

## **OMA Government Affairs Committee**

November 29, 2017



### **AGENDA**

#### **Welcome & Introductions**

**Luke Harms**, Senior Manager of Government Relations  
Whirlpool Corp, **Government Affairs Committee Vice Chair**

#### **OMA Counsel's Report**

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

#### **Special Guest**

**Hon. Ryan Smith**, Ohio House of Representatives

#### **Staff Reports**

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

#### **Panel Presentation / Discussion**

- State Issue 2: Drug Price Mandates
- Electricity Market Protection and Utility Subsidy Legislation
- 2018 Political Landscape
- Federal Tax Reform

**Andy Corsig**, PhRMA  
**Curt Steiner**, Steiner Public Relations

**Luke Harms**, Whirlpool  
**Ryan Modlin**, O-I  
**Scott Corbitt**, Anheuser-Busch

#### **Old Business**

- Gun Rights vs Property Rights
- Workforce – Industry Sector Partnerships
- National Issues: Trade & Ex-Im Bank

#### **Lunch – provided by OMA**

#### **2018 Government Affairs Committee Calendar**

*Meetings will begin at 9:30 a.m.*

*2018 meeting schedule will be emailed by mid-December*

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

**Carpenter  
Lipps &  
Leland LLP**  
Attorneys at Law

## Representative Ryan Smith

### 93<sup>rd</sup> House District

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

Representative Smith graduated with a Bachelor's of Science in Finance from The Ohio State University. Upon graduation, he began working as a financial advisor. In 2005, he joined his current financial advising firm as Vice President and Partner.

Representative Smith was twice elected to the Gallipolis City School Board, where he served as Board President. Representative Smith has been engaged in local economic development efforts as he was president of both the Gallia County Chamber of Commerce and the Gallia County Civic Improvement Corporation. Representative Smith was also a board member for Holzer Health Systems, one of the largest employers and healthcare providers in southeastern Ohio.

Representative Smith is married to his wife Vicki and together they have four children, Blake, Grant, Kennedy and Camryn. They reside in Bidwell, just outside of Gallipolis, where they are active in their local church.



## **Public Policy “Hot Topics” November 29, 2017**

### **Overview**

The General Assembly returned to work in September. Energy legislation has been a key focus over the past three months. Included in these was Representative Mark Romanchuk’s House Bill 247 an OMA-supported bill to protect competitive energy markets.

Other issues of note included a new unemployment compensation solvency bill, environmental regulations on point sources, and a variety of tax issues. As the year winds down the legislature will begin to look to 2018, a campaign year, which will alter the appetite from structural reforms.

### **132<sup>nd</sup> General Assembly**

Lawmakers returned in late September and have been meeting fairly consistently over the past two and a half months. The session calendar for the remainder of 2017 is included in the meeting materials. December dates remain mostly “if needed” save for December 13. The House and Senate leadership teams are expected to release their session calendar for the first half of 2018 in the near future. Expect lawmakers back in the office in January and working up until spring break and the primaries. A lameduck session is be expected after the November general election.

### **Electric Utilities Seek \$Billions for Power Plant Subsidies**

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

Not satisfied with the action by the PUCO, FirstEnergy, AEP and other electric utilities are advocating for a series of legislative proposals forcing customers to pay billions in new above-market charges. The OMA is opposing these proposals. See Energy Section.

### **Protect Competitive Electric Markets**

The OMA has been a proponent of markets, supporting the original deregulation legislation. Several noteworthy studies have demonstrated how the market delivers lower prices, choice and innovation without compromising reliability. But, customers have been denied the low cost benefits of competition due to proliferating above-market charges approved by state regulators. The OMA is supporting a legislative reform package to empower market forces to set power costs in Ohio. See Energy Section to learn more about HB 247.

### **Unemployment Compensation**

Last year the legislature passed a provision (included in House Bill 390) guaranteeing that the state’s unemployment compensation loan would be paid back to the federal government by the November deadline. By paying the loan off a year early the business community is expected to save over \$400 million in federal penalties. Unfortunately a solvency package aimed at shoring up the state’s unemployment trust fund and correcting the underlying issue was not passed during lame duck.

A comprehensive solution for the underlying solvency issue was not included in the budget. However Representative Schuring recently introduced House Bill 382, which is a standalone effort not backed or supported by any of the interested parties. Rep. Schuring designed the bill to be a starting point of new discussions that are expected to begin again in 2018. The Senate has yet to provide a bill and have relied on Senator Peterson to work with the interested parties

on a solution. OMA continues to advocate against any solution that does not include comparable benefit reductions.

### **State Budget & Tax Policy**

Governor Kasich introduced his final budget proposal in late January. The budget is actually a series of different bills. The main operating budget is called House Bill 49. Voluminous budget bills saw hundreds of unrelated law changes tacked on, impacting all sorts of policy issue areas.

House Bill 49 again contained tax reforms proposed by Governor Kasich to reduce personal income tax rates, while increasing the sales tax rate and expanding the sales tax base, while condensing the number of income tax brackets, and simplifying municipal tax collections.

The House and Senate stripped the budget of almost all of the Governor's proposals. The final passed version took a more restrained status quo approach to the Ohio tax policy. However changes supported by OMA were included that allow manufacturers to file one single local business income tax filing at the state level. This provision has now been contested by a coalition of municipalities who have sued citing to the home rule section of the Ohio Constitution.

### **Workforce Development**

In November, the OMA hosted 500 members, manufacturers and their workforce suppliers, including government, education and training, and economic development professions to work on improving the talent pipeline for Ohio's leading industry: manufacturing.

The OMA is supporting an industry sector partnership model on a regional basis. Your company is invited to opt-in to next steps and participate in 2018 activity. See HR section resource material.

### **Patent Trolls**

On May 22, the U.S. Supreme Court held in the case of *TC Heartland LLC vs. Kraft Foods Group Brands LLC* that the patent venue statute is narrower than the general federal venue statute. This decision is generally favorable for Ohio's manufacturers.

The Court's narrowing of the patent venue statute should be helpful in at least avoiding out of state litigation in a patent trolls preferred forum.

### **Right to Work**

With the approval of right-to-work legislation in West Virginia following narrowly successful veto override, pressure would seem to be mounting on a similar proposal in the Buckeye State. Unions are running a quiet campaign to taint the term "right to work." No action, again, and none is expected during the election year.

### **Workers' Comp & Industrial Commission**

The main state operating budget included a late amendment to raid BWC and IC accounts to balance the general revenue fund, an unprecedented move. These dollars are from employer assessments and premiums....not tax dollars. The OMA was prepared to pursue legal options to prevent the raid. Fortunately, an amicable outcome was reached in negotiations. The OMA was able to help secure an amendment to Senate Bill 8 forbidding the transfer of IC or BWC dollars to the GRF. See the Safety & Workers' Comp section.

**National Issues**

Over the past year, the OMA has been active in communicating manufacturing priorities on various topics including, support for infrastructure, support for a functional Ex-Im Bank, highlighting the widespread benefits from NAFTA, and the need for national tax reform.

**Race for Ohio Leadership in 2018**

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

## Leadership

### More “Good Jobs” for Non-B.A. Workers are in Manufacturing in Ohio November 17, 2017

More than a quarter – 27% – of “good jobs” for non-bachelor-degreed workers can be found in manufacturing, above the national average of 16%, according to a new report from Georgetown University Center on Education and the Workforce in partnership with JPMorgan Chase & Co.

The report, “Good Jobs That Pay Without a BA: A State-by-State Analysis,” defines a “good job” as one paying \$35,000 (\$17 per hour for a full-time job) as the minimum earnings for those under age 45 and \$45,000 (\$22 per hour for a full-time job) for workers age 45 and older. In 2015, these good jobs had median earnings of \$55,000 per year.

The share of non-degreed “good jobs” in Ohio that are in manufacturing was 48%. Median earnings for those jobs was \$56,000 a year. Ohio ranked 7<sup>th</sup> among the states in the number of goods jobs not requiring a BA with 1.1 million such jobs. 11/16/2017

### OMA Member Meeting with ODOT Officials re. Overweight Truck Permits November 17, 2017

For interested members, there will be a 45 minute informational session with ODOT officials on Wednesday, November 29 at 1:15 p.m. regarding Overweight Truck Permits. Transportation and logistics managers are welcome to join this session to learn more about available permitting for loads exceeding 80,000 lbs.

In-person at OMA office or call-in participation welcome. Please use your My OMA login to see details and to register for this session. Click on Events. 11/16/2017

### Ohioans Say No to Issue 2 November 10, 2017

Ohioans overwhelmingly voted against State Issue 2. In fact, Issue 2 failed in a landslide, 79% to 21%.

“Today, Ohio voters delivered a loud and clear message that Issue 2 was a deceptive and seriously flawed proposal. A large majority of Ohio voters concluded Issue 2 wouldn’t have solved any problems; it would have made things worse,” said campaign manager Curt Steiner in a media release.

The OMA board opposed the measure. 11/9/2017

### Dayton Area Rep. Introduces Ballot Reform Resolution November 10, 2017

Earlier this month Rep. Niraj Antani (R-Miamisburg) introduced Joint Resolution 5 to reform the procedures for initiated statutes and constitutional amendments.

The Joint Resolution would increase the number of signatures needed for both initiated statutes and constitutional amendments, increase the vote total needed for passage to 60% and ban the paying of petition gatherers.

Ohio has long been seen as a venue for out-of-state interests to campaign pet ballot projects, not unlike State Issue 2, which went down in defeat this week.

Reforms have been discussed over the years to raise the bar on accessing the ballot to ensure Ohio’s Constitution does not enshrine out-of-state special interest policy projects. 11/9/2017

### Manufacturers and Workforce Suppliers Hold Summit November 3, 2017



This week, almost 500 OMA members, manufacturers and their workforce suppliers, including government, education and training, and economic development professionals, met in Columbus to work on improving the talent pipeline for Ohio’s leading industry: manufacturing.

Attendees from all regions of the state learned about the characteristics of successful regional workforce partnerships, best practices and initiatives underway throughout Ohio.

Industry sector partnerships are a recognized best practice with demonstrated results across the country for addressing real and common manufacturing workforce shortages and/or skill gaps.

Manufacturers also need to continue upping our game in communicating to young people and other job seekers about the many job and career opportunities

that exist in modern manufacturing. To that end, a new brand, **Making Ohio**, was debuted and promoted at the event.

If you want to be kept informed about OMA's workforce services and activities, see this "**Next Steps**" flier and sign up form. 11/2/2017

*Pictured: OMA president Eric Burkland addressing attendees at Ohio Manufacturing Workforce Summit 2017*

### **Timmons: We Must Be the Solution** **November 3, 2017**

National Association of Manufacturers (NAM) President and CEO Jay Timmons presented a **keynote address** to the Ohio Manufacturers' Workforce Summit this week.

Regarding the problem of workforce shortages, Timmons said: "As business leaders...we are in no position to sit back and say this is "someone else's" problem.

We could blame the education system. We could blame politicians. We could blame outdated attitudes about manufacturing or career technical education.

But if America doesn't transform the workforce and talent pipeline, we will have to blame ourselves. No one knows the problem better than we do. So no one is better equipped to help offer solutions and be partners for progress.

At the NAM, we firmly believe we (in manufacturing) must be the solution."

He lauded manufacturing leaders in Ohio for stepping up to lead the development and deployment of solutions to the growing problem of workforce shortages.

"Parents and teachers,...they just want to steer young people toward jobs that will offer them stability and security and a future, especially in a world that is changing so, so rapidly.

Young people are looking for something that's meaningful, challenging, cutting edge. The good news? We can answer all these priorities and concerns in manufacturing.

The challenge for us though...is getting that message across," Timmons said. 11/2/2017

### **OMA and Allies React to Newest Unemployment Comp. Proposal** **November 3, 2017**

This week the OMA and business community allies **submitted a letter** to the House Government Accountability and Oversight Committee expressing opposition to the provisions of unemployment compensation reform legislation, **House Bill 382**, but support for a separate proposal (**HJR 4**) that would allow the state to bond future unemployment compensation debt.

The group defined its principles for unemployment compensation system reform legislation, including: "Any workable solution must address both spending and revenue to balance the cost of benefits with employer contributions and simply pouring more money into the system without addressing benefits undercuts Ohio's job-creating economic competitiveness."

The group also wrote: "Meanwhile, we believe that House Joint Resolution 4 is an important piece of any solvency package in that it allows the state maximum flexibility if required to borrow federal funds to support the UI system in the future. Our organizations have long supported bonding as a helpful option when dealing with UI insolvency." 11/2/2017

### **Automakers Map Out Policy for Autonomous Vehicles** **November 3, 2017**

Honda, Ford, General Motors, and Tesla testified in an information hearing of the House Transportation and Public Safety Committee on autonomous vehicles and the appropriate public policies to have in place for their evolution on the state's roadways.

The companies discussed the five levels of vehicle automation defined by the Society of Automotive Engineers (levels four and five are when human control is completely removed). They also briefed the committee on issues of liability, cybersecurity, insurance rates, and the likely path of deployment from limited access highways to urban streets. They urged the legislature to enact a statute that specifically authorizes self-driving cars on Ohio roads.

Read the Ford testimony **here**, Honda **here**, and Tesla **here**. 11/2/2017

### **OMA Opposes Garrett Nomination for Ex-Im Bank** **October 27, 2017**

Next Wednesday, November 1, the Senate Banking Committee will hold a hearing on nominations to the Export Import Bank (Ex-Im Bank) – including the nomination of Scott Garrett to lead the bank.

OMA president Eric Burkland **sent this letter** to Sen. Sherrod Brown that describes OMA's reasons for

opposing the nomination of Scott Garrett to lead the bank.

He wrote, "Mr. Garrett has a long record of opposing the fundamental mission of the Ex-Im Bank to support U.S. jobs through exports. Manufacturers in Ohio are concerned that he will not empower the agency to achieve its full capability but will instead hobble it. Beyond his votes against a multi-year reauthorization of the Ex-Im Bank in both 2012 and 2015, his opposition appears to be based on a fundamental misunderstanding of the agency and a disregard of the extremely tilted international landscape that manufacturers in the U.S. face." 10/26/2017

### **Cybersecurity Analysis and Lessons Learned** **October 27, 2017**

The IT Services division of OMA Connections Partner, GBQ Partners, analyzed the recent surge of disclosed security breaches. The recent big brand announcements from firms such as Deloitte, Equifax, Accenture and others contributed to a record setting year for cybersecurity failures.

GBQ identified common issues with these events. Among the lessons learned:

- Being compliant does not equate to being secure.
- Testing to meet compliance requirements may not be adequate for security purposes.

Read [more here](#). 10/25/2017

### **Opportunity to Participate in Manufacturing Economic Survey** **October 27, 2017**

The Manufacturing Industry Group of OMA Connections Partner, Schneider Downs, is calling for participation in its **2017 Annual Economic Survey of the Manufacturing Industry**. This is the seventh year for this survey which aims to provide manufacturers with a snapshot of industry's performance over the last year.

This survey will take approximately 10 minutes to complete and is anonymous. Responses are invited by November 15, 2017.

Here are the [2016 survey results](#). 10/25/2017

### **Unemployment Compensation Reform Bill Has First Hearing** **October 20, 2017**

This week in the House Government Accountability and Oversight Committee, **House Bill 382** had its initial hearing. The bill, which makes a variety of changes to Ohio's unemployment compensation system, is sponsored by Rep. **Kirk Schuring** (R-Canton).

In testimony, Rep. Schuring stated that the bill is a starting place for discussion to shore up Ohio's insolvent unemployment compensation system.

The bill makes a myriad of changes including changing the number of weeks employees are eligible to receive benefits and creating a new co-pay for employees based on their employer's insurance rating. (See [bill analysis](#) and [fiscal analysis](#).)

The bill is expected to receive a lot of attention and input from interested parties over the course of the fall. The OMA continues to advocate for a solvency solution that is fair for manufacturers and their employees. 10/19/2017

### **Congressman Tiberi to Resign** **October 20, 2017**

Congressman **Pat Tiberi** (R-Galena) this week announced his intention to resign. He will take a position with the Ohio Business Roundtable.

Tiberi, a Republican whose district is in central Ohio, is a well-respected, influential congressman. He is also a great friend of American manufacturing and the OMA.

This is a big loss for the Ohio delegation, but a terrific decision by the board of the Roundtable. 10/19/2017

### **Share Your MFG DAY Photos with Us!** **October 20, 2017**

If you don't mind us boasting about your event, send us a picture or two from your MFG DAY activities.

We'll highlight them in the upcoming **Ohio Manufacturers Workforce Summit** on November 1.

Please send photos as attachments to this **email address** by Wednesday, October 25, 2017.

- Please name your images with identifying information (example:  
YourCompanyName\_MFGDAY2017.jpg)
- PNG or JPG format
- For best results, size photos to 1024 x 768 pixels, or 1400 x 1050 pixels.



- When emailing photos, please remove any of the other images that you may have in your e signature (e.g. Facebook, LinkedIn, Twitter, your company website).
- By submitting photos to the email address above, you are granting OMA permission to use these photos at the Ohio Manufacturers' Workforce Summit and potentially in other OMA communications.

Thank you! And don't forget to [register for the Summit!](#) 10/16/2017

**House Introduces New Unemployment Compensation Legislative Package**  
**October 13, 2017**

This week Rep. **Kirk Schuring** (R-Canton) introduced new unemployment compensation solvency legislation (**House Bill 382**). The bill would make a variety of changes to the state's unemployment compensation program; it would:

- Raise the taxable wage base from the current \$9,500 to \$11,000
- Charge employees a new co-insurance payment of 10% of the amount paid by the employer
- Freeze benefits for 10 years
- Reduce the maximum number of benefit weeks from 26 to 24

There is concern that the newest bill to tackle the issue would not be in compliance with Department of Labor requirements. Rep. Schuring views the bill as a starting point for new discussions to fix the state's unemployment compensation system solvency problems.

The House also introduced a resolution (**House Joint Resolution 4**) that would create a bond fund that could be used to pay off any new debts from the state's unemployment system. That resolution would need approval of the voters. 10/12/2017

**OMA Board Position on Issue 2: No**  
**October 13, 2017**

As early voting is now underway, we'd like to remind readers that, earlier this year, the OMA board of

directors voted to oppose the "Ohio Drug Price Relief Act," now known as Issue 2 on the November 2017 general election ballot.

If passed, the State of Ohio would be prohibited from entering any agreement for prescription drugs unless the net cost is the same or lower than the lowest price paid by the U.S. Department of Veterans Services.

Experts who have studied the issue say it would be difficult if not impossible to implement.

The proposal is backed by the AIDS Health Care Foundation, a Los Angeles-based organization headed by controversial activist Michael Weinstein.

In its **statement** opposing the measure, the OMA wrote: "As manufacturers, we are concerned with any plan to impose artificial price controls on products. The OMA is concerned that price controls would not stop with medication but would apply to other products purchased by government."

NBC4 WCMH-TV in Columbus hosted a Statewide Issue 2 Forum aimed at getting the facts about the prescription drug initiative; proponents and opponents were invited to the forum ([recording here](#)).

Issue 2 is also **opposed** by the Akron Beacon Journal, the Columbus Dispatch and The Plain Dealer. 10/12/2017

**Governor Declares October 2017 Manufacturing Month**  
**October 6, 2017**

Ohio Governor John R. Kasich and Lt. Governor Mary Taylor have **issued a resolution** declaring October 2017 as Manufacturing Month throughout Ohio, encouraging all Ohioans to participate in the statewide events taking place in October to celebrate the importance of manufacturing in Ohio. 10/1/2017

**RESOLUTION**

WHEREAS, manufacturing has been one of the principal economic drivers of the economy of the state of Ohio since the late 1800s, and Ohio is the third largest state in manufacturing, producing over \$100 billion in manufactured goods annually; and

WHEREAS, Ohio is a leader in the production of primary and fabricated metals, machinery, electronic products, transportation equipment, food and beverages, as well as rubber and plastics; and Ohio leads in American aircraft engine production with 16 percent of the total U.S. employment located in Ohio; and

WHEREAS, hundreds of thousands of Ohioans are currently employed in manufacturing careers, nearly 13 percent of Ohio's total employment; and manufacturing is a leading sector in rural counties, employing over 20 percent of the local labor force; and

WHEREAS, various manufacturing industry leaders have developed a series of activities in October to highlight their industry to students, potential employees and the general public, from plant tours and career workshops to a live interactive telecast being made available to high schools and middle schools statewide.

NOW, THEREFORE, We, John R. Kasich and Mary Taylor, Governor and Lieutenant Governor of the State of Ohio, do hereby recognize October 2017 as

### **MANUFACTURING MONTH**

throughout Ohio and encourage all Ohioans to participate in the statewide events taking place in October to celebrate the importance of manufacturing in Ohio.

#### **NAM Reports Historically High Optimism Continues Among U.S. Manufacturers October 6, 2017**

Last week the National Association of Manufacturers (NAM) published its latest Manufacturers' Outlook Survey. It found that the historically high levels of optimism that U.S. manufacturers expressed during the first two quarters of 2017 continued through the third quarter.

NAM reported: "In March, 93.3 percent of respondents were positive about their own company's outlook, an all-time high in the survey's 20-year history. That dropped slightly in the second quarter to 89.5 percent, then rose a bit again in the third quarter to 89.8 percent. As a result, this year we have seen the highest consecutive three-quarter average—90.9 percent having a positive outlook for their company—in the survey's history."

Access [the report here](#). 10/3/2017

#### **Lawmakers Learn About Driverless Vehicles October 6, 2017**



Members of the House Transportation Committee this week heard presentations on autonomous vehicles by national automobile trade associations.

Josh Fisher of the Association of Global Automakers **briefed committee members** about the benefits of automated technology, the evolution of technology and speculated on time frames for implementation. He also addressed public policy considerations and the role of local governments.

Jonathan Weinberger of the Alliance for Automobile Manufacturers **addressed** several specific policy changes ranging from testing to manufacturer liability and provided this **presentation** about driverless cars. 10/5/2017

#### **Trump to Address Manufacturing Leaders Today September 29, 2017**

This morning President Donald Trump will speak with America's manufacturing leaders when he addresses the National Association of Manufacturers (NAM) board of directors in Washington, D.C.

OMA president Eric Burkland is a member of the NAM board of directors.

The president is expected to highlight how bold tax reform will make America more competitive, put more money in workers' paychecks and improve the quality of life for everyone in our country.

You can **tune in here** starting at 11:00 a.m. EDT to watch the president's remarks live.

The NAM invites you to take action on tax reform by texting ActOnTax to 52866 or **click here**. 9/29/2017

**Ohio Talks Trade with Canadian Government Officials**  
**September 29, 2017**



This week OMA's Ryan Augsburger talked about the importance of fair trade with Canadian Members of Parliament.

The Buckeye state exports more than \$19 billion of manufactured goods to Canada. A **fact page** catalogs Ohio's largest international trading partnership.

The exchange was organized by Douglas George, Consul General of Canada. The delegation consisted of seven members of the House of Commons Standing Committee on International Trade as well as staff and representatives of the consulate. *9/28/2017*

*OMA's Ryan Augsburger pictured with Hon. Linda Lapointe, M.P. (Liberal Party, Quebec) and Hon. Randy Hoback, M.P. (Conservative Party, Saskatchewan)*

**Help for Marketing Your Products Internationally**  
**September 29, 2017**

The International Market Access Grant for Exporters (IMAGE) program is designed to help small businesses increase exports and create jobs in Ohio's economy. The program reimburses at a 50% rate, capped at \$12,500 per eligible approved applicant.

Here is **more information** about the IMAGE program. *9/28/2017*

**What Are You Doing for MFG DAY?**  
**September 22, 2017**



Ohio has 131 and counting **MFG DAY events** scheduled!

Started in 2012, MFG DAY has seen participation grow dramatically over the years. **Here are the official numbers** when it comes to the number of events, the number of attendees, and the how MFG

DAY is affecting the public perception of manufacturing.

It's not too late to plan an event – any day can be MFG DAY! All the **resources you need to plan are here**. *9/21/2017*

**DeWine Issues Economic Development Manual**  
**September 22, 2017**

Ohio Attorney General Mike DeWine this week issued his 2017 Ohio Economic Development Manual. First released in 2015, the manual is a one-stop guide for anyone interested in economic development programs in the state.

The manual is designed to provide users overviews on Ohio laws, tax systems, funding sources, and agencies that play a role in economic development throughout Ohio.

**Get the manual here**. *9/20/2017*

**Three 2018 Gubernatorial Candidates Meet with OMA Board**  
**September 15, 2017**



The OMA Board of Directors this week met with three of the four Republican candidates for governor in next fall's general election: Attorney General **Mike DeWine**, Secretary of State **Jon Husted** and Congressman **Jim Renacci**. Lt. Governor **Mary Taylor** was unable to attend due to schedule conflicts.

Directors listened to the candidates' plans for Ohio, specifically plans for growing the Ohio economy and supporting manufacturing. Wide-ranging conversations were had about the issues that impact manufacturing competitiveness: workforce development, taxes, energy costs, environmental regulation, logistics, health care costs, infrastructure, and more.

The board also had a visit from Republican Party Chairman, **Jane Timken**, who talked about progress in Washington under President Trump and next year's important state elections. *9/14/2017*

**Burkland/Timmons Op-Ed: No to Garrett at Ex-Im**  
**September 15, 2017**

In an op-ed in the Cleveland Plain Dealer, OMA president Eric Burkland and NAM president Jay Timmons wrote: “(O)ne recent development in our nation’s capital should have manufacturing workers deeply concerned: the nominee to be president and chairman of the U.S. Export-Import (Ex-Im) Bank. This one appointment could jeopardize billions of dollars in manufacturing sales and millions of jobs.

“The nominee in question is Scott Garrett, a defeated former congressman from New Jersey. When in Congress, he made it his mission to destroy the Ex-Im Bank. In fact, as a congressman, Garrett voted to kill the Ex-Im Bank every chance he got — more than a dozen times in all. He urged his colleagues to ‘keep the Export-Import Bank out of business.’”

**Read why Garrett is not fit for President Trump’s manufacturing agenda and why the Senate should reject him.** 9/14/2017

**Lieutenant General Murray Visits OMA**  
**September 15, 2017**



**Lieutenant General**

**John (Mike) Murray** visited the OMA this week to talk about the Army, its soldiers and its contribution to the economy. The visit was one of several in central Ohio in a program aiming to deepen the Army’s engagement with communities, including the business community.

General Murray noted that the Army recruited 80,000 soldiers last year. Forty thousand of those will leave the army in four years and will be looking for employment.

As potential employees these soldiers will know how to work for a large organization, understand sacrifice for a team, be disciplined and show up on time, have been drug-free for four years and make good employees and good citizens.

General Murray is a Kenton, Ohio native (as is his wife), and a proud graduate of The Ohio State University.

See more about soldiers transitioning to civilian life at **Solder for Life.** 9/14/2017

**Trial Bar Goes After Statute of Repose**  
**September 15, 2017**

A ride malfunction at the Ohio State Fair in early August resulted in one fatality and several serious injuries. This week attorneys representing some of the victims told the **Columbus Dispatch** that Ohio’s tort reform package of 2004 denies their clients justice.

Specifically, the plaintiffs’ attorneys protest the 10-year statute of repose which protects manufacturers from bogus lawsuits.

Acknowledging that the accident is a terrible tragedy, the OMA’s Ryan Augsburger stated that “The 2004 law does not prevent a party from seeking legal remedies against responsible parties whose actions resulted in an injury. The law recognizes that subsequent to delivery of a product the manufacturer loses control over the product, its uses, and the conditions under which the product is used and maintained. So after 10 years, it is more appropriate for parties who have had control of the product to be responsible for any harm. While Ohio law contains a statute of repose to promote manufacturing and innovation, that law does not absolve manufacturers from liability for fraudulent conduct regarding the product.” 9/14/2017

**ODE Releases School Report Cards**  
**September 15, 2017**

The Ohio Department of Education (ODE) released school **report cards for 2016-17** this week.

“Schools and districts report information for the Ohio School Report Cards on specific marks of performance – called measures – within six broad categories or components. The components are Achievement, Progress, Gap Closing, Graduation Rate, K-3 Literacy and Prepared for Success. The Department gives letter grades on each of the six components and most of the individual measures,” according to ODE. 9/14/2017

**Explore Export Opportunities at Cleveland Event**  
**Sept. 18-20**  
**September 15, 2017**

In Cleveland next week: resources to support your new or emerging export business.

Meet one-on-one with procurement staff from manufacturing OEMs including: Airbus, Bell Helicopter, Boeing Defense, Rockwell Automation, Telephonics, Fiat Chrysler Automobiles U.S., Ford Motor Company, Global Alliance Automotive, and more.

Also, U.S. government trade experts from Canada, Mexico, Germany, France, The Nordics, Southeast Europe, and more than 10 other markets will be available for meetings.

**More here.** 9/14/2017

### **Lang Appointed to Ohio's 52nd House District** **September 15, 2017**

Ohio House Republicans approved a resolution Wednesday to appoint George Lang to the seat vacated by Ohio Rep. Margy Conditt (R-Liberty Twp.) who resigned last week.

Lang was one of seven district Republicans to seek the appointment to Conditt's term, which has 18 months remaining. 9/14/2017

### **Emerson's CEO, David Farr, Outlines Tax Policy** **Requirements** **September 8, 2017**

This week, David Farr, chairman and CEO of Emerson and chair of the board of the National Association of Manufacturers (NAM) gave a speech at The Economic Club of New York about tax policy.

Among his remarks, Farr outlined these reform measures: "First, we must cut the federal corporate tax rate to 15 percent and lower the tax rate for the two-thirds of manufacturers that pay taxes at individual tax rates as pass-through entities. It is backward and unfair to saddle them with marginal tax rates of up to 44 percent on these small business owners! ...

"Second, we have to stop punishing global U.S. companies when they reinvest overseas earnings back into the United States. ... Since Emerson is headquartered in St. Louis, we pay taxes on overseas earnings brought back home while our foreign competitors do not—another negative competitive issue for global U.S. companies. ...

"Third, we need a robust capital cost-recovery system. ... Faster capital expensing lowers the after-tax cost and increases the number of profitable projects a firm can undertake—more U.S.A. investment normally translates into more jobs.

"Finally, manufacturers will be looking for strong research and development incentives in any tax package—both R&D deductions and a strengthened R&D credit.

"So, that is the straightforward and smart tax and pro-growth reform manufacturers want and that America deserves: a fair corporate tax rate, fair rates for small business, a territorial tax system, a robust capital

cost-recovery system and consistent long-term-focused R&D incentives."

Read **Farr's address here.** 9/7/2017

### **NAM Rolls Out Creators Website to Support** **Manufacturing Career Recruitment** **September 8, 2017**

The National Association of Manufacturers (NAM) is rolling out its "Creators Wanted" campaign to inspire and recruit the next-generation workforce in partnership with NAM member, Pfizer, and NAM affiliate, The Manufacturing Institute.

On the new **CreatorsWanted website**, the story of modern manufacturing come to life through the voices of workers—at manufacturers of all sizes, including these contributors: Anheuser-Busch, BTE Technologies, Dell, Edward Marc Chocolatier, Emerson, General Electric, HELM Boots, Honda, Jamison Door Company, Marlin Steel Wire Products, PPG and STIHL, as well as Pfizer.

Surveys and focus groups prove that when parents get to know modern manufacturing, kids see manufacturing as an attractive career path and manufacturers have access to a new talent pipeline. That's why the CreatorsWanted tools and videos, along with helpful conversation guides for parents, open the doors to manufacturing workplaces and the opportunities that lie beyond them.

Visit **CreatorsWanted** and share these stories with your children and your networks. 9/5/2017

### **Ohio SOS Names Ballot Issues 1 and 2** **September 1, 2017**

This week Ohio Secretary of State Jon Husted announced the official titles of the two statewide ballot initiatives that will be before Ohio voters this November: STATE ISSUE 1: "Rights for Crime Victims" and STATE ISSUE 2: "To require state agencies to not pay more for prescription drugs than the federal Department of Veterans Affairs and require state payment of attorney fees and expenses to specific individuals for defense of the law"

The OMA has joined **Ohioans Against the Deceptive Rx Ballot Issue**, a coalition comprised of diverse groups, including medical organizations, business groups and veterans' organizations, to oppose Issue 2.

This week the Akron Beacon Journal **editorialized against Issue 2**, becoming the second major Ohio newspaper to oppose the prescription drug ballot initiative. The Columbus Dispatch editorialized against the measure last month.

The full texts of arguments and explanations concerning State Issues 1 and 2 **are posted online.** *8/31/2017*

**LIFT Measures Ohio Advanced Manufacturing Job Postings for Q2**  
**September 1, 2017**

Lightweight Innovations For Tomorrow, **LIFT**, quarterly measures demand for lightweighting and advanced manufacturing jobs.

According to its most **recent report**, there were 19,525 related Ohio job postings during Q2 2017, up 1.6 percent over Q2 2016, and demand has increased nine percent in the four years since analysis began in Q1 2013.

Also, according to the report, 2017 is tracking to be the eighth consecutive year of employment growth with over 740,000 Ohio workers employed in lightweighting-related occupations – the greatest employment level since 2009.

See an infographic of the **Q2 report findings here**, including the most in-demand jobs posted.

The OMA is LIFT's Ohio partner. *8/31/2017*

## Miscellaneous Legislation of Interest to Manufacturers

Prepared by: The Ohio Manufacturers' Association  
Report created on November 28, 2017

- HB5**      **MICROBUSINESS STATUTORY DEFINITION** (PELANDA D, GAVARONE T) To create a statutory definition of "microbusiness."  
*Current Status:* 3/15/2017 - Referred to Committee Senate Transportation, Commerce and Workforce  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-5>
- HB20**      **COMPENSATORY DAMAGES CAP REMOVAL** (GONZALES A, BOGGS K) To remove the cap on the amount of compensatory damages that represents damages for noneconomic loss that is recoverable in a tort action when the tort action is brought by a victim of rape, felonious assault, aggravated assault, assault, or negligent assault.  
*Current Status:* 2/8/2017 - Referred to Committee House Government Accountability and Oversight  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-20>
- HB23**      **ALCOHOLIC ICE CREAM SALE** (PATTERSON J, BOGGS K) To allow A-4 liquor permit holders to manufacture and sell ice cream containing between one-half of one per cent and six per cent of alcohol by volume.  
*Current Status:* 5/17/2017 - House Government Accountability and Oversight, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-23>
- HB26**      **TRANSPORTATION-PUBLIC SAFETY BUDGET** (MCCOLLEY R) To make appropriations for programs related to transportation and public safety for the biennium beginning July 1, 2017, and ending June 30, 2019, and to provide authorization and conditions for the operation of those programs.  
*Current Status:* 3/31/2017 - **SIGNED BY GOVERNOR**; Some provisions line-item vetoed, eff. 6/30/2017  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-26>
- HB42**      **VEHICLE TIRE SAFETY** (SPRAGUE R, DEVITIS A) To prohibit the installation of unsafe used tires on certain motor vehicles.  
*Current Status:* 5/9/2017 - **REPORTED OUT AS AMENDED**, House Economic Development, Commerce and Labor, (Fifth Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-42>
- HB51**      **DEPARTMENT REVIEW SCHEDULE** (FABER K) To require standing committees of the General Assembly to establish a schedule for the periodic review and sunset of state departments that are currently in the Governor's cabinet, and to require that Auditor of State performance audits be scheduled to coincide with the periodic review.  
*Current Status:* 5/16/2017 - **REPORTED OUT AS AMENDED**, House State and Local Government, (Fourth Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-51>



- HB53 PUBLIC EMPLOYEES-MEMBER DUES** (BECKER J) To remove any requirement under the Public Employees Collective Bargaining Law that public employees join or pay dues to any employee organization, to prohibit public employers from requiring public employees to join or pay dues to any employee organization, to prohibit an employee organization from being required to represent public employees who are not members of the employee organization, and to make an appropriation.  
*Current Status:* 2/14/2017 - Referred to Committee House Finance  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-53>
- HB57 DOMESTIC STEEL REQUIREMENTS** (BOCCIERI J, RAMOS D) To require the use of domestic steel in construction, repair, or improvement projects involving certain buildings used by public schools, state institutions of higher education, and specified private colleges.  
*Current Status:* 3/21/2017 - House Economic Development, Commerce and Labor, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-57>
- HB127 BUILDING CODE REQUIREMENTS-WELDING** (PERALES R, DEVER J) To establish in the Ohio Building Code requirements pertaining to structural steel welding and bridge welding.  
*Current Status:* 11/28/2017 - House Economic Development, Commerce and Labor, (Third Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-127>
- HB163 PREVAILING WAGE PUBLIC IMPROVEMENT PROJECTS** (ROEGNER K, RIEDEL C) To allow political subdivisions, special districts, and state institutions of higher education to elect to apply the Prevailing Wage Law to public improvement projects.  
*Current Status:* 9/19/2017 - House Economic Development, Commerce and Labor, (Second Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-163>
- HB206 COMMERCIAL AIRLINE AND AIR FREIGHT COMMISSION** (BARNES, JR. J) To create the Commercial Airline and Air Freight Commission.  
*Current Status:* 9/13/2017 - House Transportation and Public Safety, (Third Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-206>
- HB226 FIREWORKS STUDY GROUP AND EXPANSION** (SEITZ B, SWEENEY M) To establish a fireworks study group to review and make recommendations regarding the Fireworks Law, to extend to July 1, 2020, the moratorium on issuing fireworks manufacturer and wholesaler licenses, to eliminate, beginning January 1, 2021, the moratorium on geographic transfer of fireworks manufacturer and wholesaler licenses, and, beginning July 1, 2020, to impose a fee on the retail sale of consumer grade fireworks in this state and to expand the ability of individuals to obtain 1.3G display fireworks and obtain and use 1.4G consumer fireworks.  
*Current Status:* 11/29/2017 - Senate Government Oversight and Reform, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-226>



- HB245**      **CONSUMER PROTECTION CALL CENTER ACT** (BOCCIERI J, LEPORE-HAGAN M) To enact the Consumer Protection Call Center Act of 2017 to require the Department of Job and Family Services to compile a list of all employers that relocate a call center to a foreign country and to disqualify employers on that list from state grants, loans, and other benefits.  
*Current Status:* 9/19/2017 - House Economic Development, Commerce and Labor, (Second Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-245>
- HB256**      **COMMERCIAL SERVICE AIR HUBS** (BUTLER, JR. J, ZELTWANGER P) To create the Major Air Hub Council, to require the Council to construct two commercial service airports, one in Fayette County and one in Portage County, and to create the Southern Ohio Airport Authority and the Northern Ohio Airport Authority to operate the airports.  
*Current Status:* 9/20/2017 - House Transportation and Public Safety, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-256>
- HB262**      **INDEPENDENT BUDGET PROCESS** (BUTLER, JR. J, ROMANCHUK M) To provide for the preparation of a state biennial budget independent of that submitted by the Governor and to authorize the Legislative Service Commission, upon the request of the Speaker of the House of Representatives or the President of the Senate, to arrange for an independent actuarial review of a proposed bill, specified analyses of economic policy initiatives and state benchmarking data, and a study of the state's long-range financial outlook.  
*Current Status:* 6/20/2017 - Referred to Committee House Government Accountability and Oversight  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-262>
- HB301**      **COURT SETTLEMENT RESTRICTIONS** (BUTLER, JR. J) To require the approval of the General Assembly for a state agency to agree to a consent decree or court-approved settlement agreement that would alter or prohibit the enforcement of a law of this state.  
*Current Status:* 9/12/2017 - Referred to Committee House Government Accountability and Oversight  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-301>
- HB323**      **GARBAGE COLLECTION FEES** (PATTERSON J) To authorize all municipal corporations that charge a garbage collection fee to certify unpaid amounts to the county auditor, who must enter the fees on the property tax list to be collected in the same manner as real property taxes.  
*Current Status:* 11/29/2017 - House State and Local Government, (Second Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-323>
- HR74**      **ABOLISH CORPORATE PERSONHOOD** (SMITH K, ANTONIO N) To call on legislators at the state and federal level and other communities and jurisdictions to support an amendment to the United States Constitution that would abolish corporate personhood and the doctrine of money as speech.  
*Current Status:* 5/1/2017 - Referred to Committee House Federalism and Interstate Relations  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation->

[summary?id=GA132-HR-74](https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HR-74)

- SB6 OHIO BRIDGE PARTNERSHIP PROGRAM** (HOAGLAND F) To extend the Ohio Bridge Partnership Program through the end of fiscal year 2019 and to require the Director of Transportation to submit a report to the Governor, Senate, and House of Representatives recommending ways to continue to fund the program.  
*Current Status:* 5/9/2017 - Referred to Committee House Transportation and Public Safety  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-6>
- SB30 VEHICLE RESOLUTIONS BY COUNTIES** (EKLUND J) To authorize counties to adopt resolutions regulating motor vehicle traffic on county and township roads.  
*Current Status:* 2/14/2017 - Senate Local Government, Public Safety and Veterans Affairs, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-30>
- SB43 TOWNSHIP BUILDING CODES** (BACON K) To enable limited home rule townships to adopt building codes regardless of any similar codes adopted by the county in which the township resides.  
*Current Status:* 6/27/2017 - **REPORTED OUT**, Senate Local Government, Public Safety and Veterans Affairs, (Fourth Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-43>
- SB51 LAKE ERIE IMPROVEMENT DISTRICT** (SKINDELL M, EKLUND J) To authorize the creation of a special improvement district to facilitate Lake Erie shoreline improvement.  
*Current Status:* 9/27/2017 - Senate Energy and Natural Resources, (Fourth Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-51>
- SB68 UNSAFE USED TIRES PROHIBITION** (LAROSE F, HITE C) To prohibit the installation of unsafe used tires on certain motor vehicles.  
*Current Status:* 6/27/2017 - **REPORTED OUT**, Senate Local Government, Public Safety and Veterans Affairs, (Third Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-68>
- SB72 PREVAILING WAGE LAW** (HUFFMAN M) To allow political subdivisions, special districts, and state institutions of higher education to elect to apply the Prevailing Wage Law to public improvement projects.  
*Current Status:* 3/7/2017 - Referred to Committee Senate Finance  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-72>
- SB79 STATE DEPARTMENTAL REVIEW SCHEDULE** (JORDAN K) To require standing committees of the General Assembly to establish a schedule for the periodic review and sunset of state departments that are currently in the Governor's cabinet, and to require that Auditor of State performance audits be scheduled to coincide with the periodic review.  
*Current Status:* 9/12/2017 - Referred to Committee House Government

Accountability and Oversight

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-79>

- SB122 CONCEALED CARRY-STATEHOUSE (JORDAN K)** To permit concealed handgun licensees to carry concealed handguns in the statehouse and on its grounds.  
**Current Status:** 4/26/2017 - Referred to Committee Senate Judiciary  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-122>
- SB142 CARRYING CONCEALED FIREARMS (JORDAN K)** To allow a concealed handgun licensee to carry concealed all firearms other than dangerous ordnance or firearms that state or federal law prohibits the person from possessing and to provide that a person 21 years of age or older and not prohibited by federal law from possessing or receiving a firearm does not need a concealed handgun license in order to carry or have a concealed firearm and is subject to the same laws regarding concealed firearm carrying as a concealed handgun licensee.  
**Current Status:** 5/3/2017 - Referred to Committee Senate Judiciary  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-142>
- SB156 CALL CENTER JOBS PROTECTION (SCHIAVONI J, YUKO K)** To enact the Consumer Protection Call Center Act of 2017 to require the Department of Job and Family Services to compile a list of all employers that relocate a call center to a foreign country and to disqualify employers on that list from state grants, loans, and other benefits.  
**Current Status:** 5/24/2017 - Referred to Committee Senate Government Oversight and Reform  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-156>
- SB165 BRINE SALE REQUIREMENTS (DOLAN M, SKINDELL M)** To establish conditions and requirements for the sale of brine from certain oil or gas operations as a commodity and to exempt such a commodity from requirements otherwise applicable to brine.  
**Current Status:** 11/15/2017 - Senate Energy and Natural Resources, (Third Hearing)  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-165>
- SB174 WAGE PROTECTIONS-FAIR ACT (TAVARES C)** To enact the "Fair and Acceptable Income Required (FAIR) Act" and to revise the enforcement of the prohibitions against discrimination in the payment of wages.  
**Current Status:** 9/7/2017 - Referred to Committee Senate Transportation, Commerce and Workforce  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-174>
- SB180 FIREARM RELATED LAWS-CHANGES (UECKER J, HOTTINGER J)** To assign to the prosecution the burden of disproving a self-defense or related claim, to expand the locations at which a person has no duty to retreat before using force under both civil and criminal law, and to modify the Concealed Handgun Licensing Law regarding a licensee's duty to keep the licensee's hands in plain sight, the penalties for illegally carrying a concealed firearm or improperly handling firearms in a motor vehicle, and the posting of warning signs regarding the possession of weapons on specified premises.

**Current Status:** 11/14/2017 - Senate Judiciary, (Second Hearing)  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-180>

**SB181 UNPAID MUNICIPAL GARBAGE FEES (O'BRIEN S, YUKO K)** To authorize all municipal corporations that charge a garbage collection fee to certify unpaid amounts to the county auditor, who must enter the fees on the property tax list to be collected in the same manner as real property taxes.

**Current Status:** 11/29/2017 - Senate Ways and Means, (Third Hearing)  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-181>

**SB205 BENEFIT CORPORATION FORMATION (DOLAN M)** To allow a corporation to become a benefit corporation.

**Current Status:** 10/18/2017 - Referred to Committee Senate Judiciary  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-205>

**SB210 AUXILIARY CONTAINER USEAGE (COLEY W, EKLUND J)** To authorize a person to use an auxiliary container for any purpose, to prohibit a municipal corporation from imposing a tax or fee on auxiliary containers, and to clarify that the existing antilittering law applies to auxiliary containers.

**Current Status:** 10/18/2017 - Referred to Committee Senate Health, Human Services and Medicaid  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-210>

**SB213 ECONOMIC DEVELOPMENT FUNDING PLAN (SCHIAVONI J)** To enhance economic and employment opportunities and improve local infrastructure in Ohio by providing additional assistance to workforce development and employment programs; establishing a revolving loan program for small businesses seeking to expand operations; extending job tax credits to smaller businesses; enabling expanded participation in public sector contracting by smaller companies; enhancing support for child care centers; funding additional local infrastructure and public transit; authorizing tax incentives for hiring military veterans, for donating money to local programs assisting distressed communities, or for improving distressed property; exempting the homes of disabled veterans from property taxation; terminating the income tax deduction and reduced tax rate for business income; and to make an appropriation.

**Current Status:** 11/15/2017 - Referred to Committee Senate Finance  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-213>

**SB220 SAFE HARBOR-CYBERSECURITY PROGRAMS (HACKETT R, BACON K)** To provide a legal safe harbor to covered entities that implement a specified cybersecurity program.

**Current Status:** 10/17/2017 - Introduced  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-220>

**SB221 RULE-MAKING AND REVIEW REFORM (UECKER J)** To reform agency rule-making and legislative review thereof.

**Current Status:** 11/29/2017 - Senate Government Oversight and Reform, (Second Hearing)

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-221>

- SB223**      **UNSAFE USED TIRES PROHIBITION** (LAROSE F) To prohibit the installation of unsafe used tires on certain motor vehicles.  
**Current Status:** 11/15/2017 - Referred to Committee Senate Local Government, Public Safety and Veterans Affairs  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-223>
- SJR3**      **STATE CONGRESSIONAL REDISTRICTING** (LAROSE F) Proposing to amend the versions of Sections 1, 2, 3, 4, 6, 8, and 9 of Article XI that are scheduled to take effect January 1, 2021; to amend, for the purpose of adopting new section numbers as indicated in parentheses, the versions of Sections 1(2), 2(3), 3(5), 4(6), 5(7), 6(8), 7(9), 8(10), 9(11), and 10(12) of Article XI that are scheduled to take effect January 1, 2021; and to enact new Sections 1 and 4 of Article XI of the Constitution of the State of Ohio to revise the redistricting process for congressional districts.  
**Current Status:** 3/7/2017 - Referred to Committee Senate Government Oversight and Reform  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SJR-3>
- SR59**      **SOO LOCKS FEDERAL UPGRADE** (DOLAN M, LAROSE F) To encourage the President and the Congress of the United States and the United States Office of Management and Budget to support plans to upgrade the Soo Locks at Sault Ste. Marie, Michigan, and encourage the United States Army Corps of Engineers to take expeditious action in preparing an Economic Reevaluation Report.  
**Current Status:** 9/27/2017 - **ADOPTED BY SENATE**; Vote 33-0  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SR-59>



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## Legislative Schedule for Second Half of 2017

Senate President Larry Obhof (R-Medina) announced the session schedule for the second half of 2017, following similar action by the House in late June. Unless otherwise notified, the House meets at 11 a.m. on Tuesdays, 1:30 p.m. on Wednesdays and 1 p.m. on Thursdays, and the Senate meets at 1:30 p.m. Tuesdays and Wednesdays and 11 a.m. on Thursdays. Dates and times are subject to change.

### July

Tuesday, July 18 - Senate Session **CANCELLED**

Wednesday, July 19 - House/Senate Sessions  
**CANCELLED**

Wednesday, July 26 - House Session **CANCELLED**

### August

Wednesday, Aug. 16 - Senate Session (if needed)

Wednesday, Aug. 23 - Senate Session (if needed)

### September

Monday, Sept. 4 - **Labor Day** (State Offices closed)

Tuesday, Sept. 5 - Senate committee hearings

Wednesday, Sept. 6 - Senate Session (if needed)

Tuesday, Sept. 12 - House Session (if needed)/  
Senate committee hearings

Wednesday, Sept. 13 - House Session/Senate  
committee hearings

Tuesday, Sept. 19 - House Session/Senate  
committee hearings

Wednesday, Sept. 20 - House/Senate Sessions

Tuesday, Sept. 26 - Senate committee hearings

Wednesday, Sept. 27 - Senate Session

### October

Tuesday, Oct. 3 - Senate committee hearings

Wednesday, Oct. 4 - Senate committee hearings

Monday, Oct. 9 - **Columbus Day** (State Offices  
closed)

Tuesday, Oct. 10 - House/Senate Sessions (if  
needed)

Wednesday, Oct. 11 - House/Senate Sessions

Tuesday, Oct. 17 - House Session (if needed)/  
Senate committee hearings

Wednesday, Oct. 18 - House Session (if needed)/  
Senate Session

Tuesday, Oct. 24 - House Session/Senate committee  
hearings

Wednesday, Oct. 25 - House Session (if needed)/  
Senate session

### November

Wednesday, Nov. 1 - House Session

Tuesday, Nov. 7 - **Election Day**/Senate committee  
hearings

Wednesday, Nov. 8 - Senate Session

Friday, Nov. 10 - **Veterans' Day** observed (State  
Offices closed)

Tuesday, Nov. 14 - House/Senate Sessions (if needed)

Wednesday, Nov. 15 - House Session (if needed)/  
Senate session

Thursday, Nov. 23 - **Thanksgiving Day** (State Offices  
closed)

Tuesday, Nov. 28 - Senate committee hearings

Wednesday, Nov. 29 - House/Senate Sessions

### December

Tuesday, Dec. 5 - House Session/Senate Session  
(if needed)

Wednesday, Dec. 6 - House Session (if needed)/  
Senate Session

Tuesday, Dec. 12 - House/Senate Sessions (if needed)

Wednesday, Dec. 13 - House/Senate Sessions

Thursday, Dec. 14 - House Session (if needed)

Tuesday, Dec. 19 - Senate session (if needed)

Monday, Dec. 25 - **Christmas Day** (State Offices  
closed)

Rev. 7/17/17



## Comparing and contrasting the House and Senate tax bills

Shareholder

Posted on November 11, 2017 at 10:44 am

November 9 was a busy day in Washington for lawmakers in their race to hammer out a tax reform package. The House Ways and Means Committee made amendments to, and approved, the Tax Cuts and Jobs Act. And the Senate Finance Committee released “policy highlights” for its proposed version of a tax plan. On November 10<sup>th</sup> the Senate Finance Committee announced plans to start mark up of its bill on Monday.



Many of the House and Senate provisions are similar. For example, both plans would repeal the alternative minimum tax and retain the charitable contribution deduction. However, there are a number of key differences. Here’s a look at some of the most significant.

### Individual taxes

The following changes would generally be effective beginning in 2018:

**Individual tax rates.** The House bill would consolidate the seven current federal income tax brackets into four: 12%, 25%, 35% and 39.6%. The Senate plan would still have seven tax brackets, but they would be 10%, 12%, 22.5%, 25%, 32.5%, 35% and 38.5%. (Currently, the brackets are 10%, 15%, 25%, 28%, 33%, 35% and 39.6%.)

**Personal exemptions and standard deduction.** The House bill would eliminate the current personal exemptions for taxpayers and their dependents. It would nearly double the standard deduction to \$12,200 for single filers and \$24,400 for married couples (adjusted for inflation), which, for many taxpayers, would remove the incentive to itemize deductions.

The Senate plan would do the same but the amounts are slightly smaller (\$12,000 and \$24,000) but includes an \$18,000 standard deduction for single parents (head of household filers).

**Child tax credit.** The House bill would increase the child tax credit from \$1,000 to \$1,600 for each qualifying child. The credit wouldn’t be adjusted for inflation, so its value would drop over time, and some tax professionals predict that the increased credit wouldn’t offset the loss of personal exemptions for many higher-income families.

The House also includes a \$300 credit for nonchild dependents, as well as a \$300 “family flexibility credit” for the taxpayer (or both spouses, for a joint return). The nonchild dependent credit and the family flexibility credit would be effective for tax years ending before January 1, 2023.

The House plan would also increase the income levels at which these credits phase out. Under current law, the child tax credit is phased out beginning at income levels of \$75,000 for single filers and \$110,000 for joint filers. The House plan would raise these amounts to \$115,000 and \$230,000, respectively.

The Senate plan would increase the child tax credit to \$1,650. It also would significantly increase the annual income threshold at which the credit begins to phase out to \$1 million for married joint filers and \$500,000 for single taxpayers. In addition, the Senate plan would provide a \$500 credit for dependents other than qualifying children.

**Mortgage interest deduction.** The House bill would cap the mortgage interest deduction limit at \$500,000 of debt for homes purchased after November 2, 2017. The Senate bill would keep the current mortgage interest deduction limit at \$1 million of debt.

**State and local taxes.** The House bill would generally eliminate state and local tax write-offs but preserve a deduction for property taxes limited to \$10,000. The Senate bill would fully repeal deductions for state and local taxes, including property taxes. So the deduction of state and local *income* taxes would be repealed under both bills.

**Medical expense deduction.** The House bill would get rid of the medical expense deduction while the Senate bill would retain it. The deduction generally allows taxpayers to deduct unreimbursed medical expenses that exceed certain amounts.

**Miscellaneous itemized deductions.** The house bill would remove a few of the deductions, but the Senate bill would completely eliminate all miscellaneous itemized deductions subject to 2% AGI phaseout. For higher and even middle income taxpayers, these deductions were typically not deductible due to the AMT. However, with the repeal of AMT, those deductions would have become more valuable to taxpayers. Investment expenses are one of the larger deductions in this category.

**Adoption tax credit.** The credit for adoption expenses would have been repealed under the original House bill but a November 9 amendment eliminated the repeal. The Senate bill would also retain the credit for qualified expenses. So it appears that the adoption tax credit is no longer a tax reform target.

**Enhanced standard deduction for blind and elderly taxpayers.** The House bill would eliminate this deduction while the Senate plan would retain it.

**Estate tax.** The House bill would essentially double the gift, estate and generation-skipping transfer (GST) tax exemptions to \$10 million (adjusted for inflation) and eliminate the estate and GST taxes entirely after 2023. That same year, it would reduce the gift tax rate to 35%. The Senate bill would double the exemptions, similar to the House provision. But unlike the House, the Senate doesn't propose repealing the estate tax or GST tax or reducing the gift tax rate at any point.

## **Business taxes**

These changes also would generally be effective beginning in 2018, but be sure to note the exceptions:

**Corporate tax rate.** The House bill would slash the corporate tax rate from 35% to 20% beginning in 2018 — the largest one-time reduction of the corporate rate in history. The Senate plan also would cut the rate from 35% to 20%, but it would delay the change until 2019.

**Pass-through business tax rate.** The original House bill called for substantial changes to the taxation of owners of pass-through entities (sole proprietorships, partnerships and S corporations), and the Ways and Means Committee passed amendments to its bill on November 9 that would complicate matters further. The House bill would tax pass-through owners on their “business income” at a maximum rate of 25%, rather than at their individual income tax rate. Those “actively involved” in their businesses would pay their individual rate on 70% of their income (which would be deemed wages) and the 25% rate on the remaining income.

Alternatively, until 2023, these business owners would be able to apply a “facts-and-circumstances” formula that calculates the amount of their wage income based on their capital investment in their businesses. This option might be especially appealing for capital-intensive businesses. Personal services businesses (for example, law, accounting, consulting, engineering and financial services firms) wouldn't be eligible for the 25% rate at all.

The Senate bill would provide tax relief to owners of pass-through entities by establishing a “simple and easy-to-administer deduction for pass-through businesses of all sizes.” The deduction would amount to 17.4% for certain



pass-through income. The deduction would be phased out for specified service businesses whose taxable income exceeded \$150,000 for married joint filers and \$75,000 for other taxpayers.

These provisions introduce more complexity into the income tax process. In addition, the National Federation of Independent Business expressed concern that the pass-through provisions wouldn't help most small businesses, because their income is low enough that they already pay less than 25% in taxes.

In response to such criticism, the House on November 9 added an amendment to its bill that would provide relief to some small business owners. The amendment eventually would provide a 9% tax rate, in lieu of the ordinary 12% tax rate, for the first \$75,000 in net business taxable income of an active owner or shareholder earning less than \$150,000 in taxable income through a pass-through business and married filing jointly. (For single taxpayers, the \$75,000 and \$150,000 amounts would be \$37,500 and \$75,000, and, for heads of households, they'd be \$56,250 and \$112,500.)

As taxable income exceeds \$150,000 for married joint filers, the benefit of the 9% rate relative to the 12% rate is reduced, and it's fully phased out at \$225,000 for such filers. Businesses of all types would be eligible for the preferential 9% rate. The proposed 9% rate would be phased in over five tax years. The rate for 2018 and 2019 would be 11%. For 2020 and 2021, it would be 10%, and for 2022 and thereafter, it would be 9%.

**Depreciation of business assets.** The House bill would allow companies to immediately expense capital investments — except buildings — acquired and placed in service after September 27, 2017, and before January 1, 2023 (with an additional year for certain property with a longer production period).

In addition, under the House bill, the limit on Section 179 expensing for pass-through entities would rise to \$5 million from \$500,000, with the phaseout threshold increasing to \$20 million from \$2 million. These higher amounts would be adjusted for inflation, and the definition of “qualifying property” would be expanded but wouldn't include property used in a real estate business. But the limits would be boosted for only five years, which some economists say isn't long enough to encourage much capital investment.

The Senate plan would also allow for full and immediate expensing of qualifying assets acquired and placed in service before January 1, 2023, though there would be some differences in *which* assets would qualify. The Senate bill also would increase the Sec. 179 expensing limit, but only to \$1 million, and would increase the phaseout threshold, but only to \$2.5 million. The higher limits would, however, be permanent (and continue to be indexed for inflation).

### **Nonqualified deferred compensation amendment**

When it was released, the House bill contained a provision that would tax an employee on nonqualified deferred compensation differently than it does now. It would essentially eliminate the ability to defer taxes beyond the vesting period. Business groups complained that the provision would mark the end of many nonqualified deferred compensation plans.

A House amendment, which was approved on November 9, would preserve the current tax treatment of nonqualified deferred compensation. But the Senate bill does propose significant changes to the tax treatment of nonqualified deferred compensation. The Senate plan generally includes any compensation deferred under a nonqualified deferred compensation plan in the gross income of the service provider when there is no substantial risk of forfeiture of the service provider's rights to such compensation. For this purpose, the rights of a service provider to compensation are treated as subject to a substantial risk of forfeiture only if the rights are conditioned on the future performance of substantial services by any individual.

### **What happens now?**

Keep in mind that we've covered only some of the proposed changes here. Many additional changes have been

proposed that might affect you or your business including the treatment of carried interest and changes to the international taxation rules.

Despite all the tax reform action that occurred on November 9, there's still a long way to go before a law is passed. The full House of Representatives plans to vote on its bill as early as the week of November 13, according to Republican leaders. Senate Finance Committee members said they'll make revisions to their plan in coming weeks before crafting a formal bill and having the full Senate vote on it.

Then, the House and Senate must reconcile their differences into a single bill that lawmakers hope to vote on before Christmas so that President Trump can sign it by December 31. Meanwhile, lobbyists and special interest groups, as well as taxpayers, will continue to weigh in, and some Republican lawmakers have already expressed opposition to parts of the proposals.

With the significant differences between the House and Senate plans, it remains to be seen whether they can craft a unified bill that can be passed by both chambers by the end of the year.

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## MEMORANDUM

TO: Ohio Manufacturers' Association  
Government Affairs Committee  
FROM: Bricker & Eckler LLP  
DATE: November 29, 2017  
RE: November 2017 OMA Government Affairs Committee Meeting

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### I. November 2017 Government Affairs Committee Counsel Report.

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

### II. Statewide Ballot Issues.

Overview — Statewide Ballot Issues. There were two statewide ballot issues certified to the November 7, 2017 ballot. The Ohio Drug Price Relief Act (“ODPRA”) was certified by the Sec. of State as Issue 2. Issue 1 was Marsy’s Law, officially called the Ohio Crime Victims Bill of Rights.

Ohio Drug Price Relief Act. The Ohio Drug Price Relief Act was an initiated statute originally proposed for the 2016 ballot to prohibit the State of Ohio from entering into any agreement for the purchase of prescription drugs or agree to pay, directly or indirectly, for prescription drugs unless the net cost is the same or lower than the lowest price paid for the same drug by the U.S. Department of Veterans Services. The proposal was backed by the AIDS Health Care Foundation, a Los Angeles-based organization headed by controversial activist Michael Weinstein.

The OMA and more than 80 other medical, business, veterans, healthcare, labor and community entities supported the opposition to Issue 2 – Ohioans Against the Deceptive Rx Ballot Issue.

Issue 2 was defeated on November 7, 2017 as 79.3 percent of Ohio voters chose to vote against the proposal. Only 20.7% of Ohio voters voted for the measure – the largest defeat of a contested ballot measure in Ohio history.

Marsy’s Law. Marsy’s Law was a proposed constitutional amendment designed to strengthen Ohio’s crime victim rights laws. Under Marsy’s Law, victims or their families have to be notified of any change in the status of the person accused of the crime. Victims and family members also have the right to receive reasonable protection from the accused or any person acting on his or her behalf. Marsy’s Law successfully passed in California, Illinois, North

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Dakota and Montana. On November 7, 2017, Ohio voters approved this proposed constitutional amendment by a margin of 82.6 percent to 17.4 percent.

Congressional Redistricting Proposal. The Fair Districts = Fair Elections Coalition submitted a proposal for the November 2018 ballot to amend the Ohio Constitution to create the bipartisan Ohio Redistricting (for Ohio congressional districts) Commission, the same entity created in 2015 to oversee state legislative redistricting. Proponents are currently collecting signatures needed for the 2018 ballot and as of November 3, 2017, had collected 154,000 signatures since June 3, 2017. The coalition will need to collect a total of 309,521 signatures to make it on the November 8, 2018 ballot. Based on its July 2017 Semiannual Campaign Finance Report, the League of Women Voters is one of the largest financial contributors. Other groups such as Common Cause Ohio and Ohio Environmental Council also made contributions to the coalition.

Legislative Redistricting Working Group. Based on the Fair Districts = Fair Elections Coalition’s proposal, a legislative working group surrounding congressional redistricting was formed in September 2017 to deliberate on whether the legislature or a separate entity should determine congressional redistricting. Representative Kirk Schuring (R-Canton) is the Chair of the working group. Senator Matt Huffman (R-Lima), Representative Jack Cera (D-Bellaire) and Senator Vernon Sykes (D-Akron) are also members.

The working group held two meetings in October and November 2017 to solicit public feedback regarding the current redistricting process. Lawmakers are hopeful that a bipartisan proposal curbing gerrymandering may be released by the end of the year. However, numerous other legislative redistricting proposals over the past decade have all failed. Senator Sykes and Representative Cera indicated that they are hopeful that a resolution can be reached by February, which is the deadline to qualify for the May ballot. The Fair Districts = Fair Elections Coalition initially thought that the threat of a constitutional amendment would inspire legislators to act, however, when the General Assembly failed to do so in 2016, the coalition formed and continues to grow.

Petitions with the requisite number of signatures must be filed with the Secretary of State’s office 125 days prior to the election at which the proposed constitutional amendment is to be on the ballot. Thus, the petitions must be filed by Wednesday, January 3, 2018 to make it on the May 8, 2018 ballot and on or around Wednesday, July 4, 2018 to be on the November 6, 2018 ballot.

Ohio Community Rights Amendment. This constitutional amendment would grant a constitutional right to local community self-government for the “health, safety and welfare of community members.” This amendment is supported by the Ohio Community Rights Network and the Community Environment Legal Defense Fund. This effort in addition to the Initiative and Referendum Amendment for Counties and Townships outlined below were drafted to

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address what proponents feel is an increased influence from the Ohio Statehouse on local, community decisions. Attorney General Mike DeWine certified the petition for the Ohio Community Rights Amendment on November 27, 2017, which means that the proposal had the required 1,000 valid signatures from registered Ohio voters and that they present a “fair and truthful” summary of the proposed amendment.

Initiative and Referendum Amendment for Counties and Townships. This constitutional amendment would give county and townships the ability to engage in the initiative and referendum process. This amendment is also supported by the Ohio Community Rights Network and the Community Environment Legal Defense Fund. Colorado and Oregon have passed similar measures in recent years. Attorney General Mike DeWine certified the petition for the Initiative and Referendum Amendment for Counties and Townships on November 27, 2017. Both the Ohio Community Rights Amendment and the Initiative and Referendum Amendment for Counties and Townships will proceed to the Ohio Ballot Board, which will determine whether the proposals contain a single or multiple issues.

H.J.R. 5—Ballot Issues. Representative Niraj Antani (R-Miamisburg) is sponsoring House Joint Resolution 5 which proposes several amendments to the Ohio Constitution that will modify the requirements for proposing and adopting constitutional amendments and proposed laws. It was introduced on November 1, 2017. H.J.R. 5 increases the number of petition signatures needed, signatures of 12.5 percent of electors are required for proposed constitutional amendments and signatures of 3.75 percent of electors for proposed laws. H.J.R. 5 also requires 60 percent of affirmative votes for passage for both constitutional amendments and proposed laws, and bans the monetary compensation of petition gatherers. Representative Antani’s proposal is not too dissimilar from the statewide ballot initiative discussions and/or possible proposals of the Ohio Constitutional Modernization Commission in 2015-2017. The business trade associations, including the OMA, viewed the OCMC discussions seriously, but noted the discussions likely lacked the substantive changes necessary to meaningfully alter the ease with which out of state entities continue to seek changes to Ohio statutory schemes and the Ohio Constitution. Despite initial discussions on the OCMC challenges, Representative Antani did not seek input for his proposal or have initial discussions with the business community prior to the introduction of H.J.R. 5.

### III. Tort Reform.

Speaker Cliff Rosenberg (R-Clarksville) has mentioned that he is interested in additional potential tort reform measures. As a result, the Ohio Alliance for Civil Justice members, including the OMA, began having conversations on the following matters and bills.

Statute of Repose. On July 26, 2017, the Fire Ball ride at the Ohio State Fair broke apart, killing one person and injuring seven others. Conversations surrounding altering the statute of repose,

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which currently sets a 10-year limit on a manufacturer's liability for a product's defect, have increased after the tragic fair accident. Selected trial lawyers and the Ohio Association for Justice have been particularly outspoken about extending the current statute of repose.

KMG the Netherlands-based manufacturer of the Fire Ball ride would likely be protected by the statute of repose's limit, as no cause of action based on a product-liability claim shall accrue against the manufacturer or supplier of a product later than 10 years from the date that the product is delivered to its first purchaser or lessee. The OMA has defended the current statute of repose and noted that the law does not prevent victims from seeking legal remedies such as holding those in control of the product responsible for any subsequent harm.

H.B. 20—Compensatory Damages. This bill is sponsored by Representatives Anne Gonzales (R-Westerville) and Representative Kristin Boggs (D-Columbus). It will remove the cap on the amount of compensatory damages that represents damages for noneconomic loss that is recoverable in a tort action when the tort action is brought by a victim of rape, felonious assault, aggravated assault, assault, or negligent assault. H.B. 20 was introduced on February 1, 2017. It was referred to the House Government Accountability and Oversight Committee. It has not yet had a hearing.

H.B. 271—Accessibility Laws. Representatives Rob McColley (R-Napoleon) and Jeff Rezabek (R-Clayton) are sponsoring this bill. H.B. 271 will authorize an alleged aggrieved party to provide a notice of an alleged accessibility law violation in advance of filing a civil action. The bill also establishes the circumstances under which an alleged aggrieved party is entitled to attorney's fees in a civil action based on the violation.

The bill was introduced on June 12, 2017 and was referred to the House Civil Justice Committee. It has had three committee hearings. Supporters of the bill say that it will protect businesses from predatory lawsuits filed for minor or technical violations of the Americans with Disabilities Act ("ADA"). Representative McColley offered several amendments to the original version of the bill in October. First, the window to cure a problem of noncompliance with the ADA would be reduced from 90 to 60 days. Additionally, an amendment also clarifies that existing housing discrimination laws are not included in the notification requirement provision of the bill.

#### IV. Unemployment Compensation.

H.B. 382—Unemployment Compensation. Representative Kirk Schuring (R-Canton) is sponsoring this bill that was introduced on October 11, 2017. It seeks to modify terms describing payments made under the Unemployment Compensation Law and increases the amount of wages subject to unemployment compensation premiums. The bill requires qualifying employees to make payments to the Unemployment Compensation Insurance Fund and allows the Director of Job and Family Services to adjust maximum weekly benefit amounts. The bill changes the fund's

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name to the Unemployment Insurance Fund. The bill reduces the maximum number of benefit weeks and makes additional changes to the Unemployment Compensation Law. The bill has had four hearings in the House Government Accountability & Oversight Committee.

The bill has yet to draw support from any specific business groups. The bill has also drawn little testimony. Zach Schiller of Policy Matters Ohio testified as an interested party, and noted that the bill is an improvement over past unemployment compensation bills but that it relies too much on cuts to worker benefits.

The OMA, NFIB, Ohio Farm Bureau, Ohio Chamber of Commerce, and Ohio Council of Retail Merchants submitted joint written testimony and stated that their organizations cannot support H.B. 382 in its current form. However, the testimony did say that these organizations view the bill as a forum to continue discussions surrounding solutions to the unemployment compensation issues.

H.J.R. 4—Unemployment Compensation. Representative Schuring (R-Canton) is also sponsoring this companion House Joint Resolution to H.B. 382 for a proposed constitutional amendment to allow the state to issue bonds to pay off debt incurred if the unemployment compensation fund needs to borrow money before turning to the federal government. This H.J.R. was introduced on October 11, 2017 and has had four hearings in the House Government Accountability & Oversight Committee. There has been no testimony on the resolution.

V. Pending Legislation (2017-2018).

H.B. 2 – Civil Rights Laws. Representative Bill Seitz (R-Cincinnati) sponsored H.B. 2. The bill was introduced in the House on February 1, 2017 and referred to the House Economic Development, Commerce & Labor Committee. H.B. 2 has had six committee hearings. On May 9, 2017, the House Committee voted (9-5) the substitute version of the bill out of the Committee. The OMA, Ohio Alliance for Civil Justice, Ohio Chamber of Commerce and NFIB submitted written proponent testimony to the House Economic Development, Commerce & Labor Committee on February 21 and 28, 2017.

The substitute bill requires one to file a charge of discrimination before the Ohio Civil Rights Commission before filing a lawsuit. The substitute bill also extends the previously proposed one-year statute of limitations for such claims to two years. Sub. H.B. 2 prohibits the filing of a lawsuit unless one (1) has received a notice of the right to sue from the OCRC, or (2) has requested a notice and the commission fails to issue the notice within 45 days after the required date, or after the panel determines it is probable that discrimination took place in that case. Additionally, the bill permits a person to file a lawsuit without notice of the right to sue if the person seeks only injunctive relief or the person has filed a charge with both the OCRC and the federal Equal Employment Opportunity Commission.

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Sub. H.B. 2 restores individual liability compared to the introduced version by permitting a person to file a lawsuit or Ohio Civil Rights Commission charge alleging an individual who is not the employer retaliated against the victim or aided the discriminatory behavior. The bill removes supervisory liability but aligns the Ohio definition of “agent of the state, political subdivision or person” to federal code. Sub. H.B. 2 codifies affirmative defenses for sexual harassment claims to match federal law.

This bill has been a business community objective since it was not included as a part of Senate Bill 80 decades ago but the self-described supporter of the business community have never found the time to push the bill across the line. Additional efforts will be made to try to get this to a positive resolution.

H.B. 86 – Minimum Wage. This bill is sponsored by Representatives Kent Smith (D-Euclid) and Hearcel Craig (D-Columbus). H.B. 86 would increase the state minimum wage to ten dollars and ten cents per hour beginning January 1, 2019. This bill was introduced in the House on February 22, 2017 and has had no hearings.

H.B. 99 – Pneumoconiosis Claims. The bill is sponsored by Representative Jack Cera (D-Bellaire) and modifies workers’ compensation benefit amounts for occupational pneumoconiosis claims and creates the Occupational Pneumoconiosis Board to determine medical findings for such claims. It was introduced in the House on February 28, 2017 and referred to the House Insurance Committee.

H.B. 187 – Employee Hiring Information. Representative Jonathan Dever (R-Madeira) is sponsoring H.B. 187, which will regulate the collection, use, and retention of certain information obtained from an applicant during the employee selection process. The bill was introduced in the House on April 24, 2017 and was referred to the House Community & Family Advancement Committee. H.B. 187 has had three hearings.

H.B. 380 – Workers Compensation. Representatives Bill Seitz (R-Cincinnati) and Larry Householder (R-Glenford) are sponsoring this bill, which prohibits illegal and unauthorized aliens from receiving compensation and certain benefits under Ohio’s Workers’ Compensation Law. The bill was referred the House Insurance Committee and has had one hearing.

S.B. 14 – Domestic Workers. Senator Charleta Tavares (D-Columbus) is S.B. 14’s sponsor. The bill would require domestic workers be paid the higher of the minimum wage provided in Section 34a of Article II, Ohio Constitution, or the minimum wage provided in the Fair Labor Standards Act. S.B. 14 would also require that domestic workers be paid overtime wages and would make certain conduct directed toward a domestic worker an unlawful discriminatory practice. The bill would also require a weekly day of rest for domestic workers. S.B. 14 was



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introduced in the Senate on January 31, 2017 and was referred to the Transportation, Commerce & Workforce Committee.

S.B. 76 – Trespassing Notices. Senator Bill Coley (R-Middletown) introduced this bill in the Senate on February 27, 2017. The bill would amend the law governing criminal trespass to specify that placing purple paint marks on trees or posts constitutes posting notice in a manner reasonably calculated to come to the attention of potential intruders. The bill was referred to the Senate Judiciary Committee and has had two hearings.

S.B. 100 – Civil Rights – Discrimination Prohibitions. This bill is sponsored by Senators Mike Skindell (D-Lakewood) and Charleta Tavares (D-Columbus) and was introduced in the Senate on March 14, 2017. S.B. 100 would prohibit discrimination on the basis of sexual orientation or gender identity or expression. It would add mediation to the list of informal methods by which the Ohio Civil Rights Commission must attempt to induce compliance with Ohio’s Civil Rights Law before instituting a formal hearing. The bill would also eliminate certain religious exemptions from the Ohio Civil Rights Law. The bill was referred to the Senate Government Oversight & Reform Committee.

#### VI. 2018 Statewide Political Update.

U.S. Senate. Current Ohio Treasurer Josh Mandel, Cleveland investment banker Mike Gibbons, Marysville business owner Melissa Ackison and former Legislative Service Commission staffer Don Elijah are all campaigning for the Republican nomination to face incumbent U.S. Senator Sherrod Brown, who is his third U.S. Senate term in 2018.

U.S. Congress. Republican Congressman Pat Tiberi recently announced his plans to leave Congress at the end of January to lead the Ohio Business Roundtable. Several state lawmakers have expressed interest in running for the 12th U.S. Congressional District seat. The following have indicated an interest in running: Senator Kevin Bacon (R-Minerva Park), Senator Kris Jordan (R-Ostrander), Representative Rick Carfagna (R-Westerville), Representative Mike Duffey (R-Worthington), and Delaware County Prosecutor Carol O’Brien. On the Democratic side, Ed Albertson, John Peters and Doug Wilson have all filed to run for the nomination. Franklin County Recorder Danny O’Conner is also rumored to be interested in the race.

There could be special a primary election for the unexpired term and a May primary for the new term. There will be a special general election that will occur sometime likely in the summer for the unexpired term. There will also be a November general election for the new term. Governor Kasich will set the dates for the special elections once the seat is officially vacated.

The 16th U.S. Congressional District seat is also open as Congressman Renacci is running for Governor. Currently there are three candidates seeking the Republican nomination: former Ohio

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State and NFL Football player Anthony Gonzales, Representative Christina Hagan (R-Alliance) and veteran Kit Seryak. Physicist and first-time candidate Aaron Godfrey appears to be the only Democrat to announce their candidacy.

Governor. Currently, four Republicans are seeking the nomination in the 2018 Ohio Gubernatorial race: Lt. Governor Mary Taylor, Secretary of State Jon Husted, U.S. Congressman Jim Renacci, and Attorney General Mike DeWine.

Democratic contenders include: State Senator Joe Schiavoni; former Ohio State Representative, Connie Pillich; current Mayor of Dayton, Nan Whaley; sitting Ohio Supreme Court Justice Bill O’Neill; and former U.S. Congresswoman Betty Sutton all of whom have announced that they will run for Governor in 2018. Former director of the Consumer Financial Protection Bureau, Richard Cordray, who recently announced his resignation from that federal position, is expected to announce his intention to run for Governor soon.

Secretary of State. State Senator Frank LaRose (R-Copley) is seeking the Republican nomination for Secretary of State. Representative Dorothy Pelanda decided against seeking the position.

Ohio State Representative Kathleen Clyde (D-Kent) is currently the only Democrat in the race.

Attorney General. Current State Auditor David Yost announced that he is running to become the Ohio Attorney General in 2018.

Former U.S. District Attorney Steve Dettelbach announced his democratic candidacy for Attorney General and is the only known Democratic challenger.

Auditor. State Representative Keith Faber, previously the President of the Ohio Senate, announced his campaign Auditor of State.

Former U.S. Congressman Zach Space (D-Dover) announced his candidacy during the summer of 2017.

Treasurer. State Representative Robert Sprague (R-Findlay) announced that he is running for Ohio State Treasurer. Franklin County Auditor Clarence Mingo has decided to seek re-election to his current position instead of running for State Treasurer.

Democrat Rob Richardson Jr., a former Cincinnati mayoral candidate, has decided to enter the race for state Treasurer.

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Supreme Court. The Ohio Republican Party recently endorsed Judge Craig Baldwin of the Fifth District Court of Appeals and Seventh District Court of Appeals Judge Mary DeGenaro for the two open seats on the Ohio Supreme Court.

Cuyahoga County Democrat John O’Donnell who was unsuccessful in 2014 and 2016 at gaining a seat on the Ohio Supreme Court may seek election again in 2018, although he must run without cover in 2018 as his common pleas seat is up for re-election also in 2018. Judge Cynthia Rice, Eleventh District Court of Appeals, who ran in 2016, may also seek to be the second Democratic Supreme Court candidate. Judge Mike Donnelly of the Cuyahoga County Common Pleas Court and Judge Melody Stewart of the Eighth Appellate District Court are also rumored to be interested in running for the Ohio Supreme Court.

General Assembly. With recent resignations from Senator Cliff Hite (R-Findlay) and Representative Wes Goodman (R-Cardington) over inappropriate behavior, there will be soon be a new member of the Ohio Senate. Representative Rob McColley (R-Napoleon) and Representative Craig Riedel (R-Defiance) have both applied for the appointment to the 1<sup>st</sup> Senate District. Regardless of whom the Senate Majority Caucus chooses to appoint, the House Majority Caucus will have to appoint someone to fill either candidates’ House seat. There are four other candidates who have applied for the 1<sup>st</sup> Senate District seat: Paulding County Commissioner Roy Klopfenstein, Craig Kupferberg, principal of Findlay High School, Jeff Smalley of Bellefontaine, and Frank Miller, Jr. of Ottawa. If either Representative McColley or Representative Riedel is selected to fill the remainder of Senator Hite’s term, the Ohio House would have to fill a new House member for that seat. The House Republican caucus will also have to appoint a replacement to fill Representative Goodman’s seat for the 87<sup>th</sup> House District, which consists of Morrow, Crawford, Wyandot and parts of Marion and Seneca counties.

## VII. Litigation and Amicus Activity Update.

*Nationwide Mutual Insurance Company v. Lucarell*, Ohio Sup. Ct. No. 2016-0585

This case involves an appeal from Seventh District Court of Appeals in Mahoning County. Nationwide filed a notice of appeal seeking discretionary review on April 18, 2016. The OMA, together with other business interest groups, filed an amicus curiae memorandum in support of jurisdiction, asking the Court to accept Nationwide’s appeal. On July 27, 2016, the Court agreed to accept Nationwide’s appeal.

The two propositions of law of interest to the OMA are:

(1) An award of punitive damages is not available for breach of contract and is instead limited to independent claims based on tort.

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(2) Prevention of performance is not an available defense to a fully executed release absent some other nonperformance-related contract defense that would make the release unenforceable.

Nationwide and its amici curiae, including the OMA, filed their merit briefs on September 26, 2016. Lucarell filed her merit brief on November 15, 2016 and Nationwide filed its reply brief on December 23, 2016. Oral argument was held on April 5, 2017 and the parties are now awaiting a decision.

*Schwartz v. Honeywell International, Inc.*, Ohio Sup. Ct. No. 2016-1372

This case involves the death of Kathleen Schwartz from peritoneal mesothelioma. Mrs. Schwartz was in her late 40s and was the mother of four minor children. The lawsuit alleged she was exposed to asbestos which was brought home on her father's clothing. Mrs. Schwartz helped her mother do the laundry until she moved out of the house when she turned 18.

Her father's job regularly exposed him to asbestos. But, the defendants involved with her father's work resolved the claims against them before trial.

Her father also claimed that he got asbestos fibers on his clothing as a result of brake jobs he did on the family autos. He claimed that on four occasions he used Bendix brake pads to repair the family autos' brakes.

Honeywell is responsible for Bendix asbestos brake pads in this case. The jury at trial rendered a \$20,000,000 plus verdict and held that Honeywell was 5% liable. An appeal was taken to the Eighth District Court of Appeals. The Court of Appeals upheld the verdict and rejected each ground for appeal asserted by Honeywell.

On September 19, 2016, the OMA participated by filing an amicus curiae memorandum in support of jurisdiction asking the Ohio Supreme Court to accept the appeal. The issue the amicus brief focused on deals with what constitutes a "substantial factor" in the context of asbestos related litigation. Schwartz relied on what is commonly referred to as the "each and every fiber theory of liability" or cumulative exposure liability, which goes to the element of substantial contributing factor in tort cases. Under this theory a plaintiff's medical expert argues that every exposure to asbestos is significant since it adds to the cumulative exposure, which is what causes mesothelioma (or any other asbestos related disease).

Ohio Revised Code 2307.96 defines what constitutes a substantial factor and it was added to the Revised Code so that plaintiffs cannot keep defendant manufacturers in a case if they assert only a brief, insignificant exposure to asbestos from that manufacturer's product. The courts in Ohio have been ignoring that issue and holding manufacturers liable even for brief, insignificant claimed exposures.

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The “each and every fiber theory of liability” and what is required to be a substantial contributing factor in causing a disease is being litigated across the country. The issue also has implications in many areas outside asbestos litigation such as chemical exposures, radiation exposures, ingestion of food additives, etc.

On April 19, 2016, the Court accepted the appeal on the issue addressed in the OMA’s memorandum in support of jurisdiction. The OMA filed an amicus curiae brief on the merits on June 16, 2017. The case has been fully-briefed and oral argument occurred on October 17, 2017. The parties are awaiting a decision.

*Turner v. Union Carbide Corp.*, Ohio Sup. Ct. No. 2017-0004

This case involves a lung cancer claim under Ohio’s asbestos litigation statutes.

Bobby Turner alleged that he developed lung cancer as a result of his exposure to asbestos during the course of his employment. Union Carbide moved to administratively dismiss the action pursuant to R.C. 2307.92 and R.C. 2307.93, which require a “smoker,” to provide prima facie evidence that the lung cancer was caused by asbestos exposure. Under R.C. 2307.91(DD), a “smoker” is defined as “a person who has smoked the equivalent of one-pack year, ***as specified in the written report of a competent medical authority*** pursuant to [R.C. 2307.92 and 2307.93], during the last fifteen years.” (Emphasis added).

Rather than submit the report of a competent medical authority to show that he was a non-smoker, Turner submitted his own self-serving affidavit and affidavits from his friends and family stating that they had not “seen” him smoke. Other evidence, contradicted these affidavits, including Turner’s medical records which indicated that Turner had smoked cigars for 40 years and was still smoking cigars at the time of treatment for lung cancer.

The trial court ruled that Mr. Turner did not need to submit “a written report from competent medical authority” and, instead, weighed the evidence. The trial court concluded Mr. Turner was not a smoker and was not required to submit prima facie evidence that his lung cancer was caused by asbestos exposure.

The Eighth District affirmed and held that a plaintiff is not required to submit ‘the written report of a competent medical authority’ until it has been determined that he is a smoker.

Union Carbide filed a discretionary appeal and on January 3, 2017, the OMA filed a memorandum in support of jurisdiction urging the Ohio Supreme Court to accept the appeal on the following proposition of law:

In an asbestos tort action alleging lung cancer, when there is evidence that a plaintiff has smoked in the past fifteen years, the General Assembly’s express statutory language requires a plaintiff to prove, through a “written report of a

OMA Government Affairs Committee – Counsel Report

November 29, 2017

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competent medical authority,” that he is not a smoker as defined in R.C. 2307.91(DD). A reviewing court must strictly enforce and may not ignore the General Assembly’s express inclusion of “competent medical authority” language in this statute.

On September 13, 2017, the Ohio Supreme Court accepted the appeal. Union Carbide filed its brief and the OMA filed its amicus brief on November 8, 2017. The Appellee’s brief is due on December 8, 2017.

**To: OMA Government Affairs Committee**  
**From: Ryan Augsburger / Rob Brundrett**  
**Re: Energy Policy Report**  
**Date: November 29, 2017**

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### **Overview**

Significant energy policy questions were debated by the General Assembly again in the autumn session, but have not advanced. Lawmakers will soon recess for the holidays. When they return in 2018, the election year will be at hand. Meanwhile activity at the PUCO has slowed and all eyes are on the federal government as they consider a national subsidy proposal initiated by U.S. DOE Secretary Rick Perry in the name of grid resiliency.

### **OMA Appeals FirstEnergy Subsidy**

In October, The OMA Energy Group (OMAEG) filed an appeal of the FirstEnergy subsidy case, originally referred to as the “PPA case.” The case spawned copy-cat applications by Ohio’s other investor-owned investors.

### **Utility Subsidies for Grid Resiliency? DOE NOPR**

Reflecting Ohio’s leading role in the genesis of the Department of Energy (DOE) proposed rule to impose additional customer charges to pay for “grid resiliency,” U.S. Secretary of Energy Rick Perry announced his Notice of Proposed Rule Making (NOPR) in Ohio earlier this autumn. Ohio utility and coal interests are known to have lobbied for the proposal.

National energy advocates have been on high alert ever since. See memo on DOE NOPR for more background. The OMA Energy Group filed individual comment with FERC urging rejection of the proposal. FERC is expected to act by Dec 11. While numerous FERC experts have expressed a dim view of the policy justification for the proposed subsidies, the composition of FERC commissioners is split.

### **Zero Emissions Credit (ZEC) STILL = Nuke Bailout**

After being panned by dozens of important stakeholders, legislation to subsidize the uneconomical nuclear power plants stalled out over the summer. During the autumn, House Bill 381 was introduced by Representative Anthony DeVitis of Summit County and several other bipartisan co-sponsors. Similar legislation in the Senate has been amended to mirror the new House Bill. The OMA strongly opposes the legislation and is working with other opponents to coordinate advocacy. See attached analysis.

### **OVEC Bailout**

Companion legislation was introduced in late May and was on the fast-track for possible passage prior to the summer recess but did not advance. HB 239 is sponsored by Representatives Ryan Smith and Rick Carfagna, while SB 155 is sponsored by Senators Lou Terhar and Bob Peterson.

The legislation provides over one hundred million dollars per year to the owners of aging coal plants (one in Ohio and one in Indiana) operated by the Ohio Valley Electric Corporation (OVEC). The bailout subsidies would be added to customer bills until 2030 and sets up the possibility for continued customer payment after 2030.

Sponsors and proponents justify this bailout as “national security” because the plants formerly supplied the Piketon uranium enrichment facility. The OMA opposes this bailout that will impose new above-market customer charges. See OVEC rebuttal document of the most recent version.

### **Protecting Competitive Electric Markets**

In 1999, with the passage of Senate Bill 3, Ohio began a transition to deregulated generation. That transition which has taken over a decade, has delivered customer choice, cost-savings and innovation. One of the main tenets of deregulation was forcing then-integrated utility companies to sell or spin-off their generation. “Stranded costs” and other above-market surcharge constructs enabled the utilities to have their generation paid for by Ohioans for a second time. If approved in some form, the subsidy cases and Nuke bailout legislation would represent yet another above-market payment to utilities by customers who realize no benefit.

The OMA has been a proponent of markets, supporting the original deregulation legislation and opposing utility profit subsidy schemes that distort the market and result in new above-market charges on manufacturers.

Several noteworthy studies have demonstrated how the market delivers lower prices, choice and innovation without compromising reliability (ask staff for the studies). The opportunity to advance legislative reform to protect competitive markets has arrived. The OMA has been working with other customer groups to support House Bill 247 introduced by Representative of Mark Romanchuk from the Mansfield area. OMA members Brad Belden of Belden Brick and Luke Harms of Whirlpool provided proponent testimony on behalf of the OMA and their companies on November 28. See attached summary of the three-part market protection plan. Manufacturers can engage policymakers and support a campaign to support the reform. Please contact OMA staff to learn how you can support the cause.

### **Financial Integrity Bailouts**

In Spring of 2016, we reported on favorable Supreme Court decisions that protect customers from inappropriate utility overcharges. The Court decisions pertained to both AEP and DP&L but also established precedent. In late 2016 Dayton Power & Light developed a legislative proposal to reverse Supreme Court decision that fairly protects customers from transition charges. The legislative proposal would authorize PUCO to impose riders on customers’ electric bills to fund a utility bailout any time a utility claims their “financial integrity” is threatened. The legislation did not advance in 2016, but a remarkably similar proposal was amended into the state budget in late May of 2017. After a month of intense lobbying by opponents, the provision was stripped from the bill. We remain vigilant of similar legislative proposals re-emerging.

### **Re-Monopolization**

AEP and other investor-owned utilities have been calling for legislation to *re-monopolize* aspects of utility-owned generation. In spite of assurances made to investors that legislation would be introduced during the terms, no such bill has been introduced.

### **Natural Gas Infrastructure**

The OMA continues to express industry support for the Rover Pipeline and Nexus Pipeline. Billions of dollars of pipeline investment are underway by several different developers. The Rover Pipeline secured FERC approval in early February. Natural gas production continues to grow in the Buckeye state even with depressed pricing. In fact, Ohio natural gas prices are among the lowest around the globe today. The OMA has been working with the NAM to



promote gas infrastructure and increased market utilization. Please contact staff to learn more about opportunities for supportive manufacturers to engage.

### **Energy Standards Legislation**

The Governor acted on his threat to veto House Bill 554 last December. The bill weakened the energy standards that had been frozen since 2015 by then SB 310. Together with over fifty co-sponsors, Representative Bill Blessing introduced HB 114 which is very similar to the vetoed legislation. Ask staff for a technical analysis.

Separately, legislation to soften the restrictive wind set backing siting requirements was inserted by the Senate into the budget bill during the Spring session but was later removed during the budget process. The issue is deterring new investment in large scale wind-farms.

## Energy

### **PUCO Sets New Net Metering Rules** **November 17, 2017**

After conducting a workshop and receiving comments from a number of parties, including **OMA Energy Group**, the Public Utilities Commission of Ohio (PUCO) issued an order adopting new net metering rules on November 8, 2017.

A net metering system is a generation facility that uses an appropriate fuel type, is located on the customer-generator's premises, operates in parallel with the electric utility's transmission and distribution facilities, and is intended primarily to offset part or all of the customer-generator's requirements for electricity. Permissible fuel types for net metering are: solar, wind, biomass, landfill gas or hydropower.

Read a **summary of the new net metering rules** from OMA energy counsel, Carpenter Lipps & Leland. 11/13/2017

### **Expedited Ruling Expected on Utility Subsidy Scheme** **November 10, 2017**

More than 300 parties filed comments opposing a recent proposal by U.S. Secretary of Energy Rick Perry to subsidize unprofitable power plants in the name of grid resiliency, even though credible data affirms grid reliability has never been better due to the competitive market.

The OMA **filed comment** in the Federal Energy Regulatory Commission (FERC) docket and this week filed a **reply brief**.

Meanwhile U.S. Representative David Joyce and members of Ohio's Congressional delegation this week **issued a joint Congressional letter** to the FERC, endorsing the pro-utility scheme to force customers to pay more on power bills to subsidize unprofitable nuclear and coal power plants.

The FERC has significant independence of the Department of Energy and the commissioners will consider the evidence and render an opinion by December 11.

OMA members will discuss the far-reaching federal debate – and much more – at the OMA Energy Committee on November 16. **Register here**. 11/9/2017

### **DP&L Industrial Energy Savings Workshop – 25% Bonus on Efficiency Rebates** **November 10, 2017**

DP&L, the Midwest Energy Efficiency Alliance and the EnergyStar Challenge for Industry are hosting a workshop on Industrial Energy Savings. The workshop is scheduled for this coming Thursday, November 16<sup>th</sup>, at the University of Dayton River Campus.

The workshop features case studies presented by General Motors and Honda, free resources from the Industrial Assessment Center and EPA EnergyStar, and updates on DP&L's energy-efficiency programs.

OMA members served by DP&L who attend will be eligible for an exclusive 25% bonus rebate for eligible efficiency projects. Learn more and **register here**, or contact **John Seryak** for more information. 11/7/2017

### **Electricity Subsidy Battle Hits the Airwaves** **November 3, 2017**

Proponents and opponents of pending Ohio legislation to subsidize power plants are duking it out over Ohio radio waves across the Buckeye State.

The OMA is an opponent to two pieces of legislation that would provide above-market customer-paid subsidies to various utilities: House Bill 239, which concerns the utilities that are members of the Ohio Valley Electric Corporation (OVEC), and House Bill 381, the Zero Emissions Credit nuclear power plant subsidy for FirstEnergy. Identical legislation is also pending in the Ohio Senate.

In recent weeks the Ohio Petroleum Institute, API-Ohio, has run **radio spots** that oppose the subsidies as anti-competitive. Meanwhile a counter-point **radio spot** is being aired by a pro-utility coalition falsely contending that imported electricity is problematic for Ohio's economic well-being. 11/2/2017

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### **To FERC: Reject DOE Secretary Perry's Utility Subsidy Proposal** **November 3, 2017**

Scores of advocates filed comment with the Federal Energy Regulatory Commission (FERC) to oppose a proposed federal rule that would subsidize unprofitable nuclear power plants and some coal power plants. The rule was proposed by U.S. Energy Secretary Rick Perry earlier this fall.

Electrical grid operators and regulators including PJM Interconnection and the Public Utilities Commission of Ohio (PUCO) **filed comment** opposing the proposed rule for its distortion of markets. PJM's **comments** describe a disproportionate effect on customers in the PJM region, which includes Ohio.

On behalf of its members, the **OMA Energy Group filed comment** opposing the rule-making.

These other consumer coalitions also filed comments in opposition: **American Manufacturers & Large Institutional Customers** and **ELCON et al.**

Several FERC experts have publicly taken a dim view of the rule proposal as just the latest attempt by some utility companies to prop up their revenues in the wake of competitive generation markets which are saving customers billions of dollars annually.

Energy-intensive manufacturers are invited to join the **OMA Energy Group** to protect your interests. *11/2/2017*

### **DOE Grid Resiliency Pricing Rule Faces Lots of Opposition** **October 27, 2017**

A recently filed grid resiliency rule proposal from the U.S. Department of Energy has brought out a storm of opposition from a wide range of groups, including the Ohio Public Utilities Commission of Ohio (PUCO), PJM, consumers groups (including the OMA), natural gas generators, and even some coal interests.

The rule would effectively require subsidies for coal and nuclear generators. By doing so, it would blow up the functioning electricity markets and raise prices on consumers significantly, according to the rule's critics.

**Read a summary** prepared for the OMA Energy Group. *10/25/2017*

### **Efficiency Project Rebates Available in AEP Ohio Territory** **October 27, 2017**

OMA's energy engineering partner, **Go Sustainable Energy**, recently secured \$300,000 in rebates on behalf of Ohio manufacturers in AEP Ohio's **Bid4Efficiency** auction.

AEP Ohio holds the annual auction to create incentives for customer energy efficiency projects.

Rebates awarded by the program are eligible to exceed AEP's \$25,000 rebate cap. Projects will be compensated at \$0.029/kWh saved or at \$0.149/W for lighting projects.

If you have a facility in AEP territory and you are completing or planning an efficiency project in 2018, contact **John Seryak** to learn more. Funding will be available to OMA members on a first-come, first-served basis. *10/26/2017*

### **A Rebuttal of False and Misleading Utility Claims** **October 20, 2017**

This week the OMA, together with a broad coalition of partners, produced an **extensive rebuttal of false and misleading claims** being made by Ohio electric utilities regarding HB 239, another massive subsidy proposal for two old, uneconomic generating plants, one in Ohio and one in Indiana. Yes, Indiana. The plants are jointly owned by several utilities through the Ohio Valley Electric Corporation (OVEC).

"Several false and misleading claims about the legislation have been fabricated and reinforced by the utilities in an attempt to convince legislators to provide the OVEC plants with above-market subsidies on the backs of Ohio ratepayers," writes the coalition.

"These are clear and true facts: The utilities want a subsidy to operate and maintain uneconomic OVEC power plants ... If approved, the legislation would not be the utilities' first consumer-paid subsidy. Ohio's investor-owned utilities received at least \$9.2 billion in "stranded assets" and "regulatory transition" payments from 2000 to 2010. The proposed OVEC legislation is bad for customers, bad for competitive markets, and bad for Ohio." *10/19/2017*

### **Nuclear Bailout, Part 2** **October 20, 2017**

Last week a group of 16 lawmakers introduced a new version of legislation to bailout the unprofitable nuclear power plants presently owned by an affiliate of FirstEnergy. The proposed bailout is marketed under the term ZEN for Zero Emission Nuclear credits.

House Bill 381 alters the state's energy policy by establishing a preference for nuclear generation over other fuel sources, such as natural gas or coal. The bill seeks to take advantage of a national question raised by the U.S. Department of Energy about fuel-diversity.

According to an **analysis prepared for members of the OMA Energy Group**, the new bill would cost a small manufacturer an above-market charge of \$60,000, while a large manufacturer would pay \$504,000, over the course of the proposed ZEN program. The structure of the subsidies is particularly punishing to small and medium manufacturers. *10/19/2017*

### **OMA Appeals New FirstEnergy Rider to Supreme Court** **October 20, 2017**

Just over one year ago, the PUCO approved a new credit support rider called the "distribution

modernization rider” that will cost manufacturers in the FirstEnergy service territory an additional annual charge ranging between \$3,700 to \$3.7 million based on a company’s electricity usage.

The new above-market charge is unrelated to distribution service and offers no offsetting customer benefit. The **OMA Energy Group** opposed the rider throughout the PUCO process. The charge hit customer bills in January.

“This week, we **appealed** the PUCO decision to the Ohio Supreme Court,” reported OMA’s Ryan Augsburger. “The credit support rider approved by the PUCO one year ago is unlawful and is merely an instrument to prop up the affiliate company, FirstEnergy Solutions. It is apparent to our members that this rider is just another above-market charge that customers are forced to pay to subsidize an unprofitable and unregulated power generation company. The rider will increase customer’s power costs, jeopardizing Ohio’s manufacturing competitiveness.” *10/19/2017*

#### **PJM Market Monitor: Protect Electricity Markets** **October 20, 2017**

“The best electric industry structure is the one that results in the lowest possible costs to customers. The best wholesale power market structure is a competitive structure that includes a competitive energy, ancillary services and capacity market,” **says Dr. Joe Bowring**, the independent auditor for PJM Interconnection.

Comparing merchant generators to utility generators, he notes: “Merchant generators put private capital at risk, enter the market when it appears profitable and exit the market when it is not profitable. The decisions are made entirely by private investors and the consequences are borne entirely by private investors. Customer funds are not used to fund the construction of merchant generation units and customer funds are not used to guarantee rates of return to investors when units underperform.”

Ohio electricity consumers are under siege from subsidy-seeking monopoly utilities. Bowring cautions: “Subsidies, particularly for mature technologies, result in customers paying more than they would pay without subsidies.” *10/19/2017*

#### **Poll Shows Ohioans Oppose FirstEnergy Nuclear Subsidy** **October 13, 2017**

API Ohio last week **released a new poll** finding that a majority of voters in Summit, Lake and Ottawa counties oppose legislation that would allow FirstEnergy to charge its customers a special fee to

support its Ohio Davis-Besse and Perry nuclear plants.

API Ohio is a division of API, which represents all segments of America’s oil and natural gas industry.

API Ohio Executive Director Chris Zeigler said, “... We do not oppose nuclear power. What we oppose are legislative schemes that subsidize one form of energy over another, and create an uneven playing field that costs consumers, hurts manufacturers and threatens the state’s economy.”

According to API, **poll results** include:

- 81% of voters agree that Ohio consumers should not have to pay a special fee to bailout FirstEnergy’s nuclear power plants.
- 70% of voters agree that the Ohio electricity market should be based on the marketplace, and not on whether the state government allows one particular corporation to charge its customers more to sustain its electric power generation.

601 Ohio registered voters in Lake County, Summit County and Ottawa County were polled. *10/12/2017*

#### **Meanwhile, Another Nuke Bailout Bill Emerges** **October 13, 2017**

Lawmakers in Columbus have been considering legislation to prop up FirstEnergy’s affiliate that owns a fleet of nuclear power plants. The power plants’ profitability has diminished as newer, efficient natural gas-fueled power plants come online. The proposed law would impose a new energy rider on all residential and business customers in FirstEnergy service territories.

The original bill has stalled; however, a revised proposal was introduced anew this week by Rep. **Anthony DeVitis** (R-Green) and co-sponsored by **15 other state representatives**.

**House Bill 381** calls for the new rider to be paid by customers until at least 2030. The OMA was an opponent of the prior version of the bill. Needless to say: more to come. *10/12/2017*

#### **Utility Subsidy Bill Could Advance Next Week** **October 6, 2017**

This week members of the **House Public Utilities Committee** again considered an electric utility

subsidy, House Bill 239, which would require Ohioans to pay a new tax on monthly power bills to subsidize the owners of the Ohio Valley Electric Corporation (OVEC).

AEP Ohio has the largest ownership stake in OVEC and would get the biggest subsidy. The utility testified in support of the bill this week.

The bill would force Ohio customers to prop up the finances of the Kyger Creek power plant near Gallipolis, Ohio, and the Clifty Creek power plant in Madison, Indiana. The OMA and other business groups sent a **strong letter** opposing the bill. Competitive power suppliers oppose the bill as do residential advocates **including AARP**.

A vote is likely next Tuesday. Concerned manufacturers are encouraged to call members of the **House Public Utilities Committee** to ask them to oppose the bill. *10/5/2017*

#### **OMA Energy Group Files to Intervene in Amazon Electricity Case** **September 29, 2017**

The **OMA Energy Group** (OMAEG) has filed a motion to intervene in the Unique Economic Development Arrangement filed at the PUCO by AEP and Vadata, Inc. (an affiliate of Amazon Web Services).

The price concession was requested as part of Vadata's plan to build and operate "cloud computing data centers" at three Ohio locations.

OMAEG intervened in order to ensure that the requested reasonable arrangement appropriately balances any purported benefits to the state and local economies with the costs required to achieve such benefits.

#### **ITC to Act on Photovoltaic Panel Trade Case** **September 29, 2017**

OMA Connections Partner, Jones Day, posted about a trade issue in the photovoltaic industry: "A recent decision by the U.S. International Trade Commission ("ITC") could have long-term consequences for the U.S. solar industry. On September 22, 2017, the ITC found, by a vote of 4-0, that rising imports have caused "serious injury" to domestic manufacturers of solar photovoltaic ("PV") panels, thus supporting trade barriers restricting solar panel imports. The ITC will now have until mid-November 2017 to recommend remedies to President Trump, who may exercise his sole discretion in determining which safeguards are to be implemented."

Jones Day also wrote: "Solar project developers and installation companies, which have benefitted from the rapid decline in solar PV panel prices, lined up in opposition to the case. They argued that increasing the price of panels would jeopardize the development of dozens of gigawatts of solar generation facilities and lead to tens of thousands of lost jobs. ..."

Read **more from Jones Day here**. *9/26/2017*

#### **GM Plants to Run on 100% Renewable Power** **September 29, 2017**

All of GM's Ohio and Indiana manufacturing facilities will meet their electricity needs with 100% renewable energy by the end of 2018 according to this **announcement** by General Motors Corporation this week.

GM is buying a total of 200 megawatts of wind energy from Ohio and Illinois wind farms. Once the turbines come online by the end of 2018, renewable energy will power 20% of GM's global electricity use.

The new wind deals are enough to meet the electricity needs of Fort Wayne Assembly, Marion Metal Center and Bedford Casting plants in Indiana and Lordstown Assembly, Defiance Casting Operations, Parma Metal Center and Toledo Transmission plants in Ohio.

GM is an OMA member. *9/28/2017*

#### **OMA's Sustainability Peer Network Tours Honda** **September 22, 2017**



This week the OMA Sustainability Peer Network (SPN) toured Honda's Marysville Automobile Manufacturing plant. The sold-out tour focused on Honda's sustainability projects and initiatives.

The SPN plans an in-person meeting on Wednesday, December 6 to discuss manufacturer-driven initiatives and reduction goals with respect to greenhouse gases. There will be a panel of subject matter experts and group discussion.

Watch *Leadership Briefing* for details and registration information. Or **email us here** to make sure we send you the details directly. *9/21/2017*

**Legislator Proposes Reduced Wind Setbacks**  
**September 22, 2017**

Senator **Cliff Hite** (R-Findlay) introduced **Senate Bill 188** which would reduce the property line setback for large-scale wind farm developments.

Touting the economic and energy benefits of wind farms that have already been approved and constructed in his northwestern Ohio district, Senator Hite said in this **news release**: “The current policy is contrary to Ohio’s reputation as a business-friendly environment and an energy-producing state. It prevents businesses with an interest in gaining access to and investing in wind energy in Ohio from doing so.” 9/21/2017

**Amazon Affiliate Files for Price Concession**  
**September 15, 2017**

AEP and Vadata, Inc. (an affiliate of Amazon Web Services) filed a joint application for a Unique Economic Development Arrangement as part of Vadata’s plan to build and operate “cloud computing data centers” at three Ohio locations.

The arrangement proposes to significantly discount the amount that Vadata must pay under riders that are calculated on a kWh basis, with the discounts escalating as Vadata develops more data centers, and to exempt Vadata completely from the obligation to pay other riders.

Although the arrangement purports to offer Vadata these incentives without requiring other AEP customers to pay forgone revenue, the arrangement will likely shift revenue responsibility to other customers paying the same riders.

Members of the OMA Energy Group will review the application and determine a position on the matter. Contact **Ryan Augsburger** to learn more about the **OMA Energy Group**. 9/14/2017

**FERC Approves Partial Operation of Rover Pipeline**  
**September 8, 2017**

Last week the Federal Energy Regulatory Commission (FERC) **approved Rover’s request** to put Phase 1A of the Rover Pipeline into active operation.

As a result of the approval the pipeline will commence transmission of natural gas services using its 191 mile, 42 inch diameter mainline from Carroll County to Defiance County. A second mainline remains under construction.

FERC also permitted Rover to use 3.5 miles of a 30 inch diameter pipeline in Harrison County and 18.6 miles of 42 inch diameter pipeline connecting Harrison County to Carroll County. 9/7/2017

**FERC Approves Nexus Pipeline**  
**September 1, 2017**

Hannah News Services, Inc. reported: “The Federal Energy Regulatory Commission (FERC) has authorized Nexus Gas Transmission LLC to construct an approximately 255-mile pipeline, the majority of which will be built in Ohio.

“The pipeline will originate at the Kensington Processing Plant in Columbiana County, extending through Ohio and connecting with DTE Gas in Washtenaw County, MI. The project will include about 209.8 miles of new 36-inch diameter pipeline in Columbiana, Stark, Summit, Wayne, Medina, Lorain, Huron, Erie, Sandusky, Wood, Lucas, Henry and Fulton counties. ...

“There will be compressor stations located in Columbiana, Medina, Sandusky and Lucas counties. The entire project is expected to cost nearly \$2.1 billion.

“Once the project is completed sometime in 2018, the pipeline will have the capacity to deliver approximately 1.5 billion cubic feet of natural gas per day to markets in Ohio, Michigan and Ontario, according to a statement from the company, which is jointly owned by DTE Energy and Spectra Energy Partners.”

**Read the Nexus media advisory here.** 8/30/2017

**Mapping Geologic Capacity for Natural Gas Liquid Storage**  
**September 1, 2017**

“It is no secret that the region around Ohio, West Virginia and Pennsylvania has abundant natural gas resources, but can the three states uncover the keys to turning those resources into economic growth? West Virginia University-led research may have some of the answers,” writes JobsOhio in **a release** this week.

The university just released **a study** that shows how the region can support natural gas liquid storage facilities that are critical for attracting petrochemical and related industries to the area. Researchers from the geological surveys in West Virginia, Pennsylvania and Ohio studied geologic formations that could offer suitable locations for developers to build underground facilities to store natural gas liquids from Marcellus and Utica wells.

Storage capacity is seen as critical to positioning the tri-state area for investments in crackers and other petrochemical facilities. *8/31/2017*

**Poll Shows Ohioans Support Clean Energy**  
**September 1, 2017**

A **recent statewide survey** shows Ohioans overwhelmingly support policies that increase energy efficiency and encourage expanded use of renewables. The poll was commissioned by the Nature Conservancy in Ohio and conducted by Public Opinion Strategies, the nation's largest Republican polling firm.

Pollster Lori Weigel said the poll is largely consistent with recent polls conducted on the subject, noting that support for renewables and energy efficiency is increasing. She said support for renewable policies crosses partisan lines. *8/31/2017*

## Energy Legislation

Prepared by: The Ohio Manufacturers' Association  
Report created on November 28, 2017

- HB105 OIL AND GAS FUNDING LIMIT** (CERA J, HILL B) To limit the amount of revenue that may be credited to the Oil and Gas Well Fund and to allocate funds in excess of that amount to local governments, fire departments, and a grant program to encourage compressed natural gas as a motor vehicle fuel.  
*Current Status:* 5/16/2017 - House Ways and Means, (Second Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-105>
- HB114 RENEWABLE ENERGY STANDARDS** (BLESSING III L) To revise the provisions governing renewable energy, energy efficiency, and peak demand reduction and to alter funding allocations under the Home Energy Assistance Program.  
*Current Status:* 10/18/2017 - Senate Energy and Natural Resources, (Third Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-114>
- HB143 ELECTRIC DISTRIBUTION COMPANY DEFINITION** (SPRAGUE R) To clarify the definition of "electric distribution company" for kilowatt-hour tax purposes.  
*Current Status:* 3/29/2017 - Referred to Committee House Public Utilities  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-143>
- HB178 ZERO-EMISSIONS NUCLEAR PROGRAM** (DEVITIS A) Regarding the zero-emissions nuclear resource program.  
*Current Status:* 5/16/2017 - House Public Utilities, (Third Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-178>
- HB225 ABANDONED WELL REGULATION** (THOMPSON A) To allow a landowner to report an idle and orphaned well or abandoned well, to require the Chief of the Division of Oil and Gas Resources Management to inspect and classify such a well, to require the Chief to begin plugging a well classified as distressed-high priority within a specified time period, and to authorize an income tax deduction for reimbursements paid by the state to a landowner for costs incurred to plug an idle or orphaned well.  
*Current Status:* 11/28/2017 - House Energy and Natural Resources, (Third Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-225>
- HB239 ELECTRIC UTILITIES-NATIONAL SECURITY RESOURCE** (SMITH R, CARFAGNA R) To allow electric distribution utilities to recover costs for a national security generation resource.  
*Current Status:* 10/3/2017 - House Public Utilities, (Sixth Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-239>
- HB247 ELECTRIC UTILITY CONSUMER PROTECTION** (ROMANCHUK M) To require refunds to



utility customers who have been improperly charged, to eliminate electric security plans and require all electric standard service offers to be delivered through market-rate offers, and to strengthen corporate separation requirements.

**Current Status:** 11/28/2017 - House Public Utilities, (Second Hearing)

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-247>

**HB249 RESIDENTIAL UTILITY RESELLING** (DUFFEY M) To permit the Public Utilities Commission to adopt rules governing residential utility reselling.

**Current Status:** 10/17/2017 - House Public Utilities, (Second Hearing)

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-249>

**HB381 ZERO-EMISSIONS NUCLEAR RESOURCE** (DEVITIS A) Regarding the zero-emissions nuclear resource program.

**Current Status:** 10/17/2017 - Referred to Committee House Public Utilities

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-381>

**HB393 OIL AND GAS BRINE SALES** (DEVITIS A, O'BRIEN M) To authorize a person to sell brine derived from an oil and gas operation that is processed as a commodity for use in surface application in deicing, dust suppression, and other applications.

**Current Status:** 11/28/2017 - House Energy and Natural Resources, (First Hearing)

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-393>

**HCR14 PARIS CLIMATE AGREEMENT COMMITMENT** (LEPORE-HAGAN M, LELAND D) To affirm the commitment of the members of the General Assembly, in accordance with the aims of the Paris Agreement, to reduce greenhouse gas emissions to 26 to 28 per cent below 2005 levels by the year 2025.

**Current Status:** 9/19/2017 - House Energy and Natural Resources, (First Hearing)

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HCR-14>

**HR277 ENERGY GRID RULEMAKING** (ARNDT S) To express support for the proposed rulemaking by United States Secretary of Energy Rick Perry for the preservation of a secure, resilient and reliable electric grid.

**Current Status:** 10/17/2017 - Referred to Committee House Public Utilities

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HR-277>

**SB50 WELL INJECTION-PROHIBITION** (SKINDELL M) To prohibit land application and deep well injection of brine, to prohibit the conversion of wells, and to eliminate the injection fee that is levied under the Oil and Gas Law.

**Current Status:** 2/22/2017 - Senate Energy and Natural Resources, (First Hearing)

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-50>

- SB53**      **NATURAL GAS RESTRICTION** (SKINDELL M) To ban the taking or removal of oil or natural gas from and under the bed of Lake Erie.  
*Current Status:* 2/22/2017 - Senate Energy and Natural Resources, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-53>
- SB65**      **ENERGY STAR TAX HOLIDAY** (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:* 3/22/2017 - Senate Ways and Means, (Second Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-65>
- SB128**     **ZERO-EMISSION NUCLEAR PROGRAM** (EKLUND J, LAROSE F) Regarding the zero-emissions nuclear resource program.  
*Current Status:* 10/24/2017 - **SUBSTITUTE BILL ACCEPTED**, Senate Public Utilities, (Fourth Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-128>
- SB155**     **ELECTRIC DISTRIBUTION COST RECOVERY** (TERHAR L, PETERSON B) To allow electric distribution utilities to recover costs for a national security generation resource.  
*Current Status:* 10/12/2017 - **SUBSTITUTE BILL ACCEPTED**, Senate Public Utilities, (Sixth Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-155>
- SB157**     **PUBLIC UTILITY RESELLING REGULATION** (BACON K) To regulate the reselling of public utility service.  
*Current Status:* 6/28/2017 - **BILL AMENDED**, Senate Public Utilities, (Fourth Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-157>
- SB188**     **WIND TURBINE SETBACK REVISIONS** (HITE C) To revise wind turbine setback provisions for economically significant wind farms.  
*Current Status:* 10/11/2017 - Senate Energy and Natural Resources, (Second Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-188>
- SCR14**     **COUNTER OPEC MARKET MANIPULATION** (HOAGLAND F, COLEY W) To urge the Congress of the United States and the President of the United States to take certain actions to counter manipulation of the oil market by the Organization of Petroleum Exporting Countries (OPEC).  
*Current Status:* 11/15/2017 - **REPORTED OUT**, Senate Energy and Natural Resources, (Fourth Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation->



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## MEMORANDUM

Date: October 20, 2017  
To: Ohio Manufacturers' Association  
From: Jordan Nader & John Seryak, PE (RunnerStone, LLC)  
RE: Grid Resiliency Pricing Rule at FERC

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On September 29th, 2017, the Secretary of Energy filed a Notice of Proposed Rulemaking (NOPR) with the Federal Energy Regulatory Commission (FERC) to issue a final rule directing Independent System Operators (ISO) and Regional Transmission Organizations (RTO) to “accurately price generation resources necessary to maintain the reliability and resiliency of our Nation’s bulk power system.”<sup>1</sup> The three major takeaways of the proposed rule are:

- Eligible units must have a 90-day supply of fuel on site
- Must be technologically capable to provide essential energy and ancillary reliability services
- Cannot receive state or local cost-of-service rate regulation in addition to this regulation

This rule is touted as providing significant *national security* benefits. The Secretary claimed that the Polar Vortex event of 2014 resulted in consumers choosing between heat and electricity and that this proposed rule will mitigate the risk of a similar event in the future. The Secretary has requested an expedited review process with public comments due by November 24<sup>th</sup> and a final action to be taken by December 11<sup>th</sup>.

### **Current Status of NOPR**

The final NOPR published in the Federal Register on October 10<sup>th</sup>, 2017, had additional text that was not present in the original NOPR. Specifically, it clarified that only merchant power plants would be eligible for cost recovery and only if they keep 90 days of fuel supplied on site. However, there was an additional change that it would apply only to ISOs and RTOs that had “energy and capacity markets.” This distinction would limit this rule’s application to ISO-New England, New York ISO, and the PJM Interconnection and exclude merchant generators in the Southwest Power Pool, California ISO, and potentially the Midcontinent ISO from the benefits of the rule.

### **Supporting Argument for NOPR**

The argument outlined by the Secretary is that premature retirements of “fuel-secure” generation threaten the resilience of the electric grid and that these resources are thus “indispensable for our economic and *national security*.” The Secretary notes that between 2002 and 2016, 531 coal generation units retired from operation and that 4,666 MW of nuclear generation announced retirement. The

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<sup>1</sup>[https://energy.gov/sites/prod/files/2017/09/f37/Notice\\_of\\_Proposed\\_Rulemaking.pdf](https://energy.gov/sites/prod/files/2017/09/f37/Notice_of_Proposed_Rulemaking.pdf)



Secretary considers these retirements significant but does not note the volume of new generation that has been developed since 2002 and what impact it has had in diversifying generation resources.

The 2014 Polar Vortex is pointed to as an event that tested the “resiliency of the electric grid.” DOE claims that PJM “struggled” to meet capacity requirements during the vortex despite no loss of load, active participation from demand response resources, and over performance of wind resources. The suggestion in the outlined argument is that coal and nuclear resources performed at greater than required levels during the event. There is no mention of frozen coal piles or of Beaver Valley Nuclear Station’s transformer failure due to improper operations by plant operators. The report then moves to argue that current wholesale energy and capacity markets are too short run in their design in order to sufficiently price “resiliency attributes of fuel-secure generation.” DOE points to the Quadrennial Energy Review from January 2017 wherein they previously argued that resilience is more easily accounted for in “traditional end-to-end, vertically integrated electricity delivery.” They argue that market structures “complicate reliability and resilience investment decision-making.”

DOE then points to an IHS Markit study where IHS argued that without coal and nuclear resources providing a meaningful contribution to the U.S. bulk power system, consumers would have to pay an additional \$114 billion annually in order to adequately retain the level of resilience currently enjoyed. Beyond this, DOE points to a NERC letter from May 2017 that argues the benefit of secured on-site fuel to allow coal-fired and nuclear units to operate independent of supply chain disruptions. Many commentators have pointed out that Puerto Rico’s generators have fuel at their plants but due to transmission and distribution damage were unable to deliver capacity to the grid.

Finalizing their argument, DOE points to the “extensive record on price formation in ... ISOs and RTOs” that the Commission has developed as evidence that FERC has the ability to act expeditiously. The Secretary has requested an expedited docket (some commentators have called it a “rocket docket”) to take final action within 60 days of the proposed rule being published in the Federal Register. The Secretary also requested that the final rule go into effect within 30 days of publication in the Federal Register. The NOPR was published in the Federal Register on October 10th, 2017 leading to a final action being due by December 11th, 2017.

### **Criticism of NOPR**

The response to the NOPR has been just short of apocalyptic. Former FERC Chairman Jon Wellinghoff has been quoted saying “This would blow the market up.” He also said that “It’s going to be expensive as hell, expensive as it can be because we will be paying the full freight on coal and nuclear plants.” Former FERC Commissioner Tony Clark focused on the fact that FERC is an independent federal agency and is free to ignore the details of the DOE proposal. However, he noted that FERC has responded in the “most aggressive angle that they could” and that “it would be very challenging for the markets.” One analyst pointed out that if the concern is resilience, research should be conducted on the specific elements of resilience that are essential to the system. Once those are determined, the market can acquire those elements at the lowest cost. Instead, DOE has decided that 90 days of fuel onsite represents resilience without an “underpinning or modeling” to explain why 90 days is important. Another analyst said “having a mountain of coal...doesn’t mean [anything] if you can’t deliver the power” referencing the weaknesses observed in Puerto Rico’s



## RunnerStone, LLC

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power system. Even the American Coalition for Clean Coal Electricity (ACCCE) was “perplexed” by the 90 day focus of the proposal as most coal plants have 73-82 days of fuel on site today. In addition, there are practical limitations to storing 90 days of fuel at a site. By one estimate, a 1,250 MW natural gas combined cycle power plant would require 400 acres of compressed natural gas tanks. And if a natural gas site is able to burn diesel, it is likely that they would acquire 90 days’ worth of diesel fuel to store on site to become eligible for the rule’s benefits.

Ultimately, it will be necessary for FERC to create a rule based on a record and that a record must first be built before a decision can be made anywhere near as sweeping as the DOE proposal. Several former FERC commissioners were skeptical that the final rule would bear any resemblance to the published NOPR in the Federal Register as it “flies in the face of everything FERC has done under the Federal Power Act over the past 20 years.”



Like OMA, OMAEG is comprised exclusively of manufacturers who work together to protect and grow Ohio manufacturing. OMAEG strives to improve business conditions in Ohio and drive down the cost of doing business for Ohio manufacturers. Ohio's manufacturing sector is one of the top consumers of electricity in the state of Ohio, and any impacts arising from future increases to electricity prices that are caused by the Proposed Rule may have a significantly negative effect on their businesses. OMAEG is regularly and actively involved in proceedings before the Public Utilities Commission of Ohio as well as this Commission. Its unique knowledge and perspective will contribute to the Commission's consideration of the Proposed Rule and the issues it presents.

As further described herein, the Commission should take affirmative steps to protect competitive wholesale markets and ensure that customers are not saddled with soaring costs arising from a scheme to protect certain uneconomic power plants. Given that the Proposed Rule will distort the energy markets and manufacturers will be negatively impacted by the Proposed Rule, the Commission should exercise its authority to reject the Proposed Rule.

## **II. BACKGROUND**

DOE proposes to weaken the competitive foundation of energy markets in order to prop up select types of generation resources that cannot meet the competitive demands of the market. This would impair the market's ability to naturally select the most efficient generation resources to best serve customers across the United States. This will result in significantly higher energy costs for individuals and businesses. For manufacturers, this means a severe decrease in manufacturing competitiveness and jobs.

The Proposed Rule justifies inviting these deleterious effects by advancing the unfounded claim that the Proposed Rule is necessary because the retirement of coal and nuclear generation threatens the reliability and resiliency of the electric grid. The reality is that these sources of generation are being retired as part of the natural cycle of competitive markets that has long sustained efficient and competitive generation and led to massive improvements in energy efficiency. If nuclear and coal based generation are truly necessary to the reliability or resiliency of the electric grid, those sources of generation would be thriving.

For the Commission to now decide that coal and nuclear are so necessary to the resiliency and reliability of the electric grid that it needs to wade into the waters of the competitive market, it would have to suddenly reverse course and determine that existing regional transmission organization (RTO) and independent system operator (ISO) tariffs are unjust and unreasonable. There is no justification for that sort of abrupt adjustment. OMAEG does not contend that competitive markets are infallible or cannot be improved. Rather, OMAEG draws the Commission's attention to the fact that competitive markets have led to record low prices that benefit the worldwide competitiveness of manufacturing in the United States. Those benefits would be jeopardized if the Commission elects to allow certain generation resources, but not others, to be compensated with extra-market payments or subsidies.

Ultimately, the federal government should not be deciding which segments of the competitive energy markets to favor and disfavor. The competitive wholesale markets have consistently advanced the efficiency of energy generation in this country and the Commission should be wary to impede that process to rescue failing power plants when



doing so will increase costs to electric customers across the United States and harm manufacturing and the millions of jobs it supports.<sup>1</sup>

With these general principles in mind, OMAEG submits the below comments regarding the specifics of the Proposed Rule.

### III. COMMENTS

#### A. **DOE Has Not Demonstrated that Existing RTO and ISO Tariffs Are Unjust and Unreasonable.**

The fundamental premise underlying the proposed rulemaking is that the retirement of coal and nuclear generation threatens the reliability and resiliency of the electric grid. This premise is not based in reality and fails to support the requisite finding under Section 206 of the Federal Power Act that the existing RTO or ISO Tariffs are unjust, unreasonable, unduly discriminatory, or preferential.<sup>2</sup>

In the Notice of Proposed Rulemaking (NOPR), DOE does not actually define system “resiliency.” Due to this failure, DOE did not identify which attributes the system needs in order to achieve “resiliency” that are not being met with the current markets. Without stating which aspects of the current markets impair the resiliency this Proposed Rule seeks to achieve, DOE is unable to demonstrate that existing RTO and ISO Tariffs are unjust or unreasonable.

DOE did, however, ask its Staff to evaluate system reliability. And when the Staff conducted its investigation, its report found that the markets were “functioning as designed,” meaning that they were working to “ensure reliability and minimize short-

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<sup>1</sup> Bureau of Labor Statistics, The Employment Situation at 29 (October 6, 2017) <https://www.bls.gov/news.release/pdf/empstat.pdf>.

<sup>2</sup> 16 U.S.C. § 824e(a).

term costs of wholesale electricity.”<sup>3</sup> At the conclusion of its extensive report, Staff discussed proposals for the Department’s approach to the electricity grid.<sup>4</sup> Nowhere in that discussion did the report suggest advancing a life support plan for generators that had failed or were failing in the competitive markets.<sup>5</sup> The North American Electric Reliability Corporation (NERC) concurred with Staff’s assessment when it testified before Congress that “the bulk power system (BPS) remains highly reliable and resilient, showing improved reliable performance year over year.”<sup>6</sup>

In the NOPR, DOE emphasizes the 2014 Polar Vortex. Notably, the NOPR fails to mention that many coal and nuclear plants performed poorly during the Polar Vortex as the plants encountered equipment failures and frozen coal piles. Additionally the NOPR focuses on the winter of 2014, but does not mention the following winter, which brought about more record low temperatures.<sup>7</sup> The reason that DOE cannot tell a tale of calamitous unreliability from this second polar vortex is that following the 2014 event, the markets operated as markets do: the markets identified the problems that beset the grid in 2014 and they came up with solutions. In PJM, Capacity Performance Rules were implemented that address the concerns raised by the DOE. If existing market products are truly insufficient to support reliability and resiliency, however those terms may be

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<sup>3</sup> Department of Energy, Staff Report to the Secretary on Electricity Markets and Reliability at 16 (August 2017) [https://energy.gov/sites/prod/files/2017/08/f36/Staff%20Report%20on%20Electricity%20Markets%20and%20Reliability\\_0.pdf](https://energy.gov/sites/prod/files/2017/08/f36/Staff%20Report%20on%20Electricity%20Markets%20and%20Reliability_0.pdf).

<sup>4</sup> Id. at 126-29.

<sup>5</sup> See id.

<sup>6</sup> “Powering America: Defining Reliability in a Transforming Electricity Industry,” Testimony of Gerry W. Cauley, President and Chief Executive Officer, North American Electric Reliability Corporation, Before the Subcommittee on Energy, House Committee on Energy and Commerce (September 14, 2017) <http://docs.house.gov/meetings/IF/IF03/20170914/106383/HHRG-115-IF03-Wstate-CauleyG-20170914-U1.pdf>.

<sup>7</sup> Doug Stanglin and Doyle Rice, “Winter Holds Eastern U.S. in Icy Grip with Record Lows,” USA TODAY (February 20, 2015) <https://www.usatoday.com/story/weather/2015/02/20/winter-weather-cold-snow-record-temperatures/23728379/>.

defined, the proper course of action is to propose a solution tailored to product definition and the attributes sought so that all capable resources can compete to best provide service to customers. The current markets remain fully capable of ensuring reliability without the need to favor certain types of generation with subsidies paid for by captive customers.

**B. Regional Transmission Organizations Effectively Address System Reliability and Resiliency, Eliminating the Need for a One-Size-Fits-All Federal Regulation.**

DOE proposes that the federal regulatory apparatus usurp the authority of states and regional transmission organizations to determine its own resource procurement decisions. Existing RTO and ISO tariffs provide adequate authority for an RTO or ISO to prevent a generator retirement when such a retirement would actually threaten grid reliability. These RTOs and ISOs already have authority to enter into “Reliability Must Run” agreements that allow for cost recovery for generators that are needed for reliable and resilient grid operations. This approach is preferable to the Proposed Rule because it allows for a case-specific approach where only generators that are actually needed for grid reliability receive cost support payments and requires resource owners to formally indicate an intent to retire, which enables the RTO or ISO to separate generators that need additional payments to continue operations from those that simply want them. On the other hand, the Proposed Rule indiscriminately provides for cost support payments to any coal or nuclear power plant, regardless of whether that power plant is truly needed to maintain grid reliability and resiliency—or whether the payments are necessary to prevent retirement.

Ultimately, a federal agency should not be picking and choosing which competitors within an industry will live or die on their own merits and which will be

guaranteed survival by federal policy. Market forces will always do a better job of streamlining the market than reckless favoritism effectuated on a political whim. This has long been the Commission's policy, and that policy should not change with this case.

**C. Without Any Acknowledgement of its Negative Effects, the Proposed Rule Will Harm Manufacturing.**

The Proposed Rule purports to impose a regulatory burden that is limited to the initial implementation costs borne by ISOs and RTOs. The Proposed Rule, therefore, makes no attempt to quantify the millions or billions of dollars in cost increases for electricity that its adoption would impose on customers. For non-coal or nuclear generators, these costs will be felt when they are forced to compete on an uneven playing field. For residential customers, these costs will be felt when they pay their monthly electric bill. For manufacturers, these costs will be felt when they are forced to reduce their operations and lay off workers because their electric costs are cost prohibitive.

Lest anyone be inclined to disregard the real-world impacts of higher electric prices, the Commonwealth of Kentucky commissioned a study on the effect of electricity prices on U.S. businesses. That study found that a 10% increase in the real price of electricity would cause a net loss of one million jobs and a decrease of \$142 billion in the national Gross Domestic Product (GDP).<sup>8</sup> That study further concluded that those effects would be felt the strongest in the metals, paper, wood, chemical, textiles, and minerals sectors of the economy—which collectively employ 2.5 million Americans.<sup>9</sup> Further,

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<sup>8</sup> Commonwealth of Kentucky Staff at the Energy and Environment Cabinet, "The Vulnerability of the United States Economy to Electricity Price Increases" (March 2015). [http://energy.ky.gov/Programs/Data%20Analysis%20%20Electricity%20Model/Vulnerability\\_to\\_Electricity\\_Prices.pdf](http://energy.ky.gov/Programs/Data%20Analysis%20%20Electricity%20Model/Vulnerability_to_Electricity_Prices.pdf).

<sup>9</sup> Id.

these industries are geographically clustered, so the increased prices would disproportionately harm those areas of the country that are home to these sectors.<sup>10</sup>

Additionally, another study in Ohio examined the gross state product per employee and measured how it changed with the cost of electricity between 1990 and 2010 to demonstrate the effects of electricity price on productivity of manufacturing in Ohio and the region.<sup>11</sup> The study concluded that higher electricity prices have had a statistically significant negative effect on manufacturing productivity in Ohio, as well as in four other neighboring states.<sup>12</sup> Specifically, the study showed that an increase of 1 cent per kilowatt-hour correlated to a decrease in gross product generated of about \$2,527/employee, a total of 2.2%.<sup>13</sup> Similarly, the results of the study determined that those effects would be felt most keenly within the electricity-intensive industries.<sup>14</sup>

**D. The Rapidly Accelerated Time Schedule Imposed in this Case Denies Parties the Opportunity to Effectively Respond to the Commission's Questions and Denies the Commission the Opportunity to Fully Evaluate the Complete Effects of the Proposed Rule.**

Section 403(b) of DOE's Act provides that the Commission shall act on DOE's proposals in "an expeditious manner in accordance with such *reasonable* time limits as may be set by the Secretary for the completion of action by the Commission on any such proposal" (emphasis added). The timeframe proposed by DOE is patently unreasonable. It fails to allow parties sufficient time to address the complicated issues that surround the Proposed Rule.

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<sup>10</sup> Id.

<sup>11</sup> I. Lendel, S. Park and A. Thomas, "Moving Ohio Manufacturing Forward: Competitive Electricity Pricing" (2013) at 30-31. *Urban Publications*. Paper 679. [http://engagedscholarship.csuohio.edu/urban\\_facpub/679](http://engagedscholarship.csuohio.edu/urban_facpub/679).

<sup>12</sup> Id.

<sup>13</sup> Id. at 31.

<sup>14</sup> Id.

This sweeping proposal to disrupt competitive markets would impact millions across the country and the Commission should allow for all parties to have enough time to submit meaningful comments on the Proposed Rule. Given the significant nature of the Proposed Rule, the Commission should allow at least 60 days for comment, as provided in Executive Order 12,866.<sup>15</sup>

The volume and depth of questions posed by the Commission should mandate additional time for response. In its October 4, 2017 Request for Information, the Commission asked parties to respond to 30 different requests, many with multiple questions or subparts, affording parties less than 20 days to respond. This is entirely inconsistent with comment periods for other significant regulations that have ranged from 100 days to six months.<sup>16</sup>

Given that DOE does not present concrete evidence that any immediate harm will befall the electric grid should the Proposed Rule not be enacted within the near future, there is no credible reason to not extend the comment period to allow for a full consideration of the issues presented.

#### **IV. CONCLUSION**

The Commission should reject the imprudently-crafted Proposed Rule and continue its longstanding policy of competitive solutions to market impediments and fuel neutrality. The current state of affairs does not support the extreme step of using the power of the federal government to prop up failing power plants while neglecting the market benefits that have spurred efficiency, innovation, and lower prices in the energy

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<sup>15</sup> See Executive Order 12,866, Regulatory Planning and Review, 58 Fed. Reg. 51735 (September 30, 1993).

<sup>16</sup> See 75 FR 37884 (June 17, 2010); 50 FR 48540 (Nov. 25, 1985).

industry. For the reasons stated above, OMAEG respectfully requests that the Commission reject the Proposed Rule and maintain the status quo that has effectively guided the industry.

**NOTICES AND COMMUNICATIONS**

Notices and communications with regard to these proceedings should be addressed to:

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Respectfully submitted,

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*Counsel for OMAEG*

Columbus, Ohio  
October 23, 2017

**CERTIFICATE OF SERVICE**

Pursuant to Rule 2010 of the Commission's Rules of Practice and Procedure, 18 C.F.R. 385.2010, I hereby certify that I have this day served the foregoing document by electronic means upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Columbus, Ohio this 23<sup>rd</sup> day of October, 2017.

/s/ Kimberly W. Bojko \_\_\_\_\_  
Kimberly W. Bojko  
Carpenter Lipps & Leland LLP

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**Congress of the United States**  
**House of Representatives**  
**Washington, DC 20515-3514**

October 20, 2017

Chairman Neil Chatterjee  
Commissioner Cheryl A. LaFleur  
Commissioner Robert F. Powelson  
Federal Energy Regulatory Commission  
888 First Street, NE  
Washington, D.C. 20426

Dear Chairman Chatterjee, Commissioner LaFleur, and Commissioner Powelson,

We write to thank the Department of Energy and Federal Energy Regulatory Commission (FERC) for initiating a rulemaking to help ensure a secure, resilient, and reliable U.S. electrical system. This will be accomplished by preserving the baseload power plants that form the backbone of our electric grid.

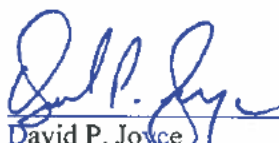
Our nation depends on an affordable, reliable, and secure supply of electricity produced by diverse energy resources. Baseload power plants are the only resources that can operate around the clock to support the energy demands of customers, businesses, and industries. These plants operate in all types of weather, and because they maintain large reserves of on-site fuel, they are not sensitive to fuel supply disruptions.

Preserving baseload plants also promotes a strong American economy. These facilities are economic engines that provide thousands of jobs not only at generating facilities and throughout the supply chain, but also in the small businesses, restaurants, entertainment venues, and other industries that comprise the communities around these plants. Local schools, police and fire departments, and other vital community services rely heavily on tax revenues paid by these facilities.

The current market structure, which undervalues baseload generation, has led to these plants closing prematurely at an alarming rate. These closures have resulted in an electrical grid with weakened resiliency and a diminished ability to respond to crisis.

A logical way to address this issue is to develop and implement market rules that appropriately compensate fuel-secure baseload generating plants. America's energy future depends on preserving a diverse, resilient, dependable, and secure energy supply. We appreciate your commitment on this matter and respectfully urge your swift action to develop and implement market rules that will prevent premature baseload plant closures, consistent with the rules and regulations of the Commission.

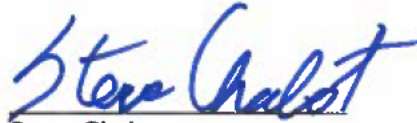
Respectfully,

  
David P. Joyce  
Member of Congress

  
Bob Gibbs  
Member of Congress



Michael R. Turner  
Member of Congress



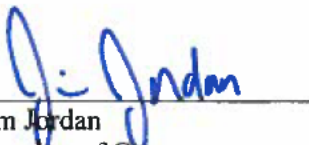
Steve Chabot  
Member of Congress



Patrick Tiberi  
Member of Congress



Bill Johnson  
Member of Congress



Jim Jordan  
Member of Congress



Warren Davidson  
Member of Congress



Robert E. Latta  
Member of Congress



Steve Stivers  
Member of Congress



Brad Wenstrup  
Member of Congress



Joyce Beatty  
Member of Congress

# Electricity Ratemaking Reforms To Protect Consumers

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

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

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

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

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

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

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

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

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

AARP

Ohio Farm Bureau

The National Federation of Independent Business/Ohio

Northeast Ohio Public Energy Council (NOPEC)

Office of the Ohio Consumers' Counsel

Ohio AgriBusiness Association

The Ohio Cast Metals Association

Ohio Chemistry Technology Council

Ohio Hotel & Lodging Association

The Ohio Manufacturers' Association

Ohio State Grange

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

- **Customers Are Not Protected from Paying Too Much for Service Under an ESP.**

One consumer protection in the 2008 law provided that ESPs could not be approved unless the result is “more favorable in the aggregate” to customers when compared to the expected results from the market-rate option. But the PUCO has been considering both quantitative and qualitative factors to determine if the ESP is more favorable in the aggregate than a market rate—and the Supreme Court of Ohio has declined to prohibit the PUCO’s approach. The consideration of qualitative factors can allow above-market charges, and that has undermined the consumer protection that prices in ESPs should compare favorably to market prices.

- **Utilities Can Veto Any PUCO-Ordered Modification to Their ESPs.** If a utility doesn’t like a PUCO ruling that modifies its proposed ESP, the utility can withdraw its application. In effect, the 2008 law gave the utilities—but no other stakeholder—veto power in ESP cases. This is a decidedly anti-customer policy.

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

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

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

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

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

**BEFORE THE  
PUBLIC UTILITIES COMMITTEE  
OF THE OHIO HOUSE OF REPRESENTATIVES**

**REP. ROBERT CUPP, CHAIRMAN**

**HOUSE BILL 247  
TESTIMONY  
OF**

**THE OHIO MANUFACTURERS' ASSOCIATION**

**BY  
BRADLEY BELDEN**

**NOVEMBER 28, 2017**

Chairman Cupp . . . members of the House Public Utilities Committee . . . Good afternoon. Thank you for the opportunity to testify today as a proponent of House Bill 247 and its many provisions for strengthening consumer protection through electric competition.

My name is Bradley H. Belden. I am a Vice President of The Belden Brick Company, which is headquartered in Canton, Ohio. I also serve as Chairman of The Ohio Manufacturers' Association Energy Committee. My testimony is reflective of both my company and the OMA.

The Belden Brick Company owns and operates six plants in Tuscarawas County and employs approximately 450 people in Ohio. We produce both molded and extruded face brick and pavers.

We are the largest family-owned-and-managed brick company in the nation, and the sixth-largest brick manufacturer overall, as measured by production volume.

Access to reliable, affordable electricity is a big competitiveness issue for our company. Our electric spend represents about 4.5 percent of our overall costs. While that doesn't qualify us as an "electric energy intensive" industry, it still represents a significant annual cost. We are always looking for ways to reduce our costs – including what we spend on electricity – because that frees up resources that can be used to invest back into the business and create jobs.

Because our electric costs are such a major line item in our expenses, we are keenly interested in public policies that will drive lowest-cost energy resources and solutions.

Ohio's transition to a competitive market for electricity has produced many well-documented successes that support that objective. For example:

- Between 2011 and 2015, business and residential customers in Ohio have saved approximately \$16 billion, with an expected additional \$3 billion per year in savings going forward.
- Seven new gas-fired power plants have been approved for construction or are under construction in Ohio, while an eighth plant is awaiting approval by the Ohio Power Siting Board.
- And, reserve margins – currently around 20 percent and expected to reach 22 percent in the 2019 / 2020 year, and 23 percent in the 2020 / 2021 year – are more than sufficient to meet Ohio's current and near-term reliability needs.

In other words, retail electricity competition is working as intended. Increased choices and savings have served customers well.

Nonetheless, with HB 247, we have an opportunity to produce even better results.

That's because current law contains a number of rate-making provisions that are anti-competitive, unnecessarily costly for residential and business customers, and bad for Ohio's economy. Many of these anti-competitive provisions became law through Senate Bill 221, passed in 2008, and today represent a serious threat to the benefits of competition we currently enjoy.

Unfortunately, anti-competitive provisions of SB 221 are producing unfair and costly outcomes.

For example: Electric Security Plans (ESPs) permitted under SB 221 have made it possible for utilities to secure approval from the Public Utilities Commission of Ohio (PUCO) to charge customers above-market prices through unwarranted non-bypassable riders.

How much money are we talking about? The Ohio Consumers' Counsel has documented more than \$14 billion in PUCO-approved, above-market electric utility charges since 2000. Those costs were paid by customers of AEP-Ohio, Dayton Power & Light, Duke Energy Ohio, and FirstEnergy.

This begs the question: Why should manufacturers like The Belden Brick Company – or any business for that matter – be forced to pay what amounts to unjustifiable energy “taxes” at a time when competitive electricity markets should be producing lower electric bills?



The answer is, “They shouldn’t.”

House Bill 247 will help protect electricity customers by addressing unfair, anti-consumer provisions in current law that cost customers billions of dollars. By eliminating language in current law that permits utilities to file ESPs, the bill also will eliminate above-market charges that those plans allow.

HB 247 will allow customers to receive refunds for all charges later determined to be improper by the Ohio Supreme Court. Under current law, customers are denied such refunds.

Senate Bill 3, enacted in 1999, prohibits utilities from owning and operating generation. However, instead of divesting their generation, some utilities chose to spin off their generation assets to a corporate affiliate. In recent years, some utilities have used the poor financial performance of those unregulated generation affiliates to seek above-market charges from customers on their distribution utility bills in the form of non-bypassable riders.

HB 247 will make the law clear that utilities and their affiliates cannot own generation thereby eliminating the potential for subsidies flowing to the utilities’ unregulated affiliates.

Businesses across all segments look at what a kilowatt of electricity will cost them. Ohio is positioned well to be able to provide reliable power at extremely competitive rates if we continue down the path of implementing fully competitive market rates. Local energy sources have lowered the cost of generation and invited investment

into our state by new generators. Traditional utilities though have been increasing the total cost of power by adding riders on distribution bills to pay for uncompetitive generation. Ohio will find it harder to retain and attract businesses with a higher total cost of electricity.

There are efforts to have ratepayers in Ohio subsidize an aging, less efficient electricity generating system. Society has moved on from the days of horse-drawn carriages, television picture tubes, and analog film cameras. There's been no effort to have us all pitch in to save the manufacturers of those products by subsidizing their continued production. Why are we doing this with electricity generation? The advancements in technology and ample supply of alternative fuel sources have unlocked lower electricity prices, so why aren't we embracing the documented benefits of the competitive market? HB 247 does just that.

HB 247 will restore much-needed balance and fairness to Ohio's rate-making process. Enactment of the bill will strengthen customer protections against unfair, unwarranted, above-market charges – and, in the process, will support economic growth and prosperity in our state.

I ask for your careful consideration of this legislation.

Chairman Cupp . . . members of the committee . . . this concludes my prepared remarks. Thank you for your kind attention. I am joined by OMA Chief Energy Counsel, Ms. Kimberly Bojko.

Together with Ms. Bojko, we will try to answer any questions that you may have.

# # #

**BEFORE THE  
PUBLIC UTILITIES COMMITTEE  
OF THE OHIO HOUSE OF REPRESENTATIVES**

**REP. ROBERT CUPP, CHAIRMAN**

**HOUSE BILL 247  
TESTIMONY  
OF**

**THE OHIO MANUFACTURERS' ASSOCIATION**

**BY  
LUKE HARMS  
SENIOR MANAGER, GOVERNMENT RELATIONS  
WHIRLPOOL CORPORATION**

**NOVEMBER 28, 2017**

Chairman Cupp, Vice Chair Carfagna, Ranking Member Ashford. . . members of the House Public Utilities Committee . . . Good morning. Thank you for the opportunity to present proponent testimony today on House Bill 247.

My name is Luke Harms. I am Senior Manager of Government Relations at Whirlpool Corporation.

Whirlpool is the number-one appliance manufacturer in the world, with approximately 93,000 employees and 70 manufacturing and technology centers. Here in Ohio, Whirlpool has five manufacturing facilities and approximately 10,000 employees.

I am testifying today on behalf of The Ohio Manufacturers' Association (OMA). I currently serve as Vice Chairman of the OMA Government Affairs Committee.

The OMA was created in 1910 to advocate for Ohio manufacturers; today it has approximately 1,400 members – large, small and in between. Its mission is to protect and grow Ohio manufacturing.

Access to reliable, affordable energy is critical to all manufacturers. For that reason, companies like Whirlpool are always seeking cost-effective energy solutions. We are constantly looking for ways to reduce our electricity costs because money we save by reducing our energy costs is money we can reinvest in our business –

in our employees, our facilities and product innovations—as well as the communities where our facilities reside.

And of course, policies that avoid unnecessary above-market electricity costs help Ohio manufacturers compete – and are a crucial element of Ohio's efforts to strengthen existing employers and attract new businesses to the state.

One way we are investing in our company's success at Whirlpool is through on-site wind energy. Just two weeks ago, we announced plans for building three wind turbines to power our manufacturing facility in Greenville, Ohio.

The three Greenville turbines will generate more than 12 million kWh annually and offset approximately 70 percent of the plant's electricity consumption. That will eliminate the equivalent of more than 9,000 annual tons of CO<sub>2</sub>.

The Greenville plant is the latest Ohio facility where Whirlpool is implementing wind energy to power its manufacturing facilities, following installation of wind turbines at our manufacturing facilities in Findlay, Marion and Ottawa, Ohio.

Expanding our company's commitment to sustainability and reducing our overall energy footprint are two objectives for these wind energy investments. An additional objective is to mitigate the impact of unwarranted above-market charges that put upward pressure on energy costs.

Manufacturers like Whirlpool are deeply concerned about the negative impact of a number of unwarranted rate-making provisions in current law. For example, according to the Ohio Consumers' Counsel, Ohio utilities have collected more than \$14 billion in PUCO-approved, above-market charges from utility customers since 2000.

For this and other reasons, the OMA strongly supports House Bill 247. The legislation will help protect customers by restoring much-needed balance and fairness to Ohio's rate-making process, and by strengthening customer protections against above-market charges through unwarranted, non-bypassable riders.

Above-market charges are an issue of concern for manufacturers of all sizes because they drive up energy costs without delivering any additional benefit to customers. And this is happening at a time when market prices are in decline and electric bills should be dropping, not rising.

ChairmanCupp . . . members of the committee . . . this concludes my prepared remarks. With the assistance of OMA Chief Energy Counsel, Kimberly Bojko, I will be happy to respond to any questions you may have.

# # #



## Ohio Valley Electric Corporation (OVEC) Legislation Sub. HB 239 and Sub. SB 155

### REBUTTAL OF FALSE & MISLEADING CLAIMS

This document shines a light on misinformation regarding the OVEC cost recovery companion bills pending before both chambers of the General Assembly. Several false and misleading claims about the legislation have been fabricated and reinforced by the utilities in an attempt to convince legislators to provide the OVEC plants with above-market subsidies on the backs of Ohio ratepayers. Regarding customer protection concerns, it is alleged that “rate caps” in the bill protect both residential and nonresidential customers. **However, these alleged “rate caps” will actually magnify the negative impact to Ohio’s consumers**, as the caps will create deferred costs that may accrue interest, which will cost Ohio’s ratepayers exponentially more in the long run.

As this document will make clear, often what the utilities don’t tell you is more problematic and dangerous than what they do tell you.

#### FACT: THIS LEGISLATION PROVIDES A SUBSIDY FOR “UNECONOMIC GENERATION.”

**FICTION:** The utilities falsely claim the legislation is not a subsidy to keep uneconomic generation assets running. They say regardless of whether or not the utilities get cost recovery, the OVEC plants will continue to operate. After all, if the plants are “economic” and operating competitively in the wholesale market, there is no need for a customer-funded subsidy. If OVEC does not require a subsidy to continue operation, there would be no need for this legislation.

- The utilities claim that OVEC dispatches power daily into the PJM wholesale market and generates cash sufficient to offset all variable costs and make a contribution toward fixed costs. If this were true, there would be no need for the guaranteed cost recovery this bill seeks to grant to the owners. Furthermore, PJM operates on “economic dispatch,” meaning the lowest cost power available at any given time is dispatched into the market first. OVEC cannot compete on price with power generated by others, including Ohio-based generators, so the utilities want Ohio ratepayers to pay them to make their OVEC power more competitive.

#### FACT: THIS LEGISLATION IS A BAILOUT OF FAILING GENERATION AND BAD BUSINESS DECISIONS.

**FICTION:** The utilities claim this legislation does not seek a revenue stream to prevent the closure of any generating facility. While it may not seek a revenue stream to keep the plants from closing, it certainly does seek a revenue stream to “stop the bleeding” resulting from running the uneconomic plants at a loss, paying down debt, or – if the plants are running at a profit – lining the utilities’ pockets. Proponents say the legislation lays out the framework for collection of costs from consumers for the commitment the Ohio utilities made to OVEC. In reality, this creates a virtual “rubber stamp” process within Ohio law to guarantee ratepayer-funded cost recovery to help financially support power plants that the utilities knowingly and voluntarily invested in upon expiration of the original contract with the U.S. DOE in 2003. Note that DOE paid the utilities \$97.5 million to terminate.

- The utilities claim that OVEC is a unique entity, having been formed during the Cold War to serve the power needs of a uranium enrichment facility located near Piketon, OH. While true, the history of the facilities from 1952-2003 is wholly inconsequential to the current debate on OVEC. Once the Piketon plant was closed by the federal government and the OVEC contract was terminated (with three years forward notice and a sizeable termination payment), the utilities and their co-owners decided to proactively and willingly reinvest in the plants and





sell the power into the PJM wholesale market in order to turn a profit. The utilities' claims are nothing more than a disingenuous attempt to wrap this issue in the American flag in order to garner legislator support. In truth, this fact should not have any bearing on the actual facts surrounding this issue.

- The utilities falsely claim that cost recovery for the Ohio utilities will not contribute to the ongoing operation of the plants. They say regardless of the outcome of this legislation, the OVEC-owned units will continue to operate, consistent with the terms of the FERC-approved Inter-Company Power Agreement (ICPA). If this is true, why do we need this legislation? If the consumer-funded subsidy will not be used to cover any losses the utilities have experienced, or will experience, due to the uneconomic nature of the OVEC plants, the subsidy will likely be used to pay down the massive debt payments that have accrued on the OVEC facilities as their debt-to-equity ratio is heavily overleveraged (98 percent to 2 percent).

The utilities disingenuously claim this legislation merely provides parity between the Ohio utility sponsors and other sponsors of OVEC that receive some form of cost recovery. The reality is that this legislation merely provides the Ohio utilities with a bailout to offset the losses they are, or will be, experiencing or pay down debt as a result of their ongoing and voluntary investment in OVEC. They proactively and willingly entered into the current contractual agreement with the other sponsors, with full knowledge of the differing regulatory environments in which the many co-owners existed and operated, but only now when the plants appear to be unprofitable do they come to the legislature with this business dispute and ask legislators not only to mediate but to award damages straight from Ohio ratepayers' wallets. Notably, the utilities did not seek to share profits with customers when then the plants were making money.

**FACT: CUSTOMERS ARE NOT PROTECTED IN THIS LEGISLATION.**

**FICTION:** The utilities claim they have worked with interested parties to include in the legislation monthly rate cap provisions that expressly protect consumers against imprudent and unreasonable costs. The claimed protections are illusory; this is a hollow claim not supported by the facts.

- The utilities claim the Public Utilities Commission of Ohio (PUCO) will conduct regular prudence reviews and exclude any costs it deems, through those reviews, to be imprudent and unreasonable. While the language has improved, it unfortunately does not go far enough to protect consumers. The so called "regular" prudence reviews are every three years, allowing the utility to recover imprudent expenditures immediately and retain the customers' money for several years before being required to return any unwarranted costs. Additionally, the language as written requires the PUCO to approve recovery of all prudent costs associated with the ICPA, regardless of the location of the facility. Thus, the PUCO is required to allow recovery of costs associated with a non-jurisdictional plant even though the PUCO has no regulatory authority over that plant or ability to review the prudence of the costs associated with the larger of the two OVEC plants located in Indiana. Therefore, Ohio ratepayers will effectively be subsidizing Indiana plant workers' salaries and pensions, in addition to paying for fuel, environmental costs and any other costs the utilities deem necessary.
- The utilities also misleadingly note that the proposed cost caps limit residential exposure to \$2.50/month and \$2,500/month for all other customers, and that the rate design will not unfairly prejudice one nonresidential customer class vis-à-vis another. The revenues will be netted against the costs, and customers will have to pay for any net costs to run and operate the OVEC plants. The truth is, the cost cap language in the legislation is illusory. While it may temporarily cap the amount of OVEC net costs collected from customers through December 31, 2030, any net costs that exceed the monthly caps must be deferred as a

regulatory asset for later recovery from customers, likely with interest. If the OVEC costs do not exceed the costs of the cap in any given month, the utilities may begin collecting the deferral amount (and any interest) from customers up to the cost cap through December 31, 2030. However, any amounts deferred for later recovery that cannot not be collected under the cost cap during the period of the rider become due when the recovery mechanism is terminated at the end of 2030.

In aggregate, the customer price caps could allow the collection of billions of dollars annually from Ohio ratepayers, resulting in no protection at all for the full customer class. For example, with a price cap of \$30/year (\$2.50 /month), Ohio’s residential ratepayers could be on the hook for \$71 million per year. And, with an annual customer cap of up to \$30,000/year (\$2,500 /month), Ohio’s 550,000 commercial and industrial accounts could have an aggregate cap of more than \$9 billion per year. If FirstEnergy Solutions were to transfer its OVEC share to FirstEnergy, the cap ceiling would be even higher. (See chart.) While the PUCO has the discretion to lower the nonresidential customer cost caps for the various customer classes, quite clearly there is room for the utilities to collect much (if not all) of their costs unchecked.

**TOTAL CUSTOMER COST CAPS ALLOWABLE UNDER UTILITIES’ CAP PROPOSAL**

Utility	Residential Customers Qty.	Annual Customer Cap (\$/customer)	Res. Total Cap Ceiling (\$/year)	Commercial & Industrial Customers Qty.	Annual Customer Cap (\$/customer)	C&I Total Cap Ceiling (\$/year)	All Customers, Total Cap Ceiling (\$/year)
<b>AEP</b>	1,292,552	\$30	\$38,776,560	188,817	\$30,000	\$5,664,510,000	\$5,703,286,560
<b>DP&amp;L</b>	460,850	\$30	\$13,825,500	52,738	\$30,000	\$1,582,140,000	\$1,595,965,500
<b>Duke</b>	634,847	\$30	\$19,045,410	71,971	\$30,000	\$2,159,130,000	\$2,178,175,410
<b>Total</b>	<b>2,388,249</b>		<b>\$71,647,470</b>	<b>313,526</b>		<b>\$9,405,780,000</b>	<b>\$9,477,427,470</b>
<b>FirstEnergy - If OVEC transferred from FES to FE</b>	1,870,980	\$30	\$56,129,400	234,356	\$30,000	\$7,030,680,000	\$7,086,809,400

Customer count based on PUCO reporting: <http://www.puco.ohio.gov/industry-information/statistical-reports/electric-customer-choice-switch-rates-and-aggregation-activity/electric-switch-rates-by-customer/customers-1q2017/>

No one is suggesting that the utilities would ever actually be permitted to collect \$9 billion. That’s not the point. The point is that the proposed cap is too large and too “loose” to function as an effective cap. What the utilities have proposed would be a cap in name only. It would have the effect of allowing the utilities to collect virtually any costs they seek to recover. Alternatively, and unfortunately, if the cap was set at a low enough level, any overage would simply get deferred possibly with interest.

Even if an effective cap were established, the amount necessary to cover the operating losses for the OVEC plants could exceed that which is able to be collected as a result of the rate caps. Thus, the delta overages will be placed into a deferral – as prescribed in the bill – and may be allowed to collect interest so that over time the actual costs to consumers will balloon. Then, at the end of 2030, Ohio ratepayers would be on the hook for exponentially more than they would have been if the caps had not been added in the first place.

The price caps are a smokescreen intended to feign concern for Ohio’s ratepayers. If the OVEC plants were making money and the revenue exceeded costs, the utilities would not be seeking this legislation and asking customers to pay for any net costs to run and operate the plants. When the plants were profitable, the utilities chose to continue and extend the ICPA contract and did not seek legislation that would allow the net impacts to be passed on to customers.

- The utilities also note that this legislation sunsets in 2030 unless the General Assembly acts to extend it. What they fail to mention is that in 2030, the termination of the rider mechanism is subject to final reconciliation. This means that at the end of 2030, the deferral possibly with interest that have accrued as the costs exceed the monthly caps become immediately due to the utilities. With no ability to collect the potentially large deferral over a longer period through the recovery mechanism, Ohio ratepayers could be required to pay a large sum at the end of 2030 or the utilities will seek to carry the regulatory asset until some future date for recovery.
- The utilities claim that recovered costs may not include a return on investment. This is clearly false as all three Ohio utilities have an equity ownership in OVEC and currently receive cost recovery today for a return that is embedded in the ICPA agreement. The legislation does not change the ICPA contract.
- Additionally, all Ohio utilities received cost recovery in the form of stranded costs as Ohio customers paid billions of dollars for the utilities to transition to a competitive market. The law explicitly requires the utilities to divest their generation assets and not own them. It also requires that customers not be forced to pay any more for the generating assets (or any more stranded costs) in a restructured market after the transition period, which ended in 2005. But after the transition to the competitive market and being paid stranded costs, the utilities chose to renew and extend the ICPA contract twice. Any customer-funded subsidy distorts the market and favors these generators over other generators competing in the market.
- Ohio ratepayers are endangered in another way. The U.S. Department of Energy (DOE) has announced it is seeking an expedited national solution regarding the operation of coal and nuclear power plants. Ohioans should not be asked to pay on a “single-state basis” for a solution for these uneconomic power plants. Instead, this subsidy issue should be debated at the national level or regional level, where it involves consumers across multiple states. This is further reason for the General Assembly to not enact the OVEC legislation.

**FACT: OHIO UTILITIES HAD PRIOR OPPORTUNITIES TO WALK AWAY FROM OVEC.**

**FICTION:** The utilities falsely claim there has never been a “walk away” opportunity and that the conditions to transfer an OVEC obligation are numerous, complex and unwieldy. These assertions are untrue. There were and are opportunities to terminate the ICPA contract. The utilities knowingly and willingly entered into a contractual agreement with the other owners – a contract that clearly spells out methods for transferring OVEC obligations. Additionally, the utilities had at least two opportunities to get out of the contract in 2003 and 2011, but instead, made a financial business decision to continue and extend the contract. SB 3 came well before either of these contract extensions when the utilities knew generation was deregulated, but they still continued to extend the ICPA. In 2003, the utilities could have used their veto power to discontinue the ICPA but chose to continue it because they were making money. Customers should not now have to pay for the utilities’ bad business decisions.

**Bottom line:** The utilities bet wrong; had they bet right, they would not be here today asking for a subsidy. The extension of the agreement was intended by the regulated utilities to benefit their shareholders. Now that the agreement is not paying off as intended, the utilities are asking captive customers to pay for the utilities’ poor decisions. Shareholders – not customers – should be responsible for any costs associated with the decisions to participate in wholesale competitive markets and to extend the ICPA agreements.

- The utilities falsely claim there is no ability in the FERC-approved ICPA for a sponsor to simply relieve itself of its contractual obligation, and that there are extensive conditions regarding transfer of a contractual commitment. A review of the ICPA, however, indicates that the Ohio utilities are not as “trapped” in OVEC as they claim. For example:

- **Unanimous consent is not required to transfer interests in OVEC.** Section 9.18 (specifically, subsections 9.182 and 9.183) of the ICPA clearly allows for transferability of the interests as long as the transferee meets certain credit-rating thresholds. A company may transfer its interest without the written consent of the other owners to affiliates, and to third parties as long as the selling company provides a right of first refusal to the other remaining OVEC companies. There is clear ability legally to transfer these interests if there is a willing buyer that meets the credit-rating standards in the Agreement. For example, the interests could be transferred to Ohio's electric cooperatives. The utilities' statement that there is no way out of the ICPA does not match the plain language of the ICPA.
- **The ICPA establishes a clear dispute resolution process.** Section 9.10 of the ICPA establishes an arbitration process for contract disputes between the parties. The Ohio investor-owned utilities (IOUs) in testimony to the Ohio House Public Utilities Committee on May 31, 2017, and to the Ohio Senate Public Utilities Committee on June 8, 2017, indicated that they recently tried to get out of the OVEC contract but were unable to successfully transfer their interests. They should provide details about those attempts, such as when they tried, how often they tried and which owners/entities objected. In the event that one of the other OVEC owners attempted to block the transfer or assignment of an Ohio IOU's OVEC interest, the Ohio IOUs should have used the arbitration process to attempt to resolve the matter and should demonstrate whether they attempted to use the arbitration provisions to enable a transfer of their OVEC interests.
- **The Ohio IOUs and their affiliates have operational authority.** Section 9.05 establishes an Operating Committee made up with one member from each participating company, with decisions made with a 2/3 vote. This is the Committee that determines the level of output for the facilities to generate. The IOUs have not disclosed who is on the Operating Committee. However, they and their affiliates make up a substantial portion of the OVEC ownership on the Operating Committee. Without the full disclosure of the membership of the Operating Committee it is unclear if the Ohio IOUs have exhausted all possible remedies to their current situation.
- The utilities also fail to note that there have been prior transfers of OVEC ownership interests. In fact, FirstEnergy was successful at transferring its ownership interest to its unregulated affiliate, FirstEnergy Solutions. The real problem is that no creditworthy, investment-grade company in its right mind wants to buy shares in an unprofitable set of power plants. The utilities could, however, transfer their interests in the plants to other co-sponsors/owners.
- The utilities claim that changes made in 2004 and 2011 enabled debt refinancing at more favorable terms – and that because OVEC is a public utility in the State of Ohio, all such OVEC financing activities are subject to conditions established by the PUCO in an annual proceeding, as required by law. The reality is that cost recovery has been routinely granted by the PUCO to AEP and may be granted in the near future to DPL as well. Additionally, the PUCO approved a placeholder rider for Duke to recover OVEC costs if Duke properly seeks such recovery from the PUCO – recovery granted in the past, although the rider was set at \$0. The utilities have a venue at the PUCO where they can and have proved their cases on OVEC recovery, and the legislature should not inject itself into the process by modifying PUCO jurisdiction and prudence review in that area.

**FACT:** THIS LEGISLATION IS A DEPARTURE FROM THE CONSERVATIVE, PRO-MARKET POLICIES OF THE STATE OF OHIO REGARDING ELECTRIC GENERATION AND COMPETITIVE RETAIL ELECTRIC SERVICE. BY THE VERY DEFINITION, THIS BILL IS ANTI-MARKET AND ANTI-COMPETITIVE BECAUSE IT GRANTS THE UTILITIES ABOVE-MARKET SUBSIDIES FOR THEIR OVEC OWNERSHIP INTERESTS AT THE EXPENSE OF OHIO RATEPAYERS AND OHIO-BASED GENERATORS.

**FICTION:** The utilities falsely claim this legislation will not impact the PJM markets or shopping (customer choice). This is a patently false and ridiculous assertion. It is functionally impossible for some market participants to be granted above-market subsidies where others are not without causing a deleterious impact on prices and the other market participants.

- The utilities falsely claim that wholesale markets will not be impacted by the legislation, and that the OVEC plants will continue to operate regardless of whether or not cost recovery is granted. To the contrary, subsidizing plants will adversely affect the wholesale markets. The legislation will favor one generator over another and allow the OVEC plants to bid into the market at a \$0.00 cost (because they do not have to collect their costs from the market as customers are paying the full costs), distorting the functioning of the market and reducing investment in new generation. In its October 3, 2017, comments, PJM explained that HB 239 would enable Ohio's utilities that own OVEC to offer bids into the wholesale markets that are below their actual costs:

*“Such bidding practices would likely have an adverse impact on PJM’s markets and on the ability for the markets to effectively attract new generation investment in Ohio.”*

Even the earlier June 15, 2017, PJM document that AEP relies upon, PJM explicitly states the following:

*“Some bill supporters have stated their explicit belief that, despite merchant affiliates owning a significant share of the units, no impacts to the wholesale market could occur as the result of HB 239. However, PJM believes that just as is the case with any supplemental payment to resources that would otherwise be uneconomic, there is potential for market impacts.”*

- The utilities erroneously claim that PJM does not intend to oppose the legislation, based on a recent letter to the Ohio House of Representatives. In its message, PJM articulated an appreciation for the OVEC quandary:

*“It is clear that the Ohio policy motivating this bill is materially different than the policy underpinning other electricity bills pending before the legislature. We better understand the uniqueness of the OVEC unit ownership and power purchase agreements with utilities in Ohio and other neighboring states.”*

Acknowledgement by PJM of a unique ownership structure is hardly a ringing endorsement of either of the OVEC bills. Further, PJM makes it a point to not advocate for or against state policies across its footprint but instead to provide context on what impact those policies may have on the wholesale market. PJM's most recent "Interested Party" testimony on OVEC is littered with cautionary references such as the following:

*“...Such bidding practices would likely have an adverse impact on PJM’s markets and on the ability for the markets to effectively attract new generation investment in Ohio.”*

*“...Such offers depress wholesale market prices for other competitive generation owners in Ohio and throughout the PJM region, potentially crowding out merchant*

*competition that relies on its market revenues alone to support investment. In the longer term, this price suppression threatens system reliability. This also results in higher power costs for retail consumers in Ohio and the PJM region by displacing more efficient, lower cost generation resources.”*

## **Conclusion**

These are clear and true facts: The utilities want a subsidy to operate and maintain uneconomic OVEC power plants. They want Ohio ratepayers to bail them out and support uneconomic plants that are no longer used to support, or otherwise related to, national defense. If approved, the legislation would not be the utilities' first consumer-paid subsidy. Ohio's investor-owned utilities received at least \$9.2 billion in "stranded assets" and "regulatory transition" payments from 2000 to 2010. The proposed OVEC legislation is bad for customers, bad for competitive markets, and bad for Ohio.

The truth? The utilities simply want more, and more, and more. The reply to the utilities should be a firm "No."



October 2, 2017

The Honorable Robert Cupp  
Chair, Public Utilities Committee  
Ohio House of Representatives  
77 S. High Street  
Columbus, OH 43215

The Honorable Michael Ashford  
Ranking Member, Public Utilities Committee  
Ohio House of Representatives  
77 S. High Street  
Columbus, OH 43215

**RE: Opposition Testimony HB 239, OVEC Legislation**

Dear Chairman Cupp and Ranking Member Ashford:

We write to jointly convey our opposition to House Bill 239. Some of our organizations have testified previously and some of our organizations are notifying you of our opposition in this letter.

Our associations have undertaken a study of the bill. It would force customers of multiple utilities to subsidize two unprofitable power plants, one in southern Ohio and one in Indiana. These power plants are owned by a coalition of utilities known as the Ohio Valley Energy Corporation (OVEC). Per the Legislative Service Commission, Ohioans could pay approximately \$77 million, or more, per year in above-market power charges for over a decade if this legislation is passed.

Competition is what makes our economic system the best in the world. Our members cannot afford to continually bailout monopoly utility companies anytime their management wants to shift ordinary business risk from shareholders to ratepayers.

Proponents of House Bill 239 first justified the bill as necessary to national security. That was found to be inaccurate. Proponents later justified the OVEC bill as needed due to an inescapable contract among a consortium of owners. That was later found to be inaccurate.

If approved, the bill will have a negative impact on the competitive energy markets, customers' energy costs, business competitiveness and job creation in our state.

We urge you to vote no on HB 239 to protect Ohioans against an unmerited tax that will be a drag on Ohio businesses and families.

Thank you.

**Roger R. Geiger**  
NFIB/Ohio

**Kevin Schmidt**  
Ohio Cast Metals Association

**Jenn Klein**  
Ohio Chemistry Technology  
Council

**Joe Savarise**  
Ohio Hotel & Lodging Assn.

**Eric L. Burkland**  
The Ohio Manufacturers' Assn.



# HB381

132nd General Assembly

ZERO-EMISSIONS NUCLEAR RESOURCE (DeVitis, A) - Regarding the zero-emissions nuclear resource program

Current Status: 10/11/2017 Introduced

**Primary Sponsor:** Anthony DeVitis

**Co-Sponsors:**

Michael Henne  
Larry Householder  
Terry Johnson  
Bill Seitz  
Marilyn Slaby  
Dick Stein  
Nino Vitale  
Keith Faber  
Tom Patton  
Ron Young  
Kristina Roegner  
Martin Sweeney  
Wes Retherford  
Nicholas Celebrezze  
Candice Keller





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M E M O R A N D U M

Date: October 13, 2017  
To: Ohio Manufacturers’ Association – Energy Group  
From: John Seryak, PE (RunnerStone, LLC)  
Kim Bojko, Energy Counsel for the OMAEG (Carpenter, Lipps, & Leland)  
RE: Analysis of H.B. 381 – Zero-Emissions Nuclear (ZEN) Credit Program

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House Bill 381 (HB 381), recently introduced in the Ohio General Assembly, proposes to change Ohio’s policy regarding electricity generation resources. Ohio’s current policy regarding electricity resources states:

*“Ensure diversity of electricity supplies and suppliers, by giving consumers effective choices over the selection of those supplies and suppliers and by encouraging the development of distributed and small generation facilities.”*

But HB 381 would alter this state policy, mandating the operation of nuclear generation, even if it is inefficient or more costly in the competitive market:

- Nuclear generation technology would be given special status that no other technology enjoys, as it would be state policy to specifically ensure “diversity of...resources, including zero-emissions nuclear resources.”
- The state would no longer limit itself to ensuring diversity through choice and encouragement, but instead would encourage diversity by recognizing “the need for nuclear energy resources.”
- State policy would also be changed to ensure diversity of, and recognize need for, a more generalized category of electricity resources that provide “fuel diversity and environmental and other benefits.”

**HB 381: Zero-Emission Nuclear Credits**

- ZEN = Attributes of 1 MWh nuclear generation
- Cost: greater than \$100 million/yr, for at least 12 years, or more than \$1.2 billion total
- Allows out-of-state ZEN credits to meet mandates
- Shifts state policy from support for competitive markets to specific generator “need”
- Limits customer intervention at PUCO
- Would cost a small manufacturer ~\$60,000 through 2030
- Would cost large, intensive manufacturer \$500,000 through 2030

HB 381 is very similar to the previous legislation (Senate Bill 128 and a companion bill, House Bill 178), which required electric distribution utilities to purchase Zero-Emissions Nuclear (ZEN) credits that would be bought from Ohio’s nuclear generators, as well as generators operating out of state, and paid for by Ohio’s customers in FirstEnergy’s service territories. HB 381 provides for the following modifications from prior versions:

- HB 381 modifies the duration of the ZEN program and cost recovery from customers,

guaranteeing that the program and cost recovery continue for at least 12 years, through 2030, with an opportunity for the General Assembly to extend after receiving a report from the PUCO in 2029.

- HB 381 clarifies that the credits are first allocated to each distribution utility, and then the distribution utility collects revenues from all of its customers through a non-bypassable rider in the amount associated with its allocation of the ZEN credits.
- HB 381 more clearly explains how the state of Ohio (PUCO) operates the program as a middle man in order to transfer ZEN credits and funds from an unregulated nuclear generator to a regulated distribution utility. The modifications in the bill are an attempt to create the illusion that FirstEnergy's customers are not subsidizing FirstEnergy's unregulated affiliate that owns nuclear generation (FES) to avoid any FERC scrutiny over such affiliate transaction.
- HB 381 deletes the cost cap included in the prior version of the bill and sets the rider rates similar to those in the OVEC legislation. Residential customers will be charged \$2.50/month and non-residential customers will be charged the lesser of 5% of the customer's total bill or \$3,500/month. There is no indication of whether the 5% calculation is referencing a customer's total annual bill or total monthly bill, which could affect the customer's monthly charge. The distribution utility may adjust these rider amounts downward if a lower rate would still allow full recovery of the cost associated with obtaining the ZEN credits that the utility is required to purchase. With this change, the deferral was eliminated.
- HB 381 also appears to have deleted recovery of indirect costs associated with the purchase of the ZEN credits.
- HB 381 removed the PUCO review of the program in years 6 and 11 and a recommendation as to whether the program should continue. Thus, the program is guaranteed to collect revenues associated with ZEN credits for 12 years, through 2030, with an opportunity to extend.

HB 381 sets forth how the state would meet the new policy goal of recognizing a need for nuclear generation by creating ZEN credits purchased from nuclear generators for distribution utilities and paid for by some Ohio customers.

Details of the ZEN credit mechanism:

- ZEN credit definition: A ZEN credit would equal the "attributes" associated with one megawatt hour (MWh) of nuclear generation. "Attributes" is not defined, but presumably refers to emissions attributes, meaning the lack of emission pollutants. However, attributes could extend to include other environmental externalities of electric generation that may someday be priced in, such as water use or spent fuel storage.
- ZEN credit price: SB 128 mandates that the initial price of a ZEN credit be \$17.00, and that the PUCO should periodically adjust the price for inflation.
- ZEN credit quantity: The number of ZEN credits to be purchased will equal 1/3 of a distribution utility's customer load, provided that the distribution utility has a qualified nuclear resource within its certified territory. Additionally, if that distribution utility is owned by a holding company, which in turn owns other distribution utility companies in Ohio, all of that holding company's Ohio distribution utilities would be required to participate in the ZEN credit program.

In plain terms, this would include all three of FirstEnergy Corp.’s distribution companies (Cleveland Electric Illuminating, Toledo Edison, Ohio Edison), but not AEP Ohio, DP&L, or Duke. The total annual distribution load of the FirstEnergy Ohio distribution utilities is approximately 54 million MWh.

- ZEN credit program duration: The ZEN credit program, including cost recovery from customers, will last for at least 12 years and there is an opportunity for the General Assembly to extend that period.
- ZEN credit cost: The customers of the FirstEnergy Ohio distribution utilities would be required to purchase 18 million ZEN credits at a price of \$17.00 per ZEN, totaling ~\$300 million per year (plus any increases for inflation). The cost to Ohio ratepayers over the 12-year term would be at least \$3.6 billion without a cost cap, though with the cost cap, the costs would still likely result in over \$1 billion for the 12-year term.
- ZEN credit availability, Out-of-state ZEN credits: Ohio’s two nuclear power plants, Davis-Besse and Perry, fall short of producing 18 million ZEN credits per year. In fact, according to the US Energy Information Administration, not once has nuclear generation in Ohio produced 18 million MWh since 2001.
  - In the most recent 5 years, Ohio nuclear plants produced on average 16.7 million MWh. Thus, an additional 1.3 million ZEN credits would need to be purchased from out-of-state nuclear resources. If the production trend continues, Ohio customers would consistently send \$21.5 million each year to out-of-state nuclear resources. Because the cost cap would limit annual cost to consumers by a magnitude greater than the out-of-state potential, it is not clear how the PUCO will decide which nuclear resource, be it in-state or out-of-state, would receive the subsidies.
  - In 2003, nuclear generation in Ohio fell to approximately 8.5 million MWh. In such a year, Ohio would spend approximately \$160 million on out-of-state ZEN credits.
- HB 381 further amends the state policy to extend long-term “environmental and ‘other’ benefits” to the region, not just the state.
- Nuclear plant eligibility: HB 381 provides remarkably specific criteria around which power generating resources are eligible.
  - In and Out-of-State Eligibility: Importantly, separate definitions exist for “in-state nuclear energy resources”, and for “all other nuclear energy resources”.
- Hypothetical Environmental Baselines: In-state nuclear resources would be eligible by comparing the emissions of the nuclear plant to that of “the predominant electric generation source...as of the time the resource commenced operation.” The impact of those hypothetical emissions would assume “the then predominant electric generation source” was located in the exact same place as the nuclear plant. The intent of this provision seems to be to compare the emissions impact of nuclear plants not against what would currently likely replace the nuclear plants – a mix of natural gas, renewable energy, and energy efficiency, all sited at different locations – but instead against 30-40 year old generation technology, which was likely predominantly inefficient coal-power plants with high emissions. This would have the effect of bolstering the alleged



environmental benefits to the region of nuclear technology, but would be wholly untethered to reality.

- ZEN program process:
  - HB 381 dictates that financial data and statements submitted by nuclear plant owners desiring to sell ZEN credits to Ohio customers would not be made public.
  - ZEN program cost recovery would be collected from customers of FirstEnergy's Ohio electric distribution utilities through a non-bypassable rider for at least 12 years.
  - The non-bypassable rider for non-residential customers will be set at the lesser of 5% of the customer's total bill or \$3,500/month. This may be adjusted downward if a lower rate would still allow the distribution utilities to collect the full amount associated with the ZEN credits allocated to the distribution utility.
  - The PUCO would have only 50 days to designate a nuclear plant as an eligible nuclear resource after the resource files a written notice, or any nuclear resource that notifies the PUCO would be automatically eligible. Interested stakeholders may file comments within 20 days after the notice is filed. Since presumably out-of-state nuclear resources could be eligible, and there are specific environmental requirements for all nuclear resources, the list of participating plants is not obvious, and could be open to challenge based on the requirements HB 381 sets forth. However, it is unlikely a robust process could take place at the PUCO within 50 days. Thus, even out-of-state nuclear plants could receive defacto eligibility without the full review of the PUCO and intervening stakeholders.
- Transfer of ZEN eligibility to other companies:
  - If a current nuclear plant owner sells or transfers its nuclear power plant, the amount of ZEN credits allocated to the distribution utilities from the transferred nuclear resource would be reduced by half of the dollar amount of any net proceeds otherwise available from the resource's known obligations. It appears that even with this reduction, the requirement for the Ohio distribution utilities to purchase ZEN credits equal to 1/3 of their load remains, implying that Ohio customers would simply need to purchase more out-of-state ZEN credits.



**Impact on Manufacturers**

The collection of revenues associated with ZEN credits would currently be limited to FirstEnergy’s Ohio customers, even though HB 381 clearly states that the benefit of the program is to the “region.” The table below shows the annual and 12-year impact to small, medium, large, and extra-large manufacturers located in the service territories of the FirstEnergy Ohio distribution utilities. The total cost, annually and for the full term, is shown, as well as the portion of the cost that could go to out-of-state nuclear plants. A small manufacturer could pay approximately \$60,000 extra over the 12-year term, where as a large manufacturer with significant local employment could pay approximately \$500,000 extra over the course of the ZEN program.

Manufacturer Size	Consumption (kWh/year)	Annual		12-year Term	
		Total ZEN Cost	With Cost Cap	Total ZEN Cost	With Cost Cap
Small (~\$100k/yr in electricity costs)	1,000,000	\$ 5,667	\$ 5,000	\$ 68,000	\$ 60,000
Medium (~\$600k/yr in electricity costs)	7,500,000	\$ 42,500	\$ 33,750	\$ 510,000	\$ 405,000
Large (~\$6 million/yr in electricity costs)	100,000,000	\$ 566,667	\$ 42,000	\$ 6,800,000	\$ 504,000
Extra Large	1,000,000,000	\$ 5,666,667	\$ 42,000	\$ 68,000,000	\$ 504,000



**The Buckeye Institute & R Street Institute  
Policy Brief**

**Don't Short Circuit the Ohio Electricity Market:  
A Q&A with Dr. Joe Bowring on State Subsidies and Power Plant Bailouts**

**By Joe Nichols & Devin Hartman**

**Introduction**

The Ohio economy depends on an affordable and reliable supply of electricity. Electricity literally powers modern life for Ohioans as we boot up our computers at the office, charge our phones, and crank up the air conditioning on hot summer days. It's also a key input for manufacturers, which still make up nearly one-fifth of Ohio's economy and provide hundreds of thousands of Ohioans with good jobs. Manufacturers typically face tough global competition, and rising electricity prices can contribute to a plant cutting its operations—or even closing.

That's why it's critically important to have good electricity policies that promote competition and customer choice. By sticking to these principles, Ohioans will enjoy a reliable supply of electricity at low cost.

Policymakers made key reforms in 1999 that opened up the electricity market for more competition and customer choice. Traditionally, Ohioans were stuck with their local electric utility and charged a price negotiated by the utility and government regulators. After the 1999 law, Ohio joined other states in a regional organization called PJM Interconnection, which operates a wholesale market for electricity. Power plants compete to sell electricity on this wholesale market and electricity providers buy wholesale electricity through PJM and sell it at retail. Now, Ohioans can choose among these different electricity providers who offer market-based pricing.

Unfortunately, the 1999 reforms didn't go far enough. The playing field is still tilted in the favor of big utilities and against their competitors, and the utilities can still stick consumers with too many charges that they can't opt out of by switching to another electricity provider.

In fact, the Ohio Consumer's Counsel has tallied up \$14.3 billion of subsidies to the big four electric utilities—American Electric Power, FirstEnergy, Dayton Power & Light, and Duke—from 2000 to 2016. Approximately \$235.11 million more *per year* are currently approved or pending going forward from 2017.<sup>1</sup>

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<sup>1</sup> Office of the Ohio Consumers' Counsel, "[Subsidy Scorecard](#)."

In the following Q&A, Dr. Joe Bowring—who is the independent auditor for PJM Interconnection—explains why Ohio benefits from participating in the PJM market. Bowring makes three key points that are especially relevant for Ohio:

1. Regulated utilities should only be in the business of distributing electricity through power lines. They should not also own the power plants that generate electricity.
2. Government policies that favor one type of power plant over another make the market function less efficiently and raise costs for customers. Ohio is guilty of favoritism in various ways, such as a current law that forces customers to buy renewable energy and proposed laws that force consumers to subsidize certain coal and nuclear plants.
3. Even though Ohio and the greater region served by PJM are experiencing many changes—including power plant closures—there is plenty of extra power capacity, and many new plants coming on-line. There is no legitimate concern that Ohio will have power shortages or blackouts.

#### **Q&A with Dr. Bowring**

**BUCKEYE/R STREET:** *What electric industry structure and policies are best for economic development?*

**BOWRING:** The best electric industry structure is the one that results in the lowest possible costs to customers. The best wholesale power market structure is a competitive structure that includes a competitive energy, ancillary services and capacity market. A competitive energy market by itself is not enough. A competitive capacity market helps ensure competition for new entry and signals for exit when units are not profitable.

**BUCKEYE/R STREET:** *How do merchants behave compared to monopoly utilities?*

**BOWRING:** Merchant generators put private capital at risk, enter the market when it appears profitable and exit the market when it is not profitable. The decisions are made entirely by private investors and the consequences are borne entirely by private investors. Customer funds are not used to fund the construction of merchant generation units and customer funds are not used to guarantee rates of return to investors when units underperform.

**BUCKEYE/R STREET:** *How does the improved economic discipline of competitive markets affect innovation and consumers?*

**BOWRING:** Markets provide a price signal and private investors and consumers decide how to react to those prices. Consumers may invest in technologies that reduce energy usage if prices are high, or shift energy usage to lower-price time periods. The private developers of power plants compete with one another to build the lowest cost, most efficient power plants. The developers put pressure on original equipment manufacturers to sell cheaper and more efficient power plants. One result has been the significant increase in the efficiency of the dominant new power plant technology: the gas-fired combined cycle. This technology would not have been

invented but for competition and this technology would not have been improved but for competition among equipment manufacturers, responding to the demand for new plants by private power plant investors/developers.

**BUCKEYE/R STREET:** *How does PJM remain a reliable electricity system despite the retirement of power plants?*

**BOWRING:** PJM is required to maintain a required margin of reserves in excess of forecast peak load. That required reserve margin is a key determinant of the demand for capacity in the PJM capacity market. Power plants earn revenues from a combination of energy markets and capacity markets. When total net revenues are not adequate to cover the going-forward costs of a generator, it is more economic to retire the unit than to continue to operate it. Based on these market signals, more than 20,000 MW of coal-fired power plants have retired in PJM since 2011. But PJM continues to maintain a reserve margin in excess of its required reserve margin as a result of new entry by investors in new units that believe they can earn a profit. Developers continue to build new generation in PJM based on the results of PJM's energy, ancillary services and capacity market and based on the expectation that the investments will be profitable.

**BUCKEYE/R STREET:** *Are PJM's markets actually competitive, considering the extent of administrative rules?*

**BOWRING:** As the independent market monitor for PJM, we continue to find that the PJM markets are competitive. All markets include complex rules and the PJM markets are no exception. The fact that there are rules does not mean that PJM markets are less than markets or are somehow administrative constructs. Cost-of-service regulation is an administrative construct. The PJM markets are competitive markets governed by rules. The PJM markets continue to be subject to regulation by the Federal Energy Regulatory Commission (FERC) because FERC relies on competitive outcomes as a substitute for direct regulation. Market participants continue to put their capital at risk and do not have recourse to customers when they lose money. Load-serving entities continue to compete for customers in states where retail competition exists. Customers continue to respond to price signals. Units and companies have gone bankrupt in PJM markets. Both the energy market and the capacity market are markets that produce competitive results for customers.

**BUCKEYE/R STREET:** *You regularly note many areas for improvement in the way PJM markets are designed and administered. Are electricity customers better served by PJM's imperfect markets or without a regional transmission organization?*

**BOWRING:** The energy market works well. The energy market relies on competitive offers from generation owners equal to short-run marginal cost that result in locational marginal prices that reflect both generator offers and constraints on the transmission system that is necessary to deliver power to load. The energy market has local market-power-mitigation rules that work effectively. There are some areas where the energy market could be made more effective, including better and more locational scarcity pricing, less discretion for PJM in affecting prices and better rules for purely financial participants. PJM does not need to find artificial ways to increase energy market prices.



The capacity market works reasonably well. The capacity market has had lower prices than indicated by market fundamentals over the past few years, but PJM's recent changes to the capacity market design (Capacity Performance) has created better and stronger incentives for units to perform. The capacity market does not need rules to support specific technologies or power plants.

In general, PJM has continued to improve the design of its energy, ancillary services and capacity markets, although there is continued need for improvement.

**BUCKEYE/R STREET:** *What is the best approach to handle shortcomings in PJM markets?*

**BOWRING:** Continued improvements in market design are the best approach to handling any perceived shortcomings in market outcomes. It is also important to distinguish between actual shortcomings in market outcomes and corresponding market-design issues, and perceived issues; for example, when a specific technology faces market challenges.

**BUCKEYE/R STREET:** *How do competitive markets affect renewables and demand-side resource investments (versus regulated monopoly)?*

**BOWRING:** Clear and transparent price signals in the energy market and the capacity market indicate to potential investors in traditional generation, renewables and in demand-side resources whether investment is likely to be profitable and where the most profitable locations are. There is no transparent price signal in a cost-of-service system. In that case, the regulated utilities decide whether to invest in renewables or demand-side base on their overall impact on the profits of the regulated utility. If renewables or demand side investments reduce the overall revenues of the regulated utility, the utility will not invest. Despite the flaws in the PJM capacity market, a large amount of demand-side resources have been built by private investors in response to market signals, and renewables have sited where [they are] expected to be profitable.

**BUCKEYE/R STREET:** *How do subsidies (e.g., bailouts) and resource mandates (e.g., renewable portfolio standards) affect market performance? How does this affect consumers and economic development?*

**BOWRING:** The market paradigm is an alternative to the quasi-market design, which relies on cost-of-service regulation and guaranteed rates of return. The market paradigm, and its associated customer benefits, cannot survive if there is intervention in the markets to save specific units or technologies despite clear market signals. Subsidies are contagious. If one owner receives special subsidies, it is the fiduciary duty of other unit owners to seek comparable subsidies. Subsidies are fundamentally incompatible with competitive markets that rely entirely on market signals for decisions about entering and exiting markets. Despite their good intentions, central planners do not succeed and have a poor track record of beating the market.

Subsidies, particularly for mature technologies, result in customers paying more than they would pay without subsidies.

**BUCKEYE/R STREET:** *What is the best role for regulated utilities within a restructured state?*

**BOWRING:** The role of regulated utilities is best suited, to date, to investment in transmission and distribution assets, although there is an increasing role for competition in those areas.

One of the risks of vertically integrated utilities is that they can, under some circumstances, shift risk from their generation side to their distribution side. That was the goal of First Energy and AEP in seeking to require Ohio customers to pay a non-bypassable charge to fund a subsidy for uneconomic generating assets. Despite the fact that FERC rejected the more egregious form of these subsidies, it is not possible to separate the financial impacts of generation from distribution in a vertically integrated company.

At the outset of wholesale power-market restructuring, many states required the divestiture, by the transmission and distribution utilities, of their generating assets. That divestiture prevented the types of cross-subsidies that were the subject of the FE and AEP filings.

The overall goal of power-market design should be to maximize the role of market forces, to eliminate incentives for subsidies and cross subsidies, to ensure that risks are borne by those making the investment decisions, to prevent market power of all types and to maximize the degree of customer choice about the types of service that customers wish to purchase.

**BUCKEYE/R STREET:** *What would be the consequences of re-regulating merchant assets?*

**BOWRING:** The re-regulation of private merchant assets would likely be a drawn-out, expensive litigation driven process that, at best, would significantly increase costs to customers. Merchant generators would expect to be compensated for their investments as if they were regulated assets, meaning a guaranteed return on and of capital. Given the observed history in PJM markets, merchants have earned less than regulated utilities. As a result, the conversion of merchant assets to regulated assets would increase costs to customers.

Longer term, re-regulation would mean the loss of market-based incentives for market entry and exit. Re-regulation would mean abandoning the market paradigm and restoring the quasi-market paradigm in which investment decisions are made by regulated utilities with guaranteed rates of return. Re-regulation would mean that customers would be required to bear all the risks of planning decisions about the type and location of new assets. Customers would be required to pay for all investments, whether successful or not.

## **Conclusion**

Utilities continue to lobby regulators and lawmakers for subsidies, because changes in the electricity market have lowered prices—and their profitability. While these subsidies are good for the utility companies, they are bad for the rest of the state’s families and businesses. Higher electricity bills reduce the amount of money that families have to put food on the table and make companies less confident about starting or expanding operations in Ohio.

Policymakers should make three electricity policy reforms to let the market work and help Ohioans save money on their energy bills:

First, Ohio should have full corporate separation, as is the case in Texas, of power generation companies and the regulated monopoly utility companies that own the power lines. Utilities should be prohibited from owning power plants through “affiliate” companies.

Second, Ohio should embrace market pricing and eliminate “electric security plans” (ESP). ESPs are regulatory proceedings that become utility wish lists for extra charges and subsidies above the market price.

Finally, Ohio law should enable the Public Utilities Commission of Ohio to issue refunds to customers if utilities overcharge them.

As Dr. Bowring attests, the restructured electricity market is doing a good job of providing Ohioans with reliable, yet low-cost electricity. These reforms are the best way to ensure that continues to be the case.

### **About the Authors**

**Joe Nichols** is the strategic partnerships officer at The Buckeye Institute. In this role, Nichols develops existing and new relationships with the Institute's investors and partners. Prior to his current position, Nichols was a policy analyst in The Buckeye Institute's Economic Research Center where he focused on energy policy. He obtained his Bachelor of Arts in Economics from Denison University in Granville, Ohio.

**Devin Hartman** is electricity policy manager and senior fellow with the R Street Institute, where he researches and promotes competitive electricity markets, efficient energy innovation and environmental policies, and sensible electric rate designs. Devin joined R Street in January 2016, having previously conducted economic analysis of wholesale electricity markets at the Federal Energy Regulatory Commission and on retail electric regulation at the Indiana Utility Regulatory Commission.

**Dr. Joseph Bowring** is the president of Monitoring Analytics. Since 1999, Bowring has been the independent market monitor for PJM, responsible for all market monitoring activities of PJM Interconnection. He has a Ph.D. in economics from the University of Massachusetts and has taught economics as a member of the faculty at Bucknell University and Villanova University. In addition, he has served as senior staff economist for the New Jersey Board of Public Utilities and as chief economist for the New Jersey Department of the Public Advocate's Division of Rate Counsel.



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*Don't Short Circuit the Ohio Electricity Market: A Q&A with Dr. Joseph Bowring on  
State Subsidies and Power Plant Bailouts*  
By Joe Nichols and Devin Hartman

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**TO: OMA Government Affairs Committee**  
**FROM: Ryan Augsburger / Rob Brundrett**  
**RE: Environment Public Policy Report**  
**DATE: November 29, 2017**

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### **Overview**

Ohio EPA has been quiet on the legislative front after the passage of Senate Bill 2. But recent rumblings suggest that the agency is preparing to drop a new omnibus bill that will touch on a variety of issues the agency has in its crosshairs. One of those issues will be phosphorus from point sources. In September the Ohio Lake Erie Commission outlined its draft action plan which would need legislative approval in 2018. This plan had a point source phosphorus mandate that could be harmful to manufacturers. Ohio EPA continues to work most aggressively on its rules and is actively highlighting its Encouraging Environment Excellence program.

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

#### **Senate Bill 2 – Ohio EPA Water Bill**

Senator Cliff Hite (R-Findley) introduced Senate Bill 2. The bill was formerly the Ohio EPA Water MBR bill in the 131<sup>st</sup> General Assembly. That bill ran into some last minute controversy and was not passed during lame duck in 2016. Among the provisions is language that would exempt slag from Ohio's water statutes. The OMA and some OMA members provided proponent testimony. The bill was passed by both chambers of the legislature and signed into law by the Governor in early July.

#### **House Bill 49 – State Budget Bill**

The Governor's budget bill had countless hearings in both chambers. Ohio EPA proposed several law changes in the bill. Among items of interest includes language that responds to the Ohio Supreme Court's decision requiring all TMDLs go through the ORC 119 rule making process.

Each TMDL, including modified TMDLs, must go through the public notice, public comment, and public hearing process. The compromise allows for appeals to Ohio Environmental Review Appeals Commission (ERAC) of any permit containing limits based on a TMDL, and specifies that indirect dischargers as well as direct dischargers may appeal. The rule therefore provides for due process considerations for all parties involved.

Other changes include expansion of the local air agency statute, the authority to waive or reduce late payment penalties and fees, and to authorize explosive landfill gas monitoring. A late amendment in the Senate removed the fees associated with Alternative Daily Cover at landfills. OMA advocated heavily for this change.

### **Regulations**

#### **Universal Waste**

The OMA-led initiative to expand Ohio EPA's definition of universal waste to include more items, among them, paint and paint-related wastes continues to march forward at a deliberate pace.

The OMA has been working closely with Ohio EPA over the past few years to expand Ohio's universal waste program to include items now considered hazardous wastes, thus providing waste management relief for Ohio manufacturers.

The OMA commented on a variety of issues from storage to transportation to management standards. Ohio EPA prepared responses to comments and final rule was approved by the agency. Ohio EPA filed the rules with JCARR only to pull the rules to be refiled again in two weeks. The agency had its hearing at JCARR with zero opposition. The final step is final filing the rules which we expect in early December.

Thank you to the members who participated in drafting comments.

#### Ohio Lake Erie Commission – Draft Action Plan

The OMA filed comments with the Ohio Lake Erie Commission on its Draft Domestic Action Plan 2018; portions of the plan could be detrimental to manufacturers.

OMA outlined its concern regarding the draft plan's call for a legislative mandate of a 1.0 mg/L monthly average phosphorus limit for all treatment works in Ohio. OMA wrote: "... this radical and unjustifiable shift in NPDES permitting in Ohio is completely unfounded, arbitrary, contrary to current statutory programs in Ohio, and not scientifically defensible. It would impose unnecessary and extensive costs on regulated parties without measurable decrease in Lake Erie phosphorus loads. ... For the Action Plan to meet due process and other legal requirements and to align with the Action Plan's broader adaptive management protocols, the legislative mandate must be removed from the draft Action Plan."

The OMA convened a work group of interested members. The group met with top Ohio EPA brass to discuss the issue and the impact on manufacturing. The updated draft sent to U.S. EPA revised the language to state that the agency would evaluate the potential for legislation on phosphorus; a nice temporary win for manufacturers. However new legislation from the agency is expected soon and could include new point source restrictions.

#### Ohio EPA Announces TMDL Rule Early Stakeholder Outreach

Ohio EPA started the first steps for the Total Maximum Daily Load (TMDL) Program Rule OAC 3745-2-12. An early stakeholder outreach took place in August and September.

According to Ohio EPA: "Dischargers covered under a National Pollutant Discharge Elimination System (NPDES) permit are indirectly impacted through the setting of permit effluent limitations based upon the wasteload allocations established in the TMDL. The rule amendments will provide for formalized stakeholder notification and comment opportunities and participation in the TMDL development process which should lead to a better TMDL product and improved water quality."

These rules are being considered due to changes made in House Bill 49, the state operating budget.

#### Startup, Shutdown, Malfunction

On October 25, 2016, Ohio EPA released draft amended rules for public comment related to changes to Ohio's startup, shutdown or malfunction and scheduled maintenance rules as they pertain to air pollution control equipment.

The amendments were being made in response to a U.S. EPA call for modifications to the rules on June 12, 2015 in 80 FR 33840.

The OMA submitted two sets of comments in response to the interested party rules package.

Ohio EPA provided the OMA with an additional opportunity to review the changes based on the comments received. Several new amendments were drafted responding to the comments, along with a new amended business impact analysis and a response to comments document for the amended draft rules.

OMA submitted two additional sets of comments to Ohio EPA in response to its updated draft rules for startup, shutdown or malfunction and scheduled maintenance rules as they pertain to air pollution control equipment.

The first set of comments was submitted in conjunction with other business allies and outlined four specific areas of needed change. The second set of comments was submitted by OMA alone and focused on maintenance days for specific equipment used in certain manufacturing industries.

#### Hazardous Waste Management Program

Ohio EPA announced that early stakeholder outreach (ESO) comments for the Hazardous Waste Management Program are due September 26, 2017.

The rule changes under consideration are federally-driven updates. Ohio's hazardous waste rules must match their federal Resource Conservation and Recovery Act (RCRA) counterpart regulations in 40 CFR Parts 260 to 279.

A number of Ohio rules need to be rescinded, added or amended to address changes to, or the creation of, their federal RCRA counterpart provisions, as published in the Federal Register.

#### Ohio EPA Agency News

##### Ohio EPA Sustainability Conference

Ohio EPA recognizes that many businesses, communities, and other organizations are moving beyond compliance and incorporating sustainable environmental practices into their daily operations.

On October 3, 2017, Ohio EPA hosted its first Sustainability Conference. This conference demonstrated how to leverage sustainable practices and resources to strengthen Ohio communities and businesses. The agency also recognized numerous OMA members for their sustainability accomplishments.

##### Ohio Materials Marketplace

The Ohio EPA continues to invite OMA members to participate in its newly launched Ohio Materials Marketplace with the objective to advance Ohio towards a circular material economy.

The free online platform enables Ohio businesses to list by-product and waste materials, as well as post requests for desired materials. The Materials Marketplace aims to assist manufacturers and other businesses in advancing their zero-landfill goals, decreasing greenhouse gas emissions, and reducing material and waste management costs.

Raw materials, by-products, and massive volumes are welcomed. Materials can range from computer monitors to waste paper to clay.





## MEMORANDUM

**TO:** Rob Brundrett

**FROM:** Christine Rideout Schirra

**DATE:** October 23, 2017

**RE:** Ohio-specific Universal Waste Rules

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### **Ohio EPA's Proposed Rulemaking and Procedural History**

On September 11, 2017, the Ohio EPA Division of Environmental Response and Revitalization issued proposed changes to its rules regarding universal waste management. Ohio's current universal waste rules, found in Ohio Administrative Code Chapter 3745-273, apply to handlers, transporters, and destination facilities for specific categories of hazardous waste streams, including lamps, pesticides, mercury-containing equipment and discarded batteries. Ohio EPA's new proposed universal waste rules add hazardous non-empty aerosol cans, hazardous antifreeze, and hazardous paint and paint-related wastes to the universal waste management rules, as proposed in part by OMA and some of its members.

Ohio EPA's proposed rulemaking follows Ohio EPA's prior issuance of draft rules on November 18, 2016. The OMA submitted comments to Ohio EPA regarding those draft rules on December 21, 2016. Ohio EPA issued a Response to Comments document in response to all comments received during the November 22 – December 21, 2016 comment period, in which it addressed many of the OMA's comments, and Ohio EPA has incorporated many of the OMA's comments into the revised proposed rules. The OMA did not submit additional comments to Ohio EPA in response to the latest proposed rule issuance. On October 17, 2017, the OMA attended Ohio EPA's public hearing on the proposed rulemaking, during which there were no oral comments submitted by any party.

Ohio EPA's rulemaking follows ongoing conversations between Ohio EPA and the OMA that have occurred over the past few years, during which the OMA petitioned Ohio EPA to expand the scope of Ohio's universal waste rules. It is expected that the rules will be filed in final form and become effective shortly.

## Summary of Ohio EPA's Proposed Ohio-specific Universal Waste Rules

Under the prior version of the universal waste rules, the definition of universal waste included batteries, pesticides, mercury-containing equipment, and lamps. OAC 3745-273-09(Q). Under the new proposed rules, "Ohio-specific universal waste" has been added to the definition of universal waste. OAC 3745-273-09(Q). Ohio-specific universal waste is defined to include aerosol containers, antifreeze, and paint and paint-related wastes. OAC 3745-273-09(A), (C), (L), (M), (Q)(5). Ohio EPA's rule changes are all aimed to expand the provisions related to universal waste management to include Ohio-specific universal waste.

The waste management standards that apply to small quantity handlers of universal waste have been updated to apply to small quantity handlers of each of the Ohio-specific universal wastes, as have labeling or marking standards for such small quantity handlers. OAC 3745-273-13 and -14. Similarly, waste management standards applicable to large quantity handlers of universal waste have been amended to include management standards for large quantity handlers, as have labeling or marking standards for such large quantity handlers. OAC 3745-273-33, -34. Additionally, a provision has been added to clarify instances where OAC Chapter 3745-273 does not apply to persons managing aerosol containers, antifreeze, and paint and paint-related wastes. OAC 3745-273-89.

## Outline of Ohio Administrative Code Rule Changes

Ohio EPA's proposed rule changes include changes to numerous provisions of the Ohio Administrative Code. These specific code changes include:

- 3745-50-45(C)(8): This rule outlines specific exclusions to the requirement to obtain a hazardous waste permit. Ohio-specific universal waste, defined to include aerosol containers, antifreeze, and paint and paint-related wastes, has been added to the exclusion allowing "universal waste handlers" and "universal waste transporters" from obtaining a hazardous waste permit. Batteries, pesticides, mercury-containing equipment, and lamps were already defined as universal wastes and included in the exclusion.
- 3745-51-09: Ohio-specific universal waste has been added to this provision applicable to universal waste, to clarify that these wastes are not fully regulated as hazardous waste, and instead are subject to regulation under OAC Chapter 3745-273, which governs Management Standards for Universal Waste.
- 3745-54-01, 3745-65-01, and 3745-270-01: These rules have each been amended to clarify that such rules do not apply to Ohio-specific universal wastes, as these wastes are to be regulated by OAC Chapter 3745-273.
- 3745-273-09: "Ohio-specific universal wastes" has been added to the definition of "Universal waste," which are defined to specifically include "aerosol container," "antifreeze," "paint," and "paint-related waste." Each of these terms are defined as follows:
  - 3745-273-09(A): "'Aerosol container' means a non-opening, non-refillable container that holds a substance under pressure and that can release the substance as a spray, gel, or foam by means of a propellant gas."

- 3745-273-09(C): “‘Antifreeze’ means propylene glycol or ethylene glycol including aggregated batches of propylene glycol or ethylene glycol used as a heat transfer medium in an internal combustion engine; heating, ventilating, and air conditioning units; and electronics cooling applications; or used for winterizing equipment.”
- 3745-273-09(L): “‘Paint’ means a pigmented or unpigmented powder coating, or a pigmented or unpigmented mixture of binder and suitable liquid resulting from commercial, industrial, mining, agricultural, and post-consumer activities that upon drying forms an adhering coating on the surface that the paint is applied. Powder coating is a surface coating that is applied as a dry powder and is fused into a continuous coating film through the use of heat.”
- 3745-273-09(M): “‘Paint-related waste’ means a material contaminated with paint that results from the packaging of paint, wholesale and retail operations, paint manufacturing, and paint application or removal activities, or a material derived from the reclamation of paint-related wastes that is recycled in a manner other than burning for energy recovery or used in a manner constituting disposal according to rules 3745-51-02 and 3745-266-20 of the Administrative Code.
- 3745-273-13: This rule outlines the standards by which small quantity handlers of universal waste shall manage the waste. Specific provisions to address Ohio-specific universal waste have been added at subparts (E), (F), and (G).
- 3745-273-14: Labeling or marking requirements for small quantity handlers of universal waste have been amended to include labeling or marking requirements as they pertain to Ohio-specific universal waste.
- 3745-273-15: The accumulation time limits specific to small quantity handlers of universal waste have been amended, as specifically applicable to aerosol containers.
- 3745-273-32: This rule has been amended to clarify that large quantity handlers of universal waste shall provide notification to US EPA of all types of universal waste managed by the handler, including Ohio-specific universal wastes.
- 3745-273-33: This rule outlines the standards by which large quantity handlers of universal waste shall manage the waste. Specific provisions to address Ohio-specific universal waste have been added at subparts (E), (F), and (G).
- 3745-273-34: Labeling or marking requirements for large quantity handlers of universal waste have been amended to now include labeling or marking requirements as they pertain to Ohio-specific universal waste.
- 3745-273-35: The accumulation time limits specific to large quantity handlers of universal waste have been amended, as specifically applicable to aerosol containers.
- 3745-273-39: Requirements applicable to large quantity handlers when tracking universal waste shipments have been amended to make such requirements applicable to Ohio-specific universal wastes.
- 3745-273-62: Universal waste shipment tracking requirements applicable to owners or operators of a destination facility as set forth in this rule have been updated to apply to Ohio-specific universal wastes.
- 3745-273-89: This rule has been added to clarify the instances in which persons managing Ohio-specific universal wastes would fall outside of the regulatory scope of OAC Chapter 3745-273.



September 25, 2017

**VIA Electronic Mail (dap@lakeerie.ohio.gov)**

Ohio Lake Erie Commission  
P.O. Box 1049  
Columbus, Ohio 43216

Re: Ohio Manufacturers Association Comments on the Ohio Lake Erie Commission's  
Draft *Domestic Action Plan 2018*

Dear Commissioners,

Pursuant to the September 1, 2017, public notice published by the Ohio Lake Erie Commission (OLEC), The Ohio Manufacturers' Association (OMA) hereby submits written comments on the draft Ohio Domestic Action Plan (Action Plan).

The OMA represents over 1,400 manufacturers in every industry throughout Ohio. For more than 100 years, the OMA has supported reasonable, necessary and transparent environmental regulations that promote the health and well-being of Ohio's citizens. Many of OMA's members will be adversely impacted by the new standards and requirements set forth in the draft Action Plan. While OMA strongly supports the efforts of OLEC and its coordinating agencies, we have significant concerns regarding certain components of draft Action Plan, which concerns are outlined in these comments.

### **General Statement**

OMA supports the hard work and study that OLEC has performed in preparation of the draft Action Plan and we expect, upon full review of the Plan, to support many of the components of the draft Action Plan. While we generally support OLEC's efforts, OMA has identified several critical concerns related to the draft Action Plan. Each of these concerns is outlined in detail in the following sections, and briefly summarized as follows:

- A. We have grave concern regarding the draft Action Plan's call for a legislative mandate of a 1.0 mg/L monthly average phosphorus limit for all treatment works in Ohio. As detailed in Section 1 below, this radical and unjustifiable shift in NPDES permitting in Ohio is completely unfounded, arbitrary, contrary to current statutory programs in Ohio, and not scientifically defensible. It would impose unnecessary and extensive costs on regulated parties without measurable decrease in Lake Erie phosphorus loads. The draft Action Plan adequately addresses point source discharges through other permitting components, such as facility-specific assessment of need, and this legislative mandate only

undermines that methodical and defensible approach to permitted dischargers. For the Action Plan to meet due process and other legal requirements and to align with the Action Plan's broader adaptive management protocols, the legislative mandate must be removed from the draft Action Plan.

- B. OMA is concerned about the very general reference in the draft Action Plan to development of a recreational use standard related to microcystin for the open water of Lake Erie (Item 9, page 16). To the extent OEPA proceeds with development of a standard or a protocol for microcystin, OEPA and OLEC should evaluate and take into consideration the many serious concerns raised by the scientific and regulated community in response to USEPA's December 2016 proposed "Draft Human Health Recreational Ambient Water Quality Criteria and/or Swimming Advisories for Microcystins and Cylindrospermopsin" (Docket ID No. EPA-HQ-OW-2016-0751, [www.regulations.gov](http://www.regulations.gov)).
- C. The Action Plan comprises dozens of regulatory and other controls and standards new to the Lake Erie basin that will impact businesses, local governments, and residents in a variety of ways for decades to come. As detailed in Section 3 below, it is unreasonable, arbitrary, and contrary to both the letter and the spirit of Ohio's administrative laws to provide a mere 24-day public review period for such an important agency action. We believe that under Ohio law, OLEC is required to provide additional time for thoughtful review by the public to ensure the Action Plan is ultimately viable and defensible. We reserve the right to supplement these comments upon completion of a full review the draft Action Plan and supporting documentation.

The following sections address each of these concerns in detail.

1. **The proposed blanket phosphorus limit for NPDES dischargers is arbitrary and not scientifically principled, and, for the Action Plan to be lawful, it must rely on the facility-specific permitting provisions and not this unfounded mandate.**

While OMA understands and supports the need for action items to address phosphorus loads from both point and non-point sources to achieve the Lake Erie phosphorus reduction goals, the proposal to establish a legislative mandate for 1.0 mg/L phosphorus limits in all NPDES permits is arbitrary and unfounded. This proposal, first presented on page 16 (item 7) of the draft, contravenes the legal requirements for establishing permit limits and departs sharply from the goals of the Action Plan and the directives in the Great Lakes Water Quality Agreement and the Western Basin of Lake Erie Collaborative Framework, which focus on adaptive management protocols to achieve the most reduction in the most efficient and reasonable manner. The proposed blanket, arbitrary concentration limit would, in many cases, impose unnecessary, unreasonable and expensive controls without creating any meaningful progress towards the targets of

the Action Plan. Each of these general objections is discussed in more detail in the following subsections.

*A. The 1.0 mg/L limit will in many cases be arbitrary and unnecessary, with no measurable benefit to Lake Erie but implemented at great cost to the discharger, and this mandate is not necessary or appropriate to achieve the targets of the Domestic Action Plan.*

As documented in the Figure on page 5 of the draft Plan, point source dischargers, in total, comprise only 9% of the total phosphorus load in the priority Maumee Watershed and comprise a similar amount in other watersheds. Furthermore, of that already small contribution, large, heavily regulated POTWs contribute the majority of the load, leaving the load from small phosphorus sources as a generally negligible source to Lake Erie. In fact, many of the facilities that would face this new limit are far upstream and are outside of the priority basins. Imposing a 1.0 mg/L limit on these small sources will essentially have no measurable impact on the load to the Lake Erie basin, but will impose an enormous cost on these dischargers, many of whom do not have, and are not required to have, the technology in place to remove phosphorus (including most impacted industrial facilities). Additionally, a 1.0 mg/L phosphorus limit would impose far more stringent reductions on certain dischargers than the 40% load reduction set forth in the Great Lakes Agreement and thus goes well beyond the legal framework of the Action Plan. Finally, for these facilities, it is likely that mandating phosphorus limits and compelling the implementation of treatment will cause more environmental harm than is justified by the small load reductions. In sum, there is no scientific or regulatory basis for these limits, and the attempt to impose this kind of blanket limit is unreasonable and indefensible.

Additionally, to the extent OEPA needs to limit phosphorus from a point source discharger in order to reasonably and prudently achieve the Action Plan targets, other provisions of the draft Action Plan already cover this need. Phosphorus limits can (and should) be determined in accordance with Item 1 on page 15 of the Plan, whereby OEPA commits to imposing appropriate phosphorus limits as necessary on a facility-specific basis. Thus, where a 1.0 mg/L limit is necessary based on sound science and reasonable and fair planning, the Action Plan already accounts for this process. Because it is both arbitrary and unnecessary, the reference to a 1.0 mg/L mandated limit must be removed from the draft Action Plan.

*B. The proposed statutory mandate would violate the due process rights of certain NPDES dischargers by establishing arbitrary and unnecessary limits without the right of appeal.*

The draft Action Plan provides no scientific support for a blanket 1.0 mg/L phosphorus discharge limit. In many cases, as noted above, the blanket standard would be imposed on dischargers where achieving the 1.0 mg/L limit would not result in a measurable

reduction in phosphorus at the Lake. Additionally, the reduction to 1.0 mg/L will in some cases require as much as 80 to 90% reductions, as some dischargers have very low load but a concentration much higher than 1.0 mg/L – and all of this reduction would come at significant cost. However, while these limits would be arbitrary and unnecessary, the discharger would have limited right to appeal its permit given the statutory basis for the limit. It is arbitrary to impose a statutory mandate that creates an unnecessary and burdensome limit but implicitly strips the discharger of its due process rights to challenge such a limit.

*C. The proposal to mandate a stringent phosphorus limit in all circumstances contradicts the Adaptive Management process that underlies the Western Lake Erie Basin Collaborative Implementation Framework (WEBCF) and OEPA’s articulated process for addressing nutrients.*

In addition to risking the imposition of arbitrary and unnecessary limits on certain facilities, the proposed mandate also contradicts the core principle of the Domestic Action Plan and the WEBCF. In its opening section, the draft Action Plan provides that “[c]entral to the implementation of the Domestic Action Plan is the adaptive management process.” (Plan at page 3) Similarly, the WEBCF contains an identical directive and supports the concept of evaluating loads and directing reductions through a methodical approach that secures the most benefit in the most efficient manner possible. (WEBCF at 3). The adaptive management approach recognizes that, in order to avoid unnecessary and often costly reductions, priority actions should be implemented and measured in steps or phases, with successive steps being informed by the success and outcomes of the previous work.

Contrary to this core principle of the Action Plan, the proposed 1.0 mg/L blanket phosphorus permit limit for “all treatment works” defies adaptive management. It would require all dischargers, irrespective of contribution, location, and cost and without any adaptive management protocols, to meet this restrictive standard in the first instance. This is particularly important where (a) some of the targeted sources are small or de minimis contributors to the phosphorus load, (b) a 1.0 mg/L constitutes far more than a 40% reduction, and (c) the costs to meet a 1.0 mg/L limit are often high, especially where phosphorus treatment is not a technically feasible option. To reiterate, some small dischargers would see load reduction requirements far in excess of 40% if subject to this unreasonable limit.

Unlike the blanket limit, Item 1 on page 15 of the draft Action Plan sets forth a reasonable and prudent adaptive management approach to phosphorus permitting, and one that fits squarely within the action plan established in the WEBCF. This provision, and not an arbitrary mandate, should control the NPDES permitting process for the Lake Erie Basin.

As an additional matter, OEPA is implementing adaptive management measures through both SB-1 and through the development of the Stream Nutrient Assessment process. Both of these important programs look to adaptive management protocols, based on sound science and technology, to evaluate the necessary controls for facilities. A blanket 1.0 mg/L mandate would fundamentally undermine and contravene these programs, notwithstanding the fact that OEPA relies on the SB-1 program as an action item in the draft Action Plan.

*D. The proposed mandate fails to comply with Ohio law requiring OEPA to perform a technical feasibility and economic reasonableness analysis on any proposed permit limits.*

OEPA must perform a technical feasibility and economic reasonableness analysis on any proposed permit limits. R.C 6111.03(J)(3). If this legislative mandate proceeds, it would contravene this existing legislative requirement and strip dischargers of these important statutory protections. Even if an overall target of 1.0 mg/L from a permitted point source could be scientifically justified, the Action Plan as drafted would exclude more reasonable and economically-justifiable site-specific approaches that would allow offsets from facilities that are capable of achieving higher reductions at lower costs (or other adaptive management tools).

*E. The proposed phosphorus creates secondary concerns as well.*

In addition to the key legal and technical concerns outlined above, the proposal suffers additional drawbacks. First, while no blanket limit is appropriate, the reliance on a concentration limit is particularly unreasonable. The Great Lakes Agreement is premised on the phosphorus load, and a concentration limit of 1.0 mg/L bears little relationship to the load itself and is the wrong value to assess.

Second, and only as a point of clarification, the OLEC is not authorized to, and, we expect, did not intend to, impose standards or expectations outside of the Lake Erie watershed. This limitation should be clarified throughout the draft Action Plan, as certain statements appear to be applied statewide when such an action would be well outside of OLEC's statutory authorization. R.C. 1506.21.

**2. OEPA should engage a stakeholder process and consider the serious concerns of the scientific and regulated community if it proceeds with development of a recreational use standard and advisory protocol for microcystin.**

OMA is concerned about the very general reference in the draft Action Plan to development of a recreational use standard related to microcystin for the open water of Lake Erie (Item 9, page 16). To the extent OEPA proceeds with development of a standard or a protocol for microcystin, OEPA and OLEC should evaluate and take into



consideration the many serious concerns raised by the scientific and regulated community in response to USEPA's December 2016 proposed "Draft Human Health Recreational Ambient Water Quality Criteria and/or Swimming Advisories for Microcystins and Cylindrospermopsin"(Docket ID No. EPA-HQ-OW-2016-0751, www.regulations.gov). Additionally, given the complexity and wide-ranging implications of such a standard or protocol, OEPA should engage a technical advisory group comprised of a variety of stakeholders to support and inform the development process.

**3. Because the Action Plan will impose new standards and requirements with broad impact across Ohio, more time for review of the Plan is required by interested parties.**

By its own statements, the draft Action Plan establishes the standards, including key regulatory action items by a number of administrative agencies that will ultimately govern the nutrient load entering Lake Erie. The draft Action Plan includes standards established by OEPA and other agencies that would impose significant costs on a variety of stakeholders – farmers, agribusiness, municipalities, industrial facilities, and residents of and visitors to Ohio – and that will govern these stakeholders for decades into the future. Each of these groups and individuals has a strong stake in this Action Plan – both in its burdens and, more importantly, in its success.

As an initial matter, OLEC's Plan states that it was developed "with input through meetings and conversations with various stakeholder groups..." Action Plan at 2. The core stakeholder group did not include representatives of industrial dischargers (or, for that matter, any municipal wastewater groups). Critically-affected entities were not involved in the development of this important Plan.

With this background, a robust public notice and public review and comment period becomes all the more critical. It is impossible to evaluate the impacts of such an important set of standards and mandates, which will control operations in Ohio for decades to come, in the timeframe initially proposed by Ohio EPA for review and comment. While we appreciate the fact that comments after the deadline will be given thoughtful consideration, OMA remains concerned that interested manufacturing parties will not be able to provide comments in a timely fashion.

**Conclusion**

The OMA appreciates the opportunity to comment on the draft Action Plan. As outlined above, while OMA and its members support the hard work of OLEC and OEPA in the Lake Erie basin, we have serious concerns about certain components of the draft Action Plan. We look forward to working with OLEC and OEPA to ensure a scientifically-sound approach to phosphorus regulations for point source dischargers in the Lake Erie Basin that does not impose unreasonable, unnecessary and arbitrary controls on individual municipal and industrial dischargers.

OMA Comments  
OLEC Draft Action Plan  
September 25, 2017  
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If OLEC has any questions regarding the foregoing, please do not hesitate to contact me or OMA's environmental counsel, Frank Merrill at Bricker & Eckler LLP (614-227-8871).

Sincerely,



Rob Brundrett  
Director, Public Policy Services

cc: Mr. Karl Gebhardt, OEPA  
William Fischbein, Esq., OEPA  
Frank Merrill, Esq.

## Environment

### **OH EPA Makes it Easy to Join the Circular Economy** November 17, 2017

The Ohio EPA's **Materials Marketplace** is a free online platform allowing businesses and organizations to connect and find reuse and recycling solutions for waste and by-product materials.

New materials are being added all the time.

Here's a **short webinar** about the marketplace. *11/13/2017*

### **OMA Discusses Proposed Phosphorus Limits with Ohio EPA Leaders** November 10, 2017

This week a large group of OMA member companies met with leaders of Ohio EPA including Assistant Director, Laura Factor, Deputy Director for Water Resources, Karl Gebhardt, and Division of Surface Water Chief, Tiffani Kavalec, to discuss the agency's **Draft Action Plan for Lake Erie**.

A primary concern of manufacturers is the agency's decision to confine – through legislative mandate – all permitted water dischargers to a 1.0 mg/L monthly average phosphorus limit. Not only will this proposal have a negative impact on Ohio's direct discharging manufacturers, but it will also negatively impact indirect manufacturer dischargers who may be penalized by their local publicly owned treatment works which must also follow this proposed mandate.

OMA previously **submitted comments** on the Draft Action Plan and will continue to work with members and allies to amend the proposal's onerous phosphorus limit. If you are interested in engaging on the issue or learning more, contact OMA's **Rob Brundrett**. *11/9/2018*

### **To Congress: Fill U.S. EPA Leadership Roles** November 10, 2017

Together with dozens of organizations, OMA signed a letter to Senate Majority Leader Mitch McConnell and Senate Democratic Leader Chuck Schumer urging the Senate to fill vacancies in U.S. EPA leadership.

The groups wrote: "... more than nine months into the new Administration, the EPA lacks Senate-confirmed Deputy and Assistant Administrators to carry out this mission. The EPA's activities have a significant impact on each of our industries, the products we

make or the services we provide, and the tens of millions of workers we represent. It is therefore of significant importance to our groups that EPA is appropriately and fully staffed. This holds especially true for individuals in key leadership positions."

Here **is the letter**; it contains the slate of nominees the groups ask the Senate to confirm. *11/9/2017*

### **ArcelorMittal Hosts OMA Environment Committee** October 27, 2017



This week, OMA member ArcelorMittal hosted the OMA Environment Committee at its Cleveland facility.

Members heard updates about U.S. EPA activity through the first nine months of the Trump Administration from Ross Eisenberg, Vice President, Energy and Resources Policy, The National Association of Manufacturers, and John Rego, Partner, Jones Day.

Other topics included Ohio's new beneficial use program, Storm Water General Permit provisions dealing with benchmark exceedances, and Lake Erie Commission's Ohio Domestic Action Plan 2018.

Following the meeting, members were treated to a tour of the facility, which is one of the most productive integrated steel making facilities in the world.

Members have requested more OMA regional meetings, and this was an effort towards that end. Join the **OMA Environment Committee here**; use your My OMA login. *10/26/2017*

### **Ohio EPA Seeks Feedback re. Haz Waste Contaminated Textiles** October 13, 2017

Ohio EPA has issued an **Early Stakeholder Outreach** (ESO) concerning the potential to develop an Ohio-specific rule to conditionally exclude hazardous waste contaminated textile products that are not currently excluded under the solvent wipe

rule. It would include gloves, aprons, smocks and uniforms that are laundered and returned to service.

Comments are due by November 3, 2017. Please contact OMA's **Rob Brundrett** with questions or comments. *10/12/2017*

### **Ohio EPA Recognizes OMA Members for Sustainability Efforts** **October 6, 2017**

At Ohio EPA's first sustainability conference this week OMA members were among companies recognized for their sustainability efforts.

Bendix and Kenworth earned Silver Level Encouraging Environmental Excellence Awards, while Crown Equipment, General Motors and Honda were awarded Gold Level Encouraging Environmental Excellence Awards.

Click here to **learn more about Ohio EPA's Encouraging Environmental Excellence (E3) Program and how to apply.** *10/5/2017*

### **OMA Submits Additional Comments to Ohio EPA on Air Pollution Equipment** **October 6, 2017**

OMA submitted two additional sets of comments to Ohio EPA in response to its updated draft rules for startup, shutdown or malfunction and scheduled maintenance rules as they pertain to air pollution control equipment.

The **first set of comments** was submitted in conjunction with other business allies and outlined four specific areas of needed change. The **second set of comments** was submitted by OMA alone and focused on maintenance days for specific equipment used in certain manufacturing industries. *10/5/2017*

### **OMA Files Concerns with Ohio Lake Erie Commission re. Draft Action Plan** **September 29, 2017**

This week the **OMA filed comments** with the Ohio Lake Erie Commission on its Draft Domestic Action Plan 2018; portions of the plan could be detrimental to manufacturers.

OMA outlined its concern regarding the draft plan's call for a legislative mandate of a 1.0 mg/L monthly average phosphorus limit for all treatment works in Ohio. OMA wrote: "... this radical and unjustifiable shift in NPDES permitting in Ohio is completely unfounded, arbitrary, contrary to current statutory programs in Ohio, and not scientifically defensible. It would impose unnecessary and extensive costs on

regulated parties without measurable decrease in Lake Erie phosphorus loads. ... For the Action Plan to meet due process and other legal requirements and to align with the Action Plan's broader adaptive management protocols, the legislative mandate must be removed from the draft Action Plan."

The OMA environment committee will learn more about this plan – among other issues – when it meets on October 26 in Cleveland at our host member, ArcelorMittal. **Register now.** *9/28/2017*

### **Universal Waste Webinar – a Few Seats Left** **September 22, 2017**

Ohio EPA has a few spots left for its Universal Waste webinar on September 27. **You can register here.**

This webinar will provide an overview of the recently updated rules that govern the management and disposal of universal wastes.

The webinar will be helpful to small and large quantity handlers of universal wastes as well as to transporters and permitted hazardous waste facilities. *9/20/2017*

### **Opportunity to Comment on Startup, Shutdown, Malfunction Amendments** **September 22, 2017**

On October 25, 2016, Ohio EPA released draft amended rules for public comment related to changes to Ohio's startup, shutdown or malfunction and scheduled maintenance rules as they pertain to air pollution control equipment.

The amendments were being made in response to a U.S. EPA call for modifications to the rules on June 12, 2015 in 80 FR 33840.

The OMA submitted two sets of comments (**here** and **here**) in response to the interested party rules package.

Ohio EPA is providing the OMA with an additional opportunity to review the changes based on the comments received. Several **new amendments** were drafted responding to the comments, along with a new **amended business impact analysis** and a **response to comments** document for the amended draft rules.

Please let OMA's **Rob Brundrett** know if you would like to file additional comments after reviewing the latest changes. The deadline for filing new comments is October 4, 2017. All comments should be sent electronically to EPA's **Paul Braun.** *9/20/2017*

**Universal Waste Rule Changes Spearheaded by OMA Move to JCARR**  
**September 15, 2017**

This week Ohio EPA filed with Joint Committee on Agency Rule Review (JCARR) the long awaited universal waste rules governing paint and paint-related wastes among other hazardous wastes.

A public comment period will run until October 17, 2017. A public hearing on this proposed rulemaking will be held in accordance with the Ohio Revised Code. The hearing will be held at Ohio EPA, 50 West Town Street, Columbus, Ohio in Conference Room A, on October 17, 2017 at 10:30 a.m.

The proposed rules, public notice, and the response to comment documents are available for download on the **DERR website** on the hazardous waste rules Proposed Rules tab. If you need more information, please contact EPA's **Karen Hale**.

A big thank you to all the OMA members who participated in the work group to make these beneficial changes possible. *9/14/2017*

**OMA Asks U.S. EPA to Reconsider 2015 Ozone Standards**  
**September 8, 2017**

This week the OMA along with other business allies across the country **sent a letter to U.S. EPA Administrator Scott Pruitt** asking the agency to reconsider its 2015 ozone standard.

In the letter the groups state: "Despite over three decades of cleaner air and before states can catch up with EPA's delays in implementing existing (2008) ozone standards, EPA finalized tighter standards of 70 parts per billion that could bring additional areas of the country into nonattainment."

Ohio, which has made major strides in air quality over the last 30 years, is vulnerable in some regions of the state falling into nonattainment. Without offsetting reductions in nonattainment areas new manufacturing investment is not permitted.

With the improvements made over the past decades it is important to leave the 2008 ozone standards in place and allow Ohio and other states to work to lower levels in a more reasonable time frame. *9/7/2017*

**Ohio Looks to Create Phosphorous Discharge Limit for Permitted Facilities**  
**September 8, 2017**

The Ohio Lake Erie Commission and the State of Ohio have **released** a draft Ohio Domestic Action Plan to reduce phosphorus entering Lake Erie under the binational Great Lakes Water Quality Agreement with a goal of reducing phosphorus loading to Lake Erie by 40% by 2025. The **draft Ohio plan** is a continuation of the Western Basin of Lake Erie Collaboration Implementation Framework finalized by the State of Ohio in early 2017.

The Ohio Lake Erie Commission will coordinate finalizing the Ohio Domestic Action Plan with Ohio EPA, Ohio Department of Agriculture, Ohio Department of Health and Ohio Department of Natural Resources, which each share responsibility for implementing the plan. Each agency will be accountable for implementing their respective areas of authority included in the state plan to meet the overall 40% reduction.

Included in the plan is a proposal to create an annual discharge limit of 1 mg/l of total phosphorous for every permitted facility. This could prove problematic for manufacturers.

Public comments can be **emailed to the commission** and are being accepted until the close of business on Sept. 25. The commission will host two public meetings on Sept. 12 and 13, 2017, to provide information about the draft plan. Both meetings will be held from 7-9 p.m. The Sept. 12 meeting will be at Lake Erie Center, 6200 Bay Shore Rd, Oregon. The Sept. 13 meeting will be at Painesville Township Hall, 55 Nye Rd., Painesville. *9/7/2017*

**Environment Legislation**  
Prepared by: The Ohio Manufacturers' Association  
Report created on November 28, 2017

- HB29**      **MUNICIPAL WATER RESERVOIR BUFFERS** (LELAND D, BOGGS K) To eliminate law authorizing the maintenance of buffers around municipal water reservoirs by contiguous property owners.  
*Current Status:* 4/25/2017 - House Energy and Natural Resources, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-29>
- HB62**      **WATER QUALITY IMPROVEMENT** (PATTERSON J, SHEEHY M) To require the Director of Agriculture to adopt rules establishing the Ohio Water Quality Improvement Program, to exempt land enrolled in the Program from taxation, and to reimburse local taxing units for revenue lost due to that exemption.  
*Current Status:* 5/10/2017 - House Agriculture and Rural Development, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-62>
- HB85**      **ENTER HEALTH CARE COMPACT** (RETFERFORD W) To enter into the Health Care Compact.  
*Current Status:* 3/7/2017 - House Federalism and Interstate Relations, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-85>
- HB225**      **ABANDONED WELL REGULATION** (THOMPSON A) To allow a landowner to report an idle and orphaned well or abandoned well, to require the Chief of the Division of Oil and Gas Resources Management to inspect and classify such a well, to require the Chief to begin plugging a well classified as distressed-high priority within a specified time period, and to authorize an income tax deduction for reimbursements paid by the state to a landowner for costs incurred to plug an idle or orphaned well.  
*Current Status:* 11/28/2017 - House Energy and Natural Resources, (Third Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-225>
- HB393**      **OIL AND GAS BRINE SALES** (DEVITIS A, O'BRIEN M) To authorize a person to sell brine derived from an oil and gas operation that is processed as a commodity for use in surface application in deicing, dust suppression, and other applications.  
*Current Status:* 11/28/2017 - House Energy and Natural Resources, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-393>
- HCR4**      **ELIMINATE E-CHECK REQUIREMENT** (YOUNG R) To urge Congress to amend the Federal Clean Air Act to eliminate the requirement to implement the E-Check Program, to urge the Administrator of USEPA to alleviate burdensome requirements of the E-Check Program and the Clean Air Act if Congress fails to act, and to encourage OEPA to explore alternatives to E-Check.  
*Current Status:* 5/9/2017 - House Federalism and Interstate Relations, (Third

Hearing)

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HCR-4>

**SB2 ENVIRONMENTAL PROTECTIONS LAWS (HITE C)** To revise specified laws relating to environmental protection.

**Current Status:** 7/7/2017 - **SIGNED BY GOVERNOR**; eff. 10/6/2017

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-2>

**SB50 WELL INJECTION-PROHIBITION (SKINDELL M)** To prohibit land application and deep well injection of brine, to prohibit the conversion of wells, and to eliminate the injection fee that is levied under the Oil and Gas Law.

**Current Status:** 2/22/2017 - Senate Energy and Natural Resources, (First Hearing)

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-50>

**SB53 NATURAL GAS RESTRICTION (SKINDELL M)** To ban the taking or removal of oil or natural gas from and under the bed of Lake Erie.

**Current Status:** 2/22/2017 - Senate Energy and Natural Resources, (First Hearing)

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-53>

**SJR4 CAPITAL IMPROVEMENTS FUNDING (SCHIAVONI J)** Proposing to enact Section 2t of Article VIII of the Constitution of the State of Ohio to permit the issuance of general obligation bonds to fund sewer and water capital improvements.

**Current Status:** 9/6/2017 - Senate Finance, (First Hearing)

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SJR-4>

**To: OMA Government Affairs Committee**  
**From: Ryan Augsburger / Rob Brundrett**  
**Re: Human Resources Report**  
**Date: November 29, 2017**

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### **Overview**

Gun legislation continues to be a concern as the General Assembly reconvenes over the fall and winter. Business groups have loosely aligned to fight a further erosion of private property rights. Unemployment compensation remains a topic and Rep. Schuring continues to request and receive hearings for his House Bill 382.

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

#### **House Bill 2 – employment discrimination reform**

Representative 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.

After numerous hearings and amendments, House Bill 2, a bill aimed at mirroring Ohio's civil rights law with the federal law, was voted out of the House Economic Development, Commerce and Labor Committee along party lines.

Opposition to the bill from the Ohio Civil Rights Commission, the Ohio Association of Justice, and others was dropped after a new sub bill was adopted.

The OMA and other business organizations were supportive of the bill and its purpose. Opponents previously argued the bill would weaken workplace protections.

The latest version of the bill made two prominent changes: language requiring an individual to file a charge of discrimination before the Ohio Civil Rights Commission before filing a lawsuit and extending the statute of limitations for such claims to two years.

The bill is waiting for a full House vote.

#### **House Bill 49 – State Operating Budget**

The Senate included a provision that created a civil cause of action against a business that establishes, maintains, or enforces a policy that prohibits a valid concealed handgun licensee from transporting or storing a firearm in that person's motor vehicle. The provision allowed courts to award compensatory damages along with attorney's fees.

The OMA and other business groups fought this new provision. The conference committee later changed the provision to only allow for injunctive relief eliminating the possibility of compensatory damages and attorney's fees.

#### **House Bill 53 – Public Employee Unions**

House Bill 53 was introduced by Rep. John Becker (R-Union Twp.). The bill removes any requirement under the Public Employees Collective Bargaining Law that public employees join or pay dues to any employee organization. The bill also prohibits public employers from requiring public employees to join or pay dues to any employee organization and prohibits an



employee organization from being required to represent public employees who are not members of the employee organization.

#### House Bill 233 – Handgun Decriminalization-Leaving Upon Request

The bill would enact the "Decriminalization Effort For Ending Notorious Deaths (DEFEND)" to provide an opportunity for a concealed handgun licensee or qualified military member to avoid guilt for carrying a concealed handgun into a prohibited place if the person leaves upon request, and to penalize as disorderly conduct failing to leave upon request or returning with a firearm.

The bill originally intended to protect those who mistakenly bring weapons into prohibited areas now provides a carve-out for a concealed handgun licensee or a qualified military member who ignores posted signs prohibiting persons from carrying firearms onto the land or those premises. The bill takes away a manufacturer's ability to keep firearms off of its property, even if a sign prohibiting the carrying of a firearm is posted in a conspicuous area.

The bill was passed quickly through the House of Representatives despite opposition from the OMA and other business groups. It still needs to have hearings in the Senate.

#### House Bill 382 – Unemployment Compensation Revisions

Representative Schuring introduced a new attempt to solve the state's unemployment compensation problems in October. The new bill is a product of the discussions that Representative Schuring and Senator Peterson oversaw during the past year between interested parties including the OMA. Representative Schuring introduced the bill without the support of any of the interested parties but wanted a starting point to discuss solutions in the committee. The bill would raise employers taxes, cut the number of weeks an employee can receive compensation, require an employee co-pay and temporarily freeze benefits.

Representative Schuring also introduced HJR 4 which would allow the state to bond any future borrowing from the federal government. This would provide the state a new option when paying back any future debts. This resolution would need to be approved by Ohio's voters.

The OMA and its business community allies submitted a letter in opposition of House Bill 382 but in favor of the HJR 4. The bill is scheduled to have its fifth hearing this week.

#### House Bill 424 – Substance Recovery for Workforce

The bill enacts the "Substance Recovery and Workforce Improvement Act" regarding drug testing and eligibility for unemployment compensation benefits. The bill was introduced this month and has received zero hearings at this time.

#### Unemployment Compensation System Surcharge

Ohio recently certified the amount owed to the federal government at \$274 million. This was paid off prior to the November deadline.

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.

The repayment state surcharge was set for 2017 at 0.6% 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.

## Workforce Services

### Manufacturers and Workforce Suppliers Hold Summit

Earlier this month, almost 500 OMA members, manufacturers and their workforce suppliers, including government, education and training, and economic development professionals, met in Columbus to work on improving the talent pipeline for Ohio's leading industry: manufacturing.

Attendees from all regions of the state learned about the characteristics of successful regional workforce partnerships, best practices and initiatives underway throughout Ohio.

Industry sector partnerships are a recognized best practice with demonstrated results across the country for addressing real and common manufacturing workforce shortages and/or skill gaps.

Manufacturers also need to continue upping our game in communicating to young people and other job seekers about the many job and career opportunities that exist in modern manufacturing. To that end, a new brand, Making Ohio, was debuted and promoted at the event.

If you want to be kept informed about OMA's workforce services and activities, join the OMA workforce opt-in group.



THE OHIO COUNCIL OF

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November 1, 2017

The Honorable Louis W. Blessing III  
Chairman  
Government Accountability and Oversight Committee  
Ohio House of Representatives  
77 S. High St., 13<sup>th</sup> Floor  
Columbus, OH 43215

Dear Chairman Blessing:

As many in the legislature are aware, Ohio's unemployment insurance (UI) system is broken. The Ohio Unemployment Insurance Trust Fund, which is currently funded entirely by employers and pays out benefits to qualifying jobless workers remains in a perilous position. This instability creates a threat to economic development in the state. Most critically, Ohio's UI Trust Fund is projected to go insolvent in the next economic downturn unless the state acts to better align benefits with contributions to build a balance. Thus, reforms are urgently needed to update and strengthen Ohio's UI program for the benefit of Ohio's employers, employees and economy.

While we appreciate the leadership taken by Representative Schuring in tackling this issue, our organizations cannot support House Bill 382 in its current form. However, we do view the bill as a forum to continue discussions regarding solutions needed to address Ohio's UI issue.

In addressing this important issue, we believe in the following principles:

- Any workable solution must address both spending and revenue to balance the cost of benefits with employer contributions and simply pouring more money into the system without addressing benefits undercuts Ohio's job-creating economic competitiveness;
- Fundamental changes should take place in the near-term, prior to the next economic downturn when the situation will be even more dire and a resolution even more difficult to craft;
- We are opposed to any employee tax and, with it, the administrative costs and burdens such a tax would bring upon all parties; and

- Any potential solution must be compliant with the U.S. Department of Labor to ensure Ohio's businesses continue to receive the Federal Unemployment Tax credit.

We remain committed to working with Representative Schuring and will continue to offer ideas and solutions to address the system's solvency.

Meanwhile, we believe that House Joint Resolution 4 is an important piece of any solvency package in that it allows the state maximum flexibility if required to borrow federal funds to support the UI system in the future. Our organizations have long supported bonding as a helpful option when dealing with UI insolvency.

We appreciate the transparent and collaborative process of Representative Schuring as he works with interested parties to tackle this tough issue. Please feel free to contact any of the undersigned organizations with questions.

Sincerely,



Roger R. Geiger  
Vice President & Executive Director  
National Federation of Independent  
Business



Adam Sharp  
Executive Vice President  
Ohio Farm Bureau



Andrew E. Doehrel  
President & CEO  
Ohio Chamber of Commerce



Eric L. Burkland  
President  
The Ohio Manufacturers' Association



Gordon Gough  
President & CEO  
Ohio Council of Retail Merchants

CC: Speaker Rosenberger  
Representative Schuring



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## MEMORANDUM

TO: Ohio Manufacturers' Association  
FROM: Bricker & Eckler LLP  
DATE: November 29, 2017  
RE: Proposed Gun Legislation.

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### I. Introduction.

The Ohio General Assembly has introduced a series of gun-related bills that could negatively impact employer's and other property owners' ability to control weapons on their property. The OMA and other business groups have submitted letters to both Senate and House leadership urging the legislature to either not move forward with these bills or to narrow the bills' broad language. Please find an overview of the various gun bills in the 132<sup>nd</sup> General Assembly below.

### II. 132nd General Assembly's Proposed Gun Legislation.

H.B. 233 (Rep. John Becker R-Union Township). The bill was introduced in the House of Representatives ("House") on May 18, 2017 in the midst of the FY18-19 Biennial Budget ("H.B. 49") process. The bill was referred to the House Federalism & Interstate Relations Committee. The OMA submitted written opponent testimony to the Committee on July 5, 2017. The House passed H.B. 233 on July 6, 2017 (64-31), largely along party lines. The bill was referred to the Senate Government Oversight & Reform Committee. It has received no hearings thus far.

H.B. 233 is part of a series of bills that several members of the General Assembly have introduced since the 131st General Assembly Lane Duck Session to relax gun restrictions in Ohio. The OMA opposed the inclusion of language in H.B. 49 that created a private cause of action against a property owner who prohibits or effectively prohibits the "injured" individual's ability to have a concealed handgun in a motor vehicle where that motor vehicle would otherwise be permitted to be. Although this language was amended, the cause of action remained a part of H.B. 49.

H.B. 233 Overview. H.B. 233 allows a concealed handgun license holder or qualified military member to avoid charges for entering a gun-free zone with a firearm. Under current law, entering a gun-free zone with a firearm is a fifth-degree felony subject to up to 12 months in prison and a \$2,500 fine. However, this bill substantially relaxes penalties. Individuals discovered carrying a weapon in such a location may only be charged with a crime if he

or she refuses to leave, or knowingly returns, within 30 days with a deadly weapon.

The bill allows a concealed handgun license holder to knowingly enter a gun-free zone without a criminal penalty. H.B. 233 does nothing to deter an individual from entering a gun-free zone with a concealed handgun. To the contrary, the bill insulates such individuals from receiving any penalty for knowingly ignoring a restriction by a property owner to keep guns off the premises.

Even if a property owner, including a business owner or manufacturer, posted “no guns allowed” signs, a concealed handgun licensee could still bring a hidden loaded handgun onto the property and the property owner would have little legal recourse against the individual.

H.B. 233’s scope is extremely broad and affects any private “land or premises”, even with a posting of “no guns allowed”. Meaning an employee could still enter the workplace with a loaded concealed handgun and not face a criminal charge.

S.B. 180 and H.B. 228(Senators Joe Uecker (R-Loveland) and Jay Hottinger (R-Newark)). S.B. 180 was introduced in the Senate on August 15, 2017. It has had two hearings in the Senate Judiciary Committee. This bill eliminates a person’s duty to retreat before acting in self-defense, defense of another, or defense of a person’s residence if that person is in a place in which the person lawfully has a right to be.

H.B. 228 is the companion bill to S.B. 180. It is sponsored by Representatives Terry Johnson (R-McDermott) and Sarah LaTourette (R-Chagrin Falls). The bill was introduced on May 16, 2017 and was referred to the House Federalism & Interstate Relations Committee. The bill has had one hearing on June 20, 2017.

H.B. 201 Overview. This bill is likely the most comprehensive relaxation of gun regulations that this General Assembly has considered. H.B. 201 is sponsored by Representatives Ron Hood (R-Ashville) and Tom Brinkman (R-Mt. Lookout). The bill was introduced on May 3, 2017. It was referred to the House Federalism & Interstate Relations Committee where it received four hearings. The bill expands the definition of “concealed handgun” license.

A firearm means “any deadly weapon capable of expelling or propelling one or more projectiles by the action of an explosive or combustible propellant.” R.C. 2923.11(B)(1). A “restricted firearm” is defined under the proposed law as a “firearm that is dangerous ordnance or that is a firearm that any law of this state, or the United States, prohibits the subject person from possessing, having, or carrying.”

H.B. 201 allows a person who is 21 years old or older, and is not otherwise prohibited from possessing or receiving a firearm, to carry a concealed firearm that is not a restricted firearm without obtaining a concealed handgun license. The bill prohibits law enforcement or any agent of the state, a county, a municipal corporation, or a township from conducting any search,

seizure, or detention, “no matter how temporary in duration” because a person is carrying or possessing a firearm with or without a concealed handgun license.

S.B. 219 Overview. This bill prohibits any person from importing, manufacturing, selling, transferring, or possessing a trigger crank, a bump-fire device, or any part, combination of parts, component, device, attachment, or accessory that is designed or functions to accelerate the rate of fire of a semi-automatic firearm but not convert the semi-automatic firearm into an automatic firearm. The bill is sponsored by Senator Thomas (D-Cincinnati) and it was introduced on October 17, 2017. It has not yet been referred to a committee.

### III. Conclusion.

The General Assembly has continued to introduce sweeping gun legislation. The various legislative items are likely to have additional hearings in the Ohio House and Ohio Senate during the remainder of the General Assembly. We will update the OMA on these ongoing issues and provide any guidance helpful for these proposals to help best protect the OMA and its members. Please let us know if we can answer any specific questions regarding the proposed gun legislation.

# INDUSTRY SECTOR PARTNERSHIPS: WHAT THEY ARE AND WHY THEY WORK

Industry Sector Partnerships are a proven workforce development strategy that put employers in the driver’s seat and have demonstrated effectiveness across the country. Manufacturers within a regional labor market work together to influence alignment around common solutions with education and training, economic and workforce development, and community organizations.

## EFFECTIVE INDUSTRY SECTOR PARTNERSHIPS:

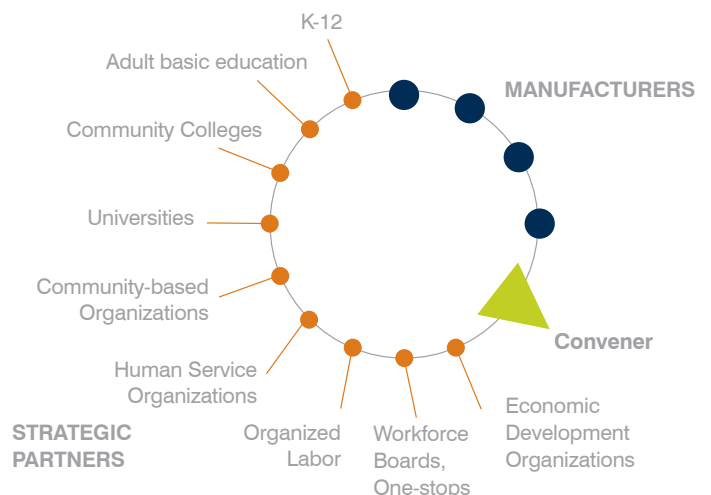
- **Identify common issues**, challenges and opportunities across individual employers;
- **Collectively** address the priority needs of industry;
- **Communicate industry priorities** to policy makers and workforce development partners, enabling them to design responsive solutions;
- Address current and emerging **skill gaps**, both short- and long-term;
- Provide a means to engage directly with industry **across traditional boundaries**;
- **Better align** programs, education/training curriculum and other resources serving employers and workers.

## KEY COMPONENTS:

- **Led by employers** – to ensure the system is truly demand-driven and will lead to better outcomes for individuals
- **Focused on a single industry** – to allow employers to connect with peers from their own industry, identify needs beyond basic workplace skills, and dive deeply into the technical needs of the industry
- **Regional** – to address unique needs of subsectors while reflecting the true dynamics within a regional economy
- **Convened by a neutral intermediary** – to align all relevant partner programs and resources as solutions to identified industry needs

## BENEFITS TO MANUFACTURERS:

- Systems change in response to business needs
- Reduced duplication and system inefficiencies
- Maximized resources and services
- Results in more streamlined services
- Helps manufacturers fill jobs more quickly
- Creates a pipeline of future workers
- Builds career pathways with seamless transitions from one educational stepping stone to another
- More powerful voice
- Influence training programs
- Impact policy
- Attract funding
- Mechanism for ongoing feedback loop with various education, training and workforce programs
- Better results (placement, earnings/benefits, retention, productivity)
- Firm-to-firm networking



From the National Governors Association report:  
State Sector Strategies Coming of Age: Implications for State Workforce Policymakers



## Building the System

*(Forming and improving Manufacturing Sector Partnerships)*

### Tools to assist communities in building a local sector partnership framework

- Industry Champion Definition
- Peer-to-Peer Recruitment Script
- Sector Partnership Launch Tasks
- Sample Implementation Structure
- And more!

Available on the OMA website at: <http://www.ohiomfg.com/workforce-services/>

## COMING SOON!

**New OMA Workforce Community of Practice** – OMA will make subject matter experts available through

- **Webinars** – workshops on a variety of topics related to building and improving manufacturing sector partnerships
- **Meetings** – information sharing, benchmarking, problem solving, and best practice sharing among peers
- **Information** – online content and relevant news about various aspects of sector partnerships, and manufacturing workforce initiatives

**Opt in to the OMA Workforce Community by returning the attached form or by visiting:**

<http://www.ohiomfg.com/workforce-services/>

## Working Together to Get Things Done!

*(Programs and strategies to address statewide manufacturing workforce skills gaps)*

**Workforce Directory** – Find existing programs and resources in your own back yard.

- Available on the OMA website at: <http://www.ohiomfg.com/workforce-services/>

**Making Ohio Image Assets** – Partnerships can apply to use and customize Making Ohio brand and related image assets to improve perceptions about manufacturing career opportunities.

- Apply on the OMA website at <http://www.ohiomfg.com/workforce-services/>

**Statewide Roadmap** – Your input informs the OMA's statewide roadmap and guides its efforts in 2018 and beyond. The OMA Manufacturing Workforce Roadmap will identify opportunities to work together statewide to:

- Accelerate solutions that have demonstrated effectiveness and potential for expansion
- Develop a powerful voice to influence policy to support our common priorities
- Identify opportunities to gain efficiencies or economies of scale

## OPT IN TO THE OMA WORKFORCE COMMUNITY OF PRACTICE BY RETURNING THIS FORM!

**OMA Workforce Community of Practice** – OMA will make subject matter experts available through

- **Webinars** – workshops on a variety of topics related to building and improving manufacturing sector partnerships
- **Meetings** – information sharing, benchmarking, problem solving, and best practice sharing among peers
- **Information** – online content and relevant news about various aspects of sector partnerships, and manufacturing workforce initiatives

### Opt in now!

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Company/Organization: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

### Return this form!

- **By email:** Workforce@ohiomfg.com
- **By fax:** (614) 224-1012
- **By mail:**  
The Ohio Manufacturers' Association  
33 N. High St. – 6th floor  
Columbus, Ohio 43215

## Thank you!



### TOOLS & RESOURCES FOR INDUSTRY SECTOR PARTNERSHIPS

#### TOOLS FOR SECTOR PARTNERSHIP LAUNCH

[Industry Sector Partnerships: What They Are and Why They Work](#) 

[Sector Partnership Self-Assessment: Launch Phase](#) 

[Sector Partnership Launch Tasks](#) 

[Industry Champion Definition](#) 

[Peer-to-Peer Recruitment Script](#) 

[Occupational Demand Worksheet](#) 

[Sample Agenda – Regional Employer Meeting](#) 

#### TOOLS FOR SECTOR PARTNERSHIP IMPLEMENTATION

Manufacturers' Workforce  
Supplier Connections  
**DIRECTORY**

NEED HELP  
**RECRUITING  
AND/OR TRAINING**

qualified workers for your  
manufacturing facility?

**FIND RESOURCES HERE!**

For workforce-related

- Webinars
- Meetings
- Information

Opt into OMA's  
**Workforce  
Community!**



# SOME PEOPLE SIT BEHIND DESKS OTHERS — *Build Them* —



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Ohio is booming with manufacturing opportunities. Get in on the action and make your way to a stable, dynamic career in advanced manufacturing.

## Human Resources

### **ACA Employer Mandate Penalty Letters are on the Way** **November 17, 2017**

OMA Connections Partner, Bricker & Eckler, posts this update: The IRS has recently taken affirmative steps towards assessing the Affordable Care Act (ACA) employer mandate penalties, which are set to begin before the end of 2017. The agency has updated its website with information ([questions 55-58](#)) discussing how employer mandate penalties will be assessed and contested. It has also released a [sample Letter 226J](#), which formally describes the procedures the IRS will use to propose and assess the penalties. The IRS plans to issue the first letters in late 2017 (for 2015 calendar year penalties)."

Read [more from Bricker about this here](#). 11/16/2017

### **U.S. House Passes Joint Employer Bill that Restores Former Standard** **November 17, 2017**

The U.S. House, by a vote of 242-181, passed H.R. 3441, the Save Local Business Act, which fixes the joint employer standard upended by the 2015 *Browning Ferris Industries* case, in which the National Labor Relations Board (NLRB) overturned 30 years of case precedent.

Previously, businesses could meet the definition of an "employer" if they had "direct and immediate" control over another's work. Now, a business owner who has "potential" or even "reserved control" over the practices of another business and its employees could be considered a "joint employer."

H.R. 3441 will restore the old standard by amending the National Labor Relations Act to define that a person may be considered a joint employer in relation to an employee only if such person directly, actually, and immediately exercises significant control over the essential terms and conditions of employment.

The measure goes to the Senate. 11/13/2017

### **Senate Confirms New NLRB Counsel, Manufacturers Approve** **November 17, 2017**

The U.S. Senate, by a vote of 49-47 and along party lines, confirmed Peter Robb to be the next General Counsel of the National Labor Relations Board (NLRB). He replaces Richard Griffin and comes to D.C. from the firm Downs Rachlin Martin in Vermont. He joined the firm in 1995 from the Washington office

of Proskauer Rose, where he was a labor attorney for a decade.

Robb's confirmation is considered critical in rolling back some of the previous administration's decisions, including rulings on social media policies and union elections. It is likely that he will be sworn in and get to work soon. 11/13/2017

### **Remember Not to Dock Employees for Short Work Breaks** **November 10, 2017**

From OMA Connections Partner, Frantz Ward: "The U.S. Third Circuit Court of Appeals issued an opinion on October 13, 2017, that serves to remind employers of the need to pay employees when they take short work breaks during their workday."

Advice from Franz Ward includes: "This decision serves as a reminder to employers to pay employees for any breaks that are 20 minutes or less, regardless of whether the employees are free to use the time as they choose or to leave the employer's facility. This is also a good time for employers to remember that any unpaid breaks, such as meal times, must not be interrupted by the employer or the entire meal period could become compensable."

Read more [about this here](#). 11/3/2017

### **SEC's Pay Ratio Disclosure Rule and Recent Guidance** **November 10, 2017**

OMA Connections Partner, Dinsmore, reminds applicable public companies of a pay reporting rule.

Per Dinsmore: "Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, the Security Exchange Commission's 2015 pay ratio rule required public companies to disclose the annual total compensation of the median employee (excluding the CEO), the annual CEO compensation and the ratio of those amounts. The Final Rule ... mandates pay ratio disclosure for the fiscal year beginning January 1, 2017. As a result, most public companies must provide pay ratio disclosures in their 2018 proxy statements. ..."

For more about this from Dinsmore, [click here](#). 11/3/2017

**DOL Announces Plans for New Overtime Rulemaking**  
**November 3, 2017**

OMA Connections Partner, Bricker & Eckler, reported that this week the Department of Labor (DOL) issued a **news release** announcing its intention to engage in new rulemaking regarding overtime.

Bricker wrote: "As many employers followed closely, the DOL previously increased the salary threshold for exempt employees to \$47,476, which was set to take effect December 2016. Those regulations were halted by a federal judge in Texas in November 2016 and eventually struck down in August 2017. The DOL, however, has appealed that decision and plans to ask for the proceedings to be stalled to give it time to come up with new rules.

"DOL Secretary Acosta has stated that he thinks the current threshold of approximately \$24,000 (set in 2004) needs to be updated, but almost doubling it to \$47,000 will be a "shock to the system." ... Given Secretary Acosta's signals, it appears that an increase to the salary threshold is inevitable, so employers should be mindful of adjusting their exempt employees at or near the old threshold if they wish to maintain those employees' exempt status."

Read **more from Bricker**. 10/31/2017

**Get Ready for Health Care Open Enrollment Season**  
**November 3, 2017**

OMA Connections Partner, **One Source Advisors**, OMA's endorsed employee health care insurance broker, offers this brief whitepaper: "**5 most common open enrollment mistakes**."

And here is a **summary of 2018 benefit notices for open enrollment**.

If you have any questions at all about employee health care insurance, contact **Cheri Gillfillan** or **Stacie Hoover** at One Source Advisors. 10/31/2017

**Businesses Could Do More re. Workplace Substance Abuse (video)**  
**October 27, 2017**

One in three Ohio businesses do not administer any components of a drug-free workplace program or do not know if they do.

That is a finding of a recently conducted, first of its kind, **survey** among businesses in 17 Ohio counties. The study was executed by OMA Connections

Partner, *Working Partners®*, together with participating community health boards.

The goal of the survey was to assess the perceptions, attitudes, knowledge and practices of businesses as they relate to preventing and addressing the harmful use of substances in the workplace and workforce.

One conclusion of the study is that Ohio businesses could do more to grow and maintain Ohio's employable, drug-free workforce. Best practices include: 1) written policy and operations; 2) employee education; 3) supervisor training; 4) drug and alcohol testing; 5) assistance for employees.

Another conclusion of the study is that businesses have limited connections to helping resources.

Watch a **short video here**.

To learn more, contact **Working Partners®**. 10/24/2017

**"ICE" Storm Coming**  
**October 27, 2017**

OMA Connections Partner, Barnes & Thornburg, posted this alert about immigration actions in the workplace: "On Oct. 17, the acting director of Immigration and Customs Enforcement (ICE), Thomas Homan, announced that the agency intends to quadruple the number of worksite enforcement actions throughout the country. This means employers should expect a dramatic increase in the number of Form I-9 inspections initiated by ICE. These inspections involve ICE agents auditing an employer's Form I-9s and other employment records to evaluate whether the employer properly verified its employees' work authorization statuses and to determine whether the employer is employing unauthorized aliens."

And: "Employers should consider preparing for these anticipated enforcement actions, particularly in the food service, hospitality, manufacturing, construction and agriculture industries, which ICE tends to target."

Read **more from Barnes & Thornburg here**. 10/23/2017

**Where are the Workforce Resources?**  
**October 13, 2017**

Right here! Check out our **Manufacturers' Workforce Supplier Connections Directory!**

Need help recruiting and/or training qualified workers for your manufacturing facility?

We have researched organizations and institutions across Ohio that offer workforce services for Ohio's manufacturers.

Search for them by name, category, region and key word [here](#). 10/9/2017

### **Minimum Wage in Ohio to Increase January 1, 2018** **October 6, 2017**

OMA Connections Partner, Bricker & Eckler, **posted**: "Effective January 1, 2018, the minimum wage in Ohio will be \$8.30 per hour for non-tipped employees. The state's minimum wage applies to non-tipped employees at businesses with gross annual receipts of more than \$305,000 per year, an increase from the current threshold of \$299,000.

"For tipped employees, the new minimum wage will be \$4.15 per hour. For people who work at companies with gross receipts below \$305,000, and for 14- and 15-year-olds, the minimum wage will be the federal rate of \$7.25 per hour.

"Employers are required to post the minimum wage and overtime information in a conspicuous place, such as an employee break room, HR office that can be accessed by employees or other common space.

"A free downloadable copy of the poster is [available here](#)." 10/3/2017

### **'Pay or Play' Coverage Penalties Remain in Effect** **October 6, 2017**

Despite recent attempts in Congress to "repeal and replace" the Affordable Care Act (ACA) and President Trump's executive order calling for executive agencies to minimize the ACA's regulatory burden, penalties for failing to comply with the ACA's employer shared responsibility ("pay or play") provisions remain in effect.

In general, an **applicable large employer** (ALE), generally one with at least 50 full-time employees, will owe a "pay or play" coverage penalty for calendar year 2017 under either of these scenarios:

- The ALE does not offer coverage to at least 95% of its full-time employees (and their dependents), and at least one full-time employee receives a premium tax credit to purchase individual coverage through the Health Insurance Marketplace. Under this

scenario, the ALE will generally owe a penalty of \$2,260 per full-time employee.

- The ALE offers coverage to at least 95% of its full-time employees (and their dependents), but at least one full-time employee receives a premium tax credit to purchase individual coverage through the Health Insurance Marketplace because he or she was not offered coverage that was **affordable or provided minimum value**, as defined by federal regulations. Under this scenario, the ALE will generally owe a penalty of \$3,390 for each full-time employee that received a premium tax credit.

Questions? Please contact OMA Connections Partner, **Cheri Gillfillan** or **Stacie Hoover** of **One Source Advisors**, at (614) 822-0212. 10/2/2017

### **Ohio Incumbent Workforce Training Program – Application Process for FY '18 Funds Underway** **September 29, 2017**

Online applications for the Ohio Incumbent Workforce Voucher program are now available. The program is designed to offset a portion of employers' costs to upgrade the skills of its incumbent workforce. Eligible employers demonstrate that by receiving funding assistance through the program their business will not only obtain a skilled workforce but will improve their company processes and competitiveness.

Eligible applicants will be able to qualify for up to \$25,000 in assistance. FY '18 awards will reimburse training that begins and is completed between January 1, 2018 and December 31, 2018.

Online applications will be accepted on a first-come, first-served basis and can be submitted on October 12, 2017 between 10:00 a.m. and 5:00 p.m.

Here is **more information** about the Ohio Incumbent Workforce Training Voucher Program. For assistance, contact **Shannon Vanderpool** at (614) 644-8560. 9/25/2017

### **Drug-free Workplace Opportunity for Employers in Allen, Auglaize, Hancock, Hardin & Montgomery Counties** **September 22, 2017**

OMA Connections Partner, *Working Partners®*, is working with these five counties' Alcohol, Drug and Mental Health (ADAMH) Boards to provide full scholarships (valued at approximately \$2,500) for employers to attend a drug-free workplace technical assistance class.

In addition to in-depth and practical education, attendees will leave that class with a customized and comprehensive drug-free workplace policy/program for their organizations.

This is an important opportunity for businesses that either have no policy or that haven't updated their policies in the last year or so. (Lots has changed in the world of drug-free workplace!)

Contact [Katie Lemke](#) at *Working Partners®* to learn more or apply; the number is (614) 337-8200. *9/21/2017*

### **Judge Strikes Down Obama-Era Overtime Rule** **September 8, 2017**

OMA Connections Partner, Roetzel, posted: "On Thursday, August 31, 2017, Judge Amos Mazzant struck down the Obama administration's overtime rule that would have extended mandatory overtime pay to more than four million U.S. workers. Specifically, the rule would have doubled the threshold for exempting "executive, administrative, and professional" workers from overtime pay. This is the latest blow to the rule, which has been battered since shortly before it was scheduled to go into effect."

And: "Although the current version of the rule may never take effect, Labor Secretary Alexander Acosta and the DOL have indicated that a revised rule is being considered. In July, the DOL issued a request for information seeking public feedback that will aid the DOL in formulating a revised rule. The 60-day public comment period will end in late September."

Read [more from Roetzel here](#). *9/5/2017*

### **Employment Authorization Issues Related to** **DACA Rescission** **September 8, 2017**

OMA Connections Partner, Barnes & Thornburg, posts this about recent immigration legal activity: "On Sept. 5, the U.S. Department of Homeland Security began an "orderly wind down" of Deferred Action for Childhood Arrivals (DACA). DACA, and a related program, Deferred Action for Parents of Americans (DAPA), were created by executive order of President Barack Obama in 2012. As the result of a lawsuit brought by several states against the DAPA program, DAPA was rescinded after courts determined that

legal and constitutional problems existed with the program.

"In June 2017, several states informed the U.S. Attorney General that if the DACA program also was not rescinded by Sept. 5, the lawsuit would be amended to include the DACA program. Attorney General Jeff Sessions conducted a review and determined that the DACA program was created in a similar manner, and had similar "legal and constitutional defects." Sessions determined that courts would likely find problems similar to those found with the DAPA program, and lead to similar results. In complying with the Sept. 5 deadline, Sessions directed an "orderly wind down" of the program, rather than an immediate termination. ...

"For employer purposes, this means that employment authorization documents (EADs) based on DACA status and used for I-9 verification purposes continues to be valid up to the expiration date on the EAD (but not beyond, absent additional documentation). Because DACA was a deferral of action against those considered unlawfully present, this deferral from enforcement actions will end upon the end date of each individual's DACA authorization – absent further action by Congress."

More [from Barnes & Thornburg here](#). *9/6/2017*

### **Employers Must Use New I-9 Form Starting** **September 18** **September 8, 2017**

OMA Connections Partner, Dinsmore, reminds employers that a new version of the Form I-9 is to be used starting September 18, 2017: "U.S. Citizenship and Immigration Services (USCIS) has published a revised version of Form I-9, Employment Eligibility Verification. Starting September 18, 2017, employers will no longer be allowed to use prior editions of the I-9 form and must use the version that bears a 7/17/2017 revision date."

Read [more from Dinsmore here](#). *9/7/2017*



## Human Resources, Health Care & Employment Law Legislation

Prepared by: The Ohio Manufacturers' Association  
Report created on November 28, 2017

- HB2**      **CIVIL RIGHTS EMPLOYMENT LAW (SEITZ B)** To modify Ohio civil rights laws related to employment.  
*Current Status:* 5/9/2017 - **SUBSTITUTE BILL ACCEPTED & REPORTED OUT**, House Economic Development, Commerce and Labor, (Sixth Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-2>
- HB53**      **PUBLIC EMPLOYEES-MEMBER DUES (BECKER J)** To remove any requirement under the Public Employees Collective Bargaining Law that public employees join or pay dues to any employee organization, to prohibit public employers from requiring public employees to join or pay dues to any employee organization, to prohibit an employee organization from being required to represent public employees who are not members of the employee organization, and to make an appropriation.  
*Current Status:* 2/14/2017 - Referred to Committee House Finance  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-53>
- HB86**      **MINIMUM WAGE INCREASE (SMITH K, CRAIG H)** To increase the state minimum wage to ten dollars and ten cents per hour beginning January 1, 2019.  
*Current Status:* 2/28/2017 - Referred to Committee House Economic Development, Commerce and Labor  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-86>
- HB136**      **ROAD DESIGNATION-DAVID SEXTON AND GLEN MILLINGER (ARNDT S)** To designate a portion of State Route 61 in Erie County as the "SGT David Sexton Memorial Highway" and a portion of Benton-Carroll Road in Ottawa County as "SGT Glen Millinger Memorial Highway."  
*Current Status:* 4/26/2017 - **REPORTED OUT**, House Transportation and Public Safety, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-136>
- HB158**      **UNEMPLOYMENT COMPENSATION-MILITARY TRANSFERS (PERALES R, CRAIG H)** To permit persons who quit work to accompany the person's spouse on a military transfer to be eligible for unemployment compensation benefits.  
*Current Status:* 11/7/2017 - Senate Finance, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-158>
- HB160**      **OHIO FAIRNESS ACT (ANTONIO N)** To enact the Ohio Fairness Act to prohibit discrimination on the basis of sexual orientation or gender identity or expression, to add mediation to the list of informal methods by which the Ohio Civil Rights Commission may use to induce compliance with Ohio's Civil Rights Law before instituting a formal hearing, and to uphold existing religious exemptions under Ohio's Civil Rights Law.  
*Current Status:* 6/7/2017 - House Government Accountability and Oversight, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation->

[summary?id=GA132-HB-160](https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-160)

- HB166**      **WORKFORCE DEVELOPMENT SYSTEM REVISIONS** (REINEKE W, CUPP B) To revise the laws governing the state's workforce development system, programs that may be offered by primary and secondary schools, certificates of qualification for employment, and the Opportunities for Ohioans with Disabilities Agency, and to designate the first week of May as In-Demand Jobs Week.  
*Current Status:* 10/11/2017 - House Higher Education and Workforce Development, (Sixth Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-166>
- HB187**      **EMPLOYEE HIRING INFORMATION** (DEVER J) To regulate the collection, use, and retention of certain information obtained from an applicant during the employee selection process.  
*Current Status:* 9/20/2017 - House Community and Family Advancement, (Third Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-187>
- HB193**      **DISCRIMINATION PROTECTION-FLU VACCINE** (HAGAN C) To prohibit an employer from taking an adverse employment action against a person who has not been or will not be vaccinated against influenza.  
*Current Status:* 9/19/2017 - Re-Referred to Committee  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-193>
- HB382**      **UNEMPLOYMENT COMPENSATION LAW** (SCHURING K) To modify terms describing payments made under the Unemployment Compensation Law, to increase the amount of wages subject to unemployment compensation premiums, to require qualifying employees to make payments to the Unemployment Compensation Insurance Fund, to allow the Director of Job and Family Services to adjust maximum weekly benefit amounts, to reduce the maximum number of benefit weeks, and to make other changes to the Unemployment Compensation Law.  
*Current Status:* 11/29/2017 - House Government Accountability and Oversight, (Fifth Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-382>
- HB424**      **SUBSTANCE RECOVERY-WORKFORCE** (WIGGAM S) To enact the "Substance Recovery and Workforce Improvement Act" regarding drug testing and eligibility for unemployment compensation benefits.  
*Current Status:* 11/21/2017 - Introduced  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-424>
- HJR4**      **UNEMPLOYMENT COMPENSATION BONDS** (SCHURING K) To allow the General Assembly to provide by law for the issuance of bonds to pay unemployment compensation benefits when the fund created for that purpose is or will be depleted or to repay outstanding advances made by the federal government to the unemployment compensation program.  
*Current Status:* 11/29/2017 - House Government Accountability and Oversight, (Fifth Hearing)

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HJR-4>

- SB3**      **WORKFORCE DEVELOPMENT** (BEAGLE B, BALDERSON T) To revise the laws governing the state's workforce development system, programs that may be offered by primary and secondary schools, certificates of qualification for employment, and the Opportunities for Ohioans with Disabilities Agency, and to designate the first week of May as In-Demand Jobs Week.  
**Current Status:** 11/6/2017 - **SIGNED BY GOVERNOR**; Eff. 90 days  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-3>
- SB14**      **MINIMUM WAGES AND OVERTIME** (TAVARES C) To require that domestic workers be paid the higher of the minimum wage provided in Section 34a of Article II, Ohio Constitution, or the minimum wage provided in the Fair Labor Standards Act, to require that domestic workers be paid overtime wages, to make certain conduct directed toward a domestic worker an unlawful discriminatory practice, and to require a weekly day of rest for domestic workers.  
**Current Status:** 2/1/2017 - Referred to Committee Senate Transportation, Commerce and Workforce  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-14>
- SB49**      **HIRING-FELONY CONVICTIONS** (WILLIAMS S) To prohibit private employers from including on an employment application any question concerning whether an applicant has been convicted of or pleaded guilty to a felony.  
**Current Status:** 11/15/2017 - Senate Transportation, Commerce and Workforce, (First Hearing)  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-49>
- SB100**      **CIVIL RIGHTS-DISCRIMINATION PROHIBITIONS** (SKINDELL M, TAVARES C) To prohibit discrimination on the basis of sexual orientation or gender identity or expression, to add mediation to the list of informal methods by which the Ohio Civil Rights Commission must attempt to induce compliance with Ohio's Civil Rights Law before instituting a formal hearing, and to eliminate certain religious exemptions from the Ohio Civil Rights Law.  
**Current Status:** 3/15/2017 - Referred to Committee Senate Government Oversight and Reform  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-100>
- SB116**      **MILITARY SPOUSE UNEMPLOYMENT COMPENSATION** (LAROSE F, WILLIAMS S) To permit persons who quit work to accompany the person's spouse on a military transfer to be eligible for unemployment compensation benefits.  
**Current Status:** 6/13/2017 - Senate Finance, (First Hearing)  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-116>
- SB140**      **PUBLIC-PRIVATE PARTNERSHIP GRANTS** (SCHIAVONI J) To create the Public-Private Partnership Grant Program for fiscal years 2018 and 2019 to develop, enhance, and promote educational programs to address regional workforce needs; to create the Sector Partnership Grant Program for fiscal years 2018 and 2019 to identify and provide grants to industry partnerships; to support programs that improve access to workforce training

opportunities for students; to support economic development and revitalization programs; and to make an appropriation.

**Current Status:** 5/3/2017 - Referred to Committee Senate Finance

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-140>

**TO: OMA Government Affairs Committee**  
**FROM: Ryan Augsburger / Rob Brundrett**  
**RE: Safety and Workers' Compensation Report**  
**DATE: November 29, 2017**

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### **Overview**

The operating budgets for both the BWC and IC were passed and signed by the Governor at the end of June. State fund employers should have received their check from the latest billion dollars back in rebates. Several different workers' compensation bills have been introduced and hearings have taken place over the past months.

### **Legislation and Rules**

#### **House Bill 27 – BWC budget bill**

The House and Senate were able to pass a BWC budget bill. Unlike previous BWC budget bills both the House and Senate made significant policy changes to the proposed bill. Several of these changes generated a large amount of opposition. Two House amendments were the most discussed. The first would have made it impossible for illegal aliens to receive workers' comp for any injury suffered as a result of work. The second change which was heavily supported by the OMA was to change the amount of a time an injured worker has to report an injury from two years to one year.

The Senate removed the illegal aliens amendment from their version of the bill, while leaving the OMA supported amendment in the bill. The House concurred with the Senate changes and the bill was signed by the governor.

#### **House Bill 28 – Industrial Commission budget bill**

The IC budget contains no major policy changes and moved quickly through the House and Senate and was signed by the Governor.

#### **House Bill 49 – State operating budget**

To help fill a hole in the state operating budget, the Senate proposed to raid the budgets of the Bureau of Workers' Compensation and the Industrial Commission, budgets paid for by employer premiums and assessments, not taxes.

"This language sets an extremely dangerous precedent of allowing the state to "raid" the budgets of these exclusively employer-funded agencies. Unlike the main operating budget, appropriations for the BWC and IC operations are funded entirely by employer premiums and assessments. This amendment is asking Ohio's employers to subsidize all state operations in the form of their BWC premium payments," wrote the OMA, Ohio Chamber of Commerce, National Federation of Independent Businesses and Council of Retail Merchants in a letter to legislative leaders, asking that the raid be stopped.

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

Despite the opposition from business groups the provision was retained in the bill during conference committee. The OMA was prepared to challenge the transfer in the courts.

After a series of negotiations with the Kasich administration, the OMA with other business groups agreed to terms in a Memorandum of Understanding (MOU) that will prevent the transfer of any funds from the Bureau of Workers' Compensation (BWC) or Industrial Commission (IC) to the General Revenue Fund (GRF) to help balance the state budget.

The MOU was executed this summer.

Senate Bill 8 which became a vehicle for budget fixes included in its conference committee report an amendment that removes the Bureau of Workers Compensation and the Ohio Industrial Commission from the list of entities from which the OBM director could transfer funds to the GRF. This along with the MOU should prevent any transfers over the biennium.

#### Senate Bill 118 / House Bill 161 – PTSD

New first responder PTSD bills were introduced this year in the General Assembly. The bills would provide workers' compensation benefits for first responders with post-traumatic stress disorder (PTSD) arising from employment, even without an accompanying physical injury or occupational illness. Benefits could be provided to qualifying claimants for up to one year.

The bills would create a fundamental shift from current workers' compensation law which requires a physical injury before allowing any mental health claims.

The Bureau of Workers' Compensation (BWC) board reviewed a report from the BWC actuarial staff quantifying the financial impact this bill and its companion, Senate Bill 118, would have on the local governments which would pay the claims.

It is estimated that the bill would cost up to an additional \$98.4 million annually in claims. For comparative purposes, currently all public entities in the State Insurance Fund combined pay approximately \$190 million in total annual premium today.

OMA and its business allies have long opposed opening the workers' compensation system to cover claims with no accompanying physical injury or occupational illness.

House Bill 161 had sponsor testimony back in May and Senate Bill 118 had its sponsor testimony earlier this month.

#### House Bill 268 – Makes changes to Ohio's self-insurance workers comp laws

The bill would create a second self-insured guaranty fund for employer who currently cannot meet the financial metrics to go self-insured under today's laws. The bill also allows self-insured companies to purchase private insurance. The bill has had two hearings in the House Insurance Committee.

#### House Bill 269 – Workers Compensation changes

The bill would rename the BWC to the Worker Safety and Rehabilitation Agency. It would require the agency to develop incentives for employers to participate in safety consultations and loss prevention programs. The bill requires an employee who is receiving temporary total disability compensation to comply with a return to work plan, and it makes changes with respect to compensation for permanent total disability and death benefits.

### House Bill 380 – Illegal Aliens

The bill prohibits illegal and unauthorized aliens from receiving compensation and certain benefits under Ohio's Workers' Compensation Law. The bill is based off of the amendment that was eventually removed from the workers' compensation budget bill. The bill is up for a possible vote this week. An amendment is proposed that would make this bill identical to the version that was in the House passed BWC budget bill.

### **BWC Agency Notes**

#### Another Billion Back

This spring Governor Kasich and the BWC announced another billion dollars back to public and private employers. This is the third such rebate to employers since 2013. All state fund employers should have received their share of the rebate. Nearly \$10 million in rebate checks from the Ohio Bureau of Workers' Compensation (BWC) remain uncashed by more than 5,500 employers who might not even know it.

#### BWC Announce \$44 Million Investment in Workplace Safety & Wellness

Lt. Governor Mary Taylor and Ohio Bureau of Workers' Compensation (BWC) Administrator/CEO Sarah Morrison announced a \$44 million investment in workplace safety, health and wellness.

The safety initiative is part of the \$1 billion rebate plan proposed by Gov. John Kasich in March and approved by BWC's board of directors.

The new initiative calls for \$44 million over two years to improve wellness and safety for workers across Ohio. This includes a new wellness program, funding for specific programs to help firefighters and those who work with children and adults with disabilities, and an education campaign to address common injuries at work and in the home.

The initiative is expected to launch in January and includes:

- \$6 million annually for a new health and wellness program for Ohioans working for small employers (50 or fewer employees) in specific high-risk industries, as well as injured workers with certain types of injuries. Services include smoking cessation programs, health coaching and chronic disease management.
- An extension of the current annual funding level of \$15 million for Safety Intervention Grants, setting aside \$4 million a year for two high-risk occupations: firefighters and employers that serve disabled children and adults.
- A \$2 million statewide safety awareness and education campaign for slips, trips and falls, overexertion and motor vehicle accidents, which are responsible for more than 60 percent of workplace injuries.

The BWC is looking for manufacturers to sit on a focus group for the initiative.

#### BWC Has New Medical Director

From a Bureau of Workers' Compensation press release this summer: "The former chief medical advisor for the Ohio Industrial Commission will join the Ohio Bureau of Workers' Compensation (BWC) as its chief medical officer (this week).

“Terrence B. Welsh, MD, who specializes in physical medicine and rehabilitation, brings extensive experience with the workers’ compensation system to his role, where he will oversee all medical components of the agency and direct medical policy.

“Dr. Welsh served from 2007 to 2014 as medical advisor to the Industrial Commission, which hears appeals of BWC and self-insured employer decisions. He is also a past member of BWC’s Health Care Quality Assurance Advisory Committee. He most recently served as chief of medical affairs for Fairfield Medical Center in Lancaster.”

Dr. Welsh is a graduate of the University of Cincinnati College of Medicine.

### **Safety Issues**

#### **OSHA Proceeds with Electronic Recordkeeping Implementation**

The Occupational Safety and Health Administration (OSHA) launched on August 1, 2017, the Injury Tracking Application (ITA). The web-based form allows employers to electronically submit required injury and illness data from their completed 2016 OSHA Form 300As. The application will be accessible from the ITA web page.

In June, OSHA published a notice of proposed rulemaking to extend the deadline for submitting 2016 Form 300A to December 1, 2017, to “allow affected entities sufficient time to familiarize themselves with the electronic reporting system, and to provide the new administration an opportunity to review the new electronic reporting requirements prior to their implementation.”

According to OSHA, the data submission process involves four steps: (1) Creating an establishment; (2) adding 300A summary data; (3) submitting data to OSHA; and (4) reviewing the confirmation email. The secure website offers three options for data submission. One option will enable users to manually enter data into a web form. Another option will give users the ability to upload a CSV file to process single or multiple establishments at the same time. A third option will allow users of automated recordkeeping systems to transmit data electronically via an application programming interface.

The ITA web page includes information on reporting requirements, a list of frequently asked questions and a link to request assistance with completing the form.

We will update you as the proposed December 1, 2017 filing date approaches.

#### **OMA Director Testifies on Silica**

Dave Johnson, CEO of Summitville Tiles, Inc., and longtime director of the OMA, testified before the U.S. Occupational Safety and Health Administration this week, asking for a repeal of the pending “silica rule” promulgated by the Obama administration. Johnson is working in conjunction with the effort of the National Association of Manufacturers on this regulatory overreach.

Johnson testified: “The shale and clay that are in use in our industry have a molecular structure belonging to minerals known as aluminosilicates ... with only about 15% of their body composition containing crystalline (or free) silica.



“This particular molecular structure is NOT known to cause silicosis, as validated by years of the scientific research and documentation that the structural clay products industry has undertaken ...

“In fact, the aluminosilicate compound that comprises 85% of our shale and clay body is essentially identical to the clay body composition which is used in the “Kitty Litter” industry, an industry which has, in fact, received an exemption from the ‘Silica Rule’ under consideration here.”

“(P)lease note,” he said, “that we have not had a single case of silicosis at Summitville Tiles in our 105 years in business.”

## Memorandum of Understanding

Between the Ohio Office of Budget and Management and the Ohio  
Business Community

On July 7, 2017, representatives of the National Federation of Independent Business/Ohio, the Ohio Chamber of Commerce, the Ohio Manufacturers' Association, and the Ohio Council of Retail Merchants, which are some of Ohio's largest employer organizations and represent thousands of Ohio businesses ("Ohio Business Community"), met with Timothy S. Keen, Director of the Ohio Office of Budget and Management (the "Director") regarding the Ohio Business Community's concerns related to the legal authority given to the Director in Section 512.12 of Am. Sub. H.B. 49 of the 132<sup>nd</sup> General Assembly, (the Fiscal Year 2018 and 2019 Main Operating Budget Bill) to transfer cash not otherwise constitutionally restricted from the funds used by certain state agencies into the State's General Revenue Fund and options to address those concerns.

Specifically, the Ohio Business Community raised concerns regarding the provision in Section 512.12 of Am. Sub. H.B. 49 providing permissive authority for the Director of the Office of Budget and Management ("OBM") to transfer cash from funds that are used by the Bureau of Workers' Compensation ("BWC") or Ohio Industrial Commission ("IC") in "an amount equaling up to two percent of each fund's total fiscal year 2017 appropriation" to the General Revenue Fund ("GRF") during the Fiscal Year 2018 to 2019 biennium.

As a result of that meeting, and by way of this Memorandum of Understanding, the authorized representatives of the Ohio Business Community and the Director, individually and on behalf of the OBM, hereby agree to the following:


- (1) The Director and OBM will not exercise the authority given to the Director in Section 512.12 of Am. Sub. H.B. 49 with respect to funds used by the BWC or IC up through and including January 13, 2019;
- (2) The Director and OBM will not exercise the authority given to the Director in Section 512.12 of Am. Sub. H.B. 49 with respect to funds used by the BWC or IC after January 13, 2019, without providing written notice to the Ohio Business Community's counsel at least 14 days prior to any transfer of cash from funds used by the BWC or IC. Such written notice shall be sent to Christopher Slagle by personal delivery (100 South Third Street, Columbus, Ohio 43215) or email ([cslagle@bricker.com](mailto:cslagle@bricker.com)).
- (3) The Director and OBM will not oppose efforts of the Ohio Business Community to enact legislation deleting the reference to or effectively removing the BWC and IC from Section 512.12 of Am. Sub. H.B. 49, at the beginning of the legislative session to resume in September 2017.
- (4) Up through and including January 13, 2019, in consideration of the foregoing, the Ohio Business Community will refrain from taking any legal action in any court of competent jurisdiction against the Director, OBM, BWC, IC, or any other state

agency or officer regarding the constitutionality or legality of Section 512.12 of Am. Sub. H.B. 49.


Nothing herein shall be construed to imply, by reason of the Director's signature or otherwise, that the Director, OBM, BWC, IC, or any other state agency or officer thereof considers the authority granted by Section 512.12 of Am. Sub. H.B. 49 or any part thereof unconstitutional or in violation of any applicable law.

**IN WITNESS WHEREOF**, the parties hereto have caused this Memorandum of Understanding to be executed by their duly authorized representatives.

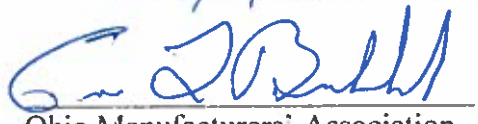
FOR THE OHIO BUSINESS  
COMMUNITY:


  
National Federation of Independent  
Business/Ohio  
Date: 8-15-17

FOR THE OHIO OFFICE OF BUDGET  
AND MANAGEMENT:

  
Timothy S. Keen, Director  
Date: August 17, 2017

  
Ohio Chamber of Commerce  
Date: 8/9/17

  
Ohio Manufacturers' Association  
Date: 8.10.17

  
Ohio Council of Retail Merchants  
Date: 8/10/17



# OHIO LEGISLATIVE SERVICE COMMISSION

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## Bill Analysis

Paul Luzzi

### **H.B. 380**

132nd General Assembly  
(As Introduced)

**Reps.** Seitz and Householder, Schaffer, Henne, Retherford, Vitale, Thompson, Becker, Merrin, Antani, Lang, Keller, Hood, Riedel

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### **BILL SUMMARY**

- Prohibits an illegal or unauthorized alien from receiving compensation or benefits under Ohio's Workers' Compensation Law.
- Prohibits an employer from electing to cover an illegal or unauthorized alien under the Workers' Compensation Law.
- Requires a claimant to submit an attestation certifying that the claimant or the deceased employee who is the subject of the claim was an eligible "employee" under Workers' Compensation Law.
- Grants an employer immunity from liability for damages suffered by reason of personal injury sustained or occupational disease contracted in the course of employment caused by the employer's wrongful act or omission or neglect unless the claimant establishes, by clear and convincing evidence, that the employer employed the individual knowing that the individual was not authorized to work under federal law.
- Maintains employer liability for intentional torts.
- Creates an irrebuttable presumption that an illegal or unauthorized alien assumed the risk of incurring an injury or contracting an occupational disease at the workplace, or dying as a result of such an injury or occupational disease, when performing services or providing labor for an employer.
- States that, unless an employer employed the individual knowing that the individual was not authorized to work under federal law, no court has jurisdiction over a claim for damages suffered by an illegal or unauthorized alien by reason of

personal injury sustained or occupational disease contracted by the illegal or unauthorized alien in the course of employment caused by the employer's wrongful act or omission or neglect.

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## CONTENT AND OPERATION

### Illegal aliens and unauthorized aliens

Current law defines "employee" for purposes of Ohio's Workers' Compensation Law<sup>1</sup> to include every person in the service of any person, firm, or private corporation, including any public service corporation, that employs one or more persons regularly in the same business or in or about the same establishment under any contract of hire, express or implied, oral or written, including aliens.<sup>2</sup> The Workers' Compensation Law does not define "alien."

The bill limits the definition of employee with respect to aliens to include only aliens authorized to work by the U.S. Department of Homeland Security or its successor. The bill excludes an illegal alien and an unauthorized alien from the definition of employee. Under the bill, "illegal alien" means an alien who is deportable if apprehended because of one of the following:

(1) The alien entered the U.S. illegally without the proper authorization and documents.

(2) The alien once entered the U.S. legally and has since violated the terms of the status under which the alien entered the U.S., making that alien an "out of status" alien.

(3) The alien once entered the U.S. legally but has overstayed the time limits of the original legal status.

The bill defines "unauthorized alien" as an alien who is not authorized to be employed as determined in accordance with the Immigration Reform and Control Act (IRCA).<sup>3</sup>

Current law allows any employer to elect to include as an "employee" within the Workers' Compensation Law certain individuals expressly excluded from the definition of "employee." The bill does not extend this authority to employers with respect to

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<sup>1</sup> R.C. Chapters 4121., 4123., 4127., and 4131.

<sup>2</sup> R.C. 4123.01(A).

<sup>3</sup> R.C. 4123.01(A), (O), and (P) and 8 U.S.C. 1324a.



illegal or unauthorized aliens; thus, under the bill, an employer may not elect to obtain coverage under the Workers' Compensation Law for an illegal or unauthorized alien.<sup>4</sup>

## **Liability for injuries incurred or occupational diseases contracted by illegal or unauthorized aliens**

### **Background**

Ohio's workers' compensation system 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. The Ohio Constitution authorizes the General Assembly to enact legislation that creates a system of workers' compensation payments to injured employees or their families in lieu of all other rights to compensation or damages as a result of death, injuries, or occupational disease. According to the constitutional provision, an employer who pays the premium or compensation as required by the Workers' Compensation Law will not be held liable in damages at common law or by statute for the death, injury, or occupational disease of an employee.<sup>5</sup>

### **General employer immunity from liability under the bill**

Except as otherwise provided under "**Liability for knowingly employing an employee not authorized to work**" and "**Liability for intentional torts**" below, under the bill if a claim is denied because the claimant is, or the deceased individual who is the subject of the claim was, an unauthorized alien, the claimant's or deceased employee's employer is not liable to that claimant for damages suffered by reason of personal injury sustained or occupational disease contracted in the course of employment caused by the employer's wrongful act or omission or neglect. For such a claimant, filing a claim under Ohio's Workers' Compensation Law is the exclusive remedy against the employer on account of injury, disease, or death in the course of and arising out of the claimant's or deceased employee's employment. Notwithstanding the continuing law provision stating that noncomplying employers are not entitled to the benefits of the Workers' Compensation Law<sup>6</sup> and except as provided below, the bill creates an irrebuttable presumption that the individual assumed the risk of incurring an injury or contracting an occupational disease at the workplace, or dying as a result of

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<sup>4</sup> R.C. 4123.01(A).

<sup>5</sup> Ohio Const., art. II, sec. 35 and R.C. 4123.74 and 4123.77, not in the bill.

<sup>6</sup> R.C. 4127.77, not in the bill.



such an injury or occupational disease, when performing services or providing labor for that employer.<sup>7</sup>

Except as provided below, the bill also denies any Ohio court from having jurisdiction over a claim for damages suffered by an illegal or an unauthorized alien by reason of personal injury sustained or occupational disease contracted by the illegal alien or unauthorized alien in the course of employment caused by the wrongful act or omission or neglect of the employer. The bill states that an illegal or unauthorized alien assumes the risk of incurring such injury or contracting an occupational disease, and that assumption is a complete bar to a recovery of damages for that injury or occupational disease (see **COMMENT**).<sup>8</sup>

### **Liability for knowingly employing an employee not authorized to work**

However, under the bill, an employer, including the state or a political subdivision, is liable to a claimant whose claim is denied under "**Attestation of eligibility**" or "**Review by Administrator**" below for damages suffered for the reason described immediately above if the claimant establishes, by clear and convincing evidence, that the employer employed the claimant or the deceased employee who is the subject of the claim knowing that the claimant or deceased employee was not authorized to work under the IRCA on the date the claimant or deceased employee suffered the injury or contracted the occupational disease. The bill grants a court jurisdiction over such a claim. In such an action, an employer cannot assert the common law defenses of assumption of the risk, contributory negligence, or the fellow servant rule.<sup>9</sup>

### **Liability for intentional torts**

Nothing in the bill can be construed to prevent an illegal alien, unauthorized alien, or a claimant whose claim is denied because the claimant is or the deceased individual was an unauthorized alien from bringing a claim against an employer in a court of competent jurisdiction for an intentional tort allegedly committed by the employer against the illegal or unauthorized alien.<sup>10</sup>

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<sup>7</sup> R.C. 2743.02(I), 2744.02(A), and 4123.513(A).

<sup>8</sup> R.C. 2307.82(B).

<sup>9</sup> R.C. 2307.82(C), 2743.02(I), 2744.02(A), and 4123.513(B).

<sup>10</sup> R.C. 2307.82(C) and 4123.513(C).



## Change in claim procedure to include attestation and review

Under continuing law, within seven days after receipt of a workers' compensation claim, the Bureau of Workers' Compensation (BWC) must notify the claimant and the claimant's employer of the receipt of the claim and of the facts alleged in the claim. Generally, in claims other than those in which the employer is a self-insuring employer, if the Administrator of Workers' Compensation determines that a claimant is or is not entitled to an award of compensation or benefits, the Administrator must issue an order no later than 28 days after BWC sends the notice of the receipt of the claim, granting or denying the payment of the compensation, benefits, or both as is appropriate to the claimant.<sup>11</sup>

### Attestation of eligibility

Under the bill, to be considered eligible for compensation or benefits, other than for medical benefits, a claimant must submit to the Administrator a signed attestation that the claimant is, or if the claimant is a dependent of an individual who died as a result of suffering an injury or contracting an occupational disease, the deceased employee was, an eligible "employee" as defined in "**Illegal aliens and unauthorized aliens**" above. The Administrator may not pay compensation or benefits, other than medical benefits, unless the Administrator receives the signed attestation.<sup>12</sup>

### Review by Administrator

If the Administrator has reason to believe that a submitted attestation is not valid, the Administrator may request that the claimant submit proof of the attestation's validity. The bill requires the Administrator to make the request in writing and to state in the request the type of proof necessary to determine validity and the date by which the claimant must submit the proof. The Administrator must deny any claim for compensation or benefits other than medical benefits if a claimant fails to comply with a written request to provide proof of the attestation's validity. A claimant who fails to comply with that written request is then barred from refileing that claim for compensation or benefits but may appeal according to the current law appeals process.

### Prosecution for fraud

Under the bill, if a claimant provides a signed attestation and it is later determined that the claimant or deceased individual who is the subject of the claim was

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<sup>11</sup> R.C. 4123.511(A) and (B)(1).

<sup>12</sup> R.C. 4123.511(A) and 4123.01(A).





an illegal or unauthorized alien, the claimant must be prosecuted for workers' compensation fraud.<sup>13</sup>

### **Applicability**

The bill applies to claims arising on or after the bill's effective date.<sup>14</sup>

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### **COMMENT**

Because the bill appears to limit remedies for an illegal or an unauthorized alien who sustains an injury or contracts occupational disease in the course of employment caused by the wrongful act or omission or neglect of the employer, it may raise questions under the Ohio constitutional provision governing due process, the right to an open court, and the right to a remedy.<sup>15</sup>

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### **HISTORY**

<b>ACTION</b>	<b>DATE</b>
Introduced	10-11-17

H0380-I-132.docx/emr

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<sup>13</sup> R.C. 2913.48, not in the bill, and R.C. 4123.511.

<sup>14</sup> Section 3.

<sup>15</sup> Ohio Const., art. I, sec. 16.



## Safety & Workers' Compensation

### **PTSD Bill has First Senate Hearing** November 17, 2017

This week Senators **Frank LaRose** (R-Hudson) and **Edna Brown** (D-Toledo) **provided sponsor testimony** for **Senate Bill 118**, which would provide Ohio workers' compensation benefits to certain emergency personnel for a diagnosis of post-traumatic stress disorder (PTSD) arising from employment without the current requirement of an accompanying physical injury.

This would be a major shift in Ohio's workers' compensation law. Unlike previous versions of the bill, Senate Bill 118 would limit benefits to one year and workers who qualify could not simultaneously receive compensation from BWC and a state retirement system disability benefit for PTSD.

A BWC **actuarial analysis** of the bill found that it would cost local governments \$98 million in claims cost. By comparison local governments' total premium payments now are \$190 million.

This proposal has long been opposed by the business community, including OMA, due to the fundamental shift of providing benefits for mental illness without an accompanying physical injury. *11/16/2017*

### **Electronic OSHA 300As are Due December 1** November 17, 2017

Here's a reminder that by December 1 2017, all covered establishments must electronically submit to OSHA information from their completed 2016 Form 300A. Generally speaking, all manufacturers with 20 or more employees are considered **covered establishments**.

OSHA has provided a website that offers three options for data submission: manually enter data into a web form; upload a CSV file to process single or multiple establishments at the same time; or transmit data electronically via an API (application programming interface).

Here's **more from OSHA**.

And here is a **recorded OMA webinar** that reviews the requirements (use your My OMA login). *11/10/2017*

### **Next BWC Employer Webinar is November 30** November 17, 2017

The Bureau of Workers' Compensation (BWC) November webinar will cover combinations due to acquisitions and mergers, the \$15,000 Medical-Only

Program and cost-containment strategies, among other topics.

The webinar is scheduled for Thursday, Nov. 30 at 11:30 a.m. To attend online, **RSVP here**. You may also **opt to attend in-person at a BWC office**. *11/15/2017*

### **NIOSH Creates Robotics Research Center** November 17, 2017

The National Institute for Occupational Safety and Health (NIOSH) created the Center for Occupational Robotics Research (CORR) in September 2017 to address the safety of workers who use, wear, or work near robots.

The center's work includes evaluating potential benefits and risks of robots in the workplace, conducting workplace interventions to prevent robot-related worker injuries, and developing guidance for safe interactions between humans and robots.

**Read more here**. *11/15/2017*

### **OMA's 2018 Safety Webinar Topics Announced** November 10, 2017

More than 160 OMA members chose from among 23 potential safety topics for the 2018 safety webinar series. The top 12 vote getters are now prioritized for monthly webinars in 2018.

Here are **the planned webinars**. Register for them at **My OMA**.

OMA safety webinars are free for members who purchase their workers' compensation services from the OMA. (All other members – \$29/webinar; non-members – \$39/webinar.)

Subject matter expertise comes from OMA Connections Partner, **Safex**. *11/6/2017*

### **3 Mistakes to Avoid in a New Workers' Compensation Claim** November 10, 2017

According to OMA Connections Partner, Dinsmore, employers should recognize three common mistakes in determining a valid workers' compensation claim and in preparing to defend an invalid claim. Read **about them here**.

Dinsmore is one of OMA Workers' Compensation Services' trusted firms for Industrial Commission hearing representation. *11/6/2017*

### **Self-Insurance Bill Gets Proponent Hearing November 3, 2017**

**House Bill 268**, which would expand the number of Ohio companies eligible for self-insurance by creating a second “B” fund, received its second hearing this week in the House Insurance Committee.

Two witnesses testified in support of the bill, the **Ohio Trucking Association** and **BarryStaff Inc.**, a staffing company.

Manufacturers remain concerned about the bill’s potential to weaken Ohio’s Self-Insured fund. The OMA Safety and Workers’ Compensation Committee will be discussing the bill at its meeting on Wednesday, November 8. **Register here** for phone or in-person attendance. 11/2/2017

### **House Holds Hearing on Bill to Deny Workers’ Comp. Benefits for Illegal Aliens November 3, 2017**

After a similar measure failed to survive the budget bill earlier in the year, Reps. **Bill Seitz** (R-Cincinnati) and **Larry Householder** (R-Glenford) presented **sponsor testimony** on a new bill, **House Bill 380**, which would make **illegal immigrants ineligible for workers’ compensation** coverage in Ohio.

The idea, long debated in and around the Statehouse, had its first hearing in the House Insurance Committee this week.

OMA urged caution on the previous bill attempt to ensure that civil justice gains are not eroded by a new cause of action and that any changes must protect an employer from frivolous litigation. 11/2/2017

### **House Insurance Committee Hears Workers’ Comp Bill to Expand Availability of Self-Insurance October 20, 2017**

Last week the House Insurance Committee accepted a substitute version of **House Bill 268** which is designed to allow more Ohio companies to qualify for self-insurance for workers’ compensation purposes. A **comparison document** outlines the changes that were accepted, including:

“Requires the Administrator of Workers’ Compensation to waive the requirement that an employer have sufficient assets located in Ohio to qualify for self-insuring status if the employer holds a rating of Ba2 or higher according to Moody’s or a comparable rating from a similar agency.”

And, “Specifies the Administrator may require such an employer to obtain an irrevocable letter of credit, a

bond, or any other security the Administrator determines necessary to ensure the employer’s solvency. Also retains the Administrator’s rule-making authority to require an employer to provide additional security.” 10/18/2017

### **Workers’ Comp Reform Bill Gets Hearing October 20, 2017**

The House Insurance Committee this week heard proponent testimony on House Bill 269, which contains a multitude of workers’ compensation reforms including a name change for the Bureau of Workers’ Compensation to “Office of Worker Safety and Rehabilitation.”

The **bill proposes** to extend benefits, adds dependent benefits, and requires the Administrator to provide incentives to employers to participate in loss prevention programs developed by the Superintendent of the Division of Safety and Hygiene, among its multiple provisions.

Rep. George Keiser from the North Dakota legislature **testified** in support of the bill, describing how his state’s system works and the effect of reforms enacted. 10/19/2017

### **\$10 Million in BWC Rebate Checks Remain Uncashed October 13, 2017**

Nearly \$10 million in rebate checks from the Ohio Bureau of Workers’ Compensation (BWC) remain uncashed by more than 5,500 employers who might not even know it.

The uncashed checks are among the more than 160,000 BWC issued in July as part of the agency’s Third Billion Back rebate initiative. Uncashed checks will expire, or stale date, 95 days after the check’s issuance date. That’s this week for some employers and as late as Oct. 18 for others.

Employers participating in a BWC Group Retrospective Rating Program should receive their checks later this month.

The agency will reissue checks after the stale date following a brief lag time for processing.

Questions? Contact the BWC at (800) 644-6292 or the business consultant or regional manager with whom you may work. 10/9/2017

### **OMA Workers’ Comp Services Customers: Your Offer is Online! October 6, 2017**

Your 2018/19 OMA Workers' Compensation Services offer is available to you 100% of the time on your [WCS dashboard at My OMA](#).

The OMA's enrollment due date for Group Experience Rating is November 13, 2017.

Our enrollment due date for Group Retrospective Rating is January 22, 2018.

Paper offers can be snail-mailed [upon request](#).

Questions? Contact OMA's [Brian Jackson](#). 10/5/2017

### **Fall Protection #1 OSHA Cited Standard October 6, 2017**

On Sept. 26, at the National Safety Council's annual Congress & Expo, OSHA Deputy Director of Enforcement Programs, Patrick Kapust, announced the [preliminary list of 10 standards](#) most frequently cited by the agency's inspectors during fiscal Year 2017.

Fall protection was the most-cited standard for the seventh year in a row, followed by Hazard Communication, and Scaffolding. The only new addition to last year's list was Fall Protection – Training Requirements, which came in at ninth place. OSHA publicizes the Top 10 list to increase awareness of these standards so employers can take steps to find and fix the hazards to prevent injury or illness.

OMA will soon be fielding its annual member survey of potential monthly safety webinar topics for 2018. OMA prioritizes members' top picks for monthly safety webinars; subject matter expertise is provided by OMA Connections Partner, Safex. 10/3/2017

### **Bender Retires from OMA September 29, 2017**



OMA Workers' Compensation Services Lead Account Manager, Barb Bender, retires from the OMA today.

Barb has worked in Ohio workers' compensation in various positions for 39 years, more than 14 of which at the OMA.

Barb said, "It has been a sincere honor and pleasure to work with OMA members throughout the years. I certainly will miss everyone!"

She will be playing with the grandchildren, visiting her son and his family in Florida and relaxing.

OMA staff will truly miss Barb's exceptional industry knowledge and helpful attitude. Godspeed, Barb! 9/25/2017

### **OSHA Electronic Recordkeeping Rule – File by Dec. 1 September 29, 2017**

OMA Connections Partner, Dinsmore, this week [posted](#): "Last month, OSHA launched the Injury Tracking Application on which employers can submit the information from the 2017 Form 300A Summary of Work-Related Injuries and Illnesses. ...

"The deadline by which certain employers must submit the information from the 2016 300As remains December 1, 2017. The two proceedings challenging to the rule remain administratively closed and stayed; however, both proceedings may resume before the December 1 deadline depending on whether OSHA decides to revise or remove portions of the rule before then."

OMA is offering a webinar on Tuesday, October 17, that will describe who, what and how to file, assuming no rule revisions before the Dec. 1 filing deadline. [Covered establishments](#) with 250 or more employees must electronically submit information from OSHA Forms 300, 300A, and 301. Covered establishments with 20-249 employees must electronically submit information from OSHA Form 300A. See more [about the webinar](#) and [register here](#). 9/28/2017

### **Big Win for Ohio Employers in the Supreme Court September 29, 2017**

OMA Connections Partner, Bricker & Eckler, posted this week: "... the Ohio Supreme Court issued its decision in the *Ferguson v. State of Ohio* case, ruling in favor of Ohio's employers. The Court specifically held that the consent provision ... enacted by the legislature in 2006, allowing an employee to dismiss an employer-initiated appeal only with the consent of the employer, is constitutional.

"The Court's decision reversed an Eighth District Court of Appeals decision ...

"This is a BIG win for Ohio's employers which can now move forward with confidence that their appeal of a workers' compensation claim into the court of

common pleas will not be unreasonably delayed by the claimant.”

Read the [post from Bricker here](#). 9/28/2017

### **Opioid Infographic Illustrates BWC’s Success, Pharmacy Leadership** **September 22, 2017**

The Bureau of Workers’ Compensation (BWC) has **created this infographic** summarizing its work over the last six years to rein in excessive opioid prescriptions and the dangers they pose to injured workers, namely abuse, addiction and death.

The infographic summarizes the steps taken to reduce the number of injured workers dependent on opioids from 8,029 in 2011 to 4,101 in 2016, a near 50% drop.

According to the BWC, much of the success is credited to John Hanna, BWC pharmacy director. Per the BWC: “More than anyone, it is John who is responsible for the achievements highlighted in the infographic, as well as for other pharmacy program reforms we’ve implemented to protect injured workers. Along the way, with the backing of BWC leadership, he also built a pharmacy department that is a model in the work comp industry today.”

John retires at the end of this month.

Read [more here](#). 9/21/2017

### **House Insurance Committee Hears Workers’ Compensation Bills** **September 15, 2017**

The House Insurance Committee returned this week from its summer recess to kick off its fall hearings. The committee entertained sponsor testimony on two new workers’ compensation bills, **House Bill 268** and **House Bill 269**. Both bills are sponsored by Rep. **Mike Henne** (R-Clayton).

House Bill 268 would create a second self-insured fund and allow self-insured companies to buy private workers’ compensation policies. In his **sponsor testimony** for House Bill 268, Rep. Henne said that, “HB 268 will allow more Ohio employers the option to self-insure, and for those that are self-insured the ability to manage their risk as they see fit.”

House Bill 269 would make a variety of changes to the Bureau of Workers’ Compensation and the state fund. Testifying on House Bill 269, **Rep. Henne stated**, “The policy changes we are pursuing will help protect workers, give them the care they need if they do get injured and get them back to work as soon as possible, provide appropriate benefits when seriously injured or killed and rebrand the organization to better reflect their mission.”

OMA Safety and Workers’ Compensation Committee members heard from Rep. Henne about these proposals at their June 27 meeting and have ongoing questions about the measures. The committee will continue to consider the bills as they are worked through the legislative process. 9/14/2017

### **BWC Changes Statute of Limitations for Filing Claims ... and More** **September 15, 2017**

Substitute House Bill 27 goes into effect September 29, 2017, and there are a number of changes that may impact businesses, including claimants will have one year to file a workers’ compensation claim involving an injury or death, instead of two.

Read [more](#) from OMA Connections Partner, Bricker & Eckler. 9/13/2017

### **NIOSH to Hold Webinar on Occupational Safety for the Aging Workforce** **September 8, 2017**

The National Institute for Occupational Safety and Health (NIOSH) will host a webinar Sept. 28 from 1:00 to 2:30 p.m. ET on best practices for addressing occupational safety and health challenges posed by an aging workforce.

The webinar will feature presentations on: research to address age differences at work; coaching to help workers manage and reduce the strain that chronic illness may present; and translating scientific knowledge on aging and its societal implications into policy-focused practice. For more information and to register, visit [NIOSH’s website](#). 9/1/2017

Learn [more and apply by September 30 here](#). 9/6/2017

**Workers' Compensation Legislation**  
Prepared by: The Ohio Manufacturers' Association  
Report created on November 28, 2017

- HB27**      **WORKERS' COMPENSATION BUDGET** (BRINKMAN T) To make changes to the Workers' Compensation Law, to make appropriations for the Bureau of Workers' Compensation for the biennium beginning July 1, 2017, and ending June 30, 2019, and to provide authorization and conditions for the operation of the Bureau's programs.  
*Current Status:* 6/30/2017 - **SIGNED BY GOVERNOR**; Eff. 6/30/2017  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-27>
- HB28**      **INDUSTRIAL COMMISSION BUDGET** (BRINKMAN T) To make appropriations for the Industrial Commission for the biennium beginning July 1, 2017, and ending June 30, 2019, and to provide authorization and conditions for the operation of Commission programs.  
*Current Status:* 6/28/2017 - **SIGNED BY GOVERNOR**; eff. 6/28/17  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-28>
- HB99**      **WORKERS COMPENSATION-PNEUMOCONIOSIS** (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:* 6/21/2017 - House Insurance, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-99>
- HB133**      **DISASTER RELIEF ACT** (RYAN S) To create the Disaster Relief Act to exempt out-of-state disaster businesses and qualifying out-of-state employees from certain taxes and laws with respect to disaster work on critical infrastructure performed in this state during a declared disaster.  
*Current Status:* 11/29/2017 - Senate Ways and Means, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-133>
- HB161**      **WORKERS COMPENSATION-PTSD** (PATTON T) 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 for up to one year and to prohibit such a person from receiving a disability benefit from a state retirement system for post-traumatic stress disorder arising from employment without an accompanying physical injury during the time period the person receives compensation and benefits under the Workers' Compensation Law for the disorder.  
*Current Status:* 5/24/2017 - House Insurance, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-161>
- HB268**      **WORKERS COMPENSATION-SELF-INSURERS** (HENNE M) To make changes to the Workers' Compensation Law with respect to self-insuring employers.  
*Current Status:* 11/1/2017 - House Insurance, (Second Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-268>
- HB269**      **WORKERS COMPENSATION OVERHAUL** (HENNE M) To rename the entities who carry

out workers' compensation functions in this state, to require the Administrator of Worker Safety and Rehabilitation to develop incentives for employers to participate in safety consultations and loss prevention programs, to require an employee who is receiving temporary total disability compensation to comply with a return to work plan, and to make changes with respect to compensation for permanent total disability and death benefits.

**Current Status:** 10/11/2017 - House Insurance, (Second Hearing)

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-269>

**HB380**      **WORKERS COMP-ILLEGAL ALIENS** (SEITZ B, HOUSEHOLDER L) To prohibit illegal and unauthorized aliens from receiving compensation and certain benefits under Ohio's Workers' Compensation Law.

**Current Status:** 11/29/2017 - House Insurance, (Second Hearing)

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-380>

**SB118**      **PTSD TREATMENT-FIRST RESPONDERS** (LAROSE F, 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 for up to one year and to prohibit such a person from receiving a disability benefit from a state retirement system for post-traumatic stress disorder arising from employment without an accompanying physical injury during the time period the person receives compensation and benefits under the Workers' Compensation Law for the disorder.

**Current Status:** 11/14/2017 - Senate Insurance and Financial Institutions, (First Hearing)

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-118>

**SB140**      **PUBLIC-PRIVATE PARTNERSHIP GRANTS** (SCHIAVONI J) To create the Public-Private Partnership Grant Program for fiscal years 2018 and 2019 to develop, enhance, and promote educational programs to address regional workforce needs; to create the Sector Partnership Grant Program for fiscal years 2018 and 2019 to identify and provide grants to industry partnerships; to support programs that improve access to workforce training opportunities for students; to support economic development and revitalization programs; and to make an appropriation.

**Current Status:** 5/3/2017 - Referred to Committee Senate Finance

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-140>

**TO: OMA Government Affairs Committee**  
**FROM: Ryan Augsburger / Rob Brundrett**  
**SUBJECT: Tax Public Policy Report**  
**DATE: November 29, 2017**

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### **Overview**

After an action packed first six months, capped by the passage of the state budget the General Assembly went home for the summer recess save for the two weeks legislators were in town to vote on veto overrides. The budget continued to be the focus of much legislative action prior to the recess. It was announced in the spring that the state was looking at an \$800 million revenue shortfall. This news tempered any ambitious plans regarding tax laws.

The beginning of fall marked the return of the General Assembly. Both the House and Senate have been busy with committee hearings over the past several months. Numerous tax credit bills have been introduced and either are having hearings or awaiting hearings in their respective committees.

OMA members remain engaged on the manufacturing sales and use tax exemption rule that is being reviewed by the Department along with looking for ways to make Ohio manufacturing even more competitive in regards to tax and economic development policy.

### **Tax Legislation**

#### **Senate Bill 9 – Sales Tax Holiday**

Senator Kevin Bacon introduced Senate Bill 9 which provides for a three-day sales tax "holiday" in August 2017 during which sales of clothing and school supplies are exempt from sales and use taxes. The holiday was passed and used in 2016 as well. The bill was signed by the Governor in mid-June. You may have benefited during back to school shopping.

#### **Senate Bill 36 – CAUV**

Senator Cliff Hite has reintroduced Senate Bill 36. SB 36 makes changes to the computation of the CAUV formula. CAUV is the alternative method for taxing agricultural property. The rate allows agricultural land to be taxed at the ag value of land as opposed to the commercial value of the land. The formula has proven to be controversial in the past. In recent years farmers have been seeing an increase in their property tax due to a variety of reasons. Making changes to the current formula has proven controversial especially to residents and local governments. The Senate unanimously passed the bill.

The standalone CAUV bills were tabled and the House and Senate included CAUV provisions in the state budget bill that was ultimately passed.

#### **House Bill 49 – State Operating Budget**

The General Assembly removed almost all of the governor's budget tax proposals in the version of House Bill 49 that was returned to his desk. Instead of additional personal



income tax reductions and increases to several other taxes including the sales tax, the legislature, working with a bleak tax revenue forecast, opted for the tax status quo.

However, the General Assembly did work with the OMA and governor's office to allow for optional centralized business income tax filings at the municipal level and the elimination of the throw-back rule. Businesses will now have the option of filing one municipal income tax form through the Ohio Business Gateway, instead of filing returns in all the municipal corporations in which a business operates.

During final state budget negotiations the conference committee amended a Senate provision which eliminated the direct appeal to the Supreme Court of Ohio from cases decided by the Board of Tax Appeals (BTA). In a letter to House and Senate leaders, the OMA stated that it could not support the elimination of this important appeal.

Instead of removing the provision, the conferees amended the provision to permit a party to request that a BTA appeal be transferred to the Supreme Court of Ohio if the appeal involves a "substantial constitutional question or a question of great general or public interest."

When the budget bill was introduced the Governor had a much more ambitious plan than the tax laws that were ultimately passed. Originally the Governor proposed more income tax reductions. As introduced, the budget proposed a nearly \$3.2 billion, 17% cut in income taxes over the two years beginning July 1. The number of income tax brackets would have been reduced from nine to five. The top tax rate would have dropped to 4.33%.

The proposed budget would have increased personal income tax exemptions for those earning less than \$80,000. The administration said these changes would mean an additional 350,000 low-income Ohioans would pay no income tax.

Governor Kasich proposed to pay for this personal income tax decrease with an increase in sales and other taxes. The sales tax rate would have increased by 1/2% to 6.25%.

In the as introduced version the sales tax base would have expanded to additional services such as television subscriptions, elective cosmetic surgery, lobbying, landscape design, interior design and decorating, travel package and tours and repossession services. It also proposed to increase the state's severance tax on oil and gas and raise taxes on cigarettes, beer and wine.

With the concern regarding budget and tax revenue shortfalls the legislature opted for the scaled back status quo version along with some tweaks.

#### Senate Bill 114 / House Bill 155 – Vehicle Training Tax Credit

Senate Bill 114 and House Bill 155 are companion bills that authorize tax credits for expense incurred by employers to train a commercial vehicle operator. These bills would allow businesses to take credits against the CAT. The bills had one hearing in the House and Senate. OMA met with both proponents of the bills and sponsors of the bills. Proponent and sponsors indicated they would follow the advice of the OMA and look at a possible grant program in lieu of a CAT credit.

#### Senate Bill 132 – Foreign Trade Zone CAT Credit

The bill would establish a five-year pilot program whereby taxpayers with facilities in Ohio 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 and renewable energy resources. OMA participated in an interested party meeting earlier this fall and expressed serious concern over the proposal.

#### House Bill 185 – Political Contributions Tax Credit

The bill expands the scope of political contributions that qualify for the income tax credit for contributions to political campaigns to candidates for any state, county, municipal, or district office. It had its first hearing in early June.

#### Senate Bill 203 – Throw-Back Rule Reinstatement

The bill would reinstate the municipal income tax "throw-back rule" used in apportioning business income among municipalities. The throw-back rule was eliminated with OMA backing during the budget bill process.

#### House Bill 216 – Used Vehicle Trade-In Credit

The bill authorizes a sales and use tax trade-in credit for purchases of used motor vehicles from a licensed dealer. The bill had two hearings prior to the summer break.

#### House Bill 262 – Independent Budget Process

The bill would provide for the preparation of a state biennial budget independent of that submitted by the Governor and to authorize the Legislative Service Commission, upon the request of the Speaker of the House of Representatives or the President of the Senate, to arrange for an independent actuarial review of a proposed bill, specified analyses of economic policy initiatives and state benchmarking data, and a study of the state's long-range financial outlook. The bill was introduced and referred to committee in June.

#### House Bill 320 – Long-Range Financial Outlook Council

The bill creates the Long-Range Financial Outlook Council for the purpose of informing the public and the General Assembly about the financial status of the state by studying financial and other conditions and issuing an annual long-range financial outlook report. The bill had its first hearing last month.

### **Tax News**

#### U.S. Supreme Court Refuses to Hear CAT Appeal from Out of State Manufacturer

On June 12, 2017, the U.S. Supreme Court refused to entertain an appeal from the U.S. Court of Appeals for the Eighth Circuit that upheld the dismissal of an action by Diversified Ingredients, Inc. in U.S. District Court in Missouri seeking declaratory and injunctive relief against the imposition of the commercial activity tax (CAT).

OMA's tax counsel, Mark Engel, of Bricker & Eckler, wrote a brief analysis of the case and summed it up this way: "The decision does not reach the merits of whether the CAT may be imposed upon a taxpayer who does not have a physical presence in Ohio. However, it is noteworthy for some other reasons. First, the trial and appellate courts both recognized that Ohio provides a plain, speedy and efficient remedy with respect to assessments of CAT. ... Second, and in some respect more important, it reflects the

willingness of federal courts to refrain from interfering with state tax matters. ... Third, it represents yet another failed attempt to bring the question of economic nexus in the realm of state taxation before the Supreme Court.”

All good news for the integrity of the Ohio CAT.

#### Cities to Sue Over Centralized Collections

A coalition of cities have sued over the provision in the state budget allowing businesses to file municipal income tax returns with the state and pay local taxes to the state who would then distribute that money back to municipalities. The provisions which have been long sought by sectors of the business community are seen as a way to reduce cost and time for companies to meet local income tax obligations and make Ohio a more attractive place to operate a business. Municipalities claim this attacks their home rule powers in the state constitution that guarantees cities the power to govern themselves. The case was filed in Franklin County.

#### Tax Dept. Accepts OMA Request to Improve Mfg. Sales/Use Exemption

This week the Ohio Department of Taxation (ODT) released its latest draft of the Manufacturing Sales and Use Exemption rule review.

Reacting to the previous draft, the OMA working group had advocated for removing this language (4th paragraph, division (B)(1)): “However, the maintain (sic) materials in the same state or form as they are received or measuring raw materials to verify quantities received, does not constitute commitment,” thus arguing for a complete definition of tax exempt materials committed to the manufacturing process.

Responding to the OMA’s comments, ODT agreed to remove the objectionable provision from the draft rule. Keeping that language out of the rule would be a major win for manufacturers.

#### Ohio Announces New Tax Amnesty Program

This week the Ohio Department of Taxation (ODT) announced that it will offer a limited-time tax amnesty program beginning January 1, 2018 and ending February 15.

The program is available to eligible taxpayers – both individuals and businesses – with unreported or under-reported tax debts. During the six week amnesty period, taxpayers who fully pay qualifying tax delinquencies will owe no penalties and only half of the interest normally charged.

To help Ohioans determine their eligibility and learn more about the Ohio Tax Amnesty, ODT is launching a statewide awareness campaign.

#### Centralized Municipal Tax Filing Opens

The Ohio Department of Taxation has opened registration for businesses to ‘opt-in’ for centralized filing and state administration of the municipal net profit tax for the 2018 tax year.

Taxpayers can register at the department’s website either electronically or by filling out and submitting a paper registration form (Form MNP-R).

Businesses that opt-in will have the advantage of filing one municipal net profit tax return that encompasses every municipality in which they are required by law to report. The Department of Taxation will process all the centrally filed returns and distribute tax payments to the appropriate municipalities.

Businesses that operate as a sole proprietor or single-member LLC are not eligible to file with the department, and should continue their current method of filing.

#### Testa Testifies at Tax Expenditure Review Committee

The General Assembly's Tax Expenditure Review Committee held its first meeting in October. The panel was formed through legislation passed in the 131st General Assembly.

Senator Scott Oelslager (R-North Canton) was selected chairman. Other members of the review committee are Senators John Eklund (R-Munson Township) and Vernon Sykes (D-Akron), and Reps. Tim Schaffer (R-Lancaster), Gary Scherer (R-Circleville), and John Rogers (D-Mentor-on-the-Lake).

Tax Commissioner Joe Testa testified in front of the committee at the initial hearing. He presented a broad overview of Ohio's tax expenditures.



September 29, 2017

**VIA Electronic Mail**

Ohio Department of Taxation  
ATTN: Laura Stanley  
30 E. Broad St.  
Columbus, OH 43216

Re: **OMA Follow Up Comments to Manufacturing Rule; OAC 5703-9-21: Ohio Department of Taxation Draft Revisions**

Dear Ms. Stanley:

As a follow-up to the meeting held at the Ohio Department of Taxation (ODT) on August 30, 2017, The Ohio Manufacturers' Association (OMA) is hereby providing ODT with written comments and suggested rule language to Ohio's Manufacturing Sales and Use tax rule 5703-9-21.

The OMA is dedicated to protecting and growing manufacturing in Ohio. The OMA represents over 1,400 manufacturers throughout Ohio. The OMA supports an equitable and transparent state tax system that encourages investment and growth.

The OMA appreciates the transparent process and the opportunities to offer additional comments to the manufacturing sales and use tax exemption rules OAC 5703-9-21. These rules are important and valuable to Ohio's manufacturing competitiveness.

The OMA remains concerned with certain provisions included the draft proposal. OMA requests that the following language, added by ODT to the fourth paragraph of division (B)(1) of the rule, be deleted: "However, the maintain (sic) materials in the same state or form as they are received or measuring raw materials to verify quantities received, does not constitute commitment."

There are three reasons for this request. First, the prior sentence in the rule states that commitment occurs when the materials have been mixed, measured, blended, heated, cleaned, or otherwise treated or prepared for the manufacturing process. This seems to be inconsistent with then saying that heating, cooling, or agitating materials in order to maintain the condition of the materials is taxable.

Second, this language means that if a manufacturer purchases items separately and combines them, and then heats or agitates them to preserve them, the materials are committed to manufacturing and the items are exempt; but if it purchases the

ingredients already mixed, and still has to heat or agitate them to maintain them, then it has not committed the materials to manufacturing and the items are taxable. This is inconsistent, illogical and isn't good policy.

Finally, no manufacturer is going to the expense to heat or agitate materials that it is not going to use. Those materials are indeed committed to the manufacturing process.

Thank you for the opportunity to comment on this draft to Rule 5703-9-21. We look forward to working with ODT as the rule review moves forward. If ODT has any questions regarding the foregoing, please do not hesitate to contact me at [rbrundrett@ohiomfg.com](mailto:rbrundrett@ohiomfg.com) or (614) 629-6814 or OMA's tax counsel, Mark Engel, of Bricker & Eckler LLP at (513) 870-6565.

Sincerely,



Rob Brundrett  
Director, Public Policy Services

CC: Matt Chafin



Chairman Oelslager and members of the Tax Expenditure Review Committee, my name is Joe Testa, Tax Commissioner for Ohio.

Thank you for the opportunity to provide testimony today on Ohio's tax expenditures. Reviewing Ohio's existing tax expenditures, now totaling over \$9 billion in forgone annual revenue, is a component of sound tax policy. As you are aware, some of Ohio's 100-plus tax expenditures have been on the books for decades and are seldom subject to formal review. Establishing a committee structure to regularly review tax expenditures will help ensure that the policy objectives of these tax expenditures are being fulfilled.

Today I plan to provide an overview of Ohio's Tax Expenditure Report (TER) and discuss the mechanics of tax expenditures, the criteria used to determine whether a tax provision constitutes a tax expenditure, and the sources of data used in the estimate of tax expenditures.

### **Overview**

The concept of tax expenditures was first articulated in 1967 by the U.S. Department of the Treasury. In the broadest sense, the tax expenditure concept is uniform and constant: a tax expenditure represents a legislated variation from—more commonly a reduction to—a standardized tax base. The executive and legislative branches of the U.S. government, most state governments, and many foreign governments utilize their own versions and definitions of tax expenditures.

Ohio law defines a tax expenditure to mean a tax provision in the Ohio Revised Code (ORC) that exempts, either in whole or in part, certain persons, income, goods, services, or property from the effect of taxes established in the ORC, including, but not limited to, tax deductions, exemptions, deferrals, exclusions, allowances, credits, reimbursements, and preferential tax rates.

Tax expenditures take the form of tax benefits for certain taxpayers or activities and result in forgone revenue to the state. Unlike direct budgetary expenditures, tax expenditures may remain in law indefinitely without a pre-determined termination date. Section 5703.48 of the Ohio Revised Code requires the Tax Commissioner to produce a tax expenditure report as an appendix to the biennial budget. The report gives a description of each tax expenditure as well

as an estimate of revenue foregone or unavailable to the General Revenue Fund. It is available online at the Office of Budget and Management and Ohio Department of Taxation websites.

### **Criteria**

The determining factor in identifying a tax provision as a tax expenditure is whether it exists as an exemption, credit, deduction, etc. in the Ohio Revised Code. The item must meet the following criteria to be considered a tax expenditure:

- The item would have been otherwise taxable had there not been a legislatively enacted exemption or exclusion.
- The item must reduce or have the potential to reduce one of the state's General Revenue Fund taxes. For example, the foregone motor fuel tax for gasoline used in off-road vehicles is not a tax expenditure because it does not impact the General Revenue Fund.
- The item is not subject to an alternative tax. Persons or activities subject to an alternative tax are not considered a tax expenditure. For example, insurance companies are excluded from the commercial activity tax under Ohio statute, but this exclusion is not considered a tax expenditure because insurance companies are subject to the insurance premium taxes.
- The item is exempt or excluded as a result of state legislative action. Anything that can only be changed by a state constitutional amendment, a federal law change, or a federal constitutional amendment is not considered a tax expenditure in this report. For example, the foregone sales tax related to take-out food is not a tax expenditure because it can only be changed by an amendment to the state constitution.

### **The Tax Expenditure Report**

The Ohio Tax Commissioner has been required to produce a TER every biennium since 1987. The TER provides a description of each tax expenditure and an estimate of the dollars unavailable to the GRF because of the tax expenditure for that two-year period. It compares those foregone revenues to the amount of revenues that were unavailable to the GRF in the immediately preceding biennium.

For the Fiscal Year 2018-2019 biennium, estimates were produced for 129 tax expenditures, spread across nine different taxes. The chart on the following page is a breakdown on the number of expenditures and estimated revenue forgone by tax type.



(Dollar Amounts in Millions)

Tax Type	Number of Tax Expenditures	FY 2018 Impact	FY 2019 Impact
Sales & Use Tax	56	\$5,988.1	\$6,197.4
Individual Income Tax	37	\$2,311.3	\$2,397.7
Commercial Activity Tax	20	\$670.8	\$694.5
Public Utility Excise Tax	3	\$98.0	\$101.4
Insurance Premium Taxes	3	\$22.1	\$22.1
Cigarette and OTP Taxes	2	\$17.5	\$17.3
Financial Institutions Tax	3	\$5.0	\$6.9
Alcoholic Beverage Tax	4	\$2.6	\$2.6
Kilowatt Hour Tax	1	Minimal	Minimal
<b>Grand Total All Taxes:</b>	<b>129</b>	<b>\$9,115.4</b>	<b>\$9,439.9</b>

-Note: "Minimal" indicates that the amount of forgone revenue is under \$1 million.

-Note: Certain persons or activities excluded from taxes are taxed under alternative taxes which have separate tax expenditures.

I will add that since the publication of the FY18-19 TER, two additional tax expenditures were enacted as part of House Bill 49: a kilowatt hour tax exemption for electricity consumed in the production of chlorine and a sales tax exemption for music purchases and delivery from digital jukeboxes. Both exemptions are estimated to produce minimal revenue losses.

It is important to note that because there may be unaccounted for overlap between expenditures, the TER figures are not intended to be relied upon as an estimate of the revenue gain if all tax expenditures were repealed simultaneously. Each tax expenditure is estimated assuming all other expenditures remain in law.

#### Data Sources

The Department estimates each expenditure statically using the most reliable data available. Any estimate's accuracy depends upon the reliability of the data. Generally speaking, the Department considers internal data to be more reliable than external data; however, internal data is not always available for the estimation of certain tax expenditures. Accordingly, the Department devised data reference codes for individual expenditures:

- Data Source Code A is internal departmental data,
- Data Source Code B is data produced by governmental agencies other than the Department, and
- Data Source Code C is all other data including data from business information service providers, academic research, and non-profit organizations.
- Some estimates may be based on a mixture of data sources.

For the most recent TER, 36 tax expenditure estimates relied on Data Source Code A, 24 relied on Data Source Code B, 10 were Data Source Code C, and 59 were combinations of two or more

data sources. One point worth considering with tax expenditure legislation is data reporting. When taxpayers are required to quantify and report the tax benefit to the Department, the higher the confidence will be in the reliability of the related estimates. For example, the estimate for the medical savings account deduction is developed solely from the amounts reported on Line 33 of Ohio Schedule A, which is filed along with the Ohio IT 1040.

### **Conclusion**

Chairman Oelslager and members of the Tax Expenditure Review Committee, I hope this brief review of the Tax Expenditure Report is of value to you. I again would like to thank you for the invitation to discuss this key area of tax policy. I, along with staff from ODT's Tax Analysis Division, would be happy to take your questions.



## **Creating an Ohio Manufacturing Investment Tax Credit**

### **Background**

As of the most recently available data (2015), Ohio manufacturing is responsible for 18% - \$108 billion – of the state's Gross Domestic Product; this is greater than the contribution of any other Ohio industry sector. For comparison, the next most productive sector is government, which contributes \$67.75 billion to GDP. Manufacturing is essential to Ohio's economy.

In the competitive domestic and global economies, every public policy decision that affects Ohio's business climate affects Ohio's manufacturing competitiveness. In turn, Ohio's manufacturing competitiveness determines the ability of the state to grow its economy and create jobs.

Ohio manufacturers require public policies that attract investment and protect the state's manufacturing legacy and advantage. These policies apply to a wide variety of issues that shape the business environment within which manufacturers operate.

### **Competition for Manufacturing Investment**

Manufacturing is capital intensive. Manufacturers must continually innovate and make investments to compete in a global market. These investments include facilities, equipment, technology and materials.

Other states and countries continually try to lure Ohio manufacturers out of state with a mixture of credits and incentives. In order to protect and grow Ohio's foundational manufacturing industry, a state strategy to support the capital projects of manufacturers has much merit.

### **What can Ohio do to be more Competitive?**

Introduction of a Manufacturing Investment Tax Credit which uses capital expenditures as the principle criteria as opposed to jobs created, would create significant economic benefit.

Productivity gains, which keep Ohio manufacturers competitive, are driven by capital investment in technology and equipment. Such investment is necessary for Ohio manufacturers to remain competitive and policies which encourage the investment should be implemented.

A nonrefundable tax credit could be calculated as a credit based on capital investment favoring manufacturing investment. The credit would be used to offset, withholding, sales or use taxes.

It is not that job creation is unimportant; quite the contrary. However, due to innovation in technology, many fruitful capital investments advance the competitiveness of Ohio manufacturers without necessarily or significantly impacting the number of jobs. What we're saying is: creating incentives for manufacturers to make the heavy capital investments that contribute to their companies' future is an investment in manufacturing growth in and of itself. Without which, current and future jobs are potentially at risk.

### **Contact:**

Rob Brundrett  
Director, Public Policy Services  
[rbrundrett@ohiomfg.com](mailto:rbrundrett@ohiomfg.com)  
(614) 629-6814



## Manufacturing Investment Tax Credit

### Background:

According to the most recent available data (2015), Ohio manufacturing is responsible for 18%, - \$108 billion – of Ohio's Gross Domestic product. This is by far the largest economic segment in the state. Ohio manufacturers continually invest in new technology in order to maintain competitiveness. Often, this investment does not result in increased employment. Nevertheless, it is essential in order for Ohio's manufacturers to remain a competitive force in today's global market.

Many of Ohio's economic development efforts are directed at attracting new business, or in job creation. While these policies are important, they ignore an important segment of manufacturing: Those existing businesses, many of them small, continue to drive Ohio's economy. Ohio needs policies that encourages those businesses and assists them in driving investment to remain competitive.

### Proposal:

The proposed manufacturing investment credit is designed to assist Ohio manufacturers, especially smaller entities that may not qualify for other existing programs such as the jobs creation or retention tax credits, as they make investment in new and more efficient technologies. Highlights of the credit include:

- Investment is measured over a two-year period (the "investment period") in new manufacturing machinery and equipment
- Amount qualifying for the credit is the amount that exceeds five percent of the aggregate cost of existing machinery and equipment at the location where the investment is made
- New manufacturing machinery and equipment must be installed at a single location
- The credit is equal to 20 percent, or 15 percent, of the amount invested, depending on the unemployment rate of the county in which the investment is made
- There is a \$5 mm cap on the amount of the credit for any single project
- The credit is claimed during the two calendar years following the investment period
- The credit may be claimed against sales tax, use tax, or withholding tax, or any combination of the three
- The credit is not refundable

It is time to reward those persons who have persevered through adversity and who continue to invest in Ohio manufacturing. This credit does that.

**(A)** As used in this section:

**(1)** "Affiliated group" means two or more persons related in such a way that one person owns or controls the business operations of another member of the group.

**(2)** "Cost" means cost as capitalized on the books of the person acquiring the property. If the property is leased, "cost" means the actual amount of any lease payments made during the credit period. "Cost" does not include so much of the basis of the property that is determined by reference to the basis of other property held at any time by the person acquiring the property.

**(3)** "Credit period" means the two consecutive calendar years ending immediately prior to January 1 of the calendar year in which a manufacturer first claims the credit provided by this section. A calendar year included in any credit period may not be included in another credit period for the same location.

**(4)** "Manufacturer" means a person who purchases, receives, or holds personal property for the purpose of adding to its value by manufacturing, refining, rectifying or combining different materials with a view of making a gain or profit by doing so.

**(5)** "Manufacturing machinery or equipment" means machinery and equipment, and tools and implements, including any associated patterns, jigs, dies, drawings, and business fixtures, used at a manufacturing facility by a manufacturer, and includes any such property leased to the manufacturer. "Manufacturing machinery or equipment" also includes machinery or equipment used by a manufacturer for research and development purposes.

**(5)** "New manufacturing machinery or equipment" means manufacturing machinery or equipment, the original use of which commences in this state with a manufacturer.

**(7)** "Purchase" means any acquisition, whether by lease or otherwise, of manufacturing machinery or equipment for a consideration, but only if

**(a)** the manufacturing machinery or equipment is not acquired by one member of a controlled group from another member of the same controlled group; and

**(b)** the basis of the manufacturing machinery or equipment of the person acquiring it is not determined in whole or in part by reference to the adjusted basis of such property of the person from whom it is acquired.

**(B)** A manufacturer that purchases new manufacturing machinery or equipment that the manufacturer locates in this state and uses as a manufacturer may claim a non-refundable credit against the following:

**(1)** Taxes withheld from the wages of employees and to be paid to this state pursuant to sections 5747.06 and 5747.07 of the Revised Code;

**(2)** Taxes collected from consumers, or otherwise owed by the manufacturer, and to be paid to this state pursuant to Chapter 5739 of the Revised Code; or

**(3)** Taxes to be paid to this state by the manufacturer pursuant to Chapter 5741 of the Revised Code.

The credit may be applied against more than one of the taxes set forth in this division, but the amount of any portion of the credit claimed against any one of the taxes described in this division shall not be claimed against any of the other taxes described in this division, or for any additional reporting period.

**(C)** The credit is available only if both of the following conditions are met:

**(1)** The purchases are made during the credit period; and

**(2)** In the case of such new manufacturing machinery or equipment purchased by the manufacturer, the cumulative cost of the new machinery or equipment for a single location, when added to the cumulative cost of any other such manufacturing machinery or equipment purchased by other members of an affiliated group of persons of which the manufacturer is a member, equals or exceeds five per cent of the aggregate cost of all tangible personal property located at the location where the purchases are to be installed at the close of the manufacturer's calendar year that ends the credit period.

A manufacturer may qualify for and claim a separate credit during a single credit period for the separate purchase of new manufacturing machinery or equipment at more than one location.

**(D)** The amount of the credit equals the following percentage of the cost of the new manufacturing machinery or equipment purchased during the credit period and located and used in this state by the manufacturer:

**(1)** twenty per cent, if the average rate of unemployment in the county in which the investment is made during the credit period is equal to or greater than at least 125 percent of the average rate of unemployment in the state of Ohio for the same period;

**(2)** fifteen per cent in all other cases.

However, the aggregate credit allowed to any manufacturer, or if the manufacturer is a member of an affiliated group of persons, to the affiliated group, shall not exceed five million dollars.

**(E)** The credit shall be claimed during the two calendar years immediately following the credit period. The credit may be claimed against such of the taxes provided in division **(B)** of this section and for any tax reporting period during the two calendar years as the taxpayer may determine, provided that the amount of the credit available to be claimed against any of the taxes shall be reduced by the amount of the credit claimed with respect to any other tax, or for any tax reporting period.

## Tax

### **Manufacturers Applaud House Passage of Historic Tax Reform Bill** November 17, 2017

The Ohio Manufacturers' Association (OMA) and the National Association of Manufacturers (NAM) praised the passage of H.R. 1, the Tax Cuts and Jobs Act, by the U.S. House of Representatives today.

In a **news release**, OMA president Eric Burkland said, "This is great news for Ohio's manufacturing workers. The passage of this bill puts us on track for bold tax reform legislation that will empower manufacturers across Ohio and the U.S. Manufacturers large and small know this reform would mean more investment in America and more men and women making things in America.

"Ohio manufacturers are grateful to the members of the House who voted for tax reform. And when the Senate takes up its tax reform bill in the coming days, we urge Senators Brown and Portman to stand with manufacturers as well. The current tax system is hurting workers in Ohio. Our elected leaders need to seize this opportunity, get tax reform across the finish line, send it to President Donald Trump's desk, and grow the American economy."

Here are the members of Congress from Ohio who voted to improve the lives of manufacturing workers and all Americans: Steve Chabot (R-OH-01); Brad Wenstrup (R-OH-02); Jim D. Jordan (R-OH-04); Robert E. Latta (R-OH-05); Bill Johnson (R-OH-06); Bob Gibbs (R-OH-07); Warren Davidson (R-OH-08); Michael R. Turner (R-OH-10); Patrick J. Tiberi (R-OH-12); David Joyce (R-OH-14); Steve Stivers (R-OH-15); and Jim B. Renacci (R-OH-16). 11/16/2017

### **Comparing and Contrasting the House and Senate Tax Bills** November 17, 2017

According to OMA Connections Partner, Clark Schaefer Hackett, many of the House and Senate provisions of their tax reform packages are similar. For example, both plans would repeal the alternative minimum tax and retain the charitable contribution deduction. However, there are a number of key differences. Here's **a look at some of the most significant for individuals and businesses**. 11/15/2017

### **Ohio Announces New Tax Amnesty Program** November 17, 2017

This week the Ohio Department of Taxation (ODT) **announced** that it will offer a limited-time tax

amnesty program beginning January 1, 2018 and ending February 15.

The program is available to eligible taxpayers – both individuals and businesses – with unreported or under-reported tax debts. During the six week amnesty period, taxpayers who fully pay qualifying tax delinquencies will owe no penalties and only half of the interest normally charged.

To help Ohioans determine their eligibility and learn more about the Ohio Tax Amnesty, ODT is launching a statewide awareness campaign and has **set up this website**. 11/16/2017

### **Tax Dept. Accepts OMA Request to Improve Mfg. Sales/Use Exemption** November 10, 2017

This week the Ohio Department of Taxation (ODT) **released its latest draft** of the Manufacturing Sales and Use Exemption rule review.

Reacting to the previous draft, the OMA working group **had advocated for** removing this language (4th paragraph, division (B)(1)): "However, the maintain (sic) materials in the same state or form as they are received or measuring raw materials to verify quantities received, does not constitute commitment," thus arguing for a complete definition of tax exempt materials committed to the manufacturing process.

Responding to the OMA's comments, ODT agreed to remove the objectionable provision from the draft rule. Keeping that language out of the rule would be a major win for manufacturers. If you and/or your tax expert have comments on this latest draft, or the rule review in general, contact OMA's **Rob Brundrett**. 11/9/2017

### **Subject Matter Experts Summarize House Tax Reform Bill** November 10, 2017

OMA Connections Partners, Clark Schaefer Hackett and GBQ Partners have taken a look at the version of the sweeping bill to reform the tax code that was released by the House Committee on Ways and Means on November 2, the Tax Cuts and Jobs Act, H.R. 1.

It has been described by the chairman of the House Ways and Means Committee as a starting point for negotiations.

President Trump and GOP lawmakers would like to pass tax reform sooner rather than later. However, before that can happen, a bill would have to be voted

on by the full House and the Senate, which is working on its own tax plan.

Here's a **brief rundown from Clark Schaefer Hackett** of some of the individual and business provisions in the 429-page bill. Generally, the changes would go into effect after December 31, 2017, but there are exceptions.

Here is the **GBQ summary of the bill**.

And here is a full **section-by-section summary** of the bill as published by the House Committee on Ways and Means. *11/6/2017*

### **New IRS Directive Provides Safe Harbor for R&D Tax Credit** **November 10, 2017**

OMA Connections Partner, Tax Credits Group (TCG), reports there's a new favorable change in the area of the R&D tax credit.

According to TCG: "Issued on September 11, 2017, IRS Directive, LB&I Memorandum No: LB&I-04-0917-005, creates a new safe harbor whereby the IRS will accept as sufficient evidence of Qualified Research Expenses ("QRE") the adjusted ASC 730 financial statement R&D expensed for the credit year.

"The purpose for creating this safe harbor is to address the significant burden that taxpayers and the IRS face in determining the correct amount of R&D credits. The Directive is intended to relieve some LB&I audit resources that have historically been devoted to auditing this area, and to create an efficient manner for determining QRE for applicable taxpayers."

Read more **from TCG here**. *11/3/2017*

### **Manufacturers Called to Action on Tax Reform** **October 27, 2017**

David Farr, Chairman and CEO, Emerson, Chair of the Board, National Association of Manufacturers (NAM) asks all manufacturers to rally and help push for tax reform. Here are three things to do:

1. Share your story of what tax reform would mean to your workers and your company—and ask your team to do the same. We have made it easy for you and your employees: just **answer these key questions here**. The NAM can then use those stories to show lawmakers why their

support for reform means bigger paychecks, more jobs and more manufacturing in the United States.

2. Engage manufacturing workers. As manufacturing leaders, we need to ensure our employees understand why it's important that we fix our outdated tax code, and this **messaging can help you**. We need to articulate the impact that tax reform will have on manufacturers and their families.
3. We need manufacturing employees to call on their members of Congress to act on tax reform without delay. Please encourage the members of your team to reach out to their elected officials by sending them **this link to take action** on tax reform. When speaking with your employees, ask them to text "ActOnTax" (all one word, no spaces) to 52886 to send a message to their members of Congress to act on tax reform.

As Chairman Farr said in **his address** to the Economic Club of Minnesota earlier this month, "Securing the future of modern manufacturing means having a tax code that lives up to the realities of the modern world. I hope you are willing to speak out and take a stand." *10/23/2017*

### **RSM Offers Year-End Tax Planning Guide** **October 27, 2017**

OMA Connections Partner, RSM, has prepared a **year-end tax planning guide** that reflects the tax considerations and developments that it believes may create risk or opportunity for businesses in 2017 and beyond.

RSM indicates the most likely candidates for major tax changes that might be enacted in 2017 or 2018 include:

1. A middle-class tax break, possibly temporary
2. Reduced tax rates for repatriated foreign earnings



3. A possible move towards a territorial tax system for foreign corporate subsidiaries engaged in foreign business activities
4. A corporate rate cut
5. A rate cut for pass-through businesses that would be crafted to exclude personal services income
6. Possible limitations on state and local tax deductions and business interest deductions to help pay for the rate cuts
7. Changes favorable to capital cost recovery, but not as generous as full expensing for all depreciable assets.

Read [more from RSM here](#). 10/25/2017

### **Centralized Municipal Tax Filing Opens** **October 20, 2017**

The Ohio Department of Taxation has opened registration for businesses to 'opt-in' for centralized filing and state administration of the municipal net profit tax for the 2018 tax year.

Taxpayers can register at the department's [website](#) either electronically or by filling out and submitting a paper registration form (**Form MNP-R**).

Businesses that opt-in will have the advantage of filing one municipal net profit tax return that encompasses every municipality in which they are required by law to report. The Department of Taxation will process all the centrally filed returns and distribute tax payments to the appropriate municipalities.

Businesses that operate as a sole proprietor or single-member LLC are not eligible to file with the department, and should continue their current method of filing. 10/19/2017

### **Testa Testifies at Tax Expenditure Review Committee** **October 20, 2017**

This week the General Assembly's Tax Expenditure Review Committee held its first meeting. The panel was formed through legislation passed in the 131st General Assembly.

Senator Scott Oelslager (R-North Canton) was selected chairman. Other members of the review

committee are Senators John Eklund (R-Munson Township) and Vernon Sykes (D-Akron), and Reps. Tim Schaffer (R-Lancaster), Gary Scherer (R-Circleville), and John Rogers (D-Mentor-on-the-Lake).

Tax Commissioner Joe Testa **testified** in front of the committee at the initial hearing. He presented a broad overview of Ohio's tax expenditures. 10/19/2017

### **OMA Tax Counsel to Retire** **October 13, 2017**



Long time OMA tax counsel Mark Engel, Partner, Bricker & Eckler, participated in his last meeting of the OMA Tax Committee this week. He'll retire from Bricker at the end of the year.

OMA's Rob Brundrett, Director, Public Policy Services, who staffs the committee said, "We are truly going to miss Mark. He is well known throughout the state as one of Ohio's preeminent tax attorneys. The work he did for Ohio's manufacturers over the years included some of the most impactful tax reforms this state has ever seen, including the elimination of the tangible personal property tax. Mark's style, knowledge, and wit have made his testimony must-see events at the Statehouse. We certainly wish him well on his retirement." 10/12/2017

*Pictured: OMA's Rob Brundrett presents a token of appreciation to OMA tax counsel, Mark Engel of Bricker & Eckler.*

### **Understanding the Impact of Proposed Corporate Tax Reform** **October 13, 2017**

OMA Connections Partner, Clark Schaefer Hackett (CSH), posted on the Trump administration's "Unified Framework for Fixing Our Broken Tax Code," which includes a framework for corporate tax reform.

"Many businesses and their owners are wondering how corporate tax reform could affect them. The

framework is a bit sparse on details, but let's shed some light on those it does include."

**Read the post from CSH.** *10/12/2017*

**General Assembly Releases 2020 Tax Policy Study Commission Report**  
**October 6, 2017**

This week the 2020 Tax Policy Study Commission issued its final **report**. The 323 page report consisted largely of public testimony submitted over the course of the commission's hearings.

The main recommendation? That Ohio continue to study Ohio's tax system. The report stated that a "more thorough review is needed and is required as part of the permanent Tax Expenditure Review Committee."

The OMA participated in the hearings and provided testimony.

The OMA Tax Committee will look further into the report findings, among other topics, when it meets on October 11. **Register here.** *10/5/2017*

**GOP Debuts "Fair and Simple" Tax Reform Plan**  
**September 29, 2017**

This week Republican House and Senate leaders unveiled their new tax reform plan. The plan, which can be **viewed at this new website**, has four principles:

1. Make the tax code simple, fair and easy to understand.
2. Give American workers a pay raise by allowing them to keep more of their hard-earned paychecks.
3. Make America the jobs magnet of the world by leveling the playing field for American businesses and workers.
4. Bring back trillions of dollars that are currently kept offshore to reinvest in the American economy.

Tax reform has been and is a major policy goal for Ohio manufacturers. *9/28/2017*

**"GOP's Proposed Tax Reform Plan Significantly Changes The Rules"**  
**September 29, 2017**

OMA Connections Partner, Clark Schaefer Hackett (CSH), breaks down the nine-page "Unified Framework for Fixing Our Broken Tax Code."

CSH says the framework is "intended to serve as a template for the congressional committees to draft legislation to cut tax rates, simplify the tax code and provide a more competitive environment for businesses. It addresses tax issues that affect both individuals and businesses."

Read a **summary of changes from CSH.** *9/28/2017*

**Impact of Tax Reform on Your Business**  
**September 22, 2017**

As tax reform moves through the legislative process, many taxpayers want to know how tax reform could affect their business.

To help answer this question, OMA Connections Partner, RSM, has created a business tax reform estimator tool based on current proposals.

**RSM's tax reform liability estimator**

RSM says: "The tax reform process is filled with uncertainty, and will continue to be, until final legislation is signed by the president. In light of this uncertainty, it is critical for you to monitor changes in the proposals for the possible effects on your business." *9/21/2017*

**Ohio Business Gateway Modernization Project Update**  
**September 22, 2017**

The Gateway Modernization Project is not only focused on transforming the way transactions are completed in the Ohio Business Gateway, but also implementing new features and functional enhancements to improve the Gateway's user experience, reliability and efficiency.

Here **is information** about the major improvements coming with the modernized Gateway. *9/21/2017*

**Repeal the Health Insurance Tax!**  
**September 15, 2017**

The National Association of Manufacturers is engaging in an effort to permanently repeal the health insurance tax. The health insurance tax is a tax on fully insured health plans that, unless repealed, will go into effect in 2018.

Rising health care costs stand in the way of increasing wages, hiring new employees, purchasing new equipment and making other needed investments that keep manufacturing competitive.

One driver of these cost increases is the health insurance tax, a multi-billion dollar tax on fully insured health plans.

**Click here** to urge Congress to help manufacturers maintain a healthy workforce and continue doing right by their employees by eliminating the health insurance tax. *9/14/2017*

**Trump's Guiding Principles for Tax Reform**  
**September 8, 2017**

OMA Connections Partner, GBQ, provides a summary of the president's tax reform principles: "Last week, President Trump, in a speech delivered at a manufacturing company in Missouri, discussed the need for tax reform and broadly outlined his vision of an "America First" tax system. While no specifics were discussed, the president did reaffirm his desire for a 15% business/corporate tax rate. In addition, the president outlined four principles guiding his tax reform efforts."

Click here to **read more from GBQ**. *9/6/2017*

## Taxation Legislation

Prepared by: The Ohio Manufacturers' Association  
Report created on November 28, 2017

- HB11**      **INCORPORATING FEDERAL REVENUE CHANGES** (SCHERER G) To expressly incorporate changes in the Internal Revenue Code since February 14, 2016, into Ohio law.  
*Current Status:* 3/30/2017 - **SIGNED BY GOVERNOR**; eff. 3/30/2017  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-11>
- HB49**      **OPERATING BUDGET** (SMITH R) Creates FY 2018-2019 main operating budget.  
*Current Status:* 8/22/2017 - Consideration of Governor's Veto  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-49>
- HB61**      **TAX EXEMPTION-FEMININE PRODUCTS** (JOHNSON G, KELLY B) To exempt from sales tax the sale of tampons and other feminine hygiene products associated with menstruation.  
*Current Status:* 10/10/2017 - House Ways and Means, (Second Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-61>
- HB70**      **FUEL TAX TRANSPARENCY** (MERRIN D) To enact the "Fuel Tax Transparency Act" requiring stickers to be placed on retail service station pumps displaying the rates of federal and state taxes applicable to gasoline and diesel fuel.  
*Current Status:* 3/15/2017 - House Government Accountability and Oversight, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-70>
- HB86**      **MINIMUM WAGE INCREASE** (SMITH K, CRAIG H) To increase the state minimum wage to ten dollars and ten cents per hour beginning January 1, 2019.  
*Current Status:* 2/28/2017 - Referred to Committee House Economic Development, Commerce and Labor  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-86>
- HB89**      **AUGUST SALES TAX HOLIDAY** (PATTERSON J, KELLY B) To provide for a three-day sales tax "holiday" in August 2017 during which sales of clothing and school supplies are exempt from sales and use taxes.  
*Current Status:* 2/28/2017 - Referred to Committee House Ways and Means  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-89>
- HB104**      **TAX REFUND ON BAD DEBTS** (SCHAFFER T) To allow vendors to receive a refund of sales tax remitted for bad debts on private label credit accounts when the debt is charged off as uncollectible by the credit account lender.  
*Current Status:* 4/25/2017 - **REPORTED OUT**, House Financial Institutions, Housing and Urban Development, (Third Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-104>
- HB133**      **DISASTER RELIEF ACT** (RYAN S) To create the Disaster Relief Act to exempt out-of-state disaster businesses and qualifying out-of-state employees from certain taxes and laws with

respect to disaster work on critical infrastructure performed in this state during a declared disaster.

**Current Status:** 11/29/2017 - Senate Ways and Means, (First Hearing)

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-133>

**HB155 VEHICLE TRAINING TAX CREDIT (SPRAGUE R, HOWSE S)** To authorize a tax credit for expenses incurred by an employer to train a commercial vehicle operator.

**Current Status:** 5/16/2017 - House Ways and Means, (First Hearing)

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-155>

**HB162 TAX CREDIT-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:** 5/9/2017 - House Ways and Means, (First Hearing)

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-162>

**HB173 IN-HOME EMPLOYEES TAX CREDIT (LATOURETTE S, PATTON T)** To provide that compensation paid to certain home-based employees may be counted for purposes of an employer qualifying for and complying with the terms of a Job Creation Tax Credit.

**Current Status:** 5/9/2017 - House Ways and Means, (First Hearing)

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-173>

**HB177 TAX EXEMPTION-COMMUNITY GYMS (WEST T)** To exempt memberships to gyms or other recreational facilities operated by charitable organizations from sales and use taxation.

**Current Status:** 11/14/2017 - House Ways and Means, (Third Hearing)

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-177>

**HB185 POLITICAL CONTRIBUTIONS TAX CREDIT (HAMBLEY S)** To expand the scope of political contributions that qualify for the income tax credit for contributions to political campaigns to candidates for any state, county, municipal, or district office.

**Current Status:** 6/6/2017 - House Ways and Means, (First Hearing)

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-185>

**HB216 USED VEHICLE TRADE-IN CREDIT (HAMBLEY S, BRINKMAN T)** To authorize a sales and use tax trade-in credit for purchases of used motor vehicles from a licensed dealer.

**Current Status:** 6/6/2017 - House Ways and Means, (Second Hearing)

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-216>

**HB243 FIREWOOD 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:** 6/20/2017 - House Ways and Means, (First Hearing)

*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-243>

- HB262**      **INDEPENDENT BUDGET PROCESS** (BUTLER, JR. J, ROMANCHUK M) To provide for the preparation of a state biennial budget independent of that submitted by the Governor and to authorize the Legislative Service Commission, upon the request of the Speaker of the House of Representatives or the President of the Senate, to arrange for an independent actuarial review of a proposed bill, specified analyses of economic policy initiatives and state benchmarking data, and a study of the state's long-range financial outlook.  
*Current Status:* 6/20/2017 - Referred to Committee House Government Accountability and Oversight  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-262>
- HB314**      **LAW ENFORCEMENT TAX CREDIT** (SCHAFFER T) To allow an income tax credit for law enforcement officials who purchase safety or protective items to be used in the course of official law enforcement activities.  
*Current Status:* 9/12/2017 - Referred to Committee House State and Local Government  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-314>
- HB320**      **LONG-RANGE FINANCIAL OUTLOOK COUNCIL** (HAGAN C, ROEGNER K) To create the Long-range Financial Outlook Council for the purpose of informing the public and the General Assembly about the financial status of the state by studying financial and other conditions and issuing an annual long-range financial outlook report.  
*Current Status:* 11/28/2017 - House Financial Institutions, Housing and Urban Development, (Second Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-320>
- HB337**      **TEXTBOOK SALES TAX EXEMPTION** (DUFFEY M) To exempt from sales and use tax textbooks purchased by post-secondary students.  
*Current Status:* 10/31/2017 - House Ways and Means, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-337>
- HB342**      **LOCAL TAX ISSUES-ELECTION DATES** (MERRIN D) To permit local tax-related proposals to appear only on general and primary election ballots and not on an August special election ballot and to modify the information conveyed in election notices and ballot language for property tax levies.  
*Current Status:* 11/1/2017 - House Government Accountability and Oversight, (Second Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-342>
- HB351**      **NOAA AND PHS TAX EXEMPTION** (PERALES R, BUTLER, JR. J) To require municipal corporations to exempt from taxation the military pay of members of the commissioned corps of the National Oceanic and Atmospheric Administration and Public Health Service.  
*Current Status:* 11/14/2017 - House Ways and Means, (Second Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-351>

- HB361**      **PROPERTY TAX COMPLAINTS TIMEFRAME** (GREENSPAN D) To increase the time within which boards of revision must decide property tax complaints.  
*Current Status:* 11/29/2017 - House Government Accountability and Oversight, (Third Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-361>
- HB371**      **TAXES ON UNSOLD PROPERTY** (MERRIN D) To exempt from property taxation the increased value of land subdivided for residential development until construction commences or the land is sold.  
*Current Status:* 11/28/2017 - House Ways and Means, (Third Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-371>
- SB9**        **AUGUST TAX HOLIDAY** (BACON K) To provide for a three-day sales tax "holiday" in August 2017 during which sales of clothing and school supplies are exempt from sales and use taxes.  
*Current Status:* 6/13/2017 - **SIGNED BY GOVERNOR**; eff. 6/13/17  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-9>
- SB36**      **AGRICULTURAL COMPUTATION** (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 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.  
*Current Status:* 5/16/2017 - Referred to Committee House Ways and Means  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-36>
- SB65**      **ENERGY STAR TAX HOLIDAY** (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:* 3/22/2017 - Senate Ways and Means, (Second Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-65>
- SB114**     **CDL TRAINING TAX CREDIT** (HITE C) To authorize a tax credit for expenses incurred by an employer to train a commercial vehicle operator.  
*Current Status:* 5/3/2017 - Senate Ways and Means, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-114>
- SB123**     **PROPERTY TAX COMPLAINT PROCESS** (COLEY W) To limit the right to initiate most types of property tax complaints to the property owner and the county recorder of the county in which the property is located.  
*Current Status:* 6/14/2017 - Senate Ways and Means, (Second Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-123>



- SB131**      **EMPLOYEE COMPENSATION-TAX CREDITS** (DOLAN M) To provide that compensation paid to certain home-based employees may be counted for purposes of an employer qualifying for and complying with the terms of a Job Creation Tax Credit.  
*Current Status:* 6/6/2017 - Referred to Committee House Ways and Means  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-131>
- SB132**      **TAX CREDIT-FOREIGN TRADE** (DOLAN M, EKLUND J) 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 and renewable energy resources.  
*Current Status:* 4/26/2017 - Referred to Committee Senate Ways and Means  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-132>
- SB147**      **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:* 9/27/2017 - Senate Ways and Means, (Second Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-147>
- SB176**      **MUNICIPAL INCOME TAX RESTRICTIONS** (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:* 9/7/2017 - Referred to Committee Senate Ways and Means  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-176>
- SB187**      **DELINQUENT MUNICIPAL INCOME TAXES** (EKLUND J, WILSON S) To allow municipal corporations to charge delinquent taxpayers the costs of collecting municipal income taxes regardless of whether the costs are incurred before or after a judgment is entered against the taxpayer.  
*Current Status:* 11/7/2017 - Senate Finance, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-187>
- SB203**      **MUNICIPAL TAX RULE REINSTATEMENT** (DOLAN M) To reinstate the municipal income tax "throw-back rule" used in apportioning business income among municipalities.  
*Current Status:* 11/15/2017 - Referred to Committee Senate Finance  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-203>
- SB209**      **PROPERTY TAX EXEMPTIONS-TIF** (COLEY W, EKLUND J) To modify the conditions that determine the relative priority of property tax exemptions when a parcel subject to a tax increment financing arrangement concurrently qualifies for another exemption.  
*Current Status:* 10/25/2017 - Referred to Committee Senate Ways and Means  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-209>
- SB224**      **GOODS TAXATION-FOREIGN DELIVERY** (EKLUND J) To exempt from sales and use tax goods purchased by a foreign citizen or entity if the goods are in Ohio only temporarily for



package consolidation before being delivered to a foreign address, and to declare an emergency.

**Current Status:** 11/15/2017 - Referred to Committee Senate Finance

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-224>