

Fifty-seventh
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2100

Introduced by

Government and Veterans Affairs Committee

(At the request of the Industrial Commission)

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

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

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

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

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

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

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