

**First Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO**

PREAMENDED

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

LLS NO. 11-0130.01 Jery Payne

HOUSE BILL 11-1115

HOUSE SPONSORSHIP

Priola and Soper, Brown, Casso, Gardner B., Kerr A., Liston, Looper, Peniston, Ramirez, Riesberg, Scott, Solano, Swalm, Swerdfeger, Szabo, Wilson

SENATE SPONSORSHIP

Tochtrop, Cadman, Jahn, Kopp, Renfroe

House Committees

Economic and Business Development

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE PAYMENT OF RETAINAGE IN CONSTRUCTION**
102 **CONTRACTS INVOLVING PUBLIC ENTITIES.**

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>.)

Currently, a public entity is allowed to withhold payment for up to 10% of the value of completed work on the first half of a construction project to ensure that the work meets specification. The bill changes that amount to 5% of the value of the entire project. A public entity must make a final settlement within 45 days after the contract is completed. If

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 public entity occupies or begins to use all or a portion of the construction, the public entity must release the withheld percentage or portion within 45 days after occupancy or use. The entity may retain double the amount of money necessary to cover any work that is not up to contract specifications.

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) Cash flow is vital to the stability of the construction industry
7 and its ability to create new jobs; and

8 (c) Public entities must ensure construction projects are completed
9 in a timely manner, while releasing retained progress payments
10 expeditiously to sustain contractor cash flow.

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

13 **24-91-103. Public entity - contracts - partial payments.**

14 (1) (a) A public entity awarding a contract exceeding one hundred fifty
15 thousand dollars for the construction, alteration, or repair of any highway,
16 public building, public work, or public improvement, structure, or system
17 shall authorize partial payments of the amount due under such contract at
18 the end of each calendar month, or as soon thereafter as practicable, to the
19 contractor, if the contractor is satisfactorily performing the contract. THE
20 PUBLIC ENTITY SHALL PAY at least ~~ninety~~ NINETY-FIVE percent of the
21 calculated value of ~~any~~ COMPLETED work. ~~completed shall be paid until~~
22 ~~fifty percent of the work required by the contract has been performed.~~
23 ~~Thereafter, the public entity shall pay any of the remaining installments~~

1 ~~without retaining additional funds if, in the opinion of the public entity,~~
2 ~~satisfactory progress is being made in the work.~~ The withheld percentage
3 of the contract price of any ~~such~~ CONTRACTED work, improvement, or
4 construction ~~shall~~ MAY be retained until the contract is completed
5 satisfactorily and finally accepted by the public entity.

6 (b) EXCEPT AS PROVIDED IN PARAGRAPH (d) OR (e) OF THIS
7 SUBSECTION (1), THE PUBLIC ENTITY SHALL MAKE A FINAL SETTLEMENT IN
8 ACCORDANCE WITH SECTION 38-26-107, C.R.S., WITHIN FORTY-FIVE DAYS
9 AFTER THE CONTRACT IS COMPLETED SATISFACTORILY AND FINALLY
10 ACCEPTED BY THE PUBLIC ENTITY.

11 (c) IF THE PUBLIC ENTITY OCCUPIES OR BEGINS TO USE ALL OR A
12 DISCRETE PORTION OF THE WORK, IMPROVEMENT, OR CONSTRUCTION
13 BEFORE THE CONTRACT IS FINALLY ACCEPTED BY THE PUBLIC ENTITY, THE
14 PUBLIC ENTITY SHALL RELEASE THE WITHHELD PERCENTAGE OR DISCRETE
15 PORTION OF THE PERCENTAGE IN ACCORDANCE WITH SECTION 38-26-107,
16 C.R.S., WITHIN FORTY-FIVE DAYS AFTER OCCUPANCY OR USE, SUBJECT TO
17 PARAGRAPH (d) OF THIS SUBSECTION (1). PUBLIC ENTITY OCCUPANCY AND
18 USE DOES NOT INCLUDE OPENING A PORTION OF A HIGHWAY OR BRIDGE
19 IMPROVEMENT PROJECT TO TRAFFIC PRIOR TO COMPLETION OF THE FINAL
20 CONFIGURATION.

21 (d) THE PUBLIC ENTITY MAY RETAIN THE AMOUNT REQUIRED TO BE
22 PAID BY PARAGRAPH (c) OF THIS SUBSECTION (1) UNTIL A COMPREHENSIVE
23 LIST OF ITEMS TO BE COMPLETED OR CORRECTED IS APPROVED BY THE
24 PUBLIC ENTITY. A PUBLIC ENTITY MAY WITHHOLD TWICE THE AMOUNT OF
25 THE VALUE OF THE WORK TO BE COMPLETED OR CORRECTED TO MEET THE
26 TERMS OF THE CONTRACT UNTIL THIRTY DAYS OR THE NEXT SCHEDULED
27 MONTHLY PAYMENT AFTER THE WORK IS COMPLETED OR CORRECTED.

1 (e) If the public entity finds that satisfactory progress is being
2 made in ~~all phases~~ ANY PHASE of the contract, it ~~may~~ SHALL, upon written
3 request by the contractor, authorize final payment from the withheld
4 percentage to the contractor or subcontractors who have completed their
5 work in a manner finally acceptable to the public entity. Before ~~such~~ THE
6 payment is made, the public entity shall determine that satisfactory and
7 substantial reasons exist for the payment and shall require written
8 approval from any surety furnishing bonds for the contract work.

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

11 **SECTION 3. Act subject to petition - effective date -**
12 **applicability.** (1) This act shall take effect at 12:01 a.m. on the day
13 following the expiration of the ninety-day period after final adjournment
14 of the general assembly (August 10, 2011, if adjournment sine die is on
15 May 11, 2011); except that, if a referendum petition is filed pursuant to
16 section 1 (3) of article V of the state constitution against this act or an
17 item, section, or part of this act within such period, then the act, item,
18 section, or part shall not take effect unless approved by the people at the
19 general election to be held in November 2012 and shall take effect on the
20 date of the official declaration of the vote thereon by the governor.

21 (2) The provisions of this act shall apply to contracts created on
22 or after the applicable effective date of this act.