

The Construction Conversation

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

January 2024

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Legislative: 2024 Pending Bills

The New Year triggers the Ohio Constitutional requirement of a Construction Capital Bill, which will be the primary financing of the General Assembly's final half before they return home for re-election campaigns on June 30, 2024. (Cont'd p. 2.)

Administrative: Construction Tax Credits

The State progressed with two programs of construction tax credits, first with \$50 million in new Single-Family Housing Tax Credits, and second with \$67.5 million in Historic Preservation Tax Credits. The Ohio Housing Finance Agency (OHFA) administers the Housing Tax Credits, filing administrative rules to outline the process this month. (Cont'd p. 4).

Administrative: Transportation Funding at Risk

A national transportation research nonprofit group recently issued a report on Ohio's transportation funding as at risk due to rising costs and needs, and reliance on the gas tax in light of conversion to electric vehicles. The TRIP Report applauds Ohio's increase in the gas tax, along with federal highway funding. (Cont'd p. 4).

Judicial: Anticipatory Breach

An anticipatory breach of contract by a contractor is a repudiation of the contractor's contractual duty before the time fixed for performance has arrived. To claim

compensation, a subcontractor must claim damages, and not merely plead an affirmative defense. (Cont'd p. 4).

Legislative: Rising Star

The daughter of former Chief Justice Eric Brown and former Franklin County Commissioner Marilyn Brown is the new State Representative for District 4, Gahanna, in Franklin County. (Cont'd p. 4).

Administrative: New State Projects

The Ohio Facilities Construction Commission has announced upcoming February bids for new construction, as well as project owners selecting design professionals for new projects. (Cont'd p. 5).

Administrative: Official Roster of Public Officials

The Ohio Secretary of State maintains current and historical lists of all public officials, including Federal, State, County, Municipal, Township, and School Board members. (Cont'd p. 5).

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Legislative: 2024 Pending Bills (Cont'd)

Pending bills which may affect the Construction Industry include:

HB 129 LICENSURE OF COMMERCIAL ROOFING CONTRACTORS (*PATTON T*)

To require licensure of commercial roofing contractors and to amend the versions of sections 715.27 and 3781.102 of the Revised Code that are scheduled to take effect on December 29, 2023, to continue the change on and after that date.

9/13/2023 - Referred to Committee Senate Government Oversight
6/21/2023 - PASSED BY HOUSE;
Vote 63-28

HB 145 POLITICAL SUBDIVISION PURCHASE OF CONSTRUCTION SERVICES (*HALL T, LAMPTON B*)

To expand political subdivision joint purchasing authority to expressly include purchases for construction services.

6/20/2023 - House State and Local Government, (Third Hearing)

HB 197 SOLAR PROGRAMS (*HOOPS J, RAY S*)

To establish the community solar pilot program and the solar development program.

12/13/2023 - SUBSTITUTE BILL ACCEPTED, House Public Utilities, (Third Hearing)

HB 203 TIMELY PAY OF CONTRACTORS (*ROEMER B, SWEENEY*)

B)

To require owners of private construction projects to timely pay contractors.

12/13/2023 - Referred to Committee Senate Workforce and Higher Education

12/6/2023 - PASSED BY HOUSE;
Vote 76-12

HB 215 COUNTY ENGINEER QUALIFICATIONS (*JOHNSON M*)

To modify the qualifications of county engineers in certain counties.

6/26/2023 - Referred to Committee House State and Local Government

HB 238 REVISE OCCUPATIONAL REGULATIONS (*FOWLER S, KLOPFENSTEIN R*)

To revise and streamline the state's occupational regulations and to make an appropriation.

12/6/2023 - House State and Local Government, (Third Hearing)

HB 291 MEDICATION SWITCHING (*LISTON B, CARRUTHERS S*)

Regarding prescription drugs and medication switching.

12/6/2023 - House Insurance, (Second Hearing)

HB 327 REQUIRE CERTAIN CONTRACTORS TO USE E-VERIFY (*WIGGAM S, SWEARINGEN D*)

To require government contractors,

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private nonresidential contractors, and certain employers to use E-verify.

11/14/2023 - Referred to Committee House Commerce and Labor

SB 23 PURCHASING AUTHORITY-CONSTRUCTION SERVICES (*LANG G*)

To expand political subdivision joint purchasing authority to expressly include purchases for construction services.

4/19/2023 - REPORTED OUT, Senate Government Oversight, (Fourth Hearing)

SB 41 LAW CHANGES-BUILDING INSPECTIONS (*ROEGNER K*)

To make changes to the law relating to building inspections.

10/3/2023 - House Economic and Workforce Development, (Third Hearing)

SB 44 ELECTRONIC LICENSING APPLICATION REQUIREMENT (*BRENNER A*)

To require a state occupational licensing agency to accept electronic license applications.

6/20/2023 - Referred to Committee House State and Local Government

6/7/2023 - PASSED BY SENATE; Vote 31-0

SB 76 HIGH-VOLUME LANDLORD TAX (*BLESSING III L, ANTONIO N*)

To levy a tax on certain high-volume

landlords.

3/22/2023 - Senate Ways and Means, (Second Hearing)

SB 77 ROOFING CONTRACTOR PRACTICES REGULATION (*LANG G*)

To regulate the practices of roofing contractors and the terms of their contracts.

3/1/2023 - Referred to Committee Senate General Government

SB 123 PUBLIC UTILITY REGULATION EXEMPTIONS (*BRENNER A*)

To exempt from regulation as a public utility certain persons or entities providing utility related services after the metered point of delivery.

6/20/2023 - Senate Energy and Public Utilities, (First Hearing)

SB 133 STATE VENDORS' DEBARMENT (*HICKS-HUDSON P, DEMORA B*)

Regarding the debarment of state vendors.

12/6/2023 - Senate Judiciary, (First Hearing)

Administrative: Construction Tax Credits (Cont'd)

Credits are divided into three community types: Central City projects, Metro Suburban Projects, and Rural projects. A single dwelling will receive up to a maximum credit of \$50,000.00.

The Ohio Department of

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Development and State Historic Preservation Office administer the Historic Preservation credits. Forty-six projects involving 54 buildings in 16 communities will receive the credits, leveraging \$732 million in private investments.

Administrative: Transportation Funding at Risk (Cont'd)

The revenues will pay for \$1.4 billion in critical projects, including the Brent Spence Bridge in Cincinnati. Key to that latter project's success is changes to improve traffic flow in the corridors leading to the Bridge.

Also noted is the \$1.6 billion identified by the Ohio Department of Transportation for which engineering is in place for the projects, but not construction funding.

The Report warns, "While this additional transportation investment will allow Ohio to make significant progress on transportation improvements, many needed projects ... will not proceed due to a lack of available funding."

Founded in 1971, TRIP® of Washington, DC, is a nonprofit organization that researches, evaluates and distributes economic and technical data on surface transportation issues.

For more information, see Tripnet.org

Judicial: Anticipatory Breach (Cont'd)

In this case, a prime contractor used a Master Agreement to subcontract cabinet work on two separate project locations in the Cleveland area.

The contractor refused to make final

payment to the subcontractor for the first project, on the basis of conditions precedent, including the signing of a final lien waiver. The trial court found for the subcontractor and against the contractor, because nothing in the Master Agreement language required the conditions precedent to payment for completed work.

On the second project, the subcontractor claimed its profit because the contractor refused to allow the subcontractor to complete the second project. The trial court erroneously found in favor of the subcontractor on anticipatory breach, because the subcontractor only pleaded the theory as an affirmative defense.

Anticipatory breach can support a claim for damages, but must be pleaded expressly as a claim, and not merely as a defense.

Berkut, Inc. v. Devolver Corp., 8th Dist.,
2024-Ohio-63.

Legislative: Rising Star (Cont'd)

Beryl Brown Piccolantonio is a Democrat appointed to the vacancy left by Representative Mary Lightbody (D, Westerville). Rep. Piccolantonio also serves as an elected president of the Gahanna-Jefferson School District.

A practicing attorney by education, she has served in administrative hearings for the Industrial Commission, and served as chief ombudsperson for the Ohio Bureau of Workers' Compensation.

She graduated from Ohio Dominican University and The Ohio State University Moritz College of Law.

She was appointed to serve on the

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House Commerce and Labor Committee which hears Construction Industry and Workers' Compensation legislation.

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

Due 2/6/2024, the Department of Natural Resources will open bids for \$2.2 million Hocking Hills Wastewater System Improvements.

Due 2/6/2024, the Department of Natural Resources will open bids for \$3.9 million North Bass Island Renovations.

QBS Proposals due 2/8/2024, the Athens City School District will select for a \$54 million New High School.

Due 2/8/2024, the Department of Natural Resources will open bids for a \$2.9 million Low Water Crossing at Hueston Woods State Park.

Due 2/12/2024, the Department of Administrative Services will open bids for a \$775,000.00 MARCS Communications Tower, Trumbull Ridge, Brookfield Ohio.

QBS Proposals due 2/13/2024, Columbus State Community College will select for a \$66 million Health Science Building.

Due 2/15/2024, the Department of Rehabilitation and Corrections will open bids for an \$800,000.00 Waterline Replacement at Southeast Correctional Institute, Lancaster Ohio.

Due 2/15/2024, the Department of Natural Resources will open bids for a \$3.7 million Wastewater Treatment Plant improvements at Deer Creek State Park in Pickaway County, Ohio.

For further information, see OFCC "Opportunities" at:

<https://ofcc.ohio.gov/project-opportunities>

Administrative: Official Roster of Public Officials **(Cont'd)**

The online access includes mailing addresses in Excel format for local officials, State Agencies, and State Boards and Commissions.

The State Boards and Commissions list alone includes 181 references, with web site links for detailed information on financing and services available.

The date includes 62 public College and University Campuses, along with links to lists of all Board of Trustees members.

For County Construction, the lists include all contact information for County Engineers.

For further information, see Ohio Secretary of State, Ohio Roster of Ohio Home:

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

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Join us in

The Construction Conversation Call-In

on

Friday, February 14, 2024

3:30 p.m.

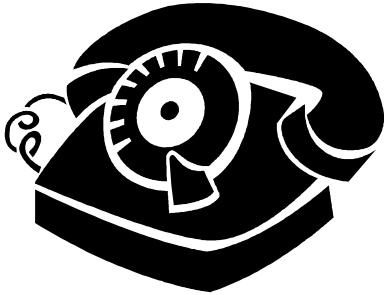
Join Zoom Meeting

<https://us02web.zoom.us/j/84196182548?pwd=N2xOZ1RHSzRNU0Y3RkpSREFBcktpZz09>

Meeting ID: 841 9618 2548

Passcode: 071660

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