

HOUSE JOURNAL
SIXTY-SEVENTH GENERAL ASSEMBLY
STATE OF COLORADO
Second Regular Session

Fifty-first Legislative Day

Thursday, March 4, 2010

1 Prayer by Dr. Gary Bowser, First Baptist Church, Denver.
2
3 The Speaker called the House to order at 9:00 a.m.
4
5 Pledge of Allegiance led by Nick Winter, Theo Smith, Isaac Buchanan,
6 Heritage High School, Littleton.
7
8 The roll was called with the following result:
9
10 Present--61.
11 Excused--Representative(s) May, Middleton, Stephens, Tipton--4.
12 Present after roll call--Representative(s) Middleton.
13

14 The Speaker declared a quorum present.
15
16

17 On motion of Representative Hullinghorst, the reading of the journal of
18 March 3, 2010, was declared dispensed with and approved as corrected
19 by the Chief Clerk.
20

21
22
23 House in recess. House reconvened.
24
25

26
27 **MESSAGE(S) FROM THE SENATE**
28

29 The Senate has adopted and transmits herewith: SJR10-016.
30
31

32
33 **INTRODUCTION AND CONSIDERATION OF RESOLUTION**
34

35 On motion of Representative Weissmann, the rules were suspended and
36 the following resolution was given immediate consideration.
37

38 **SJR10-016** by Senator(s) Bacon; also Representative(s) Kefalas--
39 Concerning the recognition of the Peace Corps on its
40 forty-ninth anniversary.
41

42 (Printed and placed in member's file).
43

1 On motion of Representative Kefalas, the resolution was read at length
2 and **adopted by viva voce** vote.

3
4 Current Roll Call added as co-sponsor(s): Representative(s) Acree, Apuan,
5 Balmer, Baumgardner, Benefield, Bradford, Casso, Court, Curry, DelGrosso,
6 Ferrandino, Fischer, Frangas, Gagliardi, Gardner B., Gardner C., Gerou,
7 Hulinghorst, Judd, Kagan, Kerr A., Kerr J., King S., Labuda, Lambert, Levy,
8 Liston, Looper, Massey, McCann, McFadyen, McKinley, McNulty, Merrifield,
9 Middleton, Miklosi, Murray, Nikkel, Pace, Peniston, Pommer, Primavera,
10 Priola, Rice, Riesberg, Roberts, Ryden, Scanlan, Schafer S., Solano,
11 Sonnenberg, Soper, Summers, Swalm, Todd, Tyler, Vaad, Vigil, Waller,
12 Weissmann, Speaker

13
14
15 House in recess. House reconvened.
16
17

18
19 **REPORT(S) OF COMMITTEE(S) OF REFERENCE**

20
21 **AGRICULTURE, LIVESTOCK, & NATURAL RESOURCES**

22 After consideration on the merits, the Committee recommends the
23 following:

24
25 **SB10-019** be amended as follows, and as so amended, be referred to
26 the Committee of the Whole with favorable
27 recommendation:
28

29 Amend reengrossed bill, page 2, line 11, after "company," insert "SMALL
30 OR LOW IMPACT".

31
32 Page 3, line 21, strike "ENTRAINMENT IN" and substitute "MORTALITY IN
33 FACILITIES ON".

34
35 Page 4, line 4, strike "ENTRAINMENT IN" and substitute "MORTALITY IN
36 FACILITIES ON".

37
38
39
40 **SB10-034** be amended as follows, and as so amended, be referred to
41 the Committee of the Whole with favorable
42 recommendation:
43

44 Amend reengrossed bill, page 5, line 7, strike "**expiration.**" and substitute
45 "**expiration - repeal.**".

46
47 Page 5, line 14, after "(4)" insert "(a) (I)" and strike "~~on December 31 of~~"
48 and substitute "on December 31 of".

49
50 Page 5, strike line 15 and substitute "each year."

51
52 Page 5, after line 15 insert:

53
54 "(II) THIS PARAGRAPH (a) IS REPEALED, EFFECTIVE JANUARY 1,
55 2011.

56

1 (b) ON AND AFTER JANUARY 1, 2011, REGISTRATION OF A
2 PESTICIDE SHALL EXPIRE EACH YEAR ON A DATE SPECIFIED BY THE
3 COMMISSIONER BY RULE."

4
5 Page 7, line 2, strike "**expiration.**" and substitute "**expiration - repeal.**".

6
7 Page 7, line 3, after "(4)" insert "(a) (I)" and strike "~~on December 31 of~~
8 each year ON" and substitute "on December 31 of each year."

9
10 Page 7, strike line 4 and substitute:

11
12 "(II) THIS PARAGRAPH (a) IS REPEALED, EFFECTIVE JANUARY 1,
13 2011.

14
15 (b) ON AND AFTER JANUARY 1, 2011, REGISTRATION OF A DEVICE
16 SHALL EXPIRE EACH YEAR ON A DATE SPECIFIED BY THE COMMISSIONER BY
17 RULE."

18
19
20
21 **SB10-038** be referred favorably to the Committee on Appropriations.

22
23
24 **SB10-052** be referred to the Committee of the Whole with favorable
25 recommendation.

26
27
28
29
30 **BUSINESS AFFAIRS & LABOR**

31 After consideration on the merits, the Committee recommends the
32 following:

33
34 **HB10-1162** be amended as follows, and as so amended, be referred to
35 the Committee on Appropriations with favorable
36 recommendation:

37
38 Amend printed bill, strike everything below the enacting clause and
39 substitute:

40
41 "**SECTION 1. Legislative declaration.** (1) The general
42 assembly hereby finds and declares that:

43
44 (a) The construction industry is a significant component of the
45 state's economy;

46
47 (b) There is a substantial statewide interest in fostering the growth
48 and stability of the construction industry and ensuring that it remains
49 economically viable;

50
51 (c) The ability of construction and design enterprises to obtain and
52 satisfactorily perform projects in the private and public sectors affects the
53 construction industry as a whole;

54
55 (d) Clauses in construction contracts that allow builders to not
56 fully fund changes to contracts prior to performance of such work and to

1 pay for such work in a timely fashion have ruinous financial
2 consequences for the affected contractors and subcontractors; and

3
4 (e) There is a substantial statewide interest in ensuring that the
5 policy underlying the efficient expenditure of funds is balanced with the
6 policy of fostering a healthy and viable Colorado construction industry.

7
8 (2) The general assembly hereby declares that:

9
10 (a) The practice of withholding earned revenue through
11 construction contracts is a matter of statewide concern and is affected
12 with a public interest; and

13
14 (b) It is within the police power of the state to protect the health,
15 peace, safety, and welfare of the people of the state.

16
17 **SECTION 2.** Title 38, Colorado Revised Statutes, is amended BY
18 THE ADDITION OF A NEW ARTICLE to read:

19
20 **ARTICLE 15**
21 **Retainage in Commercial Construction Contracts**

22
23 **38-15-101. Definitions.** AS USED IN THIS ARTICLE, UNLESS THE
24 CONTEXT OTHERWISE REQUIRES:

25
26 (1) "BUILDING CLIENT" MEANS A PERSON WHO OWNS, MANAGES,
27 OR LEASES REAL PROPERTY AND WHO CAUSES A BUILDING, STRUCTURE, OR
28 IMPROVEMENT ON REAL PROPERTY TO BE CONSTRUCTED, ALTERED,
29 MOVED, OR DEMOLISHED OR WHO CAUSES LAND TO BE EXCAVATED OR
30 OTHERWISE DEVELOPED OR IMPROVED. "BUILDING CLIENT" DOES NOT
31 INCLUDE A PUBLIC ENTITY.

32
33 (2) "CONSTRUCTION PROJECT" MEANS A PROJECT THAT IS THE
34 SUBJECT OF A CONTRACT.

35
36 (3) "CONTRACT" MEANS AN AGREEMENT OR SUBCONTRACT FOR
37 MATERIALS OR LABOR FOR THE CONSTRUCTION, ALTERATION,
38 RENOVATION, OR REPAIR OF A BUILDING, BUILDING SITE, STRUCTURE,
39 HIGHWAY, STREET, ROADWAY, BRIDGE, VIADUCT, WATER OR SEWER
40 SYSTEM, GAS OR OTHER DISTRIBUTION SYSTEM, OR OTHER WORK DEALING
41 WITH CONSTRUCTION OR FOR ANY MOVING, DEMOLITION, OR EXCAVATION
42 CONNECTED WITH THE CONSTRUCTION. FOR THE PURPOSES OF THIS
43 ARTICLE, "CONTRACT" DOES NOT INCLUDE:

44
45 (a) ANY REAL PROPERTY LEASE OR RENTAL AGREEMENT BETWEEN
46 A LANDLORD AND A TENANT, REGARDLESS OF WHETHER ANY PROVISION
47 OF THE LEASE OR RENTAL AGREEMENT CONCERNS CONSTRUCTION,
48 ALTERATION, IMPROVEMENT, OR MAINTENANCE OF REAL PROPERTY;

49
50 (b) AN AGREEMENT FOR THE CONSTRUCTION, IMPROVEMENT,
51 ALTERATION, MOVING, OR DEMOLITION OF A SINGLE-FAMILY DWELLING OR
52 MULTI-FAMILY DWELLING WITH NO MORE THAN TWO UNITS; OR

53
54 (c) A CONTRACT BETWEEN A BUILDING CLIENT AND A CONTRACTOR
55 IN AN AMOUNT LESS THAN ONE HUNDRED FIFTY THOUSAND DOLLARS.
56

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

3
4 (5) "FINAL COMPLETION" MEANS THE STAGE OF A PROJECT AT
5 WHICH ALL CONDITIONS FOR FINAL PAYMENT AND RELEASE OF RETAINAGE
6 CONTAINED IN THE CONTRACT HAVE BEEN SATISFIED.

7
8 (6) "RETAINAGE" MEANS MONEY WITHHELD FROM A CONTRACTOR
9 OR SUBCONTRACTOR UNDER A CONTRACT UNTIL THE WORK IS
10 SATISFACTORILY COMPLETED.

11
12 (7) "SUBCONTRACTOR" MEANS A PERSON WHO, FOR PROFIT,
13 ENTERS INTO A SUBCONTRACT WITH A CONTRACTOR OR SUBCONTRACTOR
14 TO PERFORM A PORTION OF THE WORK UNDER A CONTRACT WITH A
15 BUILDING CLIENT.

16
17 **38-15-102. Retainage limits.** (1) EXCEPT AS PROVIDED IN
18 SUBSECTIONS (2) AND (3) OF THIS SECTION, A BUILDING CLIENT OR
19 CONTRACTOR SHALL PAY AT LEAST NINETY-FIVE PERCENT OF THE
20 CALCULATED VALUE OF SATISFACTORILY COMPLETED WORK UNDER THE
21 CONTRACT OR A SUBCONTRACT THEREOF UNTIL FIFTY PERCENT OF THE
22 WORK REQUIRED BY A CONTRACT HAS BEEN SATISFACTORILY COMPLETED.
23 EXCEPT AS PROVIDED IN SUBSECTION (2) OF THIS SECTION, A BUILDING
24 CLIENT OR CONTRACTOR SHALL PAY AT LEAST NINETY-SEVEN AND
25 ONE-HALF PERCENT OF THE CALCULATED VALUE OF SATISFACTORILY
26 COMPLETED WORK AFTER FIFTY PERCENT OF THE WORK REQUIRED BY A
27 CONTRACT HAS BEEN SATISFACTORILY COMPLETED. THE CALCULATED
28 VALUE OF THE WORK DOES NOT INCLUDE THE PORTION OF THE CONTRACT
29 PRICE THAT IS USED TO STORE MATERIALS OR EQUIPMENT AT THE
30 CONSTRUCTION SITE.

31
32 (2) IF WORK HAS BEEN UNSATISFACTORILY COMPLETED OR IS NOT
33 COMPLETED ON TIME, THE BUILDING CLIENT OR CONTRACTOR MAY
34 WITHHOLD PAYMENT FOR SUCH WORK BEYOND THE AMOUNT AUTHORIZED
35 IN SUBSECTION (1) OF THIS SECTION IN ACCORDANCE WITH THE CONTRACT
36 OR EQUAL TO THE VALUE OF THE DELAYED OR UNSATISFACTORILY
37 COMPLETED PORTION OF THE CONTRACT UNTIL IT IS SATISFACTORILY
38 COMPLETED.

39
40 (3) THE BUILDING CLIENT MAY WITHHOLD A RETAINAGE PAYMENT
41 TO COMPLY WITH SECTION 38-26-107.

42
43 (4) RETAINAGE SHALL NOT BE WITHHELD FOR THE PORTION OF A
44 CONTRACT PRICE THAT COVERS THE COST OF STORING MATERIALS OR
45 EQUIPMENT AT THE CONSTRUCTION SITE.

46
47 (5) THIS ARTICLE DOES NOT LIMIT THE RIGHT OF THE LENDER TO A
48 BUILDING CLIENT FOR A CONSTRUCTION PROJECT TO WITHHOLD ADVANCES
49 OR PAYMENT TO THE BUILDING CLIENT PURSUANT TO A LOAN AGREEMENT
50 UNTIL THE LENDER HAS INSPECTED THE WORK FOR WHICH PAYMENT IS
51 REQUESTED AND THE LENDER DETERMINES THAT THE WORK IS
52 SATISFACTORILY COMPLETED.

53
54 **38-15-103. Retainage interest.** (1) WHEN THE RETAINAGE IS
55 RELEASED TO THE CONTRACTOR, THE BUILDING CLIENT SHALL PAY TO THE
56 CONTRACTOR ANY INCOME OR INTEREST EARNED FROM THE INVESTMENT

1 OF THE RETAINAGE WHILE THE BUILDING CLIENT HELD THE RETAINAGE.

2
3 (2) WHEN THE RETAINAGE IS RELEASED TO A SUBCONTRACTOR,
4 THE CONTRACTOR SHALL PAY TO THE SUBCONTRACTOR WHO DID THE
5 WORK FOR WHICH RETAINAGE WAS WITHHELD ANY INCOME OR INTEREST
6 EARNED FROM THE INVESTMENT OF THE RETAINAGE WHILE THE BUILDING
7 CLIENT OR CONTRACTOR HELD THE RETAINAGE.

8
9 (3) THE BUILDING CLIENT SHALL PROVIDE TO THE CONTRACTOR
10 AND THE CONTRACTOR SHALL PROVIDE TO EACH SUBCONTRACTOR WHO
11 DID THE WORK FOR WHICH RETAINAGE WAS WITHHELD A DETAILED
12 ACCOUNTING OF ANY INCOME OR INTEREST EARNED FROM THE
13 INVESTMENT OF THE RETAINAGE.

14
15 **38-15-104. Payment required.** (1) WHEN A CONTRACTOR OR
16 SUBCONTRACTOR RECEIVES A PAYMENT FOR THE WORK OF A
17 SUBCONTRACTOR, THE CONTRACTOR OR SUBCONTRACTOR SHALL
18 FORWARD THE PAYMENT TO THE SUBCONTRACTOR WHO PERFORMED THE
19 WORK WITHIN SEVEN DAYS.

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

27
28 (3) IF THE CONTRACTOR DETERMINES THAT A SUBCONTRACTOR'S
29 PERFORMANCE HAS BEEN SATISFACTORILY COMPLETED AND THE
30 SUBCONTRACTOR CAN BE RELEASED PRIOR TO FINAL COMPLETION OF THE
31 ENTIRE PROJECT WITHOUT RISK TO THE BUILDING CLIENT FROM THE
32 SUBCONTRACTOR'S WORK, THE CONTRACTOR SHALL REQUEST AN
33 ADJUSTMENT IN RETAINAGE FROM THE OWNER AS NECESSARY TO ENABLE
34 THE CONTRACTOR TO PAY THE SUBCONTRACTOR IN FULL, AND THE
35 BUILDING CLIENT SHALL RELEASE THE SUBCONTRACTOR'S RETAINAGE TO
36 THE CONTRACTOR AS PART OF THE NEXT CONTRACTUAL PAYMENT CYCLE.

37
38 **38-15-105. Substitute securities.** (1) THE CONTRACTOR MAY
39 TENDER TO THE BUILDING CLIENT ACCEPTABLE SUBSTITUTE SECURITY
40 WITH A WRITTEN REQUEST FOR RELEASE OF RETAINAGE IN THE AMOUNT OF
41 THE SUBSTITUTE SECURITY. UPON RECEIVING SUCH A REQUEST AND
42 ACCEPTABLE SECURITY, THE BUILDING CLIENT SHALL EITHER:

43
44 (a) PAY THE RETAINAGE IN THE AMOUNT OF THE SUBSTITUTE
45 SECURITY WITHIN SEVEN DAYS AFTER RECEIVING THE SUBSTITUTE
46 SECURITY IF THE RETAINAGE COVERED BY THE SECURITY HAS ALREADY
47 BEEN WITHHELD; OR

48
49 (b) DISCONTINUE WITHHOLDING RETAINAGE UNTIL THE AMOUNT
50 NOT WITHHELD EQUALS THE SUBSTITUTE SECURITY IF THE RETAINAGE HAS
51 NOT BEEN WITHHELD.

52
53 (2) THE SUBCONTRACTOR MAY TENDER TO THE CONTRACTOR
54 ACCEPTABLE SUBSTITUTE SECURITY WITH A WRITTEN REQUEST FOR
55 RELEASE OF RETAINAGE IN THE AMOUNT OF THE SUBSTITUTE SECURITY.
56 UPON RECEIVING SUCH A REQUEST AND ACCEPTABLE SUBSTITUTE

1 SECURITY, THE CONTRACTOR SHALL TENDER THE SUBSTITUTE SECURITY
2 TO THE BUILDING CLIENT WITH A REQUEST FOR THE RELEASE OF THE
3 RETAINAGE IN THE AMOUNT OF THE SUBSTITUTE SECURITY.

4
5 (3) FOR THE PURPOSES OF THIS SECTION, THE FOLLOWING
6 CONSTITUTE ACCEPTABLE SUBSTITUTE SECURITY IN THE AMOUNT OF THE
7 RETAINAGE RELEASED:

8
9 (a) AN IRREVOCABLE AND UNCONDITIONAL LETTER OF CREDIT IN
10 FAVOR OF THE BUILDING CLIENT, ISSUED BY A NATIONAL BANK OR
11 BUILDING AND LOAN ASSOCIATION LOCATED IN COLORADO OR BY A BANK
12 INCORPORATED UNDER THE LAWS OF COLORADO;

13
14 (b) RETAINAGE BONDS NAMING THE BUILDING CLIENT AS OBLIGEE,
15 ISSUED BY A SURETY COMPANY AUTHORIZED TO ISSUE BONDS IN
16 COLORADO; AND

17
18 (c) CERTIFICATES OF DEPOSIT DRAWN AND ISSUED BY A NATIONAL
19 BANK OR BUILDING AND LOAN ASSOCIATION LOCATED IN COLORADO OR BY
20 A BANK INCORPORATED UNDER THE LAWS OF COLORADO.

21
22 **38-15-106. Violations.** (1) A BUILDING CLIENT, CONTRACTOR, OR
23 SUBCONTRACTOR WHO VIOLATES THIS ARTICLE BY FAILING TO MAKE A
24 PAYMENT REQUIRED BY SECTION 38-15-104 SHALL BE LIABLE FOR THE
25 PAYMENT PLUS INTEREST AND A PENALTY TO ANY PERSON SUFFERING
26 DAMAGES ON ACCOUNT OF THE VIOLATION. THE PENALTY IS FIFTEEN
27 PERCENT INTEREST PER ANNUM, COMPOUNDED DAILY.

28
29 (2) IN ADDITION TO ANY OTHER REMEDY, FAILURE TO PAY
30 INTEREST IN VIOLATION OF SECTION 38-15-103 OR 38-15-104 SHALL
31 SUBJECT THE PROPERTY TO A MECHANICS' LIEN IN ACCORDANCE WITH
32 ARTICLE 22 OF THIS TITLE; EXCEPT THAT THE LIEN SHALL BE SUBORDINATE
33 TO ANY OTHER LIEN RECORDED PRIOR TO THE MECHANICS' LIEN.

34
35 **SECTION 3.** 24-91-102, Colorado Revised Statutes, is amended
36 BY THE ADDITION OF A NEW SUBSECTION to read:

37
38 **24-91-102. Definitions.** As used in this article, unless the context
39 otherwise requires:

40
41 (3.5) "RETAINAGE" MEANS MONEY WITHHELD FROM A
42 CONTRACTOR OR SUBCONTRACTOR UNDER A CONSTRUCTION CONTRACT
43 UNTIL THE WORK IS SATISFACTORILY COMPLETED.

44
45 **SECTION 4.** 24-91-103 (1) and (3), Colorado Revised Statutes,
46 are amended to read:

47
48 **24-91-103. Public entity - contracts - partial payments.**
49 (1) (a) A public entity awarding a contract exceeding one hundred fifty
50 thousand dollars for the construction, alteration, or repair of any highway,
51 public building, public work, or public improvement, structure, or system
52 shall authorize partial payments of the amount due under such contract at
53 the end of each calendar month, or as soon thereafter as practicable, to the
54 contractor, if the contractor is satisfactorily performing the contract.
55 EXCEPT AS PROVIDED IN PARAGRAPH (b) OF THIS SUBSECTION (1), THE
56 PUBLIC ENTITY SHALL PAY at least ~~ninety~~ NINETY-FIVE percent of the

1 calculated value of ~~any work~~ THE completed WORK shall be paid until
2 fifty percent of the work required by the contract has been performed.
3 ~~Thereafter, the public entity shall pay any of the remaining installments~~
4 ~~without retaining additional funds if, in the opinion of the public entity,~~
5 ~~satisfactory progress is being made in the work~~ SATISFACTORILY
6 COMPLETED. EXCEPT AS PROVIDED IN PARAGRAPH (b) OF THIS
7 SUBSECTION (1), THE PUBLIC ENTITY SHALL PAY AT LEAST NINETY-SEVEN
8 AND ONE-HALF PERCENT OF THE CALCULATED VALUE OF COMPLETED
9 WORK IN A TIMELY MANNER AFTER FIFTY PERCENT OF THE WORK
10 REQUIRED BY THE CONTRACT HAS BEEN SATISFACTORILY COMPLETED.
11 THE CALCULATED VALUE OF THE WORK SHALL NOT INCLUDE THE PORTION
12 OF THE CONTRACT PRICE THAT IS USED TO STORE MATERIALS OR
13 EQUIPMENT AT THE CONSTRUCTION SITE. ONE HUNDRED PERCENT OF SUCH
14 COSTS SHALL BE PAID IN A TIMELY MANNER.

15
16 (b) (I) The withheld percentage of the contract price of any such
17 CONTRACTED work, improvement, or construction shall MAY be retained
18 until the contract is completed satisfactorily and finally accepted by the
19 public entity. ~~If the public entity finds that satisfactory progress is being~~
20 ~~made in all phases of the contract, it may, upon written request by the~~
21 ~~contractor, authorize final payment from the withheld percentage to the~~
22 ~~contractor or subcontractors who have completed their work in a manner~~
23 ~~finally acceptable to the public entity. Before such payment is made, the~~
24 ~~public entity shall determine that satisfactory and substantial reasons exist~~
25 ~~for the payment and shall require written approval from any surety~~
26 ~~furnishing bonds for the contract work~~ SUBSTANTIALLY COMPLETE.

27
28 (II) IF THE CONTRACTED WORK HAS BEEN UNSATISFACTORILY
29 COMPLETED OR IS NOT COMPLETED ON TIME, THE BUILDING CLIENT MAY
30 WITHHOLD PAYMENT FOR SUCH WORK BEYOND THE AMOUNT AUTHORIZED
31 IN PARAGRAPH (a) OF THIS SUBSECTION (1) IN ACCORDANCE WITH THE
32 CONTRACT OR EQUAL TO THE VALUE OF THE DELAYED OR
33 UNSATISFACTORILY COMPLETED PORTION OF THE CONTRACT UNTIL IT IS
34 SATISFACTORILY COMPLETED.

35
36 (III) THE PUBLIC ENTITY MAY WITHHOLD A RETAINAGE TO COMPLY
37 WITH SECTION 38-26-107.

38
39 (3) ~~The provisions of this section shall apply to contracts between~~
40 ~~contractors and subcontractors entered into on or after July 1, 1991.~~

41
42 **SECTION 5.** 24-91-103.6 (2) (b), Colorado Revised Statutes, is
43 amended to read:

44
45 **24-91-103.6. Public entity - contracts - appropriations - change**
46 **orders - severability.** (2) Every public works contract, as defined in
47 section 24-91-103.5 (1) (b), shall contain the following:

48
49 (b) A clause ~~which~~ THAT prohibits the issuance of any change
50 order or other form of order or directive by the public entity requiring
51 additional compensable work to be performed, which work causes the
52 aggregate amount payable under the contract to exceed the amount
53 appropriated for the original contract, unless:

54
55 (I) The contractor is given written assurance by the public entity
56 that lawful appropriations to cover the costs of the additional work have

1 been made AND THE APPROPRIATIONS ARE AVAILABLE BEFORE
2 PERFORMANCE OF THE ADDITIONAL WORK; or ~~unless such~~

3
4 (II) THE work is covered under a remedy-granting provision in the
5 contract.

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

10
11 **24-91-111. Retainage interest.** (1) WHEN THE RETAINAGE IS
12 RELEASED TO THE CONTRACTOR, THE PUBLIC ENTITY SHALL PAY TO THE
13 CONTRACTOR ANY INCOME OR INTEREST EARNED FROM THE INVESTMENT
14 OF THE RETAINAGE WHILE THE PUBLIC ENTITY HELD THE RETAINAGE.

15
16 (2) WHEN THE RETAINAGE IS RELEASED TO A SUBCONTRACTOR,
17 THE CONTRACTOR SHALL PAY TO THE SUBCONTRACTOR WHO DID THE
18 WORK FOR WHICH RETAINAGE WAS WITHHELD ANY INCOME OR INTEREST
19 EARNED FROM THE INVESTMENT OF THE RETAINAGE WHILE THE PUBLIC
20 ENTITY OR THE CONTRACTOR HELD THE RETAINAGE.

21
22 (3) THE PUBLIC ENTITY SHALL PROVIDE TO THE CONTRACTOR, AND
23 THE CONTRACTOR SHALL PROVIDE TO THE SUBCONTRACTOR WHO DID THE
24 WORK FOR WHICH RETAINAGE WAS WITHHELD A DETAILED ACCOUNTING
25 OF ANY INCOME OR INTEREST EARNED FROM THE INVESTMENT OF THE
26 RETAINAGE.

27
28 **24-91-112. Substitute securities.** (1) THE CONTRACTOR MAY
29 TENDER TO THE PUBLIC ENTITY ACCEPTABLE SUBSTITUTE SECURITY WITH
30 A WRITTEN REQUEST FOR RELEASE OF RETAINAGE IN THE AMOUNT OF THE
31 SUBSTITUTE SECURITY. UPON RECEIVING SUCH A REQUEST AND
32 ACCEPTABLE SUBSTITUTE SECURITY, THE PUBLIC ENTITY SHALL EITHER:

33
34 (a) PAY THE RETAINAGE IN THE AMOUNT OF THE SUBSTITUTE
35 SECURITY WITHIN SEVEN DAYS AFTER RECEIVING THE SUBSTITUTE
36 SECURITY IF THE RETAINAGE COVERED BY THE SECURITY HAS ALREADY
37 BEEN WITHHELD; OR

38
39 (b) DISCONTINUE WITHHOLDING RETAINAGE UNTIL THE AMOUNT
40 NOT WITHHELD EQUALS THE SUBSTITUTE SECURITY IF THE RETAINAGE HAS
41 NOT BEEN WITHHELD.

42
43 (2) THE SUBCONTRACTOR MAY TENDER TO THE CONTRACTOR
44 ACCEPTABLE SUBSTITUTE SECURITY WITH A WRITTEN REQUEST FOR
45 RELEASE OF RETAINAGE IN THE AMOUNT OF THE SUBSTITUTE SECURITY.
46 UPON RECEIVING SUCH A REQUEST AND ACCEPTABLE SUBSTITUTE
47 SECURITY, THE CONTRACTOR SHALL TENDER THE SUBSTITUTE SECURITY
48 TO THE PUBLIC ENTITY WITH A REQUEST FOR THE RELEASE OF THE
49 RETAINAGE IN THE AMOUNT OF THE SUBSTITUTE SECURITY.

50
51 (3) FOR THE PURPOSES OF THIS SECTION, THE FOLLOWING
52 CONSTITUTE ACCEPTABLE SUBSTITUTE SECURITY IN THE AMOUNT OF THE
53 RETAINAGE RELEASED:

54
55 (a) AN IRREVOCABLE AND UNCONDITIONAL LETTER OF CREDIT, IN
56 FAVOR OF THE BUILDING CLIENT, ISSUED BY A NATIONAL BANK OR

1 BUILDING AND LOAN ASSOCIATION LOCATED IN COLORADO OR BY A BANK
2 INCORPORATED UNDER THE LAWS OF COLORADO;

3
4 (b) RETAINAGE BONDS NAMING THE BUILDING CLIENT AS OBLIGEE,
5 ISSUED BY A SURETY COMPANY AUTHORIZED TO ISSUE BONDS IN
6 COLORADO; AND

7
8 (c) CERTIFICATES OF DEPOSIT DRAWN AND ISSUED BY A NATIONAL
9 BANK OR BUILDING AND LOAN ASSOCIATION LOCATED IN COLORADO OR BY
10 A BANK INCORPORATED UNDER THE LAWS OF COLORADO.

11
12 **24-91-113. Violations.** A PUBLIC ENTITY, CONTRACTOR, OR
13 SUBCONTRACTOR WHO VIOLATES THIS ARTICLE BY FAILING TO MAKE A
14 PAYMENT REQUIRED BY SECTION 24-91-103 SHALL BE LIABLE FOR THE
15 PAYMENT PLUS INTEREST AND A PENALTY TO ANY PERSON SUFFERING
16 DAMAGES ON ACCOUNT OF THE VIOLATION. THE PENALTY IS FIFTEEN
17 PERCENT INTEREST PER ANNUM COMPOUNDED DAILY.

18
19 **SECTION 7. Act subject to petition - effective date.** This act
20 shall take effect at 12:01 a.m. on the day following the expiration of the
21 ninety-day period after final adjournment of the general assembly (August
22 11, 2010, if adjournment sine die is on May 12, 2010); except that, if a
23 referendum petition is filed pursuant to section 1 (3) of article V of the
24 state constitution against this act or an item, section, or part of this act
25 within such period, then the act, item, section, or part shall not take effect
26 unless approved by the people at the general election to be held in
27 November 2010 and shall take effect on the date of the official
28 declaration of the vote thereon by the governor."

29
30
31
32 **HB10-1266** be amended as follows, and as so amended, be referred to
33 the Committee on Appropriations with favorable
34 recommendation:

35
36 Amend printed bill, page 9, line 1, strike "**participation**".

37
38 Page 9, line 2, strike "**limited to fully funded plans -**".

39
40 Page 9, line 9, strike "HOWEVER,".

41
42 Page 9, strike lines 10 and 11.

43
44 Page 9, line 12, strike "GROUP BENEFIT PLANS.".

45
46 Page 19, line 3, strike "FULLY FUNDED".

47
48 Page 20, after line 10 insert:

49
50 "(5) IN THE EVENT OF UNEXPECTED YEAR-END DEFICITS DUE TO
51 CLAIMS COSTS OF LOCAL GOVERNMENT, SMALL BUSINESS, OR NONPROFIT
52 ORGANIZATION EMPLOYEES, EACH LOCAL GOVERNMENT, SMALL BUSINESS,
53 AND NONPROFIT ORGANIZATION EMPLOYER THAT PARTICIPATES IN THE
54 GROUP BENEFIT PLANS PURSUANT TO THIS PART 6 SHALL BEAR A
55 PERCENTAGE OF THE TOTAL COST OF SUCH UNEXPENDED YEAR-END
56 DEFICITS IN THE SAME PROPORTION THAT THE NUMBER OF EMPLOYEES OF

1 THE LOCAL GOVERNMENT, SMALL BUSINESS, OR NONPROFIT ORGANIZATION
2 EMPLOYER PARTICIPATING IN THE GROUP BENEFIT PLANS BEARS TO THE
3 TOTAL NUMBER OF LOCAL GOVERNMENT, SMALL BUSINESS, AND
4 NONPROFIT ORGANIZATION EMPLOYEES PARTICIPATING IN THE GROUP
5 BENEFIT PLANS."

6
7
8
9 **HB10-1278** be amended as follows, and as so amended, be referred to
10 the Committee on Appropriations with favorable
11 recommendation:
12

13 Amend printed bill, page 2, line 19, strike "AND, IN CONSULTATION" and
14 substitute "AND".
15

16 Page 3, strike lines 1 through 5 and substitute "SHALL ESTABLISH THE
17 AMOUNT OF THE ANNUAL REGISTRATION FEE TO BE COLLECTED UNDER
18 SECTION 38-33.3-401, C.R.S. THE AMOUNT OF THE REGISTRATION FEE
19 SHALL BE SUFFICIENT".
20

21 Page 3, line 16, after "**duties**" insert "- **rules**".
22

23 Page 4, strike lines 8 through 19 and substitute:
24

25 "(3) (a) THE HOA OMBUDSMAN SHALL ACT AS A CLEARING HOUSE
26 FOR INFORMATION CONCERNING THE RIGHTS AND DUTIES OF UNIT OWNERS,
27 DECLARANTS, AND UNIT OWNERS' ASSOCIATIONS UNDER THE ACT."
28

29 Page 4, strike lines 23 and 24 and substitute:
30

31 "(II) TRACK INQUIRIES AND COMPLAINTS AND REPORT ANNUALLY
32 TO THE DIRECTOR OF THE DIVISION OF REAL ESTATE REGARDING THE
33 NUMBER AND TYPES OF INQUIRIES AND COMPLAINTS RECEIVED."
34

35 Page 5, strike lines 1 through 3 and substitute "SHALL CONSIST OF ANNUAL
36 REGISTRATION FEES PAID BY UNIT OWNERS' ASSOCIATIONS AND
37 COLLECTED BY THE DIVISION OF REAL ESTATE PURSUANT TO SECTION
38 38-33.3-401, C.R.S. INTEREST EARNED ON MONEYS IN".
39

40 Page 5, after line 8 insert:
41

42 "(5) THE DIRECTOR OF THE DIVISION OF REAL ESTATE MAY ADOPT
43 RULES AS NECESSARY TO IMPLEMENT THIS SECTION."
44

45 Renumber succeeding subsection accordingly.
46

47 Page 5, strike lines 13 through 21 and substitute:
48

49 "**SECTION 5.** Article 33.3 of title 38, Colorado Revised Statutes,
50 is amended BY THE ADDITION OF A NEW PART to read:
51

52 **PART 4**
53 **REGISTRATION**
54

55 **38-33.3-401. Registration - annual fees.** (1) EVERY UNIT
56 OWNERS' ASSOCIATION ORGANIZED UNDER SECTION 38-33.3-301 SHALL

1 REGISTER ANNUALLY WITH THE DIRECTOR OF THE DIVISION OF REAL
2 ESTATE, IN THE FORM AND MANNER SPECIFIED BY THE DIRECTOR.
3

4 (2) THE ANNUAL REGISTRATION SHALL BE ACCOMPANIED BY A FEE
5 IN THE AMOUNT SET BY THE DIRECTOR IN ACCORDANCE WITH SECTION
6 12-61-111.5, C.R.S., AND SHALL INCLUDE THE INFORMATION REQUIRED TO
7 BE DISCLOSED UNDER SECTION 38-33.3-209.4 (1). THE INFORMATION
8 SHALL BE UPDATED WITHIN NINETY DAYS OF ANY CHANGE, IN
9 ACCORDANCE WITH SECTION 38-33.3-209.4 (1).
10

11 (3) A REGISTRATION SHALL BE VALID FOR ONE YEAR. AN
12 ASSOCIATION THAT FAILS TO REGISTER, OR WHOSE ANNUAL REGISTRATION
13 HAS EXPIRED, IS INELIGIBLE TO IMPOSE OR ENFORCE A LIEN FOR
14 ASSESSMENTS UNDER SECTION 38-33.3-316 OR TO PURSUE ANY ACTION OR
15 EMPLOY ANY ENFORCEMENT MECHANISM OTHERWISE AVAILABLE TO IT
16 UNDER SECTION 38-33.3-123 UNTIL IT IS AGAIN VALIDLY REGISTERED
17 PURSUANT TO THIS SECTION.
18

19 (4) ADMINISTRATIVELY FINAL DETERMINATIONS BY THE DIRECTOR
20 OF THE DIVISION OF REAL ESTATE CONCERNING THE VALIDITY OR
21 TIMELINESS OF REGISTRATIONS UNDER THIS SECTION ARE SUBJECT TO
22 JUDICIAL REVIEW PURSUANT TO SECTION 24-4-106 (11), C.R.S.".
23
24
25

26 **SB10-083** be amended as follows, and as so amended, be referred to
27 the Committee of the Whole with favorable
28 recommendation:
29

30 Amend reengrossed bill, page 3, after line 4 insert:
31

32 "(C) NOTHING IN THIS SUBPARAGRAPH (I) ALLOWS THE STATE
33 LICENSING AUTHORITY TO ADOPT A RULE THAT RESTRICTS THE ABILITY OF
34 A RETAILER TO PURCHASE ALCOHOL BEVERAGES ON CREDIT FROM ANY
35 LICENSEE, EXCEPT THAT IF THE RETAILER IS IN ARREARS IN PAYMENTS TO
36 A PARTICULAR LICENSEE BEYOND THE THIRTY-DAY LIMIT ON THE
37 EXTENSION OF CREDIT CONTAINED IN 27 CFR PART 6, THE RETAILER SHALL
38 MAKE PAYMENTS ON A CASH-ON-DELIVERY BASIS TO THAT PARTICULAR
39 LICENSEE AS PROVIDED IN 27 CFR PART 6."
40
41
42

43 **SIGNING OF BILLS - RESOLUTIONS - MEMORIALS**

44

45 The Speaker has signed: **HB10-1110, 1297, 1298, 1299, 1300, 1301,**
46 **1302, 1303, 1304, 1305, 1307, 1308, 1309, 1310, 1311, 1312, 1313,**
47 **1314, 1315, 1316, 1317.**
48
49

50 **DELIVERY OF BILLS TO GOVERNOR**

51

52 The Chief Clerk of the House of Representatives reports the following
53 bills have been delivered to the Office of the Governor: **HB10-1110,**
54 **1297, 1298, 1299, 1300, 1301, 1302, 1303, 1304, 1305, 1307, 1308,**
55 **1309, 1310, 1311, 1312, 1313, 1314, 1315, 1316, 1317** at 10:09 a.m. on
56 March 4, 2010.

INTRODUCTION OF BILLS
First Reading

The following bills were read by title and referred to the committees indicated:

HB10-1355 by Representative(s) Gagliardi, Merrifield; also Senator(s) Kopp--Concerning the off-label use of a prescription drug for a specific type of cancer for which the drug is recognized for treatment in the reference compendia as identified by the secretary of the United States department of health and human services.

Committee on Health and Human Services

HB10-1356 by Representative(s) Ryden, Miklosi, Pace; also Senator(s) Tochtrop, Carroll M., Hodge--Concerning enactment of the "Workers' Compensation Policyholder Protection Act of 2010", and, in connection therewith, requiring the distribution of excess surplus funds held by Pinnacol Assurance to Pinnacol Assurance policyholders and limiting the insurance commissioner's discretion with respect to the prior approval of workers' compensation pure premium rates filed by a rating organization.

Committee on Business Affairs and Labor

HB10-1357 by Representative(s) McFadyen and Judd, Carroll T., Vaad; also Senator(s) Romer and Boyd, Mitchell--Concerning creation of a false claims act.

Committee on Judiciary

HB10-1358 by Representative(s) Fischer, Apuan, Court, Frangas, Gagliardi, Hulinghorst, Kagan, Kefalas, Kerr A., Labuda, Levy, Merrifield, Middleton, Pace, Peniston, Primavera, Ryden, Solano, Todd, Tyler, Vigil, Weissmann; also Senator(s) Johnston, Bacon, Hodge, Steadman, Tapia, Williams--Concerning a requirement for new home builders to offer home buyers water efficiency options.

Committee on Transportation & Energy

SB10-071 by Senator(s) Morse; also Representative(s) Riesberg--Concerning creation of a lifetime pass to state parks and recreation areas that shall be available for purchase by Colorado residents who are of eligible age, and making an appropriation therefor.

Committee on Agriculture, Livestock, & Natural Resources

SB10-079 by Senator(s) Penry; also Representative(s) Bradford and King S.--Concerning authority to offer additional programs at Mesa state college.

Committee on Education

SB10-093 by Senator(s) Lundberg; also Representative(s) DelGrosso--Concerning the orderly resolution of claims in foreclosures involving junior liens.

Committee on Local Government

- 1 **SB10-101** by Senator(s) Gibbs, Schwartz, Romer, Bacon, Cadman,
2 Hudak, Johnston, Kester, Sandoval, Scheffel, Steadman,
3 Tapia, White; also Representative(s) Scanlan and Massey,
4 Balmer, Baumgardner, Curry, Frangas, Liston, Merrifield,
5 Pace--Concerning authorizing Colorado mountain college
6 to offer baccalaureate degrees.
7 Committee on Education
8
9 **SB10-119** by Senator(s) Shaffer B.; also Representative(s) May--
10 Concerning payments made to members of the general
11 assembly in connection with the performance of their
12 legislative duties.
13 Committee on Appropriations
14
15 **SB10-140** by Senator(s) Mitchell, Shaffer B., Carroll M., Spence;
16 also Representative(s) McCann--Concerning human
17 trafficking.
18 Committee on Judiciary
19
20 **SB10-152** by Senator(s) Newell, Bacon, Boyd, Foster, Hodge, Keller,
21 Sandoval, Schwartz, Steadman, Tochtrop; also
22 Representative(s) Gagliardi, Apuan, May, Merrifield,
23 Peniston, Primavera, Todd--Concerning information
24 relating to a referral of suspected child abuse by certain
25 mandatory reporters.
26 Committee on Health and Human Services
27
28 **SB10-154** by Senator(s) Sandoval; also Representative(s) Middleton--
29 Concerning adding categories to the definition of a "high-
30 risk student" for purposes of determining whether a public
31 school qualifies for designation as an alternative education
32 campus.
33 Committee on Education
34
35
36
37

NOTICE OF CALENDARED ITEM(S)

- 38
39
40 On motion of Representative Weissmann, the following bill(s) calendared
41 for Second Reading, March 5, will be laid over until March 8, 2010:
42 **HB10-1205.**
43
44

LAY OVER OF CALENDAR ITEM(S)

- 45
46
47
48
49 On motion of Representative Weissmann, the following item(s) on the
50 Calendar (was)were laid over until March 5, retaining place on Calendar:
51
52 Consideration of Senate Amendment(s)--**HB10-1321.**
53
54
55
56

1 On motion of Representative Weissmann, the House adjourned until
2 9:00 a.m., March 5, 2010.

3

4

5

6

Approved:
TERRANCE D. CARROLL,
Speaker

7 Attest:

8 MARILYN EDDINS,

9 Chief Clerk

