

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE BILL 831

Short Title: Wireless Telecommunications Facilities. (Public)

Sponsors: Senator Hoyle.

Referred to: Commerce, Small Business and Entrepreneurship.

March 15, 2007

1 A BILL TO BE ENTITLED
2 AN ACT STREAMLINING LOCAL GOVERNMENT REGULATION OF
3 WIRELESS FACILITIES AND WIRELESS SUPPORT STRUCTURES AND THE
4 COLLOCATION OF WIRELESS FACILITIES.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** Chapter 62A of the General Statutes is amended by adding a
7 new Article to read:

8 "Article 3.

9 "Wireless Telecommunications Facilities Advancement and Streamlining Act.

10 "**§ 62A-40. Purpose.**

11 The purpose of this Act is to ensure the safe and efficient integration of facilities
12 necessary for the provision of advanced wireless telecommunications services
13 throughout the community and to ensure the ready availability of reliable wireless
14 service to the public and government agencies and first responders, with the intention of
15 furthering the public safety and general welfare. Notwithstanding any other law or local
16 ordinance to the contrary, the following standards shall apply to an authority's actions,
17 as a regulatory body, in the regulation of the placement, construction, or modification of
18 a wireless communications facility.

19 "**§ 62A-41. Definitions.**

20 The following definitions apply in this Article:

- 21 (1) Antenna. – Communications equipment that transmits and receives
22 electromagnetic radio signals used in the provision of all types of
23 wireless communications services.
24 (2) Application. – A formal request submitted to the local authority to
25 construct or modify a wireless support structure or a wireless facility.
26 (3) Authority. – A municipality, township, county, or regional planning
27 commission, or any municipal or county legislative body or political
28 subdivision or agency of a municipality, county, or political
29 subdivision that has adopted land development regulations.

- 1 (4) Building permit. – An official administrative authorization issued by
2 an authority prior to the beginning of construction. The issuance of a
3 building permit is not a mechanism for the approval or denial of a
4 zoning or land-use application.
- 5 (5) Collocation. – The installation of wireless facilities on existing
6 structures, including towers, buildings, utility poles, and water tanks in
7 a manner that negates the need to construct a new wireless support
8 structure.
- 9 (6) Equipment enclosure. – An enclosed structure, cabinet, or shelter used
10 to contain radio or other equipment necessary for the transmission or
11 reception of wireless communication signals.
- 12 (7) Land development regulations. – Any ordinance enacted by an
13 authority for the regulation of any aspect of development, including an
14 ordinance governing zoning, subdivisions, landscaping, tree
15 protection, or signs, the authority's comprehensive plan, or any other
16 ordinance concerning any aspect of the development of land.
- 17 (8) Substantial modification. – The mounting of a proposed antenna on a
18 wireless support structure that: (i) would increase the existing vertical
19 height of the structure by more than ten percent (10%), or by the
20 height of one additional antenna array with separation from the nearest
21 existing antenna not to exceed 20 feet, whichever is greater; or (ii)
22 would involve adding an appurtenance to the body of the tower that
23 would protrude horizontally from the edge of the tower more than 20
24 feet or more than the width of the tower structure at the level of the
25 appurtenance, whichever is greater, except where necessary to shelter
26 the antenna from inclement weather or to connect the antenna to the
27 tower via cable.
- 28 (9) Utility pole. – A structure that is designed for and used to carry lines,
29 cables, or wires for telephone, cable television, or electricity or to
30 provide lighting.
- 31 (10) Wireless facility. – The set of equipment and network components,
32 exclusive of the underlying support structure or tower, including
33 antennas, transmitters, receivers base stations, power supplies cabling,
34 and associated equipment necessary to provide wireless data and
35 telecommunications services to a discrete geographic area.
- 36 (11) Wireless support structure. – A new or existing structure, including a
37 monopole, lattice tower, or guyed tower that is designed to support or
38 is capable of supporting wireless facilities. A utility pole is not a
39 wireless support structure.

40 "§ 62A-42. Construction and modification of wireless facilities and wireless
41 support structures.

42 (a) An authority may plan for and regulate the siting or modification of wireless
43 support structures and wireless facilities in accordance with land development
44 regulations and in conformity with this Article. Any person that proposes to construct or

1 substantially modify a wireless support structure or wireless facility within the
2 jurisdiction of an authority that has adopted land development regulations in accordance
3 with this Article shall submit the necessary copies and attachments of the applicant's
4 completed application to the appropriate planning authority and comply with any local
5 ordinances concerning land use and any applicable permitting process.

6 (b) The authority shall issue a written decision approving or denying the
7 application within 30 days in the case of collocation and modification applications
8 entitled to streamlined processing under G.S. 62A-43(b), and within 45 days in the case
9 of other applications, as measured from the date the application is deemed complete by
10 the authority, or any other date mutually agreed to in writing by the authority and the
11 applicant. Any decision denying an application must be supported by substantial
12 evidence in the record before the authority and must set forth the reasons for the denial
13 with sufficient particularity to allow a reviewing entity to review the evidence
14 supporting the reasons for denial. An application shall be deemed complete unless the
15 authority notifies the applicant in writing within 15 days of submission of the
16 application and identifies with specificity any deficiencies in the application which, if
17 cured, would make the application complete. The application shall be deemed complete
18 on resubmission if the application addresses the deficiencies identified.

19 (c) Except as expressly stated, nothing in this Article shall limit an authority
20 from regulating applications to construct, modify, maintain, or collocate wireless
21 facilities on a wireless support structure based on consideration of land-use and zoning
22 considerations, including aesthetics, landscaping, land-use-based location priorities,
23 structural design, and setbacks. Notwithstanding the provisions of this subsection, an
24 authority may not:

- 25 (1) Impose requirements in connection with the siting or modification of
26 wireless support structures or facilities relating to the radio frequency
27 emissions of wireless facilities, including any environmental testing,
28 sampling, monitoring, or other compliance requirements.
- 29 (2) Require the applicant for siting or modification of wireless support
30 structures or facilities to provide a justification of radio frequency need
31 or impose requirements relating to radio frequency signal strength,
32 system design, use of specific technology, or service quality.
- 33 (3) Institute a moratorium on the construction or modification of wireless
34 support structures lasting over 90 days in duration or institute any
35 moratorium within six months of the conclusion of any previous
36 moratorium on the construction or modification of wireless support
37 structures.
- 38 (4) Charge an application fee, consulting fee, or other fee associated with
39 the submission, review, processing, or approval of an application for
40 siting or modification of wireless support structures or facilities that is
41 not required for other types of commercial development. Any fee or
42 charge must apply uniformly and on a competitively neutral and
43 nondiscriminatory basis to all comparable activities and uses and
44 cannot exceed what is usual and customary for the services. Total

1 charges and fees, including consultant, application, permit, and any
2 other fees or charges, including reimbursement for consultant's
3 out-of-pocket expenses, shall not exceed one thousand dollars (\$1,000)
4 for a collocation or two thousand dollars (\$2,000) for the construction
5 or modification of a wireless facility or wireless support structure.

6 (5) To the extent that zoning approval has been obtained or is not required,
7 utilize the issuance of a building permit as a mechanism for the
8 approval or denial of a zoning or land-use application to construct or
9 modify a wireless facility or wireless support structure.

10 (6) Impose surety requirements, including bonds, escrow deposits, or any
11 other type of financial surety, to ensure that abandoned or unused
12 facilities can be removed unless the jurisdiction imposes similar
13 requirements on other permits for other types of commercial
14 development or land uses. If surety requirements are imposed, they
15 must be competitively neutral, nondiscriminatory, reasonable in
16 amount, and commensurate with the historical record for local
17 facilities and structures that fall into disuse.

18 (7) Adopt rules or regulations for siting or modification of wireless
19 support structures or wireless facilities that discriminate on the basis of
20 the ownership, including by the authority, of any property, structure, or
21 tower, or condition the approval of a wireless support structure or
22 wireless facility on the agreement of the structure or facility owner to
23 provide space on or near the structure for authority or governmental
24 services at less than market rate or to provide services via the structure
25 or facilities at less than market rate.

26 (8) Limit the duration of any permit for a wireless facility or support
27 structure.

28 (9) Impose structure lighting and marking requirements applicable to
29 wireless support structures or facilities that exceed or differ from those
30 imposed by the Federal Aviation Administration.

31 (10) Impose a blanket prohibition on placement of wireless support
32 structures or facilities in a residential area or residential zoning district.

33 (11) Impose inflexible separation requirements between wireless support
34 structures that prohibit the construction or collocation of wireless
35 facilities based solely on the distance between the proposed facility
36 and an existing facility.

37 (12) Require an ANSI inspection report prepared pursuant to
38 ANSI/TIA/EIA-222-G, Annex E, Tower Maintenance and Inspection
39 Procedures in connection with any application for collocation.

40 (13) Prohibit the placement of emergency power systems that comply with
41 federal and State environmental requirements.

42 (14) Require an applicant to construct a Distributed Antenna System
43 instead of constructing a wireless support structure or collocating on
44 an existing wireless support structure.

1 (d) All records, including any documents or electronic data, in the possession or
2 custody of authority personnel relating to applications for siting or modification of
3 wireless support structures and wireless facilities are subject to the provisions of the
4 Public Records Law, Chapter 132 of the General Statutes, including provisions
5 providing for nondisclosure of confidential or proprietary information. Any disclosure
6 of the records must be in accordance with applicable State law.

7 (e) A party aggrieved by the final action of an authority denying an application
8 under the provisions of this Article may bring an action for review in any court of
9 competent jurisdiction.

10 **"§ 62A-43. Collocation of wireless facilities.**

11 (a) An authority may deny an application to construct a new wireless support
12 structure based upon an applicant's unwillingness to evaluate the reasonable feasibility
13 of collocating new antennas and equipment on an existing structure within the
14 applicant's search ring. An authority may not deny an application to construct a new
15 wireless communications support structure if evidence is provided that collocation on an
16 existing structure is technically infeasible, unduly economically burdensome, or
17 otherwise impracticable because of contractual, engineering, or other similar
18 impediments.

19 (b) Applications for collocation that meet the following requirements shall be
20 entitled to streamlined processing: (i) the collocation does not increase the overall
21 height of the tower or wireless support structure to which the wireless facilities are to be
22 attached; (ii) the collocation does not increase the ground space area approved in the site
23 plan for equipment enclosures and ancillary facilities; and (iii) the wireless facilities in
24 the proposed collocation comply with applicable regulations, restrictions, or conditions,
25 if any, applied to the initial wireless facilities placed on the tower or other wireless
26 support structure.

27 (c) Applications for collocation entitled to streamlined processing under
28 subsection (b) of this section, and applications to modify wireless support structures,
29 other than applications that constitute substantial modifications, under G.S. 62A-42
30 shall be reviewed for conformance with applicable building permit requirements, if any,
31 but shall not otherwise be subject to zoning requirements, including design or placement
32 requirements or public hearing review. The construction of a replacement tower to
33 accommodate collocation shall not be considered a substantial modification where the
34 replacement tower is a monopole tower or, if the existing tower is a camouflaged tower,
35 the replacement tower is a camouflaged-like tower."

36 **SECTION 2.** If any provision of this Act or the application thereof to any
37 person or circumstance is held invalid, such invalidity shall not affect other provisions
38 or applications of the Act which can be given effect without the invalid provision or
39 application, and to that end the provisions of this Act are declared to be severable.

40 **SECTION 3.** This act is effective when it becomes law.