

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 180*

Short Title: Community College Construction.

(Public)

Sponsors: Senators Goldston, Ezzell, Hunt of Durham, and Plyler.

Referred to: Higher Education.

February 16, 1989

A BILL TO BE ENTITLED

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.

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

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

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

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

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

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

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

37 "**§ 143-135.6. Adjustment and resolution of community college board construction**
38 **contract claim.**

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

43 (b) A contractor who has completed a contract with a board of a community
44 college for construction or repair work and who has not received the amount he claims

1 is due under the contract may follow the same claims procedure in G.S. 143-135.3(c)
2 that is available to a contractor who has contracted with a State board.

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

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

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

16 (1) 'Community college' has the same meaning as in G.S. 115D-2(2).

17 (2) 'Contract for construction or repair work' has the same meaning as in
18 G.S. 143-135.3(a).

19 (3) 'Contractor' means any person, firm, association, or corporation which
20 has contracted for architectural, engineering, or other professional
21 services in connection with construction or repair work, as well as
22 those persons who have contracted to perform the construction or
23 repair work."

24 Sec. 3. This act is effective upon ratification and applies to all claims against
25 a board of a community college that are submitted after that date.