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# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
and Drafting

Legislative Budget  
Office

H.B. 68  
134<sup>th</sup> General Assembly

## Bill Analysis

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**Version:** As Reported by House Commerce and Labor

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

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### SUMMARY

- Requires private owners of construction projects to pay contractors 30 days after receiving a request for payment or 30 days after certain specified work is certified as being in compliance with requirements.
- Applies 18% annual interest to payments not timely made.

### 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 within 30 days of a request for payment or within 30 days of certain specified work being certified as being in compliance with requirements.

The Prompt Pay Act, in its current form, does not contain provisions requiring prompt payment to contractors from project owners. It only addresses payments amongst contractors, subcontractors, material suppliers, and laborers. The bill does not change these provisions.

#### 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, the subcontractors the contractor engaged, and persons the contractor purchased materials from. This process continues down the line through the subcontractors and material suppliers. For clarity, this analysis will refer to the higher tier contractor,

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

subcontractor, or material supplier as “the person owing payment” and the lower tier subcontractor or material supplier as the “person owed payment.”

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 after ten days pass after the person owing payment receives payment.<sup>2</sup> If 30 days elapse after the ten-day deadline, continuing law also allows the person owed payment to bring a civil action to recover the amount due, interest, and attorney’s fees.<sup>3</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, 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 payments by and amongst 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 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>4</sup>

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

<sup>3</sup> R.C. 4113.61(B).

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

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## HISTORY

Action	Date
Introduced	02-04-21
Reported, H. Commerce and Labor	05-06-21

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