

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

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

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.*

SENATE
Amended 2nd Reading
March 5, 2019

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. Legislative declaration.** (1) The general assembly
3 hereby finds and declares that:

4 (a) Under current law, taxpayers, subcontractors, and material
5 suppliers have payment protection on public construction projects through
6 bonding requirements and on private construction projects through
7 mechanic's liens, but no such payment protection exists on construction
8 projects using a public-private partnership funding agreement.

9 (b) Bonding protects the public interest, tax dollars, and property
10 owned by the taxpayers of Colorado and helps ensure that subcontractors
11 and materials suppliers involved in the construction or repair of a public
12 property are paid.

13 (2) Now, therefore, it is the intent of the general assembly to
14 ensure that current payment and performance bonding requirements for
15 public construction projects apply to construction projects using a
16 public-private partnership funding agreement.

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

19 **24-105-202. Contract performance and payment bonds -**
20 **applicability.** (4) THIS SECTION APPLIES TO ALL CONSTRUCTION
21 CONTRACTS AWARDED TO A PRIVATE ENTITY FOR CONSTRUCTION THAT IS
22 SITUATED OR LOCATED ON PUBLICLY OWNED PROPERTY USING ANY PUBLIC
23 OR PRIVATE MONEY OR PUBLIC OR PRIVATE FINANCING.

24 **SECTION 3.** In Colorado Revised Statutes, 38-26-105, **amend**

1 (1); and add (3) as follows:

2 **38-26-105. Public works contractor's bond - conditions -**
3 **applicability - definitions.** (1) ~~Subject to the provisions of subsection~~
4 (2) of this section, any person, company, firm, or corporation entering
5 into a contract for more than fifty thousand dollars with any county,
6 municipality, or school district for the construction of any public building
7 or the prosecution or completion of any public works or for repairs upon
8 any public building or public works ~~shall be~~ IS required before
9 commencing work to execute, in addition to all bonds that may be
10 required of it, a penal bond with good and sufficient surety to be approved
11 by the board or boards of county commissioners of the county or counties,
12 the governing body or bodies of the municipality or municipalities, or the
13 district school board or boards, conditioned that such contractor shall at
14 all times promptly make payments of all amounts lawfully due to all
15 persons supplying or furnishing such person or such person's
16 subcontractors with labor, laborers, materials, rental machinery, tools, or
17 equipment used or performed in the prosecution of the work provided for
18 in such contract and that such contractor will indemnify and save
19 harmless the county, municipality, or school district to the extent of any
20 payments in connection with the carrying out of any such contract which
21 the county or counties, municipality or municipalities, and school district
22 or school districts may be required to make under the law. Subcontractors,
23 materialmen, mechanics, suppliers of rental equipment, and others may
24 have a right of action for amounts lawfully due them from the contractor
25 or subcontractor directly against the principal and surety of such bond.
26 Such action for laborers, materials, rental machinery, tools, or equipment
27 furnished or labor rendered ~~shall~~ MUST be brought within six months after

1 the completion of the work. ~~and not afterwards.~~

2 (3) THIS SECTION APPLIES TO ALL CONTRACTS FOR MORE THAN
3 FIFTY THOUSAND DOLLARS AWARDED TO A PRIVATE ENTITY FOR THE
4 CONSTRUCTION OF ANY PUBLIC BUILDING OR THE PROSECUTION OR
5 COMPLETION OF ANY PUBLIC WORKS OR FOR REPAIRS UPON ANY PUBLIC
6 BUILDING OR PUBLIC WORKS THAT IS SITUATED OR LOCATED ON PUBLICLY
7 OWNED PROPERTY USING ANY PUBLIC OR PRIVATE MONEY OR PUBLIC OR
8 PRIVATE FINANCING.

9 SECTION 4. In Colorado Revised Statutes, 38-26-106, **amend**
10 (1); and add (3) as follows:

11 **38-26-106. Contractor executes bond - applicability.** (1) A
12 contractor who is awarded a contract for more than fifty thousand dollars
13 for the construction, erection, repair, maintenance, or improvement of any
14 building, road, bridge, viaduct, tunnel, excavation, or other public works
15 for any county, city and county, municipality, school district, or other
16 political subdivision of the state, and a contractor who is awarded a
17 contract for more than one hundred fifty thousand dollars for the
18 construction, erection, repair, maintenance, or improvement of any
19 building, road, bridge, viaduct, tunnel, excavation, or other public works
20 for this state. Before entering upon the performance of any such work ___
21 included in the contract, A CONTRACTOR shall duly execute, deliver to,
22 and file with the board, officer, body, or person by whom the contract was
23 awarded a good and sufficient bond or other acceptable surety approved
24 by the contracting board, officer, body, or person, in a penal sum not less
25 than one-half of the total amount payable under the terms of the contract;
26 except that, for a public works contract having a total value of five
27 hundred million dollars or more, a bond or other acceptable surety,

1 including but not limited to a letter of credit, may be issued in a penal
2 sum not less than one-half of the maximum amount payable under the
3 terms of the contract in any calendar year in which the contract is
4 performed. The contracting board, office, body, or person shall ensure
5 that the contract requires that a bond or other acceptable surety, including
6 but not limited to a letter of credit, be filed and current for the duration of
7 the contract.

8 (3) THIS SECTION APPLIES TO:

9 (a) A CONTRACTOR WHO IS AWARDED A CONTRACT FOR MORE
10 THAN FIFTY THOUSAND DOLLARS FOR THE CONSTRUCTION, ERECTION,
11 REPAIR, MAINTENANCE, OR IMPROVEMENT OF ANY BUILDING, ROAD,
12 BRIDGE, VIADUCT, TUNNEL, EXCAVATION, OR OTHER PUBLIC WORKS FOR
13 ANY COUNTY, CITY AND COUNTY, MUNICIPALITY, SCHOOL DISTRICT, OR
14 OTHER POLITICAL SUBDIVISION OF THE STATE;

15 (b) A CONTRACTOR WHO IS AWARDED A CONTRACT FOR MORE
16 THAN ONE HUNDRED FIFTY THOUSAND DOLLARS FOR THE CONSTRUCTION,
17 ERECTION, REPAIR, MAINTENANCE, OR IMPROVEMENT OF ANY BUILDING,
18 ROAD, BRIDGE, VIADUCT, TUNNEL, EXCAVATION, OR OTHER PUBLIC WORKS
19 FOR THIS STATE; AND

20 (c) ALL CONTRACTS FOR MORE THAN ONE HUNDRED FIFTY
21 THOUSAND DOLLARS AWARDED TO A PRIVATE ENTITY FOR THE
22 CONSTRUCTION, ERECTION, REPAIR, MAINTENANCE, OR IMPROVEMENT OF
23 ANY BUILDING, ROAD, BRIDGE, VIADUCT, TUNNEL, EXCAVATION, OR OTHER
24 PUBLIC WORKS THAT IS SITUATED OR LOCATED ON PUBLICLY OWNED
25 PROPERTY USING ANY PUBLIC OR PRIVATE MONEY OR PUBLIC OR PRIVATE
26 FINANCING.

27 **SECTION 5. Act subject to petition - effective date.** This act

1 takes effect at 12:01 a.m. on the day following the expiration of the
2 ninety-day period after final adjournment of the general assembly (August
3 2, 2019, if adjournment sine die is on May 3, 2019); except that, if a
4 referendum petition is filed pursuant to section 1 (3) of article V of the
5 state constitution against this act or an item, section, or part of this act
6 within such period, then the act, item, section, or part will not take effect
7 unless approved by the people at the general election to be held in
8 November 2020 and, in such case, will take effect on the date of the
9 official declaration of the vote thereon by the governor.