

CHAPTER 345—H.F.No. 3042

An act relating to regulated industries; modifying certain provisions of power purchase contracts and biomass fuel exemptions; lengthening exemption period for large telephone company to change rates; modifying provisions for public utilities commission to assess costs of certain proceedings; providing additional antislammng and disclosure requirements on long-distance service providers; clarifying requirements relating to notification of price increases; requiring provision of international toll blocking; amending Minnesota Statutes 1996, sections 216B.2424, subdivision 3; 237.295; 237.66, subdivisions 1a, 3, and by adding subdivisions; 237.74, subdivision 6, and by adding a subdivision; and 325F.692, subdivision 1; Minnesota Statutes 1997 Supplement, sections 216B.1645; 237.072; and 237.163, subdivision 8; proposing coding for new law in Minnesota Statutes, chapter 237; repealing Minnesota Statutes 1996, section 325F.692, subdivision 8; Minnesota Statutes 1997 Supplement, section 237.66, subdivision 1b.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1997 Supplement, section 216B.1645, is amended to read:

216B.1645 POWER PURCHASE CONTRACTS OR INVESTMENTS.

Upon the petition of a public utility, the public utilities commission shall approve or disapprove power purchase contracts or investments entered into or made by the utility to satisfy the wind and biomass mandates contained in sections 216B.2423 and 216B.2424. The expenses incurred in accordance with the contract and the reasonable investments made by a public utility with the approval of the commission shall be included by the commission in its determination of just and reasonable rates. by the utility over the duration of the approved contract or useful life of the investment shall be recoverable from the ratepayers of the utility, to the extent they are not offset by utility revenues attributable to the contracts or investments. Upon petition by a public utility, the commission shall approve or approve as modified a rate schedule providing for the automatic adjustment of charges to recover the expenses or costs approved by the commission. Nothing in this section shall be construed to determine the manner or extent to which revenues derived from other generation facilities of the utility may be considered in determining the recovery of the approved cost or expenses associated with the mandated contracts or investments in the event there is retail competition for electric energy.

Sec. 2. Minnesota Statutes 1996, section 216B.2424, subdivision 3, is amended to read:

Subd. 3. **FUEL EXEMPTION.** Over the duration of the contract of a biomass power facility selected to satisfy the mandate in subdivision 5, fuel sources that are not biomass may be used to satisfy up to 25 percent of the fuel requirements of a biomass power facility selected to satisfy the biomass power mandate in subdivision 5. A biomass power facility selected to satisfy the mandate in subdivision 5 also may use fuel sources that are not biomass during any period when biomass fuel sources are not reasonably available to the facility due to any circumstances constituting an act of God. Fuel sources that are not biomass used during such a period of biomass fuel source unavailability shall not be counted toward the 25 percent exemption provided in this subdivision. For purposes of this subdivision, "act of God" means any natural disaster or other natural phenomenon of an exceptional, inevitable, or irresistible character, including, but not limited to, flood,

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fire, drought, earthquake, and crop failure resulting from climatic conditions, infestation, or disease.

Sec. 3. Minnesota Statutes 1997 Supplement, section 237.072, is amended to read:

237.072 LIMITATION ON RATE CHANGES.

(a) After December 15, 1997, the commission, notwithstanding any provision to the contrary, shall not allow an incumbent telephone company with more than 1,000,000 access lines in Minnesota to change its retail rates for telecommunications services without a determination of its revenue requirement pursuant to section 237.075 unless the incumbent telephone company is regulated pursuant to sections 237.76 to 237.773.

(b) If, prior to December 15, 1997, the incumbent telephone company petitions the commission to become subject to an alternative regulation plan under sections 237.76 to 237.773, paragraph (a) shall not apply to the petitioning company until ~~180~~ 270 days after the date of the filing of the petition.

Sec. 4. Minnesota Statutes 1997 Supplement, section 237.163, subdivision 8, is amended to read:

Subd. 8. **UNIFORM STATEWIDE STANDARDS.** (a) To ensure the safe and convenient use of public right-of-way in the state, the public utilities commission shall develop and adopt by ~~March 1, 1998~~ June 1, 1999, statewide construction standards for the purposes of achieving substantial statewide uniformity in construction standards where appropriate, providing competitive neutrality among telecommunications right-of-way users, and permitting efficient use of technology. The standards shall govern:

(1) the terms and conditions of right-of-way construction, excavation, maintenance, and repair; and

(2) the terms and conditions under which telecommunications facilities and equipment are placed in the public right-of-way.

(b) The public utilities commission is authorized to review, upon complaint by an aggrieved telecommunications right-of-way user, a decision or regulation by a local government unit that is alleged to violate a statewide standard.

(c) A local unit of government may not adopt an ordinance or other regulation that conflicts with a standard adopted by the commission for the purposes described in paragraph (a).

Sec. 5. Minnesota Statutes 1996, section 237.295, is amended to read:

237.295 ASSESSMENT OF REGULATORY EXPENSES.

Subdivision 1. **PAYMENT FOR INVESTIGATIONS.** (a) Whenever the department or commission, in a proceeding upon its own motion, on complaint, or upon an application to it, considers it necessary, in order to carry out the duties imposed on it, to investigate the books, accounts, practices, and activities of, ~~or make appraisals of the property of,~~ a telephone any company, or to render engineering or accounting services to a telephone company, ~~the telephone company parties to the proceeding shall pay the expenses reasonably attributable to the investigation, appraisal, or service proceeding.~~ the telephone company parties to the proceeding shall pay the expenses reasonably attributable to the investigation, appraisal, or service proceeding. The department and commission shall ascertain the expenses, and the department shall render

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a bill for those expenses to the telephone company parties, either at the conclusion of the investigation, appraisal, or services, or from time to time during its progress proceeding. The department is authorized to submit billings to parties at intervals selected by the department during the course of a proceeding.

(b) The allocation of costs may be adjusted for cause by the commission during the course of the proceeding, or upon the closing of the docket and issuance of an order. In addition to the rights granted in subdivision 3, parties to a proceeding may object to the allocation at any time during the proceeding. Withdrawal by a party to a proceeding does not absolve the party from paying allocated costs as determined by the commission. The commission may decide that a party should not pay any allocated costs of the proceeding.

(c) The bill constitutes notice of the assessment and a demand for payment. The amount of the bills assessed by the department under this subdivision must be paid by the telephone company parties into the state treasury within 30 days from the date of assessment. The total amount, in a calendar year, for which a telephone company may become liable, by reason of costs incurred by the department and commission within that calendar year, may not exceed two-fifths of one percent of the gross jurisdictional operating revenue of the telephone company in the last preceding calendar year. Direct charges may be assessed without regard to this limitation until the gross jurisdictional operating revenue of the telephone company for the preceding calendar year has been reported for the first time. Where, under this subdivision, costs are incurred within a calendar year that are in excess of two-fifths of one percent of the gross jurisdictional operating revenues, the excess costs are not chargeable as part of the remainder under subdivision 2, but must be paid out of the general appropriation of the department.

(d) Except as otherwise provided in paragraph (e), for purposes of assessing the cost of a proceeding to a party, "party" means any entity or group subject to the laws and rules of this state, however organized, whether public or private, whether domestic or foreign, whether for profit or nonprofit, and whether natural, corporate, or political, such as a business or commercial enterprise organized as any type or combination of corporation, limited liability company, partnership, limited liability partnership, proprietorship, association, cooperative, joint venture, carrier, or utility, and any successor or assignee of any of them; a social or charitable organization; and any type or combination of political subdivision, which includes the executive, judicial, or legislative branch of the state, a local government unit, an agency of the state or a local government unit, or a combination of any of them.

(e) For assessment and billing purposes, "party" does not include the department of public service or the residential utilities division of the office of attorney general; any entity or group instituted primarily for the purpose of mutual help and not conducted for profit; intervenors awarded compensation under section 237.075, subdivision 10; or any individual or group or counsel for the individual or group representing the interests of end users or classes of end users of services provided by telephone companies or telecommunications carriers, as determined by the commission.

Subd. 2. ASSESSMENT OF COSTS. The department and commission shall quarterly, at least 30 days before the start of each quarter, estimate the total of their expenditures in the performance of their duties relating to telephone companies, other than amounts chargeable to telephone companies under subdivision 1, 5, or 6. The remainder must be assessed by the department to the telephone companies operating in this state in

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proportion to their respective gross jurisdictional operating revenues during the last calendar year. The assessment must be paid into the state treasury within 30 days after the bill has been mailed to the telephone companies. The bill constitutes notice of the assessment and demand of payment. The total amount that may be assessed to the telephone companies under this subdivision may not exceed one-eighth of one percent of the total gross jurisdictional operating revenues during the calendar year. The assessment for the third quarter of each fiscal year must be adjusted to compensate for the amount by which actual expenditures by the commission and department for the preceding fiscal year were more or less than the estimated expenditures previously assessed. A telephone company with gross jurisdictional operating revenues of less than \$5,000 is exempt from assessments under this subdivision.

Subd. 3. OBJECTIONS. Within 30 days after the date of the mailing of any bill as provided by subdivisions 1 and, 2, 5, and 6, the telephone company parties to the proceeding, against which the bill has been assessed, may file with the commission objections setting out the grounds upon which it is claimed the bill is excessive, erroneous, unlawful, or invalid. The commission shall within 60 days provide for a contested case hearing and issue an order in accordance with its findings. The order shall be appealable in the same manner as other final orders of the commission.

Subd. 4. INTEREST IMPOSED. The amounts assessed against any telephone company or other party that is not paid after 30 days after the mailing of a notice advising the telephone company or other party of the amount assessed against it, shall draw interest at the rate of six percent per annum, and upon failure to pay the assessment the attorney general shall proceed by action in the name of the state against the telephone company or other party to collect the amount due, together with interest and the cost of the suit.

Subd. 5. ADMINISTRATIVE HEARING COSTS; APPROPRIATION. Any amounts billed to the commission or the department by the office of administrative hearings for telephone contested case hearings held pursuant to section 237.25 shall be assessed by the commissioner or the department against the telephone company parties to the proceeding. The assessment shall be paid into the state treasury within 30 days after a bill, which constitutes notice of the assessment and demand for payment of it, has been mailed to the telephone company parties. Money received shall be credited to a special account and is appropriated to the commissioner or the department for payment to the office of administrative hearings.

Subd. 6. EXTENDED AREA SERVICE BALLOTING ACCOUNT; APPROPRIATION. The extended area service balloting account is created as a separate account in the special revenue fund in the state treasury. The commission shall render separate bills to telephone companies only for direct balloting costs incurred by the commission under section 237.161. The bill constitutes notice of the assessment and demand of payment. The amount of a bill assessed by the commission under this subdivision must be paid by the telephone company into the state treasury within 30 days from the date of assessment. Money received under this subdivision must be credited to the extended area service balloting account and is appropriated to the commission.

Sec. 6. Minnesota Statutes 1996, section 237.66, subdivision 1a, is amended to read:

Subd. 1a. NOTICE TO CUSTOMERS; RIGHT TO REQUIRE PRIOR AUTHORIZATION. (a) Each residential and commercial telecommunications carrier cus-

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tomer may elect to require that the telephone company serving the customer receive authorization from the customer before a request to serve that customer from a different intrastate telecommunications carrier than the carrier currently serving the customer is processed.

(b) For new installations, a telephone company shall notify a residential or commercial customer of the right described in paragraph (a) when the customer initially requests intraexchange service.

(c) Within one year of January 1, 1997, a telecommunications carrier shall notify each of its existing residential and commercial customers of the right described in paragraph (a). The notice may be made as a billing insert. Any customer notification of the rights set forth in this subdivision shall be provided utilizing uniform, competitively neutral language and the form, content, and style of the authorization shall be consistent with federal law and regulation and shall use language provided and approved by the public utilities commission.

(d) A customer may change this election at any time by notifying the telephone company of that decision. No separate charge may be imposed on the customer for electing to exercise the right described in paragraph (a) or to change that election, but a telephone company may recover in rates the reasonable costs of administering the election.

(e) If a customer has elected to exercise the right described in paragraph (a), the telephone company shall not process a request to serve the customer by another telecommunications carrier without prior authorization from the customer. If a customer has not elected to exercise the right described in paragraph (a), the company may process a request to serve the customer by another telecommunications carrier.

(f) A carrier may request such a change if the customer has authorized the change either orally or in writing signed by the customer. If the carrier requests a change in a customer's service provider, the carrier must:

- (1) notify the customer in writing that the request has been processed; and
- (2) be able to present, upon complaint by the customer, verified authorization for the change by the customer.

If the initial authorization was made orally, the carrier must be able to present verified authorization received from the customer within 14 business days of the date the oral authorization was made.

(g) In the case of an oral authorization, if a telecommunications carrier does not receive the verified authorization within 14 business days of the date of the oral authorization, the carrier must either bear the risk that the change to the service of the carrier will be deemed unauthorized under paragraph (h) or:

- (1) immediately return the customer to the service of the customer's original service provider;
- (2) bear all costs associated with returning the customer; and
- (3) bill the customer for services rendered at the rate the customer would have paid for such services if the request to serve the customer had not been made.

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(h) If the carrier is not able to present, upon complaint by the customer, verified authorization received from the customer as required under paragraph (f) and the carrier did not return the customer to the service of the customer's original service provider as required under paragraph (g), the change to the service of the carrier shall be deemed to be unauthorized from the date the carrier requested the change. In that event, the carrier shall:

(1) bear all costs of immediately returning the customer to the service of the customer's original service provider; and

(2) bear all costs of serving that customer during the period of unauthorized service.

(i) For purposes of paragraphs (f), (g), and (h), authorization required in those paragraphs may be verified utilizing any method that is consistent with federal law and regulation.

Sec. 7. Minnesota Statutes 1996, section 237.66, is amended by adding a subdivision to read:

Subd. 1c. TIMING OF NOTICE; NEW CUSTOMERS. For new installations, a telephone company shall notify a residential or commercial customer of the right described in subdivision 1a when the customer initially requests intraexchange service. Any customer notification of the rights set forth in this section shall be provided utilizing uniform, competitively neutral language and the form, content, and style of the authorization shall be consistent with federal law and regulation and shall use language provided and approved by the public utilities commission.

Sec. 8. Minnesota Statutes 1996, section 237.66, is amended by adding a subdivision to read:

Subd. 1d. CHANGE OF ELECTION. A customer may change the election under subdivision 1a at any time by notifying the telephone company of that decision. No separate charge may be imposed on the customer for electing to exercise the right described in subdivision 1a or to change that election, but a telephone company may recover in rates the reasonable costs of administering the election.

Sec. 9. Minnesota Statutes 1996, section 237.66, subdivision 3, is amended to read:

Subd. 3. ENFORCEMENT. If, after an expedited procedure conducted under section 237.61, the commission finds that a telephone company is failing to provide disclosure as required under subdivision 1, or the notification required under subdivision 1a, paragraphs (b) and (c) subdivision 1c, it shall order the company to take corrective action as necessary.

Sec. 10. [237.661] **ANTISLAMMING.**

Subdivision 1. ANTISLAMMING DUTIES OF LOCAL TELEPHONE COMPANY. If a customer has elected to exercise the right described in section 237.66, subdivision 1a, the telephone company serving the customer shall not process a request to serve the customer by another telecommunications carrier without prior authorization from the customer. If a customer has not elected to exercise the right described in that subdivision, the company may process a request to serve the customer by another telecommunications carrier.

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Subd. 2. ANTISLAMMING DUTIES OF SOLICITING CARRIER. (a) A telecommunications carrier may request that the telephone company serving a customer process a change in that customer's long-distance provider, if the customer has authorized the change either orally or in writing signed by the customer. Prior to requesting a change in a customer's long-distance service provider, the carrier must confirm:

(1) the customer's identity with information unique to the customer, unless the customer refused to provide identifying information, then that fact should be noted;

(2) that the customer has been informed of the offering made by the carrier;

(3) that the customer understands that the customer is being requested to change telecommunication carriers;

(4) that the customer has the authority to authorize the change; and

(5) that the customer agrees to the change.

(b) After requesting the change in long-distance service provider, the carrier must:

(1) notify the customer in writing that the request has been processed; and

(2) be able to produce, upon complaint by the customer, evidence that the carrier verified the authorization by the customer to change the customer's long-distance service provider. If the carrier used a negative check-off verification procedure as defined in subdivision 4, paragraph (c), the evidence must include a tape recording of the initial oral authorization.

Subd. 3. PENALTY FOR SLAMMING. If the carrier is not able to present, upon complaint by the customer, evidence that complies with subdivision 2, paragraph (b), clause (2), the change to the service of the carrier is deemed to be unauthorized from the date the carrier requested the change. In that event, the carrier shall:

(1) bear all costs of immediately returning the customer to the service of the customer's original service provider; and

(2) bear all costs of serving that customer during the period of unauthorized service.

Subd. 4. VERIFICATION PROCEDURES; EVIDENCE OF AUTHORIZATION. (a) Customer authorization for a change in the customer's long-distance service provider may be verified using a verification procedure that complies with federal law or regulation. Except as provided in paragraph (b), the requirement that the carrier be able to produce evidence of customer authorization is satisfied if the carrier uses a federally authorized verification procedure.

(b) If federal law or regulation authorizes a carrier to use a negative check-off verification procedure, and the carrier does so, the carrier must be able to produce a tape recording of the initial oral authorization by the customer to change long-distance service providers as evidence of the authorization. The initial oral authorization must include confirmation of the items listed in subdivision 2, paragraph (a).

(c) "Negative check-off" means a verification procedure that consists of:

(1) an initial oral authorization by the customer to change long-distance service providers; and

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(2) a mailing to the customer by the soliciting telecommunications carrier regarding the change in service providers that informs the customer that if the customer fails to cancel the change in service providers, the change will be deemed authorized and verified.

Sec. 11. [237.662] NOTICE AND DISCLOSURE REQUIREMENTS OF LONG-DISTANCE PROVIDERS.

Subdivision 1. INFORMATION REQUIRED. When contacted by a customer regarding the purchase of long-distance telecommunications services, or when soliciting customers via mail or telephone, a provider of long-distance services shall provide the customer with the following information, if the service is being offered to the customer, about the service offering either orally or in writing:

(1) the price or range of prices of interstate message toll service accessed by dialing "1+" or "10-xxx", including any difference in prices for evening, night, or weekend calls;

(2) the price or range of prices of intrastate interLATA message toll service accessed by dialing "1+" or "10-xxx", including any difference in prices for evening, night, or weekend calls;

(3) the price or range of prices of intrastate intraLATA message toll service accessed by dialing "1+" or "10-xxx", including any difference in prices for evening, night, or weekend;

(4) any minimum volume requirements, fixed flat fees, service charges, surcharges, termination charges or other non-service-specific charges, including the fact that the provider of local service may charge a one-time fee for changing carriers; and

(5) any special promotional rate or promotional offering related to the services or prices described in clauses (1) to (4) above, including any limitations or restrictions on the promotional rates or offerings.

Subd. 2. PRICE, TERMS, AND RESTRICTIONS IN WRITING. If a customer agrees to purchase telecommunications services from the provider of long-distance services on a presubscription basis, the provider shall send the customer written information regarding services subscribed to, containing:

(1) the information regarding prices and charges described in subdivision 1, clauses (1) to (5);

(2) the price for calls placed with a calling card issued to the customer by the provider and any surcharge for placing calls with a calling card;

(3) the price for calls charged to the customer when a personal "1-800" number for long-distance services issued to the customer by the provider is used; and

(4) the price of directory assistance calls.

This written information must be sent to the customer within seven business days from the date of the verification of the customer's authorization, unless federal law or regulation requires notice to be sent by an earlier date.

Subd. 3. FILED TARIFFS NO DEFENSE. That a telecommunications carrier has intrastate tariffs or price lists for the services listed in subdivisions 1 and 2 on file with the

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public utilities commission or department of public service is not a defense to any action brought for failure to disclose intrastate prices for which disclosure is required under this section.

Sec. 12. [237.663] LOADING.

(a) Except as provided in paragraph (b) or (c), a telephone company or telecommunications carrier providing local service shall not charge a telephone service subscriber, as defined in section 325F.692, for a telephone or telecommunications service that is not required by the commission to be offered and for which the subscriber did not explicitly contract.

(b) If a charge is assessed on a per-use basis for a service described in paragraph (a), the charge must be applied as a credit to the subscriber's next monthly bill, if the subscriber notifies the telephone company or telecommunications carrier that the subscriber did not utilize the service or did not authorize the utilization of the service.

(c) A telephone company or telecommunications carrier that receives a notification from a telephone service subscriber under paragraph (b) shall inform the subscriber of the ability to block the services from future use by the subscriber, and shall block the services from future use by the subscriber, if the subscriber so requests. If a subscriber requests that the carrier or company not block the service or later requests to have the block lifted, the subscriber shall be responsible for charges caused by the future utilization of that service. The carrier or company may not charge a recurring fee for blocking the service.

Sec. 13. Minnesota Statutes 1996, section 237.74, subdivision 6, is amended to read:

Subd. 6. TARIFF OR PRICE LIST CHANGES. (a) Telecommunications carriers may:

(1) decrease the rate for a service, or make any change in a tariff or price list that results in a decrease in rates, effective without notice to its customers or the commission; and

(2) offer a new service, increase the rate for a service, or change the terms, conditions, rules, and regulations of its service offering effective upon notice to its customers. Subject to subdivisions 2 and 9, a telecommunications carrier may discontinue a service, except that a telecommunications carrier must first obtain prior commission approval before discontinuing service to another telecommunications carrier if end users would be deprived of service because of the discontinuance.

(b) A telecommunications carrier may give notice to its customers by bill inserts, by publication in newspapers of general circulation, or by any other reasonable means. However, notice of increases for intrastate residential rates for the services referenced in section 237.662, subdivision 1, shall be made by bill inserts prominently displaying the notice of price increase on the customer's bill, or by a direct mailing or phone call to the customer. Customer notices for increases of intrastate rates for those services must include as a heading "NOTICE OF PRICE INCREASE".

Sec. 14. Minnesota Statutes 1996, section 237.74, is amended by adding a subdivision to read:

Subd. 13. INTERNATIONAL CALL BLOCKING. A telecommunications carrier, on its own or in conjunction with the telephone subscriber's provider of local tele-

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phone service, shall offer comprehensive international toll blocking of nondomestic area codes that are part of the North American numbering plans, as a condition of offering service in Minnesota.

Sec. 15. Minnesota Statutes 1996, section 325F.692, subdivision 1, is amended to read:

Subdivision 1. **DEFINITIONS.** (a) For the purposes of this section, the following terms have the meanings given them.

(b) "Information service" means a billed service transmitted exclusively orally via the telecommunications network that may include provision of information or advice, participation in trivia or other games, participation in adult conversation or other group bridging services, or provision of similar billed services. An information service may be accessed by an information service customer by various methods including, but not limited to, dialing a 1-900 or 1-800 telephone number, or by the customer receiving a collect call from an information service provider following the customer's 1-800 call.

(c) "Information service customer" means a person who receives information transmitted from or participates in conversation enabled by an information service provider.

(d) "Information service provider" means a person who provides information services and directly, or indirectly through a billing agent, either charges information service customers for use of the information service or includes the costs associated with providing information services in the charge for a long-distance call.

(e) "Telephone service subscriber" means a person who contracts with a telephone company for telephone services.

Sec. 16. REPEALER.

(a) Minnesota Statutes 1997 Supplement, section 237.66, subdivision 1b, is repealed.

(b) Minnesota Statutes 1996, section 325F.692, subdivision 8, is repealed.

Sec. 17. EFFECTIVE DATE.

Sections 1, 2, 3, 4, and 16, paragraph (b), are effective the day following final enactment. Sections 6 to 13, 15, and 16, paragraph (a), are effective July 1, 1998. Section 14 is effective January 1, 1999.

Presented to the governor March 27, 1998

Signed by the governor March 31, 1998, 10:52 a.m.

CHAPTER 346—S.F.No. 2149

VETOED

CHAPTER 347—S.F.No. 2221

VETOED

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