

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

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HOUSE BILL 365
PROPOSED COMMITTEE SUBSTITUTE H365-PCS30308-ST-5

Short Title: State Board Construction Contract Claim.

(Public)

Sponsors:

Referred to:

March 18, 2019

1 A BILL TO BE ENTITLED
2 AN ACT PROVIDING THE TIME PERIOD IN WHICH THE DIRECTOR OF THE OFFICE
3 OF STATE CONSTRUCTION SHALL ISSUE A FINAL ORDER ALLOWING OR
4 DENYING A CONTRACTOR'S VERIFIED WRITTEN CLAIM.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 143-135.3 reads as rewritten:

7 "§ 143-135.3. Adjustment and resolution of State board construction contract claim.

8 (a) For purposes of this section, the following shall apply:

9 (1) ~~The word "board" as used in this section.~~ "Board" shall mean the State of North
10 Carolina or any board, bureau, commission, institution, or other agency of the
11 State, as distinguished from a board or governing body of a subdivision of the
12 State.

13 (2) ~~"A contract for construction or repair work," as used in this section, is defined~~
14 ~~as "work" shall mean~~ any contract for the construction of buildings and
15 appurtenances thereto, including, but not by way of limitation, utilities,
16 plumbing, heating, electrical, air conditioning, elevator, excavation, grading,
17 paving, roofing, masonry work, tile work and painting, and repair work as
18 well as any contract for the construction of airport runways, taxiways and
19 parking aprons, sewer and water mains, power lines, docks, wharves, dams,
20 drainage canals, telephone lines, streets, site preparation, parking areas and
21 other types of construction on which the Department of Administration or The
22 University of North Carolina enters into contracts.

23 (3) ~~"Contractor" as used in this section includes~~ shall include any person, firm,
24 association or corporation which has contracted with a State board for
25 architectural, engineering or other professional services in connection with
26 construction or repair work as well as those persons who have contracted to
27 perform such construction or repair work.

28 (b) A contractor who has not completed a contract with a board for construction or repair
29 work and who has not received the amount ~~he~~ that contractor claims is due under the contract
30 may submit a verified written claim to the Director of the Office of State Construction of the
31 Department of Administration for the amount the contractor claims is due. The Director may
32 deny, allow, or compromise the claim, in whole or in part. A claim under this subsection is not a
33 contested case under Chapter 150B of the General Statutes.

34 (c) A contractor who has completed a contract with a board for construction or repair
35 work and who has not received the amount ~~he~~ that contractor claims is due under the contract
36 may submit a verified written claim to the Director of the Office of State Construction of the



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1 Department of Administration for the amount the contractor claims is due. The verified written
2 claim shall be submitted within 60 days after the contractor receives a final statement of the
3 board's disposition of his-the claim and shall state the factual basis for the claim.

4 ~~The Director shall investigate a submitted claim within 90 days of receiving the claim, or~~
5 ~~within any longer time period upon which the Director and the contractor agree.~~ The contractor
6 may appear before the Director, either in person or through counsel, to present facts and
7 arguments in support of ~~his-the verified written~~ claim. The Director may allow, deny, or
8 compromise the verified written claim, in whole or in part. The Director shall give the contractor
9 a ~~written statement of the Director's decision on the contractor's claim.~~ final written decision, as
10 provided in subsection (c2) of this section, allowing or denying those portions of the contractor's
11 claim that have not been previously compromised.

12 ~~A contractor who is dissatisfied with the Director's decision on a claim submitted under this~~
13 ~~subsection may commence a contested case on the claim under Chapter 150B of the General~~
14 ~~Statutes. The contested case shall be commenced within 60 days of receiving the Director's~~
15 ~~written statement of the decision.~~

16 (c1) A contractor who is dissatisfied with the Director's final written decision on a ~~claim~~
17 verified written claim, or any portion of a verified written claim, submitted under subsection (c)
18 of this section may commence a contested case on the claim under Chapter 150B of the General
19 Statutes. The contested case shall be commenced within 60 days of receiving the Director's
20 written statement of the decision.

21 (c2) The verified written claim submitted under subsection (c) of this section shall be
22 disposed of as follows:

23 (1) If the verified written claim was originally for an amount less than one
24 hundred thousand dollars (\$100,000), the Director shall investigate and issue
25 a final written decision allowing or denying the verified written claim, in
26 whole or in part, within 120 days of receipt of the contractor's verified written
27 claim.

28 (2) If the verified written claim was originally for an amount of at least one
29 hundred thousand dollars (\$100,000) but less than five million dollars
30 (\$5,000,000), the Director shall investigate and issue a final written decision
31 allowing or denying the verified claim, in whole or in part, within 180 days of
32 receipt of the contractor's verified written claim.

33 (3) If the verified written claim was originally for an amount of five million
34 dollars (\$5,000,000) or more, the Director shall investigate and issue a final
35 written decision allowing or denying the verified written claim, in whole or in
36 part, within 270 days of receipt of the contractor's verified written claim.

37 (c3) Prior to the expiration of the time periods provided for in subsection (c2) of this
38 section, the Director and contractor may, in writing, extend the time in which the Director shall
39 issue a final written decision. The Director's failure to issue a final written decision as provided
40 in subsection (c2) of this section, or at the expiration of the agreed-upon extended time, shall be
41 deemed a denial of the portions of the verified written claim not previously compromised, and
42 the contractor may seek relief on those portions of the verified written claim as provided in
43 subsection (c1) or (d) of this section.

44 (d) As to any portion of a verified written claim that is denied by the ~~Director,~~ Director
45 under subsection (c) of this section, the contractor may, in lieu of the procedures set forth in ~~the~~
46 ~~preceding~~ subsection (c1) of this section, within six months of receipt of the Director's final
47 written decision, institute a civil action for the sum ~~he-the contractor~~ claims to be entitled to under
48 the contract by filing a verified complaint and the issuance of a summons in the Superior Court
49 of Wake County or in the superior court of any county where the work under the contract was
50 performed. The procedure shall be the same as in all civil actions except that all issues shall be
51 tried by the judge, without a jury.

1 (e) The provisions of this section are part of every contract for construction or repair
2 work made by a board and a contractor. A provision in a contract that conflicts with this section
3 is invalid."

4 **SECTION 2.** G.S. 143-135.6 reads as rewritten:

5 "**§ 143-135.6. Adjustment and resolution of community college board construction contract**
6 **claim.**

7 (a) A contractor who has not completed a contract with a board of a community college
8 for construction or repair work and who has not received the amount ~~he~~that contractor claims is due
9 due under the contract may follow the claims procedure in G.S. 143-135.3(b) that is available to
10 a contractor who has contracted with a State board.

11 (b) A contractor who has completed a contract with a board of a community college for
12 construction or repair work and who has not received the amount ~~he~~that contractor claims is due
13 under the contract may follow the same claims procedure in G.S. 143-135.3(c) through (d) that
14 is available to a contractor who has contracted with a State board.

15 ~~(c) A contractor who is dissatisfied with the Director's decision on any portion of a claim~~
16 ~~submitted pursuant to subsection (b) of this section may, within six months of receipt of the~~
17 ~~Director's final decision, institute a civil action for the sum he claims to be entitled to under the~~
18 ~~contract in the Superior Court of Wake County or in the superior court of any county where the~~
19 ~~work under the contract was performed. The procedure shall be the same as in all civil actions~~
20 ~~except that all issues shall be tried by the judge, without a jury. A contractor may not commence~~
21 ~~an action under Chapter 150B of the General Statutes.~~

22"

23 **SECTION 3.** This act becomes effective January 1, 2020, and applies to verified
24 claims submitted on or after that date.