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GOVERNMENT AFFAIRS UPDATE

Associated General Contractors of Ohio's Government Affairs Update provides information about AGC's advocacy efforts and government related matters of interest to the commercial building industry. 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, Vice President of Government Relations: andrea@agcoho.com or (614) 486-6446.

July 1, 2015

GOVERNOR LINE-ITEM VETOES PROVISIONS IN BUDGET, INCLUDING ONE IMPACTING CONTRACTORS

Governor Kasich used his veto authority on 44 items contained in [HB 64](#), the state's \$71.2 billion biennial budget. Among the items vetoed by the Governor was an increase to force account and competitive bid limits for townships and parts of the controversial language that would alter the distribution of recoveries in tort actions involving subrogation.

Strongly opposed by those in the road building industry, the township force account provisions would have doubled the competitive bid thresholds and tripled force account thresholds for new construction and maintenance and repair. Among the reasons provided in the Governor's [veto message](#): "Townships would... seek fewer competitive bids from outside contractors for such projects."

Many business groups encouraged the Governor to veto the language making changes to the distribution of recoveries in tort action. The budget proposal would repeal a statute that created the Ohio Subrogation Rights Commission and create a new statute that significantly changes Ohio's subrogation laws – laws which have been in place and relied upon for many years and which have been reaffirmed by the Ohio Supreme Court. While the Governor did not veto all of the subrogation changes, he did significantly minimize its impact by vetoing portions of it. The [veto message](#) stated, "While respecting the intent of the General Assembly, the impact of this item should be minimized until that public debate can occur." Meetings have already begun between business and insurance groups, attorneys and legislators to come up with a compromise solution.

The appropriations in the nearly 2,900-page bill takes effect today, July 1, the start of the fiscal year. The policy changes contained within it will be effective in 90 days, unless otherwise indicated in the legislation.

A final recap of provisions remaining in [HB 64](#) of interest to the construction industry:

Taxation: The Governor's original tax proposals opposed by AGC, including the sales and commercial activities tax changes, are not included in the bill. An AGC-supported amendment will allow contractors to file an affidavit city when a project has completed and the contractor has no additional tax liability in the city. As a result, the contractor would not have to file future estimated payments or tax forms when it does not owe taxes to the city.

The budget includes a 6.3 percent across-the-board personal tax cut for all Ohioans and small business tax cuts. Small business tax breaks include 75 percent on the first \$250,000 in net income for the 2015 tax year, and 100 percent for the 2016 tax year with a 3 percent tax rate on anything above \$250,000.

Historic Preservation Tax Credits: Remaining out of [HB 64](#) is the Senate’s proposal to create a moratorium on the Historic Rehabilitation Tax Credit and denying the issuance of tax credit certificates beginning July 1. [AGC expressed concern about the provision](#), which would have brought hundreds of millions of dollars in construction projects to a halt across the state. The budget now merely appropriates dollars to Historic Rehabilitation Tax Credit program and makes no other substantive changes.

Project Labor Agreements (PLAs): The bill would require state agencies using PLAs to have a public hearing before a PLA requirement can be included in the bid specifications. The House had proposed much more restrictive PLA language, but it didn’t make it through the legislative process. AGC opposes government-mandated PLAs because they limit competition and undermine collective bargaining agreements.

Sale-Leaseback Agreements: Political subdivisions would have the authority to enter sale leaseback agreements where the lessor makes improvements to all or portions of building subject to the lease. AGC will continue to advocate the legislature provide clarity regarding the application of public construction laws under such arrangements.

Community School Classroom Facilities Grants: [HB 64](#) creates a \$25 million community school facilities grant program to be administered jointly by the Ohio Facilities Construction Commission (OFCC) and Ohio School Facilities Commission (OSFC). Funding for the grant program will come from the OSFC cash funds and can be used to purchase buildings in addition to construction and improvements for charter schools. Charter schools are required to fund a minimum of 50 percent of any construction costs. Since the grant program is included in temporary law, it would sunset after two years. AGC has advocated the program be subject to a competitive process in the award of projects.

Lease Purchase Authority for Schools: The lease purchase authority for schools (school districts, ESCs, charter schools) is expanded under the legislation. Instead of being limited to solely buildings, schools can now use lease purchase for construction, improvements and acquisition of facilities (sports facilities, parking lots/structures, etc.)

OFCC Bonding and Electronic Bids: The bill permits a bid guaranty that is required to be made available to a public authority after a public bid opening to be provided by an electronic verification and security system established under rules adopted by OFCC. It limits the ability to broadcast a public bid opening by electronic means to only bids that are filed electronically, and eliminates the requirement that bids submitted for improvements to the property or public works of the state be tabulated upon duplicate sheets.

Qualified Energy Project Tax Exemption: The Qualified Energy Tax Exemption deadlines for construction of an energy facility using renewable energy resources (wind, solar, biomass, etc.) is extended for five years.

Bonding Requirement on Public Private Partnerships: For transportation projects, public private partnership (P3) agreements must contain a payment and performance bond if the P3 agreement contains a construction services component.

HOUSE PASSES BILL PROHIBITING EMPLOYEE RESIDENCY QUOTAS ON PUBLIC IMPROVEMENTS; MUST WAIT UNTIL FALL UNTIL LEGISLATION TAKEN UP BY OTHER CHAMBER

Yesterday, the Ohio House passed [HB 180](#) by a 61-31 vote. AGC-supports the legislation that would prohibit employee residency requirements on public improvements. It passed along mostly party lines, with three Democrats breaking rank and voting for it – Reps Bishoff (Blacklick), Cera (Bellaire) and Slesnick (Canton) – and one Republican – Rep Anielski of Walton Hills – voting against it.

A companion bill, [SB 152](#) (Uecker, R-Miami Township) has passed the Senate floor last week. However, with summer recess, the construction industry will have to wait until the fall before either bill can be passed by the other chamber and become law.

[HB 180](#) was sponsored by Representative Maag, a Republican from Lebanon. Cosponsors include 32 Republicans: Representatives Romanchuk (Ontario), Perales (Beavercreek), Thompson (Marietta), Burkley (Payne), Green (Mt. Orab), Blessing (Cincinnati), Derickson (Oxford), Rezabek (Clayton), Duffey (Worthington), Becker (Cincinnati), Grossman (Grove City), Boose (Norwalk), Ruhl (Mount Vernon), Retherford (Hamilton), Vitale (Urbana), McColley (Napoleon), Henne (Clay Township), Hood (Ashtabula), Hackett (London), Brenner (Powell), Buchy (Greenville), Zeltwanger (Mason), Young (Leroy), Roegner (Hudson), Antani (Miami Township), Brinkman (Cincinnati), Conditt (Liberty Township), Hambley (Brunswick), Huffman (Tipp City), Kraus (Sandusky), Schaffer (Lancaster).

As a vocal proponent of the bill, AGC testified in favor of prohibiting residency mandates and has worked closely with the Ohio Contractors Association (OCA), who represents heavy highway contractors, and the Operating Engineers to ensure its passage. The groups are part of a coalition of construction and business associations supporting the measure (view the [coalition letter](#) that was sent to elected officials in both the House and the Senate); the coalition includes Allied Construction Industries, the association that houses the Cincinnati AGC.



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

CONSTRUCTION EMPLOYMENT INCREASES IN 205 OUT OF 358 METRO AREAS

Construction employment expanded in 205 metro areas, declined in 101 and was stagnant in 52 between May 2014 and May 2015, according to a new analysis of federal employment data released yesterday by AGC of America. Association officials noted even though the majority of metro areas are still adding construction jobs, the number of gainers has decreased to the lowest level since April 2013.

“Although contractors are continuing to add workers in many parts of the country, construction employment stagnated or shrank in nearly half of all metro areas over the past year,” said Ken Simonson, the association’s chief economist. “With Washington unable to figure out how to finance infrastructure and a number of large energy projects getting put on hold, the sector’s recovery appears to be slowing in certain parts of the country.” [Read full release.](#)

Ohio Data:

Area	Industry	May '14	May '15	12-mo. % change	12-mo. gain/loss	Ranks
Statewide	Construction	200,400	196,200	-2%	-4,200	
Statewide	Const, mining, logging	214,900	211,100	-2%	-3,800	
Akron, OH	Const, mining, logging	13,000	11,700	-10%	-1,300	348
Canton-Massillon, OH	Const, mining, logging	9,600	9,400	-2%	-200	266
Cincinnati, OH-KY-IN	Const, mining, logging	42,000	43,100	3%	1,100	139
Cleveland-Elyria, OH	Const, mining, logging	36,100	39,000	8%	2,900	48
Columbus, OH	Const, mining, logging	35,500	37,900	7%	2,400	67
Dayton, OH	Const, mining, logging	11,800	11,600	-2%	-200	266
Lima, OH	Const, mining, logging	1,900	1,900	0%	0	206
Mansfield, OH	Const, mining, logging	2,100	2,100	0%	0	206
Springfield, OH	Const, mining, logging	1,200	1,100	-8%	-100	341
Toledo, OH	Const, mining, logging	12,300	13,600	11%	1,300	32
Weirton-Steubenville, WV-OH	Const, mining, logging	2,100	2,000	-5%	-100	315
Youngstown-Warren-Boardman, OH-PA	Const, mining, logging	9,700	10,500	8%	800	48
Huntington-Ashland, WV-KY-OH	Const, mining, logging	9,500	10,300	8%	800	48

ACA FINAL REGULATIONS REGARDING SUMMARY OF BENEFITS & COVERAGE REQUIREMENTS

The Departments of Health and Human Services, Labor, and Treasury (the “Departments”) recently finalized changes to regulations governing the summary of benefits and coverage (“SBC”), which were published in the Federal Register on June 16, 2015. The [final regulations](#) generally track the proposed regulations in codifying certain pieces of interim and informal guidance, including guidance regarding a plan sponsor’s responsibility to ensure compliance with the SBC rules if the plan sponsor chooses to contract with a third party with respect to SBC compliance. The final regulations also contain provisions that are intended to reduce unnecessary duplication when providing SBCs and clarify that plan sponsors and issuers of insured coverage (and not self-insured coverage) must include an Internet web address where copies of the actual individual coverage policy or group certificate of coverage can be reviewed and obtained.

For employer-sponsored plans, the final regulations are generally applicable for SBCs issued in conjunction with open enrollments beginning on or after September 1, 2015, and for all other SBC distribution events relating to plan years beginning on or after September 1, 2015. [Read More](#)

AGC SUCCESSFULLY DEFENDS INSURANCE COVERAGE FOR CONSTRUCTION DEFECTS

Siding with AGC of America and the AGC of Alabama, U.S. Court of Appeals for the Eleventh Circuit has unanimously held that the contractual liability exclusion to coverage under the commercial general liability (CGL) policies sold to AGC members across the country does not deprive these firms of coverage for claims that they are in breach of contract. The court held that the exclusion is limited to claims for indemnification in accordance with a hold harmless or similar clause.

Many if not most claims for construction defects include claims for breach of contract. If the courts construed the contractual liability exclusion to carve out and exclude coverage for any claim for breach of contract, AGC members would lose much if not most of their current coverage for such defects. The Eleventh Circuit’s decision marks a significant point in the industry’s effort to push back. [Read More](#)

U.S. EPA NEWS

Plans to Modernize, Streamline Audit Policy Program: The EPA plans to modernize and streamline its process for companies to self-audit and report to the agency violations of environmental laws, with a national online reporting tool. [Read More](#)

Policy on Vapor Intrusion, Promotes National Consistency: The EPA released final guidance on how best to assess and mitigate vapor intrusion, which occurs when vapors from below-ground contamination (soil or groundwater) rise into the indoor air of overlying buildings. EPA also has renewed efforts to include vapor intrusion in evaluations of sites for placement on the National Priorities List. AGC members should be aware of how EPA’s position on vapor intrusion may impact their operations. [Read More](#)

Underground Storage Tank Requirements Strengthened: In June, the EPA finalized the first major revisions to the federal underground storage tank (UST) requirements since 1988 to help prevent and detect UST releases. With this action, EPA also amended the state program approval regulations. The [final rule](#) strengthens the existing UST requirements under the Resource Conservation and Recovery Act and sets the minimum release protection standards for tank programs in all states and on tribal lands. [Read More](#)

Environmental Justice Screening and Mapping Tool: The EPA released a new [environmental justice \(EJ\) screening and mapping tool](#) (EJSCREEN) that uses high-resolution maps combined with environmental and demographic data to identify places with arguably higher pollution burdens and vulnerable populations. Some predict that it will serve as a powerful tool to environmental and other citizen groups who want to target EJ communities and their industrial operations. For EPA’s part, [the agency states](#): “Engaging the public, meeting with stakeholder groups and affected people, and utilizing tools like EJSCREEN are some critical ways to consider environmental justice in EPA’s rulemaking actions.” [Read more](#)