

GENERAL ASSEMBLY OF NORTH CAROLINA
1989 SESSION

CHAPTER 40
SENATE BILL 180

AN ACT TO PROVIDE FOR THE ADJUSTMENT AND RESOLUTION OF
CONSTRUCTION CONTRACT CLAIMS FOR COMMUNITY COLLEGE
CONSTRUCTION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-135.3 reads as rewritten:

"§ 143-135.3. **Adjustment and resolution of ~~building~~ State board construction contract claim.**

(a) The word 'board' as used in this section shall mean the State of North Carolina or any board, bureau, commission, institution, or other agency of the State, as distinguished from a board or governing body of a subdivision of the State. 'A contract for construction or repair work,' as used in this section, is defined as any contract for the construction of buildings and appurtenances thereto, including, but not by way of limitation, utilities, plumbing, heating, electrical, air conditioning, elevator, excavation, grading, paving, roofing, masonry work, tile work and painting, and repair work as well as any contract for the construction of airport runways, taxiways and parking aprons, sewer and water mains, power lines, docks, wharves, dams, drainage canals, telephone lines, streets, site preparation, parking areas and other types of construction on which the Department of Administration enters into contracts.

'Contractor' as used in this section includes any person, firm, association or corporation which has contracted with a State board for architectural, engineering or other professional services in connection with construction or repair work as well as those persons who have contracted to perform such construction or repair work.

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

(c) A contractor who has completed a contract with a board for construction or repair work and who has not received the amount he claims is due under the contract may submit a verified written claim to the Director of the Office of State Construction of the Department of Administration for the amount the contractor claims is due. The claim shall be submitted within 60 days after the contractor receives a final statement of the board's disposition of his claim and shall state the factual basis for the claim.

The Director shall investigate a submitted claim within 90 days of receiving the claim, or within any longer time period upon which the Director and the contractor agree. The contractor may appear before the Director, either in person or through counsel, to present facts and arguments in support of his claim. The Director may allow, deny, or compromise the claim, in whole or in part. The Director shall give the contractor a written statement of the Director's decision on the contractor's claim.

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

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

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

Sec. 2. Article 8 of Chapter 143 of the General Statutes is amended by adding a section to read:

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

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

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

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

(d) The provisions of this section are part of every contract for construction or repair work made by a board of a community college and a contractor. A provision in a contract that conflicts with this section is invalid.

(e) For the purposes of this section, the following definitions shall apply, unless the context indicates otherwise:

- (1) 'Community college' has the same meaning as in G.S. 115D-2(2).
- (2) 'Contract for construction or repair work' has the same meaning as in G.S. 143-135.3(a).
- (3) 'Contractor' means any person, firm, association, or corporation which has contracted for architectural, engineering, or other professional services in connection with construction or repair work, as well as those persons who have contracted to perform the construction or repair work.

(f) The provisions of this section are applicable only to community college buildings subject to G.S. 143-341(3)."

Sec. 3. This act is effective upon ratification and applies to all claims against a board of a community college that are submitted after that date. This act shall not apply to litigation pending as of the effective date of the act.

In the General Assembly read three times and ratified this the 4th day of April, 1989.