

The Construction Conversation

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

May, 2019

A Service of Luther L. Liggett, **Graff & McGovern, LPA**
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Legislative: Design Professional Payment Assurance Legislation (PAL)

The Ohio Senate referred Senate Bill 136 to the Government Oversight and Reform Committee for hearings on whether to enact lien rights for design professionals in their respective licensure laws. (Cont'd page 2.)

Legislative: Apprenticeship to License

House Bill 258 would qualify persons who "completed a registered apprenticeship program" to sit for licensure testing in various construction trades. (Cont'd page 2.)

Judicial: Statute of Repose Enforced

The Fifth District Court of Appeals for Stark County dismissed a school board's lawsuit against an architect and general contractor for roofing design and construction completed thirteen years earlier. R.C. 2305.13 extinguishes any remote claim allegedly from construction activity more than ten years' earlier. (Cont'd p. 2.)

Administrative: Boiler Fees Increase

The Ohio Department of Commerce, Division of Industrial Compliance enacted a new administrative rule raising boiler inspection fees by approximately 30%, yielding nearly \$1 million for Operating Expenses. R.C. 4104.18 allows the Department to increase fees by rule, rather than pass new legislation as needed. (Cont'd p. 3.)

Legislative: Workforce Development

Legislation pending would create the TechCred program to reimburse employers for training costs for prospective and incumbent employees to earn a "micro-credential". (Cont'd p. 3.)

Judicial: Failure to Follow Corporate Formalities Creates Personal Liability

A construction contractor created two limited liability companies in which names he conducted business. A court held that the contractor is personally liable for contract damages when the contractor does not follow corporate formalities to give vitality to the LLC's. (Cont'd p. 3.)

Legislative: Licensure Law

Several bills address the rules governing occupational licensure, as the Licensure Sunset Review process has yet to begin for one third of occupational license boards under last session's Senate Bill 255. (Cont'd p. 3.)

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Legislative: Design Professional Payment Assurance Legislation (PAL) (Cont'd)

Senators Jay Hottinger (R, Newark) and Vernon Sykes (D, Akron) jointly sponsored the legislation to provide Architects, Landscape Architects, Engineers, and Surveyors with leverage for payment. Ohio remains one of the last states to provide any payment remedy to design professionals in construction.

Senators Michael Rulli (R, Salem) and Sandra Williams (D, Cleveland) signed on as Co-Sponsors.

Senator Bill Coley (R, West Chester) Chairs the Committee, and will schedule Sponsor testimony, followed by later hearings for Proponents and Opponents. At this writing, no opposition to the legislation has surfaced.

Of concern is the General Assembly's traditional summer recess starting on July 1, 2019.

Legislative: Apprenticeship to License (Cont'd)

Sponsored by Representative Jena Powell (R, Arcanum), elected to her first term, the concept is promoted by the Foundation for Government Accountability, which describes the legislative intent:

“Expanded Apprenticeships allow the completion of government-approved, private sector-created apprenticeships to fulfill costly licensing requirements—ensuring that workers receive the training they need, but in a cost-effective and expedited way. And because these apprenticeships are paid, this reform opens opportunities for young and low-income

Americans to experience the freedom of work.”

An apprentice graduate (journeyman) could test for a license as a steam engineer or boiler operator, a professional engineer (an apparent drafting error), an Ohio Construction Industry Licensing Board trade (plumbing, hydronics, HVAC, electrical contractor), or as a first responder in medical, fire, or transportation services.

The legislation also includes a broad mandate to every other licensing agency in which an apprentice program is certified.

The bill is assigned for hearings before the House Economic and Workforce Development Committee. The sponsor has called an Interested Parties meeting before hearings.

Judicial: Statute of Repose Enforced (Cont'd)

Non-codified law explains that the legislature intended this statute to protect design professionals and contractors, while allowing litigation against more current parties such as maintenance companies or building owners.

The Court reaffirmed its prior ruling, concluding that the Statute of Repose bars any action whether for breach of contract or for negligence (tort). The Ohio Supreme Court is due to issue its own decision on this same issue soon.

Bd. of Edn. v. CT Taylor Co., Inc., 5th Dist. Stark, 2019-Ohio-1731.

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Administrative: Boiler Fees Increase (Cont'd)

The Department argued in rulemaking documentation that the fees were unchanged “since they were originally introduced. This regulation adjusts the fees to account for the increasing costs associated with administering Chapter 4104.”

The rulemaking process requires notice to “stakeholders” during a comment period. The Department reported no input from stakeholders, limited to seven insurance companies.

Annual inspection fees increase to \$65.00, and to \$46.00 per hour for in-state manufacturers. A new operator license increased to a \$90.00 application fee, and \$72.00 for renewal.

See O.A.C. 1301:3-5-05.1.

Legislative: Workforce Development (Cont'd)

House Bill 2 is sponsored by freshmen Representatives Jon Cross (R, Kenton) and Michele Lepore-Hagan (D, Youngstown), to support private company partnerships with educational institutions for job training. The bill has enjoyed three hearings in the House Economic and Workforce Development Committee.

House Bill 4 is sponsored by freshmen Representatives Tracy Richardson (R, Marysville) and Phil Robinson (D, Solon), to require the Governor’s Office of Workforce Transformation to coordinate private companies with high school and college certificate programs. The bill has had two hearings in the House Economic and Workforce Development Committee.

House Bill 218 is sponsored by veteran Representative Tom Patton (R, Strongsville), to authorize Public-Private Partnerships for financing construction of buildings for all public authorities. The House State and Local Government Committee has held Sponsor testimony for the legislation.

Judicial: Failure to Follow Corporate Formalities Creates Personal Liability (Cont'd)

As sole owner of the LLC’s, the court “pierced the corporate veil” upon demonstration that the companies served as the owner’s personal alter egos, ie: that the owner behaved as though there was no difference between the companies and his personal acts.

For instance, trial evidence revealed that the companies did not have their own, separate bank accounts, such that the contractor used corporate funds for his own personal expenses.

The court found that the contractor violated Ohio’s Home Construction Service Law, R.C. 4722, by charging for additional work without written change orders. As a result, the contractor further had to pay the homeowner’s attorney fees.

Denny v. Breawick LLC, 3rd Dist. Hancock, 2019-Ohio-2066.

Legislative: Licensure Law (Cont'd)

Senate Bill 7 (Senator Peggy Lehner, R, Kettering) and companion House Bill 133 (Representative Rick Perales, R, Beavercreek) would grant a temporary occupational license to military personnel and their spouses. The Senate passed the

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bill unanimously, and the House Committee reported the bill out for floor vote.

House Bill 263 is sponsored by Representative Kyle Koehler (R, Springfield), along with eight co-sponsors, to require express description of criminal convictions which disqualify a person from a license. The bill expressly eliminates general descriptions such as “moral turpitude.” The legislation is not yet assigned to a Committee.

Under last session’s Senate Bill 255, the Speaker of the House will assign a third of licensure boards for sunset review, after the Legislative Service Commission provides a report on whether the license protects the health, safety, and welfare of the public. R.C. 101.62-101.63.

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on

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3:30 p.m.

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