

NOTE: This bill has been prepared for the signatures of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.

An Act

HOUSE BILL 26-1311

BY REPRESENTATIVE(S) Duran and Carter, Gonzalez R., Titone;
also SENATOR(S) Bright and Snyder, Amabile, Benavidez, Cutter, Exum,
Frizell, Gonzales J., Jodeh, Kipp, Kolker, Rodriguez, Wallace, Coleman.

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

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.

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

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

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

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

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

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

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

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

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

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

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

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

Julie McCluskie
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

James Rashad Coleman, Sr.
PRESIDENT OF
THE SENATE

Vanessa Reilly
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Esther van Mourik
SECRETARY OF
THE SENATE

APPROVED _____
(Date and Time)

Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO