

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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BILL DRAFT 2009-TD-33 [v.1] (05/03)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

5/3/2010 6:02:34 PM

Short Title: No Nonvoted Local Debt For Competing System.

(Public)

Sponsors: Senator Hoyle.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO ENSURE THAT A LOCAL GOVERNMENT THAT COMPETES WITH PRIVATE COMPANIES IN PROVIDING COMMUNICATION SERVICES HAS THE SUPPORT OF ITS CITIZENS IN FINANCING THOSE SERVICES AND TO CONTINUE THE REVENUE LAWS STUDY COMMITTEE'S REVIEW OF THE TAX AND ECONOMIC DEVELOPMENT IMPACTS OF LOCAL GOVERNMENT OWNED AND OPERATED COMMUNICATION SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-20 is amended by adding a new subsection to read:

"(e2) Communication System. – This section does not apply to an external communication system. A unit of local government may not enter into a contract under this section to purchase, or finance or refinance the purchase of, property for use in an external communication system [or to finance or refinance the construction or repair of fixtures or improvements for use in an external communication system.] A communication system is a system that provides broadband service or other internet access service, cable service, telecommunications service, video programming service, or a combination of these services. The terms "cable service," "telecommunications service," and "video programming service" have the same meanings as in G.S. 105-164.3. A communication system is external if it provides services to a person who is not a unit of local government or a part of that unit."

SECTION 2. Sections 7.1 and 7.2 of Chapter 574 of the 2009 Session Laws authorize the Revenue Laws Study Committee to study local government owned and operated communication services and to report its findings to the 2010 Session of the 2009 General Assembly. The Revenue Laws Study Committee may continue the study authorized by those sections and may report its findings and any recommended legislation to the 2011 General Assembly.

SECTION 3. This act is effective when it becomes law. This act does not affect contracts entered into under G.S. 160A-20 before the effective date of this act.



2009-TD-33: No Nonvoted Debt Local Debt For Competing System

2009-2010 General Assembly

Committee: Revenue Laws Study Committee

Date: May 5, 2010

Introduced by:

Prepared by: Heather Fennell

Analysis of: 2009-TD-33

Committee counsel

SUMMARY: *This bill would (1) restrict the issuance by a local government of nonvoted debt in the form of certificates of participation for the purpose of financing a communication system, such as a cable system or a system that provides internet access service; and (2) authorize the Revenue Laws Study Committee to continue to study local government owned and operated communication services.*

CURRENT LAW: Under G.S. 160A-311, cities are authorized to operate a number of public enterprises and to finance these enterprises. One of the authorized public enterprises is a cable television system. A North Carolina Court of Appeals case, *BellSouth Telecommunications, Inc. v. City of Laurinburg*, 168 N.C. App. 75, 606 S.E. 2d 721 (2005), interprets the statutory authorization to operate a cable television system to include operation of a fiber optic network. Morganton (CoMPAS Cable TV), Wilson (Greenlight), and Mooresville and Davidson (MiConnection) currently offer cable and internet service as a public enterprise. Salisbury is currently constructing a system to provide these services.

All of the cities that currently operate a cable and internet system financed the system through the installment purchase contract method authorized by G.S. 160A-20. This financing mechanism, commonly known as certificates of participation, was not authorized when cities were given the authority to operate a cable system as a public enterprise. Under this financing method, a city enters into an installment contract secured by a security interest in the system that is constructed. Unlike the issuance of general obligation bonds, installment purchase financing is not subject to a vote of the people. A certificate of participation is a document setting out the share of the city's debt that is owed to the holder of the certificate. In practice, the holder receives interest and principal payments in a manner similar to interest and principal payments on a bond issued by the borrowing unit. The Local Government Commission must approve a local unit's use of certificates of participation and the unit must give notice and hold a public hearing before it can enter into certificates of participation.

All of the cities that currently operate a cable and internet system had an operating loss in their system in fiscal year 2007-08 and 2008-09 ranging from \$128,000 to \$2.6 million. Two of the cities, Morganton and Wilson, have transferred funds from their electric utility public enterprise operations to provide funds to their cable and internet systems. Salisbury has issued \$35.9 million in certificates of participation to finance its system and is in the process of constructing the system.

BILL ANALYSIS: Section 1 of the bill excludes an external communication system from the activities a city can finance with nonvoted certificates of participation. The authority to finance these systems through the issuance of general obligation bonds is not affected. By limiting the exclusion to an external system, the bill preserves the authority of cities to provide a system for its internal governmental purposes, such as police, fire, and rescue. The exclusion does not affect debt that has already been issued.

The purpose of the restriction is to ensure that a city's financing for a communication system is supported by the people. This support would be manifest in a vote on a general obligation bonds.

Section 2 of the bill authorizes the Revenue Laws Study Committee to continue its study of local government owned and operated communication services and to report its findings on this topic to the 2011 General Assembly.

EFFECTIVE DATE: This act would become when it becomes law.