



May 20, 2020

The Honorable Gayle Manning  
Chair, Commerce and Labor Committee  
Ohio House of Representatives  
77 S. High Street, 12<sup>th</sup> Floor  
Columbus, OH 43215

Re: Concerns Regarding H.B. 380

Dear Representative Manning:

The Ohio Hospital Association and Ohio Manufacturer's Association, on behalf of our hospital and manufacturer members, wish to express concerns regarding H.B. 380 which requires owners of private construction projects to pay a contractor within 30 days of receiving a request for payment. Health care and manufacturing are major contributors to the state's economy, and we believe this legislation creates an unattractive environment in Ohio for private economic development.

OHA and OMA believe private entities should be free to negotiate contractual terms without government interference. This legislation erodes the ability of our members to negotiate freely and runs counter to free market and "freedom of contract" principles. All commercial construction contracts agreed to by our members are negotiated by sophisticated parties, including the payment and interest terms.

In addition, the standard terms of most Ohio contracts already include several remedies for late payment, including the ability to suspend the work, terminate the contract, or continue to work on the project and claim interest at the negotiated rate. We are not aware of any empirical evidence that suggests these remedies have been inadequate in the past, or that this late payment problem is pervasive. Therefore, the 18% interest penalty proposed in this bill is exorbitant. In fact, it would be rare to see an interest rate that high proposed by a contractor because they know it would be rejected as unfair and inflated. Setting such a rate in statute is punitive rather than compensatory and likely to result in a windfall for contractors.

The bill also fails to take into account the standard architect/engineer payment application certification process because payment is due 30 days from the date the payment application is submitted by the contractor. Almost every standard agreement for construction provides that payment does not become due until the architect or engineer has completed the following:

1. Reviewed the payment application submitted by the contractor
2. Made sure that all mechanics lien waivers are included, and
3. Reviewed the work in place to confirm that the work has progressed to the degree represented by the contractor.

This process normally tracks a detailed "schedule of values" or break down of the various portions of the project and the percentage completion of each. It is difficult for this to be accomplished on larger and more complex projects within a 30 day period and, to the extent the design professional pushes up against the 30

OHA, OMA HB 380  
May 20, 2020  
Page 2

day deadline in the statute, the owner will be deprived of the time needed to follow its internal payment procedures.

If this process is rushed, it can place the owner in peril of mechanics liens on its property, defective work not being identified, and paying too much for the actual work completed. This bill ignores the reality of the need for this process and the time involved in following this process, which is nearly universally utilized in the construction industry.

OHA and OMA appreciate this opportunity to provide feedback on HB 380 and we respectfully request your consideration of these concerns. If you have any questions, please feel free to contact us.

Sincerely,



Sean McGlone  
Sr. Vice President and General Counsel  
Ohio Hospital Association



Ryan Augsburger  
Vice President and Managing Director  
Ohio Manufacturer's Association

cc: Members of the Ohio House Commerce and Labor Committee