

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

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HOUSE PRINCIPAL CLERK

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HOUSE BILL DRH40619-RIF-10

Short Title: Authorize Broadband Cooperatives. (Public)

Sponsors: Representative Szoka.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH THE RURAL BROADBAND AUTHORITY AND TO
3 AUTHORIZE FORMATION OF BROADBAND MEMBERSHIP CORPORATIONS IN
4 ORDER TO FOSTER DEPLOYMENT OF BROADBAND SERVICES TO UNSERVED
5 AREAS OF THE STATE TO ATTRACT INVESTMENT IN LOCAL ECONOMIES, TO
6 PROVIDE FOR EDUCATIONAL AND CAREER OPPORTUNITIES, AND TO PROVIDE
7 FOR IMPROVED HEALTH CARE.

8 The General Assembly of North Carolina enacts:

9 SECTION 1.(a) The General Statutes are amended by adding a new Chapter to read:

10 **"Chapter 117A.**

11 **"Broadband for Rural and Unserved Areas.**

12 **"Article 1.**

13 **"Rural Broadband Authority.**

14 **"§ 117A-1. Rural Broadband Authority created; appointments; terms of members.**

15 An agency to be known as the "North Carolina Rural Broadband Authority" is hereby created
16 as an agency of the State of North Carolina, such agency to consist of nine members, two of
17 which shall be appointed by the Speaker of the House of Representatives, two of which shall be
18 appointed by the President Pro Tempore of the Senate, and five of which to be appointed by the
19 Governor of North Carolina. All appointments shall be made for terms of four years.

20 **"§ 117A-2. Definitions.**

21 As used in this Chapter, unless the context otherwise requires, the term:

- 22 (1) "Acquire" means to acquire by purchase, lease, devise, gift, or other mode of
23 acquisition.
24 (2) "Authority" means the North Carolina Rural Broadband Authority.
25 (3) "Board" means the board of directors of a corporation formed under Article 2
26 of this Chapter.
27 (4) "Broadband infrastructure" means wireline or wireless infrastructure capable
28 of providing terrestrially deployed broadband service.
29 (5) "Broadband service" has the same meaning as provided in G.S. 62-3(1).
30 (6) "Corporation" shall mean a corporation formed under Article 2 of this
31 Chapter.
32 (7) "Federal agency" shall mean and include the United States of America, the
33 President of the United States of America, and any other authorities, agencies,
34 and instrumentalities of the United States of America.
35 (8) "Person" shall mean and include natural persons, firms, associations,
36 corporations, business trusts, partnerships, and bodies politic.



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- 1 (9) "Unserved area" means a designated geographic area that is presently without
2 access to broadband service, as defined in this section, offered by a wireline
3 or fixed wireless provider.

4 **"§ 117A-3. Powers.**

5 The purpose of the North Carolina Rural Broadband Authority is to secure broadband service
6 for areas of the State where service is not now being rendered, or service is otherwise inadequate,
7 and it is hereby empowered to do the following in order to accomplish that purpose:

- 8 (1) To investigate all applications from communities unserved, or inadequately
9 served, by broadband in North Carolina and to determine the feasibility of
10 obtaining broadband service for such communities.
- 11 (2) To employ such personnel as shall be necessary to conduct surveys, assist
12 communities to organize and finance extensions of broadband, and negotiate
13 with telecommunications providers for and on behalf of the unserved
14 communities that desire broadband service.
- 15 (3) To contact telecommunications providers contiguous to areas desiring service,
16 for the purpose of facilitating extension of service by such providers or other
17 agencies, in that community as may be feasible for the telecommunications
18 providers or other agencies, contiguous to the area.
- 19 (4) To make estimates of costs of extension which the telecommunications
20 providers would not be willing to finance and report such findings to the
21 citizens of the community desiring service or to the corporations organized
22 under this Chapter, to be known as "broadband membership corporations."
- 23 (5) To estimate the service charges to which a community would be subject in
24 addition to the rates for broadband as may be found necessary in order to make
25 extension self-liquidating.
- 26 (6) To have the power of eminent domain for the purpose of condemning
27 rights-of-way necessary for broadband infrastructure, either in its own name,
28 or in its own name on behalf of the broadband membership corporations to be
29 formed as provided by law. For the purposes of exercising the powers of
30 eminent domain, the North Carolina Rural Broadband Authority shall be
31 deemed a private condemnor and shall follow the procedures of Chapter 40A
32 of the General Statutes for a private condemnor.
- 33 (7) To have such right and authority to secure for local communities or broadband
34 membership corporations as may be set up assistance from any agency of the
35 United States government, either by gift or loan, as may be possible to aid
36 local communities in securing broadband for a community.
- 37 (8) To investigate all applications from communities for the formation of
38 broadband membership corporations, make determinations on eligibility, and
39 grant the authority to form such corporations; to provide forms for making
40 such applications; and to do all things necessary to a proper determination of
41 the question of establishment of the local broadband membership
42 corporations.
- 43 (9) To act as agent for any broadband membership corporations formed under
44 direction or permission of the North Carolina Rural Broadband Authority in
45 securing loans or grants from any agency of the United States government.
- 46 (10) To prescribe rules and regulations for the broadband membership corporations
47 in making applications for grants or loans from any agency of the United
48 States government.
- 49 (11) To receive and investigate complaints from members of broadband
50 membership corporations.

1 (12) To do all other acts that may be necessary to aid the rural communities in
2 North Carolina to secure broadband.

3 **"§ 117A-4. Authority not granted power to fix rates or order broadband service extensions.**

4 The Authority itself shall not be a rate-making body and shall have no power to fix the rates
5 or service charges or to order the extension of broadband by telecommunications providers.

6 **"§ 117A-5. Regulatory fee.**

7 (a) Fee Imposed. – It is the policy of the State of North Carolina to provide fair regulation
8 of broadband membership corporations in the interest of the public. The cost of regulating
9 broadband membership corporations is a burden incident to the privilege of operating as a
10 broadband membership corporation. Therefore, for the purpose of defraying the cost of
11 regulating broadband membership corporations, every broadband membership corporation
12 subject to the jurisdiction of the Authority shall pay a quarterly regulatory fee, in addition to all
13 other fees and taxes, as provided in this section. The fees collected shall be used only to pay the
14 expenses of the Authority in regulating broadband membership corporations in the interest of the
15 public.

16 (b) Rate. – For each fiscal year, the regulatory fee shall be the greater of the following:

17 (1) The rate established by the General Assembly for that year based upon the
18 number of customer connections for broadband service for each broadband
19 membership corporation.

20 (2) Twenty-five cents (25¢) for each customer connection for broadband service
21 for each broadband membership corporation.

22 When the Authority prepares its budget request for the upcoming fiscal year, the Authority
23 shall propose a rate for the regulatory fee. For fiscal years beginning in an odd-numbered year,
24 that proposed rate shall be included in the budget message the Governor submits to the General
25 Assembly pursuant to G.S. 143C-3-5. For fiscal years beginning in an even-numbered year, that
26 proposed rate shall be included in a special budget message the Governor shall submit to the
27 General Assembly. If the General Assembly decides to set the regulatory fee at a rate higher than
28 the rate in subdivision (2) of this subsection, it shall set the regulatory fee by law.

29 The regulatory fee may not exceed the amount necessary to generate funds sufficient to defray
30 the estimated cost of the operations of the Authority for the upcoming fiscal year, including a
31 reasonable margin for a reserve fund. The amount of the reserve may not exceed the estimated
32 cost of operating the Authority for the upcoming fiscal year. In calculating the amount of the
33 reserve, the General Assembly shall consider all relevant factors that may affect the cost of
34 operating the Authority.

35 (c) When Due. – The regulatory fee imposed under this section is due and payable to the
36 Authority on or before the fifteenth day of the second month following the end of each quarter.
37 Every broadband membership corporation subject to the regulatory fee shall, on or before the
38 date the fee is due for each quarter, prepare and render a report on a form prescribed by the
39 Authority. The report shall state the broadband membership corporation's total North Carolina
40 customer connections for broadband service for the preceding quarter and shall be accompanied
41 by any supporting documentation that the Authority may require by rule.

42 (d) Use of Proceeds. – A special fund in the office of the State Treasurer, the North
43 Carolina Rural Broadband Authority Fund (NCRBA Fund), is created. The fees collected
44 pursuant to this section and all other funds received by the Authority shall be deposited in the
45 NCRBA Fund. The NCRBA Fund shall be placed in an interest-bearing account, and any interest
46 or other income derived from the NCRBA Fund shall be credited to the NCRBA Fund. Moneys
47 in the NCRBA Fund shall only be spent pursuant to an appropriation by the General Assembly.

48 The NCRBA Fund shall be subject to the provisions of the State Budget Act except that no
49 unexpended surplus of the NCRBA Fund shall revert to the General Fund. All funds credited to
50 the NCRBA Fund shall be used only to pay the expenses of the Authority in regulating broadband
51 membership corporations in the interest of the public as provided by this Chapter.

1 **"§ 117A-6. Organization meeting of Authority; chairman and secretary.**

2 Promptly after their appointment, the Authority shall meet and organize at such meeting, and
3 at the first meeting of each year thereafter, the members shall choose from their number a
4 chairman. They shall also choose a secretary, who shall be a competent engineer and shall fix the
5 secretary's salary subject to the approval as provided in Article 2 of Chapter 126 of the General
6 Statutes.

7 **"§ 117A-7. Compensation and expenses.**

8 All members of the Authority, except the secretary, shall receive as compensation for their
9 services per diem and actual expenses incurred while in the performance of their duties in
10 accordance with the provisions of G.S. 138-5.

11 "Article 2.

12 "Broadband Membership Corporations.

13 **"§ 117A-8. Title of Article.**

14 This Article may be cited as the "Broadband Membership Corporation Act."

15 **"§ 117A-9. Formation in unserved communities; filing application with Rural Broadband**
16 **Authority.**

17 When one or more persons residing in an unserved area desire to secure broadband service
18 for the area and desire to form a broadband membership corporation for that purpose, the person
19 shall file an application with the North Carolina Rural Broadband Authority for permission to
20 form such a corporation.

21 **"§ 117A-10. Issuance of privilege for formation of such corporation.**

22 Whenever an application is submitted pursuant to G.S. 117A-9, the North Carolina Rural
23 Broadband Authority shall cause a survey of the area to be conducted in order to determine
24 whether the area is unserved, and if so, whether formation of a broadband membership
25 corporation to provide service to the area is feasible. If the Authority determines an area subject
26 to an application is unserved and formation of a broadband membership corporation is feasible,
27 the Authority shall issue a privilege for the formation of a corporation as provided in this Chapter.

28 **"§ 117A-11. Formation authorized.**

29 Upon issuance of a privilege by the Authority pursuant to G.S. 117A-10, any number of
30 natural persons not less than three may, by executing, filing, and recording a certificate as
31 provided in this Article, form a corporation not organized for pecuniary profit for the purpose of
32 promoting and encouraging the deployment of broadband in unserved areas of the State by
33 making broadband available to inhabitants of the State at the lowest cost consistent with sound
34 economy and prudent management of the business of such corporations.

35 **"§ 117A-12. Municipal franchises.**

36 A broadband membership corporation shall be eligible to receive a franchise pursuant to
37 G.S. 160A-319 from any city or town.

38 **"§ 117A-13. Restriction on service in municipalities.**

39 Except as otherwise provided in this section, no broadband membership corporation shall
40 furnish broadband service to, or within the limits of, any incorporated city or town, except
41 pursuant to a franchise that may be granted under the provisions of G.S. 117A-12. In addition, a
42 broadband membership corporation may furnish broadband service to, or within the limits of,
43 any incorporated city or town if the city or town and all public or private broadband providers
44 then furnishing broadband to or within such city or town consent thereto in writing.

45 **"§ 117A-14. Contents of certificate of incorporation.**

46 (a) Required Provisions. – The certificate of incorporation shall be entitled and endorsed
47 "Certificate of Incorporation of _____ Broadband Membership Corporation" (the blank space
48 being filled in with the name of the corporation) and shall state:

- 49 (1) The name of the corporation, which name shall be such as to distinguish it
50 from any other corporation.

- 1 (2) A reasonable description of the territory comprising the unserved area in
2 which its operations are principally to be conducted.
- 3 (3) The location of its principal office and the post office address thereof.
- 4 (4) The maximum number of directors, not less than three.
- 5 (5) The names and post office addresses of the directors, not less than three, who
6 are to manage the affairs of the corporation for the first year of its existence,
7 or until their successors are chosen.
- 8 (6) The period, if any, limited for the duration of the corporation. If the duration
9 of the corporation is to be perpetual, this fact should be stated.
- 10 (7) The terms and conditions upon which members of the corporation shall be
11 admitted.

12 (b) Permissible Provisions. – The certificate of incorporation of a corporation may also
13 contain any provision not contrary to law that the incorporators may choose to insert for the
14 regulation of its business, and for the conduct of the affairs of the corporation, and any provisions,
15 creating, defining, limiting, or regulating the powers of the corporation, its directors and
16 members.

17 **"§ 117A-15. Execution and filing of certificate of incorporation by residents of territory to**
18 **be served.**

19 The natural persons executing the certificate of incorporation shall be residents of the territory
20 in which the principal operations of the corporation are to be conducted for the provision of
21 broadband service to the unserved area. The certificate of incorporation shall be acknowledged
22 by the subscribers before an officer qualified to administer oaths. When so acknowledged, the
23 certificate may be filed in the office of the Secretary of State, who shall prepare a certified copy
24 or copies thereof and forward one to the register of deeds in each county in which a portion of
25 the territory of the corporation is located, who shall then file such certified copy or copies in their
26 respective offices and record the same as other certificates of incorporation are recorded. As soon
27 as the provisions of this section have been complied with, the proposed corporation described in
28 the certificate so filed, under its designated name, shall be and constitute a body corporate.

29 **"§ 117A-16. Board of directors; compensation; president and secretary.**

30 Each corporation formed under this Article shall have a board of directors, in which
31 management of the affairs of the corporation is vested. The directors of the corporation, other
32 than those named in its certificate of incorporation, shall be elected annually by the members
33 entitled to vote. Provided, however, if the bylaws so provide the directors may be elected on a
34 staggered-term basis. In the event members are elected on a staggered-term basis, the total
35 number of directors on a board shall be so divided that not less than one third of them, or as
36 nearly thereto as their division for that purpose will permit, shall be elected annually, (ii) no term
37 shall be longer than for three years, and (iii) except as may be necessary in inaugurating such a
38 plan, all directors shall be elected for terms of equal duration. The directors shall be entitled to
39 receive for their services only such compensation as is provided in the bylaws. The board shall
40 elect annually from its own number a president and a secretary. The directors must be members
41 of the corporation.

42 **"§ 117A-17. Powers of board.**

43 The board shall have power to do all things necessary or convenient in conducting the
44 business of a corporation, including, but not limited to:

- 45 (1) To adopt and amend bylaws for the management and regulation of the affairs
46 of the corporation; provided, however, that the certificate of incorporation
47 may reserve to the members of the corporation the power to amend the bylaws.
48 The bylaws of a corporation may make provisions not inconsistent with law
49 or its certificate of incorporation, regulating the admission, withdrawal,
50 suspension or expulsion of members; the transfer of membership; the fees and
51 dues of members and the termination of memberships on nonpayment of dues

1 or otherwise; the number, times and manner of choosing, qualifications, terms
2 of office, official designations, powers, duties, and compensations of its
3 officers; defining a vacancy in the board or in any office and the manner of
4 filling it; the number of members to constitute a quorum at meetings, the date
5 of the annual meeting and the giving of notice thereof, and the holding of
6 special meetings and the giving of notice thereof; the terms and conditions
7 upon which the corporation is to render service to its members; the disposition
8 of the revenues and receipts of the corporation; regular and special meetings
9 of the board and the giving of notice thereof.

10 (2) To appoint agents and employees and to fix their compensation and the
11 compensation of the officers of the corporation.

12 (3) To execute instruments.

13 (4) To delegate to one or more of the directors or to the agents and employees of
14 a corporation such powers and duties as it may deem proper.

15 (5) To make its own rules and regulations as to its procedure.

16 **"§ 117A-18. Certificates of membership.**

17 A corporation may issue to its members certificates of membership, and each member shall
18 be entitled to only one vote at the meetings of the corporation.

19 **"§ 117A-19. Corporate purpose; terms and conditions of membership.**

20 The corporate purpose of each corporation formed hereunder shall be to provide broadband
21 service to its members only, and no person shall become or remain a member unless such person
22 shall use broadband supplied by such corporation and shall have complied with the terms and
23 conditions in respect to membership contained in the bylaws of such corporation; provided, that
24 such terms and conditions of membership shall be reasonable; and provided further, that no bona
25 fide applicant for membership, who is able and willing to satisfy and abide by all such terms and
26 conditions of membership, shall be denied arbitrarily, capriciously, or without good cause.

27 **"§ 117A-20. Discrimination prohibited.**

28 No broadband membership corporation shall, as to rates or services, make or grant any
29 unreasonable preference or advantage to any member or subject any member to any unreasonable
30 prejudice or disadvantage. No broadband membership corporation shall establish or maintain any
31 unreasonable difference as to rates or services either as between localities or as between classes
32 of service. No broadband membership corporation shall give, pay, or receive any rebate or bonus,
33 directly or indirectly, or mislead or deceive its members in any manner as to rates charged for
34 the services of the broadband membership corporation.

35 **"§ 117A-21. General grant of powers.**

36 Each corporation formed under this Article is hereby vested with all power necessary or
37 requisite for the accomplishment of its corporate purpose and capable of being delegated by the
38 legislature, and no enumeration of particular powers hereby granted shall be construed to impair
39 any general grant of power herein contained, nor to limit any such grant to a power or powers of
40 the same class as those so enumerated.

41 **"§ 117A-22. Specific grant of powers.**

42 Subject only to the Constitution of the State, a corporation created under the provisions of
43 this Article shall have power to do any and all acts or things necessary or convenient for carrying
44 out the purpose for which it was formed, including all of the following:

45 (1) To sue and be sued.

46 (2) To have a seal and alter the same at pleasure.

47 (3) To acquire, hold, and dispose of property, real and personal, tangible and
48 intangible, or interests therein, and to pay therefor in cash or on credit, and to
49 secure and procure payment of all or any part of the purchase price thereof on
50 such terms and conditions as the board shall determine.

- 1 (4) To provide broadband service and to acquire, own, operate, maintain, and
2 improve broadband infrastructure.
- 3 (5) To pledge all or any part of its revenue or mortgage or otherwise encumber all
4 or any part of its property for the purpose of securing the payment of the
5 principal of and interest on any of its obligations.
- 6 (6) The right to apply to the North Carolina Rural Broadband Authority for
7 permission to construct or place broadband infrastructure in and along any
8 State highway or over any lands that are now, or may be, the property of this
9 State, or any political subdivision thereof. In all questions involving the
10 right-of-way, or the right of eminent domain, the rulings of the North Carolina
11 Rural Broadband Authority are final. Notwithstanding the foregoing sentence
12 and notwithstanding subdivision (6) of G.S. 117A-3, broadband corporations
13 may, without necessity of the Authority's rulings or participation, exercise the
14 right of eminent domain for the purposes of constructing, operating, and
15 maintaining broadband infrastructure, individually and solely in their own
16 names, pursuant to the provisions of Chapter 40A of the General Statutes. The
17 foregoing grant of the power of eminent domain to broadband membership
18 corporations is supplementary to the power of eminent domain already
19 devolved upon the Authority.
- 20 (7) To accept gifts or grants of money, property, real or personal, from any person
21 or federal agency, and to accept voluntary and uncompensated services.
- 22 (8) To make any and all contracts necessary or convenient for the full exercise of
23 the powers in this Article granted, including contracts with any person or for
24 the sale of broadband services, for the management and conduct of the
25 business of the corporation, including the regulation of the rates, fees, or
26 charges for service rendered by the corporation.
- 27 (9) To sell, lease, mortgage, or otherwise encumber or dispose of all or any part
28 of its property.
- 29 (10) To contract debts, borrow money, and to issue or assume the payment of
30 bonds.
- 31 (11) To fix, maintain, and collect fees, rents, tolls, and other charges for service
32 rendered.
- 33 (12) To perform any and all of the foregoing acts and to do any and all of the
34 foregoing things under, through, or by means of its own officers, agents, and
35 employees, or by contracts with any person or federal agency.

36 **"§ 117A-23. Taxes and assessments.**

37 (a) No broadband membership corporation organized, reorganized, or domesticated
38 under the provisions of this Chapter shall be a public agency, nor shall any such corporation be,
39 or have the rights of, a political subdivision of the State.

40 (b) With respect to its properties owned and revenues, each broadband membership
41 corporation operating within the State shall be subject to, and shall pay taxes and assessments
42 under, all laws relative to State, county, municipal, and other local taxes and assessments
43 applicable to telecommunication providers in this State, except income tax.

44 **"§ 117A-24. Encumbrance, sale, etc., of property.**

45 (a) No corporation may sell, mortgage, lease, or otherwise encumber or dispose of any
46 of its property (other than merchandise and property which lie within the limits of an incorporated
47 city or town, or which shall represent not in excess of ten percent (10%) of the total value of the
48 corporation's assets, or which in the judgment of the board are not necessary or useful in operating
49 the corporation) unless both of the following criteria apply:

- 50 (1) The corporation is authorized so to do by the votes cast in person or by proxy
51 by at least two-thirds of its total membership.

1 (2) The consent of the holders of seventy-five percent (75%) in amount of the
2 bonds of such corporation then outstanding is obtained.

3 (b) Notwithstanding subsection (a) of this section, the members of a corporation may, by
4 the affirmative majority of the votes cast in person or by proxy at any meeting of the members,
5 delegate to the board of directors the power and authority to (i) borrow moneys from any source
6 and in such amounts as the board may from time to time determine, (ii) mortgage or otherwise
7 pledge or encumber any or all of the corporation's property or assets as security therefor, and (iii)
8 sell and lease back any of the corporation's property or assets.

9 **"§ 117A-25. Issuance of bonds.**

10 A corporation formed pursuant to this Article shall have power and is hereby authorized,
11 from time to time, to issue its bonds in anticipation of its revenue for any corporate purpose. Said
12 bonds may be authorized by resolution or resolutions of the board and may bear such date or
13 dates, mature at such time or times, not exceeding 40 years from their respective dates, bear
14 interest at such rate or rates, be in such denominations, be in such form, either coupon or
15 registered, carry such registration privileges, be executed in such manner, be payable in such
16 medium of payment, at such place or places, and be subject to such terms of redemption, not
17 exceeding par and accrued interest, as such resolution or resolutions may provide. Such bonds
18 may be sold in such manner and upon such terms as the board may determine at not less than par
19 and accrued interest. Any provision of law to the contrary notwithstanding, any bonds and the
20 interest coupons appertaining thereto, if any, issued pursuant to this Article shall possess all of
21 the qualities of negotiable instruments.

22 **"§ 117A-26. Covenants or agreements for security of bonds.**

23 In connection with the issuance of any bonds, a corporation may make covenants or
24 agreements and do any and all acts or things that a business corporation can make or do under
25 the laws of the State in order to secure its obligations or which, in the absolute discretion of the
26 board, tend to make the obligations more marketable, notwithstanding that such covenants,
27 agreements, acts, and things may constitute limitations on the exercise of the powers herein
28 granted.

29 **"§ 117A-27. Purchase and cancellation of bonds.**

30 A corporation shall have power out of any funds available therefor to purchase any bonds
31 issued by it at a price not exceeding the principal amount thereof and accrued interest thereon.
32 All bonds so purchased shall be canceled.

33 **"§ 117A-28. Dissolution.**

34 (a) Any corporation created hereunder may be dissolved by filing, as hereinafter
35 provided, a certificate which shall be entitled and endorsed "Certificate of Dissolution of _____"
36 (the blank space being filled in with the name of the corporation) and shall state all of the
37 following:

38 (1) Name of the corporation, and if such corporation is a corporation resulting
39 from a consolidation as herein provided, the names of the original
40 corporations.

41 (2) The date of filing of the certificate of incorporation, and if such corporation is
42 a corporation resulting from a consolidation as herein provided, the dates on
43 which the certificates of incorporation of the original corporations were filed.

44 (3) That the corporation elects to dissolve.

45 (4) The name and post office address of each of its directors, and the name, title,
46 and post office address of each of its officers.

47 (b) A certificate of dissolution shall be subscribed and acknowledged in the same manner
48 as an original certificate of incorporation by the president or a vice-president, and the secretary
49 or an assistant secretary, who shall make and annex an affidavit, stating that they have been
50 authorized to execute and file such certificate by the votes cast in person or by proxy by at least
51 two-thirds of its total membership.

1 in the form approved shall be executed and acknowledged on behalf of each consolidating
2 corporation by its president or vice-president and its seal shall be affixed thereto and attested by
3 its secretary. The articles of consolidation shall recite that they are executed pursuant to this
4 Chapter and shall state all of the following:

- 5 (1) The name of each consolidating corporation and the address of its principal
6 office.
- 7 (2) The name of the new corporation and the address of its principal office.
- 8 (3) A statement that each consolidating corporation agrees to the consolidation.
- 9 (4) The names and addresses of the directors of the new corporation.
- 10 (5) The terms and conditions of the consolidation and the mode of carrying the
11 same into effect, including the manner in which members of the consolidating
12 corporations may or shall become members of the new corporation, and may
13 contain any provisions not inconsistent with this Chapter deemed necessary
14 or advisable for the conduct of the business of the new corporation. The
15 president or vice-president of each consolidating corporation executing such
16 articles of consolidation shall make and annex thereto an affidavit stating that
17 the provisions of this section in respect of such articles were duly complied
18 with by such corporation.

19 **§ 117A-32. Merger.**

20 (a) Any one or more electric membership corporations, organized and operating under
21 this Chapter (each of which is hereinafter designated a "merging corporation"), may merge into
22 another like corporation (hereinafter designated the "surviving corporation"), by complying with
23 the requirements of this section and G.S. 117A-33.

24 (b) The proposition for the merger of the merging corporation(s) into the surviving
25 corporation and proposed articles of merger to give effect thereto shall be submitted to a meeting
26 of the members of such merging corporation(s) and of the surviving corporation, the notice of
27 which shall have attached thereto a copy of the proposed articles of merger.

28 (c) If the proposed merger and the proposed articles of merger, with any amendments,
29 are approved by the affirmative vote of not less than two-thirds of those members of each
30 corporation voting thereon at each such meeting, articles of merger in the form approved shall
31 be executed and acknowledged on behalf of each such corporation by its president or
32 vice-president, and its seal shall be affixed thereto and attested by its secretary. The articles of
33 merger shall recite that they are executed pursuant to this Chapter and shall state all of the
34 following:

- 35 (1) The name of each merging corporation and the address of its principal office.
- 36 (2) The name of the surviving corporation and the address of its principal office.
- 37 (3) A statement that each merging corporation and the surviving corporation
38 agree to the merger.
- 39 (4) The names and addresses of the directors of the surviving corporation.
- 40 (5) The terms and conditions of the merger and the mode of carrying the same
41 into effect, including the manner in which members of the merging
42 corporations may or shall become members of the surviving corporation, and
43 may contain any provisions not inconsistent with this Chapter deemed
44 necessary or advisable for the conduct of the business of the surviving
45 corporation. The president or vice-president of each corporation executing
46 such articles of merger shall make and annex thereto an affidavit stating that
47 the provisions of this section in respect of such article were duly complied
48 with by such corporation.

49 **§ 117A-33. Filing and recording of articles of consolidation or merger.**

50 Articles of consolidation or merger shall be filed with the Secretary of State, who shall
51 prepare one or more certified copies of the articles and forward one to the register of deeds of

1 each county in which a portion of the territory of the of the filing corporation is authorized to
2 furnish service. Each register of deeds shall then file the certified copy in their respective offices
3 and record the same as articles of incorporation are recorded. Once the requirements of this
4 section have been satisfied, the new consolidated corporation or the surviving merged
5 corporation, described and named in the articles filed, shall become and constitute a body
6 corporate in accordance with the provisions of such articles.

7 **"§ 117A-34. Effect of consolidation or merger.**

8 (a) In the case of a consolidation, upon compliance with the requirements of this section,
9 the existence of the consolidating corporations shall cease, and the articles of consolidation shall
10 be deemed to be the articles of incorporation of the new corporation.

11 (b) In the case of a merger, upon compliance with the requirements of this section, the
12 separate existence of the merging corporations shall cease and the articles of incorporation of the
13 surviving corporation shall be deemed to be amended to the extent, if any, that changes therein
14 are provided for in the articles of merger.

15 (c) In case of consolidation or merger, upon compliance with the provisions of the
16 requirements of this section, all of the following apply:

17 (1) All the rights, privileges, immunities, and franchises and all property, real and
18 personal, including without limitation applications for membership, all debts
19 due on whatever account and all other choses in action, of each of the
20 consolidating or merging corporations shall be deemed to be transferred to
21 and vested in the new or surviving corporation without further act or deed.

22 (2) The new or surviving corporation shall be responsible and liable for all the
23 liabilities and obligations of each of the consolidating or merging corporations
24 and any claim existing or action or proceeding pending by or against any of
25 the consolidating or merging corporations may be prosecuted as if the
26 consolidation or merger had not taken place, but the new or surviving
27 corporation may be substituted in its place.

28 (3) Neither the rights of creditors nor any liens upon the property of any of such
29 corporations shall be impaired by such consolidation or merger.

30 "Article 4.

31 "Indemnification.

32 **"§ 117A-46. Indemnification of directors, officers, employees, or agents.**

33 The powers, authority, and requirements as to indemnification, payment of expenses, and
34 purchase of liability insurance for directors, officers, employees, and agents, as provided in Part
35 5 of Article 8 of Chapter 55A of the General Statutes shall apply to and may be exercised by any
36 corporation formed under this Chapter. The indemnification of a director, officer, employee, or
37 agent of a corporation provided by this section shall not be deemed exclusive of any other rights
38 to which such director, officer, employee, or agent may be entitled, under any bylaw, agreement,
39 vote of board of directors or members, or otherwise with respect to any liability or litigation
40 expenses arising out of the person's activities as director, officer, employee, or agent."

41 **SECTION 1.(b)** G.S. 160A-319(a) reads as rewritten:

42 **"§ 160A-319. Utility franchises.**

43 (a) A city shall have authority to grant upon reasonable terms franchises for a telephone
44 system-system, broadband service provided by a broadband membership corporation established
45 pursuant to Chapter 117A of the General Statutes, and any of the enterprises listed in
46 G.S. 160A-311, except a cable television system. A franchise granted by a city authorizes the
47 operation of the franchised activity within the city. No franchise shall be granted for a period of
48 more than 60 years. A franchise granted for a sanitary landfill shall be subject to all requirements
49 pertaining thereto under G.S. 130A-294. A franchise for solid waste collection or disposal
50 systems and facilities, other than sanitary landfills, shall not be granted for a period of more than
51 30 years. Except as otherwise provided by law, when a city operates an enterprise, or upon

1 granting a franchise, a city may by ordinance make it unlawful to operate an enterprise without
2 a franchise."

3 **SECTION 2.** This act is effective when it becomes law.