

## CHAPTER 64

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**GOVERNMENT - STATE**

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**SENATE BILL 04-143**

BY SENATOR(S) Tapia, Groff, Grossman, Hillman, and Kester;  
also REPRESENTATIVE(S) Brophy, Butcher, McFadyen, Salazar, Hoppe, Jahn, Vigil, and Weddig.

**AN ACT**

**CONCERNING THE MODIFICATION OF CERTAIN REQUIREMENTS FOR CONTRACTORS THAT ARE AWARDED CONSTRUCTION CONTRACTS FOR PUBLIC PROJECTS.**

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

**SECTION 1.** 24-91-103 (1), Colorado Revised Statutes, is amended to read:

**24-91-103. Public entity - contracts - partial payments.** (1) A public entity awarding a contract exceeding ~~eighty~~ ONE HUNDRED FIFTY thousand dollars for the construction, alteration, or repair of any highway, public building, public work, or public improvement, structure, or system shall authorize partial payments of the amount due under such contract at the end of each calendar month, or as soon thereafter as practicable, to the contractor, if the contractor is satisfactorily performing the contract. At least ninety percent of the calculated value of any work completed shall be paid until fifty percent of the work required by the contract has been performed. Thereafter, the public entity shall pay any of the remaining installments without retaining additional funds if, in the opinion of the public entity, satisfactory progress is being made in the work. The withheld percentage of the contract price of any such work, improvement, or construction shall be retained until the contract is completed satisfactorily and finally accepted by the public entity. If the public entity finds that satisfactory progress is being made in all phases of the contract, it may, upon written request by the contractor, authorize final payment from the withheld percentage to the contractor or subcontractors who have completed their work in a manner finally acceptable to the public entity. Before such payment is made, the public entity shall determine that satisfactory and substantial reasons exist for the payment and shall require written approval from any surety furnishing bonds for the contract work.

**SECTION 2.** 24-91-105, Colorado Revised Statutes, is amended to read:

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

**24-91-105. Withdrawal by contractor of sums withheld - security deposit required.** The contractor under any contract exceeding ~~eighty~~ ONE HUNDRED FIFTY thousand dollars made or awarded by any public entity, pursuant to which sums are withheld to assure satisfactory performance of the contract, may withdraw the whole or any portion of the said sums withheld if the contractor deposits acceptable securities with the public entity. The contractor shall take such actions as the public entity may require to transfer the securities or a limited interest in the securities, including a security interest, and to authorize the public entity to negotiate the acceptable securities and to receive the payments due the public entity pursuant to law or the terms of the contract, and, to the extent there are excess funds resulting from said negotiation, the balance shall be returned to the contractor. Such acceptable securities so deposited at all times shall have a market value at least equal in value to the amount so withdrawn. If at any time a public entity determines that the market value of the acceptable securities theretofore deposited has fallen below the amount so withdrawn, the public entity shall give notice thereof to the contractor, who forthwith shall deposit additional acceptable securities in an amount sufficient to reestablish a total deposit of securities equal in value to the amount so withdrawn.

**SECTION 3.** The introductory portion to 24-105-202 (1), Colorado Revised Statutes, is amended to read:

**24-105-202. Contract performance and payment bonds.** (1) When a construction contract is awarded in excess of ONE HUNDRED ~~fifty~~ thousand dollars, the following bonds or security shall be delivered to the state and shall become binding on the parties upon the execution of the contract:

**SECTION 4.** 38-26-106 (1), Colorado Revised Statutes, is amended to read:

**38-26-106. Contractor executes bond.** (1) Every contractor who is awarded any 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 ~~this state, or for~~ any county, city and county, municipality, school district, or other political subdivision of the state, AND EVERY CONTRACTOR WHO IS AWARDED ANY 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 contract, shall duly execute, deliver to, and file with the board, officer, body, or person by whom such contract was awarded a good and sufficient bond, or other acceptable surety, approved by such contracting board, officer, body, or person, in a penal sum not less than one-half of the total amount payable by the terms of the contract.

**SECTION 5. Effective date.** 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 4, 2004, if adjournment sine

die is on May 5, 2004); 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.

Approved: April 1, 2004