

2015 SENATE POLITICAL SUBDIVISIONS

SB 2296

2015 SENATE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Red River Room, State Capitol

SB 2296
1/29/2015
Job Number 22797

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to a broadband grant and loan program and the broadband infrastructure revolving loan fund

Minutes:

Written testimony # 1 David Crothers
Written testimony # 2 Dan Nelson

Chairman Burckhard opened the hearing on SB 2296. All senators were present.

Senator Axness introduced SB 2296. (00:00- 5:03) It would provide incentives to improve infrastructure for broadband service and expand services across the state. What this bill in essence would create a revolving loan fund through the Department of Commerce administered by the Bank of North Dakota for companies to upgrade their infrastructure and a counterpart to that would be a grant program currently set at \$10 million dollars.(further lengthy description pertaining to this bill).

David Crothers North Dakota Association of Telephone Cooperatives (5:18-11:05) Written testimony #1.

Senator Dotzenrod One of the things you pointed out on page 1, line 15 is this cost of leases if that were struck from the bill? Then you were talking about re-sellers does that solve the problems in this section 1, lines 9-17? Is that just part of the problem that there are other issues?

David Crothers I believe there are other issues of the greatest concern of the members of the association. It would be the ability for political subdivisions to act, to go into the broadband business.

Senator Dotzenrod On page 2, lines 6&7, where there is reference to political subdivisions. If you left in those lines, 'incorporated organizational limited liability company' and the cooperative are eligible for grants. We would take out the tribes which I think would function something like a political subdivision and take out political subdivisions, would you then have solved that problem? Is there more to it than that?

David Crothers North Dakota has a history of trying to make broadband affordability in deployment possible into accelerate that goal whenever possible. They've done it through the sales tax exemption that you currently have for investment and infrastructure. When we come to 2296 this would be one more tool in the toolkit if you would, and would greatly advance that ability to offer broad band in North Dakota. So, I don't think the conversation is done with those two issues. We just get that much closer and we think that it is increasingly possible.

Senator Anderson David what is the cost of money now for cooperatives currently if the telephone cooperative get funds through that choice?

David Crothers It is pretty much at market rates. The days, the old perception of being able to go to the rural utility services the old REA and be able to get a 2% loan is long gone. It is essentially market rates when we go to the Rural Utility Service (old REA). But there are a number of cooperative borrowers that exist in the nation. Those two are market rates. They depend and vary on the financial help of one's company, the payback period on the project but a general answer that would be quite accurate is market rates.

Senator Anderson Can you tell me what that is today?

David Crothers The bankers may well know better. Rural utility service blends rates and have another of other abilities that I don't know that the bankers.

Kent Blickensderfer (15:10-15:53) representing Century Link Incorporated. A telecommunications company the former, Quest, former US West, former Northwestern Bell. I don't have prepared comments. We would echo with the Association of Telephone Cooperatives said on basically the laundry list of concerns that David had; the biggest one, being political subs being able to access that capital.

Dan Nelson, (16:00-19:44) Midcontinent Communications written testimony #2.

Chairman Burckhard it seems to me that broadband is the right technology to be working towards, it is just a lot of issues to reconfigure in this bill, the way it sounds.

Dan Nelson You heard about the FCC trying to change the standard of what broadband is. Wireless companies are entering a new generation of the speeds they are able to offer. The federal government is trying to reallocate wireless spectrum which may again provide a different way of approaching problems. One of the things this bill doesn't do is say that it should be wire lined or wireless. Now probably your incentives should be technology agnostic as we call it. Whatever can get the person what they need that's what you should be willing to support. However, Minnesota, has tried to specify more that they are looking for wire lined infrastructure in their efforts. This bill doesn't make that or give that determination.

Eric Hardmeyer (21:53- 24:42) President of the Bank of North Dakota. I am not quite sure if I am here testifying against this program. I did want to make a couple of comments. First, Senator Axness if you contacted the bank and we didn't respond to you, I apologize for that. I am up here making no statements on the merits of the program or the needs of the

program. I only call to your attention an issue that I bring up to anybody and everybody that will listen to me, on the use of the Bank of North Dakota's profits. I just feel compelled to offer a comment about that. The Bank of North Dakota along with the Industrial Commission has settled on a number that we are comfortable in terms of providing transfers back to the general fund or to the state out of our capital. That number is roughly \$140 Million. I can tell you today that there are at least five or six bills all dealing with transfers from the Bank of North Dakota capital totaling in excess of \$250 Million dollars and potentially growing. So, as you look at this, as the legislature prioritizes funding's I just wanted to mention to you that this is going to have to be put into the mix. So, I make no comments on the program. I will maybe bring a thought to you. As I've done with every other revolving loan fund in that if this is going to happen you may want to put in here a audit, an annual audit, for the form of just good government around it so you can track the performance of this. Most other revolving loan funds do have an audit. There was a question about interest, what is the market rates could be. I guess I feel like, I could weigh in on that. I will tell you today that rates are extremely low and they have been historically low, now since 2008. As an example, prime rate today is 3.25%, and many banks were offering rates below prime. That has become kind of a nebulous term now. A good variable rate would be in the area of 2.5%-4%; fixed rate and there isn't a term associated with this that I have seen in terms of how long of a term you want to provide borrowers. Fixed rates anywhere 5-10 years you will probably look at rates of 5%-6%. So that would be an indication of where rates would be today.

Senator Anderson Mr. Hardmeyer, could you talk to us about these proposed loan rates for these revolving loan funds and how they affect the profits or the ability of the Bank of North Dakota to manage it? They are talking here about the interest rate for a loan from the fund is 1% per cent per app. Does that give you enough room to operate on and so forth? The other question here says the administrative costs may not exceed 1/2 of 1% of the amount of the interest payment. Now that language makes your share pretty small. I think it meant 1/2 of percent of the fund. How does that affect the profits in your ability to manage these things?

Eric Hardmeyer (24:40- 26:44) These revolving funds are generally done off balance sheet. So, they don't come from the Bank of North Dakota's deposit base. They are set up as a special fund and so that doesn't really affect the profits of the bank because it is a special fund that we administer. So, a lot of these revolving funds that I've seen are 1-2% and that is you know with the borrowers are charged if they use the program. The money comes back into the fund; the 1/2% fee is a very standard servicing fee to administer the loan. It is accurate in here, (the bill) it is 1/2 of 1%. That is a standard fee that we see across the industry to administer a loan. So the short answer to your question is it does not really affect the profits of the bank in terms of this program. It does affect the capital if this \$50 Million comes out of our capital, but, in terms of profitability it doesn't really have an effect.

Senator Anderson it seems to me the Governor's budget took a \$100 Million out of the Bank of North Dakota's profits. Is that correct? The other bills are like this one, they are adjacent to that.

Eric Hardmeyer replied that is correct. The Governor's budget in particularly 1137 is the bill that has \$100 Million coming out of the bank to provide a revolving loan fund for

infrastructure. A companion bill or competing bill to that is HB 1443, which takes and looks at the same \$100 million and then the additional \$40 million which we have agreed too, is coming out of HB 1014. That is our appropriation bill and that is all the monies for the buy down programs, Pace, Flex Pace, Affordable Housing Pace, all those we pay for now rather than getting a general fund appropriation.

Recess as we are losing our quorum to an important event. We will be at recess for several minutes.

Senator Dotzenrod How many people have broad band? How many people have internet, and of the people that have internet, how many don't have broadband? Where are these places in the state that don't have the broadband? We didn't get any information in the hearing about that and I don't know where you go to get it.

Chairman Burckhard called the committee back to order after our short recess. The last we were for those in opposition.

Senator Dotzenrod I just have a question for those in the room here that were opposed. What I thought I heard, from just about all of them, is in general we support the objective of the bill.

Chairman Burckhard correct.

Senator Dotzenrod so if the objections they raise were cleared up, how can I assume that they would be in support of this bill or is that maybe.

Chairman Burckhard there would be many issues to clear up.

Senator Dotzenrod yes it would.

Senator Anderson It is my personal opinion that everybody in this business should be happy to have free money or very low interest money. That is the reason they are supportive of the bill. I mean who would turn that down if you could borrow at 1% instead of 2 ½ or 3%. So I don't see overwhelming support or need as I said to some of them. (Ex. cited 30:17- 30:43)

Chairman Burckhard closed the hearing on SB 2296.

Further committee discussion

Senator Bekkedahl Was there a fiscal note? Did we get that? **Chairman Burckhard** it's not because it's an appropriation.

Senator Bekkedahl I see appropriation numbers in the bill. **Chairman Burckhard** there is an appropriation, but not a fiscal note as the way I understand it.

Senator Dotzenrod One of the things that I thought would come out during the hearing was a way to quantify the problem. I hoped to have a map handed out that showed the

state of North Dakota and then the void areas here, void areas there; or some numbers that showed of those total number of internet connections in the state and how many of those who have connections don't have broad band. I don't know if I have after the hearing today really have much of an understanding of what the depth and the degree of the problem that is out there.

Chairman Burckhard I think that I can speak to some of that. I work for a telephone coop as well, and we are borrowing millions to put fiber optic cable in the rural areas. All the new expansion in Minot is also fiber optic. It's very expensive but that is where it's going. Broad band, wire lines, copper, is just old news, so there is a lot of companies going to that. I don't know how you would differentiate this.

Senator Dotzenrod I'm having some difficulty conceptualizing why this is the problem that it is, because I live in a little town, less than 500 people, several summers ago, we got optical, cable in town. I thought we would have been probably the end of the line. Hearing there are these areas where supposedly this is hard to get it done. It kind of surprises me to hear that.

Chairman Burckhard asked if he was served by whom? **Senator Dotzenrod** replied it is part of the Red River Telephone out of Abercrombie, ND.

Senator Anderson Some comments we heard were about downtown Fargo. Certainly, the businesses there and the home owners there probably had service a long time ago. If they need to upgrade it, I think those people in that area should provide for that and they should pay for it and not expect the state of North Dakota to subsidize.

Chairman Burckhard the older the part of the community the less likely they are to have fiber. I mean its copper and its old copper. In Minot's case it would be very, very expensive to replace all the heart of the city copper with fiber. It is a responsibility of that carrier to do that. To me this bill has so many holes to fill.

Senator Bekkedahl Since you're in that industry, I'll ask you the question. Can fiber be placed over head or underground?

Chairman Burckhard I think it actually can be, but most often it's buried its underground.

Senator Anderson if the chair is amendable to a motion. I'll move a do not pass on SB 2296.

Senator Bekkedahl 2nd

Senator Grabinger In Jamestown DakTel received a federal grant to expand broad band to high speed internet. They also just received another one because they brought it to my business up north of Jamestown. So I am wondering is it separate and needed beyond what the federal grant program already is allowing? Maybe that is a revolving loan fund, and you probably know better than I do.

Senator Anderson When you were out my comment was that the people who are in the business would be happy to have free money or low interest money and that is why there are here saying they support this. I think they are doing fine the way they are and maybe paying a percent or percent and a half more for their loan money but they don't need this obviously because we are seeing those extensions out into Wyndmere, Turtle Lake and Mercer and those rural areas with our telephone cooperatives now. They would be happy to have lower cost money but they don't need it.

Senator Grabinger So, do you know if that federal program is being expanded or continued? Where are they going to keep this up because they are in the state that has little if any access, I am just wondering.

Chairman Burckhard One of the biggest problems that was mentioned in this bill was that basically the political subdivisions are going into the broad band business which there is a lot of issues with that. There is a lot of businesses in the business that do it right and do it well that this would just be unusual and complicated.

Senator Dotzenrod On that point, I think that everyone agrees that they shouldn't be in there including the sponsors. So that is an easy fix there. The only point that I would like to make about his bill is that I think the real short coming in today's hearing is the sense of the ability to demonstrate the degree of the problem. I don't know much more right now than I did before the hearing started about where is it in the state that they aren't getting the service, to what level of effort is necessary to get those people to get the service they need and why isn't happening, is it happening and maybe it's happening and we just don't know it. It is a lot easier to work on a problem if you understand the nature and degree to which there is a problem. But, that was the thing that we did not get in the hearing.

Chairman Burckhard I think the problem that I heard is really, really the exception than it is the rule. Like when I hear Senator Axness say about the building of a brand new home and they aren't getting access to fiber. Those are very small instances of that. I think most telco's both rural and the century links are doing as much as they can for all of their customers. With some it's a little less likely, but I think it is a small minority that it happens too. That is a personal opinion.

Senator Anderson Also I think what Senator Axness said was he had new homes that were built and of course the company had probably already laid their fiber optic cable and so now, if you're going to put one out there on the end they are going to charge you to dig the line in and so forth. Eventually they will get around to that. But when they've already completed their project in the local area, and then you build a new house, out beyond the end of their fiber it's understandable that they will want to charge you extra to bring you the line out just like the rural water district does.

Chairman Burckhard They may ask for our contribution and aid to construction.

Chairman Burckhard the motion is on a do not pass on this bill.

Senate Political Subdivisions Committee

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Senator Judy Lee was not in attendance when the committee took the vote. Her voting is recorded on Job number 22822, January 29, 2015

Senator Judy Lee voted yes on the do not pass motion.

2015 SENATE STANDING COMMITTEE MINUTES

Political Subdivisions Committee
Red River Room, State Capitol

SB 2296
1/29/2015
Job Number 22822

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to broadband grant and loan program and the broadband infrastructure revolving loan fund

Minutes:

"Click to enter attachment information."

Chairman Burckhard opened the committee discussion on SB 2296. All senators were present.

Chairman Burckhard That bill came out of committee with a Do Not Pass motion and the voting is open for Senator Lee to vote for this.

The motion is for a Do Not Pass and we would ask if you would like to vote.

Senator Judy Lee Based on the testimony that I heard before I left I pretty much made up mind. So I would vote Yes on the Do Not Pass motion.

Chairman Burckhard That makes that a 4-2-0 Do Not Pass SB2296. That would carry then. It was a great idea with many complications.

Carrier: Senator Howard Anderson

REPORT OF STANDING COMMITTEE

SB 2296: Political Subdivisions Committee (Sen. Burckhard, Chairman) recommends **DO NOT PASS** (4 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SB 2296 was placed on the Eleventh order on the calendar.

2015 TESTIMONY

SB 2296



SB2296
1.29.15
#1.1

NORTH DAKOTA ASSOCIATION OF
TELECOMMUNICATIONS COOPERATIVES

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SENATE BILL 2296

SENATE POLITICAL SUBDIVISIONS COMMITTEE

JANUARY 29, 2015

**DAVID CROTHERS
NORTH DAKOTA ASSOCIATION OF
TELECOMMUNICATIONS COOPERATIVES**

My name is David Crothers from the North Dakota Association of Telecommunications Cooperatives. The Association represents all of the cooperative and independent telephone companies in the State. Those companies serve over 150,000 homes and small businesses and approximately 96 percent of the geographic territory of the State.

Members of the Association are supportive of the objectives Senate Bill 2296. Access to high speed broadband is increasingly important to North Dakotans because it is necessary to fully participate in today's economy and access the educational, economic and entertainment opportunities that are available.

Building telecom networks is phenomenally expensive. Members of the Association invest in excess of \$110 million to expand and upgrade their facilities annually. Today, each of the telephone cooperatives and small, independently-owned commercial companies are in the process of bringing a fiber optic connection to every home, business, school and medical facility within their service territories.

Despite that commitment and investment, there is much to be done. Access to capital is one of several hurdles our members must cross before they are able to deliver high speed

services in rural North Dakota.

However, the Association has a number of concerns about Senate Bill 2296.

First, there is not a definition of "broadband" within the legislation. Providers of telecommunications services define the word differently depending on their technology, ability and investment in infrastructure. The Federal Communications Commission (FCC) currently defines "broadband" as 4 megabits downstream and 1 megabit upstream. The FCC's new Connect America Fund rules require telecom providers to offer 10 megabits down and 1 up before accessing the fund.

However, the Federal agency is already discussing increasing those numbers again as the needs of customers grow and providers have the ability to meet the subscriber's needs and demands. It is the recommendation of the Association that Senate Bill 2296 be amended to adopt a North Dakota standard that evolves with the FCC's definition.

Second, the Association is also concerned about Section 1, subsection 1 c. It can be found on page 1, line 15 of the bill. It allows for the Department of Commerce to make loans for "The cost of leases of facilities required to provide broadband service."

That language would seem to allow resellers of telecommunications services to interconnect with an incumbent's infrastructure to offer broadband services. "Interconnection" is required by State and Federal law. However, the Association believes that extending loans, and potentially grants, to resellers of telecommunications/broadband services defeats the purpose of the legislation. Senate Bill 2296 is written to fund the deployment of broadband services. However, if the incumbent...or entity the reseller is leasing from...already has a broadband capable infrastructure the problem the legislation seeks to fix has been resolved. The reseller will not be able to offer services greater than what the owner of the facility already offers.

The Association also strongly disagrees with a provision in Section 1, subsection 3. It can be found on page 2 at lines 6 and 7. It is the section addressing the entities eligible for broadband loans and grants in the legislation. Specifically, Senate Bill 2296 makes political subdivisions eligible as recipients of loans and grants. The debate over whether there should be taxpayer-subsidized competition against private sector employers is not new in North Dakota.

Members of the Association believe that it is unfair, as well as bad public policy for the State to compete against private industry. Unlike political subdivisions, private providers of telecommunications services are unable to subsidize their operations by compelling noncustomers to pay for their losses. Political subdivisions do not pay for access to capital. Political subdivisions do not pay State and Federal income taxes. They will not pay the gross receipts tax the State of North Dakota requires other telecom providers to pay.

Finally, the Association believes that initiatives that assist telecom providers to deploy broadband services more quickly and affordably is a benefit to North Dakota residents. Members of the Association also believe that a State-based loan program may have a role in improving and advancing broadband services. We are concerned, however, that Senate Bill 2296 has flaws that would make the goal very difficult to achieve.

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#2



3901 North Louise Avenue
Sioux Falls, South Dakota 57107

Testimony of Dan Nelson, Director of Governmental Affairs
for Midcontinent Communications
on SB 2296

Mr. Chairman and members of the Political Subdivisions Committee, my name is Dan Nelson and I am a registered lobbyist representing Midcontinent Communications. We are a provider of data, phone and video services to 111 communities in North Dakota.

We are opposed to Senate Bill 2296. We have several problems with the legislation that will be explained. What must be said at the outset is that Midcontinent Communications believes private investment is the preferred method for expanding broadband availability and services in North Dakota. In calendar year 2014, Midcontinent Communications spent \$46 million in creating and maintaining broadband infrastructure in the state of North Dakota. Additionally, we see an increased number of employees and we project that operational and capital spending will continue to stay strong through the next biennium.

We understand as a privately owned, general partnership that remote areas of North Dakota most likely need some level of extra support to secure functional broadband services. The Federal Communications Commission is currently acting on this reality as they transition the Universal Service Fund away from subsidizing traditional phone service and toward broadband. The Federal Government has also been active recently supplementing capital investment in broadband through the Department of Commerce and the Department of Agriculture. Each of the aforementioned programs has worthy goals and noble intentions. However, within these programs are disagreements and problems that provide cautionary examples for the North Dakota Legislature.

We believe SB 2296 would be less objectionable if broadband were defined. Direction should also be provided as to whether wireline or wireless technologies are preferred. Midcontinent Communications operates as a general partnership in North Dakota and we are excluded from the eligible applicants listed in SB 2296.

We are very alarmed that Section 1, d., appears to enable direct subsidy of operational expenses on an ongoing basis. If so, this legislation goes far beyond assisting in encouraging infrastructure placement and potentially creates an ongoing subsidy.

Thank you for the opportunity to present the views of Midcontinent Communications on SB 2296.