



The Construction Conversation

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

May 2024

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Legislative: Democrats to Virtually Nominate President

After Republicans failed to amend Ohio's August 7th deadline for registering Presidential candidates, the Democratic National Committee will virtually nominate President Biden before the National Convention on August 19th. (Cont'd p. 2.)

Legislative: Few Bills Passed

With only two floor days scheduled before summer recess beginning July 1st, the legislature passed only 24 bills of 898 introduced, or less than 3%, all signed into law by the Governor. (Cont'd p. 2).

Legislative: Colleges Capital Appropriation

With the Constitutional requirement of a biennial construction budget, Ohio's Colleges and Universities work through the Ohio Department of Higher Education (formerly Board of Regents) to request funding for campus bricks and mortar projects. (Cont'd p. 2).

Legislative: Prison Capital Appropriation

From the Capital Appropriations legislation, the Ohio Department of Rehabilitation and Correction is planning nearly \$1 billion in the next 6 years for safety and security renovations, and not including another \$1 billion for a new penitentiary. (Cont'd p. 3).

Legislative: Public Works Capital Appropriation

The Ohio Public Works Commission has requested \$400 million for local infrastructure projects, after which its Constitutional authority will sunset, terminating the historic program. (Cont'd p. 3).

Judicial: Tort for Improper Mechanics' Lien

A construction contractor of a dairy barn knowingly filed a defective mechanics' lien on the wrong real estate. A court of appeals reversed the trial court's finding in favor of the contractor when the owner claimed tortious interference in its bank financing. (Cont'd p. 3).

Judicial: Unlicensed Electrician Not Liable

A court found that an unlicensed electrician working under the license of another licensed electrician who pulled the building permit was not liable for fraud or misrepresentation. (Cont'd p. 3).

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Legislative: Democrats to Virtually Nominate President (Cont'd)

While this calendar discrepancy occurred in 2012 and 2020 during COVID, majority Republican Representatives and Senators refused to pass legislation allowing the incumbent President to be on the ballot.

On May 24, 2024, Governor DeWine called a Special Legislative Session pursuant to Article III, Section 8 of the Ohio Constitution to address the issue.

“Ohio is running out of time to get the sitting President of the United States on the ballot this fall. Failing to do so is unacceptable,” said Governor DeWine. “It is important that when Ohioans cast their vote for President of the United States, United States Senator, and many other offices this fall, they have the opportunity to cast a vote for either of the major party candidates for those offices.”

Initially, the Ohio Senate added remedial language to HB 114, but also added controversial language regarding restrictions for statewide ballot issues. Thus, Democrats would have to vote for the “log-rolled” provisions which they oppose, just to get the President on the Ohio ballot.

Special Session House Bill 1001 addresses inclusion of the President on the Ohio ballot in simple language without other issues. The House passed the legislation May 30th, by a split vote of 63 to 31, and sends it to the Senate for final consideration.

Legislative: Few Bills Pass (Cont'd)

Nine Senate Bills passed on a variety of subjects. Fifteen House bills made it through, including 5 budgets which are mandatory to fund continuing agency

operations. Budget bills typically include substantive law which is unopposed.

The legislature is elected in the November General Election of every even year. As a part-time entity, typically the members only meet in the first six months of each year. Recesses last six months for members to pursue other employment, and to campaign in local districts.

Therefore, after July 1st, it is unlikely for the legislature to return until after the November 5, 2024 General Election.

Legislative: Colleges Capital Appropriation (Cont'd)

The Senate Workforce and Higher Education Committee has held hearings to talk about construction requirements, while using the hearing to inquire about spending on diversity, equity, and inclusion, a hot-button for Republicans.

The Ohio State University is the largest request of 38 institutions, asking for \$76.5 million for the next two years beginning July 1st. This amount represents infrastructure projects for 50 campus buildings.

Individual projects can be significant. For instance, Youngstown State University seeks \$10.7 million to renovate its 1960's-vintage Student Center.

Overall, the 14 Universities seek \$300 million, and the 23 two-year Colleges seek \$100 million. Columbus State Community College is the largest request of the two-year schools, exceeding \$16 million.

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Legislative: Prisons Capital Appropriation (Cont'd)

For the next 3 biennial budgets, DRC estimates the need of over \$150 million annually for construction.

Much of the DRC budget request results from historical neglect in renovating its 610 buildings, including 26 prisons housing 45,000 inmates. DRC details these construction needs in a 326-page “Capital Improvement Plan: FY25-30”, a public record.

Separately, the Department of Youth Services requested \$147 million, including \$50 million for the Cuyahoga Hills Juvenile Correctional Facility, and \$67 million for the Indian Hill Juvenile Correctional Facility.

Legislative: Public Works Capital Appropriation

In 1987, Ohio voters amended the Constitution to authorize the State Capital Improvements Program for local infrastructure, including roads, bridges, water supply and distribution, wastewater, solid waste disposal, and storm water projects.

Voters reauthorized the funds in 1995, 2005, and 2014. But legislation to renew the program through a Constitutional amendment has not been forthcoming.

Judicial: Tort for Improper Mechanics’ Lien (Cont’d)

When the contractor sought payment for partial construction, the owner refused to pay due to design and construction defects. The contractor filed a mechanics’ lien on a different parcel of land owned by the same

owners, causing a cloud on that unrelated title. Then the contractor sued.

The owners filed a counterclaim for tortious interference of their bank financing of the unrelated parcel. The contractor refused to release the lien.

After trial, the jury ruled in favor of the owners, which the trial judge reversed with a Judgment Notwithstanding the Verdict. The Court of Appeals held this to be error, because the owners had presented evidence of tortious interference by virtue of the contractor knowingly refusing to release an improper lien.

Universal Steel Bldgs v. Dues 2024-Ohio-698

Judicial: Unlicensed Electrician Not Liable (Cont’d)

The business owner sued for faulty workmanship rather than pay the electrician, in part noting that the electrician was not licensed.

The court found that the electrician need not be licensed if working under another’s license:

“The Defendant procured a permit under the name of a licensed electrician. This process seems to be the standard in the area of electrical work. A non-licensed electrician will often complete work under the permit pulled by a licensed electrician. Any liability would fall on the licensed electrician that pulled the permit. Mr. Wellman, the Plaintiff’s witness, testified that he did pull the permits for the outside work and that he knew a third party would be doing the work.”

As a result, the owner had to pay for

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the work of the unlicensed electrician.

Elser v. Johnson, 2024-Ohio-1745

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Join us in

The Construction Conversation Call-In

on

Thursday, June 13, 2024

3:30 p.m.

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

Topic: Construction Conversation

Time: Jun 13, 2024 03:30 PM Eastern Time
(US and Canada)

Join Zoom Meeting

<https://us02web.zoom.us/j/85128883045?pwd=ZLlgW6QbFmaMejyReAPZbQoImrDDFy.1>

Meeting ID: 851 2888 3045

Passcode: 406146

Dial by your location

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