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# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
and Drafting

Legislative Budget  
Office

H.B. 203  
135<sup>th</sup> General Assembly

## Bill Analysis

**Version:** As Introduced

**Primary Sponsors:** Reps. Roemer and Sweeney

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### SUMMARY

- Requires private owners of construction projects to pay contractors either:
  - 30 days after receiving a request for payment; or
  - 30 days after work or materials furnished pursuant to plans requiring government approval and an architect's or engineer's seal are certified as being in compliance with the approved plans, or 30 days after receiving a request for payment, whichever is later.
- 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 (R.C. 4113.61), which concerns payment timelines for construction projects aside from those involving one-, two-, or three-family dwellings.<sup>1</sup> 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

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<sup>1</sup> R.C. 4113.61(C).

payment from public owners to contractors,<sup>2</sup> the Prompt Pay Act only addresses payments between contractors, subcontractors, material suppliers, and laborers.

## **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 person owed payment makes a timely request for payment from a person owing payment, and if the person owing payment fails to pay the amounts due within ten days of the person owing payment having received payment themselves, the amount owed begins to accrue interest at an 18% annual rate. Laborers must also be paid within ten days of the receipt of funds by the person owing payment, but laborers need not make a request for payment for interest to begin accruing.<sup>3</sup> If 30 days elapse after the ten-day deadline, continuing law allows the person owed payment to bring a civil action to recover the amount due, interest, and attorney's fees.<sup>4</sup>

## **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,

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<sup>2</sup> R.C. 126.30, not in the bill.

<sup>3</sup> R.C. 4113.61(A)(2) to (6).

<sup>4</sup> R.C. 4113.61(B).

interest begins to accrue at 18% annual interest. If 30 days elapse after the deadline, the bill allows the contractor to bring a civil action to recover the amount due, interest, and attorney's fees.<sup>5</sup>

## 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.<sup>6</sup>

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.<sup>7</sup>

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## HISTORY

Action	Date
Introduced	06-06-23

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<sup>5</sup> R.C. 4113.61(A) and (B).

<sup>6</sup> R.C. 4113.61(F).

<sup>7</sup> R.C. 4113.61(G)(1).