

**Fifty-seventh Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 9, 2001**

SENATE BILL NO. 2100
(Government and Veterans Affairs Committee)
(At the request of the Industrial Commission)

AN ACT to create and enact a new section to chapter 54-18 of the North Dakota Century Code, relating to prepayment by the North Dakota mill and elevator association to contractors for construction or equipment; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 54-18 of the North Dakota Century Code is created and enacted as follows:

Contractor to be paid during progress of work - Retainage - Failure to pay - Rate of interest - Investment of retainage. If the contractor to whom a contract for construction or the provision of equipment to the association is let properly performs the work therein designated, the mill manager, at least once in each calendar month during the continuance of the contract work, shall meet, receive, and consider estimates furnished by the agent, engineer, or architect acting for the association or if not so furnished, then by the contractor, and shall allow such estimates in an amount of the estimated value of the labor and material furnished upon the contract, and of the material then upon the ground for use in the contract, subject to retentions of ten percent of each estimate presented until the time the project is fifty percent completed, with no further retainage on estimates during the continuance of the contract. Notwithstanding the requirements of any other law, the industrial commission may authorize the mill manager to prepay for equipment prior to delivery to the construction site if the industrial commission determines:

1. Prepayment is in the best interest of the association;
2. The association's interest will be adequately protected; and
3. The equipment is of a type that is not fungible and could not be sold except at a discount to another because it is constructed to specifications required by the association.

Upon completion of ninety-five percent of the contract according to the estimates, the association may pay to the contractor ninety-five percent of the amount retained from previous estimates. Any amount retained after ninety-five percent completion of the contract must be paid to the contractor in such amounts and at such times as are approved by the association, upon estimates by its agent, engineer, or architect or the contractor, with final payment of all moneys due to the contractor to be made immediately following completion and acceptance of the project. Immediately after considering and allowing any such estimate, the association shall certify and promptly draw a warrant upon the proper fund and transmit it to the contractor entitled to it. If the association fails or neglects to receive and allow the estimate or certify any estimate or final payment upon completion and acceptance for a period of more than thirty days from the date of the estimate or completion date, then the estimate or final payment, with any retainage properly payable, shall draw interest from its date at the rate per annum of two percentage points below the Bank of North Dakota prime interest rate as set thirty days from the date of the estimate or completion date until the issuance of a proper warrant therefor. Such interest must be computed and added to the face of the estimate, final payment, or retainage by the officer required to issue the warrant, must be included in the warrant when drawn, and must be charged to the fund from which payment for the improvement is to be made. On the amounts of estimates retained, as provided herein, the association may invest or deposit the retained amounts in the Bank of North Dakota earning interest or dividends for the benefit of the contractor. Any amount so invested or deposited must remain in the name of the association until final payment of all moneys due to the contractor is to be made. Further, no contractor shall use such account in any manner whatsoever until released and received by the contractor upon completion of the contract.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-seventh Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2100 and that two-thirds of the members-elect of the Senate voted in favor of said law.

Vote: Yeas 49 Nays 0 Absent 0

President of the Senate

Secretary of the Senate

This certifies that two-thirds of the members-elect of the House of Representatives voted in favor of said law.

Vote: Yeas 96 Nays 0 Absent 2

Speaker of the House

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2001.

Approved at _____ M. on _____, 2001.

Governor

Filed in this office this _____ day of _____, 2001,
at ____ o'clock _____ M.

Secretary of State