

LEGISLATIVE REPORT

Broadband Association of North Dakota

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To: Members

From: David Crothers, Executive Vice President

Today is Day 25 of the North Dakota's Sixty-Sixth Legislative Assembly. The first month of a legislative session is always busy because every bill and every resolution introduced by members will be scheduled for a committee hearing and vote on the floor in the house it was introduced. The 961 bills and resolutions introduced this year is almost 200 more than recent legislative sessions have seen. The increased number means everyone in the Capitol has been extremely busy.

The Broadband Association of North Dakota's Legislative Committee and managers have identified a number of issues of great importance to the membership that you will find detailed on the following pages. Foremost among them is legislation that will enable more efficient utility crossings of railroad property, concerns over State licensing of your company's employees who are Power Limited Technicians, a grant and loan program that proposes to fund community build out of communications infrastructure in competition with the services your own company provides, a bill requiring locally-owned broadband providers to comply with onerous new consumer regulations including requirements that you contact them by registered mail and get affirmative action each time their agreements end, another initiative by cities and counties allowing them to implement an undetermined tax on all utilities in a city in lieu of that community using special assessments to fund public infrastructure, legislation addressing critical infrastructure in the State, and the broadband experience of consumers in housing facilities on North Dakota's campuses.

The Association, in particular, wants to thank Deb Syvertsen, who is the Plant Maintenance Manager at Red River Communications, and Shane Hart of Reservation Telecom for testifying on House Bill 1362 last week. The bill, if passed, enacts into law a procedure for crossing railroad property. Jim Walter of 702 Communications also testified in favor of the bill. Members of the broadband industry were joined by the oil and gas, rural and consumer owned electric companies in the State, Associated General Contractors and oil and gas industries.

Ms. Syvertsen of Red River was particularly eloquent in her testimony before the House Political Subdivisions Committee detailing the wide range of fees the company has been assessed for crossing, including on unused and abandoned property the railroad has pulled its tracks from, and unreasonable length of time it has taken to get permits from the railroad. The legislation is strongly opposed by Burlington Northern Santa Fe and a local line, Red River Valley and Western Railroad, and both testified the bill was unconstitutional and a “taking” of their property.

It is anticipated the Political Subdivisions Committee will take up House Bill 1362 late next week and make a recommendation to the full House of Representatives to either support or defeat the bill.

Separately, the Association also sought to have amendments added to House Bill 1066, the Prairie Dog bill, that would limit any State funding of “communications” infrastructure in the State to just “emergency communications”. Representative Craig Headland, Chairman of the Finance and Taxation Committee, was instrumental in adding the language that protects the State’s independent broadband providers from unfair competition from the government.

The Association was also successful adding language to House Bill 1195, which imposed additional requirements on companies using auto renewals for consumer agreements, by exempting the local broadband providers and telecom companies in North Dakota.

The Association was also successful this week in reaching agreement with sponsors of Senate Bill 2359 to exempt the employees of telecom company employees acting within the scope of their employment from being included in a proposed new law that will bring Power Limited Technicians under the jurisdiction of the North Dakota Electrical Board. The wide-ranging legislation would require telecom employees engaged in PLT activities to be licensed by the board, pay annual fees, subject them to State-sponsored continuing education and have 6,000 hours of supervision before they may work on their own and require inspection of their work by the State Electrical Board.

Finally, the Association was also successful in securing an amendment that prevented the vast overreach in a proposal that seeks to address the user experience of broadband users in the State’s university housing. Senate Bill 2318, however, was so broadly written that it did not limit the State to addressing the specific problem, but instead directed the Information Technology Committee to review all “broadband services” for campuses. Currently those services are provided by Dakota Carrier Network. The problem that exists on campus student housing is due solely to the inadequate infrastructure within the facilities themselves and not in the quality or capacity of broadband delivered to the site itself. Members of the Association want to thank Derrick Bulawa, CEO of BEK Communications, and DCN’s Seth Arndorfer for their persuasive advocacy on the issue. The Association is also indebted to Senator Randy Burckhard, Chairman of the Senate Political Subdivisions Committee, for his leadership on the measure. The restricted measure passed this week on the Senate floor.

The coming week will continue to be busy for the Association and its members. We will again be stressing the importance of adopting House Bill 1362, the railroad crossing legislation, to members of the House Political Subdivisions Committee and members of the full House. We anticipate the committee will make its recommendation to the House's other members on either Thursday or Friday with a "do pass" or "do not pass" vote.

Members of the Association's Legislative Committee include: Derrick Bulawa, BEK Communications; Paul Schuetzler, Consolidated Telcom; Keith Larson, Dakota Central; Kent Schimke, Dickey Rural; Tyler Kilde, MLGC; Jeremy Becker, NCC; Karl Blake, Polar Communications; Dave Gauslow, Red River; Brooks Goodall, Reservation Telephone; Jim Newman, SRT and Troy Schilling, West River.

Please contact me at any time regarding any of the legislation or any other matter of concern. I can be reached at work: 701-663-1099; cell: 701-471-3838 or dcrothers@yahoo.com.

HB 1021

The Information Technology Department's appropriations bill for the next two years. The agency's appropriation pays for, among other things, the costs of providing network and telecom to all of the State agencies, K-12, cities, counties and the higher education system. Dakota Carrier Network currently holds that contract. The Association seldom testifies or advocates for agency appropriations, but monitors them and attends hearings to ensure that adverse policy is not adopted.

Jan. 11 Introduced in House.

Jan. 16 Appropriations Committee Hearing.

HB 1066

The legislation is one of the centerpieces of Republican leadership's initiatives this session. In essence, it is a redistribution of monies generated by the oil and gas revenues to governmental entities. It is a complex formula. This bill creates a new fund, the Municipal Infrastructure Fund, for the purpose of providing grants to cities located in non-oil producing counties and may only be used for essential infrastructure projects. The term "essential infrastructure project" means capital construction projects to construct new infrastructure or to replace existing infrastructure. It does not include debt repayments and routine maintenance or repair projects. There are 9 eligible uses for these grants including "communications infrastructure". The Association has a concern that may include cities providing their own telecom and broadband infrastructure. HB 1066 also creates a "County and Township Infrastructure Fund", but its eligible uses are limited to road and bridge projects.

Jan. 3 Introduced in House.
Jan. 15 Finance and Taxation Committee Hearing.
Feb. 6 Rereferred to Appropriations.

HB 1157

A bill that would prohibit those who are planning, installing, altering or repairing a fire detection system from doing the work unless they were licensed by the State Electrical Board. The legislation would specifically exclude those who are doing similar low-voltage work on audio systems, video system, computer network system, home automation system or security system. This bill is significant because of another bill the Association is watching for where the State Electrical Board is seeking to expand its jurisdiction over “Power Limited Technicians”. Essentially, members within the electrical industry are in conflict about who and what projects should be subject to licensure by the State Board. The Association will continue to attend hearings to see if this bill is amended. Specifically, whether there is an effort to license telecom and broadband company employees.

Jan. 3 Introduced in House.
Jan. 15 Industry, Business and Labor Committee Recommended
“Do Pass”.
Feb. 1 House Passed 57-34.

HB 1161

A bill prohibiting the entry of false information into a “telephone caller identification system” with the intent to deceive, defraud or mislead. The legislation outlaws entering false information or placing a call knowing that false information was entered into the Caller ID system with the intent to mislead or defraud. The Association believes the bill was introduced to target one of the most common practices of robocallers. There are a number of exemptions to the bill, including a provision exempting telecom, VoIP and broadband providers who are acting solely as a means of transmission of a “call” between recipient and sender. Other exemptions are afforded the blocking of caller identification information, law enforcement agencies and intelligence and security agencies of the Federal government.

Jan. 3 Introduced in House.
Feb. 12 Industry, Business and Labor Committee Hearing – 9:00 a.m.

HB 1171

Legislation to create a skilled workforce student grant program. The bill directs the Bank of North Dakota to develop in conjunction with Higher Ed in the State and the North Dakota Workforce Development Council a grant program to attract and retain individuals for technical and professional skills in North Dakota. The grant to each participant would be \$8,500 annually with a cap of \$17,500. The Workforce Council will determine each year which professions qualify for the funding. The program will initially receive \$10,000,000 in seed money to establish the fund and the initiative will be treated as a revolving loan fund after that.

Jan. 3 Introduced in House.

Jan. 16 Industry, Business and Labor Committee Recommended
“Do Pass”, as amended, 11-1.

HB 1195

The bill expands upon the duties of merchants when using “automatic renewals” in consumer agreements. It would apply to a consumer who borrows, buys, leases or obtains personal property, real property or services for consideration. It would require consumers to initial each clause. It would require a merchant to provide a “cost-effective, timely and simple procedure” for cancellation. The legislation requires that a customer be sent by registered mail a notice if there is a renewal for in excess of 31 days explaining how to cancel the contract. It would also require affirmative action by the consumer before there can be a renewal. House Bill 1195 contains a provision exempting the “sale of public utilities” regulated under Title 49 of the North Dakota Century Code, which would address the telecom services provided by BAND Association members, but it is the organization’s opinion that it would not include broadband or video services.

Jan. 3 Introduced in House.

Feb. 1 Industry, Business and Labor Committee Recommended
“Do Pass” 13-0, as amended.

Feb. 7 House Passed 90-0.

HB 1217

Legislation that effectively outlaws competition from North Dakota State government with private industry. The bill allows an individual directly affected by competition with a State agency or institution to petition the Public Service Commission for a hearing. If the PSC finds that a government entity is competing with private industry to provide goods or services it shall direct the agency to terminate the activity unless; 1) Cessation of the activity will create an emergency; 2) the cost of

providing the service through private enterprise will cost at least ten percent more than the government is providing it for, or; 3) private enterprise cannot adequately provide the service, or; 4) ceasing the activity will cause irreparable harm or loss of substantial invested funds. If the Public Service Commission finds a State agency is competing with private industry the activity must cease upon the completion of any contracts it may have to provide that service. HB 1217 will be monitored by the Association because of its pertinence to municipalities or State agencies providing, or contemplating, market entry for broadband services.

Jan. 3 Introduced in House.
Jan. 28 Government and Veterans Affairs Committee Recommended
 “Do Not Pass” 10-4.
Jan. 31 Failed to Pass 24-67.

HB 1329

A bill to appropriate \$225,000 to the Department of Human Services for a grant to enhance and expand services to connect telephone callers to behavioral health services. The money will be used to expand Statewide access for callers and those texting to health and human service programs, mental health support, substance abuse services, gambling addiction, services for the elderly, residents with disabilities and support for military, veterans and military families. The Association will work to ensure that broadband companies are not required to provide any services without compensation or unreasonable regulatory filings.

Jan. 8 Introduced in House.
Jan. 22 Human Services Committee Recommended “Do Pass” 7-6,
 Rereferred to Appropriations.

HB 1362

Legislation to put into statute the ability and requirements for utilities to cross railroad property in the State of North Dakota. The 6 railroad companies serving the State have always resisted having a policy in State law and, instead, only offered agreements with affected industries. The result has been widely disparate agreements between utilities and the railroads. House Bill 1362 has three fundamental principles: First, it establishes the cost of a permit for a utility seeking to cross railroad property at \$750. Second, the legislation allows a utility to begin crossing the railroad property 31 days after sending a registered letter with the permit fee, proof of insurance coverage and engineer’s drawings of the proposed crossing. Third, establishes the right of utilities to use the public right of way without paying the railroad a fee. The utilities

included in HB 1362 are 1) water, 2) sewage, 3) electronic, 4) telephone, data and telegraphic communications, 5) fiber optics, 6) cablevision, 7) electric energy, 8) oil, gas, hazardous liquids or 9) other substances, including pipes, sewers, conduits, cables, valves, lines, wires, manholes or attachments. The Association intends to actively advocate for passage of the bill.

Jan. 10 Introduced in House.

Jan. 31 Political Subdivisions Committee Hearing.

HB 1435

Legislation that furthers State and local governments' attempt to build a Statewide radio network in North Dakota. Today, the radios used by emergency personnel in North Dakota are "unable to talk to each other" and there are not enough towers. This bill is the third in the last three sessions to eliminate that problem. HB 1435 creates an \$80 million line of credit at the Bank of North Dakota for the Information Technology Department to carry out "Statewide interoperable radio network projects" as they are approved by the State legislature. Motorola is heavily involved in this bill and is one of the prime advocates of it in the legislature. Presumably Dakota Carrier Network would be a primary carrier for carrying the backhaul from the hundreds of towers throughout the State that would be required to carry the State's traffic. This bill also appropriates \$40 million additional dollars from the Strategic Investment and Improvements Fund to pay for the network.

Jan. 14 Introduced in House.

Feb. 7 Government and Veteran's Affairs Committee Hearing.

HB 1474

A measure that allows cities and counties to implement an infrastructure tax in lieu of a city adopting special assessments to fund road repair and construction and other projects of public benefit. It allows the government to levy an "infrastructure tax" on all residential and commercial utility bills. If a municipality implements the infrastructure tax it also has the authority to levy and collect a "green field" special assessment tax. Green fields are undeveloped property that infrastructure is brought to. The Association has long opposed placing taxes on utility bills as a means of funding other areas of political subdivisions. We are particularly concerned the authorized tax on utilities will not include a similar tax on wireless, video and other broadband providers.

Jan. 14 Introduced in House.

Jan. 31 Political Subdivisions Committee Hearing.

HB 1542

A bill to create a task force to study the needs and challenges of North Dakota's autonomous ecosystem. The legislation names representatives to the task force and charges them with assessing the State's current capabilities and needs going forward. Presumably it will focus on unmanned aerial vehicles and autonomous use of highways. Both will use immense amounts of data. The Association intends to participate in the hearings and ensuring the task force understands the capacity and expertise the broadband providers of North Dakota.

Jan. 14 Introduced in House.

Jan. 28 Industry, Business and Labor Committee Recommended "Do Not Pass" 13-1.

HCR 3005

A concurrent resolution urging Congress and the President of the United States to coordinate efforts to fight and provide an effective and innovative solution to combat illegal and unsolicited robocalls. Sponsors of the resolution testified that robocalls account for 98 million separate calls each day to United States households that result in \$9.5 billion annually in fraud. They further testified that small business in the nation waste an estimated 20 million hours annually dealing with illegal, unsolicited and unwanted robocalls, which lead to a minimum of \$475 million in lost productivity each year.

Jan. 3 Introduced in House.

Jan. 10 House Passed 89-0.

SB 2044

A bill updating and expanding the definition and penalties for tampering with or damaging critical infrastructure facilities or a public service. There has long been a law in North Dakota making criminal the act of damage to public communications, transportation, water, gas or power facilities. This legislation expands the law and defines it as all "critical infrastructure" and adds more industries to the list, including a telecom's central office and wireless telecom infrastructure. The bill further expands the current law by including "conspirators" of those damaging the infrastructure and provides an enhanced penalty.

Jan. 3 Introduced in House.

Jan. 18 Energy and Natural Resources Committee Hearing.

SB 2318

A bill saying it is the Legislature’s “intent” that ITD enter a contract to “provide broadband capabilities within student housing facilities at institutions under the control of the State Board of Higher Education. The Association has long been aware of an effort to separate student housing from the StageNet contract. That contract is currently held by Dakota Carrier Network. The legislation further directs ITD to work with colleges when developing requirements and selecting the broadband service solution. The Association is trying to determine exactly what SB 2318 means. First, we don’t believe we have ever seen a bill that says it is the “intent” of the Legislature that a State agency enter a contract. They would normally just direct the agency to do it. Second, providing broadband to University student housing outside of the ITD master contract would violate a separate State law. We will recommend to the Association’s Legislative Committee that this bill be one of the greatest priorities during the Sixty-Sixth Legislative Assembly.

Jan. 18 Introduced in Senate.
Feb. 1 Political Subdivisions Committee Recommended “Do Pass”,
 as amended, 5-2.
Feb. 7 Senate Passed 47-0.

SB 2359

Legislation that will give the State Electrical Board jurisdiction over “Power Limited Technicians”. The electrical board does not currently license them or regulate their work, training or education. All members of the Association employ power limited technicians in a variety of capacities including fiber to the home work, as well as a multitude of other services offered by the broadband company such as security systems, video, automation and television. The bill is sweeping in its breadth. It gives the State Electrical Board the authority to license “power limited technicians”, require continuing education, establishes different classes of licenses and mandates supervision for those with fewer than 6,000 hours of experience. Senate Bill requires their work be inspected by an “inspector” designated by the State Electrical Board. The Association believes that it overreaches and fails to recognize the professionalism or levels of training that exist today in North Dakota’s broadband and telecom companies. The Association will advocate to exempt the telecom companies recognized in Title 49 of the North Dakota Century Code. All of the Association’s members are subject to those statutes.

Jan. 21 Introduced.
Feb. 5 Industry, Business and Labor Committee Hearing.