

Senator Michael G. Waddoups proposes to substitute the following bill:

**CONSTRUCTION CONTRACTS - PROMPT**

**PAYMENT ACT**

2001 GENERAL SESSION

STATE OF UTAH

**Sponsor: Michael G. Waddoups**

**This act modifies the Commerce and Trade Code by enacting the Utah Prompt Payment Act.**

**The act requires progress payments on certain construction contracts. The act requires the**

**owner to promptly dispute a billing or estimate with which the owner does not agree and**

**limits the amount that an owner can withhold from a progress payment. The act requires**

**prompt payment by the owner upon completion of the work. The act provides for interest**

**on late payments. The act gives subcontractors the right to notification of progress**

**payments. The act provides for the awarding of costs and attorneys' fees. The act requires**

**prompt payment by the contractor to subcontractors and suppliers. The act requires the**

**wavier of mechanics' lien rights by subcontractors and suppliers upon receipt of payment.**

**The act provides for the interruption of the work on a construction contract without penalty**

**in cases of an environmental hazard. The act provides for the interruption of work on a**

**construction contract or the termination of the contract in cases of nonpayment.**

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

**58-55-501**, as last amended by Chapters 233 and 317, Laws of Utah 2000

ENACTS:

**13-33-101**, Utah Code Annotated 1953

**13-33-102**, Utah Code Annotated 1953

**13-33-201**, Utah Code Annotated 1953

**13-33-202**, Utah Code Annotated 1953



26 13-33-203, Utah Code Annotated 1953

27 13-33-204, Utah Code Annotated 1953

28 *Be it enacted by the Legislature of the state of Utah:*

29 Section 1. Section 13-33-101 is enacted to read:

30 **CHAPTER 33. UTAH PROMPT PAYMENT ACT**

31 **Part 1. General Provisions**

32 **13-33-101. Title.**

33 This chapter is known as the "Utah Prompt Payment Act."

34 Section 2. Section 13-33-102 is enacted to read:

35 **13-33-102. Definitions.**

36 As used in this chapter:

37 (1) the terms "construction contract", "contractor", "owner", and "subcontractor" have the  
38 same meaning as defined in Section 13-8-5; and

39 (2) "construction project bid documents" means the drawings, specifications, invitation  
40 for bids, request for proposals, or any other written document describing the proposed construction  
41 project that requests the submission of bids or prices for furnishing labor, materials, supplies, or  
42 equipment for construction of the project.

43 Section 3. Section 13-33-201 is enacted to read:

44 **Part 2. Prompt Payment**

45 **13-33-201. Progress payments to contractor -- Payment upon completion of work --**  
46 **Withholdings from payments -- Approval of billings -- Interest on late payments**  
47 **--Notification to subcontractor of payments by owner -- Costs and attorneys' fees.**

48 (1) An owner shall make progress payments as provided in Subsection (2) to a contractor  
49 on all construction contracts where the contract performance period exceeds 45 days.

50 (2) (a) Progress payments shall be made on the basis of a duly certified and approved  
51 billing or estimate of the work performed and the materials supplied during the preceding 30-day  
52 billing cycle, or an alternate billing cycle as stated in the construction contract.

53 (b) If billings or estimates are to be submitted in other than 30-day billing cycles, the  
54 construction project bid documents shall specifically identify the alternate billing cycle in a clear  
55 and conspicuous manner as prescribed in Subsection (3).

56 (c) Except as provided in Subsection (4), the owner shall make progress payments to the

57 contractor within seven days after the date the billing or estimate is certified and approved pursuant  
58 to Subsection (5).

59 (3) (a) A construction contract may provide for a billing cycle other than a 30-day billing  
60 cycle if:

61 (i) the construction project bid documents and the construction contract specifically set  
62 forth the alternate billing cycle; and

63 (ii) the provisions of either Subsection (3)(b) or (3)(c) are satisfied.

64 (b) The following legend or substantially similar language setting forth the other billing  
65 cycle appears in clear and conspicuous type on the construction project bid documents and the  
66 construction contract:

67 "Notice of alternate billing cycle.

68 "This contract allows the owner to require the submission of billings or estimates in billing  
69 cycles other than 30 days. Billings or estimates for this contract shall be submitted as follows:  
70 [description of alternate billing cycle]."

71 (c) The following legend or substantially similar language setting forth the other billing  
72 cycle appears in clear and conspicuous type on the construction project bid documents and the  
73 construction contract:

74 "Notice of alternate billing cycle.

75 "This contract allows the owner to require the submission of billings or estimates in billing  
76 cycles other than 30 days. A written description of the alternate billing cycle applicable to the  
77 project is available from the owner or the owner's designated agent at [telephone number or  
78 address, or both], and the owner or its designated agent shall provide this written description on  
79 request."

80 (4) An owner may make progress payments later than seven days after the date the billing  
81 or estimate is certified and approved if both:

82 (a) the construction project bid documents and the construction contract in a clear and  
83 conspicuous manner specifically provide for a later payment defined by a specified number of days  
84 after certification and approval; and

85 (b) the following legend or substantially similar language setting forth the specified  
86 number of days appears in clear and conspicuous type on the construction project bid documents  
87 and the construction contract:

88 "Notice of extended payment provision.

89 "This contract allows the owner to make payment within \_\_\_\_\_ days after certification and  
90 approval of billings and estimates."

91 (5) (a) Except as provided in Subsection (7), a billing or estimate shall be considered to  
92 be approved and certified 14 days after the owner receives the billing or estimate, unless before  
93 that time the owner or the owner's agent prepares and issues a written statement detailing those  
94 items in the billing or estimate that are not approved and certified.

95 (b) An owner may decline to approve and certify a billing or estimate or a portion of a  
96 billing or estimate for:

97 (i) unsatisfactory job progress;

98 (ii) defective construction work or materials which have not been remedied;

99 (iii) disputed work or materials;

100 (iv) failure to comply with a material provision of the construction contract;

101 (v) third-party claims filed or reasonable evidence that a claim will be filed;

102 (vi) failure of the contractor or a subcontractor to make timely payments for labor,  
103 equipment, or materials;

104 (vii) damage to the owner;

105 (viii) reasonable evidence that the construction contract cannot be completed for the  
106 unpaid balance of the construction contract sum; or

107 (ix) a reasonable amount for retention as provided in Section 13-8-5.

108 (c) The owner is considered to have received the billing or estimate when the billing or  
109 estimate is submitted to any person designated by the owner for the receipt of these submissions  
110 or for review or approval of the billing or estimate.

111 (6) Except as provided in Section 13-8-5, an owner may withhold from a progress payment  
112 only an amount that is sufficient to pay the direct expenses the owner reasonably expects to incur  
113 to correct any items set forth in writing pursuant to Subsection (5).

114 (7) An owner may extend the period within which the billing or estimate is certified and  
115 approved if both:

116 (a) the construction project bid documents and the construction contract in a clear and  
117 conspicuous manner specifically provide for an extended time period within which a billing or  
118 estimate shall be certified and approved, defined by a specified number of days after the owner has

119 received the billing or estimate; and

120 (b) the following legend or substantially similar language, setting forth the specified  
121 number of days, appears in clear and conspicuous type on the construction project bid documents  
122 and the construction contract:

123 "Notice of extended certification and approval period provision.

124 "This contract allows the owner to certify and approve billings and estimates within \_\_\_\_\_  
125 days after the billings and estimates are received from the contractor."

126 (8) (a) When a contractor completes and an owner approves and certifies all work under  
127 a construction contract, the owner shall make payment in full on the construction contract within  
128 seven days.

129 (b) When a contractor completes and an owner approves and certifies all work under a  
130 portion of a construction contract for which the construction contract states a separate price, the  
131 owner shall make payment in full on that portion of the construction contract within seven days.

132 (c) On construction projects that require a federal agency's final approval or certification,  
133 the owner shall make payment in full on the construction contract within seven days of the federal  
134 agency's final approval or certification.

135 (9) Payment shall not be required pursuant to this section unless the contractor provides  
136 the owner with a billing or estimate for the work performed or the material supplied in accordance  
137 with the terms of the construction contract between the parties.

138 (10) A construction contract shall not alter the rights of any contractor, subcontractor, or  
139 material supplier to receive prompt and timely progress payments as provided under this chapter.

140 (11) If an owner or a third party designated by an owner as the person responsible for  
141 making progress payments on a construction contract does not make a timely payment pursuant  
142 to this section, the owner shall pay the contractor interest at the rate of 1.5% per month or fraction  
143 of a month on the unpaid balance, or at a higher rate as the parties to the construction contract  
144 agree.

145 (12) On the written request of a subcontractor, the owner shall notify the subcontractor  
146 within 5 days after the issuance of a progress payment to the contractor or final payment to the  
147 contractor on the construction contract.

148 (13) In any action or arbitration brought to collect payments or interest pursuant to this  
149 section, the successful party shall be awarded its costs and reasonable attorneys' fees.

150 (14) If the owner and contractor on a construction project are a single entity, that entity  
151 shall pay its subcontractors and material suppliers within 14 days after the billing or estimate is  
152 certified and approved unless the deadlines for approval and certification or for payment have been  
153 modified pursuant to Subsection (4) or (7).

154 Section 4. Section **13-33-202** is enacted to read:

155 **13-33-202. Progress payments to subcontractor or supplier -- Waiver of liens**  
156 **--Withholdings from a payment -- Interest on late payments -- Costs and attorneys' fees.**

157 (1) Notwithstanding any other provision of this section, performance by a contractor,  
158 subcontractor, or material supplier in accordance with the provisions of a construction contract  
159 entitles the contractor, subcontractor, or material supplier to payment from the party with whom  
160 the contractor, subcontractor, or material supplier contracts.

161 (2) (a) If a subcontractor or material supplier has performed in accordance with the  
162 provisions of a construction contract, the contractor shall pay to its subcontractors or material  
163 suppliers and each subcontractor shall pay to its subcontractors or material suppliers, within seven  
164 days of receipt by the contractor or subcontractor of each progress payment or final payment, the  
165 full amount received for that subcontractor's work and materials supplied based on work completed  
166 or materials supplied under the subcontract.

167 (b) Payment shall not be required pursuant to this Subsection (2) unless the subcontractor  
168 or material supplier provides to the contractor or subcontractor a billing or invoice for the work  
169 performed or material supplied in compliance with the terms of the contract between the parties.

170 (c) Each subcontractor or material supplier shall provide a waiver of any mechanic's or  
171 materialman's lien conditioned upon payment for the work completed or material supplied. The  
172 contractor or subcontractor may require that these conditional waivers of lien be notarized.

173 (3) Nothing in this section prevents the contractor or subcontractor, at the time of  
174 application or certification to the owner or contractor, from withholding the application or  
175 certification to the owner or contractor for payment to the subcontractor or material supplier for:

176 (a) unsatisfactory job progress;

177 (b) defective construction work or materials which have not been remedied;

178 (c) disputed work or materials;

179 (d) failure to comply with a material provision of the subcontract;

180 (e) third-party claims filed or reasonable evidence that a claim will be filed;

181 (f) failure of the subcontractor to make timely payments for labor, equipment, or materials;

182 (g) damage to the contractor or another subcontractor or material supplier;

183 (h) reasonable evidence that the subcontract cannot be completed for the unpaid balance  
184 of the subcontract sum; or

185 (i) a reasonable amount for retention as provided in Section 13-8-5 that does not exceed  
186 the actual percentage retained by the owner.

187 (4) If a periodic or final payment to a subcontractor or material supplier is delayed by more  
188 than seven days after receipt of periodic or final payment by the contractor or subcontractor, the  
189 contractor or subcontractor shall pay its subcontractor or material supplier interest, except for  
190 periods of time during which payment is withheld pursuant to Subsection (3), at the rate of 1.5%  
191 per month or a fraction of a month on the unpaid balance or at a higher rate as the parties agree.

192 (5) In any action or arbitration brought to collect payments or interest pursuant to this  
193 section, the successful party shall be awarded costs and reasonable attorneys' fees.

194 Section 5. Section **13-33-203** is enacted to read:

195 **13-33-203. Interruption of work for environmental hazard -- Termination of**  
196 **contract.**

197 (1) A contractor may interrupt the performance of a construction contract without penalty  
198 or liability for breach of contract if:

199 (a) any applicable law or rule requires the cessation of work; or

200 (b) (i) the contractor encounters any hazardous substance or hazardous material which is  
201 required to be removed or contained by any applicable law or rule; and

202 (ii) (A) any applicable law or rule prohibits the contractor from proceeding to remove or  
203 contain the hazardous material or hazardous substance unless the contractor is duly licensed and  
204 the contractor is not so licensed; or

205 (B) the removal or containment of the hazardous material or hazardous substance cannot  
206 be accomplished without a cessation of work.

207 (2) A contractor whose work is impaired, impeded, or prohibited under Subsection (1) may  
208 interrupt performance of the construction contract as provided in this section only to the extent of  
209 the area affected by the hazardous materials or hazardous substances removed or contained by the  
210 owner or as otherwise required by applicable statute or rule.

211 (3) The owner may terminate the construction contract on payment to the contractor,

212 subcontractor, or other person whose work is delayed under Subsection (1) of the amount of any  
213 services or materials supplied or expended which conform to the contract terms and specifications.

214 (4) A contractor who interrupts the performance of a construction contract under this  
215 section is entitled to recover any costs incurred for mobilization resulting from the shutdown and  
216 restart of the project.

217 Section 6. Section **13-33-204** is enacted to read:

218 **13-33-204. Suspension or termination of work for nonpayment -- Notice -- Costs and**  
219 **attorneys' fees.**

220 (1) (a) A contractor may suspend performance under a construction contract or terminate  
221 a construction contract for failure by the owner to make timely payment of the amount certified  
222 and approved pursuant to Subsection 13-33-201(5).

223 (b) A contractor shall provide written notice to the owner at least seven calendar days  
224 before the contractor's intended suspension or termination unless a shorter notice period is  
225 prescribed in the construction contract between the owner and contractor. A construction contract  
226 may not extend the time period for a contractor to suspend performance or terminate a construction  
227 contract under this Subsection (1).

228 (c) The suspension of performance or termination of a construction contract pursuant to  
229 this Subsection (1) does not constitute a breach of contract by the contractor.

230 (2) (a) A subcontractor may suspend performance under a construction contract or  
231 terminate a construction contract if the owner fails to make timely payment of amounts certified  
232 and approved pursuant to Subsection 13-33-201(5) for the subcontractor's work and the contractor  
233 fails to pay the subcontractor for the certified and approved work.

234 (b) A subcontractor shall provide written notice to the contractor and owner at least three  
235 calendar days before the subcontractor's intended suspension or termination unless a shorter notice  
236 period is prescribed in the construction contract between the contractor and subcontractor. A  
237 construction contract may not extend the time period for a subcontractor to suspend performance  
238 or terminate a construction contract under this Subsection (2).

239 (c) The suspension of performance or termination of a subcontract pursuant to this  
240 Subsection (2) does not constitute a breach of contract by the subcontractor.

241 (3) (a) A subcontractor may suspend performance under a construction contract or  
242 terminate a construction contract if the owner makes timely payment of amounts certified and



243 approved pursuant to Subsection 13-33-201(5) for the subcontractor's work but the contractor fails  
244 to pay the subcontractor for the certified and approved work.

245 (b) A subcontractor shall provide written notice to the contractor and owner at least seven  
246 calendar days before the subcontractor's intended suspension or termination unless a shorter notice  
247 period is prescribed in the construction contract between the contractor and subcontractor. A  
248 construction contract may not extend the time period for a subcontractor to suspend performance  
249 or terminate a construction contract under this Subsection (3).

250 (c) The suspension of performance or termination of a subcontract pursuant to this  
251 Subsection (3) does not constitute a breach of contract by the subcontractor.

252 (4) (a) A subcontractor may suspend performance under a construction contract or  
253 terminate a construction contract if the owner declines to approve and certify portions of the  
254 contractor's billing or estimate pursuant to Subsection 13-33-201(5) for that subcontractor's work  
255 but the reasons for that failure by the owner to approve and certify are not the fault of or directly  
256 related to the subcontractor's work.

257 (b) A subcontractor shall provide written notice to the contractor and owner at least seven  
258 calendar days before the subcontractor's intended suspension or termination unless a shorter notice  
259 period is prescribed in the construction contract between the contractor and subcontractor. A  
260 construction contract may not extend the time period for a subcontractor to suspend performance  
261 or terminate a construction contract under this Subsection (4).

262 (c) The suspension of performance or termination of a subcontract pursuant to this  
263 Subsection (4) does not constitute a breach of contract by the subcontractor.

264 (5) A contractor or subcontractor that suspends performance as provided in this section  
265 is not required to furnish further labor, materials, or services until the contractor or subcontractor  
266 is paid the amount that was certified and approved, together with any costs incurred for  
267 mobilization resulting from the shutdown or start-up of a project.

268 (6) In any action or arbitration brought pursuant to this section, the successful party shall  
269 be awarded costs and reasonable attorneys' fees.

270 (7) Written notice required under this section shall be provided by:

271 (a) delivery of a written notice in person to the individual or a member of the entity or to  
272 an officer of the corporation for which it was intended; or

273 (b) sending the written notice by any means that provides written, third-party verification

274 of delivery to the last business address known to the party giving notice.

275 Section 7. Section **58-55-501** is amended to read:

276 **58-55-501. Unlawful conduct.**

277 Unlawful conduct includes:

278 (1) engaging in a construction trade, acting as a contractor, an alarm business or company,  
279 or an alarm company agent, or representing oneself to be engaged in a construction trade or to be  
280 acting as a contractor in a construction trade requiring licensure, unless the person doing any of  
281 these is appropriately licensed or exempted from licensure under this chapter;

282 (2) acting in a construction trade, as an alarm business or company, or as an alarm  
283 company agent beyond the scope of the license held;

284 (3) hiring or employing in any manner an unlicensed person, other than an employee for  
285 wages who is not required to be licensed under this chapter, to engage in a construction trade for  
286 which licensure is required or to act as a contractor or subcontractor in a construction trade  
287 requiring licensure;

288 (4) applying for or obtaining a building permit either for oneself or another when not  
289 licensed or exempted from licensure as a contractor under this chapter;

290 (5) issuing a building permit to any person for whom there is no evidence of a current  
291 license or exemption from licensure as a contractor under this chapter;

292 (6) applying for or obtaining a building permit for the benefit of or on behalf of any other  
293 person who is required to be licensed under this chapter but who is not licensed or is otherwise not  
294 entitled to obtain or receive the benefit of the building permit;

295 (7) failing to obtain a building permit when required by law or rule;

296 (8) submitting a bid for any work for which a license is required under this chapter by a  
297 person not licensed or exempted from licensure as a contractor under this chapter;

298 (9) willfully or deliberately misrepresenting or omitting a material fact in connection with  
299 an application to obtain or renew a license under this chapter;

300 (10) allowing one's license to be used by another except as provided by statute or rule;

301 (11) doing business under a name other than the name appearing on the license, except as  
302 permitted by statute or rule;

303 (12) if licensed as a specialty contractor in the electrical trade or plumbing trade,  
304 journeyman plumber, residential journeyman plumber, journeyman electrician, master electrician,

305 or residential electrician, failing to directly supervise an apprentice under one's supervision or  
306 exceeding the number of apprentices one is allowed to have under his supervision;

307 (13) if licensed as a contractor or representing oneself to be a contractor, receiving any  
308 funds in payment for a specific project from an owner or any other person, which funds are to pay  
309 for work performed or materials and services furnished for that specific project, and after receiving  
310 the funds to exercise unauthorized control over the funds by failing to pay the full amounts due and  
311 payable to persons who performed work or furnished materials or services within a reasonable  
312 period of time;

313 (14) employing as an alarm company an unlicensed individual as an alarm company agent,  
314 except as permitted under the exemption from licensure provisions under Section 58-1-307;

315 (15) if licensed as an alarm company or alarm company agent, filing with the division  
316 fingerprint cards for an applicant which are not those of the applicant, or are in any other way false  
317 or fraudulent and intended to mislead the division in its consideration of the applicant for  
318 licensure;

319 (16) if licensed under this chapter, willfully or deliberately disregarding or violating:

320 (a) the building or construction laws of this state or any political subdivision;

321 (b) the safety and labor laws applicable to a project;

322 (c) any provision of the health laws applicable to a project;

323 (d) the workers' compensation insurance laws of the state applicable to a project;

324 (e) the laws governing withholdings for employee state and federal income taxes,

325 unemployment taxes, FICA, or other required withholdings; or

326 (f) reporting, notification, and filing laws of this state or the federal government;

327 (17) aiding or abetting any person in evading the provisions of this chapter or rules  
328 established under the authority of the division to govern this chapter; [~~or~~]

329 (18) engaging in the construction trade or as a contractor for the construction of residences  
330 of up to two units when not currently registered or exempt from registration as a qualified  
331 beneficiary under Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act[-];

332 or

333 (19) violating the provisions of Section 13-33-202.