

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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HOUSE BILL 1252\*  
Committee Substitute Reported Without Prejudice 4/23/09

Short Title: Level Playing Field/Cities/Service Providers.

(Public)

Sponsors:

Referred to:

April 9, 2009

1 A BILL TO BE ENTITLED  
2 AN ACT TO REGULATE COMPETITION BETWEEN LOCAL GOVERNMENT AND  
3 PRIVATE BUSINESS BY REQUIRING CITIES THAT PROVIDE  
4 COMMUNICATIONS SERVICE TO THE PUBLIC TO COMPLY WITH LAWS  
5 APPLICABLE TO PRIVATE PROVIDERS, TO ESTABLISH SEPARATE ENTERPRISE  
6 FUNDS, TO NOT CROSS-SUBSIDIZE COMMUNICATIONS SERVICE WITH OTHER  
7 GOVERNMENTAL FUNDS, TO IMPUTE THE COSTS THAT WOULD BE  
8 INCURRED BY PRIVATE PROVIDERS, TO ANNUALLY REMIT TO THE CITY'S  
9 GENERAL FUND THE COSTS THAT WOULD BE INCURRED BY PRIVATE  
10 PROVIDERS, AND TO PREPARE AN ANNUAL AUDIT OF COMPETITIVE  
11 ACTIVITIES.

12 The General Assembly of North Carolina enacts:

13 SECTION 1. Article 16 of Chapter 160A of the General Statutes is amended by  
14 adding a new section to read as follows:

15 **"§ 160A-329. City owned or operated communications service.**

16 (a) Definitions. – The following definitions apply in this section:

- 17 (1) Communications network. – A wired or wireless network for the provision  
18 of communications service.  
19 (2) Communications service. – The provision of cable, telephone, broadband, or  
20 Internet access service to the public or any sector of the public, regardless of  
21 the technology used to deliver the service.  
22 (3) High-speed Internet. – Internet access with transmission speeds that are  
23 consistent with requirements for high-speed broadband Internet access as  
24 defined by the Federal Communications Commission from time to time.

25 (b) Requirements. – A city that operates a public enterprise under G.S. 160A-311 that  
26 provides communications service to the public for a fee over a communications network that is  
27 directly or indirectly owned or operated by or provides a financial benefit to the city or another  
28 city shall meet the following conditions with respect to the provision of communications  
29 service:

- 30 (1) Comply with all local, State, and federal laws, regulations, or other  
31 requirements that would apply to the communications service if provided by  
32 a private communications service provider.  
33 (2) Establish a separate enterprise fund for communications service and shall  
34 use this fund to separately account for revenues, expenses, property, and  
35 source of investment dollars associated with the provision of  
36 communications service.



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- 1           (3)   Shall not subsidize the cost of providing communications service with funds  
2           from any other noncommunications service, operation, or other revenue  
3           source, including any funds or revenue generated from electric, gas, water,  
4           sewer, or garbage services, but excluding funds from State or federal grants  
5           and other governmental stimulus programs. In complying with this  
6           requirement, a city owned communications service provider shall not price  
7           any communications service below the cost of providing the service.
- 8           (4)   Shall, in calculating the cost incurred and in the rates to be charged for the  
9           provision of communications service, impute: (i) the cost of the capital  
10           component that is equivalent to the cost of capital available to private  
11           communications service providers in the same locality; and (ii) an amount  
12           equal to all taxes, including property taxes, licenses, fees, and other  
13           assessments that would apply to a private communications service provider  
14           including federal, State, and local taxes; rights-of-way, franchise, consent, or  
15           administrative fees; and pole attachment fees.
- 16           (5)   Shall annually remit to the general fund of the city an amount equivalent to  
17           all taxes or fees a private communications service provider would be  
18           required to pay the city or county in which the city is located, including any  
19           applicable tax refunds received by the city owned communications service  
20           provider because of its government status and a sum equal to the amount of  
21           property tax that would have been due if the city owned communications  
22           service provider were a private communications service provider.
- 23           (6)   Shall prepare and publish an independent annual audit in accordance with  
24           generally accepted accounting principles that reflect the fully allocated cost  
25           of providing the communications service, including all direct and indirect  
26           costs. The indirect costs shall include amounts for rights-of-way, franchise,  
27           consent, or administrative fees, regulatory fees, occupation taxes, pole  
28           attachment fees, and ad valorem taxes. The annual accounting shall reflect  
29           any direct or indirect subsidies received by the city owned communications  
30           service provider, and any buildings, equipment, vehicles, and personnel that  
31           are jointly used with other city departments shall be fully allocated to the  
32           city owned communications service. The North Carolina Utilities  
33           Commission may adopt rules and regulations to ensure compliance with the  
34           provisions of this subdivision, and all records demonstrating compliance  
35           shall be filed with the North Carolina Utilities Commission and made  
36           available for public inspection and copying.
- 37       (c)   Exemptions. –
- 38           (1)   The provisions of this section shall not apply to:
- 39           a.   The purchase, lease, construction, or operation of facilities by a city  
40           to provide communications service within the city's boundaries for  
41           the city's internal governmental purposes.
- 42           b.   Any city whose jurisdiction is not served by a private provider of  
43           high-speed Internet service or whose jurisdiction does not have  
44           access to high-speed Internet service. For purposes of this subsection,  
45           a city shall be determined to have access to high-speed Internet  
46           service if high-speed Internet service is available to at least eighty  
47           percent (80%) of the households in the city.
- 48           c.   The provision of communications service by a city to the extent the  
49           service is limited to areas of the city that are not served by any  
50           private communications service provider.

1           (2)   The provisions of subdivisions (b)(3) through (b)(6) of this section shall not  
2                   apply to communications service duly authorized by a city on or before  
3                   March 1, 2009."

4           **SECTION 2.**   G.S. 62-3(23) is amended by adding the following new  
5 sub-subdivision to read:

6                   "1.   The term "public utility" shall include any city providing  
7                           service as defined in G.S. 62-3(23)a.6. and subject to  
8                           regulation under G.S. 160A-329."

9           **SECTION 3.** Any city that is designated as a public utility under Chapter 62 of the  
10 General Statutes when this act becomes law shall not be subject to the provisions of this act  
11 with respect to any of its operations that are authorized by that Chapter.

12           **SECTION 4.** If any provision of this act or the application thereof to any person or  
13 circumstance is held invalid, the invalidity shall not affect other provisions or applications of  
14 this act which can be given effect without the invalid provision or application, and to that end  
15 the provisions of this act are declared to be severable.

16           **SECTION 5.** This act is effective when it becomes law and applies to the provision  
17 of communications service by a city owned communications service provider after that date.