



**SENATE WORKFORCE & HIGHER EDUCATION COMMITTEE
PROPONENT TESTIMONY ON H.B. 68**

**Provided on February 9, 2022 by
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Chair Johnson, Vice Chair Cirino, Ranking Member Williams and Representatives on the Senate Workforce & Higher Education Committee:

Thank you for the opportunity to share the AGC of Ohio's support of House Bill 68, legislation that would create a prompt pay law for private owners of construction projects.

AGC of Ohio is a construction association that represents large and small, union and open shop (non-union), commercial building and industrial contractors from across the state. Our members work in both the public and private arena; they construct hospitals, offices, schools, wastewater treatment plants, warehouses and manufacturing facilities, mixed-use developments, and a host of other vertical structures.

Commercial construction is a high-risk, high-volume and low-margin industry – particularly on the vertical building side. Cash flow is extremely important. Money is necessary to compensate workers, pay subcontractors and suppliers, procure materials and equipment, fund new projects, and finance other company functions. Cash flow can impact a construction company's ability to obtain appropriate bonding and insurance, as well as its ability to be considered for future construction projects.

The Ohio Revised Code contains several prompt pay laws. Ohio has a Prompt Pay Act that requires a contractor to make timely payments to subcontractors on both public and private construction projects [R.C. 4113.61(A)]. Laws also exist for the prompt payment of contractors by public owners (R.C. 153.12-153.14; R.C. 5525.19 for ODOT). **Notably missing is a statute requiring prompt payment from a private owner to a contractor once a request for payment is made, which H.B. 68 addresses.**

Members of this committee had questions during sponsor testimony about contractual obligations and payment, and there appeared to be some confusion about how projects are financed.



General contractors (CMs, DBs, prime, etc.) and owners sign contracts prior to the start of a project that stipulates payment terms. Those terms are tied to project milestones/completion of work, building inspection approval, architect/engineer certification, and/or the approval from an owner's representative. H.B. 68 recognizes this under Sec. 4113.61 (A)(1)(a). The appropriate milestones and related contract criteria would need to be achieved before a contractor could request payment from the owner.

The project owners provide the overall project financing. However, usually commercial contractors and subcontractors fund their initial portion of work up front; these costs can include labor (managerial and trades), materials, overhead, regulatory costs (i.e. permits), safety and health/risk management, etc.

Under state law, the general contractor is required to pay subcontractors within ten calendar days after receipt of payment from the project owner. And those subcontractors have a 10-day requirement upon receipt of their payment, and so on... repeating all the way down the tiers of subcontractors.

All tiers of contractors are reliant on timely payment from the owner to recoup their costs and continue construction on that project – as well as ensure the company's cash flow. As mentioned previously, cash flow is vital for compensating workers, paying subcontractors and suppliers, procuring materials and equipment, obtaining bonding and insurance, etc. And, public and private owners (as well as higher-tier contractors) take into account a construction companies' financial viability when considering them for a project, and delayed payments can impact their competitiveness for other projects.

We appreciate Representatives Cross and Sweeney's continued efforts with this bill, and this committee for its consideration. Give contractors another tool in their toolbox to ensure cashflow, as well as protect the viability of their current and future projects and those working on them. **We urge you to support H.B. 68.**