



## **The Construction Conversation**

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

December, 2017

A Service of Luther L. Liggett, **Graff & McGovern, LPA**  
[www.GraffMcGovern.com](http://www.GraffMcGovern.com)

#### **Legislative: Right-to-Work Initiatives**

Ballot language will be introduced to change the Ohio Constitution to eliminate closed union shops, in both private and public “Right-to-Work” initiatives. (Cont'd page 2.)

#### **Administrative: Government Construction in the New Year**

State and local government are announcing capital construction budgets as the new year begins. Ohio's General Assembly will pass a Capital Bill by June 30, 2018, to fund construction of state buildings and highways for the following two fiscal years. (Cont'd page 2.)

#### **Judicial: Prime Contractor Insurance May Cover Subs**

The Ohio Supreme Court accepted a discretionary appeal to consider whether an owner may look to the prime contractor's insurance for subcontractor workmanship defects. (Cont'd page 2.)

#### **Legislative: Bills Carry Over to New Year**

Legislation introduced in 2016 but not yet passed into law will remain in consideration during 2018, including numerous bills relating to the construction industry. (Cont'd p. 3.)

#### **Administrative: OCILB Continues Enforcement**

The Ohio Construction Industry Licensing Board cited sixteen trades contractors either for working without a license, or allowing unlicensed contractors to use another contractor's license. (Cont'd p. 5.)

#### **Judicial: Unlicensed Plumber Cannot Prove Damages**

An unlicensed plumbing contractor working on a residential project won a finding of contract breach by the homeowner, but no damages. (Cont'd p. 5.)

#### **Legislative: Statistical Benchmarks**

The Ohio General Assembly sent only 4% of bills introduced to the Governor for signature, introducing 692 bills during the first half of its biannual session. (Cont'd p. 5.)

#### **Judicial: Supplier Must Sue in the Project County**

A court has held that a construction materials supplier enters into a “construction contract” and therefore must bring suit for payment in the Ohio county where the project is located. (Cont'd p. 5.)

# **The Construction Conversation**

December, 2017

Page 2

## **Legislative: Right-to-Work Initiatives** **(Cont'd)**

State Representative John Becker (R, Cincinnati) will introduce six separate Constitutional amendments, which if passed by the General Assembly, will appear on the statewide ballot in 2018.

The proposed amendments include:

- Private-Sector Open Shop (“Right-to-Work”).
- Public-Sector Open Shop (“Right-to-Work”).
- Prevailing Wage Repeal.
- Union Dues deduction and political use prohibition.
- Project Labor Agreement prohibition.
- Union Re-certification annually.

Representative Becker has a business background, including a school district treasurer’s license. His stated interest in serving in the legislature is to repeal Ohio’s income tax.

The General Assembly will end its current session effectively on June 30, 2018, so as to allow legislators to return home for re-election campaigns. Therefore, this legislation must pass both House and Senate in the next six months.

## **Administrative: Government** **Construction in the New Year (Cont'd)**

The Ohio Turnpike and Infrastructure Commission approved a capital budget of \$121 million, which will include upgrading Customer Service Centers or plaza facilities. Detail can be found at:

<https://www.ohioturnpike.org/about-us/resolutions>

The City of Columbus signed a project labor agreement with local trades unions which creates the Community Benefits Fund, offering apprenticeship scholarships. The program also will fund tool and safety kits, and educational materials for local schools.

The Greater Cleveland Partnership requested financing for fourteen high-impact projects, including \$1.25 million for the MetroHealth System for police station and the life-flight unit, and innovation purposes.

The Ohio Facilities Construction Commission is soliciting a Construction Manager at Risk to renovate the former College of Business building to become the new Taft College of Law. The project is estimated at \$40 million, for which proposals are due January 30, 2018.

For more information see:

<http://ofcc.ohio.gov/Opportunities.aspx>

## **Judicial: Prime Contractor Insurance** **May Cover Subs (Cont'd)**

The Third District Court of Appeals for Hancock County found against a prime contractor’s comprehensive general liability (“CGL”) insurer, when an owner suffered water damage caused by faulty subcontractor workmanship.

This result is opposite recent Ohio Supreme Court precedent, which found that CGL coverage cannot be used for workmanship, as contractors’ business risks are not covered by insurance.

“The key issues are whether the contractor controlled the process leading to the damages and whether the damages were anticipated.” *Westfield Ins. Co. v. Custom*

# The Construction Conversation

December, 2017

Page 3

*Agri Sys.*, 133 Ohio St.3d 476, 2012-Ohio-4712.

In a significant departure from the standard, the Court of Appeals for Hancock County noted that the exception to that exclusion is when the work is performed by a subcontractor, causing property damage.

The insurer appealed, citing precedent that subcontractor workmanship defects are not unexpected occurrences, and therefore are not insurable.

The insurer argues that CGL policies are intended to insure the prime contractor for unforeseen injuries to third parties, but not intended to insure project parties from the prime's construction work.

A decision is expected to take at least six months.

*Ohio Northern Univ. v. Charles Constr. Serv.*, Ohio Supreme Court Case no. 2017-Ohio-0514.

## **Legislative: Bills Carry Over to New Year (Cont'd)**

**HB 75 Professional Licensure-Armed Forces** (Gavarone, R, Bowling Green) To establish an expedited process to grant a professional license to an individual who is on active duty as a member of the armed forces of the United States, or is the spouse of such an individual, and holds a valid license in another state.

Two hearings, Proponent testimony; appears stalled.

**HB 110 College Credit Apprenticeships** (Hagan, R, Alliance) To create a subprogram of the College Credit Plus Program that permits students to

participate in certified apprenticeship programs.

One hearing, sponsor testimony; no further action.

**HB 121, SB 95 Pipe Material Specifications** (Edwards, R, Nelsonville; Terhar, R, Cincinnati) To require a public authority to consider all piping materials that meet the engineering specifications for a state-funded water or waste water project.

Five hearings with significant opposition; Chair's discretion to consider more hearings in 2018.

**HB 127 Building Code Requirements-Welding** (Perales, R, Beavercreek) To establish in the Ohio Building Code requirements pertaining to structural steel welding and bridge welding.

Three hearings, likely to move.

**HB 128 Building Inspection Regulations** (Roegner, R, Hudson) To permit a general contractor or owner of specified buildings to hire a third-party private inspector or a certified building department for building inspection.

Three hearings, stalled.

**HB 148 Home Improvement Board** (Patmon, D, Cleveland) To require statewide registration of home improvement contractors.

No hearings; not likely to move.

**HB 163 Prevailing Wage Public Improvement Projects** (Roegner, R, Hudson) To make Prevailing Wage optional for political subdivisions, special districts, colleges and universities.

# **The Construction Conversation**

December, 2017

Page 4

Two hearings for advocates; not likely to pass Committee.

**HB 164 Roofing Contractors Licensure** (Patton, R, Strongsville) To require commercial roofing contractors to have a license.

Three hearings, likely to move.

**HB 180 Equal Pay Act** (Clyde, D, Kent) To require a contractor submitting a bid for a state contract to obtain an equal pay certificate, to establish a job evaluation system to identify and eliminate sex-based wage disparities, and to prohibit an employer from retaliating against an employee who discusses the employee's salary or wage rate with another employee.

No hearings, not likely to move.

**HB 211 Ohio Home Inspector Board** (Hughes, R, Columbus) To require the licensure of home inspectors and to create the Ohio Home Inspector Board.

Four hearings, likely to move.

**HB 269 Workers Compensation Overhaul** (Henne, R, Clayton) To rename workers' compensation bureau, to develop incentives for employers to participate in safety consultations and loss prevention programs, to require an employee who is receiving temporary total disability compensation to comply with a return to work plan

Three hearings, will continue consideration in 2018.

**HB 339 Residential Contractors** (Schaffer, R, Lancaster) To license residential construction contractors and to make changes to the law regulating specialty

construction contractors.

No hearings; likely to see hearings in 2018.

**SB 8 School Infrastructure And Technology** (Gardner, R, Bowling Green) To require the Ohio School Facilities Commission to establish a program assisting school districts in purchasing technology and making physical alterations to improve technology infrastructure and school safety and security.

Passed; pending Governor's signature.

**SB 15 College and University Requirements** (Tavares, D, Columbus) To require state colleges and universities to comply with minority business enterprise set-aside requirements, and to establish procurement goals for contracting with EDGE business enterprises.

One hearing, sponsor testimony; no further action.

**SB 43 Township Building Codes** (Bacon, R, Columbus) To enable limited home rule townships to adopt building codes regardless of any similar codes adopted by the county in which the township resides.

Passed Senate Local Government Committee, pending Senate floor vote.

**SB 72 Prevailing Wage Law** (Huffman, R, Lima) To make Prevailing Wage optional for political subdivisions, special districts, colleges and universities.

No hearings, not likely to move. (See HB 163 above.)

**SB 115 Roofing Contractor**

# **The Construction Conversation**

December, 2017

Page 5

**Registration** (Bacon, R, Columbus) To require the registration of roofing contractors.

One hearing, sponsor testimony; appears stalled (see HB 164 above.)

## **Administrative: OCILB Continues Enforcement (Cont'd)**

The Plumbing Section cited two unlicensed and one licensed contractors.

The Electrical Section cited six unlicensed and five licensed contractors.

The HVAC/Refrigeration Section cited one unlicensed and one licensed contractors.

The Board finds violating contractors often through referrals by other contractors.

While the Board has authority to penalize such violations, typically the Board works with the contractors to get them properly licensed.

## **Judicial: Unlicensed Plumber Cannot Prove Damages (Cont'd)**

The plumbing contractor exceeded the construction schedule, but the court held that the homeowner allowed the contract to continue. The plumbing work failed inspection, but the court held that the contractor was entitled to payment for the work completed.

Since the homeowner stopped the work, the court found the homeowner in breach of contract.

Yet in the end, the contractor received no compensation, because the contractor could not offer clear evidence “as

to how much of the work was completed.”

On appeal, the court affirmed the lower court decision, giving deference to evidentiary findings of firsthand observation by the judge.

*Daniel v. Walder*, 2<sup>nd</sup> Dist. Montgomery, 2017-Ohio-8914

## **Legislative: Statistical Benchmarks (Cont'd)**

House members introduced 271 bills, while Senators introduced 241 bills, rather equal. But the House passed twice as many, or 99 bills, while the Senate only passed 50 bills.

The fastest legislation took 57 days to be signed. House Bill 11 (Rep. Scherer, R, Circleville) incorporated federal tax law into Ohio law, passing unanimously.

Only 80 bills (12%) included bipartisan support as introduced; none have made it to the Governor.

## **Judicial: Supplier Must Sue in the Project County (Cont'd)**

In the case, a concrete supplier delivered concrete to a subcontractor. The owner paid the prime contractor, but the prime failed to pay the sub, which did not pay the supplier. The supplier tried to sue in its home headquarter county.

The court held that R.C. 4113.62(F)(5) applies, as the supplier delivered the concrete to the job site.

In the alternative, in a case involving multiple unpaid suppliers might be litigated in numerous counties at the same time.

-- 30 --

Join us in

## **The Construction Conversation**

### **Call-In**

on

**Thursday, January 18, 2018**

2:30 p.m.

Dial In: 805-309-0010

Access Code 754-477-909 #

Calendar for the Year:

Thursday, February 15, 2018

Thursday, March 15, 2018

Thursday, April 12, 2018

Thursday, May 17, 2018

Thursday, June 14, 2018

Thursday, July 12, 2018

Thursday, August 16, 2018

Thursday, September 13, 2018

Thursday, October 18, 2018

Thursday, November 15, 2018

Thursday, December 13, 2018

