

The Construction Conversation

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

March, 2019

A Service of Luther L. Liggett, **Graff & McGovern, LPA**
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Legislative: Regulatory Reduction

Senate Bill 1 is a priority of the Senate President, to reduce the number of regulatory restrictions by 30%, regardless of necessity. Such "restrictions" may include review of the Ohio Basic Building Code. (Cont'd page 2.)

Legislative: School Construction

Two bills affecting School construction appear likely to move, with Senate Bill 4 on a fast track to make a capital appropriation of \$100 million. (Cont'd page 2.)

Judicial: Doctrine of Active Participation

A subcontractor's electrician unsuccessfully sued a general contractor for negligence after falling at a construction project. The court found that the general contractor did not actively participate such as to create liability. (Cont'd p. 2.)

Legislative: Military License Reciprocity

Senate Bill 7 would require state occupational licensing agencies to issue temporary licenses to military members and their spouses if they are already licensed elsewhere and have moved to Ohio on active duty. (Cont'd p. 2.)

Legislative: Capital Funding

Several bills relate to providing new construction improvements in financing, including HB 84 which would include water and sewer laterals located on private property in the State Capital Improvements

Program. (Cont'd p. 3.)

Judicial: No Unjust Enrichment Under Contract

A contractor who did not pull a building permit due to lack of sealed plans could not claim unjust enrichment for the work performed under a construction contract. (Cont'd p. 3.)

Legislative: Design Professional Indemnity

Following an unsuccessful attempt in 2018, the lobbying association for professional engineers sought re-introduction of legislation to limit design professional liability to insurability. (Cont'd p. 3.)

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Legislative: Regulatory Reduction (Cont'd)

Jointly sponsored by Robert McColley, R, Napoleon and Kristina Roegner, R, Hudson, the bill has enjoyed three hearings in the Senate Government Oversight and Reform Committee. A similar bill passed the Senate last year unanimously.

Senator McColley successfully sought passage last December, 2018 of Senate Bill 255 to review all occupational licensing boards to consider sunset.

Similarly, this new legislation would direct state agencies to reduce the number of Ohio Administrative Code regulations under their purview by 30 percent over the course of three years.

Senate President Larry Obhof (R-Medina) expressed the view that “unnecessary red tape stifles ideas and potential, slows the growth of Ohio small businesses, prevents job creators from doing what they do best....”

Legislative: School Construction (Cont'd)

Capital funding will not be considered generally for another year. This legislation will add funds a year early for renovation and construction of school buildings across Ohio, moving up the time frame for districts that would otherwise be waiting on funding in next year’s capital appropriation.

The bill would prioritize the funding for the lowest-wealth schools and those with exceptional needs.

On March 27, 2019, SB 4 passed unanimously and moves to the House.

House Bill 22, sponsored by Niraj Antani (R, Miamisburg) follows discovery late last session that many Ohio schools close in hot weather because the buildings lack basic HVAC air conditioning.

The legislation would mandate a study to inventory and quantify the capital improvement needs.

Judicial: Doctrine of Active Participation (Cont'd)

A subcontractor is an independent contractor. Other parties on the job site only owe a duty of care to the parties in their contract or subcontract. As the electrician did not have a contract with the general contractor, no privity created a duty.

However, had the general contractor directed the electrician’s activity which resulted in the injury, rather than merely exercising general supervision, the employee may sue the general contractor.

Absent active participation, the Court dismissed the electrician’s lawsuit.

Bucha v. Sam Pitzulo Homes & Remodeling,
7th Dist. Mahoning, ` 2019-Ohio-878.

Legislative: Military License Reciprocity (Cont'd)

Jointly sponsored by Senators Peggy Lehner (R, Kettering) and Bob Hackett (R, London), the law would impact OCILB trades licenses, as well as design professional licenses such as for architecture and engineering.

Last year, the legislation passed the Senate unanimously as SB 320. Senator Lehner commented that the Secretary of the Air Force personally urged passage of the

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bill, citing military family needs at Wright Patterson Air Force Base. On March 27, 2019, the new bill passed the Ohio Senate unanimously again, and moves to the House.

Legislative: Capital Funding (Cont'd)

House Bill 84, sponsored by Glenn Holmes (D, McDonald), addresses a technical problem faced by the Ohio Public Works Commission in funding public infrastructure located on private property. Assigned to the House State and Local Government Committee, the Ohio Rural Water Association as well as the Coalition of Ohio Regional Districts support the initiative.

House Bill 163 would withhold public funds from municipal water and sewer systems if the local government charges different rates for in-city residents from out-of-city customers. Sponsored by Tom Brinkman (R, Cincinnati), the bill awaits committee assignment.

Senate Bill 38 would allow up to 5% of a surplus water and sewer budget to be diverted for extending lines for economic development. Sponsored by Joe Uecker (R, Cincinnati), the bill is assigned to the Senate Local Government Committee.

House Bill 62 passed the House and Senate as the Transportation Budget, raising taxes for infrastructure construction, at the request of the Governor. As of this writing, the Conference Committee cannot agree on the level of percentage increase, with the budget due to be passed no later than Sunday, April 1, 2019.

Finally, House Bill 166 was introduced as the new Governor's first Operating budget for all agencies, to be in

place no later than June 30th for the next biennium. Hearings begin in the House Finance Committee.

Judicial: No Unjust Enrichment Under Contract (Cont'd)

An owner hired a contractor to pull a permit and repair a building after a fire, for a fixed price to rebuild.

The owner did not provide blueprints or a building permit, but the contractor agreed to rebuild the facility anyway.

When a trial court awarded damages to the contractor for quantum meruit, or the benefit of the work performed, the Court of Appeals reversed, limiting the contractor's remedy to the terms of the contract.

Nor did the owner recover from the contractor, because insurance covered the value of the damage.

LaVangie v. Raleigh, 2nd Dist. Montgomery, 2019-Ohio-810.

Legislative: Design Professional Indemnity (Cont'd)

House Bill 159 was introduced by Representative Louis "Bill" Blessing, III (R, Cincinnati), who is a licensed professional engineer.

Assigned to the House Civil Justice Committee, the bill would forbid a provision in a public improvement contract or subcontract, that a professional design firm indemnify the public authority except for the proportionate share of the tortious conduct.

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