

The Construction Conversation

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

May, 2022

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Legislative: Capital Appropriations

The General Assembly introduced House Bill 687 and Senate Bill 343 with \$3.3 billion in capital appropriations for state vertical construction. The legislation is expected to pass in June before legislators return home to summer campaigning. (Cont'd page 2.)

Legislative: Billions Bridge

The States of Ohio and Kentucky are working together to fund the \$2.77 billion construction of the Brent Spence Bridge from Cincinnati, splitting the cost over the Ohio River. (Cont'd p. 2.)

Legislative: Private Prompt Pay

The Senate Workforce and Higher Education Committee accepted an amendment to exempt construction contracts of \$50,000.00 or below from prompt pay requirements, in a fourth hearing after strong passage in the House. (Cont'd p. 2.)

Legislative: [Non] Reciprocity

The Senate Workforce and Higher Education Committee voted out Senate Bill 131 after a Fifth Hearing and four amendments, setting the bill up for a Senate Floor vote on licensing out-of-state professionals. (Cont'd p. 2.)

Judicial: Mechanics' Lien Security Release Not Appealable

When a contractor filed mechanics' liens against an owner's property for contract losses, the trial court reduced the

security requirement only to the claims for work actually performed, and not for the full contract value claimed. (Cont'd p. 2.)

Judicial: Contractor Not Personally Liable by Personal Performance

A condominium homeowner successfully sued for breach of contract when a home builder failed to finish work incurring damages of \$27,755.00. The trial court held the home builder personally liable for not signing in a corporate capacity. (Cont'd p. 3.)

Administrative: Intel Selects Contractors

Intel Corporation announced its selection of Gilbane Building Company, McDaniel's Construction Corp., Northstar Contracting Inc., and GTSA Construction Consulting to lead the team of 7,000 construction jobs for its two new \$20 billion chip manufacturing plants in Jersey Township, Licking County, Ohio. (Cont'd p. 3.)

The Construction Conversation

May, 2022

Page 2

Legislative: Capital Appropriations **(Cont'd)**

Included is \$300 million from federal American Rescue Plan Act funds, with the rest borrowed on general revenue debt, i.e.: bonds paid off with taxes, revenues which are running 12 percent over estimates, with the lowest income tax rate in four decades.

\$400 million will go to the Ohio Public Works Commission for local infrastructure projects including water supply and sanitation.

\$457 million, or 14% of the money will go to Colleges and Universities. \$607 million, or 18% will go to K through 12 local schools.

\$515 million will go to the Department of Natural Resources for upgrades to lodges, cabins, and camping areas. \$456 million will go to prisons.

Legislative: Billions Bridge (Cont'd)

The Ohio Department of Transportation and the Kentucky Transportation Cabinet applied for \$1.66 billion in federal grant funding, or 60%.

Engineering design will proceed while awaiting the cash. ODOT has requested consultant proposals for the work.

Each state will pay for its side of improvements to feeder interstates and access ramps, approximately 8 miles. A companion corridor bridge also will be built to the west side of the existing span.

Separately, ODOT released \$51 million for 44 new Highway Safety Improvement Program safety projects in 32

counties across the state. 58% of the funding will go to local governments, including widening of shoulders, installing rumble strips, and modifying culverts.

Legislative: Private Prompt Pay (Cont'd)

House Bill 68 would require private owners to make payments after 30 days of approval of a pay application. Failure to timely pay would incur 18% interest and attorney fees.

The General Assembly only has another couple of weeks in the session before returning to legislative districts for campaigning. The legislation is ready for passage, but a vote is not yet scheduled.

Legislative: [Non] Reciprocity (Cont'd)

If passed, out-of-state licensed design professionals and contractors could obtain an Ohio license, but without reciprocally granting the out-of-state license to an Ohio resident. Current law provides for equal reciprocity already.

The rationale for the legislation is the belief that licensing is an obstacle to recruiting professionals to work in Ohio.

With the General Assembly facing recess for November elections, the legislation may not have time for three hearings in the House before year-end.

Judicial: Mechanics' Lien Security **Release Not Appealable**

Pursuant to R.C. 1311.02, the contractor could only obtain a mechanic's lien for work performed or materials furnished. Since the unpaid labor and materials was a fraction of the Mechanic's Liens based upon work that had not yet been

The Construction Conversation

May, 2022

Page 3

performed, the owner need only post security for the value of completed work and materials to have the liens fully released.

Because the underlying claims remained to be litigated, including the remaining lien claims against the reduced security, the trial court's decision was not a final, appealable order.

As an interlocutory order not affecting a substantial right, the trial court's setting of a lower security amount was not appealable.

Recovery Funding, L.L.C. v. Beckman, 10th Dist. Franklin No. 20AP-592, 2022-Ohio-1095.

Judicial: Contractor Not Personally Liable by Personal Performance

The implication was that the home builder was performing as a sole proprietor, and not shielded by the limited liability of a corporate structure.

The Court of Appeals reversed, holding that the homeowner has the burden to prove that the contractor was not working as a corporate entity, even though that entity was named in the contract documents.

As a sole proprietorship, the individual business owner is personally liable. But, under R. C. 1705.48(A) and (B), the owner of a limited liability company is not liable for the corporate debts.

The fact that the contractor performed the work personally also "is not necessarily indicative that he is personally liable under the contract."

The appellate court also questioned the damages, as only being estimates and not

actual costs incurred for repairs. This issue required trial, with the homeowner having the burden of proof of actual damages, not mere speculation.

Riesterer v. Porter, 6th Dist. Erie, Case no. E-21-005, 2022-Ohio-1698.

Administrative: Intel Selects Contractors (Cont'd)

Subcontractor selection for the initial he early excavation work is expected in the next months.

New Albany Company affiliate MBJ Holdings and EMH&T consultants applied for an isolated wetland permit from the Ohio Environmental Protection Agency. The consultants are offering a mitigation plan for the expected destruction of wetlands over 926 acres of affected land. The plan will require significant re-routing of utilities.

The two facilities are expected to cover 2.88 million square feet of space, including offices, stormwater facilities, and other infrastructure.

-- 30 --

The Construction Conversation

May, 2022

Page 4

Join us in

The Construction Conversation

Call-In

on

Thursday, June 23, 2022

3:30 p.m.

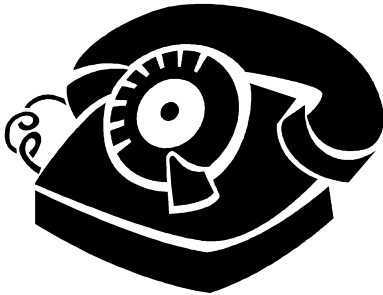
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The Construction Conversation

May, 2022

Page 5