



May 14, 2025

The Honorable Andrew Brenner
Chair, Ohio Senate Education Committee
1 Capitol Square
First Floor, 140
Columbus, OH 43215

RE: Interested Party Testimony on HB 96 – Public Improvements Contract Retainage

Chairman Brenner, Vice Chair Blessing, Ranking Member Ingram, and members of the Ohio Senate Education Committee:

My name is Michael Guastella, Director of Public Affairs of Governmental Policy Group. On behalf of our client, the Coalition of Ohio Regional Districts (CORD), I appreciate your attention to fixing an important matter in HB 96 that has the potential to negatively impact local governments and owners of public improvement projects.

CORD is the trade association that represents the interests of the regional water and sewer districts of the state, commonly referred to as 6119 districts. 6119 districts are one of the many, many entities in the state that engage in “public improvement projects.” While CORD members typically are involved in public improvement projects such as water systems, sewage-related projects, or other waterworks projects, what constitutes a “public improvement project” extends far beyond that; from roadways and highways to drainage systems and ditches, or really, any other work by a public authority.

Further, as mentioned, 6119 districts are but one type of public authority that engages in these projects; townships, cities, school districts, counties, or any other political subdivision of the state also engage with public improvement projects routinely. In most instances, public improvement projects are contracted out to private entities that complete the work for the public authority.

When contracted projects are nearing completion, the contractor and the public authority discuss the final steps and what remaining items need to be completed. Often, there is a list of items that need wrapped up that the contractor needs to accomplish before the project is determined to be finished. Once those items are done and the project is 100% complete, the contractor is paid any retained funds within 30 days, as required by current state law.

In the as-introduced version of HB 96, the Ohio Facilities Construction Commission included a series of changes to contract retainage of public improvement contracts (FCCCD15). As part of those changes, there is an unfortunate unintended consequence with the way some of the language is currently written.

Current language in HB 96 would now require that contractors be paid-in-full after **substantial** completion of the work as opposed to **final** completion of the work. While seemingly minor, this change would inhibit a 6119 district, or any other owner of a project, from being able to wrap up the project entirely before the contractor is required to be paid.

Recently, CORD approached OFCC and the other proponents of these changes in good faith to discuss the unintended consequences of this change in HB 96, where we had the chance to express our concerns and make them aware of how the language is being interpreted by local government groups.

We quickly confirmed that it was not at all their intent to move this goalpost and got to work on a solution. We also learned that their efforts are only meant to streamline the process of payment between contractors and subcontractors of public improvement projects, something that CORD supports. That said, we strongly feel that the language that exists in HB 96 currently would prove problematic to local governments and all owners of public improvement projects.

In a combined effort with the Ohio Facilities Construction Commission, the Cleveland Chapter of the National Electrical Contractors Association (NECA), and the Associated General Contractors of Ohio, we were able to craft language that fixes this issue and accomplishes the same goals of streamlining the payment process to contractors, and that fix is included in my testimony as **amendment SC1477**.

This amendment clarifies that **final** payment is only made after **final** completion of the work – but leaves in place the other reforms made by OFCC to contract retainage in place. **We are asking you to include amendment SC1477 to the Senate substitute bill of HB 96** to prevent the potential issues outlined in this testimony. We are very grateful for the responsiveness of OFCC, ACG of Ohio, and NECA in listening to our concerns and being willing to come up with a solution to address them entirely.

This change is a simple fix that has the support of all parties involved and is vital to ensure that there are no unintended consequences of reforms to contract retainage of public improvement projects. Thank you for your consideration, and if there are any questions, please contact me at michael@gpgrhr.com.

Sincerely,

Michael Guastella

Am. Sub. H. B. No. 96
As Passed by the House
FCCCD15

_____ moved to amend as follows:

In line 16021, after "portion" insert " <u>and interest thereon</u>	1
<u>accrued</u> "; after "shall" insert " <u>, within thirty days of substantial</u>	2
<u>completion of, occupation of, use of, or acceptance of the project,</u> ";	3
after "the" insert " <u>primary</u> "	4
In line 16022, after "amount" insert " <u>reasonably</u> "; after "assure"	5
insert " <u>final</u> "	6
In line 16023, after "completion" insert " <u>of the project</u> "	7
In line 16028, after " <u>funds</u> " insert " <u>withheld after substantial</u>	8
<u>completion of, occupation of, use of, or acceptance of the project, and</u>	9
<u>pending final completion of the project,</u> "	10
In line 16029, after " <u>accrued</u> " delete the remainder of the line	11
Delete line 16030	12
In line 16031, delete " <u>during the project</u> "	13
In line 16032, delete " <u>substantial</u> " and insert " <u>final</u> "	14
In line 16033, delete " <u>work</u> " and insert " <u>project</u> "	15

The motion was _____ agreed to.

SYNOPSIS

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Public contract retainage provisions

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R.C. 153.13

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Clarifies that funds retained on condition of substantial
completion of a public works contract must be paid to the
primary contractor on substantial completion of the project.

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Requires that, within 30 days after substantial
completion, a portion of the retained funds be retained as
reasonably necessary for final completion of the project
(current law omits "reasonably").

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Requires the remaining withheld funds and interest accrued
thereon to be released to the primary contractor within 30 days
of final completion of the project.

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