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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, Vice President of Government Relations: andrea@agcoho.com or (614) 486-6446.

June 20, 2016

LEGISLATURE BREAKS FOR SUMMER; HIGHLIGHTS FOR FIRST HALF OF 2016

The Ohio Legislature concluded business on May 25, passing over 30 bills in 48 hours. The Ohio House is not expected to return to the Statehouse until after the November election. The Senate will return for a few weeks prior to the election, but most of the chamber's legislative activity is expected after the election. Below are some highlights of bills that passed impacting contractors and AGC's advocacy on them, as well as legislation that may see action this fall.

Employee Residency Mandates Prohibition

Despite heavy pressure to veto, Governor Kasich on May 31 penned into law the legislation that prohibits state and local governments from imposing residency requirements on public works contracts: [HB 180](#). The act takes effect August 31, barring any legal challenges.

Passage of the legislation was a team effort, spearheaded by OCA whose members are most impacted by residency quotas with their increased use on municipal sewer projects, and in close coordination with AGC of Ohio and the Ohio Operating Engineers. Over 18 months, the three groups spent many, many hours educating and lobbying legislators; overcame numerous political obstacles and efforts to water-down the bill; and juggled four potential vehicles and over two dozen legislative hearings. A broad coalition advocated for the bill – which also included MCA, NECA, ACEC, ACI, TAGNO, Ohio Aggregates, Ohio Chamber, NFIB, and the Carpenters Union – and many AGC members who contacted their elected officials.

Key legislators in the process were the sponsors of the companion bills Rep. Ron Maag (R-Lebanon) and Sen. Joe Uecker (R-Loveland), and Rep. Cheryl Grossman (R-Grove City), one of the earliest supporters who tried to keep residency prohibition language in a budget bill.

Medical Marijuana

On June 8, Governor Kasich signed into law [HB 523](#) (Huffman, R-Tipp City), which lays out a framework for allowing physicians to recommend and patients to obtain marijuana for medicinal purposes. The bill takes effect in 90 days from his signing, and when effective, the Department of Commerce and Board of Pharmacy are required to ensure that the program is fully operational not later than two years after the bill's effective date.

AGC of Ohio worked with other employer associations to try to protect contractors' interests – especially drug free workplaces. Of particular interest to contractors, the new law will: ensure employers are not required to accommodate or permit medical marijuana use; allow employers to refuse to hire, discharge or

take adverse employment action on anyone using medical marijuana; protect BWC grant rebates and discounts for DFWP; include marijuana under the BWC's rebuttable presumption law; and ensure those discharged for medical marijuana use are discharged for just cause and thus ineligible for unemployment benefits if the use violated an employer's DFWP policy, zero-tolerance policy or other formal program/policy regulating medical marijuana use.

After the bill was signed into law, the Ohioans for Medical Marijuana, considered the likeliest group to succeed among those that proposed ballot issues, announced the suspension of its campaign.

Workers' Compensation Subrogation

In May the legislature passed [HB 207](#) (Henne, R-Clay Township; McColley, R-Napoleon), a measure that allows state fund employers to have a workers' compensation claim related to an automobile accident 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. AGC supported the legislation, providing joint testimony with other construction associations and participating in discussions with the BWC. [HB 207](#) takes effect August 31.

Capital Bill

The \$2.62 billion [capital appropriations budget measure](#) for fiscal years 2017-2018 was also passed last month. [SB 310](#) sailed through the legislature in three weeks, with little opposition and no amendments. Only one legislator, Rep. Paul Zeltwanger (R-Mason), voted against the bill. Among the few policy items in the bill is a plan to allow local schools to issue Certificates of Participation, or lease-purchase agreements, to help cover the local match for OSFC projects. The spending measure will take effect July 1, with the exception of the policy changes, which take effect August 16.

Civil Immunity for Contractors During Emergencies

[HB 17](#) (Blessing, R-Cincinnati & Landis, R-Dover) provides civil immunity to architects, engineers, surveyors, contractors and tradespeople providing volunteer services during a declared emergency without a contract. The bill was initially drafted to only apply to architects, engineers and surveyors. AGC worked with interested parties to have it amended to include contractors and tradespeople. It took effect May 17.

Bills of Interest that May See Action This Fall:

Unemployment Compensation: Late last year, the Ohio House introduced and pushed to pass [HB 394](#) (Sears, R-Monclova Twp.), which would make significant changes to Ohio's unemployment compensation laws and rates. AGC of Ohio submitted testimony, participated in meetings, and sent letters to legislators expressing concern that provisions in the bill could hurt contractors' ability to recruit and retain craftworkers. [HB 394](#) stalled while a House and Senate workgroup attempt to find a different solution; House leadership has expressed the bill will be revisited after the election.

Property Tax Increase Suspension: In May, the Senate passed [SB 235](#) (Beagle, R-Tipp City; Coley, R-Liberty Township), which would suspend increases in business property taxes for commercial or industrial improvements on unused properties until a certificate of occupancy is granted. AGC, in conjunction with other business groups, has advocated in support of the bill. [SB 235](#) has since been introduced in the House.

Pawnbrokers Law Changes: [SB 270](#) (Eklund, R-Chardon) would make changes to Ohio's pawnbrokers law. It would take away disincentives for pawnbrokers to purchase stolen property, and lessen the amount information shared on an electronic database that helps law enforcement and the public track down stolen goods. The lax requirements could impact the theft of tools and electronics commonly used in construction, such as concrete saws, GPS, laptops, etc. The bill received several hearings in the Senate prior to break.

STATE UPGRADES OAKS-CI

OAKS Capital Improvements (OAKS CI), the construction management system for State of Ohio-sponsored capital improvement, was upgraded over the weekend to a newer version (from v10.2 to v16.1). Users should have received an [email notice](#) about the upgrade and how to obtain a new password.

AGC of Ohio has been educating the Ohio Facilities Construction Commission (OFCC) about the challenges contractors have faced with OAKS CI. As previously reported, OFCC created a list highlighting the concerns, solutions, and the status of improvements ([view the issue that included the list](#)). Oracle, the maker of OAKS CI, has indicated the upgrade should improve the functionality of the system and resolve some of the major issues (i.e. freezing during the input of some change orders).

Please keep AGC of Ohio informed about how the new version functions, progress of the proposed improvements to OAKS CI, and any new concerns. Direct questions and feedback to Andrea Ashley at (614) 486-6446 or andrea@agcoho.com.

TEMPORARY DOOR LOCKING DEVICES

On May 13, the Ohio Board of Building Standards (BBS) issued a [memo](#) highlighting the conditions of use and operational requirements for temporary door locking devices (TDLDs).

[House Bill 64](#), Ohio's General Revenue Fund budget bill adopted by the Ohio General Assembly last year, included a provision that required BBS to adopt rules for the use of a device by a staff member that prevents both ingress and egress through school doors in an emergency situation and during active shooter drills. At its meeting on April 8, 2016, BBS adopted amendments to Ohio Building Code Chapters 2 & 10 for the use of TDLDs in schools under the conditions set forth in these rules. The amendments took effect April 18, 2016. View the memo [here](#).

OHIO BWC NEWS:

Private employers: Are you prepared for the true-up period that begins July 1

Ohio BWC's first-ever payroll true-up period is coming July 1 for Ohio private employers. This new process is part of BWC's recent change to prospective billing and requires employers to report their actual payroll for the previous policy year and reconcile any differences in premiums paid.

This is an important step that is necessary for BWC to accurately calculate your premium. It's also critically important for employers in order to maintain their policy, as well as participation in their current rating plan or discount programs. Employers must complete the true-up report even if your payroll for the year matches the estimate sent from BWC. View this [video tutorial](#) to learn more about the true-up process.

The most convenient way to true-up will be online with a BWC e-account. This [video tutorial](#) explains the process for creating an e-account.

BWC workers' comp opioid prescribing rule

BWC Board recently approved a new opioid prescribing rule to support the health and safety of Ohio's injured workers. The rule, the first of its kind in Ohio law, defines best medical practices for the use of opioids to treat workplace injuries and illnesses.

Under the rule, reimbursement for opioid prescriptions would be limited to claims in which current best medical practices are followed. The rule builds upon best practices developed by Governor Kasich's [Cabinet Opioid Action Team](#) by addressing the needs of injured workers.

The BWC Board of Directors approved the proposal during its May 26 meeting. It will become effective Oct. 1, 2016. Learn more [here](#).



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

AGC WINS BIG IN UNANIMOUS SUPREME COURT DECISION ON CLEAN WATER ACT JURISDICTIONAL DETERMINATIONS

The U.S. Supreme Court issued a [ruling on May 31](#) that will allow the construction and development industries with a way to respond immediately to overly aggressive assertions by the federal government that the property they want to build contains jurisdictional "Waters of the United States" (WOTUS). A "jurisdictional determination" (JD) significantly impacts how land may be used and dramatically raises the cost, and often reduces the feasibility, of constructing critical infrastructure. AGC submitted a joint "friend of the court" brief in the case, *US Army Corps of Engineers v. Hawkes Co.*, making a strong case for why it is vital for contractors to know with certainty whether their projects contain WOTUS.

AGC was the only trade association to advance the commercial construction industry's interest in the outcome of this case and, once again, AGC has succeeded in changing facts on the ground. This decision will have an impact on the way that the Section 404 permit program actually functions. [Read more.](#)

AGC SUBMITS COMMENTS ON EPA'S DRAFT CONSTRUCTION GENERAL PERMIT (CGP) FOR STORMWATER RUNOFF

AGC recently submitted extensive comments on the U.S. Environmental Protection Agency's (EPA) [draft 2017 National Pollutant Discharge Elimination System \(NPDES\) Construction General Permit](#) (draft CGP), based on the Association's members' input. AGC has devotedly represented the construction industry's main concerns with EPA's draft CGP and offered detailed recommendations on how to improve it by communicating closely with the agency's construction stormwater leads through e-mails, conference calls, and face-to-face meetings and, most recently, via [AGC's 44-page comment letter](#). To the extent that EPA adopts more stringent permit provisions, it affects construction firms everywhere because states that run their own stormwater permit programs generally follow EPA's lead in adopting enhanced protections. [Read more.](#)

AGC WINS ANOTHER ROUND AGAINST BLACKLISTING EXECUTIVE ORDER

In what may be a 12-round bout, AGC has scored another victory on the path to expunging President Obama's [Blacklisting Executive Order](#).

On May 19, the House of Representatives approved legislation that includes an AGC-backed provision to the National Defense Authorization Act—a bill that has been annually enacted into law for 54 consecutive years—that ensures the EO would not apply to Department of Defense and National Nuclear Security Administration contracts. AGC will work with Congress to limit the Executive Order.

Under the EO, both prime and subcontractors must report violations and alleged violations of 14 federal labor laws and "equivalent" state labor laws—which have not been articulated yet—during the previous three years, and again every six months, on federal contracts over \$500,000. Prime contractors would also be responsible for evaluating the labor law violations of their subcontractors at all tiers during both contract solicitation and contract performance. A single violation, or a combination of multiple violations, could lead a contracting officer to either (1) deny a prime contractor the right to compete for a federal contract; or (2) remove a prime contractor or subcontractor from an ongoing project. Such determinations would be made on an individual contracting officer basis with assistance from newly-created agency labor law compliance advisers.

ARMY CORPS SEEKS PUBLIC COMMENTS ON PROPOSAL TO RENEW, REVISE NATIONWIDE PERMITS

AGC Invites Members to Share Feedback

On June 1, 2016, the U.S. Army Corps of Engineers (Corps) published a [proposal](#) to reissue and modify the nationwide (general) permits (NWP). The Corps issues NWPs to authorize a variety of construction operations in "Waters of the U.S." (WOTUS) that have minimal individual and cumulative adverse environmental effects. Based on recent data, the Corps has authorized roughly 30,000 projects through the NWP program each year. Public comments are due by August 1. AGC invites members to share their feedback by using [AGC'S NWP Discussion Document](#). [Read More](#)

OVERTIME RULE DOUBLES SALARY THRESHOLD; INCREASES BURDEN ON CONTRACTORS

AGC Plays Vital Role in Attempting to Limit Burden, Will Continue to Pursue Corrective Action

On May 18, the U.S. Department of Labor released its [final rule](#) implementing changes to the Fair Labor Standards Act (FLSA) overtime regulations. The most significant change is a doubling of the standard salary threshold for exempt employees – from \$455 per week (\$23,660 per year) to \$913 per week (\$47,476 per year). The rule takes effect on Dec. 1, 2016.

In 2015, AGC sent both [individual comments](#) and signed onto [coalition comments](#) on the proposed rule. These comments raised strong concerns that the proposed salary threshold of \$970 per week (\$50,440 per year) would be too large an increase for employers to absorb all at once. While not all of AGC's and the coalition's recommendations were accepted, the final rule does establish a lower salary threshold than originally proposed. The final rule's concession for bonuses and commissions and its abstinence from changing the duties test are also consistent with AGC's recommendations.

Other key aspects of the rule include:

- Employers will be able to use nondiscretionary bonuses and incentive payments, including commissions, to satisfy up to 10 percent of the standard salary level, provided payments are made on at least a quarterly basis.
- The salary threshold for highly-compensated individuals will increase from \$100,000 to \$134,004. Bonus and incentive payments still may not count toward this threshold.
- The salary thresholds (for both the standard and highly-compensated employee exemptions) will automatically increase every three years.
- No changes were made to the highly-debated duties test.

AGC will continue to monitor any developments in Congress or the courts that stop or limit the rule, and will notify members accordingly.

Meanwhile, members should begin carefully reviewing compensation practices to determine whether any employees currently classified as exempt are paid a salary of at least \$455 per week but less than \$913 per week, as such employees will no longer qualify for exemption. Under the new rule, employers must either (1) track such employees' work hours and pay them overtime in accordance with FLSA mandates, or (2) increase their pay to meet the new salary threshold. AGC recommends seeking the assistance of an employment lawyer licensed to practice in your state with any concerns or complications.

FREE AGC AND CONSENSUSDOCS CONSTRUCTION LAW NEWSLETTERS

Getting concise and free information that impacts your bottom line is both useful and rare. The AGC and ConsensusDocs newsletters provide useful contract and construction law information from AGC and some of the best construction law firms to provide up-to-date information to help businesses. Click [here](#) to view & subscribe to the **ConsensusDocs** Construction Law newsletter. Click [here](#) to view & subscribe to the *AGC Construction Law* newsletter.

OSHA'S FINAL RULE TO 'NUDGE' EMPLOYERS TO PREVENT WORKPLACE INJURIES, ILLNESSES

New federal requirements take effect August 10, 2016

The [Occupational Safety and Health Administration](#) issued a [final rule](#) on injury data collection.

Under the new rule, all establishments with 250 or more employees in industries covered by the recordkeeping regulation must electronically submit to OSHA injury and illness information from OSHA Forms 300, 300A, and 301. Establishments with 20-249 employees in certain high-hazard [industries](#), including construction, must electronically submit information from OSHA Form 300A only.

The final rule also promotes an employee's right to report injuries and illnesses without fear of retaliation, and clarifies that an employer must have a reasonable procedure for reporting work-related injuries that does not discourage employees from reporting. Using data collected under the new rule, OSHA will create the largest publicly available data set on work injuries and illnesses.

The new requirements take effect August 10, with phased in data submissions beginning in 2017. These requirements do not add to or change an employer's obligation to complete and retain injury and illness records under the [Recording and Reporting Occupational Injuries and Illnesses](#) regulation.

The final rule is available in the Federal Register [here](#).

AGC GETS LEGISLATION INTRODUCED TO SUPPORT PUBLIC BUILDINGS INFRASTRUCTURE

Contact your Members of Congress and Urge Them to Support the Bill

AGC prevailed in securing the introduction of the Public Buildings Renewal Act of 2016. The legislation seeks to create a new class of projects eligible for financing through private activity bonds (PABs) including public buildings such as schools, post offices, libraries, and courthouses. In short, the bill would create \$5 billion in Private Activity Bonds (PABs) for public buildings for states to access through the Treasury Department. Visit AGC's Action Center and [urge your members of Congress to support this bill](#).

Previous efforts by AGC and the [Performance Based Building Coalition](#) helped advance the issue and ultimately helped secure introduction of this bipartisan standalone bill. AGC will continue to advocate for passage of the legislation and seek to introduce a companion PAB measure in the Senate.

ANTI-PLA MANDATE LEGISLATION FAILS IN HOUSE

The House of Representatives today failed—on a vote of [209-216](#)—to pass AGC-supported legislation that would block further implementation of President Obama's 2009 [executive order](#) encouraging federal agencies to consider government-mandated project labor agreements (PLAs) on construction projects. AGC, along with other industry allies, [urged members of the House](#) to support this initiative and will continue to advocate against government-mandated PLAs.

AGC neither supports nor opposes contractors' voluntary use of PLAs on government projects, but strongly opposes any government mandate for use of PLAs. AGC has sent over 100 letters to federal agencies opposing PLA mandates and bid preferences during the Obama administration, most in response to agency announcements that a PLA mandate or preference was under consideration for a particular project or an anticipated set of projects in a particular area. Of those, only one PLA mandate has been issued to date.

LABOR & HR RESOURCES AVAILABLE TO AGC MEMBERS

AGC of America has a wide variety of Labor and Human Resources information available to members.

AGC Website: The [Labor & HR page](#) of AGC of America's website includes a blog with the latest news, as well as links to related resources and advocacy efforts.

AGC's Labor & HR Topical Resources: This section of the AGC website contains articles, whitepapers, presentations, sample forms, sample policies and government resources. To access the Labor & HR Topical Resources section of the website, follow the steps below:

1. Go to www.agc.org. Log-in by clicking on the "log-in" button on the upper-left corner of the page.
2. After logging-in, go back to the URL bar and type www.agc.org/HR
3. On the menu bar on the left, under Labor & HR, select "Labor & HR Topical Resources"
4. Once on the page, select the primary and secondary categories.

You may also access this page at www.agc.org/topicalresources. Also, if you do not log in, you will not be able to see all of the available resources.

HR Practices E-Forum & Archives: Members can join the HR e-forum or any AGC e-forum at www.agc.org/member-benefits/agc-e-forums. Every e-forum post and response is saved in the E-forum archives, allowing participants to search subject matter. To access the e-forum archives, use the following steps:

1. Go to www.agc.org/HR.
2. On the menu bar on the left, under Labor & HR, select "HR Practices E-Forum Archives"
3. Log-in using your e-mail address
4. After logging-in, click "search" on the left side of the page. When you are searching for a particular topic, try using just one word to search. For example, for sick leave policies, you may want to search for "sick", then "PTO", then "leave". This will ensure that you will be able to see all related posts.

The e-forum archives can also be accessed by clicking on the first link at the bottom of every HR Practices E-Forum post. It says "To browse the threaded discussion board, click [here](#)."