

**As Introduced**

**135th General Assembly**

**Regular Session**

**2023-2024**

**H. B. No. 203**

**Representatives Roemer, Sweeney**

**Cosponsors: Representatives Brent, Cross, Hillyer, Russo, Skindell**

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**A BILL**

To amend section 4113.61 of the Revised Code to 1  
require owners of private construction projects 2  
to timely pay contractors. 3

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

**Section 1.** That section 4113.61 of the Revised Code be 4  
amended to read as follows: 5

**Sec. 4113.61.** (A) (1) If a contractor submits a written 6  
request for payment to a private owner for an amount that is 7  
allowed to the contractor for properly performed work or 8  
furnished materials, performed or furnished under a contract 9  
with that private owner that was created after this amendment's 10  
effective date, the private owner shall pay the amount to the 11  
contractor, less any amount withheld as authorized by law, as 12  
follows: 13

(a) For work performed or materials furnished pursuant to 14  
plans, drawings, specifications, or data submitted for approval 15  
to a municipal, township, or county building department, or to 16  
the superintendent of industrial compliance, pursuant to section 17  
3791.04 of the Revised Code and requiring the seal of an 18

architect registered under Chapter 4703. of the Revised Code or 19  
an engineer registered under Chapter 4733. of the Revised Code, 20  
thirty days after the work performed or materials furnished are 21  
certified as complying with the approved plans, drawings, 22  
specifications, or data by an architect registered under Chapter 23  
4703. of the Revised Code or an engineer registered under 24  
Chapter 4733. of the Revised Code, or thirty days after 25  
receiving the request, whichever is later; 26

(b) For all other work performed or materials furnished, 27  
thirty days after receiving the request. 28

The private owner may reduce the amount paid by any 29  
retainage provision contained in the contract, invoice, or 30  
purchase order between the private owner and contractor, and may 31  
withhold amounts that may be necessary to resolve disputed liens 32  
or claims involving the work or labor performed or material 33  
furnished by the contractor. 34

If the private owner fails to comply with division (A)(1) 35  
of this section, the private owner shall pay the contractor, in 36  
addition to the payment due, interest in the amount of eighteen 37  
per cent per annum of the payment due, beginning on the thirty- 38  
first day following the private owner's receipt of the payment 39  
request from the contractor and ending on the date of full 40  
payment of the payment due plus interest to the contractor. 41

(2) If a subcontractor or material supplier submits an 42  
application or request for payment or an invoice for materials 43  
to a contractor in sufficient time to allow the contractor to 44  
include the application, request, or invoice in the contractor's 45  
own pay request submitted to an owner, the contractor, within 46  
ten calendar days after receipt of payment from the owner for 47  
improvements to property, shall pay to the: 48

(a) Subcontractor, an amount that is equal to the 49  
percentage of completion of the subcontractor's contract allowed 50  
by the owner for the amount of labor or work performed; 51

(b) Material supplier, an amount that is equal to all or 52  
that portion of the invoice for materials which represents the 53  
materials furnished by the material supplier. 54

The contractor may reduce the amount paid by any retainage 55  
provision contained in the contract, invoice, or purchase order 56  
between the contractor and the subcontractor or material 57  
supplier, and may withhold amounts that may be necessary to 58  
resolve disputed liens or claims involving the work or labor 59  
performed or material furnished by the subcontractor or material 60  
supplier. 61

If the contractor fails to comply with division ~~(A)(1)~~ (A) 62  
(2) of this section, the contractor shall pay the subcontractor 63  
or material supplier, in addition to the payment due, interest 64  
in the amount of eighteen per cent per annum of the payment due, 65  
beginning on the eleventh day following the receipt of payment 66  
from the owner and ending on the date of full payment of the 67  
payment due plus interest to the subcontractor or material 68  
supplier. 69

~~(2)~~ (3) If a lower tier subcontractor or lower tier 70  
material supplier submits an application or request for payment 71  
or an invoice for materials to a subcontractor, material 72  
supplier, or other lower tier subcontractor or lower tier 73  
material supplier in sufficient time to allow the ~~subcontractor,~~ 74  
~~material supplier, or other lower tier subcontractor or lower~~ 75  
~~tier material supplier~~ recipient to include the application, 76  
request, or invoice in the ~~subcontractor's, material supplier's,~~ 77  
~~or other lower tier subcontractor's or lower tier material~~ 78

~~supplier's recipient's~~ own pay request submitted to a 79  
contractor, other subcontractor, material supplier, lower tier 80  
subcontractor, or lower tier material supplier, the 81  
~~recipientsubcontractor, material supplier, or other lower tier~~ 82  
~~subcontractor or lower tier material supplier,~~ within ten 83  
calendar days after receipt of payment from the contractor, 84  
other subcontractor, material supplier, lower tier 85  
subcontractor, or lower tier material supplier for improvements 86  
to property, shall pay to the: 87

(a) Lower tier subcontractor, an amount that is equal to 88  
the percentage of completion of the lower tier subcontractor's 89  
contract allowed by the owner for the amount of labor or work 90  
performed; 91

(b) Lower tier material supplier, an amount that is equal 92  
to all or that portion of the invoice for materials which 93  
represents the materials furnished by the lower tier material 94  
supplier. 95

The subcontractor, material supplier, lower tier 96  
subcontractor, or lower tier material supplier may reduce the 97  
amount paid by any retainage provision contained in the 98  
contract, invoice, or purchase order between the subcontractor, 99  
material supplier, lower tier subcontractor, or lower tier 100  
material supplier and the lower tier subcontractor or lower tier 101  
material supplier, and may withhold amounts that may be 102  
necessary to resolve disputed liens or claims involving the work 103  
or labor performed or material furnished by the lower tier 104  
subcontractor or lower tier material supplier. 105

If the subcontractor, material supplier, lower tier 106  
subcontractor, or lower tier material supplier fails to comply 107  
with division ~~(A) (2)~~ (A) (3) of this section, the subcontractor, 108

material supplier, lower tier subcontractor, or lower tier 109  
material supplier shall pay the lower tier subcontractor or 110  
lower tier material supplier, in addition to the payment due, 111  
interest in the amount of eighteen per cent per annum of the 112  
payment due, beginning on the eleventh day following the receipt 113  
of payment from the contractor, other subcontractor, material 114  
supplier, lower tier subcontractor, or lower tier material 115  
supplier and ending on the date of full payment of the payment 116  
due plus interest to the lower tier subcontractor or lower tier 117  
material supplier. 118

~~(3)~~ (4) If a contractor receives any final retainage from 119  
the owner for improvements to property, the contractor shall pay 120  
from that retainage each subcontractor and material supplier the 121  
subcontractor's or material supplier's proportion of the 122  
retainage, within ten calendar days after receipt of the 123  
retainage from the owner, or within the time period provided in 124  
a contract, invoice, or purchase order between the contractor 125  
and the subcontractor or material supplier, whichever time 126  
period is shorter, provided that the contractor has determined 127  
that the subcontractor's or material supplier's work, labor, and 128  
materials have been satisfactorily performed or furnished and 129  
that the owner has approved the subcontractor's or material 130  
supplier's work, labor, and materials. 131

If the contractor fails to pay a subcontractor or material 132  
supplier within the appropriate time period, the contractor 133  
shall pay the subcontractor or material supplier, in addition to 134  
the retainage due, interest in the amount of eighteen per cent 135  
per annum of the retainage due, beginning on the eleventh day 136  
following the receipt of the retainage from the owner and ending 137  
on the date of full payment of the retainage due plus interest 138  
to the subcontractor or material supplier. 139

~~(4)-(5)~~ If a subcontractor, material supplier, lower tier subcontractor, or lower tier material supplier receives any final retainage from the contractor or other subcontractor, lower tier subcontractor, or lower tier material supplier for improvements to property, the recipient~~subcontractor, material supplier, lower tier subcontractor, or lower tier material supplier~~ shall pay from that retainage each lower tier ~~subcontractor~~ subcontractor's or lower tier ~~the lower tier subcontractor's~~ or lower tier material supplier's proportion of the retainage, within ten calendar days after receipt of payment ~~from the contractor or other subcontractor, lower tier subcontractor, or lower tier material supplier~~, or within the time period provided in a contract, invoice, or purchase order between the subcontractor, material supplier, lower tier subcontractor, or lower tier material supplier and the lower tier subcontractor or lower tier material supplier, whichever time period is shorter, provided that the ~~subcontractor, material supplier, lower tier subcontractor, or lower tier material supplier~~ recipient has determined that the lower tier subcontractor's or lower tier material supplier's work, labor, and materials have been satisfactorily performed or furnished and that the owner has approved the lower tier subcontractor's or lower tier material supplier's work, labor, and materials.

If the ~~subcontractor, material supplier, lower tier subcontractor, or lower tier material supplier~~ recipient fails to pay the lower tier subcontractor or lower tier material supplier within the appropriate time period, the ~~subcontractor, material supplier, lower tier subcontractor, or lower tier material supplier~~ recipient shall pay the lower tier subcontractor or lower tier material supplier, in addition to the retainage due, interest in the amount of eighteen per cent

per annum of the retainage due, beginning on the eleventh day 171  
following the receipt of the retainage from the contractor or 172  
other subcontractor, lower tier subcontractor, or lower tier 173  
material supplier and ending on the date of full payment of the 174  
retainage due plus interest to the lower tier subcontractor or 175  
lower tier material supplier. 176

~~(5)~~ (6) A contractor, subcontractor, or lower tier 177  
subcontractor shall pay a laborer wages due within ten days of 178  
payment of any application or request for payment or the receipt 179  
of any retainage from an owner, contractor, subcontractor, or 180  
lower tier subcontractor. 181

If the contractor, subcontractor, or lower tier 182  
subcontractor fails to pay the laborer wages due within the 183  
appropriate time period, the contractor, subcontractor, or lower 184  
tier subcontractor shall pay the laborer, in addition to the 185  
wages due, interest in the amount of eighteen per cent per annum 186  
of the wages due, beginning on the eleventh day following the 187  
receipt of payment from the owner, contractor, subcontractor, or 188  
lower tier subcontractor and ending on the date of full payment 189  
of the wages due plus interest to the laborer. 190

(B) (1) If a ~~contractor, subcontractor, material supplier,~~ 191  
~~lower tier subcontractor, or lower tier material supplier~~ person 192  
owing payment under division (A) of this section has not made 193  
payment in compliance with that division ~~(A) (1), (2), (3), (4),~~ 194  
~~or (5) of this section~~ within thirty days after payment is due, 195  
~~a subcontractor, material supplier, lower tier subcontractor,~~ 196  
~~lower tier material supplier, or laborer~~ the person owed payment 197  
may file a civil action to recover the amount due plus ~~the~~ 198  
~~interest provided in those divisions.~~ If the court finds in the 199  
civil action that ~~a contractor, subcontractor, material~~ 200

~~supplier, lower tier subcontractor, or lower tier material-~~ 201  
~~supplier~~ the person owing payment has not made payment in 202  
compliance with ~~those divisions~~ division (A) of this section, 203  
the court shall award the interest specified in ~~those-~~ 204  
~~divisions~~ that division, in addition to the amount due. Except as 205  
provided in division (B) (3) of this section, the court shall 206  
award the prevailing party reasonable attorney fees and court 207  
costs. 208

(2) In making a determination to award attorney fees under 209  
division (B) (1) of this section, the court shall consider all 210  
relevant factors, including but not limited to the following: 211

(a) The presence or absence of good faith allegations or 212  
defenses asserted by the parties; 213

(b) The proportion of the amount of recovery as it relates 214  
to the amount demanded; 215

(c) The nature of the services rendered and the time 216  
expended in rendering the services. 217

(3) The court shall not award attorney fees under division 218  
(B) (1) of this section if the court determines, following a 219  
hearing on the payment of attorney fees, that the payment of 220  
attorney fees to the prevailing party would be inequitable. 221

(C) This section does not apply to any construction or 222  
improvement of any single-, two-, or three-family detached 223  
dwelling houses. 224

(D) (1) No provision of this section regarding entitlement 225  
to interest, attorney fees, or court costs may be waived by 226  
agreement and any such term in any contract or agreement is void 227  
and unenforceable as against public policy. 228

(2) ~~This~~ (a) Subject to division (D) (2) (b) of this 229  
section, this section shall not be construed as impairing or 230  
affecting, in any way, the terms and conditions of any contract, 231  
invoice, purchase order, or any other agreement between ~~a~~ any of 232  
the following: 233

(i) An owner and a contractor; 234

(ii) A contractor and a subcontractor or a material 235  
supplier ~~or between a;~~ 236

(iii) A subcontractor and another subcontractor, a 237  
material supplier, a lower tier subcontractor, or a lower tier 238  
material supplier, ~~except that if such~~ . 239

(b) If terms and conditions described in division (D) (2) 240  
(a) of this section contain time periods ~~which~~ that are longer 241  
than any of the time periods specified in divisions (A) (1), (2), 242  
(3), (4), ~~and~~ (5), and (6) of this section or interest at a 243  
percentage less than the interest stated in those divisions, 244  
then the provisions of this section shall prevail over such 245  
terms and conditions. 246

(E) Notwithstanding the definition of lower tier material 247  
supplier in this section, a person is not a lower tier material 248  
supplier unless the materials supplied by the person are: 249

(1) Furnished with the intent, as evidenced by the 250  
contract of sale, the delivery order, delivery to the site, or 251  
by other evidence that the materials are to be used on a 252  
particular structure or improvement; 253

(2) Incorporated in the improvement or consumed as normal 254  
wastage in the course of the improvement; or 255

(3) Specifically fabricated for incorporation in the 256

improvement and not readily resalable in the ordinary course of 257  
the fabricator's business even if not actually incorporated in 258  
the improvement. 259

(F) This section does not apply to any agreement: 260

(1) To explore, produce, or develop oil, natural gas, 261  
natural gas liquids, synthetic gas, sulphur, ore, or other 262  
mineral substances, including any lease or royalty agreement, 263  
joint interest agreement, production or production-related 264  
agreement, operating agreement, farmout agreement, area of 265  
mutual interest agreement, or other related agreement; 266

(2) For any well or mine services; 267

(3) To purchase, sell, gather, store, or transport oil, 268  
natural gas, natural gas liquids, synthetic gas, or other 269  
hydrocarbon substances by pipeline or by a fixed, associated 270  
facility. 271

(G) As used in this section: 272

(1) "Agreement" includes a written or oral agreement or 273  
understanding for either of the following: 274

(a) To provide work or services for a pipeline, including 275  
any construction, operating, repair, or maintenance services; 276

(b) To perform a part of the services covered by division 277  
(G) (1) (a) of this section or an act collateral to those 278  
services, including furnishing or renting equipment, incidental 279  
transportation, or other goods and services furnished in 280  
connection with those services. 281

(2) "Contractor" means any person who undertakes to 282  
construct, alter, erect, improve, repair, demolish, remove, dig, 283  
or drill any part of a structure or improvement under a contract 284

with an owner, a "construction manager" or "construction manager at risk" as those terms are defined in section 9.33 of the Revised Code, or a "design-build firm" as that term is defined in section 153.65 of the Revised Code.

~~(2)~~(3) "Laborer," "material supplier," "subcontractor," and "wages" have the same meanings as in section 1311.01 of the Revised Code.

~~(3)~~(4) "Lower tier subcontractor" means a subcontractor who is not in privity of contract with a contractor but is in privity of contract with another subcontractor.

~~(4)~~(5) "Lower tier material supplier" means a material supplier who is not in privity of contract with a contractor but is in privity of contract with another subcontractor or a material supplier.

~~(5)~~(6) "Owner" means the holder of any right, title, or interest, either legal or equitable, in the real estate upon which improvements are made, including interests held under a contract of purchase, whether in writing or otherwise.

(7) "Private owner" means an owner that is not a public owner.

(8) "Public owner" means an owner that is the state, or a county, township, municipal corporation, school district, or other political subdivision of the state, or any public agency, authority, board, commission, instrumentality, or special district of or in the state, and any officer or agent thereof.

(9) "Wages due" means the wages due to a laborer as of the date a contractor or subcontractor receives payment for any application or request for payment or retainage from any owner, contractor, or subcontractor.

~~(6) "Owner" includes the state, and a county, township, municipal corporation, school district, or other political subdivision of the state, and any public agency, authority, board, commission, instrumentality, or special district of or in the state or a county, township, municipal corporation, school district, or other political subdivision of the state, and any officer or agent thereof and relates to all the interests either legal or equitable, which a person may have in the real estate upon which improvements are made, including interests held by any person under contracts of purchase, whether in writing or otherwise.~~

(10) "Well or mine services" includes any of the following:

(a) Drilling, deepening, reworking, repairing, improving, testing, treating, perforating, acidizing, logging, conditioning, purchasing, gathering, storing, or transporting oil or natural gas, brine water, fresh water, produced water, condensate, petroleum products, or other liquid commodities, or otherwise rendering services in connection with a well drilled to produce or dispose of oil, gas, or other minerals or water;

(b) Designing, excavating, constructing, improving, or otherwise rendering services in connection with an oil, gas, or other mineral production platform or facility, mine shaft, drift, or other structure intended directly for use in exploring for or producing a mineral.

**Section 2.** That existing section 4113.61 of the Revised Code is hereby repealed.