



HOUSE BILL 365: State Board Construction Contract Claim.

2019-2020 General Assembly

Committee:	House State and Local Government. If favorable, re-refer to Judiciary. If favorable, re-refer to Rules, Calendar, and Operations of the House	Date:	April 9, 2019
Introduced by:	Reps. Arp, Brody, Bell, Reives	Prepared by:	Erika Churchill Staff Attorney
Analysis of:	PCS to First Edition H365-CSST-5		

OVERVIEW: *The proposed committee substitute for House Bill 365 would impose deadlines for issuance of a final written decision by the Director of the Office of State Construction in all of the following:*

- *A contractor's verified written claim for amounts due under a completed building construction or repair contract with the State, a State board or commission, a State institution, or a State agency.*
- *A contractor's verified written claim for amounts due under a completed building construction or repair contract with a community college board of trustees.*
- *Guaranteed energy savings contracts.*

Effective with verified written claims filed on or after January 1, 2020.

[As introduced, this bill was identical to S255, as introduced by Sen. Rabon, which is currently in Senate Judiciary.]

CURRENT LAW: A contractor who has completed a contract with a State agency or a State board for construction or repair of a building, and who has not received the amount the contractor contends is due, may submit a verified written claim to the Director of the Office of State Construction of the Department of Administration stating the factual basis for the claim within 60 days of receiving the final statement of the State agency's or State board's disposition of the claim.

Upon receipt of a verified written claim, the Director is required to investigate the claim within 90 days, or any longer period agreed to by the Director and the contractor. The Director can allow, deny, or compromise the claim, in whole or in part, and is required to give the contractor a written statement of the decision. There currently is no statutorily-imposed deadline by which the Director must give the written statement.

Upon receipt of the written statement of the Director's decision, a contractor who is dissatisfied with it must either commence a contested case under Chapter 150B of the General Statutes within 60 days or bring a civil action in superior court within six months. If the contractor opts for the civil action, that civil action may be brought in Wake County or any county where the work was performed, and all issues are tried by the judge without a jury.

Karen Cochrane-Brown
Director



Legislative Analysis
Division
919-733-2578

House PCS 365

Page 2

The same process, by statute, is applied to contracts with a community college board for construction and repair work (G.S. 143-135.6) and to guaranteed energy savings contracts (G.S. 143-129.4).

BILL ANALYSIS:

Section 1 of the bill would provide that, after receiving a contractor's verified written claim, the Director is required to issue a final written decision as follows:

- Within 120 days of receipt for an original claim less than \$100,000.
- Within 180 days of receipt for an original claim equal to \$100,000 but less than \$5,000,000.
- Within 270 days of receipt for an original claim equal to or greater than \$5,000,000.

Before expiration of the time permitted for issuance of the final written decision, the Director and contractor may agree in writing to an extension of time. If dissatisfied with the final written decision of the Director, the contractor would have the same options as under current law to either file a contested case commenced within 60 days or file a civil action within six months.

Section 2 of the bill would make conforming changes to the statute applying the same process to construction and repair contracts with a community college board.

EFFECTIVE DATE: January 1, 2020 and applies to verified claims submitted on or after that date.