

LEGISLATIVE REPORT

Broadband Association of North Dakota

P.O. Box 1144 · Mandan, N.D. 58554 · 701-663-1099

www.broadbandnd.com

VOLUME 18, NUMBER 9

March 25, 2019

To: Members

From: David Crothers, Executive Vice President

Today is Day 52 of North Dakota's Sixty-Sixth Legislative Assembly. The State's Constitution limits the legislature to meeting no more than 80 days during any two-year period, which is referred to as a "biennium". Legislative leadership customarily want to "hold back" a number of days and not use all 80 of them to give themselves the ability to come back if they need to address additional issues or want to attempt to override a veto a Governor might issue following their adjournment.

Informal discussion on the floors of both houses have speculated that legislators may be able to finish their work by Good Friday, which is April 19th. That would be the legislature 71st Day. That would be extremely aggressive and would represent a full week shorter than recent sessions. The more likely scenario is that they will adjourn Sine Die somewhere in the 73rd to 75th day timeframe.

Members of the Association were extremely gratified this week when the Senate passed a bill to create a more efficient system for utilities and others to cross railroad property. The measure, House Bill 1362, puts into law for the first time a fee cap and the number of days a railroad has to review an application to cross the railroads. The Senate committee that heard testimony for and against the bill made two changes to the legislation before it was sent to the floor with a 6-0 recommendation for passage.

The first amendment adopted was at the request of the Public Service Commission and gives the agency additional time to resolve disputes when either the railroad or utility petitions them. The second change gives railroads an additional 5 days to review applications before notifying utilities they object to a crossing permit.

Because there are differences between the versions of House Bill 1362 the Senate and House passed the leadership in each body will schedule a "conference committee" to resolve those differences. The Association met with House members last week and asked them to "concur" with the Senate changes. They have indicated their willingness to do so.

As you will note from the following pages of bill status and descriptions, the pace of the legislature has increased dramatically. The hard work of committee hearings following Cross Over has finished and the bills are making their way to the floor. Four different bills were passed by either the Senate or House this week the Association advocated on, including HB 1362, HB 1474, SB 2318 and SB 2359. In each of the measures either an Association amendment was adopted or the bills were converted to study resolutions.

There were two items of concern this week, however. First, proponents of House Bill 1157, which originally was a simple initiative to expand the authority of the State Electrical Board over those installing fire detection systems, brought amendments to their hearing before the Senate Industry, Business and Labor Committee that would vastly expand the Electrical Board's authority over "power limited technicians", who they rename "power limited electricians". The Association has expressed the concerns of North Dakota's broadband companies and expressed our opposition to specific provisions in the new amendment.

Second, the Association became aware this week of provisions in a separate measure, Senate Bill 2275, that would create an "infrastructure revolving loan fund" within the Bank of North Dakota and give cities and counties the ability to borrow money at low-interest rates. Among the permissible uses is for "communications infrastructure". The bill is a companion piece to House Bill 1066, the "Prairie Dog" measure, which created a \$250 million grant program for cities, counties and airport authorities. SB 2275 is frequently referred to as "Prairie Dog II". The Association has expressed our concerns to House Majority Leader Chet Pollert and that body's Chairman of the Appropriations Committee, Jeff Delzer. Although the bill came out of Mr. Delzer's committee with a 13-2 "Do Not Pass" recommendation this is the type of bill, or at least provisions of it, that are likely to be included in another measure before the end of the session. The Association will either seek to have the "communications infrastructure" language removed or add the "except for fiber optics" that was adopted in the original Prairie Dog bill.

Finally, the Association wants to thank Dakota Carrier Network for the opportunity to meet with managers this week at DCN's board meeting and brief the managers on a number of legislative issues and seek their counsel on how to proceed as the Sixty-Sixth Legislative Assembly heads into its final month.

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.
Feb. 20 Introduced in Senate.
Mar. 5 Finance and Taxation Committee Recommended "Do Pass" 14-0.
Mar. 14 Senate Passed 46-0.
Mar. 21 Signed by Governor.

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.
Mar. 20 Industry, Business and Labor Committee Hearing.

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.
Mar. 12 Industry, Business and Labor Committee Recommended, as amended “Do Pass” 6-0.
Mar. 14 Senate Passed 46-0.

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.
Mar. 11 Education Committee Hearing.
Mar. 27 Appropriations Committee Hearing – 8:30 a.m.

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.

- Mar. 11 Industry, Business and Labor Committee Recommended “Do Pass, as amended, 6-0.
Mar. 13 Senate Passed 45-0.

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.
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.
Mar. 19	Industry, Business and Labor Committee Recommended "Do Pass", as amended, 6-0.
Mar. 21	Senate Passed 46-0.

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.
 Feb. 27 Introduced in Senate.
 Mar. 14 Government and Veterans 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. 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.
 Mar. 21 Finance and Taxation Committee Recommended "Do Pass",
 as amended, 6-0.
 Mar. 21 Senate Passed 45-1.

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.
- Mar. 13 Industry, Business and Labor Committee Recommended “Do Pass”, as amended, 6-0.
- Mar. 14 Senate Adopted on Voice Vote.

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.
 Feb. 27 Introduced in House.
 Mar. 18 Energy and Natural Resources Committee Recommended
 “Do Pass”, as amended, 10-1-3.

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.
 Mar. 14 Education Committee Recommended “Do Pass” 11-2-1.
 Mar. 18 House Passed 77-15.

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. 27	Introduced in House.
Mar. 13	Industry, Business and Labor Committee Recommended “Do Pass” 10-0-4.
Mar. 21	House Passed 81-10.