

# LEGISLATIVE REPORT

**Broadband Association of North Dakota**

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

[www.broadbandnd.com](http://www.broadbandnd.com)

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To: Members

From: David Crothers, Executive Vice President

Today is Day 31 of the Sixty-Seventh Legislative Assembly. The legislature is limited by the State Constitution to meeting only 80 days every two years. Leaders in both parties are being mindful of scheduling the time remaining doing the business of the State because of their desire to keep days in reserve that would allow them the ability to reconvene to redistrict, call them themselves back in to a special session or to return to Bismarck to allocate future Federal dollars being appropriated as pandemic relief.

Work at the Capitol this week has been focused solely with an eye on “Cross-Over”. Cross-over marks that point during a legislative session when all bills must be out of their house of origin. It simply means that a bill introduced in the House of Representatives must have had a committee hearing and a vote on the floor. The same in the Senate. The bills that pass in their house of origin go to the other body where the process starts all over again. Those bills will have committee hearings in the second body and a vote on the floor. They must be approved by both houses of the legislature before they can go to the Governor for Mr. Burgum’s signature.

Cross-Over has always been a scheduled two-day break for the North Dakota legislature. This year it is scheduled for Monday, March 1<sup>st</sup> and Tuesday the 2<sup>nd</sup>. It allows for a four-day weekend. About 10 years ago, however, the House and Senate each began making a push to finish their work a day early prior to the scheduled break. They would finish their work on Thursday, and it added a day to their break. Next week, February 22<sup>nd</sup> through Friday the 26<sup>th</sup>, is the week before Cross-Over. The Association believes that not only will the House be done with their work on Thursday, the Senate may be done even earlier.

Yesterday, the Association provided testimony to members of the Senate Political Subdivisions Committee on House Bill 1059. Specifically, the Association registered its opposition to a provision added in the House of Representatives that would have required

BAND members in their capacity as excavators to conduct a time-consuming, redundant notification whenever an underground facility carrying dangerous products. A separate Federal law already requires that notification by the owner or “operator” of the pipeline.

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; Stan Vangness, 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](mailto:dcrothers@yahoo.com).

### **HB 1059**

A new addition to the Legislative Report because of language amended onto the bill in the House of Representatives before it was approved and sent to the Senate. As originally written, the bill added a new obligation on excavators to notify 911 if they damaged an underground facility and flammable, toxic or corrosive gas or liquid escaped. The change was prompted by a request from the Public Service Commission in response to Federal regulations. However, the House amended the bill to also mandate the excavator notify the pipeline operator immediately and the State unified reporting system within 24 hours. The change has drawn strong opposition from the excavators in the State, 911 board of directors, including the telephone representative, Brooks Goodall of Reservation Telephone.

Jan. 5        Introduced in House.  
Jan. 15       Energy and Natural Resources Committee Recommended  
                  “Do Pass”, as amended, 14-0.  
Jan. 19       House passed 88-2.  
Feb. 3        Introduced in Senate.  
Feb. 18       Political Subdivisions Committee Hearing.

### **HB 1064**

The legislation expands the powers and duties of the Information Technology Department to include entering memorandums of understanding with other States to jointly report and combat cybersecurity incidents. The Association takes no position on the legislation and is supportive of virtually all cybersecurity efforts but will continue to monitor the language throughout the session because this particular chapter defines the relationship between North Dakota’s Information Technology Department, BAND members and Dakota Carrier Network. For example, the language barring the State of North Dakota to offer

telecom or broadband services to private entities, businesses and individuals is found in this chapter. BAND will participate in committee hearings throughout the session to ensure that relationship does not change.

Jan. 5        Introduced.  
Feb. 12      Appropriations Committee Recommended “Do Not Pass”  
                  18-0-3.  
Feb. 16      House Defeated 94-0.

### **HB 1144**

A bill allowing civil actions by individuals against social media sites that censor speech. It also makes a “interactive computer service provider” liable. An interactive computer service means includes “a service or system that provides access to the internet...”. The bill, as currently written, would only apply to computer service providers that has over 1 million customers and is a provider of a social media site, but BAND will oppose any efforts to lower the customer threshold.

Jan. 8        Introduced in House.  
Feb. 18      Judiciary Committee Recommended “Do Pass”, as amended,  
                  8-3-3.

### **HB 1146**

An initiative by the 911 community to take authority away from cities and counties and give it to their own Statewide Interoperability Executive Committee for determining who may use Statewide Interoperable Radio Network (SIRN). Current law limits a city or county to designating which law enforcement, firefighter or emergency medical personnel may have access to personal or vehicle radio. This bill, if adopted, would remove the limitation and allow political subdivisions to give the radios to all employees. It would also permit nongovernmental emergency service providers to access the radios.

Jan. 8        Introduced in House.  
Jan. 25      Government and Veterans Affairs Committee Recommended  
                  “Do Pass”, as amended, 14-0.  
Feb. 1        House Passed 93-0.  
Feb. 16      Introduced in Senate. Referred to Government and Veteran  
                  Affairs Committee.

## **HB 1169**

Legislation intended to eliminate competition between private industry and the State of North Dakota. It gives the Public Service Commission jurisdiction to adjudicate and make binding decisions. If the PSC determines the State is in competition with private enterprise it is required to direct the State 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 same service provided by a State agency or institution;
- 3) Private enterprise cannot adequately provide the service or
- 4) Cessation of the activity will cause irreparable harm or loss of substantial invested funds.

There is also language in HB 1169 that establishes that unless a State agency demonstrates a compelling public interest for an activity to be in competition with private enterprise, “it must be the policy of the State to contract with private enterprise”.

Jan. 8            Introduced in House.  
Jan. 27          Industry, Business and Labor Committee Recommended “Do Not Pass” 13-0-1.  
Feb. 2            House Defeated 85-9.

## **HB 1175**

Legislation that gives retroactive immunity to the business community from Covid-19 liability claims. It is an expansive bill making those who own or are in control of a business immune from civil liability for any act or omission that damages or injures an individual unless the business operator acted with actual malice or intentionally exposed the injured person with the intent to cause harm. HB 1175 also extends immunity to healthcare providers for any action they might take in furtherance of the State or Centers for Disease Control guidelines.

Jan. 11          Introduced in House.  
Feb. 3            Industry, Business and Labor Committee Recommended “Do Pass”, as amended, 9-4-1.  
Feb. 5            House Passed 77-17.  
Feb. 15          Introduced in Senate. Referred to Industry, Business and Labor Committee.

## **HB 1206**

A bill altering some of the provisions of emergency services communications systems, or E911, in the State. The most substantive change is removing the restriction currently in place that limits 911 revenues to be used only for "implementing, maintaining, or operating the emergency services communication system". If the new language is adopted it would allow the Emergency Services Communications Coordinating Committee to make future decisions on what expenditures are permitted. The Coordinating Council is a four-member board with one representative each from the Association of Counties, the Adjutant General, who administers State Radio, 911 Association and the State's Chief Information Officer.

Jan. 11 Introduced in House.

Feb. 11 Political Subdivisions Committee Recommended "Do Pass", as amended, 12-0-1.

## **HB 1330**

An attempt by a handful of legislators to enact a new section of law that would prohibit most businesses from selling their users' data without consent. There is an exception for users who "opt-in" and consent for the business to sell expansively defined "protected data". Data includes name, screen name, website address, hometown, friends or followers, shopping habits, internet browsing history, purchase history, number of friends or followers and many more. A provider who violates this chapter of law is civilly liable to the user for a minimum of \$10,000. If the business knowingly commits the violation they are liable for a minimum of \$100,000 and the user's attorney fees.

Jan. 13 Introduced in House.

Feb. 10 Industry, Business and Labor Committee Recommended "Do Not Pass" 12-1-1.

Feb. 18 House Defeated 75-19.

## **HB 1370**

A bill creating a new section of law that would permit school districts to lease property to others for the construction of a wireless telecommunications facility for a period of up to 30 years. The legislation is reflective of the continuing interest by the State in meeting the demand for wireless technologies. Two years ago, the Prairie Dog bills initially permitted cities to borrow money for communications infrastructure prior to Representative Craig Headland intervening and removing the provisions. This year, there is a bill in the State Senate (SB 2111) allowing State Radio to lease space on their towers to private industry.

Jan. 18 Introduced in House  
Jan. 28 Education Committee Recommended “Do Pass” 13-0-1.  
Feb. 2 House Passed 94-0.  
Feb. 15 Introduced in Senate. Referred to Education Committee.

**HB 1376**

A measure granting employers immunity in civil lawsuits filed by employees and independent contractors who contract or are exposed to Covid-19 in the course of their employment. The exemption from liability is not available for employers who willfully expose an employee.

Jan. 18 Introduced in House.  
Feb. 8 Industry, Business and Labor Committee Recommended “Do Pass”, as amended, 11-2-1.  
Feb. 16 House Passed 80-14.

**HB 1419**

The legislation is an effort to give cities and counties the authority to assess and collect an “infrastructure fee” that would be collected by the political subdivision. The intent of the bill is to replace special assessments billed to individuals and businesses for specific projects in the affected areas and impose a broader-based city or county-wide tax to pay for those projects. A previous effort during the last legislative session sought to do something similar, but assessed individual utilities. The Association testified and asked to be exempt because all of the other taxed entities were monopoly providers. Because of disagreements in committee two years ago the legislation was converted into a study resolution. The bill this year is modified and no longer assesses individual utilities.

Jan. 18 Introduced in House.  
Jan. 29 Political Subdivisions Committee Hearing.

**HB 1473**

A bill requiring those licensed by the State Electrical Board who wish to advertise for electrical services, including power limited services, to include the license number on their business cards, advertisements and vehicles. It is the Association’s opinion any changes in HB 173 do not impact BAND members because they are exempt from both the licensing requirement and other provisions of NDCC 43-09, that statutes that govern electricians.

- Jan. 18 Introduced in House.
- Jan. 26 Industry, Business and Labor Committee Recommended “Do Not Pass” 11-3.
- Feb. 1 House Defeated 87-6.

### **HB 1486**

An effort to tighten the release of telephone records of any resident in North Dakota by requiring a signed release by the customer. The bill prohibits a telephone company from releasing the records of any customer or from selling those records without the written consent of the customer. The Association reviewed this bill with managers of BAND member companies and learned the FCC’s Customer Proprietary Network Information (CPNI) rules were at least as stringent as the prospective legislative change. BAND members are currently complying with FCC rules.

- Jan. 18 Introduced in House.
- Feb. 3 Industry, Business and Labor Committee Recommended “Do Pass”, as amended, 9-5.

### **SB 2021**

The bill is the Information Technology Department’s appropriations legislation. BAND typically does not weigh in on specific expenditures on the agency’s budget, but we have been asked in the past to express support for some of their initiatives or projects. Monitoring appropriations bills also helps us determine future unannounced projects and priorities the State of North Dakota has for the upcoming biennium. In the next two years, Governor Burgum is requesting \$14.2 million for Statewide Interoperable Radio Network (SIRN) after spending \$120 million the last two years deploying the radio network.

- Jan. 5 Introduced in Senate.
- Jan. 6 Appropriations Committee Hearing.

### **SB 2111**

The legislation would permit the Department of Transportation to lease space on State-owned radio towers to public and private entities. The bill, if adopted, also allows the private sector access to use the land upon which those towers are located. The bill is problematic for a number of reasons, foremost among them is that some BAND members lease space towers that they own. The Association has a reason to argue that competition against the State with taxpayer dollars is unfair competition.

There are a number of entities, each with their own self-interest, that are advocating for passage of this bill. The State Highway Department would welcome any unexpected revenues that they might receive by renting out space on towers they already own. SB 2111 provides that any monies from leasing space would go directly into their account and not the State treasury. The State's Information Technology Department would like the freedom to allow other entities to access State Radio towers so they can trade space with private entities who own their own towers and further deploy their Statewide Interoperable Radio Network (SIRN) transmitters. AT&T is extremely supportive of the bill because they envision being able to place equipment on them to lower their cost of deploying the FirstNet system they have committed to build. The Association's concern is twofold: First, having access to the State Radio towers would create a motivation for those renting space on BAND member-owned towers to leave. Second, there are no restrictions in the legislation that would prohibit or even discourage the State of North Dakota and Department of Transportation to go into the tower building business if they knew they were going to be able to have revenue sources to lower the cost of those towers.

Jan. 5	Introduced in Senate.
Jan. 11	Transportation Committee Recommended "Do Pass" 6-0.
Jan. 12	Rereferred back to Transportation Committee.
Jan. 28	Transportation Committee Recommended "Do Pass", as amended, 6-0.
Feb. 3	Senate Passed 47-0.

### **SB 2137**

The bill provides for a sales and use tax exemption for enterprise information technology and computer software purchased for use in a qualified data center. The reason this bill has been introduced is that a similar law providing many of the same benefits is set to expire this year. SB 2137 is one of two bills in the State Senate that does the same thing, which is quite unusual. The tax exemption is used to encourage development and investment in the State. Policymakers do this by defining the size of the "qualified data center". BAND and Dakota Carrier Network were influential in writing the language for the original bill in 2015 and the resulting law was used to further invest in DCN's facilities. "Qualified" under this bill would require new or refurbished construction of at least 15,000 square feet. If adopted, this law would expire in 2030.



Jan. 5 Introduced in Senate.  
Feb. 16 Finance and Taxation Committee Recommended “Do Pass”,  
as amended, 7-0.  
Feb. 18 Senate Passed 47-0.

### **SB 2138**

Language that would establish a new law in North Dakota that permits nonprofit corporations to hold member meetings by use of “remote communication” as long as notice is given to every member entitled to vote and the number of participating voting members is sufficient to constitute a quorum. However, if the nonprofit’s articles or bylaws prohibit such a meeting this language would not apply.

Jan. 5 Introduced in Senate.  
Jan. 21 Political Subdivisions Committee Recommended “Do Pass”  
7-0.  
Jan. 22 Senate Passed 47-0.

### **SB 2155**

The second of two pieces of legislation introduced in this session creating a sales and use tax exemption for enterprise information technology and computer software purchased for the use in a qualified data center. The other is SB 2137. Under this bill the minimum size of the data center must be 16,000 square feet. If passed, the bill’s provisions would expire in 2027.

Jan. 8 Introduced in Senate.  
Feb. 17 Finance and Taxation Committee Recommended “Do Not  
Pass” 7-0.  
Feb. 18 Senate Defeated 46-1.

### **SB 2285**

A bill introduced by a group of legislators from the northwestern part of the State to make the holders of easements liable for the fees an abstracter charges for updates. In short, the obligation to pay for an abstract update would be transferred from the landowner to the entity having an easement. The charge would be applicable each time the abstract is updated so it is not a matter of paying a single fee when acquiring an easement. The measure stipulates a \$15 fee and that it be charged every time a property owner’s abstract is updated. The Association is working with the North Dakota Land Title Association to defeat the bill.

Jan. 22      Introduced in Senate.  
Feb. 5      Political Subdivisions Committee Recommended “Do Not  
Pass” 7-0.  
Feb. 8      Senate Defeated 45-2.

### **SB 2333**

Legislation that addresses the fight between the Apple App Store and the developers that create and sell their work through the store. In practice, Apple charges a nominal fee to post the Apps on the site, but requires customers purchasing the goods or subscriptions to do it through Apple’s payment system and charges up to 30 percent on each transaction. Google does something similar. The bill would prohibit a distribution platform (Apple) from forcing a developer from using that platform (Apple’s) exclusively. It would also stop a digital platform from requiring that only their payment system be the only means for accepting payment. The bill further prohibits the online platforms from retaliating against a developer for using other distribution platforms, digital transaction systems or payment systems. The legislation was introduced at the request of the creators of digital content. It is being opposed by the online platforms such as Apple and Google. Similar legislation has been introduced in Kansas and Hawaii. Those opposing SB 2333 say the online platform provides valuable protections to the ultimate user by thoroughly vetting and analyzing the code underlying the developers’ work and ensures that malware and inferior products are not downloaded on their devices.

Jan. 25      Introduced in Senate.  
Feb. 11      Industry, Business and Labor Committee Recommended  
“Do Not Pass”, as amended, 5-1.  
Feb. 15      Senate Defeated 36-11.