

The Construction Conversation

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

August 2026

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

Legislative: Immigration Workforce

On August 11, 2026, the New York Times published an op-ed by Ohio Governor Mike DeWine in support of immigration reform “while respecting our history of welcoming people fleeing oppression and humanitarian crises.” (Cont'd p. 2).

Administrative: OFCC Energy Rules

On August 3, 2026, the Joint Committee on Agency Rule Review authorized final approval of new administrative rules for the Ohio Facilities Construction Commission regarding energy consumption standards in public buildings. (Cont'd p. 3).

Judicial: Hearsay Change in Contract

A contractor sued a third-party project owner based upon breach of a purchase order originally issued in another customer's name, which name was later changed by an unidentified handwritten notation. (Cont'd p. 3).

Legislation: Data Centers

House Bills 646, 706, 710, and 957 seek to curtail the proliferation of new Data Centers around Ohio, based on concerns of the long-term cost of energy. (Cont'd p. 3).

Judicial: Data Centers

The Ohio Supreme Court is adjudicating two disputes involving local municipal actions to regulate Data Centers through ballot initiatives, submitted by voters, and rejected by the municipal

councils. (Cont'd p. 4).

Administrative: Turnpike Aging Out

The General Assembly created the Ohio Turnpike Commission in 1949, with groundbreaking in 1952. Today, now operating as the “Ohio Turnpike and Infrastructure Commission”, more than 65 percent of the Turnpike's pavement is 71 years old. (Cont'd p. 4).

Administrative: New Project Funding

Public Records in the month of August include Ohio Tax Credit Authority rebates, expected to stimulate 3,553 new jobs and \$1.1 billion in investments; Ohio Water Development Authority low-interest loans totaling \$19 million for nine projects; and \$340 million for projects throughout Ohio's 14 four-year degree Universities, not including 2-year colleges. (Cont'd p. 5).

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Legislative: Immigration Workforce **(Cont'd)**

The Governor from Springfield, Ohio is particularly concerned about workers from Haiti, to which he noted that no Haitians seek to return.

He wrote, "In Springfield, Ohio, Haitian nationals have played a major role in the city's economic comeback. They've filled jobs, repaired homes, paid taxes, started businesses and supported their families. But the administration has ended their Temporary Protected Status, a move I have vocally opposed."

In an interview subsequent to the article's publication, the Governor commented that deportations of legal immigrants only will hamstring the very immigrant workforce which accounts for 60 percent of Ohio's population growth in recent years. "Restricting legal immigration is not a good idea" he said.

The Governor voiced support for programs such as E-Verify, that equip employers "with modern, reliable tools to verify work eligibility."

Administrative: OFCC Energy Rules **(Cont'd)**

Ohio Administrative Code sections 3318-3-01 and 3318-3-02 now condense six prior rules with revisions. Construction designers now will establish new base plans for energy consumption in state facilities. Plans must be ten percent more energy efficient than the base plan, if cost-effective.

New procedures include procedures of a state agency to locally administer energy conservation contracts.

Information provided to OFCC is intended to ensure that the building manager can:

- Perform an energy audit of the facility;
- Prepare a Request for Proposals to design and install measures with a savings guarantee;
- Score the best proposer for a contract; and
- Evaluate annual energy savings reports and proposed adjustments over the life of the contract.

Judicial: Hearsay Change in Contract **(Cont'd)**

After the trial court found in favor of the contractor, the owner appealed on the basis that the changed purchase order was based on inadmissible hearsay.

Rule of Evidence 801(C) defines "Hearsay" as a statement, other than one made by a witness while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted in the statement.

As a matter of due process and fairness, the test is whether the opposing party has a chance to cross-examine the actual person who made the statement. If no cross-examination is possible, then the hearsay statement is inadmissible.

In the case at bar, the contractor's witness testified that the real owner liable for the work was not the party whose name was typed into the purchase order originally.

Later, an unidentified billing clerk

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crossed out the original name, and handwrote in the name of the proper purchaser. That proper purchaser never signed the purchase order or other agreement.

The Court of Appeals held that the changed purchase order could not be the basis of a breach of contract claim, as containing inadmissible hearsay. “The unidentified billing clerk who made the handwritten notation never testified.”

In fact, multiple hearsay may have occurred, including the person who directed the billing clerk to make the change, and the person who talked to the proper purchaser before making such a change.

In contrast, an authenticated purchase agreement is not hearsay, but the best evidence of the existence of a contract.

This rule differs from mere authentication, which may be sufficient merely as a business record kept in the ordinary course.

Evidence Rule 406 also declares as relevant “evidence of the habit of a person or the routine practice of an organization”, to prove conformity with the habit or routine practice.

Shelly Co. v. N.E.S. Corp., 8th Dist.
Cuyahoga, 2026-Ohio-3019 (August 6,
2026).

Legislation: Data Centers (Cont’d)

The Ohio House and Senate formed Select Committees on Data Centers to consider the issues.

On May 27, 2026, Governor Mike DeWine directed the Ohio Tax Credit

Authority to pause consideration of any new data center tax exemption requests.

On Wednesday, August 5th, the Public Utilities Commission of Ohio’s Chairwoman Jennifer French assured the public that, “We continue to implement safeguards to ensure that other customers are not impacted by costs to serve large loads like data centers. Ohio is fully committed to protecting customers from added costs related to data center buildout.”

On Thursday, August 6th, gubernatorial candidate Vivek Ramaswamy proposed that data centers should provide free electricity to nearby residents, or compensation to lower their residential bills.

Gubernatorial opponent Amy Acton called for a conditional moratorium on new data centers.

The industry weighed in with NVIDIA announcing on August 17th to invest \$105 billion toward the Pike County Technology Campus. SB Energy is building a natural gas generation plant dedicated to the new data center.

OpenAI announced that the projects will create 2,500 long-term operating jobs, and 35,000 construction jobs in the 6-year buildout.

American Electric Power announced its \$18 million “Neighbor to Neighbor Program” for energy assistance over 5 years, with \$8.5 million in 2026 alone. Funding will come from Meta/Facebook, Amazon, SoftBank Energy, Google, QTS, and AEP.

Judicial: Data Centers (Cont’d)

In Ashville, Ohio, local residents sought a ballot referendum to overturn an

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April vote of the Ashville Village Council approving a development agreement with EdgeConneX. The Village Fiscal Officer rejected the referendum petition on the basis that the ordinance was an “emergency”, a legitimate basis if properly enacted.

The Ohio Supreme Court rejected the emergency clause as it “merely parrots” state law with no explanation as to why the referendum would unnecessarily delay the project. And the mere fact that the administrative officer processed the Council’s action did not make it an exempt “administrative action” instead of a legislative enactment.

*State ex rel. McNamara-Smith v. Grube,
Fiscal Officer, 2026-Ohio-3035.*

In the City of Trenton, Butler County, Ohio, residents sought to put on the ballot an initiative prohibiting data center construction.

The Trenton City Council rejected the petition with 128 signatures (10% of actual votes in the most recent election), on the basis that the petition required 820 signatures (10% of eligible voters in the most recent election).

Briefing appears complete, and the parties await a determination by the Supreme Court.

*State ex rel. Blankenship v. City of Trenton
Council, Supreme Court Case No. 2026-
1035.*

Administrative: Turnpike Aging Out (Cont’d)

For vertical construction, 18 Turnpike Maintenance Facilities are more than 70 years old and need to be razed and

rebuilt, at an estimated cost of \$197 million, or \$20 million per year over the next decade. The Ohio Facilities Construction Commission will assist on specifications and planning.

With horizontal construction of pavement and bridges, \$290 million per year will be required for a decade. The legislature only appropriated an average of \$213 million per year in the last decade.

To fund expenses including debt service, the Turnpike collected tolls over \$400 million in 2025. Total Vehicle “Transactions” exceeded 57 million in 2025, for a total of 3 billion vehicle miles.

Administrative: New Project Funding (Cont’d)

Westerman, Inc. received Tax Credits to incentivize more than \$2.8 in construction value for expansion of two manufacturing operations to accommodate growth in data center and nuclear product lines in Fairfield and Licking Counties.

The City of Columbus received an \$11.4 million OWDA loan for improvements to the water distribution facilities’ radio system equipment.

The Village of Lodi in Medina County received a \$1.9 million OWDA loan for construction of a 7,700 foot water line.

The Ohio State University received \$61 million for renovations of historic Ramseyer and Hughes Halls.

The University of Cincinnati received \$30 million for renovations at the Holmes Hospital.

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The Construction Conversation Call-In

on

**Wednesday, September 9, 2026
3:30 pm**

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

Construction Conversation
Wednesday, September 9, 2026 03:30 PM
Eastern Time (US and Canada)
Join Zoom Meeting
<https://us02web.zoom.us/j/83318087016?pwd=mFFBppDgsoHm4aoaj939DZfRBQmk1j.>

1

Meeting chat link
<https://us02web.zoom.us/jc/83318087016>

Meeting ID: 833 1808 7016
Passcode: 681324

One tap mobile
+13017158592,,83318087016# US
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