

The Construction Conversation

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

December, 2022

A Service of Luther L. Liggett, Attorney at Law
LLiggett@columbus.rr.com

Legislative: Design Professional Indemnification

After 22 months coursing through the General Assembly, Senate Bill 56 is enacted law, to require that indemnification by architects and engineers in public contracts not exceed the insurable professional standard of care. (Cont'd p. 2.)

Legislative: Out-of-State License "Reciprocity"

Senate Bill 131 for out-of-state applicant licensing passed the General Assembly by a House vote of 87 to 3 on December 14, 2022, after passing the House unanimously. The bill awaits the Governor's signature. (Cont'd p. 2.)

Judicial: Non-Compliant Contract Void

A construction remodeler was sued by a homeowner who asserted violations of the Consumer Sales Practices Act, and to declare the construction contract void. (Cont'd p. 2.)

Legislative: Private Contractor Payment

Private construction prompt pay proposed in House Bill 68 passed the House on a vote of 86 to 11, but failed to win Senate confirmation after four Committee hearings. The legislation awaits re-introduction next year. (Cont'd p. 3.)

Legislative: Agency Budgets

As final financing legislation for the session, the Ohio Senate passed a \$6 billion spending bill, including \$1.75 billion for

schools, and \$75 million for the Honda project. Earlier in the month, the Ohio Facilities Construction Commission approved matching funds for \$353 million in public construction. (Cont'd p. 3.)

Administrative: OCILB Legislative Impact

Executive Secretary Carol Ross of the Ohio Construction Industry Licensing Board addressed how legislative changes will affect trades contractor licensure, at the Board's December meeting. (Cont'd p. 3.)

Legislative: Sine Die

On Wednesday, December 28, 2022, the Ohio House of Representatives adjourned "sine die", or "without day" for subsequent meeting. All legislation not passed by the House expires. The Senate will follow the same.

The Construction Conversation

December, 2022

Page 2

Legislative: Design Professional Indemnification (Cont'd)

Sponsored by Senator Bill Blessing (R, Cincinnati), the bill passed the Senate unanimously, and passed the House 91-2 last January, 2022. Then the bill stalled, held up to include amendments unrelated to the purpose of the bill (“logrolling”).

The Governor signed the bill on December 13, 2022, effective 90 days later (February 11, 2023).

The intent is to prohibit public agencies from exposing design professionals to liability beyond the professional standard of care. It is routine for contracts to call for joint and several liability of all parties for negligence on construction projects, well-beyond a design professional’s scope of work.

The Act prohibits a public authority from requiring indemnification or insurance beyond “the proportionate share of the tortious conduct...of the professional design firm”.

In other words, no contract is enforceable to require payment beyond the proportionate share, which is limited to the professional standard of care.

Legislative: Out-of-State License “Reciprocity” (Cont'd)

Once enacted, out-of-state licensed design professionals and contractors may obtain an Ohio license automatically, but without reciprocally granting the out-of-state license to an Ohio professional. Current law provides for equal reciprocity already.

Sponsors promoted the legislation as a “jobs bill”, to incentivize licensed

professionals from outside of Ohio to move into the state. Proponents claim that licenses are barriers to entry into employment, and raise the cost of those services.

Companion House Bill 203 also passed the House, but only along party lines, and failed to pass the Senate.

Judicial: Non-Compliant Contract Void (Cont'd)

The contractor filed a counterclaim for payment of work performed prior to the homeowner’s termination of the contract.

Ordinarily, the Home Construction Service Suppliers Act (“HCSSA”) might apply in contrast to the broader Consumer Sales Practices Act. However, the Court of Appeals first determined that, because of legislative history and the ordinary meaning of the statute, “remodeling” work is not covered in the definition of “home construction service.”

The Court further determine that, if the contractor had not registered the contract with the local city pursuant to a city ordinance, then the construction contract is void and unenforceable.

Beder v. Cerha Kitchen & Bath Design Studio, LLC, 11th Dist. Geauga, Case no. 2022-G-0008, 2022-Ohio-4463

Legislative: Private Contractor Payment (Cont'd)

Sponsored by Representative Jon Cross (R, Kenton), the legislation received strong support, but written opposition from the Ohio Manufacturers Association and the Ohio Hospital Association: “Our members seek to have their facilities up and running as soon as possible and cannot risk the

The Construction Conversation

December, 2022

Page 3

delays that come with late or missed payments to contractors.”

Because of the strong support and lack of pushback at the last two Committee hearings, the sponsor expects to reintroduce the legislation in 2023.

Legislative: Agency Budgets (Cont'd)

Anticipating the Spring Operating Appropriations by the new General Assembly, agencies submitted their operating budget requests for the biennium beginning July 1, 2023. Employees, and annual expenses are estimated as follows:

Architects, Landscape Architects Board, 4 full-time employees, \$713,000.00.

Engineers Board, 8.28 employees, \$1.4 million.

Ohio Facilities Construction Commission, 84 employees, \$18 million (not including construction and debt service).

Ohio Public Works Commission, \$9.6 million (not including construction and debt service).

State Fire Marshal, \$30 million.

Division of Industrial Compliance, Department of Commerce, \$31 million.

Administrative: OCILB Legislative Impact (Cont'd)

Reciprocity: OCILB has full reciprocity agreements with 7 states. With passage of Senate Bill 131, out-of-state trades contractors can apply on an expedited basis, but still must test.

Unfortunately, the legislation deleted OCILB’s reciprocity statute, erroneously believing it to be redundant. OCILB will ask for re-enactment in the new legislative session.

New Rules: OCILB has enacted new administrative rules, including reciprocity for military personnel and spouses when deployed into Ohio. Additionally, if a license is expired for more than one year, the Board can renew for extenuating circumstances without a full reapplication and exam.

Continuing Education: Previously, if a contractor completed the same class by number in 365 days, only one course was credited. That changed, so that now the contractor gets credit for both events.

Enforcement: In 2022, OCILB issued 143 Notices for Opportunity for a hearing, for denial of the opportunity to test. In December alone, OCILB held 7 hearings, and collected \$4,000.00 in penalties.

Testing: At its December meeting, OCILB approved 63 applicants to take the test, 34 in Electrical, 13 in HVAC Refrigeration, and 16 in Plumbing Hydronics.

-- 30 --

The Construction Conversation

December, 2022

Page 4

Join us in

The Construction Conversation Call-In on

Wednesday, January 18, 2023

3:30 p.m.

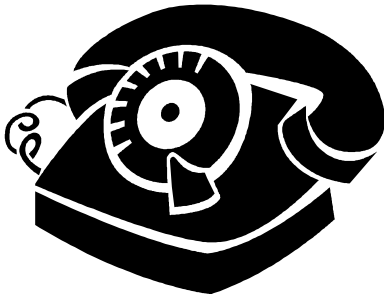
Luther Liggett is inviting you to a scheduled
Zoom meeting.

<https://us02web.zoom.us/j/86162414629?pwd=WWFJWkF5ZzczaWxUaVYwMjBDUklWQT09>

Meeting ID: 861 6241 4629

Passcode: 680213

Mobile 305-224-1968



The Construction Conversation

December, 2022

Page 5