



SENATE BILL 88: Pole Attachment Compensation

**This Bill Analysis
reflects the contents
of the bill as it was
presented in
committee.**

2015-2016 General Assembly

Committee:	Senate Commerce	Date:	April 28, 2015
Introduced by:	Sen. Brown	Prepared by:	Heather Fennell Committee Counsel
Analysis of:	PCS to First Edition S88-CSTD-22		

SUMMARY: *The PCS to Senate Bill 88 would move pole attachment compensation disputes to the Utilities Commission from the Business Court.*

[As introduced, this bill was identical to H403, as introduced by Reps. Stam, Lewis, Lucas, Presnell, which is currently in House Judiciary I, if favorable, Public Utilities.]

CURRENT LAW: G.S. 62-350 requires municipalities and certain membership corporations to permit communications service providers to use their poles, ducts, and conduits at just and reasonable rates and conditions pursuant to negotiated or adjudicated agreements. Under the statute, a "communications service provider" includes entities that provide telephone service, broadband service, or cable service. A request to a municipality or membership corporation to use its poles, ducts, or conduits could be denied only if there is insufficient capacity or for reasons of safety, reliability, and generally applicable engineering principles, and the limitations could not be remedied at a reasonable cost to be reimbursed by the communications service provider.

If the parties are not able to reach an agreement within 90 days, either party may bring an action in Business Court. The Business Court must establish a procedural schedule intended to resolve the action within 180 days, and must resolve any dispute so as to derive just and reasonable rates, terms and conditions, consistent with the public interest and necessity.

BILL ANALYSIS: The PCS to Senate Bill 88 would move the adjudication of pole attachment disputes from the Business Court to the North Carolina Utilities Commission. The Commission would have exclusive jurisdiction over the disputes on a case-by-case basis, but may not exercise general rate-making authority over the use of poles or conduits by communication service providers. The Public Staff, the consumer advocate of the Commission, would be automatically made a party to any dispute.

The Commission may consider any evidence or rate-making methodology offered by the parties. The Commission is authorized to adopt rules to carry out its duties under the bill.

In addition to moving the adjudication to the Utilities Commission, the bill modifies the statutory language in the following ways:

- Inserts language restating federal law that municipalities and membership corporations are exempt from regulation under the federal law that provides guidance to the FCC on the regulation of rates, terms, and conditions, for pole attachments.
- Provides that the agreements to utilize poles, ducts, and conduits, whether negotiated or adjudicated, must contain "just and reasonable rates" and "nondiscriminatory terms and conditions." The prior statutory language provided the agreements must contain "just, reasonable, and nondiscriminatory rates, terms, and conditions."
- Deletes a specific reference to a section of the federal Communications Act that provides guidance to the FCC for regulation of rates, terms, and conditions, for pole attachments

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between entities that are subject to that federal law, in the reference to the types of factors or evidence the parties may present in resolving a dispute.

- Removes the requirement that pole attachment disputes be subject to a procedural schedule that requires the action to be resolved by the adjudicating body within 180 days.

EFFECTIVE DATE: The bill is effective when it becomes law and applies to actions filed on or after that date.