

Sixty-first  
Legislative Assembly  
of North Dakota

## ENGROSSED SENATE BILL NO. 2040

Introduced by

Legislative Council

(Industry, Business, and Labor Committee)

1 A BILL for an Act to create and enact two new subsections to section 57-39.2-01 and a new  
2 section to chapter 57-39.2 of the North Dakota Century Code, relating to the definition of  
3 telecommunications company and telecommunications service and to a sales and use tax  
4 exemption for equipment used in telecommunications infrastructure development; to provide for  
5 a legislative council study; and to provide an expiration date.

6 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

7 **SECTION 1.** Two new subsections to section 57-39.2-01 of the North Dakota Century  
8 Code are created and enacted as follows:

9 "Telecommunications company" means a person engaged in the furnishing of  
10 telecommunications service within this state.

11 "Telecommunications service" means the electronic transmission, conveyance, or  
12 routing of voice, data, audio, video, or any other information or signals to a point,  
13 or between or among points. The term includes such transmission, conveyance,  
14 or routing in which computer processing applications are used to act on the form,  
15 code, or protocol of the content for purposes of transmission, conveyance, or  
16 routing without regard to whether the service is referred to as voice over internet  
17 protocol services or is classified by the federal communications commission as  
18 enhanced or value-added. The term does not include:

19 a. Data processing and information services that allow data to be generated,  
20 acquired, stored, processed, or retrieved and delivered by an electronic  
21 transmission to a purchaser where the purchaser's primary purpose for the  
22 underlying transaction is the processed data or information;

23 b. Installation or maintenance of wiring or equipment on a customer's premises;

- 1           c. Tangible personal property;
- 2           d. Advertising, including directory advertising;
- 3           e. Billing and collection services provided to third parties;
- 4           f. Internet access service;
- 5           g. Radio and television audio and video programming services, regardless of the  
6           medium, including the furnishing of transmission, conveyance, and routing of  
7           such services by the programming service provider. Radio and television  
8           audio and video programming services include cable service as defined in 47  
9           U.S.C. 522(6) and audio and video programming services delivered by  
10           commercial mobile radio service providers, as defined in 47 CFR 20.3;
- 11          h. Ancillary services; or
- 12          i. Digital products delivered electronically, including software, music, video,  
13           reading materials, and ringtones.

14           **SECTION 2.** A new section to chapter 57-39.2 of the North Dakota Century Code is  
15 created and enacted as follows:

16           **Sales tax exemption for equipment used in telecommunications infrastructure**  
17 **development.**

- 18          1. Gross receipts from sales of tangible personal property used to construct or  
19           expand telecommunications service infrastructure in this state are exempt from  
20           taxes under this chapter. To be exempt, the tangible personal property must be  
21           incorporated into telecommunications service infrastructure owned by a  
22           telecommunications company.
- 23          2. To qualify for exemption at the time of purchase, a telecommunications company  
24           must receive a certificate from the commissioner stating that the property qualifies  
25           for the exemption. If a certificate is not received before the purchase or the  
26           purchase is made by a contractor, subcontractor, or builder, the  
27           telecommunications company must apply to the commissioner for a refund of sales  
28           and use taxes paid for which the exemption is claimed under this section.  
29           Application for a refund must be made at the times and in the manner directed by  
30           the commissioner and must include sufficient information to permit the

1                   commissioner to verify the sales and use taxes paid and the exempt status of the  
2                   sale or use.

3                   **SECTION 3. LEGISLATIVE COUNCIL STUDY OF TELECOMMUNICATIONS**

4   **TAXES.** During the 2009-10 interim, the legislative council shall consider studying all taxes  
5 imposed on telecommunications services in this state. The legislative council shall analyze all  
6 taxes and fees imposed on providers and consumers of telecommunications services, evaluate  
7 the fairness of the taxes, and determine if the tax structure impacts the business climate and  
8 economic development of the state. The legislative council shall report its findings and  
9 recommendations, together with any legislation necessary to implement the recommendations,  
10 to the sixty-second legislative assembly.

11                  **SECTION 4. EXPIRATION DATE.** This Act is effective through June 30, 2011, and  
12 after that date is ineffective.