

**Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO**

ENGROSSED

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

LLS NO. 18-0622.01 Nicole Myers x4326

HOUSE BILL 18-1383

HOUSE SPONSORSHIP

Winter,

SENATE SPONSORSHIP

Priola,

House Committees
Business Affairs and Labor

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING BONDING REQUIREMENTS FOR A CONTRACTOR THAT IS**
102 **PARTY TO A CONTRACT THAT USES PRIVATE FINANCING FOR**
103 **CONSTRUCTION CONTRACTS ON PUBLIC PROPERTY.**

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>.)

Pursuant to current law, when a person, company, firm, corporation, or contractor (contractor) enters into a contract with certain governmental entities or governmental bodies to perform work in connection with certain projects, 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.*

HOUSE
Amended 2nd Reading
April 26, 2018

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

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 (4) THIS SECTION APPLIES TO ALL CONSTRUCTION CONTRACTS WITH A
6 PRIVATE ENTITY FOR CONSTRUCTION THAT IS SITUATED OR LOCATED ON
7 PUBLIC REAL PROPERTY USING ANY PUBLIC OR PRIVATE MONEY, PUBLIC OR
8 PRIVATE FINANCING, OR PUBLIC REAL PROPERTY, EXCEPT FOR CONTRACTS
9 FOR THE DEVELOPMENT, RESTORATION, OR ENHANCEMENT OF WILDLIFE
10 HABITAT.

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

13 **38-26-105. Public works contractor's bond - conditions.**

14 (1) (a) Subject to ~~the provisions of~~ subsection (2) of this section, any
15 person, company, firm, or corporation entering into a contract for more
16 than fifty thousand dollars with any county, municipality, or school
17 district for the construction of any public building or the prosecution or
18 completion of any public works or for repairs upon any public building
19 or public works shall be required before commencing work to execute, in
20 addition to all bonds that may be required of it, a penal bond with good
21 and sufficient surety to be approved by the board or boards of county
22 commissioners of the county or counties, the governing body or bodies of
23 the municipality or municipalities, or the district school board or boards,

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

17 (b) THIS SECTION APPLIES TO ALL CONTRACTS WITH A PRIVATE
18 ENTITY AWARDED FOR CONSTRUCTION, COMPLETION, OR REPAIR THAT IS
19 SITUATED OR LOCATED ON PUBLIC REAL PROPERTY USING ANY PUBLIC OR
20 PRIVATE MONEY, PUBLIC OR PRIVATE FINANCING, OR PUBLIC REAL
21 PROPERTY.

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

24 **38-26-106. Contractor executes bond.** (1) (a) A contractor who
25 is awarded a contract for more than fifty thousand dollars for the
26 construction, erection, repair, maintenance, or improvement of any
27 building, road, bridge, viaduct, tunnel, excavation, or other public works

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

23 (b) THIS SECTION APPLIES TO ALL CONTRACTS AWARDED TO A
24 PRIVATE ENTITY FOR THE CONSTRUCTION, ERECTION, REPAIR,
25 MAINTENANCE, OR IMPROVEMENT OF ANY BUILDING, ROAD, BRIDGE,
26 VIADUCT, TUNNEL, OR EXCAVATION THAT IS SITUATED OR LOCATED ON
27 PUBLIC REAL PROPERTY USING ANY PUBLIC OR PRIVATE MONEY, PUBLIC OR

1 PRIVATE FINANCING, OR PUBLIC REAL PROPERTY.

2 **SECTION 4. Act subject to petition - effective date.** This act
3 takes effect at 12:01 a.m. on the day following the expiration of the
4 ninety-day period after final adjournment of the general assembly (August
5 8, 2018, if adjournment sine die is on May 9, 2018); except that, if a
6 referendum petition is filed pursuant to section 1 (3) of article V of the
7 state constitution against this act or an item, section, or part of this act
8 within such period, then the act, item, section, or part will not take effect
9 unless approved by the people at the general election to be held in
10 November 2018 and, in such case, will take effect on the date of the
11 official declaration of the vote thereon by the governor.