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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-SEVENTH
SESSION

HOUSE FILE No. **589**

February 17, 2011

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The bill was read for the first time and referred to the Committee on Commerce and Regulatory Reform

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 2010, section 337.10, subdivision 4.

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

1.6 Section 1. Minnesota Statutes 2010, section 337.10, subdivision 4, is amended to read:

1.7 Subd. 4. **Progress payments and retainages.** (a) Unless the building and
1.8 construction contract provides otherwise, the owner or other persons making payments
1.9 under the contract must make progress payments monthly as the work progresses.
1.10 Payments shall be based upon estimates of work completed as approved by the owner or
1.11 the owner's agent. A progress payment shall not be considered acceptance or approval of
1.12 any work or waiver of any defects therein.

1.13 (b) Unless the building and construction contract provides otherwise, an owner or
1.14 owner's agent may reserve as retainage from any progress payment on a building and
1.15 construction contract an amount not to exceed five percent of the payment. An owner or
1.16 owner's agent may reduce the amount of retainage and may eliminate retainage on any
1.17 monthly contract payment if, in the owner's opinion, the work is progressing satisfactorily.
1.18 Retainage reserved pursuant to this subdivision must be held in an interest-bearing escrow
1.19 or trust account with a bank or trust company having its principal place of business in the
1.20 state. Within 30 days after substantial completion of all work required by the contract, the
1.21 reserved retainage and interest must be released by the owner or the owner's agent and
1.22 paid to the persons from whom the retainage was reserved.

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

- 2.1 (d) For purposes of this subdivision, "substantial completion" means the date when
2.2 the work is sufficiently completed so that the owner or the owner's representative can
2.3 occupy or use the work for the intended purpose.