

# **The Construction Conversation**

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

August 2024

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### **Legislative: Citizens Not Politicians**

On August 16, 2024, the Ohio Ballot Board drafted misleading language for the Constitutional amendment Issue 1 to create a non-partisan legislative redistricting commission, labeling the fix itself as “gerrymandering”. (Cont'd p. 2.)

### **Legislative: Solar Pilot Program**

A year after introduction by Representatives Jim Hoops (R, Napoleon) and Sharon Ray (R, Wadsworth), House Bill 197 would create a Community Solar Pilot Program. (Cont'd p. 2).

### **Judicial: Prevailing Wage Not Applicable to University Dorm**

Central State University, a public institution to which Prevailing Wage requirements apply to non-residential projects, accepted bids for construction of a dormitory without prevailing wage requirements. (Cont'd p. 2).

### **Judicial: Breach from Impossibility**

A court of appeals found that a project owner breached the construction contract by making it impossible for the contractor to finish when excluding the contractor from the job site. (Cont'd p. 3).

### **Administrative: Brownfield Funding**

The Ohio Department of Development announced the award of over \$106 million in funding cleanup and remediation projects under the Brownfield Remediation Program. (Cont'd p. 3).

### **Administrative: Lead Testing in Schools**

The U.S. Environmental Protection Agency granted \$709,000.00 to Ohio for lead testing and remediation in Ohio schools and child care facilities. (Cont'd p. 3).

### **Administrative: Building Demo Program**

The Ohio Department of Development announced grants totaling over \$67 million to remove dilapidated commercial and residential buildings, with at least \$500,000.00 going to each of 88 counties. (Cont'd p. 3).

### **Administrative: Ohio History Facility**

The Ohio History Connection (formerly Ohio Historical Society) opened its new Collections Care Center on its Columbus campus after 20-months' construction. (Cont'd p. 4).

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## **Legislative: Citizens Not Politicians** **(Cont'd)**

The proponent entity “Citizens Not Politicians” then brought suit in the Ohio Supreme Court to challenge the misleading language, which misstates the intent:

“1. Repeal constitutional protections against gerrymandering approved by nearly three quarters of Ohio electors participating in the statewide elections of 2015 and 2018...”.

“2. Establish a new taxpayer-funded commission of appointees required to gerrymander the boundaries of state legislative and congressional districts...”.

If passed, the amendment would create a 15-member Citizens Redistricting Commission, a bipartisan group representing various geographic and demographic regions of Ohio.

The new Commission would be charged with drawing “fair and impartial” legislative districts, which would not discriminate against or favor any political party or politician. This is the opposite of the Ballot Commission’s language.

As an election law case, it is likely that the Supreme Court will hear the challenge immediately.

## **Legislative: Solar Pilot Program (Cont'd)**

Continuing the debate from the prior session’s HB 450, “the goal of this legislation is to create a small-scale solar program and “add a total of 1750 MW of generation and will use private capital”, Hoops outlined in his Sponsor Testimony.

Nearly 100 witnesses offered

testimony during the bill’s seven hearings, including the IBEW in support. Behind the legislation is CleanCapital, a commercial solar asset owner which has “deployed over \$1 billion to fund solar and storage projects across 26 states”. The company is associated with MetLife Insurance as the source of funding.

The key to the proposal would include credits to customers’ bills from electric utilities, which essentially would pay the solar developer.

The Ohio Consumers’ Counsel and American Electric Power opposed the legislation out of concern that utilities would shift such costs to non-participating consumers.

With a limited schedule remaining in the General Assembly’s year, the bill is likely to be re-introduced when Representative Hoops returns after re-election.

## **Judicial: Prevailing Wage Not Applicable to University Dorm (Cont'd)**

The HVAC insulation subcontractor did not pay the prevailing wage, so the trade union for the insulation work filed a complaint with the Ohio Department of Commerce. The Department found that the work was residential, and therefore exempt pursuant to R.C. 176.05.

The union appealed to the Franklin County Common Pleas Court where the Department of Commerce is located. The trial court found the Department’s actions to meet statutory requirements without further review.

Upon the union’s next appeal, the Franklin County Court of Appeals dismissed

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the appeal on jurisdictional grounds.

R.C. 4115.16(A) requires any appeal of the Department's decision to the common pleas court in the county where the violation occurred. CSU is in Greene County, not in Franklin County. Accordingly, the Court of Appeals dismissed, and the Department of Commerce's ruling that a university dorm is exempt therefore remains in force.

*Intl Union of Heat & Frost Insulators v Dept Commerce*, 10<sup>th</sup> Dist. Franklin, 2024-Ohio-3078

## **Judicial: Breach from Impossibility** (Cont'd)

An owner operated a clean room to manufacture various culture media used for microbiological testing in clinical, research, food, and pharmaceutical laboratories. The owner contracted for construction of a second clean room, to be certified under the relevant ISO standard.

After construction, the contractor tested the as-built facility. The owner insisted that the testing needed to be at a higher rate, essentially adding a material specification to the project.

Rather than allow the contractor to conclude testing, the owner barred the contractor from entering the site. Then the owner hired another contractor to renovate the facility.

The contractor successfully sued for payment. The Court of Appeals held that a material breach of contract includes a failure to do something that makes it impossible for the other party to perform. By the owner refusing to allow the contractor back on site, the owner breached.

*W. Enviro. Corp v Hardy Diagnostics*, 12<sup>th</sup> Dist. Warren, 2024-Ohio-3051

## **Administrative: Brownfield Funding** (Cont'd)

The top three projects received \$10 million each, in Franklin and Cuyahoga Counties. A total of 35 cleanup and remediation projects received funding, along with \$4.5 million for 26 assessments.

Historically, the Program has funded over \$450 million for 374 projects in 83 of 88 counties. Once remediated and certified by an engineer, R.C. 3746.12 allows the issuance of a covenant not to sue, protecting the landowner.

## **Administrative: Lead Testing in Schools** (Cont'd)

The Ohio Department of Health will administer the funding from the federal Voluntary School and Child Care Lead Testing and Reduction grant program.

The USEPA's "3-T" protocol details the Training, Testing, and Taking Action requirements, including manuals, checklists, and a toolkit on the USEPA website.

<https://www.epa.gov/ground-water-and-drinking-water/3ts-reducing-lead-drinking-water>

## **Administrative: Building Demo Program** (Cont'd)

The Building Demolition and Site Revitalization Program started in 2021, disbursing over \$200 million for nearly 5,000 demolition projects. The latest grants cover tear-down of 1,277 structures in nine Ohio counties.

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## **Administrative: Ohio History Facility** **(Cont'd)**

The new facility cost \$17 million to store Ohio's 1.8 million historical collection items. The facility includes 12,800 square feet of offices, and 16,500 square feet of storage space.

The public is invited to view the center by making an appointment.

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Join us in

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

on

**Thursday, September 12, 2024**  
**3:30 pm**

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

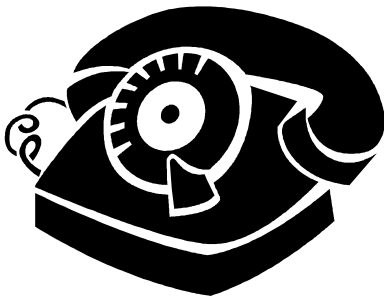
Join Zoom Meeting

<https://us02web.zoom.us/j/84973707631?pwd=yfAlwZmn327b6NbVgEFjtufj2U5MIg.1>

Meeting ID: 849 7370 7631

Passcode: 865891

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