



The Construction Conversation

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

April 2024

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Legislative: Roofing Contractor License

After passing the House of Representatives last June by a 2-to-1 majority, House Bill 129 began Senate hearings in the Government Oversight Committee with sponsor testimony to create a state Roofing Contractors' License. (Cont'd p. 2.)

Legislative: Joint Purchasing of Construction

After opposition to House Bill 145 to avoid competitive bidding for construction services in public works, the sponsor agreed to an amendment revising the term, with no obvious improvement. (Cont'd p. 2.)

Administrative: OCILB Quarterly Report

The Ohio Construction Industry Licensing Board's Specialty Sections met in April to approve new applicants for licensure, either by test or by reciprocity under law. The Administrative Section reported quarterly expenditures of \$618,818.00, or \$2.5 million annualized. (Cont'd p. 2.)

Judicial: Preliminary Injunction Preserves Construction Funds

A Court of Appeals reversed a trial

court's refusal to issue a preliminary injunction to preserve the assets of a contractor likely to become insolvent. (Cont'd p. 3).

Judicial: No Fees for Enforcing Settlement

A homeowner and contractor settled a construction dispute. When the contractor failed to perform, homeowner sued to enforce the settlement agreement, asking for attorney fees. The trial court refused to award fees in the absence of bad faith. (Cont'd p. 3).

Legislative: University Construction Funding

Ohio's Universities are testifying before the Senate Workforce and Higher Education Committee about their request for \$300 million in construction funding for the pending capital appropriation. (Cont'd p. 3).

Judicial: Mechanics' Liens Arbitrable

The Cuyahoga County Court of Appeals reversed a trial court that failed to stay a supplier's lawsuit to foreclose a mechanics' lien, pending arbitration. (Cont'd p. 4).

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Legislative: Roofing Contractor License **(Cont'd)**

Representative Tom Patton (R, Strongsville) testified that the legislation would add a new licensing section to the Ohio Construction Industry Licensure Board.

Roofing contractors with three years' continuous business experience would be grandfathered-in if meeting additional financial criteria. If not grandfathered, a contractor must show 5 years' experience to sit for an examination.

Patton served in the Ohio Senate since 2008, and is serving his fourth term as a State Representative. He has served in legislative leadership positions, and is highly respected by all.

The legislation will need Proponent Testimony, and a third hearing for Opponent Testimony. Patton stated that the industry supports the legislation, and was unaware of opposition. House opposition came primarily from conservative legislators opposed to new licenses.

Legislative: Joint Purchasing of Construction **(Cont'd)**

Legislators introducing the bill stated the legislative intent in Sponsor Testimony: "This allows political subdivisions to participate in contracts entered into by another political subdivision without having to go through the entire contract procurement process."

In the name of "government efficiency", public notice and competitive opportunities for all to bid would be eliminated.

The House legislation has a companion Senate Bill 23, which passed a Senate Committee but has not passed the Senate as a whole.

Facing opposition, the sponsors amended the legislation excepting design professionals, and to still require Qualifications Based Selection, R.C. 153.65 et seq.

However, the Associated General Contractors opposes the concept in whole, along with other construction trade associations.

The operative language of the bill states that, "Services" includes construction services, but does not include professional design services. This would open the door to selecting construction contractors through a private trade association.

To further address opposition, the latest amendment leaves the legislation to read, "Services" includes installation, repair, upgrade, replacement, and maintenance. "Services" does not include professional design services.

Thus, it appears a distinction without a difference, still allowing public entities to avoid Ohio's historic competitive bidding requirements.

Administrative: OCILB Quarterly Report **(Cont'd)**

The Ohio Construction Industry Licensing Board issued 3,782 specialty trades contractor licenses in the first three months of 2024.

The HVAC-Refrigeration Section approved 25 applicants for testing, denying 8, and approving 12 reciprocity applicants.

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The Electrical Section approved 74 applicants for testing, and 12 reciprocity applicants.

The Plumbing-Hydraulics Section approved 43 test applicants, and 13 reciprocity applicants.

Senate Bill 238 would add a “Residential-Only Specialty Contractor” License to the OCILB. Introduced on March 26, 2024 by Senator Tim Schaffer (R, Lancaster), the bill is assigned to the Government Oversight Committee.

Judicial: Preliminary Injunction Preserves Construction Funds (Cont’d)

Homeowners deposited over \$619,000.00 to start the construction of a luxury home. When the builder failed to begin construction, Homeowners sued, asking the court to require their deposit be put into escrow. They noted that mechanics’ liens indicated the contractor’s insolvency.

The trial court denied the injunction, instead staying the case pending arbitration, as required by the contract. The trial court reasoned that mechanics’ liens were an ordinary part of the construction business.

The Court of Appeals ruled that the trial court erred by not issuing the preliminary injunction. "As stated by the supreme court, "[w]hen a trial court is faced with a motion to stay pending arbitration and a motion for a preliminary injunction, the motion for a preliminary injunction should be heard first."

The denial of the injunction was a final, appealable order because even if the Homeowners ultimately won damages, a lack of funds would render the judgment meaningless.

Bettman v. JDH Bldg. Group, LLC, 12th Dist. Warren, 2024-Ohio-1092.

Judicial: No Fees for Enforcing Settlement (Cont’d)

Ohio courts follow the “American Rule” in whether to award attorney fees. Parties must bear their own costs of litigation unless a statute or contract provision directs the award of fees to the prevailing party, in the absence of bad faith.

Settlement of claims is common. When litigation is involved, typically a settlement is put in writing or on the court record. The settlement is a second contractual agreement, the first being the construction contract.

Therefore, in the absence of bad faith, if the settlement agreement does not require payment of attorney fees for failure to follow the settlement terms, the homeowner cannot recover attorney fees.

Vitantonio v. Am. Constr. Group, LLC, 9th Dist. Summit, 2024-Ohio-325.

Legislative: University Construction Funding (Cont’d)

Chairman Jerry Cirino (R, Kirtland) praised Wright State’s cost-cutting, stating that, “It almost seems like you’re running a business, which is a good thing.”

Each University President testified as to their institution’s cost-cutting since Covid impacted student enrollment, employment cuts, and additional public debt.

Each President detailed the campus construction projects which funding would initiate. The University of Cincinnati requests \$41 million to renovate the original

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1917 chemistry building.

House Bill 27 passed both the House and the Senate, with construction appropriations totaling \$1.37 billion.

House Bill 2 passed the House with local earmarks, only to be rejected by Senate leadership and therefore stalled.

Both bills will be negotiated by Republican leadership, and must pass by June 30, 2024.

Separately, the Ohio Facilities Construction Commission highlighted the new Fire Academy Search and Rescue Training House in Reynoldsburg. Ohio maintains over 1,000 fire departments staffed mostly with volunteers. The Fire Academy trains over 5,000 students annually.

OFCC also approved updates to the School Design Manual, now in digital form.

The Ohio Water Development Authority awarded \$29.6 million in low interest loans for twelve projects across the state through the Fresh Water Loan Program.

The largest OWDA loan is for \$16.9 million for the construction of 28,000 feet of waterline in the City of Whitehall, Franklin County.

Judicial: Mechanics' Liens Arbitrable **(Cont'd)**

The construction company had issued a purchase order to the material supplier which contained an arbitration requirement. The supplier did not sign the purchase order, but performed the work. When not paid, the supplier filed its

mechanics' lien, then sued.

Significantly, the Court held that under Ohio law, "a written contract containing an arbitration agreement does not need to be signed to be enforceable." Because the supplier performed the work and sent invoices without disputing the arbitration provision, the supplier agreed to arbitrate all claims, notwithstanding its mechanics' lien.

Cuyahoga Supply & Tool, Inc. v. BECDIR Constr. Co., 8th Dist. Cuyahoga, 2024-Ohio-1375.

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Join us in

The Construction Conversation Call-In

on

Wednesday, May 15, 2024

3:30 p.m.

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

Topic: April Construction Conversation
Time: May 15, 2024 03:30 PM Eastern
Time (US and Canada)

Join Zoom Meeting

<https://us02web.zoom.us/j/89107211686?pwd=QU1vMzFGK3huUGFyYkNrbHZVRXdPdZ09>

Meeting ID: 891 0721 1686
Passcode: 573907

- +1 301 715 8592 US (Washington DC)

