

The Construction Conversation

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

July 2025

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Legislative: Retainage Reform

The Ohio General Assembly passed the biennial State Operating Budget, House Bill 96 with 3,156 pages including substantive changes such as Retainage Reform, signed into law by the Governor with 67 line-item vetoes. (Cont'd p. 2.)

Legislative: Electronic Plans

Building Information Modeling (BIM) is a digital representation of a building that allows these models to supplement "plans and specifications". New law permits the Ohio Facilities Construction Commission to add BIM to contract documents. (Cont'd p. 2).

Legislative: Expedited Building Appeals

Senate Bill 6 passed both the Senate and House unanimously, signed by the Governor effective October 1, 2025 to create a right of expedited appeal of a building code ruling. (Cont'd p. 3).

Legislative: Design Professional Price Bidding

New law included in House Bill 96 allows public authorities to combine the current 2-steps (RFQ, RFP) for Construction Manager at Risk and Design Build into 1-step for projects of less than \$4 million. (Cont'd p. 3).

Legislative: Mechanics' Lien Law

The Budget Bill also contained amendments to Ohio's historic Mechanics'

Lien Law, without separate introduction of a bill, without proponent or opponent hearings, and without a separate floor vote (known as "log-rolling"). (Cont'd p. 3).

Legislative: Building Code Exception

Private interests included language in the Budget Bill to avoid local building department permitting and inspections by exempting themselves entirely from the Ohio Basic Building Code. (Cont'd p. 3).

Administrative: Project Funding

Agency actions include funding for numerous new construction projects across the State. These actions typically are taken when an owner is working with a bank for funding, before selecting either a design professional for bid plans, or publicizing for a construction contractor. Accordingly, this public information can be a "leading indicator" of upcoming work. (Cont'd p. 3).

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Legislative: Retainage Reform (Cont'd)

Now law, several construction statutes enact new delivery systems favored in particular by the Ohio Facilities Construction Commission, although not limited to that agency.

Retainage Reform simplifies contractor retainage in all public projects by:

1) holding 4% of labor through substantial completion of the project (rather than 8% on the first half of the project and zero thereafter),

2) prohibiting the prime contractor from holding a higher rate of retainage on subcontractors, and

3) eliminating the requirement of escrowing funds. R.C. 153.12, 153.13, 153.14, and 153.63.

This law is effective June 30, 2025, applying to all new public works contracts now.

Legislative: Electronic Plans (Cont'd)

Included in House Bill 96, R.C. 153.01 is effective immediately:

“In preparing these plans, details, specifications, estimates, analyses, or other data, the public authority may require the architect or engineer to use a building information model system, as long as the system is based on a nationally recognized standard for building information models. As used in this division, "building information model" means a digital representation of physical and functional characteristics of a facility, and electronic files used to design and coordinate the project, whether it is a single model or

multiple models used in the aggregate.”

The nationally recognized standard for building information models in the United States is the National BIM Standard-United States™ (NBIMS-US™), sponsored by the National Institute of Building Sciences.

Of concern to design professionals is that under Ohio’s Seal Law, R.C. 3791.04(A)(2), the BIM must include a “seal” with authenticating protocols, Ohio Administrative Code 4703-3-01(D) (architects), 4733-23-01(D) (engineers). An electronic seal must be “linked to the document in such a manner that changes are readily determined and visually displayed if any data contained in the document file was changed”.

Also of concern is that, as part of the Contract Documents, a bidder is liable for any discrepancies between the electronic and hard copy plans and specs, which complicates bidding. Competitors for bidding might be few or out-of-state given that the software is not routinely used by all construction contractors.

Legislative: Expedited Building Appeals (Cont'd)

Under the new law, a party who seeks a variance to a building department decision 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.

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

Legislative: Design Professional Price Bidding (Cont'd)

Referred to as “Best Value Selection,” the language permits public authorities to ask for price including design, currently prohibited by R.C. 153.691 and in direct conflict with nationwide Qualifications Based Selection law (the “Brooks Act”).

“For projects valued at less than four million dollars, the public authority may require the design-build firm to submit a statement along with a pricing proposal described in division (B)(2)(h) of this section. *** After and only after the public authority ranks and selects firms under division (B)(1) of this section, the public authority shall review the pricing proposals submitted by selected firms under this division, and proceed under division (B)(3) of this section, continuing the selection process from there.” R.C. 153.693(A)(2); see also R.C. 9.331(A)(2).

While the design professional is stuck with the bid price, the public authority can negotiate the number lower. This raises significant professional ethics issues in the procurement of design professional services.

Legislative: Mechanics’ Lien Law

New R.C. 1311.04(B)(12) establishes a statute of limitations for a Notice of Commencement: “The expiration date for this notice of commencement is four years from the date of recording unless a different date is specified herein.”

New R.C. 1311.04(T)(1) allows an owner by affidavit to terminate a Notice of

Commencement, creating an issue of lien priority.

New R.C. 1311.252 deletes the requirement that a Mechanics’ Lien be in affidavit form.

The inevitable result of such legislation without thoughtful consensus is litigation over these provisions, as contractors and owners dispute issues of payment.

Legislative: Building Code Exception (Cont'd)

R.C. 3737.83 (G)(1) states in part:

“Establish that, for buildings and structures incident to the agricultural purposes of the land and determined to be exempt from the rules of the board of building standards pursuant to division (B)(1) of section 3781.06 or section 3781.061 of the Revised Code, the occupant load of a covered patio and its area are not to be included in the fire area calculation of the building for the determination of sprinkler thresholds, if all the following apply:***”

Governor DeWine vetoed similar language in a previous budget bill in 2023 on the basis that such considerations deserve to be considered by the Ohio Board of Building Standards, as the rules involve public health and safety.

This language was added without separate legislation introduced, without hearings held for proponents or opponents, and without a Committee vote or independent House and Senate vote.

Administrative: Project Funding (Cont'd)

In July, the following agencies

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authorized millions of dollars for funding:

Controlling Board approved grants of \$225 million from the All Ohio Future fund for Dayton Airport hangars; Lorain County water and wastewater infrastructure improvements; Coshocton County's Conesville Industrial Park including utility upgrades; and for the Zanesville-Muskingum Port Authority's water and wastewater treatment plant.

Ohio Tax Credit Authority approved new payroll income tax rebates for Picanova, Inc.'s planned relocation to Obetz; and Great Day Improvement, LLC's relocation to Walton Hills, Bedford Heights; and Sharonville.

Ohio Public Works Commission released agreements totaling \$322.6 million for water supply, wastewater, stormwater, and transportation infrastructure.

Ohio Facilities Construction Commission approved four school districts for Classroom Facilities Assistance, including \$145 million for New Philadelphia Schools, \$132 million for West Clermont Schools, \$47 million for Ontario Schools, and \$31 million for Wooster Schools. Four other school districts received over \$241 million for new school construction.

Ohio Air Quality Development Authority approved \$210 million in financing of three Solar Energy Projects in Marion, Montgomery, and another \$55 million in financing for Rumpke to build three solid waste facilities.

Ohio Water Development Authority awarded \$31 million in low-interest loans to eight communities for water and wastewater infrastructure improvements.

Ohio Department of Transportation awarded \$137.5 million in grants to 55 recipients for traffic safety projects in 41 counties.

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Join us in

The Construction Conversation Call-In

on

**Thursday, August 14, 2025
3:30 pm**

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

Join Zoom Meeting

<https://us02web.zoom.us/j/86185582602?pwd=0jTAewjLGxycFcloHxC92FHYY6Iaqu0.1>

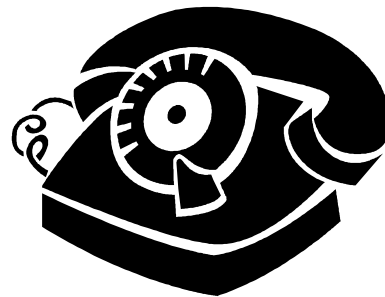
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