

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

**INTRODUCED**

LLS NO. 26-0250.01 Jery Payne x2157

**HOUSE BILL 26-1311**

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**HOUSE SPONSORSHIP**

**Duran and Carter,**

**SENATE SPONSORSHIP**

**Bright and Snyder,**

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**House Committees**  
Business Affairs & Labor

**Senate Committees**

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**A BILL FOR AN ACT**

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

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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://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.*

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.

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

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

4 **38-46-101. Definitions.**

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

6 (2.5) "LIKE BOND" MEANS A RETAINAGE BOND SUBMITTED BY A  
7 SUBCONTRACTOR TO A CONTRACTOR OR SUBCONTRACTOR THAT IS  
8 SUBSTANTIALLY EQUIVALENT TO THE RETAINAGE BOND SUBMITTED BY  
9 THE CONTRACTOR OR SUBCONTRACTOR TO THE PROPERTY OWNER OR  
10 CONTRACTOR.

11 (4.5) "RETAINAGE BOND" MEANS A SURETY BOND THAT IS ISSUED  
12 BY AN INSURER LICENSED TO ISSUE THE BOND IN COLORADO AS  
13 ASSURANCE FOR THE PERSON ACCEPTING THE BOND THAT:

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

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

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

21 **38-46-103. Private construction contracts - retainage -**  
22 **conditions precedent.**

23 (1) (a) A property owner, contractor, or subcontractor shall not  
24 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 **SECTION 3. Act subject to petition - effective date -**  
11 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following  
12 the expiration of the ninety-day period after final adjournment of the  
13 general assembly (August 12, 2026, if adjournment sine die is on May 13,  
14 2026); except that, if a referendum petition is filed pursuant to section 1  
15 (3) of article V of the state constitution against this act or an item, section,  
16 or part of this act within such period, then the act, item, section, or part  
17 will not take effect unless approved by the people at the general election  
18 to be held in November 2026 and, in such case, will take effect on the  
19 date of the official declaration of the vote thereon by the governor.

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