

CHAPTER 68

PROPERTY

SENATE BILL 00-066

BY SENATORS Teck and Hernandez;
also REPRESENTATIVES Larson, Hoppe, Kaufman, Miller, and Taylor.

AN ACT

CONCERNING THE ADDITION OF SUPPLIERS OF LABORERS TO THOSE PERSONS WHO MAY FILE A MECHANIC'S LIEN.

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

SECTION 1. 38-22-101 (1), (2), and (5), Colorado Revised Statutes, are amended, and the said 38-22-101 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

38-22-101. Liens in favor of whom - when filed - definition of person.

(1) Every person who FURNISHES OR supplies LABORERS, machinery, tools, or equipment in the prosecution of the work, and mechanics, materialmen, contractors, subcontractors, builders, and all persons of every class performing labor upon or furnishing directly to the owner or persons furnishing labor, LABORERS, OR materials to be used in construction, alteration, improvement, addition to, or repair, either in whole or in part, of any building, mill, bridge, ditch, flume, aqueduct, reservoir, tunnel, fence, railroad, wagon road, tramway, or any other structure or improvement upon land, including adjacent curb, gutter, and sidewalk, and also architects, engineers, draftsmen, and artisans who have furnished designs, plans, plats, maps, specifications, drawings, estimates of cost, surveys, or superintendence, or who have rendered other professional or skilled service, or bestowed labor in whole or in part, describing or illustrating, or superintending such structure, or work done or to be done, or any part connected therewith, shall have a lien upon the property upon which they have FURNISHED LABORERS OR supplied machinery, tools, or equipment or rendered service or bestowed labor or for which they have furnished materials or mining or milling machinery or other fixtures, for the value of such LABORERS, machinery, tools, or equipment supplied, or services rendered or labor done or LABORERS OR ~~material~~ MATERIALS furnished, whether at the instance of the owner, or of any other person acting by ~~his~~ THE OWNER'S authority or under ~~him~~ THE OWNER,

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

as agent, contractor, or otherwise for the LABORERS, machinery, tools, or equipment supplied, or work or labor done or services rendered or LABORERS OR materials furnished by each, respectively, whether supplied or done or furnished or rendered at the instance of the owner of the building or other improvement, or ~~his~~ THE OWNER'S agent; and every contractor, architect, engineer, subcontractor, builder, agent, or other person having charge of the construction, alteration, addition to, or repair, either in whole or in part, of said building or other improvement shall be held to be the agent of the owner for the purposes of this article.

(2) In case of a contract for the work, between the reputed owner and a contractor, the lien shall extend to the entire contract price, and such contract shall operate as a lien in favor of all persons performing labor or services or furnishing LABORERS OR materials under contract, express or implied, with said contractor, to the extent of the whole contract price; and after all such liens are satisfied, then as a lien for any balance of such contract price in favor of the contractor.

(5) All claimants who establish the right to a lien or claim under any of the provisions of this article shall be entitled to receive interest on any such lien or claim at the rate provided for under the terms of any contract or agreement under which the LABORERS WERE FURNISHED OR THE labor or material was supplied or, in the absence of an agreed rate, at the rate of twelve percent per annum.

(6) FOR PURPOSES OF THIS ARTICLE, "PERSON" MEANS A NATURAL PERSON, FIRM, ASSOCIATION, CORPORATION, OR OTHER LEGAL ENTITY; EXCEPT THAT IT SHALL NOT INCLUDE A LABOR ORGANIZATION AS DEFINED IN SECTION 24-34-401 (6), C.R.S.

SECTION 2. 38-22-102 (3), the introductory portion to 38-22-102 (3.5), and 38-22-102 (3.5) (b), (4), (6), and (7), Colorado Revised Statutes, are amended to read:

38-22-102. Payments - effect. (3) As to all liens, except those of principal contractors, the whole contract price shall be payable in money, and shall not be diminished by any prior or subsequent indebtedness, offset, or counterclaim in favor of the reputed owner and against the principal contractor, and no alteration of such contract shall affect any lien acquired under the provisions of this article. In case such contracts and alterations thereof do not conform substantially to the provisions of this section, the labor done and LABORERS OR materials furnished by all persons other than the principal contractor shall be deemed to have been done and furnished at the personal instance and request of the person who contracted with the principal contractor, they shall have a lien for the value thereof.

(3.5) Any provisions of this section to the contrary notwithstanding, it shall be an affirmative defense in any action to enforce a lien pursuant to this article that the owner or some person acting on ~~his~~ THE OWNER'S behalf has paid an amount sufficient to satisfy the contractual and legal obligations of the owner, including the initial purchase price or contract amount plus any additions or change orders, to the principal contractor or any subcontractor for the purpose of payment to the subcontractors or suppliers of LABORERS, materials, or services to the job, when:

(b) The property is a residence constructed by the owner or under a contract entered into by the owner prior to its occupancy as ~~his~~ THE OWNER'S primary

residence; or

(4) Any of the persons mentioned in section 38-22-101, except a principal contractor, at any time may give to the owner, or reputed owner, or to ~~his~~ THE superintendent of construction, agent, architect, or to the financing institution or other person disbursing construction funds, a written notice that they have performed labor or furnished LABORERS OR materials ~~or both~~ to or for a principal contractor, or any person acting by authority of the owner or reputed owner, or that they have agreed to and will do so, stating in general terms the kind of labor, LABORERS, or materials and the name of the person to or for whom the same was or is to be done, or performed, or both, and the estimated or agreed amount in value, as near as may be, of that already done or furnished, or both, and also of the whole agreed to be done or furnished, or both.

(6) Upon such notice being given, it is the duty of the person who contracted with the principal contractor to withhold from such principal contractor, or from any other person acting under such owner or reputed owner, and to whom, by said notice, the said labor, LABORERS, or materials, ~~or both~~, have been furnished or agreed to be furnished, sufficient money due or that may become due to said principal contractor, or other persons, to satisfy such claim and any lien that may be filed therefor for record under this article, including reasonable costs provided for in this article.

(7) The payment of any such lien, which has been acknowledged by such principal contractor, or other person acting under such owner or reputed owner in writing to be correct, or which has been established by judicial determination, shall be taken and allowed as an offset against any moneys which may be due from the owner, or reputed owner to such principal contractor, or the person for whom such work and labor was performed OR FURNISHED.

SECTION 3. 38-22-103 (2) and (4), Colorado Revised Statutes, are amended to read:

38-22-103. Attaching of lien - enforcement. (2) When the lien is for work done or LABOR OR material furnished for any entire structure, erection, or improvement, such lien shall attach to such building, erection, or improvement for or upon which the work was done, OR LABORERS or materials furnished in preference to any prior lien or encumbrance, or mortgage upon the land upon which the same is erected or put, and any person enforcing such lien may have such building, erection, or improvement sold under execution and the purchaser at any such sale may remove the same within thirty days after such sale.

(4) Whenever any person furnishes any LABORERS OR materials or performs any labor, ~~or both~~, for the erection, construction, addition to, alteration, or repair of two or more buildings, structures, or other improvements, when they are built and constructed by the same person and under the same contract, it is lawful for the person so furnishing such LABORERS OR materials or performing such labor to divide and apportion the same among the buildings, structures, or other improvements in proportion to the value of the LABORERS OR materials furnished for and the labor performed upon or for each of said buildings, structures, or other improvements and to file with his OR HER lien claim therefor a statement of the amount so apportioned to each building, structure, or other improvement. This lien claim when so filed may

be enforced under the provisions of this article in the same manner as if said LABORERS OR materials had been furnished and labor performed for each of said buildings, structures, or other improvements separately; but if the cost or value of such labor, ~~and LABORERS, OR materials or either,~~ cannot be readily and definitely divided and apportioned among the several buildings, structures, or other improvements, then one lien claim may be made, established, and enforced against all such buildings, structures, or other improvements, together with the ground upon which the same may be situated, and in such case for the purposes of this article, all such buildings, structures, and improvements shall be deemed one building, structure, or improvement, and the land on which the same are situated as one tract of land.

SECTION 4. 38-22-104, Colorado Revised Statutes, is amended to read:

38-22-104. Lien on mining property. The provisions of this article shall apply to all persons who do work or furnish LABORERS OR materials, or mining, milling, or other machinery or other fixtures, as provided in section 38-22-101, for the working, preservation, prospecting, or development of any mine, lode, or mining claim or deposit yielding metals or minerals of any kind, or for the working, preservation, or development of any such mine, lode, or deposit, in search of any such metals or minerals; and to all persons who do work upon or furnish LABORERS OR materials, mining, milling, and other machinery or other fixtures, as provided in section 38-22-101, upon, in, or for any shaft, tunnel, mill, or tunnel site, incline, adit, drift, or any draining or other improvement of or upon any such mine, lode, deposit, or tunnel site; and to every miner or other person who does work upon or furnishes any LABORERS, coal, power, provisions, timber, powder, rope, nails, candles, fuse, caps, rails, spikes, or iron, or other materials whatever, as provided in section 38-22-101, upon any mine, lode, deposit, mill, or tunnel site. But when two or more lodes, mines, or deposits owned or claimed by the same person are worked through a common shaft, tunnel, incline, adit, drift, or other excavation, then all the mines, mining claims, lodes, deposits, and tunnel and mill sites so owned and worked or developed, for the purpose of this article shall be deemed one mine. This section is not applicable to the owner of any mine, lode, mining claim, deposit, mill, or tunnel where the work or labor has been performed for or the LABORERS OR materials furnished to a lessee.

SECTION 5. 38-22-105 (2), Colorado Revised Statutes, is amended to read:

38-22-105. Property subject to lien - notice. (2) Such interest so owned or claimed shall be subject to any lien given by the provisions of this article, unless such owner or person within five days after ~~he has obtained~~ OBTAINING notice of the erection, construction, alteration, removal, addition, repair, or other improvement, gives notice that his OR HER interests shall not be subject to any lien for the same by serving a written or printed notice to that effect, personally, upon all persons performing labor or furnishing ~~skill~~ LABORERS, materials, machinery, or other fixtures therefor, or within five days after ~~he has obtained the notice aforesaid~~ SUCH OWNER OR PERSON HAS OBTAINED NOTICE OF THE ERECTION, CONSTRUCTION, ALTERATION, REMOVAL, ADDITION, REPAIR, OR OTHER IMPROVEMENT, or notice of the intended erection, construction, alteration, removal, addition, repair, or other improvement gives such notice by posting and keeping posted a written or printed notice ~~to the effect aforesaid,~~ in some conspicuous place upon said land or upon the building or other improvements situate thereon.

SECTION 6. 38-22-105.5 (2), Colorado Revised Statutes, is amended to read:

38-22-105.5. Notice of lien law. (2) The notice shall be in at least ten-point bold-faced type, if printed, or in capital letters, if typewritten, shall identify the contractor by name and address, and shall state substantially as follows:

"IMPORTANT NOTICE TO OWNERS: UNDER COLORADO LAW, SUPPLIERS, SUBCONTRACTORS, OR OTHER PERSONS FURNISHING LABORERS OR PROVIDING LABOR OR MATERIALS FOR WORK ON YOUR RESIDENTIAL PROPERTY MAY HAVE A RIGHT TO COLLECT THEIR MONEY FROM YOU BY FILING A LIEN AGAINST YOUR PROPERTY. A LIEN CAN BE FILED AGAINST YOUR RESIDENCE WHEN A SUPPLIER, SUBCONTRACTOR, OR OTHER PERSON IS NOT PAID BY YOUR CONTRACTOR FOR ~~HIS~~ SUCH LABORERS, LABOR, OR MATERIALS. HOWEVER, IN ACCORDANCE WITH THE COLORADO GENERAL MECHANICS' LIEN LAW, SECTIONS 38-22-102 (3.5) AND 38-22-113 (4), COLORADO REVISED STATUTES, YOU HAVE AN AFFIRMATIVE DEFENSE IN ANY ACTION TO ENFORCE A LIEN IF YOU OR SOME PERSON ACTING ON YOUR BEHALF HAS PAID YOUR CONTRACTOR AND SATISFIED YOUR LEGAL OBLIGATIONS.

YOU MAY ALSO WANT TO DISCUSS WITH YOUR CONTRACTOR, YOUR ATTORNEY, OR YOUR LENDER POSSIBLE PRECAUTIONS, INCLUDING THE USE OF LIEN WAIVERS OR REQUIRING THAT EVERY CHECK ISSUED BY YOU OR ON YOUR BEHALF IS MADE PAYABLE TO THE CONTRACTOR, THE SUBCONTRACTOR, AND THE SUPPLIER FOR AVOIDING DOUBLE PAYMENTS IF YOUR PROPERTY DOES NOT SATISFY THE REQUIREMENTS OF SECTIONS 38-22-102 (3.5) AND 38-22-113 (4), COLORADO REVISED STATUTES.

YOU SHOULD TAKE WHATEVER STEPS NECESSARY TO PROTECT YOUR PROPERTY."

SECTION 7. The introductory portion to 38-22-108 (1) and 38-22-108 (1) (b) and (1) (c), Colorado Revised Statutes, are amended to read:

38-22-108. Rank of liens. (1) Every person given a lien by this article whose contract, either express or implied, is with the owner or reputed owner or ~~his~~ OWNER'S agent or other representative, is a principal contractor and all others are subcontractors; and in every case in which different liens are claimed against the same property, the rank of each lien, or class of liens, as between the different lien claimants, shall be declared and ordered to be satisfied in the decree or judgment in the following order named:

(b) The liens of all other subcontractors and of all materialmen whose claims are either entirely or principally for LABORERS, materials, machinery, or other fixtures, furnished either as principal CONTRACTORS or subcontractors;

(c) The liens of all other principal contractors and all ~~funds~~ MONEYS realized in any actions for the satisfaction of liens against the same improvements or structures shall be paid out in the order above designated.

SECTION 8. The introductory portion to 38-22-109 (1) and 38-22-109 (1) (b), (3), (4), (5), (7), and (11), Colorado Revised Statutes, are amended to read:

38-22-109. Lien statement. (1) Any person wishing to ~~avail himself of~~ USE the provisions of this article shall file for record, in the office of the county clerk and recorder of the county wherein the property, or the principal part thereof, to be affected by the lien is situated, a statement containing:

(b) The name of the person claiming the lien, the name of the person who furnished the ~~material~~ LABORERS OR MATERIALS or performed the labor for which the lien is claimed, and the name of the contractor when the lien is claimed by a subcontractor or by the assignee of a subcontractor, or, in case the name of such contractor is not known to a lien claimant, a statement to that effect;

(3) In order to preserve any lien for work performed or LABORERS OR materials furnished, there must be a notice of intent to file a lien statement served upon the owner or reputed owner of the property or ~~his~~ THE OWNER'S agent and the principal or prime contractor or his OR HER agent at least ten days before the time of filing the lien statement with the county clerk and recorder. Such notice of intent shall be served by personal service or by registered or certified mail, return receipt requested, addressed to the last known address of such persons, and an affidavit of such service or mailing at least ten days before filing of the lien statement with the county clerk and recorder shall be filed for record with said statement and shall constitute proof of such service.

(4) All such lien statements claimed for labor and work by the day or piece, but without furnishing ~~material~~ LABORERS OR MATERIALS therefor, must be filed for record after the last labor for which the lien claimed has been performed and at any time before the expiration of two months next after the completion of the building, structure, or other improvement.

(5) Except as provided in subsections (10) and (11) of this section, the lien statements of all other lien claimants must be filed for record at any time before the expiration of four months after the day on which the last labor ~~was~~ IS performed or the last ~~material~~ LABORERS OR MATERIALS ARE furnished by such lien claimant.

(7) No trivial imperfection in or omission from the said work or in the construction of any building, improvement, or structure, or of the alteration, addition to, or repair thereof, shall be deemed a lack of completion, nor shall such imperfection or omission prevent the filing of any lien statement or filing of or giving notice, nor postpone the running of any time limit within which any lien statement shall be filed for record or served upon the owner or reputed owner of the property or ~~his~~ SUCH OWNER'S agent and the principal or prime contractor or his OR HER agent, or within which any notice shall be given. For the purposes of this section, abandonment of all labor, work, services, and furnishing of LABORERS OR materials under any unfinished contract or upon any unfinished building, improvement, or structure, or the alteration, addition to, or repair thereof, shall be deemed equivalent to a completion thereof. For the purposes of this section, "abandonment" means discontinuance of all labor, work, services, and furnishing of LABORERS OR materials for a three-month period.

(11) Upon termination of agreement to provide labor, LABORERS, or materials, the

owner, or someone in ~~his~~ SUCH OWNER'S behalf, may demand from the person filing said notice a termination of said notice, which termination shall identify the properties upon which labor has not been performed or to which LABORERS OR materials have not been furnished and as to which said notice is terminated. Upon the filing of said termination in the office of the county clerk and recorder in the county wherein said property is situated, such notice no longer constitutes notice as provided in subsection (10) of this section as to the property described in said termination.

SECTION 9. 38-22-110, Colorado Revised Statutes, is amended to read:

38-22-110. Action commenced within six months. No lien claimed by virtue of this article, as against the owner of the property or as against one primarily liable for the debt upon which the lien is based or as against anyone who is neither the owner of the property nor one primarily liable for such debt, shall hold the property longer than six months after the last work or labor is performed, OR LABORERS or materials ARE furnished, or after the completion of the building, structure, or other improvement, or the completion of the alteration, addition to, or repair thereof, as prescribed in section 38-22-109, unless an action has been commenced within that time to enforce the same, and unless also a notice stating that such action has been commenced is filed for record within that time in the office of the county clerk and recorder of the county in which said property is situate. Where two or more liens are claimed of record against the same property, the commencement of any action and the filing of the notice of the commencement of such action within that time by any one or more of such lien claimants in which action all the lien claimants as appear of record are made parties, either plaintiff or defendant shall be sufficient.

SECTION 10. The introductory portion to 38-22-113 (4), Colorado Revised Statutes, is amended to read:

38-22-113. Hearing - judgment - summons - defense. (4) In such proceedings, it shall be an affirmative defense that the owner or some person acting on ~~his~~ THE OWNER'S behalf has paid an amount sufficient to satisfy the contractual and legal obligations of the owner, including the initial purchase price or contract amount plus any additions or change orders, to the principal contractor or any subcontractor for the purpose of payment to the subcontractors or suppliers of LABORERS OR materials or services to the job, when:

SECTION 11. 38-22-122, Colorado Revised Statutes, is amended to read:

38-22-122. Lien under two contracts - effect. In case the act of doing such work or of furnishing such LABORERS OR materials is continuous, said lien shall attach as in other cases, even though such work is done or LABORERS OR materials have been furnished under two or more contracts between the same parties.

SECTION 12. 38-22-126 (3) and (6), Colorado Revised Statutes, are amended to read:

38-22-126. Disburser - notice - duty of owner and disburser. (3) It is the duty of any person upon ordering or contracting for any labor, services, machinery, tools, equipment, LABORERS, or materials to be used as provided in section 38-22-101, upon demand of the person from whom he OR SHE is so ordering or with whom he OR SHE

is so contracting, to furnish to such person a statement of the names, addresses, and telephone numbers of the owner or reputed owner of the land to be improved, the principal contractor, if any, and the disbursing agent, if any, as defined in subsection (1) of this section, together with a legal description or the address, if any, of the land to be improved.

(6) Upon such notice being received by the disbursing agent, it is the duty of the disbursing agent, before disbursing any funds to the person designated in said notice with whom said claimant has contracted, to ascertain the amount due to the claimant on any disbursement date, and to pay such amount directly to the claimant out of any undisbursed funds available for and due to said person designated in said notice on such date; except that any amounts actually paid by the disbursing agent to others for labor, services, machinery, tools, equipment, and ~~material~~ LABORERS OR MATERIALS performed, supplied, or furnished for such structure or improvement ~~which~~ THAT are chargeable to said person designated in said notice shall not be deemed available for said person designated in said notice; and further except that if the amount claimed by said claimant is disputed by said person designated in said notice, the disbursing agent may impound such amount until the amount due is settled by agreement or final judicial determination.

SECTION 13. 38-22-127 (1) and (2), Colorado Revised Statutes, are amended to read:

38-22-127. Moneys for lien claims made trust funds - disbursements - penalty. (1) All funds disbursed to any contractor or subcontractor under any building, construction, or remodeling contract or on any construction project shall be held in trust for the payment of the subcontractors, LABORER OR material suppliers, or laborers who have furnished LABORERS, materials, services, or labor, who have a lien, or may have a lien, against the property, or who claim, or may claim, against a principal and surety under the provisions of this article and for which such disbursement was made.

(2) This section shall not be construed so as to require any such contractor or subcontractor to hold in trust any funds which have been disbursed to him OR HER for any subcontractor, LABORER OR material supplier, or laborer who claims a lien against the property or claims against a principal and surety who has furnished a bond under the provisions of this article if such contractor or subcontractor has a good faith belief that such lien or claim is not valid or if such contractor or subcontractor, in good faith, claims a setoff, to the extent of such setoff.

SECTION 14. 38-22-129 (1), Colorado Revised Statutes, is amended to read:

38-22-129. Principal contractor may provide bond prior to commencement of work. (1) Except as provided in subsection (4) of this section, the provisions of section 38-22-101 (1) shall not apply if, at the commencement of any work upon any construction project for the improvement of real property as described in section 38-22-101 (1), a performance bond and a labor and materials payment bond, each in an amount equal to one hundred fifty percent of the contract price, are executed by the principal contractor and one or more corporate sureties authorized and qualified to do business in this state, for the protection of all contractors, subcontractors, materialmen, and laborers supplying labor, LABORERS, or material in the prosecution

of the work on such construction project for the use of each contractor, subcontractor, materialman, or laborer.

SECTION 15. 38-26-102 (1), Colorado Revised Statutes, is amended to read:

38-26-102. Railroad and irrigation contractor's bond - action - limitation.

(1) Whenever any railroad, reservoir, or irrigating canal company contracts with any person or corporation for the construction of its railroad, reservoir, or irrigating canal, or any part thereof, such company shall take from the person or corporation with whom such contract is made a good and sufficient bond, conditioned that such contractor shall pay or cause to be paid to all laborers, mechanics, materialmen, ranchmen, farmers, merchants, and other persons who supply such contractor, or any of his OR HER subcontractors, with labor, work, ~~material~~ LABORERS, MATERIALS, ranch or farm products, provisions, goods, or supplies of any kind all just debts incurred therefor in carrying on such work, which bond shall be filed by such company in the office of the county clerk and recorder in the county where the principal work of such contractor is carried on. If any such railroad, reservoir, or irrigation canal company fails to take such bond, such company shall be liable to the persons mentioned to the full extent of all such debts so contracted by such contractor or any of his OR HER subcontractors. Any such contractor may take a similar bond from each of his OR HER subcontractors to secure the payment of all debts of the kind mentioned incurred by ~~him~~ SUCH CONTRACTOR and file the same.

SECTION 16. 38-26-103, Colorado Revised Statutes, is amended to read:

38-26-103. Verified account to company - withhold payments. Every laborer, mechanic, ranchman, farmer, merchant, or other person performing any work or labor or furnishing any ~~material~~ LABORERS, MATERIALS, ranch or farm products, provisions, goods, or supplies to any contractor or subcontractor in the construction of any railroad, reservoir, or irrigation canal, or any part thereof, used by such contractor or subcontractor in carrying on said work of construction whose demand for work, labor, LABORERS, material, ranch or farm products, provisions, goods, or supplies so furnished has not been paid may deliver to the company owning such railroad, reservoir, or irrigation canal, or to its agent, a verified account of the amount and value of the work and labor so performed or the LABORERS, material, ranch or farm products, provisions, goods, or supplies so furnished. Thereupon such company, or its agent, shall retain out of the subsequent payments to the contractor the amount of such unpaid account for the benefit of the person to whom the same is due.

SECTION 17. 38-26-105 (1), Colorado Revised Statutes, is amended to read:

38-26-105. Public works contractor's bond - conditions. (1) 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 ~~him or his~~ 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 ~~material~~ 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.

SECTION 18. 38-26-106 (2), Colorado Revised Statutes, is amended to read:

38-26-106. Contractor executes bond. (2) Such bond shall be duly executed by a qualified corporate surety, conditioned upon the faithful performance of the contract, and, in addition, shall provide that, if the contractor or his OR HER subcontractor fails to duly pay for any labor, materials, team hire, sustenance, provisions, provender, or other supplies used or consumed by such contractor or his OR HER subcontractor in performance of the work contracted to be done or fails to pay any person who supplies LABORERS, rental machinery, tools, or equipment, all amounts due as the result of the use of such LABORERS, machinery, tools, or equipment, in the prosecution of the work, the surety will pay the same in an amount not exceeding the sum specified in the bond together with interest at the rate of eight percent per annum. Unless such bond is executed, delivered, and filed, no claim in favor of the contractor arising under such contract shall be audited, allowed, or paid. A certified or cashier's check or a bank money order made payable to the treasurer of the state of Colorado or to the treasurer or other officer designated by the governing body of the contracting local government may be accepted in lieu of a bond.

SECTION 19. 38-26-107 (1), Colorado Revised Statutes, is amended to read:

38-26-107. Supplier may file statement - notice - withholding funds. (1) Any person, copartnership, association of persons, company, or corporation that has furnished labor, materials, team hire, sustenance, provisions, provender, or other supplies used or consumed by such contractor or his OR HER subcontractor in or about the performance of the work contracted to be done or that supplies LABORERS, rental machinery, tools, or equipment to the extent used in the prosecution of the work whose claim therefor has not been paid by the contractor or the subcontractor, at any time up to and including the time of final settlement for the work contracted to be done, which final settlement shall be duly advertised at least ten days prior thereto by publication of notice thereof at least twice in a public newspaper of general circulation published in the counties wherein the work was contracted for and wherein such work was performed, may file with the board, officer, person, or other contracting body by whom the contract was awarded a verified statement of the amount due and unpaid on account of such claim.

SECTION 20. Effective date - applicability. (1) This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution; except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

(2) The provisions of this act shall apply to all construction, railroad, or mining projects commenced on or after the applicable effective date of this act.

Approved: March 29, 2000