



2016 lame duck summary and 2017 budget preview

December 28, 2016

We monitored several notable legislative efforts through the post-election November-December “lame duck” legislative session. With the New Year comes a new General Assembly. Bills that were not passed by the 131st General Assembly will have to be reintroduced if legislators want to pursue those issues in the 132nd General Assembly. In addition, we will see 29 new members in the General Assembly next year. Finally, 2017 will see the passage of the 2018-2019 State Operating Budget.

With all of these factors at play, here is an overview of end-of-the-year legislation and an update on what to expect in 2017 to help guide decision-making and prioritizing issues for the New Year.

Noteworthy passed legislation

S.B. 199: S.B. 199 emerged as an important piece of legislation because of its provisions relaxing Controlled Carry Weapons (CCW) restrictions. This bill passed the Senate Civil Justice Committee (32-0) in April 2016. However, after having its first hearing in the House State Government Committee in May 2016, the bill did not see another hearing until November 2016. After long hours of debate and negotiations, the bill was ultimately passed in the House (68-25). The Senate voted (22-8) and agreed to the changes, highlighted below.

Of great interest to Ohio’s business community, the bill originally contained language that extended protected class status to CCW permit holders under Ohio’s employment anti-discrimination laws. The business community opposed this language extending protected class status. The bill also allowed concealed firearms in all state and local government buildings lacking security checkpoints, such as libraries and boards of elections. In the final remaining hours of the 2016 legislative session, the House of Representatives restored the abilities for political subdivisions to opt-in to allow concealed carry weapons inside government buildings through statute or ordinance.

Despite protestations from the business community, the General Assembly



Christopher N. Slagle
Partner

Columbus
614.227.8826
cslagle@bricker.com



Gregory J. Lestini
Partner

Columbus
614.227.4893
glestini@bricker.com



Matthew R. Koppitch

preserved language in S.B. 199 that blocks businesses from banning guns in locked vehicles in private, employer-owned parking lots. Every major business group opposed this provision along with the aforementioned creation of a CCW protected class. The Ohio Chamber of Commerce issued a Key Vote alert on S.B. 199. At the end of the day, the parking lot language remained unchanged, but the General Assembly did eliminate the CCW protected class. The Ohio Manufacturers' Association has asked the governor for a veto of this legislation.

Associate
Columbus
614.227.8824
mkoppitch@bricker.com

Additionally, the bill as passed contains language from H.B. 48 (another CCW bill), lifting the mandatory ban on concealed carry in public areas of airports, daycare centers and in-home daycares. Public buildings belonging to the state or its political subdivisions were initially prohibited from banning CCW in their buildings without other security screening measures. The House amendments restored the CCW prohibition in these spaces but allowed political subdivisions or the state to proactively allow CCW by ordinance or policy.

One of S.B. 199's lesser controversial provisions allows military members to carry a concealed weapon without completing state certification if they can show a military ID and documentation showing they received training that meets or exceeds training required for a concealed carry permit.

S.B. 235: S.B. 235, which originally began as a five-page piece of legislation that would freeze the value of development property for tax purposes until the completion of new commercial or industrial development on the property, turned into a "Christmas Tree Bill". The Senate concurred in the House amendments on December 8, 2016, (29-2) and the bill passed in the House (81-9).

The bill was sponsored by Senators Bill Coley and Bill Beagle. County and local governments opposed the property tax provision in the original version of the bill because it absolved them of local control over development in their jurisdictions. The final version of the bill contains language that makes the property value provision permissive for counties and other local governments.

After the substance of the original bill was dealt with, approximately 20 provisions were added. Among the 20 provisions was a compromise stopgap plan to shore up the state's unemployment compensation fund. The plan would freeze benefits for unemployed workers from 2018-2019 while the taxable wage base on employers increases from \$9,000 to \$9,500 over the same time. The bill also repealed an automatic tax increase on businesses in the event that the state is forced to borrow from the federal government to cover the fund.

The temporary unemployment compensation fix provisions were added to S.B. 235 after it became apparent to legislators and interested parties that another more extensive plan (H.B. 620) lacked sufficient support to get through the legislature during lame duck. Lawmakers and representatives for business and labor agreed to the provisions in S.B. 235 and set a deadline of April 1 to attempt to bring solvency to

the state's unemployment compensation system.

A smaller provision that was also included in the final version of S.B. 235 authorizes certain hospital boards that were not previously allowed to use telecommunications equipment for purposes of attendance.

On December 27, 2016, Governor Kasich used his line-item vetoes to strike three provisions of S.B. 235: (1) an appropriation carryover for major sporting events; (2) an expanded sales tax exemption for oil and gas production; and (3) a sales tax exemption for digital jukeboxes. S.B. 235, including the temporary unemployment compensation fix and the property tax provisions discussed above, was otherwise signed into law and filed with the Secretary of State's Office.

S.B. 273: The General Assembly passed the Insurance Industry Corporate Governance Disclosure Bill promoted by the Ohio Department of Insurance and supported by the insurance industry in Ohio. This bill will require insurers based in Ohio to submit corporate governance disclosures to the Department of Insurance every year. The Association of Ohio Life Insurance Companies and the Ohio Insurance Institute provided testimony in support of the bill. The legislative language will likely become an accreditation standard for the National Association of Insurance Commissioners in the near future. The Senate concurred on the House Amendments (32-0) and the House then passed the bill (77-7). The seven "no" votes came mostly from members who were unfamiliar with the bill and thought they were increasing regulation on business without those businesses' consent — confusion caused by lame duck's compressed timeline.

H.B. 185: This arson bill passed in the Senate on December 1, 2016, and the House concurred in Senate amendments on December 6, 2016 (60-28). This bill will eliminate lack of the property owner's consent as an element of arson when the property is abandoned real property and will make the consent of the owner of the abandoned real property an affirmative defense.

H.B. 216: This bill revising the laws governing advanced practice registered nurses (APRN) passed in Senate (31-0) and the House concurred (88-1). H.B. 216 was originally focused on APRN independent practice. After opposition from the Ohio State Medical Association and other healthcare professionals, the legislature amended the bill, retaining the requirement that APRNs must enter into a standard of care agreement with a collaborating physician. The bill does make other changes to the APRN law, including making their drug formulary exclusionary only. This means that the formulary will only list the drugs that APRNs cannot prescribe.

H.B. 341: A bill further modifying vehicle-towing laws in Ohio, H.B. 341 passed in the Senate on December 7, 2016, (32-0) and the House concurred (88-0). This bill updates a series of towing-related laws, including the creation of a process for the quick release of vehicles to owners under certain circumstances.

H.B. 388: This OVI offenses bill passed in the Senate on December 6, 2016, (31-0) and the House concurred on the Senate amendments (91-0). The bill permits judges to require ignition interlock devices, thereby increasing safety for other motorists. First-time DUI offenders could retain unlimited driving privileges if they install interlock devices on their vehicles. This bill is known as Annie's Law, and Ohio will be the 29th state in the nation to enact such restrictions on OVI offenses. The bill was inspired by the family of a southern Ohio woman who was killed in a drunk driving accident.

H.B. 463: This bill originally pertained to mortgage foreclosures, however, various provisions were added to this bill before the General Assembly adjourned, including Autism insurance coverage requirements. Private insurers will be required to cover autism services in varying degrees. The provision has been opposed by business interests over the past several years when the issue has been proposed by various members of the General Assembly. The Senate passed the bill during lame duck (26-5) and the House concurred in the Senate amendments (72-21).

H.B. 554: After months of negotiations between lawmakers and interested parties, the General Assembly passed H.B. 554 which redefines the state's previously frozen advanced energy standards as "goals" for two years. It now sits on Governor Kasich's desk.

H.B. 554's path through the legislature has its roots in 2008, when a bipartisan group of legislators and Governor Strickland enacted S.B. 221 which established Ohio's Renewable Energy Standards (Standards). Those Standards called for 25 percent of energy production to come from renewable sources by 2025. The Standards also required that at least half of that percentage must be from renewable sources such as solar, wind or geothermal. Each year had benchmarks that increased incrementally.

In 2014, Ohio enacted S.B. 310, which froze the Standards at the 2014 levels until 2017. In addition S.B. 310 also created the Energy Mandates Study Committee to study the Renewable Energy Standards, energy efficiency and peak energy reduction. The legislature empowered the Study Committee specifically to examine:

- A cost-benefit analysis of the renewable energy, including the projected costs on electric customers if the mandates were to remain at the percentage levels required under the law
- A recommendation of the best, evidence-based standard for reviewing the mandates in the future, including an examination of readily available technology to attain such a standard
- The potential benefits of an opt-in system for the mandates, in contrast to an opt-out system for the mandates
- An assessment of the environmental impact of the renewable energy

Using the results of the Study Committee and with the Standards set to return to increased levels in 2017, the Ohio General Assembly began working on legislation to

address the future of renewable and advanced energy in Ohio, resulting in the introduction of both S.B. 320 (Seitz) and H.B. 554 (Amstutz). While both bills worked through the committee process, the approach to the Standards and energy efficiency changed multiple times. Eventually the legislature settled on making the Standards optional for two years by removing the penalties for noncompliance, arguing that it was not an additional freeze.

H.B. 554 passed the House on December 6, 2016. The Senate voted (18-13) to adopt this bill late December 8, 2016; the House concurred (55-34) in the early hours of December 9, 2016. The Senate Energy and Natural Resources Committee made a series of changes, including shortening the goal period to two years (the version the House passed had a three year period without penalties). Other amendments include a provision modifying the percentage of federal funds to be deposited to the credit of the House Energy Assistance Block Grant Fund so that 25 percent of the Block Grant is mandated to be spent on weatherization projects for individuals eligible for the Home Energy Assistance Program (HEAP). Under the current budget, only 15 percent of the federal block grant funds are set aside for HEAP eligible projects.

On December 27, 2016, Governor Kasich vetoed HB 554. In his veto message, Governor Kasich stated that the legislation would take away energy generation options and setback efforts to help businesses and homeowners reduce energy costs. The House adjourned sine die, foreclosing any possibility of a veto override. However, Senator Seitz vowed in a statement issued to the press to revisit the issue through a “full scale effort” in the 132nd General Assembly.

Noteworthy failed legislation

S.B. 268: Senator Bill Seitz introduced S.B. 268 to modify Ohio civil rights laws related to employment and the statute of limitations for other specified claims against an employer. The bill would create a one-year statute of limitations on all employee discrimination claims, eliminate individual statutory liability for managers and supervisors and cap non-economic and punitive damages based on the size of the employer. The Ohio Chamber of Commerce supported this legislation. The bill died in the Senate Civil Justice Committee.

H.B. 279: This vehicle insurance bill died in the Senate Insurance Committee. The bill would prevent those who have been previously convicted of driving without insurance in the past seven years from seeking non-compensatory damages in the event of a traffic accident in which they were not at fault.

H.B. 559: This bill relating to medical claims did not pass and died in the House Judiciary Committee. The bill was designed to provide health care professionals with qualified civil immunity for services provided as a result of a disaster or mass hazard.

2017 Budget year preview

Budget: In early 2017, Governor Kasich will unveil his final biennial state budget for

FY2018-19. While Governor Kasich has not directly addressed what will be included in his final budget, past budgets have contained sweeping changes to government structure and policy. At the end of this current biennium, the state's tax receipts have seen diminishing collections. To date, Ohio is \$259 million, or 2.8 percent, behind the estimates in the FY2016-17 biennial budget. As a result, Ohio Office of Budget and Management Director Timothy Keen, as well as Governor Kasich, have both indicated that government spending in the next two year budget will be tight, impacting the budgets of state agencies, local governments and libraries, and state grants and programming.

In prior state budgets, Governor Kasich sought — and achieved — reductions in the personal income tax, continuing his long-held belief that lower income taxes will lead to increased jobs and prosperity. Given the expected difficulties in the coming FY2018-19 biennial budget it is unknown if his proposal will contain another reduction. Notably, a decrease in the income tax could include revisions to Ohio's severance tax or expansion of Ohio's sales tax to pay for the income tax reductions. Downward pressure on the state budget will be exacerbated by the loss of the state's share of taxes on Medicaid managed care plans via a recent U.S. Supreme Court case. All of these factors will make the environment for the FY2018-19 state budget very challenging.

The Governor will unveil his budget in early 2017. Then, the House of Representatives will have the first chance to review and amend that proposal. Ohio's Constitution requires the new budget to be enacted by June 30, 2017, and for that budget to be balanced.

Energy Regulation and Policy: At the end of the 131st General Assembly, renewable energy standards dominated a large portion of the headlines. Many lawmakers indicated that Ohio's energy policy will continue to be addressed in the next General Assembly.

We expect Ohio's investor-owned utilities to push a plan to re-regulate Ohio's electric market. In 1999, Ohio deregulated the electricity market, creating competition and permitting customer shopping for power supplies. A study conducted by the Ohio State University and Cleveland State University says consumers have saved \$15 billion on electricity costs from competitive choice and electricity supplier shopping since 2011. Despite the seeming success of deregulation in Ohio, Ohio's electric utilities have publicly and recently stated their legislative plans seeking re-regulation of the electric industry as their top priority in 2017.

Unemployment Compensation: Ohio has been seeking to reform its unemployment compensation system for several years after the recession of 2007 left Ohio's unemployment system in debt to the federal government. Ohio was forced to borrow funds to make payments to unemployed workers. Earlier this year, Ohio repaid the debt, avoiding a massive tax increase to Ohio businesses, but the system is still

structurally imbalanced and at risk should the state see another economic downturn. Business and labor leaders struck an initial deal to pass a stopgap this year and work with the legislature to establish a long-term solution in legislation in 2017. The temporary fix was passed in the waning hours of the 131st General Assembly. Under that deal, benefits to jobless workers are frozen for two years beginning in 2018, and employers must pay unemployment taxes on an employee's first \$9,500 of wages. That stopgap solution was intended as a good faith gesture to bring the sides together to form a final agreement by April 10, 2017.

Healthcare: In the 132nd General Assembly, both the Governor and the legislature are expected to continue reforming Ohio's healthcare delivery system. Many of these changes can be expected in the state budget. However, all eyes will be focused on Washington, D.C., as federal changes to healthcare, including the Affordable Care Act (ACA), will impact any potential changes in state policy. Perhaps the largest issue will be the status of Medicaid expansion. Over 600,000 Ohioans have been enrolled through the expansion and it is unclear how Ohio state legislators will respond if Congress repeals the ACA and federal funding for Medicaid expansion disappears.

Additionally, legislation that failed to pass in the 131st General Assembly could see renewed life in 2017, such as a proposal to eliminate and consolidate multiple boards that regulate healthcare professional licensure. The legislation was introduced in response to a U.S. Supreme Court case involving the North Carolina State Board of Dental Examiners that held that the board, which was operated by members of the profession, is a private actor and is subject to antitrust laws, unless it is actively supervised by the state. In that case, the board had been sending cease and desist letters to commercial teeth-whitening services under the premise that unauthorized practice of dentistry was a crime. H.B. 617 (LaTourette) requires the Director of Administrative Services to review and either approve or disapprove actions or proposed actions undertaken by boards and commissions that regulate occupations or industries if the action might have antitrust implications. The legislation also eliminates and consolidates multiple licensure boards into three boards, combining the duties and functions and the membership of those respective boards.

Education: The state budget traditionally contains many changes related to both education funding and policy. A battle still rages between proponents of charter school education and traditional public school advocates. This divide, highlighted over the past year with the charter school ratings questions and the Youngstown Public School takeover, will likely only see more animosity following President-elect Donald Trump's selection of long-time charter school advocate Betsy DeVos for U.S. Education Secretary.

Funding changes will undoubtedly play a starring role next year's state budget. Previous state budget bills have seen attempts to shift funding to private operators, increase teacher and administration accountability in public schools and re-align the voucher system in Ohio.

Although Governor Kasich advocated for, and higher education administrators pioneered, a new collaborative process for higher education funding last biennium, funding for Ohio's colleges and universities will again take up a lot of time and effort for legislators during the state budget process. Neither the Governor nor the legislature has shown their hand on their plans for education funding in next year's state budget, but stay tuned for more updates as this topic is sure to generate many hours of debate and negotiation.

Local Government: Local government officials and advocates continue to struggle with what they see as reductions in local government funds each state budget cycle. The governor's office, and the Office of Budget and Management, specifically, argue that when all funding is taken into account, local governments have not seen a decrease in funding for many years — the local officials will be advocating for increases to pay for what they argue are increasing unfunded mandates and service needs at the local level. We can also expect local governments to push for policy reforms in the state budget. We are likely to see arguments over local control, CCW and economic development improvements in the 132nd General Assembly, including in state budget debates.

Conclusion

The fate of the bills passed by both the House and Senate remain in the hands of Governor Kasich. Governor Kasich has already acted on multiple pieces of legislation, signing bills into law and exercising his constitutional veto authority. As the year draws to a close, there are still several pieces of legislation that await his action. We will continue to monitor any activity in the executive branch going forward including bill signings and vetoes. Additionally, we will provide updates regarding the upcoming budget year as we learn more.