

HOUSE COMMITTEE OF REFERENCE REPORT

Chairman of Committee

March 3, 2010
Date

Committee on Business Affairs and Labor.

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

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

1 Amend printed bill, strike everything below the enacting clause and
2 substitute:

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

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

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

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

13 (d) Clauses in construction contracts that allow builders to not
14 fully fund changes to contracts prior to performance of such work and to
15 pay for such work in a timely fashion have ruinous financial
16 consequences for the affected contractors and subcontractors; and

17 (e) There is a substantial statewide interest in ensuring that the
18 policy underlying the efficient expenditure of funds is balanced with the

1 policy of fostering a healthy and viable Colorado construction industry.

2 (2) The general assembly hereby declares that:

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

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

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

10 **ARTICLE 15**
11 **Retainage in Commercial Construction Contracts**

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

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

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

22 (3) "CONTRACT" MEANS AN AGREEMENT OR SUBCONTRACT FOR
23 MATERIALS OR LABOR FOR THE CONSTRUCTION, ALTERATION,
24 RENOVATION, OR REPAIR OF A BUILDING, BUILDING SITE, STRUCTURE,
25 HIGHWAY, STREET, ROADWAY, BRIDGE, VIADUCT, WATER OR SEWER
26 SYSTEM, GAS OR OTHER DISTRIBUTION SYSTEM, OR OTHER WORK DEALING
27 WITH CONSTRUCTION OR FOR ANY MOVING, DEMOLITION, OR EXCAVATION
28 CONNECTED WITH THE CONSTRUCTION. FOR THE PURPOSES OF THIS
29 ARTICLE, "CONTRACT" DOES NOT INCLUDE:

30 (a) ANY REAL PROPERTY LEASE OR RENTAL AGREEMENT BETWEEN
31 A LANDLORD AND A TENANT, REGARDLESS OF WHETHER ANY PROVISION

1 OF THE LEASE OR RENTAL AGREEMENT CONCERNS CONSTRUCTION,
2 ALTERATION, IMPROVEMENT, OR MAINTENANCE OF REAL PROPERTY;

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

6 (c) A CONTRACT BETWEEN A BUILDING CLIENT AND A CONTRACTOR
7 IN AN AMOUNT LESS THAN ONE HUNDRED FIFTY THOUSAND DOLLARS.

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

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

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

16 (7) "SUBCONTRACTOR" MEANS A PERSON WHO, FOR PROFIT,
17 ENTERS INTO A SUBCONTRACT WITH A CONTRACTOR OR SUBCONTRACTOR
18 TO PERFORM A PORTION OF THE WORK UNDER A CONTRACT WITH A
19 BUILDING CLIENT.

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

1 (2) IF WORK HAS BEEN UNSATISFACTORILY COMPLETED OR IS NOT
2 COMPLETED ON TIME, THE BUILDING CLIENT OR CONTRACTOR MAY
3 WITHHOLD PAYMENT FOR SUCH WORK BEYOND THE AMOUNT AUTHORIZED
4 IN SUBSECTION (1) OF THIS SECTION IN ACCORDANCE WITH THE CONTRACT
5 OR EQUAL TO THE VALUE OF THE DELAYED OR UNSATISFACTORILY
6 COMPLETED PORTION OF THE CONTRACT UNTIL IT IS SATISFACTORILY
7 COMPLETED.

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

10 (4) RETAINAGE SHALL NOT BE WITHHELD FOR THE PORTION OF A
11 CONTRACT PRICE THAT COVERS THE COST OF STORING MATERIALS OR
12 EQUIPMENT AT THE CONSTRUCTION SITE.

13 (5) THIS ARTICLE DOES NOT LIMIT THE RIGHT OF THE LENDER TO A
14 BUILDING CLIENT FOR A CONSTRUCTION PROJECT TO WITHHOLD ADVANCES
15 OR PAYMENT TO THE BUILDING CLIENT PURSUANT TO A LOAN AGREEMENT
16 UNTIL THE LENDER HAS INSPECTED THE WORK FOR WHICH PAYMENT IS
17 REQUESTED AND THE LENDER DETERMINES THAT THE WORK IS
18 SATISFACTORILY COMPLETED.

19 **38-15-103. Retainage interest.** (1) WHEN THE RETAINAGE IS
20 RELEASED TO THE CONTRACTOR, THE BUILDING CLIENT SHALL PAY TO THE
21 CONTRACTOR ANY INCOME OR INTEREST EARNED FROM THE INVESTMENT
22 OF THE RETAINAGE WHILE THE BUILDING CLIENT HELD THE RETAINAGE.

23 (2) WHEN THE RETAINAGE IS RELEASED TO A SUBCONTRACTOR,
24 THE CONTRACTOR SHALL PAY TO THE SUBCONTRACTOR WHO DID THE
25 WORK FOR WHICH RETAINAGE WAS WITHHELD ANY INCOME OR INTEREST
26 EARNED FROM THE INVESTMENT OF THE RETAINAGE WHILE THE BUILDING
27 CLIENT OR CONTRACTOR HELD THE RETAINAGE.

28 (3) THE BUILDING CLIENT SHALL PROVIDE TO THE CONTRACTOR
29 AND THE CONTRACTOR SHALL PROVIDE TO EACH SUBCONTRACTOR WHO
30 DID THE WORK FOR WHICH RETAINAGE WAS WITHHELD A DETAILED
31 ACCOUNTING OF ANY INCOME OR INTEREST EARNED FROM THE
32 INVESTMENT OF THE RETAINAGE.

33 **38-15-104. Payment required.** (1) WHEN A CONTRACTOR OR
34 SUBCONTRACTOR RECEIVES A PAYMENT FOR THE WORK OF A

1 SUBCONTRACTOR, THE CONTRACTOR OR SUBCONTRACTOR SHALL
2 FORWARD THE PAYMENT TO THE SUBCONTRACTOR WHO PERFORMED THE
3 WORK WITHIN SEVEN DAYS.

4 (2) EXCEPT AS PROVIDED IN SECTION 38-15-102 (2), THE BUILDING
5 CLIENT SHALL PAY TO THE CONTRACTOR THE BALANCE OF THE UNPAID
6 CONTRACT PRICE, WHICH SHALL INCLUDE ALL RETAINAGE PLUS INTEREST
7 ACCRUED PURSUANT TO SECTION 38-15-103, WITHIN THIRTY DAYS AFTER
8 THE EARLIER OF THE BUILDING BEING APPROVED FOR OCCUPANCY OR
9 RECEIVING NOTICE OF FINAL COMPLETION.

10 (3) IF THE CONTRACTOR DETERMINES THAT A SUBCONTRACTOR'S
11 PERFORMANCE HAS BEEN SATISFACTORILY COMPLETED AND THE
12 SUBCONTRACTOR CAN BE RELEASED PRIOR TO FINAL COMPLETION OF THE
13 ENTIRE PROJECT WITHOUT RISK TO THE BUILDING CLIENT FROM THE
14 SUBCONTRACTOR'S WORK, THE CONTRACTOR SHALL REQUEST AN
15 ADJUSTMENT IN RETAINAGE FROM THE OWNER AS NECESSARY TO ENABLE
16 THE CONTRACTOR TO PAY THE SUBCONTRACTOR IN FULL, AND THE
17 BUILDING CLIENT SHALL RELEASE THE SUBCONTRACTOR'S RETAINAGE TO
18 THE CONTRACTOR AS PART OF THE NEXT CONTRACTUAL PAYMENT CYCLE.

19 **38-15-105. Substitute securities.** (1) THE CONTRACTOR MAY
20 TENDER TO THE BUILDING CLIENT ACCEPTABLE SUBSTITUTE SECURITY
21 WITH A WRITTEN REQUEST FOR RELEASE OF RETAINAGE IN THE AMOUNT OF
22 THE SUBSTITUTE SECURITY. UPON RECEIVING SUCH A REQUEST AND
23 ACCEPTABLE SECURITY, THE BUILDING CLIENT 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

28 (b) DISCONTINUE WITHHOLDING RETAINAGE UNTIL THE AMOUNT
29 NOT WITHHELD EQUALS THE SUBSTITUTE SECURITY IF THE RETAINAGE HAS
30 NOT BEEN WITHHELD.

31 (2) THE SUBCONTRACTOR MAY TENDER TO THE CONTRACTOR
32 ACCEPTABLE SUBSTITUTE SECURITY WITH A WRITTEN REQUEST FOR
33 RELEASE OF RETAINAGE IN THE AMOUNT OF THE SUBSTITUTE SECURITY.
34 UPON RECEIVING SUCH A REQUEST AND ACCEPTABLE SUBSTITUTE
35 SECURITY, THE CONTRACTOR SHALL TENDER THE SUBSTITUTE SECURITY

1 TO THE BUILDING CLIENT WITH A REQUEST FOR THE RELEASE OF THE
2 RETAINAGE IN THE AMOUNT OF THE SUBSTITUTE SECURITY.

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

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

10 (b) RETAINAGE BONDS NAMING THE BUILDING CLIENT AS OBLIGEE,
11 ISSUED BY A SURETY COMPANY AUTHORIZED TO ISSUE BONDS IN
12 COLORADO; AND

13 (c) CERTIFICATES OF DEPOSIT DRAWN AND ISSUED BY A NATIONAL
14 BANK OR BUILDING AND LOAN ASSOCIATION LOCATED IN COLORADO OR BY
15 A BANK INCORPORATED UNDER THE LAWS OF COLORADO.

16 **38-15-106. Violations.** (1) A BUILDING CLIENT, CONTRACTOR, OR
17 SUBCONTRACTOR WHO VIOLATES THIS ARTICLE BY FAILING TO MAKE A
18 PAYMENT REQUIRED BY SECTION 38-15-104 SHALL BE LIABLE FOR THE
19 PAYMENT PLUS INTEREST AND A PENALTY TO ANY PERSON SUFFERING
20 DAMAGES ON ACCOUNT OF THE VIOLATION. THE PENALTY IS FIFTEEN
21 PERCENT INTEREST PER ANNUM, COMPOUNDED DAILY.

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

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

29 **24-91-102. Definitions.** As used in this article, unless the context
30 otherwise requires:

31 (3.5) "RETAINAGE" MEANS MONEY WITHHELD FROM A
32 CONTRACTOR OR SUBCONTRACTOR UNDER A CONSTRUCTION CONTRACT

1 UNTIL THE WORK IS SATISFACTORILY COMPLETED.

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

4 **24-91-103. Public entity - contracts - partial payments.**

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

27 (b) (I) The withheld percentage of the contract price of any ~~such~~
28 ~~CONTRACTED~~ work, improvement, or construction ~~shall~~ MAY be retained
29 until the contract is ~~completed satisfactorily and finally accepted by the~~
30 ~~public entity. If the public entity finds that satisfactory progress is being~~
31 ~~made in all phases of the contract, it may, upon written request by the~~
32 ~~contractor, authorize final payment from the withheld percentage to the~~
33 ~~contractor or subcontractors who have completed their work in a manner~~
34 ~~finally acceptable to the public entity. Before such payment is made, the~~
35 ~~public entity shall determine that satisfactory and substantial reasons exist~~
36 ~~for the payment and shall require written approval from any surety~~
37 ~~furnishing bonds for the contract work~~ SUBSTANTIALLY COMPLETE.

1 (II) IF THE CONTRACTED WORK HAS BEEN UNSATISFACTORILY
2 COMPLETED OR IS NOT COMPLETED ON TIME, THE BUILDING CLIENT MAY
3 WITHHOLD PAYMENT FOR SUCH WORK BEYOND THE AMOUNT AUTHORIZED
4 IN PARAGRAPH (a) OF THIS SUBSECTION (1) IN ACCORDANCE WITH THE
5 CONTRACT OR EQUAL TO THE VALUE OF THE DELAYED OR
6 UNSATISFACTORILY COMPLETED PORTION OF THE CONTRACT UNTIL IT IS
7 SATISFACTORILY COMPLETED.

8 (III) THE PUBLIC ENTITY MAY WITHHOLD A RETAINAGE TO COMPLY
9 WITH SECTION 38-26-107.

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

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

14 **24-91-103.6. Public entity - contracts - appropriations - change**
15 **orders - severability.** (2) Every public works contract, as defined in
16 section 24-91-103.5 (1) (b), shall contain the following:

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

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

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

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

31 **24-91-111. Retainage interest.** (1) WHEN THE RETAINAGE IS
32 RELEASED TO THE CONTRACTOR, THE PUBLIC ENTITY SHALL PAY TO THE

1 CONTRACTOR ANY INCOME OR INTEREST EARNED FROM THE INVESTMENT
2 OF THE RETAINAGE WHILE THE PUBLIC ENTITY HELD THE RETAINAGE.

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 PUBLIC
7 ENTITY OR THE CONTRACTOR HELD THE RETAINAGE.

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

13 **24-91-112. Substitute securities.** (1) THE CONTRACTOR MAY
14 TENDER TO THE PUBLIC ENTITY ACCEPTABLE SUBSTITUTE SECURITY WITH
15 A WRITTEN REQUEST FOR RELEASE OF RETAINAGE IN THE AMOUNT OF THE
16 SUBSTITUTE SECURITY. UPON RECEIVING SUCH A REQUEST AND
17 ACCEPTABLE SUBSTITUTE SECURITY, THE PUBLIC ENTITY SHALL EITHER:

18 (a) PAY THE RETAINAGE IN THE AMOUNT OF THE SUBSTITUTE
19 SECURITY WITHIN SEVEN DAYS AFTER RECEIVING THE SUBSTITUTE
20 SECURITY IF THE RETAINAGE COVERED BY THE SECURITY HAS ALREADY
21 BEEN WITHHELD; OR

22 (b) DISCONTINUE WITHHOLDING RETAINAGE UNTIL THE AMOUNT
23 NOT WITHHELD EQUALS THE SUBSTITUTE SECURITY IF THE RETAINAGE HAS
24 NOT BEEN WITHHELD.

25 (2) THE SUBCONTRACTOR MAY TENDER TO THE CONTRACTOR
26 ACCEPTABLE SUBSTITUTE SECURITY WITH A WRITTEN REQUEST FOR
27 RELEASE OF RETAINAGE IN THE AMOUNT OF THE SUBSTITUTE SECURITY.
28 UPON RECEIVING SUCH A REQUEST AND ACCEPTABLE SUBSTITUTE
29 SECURITY, THE CONTRACTOR SHALL TENDER THE SUBSTITUTE SECURITY
30 TO THE PUBLIC ENTITY WITH A REQUEST FOR THE RELEASE OF THE
31 RETAINAGE IN THE AMOUNT OF THE SUBSTITUTE SECURITY.

32 (3) FOR THE PURPOSES OF THIS SECTION, THE FOLLOWING
33 CONSTITUTE ACCEPTABLE SUBSTITUTE SECURITY IN THE AMOUNT OF THE
34 RETAINAGE RELEASED:

1 (a) AN IRREVOCABLE AND UNCONDITIONAL LETTER OF CREDIT, IN
2 FAVOR OF THE BUILDING CLIENT, ISSUED BY A NATIONAL BANK OR
3 BUILDING AND LOAN ASSOCIATION LOCATED IN COLORADO OR BY A BANK
4 INCORPORATED UNDER THE LAWS OF COLORADO;

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

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

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

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