

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE BILL 831
Commerce, Small Business and Entrepreneurship Committee Substitute Adopted
6/5/07
Finance Committee Substitute Adopted 7/19/07

Short Title: Wireless Telecommunications Facilities. (Public)

Sponsors:

Referred to:

March 15, 2007

A BILL TO BE ENTITLED

AN ACT STREAMLINING LOCAL GOVERNMENT REGULATION OF
WIRELESS FACILITIES AND WIRELESS SUPPORT STRUCTURES AND THE
COLLOCATION OF WIRELESS FACILITIES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 19 of Chapter 160A of the General Statutes is amended
by adding a new Part to read:

"Part 3E. Wireless Telecommunications Facilities.

§ 160A-400.50. Purpose and compliance with federal law.

(a) The purpose of this section is to ensure the safe and efficient integration of facilities necessary for the provision of advanced wireless telecommunications services throughout the community and to ensure the ready availability of reliable wireless service to the public, government agencies, and first responders, with the intention of furthering the public safety and general welfare. The following standards shall apply to a city's actions, as a regulatory body, in the regulation of the placement, construction, or modification of a wireless communications facility.

(b) The placement, construction, or modification of wireless communications facilities shall be in conformity with the Federal Communications Act, 47 U.S.C. § 332 as amended, and in accordance with the rules promulgated by the Federal Communications Commission.

§ 160A-400.51. Definitions.

The following definitions apply in this Part.

(1) Antenna. – Communications equipment that transmits and receives electromagnetic radio signals used in the provision of all types of wireless communications services.

(2) Application. – A formal request submitted to the city to construct or modify a wireless support structure of a wireless facility.

- 1 (3) Building permit. – An official administrative authorization issued by
2 the city prior to beginning construction consistent with the provisions
3 of G.S. 160A-417.
- 4 (4) Collocation. – The installation of new wireless facilities on
5 previously-approved structures, including towers, buildings, utility
6 poles, and water tanks.
- 7 (5) Equipment enclosure. – An enclosed structure, cabinet, or shelter used
8 to contain radio or other equipment necessary for the transmission or
9 reception of wireless communication signals.
- 10 (6) Land development regulation. – Any ordinance enacted pursuant to
11 this Part.
- 12 (7) Search ring. – The area within which a wireless facility must be
13 located in order to meet service objectives of the wireless service
14 provider using the wireless facility or wireless support structure.
- 15 (8) Utility pole. – A structure that is designed for and used to carry lines,
16 cables, or wires for telephone, cable television, or electricity, or to
17 provide lighting.
- 18 (9) Wireless facility. – The set of equipment and network components,
19 exclusive of the underlying support structure or tower, including
20 antennas, transmitters, receivers base stations, power supplies, cabling,
21 and associated equipment necessary to provide wireless data and
22 telecommunications services to a discrete geographic area.
- 23 (10) Wireless support structure. – A new or existing structure, such as a
24 monopole, lattice tower, or guyed tower that is designed to support or
25 capable of supporting wireless facilities. A utility pole is not a wireless
26 support structure.

27 **§ 160A-400.52. Construction of wireless facilities and wireless support structures.**

28 (a) A city may plan for and regulate the siting or modification of wireless support
29 structures and wireless facilities in accordance with land development regulations and in
30 conformity with this Part. Except as expressly stated, nothing in this Part shall limit a
31 city from regulating applications to construct, modify, or maintain wireless support
32 structures, or construct, modify, maintain, or collocate wireless facilities on a wireless
33 support structure based on consideration of land use, public safety, and zoning
34 considerations, including aesthetics, landscaping, structural design, and setbacks, or
35 State and local building code requirements, consistent with the provisions of federal law
36 provided in G.S. 160A-400.50. For purposes of this Part, public safety shall not include
37 requirements relating to radio frequency emissions of wireless facilities.

38 (b) Any person that proposes to construct or modify a wireless support structure
39 or wireless facility within the planning and land-use jurisdiction of a city must do both
40 of the following:

- 41 (1) Submit a completed application with the necessary copies and
42 attachments to the appropriate planning authority.
- 43 (2) Comply with any local ordinances concerning land use and any
44 applicable permitting processes.

1 (c) A city's review of an application for the placement, construction, or
2 modification of a wireless facility or wireless support structure shall only address public
3 safety, land development, or zoning issues. In reviewing an application, the city may not
4 require information on or evaluate an applicant's business decisions about its designed
5 service, customer demand for its service, or quality of its service to or from a particular
6 area or site. In reviewing an application, the city may review the following:

7 (1) Applicable public safety, land use, or zoning issue addressed in its
8 adopted regulations that do not conflict with this Part, including
9 aesthetics, landscaping, land-use based location priorities, structural
10 design, and setbacks.

11 (2) Information or materials directly related to an identified public safety,
12 land development, or zoning issue including evidence that no existing
13 or previously approved structure can reasonably be used for the
14 antenna placement instead of the construction of a new tower, that
15 residential areas cannot be served from outside the residential area, or
16 that the proposed height of a new tower or initial antenna placement or
17 a proposed height increase of a modified tower, replacement tower, or
18 collocation is necessary to provide the applicant's designed service.

19 (3) A city may require applicants for new wireless facilities to evaluate the
20 reasonable feasibility of collocating new antennas and equipment on
21 an existing structure or structures within the applicant's search ring.
22 Collocation on an existing structure is not reasonably feasible if
23 contractual, economic, or engineering impediments prevent
24 collocation.

25 (d) An application shall be deemed complete unless the city provides notice in
26 writing to the applicant within 45 days of submission, in the case of collocation
27 applications entitled to streamlined processing under G.S. 160A-400.53, or 60 days of
28 submission, in the case of other applications, or within some other mutually agreed
29 upon timeframe. The notice shall identify the deficiencies in the application which, if
30 cured, would make the application complete. The application shall be deemed complete
31 on resubmission if the additional materials address the deficiencies identified.

32 (e) The city shall issue a written decision approving or denying an application
33 within 45 days in the case of collocation applications entitled to streamlined processing
34 under G.S. 160A-400.53 and within a reasonable period of time consistent with the
35 issuance of other land-use permits in the case of other applications, each as measured
36 from the time the application is deemed complete.

37 (f) A city may fix and charge an application fee, consulting fee, or other fee
38 associated with the submission, review, processing, and approval of an application to
39 site or modify wireless support structures or wireless facilities that is based on the costs
40 of the services provided and does not exceed what is usual and customary for such
41 services. Any charges or fees assessed by a city on account of an outside consultant
42 shall be fixed in advance and incorporated into a permit or application fee and shall be
43 based on the reasonable costs to be incurred by the city in connection with the
44 regulatory review authorized under this section. On request, the amount of the

1 consultant charges incorporated into the permit or application fee shall be separately
2 identified and disclosed to the applicant.

3 (g) The city may condition the issuance of a building permit, certificate of
4 completion, or applicable land-use permit authorizing the construction of a new wireless
5 support structure on the provision of documentation prior to construction or occupation
6 of the structure establishing the existence of one or more parties, including the owner of
7 the wireless support structure, who intend to locate wireless facilities on the wireless
8 support structure. A city shall not deny an initial land-use or zoning permit based on a
9 showing of such documentation.

10 (h) The city may not require the placement of wireless support structures or
11 wireless facilities on city owned or leased property, but may develop a process to
12 encourage the placement of wireless support structures or facilities on city owned or
13 leased property, including an expedited approval process.

14 (i) This section shall not be construed to limit the provisions or requirements of
15 any historic district or landmark regulation adopted pursuant to Part 3C of this Article.

16 **"§ 160A-400.53. Collocation of wireless facilities.**

17 (a) Applications for collocation entitled to streamlined processing under this
18 section shall be reviewed for conformance with applicable site plan and building permit
19 requirements but shall not otherwise be subject to zoning requirements, including design
20 or placement requirements, or public hearing review.

21 (b) Applications for collocation of wireless facilities are entitled to streamlined
22 processing if the addition of the additional wireless facility does not exceed the number
23 of wireless facilities previously approved for the wireless support structure on which the
24 collocation is proposed. This provision applies to wireless support structures which are
25 approved on or after December 1, 2007.

26 (c) Applications for collocation that meet all the following requirements shall
27 also be entitled to streamlined processing:

28 (1) The collocation does not increase the overall height and width of the
29 tower or wireless support structure to which the wireless facilities are
30 to be attached.

31 (2) The collocation does not increase the ground space area approved in
32 the site plan for equipment enclosures and ancillary facilities.

33 (3) The wireless facilities in the proposed collocation comply with
34 applicable regulations, restrictions, or conditions, if any, applied to the
35 initial wireless facilities placed on the tower or other wireless support
36 structure.

37 (4) The additional wireless facilities comply with all federal, State and
38 local safety requirements.

39 (5) The collocation does not exceed the applicable weight limits for the
40 wireless support structure.

41 **SECTION 2.** Article 18 of Chapter 153A of the General Statutes is amended
42 by adding a new Part to read:

43 "Part 3B. Wireless Telecommunications Facilities.

44 **"§ 153A-349.50. Purpose and compliance with federal law.**

1 (a) Purpose. – The purpose of this section is to ensure the safe and efficient
2 integration of facilities necessary for the provision of advanced wireless
3 telecommunications services throughout the community and to ensure the ready
4 availability of reliable wireless service to the public, government agencies, and first
5 responders, with the intention of furthering the public safety and general welfare. The
6 following standards shall apply to a county's actions, as a regulatory body, in the
7 regulation of the placement, construction, or modification of a wireless communications
8 facility.

9 (b) Compliance with the Federal Communications Act. – The placement,
10 construction, or modification of wireless communications facilities shall be in
11 conformity with the Federal Communications Act, 47 U.S.C. § 332 as amended, and in
12 accordance with the rules promulgated by the Federal Communications Commission.

13 **"§ 153A-349.51. Definitions.**

14 The following definitions apply in this Part.

- 15 (1) Antenna. – Communications equipment that transmits and receives
16 electromagnetic radio signals used in the provision of all types of
17 wireless communications services.
- 18 (2) Application. – A formal request submitted to the county to construct or
19 modify a wireless support structure of a wireless facility.
- 20 (3) Building permit. – An official administrative authorization issued by
21 the county prior to beginning construction consistent with the
22 provisions of G.S. 153A-357.
- 23 (4) Collocation. – The installation of new wireless facilities on
24 previously-approved structures, including towers, buildings, utility
25 poles, and water tanks.
- 26 (5) Equipment enclosure. – An enclosed structure, cabinet, or shelter used
27 to contain radio or other equipment necessary for the transmission or
28 reception of wireless communication signals.
- 29 (6) Land development regulation. – Any ordinance enacted pursuant to
30 this Part.
- 31 (7) Search ring. – The area within which a wireless facility must be
32 located in order to meet service objectives of the wireless service
33 provider using the wireless facility or wireless support structure.
- 34 (8) Utility pole. – A structure that is designed for and used to carry lines,
35 cables, or wires for telephone, cable television, or electricity, or to
36 provide lighting.
- 37 (9) Wireless facility. – The set of equipment and network components,
38 exclusive of the underlying support structure or tower, including
39 antennas, transmitters, receivers base stations, power supplies, cabling,
40 and associated equipment necessary to provide wireless data and
41 telecommunications services to a discrete geographic area.
- 42 (10) Wireless support structure. – A new or existing structure, such as a
43 monopole, lattice tower, or guyed tower that is designed to support or

1 capable of supporting wireless facilities. A utility pole is not a wireless
2 support structure.

3 "**§ 153A-349.52. Construction of wireless facilities and wireless support structures.**

4 (a) A county may plan for and regulate the siting or modification of wireless
5 support structures and wireless facilities in accordance with land development
6 regulations and in conformity with this Part. Except as expressly stated, nothing in this
7 Part shall limit a county from regulating applications to construct, modify, or maintain
8 wireless support structures, or construct, modify, maintain, or collocate wireless
9 facilities on a wireless support structure based on consideration of land use, public
10 safety, and zoning considerations, including aesthetics, landscaping, structural design,
11 and setbacks, or State and local building code requirements, consistent with the
12 provisions of federal law provided in G.S. 153A-349.50. For purposes of this Part,
13 public safety shall not include requirements relating to radio frequency emissions of
14 wireless facilities.

15 (b) Any person that proposes to construct or modify a wireless support structure
16 or wireless facility within the planning and land-use jurisdiction of a county must do
17 both of the following:

18 (1) Submit a completed application with the necessary copies and
19 attachments to the appropriate planning authority.

20 (2) Comply with any local ordinances concerning land use and any
21 applicable permitting processes.

22 (c) A county's review of an application for the placement, construction, or
23 modification of a wireless facility or wireless support structure shall only address public
24 safety, land development, or zoning issues. In reviewing an application, the county may
25 not require information on or evaluate an applicant's business decisions about its
26 designed service, customer demand for its service, or quality of its service to or from a
27 particular area or site. In reviewing an application the county may review the following:

28 (1) Applicable public safety, land use, or zoning issue addressed in its
29 adopted regulations that do not conflict with this Part, including,
30 aesthetics, landscaping, land-use based location priorities, structural
31 design, and setbacks.

32 (2) Information or materials directly related to an identified public safety,
33 land development or zoning issue including evidence that no existing
34 or previously approved structure can reasonably be used for the
35 antenna placement instead of the construction of a new tower, that
36 residential areas cannot be served from outside the residential area, or
37 that the proposed height of a new tower or initial antenna placement or
38 a proposed height increase of a modified tower, replacement tower, or
39 collocation is necessary to provide the applicant's designed service.

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41 the reasonable feasibility of collocating new antennas and equipment
42 on an existing structure or structures within the applicant's search ring.
43 Collocation on an existing structure is not reasonably feasible if

1 contractual, economic, or engineering impediments prevent
2 collocation.

3 (d) An application shall be deemed complete unless the county provides notice in
4 writing to the applicant within 45 days of submission, in the case of collocation
5 applications entitled to streamlined processing under G.S. 160A-400.53, or 60 days of
6 submission, in the case of other applications, or within some other mutually agreed
7 upon timeframe. The notice shall identify the deficiencies in the application which, if
8 cured, would make the application complete. The application shall be deemed complete
9 on resubmission if the additional materials address the deficiencies identified.

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11 within 45 days in the case of collocation applications entitled to streamlined processing
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13 issuance of other land-use permits in the case of other applications, each as measured
14 from the time the application is deemed complete.

15 (f) A county may fix and charge an application fee, consulting fee, or other fee
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18 of the services provided and does not exceed what is usual and customary for such
19 services. Any charges or fees assessed by a county on account of an outside consultant
20 shall be fixed in advance and incorporated into a permit or application fee and shall be
21 based on the reasonable costs to be incurred by the county in connection with the
22 regulatory review authorized under this section. On request, the amount of the
23 consultant charges incorporated into the permit or application fee shall be separately
24 identified and disclosed to the applicant.

25 (g) The county may condition the issuance of a building permit, certificate of
26 completion, or applicable land-use permit authorizing the construction of a new wireless
27 support structure on the provision of documentation prior to construction or occupation
28 of the structure establishing the existence of one or more parties, including the owner of
29 the wireless support structure, who intend to locate wireless facilities on the wireless
30 support structure. A county shall not deny an initial land-use or zoning permit based on
31 a showing of such documentation.

32 (h) The county may not require the placement of wireless support structures or
33 wireless facilities on county owned or leased property, but may develop a process to
34 encourage the placement of wireless support structures or facilities on county owned or
35 leased property, including an expedited approval process.

36 (i) This section shall not be construed to limit the provisions or requirements of
37 any historic district or landmark regulation adopted pursuant to Part 3C of this Article.

38 **"§ 153A-349.53. Collocation of wireless facilities.**

39 (a) Applications for collocation entitled to streamlined processing under this
40 section shall be reviewed for conformance with applicable site plan and building permit
41 requirements but shall not otherwise be subject to zoning requirements, including design
42 or placement requirements, or public hearing review.

43 (b) Applications for collocation of wireless facilities are entitled to streamlined
44 processing if the addition of the additional wireless facility does not exceed the number

1 of wireless facilities previously approved for the wireless support structure on which the
2 collocation is proposed. This provision applies to wireless support structures which are
3 approved on or after December 1, 2007.

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5 also be entitled to streamlined processing:

6 (1) The collocation does not increase the overall height and width of the
7 tower or wireless support structure to which the wireless facilities are
8 to be attached.

9 (2) The collocation does not increase the ground space area approved in
10 the site plan for equipment enclosures and ancillary facilities.

11 (3) The wireless facilities in the proposed collocation comply with
12 applicable regulations, restrictions, or conditions, if any, applied to the
13 initial wireless facilities placed on the tower or other wireless support
14 structure.

15 (4) The additional wireless facilities comply with all federal, State, and
16 local safety requirements.

17 (5) The collocation does not exceed the applicable weight limits for the
18 wireless support structure.

19 **SECTION 3.** If any provision of this act or the application thereof to any
20 person or circumstance is held invalid, such invalidity shall not affect other provisions
21 or applications of the act which can be given effect without the invalid provision or
22 application, and to that end the provisions of this act are declared to be severable.

23 **SECTION 4.** This act becomes effective December 1, 2007.