

CONSTRUCTION CONTRACT AMENDMENTS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: _____

LONG TITLE

General Description:

This bill enacts a provision relating to construction contracts.

Highlighted Provisions:

This bill:

- ▶ makes void and unenforceable a construction contract that:
 - limits the right of a party to collect damages for a performance delay; or
 - requires a party to waive a method of proof of damages;
- ▶ allows parties to a construction contract to waive those provisions;
- ▶ imposes requirements on parties to a construction contract relating to a change in the scope of work under the contract; and
- ▶ requires a court to award attorney fees and costs to a prevailing party in an action under these provisions.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

13-8-6, Utah Code Annotated 1953



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

29 Section 1. Section **13-8-6** is enacted to read:

30 **13-8-6. Certain construction contracts void -- Waiver exception -- Change in**
31 **scope of work -- Attorney fees and costs.**

32 (1) As used in this section:

33 (a) "Construction contract" means a written agreement:

34 (i) between an owner and a contractor, a contractor and a subcontractor, or a
35 subcontractor and another subcontractor;

36 (ii) concerning the design, construction, alteration, renovation, repair, or maintenance
37 of a building, structure, highway, road, bridge, utility, appurtenance, appliance, or other
38 improvement to real property, including earth moving, demolition, and excavating; and

39 (iii) relating to a nonresidential commercial or industrial construction project.

40 (b) "Contractor":

41 (i) means a person who, for compensation other than wages as an employee, undertakes
42 work in a construction trade, as defined in Section 58-55-102; and

43 (ii) includes:

44 (A) a maintenance person who regularly engages in activities under Section 58-55-102
45 as a construction trade; and

46 (B) a construction manager who performs management and counseling services on a
47 construction project for a fee.

48 (c) "Owner":

49 (i) means a person who holds any legal or equitable title to or interest in real property;
50 and

51 (ii) does not include a construction lender, unless the construction lender would be a
52 person described in Subsection (1)(c)(i) in the absence of being a construction lender.

53 (d) "Public agency" means any state agency or political subdivision of the state that
54 enters into a construction contract for an improvement on public property.

55 (e) "Subcontractor" has the same meaning as defined in Section 38-1-2.

56 (2) This section applies to a construction contract entered into on or after July 11, 2011
57 between:

58 (a) an owner or public agency and an original contractor;

59 (b) an original contractor and a subcontractor; or

60 (c) two or more subcontractors.

61 (3) (a) Subject to Subsection (3)(b):

62 (i) a provision of a construction contract that purports to limit the right of a party to the
63 construction contract to collect damages for a delay of performance under the contract is void,
64 unenforceable, and contrary to public policy; and

65 (ii) a provision of a construction contract that purports to require a party to the contract
66 to waive or restrict the method of proof of damages incurred is void, unenforceable, and against
67 public policy.

68 (b) By mutual consent of all parties to a construction contract, Subsection (3)(a)(i) or
69 (ii) may be waived for that construction contract.

70 (4) If a construction contract authorizes an owner, contractor, or subcontractor to direct
71 a change in the scope of work defined in the contract before the cost of the changed work is
72 agreed upon, the owner, contractor, or subcontractor directing the change in the scope of work
73 shall:

74 (a) promptly act in good faith to determine and agree upon the cost of the changed
75 work;

76 (b) submit a response to a cost proposal for the changed work within the same period
77 that the construction contract requires the owner, contractor, or subcontractor directing the
78 change in the scope of work to submit a cost proposal; and

79 (c) pay the party performing the changed work any undisputed amount for the cost of
80 the changed work as the work is performed and in accordance with the construction contract's
81 payment provisions.

82 (5) In an action brought to enforce a provision of this section, the court shall award the
83 prevailing party attorney fees and costs.

Legislative Review Note
as of 2-15-11 6:40 AM

Office of Legislative Research and General Counsel

FISCAL NOTE

S.B. 208

SHORT TITLE: **Construction Contract Amendments**

SPONSOR: **Bramble, C.**

2011 GENERAL SESSION, STATE OF UTAH

STATE GOVERNMENT (UCA 36-12-13(2)(b))

Enactment of this bill could result in new legal expenses, but the amount cannot be reasonably estimated at this time.

LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

Enactment of this bill likely will not result in direct, measurable costs for local governments.

DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

Enactment of this bill likely will not result in direct, measurable expenditures by Utah residents or businesses.