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H.B. 203
135th General Assembly

Bill Analysis

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Version: As Reported by House Commerce and Labor

Primary Sponsors: Reps. Roemer and Sweeney

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SUMMARY

- Requires private owners of construction projects to pay contractors within 30 days after receiving a request for payment except that, if the plans require government approval, payment is required no sooner than 30 days after work is certified as compliant with architectural or engineering standards.
- Applies 18% annual interest to payments not timely made.
- Exempts certain agreements concerning exploration, extraction, and transportation of natural resources from Ohio's Prompt Pay Act.

DETAILED ANALYSIS

The bill adds provisions to Ohio's Prompt Pay Act, which concerns payment timelines for construction projects aside from those involving one-, two-, or three- family dwellings.¹ The new provisions require the private owners of construction projects to pay contractors with whom they have contracted within 30 days of a request for payment or within 30 days of certain specified work being certified as being in compliance with architectural or engineering requirements.

The Prompt Pay Act, in its current form, does include provisions requiring prompt payment to contractors from private owners. While another provision of law addresses payment from public owners to contractors,² the Prompt Pay Act only addresses payments between contractors, subcontractors, material suppliers, and laborers.

¹ R.C. 4113.61(C).

² R.C. 126.30, not in the bill.

Construction projects and the current act

In a construction project, a contractor may engage subcontractors and buy materials. The subcontractors and material suppliers in turn may engage subcontractors and buy materials. When the project owner pays the contractor, the contractor must pay the contractor's laborers and subcontractors, and material suppliers. This process continues down the line through the subcontractors and material suppliers, who must pay their own laborers and subcontractors and suppliers.

Under continuing law, if a subcontractor or supplier makes a timely request for payment from a contractor, and if the contractor fails to pay the amounts due within ten days after receiving payment themselves (for example, from the building owner or another contractor), the amount owed accrues interest at an 18% annual rate. Laborers must also be paid within ten days of the receipt of funds by the contractor, but laborers need not make a request for payment for interest to begin accruing.³ If 30 days elapse after the ten-day deadline, continuing law allows the subcontractor, supplier, or laborer owed payment to bring a civil action to recover the amount due, interest, and attorney's fees.⁴

New obligation for owners

The bill's new provisions require a private owner that has received a written request for payment from a contractor, for an amount allowed under the contract for properly performed work or furnished materials, to make payment as follows:

- 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, and which require the seal of a registered architect or engineer, within 30 days after the work performed or materials furnished are certified as complying with the approved plans, drawings, specifications, or data by a licensed architect or engineer, or within 30 days after receiving the request for payment, whichever is later;
- For all other work performed or materials furnished, 30 days after the request for payment is received.

Similar to the continuing provisions for payments by and among contractors, subcontractors, material suppliers, and laborers, amounts may be withheld as authorized by law, for retainage as provided in the contract, and as necessary to resolve disputed liens or claims involving the work, labor, or materials. If the private owner fails to pay as required, interest begins to accrue at an 18% annual rate. If 30 days elapse after the deadline, the bill

³ R.C. 4113.61(A)(2) to (6).

⁴ R.C. 4113.61(B).

allows the contractor to bring a civil action to recover the amount due, interest, and attorney's fees.⁵

Exemptions

The bill exempts certain agreements from existing and added provisions of the Ohio Prompt Pay Act, including the following agreements:

- To explore, produce, or develop oil, natural gas, natural gas liquids, synthetic gas, Sulphur, ore, or other mineral substances;
- For any well or mine services;
- 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.⁶

The bill defines "agreement" as a written or oral agreement or understanding to provide work or services for either of the following:

- To provide work or services for a pipeline, including any construction, operating, repair, or maintenance services;
- To perform a part of the aforementioned services 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.⁷

Effective date

The bill's changes to the Prompt Pay Law take effect six months after the standard, 90-day effective date.⁸

HISTORY

Action	Date
Introduced	06-06-23
Reported, H. Commerce & Labor	10-11-23

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⁵ R.C. 4113.61(A) and (B).

⁶ R.C. 4113.61(F).

⁷ R.C. 4113.61(G)(1).

⁸ Section 3 of the bill.