



2015-2016 General Assembly

SENATE BILL 481: Fund Small Businesses/Department of Revenue Rulings/City Rights of Way, Part III: Prohibit Cities from Charging Fees for Utility Use of Right-of-Way

Committee:		Date:	August 10, 2016
Introduced by:		Prepared by:	Greg Roney Staff Attorney
Analysis of:	Part III of S.L. 2016-103		

OVERVIEW: Part III of S.L. 2016-103 prohibits a city from imposing a fee on telecommunications, video programming, electricity, or gas utilities for activities conducted in the city's right-of-way, unless the city's right-of-way management expenses related to these activities exceed distributions to the city of sales tax from the utilities' customers. Payments under G.S. 62-350 for pole attachments are not affected.

The prohibition on cities charging fees for utilities' use of right-of-way becomes effective July 1, 2017, and during the period July 22, 2016, through July 1, 2017, cities may charge fees not exceeding fees in effect as of June 1, 2016.

CURRENT LAW: Article 5 of Chapter 105 of the General Statutes distributes to cities part of the sales tax on the following utility services:

- Telecommunications (G.S. 105-164.44F).¹
- Video programming service (G.S. 105-164.44I).²
- Electricity (G.S. 105-164.44K).³
- Piped natural gas (G.S. 105-164.44L).⁴

¹ S.L. 2001-430 (as amended by S.L. 2001-424 and S.L. 2001-487) made all telecommunication services subject to a State sales tax at a uniform rate. Under prior law, local telecommunications were subject to a gross receipts franchise tax and a sales tax, intrastate long distance was subject to a sales tax, and interstate long distance was not taxed. Cities receive a distribution of the sales tax.

² S.L. 2006-151 significantly altered the calculation of the local share of shared sales tax on video programming service and created an entirely new distribution method for the local share of shared sales tax collections.

³ S.L. 2013-316 (as amended by S.L. 2013-363 and S.L. 2013-414) repealed the franchise tax on electricity and replaced the tax with a State sales tax. A portion of the franchise tax was shared with the cities on sales made within the cities. S.L. 2013-316 repealed those tax sharing provisions and substituted a distribution of a portion of the sales tax derived from the utility.

⁴ S.L. 2013-316 (as amended by S.L. 2013-363 and S.L. 2013-414) repealed the excise tax on piped natural gas and replaced the tax with a State sales tax. A portion of the excise tax was shared with the cities on sales made within the cities. S.L. 2013-316 repealed those tax sharing provisions and substituted a distribution of a portion of the sales tax derived from the utility.

Karen Cochrane-Brown
Director



Legislative Analysis
Division
919-733-2578

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BILL ANALYSIS:

Part 3 of S.L. 2016-103 prohibits a city from imposing a fee on telecommunications, video programming, electricity, or piped natural gas utilities for activities conducted in the city's right-of-way, unless the city's right-of-way management expenses related to these activities exceed distributions to the city of sales tax from the utilities' customers.

The listed utility services (telecommunications, video programming, electricity, or piped natural gas) are subject to sales tax, and the cities receive a share of the sales tax under Article 5 of Chapter 105 of the General Statutes.

Payments under G.S. 62-350 for pole attachments are not affected.

EFFECTIVE DATE: The prohibition on cities charging fees for utility use of right-of-way is effective July 1, 2017, and during the period July 22, 2016 until July 1, 2017, cities may charge fees not exceeding fees in effect as of June 1, 2016.