

The Construction Conversation

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

September, 2022

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Legislative: LSC, LBO

The Legislative Service Commission is the behind-the-scene entity that drafts all legislation in a common format, for introduction in the Ohio General Assembly. LSC offers significant information available to the public for all legislation currently pending. (Cont'd p. 2.)

Administrative: Mechanical, Plumbing Retrofits

Two universities are requesting proposals for the Design-Build of a mechanical and plumbing retrofit upgrade to existing facilities. The contractor will be selected by qualification proposals and not by price. (Cont'd p. 2.)

Judicial: CM at Risk Scope

After five years' litigation, a Court of Appeals remanded back to the trial court consideration of whether a Construction Manager at Risk knew the scope of work for mall construction included tenant improvements, or was outside of the contract scope. (Cont'd p. 2.)

Administrative: Apprenticeship Incentive Program

Governor DeWine announced the availability of Incentive Grants of up to \$25,000.00 for sponsors and employers of registered Apprenticeship Programs, as reimbursement for instruction and tool expenses. (Cont'd p. 3.)

Administrative: Bridge Funding

The Ohio Department of Transportation is accepting applications for the Local Major Bridge Program, using federal funds for counties and municipalities for bridge replacement, renovation, and demolition. (Cont'd p. 3.)

Administrative: Federal Construction

The federal government announces all construction projects in Ohio through the Sam.gov website. By searching your preferred criteria using key words, all projects are listed with links to design and bid documents. (Cont'd p. 3.)

Administrative: Sunshine Laws

Ohio government is presumed to be open and accessible in all aspects of records and processes. Accordingly, the Public Records Act and Open Meetings Act guarantee access for all persons seeking information including construction bid, budget, and award facts and processes. (Cont'd p. 3.)

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Legislative: LSC, LBO (Cont'd)

The legislature created LSC in 1953 to conduct studies of legislative issues. LSC's staff includes attorneys, budget analysts, economists, researchers, and support personnel.

The Legislative Budget Office is a division of LSC, responsible for financial analyses.

After a legislator introduces any bill, LSC staff writes an Analysis summarizing the purpose of the legislation. LBO then prepares a Fiscal Note and Local Impact Statement, to determine whether there is a cost resulting from passage of the bill.

LSC offers the Fellowship Program, a 13-month, full-time, paid internship for 24 college graduates each year.

For more information, visit
www.lsc.ohio.gov

Administrative: Mechanical, Plumbing Retrofits (Cont'd)

Central State University in Wilberforce (Greene County) seeks a mechanical contractor for HVAC control upgrades, estimated at a cost of \$1.2 million. Proposals are due October 4, 2022, to the project manager Browne E & C Services, Inc.

The Ohio State University in Columbus seeks a specialty contractor for the design-build of a Chilled Water Meter Upgrade at the Wexner Medical Center. Motz Engineering completed criteria documents through conceptual design, for an estimated project cost of \$1.5 million. Proposals are due October 7, 2022.

For further information on similar future projects, visit the Ohio Facilities Construction Commission "Opportunities", "Best Value RFQs".

Judicial: CM at Risk Scope (Cont'd)

The CM at Risk signed a Guaranteed Maximum Price, billed the project in full, then demanded payment of an additional \$500,000.00 for unjust enrichment of Tenant Improvements, claiming that was outside of the contract scope of work.

The litigation began in 2017, and included the mortgage bank which financed the construction. Five years later, the Court of Appeals reversed the trial court decision, sending the case back for reconsideration.

The Court of Appeals held that it could not resolve the appeal when the trial court failed to determine the facts as to scope of work. This left the Court of Appeals in the position of being an original fact-finder, not merely reviewing the decision.

But the Court of Appeals did not send back the findings in favor of the mortgage bank. The Court of Appeals affirmed that the owner breached the loan documents, and was liable for a personal guaranty, when the owner signed an affidavit claiming no knowledge of any claims, and failed to bond off the mechanics' liens. The trial court further held that the bank's mortgage had priority over the mechanics' liens, and awarded to the bank its attorney fees of over \$250,000.00.

Therefore, failing to include a clear reference in the scope of work to the Tenant Improvement plans, issued prior to the contract, cost the parties five years and

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attorney fees well in excess of the money at issue.

Four Elyria Co. v. Brexton Constr. LLC, 9th Dist. Lorain, 2022-Ohio-2989.

Administrative: Apprenticeship Incentive Program (Cont'd)

In 2021, Ohio had 19,848 active apprentices, third largest in the nation behind California and Texas.

While only 17% of Apprenticeship programs are sponsored by union-employer Joint Labor Management entities, these programs account for nearly half of all active apprentices.

A third of all Apprentices are employed in the Construction Industry. An additional third are employed in Public Administration and Educational Services. Ohio has registered 269 different occupations that offer apprenticeship training.

The overall Program is supervised by the U.S. Department of Labor's Employment and Training Administration which registers individual programs. The actual day-to-day operation of the Program is administered by the States, including the Ohio Department of Job and Family Services' ApprenticeOhio Program.

Unique to the Construction Industry, the Ohio Department of Higher Education works with Ohio's public Colleges and Universities, to grant college credit for education in the Apprenticeship Programs for Electricians, Plumbers and Pipefitters, and Sheet Metal work.

For further information, see "Apprenticeship Pathways", Transfer Credit

Ohio, Department of Higher Education.

Administrative: Bridge Funding (Cont'd)

Across Ohio, 238 bridges are eligible due to modified program requirements. 95% of project cost for engineering and construction is eligible up to a \$20 million cap.

For more information, see ODOT's Local Major Bridge Program at:

https://www.transportation.ohio.gov/programs/local-funding-opportunities/resources/local-major-bridge?utm_medium=email&utm_source=govdelivery

Administrative: Federal Construction (Cont'd)

For instance, searching for the words "solicitation", "plumbing", "October", and Place of Performance "Ohio" results in announcement of a fixed price bid for Cleanroom Air Handler Units and Exhaust at Wright Patterson Air Force Base in Dayton, bids due in October.

Using the search word "construction" can generate too many projects, as the search is too general.

By registering your company, you can pre-set searches and receive notifications when your criteria are met.

For further information, see:
<https://sam.gov/content/home>

Administrative: Sunshine Laws (Cont'd)

Revised Code Chapter 149 provides the rule that all state and local government records are open and available unless an

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express, statutory exemption applies.

Revised Code 121.22 provides that a resolution, rule, or formal action of a government body is invalid if adopted in violation of the Open Meetings Act.

Both statutory schemes provide for an award of attorney fees if a challenge to the public authority is successful. Enforcement of disclosure of public records is expedited and without the need of an attorney by filing a short form with the local Clerk of Courts for a \$25.00 fee.

To review specific legal authority and case examples, the Ohio Attorney General publishes the Sunshine Manual, free upon request:

Ohio Attorney General Public Records Unit
Re: Sunshine Manual Request
30 E. Broad St., 16th Floor
Columbus, Ohio 43215
(800) 282-0515 or (614) 466-2872
www.OhioAttorneyGeneral.gov/Sunshine

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Join us in

The Construction Conversation

Call-In

on

Thursday, October 13, 2022

3:30 p.m.

Luther Liggett is inviting you to a scheduled
Zoom meeting.

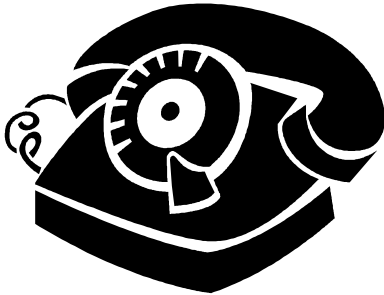
Join Zoom Meeting

[https://us02web.zoom.us/j/81462409087?pwd=bGQ1YzF0SXhrZlZlTTIzVGNpbzJHU
T09](https://us02web.zoom.us/j/81462409087?pwd=bGQ1YzF0SXhrZlZlTTIzVGNpbzJHU
T09)

Meeting ID: 814 6240 9087

Passcode: 177544

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