

1 **UTAH CONSTRUCTION CONTRACTS PROMPT**

2 **PAYMENT ACT**

3 2003 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: David L. Hogue**

6 **This act modifies the Commerce and Trade provisions by enacting the Utah Construction**
7 **Contracts Prompt Payment Act. The act defines certain terms. It requires progress**
8 **payments on certain construction contracts. The act requires the owner to promptly**
9 **dispute a billing or estimate with which the owner does not agree and limits the amount**
10 **that an owner can withhold from a progress payment. The act requires prompt payment**
11 **by the owner upon completion of the work. The act provides for interest on late**
12 **payments. The act gives subcontractors the right to notification of progress payments.**
13 **The act provides for the awarding of costs and attorneys' fees. The act requires prompt**
14 **payment by the contractor to subcontractors and suppliers. The act requires the waiver**
15 **of mechanics' lien rights by contractors and subcontractors upon receipt of payment. The**
16 **act provides for the interruption of the work on a construction contract without penalty**
17 **in cases of an environmental hazard. The act provides for the interruption of work on a**
18 **construction contract or the termination of the contract in cases of nonpayment. The act**
19 **provides an effective date.**

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

21 ENACTS:

22 **13-37-101**, Utah Code Annotated 1953

23 **13-37-102**, Utah Code Annotated 1953

24 **13-37-103**, Utah Code Annotated 1953

25 **13-37-201**, Utah Code Annotated 1953

26 **13-37-202**, Utah Code Annotated 1953

27 **13-37-203**, Utah Code Annotated 1953



59 Section 3. Section **13-37-103** is enacted to read:

60 **13-37-103. Scope of chapter.**

61 (1) Where there are any conflicts between the provisions of this chapter with the
62 provisions of Title 15, Chapter 6, Utah Prompt Payment Act, the provisions of this chapter
63 shall govern.

64 (2) Except as otherwise provided in Subsection (3), this chapter applies to all
65 construction contracts entered into on or after July 1, 2003.

66 (3) This chapter does not apply to a construction contract for the construction of a
67 residence.

68 Section 4. Section **13-37-201** is enacted to read:

69 **Part 2. Prompt Payment**

70 **13-37-201. Progress payments to contractor -- Alternate billing cycle -- Lien**
71 **waivers -- Extended payment provision.**

72 (1) An owner shall make progress payments as provided in Subsection (2) to a
73 contractor on a construction contract where the contract performance period exceeds 45
74 calendar days.

75 (2) (a) Progress payments shall be made on the basis of an approved billing or estimate
76 of the work performed and the materials supplied during the preceding monthly billing cycle,
77 or an alternate billing cycle as stated in the construction contract.

78 (b) If billings or estimates are to be submitted in other than monthly billing cycles, the
79 construction project bid documents shall specifically identify the alternate billing cycle in a
80 clear and conspicuous manner as required in Subsection (3).

81 (c) Except as provided in Subsection (4), the owner shall make progress payments to
82 the contractor within ten working days after the date the billing or estimate is approved by the
83 owner pursuant to Subsection 13-37-202(1).

84 (d) If required by the owner, the contractor shall provide waivers of mechanics' or
85 materialmens' liens from both the contractor and its subcontractors conditioned upon payment
86 for the work completed and materials supplied. The owner may require that these conditional
87 waivers of lien be notarized.

88 (3) (a) A construction contract may provide for a billing cycle other than a monthly
89 billing cycle if:

90 (i) the construction project bid documents specifically establish the alternate billing
91 cycle; and

92 (ii) the notice requirements of Subsection (3)(b) are satisfied.

93 (b) Either of the following legends, or language setting forth the alternate billing cycle,
94 shall appear in a clear and conspicuous manner in the payment section of the construction
95 project bid documents:

96 (i) "Notice of alternate billing cycle"

97 "This contract allows the owner to require billings or estimates to be submitted in
98 billing cycles other than monthly. Billings or estimates for this contract shall be submitted as
99 follows: [description of alternate billing cycle]"; or

100 (ii) "Notice of alternate billing cycle"

101 "This contract allows the owner to require billings or estimates to be submitted in
102 billing cycles other than monthly. A written description of the alternate billing cycle applicable
103 to the project is available from the owner or the owner's designated agent at [telephone number
104 or address, or both], and the owner or its designated agent shall provide this written description
105 on request."

106 (4) An owner may make progress payments and final payment later than ten working
107 days after the date the billing or estimate is approved by the owner if:

108 (a) the construction project bid documents in a clear and conspicuous manner
109 specifically provide for payment to be made on a specified number of days after approval; and

110 (b) the following legend or language setting forth the specified number of days appears
111 in a clear and conspicuous manner in the payment section of the construction project bid
112 documents:

113 "Notice of extended payment provision"

114 "This contract allows the owner to make payment within _____ days after approval of
115 billings and estimates."

116 (5) Notwithstanding Subsections (1) through (4), for a construction project that is
117 "design-build" or "negotiated" before the development of bid documents, the owner, contractor,
118 and subcontractor may include the alternate billing cycle and an extended payment provision in
119 the construction contract rather than in bid documents. At the stage of solicitation of bids
120 based upon written bid documents, for any part of the construction project, the requirements in

121 this section for notice of the alternate billing cycle and an extended payment provision shall
122 apply to the bidding subcontractor. The contractor or subcontractor soliciting the bids shall be
123 solely responsible for including the notice of alternate billing cycle and an extended payment
124 revision in the bid documents.

125 Section 5. Section **13-37-202** is enacted to read:

126 **13-37-202. Approval of billings.**

127 (1) (a) Except as provided in Subsection (3), a billing or estimate shall be considered to
128 be approved by the owner 14 calendar days after the owner receives the billing or estimate,
129 unless before that time the owner or the owner's agent delivers to the contractor a written
130 statement detailing those items in the billing or estimate that are not approved.

131 (b) An owner may decline to approve a billing or estimate or a portion of a billing or
132 estimate because of:

133 (i) unsatisfactory job progress;

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

135 (iii) disputed work or materials;

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

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

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

140 (vii) loss or damage to the owner or the owner's property attributable to the
141 construction contract and caused by the contractor;

142 (viii) reasonable evidence that the construction contract cannot be completed for the
143 unpaid balance under the construction contract; or

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

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

148 (2) Except as provided in Section 13-8-5, an owner may withhold from a progress
149 payment only an amount that is sufficient to pay the direct expenses the owner reasonably
150 expects to incur to correct any items set forth in writing pursuant to Subsection (1).

151 (3) An owner may extend the period within which the billing or estimate is approved

152 if:

153 (a) the construction project bid documents in a clear and conspicuous manner
154 specifically provide for an extended time period within which a billing or estimate shall be
155 approved, stating a specified number of days after the owner has received the billing or
156 estimate; and

157 (b) the following legend, or language setting forth the specified number of days,
158 appears in a clear and conspicuous manner in the payment section of the construction project
159 bid documents:

160 "Notice of extended certification and approval period provision"

161 "This contract allows the owner to approve billings and estimates within _____ days
162 after the billings and estimates are received from the contractor."

163 (4) Except as provided in Subsection 13-37-201(4) and in Section 13-8-5:

164 (a) when a contractor completes and an owner approves all work under a construction
165 contract, the owner shall make payment in full on the construction contract within ten working
166 days after the date of approval;

167 (b) when a contractor completes and an owner approves all work under a portion of a
168 construction contract for which the construction contract states a separate price, the owner shall
169 make payment in full on that portion of the construction contract within ten working days after
170 the date of approval; and

171 (c) on construction projects that require a federal agency's final approval or
172 certification, the owner shall make payment in full on the construction contract within seven
173 working days of the federal agency's final approval or certification.

174 (5) Payment is not required under this section unless the contractor provides the owner
175 with a billing or estimate for the work performed or the material supplied in accordance with
176 the terms of the construction contract between the parties.

177 (6) If the owner and contractor on a construction project are a single entity, that entity
178 shall pay its subcontractors within 20 calendar days after the billing or estimate is approved by
179 the owner unless the deadlines for approval or for payment have been modified under
180 Subsection (3) or Subsection 13-37-201(4).

181 Section 6. Section **13-37-203** is enacted to read:

182 **13-37-203. Notice of progress payments.**

183 On the written request of a subcontractor, the owner shall notify the subcontractor
184 within five working days after the issuance of a progress payment or final payment to the
185 contractor under the construction contract.

186 Section 7. Section **13-37-204** is enacted to read:

187 **13-37-204. Progress payments to subcontractor or supplier -- Waiver of liens --**
188 **Withholdings from a payment.**

189 (1) (a) If a subcontractor has performed in accordance with the provisions of a
190 construction contract, the contractor shall pay to its subcontractor and the subcontractor shall
191 pay to its subcontractors, within ten working days of receipt by the contractor or subcontractor,
192 as the case may be, of each progress payment or final payment, the full amount received for
193 that subcontractor's work and materials supplied based on work completed or materials
194 supplied under the subcontract.

195 (b) Payment is not required under Subsection (1)(a) unless the subcontractor provides
196 to the contractor or subcontractor with whom it has the contract a billing or invoice for the
197 work performed or material supplied in compliance with the terms of the construction contract
198 between the parties.

199 (c) If required by the other party to a construction contract, each subcontractor shall
200 provide to the contractor or subcontractor with whom it has the contract a waiver of any
201 mechanics' or materialmans' lien or payment bond claims conditioned upon payment for the
202 work completed or material supplied. The contractor or subcontractor may require that the
203 conditional waiver of lien be notarized.

204 (2) Nothing in this section prevents the contractor or subcontractor, at the time of
205 application or certification to its owner or contractor, as the case may be, from withholding the
206 application or certification to the owner or contractor for payment to the subcontractor because
207 of:

208 (a) unsatisfactory job progress;

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

210 (c) disputed work or materials;

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

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

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

214 materials;

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

216 (h) reasonable evidence that the subcontract cannot be completed for the unpaid
217 balance under the contract; or

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

220 Section 8. Section **13-37-205** is enacted to read:

221 **13-37-205. Payment entitlement -- No waiver.**

222 (1) Notwithstanding any other provision of this chapter, performance by a contractor or
223 subcontractor in accordance with the provisions of a construction contract entitles the
224 contractor or subcontractor to payment from the party with whom the contractor or
225 subcontractor contracts pursuant to the terms of the construction contract.

226 (2) This chapter shall not waive or alter any rights or claims a contractor or
227 subcontractor may have arising out of performance of work or supplying of materials pursuant
228 to any construction contract, including the right to receive prompt and timely progress
229 payments.

230 Section 9. Section **13-37-206** is enacted to read:

231 **13-37-206. Interruption of work for environmental hazard -- Termination of**
232 **contract.**

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

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

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

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

241 (B) the removal or containment of the hazardous material or hazardous substance
242 cannot be accomplished without a cessation of work and the situation which resulted in the
243 cessation of work under Subsection (1)(a) was not part of the scope of the work under the
244 construction contract.

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

249 (3) The owner may terminate the construction contract upon payment to the contractor,
250 subcontractor, or other person whose work is delayed under Subsection (1) of the amount of
251 any services or materials supplied or expended which conform to the contract terms and
252 specifications.

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

256 Section 10. Section **13-37-207** is enacted to read:

257 **13-37-207. Suspension or termination of work for nonpayment -- Notice -- Costs**
258 **and attorneys' fees.**

259 (1) (a) A contractor may suspend performance under a construction contract or
260 terminate a construction contract for failure by the owner to make timely payment of the
261 amount approved pursuant to Subsection 13-37-202(1).

262 (b) A contractor shall provide written notice to the owner at least 15 working days
263 before the contractor's intended suspension or termination unless a shorter notice period is set
264 forth in the construction contract between the owner and contractor. A construction contract
265 may not extend the time period for a contractor to suspend performance or terminate a
266 construction contract under this Subsection (1).

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

269 (2) (a) A subcontractor may suspend performance under a construction contract or
270 terminate a construction contract if the owner fails to make timely payment of amounts
271 approved pursuant to Subsection 13-37-202(1) for the subcontractor's work or materials
272 supplied and the contractor fails to pay the subcontractor for the approved work.

273 (b) (i) For the first event of failure of timely payment on the construction project, a
274 subcontractor shall provide written notice to the contractor and owner at least 15 working days
275 before the subcontractor's intended suspension or termination, unless a shorter notice period is

276 prescribed in the construction contract between the contractor and subcontractor.

277 (ii) If, after a first event of failure of timely payment followed by notice as provided in
278 Subsection (2)(b)(i), there is a subsequent failure of timely payment on the construction
279 project, the subcontractor shall provide written notice to the contractor and owner at least ten
280 working days before the subcontractor's intended suspension of termination, unless a shorter
281 notice period is prescribed in the construction contract between the contractor and the
282 subcontractor.

283 (iii) A construction contract may not extend the time period for a subcontractor to
284 suspend performance or terminate a construction contract under this Subsection (2).

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

287 (3) (a) A subcontractor may suspend performance under a construction contract or
288 terminate a construction contract if the owner makes timely payment of amounts approved
289 pursuant to Subsection 13-37-202(1) for the subcontractor's work or materials supplied but the
290 contractor fails to pay the subcontractor or the subcontractor fails to pay its subcontractor for
291 the approved work.

292 (b) (i) For the first event of failure of timely payment on the construction project, a
293 subcontractor shall provide written notice to the contractor and owner at least 15 working days
294 before the subcontractor's intended suspension or termination, unless a shorter notice period is
295 prescribed in the construction contract between the contractor and subcontractor.

296 (ii) If, after a first event of failure of timely payment followed by notice as provided in
297 Subsection (3)(b)(i), there is a subsequent failure of timely payment on the construction
298 project, the subcontractor shall provide written notice to the contractor and owner at least ten
299 working days before the subcontractor's intended suspension of termination, unless a shorter
300 notice period is prescribed in the construction contract between the contractor and the
301 subcontractor.

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

304 (4) (a) A subcontractor may suspend performance under a construction contract or
305 terminate a construction contract if the owner declines to approve and certify portions of the
306 contractor's billing or estimate pursuant to Subsection 13-37-202(1) for that subcontractor's

307 work or materials supplied but the reasons for that failure by the owner to approve are not the
308 fault of, or are not directly related to, the subcontractor's work or materials supplied.

309 (b) A subcontractor shall provide written notice to the contractor and owner at least ten
310 working days before the subcontractor's intended suspension or termination unless a shorter
311 notice period is prescribed in the construction contract between the contractor and
312 subcontractor, or subcontractor and subcontractor. A construction contract may not extend the
313 time period for a subcontractor to suspend performance or terminate a construction contract
314 under this Subsection (4).

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

317 (5) A contractor or subcontractor that suspends performance as provided in this section
318 is not required to furnish further labor, materials, or services until the contractor or
319 subcontractor is paid the amount that was approved, together with any costs incurred for
320 mobilization resulting from the shutdown or restart of a project.

321 Section 11. Section **13-37-208** is enacted to read:

322 **13-37-208. Written notice.**

323 Written notice required under this chapter shall be provided by:

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

326 (2) sending the written notice by any means that provides written, third-party
327 verification of delivery to the last business address known to the party giving notice.

328 Section 12. Section **13-37-209** is enacted to read:

329 **13-37-209. Costs and attorney fees.**

330 In any action or arbitration brought under this chapter, the successful party shall be
331 awarded costs and reasonable attorney fees.

332 Section 13. Section **13-37-210** is enacted to read:

333 **13-37-210. Time of payment.**

334 For purposes of this chapter, payment is considered to have been made at the time the
335 payment is sent.

336 Section 14. Section **13-37-211** is enacted to read:

337 **13-37-211. Interest on late payments.**

338 (1) If an owner or a third party designated by an owner as the person responsible for
339 making progress payments on a construction contract does not make a timely payment pursuant
340 to this chapter, the owner shall pay the contractor interest at the rate of 1.5% per month or
341 fraction of a month on the unpaid balance, unless otherwise set forth in the construction
342 contract between the parties.

343 (2) If a periodic or final payment to a subcontractor is delayed by more than ten
344 working days after receipt of periodic or final payment by the contractor or subcontractor with
345 whom it has the contract, the contractor or subcontractor, as the case may be, shall pay its
346 subcontractor interest, except for periods of time during which payment is withheld pursuant to
347 Subsection 13-37-204(2), at the rate of 1.5% per month or a fraction of a month on the unpaid
348 balance, unless otherwise set forth in the construction contract between the parties.

349 Section 15. **Effective date.**

350 This act takes effect on July 1, 2003.

Legislative Review Note
as of 1-29-03 11:56 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number HB0147

Utah Construction Contracts Prompt Payment Act

06-Feb-03

2:45 PM

State Impact

This bill can be handled within existing budgets.

Individual and Business Impact

This bill clarifies procedures for timely payments under construction contracts.

Office of the Legislative Fiscal Analyst