

The Construction Conversation

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

November, 2021

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Legislative: Design Professional Liability

Senate Bill 56 passed out of the House Civil Justice Committee, and awaits a floor vote. Sponsored by Senator Bill Blessing III (R, Cincinnati), the legislation prohibits broad indemnification clauses in public design contracts which are not insurable. (Cont'd page 2.)

Administrative: Ohio Leader in Apprentices

The Department of Job and Family Services announced that Ohio ranks first in the Midwest and third nationally in the number of individuals enrolled in certified Apprenticeship programs. (Cont'd p. 2.)

Legislative: Commercial Roofing License

The House Commerce and Labor Committee heard Proponent Testimony in favor of House Bill 88, to require a commercial roofing contractor's license. (Cont'd p. 2.)

Administrative: 1099 Employees Flagged

The Ohio Construction Industry Licensing Board requires proof of five years' W-2 "employment" from applicants, otherwise citing current license holders for allowing work by non-employee contractors.

Ohio Revised Code 4740.01(B)(2)(b) requires that the licensed contractor "employs tradespersons", which the OCILB

interprets as other-than independent contractors. (Cont'd p. 2.)

Judicial: Engineering License Denial

A Court of Appeals reversed a trial court in upholding the Ohio Board of Registration for Professional Engineers and Surveyors, deferring to the Board's discretion to deny a certificate of authorization. (Cont'd p. 2.)

Administrative: \$130 Million School Projects Approved

The Ohio Facilities Construction Commission approved two school construction projects, with \$106 million going to Celina Schools and \$21 million going to Massillon Schools. (Cont'd p. 3.)

Judicial: Prevailing Wage Enforced

The Franklin County Court of Appeals reversed a trial court decision favoring an employer who failed to pay prevailing wages to employees, and then fired the supervisor when he threatened to report the case to the State. (Cont'd p. 3.)

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Legislative: Design Professional Liability (Cont'd)

Before leaving Committee, legislators amended the bill to include municipal safety personnel immunity language, entirely unrelated to design professionals.

The bill passed unanimously out of the Ohio Senate, and likely will pass the House as soon as the schedule permits.

Administrative: Ohio Leader in Apprentices (Cont'd)

The Department disclosed that more than 19,500 Ohioans are enrolled in the work-sponsored training programs, covering 180 occupations including the construction building trades.

The U.S. Department of Labor granted \$9.4 million in 2020 for Ohio to fund pre-apprenticeship programs, including employer incentives and opportunities in under-represented populations.

Legislative: Commercial Roofing License (Cont'd)

Sponsored by Representative Tom Patton (R, Strongsville), the bill drew supporting testimony from a Newark firefighter representing the Ohio Association of Professional Fire Fighters. The Ohio Roofing Contractors Association and the Mid-States District Council of Roofers and Waterproofers submitted written testimony.

Next, the Committee will hold a Third Hearing for opponent testimony. Last session, the bill received no opponent testimony, and passed the House by a 3-to-1 margin.

Administrative: 1099 Employees Flagged (Cont'd)

The conclusion follows that if a licensed contractor engages a separate contractor to perform work, that is the same as illegally lending the license to an unlicensed contractor.

Therefore, when the Electrical Section recently received an application for a new license by an independent contractor paid with a 1099 form, the Board rejected the applicant as not having five-years' work "employed" by the licensed commercial contractor.

In addition, the Electrical Section issued a Notice of Opportunity for Hearing to the license-holder, to show cause why he did not violate the law. The Board typically fines licensed contractors \$1,000.00 for a first offense of allowing an unlicensed contractor to use the license.

Judicial: Engineering License Denial (Cont'd)

An engineering firm designated a licensed but retired Professional Engineer as the "engineering manager" for future work, to be paid as a 1099 independent contractor and not as a W-2 employee.

The Engineer's Board denied a Certificate of Authorization to the engineering firm, finding that the designated manager was not full-time in responsible charge of the firm's engineering activities, as required in Revised Code 4733.16(D).

The firm sued, and the trial court overruled the Board. The Court of Appeals reversed, upholding the Board.

The Court reasoned that a 1099

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contractor “does not work regularly for an employer”. The Court further found that the full-time manager “must work directly for the entity seeking the COA”.

Twism Enters., LLC v. State Bd. Of Registration, 5th Dist., Hamilton, 2021-Ohio-3665.

Administrative: \$130 Million School Projects Approved (Cont’d)

The Celina project funding will be used to renovate and expand the intermediate school to add pre-Kindergarten through sixth grade students, as well as career technical curricula. The state share is only 49% of total cost, so the project will cost over \$200 million.

The Massillon project funding will be used to build two new elementary school buildings. The state’s funding is 73%, with local contribution estimated at \$6 million.

OFCC also is seeking bids for an \$11.5 million service maintenance facility in Pickaway County for the Ohio Department of Transportation.

For further information, see:

<https://ofcc.ohio.gov/Opportunities2>

Judicial: Prevailing Wage Enforced (Cont’d)

The Court found that the firing of an employee-at-will is nevertheless prohibited when an employee is discharged or disciplined for a reason which is prohibited by statute.

Significantly, the Court then concluded that “the substantive right of an employee to receive the prevailing wage is

not adequately protected by the remedies set forth” in statute.

The Court reviewed the history and details of the Prevailing Wage enforcement mechanism in a lengthy opinion as support for its conclusions.

Thomson v Boss Excavating & Grading, Inc., 10th Dist. Franklin, 2021-Ohio-3743.

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Join us in

The Construction Conversation

Call-In

on

**Wednesday, December 15,
2021**

3:30 p.m.

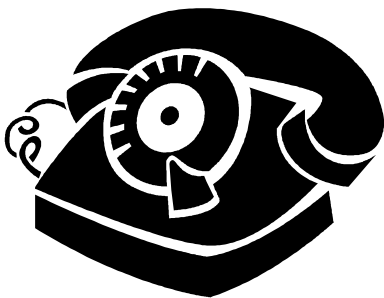
Join Zoom Meeting

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pwd=RWVncFAyTFEwb2pXK1NrQnBI
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Meeting ID: 830 2206 2470

Passcode: 122329

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