

CHAPTER 24-02
DIRECTOR OF THE DEPARTMENT OF TRANSPORTATION

24-02-01. State highway department established - Commissioner is head of department.

Repealed by S.L. 1989, ch. 72, § 25.

24-02-01.1. Department of transportation - Creation - Transfer of functions.

The department of transportation is established as an executive department of this state. Transferred to and vested in the department of transportation are the functions, powers, and duties of the following governmental agencies:

1. The highway department, the highway commissioner, and the chief engineer, including titles 24 and 39, chapter 49-17.1, and sections 49-10.1-17, 49-17.2-27, and 55-01-01.
2. The motor vehicle department and the registrar of motor vehicles, including title 39, chapter 57-40.3, and sections 26.1-23-03 and 26.1-41-02.

24-02-01.2. Department of transportation and director of the department of transportation to be substituted for motor vehicle department, registrar of motor vehicles, highway department, and highway commissioner.

Wherever the terms "motor vehicle department", "registrar of motor vehicles", "highway department", or "highway commissioner", or any derivative of those terms which, when used in context indicates an intention to refer to those persons or departments, shall appear in the North Dakota Century Code, the term "department of transportation", or the term "director of the department of transportation", as the case may be, shall be substituted therefor. It is the intent of the legislative assembly that the department of transportation and the director of the department of transportation must be substituted for, shall take any actions previously taken by, and shall perform all duties previously performed by the motor vehicle department, the registrar of motor vehicles, the highway department, and the highway commissioner.

24-02-01.3. Director of the department of transportation - Appointment - Compensation.

The department of transportation must be managed and directed by the director of the department of transportation, who must be appointed by, and serve at the pleasure of, the governor. The director shall take the oath of office required of civil officers by section 44-01-05. The director shall receive compensation in the amount established by the governor within the limits of legislative appropriations.

24-02-01.4. Structure of the department of transportation.

The department of transportation must be structured to promote efficient and effective operations consistent with fulfilling its statutory duties. The department of transportation must be organized into offices, divisions, and districts as the director of the department of transportation determines necessary, and as provided in this section.

1. The director shall establish an office of driver and vehicle services to administer the department's regulatory authority over motor vehicle titling and registration, operator licensing and traffic safety, and motor carriers. Operating expenses for functions performed by the department under chapters 39-04 and 39-05 must be funded by appropriations from collections made under those chapters before deposit into the fund provided by section 54-27-19.
2. The director shall establish an office of state highways and engineering to administer the department's authority and responsibilities over the construction, maintenance, and repair of highways in this state, including the operation of district offices.
3. The director may establish an office of transportation planning to administer the department's authority and responsibilities for planning all surface modes of transportation, budgeting, development of programs and projects, data collection and management, and research. Coordination must be established between the

aeronautics commission planning section and the department of transportation office of planning for airport development as it pertains to surface access.

4. The director shall establish an office of management services in the department to provide for the employment of human resources, finance and inventory control, automation, and other administrative services.

24-02-01.5. Department of transportation - Administrative rules.

The department of transportation may adopt the administrative rules necessary to carry out its responsibilities and functions as created and transferred by sections 24-02-01.1 through 24-02-01.5. Rules adopted by the agencies whose functions relate to the functions or agencies created, transferred, or covered by sections 2-05-03, 24-02-01.1 through 24-02-01.5, subsections 7 and 11 of section 24-01-01.1, sections 24-02-13, 24-16-02, 24-17-02, subsections 11, 16, and 17 of section 39-01-01, subsection 1 of section 39-16-01, subsection 2 of section 49-17.1-01, subsection 1 of section 54-06-04, subsection 1 of section 54-27-19, subsection 6 of section 57-40.3-01, subsection 1 of section 57-43.1-01, section 57-43.1-44, subsection 6 of section 57-43.2-01, and section 57-43.2-37 remain in effect until they are specifically amended or repealed by the department.

24-02-02. State highway commissioner - Appointment, term, removal, oath, bond, salary.

Repealed by S.L. 1989, ch. 72, § 25.

24-02-02.1. Agreement for the construction of the Oahe bridge.

The director is authorized to execute an agreement with the federal government for the construction of a bridge over the Oahe Reservoir wherein the department agrees to hold the United States harmless and free from damages due to the construction or operation and maintenance of such bridge, except for damages due to the fault or negligence of the United States or its contractors.

24-02-02.2. Authority to contract with adjoining states and provinces.

The director may contract with adjoining states and provinces to provide for the construction, reconstruction, repair, or maintenance of highways located on or near the border of each jurisdiction.

24-02-02.3. Director may enter agreements with tribal governments.

Notwithstanding the provisions of chapter 54-40.2, the director may enter agreements with any one or more tribal governments for the purpose of construction and maintenance of highways, streets, roads, and bridges on the state highway system. The agreements must be limited to those necessary to meet federal highway program spending requirements.

24-02-03. Responsibilities of commissioner.

Repealed by S.L. 1989, ch. 72, § 25.

24-02-03.1. Cooperation of director in matters of national defense.

In order to facilitate national defense, the director is hereby authorized to cooperate with the appropriate federal agency, when requested by it, in:

1. Making of surveys, plans, specifications, and estimates for, and in the construction and maintenance of, flight strips and of roads and bridges necessary to provide access to military and naval reservations, defense industries, defense-industry sites, and sources of raw materials.
2. Acquiring of land necessary for the construction of such flight strips and roads and bridges by purchase or condemnation in the manner provided by law for the purchase or condemnation of land required for state highway construction.
3. Replacing existing highways and highway connections shut off from general public use at military and naval reservations and defense-industry sites.

4. Entering into contracts in any manner approved by the appropriate federal agency for the construction of any such flight strips or roads.
5. Performing such construction and maintenance work by force account, whether paid for in whole by federal funds or in part by federal funds and in part by funds provided by the state or any of its subdivisions.

Provided, that no cooperative venture may be entered into when any funds appropriated by the legislative assembly for highway purposes are to be expended thereby, unless such expended funds are to be reimbursed from federal sources.

24-02-03.2. Director may protect roads from damage and negotiate settlement for damages.

Whenever federally financed construction or maintenance activities are likely to affect any public road within this state, the director is hereby authorized to take such action as may be necessary to protect such public road from any damages that may be caused, and to negotiate with any contractor or any officer or agency of the federal government for the repair of damage or extraordinary maintenance that may be required on such public road. If the public road affected is under the jurisdiction of any county, city, or township, the director shall obtain the concurrence of the appropriate governing board of such county, city, or township before any agreement is entered into or any other action is taken with respect to such public road.

24-02-03.3. Central management system for all state-owned licensed motor vehicles.

1. The director shall establish within the department a central vehicle management system to regulate the operation, maintenance, and management of all motor vehicles owned or leased by the state subject to registration under chapters 39-04 and 39-05. Upon the request of a state agency and an agreement between the agency and director for the use of the motor vehicle-related equipment, the director may purchase or lease motor vehicle-related equipment and include that equipment within the system. The director shall provide a uniform method of documenting the use and cost of operation of motor vehicles and motor vehicle-related equipment in the system. The director shall advise the director of the office of management and budget as to the need to acquire or dispose of system motor vehicles. The specifications for highway patrol vehicles to be acquired may be set by the highway patrol superintendent. Every state agency, institution, department, board, bureau, and commission unless exempted by the director must use the system. At the request of the director of the North Dakota agricultural experiment station, certain vehicles used in farming operations at the agronomy seed farm and branch research centers shall be exempt from the requirements of this section. However, an agency, institution, department, board, bureau, or commission may authorize the use of an employee's personal motor vehicle pursuant to subsection 4 of section 54-06-09.
2. The director may enter into an agreement with a state employee who has a disability requiring a specially-equipped vehicle to pay a mileage rate greater than the rate established in section 54-06-09 for the employee's use of the employee's specially-equipped motor vehicle while conducting state business. The rate must be based on the rate provided in section 54-06-09, increased by the actual cost per mile caused by the special equipment, and may not exceed the cost associated with the special equipment expressed as the new value plus the depreciated fair market value in eight years divided by two, divided by twenty thousand miles.
3. Each entity required to use the system shall submit records of the operation of each vehicle as directed by the director.
4. The director may enter an agreement for the use of the motor vehicle-related equipment with the North Dakota art museum established in section 54-02-11.

24-02-03.4. Transfer of motor vehicles.

The title or other documents representing ownership of a motor vehicle owned or leased by the board of higher education and the institutions under its jurisdiction must be transferred to the director on August 1, 1995.

24-02-03.5. User charges - Incidental revenues.

Each entity using the central vehicle management system shall pay a user charge to the director. The user charge will be set by the director and must be based upon the actual cost of the service provided, including depreciation. The user charges and any proceeds from insurance claims, motor vehicle sales, commercial refunds or rebates, or similarly derived proceeds must be remitted to the state treasurer for deposit in the fleet services fund.

24-02-03.6. Board of higher education fleet committee.

Expired under S.L. 1995, ch. 260, § 4.

24-02-04. Commissioner to devote full time to office.

Repealed by S.L. 1989, ch. 72, § 25.

24-02-05. Office hours, sessions, and hearings of commissioner.

Repealed by S.L. 1989, ch. 72, § 25.

24-02-06. Chief engineer - Qualifications, salary.

Repealed by S.L. 1989, ch. 72, § 25.

24-02-07. Expenses of department employees.

In addition to the compensation received for their service, employees of the department are entitled to receive their expenses actually and necessarily incurred in the performance of their duties, the amount of the expenses so allowed to be fixed and determined by the director.

24-02-07.1. Engineering scholarships established.

Repealed by S.L. 1967, ch. 206, § 2.

24-02-07.2. Contract of employment or repayment a prerequisite.

Repealed by S.L. 1967, ch. 206, § 2.

24-02-07.3. Prequalification, selection, and contracting for consultants - Solicitations.

1. The director may prequalify, select, and contract for consultants in the area of engineering, land surveying, architecture, traffic safety, business administration, and related matters. The prequalification of the consultant must be based on detailed information regarding firm organization, qualifications of personnel, type of work the firm is qualified to perform, previous work experience, and financial status and must be provided to the director in a form approved by the director. If a consultant meets the criteria set by the director, the director shall prequalify the consultant, noting any limitations as to the type or amount of the work the consultant may perform. When a consultant is prequalified, the consultant is entitled to receive requests for proposals, proposals, and other solicitations for work in the areas in which the consultant is prequalified without any other screening or qualification process. The period of prequalification may not exceed three years. The qualifications of the consultant for a specific project must be determined according to the criteria in subsection 5 of section 54-44.7-03. The director shall publish a prequalification solicitation at least once each year and need not comply with the provision in subdivision c of subsection 2 of section 54-44.7-03 requiring the publication of an invitation for a specific project. The selection and contract negotiation must be performed according to subsections 6 and 7 of section 54-44.7-03.

2. The director is not required to comply with subsection 3 of section 54-44.7-03 or 54-44.7-04 and may procure the services of consultants for:
 - a. Projects with consultant costs estimated to be not more than one hundred thousand dollars through direct negotiation with a selected prequalified firm, after considering the nature of the project; the proximity of the architect, engineer, construction management, or land surveying services to the project; the capability of the architect, engineer, construction manager, or land surveyor to produce the required services within a reasonable time; past performance; and the ability to meet project budget requirements. Fees paid pursuant to this subdivision during the twelve months immediately preceding negotiation of the contract by the department of transportation for professional services performed by any one architectural, engineering, or land surveying individual or firm may not exceed two hundred thousand dollars. A person seeking to render professional services under this section shall furnish the department a list of professional services previously provided to the department, including the fees paid during the twelve months immediately preceding the contract being negotiated. If the department determines that it is appropriate, the department may use the procurement procedures in subdivision b or c in place of the procedures in this subdivision.
 - b. Projects with consultant costs estimated to be greater than one hundred thousand dollars but not more than three hundred thousand dollars by notifying all prequalified firms in the specific area of need, allowing a minimum of seven calendar days to respond, and following the remaining process in subsections 4 through 7 of section 54-44.7-03. If the department determines that it is appropriate, the department may use the procurement procedures in subdivision c in place of the procedures in this subdivision.
 - c. Projects with consultant costs estimated to be greater than three hundred thousand dollars by notifying all prequalified firms, allowing a minimum of twenty-one calendar days to respond, and following the remaining process in subsections 4 through 7 of section 54-44.7-03.
3. Notwithstanding any other provision of law, when soliciting the services of consultants under this section, the director may include multiple projects in one solicitation. The requirements for the project within the highest dollar threshold under subsection 2 apply to all of the projects in the multiple project solicitation.

24-02-08. Engineering consulting services - Coordinator of highway, road, and street program within state.

The director may provide consulting engineering services upon request of any governmental unit.

The director has the authority and responsibility for the coordination of the total highway, road, and street program within this state, including the designation of systems, which the director may functionally classify as to the types of service, and the development of construction standards as hereinafter provided for.

24-02-09. Departmental budget estimates - Departmental budgets.

Not later than the fifteenth day of May of each year, each head of a department, division, section, or activity of the department who may be directed and designated to do so by the director shall submit to the director an outline of the work which should be undertaken by such department, division, section, or activity during the following fiscal year and the estimated expense thereof, in such detail as the director may prescribe, together with such other cost data and information as the director shall direct.

Not later than the thirtieth day of June of each year, the director shall adopt a departmental budget wherein must be allocated, set aside, and appropriated to each department, division, section, or activity of the department for the ensuing fiscal year a definite and fixed sum or allowance in such amount and with such detail as the director may elect for the use and purpose specified in such departmental budget. Nothing herein, however, prevents the director

from adding to, amending, revising, or reducing from time to time, and as circumstances may warrant, such departmental budget.

24-02-10. Biennial report.

The director shall submit a biennial report to the governor and the secretary of state in accordance with section 54-06-04.

24-02-11. Records of department open to public - Certain records not open to public - Certified copies.

1. The director is custodian of, and shall preserve, the files and records of the department. The files and records of the department must be open to public inspection under reasonable regulations. However, records relating to the financial condition of any party are not open to public inspection if that party:
 - a. Has applied for prequalification as a bidder;
 - b. Is designated as a prequalified bidder pursuant to this chapter;
 - c. Is an applicant under the disadvantaged business enterprise program;
 - d. Makes a submission in furtherance of being selected as a consultant;
 - e. Is selected as a consultant; or
 - f. Is subject to audit by the department.
2. Copies of files and records of the department, when certified by the director as being true copies, must be received in evidence in any court in the state with the same force and effect as the originals.
3. The books of account of the department must be kept accurately and completely as must be prescribed or approved by the state auditor, which must show among other things the following facts:
 - a. The cost of maintaining the department, including the salaries and expenses of the individual members thereof.
 - b. The amounts of money expended for the construction or maintenance of the state highways, when and where, and upon what job or portion of the road expended, so that the cost per mile [1.61 kilometers] of the construction or maintenance can be ascertained with ease.
 - c. The amount of road equipment and materials purchased and when and where and from whom purchased. The book also must show the price paid for each item. The original invoice or a photographic copy thereof must form a part of the permanent files and records in the department.
 - d. The director shall charge a uniform fee, by type of record.

24-02-12. Auditing and payment of payrolls.

Payroll vouchers prepared on forms adopted in accordance with section 24-02-34 must be certified and approved by the director and the same must be presented to the office of management and budget which shall prepare and issue a warrant signed by the state auditor for each person named thereon without submitting such payroll voucher to the office of the budget for its examination and approval.

24-02-13. Payment of estimates on contract or deposits in condemnation.

Whenever any estimate or allowance for payment, except a final estimate or payment subsequent to a final estimate, is allowed, or granted, on a contract entered into by the department, or a deposit is to be made with the clerk of district court in a condemnation proceeding, and the estimate is vouchered by the department for presentation to the office of management and budget, instead of submitting the estimate to the contractor or clerk of district court for certification, the director of the department or the director's authorized designee shall make the following certificate, in lieu of the certificate otherwise required by law, which must be printed on the voucher or claim:

Estimate certificate. I hereby certify that the within estimate or claim is just and true, that the contractor herein named has rendered the services and furnished the material herein

charged, that they are of the value claimed, that no part thereof has been paid, and that the foregoing estimate or claim is supported by a proper contract and bond on file in the department or that the purpose of the payment to a clerk of district court is pursuant to law and for the taking of property by condemnation.

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After a certified estimate or deposit with a clerk of district court has been approved for payment by the director, the same must be presented to the office of management and budget for payment. The office of management and budget thereupon shall prepare and issue a warrant therefor signed by the state auditor without submitting the voucher or claim to the office of the budget for examination and allowance. The foregoing procedure does not apply to the final estimate or allowance to a contractor, nor to any estimate or allowance subsequent or supplemental to the final estimate, but the final estimate or supplemental allowance must conform to the provisions of law relative to the certification and approval of any other claim or demand; nor does the procedure apply to payments to property owners involved in the taking of property in any condemnation proceeding.

24-02-14. Acts prohibited.

Repealed by S.L. 1975, ch. 106, § 673.

24-02-15. Action against employee of department on bond.

The state, and civil government divisions thereof, and any person damaged by any wrongful act or omission of any bonded employee of the department in the performance of the employee's official duties may maintain an action on the employee's bond for the recovery of damages so sustained.

24-02-16. Basis of contracts for construction work.

The director may request bids and award contracts for construction work requiring the contractor to furnish all equipment, labor, materials, and supplies for each particular contract or project, or requiring the director to furnish and provide the contractor with materials and supplies as the director may elect. If the director elects to provide materials and supplies for any project or construction work, the director shall notify the office of management and budget of the fact that the director has elected to furnish the materials and supplies. The office of management and budget may either exempt the purchase and allow the director to request and let bids and make the purchase, or the office of management and budget may handle the bidding and purchasing through its central purchasing agency. Either the office of management and budget or the director shall request proposals or bids for the total and aggregate of the materials and supplies for any and all projects or construction work according to the class, type, and nature of the materials and supplies and may award a contract or contracts therefor upon a basis deemed efficient and economical, whether upon the basis of delivery to the construction project directly or to a central storehouse or storehouses maintained by the state. The materials and supplies purchased by the office of management and budget or the department of transportation may be delivered to the project or construction work without expense to the contractor doing the construction work or may be sold to the contractor at cost and made to constitute a part of the construction cost, as the director may elect.

24-02-17. Contracts - Bids.

Whenever the cost of any construction improvement exceeds the sum of twenty thousand dollars, the department shall proceed to advertise the same, request bids, and award such contracts in the manner provided in this chapter. The department may accept bids and bid bonds that are submitted by electronic media such as the internet. The director may adopt the procedures and rules necessary to implement this section.

24-02-18. Reconstruction work without letting contract.

The department may, if in the opinion of the director, the public interest and the preservation of the state highways from deterioration requires it, do the work necessary for minor grading reconstruction on any state highway without letting a contract for such reconstruction work, or the director may contract with the county in which any such reconstruction project is located, to perform such reconstruction work on a cost basis. Any such reconstruction projects may include any project that is eligible for federal aid. Any funds available for highway reconstruction purposes may be expended in carrying out the provisions of this section.

24-02-19. Request for bids - How solicited.

Any request for bids for construction work or the improvement of any state highway, or any structure in excess of the amount specified in section 24-02-17, must be advertised by publication once prior to the opening of such bids, in the official newspaper of the county in which the project is located. Any other advertisement made by the director may utilize one or more of the following methods:

1. The publication of the solicitation in a daily newspaper having a general circulation in the area where the project is located.
2. The publication of the solicitation in commonly recognized trade journals or similar publications that advertise the solicitation of bids on public work projects.
3. The written solicitation of all qualified contractors appearing on the bidders' list as maintained by the department of transportation.

When the solicitation is by publication, it must be made at least three weeks prior to the date of the bid opening. The solicitation must state where the bidder may inspect the plans and specifications, with whom bids must be filed, and the time and place where bids must be opened. Such place must be the office of the department.

All requests for bids for the purchase of equipment, materials, and supplies, exclusive of repairs to equipment and except as provided in section 25-16.2-02 in excess of the sum of twenty thousand dollars must be advertised in the official newspaper of the county in which the department district is located. The advertisement must be published once a week for a period of two successive weeks prior to the opening of such bids.

24-02-20. Bids, where opened - Requirements - Bonds or checks of three lowest bidders retained.

All bids must be opened at the time and place specified in the advertised request for bids. Each bid must be accompanied by a certified or cashier's check of the bidder on a solvent bank, in an amount equal to five percent of the bidder's bid, to be forfeited to the state highway fund should the bidder fail to effect a contract within ten days after notice of an award or by a bidder's bond in a sum equal to ten percent of the full amount of the bid, executed by the bidder as principal and by a surety company authorized to do business in this state, conditioned that if the principal's bid be accepted and the contract awarded to the principal, the principal, within ten days after notice of award, will execute and effect a contract in accordance with the terms of the principal's bid and a contractor's bond as required by law and the regulations and determinations of the department.

All bonds or checks, except those of the responsible bidders submitting the three lowest and best bids, must be returned to the bidders promptly upon opening such bids. The bond or check of the responsible bidder submitting the lowest and best bid may be cashed or retained until the contract has been awarded and executed properly. The bonds or checks of the responsible bidders submitting the second and third lowest and best bids may be returned to the bidders when the department has determined to whom the contract is to be awarded.

24-02-21. Contracts on informal bids - How let.

Informal bids must be requested and the contract therefor may be awarded upon such basis and procedure as the director directs.

24-02-22. Separate proposals on each type of work.

Whenever any highway improvement involves structural work, dirt grading and traffic service gravel, graveling, stabilizing and oiling, or concrete surfacing, or any two or more of them, then wherever practicable and not contrary to any federal law or regulations, separate proposals and bids must be received on each separate type of work.

24-02-23. Award of contracts - Bonds.

Each and every contract in excess of the sum specified in section 24-02-17 must be awarded by the department to the responsible bidder submitting the lowest and best bid, but said department may reject all bids. If no satisfactory bid or bids are received, new bids may be called for. The successful bidder must be required to furnish a suitable bond in at least the amount of the contract and with such surety as may be determined by the department and as approved by it.

24-02-24. Participating county or municipality to be notified of opening of bids.

In the event that any county or municipality participates in and defrays the cost, or part of the cost, of any improvement to be made by the department, the director shall notify the board of county commissioners of the county so interested, or the proper city officials of any municipality, of the time set for opening bids.

24-02-25. Payments made monthly to contractors.

Payment must be made monthly to the contractor for all work done or material furnished, in such amount as must be determined by the director, but in no event less than ninety percent nor more than ninety-nine percent thereof, and payment must be made in full upon the completion of the contract and acceptance of the work.

24-02-25.1. Claims against project - Notice of claim - When filed - Where filed.

Any person who has furnished labor, materials, or supplies on a contract awarded under section 24-02-23, and who has not been paid in full at the time of final acceptance of the project by the department, has the right to file a claim against the contractor and the surety furnishing the performance bond.

Notice of the claim must be given, in writing, to the contractor or the surety furnishing the performance bond and must provide a clear and concise statement of the labor, materials, and supplies furnished, to whom it was furnished, and the monetary value thereof. The claim must bear interest, on each transaction for labor, materials, or supplies, commencing thirty days after the last transaction. The rate of interest must be the rate provided in section 28-20-34. The notice of the claim must be made by certified mail postage prepaid, in an envelope addressed to the contractor at any place the contractor maintains an office or has a residence and posted within one hundred eighty days from the date on which the person completed the contribution giving rise to the claim.

24-02-25.2. Actions against contractor and surety - Time.

Any person who has furnished labor, materials, or supplies and made a claim under section 24-02-25.1 has the right to commence an action to recover the amount of the person's claim against the contractor or surety within one year of the date of the final acceptance of the project by the department.

24-02-26. Controversies to be arbitrated - Arbitrators - How named.

A controversy arising out of a contract for the construction or repair of a highway entered by the director must be submitted to arbitration under this chapter and chapter 32-29.2. A person that voluntarily enters a contract for the construction or repair of a highway is deemed to have agreed to arbitration of a controversy arising out of that contract. For a claim for less than one hundred thousand dollars, only one arbitrator may be jointly selected by the parties. For a claim for one hundred thousand dollars or more, three persons comprise the arbitration board.

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.

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 act on 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.

24-02-27. Arbitration demand - District court may appoint arbitrators if parties fail.

1. Unless a party submits the dispute to the American arbitration association, the arbitrators must be selected in accordance with this section. The party desiring arbitration of claims for more than one hundred thousand dollars shall 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.
2. The same procedure applies to the parties for claims involving less than one hundred thousand dollars, except that the parties jointly shall select the arbitrator after the demand and response.

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.

24-02-29. Arbitration may proceed although one party fails to agree.

If either party refuses to submit to arbitration as provided in this chapter, that party must be deemed to have waived all claims and demands, and the arbitrators shall proceed to determine the controversies set forth by the moving party according to the justice of the case. Judgment must be entered upon the award of such arbitrators in all things the same as though the submission to arbitration has been signed by both parties.

24-02-30. Conditions precedent to demand for arbitration against director.

No right exists to demand arbitration against the director until the conditions specified in this section have been complied with. The contractor shall give the director notice in writing that the contractor claims the contract has been or will be performed fully on a day stated, which may not be less than ten days after the giving of such notice. At the time stated in the notice the director shall cause the work to be inspected, and if the director claims the work has not been completed, the director, with all reasonable dispatch, having regard to the early completion of the work, shall specify the particulars in which it is incomplete and shall direct that it be completed accordingly, or if the director considers further work necessary to bring the project up to the desired standard for acceptance either by the director or the United States public roads administration, even though the director considers such contract complete, the director likewise may specify any such additional work. The contractor shall proceed with all reasonable dispatch, having due regard to weather conditions, with the performance of all such additional work with a view to a speedy completion of the project. When the contractor claims in good faith, supported by affidavit furnished to the director, that the contractor has completed such additional work according to the specifications furnished to the contractor, and the director fails for ten days to accept such work as completed, the contractor has the right to institute proceedings under this chapter.

24-02-31. Arbitrators shall determine all controversies - May give directions.

The arbitrators shall determine all controversies between the parties growing out of the contract, including the question whether it had been performed at the time claimed by the contractor and whether the additional work required by the director as specified has been done, and if not done they shall specify the particulars in which it has not been done, give appropriate directions with reference thereto, and shall make a proper award for any extra work they find the contractor entitled to, making such award so far as it is practicable upon the basis of the contract price, having due regard to what is just and equitable between the parties under the facts and circumstances of the case.

24-02-32. Further arbitration permitted.

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, the controversies may be submitted to the same arbitrators on five days' notice for further determination.

24-02-33. Judgment against director - How collected.

When judgment has been entered against the director, the same is not collectible or enforceable by execution, but if the same provides for the payment of money by the director, it must be paid in the same manner, to the same extent, and out of the same funds as though the claims thus established had been recognized and allowed without arbitration. The performance of the duty of the director with reference to payment or other compliance with such judgment may be enforced by mandamus proceedings in the district courts of the state.

24-02-34. Preparation of standard contract forms.

The director may prepare, adopt, or amend uniform standard forms of contracts, bonds, estimates and other forms and documents deemed essential for the efficient administration of highway matters within the department.

24-02-35. Contracts - For road and bridge work and materials - Awarding to residents of North Dakota and giving preference to residents of North Dakota.

Repealed by S.L. 1959, ch. 234, § 1.

24-02-35.1. Casual sale of road materials to local governmental units.

The department may sell road materials in small quantities on an occasional basis to local governmental units, when the local governmental units are unable to economically procure those quantities of road materials from the private sector.

24-02-35.2. Deposit of sale proceeds - Continuing appropriation.

The proceeds from any sale of road materials made under section 24-02-35.1 must be deposited in the department of transportation fund. An amount not to exceed the total sum of the sales under section 24-02-35.1, but not to exceed one million dollars a year, may be withdrawn upon voucher of the department for purchasing road materials. All moneys deposited in the fund pursuant to this section are hereby appropriated to the department for the purposes of this section.

24-02-36. State funds not used on feeder roads.

Except as provided in section 24-01-48, no state funds may be expended for feeder roads or other roads not on the state highway system except for the necessary administrative costs and for such work as is reimbursable from federal or county funds or from funds of other organizations or governmental departments for which reimbursement arrangements have been made. After completion of any such cooperative construction, all authority and control over roads off the state highway system must be returned to the local authorities under whom control was vested previously.

24-02-37. State highway fund - Priorities for expenditure - Use of investment income.

The state highway fund, created by law and not otherwise appropriated and allocated, must be applied and used for the purposes named 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:
 - a. The cost of maintaining the state highway system.
 - 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.
 - c. Any portion of the highway fund not allocated as provided in 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, 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 office of management and budget and signed by the state auditor under this title 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 eighty percent of the income derived from the interest-bearing account in a special interest-bearing account in the state treasury known as the special road fund. 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 special road committee. A political subdivision or state agency may request funds from the special road fund by applying to the committee on forms designated by the committee. The committee 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. Any moneys in the fund not obligated by the special road committee by June thirtieth of each odd-numbered year must be held for an additional two years after which the funds revert to the state highway fund.

24-02-37.1. Special road advisory committee - Special road fund.

Repealed by S.L. 1997, ch. 41, § 11.

24-02-37.2. Special road committee.

The special road committee consists of one member of the senate and one member of the house of representatives appointed by the chairman of the legislative management, the director of the game and fish department, the director of the parks and recreation department, and the director of the department of transportation. The director of the department of transportation is chairman of the committee. The committee must meet at the call of the director to review requests for funding from the special road fund. The committee shall decide which project requests will receive funding. The director shall provide staff services to the committee. The members of the committee who are members of the legislative assembly are entitled to compensation from the department of transportation, from moneys appropriated from the special road fund, for attendance at committee meetings at the rate provided for members of the legislative assembly for attendance at interim committee meetings and are entitled to reimbursement for expenses incurred in attending the meetings in the amounts provided by law for other state officers.

24-02-38. Additional appropriation for administration expenses.

Repealed by S.L. 1989, ch. 72, § 25.

24-02-39. Highway department - Building limitation.

Repealed by S.L. 1975, ch. 239, § 1.

24-02-40. Short-term financing.

The department is hereby authorized, whenever needed, to arrange, with any state-owned or private financing agency, including the Bank of North Dakota, short-term loans in the event that construction funds on hand are insufficient to meet current obligations. Short-term financing as provided herein must be in amounts no larger than can be repaid within four years from moneys known to be due and forthcoming. In no event may such short-term financing be used in anticipation of increased federal-aid highway grants or increased state highway user revenue funds, nor may such loans be obligated for road construction that cannot be financed from a known source of income.

24-02-40.1. Grant or revenue anticipation financing.

Notwithstanding any other provision of law, the department, whenever needed for the liberty memorial bridge improvement project and the United States highway 2 project improvements, may arrange with any state-owned or private financing agency or underwriter, including the Bank of North Dakota, grant or revenue anticipation financing through the issuance of evidences of indebtedness on such terms and conditions as the department determines if construction funds on hand are insufficient to meet current obligations or to achieve cost-savings or efficiencies in road construction. The department may refund the evidences of indebtedness as often as it is advantageous to do so. Evidences of indebtedness may be sold at public or private sale and must mature not more than fifteen years from their date or dates, and the proceeds of the sale may be invested on such terms and conditions as the department determines. Grant or revenue anticipation financing must be in amounts no larger than can be repaid from moneys known or reasonably anticipated to be due and forthcoming. The grant or revenue anticipation financing may not be used in anticipation of increased federal aid highway grants or increased state highway user revenue funds, and the financing may not be obligated for road construction that cannot be financed from known sources of grants or revenue. The department may pledge any federal aid grants received or to be received for debt service and related issuance costs for evidences of indebtedness issued under this section directly to a trustee in trust for payment to holders of the evidences of indebtedness. The department may also pledge any biennially appropriated revenues for debt service on the evidences of indebtedness directly to a trustee in trust for payment to holders of the evidences of indebtedness. Any evidences of indebtedness issued under this section are not general obligations or debt of the state, the department, or any public officer or employee of the department or this state. The principal of and interest on the evidences of indebtedness are limited obligations payable solely from grants or revenues received or to be received by the department. The department may capitalize from proceeds of the evidences of indebtedness all expenses incidental to issuing the evidences of indebtedness, including any reserves for payment of the evidences of indebtedness.

24-02-41. Department revenues to state highway fund.

All revenue in the form of charges, reimbursements, or earnings as hereinafter specified, accruing to the department or any of its agencies or divisions, must be collected and received by the director or the director's agent, and deposited with the state treasurer monthly, who shall credit all such deposits to the state highway fund:

1. Overload fees or charges, permit fees, proceeds from sales, and reimbursements from other entities.
2. Service fees and charges for furnishing documents, material, information, or performing work at the request of, or for the convenience of other entities.
3. Income resulting from ownership of rights or properties.
4. Funds collected pursuant to a reciprocal or other agreement, which are in lieu of mile tax.
5. Other income resulting from authorized activities of the department and the discharge of its statutory responsibilities.

24-02-42. Scholarships authorized.

The director is authorized to establish continuing grants of financial aid for study in undergraduate coursework, which meets the needs and mission of the department, at institutions of higher learning in this state. Expenditure from highway operating funds is authorized. No individual may receive financial aid in any year exceeding the tuition of the institution for which the student is enrolled. The director shall establish the annual expenditure in the department's budget, which includes individual student financial aid limitations to be determined by the director dependent on the available funds. Before any student shall receive the financial aid authorized by this section, the student shall enter into a contract with the department, which must provide that such student shall upon graduation accept employment with the department for a period of time at least equal to the time the student received financial aid benefits, the salary to be in the grade established for the classification assigned. In the event such student is inducted into the armed forces before graduation, such education may then be

completed upon that student's return to civil life, and in the event such induction into the armed services is made after graduation the employment contract does not take effect until after such period of service in the armed forces has been completed. Leave of absence without pay will be granted to one whose induction occurs during the period of the life of such contract and the employment will be resumed for the balance of the contract period after such employee has been discharged from the service.

If such student fails to graduate with a degree, or fails to accept employment with the department as above provided, such student shall repay the department, with interest at the rate of six percent per annum, all sums received by the student in financial aid benefits under the contract herein provided, such repayment to be made within a period equal to the time the student received such benefits. For the purpose of this section, defenses of minority or statute of limitations are removed as to any applicant granted a loan by the director and such contracts are in all respects legal and binding. Salary increases to employees having received financial aid by virtue of this section must be based on the same considerations as other employees employed by the department.

The director, with the cooperation and concurrence of the board of higher education, shall prescribe rules for determining the selection of recipients, qualifications, and courses of study. Such rules may cover any areas as may be necessary to assure a source of qualified trained employees for the department.

24-02-43. Intergovernmental cooperation - Infrastructure bank.

The director may contract and cooperate with other states, with political subdivisions of this state, and with the United States government to establish, maintain, and operate a multistate infrastructure bank pursuant to section 350 of the National Highway System Designation Act of 1995 [Pub. L. 104-59; 109 Stat. 568, 618-622] and the Department of Transportation and Related Agencies Appropriations Act of 1997 [Pub. L. 104-205, title I]. The director may transfer and commit to the multistate infrastructure bank state and federal-aid highway funds, up to a maximum of ten percent of eligible federal-aid highway funds, and the required state matching funds. All funds and revenue allocated or generated under this section must be used for purposes of funding eligible projects as determined by agreement of the members of the multistate infrastructure bank and as authorized by state and federal law.

24-02-44. Authority to borrow funds for a disaster - Appropriation.

The department of transportation, subject to the approval of the emergency commission, may borrow moneys from the Bank of North Dakota to advance and match federal emergency relief funds. Any moneys borrowed from the Bank of North Dakota pursuant to this section are appropriated.

24-02-45. Cooperative agreements with counties or cities.

The director may enter an agreement with a county or city for the cooperative or joint administration of an activity that will enhance the efficiency and effectiveness of the state highway system. The terms of the agreement supersede sections 24-02-36 and 24-02-37 or any other state law governing the use of state, county, or city highway funds.

24-02-46. Multistate highway transportation agreement.

The director may join the multistate highway transportation agreement to promote uniformity among participating jurisdictions in vehicle size and weight standards. The legislative council shall review the guidelines for eligible voting members of the cooperating committee formed by the agreement and the legislative management shall appoint a member of the house standing transportation committee and a member of the senate standing transportation committee or their designees as the legislative members representing this state to the cooperating committee formed by the agreement.

24-02-47. Contracts - Design-build method.

Expired under S.L. 2009, ch. 236, § 16.

24-02-48. Use of department of transportation airplanes.

Upon request, the department of transportation shall provide air transportation services to other state agencies. Unless waived by the department, each agency using air transportation services from the department shall pay a user charge determined by the department of transportation. The department shall give priority to requests for air transportation services from the attorney general's office when the request is for law enforcement purposes. The director of the department of transportation shall allow employees of other state agencies to operate the department's airplanes for official purposes if the employee is properly licensed and has the proper rating and type endorsement to operate the requested airplane.