

**Sixty-first Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 6, 2009**

HOUSE BILL NO. 1353
(Representative Weiler)
(Senators Hogue, Triplett)

AN ACT to create and enact a new section to chapter 24-01 of the North Dakota Century Code, relating to relocation of a utility facility; and to amend and reenact sections 24-01-41, 49-21-01.3, and 49-21-04 of the North Dakota Century Code, relating to facility relocation cost recovery.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

24-01-41. Relocation of utility facilities.

1. Whenever the director determines and orders that any utility facility which now is, or hereafter may be, located in, over, along, or under the national system of interstate and defense highways, or urban extension thereof, qualifying for federal aid should be changed, removed, or relocated to accommodate the construction of a project on the national system of interstate and defense highways, including extensions thereof within urban areas, the utility owning or operating such facility shall change, relocate, or remove the same in accordance with the order of the director; provided that the costs of the change, relocation, or removal, including the costs of installing such facilities in a new location, must be ascertained and paid to the affected utility by the state out of state highway funds as part of the cost of such federally aided project, unless such payment would violate a legal contract between the utility and the state.
2. ~~The~~ As used in this section, the term "utility" includes all cooperatively, municipally, publicly, or privately owned utilities, for supplying water, sewer, light, gas, power, telegraph, telephone, transit, pipeline, or like service to the public or any part thereof. "Cost of change, relocation, or removal" includes the entire cost incurred by such utility properly attributable to such change, relocation, or removal after deducting therefrom any increase in the value of the new facility and any salvage value derived from the old facility. ~~Nothing herein contained may be construed to~~
3. The department, in cooperation with utilities, shall develop or adopt procedures for administration of utility facility relocation. The procedures must comply with federal law. At a minimum, the procedures must address notification, coordination, billing, and payment. The department shall coordinate with utilities that are affected by the construction project as early as possible in the project development process.
4. The department shall coordinate utility facility relocations with the affected utility in an effort to minimize cost associated with utility facility relocations.
5. When a utility facility needs to be relocated, the department shall enter an agreement with the utility indicating if the utility facility relocation work is eligible for reimbursement, the estimated cost for the work, the anticipated construction schedule, and the location of the work.
6. This section does not affect in any way the right of any utility to receive just compensation for the expense of changing, removing, or relocating its facilities located in a private right of way.

SECTION 2. A new section to chapter 24-01 of the North Dakota Century Code is created and enacted as follows:

Relocation of utility facilities - Political subdivision roads.

1. Whenever a political subdivision determines and orders that any utility facility that is or may be located in, over, along, or under a road right of way under its authority, qualifying for federal aid, should be changed, removed, or relocated to accommodate the construction of a project, the utility owning or operating the facility shall change, relocate, or remove the utility facility in accordance with the order of the political subdivision; provided that the costs of the change, relocation, or removal, including the cost of installing the facilities in a new location, must be ascertained and paid to the affected utility by the political subdivision as part of the cost of the federally aided project unless the payment would violate a legal contract between the utility and the political subdivision or where the roadway existed before the utility facility.
2. As used in this section:
 - a. "Cost of change, relocation, or removal" includes the entire cost incurred by such utility properly attributable to such change, relocation, or removal after deducting therefrom any increase in the value of the new facility and any salvage value derived from the old facility.
 - b. "Political subdivision" includes a county, city and county, city, home rule city, service authority, school district, local improvement district, law enforcement authority, water, sanitation, fire protection, metropolitan, irrigation, drainage, or other special district, or any other municipal, quasi-municipal, or public organization.
 - c. "Utility" includes all cooperatively, municipally, publicly, or privately owned utilities for supplying water, sewer, light, gas, power, telegraph, telephone, transit, pipeline, or like service to the public.
3. The political subdivision, in cooperation with utilities, shall develop or adopt procedures for administration of utility facility relocation. The procedures must comply with federal law. At a minimum, the procedures must address notification, coordination, billing, and payment. The political subdivision shall coordinate with utilities that are affected by the construction project as early as possible in the project development process.
4. The political subdivision shall coordinate utility facility relocations with the affected utility in an effort to minimize costs associated with utility facility relocations.
5. When a utility facility needs to be relocated, the political subdivision shall enter an agreement with the utility indicating if the utility facility relocation work is eligible for reimbursement, the estimated cost for the work, the anticipated construction schedule, and the location of the work.
6. This section does not affect in any way the right of any utility to receive just compensation for the expense of changing, removing, or relocating its facilities located in a private right of way.

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 or resulting in relocation, change, or removal of facilities must be fully reflected in any price for those services within thirty days of the effective date of the surcharge or change, except price changes 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 form and detail as ~~it~~ 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 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~~ 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.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-first Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1353.

House Vote: Yeas 94 Nays 0 Absent 0

Senate Vote: Yeas 47 Nays 0 Absent 0

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2009.

Approved at _____ M. on _____, 2009.

Governor

Filed in this office this _____ day of _____, 2009,
at _____ o'clock _____ M.

Secretary of State