

**Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 10-0089.01 Jery Payne

HOUSE BILL 10-1162

HOUSE SPONSORSHIP

Soper,

SENATE SPONSORSHIP

Bacon,

House Committees
Business Affairs and Labor

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING PAYMENT OF AMOUNTS DUE UNDER A CONSTRUCTION**
102 **CONTRACT.**

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://www.leg.state.co.us/billsummaries>.)

The bill prohibits retaining more than 5% of the payments due to a contractor to ensure that work is satisfactorily completed (retainage) for the first 50% of a construction project. For the remaining 50% of the work, the bill prohibits retainage of more than 2.5%. More retainage may be withheld for work that is unsatisfactorily completed.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

A building client is required to deposit retainage in an interest-bearing escrow account that the contractor may access with an arbitration or court order. The bill sets standards for the account. If the building client fails to deposit the money in an account, the building client is required to pay the contractor 15% interest on the retainage.

The bill requires a contractor to forward payment to a subcontractor for work the subcontractor performed within 7 days. The building client is required to pay the contractor retainage within 30 days after substantial completion of the construction project. A violator is required to pay interest plus a penalty of 15% interest.

Contractors are authorized to give the building client a substitute security and have retainage paid. Standards are set for the security.

Failure to pay interest subjects the property to a lien.

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

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

4 (a) The construction industry is a significant component of the
5 state's economy;

6 (b) There is a substantial statewide interest in fostering the growth
7 and stability of the construction industry and ensuring that it remains
8 economically viable;

9 (c) The ability of construction and design enterprises to obtain and
10 satisfactorily perform projects, in the private and public sectors affects the
11 construction industry as a whole;

12 (d) Clauses in construction contracts that allows entities to not
13 fully fund changes to contracts prior to performance of such work and to
14 pay for such work in a timely fashion has a ruinous financial
15 consequences on affected contractor and subcontractors; and

16 (e) There is a substantial statewide interest in ensuring that the
17 policy underlying the efficient expenditure of funds is balanced with the
18 policy of fostering a healthy and viable Colorado construction industry.

1 (2) The general assembly hereby declares that:

2 (a) The practice of withholding earned revenue, or retainage,
3 through construction contracts is a matter of statewide concern and
4 affected with the public interest; and

5 (b) This act is in the exercise of the police power to protect the
6 health, peace, safety, and welfare of the people of the state.

7 **SECTION 2.** Title 38, Colorado Revised Statutes, is amended BY
8 THE ADDITION OF A NEW ARTICLE to read:

9 **ARTICLE 15**

10 **Retainage in Commercial Construction Contracts**

11 **38-15-101. Definitions.** AS USED IN THIS ARTICLE, UNLESS THE
12 CONTEXT OTHERWISE REQUIRES:

13 (1) "BUILDING CLIENT" MEANS A PERSON WHO OWNS, MANAGES,
14 OR LEASES REAL PROPERTY AND WHO CAUSES A BUILDING, STRUCTURE, OR
15 IMPROVEMENT ON REAL PROPERTY TO BE CONSTRUCTED, ALTERED,
16 MOVED, OR DEMOLISHED OR WHO CAUSES LAND TO BE EXCAVATED OR
17 OTHERWISE DEVELOPED OR IMPROVED. "BUILDING CLIENT" DOES NOT
18 INCLUDE A PUBLIC ENTITY.

19 (2) "CONSTRUCTION PROJECT" MEANS A PROJECT THAT IS THE
20 SUBJECT OF A CONTRACT.

21 (3) "CONTRACT" MEANS A CONTRACT, SUBCONTRACT, OR
22 AGREEMENT FOR MATERIALS OR LABOR FOR, OR THE CONSTRUCTION,
23 ALTERATION, RENOVATION, REPAIR, MAINTENANCE, DESIGN, PLANNING,
24 SUPERVISION, INSPECTION, TESTING, OR OBSERVATION OF, A BUILDING,
25 BUILDING SITE, STRUCTURE, HIGHWAY, STREET, BRIDGE, VIADUCT, WATER
26 OR SEWER SYSTEM, GAS OR OTHER DISTRIBUTION SYSTEM, OR OTHER WORK
27 DEALING WITH CONSTRUCTION OR FOR ANY MOVING, DEMOLITION, OR

1 EXCAVATION CONNECTED WITH SUCH CONSTRUCTION PROJECT.

2 (4) "CONTRACTOR" MEANS A PERSON WHO ENTERS INTO A
3 CONTRACT WITH A BUILDING CLIENT.

4 (5) "RETAINAGE" MEANS MONEY WITHHELD FROM A CONTRACTOR
5 OR SUBCONTRACTOR UNDER A CONTRACT UNTIL THE WORK IS
6 SATISFACTORILY COMPLETED.

7 (6) "SUBCONTRACTOR" MEANS A PERSON WHO, FOR PROFIT,
8 ENTERS INTO A SUBCONTRACT WITH A CONTRACTOR OR SUBCONTRACTOR.

9 (7) "SUBSTANTIAL COMPLETION" MEANS THE EARLIER OF THE
10 FOLLOWING:

11 (a) THE ARCHITECT OR ENGINEER HAS ISSUED A CERTIFICATE OF
12 SUBSTANTIAL COMPLETION IN ACCORDANCE WITH THE CONTRACT; OR

13 (b) ALL CONDITIONS FOR FINAL PAYMENT AND RELEASE OF
14 RETAINAGE CONTAINED IN THE CONTRACT HAVE BEEN SATISFIED.

15 **38-15-102. Retainage limits.** (1) UNTIL FIFTY PERCENT OF THE
16 WORK REQUIRED BY A CONTRACT HAS BEEN SATISFACTORILY COMPLETED,
17 AT LEAST NINETY-FIVE PERCENT OF THE CALCULATED VALUE OF
18 COMPLETED WORK UNDER THE CONTRACT OR A SUBCONTRACT THEREOF
19 SHALL BE PAID. AFTER FIFTY PERCENT OF THE WORK REQUIRED BY A
20 CONTRACT HAS BEEN SATISFACTORILY COMPLETED, AT LEAST
21 NINETY-SEVEN AND ONE-HALF PERCENT OF THE CALCULATED VALUE OF
22 SUCH COMPLETED WORK SHALL BE PAID. THE CALCULATED VALUE OF THE
23 WORK SHALL NOT INCLUDE THE PORTION OF THE CONTRACT PRICE THAT IS
24 USED TO STORE MATERIALS OR EQUIPMENT AT THE CONSTRUCTION SITE.

25 (2) IF WORK HAS BEEN UNSATISFACTORILY COMPLETED, THE
26 BUILDING CLIENT MAY WITHHOLD PAYMENT FOR SUCH WORK BEYOND THE
27 AMOUNT AUTHORIZED IN SUBSECTION (1) OF THIS SECTION IN

1 ACCORDANCE WITH THE CONTRACT OR EQUAL TO THE VALUE OF THE
2 UNSATISFACTORILY COMPLETED PORTION OF THE CONTRACT FOR EACH
3 UNSATISFACTORY PORTION UNTIL THAT PORTION IS SATISFACTORILY
4 COMPLETED.

5 (3) RETAINAGE SHALL NOT BE WITHHELD FOR THE PORTION OF A
6 CONTRACT PRICE THAT COVERS THE COST OF STORING MATERIALS OR
7 EQUIPMENT STORED AT THE CONSTRUCTION SITE.

8 **38-15-103. Trust account.** (1) THE BUILDING CLIENT SHALL
9 DEPOSIT RETAINAGE IN AN ESCROW ACCOUNT WITH A BANK OR BUILDING
10 AND LOAN ASSOCIATION SELECTED BY MUTUAL AGREEMENT BETWEEN THE
11 CONTRACTOR AND THE BUILDING CLIENT, SUBJECT TO THE FOLLOWING
12 REQUIREMENTS:

13 (a) THE ESCROW AGENT SHALL DEPOSIT THE MONEY IN A SAVINGS
14 ACCOUNT OR PROMPTLY INVEST IT IN OBLIGATIONS SELECTED BY THE
15 ESCROW AGENT, AS DETERMINED IN THE CONTRACT.

16 (b) THE ESCROW AGENT SHALL HOLD THE PRINCIPAL AND INCOME
17 UNTIL RECEIVING ONE OF THE FOLLOWING, THAT SPECIFIES THE AMOUNT
18 OF THE PRINCIPAL TO BE RELEASED AND THE PERSON TO WHOM IT IS TO BE
19 RELEASED:

20 (I) NOTICE FROM THE BUILDING CLIENT AND THE CONTRACTOR;

21 (II) AN ARBITRATION ORDER; OR

22 (III) A COURT ORDER.

23 (c) UPON RECEIPT OF THE NOTICE OR ORDER, THE AGENT SHALL
24 PROMPTLY PAY THE AMOUNT OF PRINCIPAL AND A PROPORTIONATE
25 AMOUNT OF THE ESCROWED INCOME TO THE PERSON INDICATED.

26 (d) THE BUILDING CLIENT AND THE CONTRACTOR SHALL
27 COMPENSATE THE ESCROW AGENT FOR SERVICES RENDERED AS AGREED TO

1 BY THE BUILDING CLIENT AND THE CONTRACTOR FROM THE INCOME IN THE
2 ESCROW ACCOUNT.

3 (2) THE CONTRACT MAY INCLUDE OTHER PROVISIONS THAT DO NOT
4 CONFLICT WITH THIS SECTION, INCLUDING GRANTING AUTHORITY FOR THE
5 ESCROW AGENT TO COMMINGLE THE ESCROWED FUNDS WITH FUNDS HELD
6 PURSUANT TO OTHER ESCROW AGREEMENTS AND LIMITING THE LIABILITY
7 OF THE ESCROW AGENT.

8 (3) IF THE BUILDING CLIENT FAILS TO DEPOSIT THE RETAINAGE IN
9 AN ESCROW ACCOUNT PURSUANT TO SUBSECTION (1) OF THIS SECTION, THE
10 BUILDING CLIENT SHALL PAY FIFTEEN PERCENT INTEREST ON SUCH MONEY
11 UNTIL THE RETAINAGE IS PAID WITH SUCH INTEREST TO THE CONTRACTOR.

12 **38-15-104. Payment required.** (1) UPON RECEIVING A PAYMENT
13 FOR THE WORK OF A SUBCONTRACTOR, A CONTRACTOR OR
14 SUBCONTRACTOR SHALL FORWARD THE PAYMENT TO THE
15 SUBCONTRACTOR WHO PERFORMED THE WORK WITHIN SEVEN DAYS.

16 (2) EXCEPT AS PROVIDED IN SECTION 38-15-102 (2), THE BUILDING
17 CLIENT SHALL PAY TO THE CONTRACTOR THE BALANCE OF THE UNPAID
18 CONTRACT PRICE, WHICH SHALL INCLUDE ALL RETAINAGE PLUS INTEREST
19 ACCRUED PURSUANT TO SECTION 38-15-103, WITHIN THIRTY DAYS AFTER
20 THE EARLIER OF THE BUILDING BEING APPROVED FOR OCCUPANCY OR
21 RECEIVING NOTICE OF SUBSTANTIAL COMPLETION.

22 **38-15-105. Substitute securities.** (1) THE CONTRACTOR MAY
23 TENDER TO THE BUILDING CLIENT ACCEPTABLE SUBSTITUTE SECURITY
24 WITH A WRITTEN REQUEST FOR RELEASE OF RETAINAGE IN THE AMOUNT OF
25 THE SUBSTITUTE SECURITY. UPON RECEIVING SUCH A REQUEST AND
26 ACCEPTABLE SECURITY, THE BUILDING CLIENT SHALL EITHER:

27 (a) PAY THE RETAINAGE IN THE AMOUNT OF THE SUBSTITUTE

1 SECURITY WITHIN SEVEN DAYS AFTER RECEIVING THE SUBSTITUTE
2 SECURITY IF THE RETAINAGE COVERED BY THE SECURITY HAS ALREADY
3 BEEN WITHHELD; OR

4 (b) DISCONTINUE WITHHOLDING RETAINAGE UNTIL THE AMOUNT
5 NOT WITHHELD EQUALS THE SUBSTITUTE SECURITY IF THE RETAINAGE HAS
6 NOT BEEN WITHHELD.

7 (2) THE SUBCONTRACTOR MAY TENDER TO THE CONTRACTOR
8 ACCEPTABLE SUBSTITUTE SECURITY WITH A WRITTEN REQUEST FOR
9 RELEASE OF RETAINAGE IN THE AMOUNT OF THE SUBSTITUTE SECURITY.
10 UPON RECEIVING SUCH A REQUEST AND ACCEPTABLE SUBSTITUTE
11 SECURITY, THE CONTRACTOR SHALL TENDER THE SUBSTITUTE SECURITY
12 TO THE BUILDING CLIENT WITH A REQUEST FOR THE RELEASE OF THE
13 RETAINAGE IN THE AMOUNT OF THE SUBSTITUTE SECURITY.

14 (3) THE FOLLOWING CONSTITUTE ACCEPTABLE SUBSTITUTE
15 SECURITY FOR THE PURPOSES OF THIS SECTION IF THE SECURITY IS
16 NEGOTIABLE BY THE BUILDING CLIENT AND OF A VALUE EQUAL TO OR
17 GREATER THAN THE AMOUNT OF RETAINAGE REQUESTED TO BE RELEASED:

18 (a) UNITED STATES TREASURY BONDS, UNITED STATES TREASURY
19 NOTES, UNITED STATES TREASURY CERTIFICATES OF INDEBTEDNESS, OR
20 UNITED STATES TREASURY BILLS;

21 (b) BONDS OR NOTES OF THE STATE OF COLORADO;

22 (c) BONDS ISSUED BY A SURETY COMPANY AUTHORIZED TO ISSUE
23 BONDS IN COLORADO; AND

24 (d) CERTIFICATES OF DEPOSIT DRAWN AND ISSUED BY A NATIONAL
25 BANK OR BUILDING AND LOAN ASSOCIATION LOCATED IN COLORADO OR BY
26 A BANK INCORPORATED UNDER THE LAWS OF COLORADO.

27 **38-15-106. Violations.** (1) A BUILDING CLIENT, CONTRACTOR, OR

1 SUBCONTRACTOR WHO VIOLATES THIS ARTICLE BY FAILING TO MAKE A
2 PAYMENT REQUIRED BY SECTION 38-15-104 SHALL BE LIABLE FOR THE
3 PAYMENT PLUS INTEREST AND A PENALTY TO ANY PERSON SUFFERING
4 DAMAGES ON ACCOUNT OF THE VIOLATION. THE PENALTY IS FIFTEEN
5 PERCENT INTEREST PER ANNUM, COMPOUNDED DAILY.

6 (2) IN ADDITION TO ANY OTHER REMEDY, FAILURE TO PAY
7 INTEREST IN VIOLATION OF SECTION 38-15-103 OR 38-15-104 SHALL
8 SUBJECT THE PROPERTY TO A MECHANIC'S LIEN IN ACCORDANCE WITH
9 ARTICLE 22 OF THIS TITLE.

10 **SECTION 3.** 24-91-102 (5), Colorado Revised Statutes, is
11 amended, and the said 24-91-102 is further amended BY THE
12 ADDITION OF A NEW SUBSECTION, to read:

13 **24-91-102. Definitions.** As used in this article, unless the context
14 otherwise requires:

15 (3.5) "RETAINAGE" MEANS MONEY WITHHELD FROM A
16 CONTRACTOR OR SUBCONTRACTOR UNDER A CONSTRUCTION CONTRACT
17 UNTIL THE WORK IS SATISFACTORILY COMPLETED.

18 (5) "~~Substantial completion~~" means ~~the date when the construction~~
19 ~~is sufficiently complete, in accordance with the contract documents, as~~
20 ~~modified by any change orders agreed to by the parties, so that the work~~
21 ~~or designated portion thereof is available for use by the owner~~ EARLIER
22 OF THE FOLLOWING:

23 (a) THE ARCHITECT OR ENGINEER HAS ISSUED A CERTIFICATE OF
24 SUBSTANTIAL COMPLETION IN ACCORDANCE WITH CONTRACT; OR

25 (b) ALL CONDITIONS FOR FINAL PAYMENT AND RELEASE OF
26 RETAINAGE CONTAINED IN THE CONTRACT HAVE BEEN SATISFIED.

27 **SECTION 4.** 24-91-103 (1) and (3), Colorado Revised Statutes,

1 are amended to read:

2 **24-91-103. Public entity - contracts - partial payments.**

3 (1) (a) A public entity awarding a contract exceeding one hundred fifty
4 thousand dollars for the construction, alteration, or repair of any highway,
5 public building, public work, or public improvement, structure, or system
6 shall authorize partial payments of the amount due under such contract at
7 the end of each calendar month, or as soon thereafter as practicable, to the
8 contractor, if the contractor is satisfactorily performing the contract. At
9 least ~~ninety~~ NINETY-FIVE percent of the calculated value of ~~any work~~
10 completed WORK shall be paid until fifty percent of the work required by
11 the contract has been ~~performed~~ SATISFACTORILY COMPLETED.
12 ~~Thereafter, the public entity shall pay any of the remaining installments~~
13 ~~without retaining additional funds if, in the opinion of the public entity,~~
14 ~~satisfactory progress is being made in the work~~ AFTER FIFTY PERCENT OF
15 THE WORK REQUIRED BY THE CONTRACT HAS BEEN SATISFACTORILY
16 COMPLETED, AT LEAST NINETY-SEVEN AND ONE-HALF PERCENT OF THE
17 CALCULATED VALUE OF COMPLETED WORK SHALL BE PAID IN A TIMELY
18 MANNER. THE CALCULATED VALUE OF THE WORK SHALL NOT INCLUDE
19 THE PORTION OF THE CONTRACT PRICE THAT IS USED TO STORE MATERIALS
20 OR EQUIPMENT AT THE CONSTRUCTION SITE. ONE HUNDRED PERCENT OF
21 SUCH COSTS SHALL BE PAID IN A TIMELY MANNER.

22 (b) (I) The withheld percentage of the contract price of any such
23 work, improvement, or construction ~~shall~~ MAY be retained until the
24 ~~contract is completed satisfactorily and finally accepted by the public~~
25 ~~entity. If the public entity finds that satisfactory progress is being made~~
26 ~~in all phases of the contract, it may, upon written request by the~~
27 ~~contractor, authorize final payment from the withheld percentage to the~~

1 contractor or subcontractors who have completed their work in a manner
2 finally acceptable to the public entity. Before such payment is made, the
3 public entity shall determine that satisfactory and substantial reasons exist
4 for the payment and shall require written approval from any surety
5 furnishing bonds for the contract work. EARLIER OF SATISFACTORY
6 COMPLETION OR THE BUILDING BEING APPROVED FOR OCCUPANCY.
7 EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH (b), THE
8 PUBLIC ENTITY SHALL PAY TO THE CONTRACTOR THE BALANCE OF THE
9 UNPAID CONTRACT PRICE, WHICH SHALL INCLUDE ALL RETAINAGE PLUS
10 INTEREST ACCRUED DURING THE TIME THE RETAINAGE WAS WITHHELD,
11 WITHIN THIRTY DAYS AFTER THE EARLIER OF THE BUILDING BEING
12 APPROVED FOR OCCUPANCY OR THE PUBLIC ENTITY FINDING SUBSTANTIAL
13 COMPLETION OF THE CONSTRUCTION.

14 (II) IF WORK HAS BEEN UNSATISFACTORILY COMPLETED, THE
15 BUILDING CLIENT MAY WITHHOLD PAYMENT FOR SUCH WORK BEYOND THE
16 AMOUNT AUTHORIZED IN PARAGRAPH (a) OF THIS SUBSECTION (1) IN
17 ACCORDANCE WITH THE CONTRACT OR EQUAL TO THE VALUE OF THE
18 UNSATISFACTORILY COMPLETED PORTION OF THE CONTRACT FOR EACH
19 UNSATISFACTORY PORTION UNTIL THAT PORTION IS SATISFACTORILY
20 COMPLETED.

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

23 **SECTION 5.** 24-91-103.6 (2) (b), Colorado Revised Statutes, is
24 amended to read:

25 **24-91-103.6. Public entity - contracts - appropriations - change**
26 **orders - severability.** (2) Every public works contract, as defined in
27 section 24-91-103.5 (1) (b), shall contain the following:

1 (b) A clause ~~which~~ THAT prohibits the issuance of any change
2 order or other form of order or directive by the public entity requiring
3 additional compensable work to be performed, which work causes the
4 aggregate amount payable under the contract to exceed the amount
5 appropriated for the original contract, unless:

6 (I) The contractor is given written assurance by the public entity
7 that lawful appropriations to cover the costs of the additional work have
8 been made AND THE APPROPRIATIONS ARE AVAILABLE BEFORE
9 PERFORMANCE OF THE ADDITIONAL WORK; or ~~unless such~~

10 (II) THE work is covered under a remedy-granting provision in the
11 contract.

12 **SECTION 6.** Article 91 of title 24, Colorado Revised Statutes, is
13 amended BY THE ADDITION OF THE FOLLOWING NEW
14 SECTIONS to read:

15 **24-91-111. Trust account.** (1) THE PUBLIC ENTITY SHALL
16 DEPOSIT RETAINAGE IN AN ESCROW ACCOUNT WITH A BANK OR BUILDING
17 AND LOAN ASSOCIATION SELECTED BY MUTUAL AGREEMENT BETWEEN THE
18 CONTRACTOR AND THE PUBLIC ENTITY, SUBJECT TO THE FOLLOWING
19 REQUIREMENTS:

20 (a) THE ESCROW AGENT SHALL DEPOSIT THE MONEY IN A SAVINGS
21 ACCOUNT OR PROMPTLY INVEST IT IN OBLIGATIONS SELECTED BY THE
22 ESCROW AGENT, AS DETERMINED IN THE CONTRACT.

23 (b) THE ESCROW AGENT SHALL HOLD THE PRINCIPAL AND INCOME
24 UNTIL RECEIVING ONE OF THE FOLLOWING, SPECIFYING THE AMOUNT OF
25 THE PRINCIPAL TO BE RELEASED AND THE PERSON TO WHOM IT IS TO BE
26 RELEASED:

27 (I) NOTICE FROM THE PUBLIC ENTITY AND THE CONTRACTOR;

1 (II) AN ARBITRATION ORDER; OR

2 (III) A COURT ORDER.

3 (c) UPON RECEIPT OF THE NOTICE OR ORDER, THE AGENT SHALL
4 PROMPTLY PAY THE AMOUNT OF PRINCIPAL AND A PROPORTIONATE
5 AMOUNT OF THE ESCROWED INCOME TO THE PERSON INDICATED.

6 (d) THE PUBLIC ENTITY AND THE CONTRACTOR SHALL
7 COMPENSATE THE ESCROW AGENT FOR SERVICES RENDERED AS AGREED TO
8 BY THE PUBLIC ENTITY AND THE CONTRACTOR FROM THE INCOME IN THE
9 ESCROW ACCOUNT.

10 (2) THE CONTRACT MAY INCLUDE OTHER PROVISIONS THAT DO NOT
11 CONFLICT WITH THIS SECTION, INCLUDING GRANTING AUTHORITY FOR THE
12 ESCROW AGENT TO COMMINGLE THE ESCROWED FUNDS WITH FUNDS HELD
13 PURSUANT TO OTHER ESCROW AGREEMENTS AND LIMITING THE LIABILITY
14 OF THE ESCROW AGENT.

15 (3) IF THE PUBLIC ENTITY FAILS TO DEPOSIT THE RETAINAGE IN AN
16 ESCROW ACCOUNT PURSUANT TO SUBSECTION (1) OF THIS SECTION, THE
17 PUBLIC ENTITY SHALL PAY FIFTEEN PERCENT INTEREST ON SUCH MONEY
18 UNTIL THE RETAINAGE IS PAID WITH SUCH INTEREST TO THE CONTRACTOR.

19 **24-91-112. Substitute securities.** (1) THE CONTRACTOR MAY
20 TENDER TO THE PUBLIC ENTITY ACCEPTABLE SUBSTITUTE SECURITY WITH
21 A WRITTEN REQUEST FOR RELEASE OF RETAINAGE IN THE AMOUNT OF THE
22 SUBSTITUTE SECURITY. UPON RECEIVING SUCH A REQUEST AND
23 ACCEPTABLE SUBSTITUTE SECURITY, THE PUBLIC ENTITY SHALL EITHER:

24 (a) PAY THE RETAINAGE IN THE AMOUNT OF THE SUBSTITUTE
25 SECURITY WITHIN SEVEN DAYS AFTER RECEIVING THE SUBSTITUTE
26 SECURITY IF THE RETAINAGE COVERED BY THE SECURITY HAS ALREADY
27 BEEN WITHHELD; OR

1 (b) DISCONTINUE WITHHOLDING RETAINAGE UNTIL THE AMOUNT
2 NOT WITHHELDEQUALS THE SUBSTITUTE SECURITY IF THE RETAINAGE HAS
3 NOT BEEN WITHHELD.

4 (2) THE SUBCONTRACTOR MAY TENDER TO THE CONTRACTOR
5 ACCEPTABLE SUBSTITUTE SECURITY WITH A WRITTEN REQUEST FOR
6 RELEASE OF RETAINAGE IN THE AMOUNT OF THE SUBSTITUTE SECURITY.
7 UPON RECEIVING SUCH A REQUEST AND ACCEPTABLE SUBSTITUTE
8 SECURITY, THE CONTRACTOR SHALL TENDER THE SUBSTITUTE SECURITY
9 TO THE PUBLIC ENTITY WITH A REQUEST FOR THE RELEASE OF THE
10 RETAINAGE IN THE AMOUNT OF THE SUBSTITUTE SECURITY.

11 (3) THE FOLLOWING CONSTITUTE ACCEPTABLE SUBSTITUTE
12 SECURITY FOR THE PURPOSES OF THIS SECTION IF THE SECURITY IS
13 NEGOTIABLE BY THE PUBLIC ENTITY ANDEQUAL TO OR GREATER THAN THE
14 AMOUNT OF RETAINAGE REQUESTED TO BE RELEASED:

15 (a) UNITED STATES TREASURY BONDS, UNITED STATES TREASURY
16 NOTES, UNITED STATES TREASURY CERTIFICATES OF INDEBTEDNESS, OR
17 UNITED STATES TREASURY BILLS;

18 (b) BONDS OR NOTES OF THE STATE OF COLORADO;

19 (c) BONDS ISSUED BY A SURETY COMPANY AUTHORIZED TO ISSUE
20 BONDS IN COLORADO; AND

21 (d) CERTIFICATES OF DEPOSIT DRAWN AND ISSUED BY A NATIONAL
22 BANK OR BUILDING AND LOAN ASSOCIATION LOCATED IN COLORADO OR BY
23 A BANK INCORPORATED UNDER THE LAWS OF COLORADO.

24 **24-91-113. Violations.** (1) A PUBLIC ENTITY, CONTRACTOR, OR
25 SUBCONTRACTOR WHO VIOLATES THIS ARTICLE BY FAILING TO MAKE A
26 PAYMENT REQUIRED BY SECTION 24-91-103 SHALL BE LIABLE FOR THE
27 PAYMENT PLUS INTEREST AND A PENALTY TO ANY PERSON SUFFERING

1 DAMAGES ON ACCOUNT OF THE VIOLATION. THE PENALTY IS FIFTEEN
2 PERCENT INTEREST PER ANNUM COMPOUNDED DAILY.

3 (2) IN ADDITION TO ANY OTHER REMEDY, FAILURE TO PAY
4 INTEREST IN VIOLATION OF SECTION 24-91-103 OR 24-91-111 SHALL
5 SUBJECT THE PROPERTY TO A MECHANIC'S LIEN IN ACCORDANCE WITH
6 ARTICLE 22 OF TITLE 38, C.R.S.

7 **SECTION 7. Act subject to petition - effective date.** This act
8 shall take effect at 12:01 a.m. on the day following the expiration of the
9 ninety-day period after final adjournment of the general assembly (August
10 11, 2010, if adjournment sine die is on May 12, 2010); except that, if a
11 referendum petition is filed pursuant to section 1 (3) of article V of the
12 state constitution against this act or an item, section, or part of this act
13 within such period, then the act, item, section, or part shall not take effect
14 unless approved by the people at the general election to be held in
15 November 2010 and shall take effect on the date of the official
16 declaration of the vote thereon by the governor.