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

July 3, 2018

OHIO LEGISLATURE BREAKS FOR SUMMER

Over the last two weeks in June, the Ohio Legislature frantically worked to conclude business before heading home for the summer. The Ohio House and Senate concluded with a marathon session on Wednesday, passing dozens of bills ranging from dogs, to charter schools, to regulatory reform.

The fervent pace could especially be felt in the Ohio House, where legislators tried to pack into two weeks what they neglected to do over the two months without a Speaker. Many bills were scheduled to be passed out of committees with only one or two hearings—including one that would have allowed 16 and 17-year olds to work on active jobsites with very little training and no oversight; AGC and others with construction interests were able to put the brakes on the bill so it could be further vetted.

During weeks like that, Benjamin Franklin's famous quote rings true: "No man's life, liberty or fortune is safe while our legislature is in session." Fortunately, lawmakers are now home campaigning. A few "if-needed" session days are scheduled in the summer months, so they may return to the statehouse to take care of any "unfinished" business, which will most likely include passing some feel-good bills to help their campaigns and a lot of fundraising.

GOVERNOR SIGNS ACT WITH MORATORIUM ON SCHOOL STORM STRUCTURE BUILDING REQUIREMENT

On Friday, Governor Kasich signed [H.B. 21](#) (Hambley, R-Brunswick), charter school legislation that included language creating a moratorium for a recent storm shelter building code requirement for public and private schools. The act takes effect 90 days after the Governor's signature.

The Ohio Senate amended the bill last month to create a moratorium through Sept 15, 2019 on the school storm shelter building code requirement that was adopted earlier this year to the Ohio Building Code. The moratorium applies for projects underway, as well as those that have secured financing prior to September 15. During the amendment's drafting process, AGC of Ohio consulted with Senate policy staff and the involved agencies about the issue and provided some perspective as they worked through conflicting proposals for the amendment.

AGC of Ohio asked the Ohio Board of Building Standards (OBBS) how building departments will handle those projects underway prior to the effective date of the [H.B. 21](#). OBBS indicated that guidance will be provided to local building departments about how to handle such projects; the information will be shared once it is available.

AGC CONTINUES EFFORT TO IMPROVE OFCC CM-R CONTRACT

A group of AGC members last week met with Ohio Facilities Construction Commission staff about the recent changes to its Construction Management at Risk contract. AGC expressed concern that the changes were made without input from the industry and increase risk for contractors.

As previously reported, OFCC has agreed to provide a “patch” to the troublesome indemnity language in the new contract after learning that the language could potentially conflict with contractors’ insurance policies and make them void. For the interim “patch,” OFCC is removing the 2018 CM-R contract’s 10.6.5 insert, and resort back to the previous version’s indemnity language.

At this time, the other provisions of the 2018 CM-R contract remain intact. OFCC did, however, indicate it would delay the release of its new general contract and design build documents for further review.

AGC of Ohio will continue to advocate for fair contract standards. In the meantime, be sure to thoroughly review the OFCC documents and consult with your insurer and legal counsel before signing them.

BILLS OF INTEREST TO CONTRACTORS

Below is a list of bills that AGC of Ohio is monitoring that have been introduced or seen action over the past month, as well as some of AGC’s involvement in the legislation.

HB21 - COMMUNITY SCHOOL ENROLLMENT VERIFICATION (HAMBLEY S) Regarding verification of community school enrollments and community school sponsor contract specifications; regarding state assessment and graduation requirements for certain chartered nonpublic schools; eliminating the Education Management Information System (EMIS) Advisory Board in favor of a new EMIS Advisory Council; to make other education policy changes. **Current Status:** 6/29/2018 - **SIGNED BY GOVERNOR**; Eff. 90 days. **AGC Action:** *AGC was engaged on an amendment that provides a moratorium on a new storm shelter building code requirement for schools until Sept 15, 2019, and an exemption for schools that have secured funding prior to that date; this allows time for school projects to prepare and budget for the change.*

HB127 - BUILDING CODE REQUIREMENTS-WELDING (PERALES R, DEVER J) To establish in the Ohio Building Code requirements pertaining to structural steel welding and bridge welding. **Current Status:** 6/26/2018 - **SUBSTITUTE BILL ACCEPTED & REPORTED OUT**, House Economic Development, Commerce and Labor, (Fifth Hearing). **AGC Action:** *AGC of Ohio expressed concern about the as-introduced version of the bill and many of the changes adopted in the substitute bill were made to address AGC’s concerns. AGC of Ohio is currently obtaining feedback about the sub-bill from members and will continue to advocate as the legislation moves through the Senate to address any outstanding issues.*

HB236 - MODEL ELEVATOR LAW (PATTON T, CUPP B) To enact the Model Elevator Law. **Current Status:** 6/26/2018 - House Economic Development, Commerce and Labor, (Third Hearing)

HB500 - TOWNSHIP LAW (CARFAGNA R) To make various changes to township law, including the authority to levy taxes for capital funding by townships and other political subdivisions. **Current Status:** 6/27/2018 - **PASSED BY HOUSE**; Vote 93-0

HB544 - STATE BOARD-ADOPT SCHOOL SAFETY STANDARDS (ROGERS J, PERALES R) To require the State Board of Education to adopt rules prescribing standards for safety enhancements to new public and nonpublic school facilities and to require the Ohio Facilities Construction Commission to revise its construction and design standards to comply with the State Board’s standards. **Current Status:** 6/19/2018 - House Education and Career Readiness, (Second Hearing)



HELP AGC OF OHIO ADVOCATE FOR YOU *Contribute to* **AGC of Ohio Action!**

Fundraising is part of the political process, and a healthy PAC is vital to AGC’s success at the Statehouse! Make checks payable to AGC of Ohio Action (non-corporate contributions only). Sole proprietors, partnerships and unincorporated associations, which include limited liability companies under Ohio campaign finance law, may use company funds to contribute; such contributions should include the name of the entity and individual making the contribution.

HB551 - MINORS-HAZARDOUS OCCUPATIONS (PERALES R, ROMANCHUK M) Regarding hazardous occupations prohibited for minors and providing training to certain minors employed in a construction or manufacturing occupation. **Current Status:** 6/26/2018 - House Economic Development, Commerce and Labor, (Third Hearing). **AGC Action:** *AGC of Ohio testified in opposition of the current version of the bill. In the testimony, AGC of Ohio said that while AGC strongly supports the idea of giving students meaningful exposure in construction, AGC opposes the current draft of the legislation because the mandatory training for minors were insufficient; instructional requirements were vague; no provisions require supervision of the minors; and a myriad of safety and health concerns for the minor and others on an active jobsite.*

HB668 - PUBLIC-PRIVATE PARTNERSHIP FACILITIES (PATTON T) To authorize state agencies, state institutions of higher education, counties, townships, municipal corporations, school districts, community schools, STEM schools, and college-preparatory boarding schools to enter into public-private initiatives with a private party through a public-private agreement regarding public facilities. **Current Status:** 6/5/2018 - Referred to Committee House Higher Education and Workforce Development. **AGC Action:** *AGC of Ohio has spoken with those pushing the legislation and is currently obtaining feedback from members.*

HB670 - MUNICIPAL TAX WITHHOLDING (BARNES, JR. J) To enact the "Simplified Alternative Withholding Tax Compliance Act" authorizing an employer to enter into an agreement with a municipal tax administrator to prescribe, subject to certain parameters, the portion of nonresident employee wages that will be subject to the municipal corporation's income tax. **Current Status:** 6/13/2018 - House State and Local Government, (First Hearing). **AGC Action:** *AGC of Ohio is working with other interested parties to make certain this bill does not undermine the previous reform efforts.*

HB694 - PERIOD OF LIMITATION-CONTRACT (LANG G) To shorten the period of limitations for actions upon a contract. **Current Status:** 6/27/2018 - House Civil Justice, (First Hearing)

HB704 - UNEMPLOYMENT BENEFITS-DRUG TESTS (SCHAFFER T) To require applicants for unemployment benefits to submit to a drug test under certain circumstances, to require the Director of Job and Family Services to operate an Ohio Works First drug testing pilot program, and to make an appropriation. **Current Status:** 6/13/2018 - Introduced

HB712 - REPEAL PREVAILING WAGE (HOOD R, DEAN B) To repeal the Prevailing Wage Law. **Current Status:** 6/26/2018 - Introduced

SB140 - PUBLIC-PRIVATE PARTNERSHIP GRANTS (SCHIAVONI J) To create the Public-Private Partnership Grant Program for fiscal years 2018 and 2019 to develop, enhance, and promote educational programs to address regional workforce needs; to create the Sector Partnership Grant Program for fiscal years 2018 and 2019 to identify and provide grants to industry partnerships; to support programs that improve access to workforce training opportunities for students; to support economic development and revitalization programs; and to make an appropriation. **Current Status:** 6/19/2018 - Senate Finance, (First Hearing)

SB213 - ECONOMIC DEVELOPMENT FUNDING PLAN (SCHIAVONI J) To enhance economic and employment opportunities and improve local infrastructure in Ohio by providing additional assistance to workforce development and employment programs; establishing a revolving loan program for small businesses seeking to expand operations; extending job tax credits to smaller businesses; enabling expanded participation in public sector contracting by smaller companies; enhancing support for child care centers; funding additional local infrastructure and public transit; authorizing tax incentives for hiring military veterans, for donating money to local programs assisting distressed communities, or for improving distressed property; exempting the homes of disabled veterans from property taxation; terminating the income tax deduction and reduced tax rate for business income; and to make an appropriation. **Current Status:** 6/19/2018 - Senate Finance, (First Hearing)

SB221 - RULE-MAKING AND REVIEW REFORM (UECKER J) To reform agency rule-making and legislative review thereof. **Current Status:** 6/27/2018 - **PASSED BY HOUSE**; Vote 73-20

SB293 - REDUCTION OF AGENCY REGULATIONS (PETERSON B, MCCOLLEY R) To require agencies to reduce the number of regulatory restrictions. **Current Status:** 6/27/2018 - **PASSED BY SENATE**; Vote 23-9

SB308 - ELEVATOR LAW (UECKER J, YUKO K) To revise the Elevator Law. **Current Status:** 6/27/2018 - Senate Transportation, Commerce and Workforce, (First Hearing)

AGC OF OHIO INVOLVED IN FRIEND-OF-COURT BRIEFS SUPPORTING INDUSTRY INTERESTS

This year so far has been a busy one with court cases impacting key issues for contractors. AGC of Ohio has filed (or is in the process of filing) five amicus briefs, or friend-of-the-court briefs, in support of the construction industry's interests:

Statute of Repose: In this case, a school district sued the general trades contractor, roofing prime contractor and designer for breach of contract. The trial court dismissed the claims based on statute of repose 10-year limit, but the appellate court overturned case on district's argument that statute of repose did not apply to breach of contract claims, only tort claims (personal injury or property damage). The appellants appealed, and the Ohio Supreme Court is now taking up the case. AGC of Ohio and the Ohio Contractors Association (OCA) will be filing a joint amicus brief in support of the Statute of Repose applying to breach of contract claims. [New Riegel Local School District v. The Buehrer Group 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 after many members, especially those located near the state's border, took issue with the impact of local hire laws on their businesses. The case has been appealed to the Ohio Supreme Court, and AGC has filed a joint amicus brief with the Ohio Contractors Association (OCA) in support of the residency prohibition law. [Cleveland v State](#), 2017.

Municipal Tax Reform, Optional Centralized Net Profits Collection: More than 100 cities and villages have filed two civil lawsuits 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, which simplified and streamlined local tax filings for contractors. Both cases are now in the Franklin County Court of Appeals. AGC has filed an amicus in conjunction with other employer associations in both cases supporting the municipal tax reform laws. *Athens et al. v Ohio State Tax Commissioner et al.* (case no.'s 18AP000144 & 18AP000189).

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 case is now in the Ohio Supreme Court. AGC filed an amicus brief in conjunction with the American Subcontractors Association (ASA) and Ohio Contractors Association (OCA) supporting a contractor's ability to use CGL policies for subcontractor's defective work. [Ohio Northern University v. Charles Construction Services, Inc.](#)

ACTING DEPUTY DIRECTOR OF EOD MEETS WITH AGC OF OHIO BOARD

Pam Osborne, Acting Deputy Director for the Ohio [Equal Opportunity Division](#), met with the AGC of Ohio Board of Directors during its June 15 meeting. She discussed how the department was planning to handle the graduation of approximately 89 EDGE participants due to time limitations. The maximum amount of time a certified business or business owner may participate is a cumulative total of 10 years.

DAS has released the [EDGE Graduation and Participation Time Limits](#) document highlighting EDGE's graduation and time-limit policy, as well as post-graduation information and resources. Once all 89 companies are contacted, EOD will also provide a list of those graduating companies, and AGC will share it with members once it is received.

Since its inception in 2003, the EDGE program has certified more than 4,700 businesses. Learn more about EDGE certification [here](#). Access the document about EDGE time limits [here](#).

UPCOMING OHIO FACILITIES CONSTRUCTION COMMISSION EVENTS

July 11, 10:00-11:00 am: *Everything you Need to Know About Tech in 30 Minutes Webinar* - [Description](#); Register [here](#).

July 19, 10:00-11:00 am: *The Power of Making Workshop* - [Description of event](#); Register [here](#).

OFCC Conference 2018: [Description & Registration](#)

- August 7** - Columbus 1, Creekside Conference & Event Center
- August 16** - Cleveland, Embassy Suites, Independence
- August 22** - Cincinnati, Holiday Inn Centre Park - West Chester
- August 28** - Columbus 2, Creekside Conference & Event Center



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

Learn more about AGC of America’s advocacy efforts at <https://advocacy.agc.org>.

SENATE COMMITTEE ADVANCES CAREER AND TECHNICAL EDUCATION LEGISLATION

This week a Senate committee passed the Carl D. Perkins Career and Technical Education Act, which will now have to be considered by the full Senate and conferenced with a House-passed bill from last year. A top priority of AGC’s has been reforming and reauthorizing the Perkins Act, as it helps offset the cost of career and technical education (CTE) programs. Ahead of the Senate considering the bill, AGC joined with over 500 national, state and local organizations in a [letter](#) to Senate leaders urging swift, bipartisan action on Perkins reauthorization.

AGC OF AMERICA REGULATORY EFFORTS & SUCCESS

AGC recently hosted a webinar discussing its efforts to reduce the negative impact of federal regulations on contractors. Check out AGC of America’s latest *Federal Regulatory Tracker* [here](#). It provides a spreadsheet of the various regulations, AGC’s efforts, and links to news articles with additional details about the regulations and their impact on contractors.




Recent Regulatory Highlights

U.S. DEPARTMENT OF LABOR

- **REPEALED:** Obama OSHA Rule that extends statute of limitations from 6 to 66 months for injury and illness record keeping rules
- **REPEALED:** Obama Blacklisting Rule for Federal Contractors
- **SUSPENDED:** Obama Overtime Rule doubling salary threshold
- **RESCINDED:** Obama’s Guidance Granting Walk Around Rights for Unions At Open Shop Jobsites
- **RESCINDED:** Withdrawal of 2015 and 2016 Guidance on Joint Employment and Independent Contractors
- **IN QUESTION:** OFCCP’s Audit Selection Policy for Construction
- **UNDER REVIEW:** The Obama Persuader Rule

NATIONAL LABOR RELATIONS BOARD

- **UNDER REVIEW:** Joint Employer Standard
- **UNDER REVIEW:** Ambush/Quickie Election

EQUAL EMPLOYMENT OPPORUNITY COMMISSION

- **SUSPENDED:** Obama Revised EEO-1 Report requiring contractors to report all employees comp. data and aggregate hours worked by race, ethnicity and gender within 12 pay bands and 10 job categories

U.S. DEPARTMENT OF TRANSPORTATION

- **WITHDRAWN:** Local Hiring Proposed Rule and Pilot Program
- **RESCINDED:** National Performance Management relating to GHG

U.S. ENVIRONMENTAL PROTECTION AGENCY

- **UNDERWAY:** Repeal & Replace of WOTUS Rule
- **SUSPENDED:** Pursuit to revise stormwater regs governing post-construction discharges
- **SUSPENDED:** Lead paint work practice rules for public and commercial buildings
- **RESCINDED:** Sue and Settle Policy w/ Environmentalists
- **RESCINDED:** Obama directive establishing preference for compensatory mitigation where unavoidable adverse impacts may occur.
- **RESCINDED:** NEPA Guidance encouraging agencies to quantify direct and indirect GHG emissions for construction projects during NEPA Review

U.S. DEPARTMENT OF THE TREASURY

- **WITHDRAWN:** Rule eliminating Estate Tax valuation discounts for family members receiving interest in a family controlled business.

U.S. DEPARTMENT OF JUSTICE

- **NULLIFIED:** Policy actively seeking to hold individuals criminal liable for company’s environmental violations