

TORONTO TRANSIT COMMISSION REPORT NO.

MEETING DATE: March 26, 2014

SUBJECT: Bill 69 - Prompt Payment Act

ACTION ITEM

RECOMMENDATION

It is recommended that the Board approve submission of the proposed amendments to Bill 69 consistent with those attached to this Report as Schedule "A", along with supporting reasons, to the Standing Committee on Regulations and Private Bills.

FUNDING

There are no direct funding implications.

BACKGROUND

Bill 69 *An Act Respecting Payments made under Contracts and Subcontracts in the Construction Industry* (short title: *Prompt Payment Act, 2013*) is a private member's bill introduced in the Ontario Legislature in May 2013. It has passed first and second reading and was referred to the Standing Committee on Regulations and Private Bills. Oral hearings were held on March 19 and 26, 2014 and written submissions are required to be filed by 3 p.m. on March 26, 2014.

TTC currently manages construction projects with an aggregate value of over \$3.5 Billion.

DISCUSSION

Bill 69, as currently drafted, would apply to all construction contracts entered into in Ontario including all TTC construction contracts.

TTC staff fully support the conceptual intent of Bill 69: timely payment for satisfactorily completed construction work. In fact, TTC's current standard construction contract meets the general intent of the Bill. However, the particular wording of Bill 69, as currently proposed, significantly restricts the parties' ability to negotiate contract terms and involve more than just the timing of payments. As drafted, Bill 69 prescribes practices that put TTC funds at significant risk and appears to increase the costs of capital construction projects.

In conversations with the Bill's sponsor, MPP Del Duca, he has requested owners, including TTC, submit their proposed amendments to the Bill to ensure industry stakeholders concerns are heard.

City of Toronto staff in accordance with approval from City Council (meeting of December 16, 17 and 18, 2013) will also be providing suggested amendments to the Standing Committee on Regulations and Private Bills (<http://www.toronto.ca/legdocs/mmis/2013/cc/bgrd/backgroundfile-64779.pdf>).

TTC staff's primary concerns regarding Bill 69 as currently drafted, which many of TTC's proposed amendments as set out in Schedule "A" seek to address, are as follows:

Payment Timelines

TTC standard construction contracts provide payment to a contractor within 30 days of receipt of an acceptable invoice. This would not be permitted under Bill 69 and TTC would be required to release payment to a contractor within 15 - 20 days of receipt of "payment application" without regard to the size or complexity of a project, among other things.

Payment for work not provided

A payment application may rely on estimates for work which "will be supplied" rather than work actually performed. This would require the TTC to pay contractors for work that has not actually been performed.

Deemed payment approval

The Bill will automatically deem any payment application approved unless an explanation of amendments is provided to the contractor with full particulars within 10 days, whether the amounts claimed in that payment application are valid or not. This requirement does not take into account the complexity or size of a specific project.

In addition, an owner's ability to holdback monies because of a contractor's failure to provide contractually required documents (e.g. a safety plan, contract schedule or engineering/design submittals) is restricted.

Right to Terminate or Suspend Contracts and Subcontracts

A subcontractor may suspend or terminate its subcontract, even if paid in full, provided a party above it in the contract chain serves its payer with a notice of suspension or termination.

If Bill 69 is enacted in its current form, it will require increases to project budgets due to additional costs in administration of the contract to meet the review and payment deadlines and increases in bid prices due to the general contractor's inclusion of financing costs. Bill 69 will also create significant risk that TTC will be obligated to pay out funds to a contractor for work not yet performed.

The primary proponent of Bill 69 has been the National Trade Contractors Coalition of Canada. The Ontario General Contractors Association was an initial supporter but has since advocated for a more substantive review and amendment process.

In addition, a number of public and private owners are also requesting changes to the Bill to address industry concerns, including: City of Toronto, City of Mississauga, Association of Municipalities of Ontario, Ontario Public Buyer's Association, Ontario Public School Boards Association, Ontario Association of School Board Officials and Residential Construction Council of Ontario.

JUSTIFICATION

Enactment of the Bill in its current form will significantly impact TTC's management and funding of construction projects and put TTC funds at risk of being paid to contractors for work not performed.

March 26, 2014
45-66

Attachments - Schedules "A" and "B"

Schedule “A”

Toronto Transit Commission Proposed Amendments to Bill 69

Bill 69

2013

An Act respecting payments made under contracts and subcontracts in the construction industry

Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. (1) The terms used in this Act have the same meaning as in the Construction Lien Act.

(2) In this Act,

“payment application” means a payee’s request for payment for only the amounts it is entitled to under the contract or subcontract and together with all other documents required by the contract or subcontract.

“regulations” means the regulations made under this Act.

2. (1) This Act binds the Crown.

(2) This Act does not apply to any contract or subcontract prescribed by the regulations.

(3) This Act does not apply to any contract or subcontract made before the day this Act came into force.

3. [Deleted]

4. (1) Any entitlement to receive payments under this Act is subject to the payer’s obligation to retain holdbacks under the *Construction Lien Act*.

(2) Following receipt of a payment application, a payer shall pay the value of a holdback the payer is no longer required to retain under the *Construction Lien Act* by the later of:

(a) seven (7) days after the day the payer is no longer required to retain the holdback under the *Construction Lien Act*; or

(b) the 45 days after receipt of the payment application.

(3) A payer shall not withhold any payment or partial payment other than the following:

(a) those payments that the payer is permitted or required to withhold under this Act or its Regulations;

(b) those payments that the payer is permitted or required to withhold under the *Construction Lien Act* or any other statute;

(c) any amounts for services and/or materials that were not carried out or supplied in accordance with the contract or subcontract; or

(d) any other amounts set out in the contract or subcontract.

(4) A payer may, retain and set-off from funds payable under a contract or subcontract an amount that, as between the payer and the payee, is equal to the balance in the payer's favour of all outstanding debts, claims or damages, whether or not related to the improvement.

5. Every contractor and subcontractor is entitled to be paid progress payments in accordance with the following:

(1) If a contract provides for progress payments that become payable at least every:

(a) 45 days after the receipt by the payer of a payment application; or

(b) 31 days after issuance of a payment certificate by the payment certifier;

the payments shall be made in accordance with the contract.

(2) If a contract does not provide for progress payments as described in paragraph (1), the payments shall be made in accordance with section 6.

(3) If a subcontract provides for progress payments that become payable at least every 20 days after the subcontractor's payer receives payment from its own payer, the payments to the subcontractor shall be made in accordance with the subcontract.

(4) If a subcontract does not provide for progress payments as described in paragraph (3), the payments shall be made in accordance with section 6.

6. (1) This section applies where a contract does not provide for progress payments as described in paragraph 5 (1) or subcontract does not provide for progress payments as described in paragraph 5 (3).

(2) A payment period referred to in this section means:

(a) the period of time that begins on the first day of every month and ends on the last day of that month; or

(b) any other period of time prescribed by the contract or subcontract.

(3) A contractor or subcontractor shall prepare, in respect of every payment period a progress payment application.

(4) Progress payment applications shall be submitted in accordance with the following schedule:

1. A contractor shall submit a progress payment application to an owner on or after the last day of the payment period.

2. A subcontractor shall submit a progress payment application to a contractor before the last day of the payment period.

3. A subcontractor shall submit a progress payment application to another subcontractor within the time period prescribed by the regulations or, if no such time period is prescribed, within a reasonable period of time that would enable the other subcontractor to comply with this subsection.

(5) A payer shall make a progress payment in accordance with the following schedule:

(a) In the case of a payment to a contractor, the later of:

(i) the 45th day after the day the payee submits the progress payment application to the payer; or

(ii) the 31st day after issuance of a payment certificate by the payment certifier.

(b) In the case of a payment to a subcontractor, the 10th day after the subcontractor's payer receives payment from its own payer.

7. Every contractor and subcontractor may suspend work or terminate a contract or subcontract in accordance with the following:

(1) If a contract or subcontract provides for the right to suspend work or terminate a contract or subcontract if the payee is not paid a progress payment it is entitled to under

this Act, the suspension or termination shall be made in accordance with the contract or subcontract.

(2) If a contract or subcontract does not provide for the right to suspend work or terminate a contract or subcontract if the payee is not paid a progress payment it is entitled to under this Act as described in paragraph 1, the suspension or termination shall be made in accordance with section 8.

8. (1) This section applies where a contract or subcontract does not authorize a payee to suspend work or terminate the contract or subcontract if the payee is not paid a progress payment it is entitled to under this Act.

(2) Where a payee has not been paid a progress payment it is entitled to under this Act, the payee may suspend work if,

(a) the payee provides the payer with written notice of its intention to suspend work if the payment is not made within the period of time set out in the written notice of intention to suspend which shall not be less than fourteen (14) days after the day the payee provides the notice;

(b) the payer has not made the payment within the period of time set out in the written notice of intention to suspend; and

(c) after the period of time set out in the written notice of intention to suspend, the payee provides the payer with written notice of the suspension.

(3) After a payee has suspended work under subsection (2), the payee may terminate the contract or subcontract if,

(a) the payee provides the payer with written notice of its intention to terminate the contract or subcontract if the payment is not made within the period of time set out in the written notice of intention to terminate which shall not be less than fourteen (14) days after the day the payee provides the notice;

(b) the payer has not made the payment within the period of time set out in the written notice of intention to terminate; and

(c) after the period of time set out in the written notice of intention to terminate, the payee provides the payer with written notice of the termination.

9. (1) This section applies where a payee has not been paid a progress payment it is entitled to under this Act and the payee has taken any step to suspend work, terminate the contract or subcontract, or enforce the payee’s lien rights.

(2) Any obligation of the payee under this Act to make a payment by a specified date shall be extended and the payment shall become payable on the earliest of the following days:

1. The day on which the default on the payment is corrected.
2. The day on which the default on the payment is resolved by settlement or agreement.
3. The day on which a final determination of the payee’s lien rights is made, if applicable.
4. The day on which the payee’s lien rights expires.

10. Every contractor and subcontractor is entitled to be paid a final payment in accordance with the following:

- (1) If a contract or subcontract provides for a final payment, the payment shall be made in accordance with the contract or subcontract.
- (2) If a contract or subcontract does not provide for a final payment, the payment shall be made in accordance with section 11.

11. (1) This section applies where a contract or subcontract does not provide for a final payment.

(2) Final payment applications shall be submitted in accordance with the following:

1. A contractor shall submit a final payment application on or after the date the contract is deemed to be completed and services or materials are deemed to be last supplied to the improvement under subsection 2 (3) of the *Construction Lien Act*.
2. A subcontractor shall submit a final payment application on or after the date on which the subcontractor last supplies services or materials to the improvement under the subcontract.

(3) A payer shall make the final payment in accordance with the following schedule:

- (a) In the case of a payment to a contractor, the payment shall be made by the day that is the later of,

- i. the 45th day after the day the payee submits the progress payment application to the payer; and
- ii. the 31st day after issuance of a payment certificate by the payment certifier.

(b) In the case of a payment to a subcontractor, the payment shall be made by the day that is 10 days after the subcontractor's payer receives payment from its own payer.

12. On or before the 20th day after receipt of a payment application the payer shall provide the payee with written notice that all or part of the application is being disapproved or amended

13. (1) Interest is payable on any unpaid amount of a progress payment or a final payment that the payee is entitled to under this Act at a rate that is the greater of,

(a) the prejudgment interest rate determined under subsection 127 (2) of the *Courts of Justice Act*; and

(b) the rate specified in the contract or subcontract.

(2) For the purpose of (1) “the first day of the last month of the quarter preceding the quarter in which the proceeding was commenced” shall be the date that the contract was entered into.

14. (1) Before entering into a contract related to an improvement a contractor may in writing request an owner, other than the Crown, a municipality or any other entity prescribed by the Regulations, to provide the contractor with the financial information prescribed by the regulations for the purpose of demonstrating the financial ability of the owner to make the payments provided for under the contract, which information shall be provided within a reasonable time, not to exceed twenty-one days.

(2) For the purpose described in subsection (1), a contractor may at any time request in writing that the owner provide updated financial information prescribed by the regulations, which information shall be provided within a reasonable time, not to exceed twenty-one days .

(3) If a subcontractor who supplies services or materials to the improvement requests in writing that the contractor provide a copy of the information provided under subsection (1) or (2), the information shall be provided within a reasonable time, not to exceed twenty-one days.

(4) If a subcontractor who supplies services or materials to the improvement requests in writing that the payer provide the dates on which payments in relation to the improvement become payable to the payer, the payer shall promptly provide the information.

(5) When a payer who is a contractor or subcontractor receives a payment in relation to the improvement, the payer shall notify within a reasonable time, not to exceed twenty-one days any subcontractor who supplies services or materials to the improvement under a subcontract with the payer by,

- (a) providing the subcontractor with written notice of the payment;
- (b) posting the information on a website that can be accessed by the subcontractor; or
- (c) such other means as may be prescribed by the regulations.

(6) Any person who receives information under subsection (1), (2) or (3) shall keep the information confidential and shall not use or disclose the information for any purpose other than for which it was provided.

(7) Any person who contravenes subsection (6) is liable to the owner for any damages sustained by reason of the contravention.

(8) Where a person who is required under subsection (1), (2), (3), (4) or (5) to provide information does not provide the information as required, or knowingly or negligently misstates the information, the person is liable to the person who is entitled to the information for any damages sustained by reason of the failure to provide the information or misstatement of the information.

(9) Upon motion to the Superior Court of Justice, the court may at any time, whether or not an action has been commenced, order a person to comply with a requirement to provide information under this section and, when making the order, the court may make any order as to costs as it considers appropriate in the circumstances, including an order for the payment of costs on a substantial indemnity basis.

15. The Lieutenant Governor in Council may make regulations prescribing anything referred to in this Act as prescribed by the regulations or as otherwise dealt with by the regulations.

16. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

17. The short title of this Act is the Prompt Payment Act, 2013.

Schedule “B” (summary of blacklined changes)**Toronto Transit Commission Proposed Amendments to Bill 69**

Bill 69

2013

An Act respecting payments made under contracts and subcontracts in the construction industry

Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. (1) The terms used in this Act have the same meaning as in the Construction Lien Act, ~~unless the context requires otherwise.~~

(2) In this Act,

~~“payment application” means a payee’s request for payment for only the amounts it is entitled to under the contract or subcontract and together with all other documents required by the contract or subcontract.~~

“regulations” means the regulations made under this Act.

2. (1) This Act binds the Crown.

(2) This Act does not apply to any contract or subcontract prescribed by the regulations.

(3) This Act does not apply to any contract or subcontract made before the day this Act came into force.

~~3. Every contract or subcontract related to an improvement is deemed to be amended in so far as is necessary to be in conformity with this Act.~~

4. (1) Any entitlement to receive payments under this Act is subject to the payer’s obligation to retain holdbacks under the *Construction Lien Act*.

~~(2) A~~Following receipt of a payment application, a payer shall pay the value of a holdback ~~within one day~~the payer is no longer required to retain under the *Construction Lien Act* by the later of:

(a) seven (7) days after the day the payer is no longer required to retain the holdback under the *Construction Lien Act*; ~~or~~

(b) the 45 days after receipt of the payment application.

(3) A payer shall not withhold any payment or partial payment other than the following:

(a) those payments that the payer is permitted or required to withhold under this Act or its Regulations;

(b) those payments that the payer is permitted or required to withhold under the *Construction Lien Act*; or any other statute;

(c) any amounts for services and/or materials that were not carried out or supplied in accordance with the contract or subcontract; or

(d) any other amounts set out in the contract or subcontract.

(4) A payer may, retain and set-off from funds payable under a contract or subcontract an amount that, as between the payer and the payee, is equal to the balance in the payer's favour of all outstanding debts, claims or damages, whether or not related to the improvement.

5. Every contractor and subcontractor is entitled to be paid progress payments in accordance with the following:

~~(1.)~~ If a contract ~~or subcontract~~ provides for progress payments that become payable at least every:

(a) 45 days after the receipt by the payer of a payment application; or

(b) 31 days after the first day that services or materials are supplied to the improvement under issuance of a payment certificate by the contract or subcontract, payment certifier;

the payments shall be made in accordance with the contract ~~or subcontract~~.

~~(2.)~~ If a contract ~~or subcontract~~ does not provide for progress payments as described in paragraph ~~(1.)~~, the payments shall be made in accordance with section 6.

(3) If a subcontract provides for progress payments that become payable at least every 20 days after the subcontractor's payer receives payment from its own payer, the payments to the subcontractor shall be made in accordance with the subcontract.

(4) If a subcontract does not provide for progress payments as described in paragraph (3), the payments shall be made in accordance with section 6.

6. (1) This section applies where a contract does not provide for progress payments as described in paragraph 5 (1) or subcontract does not provide for progress payments ~~that become payable at least every 31 days after the first day that services or materials are supplied to the improvement under the contract or subcontract as described in paragraph 5 (3).~~

(2) A payment period referred to in this section means:

(a) the period of time that begins on the first day of every month and ends on the last day of that month; or

(b) any other period of time prescribed by the contract or subcontract.

~~(3) A contractor or subcontractor shall prepare, in respect of every payment period, a progress payment application that sets out the value of the services and materials that have been or will be supplied to the improvement under the contract or subcontract during the payment period.~~

~~(4) A progress payment application may rely on reasonable estimates.~~

~~(5)~~ Progress payment applications shall be submitted in accordance with the following schedule:

1. A contractor shall submit a progress payment application to an owner on or after the last day of the payment period.
2. A subcontractor shall submit a progress payment application to a contractor before the last day of the payment period.
3. A subcontractor shall submit a progress payment application to another subcontractor within the time period prescribed by the regulations or, if no such time period is prescribed, within a reasonable period of time that would enable the other subcontractor to comply with this subsection.

~~(6)~~ A payer shall make a progress payment in accordance with the following schedule:

~~1. (a) In the case of a payment to a contractor, within 20 days~~ the later of:

- (i) the 45th day after the day the payee submits the progress payment application; to the payer; or

~~2. (ii) the 31st day after issuance of a payment certificate by the payment certifier.~~

~~(b) In the case of a payment to a subcontractor, by the 10th day that is the later of,~~

~~i. 10 days after the day a certificate is issued by a payment certifier in respect of the payment, if applicable, and~~

~~ii. 30 days after the day the payee submits the progress subcontractor's payer receives payment application from its own payer.~~

~~7. (1) A payee~~ Every contractor and subcontractor may suspend work or terminate a contract or subcontract in accordance with the following:

~~(1) If a contract or subcontract provides for the right to suspend work or terminate a contract or subcontract if the payee is not paid a progress payment that the payee is entitled to under this Act, the suspension or termination shall be made in accordance with the contract or subcontract.~~

~~(2) A suspension or termination shall be done,~~

~~(If a) in accordance with the contract or subcontract; or~~

~~(b) if the contract or subcontract does not authorize such a provide for the right to suspend work or terminate a contract or subcontract if the payee is not paid a progress payment it is entitled to under this Act as described in paragraph 1, the suspension or termination of both, shall be made in accordance with section 8.~~

8. (1) This section applies where a contract or subcontract does not authorize a payee to suspend work or terminate the contract or subcontract if the payee is not paid a progress payment it is entitled to under this Act.

(2) Where a payee has not been paid a progress payment it is entitled to under this Act, the payee may suspend work ~~or terminate a contract or subcontract~~ if,

(a) the payee provides the payer with written notice of ~~theits~~ their intention to suspend work ~~or terminate the contract or subcontract~~ if the payment is not made within seventhe period of time set out in the written notice of intention to suspend which shall not be less than fourteen (14) days after the day the payee provides the notice;

(b) the payer has not made the payment within ~~seven days~~ the period of time set out in the written notice of intention to suspend; and

(c) ~~after the period of time set out in the written notice of intention to suspend,~~ the payee provides the payer with written notice of the suspension ~~or termination.~~

(3) ~~After~~ a payee has suspended work under subsection (2), the payee may terminate the contract or subcontract ~~during or after that time if, if,~~

(a) the payee provides the payer with written notice of ~~theits~~ intention to terminate the contract or subcontract if the payment is not made within ~~seven~~ the period of time set out in the written notice of intention to terminate which shall not be less than fourteen (14) days after the day the payee provides the notice;

(b) the payer has not made the payment within ~~seven days~~ the period of time set out in the written notice of intention to terminate; and

(c) ~~after the period of time set out in the written notice of intention to terminate,~~ the payee provides the payer with written notice of the termination.

~~—(4) A payee shall provide a copy of any written notice provided to a payer under subsection (2) or (3) to any subcontractor who supplies services or materials to the improvement under a subcontract with the payee.~~

~~—(5) A subcontractor who receives notice of a suspension under subsection (4) may suspend work if the subcontractor provides the payer with written notice of the suspension.~~

~~—(6) A subcontractor who receives notice of a termination under subsection (4) may terminate the subcontract if the subcontractor provides the payer with written notice of the termination.~~

~~—(7) If a payee resumes work following a suspension, the payer shall pay the payee for any reasonable demobilization and remobilization costs incurred by the payee.~~

9. (1) This section applies where a payee has not been paid a progress payment it is entitled to under this Act and the payee has taken ~~steps~~ any step to suspend work, terminate the contract or subcontract, or enforce the payee's lien rights.

(2) Any obligation of the payee under this Act to make a payment by a specified date shall be extended and the payment shall become payable on the earliest of the following days:

1. The day on which the default on the payment is corrected.
2. The day on which the default on the payment is resolved by settlement or agreement.

3. The day on which a final determination of the payee’s lien rights is made, if applicable.

4. The day on which the payee’s lien rights expires.

10. Every contractor and subcontractor is entitled to be paid a final payment in accordance with the following:

~~(1. —) If a contract or subcontract provides for a final payment, the payment shall be made in accordance with the contract or subcontract.~~

~~(2. —) If a contract or subcontract does not provide for a final payment, the payment shall be made in accordance with section 11.~~

11. (1) This section applies where a contract or subcontract does not provide for a final payment.

~~—(2) contractor or subcontractor shall prepare a final payment application that sets out the outstanding amount owing under the contract or subcontract.~~

~~(23)~~ Final payment applications shall be submitted in accordance with the following:

1. A contractor shall submit a final payment application on or after the date the contract is deemed to be completed and services or materials are deemed to be last supplied to the improvement under subsection 2 (3) of the *Construction Lien Act*.

2. A subcontractor shall submit a final payment application on or after the date on which the subcontractor last supplies services or materials to the improvement under the subcontract.

~~(43)~~ A payer shall make the final payment in accordance with the following schedule:

~~—1. (a) In the case of a payment to a contractor, the payment shall be made by the day that is the later of,~~

~~i. five days after the 45th day a certificate is issued by a payment certifier in respect of the payment, if applicable, and~~

~~—ii. if payment is not dependant on such a certificate or if the certificate is not issued within 10 days of the contractor’s request to do so, 15 days after the day the payee submits the final progress payment application. to the payer; and~~

~~ii. _____ 2. _____ the 31st day after issuance of a payment certificate by the payment certifier.~~

~~(b) In the case of a payment to a subcontractor, the payment shall be made by the day that is the later of,~~

~~i. 10 days after the day a certificate is issued by a payment certifier in respect of the payment, if applicable, and subcontractor’s payer receives payment from its own payer.~~

~~12. _____ ii. _____ 30 days On or before the 20th day after the day the payee submits the final receipt of a payment application.~~

~~12. (1) A payment application is deemed to be approved 10 days after the day the payee submits the application, unless,~~

~~(a) before that tenth day, the payer provides shall provide the payee with written notice that all or part of the application is being disapproved or amended; and~~

~~(b) the written notice contains full particulars, including,~~

~~(i) the reasons for the disapproval or amendment,~~

~~(ii) the amount of the payment that is disapproved or amended,~~

~~(iii) any provisions of the contract or subcontract that are relevant to the disapproval or amendment, and~~

~~(iv) any other information prescribed by the regulations.~~

~~(2) The amount of a payment that is disapproved or amended shall be limited to a reasonable estimate of any direct loss, damage, cost or expense incurred by the payer that is recoverable under the contract or subcontract.~~

~~(3) If a payment application is not approved under subsection (1), a payer may withhold that part of the payment that is disapproved or amended, but may not withhold any more than that part.~~

~~13. (1) Interest is payable on any unpaid amount of a progress payment or a final payment that the payee is entitled to under this Act at a rate that is the greater of,~~

(a) the prejudgment interest rate determined under subsection 127 (2) of the *Courts of Justice Act*; and

(b) the rate specified in the contract or subcontract.

(2) For the purpose of (1) “the first day of the last month of the quarter preceding the quarter in which the proceeding was commenced” shall be the date that the contract was entered into.

14. (1) Before entering into a contract related to an improvement, ~~an owner shall~~ a contractor may in writing request an owner, other than the Crown, a municipality or any other entity prescribed by the Regulations, to provide the contractor with the financial information prescribed by the regulations for the purpose of demonstrating the financial ability of the owner to make the payments provided for under the contract, which information shall be provided within a reasonable time, not to exceed twenty-one days.

(2) For the purpose described in subsection (1), a contractor may at any time request in writing that the owner provide updated financial information, ~~and the owner shall promptly provide the information~~ prescribed by the regulations, which information shall be provided within a reasonable time, not to exceed twenty-one days.

(3) If a subcontractor who supplies services or materials to the improvement requests in writing that the contractor provide a copy of the information provided under subsection (1) or (2), the ~~contractor shall promptly provide the information~~ information shall be provided within a reasonable time, not to exceed twenty-one days.

(4) If a subcontractor who supplies services or materials to the improvement requests in writing that the payer provide the dates on which payments in relation to the improvement become payable to the payer, the payer shall promptly provide the information.

(5) When a payer who is a contractor or subcontractor receives a payment in relation to the improvement, the payer shall ~~promptly notify~~ notify within a reasonable time, not to exceed twenty-one days any subcontractor who supplies services or materials to the improvement under a subcontract with the payer by,

- (a) providing the subcontractor with written notice of the payment;
- (b) posting the information on a website that can be accessed by the subcontractor; or
- (c) such other means as may be prescribed by the regulations.

(6) Any person who receives information under subsection (1), (2) or (3) shall keep the information confidential and shall not use or disclose the information for any purpose other than for which it was provided.

(7) Any person who contravenes subsection (6) is liable to the owner for any damages sustained by reason of the contravention.

(8) Where a person who is required under subsection (1), (2), (3), (4) or (5) to provide information does not provide the information as required, or knowingly or negligently misstates the information, the person is liable to the person who is entitled to the information for any damages sustained by reason of the failure to provide the information or misstatement of the information.

(9) Upon motion to the Superior Court of Justice, the court may at any time, whether or not an action has been commenced, order a person to comply with a requirement to provide information under this section and, when making the order, the court may make any order as to costs as it considers appropriate in the circumstances, including an order for the payment of costs on a substantial indemnity basis.

15. The Lieutenant Governor in Council may make regulations prescribing anything referred to in this Act as prescribed by the regulations or as otherwise dealt with by the regulations.

16. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

17. The short title of this Act is the Prompt Payment Act, 2013.