

VETOED MEASURES

CHAPTER 558

HOUSE BILL NO. 1330

(Representatives Keiser, Berg, Carlson, Wald)

WORKERS COMPENSATION BUREAU DECISIONS AND JURISDICTION

AN ACT to amend and reenact sections 65-01-16 and 65-05-04 of the North Dakota Century Code, relating to workers compensation bureau decisions, disputed decisions, and continuing jurisdiction; to repeal section 7 of chapter 532 of the 1997 Session Laws, relating to the effective date of chapter 532 of the 1997 Session Laws; and to provide an effective date.

VETO

March 12, 1999

The Honorable Francis J. Wald
Speaker of the House
House Chamber
State Capitol
Bismarck, ND 58505

Dear Speaker Wald:

I am returning to you House Bill 1330, and respectfully veto the same, in order to do what is best for the employers and employees of our State. HB 1330 allows the North Dakota Worker's Compensation Bureau to re-open any decision based upon new information. This is a public policy with which I do not agree for the following reasons:

First, I believe it will invite litigation to interpret the bill, and litigation to challenge the bill's effect upon North Dakota's employees, a result that neither the Bureau, nor citizens of North Dakota want.

Secondly, the bill allows the right to re-open a case, only to the Bureau. It does not afford the employee the same right to re-open a case upon "new information." I believe that is fundamentally unfair.

Third, the bill is in direct response to a Supreme Court decision, Cridland v. NDWCB, 1997, ND 223, 571 N.W.2d 351, which says that Bureau decisions should be final, and it should not be allowed to re-litigate issues it has had an opportunity to litigate. In the Cridland case, the employee applied for and received North Dakota Workers Compensation benefits following a formal hearing. Subsequently, the Bureau chose to re-open the case and seek reimbursement of \$24,000 in benefits. The Supreme Court rejected the Bureau's claim. Its decision is well reasoned and reasonable. It allows the Bureau to continue its current practices, but confirmed that the Bureau does not get more than "one bite at the apple."

The bill's language is unclear. Section 2 provides that the Bureau may re-open a case "on the basis of new information." But, it provides no standards by which to guide decisions for review. In other areas of the law, litigants are allowed only to revisit a case upon "new information" if they show that it was not discoverable at the time of trial even with the exercise of reasonable diligence. We should hold North Dakota Workers Compensation to a similar standard.

The bill also does not provide finality for the parties. Every litigant, every employer, and employee deserves to have confidence in the decisions made the by the Bureau, that those decisions are final. This bill does not afford that finality, but in fact opens cases for review upon standards that are undefined. It risks the limited resources of the employer, the employee, the Bureau, the Office of Administrative Hearings, and the Court, to have issues relitigated repeatedly. We should not endorse bills that provide more litigation and less certainty in Bureau claims.

Finally, the bill erodes the rights of North Dakota workers and their employers to have work related injuries handled in a judicious, prompt manner that affords the employee sure and certain relief for work related injuries. In considering this bill, I am reminded of our Supreme Court's admonition in Baldock v. NDWCB, that continued erosion of workers compensation benefits may reach a point where the fairness of the system no longer supports the underlying bargain of employer immunity.

I have reviewed carefully the testimony of proponents and opponents of the bill. I am convinced that it does not provide wise public policy for our employers and their employees. For these reasons, I respectfully veto the bill.

Sincerely,

Edward T. Schafer
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-01-16 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-01-16. Decisions by bureau - Disputed decisions. The following procedures must be followed in claims for benefits, notwithstanding any provisions to the contrary in chapter 28-32:

1. The bureau shall send a copy of each initial claim form filed with the bureau to the claimant's employer, by regular mail, along with a form for the employer's response, if the employer's response has not been filed at the time the claim is filed. Failure of the employer to file a response within fourteen days from the day the response form was mailed to the employer constitutes the employer's admission that the information in the claim form is correct.
2. The bureau may conduct a hearing on any matter within its jurisdiction by informal internal review of the information of record.
3. The bureau may issue a notice of decision for any decision made by informal internal review and shall ~~serve~~ send the notice of decision ~~on~~ to the parties by regular mail. A notice of decision must include a

statement of the decision, a short summary of the reason for the decision, and notice of the right to reconsideration.

4. A party has thirty days from the day the notice of decision was mailed by the bureau in which to file a written request for reconsideration. The request must state the alleged errors in the decision and the relief sought. The request may be accompanied by additional evidence not previously submitted to the bureau. The bureau shall reconsider the matter by informal internal review of the information of record. Absent a timely and sufficient request for reconsideration, the notice of decision is final and may not be reheard or appealed.
5. Within sixty days after receiving a request for reconsideration, the bureau shall serve on the parties by regular mail a notice of decision reversing the previous decision or, in accordance with the North Dakota Rules of Civil Procedure, an administrative order that includes its findings, conclusions, and order. The bureau may serve an administrative order on any decision made by informal internal review without first issuing a notice of decision and receiving a request for reconsideration.
6. A party has thirty days from the date of service of an administrative order in which to file a request for assistance from the workers' adviser program under section 65-02-27.
7. A party has thirty days, from the date of service of an administrative order or from the day the workers' adviser program mails its notice that the program's assistance is complete, in which to file a written request for rehearing. The request must specifically state ~~each the~~ alleged errors of fact and law to be reheard errors in the decision and the relief sought. Absent a timely and sufficient request for rehearing, the administrative order is final and may not be reheard or appealed.
8. Rehearings must be conducted as hearings under chapter 28-32 to the extent the provisions of that chapter do not conflict with this section. The bureau may arrange for the designation of hearing officers to conduct rehearings and issue recommended findings, conclusions, and orders. In reviewing recommended findings, conclusions, and orders, the bureau may consult with its legal counsel representing it in the proceeding.
9. ~~Within sixty~~ Absent good cause, within thirty days after receiving the recommended findings, conclusions, and order, the bureau shall serve on the parties, in accordance with the North Dakota Rules of Civil Procedure, its findings, conclusions, and posthearing administrative order.
10. A party may appeal a posthearing administrative order to district court in accordance with chapter 65-10 but may not request reconsideration of the order by the bureau.
11. Any notice of decision, administrative order, or posthearing administrative order is subject to review and reopening under section 65-05-04.

12. This section applies to all orders and decisions on all claims regardless of the date of injury or the date the claim was filed.

SECTION 2. AMENDMENT. Section 65-05-04 of the North Dakota Century Code is amended and reenacted as follows:

65-05-04. Bureau has continuing jurisdiction over claims properly filed. If the original claim for compensation has been made within the time specified in section 65-05-01, the bureau at any time, on its own motion or on application, may review the award, and in accordance with the facts found on such review, may end, diminish, modify, or increase the compensation previously awarded, or, if compensation has been refused or discontinued, may award compensation, except that the bureau may not reopen an issue that was noticed for, heard in, and specifically decided as a result of a formal hearing under subsection 8 of section 65-01-16 except on the basis of new information. There is no appeal from a bureau decision not to reopen a ~~claim~~ previous decision after the bureau's ~~order on the ~~claim~~ previous decision~~ has become final.

SECTION 3. REPEAL. Section 7 of chapter 532 of the 1997 Session Laws of North Dakota is repealed.

SECTION 4. EFFECTIVE DATE. Section 2 of this Act applies to all claims regardless of the date of the injury.

Disapproved March 12, 1999
Filed April 14, 1999

CHAPTER 559**SENATE BILL NO. 2425**

(Senator Krauter)
(Representative Nicholas)

LIVESTOCK PRODUCTION LOAN PROGRAM

AN ACT to create and enact a new chapter to title 4 of the North Dakota Century Code, relating to the establishment of a livestock production loan program and the issuance of revenue bonds or other evidences of indebtedness by the industrial commission of North Dakota.

VETO

April 5, 1999

The Honorable Rosemarie Myrdal
President of the Senate
Senate Chamber
State Capitol
Bismarck, ND 58505

Dear President Myrdal:

Attached please find Senate Bill 2425, which I am returning to the Senate and hereby veto.

This legislation attempts to supplant financing available in the private sector through government bonding. It does so in an unfocused fashion that, in any event, appears unworkable.

Based on consultations with bond counsel, it appears the proposed bonds are neither saleable nor tax-exempt. First, they will not find buyers since the full faith and credit of North Dakota is not behind them. These are solely revenue bonds. Investors will be looking for collateral and standing similar as a commercial bank, yet facing additional administrative costs involved with the government bonding.

Second, the bonds will be used to finance private activity and are therefore not tax exempt. Such an exemption is usually a major attraction for investors.

Given these circumstances, any financial problems facing the venture would compel the Industrial Commission to repurchase the bonds. The repurchasing option is an unwise provision in this legislation that would further increase the state's exposure.

In many respects, this bill is reminiscent of the legislation that established the Real Estate Trust Fund in the 1980s. You will recall that the Bank of North Dakota had to write off nearly \$24 million last session stemming from that fund.

It is not ordinarily the practice nor purpose of the Bank of North Dakota to be primary financiers of any non-public venture. The state can and does provide financial assistance, but only with participation of the private sector. No such private involvement is included in this legislation.

The primary problem facing agriculture today is profitability. This legislation does nothing in a significant manner to address profitability, and instead offers false hopes to farmers and ranchers through an agent of the government.

I have, therefore, vetoed the bill and respectfully return the same to the Senate Chambers.

Sincerely,

Edward T. Schafer
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new chapter to title 4 of the North Dakota Century Code is created and enacted as follows:

Declaration of intent. It is hereby found and declared that:

1. The high costs of financing associated with livestock production make it difficult for livestock producers to continue existing livestock production operations and facilities, and also make it difficult to establish a livestock production operation or facility.
2. The high costs of access to capital for livestock production are a contributing factor in the continuing decline in the number of family farms in the state and the opportunity for employment in rural areas.
3. As a result of these conditions, the state is experiencing structural economic weaknesses which can be alleviated, in part, through action by the state designed to provide affordable financing for new and existing livestock production operations and facilities.
4. The encouragement and promotion of livestock production through a loan program as established by this chapter is a public purpose for which the use of public funds provided through the issuance and sale of bonds is a proper governmental function which can best be accomplished by the industrial commission.

Definitions. For purposes of this chapter, unless the context otherwise requires:

1. "Bank" means the Bank of North Dakota.
2. "Bonds" means revenue bonds or other evidences of indebtedness issued by the commission under this chapter.
3. "Commission" means the industrial commission of North Dakota.
4. "Cooperative" means an association incorporated under chapter 10-15, and an association incorporated under the laws of South Dakota which has members residing within this state.
5. "Livestock producer" means an individual or cooperative organized for the purpose of livestock production.

6. "Livestock production" means the business of acquiring, raising, and processing livestock, including real and personal property necessary for all activities related to such production.

Powers. The commission is granted all powers necessary to carry out the purpose and intent of this chapter, including the power to:

1. Enter into contracts or other instruments or agreements necessary or incidental for the performance of its duties and functions under this chapter, including contracts, instruments, or agreements with any department, agency, or instrumentality of the United States of America or this state.
2. Sue and be sued.
3. Borrow money through the issuance and sale of bonds as provided in this chapter.
4. Invest proceeds of its bonds not needed for immediate disbursement, including any reserve funds, in such securities as the commission determines to be prudent, subject to any agreements with the holders of the commission's bonds.
5. Procure insurance, a guaranty, or a letter of credit for the payment of its bonds, including the payment of premiums or other fees, from any public or private entity.
6. Make loans to livestock producers through the loan program established under this chapter and charge any reasonable fees to such borrowers as the commission may determine to be appropriate.
7. Prescribe and approve the forms and procedures for applications by livestock producers for loans to be made under this chapter.
8. Prescribe the terms and other conditions of loans to be made to a livestock producer under this chapter.
9. Consent to any modification, amendment, or other revision with respect to the terms and provisions of its bonds, or of any other contract, instrument, or other agreement to which the commission is a party, subject to any agreements with the holders of the commission's bonds.
10. Purchase bonds issued under this chapter out of any funds available to the commission for such purpose and not pledged to or necessary for some other purpose, and hold, cancel, or sell such bonds, subject to any agreements with its bondholders.

Bank of North Dakota. The commission may delegate to the Bank, and the Bank is authorized to exercise, all administrative powers granted to the commission under this chapter, including processing and reviewing applications for, and closing and servicing loans made to, livestock producers. The Bank may not issue a letter of credit for bonds issued under this Act.

Issuance and sale of bonds - Use of bond proceeds. The commission has the authority to issue its bonds in such principal amounts as the commission determines is necessary to provide sufficient funds to carry out its duties and functions under

this chapter. The proceeds must be used solely to make loans, pay costs of issuance of the bonds, pay accrued or capitalized interest or capitalized principal, and provide any reasonably required reserve funds. The bonds must be authorized by resolution of the commission and must bear such date, mature at such times, bear interest at such rates, be in such denominations, be payable from such sources, and be subject to such terms of redemption as may be provided by such resolution. The bonds may be sold by the commission at public or private sale at such times and at such prices as may be agreed to by the commission. The commission may provide for the refunding or refinancing of the bonds from time to time.

Agreement with bondholders. Any resolution of the commission authorizing the issuance of bonds under this chapter may contain provisions or covenants, which will be a contract or agreement with the bondholders, as to:

1. The setting aside of reserves or sinking funds.
2. Limitations on the purposes to which the proceeds from the sale of bonds may be applied and pledging the proceeds to secure the payment of the bonds.
3. Limitations on the issuance of additional bonds, the terms upon which additional bonds may be issued and secured, and the refunding of outstanding or other bonds.
4. The procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent to such amendment or abrogation, and the manner in which the consent may be given.
5. Vesting in a trustee such property, rights, powers, and duties in trust as the commission may determine, and limiting or abrogating the right of bondholders to appoint a trustee or limiting the rights, powers, and duties of the trustee.
6. Defining the acts, or omissions to act, which constitute a default of the obligations and duties of the commission to the bondholders, and providing for the rights and remedies of the bondholders in the event of a default, provided that the rights and remedies must be consistent with the general laws of the state and other provisions of this chapter.
7. Any other matter, of like or different character, which in any way affects the security or protection of the bondholders.

Reserve fund. The commission must establish and maintain a reserve fund for bonds issued under this chapter. There must be deposited in the reserve fund:

1. All bond proceeds required to be deposited in the reserve fund by the terms of any contract between the commission and the bondholders or by the terms of any resolution of the commission concerning the use of bond proceeds.
2. Any moneys from any other source made available to the commission for deposit in the reserve fund.

Moneys in the reserve fund may be used only to make payments of the principal of and interest on bonds, including any premium required to be paid when bonds are

redeemed prior to maturity, and sinking fund installments as they become due and payable. Moneys in the reserve fund may only be withdrawn in conformity with the terms of any contract between the commission and the bondholders or any resolution of the commission concerning the use of bond proceeds.

Exemption from state and local taxes. All bonds issued under this chapter and the interest or other income payable to and received by bondholders are exempt from taxation by the state or any political subdivision of the state.

Payment of bonds. Bonds issued under the authority of this chapter by the commission are not obligations or debt of the state, and are payable solely from revenues or other funds available to the commission under this chapter. The bonds do not constitute a charge, lien, or encumbrance, legal or equitable, upon any property of the commission or the Bank other than the revenues and property pledged under this chapter. Each bond issued under this chapter must contain a statement that neither the faith and credit nor the taxing power of the state is pledged to the payment of the principal of or interest on the bond.

Legal investments. Bonds issued under the authority of this chapter by the commission are legal investments in which all public officers or public bodies of the state, its political subdivisions, and all banks organized under the laws of the state and engaged in the business of banking may invest funds.

Validity. Bonds issued under the authority of this chapter must be executed by a member of the commission or by facsimile signature and the manual signature of an authenticating agent. Any bond bearing the signature of a member of the commission in office on the date of execution is valid and binding for all purposes for which it was issued. After issuance, all bonds issued under the authority of this chapter by the commission are conclusively presumed to be fully authorized and issued under the laws of the state, and any person or entity is estopped from questioning their authorization, issuance, execution, sale, or delivery by the commission.

Disapproved April 5, 1999
Filed May 3, 1999

CHAPTER 560**HOUSE BILL NO. 1335**

(Representatives Nichols, Drovdal, Nelson, Nicholas)
(Senators Kroeplin, Wanzek)

**AGRICULTURAL PRODUCTS AND LIVESTOCK
CHEMICAL PRESENCE**

AN ACT to create and enact a new section to chapter 4-35 of the North Dakota Century Code, relating to the presence of chemicals in agricultural products and livestock; to provide a penalty; and to provide an effective date.

VETO

April 12, 1999

The Honorable Francis J. Wald
Speaker of the House
House Chamber
State Capitol
Bismarck, ND 58505

Dear Speaker Wald:

I am returning House Bill 1335 to you, and hereby veto the same. The bill has a noble purpose at heart, namely to require producers of our trading partners to comply with the same standards with which North Dakota producers must comply. This is a goal I support and will aggressively pursue in the next two years. However, I cannot sign the bill for the following reasons:

1. The bill does not become effective until July 1, 2001. Consequently, it will have no positive legal effect upon the issues that it is designed to address.
2. However, it may have several negative and unintended consequences that cause me concern. These potential consequences will include the following:
 - a. First, the Canadian Government has indicated that even with the delayed effective date, it will pursue consultations with the United States Trade Representative, which may result in retaliation against North Dakota producers.
 - b. This will require North Dakota to expend resources in these consultations to defend a law that has no legal effect until July 1, 2001. We should not commit taxpayer dollars for such a purpose.
 - c. It may also affect our canola processing industry that relies upon canola from our neighbors to the North. Forty-five percent of canola crushed at Velva comes from Canada.

- d. Finally, the bill may jeopardize what progress is being made to address these issues between our national government and our trading partners. I do not support legislation that has no legal effect yet creates the potential for harming efforts to address these issues in other arenas.

House Bill 1335 has served to put on notice the governments of the United States and Canada that the issues raised by this bill are significant and real, requiring urgent resolution. If they are not resolved successfully and in a timely manner, legislative leaders and governors across the border states are likely to take up these issues again, to seek resolution on their own.

For these reasons, I have vetoed HB 1335 and respectfully return the bill with these objections for your consideration.

Sincerely,

Edward T. Schafer
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 4-35 of the North Dakota Century Code is created and enacted as follows:

Agricultural products and livestock - Certified as chemical free - Penalty.

1. It is a class B misdemeanor for any person to transport any agricultural product or livestock into this state from another country or to pass through this state with an agricultural product from another country unless the product or livestock has a phytosanitary or sanitary certificate stating:
 - a. The agricultural product or livestock does not contain any chemical levels in excess of established maximum residue limits;
 - b. The agricultural product or livestock shows no trace of any chemical for which no maximum residue limit has been established; and
 - c. The agricultural product or livestock shows no trace of any chemical not approved for use on such agricultural product or livestock in this country.
2. For purposes of this section:
 - a. "Agricultural product" means crops, crop products, or plants, but does not include products for the sole consumption of the transporter or the transporter's family.
 - b. "Livestock" does not include products for the sole consumption of the transporter or the transporter's family.

SECTION 2. EFFECTIVE DATE. This Act becomes effective on July 1, 2001.

Disapproved April 12, 1999

Filed April 14, 1999

CHAPTER 561

HOUSE BILL NO. 1108

(Natural Resources Committee)

(At the request of the Tax Commissioner)

INTERNET SERVICE PROVIDER TAX

AN ACT to create and enact five new sections to chapter 57-34 of the North Dakota Century Code, relating to 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; to amend and reenact sections 57-34-01, 57-34-02, 57-34-03, 57-34-06, and 57-34-10 of the North Dakota Century Code, relating to definitions, identification of taxable resellers and pay telephone operators, elimination of tentative assessments, allocation of revenue, filing extensions, tax liabilities of less than five dollars, and interest and lien provisions; to provide for retroactive application; to provide an effective date; and to provide an expiration date.

VETO

April 15, 1999

The Honorable Francis J. Wald
Speaker of the House
House Chamber
State Capitol
Bismarck, ND 58505

Dear Speaker Wald:

I am returning House Bill 1108, and regretfully must veto the same. The bill has one provision contained in section 6, which I have made clear that I cannot support, namely the inclusion of Internet Service Providers (ISPs) for the payment of the gross receipts tax under chapter 57-34 of the North Dakota Century Code.

I simply cannot agree that this tax is wise or necessary public policy when we are spending millions to encourage the development of the Internet as a driving economic force in North Dakota's future. The Internet is becoming an essential tool for government efficiency, educational outreach and the provision of cost-effective services, especially in rural North Dakota. Our businesses will increasingly rely on the Internet to compete in the world economy.

More specifically, these are the reasons I cannot support imposing what I consider to be a new tax on a new class of taxpayers:

1. First, taxing access to the Internet is a policy decision that runs contrary to the best interests of our people. We are urging development and use of the Internet in the public and private sector. By raising costs, taxation discourages such development.

2. Second, the amount of revenue anticipated by taxing ISPs is not substantial, estimated at less than \$200,000 for the upcoming biennium. While the revenue is at best modest, the new tax could well hinder new investment in and growth of an Internet-related economy. Additionally, we will face legal challenges to the tax by national ISPs who contend the tax is illegal. Those costs could easily exceed any revenue we might hope to gain from HB 1108.
3. Third, the tax will result in unfair competition to North Dakota ISPs. Consider the Internet Service Provider in Fargo, Minot or Watford City who does not challenge the tax, but instead pays it. Those in-state providers will pay the tax, while their competitors from another jurisdiction will not, instead challenging the tax in court. We should not put good North Dakota entrepreneurs in such a competitive disadvantage.
4. I also believe the Internet tax provision of HB 1108 is either unnecessary or potentially illegal. Some argue that the ISP taxation is already in place as a result of the 1997 Legislature's passage of HB 1068, which restructured telecommunications taxation. If that is true, then including the ISPs in the bill now under consideration is unnecessary.

However, if ISPs were not included in the 1997 legislation -- which is my view -- then this bill is likely to be illegal under the Internet Tax Freedom Act, passed by Congress and made law on October 1, 1998. That federal law placed a three-year moratorium on taxing Internet access. A limited grandfather clause was granted for a number of states, including North Dakota, but only if the states can show that the tax has been "generally imposed and actually enforced." A sound argument exists that we may not be able to meet that standard.

5. Finally, and perhaps most importantly, I do not support this tax because it is indeed the imposition of a new tax upon a new sector of our economy.

For these reasons, I regretfully must return HB 1108 with my veto. I urge your careful consideration of these concerns, and ask that you vote to sustain this veto. I also recommend that you consider attaching the good and necessary provisions in this bill to the final Office of Management and Budget omnibus legislation to ensure their enactment into law.

Sincerely,

Edward T. Schafer
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. 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 2. 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 3. 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 4. 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 5. 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 6. 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;
 - 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~~ Internet access service or similar 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 7. 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 8. 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 9. 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 10. 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 11. RETROACTIVE APPLICATION OF ACT - EFFECTIVE DATE - EXPIRATION DATE. This Act applies retroactively to all tax years beginning after December 31, 1997. The amendments of subsections 1 and 3 of section 57-34-01 as amended by section 6 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 7 of this Act are effective for the first two taxable years beginning after December 31, 1999, and are thereafter ineffective.

Disapproved April 15, 1999

Filed April 17, 1999

CHAPTER 562**HOUSE BILL NO. 1443**

(Representatives Dorso, Byerly, Koppang)
(Senators Kringstad, Robinson, Traynor)

**WORK FORCE TRAINING INVESTMENT FEE LINE
ITEM****VETO**

March 22, 1999

The Honorable Francis J. Wald
Speaker of the House
House Chamber
State Capitol
Bismarck, ND 58505

Dear Speaker Wald:

I am returning House Bill 1266 regarding the purchase of a building by the North Dakota Workers Compensation Bureau (NDWCB) and hereby veto the same. The bill gives the NDWCB the authority to purchase a building under certain conditions and provides the authority until July 31, 2003.

The return on investment for the NDWCB has averaged 11.3% since 1993. This is about equal to the purported cost savings suggested by the Bureau in its financial analysis for buying a building. Real cost savings from this legislation appears to be minimal.

The bill is premised on the uncertain notion that it will save money that might be used for higher benefits or reduced premiums. Yet, the bill does not require any such purported savings to be passed on to the employees or the employers of this state.

Finally, I believe this legislation does not set good policy for the entire State of North Dakota. NDWCB is a state agency funded by taxes from North Dakota employers. We should make decisions regarding the Bureau based upon sound policy for the entire state. If we are to shift public policy toward buying buildings, then we should do so in a broad examination of the policy itself, not for just one agency or on an ad hoc basis. We should consult with our financial planners and the private sector, consider the impact to other agencies, potential cost savings, the impact to local property taxes and the affect upon local governments that such a policy may have.

For these reasons, I must respectfully veto HB 1266.

Sincerely,

Edward T. Schafer
Governor

Disapproved April 19, 1999
Filed April 19, 1999

NOTE: For the full text of House Bill No. 1443, including the vetoed sections, see chapter 439.

CHAPTER 563**SENATE BILL NO. 2307**

(Senators Krebsbach, Heitkamp, Kringstad)
(Representatives Clark, Dorso, Kroeber)

**911 FEES, FUND, DEFINITIONS, AND
COMMUNICATIONS**

AN ACT to create and enact sections 57-40.6-02.1, 57-40.6-02.2, and 57-40.6-10 of the North Dakota Century Code, relating to a wireless 911 service fee, service fund, and planning committee; to amend and reenact sections 57-40.6-01, 57-40.6-06, 57-40.6-07, and 57-40.6-08 of the North Dakota Century Code, relating to wireless 911 service fees, definitions, and communications; and to provide a continuing appropriation.

VETO MEASURE

April 20, 1999

The Honorable Alvin Jaeger
Secretary of State
600 East Boulevard, 1st Floor
Bismarck, ND 58505-0500

RE: Senate Bill 2307

Dear Secretary Jaeger:

I am sending to you Senate Bill 2307, and hereby veto the same. The bill imposes a 40 cent tax per month on cell phones in the state for the purposes of defraying the costs of 911 service and to enhance 911 capability. I cannot support the bill for the following reasons:

1. First, the bill imposes a new tax generating nearly \$2 million from North Dakota cell phone users.
2. The bill creates a planning committee but does not include taxpayers, emergency medical service representatives, or law enforcement personnel. The committee is charged with developing legislation to implement a statewide plan for enhanced 911 service that would not be considered until the 2003 legislative session. I believe both the make-up of the committee and its charge fall short in providing sound guidance and implementation for our state's 911 system.
3. I do not support imposing such a broad tax on users, who are probably already paying a 911 tax on their land-lines, without considering a commensurate reduction in land-line taxes.
4. Finally, the bill imposes this tax, purportedly to provide enhanced 911 (E-911) service, but falls short of its goal. It allocates 25 cents to the counties, but allows the funds to be used for maintaining existing 911 service without moving toward an enhanced system.

The bill requires the balance of the fund to be held in escrow until the counties certify that they have begun to implement phase I and II of enhanced 911 service as defined by the FCC. However, under the FCC order, providers are entitled to be reimbursed for the E-911 costs. These costs are unknown. In effect, the bill imposes a tax to fund a system, the cost of which is not determined. Because of this uncertainty, I am unwilling to increase taxes by \$2 million upon North Dakota taxpayers.

Importantly, vetoing this legislation does not jeopardize the current 911 system. Technology is available for enhanced 911 service, and we should allow that technology to evolve before asking our citizens to pay more for cellular phone service.

For these reasons, I hereby veto SB 2307.

Sincerely,

Edward T. Schafer
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-40.6-01 of the North Dakota Century Code is amended and reenacted as follows:

57-40.6-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Commercial mobile radio service provider" means any provider of wireless telephone service or any communications service capable of accessing a public safety answering point by dialing the digits 9-1-1.
2. "Emergency services communication system" means a statewide, countywide, or citywide radio system, land lines communication network, or emergency 911 telephone system, which provides rapid public access for coordinated dispatching of services, personnel, equipment, and facilities for law enforcement, fire, medical, or other emergency services.
3. "Enhanced 911 wireless service" has the meaning provided by the federal communications commission under a two-phase implementation of a wireless enhanced 911 technology. Phase I provides for a commercial mobile radio service subscriber's telephone number and the location of the cell site transmitting the call to those public safety answering points which request enhanced 911 wireless service. Phase II requires commercial mobile radio service providers to be able to identify the location of the commercial mobile radio service subscriber within one hundred twenty-five meters at least sixty-seven percent of the time by October 1, 2001.
4. "Public safety answering point" means a communications facility operated on a twenty-four-hour basis which first receives 911 calls from persons in a 911 service area and which may, as appropriate, directly dispatch public safety services or extend, transfer, or relay 911 calls to appropriate public safety agencies.

- ~~2.~~ 5. "Telephone access line" means the principal land-line or fixed-line access to the telephone telecommunications company's switched network including an outward dialed trunk or access register.
6. "Wireless telephone service" means commercial mobile radio service as defined by 47 U.S.C. 332(d)(1) and includes any of the following:
- a. Services commonly referred to as wireless.
 - b. Services provided by wireless real time two-way voice communication devices, including radio-telephone communications used in:
 - (1) Cellular telephone services;
 - (2) Personal communications services; or
 - (3) The functional or competitive equivalent of a radio-telephone communications line used in cellular telephone services, a personal communications services, or a network radio access line.

SECTION 2. Section 57-40.6-02.1 of the North Dakota Century Code is created and enacted as follows:

57-40.6-02.1. Wireless 911 service fee, administration, collection. A wireless 911 service fee is imposed at a rate of forty cents per month on each commercial mobile radio service telephone service number provided within the state, except for those issued to the federal government or agencies of the federal government. The tax commissioner shall administer this section and the fee imposed. The commissioner may adopt rules not inconsistent with this chapter necessary for its administration, including appropriate penalties and interest for late payment of the fee. The fee must be collected and remitted as follows:

1. Each commercial mobile radio service provider shall add the wireless 911 service fee to its subscribers' billings, separately stating the amount of the 911 wireless service fee.
2. The commercial mobile radio service provider shall collect the 911 service fee and may retain two percent of the fees collected by the provider for the purpose of defraying the administrative costs of collecting and remitting the fees.
3. The commercial mobile radio service provider shall remit the balance of the wireless service fees collected to the tax commissioner on or before the last day of the month following the month the fees were collected.
4. The tax commissioner may retain one percent of the fees received for the services rendered in connection with their collection and disbursement and transfer this amount to the state treasurer at the end of each month for deposit in the state general fund.
5. The tax commissioner shall transfer the balance of the fees received under this section to the state treasurer at the end of each month for deposit in the wireless 911 service fund.

SECTION 3. Section 57-40.6-02.2 of the North Dakota Century Code is created and enacted as follows:

57-40.6-02.2. Wireless 911 service fund - Allocation - Continuing appropriation. Revenues deposited in the wireless 911 service fund are provided as a standing and continuing appropriation to the state treasurer for allocation as follows:

1. Revenues from twenty-five cents per month per telephone service number from the fee imposed under section 57-40.6-02.1 must be allocated monthly in equal shares to political subdivisions operating a public safety answering point. Political subdivisions served by the state public safety answering point must be treated as one public safety answering point for the purposes of this subsection and must be allocated a portion of the revenues based upon the proportion each of those political subdivision's telephone access lines bears to the total number of telephone access lines served by the state public safety answering point. Revenue received under this subsection must be used by the political subdivision for establishing and operating a 911 emergency services communication system including enhanced 911 wireless service.
2. Revenues remaining after the allocation under subsection 1 must be allocated monthly to political subdivisions responsible for the emergency services communication system in each political subdivision based upon the proportion the population served by the emergency services communication system bears to the total population of the state served by emergency services communication systems, as indicated by the most current census. However, these funds and the interest earned must be held in escrow by the state treasurer for each political subdivision until the governing board of the political subdivision certifies that it has formally begun the implementation of phase I or phase II of enhanced 911 wireless service as defined by the federal communications commission. The certification must include documentation of agreements between political subdivisions or public safety answering points and commercial mobile service providers which authorize the purchase of equipment or services necessary to implement enhanced 911 wireless service. The funds must be designated for the implementation of enhanced 911 wireless service and allocated by political subdivisions on the basis of actual costs incurred by public safety answering points and commercial mobile radio service providers.

SECTION 4. AMENDMENT. Section 57-40.6-06 of the North Dakota Century Code is amended and reenacted as follows:

57-40.6-06. Data base. ~~In 911 systems that have been approved by the state emergency service communication system advisory committee, any~~ Any telecommunications company providing emergency 911 service shall provide upon request, on an annual basis, current customer names, addresses, and telephone numbers to each public service safety answering point within each 911 system ~~and shall update the information according to a schedule prescribed by the state 911 advisory committee's standards and guidelines.~~ Information provided under this section must be provided in accordance with the transactional record disclosure requirements of the federal Electronics Communications Privacy Act of 1986, 18 U.S.C. 2703 (C)(1)(B)(iv).

SECTION 5. AMENDMENT. Section 57-40.6-07 of the North Dakota Century Code is amended and reenacted as follows:

57-40.6-07. Use of the furnished information. Names, addresses, and telephone numbers provided to a 911 public ~~service~~ safety answering point under section 57-40.6-06 are private data and may be used only for verifying the location or identity, or both, for response purposes only, of a person calling a 911 answering point for emergency help. The information furnished may not be used or disclosed by the public ~~service~~ safety answering point or its agents or employees for any other purpose except those specifically required by state law or under a court order issued for good cause shown after notice to the submitting telecommunications company or commercial mobile radio service provider, or upon written consent granted by the submitting telecommunications company or commercial mobile radio service provider.

SECTION 6. AMENDMENT. Section 57-40.6-08 of the North Dakota Century Code is amended and reenacted as follows:

57-40.6-08. Emergency services communication system or emergency instructions - Liability.

1. A public agency, public safety agency, commercial mobile radio service provider, or local exchange telecommunications company that provides access to an emergency services communication system ~~at or below cost,~~ or any officer, agent, or employee of any public agency, public safety agency, commercial mobile radio service provider, or local exchange telecommunications company, is not liable for any civil damages as a result of any act or omission except willful and wanton misconduct or gross negligence in connection with developing, adopting, operating, or implementing any plan or system as provided under this chapter.
2. A person who gives emergency instructions through a an emergency services communication system as provided under this chapter, to persons rendering services in an emergency at another location, or any person following such instructions in rendering such services, is not liable for any civil damages as a result of issuing or following the instructions, unless issuing or following the instructions constitutes willful and wanton misconduct or gross negligence.
3. This section does not waive, limit, or modify any existing immunity or other defense of the state or any political subdivision, or any of its agencies, departments, commissions, boards, officers, or employees, nor does it create any claim for relief against any of these entities.
4. A public agency, public safety agency, commercial mobile radio service provider, or local exchange telecommunications company that provides access to an emergency services communications system or any officer, agency, or employee of any public agency, public safety agency, commercial mobile radio service provider, or local exchange telecommunications company and its data base vendor is not liable for any civil damages resulting from the release of a wireless customer's telephone number or other subscriber information provided to any public safety answering point.
5. All proprietary information of commercial mobile radio service providers, including a commercial mobile radio service provider's

customer lists and information concerning a commercial mobile radio service provider's actual or estimated costs and revenues, submitted to a public agency, public safety agency, political subdivision, or state agency may be released or published in aggregate amounts that do not identify or allow identification of number of subscribers, costs, or revenues of an individual commercial mobile radio service provider.

SECTION 7. Section 57-40.6-10 of the North Dakota Century Code is created and enacted as follows:

57-40.6-10. Enhanced 911 wireless service planning committee. An enhanced 911 wireless service planning committee is created to consist of five members. The governor shall appoint one member to represent commercial mobile radio service providers, one member to represent telecommunications companies providing land-line or fixed-line service, one member to represent a county served by state radio communications in the emergency services communication system, and one member from the information technology committee of the legislative council. The North Dakota association of counties shall appoint one member of the committee. The governor shall designate the chairman of the committee. The state radio communications office shall provide staff services to the committee.

The committee shall develop proposed legislation for implementation of a statewide plan regarding enhanced 911 wireless service and fees, administration, and allocation of revenues. Before November 1, 2001, the proposed legislation must be presented by the committee to the budget section of the legislative council for consideration.

Disapproved April 20, 1999
Filed April 20, 1999