

## CHAPTER 211

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**GOVERNMENT - STATE**


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**HOUSE BILL 11-1115**

BY REPRESENTATIVE(S) Priola and Soper, Brown, Casso, Gardner B., Kerr A., Liston, Looper, Peniston, Ramirez, Riesberg, Scott, Solano, Swalm, Swerdfeger, Szabo, Wilson, Barker, Conti, Fischer, Kefalas, Kerr J., Lee, Tyler, Vaad, Waller, Williams A., Gerou, Labuda, Todd;  
also SENATOR(S) Tochtrop, Cadman, Jahn, Kopp, Renfroe, Aguilar, Guzman, Heath, Johnston, Newell, Nicholson, Williams S.

**AN ACT****CONCERNING THE PAYMENT OF RETAINAGE IN CONSTRUCTION CONTRACTS INVOLVING PUBLIC ENTITIES.**

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1. Legislative declaration.** (1) The general assembly hereby finds and declares that:

- (a) The construction industry is a significant component of the state's economy;
- (b) Cash flow is vital to the stability of the construction industry and its ability to create new jobs; and
- (c) Public entities must ensure construction projects are completed in a timely manner, while releasing retained progress payments expeditiously to sustain contractor cash flow.

**SECTION 2.** 24-91-103 (1) and (3), Colorado Revised Statutes, are amended to read:

**24-91-103. Public entity - contracts - partial payments.** (1)(a) A public entity awarding a contract exceeding one hundred fifty thousand dollars for the construction, alteration, or repair of any highway, public building, public work, or public improvement, structure, or system shall authorize partial payments of the amount due under such contract at the end of each calendar month, or as soon thereafter as practicable, to the contractor, if the contractor is satisfactorily performing the contract. THE PUBLIC ENTITY SHALL PAY at least ~~ninety~~ NINETY-FIVE

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*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

percent of the calculated value of ~~any~~ COMPLETED work. ~~completed shall be paid until fifty percent of the work required by the contract has been performed. Thereafter, the public entity shall pay any of the remaining installments without retaining additional funds if, in the opinion of the public entity, satisfactory progress is being made in the work.~~ The withheld percentage of the contract price of any ~~such~~ CONTRACTED work, improvement, or construction ~~shall~~ MAY be retained until the contract is completed satisfactorily and finally accepted by the public entity.

(b) THE PUBLIC ENTITY SHALL MAKE A FINAL SETTLEMENT IN ACCORDANCE WITH SECTION 38-26-107, C.R.S., WITHIN SIXTY DAYS AFTER THE CONTRACT IS COMPLETED SATISFACTORILY AND FINALLY ACCEPTED BY THE PUBLIC ENTITY.

(c) If the public entity finds that satisfactory progress is being made in ~~all phases~~ ANY PHASE of the contract, it may, upon written request by the contractor, authorize final payment from the withheld percentage to the contractor or subcontractors who have completed their work in a manner finally acceptable to the public entity. Before ~~such~~ THE payment is made, the public entity shall determine that satisfactory and substantial reasons exist for the payment and shall require written approval from any surety furnishing bonds for the contract work.

(3) ~~The provisions of this section shall apply to contracts between contractors and subcontractors entered into on or after July 1, 1991.~~

**SECTION 3. Act subject to petition - effective date - applicability.** (1) This act shall take 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 10, 2011, if adjournment sine die is on May 11, 2011); 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 shall not take effect unless approved by the people at the general election to be held in November 2012 and shall take effect on the date of the official declaration of the vote thereon by the governor.

(2) The provisions of this act shall apply to contracts created on or after the applicable effective date of this act.

Approved: May 26, 2011