

The Construction Conversation

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

April, 2022

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Legislative: Licensure Legislation

Several bills in the General Assembly which affect construction licensing saw activity before the legislature's recent recess. (Cont'd page 2.)

Legislative: Construction Legislation

Several important pieces of legislation are active in the legislature, poised to pass before June 30th when the Senators and Representatives return home to campaign for re-election. (Cont'd p. 2.)

Administrative: Highway Funding

The Ohio Department of Transportation and the Turnpike Commission will invest over \$2 billion in Ohio transportation projects, including pavement and bridges. (Cont'd p. 2.)

Administrative: Brownfield Grants

The Ohio Department of Development distributed \$60 million in the first round of Brownfield Remediation grants, of a total \$350 million for the program which began last December. The funding will target 78 projects in 35 of 88 Ohio counties. (Cont'd p. 3.)

Judicial: Termination for Convenience Damages

When an owner terminates the prime contractor for convenience, and not for cause, the calculation of damages differs. Referencing an AIA form contract, the

Court modified a typographical error. The Court of Appeals described three types of damages in a breach of contract case: (Cont'd p. 3.)

Administrative: OCILB Activity

The Licensure Sections of the Ohio Construction Industry Licensing Board held meetings in April to consider enforcement of the construction contractor license requirements. (Cont'd p. 3.)

Judicial: Arbitration Enforceable

A Court of Appeals enforced an unsigned contract after a subcontractor sued in court, which court refused to stay the case pending arbitration. The subcontractor filed the original case on January 23, 2020; the Court of Appeals reversed on March 29, 2022, the 2-year delay due to the pandemic. (Cont'd p. 3.)

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Legislative: Licensure Legislation (Cont'd)

House Bill 88 would require Commercial Roofing Contractors to have a license. The legislation passed the House, and awaits 3 hearings in the Senate Government Oversight Committee before moving to the floor for a vote.

Senate Bill 64 would require Roofing Contractor Registration. While the bill's language has been amended and received 3 hearings, the last activity was in early October, 2021, appearing to have stalled.

House Bill 203 and Senate Bill 131 would require licensing agencies to grant an Ohio "Reciprocal" License if the applicant has "satisfactory work experience in another state". Promoted as an idea to increase job opportunities, this proposal is not reciprocal, as Ohio licensees cannot obtain the other state's license in return. Ohio law already provides for full reciprocity with states recognizing Ohio's license requirements. Both bills have enjoyed three hearings, the House version reported out and awaiting a floor vote.

House Bill 235 would enact the High Hazard Training Certification for construction work in petroleum refineries. Supported by the Affiliated Construction Trades Foundation ("ACT Ohio"), the bill would require specific apprenticeship safety and hazard training for the work. After four hearings, the legislation is opposed by industry representatives as a pro-union employment bill.

Legislative: Construction Legislation (Cont'd)

House Bill 68 would require Prompt Payment by a private owner on private projects to pay the prime contractor within 30 days of an architect's approval, or face penalties of 18% interest and attorney fees. The bill passed the House, and has received the required 3 Senate Workforce Committee hearings before a vote, which is expected soon.

House Bill 175 reduces Ohio EPA regulation of Ephemeral Water Features, aligning the local requirements with federal law. The Governor signed the bill into law on April 21, 2022.

Senate Bill 260 (and companion House Bill 275) would allow political subdivisions to purchase construction services without notice or bidding, from a joint purchasing authority currently operating to offer discounted commodities. The construction industry has expressed a united opposition to the proposal. Senate Bill 20 passed unanimously to allow joint purchasing programs to exempt county utility supply contracts from the 10-year maximum term for financing purposes.

Senate Bill 56 would equate Indemnification and Insurability public clauses in Design Professional contracts. Passing the Senate and House with only 1 vote against, the bill is stalled pending "Conference Committee" on unrelated amendments.

Senate Bill 196 would create an expedited appeal to the Board of Building Appeals for building inspection issues. Passing unanimously in the Senate, the bill awaits House Committee assignment.

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Senate Bill 225 would extend the Historic Rehabilitation and Opportunity Zone Investment Tax Credits. Passing unanimously in the Senate, the House Ways and Means Committee will hold a third hearing for passage.

Senate Bill 307 would create incentives for Electric Vehicles, including infrastructure funding. The bill awaits a third hearing in the Senate Energy and Public Utilities Committee.

Administrative: Highway Funding (Cont'd)

ODOT begins the construction season with 829 projects budgeted, including 661 bridges and 7,626 miles of pavement. 95% of funding will go to existing infrastructure, not new construction.

\$800 million will fund 130 projects in Central Ohio alone.

Noting that traffic generally is down, truck traffic has increased by over 13%. In 2021, Ohio experienced 4,796 crashes in work zones, with 30 deaths.

The Turnpike Commission budgeted \$233 million in 2022, including over \$10 million for electrical work to upgrade the toll collection system.

By Spring, 2023, an E-Z Pass customer can travel the full length of the Turnpike's 241 miles without stopping.

Administrative: Brownfield Grants (Cont'd)

By example, the State funded 13 projects in Cuyahoga County. The largest grant was for \$6.43 million to redevelop the Goodyear Akron Mix Center.

Ohio Revised Code 122.65 establishes the funding, so that land owners with contaminated real estate can remediate. Once a Certified Professional issues a "no further action" letter, the Director of the Ohio Environmental Protection Agency issues a "covenant not to sue" under R.C. 3746.12.

This allows for real estate development of previously contaminated sites.

Judicial: Termination for Convenience Damages (Cont'd)

Expectation Interest: placing the non-breaching party in the position it would have been in had the contract been fully performed, the "benefit of the bargain".

Reliance Interest: Reimbursed for losses for having relied on the contract.

Restitution Interest: The value of the benefit conferred on the breaching party i.e.: the value of what the other party received, or the increase in the value of the other party's property.

Under the Termination for Convenience clause of the AIA Section 14.4.1, the parties limited a contractor's recovery to restitution damages, not paying for damages as if the contract were completed fully.

The Court also affirmed that the trial court has the inherent power to modify the parties' contract for obvious typographical errors. In this case, the AIA document referenced Section 13.1 for calculation of damages. Yet, that Section "does not speak directly to the issue of damages at all." Thus, the Court applied the remedy in the Termination for Convenience clause.

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Hanuman Chalisa, LLC v. BoMar Contracting, Inc., 10th Dist. Franklin, 2022-Ohio-1111.

Administrative: OCILB Activity (Cont'd)

The HVAC/Refrigeration Section imposed an unusually high \$5,000 fine against a licensed HVAC Contractor, based on five separate violations of law.

The licensed trades contractor allowed a lapsed license to be altered by a non-licensed contractor, who then presented the altered license to secure as many as seven building permits.

Evidence further confirmed that the non-licensed contractor repeatedly renewed its local license using the false state license for two different, unlicensed companies.

The license holder requested a formal hearing to present evidence, then failed to show or offer a defense.

Separately, the Board as a whole approved 117 test applicants to sit for the examination in their specific trades. The Board also granted a reciprocal license to 25 applicants from other states.

Judicial: Arbitration Enforceable (Cont'd)

The subcontractor sued in court, attaching a contract which included arbitration of all claims. The prime contractor drafted a contract with arbitration for dispute resolution. The subcontractor signed the agreement, contending it to be the parties' working contract, even though the prime contractor never signed. The subcontractor completed the work.

So, the prime contractor commenced

arbitration in spite of the trial court's refusal to stay the court litigation. Receiving a judgment, the prime contractor moved the trial court to accept the arbitration decision.

The arbitrator noted that both prime contractor and subcontractor signed a work order which incorporated the partially-signed "master" contract.

When the trial court set a trial date, the prime contractor appealed, claiming that denying an application to stay pending the arbitration award is a final appealable order.

The Court of Appeals agreed that arbitration was enforceable, that the trial court should have stayed the court case, and that the arbitration decision was confirmed.

Starr Construction & Demo v. D.A. Bendley Construction, 7th Dist. Mahoning, 2022-Ohio-1122.

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Join us in

The Construction Conversation

Call-In

on

Wednesday, May 18, 2022

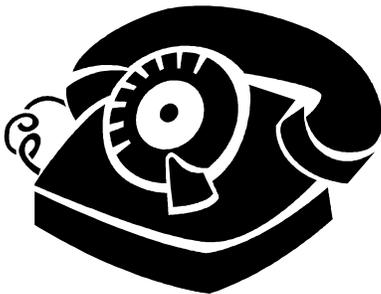
3:30 p.m.

Join Zoom Meeting

<https://us02web.zoom.us/j/81898545131?pwd=SHoyNjFzS110UW1mbkdzSWlNNms1dz09>

Meeting ID: 818 9854 5131
Passcode: 886721

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