

PUBLIC UTILITIES

CHAPTER 566

SENATE BILL NO. 2320
(Senators Nething, Langley)
(Representatives Ulmer, R. Larson)

TELECOMMUNICATION RATES

AN ACT to create and enact subsection 6 of section 49-21-01.1 and four new sections to chapter 49-21, relating to the establishment of a regulatory reform review commission and exemption from certain regulations for telecommunication companies; and to amend and reenact subsection 2 of section 49-02-01, sections 49-21-01, 49-21-02.1, 49-21-02.2, 49-21-04, 49-21-04.1, 49-21-05, 49-21-06, 49-21-07, and 49-21-09, relating to regulation of telecommunication companies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 49-02-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. Telecommunications companies engaged in the furnishing of telecommunications services as provided for in chapter 49-21.

SECTION 2. AMENDMENT. Section 49-21-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-21-01. Definitions. As used in this chapter, unless the context otherwise clearly requires:

1. "Access" means telecommunications services to connect a telecommunications customer or end user with a telecommunications company that allows for the origination or the termination, or both, of message toll type and private line telecommunications services. "Switched access" includes:
 - a. Local exchange central office switching and signaling;
 - b. Operator and recording intercept of calls;
 - c. Termination of end user lines in the local exchange central office; and
 - d. The carrier common line charge for the line between the end user's premises and the local exchange central office.
2. "Essential telecommunications price factor" means the annual change in a company's input cost index reduced by fifty percent of that company's productivity incentive adjustment.

3. "Essential telecommunications service" means service that is necessary for access to interexchange telecommunications companies and two-way switched communications for both residential and business service within a local exchange area. A charge based on usage may not be required for residential and business local exchange service. Essential telecommunications services include:
 - a. Access;
 - b. Any new product or service, not existing on July 1, 1989, but deemed essential by the commission after notice and hearing in accordance with chapter 28-32;
 - c. Billing and collection of the billing company's own essential telecommunications services;
 - d. Directory listing and local exchange directory assistance;
 - e. Emergency 911 services and operator assistance in local exchange areas in which emergency 911 service is not available;
 - f. Except as provided in section 49-02-01.1, mandatory, flat-rate extended area service to designated nearby local exchange areas;
 - g. Service connection to the local exchange network;
 - h. Telecommunications service provided to allow transmission service and termination between an interexchange company's premises and the local exchange central office switch for the origination or termination of the interexchange company's telecommunications services; and
 - i. Transmission service between the end user's premises and the local exchange central office switch including signaling service such as touchtone used by end users for essential telecommunications services.
4. "Input cost index" means a comparison of the cost of all goods and services purchased by a telecommunications company to the cost of the same goods and services in a base year.
5. "Interexchange telecommunications company" means a person providing telecommunications service to end users located in separate local exchange areas.
6. "Local exchange area" means a geographic territorial unit established by a telecommunications company for the administration of telecommunications services as approved and regulated in accordance with chapter 49-03.1.
7. "Mutual telephone company" means a telephone cooperative organized and operating subject to the provisions of this chapter, and such a cooperative shall also be subject to the general law governing cooperatives, except where such general law is in conflict with this chapter.

- ~~2-~~ 8. "Price" means any charge set and published in accordance with chapter 49-21 and collected by a telecommunications company for any telecommunications service offered by it to the public or other telecommunications companies.
9. "Productivity incentive adjustment" means a telecommunications company's expected average annual change in productivity. "Productivity" means a measure of a telecommunications company's total output of services and products to the total amount of input of resources used to produce those services and products.
10. "Telecommunications company" means a person engaged in the furnishing of telecommunications service within this state.
- ~~3-~~ 11. "Telecommunications service" means the offering for hire of telecommunications facilities, or transmitting for hire telecommunications by means of such facilities whether by wire, radio, lightwave, or other means.

SECTION 3. Subsection 6 of section 49-21-01.1 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

6. Billing and collection services.

SECTION 4. A new section to chapter 49-21 of the North Dakota Century Code is hereby created and enacted to read as follows:

Exemption - Rate regulation. Except as provided for in this chapter and sections 49-02-01.1, 49-02-02, 49-02-04, 49-02-05, 49-02-05.1, 49-02-21, 49-02-22, and 49-04-02.1, telecommunications companies and all telecommunications services are exempt from the provisions of chapter 49-02 and from the provisions of section 49-02-02 and chapters 49-04, 49-05, and 49-06 which concern rates. Telecommunications companies and services are not subject to rate or rate of return regulation. Any telecommunications company may inform the commission, in writing, that it does not want to be subject to the provisions of this section and section 5 of this Act, and that it wants to be subject to rate and rate of return regulation. For telecommunications companies with over fifty thousand end users, the election not to be exempt from rate and rate of return regulation is a one-time, irrevocable decision.

SECTION 5. A new section to chapter 49-21 of the North Dakota Century Code is hereby created and enacted to read as follows:

Certain price increases prohibited - Essential telecommunications services. Changes in essential telecommunications services prices are prohibited except as specifically provided for in chapter 49-21 and section 49-02-01.1.

1. All increases or decreases in governmentally imposed surcharges and any financial impact on cost caused by governmentally imposed changes in taxes, accounting practices, or separations procedures for essential services must be fully reflected in any price for those services within thirty days of the effective date of the surcharge or change.

2. The price of essential services may be changed according to the essential telecommunications price factor. Increases may be reflected in prices after notice to the company's customers one billing period in advance. A decrease must be reflected in prices within thirty days of the effective date of the price factor. The commission shall set a company's price factor to be effective January 1, 1990, and annually thereafter. No price for a service may be changed more than once a year. Prices may be changed by service element, but the aggregate annual price change for a service may not exceed the essential telecommunications price factor. Complaints may be made pursuant to section 49-21-06 for any prices changed under this subsection.
3. Nothing in this section prohibits the lowering of a price of an essential service based on reasonable business practices in a competitive environment provided that no price change may be anticompetitive or otherwise in violation of antitrust or unfair trade practice laws.

SECTION 6. A new section to chapter 49-21 of the North Dakota Century Code is hereby created and enacted to read as follows:

Purchase of essential telecommunications services. Customers of any telecommunications company must be permitted to purchase essential telecommunications services separate from all other telecommunications services.

SECTION 7. A new section to chapter 49-21 of the North Dakota Century Code is hereby created and enacted to read as follows:

Regulatory reform review commission - Appointments - Report to legislative council. The regulatory reform review commission shall review the operation and effect of this Act on an ongoing basis during the interims between the 1989, 1991, 1993, and 1995 legislative sessions and shall submit a report regarding its operation and effect to the legislative council in 1990, 1992, and 1994. The regulatory reform review commission consists of the members of the public service commission, two members of the senate, appointed by the president of the senate, and two members of the house of representatives, appointed by the speaker. The public service commission shall provide technical assistance to the regulatory reform commission and the legislative council shall provide staff services. The expenses of the regulatory reform review commission while carrying out its duties under this Act including expenses incurred for holding meetings and preparing reports shall, upon the order of the public service commission, be paid by the telecommunications companies affected by this Act in the manner provided in section 49-02-02.

SECTION 8. AMENDMENT. Section 49-21-02.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-21-02.1. Authority to exempt from regulation.

1. The commission ~~may~~ must exempt a telecommunications service, a telecommunications company, or a transaction by a telecommunications company from one or more of the provisions of this title when the commission determines that the application of

such provisions are not necessary to carry out the telecommunications policy of section 49-21-02; and either of the following apply:

- a. The transaction or service is of limited scope.
 - b. The application of a provision of this title is not needed to protect subscribers because the service, company, or transaction is subject to effective competition a sufficiently competitive market.
2. In determining if a telecommunications service, company, or transaction is subject to effective competition a sufficiently competitive market, the commission ~~shall~~ may consider all of the following:
- a. The extent to which competing telecommunications services are available from providers in the relevant geographic area or market.
 - b. The ability of such providers to make competing telecommunications services which are functionally equivalent or substitutable and readily reasonably available at comparable rates prices, terms, quality, and conditions.
 - c. Other indicators of the extent of competition The behavior of the market, including the market share, growth in the market share, and the affiliation of providers of competing telecommunications services as the commission deems appropriate the impact of potential competition, and other factors which cause a company to behave competitively.
3. The commission may begin a proceeding under this section on its own initiative or on application by an interested party. ~~The commission may specify the period of time during which an exemption granted under this section is effective-~~ The commission may revoke an exemption, to the extent it specifies, when it finds that application of a provision of this title to the service, company, or transaction is necessary to carry out the telecommunications policy set forth in section 49-21-02.
4. ~~When the commission exempts a telecommunications service from all of the provisions of this title; the investment, revenues, and expenses associated with the service shall not be considered by the commission in setting rates for the telecommunications company's regulated operations- Nothing in this section precludes the commission from considering the investment, revenues, and expenses associated with the sale of classified directory advertising or directory listings by a telecommunications company in determining rates for the regulated services of the telecommunications company-~~
- 5- The commission may not be unjustly discriminatory or preferential in the regulatory treatment of any telecommunications company.

SECTION 9. AMENDMENT. Section 49-21-02.2 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-21-02.2. Separation between regulated and unregulated services. Cross-subsidization prohibited. Revenues obtained from regulated services, including essential and nonessential services, may not be used to subsidize or otherwise give advantage to a telecommunications company in its unregulated enterprises. If a telecommunications company offers both regulated services and services that are unregulated as determined under section 49-21-02.1, the commission may require the telecommunications company to keep separate books of account, to allocate costs in accordance with procedures established by rule or order of the commission and to perform such other acts as will assist the commission in enforcing this section. Services, and revenues from essential services may not be used to subsidize or otherwise give advantage to a telecommunications company in its nonessential services. The commission may require a telecommunications company to keep separate books of account, to allocate costs in accordance with procedures established by rule or order of the commission, and to perform other acts that will assist the commission in enforcing this section. The price charged for an unregulated service or a nonessential service must cover the cost of providing that service.

SECTION 10. AMENDMENT. Section 49-21-04 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-21-04. Tariffs. Price schedules filed with the commission. Each telecommunications company, including companies excluded from the commission's rate jurisdiction pursuant to section 49-02-01.1, shall file with the commission in such form and detail as it may require, subject to considerations for maintaining trade secrets or commercial confidentiality:

1. Schedules showing all rates and charges which are established and prices, including those prices set by contract and the individual unbundled or unpackaged price of any essential service, in effect at the time for any telecommunications service rendered to the public by such telecommunications company within this state; and
2. All rules and regulations which in any manner affect the rates prices charged or to be charged for such service.

SECTION 11. AMENDMENT. Section 49-21-04.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-21-04.1. Maximum and minimum rates - Changes. Notwithstanding the provisions of section 49-05-05 to the contrary, for a telecommunications company that elects to remain subject to the commission's rate and rate of return regulation, the commission may approve schedules of rates for a service that establishes only maximum rates, only minimum rates, or both minimum and maximum rates. A telecommunications company having such an approved schedule may, with respect to the services covered by the schedule, change its rates after such notice to the public and commission as the commission prescribes.

SECTION 12. AMENDMENT. Section 49-21-05 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-21-05. Schedule of rates prices to be on file for public inspection. The commission may require any telecommunications company to keep on file and accessible to the public, subject to considerations for maintaining trade secrets or commercial confidentiality, at any city in which the telecommunications company has an a public office, a schedule of such rates and charges prices for essential telecommunications services as the commission may deem necessary.

SECTION 13. AMENDMENT. Section 49-21-06 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-21-06. Complaint against rates or service prices. There is a rebuttable presumption that prices for essential telecommunications services in effect on July 1, 1989, are fair and reasonable. Any telecommunications company; municipality; or not less than ten percent of the patrons of a telecommunications company within any municipality or territory contiguous thereto; person may make complaint to the commission, or the commission on its own motion may begin investigation, of the unreasonableness or inadequacy of any rate or charge price for any service. Any hearing by the commission will be conducted in accordance with section 49-05-03 and the commission can set aside any price for a service it investigates pursuant to this section which it determines, after notice and hearing, to be unreasonable or inadequate. This section must be construed to authorize the commission to set aside any unreasonable or inadequate price set by a telecommunications company for the connection between facilities of two or more telecommunications companies and for the transfer of telecommunications, provided this section may not be construed to set aside any price set by contract between telecommunications companies and in effect on July 1, 1989, upon complaint by one of the parties to the contract that the price is unreasonably high. Other complaints are subject to the commission's authority pursuant to section 49-05-01.

SECTION 14. AMENDMENT. Section 49-21-07 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-21-07. Discrimination unlawful. It shall be unlawful for any telecommunications company to make any unjust or unreasonable discrimination in prices, practices, or service for or in connection with like telecommunications service, or give any undue or unreasonable preference or advantage to any person or telecommunications company or to subject any person or telecommunications company to any undue or unreasonable prejudice or disadvantage in the service rendered by it to the public or to a telecommunications company, or to charge or receive for any such service rendered, more or less than the rates prices provided for in the schedules then on file with the commission. So long as the price for access service is subject to the provisions of subsection 2 of section 5 of this Act, a telecommunications company providing intrastate interexchange message toll services shall charge uniform prices on all routes where it offers such services. A telecommunications company providing local exchange service and message toll type and private line services shall cover in its price for message toll type and private line services, the price of providing access service in its own exchanges. Nothing in this chapter shall be construed to prevent any telecommunications company from offering or providing volume or other discounts based on reasonable business practices; from passing through any state, municipal or local taxes to the specific geographic areas from which the taxes originate; or from furnishing free telecommunications service

or service at reduced ~~rates~~ prices to its officers, agents, servants, or employees.

SECTION 15. AMENDMENT. Section 49-21-09 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-21-09. Telecommunications - Connections —~~Rates~~. Whenever the commission shall find that a connection can be made reasonably between the facilities of two or more telecommunications companies for the transfer of telecommunications and that public convenience and necessity will be subserved thereby, the commission may require that such connection be made—~~The commission may establish rates for the transfer of telecommunications between telecommunications companies~~ and may order that telecommunications be transmitted and transferred by the companies.

Approved April 19, 1989

Filed April 19, 1989

CHAPTER 567

HOUSE BILL NO. 1159
(Committee on State and Federal Government)
(At the request of the Public Service Commission)

PSC APPROVAL OF ASSET DISPOSAL

AN ACT to amend and reenact section 49-04-05 of the North Dakota Century Code, relating to commission approval when a public utility disposes of assets.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 49-04-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-04-05. ~~Consent of commission~~ Commission approval required to dispose of or encumber franchises, works, or systems - Exceptions. ~~No A public utility shall sell, assign, lease, transfer, mortgage, or otherwise may not dispose of or, encumber the whole or any part of, merge, or consolidate its franchise, works, or system necessary or useful in the performance of its duties to the public, nor at any time, directly or indirectly merge or consolidate such works, system, franchise, or any part thereof with any other person, corporation, or public utility, without first having secured from the commission an order authorizing it to do so. No such sale, assignment, lease, transfer, mortgage, disposition, encumbrance, merger, or consolidation shall be binding upon the public without the approval of the prior commission approval.~~ This section does not apply to the sale by public utilities:

1. Disposal or encumbrance of tangible property valued at less than five hundred thousand dollars.
2. Sale of securities registered with the federal securities and exchange commission.

Approved March 14, 1989
Filed March 15, 1989

CHAPTER 568

SENATE BILL NO. 2172
(Committee on Transportation)
(At the request of the Public Service Commission)

RAILROAD RIGHT OF WAY ACQUISITION

AN ACT to amend and reenact section 49-09-04.2 of the North Dakota Century Code, relating to priority in the sale and use of abandoned railroad right of way.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 49-09-04.2 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-09-04.2. Abandoned railroad right of way - Sale —~~First option~~ ~~Public use~~ ~~Wildlife use~~.

1. Whenever any state-owned land taken, held, and used pursuant to ~~section 49-09-04~~ for When service is discontinued on any railroad right of way, or any railroad spur, industrial, switching, or sidetrack right of way located entirely within in the state is abandoned and the property is offered for sale, lease, exchange, or other disposal, the landowner or landowners adjoining the abandoned right of way shall be given next option to acquire the right of way upon reasonable terms, second only to the right of the public service commission to receive in trust and transfer the right of way to any person, firm, or corporation for the continued operation of a by the railroad or an affiliated entity, the property must first be offered for public purposes.
2. In all instances where railroad abandonment or discontinuance is governed by federal law and If right of way property along abandoned railroad right of way rail lines is first offered for public purposes and refused, the landowner or landowners adjoining the abandoned right of way lessee operators of grain and potato warehouses located on the property shall be given the next option to purchase, lease, exchange, or otherwise acquire the right of way upon reasonable terms property described in their lease. However, Adjoining agricultural landowners must thereafter be given the next option of the adjoining landowner does not supersede the right of the public service commission to receive in trust and transfer the right of way to any person, firm, or corporation for the continued operation of a railroad to acquire the property adjoining their land.
3. Whenever When abandoned railroad right of way is offered for wildlife programs or projects, the proposed acquisitions must first be submitted to approved by the board of county commissioners of

the county or counties in which the right of way is located ~~for the board's approval pursuant to under~~ section 20.1-02-17.1 if offered to the state game and fish department or ~~pursuant to under~~ section 20.1-02-18.1 if offered to the United States department of the interior, ~~its bureaus or agencies.~~

4. This section is subservient to the right of the public service commission to receive rail property in trust under section 49-09-04.1.

Approved April 11, 1989
Filed April 12, 1989

CHAPTER 569

SENATE BILL NO. 2063
(Legislative Council)
(Interim Legislative Audit and Fiscal Review Committee)

RAILROAD RIGHT OF WAY IDENTIFICATION

AN ACT to amend and reenact sections 49-09-10.2 and 49-09-11.7 of the North Dakota Century Code, relating to acquisition of railroad rights of way; and to repeal section 49-09-10.1 of the North Dakota Century Code, relating to identification of certain railroad rights of way by the public service commission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 49-09-10.2 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

~~49-09-10.2. Acquisition of right of way. An operating right of way described in section 49-09-10.1 may be acquired in accordance with this section. That acquisition is subject to the following requirements: Identification of right of way to be acquired, leased, or transferred.~~

1. Each carrier or other entity intending to acquire a, lease, or transfer an operating railroad right of way shall file a notice of intent to do so with the commission, if any of the following applies:
 - a. The acquisition or lease would be by a party that is not a railroad carrier, and would be of rail property that would be operated by a third party.
 - b. The operation would be by a new carrier and of rail property acquired or leased by a third party.
 - c. There would be a change of operators on the line.
2. The notice required under subsection 1 must designate the complete private or corporate identity of the acquiring or leasing party, the complete identity of the divesting carrier, and a thorough description of the line involved. The notice must include financial information as to the acquiring or leasing entity. These documents are confidential and may not be divulged by the commission to any party.
3. An acquiring, leasing, or divesting carrier shall attend conferences with the commission on reasonable notice, and shall respond to all questions and requests for information which are reasonably related, or may lead to information reasonably related,

to the issue of whether the proposed transaction is consistent with law.

SECTION 2. AMENDMENT. Section 49-09-11.7 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-09-11.7. Rules for enforcement. The commission may adopt rules, in accordance with chapter 28-32, consistent with and necessary for the enforcement of sections 49-09-11.1 through 49-09-11.4, and sections ~~49-09-10.1~~ and section 49-09-10.2.

SECTION 3. REPEAL. Section 49-09-10.1 of the 1987 Supplement to the North Dakota Century Code is hereby repealed.

Approved March 17, 1989
Filed March 17, 1989

CHAPTER 570

SENATE BILL NO. 2187
(Committee on Transportation)
(At the request of the Public Service Commission)

RAILROAD RIGHT OF WAY FENCES

AN ACT to amend and reenact sections 49-11-24, 49-11-28, 49-11-29, and 49-11-30 of the North Dakota Century Code, relating to fencing on railroad rights of way and maintenance of cattleguards and gates.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 49-11-24 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-11-24. Railroad right of way to be fenced - Fences.

1. Every person, company, or corporation owning or operating any line of railroad or railway within this state shall construct a fence on each side of its right of way and shall maintain such fence and keep it in good repair. Such fence shall be constructed within six months after the completion of the railroad or railway owner or lessee of land abutting any operating railroad's right of way who has a legal fence, as defined in section 47-26-01, along all sides of the land except the side abutting the right of way may make a written request of the owners or operators of the railroad to construct a fence along the right of way. Upon receipt of the request, the owners or operators shall erect, within a reasonable time, a legal fence along the right of way to confine livestock as required by section 36-11-01. The owners or operators shall maintain the fence so long as the owner or lessee maintains the fence around the other sides of the enclosure.
2. Where the railroad has a fence along its right of way, the owners or operators of the railroad shall maintain the fence without necessity of a request by the owner or lessee so long as the owner or lessee maintains a fence around the other sides of the enclosure.
3. Except for the penalty and liability imposed by sections 49-11-29 and 49-11-30, the failure to comply with the requirements of this section is not, in itself, evidence of negligence and the fact that this section has been violated is not admissible in any other action.

SECTION 2. AMENDMENT. Section 49-11-28 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-11-28. ~~Cattle guards and swinging~~ Swinging gates - When railroad required to maintain. Every person, company, or corporation owning or operating any line of railroad within this state shall:

- 1- ~~Construct and maintain suitable and safe cattle guards on both sides of all public crossings; and~~
- 2- ~~Construct and maintain suitable and safe swinging gates on both sides of all private crossings~~ Upon the written request of the owner or lessee of land abutting the railroad's right of way, the owners or operators of a railroad shall construct and maintain suitable and safe swinging gates on any side of a private crossing enclosed by the railroad under section 49-11-24. The request must be made at the same time a request is made under subsection 1 of section 49-11-24.

SECTION 3. AMENDMENT. Section 49-11-29 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-11-29. Failure to construct fence, ~~cattle guard, or swinging gate~~ - Penalty. Any person owning or operating any line of railroad within this state and refusing or neglecting to comply with any of the provisions of sections 49-11-24 through 49-11-28 shall be is guilty of a class A misdemeanor. A prosecution or conviction under sections 49-11-24 through 49-11-28 shall does not relieve such person from liability for the maiming or killing of livestock on such the right of way by reason of his that person's negligence.

SECTION 4. AMENDMENT. Section 49-11-30 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-11-30. Failure of railroad to fence - Damage to owner of stock - How collected. Any corporation operating a railroad and failing to fence the same against livestock running at large and failing to maintain proper and sufficient cattle guards at all points where the duty to fence or maintain cattle guards exists, shall be is liable to the owner of any stock killed or injured by reason of the want of such fence or cattle guard for the full amount of the damages sustained by the owner, unless the injury was occasioned by the grossly negligent act of the owner of the stock or his the owner's agent. To recover the same, it shall be necessary for the owner of the stock to must prove only the loss of or injury to his the owner's property. Notice in writing that a loss or injury has occurred, accompanied by an affidavit thereof, shall must be served upon an officer of the corporation or upon a station or ticket agent employed by said the corporation in the county where such the loss or injury occurred. If the corporation fails or neglects to pay such damage the damages within ninety days after the notice is served on it, the owner shall be is entitled to recover from the corporation double the amount of damages actually sustained by him the owner, and twenty five dollars as an a reasonable attorney's fee when it shall be is adjudged by a court of competent jurisdiction that the claimant is entitled to the amount claimed.

Approved April 19, 1989
Filed April 19, 1989

CHAPTER 571

SENATE BILL NO. 2337
(Senators Waldera, Maixner, Wogsland)
(Representatives R. Anderson, Murphy, Goetz)

SALTWATER TRANSPORTATION

AN ACT to amend and reenact subsection 13 of section 49-18-02 of the North Dakota Century Code, relating to the regulation of the transportation of saltwater by the public service commission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 13 of section 49-18-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

13. To the transportation of rubbish or garbage. As used in this subsection, rubbish or garbage does not include saltwater produced or utilized in oil and gas exploration, development, and production activities.

Approved March 28, 1989
Filed March 28, 1989

CHAPTER 572

HOUSE BILL NO. 1081
(Committee on Transportation)
(At the request of the Public Service Commission)

CONTRACT MOTOR CARRIER PERMITS

AN ACT to amend and reenact section 49-18-23 of the North Dakota Century Code, relating to issuance of contract motor carrier permits.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 49-18-23 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-18-23. Issuance of contract carrier permit - Factors considered. The commission ~~is vested with power and authority to may~~ grant or deny, ~~the permit prayed for by a contract motor carrier; or to grant it for the partial exercise only of the privilege sought. It may attach to the exercise of the privilege granted by such permit, such terms and conditions as in its judgment will in whole or in part, applications for contract carrier authority and may impose terms and conditions necessary to carry out the purposes of this chapter. No A permit shall may not~~ be granted unless the applicant has established to the satisfaction of the commission that the privilege sought will not endanger the safety of the public ~~nor interfere with the public use of the public highways; nor impair the condition or maintenance of such highways directly or indirectly; nor or~~ impair the efficient public service of any authorized common carrier then adequately serving the same territory.

Approved March 9, 1989
Filed March 9, 1989

CHAPTER 573

HOUSE BILL NO. 1259
(Representatives Belter, V. Thompson)
(Senators Langley, Todd)

INTERSTATE MOTOR CARRIER FEES

AN ACT to amend and reenact sections 49-18-41.1 and 49-18-42 of the North Dakota Century Code, relating to the collection of fees for registration of interstate motor carriers and dedicating the use of the fees and providing for allocation of the fees; and to provide an appropriation and a statement of legislative intent.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 49-18-41.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-18-41.1. Interstate carrier registration and identification. The ~~public service~~ commission is authorized to ~~collect~~ assess a ~~seven ten~~ dollar per vehicle fee as provided by rule for the registration and identification of interstate motor carriers operating within this state. The fee shall not exceed the maximums provided for by the laws of the United States. The motor vehicle department shall collect the fee and issue identification stamps on behalf of the commission. Until July 1, 1991, the fee assessed per vehicle under this section and collected before July 1, 1991, must be paid into the state treasury monthly and credited to the general fund. After July 1, 1991, three dollars of the fee assessed and collected per vehicle must be credited to the highway fund for the use of the highway patrol.

SECTION 2. AMENDMENT. Section 49-18-42 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-18-42. Auto transportation fund. ~~All~~ Except as otherwise provided under section 49-18-41.1, all fees collected by the commission, under the provisions of this chapter, ~~shall~~ must be paid into the state treasury monthly and ~~shall~~ must be credited to the general fund for the purpose of defraying the general expenses of the state government.

SECTION 3. AMENDMENT. Section 1 of House Bill No. 1012, as approved by the fifty-first legislative assembly, is hereby amended and reenacted to read as follows:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof 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 department of human services and its various divisions for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1989, and ending June 30, 1991, as follows:

* NOTE: Section 49-18-41.1 was also amended by section 17 of Senate Bill No. 2243, chapter 72.

Salaries and wages		\$134,431,003
Data processing		11,330,151
Operating expenses		42,502,943
Equipment		1,082,113
Capital improvements		1,969,657
Grants, benefits, and claims		560,402,363
Community chemical dependency treatment enhancement		534,000
Developmentally disabled facility loan fund		1,837,956
Total all funds		<u>\$754,090,186</u>
Less estimated income	<u>517,062,486</u>	518,392,486
Total general fund appropriation	<u>6237,027,700</u>	<u>\$235,697,700</u>

SECTION 4. APPROPRIATION. There is hereby appropriated from the general fund in the state treasury, not otherwise appropriated, the sum of \$1,165,000 or so much thereof as may be necessary, to the state board of higher education for the purpose of providing student financial assistance for the biennium beginning July 1, 1989, and ending June 30, 1991.

SECTION 5. LEGISLATIVE INTENT. It is the intent of the legislative assembly that, for purposes of section 11 of Senate Bill No. 2538, passed by the fifty-first legislative assembly, the revised estimated medicaid matching rate for the nine months ending June 30, 1991, is sixty-nine and eighty-two one hundredths percent. Other funds available from changes in the medicaid funding formula, as referred to in Senate Bill No. 2538, are those funds in excess of the revised estimated medicaid matching rate in this section.

Approved April 28, 1989
 Filed April 28, 1989