

Fiscal and Regulatory Impact Analysis

Telecommunications Facilities
for Broadband Providers
01 NCAC 06F

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A. General Information

Agency:

NC Department of Administration

Title and Citation of Rule:

01 NCAC 06F Telecommunications Facilities for Broadband Providers
.0101 Definitions
.0102 Application
.0103 Procedures
.0104 Terms and Conditions
.0105 Termination

Statutory Authority:

S.L. 2018-5, s. 37.1(a) – (i); N.C.G.S. § 146-29.2; N.C.G.S. § 146-30

Impact Summary:

State Government:	Yes
Local Government:	Unknown
Federal Government:	No
Private sector	Yes
Substantial Impact:	No

Statement of Impact:

The proposed rules establish the process, application, terms, and conditions for a broadband provider to collocate, install and operate their equipment on State owned or leased property. N.C. Session Law 2018-5 introduced this allowable use of State property as a component of the “GREAT” initiative, a comprehensive program administered by the Department of Information Technology (hereinafter “DIT”) intended to reduce barriers to broadband expansion across North Carolina.

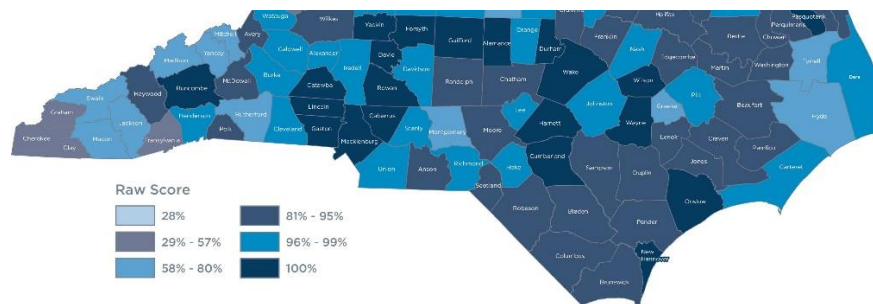
Should broadband providers choose to utilize State property, the proposed rules will impact broadband providers and their potential customers, the leasing state agency, and state agencies, including the NC Department of Administration State Property Office (hereinafter “SPO”) which is processing the leasing agreements with the provider, and the DIT which is administering the program, including the assessment of the requesting provider’s capabilities and the tracking of all equipment installed on State property.

B. Background and Purpose

These rules were a direct result of Session Law 2018-5, sections 37.1(a) – (i), which address the need for greater broadband access throughout the State, particularly in rural areas. Among other provisions to encourage the deployment of broadband service by reducing barriers and lowering costs, sections 37.1(f) – (g) allows broadband providers to collocate, install and operate equipment on State owned or leased property and tasks the Department of Administration with standardizing the terms and conditions associated with these leases. See Appendix B for applicable excerpts from Session Law 2018-5.

The Department of Administration State Property Office is responsible for providing real property services for the State by managing State property transactions through deeds, leases, easements, etc, and maintains an inventory of all State owned lands, buildings, and space in buildings for use by state agencies.¹ These rules are required to ensure that State property transactions are managed through proper agreements and that information is provided to ensure inventory of land, buildings and space is properly maintained by the SPO.

The Department of Information Technology is responsible for assessing areas of need throughout the State, determining eligible recipient and projects and aiding broadband providers to facilitate the deployment of broadband to unserved areas. DIT has created a Broadband Infrastructure Office (BIO) which has conducted extensive research on the needs and benefits of increasing broadband services to the State and has published a State Broadband Plan.²



BROADBAND AVAILABILITY INDEX AT 25 MBPS DOWNLOAD SPEEDS

Source: <https://www.ncbroadband.gov/connectingnc/broadband-availability/>

C. Summary of Proposed Rules

¹ <https://ncadmin.nc.gov/about-doa/divisions/state-property-office>

² See https://www.ncbroadband.gov/wp-content/uploads/2017/02/NC-Broadband-Plan_2017_Online_FINAL_PNGs3www.pdf for the State Broadband Plan.

The proposed rules, as stated above, will provide the Agency and broadband provider with the process they will follow after receiving approval from DIT. The rules clarify the steps needed by all parties who wish to enter into a lease agreement to collocate, install and operate their equipment on State owned or leased property. The rules provide the broadband provider with the guidance needed to accurately identify the information needed by SPO, the procedure to be followed in the execution of the lease agreement, the terms and conditions of a lease, and terms they will need to follow upon termination of a lease.

01 NCAC 06F .0101 Definitions. This rule defines commonly used terms throughout the subchapter to aid the reader and streamline terminology.

01 NCAC 06F .0102 Application. This rule provides the information to be provided when requesting a lease. The SPO has prepared a BB-2 WISP Application form asking specific information be provided in order to assess fair market value for the property being utilized.

01 NCAC 06F .0103 Procedures. This rule sets out the process a broadband provider shall follow when requesting the construction and placement of broadband equipment on State owned or leased property; states which forms to submit to SPO and what information is required on those forms; states how SPO will evaluate the request; and, sets out the process for executing the lease agreements prepared by SPO.

01 NCAC 06F .0104 Terms and Conditions. This rule sets out the required terms and conditions that will be required of the provider. The standard terms and conditions that will be included in the lease are not limited to only what is stated in this rule. Terms and conditions stated in this rule act as an aid to streamline requests received by providers and Agencies and to reduce confusion or misconceptions on the responsibilities of each party involved in the process.

01 NCAC 06F .0105 Termination. This rule sets out the roles and responsibilities of the Agency and the provider upon termination of the lease.

D. Impact Analysis

Benefits

By enacting Session Law 2018-5, the General Assembly created the Growing Rural Economies with Access to Technology (GREAT) program in hopes of “encouraging partnerships and competition between private broadband providers and cooperatives to provide citizens with improved choices and greater value for broadband service and by reducing costs via allowing for the lease of State- or local government-owned properties of facilities for the purpose of locating or collocating broadband infrastructure.”³ The GREAT program legislation provides grant funds to broadband providers as long as specific requirements are met, in order to fill the needs of unserved areas throughout the state. For a full explanation of the GREAT program see attached as Appendix B.

³ See Appendix B, Session Law 2018-5, Section 37.1(a).

The legislation creating the “GREAT” program explain:

“The General Assembly believes that expanding access to currently unserved areas will have multiple benefits, including recruitment of new businesses and industries, strengthening e-commerce, growth of the home-based workforce, expanding educational opportunity, greater utilization of telehealth, increased energy efficiency by enabling the use of energy-saving smart devices, among many others.”⁴

The DIT Broadband Infrastructure Office notes that broadband deployment costs are barriers to broadband expansion, but that access to government land and structures can reduce costs:

“Wireless internet service providers (WISPs) can beam strong broadband connections from a fiber connection to homes and businesses that cannot normally receive a fiber broadband connection. The wireless internet signal can be beamed many miles away to receivers within line of sight of the transmitters. Therefore, allowing broadband providers access to roofs of government buildings, water towers, and other tall structures to install transmitters, antennas and other networking equipment can result in broadband deployment with fewer costs.”⁵

Through this option broadband providers may lease only the space needed for the placement of their broadband equipment at a rate determined to be fair market value. The terms of the lease agreement do not include any additional fees, such as application fees, early termination or renewal fees. The lease agreement does allow for an annual rate adjustment in accordance with North Carolina General Statute § 146-29.1. Each lease agreement will include an access agreement and non-exclusive utility agreement which will allow providers access to the State property without additional expense.

The extent to which providers may choose to expand broadband service in unserved areas using State property is unknown, but the effect of these rules is likely to be small. Providers’ decisions will be based on the cost of the project as a whole, and the ability to lease state property is unlikely to be the determining factor in the feasibility of the expansion project. It is further unknown the extent to which state property will be used, either to place equipment on existing State structures or place new towers on undeveloped land. At present, SPO has been contacted by one (1) provider expressing interest in this option. However, if State government properties suitable for broadband installation are identified, and if the lease costs compare favorably to other alternatives, , these rules establish a process for issuing leases and ensure consistency and certainty for review of applications.

⁴ See Appendix B, Session Law 2018-5, Section 37.1(a).

⁵ <https://www.ncbroadband.gov/playbook/policy-and-broadband/building-and-structure-access/>

Once a provider has determined to place equipment on State property, a lease is drafted by SPO. The agency that owns the property subject to the lease may retain up to four percent (4%) of the amount of the lease to be paid annually on the anniversary of the executed agreement. The remaining proceeds of the lease will be paid to the GREAT fund.⁶

Cost Estimates

As this ability to lease State owned or leased property is new, there is no previous cost comparison. Prior to Session Law 2018-5, broadband providers were not provided the opportunity to lease State property for this purpose. If a broadband provider placed equipment on property, it was leased or purchased by private entities not subject to these rules or, more than likely, the equipment not placed at all, resulting in the numerous unserved areas provided in the map shown previously.

All costs associated with the processing and installation of broadband equipment on State property will be incurred by the requesting provider and/or the Agency. These costs will be assessed by those parties and reviewed by DIT. If applicable, DIT will issue grants through the GREAT program to assist the broadband provider with overall costs.

All costs associated with the lease of the State property on which equipment will be placed will be determined by size, type and location of the equipment, and based on fair market value in accordance with North Carolina General Statute § 146-29.1. All funds collected as rent from the lease will be paid annually on the anniversary of the execution of the lease agreement.

In determining fees associated with the lease, SPO will obtain the fair market value of the State asset and use the tier value assigned by DIT during the application process, along with the amount of equipment/space the lessee is requesting on the asset or the size and distance of any requested easement. SPO leasing agents estimate the cost for a simple one antenna deployment in a Tier 1 county would be estimated at \$1,200.00 annually; whereas, a complex “base station” type of deployment in the same Tier 1 county would be estimated at \$30,000.00 annually.

The Agency may require an escrow fund as part of this lease agreement which shall be returned to the provider upon termination of the agreement and a finding by the Agency that all equipment is removed and the property has been returned to the preleased condition.

It is unknown at this time the number of Agencies and providers these rules will affect, and the process is handled on an as requested basis. SPO’s involvement with these parties is limited to preparing lease and easement agreements for the use of State owned or leased property after the broadband provider has been through the DIT process. All monitoring, assessing equipment, and other requirements will be handled through DIT and not subject to these rules.

⁶ See Appendix B, Session Law 2018-5, Section 37.1(g).

The only cost to the State for processing lease applications arises from the time taken to review the application, process the request, track the equipment, answer inquiries, and prepare and execute the required leases and easements. SPO has developed a simple application form which should take the broadband provider less than 30 minutes to complete. As this process is still in the development phase and work is conducted on a requested basis, the actual time is undetermined; however, it is estimated that it will take approximately three (3) to five (5) hours over a four (4) to six (6) week period for SPO to complete.

The Department of Administration does not anticipate any increase in expenditures within the Department as a result of these rules. Existing SPO staff will prepare any lease agreements through this program in addition to their current duties and it is unknown at this time how this process will affect their daily duties. Since the enactment of Session Law 2018-5 in July 2018, the State Property Office has been contacted by one (1) broadband provider and a lease agreement has not been completed.

According to the Director of the Broadband Infrastructure Office, DIT is proposing to designate 15% of one (1) full time staff member's time to the processing, monitoring and tracking of providers once this process is established. DIT has not created application forms for this process at this point but anticipates a one (1) page intake form to assess the request with a goal to automate this process as soon as funding is available.

APPENDIX A: Proposed Rule Text

SUBCHAPTER 6F – TELECOMMUNICATIONS FACILITIES FOR BROADBAND PROVIDERS

01 NCAC 06F .0101 DEFINITIONS

For the purposes of this Chapter, the following definitions apply:

- (1) “Agency” means the body to which State owned or leased property is allocated.
- (2) “DIT” means the NC Department of Information Technology.
- (3) “WISP” means Wireless Internet Service Provider.

History Note: Authority G.S.146-29.1; 146-29.2; 146-30; S.L. 2018-5, s. 37.1(a)-(i);

01 NCAC 06F .0102 APPLICATION

Upon referral from the DIT, an Agency requesting the construction and placement of broadband equipment on state property shall submit to the Division of State Property a completed PO-2, Disposition of Real Property form, as set forth in 01 NCAC 06B .0300 of these Rules, and BB-2, WISP Application form, that shall include the following information:

- (1) description of the state property;
- (2) information pertaining to the lessee; and
- (3) equipment to be used and scope of work.

History Note: Authority G.S.146-29.1; 146-29.2; 146-30; S.L. 2018-5, s. 37.1(a)-(i);

01 NCAC 06F .0103 PROCEDURES

- (a) The Division of State Property shall evaluate the information provided on the application and determine fair market value of the lease pursuant to G.S. 146-29.1.
- (b) The Division of State Property shall generate the lease, license, or easement and provide to the Agency for review and distribution to the broadband provider.
- (c) Prior to the construction or placement of broadband equipment, the broadband provider and the Division of State Property shall execute duplicate original agreements.
- (d) The Agency shall ensure all equipment is installed in accordance with the terms set out in the lease, license or easement.

History Note: Authority G.S.146-29.1; 146-29.2; 146-30; S.L. 2018-5, s. 37.1(a)-(i);

01 NCAC 06F .0104 TERMS AND CONDITIONS

The following terms and conditions shall apply to the location and installation of equipment by a broadband provider on state owned or leased property:

- (1) All lease and license agreements shall be a five year term with two optional five year renewal periods.
- (2) All lease and license agreements shall include an access agreement and a non-exclusive utility easement.
- (3) The fair market value of the state-owned or leased property is subject to an annual rate adjustment as set forth in the lease.
- (4) Rent shall be paid annually on the anniversary of the executed lease.
- (5) An Agency shall require an escrow fund as part of the broadband provider's lease or license agreement.
- (6) Site specific protocols as set out in the lease and license agreement for construction and maintenance procedures shall be adhered to by the Applicant during installation and during any maintenance.
- (7) Upgrades or changes to equipment shall be reviewed by the Division of State Property for compliance with the existing lease prior to any changes to equipment.
- (8) The Agency shall not supply space in any existing equipment buildings, nor electricity.

History Note: Authority G.S.146-29.1; 146-29.2; 146-30; S.L. 2018-5, s. 37.1(a)-(i);

01 NCAC 06F .0105 TERMINATION

Upon termination of the agreement, at the Agency's request, the applicant shall remove equipment and cabling from the tower, ice-bridge, and within fenced property. The Agency shall then inspect the property to ensure compliance with this Paragraph. Upon a finding by the Agency that all equipment and cabling is removed, and the property has been returned to pre-leased conditions, the escrow funds shall be returned to the broadband provider within 60 days.

History Note: Authority G.S.146-29.1; 146-29.2; 146-30; S.L. 2018-5, s. 37.1(a)-(i);

APPENDIX B: Session Law 2018-5, s. 37.1

**PART XXXVII. DEPARTMENT OF INFORMATION TECHNOLOGY
GROWING RURAL ECONOMIES WITH ACCESS TO TECHNOLOGY (GREAT)
PROGRAM**

SECTION 37.1.(a) The General Assembly finds that broadband service is an essential element to ensure economic opportunity in a twenty-first century global economy. Recognizing that the availability of terrestrially deployed broadband at connection speeds exceeding 10 megabits per second (Mbps) download and one Mbps upload (10:1) is vital for enabling economic opportunity in our State, particularly in rural areas, the General Assembly hereby establishes the Growing Rural Economies with Access to Technology (GREAT) program to facilitate the deployment of broadband to unserved areas of the State. The purpose of this program is to encourage the deployment of broadband at the highest possible speeds throughout as much of the inhabitable geographic area of the State that is practical and feasible by the year 2030. The General Assembly believes that expanding access to currently unserved areas will have multiple benefits, including recruitment of new businesses and industries, strengthening e-commerce, growth of the home-based workforce, expanding educational opportunity, greater utilization of telehealth, increased energy efficiency by enabling the use of energy-saving smart devices, among many others.

The GREAT program is designed to significantly expedite the terrestrial deployment of broadband by encouraging partnerships and competition between private broadband providers and cooperatives to provide citizens with improved choices and greater value for broadband service and by reducing costs via allowing for the lease of State- or local government-owned properties or facilities for the purpose of locating or collocating broadband infrastructure.

The Federal Communications Commission current minimum level of broadband service speed for its Connect America Fund is 10:1 Mbps, and the Commission utilizes a benchmark of 25:3 to assess progress in broadband deployment for advanced telecommunications capability over time. It is the position of the General Assembly to not only have broadband service extended to areas where it presently does not exist but also to foster speeds exceeding 10:1 to help assure that as much of the inhabitable area of the State as possible is well-positioned with broadband service for the future. Therefore, the General Assembly encourages the deployment of speeds of 25:3 Mbps or greater.

SECTION 37.1.(b) Part 6 of Article 15 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"§ 143B-1373. Growing Rural Economies with Access to Technology (GREAT) program.

(a) As used in this section, the following definitions apply:

- (1) Agriculture. – Activities defined in G.S. 106-581.1.
- (2) Broadband service. – For the purposes of this section, terrestrially deployed Internet access service with transmission speeds of at least 10 megabits per second (Mbps) download and at least one megabit per second upload (10:1).
- (3) Coastal Plain Region. – The portion of the State lying east of the eastern boundaries of Franklin, Lee, Moore, Wake, and Warren Counties.
- (4) Cooperative. – An electric membership corporation, organized pursuant to Article 2 of Chapter 117 of the General Statutes, or a telephone membership

corporation, organized pursuant to Article 4 of Chapter 117 of the General Statutes.

- (5) Eligible economically distressed county. – A county designated as a development tier one area, as defined in G.S. 143B-473.08.
- (6) Eligible project. – An eligible project is 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. Eligible projects do not include middle mile, backhaul, and other similar projects not directed at broadband service to end users.
- (7) Eligible recipient. – Eligible grant recipients are private providers of broadband services, including cooperatively organized entities, or any partnerships formed between cooperatively organized entities, private providers, or any combination thereof, on or after January 1, 2018.
- (8) Household. – A house, apartment, single room, or other group of rooms, if occupied or intended for occupancy as separate living quarters, and where the occupants do not live with any other persons in the structure and there is direct access from the outside or through a common hall.
- (9) Infrastructure costs. – Costs directly related to the construction of broadband infrastructure for the extension of broadband service for an eligible project, including installation, acquiring or updating easements, equipment, fiber, construction, backhaul infrastructure, and testing costs. The term does not include overhead or administrative costs.
- (10) Mountain Region. – The portion of the State lying west of and including Alleghany, Burke, Caldwell, Rutherford, and Wilkes Counties.
- (11) Office. – The Broadband Infrastructure Office in the Department of Information Technology.
- (12) Piedmont Region. – The portion of the State lying west of and including Franklin, Lee, Moore, Richmond, Wake, and Warren Counties, to the eastern boundaries of Alleghany, Burke, Caldwell, Rutherford, and Wilkes Counties.
- (13) Secretary. – The Secretary of the Department of Information Technology.
- (14) Unserved area. – A designated geographic area that is presently without access to broadband service, as defined in this section, offered by a wireline or fixed wireless provider. Areas where a private provider has been designated to receive funds through other State or federally funded programs designed specifically for broadband deployment shall be considered served if such funding is intended to result in construction of broadband in the area within 18 months.

(b) The Growing Rural Economies with Access to Technology Fund is established as a special revenue fund in the Department of Information Technology. The Secretary may award grants from the Growing Rural Economies with Access to Technology Fund to eligible recipients for eligible projects. The funds shall be used by the recipient to pay for infrastructure costs associated with an eligible project. State funds appropriated to this Fund shall be considered an information technology project within the meaning of G.S. 143C-1-2.

(c) Project areas comprised of census blocks, or portions thereof, within which a broadband provider is receiving State or federal matching funds to deploy technologically neutral scalable broadband service within the next 18 months are ineligible for the GREAT program. It is

essential for the Office to know the location of census blocks, or portions thereof, comprising these areas so it can determine project eligibility. A private provider receiving State or federal matching funds to deploy broadband service within such an area shall, within 60 days of the effective date of this section, submit only a listing of the census blocks, or portions thereof, comprising each of its federally funded project areas meeting this requirement and nothing more to the Office. In future program years, the cutoff date for submitting this census block data shall be May 15. This will enable the office to update maps and advise applicants as to the unserved areas of the State that are eligible for consideration in that program year. The Office shall only utilize this data to update maps of census blocks to reflect these census blocks, or portions thereof, as being served. Failure on the part of a provider to submit the listing of census blocks by the cutoff date shall result in those areas being eligible for inclusion under this program during the upcoming program year. The Office shall use the census block data provided only for mapping of unserved areas. Information provided to the Office pursuant to this subsection is not a public record, as that term is defined in G.S. 132-1.

(d) Applications for grants will be submitted at times designated by the Secretary and will include, at a minimum, the following information:

- (1) An attestation to the Office that the proposed project area is eligible.
- (2) The identity of the applicant and its qualifications and experience with deployment of broadband.
- (3) The total cost and duration of the project.
- (4) The amount to be funded by the applicant.
- (5) An illustration or description of the area to be served and the number of homes, businesses, community anchor points, agricultural operations, or agricultural processing facilities that will have access to broadband as a result of the project.
- (6) An assessment of the current level of broadband access in the proposed deployment area and the current level of service provided at the point from which broadband deployment will be made.
- (7) The proposed construction time line.
- (8) A description of the services to be provided, including the proposed upstream and downstream broadband speeds to be delivered and any applicable data caps, provided that any applicant proposing a data cap below 150 Gigabytes of usage per month shall provide justification to the satisfaction of the Office that the proposed cap is in the public interest and consistent with industry standards.
- (9) Any other information or supplementary documentation requested by the Office.
- (10) A plan to encourage users to connect that incorporates, at a minimum, community education forums, multimedia advertising, and marketing programs.
- (11) For the proposed area to be served, the infrastructure cost per household for the project.
- (12) Evidence of support for the project from citizens, local government, businesses, and institutions in the community.
- (13) The proposed advertised speed to be marketed to end users.
- (14) An explanation of the scalability of the broadband infrastructure to be deployed for higher broadband speeds in the future.

(e) Applications shall be made publicly available by posting on the Web site of the Department of Information Technology for a period of at least 30 days prior to award. During the 30-day period, any interested party may submit comments to the Secretary concerning any pending application. A provider of broadband services may submit a protest of any application on the grounds the proposed project covers an area that is not an eligible area under this section. Protests shall be submitted in writing, accompanied by all relevant supporting documentation, and shall be considered by the Office in connection with the review of the application. Protests based upon actual current connection speed in a proposed project area shall not be considered. For applications with filed protests, the Secretary shall issue a written decision to the protesting party at least 15 days prior to the approval of that application.

(f) The Office may consult with the Department of Commerce to determine if a broadband project proposed under this section will benefit a potential economic development project relevant to the proposed area outlined in the broadband project.

(g) Applications shall be scored based upon a system that awards a single point for criteria considered to be the minimum level for the provision of broadband service with additional points awarded to criteria that exceed minimum levels. The Office shall score project applications in accordance with the following:

(1) Partnership. – Projects involving partnership or affiliation by a private provider with a nonprofit or not-for-profit, or a for-profit subsidiary of either that is required to enable certain partnership activities, or any combination thereof, shall be given five points in their application score where it is documented to the satisfaction of the Office that the partnership or affiliation will facilitate deployment and reduce cost per housing unit by utilizing the resources, facilities, and infrastructure of the partner or where the nonprofit or not-for-profit partner provides only financial support.

(2) Unserved households. – The Office shall give additional points to projects based upon the estimated number of unserved households within the eligible economically distressed county, as determined by the most recent data published by the Federal Communications Commission or any other information available to the Office. Points shall be given to projects that will be located in counties with estimated unserved households as follows:

<u>Unserved Households</u>	<u>Points Given</u>
<u>700 or less</u>	<u>1</u>
<u>700-1999</u>	<u>2</u>
<u>2000 and over</u>	<u>3</u>

(3) Households to be served. – The Office shall give additional points to projects that will provide broadband service to unserved households within the eligible economically distressed county, as determined by the most recent data published by the Federal Communications Commission or any other information available to the Office. Points shall be given to projects that will serve unserved households within the project area as follows:

<u>Households To Be Served</u>	<u>Points Given</u>
<u>Under 150</u>	<u>1</u>
<u>150-249</u>	<u>2</u>
<u>250 and up</u>	<u>3</u>

- (4) Unserved businesses. – The Office shall give additional points to projects that will provide broadband service to unserved businesses located within the eligible economically distressed county, as determined by the most recent data published by the Federal Communications Commission or any other information available to the Office. Points shall be given to projects that serve unserved businesses within the project area as follows:
- a. Projects proposing to serve between 1 and 4 businesses shall receive 1 point.
 - b. Projects proposing to serve between 5 and 10 businesses shall receive 2 points.
 - c. Projects proposing to serve either (i) more than 10 businesses or (ii) an agricultural operation, agricultural processing facility, or a business with 31 or more full-time employees shall receive 3 points.

- (5) Cost per household. – The Office shall give additional points to projects that minimize the infrastructure cost of the proposed project per household, based upon information available to the Office. Points shall be given to projects based upon the estimated cost per household as follows:

a. For projects proposed in the Piedmont or Coastal Plain Regions:

<u>Est. Cost per Household</u>	<u>Partnership Using Infrastructure</u>	<u>Private Provider Only</u>
Up to \$1,700	4	9
\$1,701-2,200	3	8

b. For projects located in the Mountain Region:

<u>Est. Cost per Household</u>	<u>Partnership Using Infrastructure</u>	<u>Private Provider Only</u>
Up to \$2,500	4	9
\$2,501-3,300	3	8

- (6) Base speed multiplier. – Projects that will provide minimum download and minimum upload speeds shall have the aggregate points given under subdivisions (1) through (5) of this subsection multiplied by a factor at the level indicated in the table below:

<u>Minimum Download:</u>	<u>Score Multiplier</u>
<u>Minimum Upload</u>	
10:1 Mbps.	0.95
25:3 Mbps. or greater	1.35

(h) The Office shall score applications based upon the metrics provided in subsection (g) of this section. In awarding grants based upon the scoring metrics, the Office shall also award an additional point to projects where a county has a Community Broadband Planning Playbook that meets the guidelines established by the Office.

(i) Applications receiving the highest score shall receive priority status for the awarding of grants pursuant this section. Applicants awarded grants pursuant to this section shall enter into an agreement with the Office. The agreement shall contain all of the elements outlined in subsection (d) of this section and any other provisions the Office may require. The agreement shall contain a provision governing the time line and minimum requirements and thresholds for disbursement of grant funds measured by the progress of the project. Grant funds shall be disbursed only upon verification by the Office that the terms of the agreement have been fulfilled according

to the progress milestones contained in the agreement. At project completion, the grant recipient shall certify and provide to the Office evidence consistent with Federal Communications Commission attestation that the proposed minimum upstream and minimum downstream broadband speeds identified in the application guidelines, and for which a base speed multiplier was awarded pursuant to subdivision (6) of subsection (g) of this section, are available throughout the project area prior to any end user connections. A single grant award shall not exceed two million dollars (\$2,000,000). No more than one grant may be awarded per fiscal year for a project in any one eligible economically distressed county.

(j) Grant recipients are required to provide matching funds based upon the application scoring pursuant to this section in the following minimum amounts:

<u>Score</u>	<u>Matching Requirement</u>
<u>7.0 points or less</u>	<u>55%</u>
<u>Greater than 7.0, but less than 14.0 points</u>	<u>50%</u>
<u>Greater than 14.0, but less than 21.0 points</u>	<u>45%</u>
<u>21.0 points or greater</u>	<u>35%</u>

Up to fifty percent (50%) of matching funds paid by the grant recipient may be comprised of third-party funding and other grant programs. Universal Service Fund, Connect America Fund, or other grants awarded for broadband expansion through a separate State or federal program shall not be used for the required matching funds.

(k) The Office shall require that grant recipients offer the proposed advertised minimum download and minimum upload speeds identified in the project application for the duration of the five-year service agreement. At least annually, a grant recipient shall provide to the Office evidence consistent with Federal Communications Commission attestation that the grant recipient is making available the proposed advertised speed, or a faster speed, as contained in the grant agreement. For the duration of the agreement, grant recipients shall disclose any changes to data caps for the project area that differ from the data caps listed in the grant application to the Office.

(l) A grant recipient shall forfeit the amount of the grant received if it fails to perform, in material respect, the obligations established in the agreement. Grant recipients that fail to provide the minimum advertised connection speed for which a reduction in matching funds was applied shall forfeit that amount. A grant recipient that forfeits amounts disbursed under this section is liable for the amount disbursed plus interest at the rate established under G.S. 105-241.21, computed from the date of the disbursement. The number of subscribers that subscribe to broadband services offered by the provider in the project area shall not be a measure of performance under the agreement for the purposes of this subsection.

(m) The Office of Broadband Infrastructure in the Department of Information Technology shall be the designated agency for receipt and disbursement of federal grant funds intended for the State for broadband expansion and shall seek available federal grant funds for that purpose. All federal grant funds received for the purpose of broadband expansion shall be disbursed in accordance with this section.

(n) Grant recipients shall submit to the Office an annual report for each funded project for the duration of the agreement. The report shall include a summary of the items contained in the grant agreement and level of attainment for each and shall also include (i) the number of households, businesses, agriculture operations, and community anchor points that have broadband access as a result of the project; (ii) the percentage of end users in the project area who have access to broadband service and actually subscribe to the broadband service; and (iii) the average monthly subscription cost for broadband service in the project area.

(o) The Department of Information Technology shall submit an annual report to the Joint Legislative Oversight Committee for Information Technology and the Fiscal Research Division on or before September 1. The report shall contain at least all of the following:

- (1) The number of grant projects applied for and the number of grant agreements entered into.
- (2) A time line for each grant agreement and the number of households, businesses, agriculture operations, and community anchor points expected to benefit from each agreement.
- (3) The amount of matching funds required for each agreement and the total amount of investment.
- (4) A summary of areas receiving grants that are now being provided broadband service and the advertised broadband speeds for those areas.
- (5) Any breaches of agreements, grant fund forfeitures, or subsequent reductions or refunds of matching funds.
- (6) Any recommendations for the grant program, including better sources and methods for improving outcomes and accountability."

SECTION 37.1.(c) G.S. 160A-272 reads as rewritten:

"§ 160A-272. Lease or rental of property.

(a) Any property owned by a city may be leased or rented for such terms and upon such conditions as the council may determine, but not for longer than 10 years (except as otherwise provided in subsection (b1) of this section) and only if the council determines that the property will not be needed by the city for the term of the lease. In determining the term of a proposed lease, periods that may be added to the original term by options to renew or extend shall be included.

(a1) Property may be rented or leased only pursuant to a resolution of the council authorizing the execution of the lease or rental agreement adopted at a regular council meeting upon 30 days' public notice. Notice shall be given by publication describing the property to be leased or rented, stating the annual rental or lease payments, and announcing the council's intent to authorize the lease or rental at its next regular meeting.

(b) No public notice as required by subsection (a1) of this section need be given for resolutions authorizing leases or rentals for terms of one year or less, and the council may delegate to the city manager or some other city administrative officer authority to lease or rent city property for terms of one year or less.

(b1) Leases for terms of more than 10 years shall be treated as a sale of property and may be executed by following any of the procedures authorized for sale of real property.

(c) Notwithstanding subsection (b1) of this section, the council may approve a lease without treating that lease as a sale of property for any of the following reasons:

- (1) For the siting and operation of a renewable energy facility, as that term is defined in G.S. 62-133.8(a)(7), for a term up to 25 years.
- (2) For the siting and operation of a tower, as that term is defined in G.S. 146-29.2(a)(7), for communication purposes for a term up to 25 years.
- (3) For the operation and use of components of a wired or wireless network, for a term up to 25 years; provided, however, that the lease is entered into with a private broadband provider or a cooperative in connection with a grant agreement pursuant to G.S. 143B-1373 and is 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.

(d) Notwithstanding subsection (a) of this section, any lease by a city of any duration for components of a wired or wireless network shall be entered into on a competitively neutral and nondiscriminatory basis and made available to similarly situated providers on comparable terms and conditions and shall not be used to subsidize the provision of competitive service."

SECTION 37.1.(d) G.S. 160A-272.1 reads as rewritten:

"§ 160A-272.1. Lease of utility or enterprise property.

Subject to this Article and G.S. 160A-321, a city-owned utility or public service enterprise, or part thereof, may be leased."

SECTION 37.1.(e) G.S. 160A-321 reads as rewritten:

"§ 160A-321. Sale, lease, or discontinuance of city-owned enterprise.

(a) A city is authorized to sell or lease as lessor any public enterprise that it may own upon any terms and conditions that the council may deem best. However, except as to transfers to another governmental entity pursuant to G.S. 160A-274 or as provided in subsection (b) of this section, a city-owned public enterprise shall not be sold, leased to another, or discontinued unless the proposal to sell, lease, or discontinue is first submitted to a vote of the people and approved by a majority of those who vote thereon. Voter approval shall not be required for the sale, lease, or discontinuance of airports, off-street parking systems and facilities, or solid waste collection and disposal systems.

(b) For the sale, lease, or discontinuance of water treatment systems, water distribution systems, or wastewater collection and treatment systems, a city may, but is not required to, submit to its voters the question of whether such sale, lease, or discontinuance shall be undertaken. The referendum is to be conducted pursuant to the general and local laws applicable to special elections in such city."

SECTION 37.1.(f) G.S. 146-29.2 reads as rewritten:

"§ 146-29.2. Lease or interest in real property for communication purposes.

(a) The following definitions apply in this section:

...

(1a) Applicable codes. – The North Carolina State Building Code and any other uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization together with amendments to those codes enacted to address imminent threats of destruction of property or injury to persons.

(1b) Broadband. – 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 Federal Communications Commission for broadband data gathering and reporting, regardless of the technology or medium used to provide the service.

...

(3) Collocation. – The placement or installation of wireless or broadband facilities on existing structures, including electrical transmission towers, water towers, buildings, and other structures capable of structurally supporting the attachment of wireless or broadband facilities in compliance with applicable ~~building and line safety~~ codes.

(4) Equipment. – Antennas, transmitters, receivers, cables, wires, transformers, power supplies, electric and communication lines necessary for the provision of television broadcast signals, radio wave signals, wireless data or wireless telecommunication ~~services~~ services, or broadband to a discrete geographic area, and all other apparatuses and appurtenances, including

shelters, cabinets, buildings, platforms, and ice bridges used to house or otherwise protect equipment.

...

(6) Provider. – Any person that is engaged in the transmission, reception, or dissemination of television broadcast signals, radio wave signals, or electromagnetic radio signals used in the provision of wireless communications service, or the provisioning of wireless infrastructure. The term also includes any person engaged in the provision of broadband.

...

(b1) The State shall allow the collocation, installation, and operation of equipment by a broadband provider on any existing structure owned by the State and shall lease real property, or grant an easement or license with an interest in real property, for the purposes of construction and placement of broadband infrastructure on State land. A disposition entered into pursuant to this subsection is voidable by the Governor and Council of State for specific reasons or causes that shall be cited.

(c) ~~If otherwise feasible and determined by the Department of Administration to be in the best interest of the State:~~

(1) ~~New towers constructed on State land shall be designed for collocation. This requirement shall not apply to towers constructed on State land by the State or any of its agencies or by a "public entity" as that term is defined in G.S. 146-29.1(b).~~

(2) ~~The State shall encourage the collocation of equipment on existing towers and buildings owned by the State.~~

(3) The State shall sublease for collocation purposes space on any tower or ground area leased by the State, if allowed under the terms of the lease.

(4) ~~The State shall, to the extent practicable, shall~~ adopt standard terms and conditions for applications to lease, easements, or other conveyances of an interest in real property for communication ~~purposes.~~ purposes and the deployment of broadband.

...."

SECTION 37.1.(g) G.S. 146-30 is amended by adding a new subsection to read:

"(b3) Notwithstanding the other provisions of this section, no service charge into the State Land Fund shall be deducted from or levied against the proceeds of any disposition by lease, rental, or easement of State lands or structures for the collocation, installation, or operation of equipment by a broadband provider on an existing structure owned by the State in accordance with G.S. 146-29.2. The agency that owns the land or structure subject to the lease, rental, or easement may retain an amount not to exceed four percent (4%) of the amount of the lease, rental, or easement. All net proceeds of those dispositions, after the amount retained by the agency, shall be deposited in the Growing Rural Economies with Access to Technology Fund established pursuant to subsection (b) of G.S. 143B-1373."