

CHAPTER 254

PROPERTY

SENATE BILL 03-070

BY SENATOR(S) Lamborn;
also REPRESENTATIVE(S) McCluskey, Schultheis, and Williams T.

AN ACT

CONCERNING PAYMENT PROCEDURES FOR A PUBLIC WORKS CONSTRUCTION PROJECT, AND, IN CONNECTION THEREWITH, CREATING REQUIREMENTS FOR CONTRACTORS' BONDS THAT ARE CONSISTENT WITH EXISTING MECHANICS' LIENS REQUIREMENTS APPLICABLE TO PRIVATE PROJECTS.

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

SECTION 1. 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 2. Article 26 of title 38, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SECTIONS to read:

38-26-109. Moneys for verified claims made - trust funds - disbursements - penalty. (1) ALL FUNDS DISBURSED TO ANY CONTRACTOR OR SUBCONTRACTOR

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

UNDER ANY CONTRACT OR PROJECT SUBJECT TO THE PROVISIONS OF THIS ARTICLE SHALL BE HELD IN TRUST FOR THE PAYMENT OF ANY PERSON THAT HAS FURNISHED LABOR, MATERIALS, SUSTENANCE, OR OTHER SUPPLIES USED OR CONSUMED BY THE CONTRACTOR 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 WHERE THE PERSON HAS:

(a) FILED OR MAY FILE A VERIFIED STATEMENT OF A CLAIM ARISING FROM THE PROJECT; OR

(b) ASSERTED OR MAY ASSERT A CLAIM AGAINST A PRINCIPAL OR SURETY UNDER THE PROVISIONS OF THIS ARTICLE AND FOR WHOM OR WHICH SUCH DISBURSEMENT WAS MADE.

(2) THE REQUIREMENTS OF THIS SECTION SHALL NOT BE CONSTRUED SO AS TO REQUIRE A CONTRACTOR OR SUBCONTRACTOR TO HOLD IN TRUST ANY FUNDS THAT HAVE BEEN DISBURSED TO HIM OR HER FOR ANY PERSON THAT HAS FURNISHED LABOR, MATERIALS, SUSTENANCE, OR OTHER SUPPLIES USED OR CONSUMED BY THE CONTRACTOR OR HIS OR HER SUBCONTRACTOR IN THE PERFORMANCE OF THE WORK CONTRACTED TO BE DONE; SUPPLIED LABORERS, RENTAL MACHINERY, TOOLS, OR EQUIPMENT TO THE EXTENT USED IN THE PROSECUTION OF THE WORK; FILED OR MAY FILE A VERIFIED STATEMENT OF A CLAIM ARISING FROM THE PROJECT; OR HAS ASSERTED OR MAY ASSERT A CLAIM AGAINST A PRINCIPAL OR SURETY THAT HAS FURNISHED A BOND UNDER THE PROVISIONS OF THIS ARTICLE IF:

(a) THE CONTRACTOR OR SUBCONTRACTOR HAS A GOOD FAITH BELIEF THAT THE VERIFIED STATEMENT OF A CLAIM OR BOND CLAIM IS NOT VALID; OR

(b) THE CONTRACTOR OR SUBCONTRACTOR, IN GOOD FAITH, CLAIMS A SETOFF, TO THE EXTENT OF SUCH SETOFF.

(3) EACH CONTRACTOR OR SUBCONTRACTOR SHALL MAINTAIN SEPARATE RECORDS OF ACCOUNT OF EACH PROJECT OR ACCOUNT; EXCEPT THAT NOTHING IN THIS SECTION SHALL BE CONSTRUED TO REQUIRE A CONTRACTOR OR SUBCONTRACTOR TO DEPOSIT TRUST FUNDS FROM A SINGLE PROJECT IN A SEPARATE BANK ACCOUNT SOLELY FOR THAT PROJECT AS LONG AS THE TRUST FUNDS ARE NOT DISBURSED IN A MANNER THAT CONFLICTS WITH THE REQUIREMENTS OF THIS SECTION.

(4) ANY PERSON WHO VIOLATES THE PROVISIONS OF SUBSECTIONS (1) AND (2) OF THIS SECTION COMMITS THEFT WITHIN THE MEANING OF SECTION 18-4-401, C.R.S.

38-26-110. Excessive amounts claimed. (1) ANY PERSON WHO FILES A VERIFIED STATEMENT OF A CLAIM OR ASSERTS A CLAIM AGAINST A PRINCIPAL OR SURETY THAT HAS FURNISHED A BOND UNDER THIS ARTICLE FOR AN AMOUNT GREATER THAN THE AMOUNT DUE WITHOUT A REASONABLE POSSIBILITY THAT THE AMOUNT CLAIMED IS DUE AND WITH THE KNOWLEDGE THAT THE AMOUNT CLAIMED IS GREATER THAN THE AMOUNT DUE, AND THAT FACT IS DEMONSTRATED IN ANY PROCEEDINGS UNDER THIS ARTICLE, SHALL FORFEIT ALL RIGHTS TO THE AMOUNT CLAIMED AND SHALL BE LIABLE TO THE FOLLOWING IN AN AMOUNT EQUAL TO ALL COSTS AND ALL ATTORNEY FEES REASONABLY INCURRED IN BONDING OVER, CONTESTING, OR OTHERWISE RESPONDING IN ANY WAY TO THE EXCESSIVE VERIFIED STATEMENT OF CLAIM OR EXCESSIVE BOND

CLAIM:

(a) THE PERSON TO WHOM OR WHICH A DISBURSEMENT WOULD BE MADE BUT FOR THE VERIFIED STATEMENT OF A CLAIM OR BOND CLAIM; OR

(b) THE PRINCIPAL AND SURETY ON THE BOND.

SECTION 3. No appropriation. The general assembly has determined that this act can be implemented within existing appropriations, and therefore no separate appropriation of state moneys is necessary to carry out the purposes of this act.

SECTION 4. Effective date - applicability. (1) This act shall take effect September 1, 2003.

(2) However, if a referendum petition is filed against this act or an item, section, or part of this act during the 90-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, then the act, item, section, or part, shall not take effect unless approved by the people at a biennial regular general election and shall take effect on the date specified in subsection (1) or on the date of the official declaration of the vote thereon by proclamation of the governor, whichever is later.

(3) The provisions of this act shall apply to verified statements of claim or claims asserted against a bond furnished under the provisions of this article on or after the applicable effective date of this act.

Approved: May 14, 2003