



2020 lame duck summary and 2021 preview

January 19, 2021

Overview

The year 2020 began with the optimism of advancing numerous pieces of legislation and promises of strong bipartisan cooperation, but activity suddenly halted in March with the onset of shutdowns due to the COVID-19 pandemic – essentially stalling all legislative activity for months. During the remaining months of the 133rd General Assembly, the Legislature's attention turned to addressing COVID-19 and the scandal surrounding former Speaker Larry Householder and House Bill (H.B.) 6. The Ohio General Assembly concluded its busy post-election lame duck session on December 22, 2020.

Any unfinished legislation needs reintroduced in the 134th General Assembly, which officially convened on January 4, 2021. This memo summarizes the 2020 lame duck session and previews what to expect from the 134th General Assembly in 2021.

2020 lame duck summary

In 2020, the COVID-19 pandemic significantly reduced legislative activity that otherwise would have occurred. As a result, the legislature largely focused on the state's response to the many impacts of COVID-19 in Ohio. However, as the year progressed, legislators pushed forward on their legislative agendas, including utilizing the year-end lame duck session to finalize several proposals before the end of the General Assembly. Below is a summary of some frantic legislative activity during the closing days of the lame duck session.

[House Bill 6 delay/repeal legislation](#)

The legislature struggled with whether to repeal or delay H.B. 6, the legislation at the heart of the corruption allegations levied against former Ohio House Speaker Larry Householder. The scandal saw the removal of Householder, guilty pleas of two co-defendants, the removal of several members of senior leadership of electric utility FirstEnergy, and a FBI raid of the house of Public Utilities Commission of Ohio (PUCO) chair Sam Randazzo, who subsequently resigned. In addition to the near constant headlines and developments, legislators faced a hard deadline because customer charges for the nuclear and solar subsidies began on January 1, 2021. Legislators proposed multiple solutions including full repeal, partial repeal and a delay of the law's subsidies. However, none of the proposals garnered the necessary majorities in either chamber.

On December 21, 2020, Franklin County Court of Common Pleas Judge Chris Brown issued a preliminary injunction, preventing the imposition of the charges. In issuing his decision, Judge Brown remarked, "[f]rankly, the work of the 133rd General Assembly is quickly coming to an end. As of today, as of this moment, there has been no movement of any legislation and the court feels putting the ball in the General Assembly's court would be an abdication on my part to decide these issues."

The decision was issued in the consolidated cases that were originally filed by the cities of Cincinnati and Columbus and Ohio Attorney General Dave Yost separately. "Today's ruling proves that the powerful can be held accountable and that corruption will be rooted out. Everybody who pays an electric bill, whether for their own home or a job-sustaining manufacturer, is the winner today. Your pocket will not be picked."

On December 28, 2020, the Ohio Supreme Court granted a temporary stay of the customer charges in an action brought by the Ohio Manufacturers' Association Energy Group, different than the lawsuit brought by the attorney general and the municipalities. The order echoes the Common Pleas Court decision issued by Judge Brown. The Supreme Court ordered parties to submit supplemental briefing and established an expedited briefing schedule.

Following, PUCO vacated its order that established the Clean Air Fund Rider and required the four electric utilities in Ohio to collect the rider charges.

With the criminal trial expected to continue throughout the year, and possibly producing more noteworthy headlines, legislative leaders vowed to continue working on the issue in 2021.

House Bill 7 – Water quality

The Senate amended H.B. 7 with its own legislation aimed at improving water quality in Ohio, Senate Bill (S.B.) 2. The House concurred with the Senate amendments. H.B. 7 now creates the Statewide Watershed Planning and Management Program under the administration of the Director of Agriculture. This program requires that the director categorize watersheds and appoint at least one watershed planning and management coordinator to each categorized watershed. In addition, S.B. 2 requires the Department of Agriculture to establish a pilot program that assists farmers, agricultural retailers and soil and water conservation districts in reducing phosphorus and dissolved reactive phosphorous in a watershed to be determined by the Department. Governor DeWine signed the bill into law on January 5, 2021.

House Bill 1 – Criminal justice reform

H.B. 1, the first legislation introduced in the House, passed in the final hours of the General Assembly. Both chambers worked diligently on criminal justice reform issues during the 133rd General Assembly, but a broader measure, S.B. 3, did not pass. H.B. 1 encourages criminal drug offenders to get drug treatment and makes it easier to seal criminal records – a move designed to help criminal offenders obtain employment and avoid recidivism.

House Bill 308 – PTSD coverage, first responders

After several efforts to compensate first responders suffering from post-traumatic stress disorder (PTSD) through the Bureau of Workers' Compensation failed, H.B. 308 creates an entirely new fund dedicated to helping police and fire first responders recover and seek treatment for PTSD.

House Bill 264 - Water development, loan refinancing

At one point, H.B. 264 was poised to be the final vehicle for addressing H.B. 6. In the end, and after a lengthy delay, the proposal, which permits the refinancing of loans for public water and wastewater infrastructure projects, passed cleanly. The measure is expected to help local governments save considerable funds when many bonds (\$2.7 billion worth according to one legislator) become due in the coming years.

Senate Bill 33 – Modify criminal and civil law for critical infrastructure damage

This legislation, which previously passed in the Senate, passed the House during the lame duck session. It creates and increases the penalties for certain types of conduct such as trespassing or tampering occurring at critical infrastructure, like gas pipelines and power plants.

Senate Bill 284- Credit for reinsurance

The House and Senate both had versions of the bill, S.B. 284 and H.B. 512, which implements the National Association of Insurance Commissioners model law for credit for reinsurance. The model law, supported by the Ohio Department of Insurance and the insurance industry, generally needed to be adopted prior to September 2021. Otherwise, Ohio's reinsurance laws would have been at risk for federal preemption. The House passed S.B. 284 on December 1, 2020, and the Senate concurred with House amendments on December 3, 2020. Governor DeWine signed the bill on December 21, 2020.

Senate Bill 310 – Capital budget

Originally, a Coronavirus Aid, Relief, and Economic Security (CARES) Act funding distribution bill, S.B. 310 was heavily amended during conference committee meetings between the House and Senate. During December 16, 2020, and December 17, 2020, meetings, the conference committee adopted several amendments, including the much anticipated capital budget. The long anticipated public infrastructure spending measure was delayed because of COVID-19. The conference committee also adopted amendments to authorize spending and appropriations of unspent CARES Act funds, in case the federal government was unable to pass an extension of the pending deadline. The President and Congress ultimately extended the CARES Act spending deadline. Governor DeWine signed S.B. 310 on December 29, 2020.

Senate Bill 375 – Void Director of Health order regarding county fairs

The General Assembly passed legislation that directly overrides one of Governor DeWine's orders related to the pandemic. Citing the fiscal duress caused to county fairs, the legislature voided the Ohio Department of Health Director's order that limited county fairs to junior fair activities and spectator-free harness racing. The legislation also creates a working group charged with recommending safe and hygienic protocols for the operation of county fairs. Governor DeWine, who previously vetoed other legislation that limited the Health Department's ability to issue pandemic related orders (more on S.B. 311 below), vetoed S.B. 375 on January 10, 2021.

2021 Preview

Ohio House of Representatives

Under the leadership of Speaker Bob Cupp (R-Lima), who Republicans elected to replace former Speaker Larry Householder to preside over the Ohio House of Representatives in July 2020, Ohio House Republicans added to their already strong majority by adding a net gain of four seats to bring their total to 65 of the 99 seats for the next General Assembly. House Republicans already informally agreed to keep Speaker Cupp, and his leadership team, including Representatives Tim Ginter (R-Salem) as Speaker Pro Tempore, Bill Seitz (R-Cincinnati) as Majority Floor Leader, Rick Carfagna (R-Genoa Twp.) as Assistant Majority Floor Leader, Don Jones (R-Freeport) as Majority Whip and Cindy Abrams (R-Harrison) as Assistant Majority Whip.

Representative Larry Householder (R-Glenford), although facing federal criminal charges that lead to his ouster as Speaker, remains a member of the House after winning reelection against four write-in candidates. His criminal trial, stemming from the corruption allegations tied to H.B. 6 is pending, but he remains a member of the Ohio House of Representatives for the next two

years unless removed from office. House Democrats tried during the previous General Assembly to remove him. Speaker Cupp blocked the move, citing the state constitution's prohibition on double jeopardy that would limit the chambers ability to remove him a second time if he was reelected. It is unclear if a similar move will occur in 2021 or if the chamber will wait for the criminal judicial process to conclude.

Ohio House Democrats retained their current leadership of Minority Leader Emilia Sykes (D-Akron), Assistant Minority Leader Kristin Boggs (D-Columbus), Minority Whip Paula Hicks-Hudson (D-Toledo) and Assistant Minority Whip Richard Brown (D-Canal Winchester) for the next General Assembly.

Ohio Senate

Ohio Senate Republicans added a seat during the 2020 General Election and now control 25 of the chamber's 33 seats. Senate Republicans selected Senator Matt Huffman (R-Lima) as the next Senate President to replace term-limited President Larry Obhof (R-Medina). His leadership team includes Senators Jay Hottinger (R-Newark) as President Pro Tempore, Kirk Schuring (R-Canton) as Majority Floor Leader) and Rob McColley (R-Napoleon) as Majority Whip.

Ohio Senate Democrats reelected Senator Kenny Yuko (D-Richmond Heights) as Minority Leader for the 134th General Assembly. Senate Democrats also reelected Senator Cecil Thomas (D-Cincinnati) as Assistant Minority Leader. Senators Nickie Antonio (D-Lakewood) and Tina Maharath (D-Canal Winchester) will become Minority Whip and Assistant Minority Whip.

Legislative preview

The COVID-19 pandemic will continue to effect Statehouse activity for at least the first half of 2021, until a vaccine is widely distributed. Governor DeWine, as the sitting Governor, must submit his operating budget proposal for the biennium to the General Assembly by February 1, 2021. The budget will be a fiscally constrained because of likely decreased revenues, continued financial uncertainty due to the pandemic and the requirement for the state to have a balanced budget. Other separate budgets that must be passed in early 2021 include the transportation and workers' compensation budgets.

Mandatory redistricting for Congressional and Statehouse districts as a result of the recent census, utilizing the new process approved by Ohio voters in 2018, will be on the agenda in 2021 (see below). Expect to see continued legislative activity regarding the House Bill 6 scandal. There will likely be additional water quality legislation regarding funding for H2Ohio. Many of the bills, such as the ones listed below, that were left unfinished at the end of 2020 will likely get reintroduced in the early days of the 134th General Assembly.

- a. Broadband funding – The COVID-19 pandemic showed the inequities of broadband access in Ohio, which the Ohio Legislature reacted to by working heavily on creating and funding a broadband program. However, the legislation, H.B. 13, was unable to cross the finish line. The House and Senate are expected to pick this legislation back up, and could eventually be passed through the budget process.
- b. Sports gambling – At the beginning of 2020, the House and Senate each had their own proposal for legalizing sports gambling in Ohio, S.B. 111 and H.B. 194. However, the chambers could not come to an agreement on which proposal should move forward. With a new general assembly and several new legislative members, legalizing sports gambling is likely to come up again.
- c. School funding – Prior to Speaker Cupp taking the leadership role in the House, he worked diligently on changing Ohio's school funding formula. The House passed H.B. 304 in an effort to begin the conversation on the legislation in the Senate prior to the end of the general assembly. Although, the Senate was unable to consider H.B. 304 before the end of 2020, the proposal could receive traction during the budget discussions between the two chambers in the upcoming year.
- d. Distracted driving – Prior to the COVID-19 pandemic, the Ohio Distracted Driving Task Force Report was released with recommendations for changes in policy to prevent distracted driving accidents in Ohio. Following the report, Governor DeWine worked with Senator Stephanie Kunze (R- Hillard) and Senator Sean O'Brien (D- Warren) to introduce legislation, Hands Free Ohio, in February 2020. The bill would have made the use of handheld devices while driving a primary offense, for which officers can stop and cite motorists. The legislation, S.B. 285, received three hearings in the Senate

Local Government, Public Safety, and Veterans Affairs Committee. The legislation likely did not move quickly due to the pandemic and vocal opposition from libertarian minded legislators, therefore, it is expected to appear again in the next General Assembly or even appear in the transportation budget.

- e. Limitations on executive or health director orders – The legislature passed several measures designed to limit or curb the executive branch’s ability to issue regulations on businesses or mandates on individuals. Many legislators bristled at Governor DeWine’s use of executive authority to issue directives or orders in the administration’s efforts to combat the pandemic, without incorporating the input of the legislative branch, even when they agreed with the intent behind the order. Other legislators simply objected to orders generally. Regardless of the motivation, legislators threatened to override vetoes by Governor DeWine. Although the General Assembly never attempted an override during the 133rd General Assembly, it is expected both chambers will renew efforts to limit executive authority. For example, S.B. 311, which Governor DeWine vetoed, prohibited the Department of Health from issuing a general mandatory statewide or regional quarantine or isolation order that applies to individuals who have not been directly exposed or medically diagnosed with the disease that is the subject of the order. Another proposal that had bipartisan support, H.B. 621, which permits businesses required to limit or cease their operations under orders or rules imposed due to a dangerous disease to continue operating, provided the businesses follow the same safety requirements levied on businesses permitted to continue operating under the same orders or rules, is expected to resurface in 2021.
- f. Statute of limitations – Legislation that decreases the statute of limitations for contracts seemed poised to pass in the final days of the General Assembly. However, both chambers were unable to work out final differences on the proposal before the clock ran out. The issue is expected to resurface in the 134th General Assembly.
- g. Redistricting – On top of an already packed agenda, the legislature must establish new legislative districts for the state’s representatives to the United State House of Representatives and the General Assembly. The two processes have some notable differences. For Ohio’s legislative districts, the General Assembly created the Ohio Redistricting Commission. The seven-member body, replacing the Apportionment Board, includes Governor DeWine, State Auditor Keith Faber, Secretary of State Frank LaRose, and appointees from both caucuses for each chamber. A new ten-year plan requires two votes from each political party before September 1, 2021. Any map that does not obtain at least two votes from each political party can only last four years. Congressional districts are created by the General Assembly, requiring a three-fifths approval by each chamber to approve a new ten-year map. If the General Assembly fails to adopt a map by September 30, 2021, the Redistricting Commission has until October 31, 2021, to adopt a plan through a bipartisan vote. If that deadline passes without a new map, the responsibility returns to the General Assembly who can adopt a four-year map.

Executive agency appointments

Governor DeWine has two key vacancies in his administration that we anticipate he will fill in early 2021. As previously mentioned, Sam Randazzo resigned as chair of PUCO. The PUCO Nominating Council recommended four finalists for the vacancy to appoint a replacement. The finalists include outgoing Ohio Supreme Court Justice Judi French; Anne Vogel, who is a policy advisor to Governor DeWine and previously worked for AEP; Angela Amos, a senior policy advisor for the Federal Energy Regulatory Commission; and Greg Poulos, executive director of the Consumer Advocates of the PJM States. Also, on Governor DeWine’s to-do list for early 2021 is to name a permanent Department of Insurance Director as Director Jillian Froment left in August 2020 to pursue other opportunities.

Conclusion

The General Assembly’s early 2021 agenda is already filled. A state budget addressing the economic and social impacts of the COVID-19 pandemic and numerous legislative and policy priorities makes for a busy and frantic legislative session.

Authors



Christopher N. Slagle

Partner & Government Relations Chair

Columbus

614.227.8826

cslagle@bricker.com



Gregory J. Lestini

Partner

Columbus

614.227.4893

glestini@bricker.com



Brock A. Miskimen

Of Counsel

Columbus

614.227.2340

bmiskimen@bricker.com



Matthew R. Koppitch

Senior Associate

Columbus

614.227.8824

mkoppitch@bricker.com



Rachael N. Mains

Associate

Columbus

614.227.4851

rmains@bricker.com

