

**As Reported by the House Small Business Committee**

**136th General Assembly**

**Regular Session**

**2025-2026**

**Am. H. B. No. 288**

**Representatives Roemer, Sweeney**

**Cosponsors: Representatives Brent, Brennan, Brewer, Daniels, Fischer, Johnson,  
Piccolantonio, Rogers, Russo, Troy**

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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 or landscape architect registered under Chapter 4703. 19  
of the Revised Code or an engineer registered under Chapter 20  
4733. of the Revised Code, thirty days after the work performed 21  
or materials furnished are certified as complying with the 22  
approved plans, drawings, specifications, or data by an 23  
architect or landscape architect registered under Chapter 4703. 24  
of the Revised Code or an engineer registered under Chapter 25  
4733. of the Revised Code, or thirty days after receiving the 26  
request, whichever is later; 27

(b) For all other work performed or materials furnished, 28  
thirty days after receiving the request. 29

The private owner may reduce the amount paid by any 30  
retainage provision contained in the contract, invoice, or 31  
purchase order between the private owner and contractor, and may 32  
withhold amounts that may be necessary to resolve disputed liens 33  
or claims involving the work or labor performed or material 34  
furnished by the contractor. 35

If the private owner fails to comply with division (A) (1) 36  
of this section, the private owner shall pay the contractor, in 37  
addition to the payment due, interest in the amount of eighteen 38  
per cent per annum of the payment due, beginning on the thirty- 39  
first day following the private owner's receipt of the payment 40  
request from the contractor and ending on the date of full 41  
payment of the payment due plus interest to the contractor. 42

(2) If a subcontractor or material supplier submits an 43  
application or request for payment or an invoice for materials 44  
to a contractor in sufficient time to allow the contractor to 45  
include the application, request, or invoice in the contractor's 46  
own pay request submitted to an owner, the contractor, within 47

ten calendar days after receipt of payment from the owner for 48  
improvements to property, shall pay to the: 49

(a) Subcontractor, an amount that is equal to the 50  
percentage of completion of the subcontractor's contract allowed 51  
by the owner for the amount of labor or work performed; 52

(b) Material supplier, an amount that is equal to all or 53  
that portion of the invoice for materials which represents the 54  
materials furnished by the material supplier. 55

The contractor may reduce the amount paid by any retainage 56  
provision contained in the contract, invoice, or purchase order 57  
between the contractor and the subcontractor or material 58  
supplier, and may withhold amounts that may be necessary to 59  
resolve disputed liens or claims involving the work or labor 60  
performed or material furnished by the subcontractor or material 61  
supplier. 62

If the contractor fails to comply with division ~~(A) (1)~~ (A) 63  
(2) of this section, the contractor shall pay the subcontractor 64  
or material supplier, in addition to the payment due, interest 65  
in the amount of eighteen per cent per annum of the payment due, 66  
beginning on the eleventh day following the receipt of payment 67  
from the owner and ending on the date of full payment of the 68  
payment due plus interest to the subcontractor or material 69  
supplier. 70

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

~~tier material supplier recipient~~ to include the application, 77  
request, or invoice in the ~~subcontractor's, material supplier's,~~ 78  
~~or other lower tier subcontractor's or lower tier material-~~ 79  
~~supplier's recipient's~~ own pay request submitted to a 80  
contractor, other subcontractor, material supplier, lower tier 81  
subcontractor, or lower tier material supplier, the 82  
~~recipient subcontractor, material supplier, or other lower tier-~~ 83  
~~subcontractor or lower tier material supplier,~~ within ten 84  
calendar days after receipt of payment from the contractor, 85  
other subcontractor, material supplier, lower tier 86  
subcontractor, or lower tier material supplier for improvements 87  
to property, shall pay to the: 88

(a) Lower tier subcontractor, an amount that is equal to 89  
the percentage of completion of the lower tier subcontractor's 90  
contract allowed by the owner for the amount of labor or work 91  
performed; 92

(b) Lower tier material supplier, an amount that is equal 93  
to all or that portion of the invoice for materials which 94  
represents the materials furnished by the lower tier material 95  
supplier. 96

The subcontractor, material supplier, lower tier 97  
subcontractor, or lower tier material supplier may reduce the 98  
amount paid by any retainage provision contained in the 99  
contract, invoice, or purchase order between the subcontractor, 100  
material supplier, lower tier subcontractor, or lower tier 101  
material supplier and the lower tier subcontractor or lower tier 102  
material supplier, and may withhold amounts that may be 103  
necessary to resolve disputed liens or claims involving the work 104  
or labor performed or material furnished by the lower tier 105  
subcontractor or lower tier material supplier. 106

If the subcontractor, material supplier, lower tier subcontractor, or lower tier material supplier fails to comply with division ~~(A)(2)~~ (A)(3) of this section, the subcontractor, material supplier, lower tier subcontractor, or lower tier material supplier shall pay the lower tier subcontractor or lower tier material supplier, in addition to the payment due, interest in the amount of eighteen per cent per annum of the payment due, beginning on the eleventh day following the receipt of payment from the contractor, other subcontractor, material supplier, lower tier subcontractor, or lower tier material supplier and ending on the date of full payment of the payment due plus interest to the lower tier subcontractor or lower tier material supplier.

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

If the contractor fails to pay a subcontractor or material supplier within the appropriate time period, the contractor shall pay the subcontractor or 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

following the receipt of the retainage from the owner and ending 138  
on the date of full payment of the retainage due plus interest 139  
to the subcontractor or material supplier. 140

~~(4)~~ (5) If a subcontractor, material supplier, lower tier 141  
subcontractor, or lower tier material supplier receives any 142  
final retainage from the contractor or other subcontractor, 143  
lower tier subcontractor, or lower tier material supplier for 144  
improvements to property, the recipient ~~subcontractor, material-~~ 145  
~~supplier, lower tier subcontractor, or lower tier material-~~ 146  
~~supplier~~ shall pay from that retainage each lower tier 147  
~~subcontractor~~ subcontractor's or lower tier ~~the lower tier~~ 148  
~~subcontractor's~~ or lower tier material supplier's proportion of 149  
the retainage, within ten calendar days after receipt of payment 150  
~~from the contractor or other subcontractor, lower tier~~ 151  
~~subcontractor, or lower tier material supplier,~~ or within the 152  
time period provided in a contract, invoice, or purchase order 153  
between the subcontractor, material supplier, lower tier 154  
subcontractor, or lower tier material supplier and the lower 155  
tier subcontractor or lower tier material supplier, whichever 156  
time period is shorter, provided that the ~~subcontractor,~~ 157  
~~material supplier, lower tier subcontractor, or lower tier~~ 158  
~~material supplier~~ recipient has determined that the lower tier 159  
subcontractor's or lower tier material supplier's work, labor, 160  
and materials have been satisfactorily performed or furnished 161  
and that the owner has approved the lower tier subcontractor's 162  
or lower tier material supplier's work, labor, and materials. 163

If the ~~subcontractor, material supplier, lower tier~~ 164  
~~subcontractor, or lower tier material supplier~~ recipient fails 165  
to pay the lower tier subcontractor or lower tier material 166  
supplier within the appropriate time period, the ~~subcontractor,~~ 167  
~~material supplier, lower tier subcontractor, or lower tier~~ 168

~~material supplier-recipient~~ shall pay the lower tier 169  
subcontractor or lower tier material supplier, in addition to 170  
the retainage due, interest in the amount of eighteen per cent 171  
per annum of the retainage due, beginning on the eleventh day 172  
following the receipt of the retainage from the contractor or 173  
other subcontractor, lower tier subcontractor, or lower tier 174  
material supplier and ending on the date of full payment of the 175  
retainage due plus interest to the lower tier subcontractor or 176  
lower tier material supplier. 177

~~(5)~~ (6) A contractor, subcontractor, or lower tier 178  
subcontractor shall pay a laborer wages due within ten days of 179  
payment of any application or request for payment or the receipt 180  
of any retainage from an owner, contractor, subcontractor, or 181  
lower tier subcontractor. 182

If the contractor, subcontractor, or lower tier 183  
subcontractor fails to pay the laborer wages due within the 184  
appropriate time period, the contractor, subcontractor, or lower 185  
tier subcontractor shall pay the laborer, in addition to the 186  
wages due, interest in the amount of eighteen per cent per annum 187  
of the wages due, beginning on the eleventh day following the 188  
receipt of payment from the owner, contractor, subcontractor, or 189  
lower tier subcontractor and ending on the date of full payment 190  
of the wages due plus interest to the laborer. 191

(B) (1) If a ~~contractor, subcontractor, material supplier,~~ 192  
~~lower tier subcontractor, or lower tier material supplier person~~ 193  
owing payment under division (A) of this section has not made 194  
payment in compliance with that division ~~(A) (1), (2), (3), (4),~~ 195  
~~or (5) of this section~~ within thirty days after payment is due, 196  
a ~~subcontractor, material supplier, lower tier subcontractor,~~ 197  
~~lower tier material supplier, or laborer~~ the person owed payment 198

may file a civil action to recover the amount due plus ~~the~~ 199  
~~interest provided in those divisions~~. If the court finds in the 200  
civil action that ~~a contractor, subcontractor, material~~ 201  
~~supplier, lower tier subcontractor, or lower tier material~~ 202  
~~supplier~~ the person owing payment has not made payment in 203  
compliance with ~~those divisions~~ division (A) of this section, 204  
the court shall award the interest specified in ~~those~~ 205  
~~divisions~~ that division, in addition to the amount due. Except as 206  
provided in division (B) (3) of this section, the court shall 207  
award the prevailing party reasonable attorney fees and court 208  
costs. 209

(2) In making a determination to award attorney fees under 210  
division (B) (1) of this section, the court shall consider all 211  
relevant factors, including but not limited to the following: 212

(a) The presence or absence of good faith allegations or 213  
defenses asserted by the parties; 214

(b) The proportion of the amount of recovery as it relates 215  
to the amount demanded; 216

(c) The nature of the services rendered and the time 217  
expended in rendering the services. 218

(3) The court shall not award attorney fees under division 219  
(B) (1) of this section if the court determines, following a 220  
hearing on the payment of attorney fees, that the payment of 221  
attorney fees to the prevailing party would be inequitable. 222

(C) This section does not apply to any construction or 223  
improvement of any single-, two-, or three-family detached 224  
dwelling houses. 225

(D) (1) No provision of this section regarding entitlement 226  
to interest, attorney fees, or court costs may be waived by 227



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| agreement and any such term in any contract or agreement is void                        | 228 |
| and unenforceable as against public policy.   | 229 |
| (2) <del>This</del> (a) <u>Subject to division (D) (2) (b) of this</u>                  | 230 |
| <u>section, this section shall not be construed as impairing or</u>                     | 231 |
| affecting, in any way, the terms and conditions of any contract,                        | 232 |
| invoice, purchase order, or any other agreement between <del>a</del> <u>any of</u>      | 233 |
| <u>the following:</u>   | 234 |
| (i) <u>An owner and a contractor;</u>   | 235 |
| (ii) <u>A contractor and a subcontractor or a material</u>                              | 236 |
| <u>supplier</u> <del>or between a;</del>  | 237 |
| (iii) <u>A subcontractor and another subcontractor, a</u>                               | 238 |
| material supplier, a lower tier subcontractor, or a lower tier                          | 239 |
| material supplier, <del>except that if such</del> .                                     | 240 |
| (b) <u>If terms and conditions described in division (D) (2)</u>                        | 241 |
| <u>(a) of this section contain time periods</u> <del>which</del> <u>that</u> are longer | 242 |
| than any of the time periods specified in divisions (A) (1), (2),                       | 243 |
| (3), (4), <del>and</del> (5), <u>and (6)</u> of this section or interest at a           | 244 |
| percentage less than the interest stated in those divisions,                            | 245 |
| then the provisions of this section shall prevail over such                             | 246 |
| terms and conditions.   | 247 |
| (E) Notwithstanding the definition of lower tier material                               | 248 |
| supplier in this section, a person is not a lower tier material                         | 249 |
| supplier unless the materials supplied by the person are:                               | 250 |
| (1) <u>Furnished with the intent, as evidenced by the</u>                               | 251 |
| <u>contract of sale, the delivery order, delivery to the site, or</u>                   | 252 |
| <u>by other evidence that the materials are to be used on a</u>                         | 253 |
| <u>particular structure or improvement;</u>   | 254 |
| (2) <u>Incorporated in the improvement or consumed as normal</u>                        | 255 |

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| wastage in the course of the improvement; or                           | 256 |
| (3) Specifically fabricated for incorporation in the                   | 257 |
| improvement and not readily resalable in the ordinary course of        | 258 |
| the fabricator's business even if not actually incorporated in         | 259 |
| the improvement.   | 260 |
| (F) <u>This section does not apply to any agreement:</u>               | 261 |
| (1) <u>To explore, produce, or develop oil, natural gas,</u>           | 262 |
| <u>natural gas liquids, synthetic gas, sulphur, ore, or other</u>      | 263 |
| <u>mineral substances, including any lease or royalty agreement,</u>   | 264 |
| <u>joint interest agreement, production or production-related</u>      | 265 |
| <u>agreement, operating agreement, farmout agreement, area of</u>      | 266 |
| <u>mutual interest agreement, or other related agreement;</u>          | 267 |
| (2) <u>For any well or mine services;</u>                              | 268 |
| (3) <u>To purchase, sell, gather, store, or transport oil,</u>         | 269 |
| <u>natural gas, natural gas liquids, synthetic gas, or other</u>       | 270 |
| <u>hydrocarbon substances by pipeline or by a fixed, associated</u>    | 271 |
| <u>facility.</u>   | 272 |
| (G) <u>As used in this section:</u>                                    | 273 |
| (1) <u>"Agreement" includes a written or oral agreement or</u>         | 274 |
| <u>understanding for either of the following:</u>                      | 275 |
| (a) <u>To provide work or services for a pipeline, including</u>       | 276 |
| <u>any construction, operating, repair, or maintenance services;</u>   | 277 |
| (b) <u>To perform a part of the services covered by division</u>       | 278 |
| <u>(G) (1) (a) of this section or an act collateral to those</u>       | 279 |
| <u>services, including furnishing or renting equipment, incidental</u> | 280 |
| <u>transportation, or other goods and services furnished in</u>        | 281 |
| <u>connection with those services.</u>                                 | 282 |

(2) "Contractor" means any person who undertakes to 283  
construct, alter, erect, improve, repair, demolish, remove, dig, 284  
or drill any part of a structure or improvement under a contract 285  
with an owner, a "construction manager" or "construction manager 286  
at risk" as those terms are defined in section 9.33 of the 287  
Revised Code, or a "design-build firm" as that term is defined 288  
in section 153.65 of the Revised Code. 289

~~(2)~~(3) "Laborer," "material supplier," "subcontractor," 290  
and "wages" have the same meanings as in section 1311.01 of the 291  
Revised Code. 292

~~(3)~~(4) "Lower tier subcontractor" means a subcontractor 293  
who is not in privity of contract with a contractor but is in 294  
privity of contract with another subcontractor. 295

~~(4)~~(5) "Lower tier material supplier" means a material 296  
supplier who is not in privity of contract with a contractor but 297  
is in privity of contract with another subcontractor or a 298  
material supplier. 299

~~(5)~~(6) "Owner" means the holder of any right, title, or 300  
interest, either legal or equitable, in the real estate upon 301  
which improvements are made, including interests held under a 302  
contract of purchase, whether in writing or otherwise. 303

(7) "Private owner" means an owner that is not a public 304  
owner. 305

(8) "Public owner" means an owner that is the state, or a 306  
county, township, municipal corporation, school district, or 307  
other political subdivision of the state, or any public agency, 308  
authority, board, commission, instrumentality, or special 309  
district of or in the state, and any officer or agent thereof. 310

(9) "Wages due" means the wages due to a laborer as of the 311

date a contractor or subcontractor receives payment for any 312  
application or request for payment or retainage from any owner, 313  
contractor, or subcontractor. 314

~~(6) "Owner" includes the state, and a county, township, 315  
municipal corporation, school district, or other political 316  
subdivision of the state, and any public agency, authority, 317  
board, commission, instrumentality, or special district of or in 318  
the state or a county, township, municipal corporation, school 319  
district, or other political subdivision of the state, and any 320  
officer or agent thereof and relates to all the interests either 321  
legal or equitable, which a person may have in the real estate 322  
upon which improvements are made, including interests held by 323  
any person under contracts of purchase, whether in writing or 324  
otherwise. 325~~

(10) "Well or mine services" includes any of the 326  
following: 327

(a) Drilling, deepening, reworking, repairing, improving, 328  
testing, treating, perforating, acidizing, logging, 329  
conditioning, purchasing, gathering, storing, or transporting 330  
oil or natural gas, brine water, fresh water, produced water, 331  
condensate, petroleum products, or other liquid commodities, or 332  
otherwise rendering services in connection with a well drilled 333  
to produce or dispose of oil, gas, or other minerals or water; 334

(b) Designing, excavating, constructing, improving, or 335  
otherwise rendering services in connection with an oil, gas, or 336  
other mineral production platform or facility, mine shaft, 337  
drift, or other structure intended directly for use in exploring 338  
for or producing a mineral. 339

**Section 2.** That existing section 4113.61 of the Revised 340

Code is hereby repealed. 341

**Section 3.** Sections 1 and 2 of this act take effect six 342  
months after the effective date of this section. 343