

# **The Construction Conversation**

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

June, 2022

A Service of Luther L. Liggett, Attorney at Law  
LLiggett@columbus.rr.com

### **Legislative: Capital Appropriations**

Effective June 14, 2022, the Governor signed into law House Bill 687, with \$3.51 billion in capital appropriations for state vertical construction. The General Assembly then adjourned to campaign for re-election in November. (Cont'd page 2.)

### **Legislative: Hazardous Liquid Pipeline Notice**

House Bill 430 passed into law effective September 24, 2022, to require specific design notice from the pipeline operator and public facility owner of the "actual location" of the pipeline for any new improvement. R.C. 3781.27. (Cont'd p. 2.)

### **Legislative: [Non] Reciprocity**

On June 1, 2022, the Ohio Senate unanimously passed Senate Bill 131 to license out-of-state professionals. Sponsored by Senators Kristina Roegner (R, Hudson) and Robert McColley (R, Napoleon), the bill is touted as a job creation initiative by eliminating obstacles to employment. (Cont'd p. 2.)

### **Judicial: Implied Workmanship Warranty**

When a home construction contractor finished a retaining wall and stairs, he sued based on substantial completion as entitling him to payment, with deductions for workmanship defects. Homeowner counterclaimed to pay nothing, citing drinking on the job. (Cont'd p. 3.)

### **Administrative: OCILB Licenses and Enforcement**

The Ohio Construction Industry Licensing Board issued 5,002 Contractor Licenses across the various trades during February through May, 2022. (Cont'd p. 3.)

### **Judicial: Unjust Enrichment against Owner**

A general contractor's owner filed bankruptcy, leaving the project subcontractors unpaid. A Subcontractor who did not file a mechanics' lien nevertheless sued the owner for unjust enrichment. (Cont'd p. 3.)

### **Administrative: \$40 million BGSU Building**

Qualifications are due this week from Architects and Engineers for the new Advanced Manufacturing - Engineering Innovation academic building on the Bowling Green State University campus. (Cont'd p. 3.)

# The Construction Conversation

June, 2022

Page 2

## **Legislative: Capital Appropriations** **(Cont'd)**

\$2.28 billion (two-thirds) is financed as new debt, based on positive tax revenues. This means less funding for State operating expenses in future fiscal years.

The legislation also funds incentives for Intel to construct its “semiconductor wafer manufacturing facility” in Newark. All construction materials for the facility are exempted from sales and use tax, R.C. 5739.01(RRR) and 5739.02(B(13)).

The legislation doubles the project size to \$3 million that an agency may locally administer a project without using the Ohio Facilities Construction Commission. R.C. 123.211, 1501.011.

For design professionals, the legislation exempts any project of \$25,000.00 or less from the requirements of Qualifications Based Selection, R.C. 153.65 et seq. Prior law was conditional.

Agencies may use in-house architects or engineers for design services without reporting such use to the OFCC, R.C. 153.692. The law does not require any malpractice insurance for such employee.

## **Legislative: Hazardous Liquid Pipeline Notice** **(Cont'd)**

For any new public improvement, the pipeline operator and public authority must provide notice of the location of such pipeline if located within 660 feet of the public facility.

Given difficulties locating exact vertical and horizontal position, the notice language is strict:

(b) The location and description of any right-of-way associated with the pipeline as well as pipeline location information, such as providing documents reflecting the actual location of the pipeline, marking facilities on design drawings, and providing maps;

(c) Contact information for the primary contact person for the project area.

Sponsored by State Representative Jon Cross (R, Kenton), the legislative intent is to create a better informational dialogue between developers, pipeline operators, local officials and public authorities.

A public authority is immune from liability for errors if relying on the information provided by the developer. R.C. 3781.27(G).

## **Legislative: [Non] Reciprocity** **(Cont'd)**

Separately, House Bill 203 (Rep. Jena Powell, R, Arcanum) passed the House by a split party-line vote of 56-33 to enact the same concept.

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.

Remaining for each bill is three committee hearings, with only three days scheduled in each of November and December.

# The Construction Conversation

June, 2022

Page 3

## **Judicial: Implied Workmanship Warranty**

The contractor sued for the full balance, and the homeowner sued for the price of re-construction; essentially, each party wanted full payment or refund.

The trial court held that both parties had failed to perform as agreed, and therefore left them in their current predicaments.

The Court of Appeals held that, “The implied warranty to perform in a workmanlike manner requires that those who repair or modify existing tangible goods or property perform the service using proper materials and workmanlike skill and judgment.”

*Perkins dba AI Concrete Leveling and Foundation Repair v. Petrilli, 2022-Ohio-2029.*

## **Administrative: OCILB Licenses and Enforcement**

At their June meetings, the Electrical and Plumbing Sections each fined the same contractor \$1,000.00 each for performing electrical and plumbing construction work without a license.

The three sections together approved 76 applicants to sit for the exam.

## **Judicial: Unjust Enrichment against Owner (Cont'd)**

However, the Subcontractor is not entitled to what the General Contractor owed. The Owner is only liable for that portion of funds unjustly retained.

In this case, the Owner paid out all

remaining funds in the prime contract, including retainage. Accordingly, since Owner did not keep any funds under the prime contract, no unjust enrichment occurred. Subcontractor’s remedy was only against the bankrupt General Contractor.

Had the Subcontractor filed a Mechanics’ Lien, the real estate would be available to satisfy the amount owed.

*Sterling Contr., LLC v. Main Event Ent., LP, 8<sup>th</sup> Dist. Cuyahoga, 2022-Ohio-2138.*

## **Administrative: \$40 million BGSU Building (Cont'd)**

Covering 84,000 square feet, the new building will serve the University’s College of Technology, Architecture, and Applied Engineering, including laboratory space.

Actual construction is budgeted at \$28 million, with construction to begin September, 2023.

-- 30 --

# **The Construction Conversation**

June, 2022

Page 4

Join us in

## **The Construction Conversation**

**Call-In**

on

**Thursday, July 14, 2022**

3:30 p.m.

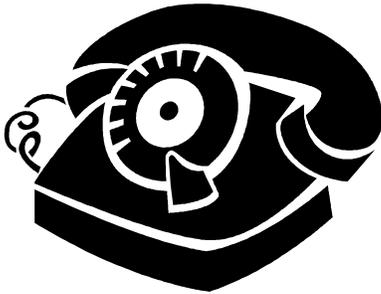
Join Zoom Meeting

<https://us02web.zoom.us/j/87296562969?pwd=zTnZwmlOpRamYhBQeDcfY1pzD7y-DU.1>

Meeting ID: 872 9656 2969

Passcode: 225081

929-205-6099



**The Construction Conversation**

June, 2022

Page 5