

CHAPTER 270

PROPERTY

SENATE BILL 09-248

BY SENATOR(S) Heath;
also REPRESENTATIVE(S) McNulty, Gardner B., Kerr J., Massey, Priola, Sonnenberg, Stephens, Tipton.

AN ACT

CONCERNING CONTRACTOR SURETY REQUIREMENTS FOR A PUBLIC WORKS PROJECT CONTRACT HAVING A TOTAL VALUE OF FIVE HUNDRED MILLION DOLLARS OR MORE, AND, IN CONNECTION THEREWITH, REQUIRING A BOND OR OTHER ACCEPTABLE SURETY, INCLUDING BUT NOT LIMITED TO A LETTER OF CREDIT, TO BE FILED IN A SPECIFIED MINIMUM AMOUNT FOR THE DURATION OF THE CONTRACT.

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

SECTION 1. 38-26-106, Colorado Revised Statutes, is amended to read:

38-26-106. Contractor executes bond. (1) ~~Every~~ **A** contractor who is awarded ~~any~~ **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 ~~every~~ **A** contractor who is awarded ~~any~~ **A** contract for more than one hundred 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 ~~said~~ **THE** contract, shall duly execute, deliver to, and file with the board, officer, body, or person by whom ~~such~~ **THE** contract was awarded a good and sufficient bond or other acceptable surety approved by ~~such~~ **THE** contracting board, officer, body, or person, in a penal sum not less than one-half of the total amount payable ~~by~~ **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**

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

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.

(2) ~~Such~~ A bond OR OTHER ACCEPTABLE SURETY shall be duly executed by a qualified corporate surety OR OTHER QUALIFIED FINANCIAL INSTITUTION, 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 OR OTHER QUALIFIED FINANCIAL INSTITUTION will pay the same in an amount not exceeding the sum specified in the bond OR OTHER ACCEPTABLE SURETY together with interest at the rate of eight percent per annum. Unless ~~such~~ A bond OR OTHER ACCEPTABLE SURETY is executed, delivered, and filed, no claim in favor of the contractor arising under ~~such~~ THE 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 OR OTHER ACCEPTABLE SURETY.

SECTION 2. 38-26-107 (3), Colorado Revised Statutes, is amended to read:

38-26-107. Supplier may file statement - notice - withholding funds. (3) At the expiration of ~~such~~ THE ninety-day period, the person or other body awarding the contract shall pay to the contractor such moneys and funds as are not the subject of suit and lis pendens notices and shall retain thereafter, subject to the final outcome thereof, only sufficient funds to insure the payment of judgments ~~which~~ THAT may result from ~~such~~ THE suit. Failure on the part of a claimant to comply with the provisions of sections 38-26-101, 38-26-106, and this section shall relieve the board, officer, body, or person by whom such contract was awarded from any liability for making payment to the contractor. At any time within ninety days following the date fixed for final settlement as published, any person, copartnership, association of persons, company, or corporation, or its assigns, whose claims have not been paid by any such contractor or subcontractor may commence an action to recover the same, individually or collectively, against the surety OR OTHER QUALIFIED FINANCIAL INSTITUTION on the bond OR OTHER ACCEPTABLE SURETY specified and required in section 38-26-106.

SECTION 3. Act subject to petition - 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, (August 5, 2009, if adjournment sine die is on May 6, 2009); 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 contracts executed on or after the applicable effective date of this act.

Approved: May 18, 2009