costs charged to the Surplus Fund of the State Insurance Fund. These costs are primarily for claims with injury dates prior to 1987 of defaulted self-insured employers and for specific medical exams and prostheses.

Self-Insured Employers Guaranty Fund (SIEGF) – This fund covers the costs of defaulted self-insuring employers' claims with injury dates after 1986. It also includes managed care organization (MCO) fees and the costs of Disabled Workers' Relief Fund (or cost-of-living increases) on eligible bankrupt self-insuring employers' permanent total disability claims with any injury date.

BWC and Industrial Commission of Ohio (IC) Administrative Cost Funds – These funds cover the administrative costs of BWC and IC activities that support self-insuring employers.

Division of Safety & Hygiene Fund – This fund covers BWC's Division of Safety & Hygiene's activities on behalf of self-insuring employers.

Optional Disallowed Claim Reimbursement Program – This assessment funds the program to reimburse participating self-insuring employers for claim costs awarded by the IC that were ultimately overturned. Currently, 405 self-insuring employers participate in this program.

Guaranty fund assessments for new self-insuring employers – We assess new self-insuring employers 6 percent of the most-current complete year of payroll premium at the effective date of self-insurance and the next two renewals.

How does BWC determine assessment rates?

BWC maintains a minimum balance of funds in the SIEGF at rates as low as possible to assure sufficient moneys to guarantee the payment of any claims against the fund. Additionally, Ohio Administrative Code 4123-19-15 (B) requires the SIEGF to maintain a minimum balance of 1.25 times the prior year's annual claims disbursements. When BWC determines the SIEGF has insufficient funds, an assessment is necessary to ensure the minimum balance in the fund. BWC will then assess all self-insuring employers an annual contribution.

BWC determines SIS and SIEGF year-end fund balances and identifies adjustments needed in the upcoming year. BWC determines new rates based on projected income from assessments and other third-party sources, and the amount needed to meet the statutorily required levels.

What are the revenue sources for the SIS and SIEGF?

The primary source of revenue is the assessment payments from self-insuring employers. Additional revenue can come from collection on security for defaulted employers and recoveries from excess liability insurance previously held by defaulted employers.

What is the minimum assessment rate?

Each year, BWC determines the minimum amount of assessment due, regardless of the amount of compensation paid and reported. For a canceled self-insuring employer, BWC reduces the minimum assessment by 10 percent each year the employer reports paid compensation below the amount required to reach the minimum rate.

How did BWC determine the current assessment rates?

Please see the current-year assessment rate documentation.

How does BWC invoice the assessments?

BWC levies assessments based on the prior year's reported paid compensation for all active self-insuring employers. BWC uses reported compensation for the calendar year 2015 for the January and July 2017 billings. Payments are due the last day of February and August, respectively.

Where should employers send payments?

Employers can send payments by regular mail to the Ohio Bureau of Workers' Compensation, P.O. box 89492, Cleveland, OH 44101-6492.

Employers can send payments by overnight mail to Ohio Bureau of Workers' Compensation Attn: Lockbox 89492 4910 Tiedeman Road Cleveland, OH 44144.

Can employers pay invoices online?

Employers can make online payments with a credit card or routing number through their BWC e-account.

What if my payment is late?

BWC must receive assessment payments prior to the end of February and August. BWC will charge \$500 late-payment penalty if payment is not received on time. BWC may add additional penalties if payments are not received within 60 days of the payment due date.

Safety & Workers' Compensation

[BWC on Medical Marijuana Law](#)

August 12, 2016

The Bureau of Workers' Compensation (BWC) has prepared [this factsheet](#) about the impact on employers of Ohio's medical marijuana law, which takes effect September 8, 2016.

BWC says: "The best way employers can protect their workers and themselves is to establish a [drug-free workplace](#), or, if they already have one, to review and update it if necessary. This is important because certain sections of the new law reference the use of medical marijuana in violation of an employer's drug-free workplace policy, zero-tolerance policy or other formal program or policy regulating the use of medical marijuana. For what this means to your specific workplace, consult your human resources or legal department."

OMA members are also encouraged to consult with OMA Connections Partner, [Working Partners®](#), on drug-free workplace matters.

[BWC Safety Innovation Awards – Enter by September 30](#)

August 12, 2016

The Ohio Bureau of Workers' Compensation (BWC) is accepting applications from Ohio employers for the 2017 Safety Innovation Awards.

Submit your innovation that demonstrates reduction in safety or ergonomic risk factors, or occupational health exposures.

Cash awards up to \$6,000. Apply by September 30, 2016.

Eligibility [requirements and application instructions are available here](#).

[New BWC FAQ on SI Assessments](#)

August 12, 2016

The Bureau of Workers' Compensation (BWC) has released [this new FAQ](#) about assessments it charges to Ohio's self-insured employers.

[In a Workers' Compensation Group Program? True-up by August 15 or Else!](#)

August 5, 2016

The Bureau of Workers' Compensation (BWC) "true-up" window ends at close of business Monday, August 15.

According to the BWC, many state fund companies have not yet completed the true-up.

Employers are required to report their actual payroll for the policy year ended June 30, 2016 and reconcile any differences in premium paid. Employers must complete the true-up report even if their payroll for the year matches the estimate received from BWC.

Failing to true up will disqualify your company for rebates/refunds due in policy year 2015 and render your company ineligible for any BWC discount programs in policy year 2016 as well as policy year 2017.

The quickest and easiest way to true-up is online with a BWC e-account. [Learn how to create an e-account here](#). For true-up instructions, [please visit this link](#). The payroll true-up may also be completed through the BWC call center at (800) 644-6292.

Questions? Contact OMA's [Brian Jackson](#) at (614) 629-6819.

[BWC Offers Transitional Work Grants and Bonuses](#)

July 22, 2016

BWC's Transitional Work Grants helps employers create a customized plan to return an injured worker to duty with restrictions. Transitional work uses real job duties for a specified period to gradually return the injured worker to his/her original job.

Now is a good time to consider a transitional work grant; a recent change to the program means employers are no longer required to have a claim to receive a grant.

Once implemented, employers can also [receive a bonus](#) for using the plan to return injured workers to work.

Read more about the program [here](#) and [here](#), and contact [BWC's transitional work unit](#) or OMA's [Brian Jackson](#) with questions.

[Have a Safety Innovation? Enter to Win BWC Competition!](#)

July 22, 2016

BWC's annual Safety Innovation Awards competition recognizes innovations that have reduced safety risks for employees. The deadline to apply for the next round of Safety Innovation Awards is September 30.

The final round of the competition will be held at the 2017 Ohio Safety Congress & Expo next March. Cash prizes range from \$1,000 to \$6,000.

[Learn about the BWC Safety Innovations Award here.](#)

[Time to "True-up"](#)

July 15, 2016

With the state's new fiscal year now underway, the Bureau of Workers' Compensation (BWC) [is calling on employers](#) to participate in the final step of the agency's transition to prospective billing.

The "True-up" window opened July 1 and closes at the close of business Aug. 15. Employers are required to report their actual payroll for the policy year ended June 30, 2016 and reconcile any differences in premium paid.

BWC began its switch to a prospective billing last year and now collects premiums upfront, an insurance industry standard practice.

BWC will remove employers from their current rating plan or discount program if it does not receive a payroll true-up by the due date. Any outstanding payroll true-ups will render the employer ineligible for participation in future rating plans or discount programs until all outstanding payroll true-ups are complete. Employers must complete the true-up report even if their payroll for the year matches the estimate received from BWC.

The quickest and easiest way to true-up is online with a BWC e-account. Online true-up and payment also qualifies eligible employers for a 1% rebate up to \$2,000.

Learn how to [create an e-account here](#). For true-up instructions, [please visit this link](#). The payroll true-up

may also be completed through the BWC call center at (800) 644-6292.

[100 Ohio Employers Now Have Other States Coverage Policies](#)

July 15, 2016

The Ohio Bureau of Workers' Compensation (BWC) has [issued its 100th policy](#) under the Other States Coverage program, a new option that protects Ohio businesses with employees who work in other states. The coverage ensures these employees are protected regardless of where they are injured without the need to manage policies in multiple states with varying laws.

BWC generally provides coverage for employees working temporarily outside of Ohio. However, complications could arise when the injured worker files a claim in another state. Treatment can be delayed and businesses can be subject to penalties by the other state.

A law enacted last year granted BWC the authority to contract with an insurer to provide this coverage. BWC is working with United States Insurance Services (USIS) and Zurich Insurance to provide that coverage.

[Go here to learn more and to apply.](#) A brief video overview of the new program [can be found here](#).

[BWC Names New Legislative Director](#)

July 1, 2016

Ohio Bureau of Workers' Compensation (BWC) Administrator & CEO Sarah Morrison [announced](#) that Elle Decot has joined the agency as its legislative director.

Decot will be charged with representing BWC at the Statehouse, working with lawmakers on legislation effecting Ohio's workers' compensation system and responding to constituent and customer questions and concerns.

She joined BWC on June 13, filling a role vacated by Kelly Carey, who left the bureau in April for a job in the private sector. A photo of Decot [can be found here](#).

BWC Board to Host Toledo Public Forum

June 24, 2016

The Ohio Bureau of Workers' Compensation (BWC) board of directors will host a public forum Wednesday, June 29 at 9:00 a.m. in Toledo for area business owners, medical providers, stakeholders, injured workers and other interested parties.

Members of the board will conduct a roundtable discussion about BWC and how policy decisions are made by the board. This is also an opportunity for the directors to learn which issues are most important to stakeholders in the area, and the suggestions they may have for improvement.

The meeting will take place at 1 Government Center, Suite 1136, Toledo, Ohio 43604-0794.

BWC True-Up Reminder!

June 17, 2016

Prospective billing payroll true-up begins July 1! Visit the [BWC website](#) for more information. This [2-minute video](#) explains the true-up process.

A Guide for Safety Sustainability Reporting

June 17, 2016

The Center for Safety and Health Sustainability has released a [Best Practice Guide for Occupational Health and Safety in Sustainability Reports](#), which outlines a framework that can be used to incorporate occupational health and safety metrics into sustainability reporting practices.

The eight-page guide was developed through a collaborative process that included some of the world's largest OSH professional organizations and represents standards of performance which are already accepted, understood, and operationalized by those managing safety and health at work.

Workers' Compensation Legislation
Prepared by: The Ohio Manufacturers' Association
Report created on August 26, 2016

- HB51** **INDUSTRIAL COMMISSION BUDGET** (HACKETT R) To make appropriations for the Industrial Commission for the biennium beginning July 1, 2015, and ending June 30, 2017, and to provide authorization and conditions for the operation of Commission programs.
Current Status: 6/30/2015 - **SIGNED BY GOVERNOR**; eff. 6/30/15; certain provisions effective 9/29/15
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-51>
- HB52** **WORKERS' COMPENSATION BUDGET** (HACKETT R) To make changes to the Workers' Compensation Law, to make appropriations for the Bureau of Workers' Compensation for the biennium beginning July 1, 2015, and ending June 30, 2017, and to provide authorization and conditions for the operation of the Bureau's programs.
Current Status: 6/30/2015 - **SIGNED BY GOVERNOR**; eff. 6/30/15; certain provisions effective 9/29/15, other dates
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-52>
- HB64** **OPERATING BUDGET** (SMITH R) To make operating appropriations for the biennium beginning July 1, 2015, and ending June 30, 2017, and to provide authorization and conditions for the operation of state programs.
Current Status: 6/30/2015 - **SIGNED BY GOVERNOR**; eff. 6/30/15; certain provisions effective 9/29/15, other dates
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-64>
- HB205** **SELF-INSURING EMPLOYERS** (HENNE M, RETHERFORD W) To modify the requirements for an employer to become a self-insuring employer for purposes of the Workers' Compensation Law, to transfer authority over the workers' compensation self-insurance program to the Superintendent of Insurance, and to allow certain employers and groups of employers to obtain workers' compensation coverage from a private workers' compensation insurer.
Current Status: 2/9/2016 - House Insurance, (Third Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-205>
- HB206** **INDUSTRIAL COMMISSION-CLAIM STATISTICS** (HENNE M) To require the Industrial Commission to keep statistics on individual hearing decisions of contested workers' compensation claims.
Current Status: 6/9/2015 - House Insurance, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-206>
- HB207** **WORKERS' COMPENSATION-SURPLUS FUND** (HENNE M, MCCOLLEY R) To allow a state fund employer to have a workers' compensation claim that is likely to be subrogated by a third party paid from the surplus fund account in the state insurance fund rather than charged to the employer's experience.
Current Status: 5/31/2016 - **SIGNED BY GOVERNOR**; eff. 8/31/16
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-207>

- HB292** **FIREFIGHTER COMPENSATION** (HAGAN C) To provide that a firefighter who is disabled as a result of specified types of cancer is presumed for purposes of the laws governing workers' compensation and the Ohio Police and Fire Pension Fund to have incurred the cancer while performing official duties as a firefighter.
Current Status: 10/6/2015 - House Insurance, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-292>
- HB355** **EMPLOYEE DEFINITION** (RETFERFORD W) To create a generally uniform definition of employee for specified labor laws and to prohibit employee misclassification under those laws.
Current Status: 11/4/2015 - House State Government, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-355>
- HB510** **PNEUMOCONIOSIS-WORKERS' COMPENSATION** (CERA J) To modify workers' compensation benefit amounts for occupational pneumoconiosis claims and to create the Occupational Pneumoconiosis Board to determine medical findings for such claims.
Current Status: 4/13/2016 - Referred to Committee House Insurance
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-510>
- SB5** **WORKERS' COMPENSATION-PTSD** (PATTON T, BROWN E) To make peace officers, firefighters, and emergency medical workers diagnosed with post-traumatic stress disorder arising from employment without an accompanying physical injury eligible for compensation and benefits under Ohio's Workers' Compensation Law.
Current Status: 10/13/2015 - **REPORTED OUT AS AMENDED**, Senate Finance, (Sixth Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-5>
- SB27** **WORKERS' COMPENSATION-FIREFIGHTER CANCER** (PATTON T) To provide that a firefighter who is disabled as a result of specified types of cancer is presumed for purposes of the laws governing workers' compensation and the Ohio Police and Fire Pension Fund to have incurred the cancer while performing official duties as a firefighter.
Current Status: 5/24/2016 - House Insurance, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-27>
- SB149** **WORKERS' COMPENSATION-BRAIN-SPINAL CORD INJURY** (SCHIAVONI J) To make an individual who has lost the use of a body part due to a brain injury or spinal cord injury eligible for partial disability and permanent total disability compensation under the Workers' Compensation Law.
Current Status: 4/22/2015 - Referred to Committee Senate Transportation, Commerce and Labor
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-149>

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

Overview

This fall the Administration will begin to prepare Governor Kasich's final budget. The biggest issue concerns a budget hole estimated around \$1 billion as a result of Medicaid tax changes. There is a good chance that any new budget proposal may include an income tax reduction. How the budget hole and a possible income tax reduction are paid remains a mystery.

Tax Legislation

2020 Tax Policy Study Commission

The Study Commission continues to hold monthly hearings to discuss the various aspects of Ohio's tax climate. The OMA has testified twice before the committee. First the OMA testified on general tax conditions and impacts on manufacturing. The second time, the OMA testified specifically on tax credits.

Co-chairman Jeff McClain from the House is to be replaced by new House Ways and Means Chairman Tim Schaffer.

The Study Commission plans to have some recommendations for the next budget.

The Study Commission has not had a hearing since the spring. It does not look like it will have another hearing until this fall at the earliest.

House Bill 9 – tax expenditure review committee

HB 9 was introduced by Representative Boose (R-Norwalk). The bill creates a Tax Expenditure Review Committee that would periodically review existing and proposed tax expenditures. The bill was voted out of the Senate on May 25. However due to an amendment dealing with controlling board, the bill has been held up.

Senate Bill 88 – CAT credit

Sponsored by Sen. Charleta Tavares (D-Columbus) would create tax credits, including CAT credits, for the employment of individuals who have been convicted of criminal offenses. The bill has not had any hearings. Nor is it expected to move.

House Bill 102 – CAT credit

House Bill 102 sponsored by Reps. Niraj Antani (R-Miamisburg) and Hearcel Craig (D-Columbus), would provide a bid preference for state contracts to a veteran-owned business and would have authorize a personal income and CAT credit for a business that hires and employs a veteran for at least one year. However the sponsors introduced a substitute version of the bill at its first hearing removing the CAT provisions from the bill. The bill only received a first hearing for sponsor testimony last year.

House Bill 176 – CAT credit

House Bill 176 sponsored by Reps. Hall (R-Millersburg) and O'Brien (D-Bazetta) creates the Gaseous Fuel Vehicle Conversion Program. The bill allows a credit against the income or commercial activity tax for the purchase or conversion of alternative fuel vehicle. It reduces the amount of sales tax due on the purchase or lease of a qualifying electric vehicle by up to \$500. It applies the motor fuel tax to the distribution or sale of compressed natural gas. The bill also authorizes a temporary, partial motor fuel tax exemption for sales of compressed natural gas used as motor fuel. The bill was introduced in the previous General Assembly, but stalled in the legislative process. Earlier this year it was passed out of House Ways and Means Committee. The bill was re-referred to Finance Committee and voted out of committee last November.

An alternative fuel vehicle conversion grant program was included in House Bill 390. The OMA has long advocated for grant programs in place of tax credits.

Senate Bill 198 – non-resident municipal income tax

SB 198 was introduced by Senator Jordan (R-Ostrander). The bill prohibits municipal corporations from levying an income tax on nonresidents' compensation for personal services or on net profits from a sole proprietorship owned by a nonresident. This bill has opposition from Ohio's cities and villages. The bill had one hearing last fall. It is not expected to move.

House Bill 232 – seller use tax collection

HB 232 was introduced by Representatives Grossman (R-Grove City) and Scherer (R-Circleville). The bill prescribes new criteria for determining whether sellers are presumed to have substantial nexus with Ohio and therefore required to register to collect use tax to allow sellers presumed to have substantial nexus rebut that presumption, and to require a person, before the person enters into a sale of goods contract with the state, to register, along with the person's affiliates, to collect use tax. The bill has not had a hearing.

Senate Bill 235 – increased value property tax

Senate Bill 235 was introduced by Senators Beagle (R-Tipp City) and Coley (R-Liberty Township) and would exempt from property tax the increased value of property on which industrial or commercial development is planned until construction of new commercial or industrial facilities at the property commences. The bill was passed by the Senate in late May and is supported by local chambers of commerce.

Senate Bill 246 / House Bill 398 – change the CAUV computation

Senator Hite (R-Findley) and Representative Hill (R-Zanesville) introduced companion bills to require that the computation of the capitalization rate for the purposes of determining CAUV of agricultural land be computed using a method that excludes appreciation and equity buildup and to stipulate that CAUV land used for a conservation practice or enrolled in a federal land retirement or conservation program for at least three years must be valued at the lowest of the values assigned on the basis of soil type.

The bill is proving to be controversial due to the fact that agriculture land is already taxed at a reduced rate compared to residential and commercial property. The Senate and House bills have had multiple hearings to vet the issue.

Senate Bill 264 / House Bill 454 – permanent holiday sales tax

Last year Ohio passed a pilot project to exempt sales tax during one week of back to school shopping. There is interest in making that a permanent tax break. The General Assembly quickly passed the Senate version earlier this year.

Senate Bill 288 – income tax for pass through entities reform

SB 288 was introduced by Senator Eklund (R-Munson Township). The bill revises the law governing how taxes on income from pass-through entities is to be reported and paid by the entities and their investors. The bill has had two official hearings. Interested party meetings have continued through the summer.

Senate Bill 289 / House Bill 475 – increase the motion picture tax credit

The motion picture tax credit companion bills sponsored by Senator Patton (R-Strongsville) and Representative Schuring (R-Canton) would expand the current motion picture tax credit. The bills would be applied against the current credit against the commercial activity tax. A version of HB 475 was amended into HB 390 and passed.

Senate Bill 310 – capital appropriations

SB 310 was introduced by Senator Oelslager (R-Canton). The capital bill is expected to move quickly. It is scheduled to leave the Senate this week after only one week of hearings. It is expected to have strong bi-partisan support. The bill provides funding for capital projects across the state and in all the legislative districts. The bill was quick passed and signed by the Governor in May.

House Bill 343 – remove sale tax on temp employees

HB 343 was introduced by Representatives Romanchuk (R-Mansfield) and Young (R-Leroy Township). The bill would exempt employment services and employment placement services from sales and use tax.

This is a priority tax issue for manufacturers who in Ohio must pay sales tax on their temporary employees. The OMA has strongly advocated for this tax relief for manufacturers over the past two budget cycles.

The bill was finally voted out of House Committee during an extremely busy May.

The OMA and members Whirlpool and Cargill testified in support of the measure last fall.

House Bill 355 – employee misidentification

Rep. Wes Retherford (R – Hamilton) has introduced a bill, HB 355, that would turn the Bureau of Workers' Compensation (BWC) into an agency that would police businesses in their classifications of employees and independent contractors.

Under the bill, the BWC would be authorized to enter and inspect all of the offices and job sites maintained by an employer who is the subject of a complaint that an employer is misclassifying an employee. The BWC would be authorized to issue stop work orders and fines.

For many many years, organized labor has attempted to create a de facto Department of Labor at the state level. That's what this one is after. It is a really bad idea.

There have been two interested stakeholder meetings regarding the bill. The OMA has weighed in on several occasions regarding the provisions in the bill.

House Bill 390 – unemployment compensation pay off

During the May legislative session HB 390 morphed into a catch all for tax and finance provisions. Two bills important to manufacturers were amended into HB 390, and one stand-alone provision was also included.

The bill incorporated the portions of HB 473 that required voter approval before a county may levy a new utilities services tax. The amendment was in response to a controversy that occurred in Hamilton County when the commissioners attempted to levy the tax without the input of the voters.

Second, the bill incorporated HB 475 and expanded the motion picture tax credit. The General Assembly approved the amendment to House Bill 390 which expanded Ohio's current motion picture tax credit. The action would have increased the total amount of credits that may be awarded from \$20 million per fiscal year to \$75 million per fiscal year. The vast majority of the claimed credits are taken against the commercial activity tax (CAT).

The legislature scaled back the proposal, opposed by the OMA, by almost half by reducing the amount of allowable credits to \$40 million per fiscal year and disallowing any carryover of credits if less than \$40 million is awarded in any year.

OMA opposes carve outs and credits to the CAT as they threaten its broad-base and low rate.

Finally the General Assembly used HB 390 as the vehicle to address the state's unemployment compensation debt. The General Assembly agreed to a deal with the intention to eliminate the state's recession-era unemployment compensation debt to the federal government. The move supported by the OMA and other business allies will potentially save Ohio's businesses more than \$400 million in FUTA penalties. Without this fix employers were staring at a possible \$168 per employee penalty to be paid in 2017.

The new plan will borrow from the state's unclaimed funds to pay off the debt in November 2016. Then employers will repay the state-backed loan by paying a per employee surcharge in 2017.

House Bill 394 – unemployment compensation reform

HB 394 was introduced last November by Representative Sears (R-Monclova Township). The bill is a priority for the business community. Ohio is one of two states that continue to carry debt owed to the federal government due to its insolvent unemployment trust fund. The bill offers a balanced package of reforms to pay off the debt and build solvency in the system to prevent another major solvency issue in the next recession.

The bill has had multiple hearings in the House Insurance Committee. The OMA and its business allies hired a national expert to testify and set the record straight regarding the provisions of the bill to the General Assembly.

House and Senate leaders have established a six person work group to tackle the issue with a promise of passing the bill in the lame duck session after the elections. The working group is committed to passing a form of HB 394 as was reiterated during the HB 390 debate.

House Bill 467 – unemployment compensation debt

HB 467 was introduced by Representative Butler (R-Oakwood). The bill establishes a loan from the Budget Stabilization Fund to the Unemployment Compensation Fund, to require the Director of Job and Family Services to recommend a program to incentivize the purchase of private unemployment insurance, and to require a study on the solvency of the Unemployment Compensation Fund. However, while the bill finds a way to pay off the debt prior to November 2016, it does nothing to address the long term solvency issues of the fund.

House Bill 491 – CAT tax credit pilot program

HB 491 was introduced by Representative Anielski (R-Walton Hills). The bill creates a five-year pilot program whereby taxpayers with facilities in this state with activated foreign trade zone status may claim a nonrefundable commercial activity tax credit equal to the amount redeployed by the taxpayer to job creation or other specified projects.

The bill has had two hearings.

Tax News

Budget Concerns

Since 2005, Ohio has been charging taxes on services provided through Medicaid managed-care organizations to take advantage of federal matching funds. A portion of the money is returned to the managed-care organizations to hold them harmless.

The state started off charging a 5.5 percent franchise tax, until federal officials said in 2009 that was no longer permissible. So then-Gov. Ted Strickland switched it to a sales tax, which is now 5.75 percent.

That allowed counties and transit authorities, through their piggyback sales taxes, to also benefit from the expansion.

But in July 2014, the federal Centers for Medicare & Medicaid Services said applying a tax only to managed-care companies dealing with Medicaid was not allowed. Ohio has until the end of this budget cycle to fix it — June 30, 2017.

Attorney General

Just prior to the 4th of July holiday, Ohio Attorney General Mike DeWine filed an amicus brief requesting certiorari from the United States Supreme Court in the case *Gillette Co. v. Franchise Tax Board*. The case involves whether member states may ignore provisions of the Multistate Tax Compact, in this case to the detriment of taxpayers. The Attorney General focuses the state's arguments on the compact/contract issue and its importance to states in general. The broader implications of this case and the impacts and precedent it could set for other state compacts could prove troublesome for both manufacturers and states. The case is of critical importance for manufacturers and we truly appreciate the Attorney General's willingness to engage the U.S. Supreme Court in this matter.



Ohio Legislative Service Commission

Jean J. Botomogno

Fiscal Note & Local Impact Statement

Bill: H.B. 343 of the 131st G.A. **Date:** May 31, 2016
Status: As Reported by House Economic and Workforce Development **Sponsor:** Reps. Romanchuk and Young

Local Impact Statement Procedure Required: Yes

Contents: To exempt sales of employment services and employment placement services from the sales and use tax beginning July 1, 2017

State Fiscal Highlights

STATE FUND	FY 2017	FY 2018	FUTURE YEARS
General Revenue Fund			
Revenues	- 0 -	Loss of \$164 million	Loss of \$169 million in FY 2019. Losses are likely to grow in ensuing years
Expenditures	- 0 -	- 0 -	- 0 -

Note: The state fiscal year is July 1 through June 30. For example, FY 2016 is July 1, 2015 – June 30, 2016.

- The bill reduces the sales and use tax base, and thus decreases sales and use tax revenue starting in FY 2018.
- State sales and use tax receipts are deposited in the GRF which would bear the majority of the revenue loss. Any reduction to GRF tax receipts would also reduce the amount distributed to the Local Government Fund (LGF) and Public Library Fund (PLF) as these local funds receive distributions from GRF tax receipts.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2016	FY 2017	FUTURE YEARS
Counties, municipalities, townships, and public libraries (LGF and PLF)			
Revenues	- 0 -	Potential loss	Loss of \$5.6 million in FY 2018. Losses are likely to grow in ensuing years
Expenditures	- 0 -	- 0 -	- 0 -
Counties and Transit Authorities			
Revenues	- 0 -	Potential loss	Loss of \$41.5 million in FY 2018. Losses are likely to grow in ensuing years
Expenditures	- 0 -	- 0 -	- 0 -

Note: For most local governments, the fiscal year is the calendar year. The school district fiscal year is July 1 through June 30.

- The bill reduces revenue from local permissive county and transit authority sales taxes. Those taxes share the same base as the state sales and use tax.
 - Receipts from the state sales and use tax are deposited in the GRF. A share of GRF tax revenues is distributed under permanent law to the LGF and PLF. Thus, any reduction to GRF tax receipts would also reduce the amount distributed to the LGF and PLF.
-

Detailed Fiscal Analysis

Under current law, the sale or use of services is generally not taxable unless expressly made subject to the sales tax; and employment services and employment placement services have been explicitly subject to the tax since 1993. Employment services are transactions in which a service provider furnishes personnel to perform work under the supervision or control of the purchaser. The personnel may be assigned to the purchaser for a short period of time or on a long-term basis, and are paid by the service provider or a third party that supplies the personnel to the service provider. Generally, if employment services are supplied by a third party to a service provider, and then by the service provider to a purchaser, only the transaction between the service provider and the purchaser is taxable. H.B. 343 would exempt all taxable employment and employment placement services beginning July 1, 2017, thus affecting sales tax revenue starting in FY 2018.

Sales taxes on employment services are generally remitted by businesses with North American Industry Classification System (NAICS) codes starting with 5613. These would include employment placement agencies (NAICS 561311), executive search services firms (NAICS 561312), temporary help services firms (NAICS 561320), and professional employer organization firms (NAICS 561330). Additionally, certain users of employment services and employment placement services pay use taxes directly to the state. Roughly \$155 million was collected from the state sales and use tax on employment and employment placement services in FY 2015, according to the Department of Taxation.

Separately, data from the U.S. Census Bureau suggest revenue from establishments in the administrative and support services industries (NAICS 561) which declined during the last economic recession grew about 6% per year, on average, in the most recent years.¹ Assuming a revenue growth rate of 3% for firms in the employment and employment placement services in Ohio, the potential revenue from the sales and use tax on employment services might be about \$169 million in FY 2018 and \$174

¹ Nationwide, revenue growth at businesses in the Administrative and Support Services sector (NAICS 561), which includes firms relevant to the bill, was about 6% per year between 2011 and 2014, according to the 2014 Service Annual Survey and administrative data from the Economic Census.

million in FY 2019, and possibly higher depending on the growth of the industry. The amounts above would also correspond to the potential revenue loss from H.B. 343, which is likely to increase in future years, though the magnitude of the increases would depend on the business cycle.²

Receipts from the state sales and use tax are deposited into the GRF. Under permanent law, a portion of GRF tax receipts is subsequently transferred to the Local Government Fund (LGF) and the Public Library Fund (PLF). Under permanent law, the GRF would receive 96.68% of sales tax revenue, and the LGF and the PLF 1.66% each.³ Thus, the GRF loss would be about \$164 million in FY 2018. Reduced distributions to the LGF and PLF would be about \$2.8 million for each local government fund. In FY 2019, estimated revenue losses from the bill would be about \$169 million to the GRF, and \$2.9 million each for the LGF and the PLF.

Local permissive county and transit authority sales taxes share the same tax base as the state sales tax, and are approximately 24.5% of state sales tax revenues. Thus, the revenue loss to local governments from permissive county and transit authority sales and use taxes from H.B. 343 would be about \$41.5 million in FY 2018 and \$42.7 million in FY 2019. Adding those amounts to the potential revenue losses to the LGF and the PLF, revenue reductions to local governments would total \$47.1 million in FY 2018 and \$48.5 million in FY 2019, and are likely to grow in future years.

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² Though a small share of nonfarm payroll employment (2.1% in 2014), the temporary help industry plays an outsized role in workforce adjustment during recessions and recoveries. Generally, during recessions, companies increase their use of temporary help, lengthen existing temporary help assignments, or reduce hiring from their pool of temporary workers in response to economic uncertainty. The reverse tends to occur in periods of economic recovery.

³ Under temporary provision in H.B. 64, the budget act for the current biennium, the PLF share would be 1.70%, instead of 1.66%.



Ohio Legislative Service Commission

Jean J. Botomogno

Fiscal Note & Local Impact Statement

Bill: H.B. 491 of the 131st G.A.

Date: May 23, 2016

Status: As Introduced

Sponsor: Rep. Anielski

Local Impact Statement Procedure Required: Yes

Contents: Authorizes a nonrefundable credit against the commercial activity tax for businesses that have facilities located in active foreign-trade zones

State Fiscal Highlights

- The bill authorizes a nonrefundable credit against the commercial activity tax (CAT) for expenditures incurred for specified purposes by businesses in Ohio foreign-trade zones.
- The bill reduces revenue from the CAT by an uncertain amount. The potential revenue loss would be dependent on the level of qualifying expenditures, and thus could be sizable.
- CAT revenue is deposited into the GRF and two local government funds used to reimburse school districts and other units of local government for lost revenue from the phase-out in tangible personal property taxes. Under current law, the GRF receives 75% of CAT revenue. The School District Tangible Property Tax Replacement Fund (Fund 7047) and the Local Government Tangible Property Tax Replacement Fund (Fund 7081) receive 20% and 5%, respectively.
- A loss of GRF revenue would reduce distributions to the Local Government Fund (LGF, Fund 7069) and the Public Library Fund (PLF, Fund 7065), which will receive 1.66% and 1.70%, respectively, of GRF revenue in FY 2017. The PLF share reverts to 1.66% in FY 2018 and thereafter under current law.

Local Fiscal Highlights

- The bill reduces revenue from the CAT. A share of CAT revenue is deposited into two local government funds used to reimburse school districts and other units of local government for lost revenue from the phase-out in tangible personal property taxes. Thus the bill reduces revenue to school districts and other local governments.
- A reduction in state distributions to the LGF and PLF would reduce revenues of units of local government and libraries.

Detailed Fiscal Analysis

The bill authorizes a nonrefundable credit against the commercial activity tax (CAT) for businesses that have one or more facilities located in active foreign-trade zones (FTZs) in Ohio.¹ FTZs are areas designated by the Foreign-Trade Zones Board (FTZ Board), pursuant to federal law, for the purpose of storing, exhibiting, assembling, manufacturing, and processing foreign and domestic goods. The credit equals expenditures incurred by the business during the tax period for any of the following purposes: (1) creating jobs at the FTZ facility, (2) providing training or continuing education to employees working at the FTZ facility, (3) making capital improvements to the FTZ facility including, specifically, installation of renewable energy resources, or (4) undertaking initiatives to increase exports to foreign nations of goods or services produced at the FTZ facility.

The credit would be claimed against the CAT due on the business's gross receipts derived from the FTZ facility, but expenditures exceeding the tax due cannot be claimed as a credit in future tax periods. The bill requires businesses claiming the credit to file records of the commitments and expenditures upon which the credit is based with the Tax Commissioner. If the Commissioner and the Director of Development Services determine that a business has failed to comply with the reporting requirement, the Commissioner may make an assessment against the business proportionate to the compliance failure. The assessment may include applicable penalty and interest.

LSC is unable to determine the commitments and expenditures of firms that may be used as the basis of the CAT credit. Therefore, LSC is unable to estimate the potential revenue loss from the bill. Though the revenue reduction is undetermined, it could be sizable depending on the level of qualifying expenditures incurred by firms in the FTZs and their current CAT payments, none of which can be ascertained by LSC.

CAT revenue is deposited into the GRF and two local government funds used to reimburse school districts and other units of local government for lost revenue from the phase-out in tangible personal property taxes. Under current law, the GRF receives 75% of CAT revenue; the School District Tangible Property Tax Replacement Fund (Fund 7047) and the Local Government Tangible Property Tax Replacement Fund (Fund 7081) are credited 20% and 5% of CAT receipts, respectively.

A portion of GRF tax revenue is distributed to the Local Government Fund (LGF, Fund 7069) and the Public Library Fund (PLF, Fund 7065), with the balance retained by the GRF. The LGF and PLF shares are 1.66% each under permanent law, but the PLF instead receives 1.70% during the current biennium. Reduced distributions to these two state funds would lower revenues of units of local government and public libraries.

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¹ The U.S. Foreign-Trade Zone Board reports eight active foreign-trade zones in Ohio with merchandise received and shipments between \$10 billion and \$25 billion in 2014.

Medicaid tax change to cost Ohio, counties

Nearly 3 million Ohioans are enrolled in Medicaid, the government health insurance program for the poor and disabled. Debate over the next two-year state budget won't start for seven months, but state officials already are wrestling with a looming billion-dollar budget hole, plus a \$400 million local funding hit that includes bus services.

Federal regulators are putting an end to a state sales tax structure that allowed Ohio to collect hundreds of millions of dollars per year in federal Medicaid matching funds. That has Gov. John Kasich and legislative leaders staring at a \$1.1 billion state funding loss in the next two-year budget.

Plus, the average county is looking at a loss of 7.5 percent of its sales tax collections, based on 2015 state figures. A number of rural counties, including Pickaway, would see sales tax losses exceeding 10 percent.

Meanwhile, the Central Ohio Transit Authority stands to lose about \$8 million a year.

"The dollar amounts are considerable," said Suzanne Dulaney, executive director of the County Commissioners Association of Ohio, noting that 60 percent of county budgets are spent on criminal justice and safety.

"The (Kasich) administration told our members that they understand the impact on counties and plan to take that into account," she said. "We've also heard from lawmakers who have cautioned counties to budget conservatively because of this issue."

Tim Keen, the state budget director, said the change essentially will wipe out half of the state's projected tax revenue growth and could mean significant county cuts that "we must take into account."

"This is a significant budget issue for the state, counties and transit authorities that we have to try to work through," he said.

Since 2005, Ohio has been charging taxes on services provided through Medicaid managed-care organizations to take advantage of federal matching funds. A portion of the money is returned to the managed-care organizations to hold them harmless.

The state started off charging a 5.5 percent franchise tax, until federal officials said in 2009 that was no longer permissible. So then-Gov. Ted Strickland switched it to a sales tax, which is now 5.75 percent.

That allowed counties and transit authorities, through their piggyback sales taxes, to also benefit from the expansion.

But in July 2014, the federal Centers for Medicare & Medicaid Services said applying a tax only to managed-care companies dealing with Medicaid was not allowed. Ohio has until the end of this budget cycle to fix it — June 30, 2017.

“People have been aware of the fact that it was at risk,” said John Corlett, Ohio’s former Medicaid director who is now executive director of the Center for Community Solutions, a policy research group based in Cleveland. “There are ways to address it. None of them will be universally popular or easy.”

Starting July 1, 2017, Ohio will no longer charge a Medicaid sales tax that is expected to net the state \$558 million in fiscal year 2018. Over the two-year budget, the net state loss is projected at \$1.1 billion, plus nearly \$400 million in county and transit authority sales taxes.

Roughly 80 percent of the local funding loss hits counties — Franklin County would see a hit of about \$20 million per year. Ohio's eight regional transit authorities would lose about \$39 million per year, as critics note that the state already ranks 47th in public transportation funding, spending 63 cents per person on transit.

The annual loss for COTA would top 6 percent of its total sales tax revenue. Based on 2015 figures, the loss equates to more than 70,000 hours of service, said Marty Stutz, COTA spokesman.

“We would have to be proactive about budgeting to make sure the implications are considered,” he said. “It will be a challenge for us.”

Since the Great Recession, not only have counties grown more reliant on sales tax revenue, but those sales tax receipts have increasingly been made up of Medicaid services. In 2013, counties got \$81 million from Medicaid sales taxes, 4.9 percent of their total sales taxes. But with Kasich's expansion of Medicaid coverage and the push to increase managed care, that revenue rose to \$148 million by 2015, 7.5 percent of the total, and would reach about \$160 million by 2018.

While sales tax revenue has seen steady growth, other county revenue sources have been largely flat, adding to concerns about the looming cut.

The state has options to make up its money. Corlett pointed to the hospital franchise fee, which also draws down federal dollars.

“If you look around the state, I don’t think there’s a hospital that’s losing money,” he said.

Last year, Kasich’s initial two-year budget proposed increasing the hospital fee from 2.66 percent to 3 percent. House Republicans pushed it to 4 percent, which would have netted the state \$1 billion over two years.

Senate Republicans later stripped out the fee increase, and the rate was left unchanged.

Keen would not comment on the hospital fee or other options, such as increasing the health-insuring corporation tax or expanding the sales tax to private managed-care operations.

“We’re assessing a range of potential solutions, but we’re very early in our analysis,” he said.

Ohio is not alone in its troubles. Pennsylvania, Michigan and California already have addressed how they tax Medicaid managed care in various ways over the past seven months.

Keen said his office is looking at those states, while counties keep an eye on Keen.

“Redistributing a new revenue stream back to 88 counties is more challenging than sending it into one state general fund,” Dulaney said.

jsiegel@dispatch.com

Tax

[Come Hear Congressman Renacci Discuss Federal Tax Reform](#)

August 12, 2016

Congressman [Jim Renacci](#) (R-16th Congressional District) will discuss concepts for federal tax reform at the OMA Government Affairs Committee meeting on Wednesday, August 31.

The meeting will be held at Eaton Corporation, 1000 Eaton Blvd., Cleveland, OH 44122 from 9:30 a.m. until 1:00 p.m.; includes lunch.

Additional topics on the agenda include:

- 2016 election updates
- Ohio energy issues: 1) Utility proposals for unjustified subsidies; 2) Potential utility re-regulation legislation
- Pending state legislation, including:
 - Unemployment compensation system reform
 - Elimination of tax on temporary employment services & employees
 - Preview of 2017 state budget concerns – will business tax increases be on the table?

[Register here.](#)

[IRS Proposed Regulations Target Gift and Estate Tax Planning Strategies](#)

August 12, 2016

According to OMA Connections Partner, Clark Schafer Hackett, the IRS has recently released proposed regulations that would eliminate valuation discounts for gifts of family-controlled, closely held business interests to family members. [Read more here.](#)

[Business Tax Giveaway to Hollywood Hits State Revenue](#)

July 29, 2016

This week the Ohio Office of Budget and Management (OBM) made another deposit to the state's rainy day fund, now topping \$2 billion, a little more than 6% of the biennial state budget held in reserve.

With the deposit, the OBM director Tim Keen [issued a revised revenue estimate](#) including revising commercial activity tax (CAT) collections downward by more than \$10 million due to the recently approved state legislation that extends a CAT credit to movie making enterprises.

Hailed for job creation and economic development, an amendment to [SB 390](#) to exempt movie production enterprises from the state's business was approved earlier this year by lawmakers. The OMA opposed the credit that erodes the tax base and puts pressure on remaining taxpayers including manufacturers. Aren't you glad to be subsidizing Hollywood producers like George Clooney?

[Ohio Attorney General Defends Manufacturers](#)

July 15, 2016

Just prior to the Independence Day holiday, [Ohio Attorney General Mike DeWine](#) filed an [amicus brief](#) requesting certiorari from the U. S. Supreme Court in the case of *Gillette Co. v. Franchise Tax Board*. The case involves whether member states may ignore provisions of the Multistate Tax Compact, in this case to the detriment of taxpayers.

The Attorney General focuses the state's arguments on the compact/contract issue and its importance to states in general. The precedent the case could set for other state compacts could be detrimental to both manufacturers and states.

OMA appreciates the Attorney General's willingness to engage the U.S. Supreme Court on this critical matter.

[State Ends Fiscal Year in Good Shape](#)

July 8, 2016

Unlike some other states that are experiencing budget shortfalls (look east to Pennsylvania and west to Illinois), Ohio ended FY16 in good shape. Revenues were a little down for the fiscal year ending June 30, but so were expenditures, by a lot more.

Revenues fell just 1 percent below estimates: a total of \$21.8 billion came in compared to the \$22.0 billion predicted. Compared to FY15, the state brought in \$415.7 million more in FY16.

Spending was below estimates for FY16 by about \$1.2 billion. Medicaid accounted for nearly \$925.9 million of that amount. Primary and second education

spending was below estimates by \$74.5 million while health and human services spending is down \$59.7 million.

Medicaid spending was up \$2.1 billion in state and federal funds from FY15. Through June of 2015, nearly \$14.9 billion was spent on Medicaid; through June 2016, a total of nearly \$17.0 billion was spent.

[Overview of Presidential Candidates' Tax Plans](#)

July 1, 2016

From OMA Connections Partner, GBQ Partners: "Now that the races are down to a manageable number of candidates, [we want to provide some information on their tax proposals](#) (as of May 17th). No political commentary, just an overview to help keep you informed. Although many of these

proposals may never become law, they nonetheless provide valuable insight into the underlying principles that will guide tax reform efforts from the next president."

[New Tax Filing Deadlines for Business](#)

June 17, 2016

OMA Connections Partner, Clark Schaefer Hackett (CSH), posted this: "While your individual tax return is still due on April 15th, many other filing deadlines were just changed by Congress that businesses need to be aware of. The IRS recently issued new tax filing deadlines for C corporations, S corporations and partnerships."

To help you stay in compliance, CSH provides [this summary](#) of due dates and extended due dates

Taxation Legislation

Prepared by: The Ohio Manufacturers' Association
Report created on August 26, 2016

- HB9** **TAX EXPENDITURE REVIEW COMMITTEE** (BOOSE T) To create a Tax Expenditure Review Committee for the purpose of periodically reviewing existing and proposed tax expenditures.
Current Status: 5/25/2016 - **PASSED BY SENATE**; Vote 33-0
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-9>
- HB12** **TIF-INCENTIVE DISTRICTS** (BUTLER, JR. J, BURKLEY T) To establish a procedure by which political subdivisions proposing a tax increment financing (TIF) incentive district are required to provide notice to the record owner of each parcel within the proposed incentive district before creating the district.
Current Status: 5/25/2016 - **PASSED BY HOUSE**; Vote 71-26
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-12>
- HB19** **INTERNAL REVENUE CODE** (SCHERER G) To expressly incorporate changes in the Internal Revenue Code since March 22, 2013 into Ohio law and to declare an emergency.
Current Status: 4/1/2015 - **SIGNED BY GOVERNOR**; eff. 4/1/15
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-19>
- HB26** **COIN SALES-USE TAX EXEMPTION** (MAAG R, HAGAN C) To exempt from sales and use taxes the sale or use of investment metal bullion and coins.
Current Status: 11/18/2015 - Senate Ways and Means, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-26>
- HB32** **AIRCRAFT-MOTOR FUEL EXCISE TAX** (PERALES R) To subject the receipt of motor fuel used to operate aircraft to the motor fuel excise taxes rather than the sales and use taxes and to require a percentage of motor fuel excise tax revenue to be used for airport improvements.
Current Status: 2/10/2015 - Referred to Committee House Ways and Means
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-32>
- HB64** **OPERATING BUDGET** (SMITH R) To make operating appropriations for the biennium beginning July 1, 2015, and ending June 30, 2017, and to provide authorization and conditions for the operation of state programs.
Current Status: 6/30/2015 - **SIGNED BY GOVERNOR**; eff. 6/30/15; certain provisions effective 9/29/15, other dates
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-64>
- HB65** **TAX-EXPENDITURE APPRAISAL** (DRIEHAUS D) To provide for the periodic appraisal of the effectiveness of tax expenditures.
Current Status: 3/24/2015 - House Ways and Means, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-65>

- HB84** **MUNICIPAL TAX-CIVIL ACTIONS** (SPRAGUE R, SWEENEY M) To require civil actions by taxpayers related to municipal income taxes be brought against the municipal corporation imposing the tax rather than the municipal corporation's tax administrator.
Current Status: 3/24/2015 - House Ways and Means, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-84>
- HB99** **INCOME TAX-SCHOOL FUNDING** (CURTIN M) To require that an amount equal to state income tax collections, less amounts contributed to the Ohio political party fund via the income tax checkoff, be distributed for the support of elementary, secondary, vocational, and special education programs.
Current Status: 5/5/2015 - House Ways and Means, (Second Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-99>
- HB102** **VETERAN-OWNED BUSINESSES** (CRAIG H, ANTANI N) To provide a bid preference for state contracts to a veteran-owned business and to authorize a personal income and commercial activity tax credit for a business that hires and employs a veteran for at least one year.
Current Status: 4/28/2015 - House Ways and Means, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-102>
- HB162** **SEVERANCE TAX RATES** (CERA J) To change the basis, rates, and revenue distribution of the severance tax on oil and gas, to create a grant program to encourage compressed natural gas as a motor vehicle fuel, to authorize an income tax credit for landowners holding an oil or gas royalty interest, and to exclude some oil and gas sale receipts from the commercial activity tax base.
Current Status: 5/12/2015 - House Ways and Means, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-162>
- HB176** **GAS-FUEL CONVERSION PROGRAM** (HALL D, O'BRIEN S) To create the Gaseous Fuel Vehicle Conversion Program, to allow a credit against the income or commercial activity tax for the purchase or conversion of an alternative fuel vehicle, to reduce the amount of sales tax due on the purchase or lease of a qualifying electric vehicle by up to \$500, to apply the motor fuel tax to the distribution or sale of compressed natural gas, to authorize a temporary, partial motor fuel tax exemption for sales of compressed natural gas used as motor fuel, and to make an appropriation.
Current Status: 11/18/2015 - **REPORTED OUT**, House Finance, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-176>
- HB232** **SELLER-USE TAX COLLECTION** (GROSSMAN C, SCHERER G) To prescribe new criteria for determining whether sellers are presumed to have substantial nexus with Ohio and therefore required to register to collect use tax, to allow sellers presumed to have substantial nexus to rebut that presumption, and to require a person, before the person enters into a sale of goods contract with the state, to register, along with the person's affiliates, to collect use tax.
Current Status: 6/2/2015 - Referred to Committee House Ways and Means
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-232>

- HB269** **INCOME TAX-SOUND RECORDING** (SMITH K, LATOURETTE S) To authorize a refundable income tax credit for individual investors in a sound recording production company equal to a portion of the company's costs for a recording production or recording infrastructure project in Ohio.
Current Status: 2/16/2016 - House Ways and Means, (Second Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-269>
- HB280** **BALANCED BUDGET COMPACT** (KRAUS S, KOEHLER K) To adopt the Compact for a Balanced Budget and to declare an emergency.
Current Status: 6/30/2015 - Introduced
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-280>
- HB308** **TEXTBOOKS-TAX EXEMPTION** (DUFFEY M, STINZIANO M) To exempt from sales and use tax textbooks purchased by post-secondary students.
Current Status: 10/21/2015 - House Ways and Means, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-308>
- HB326** **TAX LAW-JOINT FILING** (AMSTUTZ R, MCCLAIN J) To make technical changes to the state income tax law, to modify the requirements for receiving the joint filing credit, and to provide that, for the 2015 taxable year, any taxable business income under \$125,000 for married taxpayers filing separately or \$250,000 for other taxpayers is subject to the graduated tax rates applicable to nonbusiness income, while business income in excess of those amounts remains subject to the existing 3% flat tax.
Current Status: 10/26/2015 - House Ways and Means, (Fifth Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-326>
- HB343** **EMPLOYMENT SERVICES-TAX EXEMPT** (YOUNG R, ROMANCHUK M) To exempt employment services and employment placement services from sales and use tax.
Current Status: 4/27/2016 - **REPORTED OUT**, House Economic and Workforce Development, (Eighth Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-343>
- HB358** **TAX DEDUCTION-SAVINGS ACCOUNTS** (DEVER J, CONDITT M) To allow an income tax deduction for contributions to ABLE savings accounts.
Current Status: 4/19/2016 - House Ways and Means, (Second Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-358>
- HB369** **BALANCED BUDGET COMPACT** (KOEHLER K, HAMBLEY S) To adopt the Compact for a Balanced Budget and to declare an emergency.
Current Status: 5/24/2016 - House Government Accountability and Oversight, (Third Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-369>
- HB390** **NATURAL GAS-ET AL** (SCHAFFER T, RETHERFORD W) To provide authorization and conditions for the operation of state programs and to make appropriations.

Current Status: 6/28/2016 - **SIGNED BY GOVERNOR**; eff. 9/28/16
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-390>

HB398 CAUV COMPUTATION (HILL B) To require that the computation of the capitalization rate for the purposes of determining CAUV of agricultural land be computed using a method that excludes appreciation and equity buildup.

Current Status: 5/3/2016 - House Government Accountability and Oversight, (Second Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-398>

HB454 SALES TAX HOLIDAY-PERMANENT (PATTERSON J) To provide for a permanent three-day sales tax "holiday" each August during which sales of back-to-school clothing and school supplies are exempt from sales and use taxes.

Current Status: 2/23/2016 - Referred to Committee House Ways and Means

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-454>

HB466 TAX-EXEMPT-DIGITAL ADVERTISING (SMITH R) To specifically exempt digital advertising services from sales and use tax.

Current Status: 7/12/2016 - **SIGNED BY GOVERNOR**; eff. 10/12/16

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-466>

HB467 UNEMPLOYMENT COMPENSATION FUND (BUTLER, JR. J) To establish a loan from the Budget Stabilization Fund to the Unemployment Compensation Fund, to require the Director of Job and Family Services to recommend a program to incentivize the purchase of private unemployment insurance, and to require a study on the solvency of the Unemployment Compensation Fund.

Current Status: 4/13/2016 - Referred to Committee House Insurance

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-467>

HB473 UTILITY SERVICE TAX-LEVY (AMSTUTZ R) To require voter approval before a county may levy a new utilities services tax, to allow small businesses to count employees of related or affiliated entities towards satisfying the employment criteria of the business investment tax credit, to permit a bad debt refund for cigarette and tobacco product excise taxes paid when a purchaser fails to pay a dealer for the cigarettes or tobacco products and the unpaid amount is charged off as uncollectible by the dealer.

Current Status: 5/17/2016 - House Ways and Means, (Fourth Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-473>

HB475 MOTION PICTURE-TAX CREDIT (SCHURING K) To authorize motion picture companies to transfer the authority to claim refundable motion picture tax credits to other persons, to adjust how the credit is calculated, to increase the total amount of credits that may be awarded per year, to remove the limit on the maximum credit amount that may be awarded to a motion picture, and to create a job training program for resident film crew members.

Current Status: 5/24/2016 - **REPORTED OUT AS AMENDED**, House Finance, (Fourth Hearing)

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

[summary?id=GA131-HB-475](https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-475)

- HB484** **TAX-EXEMPT PRODUCTS** (SYKES E, CERA J) To exempt from sales and use tax the sale of nonprescription human drugs, feminine hygiene products associated with menstruation, and disposable baby diapers, to reimburse the Local Government Fund and Public Library Fund and county and transit sales and use tax collections for any revenue lost due to those exemptions, and to create the Legislative Commission on Middle Class Economic Strength to study proposed income, sales, or use tax legislation that changes the proportionate tax burden among income classes or other classes.
Current Status: 4/13/2016 - Referred to Committee House Ways and Means
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-484>
- HB485** **INCOME TAX DEDUCTION-TUITION** (RAMOS D) To reinstate the state income tax deduction for qualified higher education tuition and fee payments that expired December 31, 2005.
Current Status: 4/13/2016 - Referred to Committee House Ways and Means
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-485>
- HB489** **MINE FUNDS** (CERA J) To credit a portion of the money derived from the Kilowatt-Hour Tax Receipts Fund to the Abandoned Mine Reclamation Fund, the Acid Mine Drainage Abatement and Treatment Fund, and the Mine Safety Fund and to make other changes to those funds.
Current Status: 5/10/2016 - House Ways and Means, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-489>
- HB491** **TAX CREDIT-PILOT PROGRAM** (ANIELSKI M) To establish a five-year pilot program whereby taxpayers with facilities in this state with activated foreign trade zone status may claim a nonrefundable commercial activity tax credit equal to the amount redeployed by the taxpayer to job creation or other specified projects.
Current Status: 5/24/2016 - House Ways and Means, (Second Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-491>
- HB492** **CAPITAL IMPROVEMENT-PILOT** (ROGERS J, DRIEHAUS D) To create the Supplemental State Capital Improvements Pilot Program funded by a temporary transfer from the Budget Stabilization Fund and to make an appropriation.
Current Status: 4/13/2016 - Referred to Committee House Finance
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-492>
- HB515** **HEATING FUELS-SALES TAX** (PATTERSON J, CERA J) To exempt from sales and use taxation the bulk sale of firewood and certain other heating fuels, and to reimburse the Local Government Fund and Public Library Fund and county and transit sales tax collections for the resulting revenue losses.
Current Status: 4/26/2016 - Referred to Committee House Ways and Means
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-515>
- HB547** **MBR-OBM** (SMITH R) To provide authorization and conditions for the operation of state

programs and to make appropriations.

Current Status: 5/24/2016 - **SUBSTITUTE BILL ACCEPTED**, House Finance, (Fourth Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-547>

HB563 **INCOME TAX-LAYOFFS (RAMOS D)** To provide for payments to municipalities or school districts for their lost income tax revenue after a business lays off 50 or more employees within their jurisdiction.

Current Status: 5/12/2016 - Introduced

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-563>

HB565 **TAX CREDIT-STUDENT LOANS (RAMOS D)** To allow a credit against the income tax or commercial activity tax for graduates or employers who make payments on student loans obtained by the graduate to earn a degree from an Ohio college or university.

Current Status: 5/12/2016 - Introduced

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-565>

SB2 **INTERNAL REVENUE SERVICE-INCORPORATE CHANGES (PETERSON B)** To expressly incorporate changes in the Internal Revenue Code since March 22, 2013, into Ohio law, and to declare an emergency.

Current Status: 2/14/2016 - **SIGNED BY GOVERNOR**; eff. 2/14/16

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

SB12 **INCOME TAX CREDIT-SCIENCE RELATED DEGREE (HOTTINGER J)** To grant an income tax credit to individuals who earn degrees in science, technology, engineering, or math-based fields of study.

Current Status: 2/4/2015 - Referred to Committee Senate Ways and Means

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-12>

SB18 **TAX CREDIT-NATIONAL GUARD EMPLOYMENT (GENTILE L)** To authorize a refundable income tax credit for employers that hire one or more qualified veterans or members of the National Guard or reserves.

Current Status: 4/27/2016 - Senate Ways and Means, (First Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-18>

SB21 **EARNED INCOME TAX CREDIT RESTRICTION (SKINDELL M)** To remove the income restriction on the earned income tax credit and to make the credit refundable beginning in 2015.

Current Status: 2/4/2015 - Referred to Committee Senate Ways and Means

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-21>

SB40 **ECONOMIC DEVELOPMENT TAX CREDIT (BEAGLE B)** To authorize tax credits for contributions of money to economic and infrastructure development projects undertaken by local governments and non-profit corporations.

Current Status: 6/10/2015 - Senate Ways and Means, (First Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-40>

- SB41** **NEW MARKETS TAX CREDIT QUALIFICATIONS** (BEAGLE B, TAVARES C) To modify the qualifications for the New Markets Tax Credit and the schedule for receiving the credit.
Current Status: 6/3/2015 - Senate Ways and Means, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-41>
- SB52** **AIRCRAFT FUEL EXCISE TAX** (BEAGLE B) To subject the receipt of motor fuel used to operate aircraft to the motor fuel excise taxes rather than the sales and use taxes and to require a percentage of motor fuel excise tax revenue to be used for airport improvements.
Current Status: 2/18/2015 - Referred to Committee Senate Ways and Means
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-52>
- SB88** **FELON EMPLOYMENT TAX CREDIT** (TAVARES C, THOMAS C) To create a tax credit for the employment of individuals who have been convicted of criminal offenses.
Current Status: 3/4/2015 - Referred to Committee Senate Ways and Means
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-88>
- SB100** **SALES TAX HOLIDAY-ENERGY STAR** (BROWN E) To provide a three-day sales tax "holiday" each April during which sales of qualifying Energy Star products are exempt from sales and use taxes.
Current Status: 3/4/2015 - Referred to Committee Senate Ways and Means
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-100>
- SB198** **NON-RESIDENT MUNICIPAL INCOME TAX** (JORDAN K) To prohibit municipal corporations from levying an income tax on nonresidents' compensation for personal services or on net profits from a sole proprietorship owned by a nonresident.
Current Status: 9/29/2015 - Senate State and Local Government, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-198>
- SB208** **STATE INCOME TAX** (BEAGLE B) To make technical changes to the state income tax law, to modify the requirements for receiving the joint filing credit.
Current Status: 11/15/2015 - **SIGNED BY GOVERNOR**; Eff. 2/15/16; certain provisions effective 11/15/15
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-208>
- SB209** **OHIO RURAL JOBS ACT** (HITE C) To enact the "Ohio Rural Jobs Act" which authorizes a nonrefundable tax credit for insurance companies that invest in rural business growth funds, which are certified to provide capital to rural and agricultural businesses.
Current Status: 12/8/2015 - House Agriculture and Rural Development, (Second Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-209>
- SB235** **INCREASED VALUE-PROPERTY TAX** (BEAGLE B, COLEY W) To exempt from property

tax the increased value of property on which industrial or commercial development is planned until construction of new commercial or industrial facilities at the property commences.

Current Status: 5/4/2016 - **PASSED BY SENATE**; Vote 22-11

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-235>

SB246 CAUV COMPUTATION-CAPITALIZATION RATE (HITE C) To require that the computation of the capitalization rate for the purposes of determining CAUV of agricultural land be computed using a method that excludes appreciation and equity buildup.

Current Status: 4/27/2016 - Senate Ways and Means, (Fourth Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-246>

SB260 CAPITAL REAPPROPRIATIONS (COLEY W) To make capital reappropriations for the biennium ending June 30, 2018.

Current Status: 2/21/2016 - **SIGNED BY GOVERNOR**; eff. 5/23/2016

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-260>

SB288 INCOME TAX-PASS THROUGH ENTITIES (EKLUND J) To revise the law governing how taxes on income from pass-through entities is to be reported and paid by the entities and their investors.

Current Status: 4/20/2016 - Senate Ways and Means, (Second Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-288>

SB289 MOTION PICTURE TAX CREDIT (PATTON T) To increase the overall cap on the motion picture tax credit from \$40 million per fiscal biennium to \$100 million for the current fiscal biennium and \$160 million for all subsequent biennia.

Current Status: 4/12/2016 - Referred to Committee Senate Ways and Means

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-289>

SB302 PROPERTY TAX EXEMPTION-MILITARY VETERANS-DISABLED (SCHIAVONI J, GENTILE L) To exempt from property taxation the primary residence of military veterans who are disabled.

Current Status: 4/12/2016 - Referred to Committee Senate Ways and Means

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-302>

SB305 TAX CERTIFICATES-SALE PROHIBITION (WILLIAMS S) To prohibit the sale of tax certificates for parcels owned by a person sixty-five years of age or older and that include the primary residence of the owner.

Current Status: 4/12/2016 - Referred to Committee Senate Ways and Means

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-305>

SB310 CAPITAL APPROPRIATIONS (OELSLAGER S) To make capital appropriations and changes to the law governing capital projects for the biennium ending June 30, 2018.

Current Status: 5/17/2016 - **SIGNED BY GOVERNOR**; eff. 8/16/16, certain provisions effective 7/1/16

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-310>