



SENATE BILL 88: Pole Attachment Disputes

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

2015-2016 General Assembly

Committee: House Public Utilities
Introduced by: Sen. Brown
Analysis of: PCS to Second Edition
S88-CSTD-35

Date: June 17, 2015
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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, may be made a party to any dispute at the discretion of the Commission.

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.

As part of the final adjudication of a dispute, the Commission may assess up to \$10,000 of the costs of the proceeding to the parties. If the Public Staff is made a party to a proceeding, the Commission may also assess the costs of expert witnesses required by the Public Staff against the parties.

In addition to moving the adjudication to the Utilities Commission, the bill also makes the following changes:

- Provides that any fees for pole attachments must be billed separately and cannot be added to a bill for electric service.
- Clarifies that the authority to adjudicate pole attachment disputes does not change the Commission's authority under Subsections (h) and (m) of G.S. 62-133.5. Subsection (h) and

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Subsection (m) refer to alternative forms of regulation that telephone companies whose territory is open to competition from other local providers can elect.

- 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.
- 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 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.