

TO:	CHAIR AND MEMBERS CORPORATE SERVICES COMMITTEE MEETING OF MARCH 25, 2014
FROM:	GRANT HOPCROFT, DIRECTOR OF INTERGOVERNMENTAL AND COMMUNITY LIAISON
SUBJECT:	BILL 69: THE PROMPT PAYMENT ACT 2013

RECOMMENDATION

That, on the recommendation of the Director of Intergovernmental and Community Liaison, this report on the potential impact of Bill 69, the *Prompt Payment Act, 2013* **BE RECEIVED.**

PREVIOUS REPORTS PERTINENT TO THIS MATTER

None.

BACKGROUND

Bill 69, the *Prompt Payment Act, 2013*, is a private member's bill, introduced by MPP Steven Del Duca, an act respecting payments made under contracts and subcontracts in the construction industry. It has received all-party support during second reading and was recently referred to the Standing Committee on Regulations and Private Bills for public consultations on March 19 and 26.

Bill 69 would have negative consequences for any institutions in the provincial and municipal public sector that are impacted by the construction industry. In essence it attempts to redress the problems faced by contractors with respect to cash flow. The Bill would limit the contractual freedom of construction owners, including municipal governments and other public sector institutions, to negotiate with contractors and suppliers the most suitable payment terms for work performed. There are two aspects to the bill of particular concern to municipalities. Firstly, it would prohibit holdbacks on a construction project other than those required under the *Construction Lien Act*. This would prevent owners from retaining holdbacks for items such as deficiencies and maintenance. Secondly, it would impose stringent and unrealistic timelines to make payments that do not account for the time required to review and properly certify work.

As a construction owner, the City of London would be negatively impacted by Bill 69 if passed in its current form. The Bill does not provide for a reasonable payment process for complex infrastructure projects. It includes a one-day turn-around time to release the 10% holdback. Bill 69 also implies that a contractor can request to be paid for services and materials that "will be supplied" to a project, rather than asking for payment after work has been completed or for materials that have actually been supplied. Current business practice and contract law, on the other hand, is that payment is provided only after work has actually been done. Furthermore, the Bill would require the City to perform a title-search of lands involved in the project, requisition payment and make payment all within one day, something that would be neither practical nor responsible.

The Association of Municipalities of Ontario (AMO) is opposed to the Bill and has written to the province with respect to its concerns. In February, the Large Urban Mayors Caucus of Ontario (LUMCO) endorsed AMO's position and Mayor Fontana wrote to the three party leaders in follow up to the request made at LUMCO. The Ontario Public Buyers Association, a professional association representing public procurement professionals across Ontario, has also voiced numerous concerns about the Bill. AMO is urging municipalities to make a presentation to the Standing Committee on Regulations and Private Bills, either in person or by submission. The City of London, AMO, and other municipalities requested an opportunity to make an oral presentation to the committee or failing that, a written submission by the deadline of March 26. London has not been granted an opportunity to make an oral submission. It is the intention of Civic Administration to make a written submission prior to the March 26 deadline, requesting that municipalities be exempted from Bill 69, or if that is not possible, asking for substantive amendments to address sector concerns including those listed in this report so that municipalities can exercise due diligence over public funds.

Civic Administration will be following developments on this Bill and will report back to Council.

This report was written in consultation with John Freeman, Manager of Purchasing and Solicitor, David Mounteer.

PREPARED BY:	RECOMMENDED BY:
JILL TANSLEY MUNICIPAL POLICY SPECIALIST	GRANT HOPCROFT DIRECTOR, INTERGOVERNMENTAL AND COMMUNITY LIAISON