A BILL FOR AN ACT

Concerning bonding requirements for a contractor that is party to a contract that uses private financing for construction contracts on public property.

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.)

Pursuant to current law, when a person, company, firm, corporation, or contractor (contractor) enters into a contract with certain governmental entities or governmental bodies to perform work in connection with certain projects, the contractor is required to execute performance bonds and payment bonds.
The bill specifies that these bonding requirements apply to all construction contracts situated or located on public real property using public or private money, public or private financing, or public real property.

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

SECTION 1. In Colorado Revised Statutes, 24-105-202, add (4)
as follows:


(4) This section applies to all construction contracts with a
private entity for construction that is situated or located on
public real property using any public or private money, public or
private financing, or public real property.

SECTION 2. In Colorado Revised Statutes, 38-26-105, amend
(1) as follows:

38-26-105. Public works contractor's bond - conditions.

(1) (a) Subject to the provisions of subsection (2) of this section, any
person, company, firm, or corporation entering into a contract for more
than fifty thousand dollars with any county, municipality, or school
district for the construction of any public building or the prosecution or
completion of any public works or for repairs upon any public building
or public works shall be required before commencing work to execute, in
addition to all bonds that may be required of it, a penal bond with good
and sufficient surety to be approved by the board or boards of county
commissioners of the county or counties, the governing body or bodies of
the municipality or municipalities, or the district school board or boards,
conditioned that such contractor shall at all times promptly make
payments of all amounts lawfully due to all persons supplying or
furnishing such person or such person's subcontractors with labor, laborers, materials, rental machinery, tools, or equipment used or performed in the prosecution of the work provided for in such contract and that such contractor will indemnify and save harmless the county, municipality, or school district to the extent of any payments in connection with the carrying out of any such contract which the county or counties, municipality or municipalities, and school district or school districts may be required to make under the law. Subcontractors, materialmen, mechanics, suppliers of rental equipment, and others may have a right of action for amounts lawfully due them from the contractor or subcontractor directly against the principal and surety of such bond. Such action for laborers, materials, rental machinery, tools, or equipment furnished or labor rendered shall be brought within six months after the completion of the work and not afterwards.

(b) This section applies to all contracts with a private entity awarded for construction, completion, or repair that is situated or located on public real property using any public or private money, public or private financing, or public real property.

SECTION 3. In Colorado Revised Statutes, 38-26-106, amend (1) as follows:

38-26-106. Contractor executes bond. (1) (a) A contractor who is awarded a contract for more than fifty thousand dollars for the construction, erection, repair, maintenance, or improvement of any building, road, bridge, viaduct, tunnel, excavation, or other public works for any county, city and county, municipality, school district, or other political subdivision of the state, and a contractor who is awarded a
contract for more than one hundred fifty thousand dollars for the
construction, erection, repair, maintenance, or improvement of any
building, road, bridge, viaduct, tunnel, excavation, or other public works
for this state, before entering upon the performance of any such work
included in the contract, shall duly execute, deliver to, and file with the
board, officer, body, or person by whom the contract was awarded a good
and sufficient bond or other acceptable surety approved by the contracting
board, officer, body, or person, in a penal sum not less than one-half of
the total amount payable under the terms of the contract; except that, for
a public works contract having a total value of five hundred million
dollars or more, a bond or other acceptable surety, including but not
limited to a letter of credit, may be issued in a penal sum not less than
one-half of the maximum amount payable under the terms of the contract
in any calendar year in which the contract is performed. The contracting
board, office, body, or person shall ensure that the contract requires that
a bond or other acceptable surety, including but not limited to a letter of
credit, be filed and current for the duration of the contract.

(b) This section applies to all contracts awarded to a
private entity for the construction, erection, repair,
maintenance, or improvement of any building, road, bridge,
viaduct, tunnel, or excavation that is situated or located on
public real property using any public or private money, public or
private financing, or public real property.

SECTION 4. Act subject to petition - effective date. 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
8, 2018, if adjournment sine die is on May 9, 2018); 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 2018 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.