

**STATE and LOCAL  
FISCAL IMPACT**

<b>Drafting Number:</b> LLS 11-0130	<b>Date:</b> January 28, 2011
<b>Prime Sponsor(s):</b> Rep. Priola; Soper Sen. Tochtrop	<b>Bill Status:</b> House Economic and Business Development <b>Fiscal Analyst:</b> Kerry White (303-866-3469)

**TITLE:** CONCERNING THE PAYMENT OF RETAINAGE IN CONSTRUCTION CONTRACTS INVOLVING PUBLIC ENTITIES.

<b>Fiscal Impact Summary</b>	<b>FY 2011-2012</b>	<b>FY 2012-2013</b>
<b>State Revenue</b> General Fund	Up to (\$1,151,026)	Up to (\$1,151,026)
<b>State Expenditures</b>	See State Expenditures section	
<b>FTE Position Change</b>		
<b>Effective Date:</b> August 10, 2011, if the General Assembly adjourns on May 11, 2011, as scheduled, and no referendum petition is filed.		
<b>Appropriation Summary for FY 2011-2012:</b> None required.		
<b>Local Government Impact:</b> See Local Government Impact section.		

**Summary of Legislation**

This bill sets payment standards for construction contracts between contractors and public entities with contracts exceeding \$150,000 and reduces the amount that may be withheld from a contractor to ensure that work is satisfactorily completed.

Under current law, 10 percent of the contract amount is retained through the first half of the project. After the project reaches 50 percent completion, the state releases remaining installment payments without holding retainage, provided it determines that satisfactory progress is being made on the work. This bill reduces the amount of retainage held to 5 percent of the total project and removes the timing restrictions. Retainage deposits and contract balances for completed work must also be paid within 45 days of occupancy or use. A public entity may retain double the amount of moneys necessary to complete or correct any work performed by a contractor that is unsatisfactory, for up to 30 days after the work is completed.

### **State Revenue**

By changing the percentage of retainage held, this bill could reduce interest earnings in the State Treasury by up to \$1,151,026 per year, beginning in FY 2011-12.

Under current law, an average of \$46 million per year in retainage moneys are held in restricted accounts within the Treasury. Assuming these moneys are earning interest at 2.5 percent, the average amount of revenue currently generated from interest on retainage is up to \$1,151,026 per year. Construction projects currently average between 3 and 5 years until completion. The average length of time a project takes to reach 50 percent completion (where retainage may be released) or how often retainage is held past this period is not currently known.

Under HB11-1115, the state may only withhold up to 5 percent of the total project, irrespective of the contractor's performance or timing. This bill decreases the amount of retainage held, which will lower the amount of interest earned. The actual amount of lost revenue will depend on the difference in the amounts retained and the timing of their release, which cannot be estimated at this time. For the purposes of this fiscal note, this analysis assumes the amount of lost revenue could range from \$0 to \$1,151,026 per year. If more data becomes available, this preliminary estimate may be revised in a future fiscal note.

### **State Expenditures**

This bill may increase state expenditures in the Judicial Department from additional construction defect and breach of contract lawsuits that arise from new requirements under this bill. It is anticipated that any such increases will be minimal and not require new appropriations.

### **Local Government Impact**

Depending on the retainage provisions required by the funder, local governments and school districts may be limited from using grant moneys to pay for construction. This could increase construction costs for local governments and school districts, or cause them to forego alternative funding and prevent them from undertaking certain construction projects.

### **Departments Contacted**

All departments