

**Sixtieth Legislative Assembly of North Dakota
In Regular Session Commencing Wednesday, January 3, 2007**

HOUSE BILL NO. 1130
(Industry, Business and Labor Committee)
(At the request of the Department of Transportation)

AN ACT to amend and reenact sections 24-02-26.1 and 24-02-28 of the North Dakota Century Code, relating to highway construction arbitration.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

24-02-26.1. Condition precedent to contractor demand for highway construction 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~~ A contractor submitting a claim for compensation under this section, personally or on behalf of another person or entity, must do so in writing, 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 director shall provide claim forms to persons requesting or indicating a need for them.~~

The director shall act on ~~the claim~~ claims of less than three million dollars within sixty days after the claim is served upon the director. The director shall act on claims of three million dollars or more within one hundred eighty days after the claim is served upon the director. The contractor and the director may negotiate a supplemental agreement for the claim items that are accepted by the director, and the director 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 director'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 24-02-28 of the North Dakota Century Code is amended and reenacted as follows:

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

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixtieth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1130.

House Vote: Yeas 91 Nays 1 Absent 2

Senate Vote: Yeas 44 Nays 0 Absent 3

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2007.

Approved at _____ M. on _____, 2007.

Governor

Filed in this office this _____ day of _____, 2007,

at _____ o'clock _____ M.

Secretary of State