

**First Regular Session
Seventy-second General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 19-0821.01 Pierce Lively x2059

SENATE BILL 19-138

SENATE SPONSORSHIP

Winter and Priola,

HOUSE SPONSORSHIP

Bird,

Senate Committees
Finance

House Committees

A BILL FOR AN ACT

101 **CONCERNING BONDING REQUIREMENTS FOR CONTRACTORS THAT ARE**
102 **A PARTY TO CERTAIN PUBLIC-PRIVATE INITIATIVES.**

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>.)

Under current law, when a person, company, firm, corporation, or contractor (contractor) enters into a contract with a county, municipality, school district, or, in some instances, any other political subdivision of the state to perform work in connection with a project that has specified characteristics, the contractor is required to execute performance bonds and payment bonds.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

The bill specifies that these bonding requirements apply to all construction contracts situated or located on public real property using public or private money or public or private financing.

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

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

4 **24-105-202. Contract performance and payment bonds -**
5 **applicability.** (4) THIS SECTION APPLIES TO ALL CONSTRUCTION
6 CONTRACTS AWARDED TO A PRIVATE ENTITY FOR CONSTRUCTION THAT IS
7 SITUATED OR LOCATED ON PUBLIC REAL PROPERTY USING ANY PUBLIC OR
8 PRIVATE MONEY OR PUBLIC OR PRIVATE FINANCING.

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

11 **38-26-105. Public works contractor's bond - conditions -**
12 **applicability - definitions.** (1) (a) Subject to ~~the provisions of~~ subsection
13 (2) of this section, any person, company, firm, or corporation entering
14 into a contract for more than fifty thousand dollars with any county,
15 municipality, or school district for the construction of any public building
16 or the prosecution or completion of any public works or for repairs upon
17 any public building or public works ~~shall be~~ IS required before
18 commencing work to execute, in addition to all bonds that may be
19 required of it, a penal bond with good and sufficient surety to be approved
20 by the board or boards of county commissioners of the county or counties,
21 the governing body or bodies of the municipality or municipalities, or the
22 district school board or boards, conditioned that such contractor shall at
23 all times promptly make payments of all amounts lawfully due to all
24 persons supplying or furnishing such person or such person's

1 subcontractors with labor, laborers, materials, rental machinery, tools, or
2 equipment used or performed in the prosecution of the work provided for
3 in such contract and that such contractor will indemnify and save
4 harmless the county, municipality, or school district to the extent of any
5 payments in connection with the carrying out of any such contract which
6 the county or counties, municipality or municipalities, and school district
7 or school districts may be required to make under the law. Subcontractors,
8 materialmen, mechanics, suppliers of rental equipment, and others may
9 have a right of action for amounts lawfully due them from the contractor
10 or subcontractor directly against the principal and surety of such bond.
11 Such action for laborers, materials, rental machinery, tools, or equipment
12 furnished or labor rendered ~~shall~~ MUST be brought within six months after
13 the completion of the work. ~~and not afterwards.~~

14 (b) THIS SECTION APPLIES TO ALL CONTRACTS FOR MORE THAN
15 FIFTY THOUSAND DOLLARS AWARDED TO A PRIVATE ENTITY FOR THE
16 CONSTRUCTION, COMPLETION, OR REPAIR THAT IS SITUATED OR LOCATED
17 ON PUBLIC REAL PROPERTY USING ANY PUBLIC OR PRIVATE MONEY OR
18 PUBLIC OR PRIVATE FINANCING.

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

21 **38-26-106. Contractor executes bond - applicability.** (1)(a) A
22 contractor who is awarded a contract for more than fifty thousand dollars
23 for the construction, erection, repair, maintenance, or improvement of any
24 building, road, bridge, viaduct, tunnel, excavation, or other public works
25 for any county, city and county, municipality, school district, or other
26 political subdivision of the state, and a contractor who is awarded a
27 contract for more than one hundred fifty thousand dollars for the

1 construction, erection, repair, maintenance, or improvement of any
2 building, road, bridge, viaduct, tunnel, excavation, or other public works
3 for this state, before entering upon the performance of any such work
4 included in the contract, shall duly execute, deliver to, and file with the
5 board, officer, body, or person by whom the contract was awarded a good
6 and sufficient bond or other acceptable surety approved by the contracting
7 board, officer, body, or person, in a penal sum not less than one-half of
8 the total amount payable under the terms of the contract; except that, for
9 a public works contract having a total value of five hundred million
10 dollars or more, a bond or other acceptable surety, including but not
11 limited to a letter of credit, may be issued in a penal sum not less than
12 one-half of the maximum amount payable under the terms of the contract
13 in any calendar year in which the contract is performed. The contracting
14 board, office, body, or person shall ensure that the contract requires that
15 a bond or other acceptable surety, including but not limited to a letter of
16 credit, be filed and current for the duration of the contract.

17 (b) THIS SECTION APPLIES TO ALL CONTRACTS FOR MORE THAN ONE
18 HUNDRED FIFTY THOUSAND DOLLARS AWARDED TO A PRIVATE ENTITY FOR
19 THE CONSTRUCTION, ERECTION, REPAIR, MAINTENANCE, OR IMPROVEMENT
20 OF ANY BUILDING, ROAD, BRIDGE, VIADUCT, TUNNEL, OR EXCAVATION
21 THAT IS SITUATED OR LOCATED ON PUBLIC REAL PROPERTY USING ANY
22 PUBLIC OR PRIVATE MONEY OR PUBLIC OR PRIVATE FINANCING.

23 **SECTION 4. Act subject to petition - effective date.** This act
24 takes effect at 12:01 a.m. on the day following the expiration of the
25 ninety-day period after final adjournment of the general assembly (August
26 2, 2019, if adjournment sine die is on May 3, 2019); except that, if a
27 referendum petition is filed pursuant to section 1 (3) of article V of the

1 state constitution against this act or an item, section, or part of this act
2 within such period, then the act, item, section, or part will not take effect
3 unless approved by the people at the general election to be held in
4 November 2020 and, in such case, will take effect on the date of the
5 official declaration of the vote thereon by the governor.