

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2017

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

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 ...  
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.



1 **"§ 160A-400.51. Definitions.**

2 The following definitions apply in this Part.

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

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

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

33 ...

34 **"§ 160A-400.54. Collocation of small wireless facilities.**

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

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

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

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

- 47           (1) A city may not, directly or indirectly, require an applicant to perform  
 48 services unrelated to the collocation for which approval is sought. For  
 49 purposes of this subdivision, "services unrelated to the collocation," includes  
 50 in-kind contributions to the city such as the reservation of fiber, conduit, or  
 51 pole space for the city.

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

1 wireless provider agree to extend this period or a delay is caused by a lack of  
2 commercial power at the site.

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

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

16 (1) Travel expenses incurred in a third party's review of a collocation  
17 application.

18 (2) Direct payment or reimbursement for a consultant or other third party based  
19 on a contingent fee basis or results-based arrangement.

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

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

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

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

41 **"§ 160A-400.55. Use of public right-of-way.**

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

45 (b) Subject to the requirements of G.S. 160A-400.54, a wireless provider may collocate  
46 small wireless facilities along, across, upon, or under any city right-of-way. Subject to the  
47 requirements of this section, a wireless provider may place, maintain, modify, operate, or  
48 replace associated utility poles, city utility poles, conduit, cable, or related appurtenances and  
49 facilities along, across, upon, and under any city right-of-way. The placement, maintenance,  
50 modification, operation, or replacement of utility poles and city utility poles associated with the  
51 collocation of small wireless facilities, along, across, upon, or under any city right-of-way shall

1 be subject only to review or approval under subsection (d) of G.S. 160A-400.54 if the wireless  
2 provider meets all the following requirements:

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

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

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

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

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

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

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

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

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

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

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

44 (h) This section shall not be construed to limit local government authority to enforce  
45 historic preservation zoning regulations consistent with Part 3C of Article 19 of this Chapter,  
46 the preservation of local zoning authority under 47 U.S.C. § 332(c)(7), the requirements for  
47 facility modifications under 47 U.S.C. § 1455(a), or the National Historic Preservation Act of  
48 1966, 54 U.S.C. § 300101, et seq., as amended, and the regulations, local acts, and city charter  
49 provisions adopted to implement those laws.

50 (i) A wireless provider may apply to a city to place utility poles in the public  
51 rights-of-way, or to replace or modify utility poles or city utility poles in the public rights-of

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

9 **"§ 160A-400.56. Access to city utility poles.**

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

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

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

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

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

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

45 (g) The city shall not require more make-ready work than that required to meet  
46 applicable codes or industry standards. Fees for make-ready work shall not include costs related  
47 to preexisting or prior damage or noncompliance. Fees for make-ready work, including any  
48 pole replacement, shall not exceed actual costs or the amount charged to other communications  
49 service providers for similar work and shall not include any consultant fees or expenses.

1        (h) Nothing in this section shall be construed to apply to an entity whose poles, ducts,  
2 and conduits are subject to regulation under section 224 of the Communications Act of 1934,  
3 47 U.S.C. § 151, et seq., as amended, or under G.S. 62-350.

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

16 **"§ 160A-400.57. Applicability.**

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

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

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

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

32        (e) The approval of the installation, placement, maintenance, or operation of a small  
33 wireless facility pursuant to this Part does not authorize the provision of any communications  
34 services or the installation, placement, maintenance, or operation of any communications  
35 facility, including a wireline backhaul facility, other than a small wireless facility, in the  
36 right-of-way."

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

38 **"§ 136-18. Powers of Department of Transportation.**

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

40        ...

41        (10) To make proper and reasonable rules, regulations and ordinances for the  
42        placing or erection of telephone, telegraph, electric and other lines, above or  
43        below ground, wireless facilities, signboards, fences, gas, water, sewerage,  
44        oil, or other pipelines, and other similar obstructions that may, in the opinion  
45        of the Department of Transportation, contribute to the hazard upon any of  
46        the said highways or in any way interfere with the same, and to make  
47        reasonable rules and regulations for the proper control thereof. And  
48        whenever the order of the said Department of Transportation shall require  
49        the removal of, or changes in, the location of telephone, telegraph, electric or  
50        other lines, wireless facilities, signboards, fences, gas, water, sewerage, oil,  
51        or other pipelines, or other similar obstructions, the owners thereof shall at

1 their own expense, except as provided in G.S. 136-19.5(c), move or change  
2 the same to conform to the order of said Department of Transportation. Any  
3 violation of such rules and regulations or noncompliance with such orders  
4 shall constitute a Class 1 misdemeanor. For purposes of this subdivision,  
5 "wireless facilities" shall have the definition set forth in G.S. 160A-400.51.

6 ...."

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

9 **"§ 136-18.3A. Wireless communications infrastructure.**

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

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

17 (c) The Department of Transportation shall take action to approve or deny a permit  
18 application under this section within a reasonable period of time of receiving the application  
19 from a wireless provider.

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

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

28 (2) Each new or modified utility pole and wireless support structure installed in  
29 the right-of-way of State-maintained highways shall not exceed the greater  
30 of (i) 10 feet in height above the height of the tallest existing utility pole,  
31 other than a utility pole supporting only wireless facilities, in place as of July  
32 1, 2017, located within 500 feet of the new pole in the same rights-of-way or  
33 (ii) 50 feet above ground level.

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

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