

# **The Construction Conversation**

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

November 2025

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### **Legislative: Spearin Doctrine**

House Bill 605 would codify Ohio case law adopting the “Spearin Doctrine”, a 1918 case imposing an implied warranty on a project owner that the plans and specifications are “full and accurate, free from defects, and sufficient for the successful and timely completion of the project.” (Cont'd p. 2.)

### **Administrative: HB 6 FirstEnergy Fine**

The Public Utilities Commission of Ohio imposed a fine of \$251 million on FirstEnergy, for its part in a \$61 million payment scheme to pass House Bill 6 in July, 2019, to subsidize the utility's nuclear energy program. (Cont'd p. 2).

### **Legislative: E-Verify**

House Bill 246 passed the Senate unanimously, to require every commercial construction contractor must verify employees' eligibility through the E-Verify system operated by the federal government. (Cont'd p. 2).

### **Legislative: Private Project Retainage**

House Bill 568 would limit Retainage in Private Project construction projects to a maximum of 5% (five percent, for both prime contracts and for subcontracts of \$1 million or more. (Cont'd p. 2).

### **Administrative: New Fire Code**

The 2025 Ohio Fire Code is now in effect, incorporating the 2021 International Fire Code. Following recent legal mandates,

the State Fire Marshal removed 8,772 out-of-date regulatory provisions. (Cont'd p. 3).

### **Administrative: Columbus Lead Lines**

The Ohio Environmental Protection Agency announced a \$500,000.00 grant to the City of Columbus to replace lead and galvanized service lines at child-care facilities served by the Columbus Division of Water. (Cont'd p. 3).

### **Administrative: Ohio Job Funding**

The Ohio Department of Transportation and the Ohio Tax Credit Authority approved over \$13 million in funding for projects across Ohio which will result in over a thousand transportation and corporate jobs. (Cont'd p. 3).

### **Judicial: Solar Project Appeal**

The Ohio Supreme Court heard arguments in opposition to a proposed 2,768 acre solar project which the Ohio Power Siting Board approved over local objections under Senate Bill 52. (Cont'd p. 3).

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## **Legislative: Spearin Doctrine (Cont'd)**

Sponsored by Representative Heidi Workman (R, Rootstown) and Representative Thad Claggett (R, Newark), the bill is not yet assigned to a Committee for hearings.

In the *Spearin* case precedent, the United State Supreme Court recognized that when a contractor is "bound to build according to plans and specifications prepared by the owner, the contractor will not be responsible for the consequences of defects in the plans and specifications." *United States v. Spearin* (1918), 248 U.S. 132, 39 S.Ct. 59, 63 L.Ed. 166 at 136, 59, 166.

*Spearin* involved the existence of a site condition that precluded completion of the construction project.

Ohio courts have recognized that the "Spearin doctrine holds that, in cases involving government contracts, the government impliedly warrants the accuracy of its affirmative indications regarding job site conditions." *Sherman R. Smoot Co. v. Ohio Dept. of Adm. Servs.* (10th Dist. 2000), 136 Ohio App.3d 166, 176, 736 N.E.2d 69, citing *Cent. Ohio Joint Vocational School Dist. Bd. of Edn. v. Peterson Constr. Co.* (12th Dist.1998), 129 Ohio App.3d 58, 65, 716 N.E.2d 1210.

When proprietary material specifications are required, the owner is liable when mandating a particular material or sole source which turns out to be non-conforming. *Cooper v. DeCapo Constr.*, (8<sup>th</sup> Dist. Cuyahoga, 1981), 198 Ohio App. LEXIS 10520; *Carter Steel v. ODOT*, Ct. Claims 1999, 102 Ohio Misc.2d 1.

As *Spearin* applied to public

contracts, HB 605 only applies to public owners who contract for construction.

An owner's requirement that a contractor make a site visit "does not void the implied warranty".

## **Administrative: HB 6 FirstEnergy Fine (Cont'd)**

The legislation originally was sponsored by Representative Jamie Callender (R, Concord), for which the PUCO initiated four investigations into the utility's involvement in the actions by Speaker Larry Householder (R, Perry County). Householder was convicted of federal racketeering charges and is serving a sentence of 20 years in prison.

To finance HB 6, the legislation imposed utility fees across all Ohio utility customers, which remain in effect today.

Payment of the fine begins immediately, and will include \$180 million in customer restitution in billing credits.

## **Legislative: E-Verify (Cont'd)**

The law applies only to a "Nonresidential construction contractor" responsible for the means, method, and manner of construction, thus excluding design professionals or construction managers not subcontracting the work.

The Governor is expected to sign the legislation, effective 90 days later.

## **Legislative: Private Project Retainage (Cont'd)**

Sponsored by Representatives Ty Mathews (R, Findlay) and Nick Santucci (R, Niles), the bill has enjoyed Sponsor

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Testimony and Proponent Testimony in the House Small Business Committee.

Support has come from the Ohio Chamber of Commerce, the National Electrical Contractors Association (Cleveland and Columbus Chapters), the Mechanical Contractors Association of Ohio, the Ohio Roofing Contractors Association, and the Associated General Contractors of Ohio.

## **Administrative: New Fire Code**

Senate Bill 9 of the 134<sup>th</sup> General Assembly, effective September 30, 2024, required the reduction in administrative rules by one-third over three years. The new Fire Code is lessened by 29% in the number of words, resulting in a more compact hard copy version.

Still at issue is that Ohio case law does not provide that the state building and fire codes are general state laws, allowing local jurisdictions to exercise “home rule” and vary the Ohio Basic Building Code and Ohio Fire Code.

Therefore, in seeking plan approval by a local building department, the process will continue to require the local fire marshal’s review for local compliance as well.

## **Administrative: Columbus Lead Lines (Cont’d)**

Columbus Mayor Andy Ginther projected that the City intends to replace all lead service lines citywide by the year 2037. Day Care Centers’ renovations will take priority with the State H2Ohio grant.

To date, the EPA H2Ohio program has disbursed over \$9 million in lead-line

remediation funding. Coupled with the EPA’s “Get the Lead Out Ohio” program, the state has funded 16,000 service line removals since 2019, with 30,000 service lines currently in the process of replacement.

## **Administrative: Ohio Job Funding (Cont’d)**

ODOT distributed \$13.5 million to 15 transit agencies in 16 counties, for 28 public transit projects, funded in the Transportation Budget using federal funds.

Projects include over \$1 million for general construction at Rickenbacker Air Base administered by the Central Ohio Transportation Authority (COTA); \$800,000 for the “Shoregate Transit Hub” in Lake County; and \$240,000 for Facility Rehabilitation in Stark County.

The Ohio Tax Credit Authority authorized income tax rebates to EdgeConneX in New Albany on \$4 million new payroll in converting 525,000 square feet for a data center; \$26 million in new payroll by Layer Zero Power Systems in Streetsboro for a 120,000 square foot facility expansion; and to Engineered Plastic Components in Fremont on \$6.5 million in new payroll to build a new facility valued at \$635,000.00.

## **Judicial: Solar Project Appeal (Cont’d)**

Located in Logan County, Fountain Point Solar Energy LLC proposed a 280-megawatt project. The Ohio Power Siting Board approved the project after the effective date of Senate Bill 52, which enacted R.C. 4906.10.

That statute requires a finding “That the facility will serve the public interest, convenience, and necessity”.

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The local Bokescreek Township Trustees previously passed a unanimous Resolution restricting the development of solar projects in the Township.

Later, two of the Township Trustees became conflicted in voting in their official capacities, as having an ownership interest in the project real estate.

This created a dispute as to whether the Township opposed the project given the conflict, which could result in rejection of the required support and denial of a certificate.

The Supreme Court will issue its decision in a couple of months.

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Join us in

## **The Construction Conversation Call-In**

on

**Thursday, December 11, 2025  
3:30 pm**

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

Topic: December Construction Conversation  
Time: Dec 11, 2025 03:30 PM Eastern Time  
(US and Canada)

Join Zoom Meeting

<https://us02web.zoom.us/j/88006773921?pwd=uHiwNLay3iR0V3f18LmHOR67McaCk8.1>

Meeting ID: 880 0677 3921  
Passcode: 762601

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