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## Coates' Canons Blog: Leasing Government Property 2015 Legislative Changes: Notice Requirements and Communications Towers

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What do the time frame for providing public notice of a lease of government property and leasing government property for communications towers have in common? Changes to the statutory requirements for both are included in legislation that became law earlier this week. **Section 9 of S.L. 2015-246 (H44)** amends **G.S. 160A-272**, the statute that generally governs leasing government-owned property, in two ways: (1) increases the public notice period for certain types of leases from 10 days to 30 days; and (2) allows leases for communications towers to have a term of up to 25 years without being treated as a sale of government property. Both of these legislative changes are now law, so if you're interested, keep reading.

### **Background**

**G.S. 160A-272** establishes the procedures most local governments must use when leasing government-owned property. While leases of government-owned property typically involve real property, the statute also applies to personal property. The procedural requirements vary depending on the length of the lease, and can be divided into three categories:

1. *Leases for a term of one year or less:* The governing board may approve the lease without any public notice, and may delegate approval authority to the manager.
2. *Leases for a term between one and 10 years:* The lease must be approved by resolution adopted by the governing board at a regular meeting after public notice. The notice must be given by publication in a newspaper of general circulation in the jurisdiction and must describe the property to be leased, state the annual lease payments, and announce the board's intent to authorize the lease at its next regular meeting (notice by electronic means is not authorized).
3. *Leases for a term longer than 10 years:* The lease must be treated as a sale, and the local government must follow one of the methods authorized for the sale of government property under Article 12 of G.S. Chapter 160A.

**Section 9 of S.L. 2015-246 (H44)** changes these procedural requirements by (1) increasing the time for giving published notice of leases in category #2, and (2) when the lease involves a communications tower, extending the length of the lease term that triggers sale requirements for leases in category #3.

### **Notice Requirement**

Under the previous version of **G.S. 160A-272**, notice of intent to approve a lease with a term of between one and 10 years had to be published at least 10 days prior to the board meeting at which the resolution approving the lease was to be considered. **Section 9 of S.L. 2015-246 (H44)** changed the 10-day notice period to 30 days. The change became law on Wednesday, September 23<sup>rd</sup> and is now in effect.

*What does this mean?* If a city, county, school board, or other unit of local government subject to Article 12 property disposal requirements intends to lease property for a period of between one and 10 years, formal notice of the governing board's intent to approve the lease must be published at least 30 days prior to the regular meeting at which the board will take action.

*Does this change apply to leases of less than one year?* No. If the lease term is less than one year and there are no

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options for extension or renewal (see the next paragraph for discussion of renewal periods), no public notice is required. That was the law previously and **Section 9 of S.L. 2015-246 (H44)** does not change this.

*Do renewal periods count toward the term of the lease?* Yes. When calculating the length of the term of a lease for purposes of determining which set of procedures apply (see the categories of leases described above), **G.S. 160A-272** remains very clear: "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." The legislative amendments do not change this requirement. So, if the lease is for a term of one year with an option to renew for one additional year, it is really a 2-year lease for purposes of the statute. Consequently, it would fall into category #2 described above and would be subject to governing board approval after 30-days' published notice.

*When does this change go into effect?* It's already in effect. The Governor signed HB44 into law on Wednesday, September 23<sup>rd</sup>, and Section 9 of this bill which amends G.S. 160A-272 went into effect immediately. So, the 30-day notice requirement applies *now* to all leases with terms of between one and 10 years.

### **Communications Tower Leases**

**Section 9 of S.L. 2015-246 (H44)** also amends subsection (c) of **G.S. 160A-272** to give more flexibility to local governments when they lease property for siting and operating communications towers. Under the previous version of the statute, a lease of government property for siting and operating a communications tower was treated like any other lease. For example, if the lease was for a term of 10 years, the governing board approved it by resolution at a regular meeting after giving the required published notice. If, however, the lease was for a term of greater than 10 years, it had to be treated like a sale. Private communications providers typically require leases for a term longer than 10 years (25 years seems to be the industry norm), so the sale requirement triggered by long-term leases has posed a challenge to both local governments and private providers in siting towers in ideal geographic locations. The amendment to subsection (c) of **G.S. 160A-272** addresses this problem by authorizing leases with terms of up to 25 years for siting and operating communications towers without treating those leases as a sale of property.

*What does this mean?* A local government may now lease property for siting and operating a communications towers for a term of up to 25 years without having to treat that lease as a sale of property. The local government may enter into the lease following the procedural requirements for lease category #2 described above – governing board approval by resolution adopted at a regular meeting after 30 days' published notice.

*What is a communications tower?* A communications tower is specifically defined under **G.S. 146-29.2(a)(7)** as "new or existing structures, such as a monopole, lattice tower, guyed tower, fire observation tower or water tower that are designed to support or are capable of supporting equipment used in the transmission or receipt of television broadcast signals, radio wave signals, or electromagnetic radio signals used in the provision of wireless communication service." Think tall communications poles or towers to which an array of antennae is attached. The antennae often serve both private and public communications systems and broadcast signals.

*Do renewal periods count toward the term of the lease?* Yes. As discussed above, when calculating the length of the term of a lease for purposes of determining which set of procedures apply under **G.S. 160A-272**, renewal and extension periods count toward the total length of the lease term. So, if a communications tower lease is for a term of 25 years with one option to renew for an additional 25 year term, it is really a 50-year lease for purposes of the statute. Consequently, it would fall into category #3 described at the beginning of this post and must be treated as a sale of property.

*When does this change go into effect?* It's already in effect. The Governor signed HB44 into law on Wednesday, September 23<sup>rd</sup>, and Section 9 of this bill which amends G.S. 160A-272 went into effect immediately. So, the authorization for long-term communications tower leases is effective now.



*Are there other situations where a local government can enter into a long-term lease without treating it as a sale? Yes.* In 2014, the General Assembly enacted similar long-term lease authorization for siting and operating renewable energy facilities (**S.L. 2014-120**). Long-term renewable energy facility leases are discussed in my **2014 purchasing and contracting legislative summary**.

**For more information about this and other legislative changes, be sure to stay tuned for announcements about the SOG's legislative wrap-up webinars.**

## Links

- [www.ncleg.net/Sessions/2015/Bills/House/HTML/H44v5.html](http://www.ncleg.net/Sessions/2015/Bills/House/HTML/H44v5.html)
- [www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=160A-272](http://www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=160A-272)
- [www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=146-29.2](http://www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=146-29.2)
- [www.ncleg.net/EnactedLegislation/SessionLaws/HTML/2013-2014/SL2014-120.html](http://www.ncleg.net/EnactedLegislation/SessionLaws/HTML/2013-2014/SL2014-120.html)
- [www.sog.unc.edu/resources/legal-summaries/2014-legislative-summary-purchasing-and-contracting](http://www.sog.unc.edu/resources/legal-summaries/2014-legislative-summary-purchasing-and-contracting)