

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

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HOUSE BILL 384

Short Title: FIBER NC Act. (Public)

Sponsors: Representative Clampitt.

For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Energy and Public Utilities, if favorable, Finance, if favorable, Rules, Calendar, and Operations of the House

March 25, 2021

A BILL TO BE ENTITLED

AN ACT TO FOSTER INFRASTRUCTURE FOR BROADBAND EXPANSION AND RESOURCES IN NORTH CAROLINA BY AUTHORIZING COUNTIES AND CITIES TO INSTALL AND LEASE BROADBAND INFRASTRUCTURE 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 broadband infrastructure.

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

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

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

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

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

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

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

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

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

a. Which areas within the county:



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

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

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

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

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

39 **"§ 160A-499.5. Authority to construct and lease certain facilities.**

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

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

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

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

- 1 (1) A business plan for providing broadband infrastructure, including a plan for
2 leasing the broadband infrastructure to a private provider.
- 3 (2) The results of a feasibility study conducted by the city to determine needs and
4 available resources. The feasibility study shall include at least all of the
5 following information:
- 6 a. Which areas within the city:
- 7 1. Have one or fewer wireline or fixed wireless private providers
8 of broadband services to residential customers.
- 9 2. Have terrestrially deployed internet access service with
10 transmission speeds of 10 megabits per second (Mbps)
11 download and no more than one megabit per second upload
12 (10:1).
- 13 3. Have terrestrially deployed internet access service with
14 transmission speeds of 25 megabits per second (Mbps)
15 download and no more than three megabits per second upload
16 (25:3).
- 17 b. A determination of any areas within the city that State or federal grant
18 moneys have been awarded within the 18 months prior to the date of
19 the feasibility study to provide access to broadband. A city may rely
20 on data from the Broadband Infrastructure Office in the Department of
21 Information Technology in complying with this sub-subdivision.
- 22 c. A map, or sufficient written description, of the location and type of
23 broadband infrastructure proposed to be installed.
- 24 d. A review of the city's financials and proposed sources of revenue to
25 fund installation of broadband infrastructure.

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

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

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

42 **SECTION 2.(a)** G.S. 153A-149(c) is amended by adding a new subdivision to read:
43 "(7a) Broadband Infrastructure. – To construct wireline and wireless infrastructure."

44 **SECTION 2.(b)** G.S. 160A-209(c) is amended by adding a new subdivision to read:
45 "(7a) Broadband Infrastructure. – To construct wireline and wireless infrastructure."

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

48 **SECTION 3.** G.S. 159-81(3) is amended by adding a new sub-subdivision to read:
49 "r. Broadband infrastructure for the purpose of leasing in accordance with
50 G.S. 160A-272.5."

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

3 **"§ 160A-272.5. Leases of broadband infrastructure to a private provider.**

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

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

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

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

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

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

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

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

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

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

33 1. The type and location of the broadband infrastructure to be
34 leased.

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

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

38 4. A statement reserving to the governing board the right to reject
39 any or all proposals.

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

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

44 SECTION 4.(b) This section becomes effective October 1, 2021, and applies to
45 leases entered into on or after that date.

46 SECTION 5. G.S. 153A-459 reads as rewritten:

47 **"§ 153A-459. Authorization to provide grants.**

48 A county may provide grants to unaffiliated qualified private providers of high-speed Internet
49 access service, as that term is defined in G.S. 160A-340(4), for the purpose of expanding service
50 in unserved areas ~~for economic development~~ in the county. The grants shall be awarded on a
51 technology neutral basis, shall be open to qualified applicants, and may require matching funds

1 by the qualified private provider. A county shall seek and consider requests for proposal from
2 qualified private providers within the county prior to awarding a broadband grant and shall use
3 reasonable means to ensure that potential applicants are made aware of the grant, including, at a
4 minimum, compliance with the notice procedures set forth in G.S. 160A-340.6(c). The county
5 shall use only unrestricted general fund revenue for the grants. For the purposes of this section,
6 a qualified private provider is a private provider of high-speed Internet access service in the State
7 prior to the issuance of the grant proposal. Nothing in this section authorizes a county to provide
8 high-speed Internet broadband service."

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

10 "**§ 160A-321. Sale, lease, or discontinuance of city-owned enterprise.**

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

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

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

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

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

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

29 **SECTION 8.** Except as otherwise provided, this act becomes effective October 1,
30 2021.