

The Construction Conversation

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

June 2025

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

Legislative: Private Prompt Pay

To enact prompt pay of private prime contractors, House Bill 288 passed out of the Houe Small Business Committee by an 8-4 vote, with the four nays being Republican Representatives. (Cont'd p. 2.)

Legislative: E-Verify in Construction

House Bill 246 passed the House unanimously, to require that every commercial construction contractor, must verify employment eligibility through the E-Verify system operated by Homeland Security and the Social Security Administration. (Cont'd p. 2).

Legislative: Expedited Building Appeals

Senate Bill 6 passed both the House and Senate unanimously, to create a right of expedited appeal of a building code ruling. Sponsored by Senator Kristine Roegner (R, Hudson), the bill now goes to the Governor for signature, effective 90 days later. (Cont'd p. 3).

Judicial: Unforeseeable Agency Action May Excuse Contract Performance

In a detailed analysis of agency inspection of construction work, a Court of Appeals held that an unforeseeable change in agency policy may excuse a contractor's performance. (Cont'd p. 3).

Administrative: Tax Authority Rebates for New Projects

The Ohio Tax Credit Authority authorized six projects expected to create

716 new jobs with more than \$50 million in payroll, and an investment of over \$39 million. (Cont'd p. 3).

Administrative: New Construction

The State announced new construction project grants of \$5.15 million from the Ohio Department of Development, and \$50 million for local jail construction from the Ohio Department of Rehabilitation and Correction. (Cont'd p. 3).

Legislative: Affordable Housing Funds

House Bill 313 is bi-partisan legislation to appropriate \$50 million for "grants to townships and municipal corporations that adopt and implement at least three pro-housing policies in accordance with this section."

Legislative: Entitlement Hearings

House Bill 361 would require a building code hearing for certain categories of land use changes.

The Construction Conversation

June 2025

Page 2

Legislative: Private Prompt Pay (Cont'd)

Sponsored by Representatives Bill Roemer (R, Richfield) and Bride Rose Sweeney (D, Westlake), the legislation was introduced in two prior sessions, recently passing the House by a wide margin but not passing in the Senate.

If enacted, a prime contractor is entitled to payment by the private project owner within 30 days after the design professional certifies the work as complete.

Failure to pay will incur 18% interest, and attorney fees if the contractor has to sue.

The Ohio Chapter, American Society of Landscape Architects, supported the legislation while noting the omission of these licensed professionals in sealing plans. The Sponsors immediately amended the Bill before moving it on from the Committee.

The Republican opposition likely is in support of testimony by the Ohio Manufacturers Association against the legislation in preference to unrestricted contracting: “Virtually every private construction contract is a freely negotiated agreement that sets forth the payment terms in detail...”.

The bill now moves to the House floor for a vote. It is not likely to be heard further until after the Summer recess.

Legislative: E-Verify in Construction (Cont'd)

Sponsored by Representatives Doug Swearingen (R, Huron) and Tex Fischer (R, Youngstown), Matt Szollosi of ACT Ohio provided Proponent Testimony. Szollosi noted that labor brokers view workers as

“chattel,” smuggling them into the country with false promises and paying them “shit wages.”

Now assigned to the Senate Workforce Development Committee, a companion bill Senate Bill 183 held sponsor testimony earlier. “There have been many instances where brokers have operated sort of outside of the intent of the law”, Senator Jerry Cirino (R, Kirtland) testified.

The legislation as passed by the House requires the Attorney General to sue in a court of common pleas when a contractor, subcontractor, or labor broker does not comply with an enforceable order within 30 days.

Legislative: Expedited Building Appeals (Cont'd)

Under the new law, a party who seeks a variance to a building department ruling may request an expedited appeal. The Board of Building Appeals must:

- Commence the appeal within one day after the request is made, excluding Saturdays, Sundays, and legal holidays;
- Hold a hearing within five days after the request is made, excluding Saturdays, Sundays, and legal holidays.

Continuing law requires that the Board issue a decision within 30 days.

Judicial: Unforeseeable Agency Action May Excuse Contract Performance (Cont'd)

A real estate developer hired a contractor to install sewer lines in two separate sections of a new housing development. Standard to the contract was

The Construction Conversation

June 2025

Page 3

that the contractor agreed that its work would conform to the requirements of all governmental agencies, and in accordance with the agencies' specifications.

The contractor completed work on the first section which the local Sanitary Sewer Department approved. However, when the contractor completed the second section, the local Department rejected the work.

The Department's written rule was to reject if the video camera lens came into contact with standing water. But, for the second section, the Department adopted a new no-standing water ("zero bellies") policy.

The parties' first lawsuit was based upon the constitutionality of the written regulation, i.e. that the government legislation cannot retroactively impair contracts. The court upheld the written regulation as not violating due process.

However, in a subsequent lawsuit, the trial court held that the Department's change of policy was unforeseeable at time of contracting, and therefore the contractor's failure to obtain approval was excused.

The Court of Appeals held that the contractor's failure to obtain approval was a breach of contract unless excused. Contract language clearly threw upon the contractor the risk of ordinary regulatory non-approval. But no language clearly covered the risk of unpredictably arbitrary or absurd actions.

To prove excuse, the contractor must demonstrate (1) that a supervening regulatory action has occurred, (2) that the action was unforeseeable so as to undermine a basic assumption of the bargain, taking into account the parties' assumption of risk

and the realities of industry practice, (3) that the action rendered performance impossible or impracticable under the relevant legal standard, and (4) that the party claiming excuse attempted in good faith to comply with or avoid the application of the relevant regulation.

Nevertheless, if the contractor was excused by impossibility, so was the owner excused from paying for work not approved.

The proper monetary remedy (if any) is restitution to compensate the contractor's partial performance to the degree such performance benefited the owner.

Mt. Pleasant Blacktopping Co., Inc. v. Inverness Grp., Inc. 1st Dist. Hamilton, 2025-Ohio-284

Administrative: Tax Authority Rebates for New Projects

Vaughn Industries, LLC: A skilled trades construction contractor in Wyandot County, the company's relocation to the Village of Carey, Ohio, will create \$8.8 million in new annual payroll, receiving a State tax credit estimated at \$1.02 million.

Melink Solar, LLC: A design-build contractor for solar energy systems, the project will establish a new headquarters in Hamilton County with 30 new jobs and \$3.6 million in new payroll, receiving a State tax credit estimated at \$365,000.00.

StandardAero Component Services, Inc.: A service provider in the aerospace industry, the proposed project will add space to its Hamilton County campus, creating 300 new jobs at \$13.8 new payroll, receiving a State tax credit estimated at \$1.5 million.

Application information may be

The Construction Conversation

June 2025

Page 4

found on the Tax Authority's website:

<https://development.ohio.gov/about-us/boards-and-commissions/ohio-tax-credit-authority>

Administrative: New Construction (Cont'd)

Residential Public Infrastructure Grants are capped at \$750,000.00; Economic Development Program awards are capped at \$500,000.00.

The following communities received funding for water and wastewater systems:

Village of Carroll (Fairfield County), \$750,000.00 for its wastewater system, and \$3 million for its sewer system.

Village of Fayette (Fulton County), \$750,000.00, and \$10 million for its 90-year-old water system.

Monroe County, \$750,000.00 for a wastewater system in Sardis.

Trumbull County, \$750,000.00 for construction of a wastewater system in Leavittsburg.

Union County, \$750,000.00 for a wastewater system in Magnetic Springs.

Washington County, \$750,000.00 to upgrade an existing water tower, and replace wells.

Jail renovation funding went to the following:

Ashtabula County \$15 million
Guernsey County \$7.38 million
Muskingum County \$7 million
Hocking County \$6.76 million

Pickaway County \$4.49 million
Summit County \$2.95 million
Morrow County \$1.25 million
Morgan County \$1.21 million
Paulding County \$1.08 million

For more information, see:

<https://development.ohio.gov/community/economic-development/residential-public-infrastructure-program>

Legislative: Affordable Housing Funds (Cont'd)

Sponsored by Adam Mathews (R, Lebanon) and Dani Isaacsohn (D, Cincinnati), the bill is assigned to the House Development Committee.

While the funding is unlikely given its omission from House Bill 96, the Budget, nevertheless the intent is to focus new attention on the need to support local housing initiatives.

The legislation details ten categories of pro-affordable housing criteria.

With Summer break near, the bill is not likely to see attention until this Fall.

Legislative: Entitlement Hearings (Cont'd)

Sponsored by Brian Lorenz (R, Powell) and Tex Fischer (R, Youngstown), the legislation defines "entitlement" as "any discretionary land use decision requiring an approval by a public body or elected official, including, but not limited to, a variance, special or conditional use, zoning change, planned unit development, or other special approval."

The bill is assigned to the House

The Construction Conversation

June 2025

Page 5

Local Government Committee, but has not had a Sponsor Hearing yet. At that time, the Sponsors will describe the particular issue they hope to address related to building code determinations.

- 30 -

Join us in

The Construction Conversation Call-In

on

**Thursday, July 17, 2025
3:30 pm**

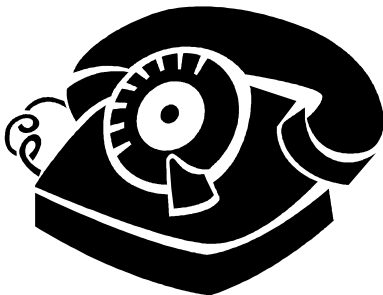
Luther L Liggett is inviting you to a
scheduled Zoom meeting.

Join Zoom Meeting

<https://us02web.zoom.us/j/83442251990?pwd=5dgrjQB8PUUHbGJxUJeQpkK2VUVuT>
M.1

Meeting ID: 834 4225 1990
Passcode: 554475

646 931 3860 US
929 205 6099 US
301 715 8592 US



The Construction Conversation

June 2025
Page 6