

The Construction Conversation

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

April, 2023

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Legislative: Construction Funding at Risk

House Joint Resolution 1 and Senate Joint Resolution 2 would put on the ballot an Ohio Constitutional amendment to increase to 60% for any future amendment. Separate SB 92 creates a special election this August 8th, costing \$20 million. (Cont'd p. 2.)

Legislative: Affordable Housing Tax

Concerned about corporate entities taking over neighborhoods which eliminates affordable housing, Senator Bill Blessing (R, Cincinnati) introduced legislation to tax certain practices, to create a disincentive to this practice. (Cont'd p. 2.)

Administrative: OFCC Large Projects

The Ohio Facilities Construction Commission will accept bids in early May for two large school projects, one at Ohio University in Athens, and one in Arlington, Hancock County. (Cont'd p. 2.)

Judicial: Attorney Fees Limited to Indemnification

A Court of Appeals clarified the distinction of construction contract language between Indemnification for third-party claims, versus Liability Shifting and assumption of the risk. (Cont'd p. 2.)

Administrative: New Projects Funding

Several agencies announced award of funding for infrastructure construction, including grants and loans across Ohio

totaling \$875 million. (Cont'd p. 3.)

Administrative: Official Government Roster

The Ohio Secretary of State publishes the Official Roster of all public officials throughout Ohio, including Federal, State, County, Township, and City personnel. (Cont'd p. 3.)

Administrative: Sales Tax for Construction

Often confused on construction projects is whether an owner must pay sales tax, and the prime contractor must collect tax on the invoice as tangible personal property, as work not incorporated into the real estate. (Cont'd p. 3.)

Legislative: Building Trades Lobbyist

Meet Michael Knisley, Secretary-Treasurer of the Ohio State Building & Construction Trades Council, and member of the Ohio Governor's Office of Workforce Transformation. (Cont'd p. 4.)

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Legislative: Construction Funding at Risk (Cont'd)

The true purpose of the legislation is to prevent popular petitioning to amend the Ohio Constitution for controversial rights such as abortion or recreational marijuana.

An unintended casualty is construction financing through state debt. Any debt financing above \$750,000.00 requires constitutional authorization voted by the electorate.

Historically, two-thirds of bond finance issues since 1980 only passed below the proposed 60% threshold.

Former Secretary of State and Governor Robert Taft wrote a letter opposing the initiative, noting that last year the legislature outlawed August special elections, R.C. 3501.022.

Taft further noted that, “If that threshold had been in effect during my time as governor, ... the Clean Ohio Fund and the Third Frontier Project – would not have been approved.”

Not having seen Governor Taft’s letter, Governor DeWine stated that, if the legislation passes, “I’m going to sign it.”

Legislative: Affordable Housing Tax (Cont'd)

Joined in sponsorship by Minority Leader Senator Nickie Antonio (D, Lakewood), the bill has enjoyed two hearings in the Senate Ways & Means Committee.

The legislation would levy a tax on any landlord (including a corporate entity) that owns fifty or more houses in any one

county. The bill requires owner disclosure of “pass-through” entities for property transfers.

Senator Antonio described the corporate practice of targeting starter homes, evicting current tenants, then charging a uniform high rental rate so that tenants have no choice.

Senator Blessing described his idea as a “tax that nobody will ever pay.” Entities with common control would be forced to divest of their holdings. He gave an example of one owner holding 3,000 rental properties in Hamilton County.

Testifying in favor were the Port of Greater Cincinnati Development Authority; the Cuyahoga County Vacant and Abandoned Property Action Council; and the City of Cleveland.

Administrative: OFCC Large Projects (Cont'd)

Both projects will be awarded to Construction Managers at Risk.

Ohio University will build a new dormitory with 600 beds, 180,000 square feet on the South Green. Total Project Cost is estimated at over \$91 million.

Arlington plans to build a new Elementary-Middle-High School, 94,136 square feet. Estimated Project Cost is over \$40 million.

Judicial: Attorney Fees Limited to Indemnification (Cont'd)

A retail store hired a general contractor to conduct demolition and salvage of a facility. When the general contractor failed to perform, the store hired a

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replacement contractor, and sued. The contractor filed a mechanics' lien and countersued.

The trial court awarded to the store and against the contractor the sum of \$69,357.82 for construction contract damages; \$25,000.00 for conversion of salvaged material; and \$180,022.06 for attorney fees.

The attorney fees were based on contract language in which the contractor indemnified the owner from claims, including fees. But, when read in its entirety, the indemnity language related to claims caused by others, in an effort to make whole what another should have paid.

This differs from fee-shifting in litigation over contract performance. Often, such language will be an award of attorney fees to the "prevailing party".

Because the indemnification clause as a whole related to third-party claims, the Court of Appeals denied the attorney fees award.

Menard v. DiPaolo Indus. Dev., LLC, 2023-Ohio-1188.

Administrative: New Projects Funding **(Cont'd)**

The Ohio Water Development Authority awarded \$13.7 million in low interest loans for drinking and wastewater projects, including \$10 million to the Village of Commercial Point in Pickaway County for a waste-water treatment plant.

The US Environmental Protection Agency announced \$242.9 million awarded to the Ohio EPA for its Drinking Water State Revolving Fund.

The Ohio Turnpike Commission will spend \$226 million for projects along its 241-mile toll road in 2023. The work includes replacement of a wastewater treatment plant serving two service plazas, and renovation of the Eastgate Toll Plaza in Mahoning County.

The Ohio Department of Transportation approved funding for 27 projects totaling \$392 million.

Administrative: Official Government Roster (Cont'd)

The Roster also includes all Federal Offices Serving Ohio, with street address and telephone numbers.

All State Agencies, Boards and Commissions are listed with website links, and the Ohio Revised Code which authorizes each agency.

Each Staff Member working for each Elected Official is named for specific contact on any issue.

All Judges from Federal through State Local Courts are listed. Colleges, Universities, and Local School Boards are included.

A Search function allows searching by particular agency. Historical Rosters also are available on the Secretary of State's website. For further information, see:

<https://ohioroster.ohiosos.gov/>

Administrative: Sales Tax for Construction (Cont'd)

Typical is construction that is incorporated into the real estate, thus raising the value for property tax appraisal. This is

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a non-taxable event for sales tax. Therefore, the prime contractor is the consumer, and must pay (not collect) sales tax on all materials and services purchased from subcontractors or materialmen.

Carpeting is taxable to the owner. Landscaping supplies are taxable personal property for which the contractor must collect sales tax from the property owner, including trees, shrubs, sod, seed, and mulch. R.C. 5739.01.

Repair and maintenance services on equipment which is itself tangible personal property also is taxable to the owner.

Tax-exempt owners or projects require an exemption certificate signed by the owner and sent to all contractors.

To avoid liability for mistakes, the contractor should obtain in writing from the owner a statement of the taxable nature of the project. Merely paying sales tax to a materialman does not exempt a contractor from collecting tax from an owner, because the value is less.

For further information, see Ohio Department of Taxation, "Construction Contract",

<https://tax.ohio.gov/help-center/resources/tax-education/construction-contract>

Legislative: Building Trades Lobbyist **(Cont'd)**

Mr. Knisley received a degree from the Hobart School of Welding Technology in 1979, graduated from the Plumbers, Pipefitters and Service Technicians Local 776's apprenticeship program in 1992, and graduated from the UA Instructor Training

Program through Michigan State University at Washtenaw Community College in 1999.

He also served as President of the Lima Building and Construction Trades Council from 2010-2018.

As the union trades' lobbyist to the Ohio General Assembly, Mr. Knisley promotes the union construction industry.

He oversees the day-to-day operations of the State Council, supporting its 14 individual local councils that comprise 137 trade unions and 100,000 members.

Working with Ohio signatory construction contractors in the specialty trades, the labor-management teams sponsor Certified Apprenticeship programs across the state to train skilled journeymen.

For more information, see:

<https://ohiostatebtc.org/>

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Join us in

The Construction Conversation Call-In

on

Wednesday, May 17, 2023

3:30 p.m.

Luther L Liggett is inviting you to a
scheduled Zoom meeting.

Join Zoom Meeting

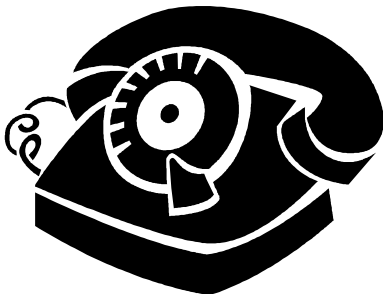
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