A BILL FOR AN ACT

CONCERNING PAYMENTS IN CONSTRUCTION CONTRACTS GOVERNING IMPROVEMENTS TO PRIVATE REAL PROPERTY.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at http://leg.colorado.gov.)

In a construction contract of at least $150,000, the bill requires:

! A property owner to make partial payments to the contractor of any amount due under the contract at the end of each calendar month or as soon as practicable after the end of the month;

! A property owner to pay the contractor at least 95% of the
value of satisfactorily completed work;

! A property owner to pay the withheld percentage within 60 days after the contract is completed satisfactorily;

! A contractor to pay a subcontractor for work performed under a subcontract within 30 calendar days after receiving payment for the work, not including a withheld percentage not to exceed 5%;

! A subcontractor to pay any supplier, subcontractor, or laborer who provided goods, materials, labor, or equipment to the subcontractor within 30 calendar days after receiving payment under the subcontract; and

! A subcontractor to submit to the contractor a list of the suppliers, sub-subcontractors, and laborers who provided goods, materials, labor, or equipment to the subcontractor for the work.

The bill does not apply to contracts with public entities or to a contract concerning one multi-family dwelling of no more than 4 units or one single-family dwelling. A person who fails to make a required payment must pay 1.5% interest per month until the debt is fully paid. In a lawsuit to enforce the bill, the prevailing party is awarded attorney fees and costs.

---

1. Be it enacted by the General Assembly of the State of Colorado:

   SECTION 1. In Colorado Revised Statutes, add article 46 to title 38 as follows:

   ARTICLE 46

   Payment of Construction Contracts in Real Property

   38-46-101. Definitions. As used in this article 46, unless the context otherwise requires:

   1) "Contract" means a contract to erect, alter, or repair a fixture on real property.

   2) "Contractor" means a person who enters into a contract with a property owner.

   3) "Property owner" means a person with an interest, including a leasehold, in real property or in a real property
FIXTURE WHO HAS ENTERED INTO A CONTRACT WITH A CONTRACTOR.

(4) "SUBCONTRACT" MEANS A CONTRACT TO PERFORM A PORTION
OF THE WORK REQUIRED BY A CONTRACT.

(5) "SUBCONTRACTOR" MEANS A PERSON WHO ENTERS INTO A
SUBCONTRACT WITH A CONTRACTOR.

38-46-102. Applicability of article. (1) Except as provided in
subsection (2) of this section, this article 46 applies to:

(a) A CONTRACT BETWEEN A PROPERTY OWNER AND A
CONTRACTOR TO BUILD MULTIPLE SINGLE-FAMILY DWELLINGS OR TO
BUILD MULTIPLE MULTI-FAMILY DWELLINGS OR TO ERECT, ALTER, OR
REPAIR COMMERCIAL PROPERTY THAT HAS A PRICE OF AT LEAST ONE
HUNDRED FIFTY THOUSAND DOLLARS; AND

(b) A SUBCONTRACT TO A CONTRACT DESCRIBED IN SUBSECTION
(1)(a) OF THIS SECTION, NOTWITHSTANDING THAT THE SUBCONTRACT
PRICE IS LESS THAN ONE HUNDRED FIFTY THOUSAND DOLLARS.

(2) This article 46 does not apply to:

(a) A SINGLE CONTRACT THAT GOVERNS THE BUILDING OF EITHER
ONE:

(I) SINGLE-FAMILY DWELLING; OR

(II) MULTI-FAMILY DWELLING WITH NO MORE THAN FOUR FAMILY
DWELLING UNITS; OR

(b) A CONTRACT WITH A PUBLIC ENTITY, AS DEFINED IN SECTION
24-91-102.


(1) (a) If a contractor is satisfactorily performing under a
contract, the property owner shall make partial payments of at
least ninety-five percent of the price of completed work to the
CONTRACTOR AT THE END OF EACH CALENDAR MONTH OR AS SOON AS
PRACTICABLE AFTER THE CALENDAR MONTH.

(b) THE PROPERTY OWNER SHALL PAY THE CONTRACTOR ANY
WITHHELD PERCENTAGE WITHIN SIXTY DAYS AFTER THE CONTRACT IS
COMPLETED SATISFACTORILY AND THE WORK IS FINALLY ACCEPTED.

(2) (a) EXCEPT AS PROVIDED IN SUBSECTION (3) OF THIS SECTION,
WHEN A CONTRACTOR RECEIVES PAYMENT FOR THE WORK OF A
SUBCONTRACTOR, THE CONTRACTOR SHALL PAY THE SUBCONTRACTOR AT
LEAST NINETY-FIVE PERCENT OF THE PRICE OF THE SUBCONTRACTOR’S
COMPLETED WORK WITHIN THIRTY CALENDAR DAYS AFTER RECEIVING THE
PAYMENT.

(b) WHEN A SUBCONTRACTOR RECEIVES PAYMENT UNDER A
SUBCONTRACT, THE SUBCONTRACTOR SHALL PAY ANY SUPPLIER,
SUB-SUBCONTRACTOR, OR LABORER WHO PROVIDED GOODS, MATERIALS,
LABOR, OR EQUIPMENT TO THE SUBCONTRACTOR AT LEAST NINETY-FIVE
PERCENT OF THE AMOUNT OWED THE SUPPLIER, SUB-SUBCONTRACTOR, OR
LABORER WITH THIRTY CALENDAR DAYS AFTER RECEIVING THE PAYMENT.

(c) THIS SUBSECTION (2) DOES NOT AUTHORIZE A CONTRACTOR TO
OR SUBCONTRACTOR TO WITHHOLD MORE THAN FIVE PERCENT OF THE
AMOUNT OWED A SUPPLIER, SUBCONTRACTOR, SUB-SUBCONTRACTOR, OR
LABORER WHO PROVIDED GOODS, MATERIALS, LABOR, OR EQUIPMENT.

(3) WHEN A SUBCONTRACTOR SUBMITS A REQUEST FOR PAYMENT
TO A CONTRACTOR, THE SUBCONTRACTOR SHALL SUBMIT TO THE
CONTRACTOR A LIST OF THE SUBCONTRACTOR’S SUPPLIERS,
SUB-SUBCONTRACTORS, AND LABORERS WHO PROVIDED GOODS,
MATERIALS, LABOR, OR EQUIPMENT TO THE SUBCONTRACTOR FOR THE
WORK. A CONTRACTOR MAY WITHHOLD A PAYMENT REQUIRED BY THIS
ARTICLE 46 UNTIL THE SUBCONTRACTOR COMPLIES WITH THIS SUBSECTION (3).

38-46-104. Violations - liability. (1) If a property owner, contractor, or subcontractor fails to make a payment in the amount and within the time required by this Article 46, the property owner, contractor, or subcontractor shall pay interest on the amount due. The interest is calculated:

(a) From the date the payment was due until the date the payment is made; and

(b) By compounding the interest monthly at a rate of one and one-half percent per month.

(2) A court shall award reasonable attorney fees and costs to the prevailing party in an action to enforce this Article 46.

SECTION 2. Act subject to petition - effective date - applicability. (1) This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 5, 2020, if adjournment sine die is on May 6, 2020); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2020 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

(2) This act applies to contracts made on or after the applicable effective date of this act.