

# MICROFILM DIVIDER

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ROLL NUMBER

DESCRIPTION

1052

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Yolanda Rickford  
Operator's Signature

10/2/03  
Date

2003 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1052

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Operator's Signature

10/2/03  
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1052

House Industry, Business, & Labor Committee

☐ Conference Committee

Hearing Date: January 8, 2003

Tape Number	Side A	Side B	Meter #
1	X		31.5-54.3
1		X	0.0-3.6
Committee Clerk Signature: <i>Mickie Schmidt</i>			

Minutes:

**(31.5) REP. GEORGE KEISER; CHAIRMAN:** We will open the hearing on HB# 1052.

**(31.7) TONY CLARK; STATE PUBLIC SERVICE COMMISSIONER & A HOLDER OF THE COMMISSIONS TELECOMMUNICATIONS PORTFOLIO:** The bill that's before you today is actually submitted from the RRRC, Regulatory, Reform and Review Commission which is a statutory committee which I am a member of. Testified in support of HB #1052. (see attachment)

**REP. MARY EKSTROM:** Potential bad actions, page 2: What sort of things do we invasion, slamming and cramming?

**TONY CLARK:** When we refer to potential bad actions, it's strictly in how Quest deals with it's competitors and the wholesale market place. There's a whole list of standards to which Quest is agreed and offered to these competitors basically as part of the contract that they agree to provide this level of service.

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*10/2/03*  
Date

Page 2

House Industry, Business, and Labor Committee

Bill/Resolution Number HB 1052

Hearing Date: January 8, 2003

**REP. MARY EKSTROM:** How does this compare in terms of the PSC's handling of this long distance carrier and other long distance carriers? Are there similar agreements and similar situations?

**TONY CLARK:** This is really new and just for Quest. The reason: It goes back to the federal act which Quest and all Bell companies were prohibited from providing long distance after the break up of AT&T. Commerce came up with the idea. One encouraged competition for local phones. So Bell company said if you meet all of these standards, then the reward that you get for opening your local network, is you get to get into long distance. The FCC is part of this process.

**(42.1) REP. JIM KASPER:** How do you or the entity determine the rate that can be charged to the other long distance carriers for the use of the local lines? What method have you been using to investigate?

**TONY CLARK:** There are two rates. There are a couple of different areas that are regulated, there are access fees which long distance companies pay to local companies when they access their network. There are two parts of access fees: Partially intrastate access fees which are regulated by the PSC. The companies can choose to be price capped, which is allowed under state law, or they can choose the rate of return regulated. There are intrastate access fees, which are regulated by the Federal Communications Commission. The second type of regulated rates to which they might be referring are the grades that Quest offers to use network if you're a competitive local phone company. So it wouldn't be a long distance company. It might be one who is renting Quest network and what they're renting is network element, which there are certain network elements under the Act which Quest has to rent to competitors, and they have to rent them at regulated rates. The rates have been in effect for a number of years. In the Interim

Page 3

House Industry, Business, and Labor Committee

Bill/Resolution Number HB 1052

Hearing Date: January 8, 2003

arbitrated agreement before the commission that AT&T & Quest entered into. The FCC wants final rates set.

**REP. JIM KASPER:** So they are regulated?

**TONY CLARK:** At least on the wholesale level for what they can charge competitors for certain portions of that network.

**REP. MATTHEW KLEIN:** Who are the four Legislatures that serve on the RRCC with you?

**TONY CLARK:** Rick Berg, Rich Wardner, Sen. Tomak, and Rep. Glassheim.

**REP. MATTHEW KLEIN:** How do those predetermined amounts and what are we relating to on the second page of your testimony; if Quest fails to meet it's obligations, the phrase predetermined amounts, how do those get determined and what is it?

**TONY CLARK:** There is a whole matrix of predetermined amounts. There's a matrix of what Quest would have to pay to both competitors and competitive companies and to the state. The way those were developed was part of a multi-state regional collaborate. Most of these, Quest, states, commissions, the competitive phone companies over the course of the last 3 years have collaboratively worked on the plan and came up with that whole matrix of how much will be taken as payments. It's the upper Midwest and west, Minnesota, North Dakota, South Dakota, Nebraska, Wyoming.

**REP. MATTHEW KLEIN:** On page 3, you talked about the 100,000 dollars per biennium. Was that live debt or just a gift?

**(46.4) TONY CLARK:** These are just gifts. None of the commissions know what the expenditures are going to be. After looking at the Legislation that was in the Nebraska Legislature had instituted, they are structuring differently. They're creating the fund and giving

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House Industry, Business, and Labor Committee

Bill/Resolution Number HB 1052

Hearing Date: January 8, 2003

the commission their unlimited spending authority. But once over \$100,000 accrued, any additional money goes to the schools.

**REP. GLEN FROSETH:** Could we review the fiscal note?

**(48.5) TONY CLARK:** Explained the fiscal note. The total that they're projecting for the 03-05 biennium is \$300,000. The \$30,000 is just prorating for these last few months. \$100,000 would be the expenditure that's in the bill itself.

**REP. JIM KASPER:** Are telephone companies that may have interest in that hearing, have they been notified so they can get involved in the process if they so desire, and if they haven't been, how do they get involved in the process, so they can take part in sharing their thoughts?

**TONY CLARK:** Yes, any of the phone companies involved would be notified.

**REP. MARK DOSCH:** A few months ago, Quest developed some new accounting deregularities, has that issue been resolved to your satisfaction?

**(52.3) TONY CLARK:** The accounting deregularities, are trouble. The commission itself needs to keep it's eye on what we have regulatory authority over.

**REP. MARK DOSCH:** It also deals with the integrity of the company and if we're relying on Quest to be honest with it's competitors on how they treat them, needs to be taken into account.

**TONY CLARK:** That is actually the reason for this bill. The Commission will be entering with regional piers to hiring an auditor to ensure that.

**REP. GEORGE KEISER:** Why are we putting this in code versus doing it through administrative rule?

**(54.3) TONY CLARK:** The legislation itself, we would have to do it statutorily, because all monies would get deposited to the general fund, which is fine but the Commission doesn't know

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House Industry, Business, and Labor Committee

Bill/Resolution Number HB 1052

Hearing Date: January 8, 2003

really what the income and expenditures are going to be in the first two years, because this is all new to all of us in the 14 state region.

\*(Tape 1, Side B:)

**MEL?** Testified in support of HB 1052.

**REP. GEORGE KEISER:** Is there anyone in opposition to HB 1052? We will close the hearing on HB 1052. What would the committee like to do with this bill?

**REP. MATTHEW KLEIN:** I vote a due pass on HB 1052.

**REP. WAYNE TIEMAN:** second it.

**(14)REP. GEORGE KEISER:** There was discussion on HB 1052 by the committee. Asked the clerk to take a Roll Call Vote on a due pass for HB 1052: 14 yeas; 0 nays; 0 absent; Rep.

Matthew Klein will carry the bill.

**FISCAL NOTE**  
Requested by Legislative Council  
03/10/2003

Amendment to: HB 1052

**1A. State fiscal effect:** Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$5,000	\$100,000	\$200,000	\$100,000		
Expenditures	\$0	\$30,000	\$0	\$100,000		
Appropriations	\$0	\$100,000	\$0	\$100,000		

**1B. County, city, and school district fiscal effect:** Identify the fiscal effect on the appropriate political subdivision.

2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

**2. Narrative:** Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.

This bill creates the performance assurance fund, a component of Qwest's performance assurance plan which is a required part of Qwest's application to provide out-of-region (InterLATA) long distance. The performance assurance plan is basically a contract between Qwest and competitive local exchange companies that interconnect with Qwest. The plan includes service quality goals and benchmarks which Qwest must meet. If Qwest fails to meet these goals and benchmarks, the plan provides pre-determined damages that Qwest must pay both the competitive local exchange companies and the state. The state must monitor and audit the effectiveness of the plan. The continuing appropriation allows use of the fund moneys to carry out these monitoring and auditing functions.

**3. State fiscal effect detail:** For information shown under state fiscal effect in 1A, please:

**A. Revenues:** Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.

Revenue estimates are based on information provided by Qwest and indicate the midpoints of projected ranges. For the period covered by the remaining portion of the 2001-2003 biennium, Qwest estimates, based on current reports and trends, payments into the fund of \$15,000 to \$20,000 per month. The midpoint of this range for six months is \$105,000. The engrossed bill provides that \$100,000 of this is to be deposited into the special fund and the excess is to be deposited into the general fund. For the 2003-2005 biennium, Qwest estimates lower payments into the fund, based on current reports and trends, ranging from \$10,000 to \$15,000 per month. The midpoint of this range for 24 months is \$300,000. Again, \$100,000 of this is to be deposited into the special fund and the excess is to be deposited into the general fund. The bill contains a sunset provision, ending 30 June 2005. Consequently, there are no estimates provided for the 2005-2007 biennium.

**B. Expenditures:** Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.

The state must monitor and audit the effectiveness of the Qwest performance assurance plan. Qwest regional states are exploring ways to collaboratively administer these responsibilities, which should bring efficiencies to the process. Expenses for such a collaborative effort will be paid from the special fund. Even if no multi-state collaborative effort is undertaken, the commission will incur expenses to monitor and audit the effectiveness of the plan in North Dakota, and the appropriation will allow the expenses of this function to be paid from the special fund.



C. Appropriations: Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.

The legislation authorizes a continuing appropriation of \$100,000 each biennium from the special fund.

Name:	Ilona A. Jeffcoat-Sacco	Agency:	PSC
Phone Number:	701-328-2407	Date Prepared:	03/13/2003

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10/2/03  
Date

4

**FISCAL NOTE**  
Requested by Legislative Council  
12/16/2002

Bill/Resolution No.: HB 1052

**1A. State fiscal effect:** Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$105,000	\$0	\$300,000		
Expenditures	\$0	\$30,000	\$0	\$100,000		
Appropriations	\$0	\$100,000	\$0	\$100,000		

**1B. County, city, and school district fiscal effect:** Identify the fiscal effect on the appropriate political subdivision.

2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

**2. Narrative:** Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.

This bill creates the performance assurance fund, a component of Qwest's performance assurance plan which is a required part of Qwest's application to provide out-of-region (InterLATA) long distance. The performance assurance plan is basically a contract between Qwest and competitive local exchange companies that interconnect with Qwest. The plan includes service quality goals and benchmarks which Qwest must meet. If Qwest fails to meet these goals and benchmarks, the plan provides pre-determined damages that Qwest must pay both the competitive local exchange companies and the state. The state must monitor and audit the effectiveness of the plan. The continuing appropriation allows use of the fund moneys to carry out these monitoring and auditing functions.

**3. State fiscal effect detail:** For information shown under state fiscal effect in 1A, please:

**A. Revenues:** Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.

Revenue estimates are based on information provided by Qwest and indicate the midpoints of projected ranges. For the period covered by the remaining portion of the 2001-2003 biennium, Qwest estimates, based on current reports and trends, payments into the fund of \$15,000 to \$20,000 per month. The midpoint of this range for six months is \$105,000. For the 2003-2005 biennium, Qwest estimates lower payments into the fund, based on current

reports and trends, ranging from \$10,000 to \$15,000 per month. The midpoint of this range for 24 months is \$300,000. The bill contains a sunset provision, ending 30 June 2005. Consequently, there are no estimates provided for the 2005-2007 biennium.

**B. Expenditures:** Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.

The state must monitor and audit the effectiveness of the Qwest performance assurance plan. Qwest regional states are exploring ways to collaboratively administer these responsibilities, which should bring efficiencies to the process. Expenses for such a collaborative effort will be paid from the fund. Even if no multi-state collaborative effort is undertaken, the commission will incur expenses to monitor and audit the effectiveness of the plan in North Dakota, and the appropriation will allow the expenses of this function to be paid from the special fund.

**C. Appropriations:** Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.

The legislation authorizes a continuing appropriation of \$100,000 each biennium from the fund, and allows the commission to request that the budget section of the legislative council authorize additional amounts if appropriate.

<b>Name:</b>	Ilona Jeffcoat-Sacco	<b>Agency:</b>	PSC
<b>Phone Number:</b>	701-328-2407	<b>Date Prepared:</b>	12/20/2002

Date: 1/8/03  
Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1052

House Industry, Business & Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass

Motion Made By Rep. Nottelstad Seconded By Rep. Ekstrom

Representatives	Yes	No	Representatives	Yes	No
Chairman Kelser	/		Rep.Boe	/	
Rep. Severson, Vice-Chair	/		Rep. Ekstrom	/	
Rep. Dosch	/		Rep. Thorpe	/	
Rep. Froseth	/		Rep. Zaiser	/	
Rep. Johnson	/				
Rep. Kasper	/				
Rep. Klein	/				
Rep. Nottelstad	/				
Rep. Ruby	/				
Rep. Tieman	/				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Rep Klein

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE (410)**  
January 8, 2003 3:15 p.m.

Module No: HR-02-0381  
Carrier: M. Klein  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**  
HB 1052: Industry, Business and Labor Committee (Rep. Kelsor, Chairman)  
recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).  
HB 1052 was placed on the Eleventh order on the calendar.

(2) DESK, (3) COMM

Page No. 1

HR-02-0381

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Operator's Signature

*10/2/03*  
Date

2003 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1052

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Operator's Signature

*Halista Rickford*

Date

*10/2/03*

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1052

Senate Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 02-17-03

Tape Number	Side A	Side B	Meter #
1		xxxx	1170
Committee Clerk Signature <i>Lisa Van Berkow</i>			

Minutes: Chairman Mutch opened the hearing on HB 1052. All Senators were present. HB 1052 relates to a performance assurance plan by the public service commission.

Testimony in support of HB 1052

Tony Clark, Public Service Commission, introduced the bill. See written testimony.

Senator Heitkamp: Isn't this your job anyway?

Tony: This would be brand new. The FCC went about setting up the 271 process. The FCC requires ongoing paid oversight with annual or biannual audits.

Senator Heitkamp: The PSC does not have permission right now to oversee Qwest?

Tony: We likely have the authority to do so, but the problem is the money. We don't have the expertise or time to do that.

Senator Mutch: Did this go to appropriations on the House side?

Tony: I don't know if it ever was. The cost will be \$300,000 from the general fund.

Page 2

Senate Industry, Business and Labor Committee

Bill/Resolution Number 1052

Hearing Date 02-17-03

**Senator Klein:** So we are establishing a group to oversee these companies at the request of the FCC?

**Tony:** They say that before they will approve a company to go into the long distance marketplace, the ongoing commitment for oversight needs to be in place.

**Senator Nething:** Under the two types of payment, the first type says that "if the competitor has been harmed" but then it is stated as "potential bad action", which is it?

**Tony:** Potential only means that it is a self executing contract between the competitor and Qwest.

End testimony. Tape 1, side B, meter no. 2262.

**Neutral testimony**

**Tim Dawson,** Legislative Council, explained the bill. This bill creates a special fund in the state treasury. Money is deposited into that fund from the performance assurance plan and then money is appropriated out of that fund on a continuing basis. It is not to exceed \$100,000 without approval.

**Susan Wefald,** Public Service Commission, stated that competing companies will be watching each other to make sure requirements are met.

**Senator Heitkamp:** Who administers the contract? Who enforces the policies?

**Susan:** I believe that is why this bill is in place, so we can work with 14 other states and set up an audit committee. We need to pay our fair share into that 14 state process in order to do this.

**Senator Heitkamp:** If we are going to codify this in ND Code, who in North Dakota is going to sign off on this stuff?

**Susan:** Those fines are predetermined. They are in the contract. If you come up to our office, we can show you all the penalties. The commission will have oversight.



Page 3  
Senate Industry, Business and Labor Committee  
Bill/Resolution Number 1052  
Hearing Date 02-17-03

**Senator Mutch:** What do you do if you find some violation of the rates they filed?

**Susan:** That probably wouldn't be happening in North Dakota. We would work to address it.

**Senator Klein:** Is it uniform policy in all 14 states?

**Susan:** Yes.

**Tony Clark:** Qwest submits a performance indicator document every month and then writes out a check.

**Mel Kambeltz,** Qwest, supports the bill. No additional testimony.

**Senator Nething** suggests that the left over money go back into the general fund.

**No opposing testimony. Hearing was closed.**

**No action taken at this time.**

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1052

Senate Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 03-05-03

Tape Number	Side A	Side B	Meter #
2	XXXX		4300-4603
Committee Clerk Signature <i>Lisa VanBeek</i>			

Minutes: Chairman Mutch opened the discussion on HB 1052. Senator Every and Senator Espegard were absent. HB 1052 relates to a performance assurance plan by the public service commission.

Senator Nething proposed amendments. See attached. The amendments were read and everyone agreed upon them.

Senator Nething moved to adopt amendments. Senator Heitkamp seconded.

Roll Call Vote: 5 yes. 0 no. 2 absent.

Senator Nething moved a DO PASS AS AMENDED. Senator Heitkamp seconded.

Roll Call Vote: 5 yes. 0 no. 2 absent.

Carrier: Senator Nething.

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Operator's Signature

*10/2/03*  
Date

30189.0202  
Title.0300

Prepared by the Legislative Council staff for  
Senator Nething  
March 4, 2003

903  
3-5-3

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1052

Page 1, line 7, replace "Budget" with "Report to budget"

Page 1, line 8, remove "approval"

Page 1, line 10, after the first "fund" insert "until deposits during a blennium equal one hundred thousand dollars"

Page 1, line 12, replace "However, the" with "All the payments received by the commission in excess of the one hundred thousand dollars deposited in the performance assurance fund must be deposited in the general fund. The" and replace "may not spend more than one" with "shall report annually to"

Page 1, remove line 13

Page 1, line 14, remove "receiving prior approval from" and after "council" insert "with respect to the payments received under the plan and the expenditures from the performance assurance fund"

Renumber accordingly

Date: 3-05-03  
Roll Call Vote #:

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO.

Senate 1062 Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number ~~0202~~ 30189.0202

Action Taken Adopt Amend

Motion Made By Nothing Seconded By Heitkamp

Senators	Yes	No	Senators	Yes	No
Sen. Mutch, Chairman	X				
Sen. Klein, Vice Chairman	X				
Sen. Krebsbach	X				
Sen. Nething	X				
Sen. Heitkamp	X				
Sen. Every	A				
Sen. Espgaard	A				

Total (Yes) 6 No 0

Absent 2

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

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Valista Rickford 10/2/03  
Operator's Signature Date

Date: 3-5-03  
Roll Call Vote #: 72

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO.

Senate \_\_\_\_\_ 1052 \_\_\_\_\_ Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken

Do Pass As Amend

Motion Made By

Nothing

Seconded By

Heitkamp

Senators	Yes	No	Senators	Yes	No
Sen. Mutch, Chairman	X				
Sen. Klein, Vice Chairman	X				
Sen. Krebsbach	X				
Sen. Nething	X				
Sen. Heitkamp	X				
Sen. Every	A				
Sen. Espgaard	A				

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent

Nothing

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE (410)**  
March 7, 2003 12:19 p.m.

Module No: SR-41-4221  
Carrier: Nothing  
Insert LC: 30189.0202 Title: .0300

**REPORT OF STANDING COMMITTEE**

**HB 1052: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS and BE REREFERRED to the Appropriations Committee (5 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1052 was placed on the Sixth order on the calendar.**

Page 1, line 7, replace "Budget" with "Report to budget"

Page 1, line 8, remove "approval"

Page 1, line 10, after the first "fund" insert "until deposits during a blennium equal one hundred thousand dollars"

Page 1, line 12, replace "However, the" with "All the payments received by the commission in excess of the one hundred thousand dollars deposited in the performance assurance fund must be deposited in the general fund. The" and replace "may not spend more than one" with "shall report annually to"

Page 1, remove line 13

Page 1, line 14, remove "receiving prior approval from" and after "council" insert "with respect to the payments received under the plan and the expenditures from the performance assurance fund"

Renumber accordingly

2003 SENATE APPROPRIATIONS

HB 1052

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Operator's Signature

*Valista Rickford*

Date

*10/2/03*

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1052 & Vote

Senate Appropriations Committee

☐ Conference Committee

Hearing Date 3-17-03

Tape Number	Side A	Side B	Meter #
2	X		2080 - 3326
Committee Clerk Signature <i>Sandra Dawson</i>			

Minutes: CHAIRMAN HOLMBERG opened the hearing to HB 1052. A bill relating to a performance assurance plan by the PSC.

(Meter 2159) TIM DAWSON from Legislative Council appeared to testify neutrally on HB 1052. He explained the history of the bill. He staffed the regulatory perform commission from whence the bill came from. The bill creates a special fund in the state's treasury called the performance assurance fund and the moneys are deposited in this fund from performance assurance plan. The performance assurance plan is a plan whereby Qwest has entered into an agreement with other carriers and the state receives some moneys from these contract for violations of the contract. This money in this fund is appropriated on a continuing bases and there is a limitation on this on lines 13-16.. Payments in excess of \$100,000 must be deposited in the general fund. The commission then shall report annually to the budget section on the expenditure of that first \$100,000.

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Operator's Signature

*10/2/03*  
Date



Page 2  
Senate Appropriations Committee  
Bill/Resolution Number HB 1052  
Hearing Date 3-17-03

(Meter 2304) Tony Clark, Public Service Commissioner testified in support of the bill. See written testimony Exhibit 1.

(Meter 2813) Mel Kamnitz, Qwest Corporation testified in support of this bill.

(Meter 2897) There was a motion of a DO PASS by SENATOR ANDRIST and a second by SENATOR TALLACKSON. The roll call vote passed the bill with 12 yeas, 0 nays and 2 absent. The IBL committee will carry by SENATOR NETHING.

CHAIRMAN HOLMBERG closed the hearing to HB 1052.

Date: 3-17-03  
Roll Call Vote #: 1

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1052

Senate Appropriations Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass

Motion Made By Andrist Seconded By Tallackson

Senators	Yes	No	Senators	Yes	No
Senator Holmberg, Chairman	✓				
Senator Bowman, Vice Chair	✓				
Senator Grindberg, Vice Chair	✓				
Senator Andrist	✓				
Senator Christmann	✓				
Senator Kilzer	✓				
Senator Krauter					
Senator Kringstad	✓				
Senator Lindaas	✓				
Senator Mathern	✓				
Senator Robinson	✓				
Senator Schobinger	✓				
Senator Tallackson	✓				
Senator Thane	✓				

Total (Yes) 12 No \_\_\_\_\_

Absent 2 IBL

Floor Assignment IBL nothing

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE (410)**  
March 17, 2003 11:35 a.m.

Module No: SR-47-4895  
Carrier: Nothing  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**  
HB 1052, as amended, Appropriations Committee (Sen. Holmberg, Chairman)  
recommends **DO PASS** (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING).  
HB 1052, as amended, was placed on the Fourteenth order on the calendar.

(2) DESK, (3) COMM

Page No. 1

SR-47-4895

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*Yolanda Rickford*  
Operator's Signature

*10/2/03*  
Date

2003 TESTIMONY

HB 1052

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Operator's Signature

*Yolanda Rickford*

Date

*10/2/03*

## **H.B. 1052**

**Presented by:** Tony Clark, Public Service Commissioner  
**Before:** House Industry, Business and Labor Committee  
Honorable George Kelser, Chairman  
**Date:** January 8, 2003

### **TESTIMONY**

Chairman Kelser and members of the House IBL Committee. Good morning, my name is Tony Clark, I am a state PSC Commissioner, and am the holder of the Commission's telecommunication portfolio. The bill before you is a product of the Regulatory Reform Review Commission, a statutory committee of which I am a member along with four state legislators.

As a member of the RRRC and the PSC, my testimony today is both to explain the bill itself and offer the PSC's support for the bill on behalf of my fellow Commissioners.

This legislation deals with the establishment of a fund to handle payments that Qwest Corporation may be making to the state in future months. As many of you know, Qwest recently obtained FCC authorization to provide long distance service. The process by which they obtained approval is known as the 271 process (named after the section of the federal act that governs it).

As part of the 271 process, the FCC requires Qwest to institute a plan that assures its continued good performance in how it treats its local phone competitors. The PSC reviewed this plan and recommended changes, where appropriate. Because

Qwest is now authorized to provide long distance service, the plan is in effect, but a change in law is necessary to make the plan work as envisioned.

The FCC requires strong financial incentives that ensure that Bell Companies keep up good wholesale performance. The plan to which Qwest has agreed sets numerous quality of service goals and benchmarks which Qwest must meet. A key component of this self-executing contract is compensatory payments. The plan that Qwest is offering calls for two types of penalties. The first is a direct payment to the competitors that have been harmed by Qwest's potential bad actions. The second are payments Qwest makes to the State of North Dakota for injuries done to the competitive marketplace should it fail to meet the standards to which it has agreed. If Qwest fails to meet its obligations, it pays pre-determined amounts to its competitors and to the state.

The question becomes, how are payments to the state handled? There is general agreement from all the parties involved in this process that a portion of that money should be set aside for the continuing administration, monitoring and auditing of this plan. Once Qwest enters long-distance, it is as much a beginning as an end. The PSC and our regional peer commissions will enter a new stage, wherein we will continue to work collaboratively with all parties, monitoring, auditing and enforcing this wholesale market. The PSC will incur expenses associated with continuing regional collaboration. This could include not only staff travel and expenses, but the possibility that a number of state commissioners may jointly hire an independent auditor or consultant for on-going oversight. To do otherwise is, frankly, not an option. The FCC would simply not allow a Bell Company into long-distance if it didn't believe there was an ongoing state commitment to overseeing it.

The solution the RRRC is proposing is for the legislature to set up a mechanism that will allow for a portion of the money received from fines to be used by the PSC to offset the inevitable expenses of administering this plan. All money that is paid to the state accrues in this fund. The PSC would have budgetary authority to spend up to \$100,000 per biennium prior to seeking Budget Section authority for additional expenditures, if needed. This will allow the PSC to continue to do the work the FCC and others in the telecommunications marketplace expect, but it does so by limiting taxpayer exposure. It is, effectively, a regulatory plan that pays for itself.

Section 2 of the bill sunsets the legislation. The idea is that any unspent money would then be deposited in the general fund. Two years from now, the commission and legislature can revisit the plan. At that point, we will all have a better idea of the income and expenses associated with this plan. The legislature at that juncture could simply decide to general fund all income and roll expenses into the PSC general fund appropriation, or it could choose to continue the interim fund established in this bill.

Section 3 is the emergency clause. Because Qwest could potentially be making payments prior to summer, and the PSC could be experiencing expenditures prior to that, the emergency clause would be extraordinarily helpful.

You should see a self-explanatory fiscal note attached, and I would be happy to answer any questions about that you may have.

That concludes my testimony Mr. Chairman, I would be happy to answer any questions you may have.

**H.B. 1052**

**Presented by:** Tony Clark, Public Service Commissioner  
**Before:** Senate Industry, Business and Labor Committee  
Honorable Duane Mutch, Chairman  
**Date:** February 17, 2003

*This same testimony given to Senate Appropriations on March 17, 2003*

**TESTIMONY**

Chairman Mutch and members of the Senate IBL Committee. Good morning, my name is Tony Clark, I am a state PSC Commissioner, and I am the holder of the Commission's telecommunication portfolio. The bill before you is a product of the Regulatory Reform Review Commission, a statutory committee of which I am a member along with four state legislators.

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The FCC requires strong financial incentives that ensure that Bell Companies keep up good wholesale performance. The plan to which Qwest has agreed sets numerous quality of service goals and benchmarks which Qwest must meet. A key component of this self-executing contract is compensatory payments. The plan that Qwest is offering calls for two types of payments. The first is a direct payment to the competitors that have been harmed by Qwest's potential bad actions. The second are payments Qwest makes to the State of North Dakota for injuries done to the competitive marketplace, should it fail to meet the standards to which it has agreed. If Qwest fails to meet its obligations, it pays pre-determined amounts to its competitors and to the state.

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offset the inevitable expenses of administering this plan. All money that is paid to the state accrues in this fund. The PSC would have budgetary authority to spend up to \$100,000 per biennium prior to seeking Budget Section authority for additional expenditures, if needed. This will allow the PSC to continue to do the work the FCC and others in the telecommunications marketplace expect, but it does so by limiting taxpayer exposure. It is, effectively, a regulatory plan that pays for itself.

Section 2 of the bill sunsets the legislation. The idea is that any unspent money would then be deposited in the general fund. Two years from now, the commission and legislature can revisit the plan. At that point, we will all have a better idea of the income and expenses associated with this plan. The legislature at that juncture could simply decide to deposit all income in the general fund, and then roll expenses into the PSC general fund appropriation, or it could choose to extend the interim fund established in this bill.

Section 3 is the emergency clause. Because Qwest could potentially be making payments prior to summer, and the PSC could be experiencing expenditures prior to that, the emergency clause would be extraordinarily helpful.

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