

Changes from Builder's Lien Act to Prompt Payment and Construction Lien Act ('the Act')

High level overview:

- The "Builders' Lien Act" name has changed to the "Prompt Payment and Construction Lien Act ('the Act')"
 - Received Royal Assent December 9, 2020
- Resulted in changes to filing periods, invoice requirements, and prompt payment requirements that will have impacts on government processes and practices
- The time is right to take your organizations practices around payment of major or minor liens (i.e. holdbacks) to ensure practices and contract provisions adhere to legislation
- **See Page 2 for further detail on anticipated impacts**

Background:

- The Act is designed to protect contractors, subcontractors, labourers, suppliers who have provided labour or materials to a construction project to ensure they are paid
 - These parties may register/file a lien against the interests of a project owner (against the certificate of title of land) within a certain time frame
 - i.e. a lien may be filed against the government where the government is a project owner
- When the government act as a project owner, it can hold back a portion of the construction project costs and sets aside funds (major or minor liens) in case there are any liens filed by a third party
 - Holdbacks are proportion of value of work done or goods furnished
 - Once terms of a project are complete and no liens have been filed within legislated time frames and criteria, the holdback amounts are released by the County

Summary:

As a result of the changes to the legislation, governments should:

- Examine current processes, practices, and contracts to ensure compliance with legislation
 - Changes to other purchase contract terms (e.g. 28 day payment terms)
- Engage impacted operational departments
 - Contract changes, payment changes etc.
 - Clearly define roles and responsibilities

Anticipated Impacts:

Change/consideration/challenge	Implications	Considerations
<p>Holdbacks on all projects Holdbacks may not be required pursuant to the Act (the government may take holdbacks for performance or other reasons)</p>	<p>Contracts may not clearly identify which holdbacks are pursuant to Builder’s Lien vs performance or other reasons</p>	<p>Ensure contract terms are clear, and processes adhere to legislation etc.</p>
<p>Interpretation of “prompt” payment change in legislation</p>	<p>Depending on interpretations of legislation, there is potential that other forms of holdbacks may not be permitted for some projects</p>	<p>Ensure contract terms are clear, and processes adhere to legislation etc.</p>
<p>Invoice payment requirements A proper invoice must be paid within 28 days from date of receipt of the invoice (previously 30 days). The time starts at receipt of the initial invoice, not the date of a certified invoice by the Government</p> <p>There will be 14 days from receipt of initial invoice to informally resolve any issues/give notice of formal dispute</p>	<p>Governments will have less time to resolve potential issues with an invoice: once an <u>initial</u> invoice is submitted, the Government will have to pay or dispute it.</p>	<p>Governments must examine current processes and ensure they comply with legislation and timelines</p> <p>Process changes may be required, for example change all purchasing contract terms from 30 days to 28 days</p>
<p>Extended timeline for registering liens 45 to 60 days for construction industry</p> <p>45 to 90 days for concrete industry</p>	<p>Governments must adhere to new legislation timelines and not release holdbacks prior to the 60 or 90 days</p> <p>Governments must also consider what projects are defined as “concrete” vs construction (e.g. sidewalks)</p>	<p>Governments must adhere to new legislation timelines and not release holdbacks prior to new timelines</p> <p>Governments must also understand/determine if any projects would be deemed “concrete”</p>
<p>Multi-year project holdbacks New legislation may require a portion of holdbacks to be released annually if certain criteria are met (multi-year projects over a certain amount)</p>	<p>Potential changes to timing of holdback releases (process considerations)</p>	<p>Governments must ensure understanding of legislation and when releases will be required</p>

Change/consideration/challenge	Implications	Considerations
For mandatory annual lien fund releases, the AUMA discussion guide indicates it is proposed that the min. price should exceed \$10,000,000		
Trigger for holdback releases Legislation clearly defines that release has to be at Certificate of Substantial Performance (CSP)	Governments must ensure current practices are consistent and adhere to legislation	Government must ensure current practices adhere to legislation
Potential interest on unpaid amounts The legislation allows interest to be charged for any unpaid amounts of the proper invoice that are due (start accruing 29 days after delivery of the proper invoice) AUMA discussion guide indicates it proposed that parties use the rate in the Judgement Interest Act (4%) or rate determined in the contract	It may be challenging to track and apply interest	Governments must monitor interest related requirements and ensure processes are in place to track and apply interest if required (may be a challenge)

Related links:

- GoA info on changes - [Introducing prompt payment for construction industry | Alberta.ca](#)
- The current version of the *Builders' Lien Act* is [here](#)
- Legislature Bill status page is [here](#)
- Original Bill is [here](#)
- Amendment is [here](#)