The Construction Conversation

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

October 2026

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Legislative: Lame Duck Session

After the General Election, the Ohio General Assembly will return for final action in its two-year session, to adjourn no later than December 31, 2026. All bills not passed then expire. (Cont'd p. 2).

Legislative: Data Centers

House Bill 646 passed the House unanimously, to create the Data Center Study Commission within the Ohio Department of Development. (Cont'd p. 2).

Judicial: Prompt Pay Exception

The Franklin County Court of Appeals held that the General Contractor did not owe Prompt Pay Interest to a Subcontractor until and unless all court appeals were resolved. (Cont'd p. 3).

Administrative: Ohio Basic Building Code

The Ohio Board of Building Standards received a petition from the Ohio Electrical Coalition to adopt the 2026 National Electrical Code for both the commercial and residential state building codes. (Cont'd p. 3).

Administrative: Nuclear Modernization

The United States Department of Energy announced in October a commitment of $4.2 billion to modernize the Davis-Besse Nuclear Power Station in Oak Harbor, Ottawa County, and the Perry Nuclear Generating Station in North Perry, Lake County, Ohio. (Cont'd p. 4).

Judicial: Building Code Constitutional Challenge

A commercial building owner brought suit against an Ohio city on the claim that the Building Code requirement of plans approval, building permit, and a certificate of occupancy constituted an improper taking under the United States Constitution (Cont'd p. 4).

Administrative: New Project Funding

Various state agencies announced significant funding for construction projects across Ohio, including tax credits from the Ohio Tax Credit Authority; grants from the Environmental Protection Agency; loans from the Ohio Water Development Authority; Turnpike Commission re-bidding for three projects; and highway improvements for autonomous electric vehicles (AV's). (Cont'd p. 5).

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Legislative: Lame Duck Session (Cont'd)

The Governor either will sign or veto any legislation passed, or might exercise a "pocket veto", not taking action by the session's deadline.

A new Governor will be sworn in on January 11, 2027, with a new biennial budget due no later than June 30, 2027.

The legislature may re-introduce bills which expire this year, for re-consideration anew. Every bill will require three Committee hearings in each of the House and Senate, and a floor vote, no matter how many hearings the bill had in the expired session.

Only 5 days of House and Senate Committee hearings are scheduled before Christmas recess, and only 5 floor sessions before year-end.

Legislative: Data Centers (Cont'd)

Sponsored by Representative Gary Click (R, Vickery), a substitute bill then passed the Senate Energy Committee, requiring that the total energy cost of data centers be borne by the data center owner.

House and Senate conferees could not agree on reconciling the differences between the versions of the bill. Of significance was debate on eliminating 30-year sales tax exemptions previously given to data center owners Amazon, Google, and Meta.

Accordingly, without agreement, the Senate returned the bill back to Committee for further consideration. If agreement is reached, the General Assembly could pass HB 646 before session ends.

Judicial: Prompt Pay Exception (Cont'd)

The City of Columbus hired a General Contractor, who subcontracted the shaft drilling and placing of concrete.

The General Contractor insisted that the rate of drilling was of the essence to the Subcontract. The Court ruled that the Subcontract was not ambiguous in the absence of any such provision, and therefore the General Contractor could not use outside evidence to add a provision to the Subcontract.

Importantly, the General Contractor's claim against the Subcontractor alleging fraud or reckless behavior is a tort or personal injury. The Court dismissed such claim, stating that, "Under Ohio law, the breach of a contract does not create a tort claim" known as the Economic Loss Rule.

The Subcontractor submitted its damages claim to the General Contractor, who referred the claim to the owner City. The Subcontract contained language that, "[General Contractor] will be not liable to [Subcontractor] … unless and until [the claim] is allowed by the [City]."

The City denied the claim, and the Subcontractor failed to either appeal the decision or request the General Contractor to appeal the decision. Therefore, the Subcontractor effectively waived any appeal.

As for a portion of Subcontractor's claims awarded by the City, Prompt Pay Interest is not due because "[t]he contractor may reduce the amount paid by any retainage provision contained in the contract, invoice, or purchase order between the contractor and the subcontractor or material supplier, and may withhold

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amounts that may be necessary to resolve disputed liens or claims involving the work or labor performed or material furnished by the subcontractor or material supplier." R.C. 4113.61(A)(1).

Until all appeals were concluded, Prompt Pay Interest did not accrue.

Suburban Maintenance & Constr., Inc. v. Complete Gen. Constr. Co., 10th Dist. Franklin No. 25AP-454, 2026-Ohio-4160

Administrative: Ohio Basic Building Code (Cont'd)

OBBS will begin comment review in the second half of 2027 of the 2026 Electrical Code published by the National Fire Protection Association (NFPA) as "NFPA 70". Ohio currently uses the 2023 National Electrical Code.

Yet this December, 2026, OBBS will announce its 5-year statutory review of the Residential Code. Also currently pending are new rules for Inspector Certifications, particularly incorporating options for third-party inspections.

In early 2027, OBBS will begin update of the Commercial Building and Plumbing Codes.

Administrative: Nuclear Modernization (Cont'd)

The facilities also serve Pennsylvania, operated by Vistra Corp., a Fortune 500 company based in Irving, Texas.

The loan is part of the federal government's program, "Reinvigorating the Nuclear Industrial Base" begun in May, 2025. The goal is to extend the plants' useful lives for an additional 20 years, supporting an estimated 3,000 project-related jobs.

Judicial: Building Code Constitutional Challenge (Cont'd)

The private real estate owner's parcel was classified as a commercial property, in which the owner renovated the second story into residential units. The owner then rented the rooms without obtaining a permit, inspection, or certificate of occupancy.

When the Building Department and local Fire Chief attempted an inspection, the owner refused access. Upon learning that tenants occupied the building, the Fire Chief issued a citation prohibiting occupancy. Owner sued the City.

Ohio law provides that the Ohio Board of Building Standards certifies local Building Officials to review and approve plans for construction. Ohio Administrative Code 4101:1-1, Rule 107.5.1, Building Official Approval.

What is typically referred to as a "building permit" actually is a license to construct, pursuant to a certified Building Official's approval, R.C. 3791.04.

Independent of OBBS, no City has the authority to approve, inspect, or issue occupancy permits, as this is under OBBS' jurisdiction.

Significantly, prior to the State Building Official's issuance of a certificate of occupancy, the Fire Official does not have jurisdiction, although cooperates with the Building Official.

Once the property is occupied, the

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Fire Official has jurisdiction for the health, safety, and welfare of the occupants, and the Building Official is no longer involved.

In this litigation, the property owner argued that the Fire Chief's citation created a "cloud" on the property's title. The owner argued that no law requires the owner to obtain a certificate of occupancy, and by doing so, the public authorities deprived the owner of using his property.

The federal court ruled that no Constitutional "taking" occurs merely because the government regulates private property. A "taking" requires compensation only when government regulation is so burdensome as to effectively become a direct appropriation or ouster of the owner from the private property. Accordingly, the enforcement of routine safety regulations in building and fire codes is not a regulatory "taking".

304 N Main LLC v. City of Fostoria, USDC Toledo, 9/30/2026, 2026 U.S. Dist. LEXIS 223264.

<u>Administrative</u>: New Project Funding (Cont'd)

The Ohio Tax Credit Authority announced ten projects expected to result in more than $2.2 billion in investments, including a new facility by Bayer U.S. LLC in New Albany, Franklin County, with a credit estimated at $73.5 million.

The Environmental Protection Agency awarded grants in nine counties under its H2Ohio Initiative, including a $1 million grant to construct nine miles of water pipeline connecting Holgate in Henry County to Napoleon's city water system.

The Ohio Water Development Authority approved over $2.9 million in low interest loans for wastewater and drinking water infrastructure, including $1.2 million to Burr Oak Regional Water District in southeast Ohio, for the construction of a granular activated carbon treatment system at its Water Treatment Plant.

The Ohio Turnpike Commission will re-bid three projects in Williams County after receiving only one bid from Miller Brothers Construction for over $13 million, which was 12 percent over estimate.

The Ohio Department of Transportation tested two autonomous electric vehicles by EASE Logistics in Marysville, under the "Drive Ohio Initiative". The Ohio Rural Automated Project incorporates driverless technology in the Truck Automation Corridor Project near the Transportation Research Center, funded by an $8.8 million grant from the federal government.

For more detail, the loan and grant applications considered by state agencies are public records, typically available online at agency websites.

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The Construction Conversation Call-In

on

Wednesday, November 11, 2026, 3:30 pm

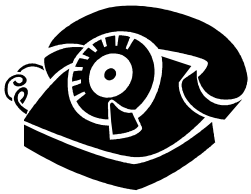
Luther L Liggett is inviting you to a scheduled Zoom meeting.

November Construction Conversation
Wednesday, November 11, 2026, 3:30 PM
Eastern Time (US and Canada)

Join Zoom Meeting
https://us02web.zoom.us/j/87925941376?pwd=ITkcHrIy6MXvaMlgXoGEWQmKDZjKHe.1

Meeting ID: 879 2594 1376
Passcode: 138953

Call-In: 309-205-3325



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