

1                                   **DFCM CONTRACT CLAIM RESOLUTION**

2   **PROCESS**

3   2003 GENERAL SESSION

4   STATE OF UTAH

5   **Sponsor: Stephen D. Clark**

6   **This act modifies statutes governing the Division of Facilities Construction and**  
7   **Management by requiring the division to make rules establishing certain processes for**  
8   **resolving construction contract claims against the state. This act defines certain**  
9   **requirements that the division must include as part of that process.**

10 This act affects sections of Utah Code Annotated 1953 as follows:

11 ENACTS:

12                   **63A-5-206.5**, Utah Code Annotated 1953

13 *Be it enacted by the Legislature of the state of Utah:*

14                   Section 1. Section **63A-5-206.5** is enacted to read:

15                   **63A-5-206.5. Division to make rules establishing a certification and conflict**  
16 **resolution procedure.**

17                   (1) The division shall:

18                   (a) make rules that establish a formal process for resolving claims made by contractors  
19 and subcontractors employed on state building projects if the amount of the contract meets or  
20 exceeds a particular dollar amount;

21                   (b) make rules that establish a formal process for certifying that buildings are ready for  
22 occupancy and that all claims from contractors or subcontractors employed on the project have  
23 been resolved before the building may be occupied; and

24                   (c) before enacting the rules, present a draft copy of those rules to the Government  
25 Operations Interim Committee for review, comment, and recommendations by August 1, 2003.

26                   (2) The division shall ensure that:

27                   (a) to the extent possible, the claims process established by the rules complies with the



28 procedures and requirements of Title 63 Chapter 46b, Administrative Procedures Act;

29 (b) the claims resolution process established by the rules governs both contractors who  
30 have a contractual relationship with the state and subcontractors who have a contract  
31 relationship with the general contractor;

32 (c) the person vested with the power to certify that buildings are fit for occupancy and  
33 that claims have been resolved is independent of the division; and

34 (d) the claims process established by rule requires that:

35 (i) a contractor or subcontractor who has a claim against the state file a notice of claim  
36 with the division to begin the claim resolution process;

37 (ii) the contractor or subcontractor must document its claim within a time period  
38 established by rule or the claim will be dismissed;

39 (iii) the division must resolve and pay the claim within a time period established by  
40 rule unless extraordinary circumstances as defined by rule allow the time for settlement and  
41 payment to be extended; and

42 (iv) if the claim is not settled within a time period established by rule that begins on the  
43 date of the notice of claim, the contractor or subcontractor may initiate an action on the claim  
44 in district court.

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#### Legislative Review Note

as of 1-9-03 3:53 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel

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**Fiscal Note****DFCM Contract Claim Resolution Process***06-Feb-03***Bill Number HB0115***10:39 AM*

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**State Impact**

This bill requires DFCM to draft rules that settle disputes between contractors and subcontractors. Prior to enacting these rules, they must be presented for review and recommendation by the Government Operations Interim Committee.

If these rules are enacted, the Attorney General's Office will require additional staff (2 FTE) to work on dispute resolution. This cost will be charged to DFCM and will likely exceed \$125,000. It will appear as dedicated credit revenue in the AG line item following the transfer. DFCM will see increased workload from the resolution process and will need two additional employees to manage the new charge. Salary and benefits for those employees will total \$142,500. The cost of DFCM claim payments, while potentially significant, cannot be estimated at this time.

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**Individual and Business Impact**

No fiscal impact.

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**Office of the Legislative Fiscal Analyst**