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H.B. 568
136th General Assembly

Bill Analysis

Version: As Introduced

Primary Sponsors: Reps. T. Mathews and Santucci

Reid J. Fleeson, Attorney

SUMMARY

- Prohibits a construction contract or subcontract for a private project with an expected value of greater than \$1 million that is entered into on or after the bill's effective date from including any provision that requires or permits a withholding of retainage in an amount greater than 5% of the contract's or subcontract's expected value.
- Specifies that nothing in the bill is to be construed as requiring a payment of a retainage where there is a good faith claim directly related to the work or labor performed, or the materials furnished, by the contractor, subcontractor, material supplier, lower tier subcontractor, or lower tier material supplier.

DETAILED ANALYSIS

Current law imposes certain payment requirements between: (1) a contractor and a subcontractor or material supplier, and (2) a subcontractor, material supplier, lower tier subcontractor, or lower tier material supplier and other lower tier subcontractor or other material supplier. However, the contractor, subcontractor, material supplier, lower tier subcontractor, or lower tier material supplier may reduce the amount paid to such other entities by any retainage provision contained in the contract, invoice, or purchase order.

The bill prohibits a construction contract or subcontract for a private project with an expected value of greater than \$1 million that is entered into on or after the bill's effective date from including any provision that requires or permits a withholding of retainage in an amount greater than 5% of the contract's or subcontract's expected value. Additionally, the bill specifies that nothing in it is to be construed as requiring a payment of a retainage where there is a good faith claim directly related to the work or labor performed, or the materials furnished, by the contractor, subcontractor, material supplier, lower tier subcontractor, or lower tier material supplier.

The bill defines the following terms:

- “Owner” means a person who is not a public authority and relates to all the interests either legal or equitable that the person may have in the real estate upon which improvements are made, including interests held by any person under contracts of purchase, whether in writing or otherwise.
- “Private project” means construction, alteration, erection, improvement, demolition, removal, digging, or drilling any part of a structure or improvement, directly or indirectly, under a contract with an owner. “Private project” includes work or labor performed, or materials furnished, under a contract with an owner, contractor, subcontractor, material supplier, lower tier subcontractor, or lower tier material supplier, so long as the owner of the structure or improvement on which the work or labor is performed, or the materials are used, is not a public authority.

Continuing law defines the following also used in the bill:

- “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, a construction manager at risk, or a design-build firm.
- “Subcontractor” includes any person who undertakes to construct, alter, erect, improve, repair, demolish, remove, dig, or drill any part of any improvement under a contract with any person other than the owner, part owner, or lessee.
- “Material supplier” includes any person by whom any materials are furnished in furtherance of an improvement.
- “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.
- “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.
- “Public authority” includes Ohio, and a county, township, municipal corporation, school district, or other political subdivision of Ohio, and any public agency, authority, board, commission, instrumentality, or special district of or in Ohio or a county, township, municipal corporation, school district, or other political subdivision of Ohio, and any officer or agent thereof.¹

¹ R.C. 4113.63; R.C. 1311.01, 1311.25, and 4113.61, not in the bill.

HISTORY

Action	Date
Introduced	11-04-25
