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## GOVERNMENT AFFAIRS UPDATE

*Associated General Contractors 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](http://www.agcoho.com/advocacy.html). Direct questions and comments to Andrea Ashley, Vice President of Government Relations: [andrea@agcoho.com](mailto:andrea@agcoho.com) or (614) 486-6446.*

September 25, 2015



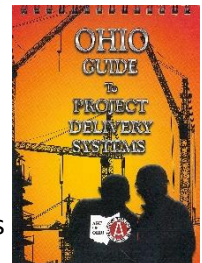
### AGC OF OHIO BOARD VOTES TO OPPOSE ISSUE 3 & SUPPORT ISSUE 2

On September 11, the AGC of Ohio Board of Directors voted to oppose Issue 3, which would allow for the legalization of marijuana, and provide financial support to *Ohioans Against Marijuana Monopolies*, the organization opposing the initiative. Board members expressed concern that its passage could increase jobsite injuries and accidents, cause potential substance abuse issues, negatively impact employee productivity, and increase employer liability.”

The Board also voted to support State Issue 2, which would amend the state's constitution to prohibit the ballot initiative process to “grant or create a monopoly, oligopoly or cartel.” Issue 2 is considered by many marijuana opponents to be a back-up plan in case Issue 3 passes. If both ballot issues pass this November, Issue 2 would take effect immediately, which would stop Issue 3 from going into effect.

### AGC CREATES THE OHIO GUIDE TO PUBLIC PROJECT DELIVERY SYSTEMS

Since the Construction Reform legislation went into effect four years ago, there have been many questions from Ohio's public owners and contractors about selecting the appropriate delivery system, owner and contractor responsibilities, proper procedures, etc. Oftentimes, answers to the questions can be difficult to find in lengthy contract documents and hundreds of pages of codes and rules.



To help simplify and clarify the process, AGC of Ohio created the *Ohio Guide to Construction Project Delivery Systems*. It provides a brief overview of the project delivery systems available for public construction—the defining characteristics, basic responsibilities, and pros and cons. The *Guide* is being shared with public owners covered by Ohio's public construction laws, and is available to members free of charge. To order copies, contact Glenna Keys at [accounting@agcoho.com](mailto:accounting@agcoho.com) or (614) 486-6446.

### OFCC TO SPEAK WITH AGC MEMBERSHIP PRIOR TO BUILD OHIO CELEBRATION

AGC of Ohio members are invited to join the AGC of Ohio Board for an OFCC Update on November 6 at 3:00 p.m. OFCC Interim Executive Director David Chovan will be the guest speaker (other key OFCC staff have also been invited, and AGC is waiting for confirmation). The meeting will take place at the Columbus Hilton Downtown, prior to the annual [Build Ohio Celebration](#), and should conclude by 4:30 p.m. To attend, RSVP to Andrea Ashley at AGC of Ohio: [andrea@agcoho.com](mailto:andrea@agcoho.com) or (614) 486-6446.

## THEY'RE BACK!

Wednesday marked the first day of fall, and the first scheduled session day for the Ohio legislature since the end of June. The Senate has a total of sixteen sessions scheduled prior to the end of the year, and the Ohio House has ten. Here are sine bills of interest to contractors that may see action this fall:

**HB17 CHARTER SCHOOL SPONSORSHIP** (DOVILLA M, ROEGNER K) With regard to sponsorship and management of community schools.

**Current Status:** 6/26/2015 - Senate Finance - Education Subcommittee, (Seventh Hearing)

Discussions have taken place to expand the charter school facilities program from a temporary grant program to one modeled like the facilities program for traditional schools administered by OSFC. This bill could provide a vehicle to do so.

**HB72 EMERGENCY CIVIL IMMUNITY** (BLESSING III L, LANDIS A) To provide civil immunity for architects, contractors, engineers, surveyors, and tradespersons providing volunteer services during a declared emergency.

**Current Status:** 4/22/2015 - Senate Civil Justice, (Third Hearing)

AGC has been a proponent – lobbying to expand the initial bill written to cover architects, engineers, and surveyors to include contractors and testifying in support. After placating some concerns, this bill may be voted out of committee and on the Senate floor this fall.

**HB206 RESIDENCY REQUIREMENTS** (MAAG R) To prohibit a public authority from requiring a contractor to employ a certain percentage of individuals from the geographic area of the public authority for the construction or professional design of a public improvement.

**Current Status:** 6/30/2015 - **PASSED BY HOUSE**; Vote 62-31

AGC has been a very active proponent of this bill – providing testimony, attending numerous meetings with legislators and other interested parties, etc. Both employee residency prohibition companion bills have passed their respective chambers, and one needs to pass the other chamber before it can become law.

**HB282 WORKERS' COMPENSATION-SURPLUS FUND** (HENNE M, MCCOLLEY R) To allow a state fund employer to have a workers' compensation claim that is likely to be subrogated by a third party paid from the surplus fund account in the state insurance fund rather than charged to the employer's experience.

**Current Status:** 6/16/2015 - House Insurance, (Second Hearing)

AGC has attended interested party meetings related to this legislation and has reviewed draft changes to the bill. AGC's Safety and Legislative Committees will recommend whether or not the association should support it.

**HB298 REDEVELOPMENT DISTRICTS** (SCHURING K) To authorize municipal corporations to create downtown redevelopment districts and innovation districts for the purposes of promoting the rehabilitation of historic buildings, creating jobs, encouraging economic development in commercial and mixed-use areas, and supporting grants and loans to technology-oriented and other businesses.

**Current Status:** 6/16/2015 - House Government Accountability and Oversight, (Second Hearing)

**HB306 PREVAILING WAGE LAW** (ROEGNER K, HOOD R) To repeal Section 509.70 of Am. H.B. 497 of the 130th General Assembly to repeal the Prevailing Wage Law.

**Current Status:** 7/7/2015 - Introduced

While a few hearings will most likely take place this fall, at this time the bill is not expected to move.

**HB274 APPRENTICESHIP LOAN PROGRAM** (HAGAN C) To create a subprogram of the College Credit Plus Program that permits students to participate in certified apprenticeship programs.

**Current Status:** 9/16/2015 - Referred to Committee House Education

**SB152 ECONOMIC DEVELOPMENT TAX CREDIT** (BEAGLE B) To authorize tax credits for contributions of money to economic and infrastructure development projects undertaken by local governments and non-profit corporations.

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

**SB180 CHARTER SCHOOL OVERSIGHT** (LEHNER P, SAWYER T) To make changes to the law regarding governance, operation, and management of community schools, and to make an appropriation.

**Current Status:** 5/27/2015 - Senate Finance - Education Subcommittee, (Fifth Hearing)

Discussions have taken place to expand the charter school facilities program from a temporary grant program to modeled like the public school program administered by OSFC. This bill could provide a vehicle to do so.

**SB185 GEOGRAPHIC EMPLOYMENT REQUIREMENTS** (UECKER J) To prohibit a public authority from requiring a contractor to employ a certain percentage of individuals from the geographic area.

**Current Status:** 6/25/2015 - **PASSED BY SENATE**; Vote 21-11

AGC has been a very active proponent of this bill – providing testimony, attending numerous meetings with legislators and other interested parties, etc. Both employee residency prohibition companion bills have passed their respective chambers, and one needs to pass the other chamber before it can become law.

**SB198 ANTI DISCRIMINATION-EMPLOYMENT** (UECKER J) To prohibit an employer from discharging or otherwise discriminating against a person who exercises a constitutional or statutory right within the person's private real property or motor vehicle.

**Current Status:** 6/24/2015 - Senate Civil Justice, (First Hearing)

AGC is monitoring this legislation and potential concerns related to impact on jobsites and workplaces with no-gun policies.

**SB205 SPECIAL IMPROVEMENT DISTRICTS** (SEITZ B) To revise the law governing special improvement districts created for the purpose of developing and implementing plans for special energy improvement projects.

**Current Status:** 6/23/2015 - Senate Energy and Natural Resources, (First Hearing)

**SJR3 FUND SEWER-WATER CAPITAL IMPROVEMENTS** (SCHIAVONI J) Proposing to enact Section 2t of Article VIII of the Constitution of the State of Ohio to permit the issuance of general obligation bonds to fund sewer and water capital improvements.

**Current Status:** 8/31/2015 - Introduced

**DEPARTMENT OF COMMERCE ISSUES GUIDANCE ON BARRICADE DEVICES TO EDUCATIONAL FACILITIES THROUGHOUT STATE; COULD IMPACT SCHOOL CONSTRUCTION PROJECTS**

The Ohio Department of Commerce on September 2 issued a guidance document concerning the development of rules for the use of barricade devices in an active shooter situation at Ohio schools and higher education facilities. Schools are being cautioned against purchasing and installing devices before the rules take effect as some devices currently on the market may not be allowable once new rules are adopted.

The Ohio Board of Building Standards (BBS) is in the initial stages of developing rules for the use of barricade devices that would prevent both ingress and egress through classroom doors in an active shooter situation. These rules will establish the guidelines for what devices that are currently being marketed, or developed in the future, will be authorized. The agency is mandated to have the rules in place by March 2016. Direct questions about these or other building code requirements for schools to the Ohio Board of Building Standards: 614-644-2613 or [BBS@com.state.oh.us](mailto:BBS@com.state.oh.us).

**OHIO SUPREME COURT ERADICATES NO-INJURY CLASS ACTIONS**  
*Information courtesy of AGC member [McDonald Hopkins](#)*



On Aug. 27, 2015, the Ohio Supreme Court established in *Felix v. Ganley Chevrolet, Inc.*, [Slip Opinion No. 2015-Ohio-3430](#) that all members of a plaintiff class alleging violations of the Ohio Consumer Sales Practices Act (OCSPA) must have suffered injury as a result of the conduct challenged in a suit under the act. In so ruling, the court made clear that:

1. Ohio’s class action rules and consumer protection statutes do not permit “windfall awards” to parties who were not actually injured by a business's allegedly improper commercial practices.
2. “No-injury” consumer class actions will not be allowed in Ohio.

This decision is particularly important to companies (and their management and boards) that provide consumer services and hold consumer information – including manufacturers, distributors, and/or retailers of consumer goods and/or providers of consumer services (banking, insurance, credit, utilities, etc.). At least in Ohio, class actions now cannot be based on allegations akin to "We bought a product, other people had a problem with it, and we want our money back, even though it worked fine for us." [Read additional information about the decision.](#)

**OHIO LABOR MARKET REVIEW**

The Ohio Dept. of Jobs and Family Services has released August’s [Labor Market Review](#). It includes current Employment Statistics prepared in cooperation with the U.S. Department of Labor [Bureau of Labor Statistics](#), and incorporates current and historical data on employment by industry, hours, and earnings for [Ohio and 12 metropolitan areas](#).

According to the data, nonresidential building construction employment is down slightly from July, and down 1,700 from last August. Both specialty trade contractors and heavy and civil engineering construction are up for the month, yet down slightly for the year: 2,900 and 600 respectively.

View complete [Ohio Labor Market Information](#) and subscribe to receive [Labor Market Review](#) notices.

**Nonagricultural Wage and Salary Employment, 2015** (data in thousands, not seasonally adjusted)

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Aug 2014
<b>Construction</b>	170.2	169.1	172.8	184.3	194.2	198.7	201.7	203.4	212.2
Construction of Buildings	40.5	38.1	38.5	39.7	39.7	41.1	40.4	40.3	45.6
Nonresidential Building Construction	23.3	22.7	23.1	23.7	24.1	25.0	24.8	24.9	26.6
Heavy and Civil Engineering Construction	21.4	21.7	23.4	27.1	29.9	30.1	30.8	31.2	31.8
Specialty Trade Contractors	108.3	109.3	110.9	117.5	124.6	127.5	130.5	131.9	134.8

## NEW IRS RESOURCE HELPS EMPLOYERS UNDERSTAND THE HEALTH CARE LAW

The new [ACA Information Center for Applicable Large Employers](#) page on IRS.gov features information and resources for employers of all sizes on how the health care law may affect them if they fit the definition of an applicable large employer.

The web page includes the following sections:

- What's Trending for ALEs,
- How to Determine if You are an ALE,
- Resources for Applicable Large Employers, and
- Outreach Materials.

Visitors to the new page will find links to:

- Detailed information about tax provisions including information reporting requirements for employers,
- Questions and answers, and
- Forms, instructions, publications, health care tax tips, flyers and videos.

Although the vast majority of employers will not be affected, you should determine if you are an applicable large employer. If you averaged at least 50 full-time employees, including full-time equivalent employees, during 2014, you are most likely an ALE for 2015. If you have fewer than 50 full-time employees, you may be considered an applicable large employer if you share a common ownership with other employers. As an applicable large employer, you should be taking steps now to prepare for the coming filing season.

In 2016, applicable large employers must file an [annual information return](#) – and provide a statement to each full-time employee – reporting whether they offered health insurance, and if so, what insurance they offered their employees.

If you will file 250 or more information returns for 2015, you must file the returns electronically through the ACA Information Reports system. You should review draft [Publication 5165](#), Guide for Electronically Filing Affordable Care Act (ACA) Information Returns, now for information on the communication procedures, transmission formats, business rules and validation procedures for returns that you must transmit in 2016.

## UPCOMING EVENTS

### MUNICIPAL INCOME TAX LAW CHANGES WEBCAST

**Sept 28, 9:30-11:30 a.m.;** [Learn more](#)

Changes contained in Ohio House Bill 5, the municipal tax reform legislation, passed last year and goes into effect 2016. Learn more about the new law and plan now for changes that will impact you or your business with former Ohio Tax Commissioner Tom Zaino, CPA, JD of Zaino Hall & Farrin LLC in a [webcast](#). Zaino helped craft the legislation on behalf of the Ohio Municipal Tax Reform Coalition. AGC of Ohio, an active partner in the Coalition, is a co-sponsor for the program.

### OHIO EPA'S PERMIT WIZARD ONLINE GUIDE

**Oct 21, 10:00-11:00 a.m.;** [Learn more](#)

The webinar features a description and demonstration of Ohio EPA's new Permit Wizard, an online guide to help businesses determine what EPA permits they need. Through a series of progressive and dynamic questions, the Permit Wizard directs users to needed permits and available exemptions and compiles useful web links and local contacts for follow-up. [Register and learn more.](#)

### OFCC UPDATE

**Nov 6, 3-4:00 p.m., Hilton Columbus Downtown**

OFCC Interim Executive Director David Chovan will provide an update to AGC members about the latest Ohio Facilities Construction Commission (OFCC) initiatives, public construction, and recent contract changes. (Other key OFCC staff have also been invited, and AGC is waiting for confirmation.) RSVP to Andrea Ashley at [andrea@agcohio.com](mailto:andrea@agcohio.com).

### SAFETY MEETING

**Dec 4, 9:30 a.m. - noon; AGC office (Cols)**

Regular safety meeting agenda items include an OSHA regulatory and enforcement update and a roundtable discussion about safety matters of interest. This meeting will also include a program on Innovative Training Techniques designed to help improve safety training and reach different generations of employees. To attend, RSVP to Andrea Ashley at [andrea@agcohio.com](mailto:andrea@agcohio.com).



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

### **SPEAKER BOEHNER RESIGNS**

U.S. House Speaker John Boehner today announced that he will resign the Speakership and his seat in Congress on October 30.

According to his statement: *"It was my plan to only serve as Speaker until the end of last year, but I stayed on to provide continuity to the Republican Conference and the House. It is my view, however, that prolonged leadership turmoil would do irreparable damage to the institution. To that end, I will resign the Speakership and my seat in Congress on October 30.*

Read the complete release [here](#).

### **AGC OF AMERICA LEGISLATIVE PRIORITIES**

AGC of America is advocating on a host of issues on Capitol Hill—ranging from public construction funding, multi-employer pension plan reform, workforce development improvements, tax reform, etc. [View AGC's immediate priorities in this Congress](#). The document only scratches the surface of the many issues on which AGC is monitoring. Learn more about these and other issues at the AGC Legislative Action Center: <https://www.agc.org/LAC>.

### **NATIONAL LABOR RELATIONS BOARD EXPANDS DEFINITION OF "JOINT EMPLOYER"**

*Decision Could Prove Very Problematic for Construction Firms*

The National Labor Relations Board issued a disappointing but anticipated [decision](#) on Thursday that relaxes the standard for determining when two companies constitute "joint employers" under the National Labor Relations Act. As reported [here](#), AGC submitted a joint amicus brief with other employer groups in the case last year. The brief urged the NLRB to maintain the current standard, under which separate entities are considered joint employers only if they share direct control over, or co-determine, essential terms and conditions of employment. The brief also urged the Board to refrain from relaxing the standard to the point where indirect or potential control would be enough. Consistent with the current Board's penchant for expanding employer liability, the NLRB changed the standard to require consideration of whether an employer has exercised indirect control over terms and conditions of employment through an intermediary, or reserved the right to do so.

The question in the case, *Browning-Ferris Industries of California, Inc.*, was whether Browning-Ferris Industries and a company it used to supply labor are joint employers of the supplied workers or whether the labor supplier is the sole employer. Companies that are joint employers may be held jointly responsible for any unfair labor practices and collective bargaining obligations related to the workers. The Board concluded that the two companies were indeed joint employers based on its findings of indirect and direct control that Browning-Ferris possessed over essential terms and conditions of employment of the supplied workers as well as Browning-Ferris's reserved authority to control such terms and conditions.

AGC will provide further guidance after completing a full analysis of the case. An appeal is expected but not certain at this time.

## **AGC OPPOSES SALARY THRESHOLD INCREASE TO \$50,440 IN PROPOSED OVERTIME RULE**

On September 4, AGC submitted comments, both [jointly with Partnership to Protect Workplace Opportunity coalition members](#) and also [independently](#), to the U. S. Department of Labor's Wage and Hour Division (WHD) regarding proposed changes to the overtime regulations under the Fair Labor Standards Act (FLSA). If implemented, the [proposed rule](#) would increase the salary threshold for the executive, administrative and professional exemptions from \$455 per week (\$23,660 per year) to \$970 per week (\$50,440 per year) – an increase of more than 100%. The threshold for highly compensated employees would also increase from \$100,000 per year to \$122,148 per year. Both thresholds would be adjusted annually based on one of two proposed methods. [Read more on AGC.org.](#)

## **AGC PARTNERS WITH INDUSTRY STAKEHOLDERS ON MANAGING UNCERTAINTY AND EXPECTATIONS REPORT**

For contractors, the challenges that emerge due to the uncertainty and imperfection inherent in a complex construction project become evident during the construction phase. More than any other stakeholder, contractors need to be able to effectively manage uncertainty. The "[Managing Uncertainty and Expectations in Building Design and Construction SmartMarket Report](#)" was produced by McGraw Hill Construction in partnership with the AIA Large Firm Roundtable; additional partners include the Associated General Contractors of America, the American Institute of Architects, Autodesk, the Design-Build Institute of America, Graphisoft, and the Lean Construction Institute. [Read more on AGC.org.](#) To download the full report, click [here](#).

## **FEDERAL CONTRACTORS MUST PROVIDE PAID LEAVE UNDER NEW EXECUTIVE ORDER**

On September 7 (Labor Day), President Obama announced a new [executive order \(EO\)](#) that will require federal contractors and subcontractors to provide up to seven days of paid leave for sickness and other covered purposes to covered employees annually. The new requirement will impact new federal contracts or contract-like instruments entered into on or after January 1, 2017. Federally assisted contracts are not impacted.

The EO will require federal contractors and subcontractors to provide a minimum of one hour of paid leave for every 30 hours worked and will prohibit setting a limit on accrued leave of less than 56 hours (or seven days). The leave may be used for an absence resulting from physical or mental illness, injury or medical condition, obtaining diagnosis, care or preventative care from a health care provider, and caring for a child, parent, spouse, domestic partner or any other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship. The EO also requires the allowance of such leave for reasons associated with domestic violence, sexual assault, or stalking. Requests for leave may be made verbally or in writing, and such leave must be granted without the contingency that the employee find his or her own replacement. Additionally, contractors may require documentation only if the absence lasts for three or more consecutive workdays.

Read full article [here](#).

## **UPCOMING AGC WEBINARS**

***Unmanned Aerial Systems (UAS or Drones): Embracing an Important New Technology on the Jobsite***  
Tuesday, October 6, 2015, 2:00-3:00 p.m. [Learn more and register.](#)

***How to Foster a Culture of Lean and Innovation***  
Tuesday, November 17, 2015, 2:00-3:00 p.m. [Learn more and register.](#)