

LEGISLATIVE REPORT

**North Dakota Association of
Telecommunications Cooperatives**
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To: Members

From: David Crothers, Executive Vice President

As members of the Association anticipated, the House Finance and Taxation Committee gave an unfavorable recommendation to House Bill 1046. The bill is a proposal to remove the sunset provision from existing law, which gives those building out telecommunications infrastructure an exemption from paying the 5 percent North Dakota sales tax. The committee voted 13-1 to give it a “Do Not Pass” recommendation. The bill will now proceed to the floor for a vote by the full House.

Directors and managers will remember the sales tax exemption does not disappear immediately. It will remain in effect until June 30, 2017.

Also this week, the proposal to increase the 911 assessment by 50 cents, which will be forwarded to a dedicated fund for an interoperability radio network passed in the House of Representatives by an 81-12 margin. As you will recall, House Bill 1046 was also the legislation that originally limited telecom companies to only 5 percent of the first dollar in compensation for collecting and remitting the 911 fees to the respective counties. Following Association testimony before the House Political Subdivisions Committee that provision was removed. It is also the legislation that eliminates the ability to charge for changes made to the 911 database.

Additionally, House Bill 1162, the measure to expand the Public Service Commission’s authority to adjudicate disputes between private industry and State government when the latter was providing a good or service available from the private sector was converted to a study resolution. The original language gave the PSC the authority to order State government to cease providing a service if it was determined by the agency that a similar service is available from private industry.

Last week the Industry, Business and Labor Committee adopted amendments to convert HB 1162 into a study resolution. The full House approved the measure on Wednesday by an 83-8 vote.

Finally, House Bill 1373 also passed this week. The legislation is Century Link's initiative to remove language in the State's existing statutes that required a telecom company to increase or decrease any governmentally imposed surcharge within 30 days of its creation. It is anticipated the company will begin adding another line item to customer bills for North Dakota's 2.5 percent gross receipts tax. The measure created no opposition and passed the House 94-0.

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.

Feb. 1 Finance and Taxation Committee Recommended "Do Not Pass" 13-1.

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.
- Jan. 31 House Passed 83-8.

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.
- Feb. 1 House Passed 81-12.

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.
- Jan. 31 House Passed 94-0.

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.