



HOUSE BILL 1086: Counties/Internet Infrastructure.

2017-2018 General Assembly

Committee:	House State and Local Government II. If favorable, re-refer to Finance	Date:	June 12, 2018
Introduced by:	Reps. Dobson, Corbin, Presnell, Rogers	Prepared by:	Cindy Avrette
Analysis of:	First Edition		Staff Attorney

OVERVIEW: *House Bill 1086 would authorize a county to acquire, construct, establish, and own a high-speed Internet access service as a public enterprise. The county could not operate the service, but it could lease the infrastructure to a private provider of Internet access service.*

The act is limited to the following counties: Avery, Cherokee, Clay, Cleveland, Graham, Haywood, Jackson, Macon, Madison, McDowell, Mitchell, Polk, Rutherford, and Swain.

CURRENT LAW: Generally, cities and counties may own and operate those services authorized by the General Assembly for them to provide. Article II, Sec. 24, of the Constitution of North Carolina prohibits local acts regulating labor, trade, mining, or manufacturing; the General Assembly may enact general laws regulating these matters. Under general law, counties and cities are authorized to operate and finance a public enterprise.¹

A county may dispose of real or personal property, and that would include leases of real property, according to the procedures prescribed in Chapter 160A, Article 12. Under G.S. 160A-272, as amended by the Current Operations Appropriations Act of 2018, S.L. 2018-5, effective July 1, 2018, a county may lease components of a wired or wireless network that are part of a public enterprise for a lease term of up to 25 years provided the lease is entered into with a provider in connection with a grant agreement under the GREAT² program for a discrete and specific project located in an unserved area of an economically distressed county seeking to provide broadband service to homes, businesses, and community anchor points not currently served. The lease must be entered into on a competitively neutral and nondiscriminatory basis and made available to similarly situated providers on comparable terms and conditions, and cannot be used to subsidize the provision of competitive service.

Section 37.1 of the Budget created a \$10M grant program to broadband providers for the expansion of broadband in rural areas. The program is designed to facilitate the deployment of broadband to unserved areas of the State, and one of the ways in which it does that is by allowing for the lease of State-owned or local government-owned properties or facilities for the purpose of locating or collocating broadband infrastructure. For purposes of this program, "broadband service" is defined as terrestrially deployed Internet access service with transmission speeds of at least 10 megabits per second download and at least one megabit per second upload. An eligible project is a discrete and specific project located in an unserved area of an economically distressed county, and an economically distressed county is a county designated as a development tier one area.

¹ A public enterprise includes a water supply and distribution system; a wastewater collection, treatment, and disposal system; a solid waste collection and disposal system; an airport; off-street parking facilities; public transportation system, and a stormwater management program.

² Growing Rural Economies with Access to Technology.

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BILL ANALYSIS: House Bill 1086 would authorize 14 counties to own and provide infrastructure for the purpose of expanding high-speed Internet access service in unserved areas of the county. The counties could not operate the service, but it could lease the infrastructure to an "unaffiliated, qualified private provider of high-speed Internet access service". Any lease contract would have to comply with the provisions of Article 8 of Chapter 143³ of the General Statutes, the law that governs public contracts, and must be awarded on a technology neutral basis.

High-speed Internet access service is defined as Internet access service with transmission speeds that are equal to or greater than the requirements for basic broadband tier 1 service as defined by the FCC for broadband data gathering and reporting. And an unserved area means a census block in which at least 50% of the households either have no access to high-speed Internet service or have access only from a satellite provider. These definitions do not read the same as the ones used for purposes of the GREAT program.

EFFECTIVE DATE: This act becomes effective when it becomes law.

³ That Article sets forth the requirements for bidding of certain types of contracts. One of the types of bidding authorized is for 'public-private partnerships.' With that type of bidding, the governmental entity determines in writing that it has a critical need for a capital improvement project, in an open meeting, then seeks interested private developers to submit qualifications, then selects one or more private developers with whom to negotiate the terms and conditions of the contract to perform the public-private project.