

**Second Regular Session
Seventy-fifth General Assembly
STATE OF COLORADO**

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 26-0250.01 Jery Payne x2157

HOUSE BILL 26-1311

HOUSE SPONSORSHIP

Duran and Carter,

SENATE SPONSORSHIP

Bright and Snyder,

House Committees
Business Affairs & Labor

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE USE OF A BOND IN LIEU OF RETAINAGE IN**
102 **CONSTRUCTION CONTRACTS.**

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://leg.colorado.gov>.)

Under current law, a property owner is prohibited from retaining more than 5% of a construction contract as retainage if the contract is at least \$150,000. The bill authorizes a contractor to submit a surety bond in lieu of withholding retainage, and the property owner must accept the bond and not withhold the retainage if the bond meets the bill's standards.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing law.
Dashes through the words or numbers indicate deletions from existing law.

HOUSE
Amended 2nd Reading
March 20, 2026

A subcontractor may require the contractor to submit a bond in lieu of retainage for the subcontractor's portion of the retainage. The contractor may require the subcontractor to submit a like bond to the contractor.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 38-46-101, **add** (2.5) and (4.5) as follows:

38-46-101. Definitions.

As used in this article 46, unless the context otherwise requires:

(2.5) "LIKE BOND" MEANS A RETAINAGE BOND SUBMITTED BY A SUBCONTRACTOR TO A CONTRACTOR OR SUBCONTRACTOR THAT IS SUBSTANTIALLY EQUIVALENT TO THE RETAINAGE BOND SUBMITTED BY THE CONTRACTOR OR SUBCONTRACTOR TO THE PROPERTY OWNER OR CONTRACTOR.

(4.5) "RETAINAGE BOND" MEANS A SURETY BOND THAT IS ISSUED BY AN INSURER LICENSED TO ISSUE THE BOND IN COLORADO AS ASSURANCE FOR THE PERSON ACCEPTING THE BOND THAT:

(a) A CONTRACT OR SUBCONTRACT WILL BE SATISFACTORILY COMPLETED; OR

(b) THE GOODS, MATERIALS, OR EQUIPMENT MEETS THE SPECIFICATIONS NECESSARY FOR SATISFACTORY PERFORMANCE OF A CONTRACT OR SUBCONTRACT.

SECTION 2. In Colorado Revised Statutes, 38-46-103, **amend** (1) as follows:

38-46-103. Private construction contracts - retainage - conditions precedent.

(1) (a) A property owner, contractor, or subcontractor shall not withhold as retainage more than five percent of the price of the work

1 completed under the contract or subcontract. Making a partial payment
2 under this subsection (1) is not acceptance or approval of some of the
3 work or of a waiver of defects in the work.

4 (b) (I) IN LIEU OF RETAINAGE, A SUBCONTRACTOR OR CONTRACTOR
5 MAY TENDER A RETAINAGE BOND IN AN AMOUNT NOT TO EXCEED FIVE
6 PERCENT OF THE MONEY EARNED BY THE SUBCONTRACTOR OR
7 CONTRACTOR. IF THE CONTRACTOR OR SUBCONTRACTOR TENDERS A
8 RETAINAGE BOND MEETING THE REQUIREMENTS OF SUBSECTIONS (1)(b)(II)
9 AND (1)(b)(III) OF THIS SECTION, THE PROPERTY OWNER, CONTRACTOR, OR
10 SUBCONTRACTOR SHALL ACCEPT THE RETAINAGE BOND AND RELEASE THE
11 RETAINAGE COVERED BY THE RETAINAGE BOND.

12 (II) TO COMPLY WITH SUBSECTION (1)(b)(I) OF THIS SECTION, THE
13 CONTRACTOR OR SUBCONTRACTOR MUST PROVIDE A RETAINAGE BOND
14 MEETING THE REQUIREMENTS OF SUBSECTION (1)(b)(III) OF THIS SECTION
15 AND MUST:

16 (A) FAITHFULLY PERFORM ALL THE PROVISIONS OF THE CONTRACT
17 OR SUBCONTRACT; AND

18 (B) PAY ALL LABORERS, SUPPLIERS, AND SUBCONTRACTORS
19 AMOUNTS OWED UNDER THE CONTRACT OR SUBCONTRACT.

20 (III) THE PROPERTY OWNER OR CONTRACTOR MAY REQUIRE THAT
21 THE AUTHORIZED SURETY HAVE A MINIMUM A.M. BEST, OR A SUCCESSOR
22 INSTITUTION, FINANCIAL STRENGTH RATING, SO LONG AS THE REQUIRED
23 MINIMUM RATING DOES NOT EXCEED "A-". THE CONTRACTOR MAY
24 WITHHOLD THE SUBCONTRACTOR'S PORTION OF THE BOND PREMIUM, TO
25 THE EXTENT THE CONTRACTOR PROVIDES A RETAINAGE BOND TO OBTAIN
26 A RELEASE OF THE SUBCONTRACTOR'S RETAINAGE.

27 (IV) THE CONTRACTOR OR PROPERTY OWNER MUST ACCEPT A

1 BOND MEETING THE REQUIREMENTS OF SUBSECTION (1)(b)(III) OF THIS
2 SECTION. THE SUBCONTRACTOR'S OR CONTRACTOR'S BOND AND THE
3 PROCEEDS FROM THE BOND ARE SUBJECT TO A CLAIM AND LIEN IN THE
4 SAME MANNER AND PRIORITY AS SET FORTH IN ARTICLE 22 OF THIS TITLE
5 38.

6 (V) WHEN A PROPERTY OWNER ACCEPTS A BOND IN LIEU OF
7 RETAINAGE FROM A CONTRACTOR, THE CONTRACTOR MUST ACCEPT A LIKE
8 BOND FROM ANY SUBCONTRACTOR THAT SUBMITS A BOND IN LIEU OF
9 RETAINAGE UNDER THIS SUBSECTION (1)(b).

10 (VI) THIS SUBSECTION (1)(b) DOES NOT APPLY TO A CONTRACT OR
11 SUBCONTRACT THAT CONCERNS PROPERTY OWNED BY A PUBLIC ENTITY.
12 THE EXEMPTION DESCRIBED IN THIS SUBSECTION (1)(b)(VI) INCLUDES A
13 CONTRACT OR SUBCONTRACT THAT RESULTS FROM A PUBLIC-PRIVATE
14 PARTNERSHIP.

15 **SECTION 3. Act subject to petition - effective date -**
16 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
17 the expiration of the ninety-day period after final adjournment of the
18 general assembly (August 12, 2026, if adjournment sine die is on May 13,
19 2026); except that, if a referendum petition is filed pursuant to section 1
20 (3) of article V of the state constitution against this act or an item, section,
21 or part of this act within such period, then the act, item, section, or part
22 will not take effect unless approved by the people at the general election
23 to be held in November 2026 and, in such case, will take effect on the
24 date of the official declaration of the vote thereon by the governor.

25 (2) This act applies to contracts created on or after the applicable
26 effective date of this act.