

AN ACT

To amend section 153.56 and to enact section 4113.62 of the Revised Code to void various types of provisions of a construction contract or subcontract that are considered to be against public policy and to establish new requirements and limitations relative to exercising rights under a bond for certain public improvements.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That section 153.56 be amended and section 4113.62 of the Revised Code be enacted to read as follows:

Sec. 153.56. (A) Any person to whom any money is due for labor or work performed or materials furnished in a public improvement as provided in section 153.54 of the Revised Code, at any time after performing the labor or work or furnishing the materials, but not later than ninety days after the acceptance of the public improvement by the duly authorized board or officer, shall furnish the sureties on the bond, a statement of the amount due to the person.

(B) A suit shall not be brought against sureties on the bond until after sixty days after the furnishing of the statement described in division (A) of this section. If the indebtedness is not paid in full at the expiration of that sixty days, and if the person complies with division (C) of this section, the person may bring an action in ~~his~~ the person's own name upon the bond, as provided in sections 2307.06 and 2307.07 of the Revised Code, that action to be commenced, notwithstanding section 2305.12 of the Revised Code, not later than one year from the date of acceptance of the public improvement.

(C) to exercise rights under this section, a subcontractor or materials supplier supplying labor or materials that cost more than thirty thousand dollars, who is not in direct privity of contract with the principal contractor for the public improvement, shall serve a notice of furnishing upon the principal contractor in the form provided in section 1311.261 of the Revised Code.

(D) a subcontractor or materials supplier who serves a notice of furnishing under division (c) of this section as required to exercise rights

under this section has the right of recovery only as to amounts owed for labor and work performed and materials furnished during and after the twenty-one days immediately preceding service of the notice of furnishing.

(E) for purposes of this section, "principal contractor" has the same meaning as in section 1311.25 of the Revised Code.

Sec. 4113.62. (A) any provision of a construction contract, agreement, or understanding that waives rights under a surety bond is void and unenforceable as against public policy.

(B) any provision of a construction contract, agreement, or understanding, or specification or other documentation that is made a part of a construction contract, agreement, or understanding, that waives any pending or asserted claim on the basis of final payment made from one person to another for the construction contract, agreement, or understanding, is void and unenforceable as against public policy, when the person against whom the claim is pending or asserted has received notice of that pending or asserted claim. Nothing in this division precludes parties to a construction contract, agreement, or understanding from entering into a subsequent settlement agreement arising from a claim under that construction contract, agreement, or understanding.

(c)(1) any provision of a construction contract, agreement, or understanding, or specification or other documentation that is made a part of a construction contract, agreement, or understanding, that waives or precludes liability for delay during the course of a construction contract when the cause of the delay is a proximate result of the owner's act or failure to act, or that waives any other remedy for a construction contract when the cause of the delay is a proximate result of the owner's act or failure to act, is void and unenforceable as against public policy.

(2) Any provision of a construction subcontract, agreement, or understanding, or specification or other documentation that is made part of a construction subcontract, agreement, or understanding, that waives or precludes liability for delay during the course of a construction subcontract when the cause of the delay is a proximate result of the owner's or contractor's act or failure to act, or that waives any other remedy for a construction subcontract when the cause of the delay is a proximate result of the owner's or contractor's act or failure to act, is void and unenforceable as against public policy.

(d) No construction contract, agreement, or understanding that makes payment from a contractor to a subcontractor or materials supplier, or from a SUBCONTRACTOR to a materials supplier, lower tier subcontractor, or lower tier materials supplier contingent or conditioned upon receipt of

payment from any other person shall prohibit a person from filing a claim to protect rights under sections 153.56, 1311.06, and 1311.26 of the Revised Code from expiring during the PENDENCY of receipt of payment.

(E) Nothing in this section shall be construed to create a liability for a surety on a bond that is greater than that of its principal, or limit the availability to a surety of any defenses available to its principal.

(E) As used in this section:

(1) "Contractor" and "LOWER TIER subcontractor" have the same meanings as in section 4113.61 of the Revised Code.

(2) "Materials supplier" includes any person by whom any materials are furnished in furtherance of an improvement.

(3) "Lower tier materials supplier" means a materials supplier who is not in privity of contract with a contractor but is in privity of contract with another subcontractor or a materials supplier.

(4) "Subcontractor," "improvement," and "materials" have the same meanings as in section 1311.01 Of the Revised Code.

SECTION 2. That existing section 153.56 of the Revised Code is hereby repealed.

SECTION 3. Nothing in section 4113.62 of the Revised Code, as enacted by this act, applies to or shall be construed as applying to any contracts, agreements, or understandings entered into before the effective date of this act.

Speaker _____ of the House of Representatives.

President _____ of the Senate.

Passed _____, 20____

Approved _____, 20____

Governor.

Am. Sub. S. B. No. 71

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The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the
____ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____