

1.1 A bill for an act

1.2 relating to commerce; regulating building and construction contracts; requiring
1.3 retainage to be held in escrow or trust accounts until released; amending
1.4 Minnesota Statutes 2009 Supplement, section 337.10, subdivision 4.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. Minnesota Statutes 2009 Supplement, section 337.10, subdivision 4, is
1.7 amended to read:

1.8 Subd. 4. **Progress payments and retainages.** (a) Unless the building and
1.9 construction contract provides otherwise, the owner or other persons making payments
1.10 under the contract must make progress payments monthly as the work progresses.
1.11 Payments shall be based upon estimates of work completed as approved by the owner or
1.12 the owner's agent. A progress payment shall not be considered acceptance or approval
1.13 of any work or waiver of any defects therein. Any retainage reserved pursuant to this
1.14 subdivision must be held in an interest-bearing escrow or trust account with a bank or
1.15 trust company having its principal place of business in the state. Within 30 days after
1.16 substantial completion of all the work required by the contract, the reserved retainage and
1.17 interest must be released and paid to the persons from whom the retainage was reserved.

1.18 (b) Unless the building and construction contract provides otherwise, an owner or
1.19 owner's agent may reserve as retainage from any progress payment on a building and
1.20 construction contract an amount not to exceed five percent of the payment. An owner or
1.21 owner's agent may reduce the amount of retainage and may eliminate retainage on any
1.22 monthly contract payment if, in the owner's opinion, the work is progressing satisfactorily.

1.23 (c) This subdivision does not apply to contracts for professional services as defined
1.24 in sections 326.02 to 326.15.

S.F. No. 3057, as introduced - 86th Legislative Session (2009-2010) [10-5599]

2.1 (d) For purposes of this subdivision, substantial completion means either that the
2.2 work required by the contract has been completed except for work having a contract price
2.3 of less than one percent of the then adjusted total contract price, or substantially all of the
2.4 work has been completed and opened to use or occupancy except for minor incomplete
2.5 or unsatisfactory work items that do not materially impair the usefulness of the work
2.6 required by the contract.