

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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SENATE BILL 377*

Short Title: Wireless Communications Infrastructure Siting. (Public)

Sponsors: Senator Hise (Primary Sponsor).

Referred to: Rules and Operations of the Senate

March 27, 2017

1 A BILL TO BE ENTITLED
2 AN ACT TO REFORM WIRELESS COMMUNICATIONS INFRASTRUCTURE
3 LICENSING AND PERMITTING TO AID IN DEPLOYMENT OF NEW
4 TECHNOLOGIES.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** The General Assembly finds the following:

- 7 (1) The design, engineering, permitting, construction, modification,
8 maintenance, and operation of wireless facilities are instrumental to the
9 provision of emergency services and to increasing access to advanced
10 technology and information for the citizens of North Carolina.
11 (2) Cities and counties play a key role in facilitating the use of the public
12 rights-of-way.
13 (3) Wireless services providers and wireless infrastructure providers must have
14 access to the public rights-of-way and the ability to attach to poles and
15 structures in the public rights-of-way to densify their networks and provide
16 next generation services.
17 (4) Small wireless facilities, including facilities commonly referred to as small
18 cells and distributed antenna systems, often may be deployed most
19 effectively in the public rights-of-way.
20 (5) Therefore, expeditious processes and reasonable and nondiscriminatory
21 rates, fees, and terms related to such deployments are essential to the
22 construction and maintenance of wireless facilities.
23 (6) Wireless facilities help ensure the State remains competitive in the global
24 economy.
25 (7) The timely design, engineering, permitting, construction, modification,
26 maintenance, and operation of wireless facilities are matters of statewide
27 concern and interest.

28 **SECTION 2.(a)** G.S. 160A-400.51(4a) is recodified as G.S. 160A-400.51(4b).

29 **SECTION 2.(b)** G.S. 160A-400.51(7a) is recodified as G.S. 160A-400.51(7b).

30 **SECTION 2.(c)** Part 3E of Article 19 of Chapter 160A of the General Statutes, as
31 amended by subsections (a) and (b) of this section, reads as rewritten:

32 "Part 3E. Wireless Telecommunications Facilities.

33 **"§ 160A-400.50. Purpose and compliance with federal law.**

34 ...
35 (c) This Part shall not be construed to authorize a city to require the construction or
36 installation of wireless facilities or to regulate wireless services other than as set forth herein.



"§ 160A-400.51. Definitions.

The following definitions apply in this Part.

- (1) Antenna. – Communications equipment that transmits, receives, or transmits and receives electromagnetic radio signals used in the provision of all types of wireless communications services.
- (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 State or local amendments to those codes enacted solely to address imminent threats of destruction of property or injury to persons.
- (2) Application. – A formal request submitted to the city to construct or modify a wireless support structure or a wireless facility.
- (2a) Base station. – A station at a specific site authorized to communicate with mobile stations, generally consisting of radio receivers, antennas, coaxial cables, power supplies, and other associated electronics.
- (3) Building permit. – An official administrative authorization issued by the city prior to beginning construction consistent with the provisions of G.S. 160A-417.
- (3a) City right-of-way. – A right-of-way owned, leased, or operated by a city, including any public street or alley that is not a part of the State highway system.
- (3b) City utility pole. – A utility pole owned or operated by a city in the right-of-way of any public street or alley that is not a part of the State highway system.
- (4) Collocation. – ~~The placement or installation~~ placement, installation, maintenance, modification, operation, or replacement of wireless facilities on, under, within, or on the surface of the earth adjacent to existing structures, including electrical transmission towers, water towers, buildings, and other structures capable of structurally supporting the attachment of wireless facilities in compliance with applicable codes.
- (4a) Communications service provider. – A cable operator, as defined in 47 U.S.C. § 522(5); a provider of information service, as defined in 47 U.S.C. § 153(24); a telecommunications carrier, as defined in 47 U.S.C. § 153(51); or a wireless provider.
- (4b) Eligible facilities request. – A request for modification of an existing wireless tower or base station that involves collocation of new transmission equipment or replacement of transmission equipment but does not include a substantial modification.
- (5) Equipment compound. – An area surrounding or near the base of a wireless support structure within which a wireless facility is located.
- (5a) Fall zone. – The area in which a wireless support structure may be expected to fall in the event of a structural failure, as measured by engineering standards.
- (6) Land development regulation. – Any ordinance enacted pursuant to this Part.
- (7) Search ring. – The area within which a wireless support facility or wireless facility must be located in order to meet service objectives of the wireless service provider using the wireless facility or wireless support structure.
- (7a) Small wireless facility. – A wireless facility that meets both of the following qualifications:
 - a. Each antenna is located inside an enclosure of no more than six cubic feet in volume or, in the case of an antenna that has exposed

- 1 elements, the antenna and all of its exposed elements, if enclosed,
2 could fit within an enclosure of no more than six cubic feet.
- 3 b. All other wireless equipment associated with the facility has a
4 cumulative volume of no more than 28 cubic feet. For purposes of
5 this sub-subdivision, the following types of ancillary equipment are
6 not considered "associated with the facility" and therefore are
7 excluded from the calculation of cumulative volume: electric meters,
8 concealment elements, telecommunications demarcation boxes,
9 ground-based enclosures, grounding equipment, power transfer
10 switches, cut-off switches, and vertical cable runs for the connection
11 of power and other services.
- 12 (7b) Substantial modification. – The mounting of a proposed wireless facility on
13 a wireless support structure that substantially changes the physical
14 dimensions of the support structure. A mounting is presumed to be a
15 substantial modification if it meets any one or more of the criteria listed
16 below. The burden is on the local government to demonstrate that a
17 mounting that does not meet the listed criteria constitutes a substantial
18 change to the physical dimensions of the wireless support structure.
- 19 a. Increasing the existing vertical height of the structure by the greater
20 of (i) more than ten percent (10%) or (ii) the height of one additional
21 antenna array with separation from the nearest existing antenna not to
22 exceed 20 feet.
- 23 b. Except where necessary to shelter the antenna from inclement
24 weather or to connect the antenna to the tower via cable, adding an
25 appurtenance to the body of a wireless support structure that
26 protrudes horizontally from the edge of the wireless support structure
27 the greater of (i) more than 20 feet or (ii) more than the width of the
28 wireless support structure at the level of the appurtenance.
- 29 c. Increasing the square footage of the existing equipment compound
30 by more than 2,500 square feet.
- 31 (8) Utility pole. – A structure that is designed for and used to carry lines, cables,
32 or wires for telephone, cable television, or electricity, or to provide
33 ~~lighting~~ lighting, traffic control, signage, or a similar function.
- 34 (8a) Water tower. – A water storage tank, a standpipe, or an elevated tank
35 situated on a support structure originally constructed for use as a reservoir or
36 facility to store or deliver water.
- 37 (9) ~~Wireless facility. – The set of equipment and network components, exclusive~~
38 ~~of the underlying wireless support structure or tower, including antennas,~~
39 ~~transmitters, receivers, base stations, power supplies, cabling, and associated~~
40 ~~equipment necessary to provide wireless data and wireless~~
41 ~~telecommunications services to a discrete geographic area.~~ Equipment at a
42 fixed location that enables wireless communications between user equipment
43 and a communications network, including (i) equipment associated with
44 wireless communications and (ii) radio transceivers, antennas, wires, coaxial
45 or fiber-optic cable, regular and backup power supplies, and comparable
46 equipment, regardless of technological configuration. The term includes
47 small wireless facilities but does not include any structure or improvements
48 on, under, within, or adjacent to which the equipment is collocated.
- 49 (9a) Wireless infrastructure provider. – Any person with a certificate to provide
50 telecommunications service in the State who builds or installs wireless

1 communication transmission equipment, wireless facilities, or wireless
2 support structures but that does not provide wireless services.

3 (9b) Wireless provider. – A wireless infrastructure provider or a wireless services
4 provider.

5 (9c) Wireless services. – Any services, whether at a fixed location or mobile,
6 provided using wireless facilities.

7 (9d) Wireless services provider. – A person who provides wireless services.

8 (10) Wireless support structure. – A new or existing structure, such as a
9 monopole, lattice tower, or guyed tower that is designed to support or
10 capable of supporting wireless facilities. A utility pole is not a wireless
11 support structure.

12 ...

13 **"§ 160A-400.54. Collocation of small wireless facilities.**

14 (a) Except as expressly provided in this Part, a city may not prohibit, regulate, or charge
15 for the collocation of small wireless facilities.

16 (b) A city may not institute, either expressly or in practice, a moratorium on (i) filing,
17 receiving, or processing applications or (ii) issuing permits or any other approvals for the
18 collocation of small wireless facilities.

19 (c) Small wireless facilities shall be classified as permitted uses and not subject to
20 zoning review or approval authorized by Article 19 of this Chapter if they are collocated (i) in a
21 city right-of-way within any zoning district or (ii) outside of rights-of-way on any property
22 other than property zoned exclusively for single-family residential use.

23 (d) A city may require an applicant to obtain a building permit to collocate a small
24 wireless facility, provided the permit is of general applicability and does not apply exclusively
25 to wireless facilities. A city shall receive applications for, process, and issue such permits
26 subject to the following requirements:

27 (1) A city may not, directly or indirectly, require an applicant to perform
28 services unrelated to the collocation for which approval is sought. For
29 purposes of this subdivision, "services unrelated to the collocation,"
30 includes, but is not limited to, in-kind contributions to the city such as the
31 reservation of fiber, conduit, or pole space for the city.

32 (2) An applicant shall not be required to provide more information to obtain a
33 permit than communications service providers that are not wireless
34 providers.

35 (3) Within 10 days of receiving an application, a city must determine and notify
36 the applicant whether the application is complete. If an application is
37 incomplete, a city must specifically identify the missing information.

38 (4) The permit application shall be processed on a nondiscriminatory basis and
39 shall be deemed approved if the city fails to approve or deny the application
40 within 60 days.

41 (5) A city may deny an application only on the basis that it does not meet the
42 city's applicable codes. The city must (i) document the basis for a denial,
43 including the specific code provisions on which the denial was based, and
44 (ii) send the documentation to the applicant on or before the day the city
45 denies an application. The applicant may cure the deficiencies identified by
46 the city and resubmit the application within 30 days of the denial without
47 paying an additional application fee. The city shall approve or deny the
48 revised application within 30 days. Any subsequent review shall be limited
49 to the deficiencies cited in the prior denial.

50 (6) An applicant seeking to collocate small wireless facilities at multiple
51 locations within the jurisdiction of a city shall be allowed at the applicant's

1 discretion to file a consolidated application and receive a single permit for
2 the collocation of all the small wireless facilities meeting the requirements of
3 this section.

4 (7) The permit may specify that collocation of the small wireless facility shall
5 commence within one year of approval and shall be pursued to completion.
6 The permit may not place a time limitation on completion of the small
7 wireless facility and shall remain in effect until the applicant requests that
8 the permit be terminated.

9 (e) The city may charge a fee to offset the cost of reviewing and processing applications
10 required by this section, subject to the following limitations:

11 (1) A city may charge an application fee only if a fee is required for other
12 similar activities within the city's jurisdiction.

13 (2) The fee shall be reasonably related in time to the incurring of such costs.

14 (3) A fee may not include (i) travel expenses incurred by a third party in its
15 review of an application or (ii) direct payment or reimbursement of
16 third-party rates or fees charged under a contingency or result-based
17 arrangement.

18 (4) In any dispute concerning the appropriateness of a fee, the city shall have the
19 burden of proving that the fee meets the requirements of this subsection.

20 (5) The total application fee shall not exceed the lesser of (i) the actual, direct
21 and reasonable costs to process and review applications for collocated small
22 wireless facilities, (ii) the amount charged by the city for a building permit
23 for any similar activity, and (iii) one hundred dollars (\$100.00) per facility
24 for the first five small wireless facilities addressed in an application plus
25 fifty dollars (\$50.00) for each additional small wireless facility addressed in
26 the application.

27 (f) A city shall not require an application for (i) routine maintenance or (ii) the
28 replacement of wireless facilities with wireless facilities that are substantially similar or the
29 same size or smaller. Provided, however, that a city may require a permit to work within a city
30 right-of-way for such activities, if applicable. Any such permits shall be subject to the
31 requirements provided in subsections (d) and (e) of this section.

32 **"§ 160A-400.55. Use of public right-of-way.**

33 (a) This section shall apply to activities of a wireless provider within any city
34 right-of-way.

35 (b) A city shall not enter into an exclusive arrangement with any person for use of city
36 rights-of-way for the construction, operation, marketing, or maintenance of wireless facilities or
37 wireless support structures or the collocation of small wireless facilities.

38 (c) The collocation of wireless facilities and the construction, operation, modification,
39 or maintenance of utility poles, wireless support structures, conduit, cable, and related
40 appurtenances and facilities along, across, upon, and under any city right-of-way shall not be
41 subject to zoning review or approval authorized by Article 19 of this Chapter if the wireless
42 provider wishing to undertake the collocation meets the following requirements:

43 (1) The wireless provider completes an application as specified in form and
44 content by the city.

45 (2) The structures and facilities do not obstruct or hinder the usual travel or
46 public safety on any rights-of-way or obstruct the legal use of such
47 rights-of-way by other utilities.

48 (3) Each new or modified utility pole and wireless support structure installed in
49 the right-of-way does not exceed the greater of (i) 10 feet in height above the
50 height of the tallest existing utility pole in place as July 1, 2017, located

1 within 500 feet of the new pole in the same rights-of-way or (ii) 50 feet
2 above ground level.

3 (4) Each new wireless facility in the right-of-way does not extend (i) more than
4 10 feet above an existing utility pole or wireless support structure in place as
5 of July 1, 2017, or (ii) above the height permitted for a new utility pole or
6 wireless support structure under this section.

7 (d) A city may not prohibit the construction, modification, or maintenance of utility
8 poles, wireless support structures, or wireless facilities that exceed the limits set forth in
9 subdivision (3) of subsection (c) of this section if those structures and facilities comply with
10 applicable zoning requirements for the site.

11 (e) Applicants for use of a city right-of-way shall comply with a city's undergrounding
12 requirements prohibiting communications service providers from installing structures in the
13 rights-of-way without prior zoning approval in areas zoned for single-family residential use, if
14 those requirements (i) are nondiscriminatory with respect to type of utility and (ii) do not
15 prohibit the replacement of structures existing at the time of adoption of the requirements.

16 (f) A city may charge a wireless provider for the use of a city right-of-way to construct,
17 collocate, install, mount, maintain, modify, operate, or replace a wireless facility or wireless
18 support structure if the city charges other communications service providers or publicly,
19 cooperatively, or municipally owned utilities for similar uses of the right-of-way. Charges
20 authorized by this section shall meet all of the following requirements:

21 (1) The charge shall not exceed the direct and actual cost of managing the
22 rights-of-way and shall not be based on the wireless provider's revenue or
23 customer counts. The city may not impose a charge if existing rates, fees, or
24 taxes already recover the direct and actual costs of managing the
25 rights-of-way.

26 (2) The charge shall not exceed that imposed on other users of the right-of-way,
27 including investor, city, or cooperatively owned entities.

28 (3) The charge shall not be unreasonable, discriminatory, or violate any
29 applicable law.

30 (4) In the case of collocation of small wireless facilities under
31 G.S. 160A-400.54, the charge shall not exceed an annual amount equal to
32 twenty dollars (\$20.00) for each utility pole or wireless support structure in
33 the city's corporate limits on which the wireless provider has collocated a
34 small wireless facility antenna.

35 Nothing in this subsection is intended to prevent a city from providing free access to city
36 rights-of-way on a nondiscriminatory basis in order to facilitate the public benefits of the
37 deployment of wireless services.

38 (g) A city may require a wireless provider to repair all damage to a city right-of-way
39 directly caused by the activities of the wireless provider, while occupying, installing, repairing,
40 or maintaining wireless facilities, wireless support structures, or utility poles and to return the
41 right-of-way to its functional equivalence before the damage. If the wireless provider fails to
42 make the repairs required by the city within a reasonable time after written notice, the city may
43 undertake those repairs and charge the applicable party the reasonable and documented cost of
44 the repairs.

45 **§ 160A-400.56. Dispute resolution.**

46 In the event a wireless provider and a city are unable to reach an agreement on fees or
47 charges arising under this Part, either party may initiate proceedings to resolve the dispute
48 before the Utilities Commission as set forth in G.S. 62-350(c). Unless the wireless provider and
49 the city otherwise agree, the city shall allow the placement of a wireless facility or wireless
50 support structure at a temporary rate of one-half of a city-proposed annual fee or charge or
51 twenty dollars (\$20.00), whichever is less, pending resolution of the dispute.

1 **"§ 160A-400.57. Limitation of authority.**

2 A city shall not adopt or enforce any ordinance, rule, regulation, or resolution that does any
3 of the following:

4 (1) Regulates the design, engineering, construction, installation, or operation of
5 any small wireless facility located in an interior structure or upon the site of
6 any stadium or athletic facility. The prohibition set forth in this subdivision
7 does not apply (i) if the city owns or otherwise controls the stadium or
8 athletic facility or (ii) to the enforcement of applicable codes.

9 (2) Requires a wireless provider to (i) indemnify and hold harmless the city and
10 its officers and employees or (ii) obtain insurance policies naming the city
11 and its officers and employees as additional insureds against any claims,
12 lawsuits, judgments, costs, liens, losses, expenses, or fees related to the
13 installation, repair, or maintenance of wireless facilities."

14 **SECTION 2.(d)** G.S. 62-350 reads as rewritten:

15 **"§ 62-350. Regulation of pole attachments.**

16 ...

17 (c) In the event the parties are unable to reach an agreement within 90 days of matters
18 arising under Part 3E of Article 19 of Chapter 160A of the General Statutes or a request to
19 negotiate pursuant to subsection (b) of this section, or if either party believes in good faith that
20 an impasse has been reached prior to the expiration of the 90 day period, either party may
21 initiate proceedings to resolve the dispute before the Commission. The Commission shall have
22 exclusive jurisdiction over proceedings arising under this section and shall adjudicate disputes
23 arising under this section on a case by case basis. The Commission shall not exercise general
24 rate making authority over communication service provider utilization of municipal or
25 membership corporation facilities. This section does not impact or expand the Commission's
26 authority under G.S. 62 133.5(h) or (m). The Public Staff may, at the discretion of the
27 Commission, be made a party to any proceedings under this section as may be appropriate to
28 serve the using and consuming public. The parties shall identify with specificity in their
29 respective filings the issues in dispute. The Commission, in its discretion, may consider any
30 evidence or rate making methodologies offered or proposed by the parties and shall resolve any
31 dispute identified in the filings consistent with the public interest and necessity so as to derive
32 just and reasonable rates, terms, and conditions. The Commission shall apply any new rate
33 adopted as a result of the action retroactively to the date immediately following the expiration
34 of the 90 day negotiating period or initiation of the proceeding, whichever is earlier. If the new
35 rate is for the continuation of an existing agreement, the new rate shall apply retroactively to
36 the date immediately following the end of the existing agreement. Prior to initiating any
37 proceedings under this subsection, a party must pay any undisputed fees related to the use of
38 poles, ducts, or conduits which are due and owing under a preexisting agreement with the
39 municipality or membership corporation. In any proceeding brought under this subsection, the
40 Commission may resolve any existing disputes regarding fees alleged to be owing under a
41 preexisting agreement or regarding safety compliance arising under subsection (d) of this
42 section. The provisions of this section do not apply to an entity whose poles, ducts, and
43 conduits are subject to regulation under section 224 of the Communications Act of 1934, as
44 amended.

45 ...

46 (e) For purposes of this section, the term "communications service provider" means a
47 person or entity that provides or intends to provide: (i) telephone service as a public utility
48 under Chapter 62 of the General Statutes or as a telephone membership corporation organized
49 under Chapter 117 of the General Statutes; (ii) broadband service, but excluding broadband
50 service over energized electrical conductors owned by a municipality or membership
51 corporation; ~~or~~ (iii) cable service over a cable system as those terms are defined in Article 42 of

Chapter 66 of the General Statutes; or (iv) services as a wireless provider as defined in G.S. 160A-400.51.

...."

SECTION 2.(e) This section becomes effective July 1, 2017, and applies to applications for wireless communications infrastructure received by cities on or after that date. Any charge imposed by a city on wireless providers for use of rights-of-way owned, leased, or operated by a city to construct, collocate, install, mount, maintain, modify, operate, or replace a wireless facility or wireless support structure shall comply with the requirements of G.S. 160A-400.55, as enacted by this subsection (c) of this section, no later than January 1, 2018.

SECTION 3.(a) G.S. 136-18 reads as rewritten:

"§ 136-18. Powers of Department of Transportation.

...

(10) To make proper and reasonable rules, regulations and ordinances for the placing or erection of telephone, telegraph, electric and other lines, above or below ground, wireless facilities, signboards, fences, gas, water, sewerage, oil, or other pipelines, and other similar obstructions that may, in the opinion of the Department of Transportation, contribute to the hazard upon any of the said highways or in any way interfere with the same, and to make reasonable rules and regulations for the proper control thereof. And whenever the order of the said Department of Transportation shall require the removal of, or changes in, the location of telephone, telegraph, electric or other lines, wireless facilities, signboards, fences, gas, water, sewerage, oil, or other pipelines, or other similar obstructions, the owners thereof shall at their own expense, except as provided in G.S. 136-19.5(c), move or change the same to conform to the order of said Department of Transportation. Any violation of such rules and regulations or noncompliance with such orders shall constitute a Class 1 misdemeanor. For purposes of this subdivision, "wireless facilities" shall have the definition set forth in G.S. 160A-400.51.

...."

SECTION 3.(b) Article 2 of Chapter 136 of the General Statutes is amended by adding a new section to read:

"§ 136-18.3A. Wireless communications infrastructure.

(a) The definitions set forth in G.S. 160A-400.51 shall apply to this section.

(b) The Department of Transportation is authorized to issue permits to wireless providers for the collocation of wireless facilities and the construction, operation, modification, or maintenance of utility poles, wireless support structures, conduit, cable, and related appurtenances and facilities for the provision of wireless services along, across, upon, and under the rights-of-way of State-maintained highways. The permits and included requirements shall be issued and administered in a reasonable and nondiscriminatory manner.

(c) If the Department of Transportation does not take action to approve or deny a permit application under this section within 60 days of receiving the application from a wireless provider, the permit is deemed approved.

(d) The Department of Transportation may charge a wireless provider for the use of the rights-of-way of a State-maintained highway to construct, collocate, install, mount, maintain, modify, operate, or replace a wireless facility or wireless support structure if and to the same extent the Department of Transportation charges other communications service providers or publicly, cooperatively, or municipally owned utilities for similar uses of the right-of-way. Charges authorized by this subsection shall not exceed the direct and actual cost of managing the rights-of-way and shall not be based on the wireless provider's revenue or customer counts.

1 The Department of Transportation may not impose a charge if existing rates, fees, or taxes
2 already recover the direct and actual costs of managing the rights-of-way.

3 (e) The Department of Transportation may require a wireless provider to repair all
4 damage to a right-of-way directly caused by the activities of the wireless provider, while
5 occupying, installing, repairing, or maintaining wireless facilities, wireless support structures,
6 or utility poles and to return the right-of-way to its functional equivalence before the damage. If
7 the wireless provider fails to make the repairs required by the Department of Transportation
8 within a reasonable time after written notice, the Department of Transportation may undertake
9 those repairs and charge the applicable party the reasonable and documented cost of the
10 repairs."

11 **SECTION 4.** Except as otherwise provided, this act is effective when it becomes
12 law.