

As Introduced

133rd General Assembly

Regular Session

2019-2020

H. B. No. 380

Representatives Cross, Sweeney

**Cosponsors: Representatives Crossman, Skindell, Upchurch, Weinstein,
Galonski, Seitz, Lepore-Hagan, O'Brien, Miller, A., Crawley**

A BILL

To amend section 4113.61 of the Revised Code to
require owners of construction projects to pay a
contractor within thirty-five days of receiving
a request for payment.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That section 4113.61 of the Revised Code be
amended to read as follows:

Sec. 4113.61. (A) (1) If a contractor submits a written
request for payment to an owner for an amount that is allowed to
the contractor under a contract for properly performed work or
furnished materials, the owner shall pay the amount to the
contractor, less any amount withheld as authorized by law,
within thirty-five days after receiving the request.

The owner may reduce the amount paid by any retainage
provision contained in the contract, invoice, or purchase order
between the owner and contractor, and may withhold amounts that
may be necessary to resolve disputed liens or claims involving
the work or labor performed or material furnished by the

contractor. 18

If the owner fails to comply with division (A) (1) of this 19
section, the owner shall pay the contractor, in addition to the 20
payment due, interest in the amount of eighteen per cent per 21
annum of the payment due, beginning on the thirty-sixth day 22
following the receipt of the payment request from the contractor 23
to the owner ending on the date of full payment of the payment 24
due plus interest to the contractor. 25

(2) If a subcontractor or material supplier submits an 26
application or request for payment or an invoice for materials 27
to a contractor in sufficient time to allow the contractor to 28
include the application, request, or invoice in the contractor's 29
own pay request submitted to an owner, the contractor, within 30
ten calendar days after receipt of payment from the owner for 31
improvements to property, shall pay to the: 32

(a) Subcontractor, an amount that is equal to the 33
percentage of completion of the subcontractor's contract allowed 34
by the owner for the amount of labor or work performed; 35

(b) Material supplier, an amount that is equal to all or 36
that portion of the invoice for materials which represents the 37
materials furnished by the material supplier. 38

The contractor may reduce the amount paid by any retainage 39
provision contained in the contract, invoice, or purchase order 40
between the contractor and the subcontractor or material 41
supplier, and may withhold amounts that may be necessary to 42
resolve disputed liens or claims involving the work or labor 43
performed or material furnished by the subcontractor or material 44
supplier. 45

If the contractor fails to comply with division (A) ~~(1)~~ (2) 46

of this section, the contractor shall pay the subcontractor or 47
material supplier, in addition to the payment due, interest in 48
the amount of eighteen per cent per annum of the payment due, 49
beginning on the eleventh day following the receipt of payment 50
from the owner and ending on the date of full payment of the 51
payment due plus interest to the subcontractor or material 52
supplier. 53

~~(2)~~ (3) If a lower tier subcontractor or lower tier 54
material supplier submits an application or request for payment 55
or an invoice for materials to a subcontractor, material 56
supplier, or other lower tier subcontractor or lower tier 57
material supplier in sufficient time to allow the subcontractor, 58
material supplier, or other lower tier subcontractor or lower 59
tier material supplier to include the application, request, or 60
invoice in the subcontractor's, material supplier's, or other 61
lower tier subcontractor's or lower tier material supplier's own 62
pay request submitted to a contractor, other subcontractor, 63
material supplier, lower tier subcontractor, or lower tier 64
material supplier, the subcontractor, material supplier, or 65
other lower tier subcontractor or lower tier material supplier, 66
within ten calendar days after receipt of payment from the 67
contractor, other subcontractor, material supplier, lower tier 68
subcontractor, or lower tier material supplier for improvements 69
to property, shall pay to the: 70

(a) Lower tier subcontractor, an amount that is equal to 71
the percentage of completion of the lower tier subcontractor's 72
contract allowed by the owner for the amount of labor or work 73
performed; 74

(b) Lower tier material supplier, an amount that is equal 75
to all or that portion of the invoice for materials which 76

represents the materials furnished by the lower tier material 77
supplier. 78

The subcontractor, material supplier, lower tier 79
subcontractor, or lower tier material supplier may reduce the 80
amount paid by any retainage provision contained in the 81
contract, invoice, or purchase order between the subcontractor, 82
material supplier, lower tier subcontractor, or lower tier 83
material supplier and the lower tier subcontractor or lower tier 84
material supplier, and may withhold amounts that may be 85
necessary to resolve disputed liens or claims involving the work 86
or labor performed or material furnished by the lower tier 87
subcontractor or lower tier material supplier. 88

If the subcontractor, material supplier, lower tier 89
subcontractor, or lower tier material supplier fails to comply 90
with division (A) ~~(2)~~ (3) of this section, the subcontractor, 91
material supplier, lower tier subcontractor, or lower tier 92
material supplier shall pay the lower tier subcontractor or 93
lower tier material supplier, in addition to the payment due, 94
interest in the amount of eighteen per cent per annum of the 95
payment due, beginning on the eleventh day following the receipt 96
of payment from the contractor, other subcontractor, material 97
supplier, lower tier subcontractor, or lower tier material 98
supplier and ending on the date of full payment of the payment 99
due plus interest to the lower tier subcontractor or lower tier 100
material supplier. 101

~~(3)~~ (4) If a contractor receives any final retainage from 102
the owner for improvements to property, the contractor shall pay 103
from that retainage each subcontractor and material supplier the 104
subcontractor's or material supplier's proportion of the 105
retainage, within ten calendar days after receipt of the 106

retainage from the owner, or within the time period provided in 107
a contract, invoice, or purchase order between the contractor 108
and the subcontractor or material supplier, whichever time 109
period is shorter, provided that the contractor has determined 110
that the subcontractor's or material supplier's work, labor, and 111
materials have been satisfactorily performed or furnished and 112
that the owner has approved the subcontractor's or material 113
supplier's work, labor, and materials. 114

If the contractor fails to pay a subcontractor or material 115
supplier within the appropriate time period, the contractor 116
shall pay the subcontractor or material supplier, in addition to 117
the retainage due, interest in the amount of eighteen per cent 118
per annum of the retainage due, beginning on the eleventh day 119
following the receipt of the retainage from the owner and ending 120
on the date of full payment of the retainage due plus interest 121
to the subcontractor or material supplier. 122

~~(4)~~ (5) If a subcontractor, material supplier, lower tier 123
subcontractor, or lower tier material supplier receives any 124
final retainage from the contractor or other subcontractor, 125
lower tier subcontractor, or lower tier material supplier for 126
improvements to property, the subcontractor, material supplier, 127
lower tier subcontractor, or lower tier material supplier shall 128
pay from that retainage each lower tier subcontractor or lower 129
tier the lower tier subcontractor's or lower tier material 130
supplier's proportion of the retainage, within ten calendar days 131
after receipt of payment from the contractor or other 132
subcontractor, lower tier subcontractor, or lower tier material 133
supplier, or within the time period provided in a contract, 134
invoice, or purchase order between the subcontractor, material 135
supplier, lower tier subcontractor, or lower tier material 136
supplier and the lower tier subcontractor or lower tier material 137

supplier, whichever time period is shorter, provided that the 138
subcontractor, material supplier, lower tier subcontractor, or 139
lower tier material supplier has determined that the lower tier 140
subcontractor's or lower tier material supplier's work, labor, 141
and materials have been satisfactorily performed or furnished 142
and that the owner has approved the lower tier subcontractor's 143
or lower tier material supplier's work, labor, and materials. 144

If the subcontractor, material supplier, lower tier 145
subcontractor, or lower tier material supplier fails to pay the 146
lower tier subcontractor or lower tier material supplier within 147
the appropriate time period, the subcontractor, material 148
supplier, lower tier subcontractor, or lower tier material 149
supplier shall pay the lower tier subcontractor or lower tier 150
material supplier, in addition to the retainage due, interest in 151
the amount of eighteen per cent per annum of the retainage due, 152
beginning on the eleventh day following the receipt of the 153
retainage from the contractor or other subcontractor, lower tier 154
subcontractor, or lower tier material supplier and ending on the 155
date of full payment of the retainage due plus interest to the 156
lower tier subcontractor or lower tier material supplier. 157

~~(5)~~ (6) A contractor, subcontractor, or lower tier 158
subcontractor shall pay a laborer wages due within ten days of 159
payment of any application or request for payment or the receipt 160
of any retainage from an owner, contractor, subcontractor, or 161
lower tier subcontractor. 162

If the contractor, subcontractor, or lower tier 163
subcontractor fails to pay the laborer wages due within the 164
appropriate time period, the contractor, subcontractor, or lower 165
tier subcontractor shall pay the laborer, in addition to the 166
wages due, interest in the amount of eighteen per cent per annum 167

of the wages due, beginning on the eleventh day following the 168
receipt of payment from the owner, contractor, subcontractor, or 169
lower tier subcontractor and ending on the date of full payment 170
of the wages due plus interest to the laborer. 171

(B) (1) If a ~~contractor, subcontractor, material supplier,~~ 172
~~lower tier subcontractor, or lower tier material supplier person~~ 173
owing payment under division (A) of this section has not made 174
payment in compliance with that ~~division (A) (1), (2), (3), (4),~~ 175
~~or (5) of this section~~ within thirty days after payment is due, 176
~~a subcontractor, material supplier, lower tier subcontractor,~~ 177
~~lower tier material supplier, or laborer~~ the person owed payment 178
may file a civil action to recover the amount due plus ~~the~~ 179
~~interest provided in those divisions.~~ If the court finds in the 180
civil action that a ~~contractor, subcontractor, material~~ 181
~~supplier, lower tier subcontractor, or lower tier material~~ 182
~~supplier~~ the person owing payment has not made payment in 183
compliance with ~~those divisions~~ division (A) of this section, 184
the court shall award the interest specified in ~~those~~ 185
~~divisions~~ that division, in addition to the amount due. Except as 186
provided in division (B) (3) of this section, the court shall 187
award the prevailing party reasonable attorney fees and court 188
costs. 189

(2) In making a determination to award attorney fees under 190
division (B) (1) of this section, the court shall consider all 191
relevant factors, including but not limited to the following: 192

(a) The presence or absence of good faith allegations or 193
defenses asserted by the parties; 194

(b) The proportion of the amount of recovery as it relates 195
to the amount demanded; 196

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| (c) The nature of the services rendered and the time expended in rendering the services. | 197 198 |
| (3) The court shall not award attorney fees under division (B) (1) of this section if the court determines, following a hearing on the payment of attorney fees, that the payment of attorney fees to the prevailing party would be inequitable. | 199 200 201 202 |
| (C) This section does not apply to any construction or improvement of any single-, two-, or three-family detached dwelling houses. | 203 204 205 |
| (D) (1) No provision of this section regarding entitlement to interest, attorney fees, or court costs may be waived by agreement and any such term in any contract or agreement is void and unenforceable as against public policy. | 206 207 208 209 |
| (2) <u>This (a) Subject to division (D) (2) (b) of this section, this section shall not be construed as impairing or affecting, in any way, the terms and conditions of any contract, invoice, purchase order, or any other agreement between a</u> any of the following: | 210 211 212 213 214 |
| <u>(i) An owner and a contractor;</u> | 215 |
| <u>(ii) A contractor and a subcontractor or a material supplier</u> or between a; | 216 217 |
| <u>(iii) A subcontractor and another subcontractor, a material supplier, a lower tier subcontractor, or a lower tier material supplier,</u> except that if such. | 218 219 220 |
| <u>(b) If terms and conditions described in division (D) (2) (a) of this section contain time periods</u> which that are longer than any of the time periods specified in divisions (A) (1), (2), (3), (4), and <u>(5), and (6)</u> of this section or interest at a | 221 222 223 224 |

percentage less than the interest stated in those divisions, 225
then the provisions of this section shall prevail over such 226
terms and conditions. 227

(E) Notwithstanding the definition of lower tier material 228
supplier in this section, a person is not a lower tier material 229
supplier unless the materials supplied by the person are: 230

(1) Furnished with the intent, as evidenced by the 231
contract of sale, the delivery order, delivery to the site, or 232
by other evidence that the materials are to be used on a 233
particular structure or improvement; 234

(2) Incorporated in the improvement or consumed as normal 235
wastage in the course of the improvement; or 236

(3) Specifically fabricated for incorporation in the 237
improvement and not readily resalable in the ordinary course of 238
the fabricator's business even if not actually incorporated in 239
the improvement. 240

(F) As used in this section: 241

(1) "Contractor" means any person who undertakes to 242
construct, alter, erect, improve, repair, demolish, remove, dig, 243
or drill any part of a structure or improvement under a contract 244
with an owner, a "construction manager" or "construction manager 245
at risk" as those terms are defined in section 9.33 of the 246
Revised Code, or a "design-build firm" as that term is defined 247
in section 153.65 of the Revised Code. 248

(2) "Laborer," "material supplier," "subcontractor," and 249
"wages" have the same meanings as in section 1311.01 of the 250
Revised Code. 251

(3) "Lower tier subcontractor" means a subcontractor who 252

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| is not in privity of contract with a contractor but is in | 253 |
| privity of contract with another subcontractor. | 254 |
| (4) "Lower tier material supplier" means a material | 255 |
| supplier who is not in privity of contract with a contractor but | 256 |
| is in privity of contract with another subcontractor or a | 257 |
| material supplier. | 258 |
| (5) "Wages due" means the wages due to a laborer as of the | 259 |
| date a contractor or subcontractor receives payment for any | 260 |
| application or request for payment or retainage from any owner, | 261 |
| contractor, or subcontractor. | 262 |
| (6) "Owner" includes the state, and a county, township, | 263 |
| municipal corporation, school district, or other political | 264 |
| subdivision of the state, and any public agency, authority, | 265 |
| board, commission, instrumentality, or special district of or in | 266 |
| the state or a county, township, municipal corporation, school | 267 |
| district, or other political subdivision of the state, and any | 268 |
| officer or agent thereof and relates to all the interests either | 269 |
| legal or equitable, which a person may have in the real estate | 270 |
| upon which improvements are made, including interests held by | 271 |
| any person under contracts of purchase, whether in writing or | 272 |
| otherwise. | 273 |
| Section 2. That existing section 4113.61 of the Revised | 274 |
| Code is hereby repealed. | 275 |