

LEGISLATIVE REPORT

**North Dakota Association of
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To: Members

From: David Crothers, Executive Vice President

North Dakota's 65th Legislative Assembly began last week in Bismarck with a new Governor and 1 in 5 members of the Legislature being new to the body. At the same time, policymakers are confronted with reduced revenues for the first time in almost a decade.

Today is Day 7 of the Legislative Session. Legislators are limited to meeting no more than 80 days during the biennium. This year's session was unique in that they convened on January 3rd and were addressed by the Governor, but did not gavel themselves in to session on the following two days despite being at the Capitol and holding committee hearings. As a result, they days did "not count" towards the 80 day total.

Despite it being early in the session, two bills of considerable consequence to the independent telecommunications industry have already had committee hearings. The first, House Bill 1027, is a proposal advocated by the 911 community and North Dakota Association of Counties that seeks to eliminate a telco's ability to charge Public Safety Answering Points (PSAP's) for database changes and limit the reimbursement a telco receives to 5 percent of the first dollar collected in 911 fees. The Association testified against the bill before the House Political Subdivisions Committee. The counties focused on the typical 1 percent charge other States have allowed for telco compensation as opposed to North Dakota's 5 percent. The Association noted two points: First, scales of economy were much smaller for the independent telecom companies in the State. Second, not a single cooperative was interested in continuing to be the collection agent for the county PSAP's. Their operations are locally-funded and locally-controlled. There is no reason they couldn't collect it themselves.

Committee members were extremely interested in the issue and asked many questions about the amounts telcos were charging for both database management changes and what it actually cost to collect, process, and remit 911 fees. At the conclusion of the meeting, the Association

and representatives of the counties and 911 community were asked to meet privately and report back to the Political Subdivisions Committee yesterday.

Following those meetings between ourselves and the counties, as well as a conference call with the NDATC Legislative Committee members and managers of our member telcos this week, we have reached agreement on the following: First, the telecom companies in the State will no longer charge fees for changes to the databases. Second, telecom companies will continue to receive the full 5 percent for collecting and remitting the 911 fees to the county, including those fees as they continue to increase. For example, 18 counties currently have a \$1.50 monthly assessment, up from \$1.00 in the last several years. There is going to be a bill introduced that will raise the assessment to \$2.00 during this legislative session.

During the Political Subdivision Committee hearing yesterday the members concurred with the agreement and voted to 15-0 to give House Bill 1027, as amended, a “Do Pass” recommendation.

The second bill having a hearing last week was House Bill 1046, which removes the sunset provision on the sales tax exemption telecoms enjoy when building out their infrastructure. The existing law is scheduled to “disappear” on June 30, 2017. Telecoms....and all companies building out telecom infrastructure.....will be responsible for paying the sales tax following that date.

North Dakota telco managers, Shane Hart from Reservation Telephone Cooperative, Troy Schilling of West River Telecom and Keith Larson of Dakota Central all attended the meeting and met with legislators. Mr. Larson testified in favor of the bill, as well as the Association.

House Bill 1046 is in real danger of failing. The House of Representatives is having an extremely difficult time funding both their priorities and their existing obligations. At the moment, they have approximately an \$80 million dollar “problem” that they are looking for ways to fix. The many sales and property tax exemptions that they have given when the State had money is the first place they are looking.

It is anticipated the House Finance and Taxation Committee may act as early as next week with an unfavorable recommendation to the full body.

The third bill heard last week was House Bill 1026, which is the produced of 18 months discussion between different One Call system stakeholders. The legislation makes comprehensive changes to the existing statutes and is the result of many discussions between the pipelines, water, electric, contractors, municipal, telecom, landowner and others within an interest in underground facilities.

Brooks Goodall, the Operations Manager at Reservation Telephone and the telecommunications industry's representative on the North Dakota One Call Board, has been an influential voice in the stakeholder's group deliberations and testified on behalf of the industry during the committee hearing.

Members of the Association's Legislative Committee include: Derrick Bulawa, BEK Communications; Paul Schuetzler, Consolidated Telcom; Keith Larson, Dakota Central; Ralph Greer, Dickey Rural; Tyler Kilde, MLGC; Dean Rustad, NCC; Karl Blake, Polar Communications; Dave Gauslow, Red River; Jeanette Hoff, Reservation Telephone; Barb Steinmetz, Reservation Telephone; and Jim Newman, SRT.

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 1008

The Public Service Commission's appropriation bill. The \$21 million biennial budget is typically not an area members of the Association are tremendously concerned about, but potentially is a vehicle to add language impacting the independent telecommunications industry in North Dakota. The Association will continue to monitor the bill throughout the session.

Jan. 3 Introduced in House.

Jan. 9 Appropriations Committee Hearing.

HB 1026

Legislation introduced by Legislative Management, which took it from an interim committee known as the Economic Impact Committee, that addresses changes to North Dakota's One Call statutes. Brooks Goodall, Operations Manager at Reservation Telephone Cooperative and the telecommunications board member on the North Dakota One Call Board, testified on behalf of the independent telephone industry in the State. The

legislation is supported by the Association and minimizes a number of problems the industry sought to address during the last legislative session. Specifically, allowing telcos to utilize "positive response" and "digital white lining" should reduce the time, effort and expense incurred by facility owners in complying with the existing law.

Jan. 3 Introduced in House.

Jan. 5 Industry, Business and Labor Committee recommended "Do Pass", as amended, 14-0.

HB 1027

A bill introduced by the Economic Impact Committee that met during the interim and received a report from the Emergency Services Communications Coordinating Committee. Recommendations in the report included legislation eliminating the ability of telecommunications companies to charge for changes classified as “database management” and limiting telco compensation for billing and remitting 911 assessments to the counties to 5 percent of “the first dollar collected”. The language is strongly supported by the 911 community and the North Dakota Association of Counties. During the initial hearing on House Bill 1027 the Association strongly opposed the change and told members of the committee that it was unfair to change a formula that has existed for over 30 years simply because the Public Safety Answering Points (PSAP’s) in the State wanted more money. The Association also testified that telecom companies in the State had no desire to be the billing and collection agents for the counties and they had the ability to bill residents of the county for the locally-owned and locally-controlled entities.

Jan. 3 Introduced in House.
Jan. 5 Political Subdivisions Committee Hearing.
Jan. 12 Political Subdivisions Committee Recommended “Do Pass”,
 as amended, 15-0.

HB 1046

Legislation making the current 5 percent sales tax exemption for equipment used in telecommunications infrastructure development permanent. Since its inception in 2009 the exemption has been temporary. Although the statute has existed since then, there was always an automatic “sunset provision” whereupon the exemption disappeared on a set date. In the beginning the statute “sun set” two year old intervals. However, the current exemption has been in effect since 2013. As a result, it will expire on June 30, 2017.

As part of the legislative interim between 2015 and 2017 the Political Subdivisions Taxation Committee did a thorough review of all of the current tax exemptions for all industries and investors in the State of North Dakota, including the one utilized by the telecommunications industry. The Association appeared numerous times before the interim committee to urge the provision’s retention. The interim committee agreed and voted unanimously to introduce legislation this session making the exemption permanent.

A number of problems have arisen, however, since its introduction and were highlighted during the Finance and Taxation Committee's hearing. Although there was no opposition to the measure in committee, North Dakota's financial condition, the philosophical bent of a number of legislators and the legislature's scouring of accounts for extra money has presented obstacles that we did not anticipate. The Association expects the bill will sit in committee without action until they have further insight into the revenues they have available for this and similar exemptions.

Jan. 3 Introduced in House.

Jan. 9 Finance and Taxation Committee Hearing.

HB 1162

A bill that enables private industry to file a complaint against a State agency or institution alleging the government is competing against them for business. The allegation will be filed with the North Dakota Public Service Commission. The PSC will hold a hearing and make a determination if government is competing against private enterprise for that service or product. The Commission must issue a decision within 20 days. If the PSC finds the government is competing with the private sector it will order the agency or institution to cease its operations unless: 1) Ceasing 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.

The legislation also requires that "Unless a State agency or institution 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. If a State agency institution is authorized to engage in an activity in competition with private enterprise, the Public Service Commission shall set a fee for that activity to reflect the fair market value and the actual costs incurred."

Jan. 6 Introduced in House. Referred to the Industry, Business and Labor Committee.

HB 1178

Legislation that alters substantially how 911 fees are charged in North Dakota. The bill removes the requirement that a governing board adopt a resolution forwarding a proposed 911 assessment to the voters for their approval or rejection during the next election. Instead, the governing board in that city or county may instead impose a fee of up to \$2.00 per month on the assessed services. The requirement for voter approval disappears.

Additionally, 50 cents of the \$2.00 must be dedicated to a political subdivision's obligation to a new "statewide interoperability radio network".

Jan. 6 Introduced in House. Referred to Political Subdivisions Committee.

HB 1185

A mandate that anyone who manufactures, distributes or sells a product that makes content on the internet accessible may not sell the device.....including routers.....unless it has an operating digital blocking capability. It imposes additional obligations upon the manufacturer to ensure that access to intimate images and prostitution sites are inaccessible. The process for having the filter disabled is quite cumbersome and includes a written request, face-to-face meeting and the payment of a \$20 fee.

Jan. 9 Introduced in House. Referred to Judiciary Committee.

Jan. 11 Request Return from Committee.

Jan. 11 Withdrawn from Further Consideration.

SB 2021

The Information Technology Department's biennial appropriation bill. The agency is responsible for providing the voice, data and video....through a contract with Dakota Carrier Network.....to all State agencies, K-12, higher education, county offices and the State National Guard. Although the Association seldom gets involved with ITD's appropriations bill, it is monitored because of the many advisory committees created under this section of law. Additionally, it is the section of the Century Code that enumerates the agency's powers and duties, including whom they may and may not serve.

Jan. 3 Introduced in Senate.

Jan. 5 Appropriations Committee hearing.