

LEGISLATIVE REPORT

Broadband Association of North Dakota

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To: Members

From: David Crothers, Executive Vice President

Cross-over has arrived in the Sixty-Sixth Legislative Assembly. “Cross-over” is a legislative mandate just sort of mid-point during a legislative session when all bills must be voted on in their house of origin. Bills introduced in the House of Representatives must have had a committee hearing and a vote on the floor. The same with legislation introduced in the Senate. The workload for members of the legislature has been more substantial than recent sessions. The House has seen 546 bills and 56 resolutions introduced this year, while the Senate has 361 bills and 18 resolutions. The 981 total is not an all-time high, but is higher than average and just over 200 more than two years ago.

Members of the Association were extremely pleased with the passage of House Bill 1362 on Wednesday as members of the House of Representatives were grinding through their “calendar” of bills trying to finish their work. The legislation, which provides a clear streamlined permitting process for utilities and others crossing railroad property, passed by an 83-8 margin. It has been a priority of the Association during this legislative session.

House Bill 1362 was warmly received beginning in the House’s Political Subdivisions Committee when members heard testimony from Shane Hart, CEO of Reservation Telephone; Deb Syvertsen, Plant Maintenance Manager at Red River Communications; and, Jim Walters, President of 702 Communications about the myriad of unjustified fees and unreasonable delays railroads are imposing on those trying to cross railroad property. Similar examples were cited by cooperative and investor-owned electric companies, oil and gas companies and contractors.

House Bill now moves on to the Senate.

The House also passed this week House Bill 1066, which is more commonly known as the “Prairie Dog Bill”. The legislation redistributes monies generated by oil and gas revenues in the State to municipalities and counties for 9 allowable uses, including “communications infrastructure”. Members of the Broadband Association of North Dakota were extremely

concerned about the potential for governmental entities to start creating and running their own networks in the State. Representative Craig Headland, chairman of the House's Finance and Taxation Committee, was solely responsible for ensuring the communications providers in North Dakota would not face subsidized competition by advocating and persuading committee members to adopt an amendment prohibiting the use of fiber optics when HB 1066 was heard in his committee. Please thank Representative Headland when you have the opportunity for his efforts on this issue. The battle over government competition is an ongoing one during legislative sessions.

Also, on Wednesday, members of the House passed House Bill 1474, which is a measure permitting cities and counties to hold a vote determining whether they would eliminate special assessments for street and road projects and instead implement an assessment on utilities each month. A regular charge will be assessed to the account of each utility user within the city or county. The Association appeared before the House Political Subdivisions Committee and submitted an amendment exempting telecom and broadband providers from the utilities to be assessed. The Association told committee members that locally-owned and wireline and fiber companies would be at a competitive disadvantage with those such as wireless, satellite and others who provide the same broadband or voice services, but would not be subject to the tax. Members of the committee adopted the Association's amendment and included it in the bill that will be forwarded to the Senate.

Members of the Senate also passed a measure, Senate Bill 2044, after their Energy and Natural Resources Committee adopted an Association amendment expanding the broadband company infrastructure when they passed legislation expanding the definition of "critical infrastructure" and increasing penalties for damaging it.

Members of both the Senate and House of Representatives will return to Bismarck and begin their work next Wednesday. Of particular concern to the Association next week will be scheduled committee hearings for the Information Technology Department's biennial appropriation (HB 1021) and a resolution (HCR 3005) urging Congress and the President of the United States to press for solutions to the growing robocall problems in the nation.

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.
Feb. 18 Appropriations Committee Recommended "Do Pass", as amended, 21-0.
Feb. 20 House Passed 78-11.
Feb. 28 Appropriations Committee Hearing.

HB 1066

The legislation is one of the centerpieces of Republican leaderships' 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.
Feb. 5 Finance and Taxation Committee Recommended "Do Pass", as amended, 9-5.
Feb. 6 Rereferred to Appropriations.
Feb. 18 Appropriations Committee Recommended "Do Pass" 80-12.
Feb. 20 House Passed 80-12.

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”, as amended, 7-4.
Feb. 1 House Passed 57-34.
Feb. 18 Introduced in Senate. Referred to Industry, Business and Labor Committee.

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. 18 Industry, Business and Labor Committee Recommended “Do Pass”, as amended, 12-0.
Feb. 19 House Passed 92-1.
Feb. 20 Introduced in Senate. Referred to Industry, Business and Labor Committee.

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.
Feb. 11 House Passed 83-10.
Feb. 18 Introduced in Senate. Referred to Education Committee.

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 was the organization’s opinion that it would not include broadband or video services. An amendment advocated by the Association was adopted by the House exempting all services provided by BAND members.

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.
Feb. 18 Introduced in Senate. Referred to Industry, Business and
Labor Committee.

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.
Feb. 14 Appropriations Committee Recommended “Do Not Pass”, as
 amended, 11-8.
Feb. 19 Failed to Pass 26-67.

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.
Feb. 18 Political Subdivisions Committee Recommended "Do Pass",
 as amended, 11-3.
Feb. 20 Introduced in Senate. Referred to Political Subdivisions
 Committee.

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. 11 Government and Veteran's Affairs Committee
 Recommended "Do Pass", as amended, 13-1.
Feb. 12 Referred to Appropriations.
Feb. 18 Appropriations Committee Recommended "Do Pass", as
 amended, 19-1.
Feb. 20 House Passed 85-5.

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. House Political Subdivisions committee members adopted an amendment and exempted communications services during the final deliberations on the measure.

Jan. 14 Introduced in House.
Feb. 15 Political Subdivisions Committee Recommended “Do Pass”,
 as amended, 10-3.
Feb. 19 House Passed 81-12.
Feb. 20 Introduced in Senate. Referred to Finance and Taxation
 Committee.

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.
Feb. 11 House Defeated 70-23.

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.
Feb. 18 Introduced in Senate.
Feb. 27 Industry, Business and Labor Committee Hearing - 3:00 p.m.

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. The Association testified during the Senate Committee hearing and urged them to adopt more expansive language protecting wireline companies network. The committee subsequently adopted an amendment prepared by BAND that protects a wireline company’s entire infrastructure.

Jan. 3 Introduced in House.
Jan. 18 Energy and Natural Resources Committee Recommended “Do Pass”, as amended, 6-0.
Feb. 15 Senate Passed 42-3.

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. Derrick Bulawa testified on behalf of the Association and told committee members the problem was not the quality or capacity of broadband being delivered, but rather inferior infrastructure within the housing units themselves. An amendment submitted by BAND limiting the scope to “Local Area Networks” and remove “broadband services” was adopted by the committee and approved by the full Senate.

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

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. Although the Association was successful prior to the hearing in persuading sponsors of the bill to include an amendment exempting broadband company employees “acting within the scope” of their employment, the committee ultimately converted the bill to a study resolution.

- Jan. 21 Introduced.
- Feb. 12 Industry, Business and Labor Committee Recommended “Do Pass”, as amended, 5-1.
- Feb. 13 Senate Passed 44-3.
- Feb. 14 Introduced in House.