

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

**REREVISED**

*This Version Includes All Amendments  
Adopted in the Second House*

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**

Business, Labor and Technology  
Finance  
Appropriations

---

**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.*

SENATE  
3rd Reading Unam ended  
April 29, 2011

SENATE  
Am ended 2nd Reading  
April 28, 2011

HOUSE  
3rd Reading Unam ended  
February 10, 2011

HOUSE  
Am ended 2nd Reading  
February 9, 2011

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

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

14 **24-91-103. Public entity - contracts - partial payments.**

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

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

7             (b) THE PUBLIC ENTITY SHALL MAKE A FINAL SETTLEMENT IN  
8     ACCORDANCE WITH SECTION 38-26-107, C.R.S., WITHIN SIXTY DAYS  
9     AFTER THE CONTRACT IS COMPLETED SATISFACTORILY AND FINALLY  
10    ACCEPTED BY THE PUBLIC ENTITY.

11                    
12            (c) If the public entity finds that satisfactory progress is being  
13    made in ~~all phases~~ ANY PHASE of the contract, it may, upon written  
14    request by the contractor, authorize final payment from the withheld  
15    percentage to the contractor or subcontractors who have completed their  
16    work in a manner finally acceptable to the public entity. Before ~~such~~ THE  
17    payment is made, the public entity shall determine that satisfactory and  
18    substantial reasons exist for the payment and shall require written  
19    approval from any surety furnishing bonds for the contract work.

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

22            **SECTION 3. Act subject to petition - effective date -**  
23    **applicability.** (1) This act shall take effect at 12:01 a.m. on the day  
24    following the expiration of the ninety-day period after final adjournment  
25    of the general assembly (August 10, 2011, if adjournment sine die is on  
26    May 11, 2011); except that, if a referendum petition is filed pursuant to  
27    section 1 (3) of article V of the state constitution against this act or an

1 item, section, or part of this act within such period, then the act, item,  
2 section, or part shall not take effect unless approved by the people at the  
3 general election to be held in November 2012 and shall take effect on the  
4 date of the official declaration of the vote thereon by the governor.

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