

BILL 69 PROMPT PAYMENT ACT, 2013

ACES Client Seminar
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HISTORY OF BILL

- private member's bill
- passed First Reading May 13, 2013
- passed Second Reading May 16, 2013

PURPOSE OF BILL

- to establish minimum norms for payment schedules in the construction industry
- to provide an effective remedy for late payments

How Prompt Payment Would Work

- would apply to all contracts
 - public/private sectors
 - written and oral
- by regulation, certain types of construction work could be excluded from coverage
- would not affect lien rights
- cannot contract out

Mandatory Progress Payments

- if contract provides for PPs payable at least ever 31 days from first supply, follow contract
- if not, owner required to pay within 20 days after contractor submits monthly invoice
- contractors to pay subs within 10 days of payment certificate or 30 days after sub submits its invoice, whichever is later

Final Payments

- by owner to contractor 5 days after payment certificate issued or, in some cases, 10 days after final payment application submitted
- to subcontractor the later of 30 days after final payment application submitted or 10 days after payment certificate issued

Remedies

- deemed acceptance 10 days after invoices submitted unless payer provides written notice of disapproval or amendment
- right to suspend work or terminate contract
- right to reasonable remobilization costs
- right to interest

Holdbacks

- must pay lien holdback within 1 day after holdback period expires provided no liens
- no holdbacks other than those provided for in the CLA

Right to Information

Ability to pay

- owner to provide financial information before entering into contract
- contractor may request updated info throughout project
- sub may request info on agreed time schedule of progress payments between owner and general

Receipt of Payments

- when contractor or sub receives a payment, must notify its subcontractors (written notice or posting on a website)

CASE “FOR” LEGISLATION

- levels playing field
- increases employment
- increases size of bidding pool
- reduces construction costs

CRITICISMS

- restricts ability of parties to negotiate payment terms
- deemed approval of payment applications
- 1 day turn around to pay holdback
- limit on retaining amounts (*i.e.* warranty)
- disclosure of financial information

PRESENT STATUS

- Standing Committee on Regulations and Private Bills
 - public hearings in Toronto March 19 & 26, 2014
 - oral presentations
 - written submissions
- Electronic Petition / TV Ads
 - ontariopromptpayment.com