

GENERAL ASSEMBLY OF NORTH CAROLINA
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HOUSE BILL 815

Short Title: County Broadband Authority. (Public)

Sponsors: Representatives Saine, Johnson, Reives, and Wray (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, Rules, Calendar, and Operations of the House

May 5, 2021

A BILL TO BE ENTITLED

AN ACT TO FACILITATE THE EXPANSION OF BROADBAND SERVICE IN UNSERVED AREAS OF THE STATE BY ENSURING TIMELY AND NONDISCRIMINATORY ACCESS TO MUNICIPAL AND ELECTRIC MEMBERSHIP COOPERATIVE UTILITY POLES, DUCTS, AND CONDUITS AT JUST AND REASONABLE RATES; TO AUTHORIZE COUNTIES TO PROVIDE GRANTS TO BROADBAND SERVICE PROVIDERS; TO FURTHER DEFINE THE TERM "CITY UTILITY POLE"; TO PROHIBIT CERTAIN FEES FOR THE COLLOCATION OF SMALL WIRELESS FACILITIES; AND TO MAKE RELATED CHANGES.

The General Assembly of North Carolina enacts:

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

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

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

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

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

(b) Notwithstanding any other provision of law, if a pole is replaced as provided in this section, the municipality or membership corporation shall not require reimbursement from a provider for any costs associated with the replacement except costs incurred solely because of 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-459 reads as rewritten:

40 **"§ 153A-459. ~~Authorization to provide grants.~~County broadband authority.**

41 A county may provide grants to unaffiliated ~~qualified~~ private or nonprofit providers of
42 ~~high speed Internet access service, broadband service,~~ as that term is defined in
43 ~~G.S. 160A-340(4), G.S. 143B-1373(a)(2),~~ for the purpose of expanding broadband service in
44 unserved areas ~~for economic development~~ in the county. The grants shall be awarded on a
45 technology neutral basis, shall be open to ~~qualified applicants,~~ all private or nonprofit providers
46 of broadband service, and may require matching funds by the private provider ~~or nonprofit~~
47 providers. A county shall seek and consider requests for proposal from ~~qualified private~~ providers
48 ~~within the county~~ prior to awarding a broadband grant and shall use reasonable means to ensure
49 that potential applicants are made aware of the grant, ~~including, at a minimum, compliance with~~
50 ~~the notice procedures set forth in G.S. 160A-340.6(e).~~ grant; provided, however, a county is not
51 required to seek and consider requests for proposal when providing financial or other support in

1 connection with an application from a private provider for a broadband service grant under
2 G.S. 143B-1373. The county ~~shall~~ may use ~~only unrestricted~~ general fund revenue as well as
3 State or federal funds for the grants. ~~For the purposes of this section, a qualified private provider~~
4 ~~is a private provider of high-speed Internet access service in the State prior to the issuance of the~~
5 ~~grant proposal.~~ For purposes of this section, the term "unserved area" has the same meaning as
6 in G.S. 143B-1373(a)(14). For any grants awarded pursuant to this section after the date this
7 section becomes effective, the term "unserved area" shall not include any location where a private
8 provider has been designated to receive funds through State or federally funded programs
9 designed specifically for broadband service deployment if the recipient of the funding is in good
10 standing with the grantor agency's requirements regarding construction build-out and time lines.
11 Nothing in this section authorizes a county to provide high-speed Internet broadband service."

12 **SECTION 3.** G.S. 160D-931 reads as rewritten:

13 **"§ 160D-931. Definitions.**

14 The following definitions apply in this Part:

15 ...

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

21"

22 **SECTION 4.** G.S. 160D-935 reads as rewritten:

23 **"§ 160D-935. Collocation of small wireless facilities.**

24 ...

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

- 27 (1) A fee for the collocation of a small wireless facility or the installation,
28 modification, or replacement of a utility pole or city utility pole in the city
29 right-of-way including, without limitation, a fee under subsections (e) and (f)
30 of this section or a fee for a building permit, electrical permit, inspection, lane
31 closure, or work permit of any kind.
- 32 (2) Except for recurring charges assessed under G.S.160D-937(a), (c), and (d), a
33 recurring charge for the collocation of a small wireless facility in the city
34 right-of-way or the installation, modification, or replacement of a utility pole
35 or city utility pole in the city right-of-way including, without limitation, a
36 recurring charge under G.S. 160D-936(f).

37 ...

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

46 (f) Subject to the limitations provided in G.S. 160A-296(a)(6), a city may impose a
47 technical consulting fee for each application, not to exceed five hundred dollars (\$500.00), to
48 offset the cost of reviewing and processing applications required by this section. The fee must be
49 based on the actual, direct, and reasonable administrative costs incurred for the review,
50 processing, and approval of an application. A city may engage an outside consultant for technical

1 consultation and the review of an application. The fee imposed by a city for the review of the
2 application shall not be used for either of the following:

3"

4 **SECTION 5.** G.S. 160D-936 reads as rewritten:

5 **"§ 160D-936. Use of public right-of-way.**

6 ...

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

11"

12 **SECTION 6.** G.S. 160D-937 reads as rewritten:

13 **"§ 160D-937. Access to city utility poles to install small wireless facilities.**

14 ...

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

32 **SECTION 7.** This act is effective when it becomes law.