

# HIGHWAYS, BRIDGES, AND FERRIES

## CHAPTER 330

SENATE BILL NO. 2469  
(Senators Hilken, Freborg)  
(Representatives Hokana, Dorso)

### MOTOR VEHICLE TRANSFER CREDIT

AN ACT to amend and reenact section 24-02-03.4 of the North Dakota Century Code, relating to credit for transferring motor vehicles.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 24-02-03.4 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

24-02-03.4. Transfer of motor vehicles. The title or other documents representing ownership of a motor vehicle owned or leased by the state, except the board of higher education and the institutions under its jurisdiction, must be transferred to the commissioner on July 1, 1987. ~~If a transferred motor vehicle was originally purchased with dedicated or trust funds, the commissioner shall credit the purchaser with an amount equal to two-thirds of the national automobile dealers association wholesale value of the motor vehicle to be offset against future user charges. Any credit must be made available July 1, 1989, and be completed within ten years. The commissioner may assign motor vehicles purchased with federal funds to the original purchaser or may pay the market value of the vehicle to the original purchaser.~~

Approved March 28, 1989  
Filed March 28, 1989

## CHAPTER 331

HOUSE BILL NO. 1178  
(Committee on Transportation)  
(At the request of the Highway Department)

### HIGHWAY CONTRACT ARBITRATION

AN ACT to amend and reenact sections 24-02-26.1, 24-02-27, and 24-02-32 of the North Dakota Century Code, relating to the arbitration of claims on contracts for the construction or repair of highways.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 24-02-26.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

24-02-26.1. Condition precedent to contractor demand for arbitration - Claims for extra compensation. In addition to the provisions of section 24-02-30, full compliance by a contractor with the provisions of this section is a condition precedent to the contractor's right to demand arbitration. If the contractor believes the contractor is entitled to additional compensation for work or materials not covered in the contract or not ordered by the engineer as extra work or force account work in accordance with the contract specifications, the contractor shall, prior to beginning the work which the claim will be based upon, notify the engineer in writing of the intent to make claim for additional compensation. If the basis for the claim does not become apparent until the contractor has commenced work on the project and it is not feasible to stop the work, the contractor shall immediately notify the engineer that the work is continuing and that written notification of the intent to make claim will be submitted within ten calendar days. Failure of the contractor to give the notification required and to afford the engineer facilities and assistance in keeping strict account of actual costs will constitute a waiver of claim for additional compensation in connection with the work already performed. Notification of a claim, and the fact that the engineer has kept account of the costs involved, may not be construed as proving or substantiating the validity or actual value of the claim.

Any person submitting a claim for compensation under this section, personally or on behalf of another person or entity, shall do so in writing, stating not later than ninety days after the department has submitted the final estimate to the contractor. The claim must state the monetary amount of the claim, the reason for the claim, when the loss was incurred, and a short statement of the factual situation under which the claim arose. The claim must be made under oath or equivalent affirmation. The commissioner shall provide claim forms to persons requesting or indicating a need for them.

The commissioner shall act on the claim within sixty days after the claim is served upon the commissioner. The contractor and the commissioner may negotiate a supplemental agreement for the claim items that are accepted

by the commissioner, and the commissioner shall immediately pay the contractor for any additional compensation resulting from the supplemental agreement. The contractor may demand arbitration on the remaining claim items within ninety days after the contractor has been notified of the commissioner's action on the claim.

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

SECTION 2. AMENDMENT. Section 24-02-27 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

24-02-27. Arbitration demand - District court may appoint arbitrators if parties fail - Arbitration pool. The party desiring arbitration shall make a written demand therefor and in such demand shall name the arbitrator by him selected. He also in such demand shall set forth all the controversies and claims which he desires to submit to arbitration and a concise statement of his claims with reference to each controversy. Such demand shall be served upon the opposite party, who, within ten days, shall name in writing the arbitrator on his part, and in connection therewith shall set forth in writing his contentions with reference to the claims set forth in the demand served upon him and any additional claims or controversies which he desires to submit to arbitration on his part, with a concise statement of his claims in connection therewith. If the party proceeded against shall fail or refuse to name an arbitrator, the moving party may apply ex parte to the judge of the district court of the county in which the improvement in the contract in question, or any part thereof, may be located, for the appointment of the two additional arbitrators, and if upon the appointment of an arbitrator by each of the parties, the two so appointed have been unable to agree upon a third arbitrator within five days, then either party to the controversy, upon five days' notice, may apply to such district court for the appointment of such third arbitrator. The party desiring arbitration must serve a written demand upon the adverse party. The demand must designate an arbitrator and must describe and detail all claim items that are submitted to arbitration. The party served with the demand shall respond in writing within thirty days, and the response must designate a second arbitrator and must explain the respondent's position concerning each claim item. If the respondent does not designate the second arbitrator within thirty days, the claimant may apply to the district court of the judicial district in which the project, or any part of the project, is located for the appointment of the second arbitrator. If the two arbitrators do not designate the third arbitrator within thirty days after the second arbitrator is designated, either party may apply to the district court for the appointment of the third arbitrator. The proceedings in the district court are governed by the rules of civil procedure concerning motions.

All arbitrators shall be selected from an arbitration pool which shall consist of fifteen members. The members of the pool shall be appointed by the governor. The governor shall select members to the arbitration pool from lists submitted by the society of professional engineers, the association of general contractors, and the commissioner. The governor shall not select more than five names from any one of the lists submitted. Members of the

arbitration pool shall serve a term of two years ~~starting on July 1, 1983~~. If any vacancy occurs for any reason, the governor shall fill the vacancy for the unexpired term in the same manner as the original selection.

SECTION 3. AMENDMENT. Section 24-02-32 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

24-02-32. Further arbitration permitted — ~~Arbitration must be commenced within six months~~. If after the making of an award which requires the contractor to do further work, any controversies arise between the parties as to the doing of such work, ~~such~~ the controversies may be submitted to the same arbitrators on five days' notice for further determination.

~~No arbitration shall be had under this chapter unless commenced within six months after the right thereto has arisen.~~

Approved March 31, 1989  
Filed March 31, 1989

## CHAPTER 332

SENATE BILL NO. 2270  
 (Senators Langley, Olson)  
 (Representatives Flaagan, Timm, V. Thompson)

### HIGHWAY FUND INCOME USE

AN ACT to create and enact a new section to chapter 24-02 of the North Dakota Century Code, relating to formation, composition, and duties of the special road advisory committee; to amend and reenact section 24-02-37 of the North Dakota Century Code, relating to investment of the state highway fund and the use of income generated; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 24-02-37 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

24-02-37. State highway fund - ~~How expended~~ Priorities for expenditure - Use of investment income. The state highway fund, created by law and not otherwise appropriated and allocated, ~~shall~~ must be applied and used for the purposes ~~herein~~ named ~~and~~ in this section, as follows:

1. Except for investment income as provided in subsection 3, the fund must be applied in the following order of priority:
  - ~~1- a.~~ a. The cost of maintaining the state highway system.
  - ~~2- b.~~ b. The cost of construction and reconstruction of highways in the amount necessary to match in whatever proportion may be required, federal aid granted to this state by the United States government for road purposes in North Dakota.
  - ~~3- c.~~ c. Any portion of the highway fund not allocated as provided in ~~subsections + subdivisions a and b~~ may be expended for the construction of state highways without federal aid or may be expended in the construction, improvement, or maintenance of such state highways.
2. All funds heretofore appropriated or hereafter appropriated or transferred to the department, whether earmarked or designated for special projects or special purposes or not, ~~shall~~ must be placed or transferred into a single state highway fund in the office of the state treasurer and any claims for money expended by the department upon warrants prepared and issued by the ~~department of accounts and purchases~~ office of management and budget and signed by the state auditor under ~~the provisions of this title~~ shall must be paid out of the state highway fund by the state treasurer; provided, however, that the commissioner shall keep and maintain complete and accurate records showing that all expenditures have

been made in accordance with legislative appropriations and authorizations.

3. The state treasurer shall deposit the moneys in the state highway fund in an interest-bearing account at the Bank of North Dakota. The state treasurer shall deposit any income derived from the deposit of the moneys in a special fund in the state treasury known as the special road fund. Moneys, and any earnings on the moneys, in the special road fund may be used, within the limits of legislative appropriation, exclusively for the construction and maintenance of access roads to and roads within recreational, tourist, and historical areas as designated by the commissioner with the advice of the special road advisory committee. Requests by political subdivisions or state agencies for funding from the special road fund must be made to the commissioner on forms designated by the commissioner. The commissioner may require the political subdivision or state agency to contribute to the cost of the project as a condition of any expenditure authorized from the special road fund.

SECTION 2. A new section to chapter 24-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

Special road advisory committee. The special road advisory committee consists of one member of the senate transportation committee and one member of the senate appropriations committee appointed by the chairman of the legislative council and one member of the house of representatives transportation committee and one member of the house of representatives appropriations committee appointed by the chairman of the legislative council and also the game and fish commissioner, the director of state parks and recreation, the director of the economic development commission, and the highway commissioner. The committee shall meet at the call of the highway commissioner, who is chairman of the committee, to review requests for funding from the special road fund and to advise the highway commissioner regarding funding requested projects. All final decisions regarding funding requested projects are in the sole discretion of the highway commissioner. The members of the commission who are members of the legislative assembly must be compensated by the department, from moneys appropriated from the special road fund, for attendance at committee meetings at the rate provided in section 54-35-10 and are entitled to reimbursement for expenses incurred in attending the meetings in the amounts provided by law for other state officers.

SECTION 3. EFFECTIVE DATE. This Act becomes effective on July 1, 1991.

Approved April 28, 1989  
Filed April 28, 1989