

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

H

1

HOUSE BILL 431*

Short Title: FIBER NC Act. (Public)

Sponsors: Representatives Dobson, Lewis, Szoka, and Corbin (Primary Sponsors).
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, 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 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, 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.

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

3 **"§ 160A-499.5. Authority to construct and lease certain facilities.**

4 (a) A city shall have the authority to construct facilities or equipment of a broadband
5 service as defined by G.S. 62-3 for the purpose of leasing such facilities or equipment, in
6 accordance with G.S. 160A-272, to one or more lessees who are not a governmental unit as
7 defined in G.S. 160A-274.

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

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

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

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

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

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

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

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

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

29 "(7a) Broadband Services. – To build facilities and equipment of a broadband
30 service as defined in G.S. 62-3."

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

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

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

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

38 **"§ 160A-272. Lease or rental of property.**

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

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

50 (b) No public notice as required by subsection (a1) of this section need be given for
51 resolutions authorizing leases or rentals for terms of one year or less, and the council may

1 delegate to the city manager or some other city administrative officer authority to lease or rent
2 city property for terms of one year or less.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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 as defined in
43 G.S. 62-3, a city shall not be required to submit to its voters the question of whether such lease
44 shall be undertaken.

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

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

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

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

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

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

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