

## Prompt Payment of Certain Contractors P.L. 2006, c. 96

### **—Background—**

On September 1, 2006, Governor Corzine enacted P.L. 2006, c. 96, which requires property owners to pay prime contractors within 30 days of the completion of certain construction work. The law applies to all contracts entered into, on or after September 1, 2006. A separate statutory provision applies to subcontractors, which requires prime contractors to pay their subcontractors within 10 days of completion of work, provided the work has been accepted by the owner.

### **—How does the law define “construction?”—**

The law covers all improvements to structures and real property. The definition of improvement is very broad and covers most types of construction work to buildings and property. In addition, it also includes the engagement of certain professionals in connection with construction work (e.g. engineers, surveyors, etc.).

The law covers contracts to build, alter, repair or demolish any structure; to excavate, clear, grade, fill or landscape any real property; to construct driveways and private roadways on real property; to furnish construction-related materials, including trees and shrubbery; or to perform any labor upon a structure, including any design, professional, or skilled services furnished by an architect, engineer, land surveyor or landscape architect. All improvement contracts are covered, regardless of dollar amount.

### **—Who is considered an “owner” or “prime contractor” under the law? —**

An owner is defined to include any person or any public or governmental agency that has an interest in real property. A prime contractor is defined as a person who contracts with an owner to improve real property.

### **—When does the law require payment from private owners? —**

The law requires private property owners to pay a prime contractor 30 calendar days following the billing date specified in the contract. The law deems that billing is approved and certified 20 days after receipt of the bill by the owner. However, the owner may withhold full or partial payment if the owner provides a written statement to the prime contractor of the amount withheld and the reason for withholding payment within the 20-day period.

Example A: Contract specifies a billing date of the first of every month. Construction work is performed by prime contractor pursuant to the contract. Payment is due on the thirty-first day, unless the owner

sends a written statement to the prime contractor stating a reason for any full or partial withholding of payment. This notice must be provided to the prime contractor on or before the twenty-first day.

—***What about work for public entities?*** —

Public contracts follow the same procedure, except when construction work is performed for a public entity that requires the entity's governing body to formally vote to approve payments. For these entities, the billing may be approved and certified at the next meeting of the governing body and must be paid before the close of the subsequent payment cycle. In order to utilize this procedure, the public entity must include these specific provisions within the bid specifications.

**Example B:** Contract specifies a billing date of the first of every month. Public entity includes a provision in the bid specifications and contract whereby it must approve all expenditures at a regular monthly meeting. Construction work is performed by prime contractor pursuant to the bid contract. Billing, provided on the first of the month, is deemed approved and certified at the regular monthly meeting of the governing body of the entity. The entity has 20 days from the date of this meeting to send a written statement to the prime contractor stating the reason for any full or partial withholding of payment. If the entity does not provide any notice to the prime contractor, payment must occur prior to the next regular meeting of the governing body.

—***What about prime contractors who hire other individuals to complete various stages of a job?*** —

In these instances, the law is applied as it is for prime contractors and owners, unless other terms are agreed to through a written contract. Absent other specified terms, prime contractors must pay their subcontractors within 10 days of receiving payment themselves. Likewise, subcontractors must pay individuals they contract with (also known as sub-subcontractors) within 10 days of receiving payment.

In the case of partial payments for ongoing work on the same project, the money owed to the subcontractor or sub-subcontractor for work already completed is only required to be paid if the contractor or subcontractor, as applicable, is satisfied with that work.

**Example C:** A contractor is hired to complete an improvement to property. That contractor hires a subcontractor who, in turn, hires another individual to furnish labor, materials, or some other service for the property improvement. Once the contractor is paid by the property owner, he must pay the subcontractor within 10 days of receiving the payment. Once the subcontractor receives payment he must follow suit with the sub-subcontractor. This requirement may not apply for ongoing or multifaceted projects where the supervising contractor or subcontractor is not satisfied with the work completed by the person he contracted with to assist in completing the job.

—***Remedies and Penalties*** —

Persons that violate the law are liable for the amount of money owed under the contract plus interest.

Any prime or subcontractor that does not receive payment in accordance with this law may suspend performance of construction work without penalty, provided the contractor provides the owner with written notice seven days prior to the work stoppage. This provision does not apply to certain transportation projects that utilize federal funding. This section of the law is in addition to any other rights or remedies available to the parties.

The law also provides that all contracts for improvements to real property must include a provision allowing alternative dispute resolution. Additionally, the law provides that any civil action relating to the payment of construction contracts must be conducted in New Jersey and that a prevailing party will be awarded reasonable costs and attorney fees.

***—Strategies for Compliance—***

Owners and contractors should pay close attention to the billing dates utilized in contracts dated September 1, 2006, and thereafter. Additionally, owners, operators and contractors should consider enacting procedures to screen billings within 20 days of receipt.

***—For More Information—***

If you need additional information, please contact NJBIA's Member Action Center at 1-800-499-4419, ext. 3 or [member411@njbia.org](mailto:member411@njbia.org).

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This information should not be construed as constituting specific legal advice. It is intended to provide general information about this subject and general compliance strategies. For specific legal advice, NJBIA strongly recommends members consult with their attorney.