GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2013

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HOUSE BILL 192 Committee Substitute Favorable 3/20/13 Senate State and Local Government Committee Substitute Adopted 6/26/13

Short Title: Allow ROW Usage in Central Business Districts.

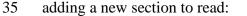
(Public)

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Sponsors:			
Referred to:			

March 4, 2013

1	A BILL TO BE ENTITLED
2	AN ACT TO PERMIT LOCAL GOVERNMENTS TO ENACT SIDEWALK DINING
3	ORDINANCES FOR USE OF STATE-OWNED RIGHT-OF-WAY.
4	The General Assembly of North Carolina enacts:
5	SECTION 1. G.S. 136-18(9) reads as rewritten:
6	"(9) To employ appropriate means for properly selecting, planting and protecting
7	trees, shrubs, vines, grasses or legumes in the highway right-of-way in the
8	promotion of erosion control, landscaping and general protection of said
9	highways; to acquire by gift or otherwise land for and to construct, operate
10	and maintain roadside parks, picnic areas, picnic tables, scenic overlooks
11	and other appropriate turnouts for the safety and convenience of highway
12	users; and to cooperate with municipal or county authorities, federal
13	agencies, civic bodies and individuals in the furtherance of those objectives.
14	None of the roadside parks, picnic areas, picnic tables, scenic overlooks or
15	other turnouts, or any part of the highway right-of-way shall be used for
16	commercial purposes except (i) for for any of the following:
17	<u>a.</u> <u>materials Materials displayed in welcome centers in accordance with</u>
18	G.S. 136-89.56, and (ii) for G.S. 136-89.56.
19	<u>b.</u> <u>vending</u> <u>Vending</u> machines permitted by the Department of
20	Transportation and placed by the Division of Services for the Blind,
21	Department of Health and Human Services, as the State licensing
22	agency designated pursuant to Section $2(a)(5)$ of the
23	Randolph-Sheppard Act (20 USC 107a(a)(5)). The Department of
24	Transportation shall regulate the placing of the vending machines in
25	highway rest areas and shall regulate the articles to be dispensed.
26	Every other use or attempted use of any of these areas for
27	commercial purposes shall constitute a Class 1 misdemeanor and
28	each day's use shall constitute a separate offense.
29	c. Activities permitted by a local government pursuant to an ordinance
30	meeting the requirements of G.S. 136-27.4.
31	Every other use or attempted use of any of these areas for commercial
32	purposes shall constitute a Class 1 misdemeanor, and each day's use shall
33	constitute a separate offense."
34	SECTION 2. Article 2 of Chapter 136 of the General Statutes is amended by





General Assembly Of North Carolina Session 2013 1 "§ 136-27.4. Use of certain right-of-way for sidewalk dining. 2 The Department may enter into an agreement with any local government permitting (a) 3 use of the State right-of-way associated with components of the State highway system and 4 located within the zoning jurisdiction of the local government for sidewalk dining activities. 5 For purposes of this section, "sidewalk dining activities" means serving food and beverages 6 from a restaurant abutting State right-of-way to customers seated in the State right-of-way. The 7 agreement between the Department and the local government shall provide that the local 8 government is granted the administrative right to permit sidewalk dining activities that, at a 9 minimum, comply with all of the following requirements and conditions: 10 Tables, chairs, and other furnishings shall be placed a minimum of six feet (1)11 from any travel lane. 12 Tables, chairs, and other furnishings shall be placed in such a manner that at (2)13 least five feet of unobstructed paved space of the sidewalk, measured from 14 any permanent or semi-permanent object, remains clear for the passage of 15 pedestrians and provides adequate passing space that complies with the 16 Americans with Disabilities Act. 17 Tables, chairs, and other furnishings shall not obstruct any driveway, (3) 18 alleyway, building entrance or exit, emergency entrance or exit, fire hydrant 19 or standpipe, utility access, ventilations areas, or ramps necessary to meet 20 accessibility requirements under the Americans with Disabilities Act. 21 <u>(4)</u> The maximum posted speed permitted on the roadway adjacent to the right-of-way to be used for sidewalk dining activities shall not be greater 22 23 than 45 miles per hour. 24 (5) The restaurant operator shall provide evidence of adequate liability 25 insurance in an amount satisfactory to the local government, but in no event 26 in an amount less than the amount specified by the local government under 27 G.S. 160A-485 as the limit of the local government's waiver of immunity or 28 the amount of Tort Claim liability specified in G.S. 143-299.2, whichever is 29 greater. The insurance shall protect and name the Department and the local 30 government as additional insureds on any policies covering the business and 31 the sidewalk activities. 32 The restaurant operator shall provide an agreement to indemnify and hold (6) 33 harmless the Department or the local government from any claim resulting 34 from the operation of sidewalk dining activities. 35 The restaurant operator shall provide a copy of all permits and licenses (7)36 issued by the State, county or city, including health and ABC permits, if any, 37 necessary for the operation of the restaurant or business, or a copy of the 38 application for the permit if no permit has been issued. This requirement 39 includes any permits or certificates issued by the county or city for exterior 40 alterations or improvements to the restaurant. 41 The restaurant operator shall cease part or all sidewalk dining activities in (8) 42 order to allow construction, maintenance, or repair of any street, sidewalk, 43 utility, or public building, by the Department, the local government, its 44 agents or employees, or by any other governmental entity or public utility. 45 (9) Any other requirements deemed necessary by the Department, either for a 46 particular local government or a particular component of the State highway 47 system. 48 A local government given the administrative right to permit sidewalk dining activities under 49 this section may impose additional requirements on a case-by-case basis, and nothing in this 50 section requires the local government to issue or maintain any permit for sidewalk dining 51 activities if, in the opinion of the local government, such activities cannot be conducted in a

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1	safe man	safe manner. Nothing in this section requires the Department to give a local government the						
2	right to establish a permit program for sidewalk dining activities if, in the opinion of the							
3	Department, such activities cannot be conducted in a safe manner.							
4	<u>(b)</u>	<u>A</u> mu	nicipality applying to the Department for administrative rights under this					
5	section sl	hall:						
6		<u>(1)</u>	Enact an ordinance consistent with, but not necessarily limited to, the					
7			requirements of this section.					
8		<u>(2)</u>	For applications along a federal-aid route or where the laws of the United					
9			States otherwise require, obtain permission from the Federal Highway					
10			Administration to permit the right-of-way to be used for the sidewalk					
11			<u>dining.</u> "					
12		SECT	TION 3. This act shall not preempt or override local ordinances currently in					
13	place.							
14		SECT	TION 4. This act is effective when it becomes law.					