

From: AMO Communications [<mailto:communicate@amo.on.ca>]

Sent: February 24, 2014 4:23 PM

To: Lockyer, Kathryn

Subject: AMO BREAKING NEWS - Bill 69

TO THE IMMEDIATE ATTENTION OF THE CLERK AND COUNCIL

February 24, 2014

***Prompt Payment Act, 2013* – Immediate Municipal Action Required**

Bill 69, *The Prompt Payment Act, 2013* has been referred to the Standing Committee on Regulations and Private Bills of the Ontario Legislature. Municipalities are urged to write to the members of the Standing Committee, the party leaders and their local MPPs. Following is a sample letter municipalities can use to voice their concerns.

The Prompt Payment Act, a Private Members Bill proposed by Liberal MPP Steven Del Duca will set strong limits on municipalities' freedom of contract for construction and infrastructure projects if it is passed without amendment. To ensure contractors and sub-contractors are paid quickly when they undertake work, the Act would:

- Amend all construction contracts to conform – no ability to negotiate payment terms;
- Eliminate any hold-back (including warranty and maintenance) beyond that allowed under the *Construction Liens Act* and allow one day to release that hold back;
- Not permit payments tied to contract or construction milestones;
- Require progress payments every 31 days or less;
- Deem payment applications as accepted within 10 days unless the payer provides written notice and full particulars;
- Payment applications can be based on services performed or materials delivered – or services and materials to be supplied;
- Allow suspension or termination of a contract if progress payments are not paid on time; and
- Allow contractors to request financial information regarding the construction owners' viability to undertake a project without limit.

Bill 69 provides for extremely short payment timelines that will not allow for appropriate review of work and certification of the payments process. The Bill could result in costly work stoppages and restarts and potential litigation to settle disputes.

AMO is requesting that Bill 69, *The Prompt Payment Act, 2013* be amended to allow municipalities to continue to exert prudent stewardship over public financial resources by:

- reflecting more realistic timelines for payments in infrastructure projects;
- allowing time for due diligence before accepting work and certifying payments; and
- allow payments to continue to be tied to project milestones;

AMO Contact: Craig Reid, Senior Advisor, E-mail creid@amo.on.ca, 416.971.9856 ext. 334.

Members of the Standing Committee on Regulations and Private Bills

c/o Valerie Quioc Lim, Committee Clerk

valerie_quioc@ontla.ola.org

Local MPPs

Dear (_____):

Re: Bill 69, *The Prompt Payments Act, 2013* - An Act respecting payments made under contracts and subcontracts in the construction industry

I am writing to you today regarding Bill 69, *The Prompt Payments Act, 2013*. This legislation will have significant impacts on my municipalities' ability to manage taxpayer funds prudently in construction and infrastructure contracts. If it is passed as is, Bill 69 could negatively impact municipalities, other public sector organizations, provincial government ministries and agencies as well as potentially residents and homeowners.

In particular, Bill 69 will limit our ability to contract for the best payment arrangements to safeguard public funds in each construction project we manage. It imposes unrealistic and imprudent timelines for payment and to review work and certify payments; limits our ability to hold back reserves for warranty and maintenance; and does not reflect the complex nature of financial arrangements under large infrastructure projects.

As a result, we are requesting that Bill 69 be amended to:

- reflect more realistic timelines for payments in infrastructure projects;
- allow time for due diligence before accepting work and certifying payments; and
- allow payments to continue to be tied to project milestones;

Sincerely,

(Name)

cc: The Honourable Kathleen Wynne, Premier of Ontario
The Honourable Linda Jeffrey, Minister of Municipal Affairs and Housing
Steven Del Duca, MPP, Vaughan
Andrea Horwath, NDP Leader
Tim Hudak, PC Leader