

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

**PREAMENDED**

*This Unofficial Version Includes Committee  
Amendments Not Yet Adopted on Second Reading*

LLS NO. 10-0089.01 Jery Payne

**HOUSE BILL 10-1162**

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**HOUSE SPONSORSHIP**

**Soper,**

**SENATE SPONSORSHIP**

**Bacon,**

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**House Committees**

Business Affairs and Labor  
Appropriations

**Senate Committees**

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**A BILL FOR AN ACT**

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

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**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.

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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 allow builders 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 have ruinous financial  
15 consequences for the affected contractors 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 through  
3 construction contracts is a matter of statewide concern and is affected  
4 with a public interest; and

5 (b) It is within the police power of the state to protect the health,  
6 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 AN AGREEMENT OR SUBCONTRACT FOR  
22 MATERIALS OR LABOR FOR THE CONSTRUCTION, ALTERATION,  
23 RENOVATION, OR REPAIR OF A BUILDING, BUILDING SITE, STRUCTURE,  
24 HIGHWAY, STREET, ROADWAY, BRIDGE, VIADUCT, WATER OR SEWER  
25 SYSTEM, GAS OR OTHER DISTRIBUTION SYSTEM, OR OTHER WORK DEALING  
26 WITH CONSTRUCTION OR FOR ANY MOVING, DEMOLITION, OR EXCAVATION  
27 CONNECTED WITH THE CONSTRUCTION. FOR THE PURPOSES OF THIS

1 ARTICLE, "CONTRACT" DOES NOT INCLUDE:

2 (a) ANY REAL PROPERTY LEASE OR RENTAL AGREEMENT BETWEEN  
3 A LANDLORD AND A TENANT, REGARDLESS OF WHETHER ANY PROVISION  
4 OF THE LEASE OR RENTAL AGREEMENT CONCERNS CONSTRUCTION,  
5 ALTERATION, IMPROVEMENT, OR MAINTENANCE OF REAL PROPERTY;

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

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

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

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

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

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

23 **38-15-102. Retainage limits.** (1) EXCEPT AS PROVIDED IN  
24 SUBSECTIONS (2) AND (3) OF THIS SECTION, A BUILDING CLIENT OR  
25 CONTRACTOR SHALL PAY AT LEAST NINETY-FIVE PERCENT OF THE  
26 CALCULATED VALUE OF SATISFACTORILY COMPLETED WORK UNDER THE  
27 CONTRACT OR A SUBCONTRACT THEREOF UNTIL FIFTY PERCENT OF THE

1 WORK REQUIRED BY A CONTRACT HAS BEEN SATISFACTORILY COMPLETED.  
2 EXCEPT AS PROVIDED IN SUBSECTION (2) OF THIS SECTION, A BUILDING  
3 CLIENT OR CONTRACTOR SHALL PAY AT LEAST NINETY-SEVEN AND  
4 ONE-HALF PERCENT OF THE CALCULATED VALUE OF SATISFACTORILY  
5 COMPLETED WORK AFTER FIFTY PERCENT OF THE WORK REQUIRED BY A  
6 CONTRACT HAS BEEN SATISFACTORILY COMPLETED. THE CALCULATED  
7 VALUE OF THE WORK DOES NOT INCLUDE THE PORTION OF THE CONTRACT  
8 PRICE THAT IS USED TO STORE MATERIALS OR EQUIPMENT AT THE  
9 CONSTRUCTION SITE.

10 (2) IF WORK HAS BEEN UNSATISFACTORILY COMPLETED OR IS NOT  
11 COMPLETED ON TIME, THE BUILDING CLIENT OR CONTRACTOR MAY  
12 WITHHOLD PAYMENT FOR SUCH WORK BEYOND THE AMOUNT AUTHORIZED  
13 IN SUBSECTION (1) OF THIS SECTION IN ACCORDANCE WITH THE CONTRACT  
14 OR EQUAL TO THE VALUE OF THE DELAYED OR UNSATISFACTORILY  
15 COMPLETED PORTION OF THE CONTRACT UNTIL IT IS SATISFACTORILY  
16 COMPLETED.

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

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

22 (5) THIS ARTICLE DOES NOT LIMIT THE RIGHT OF THE LENDER TO A  
23 BUILDING CLIENT FOR A CONSTRUCTION PROJECT TO WITHHOLD ADVANCES  
24 OR PAYMENT TO THE BUILDING CLIENT PURSUANT TO A LOAN AGREEMENT  
25 UNTIL THE LENDER HAS INSPECTED THE WORK FOR WHICH PAYMENT IS  
26 REQUESTED AND THE LENDER DETERMINES THAT THE WORK IS  
27 SATISFACTORILY COMPLETED.

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

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

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

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

26           (3) IF THE CONTRACTOR DETERMINES THAT A SUBCONTRACTOR'S  
27 PERFORMANCE HAS BEEN SATISFACTORILY COMPLETED AND THE

1 SUBCONTRACTOR CAN BE RELEASED PRIOR TO FINAL COMPLETION OF THE  
2 ENTIRE PROJECT WITHOUT RISK TO THE BUILDING CLIENT FROM THE  
3 SUBCONTRACTOR'S WORK, THE CONTRACTOR SHALL REQUEST AN  
4 ADJUSTMENT IN RETAINAGE FROM THE OWNER AS NECESSARY TO ENABLE  
5 THE CONTRACTOR TO PAY THE SUBCONTRACTOR IN FULL, AND THE  
6 BUILDING CLIENT SHALL RELEASE THE SUBCONTRACTOR'S RETAINAGE TO  
7 THE CONTRACTOR AS PART OF THE NEXT CONTRACTUAL PAYMENT CYCLE.

8 **38-15-105. Substitute securities.** (1) THE CONTRACTOR MAY  
9 TENDER TO THE BUILDING CLIENT ACCEPTABLE SUBSTITUTE SECURITY  
10 WITH A WRITTEN REQUEST FOR RELEASE OF RETAINAGE IN THE AMOUNT OF  
11 THE SUBSTITUTE SECURITY. UPON RECEIVING SUCH A REQUEST AND  
12 ACCEPTABLE SECURITY, THE BUILDING CLIENT SHALL EITHER:

13 (a) PAY THE RETAINAGE IN THE AMOUNT OF THE SUBSTITUTE  
14 SECURITY WITHIN SEVEN DAYS AFTER RECEIVING THE SUBSTITUTE  
15 SECURITY IF THE RETAINAGE COVERED BY THE SECURITY HAS ALREADY  
16 BEEN WITHHELD; OR

17 (b) DISCONTINUE WITHHOLDING RETAINAGE UNTIL THE AMOUNT  
18 NOT WITHHELD EQUALS THE SUBSTITUTE SECURITY IF THE RETAINAGE HAS  
19 NOT BEEN WITHHELD.

20 (2) THE SUBCONTRACTOR MAY TENDER TO THE CONTRACTOR  
21 ACCEPTABLE SUBSTITUTE SECURITY WITH A WRITTEN REQUEST FOR  
22 RELEASE OF RETAINAGE IN THE AMOUNT OF THE SUBSTITUTE SECURITY.  
23 UPON RECEIVING SUCH A REQUEST AND ACCEPTABLE SUBSTITUTE  
24 SECURITY, THE CONTRACTOR SHALL TENDER THE SUBSTITUTE SECURITY  
25 TO THE BUILDING CLIENT WITH A REQUEST FOR THE RELEASE OF THE  
26 RETAINAGE IN THE AMOUNT OF THE SUBSTITUTE SECURITY.

27 (3) FOR THE PURPOSES OF THIS SECTION, THE FOLLOWING

1 CONSTITUTE ACCEPTABLE SUBSTITUTE SECURITY IN THE AMOUNT OF THE  
2 RETAINAGE RELEASED:

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

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

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

13 **38-15-106. Violations.** (1) A BUILDING CLIENT, CONTRACTOR, OR  
14 SUBCONTRACTOR WHO VIOLATES THIS ARTICLE BY FAILING TO MAKE A  
15 PAYMENT REQUIRED BY SECTION 38-15-104 SHALL BE LIABLE FOR THE  
16 PAYMENT PLUS INTEREST AND A PENALTY TO ANY PERSON SUFFERING  
17 DAMAGES ON ACCOUNT OF THE VIOLATION. THE PENALTY IS FIFTEEN  
18 PERCENT INTEREST PER ANNUM, COMPOUNDED DAILY.

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

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

26 **24-91-102. Definitions.** As used in this article, unless the context  
27 otherwise requires:



1 (3.5) "RETAINAGE" MEANS MONEY WITHHELD FROM A  
2 CONTRACTOR OR SUBCONTRACTOR UNDER A CONSTRUCTION CONTRACT  
3 UNTIL THE WORK IS SATISFACTORILY COMPLETED.

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

6 **24-91-103. Public entity - contracts - partial payments.**

7 (1) (a) A public entity awarding a contract exceeding one hundred fifty  
8 thousand dollars for the construction, alteration, or repair of any highway,  
9 public building, public work, or public improvement, structure, or system  
10 shall authorize partial payments of the amount due under such contract at  
11 the end of each calendar month, or as soon thereafter as practicable, to the  
12 contractor, if the contractor is satisfactorily performing the contract.

13 EXCEPT AS PROVIDED IN PARAGRAPH (b) OF THIS SUBSECTION (1), THE  
14 PUBLIC ENTITY SHALL PAY at least ~~ninety~~ NINETY-FIVE percent of the  
15 calculated value of ~~any work~~ THE completed WORK ~~shall be paid~~ until  
16 fifty percent of the work required by the contract has been performed.

17 ~~Thereafter, the public entity shall pay any of the remaining installments~~  
18 ~~without retaining additional funds if, in the opinion of the public entity,~~  
19 ~~satisfactory progress is being made in the work~~ SATISFACTORILY  
20 COMPLETED. EXCEPT AS PROVIDED IN PARAGRAPH (b) OF THIS

21 SUBSECTION (1), THE PUBLIC ENTITY SHALL PAY AT LEAST NINETY-SEVEN  
22 AND ONE-HALF PERCENT OF THE CALCULATED VALUE OF COMPLETED  
23 WORK IN A TIMELY MANNER AFTER FIFTY PERCENT OF THE WORK  
24 REQUIRED BY THE CONTRACT HAS BEEN SATISFACTORILY COMPLETED.

25 THE CALCULATED VALUE OF THE WORK SHALL NOT INCLUDE THE PORTION  
26 OF THE CONTRACT PRICE THAT IS USED TO STORE MATERIALS OR  
27 EQUIPMENT AT THE CONSTRUCTION SITE. ONE HUNDRED PERCENT OF SUCH

1 COSTS SHALL BE PAID IN A TIMELY MANNER.

2 (b) (I) The withheld percentage of the contract price of any such  
3 CONTRACTED work, improvement, or construction shall MAY be retained  
4 until the contract is completed satisfactorily and finally accepted by the  
5 public entity. If the public entity finds that satisfactory progress is being  
6 made in all phases of the contract, it may, upon written request by the  
7 contractor, authorize final payment from the withheld percentage to the  
8 contractor or subcontractors who have completed their work in a manner  
9 finally acceptable to the public entity. Before such payment is made, the  
10 public entity shall determine that satisfactory and substantial reasons exist  
11 for the payment and shall require written approval from any surety  
12 furnishing bonds for the contract work SUBSTANTIALLY COMPLETE.

13 (II) IF THE CONTRACTED WORK HAS BEEN UNSATISFACTORILY  
14 COMPLETED OR IS NOT COMPLETED ON TIME, THE BUILDING CLIENT MAY  
15 WITHHOLD PAYMENT FOR SUCH WORK BEYOND THE AMOUNT AUTHORIZED  
16 IN PARAGRAPH (a) OF THIS SUBSECTION (1) IN ACCORDANCE WITH THE  
17 CONTRACT OR EQUAL TO THE VALUE OF THE DELAYED OR  
18 UNSATISFACTORILY COMPLETED PORTION OF THE CONTRACT UNTIL IT IS  
19 SATISFACTORILY COMPLETED.

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

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

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

26 **24-91-103.6. Public entity - contracts - appropriations - change**  
27 **orders - severability.** (2) Every public works contract, as defined in

1 section 24-91-103.5 (1) (b), shall contain the following:

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

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

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

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

16 **24-91-111. Retainage interest.** (1) WHEN THE RETAINAGE IS  
17 RELEASED TO THE CONTRACTOR, THE PUBLIC ENTITY SHALL PAY TO THE  
18 CONTRACTOR ANY INCOME OR INTEREST EARNED FROM THE INVESTMENT  
19 OF THE RETAINAGE WHILE THE PUBLIC ENTITY HELD THE RETAINAGE.

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

25 (3) THE PUBLIC ENTITY SHALL PROVIDE TO THE CONTRACTOR, AND  
26 THE CONTRACTOR SHALL PROVIDE TO THE SUBCONTRACTOR WHO DID THE  
27 WORK FOR WHICH RETAINAGE WAS WITHHELD A DETAILED ACCOUNTING

1 OF ANY INCOME OR INTEREST EARNED FROM THE INVESTMENT OF THE  
2 RETAINAGE.

3 **24-91-112. Substitute securities.** (1) THE CONTRACTOR MAY  
4 TENDER TO THE PUBLIC ENTITY ACCEPTABLE SUBSTITUTE SECURITY WITH  
5 A WRITTEN REQUEST FOR RELEASE OF RETAINAGE IN THE AMOUNT OF THE  
6 SUBSTITUTE SECURITY. UPON RECEIVING SUCH A REQUEST AND  
7 ACCEPTABLE SUBSTITUTE SECURITY, THE PUBLIC ENTITY SHALL EITHER:

8 (a) PAY THE RETAINAGE IN THE AMOUNT OF THE SUBSTITUTE  
9 SECURITY WITHIN SEVEN DAYS AFTER RECEIVING THE SUBSTITUTE  
10 SECURITY IF THE RETAINAGE COVERED BY THE SECURITY HAS ALREADY  
11 BEEN WITHHELD; OR

12 (b) DISCONTINUE WITHHOLDING RETAINAGE UNTIL THE AMOUNT  
13 NOT WITHHELD EQUALS THE SUBSTITUTE SECURITY IF THE RETAINAGE HAS  
14 NOT BEEN WITHHELD.

15 (2) THE SUBCONTRACTOR MAY TENDER TO THE CONTRACTOR  
16 ACCEPTABLE SUBSTITUTE SECURITY WITH A WRITTEN REQUEST FOR  
17 RELEASE OF RETAINAGE IN THE AMOUNT OF THE SUBSTITUTE SECURITY.  
18 UPON RECEIVING SUCH A REQUEST AND ACCEPTABLE SUBSTITUTE  
19 SECURITY, THE CONTRACTOR SHALL TENDER THE SUBSTITUTE SECURITY  
20 TO THE PUBLIC ENTITY WITH A REQUEST FOR THE RELEASE OF THE  
21 RETAINAGE IN THE AMOUNT OF THE SUBSTITUTE SECURITY.

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

25 (a) AN IRREVOCABLE AND UNCONDITIONAL LETTER OF CREDIT, IN  
26 FAVOR OF THE BUILDING CLIENT, ISSUED BY A NATIONAL BANK OR  
27 BUILDING AND LOAN ASSOCIATION LOCATED IN COLORADO OR BY A BANK

1 INCORPORATED UNDER THE LAWS OF COLORADO;

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

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

8 **24-91-113. Violations.** A PUBLIC ENTITY, CONTRACTOR, OR  
9 SUBCONTRACTOR WHO VIOLATES THIS ARTICLE BY FAILING TO MAKE A  
10 PAYMENT REQUIRED BY SECTION 24-91-103 SHALL BE LIABLE FOR THE  
11 PAYMENT PLUS INTEREST AND A PENALTY TO ANY PERSON SUFFERING  
12 DAMAGES ON ACCOUNT OF THE VIOLATION. THE PENALTY IS FIFTEEN  
13 PERCENT INTEREST PER ANNUM COMPOUNDED DAILY.

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