

The Construction Conversation

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

May 2025

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

Legislative: Private Prompt Pay

On May 27, 2025, the House Small Business Committee heard sponsor testimony on House Bill 288, to enact prompt pay requirements on private prime construction contracts, as currently applies to public prime contracts and all subcontracts. (Cont'd p. 2.)

Legislative: E-Verify in Construction

House Bill 246 if passed would require that every commercial construction contractor, subcontractor, and labor broker 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 Code Appeals

Senate Bill 6 would create a right of expedited appeal of a building code ruling. The General Assembly passed the bill last session by a unanimous vote in both chambers. But the legislation failed based on numerous amendments. (Cont'd p. 3).

Judicial: Payment for Percentage Complete

A homeowner contracted with a construction contractor to build a \$2.5 million home. When owner failed to pay the contractor for the percentage complete, the contractor sent a notice of default. (Cont'd p. 3).

Legislative: Port Authority Sales Tax Exemption

House Bill 147 would add Port Authorities expressly to current law exempting construction materials and services incorporated into the project from charging sales tax. (Cont'd p. 3).

Judicial: Mechanics' Lien Lawsuit

An HVAC contractor filed a mechanics' lien for payment of services rendered to a property owner, then filed a lawsuit to collect by and through legal counsel, who later withdrew from the case. (Cont'd p. 3).

Legislative: County Recorder Lien Address

In a fundamental amendment to lien recordation, Senate Bill 101 passed the Senate unanimously to require that any lien document filed with the County Recorder include the last known street address of the obligor that is not a post office box. (Cont'd p. 4).

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Legislative: Private Prompt Pay (Cont'd)

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

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

Sponsor Roemer explained, “This bill aims to get money flowing from, often-times, very large companies to Ohio contractors. This bill would not impact home builders and we believe focuses on large-scale commercial developers that are not paying their contractors within a reasonable time. HB288 is modeled after 30 other states’ current laws, from California to Florida.”

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

The bill requires Proponent and Opponent Testimony before any Committee vote.

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

The employer is prohibited from continuing to employ any person who is not verified as employment eligible.

Enforcement will be through a complaint to the Ohio Attorney General, who may investigate and then give notice to the employer of a violation. The Department of Commerce would hold an administrative adjudication.

If the adjudication determines a violation, the State may impose a fine of \$250.00 to \$25,000.00, and initiate a civil court action to enforce the law.

The contractor also may be barred from public bidding for two years, and any public license be revoked.

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.”

The House Commerce and Labor Committee will consider Opponent Testimony before scheduling any vote. The Senate is considering the same legislation in a companion Senate Bill 183.

Legislative: Expedited Building Code Appeals (Cont'd)

Sponsored by Senator Kristine Roegner (R, Hudson), the legislation passed the Senate unanimously again, and has enjoyed three hearings in the House.

The Ohio Building Officials Association testified in opposition, noting that the ability to appeal on an expedited basis to the state Board of Building Appeals will mean that about a dozen local boards of appeal may dissolve, as the expedited process is not workable locally.

The bill is likely to see passage at the next House Development Committee meeting.

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Judicial: Payment for Percentage Complete (Cont'd)

The owner sued for contract default, contending that the contractor breached for failing to complete specific construction items, for which owner refused to pay. The owner sought judgment for completing the construction.

The contractor sued based on the actual contract language for payment based on percentage complete.

The trial court granted summary judgment to the contractor, based upon the contract language that progress payments were due “based on percentage of work completed and not the specific task performed.”

Because the homeowner failed to pay based upon the actual contract language, the owner failed on the complaint, and the court awarded the contractor payment based on the actual contract language.

Painter v. Sterling Homes, LLC, Case no. A2400367, Hamilton Common Pleas Court, March 25, 2025.

Legislative: Port Authority Sales Tax Exemption

Sponsored by Representative Brian Lorenz (R, Powell), the proposal would recognize the added value to the real estate improvement in a Port Authority, requiring the contractor to pay sales taxes to the materialmen and subcontractors, but not collect sales taxes from the ultimate project owner on the final, higher value.

Referred to the House Development Committee, the Sponsor noted that “Currently, applications for tax exemptions

vary greatly based on the port authority.” He declined to mention specific counties where the authority refused to acknowledge the current statutory exemption.

Ohio Revised Code 5739.02 already exempts ultimate property owners from sales taxes on construction incorporated into real estate, recognizing that the increased property value will be reflected in higher property taxes.

If the Port Authority project owner is a tax-exempt entity such as a government agency or non-profit corporation, the purchase of materials and payments to subcontractors also is tax-exempt, provided that the construction contractor obtains a certification from the owner of the tax-exempt status.

Judicial: Mechanics’ Lien Lawsuit (Cont’d)

The HVAC contractor is a corporate limited liability company, which in the eyes of the law is an individual person. The corporate owner is not the same as the company. Accordingly, the owner cannot represent the corporate entity in court without legal counsel.

When the property owner filed a counterclaim and motion for summary judgment, the contractor filed an Affidavit but not a responsive pleading through counsel. Accordingly, the trial court issued a default judgment against the contractor and in favor of the property owner.

The Court of Appeals reversed, holding that the Affidavit should have been considered a responsive denial of the property owner’s defense.

Similarly, the Affidavit asserted a

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material dispute of the facts, which sufficed as a bar to summary judgment.

Wright v. Mallet, 8th Dist. Cuyahoga, 2025-Ohio-1729.

Legislative: County Recorder Lien Address (Cont'd)

Sponsored by Senator Bill Blessing (R, Cincinnati), the requirement specifically amends sections 3123.67, 4123.78, 4141.23, 5301.071, 5301.255, 5719.04, 5739.13, 5747.13, and 5749.07 of the Revised Code, including employer arrearages for workers' compensation, certain tax liens, and unemployment compensation.

Assigned to the House Judiciary Committee, Senator Blessing described the dilemma as "Several Ohioans are caused unnecessary stress when they are notified that they are lien debtors simply because they share the same name as the real lien debtor."

The bill needs two more hearings in the House Committee before passage, but had no opponent in the Senate.

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Join us in

The Construction Conversation Call-In

on

**Thursday, June 12, 2025
3:30 pm**

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

Join Zoom Meeting

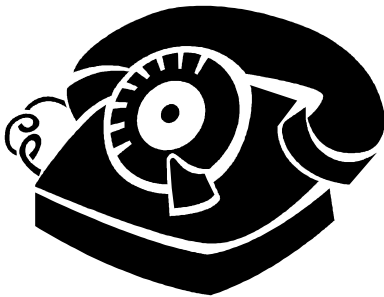
<https://us02web.zoom.us/j/84697253610?pwd=0QzrxDGbRouR2MbsNaPibVFbWzEdMF.1>

Meeting ID: 846 9725 3610

Passcode: 864165

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