

CHAPTER 24

PROPERTY

HOUSE BILL 00-1089

BY REPRESENTATIVES Tapia, Coleman, Gagliardi, Mace, Miller, Plant, Sinclair, Spradley, Veiga, Vigil, Young, and Zimmerman;
also SENATOR Hernandez.

AN ACT

CONCERNING THE ABILITY OF A PERSON WHO PERFORMS WORK ON A PUBLIC WORKS PROJECT TO SUBSTITUTE A BOND APPROVED BY A DISTRICT COURT JUDGE FOR A CLAIM FILED AGAINST THE CONTRACT.

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

SECTION 1. Article 26 of title 38, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

38-26-108. Substitution of bond allowed. (1) WHENEVER A VERIFIED STATEMENT OF A CLAIM HAS BEEN FILED IN ACCORDANCE WITH SECTION 38-26-107, THE CONTRACTOR HOLDING THE CONTRACT AGAINST WHICH SUCH STATEMENT HAS BEEN FILED, OR OTHER PERSON WHO HAS AN INTEREST IN THE PAYMENTS BEING WITHHELD, BY THE CONTRACTING BODY THAT AWARDED THE CONTRACT MAY, AT ANY TIME, FILE WITH THE CLERK OF THE DISTRICT COURT OF THE COUNTY WHERE THE CONTRACT IS BEING PERFORMED OR OF THE COUNTY WHERE THE OFFICE IN WHICH THE VERIFIED STATEMENT OF CLAIM IS LOCATED AN EX PARTE MOTION FOR APPROVAL OF A SUBSTITUTE CORPORATE SURETY BOND OR ANY OTHER UNDERTAKING THAT MAY BE ACCEPTABLE TO A JUDGE OF SUCH DISTRICT COURT.

(2) A CORPORATE SURETY BOND OR UNDERTAKING FILED PURSUANT TO SUBSECTION (1) OF THIS SECTION SHALL BE IN AN AMOUNT EQUAL TO ONE AND ONE-HALF TIMES THE AMOUNT OF THE CLAIM PLUS COSTS ALLOWED BY THE COURT UP TO THE DATE OF SUCH FILING AND SHALL HAVE BEEN APPROVED BY AN ORDER OF A JUDGE OF THE DISTRICT COURT IN WHICH SUCH BOND OR UNDERTAKING IS FILED. THE ORDER SHALL STATE THAT:

(a) THE CORPORATE SURETY BOND OR UNDERTAKING IS APPROVED;

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

(b) THE VERIFIED STATEMENT OF CLAIM IS DISCHARGED;

(c) THE CORPORATE SURETY BOND OR UNDERTAKING SHALL BE SUBSTITUTED FOR THE MONEYS WITHHELD PURSUANT TO THE VERIFIED STATEMENT OF CLAIM; AND

(d) THE CONTRACTING BODY THAT AWARDED THE CONTRACT SHALL RELEASE THE MONEYS BEING WITHHELD PURSUANT TO THE VERIFIED STATEMENT OF CLAIM ON THE SAME TERMS AND CONDITIONS AS IF THE VERIFIED STATEMENT OF CLAIM HAD BEEN RELEASED BY THE CLAIMANT.

(3) A CORPORATE SURETY BOND OR UNDERTAKING FILED PURSUANT TO SUBSECTION (1) OF THIS SECTION SHALL BE CONDITIONED THAT, IF THE CLAIMANT IS FINALLY ADJUDGED TO BE ENTITLED TO RECOVER UPON THE CLAIM UPON WHICH THE CLAIMANT'S VERIFIED STATEMENT OF A CLAIM IS BASED, THE SURETY ISSUING THE BOND OR UNDERTAKING OR THE PRINCIPAL THEREUNDER, SHALL PAY TO SUCH CLAIMANT THE AMOUNT OF THE JUDGMENT ISSUED UPON SUCH CLAIM, TOGETHER WITH ANY INTEREST, COSTS, AND OTHER AMOUNTS AWARDED BY THE JUDGMENT.

(4) NOTWITHSTANDING THE PROVISIONS OF SECTION 38-26-107, UPON THE ISSUANCE OF AN ORDER FROM A JUDGE OF THE DISTRICT COURT APPROVING A BOND OR UNDERTAKING FILED PURSUANT TO SUBSECTION (1) OF THIS SECTION, THE CLERK OF SUCH DISTRICT COURT SHALL ISSUE A CERTIFICATE OF RELEASE, WHICH SHALL BE SERVED ON THE BOARD, OFFICER, PERSON, OR OTHER CONTRACTING BODY BY WHOM THE CONTRACT WAS AWARDED BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, OR BY PERSONAL DELIVERY. THE CERTIFICATE OF RELEASE SHALL SHOW THAT SUCH CLAIM AGAINST THE CONTRACT HAS BEEN DISCHARGED AND RELEASED IN FULL AND THE CORPORATE SURETY BOND OR UNDERTAKING HAS BEEN SUBSTITUTED. AFTER THE CERTIFICATE OF RELEASE IS FILED, PAYMENTS TO THE CONTRACTOR BY THE CONTRACTING BODY BY WHOM THE CONTRACT WAS AWARDED SHALL RESUME IN ACCORDANCE WITH THE TERMS OF THE CONTRACT, AND ANY FUNDS PREVIOUSLY WITHHELD AS A RESULT OF THE FILING OF THE VERIFIED STATEMENT SHALL BE RELEASED TO THE CONTRACTOR PURSUANT TO THE TERMS OF THE CONTRACT OR, IF NOT SPECIFIED IN THE CONTRACT, WITHIN THIRTY DAYS AFTER THE RECEIPT OF THE CERTIFICATE OF RELEASE BY THE BOARD, OFFICER, PERSON, OR OTHER CONTRACTING BODY BY WHOM THE CONTRACT WAS AWARDED.

(5) WHEN A CORPORATE SURETY BOND OR UNDERTAKING IS SUBSTITUTED FOR A CLAIM AS PROVIDED IN THIS SECTION, THE CLAIMANT WHO FILED THE VERIFIED STATEMENT OF A CLAIM PURSUANT TO SECTION 38-26-107 (1) MAY BRING AN ACTION AGAINST SUCH BOND OR UNDERTAKING. SUCH ACTION SHALL BE COMMENCED WITHIN THE TIME ALLOWED FOR THE COMMENCEMENT OF AN ACTION SET FORTH IN SECTION 38-26-107 (3).

(6) IN THE EVENT THAT NO ACTION IS COMMENCED UPON THE CORPORATE SURETY BOND OR UNDERTAKING WITHIN THE TIME PERIOD CALLED FOR BY SECTION 38-26-107, THE CORPORATE SURETY BOND OR UNDERTAKING SHALL BE DISCHARGED AND SHALL BE RETURNED TO THE CONTRACTOR.

SECTION 2. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: March 10, 2000