

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

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SENATE BILL 645

Short Title: Local Gov'ts/Broadband Service Infrastructure. (Public)

Sponsors: Senators Burgin and T. Alexander (Primary Sponsors).

Referred to: Rules and Operations of the Senate

April 4, 2019

A BILL TO BE ENTITLED

AN ACT TO FOSTER INFRASTRUCTURE FOR BROADBAND EXPANSION AND RESOURCES IN NORTH CAROLINA BY AUTHORIZING COUNTIES AND CITIES TO BUILD AND LEASE FACILITIES AND EQUIPMENT OF BROADBAND SERVICES TO INCREASE ADEQUATE BROADBAND SERVICES TO ATTRACT INVESTMENT IN LOCAL ECONOMIES, PROVIDE FOR EDUCATIONAL AND CAREER OPPORTUNITIES, MODERNIZE FARMING TECHNOLOGIES, AND TO PROVIDE FOR IMPROVED HEALTH CARE.

The General Assembly of North Carolina enacts:

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

"§ 153A-458. Authority to construct and lease certain facilities.

(a) A county shall have the authority to enter into an agreement with a qualified private entity to construct facilities or equipment of a broadband service, as defined in G.S. 62-3, for the purpose of leasing such facilities or equipment, in accordance with G.S. 160A-272, to one or more lessees who are not a governmental unit as defined in G.S. 160A-274.

(b) A board of county commissioners may utilize ad valorem tax levies authorized under G.S. 153A-149(c), grants, or any other unrestricted funds in exercising authority granted under this section, but in no case shall the funds utilized by the county exceed fifty percent (50%) of the total funds expended to construct the facilities or equipment.

(c) When a board of county commissioners determines to construct facilities or equipment of a broadband service as defined by G.S. 62-3, that county shall do all of the following prior to beginning construction:

- (1) Conduct a feasibility study to determine needs and available resources.
- (2) Adopt a resolution at a regular meeting stating its intent to construct facilities or equipment of a broadband service as defined by G.S. 62-3 for the purpose of leasing such facilities or equipment in accordance with G.S. 160A-272. Prior to the regular meeting, notice shall be published at least once, not less than 10 days before the regular meeting.
- (3) Notify the Local Government Commission of any commitment to expend funds for construction over more than one fiscal year.
- (4) Notify the State Chief Information Officer, or their designee, of the location and type of facilities or equipment of a broadband service as defined by G.S. 62-3 constructed in the format determined by the State Chief Information Officer.



1 (d) Prior to exercising the authority granted in subsections (a) through (c) of this section,
2 the governing body of the county shall direct the county board of elections to conduct a
3 referendum on the question of whether authority to enter into an agreement with a qualified
4 private entity to construct facilities or equipment of a broadband service, as provided in
5 subsection (a) of this section, should be granted. The referendum may be held at the same time
6 as any other state or county primary, general election, special election, or referendum, and shall
7 be conducted in accordance with the procedures of Chapter 163A of the General Statutes. The
8 form of the question to be presented on the ballot shall be:

9 "[] FOR [] AGAINST

10 Granting the county authority to enter into an agreement with a qualified private entity to
11 construct facilities or equipment of a broadband service for the purpose of leasing the facilities
12 or equipment to one or more lessees who are not a governmental unit."

13 (c) If a majority of the votes are cast for the question, the county shall have the authority
14 granted in subsections (a) through (c) of this section. If a majority of the votes are cast against
15 the question, the county shall not have the authority granted in subsections (a) through (c) of this
16 section."

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

19 **"§ 160A-499.5. Authority to construct and lease certain facilities.**

20 (a) A city shall have the authority to enter into an agreement with a qualified private
21 entity to construct facilities or equipment of a broadband service as defined by G.S. 62-3 for the
22 purpose of leasing such facilities or equipment, in accordance with G.S. 160A-272, to one or
23 more lessees who are not a governmental unit as defined in G.S. 160A-274.

24 (b) A city may utilize ad valorem tax levies authorized under G.S. 160A-209(c), grants,
25 or any other unrestricted funds in exercising authority granted under this section, but in no case
26 shall the funds utilized by the city exceed fifty percent (50%) of the total funds expended to
27 construct the facilities or equipment.

28 (c) When a city determines to construct facilities or equipment of a broadband service as
29 defined by G.S. 62-3, that city shall do all of the following prior to beginning construction:

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

31 (2) Adopt a resolution at a regular meeting stating its intent to construct facilities
32 or equipment of a broadband service as defined by G.S. 62-3 for the purpose
33 of leasing such facilities or equipment in accordance with G.S. 160A-272.
34 Prior to the regular meeting, notice shall be published at least once, not less
35 than 10 days before the regular meeting.

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

38 (4) Notify the State Chief Information Officer, or their designee, of the location
39 and type of facilities or equipment of a broadband service as defined by
40 G.S. 62-3 constructed in the format determined by the State Chief Information
41 Officer."

42 (d) Prior to exercising the authority granted in subsections (a) through (c) of this section,
43 the governing body of the city shall direct the board responsible for city elections to conduct a
44 referendum on the question of whether authority to enter into an agreement with a qualified
45 private entity to construct facilities or equipment of a broadband service, as provided in
46 subsection (a) of this section, should be granted. The referendum may be held at the same time
47 as any other state, county, or city primary, general election, special election, or referendum, and
48 shall be conducted in accordance with the procedures of Chapter 163A of the General Statutes.
49 The form of the question to be presented on the ballot shall be:

50 "[] FOR [] AGAINST

1 Granting the city authority to enter into an agreement with a qualified private entity to
2 construct facilities or equipment of a broadband service for the purpose of leasing the facilities
3 or equipment to one or more lessees who are not a governmental unit."

4 (c) If a majority of the votes are cast for the question, the city shall have the authority
5 granted in subsections (a) through (c) of this section. If a majority of the votes are cast against
6 the question, the county shall not have the authority granted in subsections (a) through (c) of this
7 section."

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

10 "(7a) Broadband services. – To build facilities and equipment of a broadband
11 service as defined in G.S. 62-3."

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

13 "(7a) Broadband services. – To build facilities and equipment of a broadband
14 service as defined in G.S. 62-3."

15 **SECTION 2.(c)** This section is effective for taxes imposed for taxable years
16 beginning on or after July 1, 2019.

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

18 "r. Facilities or equipment of a broadband service as defined by G.S. 62-3
19 for the purpose of leasing such facilities or equipment in accordance
20 with G.S. 160A-272."

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

22 "**§ 160A-272. Lease or rental of property.**

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

29 (a1) Property may be rented or leased only pursuant to a resolution of the council
30 authorizing the execution of the lease or rental agreement adopted at a regular council meeting
31 upon 30 days' public notice. Notice shall be given by publication describing the property to be
32 leased or rented, stating the annual rental or lease payments, and announcing the council's intent
33 to authorize the lease or ~~rental at its next regular meeting.~~ rental.

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

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

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

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

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

46 (3) For the operation and use of ~~components of a wired or wireless network, any~~
47 facilities and equipment of a broadband service, as defined in G.S. 62-3, for a
48 term up to 25 years; provided, however, that the lease is entered into with a
49 private broadband provider or a cooperative in connection with a grant
50 agreement pursuant to G.S. 143B-1373 and is for a discrete and specific
51 project located in an unserved area of an economically distressed county

1 ~~seeking to provide broadband service to homes, businesses, and community~~
2 ~~anchor points not currently served.~~

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

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

11 (2) Advertisement for proposals from lessees shall be published in a newspaper
12 having general circulation in the city no less than seven full days prior to the
13 date on the notice for the opening of bids.

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

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

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

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

21 d. A statement reserving to the governing body the right to reject any or
22 all proposals.

23 (4) Proposals may be rejected for any reason determined by the governing body
24 to be in the best interest of the city.

25 (e) Notwithstanding G.S. 160A-321, for the lease of part of a city-owned public
26 enterprise to be operated and used as facilities or equipment of a broadband service as defined in
27 G.S. 62-3, a city shall not be required to submit to its voters the question of whether such lease
28 shall be undertaken.

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

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

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

34 "(f) This Article shall not apply to facilities or equipment of a broadband service as
35 defined in G.S. 62-3 constructed by a city for the purpose of leasing such facilities or equipment
36 in accordance with G.S. 160A-272."

37 **SECTION 6.** G.S. 143-128.1C is amended by adding a new subsection to read:

38 "(n) For purposes of this section, the term "public-private project" shall also include a
39 capital improvement project undertaken for the benefit of a city or county that includes
40 construction of facilities or equipment of a broadband service, as defined in G.S. 62-3, in
41 conjunction with, or part of, another construction project undertaken by the city or county."

42 **SECTION 7.** Except as otherwise provided, this act becomes effective July 1, 2019.