

Sixtieth  
Legislative Assembly  
of North Dakota

## ENGROSSED 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. If the basis for the claim does not become apparent until the contractor has  
15 commenced work on the project and it is not feasible to stop the work, the contractor shall  
16 immediately notify the engineer that the work is continuing and that written notification of the  
17 intent to make claim will be submitted within ten calendar days. Failure of the contractor to give  
18 the notification required and to afford the engineer facilities and assistance in keeping strict  
19 account of actual costs will constitute a waiver of claim for additional compensation in  
20 connection with the work already performed. Notification of a claim, and the fact that the  
21 engineer has kept account of the costs involved, may not be construed as proving or  
22 substantiating the validity or actual value of the claim.

23 ~~Any person~~ A contractor submitting a claim for compensation under this section,  
24 personally or on behalf of another person or entity, must do so in writing, not later than ninety

1 days after the department has submitted the final estimate to the contractor. The claim must  
2 state the monetary amount of the claim, the reason for the claim, when the loss was incurred,  
3 and a short statement of the factual situation under which the claim arose. The claim must be  
4 made under oath or equivalent affirmation. ~~The director shall provide claim forms to persons~~  
5 ~~requesting or indicating a need for them.~~

6 The director shall act on ~~the claim~~ claims of less than three million dollars within sixty  
7 days after the claim is served upon the director. The director shall act on claims of three million  
8 dollars or more within one hundred eighty days after the claim is served upon the director. The  
9 contractor and the director may negotiate a supplemental agreement for the claim items that  
10 are accepted by the director, and the director shall immediately pay the contractor for any  
11 additional compensation resulting from the supplemental agreement. The contractor may  
12 demand arbitration on the remaining claim items within ninety days after the contractor has  
13 been notified of the director's action on the claim.

14 The contractor shall make available to the department and allow the department to  
15 examine and copy all of the contractor's records, documents, worksheets, and other data which  
16 are pertinent to the justification of the claim and to the substantiation of all costs related to the  
17 claim. The department shall also make available to the contractor all of the department's  
18 records, documents, worksheets, and other data which are pertinent to the department's  
19 response to the claim.

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

22 **24-02-28. Procedure for arbitration.** After a board of arbitration has been appointed,  
23 a submission in writing must be executed as provided in section 32-29.3-06, but the submission  
24 must provide for the entry of judgment upon the award by the district court of the county in  
25 which the improvement, or some part thereof, involved in the contract is located. The county  
26 must be specified in the submission. The submission must be executed by the director. After  
27 submission of the arbitration agreement, the arbitration must proceed in accordance with the  
28 provisions of chapter 32-29.3, unless a party submits the dispute to arbitration in accordance  
29 with the construction industry arbitration rules of the American arbitration association. If the  
30 rules of the American arbitration association conflict with North Dakota law, North Dakota law

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- 1 governs. The decision of the arbitrators must be in writing and must state the basis for the
- 2 decision.