

## **CHAPTER 54-18**

### **NORTH DAKOTA MILL AND ELEVATOR ASSOCIATION**

**54-18-01. Definition.** Whenever the word "association" is used in this chapter, it means the North Dakota mill and elevator association.

**54-18-02. North Dakota mill and elevator association.** For the purpose of encouraging and promoting agriculture, commerce, and industry, the state of North Dakota shall engage in the business of manufacturing and marketing farm products. For that purpose it shall establish a system of warehouses, elevators, flour mills, factories, plants, machinery, and equipment, owned, controlled, and operated by it under the name of North Dakota mill and elevator association. The business of the association, in addition to other matters specified in this chapter, may include anything that any private individual, corporation, or limited liability company lawfully may do in conducting a similar business except as restricted by the provisions of this chapter. In the creation of the association, it is the intention of the legislative assembly that all acts of the association are the acts of the state of North Dakota functioning in its sovereign and governmental capacity. The association is not a separate agency of the sovereign power, but is the state itself functioning.

**54-18-03. Industrial commission to operate association - Place of business - Rules made by commission.** The industrial commission shall:

1. Operate, manage, and control the association.
2. Locate and maintain its places of business of which the principal place must be within the state.
3. Make and enforce orders, rules, regulations, and bylaws for the transaction of its business.

**54-18-04. Powers and duties of industrial commission in operating association.** To accomplish the purposes of this chapter, the industrial commission shall acquire by purchase, lease, or, subject to chapter 32-15, by exercise of the right of eminent domain all necessary property or property rights and may:

1. Construct, remodel, or repair all necessary buildings.
2. Purchase, lease, construct, or otherwise acquire warehouses, elevators, flour mills, factories, offices, plants, machinery, equipment, and all other things necessary, incidental, or convenient in the manufacturing and marketing of all kinds of raw and finished farm products within or without the state.
3. Dispose of all kinds of raw and finished farm products.
4. Buy, manufacture, store, mortgage, pledge, sell, exchange, or otherwise acquire or dispose of all kinds of manufactured and raw farm and food products and byproducts.
5. For the purpose of acquiring or disposing of all kinds of manufactured farm and food products and byproducts, establish and operate exchanges, bureaus, markets, and agencies, within or without the state, including foreign countries, on such terms and conditions and under such rules and regulations as the commission may determine.

**54-18-04.1. Marketing functions exempt from Securities Act.** The association is exempt from the provisions of chapter 10-04 when in the performance of its authorized marketing functions. The exemption provided under this section also applies to any agency or instrumentality of the association and to any agent or employee of the association or any agency or instrumentality thereof.

**54-18-05. Manager and employees of association - Industrial commission to appoint - Compensation.** The industrial commission shall obtain such assistance as in its judgment may be necessary for the establishment, maintenance, and operation of the association. To that end it shall appoint a manager and may appoint such subordinate officers and employees as it may judge expedient. It may constitute such manager its general agent, in respect to the functions of the association, but subject, nevertheless, in such agency, to the supervision, limitation, and control of the commission. It shall employ such contractors, architects, builders, attorneys, clerks, accountants, and other experts, agents, and servants as in the judgment of the commission the interests of the state may require, and shall define the duties, designate the titles, and fix the compensation and bonds of all such persons so engaged.

**54-18-06. Manager shall appoint necessary employees.** Subject to the control and regulation of the industrial commission, the manager of the association shall appoint and employ such deputies and other subordinates and such contractors, architects, builders, attorneys, clerks, accountants, and other experts, agents, and servants as the manager finds are required by the interests of the association.

**54-18-07. Compensation of employees and expenditures remain within appropriation.** The total compensation of the appointees and employees of the association, together with other expenditures for the operation and maintenance of the association, must remain within the appropriation and earnings lawfully available in each year for such purposes.

**54-18-08. Bonds of manager and employees.** Repealed by S.L. 1999, ch. 113, § 24.

**54-18-09. Removal and discharge of appointees.** The industrial commission may remove and discharge any and all persons appointed in the exercise of the powers granted by this chapter, whether by the commission or by the manager of the association, and any such removal may be made whenever in the judgment of the commission the public interests require it. All appointments and removals contemplated by this chapter must be made as the commission shall deem most fit to promote the efficiency of the public service.

**54-18-10. Industrial commission to fix price of things bought and sold by association.** The industrial commission shall fix the buying price of all things bought, and the selling price of all things sold, incidental to the operation of the association, and shall fix all charges for any and all services rendered by the association. In fixing these prices, while all services are to be rendered, as near as may be, at cost, there must be taken into consideration, in addition to other necessary costs, a reasonable charge for depreciation of all property, all overhead expenses, and a reasonable surplus, together with all amounts required for the repayment, with interest, of funds received from the state.

**54-18-11. Name in which business conducted and titles taken - Execution of written instruments.** All business of the association must be conducted under the name of "North Dakota mill and elevator association". Title to property pertaining to the operation of the association must be obtained and conveyed in the name of the state of North Dakota, doing business as the North Dakota mill and elevator association. Written instruments must be executed in the name of the state of North Dakota, signed by any two members of the industrial commission, of whom the governor must be one, or by the manager of the association within the scope of the manager's authority, as defined by the commission or by other officers, employees, or legal counsel of the association as authorized by the industrial commission.

**54-18-12. Civil actions on association transactions - Names of parties - Service - Venue - Statement filing provisions inapplicable.** Civil actions may be brought against the state of North Dakota on account of claims for relief claimed to have arisen out of transactions connected with the operation of the association upon compliance with this section. In such actions the state must be designated as the state of North Dakota, doing business as North Dakota mill and elevator association, and the service of process therein must be made upon the manager of the association. Such actions must be brought in the county where the association

has its principal place of business, except as provided in sections 28-04-01 through 28-04-04 and 28-04-07. Section 54-14-04 does not apply to claims against the state affected by this section.

**54-18-13. Capital of association.** The capital of the association must be any funds procured by the industrial commission through the sale of state bonds, as may be provided by law for that purpose, and also all moneys raised by the mill tax for terminal elevators as provided in sections 2072 and 2073 of the Compiled Laws of 1913. Said moneys must be paid to the manager of said association and the manager shall place the same in the general fund of the association.

**54-18-14. Annual audit of association.** The books, records, accounts, inventories, stocks of merchandise, supplies, equipment, and all affairs of the association must be audited and examined once in each year by the state auditor. The audit must be made as soon as possible after June thirtieth in each year. Said audit and the report thereof must disclose fairly and accurately the actual condition of the association as of June thirtieth of that year. Profits and losses may be computed only on such contracts and commitments, or parts thereof, as have been completed on said date, and no estimates of forecasts may be made as to the probable loss or gain on transactions to be fulfilled after said date. Inventories of grains, supplies, and stocks on hand must be computed on the basis of cost or market, on a consistent basis, in accordance with generally accepted accounting principles. The report may disclose the actual obligations and commitments of the association on existing unfulfilled contracts, and the consideration and prices fixed in said contracts, if, in the judgment of said state auditor, the same are necessary to a complete audit, but the report constitutes a factual report of existing conditions, and, to the fullest extent possible, all estimates, forecasts, and probabilities must be eliminated therefrom. Copies of such audit report upon completion must be filed with the industrial commission, the manager of the association, with the state auditor, and a consolidated balance sheet and operating statement must be made public.

**54-18-15. Additional audits.** The industrial commission may direct unexpected or unscheduled audits other than the annual audit provided for in section 54-18-14 at such times and by such auditor as it shall deem proper to protect the interests of the state.

**54-18-16. Contracts of association recognized - Property to remain vested in state.**  
Repealed by omission from this code.

**54-18-17. Industrial commission to establish research and processing unit for soybeans and flaxseed.** The industrial commission shall install at the association equipment for the processing of soybeans and flaxseed and equipment designed for the conducting of research leading to the manufacture and sale of soybeans and flaxseed. Storage facilities also must be established for the storage of soybeans and flaxseed.

**54-18-18. Contractor to be paid during progress of work - Retainage - Failure to pay - Rate of interest - Investment of retainage.** If the contractor to whom a contract for construction or the provision of equipment to the association is let properly performs the work therein designated, the mill manager, at least once in each calendar month during the continuance of the contract work, shall meet, receive, and consider estimates furnished by the agent, engineer, or architect acting for the association or if not so furnished, then by the contractor, and shall allow such estimates in an amount of the estimated value of the labor and material furnished upon the contract, and of the material then upon the ground for use in the contract, subject to retentions of ten percent of each estimate presented until the time the project is fifty percent completed, with no further retainage on estimates during the continuance of the contract. Notwithstanding the requirements of any other law, the industrial commission may authorize the mill manager to prepay for equipment prior to delivery to the construction site if the industrial commission determines:

1. Prepayment is in the best interest of the association;
2. The association's interest will be adequately protected; and

3. The equipment is of a type that is not fungible and could not be sold except at a discount to another because it is constructed to specifications required by the association.

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

**54-18-19. Transfer of North Dakota mill and elevator profits to general fund.** The industrial commission shall transfer to the state general fund fifty percent of the annual earnings and undivided profits of the North Dakota mill and elevator association after any transfers to other state agricultural-related programs. The moneys must be transferred on an annual basis in the amounts and at the times requested by the director of the office of management and budget.

**54-18-20. Gain-sharing program.** For the purpose of this section, "gain-sharing program" means a program approved annually by the industrial commission with provisions that promote profitability, productivity, and safety. Any gain-sharing program approved by the industrial commission must include provisions that ensure that no payouts occur unless mill and elevator profits exceed one million dollars and transfers will be made to the state general fund for that program year.

**54-18-21. Annual transfer.** Within thirty days after the conclusion of each fiscal year, the industrial commission shall transfer five percent of the net income earned by the state mill and elevator association during that fiscal year to the agricultural fuel tax fund.