

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H

4

HOUSE BILL 310
Committee Substitute Favorable 5/18/17
Corrected Copy 5/19/17
Committee Substitute #2 Favorable 5/24/17

Short Title: Wireless Communications Infrastructure Siting.

(Public)

Sponsors:

Referred to:

March 13, 2017

1 A BILL TO BE ENTITLED
2 AN ACT TO REFORM COLLOCATION OF SMALL WIRELESS COMMUNICATIONS
3 INFRASTRUCTURE 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,
7 maintenance, and operation of wireless facilities are instrumental to the
8 provision of emergency services and to increasing access to advanced
9 technology and 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
15 next generation services.
- 16 (4) Small wireless facilities, including facilities commonly referred to as small
17 cells and distributed antenna systems, often may be deployed most
18 effectively in the public rights-of-way.
- 19 (5) Expedient processes and reasonable and nondiscriminatory rates, fees, and
20 terms related to such deployments are essential to the construction and
21 maintenance of wireless facilities.
- 22 (6) Wireless facilities help ensure the State remain 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(4d).

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 ...



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

3 **"§ 160A-400.51. Definitions.**

4 The following definitions apply in this Part.

- 5 (1) Antenna. – Communications equipment that transmits, receives, or transmits
6 and receives electromagnetic radio signals used in the provision of all types
7 of wireless communications services.
- 8 (1a) Applicable codes. – The North Carolina State Building Code and any other
9 uniform building, fire, electrical, plumbing, or mechanical codes adopted by
10 a recognized national code organization together with State or local
11 amendments to those codes enacted solely to address imminent threats of
12 destruction of property or injury to persons.
- 13 (2) Application. – ~~A formal request submitted to the city to construct or modify~~
14 ~~a wireless support structure or a wireless facility.~~ A request that is submitted
15 by an applicant to a city for a permit to collocate wireless facilities or to
16 approve the installation, modification, or replacement of a utility pole, city
17 utility pole, or wireless support structure.
- 18 (2a) Base station. – A station at a specific site authorized to communicate with
19 mobile stations, generally consisting of radio receivers, antennas, coaxial
20 cables, power supplies, and other associated electronics.
- 21 (3) Building permit. – An official administrative authorization issued by the city
22 prior to beginning construction consistent with the provisions of
23 G.S. 160A-417.
- 24 (3a) City right-of-way. – A right-of-way owned, leased, or operated by a city,
25 including any public street or alley that is not a part of the State highway
26 system.
- 27 (3b) City utility pole. – A pole owned by a city in the city right-of-way that
28 provides lighting, traffic control, or a similar function.
- 29 (4) Collocation. – ~~The placement or installation placement, installation,~~
30 ~~maintenance, modification, operation, or replacement of wireless facilities~~
31 ~~on~~ on, under, within, or on the surface of the earth adjacent to existing
32 structures, including electrical transmission towers, utility poles, city utility
33 poles, water towers, buildings, and other structures capable of structurally
34 supporting the attachment of wireless facilities in compliance with
35 applicable codes. The term "collocation" does not include the installation of
36 new utility poles, city utility poles, or wireless support structures.
- 37 (4a) Communications facility. – The set of equipment and network components,
38 including wires and cables and associated facilities used by a
39 communications service provider to provide communications service.
- 40 (4b) Communications service. – Cable service as defined in 47 U.S.C. § 522(6),
41 information service as defined in 47 U.S.C. § 153(24), telecommunications
42 service as defined in 47 U.S.C. § 153(53), or wireless services.
- 43 (4c) Communications service provider. – A cable operator as defined in 47
44 U.S.C. § 522(5); a provider of information service, as defined in 47 U.S.C. §
45 153(24); a telecommunications carrier, as defined in 47 U.S.C. § 153(51); or
46 a wireless provider.
- 47 (4d) Eligible facilities request. – A request for modification of an existing
48 wireless tower or base station that involves collocation of new transmission
49 equipment or replacement of transmission equipment but does not include a
50 substantial modification.

- 1 (5) Equipment compound. – An area surrounding or near the base of a wireless
2 support structure within which a wireless facility is located.
- 3 (5a) Fall zone. – The area in which a wireless support structure may be expected
4 to fall in the event of a structural failure, as measured by engineering
5 standards.
- 6 (6) Land development regulation. – Any ordinance enacted pursuant to this Part.
- 7 (6a) Micro wireless facility. – A small wireless facility that is no larger in
8 dimension than 24 inches in length, 15 inches in width, and 12 inches in
9 height and that has an exterior antenna, if any, no longer than 11 inches.
- 10 (7) Search ring. – The area within which a wireless support facility or wireless
11 facility must be located in order to meet service objectives of the wireless
12 service provider using the wireless facility or wireless support structure.
- 13 (7a) Small wireless facility. – A wireless facility that meets both of the following
14 qualifications:
- 15 a. Each antenna is located inside an enclosure of no more than six cubic
16 feet in volume or, in the case of an antenna that has exposed
17 elements, the antenna and all of its exposed elements, if enclosed,
18 could fit within an enclosure of no more than six cubic feet.
- 19 b. All other wireless equipment associated with the facility has a
20 cumulative volume of no more than 28 cubic feet. For purposes of
21 this sub-subdivision, the following types of ancillary equipment are
22 not included in the calculation of equipment volume: electric meters,
23 concealment elements, telecommunications demarcation boxes,
24 ground-based enclosures, grounding equipment, power transfer
25 switches, cut-off switches, vertical cable runs for the connection of
26 power and other services, or other support structures.
- 27 (7b) Substantial modification. – The mounting of a proposed wireless facility on
28 a wireless support structure that substantially changes the physical
29 dimensions of the support structure. A mounting is presumed to be a
30 substantial modification if it meets any one or more of the criteria listed
31 below. The burden is on the local government to demonstrate that a
32 mounting that does not meet the listed criteria constitutes a substantial
33 change to the physical dimensions of the wireless support structure.
- 34 a. Increasing the existing vertical height of the structure by the greater
35 of (i) more than ten percent (10%) or (ii) the height of one additional
36 antenna array with separation from the nearest existing antenna not to
37 exceed 20 feet.
- 38 b. Except where necessary to shelter the antenna from inclement
39 weather or to connect the antenna to the tower via cable, adding an
40 appurtenance to the body of a wireless support structure that
41 protrudes horizontally from the edge of the wireless support structure
42 the greater of (i) more than 20 feet or (ii) more than the width of the
43 wireless support structure at the level of the appurtenance.
- 44 c. Increasing the square footage of the existing equipment compound
45 by more than 2,500 square feet.
- 46 (8) Utility pole. – A structure that is designed for and used to carry lines, cables,
47 ~~or wires~~ wires, lighting facilities, or small wireless facilities for telephone,
48 cable television, ~~or electricity, or to provide lighting,~~ lighting, or wireless
49 services.

- 1 (8a) Water tower. – A water storage tank, a standpipe, or an elevated tank
2 situated on a support structure originally constructed for use as a reservoir or
3 facility to store or deliver water.
- 4 (9) ~~Wireless facility. – The set of equipment and network components, exclusive~~
5 ~~of the underlying wireless support structure or tower, including antennas,~~
6 ~~transmitters, receivers, base stations, power supplies, cabling, and associated~~
7 ~~equipment necessary to provide wireless data and wireless~~
8 ~~telecommunications services to a discrete geographic area.~~Equipment at a
9 fixed location that enables wireless communications between user equipment
10 and a communications network, including (i) equipment associated with
11 wireless communications and (ii) radio transceivers, antennas, wires, coaxial
12 or fiber-optic cable, regular and backup power supplies, and comparable
13 equipment, regardless of technological configuration. The term includes
14 small wireless facilities. The term shall not include any of the following:
- 15 a. The structure or improvements on, under, within, or adjacent to
16 which the equipment is collocated.
- 17 b. Wireline backhaul facilities.
- 18 c. Coaxial or fiber-optic cable that is between wireless structures or
19 utility poles or city utility poles or that is otherwise not immediately
20 adjacent to or directly associated with a particular antenna.
- 21 (9a) Wireless infrastructure provider. – Any person with a certificate to provide
22 telecommunications service in the State who builds or installs wireless
23 communication transmission equipment, wireless facilities, or wireless
24 support structures for small wireless facilities but that does not provide
25 wireless services.
- 26 (9b) Wireless provider. – A wireless infrastructure provider or a wireless services
27 provider.
- 28 (9c) Wireless services. – Any services, using licensed or unlicensed wireless
29 spectrum, including the use of Wi-Fi, whether at a fixed location or mobile,
30 provided to the public using wireless facilities.
- 31 (9d) Wireless services provider. – A person who provides wireless services.
- 32 (10) Wireless support structure. – A new or existing structure, such as a
33 monopole, lattice tower, or guyed tower that is designed to support or
34 capable of supporting wireless facilities. A utility pole or a city utility pole is
35 not a wireless support structure.

36 ...

37 **"§ 160A-400.54. Collocation of small wireless facilities.**

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

40 (b) A city may not establish a moratorium on (i) filing, receiving, or processing
41 applications or (ii) issuing permits or any other approvals for the collocation of small wireless
42 facilities.

43 (c) Small wireless facilities that meet the height requirements of
44 G.S. 160A-400.55(b)(2) shall only be subject to administrative review and approval under
45 subsection (d) of this section if they are collocated (i) in a city right-of-way within any zoning
46 district or (ii) outside of city rights-of-way on property other than single-family residential
47 property.

48 (d) A city may require an applicant to obtain a permit to collocate a small wireless
49 facility. A city shall receive applications for, process, and issue such permits subject to the
50 following requirements:

- 1 (1) A city may not, directly or indirectly, require an applicant to perform
2 services unrelated to the collocation for which approval is sought. For
3 purposes of this subdivision, "services unrelated to the collocation," includes
4 in-kind contributions to the city such as the reservation of fiber, conduit, or
5 pole space for the city.
- 6 (2) The wireless provider completes an application as specified in form and
7 content by the city. A wireless provider shall not be required to provide more
8 information to obtain a permit than communications service providers that
9 are not wireless providers.
- 10 (3) A permit application shall be deemed complete unless the city provides
11 notice otherwise in writing to the applicant within 30 days of submission or
12 within some other mutually agreed upon time frame. The notice shall
13 identify the deficiencies in the application which, if cured, would make the
14 application complete. The application shall be deemed complete on
15 resubmission if the additional materials cure the deficiencies identified.
- 16 (4) The permit application shall be processed on a nondiscriminatory basis and
17 shall be deemed approved if the city fails to approve or deny the application
18 within 45 days from the time the application is deemed complete or a
19 mutually agreed upon time frame between the city and the applicant.
- 20 (5) A city may deny an application only on the basis that it does not meet any of
21 the following: (i) the city's applicable codes; (ii) local code provisions or
22 regulations that concern public safety, objective design standards for
23 decorative utility poles, city utility poles, or reasonable and
24 nondiscriminatory stealth and concealment requirements, including
25 screening or landscaping for ground-mounted equipment; (iii) public safety
26 and reasonable spacing requirements concerning the location of
27 ground-mounted equipment in a right-of-way; or (iv) the historic
28 preservation requirements in subsection 160A-400.55(h). The city must (i)
29 document the basis for a denial, including the specific code provisions on
30 which the denial was based and (ii) send the documentation to the applicant
31 on or before the day the city denies an application. The applicant may cure
32 the deficiencies identified by the city and resubmit the application within 30
33 days of the denial without paying an additional application fee. The city
34 shall approve or deny the revised application within 30 days of the date on
35 which the application was resubmitted. Any subsequent review shall be
36 limited to the deficiencies cited in the prior denial.
- 37 (6) An application must include an attestation that the small wireless facilities
38 shall be collocated on the utility pole, city utility pole, or wireless support
39 structure and that the small wireless facilities shall be activated for use by a
40 wireless services provider to provide service no later than one year from the
41 permit issuance date, unless the city and the wireless provider agree to
42 extend this period or a delay is caused by a lack of commercial power at the
43 site.
- 44 (7) An applicant seeking to collocate small wireless facilities at multiple
45 locations within the jurisdiction of a city shall be allowed at the applicant's
46 discretion to file a consolidated application for no more than 25 separate
47 facilities and receive a permit for the collocation of all the small wireless
48 facilities meeting the requirements of this section. A city may remove small
49 wireless facility collocations from a consolidated application and treat
50 separately small wireless facility collocations (i) for which incomplete

1 information has been provided or (ii) that are denied. The city may issue a
2 separate permit for each collocation that is approved.

3 (8) The permit may specify that collocation of the small wireless facility shall
4 commence within six months of approval and shall be activated for use no
5 later than one year from the permit issuance date, unless the city and the
6 wireless provider agree to extend this period or a delay is caused by a lack of
7 commercial power at the site.

8 (e) A city may charge an application fee that shall not exceed the lesser of (i) the actual,
9 direct, and reasonable costs to process and review applications for collocated small wireless
10 facilities; (ii) the amount charged by the city for permitting of any similar activity; or (iii) one
11 hundred dollars (\$100.00) per facility for the first five small wireless facilities addressed in an
12 application, plus fifty dollars (\$50.00) for each additional small wireless facility addressed in
13 the application. In any dispute concerning the appropriateness of a fee, the city has the burden
14 of proving that the fee meets the requirements of this subsection.

15 (f) A city may impose a technical consulting fee for each application, not to exceed five
16 hundred dollars (\$500.00), to offset the cost of reviewing and processing applications required
17 by this section. The fee must be based on the actual, direct, and reasonable administrative costs
18 incurred for the review, processing, and approval of an application. A city may engage an
19 outside consultant for technical consultation and the review of an application. The fee imposed
20 by a city for the review of the application shall not be used for either of the following:

21 (1) Travel expenses incurred in the review of a collocation application by an
22 outside consultant or other third party.

23 (2) Direct payment or reimbursement for an outside consultant or other third
24 party based on a contingent fee basis or results-based arrangement.

25 In any dispute concerning the appropriateness of a fee, the city has the burden of proving
26 that the fee meets the requirements of this subsection.

27 (g) A city may require a wireless services provider to remove an abandoned wireless
28 facility within 180 days of abandonment. Should the wireless services provider fail to timely
29 remove the abandoned wireless facility, the city may cause such wireless facility to be removed
30 and may recover the actual cost of such removal, including legal fees, if any, from the wireless
31 services provider. For purposes of this subsection, a wireless facility shall be deemed
32 abandoned at the earlier of the date that the wireless services provider indicates that it is
33 abandoning such facility or the date that is 180 days after the date that such wireless facility
34 ceases to transmit a signal, unless the wireless services provider gives the city reasonable
35 evidence that it is diligently working to place such wireless facility back in service.

36 (h) A city shall not require an application or permit or charge fees for (i) routine
37 maintenance; (ii) the replacement of small wireless facilities with small wireless facilities that
38 are the same size or smaller; or (iii) installation, placement, maintenance, or replacement of
39 micro wireless facilities that are suspended on cables strung between existing utility poles or
40 city utility poles in compliance with applicable codes by or for a communications service
41 provider authorized to occupy the city rights-of-way and who is remitting taxes under
42 G.S. 105-164.4(a)(4c) or G.S. 105-164.4(a)(6).

43 (i) Nothing in this section shall prevent a city from requiring a work permit for work
44 that involves excavation, affects traffic patterns, or obstructs vehicular traffic in the city
45 right-of-way.

46 **"§ 160A-400.55. Use of public right-of-way.**

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

50 (b) Subject to the requirements of G.S. 160A-400.54, a wireless provider may collocate
51 small wireless facilities along, across, upon, or under any city right-of-way. Subject to the

1 requirements of this section, a wireless provider may place, maintain, modify, operate, or
2 replace associated utility poles, city utility poles, conduit, cable, or related appurtenances and
3 facilities along, across, upon, and under any city right-of-way. The placement, maintenance,
4 modification, operation, or replacement of utility poles and city utility poles associated with the
5 collocation of small wireless facilities, along, across, upon, or under any city right-of-way shall
6 be subject only to review or approval under subsection (d) of G.S. 160A-400.54 if the wireless
7 provider meets all the following requirements:

8 (1) Each new utility pole and each modified or replacement utility pole or city
9 utility pole installed in the right-of-way shall not exceed 50 feet above
10 ground level.

11 (2) Each new small wireless facility in the right-of-way shall not extend more
12 than 10 feet above the utility pole, city utility pole, or wireless support
13 structure on which it is collocated.

14 (c) Nothing in this section shall be construed to prohibit a city from allowing utility
15 poles, city utility poles, or wireless facilities that exceed the limits set forth in subdivision (1) of
16 subsection (b) of this section.

17 (d) Applicants for use of a city right-of-way shall comply with a city's undergrounding
18 requirements prohibiting the installation of above-ground structures in the city rights-of-way
19 without prior zoning approval, if those requirements (i) are nondiscriminatory with respect to
20 type of utility, (ii) do not prohibit the replacement of structures existing at the time of adoption
21 of the requirements, and (iii) have a waiver process.

22 (e) Except as provided in this part, a city may assess a right-of-way charge under this
23 section for use or occupation of the right-of-way by a wireless provider, subject to the
24 restrictions set forth under G.S. 160A-296(a)(6). In addition, charges authorized by this section
25 shall meet all of the following requirements:

26 (1) The right-of-way charge shall not exceed the direct and actual cost of
27 managing the city rights-of-way and shall not be based on the wireless
28 provider's revenue or customer counts.

29 (2) The right-of-way charge shall not exceed that imposed on other users of the
30 right-of-way, including publicly, cooperatively, or municipally owned
31 utilities.

32 (3) The right-of-way charge shall be reasonable and nondiscriminatory.

33 Nothing in this subsection is intended to establish or otherwise affect rates charged for
34 attachments to utility poles, city utility poles, or wireless support structures. At its discretion, a
35 city may provide free access to city rights-of-way on a nondiscriminatory basis in order to
36 facilitate the public benefits of the deployment of wireless services.

37 (f) Nothing in this section is intended to authorize a person to place, maintain, modify,
38 operate, or replace a privately owned utility pole or wireless support structure or to collocate
39 small wireless facilities on a privately owned utility pole, a privately owned wireless support
40 structure, or other private property without the consent of the property owner.

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

49 (h) This section shall not be construed to limit local government authority to enforce
50 historic preservation zoning regulations consistent with Part 3C of Article 19 of this Chapter,
51 the preservation of local zoning authority under 47 U.S.C. § 332(c)(7), the requirements for

1 facility modifications under 47 U.S.C. § 1455(a), or the National Historic Preservation Act of
2 1966, 54 U.S.C. § 300101, et seq., as amended, and the regulations, local acts, and city charter
3 provisions adopted to implement those laws.

4 (i) A wireless provider may apply to a city to place utility poles in the city
5 rights-of-way, or to replace or modify utility poles or city utility poles in the public rights-of
6 way, to support the collocation of small wireless facilities. A city shall accept and process the
7 application in accordance with the provisions of G.S. 160A-400.54(d), applicable codes, and
8 other local codes governing the placement of utility poles or city utility poles in the city
9 rights-of-way, including provisions or regulations that concern public safety, objective design
10 standards for decorative utility poles or city utility poles, or reasonable and nondiscriminatory
11 stealth and concealment requirements, including those relating to screening or landscaping, or
12 public safety and reasonable spacing requirements. The application may be submitted in
13 conjunction with the associated small wireless facility application.

14 **"§ 160A-400.56. Access to city utility poles to install small wireless facilities.**

15 (a) A city may not enter into an exclusive arrangement with any person for the right to
16 collocate small wireless facilities on city utility poles. A city shall allow any wireless provider
17 to collocate small wireless facilities on its city utility poles at just, reasonable, and
18 nondiscriminatory rates, terms, and conditions, but in no instance may the rate exceed fifty
19 dollars (\$50.00) per city utility pole per year. The North Carolina Utilities Commission shall
20 not consider this subsection as evidence in a proceeding initiated pursuant to G.S. 62-350(c).

21 (b) A request to collocate under this section may be denied only if there is insufficient
22 capacity or for reasons of safety, reliability, and generally applicable engineering principles,
23 and those limitations cannot be remedied by rearranging, expanding, or otherwise
24 reengineering the facilities at the reasonable and actual cost of the city to be reimbursed by the
25 wireless provider. In granting a request under this section, a city shall require the requesting
26 entity to comply with applicable safety requirements, including the National Electrical Safety
27 Code and the applicable rules and regulations issued by the Occupational Safety and Health
28 Administration.

29 (c) If a city that operates a public enterprise as permitted by Article 16 of this Chapter
30 has an existing city utility pole attachment rate, fee, or other term with an entity, then, subject
31 to termination provisions, that attachment rate, fee, or other term shall apply to collocations by
32 that entity or its related entities on city utility poles.

33 (d) Following receipt of the first request from a wireless provider to collocate on a city
34 utility pole, a city shall, within 60 days, establish the rates, terms, and conditions for the use of
35 or attachment to the city utility poles that it owns or controls. Upon request, a party shall state
36 in writing its objections to any proposed rate, terms, and conditions of the other party.

37 (e) In any controversy concerning the appropriateness of a rate for a collocation
38 attachment to a city utility pole, the city has the burden of proving that the rates are reasonably
39 related to the actual, direct, and reasonable costs incurred for use of space on the pole for such
40 period.

41 (f) The city shall provide a good-faith estimate for any make-ready work necessary to
42 enable the city utility pole to support the requested collocation, including pole replacement if
43 necessary, within 60 days after receipt of a complete application. Make-ready work, including
44 any pole replacement, shall be completed within 60 days of written acceptance of the
45 good-faith estimate by the applicant. For purposes of this section, the term "make-ready work"
46 means any modification or replacement of a city utility pole necessary for the city utility pole to
47 support a small wireless facility in compliance with applicable safety requirements, including
48 the National Electrical Safety Code, that is performed in preparation for a collocation
49 installation.

50 (g) The city shall not require more make-ready work than that required to meet
51 applicable codes or industry standards. Fees for make-ready work shall not include costs related

1 to preexisting or prior damage or noncompliance. Fees for make-ready work, including any
2 pole replacement, shall not exceed actual costs or the amount charged to other communications
3 service providers for similar work and shall not include any consultant fees or expenses.

4 (h) Nothing in this Part shall be construed to apply to an entity whose poles, ducts, and
5 conduits are subject to regulation under section 224 of the Communications Act of 1934, 47
6 U.S.C. § 151, et seq., as amended, or under G.S. 62-350.

7 (i) This section shall not apply to an excluded entity. Nothing in this section shall be
8 construed to affect the authority of an excluded entity to deny, limit, restrict, or determine the
9 rates, fees, terms, and conditions for the use of or attachment to its utility poles, city utility
10 poles, or wireless support structures by a wireless provider. This section shall not be construed
11 to alter or affect the provisions of G.S. 62-350, and the rates, terms, or conditions for the use of
12 poles, ducts, or conduits by communications service providers, as defined in G.S. 62-350, are
13 governed solely by G.S. 62-350. For purposes of this section, "excluded entity" means (i) a city
14 that owns or operates a public enterprise pursuant to Article 16 of this Chapter consisting of an
15 electric power generation, transmission, or distribution system or (ii) an electric membership
16 corporation organized under Chapter 117 of the General Statutes that owns or controls poles,
17 ducts, or conduits, but which is exempt from regulation under section 224 of the
18 Communications Act of 1934, 47 U.S.C. § 151 et seq., as amended.

19 **"§ 160A-400.57. Applicability.**

20 (a) A city shall not adopt or enforce any ordinance, rule, regulation, or resolution that
21 regulates the design, engineering, construction, installation, or operation of any small wireless
22 facility located in an interior structure or upon the site of any stadium or athletic facility. This
23 subsection does not apply to a stadium or athletic facility owned or otherwise controlled by the
24 city. This subsection does not prohibit the enforcement of applicable codes.

25 (b) Nothing contained in this Part shall amend, modify, or otherwise affect any
26 easement between private parties. Any and all rights for the use of a right-of-way are subject to
27 the rights granted pursuant to an easement between private parties.

28 (c) Except as provided in this Part or otherwise specifically authorized by the General
29 Statutes, a city may not adopt or enforce any regulation on the placement or operation of
30 communications facilities in the rights-of-way of State-maintained highways or city
31 rights-of-way by a provider authorized by State law to operate in the rights-of-way of
32 State-maintained highways or city rights-of-way and may not regulate any communications
33 services.

34 (d) Except as provided in this Part or specifically authorized by the General Statutes, a
35 city may not impose or collect any tax, fee, or charge to provide a communications service over
36 a communications facility in the right-of-way.

37 (e) The approval of the installation, placement, maintenance, or operation of a small
38 wireless facility pursuant to this Part does not authorize the provision of any communications
39 services or the installation, placement, maintenance, or operation of any communications
40 facility, including a wireline backhaul facility, other than a small wireless facility, in the
41 right-of-way."

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

43 **"§ 136-18. Powers of Department of Transportation.**

44 The said Department of Transportation is vested with the following powers:

45 ...

- 46 (10) To make proper and reasonable rules, regulations and ordinances for the
47 placing or erection of telephone, telegraph, electric and other lines, above or
48 below ground, wireless facilities, signboards, fences, gas, water, sewerage,
49 oil, or other pipelines, and other similar obstructions that may, in the opinion
50 of the Department of Transportation, contribute to the hazard upon any of
51 the said highways or in any way interfere with the same, and to make

1 reasonable rules and regulations for the proper control thereof. And
2 whenever the order of the said Department of Transportation shall require
3 the removal of, or changes in, the location of telephone, telegraph, electric or
4 other lines, wireless facilities, signboards, fences, gas, water, sewerage, oil,
5 or other pipelines, or other similar obstructions, the owners thereof shall at
6 their own expense, except as provided in G.S. 136-19.5(c), move or change
7 the same to conform to the order of said Department of Transportation. Any
8 violation of such rules and regulations or noncompliance with such orders
9 shall constitute a Class 1 misdemeanor. For purposes of this subdivision,
10 "wireless facilities" shall have the definition set forth in G.S. 160A-400.51.

11"

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

14 **"§ 136-18.3A. Wireless communications infrastructure.**

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

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

22 (c) The Department of Transportation shall take action to approve or deny a permit
23 application for collocation of a small wireless facility under this section within a reasonable
24 period of time of receiving the application from a wireless provider.

25 (d) The collocation of small wireless facilities and the construction, operation,
26 modification, or maintenance of utility poles, wireless support structures, conduit, cable, and
27 related appurtenances and facilities for the provision of small wireless facilities along, across,
28 upon, or under the rights-of-way of State-maintained highways shall be subject to all of the
29 following requirements:

30 (1) The structures and facilities shall not obstruct or hinder the usual travel or
31 public safety on any rights-of-way of State-maintained highways or obstruct
32 the legal use of such rights-of-way of State-maintained highways by other
33 utilities.

34 (2) Each new or modified utility pole and wireless support structure installed in
35 the right-of-way of State-maintained highways shall not exceed the greater
36 of (i) 10 feet in height above the height of the tallest existing utility pole,
37 other than a utility pole supporting only wireless facilities, in place as of July
38 1, 2017, located within 500 feet of the new pole in the same rights-of-way or
39 (ii) 50 feet above ground level.

40 (3) Each new small wireless facility in the right-of-way shall not extend (i) more
41 than 10 feet above an existing utility pole, other than a utility pole
42 supporting only wireless facilities, or wireless support structure in place as
43 of July 1, 2017, or (ii) above the height permitted for a new utility pole or
44 wireless support structure under subdivision (2) of this section."

45 **SECTION 4.** This act is effective when it becomes law.