

The Construction Conversation

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

June 2024

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Legislative: One-Time Local Projects

The House and Senate continue to joust over how to allot \$700 million from last year's budget, each chamber introducing their own list of pet local projects prior to the fall election. (Cont'd p. 2.)

Legislative: Capital Appropriation to Pass Before Recess

The Ohio Constitution requires that the General Assembly pass a Capital Appropriations bill before recessing for the summer and fall, to return to local districts to campaign for the General Election. (Cont'd p. 2).

Administrative: Agency Construction Grants

While the biennial Capital Appropriation is the largest in Ohio history, state agencies continue to process applications for individual projects, such as the Ohio Water Development Authority, the Department of Development, and the Ohio Department of Transportation. (Cont'd p. 3).

Judicial: Worker Recovers for Promissory Estoppel

A Court of Appeals affirmed a trial court judgment in favor of an unpaid worker for a labor supplier, when a construction company promised to pay, misleading the worker to give up his mechanics' lien rights. (Cont'd p. 3).

Judicial: Unjust Enrichment and Breach

A Court of Appeals found that an

oral construction agreement is enforceable, and therefore the equitable remedy of unjust enrichment is inapplicable. (Cont'd p. 4).

Administrative: Tax Authority Supports Construction Businesses

The Ohio Tax Credit Authority announced state tax rebates to three companies involved in the construction industry, which are creating or preserving Ohio jobs. (Cont'd p. 4).

Legislative: Building Appeal Legislation Addresses Form Contracts

After passing the Senate unanimously, SB 41 will move out of the House with amendments addressing standard contract forms. (Cont'd p. 4).

Administrative: OCILB Cites Electrician

The Ohio Construction Industry Licensing Board issued a Notice for Hearing to a licensed electrician involved in a reported case for allowing an unlicensed contractor to use the license. (Cont'd p. 5).

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Legislative: One-Time Local Projects (Cont'd)

In February, 2024, the House introduced House Bill 2 with half of the fund designated for House members' local project interests. When passed in the House and sent to the Senate, the Senate President immediately rejected the list, claiming an interest in designating the entire fund.

Now, the Senate introduced Senate Bill 288 for the One-Time Strategic Community Investment Fund, for "projects that people notice because they make a difference every day in their neighborhood," according to Senate President Matt Huffman (R, Lima).

Huffman is term-limited, but unopposed to become a freshman Representative in the House next January, 2025. In that role, Huffman seeks to be the Speaker of the House, notwithstanding opposition from the current Speaker Jason Stephens (R, Kitts Hill).

Once agreed upon by House and Senate legislators, the designated spending will be consolidated into HB 2.

Big-ticket items include \$46 million for developing the Hamilton County Convention Center; \$27.5 million for the Cincinnati Open Tennis Tournament; and \$24 million for the Transportation Research Center Impact Lab Upgrades (where the State is testing driverless car highways).

Also included are \$20 million for the Cuyahoga County land bridge to the Cleveland lakefront; and \$20 million for the Franklin County workforce training Center for Advanced Technologies.

Legislative: Capital Appropriation to Pass Before Recess (Cont'd)

Half of all State Senators and all State Representatives are up for election in November, 2024. After passing the appropriation legislation, the General Assembly will recess until the General Election.

But before leaving, the legislators must agree on bricks-and-mortar funding for state agencies, colleges and universities.

Legislators introduced companion legislation so as to begin hearings, on Senate Bill 292 and House Bill 629, with a total value of \$4.2 billion in construction funding.

Once agreed upon, the One-Time Strategic Community Investment Fund and the Capital Appropriations will be consolidated into House Bill 2, and pass as bi-partisan legislation. Leadership hopes for a two-thirds passage to enact an emergency clause, and to signal the possibility of an override of any line-item veto from the Governor.

The Ohio Facilities Construction Commission will receive \$600 million for its school buildings program, and the Ohio Public Works Commission will receive \$575 million for local infrastructure.

\$456.6 million is designated for higher education, including \$55.3 million for the University of Toledo's renovation needs, and \$7.7 million to Owens Community College for HVAC and electrical renovations at the Findlay Education Center.

The Ohio State University leads the group with \$67.4 million for building renovations on the Columbus campus.

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Of concern are expected tax revenue shortfalls in the current fiscal year ending July 1st, due to tax code changes in 2022.

Of key concern is ongoing discussions toward ballot language for voters to reauthorize the Ohio Public Works Commission. Initiated in 1987, voters repeatedly and by large margins authorize annual debt financing to pay for local infrastructure improvements, selected through a bipartisan, merit-based process.

Without renewal, this is the last year in which funding is available.

Administrative: Agency Construction Grants (Cont'd)

In May, the Ohio Water Development Authority awarded \$58.8 million in low-interest loans for local wastewater and drinking water infrastructure.

Of the 16 designated projects, the Southwest Licking Community Water and Sewer District led the list, receiving \$5.5 million for waterline construction in Union Township, to extend service to areas currently served by well-water.

In April, OWDA awarded \$29 million. Allen County (Lima) received over \$22 million to control wastewater sewer overflows.

The Department of Development made grants up to \$750,000.00 to 5 communities under its Residential Public Infrastructure and Flexible Grants programs.

\$750,000.00 went to each of Athens County to replace waterlines; and to Bowerston in Harrison County for water system replacement of cast-iron line with

PVC lines.

ODOT invested \$5 million in 14 projects through its Transportation Improvement District Program. These projects are transportation systems maintained by local governments such as County engineers, municipalities, and townships.

Judicial: Worker Recovers for Promissory Estoppel (Cont'd)

The project owner hired a general contractor to build a custom garage for his automobile collection. The general subcontracted to a specialty steel-building structure company, which hired labor from a third party "craft labor force".

The independent laborer entered into a subcontract with the labor supplier for \$180,000.00. However, on a separate project, the laborer bypassed the labor third party, and subcontracted directly with the structure company. The labor supply company accordingly refused to pay for the work on the original project.

The independent laborer contacted the structure company intending to file a mechanics' lien. The structure company assured payment if the laborer did not file a mechanics' lien.

The laborer had no contract with the structure company, but sued for promissory estoppel, a quasi-contractual or equitable doctrine designed to prevent the harm resulting to the promisee from the reasonable and detrimental reliance on a promise made by the promisor

The laborer recorded his telephone call: "As far as liens, I'll make sure you get paid off before there's any liens on the job,

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so don't do that right away. There's lots of time to do that. But I'll talk to [them] and make sure you get what's owed to you, if that's how it ends up."

Accordingly, even with no contract and no lien, the courts held that the promise created liability to pay the laborer.

Pitt v Quanta Bldg. Group, 9th Dist. Lorain,
2024-Ohio-2297

Judicial: Unjust Enrichment and Breach

Homeowners entered into an oral (non-written) agreement with a contractor to build a pole-barn garage. After completion, homeowners complained that the poles were not plumb, and that the roof leaked. They hired a third-party to repair the building, then sued for the repair cost.

The complaint alleged breach of contract for improper workmanship. But, because there was no written agreement, homeowners also alleged unjust enrichment.

The trial court found for the homeowners both for breach of the oral contract, and for unjust enrichment. The contractor appealed.

The Court of Appeals recognized that unjust enrichment is an equitable remedy in the absence of a contract. Acknowledging that an oral agreement is enforceable, the Court held that it was error to find unjust enrichment with an enforceable oral contract.

Williams v. Edgell, 7th Dist. Columbiana,
2024-Ohio-2129

Administrative: Tax Authority Supports Construction Businesses (Cont'd)

Three such projects received subsidies for job creation:

- Goyette Mechanical Company, Inc. of Hilliard (Franklin County), expects to generate \$7.2 million in new annual payroll. Goyette is a mechanical contractor for plumbing, piping, HVAC, and electrical systems for industrial and commercial customers.

- Westafo America LLC, of Trotwood (Montgomery County), expects to create 230 full-time positions. Westafo is a manufacturer of high voltage power transformers for energy storage including renewable energy generation through solar, wind, and hydrogen.

- Enerfab Power & Industrial, of Cincinnati (Hamilton County), expects to create 44 full-time positions, generating more than \$4.1 million in new annual payroll. Enerfab offers tank fabrication, engineering, and related project management services for fabricated steel products and field services utilized across chemical, oil/gas, food/beverage, and wastewater industries.

Legislative: Building Appeal Legislation Addresses Form Contracts (Cont'd)

Sponsored by Senator Kristina Roegner (R, Hudson), the House Economic and Workforce Committee is expected to introduce a substitute bill, and pass out of committee the bill with three amendments.

These amendments will address the concern that owners often use what appears to be a standardized form contract, but with

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innumerable changes not disclosed to the construction bidders. The amended law will invalidate any contract change unless clearly identified:

“When utilizing an industry standard published construction management contract form, the public authority shall provide the contract form in a manner that indicates any alteration to the standard form, by striking through and underlining any changes to the original language of the standard form, or by cross-referencing conditions that are supplemental to the standard form.”

SB 41 then proceeds to the House Floor, then to the Senate to ratify, then to the Governor for signature, enacting expedited building appeals.

Administrative: OCILB Cites Electrician (Cont'd)

In the reported case *Elser v. Johnson*, 2024-Ohio-1745 (see May 2024 *Construction Conversation* newsletter), the trial court determined that the unlicensed electrician, “procured a permit under the name of a licensed electrician. This process seems to be the standard in the area of electrical work. A non-licensed electrician will often complete work under the permit pulled by a licensed electrician.”

Of course, this is not the OCILB law or viewpoint. It is illegal for a licensed electrician to allow a non-licensed contractor to work under the pretense of another license.

Accordingly, while the unlicensed electrician won his court case, the licensed electrician now must account for the misuse of his license.

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Join us in

The Construction Conversation Call-In

on

Wednesday, July 17, 2024

3:30 p.m.

Luther L Liggett is inviting you to a scheduled Zoom meeting.

Topic: Construction Conversation

Time: Wednesday, Jul 17, 2024 03:30 PM Eastern Time (US and Canada)

Join Zoom Meeting

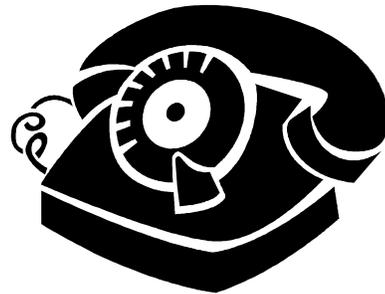
<https://us02web.zoom.us/j/83535383151?pwd=ZGw2LRvSlm8qZAQub7FPEurHpEL6Xm.1>

Meeting ID: 835 3538 3151

Passcode: 684015

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