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## **Contractor's Prompt Pay Act**

This proposal aims to remedy two aspects of an issue of great importance to Illinois contractors and subcontractors – withholding payment for work performed, and retaining payment well after the work is complete. It resembles recently enacted legislation in other states intended to quicken payment for contractors; it parallels existing Illinois law requiring prompt payment on publicly funded construction projects. The Act would discourage the abusive practice of withholding payments due for construction work without justification, simply to force workers and thinly capitalized builders to accept less than what they are due.

It provides that, unless the parties to a construction contract agree otherwise, they must pay promptly for work already performed, and about which there is no objection. Further, it provides that only five percent, rather than ten percent or more, may be withheld from such payments as retainage.

The Act's scope is restricted in several ways, taking into consideration the concerns of other Illinois individuals and groups. First, the Act applies only to "Building and Construction Contracts," defined to exclude all publicly funded construction and all single-family residential building. Second, owners and contractors would only be required to pay amounts that are admittedly due and owing. Third, retainage would not be eliminated, merely reduced to five percent of payments made for work agreed upon. Finally, parties to a Construction Contract would be free to waive the provisions of the new law, as long as they do so clearly and in writing.

The Act would permit a private action to be brought to enforce its provisions, with expenses and fees paid to a successful plaintiff. Ten percent interest would be due on payments wrongfully withheld. This is the same rate permitted under the Illinois Mechanics Lien Act, though much lower than the 24% interest provided under comparable sections of the Illinois Local Government Prompt Payment Act.

The bill is admittedly modest by, for example, allowing its provisions to be waived, and calling for payment only of amounts admittedly due; nonetheless, such a law would support contractors and subcontractors efforts to receive in encouraging demanding payments due for work performed when all parties are in agreement that the work is acceptable. It is imminently fair to mandate that under such circumstances, payment should be made in accordance with the parties' contract. After all, when a person benefits from the hard labor and risked capital of working men and women in our state, that person should pay the agreed price for the work.

The above was prepared by Jim Rohlfling, for ASA Chicago and the Illinois Mechanical and

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Specialty Contractor's Association (IMSCA). He would be pleased to answer any questions about the proposal. He can be contacted at 312 923-7104, or [jtr@rolaw.net](mailto:jtr@rolaw.net).