

LEGISLATIVE REPORT

Broadband Association of North Dakota

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

www.broadbandnd.com

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To: Members

From: David Crothers, Executive Vice President

Today is Day 61 of the Sixty-Sixth Legislative Assembly. Members of the body have 19 more days before they reach the North Dakota Constitution's limit of 80 days every two years. It is this time of year when speculation on when the legislature will adjourn "Sine Die" (without an appointed day for return) is rampant. The most optimistic reason that it could come as early as Good Friday (Day 72). Almost everyone is sure that it will not go any longer than the end of the following week (Days 76 or 77). Optimism for an early adjournment surged this week with an agreement between the House and Senate on State employee raises, which is traditionally one of the last bills compromised on at the end of legislative sessions.

Members of BAND were pleased this week when the Senate Industry, Business and Labor Committee adopted language exempting North Dakota telecom carriers from any future requirements on the companies' Power Limited Technicians. The story of regulating Power Limited Technicians by North Dakota's State Electrical Board has been a long and complicated one this legislative session. Initially, the Electric Board attempted to bring them under their jurisdiction under Senate Bill 2359, which was widely opposed by members of the Power Limited Technician community. The Association spent considerable time working...ultimately successfully...to secure an exemption for the telecom industry in that bill. In the face of such widespread opposition and the perception the State Electrical Board was trying to vastly expand its authority, however, members of the Senate ultimately converted the measure into a study resolution.

At the same time, there was a House bill (HB 1157) that simply sought to require Power Limited Technicians installing or designing fire detection systems in the State to come under the purview of the State Electrical Board. That bill was ultimately passed by the House and sent to the Senate. However, during a Senate Industry, Business and Labor Committee hearing on HB 1157 the bill's sponsor, Representative Ben Koppelman (R-West Fargo) sought to change his bill with a "hog house" amendment, which essentially replaced all of the language in his original bill with new provisions. Those changes comprehensively addressed

power limited technicians and for the first time subjected them to regulation, but with a much lighter touch than contemplated in Senate Bill 2359. The Association still argued however that telecom companies should be exempt from any regulation by the State Electrical Board because of the degree of our own training programs and work that your companies do. We were successful in that advocacy and are specifically exempted. The Association would like to recognize the efforts of both Kent Schimke, CEO of Dickey Rural, and Polar Communications CEO Karl Blake for their counsel and guidance throughout the legislative session on these bills. The amended House Bill 1157 passed the Senate yesterday and now will go into a conference committee with members of the House, who passed a far different bill than the one they are receiving back.

Also, this week, members of the House Agriculture Committee adopted an amendment exempting utilities with a legal right to be on land from the provisions of any future trespassing bill. One of the hot button issues of this session has been a measure introduced in the Senate that would flip the right of non-owners to access the property of an owner. Right now, one is allowed to access that property unless it is “posted”, or signs are put up directing one not to trespass. The initial legislation would have changed the presumption to all property is off limits to others without any posting and the landowner must grant permission for access. The legislation has taken many twists and turns since its introduction, but members of the Association eventually became concerned about the ability of broadband providers to access property where their infrastructure was located. The amendment was written by Representative Craig Headland, who carried it to fellow members of the Agriculture Committee and persuaded them to adopt it.

Finally, the Association has been working with leadership in both the House and Senate on language in Prairie Dog II (SB 2275) if it were to come back to life. Prairie Dog II is a companion bill to Prairie Dog I (HB 1066).

House Bill 1066 is a \$250 million grant program for cities, counties and airport authorities that changes the formula for distributing oil money and is intended for infrastructure projects across the State. Included in the 10 allowable uses for that money is “communications infrastructure”. The Association objected to cities and counties being allowed to use State money to compete with private industry, but were told that it was necessary for them to complete the SIRN project, which is a \$190 million initiative to deploy an interoperable Statewide radio system for use by law enforcement and emergency services. Much of that money will be for radios and infrastructure. However, Representative Craig Headland, chairman of the powerful House Finance and Taxation Committee, successfully added an amendment to Prairie Dog I that prohibits cities and counties from using the money for “fiber optic infrastructure”. It will prevent government entities from using grant money to install excess fiber in their own networks and reselling excess capacity. Both houses passed the legislation and it has been signed into law by Governor Doug Burgum.

At the same time Prairie Dog 1 was working its way through the House, Prairie Dog II was doing the same in the Senate. Prairie Dog II (Senate Bill 2275) differs from the House version in that the House bill is a grant program and the Senate's bill is a low-interest loan program administered by the Bank of North Dakota of \$550 million for the same 10 allowable uses for cities and counties, including "communications infrastructure". However, despite Senate Bill 2275 being passed overwhelmingly in that body, the House killed it on their side. No idea is really dead during a legislative session though until they adjourn "Sine Die" and there is widespread speculation the Senate will put the Prairie Dog II legislation back into one of the House bills that currently are in the Senate through an amendment and send it back to the House again. Those amendments are usually attached to some agency's appropriations bill which is eventually going to have to pass. The problem of no language limiting the power of cities and counties accessing low interest loans to build out "communications infrastructure" remains, however. The Association has met with the Senate Majority Leader and Appropriations Committee chairman to advocate the same language prohibiting use of any low-interest loans to build out "fiber optic infrastructure".

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 prohibits 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 specifically excludes 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. BAND's concerns this bill would be amended to include broadband company employees were realized when the legislation's original sponsor came to the Senate I, B & L committee with language that proposed to recreate a licensing structure for Power Limited Technicians (PLT's).

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. 27 Industry, Business and Labor Committee Recommended “Do
 Not Pass” 6-0.
 Mar. 28 Re-referred to Industry, Business and Labor Committee.
 April 3 Industry, Business and Labor Committee Recommended “Do
 Pass” 6-0.

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 Recommended “Do Pass” 14-0.
Mar. 28 Senate Passed 45-0.
April 3 House Refused to Concur with Senate Amendments.

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.
April 2 House Concurred with Senate Amendments.

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.

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.
April 2 House Concurred with Senate Amendments 79-8.

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. 22 Government and Veterans Affairs Committee Recommended
 "Do Pass", as amended, 7-0.
 Mar. 29 Appropriations Committee Recommended "Do Pass" 14-0.
 April 1 Senate Passed 47-0.

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. The Senate amended the bill and converted it to a study resolution.

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.
 April 3 House Refused to Concur with Senate.

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. That language is included in the measure sent to the Governor for his signature.

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.
Mar. 25 House Passed 76-14.
April 3 Senate Concurred with House Amendments 43-4.

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. The House adopted the amended bill in its entirety, so the bill now goes to the Governor.

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.
Mar. 27 Signed by Governor.

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.
April 1 Signed by Governor.