

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

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HOUSE BILL 431*
Committee Substitute Favorable 8/7/19

Short Title: FIBER NC Act.

(Public)

Sponsors:

Referred to:

March 25, 2019

1 A BILL TO BE ENTITLED
2 AN ACT TO FOSTER INFRASTRUCTURE FOR BROADBAND EXPANSION AND
3 RESOURCES IN NORTH CAROLINA BY AUTHORIZING COUNTIES AND CITIES
4 TO INSTALL AND LEASE BROADBAND INFRASTRUCTURE TO INCREASE
5 ADEQUATE BROADBAND SERVICES TO ATTRACT INVESTMENT IN LOCAL
6 ECONOMIES, PROVIDE FOR EDUCATIONAL AND CAREER OPPORTUNITIES,
7 MODERNIZE FARMING TECHNOLOGIES, AND TO PROVIDE FOR IMPROVED
8 HEALTH CARE.

9 The General Assembly of North Carolina enacts:

10 SECTION 1.(a) Article 23 of Chapter 153A of the General Statutes is amended by
11 adding a new section to read:

12 "**§ 153A-458. Authority to construct and lease broadband infrastructure.**

13 (a) A county shall have the authority to install or maintain broadband infrastructure to be
14 leased to a private provider in accordance with G.S. 160A-272.5 if all of the following apply:

15 (1) The lessee is a person operating for profit in this State to provide broadband
16 services to customers.

17 (2) The county has at least one of the following:

18 a. More than four and three quarters percent (4.75%) of the county
19 without a provider of broadband infrastructure according to the
20 Federal Communications Commission.

21 b. A major military installation, as defined in G.S. 143-215.115.

22 (b) A board of county commissioners may utilize ad valorem tax levies authorized under
23 general law, grants, or any other unencumbered funds in exercising authority granted under this
24 section.

25 (c) Prior to beginning installation of broadband infrastructure under this section, a county
26 shall prepare a report, available in the office of the clerk for at least 90 days prior to the date of
27 the public hearing, containing at least all of the following:

28 (1) A business plan for providing broadband infrastructure, including plans for
29 leasing the broadband infrastructure to a private provider.

30 (2) The results of a feasibility study conducted by the county to determine needs
31 and available resources. The feasibility study shall include at least all of the
32 following information:

33 a. Which areas within the county:

34 1. Have one or fewer wireline or fixed wireless private providers
35 of broadband services to residential customers.



- 1 2. Have terrestrially deployed Internet access service with
2 transmission speeds of 10 megabits per second (Mbps)
3 download and no more than one megabit per second upload
4 (10:1).
5 3. Have terrestrially deployed Internet access service with
6 transmission speeds of 25 megabits per second (Mbps)
7 download and no more than three megabits per second upload
8 (25:3).
9 b. A determination of any areas within the county that State or federal
10 grant moneys have been awarded within the 18 months prior to the
11 date of the feasibility study to provide access to broadband. A county
12 may rely on data from the Broadband Infrastructure Office in the
13 Department of Information Technology in complying with this
14 sub-subdivision.
15 c. A map, or sufficient written description, of the location and type of
16 broadband infrastructure proposed to be installed.
17 d. A review of the county's financials and proposed sources of revenue
18 to fund installation of broadband infrastructure.

19 (d) The board of county commissioners shall hold a public hearing before adopting any
20 resolution at a regular meeting stating its intent to install broadband infrastructure for the purpose
21 of leasing in accordance with G.S. 160A-272.5. Notice of the hearing shall state the date, hour,
22 and place of the public hearing and its subject and shall include the map described in
23 sub-subdivision (c)(2)c. of this section and a statement that the report required by subsection (c)
24 of this section is available for public inspection in the office of the clerk. The notice shall be
25 published at least once, not less than one week before the date of the hearing.

26 (e) Nothing in this section grants authority, or shall be construed to grant authority, to a
27 county to use broadband infrastructure constructed under this section to provide communications
28 services as defined in G.S. 160A-340(3) or in accordance with Article 16A of Chapter 160A of
29 the General Statutes.

30 (f) For purposes of this section, "broadband infrastructure" shall mean wireline or
31 wireless infrastructure capable of providing terrestrially deployed Internet access service with
32 transmission speeds of at least 25 megabits per second (Mbps) download and at least three
33 megabits per second upload (25:3) or as defined by the Federal Communications Commission,
34 whichever speeds are faster."

35 **SECTION 1.(b)** Article 21 of Chapter 160A of the General Statutes is amended by
36 adding a new section to read:

37 **"§ 160A-499.5. Authority to construct and lease certain facilities.**

38 (a) A city shall have the authority to install or maintain broadband infrastructure to be
39 leased to a private provider in accordance with G.S. 160A-272.5 if all of the following apply:

- 40 (1) The city has at least sixty percent (60%) of its population, according to the
41 most recent federal decennial census, lying in one of the counties described in
42 G.S. 153A-458(a)(2).
43 (2) The lessee is a person operating for profit in this State to provide broadband
44 services to customers.

45 (b) A city council may utilize ad valorem tax levies authorized under general law, grants,
46 or any other unencumbered funds in exercising authority granted under this section.

47 (c) Prior to beginning installation of broadband infrastructure under this section, a city
48 shall prepare a report, available in the office of the clerk for at least 90 days prior to the date of
49 the public hearing, containing at least all of the following:

- 50 (1) A business plan for providing broadband infrastructure, including a plan for
51 leasing the broadband infrastructure to a private provider.

1 (2) The results of a feasibility study conducted by the city to determine needs and
2 available resources. The feasibility study shall include at least all of the
3 following information:

4 a. Which areas within the city:

5 1. Have one or fewer wireline or fixed wireless private providers
6 of broadband services to residential customers.

7 2. Have terrestrially deployed Internet access service with
8 transmission speeds of 10 megabits per second (Mbps)
9 download and no more than one megabit per second upload
10 (10:1).

11 3. Have terrestrially deployed Internet access service with
12 transmission speeds of 25 megabits per second (Mbps)
13 download and no more than three megabits per second upload
14 (25:3).

15 b. A determination of any areas within the city that State or federal grant
16 moneys have been awarded within the 18 months prior to the date of
17 the feasibility study to provide access to broadband. A city may rely
18 on data from the Broadband Infrastructure Office in the Department of
19 Information Technology in complying with this sub-subdivision.

20 c. A map, or sufficient written description, of the location and type of
21 broadband infrastructure proposed to be installed.

22 d. A review of the city's financials and proposed sources of revenue to
23 fund installation of broadband infrastructure.

24 (d) The city council shall hold a public hearing before adopting any resolution at a regular
25 meeting stating its intent to install broadband infrastructure for the purpose of leasing in
26 accordance with G.S. 160A-272.5. Notice of the hearing shall state the date, hour, and place of
27 the public hearing and its subject and shall include the map described in sub-subdivision (c)(2)c.
28 of this section and a statement that the report required by subsection (c) of this section is available
29 for public inspection in the office of the clerk. The notice shall be published at least once, not
30 less than one week before the date of the hearing.

31 (e) Nothing in this section grants authority, or shall be construed to grant authority, to a
32 city to use broadband infrastructure constructed under this section to provide communications
33 services as defined in G.S. 160A-340(3) or in accordance with Article 16A of Chapter 160A of
34 the General Statutes.

35 (f) For purposes of this section, "broadband infrastructure" shall mean wireline or
36 wireless infrastructure capable of providing terrestrially deployed Internet access service with
37 transmission speeds of at least 25 megabits per second (Mbps) download and at least three
38 megabits per second upload (25:3) or as defined by the Federal Communications Commission,
39 whichever speeds are faster."

40 **SECTION 2.(a)** G.S. 153A-149(c) is amended by adding a new subdivision (7a) to
41 read:

42 "(7a) Broadband Infrastructure. – To construct wireline and wireless infrastructure."

43 **SECTION 2.(b)** G.S. 160A-209(c) is amended by adding a new subdivision to read:

44 "(7a) Broadband Infrastructure. – To construct wireline and wireless infrastructure."

45 **SECTION 2.(c)** This section is effective for taxes imposed for taxable years
46 beginning on or after July 1, 2020.

47 **SECTION 3.** G.S. 159-81(3) is amended by adding a new sub-subdivision to read:

48 "r. Broadband infrastructure for the purpose of leasing in accordance with
49 G.S. 160A-272.5."

50 **SECTION 4.(a)** Article 12 of Chapter 160A of the General Statutes is amended by
51 adding a new section to read:

1 **"§ 160A-272.5. Leases of broadband infrastructure to a private provider.**

2 (a) Notwithstanding this Article, broadband infrastructure installed or maintained in
3 accordance with G.S. 153A-458 or G.S. 160A-499.5 shall be leased to a private provider for
4 delivery of services to customers in accordance with this section.

5 (b) The governing board may lease broadband infrastructure installed or maintained in
6 accordance with this Article to a private provider for a term of up to 25 years. Property may be
7 leased only pursuant to a resolution of the governing board authorizing the execution of the lease
8 agreement adopted at a regular governing board meeting upon 30 days' public notice. Notice shall
9 be given by publication describing the property to be leased and announcing the governing
10 board's intent to authorize the lease.

11 (c) All leases of broadband infrastructure installed or maintained in accordance with this
12 Article shall comply with all of the following:

13 (1) The lease shall be entered into on a technology neutral basis.

14 (2) The lease shall be open to similarly situated private providers on comparable
15 terms and conditions.

16 (3) Requests for proposals shall be solicited by the governing board prior to
17 adoption of the resolution authorizing the execution of the lease, as follows:

18 a. Requests for proposals shall be invited by advertisement in a
19 newspaper having general circulation in the city. A city may also invite
20 proposals by electronic means.

21 b. Advertisement for proposals from potential lessees shall be published
22 in a newspaper having general circulation in the city no less than 30
23 days prior to the date on the notice for the opening of bids.

24 c. A city shall seek and consider requests for proposals from qualified
25 private providers within the city by providing notice in accordance
26 with G.S. 160A-340.6(c) and any other reasonable means to ensure
27 that potential lessees are made aware of the notice for requests for
28 proposals.

29 d. The advertisement for requests for proposals from potential lessees
30 shall contain at least the following information:

31 1. The type and location of the broadband infrastructure to be
32 leased.

33 2. The time and place where plans and specifications of the
34 proposed lease may be had.

35 3. The time and place for opening of the proposals.

36 4. A statement reserving to the governing board the right to reject
37 any or all proposals.

38 e. Proposals may be rejected for any reason determined by the governing
39 board to be in the best interest of the city.

40 (d) For purposes of this section, in determining the term of a proposed lease, periods that
41 may be added to the original term by options to renew or extend shall be included."

42 **SECTION 4.(b)** This section becomes effective October 1, 2019, and applies to
43 leases entered into on or after that date.

44 **SECTION 5.** G.S. 153A-349.60 reads as rewritten:

45 **"§ 153A-349.60. Authorization to provide grants.**

46 (a) A county may provide grants to unaffiliated qualified private providers of highspeed
47 Internet access service, as that term is defined in G.S. 160A-340(4), for the purpose of expanding
48 service in unserved areas for economic development in the county. The grants shall be awarded
49 on a technology neutral basis, shall be open to qualified applicants, and may require matching
50 funds by the qualified private provider. A county shall seek and consider request for proposals
51 from qualified private providers within the county prior to awarding a broadband grant and shall

1 use reasonable means to ensure that potential applicants are made aware of the grant, including,
2 at a minimum, compliance with the notice procedures set forth in G.S. 160A-340.6(c). The
3 county shall use only unrestricted general fund revenue for the grants. For the purposes of this
4 section, a qualified private provider is a private provider of high-speed Internet access service in
5 the State prior to the issuance of the grant proposal.

6 (b) Nothing in this section authorizes a county to provide highspeed Internet broadband
7 service."

8 **SECTION 6.** G.S. 160A-321 reads as rewritten:

9 "**§ 160A-321. Sale, lease, or discontinuance of city-owned enterprise.**

10 (a) A city is authorized to sell or lease as lessor any public enterprise that it may own
11 upon any terms and conditions that the council may deem best. However, except as to transfers
12 to another governmental entity pursuant to G.S. 160A-274 or as provided in ~~subsection~~
13 subsection (a1) and (b) of this section, a city-owned public enterprise shall not be sold, leased to
14 another, or discontinued in its entirety unless the proposal to sell, lease, or discontinue such public
15 enterprise in its entirety is first submitted to a vote of the people and approved by a majority of
16 those who vote thereon.

17 (a1) Voter approval shall not be required for the sale, lease, or discontinuance of airports,
18 off-street parking systems and facilities, or solid waste collection and disposal systems.

19 (b) For the sale, lease, or discontinuance of water treatment systems, water distribution
20 systems, or wastewater collection and treatment systems, a city may, but is not required to, submit
21 to its voters the question of whether such sale, lease, or discontinuance shall be undertaken.

22 (c) ~~The~~ Any referendum under this section is to be conducted pursuant to the general and
23 local laws applicable to special elections in such city."

24 **SECTION 7.** G.S. 160A-340.2 is amended by adding a new subsection to read:

25 "(f) Broadband infrastructure constructed by a city for the purpose of leasing in
26 accordance with G.S. 160A-272.5 shall not be used to provide communication services under
27 this Article."

28 **SECTION 8.** Except as otherwise provided, this act becomes effective October 1,
29 2019.