



## **The Construction Conversation**

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

November, 2017

A Service of Luther L. Liggett, **Graff & McGovern, LPA**  
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#### **Legislative: Home Inspector License**

The sponsor of House Bill 211, to create a Home Inspector Board and license, introduced a substitute bill after work with interested parties. (Cont'd page 2.)

#### **Administrative: Pre-Apprenticeship**

On November 20, 2017, the Franklin County Commissioners announced a contract to administer a pre-apprenticeship pilot program for up to 30 students. The Ohio Building and Construction Trades Council and IMPACT Community Action will administer the program for low-income county residents. (Cont'd page 2.)

#### **Judicial: Arbitration Preferred**

Two courts of appeals found in favor of arbitration over court litigation as the agreed method of dispute resolution, even when a subcontractor had not signed the subcontract. (Cont'd page 2.)

#### **Legislative: Pipe Material Specification Gets Amendment**

The sponsor of House Bill 121 introduced an amendment without interested party support, drawing continued opposition in extensive testimony. (Cont'd p. 3.)

#### **Administrative: Ohio Infrastructure**

As the Ohio Development Services Agency awarded \$2.5 million in

infrastructure grants, the Ohio Oil and Gas Association announced spending \$302 million on Ohio roads and bridges. (Cont'd p. 3.)

#### **Judicial: Statute of Repose at Issue**

A Court of Appeals has ruled that Ohio's Statute of Repose applies to both personal injury and contract claims, but reversed based on contrary Supreme Court precedent. (Cont'd p. 3.)

#### **Legislative: Year-End Cleanup**

Legislation on Welding Inspectors, Workforce Development, and School Infrastructure showed movement in the waning days of the General Assembly this year. (Cont'd p. 4.)

#### **Administrative: Governor Offers No Support for Right-to-Work**

In a question-and-answer session at the Ohio Manufacturer's Association's Workforce Summit, Governor John Kasich opposed any initiative seeking right-to-work options in Ohio. (Cont'd p. 4.)

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## **Legislative: Home Inspector License** (Cont'd)

State Representative Jim Hughes (R, Columbus) amended the legislation to expand “grandfathering” of inspectors currently practicing. Real estate agents would have to provide at least three names of licensed inspectors if recommending any name.

The Ohio Realtors supported the legislation at its fourth hearing, pending before the House Economic Development, Commerce and Labor Committee.

The Ohio Chapter of Americans for Prosperity opposes the legislation as unnecessary bureaucracy.

While a Committee vote seems likely, no vote is scheduled at this time.

## **Administrative: Pre-Apprenticeship** (Cont'd)

Named “Building Futures”, the program will provide trade-specific training and soft skills, to assist students in preparing for entrance into the full apprenticeship program.

The 9-week program will pay students \$250.00 per week.

During National Apprenticeship Week this month, the Governor touted the effectiveness of Ohio’s apprenticeship council, pointing to “more than 18,000 apprentices in more than 200 occupations”.

## **Judicial: Arbitration Preferred** (Cont'd)

In the first case, the subcontractor performed and billed for its work, while objecting to the arbitration provision and refusing to sign the subcontract accordingly. The prime contractor paid the first pay application, but failed to pay further, leading later to litigation.

The owner’s representative discharged the prime contractor, and asked the subcontractor to sign an “Assignment Agreement” in order to perform further work.

The Court of Appeals ruled that parties must agree voluntarily in contract to arbitration. The subcontractor could not be held to arbitration just because the provision appeared in a prime contract.

However, because the subcontractor later signed the Assignment and Assumption Agreement, this was tantamount to signing the subcontract containing an arbitration provision.

*Rorick’s Inc. v. Corporex Dev. & Constr. Mgmt.*, 5<sup>th</sup> Dist. Stark, 2017-Ohio-8694.

In the second case, the owner lost an arbitration judgment to a contractor, pursued under a contract which contained an arbitration provision. After losing, the owner challenged arbitration on the basis that, because the issue was failure to follow terms of the contract, the contract itself became null and void, along with the arbitration clause.

The Court of Appeals held that, “All agreements have some degree of indefiniteness and some degree of uncertainty \*\*\* but people must be held to

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the promises they make.” Because the arbitration term was not at issue, arbitration was valid.

*Sunrush Contr. Co. v. Landmark Properties*,  
4<sup>th</sup> Dist. Ross, 2017-Ohio-8598.

## **Legislative: Pipe Material Specification Gets Amendment (Cont’d)**

Rep. Jay Edwards (R, Nelsonville) introduced the amendment, which the House State and Local Government Committee accepted, in an effort to keep discussion going on the legislation. The amendment states,

“No public authority shall prohibit the use of reasonable piping material, based on sound engineering principles, in the construction, development, maintenance, rebuilding, or improvement of a water or waste water project that is funded in whole or in part with state funds.”

Twenty-three witnesses testified, mostly re-stating what they previously said before the same Committee.

Proponents complain primarily that cities pass ordinances after deciding on certain materials. The first witness was from the Ohio Municipal League, noting that the amendment will initiate litigation. Ohio Cities enjoy “Home Rule”, so that state statutes cannot interfere with local ordinances.

Importantly, this bill would apply to Ohio schools, universities, and highways, and set a precedent for legislating construction design.

The bill is not scheduled for further hearings, but may be continued in the Spring of 2018.

## **Administrative: Ohio Infrastructure (Cont’d)**

The state grants went to ten Ohio Counties, varying from \$300,000.00 for six projects, to a low of \$139,700.00 to assist the village of Beverly in Washington County for improvements to a wastewater treatment plant. Most of the projects relate to sewer, storm sewer, waste water, and a water tower.

Separately, the “Energy in Depth” report tallies “road use maintenance agreements” under recent law. The oil and gas industry pays for upgrades to 639 miles of roadway since 2011, which helps their own industry in local areas.

## **Judicial: Statute of Repose at Issue (Cont’d)**

The design professional provided services to a local school, after which the design company’s owner passed away. At issue was the ten-year statute of repose, R.C. 2305.131(A)(1), and the six-month limitation to present claims against a decedent’s estate.

The Court found that the Statute of Repose “specifies that NO cause of action for damages to real property, resulting from the improvement to that real property, can be brought after 10 years....” Bowing to Supreme Court precedent, the Court allowed the school’s claim, then barred it as untimely under estate law.

The design professional has asked the Court for reconsideration, and may appeal to the Supreme Court.

A similar Statute of Repose case will be argued in a different Court of Appeals on December 7, 2017, in which the issue is whether the Statute of Repose applies to the

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State of Ohio government contracts.

*New Riegel Local School Dist. V. Buehrer  
Group Architecture & Eng., 3<sup>rd</sup> Dist.  
Seneca, 2017-Ohio-8522.*

## **Legislative: Year-End Cleanup (Cont'd)**

The Associated General Contractors offered the first apparent opposition to House Bill 127, which would create a new requirement for independent inspectors of structural steel welds.

The AGC noted an apparent overlap of responsibility with professional engineers and the Ohio Building Code which already cover such welding. AGC also opposes giving a single non-profit association sole authority in certification, while noting that the requirements would impact project design and development.

Separately, the Governor signed into law Senate Bill 3, creating a pre-apprenticeship career pathway in high school, primarily for construction, along with several other workplace programs, effective in February, 2018.

In addition, both the House and Senate agreed on final language for Senate Bill 8, sponsored by Senator Randy Gardner (R, Bowling Green), to create a program to improve school's technology infrastructure. The bill still requires the Governor's approval.

## **Administrative: Governor Offers No Support for Right-to-Work (Cont'd)**

Today, Kasich claims that businesses do not stay away from Ohio because of its closed-shop laws.

Referring to other states, "because you are right to work, doesn't mean you're not going to have disruption with labor, right? So, I don't seek disruption. I learned that early on," in an apparent reference to a first-term anti-labor initiative rejected by Ohio voters.

Stating his general attitude toward labor, "Frankly, my father was in a labor union. My uncles, most of them were. I think a lot of them represent the middle class, and I'm for the middle class."

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**Call-In**

on

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2:30 p.m.

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