

Standing Committee on
Social Development



Interim Report on Bill 65: *Builders' Lien Act*

19th Northwest Territories Legislative Assembly

Chair: Ms. Caitlin Cleveland

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February 27, 2023

SPEAKER OF THE LEGISLATIVE ASSEMBLY

Mr. Speaker:

Your Standing Committee on Social Development is pleased to provide its *Interim Report on Bill 65: Builders' Lien Act* and commends it to the House.



Ms. Caitlin Cleveland
Chair, Standing Committee on
Social Development

STANDING COMMITTEE ON SOCIAL DEVELOPMENT INTERIM REPORT ON

BILL 65: BUILDERS' LIEN ACT

INTRODUCTION

Bill 65: *Builders' Lien Act* (Bill 65) was referred to the Standing Committee on Social Development (Committee) for review on November 3, 2022.ⁱ A Plain Language Summary for Bill 65 was tabled on the same day.ⁱⁱ The sponsoring Department for Bill 65 is the Department of Justice (Department).

During Committee's review and public hearing on Bill 65, inquiries focused on applying the *Builders' Lien Act* to the Government of the Northwest Territories (GNWT), Indigenous Governments, and municipalities, including questions on how provisions related to lands owned by those entities would work.ⁱⁱⁱ Committee had already raised concerns and considered amendments to the proposed legislation, particularly concerning types of lands subject to the Bill and GNWT's engagement with Indigenous and municipal governments in developing the Bill.

During the public hearing on January 18, 2023, Committee expressed concerns regarding the level of consultation done by the Department prior to the introduction of Bill 65. During the same hearing, the Minister of Justice committed to working with Committee, doing further engagement, and improving the Bill.

Following the public hearing, the Government House Leader requested that Committee seek an extension of the review period under Rule 8.3(2) to allow the Department time to engage in discussions with Indigenous Governments, municipalities, and industry about Committee's concerns.

BILL 65: BUILDERS' LIEN ACT

The purpose of Bill 65 is to modernize the Northwest Territories (NWT) lien legislation as it concerns construction. The existing *Mechanics Lien Act* has not changed substantially in over 100 years. Since then, practices and contractual arrangements in construction and real property development have changed considerably and continue to evolve. At the

core of this legislation lies the intent to ensure that contractors and subcontractors are paid for the work and materials they have provided.

The builders' lien legislation would also regulate the way payments are made in the construction industry and protect the participants in a construction project against the failure of others to pay for the work or materials provided. Several Canadian jurisdictions have also updated their builders' lien legislation, including Ontario (2019), British Columbia (2020), and Alberta (2022).

Bill 65 applies to activities involving the creation, repair, or alteration of an "improvement" to land or alteration of the land itself. This includes buildings and structures above and below ground and could consist of culverts, driveways, utility lines, pipelines, excavations and nearly all active modification of the surface and subsurface of the land, including demolition or removal of structures.

Bill 65 updates the law governing construction in the NWT by clarifying who is entitled to claim a lien (including workers), extending timelines to preserve and perfect a claim, allowing annual and phased holdback amounts, requiring a certificate of substantial performance, providing rights to certain information, and including regulation-making provisions.

COMMITTEE CONSIDERATIONS

Committee reviewed Bill 65 and found there is room for changes or clarification in the following areas:

- Ensuring the GNWT is bound.
- Ensuring that Bill 65 treats all governments equally.
- Ensuring that land, resources and self-government agreements prevail where there is conflict or inconsistency.
- Exempting three categories of land from sale and seizure: public lands and lands owned by agencies on behalf of the Government of the Northwest Territories (GNWT), settlement lands, and municipal lands.
- Considering that lands withdrawn from disposition for the purpose of pending treaties also be exempt from seizure and sale.

In the initial review, Committee perceived that GNWT did not give enough consideration to the thought that settlement lands may not be sold. Members found that any sale of lands requires recognition of the need for a heightened sensitivity in the analysis and preparation of legislation.

Committee included Indigenous governments and organizations in the initial review during the engagement period, however, Committee did not receive submissions. Members see it as necessary to have communication on Bill 65 going directly to Indigenous governments.

Committee Members determined that Indigenous governments and communities as well as industry must have an opportunity to provide input.

CONCLUSION

Committee decided to wait for the outcome of the Department's consultations before taking a final view on any amendments to Bill 65. Committee is willing to work collaboratively with the Department and looks forward to considering the results and recommendations from the Department's engagement.

ENDNOTES

ⁱ Bill 65: [Builders' Lien Act](#).

ⁱⁱ [Plain Language Summary for Bill 65: Builders' Lien Act](#). Tabled document 794-19-(2), November 3, 2022.

ⁱⁱⁱ [Public hearing on Bill 65: Builders' Lien Act](#). Yellowknife, January 18, 2023. Recording available on the Northwest Territories Legislative Assembly YouTube Channel.