

LEGISLATIVE REPORT

**North Dakota Association of
Telecommunications Cooperatives**
P.O. Box 1144 · Mandan, N.D. 58554 · 701-663-1099
www.ndatc.com

VOLUME 17, NUMBER 3

January 27, 2017

To: Members

From: David Crothers, Executive Vice President

Today is Day 17 of the Sixty-Fifth Legislative Assembly.

The independent telecommunications industry enjoyed a busy week in Bismarck with the hosting of the Association's biennial Legislative Dinner, the organization's board meeting, a PSC/Industry luncheon, Dakota Carrier Network's regular board meeting and a ribbon cutting of DCN's newest addition. Legislators, Statewide elected officials, telco directors and managers were among the 342 who gathered on Tuesday evening in Bismarck for the rural industry's Legislative Dinner.

This week also marked the deadline for legislators to introduce bills this session. The House of Representatives saw 435 bills introduced this session while 344 were introduced in the Senate. The Senate has also seen 9 concurrent resolutions introduced. The House has 22 resolutions that will be considered. The 779 total for bills being introduced is down considerably from past years, which most observers attribute to the State's reduced revenue forecasts and the inability of policymakers to fund nonessential projects.

While no committee hearings are scheduled for the coming week, there are three bills that have moved out of their respective committees to the House floor for consideration. House Bills 1162, 1178 and 1373 will all be voted upon this week.

House Bill 1162 is a bill that gives "private industry" the ability to file complaints against the State of North Dakota when they allege the government is competing against them in providing goods or services to the public. Under the legislation's original version the Public Service Commission would make a determination if the allegation was true and could order State government to cease the activity. However, the bill was heavily amended by the House Industry, Business and Labor Committee this week to convert the proposed law into a study

resolution. As amended, HB 1162 directs Legislative Management to consider studying the effects of government competition against private business currently providing the same services, as well as what services government is offering that nonprofits might otherwise provide.

House Bill 1178 was also heavily amended. As you will recall, it was the bill implementing a \$2.00 monthly 911 assessment, but 50 cents of the total must be set aside as dedicated money to implement a “statewide interoperability radio network”. It eliminated the voter approval process. The amended version of HB 1178 still includes the language imposing a 50 cent surcharge dedicated for the radio network, but restores the elections the original version of the bill removed. The result is that residents of a county will still vote to determine how much they want to spend on 911 fees up to a cap of \$1.50 (plus the 50 cent surcharge).

The final bill moving from committee to the floor this week is Century Link’s initiative to remove the language limiting a telecom company’s ability to add to a customer’s bill any governmentally-imposed surcharge more than 30 days after that increase is adopted. The House Industry, Business and Labor Committee recommended by a 12-0-2 vote to remove the language, which had become somewhat of a non-issue following action by the Legislative Assembly in 2015 that completely deregulated Century Link’s local rates.

Members of the Association’s Legislative Committee include: Derrick Bulawa, BEK Communications; Paul Schuetzler, Consolidated Telcom; Keith Larson, Dakota Central; Ralph Neu, Dickey Rural; Tyler Kilde, MLGC; Dean Rustad, NCC; Karl Blake, Polar Communications; Dave Gauslow, Red River; Barb Steinmetz, Reservation Telephone; Jim Newman, SRT, Troy Schilling, West River and Matt Erhardt, 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 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.
- Jan. 10 House Passed 91-1.

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.
- Jan. 18 House Passed 90-0.

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.

Jan. 26 Industry, Business and Labor Committee Recommended “Do Pass”, as amended, 12-2.

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.

Jan. 26 Political Subdivisions Committee Recommended “Do Pass”, as amended, 11-2-1.

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.

HB 1373

Legislation introduced at the request of Century Link to eliminate the requirement that any governmentally imposed surcharges be added to a customer's bill within 30 days of the implementation of those obligations. The Association believes that Century Link will begin adding the 2.5 percent gross receipts tax to customer bills, although the tax obligation has existed for almost two decades. As you will recall, the North Dakota Century Code was amended two years ago to remove any rate regulation for Century Link so there was some question whether this legislation was even necessary. However, to avoid any future confusion or disagreement it was determined the change should be proposed.

- Jan. 16 Introduced in House.
- Jan. 25 Industry, Business and Labor Committee Recommended "Do Pass" 12-0-2.

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.

SB 2199

Legislation that allows out-of-state businesses to come into North Dakota to repair or replace critical infrastructure during an emergency and not be subject to the same business registration, tax obligations or Workforce Safety premiums that in-state companies are subject to. The exemption is good for 10 days before a declared emergency and ends 60 days after the Governor or President makes a proclamation.

Critical Infrastructure includes natural gas, electrical and telecommunications transmission property that is so vital that its incapacity or destruction would have a debilitating impact on public health or safety and the economic and physical security of the region.

Passage of this bill would allow companies who enter the State to do remediation and repair work within the disaster period and their employees to not be liable for any State or local taxes or contributions to unemployment insurance, workers compensation insurance or taxes administered by the Tax Commissioner.

Furthermore, the State of North Dakota will be prohibited from considering the income earned by either the out-of-state business or its employees when they are in the State doing the remedial or repair work during the declared emergency.

AT&T has hired a local lobbying firm to advocate for passage of the bill.

Jan. 12 Introduced in Senate.

Jan. 17 Finance and Taxation Committee Hearing.