



GOVERNMENT AFFAIRS ACTIVITIES

January - April 2018

LEGISLATIVE EFFORTS

With the upcoming contentious May primaries, resignation of the Ohio House Speaker and what is expected to be a challenging election cycle for Republicans—the legislative calendar at the statehouse has been light so far this year. Below is a synopsis of some of AGC of Ohio’s legislative advocacy over the past several months.

Support Capital Spending: The \$2.63 billion capital appropriations measure, [H.B. 529](#), has been signed by the Governor and goes into effect July 1. The biennial “bricks and mortar” spending measure includes: \$600 million for school facilities, \$514 million for local infrastructure projects, \$483 million for public colleges and universities, \$222 million for health and human services facilities, and \$150 in community projects. In addition to new spending, the bill contains \$1.26 billion in reappropriations.

Protect Industry’s Ability to Provide Career Information to Students: AGC worked with the bill’s sponsors and actively supported [H.B. 98](#), legislation designed to ensure organizations have the opportunity to present information about career information to students – a right that currently does not exist in Ohio law. AGC provided [testimony](#) that describes AGC and OCA’s [BuildOhio](#) initiative that incorporates outreach to schools, and how the bill would help the effort “by creating minimum access standards for employers and organizations like ours to present career information to Ohio high school students.” [H.B. 98](#) has been signed into law and goes into effect June 29.

Thwart Legislation Designed to Undermine Public Construction Procurement Laws: After stopping a similar effort during last year’s state operating budget deliberations, AGC led an effort of construction industry associations in opposition to [H.B. 471](#), a bill designed to allow a third-party administrator to manage public improvement work under its DAS minority business setaside maintenance contract. After an interested party meeting involving most construction and labor groups with a statehouse presence and several conversations with AGC staff, the bill’s sponsor recognized the [industry’s concerns](#) and decided not to move forward with the measure. AGC then met with appropriate staff of the state agencies involved and educated them about public procurement laws, as well as legal concerns with potential contract steering and the procurement of public improvement projects under set-asides.

Force Redraft of Erroneous Structural Steel Welding Legislation: AGC testified on [H.B. 127](#), legislation that would establish structural steel welding and bridge welding requirements in the Ohio Building Code. The intent of the bill is to prevent the use of falsified certifications for structural steel welds as required by the architect/engineer in project specifications. However, the bill’s “as introduced” version did not reflect that purpose and was drafted in a manner that would make it unworkable in the industry. As a result, an interested party meeting was held to discuss changes that would better reflect the bill’s intent and provide a more practical solution. A new draft of the legislation is expected.



REGULATORY EFFORTS

Ohio EPA Construction Storm Water General Permit: In April, the [Ohio EPA issued](#) its revised National Pollutant Discharge Elimination System (NPDES) General Permit for Discharges of Storm Water Associated with Construction Activity. The [new permit](#) is effective for five years, expiring on April 22, 2023. AGC of Ohio was part of a coalition that submitted [comments on the proposed rule changes](#). The Ohio EPA made [many revisions](#) to the final permit based on the feedback of AGC and other parties.

Ohio EPA 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](#). After the first round of public comments, the agency made some changes at the request of AGC and other stakeholders that lessened some of the liability and compliance burden. AGC submitted additional [comments](#) on the last revision, but no further changes were made. The new rules are effective July 30.

Ohio Facilities Construction Commission (OFCC): Changes were made to the OFCC [contract documents](#) that significantly shift risk to contractors. AGC has a workgroup of members that are meeting with OFCC to educate them about reasonable contract language and advocate for changes that would create more balanced and equitable documents.

COURT CASES

General Liability Insurance: In January, Ohio's Third District Court of Appeals ruled that an insurer, in this case Cincinnati Insurance, has the duty to defend and indemnify a contractor against claims made by a project owner for property damage resulting from a subcontractor's defective work. The court rejected the Cincinnati Insurance's argument that claims of defective work, regardless of who performed the work, are not covered under CGL policies since defective work does not constitute an occurrence. Prior to the District Court's ruling, the trial court found in favor of the insurer. The Ohio Supreme Court will now hear the case. AGC filed an amicus brief in support of the contractor and the ability to use CGL policies for subcontractor's defective work. [Ohio Northern University v. Charles Construction Services, Inc.](#)

Municipal Tax Reform, Optional Centralized Net Profits Collection: More than 100 cities and villages filed a civil lawsuit in the Franklin County Court of Common Pleas 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. AGC was an active proponent of the municipal tax changes. The suit seeks an immediate preliminary and permanent injunction to halt all work by the State of Ohio to implement centralized net profits filings through the Ohio Business Gateway along with other state-administered municipal tax operations. Common pleas Judge Cain dismissed the suit, and the cities have appealed to the Franklin County Court of Appeals. AGC will file an amicus in conjunction with other employer associations in support of the municipal tax reform laws. [City of Athens, et. al. v. Testa, et. al.](#)

Prohibition of Employee Residency Requirements (aka Local Hire): The Eighth Appellate District Court of Appeals' in Cuyahoga County upheld a Cleveland trial court's injunction on the statute prohibiting the use of residency requirements on public improvement contracts in Ohio. AGC of Ohio strongly supported the legislation (H.B. 180) that was enacted in 2016. The case has been appealed to the Ohio Supreme Court, and AGC intends to engage in support of the prohibition. [Cleveland v State](#), 2017.