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GOVERNMENT AFFAIRS UPDATE

Associated General Contractors (AGC) of Ohio's *Government Affairs Update* provides information about government related matters of interest to the commercial building industry and AGC's advocacy efforts. It is e-mailed to AGC of Ohio members and available online at www.agcoho.com/advocacy.html. Direct questions and comments to Andrea Ashley, VP of Government Relations: andrea@agcoho.com or (614) 486-6446.

June 7, 2018

OHIO HOUSE ELECTS RYAN SMITH AS NEW SPEAKER; BEGINS TO VOTE ON BILLS

After nearly two months without a leader, the Ohio House on Wednesday elected Ryan Smith (R-Bidwell) as its new Speaker after an unprecedented eleven rounds of voting.

Smith was one of four Speaker nominees; the others included Representatives Strahorn (D-Dayton), Thompson (R-Marietta) and Hughes (R-Columbus). Rules require the House Speaker to be elected with a majority of those voting; if no one receives the majority after ten rounds of voting, on the eleventh round the person receiving the plurality of votes wins the election. On Wednesday's vote, with seven representatives missing and one empty seat, the total needed was 46 votes. Smith consistently received 44 votes, forcing the House to go through eleven rounds of voting before he could be elected Speaker.

Rep. Smith's term as Speaker will conclude late December, at the end of the 132nd General Assembly. He replaces Cliff Rosenberger, who resigned amid an FBI investigation into his travel and expenditures as Speaker. Smith remains locked in a bitter Speaker's battle for the next General Assembly with former Ohio House Speaker Larry Householder, who returned to the legislature this year. Being elected Speaker may help Smith in that battle, especially since the Speaker has a lot of say in the spending of the Ohio House Republican Organizational Committee funds, which helps finance Republican House candidates' campaigns. However, many new House Republican candidates won primary races against Smith-backed candidates and are considered Householder supporters. Expect the mud-slinging to continue.

The full House met again today to vote out some of the over 150 bills that have been stalled since the Speaker's vacancy. (House rule disallow the chamber from passing bills without a Speaker; and the Senate remained busy passing legislation while the House sorted through the Speaker predicament.) Representatives are expected to work through June, later than usual on an election year, to vote out legislation that had stalled due to the Speaker vacancy. Statehouse insiders do not expect many controversial measures; those will most likely be saved until after the elections during lame duck.

Despite all the conjecture about statehouse politics, one thing is for certain: next year's Speaker's race and the FBI investigation will impact policy and political spending over the remainder of the year.



LEARN HOW AGC WORKING FOR YOU!

In case you missed it, AGC of Ohio released a [document](#) highlighting its government affairs activities from January through April. View it [here](#).

BILLS OF INTEREST TO CONTRACTORS

Even without a Speaker, the Ohio House has continued to hold committee hearings throughout the spring. And the Senate has remained fully operational, passing legislation. Below are bills seeing action that AGC of Ohio is monitoring, and our advocacy efforts.

HB21: COMMUNITY SCHOOL ENROLLMENT VERIFICATION

(HAMBLEY S) Regarding verification of community school enrollments and community school sponsor contract specifications; regarding state assessment and graduation requirements for certain chartered nonpublic schools; eliminating the Education Management Information System (EMIS) Advisory Board in favor of a new EMIS Advisory Council; to make other education policy changes.

Current Status: 5/23/2018 - Passed by Senate; Vote 32-0.

AGC Action: *AGC was engaged on an amendment that provides a moratorium on a new storm shelter building code requirement for schools until Sept 15, 2019, and an exemption for schools that have secured funding prior to that date; this allows time for school projects to prepare and budget for the change.*

HB110: COLLEGE CREDIT APPRENTICESHIPS (HAGAN C, DEAN B) To create a subprogram of the College Credit Plus Program that permits students to participate in certified apprenticeship programs.

Current Status: 4/11/2018 - House Higher Education and Workforce Development, (Third Hearing).

HB236: MODEL ELEVATOR LAW (PATTON T, CUPP B) To enact the Model Elevator Law.

Current Status: 4/10/2018 - Substitute Bill Accepted, House Economic Development, Commerce and Labor, (Second Hearing).

HB271: ACCESSIBILITY LAW VIOLATION NOTICE (MCCOLLEY R, REZABEK J) To authorize an alleged aggrieved party to provide a notice of an alleged accessibility law violation in advance of filing a civil action and to establish the circumstances under which an alleged aggrieved party is entitled to attorney's fees in a civil action based on the violation.

Current Status: 5/22/2018 - Senate Judiciary, (First Hearing).

AGC of Ohio Action: *Several contractors have been affected by lawsuits related to this issue; AGC has quietly educated lawmakers about the impact that groups actively seeking to file accessibility lawsuits have on contractors and the industry.*

HB459: WORKERS COMP-SELF-INSURING EMPLOYERS (HENNE M) To allow groups of employers to be granted status as a self-insuring employer for purposes of the Workers' Compensation Law.

Current Status: 5/23/2018 - House Insurance, (Third Hearing).

HB492: WOMEN-OWNED BUSINESS PROCUREMENT (GONZALES A) To establish the women-owned business enterprise program.

Current Status: 5/31/2018 - House State and Local Government, (Fourth Hearing).

AGC Action: *AGC has worked with those pushing the bill to make changes trying to ensure it is not onerous on the construction industry.*

HB500: TOWNSHIP LAW (CARFAGNA R) To make various changes to township law, including the authority to levy taxes for capital funding by townships and other political subdivisions.

Current Status: 5/24/2018 - Reported Out, House State and Local Government, (Sixth Hearing)



HELP AGC OF OHIO ADVOCATE FOR YOU *Contribute to* *AGC of Ohio Action!*

Fundraising is part of the political process, and a healthy PAC is vital to AGC's success at the Statehouse! Make checks payable to AGC of Ohio Action (non-corporate contributions only). Sole proprietors, partnerships and unincorporated associations, which include limited liability companies under Ohio campaign finance law, may use company funds to contribute; such contributions should include the name of the entity and individual making the contribution.

HB504: INTERIOR DESIGNERS (PELANDA D) Regarding interior designers; creates a certification.

Current Status: 5/22/2018 - Substitute Bill Accepted & Reported Out, House Economic Development, Commerce and Labor, (Third Hearing).

AGC Action: *AGC has worked with those pushing for the legislation to move the certification process and adjudication out of the Board of Building Standards, which was made in the substitute bill. AGC continues to work to reinstate inadvertently excluded language that makes clear the certification would not apply to interior construction contractors.*

HB544: STATE BOARD-ADOPT SCHOOL SAFETY STANDARDS (ROGERS J, PERALES R) To require the State Board of Education to adopt rules prescribing standards for safety enhancements to new public and nonpublic school facilities and to require the Ohio Facilities Construction Commission to revise its construction and design standards to comply with the State Board's standards.

Current Status: 5/15/2018 - House Education and Career Readiness, (First Hearing)

HB554: PUBLIC DESIGN CONTRACTS-INDEMNITY (SEITZ B) To regulate the use of indemnity provisions in professional design contracts related to public improvements.

Current Status: 5/23/2018 - House Civil Justice, (Third Hearing).

AGC Action: *AGC worked with those pushing this legislation when it was first introduced during the last General Assembly to change language that would have negatively impacted contractors.*

HB583: LOCAL OCCUPATIONAL LICENSING LIMITS (HENNE M) To limit the occupational license and registration requirements and fees that a political subdivision may impose on state-regulated occupations, to establish a waiver exempting certain persons from paying occupational license or registration fees, and to revise the licensing restrictions applicable to individuals convicted of criminal offenses.

Current Status: 5/22/2018 - House Economic Development, Commerce and Labor, (First Hearing)

HB668: PUBLIC-PRIVATE PARTNERSHIP FACILITIES (PATTON T) To authorize state agencies, state institutions of higher education, counties, townships, municipal corporations, school districts, community schools, STEM schools, and college-preparatory boarding schools to enter into public-private initiatives with a private party through a public-private agreement regarding public facilities.

Current Status: 6/5/2018 - Referred to Committee House Higher Education and Workforce Development

OFCC PROVIDES “PATCH” FOR INDEMNITY ISSUE IN CM-R CONTRACT DOCUMENTS

AGC of Ohio sent an email to members last month about changes in the Ohio Facilities Construction Commission’s [Construction Manager at Risk \(CM-R\) Contract](#) that contained indemnity language (Sections 10.6.5 and 10.6.5.1) that could void a construction manager’s insurance coverage for a public project.

After a workgroup of AGC members met with the OFCC to educate them about issue (as well as other changes in the CM-R contract that could be problematic for contractors), OFCC sent information about an interim fix for the indemnity issue. As an interim “patch,” OFCC is going to remove the 10.6.5 insert that was added in the 2018 CMR updates. This will not change anyone’s statutory obligations or requirements, but hopefully will relieve current pressure while matters are further considered. The change:

10.6.5 As part of the CM’s duty to defend the State and Contracting Authority under **Section 10.6** the CM or the CM’s insurer (as applicable): (1) must confer with the Ohio Attorney General's Office ("Attorney General") concerning the representation requirements for the Contracting Authority or any other State entity statutorily represented by the Attorney General; (2) must seek Attorney General approval of any settlement but only to the extent that such settlement involves a material commitment or concession by the State and/or Contracting Authority

Thanks to all who provided feedback and to those involved in the meetings! AGC of Ohio will continue to keep members apprised as we continue to advocate for additional changes. In the meantime, thoroughly review the OFCC documents and consult with your insurer and legal counsel before signing them.

DAS EQUAL OPPORTUNITY DIVISION TO GRADUATE OHIO EDGE PARTICIPANTS

This year, the Ohio Dept of Administrative (DAS) Services [Equal Opportunity Division](#) will be notifying approximately 89 companies that they will be graduating from the Encouraging Diversity, Growth and Equity (EDGE) program due to time limitations. The maximum amount of time a certified business or business owner may participate in the EDGE program is a cumulative total of 10 years.

To help educate EDGE certified businesses and those that hire them, DAS has released the [EDGE Graduation and Participation Time Limits](#) document highlighting EDGE’s graduation and time-limit policy, as well as post-graduation information and resources.

Since its inception in 2003, the EDGE program has certified more than 4,700 businesses. Learn more about EDGE certification [here](#). Access the document about EDGE time limits [here](#).

OHIO BWC BOARD APPROVES A FOURTH “BILLION BACK”

The Ohio BWC Board on May 24 formally approved \$1.5 billion in rebates for Ohio employers. The proposed rebate equals 85 percent of the premiums paid for the policy year that ended June 30, 2017.

The BWC reported earning an average 6.7% return on its investments in the past five fiscal years, with the fund’s net position at \$10.9 billion as of March 31. BWC Administrator Sarah Morrison has cautioned that “despite recent history, strong investment returns and rebates are a goal, not a guarantee.”

Eligible employers must pay any overdue premiums and submit outstanding payroll reports before June 8; they are also encouraged to verify contact information to ensure checks to go the correct address.

According to Governor Kasich’s and BWC’s press announcement about the proposal last month, the rebate is the BWC’s largest in 20 years, and marks the fourth “billion back” under the Administration. BWC will have saved employers \$8 billion in workers’ compensation costs since 2011 after considering other rebates, credits, greater efficiencies and several rate reductions.

More details on the rebate can be found [here](#). An overview of the \$8 billion in workers’ comp savings since 2011 can be found [here](#).

POTENTIAL NEGATIVE IMPACT OF BWC RATE REDUCTIONS FOR CONTRACTORS

In February, the Ohio BWC reduced workers’ comp rates by an average of 12 percent. Some contractors have found the reduction of the base rate will cause their experience modification rate (EM) to increase, even without incurring additional claims.

If you haven’t already done so, work with your TPA or risk professional to find out the rate reduction’s impact on your EM. Also, the BWC has a construction [EM Construction Cap Program](#) that can be used for bidding purposes if the change causes your company’s EM to increase over 1.0. AGC of Ohio advocated for the creation of the Cap Program when the BWC first began significantly reducing base rates under the Strickland administration after members expressed concern about the increase in their EM’s and resulting inability to bid on some projects.

AGC OF OHIO INVOLVED IN FRIEND-OF-COURT BRIEF SUPPORTING MUNICIPAL TAX REFORM

More than 100 cities and villages have appealed its challenge of net profits centralized collection and other aspects of municipal tax reform to the Franklin County Court of Appeals ([City of Athens, et. al. v. Testa, et. al.](#)). The lower court had ruled against the cities, who are challenging the constitutionality of key municipal income tax reforms signed into law through H.B. 49 in June 2017 and H.B. 5 in December 2014.

As an active proponent of municipal tax reform throughout the legislative process, AGC of Ohio is part of an amicus (friend-of-court) brief filed by employer associations in support of the municipal tax reform laws.

OHIO EPA WEBINAR ON NEW CONSTRUCTION STORM WATER GENERAL PERMIT

The Ohio EPA's Division of Environmental and Financial Assistance on May 16 hosted a [webinar](#) highlighting the revisions to Ohio's National Pollutant Discharge Elimination System (NPDES) General Permit for Discharges of Storm Water Associated with Construction Activity. The [new permit](#) will be in effect for five years, expiring on April 22, 2023. Access the webinar about the permit changes on YouTube [here](#).

AGC of Ohio was part of a coalition of six industry and business groups that jointly submitted [comments on the proposed rule changes](#), which resulted in many revisions to the final permit, making it more workable for the construction and development industries.



REVISED WETLAND ANTIDEGRADATION AND WETLAND WATER QUALITY STANDARDS

After a three-year process, the Ohio EPA on May 1 adopted three revised rules to its Wetland Antidegradation and Wetland Water Quality Standards: [wetland definitions](#), [wetland narrative criteria](#) and [wetland antidegradation](#). The rules are effective July 30.

During the rulemaking process, Ohio EPA made some changes at the request of AGC and other stakeholders that lessened some of the liability and compliance burden after the first round of comments a few years ago. AGC submitted additional [comments](#) on the last revision that was released this year, but no further changes were made. Click [here](#) for final versions of the rules (OAC 3745-1-50:54).

To coincide with the revised rules, changes are required to the 401 WQC application form, impact tables, and application instructions. The revisions included changing terms and definitions to establish consistency with the Federal Mitigation Rule, updating the mitigation hierarchy to be consistent with Ohio Revised Code (ORC) 6111.30 and the Federal Mitigation Rule, adding mitigation monitoring requirements, and application requirements for deviations from the mitigation hierarchy (see [OAC 3745-1-54\(E\)\(2\)](#)).

The new 401 WQC application form, impact tables, and application instructions, are posted on the DSW 401 website [here](#). Once the new rules become effective on July 30, 2018, the new forms (dated 06/2018) should be used. Ohio EPA will continue to accept the old application forms and impact tables (dated 12/2016) until October 30, 2018 (three months from the effective date) after which the new application form will be required. However, once the revised rules are effective, the new application requirements, outlined in the application instructions, will be in effect and will be expected for all submittals.



GOVERNOR'S OFFICE OF WORKFORCE TRANSFORMATION AND JOBS & FAMILY SERVICES PROMOTE [I BUILD AMERICA - OHIO](#)

The Governor's Office of Workforce Transformation and the Ohio Department of Jobs and Family Services issued a [release](#) on May 21 announcing *I Build America - Ohio*.

I Build America – Ohio is an initiative launched by AGC of Ohio and Ohio Contractors Association in collaboration with *I Build America*. It promotes the construction industry to students, as well as provides [outreach tools](#) for employers, resources for educators and influencers, and information for parents. The campaign features a new [website](#) that serves as the driving force for the initiative's messaging and a related marketing campaign.

"The construction industry produces many of Ohio's in-demand jobs," said Ryan Burgess, director of the Governor's Office of Workforce Transformation. "We're excited to see construction employers working together to develop a resource that will help build a future workforce for the industry."

The website – www.ibuildamerica-ohio.com – went live May 1, and the marketing campaign was launched concurrently. View the press release [here](#).



ON THE NATIONAL FRONT... Information courtesy of AGC of America

Learn more about AGC of America's advocacy efforts at <https://advocacy.agc.org>.

OSHA ISSUES PROPOSED RULE TO ADDRESS CRANE OPERATOR QUALIFICATION

On May 21, the Occupational Safety and Health Administration (OSHA) issued a [Notice of Proposed Rulemaking](#) to revise crane operator training, certification/licensing, and competency. The proposed changes would: (1) require comprehensive training of operators; (2) remove the provision that requires certification by capacity; (3) clarify and permanently extend the employer's responsibility to evaluate crane operator competency; and (4) require documentation of that evaluation.

The proposed rule was released ahead of the November 10 compliance deadline for enforcement of crane operator certification. AGC has been following this rulemaking closely and will be working with members to draft and submit comments by June 20.

SPRING 2018 REGULATORY AGENDA UNVEILS PRIORITIES OF FEDERAL LABOR AGENCIES

On May 9, 2018, the Trump Administration unveiled its [Spring 2018 Unified Agenda of Regulatory and Deregulatory Actions](#) mapping out federal agency priorities for the coming months. This bi-annual publication informs the public of regulations under consideration or planned by federal agencies. The present agenda includes several submissions by labor agencies.

The U.S. Department of Labor's [submission](#) updates projected timelines for action already in progress and adds several new actions of relevance to construction contractors, such as a:

- proposed rule revising the [overtime regulations](#);
- proposed rule to update the child labor protections to allow teenagers to work longer hours in hazardous conditions;
- proposed rule to revise the law governing time-and-a-half overtime calculations by redefining the regular rate of pay;
- final rule establishing criteria for the sponsorship of [association health plans](#); and a
- final rule to rescind the ["persuader rule."](#)

The Equal Employment Opportunity Commission also revealed plans for several actions. Most notably are reports of initiatives to revise its regulations governing employer-sponsored wellness programs.

The National Labor Relations Board announced its timeline for considering responses to a recent Request for Information regarding its controversial ["quickie election" rule](#). In a more surprising announcement, the Board disclosed that it is considering rulemaking to address another controversial matter in which it has been enmeshed for the past few years, the [standard for determining joint-employer status](#).

AGC regularly provides input on regulatory actions through the public comment process and stakeholder meetings with agencies and the administration. AGC will monitor and consider participation in these actions, and will notify members of significant developments.

ENVIRONMENTAL NEWS

AGC Supports Proposal to Streamline Disposal Requirements for Aerosol Cans

On May 15, AGC put forth its [support](#) for the U.S. Environmental Protection Agency's (EPA) proposal to expand the universal waste regulations to include non-empty aerosol cans. Recognizing that aerosol cans are often the only hazardous waste stream produced on a construction site, this proposal could change a company's status as a "generator" and reduce program costs and facilitate recycling.

AGC further suggested that EPA allow flexibility to very small quantity generators (VSQG) to treat aerosol cans as either universal waste or to follow the existing VSQG regulations. AGC also recommended that EPA create a single regulatory structure for aerosol cans that allow non-hazardous, non-intact, and intact aerosol cans to be managed together as universal waste.

The Spring Unified Agenda Slates Many Federal Environmental Policy Items for Review

From the repeal and replacement of the 2015 definition of Waters of the United States and opening up the National Environmental Policy Act procedures, to reevaluating regulations on listing species and designating critical habitat, the spring Unified Agenda sets a busy schedule for the year ahead. [Read More.](#)

LEARN HOW TO AVOID MISTAKES ON FORM I-9 & BETTER UNDERSTAND E-VERIFY!

AGC of America is offering a two-part webinar series featuring Dave Basham, who works for the Public Relations & Education, Verification Division of the U.S. Citizenship and Immigration Services, Department of Homeland Security. The series will educate contractors about properly filling out I-9 forms and help them better understand E-Verify. Each part of the series is worth 1.5 HR Recertification Credit Hours for HRCI©

Part 1: Form I-9: Mistakes Big or Small – Avoid them All! June 28 | 2:00-3:30 pm

Ever wonder if you are correctly completing the Form I-9? Concerned about having your I-9s audited? Who better to hear from than someone that works in the very government division that houses and oversees the Form I-9. [More information...](#)

Part 2: E-Verify: Voluntary Enrollment, Mandatory States & Federal Contractors July 11 | 2:00-3:30 pm

E-Verify, the Form I-9's companion will be the topic in this second session of a two-part series. E-Verify is the free web-based service administered by U.S. Citizenship and Immigration Service (USCIS) and the Social Security Administration (SSA) that allows enrolled employers to electronically verify the employment eligibility of their new hires. [More Information...](#)