



**HOUSE COMMERCE AND LABOR COMMITTEE
PROPONENT TESTIMONY ON H.B. 203**

**Provided on June 20, 2023 by
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Associated General Contractors (AGC) of Ohio**

Chair Johnson, Vice Manchester, Ranking Member McNally and Representatives on the House Commerce and Labor Committee:

Thank you for the opportunity to share the AGC of Ohio's support of House Bill 203, 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 a company's ability to be considered for future construction projects (construction purchasers want to know the contractors they hire are financially viable).

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. 203 addresses.** *(A synopsis of Ohio's current prompt pay laws is provided at the end of this testimony, on the third page.)*

And, Ohio would not be alone by passing this legislation. Thirty other states have a similar prompt pay law, including more liberal states like California and conservative ones like Florida and Texas.

This bill was presented to this committee last General Assembly. It was favorably reported without objection and passed the House floor 86-11. During those deliberations, we received questions about payment and retainage. To help those of you unfamiliar with how the industry operates, we wanted to provide that information up front:



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- **Payment:** Contractors 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. 203 recognizes this under Sec. 4113.61 (A)(1)(a).
 - **Retainage:** Retainage is a separate issue than prompt pay. The bill allows for the withholding of retainage from payments to contractors in Sec 4113.61(A)(1)(b). While Ohio has laws governing the use of retainage on public construction projects, there is no related statute for privately owned or financed projects. Retainage is often used by owners and higher-tier contractors to ensure a contractor or subcontractor will return to complete work or address minor issues at the end of the job.

We appreciate Representatives Roemer and Sweeney's 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 again support and favorably report the prompt pay provisions provided in H.B. 203.



OHIO'S PROMPT PAY LAWS

PAYMENT FROM OWNER TO CONTRACTOR

Laws 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. 203 addresses.***

PAYMENT FROM CONTRACTOR TO SUBCONTRACTORS, MATERIAL SUPPLIERS

The Ohio Revised Code contains prompt pay laws governing a contractor's payments to subcontractors, material suppliers and lower tier subcontractors and suppliers on both public and private, nonresidential construction projects. (R.C. 4113.61)

Ohio's prompt pay law requires contractors to pay subcontractors within 10 calendar days after receipt of payment from the owner. The contractor may reduce the payment under a retainage provision in the contract, and/or withhold amounts necessary to resolve disputed liens or claims involving the work or labor performed or material furnished.

Ohio's Prompt Pay Act does not just apply to progress and final payments; it also covers retainage. Contractors must pay retainage within 10 calendar days after receipt of the retainage from the owner, or within the time period provided in the contract (whichever is shorter), provided that the contractor and owner approve the work.

If the contractor fails to meet its payment deadlines, it must pay an interest penalty at a rate of 18% annually. The contractor is also liable for the subcontractor's attorney's fees and court costs unless those payments would be inequitable.

Ohio's prompt pay laws impose similar payment timing requirements on lower-tier subcontractors and material suppliers. Within 10 days of receipt of payment from the contractor, subcontractors must pay lower-tier subcontractors and material suppliers. The 10-day requirement applies through the chain of contracts as each lower-tier contractor is paid. This keeps the money flowing downhill in a timely manner to ensure all subcontractors and material suppliers are being paid.