

SPECIAL EDITION



PROMPT PAYMENT ACT SIGNED, PRIME CONTRACTORS INCLUDED, INTEREST AND ATTORNEYS FEES NOW AVAILABLE

On September 1, 2006 the Prompt Payment Act became effective. Contractors that work directly for "Owners", public and pri-

vate, such as school boards, municipalities and private commercial owners, will have a statute upon which to rely when filing suit to

recover money due. This article explains how the contractor can take full advantage of this reformed law.

Contract compliance and record keeping are important

Requirements with which the contractor must comply to glean the benefits of this statute are those set forth in the contractor's contract with the owner. If the contractor has not "performed in accordance with the provisions of a contract" an Owner may argue that even if it has failed to pay the contractor promptly, the reasons therefore are attributable to the contractor's failures. The provisions of the Statute (interest and attorneys fees) are contingent upon the contractor's

compliance with the Contract. This means that if the Contract requires notification of a delay within five days of the occurrence of the event giving rise to the delay, the contractor must be able to prove that he gave such notice. In addition, the Owner is required to pay the contractor within 30 days of the billing date. If the Owner fails to do so (and does not give a reason in writing), the Owner is liable to the contractor for interest at the rate of prime plus one per-

cent. "In any civil action or arbitration brought to collect payments or resolve disputes pursuant to this section, the action or arbitration shall be conducted inside of this State and the prevailing party shall be awarded reasonable costs and attorney fees." Failure to keep proper payment records and comply with the terms of the contract could cost the contractor its interest and the ability to recover attorneys fees.

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Care must be taken in subcontractor's contracts

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Your subcontractors may have the same remedies that you have recently been afforded under this new legislation (interest and attorneys fees), except you are required to pay them within ten days after your receipt of payment.

On the last draft of this legislation, the arbitration provision of the Statute was

changed from mandatory to permissive ("shall" was changed to "may"), therefore you and the Owner "may" choose to arbitrate your issues, however your subcontractors or materialmen may demand civil litigation. For this reason you should be sure that the "dispute resolution" clause in the subcontracts that you have with your subcontractors and suppliers defines the method of dispute resolution as that

which is chosen by you and the Owner. Nothing good can become of inconsistent dispute resolution clauses. Disputing payment issues in two different forums (arbitration and superior court) is extremely costly and could lead to inconsistent results (you may have to pay the subcontractor in one forum but the Owner may be relieved from liability in another forum).

Take advantage of this Statute by exercising your rights

The Prompt Payment Act requires the Owner provide "a written statement of the amount withheld and the reason for the withholding; and the payor is [] engaged in a good faith effort to resolve the reason for the withholding." You should no longer be wondering what hap-

pened to your payments. If used properly this statute could afford the contractor interest payments and attorneys fees. The Owner must put its position in writing so that you will no longer deal with constantly changing positions. In addition the Owner is required to be engaged

in a good faith effort to resolve the reason for withholding of your payment. Contractors are now empowered to challenge the actions of those who improperly withhold money.