

GENERAL ASSEMBLY OF NORTH CAROLINA
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HOUSE PRINCIPAL CLERK

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HOUSE BILL DRH40181-MH-12 (11/30)

Short Title: Wireless Communications Infrastructure Siting. (Public)

Sponsors: Representatives Saine, Torbett, and Wray (Primary Sponsors).

Referred to:

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

4 The General Assembly of North Carolina enacts:

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

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

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

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

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

31 "Part 3E. Wireless Telecommunications Facilities.

32 "**§ 160A-400.50. Purpose and compliance with federal law.**

33 ...

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

36 "**§ 160A-400.51. Definitions.**



* D R H 4 0 1 8 1 - M H - 1 2 *

1 The following definitions apply in this Part.

- 2 (1) Antenna. – Communications equipment that transmits, receives, or transmits
3 and receives electromagnetic radio signals used in the provision of all types of
4 wireless communications services.
- 5 (1a) Applicable codes. – The North Carolina State Building Code and any other
6 uniform building, fire, electrical, plumbing, or mechanical codes adopted by a
7 recognized national code organization together with State or local amendments
8 to those codes enacted solely to address imminent threats of destruction of
9 property or injury to persons.
- 10 (2) Application. – A formal request submitted to the city to construct or modify a
11 wireless support structure or a wireless facility.
- 12 (2a) Base station. – A station at a specific site authorized to communicate with
13 mobile stations, generally consisting of radio receivers, antennas, coaxial
14 cables, power supplies, and other associated electronics.
- 15 (3) Building permit. – An official administrative authorization issued by the city
16 prior to beginning construction consistent with the provisions of
17 G.S. 160A-417.
- 18 (3a) City right-of-way. – A right-of-way owned, leased, or operated by a city,
19 including any public street or alley that is not a part of the State highway
20 system.
- 21 (3b) City utility pole. – A utility pole owned or operated by a city in the
22 right-of-way of any public street or alley that is not a part of the State highway
23 system.
- 24 (4) Collocation. – ~~The placement or installation~~ placement, installation,
25 maintenance, modification, operation, or replacement of wireless facilities on
26 on, under, within, or on the surface of the earth adjacent to existing structures,
27 including electrical transmission towers, water towers, buildings, and other
28 structures capable of structurally supporting the attachment of wireless facilities
29 in compliance with applicable codes.
- 30 (4a) Communications service provider. – A cable operator, as defined in 47 U.S.C. §
31 522(5); a provider of information service, as defined in 47 U.S.C. § 153(24); a
32 telecommunications carrier, as defined in 47 U.S.C. § 153(51); or a wireless
33 provider.
- 34 (4b) Eligible facilities request. – A request for modification of an existing wireless
35 tower or base station that involves collocation of new transmission equipment
36 or replacement of transmission equipment but does not include a substantial
37 modification.
- 38 (5) Equipment compound. – An area surrounding or near the base of a wireless
39 support structure within which a wireless facility is located.
- 40 (5a) Fall zone. – The area in which a wireless support structure may be expected to
41 fall in the event of a structural failure, as measured by engineering standards.
- 42 (6) Land development regulation. – Any ordinance enacted pursuant to this Part.
- 43 (7) Search ring. – The area within which a wireless support facility or wireless
44 facility must be located in order to meet service objectives of the wireless
45 service provider using the wireless facility or wireless support structure.
- 46 (7a) Small wireless facility. – A wireless facility that meets both of the following
47 qualifications:
- 48 a. Each antenna is located inside an enclosure of no more than six cubic
49 feet in volume or, in the case of an antenna that has exposed elements,
50 the antenna and all of its exposed elements, if enclosed, could fit within
51 an enclosure of no more than six cubic feet.

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

- 1 (9b) Wireless provider. – A wireless infrastructure provider or a wireless services
2 provider.
3 (9c) Wireless services. – Any services, whether at a fixed location or mobile,
4 provided using wireless facilities.
5 (9d) Wireless services provider. – A person who provides wireless services.
6 (10) Wireless support structure. – A new or existing structure, such as a monopole,
7 lattice tower, or guyed tower that is designed to support or capable of
8 supporting wireless facilities. A utility pole is not a wireless support structure.
9

10 **§ 160A-400.54. Collocation of small wireless facilities.**

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

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

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

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

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

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

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

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

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

46 (6) An applicant seeking to collocate small wireless facilities at multiple locations
47 within the jurisdiction of a city shall be allowed at the applicant's discretion to
48 file a consolidated application and receive a single permit for the collocation of
49 all the small wireless facilities meeting the requirements of this section.

50 (7) The permit may specify that collocation of the small wireless facility shall
51 commence within one year of approval and shall be pursued to completion. The

1 permit may not place a time limitation on completion of the small wireless
2 facility and shall remain in effect until the applicant requests that the permit be
3 terminated.

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

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

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

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

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

14 (5) The total application fee shall not exceed the lesser of (i) the actual, direct and
15 reasonable costs to process and review applications for collocated small
16 wireless facilities, (ii) the amount charged by the city for a building permit for
17 any similar activity, and (iii) one hundred dollars (\$100.00) per facility for the
18 first five small wireless facilities addressed in an application plus fifty dollars
19 (\$50.00) for each additional small wireless facility addressed in the application.

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

25 **§ 160A-400.55. Use of public right-of-way.**

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

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

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

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

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

41 (3) Each new or modified utility pole and wireless support structure installed in the
42 right-of-way does not exceed the greater of (i) 10 feet in height above the height
43 of the tallest existing utility pole in place as July 1, 2017, located within 500
44 feet of the new pole in the same rights-of-way or (ii) 50 feet above ground
45 level.

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

50 (d) A city may not prohibit the construction, modification, or maintenance of utility poles,
51 wireless support structures, or wireless facilities that exceed the limits set forth in subdivision (3)

1 of subsection (c) of this section if those structures and facilities comply with applicable zoning
2 requirements for the site.

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

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

- 13 (1) The charge shall not exceed the direct and actual cost of managing the
14 rights-of-way and shall not be based on the wireless provider's revenue or
15 customer counts. The city may not impose a charge if existing rates, fees, or
16 taxes already recover the direct and actual costs of managing the rights-of-way.
- 17 (2) The charge shall not exceed that imposed on other users of the right-of-way,
18 including investor, city, or cooperatively owned entities.
- 19 (3) The charge shall not be unreasonable, discriminatory, or violate any applicable
20 law.
- 21 (4) In the case of collocation of small wireless facilities under G.S. 160A-400.54,
22 the charge shall not exceed an annual amount equal to twenty dollars (\$20.00)
23 for each utility pole or wireless support structure in the city's corporate limits on
24 which the wireless provider has collocated a small wireless facility antenna.

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

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

35 **"§ 160A-400.56. Dispute resolution.**

36 In the event a wireless provider and a city are unable to reach an agreement on fees or charges
37 arising under this Part, either party may initiate proceedings to resolve the dispute before the
38 Utilities Commission as set forth in G.S. 62-350(c). Unless the wireless provider and the city
39 otherwise agree, the city shall allow the placement of a wireless facility or wireless support
40 structure at a temporary rate of one-half of a city-proposed annual fee or charge or twenty dollars
41 (\$20.00), whichever is less, pending resolution of the dispute.

42 **"§ 160A-400.57. Limitation of authority.**

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

- 45 (1) Regulates the design, engineering, construction, installation, or operation of any
46 small wireless facility located in an interior structure or upon the site of any
47 stadium or athletic facility. The prohibition set forth in this subdivision does not
48 apply (i) if the city owns or otherwise controls the stadium or athletic facility or
49 (ii) to the enforcement of applicable codes.
- 50 (2) Requires a wireless provider to (i) indemnify and hold harmless the city and its
51 officers and employees or (ii) obtain insurance policies naming the city and its

1 officers and employees as additional insureds against any claims, lawsuits,
2 judgments, costs, liens, losses, expenses, or fees related to the installation,
3 repair, or maintenance of wireless facilities."

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

5 **"§ 62-350. Regulation of pole attachments.**

6 ...

7 (c) In the event the parties are unable to reach an agreement within 90 days of matters
8 arising under Part 3E of Article 19 of Chapter 160A of the General Statutes or a request to
9 negotiate pursuant to subsection (b) of this section, or if either party believes in good faith that an
10 impasse has been reached prior to the expiration of the 90 day period, either party may initiate
11 proceedings to resolve the dispute before the Commission. The Commission shall have exclusive
12 jurisdiction over proceedings arising under this section and shall adjudicate disputes arising under
13 this section on a case by case basis. The Commission shall not exercise general rate making
14 authority over communication service provider utilization of municipal or membership corporation
15 facilities. This section does not impact or expand the Commission's authority under G.S. 62
16 133.5(h) or (m). The Public Staff may, at the discretion of the Commission, be made a party to any
17 proceedings under this section as may be appropriate to serve the using and consuming public.
18 The parties shall identify with specificity in their respective filings the issues in dispute. The
19 Commission, in its discretion, may consider any evidence or rate making methodologies offered or
20 proposed by the parties and shall resolve any dispute identified in the filings consistent with the
21 public interest and necessity so as to derive just and reasonable rates, terms, and conditions. The
22 Commission shall apply any new rate adopted as a result of the action retroactively to the date
23 immediately following the expiration of the 90 day negotiating period or initiation of the
24 proceeding, whichever is earlier. If the new rate is for the continuation of an existing agreement,
25 the new rate shall apply retroactively to the date immediately following the end of the existing
26 agreement. Prior to initiating any proceedings under this subsection, a party must pay any
27 undisputed fees related to the use of poles, ducts, or conduits which are due and owing under a
28 preexisting agreement with the municipality or membership corporation. In any proceeding
29 brought under this subsection, the Commission may resolve any existing disputes regarding fees
30 alleged to be owing under a preexisting agreement or regarding safety compliance arising under
31 subsection (d) of this section. The provisions of this section do not apply to an entity whose poles,
32 ducts, and conduits are subject to regulation under section 224 of the Communications Act of
33 1934, as amended.

34 ...

35 (e) For purposes of this section, the term "communications service provider" means a
36 person or entity that provides or intends to provide: (i) telephone service as a public utility under
37 Chapter 62 of the General Statutes or as a telephone membership corporation organized under
38 Chapter 117 of the General Statutes; (ii) broadband service, but excluding broadband service over
39 energized electrical conductors owned by a municipality or membership corporation; ~~or~~ (iii) cable
40 service over a cable system as those terms are defined in Article 42 of Chapter 66 of the General
41 ~~Statutes.~~ Statutes; or (iv) services as a wireless provider as defined in G.S. 160A-400.51.

42"

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

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

50 **"§ 136-18. Powers of Department of Transportation.**

51 ...

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

17 "...."

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

20 "**§ 136-18.3A. Wireless communications infrastructure.**

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

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

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

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

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

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