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SENATE BILL DRS45360-LM-102

Short Title: County Broadband Authority. (Public)

Sponsors: Senators Corbin, Hise, and Foushee (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO FACILITATE THE EXPANSION OF BROADBAND SERVICE IN UNSERVED  
3 AREAS OF THE STATE BY ENSURING TIMELY AND NONDISCRIMINATORY  
4 ACCESS TO MUNICIPAL AND ELECTRIC MEMBERSHIP COOPERATIVE UTILITY  
5 POLES, DUCTS, AND CONDUITS AT JUST AND REASONABLE RATES; TO  
6 AUTHORIZE COUNTIES TO PROVIDE GRANTS TO HIGH-SPEED INTERNET  
7 ACCESS SERVICE PROVIDERS AND TO BUILD FACILITIES AND EQUIPMENT OF  
8 A BROADBAND SERVICE AND TO LEVY TAXES FOR THOSE PURPOSES; TO  
9 FURTHER DEFINE THE TERM "CITY UTILITY POLE"; TO PROHIBIT CERTAIN  
10 FEES FOR THE COLLOCATION OF SMALL WIRELESS FACILITIES; AND TO MAKE  
11 RELATED CHANGES.

12 The General Assembly of North Carolina enacts:

13 **SECTION 1.** Article 17 of Chapter 62 of the General Statutes is amended by adding  
14 a new section to read as follows:

15 **"§ 62-350.1. Pole replacements in unserved areas.**

16 (a) A municipality or membership corporation shall, upon the request of a  
17 communications service provider (hereinafter "provider"), replace a pole in any instance where  
18 the provider is granted access under G.S. 62-350(a) for the purpose of offering broadband service  
19 in an unserved area and that access requires replacement of the pole which can be performed in  
20 a manner consistent with applicable safety requirements, including the National Electrical Safety  
21 Code and applicable rules and regulations issued by the Occupational Safety and Health  
22 Administration. For purposes of this section:

23 (1) The term "unserved area" means an area in which, according to the most recent  
24 map of fixed broadband internet access service made available by the Federal  
25 Communications Commission, fixed, terrestrial broadband service at speeds  
26 of at least 25 megabits per second download and at least three megabits per  
27 second upload is unavailable at the time the communication service provider  
28 requests access.

29 (2) The phrase "for the purpose of offering broadband service in an unserved area"  
30 means the pole to be replaced is located in an unserved area or is located in an  
31 area other than an unserved area but requires replacement to support facilities  
32 necessary to extend the provider's facilities to reach an unserved area.

33 (b) Notwithstanding any other provision of law, if a pole is replaced as provided in this  
34 section, the municipality or membership corporation shall not require reimbursement from a  
35 provider for any costs associated with the replacement except costs incurred solely because of  
36 the attachment. The costs of replacing a pole incurred solely because of the attachment means



1 the reasonable costs of advancing the retirement of the pole that would have occurred in the  
2 absence of the attachment, and the municipality or membership corporation shall ensure that it  
3 maintains records sufficient to permit identification of those reasonable costs, which shall consist  
4 of the following:

5 (1) The net book value of the existing pole being retired as a result of the  
6 attachment.

7 (2) The incremental cost, if any, of installing a pole with greater capacity relative  
8 to the average installation cost of a new pole installed by the municipality or  
9 membership corporation.

10 (3) Any other incremental costs proved by the municipality or membership  
11 corporation of advancing the retirement, except that the incremental costs  
12 shall not include any costs associated with the future installation of a pole the  
13 municipality or membership corporation would have installed if there were no  
14 attachment being made.

15 (c) A municipality or membership corporation shall do both of the following:

16 (1) Promptly review a request for access, perform surveys, provide estimates and  
17 final invoices, and complete, or require the completion by other attaching  
18 entities, of any work necessary to accommodate a provider's request for  
19 attachment for purposes of offering broadband service in an unserved area,  
20 including the replacement of poles as provided in subsection (a) of this  
21 section.

22 (2) Perform or allow providers to perform all other actions to facilitate access to  
23 poles in the same time lines and pursuant to the same procedures to provide  
24 access to utility poles as provided in 47 C.F.R. § 1.1411 on the date this section  
25 becomes effective. For purposes of complying with the time lines and  
26 procedures described in this subdivision, replacement of a pole shall be  
27 considered work above the communications space.

28 (d) In the event of a dispute arising under this section pertaining to a denial of a request  
29 for access under G.S. 62-350(a) in an unserved area or an impasse reached under G.S. 62-350(c)  
30 regarding an attachment request in an unserved area, the municipality or membership corporation  
31 or any attaching party may initiate proceedings to resolve the dispute before the Commission. In  
32 resolving any dispute under this subsection, the Commission shall apply the provisions of this  
33 section notwithstanding any contrary provisions of any existing agreement. Notwithstanding any  
34 other provision of law, the Commission shall issue a final order resolving the dispute within 120  
35 days of the date the proceedings were initiated; provided, however, the Commission may extend  
36 the time for issuance of a final order for good cause and with the agreement of all parties.

37 (e) The Commission may adopt such rules as it deems necessary to exercise its  
38 responsibility to adjudicate any disputes arising under this section."

39 **SECTION 2.** G.S. 153A-149 reads as rewritten:

40 **"§ 153A-149. Property taxes; authorized purposes; rate limitation.**

41 ...

42 (c) Each county may levy property taxes for one or more of the purposes listed in this  
43 subsection up to a combined rate of one dollar and fifty cents (\$1.50) on the one hundred dollars  
44 (\$100.00) appraised value of property subject to taxation. Authorized purposes subject to the rate  
45 limitation are:

46 ...

47 (38) To provide grants to high-speed internet access service providers or to build  
48 facilities and equipment of a broadband service. For purposes of this  
49 subdivision, the term "high-speed internet access service" has the same  
50 meaning as in G.S. 160A-340(4) and the term "broadband service" has the  
51 same meaning as in G.S. 62-3(1).

...."

SECTION 3. G.S. 153A-459 reads as rewritten:

"§ 153A-459. ~~Authorization to provide grants.~~**County broadband authority.**

(a) Authorization to Provide Grants. – A county may provide grants to ~~unaffiliated qualified private or nonprofit~~ providers of high-speed Internet access service, as that term is defined in G.S. 160A-340(4), for the purpose of expanding service ~~in unserved areas for economic development~~ in the county. The grants shall be awarded on a technology neutral basis, ~~shall may be open to qualified applicants, all private or nonprofit providers of high-speed internet access service,~~ and may require matching funds by the private ~~provider~~ or nonprofit providers. A county ~~shall may~~ seek and consider requests for proposal from ~~qualified private~~ providers within the county prior to awarding a broadband grant and ~~shall use reasonable means to ensure that potential applicants are made aware of the grant, including, at a minimum, compliance with the notice procedures set forth in G.S. 160A-340.6(c).~~ grant. The county ~~shall may~~ use only unrestricted general fund revenue as well as State or federal funds for the grants. ~~For the purposes of this section, a qualified private provider is a private provider of high speed Internet access service in the State prior to the issuance of the grant proposal. Nothing in this section authorizes a county to provide high speed Internet broadband service.~~

(b) Broadband Infrastructure. – A county may construct Internet technology infrastructure capable of delivering high-speed Internet access service within the county. The county may lease or sell the technology infrastructure to a private or nonprofit provider of high-speed Internet access service for the purpose of providing high-speed Internet access service within the county. The county may use general fund revenue as well as State or federal funds to construct the technology infrastructure.

(c) Prohibition. – Nothing in this section authorizes a county to provide high-speed Internet broadband service."

SECTION 4. G.S. 160D-931 reads as rewritten:

"§ 160D-931. **Definitions.**

The following definitions apply in this Part:

...

(7) City utility pole. – A pole owned by a city (i) in the city right-of-way that provides lighting, traffic control, or a similar ~~function~~ function and (ii) as part of a public enterprise owned or operated by a city pursuant to Article 16 of Chapter 160A of the General Statutes consisting of an electric power generation, transmission, or distribution system.

...."

SECTION 5. G.S. 160D-935 reads as rewritten:

"§ 160D-935. **Collocation of small wireless facilities.**

...

(a1) A city may not charge a wireless provider who is taxed under G.S. 105-164.4(a)(4c) and submits an application under G.S. 160D-935(d) or G.S. 160D-936(j) either of the following:

(1) A fee for the collocation of a small wireless facility or the installation, modification, or replacement of a utility pole or city utility pole in the city right-of-way including, without limitation, a fee under subsections (e) and (f) of this section or a fee for a building permit, electrical permit, inspection, lane closure, or work permit of any kind.

(2) Except for recurring charges assessed under G.S. 160D-937(a), (c), and (d), a recurring charge for the collocation of a small wireless facility in the city right-of-way or the installation, modification, or replacement of a utility pole or city utility pole in the city right-of-way including, without limitation, a recurring charge under G.S. 160D-936(f).

...

1 (e) ~~Subject to the limitations provided in G.S. 160A-296(a)(6), a~~ A city may charge an  
2 application fee that shall not exceed the lesser of (i) the actual, direct, and reasonable costs to  
3 process and review applications for collocated small wireless facilities, (ii) the amount charged  
4 by the city for permitting of any similar activity, or (iii) one hundred dollars (\$100.00) per facility  
5 for the first five small wireless facilities addressed in an application, plus fifty dollars (\$50.00)  
6 for each additional small wireless facility addressed in the application. In any dispute concerning  
7 the appropriateness of a fee, the city has the burden of proving that the fee meets the requirements  
8 of this subsection.

9 (f) ~~Subject to the limitations provided in G.S. 160A-296(a)(6), a~~ A city may impose a  
10 technical consulting fee for each application, not to exceed five hundred dollars (\$500.00), to  
11 offset the cost of reviewing and processing applications required by this section. The fee must be  
12 based on the actual, direct, and reasonable administrative costs incurred for the review,  
13 processing, and approval of an application. A city may engage an outside consultant for technical  
14 consultation and the review of an application. The fee imposed by a city for the review of the  
15 application shall not be used for either of the following:

16 ...."

17 **SECTION 6.** G.S. 160D-936 reads as rewritten:

18 **"§ 160D-936. Use of public right-of-way.**

19 ...

20 (f) Except as provided in this Part, a city may assess a right-of-way charge under this  
21 section for use or occupation of the right-of-way by a wireless ~~provider, subject to the restrictions~~  
22 ~~set forth under G.S. 160A-296(a)(6).~~ provider. In addition, charges authorized by this section  
23 shall meet all of the following requirements:

24 ...."

25 **SECTION 7.** G.S. 160D-937 reads as rewritten:

26 **"§ 160D-937. Access to city utility poles to install small wireless facilities.**

27 ...

28 (i) ~~This section shall not apply to an excluded entity. Nothing in this Part shall be~~  
29 construed to apply to an electric membership corporation organized under Chapter 117 of the  
30 General Statutes that owns or controls poles, ducts, or conduits and is exempt from regulation  
31 under section 224 of the Communications Act of 1934, 47 U.S.C. § 151, et seq., as amended.  
32 Nothing in this section shall be construed to affect the authority of an excluded entity electric  
33 membership corporation to deny, limit, restrict, or determine the rates, fees, terms, and conditions  
34 for the use of or attachment to its utility poles, city utility poles, poles or wireless support  
35 structures by a wireless provider. This section shall not be construed to alter or affect the  
36 provisions of G.S. 62-350, and the rates, terms, or conditions for the use of poles, ducts, or  
37 conduits by communications service providers, as defined in G.S. 62-350, are governed solely  
38 by G.S. 62-350. For purposes of this section, "excluded entity" means (i) a city that owns or  
39 operates a public enterprise pursuant to Article 16 of Chapter 160A of the General Statutes  
40 consisting of an electric power generation, transmission, or distribution system or (ii) an electric  
41 membership corporation organized under Chapter 117 of the General Statutes that owns or  
42 controls poles, ducts, or conduits, but which is exempt from regulation under section 224 of the  
43 Communications Act of 1934, 47 U.S.C. § 151, et seq., as amended. G.S. 62-350, of poles, ducts,  
44 or conduits owned by electric membership corporations."

45 **SECTION 8.** This act is effective when it becomes law.