

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 Construction Contracts 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. The act provides an effective date.

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

13-33-103, Utah Code Annotated 1953



- 26 13-33-201, Utah Code Annotated 1953
- 27 13-33-202, Utah Code Annotated 1953
- 28 13-33-203, Utah Code Annotated 1953
- 29 13-33-204, Utah Code Annotated 1953

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

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

32 **CHAPTER 33. UTAH CONSTRUCTION CONTRACTS PROMPT PAYMENT ACT**

33 **Part 1. General Provisions**

34 **13-33-101. Title.**

35 This chapter is known as the "Utah Construction Contracts Prompt Payment Act."

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

37 **13-33-102. Definitions.**

38 As used in this chapter:

39 (1) the terms "construction contract", "contractor", and "subcontractor" have the same
40 meaning as defined in Section 13-8-4;

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

45 (3) "owner" means a person holding any legal or equitable title or interest in the real
46 property which is the subject of a construction contract.

47 Section 3. Section 13-33-103 is enacted to read:

48 **13-33-103. Scope of chapter.**

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

51 (2) This chapter applies to all construction contracts entered into on or after July 1, 2001.

52 Section 4. Section 13-33-201 is enacted to read:

53 **Part 2. Prompt Payment**

54 **13-33-201. Progress payments to contractor -- Payment upon completion of work --**

55 **Withholdings from payments -- Approval of billings -- Interest on late payments**

56 **--Notification to subcontractor of payments by owner -- Costs and attorneys' fees.**

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

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

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

65 (c) Except as provided in Subsection (4), the owner shall make progress payments to the
66 contractor within seven working days after the date the billing or estimate is certified and approved
67 pursuant to Subsection (5).

68 (d) The contractor shall provide a waiver of any mechanics' or materialmans' lien
69 conditioned upon payment for the work completed and materials supplied. The owner may require
70 that these conditional waivers of lien be notarized.

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

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

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

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

79 "Notice of alternate billing cycle.

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

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

86 "Notice of alternate billing cycle.

87 "This contract allows the owner to require the submission of billings or estimates in billing

88 cycles other than monthly. A written description of the alternate billing cycle applicable to the
89 project is available from the owner or the owner's designated agent at [telephone number or
90 address, or both], and the owner or its designated agent shall provide this written description on
91 request."

92 (4) An owner may make progress payments and final payment later than seven working
93 days after the date the billing or estimate is certified and approved if both:

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

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

100 "Notice of extended payment provision.

101 "This contract allows the owner to make payment within _____ days after certification and
102 approval of billings and estimates."

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

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

109 (i) unsatisfactory job progress;

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

111 (iii) disputed work or materials;

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

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

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

116 (vii) damage to the owner;

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

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

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

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

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

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

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

135 "Notice of extended certification and approval period provision.

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

138 (8) Except as provided in Subsection (4) and in Section 13-8-5:

139 (a) when a contractor completes and an owner approves and certifies all work under a
140 construction contract, the owner shall make payment in full on the construction contract within
141 seven working days;

142 (b) when a contractor completes and an owner approves and certifies all work under a
143 portion of a construction contract for which the construction contract states a separate price, the
144 owner shall make payment in full on that portion of the construction contract within seven working
145 days; and

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

149 (9) Payment shall not be required pursuant to this section unless the contractor provides

150 the owner with a billing or estimate for the work performed or the material supplied in accordance
151 with the terms of the construction contract between the parties.

152 (10) Except as otherwise specifically provided in this chapter, a construction contract shall
153 not alter the rights of any contractor, subcontractor, or material supplier to receive prompt and
154 timely progress payments.

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

160 (12) On the written request of a subcontractor, the owner shall notify the subcontractor
161 within five working days after the issuance of a progress payment to the contractor or final
162 payment to the contractor on the construction contract.

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

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

169 (15) For purposes of this chapter, payment shall be considered to have been made at the
170 time the payment is sent.

171 Section 5. Section 13-33-202 is enacted to read:

172 **13-33-202. Progress payments to subcontractor or supplier -- Waiver of liens --**
173 **Withholdings from a payment -- Interest on late payments -- Costs and attorneys' fees.**

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

178 (2) (a) If a subcontractor or material supplier has performed in accordance with the
179 provisions of a construction contract, the contractor shall pay to its subcontractors or material
180 suppliers and each subcontractor shall pay to its subcontractors or material suppliers, within seven

181 working days of receipt by the contractor or subcontractor of each progress payment or final
182 payment, the full amount received for that subcontractor's work and materials supplied based on
183 work completed or materials supplied under the subcontract.

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

187 (c) Each subcontractor or material supplier shall provide a waiver of any mechanics' or
188 materialmans' lien conditioned upon payment for the work completed or material supplied. The
189 contractor or subcontractor may require that these conditional waivers of lien be notarized.

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

193 (a) unsatisfactory job progress;

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

195 (c) disputed work or materials;

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

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

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

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

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

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

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

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

212 Section 6. Section 13-33-203 is enacted to read:

213 **13-33-203. Interruption of work for environmental hazard -- Termination of**
214 **contract.**

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

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

218 (ii) (A) the contractor encounters any hazardous substance or hazardous material which
219 is required to be removed or contained by any applicable law or rule; and

220 (B) (I) any applicable law or rule prohibits the contractor from proceeding to remove or
221 contain the hazardous material or hazardous substance unless the contractor is duly licensed and
222 the contractor is not so licensed; or

223 (II) the removal or containment of the hazardous material or hazardous substance cannot
224 be accomplished without a cessation of work; and

225 (b) the situation which resulted in the cessation of work under Subsection (1)(a) was not:

226 (i) caused by the contractor or any agent, employee, subcontractor, or supplier of the
227 contractor; or

228 (ii) part of the scope of the work under the construction contract.

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

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

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

239 Section 7. Section 13-33-204 is enacted to read:

240 **13-33-204. Suspension or termination of work for nonpayment -- Notice -- Costs and**
241 **attorneys' fees.**

242 (1) (a) A contractor may suspend performance under a construction contract or terminate

243 a construction contract for failure by the owner to make timely payment of the amount certified
244 and approved pursuant to Subsection 13-33-201(5).

245 (b) A contractor shall provide written notice to the owner at least seven working days
246 before the contractor's intended suspension or termination unless a shorter notice period is
247 prescribed in the construction contract between the owner and contractor. A construction contract
248 may not extend the time period for a contractor to suspend performance or terminate a construction
249 contract under this Subsection (1).

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

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

256 (b) A subcontractor shall provide written notice to the contractor and owner at least seven
257 working days before the subcontractor's intended suspension or termination unless a shorter notice
258 period is prescribed in the construction contract between the contractor and subcontractor. A
259 construction contract may not extend the time period for a subcontractor to suspend performance
260 or terminate a construction contract under this Subsection (2).

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

263 (3) (a) A subcontractor may suspend performance under a construction contract or
264 terminate a construction contract if the owner makes timely payment of amounts certified and
265 approved pursuant to Subsection 13-33-201(5) for the subcontractor's work but the contractor fails
266 to pay the subcontractor for the certified and approved work.

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

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

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

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

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

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

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

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

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

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

297 Section 8. Section **58-55-501** is amended to read:

298 **58-55-501. Unlawful conduct.**

299 Unlawful conduct includes:

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

304 (2) acting in a construction trade, as an alarm business or company, or as an alarm

305 company agent beyond the scope of the license held;

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

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

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

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

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

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

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

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

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

325 (12) if licensed as a specialty contractor in the electrical trade or plumbing trade,
326 journeyman plumber, residential journeyman plumber, journeyman electrician, master electrician,
327 or residential electrician, failing to directly supervise an apprentice under one's supervision or
328 exceeding the number of apprentices one is allowed to have under his supervision;

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

335 (14) employing as an alarm company an unlicensed individual as an alarm company agent,

336 except as permitted under the exemption from licensure provisions under Section 58-1-307;

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

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

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

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

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

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

346 (e) the laws governing withholdings for employee state and federal income taxes,
347 unemployment taxes, FICA, or other required withholdings; or

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

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

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

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

356 Section 9. **Effective date.**

357 This act takes effect on July 1, 2001.