

Sixtieth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1130

Introduced by

Industry, Business and Labor Committee

(At the request of the Department of Transportation)

1 A BILL for an Act to amend and reenact sections 24-02-26.1 and 24-02-28 of the North Dakota
2 Century Code, relating to highway construction arbitration.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1. AMENDMENT.** Section 24-02-26.1 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **24-02-26.1. Condition precedent to contractor demand for highway construction**
7 **arbitration - Claims for extra compensation.** In addition to the provisions of section
8 24-02-30, full compliance by a contractor with the provisions of this section is a condition
9 precedent to the contractor's right to demand arbitration. ~~If the contractor believes the~~
10 ~~contractor is entitled to additional compensation for work or materials not covered in the~~
11 ~~contract or not ordered by the engineer as extra work or force account work in accordance with~~
12 ~~the contract specifications, the contractor shall, prior to beginning the work which the claim will~~
13 ~~be based upon, notify the engineer in writing of the intent to make claim for additional~~
14 ~~compensation.~~ Any time a claim will be made for additional compensation for work performed
15 or materials furnished on a project for construction or repair of highways, the contractor shall
16 notify the engineer in writing of its intent to make a claim for additional compensation before
17 beginning the work upon which the claim will be based. The only time that notice need not be
18 given is when the engineer has ordered in writing that the work be done on a force account
19 basis in accordance with the contract specifications and the contractor agrees that the sole
20 compensation will be as provided for in the specifications for force account work. If the basis
21 for the claim does not become apparent until the contractor has commenced work on the
22 project and it is not feasible to stop the work, the contractor shall immediately notify the
23 engineer that the work is continuing and that written notification of the intent to make claim will
24 be submitted within ten calendar days. Failure of the contractor to give the notification required

1 and to afford the engineer facilities and assistance in keeping strict account of actual costs will
2 constitute a waiver of claim for additional compensation in connection with the work already
3 performed, and this waiver must be strictly enforced and not excused on grounds of claimed
4 actual notice, waiver, or estoppel on the part of the engineer. The issue of proper notification
5 by the contractor must be determined by the arbitration board before any arbitration proceeding
6 taking place. If it is determined that proper notice was not given, then arbitration proceedings
7 may not take place. Notification of a claim, and the fact that the engineer has kept account of
8 the costs involved, may not be construed as proving or substantiating the validity or actual
9 value of the claim.

10 ~~Any person~~ A contractor submitting a claim for compensation under this section,
11 ~~personally or on behalf of another person or entity~~ including any claims for work subcontracted
12 ~~to third parties in that there is no right on the part of any subcontractor to make a claim directly~~
13 ~~upon the department,~~ must do so in writing, not later than ninety days after the department has
14 submitted the final estimate to the contractor. The claim must state the monetary amount of the
15 claim, the reason for the claim, when the loss was incurred, and a short statement of the factual
16 situation under which the claim arose. The claim must be made under oath or equivalent
17 affirmation. ~~The director shall provide claim forms to persons requesting or indicating a need~~
18 ~~for them.~~

19 The director shall act on ~~the claim~~ claims of less than three million dollars within sixty
20 days after the claim is served upon the director. The director shall act on claims of three million
21 dollars or more within one hundred eighty days after the claim is served upon the director. The
22 contractor and the director may negotiate a supplemental agreement for the claim items that
23 are accepted by the director, and the director shall immediately pay the contractor for any
24 additional compensation resulting from the supplemental agreement. The contractor may
25 demand arbitration on the remaining claim items within ninety days after the contractor has
26 been notified of the director's action on the claim.

27 The contractor shall make available to the department and allow the department to
28 examine and copy all of the contractor's records, documents, worksheets, and other data which
29 are pertinent to the justification of the claim and to the substantiation of all costs related to the
30 claim. The department shall also make available to the contractor all of the department's

1 records, documents, worksheets, and other data which are pertinent to the department's
2 response to the claim.

3 **SECTION 2. AMENDMENT.** Section 24-02-28 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **24-02-28. Procedure for arbitration.** After a board of arbitration has been appointed,
6 a submission in writing must be executed as provided in section 32-29.3-06, but the submission
7 must provide for the entry of judgment upon the award by the district court of the county in
8 which the improvement, or some part thereof, involved in the contract is located. The county
9 must be specified in the submission. The submission must be executed by the director. After
10 submission of the arbitration agreement, the arbitration must proceed in accordance with the
11 provisions of chapter 32-29.3, unless a party submits the dispute to arbitration in accordance
12 with the construction industry arbitration rules of the American arbitration association. If the
13 rules of the American arbitration association conflict with North Dakota law, North Dakota law
14 governs. The decision of the arbitrators must be in writing and must state the basis for the
15 decision.