

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

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SENATE BILL DRS45308-LMf-75A

Short Title: FIBER NC Act.

(Public)

Sponsors: Senators Lazzara, Corbin, and deViere (Primary Sponsors).

Referred to:

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 BUILD AND LEASE FACILITIES AND EQUIPMENT OF BROADBAND
5 SERVICES TO INCREASE ADEQUATE BROADBAND SERVICES IN RURAL AREAS
6 OF THE STATE WHERE THE NEED FOR BROADBAND IS GREAT DUE TO MANY
7 FACTORS, INCLUDING THE COVID-19 PANDEMIC.

8 The General Assembly of North Carolina enacts:

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

11 "**§ 153A-460. Authority to build and lease certain facilities.**

12 (a) A county shall have the authority to build facilities or equipment of a "broadband
13 service," as that term is defined in G.S. 62-3(1), for the purpose of leasing the facilities or
14 equipment, in accordance with G.S. 160A-272, to one or more lessees who are not a
15 governmental unit as defined in G.S. 160A-274.

16 (b) A board of county commissioners may utilize ad valorem tax levies authorized under
17 G.S. 153A-149(c), grants, or any other unrestricted funds in exercising authority granted under
18 this section.

19 (c) When a county determines to build facilities or equipment of a broadband service,
20 that county shall do all of the following prior to beginning construction:

21 (1) Conduct a feasibility study to determine needs and available resources.

22 (2) Adopt a resolution at a regular meeting stating its intent to build facilities or
23 equipment of a broadband service for the purpose of leasing the facilities or
24 equipment in accordance with G.S. 160A-272. Prior to the regular meeting,
25 notice shall be published at least once, not less than 10 days before the regular
26 meeting, in a newspaper having general circulation in the county or by
27 electronic means, or both.

28 (3) Notify the Local Government Commission of any commitment to expend
29 funds for construction over more than one fiscal year.

30 (4) Notify the State Chief Information Officer (CIO), or the CIO's designee, of
31 the location and type of facilities or equipment of the broadband service to be
32 built, in the format determined by the CIO."

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

35 "**§ 160A-499.5. Authority to build and lease certain facilities.**



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1 (a) A city shall have the authority to build facilities or equipment of a "broadband
2 service," as that term is defined in G.S. 62-3(1), for the purpose of leasing the facilities or
3 equipment, in accordance with G.S. 160A-272, to one or more lessees who are not a
4 governmental unit as defined in G.S. 160A-274.

5 (b) A city may utilize ad valorem tax levies authorized under G.S. 160A-209(c), grants,
6 or any other unrestricted funds in exercising authority granted under this section.

7 (c) When a city determines to build facilities or equipment of a broadband service, the
8 city shall do all of the following prior to beginning construction:

9 (1) Conduct a feasibility study to determine needs and available resources.

10 (2) Adopt a resolution at a regular meeting stating its intent to build facilities or
11 equipment of a broadband service for the purpose of leasing the facilities or
12 equipment in accordance with G.S. 160A-272. Prior to the regular meeting,
13 notice shall be published at least once, not less than 10 days before the regular
14 meeting, in a newspaper having general circulation in the city or by electronic
15 means, or both.

16 (3) Notify the Local Government Commission of any commitment to expend
17 funds for construction over more than one fiscal year.

18 (4) Notify the State Chief Information Officer (CIO), or the CIO's designee, of
19 the location and type of facilities or equipment of the broadband service to be
20 built, in the format determined by the CIO."

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

22 "(7a) Broadband Services. – To build facilities and equipment of a broadband
23 service as defined in G.S. 62-3(1)."

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

25 "(7a) Broadband Services. – To build facilities and equipment of a broadband
26 service as defined in G.S. 62-3(1)."

27 **SECTION 2.(c)** This section is effective for taxes imposed for taxable years
28 beginning on or after July 1, 2021.

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

30 "r. Facilities or equipment of a broadband service as defined in
31 G.S. 62-3(1) for the purpose of leasing the facilities or equipment in
32 accordance with G.S. 160A-272."

33 **SECTION 4.(a)** G.S. 160A-272 reads as rewritten:

34 **"§ 160A-272. Lease or rental of property.**

35 (a) Any property owned by a city may be leased or rented for such terms and upon such
36 conditions as the council may determine, but not for longer than 10 years (except as otherwise
37 provided in subsection (b1) of this section) and only if the council determines that the property
38 will not be needed by the city for the term of the lease. ~~In determining the term of a proposed~~
39 ~~lease, periods that may be added to the original term by options to renew or extend shall be~~
40 ~~included.~~

41 (a1) Property may be rented or leased only pursuant to a resolution of the council
42 authorizing the execution of the lease or rental agreement adopted at a regular council meeting
43 upon 30 days' public notice. Notice shall be given by publication in a newspaper having general
44 circulation in the city or by electronic means, or both, describing the property to be leased or
45 rented, stating the annual rental or lease payments, and announcing the council's intent to
46 authorize the lease or ~~rental at its next regular meeting rental.~~

47 (b) No public notice as required by subsection (a1) of this section need be given for
48 resolutions authorizing leases or rentals for terms of one year or less, and the council may
49 delegate to the city manager or some other city administrative officer authority to lease or rent
50 city property for terms of one year or less.

1 (b1) Leases for terms of more than 10 years shall be treated as a sale of property and may
2 be executed by following any of the procedures authorized for sale of real property.

3 (c) Notwithstanding ~~subsection~~ subsections (a) and (b1) of this section, the council may
4 approve a lease without treating that lease as a sale of property for any of the following reasons:

5 (1) For the siting and operation of a renewable energy facility, as that term is
6 defined in G.S. 62-133.8(a)(7), for a term up to 25 years.

7 (2) For the siting and operation of a tower, as that term is defined in
8 G.S. 146-29.2(a)(7), for communication purposes for a term up to 25 years.

9 (3) For the operation and use of ~~components of a wired or wireless network, any~~
10 facilities and equipment of a broadband service, as defined in G.S. 62-3(1),
11 for a term up to 25 years; provided, however, that the lease is entered into with
12 a private broadband provider or a cooperative in connection with a grant
13 agreement pursuant to G.S. 143B-1373 and is for a discrete and specific
14 project located in an unserved area of an economically distressed county
15 seeking to provide broadband service to homes, businesses, and community
16 anchor points not currently served.

17 (d) Notwithstanding ~~subsection (a)~~ subsections (a1) and (b) of this section, any lease by
18 a city of any duration for ~~components of a wired or wireless network shall be entered into on a~~
19 ~~competitively neutral and nondiscriminatory basis and made available to similarly situated~~
20 ~~providers on comparable terms and conditions and shall not be used to subsidize the provision of~~
21 ~~competitive service.~~ facilities and equipment of a broadband service, as defined in G.S. 62-3(1),
22 shall comply with all of the following:

23 (1) Proposals shall be invited by advertisement in a newspaper having general
24 circulation in the city. A city may also invite proposals by electronic means.

25 (2) Advertisement for proposals from lessees shall be published in a newspaper
26 having general circulation in the city or published using electronic means, or
27 both, no less than seven full days prior to the date on the notice for the opening
28 of bids.

29 (3) The advertisement for proposals from lessees shall contain at least the
30 following information:

31 a. The type and location of the facilities or equipment of a broadband
32 service to be leased.

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

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

36 d. A statement reserving to the governing body the right to reject any or
37 all proposals.

38 (4) Proposals may be rejected for any reason determined by the governing body
39 to be in the best interest of the city. The governing body shall publicly disclose
40 the reason for rejecting a proposal.

41 (e) Notwithstanding G.S. 160A-321, for the lease of part of a city-owned public
42 enterprise to be operated and used as facilities or equipment of a broadband service, a city shall
43 not be required to submit to its voters the question of whether the lease shall be undertaken.

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

46 **SECTION 4.(b)** This section becomes effective July 1, 2021, and applies to leases
47 entered into on or after that date.

48 **SECTION 5.** G.S. 160A-340.2 is amended by adding a new subsection to read:

49 "(f) This Article shall not apply to facilities or equipment of a "broadband service," as
50 defined in G.S. 62-3(1), built by a city for the purpose of leasing the facilities or equipment in
51 accordance with G.S. 160A-272."

- 1 **SECTION 6.** G.S. 143-128.1C is amended by adding a new subsection to read:
2 "(n) For purposes of this section, the term "public-private project" shall also include a
3 capital improvement project undertaken for the benefit of a city or county that includes
4 construction of facilities or equipment of a broadband service, as defined in G.S. 62-3(1), in
5 conjunction with, or part of, another construction project undertaken by the city or county."
6 **SECTION 7.** Except as otherwise provided, this act becomes effective July 1, 2021.