

**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**

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**A BILL**

To amend section 4113.61 of the Revised Code to 1  
require owners of construction projects to pay a 2  
contractor within thirty-five days of receiving 3  
a request for payment. 4

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

**Section 1.** That section 4113.61 of the Revised Code be 5  
amended to read as follows: 6

**Sec. 4113.61.** (A) (1) If a contractor submits a written 7  
request for payment to an owner for an amount that is allowed to 8  
the contractor under a contract for properly performed work or 9  
furnished materials, the owner shall pay the amount to the 10  
contractor, less any amount withheld as authorized by law, 11  
within thirty-five days after receiving the request. 12

The owner may reduce the amount paid by any retainage 13  
provision contained in the contract, invoice, or purchase order 14  
between the owner and contractor, and may withhold amounts that 15  
may be necessary to resolve disputed liens or claims involving 16  
the work or labor performed or material furnished by the 17

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

(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</u> 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 <del>a</del> <u>any of the following:</u>	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> <del>or between a;</del>	216 217
<u>(iii) A subcontractor and another subcontractor, a material supplier, a lower tier subcontractor, or a lower tier material supplier,</u> <del>except that if such.</del>	218 219 220
<u>(b) If terms and conditions described in division (D) (2) (a) of this section</u> contain time periods <del>which</del> <u>that</u> are longer than any of the time periods specified in divisions (A) (1), (2), (3), (4), <del>and</del> <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

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
<b>Section 2.</b> That existing section 4113.61 of the Revised	274
Code is hereby repealed.	275