

The Construction Conversation

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

December, 2021

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Legislative: Sunset Review Continues

The House State and Local Government Committee heard testimony from the Board of Building Standards regarding 49 distinct building department personnel certifications. (Cont'd page 2.)

Administrative: Ohio EPA Water Awards

The Ohio Environmental Protection Agency awarded more than \$156 million in low-interest loans and principal forgiveness for wastewater and drinking water infrastructure. (Cont'd p. 2.)

Legislative: Second Half of Session

The Ohio General Assembly is in holiday recess, to return January 11, 2022 for an active six months, then to return to local districts for re-election campaigns. Pending of significance is the biennial Capital Appropriations bill for public works construction. (Cont'd p. 2.)

Administrative: Transportation Infrastructure

As the Ohio Turnpike and Infrastructure Commission announced its \$233 million project funding for 2022, the Federal Aviation Administration announced \$51 million for Ohio airports. (Cont'd p. 3.)

Judicial: Victoria's Secret Loses Suit

A Court of Appeals affirmed a trial court dismissal of Victoria's Secret's lawsuit against a service contractor after fire sprinkler work flooded its store, damaging

merchandise and structures. (Cont'd p. 3.)

Administrative: Controlling Board Approves Unbid Work

The Ohio Controlling Board meets twice a month to approve agency and university requests to award construction projects to architects, engineers, and general contractors without competitive bidding. Ohio Revised Code 127.16 provides that the Controlling Board may approve selection of vendors without competitive selection. (Cont'd p. 3.)

Judicial: Subcontract Arbitration Enforced

A Court of Appeals reversed a trial court, to enforce a general contractor's subcontract arbitration provision on a dispute between the subcontractor and a material supplier. The Court looked to the general contractor's provisions, requiring arbitration for any dispute which "arises out of, or related to [the] Subcontract...". (Cont'd p. 4.)

The Construction Conversation

December, 2021

Page 2

Legislative: Sunset Review Continues (Cont'd)

Recently-enacted law requires a five-year sunset of state licensure statutes unless affirmatively renewed, as a way of reducing obstacles to job entry.

Executive Secretary Regina Hanshaw, an attorney by profession, testified that BBS maintains around 4,500 certifications held by 2,000 individuals and 735 local building departments. Additionally, BBS annually renews 650 fire protection system designer certifications.

Significant to the review process, Secretary Hanshaw noted that the licenses are essential to ensure safety, rather than unnecessarily licensing professions.

Secretary Hanshaw opined that the fire protection system designers' certification of persons who are not registered design professionals is redundant, requiring a legislative amendment.

Administrative: Ohio EPA Water Awards (Cont'd)

The City of Columbus received \$40.3 million for six separate projects, to control stormwater, construct water mains, and water treatment improvements.

Wapakoneta received \$23.5 million for its drinking water treatment plant.

The EPA is making these quarterly awards through its Water Pollution Control Loan Fund, its Water Supply Revolving Loan Account, and the State Revolving Fund loans.

Legislative: Second Half of Session (Cont'd)

Active for consideration are the following bills affecting the construction industry:

- HB 68, Private Contractor Prompt Pay, passed the House, one hearing in Senate Workforce Committee.
- HB 88, Commercial Roofing Contractor License, two hearings in House Commerce and Labor Committee.
- SB 64, Regulate Roofing Contractors, three hearings in Senate Government Oversight Committee.
- HB 175, Deregulate Ephemeral Water Features, passed the House, two hearings in Senate Agriculture Committee.
- HB 203, SB 131, License Out-of-State applicants if licensed in another state, four hearings in House State and Local Government Committee, two hearings in Senate Workforce Committee.
- HB 247, Revise Plumbing Inspection Law, passed the House, pending Senate Health Committee.
- HB 275, SB 260, Expand Joint Purchasing Authority to political subdivisions for construction services without competitive bidding, one hearing in House Commerce and Labor Committee, pending Senate Local Government Committee.
- SB 9, Reduce Administrative Regulations by 10% annually, passed the Senate, five hearings in House Government Oversight Committee.

The Construction Conversation

December, 2021

Page 3

- SB56, Indemnity Limitation for Public Design Contracts, passed the Senate unanimously, awaits House floor vote.
- SB 142, Residential Construction Contractor License, three hearings in Small Business Committee.

Administrative: Transportation Infrastructure (Cont'd)

The Turnpike Commission also will issue \$425 million in “junior lien revenue refunding bonds to reduce interest costs.

While most projects are highway related, the Commission will bid three Toll Plaza renovations, and a Pump Station and Sanitary Sewer Force Main.

The airport funding is allocated to Ohio, but requires application for priority projects.

The Federal Highway Administration created a new website that will serve as a one-stop shop for the Bipartisan Infrastructure Law. For more information, see:

<https://www.fhwa.dot.gov/bipartisan-infrastructure-law/>

Judicial: Victoria’s Secret Loses Suit (Cont’d)

The service contractor hired a subcontractor to lower the height of the sprinkler heads in the store. The mall failed to properly drain the sprinkler system prior to the subcontract work. Since the subcontractor had no contract with the mall, the court decided on summary judgment that the subcontractor could not be held liable for the mall’s failure.

Interpreting the express contract language, the service contractor had no duty to insure the mall staff’s performance.

Victoria’s Secret Stores, LLC v. Cintas Corp. No. 2, 2021-Ohio-4327.

Administrative: Controlling Board Approves Unbid Work (Cont’d)

The statute does not include criteria for such unbid selection.

Agencies and universities apply in advance of each meeting. The Legislative Service Commission reviews each request, and provides recommendations.

For instance, Ohio Revised Code 153.65 et seq. requires that an agency select design professionals based on qualifications and not on price competition.

Another example might be an emergency or a sole-source for the purchase.

The Controlling Board recently met on December 13, 2021, considering among other projects a request from Kent State University to hire a Construction Manager at Risk for a roof replacement and renovation.

By following the bi-weekly agenda, trades contractors can get advance notice of project design and award across the state.

For further information, view the Ohio Controlling Board Agendas and Meeting Minutes at:

<https://ecb.ohio.gov/Public/MeetingsAndAgendas.aspx>

The Construction Conversation

December, 2021

Page 4

Judicial: Subcontract Arbitration **Enforced (Cont'd)**

The general hired a subcontractor for carpentry work. The subcontractor signed a purchase order to a lumber supplier. When the subcontractor claimed that the materialman supplied defective lumber, the sub cancelled the purchase order.

The supplier sued for a prompt payment violation, alleging that the owner and general contractor paid the subcontractor for the defective material, and improperly withheld the funds.

The general contractor moved for a stay of the court proceedings in favor of the arbitration provision. The trial court erroneously determined that conditions precedent to arbitration had not been met. But, those conditions themselves are arbitrable.

Accordingly, the arbitration prevails and the lawsuit should not proceed in court.

Michigan Timber & Truss, Inc. v. Summit Bldg. Servs. & Ruscilli Construction, 2021-Ohio-3158.

-- 30 --

The Construction Conversation

December, 2021

Page 5

Join us in

The Construction Conversation

Call-In

on

Wednesday, January 19, 2022

3:30 p.m.

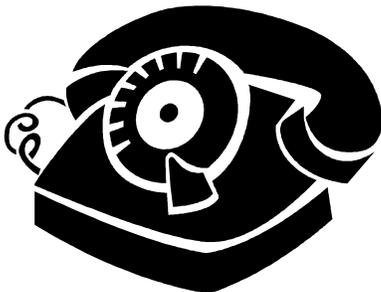
Join Zoom Meeting

<https://us02web.zoom.us/j/81046369917?pwd=NWhQeVFTdHlhYWR1S0tvaFJKdzEydz09>

Meeting ID: 810 4636 9917

Passcode: 431961

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The Construction Conversation

December, 2021

Page 6