

Legislative UPDATE



Issue 1, 127th General Assembly • January 12, 2007

Unprecedented Veto Threatens Jobs

Governor Fires First Shot

In a highly unusual move just hours after taking office on Monday, January 8, Gov. Ted Strickland vetoed a key business-backed bill that former Gov. Bob Taft expected to become law without his signature. Sending shock waves through the Statehouse community, Gov. Strickland asked newly elected Secretary of State Jennifer Brunner to return Sub. SB 117 to him so he could veto it. The governor's move immediately raised questions about its legality and set-up a standoff between the executive and legislative branches of state government that may be decided by the judicial branch.

SB 117 was amended during the 126th General Assembly's lame duck-session to include several

important provisions supported by the Ohio Chamber and other business organizations. The bill clarifies that cities can only bring actions against manufacturers of products, including those who made lead-pigment paint, under the state's products liability statutes. Legislative clarification became necessary when personal injury lawyers began an aggressive campaign to convince Ohio cities to use their public nuisance powers to bring actions against lead-paint manufacturers, thereby circumventing recently enacted civil justice reforms. Similar to the asbestos crisis, these lawsuits could have a devastating economic effect on Ohio companies and result in huge job losses.

The city actions are an attempt to recover money from companies who have not manufactured lead-based paint for decades and without having to prove which company actually made the paint at issue. Many reliable sources—including the Centers for Disease Control, the U.S. EPA, and the U.S. Department of Housing and Urban Development—acknowledge that intact and well-maintained lead-based paint does not present a health hazard. Major problems arise only when the paint is allowed to deteriorate through peeling and chipping.

Under state and local laws, property owners are responsible for maintaining their properties, including those with old lead-based paints, and keeping them in good condition. To minimize the potential risk from old lead paint, these laws must be strictly enforced by city health departments. SB 117 does not prohibit cities from bringing such enforcement actions against property owners. Nor does it prevent products liability actions against specific paint manufacturers. The law simply clarifies the General Assembly's intent that plaintiffs who file lawsuits over products liability issues must do so under existing products liability statutes rather than under public nuisance statutes.

The other key business-backed provision added to SB 117 concerns actions brought under the Consumer Sales Practices Act (CSPA). The CSPA is a law used by the Ohio attorney general and consumers, in private actions, to recover actual out-of-pocket losses related to sales transactions, like automobiles. The CSPA was recently expanded by state lawmakers to cover transactions between consumers and mortgage lenders.

Actions brought under the CSPA require a lower burden of proof and can result in awards that are three times the amount of actual damages. The

CSPA also requires the court to award attorney fees to the plaintiff. Until a November 2006 Ohio Supreme Court decision, non-economic damages (damages that compensate for pain and suffering) were not awarded under the CSPA. Since the statute didn't clearly prohibit non-economic damages, the court found they could be awarded. SB 117 for the first time allows non-economic damages to be awarded in CSPA actions, but caps them at \$5,000, a very reasonable amount given the nature of cases that involve sales transactions.

The Ohio General Assembly is considering bringing a legal action related to the governor's veto. The court would be asked to determine whether the secretary of state could return a bill already accepted by the office. The court may also be asked to determine when the constitutionally required 10-day period between legislative action and gubernatorial action begins and whether Sundays are counted. Gov. Strickland, upon the advice of newly elected Attorney General Marc Dann, believes the 10-day period was triggered on December 27, 2006, when Gov. Taft received the bill. The Ohio General Assembly maintains that when bills are sent to the governor at the time a General Assembly finally adjourns, *sine die*, the 10-day period is triggered by the date the legislature adjourns. In this case that date was December 26, 2006.

Although Gov. Strickland's veto sends a strong message that it will not be "business as usual" at the Statehouse, it may not mean the end of the cooperative relationship both the governor and legislative leaders have advocated. In fact, Senate President Harris, House Speaker Husted and Gov. Strickland all enthusiastically embraced a legislative proposal announced by Speaker Husted this week that could dramatically change oversight of state universities. The proposal would place the chancellor of higher education in the governor's cabinet. Currently, the position is hired by and reports to a separate Board of Regents appointed by the governor.

Beginning with this issue, the Ohio Chamber will publish *Legislative Update* each Friday during the 127th General Assembly's legislative session. The *WrapUp* edition, summarizing key business legislation considered by the 126th General Assembly, will be mailed to Ohio Chamber members, along with the final *Ohio Chamber Legislative Voting Record*, within the next several weeks. Both publications, including back issues, are available on the Ohio Chamber's Web site at www.ohiochamber.com.



General Assembly News

Legislative voting sessions scheduled for Wednesday, January 17 and Thursday, January 18 have been canceled. The next voting sessions for the House and Senate are scheduled for Tuesday, February 13 and Wednesday, February 14.

Legislative leaders are working on committee assignments. This week the following House committee appointments were announced:

Joint Legislative Ethics Committee:
Reps. Husted, DeWine, Carmichael, Beatty, Book and Driehaus

Controlling Board:
Reps. DeWine, Flowers and Sykes

Legislative Service Commission:
Reps. Husted, Schneider, Flowers, Carmichael, Seitz, Beatty and Redfern

Legislative Task Force on Redistricting, Reapportionment & Demographic Research:
Reps. DeWine and Driehaus

Joint Committee on Agency Rule Review:
Reps. Evans, Widener, Peterson, Carano and Strahorn

The Ohio Chamber will post all committee appointments on its Web site as they are announced, and release a printed legislative directory upon the completion of all committee appointments.

Gubernatorial News

Gov. Ted Strickland's ceremonial swearing in, which is open to the public, will take place at 11:30 a.m. on Saturday, January 13 on the West Lawn of the Statehouse. The governor will deliver his inaugural speech and welcome those in attendance at the Statehouse atrium. An inaugural dance will take place Saturday evening in the Lausche and Rhodes Buildings at the Ohio Exposition Center starting at 8 p.m.

Seven additional cabinet members have been announced, bringing the total appointments to 12.

Chris Korleski was appointed **director of the Ohio Environmental Protection Agency (OEPA)**. Korleski has served as legal counsel to Honda of America Mfg., Inc, advising the company on environmental and safety issues. He has also been a member of the Ohio Chamber's Energy & Environment Committee. The Chamber supported Korleski for the OEPA position, citing the importance of his strong industry knowledge and experience.

Former State Representative **Sean Logan** will serve as **director of the Ohio Department of Natural Resources**. Logan, a current Columbiana County commissioner, served six years on the House Agriculture and Natural Resources Committee when he was a State Representative.

Gov. Strickland intends to create the new position of **Medicaid Director** as a cabinet-level position. This week he announced that **Cristal Thomas** will serve in the new position. A native of Ohio, Thomas most recently served as assistant director of the Illinois Department of Healthcare and Family Services.

Taking over as the **director of the Ohio Department of Health** will be **Dr. Alvin Jackson**. Jackson has served as director of Community Health Services in Fremont, Ohio. He will assume his new position on April 1, 2007.

John Martin was tapped as the new **director of the Department of Mental Retardation and Developmental Disabilities**. Martin, has served as director of Sunshine, Inc. in Northwest Ohio for over 22 years and is a parent of a child with severe disabilities.

Barbara Riley, who served as director of the Ohio Department of Job and Family Services for the last two years, was appointed **director of the Department of Aging**.

Staying on as **Adjutant General** is **Greg Wayt**. Gen. Wayt was appointed to this position in 2004 by former Gov. Taft and has held several positions in the Ohio Army National Guard.

Gov. Strickland also announced his top staff members. They are:

- **CHIEF OF STAFF:** John Haseley, who served as director of the governor's campaign and transition team. He also served as chief of staff in the governor's congressional office.
- **LEGAL COUNSEL:** Kent Markus, a former Capital University Law Professor and counselor to U.S. Attorney General Janet Reno.
- **CABINET SECRETARY:** Jan Allen, who was deputy chief of staff to former Gov. Richard Celeste.
- **CHIEF OPERATING OFFICER:** Aaron Pickrell, former manager of Gov. Strickland's campaign.
- **DEPUTY DIRECTOR OF BOARDS & COMMISSIONS:** Malik Hubbard, a Shaker Heights native.
- **POLICY DIRECTOR:** Janetta King, a former aide in the governor's congressional office and policy advisor to his gubernatorial campaign.
- **HEALTH & HUMAN SERVICES POLICY ASSISTANT:** Robin Harris, former public policy director and acting president and CEO of the Ohio United Way.
- **EXECUTIVE ASSISTANT FOR PUBLIC SAFETY & CRIMINAL JUSTICE:** Kris Long, former chief of staff and legal counsel for the Ohio Senate Democratic Caucus.
- **EXECUTIVE ASSISTANT FOR EDUCATION:** John D. Stanford, who was special assistant to the superintendent of Columbus Public Schools.
- **LEGISLATIVE AFFAIRS DIRECTOR:** William Hartnett, a former state representative from the Mansfield area will head up the office. He will be assisted by **Mike Culp**, former executive director of the Ohio Democratic Party and **Tamiyka Koger**, a former House aide, who will serve as legislative liaison.
- **COMMUNICATIONS DIRECTOR:** Jess Goode, a former congressional press secretary and district office director. **Amanda Wurst** was named deputy communications director. She worked on the congressional campaigns of Mary Jo Kilroy and Charlie Wilson. **Jesse Taylor** will continue in his campaign position, as online communications director for the governor. **Stephen Hightower**, will be media events coordinator.
- **PRESS SECRETARY:** Keith Dailey, who served as Gov. Strickland's press secretary during the campaign and transition period.
- **DIRECTOR OF PUBLIC LIAISON:** Wade Rakes, former executive assistant to the chairman of Showtime Networks, Inc.
- **GOVERNOR'S OFFICE OF FAITH-BASED INITIATIVES:** Angela Woodson and Shandell Jamal.
- **SCHEDULER:** Betsy O'Grady Becker, who served in the same position during the gubernatorial campaign. She will be joined in the scheduling office by **Caroline Jones**, a former congressional staff member.

A complete list of Gov. Strickland's cabinet and executive staff members will be maintained in the governmental affairs section of the Ohio Chamber's Web site.