

As Introduced

**125th General Assembly
Regular Session
2003-2004**

H. B. No. 208

**Representatives Young, Brinkman, Buehrer, McGregor, Flowers, Aslanides,
Peterson, D. Evans, Gibbs, Reidelbach, Callender**

A B I L L

To amend sections 153.12, 153.13, 153.14, 3791.04, 1
4113.61, 4113.62, and 5559.14 of the Revised Code 2
to modify provisions governing the practice of 3
withholding a percentage of payment from 4
contractors, subcontractors, and material 5
suppliers in the form of retainage. 6

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

Section 1. That sections 153.12, 153.13, 153.14, 3791.04, 7
4113.61, 4113.62, and 5559.14 of the Revised Code be amended to 8
read as follows: 9

Sec. 153.12. (A) With respect to award of any contract for 10
the construction, reconstruction, improvement, enlargement, 11
alteration, repair, painting, or decoration of a public 12
improvement made by the state, or any county, township, municipal 13
corporation, school district, or other political subdivision, or 14
any public board, commission, authority, instrumentality, or 15
special purpose district of or in the state or a political 16
subdivision or that is authorized by state law, the award, and 17
execution of the contract, shall be made within sixty days after 18
the date on which the bids are opened. The failure to award and 19

execute the contract within sixty days invalidates the entire bid 20
proceedings and all bids submitted, unless the time for awarding 21
and executing the contract is extended by mutual consent of the 22
owner or its representatives and the bidder whose bid the owner 23
accepts and with respect to whom the owner subsequently awards and 24
executes a contract. The public owners referred to in this section 25
shall include, in the plans and specifications for the project for 26
which bids are solicited, the estimate of cost. The bid for which 27
the award is to be made shall be opened at the time and place 28
named in the advertisement for bids, unless extended by the owner 29
or its representative or unless, within seventy-two hours prior to 30
the published time for the opening of bids, excluding Saturdays, 31
Sundays, and legal holidays, any modification of the plans or 32
specifications and estimates of cost for the project for which 33
bids are solicited is issued and mailed or otherwise furnished to 34
persons who have obtained plans or specifications for the project, 35
for which the time for opening of bids shall be extended one week, 36
with no further advertising of bids required. The contractor, upon 37
request, is entitled to a notice to proceed with the work by the 38
owner or its representative upon execution of the contract. No 39
contract to which this section applies shall be entered into if 40
the price of the contract, or, if the project involves multiple 41
contracts where the total price of all contracts for the project, 42
is in excess of ten per cent above the entire estimate thereof, 43
nor shall the entire cost of the construction, reconstruction, 44
repair, painting, decorating, improvement, alteration, addition, 45
or installation, including changes and estimates of expenses for 46
architects or engineers, exceed in the aggregate the amount 47
authorized by law. 48

The unit or lump sum price stated in the contract shall be 49
used in determining the amount to be paid and shall constitute 50
full and final compensation for all the work. 51

Partial payment to the contractor for work performed or 52
material supplied under the lump sum price shall be based on a 53
schedule prepared by the contractor and approved by the architect 54
or engineer who shall apportion the lump sum price to the major 55
components entering into or forming a part of the work under the 56
lump sum price. 57

Partial payments to the contractor for labor performed or 58
material supplied under either a unit or lump sum price contract 59
shall be made at the rate of ~~ninety-two~~ one hundred per cent of 60
the estimates prepared by the contractor and approved by the 61
architect or engineer. ~~All labor performed after the job is fifty~~ 62
~~per cent completed shall be paid for at the rate of one hundred~~ 63
~~per cent of the estimates submitted by the contractor and approved~~ 64
~~by the architect or engineer.~~ 65

The amounts and time of payments of any public improvements 66
contract made by the state or any county, township, municipal 67
corporation, school district, or other political subdivision, or 68
any public board, commission, authority, instrumentality, or 69
special purpose district of or in the state or a political 70
subdivision or that is authorized by state law, except as provided 71
in section 5525.19 of the Revised Code, shall be governed by this 72
section and sections 153.13 and 153.14 of the Revised Code. If the 73
time for awarding the contract is extended by mutual consent, or 74
if the owner or its representative fails to issue a timely notice 75
to proceed as required by this section, the owner or its 76
representative shall issue a change order authorizing delay costs 77
to the contractor, which does not invalidate the contract. The 78
amount of such a change order to the owner shall be determined in 79
accordance with the provisions of the contract for change orders 80
or force accounts or, if no such provision is set forth in the 81
contract, the cost to the owner shall be the contractor's actual 82
costs including wages, labor costs other than wages, wage taxes, 83

materials, equipment costs and rentals, insurance, and 84
subcontracts attributable to the delay, plus a reasonable sum for 85
overhead. In the event of a dispute between the owner and the 86
contractor concerning such change order, procedures shall be 87
commenced under the applicable terms of the contract, or, if the 88
contract contains no provision for resolving the dispute, it shall 89
be resolved pursuant to the procedures for arbitration in Chapter 90
2711. of the Revised Code, except as provided in division (B) of 91
this section. Nothing in this division shall be construed as a 92
limitation upon the authority of the director of transportation 93
granted in Chapter 5525. of the Revised Code. 94

(B) If a dispute arises between the state and a contractor 95
concerning the terms of a public improvement contract let by the 96
state or concerning a breach of the contract, and after 97
administrative remedies provided for in such contract and any 98
alternative dispute resolution procedures provided in accordance 99
with guidelines established by the director of administrative 100
services are exhausted, the contractor may bring an action to the 101
court of claims in accordance with Chapter 2743. of the Revised 102
Code. The state or the contractor may request the chief justice of 103
the supreme court to appoint a referee or panel of referees in 104
accordance with division (C)(3) of section 2743.03 of the Revised 105
Code. As used in this division, "dispute" means a disagreement 106
between the state and the contractor concerning a public 107
improvement contract let by the state. 108

(C) The state or any county, township, municipal corporation, 109
school district, or other political subdivision, or any public 110
board, commission, authority, instrumentality, or special purpose 111
district of or in the state or a political subdivision or that is 112
authorized by state law that enters into a contract for the 113
construction, reconstruction, improvement, enlargement, 114
alteration, repair, painting, or decoration of a public 115

improvement, shall include a provision in the contract that 116
requires the contractor to have a safety program that satisfies 117
all of the following requirements: 118

(1) The safety program applies to the public improvement that 119
is the subject of the contract. 120

(2) The safety program is described in writing. 121

(3) The safety program includes a plan that describes 122
conditions under which and the manner in which drug and alcohol 123
testing may be performed on individuals performing work pursuant 124
to the contract. 125

(4) For public improvements estimated to take longer than two 126
months to complete or estimated to cost more than five hundred 127
thousand dollars, the safety program is specifically designed for 128
the site or each separate site where work is performed pursuant to 129
the contract. 130

Sec. 153.13. At the time named in the contract for payment to 131
the person with whom it is made, the owner referred to in section 132
153.01 or 153.12 of the Revised Code shall approve a full, 133
accurate, and detailed estimate of the various kinds of labor 134
performed and material furnished under the contract, with the 135
amount due for each kind of labor and material and the materials 136
and amount due in the aggregate, which estimate shall be based 137
upon actual measurement of such labor and materials, and shall 138
give the amounts of the preceding estimate, and the amount of 139
labor performed and materials furnished since the last estimate. 140
~~From the date the contract is fifty per cent complete, as~~ 141
~~evidenced by payments in the amount of at least fifty per cent of~~ 142
~~the contract to the person with whom the owner has contracted,~~ 143
~~except in the case of contracts the total cost of which is less~~ 144
~~than fifteen thousand dollars, all funds retained pursuant to~~ 145

~~sections 153.12 and 153.14 of the Revised Code for the faithful performance of work shall be deposited in the escrow account designated in section 153.63 of the Revised Code. After the contract is fifty per cent complete, no further No funds shall be retained. When the major portion of the project is substantially completed and occupied, or in use, or otherwise accepted, and there exists no other reason to withhold retainage, the retained percentages held in connection with such portion shall be released from escrow and paid to the contractor, withholding only that amount necessary to assure completion. Funds in the escrow account not heretofore paid, with accumulated interest, shall be paid to the person with whom the owner has contracted thirty days from the date of completion or either acceptance or occupancy by the owner. Such payments shall be in accordance with division (A)(2) of section 153.63 of the Revised Code. Nothing in this section shall be construed as a limitation upon the authority of the director of transportation granted in Chapter 5525. of the Revised Code.~~

Sec. 153.14. For the construction of those projects, improvements, and public buildings over which the director of administrative services has general supervision pursuant to section 123.01 of the Revised Code, the estimates referred to in section 153.13 of the Revised Code shall be filed with the director by the owner referred to in section 153.01 or 153.12 of the Revised Code. Upon completion of a project referred to in section 153.13 of the Revised Code or any divisible part thereof, the maintenance and repair of such project or divisible part shall be assumed by the owner referred to in section 153.01 or 153.12 of the Revised Code.

In addition to all other payments on account of work performed, there shall be allowed by the owner referred to in section 153.01 or 153.12 of the Revised Code and paid to the

contractor a sum at the rate of ~~ninety-two~~ one hundred per cent of 177
the invoice costs, not to exceed the bid price in a unit price 178
contract, of material delivered on the site of the work, or a 179
railroad station, siding, or other point in the vicinity of the 180
work, or other approved storage site, provided such materials have 181
been inspected and found to meet the specifications. ~~The balance~~ 182
~~of such invoiced value shall be paid when such material is~~ 183
~~incorporated into and becomes a part of such building,~~ 184
~~construction, addition, improvement, alteration, or installation.~~ 185
When an estimate is allowed on account of material delivered on 186
the site of the work or in the vicinity thereof or under the 187
possession and control of the contractor but not yet incorporated 188
therein, such material shall become the property of the owner 189
under the contract, but if such material is stolen, destroyed, or 190
damaged by casualty before being used, the contractor shall be 191
required to replace it at ~~his~~ the contractor's own expense. 192

When the rate of work and amounts involved are so large that 193
it is considered advisable by the owner or contractor, estimates 194
and payments shall be made twice each month. 195

Payment on approved estimates filed with the owner or its 196
representative shall be made within thirty days. Upon the failure 197
of the owner or its representative to make such payments within 198
thirty days, or upon an unauthorized withholding of retainage, 199
there shall be allowed to the contractor, in addition to any other 200
remedies allowed by law, interest on such moneys not paid within 201
thirty days. Interest on the unauthorized withholding of retainage 202
shall be in addition to any interest earned in the escrow account 203
~~set forth~~ designated in section ~~153.13~~ 153.63 of the Revised Code. 204
The rate of such interest shall be the average of the prime rate 205
established at the commercial banks in the city of over one 206
hundred thousand population that is nearest the construction 207
project. Nothing in this section shall be construed as a 208

limitation upon the authority of the director of transportation 209
granted in Chapter 5525. of the Revised Code. 210

Sec. 3791.04. (A) Before beginning the construction, 211
erection, or manufacture of any building to which section 3781.06 212
of the Revised Code is applicable, including all industrialized 213
units, the owner thereof, in addition to any other submission of 214
plans or drawings, specifications, and data required by law, shall 215
submit the plans or drawings, specifications, and data prepared 216
for the construction, erection, and equipment thereof, or the 217
alteration thereof or addition thereto, which plans or drawings, 218
and specifications shall indicate thereon the portions that have 219
been approved pursuant to section 3781.12 of the Revised Code, for 220
which no further approval shall be required, to the municipal, 221
township, or county building department having jurisdiction if 222
such department has been certified as provided in division (E) of 223
section 3781.10 of the Revised Code, and if there is no certified 224
municipal, township, or county building department, to the 225
superintendent of the division of industrial compliance, for 226
approval. 227

The seal of an architect registered under Chapter 4703. of 228
the Revised Code or an engineer registered under Chapter 4733. of 229
the Revised Code shall be required for any plans, drawings, 230
specifications, or data submitted for approval, unless the plans, 231
drawings, specifications, or data may be prepared by persons other 232
than registered architects pursuant to division (C) or (D) of 233
section 4703.18 of the Revised Code, or by persons other than 234
registered engineers pursuant to division (C) or (D) of section 235
4733.18 of the Revised Code. 236

No seal shall be required for any plans, drawings, 237
specifications, or data submitted for approval for any buildings 238
or structures subject to the requirements of section 3781.181 of 239

the Revised Code, exempt from the requirements of sections 3781.06 240
to 3781.18 and 3791.04 of the Revised Code, or erected as 241
industrialized one-, two-, or three-family units or structures 242
within the meaning of "industrialized unit" as defined in section 243
3781.06 of the Revised Code. 244

No seal shall be required for the installation of replacement 245
equipment or systems that are similar in type or capacity to the 246
equipment or systems being replaced. No seal shall be required for 247
approval for any new construction, improvement, alteration, 248
repair, painting, decorating, or other modification of any 249
buildings or structures subject to sections 3781.06 to 3781.18 and 250
3791.04 of the Revised Code if the proposed work does not involve 251
technical design analysis, as defined by rule adopted by the board 252
of building standards. 253

(B) No owner shall proceed with the construction, erection, 254
alteration, or equipment of any such building until such plans or 255
drawings, specifications, and data have been so approved, or the 256
industrialized unit inspected at the point of origin. No plans or 257
specifications shall be approved or inspection approval given 258
unless the building represented thereby would, if constructed, 259
repaired, erected, or equipped according to the same, comply with 260
Chapters 3781. and 3791. of the Revised Code and any rule made 261
under such chapters. 262

(C) The approval of plans or drawings and specifications or 263
data pursuant to this section is invalid if construction, 264
erection, alteration, or other work upon the building has not 265
commenced within twelve months of the approval of the plans or 266
drawings and specifications. One extension shall be granted for an 267
additional twelve-month period if requested by the owner at least 268
ten days in advance of the expiration of the permit and upon 269
payment of a fee not to exceed one hundred dollars. If in the 270
course of construction, work is delayed or suspended for more than 271

six months, the approval of plans or drawings and specifications 272
or data is invalid. Two extensions shall be granted for six months 273
each if requested by the owner at least ten days in advance of the 274
expiration of the permit and upon payment of a fee for each 275
extension of not more than one hundred dollars. Before any work 276
may continue on the construction, erection, alteration, or 277
equipment of any building for which the approval is invalid, the 278
owner of the building shall resubmit the plans or drawings and 279
specifications for approval pursuant to this section. 280

(D) Subject to section 3791.042 of the Revised Code, the 281
board of building standards or the legislative authority of a 282
municipal corporation, township, or county, by rule, may regulate 283
the requirements for the submission of plans and specifications to 284
the respective enforcing departments and for the processing of the 285
same by such departments. The board of building standards or the 286
legislative authority of a municipal corporation, township, or 287
county may adopt rules to provide for the approval, subject to 288
section 3791.042 of the Revised Code, by the department having 289
jurisdiction of the plans for construction of a foundation or any 290
other part of a building or structure before the complete plans 291
and specifications for the entire building or structure have been 292
submitted. When any plans are approved by the department having 293
jurisdiction, the structure and every particular thereof 294
represented by those plans and disclosed therein shall, in the 295
absence of fraud or a serious safety or sanitation hazard, be 296
conclusively presumed to comply with Chapters 3781. and 3791. of 297
the Revised Code and any rule issued pursuant thereto, if 298
constructed, altered, or repaired in accordance with those plans 299
and any such rule in effect at the time of approval. 300

(E) The approval of plans and specifications, including 301
inspection of the industrialized units, under this section is a 302
"license" and the failure to approve such plans or specifications 303

as submitted or to inspect the unit at the point of origin within 304
thirty days after the plans or specifications are filed, or the 305
request for inspection of the industrialized unit is made, or the 306
disapproval of such plans and specifications, or the refusal to 307
approve such industrialized unit, following inspection at the 308
point of origin is "an adjudication order denying the issuance of 309
a license" requiring an "adjudication hearing" as provided by 310
sections 119.07 to 119.13 of the Revised Code and as modified by 311
sections 3781.031 and 3781.19 of the Revised Code. An adjudication 312
order denying the issuance of a license shall specify the reasons 313
for such denial. 314

(F) The board of building standards shall not require the 315
submission of site preparation plans or plot plans to the division 316
of industrial compliance in situations where industrialized units 317
are used exclusively as one-, two-, or three-family dwellings. 318

(G) Notwithstanding any procedures established by the board, 319
the agency having jurisdiction, if it objects to any portion of 320
the plans or specifications, upon the request of the owner or 321
representative of the owner, may issue conditional approval to 322
proceed with construction up to the point where there is 323
objection. Approval shall be issued only when the objection 324
results from conflicting interpretations of the rules of the board 325
of building standards rather than the application of specific 326
technical requirements of the rules. Approval shall not be issued 327
where the correction of the objection would cause extensive 328
changes in the building design or construction. The giving of 329
conditional approval is a "conditional license" to proceed with 330
construction up to the point where construction or materials 331
objected to by the agency are to be incorporated into the 332
building. No construction shall proceed beyond this point without 333
the prior approval of the agency or another agency which conducts 334
an adjudication hearing relative to the objection. The agency 335

having jurisdiction shall specify its objections to the plans or 336
specifications, which is an "adjudication order denying the 337
issuance of a license" and may be appealed pursuant to sections 338
119.07 to 119.13 of the Revised Code and as modified by sections 339
3781.031 and 3781.19 of the Revised Code. 340

(H) A certified municipal, township, or county building 341
department having jurisdiction, or the superintendent of the 342
division of industrial compliance, as appropriate, shall review 343
any plans, drawings, specifications, or data described in this 344
section that are submitted to it or to the superintendent. 345

(I) A certified municipal, township, or county building 346
department having jurisdiction, and the superintendent of the 347
division of industrial compliance shall not issue a certificate of 348
occupancy for any building or structure until the contractor 349
provides to the building department or superintendent 350
certification that all retainage withheld from the contractor or 351
any subcontractor, material supplier, lower tier subcontractor, or 352
lower tier material supplier who performed work or supplied 353
materials for the building or structure has been paid, except for 354
amounts necessary to ensure completion of any incomplete work or 355
work that is noted in a written list provided to the owner or 356
public authority specifying deficiencies yet to be corrected, or 357
to compensate for undelivered, defective, or otherwise inadequate 358
supplies. 359

(J) No owner or persons having control as an officer, or as a 360
member of a board or committee, or otherwise, of a building to 361
which section 3781.06 of the Revised Code is applicable, and no 362
architect, designer, engineer, builder, contractor, subcontractor, 363
or any officer or employee of a municipal, township, or county 364
building inspection department shall violate this section. 365

~~(J)~~(K) Whoever violates this section shall be fined not more 366
than five hundred dollars. 367

Sec. 4113.61. (A)(1) If a subcontractor or ~~materialman~~ material supplier submits an application or request for payment or an invoice for materials to a contractor in sufficient time to allow the contractor to include the application, request, or invoice in ~~his~~ the contractor's own pay request submitted to an owner, the contractor, within ten calendar days after receipt of payment from the owner for improvements to property, shall pay to the:

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

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

The contractor may, subject to the limitations described in division (F) of this section, reduce the amount paid by any retainage provision contained in the contract, invoice, or purchase order between the contractor and the subcontractor or ~~materialman~~ material supplier, and may withhold amounts that may be necessary to resolve disputed liens or claims involving the work or labor performed or material furnished by the subcontractor or ~~materialman~~ material supplier.

If the contractor fails to comply with division (A)(1) of this section, the contractor shall pay the subcontractor or ~~materialman~~ 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 owner and ending on the date of full payment of the payment due plus interest to the subcontractor or ~~materialman~~ material supplier.

(2) If a lower tier subcontractor or lower tier ~~materialman~~ material supplier submits an application or request for payment or an invoice for materials to a subcontractor, ~~materialman~~ material supplier, or other lower tier subcontractor or lower tier ~~materialman~~ material supplier in sufficient time to allow the subcontractor, ~~materialman~~ material supplier, or other lower tier subcontractor or lower tier ~~materialman~~ material supplier to include the application, request, or invoice in ~~his~~ the subcontractor's, material supplier's, or other lower tier subcontractor's or lower tier material supplier's own pay request submitted to a contractor, other subcontractor, ~~materialman~~ material supplier, lower tier subcontractor, or lower tier ~~materialman~~ material supplier, the subcontractor, ~~materialman~~ material supplier, or other lower tier subcontractor or lower tier ~~materialman~~ material supplier, within ten calendar days after receipt of payment from the contractor, other subcontractor, ~~materialman~~ material supplier, lower tier subcontractor, or lower tier ~~materialman~~ material supplier for improvements to property, shall pay to the:

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

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

The subcontractor, ~~materialman~~ material supplier, lower tier subcontractor, or lower tier ~~materialman~~ material supplier may, subject to the limitations described in division (F) of this section, reduce the amount paid by any retainage provision contained in the contract, invoice, or purchase order between the

subcontractor, ~~materialman~~ material supplier, lower tier 430
subcontractor, or lower tier ~~materialman~~ material supplier and the 431
lower tier subcontractor or lower tier ~~materialman~~ material 432
supplier, and may withhold amounts that may be necessary to 433
resolve disputed liens or claims involving the work or labor 434
performed or material furnished by the lower tier subcontractor or 435
lower tier ~~materialman~~ material supplier. 436

If the subcontractor, ~~materialman~~ material supplier, lower 437
tier subcontractor, or lower tier ~~materialman~~ material supplier 438
fails to comply with division (A)(2) of this section, the 439
subcontractor, ~~materialman~~ material supplier, lower tier 440
subcontractor, or lower tier ~~materialman~~ material supplier shall 441
pay the lower tier subcontractor or lower tier ~~materialman~~ 442
material supplier, in addition to the payment due, interest in the 443
amount of eighteen per cent per annum of the payment due, 444
beginning on the eleventh day following the receipt of payment 445
from the contractor, other subcontractor, ~~materialman~~ material 446
supplier, lower tier subcontractor, or lower tier ~~materialman~~ 447
material supplier and ending on the date of full payment of the 448
payment due plus interest to the lower tier subcontractor or lower 449
tier ~~materialman~~ material supplier. 450

(3) If a contractor receives any final retainage from the 451
owner for improvements to property, the contractor shall pay from 452
that retainage each subcontractor and ~~materialman~~ material 453
supplier his proportion of the retainage, within ten calendar days 454
after receipt of the retainage from the owner, or within the time 455
period provided in a contract, invoice, or purchase order between 456
the contractor and the subcontractor or ~~materialman~~ material 457
supplier, whichever time period is shorter, provided that the 458
contractor has determined that the subcontractor's or 459
~~materialman's~~ material supplier's work, labor, and materials have 460
been satisfactorily performed or furnished and that the owner has 461

approved the subcontractor's or ~~materialman's~~ material supplier's 462
work, labor, and materials. 463

If the contractor fails to pay a subcontractor or ~~materialman~~ 464
material supplier within the appropriate time period, the 465
contractor shall pay the subcontractor or ~~materialman~~ material 466
supplier, in addition to the retainage due, interest in the amount 467
of eighteen per cent per annum of the retainage due, beginning on 468
the eleventh day following the receipt of the retainage from the 469
owner and ending on the date of full payment of the retainage due 470
plus interest to the subcontractor or ~~materialman~~ material 471
supplier. 472

(4) If a subcontractor, ~~materialman~~ material supplier, lower 473
tier subcontractor, or lower tier ~~materialman~~ material supplier 474
receives any final retainage from the contractor or other 475
subcontractor, lower tier subcontractor, or lower tier ~~materialman~~ 476
material supplier for improvements to property, the subcontractor, 477
~~materialman~~ material supplier, lower tier subcontractor, or lower 478
tier ~~materialman~~ material supplier shall pay from that retainage 479
each lower tier subcontractor or lower tier ~~materialman~~ material 480
supplier his proportion of the retainage, within ten calendar days 481
after receipt of payment from the contractor or other 482
subcontractor, lower tier subcontractor, or lower tier ~~materialman~~ 483
material supplier, or within the time period provided in a 484
contract, invoice, or purchase order between the subcontractor, 485
~~materialman~~ material supplier, lower tier subcontractor, or lower 486
tier ~~materialman~~ material supplier and the lower tier 487
subcontractor or lower tier ~~materialman~~ material supplier, 488
whichever time period is shorter, provided that the subcontractor, 489
~~materialman~~ material supplier, lower tier subcontractor, or lower 490
tier ~~materialman~~ material supplier has determined that the lower 491
tier subcontractor's or lower tier ~~materialman's~~ material 492
supplier's work, labor, and materials have been satisfactorily 493

performed or furnished and that the owner has approved the lower 494
tier subcontractor's or lower tier ~~materialman's~~ material 495
supplier's work, labor, and materials. 496

If the subcontractor, ~~materialman~~ material supplier, lower 497
tier subcontractor, or lower tier ~~materialman~~ material supplier 498
fails to pay the lower tier subcontractor or lower tier 499
~~materialman~~ material supplier within the appropriate time period, 500
the subcontractor, ~~materialman~~ material supplier, lower tier 501
subcontractor, or lower tier ~~materialman~~ material supplier shall 502
pay the lower tier subcontractor or lower tier ~~materialman~~ 503
material supplier, in addition to the retainage due, interest in 504
the amount of eighteen per cent per annum of the retainage due, 505
beginning on the eleventh day following the receipt of the 506
retainage from the contractor or other subcontractor, lower tier 507
subcontractor, or lower tier ~~materialman~~ material supplier and 508
ending on the date of full payment of the retainage due plus 509
interest to the lower tier subcontractor or lower tier ~~materialman~~ 510
material supplier. 511

(5) A contractor, subcontractor, or lower tier subcontractor 512
shall pay a laborer wages due within ten days of payment of any 513
application or request for payment or the receipt of any retainage 514
from an owner, contractor, subcontractor, or lower tier 515
subcontractor. 516

If the contractor, subcontractor, or lower tier subcontractor 517
fails to pay the laborer wages due within the appropriate time 518
period, the contractor, subcontractor, or lower tier subcontractor 519
shall pay the laborer, in addition to the wages due, interest in 520
the amount of eighteen per cent per annum of the wages due, 521
beginning on the eleventh day following the receipt of payment 522
from the owner, contractor, subcontractor, or lower tier 523
subcontractor and ending on the date of full payment of the wages 524
due plus interest to the laborer. 525

(B)(1) If a contractor, subcontractor, ~~materialman~~ material supplier, lower tier subcontractor, or lower tier ~~materialman~~ material supplier has not made payment in compliance with division (A)(1), (2), (3), (4), or (5) of this section within thirty days after payment is due, a subcontractor, ~~materialman~~ material supplier, lower tier subcontractor, lower tier ~~materialman~~ material supplier, or laborer may file a civil action to recover the amount due plus the interest provided in those divisions. If the court finds in the civil action that a contractor, subcontractor, ~~materialman~~ material supplier, lower tier subcontractor, or lower tier ~~materialman~~ material supplier has not made payment in compliance with those divisions, the court shall award the interest specified in those divisions, in addition to the amount due. Except as provided in division (B)(3) of this section, the court shall award the prevailing party reasonable attorney fees and court costs.

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

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

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

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

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

(C) This section does not apply to any construction or improvement of any single-, two-, or three-family detached

dwelling houses. 557

(D)(1) No provision of this section regarding entitlement to 558
interest, attorney fees, or court costs may be waived by agreement 559
and any such term in any contract or agreement is void and 560
unenforceable as against public policy. 561

(2) This section shall not be construed as impairing or 562
affecting, in any way, the terms and conditions of any contract, 563
invoice, purchase order, or any other agreement between a 564
contractor and a subcontractor or a ~~materialman~~ material supplier 565
or between a subcontractor and another subcontractor, a 566
~~materialman~~ material supplier, a lower tier subcontractor, or a 567
lower tier ~~materialman~~ material supplier, except that if such 568
terms and conditions contain time periods which are longer than 569
any of the time periods specified in divisions (A)(1), (2), (3), 570
(4), and (5) of this section or interest at a percentage less than 571
the interest stated in those divisions, then the provisions of 572
this section shall prevail over such terms and conditions. 573

(E) Notwithstanding the definition of lower tier ~~materialman~~ 574
material supplier in this section, a person is not a lower tier 575
~~materialman~~ material supplier unless the materials supplied by ~~him~~ 576
the person are: 577

(1) Furnished with the intent, as evidenced by the contract 578
of sale, the delivery order, delivery to the site, or by other 579
evidence that the materials are to be used on a particular 580
structure or improvement; 581

(2) Incorporated in the improvement or consumed as normal 582
wastage in the course of the improvement; or 583

(3) Specifically fabricated for incorporation in the 584
improvement and not readily resalable in the ordinary course of 585
the fabricator's business even if not actually incorporated in the 586
improvement. 587

(F) Notwithstanding any other provision in this section, a contractor, subcontractor, material supplier, lower tier subcontractor, and lower tier material supplier shall not withhold retainage from a subcontractor, material supplier, lower tier subcontractor, and lower tier material supplier at a higher percentage amount than the percentage amount being withheld from that contractor, subcontractor, material supplier, lower tier subcontractor, or lower tier material supplier. 588
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(G) As used in this section and section 4113.62 of the Revised Code: 596
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(1) "Contractor" means any person who undertakes to 598
construct, alter, erect, improve, repair, demolish, remove, dig, 599
or drill any part of a structure or improvement under a contract 600
with an owner, or a "construction manager" as that term is defined 601
in section 9.33 of the Revised Code. 602

(2) "Laborer," "~~materialman~~ improvement," "materials," 603
"material supplier," "subcontractor," and "wages" have the same 604
meanings as in section 1311.01 of the Revised Code. 605

(3) "Lower tier subcontractor" means a subcontractor who is 606
not in privity of contract with a contractor but is in privity of 607
contract with another subcontractor. 608

(4) "Lower tier ~~materialman~~ material supplier" means a 609
~~materialman~~ material supplier who is not in privity of contract 610
with a contractor but is in privity of contract with another 611
subcontractor or a ~~materialman~~ material supplier. 612

(5) "Wages due" means the wages due to a laborer as of the 613
date a contractor or subcontractor receives payment for any 614
application or request for payment or retainage from any owner, 615
contractor, or subcontractor. 616

(6) "Owner" includes the state, and a county, township, 617

municipal corporation, school district, or other political 618
subdivision of the state, and any public agency, authority, board, 619
commission, instrumentality, or special district of or in the 620
state or a county, township, municipal corporation, school 621
district, or other political subdivision of the state, and any 622
officer or agent thereof and relates to all the interests either 623
legal or equitable, which a person may have in the real estate 624
upon which improvements are made, including interests held by any 625
person under contracts of purchase, whether in writing or 626
otherwise. 627

(7) "Construction contract" means a contract or agreement for 628
the design, planning, construction, alteration, repair, 629
maintenance, moving, demolition or excavation of a building, 630
structure, highway, road, appurtenance, or appliance situated on 631
real estate located in this state. 632

Sec. 4113.62. (A) Any provision of a construction contract, 633
agreement, or understanding that waives rights under a surety bond 634
is void and unenforceable as against public policy. 635

(B) Any provision of a construction contract, agreement, or 636
understanding, or specification or other documentation that is 637
made a part of a construction contract, agreement, or 638
understanding, that waives any pending or asserted claim on the 639
basis of final payment made from one person to another for the 640
construction contract, agreement, or understanding, is void and 641
unenforceable as against public policy, when the person against 642
whom the claim is pending or asserted has received notice of that 643
pending or asserted claim. Nothing in this division precludes 644
parties to a construction contract, agreement, or understanding 645
from entering into a subsequent settlement agreement arising from 646
a claim under that construction contract, agreement, or 647
understanding. 648

(C)(1) Any provision of a construction contract, agreement, 649
or understanding, or specification or other documentation that is 650
made a part of a construction contract, agreement, or 651
understanding, that waives or precludes liability for delay during 652
the course of a construction contract when the cause of the delay 653
is a proximate result of the owner's act or failure to act, or 654
that waives any other remedy for a construction contract when the 655
cause of the delay is a proximate result of the owner's act or 656
failure to act, is void and unenforceable as against public 657
policy. 658

(2) Any provision of a construction subcontract, agreement, 659
or understanding, or specification or other documentation that is 660
made part of a construction subcontract, agreement, or 661
understanding, that waives or precludes liability for delay during 662
the course of a construction subcontract when the cause of the 663
delay is a proximate result of the owner's or contractor's act or 664
failure to act, or that waives any other remedy for a construction 665
subcontract when the cause of the delay is a proximate result of 666
the owner's or contractor's act or failure to act, is void and 667
unenforceable as against public policy. 668

(D)(1) Any provision of a construction contract, agreement, 669
understanding, or specification or other document or documentation 670
that is made a part of a construction contract, subcontract, 671
agreement, or understanding for an improvement, or portion 672
thereof, to real estate in this state that makes the construction 673
contract or subcontract, agreement, or other understanding subject 674
to the laws of another state is void and unenforceable as against 675
public policy. 676

(2) Any provision of a construction contract, agreement, 677
understanding, specification, or other document or documentation 678
that is made a part of a construction contract, subcontract, 679
agreement, or understanding for an improvement, or portion 680

thereof, to real estate in this state that requires any 681
litigation, arbitration, or other dispute resolution process 682
provided for in the construction contract, subcontract, agreement, 683
or understanding to occur in another state is void and 684
unenforceable as against public policy. Any litigation, 685
arbitration, or other dispute resolution process provided for in 686
the construction contract, subcontract, agreement, or 687
understanding shall take place in the county or counties in which 688
the improvement to real estate is located or at another location 689
within this state mutually agreed upon by the parties. 690

(3) Nothing in this section shall be construed to apply to 691
any promissory note, loan agreement, mortgage, security agreement, 692
assignment of rents, or any other contract, agreement, 693
understanding, or other document or documentation to which a 694
financial institution, as defined in section 5725.01 of the 695
Revised Code, or any affiliate, as defined in division (A)(1) of 696
section 1109.53 of the Revised Code, is a party. 697

(E) No construction contract, agreement, or understanding 698
that makes payment from a contractor to a subcontractor or 699
~~materials~~ material supplier, or from a subcontractor to a 700
~~materials~~ material supplier, lower tier subcontractor, or lower 701
tier ~~materials~~ material supplier contingent or conditioned upon 702
receipt of payment from any other person shall prohibit a person 703
from filing a claim to protect rights under sections 153.56, 704
1311.06, and 1311.26 of the Revised Code from expiring during the 705
pendency of receipt of payment. 706

(F) Any provision of a construction contract, subcontract, 707
agreement, or understanding that permits the holding of retainage 708
from payments to contractors, subcontractors, material suppliers, 709
lower tier subcontractors, or lower tier material suppliers is 710
void and unenforceable, being against public policy, if the 711
construction contract, subcontract, agreement, or understanding 712

requires a performance and payment bond for the work that is the 713
subject of the construction contract, subcontract, agreement, or 714
understanding. This division does not apply to construction 715
contracts, subcontracts, agreements, or understandings for work 716
involving a single-, two-, or three-family dwelling house. 717

(G) Nothing in this section shall be construed to create a 718
liability for a surety on a bond that is greater than that of its 719
principal, or limit the availability to a surety of any defenses 720
available to its principal. 721

~~(G) As used in this section:~~ 722

~~(1) "Contractor" and "lower tier subcontractor" have the same~~ 723
~~meanings as in section 4113.61 of the Revised Code.~~ 724

~~(2) "Materials supplier" includes any person by whom any~~ 725
~~materials are furnished in furtherance of an improvement.~~ 726

~~(3) "Lower tier materials supplier" means a materials~~ 727
~~supplier who is not in privity of contract with a contractor but~~ 728
~~is in privity of contract with another subcontractor or a~~ 729
~~materials supplier.~~ 730

~~(4) "Subcontractor," "improvement," and "materials" have the~~ 731
~~same meanings as in section 1311.01 of the Revised Code.~~ 732

~~(5) "Construction contract" means a contract or agreement for~~ 733
~~the design, planning, construction, alteration, repair,~~ 734
~~maintenance, moving, demolition, or excavation of a building,~~ 735
~~structure, highway, road, appurtenance, or appliance situated on~~ 736
~~real estate located in this state.~~ 737

Sec. 5559.14. The payment of the cost of the construction of 739
an improvement as provided by section 5559.02 of the Revised Code 740
shall be made as the work progresses, upon estimates made by the 741
county engineer. ~~No payment on account of the contract for any~~ 742
~~improvement, shall, before the completion of such contract, exceed~~ 743

~~ninety per cent of the value of the work performed to the date of 744
such payment, and, except as provided in this section and section 745
5559.15 of the Revised Code, ten per cent of the value of the work 746
performed shall be held until the final completion of the contract 747
in accordance with the plans and specifications. In addition to 748
the above payments on account of work performed, the engineer may 749
also allow the contractor an estimate not to exceed ninety per 750
cent of the value of material delivered on the site of the work, 751
or at a railroad station or siding, or other point in the general 752
vicinity thereof, but not yet incorporated therein, provided such 753
material has been inspected and found to meet the specifications. 754
When an estimate is allowed on account of material delivered on 755
the site of the work or in the vicinity thereof, but not yet 756
incorporated therein, such material shall become the property of 757
the county, but in case it is stolen, destroyed, or damaged by 758
casualty before being used, the contractor will be required to 759
replace it at his the contractor's own expense. ~~When the retained 760
percentage plus the difference between the contract price and 761
estimates allowed exceeds by more than fifteen per cent the 762
estimated cost of completing the work, as determined by the 763
engineer, such engineer may allow the contractor an estimate equal 764
to all or any part of such excess sum, retaining not less than the 765
estimated cost of completing the work, as determined by him, plus 766
fifteen per cent. 767~~~~

Section 2. That existing sections 153.12, 153.13, 153.14, 768
3791.04, 4113.61, 4113.62, and 5559.14 of the Revised Code are 769
hereby repealed. 770

Section 3. Sections 1 and 2 of this act shall not apply with 771
respect to payment for labor or work performed or materials 772
supplied pursuant to a contract, subcontract, agreement, or 773
understanding that is entered into before the effective date of 774

this act.

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