

The Construction Conversation

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

February, 2020

A Service of Luther L. Liggett, **Graff & McGovern, LPA**
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Legislative: Private Prompt Pay Statute

The House Commerce & Labor Committee accepted a technical amendment to legislation which would enact a prompt pay law for private owners to pay within 30 days of a contractor's Pay Application. (Cont'd page 2.)

Administrative: OFCC Revising CM at Risk Documents

The Ohio School Facilities Commission is meeting with interested parties to review amendments to the agency's standard front-end documents for construction contracting for public works projects, including Construction Manager at Risk and Design-Build delivery methods. (Cont'd page 2.)

Judicial: Government Not Immune

Two Ohio courts of appeals reversed trial court findings that government agencies were immune from liability for construction site accidents and injuries, based on immunity exceptions in law. (Cont'd p. 2.)

Legislative: Roofing Contractor Licensure

House Bill 199, sponsored by Representative Tom Patton (R, Strongsville), passed out of the House Commerce & Labor Committee with only one vote in opposition, and now moves on to House floor consideration. (Cont'd p. 3.)

Legislative: Design Professions

Senate Bill 136 enjoyed a third hearing with no opposition, to create lien rights for Architects, Landscape Architects, Engineers, and Surveyors. House Bill 402 began with sponsor testimony, to allow certified Interior Designers to seal blueprints for building permits. (Cont'd p. 3.)

Legislative: License Reciprocity, Criteria

Companion legislation in the House and Senate would open the door to any out-of-state licensee, without reciprocal licensure in the origin state. Separate legislation will require license exclusions based on a criminal record to specify the disqualifying crime. (Cont'd p. 3.)

Legislative: Building Code Exemption from Review

House Bill 517 was introduced to exempt Ohio's building and fire codes from Revised Code 121.95, current law which requires elimination of all mandatory words in administrative rules. (Cont'd p. 4.)

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Legislative: Private Prompt Pay Statute (Cont'd)

House Bill 380 enjoyed a third hearing for opponent testimony, where no opponent appeared.

The Associated General Contractors of Ohio testified as an interested party in the legislation, which would apply to non-residential, commercial private construction projects. “Notably missing is a statute requiring prompt payment from a private owner to a contractor once a request for payment is made, which H.B. 380 addresses,” as stated in AGC’s written testimony.

With no opposition, the House needs another Committee hearing to pass the bill out for floor consideration, and then Senate consideration before year end.

Administrative: OFCC Revising CM at Risk Documents (Cont'd)

Under law, all state agencies must work through OFCC with uniform documents and procedures for state construction, excepting the Ohio Department of Transportation and local administration of certain University projects.

OFCC legal staff met with the Associated General Contractors of Ohio to discuss changes impacting the CM’s, and separately met with architects and engineers.

For the Architect/Engineer Agreement Form, A/E Standard Terms and Conditions, A.E Scope of Services and Contracting Definitions for a CM at Risk Project, additional comments are due March 6, 2020.

Separately, OFCC announced new Summaries of capital construction projects in progress or completed regionally across Ohio, sorted by legislative district. For more information, see:

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

Judicial: Government Not Immune (Cont'd)

In the first case, a township service department worker improperly parked a backhoe used to uproot a tree on township property. Considering the brakes to be faulty, the worker left the backhoe on an incline, running the diesel engine so as not to warm it up on re-starting.

A person parked his pickup truck near the backhoe to pick up tools he purchased from the township. The backhoe rolled into the pickup, physically injuring the person.

The Court of Appeals held that the safe operation of equipment is not a government function, nor of government discretion, but ordinary safety. Accordingly, the township and the backhoe operator did not receive governmental immunity from the construction work.

Alcus v. Bainbridge Township, 11th Dist.
Geauga, 2020-Ohio-543.

In the second case, a homeowner sued a city for negligent maintenance of the storm sewer system. The city owned storm sewer and retention basin easements on the property next to a creek.

Revised Code 2744.02(B)(2) holds a political subdivision liable for negligence related to any proprietary function, including maintenance and repair (not construction) to

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a storm sewer system.

The city argued that the flooding is due to the creek, and not its operation of the storm sewer.

The court of appeals held that the mere easement over the flooded property raised the issue of whether the area was part of the storm sewer system.

Economus v. Independence, 8th Dist. Cuyahoga, 2020-Ohio-266.

Legislative: Roofing Contractor Licensure (Cont'd)

After five hearings, the bill received only nominal opposition, from the general viewpoint of opposing any new regulation in the construction industry.

If passed into law, the legislation would add a “roofing contractor” section to the Ohio Construction Industry Licensure Board. The bill would grandfather in any roofing contractor without a test, if meeting the other standard criteria including experience.

Separately, a version of Roofing Contractor certification is stalled in the Senate Transportation, Commerce and Workforce Committee. Senate Bill 177 has received no hearings since introduction on July 16, 2019.

Legislative: Design Professions (Cont'd)

The “Payment Assurance Legislation” now awaits a fourth hearing for a vote out of Committee, followed by consideration by the full Senate. If passed, SB 136 moves to the House for three committee hearings and floor consideration.

Pending in the House State and Local Government Committee, Interior Designers claim that they are not interested in preparing permit blueprints affecting structural changes. However, the language in the bill defines the “practice” of interior design to include building and fire code scope of work.

The Interior Design legislation is opposed by Architects, Building Officials, Fire Chiefs, and the Mayors of Ohio’s major cities. Opponents view the initiative as allowing building and fire code design by persons not trained in code.

Legislative: License Reciprocity, Criteria (Cont'd)

House Bill 432 (Rep. Powell, R, Arcanum) and Senate Bill 246 (Sen. Roegner, R, Hudson) purport to create new jobs in Ohio by automatically licensing any licensee with state criteria similar to Ohio’s.

Every Ohio license is affected, including for design professionals and contractors. Unfortunately, the legislation does not require comity, or similar treatment in the state of origin.

Opponents argue that the legislation does not create jobs by facilitating new out-of-state licensees, but merely takes work away from Ohio residents.

After two hearings in the House and five hearings in the Senate, faced with apparent opposition, legislative enthusiasm for the idea appears to have cooled.

House Bill 263 prohibits a state licensing authority from refusing to issue a license to an individual based solely on being charged with or convicted of an unspecified criminal offense or a

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nonspecific qualification such as “moral turpitude” or lack of “moral character.”

Sponsored by Representative Kyle Koehler (R, Springfield), the issue follows court rulings requiring statutory specificity as a matter of due process and fairness.

The bill passed out of the House Commerce and Labor Committee, and awaits a House floor vote.

Legislative: Building Code Exemption from Review (Cont'd)

Sponsored by Representative Bride Rose Sweeney (D, Cleveland), the bill is co-sponsored by nine other Democratic Representatives and no Republicans.

The bill appears to be a response to Senate Bill 1, sponsored by Senators Robert McColley (R, Napoleon) and Kristina Roegner (R, Hudson), to extend the statutory directive. SB 1 passed the Senate and is stalled in the House State and Local Government Committee.

R.C. 121.95 currently provides, “a state agency shall review its existing rules to identify rules having one or more regulatory restrictions that require or prohibit an action and prepare a base inventory of the regulatory restrictions in its existing rules. Rules that include the words ‘shall,’ ‘must,’ ‘require,’ ‘shall not,’ ‘may not,’ and ‘prohibit’ shall be considered to contain regulatory restrictions.”

As much of Ohio’s building and fire codes follow national or international codes for uniformity in materials and enforcement, editing the codes would have an unintended effect.

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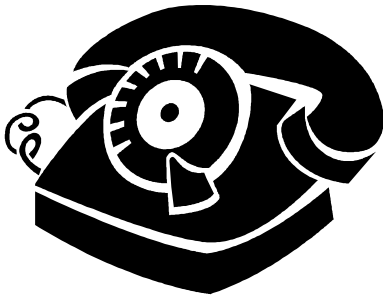
on

Thursday, March 19, 2020

3:30 p.m.

Call in and Participate

Dial In: 805-309-0010
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