

Fifty-sixth Legislative Assembly, State of North Dakota, begun in the Capitol in the City of Bismarck, on Tuesday, the fifth day of January, one thousand nine hundred and ninety-nine

SENATE BILL NO. 2015
(Appropriations Committee)
(At the request of the Governor)

AN ACT to provide an appropriation for defraying the expenses of the various divisions under the supervision of the director of the office of management and budget; to provide other appropriations; to provide for various transfers and financial transactions; to provide an exemption from the provisions of section 54-44.1-11 of the North Dakota Century Code; to provide statements of legislative intent; to provide for a legislative council study; to create and enact a new section to chapter 54-06, a new section to chapter 54-11, a new section to chapter 54-23.2, five new sections to chapter 57-34, and a new section to chapter 65-02 of the North Dakota Century Code, relating to the collection and receipt of public funds, mobile data terminal and 911 service fees, the audit and assessment of telecommunications carriers, deficiency notice protest and appeal procedure, claim for credit or refund of the tax on telecommunications carriers, preservation of records, and resale certificates, and payments in lieu of taxes on workers compensation bureau property; to amend and reenact subsection 2 of section 4-14.1-07, section 15-39.1-26, subsection 2 of section 32-12.2-07, sections 34-15-07, 39-12-20, subdivision g of subsection 3 of section 49-23-04, sections 54-16-04.1, 54-16-04.2, 54-27.2-02, 54-44-04.6, 57-34-01, 57-34-02, 57-34-03, 57-34-06, and 57-34-10 of the North Dakota Century Code, relating to ethanol plants, the collection, investment, and deposit of state funds, time periods under the one-call excavation notice system, the risk management fund, emergency commission approvals, the budget stabilization fund, and telecommunications carriers gross receipts tax revenues; to provide a penalty; to provide a continuing appropriation; to provide an effective date; to provide an expiration date; to provide for retroactive application; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the various divisions under the supervision of the director of the office of management and budget for the purpose of defraying their expenses, for the biennium beginning July 1, 1999, and ending June 30, 2001, as follows:

Subdivision 1.

OFFICE OF MANAGEMENT AND BUDGET

Administration	\$2,982,026
Fiscal management	3,875,828
Facility management	8,074,694
Central personnel	1,212,300
Division of community services	42,035,197
Risk management	959,911
Statewide compensation plan	<u>5,400,000</u>
Total all funds	\$64,539,956
Less estimated income	<u>46,088,243</u>
Total general fund appropriation	\$18,451,713

Subdivision 2.

INFORMATION SERVICES DIVISION

Information resource management	\$49,659,295
Total all funds	\$49,659,295

Less estimated income	49,409,295
Total general fund appropriation	<u>\$250,000</u>

Subdivision 3.

CENTRAL SERVICES

Central services	\$5,454,471
Total all funds	<u>\$5,454,471</u>
Less estimated income	4,774,332
Total general fund appropriation	<u>\$680,139</u>

Subdivision 4.

STATE RADIO COMMUNICATIONS

Salaries and wages	\$2,468,120
Operating expenses	1,788,580
Equipment	<u>160,000</u>
Total all funds	<u>\$4,416,700</u>
Less estimated income	514,990
Total general fund appropriation	<u>\$3,901,710</u>
Grand total general fund appropriation section 1	\$23,283,562
Grand total special funds appropriation section 1	\$100,786,860
Grand total all funds appropriation section 1	<u>\$124,070,422</u>

SECTION 2. APPROPRIATION. There is hereby appropriated from federal funds \$6,000,000, or so much of the sum as may be necessary, to the director of the office of management and budget for the division of community services for flood-related disasters and the weatherization of low-income homes, for the period beginning with the effective date of this Act and ending June 30, 1999.

SECTION 3. APPROPRIATION. There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$360,000, or so much of the sum as may be necessary, to the emergency commission for the purpose of paying costs associated with Americans with Disabilities Act litigation to which the department of transportation is a party for the biennium beginning July 1, 1999, and ending June 30, 2001. The emergency commission may use the funds to make payments to the plaintiffs in the event a judgement is entered against the state in Miller v. State of North Dakota.

SECTION 4. APPROPRIATION - UNIVERSITY SYSTEM - GRANT TO PRAIRIE PUBLIC BROADCASTING. There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$415,000, or so much of the sum as may be necessary, to the university system office for the purpose of providing a grant to be used as matching funds by prairie public broadcasting for phase I of the project to convert to digital television broadcasting.

SECTION 5. ATTORNEY GENERAL - GAMING ENFORCEMENT GRANTS - LINE ITEM TRANSFERS. Notwithstanding section 54-16-04 and section 5 of Senate Bill No. 2003, as approved by the fifty-sixth legislative assembly, the emergency commission may authorize the attorney general to make transfers between the line items in section 1 of Senate Bill No. 2003 of up to the sum of \$310,086 for the purpose of providing additional local gaming enforcement grants in accordance with the provisions of section 6 of Senate Bill No. 2003, for the biennium beginning July 1, 1999, and ending June 30, 2001.

SECTION 6. APPROPRIATION. The amount of \$25,000, or so much of that amount as may be necessary, is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, to the council on the arts for the purpose of providing a grant to the plains art museum for the Lewis and Clark bicentennial event, for the biennium beginning July 1, 1999, and ending June 30, 2001. The council on the arts may provide the grant only after the plains art museum has raised \$25,000 of other funds to be used to match the general fund moneys appropriated in this section.

SECTION 7. LINE ITEM TRANSFERS - EMERGENCY COMMISSION AND BUDGET SECTION APPROVAL. Upon approval of the emergency commission, the director of the office of

management and budget may transfer between various line items in subdivisions 1, 2, and 3 of section 1 of this Act appropriation authority of up to ten percent of a given line item to adjust for changing circumstances in meeting established performance measures. Any further transfers must be approved by the budget section.

SECTION 8. CAPITOL BUILDING FUND. The amount of \$225,000, or so much of the sum as is necessary, included in the estimated income line item in subdivision 1 of section 1 of this Act, is to be spent by the facility management division from the capitol building fund during the biennium beginning July 1, 1999, and ending June 30, 2001. The amount of \$25,000, or so much of the sum as is necessary, included in the estimated income line item in subdivision 1 of section 1 of this Act, is to be spent by the administration division from the capitol building fund for capitol grounds planning during the biennium beginning July 1, 1999, and ending June 30, 2001.

SECTION 9. EXEMPTION. The fiscal management appropriation contained in subdivision 1 of section 1 of chapter 15 of the 1997 Session Laws is not subject to the provisions of section 54-44.1-11 for up to an amount of \$750,000 and any unexpended funds from this appropriation are available for continued development and operating costs of the accounting, management, and payroll systems during the biennium beginning July 1, 1999, and ending June 30, 2001.

SECTION 10. SPECIAL COMPENSATION ADJUSTMENTS FOR CLASSIFIED STATE EMPLOYEES. It is the intent of the fifty-sixth legislative assembly that the statewide compensation plan appropriation included in subdivision 1 of section 1 of this Act be used for market equity compensation adjustments for classified state employees. The special market equity adjustments are to begin with the month of July 1999, to be paid in August 1999. The special market equity adjustments are to be independent of any general salary increase provided by this legislative assembly.

The special market equity increases are to be prioritized based on equity for employees whose salaries are furthest from their respective salary range midpoints effective July 1, 1999. Special market equity increases may not be given to employees whose salary exceeds the midpoints of their assigned salary range effective July 1, 1999.

Probationary employees are eligible for the special market equity increases. Employees whose documented performance levels do not meet standards are not eligible for the special market equity increases.

The central personnel division shall provide a model base plan to each agency. Agencies may adopt the model plan, adopt the model plan with exceptions, or offer an alternative plan that meets the intent outlined in this section.

Upon adoption of an appropriate plan and application to the central personnel division, the division shall transfer appropriated general funds or special fund spending authority for the increases to the agencies.

SECTION 11. INTENT - STATE EMPLOYEE COMPENSATION ADJUSTMENTS - GUIDELINES. It is the intent of the fifty-sixth legislative assembly that 1999-2001 compensation adjustments for permanent state employees are to be increases of a minimum of \$35 per month, beginning with the month of July 1999, to be paid in August 1999, and a minimum of \$35 per month, beginning with the month of July 2000, to be paid in August 2000. Any increases greater than \$35 per month may not be given across-the-board and must be based on merit and equity. Each agency appropriation is increased by 2.0 percent per year.

Probationary employees and employees whose documented performance levels do not meet standards are not eligible for the general or additional increases.

During the biennium, no salary increase other than the \$35 per month in July 1999 and \$35 per month in July 2000 may be given to an employee whose salary exceeds or would exceed the salary range maximum.

It is the intent of the fifty-sixth legislative assembly that the workers compensation bureau provide pay raises based on merit and performance throughout the 1999-2001 biennium.

An agency may provide average salary increases of up to 3.0 percent for the second year of the 1999-2001 biennium only to the extent that the increase can be paid without an increase in the agency's appropriation. State agencies and institutions shall report to the office of management and budget on the amounts provided for salary increases for the second year of the biennium, any amounts transferred between line items pursuant to section 12 of this Act, the source of funding, and the impact on the provision of agency services. The office of management and budget shall report to the budget section at its December 2000 meeting concerning the amounts provided by state agencies and institutions for salary increases for the second year of the biennium, line item transfers relating to the increases, the source of the funding, and the impact on the provision of agency services.

SECTION 12. STATE AGENCIES - LINE ITEM TRANSFER AUTHORITY. Notwithstanding the provisions of chapter 54-16, the director of the office of management and budget and the state treasurer shall make transfers of funds between line items of an agency or institution upon the request of the agency or institution in order to provide for an average of 3.0 percent employee salary increases for the second year of the 1999-2001 biennium as provided in section 11 of this Act.

SECTION 13. INTENT. Within the authority included in subdivision 1 of section 1 of this Act, are the following grants and special items:

Boys and girls clubworks	\$53,000
State contingencies	600,000
State memberships and related expenses	317,000
Firemen's association	63,000
Unemployment insurance	1,200,000
Capitol grounds planning commission	25,000
State lobbyist	120,000

SECTION 14. TRANSFER. During the biennium beginning July 1, 1999, and ending June 30, 2001, the director of the office of management and budget is authorized to transfer special funds to the general fund as follows:

Lands and minerals trust fund	\$3,000,000
Public employees life insurance program	1,500,000
Financial institutions regulatory fund	200,000

SECTION 15. DEVELOPMENTAL DISABILITIES REVOLVING LOAN FUND - AUTHORITY TO SELL LOANS - TRANSFERS. Between January 1 and June 30, 2001, at the request of the director of the office of management and budget, the executive director of the department of human services shall sell such loans in the developmental disabilities revolving loan fund created under North Dakota Century Code section 6-09.6-01, as may be necessary to the Bank of North Dakota to provide \$2,150,000, or so much thereof as may be necessary, with the proceeds to be deposited in the general fund. The loans may only be sold to the extent necessary to achieve the June 30, 2001, ending general fund balance as estimated by the fifty-sixth legislative assembly.

SECTION 16. FIRE AND TORNADO FUND. The amount of \$63,000, or so much of the amount as is necessary, included in the estimated income line item in subdivision 1 of section 1 of this Act, is from the fire and tornado fund.

SECTION 17. BANK OF NORTH DAKOTA TRANSFERS TO STATE GENERAL FUND. During the biennium ending June 30, 2001, the industrial commission shall transfer to the state general fund up to \$50,000,000 from the current earnings and the accumulated undivided profits of the Bank of North Dakota. No more than \$15,000,000 of the amount transferred may come from accumulated undivided profits. The moneys must be transferred in the amounts and at such times as requested by the director of the office of management and budget.

No transfers may be made that would reduce the Bank's capital structure below \$100,000,000.

SECTION 18. CONTINGENT BANK OF NORTH DAKOTA TRANSFERS TO STATE GENERAL FUND - BUDGET SECTION APPROVAL. If, during the biennium ending June 30, 2001, the director of the office of management and budget determines via revised projections that general

fund revenue collections will not meet the revenues as forecast in the March 1999 legislative forecast, then the industrial commission shall transfer to the state general fund an additional amount, as determined by the director of the office of management and budget and as approved by the budget section, from the earnings and accumulated and undivided profits of the Bank of North Dakota. Transfers made under the provisions of this section may not be made before July 1, 2000, and may only be made to the extent that the transfer is necessary to achieve a projected June 30, 2001, general fund balance of \$10,000,000. The moneys must be transferred in amounts and at such times as requested by the director of the office of management and budget. The additional amount transferred may not exceed the lesser of \$40,000,000 or the revenue shortfall of actual collections compared to the March 1999 legislative forecast.

No transfers may be made that would reduce the Bank's capital structure below \$100,000,000.

SECTION 19. FEDERAL PROGRAM TERMINATIONS - BLOCK GRANT - FUNDING REDUCTIONS - RELATED PROGRAM REDUCTIONS - REPORTS TO THE BUDGET SECTION. If the federal government during the 1999-2001 biennium terminates funding for any program administered by an agency, department, or institution of the state of North Dakota, the agency, department, or institution, subject to budget section approval, may terminate the program and not replace the reduction in federal funds with state funds, notwithstanding any other provision of law. If the federal government combines funding for separate programs in a block grant resulting in a reduction of total federal funds available for those programs, the administering agency, department, or institution may, subject to budget section approval, prioritize or reprioritize programs as necessary in making programmatic reductions. The agency, department, or institution may administer funds available under a new federal block grant or similar measure, consistent with the terms of that measure, notwithstanding any other provisions of law intended to conform to or implement the provisions of the repealed federal Act, and shall report any program terminations, reductions, or changes resulting from this section to the budget section of the legislative council for its approval.

SECTION 20. PROGRAM-BASED PERFORMANCE BUDGETING. The office of management and budget shall discontinue the program-based performance budgeting pilot project when preparing the 2001-03 biennium budget documents and accompanying appropriation bills. Budget documents for the 2001-03 biennium are to be based on the standard line items and are not to contain agency performance measures.

SECTION 21. LEGISLATIVE COUNCIL INTERIM STUDY OF PERFORMANCE INCENTIVE PILOT PROGRAMS. The legislative council shall consider studying the establishment of agency performance incentive pilot programs. If conducted, the study should address how agencies could develop, implement, administer, maintain, and evaluate performance incentive pilot programs. The study should also address the development of personnel policies and procedure manuals and how pay raises which may not be across the board are to be awarded as a reward and incentive for superior performance and the length of time they may be in effect. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-seventh legislative assembly.

SECTION 22. UNIVERSITY OF NORTH DAKOTA WINTER SPORTS FACILITY MAINTENANCE FUND. The university of North Dakota shall establish a reserve fund to be used to provide for future repair and maintenance costs related to the winter sports facility to be constructed at the university of North Dakota. The university shall establish a reserve fund for this purpose from building operating profits, donations, or other funds.

SECTION 23. AMENDMENT. Subsection 2 of section 4-14.1-07 of the 1997 Supplement to the North Dakota Century Code as amended by section 11 of House Bill No. 1019, as approved by the fifty-sixth legislative assembly, is amended and reenacted as follows:

2. An ethanol plant that was in operation before July 1, 1995, and which ~~produced~~ has a production capacity of fewer than fifteen million gallons [56781000 liters] of ethanol in the previous fiscal year may receive up to seven hundred fifty thousand dollars in production incentives from the state for production in a fiscal year. An ethanol plant that was in operation before July 1, 1995, and which has a production capacity of fifteen million

gallons [56781000 liters] or more of ethanol per year is not eligible for production incentives from the state.

SECTION 24. AMENDMENT. Section 15-39.1-26 of the North Dakota Century Code is amended and reenacted as follows:

15-39.1-26. Investment of moneys in fund - Interest and earnings attributable to fund. Investment of the fund ~~shall be~~ is under the supervision of the state investment board in accordance with chapter 21-10. ~~Such~~ The moneys must be placed for investment only with a firm or firms whose endeavor is money management, and only after a trust agreement or contract has been executed. Investment costs may be paid directly from the fund, and are hereby appropriated for that purpose, in accordance with section 21-10-06.2. All interest and earnings on funds administered by the board must be credited to the fund.

SECTION 25. AMENDMENT. Subsection 2 of section 32-12.2-07 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. The state risk management fund is a special fund in the state treasury administered by the director of the office of management and budget. The fund is a revolving fund consisting of contributions from participating state entities, all payments received by the fund from its activities, and other appropriations by the legislative assembly. The state investment board shall invest the fund in accordance with chapter 21-10. Funds received as contributions from state entities, all other payments deposited in the fund, and interest and income received on investments are hereby appropriated on a continuing basis for the purposes of the fund. Section 54-44.1-11 does not apply to the fund.

SECTION 26. AMENDMENT. Section 34-15-07 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

34-15-07. Disposition of civil money penalties. A civil money penalty collected under this chapter must be paid into the state treasury for deposit in the general fund ~~after the costs of recovering the civil money penalty are deducted therefrom.~~

SECTION 27. AMENDMENT. Section 39-12-20 of the North Dakota Century Code is amended and reenacted as follows:

39-12-20. Proceeds of sale - Continuing appropriation. The proceeds of sale must be ~~applied first to the payment of~~ deposited with the state treasurer. The state treasurer shall deposit in the highway fund an amount equal to the amount of the charges assessed pursuant to section 39-12-17 ~~after paying the costs to the county. An amount equal to the costs of the proceedings, including attorneys and witness fees and costs, and next to the payment of the charges assessed. Such charges must be remitted to the state treasurer to be credited to the highways fund~~ is appropriated on a continuing basis out of the funds collected to the county in which the prosecution took place for the purpose of defraying the costs of prosecution. The balance of the proceeds of any sale after the payment of costs and charges ~~must~~ is appropriated on a continuing basis out of the funds collected to be paid ~~over by the sheriff~~ to the person entitled thereto as determined by the court or must be deposited with the clerk of court for such payment.

SECTION 28. AMENDMENT. Subdivision g of subsection 3 of section 49-23-04 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- g. An excavator may not use a location more than ~~seventy-two hours~~ ten days, or any extension of that period, after the planned excavation date unless the excavator has made previous arrangements with the operators affected.

SECTION 29. A new section to chapter 54-06 of the North Dakota Century Code is created and enacted as follows:

Expenses incurred to collect funds owed the state - Continuing appropriation. If a state agency enters a contract with a collection or credit agency to collect money due the state, the fees for services, reimbursement, or other remuneration to the collection or credit agency must be based on the

amount of money actually collected. All funds collected on behalf of a state agency by a collection or credit agency must be deposited with the state treasurer. An amount equal to the amount of fees for services, reimbursement, or any other remuneration to the collection or credit agency as set forth in the contract is appropriated from the fund into which the money collected was deposited to the state agency for which the funds were collected for the payment of fees due under the contract.

SECTION 30. A new section to chapter 54-11 of the North Dakota Century Code is created and enacted as follows:

Appointment of agents. The treasurer may appoint agents for the purpose of receiving public funds as required by section 12 of article X of the Constitution of North Dakota. If appointed by the state treasurer, the Bank of North Dakota shall serve as an agent of the state treasurer for the purpose of receiving public funds, including funds that must be deposited in higher education institution special revenue funds.

SECTION 31. AMENDMENT. Section 54-16-04.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-16-04.1. May authorize acceptance and disbursement of federal funds. The emergency commission with the advice and counsel of the executive office of the budget may authorize the state treasurer to receive any moneys not appropriated by the legislative assembly which are made available by any federal agency and which the legislative assembly has not indicated an intent to reject. The emergency commission may authorize pass-through federal funds from one state agency to another state agency. The emergency commission, with approval of the budget section of the legislative council if the amount under consideration exceeds fifty thousand dollars, may authorize any state officer to expend federal moneys from the date such moneys become available until June thirtieth following the next regular legislative session. The expenditures must be consistent with state law and with the terms of the grant and the program may not commit the legislative assembly for matching funds in the future unless the program has first been approved by the legislative assembly. A state officer may not expend funds received from the federal government which have not been specifically appropriated by the legislative assembly except as provided in this chapter. A state officer shall submit an expenditure plan with a request for approval under this section of expenditure of federal funds combined with or as part of a block grant for a new or existing program.

SECTION 32. AMENDMENT. Section 54-16-04.2 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-16-04.2. Commission may authorize acceptance and expenditure of moneys. The emergency commission, upon the advice of the office of management and budget, with approval of the budget section of the legislative council if the amount under consideration exceeds fifty thousand dollars, may authorize a state officer to receive moneys from gifts, grants, donations, or other sources, not otherwise appropriated by the legislative assembly, for new or existing programs if the legislative assembly has not indicated an intent to reject the moneys or the program. The emergency commission may authorize the state officer to expend money received under this section from the date the money becomes available until June thirtieth following the next regular legislative session.

SECTION 33. A new section to chapter 54-23.2 of the North Dakota Century Code is created and enacted as follows:

Mobile data terminal and 911 service fees. State radio communications shall establish and charge fees to provide mobile data terminal service to interested local law enforcement agencies. The fees must be based on actual costs incurred by state radio communications for providing the service.

State radio communications shall charge at least twenty cents per telephone for 911 services provided to political subdivisions. Each county currently receiving 911 services from state radio communications shall abide by the standards established by the governor's emergency services advisory committee.

SECTION 34. AMENDMENT. Section 54-27.2-02 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-27.2-02. (Effective through June 30, 1999) Certain general fund revenues to be deposited in the budget stabilization fund. Notwithstanding any other provision of law except section 54-27.2-01, any amount in the state general fund in excess of sixty-five million dollars at the end of any biennium must be transferred by the state treasurer to the budget stabilization fund. For purposes of this section, "at the end of any biennium" means after cancellation of unexpended appropriations under section 54-44.1-11.

~~(Effective July 1, 1999) Certain general fund revenues to be deposited in the budget stabilization fund. Notwithstanding any other provision of law except section 54-27.2-01, any amount in the state general fund in excess of forty million dollars at the end of any biennium must be transferred by the state treasurer to the budget stabilization fund. For purposes of this section, "at the end of any biennium" means after cancellation of unexpended appropriations under section 54-44.1-11.~~

SECTION 35. AMENDMENT. Section 54-44-04.6 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-44-04.6. State surplus property - Department heads to inform director - Disposition of property - Proceeds - Exchange of property.

1. The person in charge of any department, agency, or institution of the state shall inform the director of the office of management and budget or the director's designee whenever that department, agency, or institution possesses property surplus to its needs, whether originally obtained with state or other funds.
2. State surplus property must be transferred at fair market value to state agencies, political subdivisions, and nonprofit organizations eligible to receive federal surplus property under the Federal Property Administrative Services Act of 1949, as amended. Eligible organizations must be notified of the availability of property on a regular basis.
3. If not disposed of under subsection 2, then by sale on sealed bids or at public auction to the highest and best bidder for property valued at more than three thousand dollars, with no money deposit required prior to sale, or by sealed bids, public auction, or negotiation at fair value for property valued at less than three thousand dollars.
4. All proceeds received from the transfer or sale of state surplus property must be deposited into the fund from which the property was originally purchased, less administrative expenses with the state treasurer for deposit in the surplus property operating fund. For each piece of property, the office of management and budget shall transfer to the agency from which the property was received an amount equal to the proceeds of the sale less the administrative expenses of the sale. The agency shall deposit the proceeds into the fund from which the property was originally purchased.
5. No department, agency, or institution may exchange items as part of a purchase price of new items until a detailed statement of the value of the items to be exchanged and request for approval have been submitted to the director of the office of management and budget. The director shall approve the exchange only if the director has determined that the item has been valued at fair value.

SECTION 36. A new section to chapter 57-34 of the North Dakota Century Code is created and enacted as follows:

Tax commissioner to audit returns and state board of equalization to assess tax. The tax commissioner shall proceed to audit the returns of telecommunications carriers not later than three years after the due date of the return, or three years after the return was filed, whichever period expires later. The state board of equalization shall assess the tax and, if any additional tax is found due, the tax commissioner shall notify the taxpayer in detail as to the reason for the increase.

SECTION 37. A new section to chapter 57-34 of the North Dakota Century Code is created and enacted as follows:

Deficiency, protest, and appeal.

1. When tax is understated on a return because of a mathematical or clerical error, the tax commissioner shall notify the telecommunications carrier of the error and the amount of additional tax due. This notice is not a notice of deficiency and the telecommunications carrier has no right to protest.
2. If upon audit the tax commissioner finds additional tax due, the tax commissioner shall notify the telecommunications carrier and the state board of equalization of the deficiency in the tax amount. A notice of deficiency must be sent to the telecommunications carrier by first-class mail and must state the amount of additional tax due and set forth the reasons for the increase.
3. A telecommunications carrier has thirty days from the date of mailing of the notice of deficiency to file a written protest with the state board of equalization objecting to the assessment of additional tax due. The protest must set forth the basis for the protest and any other information that may be required by the state board of equalization. If a telecommunications carrier fails to file a written protest within the time provided, the amount of additional tax stated in the notice of deficiency becomes finally and irrevocably fixed. If a telecommunications carrier protests only a portion of the tax commissioner's finding, the portion that is not protested becomes finally and irrevocably fixed.
4. If a protest is filed, the state board of equalization shall reconsider the assessment of additional tax due.
5. Within six months after the protest is filed, the state board of equalization shall mail to the telecommunications carrier a notice of reconsideration and assessment which must respond to the telecommunications carrier's protest and assess the amount of any additional tax due. The amount set forth in that notice becomes finally and irrevocably fixed unless the telecommunications carrier brings an action against the state in district court within six months of the mailing of the notice of reconsideration and assessment.

SECTION 38. A new section to chapter 57-34 of the North Dakota Century Code is created and enacted as follows:

Claims for credit or refund.

1. A telecommunications carrier may file a claim for credit or refund of an overpayment of any tax imposed by this chapter within three years after the due date of the return or within three years after the return was filed, whichever period expires later.
2. A claim for credit or refund must be made by filing with the tax commissioner an amended return, or other report as prescribed by the tax commissioner, accompanied by a statement outlining the specific grounds upon which the claim for credit or refund is based.
3. The tax commissioner shall notify the telecommunications carrier if the state board of equalization disallows all or part of a claim for credit or refund. The decision of the state board of equalization denying a claim for credit or refund is final and irrevocable unless the telecommunications carrier brings an action against the state in district court within six months of the mailing of the notice denying the claim for credit or refund.

SECTION 39. A new section to chapter 57-34 of the North Dakota Century Code is created and enacted as follows:

Preservation of records. Every telecommunications carrier required to make a return and pay any tax under this chapter shall preserve records of the gross proceeds of sale as the commissioner may require and every carrier shall preserve for a period of three years and three months all invoices and other records of telecommunications services purchased for resale. All of these books, invoices, and other records must be open to examination at any time by the commissioner or any duly authorized agent of the commissioner.

SECTION 40. A new section to chapter 57-34 of the North Dakota Century Code is created and enacted as follows:

Resale certificates. A telecommunications carrier who receives a resale certificate certifying that another telecommunications carrier holds a North Dakota sales and use tax permit for sales or use tax purposes under section 57-39.2-14 is relieved from submitting the telecommunications gross receipts tax upon the sale of telecommunications services to be resold by the telecommunications carrier submitting the certificate. When a telecommunications carrier submits a false resale certificate to another telecommunications carrier, the telecommunications carrier that submitted the certificate is liable for the telecommunications gross receipts tax on the sale. A hospital, hotel, motel, or similar place of temporary accommodation selling telecommunications service to its patients or guests is not a telecommunications carrier under this section.

SECTION 41. AMENDMENT. Section 57-34-01 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-34-01. Definitions. The definitions in this section may not be construed to subject a telecommunications carrier or telecommunications service to the provisions of title 49. As used in this chapter, unless the context or subject matter otherwise clearly requires:

1. "Adjusted gross receipts" means telecommunications carrier gross receipts less all amounts paid by the reporting telecommunications carrier on telecommunications service that is taxable under this chapter in state and local sales and use taxes and federal excise taxes and less amounts paid by the reporting telecommunications carrier to another telecommunications carrier for directory assistance originated by a caller in this state.
2. "Company" includes any individual, copartnership, business trust, corporation, limited liability company, joint-stock company, association, or any other organization.
2. 3. "Gross receipts" means all telecommunications carrier retail revenues from telecommunications service charges billed to any station in this state and from charges to another telecommunications carrier for directory assistance originated by a caller in this state.
3. 4. "Station" means a subscriber service address located in this state with a distinct call number designation or distinct extension number designation. If this is not a defined location, "station" means the location of the primary use of telecommunications equipment as determined by telephone number, authorization code, or billing address.
4. 5. "Telecommunications carrier" means a ~~person~~ company that is engaged in the business of furnishing telecommunications service within this state. The term includes a reseller of telecommunications service.
5. 6. "Telecommunications service" means transmitting for consideration of two-way communication by wire, cable, fiber optics, radio, lightwave, microwave, satellite, or other means. The term includes:
 - a. Essential telecommunications service and nonessential telecommunications service as defined in section 49-21-01;
 - b. Telecommunications service that originates and terminates in this state and is billed to a station in this state;
 - c. Interstate telecommunications service that originates or terminates in this state and is billed to a station in this state; and
 - d. ~~A hospital, hotel, motel, or similar place of temporary accommodation selling telecommunications service to its patients or guests, if there is a separately stated charge for the service; and~~
 - e. Telegraph service.
6. 7. "Telecommunications service charges" means the value of all consideration received by a telecommunications carrier for provision of telecommunications service and recovery within

the year of telecommunications service charges written off in a prior year as uncollectible. For a telecommunications carrier operating on any form of mutual basis, the term includes all amounts assessed against the members for the operation and maintenance of the business. The term does not include revenue from merchandising, jobbing and contract work, maintenance or repair of customer premises equipment including equipment leased or rented by the customer from any source, operations not directly related to provision of telecommunications service, amounts charged for billing and collection on behalf of another telecommunications carrier, proceeds from transfer of capital stock, or transfer, sale, or lease of property not directly related to telecommunications service. The term does not include amounts collected for or amounts collected from federal and state mechanisms to preserve and advance universal service.

SECTION 42. AMENDMENT. Section 57-34-02 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-34-02. Reports of telecommunications carriers - Penalty.

1. Each telecommunications carrier that received intercarrier telecommunications revenue in the preceding calendar year shall make and file with the tax commissioner, on or before January fifteenth of each year, a list containing the name and mailing address of each telecommunications carrier from which the reporting telecommunications carrier received intercarrier telecommunications revenue in the preceding calendar year. This list is to be filed in addition to the report required by subsection 3.
2. Each telecommunications carrier that provided telecommunications service in the preceding calendar year to one or more pay telephones owned by another company shall make and file with the tax commissioner, on or before January fifteenth of each year, a list containing the name and mailing address for each company that owned a pay telephone served by the reporting telecommunications carrier in the preceding calendar year. This list is to be filed in addition to the report required by subsection 3.
3. Each telecommunications carrier subject to gross receipts taxes under this chapter shall make and file with the tax commissioner, on or before May first of each year, on the form as the tax commissioner may prescribe, a report containing a statement of its gross receipts in this state during the preceding calendar year, amounts paid by the carrier on telecommunications service that is taxable under this chapter during the preceding calendar year in state and local sales and use taxes and federal excise taxes, amounts received from or paid to another telecommunications carrier for directory assistance, and any other information as the tax commissioner may require. The form must include a notice of a telecommunications carrier's right to appeal its assessment to the state board of equalization prior to or at the August meeting of the state board of equalization. Each report must be signed, subject to section 12.1-11-02, by the president, secretary, or other official of the telecommunications carrier.

SECTION 43. AMENDMENT. Section 57-34-03 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-34-03. Computation of taxes by tax commissioner - Exemption for high-volume customers - Continuing appropriation.

1. On or before July fifteenth of each year, the tax commissioner shall review the report under subsection 3 of section 57-34-02 and compute the ~~tentative~~ total tax to be assessed against each telecommunications carrier in this state at a rate of two and one-half percent of adjusted gross receipts. ~~The~~ If the tax commissioner's computation of the total tax differs from the amount computed by a telecommunications carrier, the tax commissioner shall give ten days' notice of the change by mail to each that telecommunications carrier of its tentative total tax under this section and of its right to contest the determination before the state board of equalization at its August meeting on or before July fifteenth. The state board of equalization shall assess the tax under this section after consideration of any contest presented.

2. A telecommunications carrier's retail customer in this state is entitled to a refund equal to two and one-half percent of the amount of telecommunications service charges paid to telecommunications carriers by that customer in excess of eight hundred thousand dollars in a calendar year. A refund claim under this subsection must be filed with the tax commissioner before July first of the year following the calendar year for which the refund is claimed. A claim for refund must be made in the manner prescribed by the tax commissioner. Refunds under this subsection must be paid by the tax commissioner from tax collections under this chapter and are appropriated as a standing and continuing appropriation to the tax commissioner for that purpose.

SECTION 44. AMENDMENT. Section 57-34-06 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-34-06. Duties of county treasurer. The county treasurer shall allocate taxes received under this chapter to the state, the county, and the various taxing districts within the county according to the proportion that taxes paid by telecommunications carriers in locally assessed property taxes and taxes assessed under chapter 57-06 and this chapter in 1997 and received by the state, the county, and each currently existing taxing district in the county bears to all taxes paid by telecommunications carriers in locally assessed property taxes and taxes assessed under chapter 57-06 and this chapter in 1997 and received by the state, the county, and all taxing districts in the county.

SECTION 45. AMENDMENT. Section 57-34-10 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-34-10. Penalties - Interest - Lien for tax.

1. If a telecommunications carrier refuses or neglects to make the reports required by this chapter, or refuses or neglects to furnish any information requested, the tax commissioner shall use the best available facts and estimates to determine taxation of the gross receipts of that carrier. The tax must be imposed upon the basis of that information, ~~and.~~ If any company fails to make the report required under this chapter on or before the first day of May of any year, the state board of equalization shall add a penalty of one-quarter of the tax due for failure to make the required report which must be collected as a part of the tax, but the tax commissioner, upon application, may grant extensions of time within which the returns must be filed.
2. Taxes levied under this chapter are due and payable to the tax commissioner on January first following the year in which the taxes were assessed. ~~The unpaid principal balance of taxes on the following March first is subject to a penalty of three percent, on the following May first an additional penalty of three percent, on the following July first an additional penalty of three percent, and on the following October fifteenth an additional penalty of three percent. Beginning January first of the year following the year the taxes became due, simple interest at the rate of twelve percent per annum applies to the unpaid principal balance until the taxes and penalties are paid. Interest penalties must be prorated to the nearest full month for a fractional year of delinquency. A remittance of tax need not be made and any assessment or collection of tax may not be made unless the amount is at least five dollars, including penalty and interest.~~
3. If any amount of tax imposed by this chapter is not paid on or before March first, or if upon audit an additional tax is found to be due, there must be added to the tax remaining due interest at the rate of one percent of the additional tax for each month or fraction of a month during which the tax remains unpaid, computed from March first to the date paid.
3. 4. Taxes under this chapter constitute a first and paramount lien in favor of the state upon all property and rights to property of the taxpayer. The lien may be foreclosed in the same manner provided by law for mortgages on real or personal property. Whenever any taxpayer liable to pay a tax or penalty imposed refuses or neglects to pay the liability, the amount, including any interest, penalty, or addition to the tax, and the additional costs that may accrue are a lien in favor of the state of North Dakota upon all property and rights to property, whether real or personal, belonging to the taxpayer. The lien attaches at the time

the tax becomes due and payable and continues until the liability for the amount is satisfied.

5. Any mortgagee, purchaser, judgment creditor, or lien claimant acquiring any interest in, or lien on, any property situated in the state, prior to the tax commissioner filing in the central indexing system maintained by the secretary of state a notice of the lien provided for in subsection 4, takes free of, or has priority over, the lien. The tax commissioner shall index in the central indexing system the following data:
 - a. The name of the taxpayer.
 - b. The tax identification number or social security number of the taxpayer.
 - c. The name "State of North Dakota" as claimant.
 - d. The date and time the notice of lien was indexed.
 - e. The amount of the lien.

The notice of lien is effective as of eight a.m. the next day following the indexing of the notice. The tax commissioner shall index any notice of lien with no payment of fees or costs to the secretary of state.

6. Upon payment of the tax, and any accrued penalties and interest, as to which the tax commissioner has filed a notice of lien, the tax commissioner shall index a satisfaction of the lien in the central indexing system without fees or costs.

SECTION 46. A new section to chapter 65-02 of the North Dakota Century Code is created and enacted as follows:

Payments in lieu of taxes by bureau. If a building and associated real property is purchased by the workers compensation bureau pursuant to a legislative grant of authority, the bureau shall make payments in lieu of property taxes in the manner and according to the conditions and procedures that would apply if the building and property were privately owned.

SECTION 47. APPROPRIATION. There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$1,055,877, or so much thereof as may be necessary, and from special funds the sum of \$348,985 to the office of management and budget for the purpose of providing funding to state agencies and institutions to assist in providing the minimum of \$35 per month to permanent state employees for the biennium beginning July 1, 1999, and ending June 30, 2001. The office of management and budget shall transfer the funding provided in this section to state agencies and institutions to provide sufficient funding for the \$35 per month minimum salary increase.

SECTION 48. RETROACTIVE APPLICATION. Section 25 of this Act is effective for all funds received and deposited into the risk management fund on or after July 1, 1997.

SECTION 49. RETROACTIVE APPLICATION - EFFECTIVE DATE - EXPIRATION DATE. Sections 36 through 45 of this Act apply retroactively to all tax years beginning after December 31, 1997. The amendments to subsections 1 and 3 of section 57-34-01 as amended by section 41 of this Act are effective for taxable years beginning after December 31, 1998. The amendments to subsections 1 and 2 of section 57-34-02 as amended by section 42 of this Act are effective for the first two taxable years beginning after December 31, 1999, and are thereafter ineffective.

SECTION 50. APPLICATION. North Dakota Century Code sections 54-16-04 and 54-44.1-11 do not apply to chapter 30 of the 1997 Session Laws.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-sixth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2015.

Senate Vote: Yeas 36 Nays 10 Absent 3

House Vote: Yeas 65 Nays 28 Absent 5

Secretary of the Senate

Received by the Governor at _____ M. on _____, 1999.

Approved at _____ M. on _____, 1999.

Governor

Filed in this office this _____ day of _____, 1999,

at _____ o'clock _____ M.

Secretary of State