

As Passed by the House

135th General Assembly

Regular Session

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Am. H. B. No. 203

Representatives Roemer, Sweeney

Cosponsors: Representatives Brent, Cross, Hillyer, Russo, Skindell, Johnson, Abrams, Brennan, Brewer, Brown, Carruthers, Click, Dell'Aquila, Denson, Dobos, Edwards, Forhan, Galonski, Grim, Holmes, Isaacsohn, Jones, Lightbody, Liston, Loychik, McNally, Miller, J., Miranda, Mohamed, Patton, Somani, Thomas, C., Troy, Upchurch, Weinstein, Williams

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 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
~~recipient subcontractor, 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 140
subcontractor, or lower tier material supplier receives any 141
final retainage from the contractor or other subcontractor, 142
lower tier subcontractor, or lower tier material supplier for 143
improvements to property, the recipient~~subcontractor, material-~~ 144
~~supplier, lower tier subcontractor, or lower tier material-~~ 145
~~supplier~~ shall pay from that retainage each lower tier 146
~~subcontractor~~ subcontractor's or lower tier ~~the lower tier~~ 147
~~subcontractor's~~ or lower tier material supplier's proportion of 148
the retainage, within ten calendar days after receipt of payment 149
~~from the contractor or other subcontractor, lower tier~~ 150
~~subcontractor, or lower tier material supplier,~~ or within the 151
time period provided in a contract, invoice, or purchase order 152
between the subcontractor, material supplier, lower tier 153
subcontractor, or lower tier material supplier and the lower 154
tier subcontractor or lower tier material supplier, whichever 155
time period is shorter, provided that the ~~subcontractor,~~ 156
~~material supplier, lower tier subcontractor, or lower tier~~ 157
~~material supplier~~ recipient has determined that the lower tier 158
subcontractor's or lower tier material supplier's work, labor, 159
and materials have been satisfactorily performed or furnished 160
and that the owner has approved the lower tier subcontractor's 161
or lower tier material supplier's work, labor, and materials. 162

If the ~~subcontractor, material supplier, lower tier~~ 163
~~subcontractor, or lower tier material supplier~~ recipient fails 164
to pay the lower tier subcontractor or lower tier material 165

supplier within the appropriate time period, the ~~subcontractor,~~ 166
~~material supplier, lower tier subcontractor, or lower tier~~ 167
~~material supplier recipient~~ shall pay the lower tier 168
subcontractor or lower tier material supplier, in addition to 169
the retainage due, interest in the amount of eighteen per cent 170
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 these 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 ~~these divisions~~ division (A) of this section, 203
the court shall award the interest specified in ~~these~~ 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 wastage in the course of the improvement; or	254 255
(3) Specifically fabricated for incorporation in the improvement and not readily resalable in the ordinary course of the fabricator's business even if not actually incorporated in the improvement.	256 257 258 259
(F) <u>This section does not apply to any agreement:</u>	260
<u>(1) To explore, produce, or develop oil, natural gas, natural gas liquids, synthetic gas, sulphur, ore, or other mineral substances, including any lease or royalty agreement, joint interest agreement, production or production-related agreement, operating agreement, farmout agreement, area of mutual interest agreement, or other related agreement;</u>	261 262 263 264 265 266
<u>(2) For any well or mine services;</u>	267
<u>(3) To purchase, sell, gather, store, or transport oil, natural gas, natural gas liquids, synthetic gas, or other hydrocarbon substances by pipeline or by a fixed, associated facility.</u>	268 269 270 271
<u>(G) As used in this section:</u>	272
<u>(1) "Agreement" includes a written or oral agreement or understanding for either of the following:</u>	273 274
<u>(a) To provide work or services for a pipeline, including any construction, operating, repair, or maintenance services;</u>	275 276
<u>(b) To perform a part of the services covered by division (G) (1) (a) of this section or an act collateral to those services, including furnishing or renting equipment, incidental transportation, or other goods and services furnished in connection with those services.</u>	277 278 279 280 281

(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 285
at risk" as those terms are defined in section 9.33 of the 286
Revised Code, or a "design-build firm" as that term is defined 287
in section 153.65 of the Revised Code. 288

~~(2)~~(3) "Laborer," "material supplier," "subcontractor," 289
and "wages" have the same meanings as in section 1311.01 of the 290
Revised Code. 291

~~(3)~~(4) "Lower tier subcontractor" means a subcontractor 292
who is not in privity of contract with a contractor but is in 293
privity of contract with another subcontractor. 294

~~(4)~~(5) "Lower tier material supplier" means a material 295
supplier who is not in privity of contract with a contractor but 296
is in privity of contract with another subcontractor or a 297
material supplier. 298

~~(5)~~(6) "Owner" means the holder of any right, title, or 299
interest, either legal or equitable, in the real estate upon 300
which improvements are made, including interests held under a 301
contract of purchase, whether in writing or otherwise. 302

(7) "Private owner" means an owner that is not a public 303
owner. 304

(8) "Public owner" means an owner that is the state, or a 305
county, township, municipal corporation, school district, or 306
other political subdivision of the state, or any public agency, 307
authority, board, commission, instrumentality, or special 308
district of or in the state, and any officer or agent thereof. 309

(9) "Wages due" means the wages due to a laborer as of the 310

date a contractor or subcontractor receives payment for any 311
application or request for payment or retainage from any owner, 312
contractor, or subcontractor. 313

~~(6) "Owner" includes the state, and a county, township, 314
municipal corporation, school district, or other political 315
subdivision of the state, and any public agency, authority, 316
board, commission, instrumentality, or special district of or in 317
the state or a county, township, municipal corporation, school 318
district, or other political subdivision of the state, and any 319
officer or agent thereof and relates to all the interests either 320
legal or equitable, which a person may have in the real estate 321
upon which improvements are made, including interests held by 322
any person under contracts of purchase, whether in writing or 323
otherwise. 324~~

(10) "Well or mine services" includes any of the 325
following: 326

(a) Drilling, deepening, reworking, repairing, improving, 327
testing, treating, perforating, acidizing, logging, 328
conditioning, purchasing, gathering, storing, or transporting 329
oil or natural gas, brine water, fresh water, produced water, 330
condensate, petroleum products, or other liquid commodities, or 331
otherwise rendering services in connection with a well drilled 332
to produce or dispose of oil, gas, or other minerals or water; 333

(b) Designing, excavating, constructing, improving, or 334
otherwise rendering services in connection with an oil, gas, or 335
other mineral production platform or facility, mine shaft, 336
drift, or other structure intended directly for use in exploring 337
for or producing a mineral. 338

Section 2. That existing section 4113.61 of the Revised 339

Code is hereby repealed. 340

Section 3. Sections 1 and 2 of this act take effect six 341
months after the effective date of this section. 342