



Government Affairs Committee Agenda
June 3, 2020

Welcome & Introductions

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

Luke Harms, Director of Government Relations, Whirlpool,
Corp., Committee Vice Chair

NAM *Making America* Festival in Ohio

Todd Shelton, National Association of Manufacturers

OMA Counsel's Report

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

Staff Reports

Ryan Augsburger, OMA Staff

Rob Brundrett, OMA Staff

John Seryak, PE, Runnerstone LLC, OMA Energy Engineer

Kim Bojko, Partner, Carpenter Lipps & Leland, OMA Energy
Counsel

Committee Members

Discussion Agenda

- HB606/SB308 Immunity / workers' comp floor amendment
- Review Ohio COVID response
- Ohioans scammed by energy policy
- Ballot issue signature collection litigation
- PTSD coverage under workers' comp
- OMA workforce opportunities
- Distracted Driving Legislation
- HB 380 construction contracts
- Rx costs debate
- 2020 legislative outlook
- 2020 political outlook

**2020 Government Affairs Committee
Calendar**

Meetings begin at 9:30 a.m.

Wednesday, August 26
Tuesday, November 10

Our Meeting Sponsor:



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OMA Government Affairs Committee

Name	Company	Location
Ann K. Aquillo	Scotts Miracle-Gro Company	Marysville, OH United States
Ryan R. Augsburg	The Ohio Manufacturers' Association	Columbus, OH United States
Dex Battista	Magna International	Troy, MI United States
Bruce Benedict	Production Tube Cutting	Dayton, OH United States
Kimberly W. Bojko	Carpenter Lipps & Leland LLP	Columbus, OH United States
Terry Boose	Norwalk Concrete Industries	Norwalk, OH United States
Ruth Bradley Weyland	Tyson Foods, Inc.	Springdale, AR United States
Don J. Brown	Cargill, Inc.	Minneapolis, MN United States
Rob Brundrett	The Ohio Manufacturers' Association	Columbus, OH United States
Brent Chaney	Vistra Energy	Irving, TX United States
Scott Corbitt	Anheuser-Busch Companies	Columbus, OH United States
Andrew P. Corsig	Pharmaceutical Research and Manufacturers of America (PhRMA)	Cincinnati, OH United States
Nicholas D'Angelo	Eaton	Cleveland, OH United States
Kevin DeWine	Crown Equipment Corporation C/o CBD Advisors	Beavercreek Township, OH United States
Steve Dimon	AMG Vanadium LLC C/o 21 Consulting, LLC	Columbus, OH United States
Dustin Dixon	SK Food Group	Groveport, OH United States
Tayte French Lutz	The French Oil Mill Machinery Company	Piqua, OH United States
Scott Frens	Fort Recovery Industries Inc.	Fort Recovery, OH United States
LaMont Friebel	Cooper Enterprises Inc.	Shelby, OH United States
Jason Gonzalez	DuPont	Wilmington, DE United States
Jay Goyal	Goyal Industries, Inc.	Mansfield, OH United States
Tim Greenwood	O-I - C/o Spengler Nathanson PLL	Toledo, OH United States
Luke M. Harms	Whirlpool Corporation	Washington, DC United States
Hayley Heath	Magna International	Troy, MI United States
Michael E. Heltzer	B A S F Corporation	Florham Park, NJ United States
Sonya Higginbotham	Worthington Industries, Inc.	Columbus, OH United States
Matthew F. Johnston	Worthington Industries, Inc.	Columbus, OH United States
LeeAnn Kagy	A To Z Portion Control Meats Inc.	Bluffton, OH United States
Kathryn Karbo	Koch Companies Public Sector, LLC	Washington, DC United States
Jamie Karl	The Ohio Manufacturers' Association	Columbus, OH United States
Ethan Karp	MAGNET	Cleveland, OH United States
Stephen B. Kittredge	Owens Corning	Washington, DC United States
Kelly Knight	S S P Fittings Corporation	
Todd Lacksonen	AstraZeneca Pharmaceuticals	Dublin, OH United States
Timothy Ling	Plaskolite	Columbus, OH United States
Jody Mason	Danone North America	Minster, OH United States
David Merritt	Danone North America	Minster, OH United States
Kevin Mueller	Rogue Fitness	Columbus, OH United States
Theresa Mullen	CliftonLarsonAllen, LLP	Canton, OH United States
Ramola Musante	The Sherwin-Williams Company	Washington, DC United States
Matthew B. O'Connor	Zaclon LLC	Cleveland, OH United States
Kevin Orr	Pfizer, Inc.	Dublin, OH United States
Leah Pappas Porner	Calfee, Halter & Griswold LLP	Columbus, OH United States
Mike Piglia	National Machine Co. dba NMG Aerospace	Stow, OH United States
Stephanie Pizzoferrato	Covestro LLC	Washington, DC United States
Rick Platt	Heath-Newark-Licking County Port Authority	Heath, OH United States
Mike Prentiss	The Procter & Gamble Company	Cincinnati, OH United States
Andrew Robreno	Ferrero U.S.A, Inc.	Washington, DC
Mark Romanchuk	P R Machine Works, Inc.	Mansfield, OH United States
Kathy Rothenbuhler	Standard Acquisition, LLC	Fremont, OH United States
Christine Schwartz	Honda North America, Inc.	Marysville, OH United States
Tadd Schwarz	RJS Corporation	Akron, OH United States
Alexandra Scully	Magna International	Troy, MI United States
Hugh Scott Seaholm	Universal Metal Products	Wickliffe, OH United States
Kenneth Seilkop	A G Tool & Die Company	Miamitown, OH United States
John Seryak, PE	Go Sustainable Energy, LLC	Columbus, OH United States
Jack Shaner	EnviroScience	Stow, OH United States

OMA Government Affairs Committee

Name	Company	Location
George Shardlow	Cargill, Inc.	Minneapolis, MN United States
Todd Shelton	National Association of Manufacturers	Lancaster, OH United States
Matthew Shurte	Lancaster Colony Corporation	Westerville, OH United States
Karen Sisson	3 M Company	Saint Paul, MN United States
Christopher N. Slagle	Bricker & Eckler LLP	Columbus, OH United States
Mike Smaha	O-I	Arlington, VA United States
Gretchen Spear	International Paper	Bloomington, MN United States
Rod Spencer	Kenworth Truck Company	Chillicothe, OH United States
Michael E. Stanek	Hunt Imaging LLC	Berea, OH United States
Duane Steelman	Zaclon LLC	Cleveland, OH United States
Samantha Summers	Whirlpool Corporation	Washington, DC United States
Ann Tumolo	PPG	Pittsburgh, PA United States
Matthew J. Walker	Republic Steel	Canton, OH United States
Raymond Wayne	Heritage Thermal Services	East Liverpool, OH United States
Matthew Wells	WestRock	Richmond, VA United States
Chad Wilson	Nationwide	Columbus, OH United States

Total Participants 73

Public Policy “Hot Topics” June 3, 2020

Overview

Public policy activity has been intense since the Government Affairs Committee met in March. COVID response has dominated everything. Other top issues include immunity for businesses, subsidies for power plants and electric distribution utilities, detrimental ballot reform, unemployment compensation, and workforce development.

COVID-19 Response

COVID-19 is a public health pandemic. Since March, state government officials have been exercising “ultimate authority” to restrict business activity in order to protect the public. With every state order, there has been a rush beforehand by the OMA staff and counsel to anticipate the order and shape it as favorably as possible for the manufacturing industry. Governor DeWine and Lt. Governor Husted have been attentive to OMA suggestions. After every order or new guidance there has been a rush by OMA staff and counsel to analyze and communicate it to the membership. At the same time, the OMA supported the Ohio Manufacturing Alliance to produce needed emergency protective equipment.

Legislative Branch Composition & Control

- Senate (Republicans control 24 – 9)
- House of Representatives (Republicans control 61 – 38)

Lawmakers defied the Governor’s stay-at-home order to return to the Statehouse. They have held numerous hearings and sessions on bills and resolutions to a near empty gallery as Ohioans are distracted from COVID. They are expected to be in session through June.

2020 Presidential Politics

The race has been on. How has it manifest in Ohio? Some in the Republican House seem set to challenge the Governor and his cabinet in their handling of the COVID-19 response. Even wearing a mask inside the statehouse has taken on a political connotation.

Legislative Priorities

State government finances are forecast to take a \$2.5 billion hit for the biennium that ends June 30, 2021. As a result the General Assembly is expected to deliberate and approve a corrective budget bill, slashing spending by state agencies. A capital bill to fund public construction projects using bonded money has garnered more controversy with some legislators proposing to revisit previously approved funds, such as \$20 million allocated to the Columbus Crew soccer stadium.

Immunity Legislation

As the federal government and other states have been approving legal reforms to protect businesses from accidental exposure of employees or customers, state legislative leaders announced in early April that immunity would be a top short-term priority. For the past five weeks, intense negotiations have been ongoing. The OMA works via the Ohio Alliance for Civil Justice (OACJ) to advocate for civil justice measures together with other business organizations and individual companies.

The House vehicle, HB 606 was approved by the House last week, but with a problematic amendment to shift the burden of proof for workers’ comp claims based on COVID contraction. The Senate is now considering HB 606 as well as their independent Senate Bill 308. Both bills cover employers against exposure and also cover the manufacturer of emergency protective equipment or components. The OMA

has provided testimony on both bills. Resistance from the plaintiffs' bar and labor has slowed progress and diluted protections. See attached letter to Senate President Obhof requesting removal of the House floor amendment shifting the workers' compensation burden of proof.

Tax Policy

In the original House bill to respond to COVID, the OMA was able to win a provision to allow companies to their current local withholding tax practice. The OMA also supported changes to income tax deadlines and giving expanded authority to the Department to defer other collections. The administration failed to act on its new authority by defer the CAT and other excise taxes. The OMA had pushed for the Department to use the new authority liberally.

Fifteen years after Ohio's business tax reform was passed, General Assembly members continue to introduce CAT credit bills at an alarming rate. This can be attributed to the massive turnover in the legislature since these reforms were first enacted.

Electricity Bailouts / Market Distortion

After being denied new subsidy payments for many years, proponents of nuclear power plant bailouts succeeded last year, winning approval of HB 6. The bill transfers money from customers to power plant owners and in so doing, distorts the generation market. The OMA had been a leading opponent to HB 6 and the various prior subsidy attempts.

In the past quarter while Main Street is struggling to survive, the owners of the nuclear power plants are rewarding their investors hundreds of millions of dollars as a result of HB 6. The move proves that the power plants did not need a bailout. The OMA forewarned of this possibility in June 2019. Also as the OMA warned, state regulators are requiring customers to pay more on power bills to make electric utilities whole to record revenue levels. Meanwhile eyes are still on grid operator PJM to see the next move following a FERC order to protect competitive markets. At stake? More customer costs.

Ballot Reform

In November 2018, Ohioans defeated a criminal sentencing constitutional amendment. The issue once again ignited the debate about how well-financed out of state interests are able to use Ohio's constitution as a petri dish for policy experimentation. The initial interest in a fix to the ballot process has dissipated however some legislators are advancing proposals. The proliferation of new ballot issues in 2020 is again triggering calls for reform.

Then came COVID. A lawsuit initiated by activists in Athens County to legalize recreational marijuana alleged that the gathering ban made it too hard to collect requisite number of signatures to place an issue on the ballot. Statewide ballot issues enjoined themselves to gain the same treatment.

In late May, a federal district judge bought the plaintiffs' argument granting them authority to collect signatures electronically and without actual ink signature. According to OMA counsel, the ruling overrides Ohio's Constitution, statutes, and decades of case precedent. If unchecked, a proliferation of ballot issues from well-funded special interests could immediately follow. The State is appealing the case to the full 6th Circuit Court. The OMA has been the lead amici in support of the State. See counsel's request for more detail.

Ballot Issues

Before the COVID-induced stay-at-home order several ballot issues were anticipated on the November ballot. Over the past few months, the campaign announced they would drop their effort due to the difficulty in signature collection. That welcome news is now uncertain as the judge's ruling gives those campaigns, and others a lifeline. We were tracking ballot issues on recreational marijuana legalization, minimum wage increase, alternative energy, and term limit reform. See counsel's report for more details.

Workforce Development

A top priority for Ohio manufacturers, the OMA is in its fourth year supporting an industry sector partnership model on a regional basis to help enact systems change in workforce development. Please contact the OMA staff to get your team engaged in regional efforts to develop a modern manufacturing workforce.

The fourth annual OMA Workforce Summit is still scheduled for October 28. However due to the COVID-19 pandemic – it will be an all virtual event this fall. Be on the lookout for updates throughout the summer.

The OMA was able to work the administration to create an Industry Sector Partnership grant program for manufacturers and their partners who are working in the sector partnership model. Due to the collapse of state revenue it will be only granted for FY 2021.

Tech Cred continues to be a success and its second round of funding will close shortly. The program reimburses employers up to \$2,000 per employee (Capped at \$30,000 per employer) for employees working towards an industry recognized credential or certificate. The Lt. Governor announced unemployed workers would now also qualify.

Environment

Last year Governor DeWine directed Ohio EPA and the Department of Health to develop an “action plan” for PFAS in Ohio with the focus of testing public and private water systems. Ohio began testing public water supplies in March. Ohio EPA has since stopped testing because of lack of COVID-19 resources.

The administration also remains focused on water quality across Ohio. The H2Ohio program introduced by the Governor was provided initial startup funding the state budget bill and will be administered by three state agencies, EPA, AG, and ODNR. The program will remain fully funded through FY 2020.

OMA members and staff have been highly engaged on several federal issues including storm water and Ohio air permit nuisance SIP.

See environment report for all of these issues.

Unemployment Compensation

After the failure of the General Assembly to address comprehensive unemployment compensation reform in the state budget manufacturers saw their unemployment taxes reduced in 2020. However due to COVID-19 Ohio was required to borrow \$3 billion from the federal government. Employers will be required to repay the government in the coming years. Ohio now finds itself in the same position as it did after the Great Recession. OMA is supporting SJR4 which would allow the state to bond to repay borrowed funds.

Tort Reform

A motion picture released in late November and bombed at the box office demonized a large manufacturer. The film which was mostly full of dramatized fiction will likely increase civil lawsuits. The OMA has been communicating on this topic, but the issue appears to have gotten lost somewhat in the COVID news.

The OMA is supporting legislation to shorten the statute of limitations for business contracts – final action by the Senate on House Bill 251 is likely before the summer recess.

Workers' Comp Claims Expansion to Mental Injury and COVID-19

After failing to include PTSD coverage for first-responders in the BWC budget bill, the House came back and passed HB 308. The PTSD extension sets a costly precedent for extending mental coverage into a system that has required a physical injury to receive treatment. The OMA has long opposed the extension of PTSD since it is covered by healthcare plans. The OMA worked with other business groups to provide alternative coverage for Ohio's first responders but were rebuffed in the House. There is talk of expanding to private employers either through legislation or through the courts. Watch out! The Senate is now hearing the bill and the OMA has been a vocal opponent.

Due to COVID-19 there has been a flurry of workers' compensation legislation. Mainly to allow COVID-19 as a presumptive occupational disease. One of these was inserted into the liability protection bill in the House, setting a very dangerous precedent for manufacturers.

Right to Work

No action anticipated.

Workers' Comp & Industrial Commission

The BWC has deferred payments through the summer. It has also issued another billion back, essentially repaying premiums. The Industrial Commission continues to hold hearings via teleconference only.

Leadership

Ohio Business Immunity Bill Clears Hurdles in House May 29, 2020

This week, the Ohio House completed action on **House Bill 606** — legislation granting civil immunity to businesses during COVID-19 — and sent the measure to the Senate. Passed on an 83-9 vote, the immunity bill bars civil action related to deaths, injuries or losses tied to transmission of COVID-19 in cases without reckless or intentional conduct. The latest version of HB 606 includes manufacturers making pandemic-related protective equipment. The OMA supports the bill overall. House negotiators had to win Democratic votes in order to obtain a supermajority, needed to trigger the bill's emergency clause and provide immediate effectiveness upon enactment. Before approving the measure, the chamber accepted a floor amendment that classifies COVID-19 as an occupational disease that qualifies first responders, food workers and corrections officers for workers' compensation benefits. (See story below.)

Across the Rotunda, the Senate is nearing completion on a similar legislation, **Senate Bill 308**. The bill's sponsor, Sen. **Matt Huffman** (R-Lima) this week reviewed an updated version of the legislation. Further negotiations are to be expected in the next week to reconcile the versions. Supportive manufacturers can add their voice to the debate by **sending a letter of support to your state legislators**. 5/28/2020

Amended House Bill to Provide Business Immunity Leaves Food, Beverage Makers Vulnerable May 29, 2020

The OMA has called for passage of immunity legislation for Ohio businesses during COVID-19. (See above story.) On Thursday, May 28, a surprise floor amendment was added to House Bill 606 to designate that COVID-related injuries experienced by employees would be presumed to have been caused by the virus being contracted at the workplace — and therefore compensable under an employer's workers' compensation policy.

The **amendment**, offered by Rep. **Brigid Kelly** (D-Cincinnati), applies to all sorts of food industries, including food and beverage manufacturers. OMA members in the food and beverage industry are invited to participate in a special conference call later today (Friday, May 29) to assess the amendment. Please **contact OMA staff** to be included in the call. 5/29/2020

Federal Appeals Court Temporarily Halts Judge's E-Signature Ruling Impacting Statewide Ballot Issues May 29, 2020

Last week, a U.S. district court judge **dealt a blow** to Ohio business interests by issuing an unprecedented ruling to allow electronic signature collections (instead of in-person signatures) for **several pending ballot measures**, while extending the signature deadlines. This would provide a lifeline to out-of-state interest groups seeking to change the Ohio Constitution to legalize marijuana, impose a \$13/hour minimum wage, allow for same-day voter registration, among other actions. Here is what has developed since the judge's controversial ruling:

- On May 21, Attorney General Dave Yost and Secretary of State Frank LaRose appealed the judge's decision, correctly pointing out that the existing petition requirements are "set in Ohio Constitution and decisions on changing them belong to the General Assembly and the people."
- The OMA, which has long fought against efforts to erode the petition process and validity of ballot security, led an effort to file an **amicus (friend of the court) brief** with five other statewide business groups to support the state's appeal.
- On May 26, a three-judge panel of the 6th Circuit U.S. Court of Appeals stayed the

judge's ruling, providing a short-term legal victory for Ohio's business community. The order blocks the lower court decision only while the appeals court continues its review of the case, which has been expedited.

The OMA will continue to follow this development and members will be fully briefed at the **OMA's June 3 Government Affairs Committee meeting**. 5/27/2020

Planning for Success in the Face of Supply Chain Disruption May 29, 2020

Whether the cause is uncertain demand, shipping disruptions, non-operational suppliers or volatile costs, supply chain disruptions have become standard — and waiting for a near-term return to true “normalcy” is a failing strategy. OMA Connections Partner Crowe has published **this insight** offering key strategies for business success in the next few months. 5/27/2020

Ohio House Democrats Introduce Worker Protection Act May 29, 2020

This week, Reps. **David Leland** (D-Columbus) and **Lisa Sobecki** (D-Toledo) **announced** the introduction of **House Bill 672**, called the Worker Protection Act. The bill would allow Ohioans on unemployment to retain their jobless benefits if they are recalled or offered their jobs back. The bill is aimed at workers who are considered high risk under the following conditions: their employer does not comply with state safety guidelines, they are the primary caregiver, and their child care is not operating — or if they have COVID-19 symptoms or a positive diagnosis. OMA staff will continue to monitor this bill and similar legislation that could impact manufacturing employers. 5/28/2020

NAM Releases Agenda to Strengthen Manufacturing Supply Chain May 29, 2020

The National Association of Manufacturers (NAM) has released its **supply chain policy recommendations** to help federal policymakers

find ways to boost long-term economic growth in the wake of the COVID-19 pandemic. NAM is also launching a major national advertising campaign on the importance of investing in U.S. supply chains without closing off critical global supplies. 5/27/2020

Will COVID-19 Kill Globalization? May 29, 2020

“Globalization is like fire: It can cook your food, keep you warm or burn your house down.” That's according to John Manzella, a nationally syndicated columnist on global business and economic trends, who this month offered his **insight at SiteSelection.com**. Despite predictions that global trade will see large declines this year — and that U.S.-China trade will further deteriorate long term — Manzella says globalization is evolving, not dying. Advances in technology and automation, along with booming markets in Asia, Latin America and Mexico, point to continued globalization. “The key to future U.S. economic growth and job creation lies in our ability to innovate new products ... and deliver them to the world's consumers,” Manzella concludes. 5/27/2020

Another Round of Revisions to Immunity Bills to Protect Manufacturers May 22, 2020

The OMA continues to lobby to provide immunity to manufacturers and other businesses from frivolous lawsuits stemming from the coronavirus pandemic. This week the Senate unveiled another version of **Senate Bill 308**, while the House accepted another version of **House Bill 606**. Both chamber committees are primed to vote the bill as soon as next week. Here is a **comparison of the changes** to the House versions.

The **OMA testified** before the House Civil Justice Committee on Tuesday in support of House Bill 606. The OMA asked the panel to support enhancements outlined by the **Ohio Alliance for Civil Justice** (OACJ) on behalf of the broad business community. The OMA is a leading member of this Alliance. The **plaintiffs' bar** is working to dilute the bill. 5/21/2020

Contractors Seek Prompt Payment Law May 22, 2020

The OMA joined forces with the Ohio Hospital Association (OHA) this week to express

concerns with **House Bill 380** (Jon Cross, R-Kenton, Bride Rose Sweeney, D-Cleveland). The legislation imposes restrictions on construction contracts most notably dictating 30-day prompt payment terms. “OHA and OMA believe private entities should be free to negotiate contractual terms without government interference. This legislation erodes the ability of our members to negotiate freely and runs counter to free market and “freedom of contract” principles. All commercial construction contracts agreed to by our members are negotiated by sophisticated parties, including the payment and interest terms.” **Read the letter.** *5/21/2020*

Ballot Issue Campaigns Get Lifeline from Judge May 22, 2020

It seemed that general election ballot issues — including marijuana and minimum wage measures — would not be able to proceed in 2020 due to signature collection challenges related to the pandemic; however, a federal district court judge has ordered the secretary of state to allow electronic signatures from electors.

That is a significant departure from the norm and makes the collection of required signatures much easier. This is of concern as ballot issues proliferate especially by well-funded special interests. **Read more about this from the Columbus Dispatch.**

We will discuss the issue at **OMA’s June 3 Government Affairs Committee meeting** and monitor any appeal activity. *5/21/2020*

Ballot Issue Access Ruling: Analysis May 22, 2020

The unprecedented ruling (see above story) finds unconstitutional many decades of direct democracy in Ohio governing the time, manner, process, and regulatory requirements around local and statewide ballot measures. Of significant concern are new abilities for out of state interest groups and petition gathers to gather signatures theoretically from Ohio electors without the usual and fulsome verification process that the Secretary of State and county boards of elections go through to ensure the required number of Ohio electors

actually sign a petition to secure its place on the November 2020 ballot.

Initial comments from the Ohio Attorney General and Ohio Secretary of State indicate the state will appeal. The OMA has long fought against efforts to erode the process and validity of ballot security and statewide petition methods to ensure only those measures which truly and lawfully should qualify make it to a vote of the people.

The OMA will continue to closely monitor and update the members on this truly historic and unprecedented decision from the federal court. **Read this memo from OMA General Counsel Chris Slagle.** Again, we’ll fully cover this topic at the upcoming OMA Government Affairs Committee on June 3. *5/21/2020*

Senate Sends Bill Limiting Health Director’s Authority to Conference Committee May 22, 2020

This week the Senate unanimously rejected the House amendments to **Senate Bill 1** and sent the bill to a conference committee. The floor debate centered on whether the legislature should limit the state health director’s orders — which are currently being used to combat COVID-19.

Originally SB 1 was aimed at regulatory reform but the House added a provision that would require orders issued by the Department of Health to go to the Joint Committee on Agency Rule Review (JCARR) after 14 days for a review prior to any renewal.

The governor said he would veto any bill restricting the Department of Health’s powers under the law. *5/21/2020*

Find and Be Found in U.S. Supply Chains May 22, 2020

As America begins to move from response to recovery in the COVID-19 pandemic, manufacturers large and small are doing their part to fill gaps in the supply chain. Some are seeking suppliers closer to home as others ramp up production or retool to fill needs.

Manufacturers Marketplace — a collaboration of the National Association of Manufacturers and state manufacturing associations — is a

searchable database intended to help U.S. manufacturers find and do business with one another as an ongoing solution against supply chain disruption.

Manufacturers Marketplace is available for free to OMA members until June 30 using code COVID-19. It will continue to be free as long as your company uses the platform and updates your profile. Contact the Marketplace's **David Smart** to learn more. *5/18/2020*

New Innovation from Ohio Manufacturing Alliance Collaboration to Fight COVID-19 May 22, 2020

The Manufacturing Advocacy and Growth Network (MAGNET), in collaboration with University Hospitals and **The Ohio Manufacturing Alliance to Fight COVID-19**, has developed a new, protective testing platform for health care workers assessing the spread of COVID-19.

Health care experts at University Hospitals and UH Ventures, their innovation and commercialization division, believe these specially designed barriers could decrease the need for valuable personal protective equipment, speed up the testing process, and better protect front line health care workers. *5/15/2020*

So, What Are Consumers Thinking Now? May 22, 2020

From the Cleveland Fed: How many consumers still say they're storing more food or increasing cash on hand? How long do most believe the pandemic will last? This **interactive chart of weekly survey results** gives a glimpse into what consumers are thinking and doing, dating back to March. *5/19/2020*

Threats to 5G Cellular Network Over Coronavirus May 22, 2020

This from the Ohio Homeland Security Critical Infrastructure Unit: Recently, disinformation campaigns through social media have produced conspiracy theories claiming the new 5G technology weakens the immune system leading to rapid spread of the virus. The disinformation campaigns are generated by violent extremists who encourage attacks on the network infrastructure.

Attacks on the 5G infrastructure began in the United Kingdom where 5G towers were set on fire. The fear and theories spread globally to the U.S., Australia, New Zealand, and the Netherlands. Here in Ohio, fliers have been found posted throughout a southeastern county stating the coronavirus is fake and the 5G towers are the real cause of deaths. Physical attacks to communication infrastructure have not occurred in Ohio at this time. *5/20/2020*

Maximize Your Exports with Free Planning Tools May 22, 2020

The U.S. Commercial Service, the trade promotion arm of the U.S. Department of Commerce's International Trade Administration, has developed free, online **export planning resources**. *5/18/2020*

A Look at the Future of Supply Chain Automation May 15, 2020

Globally, manufacturers and other businesses are rethinking their warehouse and distribution systems, with automation likely to play a pivotal role in future plans.

VisualCapitalist.com has published **this infographic** that provides a look at the future of supply chain automation. It shows that major investment is already occurring in warehouse automation, predictive analytics, and Industry 4.0. *5/11/2020*

Survey: 64% of Manufacturers Say Reshoring is Likely May 15, 2020

According to a new survey by Thomas, 64% of companies across the manufacturing and industrial sectors "are likely to bring manufacturing production and sourcing back to North America," to avoid similar difficulties in the future. **Supply Chain Dive** reports that the survey was conducted in April and included responses from 878 North American manufacturing and industrial sector professionals. *5/14/2020*

OSU Official Says Local Sourcing for PPE Will Be Critical for Health Care Providers May 15, 2020

The threat of COVID-19 has changed how hospitals like The Ohio State University Wexner Medical Center look at their equipment inventories — especially personal protective equipment (PPE), such as face masks and isolation gowns. Hal Mueller, chief supply chain officer at OSU's Wexner Medical Center, **writes** that the crisis may forever alter the way some supply chains operate. He adds that "local sourcing will have to be the focus" as health care providers form "stronger relationships with manufacturers and distributors." *5/10/2020*

Immunity Bills Debated at Statehouse May 15, 2020

This week, manufacturers joined a chorus of business interests in support of **Senate Bill 308**, legislation to provide temporary legal immunity during the COVID-19 state of emergency. The bill has three components:

- provide immunity to health care professionals;
- provide immunity to businesses against exposure related injuries; and
- provide immunity to manufacturers for emergency protective products.

The OMA provided **proponent testimony** highlighting the importance of the manufacturing provision, citing hundreds of firms who have generously repurposed operations to make needed masks, gowns, ventilator components, and other protective equipment. Pete Huggins, president of ITEN Industries in Ashtabula, **testified in support** of SB 308, telling lawmakers how his company has been producing face shields. He urged lawmakers to promptly pass the bill, saying, "We undertook this activity because we were able to help and there was an immediate need. We did this without consideration of legal liability."

A representative of the influential plaintiffs' bar attended the hearing and presented opponent testimony.

Meanwhile in the Ohio House of Representatives, **House Bill 606** contains similar immunity provisions for businesses, but it does not include liability for manufacturers of protective equipment and supplies. *5/15/2020*

Lawmakers Hold Hearings on Unemployment Insurance Bills May 15, 2020

The General Assembly this week held hearings on two unemployment compensation bills that target two very different parts of the system.

On May 12, Reps. **Tracy Richardson** (R-Marysville) and **Mark Fraizer** (R-Newark) provided **sponsor testimony** on **House Bill 614**, a bill to study and reform the application, processing and administration infrastructure of Ohio's unemployment compensation system. The sponsors stated that this bill is not focused on the solvency and funding of the system, but instead seeks to dive deep into how the fund is administered and how services are provided. The Senate heard **sponsor testimony** from Sen. **Bob Peterson** (R-Sabina) on **Senate Joint Resolution 4**, which would create an alternative approach for repaying future state borrowing from the federal government to fund unemployment compensation claims. It would allow the General Assembly to provide for the issuance of bonds to repay outstanding debt of the state's unemployment compensation program. Several states already permit bonding to fund debt repayment. The OMA previously signaled support for the creation of a bond repayment program. Ohioans would need to approve the measure as a constitutional amendment in a future referendum. *5/14/2020*

AG Yost's Price Gouging Bill Gets Mixed Reviews May 15, 2020

This week, Ohio Attorney General **Dave Yost** and others provided testimony in support of **Senate Bill 301**. The bill, as outlined in the attorney general's **testimony**, would do two things:

1. Gives the attorney general's office explicit authority to go after the most egregious price gougers — those who sell items at prices "grossly in excess" of the regular price of an item before the declaration of an emergency.
2. Gives the attorney general's office permissive authority to establish statewide

and uniform per-consumer, per-transaction quantity limitations on items related to an emergency or necessary to protect the health and safety of Ohioans.

3.

Several senators expressed skepticism regarding the proposal, but changes to the bill could be coming. The OMA will review this legislation at the next **Government Affairs Committee meeting**, set for June 3. *5/14/2020*

May 21 Webinar to Focus on Cybersecurity May 15, 2020

OMA Connections Partner Plante Moran will offer a **free, 45-minute webinar** at 10 a.m. (ET) on Thursday, May 21, to help businesses focus on ramping up cybersecurity and IT operations after a slowdown or full shutdown. *5/14/2020*

Beijing-Based Analyst: ‘America Can’t Build Anymore’ May 15, 2020

At **Bloomberg.com** and in *The Japan Times*, Beijing-based technology analyst Dan Wang writes, “America can’t build anymore.” He says that while Americans dominate high-tech sectors, the U.S. today “struggles to make even relatively simple products such as swabs, masks and protective gear.”

“Learning to build again will take more than a resurgence of will,” he writes. The U.S. will need to re-establish process knowledge, skilled talent, and industrial clusters to support manufacturing. Meanwhile, U.S. policymakers and other leaders will need to treat manufacturing work, “even in low-margin goods, as fundamentally valuable,” while providing incentives “to bring production back home.” *5/11/2020*

OMA Publishes New Edition of ‘Manufacturing Counts’ May 8, 2020

The new edition of the OMA’s *Ohio Manufacturing Counts* is **now available digitally**. The data in this publication are strong reminders that manufacturing continues to power the Buckeye State and will undoubtedly lead Ohio’s recovery in the coming months. The

most current information collected by the OMA shows Ohio manufacturing is responsible for:

- Nearly 17% of Ohio’s Gross Domestic Product;
- Roughly 700,000 jobs for Ohio workers;
- An annual payroll of \$43 billion, the highest total annual wages of any of Ohio’s sectors; and
- \$53 billion in exported products to 211 countries and territories.

Sponsors of this valuable resource are **Constellation, Health Management Solutions**, and **Vistra Energy**. *5/7/2020*

Legislation Introduced to Provide Employer Immunity Against COVID-19-Related Injuries May 8, 2020

Sen. **Matt Huffman** (R-Lima) this week introduced **Senate Bill 308** to revise Ohio’s civil liability laws in anticipation of litigation stemming from the pandemic. Sen. Huffman said the bill is needed because litigation might cripple a business as it is set to emerge from the lockdown.

The bill **consists of two parts**: the first deals with health care industries and the second addresses general business by clarifying immunity would be granted to businesses that are doing something to sustain or help people during an emergency, especially if a person is infected as a result of working at that business. Together with the Ohio Alliance for Civil Justice, the OMA has been working to develop language that would include immunity for the manufacture of PPE and related safety products. The OMA is grateful to the Senate for making this a priority. A vote could take place soon.

Meanwhile, the House is working on a **similar initiative**, although the Senate version appears to be more workable for manufacturers. Negotiations are ongoing. Contact the OMA’s **Ryan Augsburger** for more information. *5/7/2020*

House Votes to Limit Ohio Health Director’s Authority May 8, 2020

This week, the House voted 58-37 to approve amended legislation that, if signed into law, would curtail the state health director's ability to issue orders limiting business operations and the movement of Ohioans.

Under the amended **Senate Bill 1** — a regulatory reform bill — the health director's orders would be limited to 14 days. Any order lasting longer than two weeks would need to be approved by the General Assembly's **Joint Committee on Agency Rule Review**. It is unknown if the Senate will support this provision. A spokesman for Gov. Mike DeWine said the governor would veto the bill if it reached his desk as passed by the House. 5/7/2020

Senate Hears Bill to Address Hoarding, Price Gouging May 8, 2020

This week, the Senate Judiciary Committee held its first hearing on **Senate Bill 301**. Introduced by Sens. **Nathan Manning** (R-North Ridgeville) and **Steve Wilson** (R-Maineville), the bill **targets panic buying and price gouging** during a declared disaster or emergency.

The bill would give the attorney general permissive authority to establish per-consumer, per-transaction quantity limits on goods or services sold by suppliers in emergencies. SB 301 also provides expanded authority to investigate grossly excessive price increases as a violation of the Consumers Sales Practices Act after an emergency is declared. The legislators provided **sponsor testimony** and answered questions from lawmakers. The bill is expected to have more hearings in the coming weeks. 5/7/2020

Pandemic Halts Ohio Ballot Initiatives May 8, 2020

Referenda on recreational marijuana, voting rights, a minimum wage hike and more have fallen victim to the pandemic. It was **reported** this week that because the COVID-19 crisis has made it almost impossible to collect ballot initiatives, these campaigns have effectively ended. However, some campaigns are appealing to federal courts in a final effort to get their issues on the November ballot. 5/6/2020

Invent Here, Manufacture There May 8, 2020

"The U.S. has lost its capacity to innovate and mass produce emerging hardware technologies."

That's the conclusion of a **white paper** by a leading professor of mechanical engineering at the University of Michigan and the executive director of a manufacturing think tank. The white paper concludes that "after five decades of offshoring production," the U.S. "may still be one of the most inventive countries," but it is "no longer the most innovative, at least in hardware." 5/4/2020

Ohio's Notable Commencement Speakers May 8, 2020

Even as COVID-19 restrictions force college graduations to be conducted online, Ohio graduates are at least receiving some memorable advice from notable figures. Last weekend, Apple CEO Tim Cook delivered a **virtual commencement address** to thousands of graduates of The Ohio State University, while Tom Hanks shared an **inspiring video message** with the graduating class of Wright State University. 5/4/2020

Ohio a Top 5 State for Economic Development Offices May 8, 2020

This week, *Site Selection* magazine **reported** that Ohio is ranked fifth in the publication's 2020 Prosperity Cup state rankings, which recognizes the state and regional offices that were the most successful in attracting capital investment projects in 2019. This is a two-spot improvement for Ohio — and it comes shortly after the Buckeye State was ranked No. 1 in *Site Selection's* annual Governor's Cup rankings for projects per capita. JobsOhio, the state's private economic development arm, **welcomed** the news. 5/4/2020

Ohio's Unofficial Primary Election Results Available May 1, 2020

Ohio's delayed primary election was completed Tuesday night, April 28. You can see the **unofficial results here**, including results for Ohio's House and Senate districts. (Keep in mind the official canvas will be completed three weeks after the conclusion of the election.) Special congratulations to OMA PAC-endorsed candidates Rep. **Mark Romanchuk**, who is running for Ohio Senate, and Larry Holmes — the longtime chair of the OMA's Safety & Workers' Compensation Committee — who is running for Darke County commissioner. With the COVID-19 stay-at-home order in place and non-competitive presidential contests, this year's primary election saw low voter turnout, with 1.7 million Ohioans casting their ballots — about 22% of the state's 7.7 million registered voters. That's roughly half the number of voters who participated in the 2016 primary election.

All eyes are now on the **Nov. 3 general election**. 4/29/2020

Ohio Manufacturers Keep Innovating to Fight COVID-19 May 1, 2020

In recent weeks, the OMA has devoted much of its social media activity to sharing positive news about Ohio manufacturers that are helping their communities by donating protective gear or by repurposing to manufacture products that will help win the fight against COVID-19. **Here is an updated compilation** of some of these uplifting stories. 4/30/2020

Roman: Crisis Creates Greater Appreciation for Cleveland-Area Manufacturing May 1, 2020

In a **recent editorial**, Joe Roman, the president and CEO of the Greater Cleveland Partnership, talks about the "post-coronavirus to-do list." The first item on the list, Roman says, is to gain a greater appreciation for Northeast Ohio's manufacturing capabilities, he says. Cuyahoga (1,680 establishments), Lake (569) and Summit (777) counties are among the most manufacturing-dense counties in the state. 4/27/2020

Managing a Manufacturing Plant Through the Coronavirus Crisis May 1, 2020

According to McKinsey & Company, there are **three core principles** manufacturers should follow during this time of uncertainty:

1. Protect the workforce.
2. Manage risks to ensure business continuity.
3. Drive productivity at a distance.

The firm says the adoption of new digital technologies, along with flexibility and creativity of front-line staff, will help companies emerge from the COVID-19 crisis with manufacturing operations that are safer, more productive, and more resilient. 4/27/2020

Report: 95% of Surgical Masks Made Overseas May 1, 2020

"You can be sure to expect probing questions, from boards of directors to their CEOs, around what they will be doing to ensure that there is minimal disruption the next time a major global pandemic or any catastrophe happens."

That comment comes from Rich Thompson with Chicago-based investment firm Jones Lang LaSalle. In an **article addressing supply chain concerns**, Thompson points to U.S. vulnerabilities related to drug and medical equipment supplies, citing a federal report that 95% of surgical masks and 70% of tighter-fitting respirators, such as N95 masks, are currently made overseas. 4/28/2020

Professor: Bringing Manufacturing Back to the U.S. Is Easier Said Than Done May 1, 2020

While political leaders call for U.S. manufacturers to start producing more critical supplies domestically, Willy C. Shih, a professor of management practice at Harvard Business School, has written **this article** in the *Harvard Business Review* to point out the complexities of bringing back certain segments of manufacturing.

Shih lists key steps that managers should take now to assess their supply strategies and improve their resilience. 4/27/2020

What Will Factories Look Like in the Post-Pandemic Era? **May 1, 2020**

Manufacturing will look strikingly different in the post-pandemic era, **says a Purdue University expert** in supply chain and manufacturing management.

"But we're really bullish on the future of manufacturing," said Ananth Iyer, senior associate dean in the Krannert School of Management and director of the Dauch Center for the Management of Manufacturing Enterprises. *4/30/2020*

OMA Urges Re-Opening of Economy; Governor's Plan Coming Monday **April 24, 2020**

The OMA and Ohio's other major business groups this week urged the DeWine-Husted administration to begin re-opening the economy beginning on May 1. In a **letter to the governor**, the business groups pointed to "irreversible devastation and bankruptcies under prolonged 'non-essential' stay-at-home scenarios," while highlighting the health-related consequences of long-term high unemployment.

The letter followed **last Friday's testimony** by the OMA and the other primary business groups to the **Ohio House 2020 Economic Recovery Task Force**. The testimony outlined the business community's concerns in the wake of the pandemic — including access to materials, business cash flow, employer liability, supply chains, and workplace safety.

Also this week, a coalition of state manufacturing associations — including the OMA — urged the governors of seven Midwestern states, including Ohio, to re-open "all of manufacturing and other essential businesses to protect our regional economy." **See the coalition's letter.**

Gov. DeWine **has said** he plans to unveil details about Ohio's re-opening plan on Monday, April 27. *4/24/2020*

Senator Portman Joins OMA Members for Special Briefing **April 24, 2020**

On Tuesday, April 21, the OMA hosted an hour-long phone call with U.S. Sen. **Rob Portman** (R-Ohio), who updated members on recent federal legislation and new programs in response to

COVID-19. During the call, the senator heard from a panel of large and smaller manufacturers who conveyed industry concerns, including problems with supply chains, availability of protective equipment, and the varying definitions of "essential business" across the county.

Listen to the call. (It begins at the 4:25 mark.)

The senator noted several tax provisions that can help businesses with liquidity. OMA Connections Partners — including **Plante Moran** and **GBQ Partners** — have provided guidance on the recently enacted tax relief. The **IRS also has a site** detailing coronavirus tax relief for businesses. *4/21/2020*

Rethinking U.S. Reliance on Chinese Manufacturing **April 24, 2020**

"The COVID-19 pandemic has America rethinking its reliance on China for not only key medical supplies, but production capacity in general after Beijing clamped down on exports of critical items used to combat the disease," according to a **recent report** by FOX Business. The network interviewed Charles Freeman, senior vice president for Asia at the U.S. Chamber, who said that while a number of companies have already moved, or made efforts to move, there are others that have "huge sunk costs in the market" and are unable to relocate in "any reasonable time."

To get companies to return, Freeman says, U.S. policymakers should "incentivize domestic production instead of penalizing output in markets like China." *4/20/2020*

Calls From D.C. Grow Louder: Boost America's Industrial Base **April 24, 2020**

More Congressional leaders are calling for investment in U.S. manufacturing as the COVID-19 emergency continues to expose the nation's vulnerabilities.

U.S. Sen. Marco Rubio (R-Fla.), chairman of the Senate Committee on Small Business and Entrepreneurship, **wrote** this week that failed policy choices has left America's manufacturing base diminished, adding: "There is a clear need for a sweeping pro-American industrial policy." U.S. Rep. Robert Aderholt (R-Alabama), ranking member of the House Commerce, Justice and Science Appropriations Subcommittee, wrote

a **recent editorial** saying it's time to "move critical medical manufacturing back to America" by implementing "Buy America" requirements. *4/21/2020*

Six Suggestions to Protect & Grow U.S. Manufacturing **April 24, 2020**

In his editorial published by *IndustryWeek*, Keith Belton, director of the Manufacturing Policy Initiative (MPI) at Indiana University, advocates for U.S. investment in "manufacturing resilience" — to ensure America's industrial base "can adjust in real time to emerging global threats by shifting the location of production while minimizing any loss in capacity or product quality."

Read the editorial, which contains MPI's six policy proposals to improve the competitiveness and resilience of U.S. manufacturing. *4/22/2020*

Ford CEO: Future Cars Will Kill Viruses **April 24, 2020**

Vehicles of the future will be built with surfaces designed to destroy viruses, CEO Jim Hackett said in a recent interview with *Barron's* (subscription). Hackett said, "Surfaces will have to have micro structures that can't hold viruses. These things are there. They're nano-level structures that are in the fabrics. ... You can't feel them, but if you had a microscope, they'd look like you're putting a virus on top of arrows. The virus can't live. The surface punctures it, literally." *4/20/2020*

JobsOhio Aims to Fill Gaps Left by SBA Loans **April 24, 2020**

JobsOhio, Peoples Bank and First Federal Bank/Home Savings Bank **have announced** a partnership to support small businesses during the COVID-19 pandemic. JobsOhio this week committed up to \$50 million to assist the institutions with their lending support loans, which can be used to help businesses pay their payroll, rent, mortgages, fixed debt, utilities and other bills. For information on how to apply for this lending support, **visit JobsOhio's website**. *4/23/2020*

PPP Funding Replenished; What to Do Now **April 24, 2020**

This week, Congress approved and President Trump will sign new funding legislation that does the following:

- Authorizes another \$310 billion for the **Paycheck Protection Program (PPP)** — the SBA's forgivable loan. (\$60 billion of this will be earmarked for smaller lending facilities to better reach businesses that are minority-owned and in rural areas).
- Provides \$10 billion for grants under the SBA's **Emergency Economic Injury Disaster Loan (EIDL)** program and \$50 billion for other emergency disaster loans and grants.
- Provides \$75 billion for hospitals and \$25 billion for COVID-19 testing.

If your business plans to apply for the PPP or EIDL, OMA Connections Partner GBQ Partners has **this information on what you need to do now**.

If you need free business counseling on SBA programs, **find local expertise here**. *4/23/2020*

Ohio's Voting Deadline Nears; Here's How to Get Your Absentee Ballot **April 17, 2020**

The deadline to cast your vote in Ohio's extended, almost exclusively mail-in **primary election** is nearly here. Votes will be counted Tuesday, April 28. Ohioans who haven't yet cast a ballot need to apply for an absentee ballot soon. Voters have three options:

1. Apply for an absentee ballot by **printing an application form** available online, or **have one sent to you**;
2. **Call your county elections board** to request a ballot; or
3. **Make your own** vote-by-mail ballot request.

Remember, if you voted early before the March 17 primary election was canceled, you do not need to do anything.

Requests must be received at the board by noon on Saturday, April 25. Completed ballots must be postmarked by April 27 or submitted directly to a county elections board by 7:30 p.m. April 28. *4/14/2020*

Editorial Salutes Ohio Manufacturers for Their Efforts to Beat COVID-19 April 17, 2020

The Columbus Dispatch, in its April 17 editorial, pays tribute to Ohio manufacturers that have helped combat the coronavirus. The editorial cites examples of several Ohio companies that have shifted their operations to produce personal protective equipment (PPE) as part of the **Ohio Manufacturing Alliance to Fight COVID-19**.

“For all the closures, layoffs and isolation that have marked the past month in our coronavirus-erupted world, it is nice to also witness examples of American innovation and patriotism stepping up to lend a hand,” the editorial states. **Read it here.** *4/17/2020*

OMA Members Represented on White House Recovery Task Force April 17, 2020

The White House this week announced the names of more than 200 CEOs and other business leaders who will advise the administration on reopening U.S. economy. The list included National Association of Manufacturers President and CEO Jay Timmons, as well as leaders from the following OMA-member companies:

- Cargill — David MacLennan;
- The Procter & Gamble Company — David S. Taylor;
- Abbott Laboratories — Robert Ford;
- Pfizer Inc. — Dr. Albert Bourla;
- Eli Lilly and Company — Dave Ricks;
- Emerson — David Farr;

- Fiat Chrysler — Mike Manley;
 - General Motors Company — Mary Barra;
and
 - United Parcel Service — David Abney.
- See the **full list** of task force names. *4/15/2020*

AG Yost Takes Action Against PPE Price Gouging April 17, 2020

This week, Attorney General Dave Yost **filed a lawsuit** against a Chagrin Falls man for price gouging as he allegedly sold N95 masks on eBay for as much as 18 times the retail price. Yost said in a **statement**: “We will continue to take action against anyone else in this state price gouging during this pandemic.” *4/14/2020*

Survey Finds Caution is the New Normal April 17, 2020

An **updated survey** by Gallup shows Americans remain hesitant about whether they will resume their normal daily activities once COVID-19 restrictions are lifted and businesses start to reopen. The vast majority (71%) say they will wait to see what happens with the spread of the virus before engaging in normal routines. Republicans (31%), residents of small towns/rural areas (23%) and men (22%) say they are more likely to forecast that they’ll resume normal activities immediately. *4/15/2020*

How Prepared is Your IT Security? April 17, 2020

OMA Connections Partner Clark Schaefer Hackett is now offering a **Cybersecurity HealthCheck** to provide an efficient, economical way to evaluate the readiness of your IT security programs. The tool applies industry-leading guidance to your unique financial and operational environments. *4/15/2020*

Editorial: Crisis Demonstrates ‘Might and Agility of Ohio Manufacturing’ April 17, 2020

OMA President Eric Burkland and MAGNET President and CEO Ethan Karp recently teamed up on **this editorial** in *Crain’s Cleveland Business* to discuss efforts by Ohio manufacturers to produce desperately needed

protective equipment for front-line medical workers and first responders. The pair wrote: “Coming out of this crisis will be the right time to bring more supply chains back home, starting with the medical sector and expanding from there. . . . It will allow us to make more things locally. And the more local products we create, the more jobs we create.” 4/13/2020

Cleveland Fed Examines Region’s Manufacturing Sector **April 17, 2020**

The Cleveland Fed has just published a three-part series on manufacturing in the industrial heartland. “**Manufacturing under Pressure**” weaves together the observations and family stories, and includes data visualizations, photography and videography that offer an overview of how manufacturing in our region has evolved over the past 140 years. Despite the challenges, “the future is bright for U.S. manufacturing and the people and places invested in it,” the Cleveland Fed writes. 4/15/2020

Study: U.S. Manufacturers Leaving China **April 17, 2020**

Forbes reports on a recent study that finds more U.S. manufacturers are either leaving China or contemplating an exit. The U.S.-China trade war and supply chain disruption due to COVID-19 are driving factors. According to global manufacturing consulting firm Kearney and its seventh annual **Reshoring Index**, there has been a “dramatic reversal” in the index’s five-year trend “as domestic U.S. manufacturing in 2019 commanded a significantly greater share versus 14 Asian exporters tracked in the study,” 4/13/2020

Infographic: China’s Manufacturing vs. the Rest of the World **April 17, 2020**

Just how large is China’s manufacturing output compared to that of the rest of the world? HowMuch.net has produced **this infographic** to help visualize China’s manufacturing economy. The infographic also shows that manufacturing remains an essential component of U.S. GDP at \$2.33 trillion in 2018. 4/13/2020

Ohio Manufacturers to Make Up to 1 Million Face Shields **April 10, 2020**

On Thursday, April 9, Gov. Mike DeWine announced that the **Ohio Manufacturing Alliance to Fight COVID-19** has assembled a team of Ohio manufacturers to make between 750,000 and one million high-quality, reusable face shields over the next five weeks to help combat the spread of the virus. Soon, hundreds of thousands of high-quality, reusable face shields will be shipped across the state from Hudson, Ohio-based **Little Tikes™** — a manufacturer that normally produces toys. The project involves a supply chain of 19 manufacturers, three hospitals and multiple additional partners. Together, they have done in a matter of days what would normally take several months. “These face shields will make a difference as we fight this invisible enemy,” said Gov. DeWine. “This reinforces what we know about Ohio companies — they are generous and will answer the call when needed. Together, we are going to protect our protectors and strengthen our manufacturing sector.”

Read more about this success story. To date, the Alliance has received more than 1,500 communications from manufacturers and individuals who want to help in this effort. Manufacturers with the potential to produce PPE are urged to visit **RepurposingProject.com**, review the list of in-demand products, and fill out the **online response form** if they can help. 4/9/2020

Ohio Creates Office of Small Business Relief **April 10, 2020**

This week, Ohio Gov. Mike DeWine and Lt. Governor Jon Husted announced the creation of the Office of Small Business Relief (OSBR) within the Ohio Development Services Agency. OSBR will help businesses navigate state and federal relief programs, as well as regulatory issues during the COVID-19 outbreak and subsequent economic recovery.

The **OSBR website** contains FAQs and other helpful resources, and new services and support will be added to the site as they become available. If you’re unable to find answers to your questions on the website, **email the OSBR** or call 1-833-249-6446. 4/8/2020

PhRMA Tool Provides Transparency on Drug Costs **April 10, 2020**

The Pharmaceutical Research and Manufacturers of America (PhRMA), an OMA Connections Partner, has unveiled its **Medicine Assistance Tool** (MAT) to provide patients with information to make more educated health care decisions. MAT is a search engine designed to help patients, caregivers and health care providers learn more about the resources available through various biopharmaceutical industry programs.

With health care costs remaining a challenge for most manufacturers, this tool is one worth checking out. *4/6/2020*

Ohio Manufacturers: Rising to the Challenge **April 10, 2020**

In recent weeks, the OMA has devoted much of its social media activity to sharing positive news about Ohio manufacturers that are helping their communities by donating protective gear or are pivoting to manufacture products that will help win the fight against COVID-19. We have compiled a list of some of these stories, **available here**.

In the meantime, if you know of a published news article or press release that spotlights your company's actions — and you'd like us to share it with OMA followers — **let us know**. *4/9/2020*

On a Lighter Note... **April 10, 2020**

This week, an **animated parody** of the old sitcom "Laverne & Shirley" made the rounds on the internet. Instead of the show's two characters, the online parody features Ohio Gov. Mike DeWine and his health director, Dr. Amy Acton — with humorous cameos by Lt. Gov. Jon Husted and sign language interpreter Marla Berkowitz. Showcased are several Ohio connections, including Battelle, Ohio State's Brutus, and Purell hand sanitizer.

The animated production is the creation of Dave Stofka, a freelance web developer in northeast Ohio. He told **news media** he never wanted to make light of the illness or people being out of

work, but that he created the piece to cheer people up. Mission accomplished, Dave. *4/7/2020*



Governor Announces Alliance to Produce Ohio-Made Protective Gear **April 3, 2020**

On Wednesday, April 1, Gov. Mike DeWine announced the creation of the **Ohio Manufacturing Alliance to Fight COVID-19** — a public-private partnership that aims to help meet the urgent need for more **Personal Protective Equipment** (PPE) used by health care workers and first responders.

The OMA is a lead partner in the effort, along with the Ohio Manufacturing Extension Partnership (and its partner organization MAGNET), the Ohio Hospital Association, JobsOhio, the Ohio Development Services Agency (DSA), the Ohio Department of Administrative Services (DAS), and the Ohio Department of Health (ODH).

To date, nearly 700 communications have been received from manufacturers and individuals who want to help. Manufacturers who have the potential to produce PPE are urged to visit **RepurposingProject.com**, review the list of in-demand products, and fill out the **online response form** if they can help. *4/1/2020*



Gov. Mike DeWine this week announced the public-private partnership behind the Ohio Manufacturing Alliance to Fight COVID-19.

Analysis of Ohio's Extended Stay-at-Home Order April 3, 2020

Following yesterday's action by Ohio Department of Health Director Amy Acton to **extend the state's "stay-at-home" order** through Friday, May 1, the OMA's legal counsel, Bricker & Eckler, produced **this analysis**. Overall, the order's definition of "essential businesses and operations" is almost identical to the current order — meaning a manufacturer operating under the current order may continue operating under the new order, which takes effect Monday evening, April 6. *4/2/2020*

Ohio Manufacturers: Doing Good, Rising to the Challenge April 3, 2020

In recent weeks, the OMA has devoted much of its social media activity to sharing positive stories about Ohio manufacturers who are helping their communities through donations, or pivoting to manufacture products to fight COVID-19. We've shared these stories on our **Facebook**, **Twitter**, and **LinkedIn** pages. If you have a story featuring your company that you'd like us to share, **let us know**. *4/1/2020*

Governor Unveils Council to Help With Ohio's Economic Recovery April 3, 2020

On Thursday, April 2, Gov. DeWine announced the creation of an economic advisory board, which will be led by RPM International Chairman

and CEO Frank Sullivan. The board, which will aid the administration in its efforts to expedite Ohio's recovery, also includes:

- Patrick Bowe, President and CEO, The Andersons, Inc.;
- Mike Hennigan, President and CEO, Marathon Petroleum;
- Dan Pritchard, President and CEO, A.J. Rose Manufacturing Company;
- Mark Smucker, President and CEO, The J.M. Smucker Company; and
- David Taylor, Chairman, President and CEO, Procter and Gamble.

See the **governor's press release** for the full list of board members. *4/2/2020*

Easing Employee Stress Surrounding the COVID-19 Pandemic April 3, 2020

As the COVID-19 emergency continues, employers, employees and their families are experiencing immense uncertainty. Employees are looking for guidance. OMA Connections Partner **OneSource Advisors** says employers can help calm employees' fears by taking these actions:

- Acknowledge employee fears surrounding their jobs and the company, but also reassure them of their value to the company and the company's desire to keep them as members of the team.
- Be open with employees about management decisions and ask for suggestions to rectify problems.
- Provide as much information as possible about the pandemic.
- Highlight employee benefits that employees might not know about to relieve any financial stress.

- Encourage employees to take advantage of any telemental health services to preserve their mental well-being.
- Communicate the future of the business with employees often — in meetings, on the company intranet site, in newsletters and in blogs.
- Be empathetic in your communications, as every employee's situation is different.

In uncertain times, it's imperative to clearly communicate your business's plans as frequently as possible. 4/1/2020

Best Practices to Guard Against Cyber-Attacks

April 3, 2020

With more employees working from home — including many manufacturers' administrative

Ohio Passes COVID-19 Legislation **March 27, 2020**

This week, the Ohio General Assembly approved sweeping legislation (**House Bill 197**) in response to the coronavirus outbreak. There were no votes against the bill. Gov. DeWine said he will sign the bill today, March 27.

As **amended**, HB 197 provides many **tax changes** the OMA advocated for, including:

- Aligning the state tax filing deadline with the delayed federal deadline;
- Extending the dates for estimated payments;
- Waiving interest on tax filings; and
- Extending the "20-day rule" for municipal tax withholding for employees who are now working from home.

The bill also expands eligibility for unemployment compensation and extends the mail-in ballot period for the primary election. For a more complete overview, **see the summary** by OMA legal counsel Bricker and Eckler.

Speaker **Larry Householder** (R-Glenford) said approval of the COVID-19 package will likely be

staff — cyber-attacks are disrupting businesses. OMA Connections Partner Roetzel has put together **this list of best practices** to follow while working remotely. 4/1/2020

Looking Back: How the Spanish Flu Impacted Cleveland **April 3, 2020**

Churches, schools, libraries and theaters closed. No public weddings or funerals. Loitering in restaurants or taverns is prohibited. Those orders aren't from 2020, but **from Cleveland** during the influenza pandemic of 1918-19. The *Lexington (Ky.) Herald Leader* recently published **a story** examining the similarities between today's pandemic and the one that struck a century ago. Case Western Reserve University **research says** the 1918-19 flu killed an estimated 50 million people worldwide. The estimated death toll for the U.S. was 675,000, and more than 4,400 in Cleveland. 3/31/2020

the final legislative action for the near future. 3/27/2020

State of the State Address Postponed **March 27, 2020**

Speaker Larry Householder, Senate President Larry Obhof, and Gov. Mike DeWine have announced that the State of the State Address, which had been set for next week, will be postponed. The three leaders vowed to hold the address after the COVID-19 emergency passes. 3/27/2020

Speaker Eyes Post-Coronavirus Task Force **March 27, 2020**

Speaker Householder has announced he will be creating a bipartisan task force to prepare the state to return to work after the coronavirus emergency subsides. Hannah News Service quoted Householder as saying that while the focus now is on keeping Ohioans safe, state leaders must also begin to focus on tomorrow. "How we transition and restart Ohio's economic engine is critical," he said.

Details of the task force will be forthcoming, the speaker said. 3/26/2020

**Force Majeure Clauses: What Are They?
What Do They Mean?**
March 27, 2020

The OMA has received some questions about “force majeure” clauses in business contracts between manufacturers. Plante Moran has developed **this helpful insight**. Manufacturers will want to consult legal counsel for specific contract questions. *3/27/2020*
April 28 is Deadline to Mail Ohio’s Primary Election Ballots
March 27, 2020

Under the state’s comprehensive COVID-19 legislation (House Bill 197) passed and signed this week, Ohioans have until April 28 to mail their absentee ballot for the 2020 primary election. Only those who require special assistance will be allowed to vote in person.

Secretary of State Frank LaRose had wanted to give voters until June 2. Instead, HB 197 allows electors who have not already cast a ballot — and who were registered to vote in Ohio as of the Feb. 18 deadline — to cast absentee ballots through 7:30 p.m. on April 28. Absentee ballots may be requested at the **secretary of state’s website**. *3/25/2020*

Manufacturers Repurpose to Meet COVID-19 Needs
March 27, 2020

Manufacturers across the nation are innovating, retooling and repurposing to produce the goods and products needed during the COVID-19 crisis. **One such story** by *IndustryWeek* spotlights Ohio’s Cleveland Whiskey, which “announced a partnership to devote its distillery talents to producing free hand sanitizer for the Cleveland Clinic.” Of course there are many other examples from across the state — too many to list here. *3/25/2020*

State Rep. Don Manning Passes
March 27, 2020

State Rep. **Don Manning** (R-New Middletown) passed away at age 54 last Friday after suffering chest pains. The OMA sends its condolences to the Manning family at this difficult time. *3/23/2020*

Cybercriminals Increase Activity During Health Crisis
March 27, 2020

High-tech criminals are exploiting public fear about the coronavirus, trying to break into networks, social media, and banking accounts — and manufacturers are not immune. According to website security company Sucuri, cybersecurity **analysts are seeing** an array of coronavirus-themed attacks, mostly phishing attempts. OMA Connections Partner RSM suggests **these three steps** to reduce the risk of coronavirus phishing scams. Dinsmore offers **guidance**, too. *3/25/2020*

Leadership During COVID-19: Seven Steps to Restore Control
March 27, 2020

OMA Connections Partner Plante Moran has compiled a **seven-point checklist** to help company leaders restore a sense of control in these uncertain times. *3/26/2020*

Online Dashboard Tracks COVID-19 in Ohio
March 27, 2020

On Ohio’s coronavirus website, an expanded **COVID-19 data dashboard** displays the most recent preliminary data reported to the Ohio Department of Health about COVID-19 cases, hospitalizations, and deaths in Ohio by selected demographics and county of residence. *3/26/2020*

On a Lighter Note...
March 27, 2020

Shakespeare wrote, “The robbed that smiles, steals something from the thief.”

Those words came to mind when we heard about a group of Ohioans who are trying to make the best of the situation, even as they tune in to Gov. Mike DeWine’s daily **COVID-19 updates**. Some devotees of the governor’s 2 p.m. press briefings refer to them as “Wine with DeWine” time; a few have gone so far as to don themed **T-shirts**. Further proof that those who can smile for others’ sake are the strongest among us. *3/25/2020*

OMA Asks Governor to Address Members' Concerns
March 20, 2020

This week, OMA President Eric Burkland sent two separate letters to the DeWine-Husted administration to address separate concerns raised by OMA members in the midst of state actions to slow the spread of the coronavirus.

The **first letter** requested the administration's support in designating all Ohio manufacturing facilities, supply chains and their employees as "essential infrastructure" and "essential businesses." The letter comes as there have been many well-intentioned actions in other parts of the country that have adversely impacted the supply chain.

The **second letter** suggested clarification to the Ohio Department of Health's recent restaurant closure order as it relates to consumption of food in on-site cafeterias and breakrooms within manufacturing facilities. *3/19/2020*

General Assembly Prepares to Respond to COVID-19 Outbreak
March 20, 2020

Ohio's General Assembly will return to Columbus next week to respond to the COVID-19 pandemic and its effects. It's unclear if they will meet in person or virtually. As many as three potential session days are **scheduled** for next week, according to a report by Gongwer News Service.

It is not clear what the legislative response package will contain, but OMA staff is monitoring developments closely and working to include provisions to support manufacturing.

Gov. DeWine plans to release his legislative wish list soon. He has already requested several legislative action items, including allowing online meetings by local government; suspending mortgage payments; providing a grace period to renew driver licenses due to the closure of most BMVs. Attorney General Dave Yost plans to seek a new anti-price gouging law. *3/19/2020*

OMA Staff to Work Remotely in Response to COVID-19
March 20, 2020

Beginning Monday, March 23, 2020, OMA staff will be working remotely, but will still be available

to help meet your needs. This includes OMA Workers' Compensation Services. **Here is a list** of staff emails and phone numbers. We will re-evaluate our office policy in the coming days and will keep all OMA members informed of changes. In the meantime, if there is anything OMA staff can do for you, let us know. *3/18/2020*

OMA Food Day Cancelled — at Least for Now
March 20, 2020

The OMA's Food and Beverage Manufacturers' Policy Council (also known as OMA Food Day) — which had been set for May 20 — has been cancelled due to the coronavirus outbreak. We are exploring opportunities to reschedule this event when conditions permit. *3/17/2020*

PUCO Suspends Hours-of-Service Restrictions on Motor Fuel Carriers amid COVID-19
March 20, 2020

The Public Utilities Commission of Ohio (PUCO), which has regulatory authority over truckers and other commercial carriers, has **suspended "hours-of-service" restrictions** on the movement of motor vehicle fuel in the state during Ohio's COVID-19 state of emergency. The hours-of-service waiver expires at 11:59 p.m. Friday, March 27, 2020. According to Hannah News Service, PUCO Transportation Director John Williams said the temporary move does not alter a motor carrier's duty to monitor its drivers; maintain records of duty status; and ensure drivers are not ill, fatigued, impaired or otherwise unable to operate a commercial motor vehicle safely — in addition to other state and federal requirements. *3/19/2020*

Ohio Democrats Issue Legal Challenge to New Primary Election Date
March 20, 2020

The Supreme Court of Ohio this week said it was expediting an Ohio Democratic Party lawsuit against Ohio Secretary of State Frank LaRose after he set a new **primary date for June 2**. (Note: The later date does not signal a new election; it's simply an extended date for the previously scheduled March 17 primary. If you or your employees have already voted, either in person or via absentee ballot, you do not need to — and cannot — vote again.)

The Democrats' lawsuit seeks to make LaRose direct county boards of elections to accept and process absentee ballot applications until April 25, and to accept and count all valid absentee ballots postmarked on or before April 28. *3/19/2020*

RSM Offers Weekly COVID-19 Webcasts for Business Leaders March 20, 2020

OMA Connections Partner RSM is launching a weekly webcast series on issues related to the coronavirus — to share insights for business leaders on issues such as:

- The economic impact from this pandemic;
- How to prepare for the future; and
- How to mitigate risk.

RSM's webcasts will be about 30 to 45 minutes, available every Wednesday at 1 p.m. EDT. The **first webcast** addressing key actions for businesses to take was held this week. Future webcasts will be April 1 and April 8. **Sign up here.** *3/19/2020*

Wanted: Ideas on How State Government Can Help Manufacturers During the COVID-19 Crisis March 20, 2020

The OMA continues to collect member concerns and ideas for possible actions that state policymakers can consider to help Ohio manufacturers during the COVID-19 outbreak and after. If you have suggestions or comments that you want the OMA to convey to the DeWine administration, email **Jamie Karl.** *3/18/2020*

Vote for Manufacturing: Primary Election is March 17 March 13, 2020

Ohio's primary election is only days away, this year falling on St. Patrick's Day, March 17. Due to coronavirus concerns, there have been many voting-related questions. Ohio Secretary of State Frank LaRose reports that he's working with Ohio's 88 county board of elections and health officials to promote a safe and healthy voting environment. (Get the **latest election updates here.**)

Employers can provide non-partisan resources to employees — as long as communications are

unbiased — so you may wish to share the following information:

- The deadline to **request an absentee ballot** is three days before the election (Saturday, March 14, for the primary). If mailed, absentee ballots must be postmarked by the day before the election in order to be counted.
- Most Ohio counties provide early voting at their **board of elections office**, including 8 a.m. to 4 p.m. tomorrow (Saturday, March 14) and 1 p.m. to 5 p.m. on Sunday, March 15.
- The Secretary of State's office is keeping a running tab of **relocated voting locations.**
- Before voting, you can study a **sample ballot** based on your specific location.

There's a lot of other useful **Election Day information** at the secretary of state's website, including how to **find your polling place.** *3/12/2020*

Clarification of the President's EU Travel Ban March 13, 2020

Following Wednesday night's Oval Office remarks by President Trump on COVID-19, the White House released **this proclamation** announcing restrictions on travelers to the U.S. from countries in the **EU Schengen Area.** Those countries include: Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, and Switzerland.

Specifically, the administration will ban entry by immigrants and non-immigrants who were physically present within the Schengen Area during the 14-day period preceding their entry or attempted entry into the U.S. The proclamation is effective at 11:59 p.m. EDT Friday, March 13, and will remain in effect until terminated by the president. These restrictions do not apply to

U.S. goods imports from the European Union. According to the proclamation, “the free flow of commerce between the United States and the Schengen Area countries remains an economic priority for the United States.” 3/12/2020

OMA Gov’t. Affairs Committee Reviews Early 2020 Policy Developments March 6, 2020

Nearly 50 members participated in this week’s OMA Government Affairs Committee meeting. Key matters discussed included potential general election ballot measures, recent regulatory actions, and pending state legislation that could impact manufacturers.

Guest speakers included Senate Majority Floor Leader **Matt Huffman** (R-Lima), who addressed members’ questions regarding Statehouse topics such as the controversial school vouchers debate and last year’s House Bill 6 — the nuclear power bailout. Political adviser Jeff Longstreth provided insight into high-profile House races.

The **next Government Affairs Committee meeting** is set for Wednesday, June 3 in Columbus. 3/5/2020



State Sen. Matt Huffman (upper right) addresses OMA members at this week’s Government Affairs Committee meeting.

Celebrating Women in Manufacturing March 6, 2020

The Manufacturing Institute **has announced** the winners of its STEP Ahead Awards for outstanding women in manufacturing. These 100 honorees and 30 emerging leaders — including **eight Ohioans** — work everywhere from the factory floor to the C-suite and show the true breadth of the industry’s talent. The honorees will travel to D.C. for a two-day career building seminar and an April 30 awards ceremony.

You can **read about** the winners, including those who represent Ohio companies. Congratulations to this year’s honorees! 3/3/2020

Ohio Awarded Top Honor for Economic Development March 6, 2020

Site Selection magazine **has awarded** its annual Governor’s Cup to Ohio and Gov. Mike DeWine for attracting the largest number of economic development projects per capita in 2019. Last year, the Buckeye State recorded 448 major projects — second overall only to Texas (859). To qualify, projects needed to meet one or more of the following: a minimum investment of \$1 million; creation of 20 or more new jobs; or 20,000 square feet or more of new space.

When comparing U.S. communities that did well in attracting new business and investments, *Site Selection* **ranked** Cincinnati and Columbus in its top 10 of Tier 1 metros (populations over 1 million). Dayton was No. 1 among Tier 2 metros (populations between 200,000 and 1 million), while Toledo was No. 8. Lima was sixth among Tier 3 metros. In the comparison of **small cities** (under 50,000), Ohio led all states with 14 cities. Manufacturing-heavy Findlay was No. 1 out of 551 communities, while Tiffin and Zanesville also cracked the top 10. 3/2/2020

JobsOhio: \$1.2B in Added Payroll During 2019 March 6, 2020

JobsOhio has released its **2019 Annual Report and 2020 Strategic Plan**. New payroll stemming from JobsOhio projects was \$1.2 billion in 2019 — down slightly from \$1.3 billion in 2018 — as 306 projects led to \$7 billion of capital investment, down from \$9.6 billion. In the category of “advanced manufacturing,” JobsOhio projects yielded 3,163 new jobs and \$657 million in capital investment. As the last decade ended, Ohio claimed the second-highest advanced manufacturing location quotient in the region — more than two times the U.S. industry concentration, the report says. 3/2/2020

Miscellaneous Legislation of Interest to Manufacturers
Prepared by: The Ohio Manufacturers' Association
Report created on June 1, 2020

- HB30** **EUTHANIZED ANIMAL REMAINS-FOOD** (LANESE L) To prohibit pet food from containing remains from any dog or cat or from any other animal that was euthanized by the use of an injected drug.
Current Status: 2/12/2019 - Referred to Committee House Agriculture and Rural Development
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-30>
- HB46** **STATE GOVT EXPENDITURE DATABASE** (GREENSPAN D) To require the Treasurer of State to establish the Ohio State Government Expenditure Database.
Current Status: 1/22/2020 - **SUBSTITUTE BILL ACCEPTED**, Senate General Government and Agency Review , (Seventh Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-46>
- HB48** **LOCAL GOVT ROAD IMPROVEMENT FUND** (GREENSPAN D) To provide for a new Local Government Road Improvement Fund for local governments to fund road improvements.
Current Status: 2/12/2019 - Referred to Committee House Finance
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-48>
- HB62** **TRANSPORTATION BUDGET** (OELSLAGER S) To increase the rate of and modify the distribution of revenue from motor fuel excise taxes, to make appropriations for programs related to transportation and public safety for the biennium beginning July 1, 2019, and ending June 30, 2021, and to provide authorization and conditions for the operation of those programs.
Current Status: 4/3/2019 - **SIGNED BY GOVERNOR**; eff. 90 days, Taxes eff. 7/1/19
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-62>
- HB72** **CAPITAL IMPROVEMENTS FUND** (ROGERS J, CERA J) To create the Supplemental State Capital Improvements Pilot Program funded by a temporary transfer from the Budget Stabilization Fund and to make an appropriation.
Current Status: 2/20/2019 - Referred to Committee House Finance
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-72>
- HB76** **BALLOT LANGUAGE UNIFORMITY** (MERRIN D) To enact the "Ballot Uniformity and Transparency Act" to modify the form of election notices and ballot language for property tax levies.
Current Status: 1/22/2020 - Senate General Government and Agency Review , (Fourth Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-76>
- HB115** **REGULATOR RESTRICTION REDUCTION** (RIEDEL C, ROEMER B) To require certain agencies to reduce the number of regulator restrictions and to amend the versions of

sections 106.021 and 106.03 of the Revised Code that are scheduled to take effect August 18, 2019, to continue the provision of this act on and after that effective date.

Current Status: 4/10/2019 - House State and Local Government, (Second Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-115>

HB116 **TRANSPORTATION RESEARCH (BRINKMAN T)** To make an appropriation related to transportation planning and research.

Current Status: 3/12/2019 - Referred to Committee House Finance

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-116>

HB160 **ALCOHOLIC ICE CREAM (INGRAM C)** To revise the law governing alcoholic ice cream.

Current Status: 5/27/2020 - Senate Agriculture and Natural Resources, (Fourth Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-160>

HB168 **AFFIRMATIVE DEFENSE-HAZARDOUS SUBSTANCES (HAMBLEY S)** To establish an affirmative defense to a release or threatened release of hazardous substances from a facility for certain bona fide prospective purchasers.

Current Status: 5/13/2020 - Consideration of Senate Amendments; House Does Concur, Vote 94-0

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-168>

HB174 **CONCEALED WEAPONS REFORM (HOOD R, BRINKMAN T)** To modify the Weapons Law by renaming a concealed handgun license as a concealed weapons license, allowing a concealed weapons licensee to carry concealed all deadly weapons not otherwise prohibited by law, repealing a notice requirement applicable to licensees stopped for a law enforcement purpose, authorizing expungement of convictions of a violation of that requirement, allowing a person age 21 or older and not prohibited by federal law from firearm possession to carry a concealed deadly weapon without needing a license subject to the same carrying laws as a licensee, and correcting the definition of dangerous ordnance mistakenly resulting from Am. Sub. H.B. 228 of the 132nd General Assembly.

Current Status: 3/27/2019 - Introduced

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-174>

HB178 **CONCEALED WEAPONS REFORM (HOOD R)** To modify the Weapons Law by renaming a concealed handgun license as a concealed weapons license, allowing a concealed weapons licensee to carry concealed all deadly weapons not otherwise prohibited by law, repealing a notice requirement applicable to licensees stopped for a law enforcement purpose, authorizing expungement of convictions of a violation of that requirement, and allowing a person age 21 or older and not prohibited by federal law from firearm possession to carry a concealed deadly weapon without needing a license subject to the same carrying laws as a licensee.

Current Status: 6/4/2020 - House Criminal Justice, (Third Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-178>

- HB181** **PROMOTE OHIO-GROWN ALCOHOL INGREDIENTS** (HAMBLEY S) To authorize the Department of Agriculture to promote the use of Ohio-produced agricultural goods grown for inclusion in beer, cider, or spirituous liquor through promotional programs.
Current Status: 4/4/2019 - Referred to Committee House Agriculture and Rural Development
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-181>
- HB185** **JOBSONIO-PUBLIC RECORDS-MEETINGS** (INGRAM C) To establish that records kept by JobsOhio are public records subject to inspection and copying under Ohio Public Records Law and to require all meetings of the JobsOhio Board of Directors to be open to the public, except when in an executive session.
Current Status: 5/15/2019 - House Economic and Workforce Development, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-185>
- HB202** **ELECTRIC VEHICLE INFRASTRUCTURE** (SMITH K, WEINSTEIN C) To establish the Electric Vehicle Infrastructure Study Committee.
Current Status: 10/1/2019 - House Transportation and Public Safety, (Fourth Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-202>
- HB216** **CHAIN ESTABLISHMENT REGULATION** (SKINDELL M, KELLY B) To regulate employment practices of formula retail and food services establishment employers and contractors and to require the purchaser of a formula retail or food services establishment to retain certain employees.
Current Status: 5/22/2019 - House Commerce and Labor, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-216>
- HB220** **GOVERNMENT BLOCKCHAIN USE** (CARFAGNA R) To allow a governmental entity to utilize distributed ledger technology, including blockchain technology.
Current Status: 6/12/2019 - **REPORTED OUT AS AMENDED**, House Commerce and Labor, (Third Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-220>
- HB237** **SHIPPED LIQUOR** (MANNING D, UPCHURCH T) To allow spirituous liquor and mixed beverages to be shipped to consumers via an S liquor permit holder.
Current Status: 5/14/2019 - Referred to Committee House Commerce and Labor
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-237>
- HB238** **WHISTLEBLOWER PROTECTIONS** (CERA J, SCHERER G) To revise Ohio's whistleblower protection laws.
Current Status: 2/26/2020 - **REPORTED OUT**, House Civil Justice, (Sixth Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-238>

- HB242 BAN PLASTIC BAG FEES** (LANG G, JONES D) To authorize the use of an auxiliary container for any purpose, to prohibit the imposition of a tax or fee on those containers, and to apply existing anti-littering law to those containers.
Current Status: 5/27/2020 - **PASSED BY SENATE**; Vote 23-9
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-242>
- HB251 CONTRACT ACTION-PERIOD OF LIMITATION** (LANG G, HILLYER B) To shorten the period of limitations for actions upon a contract.
Current Status: 5/27/2020 - Senate Judiciary, (Fifth Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-251>
- HB272 COURTS-EXERCISE OF JURISDICTION** (OELSLAGER S, HILLYER B) To expand the basis of a court's exercise of personal jurisdiction to include any basis consistent with the Ohio Constitution and the United States Constitution.
Current Status: 5/27/2020 - **PASSED BY SENATE**; Amended on Floor, Amendment Vote 22-10, Bill Vote 24-8
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-272>
- HB319 LOCAL CONTROL-FIREARMS** (WEST T, MILLER A) To restore local authority to generally regulate firearms-related conduct.
Current Status: 9/24/2019 - Referred to Committee House State and Local Government
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-319>
- HB320 PENDING BACKGROUND CHECK-FIREARMS** (WEST T) To prohibit a federally licensed firearms dealer from transferring a firearm while a background check is pending unless 30 days have elapsed.
Current Status: 9/24/2019 - Referred to Committee House State and Local Government
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-320>
- HB324 DAMAGES-ADJUST FOR INFLATION** (MILLER A) To raise the limitations on damages for noneconomic loss and punitive damages in certain tort actions based on adjustments for inflation from the year 2005 to 2019.
Current Status: 9/24/2019 - Referred to Committee House Civil Justice
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-324>
- HB346 VAPE PRODUCT SALES** (PATTON T) To prohibit the sale of flavored electronic smoking devices and flavored vapor products and to establish a committee to study the health risks associated with such products.
Current Status: 10/2/2019 - Referred to Committee House Health
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-346>
- HB347 VAPE PRODUCT RETAILERS** (PATTON T) To place restrictions on retailers of vapor products.

Current Status: 10/2/2019 - Referred to Committee House Health
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-347>

HB369 **SEXUAL, GENDER DISCRIMINATION** (HILLYER B, SKINDELL M) To enact the Ohio Fairness Act to prohibit discrimination on the basis of sexual orientation or gender identity or expression, to add mediation as an informal method that the Ohio Civil Rights Commission may use, and to uphold existing religious exemptions under Ohio's Civil Rights Law.

Current Status: 2/4/2020 - House Civil Justice, (Second Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-369>

HB469 **HEALTH INSURANCE COST-SHARING** (MANCHESTER S, WEST T) To prohibit certain health insurance cost-sharing practices.

Current Status: 6/2/2020 - House Health, (Second Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-469>

HB472 **CRIMINAL PERIOD OF LIMITATIONS - RAPE** (ROGERS J) To eliminate the period of limitations for the criminal prosecution of a person for rape.

Current Status: 1/28/2020 - Referred to Committee House Criminal Justice
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-472>

HB476 **EMINENT DOMAIN** (MANNING D, HAMBLEY S) To amend the law regarding eminent domain and to declare an emergency.

Current Status: 5/27/2020 - House State and Local Government, (Second Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-476>

HB490 **ELECTRIC/ HYBRID VEHICLE REGISTRATION FEES** (GREENSPAN D, SHEEHY M) To provide for the proration of the plug-in electric and hybrid motor vehicle registration fees.

Current Status: 2/11/2020 - Referred to Committee House Finance
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-490>

HB499 **MOTOR FUEL TESTING PROGRAM** (KELLY B, LANG G) To authorize a county to implement a motor fuel quality testing program.

Current Status: 5/19/2020 - House Transportation and Public Safety, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-499>

HB510 **CRIMINAL PENALTIES - VEHICLE SAFETY** (PATTON T) To increase the criminal penalties associated with failing to secure a load on a vehicle.

Current Status: 3/10/2020 - Referred to Committee House Criminal Justice
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-510>

- HB518** **TORT ACTIONS - RAPE VICTIMS** (BOGGS K, RUSSO A) To remove the cap on damages for noneconomic loss when a victim of rape or assault brings a tort action.
Current Status: 3/10/2020 - Referred to Committee House Civil Justice
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-518>
- HB560** **VOTER REGISTRATION, ELECTIONS** (LEPORE-HAGAN M, LISTON B) To modify the law governing voter registration and the method of conducting elections.
Current Status: 5/5/2020 - Referred to Committee House State and Local Government
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-560>
- HB562** **PROHIBIT EVICTION, FORECLOSURE DURING COVID-19** (LELAND D, CROSSMAN J) To prohibit foreclosure activity and the eviction of residential and commercial tenants during the state of emergency declared regarding COVID-19, to refer such proceedings caused by the state of emergency to mediation, and to declare an emergency.
Current Status: 5/5/2020 - Referred to Committee House Civil Justice
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-562>
- HB564** **PREVENT UTILITY DISRUPTION DURING COVID-19** (LELAND D) To prevent the disruption of utility service during the state of emergency declared regarding COVID-19 and to declare an emergency.
Current Status: 5/5/2020 - Referred to Committee House Public Utilities
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-564>
- HB576** **SUSPEND HOMESTEAD INTEREST PENALTY, FORECLOSURE** (ROGERS J, CROSSMAN J) To temporarily abate the charging of interest and penalties against tax-delinquent homesteads and suspend tax foreclosure proceedings and tax certificate sales regarding such homesteads and to declare an emergency.
Current Status: 5/5/2020 - Referred to Committee House Ways and Means
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-576>
- HB580** **REQUIRE INSURERS COVER TELEMEDICINE** (LISTON B, PATTON T) To require health plan issuers to cover telemedicine services during a state of emergency, and to declare an emergency.
Current Status: 5/5/2020 - Referred to Committee House Insurance
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-580>
- HB581** **ADDRESS COVID-19 CONCERNS** (CALLENDER J) To address immediate concerns related to COVID-19.
Current Status: 5/5/2020 - Referred to Committee House Health
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-581>
- HB586** **STATE AGENCIES - PROCUREMENT PROGRAMS** (GREENSPAN D, KELLY B) To require any state agency seeking to purchase supplies or services to comply with an applicable first or second procurement program and to prohibit any governmental ordering

office from combining multiple parts of a larger related project to avoid using the procurement list maintained by community rehabilitation programs.

Current Status: 5/6/2020 - House State and Local Government, (First Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-586>

HB589 FINANCIAL DAMAGE INSURANCE COVERAGE - COVID-19 (CROSSMAN J, ROGERS J) To require insurers offering business interruption insurance to cover losses attributable to viruses and pandemics and to declare an emergency.

Current Status: 5/5/2020 - Referred to Committee House Insurance

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-589>

HB590 PRICE GOUGING PROHIBITION (CROSSMAN J, ROGERS J) To prohibit price gouging after a declaration of an emergency and to declare an emergency.

Current Status: 5/5/2020 - Referred to Committee House Criminal Justice

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-590>

HB596 DEBT COLLECTION POSTPONEMENT (WEST T) To halt the collection of debts and to declare an emergency.

Current Status: 5/5/2020 - Referred to Committee House Civil Justice

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-596>

HB602 PROPERTY TAX FORECLOSURE NOTICES (ROGERS J, LIPPS S) To modify the manner in which property tax foreclosure notices may be published.

Current Status: 6/3/2020 - House Ways and Means, (Fourth Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-602>

HB606 CIVIL IMMUNITY - COVID-19 TRANSMISSION (GRENDALL D) To grant civil immunity to a person who provides services for essential businesses and operations for injury, death, or loss that was caused by the transmission of COVID-19 during the period of emergency declared by Executive Order 2020-01D, issued on March 9, 2020, and to declare an emergency.

Current Status: 5/28/2020 - **PASSED BY HOUSE**; Amended on Floor, Bill Vote 84-9, Emergency Clause 85-8

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-606>

HB614 UNEMPLOYMENT COMPENSATION REFORM (FRAIZER M, RICHARDSON T) To study and reform the application, processing, and administration infrastructure of Ohio's unemployment compensation system.

Current Status: 6/3/2020 - House Ways and Means, (Fifth Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-614>

HB617 LEGISLATIVE APPROVAL PROCEDURES - SHUTDOWN ORDERS (JORDAN K) To establish certain time frames and legislative approval procedures as conditions governing the authority of the Department of Health to issue statewide shelter-in-place or stay-at-home orders for preventing the spread of contagious or infectious diseases, to invalidate

existing statewide shelter-in-place or stay-at-home orders issued by the Department, and to declare an emergency.

Current Status: 5/12/2020 - Referred to Committee House State and Local Government

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-617>

HB618 **NOW ACT (BECKER J)** To limit the authority of the Governor and the Department of Health to issue orders regarding contagious or infectious diseases, to prohibit any order from affecting the conduct of an election, to designate its provisions as the "Need Ohio Working (NOW) Act," and to declare an emergency.

Current Status: 5/12/2020 - Referred to Committee House State and Local Government

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-618>

HB647 **PROHIBIT MANUFACTURING, POSSESSION - MAGAZINES (STRAHORN F)** To prohibit the manufacture or possession for sale of high-capacity magazines except for authorized use by law enforcement agencies or for federal military purposes.

Current Status: 5/27/2020 - Referred to Committee House Federalism

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-647>

HB670 **REAPPROPRIATE CAPITAL FUNDS (MERRIN D)** To make capital reappropriations for certain agencies for the biennium ending June 30, 2022, and to declare an emergency.

Current Status: 6/4/2020 - House Finance, (Fourth Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-670>

HJR1 **INITIATIVE PETITION SIGNATURE REQUIREMENTS (KOEHLER K)** Proposing to amend Sections 1a and 1g of Article II of the Constitution of the State of Ohio to modify certain signature requirements for a proposed constitutional amendment by initiative petition.

Current Status: 6/30/2019 - Referred to Committee House Civil Justice

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HJR-1>

SB1 **REDUCE REGULATORY RESTRICTIONS (MCCOLLEY R, ROEGNER K)** To require certain agencies to reduce the number of regulatory restrictions and to continue the provision of this act on and after August 18, 2019.

Current Status: 5/20/2020 - Consideration of House Amendments; Vote 0-32, Senate Does Not Concur

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-1>

SB3 **DRUG SENTENCING REFORM (EKLUND J, O'BRIEN S)** To modify the controlled substance possession and trafficking prohibitions and penalties and the drug and alcohol abuse civil commitment mechanism.

Current Status: 5/27/2020 - Senate Judiciary, (Twelfth Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-3>

- SB33** **CRITICAL INFRASTRUCTURE FACILITIES OFFENSES** (HOAGLAND F) To modify certain criminal offenses with respect to critical infrastructure facilities and to impose fines and civil liability for damage to a critical infrastructure facility.
Current Status: 1/29/2020 - **REPORTED OUT**, House Public Utilities, (Seventh Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-33>
- SB46** **PUNITIVE OR EXEMPLARY DAMAGES LIMITATION EXEMPTIONS** (EKLUND J) To expand the exemption from punitive or exemplary damages limitations in tort law that is related to certain felony convictions.
Current Status: 3/19/2019 - Senate Government Oversight and Reform, (Second Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-46>
- SB52** **CIVILIAN CYBER SECURITY RESERVE FORCES** (GAVARONE T) To create the civilian cyber security reserve forces, to make the Secretary of State a member of the Homeland Security Advisory Council, to require the Secretary of State to appoint a chief information security officer, to require the boards of elections to audit election results, and to make an appropriation.
Current Status: 10/25/2019 - **SIGNED BY GOVERNOR**; eff. 90 days
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-52>
- SB57** **HEMP REGULATION** (HILL B, HUFFMAN S) To establish conditions and requirements governing the regulation of hemp and hemp products, and to declare an emergency.
Current Status: 7/30/2019 - **SIGNED BY GOVERNOR**; eff. immediately
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-57>
- SB119** **DAYLIGHT SAVINGS TIME** (ROEGNER K, PETERSON B) To exempt Ohio from daylight savings time.
Current Status: 11/13/2019 - Senate General Government and Agency Review , (Third Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-119>
- SB124** **MARITIME ASSISTANCE** (WILLIAMS S) To create the Ohio Maritime Assistance Program and to make an appropriation.
Current Status: 5/21/2019 - Senate Finance, (Second Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-124>
- SB140** **EXEMPT KNIVES-CONCEALED WEAPONS** (UECKER J) To exempt knives not used as weapons from the prohibition against carrying concealed weapons and to eliminate the prohibition against manufacturing, possessing for sale, selling, or furnishing certain weapons other than firearms or dangerous ordnance.
Current Status: 11/21/2019 - House Criminal Justice, (Second Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-140>

- SB182** **RAISE MINIMUM AGE-FIREARM PURCHASES** (THOMAS C, LEHNER P) To raise the minimum age to purchase a firearm to age 21 and to increase the penalty for improperly furnishing firearms to an underage person.
Current Status: 1/21/2020 - Senate Government Oversight and Reform, (Second Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-182>
- SB183** **FIREARM TRANSFERS** (THOMAS C, LEHNER P) To require a firearm transfer to be made through a dealer, through a law enforcement agency, or pursuant to a specified exception, and to require a background check when a firearm is transferred.
Current Status: 9/17/2019 - Senate Government Oversight and Reform, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-183>
- SB186** **VOTER REGISTRATION** (MANNING N, SYKES V) To create a voter verification and registration system, to modify the requirements for the administration of the statewide voter registration database, and to allow electors to register as affiliated with a political party.
Current Status: 2/25/2020 - Senate Government Oversight and Reform, (Second Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-186>
- SB204** **AIRPORT DEVELOPMENT DISTRICT** (SCHURING K, SYKES V) To authorize the creation of an airport development district for the purpose of funding public infrastructure improvements and attracting airlines and additional flights to a qualifying airport.
Current Status: 6/3/2020 - Senate Finance, (Fourth Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-204>
- SB231** **INVESTIGATE INSULIN PRICING** (CRAIG H, ANTONIO N) To require the Attorney General to investigate insulin pricing and prepare and submit a report.
Current Status: 2/25/2020 - Senate Finance Health and Medicaid Subcommittee, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-231>
- SB232** **CAP COST SHARING-INSULIN DRUGS** (CRAIG H, ANTONIO N) To cap cost-sharing for prescription insulin drugs.
Current Status: 2/25/2020 - Senate Finance Health and Medicaid Subcommittee, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-232>
- SB263** **PBM PROHIBITIONS-REIMBURSEMENTS** (HACKETT R) To prohibit a pharmacy benefit manager from taking certain actions with respect to reimbursements made to health care providers that participate in the federal 340B Drug Pricing Program.
Current Status: 2/25/2020 - Senate Finance, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-263>

- SB276 LIMITED LIABILITY COMPANIES (ROEGNER K)** To enact the Ohio Revised Limited Liability Company Act.
Current Status: 6/3/2020 - Senate Judiciary, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-276>
- SB279 PROHIBIT PHONES WHILE DRIVING (MAHARATH T)** To generally prohibit the use of electronic wireless devices while driving.
Current Status: 3/4/2020 - Referred to Committee Senate Local Government, Public Safety and Veterans Affairs
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-279>
- SB285 DISTRACTED DRIVING (O'BRIEN S, KUNZE S)** To revise the laws relative to distracted driving and the use of an electronic wireless communications device while driving.
Current Status: 5/27/2020 - Senate Local Government, Public Safety and Veterans Affairs, (Second Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-285>
- SB294 ABSENTEE VOTING (HUFFMAN M)** To extend absent voting by mail for the March 17, 2020, primary election to April 28, 2020, to make an appropriation, and to declare an emergency.
Current Status: 5/6/2020 - Referred to Committee Senate Government Oversight and Reform
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-294>
- SB297 PROHIBIT FORECLOSURES, EVICTIONS (ANTONIO N, CRAIG H)** To prohibit foreclosure activity and the eviction of residential and commercial tenants during the state of emergency declared regarding COVID-19, to refer such proceedings caused by the state of emergency to mediation, and to declare an emergency.
Current Status: 5/6/2020 - Referred to Committee Senate General Government and Agency Review
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-297>
- SB301 CONSUMER SALES PRACTICES ACT-PROHIBIT PRICE GOUGING (MANNING N, WILSON S)** To make changes to the Ohio Consumer Sales Practices Act and to declare an emergency.
Current Status: 5/13/2020 - Senate Judiciary, (Second Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-301>
- SB305 TELEMEDICINE DURING EMERGENCY (CRAIG H)** To require health plan issuers to cover telemedicine services during a state of emergency and to declare an emergency.
Current Status: 5/27/2020 - Senate Insurance and Financial Institutions, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-305>

- SB308** **CIVIL LIABILITY-EMERGENCY SERVICES** (HUFFMAN M) To revise the law governing immunity from civil liability and professional discipline for health care providers during disasters or emergencies, to provide qualified civil immunity to service providers providing services during and after a government-declared disaster, and to declare an emergency.
Current Status: 6/3/2020 - Senate Judiciary, (Fifth Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-308>
- SB310** **FEDERAL COVID FUNDING** (DOLAN M) To provide for the distribution of some federal coronavirus relief funding to local subdivisions, to make an appropriation, and to declare an emergency.
Current Status: 6/3/2020 - House Finance, (Fourth Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-310>
- SB316** **CAPITAL REAPPROPRIATIONS** (DOLAN M) To make capital reappropriations for the biennium ending June 30, 2022, and to declare an emergency.
Current Status: 6/3/2020 - Senate Finance, (Second Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-316>
- SCR2** **SIDE GUARDS-COMMERCIAL TRUCKS** (YUKO K, O'BRIEN S) To urge Congress to enact legislation requiring commercial trucks to use side guards and establishing side guard technical specifications.
Current Status: 2/12/2020 - Senate Transportation, Commerce and Workforce, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SCR-2>
- SJR2** **CONVENTION OF STATES** (HUFFMAN M) Application to the Congress of the United States for a Convention of the States under Article V of the Constitution of the United States that is limited to proposing amendments that impose fiscal restraints on the federal government, limit the power and jurisdiction of the federal government, and limit the terms of office for its officials and Members of Congress.
Current Status: 10/9/2019 - Referred to Committee Senate General Government and Agency Review
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SJR-2>
- SJR4** **REPAY FEDERAL UNEMPLOYMENT ADVANCES** (PETERSON B) Proposing to enact Section 18 of Article VIII of the Constitution of the State of Ohio to allow the General Assembly to provide for the issuance of obligations to repay outstanding advances made by the federal government to the unemployment compensation program of the state.
Current Status: 6/3/2020 - Senate Finance, (Second Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SJR-4>



The OMA's mission is to protect and grow Ohio manufacturing. We created this page to share content that we believe is relevant to your challenges related to the coronavirus (COVID-19) pandemic. The OMA is in regular contact with state officials, as well as our counterparts at the National Association of Manufacturers, regarding the response to COVID-19.

We will keep OMA members updated regularly through electronic communications from OMA President Eric Burkland, as well as via our normal communication tools, such as the OMA's weekly Leadership Briefing.

If you have health-related questions about COVID-19, contact the Ohio Department of Health's call center at 1-833-4ASKODH (1-833-427-5634).

Federal

- [Latest updates from the CDC.](#)
- [CDC's updated guidance for manufacturing workers and employers](#) (includes [this infographic on workstations](#)).
- [CDC's resources for businesses and employers.](#)
- [CDC's reopening guidance](#) for workplaces and businesses.
- [FFCRA Paid Leave Q&A.](#)
- [FFCRA Poster on Employee Rights.](#)
- [OSHA's safety tips](#) for manufacturers to protect employees from exposure to coronavirus – in both [English](#) and [Spanish](#).
- [U.S. EPA's list of disinfectants for use against the coronavirus.](#)
- [OSHA's new poster on steps to reduce the risk of exposure in workplaces.](#)
- [OSHA's video](#) and [poster](#) on how to properly wear and remove a mask/respirator.
- [CDC recommendation's regarding the use of cloth face coverings.](#)
- [U.S. Department of Labor guidance on the WARN Act](#) (regarding plant closings and mass layoffs).
- [Families First Coronavirus Response Act \(FFCRA\) paid leave requirements – for employers.](#)
- [COVID-19 Screening Tool.](#)
- [OSHA guidance on preparing workplaces for COVID-19.](#)
- [U.S. Small Business Administration resources](#) for employers regarding the coronavirus pandemic, including information on its [disaster loan program](#).
- [SBA coronavirus relief options.](#)
- [SBA Guidance on the CARES Act's Paycheck Protection Program Loan Guarantee.](#)
- [The Federal Reserve's Main Street Lending Program.](#)
- [Summaries and FAQs on all phases \(I, II, and III\) of the federal COVID-19 emergency packages.](#)

Ohio

- The DeWine administration's [latest public health order](#), which remains in effect through July 1, unless rescinded or modified sooner. Section 13 is specific to manufacturing.
- [Safety guidance for manufacturers](#), as well as the [five safety protocols](#) for all businesses, under the DeWine administration's [Responsible RestartOhio](#) plan.
- Ohio Department of Health [FAQs on the use of face coverings in the workplace](#).
- Ohio Department of Health's updated [checklist for employers regarding potentially exposed essential workers](#).
- [Ohio's Office of Small Business Relief](#).
- [Ohio Department of Health information and checklist for employers](#).
- [Ohio COVID-19 Dashboard](#).
- [Latest updates and resources from the Ohio Department of Health \(ODH\)](#).
- [JobsOhio 'Ohio Working. Ohio Safe' website](#).
- [Governor DeWine's briefings](#).
- [Governor DeWine's website](#).
- [SharedWork Ohio](#) – an OMA-supported program that provides employers with an alternative to layoffs.
- [State of Ohio's job search engine](#) for employers to post job openings during the COVID-19 emergency.
- [Information for employers regarding unemployment issues](#).

Industry

- The Manufacturing Leadership Council's [collection](#) of emerging strategies and operational practices that manufacturers are utilizing to keep employees safe.
- [National Association of Manufacturers: New Operational Practices to Consider in the Time of COVID-19-May 2020](#).
- [Ohio Manufacturing Alliance to Fight COVID-19](#) (to help ensure that health care workers have the protective equipment they need).
- The Ohio Manufacturing Alliance's [Ohio Emergency PPE Makers' Exchange](#). (This online marketplace is a resource for organizations, including essential employers, that need PPE and related equipment to find a selection offered by Ohio manufacturers and makers.)
- [National Association of Manufacturers COVID-19 Resources](#).
- CDC [letter](#) to NAM and [additional guidance](#) to give manufacturers clearer guidance on how to operate safely during the COVID-19 outbreak.
- The National Association of Manufacturers [state tracker](#) to provide the latest re-opening information for all states.
- The U.S. Chamber's [interactive map](#) comparing state-by-state re-opening guidelines for businesses.
- [MAGNET \(Northeast Ohio's MEP\) Best Practices](#).
- [Video](#) with Dr. Bill Gegas, medical director at Worthington Industries, explaining the differences between various masks and face coverings.

OMA Connections Partners

- [Huntington National Bank's summary of financial support programs for businesses](#)
- [Clark Schaefer Hackett COVID-19 Resource Center](#)
- [RSM COVID-19 Resource Center and COVID-19 Tax Relief Center](#)
- [Bricker & Eckler Resource Center](#)
- [Calfee COVID-19 Resource Center](#)
- [Dinsmore COVID-19 Business Strategies Hub](#)
- [Frantz Ward Coronavirus Updates](#)
- [GBQ Partners COVID-19 Insights](#)
- [Roetzel COVID-19 Resources](#)
- [Benesch COVID-19 Resource Center](#)
- [Jones Day COVID-19 Insights](#)
- [Plante Moran's COVID-19 Resource Center for Manufacturers](#)
- [Thompson Hine COVID-19 Task Force](#)
- [CliftonLarsonAllen COVID-19 Resources](#)
- [Crowe COVID-19 Resource Center](#)
- [Fisher Phillips COVID-19 Resource Center](#)
- [MCM COVID-19 Resource Center](#)
- [Pharmaceutical Research and Manufacturers of America](#)
- [Schneider Downs](#)
- [Squire Patton Boggs](#)

OMA Information

- OMA communications on COVID-19:
 - [May 29, 2020](#) email from OMA President Eric Burkland.
 - [May 28, 2020](#) email from OMA President Eric Burkland.
 - [May 26, 2020](#) email from OMA President Eric Burkland.
 - [May 22, 2020](#) email from OMA President Eric Burkland.
 - [May 21, 2020](#) email from OMA President Eric Burkland.
 - [May 19, 2020](#) email from OMA President Eric Burkland.
 - [May 18, 2020](#) email from OMA President Eric Burkland.
 - [May 15, 2020](#) email from OMA President Eric Burkland.
 - [May 14, 2020](#) email from OMA President Eric Burkland.
 - [May 13, 2020](#) email from OMA President Eric Burkland.
 - [May 12, 2020](#) email from OMA President Eric Burkland.
 - [May 11, 2020](#) email from OMA President Eric Burkland.
 - [May 8, 2020](#) email from OMA President Eric Burkland.
 - [May 7, 2020](#) email from OMA President Eric Burkland.
 - [May 6, 2020](#) email from OMA President Eric Burkland.
 - [May 5, 2020](#) email from OMA President Eric Burkland.
 - [May 4, 2020](#) email from OMA President Eric Burkland.
 - [May 1, 2020](#) email from OMA President Eric Burkland.
 - [April 30, 2020](#) email from OMA President Eric Burkland.
 - [April 29, 2020](#) email from OMA President Eric Burkland.
 - [April 28, 2020](#) email from OMA President Eric Burkland.
 - [April 27, 2020](#) email from OMA President Eric Burkland.
 - [April 24, 2020](#) email from OMA President Eric Burkland.
 - [OMA Leadership Briefing \(full issue\)](#) – April 24, 2020
 - [April 23, 2020](#) email from OMA President Eric Burkland.

- April 22, 2020 email from OMA President Eric Burkland.
- April 21, 2020 email from OMA President Eric Burkland.
- April 20, 2020 email from OMA President Eric Burkland.
- April 17, 2020 email from OMA President Eric Burkland.
- OMA Leadership Briefing (full issue) – April 17, 2020
- April 16, 2020 email from OMA President Eric Burkland.
- April 15, 2020 email from OMA President Eric Burkland.
- April 14, 2020 email from OMA President Eric Burkland.
- April 13, 2020 email from OMA President Eric Burkland.
- April 10, 2020 email from OMA President Eric Burkland.
- OMA Leadership Briefing (full issue) – April 10, 2020
- April 9, 2020 email from OMA President Eric Burkland.
- April 9, 2020 press release from the Ohio Manufacturing Alliance to Fight COVID-19.
- April 8, 2020 email from OMA President Eric Burkland.
- April 7, 2020 email from OMA President Eric Burkland.
- April 6, 2020 email from OMA President Eric Burkland.
- April 3, 2020 email from OMA President Eric Burkland.
- OMA Leadership Briefing (full issue) – April 3, 2020
- April 2, 2020 email from OMA President Eric Burkland.
- April 1, 2020 email from OMA President Eric Burkland.
- March 31, 2020 email from OMA President Eric Burkland.
- March 30, 2020 email from OMA President Eric Burkland.
- March 27, 2020 email from OMA President Eric Burkland.
- OMA Leadership Briefing (full issue) – March 27, 2020
- March 26, 2020 email from OMA President Eric Burkland.
- March 25, 2020 email from OMA President Eric Burkland.
- March 24, 2020 email from OMA President Eric Burkland.
- March 23, 2020 email from OMA President Eric Burkland.
- March 22, 2020 email from OMA President Eric Burkland.
- March 21, 2020 email from OMA President Eric Burkland.
- March 20, 2020 email from OMA President Eric Burkland.
- OMA Leadership Briefing (full issue) – March 20, 2020
- March 19, 2020 email from OMA President Eric Burkland.
- March 18, 2020 email from OMA President Eric Burkland.
- March 16, 2020 email from OMA President Eric Burkland.
- March 15, 2020 press release
- OMA Leadership Briefing update – March 13, 2020.
- March 12, 2020 email from OMA President Eric Burkland.
- March 11, 2020 email from OMA President Eric Burkland.
- OMA Leadership Briefing update – March 6, 2020.
- OMA Leadership Briefing update – February 28, 2020.
- OMA Leadership Briefing update – February 21, 2020.
- OMA COVID-19 Manufacturers' Information Exchange (via LinkedIn) to share information and best practices with other manufacturers.
- Bricker & Eckler analysis of Ohio's April 6, 2020 stay-at-home order.
- Bricker & Eckler analysis of Ohio's March 23, 2020 stay-at-home order.
- Recording of OMA's COVID-19 Briefing for Manufacturers – March 23, 2020. (Includes information regarding Ohio's stay-at-home order and actions to keep the workplace safe.)
- Recording of OMA's Second COVID-19 Briefing for Manufacturers – March 25, 2020. (Includes discussion from Lt. Gov. Jon Husted, as well as a panel of experts addressing key concerns.)
- Recording of OMA's Third COVID-19 Briefing for Manufacturers – April 29, 2020. (Includes subject-matter expertise on Ohio's re-opening plan, workplace safety, use of PPE by employees, unemployment provisions, federal loan programs, and other manufacturing-related topics.)

- Bricker & Eckler analysis of Ohio's April 30, 2020 "Stay Safe Ohio" order.
 - OMA's "Guidance on the Use of Face Coverings & Masks."
 - OMA's "Safety Guidance & Resources for Manufacturers During the COVID-19 Emergency."
 - OMA's FAQs document, which addresses questions raised by several members.
 - Recording of OMA's Infectious Disease Preparedness and Response webinar – May 12, 2020.
 - Bricker & Eckler Analysis of Ohio's May 20, 2020 "Ohioans Protecting Ohioans Urgent Health Advisory".
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About the OMA Office and Staff:

Effective Monday, March 23, 2020, the OMA staff will be working remotely and will be available to help meet your needs. Email us at oma@ohiomfg.com or call (800) 662-4463. Here is a [list of staff emails](#).



May 28, 2020

The Honorable Jon Husted
77 S. High Street, 30th Floor
Columbus, OH 43215

Dear Lieutenant Governor Husted:

On behalf of the members of The Ohio Manufacturers' Association, thank you, Governor DeWine, and the entire administration for your ongoing efforts to navigate Ohioans through these precarious times. Your commitment to common sense solutions and application of measures to combat the spread of COVID-19 have no doubt enabled Ohio to weather this storm. We know that there is still a long road ahead, both combatting the virus and getting our state's economy back on track.

As the days grow longer and warmer, and with the upcoming expiration of the Health Director's current Order, we anticipate that the administration will continue to outline the next phase in this battle. As the administration is considering how to proceed, we ask you to modify the requirements regarding face masks/coverings with respect to manufacturing.

As you know, almost all of Ohio's manufacturers were considered essential under the previous stay at home order and were permitted to operate – albeit while following prescribed health protocols. At the time face masks were not required at the workplace. As Ohio moved into a phased reopening, the April 30 Director's Order required face masks for all employees (section 8 of the Order) with specific exceptions.

As the governor mentioned in a prior press conference, Ohio is moving from orders to strong recommendations. We recommend that if the Director's Order is renewed, that the use of face coverings or masks be made optional, but strongly recommended, in a manufacturing setting and the delineation of specific exceptions be rescinded.

As we enter the summer months and the temperature increases, OMA members are concerned that employees may have difficulty breathing while wearing a facial mask.

OMA has heard from members, just in the past few days, that member company employees had difficulty breathing on the manufacturing line while wearing a face mask. Members want to accommodate their individual circumstances, but they also want to be compliant with the state's guidance and not be in fear of health department or law enforcement inspection with respect to face coverings.

Maintaining proper social distancing, cleaning of workplaces, and promoting proper hygiene can and should continue while we are continuing to face this challenge. We know manufacturers can maintain a safe workplace under these conditions and protocols. We've done it.

Making face coverings or masks optional, but strongly recommended, with no specified exceptions, in a manufacturing setting is a reasonable way to continue moving forward.

While our preference is a manufacturing specific face mask recommendation, we understand the administration might desire to continue requiring face masks for other industries/sectors and simplicity lends itself to maintaining a blanket requirement for all businesses/industries/sectors. Ohio's manufacturers suggest then that the exemptions be further enumerated or additional guidance issued for manufacturers and their employees.

As one suggestion, Section 8 of the current Director's Order can be rewritten as follows:

8. Facial Coverings (Masks). Businesses must allow all customers, patrons, visitors, contractors, vendors and similar individuals to use facial coverings, except for specifically documented, legal, life, health or safety considerations and limited documented security considerations. Businesses must require all employees to wear facial coverings, except for one of the following reasons:

- a. Facial coverings in the work setting are prohibited by law or regulation.
- b. Facial coverings are in violation of documented industry standards.
- c. Facial coverings are not advisable for health reasons.
- d. Facial coverings are in violation of the business's documented safety policies.
- e. Facial coverings are not required when the employee works alone in an assigned work area.
- f. There is a functional (practical) reason for an employee not to wear a facial covering in the workplace. Practical reasons include but are not limited to high temperatures in manufacturing facilities, or manufacturing employees separated by more than six feet or by a barrier when performing their jobs on the manufacturing floor.

Businesses must provide written justification, upon request, explaining why an employee is not required to wear a facial covering in the workplace. At a minimum, facial coverings (masks) should be cloth/fabric and cover an individual's nose, mouth, and chin.

Alternatively, another suggestion is that the manufacturing specific information and checklist (Section 21(a) in the current Director's Order) can be amended as follows to include the new subsection:

Practical reasons for not wearing a mask, as cited in Section 8(f), include but are not limited to, high temperatures in manufacturing facilities, or manufacturing employees separated by more than six feet or by a barrier when performing their jobs on the manufacturing floor.

These are just two possible suggestions and The OMA and its members stand ready to work with you on developing a common sense solution. Thank you again for your service and dedication to keeping Ohioans safe.

DIRECTOR'S ORDER

Re: Director's Updated and Revised Order for Business Guidance and Social Distancing

I, Amy Acton, MD, MPH, Director of the Ohio Department of Health (ODH), pursuant to the authority granted to me in R.C. 3701.13 to "make special orders...for preventing the spread of contagious or infectious diseases" **Order** the following to prevent the spread of COVID-19 into the State of Ohio:

- 1. Preamble:** The sacrifices and incredible efforts that Ohioans have undertaken, make it possible to begin to lift the mandatory requirements and restrictions that were needed during the initial phase of the COVID-19 Pandemic. The adjustment of these orders is able to proceed based upon the facts and the science existing at this time in Ohio, however if the situation continues to improve, then more restrictions will be lifted, and if the situation deteriorates additional targeted restrictions will need to be made. While government can set the baseline, it should be understood that these orders set forth the minimum acts that must be taken and if people do more than the minimum to act safely, it will benefit everyone.
- 2. Business and operations.** All businesses and operations shall continue to comply with Social Distancing Requirements as defined in this Order, including by maintaining six-foot social distancing for both employees and members of the public when possible, including, but not limited to, when any customers are standing in line.
- 3. Prohibited activities.** All public and private gatherings of greater than 10 people occurring outside a single household and connected property, or living unit and connected property are prohibited, except for the limited purposes permitted by Orders of the Director of Health. This is in accordance with President Trump's coronavirus guidelines issued March 16, 2020. Nothing in this Order prohibits the gathering at a household, family or residence. When people need to leave their places of residence to perform or to otherwise facilitate authorized activities necessary for continuity of social and commercial life, they should at all times and as much as reasonably possible comply with Social Distancing Requirements. This Section does not apply to weddings and funerals, although wedding receptions are subject to the Restaurants, Bars, and Banquet & Catering Guidance and limited to 300 persons. This Section does not apply to religious facilities, entities and groups and religious gatherings. This Section does not apply to First Amendment protected speech, including petition or referendum circulators and any activity by the Media, which includes newspapers, television, radio and other media services.
- 4. Prohibited and permitted travel.** Persons who have tested positive for COVID-19, are presumptively diagnosed with COVID-19, or are exhibiting the symptoms identified in the screening guidance available from the U.S. Centers for Disease Control and Prevention and the

Ohio Department of Health, unless they have recovered, shall not enter the State, unless they are doing so under medical orders for the purposes of medical care, are being transported by Emergency Medical Services (EMS), are driving or being driven directly to a medical provider for purposes of initial care, or are a permanent resident of the State.

5. Elderly people and those who are vulnerable as a result of illness should take additional precautions. People at high risk of severe illness from COVID-19, including elderly people and those who are sick, are urged to stay in their residence to the extent possible except as necessary to seek medical care. According to CDC, those at high-risk for severe illness from COVID-19 include people who are sixty-five years or older and people of all ages with underlying medical conditions, particularly if not well controlled, including:

- a. People with chronic lung disease or moderate to severe asthma;
- b. People who have serious heart conditions;
- c. People who are immune compromised;
- d. People with severe obesity (body mass index [BMI] of 40 or higher);
- e. People with diabetes;
- f. People with chronic kidney disease undergoing dialysis; and
- g. People with liver disease.

6. Businesses covered by this Order. For the purposes of this Order, covered businesses include any for-profit, non-profit, educational entities, or governmental entities (other than federal) regardless of the nature of the service, the function it performs, or its corporate or entity structure. Nothing in this Order is intended to encroach on or interfere with the separation of powers under the Ohio Constitution.

7. Facial Coverings (Masks). Businesses must allow all customers, patrons, visitors, contractors, vendors and similar individuals to use facial coverings, except for specifically documented legal, life, health or safety considerations and limited documented security considerations. Businesses must require all employees to wear facial coverings, except for one of the following reasons:

- a. Facial coverings in the work setting are prohibited by law or regulation;
- b. Facial coverings are in violation of documented industry standards;
- c. Facial coverings are not advisable for health reasons;
- d. Facial coverings are in violation of the business's documented safety policies;
- e. Facial coverings are not required when the employee works alone in an assigned work area;
or
- f. There is a functional (practical) reason for an employee not to wear a facial covering in the workplace.

Businesses must provide written justification, upon request, explaining why an employee is not required to wear a facial covering in the workplace. At a minimum, facial coverings (masks) should be cloth/fabric and cover an individual's nose, mouth, and chin.

8. Medical Care. The Director of Health Order signed March 17, 2020, for the management of non-essential surgeries and procedures throughout Ohio, is rescinded effective at 11:59 p.m. on April 30, 2020. Governor DeWine asked hospitals and other providers to reassess all surgeries and procedures that were delayed consistent with the March 17 Order. Surgeries and procedures were to be prioritized and performed if there is a:

- a. Threat to the patient’s life if the surgery or procedure is delayed;
- b. Threat of permanent dysfunction of an extremity or organ system if delayed;
- c. Risk of metastasis or progression of staging if delayed;
- d. Risk of rapidly worsening to severe symptoms if delayed, or
- e. Presence of severe symptoms causing an inability to perform activities of daily living.

Effective at 11:59 p.m. on April 30, 2020, medical providers, including dentists, in the State may resume non-essential surgeries and procedures. This type of health care typically does not require an inpatient or overnight stay. These surgeries, procedures and other health care services, that utilize minimal personal protective equipment (PPE) have a minimal impact on inpatient hospital bed capacity, may resume only if the provider meets the following conditions:

- a. The provider follows infection control and other environmental practices in accordance with the ODH and CDC guidelines;
- b. The provider maintains adequate inventories of PPE, supplies, equipment, and medicine in their facility for each patient, considering all phases of care the patient may require,
- c. The provider creates a plan for conservation and monitoring that may include decontamination and reuse protocols to preserve PPE, supplies, equipment, and medicine to be prepared for an influx of patients, including those who do not have COVID-19;
- d. The provider evaluates access to a reliable supply chain to support continued operations for non-COVID-19 cases, and to respond to an unexpected surge in COVID-19 cases in a timely manner;
- e. The provider frequently counts PPE inventory. For hospitals, this information will continue to be reported to the State’s COVID-19 resource management system on a daily basis;
- f. The provider defines processes for timely COVID-19 testing of patients and staff in accordance with the ODH guidelines;
- g. The provider continues to use telehealth modalities whenever possible; and
- h. The provider develops an actionable plan for communication, outreach, and equitable delivery of services that:
 - i. Recognizes the underlying social determinants of health and the disproportionate impact of COVID-19 on minority populations;
 - ii. Engages patients in discussion regarding the risk of contracting COVID-19; and
 - iii. Engages patients in shared decision making regarding the need for and timing of health care services. Surgeries and other procedures could still be delayed based upon mutual decisions made by patients and their clinicians.

As a provider prepares to restart non-essential health care services, hospitals and other providers should review the following types of considerations:

- a. Pre-restart considerations;
- b. Prioritizing patient outreach and scheduling;
- c. Patient Communication;
- d. Patient Screening for COVID-19;
- e. Facility Considerations;
- f. Workforce/Staffing;
- g. Sanitation Procedures;

- h. Personnel Protective Equipment;
- i. Supplies;
- j. Patient and Staff Testing; and
- k. Consultation of additional Resources.

These restrictions will be lifted during the next phase of reopening. Providers should continue to use telehealth modalities, whenever possible, and create or use existing internal strategies to prioritize cases based on the medical staff's governance and resolution structure. Providers should also follow the Responsible Restart Ohio Guide for Health Care distributed by ODH.

9. **Closed Businesses and Operations.** For the purposes of this Order, the following businesses and operations are to remain closed until this Order is amended or rescinded:
- a. **Schools.** The Third Amended Director of Health Order signed May 22, 2020, or as it may be subsequently amended, that closed all K-12 schools in the State remains in effect;
 - b. **Adult Day Support or Vocational Habilitation Services in a Congregate Setting.** The Amended Director of Health Order signed March 21, 2020, or as it may be subsequently amended, that prohibited adult day support or vocational habilitation services in a congregate setting in the State remains in effect;
 - c. **Older Adult Day Care Services and Senior Centers.** The Director of Health Order signed March 24, 2020, or as it may be subsequently amended, that prohibited older adult day care services and closed senior centers in the State remains in effect;
 - d. **Entertainment/Recreation.** The Director of Health Order to Cease Operations and Close Venues signed March 21, 2020, or as it may be subsequently amended, that closed all indoor family entertainment businesses and venues such as laser tag facilities, roller skating rinks, ice skating rinks, arcades and indoor miniature golf facilities, as well as, adult and child skill or chance game facilities in the State remains in effect, except that roller skating rinks, ice skating rinks and indoor miniature golf facilities are now permitted to be open in the State so long as they comply with the non-contact sports, skills training and golf guidance contained in separate Director's orders. The Director of Health Amended Order to Limit and/or Prohibit Mass Gatherings and the Closure of Venues in the State of Ohio signed March 17, 2020, or as it may be subsequently amended, that closed auditoriums, stadiums, arenas, parades, fairs, festivals, bowling alleys, health clubs, fitness centers, workout facilities, gyms, yoga studios, indoor trampoline parks, indoor water parks, movie and other theatres (excluding drive-in theatres), performance theatres, all public recreation centers, and indoor sports facilities in the State remains in effect, except that bowling alleys, health clubs/fitness centers/workout facilities/gyms/yoga studios, fitness-based public recreation centers and indoor sports facilities are now permitted to be open pursuant to separate Director's orders and the mass gathering definition is now any number greater than 10 persons pursuant to Section 3 of this Order. All places of public amusement, whether indoors or outdoors, including, but not limited to, locations with amusement rides, carnivals, amusement parks, water parks, aquariums, zoos, museums, arcades, fairs, children's play centers, playgrounds, funplexes, theme parks, concert and music halls, and country clubs or social clubs shall be closed. Recreational sports tournaments and organized recreational sports leagues, except as specifically permitted by separate Director's order shall be prohibited.

10. Minimum Basic Operations. Any activity, business or operation, if ordered closed, is still permitted to engage in Minimum Basic Operations. For the purposes of this Order, Minimum Basic Operations include the following, provided that employees comply with Social Distancing Requirements, to the extent possible, while carrying out such operations:

- a. The minimum necessary activities to maintain the value of the business's inventory, preserve the condition of the business's physical plant and equipment, ensure security, process payroll and employee benefits, or for related functions; and
- b. The minimum necessary activities to facilitate employees of the business being able to continue to work remotely from their residences.

11. Social Distancing Requirements. For purposes of this Order, Social Distancing Requirements includes maintaining at least six-foot social distancing from other individuals, washing hands with soap and water for at least twenty seconds as frequently as possible or using hand sanitizer, covering coughs or sneezes (into the sleeve or elbow, not hands), regularly cleaning high-touch surfaces, and not shaking hands.

a. Required measures. Essential Businesses and Operations and businesses engaged in Minimum Basic Operations must take proactive measures to ensure compliance with Social Distancing Requirements, including where possible:

- i. **Designate six-foot distances.** Designating with signage, tape, or by other means six-foot spacing for employees and customers in line to maintain appropriate distance;
- ii. **Hand sanitizer and sanitizing products.** Having hand sanitizer and sanitizing products readily available for employees and customers; and
- iii. **Online and remote access.** Posting online whether a facility is open and how best to reach the facility and continue services by phone or remotely.

12. General COVID-19 Information and Checklist for Businesses/Employers. Business and employers are to take the following actions:

- a. Strongly encourage as many employees as possible to work from home by implementing policies in areas such as teleworking and video conferencing, subject to the discretion of the employer;
- b. Actively encourage sick employees to stay home until they are free of fever (without the use of medication) for at least 72 hours (three full days) AND symptoms have improved for at least 72 hours AND at least seven days have passed since symptoms first began. Do not require a healthcare provider's note to validate the illness or return to work of employees sick with acute respiratory illness; healthcare provider offices and medical facilities may be extremely busy and not able to provide such documentation in a timely way;
- c. Ensure that your sick leave policies are up to date, flexible, and non-punitive to allow sick employees to stay home to care for themselves, children, or other family members. Consider encouraging employees to do a self-assessment each day to check if they have any COVID-19 symptoms (fever, cough, or shortness of breath);

- d. Separate employees who appear to have acute respiratory illness symptoms from other employees and send them home immediately. Restrict their access to the business until they have recovered;
- e. Reinforce key messages — stay home when sick, use cough and sneeze etiquette, and practice hand hygiene — to all employees, and place posters in areas where they are most likely to be seen. Provide protection supplies such as soap and water, hand sanitizer, tissues, and no-touch disposal receptacles for use by employees;
- f. Frequently perform enhanced environmental cleaning of commonly touched surfaces, such as workstations, countertops, railings, door handles, and doorknobs. Use the cleaning agents that are usually used in these areas and follow the directions on the label. Provide disposable wipes so that commonly used surfaces can be wiped down by employees before each use; and
- g. Be prepared to change business practices if needed to maintain critical operations (e.g., identify alternative suppliers, prioritize customers, or temporarily suspend some of your operations).
- h. Comply with all applicable guidance from the U.S. Centers for Disease Control and Prevention and the Ohio Department of Health regarding social distancing.

13. Sector Specific COVID-19 Information and Checklist for Manufacturing, Distribution & Construction. Businesses and employers, whether currently open or reopening, are to take the following actions:

- a. Employees, Distributors, & Guests
 - i. Ensure minimum 6 feet between people, if not possible, install barriers.
 - ii. Businesses must require all employees to wear facial coverings, except for one of the following reasons:
 - a. Facial coverings in the work setting are prohibited by law or regulation;
 - b. Facial coverings are in violation of documented industry standards;
 - c. Facial coverings are not advisable for health reasons;
 - d. Facial coverings are in violation of the business’s documented safety policies;
 - e. Facial coverings are not required when the employee works alone in an assigned work area; or
 - f. There is a functional (practical) reason for an employee not to wear a facial covering in the workplace. Practical reasons include but are not limited to high temperatures in manufacturing facilities, or manufacturing employees separated by more than six feet or by a barrier when performing their jobs on the manufacturing floor.

Businesses must provide written justification to local health officials, upon request, explaining why an employee is not required to wear a facial covering in the workplace. At minimum, facial coverings (masks) should be cloth/fabric and cover an individual’s nose, mouth, and chin.
 - iii. Employees must perform daily symptom assessment, including for cough, shortness of breath or difficulty breathing, fever, chills, muscle pain, sore throat, and new loss of taste or smell.
 - iv. Require employees to stay home if symptomatic.
 - v. Require regular handwashing.

- vi. Stagger or limit arrivals of employees and guests.
- vii. Have employees work from home whenever possible.
- viii. It is recommended that, if possible, consider having distributors and guests wear face coverings at all times.
- ix. It is recommended that, if possible, provide stipend to employees for transportation.

b. Shift Pattern

- i. Daily disinfection of desks and workstations.
- ii. Change shift patterns (e.g. fewer shifts).
- iii. Stagger lunch and break times.
- iv. It is recommended that, if possible, split into sub-teams, limit contact across sub-teams.
- v. It is recommended that, if possible, reduce pace to allow less FTEs per line.

c. Physical Spaces/Workstations

- i. Ensure minimum 6 ft between people, if not possible, install barriers.
- ii. Daily deep disinfection of high-contact surfaces.
- iii. Space factory floor to allow for distancing.
- iv. Regulate max number of people in cafeterias/common spaces.
- v. Establish maximum capacity.
- vi. It is recommended that, if possible, close cafeteria and gathering spaces or conduct regular cleanings.
- vii. It is recommended that, if possible, daily deep disinfection of entire facility.

d. Confirmed Cases

- i. Immediately isolate and seek medical care for any individual who develops symptoms while at work.
- ii. Contact the local health district about suspected cases or exposures.
- iii. Shutdown shop/floor for deep sanitation if possible.
- iv. It is recommended that, if possible, work with local health department to identify potentially infected or exposed individuals to help facilitate effective contact tracing/notifications.
- v. It is recommended that, if possible, once testing is readily available, test all suspected infections or exposures.
- vi. It is recommended that, if possible, following testing, contact local health department to initiate appropriate care and tracing.

14. Sector Specific COVID-19 Information and Checklist for Consumer, Retail, Services.
Businesses and employers, whether currently open or reopening, are to take the following actions:

a. Employees

- i. Ensure minimum 6 feet between people, if not possible, install barriers.

- ii. Businesses must allow all customers, patrons, visitors, contractors, vendors and similar individuals to use facial coverings, except for specifically documented legal, life, health or safety considerations and limited documented security considerations.
- iii. Businesses must require all employees to wear facial coverings, except for one of the following reasons:
 - a. Facial coverings in the work setting are prohibited by law or regulation;
 - b. Facial coverings are in violation of documented industry standards;
 - c. Facial coverings are not advisable for health reasons;
 - d. Facial coverings are in violation of the business's documented safety policies;
 - e. Facial coverings are not required when the employee works alone in an assigned work area; or
 - f. There is a functional (practical) reason for an employee not to wear a facial covering in the workplace.

Businesses must provide written justification to local health officials, upon request, explaining why an employee is not required to wear a facial covering in the workplace. At minimum, facial coverings (masks) should be cloth/fabric and cover an individual's nose, mouth, and chin.
- iv. Employees must perform daily symptom assessment, including for cough, shortness of breath or difficulty breathing, fever, chills, muscle pain, sore throat, and new loss of taste or smell.
- v. Require employees to stay home if symptomatic.
- vi. Require regular handwashing by employees.
- vii. Place hand sanitizers in high-contact locations.
- viii. Clean high-touch items after each use (e.g. carts, baskets, and other items and equipment).
- ix. It is recommended that, if possible, group employees by shift to reduce exposure.

b. Customers & Guests

- i. Ensure minimum 6 feet between customers.
- ii. Specify hours for at-risk populations, as appropriate (e.g. elderly).
- iii. Place hand sanitizers in high-contact locations.
- iv. Ask customers and guests not to enter if symptomatic.
- v. Stagger entry of customers and guests.
- vi. Businesses that offer permitted sports activities and sports leagues must follow guidance for General Non-Contact Sports.
- vii. It is recommended that, if possible, consider having customers wear face coverings at all times.
- viii. It is recommended that, if possible, health questionnaire for symptoms at entry point.
- ix. It is recommended that, if possible, provide face coverings upon entry.
- x. It is recommended that, if possible, accept customers by appointment only.
- xi. It is recommended that, if possible, increase availability for curbside pickup.
- xii. It is recommended that, if possible, consider suspending return policies.

c. Physical Spaces

- i. Ensure minimum 6 ft between people, if not possible, install barriers.
- ii. Post social distancing signage and disinfect high-contact surfaces hourly.
- iii. Clean merchandise before stocking if possible.
- iv. Establish maximum capacity.
- v. Discontinue self-service buffets and product samples, but self-service beverage is permitted.
- vi. Food courts must follow Restaurants, Bars, and Banquet & Catering Facilities/Services Guidance.
- vii. Businesses with food service operations must also follow Restaurants, Bars, and Banquet & Catering Facilities/Services Guidance.
- viii. It is recommended that, if possible, close once a week for deep cleaning.
- ix. It is recommended that, if possible, maximize available checkout space to promote social distancing (e.g., space customer lines with floor markers, use alternate registers).
- x. It is recommended that, if possible, use contact-less payments.
- xi. It is recommended that, if possible, increase capacity for delivery and curbside pickup.

d. Confirmed Cases

- i. Immediately isolate and seek medical care for any individual who develops symptoms while at work.
- ii. Contact the local health district about suspected cases or exposures.
- iii. Shutdown shop/floor for deep sanitation if possible.
- iv. It is recommended that, if possible, work with local health department to identify potentially infected or exposed individuals to help facilitate effective contact tracing/notifications.
- v. It is recommended that, if possible, once testing is readily available, test all suspected infections or exposures.
- vi. It is recommended that, if possible, following testing, contact local health department to initiate appropriate care and tracing.

15. Sector Specific COVID-19 Information and Checklist for General Office Environments.

Businesses and employers, whether currently open or reopening, are to take the following actions:

a. Employees & Guests

- i. Ensure minimum 6 feet between people, if not possible, install barriers.
- ii. Personnel should work from home when possible and feasible with business operations.
- iii. Stagger arrival of all employees and guests.
- iv. Businesses must require all employees to wear facial coverings, except for one of the following reasons:
 - a. Facial coverings in the work setting are prohibited by law or regulation;
 - b. Facial coverings are in violation of documented industry standards;

- c. Facial coverings are not advisable for health reasons;
- d. Facial coverings are in violation of the business's documented safety policies;
- e. Facial coverings are not required when the employee works alone in an assigned work area; or
- f. There is a functional (practical) reason for an employee not to wear a facial covering in the workplace.

Businesses must provide written justification to local health officials, upon request, explaining why an employee is not required to wear a facial covering in the workplace. At minimum, facial coverings (masks) should be cloth/fabric and cover an individual's nose, mouth, and chin.

- v. Employees must perform daily symptom assessment, including for cough, shortness of breath or difficulty breathing, fever, chills, muscle pain, sore throat, and new loss of taste or smell.
- vi. Require employees to stay home if symptomatic.
- vii. Require regular handwashing by employees.
- viii. Place hand sanitizers in high-contact locations.
- ix. It is recommended that, if possible, ensure seating distance of minimum of 6 feet or more.
- x. It is recommended that, if possible, consider having customers wear face coverings at all times.
- xi. It is recommended that, if possible, enable natural workplace ventilation.
- xii. It is recommended that, if possible, health questionnaire for symptoms at entry.
- xiii. It is recommended that, if possible, temperature taking protocol.

b. Physical Spaces

- i. Frequent disinfection of desks, workstations, and high-contact surfaces.
- ii. Daily disinfection of common areas.
- iii. Cancel/postpone in person events when social distancing guidelines cannot be met.
- iv. No self-service buffet in cafeteria.
- v. Utilize disposable tableware and other materials.
- vi. Establish maximum capacity.
- vii. Reduce sharing of work materials.
- viii. Post signage on health safety guidelines in common areas.
- ix. It is recommended that, if possible, redesign/space workstations for 6 feet or more of distance.
- x. It is recommended that, if possible, close cafeteria and gathering or conduct regular cleanings.
- xi. It is recommended that, if possible, limit congregation in office spaces.
- xii. It is recommended that, if possible, divide essential staff into groups and establish rotating shifts.
- xiii. It is recommended that, if possible, have available at least 3 weeks of cleaning supplies

c. Confirmed Cases

- i. Immediately isolate and seek medical care for any individual who develops symptoms while at work.
- ii. Contact the local health district about suspected cases or exposures.
- iii. Shutdown shop/floor for deep sanitation if possible.
- iv. It is recommended that, if possible, work with local health department to identify potentially infected or exposed individuals to help facilitate effective contact tracing/notifications.
- v. It is recommended that, if possible, once testing is readily available, test all suspected infections or exposures.
- vi. It is recommended that, if possible, following testing, contact local health department to initiate appropriate care and tracing.

16. Previous Orders superseded. This Order supersedes, only to the extent that it conflicts, and amends any previous Order which conflicts with the provisions of this Order.

17. Duration. This Order shall be effective at 11:59 p.m. on May 29, 2020 and remains in full force and effect until 11:59 p.m. on July 1, 2020, unless the Director of the Ohio Department of Health rescinds or modifies this Order at a sooner time and date.

COVID-19 is a respiratory disease that can result in serious illness or death, is caused by the SARS-CoV-2 virus, which is a new strain of coronavirus that had not been previously identified in humans and can easily spread from person to person. The virus is spread between individuals who are in close contact with each other (within about six feet) through respiratory droplets produced when an infected person coughs or sneezes. It may be possible that individuals can get COVID-19 by touching a surface or object that has the virus on it and then touching their own mouth, nose or eyes.

On January 23, 2020, the Ohio Department of Health issued a Director's Journal Entry making COVID-19 a Class A reportable disease in Ohio.

On January 28, 2020, the Ohio Department of Health hosted the first statewide call with local health departments and healthcare providers regarding COVID-19.

On January 30, 2020, the International Health Regulations Emergency Committee of the World Health Organization declared the outbreak of COVID-19 a public health emergency of international concern.

On January 31, 2020, Health and Human Services Secretary, Alex M. Azar II, declared a public health emergency for the United States to aid the nation's healthcare community in responding to COVID-19.

On February 1, 2020, the Ohio Department of Health issued a statewide Health Alert Network to provide local health departments and healthcare providers with updated guidance for COVID-19 and revised Person Under Investigation (PUI) criteria.

On February 3, 2020, the Ohio Department of Health trained over 140 personnel to staff a call center for COVID-19, in the event it was needed.

On February 5, 2020, the Ohio Department of Health began updating and notifying the media of the number of PUIs in Ohio every Tuesday and Thursday.

On February 6, 2020, the Ohio Department of Health updated all agency assistant directors and chiefs of staff on COVID-19 preparedness and status during the Governor's cabinet meeting.

On February 7, 2020, the Ohio Department of Health and the Ohio Emergency Management Agency met to conduct advance planning for COVID-19.

On February 13, 2020, the Ohio Department of Health conducted a Pandemic Tabletop Exercise with State agencies to review responsive actions should there be a pandemic in Ohio.

On February 14, 2020, the Ohio Department of Health held a conference call with health professionals across the state. The purpose of the call was to inform and engage the healthcare community in Ohio. Presentations were provided by the Department of Health, Hamilton County Public Health, and the Ohio State University.

On February 27, 2020, the Ohio Department of Health and the Ohio Emergency Management Agency briefed the directors of State agencies during the Governor's cabinet meeting regarding preparedness and the potential activation of the Emergency Operations Center.

On February 28, 2020, the "Governor DeWine, Health Director Update COVID-19 Prevention and Preparedness Plan" was sent to a broad range of associations representing healthcare, dental, long-term care, K-12 schools, colleges and universities, business, public transit, faith-based organizations, non-profit organizations, and local governments.

On March 2, 2020, the Ohio Department of Health activated a Joint Information Center to coordinate COVID-19 communications.

On March 5, 2020, the Ohio Department of Health hosted the Governor's Summit on COVID-19 Preparedness, a meeting with the Governor, cabinet agency directors, local health department commissioners, and their staff.

On March 6, 2020, the Ohio Department of Health opened a call center to answer questions from the public regarding COVID-19.

On March 9, 2020, testing by the Department of Health confirmed that three (3) patients were positive for COVID-19 in the State of Ohio. This confirms the presence of a potentially dangerous condition which may affect the health, safety and welfare of citizens of Ohio.

On March 9, 2020, the Ohio Emergency Management Agency activated the Emergency Operations Center.

On March 9, 2020, the Governor Declared a State of Emergency in Executive Order 2020-01D.

On March 11, 2020, the head of the World Health Organization declared COVID-19 a pandemic.

On March 11, 2020, testing by the Ohio Department of Health confirmed that one (1) more patient was positive for COVID-19 in the State of Ohio.

On March 11, 2020, the Ohio Departments of Health and Veterans Services issued a Joint Directors' Order to limit access to Ohio nursing homes and similar facilities.

On March 15, 2020, the Ohio Department of Health issued a Director's Order to limit access to Ohio's jails and detention facilities.

On March 15, 2020, the Ohio Department of Health issued a Director's Order to limit the sale of food and beverages, liquor, beer and wine to carry-out and delivery only.

On March 15, 2020, the CDC issued Interim Guidance for mass gatherings or large community events, stating that such events that consist of 50 or more people should be cancelled or postponed.

On March 16, 2020 the Ohio Department of Health issued a Director's Order closing polling locations for the March 17, 2020 primary election.

On March 17, 2020 the Ohio Department of Health issued a Director's Order for the management of non-essential surgeries and procedures throughout Ohio.

On March 17, 2020 the Ohio Department of Health issued an Amended Director's Order to limit and/or prohibit mass gatherings and the closure of venues in the State of Ohio.

On March 19, 2020, the Ohio Department of Health issued a Director's Order closing hair salons, nail salons, barber shops, tattoo parlors, body piercing locations, and massage therapy locations.

On March 21, 2020, the Ohio Department of Health issued a Director's Order closing older adult day care services and senior centers.

On March 21, 2020, the Ohio Department of Health issued a Director's Order closing family entertainment centers and internet cafes.

On March 22, 2020, the Ohio Department of Health issued a Director's Order that all persons are to stay at home unless engaged in essential work or activity.

On March 24, 2020, the Ohio Department of Health issued a Director's Order that closed facilities providing child care services.

On March 30, 2020, the Ohio Department of Health issued an Amended Director's Order that closed all K-12 schools in the State of Ohio.

On April 2, 2020, the Ohio Department of Health issued an Amended Director's Order that all persons are to stay at home unless engaged in essential work or activity.

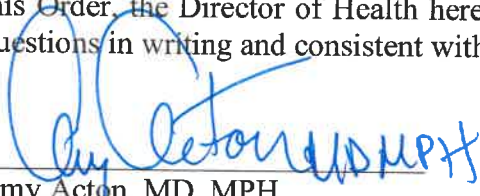
On April 30, 2020, the Ohio Department of Health issued the Stay Safe Ohio Order that reopened businesses, with exceptions, and continued a stay healthy and safe at home order.

Multiple areas of the United States are experiencing “community spread” of the virus that causes COVID-19. Community spread, defined as the transmission of an illness for which the source is unknown, means that isolation of known areas of infection is no longer enough to control spread.

The CDC reports that people are most contagious when they are most symptomatic (the sickest) however some spread might be possible before people show symptoms although that is not the main way the virus spreads.

Mass gatherings (10 or more persons) increase the risk of community transmission of the virus COVID-19.

Accordingly, I hereby **ORDER** that Social Distancing requirements and business sector checklists as set forth in this Order are to continue. This Order shall remain in full force and effect until 11:59 p.m. on July 1, 2020, unless the Director of the Ohio Department of Health rescinds or modifies this Order at a sooner time and date. To the extent any public official enforcing this Order has questions regarding the effect of this Order, the Director of Health hereby delegates to local health departments the authority to answer questions in writing and consistent with this Order.



Amy Acton, MD, MPH
Director of Health

May 29, 2020



Bricker & Eckler LLP
100 South Third Street
Columbus, OH 43215
Office: 614.227.2300
www.bricker.com

TO: The Ohio Manufacturers' Association

FROM: Bricker & Eckler

DATE: June 1, 2020

RE: Updated and Revised Order for Business Guidance and Social Distancing

On May 29, 2020, Ohio Department of Health Director Dr. Amy Acton issued a new [Updated and Revised Order for Business Guidance and Social Distancing](#) (“Order”). The Order largely mirrors previous orders including the [“Stay Safe Ohio Order”, previously issued](#) and the [Revised Director’s Order and Advisory](#) issued on May 20, 2020 (previous [analysis of the Ohioans Helping Ohioans Advisory](#)).

The Order again contains requirements on businesses for operating, including the [sector specific operating requirements](#). This Order is in effect until 11:59PM on July 1, 2020. Below is analysis of the Order’s impact on manufacturers.

Large Gatherings Ban

The Order retains the prohibition on public or private gatherings of 10 or more persons. One notable difference is the Order contains separate guidance for restaurants, bars, and banquet centers, which limits gatherings to 300 people. While this is a slight and narrow relaxing of the standard, Governor Mike DeWine has consistently remarked that permitting large gatherings is likely to be the last aspect of Ohio’s phased-in reopening.

Non-essential Travel

The Order prohibits those who have tested positive for COVID-19 and have not recovered, those who are presumptively diagnosed with COVID-19, and those who are exhibiting the symptoms identified in the screening guidance available from the CDC and the Ohio Department of Health, from entering the state of Ohio unless they are doing so under medical orders for purposes of medical care, are being transported by emergency medical services EMS, are driving or being driven directly to a medical provider for the purposes of initial care, or are a permanent resident of Ohio.

Governor DeWine and Dr. Acton have emphasized that while non-essential travel, both within and outside of Ohio, is permitted it is strongly discouraged.

General Requirements for Businesses

The Order incorporates all [previous operational requirements and protocols for businesses and services](#). As a reminder, here are the general requirements for all businesses:

Face Coverings/Masks: All businesses must allow customers, patrons, visitors, contractors, etc., to use facial coverings, unless there is a specifically documents legal, life, health or safety considerations and limited documented security considerations. Businesses must require all employees to wear facial coverings, unless facial coverings are:

- Prohibited by law or regulation;
- Violate documented industry standards;
- Not advisable for health reasons;
- Violate documented business safety policies;
- The employee is working alone in an assigned work area; or
- A functional or practical reason for an employee not to wear a facial covering or mask exists.

Businesses need to provide written justification, upon request, explaining why an employee is not wearing a face covering. The administration published an [FAQ for face coverings in the workplace](#).

Notably for manufacturers, section 13 of the Order contains additional language regarding face coverings and masks, offering additional examples of what constitutes a functional or practical reason. The Order specifically mentions high temperatures or instances where employees are separated by more than six feet or a barrier.

Additional General Protocols for All Businesses

Previous Orders offered general protocols that apply to all businesses regardless of specific industry or sector that presumably are included in the Advisory:

- Designate and mark six-foot distances
- Provide sanitizer and sanitizing products
- Separate operating hours for vulnerable populations
- Post online whether the facility is open and how best to reach the facility if it is operating remotely.

Specific Requirements for Manufacturers

Manufacturing specific requirements are again contained in the Order. These manufacturing specific requirements and protocols are similar to previous Orders and Guidance. Please again note the new guidance on face masks/coverings (see above). As a reminder manufacturers should:

- Maintain six feet of distance between employees and erect barriers if six feet of distance is not possible and also space out the factory floor to allow for distancing;
- Employees must perform their own daily health assessment, including taking temperature and monitoring for fever;
- Require symptomatic employees to stay home;
- Consider requiring distributors and guests wear facial coverings;
- Regular handwashing;
- Stagger/limit arrivals of guests and employees;
- Continue having as many employees as possible work from home;
- Perform daily disinfection of desks and workplaces, including deep disinfection of high-contact surfaces;
- Change shift patterns and stagger lunch/break times;
- Establish maximum capacity, including regulating the maximum number of people in cafeterias or other common areas;
- Immediately isolate and seek medical care for any person that develops symptoms while at work;
- Contact the local health department about suspected cases and exposures; and
- Shutdown the shop/floor for deep sanitation if possible.

Conclusion

This Order does not contain many changes compared to the previous Orders and Guidance and therefore, manufacturers should not see many changes in either operational requirements or the enforcement of mandates. However, the Order does contain new guidance for manufacturers on what constitutes a practical reason for not wearing a face mask/covering, specifically citing high temperatures or instances where employees are separated by more than six feet or a barrier.

Additional information can be obtained at <https://coronavirus.ohio.gov/wps/portal/gov/covid-19/responsible-restart-ohio/>.



Guidance on the Use of Face Coverings & Masks

Revised June 1, 2020

This document is designed to be used only as guidance and a general reference for Ohio manufacturers. For specific questions relating exclusively to your operations, please work with your internal experts, counsel, and state/local public health authorities.

Overview

On May 29, 2020, the DeWine administration released its latest public health order providing business guidance and social distancing requirements. OMA general counsel Bricker & Eckler produced [this memo](#) to summarize how the new order affects manufacturers. The firm notes: "This order does not contain many changes compared to the previous orders ... therefore manufacturers should not see many changes in either operational requirements or the enforcement of mandates. However, the order does contain new guidance for manufacturers on what constitutes a practical reason for not wearing a face mask/covering."

Under Ohio's May 29 public health order ([read Section 13](#)), the use of face coverings by manufacturing employees is mandatory, except for one of the following cases:

- Facial coverings in the work setting are prohibited by law or regulation;
- Facial coverings are in violation of documented industry standards;
- Facial coverings are not advisable for health reasons;
- Facial coverings are in violation of the business's documented safety policies;
- Facial coverings are not required when the employee works alone in an assigned work area;
- There is a functional (practical) reason for an employee not to wear a facial covering in the workplace; or
- There is a functional (practical) reason for an employee not to wear a facial covering in the workplace. Practical reasons include, but are not limited to, high temperatures in manufacturing facilities, or manufacturing employees separated by more than six feet or by a barrier when performing their jobs on the manufacturing floor.

(Continued)

Businesses must provide written justification to local health officials – upon request – explaining why an employee is not required to wear a facial covering in the workplace. At a minimum, facial coverings (masks) should be cloth/fabric and cover an individual’s nose, mouth, and chin.

Read [Ohio’s May 29 health care order](#), which includes safety protocols for Ohio businesses.

For specific information on face coverings, see the Ohio Department of Health’s (ODH) [FAQs on cloth masks/face coverings in the workplace](#), as well as the [CDC’s updated guidance](#).

For more on Ohio’s re-opening plan, visit the [Responsible Restart Ohio](#) website.

Guidance Resources

- ODH’s [guidance on the do's and don'ts of cloth face coverings](#).
- ODH’s [FAQs on cloth masks/face coverings in the workplace](#).
- ODH’s [masks/face coverings checklist](#).
- CDC on [homemade cloth face coverings](#).
- CDC’s [questions and answers on face coverings](#).
- CDC’s [interim guidance for conserving and extending filtering facepiece respirator supply in non-health care sectors](#).
- OMA Connections Partner Fisher Phillips has posted [these tips](#) for avoiding heat stress when wearing COVID-19 face coverings.
- [Guidance](#) from the National Center for Biotechnology and [WSJ.com](#) on how to keep your glasses from fogging when wearing a mask.



OHIO ALLIANCE FOR CIVIL JUSTICE



**House Civil Justice Committee
House Bill 606
Proponent Testimony
Tuesday, May 19, 2020**

Chairman Hambley, Vice Chair Patton, Ranking Member Brown and members of the House Civil Justice Committee, thank you for the opportunity to provide testimony in support of House Bill 606.

My name is Anne Marie Sferra and I am here on behalf of the Ohio Alliance for Civil Justice (OACJ). I am an attorney with Bricker & Eckler who serves as counsel to the OACJ. By way of background, the OACJ was founded in the mid-1980s to stop lawsuit abuse and promote a common-sense civil justice system in Ohio. The OACJ is comprised of representatives of dozens of Ohio trade and professional associations, small and large businesses, medical groups, farmers, non-profit organizations and local government associations — for a combined representation of more than 100,000 individuals and businesses. The OACJ's leadership team includes representatives from the following organizations: NFIB/Ohio, Ohio Chamber of Commerce, Ohio Council of Retail Merchants, Ohio Hospital Association, Ohio Manufacturers' Association, Ohio Society of CPAs, and the Ohio State Medical Association.

House Bill 606 has two primary parts — the first part amends R.C. 2305.2311 and pertains specifically to health care providers and services. The second part proposes a new Ohio law — R.C. 3701.26 — which provides Ohio's businesses and others protection against liability from the transmission of coronavirus.

We appreciate this committee's work and recognition of this crucial issue, which Ohio's health care providers and businesses are facing during this pandemic. House Bill 606 will protect our health care providers while they care for Ohioans.

The need to protect our health care providers for their essential work during this pandemic is necessary to ensure providers take all steps necessary to adequately respond to this health crisis. In the midst of a statewide pandemic, disaster, or emergency, Ohioans cannot afford to have their health care providers inhibited from necessary action due to fear of litigation or liability. We need our health care providers to provide necessary care without fear that their actions will result in liability.

The current pandemic has exposed shortcomings in the existing law that we are seeking to amend (RC 2305.2311). Those shortcomings include:

- The existing law only applies to declared disasters but should include declared emergencies. For example, in this case, Governor DeWine declared a statewide emergency on March 9, 2020; President Trump did not declare Ohio a disaster until March 31, 2020. The demands on health care providers necessitating the protections did not change in

between declarations; only the technical nature of the declaration changed. The bill would apply protections in declared emergencies as well.

- The protection provided in current law is insufficient because it applies only to emergency care, rather than also including other necessary services patients may need. The bill expands the protection to include other health care services delivered in response to the disaster or emergency.
- Current law does not contemplate the fact that a significant volume of health care services have been delayed pursuant to Director Acton’s March 17 order suspending non-essential procedures. Pursuant to that order, providers made very difficult judgments about which procedures to delay, which could result in adverse outcomes to patients, and subsequent lawsuits, in the future. Providers who made such decisions in good faith adherence to the Director’s order should be protected.
- Current law does not cover skilled nursing facilities, assisted living facilities, or other health care facilities that are providing care during the pandemic. This bill would provide that needed protection.
- Current law expressly excludes protection for wrongful death claims. Given the high risk of mortality associated with COVID-19 patients, and that wrongful death claims are likely to make up a significant number of the claims against health care providers in the wake of the pandemic, this exclusion renders this statute deficient. Note, also, that it is not unconstitutional to treat wrongful death claims the same as other tort claims when it comes to the standards that must be met for proving such a claim. The constitutional limitation regarding wrongful death claims relates to the inability to limit damages that can be recovered in wrongful death claims; the constitution does not prohibit the establishment of standards that must be met in support of such a claim.

We understand there have been some questions about the standard of protection included in H.B. 606. It is important to note that there are several existing liability protection statutes in the health care context in which immunity is granted unless the harm is caused due to willful and wanton misconduct. For example:

- **ORC 2305.23** – Ohio’s “Good Samaritan” statute provides immunity for emergency care or treatment provided by volunteers at the scene of an emergency outside of a health care setting.
- **R.C. 2305.234** – provides immunity for volunteer health services provided to indigent and uninsured persons.
- **R.C. 4765.49** – provides immunity in connection with the provision of “emergency medical services,” which are defined as the type of services performed by first responders, EMTs, and paramedics.
- **R.C. 5502.30** – provides immunity for acts carrying out, complying with, or attempting to comply with a federal, state, or local law, arrangement, or order relating to emergency management.

All of these existing statutes protect health care providers except when the harm results from willful and wanton misconduct. Thus, we believe that is the appropriate standard for health care providers called to duty during declared disasters and emergencies, and especially in pandemics, when there is a significant risk of liability due to the provision of care in an environment where many conditions are beyond the provider's control. In a pandemic, health care providers are dealing with shortages of supplies like test kits, personal protective equipment (PPE), and ventilators, managing with reduced staffing and staffing changes due to staff illness and outbreaks within facilities, and other factors inherent in a disaster or emergency. In such situations, health care providers are essentially "deputized" to respond to the public health crisis and should be granted the same level of protection as those individuals who provide care in the situations contemplated by the statutes noted above. Health care providers have stepped up in the face of an unprecedented pandemic and should be protected from an avalanche of lawsuits resulting from circumstances beyond their control.

In addition, we have submitted some technical language for consideration that we believe is necessary to ensure certain providers and entities are afforded the protection set forth in the bill and are not inadvertently left unprotected because of the uniqueness of their corporate structure or business relationships. We urge the inclusion of this language in the bill.

Finally, we also note that many states in the Midwest have taken similar actions to provide immunities to their health care providers. Kentucky, Indiana, Michigan, Illinois, and Pennsylvania (as well as numerous other states around the country) have provided liability protection, either by legislation or executive order, to health care providers during declared disasters and emergencies such as the current COVID-19 pandemic. We ask that Ohio's health care providers be similarly protected.

Regarding the business community generally, House Bill 606 also recognizes the importance of reopening Ohio's businesses and the business community's concerns with potential liability. Under this provision, a business will be granted immunity against claims of transmission of COVID-19 and the OACJ is supportive of this provision. Businesses should be protected during this uncertain time, because a business has no way of truly knowing if the disease is in its building or on its products. As we are well aware, this pandemic is caused by an unseen enemy. Businesses should not be held liable for something they cannot see or control, even when they take the recommended steps to provide a safe environment.

The Ohio Alliance of Civil Justice appreciates the time and effort spent on this bill to provide qualified immunity to Ohio's businesses so that the process can begin to get Ohio's economy back on track. The OACJ would like to make four suggestions to improve House Bill 606 and deliver stronger protections for Ohio businesses.

1. Many businesses in Ohio changed their business operations to manufacture products they do not ordinarily make in order to assist in Ohio's recovery. As drafted, House Bill 606 only protects businesses whose products are intended to prevent transmission of COVID-19, as opposed to those whose products are used to care for and treat patients with COVID-19. The OACJ believes protection from liability based on negligence should be afforded to these businesses as well. For example, auto manufacturers have begun producing parts for

ventilators and/or ventilators. Ventilators are used to treat patients with COVID-19, not to stop the transmission of COVID-19. The same is true for some diagnostic tests and equipment. The OACJ believes those who are making products in response to the declared emergency or disaster to treat, diagnose, mitigate, or cure COVID-19 should also be protected under House Bill 606 – not just those who are making products to prevent its transmission.

2. The standard used in R.C. 3701.26 (A) provides immunity “unless it is established by * * * evidence that the infection was transmitted by reckless or intentional conduct or with willful or wanton misconduct on the part of the person against whom the action is brought.” The OACJ suggest that this standard should be changed to delete “reckless or intentional conduct.”

First, “intentional conduct” is entirely too broad because just about anything that anyone does consciously (or while awake) can be considered intentional conduct. They may not intend to do harm, but they intend to act. The OACJ suggests that this term be deleted or changed to “intentional misconduct” (which is the term used in Senate Bill 308).

Second, “reckless disregard” is not as strong a standard as wanton or willful misconduct and the OACJ suggests a stronger standard should be used in this unusual circumstance where new rules and guidance for businesses are changing frequently and sometimes even daily. Lawsuits brought today will be tried down the road and, with the benefit of hindsight, actions taken today may seem reckless two years from now. To truly protect businesses under the scenario of a pandemic, the OACJ believes a higher standard than reckless disregard should be used.

Third, “reckless disregard” as defined in R.C. 3701. 26 (B) means “heedless indifference to the consequences, the person disregards a substantial and unjustifiable risk that the person’s conduct is likely to cause a transmission.” This pandemic paints most situations as a hefty risk, and there is no guaranteed method to avoid such a risk. OACJ does not believe this reckless conduct standard provides adequate protections for businesses against a civil action for damages due to the transmission of COVID-19. Instead, OACJ believes intentional, wanton or willful misconduct should be the standard because it provides clarity of the state of mind required for an exception to immunity.

3. Throughout COVID-19, several guidelines and orders have been issued by the federal and state government. These guidance documents and orders have sometimes changed daily making it difficult for all to interpret and comply in a timely fashion. The continuous barrage of rules and guidelines creates a constantly moving target. Therefore, OACJ believes House Bill 606 should be amended to state that federal, state or local government orders or guidance should not be used to create a duty for businesses. These orders should also be presumed to not be admissible as evidence that a duty of care or substantive legal right has been established.
4. Finally, OACJ believes the term “transmission” is not broad enough to encompass many of the claims that may be brought in civil lawsuits and thus will not provide qualified

immunity from them. Therefore, OACJ proposes that the term “exposure” be used in addition to the term “transmission.” “Exposure” encompasses those cases that a plaintiff may bring because coronavirus led them to experience emotional distress stemming from fear of contracting the disease, the expense of visiting a doctor or testing, or economic loss due to quarantine, but the term “transmission” does not. Businesses should be protected against such lawsuits. Because the term “transmission” narrowly tailors this immunity to only one kind of fact pattern, the OACJ suggests adding immunity for exposure claims as well.

With these four suggestions, OACJ believes House Bill 606 will provide certainty and protection for businesses and health care providers during this unprecedented time. Thank you for allowing the OACJ to provide testimony on House Bill 606. We urge the committee to support the bill with favorable consideration. I am happy to answer any questions.



**House Civil Justice Committee
House Bill 606
Proponent Testimony
Tuesday, May 19, 2020**

Chairman Hambley, Vice Chair Patton, Ranking Member Brown, and members of the House Civil Justice Committee I appreciate the opportunity to present supportive testimony on House Bill 606.

My name is Ryan Augsburger. I am vice president and managing director of public policy at the Ohio Manufacturers' Association. As you know the OMA represents Ohio's manufacturing industry and advocates to protect and grow Ohio manufacturing.

For manufacturers to invest and grow in Ohio, and to compete globally, Ohio's civil justice system must be rational, fair and predictable.

Ohio has made great strides in reforming its civil justice system over the past decade, and longer. The primary aim of the state should be to preserve those tort reform gains, in areas such as punitive damages, successor liability, collateral sources and statute of repose, which are protecting consumers without unduly burdening businesses, while positioning Ohio as an attractive state for business investment.

House Bill 606 clearly intends to maintain Ohio's competitiveness by responding to the temporary emergency situation to prevent a proliferation of questionable lawsuits that could plague businesses during a time of fragile economic recovery.

While the Association supports the tone and tenure of the bill, we ask the Committee to support enhancements outlined by the Ohio Alliance for Civil Justice on behalf of the broad business community.

I wish to highlight the importance of one such enhancement needed to provide immunity to the makers of protective gear and other emergency products.

In early April, in response to the COVID-19 challenges, The Ohio Manufacturers' Association (OMA), Ohio Hospital Association (OHA), Ohio Manufacturing Extension Program (Ohio MEP), nursing homes and JobsOhio have joined forces through the Ohio Manufacturing Alliance to Fight COVID-19. This collaborative effort is engaging manufacturers to see which companies have interest in repurposing their manufacturing operations to produce some of the most in-demand products in the fight against COVID-19, especially products for the health care industry. I've attached a list of news stories on repurposing activity.

Ohio historically has a deep industrial base and is a manufacturing powerhouse. Because of embedded know-how, Ohio manufacturers are able to pivot to retool and repurpose their operations to help meet the immediate need for personal protective equipment and other products needed in the fight against COVID-19. The innovation and responsiveness of our manufacturers – and their supply chains – are bearing fruit immediately and will be critical to the recovery of the state.

The Ohio Manufacturing Alliance sent out a call for help producing PPE and more than 1,500 manufacturing companies responded. This reinforces what we know about Ohio companies, they are generous and will answer the call when needed. Together, we are going to protect our protectors and strengthen our manufacturing sector.

It would be a travesty if we failed to protect these manufacturers from frivolous lawsuits. We commend Representatives Grendell and Seitz for their work on this important legislation and we implore you ensure the final version includes protections responsive to this need.

That concludes my testimony. I would be pleased to follow up to provide any additional information. Thank you.



Ohio Manufacturers: Helping Lead the Fight Against COVID-19

The following are some of the news stories that the OMA has shared on its social media channels (from March 2020 to present) to spotlight Ohio manufacturers who are helping their communities by either donating or producing protective gear to protect lives in the fight against COVID-19. This is Ohio manufacturing at its best. If you know of a story that should be included on this list, [email Jamie Karl](#) with the OMA staff.

Jergens produces a high-end screwdriver used for ventilators; CEO Calls on Ohio leaders to expand manufacturing

IPC addresses PPE shortage by producing gowns for health care workers

Piqua printing company making masks

Out-of-the-box creation help protect hospital workers treating coronavirus patients

Columbus-Based Milspin Invents 'Key' to Flatten Curve

FJM Inc. in Miamisburg has made more than 40,000 masks

Duck Tape company in Avon donates respirators to Avon Hospital

Fuyao donates 1 million disposable masks, medical supplies

Whirlpool's Ottawa Operations Donate Face Mask Extenders to Local Health Care Providers

Honda Begins Making Ventilator Parts for COVID-19 Patients

Nanofiber Solutions Shifts from Organ Healing to Air Filtration in Response to COVID-19

Lean manufacturing thrives amid coronavirus crisis

Ohio molder Pragmatic Manufacturing partners with Wittmann to make health care parts

How GM and Ford joined the fight against the coronavirus

Ohio manufacturers helping each other by making personal protective equipment

Ohio Rep. George Lang: Take advantage of the Ohio Emergency PPE Makers' Exchange

Online marketplace connects Ohio PPE manufacturers with in-need organizations

FastLane at University of Dayton Research Institute helps boost production of isolation gowns

Exchange opened for makers of Personal Protective Equipment

Dayton-area groups partner to produce thousands of PPE units

Boardman food manufacturer trying to keep up with demand during coronavirus pandemic

As Many Americans Stay Home, Factory Workers Continue Production Around the Clock

COVID-19: P&G, Brain Brew Whiskey and United Way will distribute 100,000 masks

Cleveland Clinic receives 15,000 masks from sports-apparel manufacturer Fanatics

Waynesfield-Goshen Makers Den 3-D prints equipment for medical professionals and businesses

Cleveland company approved to make swabs for coronavirus testing

Russells Point company pivots, makes face shields

GOJO, Lubrizol to donate hand sanitizer bottles for every patient room in hospitals over three counties

Team Wendy, CLE manufacturer of protective gear for first responders, makes 10,000 masks for local hospitals

P&G expanding donations, making more masks and sanitizer to combat Covid-19

Troy garage company makes pop-up healthcare facilities

In Ohio, the Amish take on the coronavirus

Ohio groups work together to make critical testing supplies

ROE Dental Laboratory in Independence answers the call to produce much-needed test swabs

Mentor manufacturer donating 500,000 face shields to both local and national hospital systems

Editorial: Diverse Ohio firms show how to manufacture hope

Bluffton company manufacturing coronavirus testing booths for local hospitals

Owens Illinois: O-I 3D Prints Face Shield Frames for Northwest Ohio Medical Workers

Cleveland company gets federal approval to produce ventilators

Candle company manufacturing 40,000 face shields

Eaton Corp. making tool to help you avoid touching surfaces

North Ridgeville Manufacturer Mobilizes Die-Cutting and Materials Conversion Expertise in Fight Against COVID-19

Ohio companies pivot to supply coronavirus needs, keep workers busy

FDA approves Mentor-based company to use sterilization system for N95 mask

Ohio companies continue to innovate through tough times

Area companies produce PPE for hospitals

GM Doubles Face Mask Production to Fight Coronavirus

Holland firm pitching in to help build face shields for health care workers

Ohio companies come together to fill a hand sanitizer need for first responders

Saving lives and securing a new future for Ohio manufacturing

19 Ohio manufacturers team up to make face shields for Ohio hospitals

Local companies team up to make face shields for health care workers

Ohio manufacturers teaming up to create up to 1 million face shields

GLI Keeps Making, Donating Masks to Fill 'Great Need'

Pandemic creates time of uncertainty, change for manufacturers

Central Ohio businesses manufacture, distribute PPE for medical workers

Norwalk Furniture shifts production to PPE

Sherwin Williams donates 250,000 PPE items to those on the frontlines of COVID-19

GM offers manufacturing blueprints for face masks to 600 auto parts suppliers amid virus pandemic

Ohio 3D printers rally to manufacture personal protective equipment

How one local manufacturer is stepping up amid coronavirus outbreak

Tiffin company helping produce emergency supply of air filter cartridges for medical respirators

Advanced Manufacturing's Moment: Making Supplies for the War on COVID-19

Transportation supply chain pivoting operations in support of medical professionals

Toledo man using 3-D printers to make face shields for doctors and nurses

The biopharmaceutical industry's unique role in responding to COVID-19

Coronavirus in Ohio: Amish community shifts to making protective equipment

Local company making plastic protective shields

Coronavirus: P&G making Safeguard hand sanitizer, also unbranded masks

Coronavirus Forces Manufacturers to Adapt

PPG to Donate 80,000 Masks to Hospitals to Support Coronavirus Relief Efforts

Major aerospace firms act to counter COVID-19

Honda pivots production to plastic shields

Worthington Industries donates more than 800 N95 masks to OhioHealth

Ford, GE aim to make 50,000 ventilators in 100 days

Automakers pivot to battle against COVID-19

Ventec Life Systems and GM Partner to Mass Produce Critical Care Ventilators

Plaskolite producing face shields, protective barriers

Wood component maker Cooper Enterprises responds to virus with new cashier shields

Northeast Ohio manufacturer is working around the clock to help fight COVID-19

Manufacturing workers proud to battle coronavirus pandemic

How Manufacturers, Engineers Are Stepping Up to Solve COVID-19 Challenges

Company Letterhead

The Honorable FIRST LAST
Ohio House of Representatives / Ohio Senate
77 South High Street, 12th Floor / Statehouse
Columbus, OH 43215

RE: Support immunity legislation for economic recovery

Dear Representative / Senator LAST:

I write to urge your support for House Bill 606 and Senate Bill 308 to provide responsible immunity and legal protections against frivolous lawsuits as Ohio strives to recover from the COVID shutdown.

My company is located _____. We employ ____ men and women. We produce _____ for _____ customers or industries. As an essential manufacturer, we have taken steps since late March to adopt safety practices and protocols to protect our workforce.

{If you repurposed to make protective equipment of components) Additionally, we have repurposed our operations to produce needed emergency protective gear. (Explain what you have produced and who you are supplying)}

House Bill 606 and Senate Bill 308 importantly maintains Ohio's competitiveness by responding to the temporary emergency situation to prevent a proliferation of questionable lawsuits that could plague businesses during a time of fragile economic recovery.

I appreciate your consideration of these perspectives. Thank you.

Sincerely,

SIGNATURE

FIRST LAST
TITLE
COMPANY NAME
PHONE

From: Robert Brundrett [<mailto:rbrundrett@Ohiomfg.com>]

Sent: Saturday, May 30, 2020 11:42 AM

To: OMA Food & Beverage Members

Cc: Ryan Augsburger <raugsburger@Ohiomfg.com>

Subject: Ohio Liability Bill Update - Impact on Food & Beverage Manufacturers and Food Retail - COVID-19 new presumptive occupational disease for workers compensation

Ohio Food & Beverage Manufacturers:

This is a follow up to yesterday's phone call and article in the OMA Leadership Briefing (see below). The OMA along with the rest of Ohio's business community had been working for the past month on priority immunity legislation to protect manufacturers from frivolous COVID-19 lawsuits. This week the Ohio House of Representatives approved the bill and sent it to the Senate. Overall the bill is important due to its liability protections. However in a surprising move the House Republicans accepted a Democrat offered amendment on the House floor. The amendment makes COVID-19 a presumed occupational disease in food manufacturing and food retail.

Since yesterday's call the OMA drafted the attached letter and worked with other business groups in getting the letter to Ohio Senate President Larry Obhof expressing our opposition to the amendment based on the conversation with members yesterday.

This issue will be covered at the OMA Government Affairs Committee – WEDNESDAY JUNE 3 @9:30 a.m. VIA Zoom. If you are interested in participating or have not registered please respond to me and I will make sure you are registered and receive the link for the meeting.

WHAT DOES THE AMENDMENT DO?

The amendment creates a presumption that COVID-19 is an occupational disease under Ohio workers' compensation law for the following employees:

- **Retail food establishment employees;**
- **Food processing establishment employees;**
- Peace officers, firefighters, and emergency medical workers; and
- Corrections officers.

The amendment would allow any claims from the beginning of Ohio's COVID-19 state of emergency through December 31, 2020.

What does this mean?

If you have an employee who contracts COVID-19 during this timeframe it is presumed they contracted the disease at work. It would be up to the company to prove that the employee did not get sick due to work. Current law requires employees to prove they contracted COVID-19 at work.

Practically speaking based on other presumed occupational diseases switching the burden on the employer to prove an employee did not contract a disease at work is nearly impossible.

Below are the definitions:

Retail Food Establishment: ORC 3717.01 - (C) "Retail food establishment" means a premises or part of a premises where food is stored, processed, prepared, manufactured, or otherwise held or handled for

retail sale. Except when expressly provided otherwise, "retail food establishment" includes a mobile retail food establishment, seasonal retail food establishment, and temporary retail food establishment.

Food Processing Establishment: ORC 3715.021 - (A) As used in this section, "food processing establishment" means a premises or part of a premises where food is processed, packaged, manufactured, or otherwise held or handled for distribution to another location or for sale at wholesale. "Food processing establishment" includes the activities of a bakery, confectionery, cannery, bottler, warehouse, or distributor, and the activities of an entity that receives or salvages distressed food for sale or use as food. A "food processing establishment" does not include a cottage food production operation; a processor of tree syrup who boils sap when a minimum of seventy-five per cent of the sap used to produce the syrup is collected directly from trees by that processor; a processor of sorghum who processes sorghum juice when a minimum of seventy-five per cent of the sorghum juice used to produce the sorghum is extracted directly from sorghum plants by that processor; a beekeeper who jars honey when a minimum of seventy-five per cent of the honey is from that beekeeper's own hives; or a processor of apple syrup or apple butter who directly harvests from trees a minimum of seventy-five per cent of the apples used to produce the apple syrup or apple butter.

Amended House Bill to Provide Business Immunity Leaves Food, Beverage Makers Vulnerable

The OMA has called for passage of immunity legislation for Ohio businesses during COVID-19. (See above story.) On Thursday, May 28, a surprise floor amendment was added to House Bill 606 to designate that COVID-related injuries experienced by employees would be presumed to have been caused by the virus being contracted at the workplace -- and therefore compensable under an employer's workers' compensation policy.

The [amendment](#), offered by Rep. [Brigid Kelly](#) (D-Cincinnati), applies to all sorts of food industries, including food and beverage manufacturers. OMA members in the food and beverage industry are invited to participate in a special conference call later today (Friday, May 29) to assess the amendment. Please [contact OMA staff](#) to be included in the call. *5/29/2020*

_____ moved to amend as follows:

In line 1 of the title, delete "and"; after "2744.01" insert ", and 1
4123.68" 2

In line 12 of the title, after "pandemic," insert "to make COVID-19 3
contracted by certain employees an occupational disease under the Workers' 4
Compensation Law under specific circumstances," 5

In line 14, delete "and"; after "2744.01" insert ", and 4123.68" 6

After line 620, insert: 7

"Sec. 4123.68. Every employee who is disabled because of 8
the contraction of an occupational disease or the dependent of 9
an employee whose death is caused by an occupational disease, is 10
entitled to the compensation provided by sections 4123.55 to 11
4123.59 and 4123.66 of the Revised Code subject to the 12
modifications relating to occupational diseases contained in 13
this chapter. An order of the administrator issued under this 14
section is appealable pursuant to sections 4123.511 and 4123.512 15
of the Revised Code. 16

The following diseases are occupational diseases and 17



compensable as such when contracted by an employee in the course 18
of the employment in which such employee was engaged and due to 19
the nature of any process described in this section. A disease 20
which meets the definition of an occupational disease is 21
compensable pursuant to this chapter though it is not 22
specifically listed in this section. 23

SCHEDULE 24

Description of disease or injury and description of 25
process: 26

(A) Anthrax: Handling of wool, hair, bristles, hides, and 27
skins. 28

(B) Glanders: Care of any equine animal suffering from 29
glanders; handling carcass of such animal. 30

(C) Lead poisoning: Any industrial process involving the 31
use of lead or its preparations or compounds. 32

(D) Mercury poisoning: Any industrial process involving 33
the use of mercury or its preparations or compounds. 34

(E) Phosphorous poisoning: Any industrial process 35
involving the use of phosphorous or its preparations or 36
compounds. 37

(F) Arsenic poisoning: Any industrial process involving 38
the use of arsenic or its preparations or compounds. 39

(G) Poisoning by benzol or by nitro-derivatives and amido- 40
derivatives of benzol (dinitro-benzol, anilin, and others): Any 41
industrial process involving the use of benzol or nitro- 42
derivatives or amido-derivatives of benzol or its preparations 43
or compounds. 44

(H) Poisoning by gasoline, benzine, naphtha, or other volatile petroleum products: Any industrial process involving the use of gasoline, benzine, naphtha, or other volatile petroleum products.	45 46 47 48
(I) Poisoning by carbon bisulphide: Any industrial process involving the use of carbon bisulphide or its preparations or compounds.	49 50 51
(J) Poisoning by wood alcohol: Any industrial process involving the use of wood alcohol or its preparations.	52 53
(K) Infection or inflammation of the skin on contact surfaces due to oils, cutting compounds or lubricants, dust, liquids, fumes, gases, or vapors: Any industrial process involving the handling or use of oils, cutting compounds or lubricants, or involving contact with dust, liquids, fumes, gases, or vapors.	54 55 56 57 58 59
(L) Epithelion cancer or ulceration of the skin or of the corneal surface of the eye due to carbon, pitch, tar, or tarry compounds: Handling or industrial use of carbon, pitch, or tarry compounds.	60 61 62 63
(M) Compressed air illness: Any industrial process carried on in compressed air.	64 65
(N) Carbon dioxide poisoning: Any process involving the evolution or resulting in the escape of carbon dioxide.	66 67
(O) Brass or zinc poisoning: Any process involving the manufacture, founding, or refining of brass or the melting or smelting of zinc.	68 69 70
(P) Manganese dioxide poisoning: Any process involving the grinding or milling of manganese dioxide or the escape of	71 72

manganese dioxide dust.	73
(Q) Radium poisoning: Any industrial process involving the use of radium and other radioactive substances in luminous paint.	74 75 76
(R) Tenosynovitis and prepatellar bursitis: Primary tenosynovitis characterized by a passive effusion or crepitus into the tendon sheath of the flexor or extensor muscles of the hand, due to frequently repetitive motions or vibrations, or prepatellar bursitis due to continued pressure.	77 78 79 80 81
(S) Chrome ulceration of the skin or nasal passages: Any industrial process involving the use of or direct contact with chromic acid or bichromates of ammonium, potassium, or sodium or their preparations.	82 83 84 85
(T) Potassium cyanide poisoning: Any industrial process involving the use of or direct contact with potassium cyanide.	86 87
(U) Sulphur dioxide poisoning: Any industrial process in which sulphur dioxide gas is evolved by the expansion of liquid sulphur dioxide.	88 89 90
(V) Berylliosis: Berylliosis means a disease of the lungs caused by breathing beryllium in the form of dust or fumes, producing characteristic changes in the lungs and demonstrated by x-ray examination, by biopsy or by autopsy.	91 92 93 94
This chapter does not entitle an employee or the employee's dependents to compensation, medical treatment, or payment of funeral expenses for disability or death from berylliosis unless the employee has been subjected to injurious exposure to beryllium dust or fumes in the employee's employment in this state preceding the employee's disablement and only in	95 96 97 98 99 100

the event of such disability or death resulting within eight 101
years after the last injurious exposure; provided that such 102
eight-year limitation does not apply to disability or death from 103
exposure occurring after January 1, 1976. In the event of death 104
following continuous total disability commencing within eight 105
years after the last injurious exposure, the requirement of 106
death within eight years after the last injurious exposure does 107
not apply. 108

Before awarding compensation for partial or total 109
disability or death due to berylliosis, the administrator of 110
workers' compensation shall refer the claim to a qualified 111
medical specialist for examination and recommendation with 112
regard to the diagnosis, the extent of the disability, the 113
nature of the disability, whether permanent or temporary, the 114
cause of death, and other medical questions connected with the 115
claim. An employee shall submit to such examinations, including 116
clinical and x-ray examinations, as the administrator requires. 117
In the event that an employee refuses to submit to examinations, 118
including clinical and x-ray examinations, after notice from the 119
administrator, or in the event that a claimant for compensation 120
for death due to berylliosis fails to produce necessary consents 121
and permits, after notice from the administrator, so that such 122
autopsy examination and tests may be performed, then all rights 123
for compensation are forfeited. The reasonable compensation of 124
such specialist and the expenses of examinations and tests shall 125
be paid, if the claim is allowed, as part of the expenses of the 126
claim, otherwise they shall be paid from the surplus fund. 127

(W) Cardiovascular, pulmonary, or respiratory diseases 128
incurred by firefighters or police officers following exposure 129
to heat, smoke, toxic gases, chemical fumes and other toxic 130
substances: Any cardiovascular, pulmonary, or respiratory 131

disease of a firefighter or police officer caused or induced by 132
the cumulative effect of exposure to heat, the inhalation of 133
smoke, toxic gases, chemical fumes and other toxic substances in 134
the performance of the firefighter's or police officer's duty 135
constitutes a presumption, which may be refuted by affirmative 136
evidence, that such occurred in the course of and arising out of 137
the firefighter's or police officer's employment. For the 138
purpose of this section, "firefighter" means any regular member 139
of a lawfully constituted fire department of a municipal 140
corporation or township, whether paid or volunteer, and "police 141
officer" means any regular member of a lawfully constituted 142
police department of a municipal corporation, township or 143
county, whether paid or volunteer. 144

This chapter does not entitle a firefighter, or police 145
officer, or the firefighter's or police officer's dependents to 146
compensation, medical treatment, or payment of funeral expenses 147
for disability or death from a cardiovascular, pulmonary, or 148
respiratory disease, unless the firefighter or police officer 149
has been subject to injurious exposure to heat, smoke, toxic 150
gases, chemical fumes, and other toxic substances in the 151
firefighter's or police officer's employment in this state 152
preceding the firefighter's or police officer's disablement, 153
some portion of which has been after January 1, 1967, except as 154
provided in division (E) of section 4123.57 of the Revised Code. 155

Compensation on account of cardiovascular, pulmonary, or 156
respiratory diseases of firefighters and police officers is 157
payable only in the event of temporary total disability, 158
permanent total disability, or death, in accordance with section 159
4123.56, 4123.58, or 4123.59 of the Revised Code. Medical, 160
hospital, and nursing expenses are payable in accordance with 161
this chapter. Compensation, medical, hospital, and nursing 162

expenses are payable only in the event of such disability or 163
death resulting within eight years after the last injurious 164
exposure; provided that such eight-year limitation does not 165
apply to disability or death from exposure occurring after 166
January 1, 1976. In the event of death following continuous 167
total disability commencing within eight years after the last 168
injurious exposure, the requirement of death within eight years 169
after the last injurious exposure does not apply. 170

This chapter does not entitle a firefighter or police 171
officer, or the firefighter's or police officer's dependents, to 172
compensation, medical, hospital, and nursing expenses, or 173
payment of funeral expenses for disability or death due to a 174
cardiovascular, pulmonary, or respiratory disease in the event 175
of failure or omission on the part of the firefighter or police 176
officer truthfully to state, when seeking employment, the place, 177
duration, and nature of previous employment in answer to an 178
inquiry made by the employer. 179

Before awarding compensation for disability or death under 180
this division, the administrator shall refer the claim to a 181
qualified medical specialist for examination and recommendation 182
with regard to the diagnosis, the extent of disability, the 183
cause of death, and other medical questions connected with the 184
claim. A firefighter or police officer shall submit to such 185
examinations, including clinical and x-ray examinations, as the 186
administrator requires. In the event that a firefighter or 187
police officer refuses to submit to examinations, including 188
clinical and x-ray examinations, after notice from the 189
administrator, or in the event that a claimant for compensation 190
for death under this division fails to produce necessary 191
consents and permits, after notice from the administrator, so 192
that such autopsy examination and tests may be performed, then 193

all rights for compensation are forfeited. The reasonable 194
compensation of such specialists and the expenses of examination 195
and tests shall be paid, if the claim is allowed, as part of the 196
expenses of the claim, otherwise they shall be paid from the 197
surplus fund. 198

(X) (1) Cancer contracted by a firefighter: Cancer 199
contracted by a firefighter who has been assigned to at least 200
six years of hazardous duty as a firefighter constitutes a 201
presumption that the cancer was contracted in the course of and 202
arising out of the firefighter's employment if the firefighter 203
was exposed to an agent classified by the international agency 204
for research on cancer or its successor organization as a group 205
1 or 2A carcinogen. 206

(2) The presumption described in division (X) (1) of this 207
section is rebuttable in any of the following situations: 208

(a) There is evidence that the firefighter's exposure, 209
outside the scope of the firefighter's official duties, to 210
cigarettes, tobacco products, or other conditions presenting an 211
extremely high risk for the development of the cancer alleged, 212
was probably a significant factor in the cause or progression of 213
the cancer. 214

(b) There is evidence that shows, by a preponderance of 215
competent scientific evidence, that exposure to the type of 216
carcinogen alleged did not or could not have caused the cancer 217
being alleged. 218

(c) There is evidence that the firefighter was not exposed 219
to an agent classified by the international agency for research 220
on cancer as a group 1 or 2A carcinogen. 221

(d) There is evidence that the firefighter incurred the 222

type of cancer alleged before becoming a member of the fire department.	223 224
(e) The firefighter is seventy years of age or older.	225
(3) The presumption described in division (X) (1) of this section does not apply if it has been more than fifteen years since the firefighter was last assigned to hazardous duty as a firefighter.	226 227 228 229
(4) Compensation for cancer contracted by a firefighter in the course of hazardous duty under division (X) of this section is payable only in the event of temporary total disability, working wage loss, permanent total disability, or death, in accordance with division (A) or (B) (1) of section 4123.56 and sections 4123.58 and 4123.59 of the Revised Code.	230 231 232 233 234 235
(5) As used in division (X) of this section, "hazardous duty" has the same meaning as in 5 C.F.R. 550.902, as amended.	236 237
(Y) Silicosis: Silicosis means a disease of the lungs caused by breathing silica dust (silicon dioxide) producing fibrous nodules distributed through the lungs and demonstrated by x-ray examination, by biopsy or by autopsy.	238 239 240 241
(Z) Coal miners' pneumoconiosis: Coal miners' pneumoconiosis, commonly referred to as "black lung disease," resulting from working in the coal mine industry and due to exposure to the breathing of coal dust, and demonstrated by x-ray examination, biopsy, autopsy or other medical or clinical tests.	242 243 244 245 246 247
This chapter does not entitle an employee or the employee's dependents to compensation, medical treatment, or payment of funeral expenses for disability or death from	248 249 250

silicosis, asbestosis, or coal miners' pneumoconiosis unless the 251
employee has been subject to injurious exposure to silica dust 252
(silicon dioxide), asbestos, or coal dust in the employee's 253
employment in this state preceding the employee's disablement, 254
some portion of which has been after October 12, 1945, except as 255
provided in division (E) of section 4123.57 of the Revised Code. 256

Compensation on account of silicosis, asbestosis, or coal 257
miners' pneumoconiosis are payable only in the event of 258
temporary total disability, permanent total disability, or 259
death, in accordance with sections 4123.56, 4123.58, and 4123.59 260
of the Revised Code. Medical, hospital, and nursing expenses are 261
payable in accordance with this chapter. Compensation, medical, 262
hospital, and nursing expenses are payable only in the event of 263
such disability or death resulting within eight years after the 264
last injurious exposure; provided that such eight-year 265
limitation does not apply to disability or death occurring after 266
January 1, 1976, and further provided that such eight-year 267
limitation does not apply to any asbestosis cases. In the event 268
of death following continuous total disability commencing within 269
eight years after the last injurious exposure, the requirement 270
of death within eight years after the last injurious exposure 271
does not apply. 272

This chapter does not entitle an employee or the 273
employee's dependents to compensation, medical, hospital and 274
nursing expenses, or payment of funeral expenses for disability 275
or death due to silicosis, asbestosis, or coal miners' 276
pneumoconiosis in the event of the failure or omission on the 277
part of the employee truthfully to state, when seeking 278
employment, the place, duration, and nature of previous 279
employment in answer to an inquiry made by the employer. 280

Before awarding compensation for disability or death due 281
to silicosis, asbestosis, or coal miners' pneumoconiosis, the 282
administrator shall refer the claim to a qualified medical 283
specialist for examination and recommendation with regard to the 284
diagnosis, the extent of disability, the cause of death, and 285
other medical questions connected with the claim. An employee 286
shall submit to such examinations, including clinical and x-ray 287
examinations, as the administrator requires. In the event that 288
an employee refuses to submit to examinations, including 289
clinical and x-ray examinations, after notice from the 290
administrator, or in the event that a claimant for compensation 291
for death due to silicosis, asbestosis, or coal miners' 292
pneumoconiosis fails to produce necessary consents and permits, 293
after notice from the commission, so that such autopsy 294
examination and tests may be performed, then all rights for 295
compensation are forfeited. The reasonable compensation of such 296
specialist and the expenses of examinations and tests shall be 297
paid, if the claim is allowed, as a part of the expenses of the 298
claim, otherwise they shall be paid from the surplus fund. 299

(AA) Radiation illness: Any industrial process involving 300
the use of radioactive materials. 301

Claims for compensation and benefits due to radiation 302
illness are payable only in the event death or disability 303
occurred within eight years after the last injurious exposure 304
provided that such eight-year limitation does not apply to 305
disability or death from exposure occurring after January 1, 306
1976. In the event of death following continuous disability 307
which commenced within eight years of the last injurious 308
exposure the requirement of death within eight years after the 309
last injurious exposure does not apply. 310

(BB) Asbestosis: Asbestosis means a disease caused by inhalation or ingestion of asbestos, demonstrated by x-ray examination, biopsy, autopsy, or other objective medical or clinical tests.

(CC) (1) COVID-19: COVID-19 contracted by an employee described in division (CC) (2) of this section during the emergency declared by Executive Order 2020-01D, issued March 9, 2020, constitutes a presumption, which may be refuted by affirmative evidence, that COVID-19 was contracted in the course of and arising out of the employee's employment. This division applies only to claims arising during the period that begins with the issuance of Executive Order 2020-01D, issued on March 9, 2020 and ending December 31, 2020.

(2) Division (CC) (1) of this section applies to all of the following:

(a) An employee of a retail food establishment as defined in section 3717.01 of the Revised Code;

(b) An employee of a food processing establishment as defined in section 3715.021 of the Revised Code;

(c) A peace officer, firefighter, or emergency medical worker as those terms are defined in section 4123.026 of the Revised Code;

(d) A person employed as a corrections officer by any public or private place used for the confinement of a person charged with or convicted of any crime in this state or another state or under the laws of the United States or alleged or found to be a delinquent child or unruly child in this state or another state or under the laws of the United States.

All conditions, restrictions, limitations, and other 339
provisions of this section, with reference to the payment of 340
compensation or benefits on account of silicosis or coal miners' 341
pneumoconiosis apply to the payment of compensation or benefits 342
on account of any other occupational disease of the respiratory 343
tract resulting from injurious exposures to dust. 344

The refusal to produce the necessary consents and permits 345
for autopsy examination and testing shall not result in 346
forfeiture of compensation provided the administrator finds that 347
such refusal was the result of bona fide religious convictions 348
or teachings to which the claimant for compensation adhered 349
prior to the death of the decedent." 350

In line 621, delete "and" 351

In line 622, after "2744.01" insert ", and 4123.68" 352

In line 991, after "provide" insert "protections for essential 353
workers and"; after "immunity" insert "from law suits" 354

The motion was _____ agreed to.

SYNOPSIS 355

**Presumption that COVID-19 was contracted during 356
employment 357**

R.C. 4123.68 and Section 7 358

Creates a presumption that COVID-19 is an occupational 359
disease under the Workers' Compensation Law for the following 360
employees if the employee contracts COVID-19 during the 361

emergency declared by Executive Order 2020-01D, issued March 9, 2020:	362 363
--Retail food establishment employees;	364
--Food processing establishment employees;	365
--Peace officers, firefighters, and emergency medical workers;	366 367
--Corrections officers.	368
Allows the presumption to be rebutted by affirmative evidence.	369 370
Applies the presumption to claims arising only during the period of the emergency declared by the Order but not later than December 31, 2020.	371 372 373



May 29, 2020

The Honorable Larry Obhof
President, Ohio Senate
Statehouse
Columbus, OH 43215

RE: House Bill 606 Immunity

Dear President Obhof:

We appreciate your commitment to enact legislation to provide responsible legal immunity protections for businesses and employers as Ohio strives toward economic recovery. As you know, we have been working with Senators Huffman and Eklund regarding Senate legislation on this topic and have been pleased to provide proponent testimony.

Yesterday, the Ohio House of Representatives completed work on House Bill 606, legislation containing many similar provisions. Before approving the measure, the chamber accepted a floor amendment offered by Representative Kelly that classifies COVID-19 as an occupational disease that qualifies those employed as first responders, corrections officers, as well as employees at food processors, food manufacturers, grocery stores, and convenience stores for workers' compensation benefits. This is the subject of free-standing legislation, House Bill 605 (Kelly – Patton) and House Bill 571 (Boggs).

We have reviewed the amendment language and are deeply concerned about the language that creates a presumption in favor of employees for COVID-19 workers' compensation claims. Under the amendment, if an employee contracts COVID-19, there is a presumption that the contraction was work-related. Then, the burden shifts to the employer to prove that contraction of COVID-19 was not work-related. This is contrary to current Ohio workers' compensation law which places the burden on a claimant to prove that the claimant contracted an occupational disease at work. This burden-shifting appears to be designed to eliminate defenses and create a guaranteed claim.

More specifically, under current Ohio law (without this amendment), workers' compensation is available for COVID-19 claims. In fact, as of May 12, 2020, 59 state-fund workers' compensation claims had been approved for contraction of COVID-19, 21 denied, and 105 remained pending. This shows that these claims are being considered and workers compensation benefits are being paid when appropriate.

Under current law, an employee needs to show by a preponderance of the evidence that he or she contracted COVID-19 at work to receive workers' compensation benefits. This is the established standard that historically has been applied to workers' compensation claims. There is no reason to change the workers' compensation system and open the door to guaranteed claims that will be virtually impossible for an employer to contest.

We will continue to highlight this and other provisions of importance to Ohio's employers related to priority immunity legislation.

Thank you for your leadership.



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MEMORANDUM

TO: Ohio Manufacturer's Association

FROM: Christopher N. Slagle

DATE: May 21, 2020

RE: New Requirements for Ballot Issues to Access Ballot on November

The Ohioans for Safe and Secure Elections (OFSE Plaintiffs), the Ohioans for Raising the Wage (OFRW Plaintiffs) and several plaintiffs for local marijuana decriminalization measures in municipalities (together “plaintiffs”) filed a case in the United States District Court of Southern District of Ohio against Governor DeWine.

Specifically, the Plaintiffs argued the ongoing COVID-19 pandemic and Ohio’s Stay-At-Home Order prevented the Plaintiffs from collecting signatures for their respective ballot issues. Ohio continued to enforce the several signature requirements to qualify their constitutional amendment and initiatives for the November 2020 General Election. Plaintiff’s argued that continued enforcement of the burdensome signature requirements violated the Plaintiffs First Amendment right. The Plaintiffs sought a preliminary injunction to remedy the wet-signed signature requirement, geographical and numerical requirement, and the signature collection deadline.

On May 20, 2020, U.S District Court Judge Edmund Sargus granted in part the Plaintiffs preliminary injunction. The Court based its decision on the recently decided *Esshaki* case in Michigan. *Esshaki v. Whitmer*, No. 20-1336, 2020 WL 2185553 (6th Cir. May 5, 2020). The U.S. Sixth Circuit Court of Appeals in *Esshaki* found the signature requirements combined with the ongoing COVID-19 pandemic to be heavily burdensome on the First Amendment rights; therefore, the signature requirements should be altered in some manner to alleviate the burden. The geographic and numeral requirement were found in *Esshaki* to not be burdensome.

Judge Sargus in the Ohio case found the wet-signed signature requirement and the deadline as overly burdensome. Judge Sargus, in handling the local marijuana decriminalization matters, found the federal court to not have jurisdiction on those measures, but ordered the Secretary of State to reduce the ballot access burden on those measures and to file with the Court by May 26, 2020. These adjustments are to be filed with the Court by May 26, 2020.

Judge Sargus also ordered the State to accept electronically-signed and witnessed petitions through the on-line signature collections plans proposed by OFRW Plaintiffs and OFSE Plaintiffs. The Court also ordered the parties to meet on any technical and security issues with the plan. The

parties shall submit their findings to the Court by 12:00 pm on Tuesday, May 26, 2020. Finally, the Court ordered an extension on filing those signatures from July 1, 2020 to July 31, 2020.

The plan spelled out by OFRW and OFSE includes the usage of DocuSign. A website will be established that will direct signers to a PDF of the petitions. Then, the signer will be required to provide the last 4 digits of their social security number to verify their identity. The circulator of the petition will be the administrator of the on-line petition and will monitor the activity on the website, including for duplicate names and multiple uses of an IP address. The Secretary of State will be provided the last 4 digits of the social security numbers to authenticate the identity of the signer.

The Defendants, including Governor DeWine, Ohio Department of Health Director Amy Acton, and Secretary of State LaRose, filed an appeal of the Court's decision and filed a motion to stop the preliminary injunction.

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

CHAD THOMPSON, et al.,	:	
	:	Case No. 20-3526
Plaintiffs-Appellees,	:	
	:	On Appeal from the
v.	:	United States District Court
	:	for the Southern District of Ohio
GOVERNOR OF OHIO,	:	Case No. 20-cv-2129
MICHAEL DEWINE, et al.,	:	
	:	
Defendants-Appellants.	:	

**MEMORANDUM OF AMICI CURIAE, OHIO MANUFACTURERS
ASSOCIATION, OHIO CHAMBER OF COMMERCE; NATIONAL
FEDERATION OF INDEPENDENT BUSINESSES/OHIO; OHIO FARM
BUREAU FEDERATION; OHIO COUNCIL OF RETAIL MERCHANTS;
AND OHIO BUSINESS ROUNDTABLE
IN SUPPORT OF APPELLANTS' MOTION TO STAY**

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Association; Ohio Chamber of Commerce;
National Federation of Independent
Businesses/Ohio; Ohio Farm Bureau
Federation; Ohio Council of Retail
Merchants; and Ohio Business Roundtable*

MEMORANDUM IN SUPPORT

A. Statement of Amicus Interest

The Ohio Manufacturers' Association ("OMA") is a statewide nonprofit trade association whose membership consists of over 1,400 manufacturing companies. The OMA aims to enhance the competitiveness of manufacturers and improve living standards of Ohioans by shaping a legislative and regulatory environment conducive to economic growth in Ohio.

The Ohio Chamber of Commerce ("Chamber") is Ohio's largest and most diverse business advocacy organization. The Chamber represents members of virtually every industry throughout Ohio, including retail, transportation, manufacturing, healthcare, and others. The Chamber works to promote and protect the interests of its more than 8,000 business members and the thousands of Ohioans they employ while building a more favorable Ohio business climate.

The Ohio Chapter of the National Federation of Independent Businesses ("NFIB") is an association with more than 25,000 members, making it the State's largest association dedicated exclusively to serving the interests of small and independent business owners. NFIB members typically employ fewer than twenty-five people and record annual revenue of \$250,000 or less.

The Ohio Farm Bureau Federation, Inc. ("Ohio Farm Bureau") is Ohio's largest general farm organization, representing nearly 200,000 member families.

The Ohio Farm Bureau is a federation of 86 member-county Farm Bureaus, representing Ohio's 88 counties. Farm Bureau members in Ohio serve on boards and committees working on legislation, regulations, and issues that affect agriculture, rural areas, and Ohio's citizens in general.

The Ohio Council of Retail Merchants ("Council"), founded in 1922, is a statewide trade association that includes 5,400 member companies, ranging from large department stores, supermarkets, and drug store chains, to independently owned retail businesses. The Council promotes and supports legislation and initiatives that pave a positive path for Ohio's retail community.

The Ohio Business Roundtable ("OBRT") was founded for one sole purpose: to improve Ohio's business climate. Since its inception, the OBRT has worked with Ohio's governors and legislative leaders to make Ohio more business-friendly and more competitive both nationally and internationally. OBRT members — the Chief Executive Officers of many of our state's largest, most successful businesses — have helped bring about momentous change in Ohio's economic landscape. It is the belief of OBRT members that any changes to laws regulating the mechanics of the petition and initiative process belong to the Ohio General Assembly and the citizens of Ohio.

Amici have an interest in this matter because they are often engaged in the initiative process, especially when their members are impacted by out-of-state

MAY 13, 2020
Senate Judiciary Committee
Ohio Attorney General Dave Yost – Proponent Testimony – SB 301

Chairman Eklund, Vice Chair Manning and Ranking Member Thomas—thank you for allowing me the opportunity to provide proponent testimony today on SB 301.

At the beginning of this emergency, my office began to receive complaints of product shortages and price gouging brought on by consumers panic buying items like toilet paper, disinfectant wipes, and hand sanitizer. During those early days, I spoke with a good number of major retailers, and was impressed to learn of the proactive steps retailers all over Ohio were taking to hold the line on prices and to protect the supply chain. While the vast majority of retailers continue to do the right thing, the bad actors have not—in no small part due to the lack of clear authority to curb their predatory behavior.

SB 301 has two main provisions:

- 1) It gives the office of the Attorney General explicit authority to go after the most egregious price gougers—those who sell items at prices “grossly in excess” of the regular price of an item before the declaration of an emergency, and
- 2) It gives the office of the Attorney General permissive authority to establish statewide and uniform per-consumer per-transaction quantity limitations on items related to the emergency or necessary to protect the health and safety of Ohioans.

Price Gouging

Ohio is one of only fourteen other states that do not have some form of price gouging protection codified in law. With the passage of SB 301, my office will have explicit authority to go after the worst offenders to stop their behavior, and in appropriate circumstances, to levy civil penalties against them for profiteering on fear.

Unlike other states where the attorney general may use this authority at any time, the sponsors of SB 301 have sought a more measured approach. The authority is limited to activity taking place during a declared emergency.

The bill also includes this innovation: a robust set of affirmative defenses to defend price increases related to supply chain costs, as well as actions taken by the seller that increase the value of the product.

For example, the price for eggs increased significantly in mid to late March. Our office began to receive complaints filed against retailers across the state for price gouging. After investigating, we learned that increased production costs were driving up the retail price of eggs statewide. Under SB 301, it is clear that this scenario would not constitute price gouging.

Contrast this with the case of a man who went by the handle of Donkey476 on eBay. Donkey476 sold N-95 masks at an 1800% mark up *from the existing market*. Manufacturers such as 3M

continued to make and sell their masks while in high demand for a little more than \$2 during the COVID-19 crisis. The sales of millions of masks at this price establishes the market, not the handful of fear-driven transactions at an 1800% markup.

Let us turn for a moment to the virtues of a free market. Simply shouting “Free markets forever!” is not a magic incantation. Free markets are the most efficient way to allocate resources and establish prices. They are indispensable to prosperity.

But they are not inherently infallible, and can result in outcomes we deem poor on grounds other than efficiency. That is why our market system has rules: for example, you cannot lie on your financial statements, or purposely deceive people about the dangers of your product. It’s why the New York Stock Exchange temporarily pauses trading when the market loses a certain amount, to prevent panics. They call it a “circuit breaker,” but it’s really more of an emergency brake.

So the question becomes: how does a market work during a public emergency—a pandemic or a weather catastrophe?

If plywood is in short supply in Biloxi, MS, after a hurricane, a higher price will incentivize the owners of existing stockpiles in Minnesota to move the plywood from a place of low demand (and low prices) to a place of high demand (and higher prices). This effect will come into play in the second provision of this bill—let's drop a pin here for the moment.

But what about when existing goods have been moved to the higher-demand market? If demand remains higher for a long time, then higher prices will give others the incentive to move into that market themselves—to potentially build mask or plywood factories, if you will.

Yet most emergencies do not last for a long time. What business person would try to start manufacturing these not-so-easy to produce masks for an emergency whose demand will ebb as quickly as it arose, once our society reaches herd immunity? What do you do with all those masks when they are no longer needed?

My point here is that markets are less beneficial in short-term demand spikes, where the demand is enough to exhaust existing supplies and manufacturing capacity but will not endure long enough to expand the number of players in the market. I believe that is precisely what we are seeing with the current COVID-19 pandemic.

To return to our 1800% markup man, what Donkey476 was doing was *not* market-based selling. The old phrase about pricing—“everything the market will bear”—means there is a breaking point at which the market will not bear it and other people will enter with lower priced goods, or an alternative good will develop in time because of the price incentives.

What Donkey476 did had nothing to do with markets or what they would bear, and had everything to do with the individual breaking point of individual people. A starving man will give everything he has for a loaf of bread. That transaction — don't call it a sale! — does not establish a market.

Panic Buying

While Ohio would be a relatively late adopter on the price gouging piece of SB 301, the panic buying piece is a more innovative tool. Again, only during a declared emergency, the Attorney General would have permissive authority to establish quantity limits on per-consumer per-transaction retail purchases. Our office would be required to provide notice of these limits and post them to our website, and they would remain in place for 90 days or the end of the emergency, whichever is sooner.

Americans are not going to the bathroom more because of COVID-19. We do not need more toilet paper than we did before, and we certainly don't need more toilet paper factories.

So why was this humble, yet-so-necessary commodity in short supply, and briefly sold for outrageous prices in certain places? The run on toilet paper wasn't fueled by a fear that the total global supply would run out. It was fueled by seeing empty shelves. Those empty shelves prompted us to fear that our own family would go without if we didn't buy then and buy far more than we'd ever use.

This massive bulk purchasing fueled *artificial* shortages. Some businesses and individuals saw that panic as an opportunity to make tremendous profits by exploiting people's fears and uncertainties. The authority provided in this legislation isn't a brake on the free market – it's a throttle limiter to make sure the machinery of commerce doesn't blow itself apart, hurting innocent and vulnerable consumers in the process.

The engines of supply and demand always come into balance in the long run. What we're doing here is protecting the public from exploitative sellers and artificial price inflation and supply contraction long enough for that to happen.

In the current crisis, some retailers voluntarily placed limits on the amount of toilet paper (or other goods) that could be sold in a single transaction—and others may have adopted them later after our conversations—but all those actions occurred *after* the panic buying produced the artificial shortages. And some never did limit purchase quantities. This bill will allow the Attorney General—only in the event of a declared emergency—to place temporary limits on retail sale quantities.

The result will be to diminish such price-gouging, not by government price controls, but by constraining demand.

This bill uses the law of supply and demand to achieve a flexible price result. By limiting quantity per transaction, supply and actual demand will remain in rough equilibrium. The price would reflect that balance, rather than a price set by government edit.

This levels the playing field for suppliers and consumers, provides timely assurances to a nervous public, and helps protect the nation's supply chain.

A final caution: panic buying and price gouging go hand-in-hand, and it would be a mistake to tackle one piece of this problem without acknowledging the other. Like the so-called "circuit

breaker" on the New York Stock Exchange, this bill provides for a temporary, limited emergency brake that will prevent many market distortions and the pain they generate.

In closing, I am grateful Senators Manning and Wilson for their leadership on these topics and to the many stakeholders who have provided feedback on this bill. Thank you, and I'm happy to answer any questions you may have at this time.



May 20, 2020

The Honorable Gayle Manning
Chair, Commerce and Labor Committee
Ohio House of Representatives
77 S. High Street, 12th Floor
Columbus, OH 43215

Re: Concerns Regarding H.B. 380

Dear Representative Manning:

The Ohio Hospital Association and Ohio Manufacturer's Association, on behalf of our hospital and manufacturer members, wish to express concerns regarding H.B. 380 which requires owners of private construction projects to pay a contractor within 30 days of receiving a request for payment. Health care and manufacturing are major contributors to the state's economy, and we believe this legislation creates an unattractive environment in Ohio for private economic development.

OHA and OMA believe private entities should be free to negotiate contractual terms without government interference. This legislation erodes the ability of our members to negotiate freely and runs counter to free market and "freedom of contract" principles. All commercial construction contracts agreed to by our members are negotiated by sophisticated parties, including the payment and interest terms.

In addition, the standard terms of most Ohio contracts already include several remedies for late payment, including the ability to suspend the work, terminate the contract, or continue to work on the project and claim interest at the negotiated rate. We are not aware of any empirical evidence that suggests these remedies have been inadequate in the past, or that this late payment problem is pervasive. Therefore, the 18% interest penalty proposed in this bill is exorbitant. In fact, it would be rare to see an interest rate that high proposed by a contractor because they know it would be rejected as unfair and inflated. Setting such a rate in statute is punitive rather than compensatory and likely to result in a windfall for contractors.

The bill also fails to take into account the standard architect/engineer payment application certification process because payment is due 30 days from the date the payment application is submitted by the contractor. Almost every standard agreement for construction provides that payment does not become due until the architect or engineer has completed the following:

1. Reviewed the payment application submitted by the contractor
2. Made sure that all mechanics lien waivers are included, and
3. Reviewed the work in place to confirm that the work has progressed to the degree represented by the contractor.

This process normally tracks a detailed "schedule of values" or break down of the various portions of the project and the percentage completion of each. It is difficult for this to be accomplished on larger and more complex projects within a 30 day period and, to the extent the design professional pushes up against the 30

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day deadline in the statute, the owner will be deprived of the time needed to follow its internal payment procedures.

If this process is rushed, it can place the owner in peril of mechanics liens on its property, defective work not being identified, and paying too much for the actual work completed. This bill ignores the reality of the need for this process and the time involved in following this process, which is nearly universally utilized in the construction industry.

OHA and OMA appreciate this opportunity to provide feedback on HB 380 and we respectfully request your consideration of these concerns. If you have any questions, please feel free to contact us.

Sincerely,



Sean McGlone
Sr. Vice President and General Counsel
Ohio Hospital Association



Ryan Augsburger
Vice President and Managing Director
Ohio Manufacturer's Association

cc: Members of the Ohio House Commerce and Labor Committee



MEMORANDUM

TO: Ohio Manufacturers' Association
Government Affairs Committee

FROM: Bricker and Eckler LLP
Christopher N. Slagle, OMA General Counsel

DATE: June 3, 2020

RE: June 2020 OMA Government Affairs Committee Report

I. June 2020 Government Affairs Committee Counsel Report.

Please find below several political, legislative, and judicial efforts our Firm has been monitoring for the OMA.

II. Statewide Ballot Issues Overview.

Currently, several statewide issues are attempting to qualify for the November 2020 general election – however, given the current state of COVID-19 and the lack of mass gatherings, the collection of signatures in Ohio for statewide ballot issues is challenging. Information is also listed below in the amicus section detailing the current status of federal litigation seeking to use electronic signatures on ballot initiative petitions and to extend the deadline to file the required signatures to July 31, 2020. Under current Ohio, sufficient signatures must be filed by July 1, 2020.

Secure and Fair Elections. On January 31, 2020, the Attorney General rejected the petitioner's, backed in part by the ACLU, summary that proposes amending the Ohio Constitution to allow same day voter registration in Ohio. However, the group named Ohioans for Safe and Fair Elections refiled their initiative petition on February 10, 2020 for approval to collect signatures. Attorney General Yost announced the certification of their second attempt on February 20, 2020. The Ballot Board met on March 2, 2020 and determined the petition did not include a single subject, instead the petition held four separate subjects so it should be four separate ballot issues. The group filed a complaint for writs of mandamus in the Ohio Supreme Court on March 5, 2020. The Ohio Supreme Court decided the case on April 14, 2020, requiring the Secretary of State to reconvene the Ballot Board to certify the issue as a single subject ballot initiative. The group also requested for additional time to collect signatures; however, the Court denied this request. The Ballot Board met on April 23, 2020 and certified the petition as a single issue in accordance to the Supreme Court's order. Right now, this group and the Raise the Wage Ohio group filed a case in the United States Southern District in the Sixth Circuit for additional time to collect signatures for their respective petitions. Additional information on this case is below in the litigation piece.

Raise the Wage Ohio. A labor backed group filed its summary on January 17, 2020 to amend the Ohio Constitution to raise the minimum wage to \$13 per hour by January 1, 2025. The Attorney General certified the petition on January 27, 2020 and following certification from the Ohio Ballot Board that the petition contains only one issue the petitioners can collect signatures to place the amendment on the ballot. For placement on the general election Ballot, Raise the Wage Ohio must submit 442,958 signatures to the Secretary of State by July 1, 2020. This group joined the Ohioans for Safe and Fair Elections in a case in the United States Southern District in the Sixth Circuit for additional time to collect signatures and an alternative manner to collect signatures for their respective petitions. Additional information on this case is below in the litigation piece.

Lifetime General Assembly Term Limits. On February 19, 2020, a group titled Ohioans for Legislative Term Limits filed an initiative petition for a constitutional amendment that limits an individual from holding state elected office more than a total of 16 years. If the constitutional amendment is approved, only years of service beginning on or after January 1, 2021 will be considered in determining the individual's eligibility to take or hold office. In effect, this constitutional amendment will eliminate individuals from switching from each chamber. The Attorney General certified the petition on February 27, 2020. On March 2, 2020, the Ballot Board determined this petition to be a single issue. Therefore, the group may begin to collect signatures to be filed by July 1, 2020 to be placed on the November general election ballot.

Gun Background Checks. Ohioans for Gun Safety has filed its summary, and the Attorney General certified the petitions on July 29, 2019. The group is free to collect an initial 132,000 signatures for an initiated statute closing perceived loopholes in background checks for certain firearms purchases. The signatures were due to the Secretary of State in late December 2019. The group held a “day of action” during the 2019 General Election in an effort to boost signature gathering efforts. But, on December 13, 2019, the group announced that it will wait and push for the initiative to be placed on November 2021 election.

National Popular Vote. A group has received approval from the Ohio Attorney General to begin collecting 442,958 signatures for an amendment to the Ohio Constitution requiring that Ohio presidential electors cast their Electoral College votes to the winner of the national popular vote for President of the United States. The petition was certified by the Attorney General on May 21, 2019, and signatures are due to the Secretary of State by July 1, 2020.

Legalize Recreational Marijuana. A petition committee filed an initiative petition on March 1, 2020 for a constitutional amendment to permit individuals 21 years and older to possess, use, transport, purchase and share marijuana in Ohio. Attorney General Yost rejected the initiative petition on March 10, 2020 because the summary was not fair and truthful. The petition committee filed again on March 17, 2020 and Attorney General Yost rejected the petition committee's second attempt on March 23, 2020 because the petition committee did not meet the required signature

threshold. 1,000 signatures are required, and only 271 of the signatures submitted were verified and accepted by the Board of Elections. This committee has yet to file another petition.

III. Pending Legislation (2019-2020).

During April, the General Assembly did not schedule any sessions or committees. However, in early May, the General Assembly resumed legislative work. Many bills were COVID-19 related; however, legislators continue introducing and passing non-COVID-19 related legislation. Both chambers are expected to meet in June before members return to their districts for the summer. Normally, the legislature is idle during the summer months of an election year while members are campaigning and attending events in their district. Due to COVID-19 social distancing protocols, many events are cancelled and campaigning will look different. Combined with the possibility that the pandemic necessitates additional legislative action, the legislature could return in the early fall for session. We also expect a busy lame duck session after the November general election since most of the legislative calendar in March and April were cancelled due to COVID-19.

Employment Law Reform. Introduced in the 132nd General Assembly as H.B. 2 by Representative Bill Seitz (R-Cincinnati), this legislation has yet to be reintroduced this session. The legislation has been a priority of the business community in the past.

S.B. 1 – Reduction of Agency Regulations. On February 12, 2019, Senator Rob McColley (R-Napoleon) and Senator Kristina Roegner (R-Hudson) introduced S.B. 1, which requires agencies to reduce the number of regulatory restrictions. During its second hearing, many business groups provided proponent testimony explaining that the bill will support economic growth and business development in Ohio. The bill passed the Senate on May 8, 2019.

Specifically, the bill requires a state department and/or agency to amend or rescind rules identified in its inventory of regulatory restrictions as necessary to reduce the total number of regulatory restrictions by 30 percent according to a specific schedule set forth in the language. The bill also creates a website where individuals and businesses can report burdensome regulations to the Joint Committee on Agency Rule Review.

A portion of S.B. 1 – a priority of Senate President Larry Obhof – was included in H.B. 166 – Ohio’s biennial operating budget passed by the Ohio General Assembly on July 17, 2019. However, the remainder of S.B. 1 that requires agencies to reduce their regulatory restrictions by 30% has yet to be enacted.

S.B. 1 was amended in the House State and Local Government Committee on May 5, 2020. The amendment requires all orders issued by the Director of Health on or after April 29, 2020, cease to be effective 14 days after the bill takes effect, unless the Joint Committee on Agency Rule Review (JCARR) approves extensions of those orders by a majority vote that includes at least

three members of the House of Representatives and three members of the Senate. The Ohio House passed the bill with a vote of 57-38. The Senate did not concur with the amendment by a vote of 0-32. Therefore, Senate Bill 1 will go to conference committee. A companion bill, S.B. 311 (McColley, Roegner) containing the Director of Health related amendments to S.B. 1, which is pending in the Senate Health Committee.

H.B. 6 - After Effects. Although, Ohioans Against Corporate Bailouts failed to place H.B. 6 on the ballot for a referendum, the effects of H.B. 6 continue to linger due to federal action. Specifically, the Federal Energy Regulatory Commission (FERC) directed PJM Interconnection, L.L.C. (PJM) to expand its Minimum Offer Price Rule (MOPR) to address state-subsidized electric generation resources, with certain exemptions. PJM will have to set minimum bids for state-subsidized generators in the capacity auction. FERC stated the ruling was to protect the competitive capacity market administered by PJM. FERC's ruling will impact and may disable the nuclear plants ability to have a winning bid in the capacity auction if they receive subsidies authorized by H.B. 6. Many stakeholders and supporters of H.B. 6 have begun conversations on addressing the issue, however no legislation has been introduced and PJM has not issued new market rules in response to the FERC order. In addition, many stakeholders such the Public Utilities Commission of Ohio have moved for rehearing on the FERC docket. But, FERC is not required to accept motions for rehearing. We continue to monitor this issue closely.

H.B. 238 - Ohio Whistleblower Protection Law. This bill is sponsored by Representative Jack Cera (D-Bellaire) and Gary Scherer (R-Circleville). H.B. 238 was introduced on May 7, 2019 and was referred to the House Civil Justice Committee where it has had four hearings. The bill expands the protections provided to private and public sector employees under Ohio's Whistleblower Protection Law (OWPL). Among many things, it increases the statute of limitations from 180 days to one year after the date the disciplinary or retaliatory action was taken. It eliminates the requirement that a report must be made pursuant to a specific process to be protected under OWPL. It also expands protection under OWPL to an employee who refuses to participate in illegal activities that the employee reasonably believes are illegal activities.

During the fourth hearing of H.B. 238, Representative Patton (R- Strongsville) offered a substitute version of the bill. The committee accepted this version. Specifically, the substitute bill removes all mention of private sector in the language and complies with the jurisdiction of the Inspector General. The House Civil Justice Committee passed the bill on February 28, 2020 by a vote of 10-0. The bill awaits a House vote.

H.B. 352 - Employment Law Uniformity Act. Representative Jon Cross (R- Kenton) and Representative George Lang (R- West Chester) introduced H.B. 352 on October 1, 2019. H.B. 352 makes several changes to the process of the Ohio Civil Rights Commission. H.B. 352 also reduces the statute of limitations on civil actions for employment discrimination claims from six years to two years. This bill prohibits the dual action of filing an administrative claim with the Ohio Civil Rights Commission and filing a lawsuit. Instead, a claim for workplace discrimination must be

filed with the Ohio Civil Rights Commission prior to commencing a lawsuit. H.B. 352 also eliminates personal liability for supervisors, managers or other employees of an employer unless the discriminatory act is outside the scope of employment, retaliation against the claimant or aides in a discriminatory practice. In addition, this bill codifies an affirmative defense, which provides an employer to rebut a claim if the employer can exhibit that it enacted anti-harassment policies and complaint procedures and the employee failed to utilize the policies and procedures. H.B. 352 also provides clarification on the available avenue of filing an age discrimination lawsuit.

This bill was referred to the House Civil Justice Committee and received four hearings before being voted out of committee on May 12, 2020. The committee voted out an amended version of the bill, with an amendment offered by Representative Jeff Crossman (D-Parma) that tolls the statute of limitations to allow parties to negotiate in good faith. The bill now awaits a House floor vote.

H.B. 378 – Unemployment Compensation. This bill is sponsored by Representative Jeff Crossman (D-Parma) and Michele Lepore-Hagan (D-Youngstown). H.B. 378 was introduced on October 22, 2019 and referred to the Ohio House Insurance Committee. The bill allows employees on strike to receive unemployment compensation. H.B. 378 contains an emergency clause; therefore, the bill would take immediate effect if it was signed by Governor DeWine. The legislation has not yet been heard by the House Insurance Committee.

H.B. 380 - Payment to Construction Contractors. Representative Jon Cross (R-Kenton) and Representative Bride Sweeney (D-Cleveland) introduced H.B. 380 on October 23, 2019. H.B. 380 was referred to House Commerce and Labor Committee on October 29, 2019. Thus far, H.B. 380 received three hearings. Generally, H.B. 380 requires owners of commercial and public construction projects to pay contractors within 35 days after receiving a request for payment. If a payment is not timely made, then an 18% annual interest rate will be applied to the amount owed. This modification to the Prompt Pay Act would include project owners in the act. Currently, the act only addresses payments amongst contractors, subcontractors, material suppliers, and laborers. The bill received a fourth hearing on May 20, 2020 in the House Commerce and Labor Committee.

Anti-Discrimination. S.B. 11, which is sponsored by Senator Nickie Antonio (D-Lakewood), will enact the Ohio Fairness Act to prohibit discrimination on the basis of sexual orientation or gender identity or expression. The bill seeks 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. The bill also will uphold existing religious exemptions under Ohio Civil Rights Law.

S.B. 11 was introduced on February 12, 2019 and is assigned to the Senate Judiciary Committee where it had its third hearing on May 22, 2019. This bill has received no further hearings as of the middle of February. Previous versions of the bill received strong support from the business community. Many business groups are supportive of the bill because they recognize

the importance of diversity in the workplace and believe that improvements should be made to protect against discrimination of any type.

Also, Representatives Brett Hillyer (R- Uhrichsville) and Michael Skindell (D- Lakewood) introduced similar legislation in the Ohio House on October 17, 2019. H.B. 369 was referred to the Ohio House Civil Justice Committee. H.B. 369 is nearly identical to S.B. 11; however, S.B. 11 includes a provision that makes any provision of a hiring hall contract unenforceable if it obligates a contractor to hire, only employees referred to the contractor by the union, unless within 30 days after the contract's execution the union has in effect procedures for referring qualified employees for hire without regard to sex. H.B. 369 has received two hearings, thus far. The second hearing on February 4, 2020 received nearly 300 pieces of written testimony in favor of the bill. Several organizations provided in person testimony such as the Ohio Chamber of Commerce, Columbus Chamber of Commerce, Ohio Civil Rights Commission, Ohio State Bar Association, Ohio Realtors and Equitas Health Institute.

State Minimum Wage. Several bills to increase the state minimum wage are pending this general assembly. Representative Brigid Kelly (D-Cincinnati) introduced the first bill. H.B. 34 was introduced on February 12, 2019. This bill was referred to the House Commerce and Labor Committee. The bill has only received sponsor testimony. Specifically, the bill increases the state minimum wage to \$12.00 per hour beginning January 1, 2020. Then, the bill increases the state minimum wage by \$1.00 each year following 2020, for three years. H.B. 34 also allows municipal corporations, townships or counties to establish within their respective jurisdiction a local minimum wage rate that exceeds the state minimum wage.

Following the introduction of H.B. 34, Senator Cecil Thomas (D- Cincinnati) and Senator Hearcel Craig (D- Columbus) introduced S.B. 90, which will increase the state minimum wage and allow municipalities, townships and counties to establish a higher minimum wage requirement. S.B. 90 increases the state minimum wage to \$12.00 beginning January 1, 2020 and then increases the minimum wage by a \$1.00 each year for the following three years.

Last, Representative Kent Smith (D-Euclid) and Representative Lisa Sobecki (D- Toledo) introduced H.B. 391, which requires the state minimum wage to be raised to \$10.55 beginning January 1, 2021. This bill was referred to the House Commerce and Labor committee on November 12, 2019. The bill has not received any hearings after referral. This bill was introduced prior to the constitutional amendment petition filing with the Attorney General's office.

Although, all bills mentioned are primarily sponsored by Democrats in both Republican majority chambers, the ballot issue on increasing minimum wage may spark movement on the state minimum wage discussion.

State Occupational Licensing. Both chambers are considering legislation to allow automatic issuance of occupational licenses for license holders with an out of state license. Representative

Jena Powell (R-Laura) and Representative George Lang (R-West Chester) introduced H.B. 432 and it has received two hearings in the House State and Local Government Committee. Senator Roegner (R-Hudson) and Senator McColley (R- Napoleon) introduced S.B. 246 and it has received five hearings in Senate General Government and Agency Review Committee. Both bills require a licensing authority to issue a license or government certification to an applicant if the applicant holds an out of state occupational license that allows the applicant to engage in same profession and at the same practice level as the license in Ohio. Both bills contain the restriction that the applicant's license must not have been revoked or surrendered in the previous jurisdiction due to negligence or intentional misconduct by the applicant.

Water Contaminant Legislation. Following federal trends, several bills have been introduced relating to water quality issues. Representative Wiggam (R- Wooster) introduced H.B. 427 on November 26, 2019. The bill was referred to the House Public Utilities Committee and has received one hearing for sponsor testimony.

H.B. 427 prohibits the Ohio EPA from adopting rules that require a public water system, in existence prior to the bill's effective date, to treat drinking water for secondary contaminants. The Ohio EPA may require treatment if the level of a secondary contaminant exceeds a health advisory limit established by the U.S. EPA. The bill defines a secondary contaminant as aluminum, chloride, color, copper, corrosivity, fluoride, foaming agents, iron, manganese, odor, pH, silver, sulfate, total dissolved solids, and zinc. Representative Wiggam stated in his sponsor testimony that the legislation is in response to the Ohio EPA's current rulemaking on public water systems and taste of water requirements. Representative Wiggam stated Ohio EPA's current rulemaking activities is not proscribed in the Revised Code.

H.B. 497 also was recently introduced in the House. This bill requires the Director of Ohio EPA to adopt rules establishing maximum allowable contaminant levels in drinking water and water quality standards for certain containments. H.B. 497 was introduced on February 6, 2020 and is sponsored by Representative Mary Lightbody (D- Westerville) and Representative Allison Russo (D- Upper Arlington). H.B. 497 was referred to House Health Committee and has yet to receive a hearing.

Although the two bills are entirely different, the introduction of both bills shows the Legislative engagement on the water contaminant issue. We will continue to monitor any legislative action on these bills and any new bills that are introduced.

H2Ohio Update. The biennial budget, H.B. 166, allocated \$172 million to the H2Ohio water quality plan. This funding mechanism also authorizes the Controlling Board in Fiscal Year 2021 to increase or appropriate dollars to support water protections vision and strategy. The Lake Erie Commission will coordinate with state agencies such as the Environmental Protection Agency, Department of Natural Resources, and Department of Agriculture to submit an annual report to the governor and legislature on H2Ohio spending and funds for each fiscal year.

After funding H2Ohio, Governor DeWine pivoted to establishing the strategy and implementation for the program. On November 14, 2019, Governor DeWine announced specifics of his H2Ohio plan. H2Ohio funds will help farmers implement a series of ten phosphorus reduction strategies. Implementation will begin in the Maumee watershed and eventually spread statewide. Participating farmers participate in a certification process in order to receive funds to assist in the implementation of the phosphorus reduction strategies. Utilization of the ten strategies is not a mandate.

In addition to reducing phosphorus run off, wetlands shall be established to assist in absorbing pollutants. H2Ohio also will address failing home septic systems and possible lead contamination in high-risk daycare centers and schools. The Ohio EPA will provide funds for infrastructure projects in disadvantaged communities to address these issues.

On November 22, 2019, ODNR unveiled six pending wetland projects to be created or rehabilitated through the H2Ohio water quality fund. These projects include Oak Openings Preserve in Lucas County, Sandusky Redhorse Bend in Sandusky County, Maumee Bay State Park Wetland in Lucas County, Grassy Island and Cullen Park Wetland restoration project in Lucas County, and Forder Bridge in Paulding County. On November 26, 2019, Ohio EPA announced an H2Ohio-backed project in Pomeroy, Ohio. Subsequently on December 6, 2019, Ohio EPA announced an infrastructure project in Williams County for the area of Kunkle. This project is also being funded by H2Ohio funds. On February 24, 2020, additional funds were announced for two water projects in Pike and Coshocton counties. \$1 million will be given to Pike Water Inc. to cover almost two-thirds of the cost of a \$1.6 million project involving the construction of 60,000 feet of drinking water lines. The remaining funding of \$500,000 will be put toward connecting the village of West Lafayette to the city of Coshocton's drinking water system. Several more project will likely be announced.

Due to the loss of revenue in the last few months, Ohio is facing a large budget deficit and Governor Mike DeWine requested each state agency to propose and plan for at least a 20% cut in each of their respective budgets. Several agencies have returned such reports to the Governor's office recently. The Ohio Department of Agriculture has stated their portion of the H2Ohio funds will remain steady and not be cut. However, the Ohio Department of Natural Resources has paused spending the appropriated \$12.4 million and offered it as a possible cut to their budget. Also, the Ohio Environmental Protection Agency predicted \$1.73 million of the agency's funding for H2Ohio may be cut as a part of the 20% reduction goal for the agency.

In addition, the legislature is grappling with a future plan for H2Ohio through the debate and discourse over S.B. 2 and H.B. 7. S.B. 2 creates the Statewide Watershed Planning and Management Program under the administration of the Director of Agriculture. This program requires that the Director categorize watersheds and appoint at least one watershed planning and management coordinator to each categorized watershed. Whereas, H.B. 7 creates the H2Ohio Trust

fund and the H2Ohio Advisory Council to disburse dollars from the trust fund for water quality programs. H.B. 7 also creates the H2Ohio Endowment Board, which allows the fund to accept donations, land, title to land and federal dollars. Both bills are pending in the opposite chambers and S.B. 2 has been amended from its original version passed in the House.

H.J.R. 2 – Prohibiting Certain Foreign Investment in Critical Infrastructure Located in Ohio. A joint resolution sponsored by Representatives Jamie Callender (R-Concord) and Don Manning (R-New Middletown), H.J.R. 2 seeks to place a constitutional amendment on the 2020 General Election ballot. Joint Resolutions require 3/5th majority votes by both chambers of the General Assembly to pass, meaning 60 votes in the House and 20 votes in the Senate. The proposal prohibits foreign businesses and individuals from having majority ownership interest in critical infrastructure located in Ohio. The resolution defines what “critical infrastructure” is subject to the resolution’s requirements and includes projects like power plants (coal, nuclear, and natural gas), water treatment plants, intrastate electric transmission lines, and intrastate natural gas pipelines. It also requires divestment of foreign investment in any critical infrastructure determined to be majority owned or controlled by foreign investment. Thus far, the House Energy and Natural Resources Committee has only held one hearing for sponsor testimony on H.J.R. 2.

IV. Tort Reform.

We are currently monitoring various tort reform legislative efforts and await the possible re-introduction of certain civil justice legislative items from prior legislative cycles. We do not know whether or if at all civil justice efforts will be curtailed or enhanced given the new leadership in the General Assembly, Governor’s Office, and other statewide executive offices.

Limiting Liability related to the COVID-19. Due to recent events, several legislators have recognized the concerns of the business community regarding reopening and the risk of liability surrounding the coronavirus. Therefore, Representative Diane Grendell (R- Chesterland) introduced House Bill 606 and Senator Matt Huffman (R- Lima) introduced Senate Bill 308. Although, both bills introduced language varied from one another, the House and Senate have begun discussions around marrying the language of both bills. Representative Bill Seitz (R-Cincinnati) has handled the negotiations and interested parties for H.B 606.

H.B. 606 was referred to the House Civil Justice Committee. This bill has received five hearings. Thus far, the committee has accepted two substitute bills. H.B. 606 provides immunity to health care providers and immunity to for-profit, non-profit, higher education institutions and others against claims of exposure, transmission or contraction of the coronavirus. However, H.B. 606 limits the immunity and it will not apply past December 31, 2020. During its fifth hearing on May 27, 2020, the bill was amended to prevent immunity to apply if the person’s action was intentional conduct. As discussed prior this detrimentally impairs the immunity. The bill passed the House Civil Justice Committee and then moved to the House floor for a vote. The bill was amended on the floor to include the ability to file a worker’s compensation claim for COVID-19, which would

be defined as an occupational disease. This amendment taints the bill further as discussed previously. These two items will need to be changed for H.B. 606 provide adequate immunity for manufacturers.

S.B. 308 was referred to the Senate Judiciary Committee. S.B. 308 has received four hearings. A second substitute bill was introduced during the hearing on May 27, 2020. However, Chair Eklund stated the substitute bill would not be adopted until committee members had time with the language.

Both bills likely include protections for manufacturers. Specifically, H.B. 606 protects manufacturers from claims of exposure, transmission or contraction of coronavirus. S.B. 308 protects manufacturers from claims of exposure and protects them for their actions or omissions that are a result of or in response to the disaster declared.

Although, the House and Senate leadership have expressed publicly that the immunity bills are a priority of both chambers, the timeline for this legislation is lagging. Originally, the bills were intended to be completed prior to the end of session before both chamber's summer break.

Third Party Litigation Funding. As of this date no legislation has been introduced addressing this issue. However, a draft is in the works between interested parties, especially those involved with the Ohio Alliance for Civil Justice. The draft will likely be released soon for review. However, timeline for introduction is still unknown.

Statute of Limitations on Contracts. Introduced last session as H.B. 694 by Representative George Lang (R-West Chester), this legislation was designed to shorten Ohio's statute of limitations for actions brought related to contracts and bring Ohio in line with other states to maintain Ohio's competitiveness with other similarly situated states. The legislation received two hearings in the House Civil Justice Committee. The bill was reintroduced this general assembly on May 21, 2019 as H.B. 251. H.B. 251 was referred to the House Civil Justice Committee. The House Civil Justice Committee conducted three hearings and then adopted a substitute bill, which was a compromise amongst stakeholders.

The introduced language changed the statute of limitations from eight years to three years for causes of action related to agreements in writing and changed the statute of limitations from six years to three years for causes of action related to agreements not in writing. Sub. H.B. 251 changes the statute of limitations from eight years to six years for causes of action related to agreements in writing and changed the statute of limitations from six years to four years for causes of action related to agreements not in writing. Additionally, the bill explicitly states that credit card accounts and claims for an account stated fall under a six year statute of limitations. The bill also clarifies that the borrowing statute in R.C. 2305.03(B) does not apply to contract actions.

H.B. 251 passed the Ohio House unanimously. Then, the bill was referred to the Senate Judiciary Committee. The committee has held five hearings on the bill thus far. On May 20, 2020 Senator Eklund allowed four amendments to be proposed by interested parties. Senator Coley introduced an amendment which would change the statute of limitations from six years to seven years for written contracts. It also changes the statute of limitations from four years to five years for oral contracts. Chair Eklund asked committee members to thoughtfully review the language to determine if the amendments should be added to the bill. During the following hearing on May 27, 2020, Chair Eklund stated no amendments would be considered and the committee members should continue to have conversations with interested parties. Originally, interested parties wanted to lower the statute of limitations closer to the three years in the original bill language. However, Senator Coley's amendment jeopardizes the opportunity, and debate around this bill will likely heat up over the next few weeks.

S.B. 46 – Punitive or Exemplary Damages Limitations Exceptions. Senator John Eklund (R-Chardon) introduced this legislation on February 12, 2019. The bill was referred to the Senate Government Oversight and Reform Committee where it has had two hearings.

The legislation exempts from punitive or exemplary damages limitations in tort law related to felonies or strict liability offenses that have as an element of the offense one or more mental states of purposely and knowingly as described in section R.C. 2901.22.

Statute of Limitations / Certain Criminal Offenses. Recent investigations into former Ohio State University team physician Dr. Richard Strauss have led to certain Ohio elected officials – including Governor Mike DeWine and Attorney General Dave Yost – to call for an end to certain statutes of limitations when criminal issues are present, including rape. Strauss is accused of sexual conduct against more than 177 Ohio State student athletes between 1979 – 1997. Attorney General Yost, along with former Attorneys General Betty Montgomery, Nancy Rodgers, Jim Petro, Richard Cordray and Lee Fisher sent a letter on June 3, 2019 to legislative leaders in the Ohio General Assembly calling for an elimination to Ohio's 20 year statute of limitations on rape.

On June 18, 2019, Representative Brent Hillyer (R-Uhrichsville) introduced H.B. 249. H.B. 249 will grant a victim of sexual misconduct committed during a specified period by a physician employed by a land grant university a right of action against the university. This bill has received six hearings in the House Civil Justice Committee. However, the Ohio State University announced a \$41 million settlement with 162 survivors in 12 lawsuits. Therefore, the House may no longer pursue this legislation.

Another bill was recently introduced to remove the cap on noneconomic damages for rape and assault victims. Representative Kristin Boggs (D- Grandview) and Representative Allison Russo (D- Upper Arlington) introduced H.B. 518 on February 19, 2020. H.B. 518 is not assigned to a committee yet. Specifically, H.B. 518 removes the cap on compensatory damages for the noneconomic loss that is recoverable in a tort action brought by a victim of rape, felonious assault,

aggravated assault, assault, or negligent assault asserting any claim. We will continue to monitor these legislative efforts.

V. Political Updates.

2020 will be another exciting and busy election year due to the presidential general election in November 2020. Ohio's polls on the primary election date were closed due to the safety concerns and COVID-19. The Ohio Legislature returned and passed House Bill 197 to allow for a full mail in primary election and was completed Tuesday, April 28th. The Board of Elections certified the results and those results were sent to the Ohio Secretary of State's office. Most incumbent Representatives won their primary. In addition, several Representatives who were running for State Senate seats in highly contested primaries were successful. Representatives George Lang, Niraj Antani, Bill Reinke, and Mark Romanchuk won their respective primaries for Senate seats. Most incumbent Senators were unopposed in their primary elections and are looking ahead to their general races. However, campaign season will look different for all candidates due to social distancing and many large events being cancelled as a precaution against COVID-19.

On the pre-primary report filed on March 5th revealed the continued fundraising efforts of the current Supreme Court Justices Kennedy and French. Justice Kennedy has \$602,903 on hand and Justice French has \$415,702 on hand. Both Justices face an opponent in the general election. Justice French's opponent, Judge Jennifer Brunner, has \$139,514 on hand. Justice Kennedy's opponent, Judge John O'Donnell, has \$104,284 on hand. All candidate committees will be reporting their activity post-primary on June 5, 2020. If Justice Kennedy and Justice French are both not successful in their reelection efforts, the Court's composition could drastically change. These races are key to the business committee at-large and must be monitored closely.

Not only are the Ohio Supreme Court races important to the business community, these races could have lasting effects on the congressional redistricting efforts after the 2020 census. Several news reports have shown that national groups are targeting statehouse races in Ohio. The National Democratic Redistricting Committee is supported and led by Barack Obama and Eric Holder. Specifically, these efforts are aimed to change the majority at the Statehouse to have the long term effects on the congressional district map in the future years. If the Democratic Party gains two more seats on the Ohio Supreme Court and gains seats in both chambers of the Ohio legislature, the Democrats could control the congressional redistricting during the brand new process enacted through the ballot initiative in 2018. The current composition of the Court could be more favorable if the congressional maps are challenged after redistricting. If the composition changes and the Republicans maintain their majority in the Legislature, the congressional redistricting process could be an uphill battle to maintain the Republican majority in the congressional districts. The Ohio Supreme Court has a definitive role on how the congressional districts will be drawn and accepted for the 2022 election. Therefore, the November 2020 election is critical and could permanently change the political and business climate in Ohio.

VI. Litigation and Amicus Activity Update

A. Monitored Cases.

1. Lake Erie Bill of Rights Litigation – *Drewes Farm*.

On February 26, 2019, with only nine percent of the electorate voting in a special election in Toledo, the Lake Erie Bill of Rights (“LEBOR”) passed.

The day after the special election, Drewes Farm filed an action in federal district court in Toledo challenging the LEBOR as unconstitutional. *See Drewes Farm Partnership v. City of Toledo*, (N.D. Ohio, W.D.), Case No. 3:19-cv-00434-JZ. The case is assigned to Judge Zouhary. Drewes Farm sought a preliminary injunction and a declaratory judgment. The parties agreed to stay enforcement of the LEBOR and the Court put the case on a fast track. The State of Ohio was permitted to intervene as a plaintiff. Toledoans for Safe Water, Inc. was not permitted to intervene as a defendant. Toledoans for Safe Water, Inc. filed an interlocutory appeal, which was later voluntarily dismissed. The district court issued an expedited scheduling order.

On June 6, 2019, Drewes Farms and the State filed motions for judgment on the pleadings. Briefing on these motions is to be completed by August 19, 2019. Toledoans for Safe Water, Inc. (which was not permitted to intervene as a party) was granted leave to file an amicus curiae brief opposing the motions for judgment on the pleadings. Briefing on the motions for judgment on the pleadings was completed on September 6, 2019. A record hearing has been scheduled for January 28, 2020 before Judge Zouhary. Prior to the hearing, the court will forward questions to the parties which will serve as the agenda for the hearing.

On February 27, 2020, the U.S. District Judge Jack Zouhary ruled that the LEBOR is unconstitutionally vague and exceeds the power of municipal government in Ohio.” In his ruling, Judge Zouhary said Toledoans for Safe Water used language “that sounds powerful but has no practical meaning” when crafting the LEBOR, and that the bill’s purported right to self-governance is “an aspirational statement, not a rule of law.” He found that “[u]nder even the most forgiving standard, the environmental rights identified in LEBOR are void for vagueness[.]” For all the power the LEBOR gave the city and its residents, its language does not clearly spell out key issues, such as what constitutes an infringement on the Lake’s rights, how a judge would decide what was a violation or even what constitutes a “clean and healthy environment.” The Court also found it unclear whether certain activities – such as catching fish, dredging a river, driving a gas-fueled vehicle or planting corn – would run afoul of the law.

Judge Zouhary ultimately found that the LEBOR’s authors “ignored basic legal principles and constitutional limitations.” The law was found to be unconstitutional in its entirety.

The City of Toledo appealed the district court’s decision to the Sixth Circuit Court of Appeals. On May 5, 2020, the City of Toledo dismissed its appeal.

2. *State of Ohio v. Du Pont de Nemours and Co., Washington County Common Pleas Court, No. 18OT000032 (February 8, 2018).*

On February 8, 2018, Ohio Attorney General Mike DeWine filed a lawsuit against DuPont and the Chemours Company in the Washington County Common Pleas Court alleging that the company released perfluorooctanoic acid (PFOA) from its 1,200 acre facility on the Ohio River for decades, all while knowing the harm the toxic chemical posed to people and the environment.

The complaint cites a 2017 University of Cincinnati study that found residents of the Mid-Ohio River Valley had elevated levels of PFOA. The state further alleges that at least 150,000 pounds of the chemical used to manufacture Teflon products was put into the Ohio River in the 1980s and an additional 350,000 pounds was discharged into the river in the 1990s. The complaint alleges that DuPont negligently caused environment contamination and created a public nuisance through its release of PFOA in the air, soil, and water.

The state is asking for (1) a declaration of DuPont’s duty to compensate the state for expenses related to the contamination from the chemical; (2) damages for injury to the state’s natural resources; (3) an award of present and future costs to clean up the contamination; and (4) restitution damages for profits DuPont obtained through the conduct alleged in the complaint.

On April 12, 2018, Defendants each filed a motion to dismiss. DuPont argues that the court lacks jurisdiction because the US EPA consent orders preempt such claims and that the state lacks standing. Defendant Chemours Company’s motion to dismiss argues that the state failed to state a claim upon which relief can be granted against Chemours. On May 14, 2018, the state filed its memoranda in opposition to Defendants’ motions to dismiss. The motions to dismiss have been fully-briefed and argument was held on July 20, 2018, but the Court has not yet decided any of them.

On October 12, 2018, the Little Hocking Water Association (“Little Hocking”) filed a motion to intervene as a plaintiff. The State opposed the motion. This motion has been fully-briefed and the parties are awaiting the Court’s decision.

In January 2019, this case was assigned to Judge Timothy Hogan, a retired judge from Hamilton County, Ohio. In late February, Plaintiff requested a status conference with the Court in late March to address the pending motion to dismiss, the pending motion to intervene, and to discuss a scheduling order.

On June 4, 2019, the court denied the Defendants’ motions to dismiss and also denied Little Hocking’s motion to intervene. Little Hocking filed a motion for reconsideration, which awaits the court’s decision.

On July 5, 2019, Little Hocking also appealed from the June 4 decision denying its motion to intervene. This appeal is pending in the Fourth District Court of Appeals, designated as Case No. 19CA000015. On July 25, the court of appeals ordered appellant to file a memorandum addressing the issue of jurisdiction. Ultimately, the appeal was dismissed for lack of a final appealable order.

On July 29, 2019, Plaintiff filed an amended complaint to add claims for actual and constructive fraudulent transfer under the Uniform Fraudulent Transfer Act, R.C. 1336.01, *et seq.* On August 28, 2019, Defendant filed a motion to separate and stay Plaintiff’s claims for actual and constructive fraudulent transfer. The State opposed this motion. On December 26, 2019, the Court denied this motion. On January 15, 2020, Defendants filed their answers to the amended complaint.

On March 12, 2020, the court granted Plaintiff’s motion to compel discovery. The court indicated that it was not impressed with some of the Defendants’ objections to discovery and stated that, “discovery, if obstructed, shall be met with punishing sanctions.”

3. *State of Ohio v. Purdue Pharma L.P., et al., Ross County Common Pleas Court, No. 17CI000261.*

On May 31, 2017, Ohio Attorney General Mike DeWine filed an action in Ross County Common Pleas Court against several manufacturers of opioids, including Purdue Pharma (which sold OxyContin) and Endo Health Solutions (which sold Percocet). The lawsuit alleges that the defendant drug companies violated the Ohio Consumer Sales Practices Act and created a public nuisance by disseminating false and misleading statements about the benefits and risks of opioids. The suit alleges that the defendant drug companies’ conduct increased the prescription of opioids and fueled Ohio’s opioid crisis. Among other remedies, the State seeks an injunction to stop continued misrepresentations and damages for the money the State spent on opioids.

The drug company defendants moved to dismiss the complaint and sought a stay of discovery. The motions to dismiss are fully briefed. On March 28, 2018, the trial court denied defendants’ motion to stay discovery pending the results of the multi-district litigation, but granted their motion to stay discovery pending the trial court’s ruling on the motions to dismiss. On April 30, 2018, the trial court held oral argument on defendants’ motions to dismiss (and other pending motions).

On August 22, 2018, the trial court denied all motions to dismiss. It also vacated the stay on discovery, allowing discovery to proceed. Defendants have filed answers. The Court held a

status conference on April 5, 2019. In early May, the defendants filed a motion to compel discovery from the State. The State opposed this motion and it is fully briefed.

The case had been scheduled for a multi-week trial, beginning on August 10, 2019, but no trial commenced on that date. Since May 2019, there have been numerous filings to compel the State, its agencies, and the governor's office to provide discovery. As of November 8, 2019, the court had not decided these discovery disputes. Several subpoenas *duces tecum* have been served on third parties.

On September 12, 2019, the state moved for leave to file an Amended Complaint, which was granted. On September 16, 2019, Purdue Pharma filed a notice of suggestion of bankruptcy and automatic stay of proceedings. The State moved to server the claims against Purdue Pharma. The case is proceeding against the remaining defendants. Defendants filed answers to the amended complaint on November 1, 2019. Several subpoenas have been served on third-parties and third-party discovery is ongoing.

On February 25, 2020, the State filed its First Amended Complaint.

On April 3, 2020, a motion to compel the State to comply with agreed procedures for the production of documents was filed. This motion has been fully-briefed, but has not yet been decided.

4. *State of Ohio v. McKesson Corporation, et al., Madison County Common Pleas Court, No. CVH20180055.*

On February 26, 2018, Ohio Attorney General Mike DeWine filed an action in Madison County Common Pleas Court against the following distributors of opioids: McKesson Corporation, Cardinal Health, Inc., AmerisourceBergen Drug Corporation, and Miami-Luken, Inc. The lawsuit alleges, among other things, that these distributors acted irresponsibly in oversupplying the market in and around Ohio with opioids and failed to report suspicious orders to the U.S. Drug Enforcement Agency and the Ohio Board of Pharmacy. The suit alleges that these companies should have known that the volume of opioids supplied far exceeded what could responsibly be used in Ohio, thereby fueling Ohio's opioid epidemic.

The State seeks a number of remedies, including punitive damages and compensatory damages for increased costs Ohio incurred for criminal justice, healthcare, social services, and education related to the opioid epidemic.

On May 30, 2018, Amerisource Bergen Drug Corp., Cardinal Health, Inc. and McKesson Corp. filed a joint Civ.R. 12(B)(6) motion to dismiss the complaint. On June 1, 2018, Miami-Luken, Inc. filed a Civ.R. 12(B)(6) motion to dismiss the complaint. The motions to dismiss are fully-briefed and awaiting a decision.

In January and February 2019, two defendants filed motions to compel the State to provide discovery responses. These defendants assert that the State’s objections to the discovery responses are baseless. The State opposed the motions to compel. The court denied the motions to compel.

On May 20, 2019, the court denied the defendants’ motions to dismiss. Answers were filed on July 3, 2019. Also on July 3, 2019, the State filed a motion seeking an order to prohibit speaking objections during depositions. On July 15, 2019, the court granted this motion. Defendants have filed several pro hac vice motions to admit out-of-state counsel to participate in this case.

On July 25, 2019, the Court entered a stipulated protective order.

Several non-party defendants that have been served with subpoenas (such as the Office of Budget and Department of Public Safety) have moved to quash them and for protective orders. Discovery disputes have resulted in multiple motions to compel and motions for protective orders. Notably, the Court denied McKesson’s third motion for a protective order and ordered it to present a corporate representative for a Rule 30(B)(5) deposition. The court granted the Defendants’: (1) motions to compel the State to respond to discovery requests relating to damages, fact witnesses, and expenditures; and (2) motions to compel the production of documents from several state agencies. Some briefing has been held in abeyance due to COVID-19.

The trial is scheduled to commence on October 19, 2020.

5. Global Opioid Settlement

On October 21, 2019, Distribution companies AmerisourceBergen, McKesson, Cardinal Health and drug manufacturer Teva Pharmaceuticals reached a \$260 million settlement with the adverse parties in the combined cases to be heard in Cleveland, Ohio. The distribution companies will pay the counties \$215 million, while Teva will pay \$20 million and donate \$25 million to Suboxone. After the settlement amounts were announced, Governor DeWine and Attorney General Yost conducted an informal meeting with local and county leaders to discuss the settlement funds being spread across the counties. Attorney General Yost had previously pressed the Legislature for a statutory change to allow the Attorney General’s office to control cases that affect the public of Ohio. Even those efforts failed, Attorney General Yost still pressed for the state’s involvement to allow all counties to receive sufficient funds and avoid disparity among separate county suits. After several months of these negotiations, Governor DeWine announced a framework for how the dollars may be distributed. On February 13, 2020, Governor DeWine stated the preliminary proposal will give 30% to local governments upfront and 15% to the state. The remaining 55% will go into a trust controlled largely by local entities, with the proceeds of the trust supporting ongoing efforts to battle addiction. Governor DeWine also stated more of the state’s portion may be allocated to the trust to help battle addiction issues in the Ohio in the future. The counties and municipalities involved have until March 6th to agree to the “One Ohio” plan. Attorney General

Yost and Governor DeWine have publicly stated their optimism for the plan to be adopted. As of March 12, 2020, 73 of the state's 88 county government agreed to the One Ohio plan. Attorney General Yost stressed that other entities may join even though it is beyond the original deadline to agree of March 6th.

The State of Ohio is still pursuing separate lawsuits against drug makers and distributors, including Cardinal Health in Ross and Madison counties. These suits are set for trial later this year.

6. *Lunsford v. Sterilite of Ohio, LLC*, Ohio Supreme Court Case No. 2018-1431; discretionary appeal from Fifth District Court of Appeals, Case No. 2017CA00232, 2018-Ohio-3437

The defendant company adopted a substance abuse policy. The policy informed employees that it may test them for “reasonable suspicion that an employee may be impaired by the use of drugs or alcohol” and that the company would conduct “random testing at periodic intervals to maintain safety and productivity.” The policy also explained (1) that a urinalysis method would be used to conduct the test, and (2) the consequences of refusal or failure to take the test.

Three Plaintiffs were chosen to be tested under the random screening provision and one was tested under the reasonable suspicion clause. Immediately prior to the test, Plaintiffs learned that the company would be collecting the urine specimen using a direct observation method. Under this method, Plaintiffs were each accompanied by an individual of the same sex in the restroom. The persons accompanying Plaintiffs were required to visually observe Plaintiffs’ production of the urine samples. The direct observation method was not described in the substance abuse policy, but all employees were subjected to this method of specimen collection.

Two Plaintiffs were fired because they failed to produce a urine specimen within two and a half hours. The other two Plaintiffs produced samples and are still employed by the company; one of them was particularly uncomfortable in providing a specimen under the direct observation method because of genital scarring that she was forced to reveal.

Plaintiffs filed a complaint against the company alleging, among other things, invasion of privacy and wrongful discharge in violation of public policy. The company filed a motion to dismiss for failure to state a claim upon which relief could be granted and the trial court granted the motion to dismiss on both of these claims. After the Plaintiffs dismissed the remaining claims, they appealed to the Fifth District Court of Appeals. The court of appeals reversed. In its lengthy analysis, the court of appeals stated that the Plaintiffs have stated a valid claim for invasion of privacy under the Ohio Supreme Court’s decision in *Housh v. Peth*, 165 Ohio St. 35 (1956). It then determined that the case law that the company and trial court relied on “does not foreclose the possibility” that the direct observation method of collection could comprise a violation of the right to privacy. Thus, the court of appeals remanded the case to the trial court to allow the Plaintiffs to pursue their claims.

The Ohio Supreme Court accepted the company’s discretionary appeal. The proposition of law before the Court is:

Proposition of Law No. 2. Employees of a private employer in the State of Ohio do not have a reasonable expectation of privacy in whether they are reporting to work under the influence of drugs, or whether they are cheating on a drug test. Absent allegations that the manner of testing used by a private employer to obtain this information is not job-related and consistent with business necessity, an at-will employee cannot maintain an action against her employer for invasion of privacy.

Oral argument before the Ohio Supreme Court occurred on January 28, 2020. The issue before the Court is not whether employers have a right to randomly test employees or the right to terminate an employee who does not consent to such testing. The narrow issue before the Court is whether Ohio precedent precludes Plaintiffs, as a matter of law, from pursuing a claim that the method of collection of a urine sample could be an invasion of privacy. If the Court affirms the court of appeals, the case will go back to the trial court and the Plaintiffs will be able to proceed, meaning the company will file an answer to the complaint, discovery will be conducted, etc.

The Ohio Supreme Court has not yet issued its decision.

7. *Hardwick v. 3M Company*, U.S. District Court, Southern District of Ohio, Eastern Division, Case No. 2:18-cv-1185

Fifteen years ago, the Supreme Court of Ohio was asked to consider whether class certification under Civ.R.23(B)(2) (which applies to injunctive relief) is proper in an action seeking to establish a medical-monitoring fund for employees who alleged they had been exposed to beryllium dust and fumes. See *Wilson v. Brush Wellman, Inc.*, 103 Ohio St.3d 538 (2004). The Court’s analysis focused on whether the relief requested, medical monitoring, was primarily compensatory or injunctive. The Court noted that, “depending on the nature of the precise relief sought and the circumstances of the particular case, many courts have declined to certify medical monitoring classes when joined with requests for funding and compensation.” *Id.* at 542. And, that is what the *Wilson* plaintiffs sought both compensation and funding for medical-monitoring relief. After carefully analyzing the criteria for class certification, the Court concluded that plaintiffs did not meet the standard for class certification under Civ.R. 23(B)(2).

Brush-Wellman is still the last word from the Supreme Court of Ohio on the issue of medical-monitoring relief in a class action.

But, on September 30, 2019, an Ohio federal court may have opened the door to such relief in the future. In *Hardwick v. 3M Company*, Case No. 2:18-cv-1185, the court denied the defendants’ motion to dismiss a class action complaint focused on PFAS (per- and polyfluoroalkyl

substances). According to the U.S. EPA, PFAS are a group of man-made chemicals that have been manufactured and used in a variety of industries around the world since the 1940s. The two most extensively produced PFAS (PFOA and PFOS) are persistent in the environment and in the human body. The named plaintiff in the *Hardwick* case, a firefighter for more than 40 years, alleges that he used firefighting foams that contained PFAS. Because PFAS are so prevalent, if this class is certified, it may be only the tip of the iceberg on PFAS class actions seeking damages and medical-monitoring relief, which likely would need to be funded for decades.

After the Court denied the motions to dismiss, some of the defendants filed answers and some filed a motion for reconsideration (which is still awaiting decision).

On April 30 2020, the District Court entered a preliminary pretrial order based on the parties Rule 26(f) report, which required the parties to (1) submit letters by May 20, 2020, regarding the timing of Plaintiff's motion for class certification, and (2) serve initial disclosures by May 30, 2020. The pretrial order indicated that a discovery schedule will not be issued until the yet-to-be-filed motion for class certification is determined. To date, the court has not set a deadline for the filing of a motion for class certification.

8. PFAS cases against DuPont de Nemours Inc., U.S. District Court, Southern District of Ohio, Eastern Division

Thousands of cases were filed against DuPont alleging that the company contaminated drinking water for years by discharging toxic chemicals known as PFAS into the water from one of its plants along the Ohio River. Plaintiffs allege that the exposure from the chemicals lead to a greater risk of developing six types of illnesses: testicular cancer, kidney cancer, thyroid disease, ulcerative colitis, high cholesterol, and preeclampsia. Shortly after some of cases went to trial a few years ago, DuPont settled cases involving more than 3,500 victims for \$670.7 million.

There is a 60-person group of plaintiffs suffering from testicular and kidney cancer whose claims have not been settled. Two of these cases went to trial in 2020 (involving a woman with kidney cancer and a man with testicular cancer). After five weeks of trial, the jury rendered a verdict in the testicular cancer case for nearly \$50 million, but found no basis for punitive damages to be awarded. The jury deadlocked in the kidney cancer case.

B. Amicus Cases.

1. *Thompson, et al. v. Governor DeWine, et al.*, Sixth Circuit Court of Appeals, Case No. 20-3526

On May 19, 2020, Judge Sargus, a federal district judge in the Southern District of Ohio, issued a decision in a case involving three sets of petitioners attempting to get measures on the November 2020 ballot. The petitioners are obtaining signatures in support of two statewide initiative petitions

to change the Ohio Constitution (the Safe and Secure Election Amendment and the Raising the Wage Amendment). The third group of petitioners is seeking to change local laws to decriminalize marijuana possession in several southeastern Ohio cities.

The petitioners sued Governor DeWine, Director of Health Acton, and Secretary of State LaRose alleging that the state requirements to get their petitions to the ballot coupled with the “stay at home order” violate their First Amendment rights under the U.S. Constitution. Judge Sargus granted a preliminary injunction in favor of the petitioners, enjoining the enforcement of Ohio’s requirements that all petitions be signed in ink and witnessed by the petition circulator, and extended the deadline (set forth in the Ohio Constitution) for filing signatures in support of the statewide initiative petitions from July 1, 2020 to July 31, 2020. The district court’s order also required the State to accept electronically-signed and witnessed signatures (even though this has never been done before in Ohio) and to meet and confer with petitioners to work out any technical or security issues related to the on-line collection of signatures.

The State appealed the decision to the Sixth Circuit Court of Appeals the next day and moved to stay the district court’s order. The State also moved to have the appeal heard en banc (i.e., by the full court).

The Ohio Manufacturers’ Association (along with other statewide business organizations) filed a motion for leave to support the State’s motion to stay as amicus curiae. Among other things, the OMA argued that requirements at issue – signing in ink and having signatures witnessed by the circulator – prevent fraud and should be strictly complied with. The OMA also argued that the district court’s decision extending the deadline for filing the signatures to July 31, 2020 eliminated the constitutional right to challenge signatures/the petition because objections are required to be filed on July 31, 2020 under the Ohio Constitution.

On May 26, 2020, the Sixth Circuit granted the motion to stay the district court’s decision. As a result, petitioners are not able gather signatures electronically and the deadline for gathering signatures and submitting them to the Secretary of State is July 1, 2020 again.

The briefing on the motion for en banc consideration has been completed, but has not yet been decided. Regardless of whether the full court or a three judge panel initially hears the appeal, the OMA is planning to file an amicus brief in support of the State defendants.

VII. Update to the Tax Counsel’s Report.

Tax Counsel Justin Cook provided an update from the March Tax Counsel’s Report.

A. New Legislation.

H.B. 197. H.B. 197 was enacted on March 27, 2020. It includes numerous minor technical corrections to Ohio’s tax laws, as well as provisions relating to COVID-19.

Section 28 of the act authorized the Tax Commissioner to extend tax filing and payment deadlines for state taxes and municipal income taxes. It also authorized the Tax Commissioner to waive interest and penalties that would otherwise apply for late filing and payment.

Section 29 of the act temporarily modifies the municipal income withholding rules. It generally provides that employees working from home during the pandemic will be deemed to be performing services at their principal place of employment, meaning employers would continue withholding in the municipality where employees would typically report for work under normal circumstances. To trigger the rule under Section 29, however, employees must be required to work from home under the executive order establishing Ohio’s state of emergency. Given the gradual return to work adopted by Ohio, this may result in Section 29 being more difficult to apply than anticipated. The full text is set forth below and should be carefully reviewed:

Notwithstanding section 718.011 of the Revised Code, and for the purposes of Chapter 718 of the Revised Code, during the period of the emergency declared by Executive Order 2020-01D, issued on March 9, 2020, and for thirty days after the conclusion of that period, any day on which an employee performs personal services at a location, including the employee’s home, to which the employee is required to report for employment duties because of the declaration shall be deemed to be a day performing personal services at the employee’s principal place of work.

B. Proposed Legislation.

H.B. 609. This bill proposes a new tax amnesty program that would start January 1, 2021 and run through March 31, 2021. Thus far, it has passed the House and is under consideration in the Senate. H.B. 609 would allow delinquent taxpayers to voluntarily pay unreported or underreported state taxes and receive a waiver of all otherwise applicable penalties and interest. Taxpayers would also be immune from criminal prosecution. Most, but not all, Ohio taxes would be eligible. Eligible taxes would include commercial activity tax, sales and use tax, public utility excise tax, and natural gas consumption tax, among others.

S.B. 307. This bill, introduced on May 6, 2020, proposes to temporarily exempt sales of protective equipment from Ohio sales and use tax. “Protective equipment” includes items that protect the wearer from injury or disease, but that are not suitable for general use. The exemption would apply to sales made prior to January 1, 2021.

S.J.R. 3. We previously reported on S.J.R. 3, and it remains pending before the legislature. This resolution proposes an amendment to Ohio’s constitution. The amendment would require a two-thirds vote in both the Ohio House and Senate to approve any increase in income tax rates.

H.B. 440. We previously reported on H.B. 440, and it remains pending before the legislature. This bill was introduced in December of 2019 to eliminate sales tax on employment services where the individuals providing temporary labor operate manufacturing equipment. It also would eliminate sales tax on supplies and services to clean and maintain manufacturing equipment.

H.B. 449. We previously reported on H.B. 449, and it remains pending before the legislature. H.B. 449 was introduced in the House on December 17, 2019 and referred to the House Ways and Means Committee on January 28, 2020. Under this bill, transferring more than 50% ownership in a pass-through entity that owns real property would be subject to real estate conveyance fees. The proposed legislation targets transactions where real estate is dropped into a newly formed entity and ownership in the new entity is transferred to the buyer (as opposed to directly conveying the underlying real estate). *See also Columbus City Schools Bd. of Edn. v. Franklin County Bd. of Revision*, Slip Opinion No. 2020-Ohio-353.

H.B. 467. We previously reported on H.B. 467, and it remains pending before the legislature. This bill relates to Ohio’s withholding tax imposed on non-residents’ distributive shares of income from a pass-through entity. The current withholding tax applies at either 8.5% or 5%, depending on the type of non-resident investor. The proposed bill would reduce the withholding rate to 4% across the board.

C. Judicial Actions.

Karvo Paving Co. v. Testa, 9th Dist. Summit No. 28930, 2019-Ohio-3974. Last year, the Ninth District Court of Appeals issued a decision in *Karvo Paving Co. v. Testa* dealing with three separate claims for sales and use tax exemption (i.e., purchase for resale exemption, affiliated entity exception to employment services, and casual sale exemption). This decision was subsequently appealed to the Ohio Supreme Court for a jurisdictional issue. The appeal to the Supreme Court of Ohio was dismissed on April 22, 2020. *See Karvo Paving Co. v. Testa*, 158 Ohio St.3d 1484. Consequently, dismissal of the appeal leaves intact the Court of Appeals decision which offered glosses on several important sales and use tax exemptions. We’ve summarized the Court of Appeals decision below given its renewed importance.

Karvo involved a paving company that contracted with the Ohio Department of Transportation (“ODT”) to repave roads and involves three discrete claims for exemption. The first relates to traffic control equipment. Taxpayer had to provide traffic control equipment as part of each project. ODT’s engineer directed the placement of the traffic control equipment at the various jobsites. On its initial appeal before the BTA, the BTA held that taxpayer could claim the “purchase for resale” exemption from sales tax with respect to the traffic control equipment, as taxpayer’s primary purpose for acquiring the traffic control equipment was to transfer control of it to ODT. On this issue, the Court of Appeals agreed with taxpayer and upheld the BTA’s decision.

The second issue relates to employment services provided by one of Taxpayer’s affiliates. While the majority owner of Taxpayer only owned 45% of Taxpayer’s affiliate, his wife owned the remaining interests. Testimony also established that Taxpayer’s majority owner, in practice, actually controlled both entities. The BTA concluded this satisfied the affiliate entity exception, thus the employment services were not taxable. Again, the Court of Appeals upheld the BTA’s decision on this issue.

The third issue relates to intercompany leases and the casual sale exemption. Taxpayer’s affiliate acquired excavation equipment and used it to provide excavation services in years prior to the audit period. However, during the audit period, leasing this equipment was the company’s only business activity. While the BTA denied the casual sale exemption, the Court of Appeals remanded this case to the BTA. The Court noted that “the Board incorrectly found that...the casual sale exemption cannot apply unless the seller used the item within the audit period.”

Hyundai Motor Finance Company, et. al. v. McClain, BTA No. 2015-785, 2020 WL 883134 (Feb. 6, 2020). In this case, taxpayer received several forms of revenue, including sales of cars upon termination of leases and various complex intercompany financing transactions. Importantly, taxpayer was able to successfully argue that sales to leased cars were sales of 1231 assets, and thus excluded from taxable gross receipts under Ohio’s commercial activity case. Ultimately, the holding applies to a very limited class of taxpayers. However, the BTA’s analysis and discussion of federal income tax laws as they impact the application of the commercial activity tax is noteworthy.

D. Administrative Actions.

Administrative Journal Entry 470 and 471. The Tax Commissioner extended the filing and payment date for taxpayers who elected to file municipal income tax returns with the state. The extension applies to returns typically due from April 15th through June 15th. The new due date is July 15, 2020. Additionally, for taxpayers filing municipal income tax returns with the state, the Tax Commissioner extended the date for declaring and remitting estimated payments that would otherwise be due between April 15th and June 15th. Such estimated payments are now due on July 15th.

Administrative Journal Entry 472. The Tax Commissioner extended the filing and payment date to July 15, 2020 for tax year 2019 returns of individual income tax, school district income tax, fiduciary income tax, and pass-through entity tax.

To: OMA Government Affairs Committee
From: Ryan Augsburger / Rob Brundrett
Re: Energy Policy Report
Date: June 3, 2020

Overview

Public policy activity over the past quarter has been dominated by government action to respond to the COVID-19 pandemic.

On the energy front, the controversial House Bill 6 remains in the rearview mirror. Implementation is still underway, with some provisions not effective until 2021. When the energy committee met in March, members reacted to the recent action by the federal government to restrict subsidized generation from entering power markets, standing HB 6 on its head. The resolution to that question remains front and center.

Other market distortion bills are pending in the legislature that will unfavorably impact the cost of power for Ohio businesses.

FERC Decision Tips HB 6 on its Head

On December 19, the Federal Energy Regulatory Commission (FERC) issued an order to protect competitive wholesale electricity markets from subsidized power.

The order, which modifies and expands the Minimum Offer Price Rule (MOPR), was originally designed to prevent state subsidization of new natural gas generators. Under FERC's recent order, the expanded MOPR also applies to nuclear, coal, and renewable power plants that receive state subsidies. FERC did this to level the playing field.

The FERC order tips House Bill 6 on its head, according to the OMA analysis (included following Engineering report). The OMA with expertise provided by John Seryak of RunnerStone LLC warned of such market consequences last summer.

House Bill 6 Becomes Law

Recall HB 6 which was rocketed through the General Assembly last year, provided subsidies for the owners of uneconomic power plants, namely the two nuclear power plants. The bill also notably provided a subsidy to the power plants owned by the Ohio Valley Electrical Corporation (OVEC). The bill also largely orders a stop to Ohio's utility-administered energy efficiency programs and renewable energy standards.

The bill in its final form will distort electricity markets denying customers of the long-term benefits of competition. New costs, some known and some unknown, will hit customers of all sizes.

Virtually all the warnings expressed by the OMA over the past year have materialized exposing manufacturers of all sizes to new costs. Just last week, the owner of the nuclear power plants took action to reward investors, sending hundreds of millions of dollars of revenue to be paid by captive Ohio customers and proving the bailout was not needed. See included resource material.

HB 6 Implementation

The provisions of HB 6 became effective in late-October. The bill delegated immense new authority and price-setting to the PUCO and other state agencies. The OMA Energy Group has been participating in those proceedings to protect manufacturing interests.

Decoupling Revenue Guarantees Utility Record Revenue

Among the HB 6 provisions that opened the door to unknown new customer costs was the creation of a decoupling rider. Six months after passage of the HB6, the PUCO gave approval to FirstEnergy utilities to place the new rider on customer bills. Under the mechanism, if annual revenue in a given calendar year is less (or greater) than 2018's base distribution revenue, FirstEnergy utilities will charge (or credit) the difference to customers through the decoupling rider. 2018 produced record revenue for the utilities. Additionally, the rider will move tens of millions of dollars in "lost revenue" charges from the expiring energy efficiency rider into this new rider. In the past week, AEP has filed for a decoupling rider expanding the new customer costs to customers in the AEP service territory.

FES Bankruptcy

A settlement between FE, FES, and the stakeholders was finalized in late February. Energy Harbor now owns the nuclear power plants and other generating facilities formerly owned by FirstEnergy. In the wake of the FERC ruling, they must determine next steps.

In 2019, the power plant owners together with concerned local government leaders had used the plant closure announcements to lever political support for state and federal bailouts. The beneficiaries of any possible bailout would seem to include speculative investors (hedge funds), former parent FE, and local governments hoping to prevent local job loss and tax revenue.

Post HB 6 Legislative Activity

In the months since HB 6 was completed both the Ohio House and Ohio Senate appear poised to do more. Unfortunately, customer protection does not seem to be in store. Instead we are monitoring new proposals that will protect utilities and erode Ohio's deregulation law.

House Bill 247

Months after lawmakers gave utilities and other interests the opportunity to force captive ratepayers to pay for new generation, HB 247 would go further in allowing distribution utilities to offer services beyond distribution. It seems unnecessary and anti-market. One utility is aggressively lobbying for this bill and has asked their large manufacturing customers to pen a letter of support. Don't be fooled. The OMA has been communicating extensively about this threat. The OMA opposes HB 247.

House Bill 246

Is a placeholder bill to modernize the laws governing the PUCO and OCC. There has been a lot of speculation on what the bill may contain. Too early to know for certain. No action since last report.

House Bill 104

Introduced by Representative Dick Stein (R-Norwalk), HB 104 is intended to spur research and development of molten salt nuclear reactors in Ohio via state tax dollars. The bill also advances Ohio as a hub for radioactive wastes. The OMA has written the primary sponsor to convey concerns. Many other Republican legislators have co-sponsored this unwise legislation.

House Joint Resolution 2

Representatives Don Manning of Youngstown and Jamie Callender of Lake County recently provided proponent testimony on HJR 2 to place on the ballot an amendment to the Ohio Constitution to ban foreign interests from owning critical energy infrastructure. The move dovetails with the pro-HB 6 China-bashing campaign. Some believe the resolution is political retribution to referendum proponents.

In today's global economy, a state provision against foreign ownership seems unwise. Precedents abound for other commercial activity. For example, foreign interests invest heavily in manufacturing businesses in Ohio. No action since last report. Seems to have cooled down.

Senate “Comprehensive” Energy Reform

In mid-October Senate Energy & Public Utilities Chairman Steve Wilson (R-Maineville) signaled the Senate would focus on grid reliability as a central component in the Senate’s comprehensive energy reform package. This is a curious, albeit familiar refrain from a policymaker since the grid is more reliable than ever today. The OMA fielded testimony on Tuesday, March 2.

PJM on Resiliency and Power Auctions Delayed

Throughout the recent legislative subsidy debates at the General Assembly, grid operator PJM Interconnect had been clear to dispel the myths of poor fuel diversity and electric supply shortages affecting “reliability.” The OMA has an analysis on current PJM activity but further proceedings at PJM will be needed for clarity. PJM has already delayed a planned energy auction for a full year, from May 2019. PJM suggests it could hold the auction as soon as December of 2020, or as late as March 2021. However, some parties are advocating at the FERC to delay the auction deep into 2021 to allow states time to pass legislation that would return pricing capacity to state regulatory authorities.

Protecting Competitive Electric Markets

In 1999, with the passage of Senate Bill 3, Ohio began a transition to deregulated generation. That transition 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. HB 6 represents yet another above-market payment to utilities and power plant owners 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’ electric bills. Several noteworthy studies have demonstrated how the market delivers lower prices, choice and innovation without compromising reliability. NOPEC in August issued an updated study that pegs customer savings at \$24 billion over eight years. With the passage of HB 6, competitive markets are under attack in Ohio.

OVEC Bailout

Last session, the OMA opposed legislation to provide 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 OMA had also opposed subsidies for OVEC in rate cases at the PUCO. In a decision by the Supreme Court of Ohio in late 2018, the Court effectively allowed utilities to collect the rider to subsidize OVEC under terms of a specific Electric Security Plan (ESP). An OVEC bailout for the out years beyond the terms specified in the Court decision is now included in HB 6. OVEC faces an apparent dilemma from the FERC MOPR decision.

On-Site Generation Taxed in Ohio

The Ohio Department of Taxation is sending out tax bills to third parties operating on-site generation, be it wind, solar or onsite gas generation. The Department contends that a customer who generates power should pay generation tax the same as a utility. The Department’s basis for collecting the tax is tenuous. The OMA supports a legislative correction for all forms of onsite generation. No further action.

Energy Standards Legislation

After six years of back and forth policy battles, HB 6 dismantled the standards for efficiency and renewable energy. Siting requirements for large scale wind generation projects were not part of the debate. HB 6 will now give monopoly distribution utilities an unfair advantage in building new renewable energy at captive customers’ expense. The PUCO ordered energy efficiency programs to wind down beginning September 30, 2020, so manufacturers who are using rebates will want to claim them soon.

Energy

More Changes Could be Coming to Ohio's Energy Laws **May 29, 2020**

The House Public Utilities Committee this week heard from the sponsor of **House Bill 246**, Rep. **Nino Vitale** (R-Urbana), who reviewed provisions of the **new substitute version** offered and accepted by the committee. The new version, which is being reviewed by OMA staff, appears to make numerous changes to laws regulating utility companies.

Also this week, the House Energy and Natural Resources Committee approved **House Bill 104**, sponsored by Rep. **Dick Stein** (R-Huron). The bill is intended to spur nuclear research and commercialization. View the **comparison document** to see what changed. The OMA had **expressed concerns** regarding the original version and is studying the changes. *5/28/2020*

Editorial Calls Out HB 6 Scam **May 29, 2020**

In a **blistering editorial**, *The Plain Dealer* has taken policymakers to task for allowing the owners of Ohio's nuclear power plants to scam Ohio's ratepayers. As the OMA **reported** earlier, the owner of the plants, Energy Harbor (formerly FirstEnergy Solutions), recently announced it would be rewarding investors with hundreds of millions dollars of stock buybacks. This was made possible because the company and its allies were able to persuade lawmakers in Columbus to enact House Bill 6 last year. *5/28/2020*

Report: Spiraling Investment in Shale Energy Risks Future Price Spikes **May 29, 2020**

A 50% drop in investments by U.S. shale sector companies this year could lead to a price spike in oil and natural gas following the historic pandemic-caused crash. That's according to a **new report** by the International Energy Agency (IEA). The cuts in U.S. shale production are spurring what the IEA expects in 2020 to be the largest single-year decline in overall global energy investment on record. *5/27/2020*

Gas and Electricity Market Trends Previewed **May 22, 2020**

Appearing at the OMA Energy Committee this week, Richard Ricks of Columbia Gas of Ohio gave a **presentation** showing trends impacting natural gas supply and demand. Susanne Buckley of Scioto Energy provided a report on **electricity market trends** and future price forecasts. *5/21/2020*

PJM Market Monitor Visits OMA Energy Committee **May 22, 2020**

More than 70 members virtually joined the **OMA Energy Committee meeting** this week. All OMA committee meetings through at least third quarter will be held virtually.

Special guest presenter, **Dr. Joseph Bowring**, the PJM Independent Market Monitor, spoke on the impact of the FERC Minimum Offer Price Rule (MOPR) order on customers' power bills. Dr. Bowring has noted repeatedly that state legislation to subsidize certain power plants is unfair to markets. In his **presentation** he concludes that the landmark FERC MOPR order "is not expected to have an impact on the clearing prices and auction revenues in the 2022/2023 RPM BRA (wholesale power auction)." *5/21/2020*

FirstEnergy Solutions Successor Seeks to Buy Back \$300M in Additional Shares **May 15, 2020**

Leaders of Energy Harbor — formerly known as FirstEnergy Solutions — have moved to repurchase an additional \$300 million of its own stock, according to a **report this week at Cleveland.com**. (The Statehouse News Bureau **also covered** the story.) This comes as Ohio electricity customers — including manufacturers — are about to subsidize the company to the tune of \$150 million annually through surcharges imposed by House Bill 6, last year's nuclear bailout law.

The article quotes Ned Hill, a professor at The Ohio State University, who said contrary to the company's arguments that it was in financial trouble, the buyback shows Energy Harbor's management is confident it will make money as it now rewards shareholders.

Nearly a year ago, as he delivered **OMA opponent testimony** on HB 6, former OMA Chairman David W. Johnson of Summitville Tiles urged Ohio lawmakers to require an annual, independent profitability analysis before the state doled out Ohioans' moneys to the generation company that is now Energy Harbor. That, of course, didn't happen. Join the discussion at the **OMA Energy Committee meeting next week**. 5/13/2020

Pandemic Sparks Slump in Wholesale Electricity Prices **May 15, 2020**

Due to the COVID-19 crisis, the International Energy Agency expects the biggest worldwide decline in electricity consumption since the Great Depression, **according to *The Wall Street Journal***. "It is as if Germany and France were both turned off for the year," the story notes. In the U.S., the drop has been most severe in New York City, where wholesale power prices averaged \$16.57 a megawatt-hour in the first six days of May — down by more than a quarter from the start of the 2020.

Meanwhile in Ohio, despite lower electricity consumption, Ohio electric distribution utility FirstEnergy is assured to enjoy record profits due to the **new decoupling rider** authorized by HB 6. Under the mechanism, if annual revenue in a given calendar year is less (or greater) than 2018's baseline revenue, FirstEnergy utilities will charge (or credit) the difference to customers through the decoupling rider. 5/11/2020

COVID-19 Continues to Inflict Damage on Renewable Industries **May 8, 2020**

The U.S. renewable energy industry continues to suffer from the pandemic. As many as 120,000 jobs in solar and 35,000 in wind could be lost, trade groups say. The wind industry, in particular, is plagued by slowdowns in obtaining parts from overseas, according to the **AP**. 5/4/2020

Infographic: America's Growing Dependency on China for Essential Minerals, Rare Earth Metals **May 8, 2020**

Today, the U.S. is 100% import-reliant on many minerals and metals that are essential for defense technologies, consumer goods, and clean energy technology. VisualCapitalist.com has published a **new infographic** to spotlight China's dominance in the production of critical minerals needed for the new energy era. 5/7/2020

In 2019, U.S. Energy Production Exceeded Consumption for First Time in 62 Years **May 1, 2020**

In 2019, for the first time since 1957, America's energy production exceeded energy consumption on an annual basis, **according to** the U.S. Energy Information Administration.

Domestic energy production has grown substantially during the past decade due mostly to increased crude oil and natural gas production from hydraulic fracturing and horizontal drilling. Meanwhile, due to the COVID-19 shutdown, U.S. fracking activity in April was poised to suffer its largest-ever monthly drop, according to **reports**. 4/29/2020

How Oil Prices Went Sub-Zero **April 24, 2020**

Oil prices fell into negative territory for the first time in history this week, leaving oil producers to effectively pay others to store their crude. With the sudden reduction in the demand for fuel, **some experts say** a second wave of negative pricing could emerge.

VisualCapitalist.com has created **this infographic** to tell the story of what led to this week's oil price crash. 4/21/2020

U.S. Coal Production Expected to Fall 22% from 2019 **April 17, 2020**

The U.S. Energy Information Administration (EIA) **forecasts** that U.S. coal production will be down 22% from 2019 and that energy-related CO2 emissions will decrease by 7.5% in 2020. It also predicts that the U.S. will again be a net importer of crude oil and petroleum as domestic oil production continues to decline due to low energy prices. 4/13/2020

Renewable Energy Sector Hit Hard in March April 17, 2020

The coronavirus outbreak has dealt a blow to more than just traditional energy producers. More than 106,000 jobs in the clean energy sector were lost in March, according to a **new study** conducted by BW Research Partnership for the E2 advocacy group. The analysis showed losses in several areas of the clean energy sector, including energy efficiency, renewable power generation and alternative transportation. *4/15/2020*

Analysts: Retail Gasoline Prices Could Fall Below \$1 April 10, 2020

Reports circulated this week that gasoline prices at distributors around the country are falling fast as the supply grows and demand has been cut in half due to stay-at-home orders in most states.

Analysts have said gasoline prices at the pump **could fall to under \$1** in more parts of the country, with some wholesale prices under 20 cents a gallon and as low as 10 cents a gallon in some parts of the Midwest. *4/9/2020*

Capacity Market Prices Not Expected to Increase Due to FERC's MOPR Ruling April 10, 2020

The **Independent Market Monitor** recently studied how the change in the Minimum Offer Price Rule (MOPR) by the Federal Energy Regulatory Commission (FERC) will impact PJM capacity market prices.

The study concludes that the change should not increase PJM capacity market prices due to exemptions for various existing resource types (e.g. demand response and renewable energy), as well as little change in the handling of new natural gas power plants. Another reason cited by the study: existing state-subsidized nuclear plants outside Ohio being able to bid at competitive prices, lower than the minimum offer prices, through the resource specific exemption. *4/9/2020*

What's Happening in the Energy Markets? April 3, 2020

The U.S. Energy Information Administration has **several data tools** that offer a glimpse at current energy markets, all of which are feeling the effects of COVID-19. You can investigate regional electricity use, petroleum supplies, gasoline and diesel fuel prices, natural gas storage, and much more. *3/31/2020*

Electricity Demand Falls Across PJM's Territory March 20, 2020

Electric demand across regional transmission organization **PJM's** 13-state footprint — which includes all of Ohio — has declined this week as consumers hunker down due to the spread of the coronavirus. As businesses and public entities take steps to protect employees, PJM says such actions are bound to translate into further changes in the demand needs of its 65 million customers. *3/18/2020*

PJM Capacity Market Timeline Proposed March 20, 2020

This week, PJM **filed tariff changes** at the Federal Energy Regulatory Commission (FERC) in response to its **landmark order** — issued in December to protect competitive wholesale electricity markets against unfair competition from subsidized actors.

The changes to the Minimum Offer Price Rule (MOPR) will potentially affect revenue for Ohio's two nuclear power plants, OVEC's coal-fired power plants, select large-scale solar projects, and the Sammis coal-fired power plant. All of these power plants are eligible to receive direct subsidies from Ohio ratepayers as a result of last year's House Bill 6, or are receiving indirect subsidies in the case of Sammis.

PJM has recommended a 35-day comment period, and a six-and-a-half-month lead time from FERC's acceptance of its tariff changes to when it would hold the next capacity auction. PJM's capacity auction, already a year behind, may not occur until late 2020. *3/19/2020*

Pennsylvania to Join the Regional Greenhouse Gas Initiative as EnergyHarbor Rescinds Nuclear Plant Closure March 20, 2020

Pennsylvania's nuclear and renewable energy power plants may continue to receive PJM capacity revenue — while Ohio's may not. Here's why:

It has been reported that EnergyHarbor, the company formerly known as FirstEnergy Solutions (FES), has **rescinded its closure** of the Beaver Valley nuclear power plant in Pennsylvania. Not that long ago, FES had argued to the Pennsylvania General Assembly that the plant was uneconomical, but it failed to win approval of state subsidies — the opposite of what happened in Ohio. Now Pennsylvania intends to join the multi-state carbon market known as the Regional Greenhouse Gas Initiative (**RGGI**), prompting the reversal of Beaver Valley's closure. RGGI's compensation to nuclear power plants for no-carbon power is unlikely to be qualified as a state subsidy. 3/19/2020

OMA Energy Committee Gets Insight Into Markets During Turbulent Times March 13, 2020

This week, the OMA Energy Committee held its first quarterly meeting of 2020 to review numerous regulatory and legislative matters that could affect Ohio manufacturers, including post-House Bill 6 activity and the December **2019 FERC order**.

How Would You Decide These Ohio Cases on Electricity Rates? March 13, 2020

Regulatory proceedings have big impacts on how much Ohioans pay for their electric service. To drive that point home, the *Energy News Network* this week published an **online, interactive segment** that allows readers to decide how they would rule on real cases recently decided by the Public Utilities Commission of Ohio or the Supreme Court of Ohio. After answering, readers find out how their answers compare to what actually happened. 3/12/2020

Meeting highlights included a presentation from Tim Ling, corporate environmental director at Plaskolite, who provided insightful analysis into energy management in an unstable environment. Greg Bechert of Scioto Energy gave members a comprehensive look at **electricity market trends**, while Richard Ricks of NiSource, Columbia Gas of Ohio briefed members on **natural gas trends**. Also discussed was the recent drop in oil prices and **its impact** on oil and natural gas supplies.

The **next meeting** of the OMA Energy Committee is scheduled for Thursday, May 21. All members are welcome to register for in-person or by-phone participation. 3/12/2020



Among this week's presenters at the OMA Energy Committee's meeting was Tim Ling, corporate environmental director at Plaskolite.

OMA Defends Competitive Markets Before Senate Energy Panel March 6, 2020

This week, Brad Belden — president of The Belden Brick Company, Canton, and chair of the OMA Energy Committee — testified before the Ohio Senate Energy and Public Utilities Committee. In addition to making suggestions for an improved regulatory and policy environment, he told senators to stay the course on deregulation, cautioning against a state-administered capacity pricing mechanism for nuclear, coal, and solar generation (similar to the one that currently faces disqualification from the wholesale market).

Read **Brad's testimony**, as well as coverage by **Gongwer News Service** and **Hannah News Service**. 3/3/2020



What Would a Fracking Ban Mean for Ohio? **March 6, 2020**

A new study shows a ban on federal leasing and fracking would have dire consequences for businesses and families nationwide.

Commissioned by API, the study finds such a ban, which some presidential candidates have proposed, would threaten as many as 7.5 million U.S. jobs in 2022 alone, lead to a cumulative GDP loss of \$7.1 trillion by 2030, and lower household incomes by \$5,400 annually. Among the **hardest hit states** would be Ohio, with an estimated 500,000 lost jobs. **Get more details**. 3/5/2020

Investigating Ohio's Nuclear Subsidy Saga **March 6, 2020**

The Energy News Network and the Ohio Center for Investigative Journalism have **published a story** that maps the “dark money” network that supported House Bill 6, the nuclear bailout law. The disclosure filings show FirstEnergy’s generation subsidiary paid nearly \$2 million to Generation Now, “one of the special interest groups that orchestrated ads, political donations and other efforts.” But the story also notes that legal loopholes make it harder to find out the total spent and who else was behind the campaign. 3/6/2020

FirstEnergy Solutions is Now Energy Harbor **March 6, 2020**

The company formerly known as FirstEnergy Solutions (FES) **announced** late last week it has successfully exited Chapter 11 and adopted its new name: Energy Harbor. In 2018, FES entered bankruptcy and in 2019 convinced Ohio lawmakers to enact House Bill 6, which is set to provide an estimated \$150 million a year of ratepayer-funded subsidies to the company’s two nuclear power plants. 3/2/2020

Energy Legislation

Prepared by: The Ohio Manufacturers' Association
Report created on June 1, 2020

- HB6** **CLEAN AIR PROGRAM** (CALLENDER J, WILKIN S) To create the Ohio Clean Air Program, to facilitate and encourage electricity production and use from clean air resources, and to proactively engage the buying power of consumers in this state for the purpose of improving air quality in this state.
Current Status: 7/23/2019 - **SIGNED BY GOVERNOR**; Eff. 10/22/19
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-6>
- HB20** **SOLAR PANEL LIMITATIONS** (BLESSING III L) To prohibit condominium, homeowners, and neighborhood associations from imposing unreasonable limitations on the installation of solar collector systems on the roof or exterior walls of improvements.
Current Status: 6/26/2019 - House State and Local Government, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-20>
- HB55** **OIL AND GAS WELL ROYALTY STATEMENTS** (CERA J) To require the owner of an oil or gas well to provide a royalty statement to the royalty interest holder when the owner makes payment to the holder.
Current Status: 2/26/2019 - House Energy and Natural Resources, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-55>
- HB94** **LAKE ERIE DRILLING** (SKINDELL M) To ban the taking or removal of oil or natural gas from and under the bed of Lake Erie.
Current Status: 9/17/2019 - House Energy and Natural Resources, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-94>
- HB95** **BRINE-CONVERSION OF WELLS** (SKINDELL M) To alter the Oil and Gas Law with respect to brine and the conversion of wells.
Current Status: 9/17/2019 - House Energy and Natural Resources, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-95>
- HB104** **NUCLEAR DEVELOPMENT** (STEIN D) To enact the Advanced Nuclear Technology Helping Energize Mankind (ANTHEM) Act by establishing the Ohio Nuclear Development Authority and the Ohio Nuclear Development Consortium and authorizing tax credits for investments therein.
Current Status: 5/27/2020 - **REPORTED OUT AS AMENDED**, House Energy and Natural Resources, (Sixth Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-104>
- HB223** **WIND SETBACKS** (STRAHORN F, SKINDELL M) To alter the minimum setback requirement for wind farms of five or more megawatts.
Current Status: 5/8/2019 - Referred to Committee House Public Utilities

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-223>

- HB245** **PROPERTY TAX EXEMPTION TIMELINES** (SMITH J) To remove the current deadlines by which an owner or lessee of a qualified energy project must apply for a property tax exemption.
Current Status: 5/21/2019 - Referred to Committee House Energy and Natural Resources
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-245>
- HB246** **PUCO/OCC REFORM** (VITALE N) To reform and modernize the Public Utilities Commission and the Consumers' Counsel.
Current Status: 5/28/2020 - **SUBSTITUTE BILL ACCEPTED**, House Public Utilities, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-246>
- HB247** **RETAIL ELECTRIC SERVICE LAW** (STEIN D) Regarding the competitive retail electric service law.
Current Status: 10/23/2019 - House Public Utilities, (Third Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-247>
- HB260** **CLEAN ENERGY JOBS** (DENSON S, WEINSTEIN C) To maintain operations of certified clean air resources, establish the Ohio generation and jobs incentive program and the energy performance and waste reduction program, and make changes regarding wind turbine siting.
Current Status: 5/28/2019 - Referred to Committee House Energy and Natural Resources
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-260>
- HB401** **TOWNSHIP REFERENDUM - WIND FARMS** (REINEKE W) To require inclusion of safety specifications in wind farm certificate applications, to modify wind turbine setbacks, and to permit a township referendum vote on certain wind farm certificates.
Current Status: 12/3/2019 - House Energy and Natural Resources, (Third Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-401>
- HB499** **MOTOR FUEL TESTING PROGRAM** (KELLY B, LANG G) To authorize a county to implement a motor fuel quality testing program.
Current Status: 5/19/2020 - House Transportation and Public Safety, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-499>
- HB564** **PREVENT UTILITY DISRUPTION DURING COVID-19** (LELAND D) To prevent the disruption of utility service during the state of emergency declared regarding COVID-19 and to declare an emergency.
Current Status: 5/5/2020 - Referred to Committee House Public Utilities

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-564>

HJR2 **CRITICAL INFRASTRUCTURE PROTECTION AMENDMENT** (MANNING D, CALLENDER J) Proposing to enact Section 12 of Article XV of the Constitution of the State of Ohio to provide Ohio critical infrastructure protection.

Current Status: 10/30/2019 - House Energy and Natural Resources, (First Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HJR-2>

SB86 **UTILITY SERVICE RESELLERS** (MAHARATH T) To regulate certain resellers of utility service.

Current Status: 12/10/2019 - Senate Energy and Public Utilities, (Third Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-86>

SB234 **WIND FARMS** (MCCOLLEY R) To require inclusion of safety specifications in wind farm certificate applications, to modify wind turbine setbacks, and to permit a township referendum vote on certain wind farm certificates.

Current Status: 2/11/2020 - Senate Energy and Public Utilities, (Third Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-234>

Opinion

In disgusting turn, shareholders reap the profits from ratepayer payouts intended to keep Ohio's nuclear plants afloat

Posted May 22, 2020



The Perry nuclear power plant as seen in April from Fairport Harbor. (David Petkiewicz, cleveland.com) David Petkiewicz

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So much for the cries of doom and gloom over the future of the two Ohio nuclear plants FirstEnergy Corp. built and that an affiliated company operated.

To keep open the Perry nuclear power plant east of Cleveland and the Davis-Besse plant near Toledo, Ohio's electricity customers are about to start paying an extra \$150 million a year in subsidies. That comes courtesy of the Ohio General Assembly and Gov. Mike DeWine via House Bill 6, a bill they rushed into law last summer.

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Akron-based FirstEnergy Solutions, which then owned the two plants, had argued (through an army of Statehouse lobbyists) that, without the nuclear subsidy, it would be forced to close the two plants.

In February, Solutions emerged from bankruptcy and became an independent (and solvent) firm, Energy Harbor Corp., also based in Akron.

It now appears the biggest beneficiaries of the deal will be Energy Harbor stock investors.

Energy Harbor's board voted last week to boost stock buybacks by \$300 million, from \$500 million to \$800 million, cleveland.com's Andrew J. Tobias reports. When a company buys back its own stock, that cuts the number of available shares, which can boost their prices, benefiting shareholders.

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And where did that extra \$300 million come from? Could it be on the expectation of the impending subsidy from Ohioans on their electricity bills? It's fair to ask whether Perry and Davis-Besse were ever in real jeopardy of closing, or was it all a shell game to shore up the company's finances?

That's House Bill 6: Socializing losses and privatizing profits, although the bill's Statehouse backers said otherwise. HB 6, quarterbacked by House Speaker Larry Householder, was absolutely, positively all for a good cause, the speaker assured Ohioans -- promoting clean air and, by the way, saving nuclear power plant workers' jobs.

Nuclear plants don't emit greenhouse gases, which stoke global warming. But HB 6 wasn't fully a clean air act. Besides subsidizing Perry and Davis-Besse and providing \$20 million annually to six solar power projects in Ohio, HB 6 also underwrote two coal-fired power plants (one in Indiana). Coal plants hardly promote clean air. And the bill zeroed out the state's renewable energy mandates and reduced its energy-efficiency ones.

But, as Oscar Wilde said, consistency is the last refuge of the unimaginative. And when it comes to lining the pockets of electric utilities, our legislature isn't merely imaginative; it's shameless.

Energy Harbor now owns Perry and Davis-Besse and a share of the coal plants. And while Energy Harbor stock isn't publicly traded, it's available through brokers.

The stock buybacks may already have worked their magic -- Energy Harbor was trading at \$37.50 a share when markets closed Wednesday evening. That's versus \$15.75 when trading began April 7, according to Tobias. A 138% rise in about five weeks is not bad -- if you're a speculator.

Energy Harbor told Tobias that “money for the stock buyback ‘is not related to the funding generated by House Bill 6 which does not begin until April 2021.’ ”

So: Investors don’t do research? And Energy Harbor announced Tuesday it had “received an investment grade rating of BBB- with a Stable outlook from Standard & Poor’s.”

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The Wall Street Journal reported last fall that Energy Harbor’s owners would include onetime FirstEnergy Solutions bondholders Avenue Capital Group and Nuveen Asset Management LLC. (TIAA, the teachers’ pension and insurance company, owns Nuveen.)

HB 6 supporters sometimes emphasize there’s no connection between FirstEnergy Corp., which owns the Illuminating, Ohio Edison and Toledo Edison companies, and Energy Harbor – and that FirstEnergy Corp. was more or less a bystander when the

legislature aimed HB 6 at Ohioans' wallets. If so, perhaps FirstEnergy has been so lavish in its campaign contributions to Ohio politicians, notably Householder, just to be nice.

Given the gravy HB 6 will sluice, no wonder pals of HB 6 threw everything they could dream up – including a ridiculous “Chinese conspiracy” – to sidetrack people trying to get HB 6 on the statewide ballot so Ohioans could vote the bill up or down. The friends of HB 6 succeeded, disgracefully, in blocking a statewide vote. The message they sent to Ohioans: Shut up – and pay up.

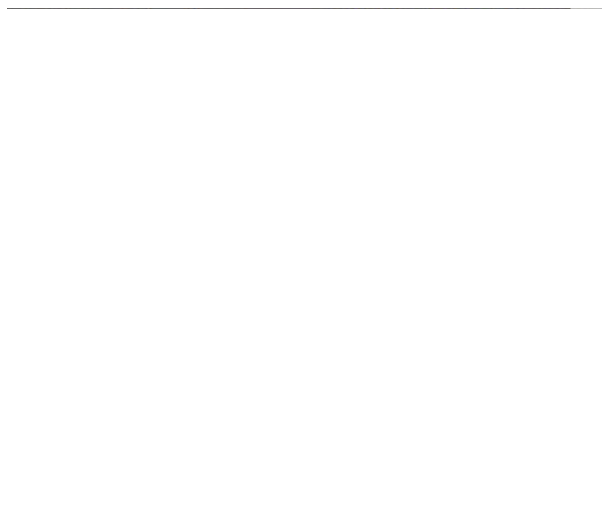
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Around the web

FirstEnergy's bad math

5/15/2020

THE EDITORIAL BOARD

Just a year ago, FirstEnergy was crying poor and demanding a \$1 billion bailout to save its nuclear power plants and the northwest Ohio jobs that go with them. Now, set to begin taking in the \$150 million a year subsidy from its customers, the company plans to spend \$800 million on a stock buyback plan to benefit its stockholders.

If that math seems a bit fuzzy, that's because it is.

But FirstEnergy specializes in that kind of bad math. Consider, for instance, that the bankrupt company argued it was in such dire financial straits that only a consumer bailout could save Davis-Besse and Perry nuclear power plants. Without the bailout, FirstEnergy would become insolvent, the plants would close, jobs would be lost, electric bills would climb, they warned.

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So the General Assembly approved House Bill 6, which adds a surcharge to bills of Ohio's electric customers from 2021 to 2027.

But at the same time, FirstEnergy gave \$1.88 million to Generation Now Inc. to fight a referendum campaign to roll back the bailout.

FirstEnergy and its employees also contributed more than \$1 million to lawmakers, candidates, and other public officials between 2017 and 2019, when the measure to add a bailout charge to consumers' bill passed the General Assembly.

FirstEnergy has since emerged from bankruptcy and spun off FirstEnergy Solutions, which was then renamed Energy Harbor. That company owns the nuclear power plants.

And its stockholders stand to benefit from the stock buyback plan. Companies use stock buybacks to repurchase their own stock and drive up the price of the rest of the shares.

Energy Harbor officials say the buyback and the bailout are unrelated because the surcharge won't show up on consumers' bills until 2021. That explanation doesn't add up, but keep in mind this company is prone to fishy math.

The stock buyback plan is a brazen slap in the face to every Ohio customer who will have to pony up to subsidize a pair of nuclear power plants that are financially troubled in the age of cheap oil and natural gas.

Ohio's lawmakers and its utility regulators should comb through every law and agreement relating to Energy Harbor in search of a way to claw back some of the money the company is sucking out of this state.

And failing that, they must, at the very least, remember this episode the next time the energy company comes with hat in hand, demanding its customers cough up even more.



FERC's December 2019 Order on State Subsidies

The Expanded Minimum Offer Price Rule and its Impact on Manufacturers, Markets, Ohio Energy Policy, and Electricity Generation Technology

January 30, 2020

The Federal Energy Regulatory Commission (FERC) issued an order on December 19, 2019 stating that

“... out-of-market payments provided, or required to be provided, by states to support the entry or continued operation of preferred generation resources threaten the competitiveness of the capacity market administered by PJM ...”.

FERC's order is a direct response to a trend of state subsidization of uneconomical power plants, including those benefitting from the recently passed Ohio House Bill 6 (HB6). The FERC order is a giant stick against state subsidies, and tips HB6 on its head: Rather than improve the economic position of select Ohio (and Indiana) power plants, the HB6 subsidies now jeopardizes these same power plants from competitively earned revenue in the wholesale electric capacity market. In fact, by charging Ohio's ratepayers hundreds of millions of dollars in annual subsidies for select power plants, about \$190 million in annual capacity revenue for these same generators is now at risk. Unfortunately, by favoring select power plants through subsidies, HB6 has created a financial liability for them.

To be clear, the select subsidized power plants can request, and may receive, a “Unit Specific Exemption” to earn capacity revenue. Or, these same power plants may request additional subsidies or financial support from the state.

The eventual effect of FERC's order on wholesale electricity prices is being debated, as is which type of generating technologies win or lose. But FERC's order is clear – if states like their subsidy plan, they can keep it – but the state and its ratepayers will bear the direct cost and consequences.

Impact to Manufacturers

A significant concern to Ohio manufacturers is how the FERC order, in conjunction with HB6, impacts electricity costs. The FERC order does not stop Ohio from subsidizing select power plants. And thus, HB6's above-market charges for select nuclear, coal, and renewable energy projects will persist on manufacturers' electric bills.

However, the FERC order does create major changes to how electricity markets work and estimating the financial impact will take careful study. At this date, there is no agreement on the financial impact. Some parties warn that the FERC order could create significant

additional electricity costs, while other parties suggest there may be no additional cost at all. Still others may argue that preservation of market forces is the ultimate cost protection, an assertion supported by market studies and academic literature. PJM and its Independent Market Monitor often conduct detailed simulations of the near-term effect of major policy changes and likely will do so for this FERC order.

Manufacturers should also be concerned about potential state responses to the FERC order, namely, a drive to create fixed resource requirement (FRR) entities. By creating an FRR, a state may attempt to create yet more out-of-market revenue streams for power plants. Not only would this increase charges even more on customers' electric bills, but it would further erode market protections.

While cost is a primary concern for all manufacturers, also of note in the FERC order is a problematic issue for manufacturers with regard to greenhouse gas (GHG) emissions reductions goals. The FERC order will apply to new renewable energy projects receiving state subsidies, including renewable energy credits (RECs) from a renewable portfolio standard (RPS). While the FERC order recognizes that renewable energy projects subscribed with corporate REC purchases should not be subject to the MOPR, it then states that "it is not possible" to distinguish a voluntary REC from a state-mandated REC. As such, without clarification, new corporately funded renewable energy projects could be deprived of capacity revenue unfairly.

Impact to Electricity Markets

The FERC order is intended to protect functioning, competitive electricity markets. In general, competitive markets are desirable because they have been shown to produce lower electricity prices for consumers than cost-of-service regulation. Markets also tend to produce better resource efficiency, and thus lower emissions from power plants. This is all to say that an order to protect markets has inherent features that protect consumers and manufacturers.

However, FERC's order is complex, and it is not fully known how it will impact electricity prices in the short and long term. The order modifies and expands a mechanism called the Minimum Offer Price Rule (MOPR).

The MOPR was originally designed to prevent state subsidization of new natural gas generators entering the market. In contrast, the expanded MOPR will apply to new and existing power plants of any technological types that "receive, or are entitled to receive, certain out-of-market payments, with certain exemptions." This means that nuclear, coal, and renewable power plants that receive state subsidies or other non-bypassable rider support will be required to offer into PJM's capacity auction at a set minimum price or apply for a Unit Specific Exemption. New power plants will have one set of resource-specific prices, called Net CONE (Cost of New Entry). Existing power plants will have another set of resource-specific prices, called Net ACR (Avoidable Cost Rate). The application of these minimum price thresholds is meant to prevent a power plant from using a state subsidy to outbid its unsubsidized competition by offering an artificially low bid into PJM's capacity auction.

Table 1 shows PJM’s proposed Net CONE and Net ACR values¹. Consider, in comparison, that PJM’s capacity auction clearing price over the past 15 years has been a minimum of \$16 to a maximum of \$174/MW-day, a median of \$110/MW-day. Thus, new and existing resources would need to have minimum offer prices of, at most, around \$110/MW-day to clear the capacity market at least half of the time. Given this low price, it is unlikely that new generating plants that receive or are entitled to receive state subsidies will be able to clear the PJM capacity auction on a regular basis, unless they apply for and receive a Unit Specific Exemption.

For existing resources, it is also unlikely that subsidized nuclear units will be able to clear the auction in most cases, and subsidized coal plants will likely only be able to clear the auction occasionally. New and existing demand response and energy-efficiency should be able to clear most auctions. As for renewable energy, new renewable energy would likely not be able to clear the auction, but existing renewable energy would.

Note that PJM is preparing updated Net CONE and Net ACR values which will be subject to FERC approval. These updated values will have meaningful bearing on how the FERC order plays out. Additionally, any resource may apply for a “Unit Specific Exemption,” in order to bid at a different price than Net CONE and Net ACR. Many resources that appear uneconomical based on Net CONE or Net ACR may in fact be economical based on their specific financial situation.

Table 1: PJM Proposed Minimum Prices

	New Resources - Net CONE (\$/MW-day)		Existing Resources - Net ACR (\$/MW-day)	
Nuclear - Single Unit	\$	1,451	\$	265
Nuclear - Double Unit	\$	1,451	\$	227
Coal	\$	1,023	\$	126
Combined Cycle - NG	\$	438	\$	1
Combustion Turbine - NG	\$	355	\$	31
Hydro	\$	1,066	\$	-
Solar PV	\$	387	\$	-
Onshore Wind	\$	2,489	\$	-
Offshore Wind	\$	4,327	\$	-
Demand (DR or EE)		\$29 - \$67	\$	-

The impact on electricity prices then depends on several things:

- How many MWs of power plants will be subject to the expanded MOPR, and effectively forced out of the capacity auction? The answer is not simple. Some power plants receiving or entitled to receive subsidies have already not cleared the auction. For example, Ohio’s nuclear power plants have not cleared the auction recently. Other power plants may choose to forgo their subsidy so they are

¹ PJM Communication, Table 2. <https://pjm.com/-/media/committees-groups/committees/mic/20190306/20190306-item-10-communication-regarding-mopr-related-requirements.ashx>

Net-ACR from: INITIAL SUBMISSION OF PJM INTERCONNECTION, L.L.C. Docket No. EL16-49-000, pages 118 & 120 of pdf. <https://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=15059002>

permitted to bid into the auction without the minimum offer price if the subsidy is lower in value than PJM's capacity payments. Or, perhaps some states will find their subsidization policies ineffective, and will eliminate them in the law so that their power plants may compete for capacity revenue. Finally, there exists a "Unit Specific Exemption" process with the MOPR. If a power plant can show that it does not need its subsidy to offer competitive capacity bids, then it may receive this exemption, and continue to receive capacity revenue. Ironically, if a power plant receives this exemption, it will be proof to state policymakers that the subsidy is not needed. For this reason, it should be considered requiring subsidized resources to apply for a Unit Specific Exemption.

- How many new power plants will enter the market due to the expanded MOPR? Again, this is not simply answered, but it is probable that increased amounts of new natural gas fired power plants will enter the market. Some parties' fear of increasing capacity prices come largely from the observation that by excluding subsidized power plants from PJM's capacity auction, the supply of power plants will decrease, while demand for power remains relatively the same. However, PJM has seen large amounts of power plant retirements in the last 15 years, with little impact on capacity prices. This is because as uneconomic power plants close, other power plants that are economic open. It is reasonable to expect that over some period of time, new economic generation will fill the gap and keep prices in check.

All told then, the goal of the FERC order appears to be to reinstate a functioning electric market and the order is designed to seriously discourage state subsidies' manipulation of the electric market. Power plants receiving unit-specific exemptions will have shown that their subsidy is unnecessary, and that they can compete without state subsidy support. Power plants that are subject to MOPR and do not clear the auction will have shown that they are uncompetitive and may need to return to the state for additional subsidies or cease operating. The resulting supply and demand in the market then will more closely match that of a competitive market absent state subsidies. And thus, the resulting price of wholesale electricity should match that of a competitive market.

A caveat is that in the short-term, there may be a mass exit of power plants that are subject to MOPR because of state subsidies. If there is an atypical quantity of exiting power plants, combined with a shorted development timeframe for new entrants, there is the possibility for short-term capacity price increase. Again, Ohio's manufacturers should wait for independent modeling of this financial impact.

The cost of state subsidies will still be borne by the residents of the state, until a state repeals its subsidy policy. And, creation and proliferation of FRR entities is an emerging risk.

Impact to Ohio's State Policy and Regulation of Power Plants

FERC's order has significant impacts to the objectives of the recently passed HB6 in Ohio, and to other Ohio policies and regulations that create subsidies for select electrical power generators. Below we cover possible impacts to specific power plants and technologies in Ohio.

- Davis-Besse and Perry Nuclear Power Plants – The Davis-Besse and Perry nuclear power plants are entitled to receive a subsidy of \$9 per MWh generated from Ohio’s Nuclear Generation Fund, newly created by HB6. This will result in \$150 million of payments annually from Ohio ratepayers to these two nuclear power plants. However, the two nuclear power plants will be subject to the expanded MOPR. The combined capacity of the power plants is about 2,150 MW. At a typical PJM capacity auction price of around \$120 /MW-day, this equates to \$94 million of forgone annual capacity revenue for the two nuclear plants.

It is not clear whether Energy Harbor’s nuclear power plants could receive a Unit Specific Exemption. It is distinctly possible that these nuclear power plants are economical without the HB6 subsidy. If so, they *could* apply for a Unit Specific Exemption, and receive it. However, applying for a Unit Specific Exemption is a choice for Energy Harbor.

In any case, Ohio policymakers face difficult choices. At a minimum, requiring HB6 subsidized units to apply for a Unit Specific Exemption is logical. If subsidized units receive an exemption, then policymakers will need to reconsider whether to continue subsidies that a power plant doesn’t need. If a unit fails to receive an exemption, policymakers will need to reconsider whether to subsidize an uneconomical power plant.

- OVEC Coal Plants – The coal plants of the Ohio Valley Electric Corporation, which include the Kyger Creek plant in Ohio and the Clifty Creek plant in Indiana, will also be subject to the MOPR. There is a chance that they will not clear the PJM capacity auction. OVEC’s capacity is about 2,175 MW, and thus it will forego about \$95 million annually in capacity revenue. However, OVEC’s subsidy is not in the form of a fixed credit, but instead in a rider that passes a pro-rated percentage of its financial losses onto Ohio utilities. As a result, Ohio’s ratepayers will share in 38.68%² of this loss, or about \$36.7 million annually.

Because OVEC’s Ohio utility owners are insulated from any and all financial losses, it is probable this additional cost will simply be passed on to Ohio’s manufacturers and other ratepayers.

- HB6-Favored Solar Energy Plants – HB6 creates a Renewable Generation Fund which will pay \$9 per MWh for renewable energy credits (RECs) for select solar projects. These solar projects have not yet been built and will thus almost certainly be subject to the MOPR and are unlikely to clear the PJM capacity auction. Moreover, given the choice, solar photovoltaic (PV) projects may prefer to receive capacity revenue over the renewable energy credit revenue. For example, a 1 MW solar PV project in central Ohio would receive about \$12,500 in capacity revenue³. That same 1 MW of solar PV would receive \$11,150⁴ from the Renewable Generation Fund. As such, renewable projects of any scale may choose to receive

² OVEC Annual Report, cumulative percentage of Ohio investor-owned sponsoring companies: The Dayton Power and Light Company, Duke Energy Ohio, FirstEnergy Solutions, and Ohio Power Company.

³ 1 MW nameplate x 0.2856 central Ohio capacity factor x \$120 /MW-day, typical x 365 days/year)

⁴ 1 MW of ground-mounted fixed solar in central generates about 1,239 MWh/year, according to PV Watts. \$9 /MWh x 1,239 MWh/year = \$11,150 /year

PJM capacity revenue over HB6 subsidies.

Thus, HB6 could result in reduced revenue for these select solar projects, making them less competitive. The forgone capacity revenue from HB6's select solar projects would be about \$22 million per year.

- Sammis Coal Plant – The Sammis coal-fired power plant owned by the former FirstEnergy Solutions may also be subject to the FERC expanded MOPR because of HB6. At first, this may be surprising, as there is no direct mention or direct subsidy of the Sammis plant within HB6. However, the FERC order appears to catch within its scope sleight-of-hand with state subsidies. FERC states:

“... we consider a State Subsidy to be: a direct *or indirect* payment, concession, rebate, subsidy, non-bypassable consumer charge, or other financial benefit that is (1) a result of any action, mandated process, or sponsored process of a state government, a political subdivision or agency of a state ...”

Importantly, FirstEnergy Solutions had publicly credited the HB6 subsidies it is receiving for its nuclear plants for *indirectly* allowing it to subsidize the Sammis coal plant⁵. According to FES comments, the Sammis coal plant cleared 1,233 MW in the most recent PJM capacity action⁶. Thus, HB6 has indirectly put \$54 million in annual capacity revenue at risk for the Sammis coal plant.

- Existing Renewable Energy – Existing renewable energy projects will be exempt from the MOPR and will continue to be able to participate in PJM's capacity auction.
- New “Behind-the-Meter” Renewable Energy – New renewable energy projects that are customer-sited, behind-the-meter, will not be subject to the MOPR. This is because behind-the-meter generation would not bid into PJM's capacity auction anyways. Instead, behind-the-meter generation reduces a customer's capacity obligation. As such, behind-the-meter projects would be able to monetize both capacity value and voluntary or state-mandated renewable energy credits.
- New “Front-of-the-Meter” Renewable Energy – New, front-of-the-meter renewable energy will be subject to the MOPR. As shown in Table 1, solar PV has the second lowest Net CONE value of new resources, after natural gas combustion turbines. That said, it is unlikely that PJM's capacity market price will clear high enough that a solar PV or wind project could enter the capacity market at the Net CONE price. This gives renewable energy developers two options. First, they could choose to enter the market competitively, favoring capacity revenue over REC revenue and subsidies. Second, if new renewable energy plants do not require REC payments to be competitive, they may apply for a “Unit Specific Exemption” and bid into the capacity market at a lower price than Net CONE. This is distinctly possible, as renewable energy projects receive comparatively less of their revenue from capacity payments due to their intermittency and REC prices have dropped to just

⁵ “House Bill Six is really designed to support our nuclear plants, and all the money from that would go to those nuclear plants. But at the same time, it would make our company economically healthy enough that we would be able to look at other investments like investing in the Sammis Plant”, FES CEO John Judge, <https://wtov9.com/news/local/sammis-plant-may-not-close>

⁶ <https://www.prnewswire.com/news-releases/firstenergy-solutions-comments-on-results-of-pjm-capacity-auction-300654549.html>

a few dollars per MWh. As renewable energy installation costs drop, their reliance on REC payments may be low enough that it does not affect the decision on whether to build the project or not, and thus competitive renewable energy projects may request and receive an exemption while preserving their REC payments.

- Energy Efficiency and Demand Response – Most new energy-efficiency and demand response capacity resources would have a Net CONE generally lower than a typical PJM capacity auction clearing price. That is to say, these new resources would have the MOPR applied to them but would still be able to clear the auction at their corresponding technology-specific Net CONE price. Moreover, existing efficiency and demand response resources would be able to continue to bid at any price. While there is some risk that new demand response and energy-efficiency resources may not clear the capacity auction in some years, this may be a manageable risk.

Impact to Technology Mix

Of interest is how FERC's order expanding MOPR will affect the generation technology mix in the PJM territory. While the expanded MOPR is complicated and has nuances, it appears to effectively disincentivize subsidization of older, uneconomical power plants. In recent years, these subsidies have been targeted at coal and nuclear power plants. Newer emerging technologies such as renewables and load management will not be entirely unaffected by the MOPR, but are positioned to be able to continue to grow for a number of reasons, be it behind-the-meter applications, the Unit Specific Exemption, or simply because they no longer require state subsidies. Thus, the expanded MOPR is likely to reinforce the recent trend in electric generation technology mix – considerably more natural gas fired generation with some meaningful expansion of renewable energy and customer-load management, and considerably less coal-fired generation with some reduction in nuclear power.

This analysis was prepared by John Seryak, PE, and Peter Worley of RunnerStone, LLC, Energy Technical Consultant to The Ohio Manufacturers' Association.



CARPENTER LIPPS & LELAND LLP

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MEMORANDUM

TO: Ohio Manufacturers' Association Energy Group
FROM: Kim Bojko, Carpenter Lipps & Leland LLP
DATE: January 16, 2020
SUBJECT: PUCO Authorizes FirstEnergy's Decoupling Rider

HB 6 authorized a utility to apply to implement a revenue decoupling mechanism to recover lost revenue as a result of implementing energy-efficiency or energy-conservation programs within thirty days of the effective date of the new law (October 22, 2019). If implemented, each utility's annual revenue will be compared against the 2018 baseline revenue of the utility. If annual revenue in a given calendar year is less (or greater) than the 2018 baseline revenue, the utility will charge (or credit) the difference to customers through the decoupling rider. Thus, if the economy takes a downturn and the utility receives less revenue from its customers, the utility will always be guaranteed to receive the same amount of revenue as it did in 2018, which will continue until the utility files a new base distribution rate case.

On November 21, 2019, FirstEnergy was the only utility to file an application for approval of a decoupling mechanism. OMAEG and others intervened in the matter and argued 1) the PUCO should ensure that there is no double recovery of costs through the decoupling mechanism, including lost distribution revenue; and 2) that the PUCO should only approve decoupling based on actual costs, not projections, and 3) that any refunds are passed back or credited to customers. The PUCO Staff released a report that revealed why 2018 was likely chosen in the legislative process and included in HB 6 as the baseline for the decoupling mechanism. Stakeholders surmised that a utility's revenues must have been high for that year, but it was not clear exactly why. The PUCO Staff report explained that 2018 was the warmest summer in history for two of the FirstEnergy utilities and the second warmest for the other. Therefore, 2018 produced high revenue for the three FirstEnergy utilities. Based upon this information, Staff recommended that FirstEnergy weather normalize rates to reflect average weather to avoid large discrepancies through the years and minimize any rate impacts to customers based upon the unusual high temperatures in 2018. This weather adjustment is regularly used in ratemaking proceedings to normalize rates and is sound policy.

This week, the PUCO granted FirstEnergy's request for a decoupling mechanism and established a decoupling rider (called Rider CSR). The Commission approved FirstEnergy's application as filed, **rejecting** Staff's recommendation to weather normalize the 2018 baseline revenue due to the unusual

high temperatures in 2018. Staff's approach would have minimized the possibility of creating a large decoupling rider to make up for the difference in revenue between future years and 2018. Although Commissioner Conway expressed his sympathy for Staff's view, the PUCO did not order FirstEnergy to weather normalize the baseline. FirstEnergy will now be guaranteed to receive the level of revenues that it received in 2018 (during the warmest summer in history) each and every year, regardless of its operating and maintenance costs and the actual revenue received from customers for base distribution rates.

TO: OMA Government Affairs Committee
FROM: Ryan Augsburger / Rob Brundrett
RE: Environment Public Policy Report
DATE: June 3, 2020

Overview

There was an expectation of a loaded winter and spring legislative session coming out of the holidays. That was brought to an abrupt halt with the onset of the COVID-19 pandemic. Several things that were once thought of as a priority have been placed on the backburner with both the administration and the General Assembly.

The House and the Senate returned to regular session and committee hearings in the early to middle part of May. They are expected to stay in session through at least the middle of June before leaving for the summer and their legislative campaign season.

Fortunately, Ohio is not expected to see any major environmental overhaul legislation in that short timeframe.

However, some projects continue such as the finalization of state water action plans aimed at reducing runoff into Ohio waterways, and especially Lake Erie. State responses to federal actions like the Waters of the U.S. are expected next month.

Last fall the Governor announced a more comprehensive plan for the new H2Ohio initiative – its initial funding appears to have avoided the budget chopping ax as agencies were asked to cut funding in response to the drastic shortage in tax revenue.

The OMA continues to be heavily engaged at the agency level regarding rules and regulations that impact Ohio's manufacturers.

OHIO EPA COVID-19 INFORMATION

Ohio EPA Requests Electronic Filings of Plans, Permit Applications

Ohio EPA has announced that because its district offices and central office are temporarily closed, businesses are encouraged to submit plans, permit applications, and other required documents electronically when there are existing avenues to do so, such as eBiz. Plans under 25 MB can be emailed. For large plans over 25 MB, entities should work with the reviewer/division to upload via LiquidFiles. Directions for submitting docs via LiquidFiles are available on YouTube (<https://www.youtube.com/watch?v=BkeiTm5e9zE&feature=youtu.be>).

How to Contact Ohio EPA Staff During the COVID-19 Crisis

Due to COVID-19 concerns, Ohio EPA is currently operating with many staff members working remotely. The agency wants businesses to know that if you are working with staff on a current project — and you know the name of the employee you are working with — you can email them using this format: `firstname.lastname@epa.ohio.gov`. Or call the employee directly.

The agency's website has contact information for every district, division, and office. Businesses can contact Ohio EPA's main phone line at (614) 644-3020. To report a spill or environmental emergency, contact the spill hotline (800) 282-9378 or (614) 224-0946.

Ohio EPA COVID-19 Guidance

Ohio EPA has announced that all regulated entities remain obligated to take all available actions necessary to ensure compliance with environmental regulations and permit requirements.

Of course, in some instances regulated entities will have an unavoidable non-compliance situation directly related to COVID-19. In these cases, the director of Ohio EPA may consider providing regulatory flexibility, where possible, to assist entities in alternative approaches to maintaining compliance, such as extending reporting deadlines, waiving late fees, and exercising enforcement discretion.

An email address (EPA.COVID-19REGFLEX@epa.ohio.gov) has been established by the agency to accept such requests.

General Assembly News and Legislation

Senate Bill 2 – Statewide Watershed Planning

The bill's goal is to create a comprehensive statewide watershed planning structure to be implemented by local soil and water conservation districts to encourage efficient crop growth, soil conservation and water protection methods. The bill specifically states that it is the General Assembly's intent to collaborate with organizations representing agriculture, conservation, the environment, and higher education to establish a certification program for farmers that utilize practices designed to minimize impacts to water quality.

The Senate sees the bill as a complementary piece of legislation to the work done in the budget on creating and funding H2Ohio. The House of Representatives has held five hearings on the Senate bill.

House Bill 7 – H2Ohio Trust Fund

The bill creates the H2Ohio Trust Fund for the protection and preservation, and restoration of the water quality of Ohio's lakes and rivers. It requires the Ohio Water Development Authority to act as trustee of the fund and grants them full powers to invest money. It also creates the H2Ohio Advisory Council to establish priorities for use of the fund for water quality initiatives.

The House initially removed most of the funding for H2Ohio from the state budget. However, the startup funding was reinserted during House and Senate discussions along with other H2Ohio framework provisions. The House passed the bill and it has received on hearing in the Senate back in the fall.

Senate Bill 50 – Increase Solid Waste Disposal Fee

Senator Eklund has reintroduced Senate Bill 50. The bill would increase one of the state fees levied on the transfer or disposal of solid waste in Ohio. The proceeds of this increase will be deposited into the Soil and Water Conservation District Assistance Fund. Last General Assembly the OMA worked with allies to oppose the fee increase. Recently the Soil and Water Conservation Districts have been the point agency on any new water programs to battle nutrient runoff. The bill has had two hearings. The budget bill provided increased state funding to the soil and water conservation districts.

House Bill 166 – State Operating Budget

Governor DeWine introduced his budget bill on March 15. Included in the budget bill was the framework for the new H2Ohio fund. That fund would be used to increase Ohio water quality throughout the state.

Originally introduced the initiative would provide funding of as much as \$900 million over ten years to protect Ohio's water quality spread over three agencies, EPA, Agriculture, and Natural Resources.

Investments would be made in programs affecting state waters including Lake Erie and other rivers, lakes, and waterways. Efforts could include pollution prevention, land-based management programs, water-based restoration programs, as well as science, research and measurement.

The General Assembly decided to fund the initiative with the \$172 million “H2Ohio fund,” aimed at protecting Lake Erie, other state waterways, and community water projects. The administration has begun to form a strategy on how best to administer the dollars, while promising “more public discussions in the next few weeks.”

Approximately \$46 million of the fund will be dedicated to wetland restoration to help to prevent nutrient run-off that contributes to algal blooms. The budget requires the Lake Erie Commission to coordinate with state agencies and boards to submit an annual report to the governor and legislature on H2Ohio spending during the prior fiscal year.

That money was protected when the Governor asked agencies to reduce their budgets due to falling tax revenue from COVID-19.

Also included in the state budget was an amendment that provided that nature or any ecosystem does not have standing to participate or bring an action in a court of common pleas, and prohibited any person on behalf of an ecosystem or nature from bringing or intervening in an action in such court. This amendment supported by the OMA was in direct response to the Lake Erie Bill of Rights which was passed earlier this year in Toledo.

Senate Bill 222 – Container Use Restriction

The Senate version of House Bill 242 also authorizes the use of an auxiliary container for any purpose; it also prohibits the imposition of a tax or fee on those containers and applies existing anti-littering laws to those containers. The OMA provided proponent testimony on the bill in Senate committee.

House Bill 242 – Container Use Restriction

The bill authorizes the use of an auxiliary container for any purpose, to prohibit the imposition of a tax or fee on those containers, and to apply existing anti-littering law to those containers.

This so-called bag bill is aimed at providing uniformity across the state regarding packaging and other products that have been ground zero for local government bans. The OMA provided strong support in committee. The bill passed the House 58-35.

A Senate committee passed the bill last week. The OMA provided proponent testimony. The bill was amended in committee adding a 12-month sunset.

House Bill 328 – PFAS Firefighting Foam

The bill prevents testing and training with firefighting foam with PFAS added. The bill which is supported by the industry has received two hearings in the House.

House Bill 491 – Plastic Pollution Awareness Day

The bill designates the fifteenth day of February as “Plastic Pollution Awareness Day.” The bill has not had any hearings.

House Bill 497 – PFAS Drinking Standard

The bill would require the Director of Environmental Protection to adopt rules establishing maximum allowable contaminant levels in drinking water and water quality standards for certain contaminants (PFAS). The has not had any hearings and was referred to the House Health committee.

House Bill 522 – Waste Disposal Conservancy Districts

The bill authorizes conservancy districts to provide for the collection and disposal of solid waste. The bill has not had any hearings to date.

Regulations

Ohio EPA Asks for Comments on Ephemeral Streams and Isolated Wetlands Permit

Ohio EPA has issued a public notice for a new general permit, titled “Ohio General Permit for Filling Category 1 and Category 2 Isolated Wetlands and Ephemeral Streams.” This covers the filling of, and the discharge of, dredged material into ephemeral streams determined to not be waters of the U.S. and not subject to Section 404 or 401 of the Clean Water Act. Ohio EPA’s stated intent with the general permit is to fill gaps in the regulatory landscape after the issuance of U.S. EPA’s Navigable Waters Protection Rule.

OMA Files Federal Comments on Ohio Air Pollution Nuisance SIP

Last week the OMA led a coalition of business groups by filing comments to the U.S. EPA’s correction of the inclusion of Ohio’s air pollution nuisance rule. The comments agree with U.S. EPA’s proposal to remove the nuisance rule from the Ohio SIP. Ohio’s public nuisance provision is a general rule prohibiting public nuisances and has not connection with the purposes for which SIPs are developed and approved. Manufacturers often find themselves in the crosshairs of lawsuits based on the SIP provision even though they are in total compliance with the permit limits.

Ohio Lake Erie Commission Releases 2020 Plan and Ohio Submits 2020 Integrated Water Quality Monitoring and Assessment Report

The Ohio Lake Erie Commission recently approved its 2020 Lake Erie Protection and Restoration Plan (LEPR). The LEPR, last published in 2016, reflects actions that the commission and its member agencies will take over the next several years to protect and restore the lake, while promoting economic development for the region. The state’s actions complement federal and local initiatives. The plan is available at the Ohio Lake Erie Commission website.

Ohio Environmental Protection Agency submitted the final 2020 Integrated Water Quality Monitoring and Assessment Report to U.S. EPA for approval. The final report is available [here](#).

The OMA and its nutrient water working group worked tirelessly with Ohio EPA and others to ensure manufacturing is not disproportionately harmed by any new regulations on nutrients. The OMA commented on both the draft plans prior to their release and submittal.

EPA Approves new WOTUS Rule

In January the Army Corps of Engineers and U.S. EPA formally signed a new Waters of the United States (WOTUS) rule. The new rule is designed to bring more clarity. The OMA participated in a roundtable with new Region V Administrator Thiede in Columbus shortly after the new rule was announced.

The revised definition identifies four clear categories of waters that are federally regulated under the Clean Water Act: the territorial seas and traditional navigable waters, like the Atlantic Ocean and the Mississippi River; perennial and intermittent tributaries, such as College Creek, which flows to the James River near Williamsburg, Virginia; certain lakes, ponds, and impoundments, such as Children's Lake in Boiling Springs, Pennsylvania; and wetlands that are adjacent to jurisdictional waters.

These four categories protect the nation's navigable waters and the core tributary systems that flow into those waters.

In September, the U.S. EPA formally scrapped the Obama-era WOTUS rule. At the time the OMA formally supported the administration's proposed rule, which was more restrained and observed traditional limits on the scope of federal power.

Manufacturers Could See More Regulation Due to Federal Ozone Standards

Ohio EPA hosted two regional meetings for interested parties, including manufacturers and the OMA, to discuss the likelihood that the Cleveland and Cincinnati airsheds will be bumped up from "marginal" to "moderate non-attainment" under the federal ozone standard. The standard was lowered to 70 parts per billion during the Obama administration.

A change in status will trigger additional compliance requirements under the federal Clean Air Act. One of the key components of additional regulatory restrictions would be emissions offsets, so that any new emissions creator would need to be set at the New Source Review offset ratio 1.15:1.

The OMA will continue to work with members and Ohio EPA on this important issue that could affect many of the state's manufacturers and Ohio's overall economy.

U.S. EPA Proposes to Retain Current Particulate Matter Standards

On April 14, U.S. EPA proposed to retain the current national ambient air quality standards (NAAQS) for particulate matter (PM) without revision. After reviewing the air quality criteria and primary and secondary NAAQS for fine and coarse PM, the agency concluded that there is insufficient scientific evidence to support tightening these standards. U.S. EPA Administrator Andrew Wheeler stated he believes the current levels will be protective of public health while the agency continues to evaluate PM. EPA will accept public comment for 60 days after the proposed standards are published in the Federal Register.

Ohio EPA Agency News

Ohio EPA Launches 'Ask an Expert'

Ohio EPA's Office of Compliance Assistance and Pollution Prevention (OCAPP) has created a new avenue for companies to receive free and confidential environmental assistance regarding regulatory concerns about air, waste, water, and other environmental requirements. This service is available Monday through Friday, from 10 a.m. to 12 p.m. — and from 1 p.m. to 3 p.m.

<https://ohioepa.custhelp.com/app/contactus>

Ohio Changes Direction on PFAS Testing

Ohio has slowed its statewide PFAS testing plan due to COVID-19. The plan is to restart later in the year.

Last year Gov. Mike DeWine directed state agencies to analyze the prevalence of per- and polyfluoroalkyl substances (PFAS) in Ohio's drinking water. This action followed a Sept. 18

letter from Gov. DeWine and 14 other governors to federal lawmakers, calling for more comprehensive federal legislation on PFAS standards.

In December an action plan was released to study all of Ohio's drinking water for PFAS chemicals. The plan contains education and other support for communities who's water tests positive for certain PFAS chemicals. The OMA worked with the agency to ensure that the plan would be fairly developed as concerned to Ohio's manufacturers.

The debate over PFAS has become controversial as plaintiffs' lawyers aggressively attempt to litigate against manufacturers.

America's Improved Air Quality

The U.S. EPA published statistics showing that between 1970 and 2018, the combined emissions of the six common pollutants dropped by 74% across the U.S. This progress occurred as the economy expanded, Americans drove more miles, and the nation's population and energy use increased. Details are available on the U.S. EPA's AirTrends website.



**BEFORE THE LOCAL GOVERNMENT, PUBLIC SAFETY AND VETERANS AFFAIRS
COMMITTEE OF THE OHIO SENATE
SENATOR NATHAN MANNING, CHAIRMAN**

**WRITTEN TESTIMONY
OF
ROB BRUNDRETT
DIRECTOR, PUBLIC POLICY SERVICES
THE OHIO MANUFACTURERS' ASSOCIATION**

MAY 20, 2020

Mr. Chairman and members of the Senate Local Government, Public Safety and Veterans Affairs Committee, my name is Rob Brundrett and I am director of public policy services at the Ohio Manufacturers' Association (OMA). Thank you for the opportunity to provide written proponent testimony on House Bill 242.

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

Manufacturing is the largest of the state's 20 primary industry sectors. Manufacturing contributed more than \$112 billion in GDP according to the most recent data. This amounts to nearly 17% of the state's economy. According to the most recent data, over 701,000 Ohioans work in manufacturing.

Ohio is home to:

- 34 stationary paper manufacturers (more than any other state);
- 28 plastic bottle manufacturers (also more than any other state);
- 31 packaging machinery manufacturers (second most in the U.S.);
- 30 paper board container manufacturers (second most in U.S.);
- 28 plastics packaging film and sheet establishments (second most in U.S.);
- 13 metal can manufacturing establishments (second most in U.S.); and
- 66 paper bag and coated-and-treated paper manufacturers (third most in U.S.).

These manufacturers alone produce more than \$7 billion in output for the Buckeye State. These same manufacturers employ more than 16,300 Ohioans with an average annual wage of over \$50,000. These are solid, family-sustaining jobs.

Moreover, these businesses supply packaging products to many of our state's other manufacturers in sectors such as food and beverage production, consumer products, and appliances. Additionally, manufacturing is an enormous consumer when it comes to utilizing recycled materials, fostering conservation and employing sustainable business practices.

Ohio manufacturers make a wide variety of world-class products. So when local jurisdictions in our state enact restrictions or outright bans on certain products or product content; or impose mandates to label certain products; or place a tax on certain products, it makes it very difficult for Ohio manufacturers to comply here at home, much less in the global economy.

This is why the OMA routinely advocates mitigating locally-imposed restrictions, mandates and taxes. In many cases these types of regulations are most appropriately

adopted at the federal government level so as to not disadvantage businesses in one state over businesses in another state.

For these reasons, the OMA favors House Bill 242. We must ensure that taxes, fees and regulations on packaging are adopted uniformly and not via a cumbersome patchwork of local mandates that would make Ohio a less friendly climate for manufacturing.

We thank Representatives Lang and Jones for sponsoring this important legislation to protect and grow Ohio manufacturing. We urge your prompt passage of House Bill 242.

Please feel free to contact me at rbrundrett@ohiomfg.com with any questions.



May 22, 2020

Re: Comments on the United States Environmental Protection Agency’s (“EPA’s”) “Air Plan Approval; Ohio; Technical Amendment”, Docket ID No. EPA-R05-OAR-2020-0055, FRL-10006-83-Region 5

Dear Administrator Wheeler:

The Ohio Chamber of Commerce, the Ohio Chemistry Technology Council, The Ohio Manufacturers’ Association, API Ohio, and the Ohio Oil and Gas Association (the “Commenters”) respectfully submit the following comments in response to EPA’s proposed correction of the inclusion of Ohio’s air pollution nuisance rule, OAC 3745-15-07 (“Nuisance Rule”), in the applicable Ohio State Implementation Plan (“SIP”) under section 110 of the Clean Air Act (“CAA”), at 40 CFR 52.1870. The Commenters support EPA’s proposed action.

The Commenters agree with the agency’s proposal to remove the Nuisance Rule from the Ohio SIP on the basis that Ohio has never relied on and never intended to rely on the Nuisance Rule to demonstrate attainment or maintenance of any National Ambient Air Quality Standards (“NAAQS”). The Ohio public nuisance provision is a general rule prohibiting public nuisances. It has no connection with the purposes for which SIPs are developed and approved, no reasonable connection with the NAAQS, and no connection to Ohio’s NAAQS control strategy. As such, EPA has clear authority under CAA Section 110(k)(6) to remove the Nuisance Rule from the SIP.

I. EPA Has Clear Authority to Remove the Nuisance Rule From the SIP.

Under CAA Section 110(k)(6), EPA has authority to revise a SIP whenever the agency determines that the “action approving, disapproving, or promulgating any plan or plan revision (or part thereof) . . . was in error.”¹ EPA interprets this provision to authorize EPA to correct a promulgated regulation when:

- (1) EPA clearly erred by failing to consider or by inappropriately considering information made available to the EPA at the time of the promulgation, or the information made available at the time of promulgation is subsequently demonstrated to have been clearly inadequate, and

¹ 42 U.S.C. § 7410(k)(6).

(2) [O]ther information persuasively supports a change in the regulation.²

EPA has used its Section 110(k)(6) authority many times to remove public nuisance provisions similar to the Ohio Nuisance Rule and has clear authority to do so here.

II. It Is EPA's Longstanding Policy and Practice to Remove General Nuisance Provisions From SIPs.

The CAA as amended in 1970 required the states, within nine months, to develop SIPs to reduce criteria pollutant emissions in areas not meeting the NAAQS. In response, thousands of state and local agency regulations were submitted to EPA for incorporation into SIPs in the 1970s and early 1980s.³ Many states and districts submitted their entire legacy air programs, “including many elements not required pursuant to the Act.”⁴ The Ohio Nuisance Rule was initially promulgated as regulation AP-2-07, now OAC-3745-15-07, by the Ohio Air Pollution Control Board (predecessor to Ohio EPA) and was approved as part of the Ohio SIP on April 15, 1974⁵. Due to resource constraints at the time, EPA focused its reviews of the submissions on “the required technical, legal, and enforcement elements” and conducted only “minimal review” of the other elements.⁶ EPA has since recognized that many of the provisions initially approved in SIPs “were not appropriate for approval,” including provisions “that prohibit emissions causing general nuisance or annoyance in the community.”⁷

In 1979, while EPA was in the process of reviewing many states' SIP submissions, EPA's Office of General Counsel (“OGC”) advised its Regional Counsel that a state's measures that either control non-criteria air pollutants or are not sufficiently related to a state's strategy for the attainment and maintenance of the NAAQS may not legally be included in the SIP.⁸ Consistent with EPA's guidance, numerous SIPs have been corrected to remove nuisance rules similar to Ohio's and other general air pollution control rules because those provisions do “not

² Designations of Areas for Air Quality Planning Purposes; Amendments and Corrections, 57 Fed. Reg. 56762, 56763 (November 30, 1992) (emphasis added).

³ Air Plan Revisions; California; Technical Amendments, 83 Fed. Reg. 43576, 43576 (Aug. 27, 2018) (proposed rule).

⁴ Approval and Promulgation of Implementation Plans; Designation of Areas for Air Quality Planning Purposes; Wyoming; Corrections, 61 Fed. Reg. 47058, 47058 (Sept. 6, 1996).

⁵ EPA's initial approval of AP-2-07 in 1972 was vacated on procedural grounds in *Buckeye Power Inc. et al. v. EPA*, 481 F.2d 162 (6th Cir. 1973).

⁶ *Id.*; 83 Fed. Reg. at 43576.

⁷ 83 Fed. Reg. at 43576.

⁸ Memorandum from Michael James, Associate General Counsel of EPA's Air, Noise, and Radiation Division to Regional Counsels and Air Branch Chief regarding “Status of State/Local Air Pollution Control Measures not related to NAAQS,” February 9, 1979. See attached at Tab A.

have a reasonable connection to the NAAQS and related air quality goals of the Clean Air Act.”⁹ EPA also has rejected states’ requests to include such provisions in their SIPs.¹⁰

As EPA explained in past rulemakings, state and local agencies can choose whether to adopt and enforce nuisance provisions, but it would be inappropriate to make them federally enforceable.¹¹ General nuisance provisions have “essentially no connection to the purposes for which SIPs are developed and approved, namely the implementation, maintenance, and enforcement of the [NAAQS].”¹² The Ohio Nuisance Rule is no different.¹³

The Ohio Nuisance Rule is most like the nuisance rules in California, Michigan, and Georgia, all of which were removed from their respective SIPs under CAA Section 110(k)(6). The Ohio Nuisance Rule provides, in part, that:

[t]he emission or escape into the open air from any source or sources whatsoever, of smoke, ashes, dust, dirt, grime, acids, fumes, gases, vapors, or any other substances or combinations of substances, in such manner or in such amounts as to endanger the health, safety or welfare of the public, or cause unreasonable injury or damage to property, is hereby found and declared to be a public nuisance. It shall be unlawful for any person to cause, permit or maintain any such public nuisance.

⁹ 63 Fed. Reg. at 65557 (Nov. 27, 1998) (removing “a general prohibition against air pollution” from the New York SIP because it was “not designed to control NAAQS pollutants such that EPA could rely on it as a NAAQS attainment and maintenance strategy.”); Approval and Promulgation of Implementation Plans; Georgia: Approval of Revisions to the State Implementation Plan, 71 Fed. Reg. 13551 (March 16, 2006) (removing a nuisance provision from the Georgia SIP, because it was “not related to the attainment and maintenance of the [NAAQS].”); Approval and Promulgation of Implementation Plans; Michigan Correction, 64 Fed. Reg. 7790, 7791 (February 17, 1999) (removing from the Michigan SIP a general nuisance provision primarily used to address odors and other local nuisances and not to attain or maintain the NAAQS); 61 Fed. Reg. at 47058 (Sept. 6, 1996) (removing odor control rules from the Wyoming SIP, because they had been “erroneously incorporated into the SIP” and “[did] not have a reasonable connection” to the NAAQS); Approval and Promulgation of Implementation Plans; Minnesota, 60 Fed. Reg. 27411 (May 24, 1995) (removing odor provision from the Minnesota SIP); Approval and Promulgation of Implementation Plans; Commonwealth of Puerto Rico, 62 Fed. Reg. 3211 (January 22, 1997) (removing odor provision from the Puerto Rico SIP); Air Plan Approval; OR: Lane County Outdoor Burning and Enforcement Procedure Rules, 83 Fed. Reg. 60386, 60388 (proposed rule) (November 26, 2018) (proposing removal of the definition of “nuisance” from the Oregon SIP because it is not “related to attainment and maintenance of the NAAQS and carrying out other specific requirements of section 110 of the CAA.”); *see also* 84 Fed. Reg. 5000 (final rule) (February 20, 2019) (final removal of “nuisance” definition); Air Plan Revisions; California; Technical Amendments, 84 Fed. Reg. 45422, 45422 (August 29, 2019) (removing numerous local nuisance rules from the California SIP that had been “approved in error.”).

¹⁰ Clean Air Act Approval and Promulgation of PM₁₀ Implementation Plan for Montana, 59 Fed. Reg. 2537, 2539 (January 18, 1994) (declining to incorporate odor provisions into the Montana SIP as part of larger SIP submission); Approval and Promulgation of Implementation Plans: Washington, 59 Fed. Reg. 44324, 44326 (August 29, 1994) (same for Washington SIP).

¹¹ *See, e.g.*, 83 Fed. Reg. at 43577.

¹² *Id.* at 43576.

¹³ In 1999, Ohio submitted a request to EPA to modify the SIP to remove the nuisance provision. Ohio certainly would not have requested that the Nuisance Rule be removed from the SIP if the rule were part of its NAAQS control strategy.

The Ohio Nuisance Rule covers a broad range of activity, prohibiting the discharge from *any* source of *any* substance or odor that will harm the public or property. The Nuisance Rule is silent with respect to criteria air pollutants, and does not require any particular reductions or controls, or establish limits or standards. It is impossible to quantify reductions in criteria air pollutant emissions that can be attributed to future enforcement of the Nuisance Rule, and Ohio has not done so. Compliance with the Nuisance Rule can only be determined through case-by-case adjudications of subjective factors (and exhaustion of appellate remedies), without any pre-defined compliance test methods. Contrary to CAA Section 110(a)(2), the Ohio Nuisance Rule does not limit “the quantity, rate, or concentration of emissions of air pollutants on a continuous basis” to enable a State to rely on it for purposes of its NAAQS demonstration. Reductions in criteria pollutant emissions from compliance with the Nuisance Rule are not, and could not possibly be, quantified or accounted for in Ohio’s attainment demonstration.

Like the provisions EPA has already removed from other SIPs, the Ohio provision is a general prohibition against public nuisances.¹⁴ Most recently, EPA issued a technical correction to the California SIP, to remove numerous local nuisance rules very similar to the Ohio Nuisance Rule that were “approved in error.”¹⁵ In each case, the local rule prohibits the discharge of “air contaminants or other material which cause injury, detriment, nuisance, or annoyance . . .”¹⁶ EPA determined that the local nuisance rules were included in error because they are general prohibitions against air pollution and not part of the districts’ NAAQS control strategies.¹⁷

Michigan’s Rule 901 was removed from Michigan’s SIP in 1999 for similar reasons. EPA determined that Rule 901 is “a general rule that prohibits the emission of an air contaminant which is injurious to human health or safety . . . or which causes unreasonable interference with the comfortable enjoyment of life or property.”¹⁸ In using its authority to correct the Michigan SIP under CAA Section 110(k)(6), EPA explained that it was removing the nuisance rule from the SIP because it primarily has been used to address odors and other nuisances and “the rule does not have a reasonable connection to the national ambient air quality standards (NAAQS) and related air quality goals of the Clean Air Act.”¹⁹ Likewise, Georgia’s nuisance rule was removed from the SIP pursuant to CAA Section 110(k)(6) “because the rule is not related to the attainment and maintenance of the NAAQS.”²⁰

Ohio’s Nuisance Rule is no different than the California, Michigan, Georgia and other nuisance rules that have been removed from SIPs. The Ohio Nuisance Rule prohibits undefined quantities of “smoke, ashes, dust, dirt, grime, acids, fumes, gases, vapors, or any other substances or combinations of substances . . .” Similarly, the Michigan nuisance rule (Mich. Admin. Code R 336.1901) prohibits “air contaminants,” defined as “dust, fume, gas, mist, odor,

¹⁴ The general nuisance provision is even couched, aptly, in the “General Provisions on Air Pollution Control” section of the Ohio SIP.

¹⁵ 84 Fed. Reg. at 45422.

¹⁶ 83 Fed. Reg. at 43577; *see, e.g.*, Amador County APCD Rule 205 (nuisance); Butte County AQMD Section 2-1 (nuisance).

¹⁷ 83 Fed. Reg. at 43576-77.

¹⁸ 64 Fed. Reg. at 7791.

¹⁹ *Id.*

²⁰ 71 Fed. Reg. at 13552.

smoke, vapor, or any combination thereof.”²¹ *Id.* at R 336.1101(f). The Georgia nuisance rule (Ga. Comp. R. & Regs. 391-3-1-.02(2)(a)(1)) also prohibits “air contaminants”, including but not limited to “solid or liquid particulate matter, dust, fumes, gas, mist, smoke, or vapor . . .” *Id.* at 391-3-1-.01(c). And many of the local rules removed from the California SIP prohibit “air contaminants,” which are defined, for example, to include “smoke, dust, charred paper, soot, grime, carbon, noxious acids, fumes, gases, odors, or particulate matter.” Amador County APCD Rule 102 (definition of “air contaminant or pollutant”); Amador County APCD Rule 205 (nuisance). EPA recognizes that broadly-defined air pollution, as in the aforementioned cases, “does not necessarily equate to a condition that would interfere with attainment or maintenance of the NAAQS.”²² The term “air contaminant,” as used in the California, Michigan, Georgia, and other nuisance rules, matches the list of substances regulated in the Ohio Nuisance Rule, i.e., “smoke, ashes, dust, dirt, grime, acids, fumes, gases, vapors, or any other substances or combinations of substances.”²³

In addition to the state-specific cases, EPA has even given an example of a nuisance provision that would not be appropriate for inclusion in a SIP:

“A person shall not discharge from any source whatsoever such quantities of air contaminants or other material which cause injury, detriment, nuisance or annoyance to any considerable number of persons or to the public or which endanger the comfort, repose, health or safety of any such persons or the public or which cause or have a natural tendency to cause injury or damage to business or property.”²⁴

The Ohio Nuisance Rule is almost identical to EPA’s hypothetical provision and is no more related to attainment and maintenance of the NAAQS than EPA’s example or the general nuisance provisions that EPA has already removed from other SIPs.

III. Keeping the Nuisance Rule in Ohio’s SIP is Unnecessary to Protect Public Health and Welfare.

Finally, EPA must reject arguments that retaining the Nuisance Rule is needed to protect public health and welfare or air quality. First and foremost, the decision to remove the Nuisance Rule from the SIP must be guided by the law—the plain language of the CAA—and not any individual or group’s interest in retaining the status quo. Nothing in 42 U.S.C. § 7410 would allow EPA to retain SIP provisions unrelated to the “implementation, maintenance, and enforcement” of primary and secondary NAAQS, even if doing so were necessary to advance public policy goals unrelated to Section 110’s purpose.

²¹ *Id.*

²² 83 Fed. Reg. at 6974.

²³ *Cf.*, e.g., N.Y. Comp. Codes R. & Regs. tit. 6, § 211.1 (general prohibition on the emission of “air contaminants,” defined at § 200.1 to include “chemical[s], dust, compound[s], fume[s], gas[es], mist, odor[s], smoke, vapor[s], pollen or any combination thereof”).

²⁴ 83 Fed. Reg. at 43576 n.1.

But keeping the Nuisance Rule in Ohio's state plan is not necessary to protect public health and welfare or air quality, for several reasons. First, the law in Ohio prohibiting public nuisances will not change when the Nuisance Rule is removed from the SIP. The rule, OAC 3745-15-07, will remain an enforceable provision in the state air regulations just as it always was. Second, Ohio citizens will continue to be able to bring a variety of public and private common law nuisance claims against defendants that interfere with the use and enjoyment of property. Third, citizens also will retain the right to bring CAA citizen suit actions for violations of emission limits and standards that are part of the state plan to attain and maintain compliance with the NAAQS. 42 U.S.C. 7604(a)(1). Citizen suits within the scope of Section 110 of the CAA will not be affected by EPA's proposal to correct the erroneous inclusion of the Nuisance Rule in the SIP.

IV. Conclusion

SIPs have a singular purpose, to control NAAQS regulated pollutants, and they may only include provisions that are part of the state's NAAQS control strategy. The Nuisance Rule is a general prohibition against public nuisances, not an emission limit or standard intended to control NAAQS regulated pollutants. The former Ohio Air Pollution Control Board never determined, demonstrated, or even considered, in 1972 when the nuisance rule (then AP-02-07) was submitted, or in 1974 when the nuisance rule was approved as part of the SIP, that the nuisance rule was "necessary or appropriate" to attain and maintain the NAAQS. And Ohio has since affirmed that it has never relied on the Nuisance Rule or intended to rely on the Nuisance Rule in any attainment demonstration or otherwise considered the Nuisance Rule to be part of its NAAQS control strategy. Accordingly, the Nuisance Rule should never have been included in Ohio's SIP, and our associations support EPA's decision to correct the error, as it has done in many other states, using CAA Section 110(k)(6).

Sincerely,

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02/09/1979

VOC570209791

Category: 57 – Exemptions/Applicability

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460
February 9, 1979

Office of
General Counsel

MEMORANDUM

SUBJECT: Status of State/Local Air Pollution Control
Measures Not Related to NAAQS

FROM: Michael A. James, Associate General Counsel
Air, Noise and Radiation Division (A-133)

TO: Regional Counsels
Regional Air Branch Chiefs

I want to bring to your attention an issue that I neglected asking Jeff Corer and Larry Novey to mention at the Air Branch Chiefs' Meeting in Atlanta last week. That issue is the status on the SIP of State or local air pollution control measures that are not designed to control national ambient air quality standard (criteria) pollutants or their precursors.

OGC has always advised the Regions that measures to control non-criteria pollutants may not legally be made part of a SIP. Section 110 of the Clean Air Act makes clear that the SIPs have this limitation.¹ This limited scope seems to be pretty well understood and only rarely does a Regional Office include a non-criteria pollutant measure in a SIP approval proposal.

I mention this now because as States submit their major SIP revisions to meet the new requirements of Part D and other provisions of the 1977 Amendments, they may not always differentiate between their regulations to control criteria pollutants and their air pollution control regulations in general. The Regional Office should differentiate if the State does not. The usual practice is that the Region notes in the proposed approval/disapproval preamble that EPA is not taking any action on an identified non-criteria pollutant measure because it cannot legally be part of the SIP.

Regulations for controlling odors, fluorides,² and arsenic are some of the non-criteria pollutant measures that have been included in State submissions for EPA approval. Visible emissions regulations are, to my knowledge, always considered SIP measures and are required for many source

¹ Measures that are not part of the approved SIP may not be enforced by EPA.

² State fluoride regulations covering certain source categories are subject to EPA approval under S 111(d), but not as parts of SIPs.

categories by 40 CFR 51.19©). If you have any questions about whether a particular emission limitation may be included in the SIP, please contact OAQPS staff on technical issues, and my staff on legal questions.

cc: Dick Rhoads
Steve Kuhrtz



June 1, 2020

VIA WWW.REGULATIONS.GOV

United States Environmental Protection Agency
Office of Water, Office of Wastewater Management (4203M)
1200 Pennsylvania Avenue, NW,
Washington, DC 20460

Re: Comments to the 2020 Issuance of the proposed USEPA NPDES Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity: Docket ID EPA-HQ-OW-2019-0372

Dear Sir/Madam:

Pursuant to USEPA's Public Notice, issued on March 2, 2020 (85 Fed. Reg. 12288, Federal Register No. 2020-04254), The Ohio Manufacturers' Association (OMA) is hereby providing USEPA with written comments on USEPA's proposed NPDES Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (MSGP).

The OMA is dedicated to protecting and growing manufacturing in Ohio. The OMA represents over 1,300 manufacturers 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.

Although Ohio is a delegated state for stormwater NPDES permitting, our membership of Ohio manufacturers are concerned about the guidance that this USEPA MSGP may provide to delegated states such as Ohio. We submit these comments in accordance with the June 1, 2020 extended comment deadline.

Of note, this proposed draft MSGP continues a recent trend towards a more top-down, command-and-control approach to stormwater regulation, with a highly prescriptive stormwater sampling/corrective action regime as its cornerstone. Prime examples of this trend in the draft MSGP include the Additional Implementation Measures (AIM), the Universal Benchmarks, and the new, voluminous Appendix Q of Stormwater Control Measures (SCMs). This is a most unfortunate trend that increases the regulatory burden on industry with no tie to a corresponding, quantifiable benefit to receiving waters. The new requirements in the proposed MSGP go well beyond what is required by the 2016 MSGP settlement and beyond what Congress intended in the Clean Water Act.

The following are additional detailed comments on the draft MSGP:

1. Request for Comment 2: Coal-Tar Sealcoat Prohibition

There appears to be some confusion that all sealcoat products are “coal-tar sealcoats”, although this is not the case. In fact, USEPA has indicated in its MSGP fact sheet that there are viable alternatives that include “asphalt emulsion sealants and acrylic sealants”. Therefore, we suggest that a sentence be added to Section 1.1.8 to indicate alternatives that can be used instead of coal-tar sealcoats, such as “Substitutes for coal-tar sealcoats are available, such as asphalt emulsion sealants and acrylic sealants.”

Additionally, there may be regulated facilities who use coal-tar sealcoats in only limited areas of their facilities. If the agency keeps Section 1.1.8, it should include a de minimis exception based on the ratio of the area with coal-tar sealcoats to the overall drainage area of the permitted facility.

2. Request for Comment 4: 60-day Discharge Authorization Wait Period

We oppose this new 60-day wait period for discharge authorization. It is a needless expansion of the NOI processing times, and would allow USEPA to relax on permit processing efficiency by extending the permit backlog processing times with impunity. The regulated community needs efficient permit processing, which includes timely feedback on their permit applications, including application deficiencies.

There is an existing category in Table 1-2 of the MSGP for “[e]xisting facility without permit coverage” that specifies discharge authorization in “30 calendar days after EPA notifies you that it has received a complete NOI, unless EPA notifies you that your authorization has been denied or delayed.” Therefore, USEPA already has the ability to deny or delay authorization for unpermitted sites with pending stormwater enforcement action without the need of the proposed new category. USEPA just needs to continue to improve their permit processing efficiency to make these denial or delay determinations in a timely manner under the current category, without the need for this proposed category.

3. Request for Comment 6: Public Posting of Permit Coverage

We oppose this new proposal for public posting of permit coverage. It is another capricious expansion of the existing MSGP “process” without any stormwater benefit. There are already USEPA and state EPA websites that list stormwater permittees. The enforcement risk for “non-compliance of process” is real, such as inadvertent non-posting, or not posting in the “right” location. This requirement would also add the burden of maintenance of the sign, often in natural bank environment that would disturb surrounding vegetation and create a visual obstruction to the natural water system. This proposal also raises precedential concerns on public postings of other non-stormwater operating permit programs.

4. Request for Comment 7: No Exposure Certification Acronym from “NOE” to “NEC”

We agree with this proposal to change the acronym for No Exposure Certification from “NOE” to “NEC” to more accurately represent what the acronym stands for.

5. Request for Comment 8: Enhanced Stormwater Controls for Major Storms

We oppose the proposed Section 2.1.1.8 for prescriptive enhanced flood controls, because the MSGP is an environmental permit, not a one-size-fits-all nationwide stormwater design manual. Flood controls have been, and continue to be, addressed in federal, state and local flood control laws, rules and ordinances as well as in local stormwater design codes and manuals.

We are also concerned that these proposed requirements appear to be regulating stormwater flowrate and volume as a “stormwater pollutant”, which is outside of the CWA’s permitting authority and which has been rejected by the courts. If implemented, USEPA would become a flood management agency, sharing the responsibility and liability for failures of any flood controls implemented under this section.

6. Request for Comment 9: Alternatives to Benchmark Monitoring

There has been over 20 years of stormwater sampling, with the data submitted to USEPA and/or the state EPAs. This existing stormwater dataset should be sufficient for USEPA to make characterizations about industrial sites’ stormwater discharges in order to provide some stormwater sampling relief. Unfortunately, it appears that USEPA is moving in the opposite direction, towards greater stormwater sampling to meet expanded, lowered benchmarks, coupled with more onerous, prescriptive corrective actions. This trend raises the enforcement liability for “non-compliance of process” on the regulated community, apart from any real stormwater quality benefit, and is characteristic of a top-down, command-and-control regulatory regime.

For these reasons, USEPA should develop alternatives to benchmark monitoring. In particular, the MSGP should provide improved off-ramps for facilities to rely on visual inspections, without analytical sampling, once they have developed record of meeting benchmarks. This is particularly true for the new Universal Benchmark monitoring requirements (see comment 7). Additionally, the benchmarks should align more closely with water quality standards, because in many cases the benchmarks are far more stringent than the applicable in-stream standard. Adjusting the benchmarks will relieve unnecessary burden by making the off-ramps more available and minimizing the risk of perpetual BMP escalation.

7. Request for Comments 10 & 13: Universal Benchmark Monitoring

We strongly oppose the introduction of stormwater benchmark requirements to **all permittees** with the addition of universal benchmarks. The intent of this new requirement has been addressed by the BMP approach in the MSGP, a successful cornerstone of stormwater management from a wide variety of sites.

Universal benchmark monitoring, at this point in time in the stormwater permitting program, would be more compliance “busy work” for no purpose other than to provide for more enforcement or citizen lawsuit opportunities for “non-compliance of process” in the implementation of these universal benchmark monitoring. Stormwater sampling is arduous, costly, and should be reserved for cases of known, significant stormwater pollutants (e.g., SARA Title III, Section 313 water priority chemicals), in order to mitigate real, actual pollution concerns.

Rather than mandating quarterly universal benchmark monitoring, USEPA should make this type of stormwater sampling an alternative to existing BMP approaches. Also, rather than mandating the three (3) parameters (i.e., pH, TSS, COD) for all permitted sites, each site should be able to determine which parameters should be monitored, if at all, if these parameters are significant stormwater pollutants from the site’s industrial activities. Another suggestion, if USEPA persists with this universal benchmark monitoring, is to mandate only pH monitoring, which is a cost-effective field test, and leaving benchmark monitoring of other parameters as optional. Additionally, if the universal benchmark is included, the proposed language should be revised to clarify that annual averaging is allowed and to add efficient and permanent off-ramps for those facilities that meet the benchmarks in the first year. Quarterly sampling for the entire permit period (and for subsequent permits) is unreasonable and of no substantive value.

Finally, once this universal benchmark monitoring is inserted into the MSGP, there is real concern that what starts out as three (3) parameters (i.e., pH, TSS, COD) will expand to a host of other parameters in future MSGPs.

8. Request for Comment 11: Inspection-only Option for “Low-Risk” Facilities

We support an “inspection-only” option, but are concerned about the potential for additional, onerous requirements to utilize this option. For this option to work, it should not end up involving more resources on the regulated community than what is required for benchmark monitoring. We would recommend that the quarterly facility inspections (Part 3.1 of the draft MSGP) be the basis for this inspection-only option, perhaps at increased frequency (e.g., monthly).

Also, the “Qualified Personnel” defined in Appendix A of the draft MSGP should be the person(s) able to perform the inspections under this option, and the qualification requirements should not be made more restrictive (e.g., no specialized licensures). Many environmental laws allows facility personnel/authorized representatives to certify environmental results, and this precedent should apply to the inspection-only protocols under the MSGP, where facility personnel knowledgeable about the site conditions is qualified to certify under the MSGP.

Additionally, the “inspection-only” option should be available to facilities that have historically met benchmarks, with the inspection protocol providing the basis for continued compliance.

9. Request for Comment 19: Site-specific Benchmark Basis

We support this proposal for this “off-ramp” from the copper national benchmarks, on a site-specific basis, and suggest that this site-specific risk assessment “off-ramp” option be made available for all of the other benchmark parameters.

10. General Comments on Additional Implementation Measures (AIM)

We strongly oppose the introduction of the Additional Implementation Measures (AIM) to the MSGP. We note that this requirements has been added solely as a result of a 2016 USEPA “sue-and-settle” case, (now contrary to federal policy) in which the regulated community was not given adequate opportunity to provide input or to object. The AIM attempts to impose a definitive SCM requirement on all facilities, irrespective of relevance or benefit, and without any link at all to in-stream water quality. This proposal simply goes far beyond the reach of the CWA.

If USEPA intends to finalize the AIM provisions, over our objections, then the potential exists for many sites to be in “perpetual” “non-compliance of process”. To mitigate this untenable situation, all of the proposed exceptions provided for each of the three (3) AIM tiers should be made available to every tier: (a) background or run-on, (b) “aberrant event”, and (c) demonstration that the stormwater discharges do not result “...in any exceedance of water quality standards...” Additionally, if AIM is included, USEPA must update all benchmarks to link them to actual water quality standards, as a minimum benchmark, not urban run-off studies from the 1970s and early 1980s.

In addition, we propose a fourth AIM exception, which is a non-industrial pollutant source demonstration, where the benchmark chemical(s), such as Zinc, is not from the industrial activities of the site (e.g., not in raw materials), but from ubiquitous items (e.g., building envelope, fencing) found in every industrial, non-industrial and residential sites.

Regarding the AIM compliance schedules, subject to our objections to the unreasonable, rigid nature of the new Appendix Q requirements, we further object to the time frames for compliance with AIM triggers. If included in the final MSGP, these time frames must include more flexibility for facility management to review, develop and secure funding for the new SCMs, which in some cases will involve ordering new equipment, modifying site layout, constructing new control features, and retaining experts to assist in planning. The “hammers” of 30 and 45 days reflect the top-down, command and control regulatory approach that unnecessarily burdens businesses. A simple narrative time frame will achieve the same water quality goals without creating “noncompliance of process” issues.

Also, in order to not overwhelm all USEPA offices with applications for approvals of AIM exceptions, sites that are able to make AIM exception claims should be required to

document these exceptions in their SWPPP, subject to disclosures already provided for in the MSGP, but not needing USEPA approval.

11. Request for Comment 21: Additional AIM Tier 1 Trigger for Facility Changes

We oppose this additional AIM Tier 1 trigger based on facility changes, as it is qualitative in nature, and risks subjective interpretation. The AIMS, as proposed, are onerous requirements, unlike a SWPPP review and revision (per Part 4.2 of the 2015 MSGP), so any AIM trigger needs to be quantitative in nature to address actual stormwater pollution.

12. Request for Comment 22: “Aberrant Event” AIM Exception

With reference to our previous AIM general comments, we are in support of extending this “aberrant event” exception from AIM to all three (3) tiers. In addition, we had suggested another exception to the AIM provisions, which is a non-industrial pollutant source demonstration, where the benchmark chemical(s), such as Zinc, is not from the industrial activities of the site (e.g., not in raw materials), but from ubiquitous items (e.g., building envelope, fencing) found in industrial, non-industrial and residential sites.

Also, in order to not overwhelm all USEPA offices with applications for approvals of AIM exceptions, sites that are able to make AIM exception claims should be required to document these exceptions in their SWPPP, subject to disclosures already provided for in the MSGP, but not needing USEPA approval.

13. Request for Comment 23: “Discharges Not Resulting in any Exceedance of Water Quality Standards” AIM Exception

With reference to our previous AIM general comments, we are in support of extending this AIM exception for “discharges not resulting in any exceedance of water quality standards” to all three (3) tiers. Again, in order to not overwhelm all USEPA offices with applications for approvals of AIM exceptions, sites that are able to make AIM exception claims should be required to document these exceptions in their SWPPP, subject to disclosures already provided for in the MSGP, but not needing USEPA approval.

14. Request for Comment 24 & 25: Natural Background AIM Exception

With reference to our previous AIM general comments, we are in support of extending this natural background exception from AIM to all three (3) tiers. However, it is our observation that the definition of “natural background” is too strict to be practically useful. By this, we mean that it is commonly interpreted that “natural background” means pre-Industrial Revolution, undisturbed soils - a situation which does not exist outside of the most pristine of the National Parks.

The reality is that what constitutes natural background is highly location-specific, and as varied as the topography and land use of this country. A greater acceptance of this variability in “natural backgrounds” is needed, as has been the case in other USEPA programs. A good definition of what is “natural” is warranted (e.g., undeveloped, rural, agricultural), but may be a challenge in the current political climate.

We believe that the National Stormwater Quality Database (NSQD) is a good resource to define the “natural backgrounds” from developed, urban areas. If agricultural lands are assumed to constitute the “natural background” of soils, then data from USDA and/or Soil and Water Conservation Districts could also be good resources.

Another suggestion is for USEPA to allow for the methods prescribed in other USEPA programs (e.g., Superfund) for determining natural background for stormwater compliance.

We also agree that the exception for natural and run-on background contributions must allow for a demonstration that but for the background contribution, the facility’s discharge would meet benchmarks. In practice, many jurisdictions already acknowledge this important component of a background exception and it would simply reflect the actual facility discharge.

Finally, the run-on exception in Section 5.2.4.2 should be revised to remove the conditions related to notifying the upstream party and USEPA. This poses an onerous burden on the innocent party to play “police”. While in some cases the regulated parties will in fact notify the neighboring contributor as a matter of its normal business relationships, in other cases such an approach could result in business interruptions.

15. Appendix Q – Stormwater Control Measures (SCM)

We are strongly opposed to the inclusion of the new Appendix Q of SCMs in the MSGP. Instead, this extensive list of SCMs should be made a separate USEPA guidance document, and not be a part of the MSGP or otherwise imposed as a requirement in any way.

At a time when our leaders are talking about regulatory reform and making regulatory programs more efficient, it is disappointing that USEPA is “ballooning” the MSGP with the proposed **672-page** Appendix Q of SCMs, forming the majority of this **1000+ page MSGP!** USEPA may have intended to provide more guidance to the regulated community with this appendix, but its inclusion has the unfortunate consequence of imposing greater legal jeopardy on the regulated community.

The inclusion of this Appendix Q in the MSGP requires permittees to wade through its 672-pages to ensure compliance with all applicable SCMs, with the real potential of legal liability of missing SCM items, even if due to inadvertent human error. In addition, each SCM in Appendix Q is followed by the requirement for the permittee to state the “Reason Why Inappropriate/Not Done”. Again, this raises concerns about “non-compliance of process” for not answering the SCM question to the satisfaction of USEPA and in fact flips the idea of facility-selected BMPs entirely on its head: under the new proposal, USEPA has selected the BMPs as the starting point for facility management.

May 26, 2020

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Another concern with this Appendix Q is that what is now a 672-page appendix will “balloon” out even more with each future MSGP renewal. Therefore, we again strongly oppose the inclusion of this Appendix Q of SCMs in the MSGP, and suggest that it be made a separate USEPA guidance document.

The OMA appreciates the opportunity to comment on the MSGP. We look forward to the Agency’s incorporation of our recommendations in the final MSGP. If USEPA has any questions regarding the foregoing, please do not hesitate to contact me (614-629-6814) or OMA’s environmental counsel, Frank Merrill at Bricker & Eckler LLP (614-227-8871).

Regards,



Rob Brundrett
Director, Public Policy Services

cc: Frank L. Merrill, Esq.

Environment

OMA Environment Committee Receives Air Update; Cincinnati, Cleveland Could See Tighter Ozone Regs May 29, 2020

This week, the OMA Environment Committee met virtually for its second meeting of 2020. Among the guest speakers was Bob Hodanbosi, the longtime chief of air pollution control at Ohio EPA, who updated members on Ohio's current air quality status.

While Ohio has seen "dramatic improvement" in its air quality, Hodanbosi reported that it's "not good enough" to meet certain federal standards, primarily in the category of ozone. The Cincinnati and Cleveland areas are **both at high risk** of being elevated to "moderate non-attainment" status due to the more stringent, 70-parts-per-billion ozone standard imposed by the U.S. EPA in 2015. An elevated status for either city would mean tighter controls on emitting industries. See Hodanbosi's **PowerPoint presentation**.

OMA members also heard updates on federal and state issues, as well as a report from OMA Environmental Counsel Frank Merrill of Bricker & Eckler. The committee **will meet again Sept. 29**. 5/28/2020

Senate Passes Amended Auxiliary Container Pre-Emption Bill May 29, 2020

The Ohio Senate has passed **House Bill 242**, legislation that is supported by the OMA and **Senate Committee Passes OMA-Supported Auxiliary Container Preemption Bill**
May 22, 2020

This week a Senate committee passed **House Bill 242** along party lines. The bill prohibits local governments from placing fees or taxes on auxiliary containers or packaging including plastic bags and cardboard containers. The bill was amended to sunset after 12 months. The OMA **provided proponent testimony** and has actively worked to pass the bill in both the House and Senate. 5/21/2020

packaging manufacturers to **prohibit** local governments from placing fees or taxes on auxiliary containers or packaging, including bags. Last week, the Senate committee that heard the bill added an amendment that sunsets HB 242's provisions after 12 months. The bill will go to the House for a potential concurrence vote. 5/28/2020

OMA Files Comments on SIP Nuisance Rule May 29, 2020

Last week, the OMA led a coalition of business groups by **filing comments** to the U.S. EPA's correction of the inclusion of Ohio's air pollution nuisance rule. The comments support the U.S. EPA's proposal to remove the nuisance rule from Ohio's state implementation plan (SIP). Ohio's public nuisance provision is a general rule prohibiting public nuisances and has no connection with the purposes for which SIPs are developed and approved. Manufacturers often find themselves in the crosshairs of lawsuits based on the SIP provision, even while in compliance with the permit limits. 5/28/2020

June 9 Webinar Will Focus on Environmental Compliance During COVID-19 May 29, 2020

OMA Connections Partner Thompson Hine will host a free webinar at 1 p.m. (ET) on Tuesday, June 9, to address environmental compliance in a COVID-19 world. The webinar will focus specifically on best practices and risk mitigation strategies. **Register here**. 5/28/2020

U.S. EPA Updates FAQs on Disinfecting May 15, 2020

The U.S. EPA has updated its **FAQs page** on disinfectants and COVID-19. Included are responses to questions about **UV lights and air purifiers, hand sanitizers, and fumigation**. 5/13/2020

Ohio Lake Erie Commission Releases 2020 Plan May 15, 2020

The Ohio Lake Erie Commission recently approved its 2020 Lake Erie Protection and

Restoration Plan (LEPR). The LEPR, last published in 2016, reflects actions that the commission and its member agencies will take over the next several years to protect and restore the lake, while promoting economic development for the region. The state's actions complement federal and local initiatives. The plan is available at the **Ohio Lake Erie Commission website**. *5/14/2020*

Ohio Submits 2020 Integrated Water Quality Monitoring and Assessment Report

May 15, 2020

This week, the Ohio Environmental Protection Agency submitted the final 2020 Integrated Water Quality Monitoring and Assessment Report to U.S. EPA for approval. The final report is **available here**. *5/14/2020*

Ohio EPA Asks for Comments on Ephemeral Streams and Isolated Wetlands Permit

May 15, 2020

Ohio EPA has issued a public notice for a new general permit, titled "Ohio General Permit for Filling Category 1 and Category 2 Isolated Wetlands and Ephemeral Streams." This covers the filling of, and the discharge of, dredged material into ephemeral streams determined to not be waters of the U.S. and not subject to Section 404 or 401 of the Clean Water Act. Ohio EPA's stated intent with the general permit is to fill gaps in the regulatory landscape after the issuance of U.S. EPA's Navigable Waters Protection Rule.

Ohio EPA has asked that comments on the general permit be submitted by June 1. All comments should be submitted by **email** or by U.S. Mail, sent to: Ohio EPA, Division of Surface Water – Permits Processing Unit, P.O. Box 1049, Columbus, Ohio 43216-1049. Please let **Rob Brundrett** know if your company is interested in submitting comments. Meanwhile, on May 21, OMA environmental counsel Bricker & Eckler LLP will be hosting an **informative webinar** on this issue, as well as the impacts of the District of Montana decision on Nationwide Permit 12 and Ohio EPA's 401 water quality certifications. *5/14/2020*

Lake Erie Remains at Record High Levels

May 8, 2020

Lake Erie last month broke its April record, rising 9 inches above the April 2019 level. The U.S. Army Corps of Engineers says the lake has broken high water average records for eight of the last 12 months, according to **reports**. *5/6/2020*

U.S. EPA Will Hold Call on Disinfecting the Workplace

May 1, 2020

Ohio business leaders are invited to take part in a call with U.S. EPA Administrator Andrew Wheeler on Monday, May 4, at 4:15 p.m. (ET). Call-in line is (866) 609-6049, followed by this code: 6429667.

The call will focus on the recent guidance from the EPA and the Centers for Disease Control and Prevention (CDC) to help facility operators and families properly clean and disinfect spaces to prevent the spread of COVID-19.

The call will include a question and answer session for Ohio businesses in attendance. If a company would like to ask a question, **email EPA staff**. *4/30/2020*

U.S. EPA and Army Corps Publish Final WOTUS Rule

May 1, 2020

The U.S. EPA and the Army Corps of Engineers recently published the long-awaited final "waters of the United States" rule, which defines the scope of waters that are federally regulated under the Clean Water Act. It will go into effect June 22. According to **analysis** by OMA Connections Partner Thompson Hine, industry groups and agricultural groups have hailed the Trump administration's rule, but legal battles are on the horizon. *4/28/2020*

Post-COVID-19 Environmental Compliance Checklist

May 1, 2020

As companies begin re-opening or resuming normal operations, OMA Connections Partner Thompson Hine has developed **this checklist** that businesses can use to assess their environmental compliance status following

the lifting or reduction of federal and state limitations and guidelines. *4/28/2020*

U.S. Supreme Court Rules that the Clean Water Act Regulates Groundwater

April 24, 2020

In a 6-3 opinion issued Thursday, April 23, the **U.S. Supreme Court ruled** that the federal Clean Water Act regulates activities releasing pollutants that are eventually conveyed through groundwater to navigable water. Rejecting the Trump administration's views, the majority ruled in ***County of Maui v. Hawaii Wildlife Fund et al.*** that a permit is required when there is a direct discharge from a point source into navigable waters, or when there is the "functional equivalent of a direct discharge." According to the OMA's legal counsel, Bricker & Eckler, the Supreme Court's decision is likely to have far reaching implications for permitting and enforcement pursuant to the Clean Water Act. *4/23/2020*

Ohio EPA's Earth Day Reminder: Free, Confidential Compliance Assistance Available

April 24, 2020

To mark the **50th anniversary celebration of Earth Day**, Ohio EPA this week noted that half a century ago, businesses had few places to go for guidance with environmental issues. Today, Ohio's businesses can contact Ohio EPA for free and confidential compliance assistance. According to the agency, compliance staff has assisted more than 80,000 businesses. **Learn more here.** *4/22/2020*

U.S. EPA Proposes to Retain Current Particulate Matter Standards

April 17, 2020

On April 14, U.S. EPA **proposed to retain** the current national ambient air quality standards (NAAQS) for particulate matter (PM) without revision. After reviewing the air quality criteria and primary and secondary NAAQS for fine and coarse PM, the agency concluded that there is insufficient scientific evidence to support tightening these standards. U.S. EPA Administrator Andrew Wheeler stated he believes the current levels will be protective of public health while the agency continues to

evaluate PM. EPA will accept public comment for 60 days after the proposed standards are published in the Federal Register. *4/16/2020*

\$9M Awarded to Great Lakes Restoration Efforts

April 17, 2020

This week, the U.S. EPA **announced** 15 Great Lakes Restoration Initiative (GLRI) grants totaling more than \$9 million to fund projects addressing excess nutrient runoff from non-point sources, including stormwater and agriculture, to the Great Lakes. Approximately \$2.5 million of this amount will be going to Ohio entities. *4/14/2020*

Honda, GM Announce Jointly Developed Electric Vehicles

April 10, 2020

General Motors and Honda **recently announced** an agreement to jointly develop two new Honda electric vehicles (EV) using GM's global EV platform powered by proprietary batteries. The vehicles are scheduled to be released for the 2024 model-year. "This collaboration will put together the strength of both companies, while combined scale and manufacturing efficiencies will ultimately provide greater value to customers," said Rick Schostek, executive vice president of American Honda Motor Co. Meanwhile, U.S. Sen. **Rob Portman** (R-OH) and U.S. Rep. **Tim Ryan** (D-Niles) celebrated the news, noting that the cars would use batteries made at the forthcoming Lordstown plant. *4/7/2020*

H2Ohio Funding at Risk Due to Pandemic

April 10, 2020

The **H2Ohio program** could see its funding cut due to reductions in state spending during the coronavirus outbreak. Hannah News Service reported this week that Ohio Department of Agriculture Director Dorothy Pelanda said the program will undergo a budgetary "reevaluation" along with other agency programs as a result of the pandemic. Earlier this year, Gov. Mike DeWine and Pelanda announced that \$30 million in H2Ohio funding would be made available for farmers in 14 Northwest Ohio counties to reduce

agricultural phosphorous pollution, which is the most significant contributor to the formation of harmful algal blooms in Lake Erie. *4/7/2020*

Fuel Economy Rules Rolled Back

April 3, 2020

On March 31, the Trump administration **announced** it had finalized its roll-back of the Obama-era fuel economy standards for automakers. The administration says the move will save 3,300 lives, as well as billions of dollars in added costs. Several environmental groups have already promised lawsuits over the new rule, which requires that auto fleets average 40 mpg by 2026 — versus 55 mpg by 2025.

The Alliance for Automotive Innovation, which represents major auto manufacturers, **said this week** that progress toward manufacturing more fuel-efficient vehicles will continue regardless. *3/31/2020*

Ohio EPA Advises Against Flushing Wipes

April 3, 2020

You knew this was coming: As some Ohioans search for alternatives to toilet paper, Ohio EPA this week **issued an advisory** to not flush any product other than toilet paper to avoid clogging sewers and septic systems. *3/31/2020*

Ohio EPA COVID-19 Guidance

March 27, 2020

Ohio EPA has announced that all regulated entities remain obligated to take all available actions necessary to ensure compliance with environmental regulations and permit requirements.

Of course, in some instances regulated entities will have an unavoidable non-compliance situation directly related to COVID-19. In these cases, the director of Ohio EPA may consider providing regulatory flexibility, where possible, to assist entities in alternative approaches to maintaining compliance, such as extending reporting deadlines, waiving late fees, and exercising enforcement discretion.

An **email address** has been established by the agency to accept such requests. **Click here** for more details. *3/26/2020*

Ohio EPA Requests Electronic Filings of Plans, Permit Applications

March 27, 2020

Ohio EPA has **announced** that because its district offices and central office are temporarily closed, businesses are encouraged to submit plans, permit applications, and other required documents electronically when there are existing avenues to do so, such as eBiz. Plans under 25 MB can be emailed. For large plans over 25 MB, entities should work with the reviewer/division to upload via LiquidFiles. Directions for submitting docs via LiquidFiles are **available on YouTube**. *3/25/2020*

How to Contact Ohio EPA Staff During the COVID-19 Crisis

March 20, 2020

Due to COVID-19 concerns, Ohio EPA is currently operating with many staff members working remotely. The agency wants businesses to know that if you are working with staff on a current project — and you know the name of the employee you are working with — you can email them using this

format: **firstname.lastname@epa.ohio.gov**. Or call the employee directly.

The **agency's website** has contact information for every district, division, and office. Businesses can contact Ohio EPA's main phone line at (614) 644-3020. To report a spill or environmental emergency, contact the spill hotline (800) 282-9378 or (614) 224-0946. *3/20/2020*

OMA Submits Comments on Two Lake Erie Plans

March 6, 2020

This week, the **OMA submitted comments** on two different clean water draft plans issued by the Ohio Lake Erie Commission.

Earlier this year, officials announced the release of the updated **Ohio Domestic Action Plan**, aimed at reducing phosphorus in Lake Erie under the bi-national Great Lakes Water Quality Agreement. Last month, the **Lake Erie Protection and Restoration Plan (LEPR)** for 2020 was also released for public comment. The LEPR, last published in 2016, reflects actions that the Ohio Lake Erie Commission and its member agencies will take during the next several years.

The OMA has created a water nutrient working group to respond and actively engage on water quality issues to ensure that manufacturing interests are heard. *3/5/2020*

Testing Begins for PFAS in Ohio Drinking Water

March 6, 2020

Ohio EPA **has begun collecting samples** to test for the presence of certain per- and polyfluoroalkyl substances (PFAS) in Ohio's

drinking water. Ohio EPA expects to complete its sampling of Ohio's 1,500 public water systems by the end of 2020. The agency has created **this site** for updates. (It's worth noting that testing for PFAS in human blood has shown **significant declines** over the past decade thanks to collaborative efforts led by manufacturers.)

The OMA has created a working group to address PFAS-related issues and possible impacts to manufacturers. If you would like to learn more or participate, contact OMA's **Rob Brundrett**. *3/2/2020*

Environment Legislation

Prepared by: The Ohio Manufacturers' Association
Report created on June 1, 2020

- HB7** **H2OHIO PROGRAM** (GHANBARI H, PATTERSON J) To create the H2Ohio Trust Fund for the protection and preservation of Ohio's water quality, to create the H2Ohio Advisory Council to establish priorities for use of the Fund for water quality programs, and to authorize the Ohio Water Development Authority to invest the money in the Fund and to make recommendations to the Treasurer of State regarding the issuance of securities to pay for costs related to the purposes of the Fund.
Current Status: 10/22/2019 - Senate Finance, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-7>
- HB94** **LAKE ERIE DRILLING** (SKINDELL M) To ban the taking or removal of oil or natural gas from and under the bed of Lake Erie.
Current Status: 9/17/2019 - House Energy and Natural Resources, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-94>
- HB95** **BRINE-CONVERSION OF WELLS** (SKINDELL M) To alter the Oil and Gas Law with respect to brine and the conversion of wells.
Current Status: 9/17/2019 - House Energy and Natural Resources, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-95>
- HB242** **BAN PLASTIC BAG FEES** (LANG G, JONES D) To authorize the use of an auxiliary container for any purpose, to prohibit the imposition of a tax or fee on those containers, and to apply existing anti-littering law to those containers.
Current Status: 5/27/2020 - **PASSED BY SENATE**; Vote 23-9
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-242>
- HB340** **DRAINAGE LAW** (CUPP B) To revise the state's drainage laws.
Current Status: 5/27/2020 - **REPORTED OUT AS AMENDED**, House State and Local Government, (Sixth Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-340>
- HB491** **PLASTIC POLLUTION AWARENESS DAY** (CRAWLEY E) To designate the fifteenth day of February as "Plastic Pollution Awareness Day."
Current Status: 2/11/2020 - Referred to Committee House State and Local Government
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-491>
- HB497** **SAFE DRINKING WATER ACT** (LIGHTBODY M, RUSSO A) To require the Director of Environmental Protection to adopt rules establishing maximum allowable contaminant levels in drinking water and water quality standards for certain contaminants.
Current Status: 2/11/2020 - Referred to Committee House Health

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-497>

- HB522** **WASTE DISPOSAL - CONSERVANCY DISTRICTS** (SOBECKI L, SWEARINGEN D) To authorize conservancy districts to provide for the collection and disposal of solid waste.
Current Status: 3/10/2020 - Referred to Committee House State and Local Government
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-522>
- HB675** **REGARDING CLEAN OHIO PROGRAM** (HILLYER B, SWEARINGEN D) Relating to the Clean Ohio Program and to make an appropriation.
Current Status: 5/27/2020 - Referred to Committee House State and Local Government
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-675>
- HR247** **AIR QUALITY STANDARDS** (ROEMER B) To respectfully urge Congress and President Donald Trump to amend the Federal Clean Air Act to eliminate the requirement to implement the E-Check Program and direct the Administrator of USEPA to begin new rule-making procedures under the Administrative Procedures Act to repeal and replace the 2015 National Ambient Air Quality Standards; to respectfully urge Congress and President Donald Trump to pass legislation to achieve improvements in air quality more efficiently while allowing companies to innovate and help the economy grow; to urge the Administrator of USEPA to alleviate burdensome requirements of the E-Check Program and the Clean Air Act if Congress and the President fail to act; and to encourage OEPA to explore alternatives to E-Check in Ohio.
Current Status: 2/20/2020 - **PASSED BY HOUSE**; Vote 62-29
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HR-247>
- HR307** **PLASTIC POLLUTION AWARENESS DAY** (CRAWLEY E) Designating Plastic Pollution Awareness Day in Ohio, February 15, 2020.
Current Status: 2/4/2020 - Introduced
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HR-307>
- SB2** **STATEWIDE WATERSHED PLANNING** (PETERSON B, DOLAN M) To create a statewide watershed planning structure for watershed programs to be implemented by local soil and water conservation districts.
Current Status: 2/19/2020 - **BILL AMENDED**, House Energy and Natural Resources, (Fifth Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-2>
- SB50** **INCREASE SOLID WASTE DISPOSAL FEE** (EKLUND J) To increase state solid waste disposal fee that is deposited into the Soil and Water Conservation District Assistance Fund, and to make an appropriation.
Current Status: 4/2/2019 - Senate Finance, (Second Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-50>

To: OMA Government Affairs Committee
From: Ryan Augsburg / Rob Brundrett
Re: Human Resources Report
Date: June 3, 2020

Overview

COVID-19 has turned state government on its head. Ohio has found itself with unprecedented increases in unemployment. State agencies and services are stretched thin.

Ohio's unemployment compensation system blew through what little reserves it contained and Ohio made a request to borrow \$3 billion from the federal government to ensure that state payments would still be made to claim filers.

A large amount of legislation has been introduced impacting employers, employees, and the state unemployment compensation system.

The Lt. Governor continues to champion workforce solutions including TechCred and Industry Sector Partnerships. Both were able to avoid the budget ax as agencies were required to cut expenses due to the unprecedented shortfall in state tax revenue.

The OMA plans to host its fourth annual OMA Workforce Summit at the end of October. The plan is to hold the event virtually. Continue to be on the lookout for more information over the course of the summer.

General Assembly News and Legislation

House Bill 2 – Credential Assistance Program

The budget bill included money for credential assistance and industry sector partnerships. The House removed the funding language from the budget bill and introduce a piece of legislation based on the budget recommendations. HB 2 is a priority workforce bill in the House. The OMA is supportive of the purpose of the legislation and is working with the bill sponsors to ensure that the money allocated will be used in programs that support the OMA industry sector partnership network.

The House and Senate shifted gears in conference committee and included all workforce funding in the budget bill but implementation language remains with HB 2. The Senate recently passed House Bill 2 from its Finance Committee and is awaiting a full floor vote which is expected as early as this week. The OMA was able to get several changes in the bill to benefit the statewide sector partnership network and industry sector partnership grant program.

Senate Joint Resolution 4 – Bond Unemployment Compensation Debt

The bill proposes to enact Section 18 of Article VIII of the Constitution of the State of Ohio to allow the General Assembly to provide for the issuance of obligations to repay outstanding advances made by the federal government to the unemployment compensation program of the state. The OMA has supported a bonding alternative to help pay off unemployment compensation debt. OMA provided proponent testimony on the bill this week.

Senate Bill 9 – Health Plan Claim Information

The bill requires a health plan issuer, beginning in July 2020, to release specific information to a requesting group policyholder. This information includes, net claims data paid or incurred by month, monthly enrollment data, monthly prescription claims information, and, for paid claims

over \$30,000, the amount paid toward each claim and claimant health condition. The bill has passed the Senate and House. Conference committee is expected this week.

Senate Bill 11 – Ohio Fairness Act

The bill prohibits discrimination on the basis of sexual orientation or gender identity or expression. The bill adds 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. The bill also upholds existing religious exemptions under Ohio's Civil Rights Law. OMA was supportive of the House version in the previous General Assembly. The Senate has held three hearings on the bill but none since last May.

House Concurrent Resolution 17 – Expand SNAP Benefits to Striking Workers

The Resolution Congress to expand Supplemental Nutrition Assistance Program eligibility to include the households of striking workers. The resolution has had one hearing in the House.

House Bill 21 – Unemployment Comp: Mass Layoffs

The bill would grant an additional 25 weeks of unemployment benefits to an individual who was laid off or separated from their most recent employment as part of a group of 75 or more individuals who were laid off or separated by the same employer within a seven-day period due to lack of work. The bill is a major concern for manufacturers and other businesses who fund the unemployment system.

House Bill 34 – State and Local Minimum Wage Increase

The bill would increase the state minimum wage and to allow municipalities, townships, and counties to establish higher minimum wage requirements. The bill had one hearing in January.

House Bill 91 – Family Medical Leave

The bill would establish family and medical leave insurance benefits. The bill has had one hearing in the House. House Insurance has held two hearings and is expected to hold at least one more hearing.

Senate Bill 92 – Wage Discrimination

The bill would enact the "Fair and Acceptable Income Required (FAIR) Act" and revises the enforcement of the prohibitions against discrimination in the payment of wages. The bill had its first hearing last March.

Senate Bill 94 – Pregnant Workers

SB 94 creates the "Ohio Pregnant Workers Fairness Act" to generally require employers to make reasonable accommodations for employees who are pregnant or breastfeeding. The bill has had one hearing.

Senate Bill 149 – Employee Wage History

The bill prohibits employers from seeking a prospective employee's wage or salary history. The bill had its first hearing this January.

Senate Bill 201 – Alternate Employer Organizations

The bill creates alternative employer organizations. The AEO mirrors the functions of PEOs (Professional Employer Organizations) with the exception that an AEO must file federal payroll taxes under the tax identification number of its client instead of its own, which is the traditional model. The bill has had three hearings.

Senate Bill 207 – Drug Test for Unemployment Benefits

The bill requires unemployment benefit applicants to take a drug test under certain circumstances, to create the Ohio Works First drug testing pilot program, and to make an appropriation. The bill has had one hearing.

House Bill 221 – Wage Discrimination Complaints

The bill would require the Ohio Civil Rights Commission to establish a system for individuals to make anonymous complaints regarding wage discrimination. It has had three hearing in the House.

Senate Bill 282 – Unemployment Comp Complaints

The bill would require the Director of Job and Family Services to establish a process for employers to make complaints regarding unemployment compensation benefits. The bill has not had any hearings.

House Bill 352 – Civil Rights Employment Law

The bill is Ohio's latest attempt to clean up its outdated and complex employment laws. The bill brings Ohio more closely in uniform with federal laws and includes the following changes:

Creates a uniform two-year statute of limitations for all employment discrimination claims.

- Unites the filing of age discrimination claims to the same procedures and remedies as all other protected classes.
- Eliminates individual statutory liability for managers and supervisors.
- Requires individuals file an administrative charge of discrimination with the Ohio Civil Rights Commission as a prerequisite to filing a discrimination lawsuit in court.
- Establishes certain affirmative defenses

The bill was reported out of House Committee last month.

House Bill 369 – Ohio Fairness Act

Much like its companion bill in the Senate, House Bill 369 prohibits discrimination on the basis of sexual orientation or gender identity or expression. The bill adds 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. The bill also upholds existing religious exemptions under Ohio's Civil Rights Law. OMA is supportive of the Senate version and is supportive of the House version.

House Bill 378 – Striking Employees Unemployment Compensation

The bill would provide unemployment benefits to striking workers. This would be a complete reversal of unemployment compensation law which is for workers who are unexpectedly out of work through no fault of their own. The OMA opposes this massive overreach.

House Bill 508 – Unemployment Compensation: Domestic Violence Victims

The bill allows an individual to be eligible for unemployment compensation benefits for unemployment due to domestic violence. The has not had any hearings.

House Bill 584 – Unemployment Compensation Work Requirements

The bill would temporarily change eligibility and work search requirements under the Unemployment Compensation Law and declares an emergency.

House Bill 588 – COVID-19 Public Assistance Programs

The bill would delay eligibility redeterminations for certain public assistance programs, temporarily modify income eligibility requirements for certain public assistance programs, and to declare an emergency.

House Bill 593 – COVID-19 Paid Leave

The bill requires paid leave for an employee who is unable to work due to quarantine or mandatory isolation, creates a grant program to compensate contract workers who cannot perform services during public health emergencies, makes an appropriation, and declares an emergency.

House Bill 614 – Unemployment Compensation Reform

House Republicans introduced House Bill 614. The bill's goal is to study and reform the application, processing, and administration infrastructure of Ohio's unemployment compensation system. The focus is not on solvency but instead the administrative challenges due to COVID-19. It has had numerous hearings in the House.

House Bill 672 – Worker Protection Act

The bill would allow Ohioans on unemployment to retain their jobless benefits if they are recalled or offered their jobs back. The bill is aimed at workers who are considered high risk under the following conditions: their employer does not comply with state safety guidelines, they are the primary caregiver, and their child care is not operating — or if they have COVID-19 symptoms or a positive diagnosis. OMA staff will continue to monitor this bill and similar legislation that could impact manufacturing employers.

Workforce Services

The OMA's fourth annual workforce summit will take place on October 28. Due to COVID-19 the event will be held virtually. More information will be coming over the summer.

TechCred

Last week, Lt. Gov. Jon Husted announced that Ohio's TechCred program — which reimburses employers that upskill current and incoming employees — will extend its focus to help unemployed individuals earn industry-recognized credentials. This will be beneficial for manufacturers.

The lieutenant governor also announced that the next TechCred application period (Round 4 of funding) begins Monday, June 1, and will run through June 30. More than 400 of the credentials approved for the program can be earned online.

In the last funding round (Round 3), which ended in late March 2020, 150 Ohio employers were approved for TechCred reimbursement. Manufacturers comprised the largest industry group of both applicants and awardees. So far, a total of 500 Ohio employers have been approved for reimbursement, resulting in up to 4,232 credentials for Ohioans.

Sector Partnership Grants

On Thursday, Jan. 23, Ohio Lt. Gov. Jon Husted announced the launch of the Industry Sector Partnership grant program. The program's development was spearheaded by the OMA to expand and enhance Ohio's partnerships and their workforce development efforts.

Established by House Bill 2 and funded through the state operating budget (HB 166), the program will invest \$5 million over two years to strengthen the state's network of industry sector partnerships.

There will only be one round of funding and it will be awarded in FY21 based off the applications submitted earlier this year.

Manufacturing Mentorship Program

The OMA lobbied hard in the budget for the creation of the Manufacturing Mentorship Program. The program allows 16 and 17-year olds to work in a manufacturing facility part time. For the first time minors will have the ability to work at a manufacturing facility without being attached a bone fide educational program. The Department of Commerce worked with the OMA and a workforce work group to develop the rules for the program.



**BEFORE THE FINANCE
COMMITTEE OF THE OHIO SENATE
SENATOR MATT DOLAN, CHAIRMAN**

**TESTIMONY
OF
ROB BRUNDRETT
DIRECTOR, PUBLIC POLICY SERVICES
THE OHIO MANUFACTURERS' ASSOCIATION**

JUNE 3, 2020

Mr. Chairman and members of the Senate Finance Committee, my name is Rob Brundrett and I am director of public policy services at The Ohio Manufacturers' Association (OMA). Thank you for the opportunity to provide proponent testimony on Senate Joint Resolution 4.

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

Senate Joint Resolution 4 proposes to enact Section 18 of Article VIII of the Ohio Constitution, which would allow the General Assembly to ask Ohioans in the November 3, 2020 General Election to approve obligations to repay a loan from the federal government to the Ohio unemployment compensation fund.

Bonds are typically repaid by employer fees but a lower rate than federal loans. If SJR4 passes in November, Ohio will be able to take advantage of its provisions immediately. As noted by the resolution's sponsor, this bonding method is only to be used if the state can obtain a lower interest rate than what the federal government offers. This is not a 'silver bullet' for the serious solvency problems of Ohio's unemployment compensation system. The program itself is structurally insolvent and comprehensive reforms are needed. The OMA and allied business groups have tried for years to enact comprehensive reform legislation, which included this bonding mechanism. While the OMA supports this standalone bonding provision, more reforms will eventually be needed to ensure Ohio's program gains solvency in order to meet the next crisis.

I want to provide some context and history as to why a comprehensive solution, including this bonding proposal, is so important.

Background

The Social Security Act of 1935 (SSA) created a federal-state unemployment insurance (UI) program to (1.) provide temporary, partial wage replacement to individuals out of work, generally through no fault of their own, and (2.) promote economic stability by maintaining a steady flow of dollars throughout the economy even when there is widespread unemployment.

The UI system historically has been forward funded – i.e., a sufficient positive balance is needed in the state unemployment trust fund to avoid having to borrow to pay benefits resulting from a reasonably foreseeable economic downturn.

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

Financing the Program

Unemployment compensation paid to unemployed workers is financed largely through both federal and state unemployment taxes paid by employers.

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

- At the federal level, the Federal Unemployment Tax Act (FUTA) imposes a single flat rate payroll tax on the first \$7,000 of wages employers pay each employee in a year. The current FUTA tax rate is 6.0 percent. However, employers can earn credits against their FUTA tax to reflect the state employment taxes they pay. Employers who pay their State Unemployment Tax Act (SUTA) taxes in a timely manner under an approved state unemployment compensation program can earn a credit of up to 5.4 percent against the 6.0 percent, resulting in an effective tax rate of 0.6 percent.
- Each state determines its own SUTA tax rates. Some states apply various formulas to determine the taxable wage base; others use a percentage of the state's average annual wage; and a few simply follow the FUTA wage base of \$7,000. Ohio's SUTA base is \$9,000, with a minimum contribution rate of 0.3 percent and a maximum contribution rate of 9.4 percent.

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

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

Impact of the Great Recession

The Great Recession of 2008 was the nation's longest and deepest since the Great Depression of the 1930s. A majority of states did not have sufficient balances in their state unemployment trust funds to pay benefits without requesting advances (i.e., loans) from the federal government to assure that unemployment compensation benefits were paid. Ohio was among the states hardest hit by the Great Recession. In fact, Ohio borrowed nearly \$3.4 billion to cover its UI state payments.

The recession was much worse than expected, wiping out positive unemployment trust fund balances across the country and in Ohio. Automatic tax trigger provisions in Ohio law designed to address a milder recession were insufficient to meet the increased

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

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

Ohio did not repay its 2008 loan until 2017 when the General Assembly passed House Bill 390. That bill paid off the final loan amount from unclaimed funds and employers repaid the state via a one-year special assessment. At that time Ohio employers were subject to a 2.1% penalty rate on their FUTA tax as opposed to the normal 0.6% rate.

Ohio has now found itself borrowing an unprecedented amount of money from the federal government for unemployment benefits: \$3.1 billion. It took Ohio nine years to pay off the previous loan. SJR4 has the potential to help alleviate some of the pain involved with an insolvent unemployment compensation system. We would urge the committee to favorably report the resolution.

I would be happy to try and answer any questions you may have.



Financing Unemployment Benefits – Federal Loans to Cover Shortfalls*

PREPARED BY: KELLY BOMBA, ATTORNEY
REVIEWED BY: JULIE A. RISHEL, DIVISION CHIEF

This brief explains the federal-state partnership for unemployment benefits, the “normal” mechanism that funds unemployment benefits, the procedure by which Ohio has obtained loans from the federal government to continue uninterrupted funding of Ohio’s unemployment compensation system, and the consequences of obtaining those loans.

Introduction

By the end of 2008, Ohio’s Unemployment Compensation Fund – the fund used to pay eligible unemployed individuals benefits¹ – was depleted. The Fund became insolvent in January 2009. Ohio borrowed a total of \$3.39 billion² from the federal government in 2009 through 2014 and paid interest on the loan totaling \$257.7 million.³ This debt was repaid on August 30, 2016, following the passage of H.B. 390 of the 131st General Assembly. That act required a one-time loan from unclaimed funds to pay off the debt, and required each experience-rated contributory employer to pay an increased contribution rate in 2017 to repay the loan from unclaimed funds.⁴ According to the Ohio Department of Job and Family Services (the agency that administers unemployment compensation in Ohio), three factors contributed to the insolvency:

1. An increase in the number of job losses due to the Great Recession, resulting in substantially more individuals than usual filing claims for unemployment benefits;

*This *Members Only* brief is an update of an earlier brief dated April 10, 2009 (Volume 128, Issue 6).

To cover the shortfalls of Ohio’s Unemployment Compensation Fund, Ohio borrowed a total of \$3.39 billion from the federal government in 2009 through 2014 and paid interest totaling \$257.7 million.

Although the debt was repaid, the Fund remains in a precarious position. Due to a low amount of reserves, a recession may result in depleting the Fund.



In the 1930s, the federal government utilized a “carrot” and “stick” approach to induce all states to establish an unemployment benefits program. The stick was a hefty federal excise tax on the payroll of most employers; the carrot was a 90% tax credit to any employer paying contributions (at a much lower rate) to support an “approved” state unemployment compensation program.

2. While under Ohio law, unemployment benefits must increase with inflation, employers’ tax rates remain generally constant;⁵ and

3. The Fund was not adequately replenished following the prior recession in the early 2000s.⁶

Although the debt was repaid, the Fund remains in a precarious position. In 2018, the Fund paid out \$863 million in benefits and took in deposits of \$1.131 billion. The year-end balance for calendar year 2018 was \$943 million. Due to the low amount of reserves, a recession might result in depleting the Fund.⁷

The federal-state partnership

The modern Ohio unemployment compensation system has its origins in the mid-1930s during the Great Depression.⁸ Although individual states initially attempted to address the national problem, Congress ultimately determined to address the situation nationally. However, U.S. Supreme Court decisions on legislation passed during the New Deal Era held that a state could not be forced to participate in a federal program or to become agents of the federal government for such a program.⁹ Accordingly, instead, Congress enacted the Federal Unemployment Tax Act (FUTA) that utilized a “carrot” and “stick” approach, offering states incentives to establish unemployment insurance programs that satisfied minimum federal standards.¹⁰

The “stick” is a hefty federal excise tax levied by Congress under its taxing power on the payroll of almost every employer in the country.¹¹ The “carrot” is an offer to waive almost 90% of that tax if the employer makes payments,

somewhat euphemistically called “contributions,” to an “approved” state unemployment compensation system (the employer receives a credit for the state contributions). The U.S. Supreme Court upheld this carrot and stick approach.¹²

These incentives proved to be enough, rapidly, to encourage all states to set up a program that satisfied the federal standards, essentially since the legislation also offered an additional “carrot” directly to the states. The federal government pays a share of a state’s administrative costs to run an approved state program out of the proceeds of that portion of the excise tax the federal government still directly collects. A third carrot allows an employer to receive an additional tax credit if a state establishes an experience ratings system in accordance with federal requirements to determine how an employer contributes to the state’s unemployment compensation fund (this credit, plus the tax credit discussed above, cannot exceed 5.4%).¹³

How the system is funded under “normal” conditions

FUTA requires each state to establish a state unemployment compensation fund to pay unemployment benefits in order for employers to receive the FUTA tax credit.¹⁴ Ohio has an approved unemployment compensation system¹⁵ and approved experience rating system. Thus, Ohio employers receive the full FUTA tax credit during times when Ohio does not have outstanding loans.

The basic funding mechanism used by all states is to establish, for those employers who are subject to the



state's unemployment compensation law, an account within the state's unemployment compensation fund and to periodically collect (in advance) contributions from almost all of those employers. The formula for calculating those contributions depends on the balance in each employer's account and the outflow of money from that account to pay benefits chargeable to that employer. These types of employers are commonly known as "contributory" employers. When the system is operating normally, each employer should have sufficient funds in its account to cover any benefit charges against the employer. As the balance in an employer's account goes down, the employer's future rate of contributions will increase to replenish those losses. If, on the other hand, an employer continues to build up the balance in its account because there are few if any changes to the account, gradually, the employer's contribution rate will decrease.

In the 1970s Congress undertook a major extension of the program to cover virtually all state and local government agencies and nearly all nonprofit employers. In contrast to contributory employers, governmental and nonprofit employers generally were granted the option to reimburse the system after benefits have been paid. (Nonprofit employers still retain the option of being contributory employers.) These types of employers are commonly known as "reimbursing" employers. The status of being either a contributory or reimbursing employer each has advantages and disadvantages, but from a systemic point of view, the reimbursing option has a disadvantage because no "cushion" of money is added to a state's unemployment compensation fund to

help deal with the higher payout of benefits during a deteriorating economy.

Ohio has other mechanisms to help maintain the solvency of Ohio's Unemployment Compensation Fund. Ohio law creates a mutualized account within the Fund that generally is used to keep the Fund balance at a safe level and to cover the payment of unemployment benefits when responsibility for that payment, although justified, cannot be attributed to an individual employer. A "mutualized tax" (a type of surtax) is applied only under certain circumstances and is applied uniformly to all contributory employers. It is not currently being applied. The mutualized tax does not affect an employer's experience rating.¹⁶

Also, Ohio law includes a requirement for calculation of a minimum safe level (MSL). If the Fund, as of the "computation date" (July 1), is above or below the MSL, the contribution schedule specified in statute for the next calendar year is adjusted based on the percentage that the Fund balance is above or below the calculated MSL.¹⁷ This additional cost to employers is known as the MSL tax. The Fund is more than 60% below the minimum safe level as of the computation date for 2019 rates. As a result, there has been an across-the-board MSL tax increase for 2019 to help rebuild the Fund. The MSL tax revenue is split equally between the mutualized account and the employer's account.¹⁸

What happens if Ohio's Unemployment Compensation Fund is unable to pay benefits?

Despite all the features designed to ensure that money to pay unemployment

Given "normal" economic conditions and a relatively low and stable unemployment rate, a state program produces sufficient revenues to pay all benefits to unemployed individuals and maintain an adequate level of reserves.



Prolonged periods of economic distress and high unemployment rates can deplete a state's reserves. Federal law allows states faced with insufficient reserves to borrow money ("advances") to continue the uninterrupted payment of unemployment benefits.

benefits is readily available when needed, several periods of distressed economic conditions have existed that pushed states' unemployment compensation funds into insolvency.

What happens if such a serious situation develops? Do people not get paid benefits? No. It appears that, under the federal-state partnership, a state must find some way to pay unemployment benefits. FUTA allows states to determine the amount of unemployment benefits they will pay. However, for a state system to comply with FUTA, it would appear that the state has to be able to pay whatever unemployment benefit amount the state establishes.¹⁹

Ohio has faced such difficulties before, most recently by the end of 2008. In the early 1980s, many states had been suffering from the recession of the late 1970s and early 1980s, and a strain was placed on their unemployment compensation funds. Ohio, along with several other states, had to obtain advances from the federal government to pay unemployment benefits. Ultimately, Ohio borrowed \$2.8 billion from the federal government.²⁰ In the late 1980s and early 1990s, when Ohio's fund again was threatened with insolvency, the General Assembly enacted changes to the state law and was able to avoid obtaining an advance from the federal government. Those changes included gradually increasing the taxable wage base (thus gradually increasing employer taxes), increasing the minimum safe level tax (discussed above) if the Fund was more than 60% below the minimum safe level, increasing the amount of earnings one must have to qualify for benefits, and temporarily modifying contribution rates, among other changes.²¹

Potential immediate funding options if the Fund is insolvent

To continue paying unemployment benefits if the Fund is insolvent, Ohio must find a way to immediately inject funds into the system. Two sources appear to need legislative action: (1) using funds from another state source or (2) issuing bonds.

However, tapping other state revenue sources could risk the state losing its "approved" status, if the funding mechanism does not satisfy federal requirements regarding how a state's system must be established for employers to receive the FUTA tax credit. Furthermore, the state may not be able to use other sources because Ohio limits how those other sources may be spent. For example, the Ohio Constitution and implementing statutes limit using the State Insurance Fund for purposes unrelated to workers' compensation.²²

Also, based on an Ohio Supreme Court decision, it does not appear that Ohio could issue bonds to cover the shortfall without amending Ohio's Constitution. In the late 1980s, the General Assembly amended the Unemployment Compensation Law to permit the issuance of bonds to repay the outstanding federal loans Ohio received. The Supreme Court held that the bonds to be issued did not fall under any exception to the prohibition against creating debt that exceeds \$750,000, and thus the debt would violate Ohio's Constitution.²³

Another option, however, which does not require constitutional amendment or legislation, is to obtain an advance (loan) from the federal government



to pay unemployment benefits, as discussed below.

Obtaining a federal advance

Federal law permits a state's governor, or the governor's designee (in Ohio, the Director of Job and Family Services) to apply to the U.S. Secretary of Labor to receive a three-month "advance" for payment of unemployment benefits if the amount in a state's account in the federal Unemployment Trust Fund is insufficient to pay those benefits.²⁴ The Secretary may allow an advance if both of the following requirements are satisfied:

1. The governor applies for the advance no earlier than the first day of the month preceding the first month of the three-month period; and
2. The governor furnishes an estimate of the amount of an advance the state will need for payment of unemployment benefits during each month of the three-month period.²⁵

If a state applies for an advance, the Secretary of Labor must determine the amount, if any, that will be required for payment of benefits during each month of the three-month period, and must certify that amount to the Secretary of the Treasury. The amount the Secretary of Labor certifies to the Treasury Secretary, and the amount the Treasury Secretary transfers to the state's account from the Federal Unemployment Account (FUA) on a monthly basis, cannot exceed the amount estimated by the governor nor the amount the Treasury Secretary reports is available in the FUA for advances during each month.²⁶ To obtain an advance, a state must determine the

amount required to pay compensation in any month, with due allowance for contingencies, and must take into account all other amounts that will be available in the state's unemployment compensation fund to pay compensation that month. "Compensation" does not include administration expenses.²⁷

Repayment of an advance

The governor of a state that has received an advance has many duties regarding applying for and repaying it. A governor may, at any time, request that funds be transferred from the state's account in the federal Unemployment Trust Fund to the FUA to repay part or all of an advance.²⁸

Consequences of obtaining an advance

FUTA sets deadlines for states to repay federal advances. If a state does not repay as required, the basic penalty is a "graduated" loss of the federal excise tax credit for all employers in the state.²⁹ Any increase in the FUTA tax then is used to repay that state's outstanding advance balance. Additionally, a state may lose additional funding and may be charged interest if advances remain unpaid.

Under normal conditions, an employer who regularly pays into an approved state system has a FUTA tax rate that equals 0.6% after taking the allowed tax credit (6% tax minus the 5.4% tax credit). If, for example, an employer has a taxable payroll of \$10,000, under normal conditions the employer pays only \$60 per year in FUTA taxes to the federal government ($\$10,000 \times 0.006$).

A state's governor or the governor's designee may apply for an advance with the U.S. Secretary of Labor to pay for unemployment benefits in an upcoming three-month period if the state is unable to pay for those benefits from its account in the federal Unemployment Trust Fund.



Advances must be repaid according to a strict timetable, with the penalty of a gradual reduction of the federal tax credit to employers if a state fails to meet the repayment deadlines.

If a state has an outstanding balance as of January 1 for two consecutive years, the state has until November 10 of the second year to pay off that balance. If the state does not pay off the balance by that date, the FUTA tax credit in that state is reduced by 5% of the FUTA tax. Thus, the employer in the example would pay an additional \$30 per year (approximately) in FUTA taxes if the advance made to the state remains outstanding after the deadline passes ($6\% \times 5\% = 0.3\%$; $\$10,000 \times 0.003 = \30). An employer's FUTA tax credit is reduced by an additional 5% per year for each succeeding year an advance remains outstanding.³⁰

If, beginning in the third and fifth consecutive years the balance of an advance remains outstanding and other conditions are not met, the FUTA tax credit is reduced by 5% as described above plus an additional amount calculated in accordance with prescribed formulas. The additional reduction that applies beginning in the fifth year is higher than the reduction that applies in the third or fourth year.³¹

If, while collecting all of these additional taxes, the balance of any advance is paid in full, the remainder no longer needed to repay the advance must be placed in the state's account in the federal Unemployment Trust Fund.³²

Under normal conditions, if amounts in other accounts with the federal Unemployment Trust Fund have reached statutorily prescribed limits, the excess funds are divided and transferred to the states' accounts. However, if a state has an outstanding advance balance, any excess the state would have received is kept in the FUA to reduce that state's balance.³³

Current employer tax rate

The FUTA tax rate is 6% on the first \$7,000 of each employee's taxable wage (\$420 per employee). Ohio currently has an approved system and does not have outstanding advances, thus Ohio employers currently receive the full tax credit and are subject to a 0.6% FUTA tax rate (\$42 per employee). In contrast, before Ohio paid off the balance of the advances in 2016, the FUTA tax credit for Ohio employers was gradually reduced so that they were subject to a rate of 2.1% (\$147 per employee) for 2015.³⁴

Interest on advances

Federal law does not require a state to pay interest on advances if (1) the advances are paid in full by September 30 of the calendar year during which the advances were made, (2) no other advances were made during that calendar year and after the repayment is complete, and (3) the state meets funding goals in regulations issued by the Secretary of Labor concerning state accounts in the federal Unemployment Trust Fund.³⁵

Otherwise, the state must pay interest on an advance.³⁶ Ohio has been unable to repay advances before interest accrued in the past. The advances Ohio received in the 1980s resulted in Ohio paying \$263.7 million in interest.³⁷ Ohio's total interest on the advances taken in 2009 to 2014 totaled \$257.7 million.³⁸

FUTA prohibits a state from using its unemployment compensation fund, either directly or indirectly, to pay the interest. If the Secretary of Labor determines that any state action results



in the direct or indirect payment of the advance through that state's unemployment compensation fund, the Secretary cannot certify the state as compliant. If a state system is not certified, the state's employers are not eligible to receive the credit on their FUTA taxes. Additionally, if a state does not make interest payments on a timely basis, the state may lose administrative funding and the employers may lose FUTA tax credit.³⁹

Interest normally is due on the first day of the federal fiscal year (October 1). However, if an advance is made during the last five months of the federal fiscal year, a state need not pay interest on that advance before December 31. A governor must notify the Secretary if the governor decides to delay that payment.⁴⁰

Additionally, in times of high unemployment for a state, the state may receive a deferral or delay on paying interest. If the Secretary determines that the average insured unemployment rate equals or exceeds 7.5% during the first six months of a calendar year, 75% of the interest due on October 1 of that year is deferred. A state must pay 25% of the interest due by October 1 of that year and must pay one-third of the deferred amount by October 1 in each of the next three years. A governor must apply to the Secretary by July 1 of the year the deferral is requested to receive a deferral. Interest does not accrue on the deferred interest.⁴¹

Similarly, if the Secretary determines, during the 12-month period preceding the October 1 when the interest normally is due, that the state had an average unemployment rate of 13.5% or greater, the state may delay the payment of interest for nine months. A delayed interest payment must be paid in full by

the following July 1, and interest does not accrue on the delayed interest.⁴²

Restrictions on state activity

If a state has received a federal advance, the state is more restricted than usual when it comes to making changes to its unemployment compensation system. This is especially true if the state wishes to avoid or limit the tax credit reduction as described below. Essentially, a state cannot take any action, whether legislative, administrative, or judicial, that results in either (1) a reduction in the state's unemployment tax effort or (2) a decrease in the net solvency of its unemployment compensation system. The former actions include a reduction in the taxable wage base, the tax rate schedule, tax rates, or taxes payable, including surtaxes. The latter comprises actions that result in an increase in benefits without at least an equal increase in taxes, or a decrease in taxes without at least an equal decrease in benefits.⁴³

Mitigating the employer FUTA tax credit reduction

FUTA allows a state to avoid or limit the reduction in employers' FUTA tax credit for failing timely to pay back an advance, if the state satisfies certain requirements. The requirements to cap the reduction include that the state did not take action during the 12-month period ending on September 30 of the taxable year that (1) has resulted or will result in a reduction in the state's unemployment tax effort and (2) that has resulted or will result in a net decrease in the solvency of the state unemployment


If advances are not repaid within a certain time frame interest charges also accrue.

Federal law severely restricts a state's freedom of action while it owes repayment for advances. A state may not make any changes to its unemployment compensation program that: (1) cause a net reduction in the state's tax effort, or (2) increase the net outflow of money from the state's fund.



compensation system. The cap in the reduction is in an amount that does not exceed the greater of the reduction of that credit that was in effect with respect to the state for the preceding taxable year, or 0.6% of the wages paid by the employer during that taxable year that are attributable to the state.⁴⁴

Additionally, as discussed under **“Consequences of obtaining an advance”** above, an additional reduction in an employer’s FUTA tax credit may be applied beginning the third consecutive year that an outstanding advance balance exists, with an even higher reduction (the BCR) applied

beginning the fifth consecutive year that the balance exists. A state may apply for a waiver of the fifth-year credit reduction, which allows a state to revert back to the lower rate used in the third and fourth years. To qualify for this waiver, a state’s governor must apply to the Secretary before July 1 of the year for which the waiver is requested and no action (legislative, judicial, or administrative) may be taken during the 12-month period ending September 30 of that year that would reduce the solvency of the state’s system for the period ending September 30.⁴⁵ 

Endnotes

¹ R.C. 4141.09.

² U.S. Department of Labor, *State Unemployment Insurance Trust Fund Solvency Report 2018*, <https://oui.doleta.gov/unemploy/docs/trustFundSolvReport2019.pdf>.

³ Legislative Service Commission, “Greenbook: LSC Analysis of Enacted Budget: Department of Job and Family Services,” <https://www.lsc.ohio.gov/documents/budget/132/MainOperating/greenbook/JFS.PDF>.

⁴ Section 741.10 of H.B. 390 of the 131st General Assembly.

⁵ By this the Department appears to mean that the state taxable wage base has remained constant; unemployment taxes have been imposed on an employee’s first \$9,000 in wages since 1995. S.B. 235 of the 131st General Assembly temporarily increased the taxable wage base from \$9,000 to \$9,500 for calendar years 2018 and 2019. The taxable wage base will decrease to \$9,000 beginning in 2020. (R.C. 4141.01(G).)

⁶ Gongwer News Service, *Unemployment Compensation Trust Fund Going Broke, Officials Say*, Volume 77, Report 115, Article 1, (June 13, 2008), available at <http://www.gongwer-oh.com/>.

⁷ See, e.g., *Lawmakers Must Fix Unemployment Fund*, *The Columbus Dispatch*, (January 28, 2018) <https://www.dispatch.com/opinion/20180129/editorial-lawmakers-must-fix-unemployment-fund>.

⁸ See *Chas. A. Steward Mach. Co. v. Davis*, 301 U.S. 548, 588-589 (1937).

⁹ See *A.L.A. Schlecter Poultry Co. v. U.S.*, 295 U.S. 495 (1925).

¹⁰ 26 United States Code (U.S.C.) 3301 *et seq.*

¹¹ U.S. Const., Art. I, and *Chas. A. Steward Mach. Co.* at 583.

¹² *Chas. A. Steward Mach. Co.* at 598.

¹³ 26 U.S.C. 3301, 3302, and 3303 and 42 U.S.C. 501 *et seq.*

¹⁴ 26 U.S.C. 3302 and 3304.

¹⁵ R.C. Chapter 4141.



¹⁶ R.C. 4141.24, 4141.241, 4141.242, and 4141.25.

¹⁷ R.C. 4141.25.

¹⁸ Ohio Department of Job and Family Services, Office of Unemployment Insurance Operations, *Contribution Rates*, <http://jfs.ohio.gov/ouc/uctax/rates.stm>.

¹⁹ See 26 U.S.C. 3304, which requires a state to establish an unemployment compensation fund and to use that fund, with some exceptions, only for the purpose of paying unemployment benefits.

²⁰ See Ohio Bureau of Employment Services, “Trust Fund Adequacy” 50 (1989).

²¹ H.B. 826 of the 118th General Assembly.

²² For example, several court cases have interpreted that the Ohio constitutional provision that is the basis for Ohio’s workers’ compensation system and a provision in Ohio’s Workers’ Compensation Law that specifies how the assets of the State Insurance Fund may be allocated (Ohio Const., Art. II, Sec. 35 and R.C. 4123.30) suggest a constitutional basis for the prohibition against use of money in the State Insurance Fund for purposes other than providing compensation to employees and their dependents for death, injuries or occupational disease, occasioned in the course of employment (see *Thompson v. Industrial Commission*, 1 Ohio St.3d 244 (1982); *Corrugated Container v. Dickerson*, 171 Ohio St. 289 (1960); *Welsh v. Industrial Commission*, 136 Ohio St. 387 (1940)).

²³ *Shkurti v. Withrow*, 32 Ohio St.3d 424 (1987).

²⁴ 42 U.S.C. 1321; 20 Code of Federal Regulations (C.F.R.) 606.4; and R.C. 4141.43(F).

²⁵ 42 U.S.C. 1321(a)(1) and (a)(3)(A).

²⁶ 42 U.S.C. 1321(a)(2) and (b).

²⁷ 42 U.S.C. 1321(a)(3)(B) and (C).

²⁸ 42 U.S.C. 1322(a).

²⁹ 26 U.S.C. 3302(c)(2).

³⁰ 26 U.S.C. 3302(c)(2)(A)(ii) and (d)(1) and Ohio Bureau of Employment Services, “Trust Fund Adequacy” 49 (1989).

³¹ 26 U.S.C. 3302(c)(2)(B) and (C).

³² 42 U.S.C. 1101(d).

³³ 42 U.S.C. 1103.

³⁴ 26 U.S.C. 3301 and 3302 and U.S. Department of Labor, *Historical FUTA Credit Reductions*, https://oui.doleta.gov/unemploy/docs/reduced_credit_states_2009-2018.xlsx.

³⁵ 42 U.S.C. 1322. See also 20 C.F.R. 606.32.

³⁶ 42 U.S.C. 1322(b)(1).

³⁷ Ohio Bureau of Employment Services, “Trust Fund Adequacy” 50 (1989).

³⁸ Legislative Service Commission, “Greenbook: LSC Analysis of Enacted Budget: Department of Job and Family Services,” <https://www.lsc.ohio.gov/documents/budget/132/MainOperating/greenbook/JFS.PDF>.

³⁹ 26 U.S.C. 3304(a)(17), 42 U.S.C. 503(c)(3) and 1322(b)(5), and R.C. 4141.09(G).

⁴⁰ 42 U.S.C. 1322(b)(3)(A) and (B) and 20 C.F.R. 606.40.

⁴¹ 42 U.S.C. 1322(b)(3)(C) and 20 C.F.R. 606.41.

⁴² 42 U.S.C. 1322(b)(9) and 20 C.F.R. 606.42.

⁴³ 20 C.F.R. 606.21.

⁴⁴ 26 U.S.C. 3302 and 20 C.F.R. 606.21 and 606.22.

⁴⁵ 26 U.S.C. 3302(c) and 20 C.F.R. 606.25 and 606.26.

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ODJFS Takes Down Unemployment Insurance Fraud Reporting Page; You Can Still Email Agency May 29, 2020

The Ohio Department of Job and Family Services (ODJFS) has **taken down** its unemployment insurance fraud **reporting web page**. This after the agency's site was attacked by an anonymous hacker who disagreed with allowing employers to report those who refused to return to work.

On its **FAQ page for employers**, ODJFS says the agency's process for determining whether to deny unemployment benefits for a refusal to return to work existed prior to the pandemic. ODJFS "encourages employers to engage in dialogue with an employee who expresses reluctance to return to work about the measures that employers are taking to help employees feel safe." If that approach is unsuccessful, employers may report eligibility concerns to ODJFS using **this email address**. 5/27/2020

Study: 68% of Laid-Off Workers Are Receiving More in Unemployment Benefits Than From Their Jobs May 29, 2020

As federal lawmakers consider yet another coronavirus relief package, a study this week revealed the effect of the initial federal response. According to University of Chicago researchers, two-thirds (68%) of jobless workers will bring home more money from their state unemployment insurance — and \$600 weekly supplement from the federal government — than they would on the job, MarketWatch **reported**. One in every five eligible workers will receive benefits worth at least double their lost earnings, the study found, as the median earnings-replacement rate was 134% of lost wages. 5/27/2020

DOL Finalizes Electronic Disclosure Safe Harbor for Retirement Plans May 29, 2020

Federal law requires a wide range of disclosures to be provided to retirement plan participants. The U.S. Department of Labor has released a final rule providing an additional method under which an administrator can satisfy the law by

using electronic delivery. See **this analysis** by OMA Connections Partner Thompson Hine. 5/26/2020

EEOC Extends Deadline to File 2019 EEO-1 Report May 22, 2020

According to **this post** from OMA Connections Partner Bricker & Eckler, the Equal Employment Opportunity Commission (EEOC) recently announced that, due to the ongoing COVID-19 pandemic, it will extend the deadline for employers to file their 2019 EEO-1 report to March 2021.

By extending the reporting deadline, employers who would have been required to file their 2019 EEO-1 report by May 31, 2020, will not need to file either a 2019 or the 2020 report until the new deadline in 2021. 5/18/2020

Employers/Employees Get Mid-Year Break on Cafeteria Plan Changes and COBRA Deadlines May 22, 2020

OMA Connections Partner **Bricker & Eckler reports** that the IRS recently issued **Notice 2020-29**, allowing §125 cafeteria plans and high-deductible health plan (HDHP) changes during the remainder of 2020, as a result of the COVID-19 pandemic.

For example, employees who declined employer-sponsored health coverage at the beginning of the plan year may now elect to enroll. Employees enrolled in employer coverage can switch to different coverage offered by the same employer. Employees can disenroll from employer coverage in order to enroll in other coverage immediately. 5/18/2020

Fluctuating Workweek Method of Computing Overtime Decided May 22, 2020

On May 20, 2020, the U.S. Department of Labor announced a final rule that allows employers to pay bonuses or other incentive-based pay to salaried, nonexempt employees whose hours vary from week to week. The final rule clarifies that payments in addition to the fixed salary are compatible with the use of the fluctuating workweek method under the Fair Labor

Standards Act (FLSA). **Read the details here.** 5/20/2020

A Look at the Federal HEROES Act May 15, 2020

Democrats in the U.S. House of Representatives this week introduced the HEROES Act (aka “Phase IV” of the federal response to COVID-19). The legislation would spend another \$3 trillion by providing a new round of \$1,200 direct payments to individuals, and an extension to January of the \$600/month in extra unemployment benefits, among other things.

See **this summary of the bill** by OMA Connections Partner Clark Schaefer Hackett. The HEROES Act would require employers to provide paid sick and emergency FMLA leave to workers regardless of company size, according to **reports**. It would also temporarily suspend minimum hour eligibility requirements and reduce tenure requirements for non-emergency FMLA. 5/14/2020

Study: Deferred Care Will Likely Reduce Large Employers’ 2020 Health Costs May 15, 2020

The COVID-19 pandemic could reduce the health care costs of large, self-funded employers by as much as 4% in 2020 due to deferred medical care, **according to a study** by Willis Towers Watson. Other health plan costs, including dental and vision care, will likely decrease in 2020 as employees eliminate some discretionary care, according to the firm. 5/11/2020

Ohio Business Groups: Extra Unemployment Benefits are Hindering Hiring Efforts May 8, 2020

Ohio’s major business organizations — including the OMA — this week **urged the state’s federal delegation** to consider the negative hiring effects of the federal government’s additional \$600 in weekly unemployment benefits during the COVID-19 emergency. Under current law, the additional aid is scheduled to continue through July 31, 2020. 5/7/2020

ODJFS: Report Employees Who Quit or Refuse to Return to Work May 8, 2020

To address potential unemployment insurance fraud, the Ohio Department of Job and Family Services (ODJFS) has created **this page** for employers to report employees who quit or refuse work when it is available. ODJFS has posted FAQs regarding unemployment eligibility and other issues at the bottom of its **employer resource hub**.

As noted in **guidance from Bricker & Eckler**, the OMA’s general counsel, when employees quit or refuse an offer of work without just cause, they may become ineligible for unemployment benefits. If you have employees who refuse to return to work or quit work, it’s important to let ODJFS know so agency officials can make accurate eligibility determinations. 5/4/2020

EEOC Issues Guidance on Returning Workers May 8, 2020

On Tuesday, May 5, the Equal Employment Opportunity Commission (EEOC) issued **new guidance** to address returning workers with pre-existing medical conditions. The next day, May 6, the agency retracted part of that new guidance, saying the answer to G.4 in the document was revised to clarify the ADA does not allow exclusion of employees simply because they have an underlying medical condition that the CDC says might pose a higher risk of severe illness if the individual contracts COVID-19. OMA Connections Partner Benesch has posted **this update** on the agency’s retraction. 5/7/2020

EEOC Delays EEO Data Collection May 8, 2020

The EEOC **said this week** it will delay the opening of its 2019 EEO-1 Component 1 data collection, as well as the 2020 EEO-3 and EEO-5 data collections due to the novel coronavirus. The agency encouraged filers to prepare data submissions for 2021. 5/7/2020

Employers Can Temporarily Use an Expired Driver’s License to Verify Identity on Form I-9 May 8, 2020

With motor vehicle licensing bureaus closed in many states — and people experiencing challenges renewing their state-issued driver’s licenses and identity cards— some job applicants

and employees are incurring difficulty in establishing their identity on Form I-9. The Department of Homeland Security has temporarily changed its Form I-9 policy, according to **this insight** from OMA Connections Partner Benesch. 5/5/2020

HR Expert on Avoiding Potential COVID-19 Lawsuits **May 1, 2020**

This week, News Radio 610 WTVN (Columbus) host Joel Riley interviewed HR expert Adam Calli, owner and founder of Arc Human Capital, LLC. Calli **discussed** how employers can guard against COVID-19-related lawsuits by employees — and how the workers' compensation system may play a helpful role. 4/29/2020

USCIS Offices Preparing to Re-Open on June 4 **May 1, 2020**

U.S. Citizenship and Immigration Services plans to re-open its field offices, asylum offices, and application support centers on June 4, according to a **press release**. In the meantime, the agency encourages employers to visit **this site** for immigration-related questions or concerns. 4/28/2020

EEOC Offers Guidance as Employers Prepare to Restart Operations **April 24, 2020**

As more businesses prepare to re-open, important ADA-related questions are being raised by employers, such as:

- How will we know what steps we can take to be consistent with the ADA when screening employees for COVID-19?
- Should we grant employee requests for accommodations due to a need for modified protective gear?

The U.S. Equal Employment Opportunity Commission (EEOC) answers these questions and more in its **recently updated guidance**. Most notably, the agency says the **employers can test employees** for COVID-19 before permitting them to enter the workplace as long as the tests are accurate and reliable. 4/20/2020

Can Employees Use PTO and FFCRA Leave at the Same Time? **April 24, 2020**

The U.S. Department of Labor recently updated its guidance for employers covered by the Families First Coronavirus Response Act (FFCRA) in order to clarify how an employer may run certain buckets of the law's emergency paid leave concurrently with other paid leave. Read the summary in **this article by HR Dive**. 4/24/2020

Immigration Webinar Set for April 29 **April 24, 2020**

This week, President Donald Trump **issued an executive order** temporarily suspending permanent legal immigration into the U.S. due to the COVID-19 outbreak. See **this analysis** by OMA Connections Partner Thompson Hine.

On Wednesday, April 29, at 11 a.m. (ET), OMA Connections Partner Squire Patton Boggs will host a **free webinar** to provide guidance to employers sponsoring foreign national employees. The webinar will also address the latest government policy directives for Form I-9 and E-Verify requirements and immigration-related compliance matters in the current "work from home" environment. 4/23/2020

Resources for Employees Struggling With Substance Use Disorders **April 24, 2020**

It's a tough time for many employees right now — but especially those who have struggled with substance abuse and are working to maintain their recovery. According to OMA Connections Partner **Working Partners®**, these employees are at an increased risk for several reasons:

1. General increased preoccupation with alcohol use;
2. Increased availability of alcohol;
3. Social isolation;
4. Decreased support and accountability from counselors and self-help groups; and
5. Increased stress and mental health challenges.

Employers are encouraged to be proactive and share resources — such as **this video** and **this list** — with employees to help those dealing with substance use disorders to better cope during these times. 4/23/2020

Is Your Small Business Exempt from Coronavirus Paid Leave? April 17, 2020

Wondering if your business meets the requirements for exemption from the recently enacted paid-leave requirements? *HR Dive* has **published guidance** on a common question about the Families First Coronavirus Response Act, which is causing affordability concerns for some employers. 4/15/2020

Coronavirus Poses New Challenges for Food Manufacturers April 17, 2020

Another **report** in *HR Dive* this week examined steps being taken by food manufacturers during the COVID-19 crisis, from increased pay to improved safety within their facilities. The story notes that employers face additional hurdles as some unions and employees are saying these steps don't go far enough. 4/13/2020

What to Do if an Employee Refuses to Return to Work April 10, 2020

Employers are raising questions about employees who refuse to return to work after being laid off for various reasons and then recalled. To provide clarity, the OMA had Christopher Page at Bricker & Eckler — the OMA's legal counsel — produce **this guidance** for employers that encounter this problem. 4/9/2020

EEOC Issues Updated COVID-19 Guidance April 10, 2020

The U.S. Equal Employment Opportunity Commission (EEOC) this week posted an updated and expanded **technical assistance publication** addressing questions arising under the Federal Equal Employment Opportunity Laws related to the COVID-19 pandemic. It features a Q&A section to address frequent questions from employers. 4/9/2020

\$13 Minimum Wage Backers Turn to the Courts for Help

April 3, 2020

Supporters of a **proposed constitutional amendment** to raise Ohio's minimum wage to \$13 an hour this week filed a lawsuit to help it get the hike on the November ballot. Hannah News Service reported that because of the governor's stay-at-home order, the group is asking the court to extend the deadline for submitting signatures; lower the threshold for the number of signatures needed; allow for continued collection during verification; and allow signatures to be collected online. 3/31/2020

NLRB Makes Big Rule Change on Representation Elections April 3, 2020

The NLRB this week finalized changes to union election rules focused largely on the process of decertifying unions. According to a story by **Politico.com**, before the changes, unions could block decertification elections indefinitely by filing unfair labor practice charges. Under the new rule, ballots can in some instances be opened and counted rather than impounded. Organizers will also be required to provide evidence they have support from a majority of workers before entering into a full bargaining relationship with an employer.

While the AFL-CIO **voiced** its displeasure, the National Right to Work Legal Defense Foundation **called the rule** a "significant step forward towards fully protecting the statutory right of employees ... to remove a union opposed by a majority of workers." 4/2/2020

OMA Publishes FAQs on COVID-19 Actions March 27, 2020

The OMA has created a **list of frequently asked questions** that we have received from members regarding state and federal actions taken in response to the COVID-19 outbreak. The answers provided in this FAQ document are not legal advice, but intended to serve only as guidance and general reference for manufacturers. For specific questions regarding your operations, be sure to work with your internal experts and legal counsel. 3/26/2020

Summaries of Federal COVID-19 Legislation March 27, 2020

Last week, Congress passed and President Trump signed a second coronavirus emergency aid package called the Families First Coronavirus Response Act (FFCRA) — known as “phase two” of the federal response. The bill addresses the growing health and economic crises with provisions for paid sick leave, free testing and expanded unemployment benefits.

Members have raised questions about this new law, so we thought we would share insight published by selected OMA Connections Partners regarding the FFCRA:

- **Clark Schaefer Hackett’s updated summary.**
- **RSM’s “Tax Alert” summary.**
- **Bricker & Eckler summary.**
- **Plante Moran’s summary.**
- **GBQ Partners’ frequently asked questions.**
-

If you’re looking for analysis of the pending \$2 trillion emergency package — known as the Coronavirus Aid, Relief, and Economic Security (CARES) Act, or “phase three” — Clark Schaefer Hackett has an **early summary**, as does **Calfee, Fisher Phillips**, and the **National Association of Manufacturers**. The House is **scheduled to vote** on the legislation later today, March 27. *3/27/2020*

State Guidelines for Essential Businesses March 27, 2020

This State of Ohio website has been created for essential businesses — including manufacturers and their suppliers — to help ensure compliance with Ohio’s stay-at-home order. It includes the workplace safety “checklist” that is contained in the order. Please take time to visit this site. *3/26/2020*

NLRB Suspends Representation Elections March 27, 2020

Due to the COVID-19 pandemic, the National Labor Relations Board (NLRB) **has suspended** all representation elections, including mail ballot elections, for the next two weeks effective immediately, through and including April 3, 2020. The NLRB said it will

monitor the situation and adjust the date as necessary. *3/23/2020*

Visit OMA’s COVID-19 Resources Page for More Information March 27, 2020

Due to the continued spread of the coronavirus (COVID-19) — and government’s response — the OMA this week emailed special updates to members and hosted two briefings to address concerns and questions raised by manufactures. These updates and recorded briefings are available at the **OMA’s COVID-19 Resources Page**, which also contains important links to federal, state, and OMA Connections Partner resources.

For health-related questions about COVID-19, contact the Ohio Department of Health’s call center at 1-833-4-ASK-ODH (1-833-427-5634) or visit the **ODH website**. *3/26/2020*

COVID-19 Update: Week Ending March 20 March 20, 2020

Due to the rapid spread of the coronavirus (COVID-19) — and government’s response to it — the OMA this week sent members special updates on **Thursday, March 19, Wednesday, March 18, and Monday, March 16**. (Click on the email dates if you missed our communications.) The OMA will continue these special updates as necessary — and will warehouse content on the **OMA’s COVID-19 Resources Page**.

This outbreak is first and foremost a human resources crisis, but its impact now reaches far beyond the HR space. Therefore, there are several other virus-related updates throughout this *Leadership Briefing*.

At **last check**, Ohio had 119 confirmed cases and 33 individuals hospitalized. Positive test results have been found in 24 counties.

Counties with confirmed cases were: Ashland (1), Belmont (2), Butler (8), Clark (1), Coshocton (2), Cuyahoga (53), Darke (1), Delaware (2), Franklin (10), Geauga (1), Hamilton (1), Huron (1), Lake (2), Lorain (6), Lucas (1), Mahoning (5), Medina (5), Miami (1), Montgomery (1), Richland (1), Stark (5), Summit (6), Trumbull (2), Tuscarawas (1).

Here is new COVID-19-related guidance from OMA Connections Partners:

- Clark Schaefer Hackett has published **this summary** of the new federal “Families First Coronavirus Response Act,” which takes effect April 2. The firm notes that employers may be eligible, depending on the direct or indirect impact to their employees, for up to a total of \$12,000 in tax credits for employees that are on sick leave and/or emergency leave.
- Frantz Ward has also published a **summary** of the new federal law. Bricker & Eckler has posted **its analysis**, too.

For health-related questions about COVID-19, contact the Ohio Department of Health’s call center at 1-833-4ASKODH (1-833-427-5634). 3/20/2020

Coronavirus Update: K-12 Schools to Close for Three Weeks, Large Gatherings Banned March 13, 2020

Here’s the latest regarding the coronavirus (COVID-19):

- Gov. Mike DeWine **has announced** he will close all K-12 schools — public, private and charter — at the end of the day Monday, March 16, until April 3. (Please check with your local schools for exact details.) The closures do not include child-care facilities.
- Ohio Department of Health (ODH) Director Amy Acton has **signed an order** banning gatherings of 100 or more people. The ban does not include grocery stores, forms of transit, typical office environments, or factories, among others places.
- Because community spread is occurring, Dr. Acton said it’s likely that **at least 1% of Ohio’s population** is carrying this virus today. One percent of the state’s

population is roughly 117,000 people. (See video of the **governor’s latest COVID-19 update**.)

- As of Thursday, five Ohioans had tested positive for the coronavirus. There are 52 Ohioans awaiting coronavirus test results, while 30 have tested negative and 333 are under health supervision. **This website** provides real-time, Ohio-specific information regarding the coronavirus.
- If you have questions regarding how to protect your employees and prepare for COVID-19, the ODH coronavirus call center can be reached at 1-833-4-ASK-ODH. The agency operates the center seven days a week from 9 a.m. to 8 p.m. daily, and staff includes infectious disease experts.
- ODH has released this brief **guidance document** for employers, as well as a **list of frequently asked questions**.
- **OSHA** has published 35 pages of **guidance on preparing workplaces** for COVID-19.
- The World Health Organization has published a five-page **guidance document** for employers.
- The CDC has published a list of **frequently asked questions** about the coronavirus, and a **short document** on keeping workplaces and homes safe.
- The U.S. EPA has **published a list** of disinfectants to protect against the spread of the coronavirus, as has the American Chemistry Council’s Center for Biocide Chemistries. The latter says “**this product**

list is not exhaustive but can be used by business owners to identify products suitable for use during the COVID-19.”

- Several OMA Connections Partners have published guidance for employers:
 - RSM has created its **coronavirus resource center** to help business leaders stay on top of this developing situation, including **this article** on five things businesses can do operationally to prepare.
 - Bricker & Eckler has posted **this guidance** on maintaining a healthy workplace after employees have traveled.
 - Dinsmore **published this article** covering the many laws an HR manager needs to consider while implementing practical business solutions required during a pandemic.
 - Calfee reports the **IRS has announced** that high-deductible health plans are allowed to cover costs associated with testing and treatment for COVID-19 without violating current regulations.
- This **interactive map** by Johns Hopkins shows the location of every reported COVID-19 case in the world. At last check, more than half of the cases were listed as “recovered.”

• The OMA continues to monitor updates from ODH, as well as the latest **situation summaries** from the CDC. *3/12/2020*

NAM Offers COVID-19 Response Plan to Federal Policymakers
March 13, 2020

The National Association of Manufacturers (NAM) has shared its **COVID-19 response recommendations** with federal policymakers. NAM’s plan identifies key policy areas where legislative and administration action would help combat the health and economic impact of COVID-19, as well as future public health emergencies.

A **new NAM survey** shows that 78.3% of respondents say the COVID-19 outbreak is likely to have a financial impact on their businesses; 53.1% of manufacturers are anticipating a change in their operations in the coming months; and 35.5% say they are already facing supply chain disruptions.
3/12/2020

Coronavirus Update – Week Ending March 6 March 6, 2020

Here’s the latest regarding the coronavirus (COVID-2019):

- This week, Gov. Mike DeWine held a conference call with OMA President Eric Burkland and leaders of other business organizations to provide an update on actions and planning efforts by state officials. **This website** provides real-time, Ohio-specific information regarding the coronavirus.
- As of Thursday, there were still no confirmed cases in Ohio, but **three people** were under investigation. Seven Ohioans have been tested but are negative, and 255 Ohio residents remain in self-quarantine, having traveled recently to China.
- Ohio will be able to test for coronavirus starting late this weekend after it received testing kits from the Centers for Disease Control and Prevention, according to **reports**. Until now, the state health

department had been forced to defer tests to the CDC, which took up to five days.

- The National Association of Manufacturers has published a **comprehensive site** with useful information.
- The Ohio Department of Health has composed **this checklist** to prepare your household for an outbreak of any infectious disease.
- Several OMA Connections Partners have published guidance for employers:
 - Roetzel says employers should do **these four things** to prepare for coronavirus.
 - Calfee has produced a **practical list of steps** to help prevent workplace exposure and plan for a widespread outbreak.
 - Dinsmore offers **this guidance** on what employers must know about quarantines and preventing the spread of disease at work.
 - And Clark Schaefer Hackett has **published a post** on the coronavirus' impact on the global manufacturing supply chain and how manufacturers can respond.
- This **interactive map** by Johns Hopkins shows the location of every reported COVID-19 case in the world. At last check,

more than half of the cases were listed as “recovered.”

The OMA continues to monitor updates from the **Ohio Department of Health**, as well as the latest **situation summaries** from the CDC. *3/5/2020*

Fines for Federal Labor Violations Just Went Up March 6, 2020

OMA Connections Partner **OneSource Advisors** reports that the U.S. Department of Labor recently **announced** its 2020 inflation-adjusted penalties for employer violations of a wide range of federal labor laws. New maximum penalties include:

- \$2,050 for violations of federal minimum wage or overtime requirements increases.
- \$2,233 per day for failing to file a Form 5500 for an employee benefit plan.
- \$176 per offense for violations of the **posting requirements** under the FMLA.

Employers should become familiar with the new penalty amounts and review their pay practices, benefit plan administration, and safety protocols to ensure compliance. *3/5/2020*

Does Your Company Have a Hiring Program for Vets? March 6, 2020

The HIRE Vets Medallion Award is the only federal-level veterans' employment award that recognizes a company's commitment to veteran hiring, retention and professional development. If your business is interested in participating in this program, **apply before April 30**. *3/2/2020*

Human Resources, Health Care & Employment Law Legislation

Prepared by: The Ohio Manufacturers' Association
Report created on June 1, 2020

- HB21** **MASS LAYOFFS-UNEMPLOYMENT COMP** (HOLMES G, MILLER A) Regarding notices, resources, and benefits under the Unemployment Compensation Law when a mass layoff occurs.
Current Status: 2/12/2019 - Referred to Committee House Commerce and Labor
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-21>
- HB34** **STATE-LOCAL MINIMUM WAGE** (KELLY B) To increase the state minimum wage and to allow municipalities, townships, and counties to establish higher minimum wage requirements.
Current Status: 1/22/2020 - House Commerce and Labor, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-34>
- HB38** **COMMERCIAL CREDIT REPORTING** (HILLYER B) To require a commercial credit reporting agency to provide credit reports to businesses and to establish a procedure whereby a business may dispute statements on the report.
Current Status: 6/3/2020 - Senate Insurance and Financial Institutions, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-38>
- HB78** **PREVAILING WAGE-PUBLIC IMPROVEMENTS** (RIEDEL C, MANCHESTER S) 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: 12/11/2019 - House Commerce and Labor, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-78>
- HB91** **FAMILY-MEDICAL LEAVE** (BOGGS K, BOYD J) To establish family and medical leave insurance benefits.
Current Status: 2/12/2020 - House Insurance, (Second Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-91>
- HB221** **WAGE DISCRIMINATION COMPLAINTS** (BOYD J, CRAWLEY E) To require the Ohio Civil Rights Commission to establish a system for individuals to make anonymous complaints regarding wage discrimination.
Current Status: 6/18/2019 - House Civil Justice, (Third Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-221>
- HB268** **VACCINES-EMPLOYMENT** (HOOD R, KENT B) To enact the "Medical Consumer Protection Act" to prohibit an employer from taking an adverse employment action against a person who has not been or will not be vaccinated.
Current Status: 6/4/2019 - Referred to Committee House Commerce and Labor

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-268>

HB292 **UNIVERSAL HEALTH CARE COVERAGE** (SKINDELL M, KENT B) To establish and operate the Ohio Health Care Plan to provide universal health care coverage to all Ohio residents.

Current Status: 9/10/2019 - House Health, (First Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-292>

HB304 **ELIMINATE SEX-BASED WAGE DISPARITIES** (CLITES R, HOWSE S) To enact the Ohio Equal Pay Act to require state contractors and economic incentive recipients to obtain an equal pay certificate, to require public employers to establish a job evaluation system to identify and eliminate sex-based wage disparities, to prohibit employers from seeking a prospective employee's wage or salary history, and to prohibit employer retaliation against an employee who discusses salary or wage rates with another employee.

Current Status: 6/30/2019 - Referred to Committee House Commerce and Labor

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-304>

HB352 **CIVIL RIGHTS EMPLOYMENT LAWS** (CROSS J, LANG G) To modify Ohio civil rights laws related to employment.

Current Status: 5/12/2020 - **REPORTED OUT AS AMENDED**, House Civil Justice, (Fourth Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-352>

HB369 **SEXUAL, GENDER DISCRIMINATION** (HILLYER B, SKINDELL M) To enact the Ohio Fairness Act to prohibit discrimination on the basis of sexual orientation or gender identity or expression, to add mediation as an informal method that the Ohio Civil Rights Commission may use, and to uphold existing religious exemptions under Ohio's Civil Rights Law.

Current Status: 2/4/2020 - House Civil Justice, (Second Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-369>

HB378 **STRIKING WORKER UNEMPLOYMENT BENEFIT** (CROSSMAN J, LEPORE-HAGAN M) To provide unemployment benefits to striking workers and to declare an emergency.

Current Status: 10/23/2019 - Referred to Committee House Insurance

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-378>

HB469 **HEALTH INSURANCE COST-SHARING** (MANCHESTER S, WEST T) To prohibit certain health insurance cost-sharing practices.

Current Status: 6/2/2020 - House Health, (Second Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-469>

- HB508 UNEMPLOYMENT COMPENSATION - DOMESTIC VIOLENCE VICTIMS** (CERA J, SWEENEY B) To allow an individual to be eligible for unemployment compensation benefits for unemployment due to domestic violence.
Current Status: 2/19/2020 - Referred to Committee House Criminal Justice
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-508>
- HB512 INSURANCE COVERAGE - EPINEPHRINE, GLUCAGON** (ROGERS J) Regarding insurance and Medicaid coverage of epinephrine and glucagon.
Current Status: 6/3/2020 - House Insurance, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-512>
- HB574 TRANSFER FUNDS - UNEMPLOYMENT COMPENSATION FUND** (MILLER J) To transfer moneys to the Unemployment Compensation Special Administration Fund, to make an appropriation, and to declare an emergency.
Current Status: 5/19/2020 - House Insurance, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-574>
- HB584 WORK SEARCH REQUIREMENTS - COVID-19** (CRAWLEY E, LELAND D) To temporarily change eligibility and work search requirements under the Unemployment Compensation Law and to declare an emergency.
Current Status: 5/5/2020 - Referred to Committee House Insurance
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-584>
- HB588 PUBLIC ASSISTANT PROGRAMS - COVID-19** (RUSSO A, SOBECKI L) To delay eligibility redeterminations for certain public assistance programs, temporarily modify income eligibility requirements for certain public assistance programs, and to declare an emergency.
Current Status: 5/5/2020 - Referred to Committee House Health
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-588>
- HB593 REQUIRED PAID LEAVE - COVID-19** (BOYD J, BOGGS K) To require paid leave for an employee who is unable to work due to quarantine or mandatory isolation, to create a grant program to compensate contract workers who cannot perform services during public health emergencies, to make an appropriation, and to declare an emergency.
Current Status: 5/5/2020 - Referred to Committee House Commerce and Labor
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-593>
- HB607 GENDER PAY DISPARITY TASK FORCE** (HOWSE S, LEPORE-HAGAN M) To create the Gender Pay Disparity Task Force.
Current Status: 5/5/2020 - Referred to Committee House Commerce and Labor
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-607>

- HB672** **WORKER PROTECTION ACT** (LELAND D, SOBECKI L) To enact the "Worker Protection Act" to require the Director of Job and Family Services to consider certain factors related to COVID-19 when determining, for purposes of unemployment benefit eligibility, whether an individual had just cause to quit work or refuse employment and to declare an emergency.
Current Status: 5/27/2020 - Referred to Committee House Insurance
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-672>
- HB679** **TELEHEALTH SERVICE REQUIREMENTS** (FRAIZER M, HOLMES A) To establish and modify requirements regarding the provision of telehealth services and to declare an emergency.
Current Status: 6/3/2020 - House Insurance, (Second Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-679>
- HCR17** **EXPAND SNAP TO STRIKERS** (SOBECKI L, RUSSO A) Urging Congress to expand Supplemental Nutrition Assistance Program eligibility to include the households of striking workers.
Current Status: 2/11/2020 - House Health, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HCR-17>
- SB9** **HEALTH PLAN CLAIM INFORMATION** (HUFFMAN M) To require health plan issuers to release certain claim information to group plan policyholders.
Current Status: 5/20/2020 - House Appoints Managers; D. Merrin, J. Cross, & K. Boggs Named as House Conferees
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-9>
- SB11** **PROHIBIT DISCRIMINATION-SEXUAL ORIENTATION, GENDER IDENTITY** (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 as an informal method that the Ohio Civil Rights Commission may use, and to uphold existing religious exemptions under Ohio's Civil Rights Law.
Current Status: 5/22/2019 - Senate Judiciary, (Third Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-11>
- SB91** **FAMILY AND MEDICAL LEAVE** (MAHARATH T) To establish family and medical leave insurance benefits.
Current Status: 9/25/2019 - Senate Insurance and Financial Institutions, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-91>
- SB92** **WAGE DISCRIMINATION** (MAHARATH T) 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: 3/20/2019 - Senate General Government and Agency Review , (First Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-92>

- SB94** **PREGNANT WORKERS** (MAHARATH T) To enact the "Ohio Pregnant Workers Fairness Act" to generally require employers to make reasonable accommodations for employees who are pregnant or breastfeeding.
Current Status: 9/10/2019 - Senate Government Oversight and Reform, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-94>
- SB149** **EMPLOYEE WAGE HISTORY** (MAHARATH T) To prohibit employers from seeking a prospective employee's wage or salary history.
Current Status: 1/29/2020 - Senate Transportation, Commerce and Workforce, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-149>
- SB201** **ALTERNATE EMPLOYER ORGANIZATIONS** (DOLAN M) To create alternate employer organizations.
Current Status: 1/22/2020 - Senate Transportation, Commerce and Workforce, (Third Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-201>
- SB207** **DRUG TESTS-UNEMPLOYMENT BENEFITS** (SCHAFFER T) To require unemployment benefit applicants to take a drug test under certain circumstances, to create the Ohio Works First drug testing pilot program, and to make an appropriation.
Current Status: 11/13/2019 - Senate General Government and Agency Review , (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-207>
- SB254** **MENTAL HEALTH BENEFIT PARITY** (GAVARONE T, O'BRIEN S) Regarding mental health and substance use disorder benefit parity.
Current Status: 2/12/2020 - Senate Insurance and Financial Institutions, (Second Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-254>
- SB259** **STATE-OWNED REAL PROPERTY** (SYKES V) To authorize the conveyance of state-owned real property.
Current Status: 5/20/2020 - **PASSED BY SENATE**; Amended on Floor, Vote 32-0
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-259>
- SB282** **UNEMPLOYMENT COMP COMPLAINTS** (HOAGLAND F) To require the Director of Job and Family Services to establish a process for employers to make complaints regarding unemployment compensation benefits.

Current Status: 3/4/2020 - Referred to Committee Senate Insurance and Financial Institutions

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-282>

TO: OMA Government Affairs Committee
FROM: Ryan Augsburger / Rob Brundrett
RE: Safety and Workers' Compensation Report
DATE: June 3, 2020

Overview

Workers' compensation law continues to be a legislative hotspot even amid COVID-19. The House continues to make workers' compensation expansion a priority. PTSD was recently passed from the House and is now being heard in the Senate.

A workers' compensation amendment was slipped into the COVID-19 immunity bill and is causing potential problems for that piece of priority legislation.

The OMA continues to work with allies to fight back against these attacks on workers' compensation law.

A plethora of new workers' compensation legislation was introduced because of the pandemic.

The BWC continues to defer premium payments amid the pandemic and has announced more money back to state fund employers. The Industrial Commission is expected to allow all claims to be heard but is still only using telephonic hearings.

Legislation and Rules

House Bill 81 – Workers' Comp for Bodily Fluid Exposure

Originally the bill provided workers' compensation coverage of post-exposure medical diagnostic services for a detention facility employee's exposure to blood or bodily fluids.

The House expanded the bill to include several additional workers' compensation provisions that were in its version of the workers' comp budget bill before the Senate striped the bill to budget provisions only. Included in HB 81 by the House were:

- reducing the statute of limitations for violations of a specific safety rule (VSSR) from two years to one year;
- increasing the funeral expense benefit cap for inflation;
- changing rules for final claim settlement agreements;
- continuing jurisdiction changes; and
- clarifying the voluntary abandonment doctrine.

The OMA provided proponent testimony for these changes in both the House and Senate. The bill has passed both chambers as awaits the governor's signature.

House Bill 197 – Pandemic Emergency Legislation

Earlier this year, Gov. DeWine signed into law House Bill 197 in response to the COVID-19 pandemic. Among the legislation's many provisions is one that tolls the statute of limitations for any administrative action or proceeding set to expire between March 9, 2020, and July 30, 2020. This includes workers' compensation timelines.

House Bill 308 – PTSD First Responders

Earlier this year, on a 74-22 vote, the Ohio House passed House Bill 308, legislation that would provide first responders with workers' compensation benefits to treat post-traumatic stress disorder (PTSD) even when there's no physical injury. Under current Ohio law, only mental conditions stemming from on-the-job physical injuries/illnesses are eligible for workers' compensation benefits.

Due to the risk of substantial premium increases for employers, the OMA has long opposed any legislation that would permit PTSD compensation or other mental claims when there is no associated physical injury or illness. As the OMA noted in its "key vote alert" to House members, HB 308, if enacted, "will inevitably result in increased workers' compensation costs for both public and private employers. The consequences of those cost increases will be felt across the Ohio economy and will negatively impact Ohio's business climate."

The OMA and other business allies crafted a competing plan that would have provided first responders with the same coverages they would receive under workers' compensation that was more streamlined.

The bill now pending in the Senate, where Senate President Larry Obhof (R-Medina) has already been quoted saying he supports the legislation. Members who are concerned with this precedent setting legislation should reach out to their Senators and urge them to vote no on the bill. The OMA and like-minded groups sent a letter to the committee chairman reiterating our opposition to the bill. The OMA provided opponent testimony this week.

House Bill 571 – COVID-19 Occupational Disease First Responders

The bill makes COVID-19 contracted by a peace officer, firefighter, or emergency medical worker an occupational disease under the Workers' Compensation Law under certain circumstances and declares an emergency. The bill has had one hearing.

House Bill 573 – COVID-19 Occupational Disease Workers

The bill makes COVID-19 contracted by any worker required to work during the pandemic an occupational disease under Ohio's workers' compensation laws. The bill has had one hearing.

House Bill 605 – COVID-19 Occupational Disease Food Workers

The bill makes COVID-19 contracted by a food worker including a food manufacturer during the pandemic an occupational disease. The bill has had one hearing. The bill in amendment form was included in the House passed liability bill. This is a major concern for food manufacturers as it changes current Ohio workers' comp law and would now put the burden of proof on the employer.

BWC Agency Notes

BWC to Send \$1.6 Billion in Dividend Payments to Employers

Gov. Mike DeWine asked the Ohio Bureau of Workers' Compensation to send up to \$1.6 billion in dividends to Ohio employers to ease the impact of the COVID-19 crisis. On April 10, the BWC board approved the governor's request in an emergency meeting. The BWC expects it will begin mailing checks to employers later this month.

According to the BWC, this dividend equals approximately 100% of the premiums employers paid in policy year 2018. The bureau will apply the dividend to an employer's outstanding balances first, including the recent installment deferrals. Any amounts exceeding outstanding balances will be sent to the employer.

Workers' Comp Implications of COVID-19 for Employers

OMA legal counsel Bricker & Eckler notes that the BWC has not provided a specific stance regarding compensability of COVID-19. The firm notes that claims of exposure to viruses or other potentially dangerous substances are generally not covered by workers' compensation unless an injury or occupational disease results from such exposure. Therefore, a claim of exposure to COVID-19 at work is not, in itself, a compensable injury or disease. Each claim will need to be evaluated on a case-by-case basis.

BWC Postpones MCO Enrollment Period

The Ohio Bureau of Workers' Compensation (BWC) recently announced that, due to the impact of the COVID-19, it would postpone this year's biennial open-enrollment period for employers to select a managed care organization (MCO) to medically manage workplace injuries. BWC will continue to publish its annual MCO Report Card, which is on BWC's website.

BWC Board Releases MCO Study

The board of directors recently heard a presentation on a second phase of a study of managed care organization (MCO) performance in the Ohio system.

Unlike 20 years ago when Governor Voinovich called the Ohio workers' compensation system the "silent killer of jobs," the Ohio system today is a national leader on any number of metrics, including medical.

However, that success comes at a cost. The study indicates that MCOs are paid 27% of total medical costs; meanwhile, benchmarks in from other programs are 15% of total costs for administrative costs.

That suggests a possible overpayment of \$70 to \$80 million for MCO services. Those costs, of course, are born by employers.

The BWC has established work groups to study this matter in detail.

Safety Issues

OSHA Revises Enforcement Policies

As states begin reopening their economies, OSHA has issued two revised enforcement policies to "ensure employers are taking action to protect their employees."

First, OSHA is increasing in-person inspections at all types of workplaces. Second, OSHA is revising its previous enforcement policy for recording cases of coronavirus. Under OSHA's recordkeeping requirements, coronavirus is a recordable illness, and employers are responsible for recording cases of the coronavirus, if the case:

- Is confirmed as a coronavirus illness;
- Is work-related as defined by 29 CFR 1904.5; and
- Involves one or more of the general recording criteria in 29 CFR 1904.7, such as medical treatment beyond first aid or days away from work.

BWC Safety Grants Expanded to \$70 Million

This week, the BWC was given approval by its board to spend \$70 million in fiscal years 2020 and 2021 on grants for Ohio employers to improve workplace safety. Funded by employer premiums, the Safety Grants program has already reached its 2020 appropriation of \$20 million.

Ohio's Latest Injuries and Illness Report Now Available

Ohio's 2018 Survey of Occupational Injuries and Illnesses report is now available. The report shows the number of cases involving days away from work in the private sector decreased 5% compared to the previous year. Sprains, strains, tears comprised more than 35% of reported injuries, followed by fractures (11.7%), cuts and lacerations (9%), and bruises and contusions (8.8%).

The rate of workplace injuries and illnesses for Ohio continues to be lower than the national average. Manufacturing reported a slight increase in the rate of injuries and illnesses, up from 3.1 to 3.2 cases per 100 full-time workers — but that's still less than the U.S. rate for manufacturing (3.4).

Overall in Ohio, agriculture — at 8.2 — had the highest total recordable case rate per 100 full-time workers.



**BEFORE THE GENERAL GOVERNMENT AND AGENCY REVIEW COMMITTEE
OF THE OHIO SENATE
SENATOR KIRK SCHURING, CHAIRMAN**

**TESTIMONY
OF
ROB BRUNDRETT
DIRECTOR, PUBLIC POLICY SERVICES
THE OHIO MANUFACTURERS' ASSOCIATION**

JUNE 3, 2020

Mr. Chairman and members of the Committee, my name is Rob Brundrett. I am the Director of Public Policy Services for The Ohio Manufacturers' Association (OMA). Thank you for the opportunity to provide testimony today on House Bill 80. The OMA was created in 1910 to advocate for Ohio's manufacturers; today, it has nearly 1,400 members. Its mission is to protect and grow Ohio manufacturing.

Manufacturing is the largest of the Ohio's 20 industry sectors and contributes more than \$112 billion annually in GDP, according to the most recent federal data. This comprises nearly 17% of the state's economic output. More than 700,000 Ohioans work in manufacturing. Ohio manufacturing employees earn, on average, more than \$61,500 in wages, according to newly released figures.

Throughout the years, the OMA has consistently advocated for an efficient and effective workers' compensation system that benefits workers, employers, and the economy of the state.

The Ohio workers' compensation system was designed to compensate injured workers' physical injuries/illnesses and any mental conditions that arise as a result of such physical injuries/illnesses. The OMA has historically opposed proposals that would permit PTSD compensation in cases in which there is no associated physical injury or illness. The adoption of a mental-only diagnosis would mark a significant change to the Ohio workers' compensation system.

As such, we are concerned about the potential expansion of workers' compensation beyond this provision's narrow target of first responders. We recognize that peace officers, firefighters, and emergency medical workers experience traumatic events. However, they are not alone in their willingness to undertake potentially dangerous and essential jobs. If we erode the physical injury requirement for peace officers, firefighters, and emergency medical workers, it will be difficult to justify not doing the same for other professions that seek equal treatment.

Once a fundamental parameter of the workers' compensation system – like the physical injury requirement – is compromised, the potential inroads into the program are endless. The result will be increased workers' compensation costs for public and private employers alike. The implications of those cost increases will be felt across the board and will impact Ohio's business climate. The increased costs could also affect our public employers' abilities to provide essential public safety functions.

Finally, given that mental health benefits have parity with physical health benefits under health insurance plans, it is important to have a broader conversation about where

PTSD arising apart from a workplace physical injury/illness is most effectively and appropriately financed – private health insurance, a special workers' compensation insurance PTSD fund outside of the current system – of which the OMA has been a vocal supporter, a specific government fund, a collectively bargained solution or something entirely different.

Thank you for the opportunity to testify. I would be happy to answer any questions from the committee.



May 28, 2020

The Honorable Kirk Schuring
Chairman
General Government and Agency Review Committee
Ohio Senate
1 Capitol Square
Columbus, Ohio 43215

Dear Chairman Schuring:

Our organizations, on behalf of our members, write to you today to express our opposition to Amended House Bill 308.

Collectively we have long advocated for a workers' compensation system in Ohio that benefits workers, employers, and the economy of the state. Over the past decade the Ohio Bureau of Workers' Compensation has continued to make strides in medical outcomes and actuarial soundness.

The Ohio workers' compensation system was designed to compensate injured workers' physical injuries/illnesses and any mental conditions that arise as a result of such physical injuries/illnesses. Our organizations have a history of opposing proposals that would permit PTSD compensation where there is no associated physical injury or illness. The adoption of a mental-only diagnosis would create a significant departure to longstanding and clear precedent in Ohio workers' compensation law.

Expanding PTSD coverage in the workers' compensation system will lead to cost increases to Ohio's public and private employers. In addition, given that mental health benefits have parity with physical health benefits under health insurance plans, it is important to have a broader conversation about where PTSD arising apart from a workplace physical injury/illness is most effectively and appropriately financed -- health insurance, an emergency responder fund, or a separate PTSD benefits system as advocated by our collective organizations. This separate system would establish a fund at the Department of Public Safety to provide benefits to first responders for PTSD without an accompanying physical injury. House Bill 556 was recently introduced to accomplish this goal and would ensure first responders can get the assistance they deserve, while at the same time preserving the workers' compensation system from an unintended expansion of coverage. We respectfully ask the Senate to consider this proposal.

Therefore, we would respectfully ask that the Senate Government and Agency Review Committee delay voting on House Bill 308 or in the alternative vote no on House Bill 308 in order to find a solution that all interested parties can support.



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OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
and Drafting

Legislative Budget
Office

H.B. 605
133rd General Assembly

Bill Analysis

Version: As Introduced

Primary Sponsors: Reps. Kelly and Patton

Paul Luzzi, Attorney

SUMMARY

- Creates a presumption that COVID-19 is an occupational disease under the Workers' Compensation Law for a retail food establishment employee or a food processing establishment employee who contracts COVID-19 during the emergency declared by Executive Order 2020-01D, issued March 9, 2020.
- Allows the presumption to be rebutted by affirmative evidence.
- Applies the presumption to claims arising only during the period of the emergency declared by the Order.
- Declares an emergency.

DETAILED ANALYSIS

Presumption that COVID-19 was contracted during employment

For purposes of the Workers' Compensation Law,¹ the bill creates a presumption that a retail food establishment employee or a food processing establishment employee who contracts COVID-19 contracted the disease in the course of and arising out of the employee's employment during the emergency declared by Executive Order 2020-01D, issued March 9, 2020. The presumption applies to claims arising only during the period of the emergency declared by the Order. The presumption may be refuted with affirmative evidence.²

Under continuing law, a retail food establishment is a premises where food is stored, processed, prepared, manufactured, or otherwise held or handled for retail sale (for example, a

¹ R.C. Chapters 4121, 4123, 4127, and 4131.

² R.C. 4123.68(CC), by reference to R.C. 3715.021 and 3717.01, not in the bill.

grocery store).³ A food processing establishment is a premises where food is processed, packaged, manufactured, or otherwise held or handled for distribution to another location or for sale at wholesale. An individual who produces nonhazardous food items in the individual's home is not a food processing establishment. Additionally, a processor of syrup, apple syrup, apple butter, sorghum juice, or honey is not a food processing establishment if 75% or more of the sap, apples, sorghum, or honey is produced or harvested directly from the processor's own trees, plants, or hives.⁴

The bill includes the presumption in the schedule of occupational diseases that are compensable under continuing law. An employee who is disabled by a scheduled occupational disease, or the dependent of an employee whose death is caused by the disease, is typically entitled to any compensation and benefits provided by the Law. The schedule, however, is not exclusive; any disease that satisfies the continuing law definition of occupational disease is compensable. For a disease to be considered an occupational disease under the Law, all of the following conditions must be satisfied:

1. The disease is contracted in the course of employment;
2. The employment creates a risk of contracting the disease in greater degree and in a different manner from the general public;
3. Either of the following applies:
 - a. The disease is peculiar to that type of employment by the disease's causes and the characteristics of the disease's manifestations;
 - b. The conditions of the employment results in a hazard that distinguishes the employment in character from employment generally.⁵

Emergency

The bill declares it to be an emergency law, meaning that it will take immediate effect once signed by the Governor.⁶

HISTORY

Action	Date
Introduced	04-10-20

H0605-I-133/ec

³ R.C. 3717.01, not in the bill.

⁴ R.C. 3715.01 and 3715.021, not in the bill.

⁵ R.C. 4123.68; R.C. 4123.01(F), not in the bill, and *State ex rel. Ohio Bell Tel. Co. v. Krise*, 42 Ohio St.2d 247, 253-254 (1975).

⁶ Section 3.



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Workers' compensation implications of COVID-19 for employers

March 19, 2020

The Bureau of Workers' Compensation (BWC) has not provided a specific stance regarding compensability of COVID-19 (coronavirus). However, businesses should consider several factors of a workers' compensation claim to prepare for potential claims, should a member of their workforce contract the virus.

Generally, claims of exposure to viruses or other potentially dangerous substances are not covered by workers' compensation, unless an injury or occupational disease (OD) results from such exposure. Therefore, a claim of exposure to COVID-19 at work is not, in itself, a compensable injury or disease. Each claim will need to be evaluated on a case-by-case basis.

In order to prevail on a COVID-19 claim, an employee would need to show that:

- they were exposed to COVID-19 in the course and scope of their employment;
- the exposure at work caused them to contract COVID-19; and
- the employee's employment involved a peculiar risk of exposure to COVID-19 different from that which the public and employees in general face.

Due to the fact that COVID-19 is now prevalent and widespread in the public,

employees will have difficulty specifically linking the condition to their employment, as mere exposure to or contact with the virus is insufficient for the allowance an OD claim.

Could your employee file a claim?

Consider a health care employee working around patients that could likely be infected with COVID-19 on a daily basis versus an office employee that is unknowingly working around individuals that could be infected with the virus.

The health care employee expected to work with or around patients that could likely be infected with the virus is more likely to have a compensable claim, assuming the test above is met, versus an employee working in an office where no other COVID-19 cases were identified. This is because the risk of contracting the virus is higher for the health care employee who is expected to engage individuals with the virus versus the office employee who is not expected to engage individuals with the virus. In other words, the health care employee's employment involved a peculiar risk, different from that which the public and employees in general face.

While the BWC has not taken a specific stance regarding compensability of the COVID-19, it does have a [Disaster & Pandemic Preparedness webpage](#) that offers general prevention guidelines for employers during this time.

Coronavirus (COVID-19) Frequently Asked Questions

To minimize the spread of coronavirus (COVID-19) and continue business operations, our BWC staff is teleworking. While we may be operating from a different physical location, we do not currently anticipate major issues with continuing to provide our employers, injured workers, and the many others we serve, with service. Phone numbers and email addresses for our customer service representatives remain the same.

We are monitoring the situation closely and will provide updates as necessary. We know you may have questions that we are just not able to immediately answer. We promise to keep you updated and share information as we have it. In the meantime, thank you for your patience as we all work through COVID-19 together.

For the latest information on coronavirus (COVID-19) visit coronavirus.ohio.gov. For questions about COVID-19's effect on BWC not listed here, you can email BWCCOVID19@bwc.state.oh.us.

Last updated at 5/28/2020 3:10 PM

New! See Q 2 about our second premium deferral.

Note to Medical Providers: BWC has developed an FAQ document specifically for medical providers that addresses COVID-19 issues. To download, click [here](#).

Face Coverings for Employers and Workforce: For FAQs related to our [Protecting Ohio's Workforce — We've Got You Covered](#) plan, [visit this link](#).

Frequently Asked Questions

Note: This is a "living" document. The following is updated routinely to reflect our most recent policy changes and initiatives, with new Q&As at the end.

Claims and Policy Processing

Q 1: What is BWC doing to help employers during this unprecedented time?

A: At the request of Ohio Governor Mike DeWine, in late April we sent up to \$1.6 billion to Ohio employers to ease the economic impact of the coronavirus (COVID-19) on Ohio's economy and business community. This dividend equals approximately 100% of the premiums employers paid in policy year 2018. BWC applied the dividend to an employer's outstanding balances first, including the recent installment deferrals. Any amounts exceeding outstanding balances were sent to the employer. For those employers, it means one less bill to worry about. As in previous years, the dividend is possible due to strong investment returns on employer premiums, a declining number of claims each year, and prudent fiscal management. It's also due to employers who work hard to improve workplace safety and reduce injury claims. Even with the downturn in the market, BWC is able to provide this important dividend to employers while maintaining funds to take care of injured workers for years to come. All checks were issued by the end of April. **Employers: For frequently asked questions about the dividend, [visit this link](#).**

Q 2: Will BWC allow employers to delay installment payments due to COVID-19's hardship?

A: To ease the continuing financial impact on Ohio businesses due to the COVID-19 pandemic, BWC is deferring installment payments for Policy Year 2020 for June, July, and August to Sept. 1, 2020. If employers are able to follow the normal installment payment scheduled due date, such payments may still be submitted. BWC will not lapse coverage or assess penalties for unpaid installments during this deferral period.

We previously deferred installments for March, April, and May until June 1, 2020. Following that decision, we gave Ohio employers nearly \$1.6 billion in dividends, but for most employers, we first applied the dividends to the unpaid balance for March, April, and May.

Q 3: How does BWC's deferral of premium installment payments apply to state fund employers that are Professional Employer Organizations (PEOs)?

A: PEO employers are required to report actual payroll and pay premiums on a monthly basis, but as state fund employers operating under the COVID-19 climate, they may defer reporting and payments for March and April until June 1st, 2020. As for the May payroll report and premium payment, it will be due as normally scheduled, on or before June 15, 2020. The deferral is automatic, there is no "opt in" requirement to take advantage of this option.

Q 4: How does this impact state fund clients of PEO employers?

A: A client of a PEO employer must maintain active workers' compensation coverage throughout the duration of any type of PEO agreement. Client employers will be treated the same as all other state fund employers and will have the option to defer payments until Sept. 1 without a lapse in coverage.

Q 5: If I contract COVID-19, is it a compensable workers' compensation claim?

A: It depends on how you contract it and the nature of your occupation. Generally, communicable diseases like COVID-19 are not workers' compensation claims because people are exposed in a variety of ways, and few jobs have a hazard or risk of getting the diseases in a greater degree or a different manner than the general public. However, if you work in a job that poses a special hazard or risk and contract COVID-19 from the work exposure, BWC could allow your claim.

Q 6: If I am quarantined due to COVID-19 can I receive workers' compensation wage replacement benefits?

A: BWC can only pay compensation in an allowed claim for disability resulting from the allowed conditions. An executive order issued by Governor DeWine, however, expands flexibility for Ohioans to receive unemployment benefits during Ohio's emergency declaration period. For more information on unemployment benefits go to the [Ohio Department of Job and Family Services](#).

Q 7: Are you making determinations on new claims?

A: Yes. Our staff is teleworking and has access to our systems.

Q 8: How will my benefits be extended when my doctor's office is closed, and they haven't completed my Medco-14?

A: BWC and the Managed Care Organizations are working with your physicians to ensure medical care and any necessary paperwork are completed so that benefits can continue uninterrupted. You may want to check with your treating provider to determine if telemedicine is available. Telemedicine can be an effective treatment tool and can be used when a new MEDCO-14 is needed.

Q 9: Will my benefits be extended if I am participating in a rehab program?

A: BWC is working with the vocational rehabilitation providers to ensure that those injured workers who are participating in a rehab program have the necessary documentation submitted to continue benefits.

Q 10: Will my wage-loss benefits be discontinued if I'm unable to complete the job searches?

A: BWC is working with injured workers to complete online job searches. Information about job postings is also available on the JobSearch.Ohio.Gov website. We encourage individuals who have been affected by COVID-19 to visit the website and apply for a position. Job search activities could also include the injured worker submitting resumes, taking online interviewing or resume tutorials, or working on sharpening their interview skills.

Q 11: I have an Independent Medical Exam (IME) scheduled and it has been cancelled, will my benefits be suspended?

A: If the examining physician has cancelled your examination, your benefits will not be suspended. Another examination will be scheduled at a later date.

Q 12: How will BWC be handling 90-day and extent of disability IMEs?

A: BWC has resumed scheduling examinations. We are asking injured workers and examining physicians to follow protocols outlined by the Ohio Department of Health to ensure the health and well-being of all who enter the facilities.

Q 13: Will I be able to speak with my claim representative?

A: If you are represented by an attorney, call your attorney first. Staff will be monitoring voice mail on a limited basis, but the most efficient method of communication will be via email messaging. The email address for your claims service specialist (CSS) can be found on the bottom of any correspondence you have previously received or look up your claim [here](#). For general questions, you may also call our call center at 1-800-OHIOBWC.

Q 14: What happens if my claim is denied or my employer does not agree with my claim?

A: Parties to the claim can still file an appeal if they disagree with the decision on a claim. The Ohio Industrial Commission (IC) will continue to have hearings. For the latest information visit the IC website at www.ic.ohio.gov.

Q 15: Will my Ohio Industrial Commission hearing be cancelled?

A: Please feel free to visit the IC website at www.ic.ohio.gov to view updated information and press releases.

Q 16: Will I be able to pick up a check for a compensation payment in a local service office?

A: After March 18, 2020, you will no longer be able to pick up your check from a local service office. We will address requests for overnight delivery on a case by case basis.

Q. 17: I have questions about the electronic delivery of my benefits, but I can't reach Key Bank. Where do I turn?

A. Key Bank is BWC's vendor that provides electronic delivery of funds through electronic fund transfers (EFT) and electronic benefit transfer (EBT) cards to our workers' compensation claimants. Key Bank's call center is currently experiencing an extremely high call volume that has resulted in difficulty reaching a Key Bank agent. Key Bank has notified BWC of this issue and has assured BWC they are taking corrective steps. Meanwhile, if you continue having difficulty reaching Key Bank, try calling Key

Bank's call center during off hours. Their call center is currently open 24/7, and call volume is much lower outside normal business hours.

Q 18: How will BWC handle additional allowance and Temporary Total (TT) entitlement requests that would ordinarily require an IME?

A: BWC continues to process additional allowance and TT entitlement requests but is using physician file reviews instead of in-person examinations whenever possible. In some cases, BWC will schedule an in-person examination. We are asking injured workers and examining physicians to follow protocols outlined by the Ohio Department of Health to ensure the health and well-being of all who enter the facilities.

Q 19: How is BWC addressing C-92 applications?

A: BWC has resumed scheduling examinations. We are asking injured workers and examining physicians to follow protocols outlined by the Ohio Department of Health to ensure the health and well-being of all who enter the facilities. However, if injured workers prefer to schedule their examination at a later date due to COVID-19 concerns, no penalties will be assessed.

Q 20: Will BWC be extending program reporting/requirement completion deadlines?

A: BWC is waiving all safety education and training requirements for this policy year (July 1, 2019 June 30, 2020 for private employers) for participants in the following programs:

- Drug Free Safety Program.
- EM Cap Program.
- Grow Ohio.
- Industry Specific Safety Program.
- One Claim Program.
- Policy Activity Rebate Program.

Calendar year 2020 public employer program participant requirements will be reviewed in June.

Discounts offered through these programs will be applied automatically.

Additionally, the annual report deadline submission for Drug Free Safety Program participants has been extended to June 1, 2020. More on these programs can be found at bwc.ohio.gov.

Q 21: Will BWC be suspending audits of self-insuring (SI) and state fund (SF) employers?

A: Yes, BWC has suspended face-to-face audits for both SI and SF employers. Paper and virtual audits will continue. We will be issuing temporary certificates to SI employers.

Q 22: What are employers supposed to do about the classes that were cancelled? What about the ½ day classroom training?

A: We have waived several requirements for many of our programs (see Q 20), but we encourage employers to take advantage of online classes while we continue to assess other training options.

Q 23: Will BWC extend the public employer taxing district (PEC) true-up grace period that ended March 16?

A: We extended the grace period to June 1, 2020.

Q 24: Is emergency sick leave and expanded FMLA paid to employees under the Families First Coronavirus Response Act reportable when submitting true-up payroll?

A: No. Emergency sick leave and expanded FMLA paid to employees under the Families First Coronavirus Response Act are not reportable to BWC for premium purposes. While regular paid sick leave (including third-party sick pay) is reportable to BWC, emergency sick leave and expanded FMLA paid under this act are not reportable.

Effective April 1, 2020, through Dec. 31, 2020, wages companies pay under the act for sick leave related to COVID-19 are not reportable to BWC. Also, leave time to care for a child whose school or childcare provider is closed or unavailable for COVID-19-related reasons is not reportable to BWC. Employers must follow the federal government’s eligibility and documentation guidelines to exclude these wages from their reportable payroll and premium calculation at true-up. Wages reported to BWC for premium calculation purposes are subject to verification by a premium audit.

Q 25: How will employers report wages at true-up for operational employees who are teleworking as a result of Governor Mike DeWine’s “stay at home” order while receiving wages from the employer?

A: To ease the economic impact of the COVID-19 crisis on businesses, private employers may report operational staff currently teleworking to class code **8871 – Clerical Telecommuter** during a declared state of emergency. For public employer taxing districts, we are creating a new class code, **9444 - Public Employee Clerical Telecommuter**, to report operational staff currently teleworking.

- The employer must contact BWC to request the addition of classification code 8871 – Clerical Telecommuter for private policies and 9444 - Public Employee Clerical Telecommuter for public employer taxing districts to their policy. This will allow the employer to report teleworking wages to class code 8871 or 9444 during the true-up period. NOTE: Since we are in the process of creating the new class code for public employers, the class code will not be available to add to your policy until after July 1, 2020. This will be available to add to your policy prior to the true-up period for public employers.
- Sole Proprietors and Partners who have elective to cover themselves will continue to report their wages to the assigned operating class code.
- Private employer staff currently reported under class code 8810-Clerical will continue to be reported under class code 8810, not 8871.
- The employer is responsible for recording, tracking, and documenting the wages associated with the operational employees now teleworking for premium audit purposes.
- If a worker continues to perform the same duties from home while teleworking, the employer will continue reporting that worker’s wages to the appropriate operational classification code, not to class code for teleworking.
 - For example: the employer manufactures surgical masks. The employer has sent workers home with the equipment and materials to continue making masks. These workers are not 8871 Clerical Telecommuter employees. They would remain under classification **2501 – Cloth, canvas and related products manufacturing**. The exposures for them do not change.
- If the worker performs their regular duties on an intermittent basis, such as working on the employer location Monday, Wednesday and Friday and is paid to stay home Tuesday and Thursday, all wages are to be reported to the operating class code and not to class code 8871.
- This temporary revision to the class code assignment rule only applies during the time of Governor DeWine’s “stay at home” order, which he initiated March 15, 2020.

- The employer is to cease reporting operational employees' wages to teleworking class code 8871 or 9444 once the "stay at home" order has ended or if the operational employee(s) return to performing their previous job duties.

To request the addition of class code 8871 - Clerical Telecommuter or 9444 for public employer taxing districts to your policy, please call 1-800-644-6292 or send an email to RTSclass@ohiobwc.com. Remember to include your policy number in your email request.

Q 26: How will BWC address late payments for Self-Insured employer assessments?

A: As you are aware, assessment payments for the July 1, 2019, to Dec. 31, 2019, period were due by Feb. 28, 2020. Normally, payments not received by the due date are subject to additional late payment penalty fees.

However, to provide financial relief to employers amid the coronavirus (COVID-19) pandemic, we are waiving the late payment penalty fees applicable to the semi-annual assessments that were due Feb. 28, 2020. We also are reimbursing employers who had submitted late payment penalty fees levied for the assessment period.

This waiver does not apply to future semi-annual assessment invoice payments. **It is only for the assessment period of July 1, 2019, to Dec. 31, 2019.**

Q 27: Will BWC continue to assess increases in security and require Letters of Credit as a result of annual reviews?

A: BWC is continuing its annual review of Self-Insured employers' workers compensation policies. A satisfactory review permits renewal for the next policy year. Results of initial reviews that indicate the need for additional security to be provided will be suspended for 90 days as a result of the COVID-19 pandemic.

In addition, though we continue our annual review of Self-Insured employers' workers' compensations policies, we are suspending assessing additional security for a 90-day period when reviews indicate a need. In such cases, we will issue temporary certificates of coverage with plans to re-evaluate prior to the end of the extended period.

Q 28: I am a self-insuring (SI) employer or a client of a self-insuring Professional Employer Organization (PEO). Why don't I receive a dividend payment like the state fund employers?

A: The recent dividend announcement was made possible for state insurance fund employers because of strong investment returns on the premiums BWC collects and lower than expected claims costs in recent policy periods. Self-insuring employers and self-insuring Professional Employer Organization(s) (PEO) do not pay premiums to the state insurance fund. Thus, the SI community has not provided the premium dollars that through the strong investment returns allow the payment of dividend dollars back to the state insurance fund premium payers.

SI assessments are used to cover the cost of the annual involvement of the BWC and the Industrial Commission in self-insured employer and claim issues as well as the cost related to previous SI employers that have defaulted on their workers' compensation claim obligations. These assessments are used within the year of collection with very little money available for investment. Any investment on SI provided money is used to lower the annual assessment rates.

Q 29: Will employers who have suspended operations due to the COVID-19 who are paying employees while they are idle at home need to report the payments as payroll?

A: No. Employers are not required to report to BWC the wages paid to employees who are idle at home because of the COVID-19 pandemic. We encourage employers to keep track of such payments, however, for purposes that might surface during potential audits.

Q 30: Has BWC modified its delivery of care for injured workers through telemedicine and telephone services?

A: Yes. BWC released three policy alerts to date to address the expanded use of telemedicine and telephone services.

- Policy alert [2020-01](#) announces a more flexible use of telemedicine and expands the site of care delivery to the injured worker's home, as well as relaxing the requirements for using a secure platform of communication. It also reduces some administrative burden to notify or request additional authorization from the managed care organization (MCO) to change the care-delivery method.
- Policy alert [2020-02](#) permits telephonic communication as a temporary substitute for some vocational rehabilitation services.
- Policy alert [2020-03](#) expands the service providers eligible to provide and bill for virtual check in and/or telephone services (audio only).

Q31: Will BWC extend the Public Employer Group-Experience Rating program roster filing deadline?

A: Yes. Normally, PEC employers would need to apply for a group rating plan by the last business day of May (May 29th this year). We have approved an extension of this deadline to June 12, 2020, with consideration that many PEC may not have had the opportunity to perform normal work duties that would require attention to such applications and deadline dates.

Q32: Will BWC extend the Private Employer (PA) Industry-Specific Safety Program (ISSP), Drug-Free Safety Program (DFSP) and Transitional Work Bonus (TWB) program enrollment deadlines?

A: Yes. Normally, the deadline for PA employers to apply for ISSP, DFSP, and TWB would be the last business day of May (May 29th this year). We have approved an extension of this deadline to June 30, 2020, for new employers, as well as those employers who withdrew from the program previously, to apply for these programs with consideration that many employers may not have been working and able to submit applications timely.

Please continue to monitor bwc.ohio.gov for updated information.

BWC Returns up to \$1.6 Billion to Ohio Employers

Frequently Asked Questions

Why is BWC giving a dividend?

We are issuing a dividend of up to \$1.6 billion to ease the financial pressures your organization may be experiencing amid the coronavirus (COVID-19) pandemic. While you may be accustomed to receiving dividend checks from BWC, this year's dividend was not a foregone conclusion. Gov. DeWine has asked his agencies to do everything they can to ease the strain of COVID-19 on Ohioans. Even after the dividend, the net position of the State Insurance Fund for injured workers remains strong due to investment returns, declining injuries and decreasing reserves.

How much will an employer receive?

BWC defines the private employer dividend as 100% of billed premium for eligible employers for the policy period of July 1, 2018, through June 30, 2019. BWC will apply the percentage to the blended premium amount. BWC defines the public employer dividend as 100% of billed premium for eligible employers for the policy period of Jan. 1, 2018, through Dec. 31, 2018. BWC will apply the percentage to the blended premium amount.

When will I receive my dividend?

BWC will mail dividend checks to eligible employers before the end of April.

I have an outstanding balance on my account. How will this impact my dividend?

An employer who has an outstanding balance — including but not limited to deferred installments, balances in an appeal status and balances owed resulting from a transfer of experience or liability from a predecessor entity — will have its dividend payment reduced by the amount of the outstanding balance. If an employer's outstanding balance exceeds the dividend amount, BWC will offset the employer's account by the amount of the dividend.

An employer whose dividend is applied to an outstanding balance will receive detail regarding how the dividend was applied on their next scheduled invoice. Employers will be able to see their updated account information at any time on bwc.ohio.gov.

Is BWC issuing a check like they have done in the past or providing a credit on employers' policies?

We will issue paper checks as we have done in the past.

Where will my check be sent?

We will send dividend checks to the current address we have on file. Please view the information we have on file for you to ensure we have the most current operating name of your business, tax identification number, physical location, mailing address, telephone number, e-mail and/or web site.

Can I receive my dividend electronically?

No. We are sending paper checks by mail only. In the event you lose your check and fail to cash one we re-issue, we will credit your BWC account.

Who is eligible for the dividend?

BWC defines eligibility as follows.

1. State Insurance Fund employers (private employers or public employer taxing districts only).
2. The employer must have reported payroll greater than zero for the applicable policy period.
3. The employer must have been billed premium for the applicable policy period.
4. Private employers must have completed their payroll true-up for policy year 2018 as of April 4, 2020.
5. The employer must be in an active, reinstated, combined, cancelled – business sold, or debtor-in-possession status or, in a lapsed status with a lapse date of Jan. 1, 2020 or later as of April 4, 2020.
6. Public employers must have completed their payroll True-Up for the 2018 policy year by April 4, 2020.

Private employers who do not meet all the criteria in 1, 2, 3, 4 and 5 listed above will not be eligible to receive a dividend. Public employers who do not meet all the criteria in 1, 2, 3, 5 and 6 listed above will not be eligible to receive a dividend.

When will BWC determine eligibility?

Eligibility was based on an employer's status (active, lapsed) with us as of April 4. BWC will not make changes to eligibility after this date.

How will this impact BWC's finances and the State Insurance Fund?

BWC and the State Insurance Fund will remain in a strong financial position after payment of this dividend.

I am in an individual-retrospective-rating program. How will BWC calculate my dividend?

BWC defines premium for private, individual-retrospective-rated employers as minimum premium, plus the impact of retrospective claim-loss premium billed for policy year July 1, 2018, through June 30, 2019, as of April 4, 2020.

BWC defines premium for public, individual-retrospective-rated employers as minimum premium, plus the impact of retrospective claim-loss premium billed for policy year Jan. 1, 2018, through Dec. 31, 2018, as of April 4, 2020.

I paid retrospective claim-loss premium for other policy periods during the eligible policy period. Will BWC consider these payments in my dividend calculation?

No. Payments received from private employers from July 1, 2018, through June 30, 2019, that are not applicable to that policy year will not be considered in the dividend calculation. Payments received from public taxing districts from Jan. 1, 2018, through Dec. 31, 2018, that are not applicable to that policy year will not be considered in the dividend calculation.

I am in a group-retrospective-rating program. How will BWC calculate my dividend?

BWC defines premium for private and public group-retrospective-rated employers as individual, experience-rated premium.

I am in a Deductible Program. How will BWC calculate my dividend?

BWC defines premium for private employers participating in a Deductible Program as discounted, blended premium.

I received a discount on my premium for Go-green, Lapse-free or Safety Council. Will this reduce my dividend?

Yes, we will be reducing the dividend based on discounts already received.

I reported zero payroll but paid the minimum administrative charge. Will I receive a dividend?

No. Employers reporting zero payroll are not eligible.

I had a no coverage penalty during the period upon which the dividend is being calculated, but formally took out coverage after the conclusion of the applicable period. Will I receive a dividend?

No. BWC will not include no coverage penalties in the premium base it uses to calculate the dividend.

I canceled my coverage but paid premium during July 1, 2018, to June 30, 2019. Will I be eligible for a dividend?

No. A private or public employer that cancels coverage prior to April 4, 2020, is not eligible for the dividend. BWC will not make account adjustments to give these employers the dividend.

I purchased a company that was billed premium for the July 1, 2018, through June 30, 2019, policy year. How will this impact my dividend?

BWC will determine eligibility based on the status of the predecessor policy. If the predecessor policy would have been eligible for the dividend, the successor will receive the applicable dividend. If the predecessor policy was canceled, the successor will not be eligible for the dividend. If the predecessor policy was in a lapsed status prior to the combination, the successor will not be eligible for a dividend. If there is existing debt on the predecessor policy, BWC will reduce the successor dividend by the amount of the outstanding balance.

I just went self-insured. Will I receive a dividend?

Private employers that paid premium for the policy reporting period of July 1, 2018, through June 30, 2019, but were granted the privilege of self-insurance before April 4, 2020, are eligible for the dividend based upon the billed premiums during the July 1, 2018, through June 30, 2019, policy period.

Public employer taxing districts that paid premium for the policy reporting period of Jan. 1, 2018, through Dec. 31, 2018, but were granted the privilege of self-insurance before April 4, 2020, are eligible for the dividend based upon the billed premiums during the Jan. 1, 2018, through Dec. 31, 2018, policy period.

I used a Professional Employer Organization (PEO) during the July 1, 2018, through June 30, 2019, policy period. Will I receive a dividend?

PEOs that receive a dividend must provide notice of the dividend to their client employers of record for the July 1, 2018, through June 30, 2019, policy period. BWC will also notify PEO client employers that it sent a dividend to their PEO. The amount PEOs pay to their client employers must be equal to 100% of the blended premium paid by the PEO to BWC on behalf of the client employer for the July 1, 2018, to June 30, 2019, policy period less the permissible administrative fee discussed herein.

The PEO shall calculate the client employers' share of the dividend based on the full amount of the dividend BWC issued it. The PEO shall not reduce the employers' share of the dividend by any credit applied to the PEO policy as a result of non-pending, outstanding balances. The PEO may retain up to 6% of the client employers' dividend as an administrative fee. PEOs must issue dividends to clients within 30 days of BWC's issuance of the dividends.

The PEO may not withhold or offset payment of the dividend based on any contractual obligation and must issue the dividend regardless of whether the client employer continues as a client employer of the PEO.

I now use a Professional Employer Organization. Will I receive a dividend?

Private employers that paid premium for the policy period of July 1, 2018, through June 30, 2019, but entered into a PEO relationship before April 4, 2020, will be eligible for the dividend based upon the billed premiums during the July 1, 2018, through June 30, 2019, policy period. BWC will send these dividends directly to the employer, not to the current PEO.

I made payments from July 1, 2018, through June 30, 2019, for other coverage periods. Will BWC consider these payments in the dividend calculation?

No. BWC will not consider payments it received from private employers from July 1, 2018, through June 30, 2019, that are not applicable to that policy year in the dividend calculation. Payments received by BWC from public employer taxing districts from Jan. 1, 2018, through Dec. 31, 2018, that are not applicable to that policy year will not be considered in the dividend calculation.

I am on a payment plan. How will this impact my dividend?

BWC will reduce the dividend payment to an employer that has a non-pending, outstanding balance including, but not limited to, balances in an appeal status and balances owed resulting from a transfer of experience or liability from a predecessor entity, by the amount of the outstanding balance. If an employer's non-pending, outstanding balance exceeds the dividend amount, BWC will offset the employer's account by the amount of the dividend.

An employer whose dividend is applied to an outstanding balance will receive detail regarding how the dividend was applied on their next scheduled invoice. Employers will be able to see their updated account information at any time on bwc.ohio.gov.

Will BWC adjust the dividend if it audits me in the future or if it adjusts my rate?

The dividend is a one-time payment. BWC will not make adjustments to the dividend amount for any reason, including, but not limited to, audits, rate adjustments, appealed balances, changes in lapse status retrospective claim billings, etc. after April 4, 2020.

Safety & Workers' Compensation

Ohio BWC Defers Premiums for Next Three Months

May 29, 2020

The Ohio Bureau of Workers' Compensation (BWC) is **deferring employers' premium installments** for the months of June, July and August. Businesses will have the option to defer the monthly premium payments with no financial penalties. This is the second payment deferral BWC has authorized since the start of the COVID-19 pandemic. The deferral is designed to help employers focus financial resources on re-opening their businesses under the **Responsible Restart Ohio Plan**. 5/28/2020

Business Groups Send Letter Opposing PTSD Legislation

May 29, 2020

The OMA and allied business associations this week **sent a letter** to the members of the Senate General Government and Agency Review Committee, outlining their opposition to **House Bill 308** — legislation that would allow first responders to receive Ohio workers' compensation benefits if diagnosed with post-traumatic stress disorder (PTSD), even without an accompanying physical injury. The coalition urged lawmakers to consider alternatives to provide PTSD benefits to first responders. 5/28/2020

How Automakers are Bringing Back Factory Workers

May 29, 2020

Tech-focused Techzimo.com has published **this article** examining U.S. automakers' efforts to prevent workers from contracting COVID-19 or spreading it. Some key takeaways:

- Ford requires employees to complete a daily, online survey assessing their ability to report to work. They're required to show an email or text message confirmation that they filled out the survey when they arrive for their shift.
- GM is asking that doors be propped open to increase airflow and reduce the number

of surfaces workers need to touch. The company recommends that workers use body parts other than their hands to open doors, when possible.

- Fiat Chrysler is giving employees a reusable temperature strip to use before they come to work, and the company has implemented a start-of-shift sanitation process for each factory workstation. The company has suspended meetings of more than eight employees.

Also, the National Association of Manufacturers and the Manufacturing Leadership Council have published **this summary** of a briefing held this week to share policies designed to keep auto industry employees safe. 5/27/2020

Understanding Contact Tracing in the Workplace During COVID-19

May 29, 2020

Perhaps the most challenging aspect of encountering a suspected or confirmed case of COVID-19 among employees is identifying those with whom the infected worker has had contact. OMA Connections Partner Fisher Phillips has published **this new insight** into the CDC's contact tracing guidelines for general businesses. 5/27/2020

Industrial Commission to Hold Special Meeting, June 3

May 29, 2020

A special meeting of the Ohio Industrial Commission **will be held** Wednesday, June 3, at 10 a.m. to address additional workers' compensation issues that may be heard during Ohio's state of emergency. Currently, a limited number of issues can be heard by the Commission. The meeting will be live streamed via the Industrial Commission's **YouTube channel**. 5/27/2020

Gov. DeWine Issues "Ohioans Protecting Ohioans" Health Advisory

May 22, 2020

This week the DeWine administration released details of a new “**Ohioans Protecting Ohioans Urgent Health Advisory**” which **rescinds and modifies the Stay Safe Ohio order** that was issued by the Ohio Department of Health on April 30, 2020.

The health order replaces language requiring Ohioans to stay at home with limited exceptions with language that strongly recommends that citizens, especially those who are high-risk, stay at home as much as possible.

The new health advisory still prohibits public or private gatherings of 10 or more persons. And it lifts overall travel restrictions and the requirement to quarantine if someone travels to or returns to Ohio. Unnecessary travel within or outside of Ohio is not encouraged.

Under the advisory, businesses, and in particular manufacturers, are still required to follow the operational rules, protocols, and guidelines contained in previous Orders. Therefore, manufacturers should not see many changes in either operational requirements or the enforcement of mandates. Here is a **summary of the advisory** from OMA general counsel Bricker & Eckler. *5/21/2020*

Senate Passes Favorable Workers’ Compensation Bill **May 22, 2020**

This week the Senate unanimously passed **House Bill 81**. Supported by the OMA, the bill is a workers’ compensation catch-all that **makes a variety of positive changes** to the system for manufacturers. The House will need to concur with the Senate amendments before the bill goes to the governor to be signed. *5/21/2020*

Senate Continues Hearings to Allow PTSD Coverage **May 22, 2020**

This week, the Senate’s General Government and Agency Review Committee continued hearings on **House Bill 308** — legislation that would allow first responders to receive Ohio workers’ compensation benefits if diagnosed with post-traumatic stress disorder (PTSD), even without an accompanying physical injury. Proponents lined up to throw in their support for the precedent changing legislation. The bill would allow mental claims without an

accompanying physical harm for the first time in Ohio’s workers’ compensation system history. The business community including the OMA remains opposed to the bill. More hearings are expected. *5/21/2020*

OSHA Revises Enforcement Policies **May 22, 2020**

As states begin reopening their economies, **OSHA has issued two revised enforcement policies** to “ensure employers are taking action to protect their employees.” First, OSHA is increasing in-person inspections at all types of workplaces. Second, OSHA is revising its previous enforcement policy for recording cases of coronavirus. Under OSHA’s recordkeeping requirements, coronavirus is a recordable illness, and employers are responsible for recording cases of the coronavirus, if the case:

- Is confirmed as a coronavirus illness;
- Is work-related as defined by 29 CFR 1904.5; and
- Involves one or more of the general recording criteria in 29 CFR 1904.7, such as medical treatment beyond first aid or days away from work.

5/20/2020

BWC to Ship 2 Million Face Coverings to Employers **May 22, 2020**

The Ohio Bureau of Workers’ Compensation (BWC) will **distribute two million face coverings** to Ohio state fund employers. Fifty face coverings will be sent to each state fund employer; distribution started this week. The face coverings are funded by the BWC budget and will not affect employer premiums. The governor asks that if you cannot use them, please share them with others who may need them. *5/20/2020*

Posters and Signs from Responsible RestartOhio **May 22, 2020**

These **free, printable resources** from Responsible RestartOhio can be used by

anyone in Ohio to display common symptoms, protocols, or guidelines during the reopening of business throughout Ohio during the COVID-19 pandemic. *5/19/2020*

Solutions to Common Face Mask

Frustrations

May 22, 2020

According to OhioHealth, while you should wear a mask, wearing a face mask changes your routine: how you breathe, how you hold your jaw, how you talk, even how you eat and drink. OhioHealth **offers these tips** to clear up some mask misconceptions and alleviate common frustrations you may have when wearing masks. *5/19/2020*

NAM: Manufacturers Share COVID-19-Related Best Practices

May 22, 2020

On a recent National Association of Manufacturers (NAM) Manufacturing Leadership Council town hall meeting, two manufacturers—The Bradbury Group and Greene Tweed—shared their experiences and spoke with council members about what’s worked and what hasn’t for protecting the health and safety of their employees and workplaces.

You can listen to the **call here** and **read a blog post** summarizing the information here. The conversation included information on communication, return-to-work guidelines, and travel and visitor policies. *5/19/2020*

Important Program Deadline for Employers in BWC DFSP

May 22, 2020

Attention Drug-Free Safety Program (DFSP) participants: Your **annual report** is due to be submitted to the BWC on or before June 1, 2020. *5/18/2020*

More Guidance on Face Coverings

May 15, 2020

If you still have questions regarding the use of face coverings and face shields, you aren’t alone. To help provide some clarity, **watch this video** in which Dr. Bill Gegas, medical director at Worthington Industries, explains the

differences between various masks/coverings, as well as their advantages and disadvantages. Under the current “Stay Safe Ohio” order, employees are required to wear face coverings, **with exceptions**. The order (**Section 8**) specifically states that, at a minimum, facial coverings should be cloth/fabric and cover an individual’s nose, mouth and chin. If you opt to use a different kind of face covering (including a face shield), document why that decision was made as a better/safer option for your employees. Be prepared to show the documentation to local health authorities, if requested.

Here are the **Ohio Department of Health’s FAQs** on face coverings in the workplace, as well as the **OMA’s FAQ document**. Also, here is **CDC guidance on using cloth face coverings**. *5/14/2020*

CDC Updates Safety Guidance for Manufacturers

May 15, 2020

The CDC has updated its **guidance for manufacturing workers and employers**. The guidance includes an **infographic on workstations**, as well as sections on administrative controls, educating workers and supervisors, cleaning and disinfecting, use of PPE, and screening and monitoring employees. *5/13/2020*

Listen to OMA’s Infectious Disease Webinar

May 15, 2020

With manufacturers focused on preventing the spread of COVID-19 at their workplaces, **this link** to the OMA’s May 12 webinar will help employers develop an infectious disease preparedness and response plan. Presented by Safex President Dianne Grote Adams, the webinar includes more than 30 minutes of Q&A. *5/13/2020*

Ohio-Made Masks, Face Shields Available for Manufacturers

May 15, 2020

The Ohio Manufacturing Alliance to Fight COVID-19 has secured Ohio-made cotton masks and face shields to help Ohio manufacturers stay open and safe. These supplies are now available for purchase by Ohio manufacturers, and all prices are direct pass-throughs at cost from manufacturers in our

state. **Click here** to order. Orders will ship via FedEx shortly after they are received. *5/12/2020*
ODH Offers Customizable Welcome ‘Stop Sign’ for Businesses
May 15, 2020

The Ohio Department of Health has made available **this editable sign** — in Microsoft Word format — for businesses to post as a reminder to customers to stay home if sick. Click the “download” button on the right side of the page to view the document. Also, check out the **Ohio Emergency PPE Makers’ Exchange** if your business is in search of safety signage. *5/13/2020*

University Hospitals Launches COVID-19 Safety ‘Playbook’ for Businesses
May 15, 2020

University Hospitals has published the “**UH Healthy Restart Playbook**” to provide businesses with guidance to help keep their workforce, facilities and customers safe. The playbook includes a website with important, up-to-date content; a downloadable version of the playbook; and an opportunity to ask UH experts for advice. *5/11/2020*

Steps Meatpackers Are Taking to Stop the Spread
May 15, 2020

Meatpacking plants have been forced to take some of the most aggressive steps to stop the spread of the coronavirus. This **playbook and checklist** was developed by University of Nebraska Medical Center public health specialists to help meat plants fight COVID-19. It includes sections on factory ventilation and physical barriers. *5/11/2020*

Senate Begins Hearings on Workers’ Comp PTSD Bill
May 15, 2020

This week, the Senate’s General Government and Agency Review Committee heard **sponsor testimony** on **House Bill 308** — legislation that would allow first responders to receive Ohio workers’ compensation benefits if diagnosed with post-traumatic stress disorder (PTSD), even without an accompanying physical injury. Were HB 308 enacted, it would mark the first time that Ohio would allow a mental claim

without accompanying physical harm. Current law prohibits so-called “mental-mental claims.” There is concern that Ohio lawmakers are aiming to pass the bill before year’s end. *5/14/2020*

What Ohio House Bill 197 Means for Workers’ Compensation
May 15, 2020

In late March, the Ohio Legislature passed and the governor signed **House Bill 197** as a direct response to the COVID-19 pandemic. OMA Connections Partner Dinsmore has published **this insight** into how HB 197 changed Ohio workers’ compensation system in two key ways: permitting public meetings and “tolling” deadlines. *5/12/2020*

More Safety Guidance for Manufacturers
May 8, 2020

This week, government agencies and OMA Connections Partners published more helpful COVID-19-related guidance for manufacturers, including:

- The state’s **guidance on Ohio travel, checklist for businesses and employers, and guidance for re-opening.**
- The Ohio Department of Health’s **updated checklist** for employers regarding potentially exposed workers.
- OSHA’s **new video** and **poster** on how to properly wear and remove a mask/respirator.
- CDC’s updated guidance on **strategies to optimize the supply of PPE**, as well as the **use of cloth face coverings.**
- Fisher Phillips’ guidance on factors that employers should consider **when taking employees’ temperatures**, as well as guidance on **developing a proactive workplace safety plan.**

Meanwhile, the OMA has updated its **FAQ document**, which addresses concerns raised by members (new questions are in green text). Also, the OMA has published **this document** called “Safety Guidance & Resources for Manufacturers During the COVID-19 Emergency.” *5/7/2020*

Reminder: Read the ‘Stay Safe Ohio’ Order
May 8, 2020

The “Stay Safe Ohio” order, issued a week ago, replaced Ohio’s stay-at-home order and contains the safety protocols of the DeWine administration’s re-opening plan. Manufacturers should pay special attention to **Sections 8, 10, 16, 20, and 21(a)**.

For additional guidance, the Ohio Department of Health has published **this FAQ document**. Also, **here is analysis** from OMA general counsel Bricker & Eckler. *5/5/2020*

OSHA Poster to Prevent Workplace
Coronavirus Exposure Available in Multiple
Languages
May 8, 2020

OSHA’s poster to prevent workplace coronavirus exposure has been published in 11 additional languages. The **poster highlights 10 infection prevention measures** every employer should implement to protect workers’ safety and health during the pandemic. *5/6/2020*

State-by-State Re-Opening Information
May 8, 2020

The National Association of Manufacturers has refreshed its **state tracker** to provide the latest re-opening information across all 50 states. Also, the U.S. Chamber has launched an **interactive map** comparing state-by-state re-opening guidelines for employers. *5/6/2020*

BWC Hosts Employer Webinar; Two Dates
Offered
May 8, 2020

This month, the Ohio BWC’s Employer Update Webinar will include updates on COVID-19, employer dividends, the importance of reviewing your estimated annual premium notice, BWC program options, key dates, and the monthly safety tip. The webinar will last 25 minutes. Registration links are available for the following dates:

- **Tuesday, May 12** at 1:30 p.m.
- **Thursday, May 28** at 11:30 a.m.

The BWC will record this webinar and make it available for future viewing **here**. *5/4/2020*

Face Coverings Required for Manufacturing
Employees Beginning May 4
May 1, 2020

The DeWine administration this week clarified that use of face coverings by employees will be mandatory under Ohio’s re-opening plan. This clarification came after incorrect information was posted by the governor’s staff earlier in the week.

For manufacturers, this requirement begins May 4. Fortunately, there are exceptions to the mandate. (The OMA engaged the administration to secure additional exceptions to address manufacturers’ concerns.)

The exceptions are:

- An employee in a particular position is prohibited by a law or regulation from wearing a mask while on the job.
- Wearing a mask on the job is against documented industry best practices.
- Wearing a mask is a violation of a company’s safety policy.
- Wearing a mask is not advisable for health purposes.
- An employee is alone in an enclosed workspace.
- There is a practical or safety reason a mask cannot be worn by an employee (e.g., extreme heat, wet conditions, need to communicate).

The administration has said that if any of these exceptions apply to a business — or one of its employees — written justification must be provided upon request. In other words, be prepared to show your written justification to local health care officials or law enforcement. *4/30/2020*

Face Coverings: Questions, Answers, Guidance
May 1, 2020

The Ohio Department of Health has published an FAQ document — in both a **web version** and **PDF** — regarding the use of cloth masks/face coverings in the workplace. The CDC has also **published guidance** on how to wear face coverings and make cloth face coverings at home.

To help clear confusion surrounding Ohio's face coverings requirement, **the OMA has published this document.**

Also, the OMA has updated **this collection of safety-related resources** to support Ohio manufacturers, whether they are re-opening their facilities or continuing essential operations. *4/30/2020*

OMA Webinar Addresses Best Practices During COVID-19 and Ohio's Re-Opening Period
May 1, 2020

On Wednesday, April 29, the OMA hosted a comprehensive COVID-19 briefing with subject-matter experts who addressed key issues facing manufacturers, including:

- Ohio's re-opening plan;
- Workplace safety;
- The use of PPE by employees;
- Unemployment insurance provisions; and
- Federal loan programs.

Numerous questions from members were answered, so we hope you are able to listen to **this recorded webinar.** (The event begins at the 3:20 mark.) *4/30/2020*

Guidance for Food & Beverage Manufacturers During COVID-19
May 1, 2020

Because food and beverage processors face unique safety challenges in protecting workers from COVID-19, OMA Connections Partner Plante Moran has published **this guidance.** *4/28/2020*

OMA Webinar: Infectious Disease Planning for Employers

May 1, 2020

On Tuesday, May 12, at 10 a.m. (ET), the OMA will host a 60-minute webinar to help employers develop an Infectious Disease Preparedness and Response Plan, as recommended by OSHA. **Register or learn more here.** *4/30/2020*

Find PPE for Your Business on the Ohio Makers' Exchange
May 1, 2020

Here is a reminder for members searching for face coverings, masks, or other personal protective equipment (PPE). The Ohio Manufacturing Alliance to Fight COVID-19 recently launched the **Ohio Emergency PPE Makers' Exchange**, an online marketplace that features PPE offered by Ohio manufacturers and makers. At last check, some of the products listed include:

- assembly line partitions;
- face shields/masks/coverings;
- temperature testing stations;
- distancing signage;
- hand sanitizer;
- shoe coverings; and
- aprons/gowns.

Keep in mind that this is an exchange — more like Craigslist than eBay, so the transaction will be directly between you and the seller. The Alliance has screened vendors to the best of its ability to include only Ohio manufacturers, but it cannot vouch for sellers or products. *4/29/2020*

Reserve Cotton Face Masks, Plastic Shields Through OMA
May 1, 2020

The OMA, along with Northeast Ohio's MEP MAGNET, has earmarked stockpiles of cotton face masks and plastic face shields for Ohio manufacturers to purchase.

Approximately 200,000 cotton masks and 200,000 face shields will be ready to start to ship in about three weeks at a price of approximately \$4 per cotton mask or plastic face shield. Each product will be sold in lots of 25 pieces. Final prices will be determined by demand and will be at cost.

Fill out **this form** if you'd like us to reserve a quantity for you. No orders will be placed until we contact you with a final price and estimated delivery date. We will make every attempt to fulfill as many orders as possible — and we may limit quantities in order to serve as many manufacturers as possible. Products are manufactured in Ohio. *4/30/2020*

Ohio's Stay-At-Home Order Extended **May 1, 2020**

The DeWine administration has extended Ohio's stay-at-home order to 11:59 p.m. May 29, 2020. The **new order** has major exceptions, including for people to shop, exercise outside and go to work. The order allows certain businesses to open, provided they follow recommended workplace safety precautions.

Today, May 1, non-essential medical procedures at hospitals that do not require an overnight stay are allowed to resume, as are dental and veterinary visits. On Monday, May 4, construction, manufacturing and distribution operations can resume, and offices can re-open. On May 12, non-essential retail stores can re-open. Schools, bars and restaurants, appearance and beauty enterprises, child care, entertainment, and gyms must remain closed. *5/1/2020*

BWC Waives Two-Hour Safety Training Requirement for 2019 Program Year **May 1, 2020**

Normally, the Ohio Bureau of Workers' Compensation (BWC) requires Group-Experience and Group-Retrospective rating participants that had a claim occurring in the "green period" to complete a two-hour training class by June 30, 2020. However, due to the pandemic, the BWC is waiving this safety requirement for the 2019 program year.

The BWC encourages employers to take advantage of its **online training opportunities**. And, as a reminder, the OMA will continue to offer its monthly schedule of **safety webinars**. *4/30/2020*

2020 Employer Dividend Impact on 2018 Group-Retrospective Rating Participants **May 1, 2020**

As **reported earlier**, the BWC is issuing a 100% dividend of premiums employers paid in the

2018 policy year. How will this impact 2018 Group-Retrospective Rating participants? Private employers included in a 2018 Group-Retrospective program will receive as a rebate 100% of their experience-rated premium as of April 4, 2020. No further financial transactions impacting the 2018 policy year will be paid to, or assessed from, those employers' policies. In other words, the group-retrospective rating cycle will be complete upon payment of the dividend. For more, see the **BWC's dividend Q&A**. *4/30/2020*

Safety Guidance for Manufacturers During COVID-19 **April 24, 2020**

Recently, OSHA published safety tips for manufacturers to help protect employees from exposure to the coronavirus. The new alert is available in both **English** and **Spanish**. With safe workplaces on everyone's mind, the OMA has compiled **this collection of safety-related resources** to support Ohio manufacturers, whether they are re-opening their facilities or continuing essential operations. *4/22/2020*

Develop an Infectious Disease Plan for Your Business **April 24, 2020**

On Tuesday, May 12, at 10 a.m. (ET), the OMA will host a 60-minute webinar to address OSHA's recommendation that employers develop an Infectious Disease Preparedness and Response Plan in response to the COVID19 pandemic. The webinar will be presented by Safex's Dianne Grote Adams, a board-certified industrial hygienist with 40 years of experience. **Register or learn more**. *4/22/2020*

BWC Dividend Checks Are on the Way **April 24, 2020**

If you have not already received it, your company's dividend check from the Ohio Bureau of Workers' Compensation (BWC) should be in the mail soon. This week, it was **announced** the BWC had begun sending 170,000 checks — worth a combined \$1.6 billion — to employers as

a means of easing the economic damage caused by COVID-19. **Click here for FAQs.** The BWC has also allowed employers to defer monthly premium installment payments for March, April and May until June 1, and has waived or postponed some requirements and deadlines for **several programs**. 4/22/2020

Ohio Manufacturing Alliance Launches Exchange to Help Employers Access PPE **April 24, 2020**

Is your business seeking personal protective equipment (PPE) for employees? The Ohio Manufacturing Alliance to Fight COVID-19 recently launched the **Ohio Emergency PPE Makers' Exchange**, an online marketplace where organizations that need PPE and related equipment can find a selection offered by Ohio manufacturers and makers — many of which have retooled to produce in-demand products. Read the Alliance's **news release**. 4/24/2020

The New Normal in Manufacturing **April 17, 2020**

With plans being made to gradually reopen the economy, **The Wall Street Journal** (subscription) reports on what the new normal will look like across various industries. "Manufacturers have redrawn factory floor plans and implemented processes, such as staggering shift workers or asking employees to take turns eating lunch in their cars to avoid cafeteria crowding, practices that may become standard as more plants come back online." The Journal spotlights Tyson Foods, which has installed walk-through temperature scanners at its plants, sending home workers who show potential COVID-19 symptoms.

Yesterday, April 16, Gov. Mike DeWine said the "new reality" is that the workplace will look very different — with masks, sanitizing of surfaces, and employee distancing — until a vaccine is developed.

Meanwhile, the CDC this week updated its **guidance on cleaning and disinfecting facilities** — and **vehicles** — as well as its **guidance on using face coverings**. 4/17/2020

COVID-19 Safety: How Manufacturers are Responding **April 17, 2020**

According to **this article** in *Forbes*, a recent national survey found the three most common ways manufacturers are keeping employees safe during the COVID-19 outbreak are:

- Health screening prior to the start of shifts;
- Maintaining distance within the factory; and
- Sanitization procedures (not enough manufacturers are doing this, according to the survey organizers).

The article provides examples of how companies are carrying out their protocols. 4/15/2020

Guidance on COVID-19 Safety **April 17, 2020**

OMA Connections Partners have provided valuable insight on a broad range of topics during the pandemic. Below is safety-related guidance published in recent days.

- Fisher Phillips on **how to avoid wrongful death and injury claims** for workplace COVID-19 exposure.
- Fisher Phillips on **how measuring worker temperatures** could lead to wage and hour claims.
- Benesch on **planning for a return to normal operations** after COVID-19.
- Fisher Phillips on the **CDC's relaxed return-to-work standards** after COVID-19 exposure.

For a comprehensive list of OMA Connections Partners who offer coronavirus-related resources, visit the **OMA's COVID-19 Resources Page**. 4/16/2020

BWC Postpones MCO Enrollment Period **April 17, 2020**

The Ohio Bureau of Workers' Compensation (BWC) recently **announced** that, due to the impact of the COVID-19, it would postpone this year's biennial open-enrollment period for employers to select a managed care organization (MCO) to medically manage workplace injuries. BWC will continue to publish

its annual MCO Report Card, which will be available by the end of April on **BWC's website**. 4/13/2020

BWC Issues Payroll Reporting Guidance April 17, 2020

The BWC Employer Services Division has announced it will implement two changes in payroll reporting requirements as a result of COVID-19. These changes may impact how you will report payroll for the upcoming (policy year 2019) true-up period.

Q: Is emergency sick leave and expanded FMLA paid to employees under the Families First Coronavirus Response Act reportable when submitting true-up payroll?

A: No. Emergency sick leave and expanded FMLA paid to employees under the Families First Coronavirus Response Act will not be reportable to BWC for premium purposes

Q: How will employers report wages at true-up for operational employees who are teleworking as a result of Gov. DeWine's stay-at-home order while receiving wages from the employer?

A: Employers are permitted to report operational staff currently teleworking to class code 8871- Clerical Telecommuter during a declared state of emergency. This will ease the economic impact of the COVID-19 state of emergency on the Ohio business community.

See the **BWC FAQs page**. 4/16/2020

OSHA Issues Revised COVID-19 Recordkeeping Requirement April 17, 2020

OSHA recently **announced** it will not enforce recordkeeping requirements for COVID-19 in most industries where there is ongoing community transmission. As **reported**, this announcement reverses previous guidance provided by the agency in March when the agency said COVID-19 transmission in the workplace, unlike the flu or common cold, would be considered a recordable injury. OMA Connections Partner Frantz Ward has published **guidance** following the announcement, as has **Fisher Phillips**. 4/13/2020

HR Expert: Take Steps Now on Workplace Safety to Avoid Potential Lawsuits April 17, 2020

This week, News Radio 610 WTVN (Columbus) host Joel Riley **interviewed** human resources expert Adam Calli, owner and founder of Arc Human Capital, LLC. Calli discussed a possible "tidal wave of lawsuits" against employers due to inadequate protective measures taken during the COVID-19 outbreak. He urged employers to take the necessary steps — including providing protective gear such as face masks — to lessen exposure risk and avoid possible lawsuits. 4/13/2020

BWC to Send \$1.6 Billion in Dividend Payments to Employers April 10, 2020

Gov. Mike DeWine **this week asked** the Ohio Bureau of Workers' Compensation to send up to \$1.6 billion in dividends to Ohio employers to ease the impact of the COVID-19 crisis. On Friday morning, April 10, the BWC board approved the governor's request in an emergency meeting. The BWC expects it will begin mailing checks to employers later this month. (For more, see this updated **FAQ list**.) According to the BWC, this dividend equals approximately 100% of the premiums employers paid in policy year 2018. The bureau will apply the dividend to an employer's outstanding balances first, including the recent installment deferrals. Any amounts exceeding outstanding balances will be sent to the employer. 4/10/2020

Another COVID-19 Workers' Compensation Bill Introduced April 10, 2020

State Rep. **Tom Patton** (R-Strongsville) has **proposed** a new legislation to expand Ohio's workers' compensation coverage by granting food packaging, food processing, and grocery store employees benefits if they contract COVID19 while at their place of employment. The Patton bill comes on the heels of the recent introduction of other legislation that would expand workers' compensation benefits to employees who are infected by the virus. 4/9/2020

Guidance on Face Coverings for Manufacturers

April 10, 2020

Both the CDC and the DeWine administration **now recommend** wearing face coverings (not N-95s or surgical masks needed for health care workers) when social distancing measures are difficult to maintain. This includes at workplace environments. For the benefit of OMA members, here is the **CDC's guidance** for use of cloth face coverings, as well as **guidance from the Ohio Department of Health**. (Note: Face coverings are not a substitute for distancing.)

Also, here is **helpful insight** from OMA Connections Partner Fisher Phillips on two common questions regarding DIY cloth face coverings.

If your business is having difficulty procuring face masks for employees, the Alliance has **launched an initiative** to source the materials necessary to potentially produce non-surgical-grade "**loop masks**." Respond to our **brief survey** so we can assess the need for — and appropriate potential quantities of — these masks. *4/9/2020*

Minimizing Risk of Exposure to Coronavirus **April 10, 2020**

OSHA has released three new animated videos to provide quick tips on **social distancing, disinfecting workplaces,** and **industry risk factors** to keep workers safe from COVID-19. And check out **OSHA's new chart** that outlines safety steps to take based on worker exposure risk by industry.

The CDC has updated **its page for businesses and employers** to prepare and respond to the coronavirus. *4/8/2020*

OSHA Extends March 14 Guidance on Use of Respirators **April 10, 2020**

OSHA has **expanded temporary guidance** provided in a March 14, 2020, memo regarding supply shortages of N95s or other filtering respirators (FFRs) due to the COVID-19 pandemic. This expanded guidance applies to all workplaces covered by OSHA where there is required respirator use.

OSHA field offices will exercise enforcement discretion concerning annual fit-testing requirements, as long as employers have made good-faith efforts to comply with the requirements of the Respiratory Protection

standard and to follow the steps outlined in the March 14 memo. *4/8/2020*

OSHA Warns Against Employer Retaliation During Pandemic **April 10, 2020**

OSHA this week issued a **press release** reminding employers that it is "illegal to retaliate against workers because they report unsafe and unhealthful working conditions during the coronavirus pandemic." According to OSHA, acts of retaliation can include terminations, demotions, denials of overtime or promotion, or reductions in pay or hours. *4/8/2020*

CDC Updates Guidance for Disinfecting Facilities **April 3, 2020**

Manufacturers have questions about how best to "deep clean" their facilities to prevent COVID-19 infection, or how to disinfect after an employee becomes ill. At this time, the best guidance comes from the **CDC's revised cleaning and disinfection page**, as well as this CDC instruction on **how to clean and disinfect your facility when someone is sick**. Both CDC pages were updated this week. *4/2/2020*

BWC Temporarily Waiving Safety Education Requirements for Some Programs **April 3, 2020**

On March 30, the Ohio Bureau of Workers' Compensation (BWC) **announced** it is waiving all safety education and training requirements through June 30, 2020 for private employers enrolled in the following programs:

- Drug-Free Safety Program;
- EM Cap Program;
- Grow Ohio;
- Industry-Specific Safety Program;
- One Claim Program; and
- Policy Activity Rebate Program.

See more from OMA legal counsel Bricker & Eckler. *4/1/2020*

Ohio's COVID-19 Legislation Extends Deadline to File Workers' Comp Claims **April 3, 2020**

Late last week, Gov. DeWine signed into law **House Bill 197** in response to the COVID-19 pandemic. Among the legislation's many provisions is one that tolls the statute of limitations for any administrative action or proceeding set to expire between March 9, 2020, and July 30, 2020.

According to **this insight** by OMA legal counsel Bricker & Eckler, this change impacts any relevant statute of limitations related to Ohio's workers' compensation claims. For new claims — which normally have a one-year window from date of injury for filing — HB 197 extends the statute of limitations to at least July 30, 2020 for claims of alleged injuries that occurred between March 9, 2019 and July 30, 2019. *4/1/2020*

COVID-19 Workers' Comp Bill in Ohio House **March 27, 2020**

Ohio House Democrats this week introduced workers' compensation legislation (**House Bill 573**) that would make COVID-19 an occupational disease under Ohio workers' compensation law. Neither the bill nor its provisions were included in the emergency legislation (HB 197) passed this week. At this time, it does not appear that the workers' compensation expansion bill will move through the legislature, but the OMA will continue to monitor the bill and update members as needed. *3/26/2020*

FDA Issues Guidance on Making Hand Sanitizers **March 27, 2020**

The FDA has provided **emergency guidance** to communicate its policy for the temporary manufacture of certain alcohol-based hand sanitizing products. In short, the agency does not intend to take action against manufacturing firms that prepare such products for use by consumers and health care personnel during this public health emergency.

Upon completion of registration and listing, firms will receive automatic confirmation and do not need to wait for a further communication before producing and distributing such products. **Email the FDA** if you need help with facilitating this process. *3/26/2020*

Ohio State Study Shows Difficulty in Achieving Virus-Free Surfaces **March 27, 2020**

Wiping surfaces with disinfectants might not be enough to protect against COVID-19 coronavirus because cleaning practices tend to be spotty, according to a **new study** from Ohio State University.

The study's author, Jason Stull, said the results serve as a warning, and that "regardless of where you visit, it's also best to assume surfaces may be contaminated." He pointed to another study showing the COVID-19 coronavirus can survive for up to three days on a plastic or doorknob.

Stull recommends people concentrate on cleaning surfaces that are commonly touched, such as doorknobs and countertops, and urges that these efforts continue even after the COVID-19 crisis. *3/26/2020*

BWC Publishes List of FAQs **March 20, 2020**

Recent events have raised many questions from employers regarding workers' compensation. The Ohio Bureau of Workers' Compensation (BWC) has prepared **this list of frequently asked questions** to provide information about the coronavirus' impact on its operations. *3/19/2020*

BWC Sees Investment Losses of About \$3.4 Billion for Month **March 20, 2020**

The BWC has seen its investments drop by about 12.5% for the month due to the COVID-19 outbreak and its effect on the stock market. The BWC board, which met Thursday, March 19, was informed that the total stock and bond market value of the State Insurance Fund has dropped about \$3.1 billion, and across all funds, the value is down about \$3.4 billion, according to Gongwer News.

The board approved an emergency rule change to allow BWC Administrator/CEO Stephanie McCloud to postpone the managed care open enrollment period, perhaps until as late as May 2021. *3/19/2020*

Workers' Comp Implications of COVID-19 for Employers **March 20, 2020**

OMA legal counsel Bricker & Eckler notes that the BWC has not provided a specific stance regarding compensability of COVID-19. The firm notes that claims of exposure to viruses or other potentially dangerous substances are generally not covered by workers' compensation unless an injury or occupational disease results from such exposure. Therefore, a claim of exposure to COVID-19 at work is not, in itself, a compensable injury or disease. Each claim will need to be evaluated on a case-by-case basis. **See more here.** 3/19/2020

Industrial Commission Now Holding Hearings Via Phone; OMA Workers' Comp Team is Ready
March 20, 2020

This week, the Ohio Industrial Commission switched to conducting all workers' compensation hearings **by phone only**. Should you have an Industrial Commission hearing, the OMA's Workers' Compensation Services team is prepared to defend the claim, or continue the hearing, whatever is in your best interests. If you have questions, email **Brian Jackson** or your account manager — **Karen James, Melissa Ross** or **Juliet Walker**. 3/18/2020

U.S. EPA Expands List of COVID-19 Disinfectants
March 20, 2020

The U.S. Environmental Protection Agency has **expanded its list of disinfectant products** qualified for use against COVID-19. The list has nearly 200 additional products. Meanwhile, the American Chemistry Council has a similar list of **products to fight COVID-19**. 3/18/2020

Important BWC Deadlines Approaching
March 13, 2020

This is a reminder that on Tuesday, March 31, program requirements are due for employers participating in the following Ohio Bureau of Workers' Compensation (BWC) programs:

- Drug-Free Safety Program participants must submit their annual report.
- One Claim Program participants must complete education requirements.

- EM Cap Program participants must complete education requirements. The OMA has prepared **this guide** to remind members of important 2020 BWC deadlines, as well as key dates for **OMA Workers' Compensation Services** customers. 3/12/2020

OSHA Reminds Employers COVID-19 is a Recordable Illness
March 13, 2020

This week, OSHA **issued guidance** to help employers prepare their workplaces for the COVID-19 outbreak, along with a reminder that any incidents of employees contracting the coronavirus at work are recordable illnesses, subject to the same rules and failure-to-record fines as other workplace injuries and illnesses. 3/12/2020

Thinking About a Health-and-Wellness Program for Your Employees?
March 13, 2020

The BWC will be conducting a **free, 25-minute webinar** on Wednesday, March 25 for employers to learn more about Better You, Better Ohio!® — the free health-and-wellness program for businesses with 150 or fewer employees engaged in higher-risk industries, including manufacturing. The program gives employers a great opportunity to start an employee wellness program with no cost or paperwork hassle. 3/12/2020

Helping Employers Prepare for Severe Weather Season
March 13, 2020

According to the National Weather Service, Ohio recorded **59 tornadoes** last year, putting the Buckeye State in the top 10 tornado states for 2019. Just in time for severe weather season, OSHA has updated its **emergency preparedness and response page** — complete with employer responsibilities. 3/12/2020

Analysis of Ohio's PTSD Legislation
March 13, 2020

Read OMA Connections Partner **Dismore's take on House Bill 308**, costly legislation that would significantly expand Ohio's workers' compensation benefits and expenses. Last

month, the Ohio House voted 74-22 to pass HB 308, which would provide first responders with workers' compensation benefits to treat PTSD, even when there is no physical injury. The OMA **opposes** the bill, which is currently pending in the Ohio Senate. *3/11/2020*

AG Blocks First Attempt of Recreational Pot Plan
March 13, 2020

Attorney General Dave Yost this week **rejected** the summary language for a proposed constitutional amendment to legalize the recreational use of marijuana. According to the AG, the summary did not constitute a "fair and truthful" representation of the issue. If supporters successfully resubmit a new summary with 1,000 valid signatures and eventually get the green light from the AG and Ballot Board, they will need to gather roughly 443,000 valid signatures from registered voters by July 1 to get the issue on the November 2020 ballot. In 2015, Ohioans rejected legalizing recreational use of marijuana (State Issue 3) by a 64% to 36% margin. *3/11/2020*

Ohio Employers to See Another Workers' Comp Premium Cut
March 6, 2020

The Ohio Bureau of Workers' Compensation (BWC) board of directors has approved a \$132

million, 13% average premium rate cut for private employers. Effective July 1, the reduction will mark BWC's third-largest cut in 60 years. It follows last year's 20% rate cut. Actual premiums paid will depend on several factors. For information on steps you can take to reduce your premiums, contact the OMA Workers' Compensation Services team by emailing **Brian Jackson** or your account manager — **Karen James, Melissa Ross** or **Juliet Walker**. *3/4/2020*

Retaining Workers Who Are Injured Outside the Workplace
March 6, 2020

Talent retention is more important than ever, especially after an injury or illness. A new federally funded program — called **Ohio RETAIN** — is exploring strategies to get individuals who have suffered a non-work-related health problem back on the job promptly and safely. Managed by the Ohio Department of Job and Family Services in coordination with Mercy Health, the program is currently in its pilot phase in Columbiana, Mahoning and Trumbull counties, with a planned expansion into Northwest and Southwest Ohio this fall. **Learn more** or **email Ohio RETAIN** to request a consultation. *3/2/2020*

Workers' Compensation Legislation
Prepared by: The Ohio Manufacturers' Association
Report created on June 1, 2020

- HB79** **INDUSTRIAL COMMISSION BUDGET** (OELSLAGER S) To make appropriations for the Industrial Commission for the biennium beginning July 1, 2019, and ending June 30, 2021, and to provide authorization and conditions for the operation of Commission programs.
Current Status: 6/27/2019 - **SIGNED BY GOVERNOR**; eff. 6/27/19
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-79>
- HB80** **BWC BUDGET** (OELSLAGER S) To make appropriations for the Bureau of Workers' Compensation for the biennium beginning July 1, 2019, and ending June 30, 2021, and to provide authorization and conditions for the operation of the bureau's programs.
Current Status: 7/22/2019 - **SIGNED BY GOVERNOR**; Eff. Immediately
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-80>
- HB81** **WORKERS COMP-BODILY FLUID EXPOSURE** (PERALES R) Regarding Workers' Compensation coverage of post-exposure medical diagnostic services for a detention facility employee's exposure to another person's blood or bodily fluids.
Current Status: 5/28/2020 - Consideration of Senate Amendments; House Does Concur, Vote 93-0
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-81>
- HB167** **OCCUPATIONAL LUNG CONDITIONS** (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: 2/12/2020 - House Commerce and Labor, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-167>
- HB308** **PTSD COVERAGE - FIRST RESPONDERS** (PATTON T) Concerning workers' compensation and disability retirement for peace officers, firefighters, and emergency medical workers diagnosed with posttraumatic stress disorder arising from employment without an accompanying physical injury.
Current Status: 6/3/2020 - Senate General Government and Agency Review , (Third Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-308>
- HB330** **FIREFIGHTER CANCER CLAIMS** (PATTON T) Regarding charging workers' compensation experience in firefighter cancer claims.
Current Status: 6/3/2020 - House Insurance, (Third Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-330>
- HB571** **COVID-19 - OCCUPATIONAL DISEASE** (BOGGS K) To make COVID-19 contracted by a peace officer, firefighter, or emergency medical worker an occupational disease under the Workers' Compensation Law under certain circumstances and to declare an emergency.
Current Status: 5/19/2020 - House Insurance, (First Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-571>

HB573 **COVID-19 - OCCUPATIONAL DISEASE** (SOBECKI L, BOGGS K) To make COVID-19 an occupational disease under the Workers' Compensation Law under certain circumstances and to declare an emergency.

Current Status: 5/12/2020 - House Insurance, (First Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-573>

HB605 **COVID-19 - OCCUPATIONAL DISEASE** (KELLY B, PATTON T) To make COVID-19 contracted by an employee of a retail food establishment or food processing establishment an occupational disease under the Workers' Compensation Law under certain circumstances and to declare an emergency.

Current Status: 5/28/2020 - House Insurance, (First Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-605>

HB633 **COVID-19 - OCCUPATIONAL DISEASE** (BOGGS K) To make COVID-19 contracted by specified types of employees an occupational disease under the Workers' Compensation Law under certain circumstances and to declare an emergency.

Current Status: 5/19/2020 - Referred to Committee House Insurance

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-633>

HB667 **COVID-19 OCCUPATIONAL DISEASE - CORRECTIONS OFFICER** (BALDRIDGE B) To make COVID-19 contracted by a corrections officer an occupational disease under the Workers' Compensation Law and to declare an emergency.

Current Status: 5/27/2020 - Referred to Committee House Insurance

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-667>

HB668 **COVID-19 OCCUPATIONAL DISEASE - EMERGENCY WORKER** (BALDRIDGE B) To make COVID-19 contracted by a peace officer, firefighter, or emergency medical worker an occupational disease under the Workers' Compensation Law and to declare an emergency.

Current Status: 5/27/2020 - Referred to Committee House Insurance

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-668>

TO: OMA Government Affairs Committee
FROM: Ryan Augsburger / Rob Brundrett
SUBJECT: Tax Public Policy Report
DATE: June 3, 2020

Overview

The state's finances have fallen off a cliff since the beginning of the pandemic. Prior to the outbreak Ohio was looking at a surplus for the 2020 fiscal year. Last month the governor asked agencies to shave \$775 million from the state's budget. Fiscal year 2021 finances are looking bleak.

OMA worked with the General Assembly to ease certain tax deadlines. While successful working with legislative leaders to provide authority to move deadlines, the administration only used the power sparingly. While the income tax deadline was moved back to coincide with the federal tax deadlines, the state refused to defer CAT or excise tax deadlines.

Aggressive tax relief legislation will become much harder to pass. OMA is working with Development Services Agency to ensure that manufacturers receiving tax credits will not be penalized in the coming year because of COVID-19.

Tax Legislation

Senate Bill 8 – Ohio Opportunity Zone Tax Credits

Originally the bill authorized tax credits for investments in Ohio Opportunity Zones. Federal laws allowed states to designate economically distressed areas as these Zones. The bill allowed state tax incentives to compliment the federal tax treatment for the Opportunity Zones. SB 8 quickly passed the Senate. Once in the House the legislation became part of the bigger budget bill.

Senate Bill 37 – Motion Picture Tax Credit

The bill makes a variety of changes to the current motion picture tax credit and expands it to allow for more types of entertainment productions. There is no new money tied with this bill, however its sponsor, Senator Schuring has indicated he would like to see the credit more than double to \$100 million. The Senate voted out the bill after six hearings. No new money was included in the bill. The OMA continues to be a vocal opponent over such tax credits.

House Bill 60 – Diaper Sales Tax Exemption

The bill exempts from sales and use tax the sale of child and adult diapers. It has had three hearings in the House Ways and Means Committee.

House Bill 92 – County Sales Tax Voting

The bill would require voter approval of any increase in the rate of a county sales tax. The bill has had one hearing.

Senate Bill 95 – State and Local Tax Inducements

The bill will enhance state and local tax inducements for businesses making substantial fixed asset and employment investments and their suppliers. The bill provides a CAT

credit the integrated supply chain to a qualifying project. The OMA submitted a letter with likeminded allies regarding protecting the integrity of the CAT. The Senate passed the bill. The House Ways and Means Committee has had three hearings on the bill. Again the OMA submitted interested party testimony warning about carving up the CAT.

Senate Bill 109 – Workforce Scholarship Program

SB 109 establishes the Workforce Scholarship Program. The bill would terminate the provisions of the Scholarship Program on December 31, 2023 and authorize tax credits for graduates of the Scholarship Program and their employers. The bill includes a CAT credit. It had its second hearing in early October.

House Bill 134 – March Sales Tax Holiday

The bill provides a three-day sales tax "holiday" each March during which sales of qualifying Energy Star products are exempt from sales and use taxes. The bill had its first hearing in October.

House Bill 175 – Tax Exemption on Goods Movement

The bill provides an exemption from sales and use tax for things used primarily to move completed manufactured products or general merchandise. The bill has been referred to the House Ways and Means Committee and has had two hearings this fall.

House Bill 197 – Pandemic Emergency Legislation

House Bill 197 became the pandemic emergency legislation bill back in March. Among the items included in the bill was a provision that gave the Tax Commissioner the authority to change deadlines for a variety of state taxes. The OMA worked with the House and Senate to include a provision that would allow companies to continue their previous withholding practices during the state of emergency.

House Bill 222 – CDL Training Tax Credit

The bill provides an income tax credit for an employer's expenses to train a commercial vehicle operator. The bill passed the House 91-1.

Senate Bill 257 – Electric Vehicle Tax Credit

Earlier this month, Sens. Michael Rulli (R-Salem) and Sean O'Brien (D-Bazetta) introduced Senate Bill 257, designed to make Ohio — and particularly the Mahoning Valley — the nation's leader in the electric vehicle revolution. The bill would create two different tax credits:

- A sales tax credit for the purchase of an electric vehicle; and
- An income tax and commercial activity tax credit for the purchase and installation of a charging station for an electronic vehicle.

The bill has had two hearings in the Senate. The House is considering introducing a companion bill.

House Bill 378 – Striking Worker Unemployment Benefit

The bill would provide unemployment benefits to striking workers. This adds a new group of workers eligible to receive benefits in Ohio and would put even more stress on the system.

House Bill 440 – Abolish Tax on Manufacturing Temp Labor and Sales Tax on Manufacturing Janitorial Supplies and Equipment

House Bill 440 is an OMA-sponsored bill to eliminate the sales tax on temporary workers, while also eliminating the sales tax on industrial janitorial services purchased to clean machinery in a manufacturing facility.

Both provisions — longtime priorities of the OMA Tax Committee — are contained House Bill 440, bipartisan legislation offered by State Reps. Sara Carruthers (R-Hamilton) and Jessica Miranda (D-Forest Park). HB 440 was referred to the House Ways and Means Committee; and had its first hearing in January.

Ohio remains one of a handful of states that taxes temporary workers and is the only state that double taxes those workers on both the service fee and wages. Eliminating the sales tax on janitorial services would bring much-needed certainty for manufacturers and this type of service, which is often contested under the manufacturing sales and use tax exemption.

A second hearing was set for April. However that hearing was canceled due to the pandemic. We will try and work with the Chairman to set up a second hearing in the fall.

The OMA would like to hear from members who are willing to testify on the importance of this proposed tax change. Please contact Rob Brundrett if you or your company is interested in testifying or learning more about the bill.

House Bill 467 – Pass-Through Entity Tax Reduction

The bill reduces the pass-through entity withholding tax rate to four percent. It is expected to clear the House Ways and Means Committee this winter.

Senate Joint Resolution 3 – Require a Supermajority for an Income Tax Increase

Proposing to enact Section 7 of Article XII of the Constitution of the State of Ohio to require that any increase in income tax rates be approved by a supermajority of the membership of each house of the General Assembly.

Senate Joint Resolution 4 – Unemployment Compensation Bonding

Proposes to allow the state to bond future unemployment compensation debt, allowing the state to either pay off the federal loan directly or issues bonds to pay the debt. The OMA has been supportive of such a method and testified in support of the plan this week. OMA provided proponent testimony this week.

Tax News

OMA Asks Tax Commissioner to Defer Deadlines

The OMA wrote Ohio Tax Commissioner Jeff McClain, asking him to act on the authority granted in House Bill 197 to defer tax payments and deadlines during the COVID-19 emergency. The OMA — which advocated for this authority when HB 197 was considered by the General Assembly — specifically asked the commissioner to defer approaching deadlines of the commercial activity tax, as well as the beer and wine excise tax.

Governor Announces \$775M Reduction in State Spending

Gov. DeWine announced a \$775 million reduction in planned state spending for the remainder of Fiscal Year 2020, which ends June 30. The cuts, which are due to a \$1 billion swing in the state's coffers since late February, will impact:

- Medicaid spending (approximately \$210 million);
- K-12 foundation payments (\$300 million);
- Other education line items (\$55 million);
- Higher education (\$110 million);
- All other state agencies (\$100 million).

Speaker Signals Support for Tapping Rainy Day Fund

House Speaker Larry Householder (R-Glenford) said state lawmakers will likely need to utilize the state's rainy-day fund to close an expected budget gap due to the COVID-19 outbreak.

According to Gongwer News Service, the speaker told WOSU Radio: "We're sitting on a \$2.7 billion fund, and we're looking at some significant shortfalls in our budget. That budget stabilization fund is going to literally help stabilize our budget."

In the same interview, Householder said the state budget could be as much as \$2 billion short of projections by the end of the fiscal year on June 30, according to Hannah News Service. Asked about Gov. DeWine's order to agencies to cut 20% of their budgets, Householder said, "It will not be anywhere close to what we need to cut."

Sobering Data From Ohio's Monthly Budget Report

Ohio's monthly budget report shows that income tax revenues in April fell 50% below estimates. Auto sales taxes were off by 57% and other sales tax revenues were nearly 18% below the forecasted level. Altogether, tax revenues were down \$872.4 million at the end of April.

The budget report says Ohio manufacturing production decreased by 6.3%, and 3,900 manufacturing jobs were lost in March. Within durable goods, which saw production drop 9.1%, the motor vehicles and parts industry fell by 28%.

Sales Tax Exemption for All Food Manufacturers Now in Effect

Good news for all food manufacturers! During last summer's debate on the state budget (House Bill 166), the OMA led tax changes for food manufacturers as lawmakers approved an expanded sales-and-use tax exemption for equipment and supplies used to clean equipment that produces or processes food for human consumption. (Previously, the exemption applied only to dairy food processors. Now it applies to all Ohio food manufacturers.)

The expanded exemption went into effect Oct. 1, 2019. Make sure you are tracking the necessary information.

Comparison Shows Ohio is Among the Best States for Corporate Taxpayers

A new map by the Tax Foundation illustrates Ohio's competitiveness by comparing the combined federal and state corporate tax rates of all 50 states. Only six states — Ohio, Nevada, South Dakota, Texas, Washington, and Wyoming — have no state corporate

income tax. Corporations in these states are liable for only the federal tax rate of 21% (reduced from 35% by the 2017 Tax Cuts and Jobs Act).

Fifteen years ago, the OMA helped lead the repeal of Ohio's antiquated corporate franchise tax and tangible personal property tax. They were replaced with the manufacturing-friendly Commercial Activity Tax (CAT) — a gross receipts tax that imposes a single low rate of 0.26% on in-state sales, while out-of-state sales are exempt

Ohio Supreme Court Grants Jurisdiction to Hear Muni Tax Case

In May the Ohio Supreme Court held oral arguments on the municipalities' appeals to the municipal income tax cases. The OMA joined a business group coalition and filed an amicus brief.



March 19, 2020

The Honorable Mike DeWine
Governor, State of Ohio
77 S. High Street, 30th Floor
Columbus, OH 43215

The Honorable Larry Householder
Speaker, Ohio House of Representatives
77 S. High Street, 14th Floor
Columbus, OH 43215

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

Re: **Business withholding tax relief due to COVID-19**

Dear Governor DeWine, Speaker Householder, and President Obhof:

Ohio businesses are striving to comply with Executive Orders, Department of Health Orders, guidelines from CDC and all guidance from all legitimate sources to keep employees safe from COVID-19 exposure.

Many businesses, at the request of Governor DeWine, have - on a temporary basis - sent home their employees whose jobs could be performed remotely.

Working from home triggers changes in Ohio's withholding and income tax laws that will be cumbersome and difficult to implement for businesses that don't regularly permit work from home.

Ohio Revised Code provides an exception to municipal income tax withholding, which also applies to the "payroll factor" of corporate income tax, for occasional entrant employees, or employees performing services in a municipality for less than 20 days.

Companies are concerned that their payroll staff and systems will not be able to handle the required withholding and income tax changes required by law for this unique and temporary set of circumstances.

Our organizations recommend that the 20-day rule in current law be extended to last for the duration of the Governor's state of emergency Executive Order. We have attached sample language that addresses the issue.

If enacted, this will relieve one administrative burden for Ohio employers, who are focused on many complex management priorities at this time.

Again, we appreciate your leadership during this public health crisis. We would be pleased to arrange for a call with a representative group of businesses if that would be helpful.

Thank you for your prompt consideration.

Sincerely,

The Ohio Manufacturers' Association

Ohio Chamber of Commerce

Ohio Business Roundtable

The Ohio Council of Retail Merchants

Ohio Farm Bureau

NFIB - Ohio

Attachment

718.011 Municipal income tax on qualifying wages paid to an employee for the performance of personal services.

(A) As used in this section:

- (1) "Employer" includes a person that is a related member to or of an employer.
- (2) "Professional athlete" means an athlete who performs services in a professional athletic event for wages or other remuneration.
- (3) "Professional entertainer" means a person who performs services in the professional performing arts for wages or other remuneration on a per-event basis.
- (4) "Public figure" means a person of prominence who performs services at discrete events, such as speeches, public appearances, or similar events, for wages or other remuneration on a per-event basis.
- (5) "Fixed location" means a permanent place of doing business in this state, such as an office, warehouse, storefront, or similar location owned or controlled by an employer.
- (6) "Worksite location" means a construction site or other temporary worksite in this state at which the employer provides services for more than twenty days during the calendar year. "Worksite location" does not include the home of an employee.
- (7) "Principal place of work" means the fixed location to which an employee is required to report for employment duties on a regular and ordinary basis. If the employee is not required to report for employment duties on a regular and ordinary basis to a fixed location, "principal place of work" means the worksite location in this state to which the employee is required to report for employment duties on a regular and ordinary basis. If the employee is not required to report for employment duties on a regular and ordinary basis to a fixed location or worksite location, "principal place of work" means the location in this state at which the employee spends the greatest number of days in a calendar year performing services for or on behalf of the employee's employer.

If there is not a single municipal corporation in which the employee spent the "greatest number of days in a calendar year" performing services for or on behalf of the employer, but instead there are two or more municipal corporations in which the employee spent an identical number of days that is greater than the number of days the employee spent in any other municipal corporation, the employer shall allocate any of the employee's qualifying wages subject to division (B)(1)(a) of this section among those two or more municipal corporations. The allocation shall be made using any fair and reasonable method, including, but not limited to, an equal allocation among such municipal corporations or an allocation based upon the time spent or sales made by the employee in each such municipal corporation. A municipal corporation to which qualifying wages are allocated under this division shall be the employee's "principal place of work" with respect to those qualifying wages for the purposes of this section.

For the purposes of this division, the location at which an employee spends a particular day shall be determined in accordance with division (B)(2) of this section, except that "location" shall be substituted for "municipal corporation" wherever "municipal corporation" appears in that division.

(B) (1) Subject to divisions (C), (E), (F), and (G) of this section, an employer is not required to withhold municipal income tax on qualifying wages paid to an employee for the performance of personal services in a municipal corporation that imposes such a tax if the employee performed such services in the municipal corporation on twenty or fewer days in a calendar year, unless one of the following conditions applies:

(a) The employee's principal place of work is located in the municipal corporation.

(b) The employee performed services at one or more presumed worksite locations in the municipal corporation. For the purposes of this division, "presumed worksite location" means a construction site or other temporary worksite in this state at which the employer provides services that can reasonably be expected by the employer to last more than twenty days in a calendar year. Services can "reasonably be expected by the employer to last more than twenty days" if either of the following applies at the time the services commence:

(i) The nature of the services are such that it will require more than twenty days of actual services to complete the services;

(ii) The agreement between the employer and its customer to perform services at a location requires the employer to perform actual services at the location for more than twenty days.

(c) The employee is a resident of the municipal corporation and has requested that the employer withhold tax from the employee's qualifying wages as provided in section [718.03](#) of the Revised Code.

(d) The employee is a professional athlete, professional entertainer, or public figure, and the qualifying wages are paid for the performance of services in the employee's capacity as a professional athlete, professional entertainer, or public figure.

(2) For the purposes of division (B)(1) of this section, an employee shall be considered to have spent a day performing services in a municipal corporation only if the employee spent more time performing services for or on behalf of the employer in that municipal corporation than in any other municipal corporation on that day. For the purposes of determining the amount of time an employee spent in a particular location, the time spent performing one or more of the following activities shall be considered to have been spent at the employee's principal place of work:

(a) Traveling to the location at which the employee will first perform services for the employer for the day;

(b) Traveling from a location at which the employee was performing services for the employer to any other location;

(c) Traveling from any location to another location in order to pick up or load, for the purpose of transportation or delivery, property that has been purchased, sold, assembled, fabricated, repaired, refurbished, processed, remanufactured, or improved by the employee's employer;

(d) Transporting or delivering property described in division (B)(2)(c) of this section, provided that, upon delivery of the property, the employee does not temporarily or permanently affix the property to real estate owned, used, or controlled by a person other than the employee's employer;

(e) Traveling from the location at which the employee makes the employee's final delivery or pick-up for the day to either the employee's principal place of work or a location at which the employee will not perform services for the employer.

(C) If the principal place of work of an employee is located in a municipal corporation that imposes an income tax in accordance with this chapter, the exception from withholding requirements described in division (B)(1) of this section shall apply only if, with respect to the employee's qualifying wages described in that division, the employer withholds and remits tax on such qualifying wages to the municipal corporation in which the employee's principal place of work is located.

(D) (1) Except as provided in division (D)(2) of this section, if, during a calendar year, the number of days an employee spends performing personal services in a municipal corporation exceeds the twenty-day threshold described in division (B)(1) of this section, the employer shall withhold and remit tax to that municipal corporation for any subsequent days in that calendar year on which the employer pays qualifying wages to the employee for personal services performed in that municipal corporation.

(2) An employer required to begin withholding tax for a municipal corporation under division (D)(1) of this section may elect to withhold tax for that municipal corporation for the first twenty days on which the employer paid qualifying wages to the employee for personal services performed in that municipal corporation.

(3) If an employer makes the election described in division (D)(2) of this section, the taxes withheld and paid by such an employer during those first twenty days to the municipal corporation in which the employee's principal place of work is located are refundable to the employee.

(E) Without regard to the number of days in a calendar year on which an employee performs personal services in any municipal corporation, an employer shall withhold municipal income tax on all of the employee's qualifying wages for a taxable year and remit that tax only to the municipal corporation in which the employer's fixed location is located if the employer qualifies as a small employer as defined in section 718.01 of the Revised Code.

To determine whether an employer qualifies as a small employer for a taxable year, a tax administrator may require the employer to provide the tax administrator with the employer's federal income tax return for the preceding taxable year.

(F) Divisions (B)(1) and (D) of this section shall not apply to the extent that a tax administrator and an employer enter into an agreement regarding the manner in which the employer shall comply with the requirements of section 718.03 of the Revised Code.

(G) In the case of a person performing personal services at a petroleum refinery located in a municipal corporation that imposes a tax on income, an employer is not required to withhold municipal income tax on the qualifying wages of such a person if the person performs those services on twelve or fewer days in a calendar year, unless the principal place of work of the employer is located in another municipal corporation in this state that imposes a tax applying to compensation paid to the person for services performed on those days and the person is not liable to that other municipal corporation for tax on the compensation paid for such services. For the purposes of this division, a petroleum refinery is a facility with a standard industrial classification code facility classification of 2911, petroleum refining.

Notwithstanding division (D) of this section, if, during a calendar year, the number of days an individual performs personal services at a petroleum refinery exceeds twelve, the employer shall withhold tax for the municipal corporation for the first twelve days for which the employer paid qualifying wages to the individual and for all subsequent days in the calendar year on which the individual performed services at the refinery.

(H) Notwithstanding any other provision of this section, an employer is not required to withhold municipal income tax on qualifying wages paid to an employee for the performance of personal services in a municipal corporation that imposes such a tax if the municipality is not the regular principal place of work of the employee and the locating of the employee away from the regular principal place of work is in response to a governmental determination of conditions that encourage employers to have employees working remotely in order to prevent the spread of contagious disease. The employer may rely on this determination for one hundred twenty days after the governmental determination of the conditions forming the basis for such relocating of the employee or when the governmental official or agency that made the determination announces the end of those conditions, whichever is later. Any employer that does not withhold municipal income tax at the remote location pursuant to this division shall continue to withhold municipal income taxes at the regular principal place of work of the employee for the period when the employee is working remotely.

.....

718.19 Requests for refunds.

(A) Upon receipt of a request for a refund, the tax administrator of a municipal corporation, in accordance with this section, shall refund to employers, agents of employers, other payers, or taxpayers, with respect to any income or withholding tax levied by the municipal corporation:

(1) Overpayments of more than ten dollars;

(2) Amounts paid erroneously if the refund requested exceeds ten dollars;

(3) Requests for individual refunds from the municipality in which the regular principal place of work of the employee is located as defined in section 718.011 of the Revised Code shall not be granted for time spent temporarily working outside of the regular principal place of work under the conditions described in division (H) of section 718.011 of the Revised Code.

(B) (1) Except as otherwise provided in this chapter, requests for refund shall be filed with the tax administrator, on the form prescribed by the tax administrator within three years after the tax was due or paid, whichever is later. The tax administrator may require the requestor to file with the request any documentation that substantiates the requestor's claim for a refund.

(2) On filing of the refund request, the tax administrator shall determine the amount of refund due and certify such amount to the appropriate municipal corporation official for payment. Except as provided in division (B)(3) of this section, the administrator shall issue an assessment to any taxpayer whose request for refund is fully or partially denied. The assessment shall state the amount of the refund that was denied, the reasons for the denial, and instructions for appealing the assessment.

(3) If a tax administrator denies in whole or in part a refund request included within the taxpayer's originally filed annual income tax return, the tax administrator shall notify the taxpayer, in writing, of the amount of the refund that was denied, the reasons for the denial, and instructions for requesting an assessment that may be appealed under section [718.11](#) of the Revised Code.

(C) A request for a refund that is received after the last day for filing specified in division (B) of this section shall be considered to have been filed in a timely manner if any of the following situations exist:

(1) The request is delivered by the postal service, and the earliest postal service postmark on the cover in which the request is enclosed is not later than the last day for filing the request.

(2) The request is delivered by the postal service, the only postmark on the cover in which the request is enclosed was affixed by a private postal meter, the date of that postmark is not later than the last day for filing the request, and the request is received within seven days of such last day.

(3) The request is delivered by the postal service, no postmark date was affixed to the cover in which the request is enclosed or the date of the postmark so affixed is not legible, and the request is received within seven days of the last day for making the request.

(D) As used in this section, "withholding tax" has the same meaning as in section 718.27 of the Revised Code.



May 7, 2020

Jeff McClain
Tax Commissioner
Ohio Department of Taxation
30 E. Broad, 22nd Floor
Columbus, OH 43215

Dear Commissioner McClain,

We appreciate your leadership and the leadership of the DeWine administration as we all continue to navigate the COVID-19 pandemic.

We're grateful for leadership on House Bill 197. That bill included important tax changes that benefit Ohio's manufacturing community, including aligning the state's income tax filing date with the federal date and ensuring that businesses would not be required to make massive changes to their withholding systems to account for local taxes of employees working from home.

House Bill 197 also granted the Tax Commissioner the authority to extend state tax filings and payment deadlines for the duration of the state emergency and to waive interest and penalties.

Therefore, we request that you move to defer both the quarterly commercial activity tax filing due on May 11 and follow the lead of the Alcohol and Tobacco Tax and Trade Bureau and defer Ohio's beer and wine state excise taxes.

As you know, a top priority for many businesses in this environment is access to cash and protecting cash flow. By deferring the two upcoming tax deadlines the state would be throwing a needed lifeline to countless manufacturers desperately in need of cash. This measure is critical to the survival of many companies.

We appreciate your leadership at the Ohio Department of Taxation during this unprecedented public health crisis and applaud your efforts to continue to operate in an efficient and creative manner. Your consideration of this matter is of utmost importance.

Sincerely,

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

Rob Brundrett
Director, Public Policy Services
rbrundrett@ohiomfg.com
(614) 629-6814

CC: Speaker Householder
President Obhof



May 19, 2020

The Honorable Derek Merrin
Chairman
House Ways and Means Committee
77 S. High St
13th Floor
Columbus, OH 43215

Dear Chairman Merrin:

Since the inception of the commercial activity tax (CAT), The Ohio Manufacturers' Association, The Ohio Society of CPAs, Ohio State Bar Association, Ohio Chemistry Technology Council, Ohio State Medical Association, and Ohio Dental Association have been united in opposition to diluting the CAT base.

The CAT is a broad-based, low rate tax that applies to gross receipts from virtually all business activities conducted in Ohio. It was enacted to conform to the four main elements of sound tax policy: equality, simplicity of compliance, transparency, and minimal disruption in economic decisions. The CAT promotes equality in that it applies to virtually all business activity in the state. It is simple due to the minimal calculations needed to determine the tax base and relatively few credits or exclusions. It is relatively transparent, while there is some pyramiding, that is ameliorated by the low rate. Finally, because of the broad base and low rate, it minimizes the intrusion of tax considerations in economic decisions.

Senate Bill 95 authorizes tax incentives for the operators and certain suppliers of a "megaproject," i.e., a development project with at least \$1 billion in investment or that creates at least \$75 million in Ohio payroll. One of the tax incentives is a CAT exclusion for gross receipts of a megaproject supplier from sales to a megaproject operator.

When the CAT was first enacted, there were few exclusions and credits from the CAT. The tax expenditure associated with those exclusions in 2010, the first year the tax was fully phased in, totaled approximately \$300 million. Those exclusions were built into the tax as enacted and the 0.26 percent rate was established with those exclusions in mind.

In its fiscal year 2020 tax expenditure report, the Department of Taxation lists a larger number of exclusions and credits to the CAT. The total cost of those expenditures, without consideration of the credits, is more than \$700 million! Thus, since its enactment, CAT credits and exclusions have doubled the amount of the tax expenditure.

The CAT was created to fix an archaic business taxing system in Ohio that was riddled with

exemptions and credits. The old system failed to promote sound tax policy by eroding the tax base and piling disproportionate payments on certain industries. We would request the committee remove the CAT credit provisions from Senate Bill 95 in order to preserve the tax's base and rate.

Thank you for considering our position of preserving the broad-base, low-rate nature of the CAT with very few exclusions and weighing the potential consequences of new large credits.

Sincerely,

Rob Brundrett
The Ohio Manufacturers'
Association

Greg Saul
The Ohio Society of CPAs

Scott Lundregan
Ohio State Bar Association

Joe Rosato
Ohio State Medical
Association

Jennifer Klein
Ohio Chemistry Technology
Council

David J. Owsiany
Ohio Dental Association

Tax

Think Tank: Net Operating Loss Carrybacks are Critical for Struggling Businesses **May 29, 2020**

As federal policymakers explore options for a “Phase 4” coronavirus relief plan, the Tax Foundation **notes** that it’s important to understand how the CARES Act modified tax rules for businesses, including changes to net operating loss (NOL) deduction rules such as NOL carrybacks.

The HEROES Act, recently approved by the U.S. House of Representatives, would limit NOL carrybacks by only allowing firms to carry back losses to 2018 rather than a full five years. The Tax Foundation says this would cut short an important liquidity measure while disrupting firms’ plans. *5/26/2020*

Help in Developing Cash Flow Projections **May 29, 2020**

During the COVID-19 challenge, OMA Connections Partner Clark Schaefer Hackett recommends businesses develop a rolling 13-week cash flow projection to get a picture of what cash flow looks like today and may look like in the coming weeks. If businesses identify a future cash crunch or shortfall, the firm suggests asking **this list of questions** to help implement a cash flow plan to maximize liquidity. *5/27/2020*

Critical Considerations for Small Businesses Webinar **May 29, 2020**

OMA Connections Partner Schneider Downs will host a **free webinar** Tuesday, June 2, at 1 p.m. (ET) to review “critical considerations for small businesses” during COVID-19. Topics will include recent guidelines for Paycheck Protection Program loan forgiveness; retirement plan contributions and benefits; important tax considerations; and navigating the Main Street Lending program. *5/28/2020*

New Documents Available for Main Street Lending Program **May 29, 2020**

The Federal Reserve has released the legal forms and agreements for eligible borrowers and lenders to participate in the **Main Street**

Lending Program. The Fed has also published instructions for completing the required documents and an updated FAQ overview of the program. You can access the **new documents and information here**. *5/28/2020*

A Look at PPP Loan Forgiveness **May 29, 2020**

New guidance issued by the U.S. Small Business Administration addresses questions regarding Paycheck Protection Program’s loan forgiveness. Here’s a **brief summary** by OMA Connections Partner Plante Moran regarding the interim final rule’s main provisions. *5/28/2020*

OMA Leads Coalition to Stop CAT Erosion in House Committee **May 22, 2020**

This week OMA led a coalition of business organizations to again defend the Ohio Commercial Activity Tax (CAT). Since 2005, the OMA and like-minded organizations have continually reinforced to lawmakers the importance of keeping the CAT’s competitive attributes: broad-base and low rate.

On Tuesday, May 19, in the House Ways and Means Committee the OMA and others **provided interested party testimony** on **Senate Bill 95** to communicate that “the CAT was created to fix an archaic business taxing system in Ohio that was riddled with exemptions and credits. The old system failed to promote sound tax policy by eroding the tax base and piling disproportionate payments on certain industries.”

The coalition is advocating for the committee remove the CAT credit provisions from Senate Bill 95 in order to protect the tax’s base and rate. Senate Bill 95 authorizes tax incentives for the operators and certain suppliers of a “mega-project” — such as a development project with at least \$1 billion in investment or that creates at least \$75 million in Ohio payroll. One of the tax incentives is a CAT exclusion for gross receipts of a mega-project supplier from sales to a mega-project operator. *5/21/2020*

Treasury Issues PPP Loan Forgiveness Application
May 22, 2020

On May 15, the U.S. Treasury issued the Paycheck Protection Program (PPP) loan forgiveness application ([see it here](#)). OMA Connections Partner **Clark Schafer Hackett** says this highly anticipated release provides some, but not all, answers to open questions that borrowers have had related to PPP loan forgiveness. OMA Connections Partner **CLA** posted this **analysis** about what they do and don't like about the issued guidance. *5/19/2020*

Fed Commits to Launching the Main Street Lending Program by June 1
May 22, 2020

According to OMA Connections Partner Frantz Ward, in testimony before the Senate Banking Committee on May 19, Jerome Powell, the Chair of the Board of Governors of the Federal Reserve System, promised to have the Main Street Lending Program ready by June 1. Once launched, the program will offer up to \$600 billion in loans to small and medium sized businesses struggling to recover from the COVID-19 Pandemic and resulting economic crisis.

The program will launch with some significant changes from the initial proposal made in early April and has been expanded to include three separate lending facilities from the two initially proposed, with loan amounts from \$500,000 to \$200 million. **Read the details here.** *5/20/2020*

How to Claim the Employee Retention Credit
May 22, 2020

From OMA Connections Partner GBQ: If you were not able to receive a Small Business Interruption Loan under the Paycheck Protection Program, or if you repaid that loan by May 18, 2020, you may be eligible for the Employee Retention Credit.

The Employee Retention Credit is a refundable tax credit against certain employment taxes equal to 50 percent of the qualified wages an eligible employer pays to employees after March 12, 2020, and before January 1, 2021. The

maximum credit is \$5,000 per employee. **More from GBQ here.** *5/21/2020*

Good News for Some PPP Borrowers
May 15, 2020

The U.S. Treasury Department this week **issued new guidance** related to the SBA's Paycheck Protection Program (PPP), clarifying that loans under \$2 million will not be subject to further review. Also, the safe harbor deadline for returning PPP loans was extended again, this time to May 18, 2020. No action is necessary to obtain the extension.

For more information, review **Question 46** in the SBA's updated FAQ document, or read insight published by OMA Connections Partners **Clark Schaefer Hackett, Thompson Hine,** and **CliftonLarsonAllen.** *5/14/2020*

As Expected, Sobering Data From Ohio's Monthly Budget Report
May 15, 2020

Ohio's **monthly budget report**, released this week, shows that income tax revenues in April fell 50% below estimates. Auto sales taxes were off by 57% and other sales tax revenues were nearly 18% below the forecasted level. Altogether, tax revenues were down \$872.4 million at the end of April.

The budget report says Ohio manufacturing production decreased by 6.3%, and 3,900 manufacturing jobs were lost in March. Within durable goods, which saw production drop 9.1%, the motor vehicles and parts industry fell by 28%. *5/13/2020*

Department of Taxation Posts FAQs
May 15, 2020

While most tax filings have been extended to July 15, 2020, many business filers still have questions. In response, the Ohio Department of Taxation has posted an **FAQs page.** *5/11/2020*

Qualified Opportunity Zones Update
May 15, 2020

The IRS recently announced the extension of certain deadlines for taxpayers making investments in Qualified Opportunity Zone (QOZ) funds. At noon (ET) on Wednesday, June 3, OMA Connections Partner GBQ Partners will host a **free webinar** to review tax incentives

available for QOZ investments and discuss related issues. 5/14/2020

Study: Ohio is 19th Most Dependent State on Individual Income Taxes May 15, 2020

Ohio depends on individual income taxes more than many of its peers, according to a **new comparison** by the Tax Foundation. The think tank found that nearly 26% of Ohio's total state and local collections were derived from personal income taxes. That is higher than the U.S. average of 23%, but considerably lower than our neighbor to the south, Kentucky, which depends on individual income taxes for nearly 34% of its revenue. 5/13/2020

OMA Asks Tax Commissioner to Defer Deadlines May 8, 2020

This week, the OMA **wrote** Ohio Tax Commissioner Jeff McClain, asking him to act on the authority granted in **House Bill 197** to defer tax payments and deadlines during the COVID-19 emergency. The OMA — which advocated for this authority when HB 197 was considered by the General Assembly — specifically asked the commissioner to defer approaching deadlines of the commercial activity tax, as well as the beer and wine excise tax. 5/7/2020

OBM: State's April Tax Receipts 35% Below Forecast May 8, 2020

The Office of Budget and Management this week released **preliminary figures** showing Ohio's overall tax receipts finished the month of April at \$866.5 million — or 35.3% below estimates. Sales and use taxes missed estimates by 24% or \$236.7 million. Income tax revenues were 50.5% or \$635.7 million below projections. 5/6/2020

Governor Announces \$775M Reduction in State Spending May 8, 2020

Gov. DeWine this week announced a \$775 million reduction in planned state spending for the remainder of Fiscal Year 2020, which ends June 30. The cuts, which are due to a \$1 billion

swing in the state's coffers since late February, will impact:

- Medicaid spending (approximately \$210 million);
- K-12 foundation payments (\$300 million);
- Other education line items (\$55 million);
- Higher education (\$110 million);
- All other state agencies (\$100 million).

On Wednesday, May 6, State Budget Director Kimberly Murnieks provided details on the administration's \$775 million budget reduction plan as it will impact **higher education** (reductions by school district) and **K-12 education**. (Click these links to see how your local schools will be affected.) 5/6/2020

Transportation Projects Could Fall Victim to Plummeting Fuel Tax Revenue May 8, 2020

Ohio's gasoline and diesel sales are down more than 50% statewide, according to reports, which could mean big setbacks for transportation projects. *The Columbus Dispatch* this week **reported** that "all the funding gains from the 37.5% hike in the state motor-fuel tax ushered in by Gov. Mi DeWine last July might be wiped out unless the economy soon picks up and people resume driving." 5/4/2020

Maximizing the Employee Retention Tax Credit May 8, 2020

The employee retention credit, created as part of the federal CARES Act, has raised many questions. OMA Connections Partner Plante Moran is hosting a **free webinar** at 2 p.m. (ET) on Wednesday, May 20, to address the most significant aspects of the credit. 5/7/2020

COVID-19: Accounting Considerations in 2020 May 8, 2020

OMA Connections Partner GBQ Partners will host a **free webinar** at noon (ET) on Wednesday, May 13, to discuss numerous accounting and disclosure considerations that should be top of mind during the COVID-19 emergency, including: PPP loan accounting;

asset impairments (PPE, goodwill, etc.); accounts receivable collectability; an

New Details Emerge About Main Street Lending Program **May 1, 2020**

The Federal Reserve has announced **new details** on the **Main Street Lending Program**, including lowering the minimum loan size to \$500,000 to enable more small businesses to benefit from the program. Also, the program's expanded eligibility includes companies with up to 15,000 employees or \$5 billion in annual revenues.

Here is an overview of the program from the National Association of Manufacturers. The Main Street Lending Program is separate from the **Paycheck Protection Program**, which is primarily designed for companies with fewer than 500 employees. Companies may qualify for both programs. *4/30/2020*

IRS Provides Expanded FAQs on Employee Retention Tax Credit **May 1, 2020**

The IRS has issued expanded FAQs for the employee retention tax credit. The FAQs cover employer eligibility, allocation of qualified health plan expenses, interaction with other COVID-19 relief provisions and more. **Here is more information** on this temporary, refundable payroll credit. *4/30/2020*

Fight Intensifies Over COVID-19 Business Interruption Coverage **May 1, 2020**

In its **recent analysis**, OMA Connections Partner Jones Day writes, "In an ongoing effort to discourage commercial policyholders from pursuing COVID-19-related business interruption claims, the insurance industry continues to issue sweeping pronouncements of alleged 'no coverage' for such losses." According to Jones Day, policymakers in several states have issued orders and proposed legislation that may be of assistance in holding property insurers accountable for their COVID-19 coverage obligations. *4/29/2020*

Proposed Regulations Issued on Unrelated Business Taxable Income **May 1, 2020**

Last week, the U.S. Department of the Treasury and the IRS issued proposed regulations under Section 512(a)(6), which was enacted by the Tax Cuts and Jobs Acts of 2017. Among other things, this section provides that losses from one unrelated trade or business cannot offset the gains from another. Comments on the proposed regulations are due by June 23, 2020. For more details, **see this report** for OMA Connections Partner Crowe. *4/30/2020*

Additional PPP Guidance for Seasonal Employers **May 1, 2020**

Under the federal Paycheck Protection Program (PPP), there are unique requirements for seasonal employers to determine their payroll costs. The Treasury Department this week released an Interim Final Rule to provide additional relief for these employers. **Read insight** from OMA Connections Partner CliftonLarsonAllen. *4/29/2020*

Husted: State's Rainy Day Fund Will Fall Well Short of What's Needed **April 24, 2020**

During the governor's COVID-19 press briefing on Wednesday, April 22, Lt. Gov. Jon Husted told reporters that Ohio's \$2.7 billion Budget Stabilization Fund will be insufficient to balance the state budget over the next 15 months. It will likely require twice that amount to recover the state's expenditures during the emergency, he said.

Gongwer News Service reports that Senate President **Larry Obhof** (R-Medina) has said he expects the General Assembly to act on some sort of budget correction measure before the summer. *4/22/2020*

Ohio Sales Tax on Internet Access Becomes Illegal on July 1 Under Federal Law **April 24, 2020**

On July 1 of this year, sales taxes levied on internet access in six states — including Ohio — will become illegal under the provisions of the federal Permanent Internet Tax Freedom Act (PITFA).

The Tax Foundation **reports** that the 1998 law included a grandfather clause that allowed

states with taxes existing before 1998 to keep that tax in place until June 30, 2020. 4/20/2020

Guidance on COVID-19 Tax Relief
April 17, 2020

The IRS recently issued guidance significantly expanding relief from tax filing and payment deadlines available to tax-exempt entities in response to the COVID-19 pandemic. OMA Connections Partner RSM has published **this alert** to describe the new guidance. Check out **RSM's COVID-19 Tax Relief Resource Center**. 4/17/2020

Ohio's Unemployment Insurance Fund Could be Depleted in Two Months
April 17, 2020

While discussing the Unemployment Insurance (UI) Trust Fund during the governor's April 15 COVID-19 briefing, Lt. Gov. Jon Husted said that without federal assistance, the fund is expected to be insolvent "sometime in June." He said the administration would work with the General Assembly on how best to address Ohio's UI fund, which had the nation's **fifth-worst solvency rate** according to a federal report released earlier this year. During the Great Recession of 2008-09, the state was forced to borrow \$3.4 billion from the federal government — resulting in more than \$200 million in interest on the loan. 4/15/2020

Ohio Ranked Among Top States for Taxpayer ROI
April 17, 2020

According to a **new study**, Ohio ranks among the top states for taxpayer return on investment in 2020. Financial website WalletHub contrasted state and local tax collections with the quality of the services residents receive in each state across 30 metrics in five categories: Education, health, safety, economy, and infrastructure and pollution. When all the factors were considered, the Buckeye State was the sixth-best state for ROI on its tax

IRS Guidance on COVID-19 Credits for Employers
April 10, 2020

Many businesses that have been severely impacted by the COVID-19 pandemic will qualify

for two new employer tax credits from the federal government: the Credit for Sick and Family Leave and the Employee Retention Credit. For more information, **see the IRS' guidance page** regarding these new employer credits. 4/6/2020

Ohio's March Tax Receipts Fall Short of Forecast by Nearly \$160 Million
April 10, 2020

Last month, Ohio's total General Revenue Fund tax receipts **fell short \$159.4 million**, or 10.5%, from what analysts had projected before the COVID-19 outbreak. Despite last month's huge dip in economic activity, the state is still in the black for the fiscal year to date, having collected \$89.5 million over estimates, or 0.5%. Ohio's Office of Budget and Management says that income tax revenues this month will likely miss the April estimates "by a significant margin" due to lawmakers moving the tax filing deadline to July 15. 4/6/2020

Speaker Signals Support for Tapping Rainy Day Fund
April 10, 2020

This week, House Speaker **Larry Householder** (R-Glenford) said state lawmakers will likely need to utilize the state's rainy day fund to close an expected budget gap due to the COVID-19 outbreak. According to Gongwer News Service, the speaker told WOSU Radio: "We're sitting on a \$2.7 billion fund, and we're looking at some significant shortfalls in our budget. That budget stabilization fund is going to literally help stabilize our budget."

In the same interview, Householder said the state budget could be as much as \$2 billion short of projections by the end of the fiscal year on June 30, according to Hannah News Service. Asked about Gov. DeWine's order to agencies to cut 20% of their budgets, Householder said, "It will not be anywhere close to what we need to cut." 4/7/2020

House Task Force Gathering Ideas for Post-Pandemic Recovery Plan
April 10, 2020

Speaker of the House **Larry Householder** (R-Glenford) **recently named** Reps. **Paul**

Zeltwanger (R-Mason) and **Terrence Upchurch** (D-Cleveland) co-chairs of the Ohio House Economic Recovery Task Force, created to identify ways to help Ohio as the COVID-19 crisis subsides. The group includes 22 other House members.

The task force has already started meeting remotely. It plans to invite guests from various sectors of the economy, including manufacturing. Rep. Zeltwanger has told members he hopes to craft a framework for recommendations by the end of next week. *4/8/2020*

Reminder: Applications Now Being Accepted for Paycheck Protection Program
April 3, 2020

Beginning today, April 3, the U.S. Small Business Administration (SBA) will accept **applications** for the **Paycheck Protection Program** (PPP). You must apply through qualified lenders. For details, see the **SBA's press release**. Also, here is a **quick overview** of the PPP.

Please note that the U.S. Treasury Department has encouraged businesses in need to apply as quickly as possible due to a funding cap. *4/3/2020*

Summaries of the CARES Act
April 3, 2020

The federal government's "phase three" COVID-19 emergency aid package — known as the CARES Act — included \$2.2 trillion in economic relief for individuals and businesses affected by the pandemic. It includes the Paycheck Protection Program for small businesses.

Here is valuable insight on the CARES Act from selected OMA Connections Partners:

- **Clark Schaefer Hackett's summary of the CARES Act.**
- **RSM's summary of CARES Act's loans for businesses.**
- **Benesch's summary of business tax provisions in the CARES Act.**
- **GBQ Partners' summary of the CARES Act.**

- **Frantz Ward's summary of the CARES Act.**

Also, here are **summaries of the "phase two" legislation** — the Families First Coronavirus Response Act (FFCRA) — which included provisions on paid sick leave and expanded unemployment benefits. *4/1/2020*

April 3 Webinar to Focus on CARES Act Tax Provisions
April 3, 2020

Today, April 3, at 11:30 a.m. (EDT), OMA Connections Partner GBQ Partners will host a free webinar on the tax provisions in the federal CARES Act — Washington, D.C.'s "phase three" response to the COVID-19 pandemic. Topics to be discussed include employee retention credit and employer payroll tax payments, as well as net operating loss provisions and excess business loss limitations. **Register here.** *4/3/2020*

Manufacturing and the State Tax Ramifications of COVID-19
April 3, 2020

OMA Connections Partner RSM has shared **this insight**, which examines the short-term and intermediate effects that state and local taxation could have on manufacturers during the COVID-19 outbreak. *4/2/2020*

Getting a Better Grasp on the Legislative Response to COVID-19 Crisis
April 3, 2020

OMA Connections Partner Clark Schaefer Hackett is offering an **on-demand webinar** that covers the fast-changing legislative response to the coronavirus. Topics include the federal Families First Act and the CARES Act, liquidity and financial assistance, and state and federal tax filing updates. Watch at your convenience. *4/1/2020*

IRS Page Addresses Filing Extensions
March 27, 2020

The IRS has posted **filing and payment deadline questions and answers** to address the new July 15 federal filing and payment extension. The IRS also has created **this**

page to provide updates on mission-critical functions of the IRS. It includes an overview of changes related to IRS operations and guidance for taxpayers during this period. *3/25/2020*

IRS Promises Employers Full, Immediate Reimbursement for FFCRA Paid Leave **March 27, 2020**

Late last week, the IRS and U.S. Department of Labor announced that employers subject to the Families First Coronavirus Response Act (FFCRA) will be eligible for two new refundable payroll tax credits that will “immediately and fully reimburse them” for complying with its paid leave mandate. Analysis by HR Dive says the credits are designed to grant 100% reimbursement for paid leave pursuant to the FFCRA, and that health insurance costs are included in the credit. **Read the article.** *3/25/2020*

Insight on the Delayed Deadline for Tax Payments **March 20, 2020**

The U.S. Treasury Department has pushed back the April 15, 2020 tax payment deadline by 90 days. Specifically, individuals can defer tax payments of up to \$1 million for 90 days, while corporations can defer up to \$10 million of tax payments for 90 days. However, there is no extension for the April 15 filing deadline. See **this summary** from OMA Connections Partner GBQ Partners, as well as **this guidance** from CliftonLarsonAllen. Also, the IRS has **published this site** for coronavirus-related tax guidance. *3/19/2020*

How to Apply for SBA’s Disaster Loans **March 20, 2020**

On Thursday, Lt. Gov. Jon Husted announced that the U.S. Small Business Administration (SBA) has qualified Ohio for the Economic Injury Disaster Loan program. As a result, Ohio businesses that have been economically impacted by the COVID-19 outbreak may now apply for a low-interest loan of up to \$2 million to help pay for fixed debts, payroll, accounts payable and other bills that can’t be paid because of the disaster’s impact.

Businesses can **apply for the loan online**, which is recommended, or by calling (800) 659-2955 to have an application mailed. To expedite the application process, applicants should have copies of their most recent federal income tax return and a completed and signed **IRS Form 4506T**, which authorizes the release of tax information. Also have handy a schedule of liabilities, personal financial statement, monthly sales figures, a current year-to-date profit-and-loss statement, and a year-end profit-and-loss statement and balance sheet for that tax year — if the most recent federal income tax return has not been filed.

Here’s **guidance** from OMA Connections Partner Roetzel. *3/19/2020*

Huntington Bank Offering Payment Deferrals for Small Businesses **March 20, 2020**

OMA Connections Partner Huntington National Bank has **announced** it will offer payment deferrals of up to 90 days for consumers and small businesses facing pandemic-related financial problems. Such deferrals will not lead to any negative credit report impacts. The bank is also working directly with governors’ offices to facilitate a disaster declaration from the SBA for businesses to be eligible for federal Economic Injury Disaster Program loans. *3/18/2020*

At a Glance: Ohio’s Per-Capita Income Tax Collections **March 13, 2020**

Ohio’s combined state and local income tax collections per capita are 16th highest in the nation, according to a **revised report** from the Tax Foundation. As of FY 2017 (the latest year available), state and local income taxes in Ohio were \$1,207 per person, not much more than the U.S. average of \$1,198. However, collections varied widely from state to state, ranging from \$2,877 per person in New York to zero or nearly zero in nine states. *3/10/2020*

Study: Ohio has 44th Most Expensive State & Local Taxes **March 13, 2020**

Ohio does not fare well in **WalletHub’s new comparison** of state and local tax rates. The financial website compared the tax rates of the 50 states and D.C. — and their impact on the U.S. median household — and found Ohio was

the 44th most expensive. According to the study, Ohio's effective state and local tax rates on the U.S. median household is 13.14% — or \$7,962 — roughly 22% more than the U.S. average. 3/11/2020

Ohio's February Tax Revenues \$111M Above Estimate
March 6, 2020

On Thursday, Ohio's Office of Budget and Management released preliminary **February 2020 revenue data**, showing the state's total General Revenue Fund tax receipts finished the month \$111 million (7.2%) above estimates. Fiscal-year-to-date tax receipts through February exceeded estimates by \$249 million (1.6%) and were more than \$475 million (3.1%) over total tax receipts through the same period last fiscal year. 3/5/2020

Guidance on Income Tax Nexus, ESOPs, Indirect Job Costs
March 6, 2020

The latest "**Manufacturing Minute**" — published by OMA Connections Partner GBQ — contains an update on state and local income tax nexus as affected by the U.S. Supreme Court's ruling on *South Dakota v. Wayfair*. The publication also contains information regarding ESOPs, new lease accounting guidance, and accounting for indirect job costs. 3/2/2020

Ohio's Unemployment Insurance Woes
March 6, 2020

Ohio's Unemployment Insurance (UI) Trust Fund — funded by employers — has the fifth worst solvency rate in the nation, according to a **newly revised report** from the U.S. Department of Labor. It's estimated the fund could pay for just four months of benefits during a recession. Even without a recession, the fund could be broke by 2025.

While Ohio's UI system is paying out more than it takes in, a temporary freeze on benefits was allowed to expire on Jan. 1. 3/2/2020

Taxation Legislation

Prepared by: The Ohio Manufacturers' Association
Report created on June 2, 2020

- HB17** **SURVIVING SPOUSES-HOMESTEAD EXEMPTION** (GINTER T) To allow an enhanced homestead exemption for surviving spouses of public safety personnel killed in the line of duty.
Current Status: 2/11/2020 - Senate Ways and Means, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-17>
- HB19** **PINK TAX EXEMPTION** (ANTANI N, KELLY B) To exempt from sales tax the sale of tampons and other feminine hygiene products associated with menstruation.
Current Status: 5/7/2019 - House Ways and Means, (Fourth Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-19>
- HB46** **STATE GOVT EXPENDITURE DATABASE** (GREENSPAN D) To require the Treasurer of State to establish the Ohio State Government Expenditure Database.
Current Status: 1/22/2020 - **SUBSTITUTE BILL ACCEPTED**, Senate General Government and Agency Review , (Seventh Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-46>
- HB47** **TAX COMPLAINTS-LEGAL ASSISTANCE FOUNDATION** (GREENSPAN D) To increase the time within which property tax complaints must be decided.
Current Status: 10/22/2019 - Senate Ways and Means, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-47>
- HB54** **LGF TAX REVENUE INCREASE** (CERA J, ROGERS J) To increase the proportion of state tax revenue allocated to the Local Government Fund from 1.66% to 3.53% beginning July 1, 2019.
Current Status: 2/12/2019 - Referred to Committee House Ways and Means
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-54>
- HB56** **MINE SAFETY EXCISE TAX** (CERA J) To allocate 3.75% of kilowatt-hour excise tax revenue for mine reclamation, mine drainage abatement, and mine safety.
Current Status: 2/26/2019 - House Energy and Natural Resources, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-56>
- HB57** **HEATING SOURCES TAX EXEMPTION** (PATTERSON J, CERA J) To exempt certain heating sources from sales taxation and to hold local governments and libraries harmless from the revenue effect.
Current Status: 2/4/2020 - House Ways and Means, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-57>

- HB60** **DIAPER SALES TAX EXEMPTION** (ANTANI N, KELLY B) To exempt from sales and use tax the sale of child and adult diapers.
Current Status: 3/19/2019 - House Ways and Means, (Third Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-60>
- HB62** **TRANSPORTATION BUDGET** (OELSLAGER S) To increase the rate of and modify the distribution of revenue from motor fuel excise taxes, to make appropriations for programs related to transportation and public safety for the biennium beginning July 1, 2019, and ending June 30, 2021, and to provide authorization and conditions for the operation of those programs.
Current Status: 4/3/2019 - **SIGNED BY GOVERNOR**; eff. 90 days, Taxes eff. 7/1/19
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-62>
- HB75** **PROPERTY VALUE CONTESTS** (MERRIN D) To require local governments that contest property values to formally pass an authorizing resolution for each contest and to notify property owners.
Current Status: 2/12/2020 - Referred to Committee Senate Local Government, Public Safety and Veterans Affairs
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-75>
- HB92** **VOTE ON COUNTY SALES TAX** (ANTANI N, SMITH J) To require voter approval of any increase in the rate of a county sales tax.
Current Status: 3/13/2019 - House State and Local Government, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-92>
- HB109** **SAP EXTRACTION TAX BREAK** (PATTERSON J, LATOURETTE S) To authorize a property tax exemption for land used for commercial maple sap extraction.
Current Status: 1/28/2020 - House Ways and Means, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-109>
- HB112** **TAX REMITTANCE-BAD DEBTS** (SCHAFFER T) To allow vendors to receive a refund of sales tax remitted for certain bad debts charged off as uncollectible by credit account lenders.
Current Status: 5/14/2019 - House Financial Institutions, (Second Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-112>
- HB121** **TAX CREDIT-CLASSROOM MATERIALS** (SCHAFFER T) To allow a credit against the personal income tax for amounts spent by teachers for instructional materials.
Current Status: 3/19/2019 - House Primary and Secondary Education, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-121>

- HB134** **MARCH SALES TAX HOLIDAY** (ANTANI N, WEINSTEIN C) To provide a three-day sales tax "holiday" each March during which sales of qualifying Energy Star products are exempt from sales and use taxes.
Current Status: 10/29/2019 - House Ways and Means, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-134>
- HB135** **SALES TAX HOLIDAY EXPANSION** (ANTANI N) To expand the class of products exempt from sales tax if bought during a sales tax holiday.
Current Status: 11/5/2019 - House Ways and Means, (Second Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-135>
- HB162** **MOTION PICTURE TAX CREDIT** (PATTON T) To increase the overall cap on the motion picture tax credit from \$40 million per fiscal year to \$100 million per fiscal biennium.
Current Status: 3/26/2019 - Referred to Committee House Finance
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-162>
- HB166** **OPERATING BUDGET** (OELSLAGER S) To make operating appropriations for the biennium beginning July 1, 2019, and ending June 30, 2021, and to provide authorization and conditions for the operation of state programs.
Current Status: 7/18/2019 - **SIGNED BY GOVERNOR**; Eff. Immediately
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-166>
- HB175** **TAX EXEMPTION-GOODS MOVEMENT** (ANTANI N) To exempt from sales and use tax things used primarily to move completed manufactured products or general merchandise.
Current Status: 10/22/2019 - House Ways and Means, (Second Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-175>
- HB183** **TAX CREDIT-BEGINNING FARMERS** (MANCHESTER S, PATTERSON J) To allow income tax credits for beginning farmers who participate in a financial management program and for businesses that sell or rent agricultural land, livestock, facilities, or equipment to beginning farmers.
Current Status: 11/19/2019 - **REPORTED OUT AS AMENDED**, House Agriculture and Rural Development, (Fifth Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-183>
- HB187** **TAX ISSUES-AUGUST** (MERRIN D, WIGGAM S) To prohibit local tax-related proposals from appearing on an August special election ballot.
Current Status: 4/10/2019 - Referred to Committee House State and Local Government
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-187>
- HB197** **OMNIBUS MEASURES ON CORONAVIRUS** (POWELL J, MERRIN D) To continue essential operations of state government and maintain the continuity of the state tax code

in response to the declared pandemic and global health emergency related to COVID-19, to make appropriations, and to declare an emergency.

Current Status: 3/27/2020 - **SIGNED BY GOVERNOR**; eff. 3/27/20

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-197>

HB222 CDL TRAINING TAX CREDIT (STOLTZFUS R, HOWSE S) To authorize an income tax credit for an employer's expenses to train a commercial vehicle operator.

Current Status: 2/20/2020 - **PASSED BY HOUSE**; Vote 91-1

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-222>

HB245 PROPERTY TAX EXEMPTION TIMELINES (SMITH J) To remove the current deadlines by which an owner or lessee of a qualified energy project must apply for a property tax exemption.

Current Status: 5/21/2019 - Referred to Committee House Energy and Natural Resources

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-245>

HB382 PROHIBIT INCOME TAX-MUNICIPAL NONRESIDENTS (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: 11/6/2019 - Referred to Committee House Ways and Means

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-382>

HB410 SALES TAX EXEMPTION - COLLEGE TEXTBOOKS (SWEENEY B, ANTANI N) To exempt from sales and use tax textbooks purchased by post-secondary students.

Current Status: 12/10/2019 - House Ways and Means, (First Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-410>

HB440 SALES TAX EXEMPTIONS-MANUFACTURING (MIRANDA J, CARRUTHERS S) To authorize sales tax exemptions for property and services used to clean or maintain manufacturing machinery and for employment services used to operate manufacturing machinery.

Current Status: 1/28/2020 - House Ways and Means, (First Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-440>

HB467 PASS-THROUGH ENTITY TAX REDUCTION (SCHERER G) To reduce the pass-through entity withholding tax rate to four percent.

Current Status: 2/19/2020 - **SUBSTITUTE BILL ACCEPTED**, House Ways and Means, (Fourth Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-467>

HB490 ELECTRIC/ HYBRID VEHICLE REGISTRATION FEES (GREENSPAN D, SHEEHY M) To provide for the proration of the plug-in electric and hybrid motor vehicle registration fees.

Current Status: 2/11/2020 - Referred to Committee House Finance

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-490>

HB507 DELINQUENT TAX LIEN PAYMENTS (MANNING D) To prohibit enforcement of delinquent property tax liens against owner-occupied homesteads and to require that any delinquent tax be paid before the title to a homestead may be transferred.

Current Status: 2/19/2020 - Referred to Committee House Ways and Means

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-507>

HB523 STEM DEGREE LOAN REPAYMENT PROGRAM (PATTERSON J, CARFAGNA R) to establish theSTEM Degree Loan Repayment Program, to authorize a refundable tax creditfor employers who make payments on student loans obtained by a graduate toearn a STEM degree, and to make an appropriation.

Current Status: 2/21/2020 - Introduced

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-523>

HB565 EXTEND INCOME TAX FILING DEADLINE (ROGERS J, CROSSMAN J) To extend the filing and payment dates for state, municipal, and school district income taxes by the same period as any federal income tax extension granted in response to the COVID-19 disease outbreak and to declare an emergency.

Current Status: 5/5/2020 - Referred to Committee House Ways and Means

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-565>

HB567 PARTIALLY REFUNDABLE INCOME TAX CREDIT (ROGERS J, CROSSMAN J) To temporarily authorize a partially refundable earned income tax credit and to declare an emergency.

Current Status: 5/5/2020 - Referred to Committee House Finance

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-567>

HB582 MAKE APPROPRIATIONS, REAPPROPRIATIONS (CALLENDER J) To make appropriations for the biennium ending June 30, 2021, and capital reappropriations for the biennium ending June 30, 2022.

Current Status: 5/5/2020 - Referred to Committee House Finance

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-582>

HB591 SUSPEND EMPLOYER MUNICIPAL INCOME TAX (ROGERS J) To suspend some employer municipal income tax withholding requirements during the COVID-19 state of emergency and to declare an emergency.

Current Status: 5/5/2020 - Referred to Committee House Ways and Means

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-591>

HB614 UNEMPLOYMENT COMPENSATION REFORM (FRAIZER M, RICHARDSON T) To study and reform the application, processing, and administration infrastructure of Ohio's unemployment compensation system.

Current Status: 6/3/2020 - House Ways and Means, (Fifth Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-614>

SB1 **REDUCE REGULATORY RESTRICTIONS** (MCCOLLEY R, ROEGNER K) To require certain agencies to reduce the number of regulatory restrictions and to continue the provision of this act on and after August 18, 2019.

Current Status: 5/20/2020 - Consideration of House Amendments; Vote 0-32, Senate Does Not Concur

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-1>

SB8 **TAX CREDITS-OHIO OPPORTUNITY ZONE** (SCHURING K) To authorize tax credits for investments in an Ohio Opportunity Zone.

Current Status: 5/8/2019 - House Economic and Workforce Development, (Second Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-8>

SB37 **MOTION PICTURE TAX CREDIT** (SCHURING K) To extend eligibility for and make other changes to the motion picture tax credit.

Current Status: 6/30/2019 - Referred to Committee House Finance

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-37>

SB39 **MIXED USE DEVELOPMENT PROJECTS-TAX CREDIT** (SCHURING K) To authorize an insurance premiums tax credit for capital contributions to transformational mixed use development projects.

Current Status: 2/12/2020 - **BILL AMENDED**, House Economic and Workforce Development, (Seventh Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-39>

SB95 **STATE AND LOCAL TAX INDUCEMENTS** (KUNZE S, PETERSON B) To enhance state and local tax inducements for businesses making substantial fixed asset and employment investments and their suppliers.

Current Status: 5/19/2020 - House Ways and Means, (Third Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-95>

SB109 **WORKFORCE SCHOLARSHIP PROGRAM** (SCHURING K) To establish the Workforce Scholarship Program, to terminate the provisions of the Scholarship Program on December 31, 2023, to authorize tax credits for graduates of the Scholarship Program and their employers, and to make an appropriation.

Current Status: 10/8/2019 - Senate Finance, (Second Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-109>

SB125 **TAX DEDUCTION-529 PLANS** (HOTTINGER J, BRENNER A) To expand the income tax deduction allowed for contributions to Ohio's 529 education savings plans to include contributions to 529 plans established by other states.

Current Status: 5/12/2020 - Referred to Committee House Ways and Means

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-125>

SB132 GAS TAX-LOCAL GOVERNMENT ALLOCATION (WILLIAMS S) To modify the amount of revenue derived from any increase in the motor fuel tax rate that is allocated to local governments and to change the manner in which that revenue is divided between municipal corporations, counties, and townships.

Current Status: 5/1/2019 - Referred to Committee Senate Transportation, Commerce and Workforce

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-132>

SB153 JOB RETENTION TAX CREDIT-ALTERNATIVE REQUIREMENTS (DOLAN M) To permit manufacturers to meet alternative minimum employment and investment requirements to qualify for the Job Retention Tax Credit.

Current Status: 6/4/2019 - Senate Ways and Means, (First Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-153>

SB268 CAPITAL APPROPRIATION (SYKES V) To modify the purpose of a capital appropriation.

Current Status: 2/25/2020 - Senate Finance, (First Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-268>

SB307 SALES TAX EXEMPTION-PPE (GAVARONE T) To authorize a temporary sales and use tax exemption for personal protective equipment and to declare an emergency.

Current Status: 5/13/2020 - Senate Ways and Means, (First Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-307>

SB310 FEDERAL COVID FUNDING (DOLAN M) To provide for the distribution of some federal coronavirus relief funding to local subdivisions, to make an appropriation, and to declare an emergency.

Current Status: 6/3/2020 - House Finance, (Fourth Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-310>

SB316 CAPITAL REAPPROPRIATIONS (DOLAN M) To make capital reappropriations for the biennium ending June 30, 2022, and to declare an emergency.

Current Status: 6/3/2020 - Senate Finance, (Second Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-316>

SJR3 REQUIRE SUPERMAJORITY-INCOME TAX INCREASE (BURKE D) Proposing to enact Section 7 of Article XII of the Constitution of the State of Ohio to require that any increase in income tax rates be approved by a supermajority of the membership of each house of the General Assembly.

Current Status: 5/13/2020 - Senate Ways and Means, (Fifth Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SJR-3>