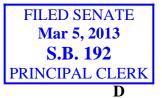
## GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2013



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## SENATE DRS35090-MH-41C\* (02/12)

Short Title:	Allow ROW Usage in Central Business Districts.	(Public)
Sponsors:	Senators Hunt, Daniel, and Harrington (Primary Sponsors).	
Referred to:		

1 2 3	A BILL TO BE ENTITLED AN ACT TO PERMIT LOCAL GOVERNMENTS TO ENACT SIDEWALK DINING ORDINANCES FOR USE OF STATE-OWNED RIGHT OF WAY.
4	The General Assembly of North Carolina enacts:
5	<b>SECTION 1.</b> G.S.136-18(9) reads as rewritten:
6	"
7	(9) To employ appropriate means for properly selecting, planting and protecting
8	trees, shrubs, vines, grasses or legumes in the highway right-of-way in the
9	promotion of erosion control, landscaping and general protection of said
10	highways; to acquire by gift or otherwise land for and to construct, operate
11	and maintain roadside parks, picnic areas, picnic tables, scenic overlooks
12	and other appropriate turnouts for the safety and convenience of highway
13	users; and to cooperate with municipal or county authorities, federal
14	agencies, civic bodies and individuals in the furtherance of those objectives.
15	None of the roadside parks, picnic areas, picnic tables, scenic overlooks or
16	other turnouts, or any part of the highway right-of-way shall be used for
17	commercial purposes except (i) for for any of the following:
18	<u>a.</u> <u>materials Materials displayed in welcome centers in accordance with</u>
19	G.S. 136-89.56, and (ii) for G.S. 136-89.56.
20	<u>b.</u> <u>vending</u> <u>Vending</u> machines permitted by the Department of
21 22	Transportation and placed by the Division of Services for the Blind,
22	Department of Health and Human Services, as the State licensing agency designated pursuant to Section $2(a)(5)$ of the
23 24	Randolph-Sheppard Act (20 USC 107a(a)(5)). The Department of
24 25	Transportation shall regulate the placing of the vending machines in
26	highway rest areas and shall regulate the articles to be dispensed.
20 27	Every other use or attempted use of any of these areas for
28	commercial purposes shall constitute a Class 1 misdemeanor and
29	each day's use shall constitute a separate offense.
30	c. Activities permitted by a local government pursuant to an ordinance
31	meeting the requirements of G.S. 136-27.3.
32	" "
33	<b>SECTION 2.</b> Article 2 of Chapter 136 of the General Statutes is amended by adding a new
34	section to read:
35	" <u>§ 136-27.3.</u> Use of certain right-of-way for sidewalk dining.



## **General Assembly Of North Carolina** Session 2013 1 "(a) The Department may enter into an agreement with any local government permitting use of the State right-of-way associated with components of the State highway system and located 2 3 within the zoning jurisdiction of the local government for sidewalk dining activities. For 4 purposes of this section "sidewalk dining activities" means serving food and beverages from a 5 restaurant abutting State right-of-way to customers seated in the State right-of-way. The 6 agreement between the Department and the local government shall provide that the local 7 government is granted the administrative right to permit sidewalk dining activities complying 8 with at least the following requirements and conditions: 9 Tables, chairs, and other furnishings must be placed a minimum of six feet (1)from any travel lane. 10 11 (2)Tables, chairs, and other furnishings must be placed in such a manner that at 12 least five feet of unobstructed paved space of the sidewalk, measured from 13 any permanent or semi-permanent object, remains clear for the passage of 14 pedestrians and provides adequate passing space that complies with the 15 Americans with Disabilities Act. 16 Tables, chairs and other furnishings shall not obstruct any driveway, (3) 17 alleyway, building entrance or exit, emergency entrance or exit, fire hydrant 18 or standpipe, utility access, ventilations areas, or ramps necessary to meet 19 accessibility requirements under the Americans with Disabilities Act. 20 (4) The maximum posted speed permitted on the roadway adjacent to the 21 right-of-way to be used for sidewalk dining shall not be greater than 45 22 miles per hour. 23 The restaurant operator shall provide evidence of adequate liability (5) 24 insurance in an amount satisfactory to the local government, but in no event 25 in an amount less than the amount specified as the limit of Tort Claim 26 liability in G.S. 143-299.2, which shall protect and name them as additional 27 insured on any policies covering the business and the sidewalk activities. 28 (6) The restaurant operator shall provide an agreement to indemnify and hold 29 harmless the Department or the local government from any claim resulting 30 from the operation of sidewalk dining. 31 The restaurant operator shall provide a copy of all permits and licenses (7) 32 issued by the state, county or city, including health and ABC permits, if any, 33 necessary for the operation of the restaurant of business, or a copy of the 34 application for the permit if no permit has been issued. This requirement 35 includes any permits or certificates issued by the county or city for exterior 36 alterations or improvements to the restaurant. The restaurant operator shall cease part or all sidewalk dining activities in 37 (8) 38 order to allow construction, maintenance, or repair of any street, sidewalk, 39 utility, or public building, by the Department, the local government, its 40 agents or employees, or by any other governmental entity or public utility. 41 The Department or the local government may impose additional requirements on a 42 case-by-case basis. Nothing in this section requires the Department or local government to 43 issue or maintain any agreement for sidewalk dining if, in the opinion of the Department or 44 local government, such activities cannot be conducted in a safe manner. 45 A municipality applying to the Department for administrative rights under this (b) 46 section shall: 47 Enact an ordinance consistent with, but not necessarily limited to, the (1) 48 requirements of this section. 49 For applications along a federal-aid route or where the laws of the United (2) 50 States otherwise require, obtain permission from the Federal Highway

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1		Administration to permit the right-of-way to be used for the sidewalk
2		dining."
3		<b>SECTION 3.</b> This act shall not preempt or override local ordinances currently in
4	place.	
5		<b>SECTION 4.</b> This act is effective when it becomes law.