

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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SENATE BILL 88

Short Title: Pole Attachment Compensation. (Public)

Sponsors: Senators Brown (Primary Sponsor); Bryant, Clark, Cook, Curtis, Daniel, J. Davis, Foushee, Harrington, Hise, B. Jackson, Lee, McInnis, Pate, Rabin, Rabon, Randleman, Sanderson, Smith, Smith-Ingram, Van Duyn, and Woodard.

Referred to: Rules and Operations of the Senate.

February 17, 2015

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT ELECTRIC MEMBERSHIP CORPORATIONS AND MUNICIPAL ELECTRIC PROVIDERS ARE EXEMPT FROM SECTION 224 OF THE COMMUNICATIONS ACT OF 1934 IN THE STATE'S REGULATION OF POLE ATTACHMENTS AND TO PROVIDE GUIDANCE IN RESOLVING DISPUTES REGARDING COMPENSATION FOR POLE ATTACHMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 62-350(a) reads as rewritten:

"(a) A municipality, or a membership corporation organized under Chapter 117 of the General Statutes, that owns or controls poles, ducts, or ~~conduits~~ conduits, but which is exempt from regulation under section 224 of the Communications Act of 1934, as amended, shall allow any communications service provider to utilize its poles, ducts, and conduits at just, reasonable, and nondiscriminatory rates, terms, and conditions adopted pursuant to negotiated or adjudicated agreements. A request to utilize poles, ducts, or conduits under this section may be denied only if there is insufficient capacity or for reasons of safety, reliability, and generally applicable engineering principles, and those limitations cannot be remedied by rearranging, expanding, or otherwise reengineering the facilities at the reasonable and actual cost of the municipality or membership corporation to be reimbursed by the communications service provider. In granting a request under this section, a municipality or membership corporation shall require the requesting entity to comply with applicable safety requirements, including the National Electrical Safety Code and the applicable rules and regulations issued by the Occupational Safety and Health Administration."

SECTION 2. G.S. 62-350(c) reads as rewritten:

"(c) In the event the parties are unable to reach an agreement within 90 days of a request to negotiate pursuant to subsection (b) of this section, or if either party believes in good faith that an impasse has been reached prior to the expiration of the 90-day period, either party may bring an action in Business Court in accordance with the procedures for a mandatory business case set forth in G.S. 7A-45.4, and the Business Court shall have exclusive jurisdiction over such actions. The parties shall identify with specificity in their respective pleadings the issues in dispute, and the Business Court shall (i) establish a procedural schedule which, unless otherwise agreed by the parties, is intended to resolve the action within a time period not to exceed 180 days of the commencement of the action, (ii) resolve any dispute identified in the pleadings consistent with the public interest and necessity so as to derive just and reasonable rates, terms, and conditions, as the term "just and reasonable" has been determined in



1 accordance with the laws of this State, taking into consideration and applying such other factors
2 or evidence that may be presented by a party, ~~including without limitation the rules and~~
3 ~~regulations applicable to attachments by each type of communications service provider under~~
4 ~~section 224 of the Communications Act of 1934, as amended,~~ and (iii) apply any new rate
5 adopted as a result of the action retroactively to the date immediately following the expiration
6 of the 90-day negotiating period or initiation of the lawsuit, whichever is earlier. If the new rate
7 is for the continuation of an existing agreement, the new rate shall apply retroactively to the
8 date immediately following the end of the existing agreement. Prior to commencing any action
9 under this subsection, a party must pay any undisputed fees related to the use of poles, ducts, or
10 conduits which are due and owing under a preexisting agreement with the municipality or
11 membership corporation. In any action brought under this subsection, the court may resolve
12 any existing disputes regarding fees alleged to be owing under a preexisting agreement or
13 regarding safety compliance arising under subsection (d) of this section. The provisions of this
14 section do not apply to an entity whose poles, ducts, and conduits are subject to regulation
15 under section 224 of the Communications Act of 1934, as amended."

16 **SECTION 3.** This act is effective when it becomes law and applies to any action
17 filed on or after that date.