

Second Regular Session  
Sixty-ninth General Assembly  
STATE OF COLORADO

INTRODUCED

LLS NO. 14-0445.03 Jery Payne x2157

HOUSE BILL 14-1165

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HOUSE SPONSORSHIP

Fischer,

SENATE SPONSORSHIP

Tochtrop,

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House Committees

Business, Labor, Economic, & Workforce Development

Senate Committees

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A BILL FOR AN ACT

101 CONCERNING A LIMIT ON THE RETAINAGE ALLOWED UNDER A PRIVATE  
102 CONSTRUCTION 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/bills summaries>.)*

The bill requires property owners who contract for improvements to real property to:

- ! Pay 95% of the amount due, which limits the amount retained to ensure the quality of work to 5%; and
- ! Pay subcontractors the retainage after the work is finally

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.*

accepted.

If a person fails to make required payments, the person must pay interest and is liable for attorney fees. These requirements are enforceable in court. Contractual provisions that do not comply with the requirements are unenforceable. A statute of limitations to enforce the bill is set for one year.

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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) It is necessary and appropriate to apply the type of retentions  
5 that presently apply, in accordance with section 24-91-103 (1) (a),  
6 Colorado Revised Statutes, to construction contracts with public entities  
7 to private contracts;

8 (b) To the extent reasonable and in accordance with the purpose  
9 for which this act is adopted, this act is intended to be construed in a  
10 manner similar to the construction of section 24-91-103 (1) (a), Colorado  
11 Revised Statutes; and

12 (c) This act is intended to assure that private construction  
13 contract retention remains an efficient means of assuring timely and  
14 satisfactory performance without imposing an undue burden upon those  
15 contractors, subcontractors, and sub-subcontractors subject to retention.

16 **SECTION 2.** In Colorado Revised Statutes, **add** article 46 to title  
17 38 as follows:

18 **ARTICLE 46**

19 **Retainage and Payment of Contracts in Real Property**

20 **38-46-101. Definitions.** AS USED IN THIS ARTICLE, UNLESS THE  
21 CONTEXT OTHERWISE REQUIRES:

22 (1) "CONTRACTOR" MEANS A PERSON THAT IS A PARTY TO A

1 CONTRACT WITH AN OWNER TO CONSTRUCT, ERECT, ALTER, INSTALL, OR  
2 REPAIR A BUILDING, IMPROVEMENT, STRUCTURE , OR SYSTEM.

3 (2) "OWNER" MEANS A PERSON THAT CONTRACTS WITH A  
4 CONTRACTOR TO CONSTRUCT, ERECT, ALTER, INSTALL, OR REPAIR A  
5 BUILDING, IMPROVEMENT, STRUCTURE, OR SYSTEM IN OR ON REAL  
6 PROPERTY.

7 (3) "SUBCONTRACTOR" MEANS A PERSON THAT:

8 (a) IS A PARTY TO A SUBCONTRACT WITH A CONTRACTOR TO  
9 CONSTRUCT, ERECT, ALTER, INSTALL, OR REPAIR A BUILDING,  
10 IMPROVEMENT, STRUCTURE, OR SYSTEM IN OR ON REAL PROPERTY; AND

11 (b) FURNISHES AND PERFORMS ON-SITE LABOR UNDER A  
12 SUBCONTRACT WITH OR WITHOUT FURNISHING MATERIALS.

13 (4) "SUB-SUBCONTRACTOR" MEANS A PERSON THAT:

14 (a) IS A PARTY TO A SUBCONTRACT WITH A SUBCONTRACTOR TO  
15 CONSTRUCT, ERECT, ALTER, INSTALL, OR REPAIR A BUILDING,  
16 IMPROVEMENT, STRUCTURE, OR SYSTEM IN OR ON REAL PROPERTY; AND

17 (b) FURNISHES AND PERFORMS ON-SITE LABOR UNDER A  
18 SUBCONTRACT WITH OR WITHOUT FURNISHING MATERIALS.

19 **38-46-102. Applicability of article.** (1) THIS ARTICLE DOES NOT  
20 APPLY TO A CONTRACT, SUBCONTRACT, OR SUB-SUBCONTRACT:

21 (a) THAT CONCERNS OR AFFECTS PROPERTY OWNED OR OPERATED  
22 BY A FEDERALLY REGULATED RAILROAD;

23 (b) FOR THE CONSTRUCTION, IMPROVEMENT, ALTERATION,  
24 MOVING, OR DEMOLITION OF ONE:

25 (I) SINGLE-FAMILY DWELLING; OR

26 (II) MULTI-FAMILY DWELLING WITH NO MORE THAN FOUR FAMILY  
27 DWELLING UNITS;

1 (c) FOR THE CONSTRUCTION, ALTERATION, OR REPAIR OF AN  
2 IMPROVEMENT FOR LESS THAN ONE HUNDRED FIFTY THOUSAND DOLLARS,  
3 BUT SUBCONTRACTS OR SUB-SUBCONTRACTS OF LESS THAN ONE HUNDRED  
4 FIFTY THOUSAND DOLLARS ARE NOT EXEMPTED BY THIS PARAGRAPH (c)  
5 UNLESS THE CONTRACT THAT GENERATES THE SUBCONTRACT OR  
6 SUB-SUBCONTRACTS IS LESS THAN ONE HUNDRED FIFTY THOUSAND  
7 DOLLARS; OR

8 (d) WITH A PUBLIC ENTITY AS DEFINED BY SECTION 24-91-102,  
9 C.R.S.

10 **38-46-103. Limits on retainage.** WITH RESPECT TO A CONTRACT,  
11 SUBCONTRACT, OR SUB-SUBCONTRACT BETWEEN AN OWNER AND A  
12 CONTRACTOR, BETWEEN A CONTRACTOR AND A SUBCONTRACTOR, OR  
13 BETWEEN A SUBCONTRACTOR AND A SUB-SUBCONTRACTOR, THE OWNER,  
14 CONTRACTOR, OR SUBCONTRACTOR SHALL PAY AT LEAST NINETY-FIVE  
15 PERCENT OF THE CALCULATED VALUE OF COMPLETED WORK IN  
16 ACCORDANCE WITH AN AGREED-UPON PAYMENT SCHEDULE. AN OWNER,  
17 CONTRACTOR, OR SUBCONTRACTOR SHALL REMIT THE RETAINAGE TO THE  
18 CONTRACTOR, SUBCONTRACTOR, OR SUB-SUBCONTRACTOR AFTER THE  
19 CONTRACT, SUBCONTRACT, OR SUB-SUBCONTRACT HAS BEEN COMPLETED  
20 SATISFACTORILY AND FINALLY ACCEPTED.

21 **38-46-104. Unenforceability of contrary contract provisions.**  
22 WITHOUT REGARD FOR A CHOICE-OF-LAW PROVISION IN A CONTRACT,  
23 SUBCONTRACT, OR SUB-SUBCONTRACT, A PROVISION OF A CONTRACT,  
24 SUBCONTRACT, OR SUB-SUBCONTRACT THAT ESTABLISHES RETAINAGE IN  
25 AN AMOUNT THAT EXCEEDS THE LIMIT OF SECTION 38-46-103 IS  
26 UNENFORCEABLE AND VOID AS AGAINST PUBLIC POLICY. A PROVISION IN  
27 A CONTRACT TO IMPROVE REAL PROPERTY THAT CONFLICTS WITH THIS

1 ARTICLE IS UNENFORCEABLE TO THE DEGREE IT CONFLICTS WITH THIS  
2 ARTICLE.

3 **38-46-105. Payments may be recovered in court - interest -**  
4 **attorney fees.** A PARTY TO A CONTRACT, SUBCONTRACT, OR  
5 SUB-SUBCONTRACT MAY BRING A CIVIL ACTION TO ENFORCE SECTION  
6 38-46-103 IF THE OTHER PARTY WITHHOLDS MORE THAN THE RETAINAGE  
7 ALLOWED BY SECTION 38-46-103. IN ADDITION TO ANY OTHER AWARD OF  
8 DAMAGES MADE TO A PARTY BRINGING AN ACTION UNDER THIS SECTION,  
9 A COURT SHALL AWARD INTEREST AT THE RATE OF ONE AND ONE-HALF  
10 PERCENT PER MONTH UPON ANY AMOUNTS WITHHELD IN VIOLATION OF  
11 THIS ARTICLE AFTER THE DATE THAT THE IMPROPER WITHHOLDING BEGAN.  
12 A COURT SHALL AWARD REASONABLE ATTORNEY FEES AND COSTS TO THE  
13 PREVAILING PARTY IN AN ACTION TO ENFORCE THIS ARTICLE.

14 **38-46-106. Limitation of actions - one year.** AN ACTION  
15 BROUGHT TO ENFORCE SECTION 38-46-103 MAY BE COMMENCED WITHIN  
16 ONE YEAR AFTER THE CAUSE OF ACTION ACCRUES, AND NOT THEREAFTER.  
17 FOR PURPOSES OF THIS SECTION, A CAUSE OF ACTION ACCRUES WHEN A  
18 PARTY TO A CONTRACT, SUBCONTRACT, OR SUB-SUBCONTRACT HAS  
19 REASON TO KNOW THAT RETAINAGE EXCEEDING THE AMOUNT PERMITTED  
20 BY THIS ARTICLE HAS BEEN WITHHELD FROM THAT PARTY.

21 **SECTION 3. Applicability.** This act applies to contracts entered  
22 into on or after the effective date of this act.

23 **SECTION 4. Safety clause.** The general assembly hereby finds,  
24 determines, and declares that this act is necessary for the immediate  
25 preservation of the public peace, health, and safety.