

BX BUILDERS EXCHANGE DAYTON

The Construction Conversation

Ohio's Legislative, Administrative, and Judicial Two-Way Newsletter

August, 2017

A Service of Luther L. Liggett, **Graff & McGovern, LPA**
www.GraffMcGovern.com

Legislative: Veto Override

The Ohio House and Senate overrode the Governor's veto of six health care funding items in the state's operational budget bill.

By Constitutional provision, the General Assembly must pass a Budget Bill every two years, and a capital bill in the next year of the session. (Cont'd page 2.)

Administrative: OFCC Spending Millions

In August, the Ohio Facilities Construction Commission announced significant construction opportunities, with millions to be spent for schools using the Construction Manager at Risk delivery system. (Cont'd page 2.)

Judicial: Public Lien Law

The 12th District Court of Appeals reversed a trial court in holding that a subcontractor's Mechanics' Lien against a public project will result in public agency liability for loss and attorney fees if it fails to escrow funds. (Cont'd page 2.)

The local city argued that the subcontractor's claim sounded in tort, or personal injury, and therefore the city was entitled to governmental immunity.

Administrative: OCILB Enforcement

The Ohio Construction Industry Licensing Board routinely cites licensed contractors which fail to display their license number on their vehicles. (Cont'd page 2.)

Administrative: OSU Adopts Construction Budget

At its recent meeting, the Ohio State University Board of Trustees adopted a construction budget of \$165 million in its Fiscal Year 2018 Capital Investment Plan. (Cont'd p. 2.)

Judicial: Corporate Shield Ignored

The 6th District Court of Appeals upheld a trial court decision holding a contractor personally liable when he did not offer evidence of his corporate status. The contractor operated as a Limited Liability Company, registered and active with the Ohio Secretary of State. (Cont'd p. 3.)

Administrative: Ohio Construction Market Varies

A national survey of Construction Employment disclosed an 8% gain in the Columbus metropolitan area in the prior 12 months, while at the same time the Toledo area experienced an 11% loss in construction jobs. (Cont'd p. 3.)

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Legislative: Veto Override (Cont'd)

After passage of House Bill 49, the Governor vetoed 47 items in the legislation. The House met on July 6, 2017 and successfully overrode the Governor's veto on 11 items with a two-thirds vote.

On August 22, 2017, the Ohio Senate followed suit, overriding the Governor's veto on six of the House's 11 items.

Both House and Senate have until the end of 2017 to consider a similar override on the remaining 36 items vetoed.

An override of the Governor's veto demonstrates a serious division between the Executive and Legislative branches of Ohio government, particularly when both are of the same Republican Party. Clearly this is in part a function of the Governor's term limit, with a new Governor to be elected in 2018.

Administrative: OFCC Spending Millions (Cont'd)

Leading the list of school spending is for a variety of projects:

Southwest Licking LSD \$114 million
Fremont CSD \$56 million
Warren Local Schools \$53 million
Greenon Local Schools \$51 million
Fremont CSD \$51 million
Carlisle LSD \$42 million
New Warrensville \$21 million
New Bremen Local \$20 million

OFCC also announced a \$1.1 million project for HVAC renovations at the Trumbull Correctional Institute. Bids are due September 15, 2017.

For further information, see Opportunities at <http://ofcc.ohio.gov/>

Judicial: Public Lien Law (Cont'd)

The Court of Appeals for Trumbull County cited to Revised Code 1311.311 which holds the public authority liable for the subcontractor's loss and for attorney fees, if the public authority fails to escrow funds for the mechanics' lien.

As a statutory action, the public authority is not entitled to immunity.

Kirk Bros. v. Trucraft Constr., (12th Dist. Trumbull), 2017-Ohio-7281.

Administrative: OCILB Enforcement (Cont'd)

The Board first issues a violation with the expectation that the contractor will comply. When the contractor ignores the notice, the Board moves forward with an opportunity for a hearing on the "advertising violation."

OCILB also submitted a new Administrative Rule for the purpose of allowing online or computer-based courses to qualify for contractor Continuing Education requirements.

Administrative: OSU Adopts Construction Budget (Cont'd)

This new money is in addition to ongoing projects costing \$396 million.

New will be renovation of Koffolt/Fontana Laboratories which support the Advanced Materials Corridor, renovation of Postle Hall for the College of Dentistry, and renovations to the Woody Hayes Athletic Center. The cost will be

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\$7.8 million, raised from donor funds.

For further information, see
www.agc.org

OSU also seeks a Construction Manager at Risk to build a 1-acre state-of-the-art Greenhouse and research facility. Estimated cost is \$24 million.

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Judicial: Corporate Shield Ignored **(Cont'd)**

The contractor operated as a Limited Liability Company, registered and active with the Ohio Secretary of State.

The LLC entered into a home renovation contract, accepted a \$17,000.00 down payment, then breached by failing to perform.

The homeowner sued for the \$35,000.00 cost of renovation and the deposit. The contractor appeared in court without legal counsel, and argued that he should be relieved of answering the pleadings as otherwise required.

The trial court found that the contractor's failure to answer was an admission of personal liability. The appellate court for Wood County agreed.

Spencer v. Stowell (6th Dist. Wood), 2017-Ohio-7353.

Administrative: Ohio Construction **Market Varies (Cont'd)**

The survey discloses generally that Ohio gained construction jobs moderately in other regions.

A survey of the industry also disclosed that construction employers find the time difficult in hiring and recruiting workers across the nation.

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Join us in

The Construction Conversation

Call-In

on

Thursday, September 21, 2017

2:30 p.m.

TOPIC: Design-Build in Ohio Public Works

Thursday, October 19, 2017

Thursday, November 16, 2017

Thursday, December 21, 2017

Dial In: 805-309-0010

Access Code 754-477-909 #

