

# **The Construction Conversation**

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

June, 2019

A Service of Luther L. Liggett, **Graff & McGovern, LPA**  
www.GraffMcGovern.com

### **Legislative: Design Professional Payment Assurance Legislation (PAL)**

The General Assembly is meeting down to the Constitutional deadline of June 30<sup>th</sup> to pass an operating budget, divided over whether businesses should pay state taxes. Several bills enjoyed their first hearing in June, including the Payment Assurance law for architects, landscape architects, engineers, and surveyors. (Cont'd page 2.)

### **Legislative: TechCred Program Passes House**

House Bill 2 passed the House almost unanimously, and heads to the Senate in September, to create the TechCred and MicroCredential Assistance Programs, for the purpose of job training and education. (Cont'd page 2.)

### **Judicial: Poor Workmanship May Lead to Contract Rescission**

A court of appeals held that a homeowner can seek rescission of a construction contract if a jury finds a contractor's breach of contract is so substantial and fundamental that it goes to the root of the contract. (Cont'd p. 2.)

### **Administrative: Legal Opinion to Avoid Competitive Bidding**

The Seneca County Prosecutor has asked the Ohio Attorney General to opine that R.C. 9.48(b)(1) and 167.081 technically

allow public subdivisions to avoid competitive bidding of construction contracts. (Cont'd p. 2.)

### **Legislative: Military License Bills Pass**

House Bill 133 (Rep. Rick Perales, R, Beavercreek) and Senate Bill 7 (Senator Lehner, R, Kettering) would provide a temporary license for professionals with out-of-state credentials, if their spouse is transferred into Ohio by the military. (Cont'd p. 3.)

### **Legislative: Professional Apprenticeships**

On June 5, 2019, the House Economic and Workforce Development Committee heard House Bill 258 (Rep. Jena Powell, R, Arcanum), which would eliminate work requirements to test for professional licenses, for applicants who complete an Apprenticeship program. (Cont'd p. 3.)

# **The Construction Conversation**

June, 2019

Page 2

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

The Senate Government Oversight and Reform Committee heard Senate Bill 136 (PAL) on June 18, 2019, with sponsor testimony by Senator Jay Hottinger (R, Newark) and Senator Vernon Sykes (D, Akron).

The Committee chair asked whether the legislation would allow a remedy if a developer decided not to pursue the project. Senator Sykes correctly answered that such a scenario is exactly the purpose of this bill.

Also enjoying first hearings were:

HB 20, to prohibit homeowner associations from limiting solar collector systems;

HB 199, Roofing Contractor license;

HB 247, regarding competitive retail electric services; and

HB 263, eliminating certain criminal offenses from prohibiting licensure.

Now, the legislature will recess until September, with no hearings scheduled for July or August.

## **Legislative: TechCred Program Passes House (Cont'd)**

Sponsored by Representatives Jon Cross (R, Kenton) and Michelle Lepore-Hagan (D, Youngstown), a “micro credential” would take only one year of training and be approved by the Department of Higher Education.

The bill contemplates reimbursing employers for the training costs through the Department of Development.

The legislation also contemplates creating partnerships with educational institutions and private businesses, to seek state funding for job training.

## **Judicial: Poor Workmanship May Lead to Contract Rescission (Cont'd)**

An owner contracted with a home construction contractor to build a custom home. Upon moving into the completed home, the homeowner determined that much of the work was below standards of acceptable workmanship. The court further found that the homeowner sufficiently stated facts that a jury could determine fraud, given that the contractor intentionally told third party suppliers to over-charge the homeowner, and otherwise made false representations.

Accordingly, if the fraud were proven, the homeowner would be entitled to rescind the contract, and the contractor would refund all construction payments and take back possession of the home.

*DeFoe v. Schoen Builders, LLC*, 6<sup>th</sup> Dist. Wood, Case No. WD-18-031, June 7, 2019.

## **Administrative: Legal Opinion to Avoid Competitive Bidding (Cont'd)**

The prosecuting attorney’s argument is based on a contorted reading of partnering with other public entities for “services”, or in the nature of joint purchasing of supplies.

The Associated General Contractors of Ohio (AGC), and the Ohio Contractors Association (whose members build highways) sent a strong letter of opposition to the Ohio Attorney General. If approved, the letter states, “The same construction company, whose bid was initially successful for one solicitation, would be used over and

# **The Construction Conversation**

June, 2019

Page 3

over again without the ability of other interested contractors to compete for those subsequent projects.”

The Ohio State Building & Construction Trades Council also sent a letter of opposition. “The crux of the Prosecuting Attorney’s request is essentially whether a political subdivision may evade its obligations under the prevailing wage law and applicable competitive bidding laws to purchase construction services at ‘unit prices’...”.

Typically, the Attorney General takes several months to craft a complete letter opinion, which is published and circulated statewide. The opinion is guidance, only, and subject to court rulings.

Attorney General Opinion Request No.  
2019-OPR-010

## **Legislative: Military License Bills Pass** **(Cont’d)**

Included in the legislations’ subject-matter would be the Ohio Construction Industry Licensing Board’s trades licenses, and the design professions, including Architects, Landscape Architects, Engineers, and Surveyors.

The legislation passed unanimously in each chamber, differing slightly in wording. Therefore, neither bill moves on to the Governor, until the two bills are reconciled.

Opposition has been expressed, given that Ohio licenses all have reciprocity already, if the out-of-state credential is equivalent to Ohio’s requirements. Therefore, the temporary license appears to be needed only by professionals who otherwise might not qualify.

As the legislature takes its summer recess, no further action is expected until September.

## **Legislative: Professional Apprenticeships** **(Cont’d)**

The rationale for the legislation is to make entry into licensed jobs easier, rather than creating obstacles to testing for a license.

That same afternoon, the sponsor held an Interested Parties meeting. Numerous representatives of various state agencies appeared to express objections to the legislation.

For instance, in referencing apprenticeships for operating engineers (steam boilers), the bill would eliminate a work requirement to sit for the Professional Engineering (design) license.

In referencing construction trades apprenticeships (working with the tools), the work requirement of five years would be met, to sit for the business contractor-owner’s license of the Ohio Construction Industry Licensing Board.

The general consensus was that no legislation is needed to create an apprenticeship program today. Otherwise, if individual license requirements are too strenuous, those requirements should be considered individually, rather than taking an approach to all licensing.

-- 30 --

Join us in

# **The Construction Conversation**

## **Call-In**

on

**Wednesday, July 17, 2019**

3:30 p.m.

Call in and Participate

Dial In: 805-309-0010

Access Code 754-477-909 #

