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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.*

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### LEGISLATURE BREAKS FOR THE HOLIDAYS; A YEAR IN REVIEW & GLIMPSE AT 2016

On December 9, the Ohio legislature wrapped up its work for 2015, the first year of the two-year 131<sup>st</sup> General Assembly. Several matters of importance to the construction industry will have to wait until next year. Lawmakers will return January 20 for the first scheduled full-session day.

The New Year will bring with it a capital appropriations bill, the public facilities construction funding measure for fiscal years 2017-2018. While the Administration has not announced a dollar amount, it should be at least \$2.4 billion, the same as the previous capital budget. (Looking at a competitive election year and the state's strong financial situation, one could assume lawmakers may be more generous in 2016.) Like the last biennium, a small portion of the capital bill will be targeted for local projects.

The following highlights some of this year's legislation of interest to contractors, and for those unresolved matters, what we expect for 2016. Please note the following disclaimer: ***This is what we anticipate based on the current political climate, but there are no guarantees, especially in an election year.***

**Employee Residency Mandates:** Prohibiting employee residency mandates on public improvements is a priority for AGC of Ohio. Companion bills that would do so—[HB 180](#) (Maag, R-Lebanon) and [SB 152](#) (Uecker, R-Miami Township)—passed their respective chambers this year. However, one of the two measures has to pass the other chamber before it can be sent to the Governor for his signature. Despite having the votes to easily pass either bill (including bipartisan support in the House), both have received limited hearings in the other chamber. At this point in time, they are being held hostage by political gamesmanship between Republican legislative leaders.

**Unemployment Compensation:** In November, the House introduced [HB 394](#) (Sears, R-Monclova Twp.) legislation that would make changes to Ohio's unemployment compensation laws. Several amendments are expected for the measure early next year, and the House has indicated they want to pass the bill by the end of January. Some amendments will most likely attempt to address some of the concerns brought up by AGC and others in the construction industry since no one considered construction or Ohio winters when the bill was drafted. *(See related story below.)*

**Repeal of Prevailing Wage Law:** [HB 282](#) (Roegner, R-Hudson & Young, R-Leroy) was introduced in September and referred to a committee, but has yet to receive any hearings. Currently, it is doubtful the bill will see much action – there are not enough votes to pass it in the Senate, and any vote in the House would be very close. However, anything is possible during lame duck after the November election as some legislators will be term-limited or may have lost their election.

**Right to Work:** [HB 377](#) (Brinkman, R-Cincinnati) would prohibit any requirement that employees of private employers join or pay dues to any employee organization and to establish civil and criminal penalties against employers who violate that prohibition. The House Speaker has indicated he supports right-to-work (he was a cosponsor on similar legislation during the last General Assembly), and the committee chairman that held the first hearing on [HB 377](#) indicated he planned future hearings and a robust debate. It is doubtful that the bill would be passed prior to the November election, but a contingent in the House could try to push it during lame duck.

**Taxation:** Many tax proposals were incorporated in [HB 64](#), the biennial funding measure for the state. The Governor's initial tax proposal would have increased the Commercial Activities Tax and expanded the sales tax, which would have cost contractors tens-of-thousands of dollars. AGC and other business associations opposed the tax proposal. It was ultimately removed and replaced with a more business-friendly one. Two other tax proposals on which AGC of Ohio advocated in the budget:

- **Historic Tax Credits:** The Senate initially proposed to create a moratorium on the Historic Rehabilitation Tax Credit, denying the issuance of tax credit certificates beginning July 1, and shift to a grant program beginning fiscal year 2018. AGC opposed the provision, which could have brought hundreds of millions of dollars in construction projects to a halt across the state. The proposed change was ultimately removed, and the budget merely appropriated dollars to Historic Rehabilitation Tax Credit program and made no other substantive changes.
- **More Municipal Tax Reform:** An AGC-supported amendment was added by the Senate that would allow a contractor to file an affidavit to a city when a project in the city has been 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, lessening unnecessary filing and paperwork. It will go into effect in January with the other AGC-supported municipal tax laws passed during the 130<sup>th</sup> General Assembly.

**Emergency Civil Immunity for Contractors:** [HB 17](#) (Blessing, R-Cincinnati & Landis, R-Dover) unanimously passed the Ohio House and was reported out of the Senate Civil Justice Committee with only one dissenting vote earlier this month. The measure would provide civil immunity to architects, engineers, surveyors, contractors and tradespeople providing volunteer services during a declared emergency without a contract. Last year, the same bill was passed by the House and the same Senate Committee, only to be held up during lame duck by the Senate Republicans on the Rules and Reference Committee, who ultimately decide which bills make the Senate Floor. There is no opposition to [HB 17](#), and we were told that the previous Senate concerns have been allayed. It is expected be put up for a vote on the Senate floor next year.

**Force Account Limits:** There have been several bills and amendments brought forth to increase force account limits for local governments. The Governor vetoed provisions in the budget bill ([HB 64](#)) passed by the legislature that would have tripled force account thresholds for new construction, maintenance and repair of roads for townships. AGC is working with other construction associations to educate legislators about the benefits of using the private industry for construction as opposed to public employees.

## **HOCEVAR APPOINTED TO PUCO UNDERGROUND TECHNICAL COMMITTEE**

AGC of Ohio Safety Committee Chairman Bill Hocevar of Great Lakes Construction was one of several appointments made by the Ohio House of Representatives to the Underground Technical Committee (UTC) this week. Bill is one of four people on the UTC representing the commercial excavator industry. The others include Mark Potnick of the Ohio Contractors Association, Joe Igel of George J. Igel & Co., and John Kelly of Edward Kelly & Sons. The UTC will provide recommendations to the Public Utilities Commission of Ohio (PUCO) as the PUCO moves forward with enforcing Ohio's underground damage prevention laws.

## **UNEMPLOYMENT COMPENSATION BILL INTRODUCED; CONSTRUCTION INDUSTRY NOT CONSIDERED**

In November, the House introduced [HB 394](#) (Sears, R-Monclova Twp.), legislation that would make significant changes to Ohio's unemployment compensation laws and rates.

Some of the proposals in the legislation would: (1) increase the taxable wage base on employers from \$9,000 to \$11,000 in 2018, and once the fund is considered solvent (or has a sufficient rainy day fund), employer rates will be lowered to the taxable wage base of \$9,000; deny benefits to those who lose their jobs due to a failed drug test, violation of employee handbook rules or three no-call, no shows; freeze maximum benefits until the minimum safe level in the unemployment compensation trust fund is reached; and reduce the maximum number of weeks a claimant may receive unemployment benefits from 26 weeks to a range of 12 to 20 weeks, based on the unemployment rate in Ohio at the time of application.

A number of large employer associations were included in the drafting of the bill – Ohio Chamber, National Federation of Independent Businesses, Ohio Manufacturing Association, Farm Bureau, and Ohio Retail Merchants. Construction was supposedly inadvertently excluded from consideration, despite AGC of Ohio's and two other construction associations' participation in a meeting with the Administration and representatives from the other associations about unemployment compensation several years ago, a unemployment compensation study committee hearing (chaired by the bill's sponsor) at the Operating Engineers Training Center last year, and association staff's inquiries earlier this year about the impending unemployment compensation legislation.

Much of [HB 394](#) is modeled after North Carolina's unemployment compensation system, and no attention was given to Ohio's cold, frozen winters or the weather's impact on industries that work primarily outdoors (concrete contractors, roadbuilders, etc.) and their workforce. Additionally, while being purported as ensuring the solvency of Ohio's unemployment compensation system, some fiscal analysis show that the legislation as drafted may not accomplish that goal.

Several amendments are expected early next year, some of which will most likely attempt to address concerns brought up by AGC and others in the construction industry. The building trades and other labor groups have taken a strong stance against the bill, and are threatening to go to the ballot if passed. The House has indicated they want to pass the bill by the end of January.

## **BWC BOARD APPROVES RULES FOR AGC-SUPPORTED "OTHER STATES' COVERAGE"**

A new coverage option approved on November 20 by the Ohio Bureau of Workers' Compensation (BWC) Board of Directors will simplify workers' comp for businesses with employees who work in other states.

AGC actively supported the act last year that authorized the BWC to create the new coverage option. Several contractors in the Northeast Ohio area voiced concerns about issues arising in Pennsylvania's workers' compensation system that made it more difficult (and expensive) to work in their area. The other states coverage option could help alleviate some of those problems.

While BWC generally provides coverage for employees working temporarily outside of Ohio, complications can arise when the injured worker files a claim in another state. Treatment can be delayed and businesses can be subject to penalties by the other state. By contracting with an insurer licensed in other states, BWC will be able to offer an option that ensures proper coverage regardless of jurisdiction.

The policy offering is expected to be in place in the first half of 2016. Employers must have the majority of their business in Ohio to be eligible for the coverage option. Interested employers will apply directly to BWC, which will determine eligibility and the premium cost for the optional coverage. The vendor will issue a policy to cover out-of-state exposures and respond to any claims filed out of state.



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

### CONSTRUCTION EMPLOYER IMPACT OF NLRB'S NEW JOINT EMPLOYER STANDARD

AGC of America hosted a free, members-only webinar on "What the NLRB's New Joint Employer Standard Means for Construction Contractors." Attorney Larry Marquess of Littler Mendelson (Denver, CO) delivered a presentation on the implications of the National Labor Relations Board's recent [decision](#) in the *Browning-Ferris Industries* case for construction employers and how such employers can minimize the risk of being deemed a joint employer of workers employed by their subcontractors, staffing firms, and other companies. The event also featured a labor law update by Denise Gold, AGC's associate general counsel. AGC members can access a recording of the webinar and a copy of the handouts [here](#).

### AFFORDABLE CARE ACT (ACA) UPDATE

- **ACA Employer Reporting Due Early 2016:** The ACA added new reporting requirements for those employers that are subject to the ACA's Employer Mandate. The reporting obligations of IRS Forms 1094-C and 1095-C are mandatory with respect to 2015 and forms are due to affected employees and the IRS in early 2016. [More details from IRS.](#)
- **Automatic Enrollment Provision Eliminated:** On October 8, President Obama signed into law a bipartisan budget package that included AGC of America-backed legislation to eliminate the Affordable Care Act's (ACA) mandatory automatic enrollment provision. [Read more.](#)
- **PACE Act Signed into Law:** President Obama signed the bipartisan the Protecting Affordable Coverage for Employees Act or PACE Act into law on October 8. The Act amends the definition of "small employer" for purposes of the non-tax portions of the ACA. [Read more.](#)

### PARTIES TO 8(F) CBA NEED NOT NOTIFY FMCS WHEN TERMINATING AGREEMENT

The National Labor Relations Board ("NLRB" or the "Board") has held that a construction employer with an 8(f) collective bargaining agreement need not comply with the notice requirements imposed by Section 8(d) of the National Labor Relations Act (the "Act"). [Read more.](#)

### ELECTRONIC LOGGING DEVICE SOON REQUIRED TO TRACK TRUCK DRIVER HOURS OF SERVICE

On December 10, the Federal Motor Carrier Safety Administration (FMCSA) issued a final rule requiring the installation and use of electronic logging devices (ELDs) on commercial motor vehicles used in interstate commerce. The rule, scheduled to go into effect on December 10, 2017, mandates the use of ELDs for all drivers who are currently required to use records of duty status log books. These electronic devices are intended to be used for the enforcement of FMCSA's Hours of Service Rules for truck drivers. [Read more.](#)

### U.S. EPA NEWS

- **Small Lot Tool for Construction General Permit:** The U.S. Environmental Protection Agency (EPA) recently released a new tool to assist small residential lot builders in developing their required stormwater pollution prevention plans, or SWPPP documents. The Small Residential Lot SWPPP Template is an optional tool designed to streamline SWPPP development and is fully compliant with the SWPPP requirements in EPA's Construction General Permit (CGP). EPA has invited states to modify the agency's new template, as needed, for use with their state CGPs. [Read more.](#)
- **CICA Center Is Your Gateway to Stormwater Compliance Information:** The stormwater information on the AGC-supported Construction Industry Compliance Assistance (CICA) Center is one of the most frequently accessed resources on this comprehensive, online environmental resource for contractors. To find out why this is such a popular resource, check out the stormwater resources available at <http://cicacenter.org/stormwater.html>.