

# **The Construction Conversation**

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

October, 2022

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### **Legislative: Ballot Issue 1-Bail Bonds**

The General Assembly passed the "Community Safety Amendment" for the November 8<sup>th</sup> ballot, to allow judges to raise bail bonds to a level intended to keep criminal defendants in jail pending trial. (Cont'd p. 2.)

### **Legislative: Ballot Issue 2-Non-Citizen Voting**

The General Assembly passed the "Citizenship Voting Requirement Amendment" for the November 8<sup>th</sup> ballot, to prohibit local government from allowing non-citizens to vote on local issues such as property taxes. (Cont'd p. 2.)

### **Judicial: Pre-Judgment Interest Only for Contract Claims**

A Court of Appeals ruled that statutory pre-judgment interest for unpaid construction work only applies to breach of contract awards, and not to equitable unjust enrichment in the absence of a contract. Unjust Enrichment is an equitable theory of recovery in the absence of a contract. (Cont'd p. 2.)

### **Administrative: Ohio Receives \$2 Billion**

The U.S. Department of Transportation allocated \$2 billion for Ohio transportation construction, categorized into 12 formulaic programs, administered by the Federal Highway Administration, with project selections determined by Ohio legislators and the Department of Transportation. (Cont'd p. 3.)

### **Legislative: Lame Duck Session**

The Ohio General Assembly will return after the General Election for only five days of House and Senate Floor sessions, with Committee meetings around those dates. (Cont'd p. 3.)

### **Administrative: OFCC Design Manual Update**

The Ohio Facilities Construction Commission annually revises the Ohio School Design Manual (OSDM) with support and valuable input from the design and construction community, school districts, state agencies and other interested parties. (Cont'd p. 3.)

### **Administrative: Regional Buildings**

The Ohio Facilities Construction Commission administers significant vertical construction for all agencies' regional operations around the state. (Cont'd p. 3.)

# The Construction Conversation

October, 2022

Page 2

## **Legislative: Ballot Issue 1-Bail Bonds** (Cont'd)

The constitutional amendment addresses an Ohio Supreme Court case, *Dubose v. McGuffey*, in which the Supreme Court affirmed reduction of a murder suspect's bail bond by a Cincinnati court from \$1.5 million to \$500,000.00. The opinion was split 4 to 3.

The U.S. Constitution's 8<sup>th</sup> Amendment of the Bill of Rights provides that, "Excessive bail shall not be required...." Ohio's Constitution also reflects this right, Article I, Section 9.

Ohio Revised Code 2937.22 defines the purpose as "Bail is security for the appearance of an accused to appear and answer to a specific criminal charge".

The Supreme Court described the purpose in the case that, "Pretrial release not only makes it easier for an accused person to prepare a defense, it also upholds the presumption of innocence by ensuring that a person is not punished before being convicted."

If the prosecution believes that a suspect poses a danger to the community and should be held without the possibility of release, then the state must follow the procedures set forth in R.C. 2937.222 for an order of detention without bail.

Under Crim.R. 46(B)(2), public-safety concerns may be addressed by imposing nonfinancial conditions, such as restrictions on travel and association, completion of alcohol and drug abuse treatment, and orders of no contact with witnesses in the case.

Attorney General David Yost pushed

for the amendment, contained in Sub. House Joint Resolution 2, sponsored by Representative Jeff LaRae (R, Canal Winchester). Predictably, the House and Senate voted along party lines for passage by Republican votes, only.

The ballot language adds to the Ohio Constitution that, "When determining the amount of bail, the court shall consider public safety... and any other factor the general assembly may prescribe."

The amendment also eliminates the Ohio Supreme Court's authority in setting bail bond procedures.

This would set up later authority for the Republican majority in the General Assembly to add additional language on bail factors, without further Constitutional amendment.

## **Legislative: Ballot Issue 2-Non-Citizen Voting** (Cont'd)

State Representatives Jay Edwards (R, Nelsonville) and Bill Seitz (R, Cincinnati) introduced House Joint Resolution 4, which passed in the House with most Democrats opposed, but passed unanimously in the Senate.

Proponents single out the Village of Yellow Springs (Greene County, home of comedian Dave Chappelle and Antioch College) as allowing non-citizens to vote in local elections under Constitutional Home Rule authority for strictly local matters.

Opponents express concern that 17-year-olds will be kept from voting in primaries before they turn 18 prior to the General Election. Opponents also contend that this creates a strict Voter Registration "blackout" 30 days before an election.

# The Construction Conversation

October, 2022

Page 3

## **Judicial: Pre-Judgment Interest Only for Contract Claims (Cont'd)**

Ohio Revised Code 1343.03(A) provides for pre-judgment interest to be added to any judgment for breach of contract. While applicable generally to contract actions, the original case authority is in construction. *Royal Electric Construction Corporation vs. Ohio State University* (1995), 73 Ohio St.3d 110, 652 N.E.2d 687.

A plaintiff cannot sue for both breach of contract and unjust enrichment, barred by the “Economic Loss Doctrine”, which prohibits sidestepping contract terms through equitable remedies.

In the case at bar, the Court of Appeals for Fairfield County found that a site subcontractor submitted an estimate for two distinct projects on the same site. The prime contractor entered into a contract for one, but verbally directed the subcontractor to proceed on the second without a written agreement.

The sub worked on a “time and materials” basis for the second, but the prime contractor questioned the invoices and refused to pay.

At trial, the trial court awarded \$70,000.00 in damages as a fair total, plus 5% pre-judgment interest against the prime contractor, who appealed.

The appellate court affirmed the base damages award, but found that the statutory language for interest includes written or oral contracts only, not equitable remedies.

Unjust enrichment is calculated to fully compensate the value, so mathematical additions are inconsistent.

*KN Excavation v. Rockmill Brewery*, 2022-Ohio-3414.

## **Administrative: Ohio Receives \$2 Billion (Cont'd)**

Nationwide, the federal administration released nearly \$60 billion.

Half is allocated to the National Highway Performance Program, and will be allocated to individual projects in Ohio through the legislative and TRAK processes.

Air Quality, Carbon Reduction, and Electric Vehicle programs also receive designated funds.

## **Legislative: Lame Duck Session (Cont'd)**

The end of a two-year schedule is known as “lame duck” because about a third of all legislators will not return next year, and any legislation not passed by December 31, 2022 is abandoned.

The floor sessions are scheduled for November 16, November 30, December 1 (House only), December 7 (Senate only), December 14, and December 21.

Still pending bills include:

Senate Bill 56, Design Professional Indemnity provisions in Public Contracts (passed both House and Senate, awaiting last-minute amendments).

House Bill 203, Senate Bill 131, Out-of-State License “Reciprocity” (each bill requires 3 Committee Hearings in the other chamber).

House Bill 68, Private Contractor Prompt Pay (passed by the House, awaits Senate Committee vote and Floor vote).

# The Construction Conversation

October, 2022

Page 4

House Bill 88, Roofing Contractor License (passed House, awaits 3 Committee Hearings in the Senate).

## **Administrative: OFCC Design Manual Update (Cont'd)**

Volume 1 contains the Educational Planning Guide for schools. Volume 2 contains the specific building standards for design professionals and contractors.

OFCC requests Statements of Qualifications from Design Professionals to update Volume 2. Deadline for response is November 18, 2022.

First developed in 1997, the 2023 update will begin in February, 2023 and be complete at the end of June, 2023. Estimated budget is \$350,000.00.

The Manual is available on the OFCC website under “Resources” at:

<https://ofcc.ohio.gov/Resources/Design-Manual-OSDM/2022-OSDM>

## **Administrative: Regional Buildings (Cont'd)**

The Ohio Department of Transportation seeks a General Trades bid on November 14, 2022, for its Belpre Outpost in Little Hocking, Ohio. Cost is estimated at over \$4.5 million.

The Ohio Department of Natural Resources will contract for General Trades for 11 cabin renovations at Buck Creek State Park in Clark County near Springfield. Bids are due November 15, 2022. Estimated cost is over \$3.2 million.

The Ohio Department of Rehabilitation and Corrections (prisons) will

hire a Design-Build firm to provide emergency electrical power through Mobile Generator Docking Stations at five regional facilities (Dayton, Lucasville, Youngstown, Toledo, Marysville). Responses are due November 21, 2022, at an estimated cost of over \$3.5 million.

-- 30 --

# **The Construction Conversation**

October, 2022

Page 5

Join us in

## **The Construction Conversation**

### **Call-In**

on

**Wednesday, November 16, 2022**

3:30 p.m.

Luther Liggett is inviting you to a scheduled  
Zoom meeting.

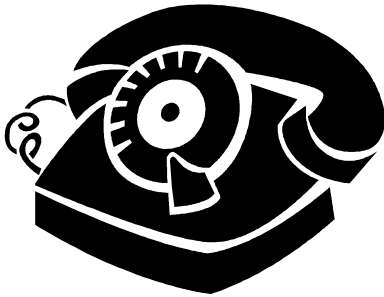
Join Zoom Meeting

<https://us02web.zoom.us/j/85498328033?pwd=OFB1emM5cm03aDM3ZEdBZHdQUzdwdz09>

Meeting ID: 854 9832 8033

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**The Construction Conversation**

October, 2022

Page 6