



HOUSE BILL 431: FIBER NC Act.

**This Bill Analysis
reflects the contents
of the bill as it was
presented in
committee.**

2019-2020 General Assembly

Committee:	House State and Local Government. If favorable, re-refer to Finance. If favorable, re-refer to Rules, Calendar, and Operations of the House	Date:	August 6, 2019
Introduced by:	Reps. Dobson, Lewis, Szoka, Corbin	Prepared by:	Erika Churchill Staff Attorney
Analysis of:	PCS to First Edition H431-CSSTxf-15		

OVERVIEW: *The proposed committee substitute for House Bill 431 would:*

- *Authorize counties and cities to install and maintain broadband infrastructure for the purpose of leasing that infrastructure to private providers, effective October 1, 2019.*
- *Authorize counties and cities to impose and use ad valorem property taxes to construct wireline and wireless infrastructure, effective for taxable years on or after July 1, 2020.*
- *Allow counties to offer grants to qualified private providers of high-speed Internet to expand service in unserved areas, effective October 1, 2019.*

CURRENT LAW: North Carolina counties and cities are authorized to engage in certain public enterprise activities, which are generally activities of a commercial nature that could be provided by the private sector. When a local government owns or operates a public enterprise it acts in a proprietary capacity, and it has more flexibility to treat the enterprise like a private business venture than it does with its traditional government functions. A local government is not required to provide any public enterprise services. If a county or city opts to provide one or more of the authorized public enterprises, it need not make them available to all citizens or property owners within the unit as there is generally no duty of equal service. Generally, as long as it is not unlawfully discriminating against a protected class of citizens, a local government can choose where, and under what circumstances, it will provide the services. If, however, a city involuntarily annexes property into its jurisdiction, the annexation triggers special statutory requirements regarding the provision of water and sewer services.

The general statutes authorize both counties and municipalities to operate public enterprises for all of the following purposes:

- Water supply and distribution
- Sewage collection and treatment
- Solid waste collection and disposal
- Airports
- Public transportation
- Off-street parking
- Stormwater management programs

Municipalities additionally are authorized to operate enterprises for the following purposes:

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- Electric power generation and distribution
- Gas production and distribution
- Cable television, including communications services

With respect to communications services, Article 16A of Chapter 160A of the General Statutes establishes the parameters under which cities providing communications services (cable, video programming, telecommunications, broadband, or high-speed Internet access) to the public for a monthly or periodic fee operate. The requirements include that the city comply with all State, local, and federal laws and regulations to which a private company providing the same communications service is subject and remit to the city's general fund an amount equal to all the taxes and fees a private provider would pay if the private provider supplied the service. Cities and joint agencies are prohibited from incurring debt, including installment purchase contracts and certificates of participation, for a communications system unless a special election is held, posing the question whether or not the city may offer the communications service.

Counties are not authorized to provide high-speed Internet broadband service to the public for a monthly or periodic fee. However, counties may provide grants to unaffiliated qualified private providers of high-speed Internet access service for the purpose of expanding service in unserved areas for economic development in the county. The grants are to be awarded on a technology neutral basis, open to qualified applicants, and may require matching funds by the private provider. The county can use only unrestricted general fund revenue for the grants.

Counties and cities may install fiber or other infrastructure needed to operate internet for their own intergovernmental purposes.

BILL ANALYSIS: The PCS would authorize certain counties and cities to install and maintain broadband infrastructure (wireline or wireless infrastructure capable of providing terrestrially deployed Internet service of at least 25 down, three up, or as defined by the FCC, whichever is faster) to be leased to a private provider. The counties and cities could use ad valorem property taxes, grants, or any other unencumbered funds for this purpose; revenue bonds would also be authorized. Nothing in the PCS would authorize a county or a city to use the broadband infrastructure installed or maintained under this authority for the purpose of providing communications services to the public for a monthly or periodic fee under Article 16A of Chapter 160A of the General Statutes.

The counties and cities authorized to install or maintain such broadband infrastructure are as follows:

- Any county with more than 4.75% of the county without a provider of broadband according to the FCC.
- Any county with a major military installation (Fort Bragg, Pope Army Airfield, Marine Corps Base Camp Lejeune, New River Marine Corps Air Station, Cherry Point Marine Corps Air Station, Military Ocean Terminal at Sunny Point, the United States Coast Guard Air Station at Elizabeth City, Naval Support Activity Northwest, Air Route Surveillance Radar (ARSR 4) at Fort Fisher, and Seymour Johnson Air Force Base, in its own right and as the responsible entity for the Dare County Bombing Range, and any facility located within the State that is subject to the installations' oversight and control.)
- Any city with at least 60% of its population lying in one of the above counties.

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The process for a county or city to install and maintain broadband infrastructure would be as follows:

1. Prepare a report, which must be available with the clerk to the board for at least 90 days before the public hearing. The report must include all of the following:
 - i. A business plan, including plans for leasing the broadband infrastructure.
 - ii. A feasibility study, which must address all of the following:
 - Which areas within the county or city have one or fewer wireline or fixed wireless private providers of broadband services to residential customers.
 - Which areas within the county or city have terrestrially deployed Internet access service with transmission speeds of 10:1.
 - Which areas within the county or city have terrestrially deployed Internet access service with transmission speeds of 25:3.
 - A determination of any areas within the county or city that State or federal grant moneys have been awarded to provide access to broadband within the 18 months before the feasibility study. A county may rely on data from the Broadband Infrastructure Office in the Department of Information Technology.
 - A map, or sufficient written description, of the location and type of broadband infrastructure proposed to be installed.
 - A review of the county's or city's financials, and proposed sources of revenue to fund installation of broadband infrastructure.
2. Conduct a public hearing. The public hearing must be held at a regular meeting of the board, and notice published at least once, not less than a week before the public hearing.
3. Adopt a resolution.

After installation, the county or city would lease the broadband infrastructure to a private provider, for a term of up to 25 years. Any lease must be adopted at a regular board meeting, with at least 30 days' public notice. The lease also must comply with all of the following:

- Be entered into on a technology neutral basis.
- Be open to similarly situated private providers on comparable terms and conditions.
- Requests for proposals (RFP's) are to be solicited by the governing board prior to adoption of the resolution authorizing the execution of the lease, as follows:
 - RFP's are to be invited by advertisement in a newspaper having general circulation, and may also invite proposals by electronic means.
 - Advertisement for RFP's from potential lessees are to be published in a newspaper having general circulation no less than 30 days prior to the date on the notice for the opening of bids.
 - The county or city must seek and consider RFP's from qualified private providers within the county or city, by
 - Mailing a notice of RFP to each firm that has obtained a license or permit to use the public rights of way in the city to provide a communications service within the city by depositing such notices in the U.S. mail at least 30 days prior to the date specified for the opening of proposals. In identifying firms, the city may rely upon lists provided

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by the Office of the Secretary of State and the North Carolina Utilities Commission.

- Posting a notice of RFP on the county or city's Web site at least 30 days before the time specified for the opening of proposals.
- Publishing a notice of RFP in a newspaper of general circulation at least 30 days before the time specified for the opening of proposals.
- Any other reasonable means to ensure that potential lessees are made aware of the notice for RFP.

The advertisement for RFP's must contain at least the following information:

- The type and location of the broadband infrastructure to be leased.
- The time and place where plans and specifications of the proposed lease may be had.
- The time and place for opening of the proposals.
- A statement reserving to the governing board the right to reject any or all proposals.

The PCS would also amend the authorization for counties to provide grants to qualified private providers to increase that authority for grants to be an authority to expand service in any unserved area in that county.

The PCS would also specify that a vote of the people is needed when a city is selling, leasing or discontinuing a public enterprise in its entirety for public transportation, stormwater management programs, electric power generation and distribution, gas production and distribution and cable television, including communications services.

EFFECTIVE DATE: For the authority to impose ad valorem property taxes, effective for taxable years beginning on or after July 1, 2020. For the remainder of the PCS, effective October 1, 2019.