

CHAPTER 37

GOVERNMENT - STATE

HOUSE BILL 11-1202

BY REPRESENTATIVE(S) Labuda, Casso, Soper, Brown, Fields, Fischer, Schafer S., Wilson;
also SENATOR(S) Tochtrop.

AN ACT

CONCERNING A REQUIREMENT THAT A PUBLIC ENTITY HAVE APPROPRIATIONS AVAILABLE TO IT PRIOR TO THE PERFORMANCE OF ANY WORK CONDUCTED BY A CONTRACTOR PURSUANT TO A CHANGE ORDER.

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 timely payment for properly completed work under public construction agreements in Colorado is a matter of statewide concern;
- (b) The construction industry is a significant component of the state's economy;
- (c) There is a substantial statewide interest in fostering the growth and stability of the construction industry and ensuring that it remains economically viable; and
- (d) Timely payment for all work, including work directed by a change order, will assist parties to construction agreements in managing their respective operations.

SECTION 2. 24-91-103.6 (2) (b), Colorado Revised Statutes, is amended to read:

24-91-103.6. Public entity - contracts - appropriations - change orders - severability. (2) Every public works contract, as defined in section 24-91-103.5 (1) (b), shall contain the following:

- (b) A clause that prohibits the issuance of any change order, AS DEFINED IN SECTION 24-101-301 (2), or other form of order or directive by the public entity

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

requiring additional compensable work to be performed, which work causes the aggregate amount payable under the contract to exceed the amount appropriated for the original contract, unless the contractor is given written assurance by the public entity that lawful appropriations to cover the costs of the additional work have been made AND THE APPROPRIATIONS ARE AVAILABLE PRIOR TO PERFORMANCE OF THE ADDITIONAL WORK or unless such work is covered under a remedy-granting provision in the contract; and

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 entered into on or after January 1, 2012.

Approved: March 21, 2011