

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S

2

SENATE BILL 831
Commerce, Small Business and Entrepreneurship Committee Substitute Adopted
6/5/07

Short Title: Wireless Telecommunications Facilities. (Public)

Sponsors:

Referred to:

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

- 1 subdivision or agency of a municipality, county, or political
2 subdivision that has adopted land development regulations.
- 3 (4) Building permit. – An official administrative authorization issued by
4 an authority prior to the beginning of construction.
- 5 (5) Collocation. – The installation of new wireless facilities on previously
6 approved existing structures, including towers, buildings, utility poles,
7 and water tanks in a manner that negates the need to construct a new
8 wireless support 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 45 days in the case of collocation and modification applications
8 entitled to streamlined processing under G.S. 62A-43(b) and (c), and within 90 days in
9 the case of other applications, as measured from the date the application is deemed
10 complete by the authority, or any other date mutually agreed to in writing by the
11 authority and the applicant. An application shall be deemed complete unless the
12 authority notifies the applicant in writing within 30 days of submission of the
13 application and identifies with specificity any deficiencies in the application which, if
14 cured, would make the application complete. The application shall be deemed complete
15 on resubmission if the application addresses the deficiencies identified.

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

23 (1) Impose requirements in connection with the siting or modification of
24 wireless support structures or facilities relating to the radio frequency
25 emissions of wireless facilities, including any environmental testing,
26 sampling, monitoring, or other compliance requirements to the extent
27 those structures or facilities comply with federal emissions
28 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) Charge an application fee, consulting fee, or other fee associated with
34 the submission, review, processing, or approval of an application for
35 siting or modification of wireless support structures or facilities unless
36 the fee or charge is based on the costs of services provided, applied on
37 a uniform, competitively neutral, and nondiscriminatory basis to all
38 comparable activities and uses, and does not exceed what is usual and
39 customary for the services. Any charges or fees, including
40 reimbursement of out-of-pocket expenses, assessed by an authority on
41 account of or to be paid to an outside consultant shall be separately
42 stated and disclosed to the applicant and shall not exceed in the
43 aggregate for any application one thousand dollars (\$1,000) for a

- 1 collocation or three thousand dollars (\$3,000) for the construction or
2 modification of a wireless facility or wireless support structure.
- 3 (4) To the extent that zoning approval has been obtained or is not required
4 under the streamlined procedures established in G.S. 62A-43(b) and
5 (c), impose any additional requirements for the issuance of a building
6 permit or a certificate of completion for a wireless support structure
7 other than those requirements otherwise imposed for similar structures.
- 8 (5) Impose surety requirements, including bonds, escrow deposits, or any
9 other type of financial surety, to ensure that abandoned or unused
10 facilities can be removed unless the surety requirements are
11 competitively neutral, nondiscriminatory, reasonable in amount, and
12 commensurate with the historical record for local facilities and similar
13 tower structures that fall into disuse and remain in disuse for a period
14 of one year.
- 15 (6) Adopt rules or regulations for siting or modification of wireless
16 support structures or wireless facilities that require placement on the
17 basis of the ownership, including by the authority, of any property,
18 structure, or tower, or condition the approval of a wireless support
19 structure or wireless facility, on the agreement of the structure or
20 facility owner to provide space on or near the structure for authority or
21 governmental services at less than market rate or to provide services
22 via the structure or facilities at less than market rate; provided,
23 however, the provisions of this subdivision shall not preclude an
24 authority from granting a preference for siting wireless support
25 structures or wireless facilities based on established zoning
26 classifications.
- 27 (7) Limit the duration of any permit for a wireless facility or support
28 structure. Nothing in this subdivision shall prevent an authority from
29 conditioning a permit on a requirement to construct facilities within a
30 reasonable period of time, which shall be no less than 24 months.
- 31 (8) Impose structure lighting and marking requirements applicable to
32 wireless support structures or facilities that exceed or differ from those
33 imposed by the Federal Aviation Administration.
- 34 (9) Impose a blanket prohibition on placement of wireless support
35 structures or facilities in a residential area or residential zoning district;
36 provided, however, that placement may be regulated as special or
37 conditional uses subject to specified zoning criteria and requirements.
- 38 (10) Impose inflexible separation requirements between wireless support
39 structures that prohibit the construction or collocation of wireless
40 facilities based solely on the distance between the proposed facility
41 and an existing facility.
- 42 (11) Prohibit the placement of emergency power systems that comply with
43 federal and State environmental requirements.

1 (12) Require an applicant to construct a Distributed Antenna System
2 instead of constructing a wireless support structure or collocating on
3 an existing wireless support structure.

4 (d) This section shall not be construed to limit the provisions or requirements of
5 any historic district or landmark ordinance or regulation adopted pursuant to Part 3C of
6 Article 19 of Chapter 160A of the General Statutes.

7 **"§ 62A-43. Collocation of wireless facilities.**

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

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

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

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

38 **SECTION 3.** This act becomes effective October 1, 2007.