

As Reported by the House Small Business Committee

136th General Assembly

Regular Session

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Am. H. B. No. 288

Representatives Roemer, Sweeney

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

A BILL

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

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

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

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

(a) For work performed or materials furnished pursuant to
plans, drawings, specifications, or data submitted for approval
to a municipal, township, or county building department, or to
the superintendent of industrial compliance, pursuant to section

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
~~recipientsubcontractor, 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 107
subcontractor, or lower tier material supplier fails to comply 108
with division ~~(A)(2)~~ (A)(3) of this section, the subcontractor, 109
material supplier, lower tier subcontractor, or lower tier 110
material supplier shall pay the lower tier subcontractor or 111
lower tier material supplier, in addition to the payment due, 112
interest in the amount of eighteen per cent per annum of the 113
payment due, beginning on the eleventh day following the receipt 114
of payment from the contractor, other subcontractor, material 115
supplier, lower tier subcontractor, or lower tier material 116
supplier and ending on the date of full payment of the payment 117
due plus interest to the lower tier subcontractor or lower tier 118
material supplier. 119

~~(3)~~ (4) If a contractor receives any final retainage from 120
the owner for improvements to property, the contractor shall pay 121
from that retainage each subcontractor and material supplier the 122
subcontractor's or material supplier's proportion of the 123
retainage, within ten calendar days after receipt of the 124
retainage from the owner, or within the time period provided in 125
a contract, invoice, or purchase order between the contractor 126
and the subcontractor or material supplier, whichever time 127
period is shorter, provided that the contractor has determined 128
that the subcontractor's or material supplier's work, labor, and 129
materials have been satisfactorily performed or furnished and 130
that the owner has approved the subcontractor's or material 131
supplier's work, labor, and materials. 132

If the contractor fails to pay a subcontractor or material 133
supplier within the appropriate time period, the contractor 134
shall pay the subcontractor or material supplier, in addition to 135
the retainage due, interest in the amount of eighteen per cent 136
per annum of the retainage due, beginning on the eleventh day 137

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 recipients~~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

agreement and any such term in any contract or agreement is void 228
and unenforceable as against public policy. 229

(2) ~~This~~ (a) Subject to division (D) (2) (b) of this 230
section, this section shall not be construed as impairing or 231
affecting, in any way, the terms and conditions of any contract, 232
invoice, purchase order, or any other agreement between a any of 233
the following: 234

(i) An owner and a contractor; 235

(ii) A contractor and a subcontractor or a material 236
supplier or between a; 237

(iii) A subcontractor and another subcontractor, a 238
material supplier, a lower tier subcontractor, or a lower tier 239
material supplier, ~~except that if such~~. 240

(b) If terms and conditions described in division (D) (2) 241
(a) of this section contain time periods ~~which~~ that are longer 242
than any of the time periods specified in divisions (A) (1), (2), 243
(3), (4), ~~and~~ (5), and (6) 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) Furnished with the intent, as evidenced by the 251
contract of sale, the delivery order, delivery to the site, or 252
by other evidence that the materials are to be used on a 253
particular structure or improvement; 254

(2) Incorporated in the improvement or consumed as normal 255

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) This section does not apply to any agreement: 261

(1) To explore, produce, or develop oil, natural gas, 262
natural gas liquids, synthetic gas, sulphur, ore, or other 263
mineral substances, including any lease or royalty agreement, 264
joint interest agreement, production or production-related 265
agreement, operating agreement, farmout agreement, area of 266
mutual interest agreement, or other related agreement; 267

(2) For any well or mine services; 268

(3) To purchase, sell, gather, store, or transport oil, 269
natural gas, natural gas liquids, synthetic gas, or other 270
hydrocarbon substances by pipeline or by a fixed, associated 271
facility. 272

(G) As used in this section: 273

(1) "Agreement" includes a written or oral agreement or 274
understanding for either of the following: 275

(a) To provide work or services for a pipeline, including 276
any construction, operating, repair, or maintenance services; 277

(b) To perform a part of the services covered by division 278
(G) (1) (a) of this section or an act collateral to those 279
services, including furnishing or renting equipment, incidental 280
transportation, or other goods and services furnished in 281
connection with those services. 282

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