

**2021 SENATE POLITICAL SUBDIVISIONS**

**SB 2285**

# 2021 SENATE STANDING COMMITTEE MINUTES

## Political Subdivisions Committee Sakakawea, State Capitol

SB 2285  
2/5/2021

A Bill for relating to fees chargeable by an Abstracter
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**10:15:00 AM Chairman Burckhard** opened the hearing on SB 2285 at 10:15 am.  
Senators present: Burckhard, Anderson, Heitkamp, Lee, Kannianen, Larson, Oban.

### Discussion Topics:

- Easements on properties
- Abstract updated

**10:15:49 AM Senator Rust** - Introduced SB 2285

**10:19:47 AM Representative Longmuir** – testified neutral #5673

**10:23:27 AM John Ward** - Lobbyist - Introduced Michelle Gibbens and Nick Hacker

**10:24:14 AM Michelle Gibbens** - Vice President - ND Land and Title Association - In opposition #5535

**10:40:19 AM Nick Hacker** - Legislative Chair - ND Land and Title Association - In opposition #5534

**10:49:47 AM Todd Kranda** - Lobbyist - ND Petroleum Council - In opposition #5566

**10:55:54 AM Eric Volk** - Executive Director - ND Rural Water - In opposition #5603

**10:58:53 AM Chairman Burckhard** closed hearing

**10:58:57 AM Senator Lee** moved to DO NOT PASS

**10:59:00 AM Senator Anderson** seconded the motion

10:59:09 AM Roll Call Vote  
Motion passed 7-0-0

Senators	Vote
Senator Randy A. Burckhard	Y
Senator Howard C. Anderson, Jr.	Y
Senator Jason G. Heitkamp	Y
Senator Jordan Kannianen	Y
Senator Diane Larson	Y
Senator Judy Lee	Y
Senator Erin Oban	Y

**10:59:15 AM Senator Lee** will carry

### Additional written testimony:

**David Crothers**, Broadband Association of ND in opposition #5634

**Stephanie Dassinger**, ND League of Cities, in opposition #5624

**Mark Bring**, Director of Legislative Affairs, in opposition #5618

**Jill Beck**, ND Association of Realtors, in opposition #5580

**Carlee McLeod**, Utility Shareholders of ND in opposition #5558

**Cheryl Riley**, President of External Affairs, AT&T, in opposition #5308

**11:01:47 AM Chairman Burckhard** adjourned the meeting

*Patricia Lahr, Committee Clerk*

**REPORT OF STANDING COMMITTEE**

**SB 2285: Political Subdivisions Committee (Sen. Burckhard, Chairman)** recommends **DO NOT PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2285 was placed on the Eleventh order on the calendar.



## NORTH DAKOTA HOUSE OF REPRESENTATIVES

STATE CAPITOL  
600 EAST BOULEVARD  
BISMARCK, ND 58505-0360



### **Representative Donald W. Longmuir**

District 2  
P.O. Box 1191  
Stanley, ND 58784-1191  
[dlongmuir@nd.gov](mailto:dlongmuir@nd.gov)

### **COMMITTEES:**

Education  
Political Subdivisions

Chairman Burckhard, and members of the Senate Political Subdivisions Committee, thank you for giving me this opportunity to appear before you this morning. My name is Don Longmuir and I am a Representative from District Two which encompasses Burke and Divide Counties, most of Williams County with the exception of the City of Williston and twelve townships in Mountrail County.

As Senator Rust has pointed out we were contacted by a constituent to bring a bill to the legislature regarding the cost of easements when an abstract is updated. Michelle Gibbens, Vice President of the North Dakota Land Title Association in her testimony is spot on dealing with how abstracts are developed and continued.

Our constituent understands the charge for an easement and does not have an issue with the easement showing up on his abstract and paying for that entry. Our constituent's frustration deals with additional entries regarding the original easement which was signed. Easements can be assigned and, in some cases, used as collateral in a mortgage. All of the entries dealing with the easement which go on after the original easement is what our constituent is frustrated with. The constituent does not feel these additional entries are something they need to pay for when updating their abstract in that these not something they requested.

Thank you for your time and consideration and I stand for any questions.

**Senate Political Subdivisions Committee  
Hearing on SB 2285**

Testimony from North Land Title Association  
Michelle Gibbens – Vice President / President-elect  
[michelle@gibbenslaw.com](mailto:michelle@gibbenslaw.com)  
(701) 230-2193

Mr. Chairman and members of the committee, my name is Michelle Gibbens. I am an attorney in Cando, a licensed abstracter, and own the abstract companies in Rolette County and Cavalier County. I am also the current Vice President and incoming President of the North Dakota Land Title Association, which is comprised of the abstract companies in every county in this State.

I may be one of the only abstracters you hear from today, so I would like to offer you a few reasons from the perspective of a licensed abstracter on why I am here to oppose SB2285 and hope you will give it a DO NOT PASS.

First, what is an abstract? The most concise explanation is that an abstract is a summary of the history of ownership of a specific parcel of land. Abstracters look at every document recorded against a specific parcel and summarize the key information from each document. It is also our responsibility to keep track of miscellaneous documents, which may not be recorded against specific parcels, but against the entire county's records: for example, a county's zoning ordinances may only affect certain townships or cities, and it is our job to notify owners of those documents by including them in the appropriate abstract.

You can also think of an abstract as a "living" document. You can keep adding entries to an abstract as more documents are recorded. For example, if someone asked me to create an abstract on January 1, 2010, I would have shown them all documents recorded from the very first document on that parcel, likely some time in the late 1800's or early 1900's, up until the very last document recorded as of January 1, 2010. I sign the abstract certificate, certifying that I have included all instruments on the lands described in the abstract, and I impress my abstracter's seal. It is considered an original, certified document.

Now, let's say that same person comes in to my office today and needs to find out what documents were recorded since the last time they had the abstract in my office. They would bring in the original abstract that I created for them on January 1, 2010, and I would show them every document recorded after that date, up until the last document recorded on February 5, 2021. I would simply add those entries to the end of the abstract, showing the continuation of title evidence, and certify it again to cover the new entries.

What do I bill for? I only bill for the documents I abstract in that particular update. When I created the abstract on January 1, 2010, let's say I showed them 100 documents recorded up to that time. I billed them for 100 entries in the abstract. When I update that abstract today, let's say I add 5 new documents. This time, I bill them only for those 5

new entries. The previous 100 entries were already paid for.

So, where do easements come in? Easements are described in N.D.C.C. Chapter 47-05. Simply, an easement is the act of one parcel of land burdening another. For example, a utility right of way easement. That easement would evidence the authority of a telephone line or a water line to cross a piece of land. The utility becomes dominant over that parcel. The underlying land, which is subject to the easement is considered servient. By recording such an easement, the servient parcel is made aware of their limitations on the use of that particular parcel.

Also, easements must be specific. N.D.C.C. 47-05-02.1 requires that an easement “shall be properly described” as to the specific real property which it benefits and burdens. So, a telephone utility cannot simply burden an entire county by recording a document that says, “Ward County has a phone line running through it.” It must be described so that there is an identifiable location or area for that particular dominant use.

Most entries in an abstract will be a summary of the original document. You can imagine how large an abstract would be if you had to include every word of every document ever recorded on a parcel. But certain documents, regardless of how long ago they were recorded, must be shown in full. One of the exceptions for summarizing documents in an abstract is an easement. This is because there is no standard form for an easement, and no standard type of information. A warranty deed for a quarter of farmland is going to look basically the same from one to the next. Even a deed for farmland will look similar to a deed for a house. It is just the conveyance of a specific parcel. But easements are different. An easement for a phone line will have much different language than an easement for a driveway, or a fence, or a wall, or an oil pipeline. Much more information included in an easement must be included in the abstract. If someone records a 15-page easement, it's my job to parse through that document and recite all of the pertinent information for the landowner.

Regardless of how much time I must spend reviewing the document or reciting the information, I charge for that single entry in the abstract. I charge \$15 as set by statute.

Perhaps most important to our discussion today is the fact that, once I show you an easement in an abstract, I don't need to show it again. It is now a part of the document. The next time someone brings in their abstract to be updated to the current date, I don't include documents from the previous update, because they have already been shown.

Now, back to the billing side of things. When I bill out that 100-entry abstract, I send the bill to the person who ordered the abstract. With this proposed amendment to the abstracter fees, I would be creating numerous bills for particular abstract entries. If I showed 10 easements in that abstract, I would have to create 11 bills. One for the person who ordered the abstract, and 10 more for each easement holder.

This raises many questions. How do I bill someone who did not place an order for the abstract update? If I now must send out 10 times more bills than before, who will spend

all that time in my billing department? I have 2 employees. I am the billing department. What happens when an easement was recorded in 1918 and the particular utility company no longer exists? Where do I send that bill? Is it my job to find out if there was a corporate merger and track down their accounts payable department?

If \$150 worth of entries were not paid for in the abstract, I would not be releasing the abstract. I would have no guarantee that the entries ever get paid for. While I wait for those few stragglers to pay their \$15 invoices, what happens to the closing that was the reason for this update? Does it wait indefinitely? Does it get cancelled because no one was able to look at the title evidence? Who is at fault for the cancellation? Am I, as the abstracter, now responsible for the sale falling through because easement holders wouldn't pay my bill?

These are the reasons I oppose this bill and why I hope you will give it a DO NOT PASS.

I would be happy to answer any questions that you may have.

**Senate Political Subdivisions Committee**  
**Hearing on SB 2285**

Testimony from North Land Title Association  
Nick Hacker – Legislative Chair  
[nick@thetitleteam.com](mailto:nick@thetitleteam.com)  
(240) 688-2210

Chairman Burckhard, Members of the Committee, my name is Nick Hacker with the North Dakota Land Title Association as well as President of North Dakota Guaranty and Title Co.

Our industry provides abstracting, title insurance and real estate closing services in every county of the state. A part of these services is to ensure buyers acquire real property as they expect, free and clear of liens and with knowledge of known encumbrances or easements.

Our abstracting services provide a compilation of documents recorded against a specific piece of property through a search of the real estate records by an Abstracter which is written in a brief concise format. These concise descriptions of the documents affecting the property are called abstract entries. The cost of an abstract entry is governed by state statute at \$15 per entry. The primary use of abstracts is for North Dakota attorneys to determine the condition of title and what needs to occur to ensure title is marketable to a buyer or lender.

Included in the attorney's examination is a review of all easements affecting the property. An easement is the legal right to use another person's real property, generally in order to cross a part of the property or to gain access. Many times, these are useful to the property owners such as a shared driveway, delivery of rural water, power, gaining physical access to a public road or to simply receive cable services. Sometimes easements may be to the detriment of the owner, in these cases the grantor of the easement is almost always compensated for granting the easement.

As abstractors, our job is to provide what has been recorded against the property to the requesting party. The requesting party could be an attorney, bank, buyer, or seller. The bill before you changes who we charge for our services, by statute, and requires us to bill the beneficiary of the easement which could be a city, county, private individual, utility, pipeline company, water system, cable company and beyond with a \$15 invoice for the abstract entry.

This bill will result in thousands of \$15 invoices being sent to unsuspecting entities who are not related to the transaction as well as significant undue hardship on small



abstracting businesses to find, invoice and collect for a service that was ordered by someone else. This is all part of ensuring the buyer has knowledge of the easement affecting the land they are contemplating to purchase.

In the case of a buyer and seller, these costs are negotiated in the purchase and sale contract, again the easement holder is not a party to the transaction. Additionally, we are a table funding state, which means when a real estate closing occurs, all costs and fees are paid for at the closing table. This bill could put abstract companies in a position of trying to collect \$15 invoices from entities with an easement that could take months to find and collect, in turn, causing unnecessary delays to real estate closings.

Please give this bill a do not pass recommendation.

Thank you.

**Testimony in Opposition to**  
**SENATE BILL NO. 2285**  
**Senate Political Subdivisions Committee**

**February 5, 2021**

Chairman Burckhard, Senate Political Subdivisions Committee members, for the record my name is Todd D. Kranda. I am an attorney with the Kelsch Ruff Kranda Nagle & Ludwig Law Firm in Mandan. I appear before you today as a lobbyist on behalf of the North Dakota Petroleum Council (NDPC) to oppose SB 2285 which changes the process for charging fees for an easement entry as shown on an abstract.

NDPC represents more than 650 companies involved in all aspects of the oil and gas industry, including oil and gas production, refining, pipelines, transportation, mineral leasing, consulting, legal work, and oilfield service activities in North Dakota, and has been representing the energy industry since 1952.

SB 2285 changes the standard billing process for abstract work by adding a provision to require that any fee that gets charged for an entry made in an abstract dealing with the existence of an easement on real property be charged to the owner of the easement. Normally, the cost for preparing an abstract and any individual entries that are made for the property that is the subject matter of the abstract is included with the overall cost that is charged for the work in preparing or updating an abstract. That cost for the abstract is and should remain the responsibility of the owner of the property or whoever has requested the preparation of an abstract for the real property.

The change proposed within SB 2285 complicates the process and significantly impacts an easement holder, such as utilities, pipelines etc., by having an extra unanticipated future cost incurred for charges caused by an abstract subsequently being prepared or updated for the real property. The easement holder being charged the abstract entry fee does not have to be and most likely would not be a party to the subsequent

transaction for which the abstract work is being completed.

Also, the easement holder would have already paid reasonable compensation to the property owner for obtaining the easement itself that was created along with any costs for recording the easement documents at the time of the original transaction.

SB 2285 establishes a new and unanticipated cost that is being charged and shifted from the property owner or entity that is requesting an abstract for the subject property. That extra cost should not be pushed off to the easement holder when an owner of property obtains a new or updated abstract for their property.

Furthermore, the proposed modification under SB 2285 is only directed at entries for easement holders which is one of several different types of entries that are made on an abstract. It is simply bad public policy to carve out and unfairly focus on one single type of entry made within an abstract and then assess a subsequent separate charge to the easement holder that is unrelated to any contract or transaction involving the easement holder itself.

In conclusion, NDPC urges your opposition to **SB 2285** and respectfully requests a **Do Not Pass** recommendation. Thank you and I would be happy to try to answer any questions.



**Eric Volk, Executive Director**

**ND Rural Water Systems Association**

**In Opposition of Senate Bill 2285**

**Senate Political Subs. Committee**

**February 5, 2021**

Chairman Burckhard, and members of the Senate Political Subdivisions Committee, my name is Eric Volk. I am the executive director of the North Dakota Rural Water Systems Association (NDRWSA). Our vision is to ensure all of North Dakota has access to affordable, ample, and quality water. NDRWSA is committed to completing and maintaining North Dakota's water infrastructure for economic growth and quality of life. Today, I am submitting testimony in opposition of Senate Bill 2285.

**Rural/Regional Water Facts (see attached map):**

- Serve over 160,000 rural residents (59,000 connections).
- Provide water to 268 (75%) of North Dakota's 357 incorporated cities.
- Furnish water to over 295,000 North Dakota residents.
- Provide service through over 40,000 miles of pipe.

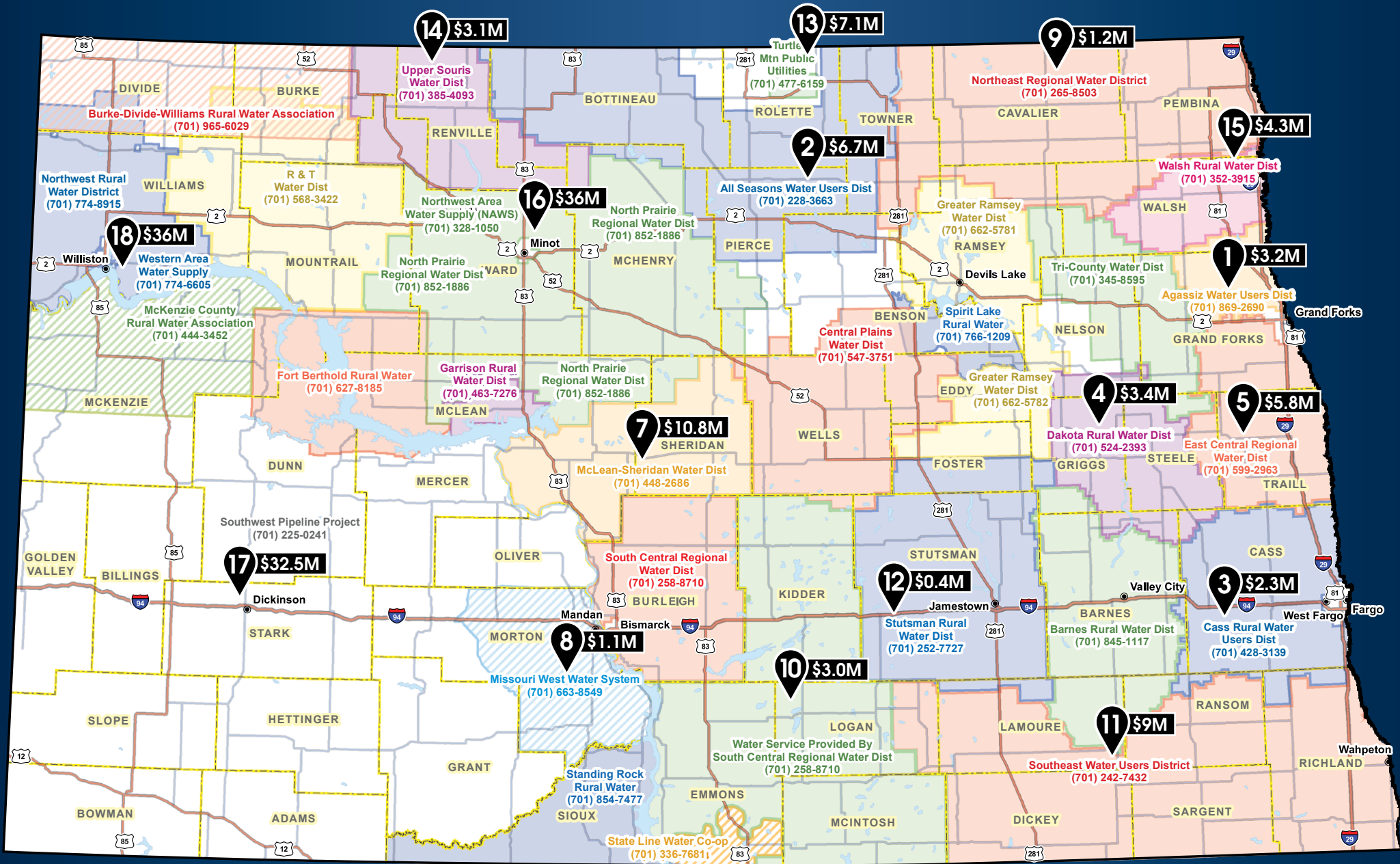
Rural/Regional water systems (RWS) acquire easements to install distribution lines and other facilities to provide water service to rural residents, cities, industries, and agricultural interests. During water system construction planning, signed easements are collected by the system. Most of the time there are no issues, as the landowner will benefit or is currently benefiting from water service. The signed easement is then recorded at the county courthouse (at the cost of the water system). At this point, the easement paperwork requirements for the water system are complete. The recorded easement will be added to the abstract the next time it is updated.

Over the past 50+ years, the process I described above has worked well for the RWS. SB 2285 looks to shift the cost of adding the easement to the abstract to the owner of the easement.

RWS have hundreds of thousands of easements across the state and still more to obtain. To be honest, I have no idea on the number of RWS easements that have not been added to abstracts. RWS have no control over that situation. If SB 2285 passes, a signed/recorded easement could sit at the courthouse until the property is sold/financed/other years later. Abstracting businesses would then be tasked with finding, billing, and collecting from whomever is responsible for the easement. For a RWS, it would be hard to imagine receiving a bill from an easement that was acquired twenty years ago.

RWS development in the state is far from over and the acquisition of easements will continue. We believe the current easement process works well and should continue as is. As stated by previous speakers, it is best to keep this between the buyer/the seller and to keep out entities that have no part in the transaction that causes the abstract to be updated. Landowners could also negotiate during the easement process if the cost of entering the easement on the abstract is an issue.

With that said, the NDRWSA opposes SB 2285. Thank you for giving me the opportunity to provide testimony on behalf of the NDRWSA. Eric Volk, [ericvolk@ndrw.org](mailto:ericvolk@ndrw.org).



Chairman Burckhard, Vice Chairman Anderson, Senator Heitkamp, Senator Kannianen, Senator Larson, Senator Lee and Senator Oban,

My name is David Crothers with the Broadband Association of North Dakota (BAND). The Association's members serve 97 percent of the State's geographic territory.

Regrettably, I am unable to be at the hearing tomorrow morning on Senate Bill 2285. The legislation adds language to the Century Code that will make easement owners liable for bringing an abstract up to date regardless, I am told, how many times that document is updated.

The Association strongly opposes the adoption of the bill.

I polled the 15 small, locally-owned broadband providers serving North Dakota and asked how many easements they held within their service territories. The eleven who have responded to date indicate they have approximately 70,000 easements. I estimate the remaining four have an additional 20,000 easements. The impact of SB 2285 has the potential to cause significant financial harm to small broadband providers and locally-owned telephone companies. That harm will lead to either higher costs for consumers or negatively impact the ability to build out fiber optic infrastructure to bring broadband to unserved or underserved areas of North Dakota.

The Association also opposes the legislation because it is an expense that we will be forced to pay that our competitors do not in the highly competitive broadband marketplace. Our greatest competitors are often wireless companies who do not have the same number of easements and use a different technology to deliver a similar product. They include satellite broadband companies like Dish and HughesNet, fixed wireless internet provided by a number of companies including Midco and the traditional wireless providers, which include Verizon, AT&T and T-Mobile. Adopting legislation that increase costs for BAND members and not our competitors put locally-owned companies at a competitive disadvantage.

Again, I apologize for not being able to appear before the committee. I will check with Chairman Burckhard and ask if he would like written testimony from BAND submitted opposing SB 2285. However, please reach out to me directly if you have any questions or I may provide additional information.

Best wishes,

David Crothers

Broadband Association of North Dakota

Cell 701-471-3838

February 5, 2021

Senate Political Subdivisions Committee

SB 2285

Senator Randy Burckhard

For the record, I am Stephanie Dassinger. I am appearing on behalf of the North Dakota League of Cities. I am the deputy director and attorney for the League.

The North Dakota League of Cities appears in opposition to SB 2285.

SB 2285 appears to create a process where the owner of an easement is required to pay up to a \$15 fee for the easement entry in an abstract, regardless of who ordered the abstract. As a part of doing its public business, cities are required to purchase and record several different types of easements. Some examples of those easements are:

Sanitary Sewer Line Easements

Water Line Easements

Construction Easements

Access Easements

Flood Wall Easements

Storm Sewer Easements

As this bill is written, a city would have to pay a \$15 fee every time one of these easements is entered into an abstract. Typically, an abstract is required when a property owner is selling his or her property or refinancing his or her property. The city is not a party to these transactions, has no control over those transactions, and as such, should not pay any of the costs associated with processing the documents required to complete those transactions.

As this committee is aware, cities are spending public money. This bill requires that public money be spent on the costs associated with private individuals or entities making decisions about transactions on their property. It is not appropriate to have a city pay the costs associated with those transactions.

The League does not have any data on this matter; however, when talking to city attorneys and city engineers about this bill, it became apparent that cities own a large number of these easements and the fiscal impact to cities if this bill passes could be quite high.

As such, the League respectfully requests a Do Not Pass recommendation on HB 2285.





Bill Number	Name	Lobbyist #	Support	Oppose	Neutral
SB 2285	Mark B Bring, Director of Legislative Affairs	61		X	

As a public electric utility, our company has thousands of easements in the state. There is no logical basis to charge the easement owner, rather than the party ordering the abstract, for an entry noting the easement on the abstract.

The costs from such a practice, which would ultimately be borne by our customers in electric rates, could be significant. This could be likened to never setting foot in the restaurant yet being required to pick up the tab for every customer who orders off the menu.

We oppose SB 2285 and urge a DO NOT PASS.



North Dakota Association of REALTORS®

#5580

To advocate for the success of our members in partnership with our local Associations and the National Association of REALTORS®

## **TESTIMONY IN OPPOSITION OF SB 2285**

**February 5, 2021**

**Senate Political Subdivision Committee**

Chairman Burckhard and Members of the Senate Political Subdivision Committee, my name is Jill Beck and I represent the North Dakota Association of REALTORS® (NDAR).

The North Dakota Association of REALTORS® represents more than 2,100 REALTORS® and more than 250 Business Partner members.

We are in opposition of SB 2285 for several reasons.

If this bill were to pass it would slow up the closing of the home purchase due to a \$15 invoice that has not been paid by the owners of the easement which more often than not are utility company or gas/oil company. The timing of getting the invoice billed and then receipt of payment can be weeks to months in which time a home purchase is waiting to close and to no fault of the home seller or buyer who are ready and sometimes needing to get closed in a timely fashion.

Buyers and sellers negotiate who will pay fees associated with their transaction. This bill would create a fee that would be handled outside of closing without disclosure to the parties.

It is important for homebuyers to know the condition of title to property they are purchasing. It is especially important for them to know if an easement exists so that they can enjoy their property without the risk of encroaching on an easement when constructing additions or new building on their property. The bill would discourage easement holders from recording their easements to avoid unknown future fees.

We ask for a **DO NOT PASS** on SB 2285 and would be happy to answer any questions you may have. My contact info is below.

**Jill Beck, CEO and Lisa Felder, Lobbyist**  
**North Dakota Association of REALTORS®**

[Jill@ndrealtors.com](mailto:Jill@ndrealtors.com)

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## North Dakota Utility Working Group Joint Statement Opposing SB 2285



The members of the North Dakota Utility Working Group, represented by our logos on this document, oppose SB 2285.



Utilities have thousands of easements in this state. When we form our easements, we pay the parties granting our easement and all the costs associated to record them. To hold us, or any other easement holder responsible for future fees unassociated with our actions is unfair and would cause additional costs which could burden utility customers.

We ask for a DO NOT PASS on SB 2285.





Cheryl Riley  
President, External Affairs  
Northern Plains States

AT&T Services, Inc.  
3709 W. 41<sup>st</sup> St.  
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February 5, 2021  
Senate Political Subdivision Committee  
Chairman Randy Burckhard  
Oppose Senate Bill 2285

Dear Chairman Burckhard and Members of the Senate Political Subdivision Committee:

AT&T opposes SB 2285. We are concerned about the bill's provision to charge companies with fiber optic cable or related equipment on an easement or right-of-way every time anyone requests an abstract or title opinion on property in the state. For companies, like AT&T, who are already paying fees to be on the land, it is misguided to charge additional fees for title searches that we have not requested or are unrelated to our business. In our experience, it is far more appropriate to simply charge the entity that orders the abstract or title opinion.

As a telecommunications provider with miles of fiber optic cable and copper in easements, as well as rights-of-way, those costs for every title search would quickly add up. This legislation would add significantly to the overall cost of doing business in North Dakota at a time when AT&T is investing millions of dollars in the state to expand our high-speed, wireless broadband network.

North Dakota has always been a state that is open for business and encourages investment in technology. Unexpected costs, such as those that would be imposed by SB 2285, could have a chilling effect on overall investment in the state.

For these reasons, we oppose SB 2285.

Sincerely,

A handwritten signature in black ink, appearing to read "Cheryl Riley", written over a light blue grid background.

Cheryl Riley  
AT&T President, External Affairs  
Northern Plains States