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GOVERNMENT AFFAIRS UPDATE

Associated General Contractors of Ohio's Government Affairs Update provides information about government related matters of interest to the commercial building industry and AGC's advocacy efforts. It is e-mailed to AGC of Ohio members and available online at www.agcoho.com/advocacy.html. Direct questions and comments to Andrea Ashley, Vice President of Government Relations: andrea@agcoho.com or (614) 486-6446.

October 29, 2015



BALLOT ISSUES: VOTE YES ON 2, NO ON 3

Election Day is Tuesday, and Ohio has three major statewide issues on the ballot – two of which are very important to the construction industry!

In September, the AGC of Ohio Board voted to **OPPOSE STATE ISSUE 3**, which would allow for the legalization of marijuana, and **SUPPORT ISSUE 2**, which would amend the state's constitution to prohibit the ballot initiative process to "grant or create a monopoly, oligopoly or cartel." (Many believe the passage of Issue 2 would override Issue 3 if both pass.) AGC also contributed to the "[No on 3](#)" campaign.

TAKE ADVANTAGE OF THE REMAINING DAYS BEFORE THE ELECTION AND SPREAD THE WORD! The "No on 3" campaign has provided materials designed to educate employees about Issue 3 and concerns with it. They are available on the AGC of Ohio website for your use: [Issue 3 FAQs](#), [No on 3 sample e-mails](#), and [What is Issue 3 flyer](#).

OFCC REPRESENTATIVES TO ADDRESS AGC MEMBERS ON NOV 6

Representatives of the Ohio Facilities Construction Commission (OFCC) will provide an OFCC Update to AGC of Ohio members at 3:00 p.m. at the Hilton in downtown Columbus prior to the [Build Ohio Celebration](#). Presenting will be: David Chovan, Interim Executive Director; Lane Beougher, Program Services Manager; Craig Weise, Chief of Projects; and Jon Walden, Chief Legal Counsel. The program will end no later than 4:30 p.m.

The program is being held in conjunction with an AGC of Ohio Board meeting, and is only open to AGC of Ohio members. If interested in attending, RSVP to Andrea Ashley at AGC of Ohio: andrea@agcoho.com or (614) 486-6446. AGC of Ohio's annual Build Ohio Celebration will be held that evening. [Learn more/register](#).

HEARINGS CONTINUE ON LEGISLATION PROHIBITING EMPLOYEE RESIDENCY MANDATES

[HB 180](#) (Maag, R-Lebanon) and [SB 152](#) (Uecker, R-Miami Township)—companion bills that would prohibit employee residency requirements on public construction—have had hearings over the past month. AGC testified in support of SB 152 in the House State Government Committee on October 14. (View testimony.) There has been some indication that the bill will be voted out of committee prior to Thanksgiving break. Senate Government Oversight & Reform held sponsor testimony on HB 180 last week.

Both bills passed their respective chambers early summer. One of the bills need to pass both the House and Senate before it can be sent to the Governor for his signature.

SPEARIN DOCTRINE IS ALIVE AND WELL – COURT DETERMINES THAT IT DOES APPLY TO CONSTRUCTION MANAGERS AT RISK

In a much anticipated ruling, the Massachusetts Supreme Judicial Court clarified the application of the *Spearin Doctrine* to At Risk Construction Managers.

On September 2, 2015 the highest Court in Massachusetts held that public owners impliedly warrant plans and specifications furnished in conjunction with a construction management at risk project. The Court also held that under the facts of the case, the parties did not disclaim this implied warranty and that the indemnification agreement in the parties' contract did not prevent the construction manager from bringing a third-party complaint against the public project owner seeking indemnity for damages alleged by a subcontractor claiming additional costs arising out of alleged design defects.

[Read full article.](#)

The citation to this case is Coghlin Elec. Contractors, Inc. v. Gilbane Bldg. Co., et al., Mass., 2105 WL 5123135 (Sept. 2, 2015). Click [here](#) to read the decision.

While this decision is fact specific as to Massachusetts public projects, it is likely applicable in the private setting. It is also instructive for the application of the *Spearin Doctrine* in other states that permit and utilize the CMAR project delivery method. Construction managers must carefully determine their scope of services when it comes to accepting legal responsibility for design work performed by a third party designer.

Article courtesy of Pete Welin of AGC member [McDonald Hopkins](#): (614) 484-0701, pwelin@mcdonaldhopkins.com

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ON THE NATIONAL FRONT...

Information courtesy of AGC of America

AGC HEAD BRINGS NOTICE TO GROUP'S EFFORTS, HONOR FROM THE HILL

AGC of America CEO Steve Sandherr has been named one of the year's leading lobbyists by *The Hill*. The honor recognizes AGC's efforts on behalf of the construction industry and places the association in an elite group in Washington. AGC "is pushing Congress to pass a long-term transit and highway funding bill while advocating on behalf of construction jobs as the industry revs up," according to The Hill. [Read article.](#)

UPCOMING EVENTS

OFCC UPDATE

BUILD OHIO CELEBRATION

November 6, 3:00-4:00 p.m.

Hilton Columbus Downtown

OFCC Interim Executive Director David Chovan will provide an update to AGC members about the latest Ohio Facilities Construction Commission (OFCC) initiatives, public construction, and recent contract changes. (Other key OFCC staff have also been invited, and AGC is waiting for confirmation.) RSVP to Andrea Ashley at andrea@agcohio.com.

The annual AGC of Ohio Build Ohio Celebration will be held that evening. Celebrate construction and mingle with construction professionals from across the state. [Learn more and register.](#) View the [Build Ohio Preview](#).

SAFETY MEETING

December 4, 9:30 a.m. – noon

AGC office (Cols)

The meeting agenda includes a presentation about innovative training techniques and ways to bridge the gap between generations. Other agenda items are an update on OSHA regulatory and enforcement activities, workers' compensation, and other safety and health topics of interest. The meeting is free of charge and open to AGC of Ohio members. RSVP to Andrea Ashley at AGC of Ohio andrea@agcohio.com or (614) 486-6446.

COURT ISSUES NATIONWIDE STAY OF EPA/CORPS REGULATION REDRAWING CLEAN WATER ACT JURISDICTION

The United States Court of Appeals for the Sixth Circuit has issued [a nationwide stay](#) of the [new federal regulation](#) redefining “waters of the U.S.” (WOTUS) for the purposes of the Clean Water Act. The U.S. Environmental Protection Agency and U.S. Army Corps of Engineers proposed and then finalized the new regulation in an effort to clarify the scope of the statute’s requirements.

The questions that lie at the heart of this and several other cases is whether the federal agencies went further than the Clean Water Act permits and whether they followed the appropriate procedures. The court’s order blocks the implementation of the new rule nationwide and preserves the status quo until the court can decide whether it has jurisdiction over the case and the resulting power to address those legal questions. In an odd twist, the 18 states that filed the lawsuit were the ones arguing that the case actually belongs in a lower court.

The court exercised its discretion to freeze the status quo for several reasons. The “sheer breadth” of the new rule and its “ripple effects” on the 18 states were certainly among them. The uncertainty that this and other pending cases have created was certainly another. But by far, the most interesting was the court’s determination that the petitioners had “demonstrated a substantial possibility of success on the merits of their claims.” The court found it “far from clear” that the new regulation is “harmonious” with the Supreme Court’s prior rulings on the statute. The court also found that the federal agencies had “not persuasively rebutted” the state’s claims that the agencies had improperly failed (1) to give the public proper notice that they might write certain “distance limitations” in the new rule or (2) to identify scientific support for the limitations they chose.

One judge did dissent, but he did not, in the process, comment on the merits of the case. Rather, he insisted that it was inappropriate for the court to exercise its discretion to issue a stay before the court had determined that it has the power to decide its merits.

This ruling on the heels of a [lower court ruling](#) that also cast doubt on new regulation. In late August, the U.S. District Court for the District of North Dakota issued a preliminary injunction against the implementation of the new rule in the 13 states that had requested the injunction. "The risk of irreparable harm to the States is both imminent and likely," he wrote, adding that, "on the whole, the greater public interest favors issuance of the preliminary injunction."

UPCOMING AGC OF AMERICA WEBINARS

Open Shop Web Meeting Quick Learn: *What the NLRB's New Joint Employer Standard Means for Construction Contractors*

November 3, 2015, 2:00 p.m. - 3:15 p.m., free of charge. [Learn more and register.](#)

How to Foster a Culture of Lean and Innovation

November 17, 2015, 2:00-3:00 p.m. [Learn more and register.](#)

The New ConsensusDocs BIM Addendum - How BIM has Evolved

November 19, 2015, 2:00-3:30 p.m. [Learn more and register.](#)