

The Construction Conversation

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

November, 2022

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Legislative: General Assembly Election Results

The Republican caucus in the Ohio House of Representatives picked up enough seats to create a "super majority", while the Senate Republicans remained in control. (Cont'd p. 2.)

Legislative: Out-of-State License "Reciprocity"

Senate Bill 131 passed the Senate unanimously, and is scheduled for its first hearing in the House, to require an Ohio occupational licensing authority to issue a license to an applicant who holds a license or has satisfactory work experience in another state. (Cont'd p. 2.)

Judicial: Subcontractor Cannot Force Arbitration with Non-Signatory Owner

A landscaping subcontractor sued a land owner and general contractor for over \$207,000.00 in unpaid work. The sub and general agreed to stay the lawsuit pending arbitration, as required in the subcontract. (Cont'd p. 2.)

Legislative: Joint Purchasing Includes Unbid Construction

The Senate Local Government Committee held a fourth hearing to amend Senate Bill 260 to expand local governments' authority to "cooperatively purchase" construction contractor services without competitive bidding. (Cont'd p. 3.)

Legislative: Electric Vehicle Incentives

Senate Bill 307 if passed would create incentives for electric vehicle manufacturing in Ohio, and allow electric utilities to recover the cost of transportation electrification programs. (Cont'd p. 3.)

Legislative: Design Professional Indemnification

A General Assembly Conference Committee finally reported out Senate Bill 56, to require that indemnification by architects and engineers in public contracts not exceed insurability. (Cont'd p. 3.)

Administrative: Controlling Board Awards

The Ohio Controlling Board meets every other Monday to waive competitive bid requirements, to award various state contracts. Meeting on November 7th, the Ohio Department of Natural Resources sought approval of \$33.5 million to fund improvements to the Muskingum River lock and dam structures in Morgan County. (Cont'd p. 3.)

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Legislative: General Assembly Election Results (Cont'd)

With 67 seats of 99 in the House, and 26 of 33 seats in the Senate, Republicans meet the Constitutional two-thirds vote to insert an “emergency” clause in any legislation. This eliminates the 90-day effective rule which provides for voters to consider a “referendum” vetoing any new law. Ohio Constitution, Article II, Section 1-d.

The House Republican Caucus nominated Rep. Derek Merrin (R-Monclova) as the next House speaker, replacing Bob Cupp (R, Lima) who is term-limited.

Rep. Phil Plummer (R-Dayton) will serve as speaker pro-tempore; Rep. Scott Wiggam (R-Wooster) will serve as majority floor leader; Rep. Susan Manchester (R-Waynesfield) will serve as assistant majority floor leader; Rep. Brian Baldrige (R-Winchester) will serve as majority whip; and Rep. Brian Stewart (R-Ashville) will serve as assistant majority whip.

The House and Senate are scheduled for only four more Floor Session days, after which all legislation expires if not passed.

Legislative: Out-of-State License “Reciprocity” (Cont'd)

Companion House Bill 203 also passed, but only along party lines.

If either bill passes the other chamber, out-of-state licensed design professionals and contractors may obtain an Ohio license automatically, but without reciprocally granting the out-of-state license to an Ohio resident. Current law provides for equal reciprocity already.

Sponsors promote the legislation as a “jobs bill”, to incentivize licensed professionals from outside of Ohio to move into the state. Proponents claim that licenses are barriers to entry into employment, and raise the cost of the services.

Judicial: Subcontractor Cannot Force Arbitration with Non-Signatory Owner (Cont'd)

However, the subcontractor’s lawsuit against the owner was not based on breach of contract, as the owner had not signed the subcontract with the arbitration clause.

Accordingly, the trial court held that claims against the owner must be tried, and that the subcontractor could not force arbitration upon the owner.

Under Ohio law, the parties to arbitration must agree, and cannot be forced upon a party absent agreement. Arbitration typically resolves claims more quickly than court trial and arbitrators tend to bring construction expertise.

However, the cost of arbitrators can be expensive. A landowner may not find a benefit in an arbitrator’s construction background, and Ohio law need not apply to what the arbitrator considers a “fair” resolution. There is no appeal from an arbitration absent fraud.

The Court of Appeals agreed with the trial court, that the general and subcontractor cannot force the owner into arbitration absent a provision the owner signed.

Peabody Landscape Constr. V Welty Bldg. Co., et al., 5th Dist. Licking, 2022-Ohio-3565.

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Legislative: Joint Purchasing Includes Unbid Construction (Cont'd)

Sponsored by Senator George Lang (R, West Chester), Senate Bill would add the phrase “construction services” to R.C. 9.48, allowing any public authority to hire construction contractors from a “joint purchasing program” facilitated by national or state associations of political subdivisions.

This change of law would eliminate all requirements of public notice and construction low bidding for public works.

The latest amendment inserted an exception for design professionals, which would remain subject to Qualifications-Based Selection, R.C. 153.65 et seq.

When a local authority sought legal advice whether existing law already allowed such purchases, the Ohio Attorney General opined that the statute did not permit avoiding the competitive bidding laws. Attorney General Opinion 2019-028.

Several school organizations and manufacturing representatives testified in favor of the change to law.

The Associated General Contractors testified against the legislation. “Cooperative purchasing for construction services will lessen opportunities for Ohio contractors to work on public projects and undermines Ohio’s current open and competitive procurement laws for public construction,” testified Angela Ashley, AGC.

Legislative: Electric Vehicle Incentives (Cont'd)

Sponsored by Senator Michael Rulli

(R, Salem), the bill has enjoyed three hearings in the Senate Energy and Public Utilities Committee.

But with only four days of session left, the sponsor will need to reintroduce the bill next January, 2023.

Finance of transportation electrical infrastructure is critical to Ohio’s auto industry, including battery production and test highways recently sponsored by Ohio’s Transportation Research Center adjacent to the Honda Plant.

Legislative: Design Professional Indemnification (Cont'd)

Sponsored by Senator Bill Blessing (R, Cincinnati), the bill passed the Senate unanimously, and passed the House 91-2 last January, 2022. Then the bill stalled, held up to include amendments unrelated to the purpose of the bill (“logrolling”).

The amended legislation is ready for mere concurrence by both House and Senate for final passage to send to the Governor for signature.

Administrative: Controlling Board Awards (Cont'd)

ODNR also sought approval for another \$16 million for design contracts for various wastewater and HVAC projects.

The Ohio Environmental Protection Agency sought approval to spend over \$10.5 million through grants for electrical charging stations.

The Ohio Department of Higher Education sought release of \$7.74 million for capital improvement projects for Ohio colleges and universities, along with \$5.2

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million for the Ohio Library and Information Network Project in Columbus.

Project details are a public record from the Controlling Board bi-weekly agenda in the Office of Budget and Management.

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Join us in

The Construction Conversation Call-In

on

Thursday, December 15, 2022

3:30 p.m.

Luther Liggett is inviting you to a scheduled Zoom meeting.

Join Zoom Meeting

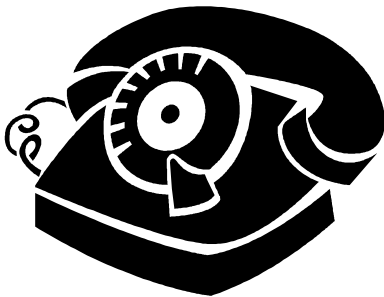
<https://us02web.zoom.us/j/88329497724?pwd=aHIxMmZiQmNYOTYySnNkc3JxYm1HQT09>

Meeting ID: 883 2949 7724

Passcode: 380095

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