

# **The Construction Conversation**

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

June, 2023

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### **Legislative: Eliminating Competitive Bids for Public Construction**

Facing industry opposition, legislation proceeded in both chambers, to allow any Ohio political subdivision to avoid competitive bidding for construction contractors, merely by joining with another subdivision that participates in a "joint purchasing program" operated by a trade association. (Cont'd p. 2.)

### **Legislative: Roofing Contractor Licensure Makes Progress**

House Bill 129 passed the House in a split vote to require licensure of commercial roofing contractors, after years of pursuing such an initiative. Sponsored by Representative Tom Patton (R, Strongsville), the bill saw bipartisan support and opposition in passage out of Committee and on the House Floor. (Cont'd p. 2.)

### **Legislative: State Budget Conference includes Building Code**

The State Operating Budget passed both chambers with different versions, so now is being considered in a Conference Committee. At issue are Republican tax cuts, and spending cuts for at-risk populations, with Senate and House leadership at odds. (Cont'd p. 2.)

### **Legislative: Prompt Pay in Private Construction**

House Bill 203 would require owners of private construction projects to pay prime contractors within 30 days of a

final invoice. (Cont'd p. 2.)

### **Legislative: County Engineer Need Not be Surveyor**

Renewing a perpetual debate, State Representative Mark Johnson (R, Chillicothe) proposes to eliminate the requirement that a County Engineer must be licensed as both a professional engineer and surveyor. (Cont'd p. 3.)

### **Legislative: Expedited Building Appeals**

Senate Bill 41 passed the Ohio Senate unanimously, to allow for expedited building code appeals the day after denial, with a decision in 5 days. (Cont'd p. 3.)

### **Judicial: Occupancy Permit Not Evidence of Contract Completion**

Homeowners suffered fire damage and asked a local contractor to finance and repair the damage. Contractor's mom offered a note and mortgage to pay her son, then foreclosed for payment. (Cont'd p. 3.)

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## **Legislative: Eliminating Competitive Bids for Public Construction (Cont'd)**

The Senate version, sponsored by Senator George Lang (R, West Chester) and Representative Thomas Hall (R, Middleton), was voted out of the Senate Government Oversight Committee in the face of opposition from the Associated General Contractors and the Mechanical Contractors Association of Ohio.

Three Republican Committee members, including the sponsor, voted in favor, while opposed by Republican Senator Niraj Antani (R, Miamisburg) and Democrat Senator Paula Hicks-Hudson (D, Toledo).

Separately, companion House Bill 145 faced opposition testimony in a third hearing, while a representative of Sourcewell testified that it makes money by charging suppliers who want to bid on such contracts.

With the summer recess imminent, it appears that the legislation will await further consideration in the Fall.

## **Legislative: Roofing Contractor Licensure Makes Progress (Cont'd)**

An amendment to allow roofing contractors to work on residential construction eliminated some opposition. Other opponents generally are opposed to licensure as a barrier to employment, and that licensure costs raise the price passed on to the consumer.

The bill now proceeds to Senate hearings in the Fall.

Separately, Senate Bill 77 introduced by Senator George Lang (R, West Chester) would apply consumer protection practices

to roofing construction. Assigned to the Senate General Government Committee, the bill has not received any hearing.

## **Legislative: State Budget Conference includes Building Code (Cont'd)**

Rolled into the budget without allowing opposition testimony are House Bill 65 and Senate Bill 67. This legislation would allow an applicant for a local building permit to seek such permit from any building department in the state, if the local building department “is unable to... issue a permit” in 5 days.

Sponsored respectively by Representatives Jamie Callender (R, Concord) and Sarah Fowler (R, Ashtabula), and Senators Jerry Cirino (R, Kirkland) and Sandra O’Brien (R, Rome), the legislative committees only heard Sponsor Testimony before moving the proposal into the 4,000-page Budget Bill.

As a result of the move, neither bill required even Proponent Testimony to explain the need for such legislation, nor Opponent Testimony explaining the problems with the legislation.

Opposed are the Ohio Building Officials Association, the Ohio Municipal League, and the American Institute of Architects, Ohio Society.

The Budget also includes \$1 billion for utility infrastructure construction projects, funded by some state funds and a possible PUCO rider to bill utility customers.

## **Legislative: Prompt Pay in Private Construction (Cont'd)**

With bipartisan sponsorship, the

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legislation has enjoyed three hearings in the House Commerce and Labor Committee, after passing the House last session but running out of time. The bill is scheduled for opponent testimony before summer recess.

Ohio Revised Code 4113.61 requires the prime contractor to pay the subcontractors and materialmen related to the owner's payment within ten days. If the subcontractor or material supplier must sue for collection, the judgment includes 18% interest and attorney fees.

But no payment begins without the owner's initial payment. Ohio law currently requires public agencies to pay within 30 days of the approved pay application. This legislation brings private construction into line with public practice.

## **Legislative: County Engineer Need Not be Surveyor (Cont'd)**

The requirement in R.C. 315.02 would be eliminated in any county with a population of less than 40,000, which constitutes 30% of Ohio's 88 Counties.

Representative Johnson is Chair of the House Commerce and Labor Committee which routinely addresses construction industry legislation. Mr. Johnson's own home of Ross County would not be eligible for the exception.

In prior budget testimony, Dean Ringle, executive director of the County Engineers Association of Ohio (CEAO), testified that it is critical that the dual qualification be maintained.

## **Legislative: Expedited Building Appeals (Cont'd)**

When asked how often this is a

concern, sponsor Senator Kristine Roegner (R, Hudson) stated that it doesn't happen frequently, but it is a large enough problem that the industry asked her to address it. She said the bill has support from across the ideological spectrum.

The construction industry generally has expressed support. The bill now is assigned for consideration in the House Economic and Workforce Development Committee, awaiting two more hearings before a possible vote.

## **Judicial: Occupancy Permit Not Evidence of Contract Completion (Cont'd)**

The promissory note repayment was for \$195,000.00 at 10% interest, plus a \$50 per day late fee. Repayment was triggered by completion of the work. When the local building department issued an occupancy permit, the homeowners did not pay because of poor workmanship.

Mom sued for \$221,375.00, claiming that it is irrelevant whether the homeowners disagreed with the quality of her son's work.

The trial court granted judgment to Mom, and the Court of Appeals reversed. An occupancy permit demonstrates compliance with the building code, separate from the construction contract scope of work.

When the homeowners complained that the project was not finished correctly, no repayment obligation began. "Substandard work is by definition incomplete."

*Betz v. Gist*, 2<sup>nd</sup> Dist. Montgomery, 2023-Ohio-1589

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Join us in

## **The Construction Conversation Call-In**

on

**Thursday, July 13, 2023**

3:30 p.m.

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

Join Zoom Meeting

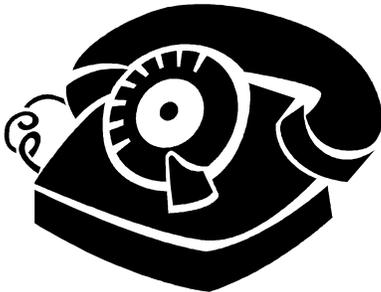
<https://us02web.zoom.us/j/82639418831?pwd=YWx0TnZDQ0NHbktwc3lrUXYrRGJldz09>

Meeting ID: 826 3941 8831

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