



Representatives Jon Cross & Bride Rose Sweeney
Sponsor Testimony: House Bill 68 (Ensure Prompt Pay)
Senate Workforce and Higher Education Committee
December 15, 2021

Chairman Johnson, Vice-Chair Cirino, Ranking Member Williams, and Members of the Workforce and Higher Education Committee, Representative Sweeney and I are excited to sponsor and testify in support of House Bill 68. Our legislation seeks to address an issue in the construction industry that unfortunately falls on those small businesses who can least afford it. House Bill 68 would require private sector owners of construction projects to provide payment to the prime contractors no more than 30 days after the prime contractors provide final invoices to the owners.

According to the 2018 Construction Payments Report issued by Rabbet, there is a \$40 billion impact on the industry for carrying forward the fees and costs of slow payments. This same study found that an overwhelming majority of subcontractors must turn to other sources of financing for wages and materials while they wait for payment. Only 39% of subcontractors reported the ability to rely on their balance sheet, followed by 36% having to use a line of credit, 22% using credit cards, 15% use personal savings and 6% use retirement savings. While wages must be paid weekly or bi-weekly and materials are typically purchased on 30-day invoices terms, three out of four contractors reported waiting longer than 30 days to receive payments. One in three contractors reported waiting longer than 60 days.

This bill aims to get money flowing from, often-times, very large companies to Ohio contractors. This bill would not impact home builders and we believe focuses on large-scale commercial developers that are not paying their contractors within a reasonable time. House Bill 68 is modeled after 29 other states' current laws, including **Texas**.

I'll now turn it over to my colleague, Representative Sweeney, to discuss the details of the bill.

Chairman Johnson, Vice-Chair Cirino, Ranking Member Williams, and Members of the Workforce and Higher Education Committee, thank you for the opportunity to testify on this pro-business, pro-worker bill, which came out of the House with a strong, bipartisan vote of 86 to 11. House Bill 68 updates our existing Prompt Pay Act to ensure a level playing field for hardworking Ohioans and to promote Ohio's economic competitiveness alongside most other states that already have similar prompt pay laws on the books.

According to PricewaterhouseCoopers' Working Capital Report, the construction industry currently suffers from 51 Days Sales Outstanding (DSO), meaning it takes on average 51 days to collect payment after a sale. That's one of the longest DSOs of any industry in the United States, and it creates cash flow problems for many businesses. A lack of timely payment affects not only the prime contractor but also the subcontractor as well as any tiers that are below them. Slow payments and late fees cost the construction industry billions of dollars each year.

The General Assembly has already worked to address this issue - in part - by placing certain time limits for payments in both the public and private sectors.

| Public Construction Projects | VS | Private Construction Projects |
|--|----|--|
| Owner to Prime Contractor: 30 days after invoice unless otherwise agreed upon (R.C. 126.30 and 153.14). | ✓ | Owner to Prime Contractor: No provision exists. |
| Prime Contractor to Sub: 10 days after prime contractor receives payment from owner (R.C. 4113.61). | ✓ | Prime Contractor to Sub: 10 days after prime contractor receives payment from owner (R.C. 4113.61). |
| Sub to Lower Tiers: 10 days after subcontractor receives payment from the prime contractor (R.C. 4113.61). | ✓ | Sub to Lower Tiers: 10 days after subcontractor receives payment from the prime contractor (R.C. 4113.61). |

Since there is no time limit for when the general contractor gets paid on a private project, the sub-contractor must wait for payment or use credit lines and other more expensive ways to cover costs. A delay in payment can continue down the line for any lower-tier contractors and material suppliers. This slows down projects and can prevent businesses from relying on their balance sheet in order to make payroll or meet other obligations.

Contractors rely on timely payments to finance the costs of bidding for future work and seeking out their next job. When payments are delayed, it jeopardizes a contractor's ability to secure that next job. House Bill 68 will promote a healthier construction industry, where more contractors will have the capital required to bid on future work and more workers will stay on the job with more reliable paychecks.

We recognize that there are many construction project owners who pay their bills on time. This legislation's intent is to target bad actors – mostly large, out-of-state companies – who take advantage of a gap in state law without any real consequences. While it can be exciting when data centers, logistics facilities or other large commercial projects come to Ohio, we cannot lose sight of the fact that it is Ohio workers and often small businesses completing these projects. They deserve to be paid on time just like any other business.

Thank you and we look forward to answering any of your questions.