



**National Trade Contractors  
Coalition of Canada**



**The Need for  
a *Prompt Payment Act*  
in Federal Government Construction**

**A report by  
Prism Economics and Analysis**

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# The Need for a Prompt Payment Act In Federal Government Construction

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## 1. The Problem

There are two distinct problems in federal construction work. The first is **delays by federal authorities in processing valid invoices** for construction work where there is no dispute that the work has been performed according to contract. The second is **delays in remitting payments down the sub-contract chain**, even when valid invoices have been submitted and where there is no dispute that the work was performed according to contract. **These payment delay problems are not occasional; they are systemic.**

As will be described in this report, Trade Contractors perform more than 80% of construction work. However, Trade Contractors are often sub-contractors to General Contractors or to other Trade Contractors. **In too many cases, the party that receives a payment intended for parties further down the sub-contract chain retains the funds for a period of time to finance their own operations at the expense of their sub-contractors.** For the sub-contractors, the result is recurrent cash-flow problems. These cash-flow risks discourage them from taking on more workers or investing in new machinery and technology. For the economy, the result is a smaller pool of Trade Contractors who will bid on work, less employment in the construction industry, and reduced investment by Trade Contractors in apprenticeship training. **The problem is systemic. It requires a systemic solution.**

**Payment delay in the construction industry is not unique to Canada.** However, other jurisdictions have enacted legislation to counter systemic delays in making payments to sub-contractors. This report will show that **virtually all U.S. jurisdictions, including the federal government, have adopted Prompt Payment legislation in the public sector. The United Kingdom, Ireland, Australia and New Zealand have also enacted Prompt Payment legislation.** The European Union has adopted a Prompt Payment directive which all of its member states are required to translate into domestic law. These examples will show that **Prompt Payment legislation is the norm, not the exception. It is Canada that is the outlier.**

Canada is one of the few remaining jurisdictions that still relies on the nineteenth century system of liens and retainage to secure and enforce lawfully due payments in the construction industry. The lien system was imported from the United States in the 1870s.<sup>1</sup> The lien system allows a construction contractor to initiate a claim for non-payment against the asset on which the construction was performed. The system also requires owners and prime contractors to retain 10% of the payments that are due for a period of approximately 60 days (depending on the province or territory) to cover potential claims by suppliers of materials or labour who were not paid. Although exceedingly complicated, the lien system does provide a useful measure of security against

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<sup>1</sup> Margaret E, McCallum, "Mechanics' Liens in the Mowat Era" *Histoire Sociale/Social History* XIX No. 38 (Nov. 1986), 387-406

non-payment when an owner or a contractor becomes insolvent. However, **the lien system is of no practical use in remedying payment delays when the party that is causing a delay in payment is a going-concern businesses.** The most common strategy to frustrate the use of liens is to allege a dispute over performance while providing a surety bond to guarantee eventual payment. The delays that ensue from this strategy can run into months. **Quite simply: in Canada, unlike most other jurisdictions, there is no effective remedy to the problem of arbitrarily delayed payments in the construction industry.** Not surprisingly, economic data show that late payment risk has increased in the last decade with serious, adverse consequences for Trade Contractors, for their employees and also for governments as purchasers of construction services.

## 2. Why Payment Delay in the Construction Industry is Systemic

***The Construction Pyramid:*** The complex structure of contracting and sub-contracting sets the construction industry apart from other industries. On large construction projects, the supply chain is a pyramid. In federal government work, a federal authority (*e.g.*, Public Works and Government Services Canada - PWGSC) is at the top of the pyramid. The federal authority tenders the construction work to a General Contractor or a Trade Contractor who becomes the Prime Contractor, *i.e.*, the party that enters into a contract with the federal authority to complete the project according to specification. Except on small projects, the usual practice is for the Prime Contractor to sub-contract various segments of a construction project to specialized Trade Contractors.<sup>2</sup> On a large building project, these could include: foundation contractors, structural contractors (concrete or steel), electrical and mechanical contractors, envelope contractors (masonry, sheeting or glass), finish contractors (drywall, flooring, painting, etc.) and roofing contractors. On large construction projects, these **Trade Contractors perform upwards of 80%, and sometimes more, of the actual construction work.**<sup>3</sup> On most large projects, Trade Contractors either sub-contract from a General Contractor or sub-sub-contract from another Trade Contractor. **As with all small and medium-sized businesses, Trade Contractors' access to bank credit is limited and their dependence on cash-flow is high.**

***Payment Freeze-Ups:*** On federal construction projects, funds flow from the federal authority to the General Contractor and thence to the various Sub-Contractors and Sub-Sub-Contractors, based on satisfactory progress. Satisfactory progress (or completion) is confirmed by a payment certifier, who is usually, but not always, the

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<sup>2</sup> Historically, a large proportion of the construction work force was directly employed by General Contractors. After 1970, sub-contracting took on greater importance as General Contractors focussed on their role as construction managers. The shift of construction employment to Trade Contractors was an international phenomenon. A study by the International Labour Office (ILO) found that the shift of employment from General Contractors to specialized Trade Contractors was evident in virtually every developed economy. International Labour Office (ILO), "The Construction Industry in the Twenty-First Century", (Geneva 2001).

<sup>3</sup> In the United States, Hinze and Tracey estimate that Trade Contractors account for 80-90% of the actual employment on major construction projects. See Hinze, J. and A. Tracey, "The Contractor-Subcontractor Relationship – the Subcontractor's View", (1994) 120(2) *Journal of Construction Engineering and Management* p 274. Similar estimates for the U.S. are offered in Bartholomew, S., *Construction Contracting: Business and Legal Principles*, Prentice Hall, 1998. Bartholomew estimates that sub-contractors perform 50% of the work on civil projects and 75% to 100% on a typical private [building] construction project. A 1991 study by the Australian Industry Commission arrived at a similar estimate for Australia. Refer to: Australian Government Publishing Service, *Construction Costs of Major Projects*, Report No. 8, Industry Commission, (March 11, 1991) p 23

architect employed by or engaged by the federal authority. **The difficulty with the construction industry's payment system is that it is highly vulnerable to freeze-ups. When any party in the payment structure withholds or delays payment on a valid invoice, their action freezes the flow of funds to all levels of the pyramid that are subordinate to them.** Thus, Sub-contractors and Sub-Sub-Contractors are subjected to unexpected payment delays, even though their work was wholly satisfactory. In most cases, no interest is paid on the delayed payments. To compound the problem, **in many cases, Trade Contractors are contractually obliged to continue working on a project, even when the payments owed to them have been delayed.**

***The Liquidity Vice:*** The risk that payments will be delayed puts Trade Contractors in a liquidity vice. On one side of the ledger are the Trade Contractors' revenues which are subject to unpredictable delays. On the other side of the ledger are Trade Contractors' costs. Payments to the Canada Revenue Agency and the workers compensation system must be paid monthly, without delay. Wages must be paid weekly. Payment for materials and equipment rentals must be made within 15 to 30 days. For Trade Contractors, there is no flexibility on the payables side of the ledger. This liquidity vice is the major cause of business failures among Trade Contractors.

***Late Payment is Distinct from Default:*** The issue that is at the heart of the payment problem in the construction industry is *late* payments, not default. Payment default is another risk altogether. The lien system provides a measure of security against the risk of payment default. However, liens have little practical relevance to the problem of *delayed* payments. In the first place, liens are easily frustrated as a tactic to enforce prompt payment. Moreover, if every payment delay were to result in a lien, the construction system would be mired in lien litigation. As one scholarly review observed, "the central problem with the builders' lien stems from the fact that it is slow and unwieldy. *In an industry that depends on speedy payments in order for parties to remain solvent*, the delays that arise in the lien procedure are argued by some to have the potential to bring down whole construction projects."<sup>4</sup> **Late payment is different from default. While, the lien system provides at least partial remedy for default, there is no remedy for systemic late payment.**

***Imbalance of Economic Power:*** The fundamental cause of the late payment problem is the unequal bargaining power between Contractors and their Sub-Contractors. Contractors force Sub-Contractors to accept late payments as part of the costs of doing business. Contractors can do this because they control the flow of work. Most Trade Contractors depend for their survival on sub-contracting either from General Contractors or from other Trade Contractors. **No Trade Contractor can afford to be struck from a bidders' list.** Trade Contractors have no choice but to endure payment delay. In most cases, payment delay is purportedly allowed by the 'pay-when-paid' clause in a sub-contract agreement. This provision allows a Contractor to delay payment to sub-contractors if payment is delayed to the Contractor by the federal authority. The Sub-Contractor, however, has no ability to determine whether the payment to the Contractor was actually delayed. Under the principle of 'privity of contract', a Sub-Contractor is not a party to the contract between a federal authority and Contractor. Except in extreme cases, any Contractor can delay payments with impunity and many do. Trade Contractors have no effective recourse. Moreover, Trade Contractors are usually bound by

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<sup>4</sup> Baas, Susan Catherine, "Protecting New Zealand Construction Subcontractors" (November 2001), thesis submitted in partial fulfilment of the requirements for the degree of Master of Laws in the Faculty of Graduate Studies, University of British Columbia, pp 48-49 [Emphasis added.]

their contract to continue work (and continue incurring costs) even though their payment for work already performed has been delayed.

The economic realities of the current construction payment system for federal work are quite simple:

- Trade Contractors depend for their livelihood on their ability to bid for sub-contract work from General Contractors or other Trade Contractors.
- This imbalance of power between the Contractors that control the flow of work and Sub-Contractors who depend on that work is reflected in the 'pay-when-paid' provisions of sub-contract agreements. 'Pay-when-paid' provisions provide an effectively unchallengeable pretext for delayed payment.
- Trade Contractors have no realistic choice but to accept 'pay-when-paid' clauses and the frequent and unpredictable payment delays they purport to sanction.
- **The current payment system for federal construction rewards Contractors who delay payment. It provides those Contractors with the opportunity to obtain interest-free cash-flow by delaying payments to Sub-Contractors, while imposing a serious cash-flow risk and a cash-flow on Sub-Contractors.**

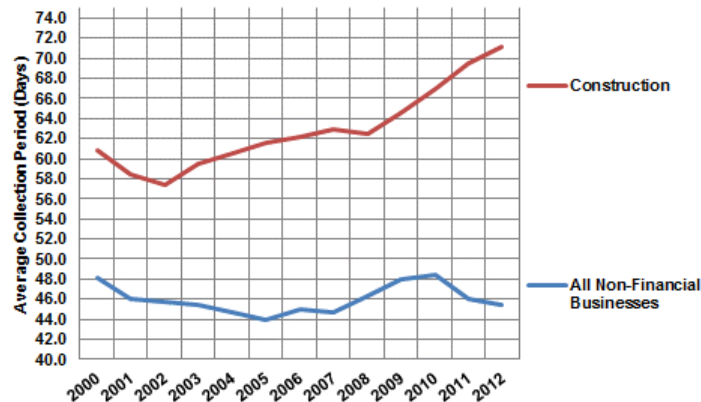
Contractors that engage in opportunistic payment delays enjoy an unfair competitive advantage over those Contractors that honour their payment obligations promptly. **Instead of a level playing field, the current payment system for federal construction work confers an unfair competitive advantage on those who operate opportunistically while at the same time imposing additional risks and costs on those who actually carry out the construction work.**

**The unavoidable reality is that, in a pyramid structure, it is always in the interests of those higher up in the pyramid to delay payment to those further down the pyramid.** The current system reflects the incentives that are inherent in it. Nothing will change in the absence of legislated payment norms. **The current system is like the leaning tower of Pisa: it can only lean in one direction and that direction is towards the interests of the Contractors that control the flow of work.**

### **3. The Nature of Payment Risk**

Figure No. 1 compares the trend in the average duration of receivables in the construction industry with the average for all non-financial industries.

Figure No. 1  
 Average Collection Period (Days) for Receivables:  
 Construction Industry compared to All Non-Financial Businesses, 2000 - 2012 (Canada)  
 Based on Statistics Canada, CANSIM, Table No. 180-0003



It is clear from Figure No. 1 that **the average duration of receivables in the construction industry is both significantly higher than the all-industries average, and is increasing.**

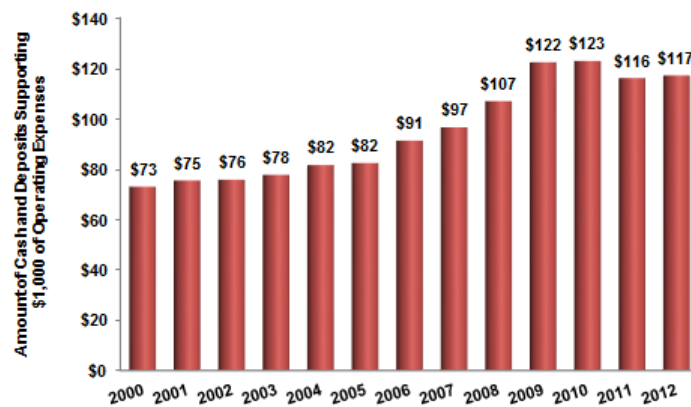
To appreciate the significance of this trend and its implications for Trade Contractors, it is important to understand the concept of ‘tail risk’. **In 2007, the average duration of a receivable in the construction industry was 62.8 days (8.97 weeks). By 2012, the average duration had increased to 71.1 days (10.16 weeks).** If this were caused by an 8.3 day increase in the collection period for a typical receivable, it might be inferred that the increase in late payment risk was comparatively moderate. However, the increase in the average collection period was actually caused by an increase in the proportion of payments that fell into the significantly delayed category. Although this ‘tail risk’ probably affects fewer than 10% of receivables, the effect is to create a much higher degree of uncertainty into overall cash-flow.

Most Trade Contractors are small employers. The majority of Trade Contractors employ fewer than 20 employees.<sup>5</sup> Trade Contractors often commit all or a large proportion of their resources to a single project. In these circumstances, there are serious consequence when there is an increase in cash-flow risk. **A delay in of three or four months in making a payment, when a project is absorbing all or virtually all of a Trade Contractors’ business resources, puts the survival of the business at risk.**

To protect against ‘tail risk’, Trade Contractors need to maintain larger cash balances than would otherwise be required to finance their operations. Figure No. 2 shows the trend in the amount of cash that construction companies need to support \$1,000 of their business operations. As can be seen, in 2000 this was \$73 of cash balances per \$1,000 of operational expenditures. By 2012, the required cash balance had increased by 60% to \$117. The cause was clear: the risk of late payment increased significantly over the decade (as evidenced by the increase in the duration of receivables) and the only defence against the risk of an interruption to cash-flow was a significant increase the amount of *idle* cash.

<sup>5</sup> Statistics Canada, CANSIM, Table 282-0076

Figure No. 2  
 Amount of Cash and Deposits Supporting \$1,000 of Operating Expenses  
 in the Construction Industry, Canada, 2000 – 2012  
 Calculations based on Statistics Canada, CANSIM Table No. 180-0003



The amount of idle cash that construction companies must maintain to support their operations may seem somewhat removed from the concerns of public policy. However, it should be borne in mind that idle cash is just that: it is idle. Idle cash does not employ anyone. Idle cash cannot be invested in training new apprentices. Nor can idle cash be used to finance new machinery or technology. Idle cash is simply a dead weight that contractors in the construction industry are forced to carry to protect themselves against interruptions in cash-flow arising from deliberate late payment.

#### 4. Consequences of the Increase in Late Payment Risk

The increase in late payment risk has had negative consequences for both workers and the federal government:

1. **Employment is lower** because the amount of operating expenses that a Trade Contractor can support with a given amount of working capital has been reduced by the increase in payment risk.
2. Some Trade Contractors have undoubtedly ‘off-loaded’ their payroll risk by increasing the number of self-employed, independent operators in their work force. This has **reduced source deductions** and increased the likelihood of earnings being under-reported to CRA.
3. Increased payment risk has led to **fewer apprenticeships** because Trade Contractors are less willing to make the long-term employment commitments that are required to recoup an investment in apprentice training.
4. Increased payment risk has caused Trade Contractors to curtail their fixed costs and therefore to **make fewer investments in new machinery and equipment**. In turn,

this has reduced the long-term productivity trend in the construction industry and raised overall construction costs.

5. **Federal government construction costs are higher** because Trade Contractors have incorporated into their bids a factor to reflect the risk of late payment by General Contractors.
6. The costs of federal construction work are also higher because the increase in late payment risk reduces the amount of work that Trade Contractors can afford to take on. As a result, **the size of the bidding pool is reduced.**
7. The spread of late payment practices has put competitive pressure on others to adopt the same opportunistic conduct. The result is an erosion of standards and an **undermining of the level playing field** which is essential for a healthy market.

## **Current Administrative Measures have not solved the Late Payment Problem**

To its credit, Public Works and Government Services Canada (PWGSC) has tried a number of measures (and suggested others) to address the late payment problem. We appreciate this recognition of the late payment problem. However, the steps taken (or proposed) do not get at the heart of the problem. As will be discussed in the next section, this also has been the experience of virtually every other comparable jurisdiction. Those jurisdictions adopted statutory payment norms because that is the only remedy that achieves the objective of prompt payment.

***Payment for Work Not in Dispute:*** PWGSC's policy is to pay for all construction work that is performed satisfactorily. If there is a dispute over performance, payment is only withheld on that work. We fully endorse this policy. The difficulty is that **this policy does not oblige Contractors to apply the same principle to their Sub-Contractors.** Contractors can still withhold the totality of payment over a dispute that pertains to only a portion of the work performed by their Sub-Contractor. This pretext can be used to delay payment when there is no real dispute and there is no rapid adjudication system to resolve disputes.

***Statutory Declarations:*** PWGSC requires Contractors to submit a statutory declaration with each invoice swearing that all payment obligations have been met. There are two difficulties with this remedy. In the first place, these declarations are retrospective. They do not prevent future payment delays. Second, **if a payment is withheld owing to a purported dispute over performance, the statutory declaration can still be submitted since technically the withheld payment is not a required payment, pending resolution of the performance dispute.**

***Contract Security:*** PWGSC requires security for all work estimated at more than \$100,000. **This provides protection against non-payment. It does not address late payment.**

***Standard Construction Documents:*** PWGSC requires that Contractors use industry standard contracts and practices. That provides no comfort whatsoever. **Standard practice is for Contractors to use their own standard contracts or to amend CCA standard contracts. Moreover, the CCA and CCDC standard contracts do not contain unqualified prompt payment requirements.**



## Answers to Objections to Prompt Payment Legislation

**Protecting the Public Interest:** The proposed Prompt Payment legislation would *not* require the federal government or a Contractor to pay for work that is in dispute. **Prompt Payment obligations would apply only to work over which there is no dispute. The right of the federal government to withhold payment for work that has not been performed satisfactorily would not be diminished in any way.**

**No New Liabilities:** **The proposed legislation does *not* create any new liabilities for the federal government.** If a Contractor does not comply with its Prompt Payment obligations to Sub-Contractors, there is no liability that attaches to the Crown. Similarly, if a Sub-Contractor does not comply with Prompt Payment obligations to a Sub-Sub-Contractor, there is no liability that attaches to either the Prime Contractor or to the Crown. The obligation to pay interest on late payments applies only to the party that is delaying payment for work that is not in dispute.

**A Tested Solution:** While it is true that Prompt Payment legislation has not been adopted in any Canadian jurisdiction, as will be described in the next section, **most other jurisdictions in the OECD region have adopted Prompt Payment legislation.** Of particular relevance, this includes (for the public sector) all U.S. jurisdictions – federal and state – except New Hampshire. Prompt Payment legislation has also operated for a number of years in a number in other common law jurisdictions, namely the U.K., Ireland, Australia (state and federal) and New Zealand. The European Union has adopted a Directive requiring all of its member states to enact Prompt Payment legislation. No jurisdiction that has adopted Prompt Payment legislation has rescinded that legislation. In fact, the trend has been to extend its principles. Prompt Payment is a tested solution.

**Voluntary Industry Codes:** Voluntary codes have *not* worked in Canada or in any other jurisdiction. Legislation was adopted in other jurisdictions because industry solutions failed there, as they have failed in Canada.

## Scan of Other Jurisdictions

**United States:** In 1982, the U.S. federal government adopted the *Prompt Payment Act*. The initial version of the *Act* required that the federal government and its agencies pay contractors within 30 days of receipt of a valid invoice. The *Act* also provided for interest on late payments. In 1988 the *Prompt Payment Act* was amended to require General Contractors to pay Sub-Contractors and Sub-Contractors to pay Sub-Sub-Contractors within the same specified time frame. Interest penalties also apply. Both the prompt payment obligations and the interest penalty flow down to all tiers of Sub-Contractors.<sup>6</sup>

The payment cycle set out in the *Prompt Payment Act* is as follows:

- the U.S. government and federal agencies are obliged to make a progress payment to the General Contractor no later than 14 days after

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<sup>6</sup> *Prompt Payment Act*: 31 U.S.C. §§ 3901 *et seq.*- <http://uscode.house.gov/download/pls/31C39.txt>

receipt of a proper invoice. The final payment is due no less than 30 days after receipt of the invoice and final acceptance of the work;

- the General Contractor is obliged to pay Sub-Contractors no later than 7 days after receipt of a proper invoice and acceptance of the work;
- the 7 day obligation extends down the contracting chain; and
- the interest rate on late payments is prescribed by regulation

Similar legislation applying to public sector construction has been adopted by *every* state, except New Hampshire. Some states also bind their municipal governments. In other states, local governments have enacted their own prompt payment bylaws that reflect the standards in the state legislation. At present, 31 states also have legislation applying prompt payment obligations to private construction projects.

**European Union:** In 2011, the E.U. amended an earlier Directive on prompt payment. The revised E.U. directive establishes a payment period of 30 days for the public sector and 60 days for the private sector. The directive also provides for interest on late payments. Member states must implement the Directive no later than March of 2013.

**United Kingdom:** A 1994 report on the construction industry commissioned by the U.K. government drew attention to the damage to the industry caused by payment delay.<sup>7</sup> The *Housing Grants, Construction and Regeneration Act, 1996* (commonly known as the ‘*Construction Act*’) contains the ‘Scheme for Construction Contracts’.<sup>8</sup> The default payment period under the “Scheme” is seven days. The “Scheme” applies to payment obligations between General Contractors and Sub-Contractors. The *Construction Act* also provides for a 28-day expedited adjudication system to settle performance disputes. The prompt payment provisions of the original 1996 *Act* were subsequently strengthened by the *Local Democracy, Economic Development and Construction Act 2009, Part 8* (“*Construction Contracts*”).

**Ireland:** In 1997, Ireland adopted the *Prompt Payment of Accounts Act* which required public agencies to pay their accounts within 45 days. Interest charges apply to late payments. In 2011, Ireland adopted the *Construction Contracts Act* which is modelled in key respects on the U.K.’s *Construction Act*. The *Construction Contract Act* applies to both the public sector and the private sector. *Per* the E.U. directive, the payment period is 30 days and late payments are subject to interest charges. Like the U.K. *Act*, the Irish statute also introduces a system of rapid and expedited adjudication to resolve payments delayed by a dispute over performance. Similarly, like the U.K. *Act*, Ireland’s *Construction Contracts Act* empowers the Minister to establish a Schedule of default contract terms that apply in the absence of an agreement between a General Contractor and a Sub-Contractor or between a Sub-Contractor and a Sub-Sub-Contractor.

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<sup>7</sup> Latham, M., *Construction the Team, Final Report of the Government/Industry Review of Procurement and Contractual Arrangements in the UK Construction Industry* (United Kingdom: Her Majesty’s Stationary Office, 1994) p 84 (part of Recommendation No. 25)

<sup>8</sup> United Kingdom, *Housing Grants, Construction and Regeneration Act, 1996* <http://www.legislation.gov.uk/ukpga/1996/53/contents>

**Australia:** Prompt payment legislation in Australia operates at both the Commonwealth (*i.e.*, federal) level and at the state level. The process of payment reform began in New South Wales which accounts for approximately one-third of construction activity in Australia. In 1997, the government of New South Wales enacted the *Building and Construction Industry Security of Payment Act 1999*. The *Act* was subsequently amended to close loop-holes in the original version.<sup>9</sup> The New South Wales statute expressly nullifies ‘pay-when-paid’ clauses. Payments under construction contracts are due within 10 days following the submission of a valid invoice. Interest charges are applicable on late payments. Similar to the U.K. statute, the New South Wales *Act* also provides for an expedited adjudication system to resolve payments withheld on the grounds of performance. Similar statutes were adopted by most other Australian states and by the Commonwealth legislature.

**New Zealand:** In 2002, New Zealand enacted the *Construction Contracts Act, 2002*.<sup>10</sup> The New Zealand *Act* is modelled on the Australian and U.K. statutes. The *Construction Contracts Act* voids conditional payments clauses in contracts (*i.e.*, ‘pay-if-paid’ and ‘pay-when-paid’) and prohibits contracting out of the *Act*. Payment is due within 20 days of a proper invoice being submitted. The *Act* provides for expedited adjudication of disputes where a payment is withheld for reasons of alleged deficiency.

Most jurisdictions in the OECD region have concluded that the problem of late payments in the construction industry can only be remedied by adopting statutory timeframes governing payments by owners (in the public and private sector) to General Contractors and by General Contractors to Sub-Contractors. By adopting Prompt Payment legislation, the Government of Canada will not be breaking new ground. On the contrary, the federal government will be building on more than three decades of experience in other comparable jurisdictions.

Appendix A provides a 50-state summary of prompt payment legislation in the United States.

## Summary

Prompt Payment legislation has a simple purpose, namely to ensure that payment is made within a reasonable and specified time period for work that is done in compliance with contractual obligations.

Prompt Payment legislation does *not* require payment for work that is not done *per* the contractual requirements. **The Government of Canada and its agencies would still have an undiluted right to withhold payment for work that they regard as unsatisfactory, pending either remedy of the deficiency or resolution of the dispute.**

**The Government of Canada would *not* assume any new liabilities** as a result of non-compliant conduct on the part of General Contractors or Sub-Contractors.

**Prompt Payment legislation will end the practice of delaying payments for reasons that have nothing to do with the performance of a Trade Contractor, but stem entirely from the financial advantages that**

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<sup>9</sup> New South Wales, *Building and Construction Industry Security of Payment Act 2002* <http://www.legislation.nsw.gov.au/maintop/view/inforce/act+46+1999+cd+0+N>

<sup>10</sup> New Zealand enacted the *Construction Contracts Act, 2002* <http://www.nadr.co.uk/articles/published/AdjudicationNewZealand/ConstructionContractsAct2002NZ.pdf>

**accrue to a Contractor when payment is delayed.** Under a Prompt Payment system, if a Contractor delays payment of a valid invoice beyond a specified time period, interest must be paid at a stipulated rate. After a further specified time period, if payment has still not been made, the Trade Contractor would not be obliged to continue working without payment.

The *status quo* does not work. **Data show that payment periods in the construction industry have been increasing and that the risk of late payment (as distinct from non-payment) has also increased.**

The negative effects of increased payment risk include: higher construction costs, less employment in the construction industry, few apprenticeships, less investment in machinery and equipment, lower productivity trends and a 'tilted playing field' that rewards opportunism while putting honourable contactors at a competitive disadvantage.

Every major, comparable jurisdiction has adopted Prompt Payment legislation. In the United States, the federal government and all states (except New Hampshire), have Prompt Payment statutes for government construction work.

PWGSC has instituted a number of administrative measures to encourage voluntary prompt payment. These measures – while laudable – have not achieved the desired result.

**The Government of Canada needs to recognize – as have other jurisdictions – that the only solution to systemic late payment in the construction industry is to legislate Prompt Payment.**



# **Canada Prompt Payment Act**

## SHORT TITLE

1. This Act may be cited as the *Canada Prompt Payment Act*.

## PURPOSE OF ACT

2. The purpose of this Act is to provide for the timely payment of funds by government institution, contractor and subcontractor payers upon construction contracts in which government institutions are owners so as to lessen the risks faced by contractors and subcontractors and strengthen the stability of the construction industry.

## INTERPRETATION

3. In this Act,

**“change”** or **“changes”** means any variation to a construction contract which:

- (a) varies the price or the method of calculation of the price;
- (b) adds to or deletes from the amount of construction work supplied or to be supplied;
- (c) varies the method of performance of construction work; or
- (d) varies the schedule for performance of construction work;

**“construction contract”** means a contract or agreement wherein a party undertakes to provide construction work in connection with an improvement and made between:

- (a) an owner or an agent of the owner, and a contractor;
- (b) a contractor and a subcontractor; or
- (c) a subcontractor and another subcontractor;

**“construction work”** means the supply of labour, services and materials, or any combination thereof, in connection with an improvement, and includes the provision of design services;

**“contractor”** means any person performing construction work pursuant to a construction contract with the owner or an agent of the owner, and may include a material supplier;

**“Crown”** means the federal Crown of Canada;

**“day”** or **“days”** means calendar day or calendar days, as the context requires;

**“final payment”** includes payment or credit for any change. For greater certainty, any single or one-time payment for carrying out construction work under a construction contract shall be deemed to be a final payment;

**“government institution”** means

(a) any department or ministry of state of the Government of Canada, or any body or office listed in Schedule I; and

(b) any parent Crown corporation, or any wholly-owned subsidiary of such a corporation, within the meaning of section 83 of the *Financial Administration Act*.

**“improvement”** means, in respect of any land,

(a) any alteration, addition or repair to the land;

(b) any construction, alteration, repair, restoration, maintenance, erection or installation on the land, including any temporary work, and also including the installation of industrial, mechanical, electrical or other equipment on the land or on any building, structure or works on the land that is essential to the normal or intended use of the land, building, structure or works; or

(c) the complete or partial demolition or removal of any building, structure or works on the land;

**“material supplier”** means a contractor or subcontractor who supplies every kind of movable property,

(a) that becomes, or is intended to become, part of the improvement, or that is used directly in the making of the improvement, or that is used to facilitate directly the making of the improvement; or

(b) that is equipment rented without an operator for use in the making of the improvement;

**“owner”** means any government institution having an interest in real property at whose request and,

(a) upon whose credit;

(b) on whose behalf;

(c) with whose privity or consent; or

(d) for whose direct benefit,

an improvement is made to the real property;

**“payee”** means any contractor or subcontractor entitled to receive payment directly from a payer under a construction contract;

**“payer”** means any owner, contractor or subcontractor obligated to make payment directly to a payee under a construction contract;

**“payment application”** means any invoice, bill or other request for periodic payment, payment upon any change or final payment in relation to and in accordance with the terms of a construction contract;

**“payment certifier”** means the person or entity identified in a construction contract responsible for the issuance of certificates for payment;

**“progress payment”** includes payment or credit for any change;

**“regulations”** means regulations made under this Act;

**“reasonable evidence of financial arrangements”** means evidence reasonably and accurately verifying the owner’s commitment of funds to perform its financial obligations under a contract, and may include verification of budgetary allocations or similar commitments.

**“subcontractor”** means any person performing construction work under a construction contract with a contractor or with another subcontractor, but not with the owner, and may include a material supplier;

**“temporary work”** means a temporary support, structure, facility, service and other temporary item required for the execution of an improvement but that is not incorporated into the improvement.

## **APPLICATION**

4. This Act applies to every construction contract entered into for construction work undertaken by a government institution after the effective date of this Act irrespective of whether or not the governing law of the contract is expressed as being the laws of Canada.

## **EXCLUSIONS**

5. This Act does not apply to:

- (a) a construction contract under which a party undertakes to carry out construction work as an employee of the party for whom the work is to be carried out; and
- (b) any construction contract or class of construction contract prescribed by regulations made under this Act.

## **NO CONTRACTING OUT**

6. No person shall contract out of or waive any of the rights, obligations or remedies provided under this Act and any such contracting out or waiver is void.



## **OBLIGATION TO PAY CONTRACTOR**

7. (1) The owner shall pay to a contractor progress payments for construction work no less frequently than the earlier of:

- (a) monthly; and
- (b) if the terms of the construction contract between them stipulate payments upon shorter intervals than monthly, upon the dates so stipulated for payments under the construction contract.

(2) Where no date for payment of progress payments is provided in the construction contract:

- (a) progress payments shall be made monthly;
- (b) each month the contractor shall submit a payment application dated the last day of the month;
- (c) each payment application shall claim for the value of construction work performed as at the date of the application; and
- (d) payment upon each such payment application shall be made on or before 20 days following the later of:
  - (i) receipt of the payment application by the owner or by the payment certifier on behalf of the owner; or
  - (ii) the last day of the monthly payment period for which the payment application is made.

8. (1) The owner shall pay to a contractor final payment for construction work in accordance with the terms of the construction contract between them on the date provided for such final payment in the construction contract.

(2) Where no date for final payment is provided in the construction contract final payment shall be made:

- (a) 5 days following the issuance of any certificate for final payment issued by the payment certifier; or
- (b) if there is no payment certifier or the payment certifier fails without sufficient cause to issue a certificate for final payment within 10 days of a request to do so, within 15 days after submission of the payment application for final payment.

## **OBLIGATION TO PAY SUBCONTRACTOR**

9. (1) A contractor shall pay to the subcontractor, and a subcontractor shall pay to another subcontractor, progress payments for construction work no less frequently than the earlier of:

- (a) monthly; and
- (b) if the terms of the construction contract between the contractor and subcontractor, or between a subcontractor and another subcontractor, as the case may be, stipulate payments upon shorter intervals than monthly, upon the dates so stipulated for payments under the construction contract.

(2) Where no date for payment of progress payments is provided in the construction contract between the contractor and subcontractor, or between a subcontractor and another subcontractor, as the case may be:

- (a) progress payments shall be made monthly;
- (b) each month the subcontractor shall submit a payment application dated the 25<sup>th</sup> day of the month;
- (c) each payment application shall claim for the value of construction work performed as at the date of the application; and
- (d) payment upon each such payment application shall be made on or before the later of:
  - (i) 30 days following receipt of the payment application by or on behalf of the owner; and
  - (ii) 10 days following the date of a certificate for such payment issued by the payment certifier.

10. (1) A contractor shall pay to the subcontractor, and a subcontractor shall pay to another subcontractor, final payment for construction work in accordance with the terms of the construction contract between them on the date provided for such final payment in the construction contract.

(2) Where no date for final payment is provided in the construction contract final payment shall be made on or before the later of:

- (a) 30 days following the receipt of the final payment application by or on behalf of the owner; and
- (b) 10 days following the date of a certificate for payment issued by the payment certifier.

## **AMOUNT OF PROGRESS PAYMENT**

11. The amount of the progress payment to which a person is entitled under a construction contract shall be:

- (a) the amount provided for payment for construction work under the construction contract, including the payment or credit provided for any changes; or
- (b) if the construction contract does not provide for payment of a specified amount, the actual value of the construction work performed and of the related goods or services supplied, immediately prior to the date of payment for the particular payment period, relative to the value of the entire construction contract including the actual value of all changes.

## **DEEMED APPROVAL OF PAYMENT APPLICATION**

12. (1) A payment application shall be deemed approved or certified for payment unless the party liable for payment, or the payment certifier on its behalf, within 10 days after receipt, provides a written statement to the party delivering such payment application describing the reasons for any disapproval or amendment of such payment application.

(2) Receipt of the payment application by the payment certifier or agent of the owner shall be deemed to be sufficient for the purposes of establishing the date of receipt under subsection (1).

(3) The written statement prescribed by subsection (1) shall contain:

- (a) full particulars of the reasons for any disapproval or amendment of such payment application, including reference to the relevant provisions of the construction contract being relied upon; and
- (b) a statement of the amount of such payment application for which payment is disapproved or amended.

(4) The portion of any payment application for which payment is disapproved or amended,

- (a) shall be limited to a reasonable estimate of the direct loss, damage or cost of completion or correction of construction work for which payment is being disapproved or amended and which direct loss, damage or cost of completion or correction of construction work is otherwise recoverable under the construction contract; and
- (b) to the extent the disapproval of a payment application, or portion thereof, is limited to the valuation or method of valuation of any change, shall be further limited to the reasonable estimate of only such portion of the value of such change as is in dispute.

(5) Provided the party liable for payment provides the written statement as provided in subsection (1), that party may only withhold such amount from the progress payment as may represent the reasonable value of the disputed portion of the construction work.

(6) Payment shall be made upon any payment application:

- (a) where the written statement prescribed by subsection (1) has not been provided; or
- (b) is not provided in accordance with the provisions of this section 12; and in any event
- (c) for the amount of any payment application for which payment is not disapproved or amended, as verified by the statement prescribed in subsection (3).

### **RIGHT TO SUSPEND PAYMENT**

13. (1) In the event a payer fails to make payment to a payee as prescribed by this Act written notice of default shall immediately be provided as follows:

- (a) if the payee is a contractor, the contractor shall provide written notice of default to the owner, and shall provide a copy of such written notice of default to all subcontractors with whom the contractor has entered into a construction contract for that portion of the improvement under which subcontract payments are due or will become due;
- (b) if the payee is a subcontractor, the payee shall provide written notice of default to the payer, and a copy of such written notice of default shall be given to the owner, to all subcontractors with whom the payee has entered into a construction contract for that portion of the improvement under which subcontract payments are due or will become due, and provided the payer is not otherwise the contractor, to the contractor.

(2) Should the payer not remedy the default within the time prescribed in the construction contract between the payer and the payee, or if such construction contract does not provide for a time to remedy the default, within 7 days of the date of delivery of the written notice of default prescribed in subsection (1), the payee may suspend performance of construction work. If the payee suspends performance, the payee shall provide to those persons to whom the payee provided the written notice stipulated by subsection (1) a written notice of suspension of payment.

(3) Provided the written notice of default has been given in accordance with subsection (1) and provided the written notice of suspension of payment has been given in accordance with subsection (2), the time for payment prescribed by this Act to which the payee who provided such written notices is otherwise subject shall be extended to the earlier of:

- (a) the date on which the default which is the subject of the written notice of default prescribed by subsection (1) is corrected; or
- (b) the date on which the default which is the subject of the written notice of default prescribed by subsection (1) is resolved by settlement or agreement.

(4) The amount of payment suspended pursuant to subsection (3) shall be deemed payable as a progress payment or final payment pursuant to this Act.

(5) No suspension of payment in accordance with the provisions of this section 13 shall be deemed to be breach of the construction contract.

(6) Notwithstanding any suspension of the obligation to make payment under any construction contract, the contractor or subcontractor whose payment obligation is suspended pursuant to subsection (3) shall be obliged to pay interest on the amount of payment so suspended from the date the payment was due but for the suspension to the date the payment finally becomes due pursuant to subsection (3), at the rate of interest prescribed in section 14.

#### **INTEREST ON OVERDUE PAYMENTS**

14. Interest is payable on the unpaid amount of any progress payment or final payment that becomes due and payable in accordance with this Act, calculated at the rate prescribed by the *Federal Courts Act* for prejudgment interest, or at the rate prescribed by the construction contract, whichever is the greater.

#### **RIGHT TO SUSPEND CONSTRUCTION WORK AND TERMINATE A CONSTRUCTION CONTRACT UPON NON-PAYMENT**

15. (1) If a contractor or subcontractor undertaking construction work does not receive payment to which it is otherwise entitled pursuant to this Act, that contractor or subcontractor may suspend performance of construction work or terminate the construction contract, in accordance with the provisions of the construction contract.

(2) Where the construction contract contains no provisions for, or prohibits, the suspension of performance of construction work or termination of the contract for failure to make payment, the contractor or subcontractor who does not receive payment to which such person is otherwise entitled pursuant to this Act may, notwithstanding such construction contract, suspend performance or terminate the construction contract in accordance with subsections (3) to (8).

(3) No suspension of construction work or termination of the construction contract pursuant to subsection (2) shall be effective unless the contractor or subcontractor intending to suspend or terminate,

(a) provides written notice to its payer of such intention to suspend construction work or terminate the construction contract in accordance with subsection (4); and

(b) the party receiving such notice fails to correct the default within 7 days following receipt of such notice.

(4) The written notice prescribed under subsection (3) shall provide that if the default is not corrected within 7 days following receipt of such written notice, the contractor or subcontractor shall suspend construction work or terminate the construction contract.

(5) Without affecting any right to receive any payment otherwise due upon the construction contract, a construction contract upon which construction work has been suspended in accordance with the provisions of subsection (2) may be terminated 7 days following written notice of termination provided by the contractor or subcontractor to its payer.

(6) No suspension or termination in accordance with the provisions of this section 15 shall be deemed to be a breach of the construction contract.

(7) Upon any resumption of construction work following a suspension thereof in accordance with subsection (2), the party resuming construction work shall be entitled to the payment of reasonable remobilization costs, in addition to such other amounts to which such party is otherwise entitled under the construction contract or under this Act.

(8) The rights and remedies prescribed by this section 15 shall be in addition to those rights and remedies prescribed by section 13.

### **RIGHT TO INFORMATION**

16. (1) A subcontractor may, at any time, by written request, require its payer under a construction contract to disclose the due dates for payment of progress payments and final payment to such payer under a construction contract.

(2) Every payer under a construction contract other than the owner shall provide notification to its payees of the date or dates of all monies or payments received by such payer on account of the construction work.

(3) The notification of payment received stipulated in subsection (2) shall be made forthwith upon receipt of payment, and may be made in writing, by posting on a website, or in any other manner as will reasonably allow access by such payees to the information contained in such notification.

(4) If the payer fails or refuses to comply with the obligations in subsection (1), (2) or (3), or if any person knowingly or negligently misstates the information provided, such person shall be liable to the person entitled to receive such information for any damages sustained by reason thereof.

(5) Upon application, the court may at any time order a person to comply with the obligations prescribed in subsections (1), (2) and (3) and, when making the order, the court may make any order as to costs as it considers appropriate, including an order for costs on a substantial indemnity basis.

### **LIMITATION ON HOLDBACKS**

17. No construction contract shall provide any right to maintain any holdback or other withholding of funds.

### **ACT BINDS THE CROWN**

18. This Act is binding on the Crown.

### **REGULATIONS**

19. The Governor in Council may make regulations for carrying the purposes and provisions of this Act into effect.

### **COMMENCEMENT**

20. This Act or any of its provisions comes into force on the day it receives Royal Assent.

## Fifty State Survey of Prompt Payment Acts for Construction Contracts

STATE	CITATION	Owner to Prime Contractors	Prime to Subcontractors	Subcontractors to Lower Tiers	Interest / Penalties
<b>Federal</b> Public Contracts	31 U.S.C. §§ 3901 et seq.; 48 CFR § 52.232-27.	Progress: 14 days after invoice. Final: 30 days after invoice and final acceptance.	7 days after payment.	7 days after payment.	Per Contract Disputes Act; compounded monthly. No fees provision.
<b>Alabama</b> Private	Ala. Code §§ 8-29-1 to 8-29-8. (Excludes residential contracts of less than \$10,000).	30 days after receipt of pay request unless otherwise agreed.	7 days after receipt of payment unless otherwise agreed.	7 days after receipt of payment unless otherwise agreed.	1% per month; attorneys' fees to the prevailing party.
<b>Alabama</b> Public	Ala. Code § 41-16-3.	30 days after invoice.	7 days after payment unless otherwise agreed.	7 days after payment unless otherwise agreed.	Interest at current statutory rate. No fees provision.
<b>Alaska</b> Private	None.				
<b>Alaska</b> Public	Alaska Stat. §§ 36.90.200-36.90.290. (Interest rate on amounts due set by Alaska Stat. § 45.45.010.)	30 days after payment request; but if the political subdivision is planning to use grant money for money, 21 days from later of invoice or political subdivision's actual receipt of grant money.	8 working days after receiving payment.	8 working days after receiving payment.	Interest at 10.5% per year, accruing from the 21st day after payment is due for payments to the prime or accruing from the date due for the lower tiers. No fees provision.



## Fifty State Survey of Prompt Payment Acts for Construction Contracts

STATE	CITATION	Owner to Prime Contractors	Prime to Subcontractors	Subcontractors to Lower Tiers	Interest / Penalties
<b>Arizona</b> Private	Ariz. Rev. Stat. §§ 32-1129 to 32-1129.06.	7 days after approval of invoice (i.e., not less than 21 days after invoice) unless otherwise provided in the contract and bid plans and specs.	7 days after receipt of each progress or final payment.	7 days after receipt of each progress or final payment.	1.5% per month; attorneys' fees to successful party in any action or arbitration.
<b>Arizona</b> Public	Ariz. Rev. Stat. §§ 34-221, 41-2576, 41-2577, 28-6924 (highway), schools exempt: § 15-213.	14 days after invoice approved (i.e., not less than 21 days after invoice). Final payment 60 days after acceptance.	7 days after payment "unless otherwise agreed" except no contract may "materially alter" a contractor/ subcontractor/o supplier's right to "prompt and timely payment."	7 days after payment "unless otherwise agreed" except no contract may "materially alter" a contractor/ subcontractor/o supplier's right to "prompt and timely payment."	1.0% per month. No fees provision.
<b>Arkansas</b> Private	None.				
<b>Arkansas</b> Public	Ark. Code § 19-4-1411.	Maximum of 5 working days after invoice, excluding time of transmittal from one party to another.	No provision.	No provision.	8% per annum. No fees provision.
<b>California</b> Private	Cal. Bus. & Prof. Code § 7108.5, Cal. Civil Code §§ 3260-3260.1.	30 days after invoice.	10 days after payment unless otherwise agreed. Final payment 45 days after project completion.	10 days after payment unless otherwise agreed.	2% per month and attorneys' fees to "prevailing party".

## Fifty State Survey of Prompt Payment Acts for Construction Contracts

STATE	CITATION	Owner to Prime Contractors	Prime to Subcontractors	Subcontractors to Lower Tiers	Interest / Penalties
<b>California</b> Public	Cal. Bus. & Prof. Code § 7108.5, Civil Code § 3262.5, Pub. Cont. Code §§ 7107, 10261.5, 10262.5, 10853.	30 days after invoice (39 days for state universities).	10 days after payment (15 days for a prime to a public utility to pay subs).	10 days after payment unless otherwise agreed.	For payments to subs, 2% interest per month and attorneys' fees to "prevailing party." For payments to prime, interest at 10% per year, no fees.
<b>Colorado</b> Private	None.				
<b>Colorado</b> Public	Colo. Rev. Stat. §§ 24-91-101 to 24-91.103.	"At the end of each calendar month, or as soon thereafter as practicable."	7 days after receipt of payment.	7 days after receipt of payment.	For payments to subcontractors, 15% per annum or amount specified in contract "whichever is higher." No fees provision.
<b>Connecticut</b> Private	Conn. Gen. Stat. §§ 42-158i to 42-158j.	30 days after written request for payment.	30 days after receipt of payment.	30 days after receipt of payment.	1% per month beginning 10 days after notice of nonpayment received by owing party; attorneys' fees only upon finding payment "unreasonably withheld."

## Fifty State Survey of Prompt Payment Acts for Construction Contracts

STATE	CITATION	Owner to Prime Contractors	Prime to Subcontractors	Subcontractors to Lower Tiers	Interest / Penalties
<b>Connecticut</b> Public	Conn. Gen. Stat. §§ 4a-71 to 4a-75, 49-41c.	45 days after invoice unless otherwise agreed.	30 days after payment.	See Private.	For payment to prime interest at rate equal to "monthly effective yield for the [state's] Short Term Investment Fund." No fees provision.
<b>Delaware</b> Private	Del. Code, Title 6, §§ 2301, 3501 to 3509. (Excludes construction of 6 or fewer residential units).	Within 30 days after invoice or "end of the billing period".	15 days after payment unless otherwise agreed.	15 days after payment unless otherwise agreed.	Unless otherwise agreed, the legal rate interest is 5% over the Federal Reserve Discount Rate. Unless otherwise agreed, attorneys' fees to "substantially prevailing party". Additional damage award for "amounts wrongfully withheld" is permitted.

## Fifty State Survey of Prompt Payment Acts for Construction Contracts

STATE	CITATION	Owner to Prime Contractors	Prime to Subcontractors	Subcontractors to Lower Tiers	Interest / Penalties
<b>Delaware</b> Public	Del. Code, Title 29, § 6516(f).	Progress payments determined by contracts for contracts of less than 90 days. For all other contracts monthly progress payments must be made within 21 days after the estimate of work is certified and approved or, within 10 days of the federal agency's approval if federal approval is needed. Final payment due 60 days after final completion and acceptance.	21 days after payment unless otherwise specified in writing.	21 days after payment unless otherwise specified in writing.	Interest is not to exceed prime interest rate as established by the Federal Reserve plus 2%; No fees provision. Additional damage award for "amounts wrongfully withheld" is permitted.
<b>D.C.</b> Private	None.				
<b>D.C.</b> Public	D.C. Code §§ 2-221.01 to 2-221.06.	30 days, excluding legal holidays, after invoice unless otherwise agreed.	7 days after payment.	7 days after payment.	Interest at rate determined by mayoral regulation but computed at a rate not less than 1%; No fees provision.
<b>Florida</b> Private	Fla. Stat. §§ 713.346, 715.12.	Per contract.; final payment within 14 days after completion.	Per contract. Must pay undisputed obligations within 30 days after payment becomes due, or within 30 days after invoice for the work is is received.	Per contract. Must pay undisputed obligations within 30 days after payment becomes due, or within 30 days after invoice for the work is is received.	Interest at judgment rate; Attorneys' fees for prevailing party in payment disputes between contractors and subs, subs and lower tiers.

## Fifty State Survey of Prompt Payment Acts for Construction Contracts

STATE	CITATION	Owner to Prime Contractors	Prime to Subcontractors	Subcontractors to Lower Tiers	Interest / Penalties
<b>Florida</b> Public	Fla. Stat. §§ 255.0705 et seq., 215.422. Localities: §§ 218.70 et seq.	30 days after invoice; Localities: 25 business days after invoice if approval	10 days after payment.	7 days after payment.	Interest at 1% per month. ; Attorneys' fees for prevailing reasonable basis in law
<b>Georgia</b> Private	Ga. Code §§ 13-11-1 to 13-11-11. (Excludes contracts for improvements to real property intended for residential purposes which consists of 12 or fewer residential units).	15 days after invoice.	10 days after payment.	10 days after payment.	Interest at 1% per month unless otherwise agreed; Attorney's fees for prevailing party.

## Fifty State Survey of Prompt Payment Acts for Construction Contracts

STATE	CITATION	Owner to Prime Contractors	Prime to Subcontractors	Subcontractors to Lower Tiers	Interest / Penalties
<b>Georgia</b> Public	Ga. Code §§ 13-11-1 to 13-11-11.	15 days after invoice (small localities — counties with populations less than 10,000, municipalities with populations less than 2,500—excluded).	10 days after payment.	10 days after payment.	Interest at 1% per month unless otherwise agreed; Fees for prevailing party.
<b>Hawaii</b> Private	HRS §§ 444-1 and 444-25.	No provision.	60 days after invoice, but may be contingent on receipt of funds held in escrow or trust if disclosed on bid solicitation.	60 days after invoice, but may be contingent on receipt of funds held in escrow or trust if disclosed on bid solicitation.	Interest at 1% per month beginning on the 60th day following receipt of the statement by the contractor; No fees provision.
<b>Hawaii</b> Public	HRS §§ 103-10 to 103-10.5. HB 3036	30 days after invoice.	10 days after payment.	See Private.	Interest at prime plus 2% for prime contractor, commencing the 30th day following receipt of invoice; subs get 1.5% per month if final payment is delayed by responsible party; No fees
<b>Idaho</b> Private	None.				
<b>Idaho</b> Public	Idaho Code §67-2302.	60 days after invoice unless otherwise agreed.	No provision.	No provision.	Interest at the midterm federal rate plus 2% for prime contractor. No fees provision.

## Fifty State Survey of Prompt Payment Acts for Construction Contracts

STATE	CITATION	Owner to Prime Contractors	Prime to Subcontractors	Subcontractors to Lower Tiers	Interest / Penalties
<b>Illinois</b> Private	Title 815 ILCS 603/1-603/99. (Excludes projects of single family residences or multi-family residences with 12 or fewer units in a single building).	40 days after invoice (25 to approve, 15 to pay after approved). Payment deemed approved 25 days after receipt of invoice unless Owner notifies contractor in writing of reason for withholding payment.	15 days after payment.	15 days after payment.	Interest at the rate of 10% per annum. No fees provision.
<b>Illinois</b> Public	Title 50 ILCS 505/1 - 505/9 (localities); title 30 ILCS 540/0.01- 540/7 (state).	60 days after invoice (30 days to approve the invoice and then 30 days to pay).	15 days after payment.	15 days after payment.	Interest at 1% per month for primes; 2% per month for subs and sub-subs; No fees provision.
<b>Indiana</b> Private	None.				

## Fifty State Survey of Prompt Payment Acts for Construction Contracts

STATE	CITATION	Owner to Prime Contractors	Prime to Subcontractors	Subcontractors to Lower Tiers	Interest / Penalties
<b>Indiana</b> Public	Ind. Code §§ 5-17-5-1 to 5-17-5-5, 5-16-5.5-1 to 5-16-5.5-8. (Excludes contracts less than \$200,000).	State: 35 days after invoice for progress payments. 61 days following the date of substantial completion for final payment. Localities: at least 45 days after invoice. Some highway projects are subject only to highway dept. rules.	10 days after receipt of any payment by state agency.	No provision.	Interest at 1% per month which must be distributed to subcontractors if contractor was “unable to make timely payments”; No fees provision.
<b>Iowa</b> Private	None.				
<b>Iowa</b> Public	Iowa Code §§ 573.12 and 573.14.	14 days after invoice for progress payments, but up to 30 days if otherwise agreed in contract; 40 days after acceptance for final payment, but up to 50 days if otherwise agreed to in contract.	7 days after payment.	No provision.	Interest rate depends on the state agency; No fees provision.
<b>Kansas</b> Private	Kan.Stat. 16-1801 to 16-1807. (Excludes construction of single family and multifamily residential housing of 4 units or less).	30 days after receipt of timely, completed, and undisputed request for payment.	7 business days after payment.	7 business days after payment.	Interest at 18% per year; fees for “prevailing party.” 16-1806.
<b>Kansas</b> Public	Kan. Stat. §§ 75-6401 to 75-6407 and 16-1901 to 16-1908, highway excluded.	Unless otherwise agreed, 30 days after request for payment or up to 45 days in cases of extenuating circumstances.	7 days after payment.	7 days after payment.	Interest at 18% per year, compounded monthly, beginning 37 days after invoice; Fees for “prevailing party.”



## Fifty State Survey of Prompt Payment Acts for Construction Contracts

STATE	CITATION	Owner to Prime Contractors	Prime to Subcontractors	Subcontractors to Lower Tiers	Interest / Penalties
<b>Kentucky</b> Public and Private	KRS 371.400 to 371.425: §§ 45.451 45.458 (prompt payment by government in general). Applies to payments on contracts entered on or after June 26, 2007. Excludes residential construction and construction for regulated utilities.	30 business days after request for payment; contractor must give notice of nonpayment after 25 business days; 45 business days for progress payments by post-secondary institutions and board of education; final payment 30 days after substantial completion.	15 business days after payment.	15 business days after payment.	Interest at 12% per year; attorney fees only if losing party “acted in bad faith.”
<b>Louisiana</b> Private	La. Rev. Stat. § 9:2784 (Excludes contracts for construction of immovables for residential purposes).	No provision.	14 days after payment.	14 days after payment.	Penalty of 1.5% per day up to 15% max of the payment due; attorneys’ fees for collection; any fees associated with defending against claim can be awarded “without merit.”

## Fifty State Survey of Prompt Payment Acts for Construction Contracts

STATE	CITATION	Owner to Prime Contractors	Prime to Subcontractors	Subcontractors to Lower Tiers	Interest / Penalties
<b>Louisiana</b> Public	La. Rev. Stat. §§ 9:2784, 38:2191, 48:251.5 (highway)	Progress payments per contract; final payment within 45 days after receipt of “clear lien certificate.” Highway contracts: 30 days after invoice for progress payments and 45 days after substantial completion.	See Private.	See Private.	Highway primes entitled to legal rate of interest; other primes get no interest; Fees to prevailing party. Within 45 days following receipt of a “clear lien certificate,” the public entity will be liable for reasonable attorney fees.
<b>Maine</b> Public and Private	10 M.R.S.A. § 1111 <i>et seq.</i> (Me. Rev. Stat., Title 10, §§ 1111 <i>et seq.</i> (excludes highway)); <i>cf.</i> Title 5, §§ 1551 <i>et seq.</i> (prompt payment by government in general).	Progress payments as agreed. If not specified in contract, then 20 days after invoice or end of billing period whichever is later; final payment 30 days after “final acceptance.”	As agreed. Notwithstanding any contrary agreement, 7 days after payment or invoice, whichever is later. Final payments: 30 days after final acceptance.	7 days after payment or invoice, whichever is later. Final payment: 30 days after final acceptance.	Interest at statutory rate, plus 1% per month penalty for the prevailing party; Attorneys’ fees for “substantially prevailing party.”

## Fifty State Survey of Prompt Payment Acts for Construction Contracts

STATE	CITATION	Owner to Prime Contractors	Prime to Subcontractors	Subcontractors to Lower Tiers	Interest / Penalties
Maryland Private	Md. Code, Real Property, §§ 9-301 to 9-304.	Progress payments as agreed; final payment 30 days after occupancy permit granted or 30 days after owner takes possession unless otherwise agreed. If final payment otherwise agreed, final payment must be within 7 days of the date specified in the contract.	7 days after payment.	7 days after payment.	Interest at the legal rate; Attorneys' fees only awarded for "bad faith" failure to pay "undisputed amounts."
Maryland Public	Md. State Fin. & Proc. §§ 15-101 to 15-108, 15-226.	30 ays after payment comes due under contract or 30 days after the agency received invoice.	10 days after payment.	10 days after payment.	Interest at 9% per year for prime beginning the 31st day after receipt; no provision on interest for subs. No fees provision.
Massachusetts Private	None.				General interest statute adds 12% to judgments in contract actions.

## Fifty State Survey of Prompt Payment Acts for Construction Contracts

STATE	CITATION	Owner to Prime Contractors	Prime to Subcontractors	Subcontractors to Lower Tiers	Interest / Penalties
<b>Massachusetts</b> Public	M.G.L.A. 30 §§ 39F, 39G, 39K; <i>cf.</i> Chapter 29 § 29C (prompt payment by government in general).	Progress payments: 15 days after invoice but 30 days in the case of the commonwealth, including local housing authorities; Final payment due within 65 days of substantial completion.	Progress payments due immediately after receiving payment; final payment to "filed subcontractors" 65 days after substantial completion of that subcontractor's work	No provision.	Federal Reserve "rediscount rate" plus 3% for prime to be prorated to affected subs; Public works payment bond statute provides legal fees for successful claimants. State must act on subcontractor assertions of nonpayment by providing direct payment to the subcontractor.
<b>Michigan</b> Private	None.				
<b>Michigan</b> Public	M.C.L.A. §§ 125.1561 — 125.1565 (highway, housing, schools excluded). Contract of less than \$30,000 or contracts that provide for 3 or fewer payments are also excluded.	Later of 30 days after owner agent approves invoice, or 15 days after agency's receipt of public funds from another agency.	No provision.	No provision.	Prime may charge "reasonable interest"; No attorneys' fees provision.

## Fifty State Survey of Prompt Payment Acts for Construction Contracts

STATE	CITATION	Owner to Prime Contractors	Prime to Subcontractors	Subcontractors to Lower Tiers	Interest / Penalties
<b>Minnesota Private</b>	Minn. Stat. § 337.10.	Monthly progress payments unless otherwise agreed.	10 days after payment.	10 days after payment.	Interest at 1.5% per month; Attorneys' fees for "party requesting payment who prevails in a civil action to collect."
<b>Minnesota Public</b>	Minn. Stat. §§15.71-74 (excludes projects federally funded), 16A.124- 16A.1245 (prompt payments of state agency bill generally required 137.36 (University of MN), 471.425 (localities).	Monthly progress payments, unless otherwise agreed; for localities, 35 (localities with regularly scheduled monthly meetings) or 45 days (localities without regularly scheduled monthly meetings) after invoice or receipt of service whichever is later unless otherwise agreed; for U of MN, 30 days after invoice.	10 days after payment.	No provision.	Interest at 1.5% per month; Attorneys' fees for contractor or subcontractor "who prevails in a civil action to collect interest penalties," however, prime must show bad faith by municipality to recover fees.
<b>Mississippi Private</b>	Miss. Code. §§ 87-7-3, 87-7-5. (Construction of single family dwellings are excluded).	Progress payments as agreed; final payment 30 days after substantial completion, certification, or use by owner.	15 days after payment.	No provision.	Interest at 1% per month for prime; penalty of 0.5% per day up to 15% for subs; No fees provision.
<b>Mississippi Public</b>	Miss. Code §§ 31-5-25, 31-5-27.	Progress payments as agreed, but must be paid within 45 days or subject to interest; final payment 45 days after substantial completion, certification, or use by owner.	15 days after payment.	No provision.	Interest at 1% per month for prime; penalty of 0.5% per day up to 15% of outstanding balance for subs; No fees provision.

## Fifty State Survey of Prompt Payment Acts for Construction Contracts

STATE	CITATION	Owner to Prime Contractors	Prime to Subcontractors	Subcontractors to Lower Tiers	Interest / Penalties
<b>Missouri</b> Private	Rev. Mo. Stat. § 431.180. (Excludes contracts for owner-occupied residential property of 4 units or less).	As agreed.	As agreed.	As agreed.	Court may award up to 1.5% interest per month and attorneys' fees to prevailing party.
<b>Missouri</b> Public (see Private for Localities)	Rev. Mo. Stat. § 34.057.	Progress payments 30 days of invoice or receipt of service whichever is later; final payment 30 days after completion or certification by contracting authority, architect, or engineer.	15 days after payment.	15 days after payment.	Interest at 1.5% per month if payment "not withheld in good faith for reasonable cause"; court "may, in its discretion" award fees to prevailing party.
<b>Montana</b> Private and Localities	Mont. Code Ann. §§ 28-2-2101 to 28-2-2117 (includes localities but not state agencies, <i>cf.</i> § 28-2-2103(2) (receipt of payment from "owner or a state agency"). Excludes residential projects of less than \$40,000.	Monthly unless alternate payment disclosed in the bid documents; invoices deemed approved after 21 days unless alternate payment disclosed in bid docs; payment due 7 days after approval unless alternate payment disclosed in the bid docs.	7 days after payment.	7 days after payment.	Interest at 1.5% per month; Attorneys fees' for prevailing party in court and may be awarded in arbitration.
<b>Montana</b> Public (for Localities, see Private)	Mont. Code §§ 17-8-241 to 17-8-244.	30 days after invoice or receipt of services, whichever is later, unless otherwise agreed.	7 days after payment.	7 days after payment.	Interest for prime at 0.05% per day in absence of good faith dispute, 10% per year in other cases; No fees for prime, for subs see Private.

## Fifty State Survey of Prompt Payment Acts for Construction Contracts

STATE	CITATION	Owner to Prime Contractors	Prime to Subcontractors	Subcontractors to Lower Tiers	Interest / Penalties
<b>Nebraska</b> Private	None.				
<b>Nebraska</b> Public	Neb. Stat. §§ 81-2401 to 81-2408. Neb. Stat. § 39-1349 (highway construction).	45 days after invoice or receipt of services whichever is later. Highway construction: final payments 60 days after project is tentatively accepted.	No provision.	No provision.	Interest at statutory rate for prime for highway construction - 3 points above the average federal composite prime leading rate for prior calendar year; No fees provision.
<b>Nevada</b> Private	Nev. Rev. Stat. §§ 624.606 to 624.630.	21 days after invoice or as otherwise agreed for progress payments; 30 days after availability of improvement for intended use for final payment.	10 days after payment or on or before date payment is due, whichever is earlier.	10 days after payment.	Interest at statutory prime rate or agreed rate, whichever is higher; attorneys' fees "may" be awarded to prevailing party if statutory right to suspend and to terminate is exercised.
<b>Nevada</b> Public	Nev. Rev. Stat. §§ 338.400-338.645.	30 days after invoice for progress payments; 30 days after occupancy, use, or notice of completion, whichever is earlier, for final payment.	10 days after payment.	10 days after payment.	Interest at one statutory rate for primes and another for subs; attorneys' fees unpaid party who prevails.
<b>New Hampshire</b> Private	None.				

## Fifty State Survey of Prompt Payment Acts for Construction Contracts

STATE	CITATION	Owner to Prime Contractors	Prime to Subcontractors	Subcontractors to Lower Tiers	Interest / Penalties
<b>New Hampshire</b> Public	None.				
<b>New Jersey</b> Public and Private	N.J. Stat. §§ 2A:30A-1, 30A-2; 40A:11-16.2 (localities), 52:32-40, 52:32-41 (older law not repealed).	30 days after billing date specified in contract (for localities, must be monthly); however, public entities get extension to billing cycle after “next scheduled public meeting.”	10 days after payment unless otherwise agreed.	10 days after payment unless otherwise agreed.	Interest at prime plus 1% (some highway projects excluded); Attorneys’ fees to prevailing party.
<b>New Mexico</b> Public and Private	N.M. Stat., §§ 57-28-1 to 57-28-11. (Excludes construction contracts for residential property containing 4 or fewer dwelling units).	Progress payments: 21 days after invoice, or 45 days for local public bodies who print notice on each page of the bid plans. Final payment: 10 days after certification of completion upon presentment of required documents.	7 days after payment.	7 days after payment.	Interest at 1.5% per month; court may award attorneys’ fees.



## Fifty State Survey of Prompt Payment Acts for Construction Contracts

STATE	CITATION	Owner to Prime Contractors	Prime to Subcontractors	Subcontractors to Lower Tiers	Interest / Penalties
<b>New York</b> Private	N.Y. Gen. Bus. Law §§ 756 <i>et seq.</i>	Progress payments: monthly billing cycle unless otherwise agreed; 42 days to pay (12 days to approve invoice plus 30 days to pay) unless otherwise agreed; owner gets time extension if lender fails to disburse loan and lender is legally required to do so. Final payment: 30 days after “final approval” for final payment.	7 days after payment.	7 days after payment.	1.5% per month; no fees provision.
<b>New York</b> Public	N.Y. State Fin. Law §§ 139-f, 179-f (pt. of Art. 11-A); Pub. Auth. Law § 2880, Gen. Mun. Law § 106-b; Hwy. Law § 3 8; NYC Procurement Policy Board Rules § 4-06.	30 days after invoice for public agencies, authorities and corporations; 75 days after invoice for highway; NYC rules: 30 days after invoice for progress payments, 60 days after invoice for changes, 60 days after invoice for final payment; for municipalities, 45 days after invoice.	15 days after payment. For municipalities, 7 days after payment.	15 days after payment. For municipalities, 7 days after payment.	Interest at one of two statutory rates, depending on type of public agency for primes; another statutory rate for subs; No fees provision.
<b>North Carolina</b> Private	N.C. Gen. Stat. §§ 22C-1 to 22C-6.	No provision.	7 days after payment.	7 days after payment.	Interest at 1% per month; No fees provision.

## Fifty State Survey of Prompt Payment Acts for Construction Contracts

STATE	CITATION	Owner to Prime Contractors	Prime to Subcontractors	Subcontractors to Lower Tiers	Interest / Penalties
<b>North Carolina</b> Public	N.C. Gen Stat. §§ 143-134 (highway exclusion) to 143-134.1, 143.135.	Progress payments per contract; final payment 45 days after acceptance or occupancy whichever is first.	7 days after payment.	See Private.	Interest at 1% per month; No fees provision.
<b>North Dakota</b> Private	None.				
<b>North Dakota</b> Public	N.D. Cent. Code §§ 13-01.1-01 to 13-01.1-06.	45 days after invoice unless otherwise agreed.	45 days after payment.	45 days after payment.	Interest at 1.75% per month unless otherwise agreed.
<b>Ohio</b> Private	Ohio Rev. Code §§ 4113.61.	No provision.	10 days after payment.	10 days after payment.	Interest at 18% per year; attorneys' fees to prevailing party.
<b>Ohio</b> Public	Ohio Rev. Code §§ 126.30.	30 days after invoice unless otherwise agreed.	See Private.	See Private.	Interest at statutory rate for primes, compounded monthly; see Private for subs. No fees provision.
<b>Oklahoma</b> Private	None.				

## Fifty State Survey of Prompt Payment Acts for Construction Contracts

STATE	CITATION	Owner to Prime Contractors	Prime to Subcontractors	Subcontractors to Lower Tiers	Interest / Penalties
<b>Oklahoma</b> Public	Okla. Stat., Title 61, §§ 221-227 (highway and contracts less than \$25,000 excluded); Title 61, §§ 113.1- 113.3 (retainage generally); 62, §§ 41.4a - 41.4d (prompt payment by government generally).	30 days after invoice for progress payments; 21 days after substantial completion for final payment.	10 days after payment.	7 days after payment.	Interest for prime at statutory rate, and for sub at 1.5% per month.
<b>Oregon</b> Private	Or. Rev. Stat. §§ 701.620 <i>et seq.</i>	Progress payments: 14 days after invoice. Final payments: 7 days after approval and completion of project.	7 days after payment.	7 days after payment.	1.5% per month for subcontractors and lower tiers; attorney fees for prevailing party.
<b>Oregon</b> Public	Or. Rev. Stat. §§ 279C.320, .505, .570, .580	30 days after invoice for progress payments; 30 days after acceptance for final payment.	10 days after payment.	10 days after payment.	Interest at statutory rate up to 30% for progress payments to prime; 1.5% per month for final payment to prime; different statutory rate for subs; No fees provision.
<b>Pennsylvania</b> Private	73 Pa. C.S. §§ 501-516. (Excludes contracts which consists of six or fewer residential units under construction simultaneously).	20 days after invoice unless otherwise agreed for progress payments; 30 days after final acceptance for final payment.	14 days after payment or receipt of subcontractor's invoice.	14 days after payment or receipt of subcontractor's invoice.	1% per month unless otherwise agreed; additional penalty of 1% per month for amounts “wrongfully withheld”; Fees to substantially prevailing party.

## Fifty State Survey of Prompt Payment Acts for Construction Contracts

STATE	CITATION	Owner to Prime Contractors	Prime to Subcontractors	Subcontractors to Lower Tiers	Interest / Penalties
<b>Pennsylvania</b> Public	62 Pa. Con. Stat. §§ 3931 <i>et seq.</i>	45 days after invoice unless otherwise agreed to progress payments; final payment inspection within 30 days of request and payment within 45 days of inspection.	14 days after payment.	14 days after payment.	Interest at statutory rate for overdue taxes; 1% per month additional penalty for amounts “withheld in bad faith”; Attorneys’ fees may be awarded but only in cases of bad faith.
<b>Rhode Island</b> Private	None.				
<b>Rhode Island</b> Public	R.I. Gen. Laws §§ 42-11.1-1 to 42-11.1-16, 37-13-5.	30 days after invoice.	10 days after payment; must pay material suppliers within 90 days of furnishing.	No provision for lower tiers; Subcontractors must pay material suppliers within 90 days of furnishing.	Interest at prime rate for prime, no provision for subs, must file notice of claim for interest to start; no fees provision.
<b>South Carolina</b> Public and Private	S.C. Code §§ 29-6-10 <i>et seq.</i>	21 days after invoice.	7 days after payment.	7 days after payment.	Interest at 1% per month if warning and statutory cite are on the invoice; rate may be varied if rights under statute are specifically waived; no fees provision.
<b>South Dakota</b> Private	None.				
<b>South Dakota</b> Public	S.D. Codified Laws §§ 5-26-1 to 5-26-8.	45 days after invoice unless otherwise agreed.	30 days after payment.	No provision.	Interest at 1.5% per month; No fees provision.

## Fifty State Survey of Prompt Payment Acts for Construction Contracts

STATE	CITATION	Owner to Prime Contractors	Prime to Subcontractors	Subcontractors to Lower Tiers	Interest / Penalties
<b>Tennessee Private</b>	Tenn. Code §§ 66-34-101 to 66-34-703 HB 3068. (Excludes construction of 4 single family units or less).	30 days after invoice submitted in accordance with contract schedule.	30 days after invoice submitted in accordance with contract schedule, subject to any pay-if-paid clause.	30 days after invoice submitted in accordance with contract schedule, subject to any pay-if-paid clause.	Interest at statutory rate unless otherwise agreed; Fees may be awarded only if “nonprevailing party has acted in bad faith.”
<b>Tennessee Public</b>	Tenn. Code §§ 12-4-701 to 12-4-707.	45 days after invoice unless otherwise agreed.	30 days after payment.	See Private.	Interest at 1.5% per month; No fees provision.
<b>Texas Private</b>	Tex. Prop. Code §§ 28.001 to 28.010.	35 days after invoice.	7 days after payment.	7 days after payment.	Interest at 1.5% per month; Court may award attorneys’ fees.
<b>Texas Public</b>	Tx. Govt. Code §§ 2251.001 - 2251.043.	31 days after invoice or receipt of services whichever is later.	10 days after payment.	10 days after payment.	Interest at prime plus 1%; attorney fees for “prevailing party.”

## Fifty State Survey of Prompt Payment Acts for Construction Contracts

STATE	CITATION	Owner to Prime Contractors	Prime to Subcontractors	Subcontractors to Lower Tiers	Interest / Penalties
<b>Utah</b> Private	Utah Code §§ 13-8-5, 58-55-603.	No provision for progress payments; final payment 45 days after later of invoice or certificate of occupancy.	Progress payments 30 days after payment; final payment 10 days after payment.	30 days after payment; final payment 10 days after payment.	Interest at 1% per month plus for subs, reasonable costs of collection and attorneys fees. Utah Code §58-55- 603; Fees for prevailing party in suit for retainage.
<b>Utah</b> Public	Utah Code §§ 13-8-5, 15-6-1 to 15-6-6. These provisions do not apply to contracts involving federal funds, or mixed state and federal funds.	60 days unless otherwise agreed for progress payments; final payment 45 days after later of invoice or certificate of occupancy.	Progress payments 30 days after payment; final payment 10 days after payment.	Progress payments see Private; final payment 10 days after payment.	Interest at IRS refund rate plus 2% for prime; interest at 15.5% for subcontractor; Fees for prevailing party in suit for retainage.
<b>Vermont</b> Public and Private	Vt. Stat., Title 9, §§ 4001-4009, Title 12, § 2903.	20 days after end of billing period or 20 days after the delivery of invoice whichever is later.	7 days after payment or receipt of invoice whichever is later.	7 days after payment or receipt of invoice whichever is later.	1% per month; Attorney fees for prevailing party; and penalty of 1% per month for amounts “wrongfully withheld.”
<b>Virginia</b> Private	None.				

## Fifty State Survey of Prompt Payment Acts for Construction Contracts

STATE	CITATION	Owner to Prime Contractors	Prime to Subcontractors	Subcontractors to Lower Tiers	Interest / Penalties
<b>Virginia</b> Public	Va. Code §§ 2.2-4347 to 2.2-4356.	30 days after invoice or receipt of services whichever is later, unless otherwise agreed for state agencies; 45 days after invoice or receipt of services whichever is later, unless otherwise agreed for localities.	7 days after payment.	7 days after payment.	Interest at prime for state agency primes unless other rate is agreed; interest at 1 % per month for subs and locality primes unless other rate is agreed; no fees provision.
<b>Washington</b> Private	None.				
<b>Washington</b> Public	Wash. Rev. Code §§ 39.76.010 to 39.76.40, 39.04.250.	30 days after invoice or receipt of services, whichever is later, unless “funded by grant or federal money” not yet received by public body.	10 days after payment.	10 days after payment.	1% per month for primes; interest at highest statutory rate for subs; Attorneys’ fees for “prevailing party.”
<b>West Virginia</b> Private	None.				

## Fifty State Survey of Prompt Payment Acts for Construction Contracts

STATE	CITATION	Owner to Prime Contractors	Prime to Subcontractors	Subcontractors to Lower Tiers	Interest / Penalties
<b>West Virginia</b> Public	W. Va. Code §§ 5A-3-54 (state), 7-5-7 (county), 8-13-22d (municipality).	60 days after invoice. Invoices to the state are received the earlier of (a) the date the invoice is marked as received by the receiving party or (b) three days after the postmark; for counties and municipalities, the invoice is received on the earlier of the postmarked date or the date the invoice is stamped as received.	No provision.	No provision.	Interest at statutory rate for primes if payment not made within 60 days. No fees provision.
<b>Wisconsin</b> Private	None.				
<b>Wisconsin</b> Public	Wis. Stat. §§ 16.528 (state); 16.53(2) (rejection of invoice); 66.0135 (local).	30 days after invoice or receipt “and acceptance” of services, whichever is later.	7 days after payment.	7 days after payment.	Interest at statutory rate for unpaid taxes, 1% per month. Interest at 1% per month for subs and sub-subs, beginning the 8 <sup>th</sup> day after the prime receives payment from the owner (compounded monthly); Attorneys’ fees to “prevailing party” in action to recover interest.



## Fifty State Survey of Prompt Payment Acts for Construction Contracts

STATE	CITATION	Owner to Prime Contractors	Prime to Subcontractors	Subcontractors to Lower Tiers	Interest / Penalties
Wyoming Private	None.				
Wyoming Public	Wyo. Stat. §§ 16-6-601 to 16-6-602.	45 days after invoice.	No provision.	No provision.	Interest at 1.5% per month for primes, unless a good faith dispute exists for the non-payment; No fees provision.