



**Sub. H.B. 490\***  
123rd General Assembly  
(As Reported by S. Judiciary)

**Reps. Willamowski, Netzley, Taylor, Terwilleger, Tiberi, Van Vyven, Winkler,  
Hartnett, Damschroder**

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**BILL SUMMARY**

- Provides that a person to whom money is due for labor or work performed or for materials furnished in a public improvement must furnish to the sureties on the bond a statement of the amount due not later than 90 days after *the completion of the contract by the principal contractor and the acceptance of the public improvement for which the bond was provided* by the duly authorized board or officer.
- Provides that an action against the sureties on the bond provided for a public improvement must be brought not later than one year from the date of the acceptance of the public improvement *for which the bond was provided*.

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**CONTENT AND OPERATION**

**Background law--public improvements**

Under the Public Improvements Law, each person bidding for a contract with the state or any political subdivision, district, institution, or other agency of the state, excluding the Department of Transportation, for any *public improvement* (see **COMMENT 1**) must file with the bid, a bid guaranty in the form of either (1) a *bid guaranty bond* conditioned upon specified statutory requirements for the full amount of the bid or (2) a certified check, cashier's check, or letter of credit in accordance with specified statutory conditions. If the bidder that files a bid guaranty in the form of a certified check, cashier's check, or letter of credit enters into the

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\* *This analysis was prepared before the report of the Senate Judiciary Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

contract, the bidder, at the time the contract is entered into, must file a bond (known as a *performance bond*) for the amount of the contract. Among the conditions of either a bid guaranty bond or a performance bond are to indemnify the state, political subdivision, district, institution, or agency against all damage suffered by failure to perform the contract according to its provisions and in accordance with the plans, details, specifications, and bills of material for the contract and *to pay all lawful claims of subcontractors, materialmen, and laborers* for labor performed or material furnished in carrying forward, performing, or completing the contract. The bidder must agree and assent that this undertaking is for the benefit of any subcontractor, materialman, or laborer having a just claim, as well as for the state, political subdivision, district, institution, or agency. (R.C. 153.54(A), (B), and (C)--not in the bill.)

### **Statement of amount due**

#### **Existing law**

Under the Public Improvements Law, any person to whom any money is due for labor or work performed or materials furnished in a public improvement as described above in "**Background law--public improvements**," at any time after performing the labor or work or furnishing the materials, but not later than 90 days after the acceptance of the public improvement by the duly authorized board or officer, must furnish the sureties on the bond, a statement of the amount due to the person (R.C. 153.56(A)).

#### **Operation of the bill**

The bill clarifies existing law by providing that any person to whom any money is due for labor or work performed or materials furnished in a public improvement, at any time after performing the labor or work or furnishing the materials, but not later than 90 days after *the completion of the contract by the principal contractor and the acceptance of the public improvement for which the bond was provided* (added by the bill) by the duly authorized board or officer, must furnish the sureties on the bond, a statement of the amount due to the person (R.C. 153.56(A)). (See COMMENT 2.)

### **Limitation of action against bond sureties**

#### **Existing law**

The Public Improvements Law provides that a suit cannot be brought against sureties on the bond until after 60 days after the furnishing of the statement described above in "**Statement of amount due**." If the indebtedness is not paid in full at the expiration of that 60-day period, and, if the person complies with the notice

requirement described in the following paragraph, the person may bring an action in the person's own name upon the bond, as provided in the law pertaining to actions on a bond (see **COMMENT 3**). That action must be commenced, notwithstanding R.C. 2305.12 (see **COMMENT 4**), not later than one year from the date of acceptance of the public improvement. (R.C. 153.56(B).)

To exercise the rights under R.C. 153.56, a subcontractor or materials supplier supplying labor or materials that cost more than \$30,000, who is not in direct privity of contract with the principal contractor for the public improvement, must serve a notice of furnishing upon the principal contractor in the form provided in the Mechanics' Lien Law (R.C. 153.56(C)).

### **Operation of the bill**

The bill retains the provision in existing law that provides that if the indebtedness is not paid in full at the expiration of the 60-day period after the furnishing of the statement described above in "**Statement of amount due**" and if the person complies with the notice requirement described in the preceding paragraph, the person may bring an action in the person's own name upon the bond, as provided in the law pertaining to actions on a bond (see **COMMENT 3**). The bill clarifies existing law by providing that the action on the bond must be commenced, notwithstanding R.C. 2305.12 (see **COMMENT 4**), not later than one year from the date of acceptance of the public improvement *for which the bond was provided* (added by the bill). (R.C. 153.56(B).) (See **COMMENT 2**.)

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## **COMMENT**

1. "Public improvement" means any construction, reconstruction, improvement, enlargement, alteration, demolition, or repair of a building, highway, drainage system, water system, road, street, alley, sewer, ditch, sewage disposal plant, water works, and any other structure or work of any nature by a public authority. "Public authority" includes the state, and a county, township, municipal corporation, school district, or other political subdivision of the state, and any public agency, authority, board, commission, instrumentality, or special district of or in the state or a county, township, municipal corporation, school district, or other political subdivision of the state, and any officer or agent of any of those entities. (R.C. 153.54(J) and 1311.25(A) and (B)--not in the bill.)

2. The case of *Thomas Steel, Inc. v. Wilson Bennett, Inc.* (1998), 127 Ohio App.3d 96, appears to have clarified an ambiguity in existing law's time periods for furnishing to the bond surety a statement of the amount due or for bringing an action against the sureties on the bond with respect to when those time periods begin to run. In that case, Thomas Steel had supplied steel to the subcontractor for

construction of a fire station and relocation of an electric vault as part of the municipal airport improvement project. The Court of Appeals for Cuyahoga County held that the date of acceptance of the public improvement at the municipal airport was the date on which the electric vault and fire station were completed, and not the later date on which the entire airport improvement project, including other improvements, was ultimately completed. The relevant time periods for furnishing to the surety the statement of the amount due and for filing the action on the bond started on the date of acceptance of the portion of the project for which Thomas Steel supplied the steel and *for which the bond was provided*.

3. Under the existing law governing actions on a bond, when a person forfeits bond, or renders the sureties liable on the bond, a person who is injured by that occurrence, or who is entitled to the benefit of the security, may bring an action on the bond, in the person's own name, against the person and the sureties, to recover the amount to which the person is entitled by reason of the delinquency. The action may be prosecuted on a certified copy of the bond. A judgment for one delinquency does not preclude the same for another person from bringing an action on the instrument for another delinquency. (R.C. 2307.06--not in the bill.) On tender of the proper fee, the custodian of the bond must deliver a copy of the bond to a person claiming to be injured. The requirements of R.C. 2307.06 are not imperative, if other provision is made by law. (R.C. 2307.07--not in the bill.)

4. R.C. 2305.12, not in the bill, provides that an action on the official bond, or undertaking of an officer, assignee, trustee, executor, administrator, or guardian, or on a bond or undertaking given in pursuance of statute, must be brought within ten years after the cause of the action accrued.

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	10-27-99	p. 1326
Reported, H. Civil & Commercial Law	04-04-00	p. 1753
Passed House (94-0)	04-12-00	pp. 1812-1813
Reported, S. Judiciary	--	--

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