

Sixty-first
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1353

Introduced by

Representative Weiler

Senators Hogue, Triplett

1 A BILL for an Act to amend and reenact sections 24-01-41, 24-04-03, 49-21-01.3, 49-21-04,
2 and 49-21-07 of the North Dakota Century Code, relating to facility relocation cost recovery.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1. AMENDMENT.** Section 24-01-41 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **24-01-41. Relocation of utility facilities.**

7 1. Whenever the director determines and orders that any utility facility which now is,
8 or hereafter may be, located in, over, along, or under the national system of
9 interstate and defense highways, or urban extension thereof, qualifying for federal
10 aid should be changed, removed, or relocated to accommodate the construction of
11 a project on the national system of interstate and defense highways, including
12 extensions thereof within urban areas, the utility owning or operating such facility
13 shall change, relocate, or remove the same in accordance with the order of the
14 director; provided that the costs of the change, relocation, or removal, including the
15 costs of installing such facilities in a new location, must be ascertained and paid to
16 the affected utility by the state out of state highway funds as part of the cost of
17 such federally aided project, unless such payment would violate a legal contract
18 between the utility and the state.

19 2. A political subdivision or the state planning a project that will require any utility
20 facility operator to identify or relocate underground facilities shall conduct a
21 preliminary design meeting during the planning and design phase of the project
22 and provide written notice of the meeting to any affected utility at least thirty days
23 before the meeting, together with information concerning the purpose of the
24 project, the proposed project design, proposed dates of any required relocations,

1 and the extent to which the project involves any highway or urban extension that is
2 part of the national system of interstate and defense highways and qualifying for
3 federal aid as so designated, or any highway that at any time was on or designated
4 as a part of the national system of interstate and defense highways but has been
5 removed for any reason, and the federal identifying project number, if any.

6 3. A political subdivision or the state shall coordinate utility relocations with the
7 affected utility facility operator and shall use best efforts to eliminate either the
8 need for or the cost of utility relocation. If it is determined by the political
9 subdivision or the state that a utility relocation or the costs of the relocation cannot
10 be eliminated, the political subdivision or the state shall coordinate the utility
11 relocation with the affected utility in the preliminary design meeting to limit the
12 impact of the construction on utility facilities and minimize costs associated with
13 utility facility relocations.

14 4. If the utility facility is located in whole or in part, over, along, or under any highway
15 or urban extension qualifying for federal aid under subsection 1, the political
16 subdivision or state shall designate on its books the amount of federal aid received
17 or to be received for the project, allocate a prorated share of these funds for the
18 benefit of each utility, keep an accounting of all funding sources for the project by
19 category and an accounting of all disbursements, and provide to the utility an
20 accounting of the funding sources and disbursements within thirty days after a
21 written request for the accounting from the utility facility.

22 5. Notwithstanding any other provision of law, if a political subdivision or the state
23 requesting utility relocation fails to provide written notice of and conduct a
24 preliminary design meeting as required in subsection 3, that entity is liable for the
25 costs of the utility relocation attributable to the utility.

26 6. A political subdivision or the state may not prohibit any utility from seeking
27 reimbursement for a utility relocation contemplated under this section in any permit,
28 license, or other written agreement authorizing the utility to complete the relocation.

29 7. As used in this section, "political subdivision" includes a county, city and county,
30 city, home rule city, service authority, school district, local improvement district, law
31 enforcement authority, water, sanitation, fire protection, metropolitan, irrigation,

1 drainage, or other special district, or any other municipal, quasi-municipal, or public
2 organization. "State" includes the state government and any state agency,
3 department, institution, or state-level authority. The term "utility" includes all
4 cooperatively, municipally, publicly, or privately owned utilities, for supplying water,
5 sewer, light, gas, power, telegraph, telephone, transit, pipeline, or like service to
6 the public or any part thereof. "Cost of change, relocation, or removal" includes the
7 entire cost incurred by such utility properly attributable to such change, relocation,
8 or removal after deducting therefrom any increase in the value of the new facility
9 and any salvage value derived from the old facility. ~~Nothing herein contained may~~
10 ~~be construed to~~ This section does not affect in any way the right of any utility to
11 receive just compensation for the expense of changing, removing, or relocating its
12 facilities located in a private right of way.

13 **SECTION 2. AMENDMENT.** Section 24-04-03 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **24-04-03. Feeder roads and rural transportation assistance programs - Director**
16 **may cooperate with federal government.** The director may receive and expend any funds
17 within the limits of legislative appropriations made available by the Congress of the United
18 States to be applied on the county road system, and other roads or streets not on the state
19 highway system, including for relocation of utility facilities under section 24-01-41, and to assist
20 in the development and improvement of surface transportation systems in rural and small urban
21 areas, including projects and programs for the construction of public roads not on any
22 federal-aid system, correction of safety hazards and replacement of bridges, development of
23 parking facilities to serve buses and other means of public transportation of passengers, and for
24 the purchase of buses used in public transportation service. The director may carry out the
25 intent and purpose of rural transportation assistance programs authorized by Congress to the
26 same extent that the director now may cooperate legally with federal-aid highway construction
27 and maintenance programs, except as hereinafter provided. The director may not engage in or
28 provide state funds for the operation of any public bus transportation system except by contract
29 with a local governmental entity or a private operator and may expend no revenue derived from
30 gas tax or motor vehicle licensing in the establishment or operation of such public bus
31 transportation system.

SECTION 3. AMENDMENT. Section 49-21-01.3 of the North Dakota Century Code is amended and reenacted as follows:

49-21-01.3. Certain price increases prohibited - Essential telecommunications services. Changes in essential telecommunications services prices are prohibited except as specifically provided for in chapter 49-21 and section 49-02-01.1.

1. All increases or decreases in governmentally imposed surcharges and any financial impact on cost of essential telecommunications services caused by governmentally imposed changes in taxes, accounting practices, or separations procedures must be fully reflected in any price for those services within thirty days of the effective date of the surcharge or change. Surcharges related to the costs of relocation, change, or removal of facilities are not subject to a thirty-day implementation requirement.

~~2. Nothing in this~~ This section prohibits ~~does not prohibit~~ the lowering of a price of an essential service based on reasonable business practices in a competitive environment provided that no price change may be anticompetitive or otherwise in violation of antitrust or unfair trade practice laws.

~~3.~~ 2. Whenever a price change provided for in this section is less than three percent of the existing price, notwithstanding any time limitations in this section, a telecommunications company may accumulate such changes in price subject to the following conditions:

- a. Price increases may be accumulated up to a percentage total of five percent.
- b. Price decreases may be accumulated only to the extent that there is an offsetting accumulated price increase of an equal or greater percentage. Accumulated price decreases may never exceed accumulated price increases.
- c. Price decreases may be accumulated only for two years beginning January first of the year in which the change is allowed.
- d. Accumulated price increases may be implemented at the discretion of the telecommunications company.

e. The effective date of implementation of an accumulated price change may be prospective only, and in accordance with the filing requirements of section 49-21-04.

~~4.~~ 3. The monthly price of residence service for telecommunications companies with over fifty thousand subscribers may be up to eighteen dollars.

~~5.~~ 4. Subject to the limitations of this section, ~~nothing in this chapter prohibits~~ does not prohibit an incumbent local exchange carrier from deaveraging local exchange service prices provided the incumbent local exchange carrier agrees to amend its commission-approved interconnection agreements to allow for deaveraged interconnection prices effective concurrently with the deaveraged retail prices.

SECTION 4. AMENDMENT. Section 49-21-04 of the North Dakota Century Code is amended and reenacted as follows:

49-21-04. Price schedules filed with the commission. Each telecommunications company shall file with the commission in ~~such the~~ the form and detail as ~~it the commission~~ the commission may require, subject to considerations for maintaining trade secrets or commercial confidentiality:

1. Schedules showing all prices for essential services, including those prices set by contract and the individual unbundled or unpackaged price of any essential service, in effect at the time for any essential telecommunications service rendered by ~~such the~~ the telecommunications company within this state;
2. All rules ~~and regulations which~~ that in any manner affect the prices charged or to be charged for ~~such~~ the essential service; and
3. All new prices and any price increases of essential services at least twenty days before the effective date of the new price or price increase, unless the commission upon application and for good cause allows a lesser time, ~~and except prices changed in accordance with subsection 1 of section 49-21-01.3, which will be filed at least ten days before the expiration of the thirty day period mandated in that section.~~ No. A price or price change is not effective until filed in accordance with this chapter.

SECTION 5. AMENDMENT. Section 49-21-07 of the North Dakota Century Code is amended and reenacted as follows:

1 **49-21-07. Discrimination unlawful.** ~~It shall be unlawful for any~~ A telecommunications
2 company ~~to~~ may not make any unjust or unreasonable discrimination in prices, practices, or
3 service for or in connection with like telecommunications service, or give any undue or
4 unreasonable preference or advantage to any person or telecommunications company or to
5 subject any person or telecommunications company to any undue or unreasonable prejudice or
6 disadvantage in the service rendered by it to the public or to a telecommunications company, or
7 to charge or receive for any such service rendered, more or less than the prices provided for in
8 the schedules then on file with the commission. A telecommunications company providing
9 intrastate interexchange message toll services shall charge uniform prices on all routes where it
10 offers such services. A telecommunications company providing local exchange service and
11 message toll and private line services shall cover, in its price for message toll and private line
12 services, the price of providing access service in its own exchanges. ~~Nothing in this~~ This
13 chapter ~~shall be construed to~~ does not prevent any telecommunications company from offering
14 or providing volume or other discounts based on reasonable business practices; from
15 introducing promotional offerings, including special incentives, competitive discounts, and price
16 waivers; from passing through any state, municipal or local taxes or fees ~~to the~~, including costs
17 of relocation, change, or removal of facilities in accordance with section 24-01-41, in specific
18 geographic areas from which the taxes ~~or~~, fees, or costs originate; from contracting with a retail
19 subscriber to provide telecommunications services at prices negotiated with the subscriber to
20 meet service requests of the subscriber or competitive offerings of another telecommunications
21 company; or from furnishing free telecommunications service or service at reduced prices to its
22 officers, agents, servants, or employees.