# HOUSE BILL 310: Wireless Communications Infrastructure Siting.

*2017-2018 General Assembly*

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| **Committee:** | Senate State and Local Government. If favorable, re-refer to Commerce and Insurance. If favorable, re-refer to Finance. If favorable, re-refer to Rules and Operations of the Senate | **Date:** | June 19, 2017 |
| **Introduced by:** | Reps. Saine, Torbett, Wray | **Prepared by:** | Erika Churchill<br>Billy R. Godwin<br>Staff Attorneys |
| **Analysis of:** | Fifth Edition | | |

***OVERVIEW: House Bill 310 would:***

- ***Amend the laws relating to regulation by cities of wireless infrastructure siting with regard to collocation of small wireless facilities on city utility poles in public rights-of-way.***
- ***Authorize cities to assess fees on wireless providers for occupation of rights-of way if the city charges other communications service providers or publicly, cooperatively, or municipally owned utilities for similar uses of the right-of-way.***
- ***Authorize cities to charge wireless providers for collocation of a small wireless facility on city utility poles a rate of $50 per pole per year.***
- ***Authorize the North Carolina Department of Transportation (NCDOT) to issue permits to wireless providers for collocation of wireless facilities on State rights-of-way.***
- ***Become effective when it becomes law.***

**[As introduced, this bill was identical to S377, as introduced by Sen. Hise, which is currently in Senate Rules and Operations of the Senate.]**

**CURRENT LAW:** Article 19 of Chapter 160A and Article 18 of Chapter 153A of the General Statutes govern land use regulations by cities and counties, respectively. Specifically in Part 3E of Article 19 of Chapter 160A (Cities) and Part 3B of Article 18 of Chapter 153A (Counties), cities and counties are granted like authority to regulate equipment and network components necessary to provide wireless service and regulate new or existing structures designed to support wireless facilities.

Part 3E of Article 19 of Chapter 160A of the General Statutes currently provides for municipal regulation of the siting and modification of mobile broadband and wireless facilities. It also provides for the regulation of collocation of wireless facilities. Collocation is the installation of new wireless facilities on previously-approved structures.

**BILL ANALYSIS:**

**Section 1** of H310 would find that small wireless facilities, including facilities commonly referred to as small cells and distributed antenna systems, may be deployed most effectively in the public rights-of-way.

**Section 2** of H310 would amend Part 3E of Article 19 Chapter 160A to provide for the municipal regulation of the siting and collocation of small wireless facilities and would define "small wireless facilities" as a wireless facility with both of the following: (i) antenna within an enclosure of no more than 6 cubic feet in volume; and (ii) other wireless equipment associated with the small wireless facility of no more than 28 cubic feet in volume. H310 would also address all of the following:

- **Permitting of Small Wireless Facilities by Cities**

G.S. 160A-400.54 would prohibit a city from establishing a moratorium on accepting applications, issuing permits, or otherwise regulating the collocation of small wireless facilities except as provided in this section. A city would have the discretion to require a permit for a wireless provider to collocate small wireless facilities within the city's jurisdiction subject to the following conditions:

- A city may not, as a permit condition, require applicants to provide unrelated services such as reservation of fiber, conduit, or pole space for the city.
- The city would have 30 days to deem an application complete; 45 days to approve or deny the completed application. An applicant would have 30 days to revise a denied application; and the city would have an additional 30 days to approve or deny the revised application.
- Applicants could include up to 25 small wireless facilities into a single permit application. A city could remove one or more those facilities from the consolidated application under certain conditions.
- The permit may require the applicant to commence collocation within 6 months of approval and to activate for use no later than one year from the permit issuance date.

A city would be able to review the permit and could deny an application only if it fails to meet one of the following:

- Compliance with local codes or regulations that concern public safety.
- Objective design standards for decorative utility poles.
- Stealth and concealment, including screening and landscaping for ground-mounted equipment.
- Reasonable spacing requirements for poles and ground-mounted equipment.
- Compliance with local, State, and federal historic district laws and regulations.

A city could charge a permit fee of up to $100 per small cell wireless facility for the first five facilities in an application and $50 for each additional facility in the application. A city could also charge a consulting fee of up to $500 per an application to hire an outside consultant to complete the review and processing of applications.

Permits for small wireless facilities that will extend no more than 10 feet above the top of its support structure may only be reviewed and approved using the G.S. 160A-400.54 criteria above if being collocated (i) in a city right-of-way within any zoning district; or (ii) outside a city right-of-way on other than single-family residential property.

A city could require a wireless services provider to remove an abandoned wireless facility within 180 days of abandonment. Should the wireless services provider fail to timely remove the abandoned wireless facility, the city would be allowed to remove the facility and to recover the actual cost of such removal, including legal fees, if any, from the wireless services provider.

- **Use of the City Right-of-Way**

G.S. 160A-400.55 would:

  - Allow a wireless provider to collocate small wireless facilities in the city rights-of-way.
  - Prohibit a city from entering into an exclusive arrangement with any person for the use of the city right-of-way for wireless facilities, wireless support structures, or the collocation of small wireless facilities.

If the wireless provider sought to install a new or modify an existing utility pole in the city right-of-way in association with the collocation of a small cell wireless facility and (i) those poles do not to exceed 50 feet; and (ii) the collocated small wireless facilities do not extend more than 10 feet off the top of the structure, the city's review is limited to the G.S. 160A-400.54 criteria set forth above. The city may, however, allow wireless facilities that exceed those height restrictions at the city's discretion. Applicants for use of the city right-of-way would have to comply with the city's undergrounding requirements.

A city could charge a wireless provider for the use of the city right-of-way. The charge must be reasonable and nondiscriminatory and must not exceed the direct and actual cost of managing the city rights-of-way and is not to be based on the wireless provider's revenue or customer counts. The charge could not exceed similar charges imposed on other users of the right-of-way, including publicly, cooperatively, or municipally owned utilities. A city could require a wireless provider to repair any damage to the city right-of-way caused while installing or maintaining wireless facilities or other associated facilities. If the wireless provider fails to make those repairs, the city could charge the provider the reasonable cost of the repairs.

Historic preservation zoning authority could still be exercised by the city.

- **Access to City Utility Poles**

G.S. 160A-400.56 would prohibit a city from entering into an exclusive arrangement with any person for the use of the city utility poles. A city must allow a wireless provider to collocate on utility poles at just, reasonable and non-discriminatory rates, not to exceed $50 per a city utility pole per year. Requests to collocate on a city utility pole may be denied only for (i) insufficient capacity; (ii) reasons of safety; and (iii) engineering principles, none of which can be remedied. The wireless provider seeking to collocate must comply with all applicable safety requirements, including the National Electric Safety Code and rules and regulations of the Occupational Safety and Health Administration.

Within 60 days of receiving an application to collocate on a city pole, the city would be required to provide an estimate of costs for make-ready work. Such work must be completed within 60 days of acceptance of the estimate by applicant.

These provisions would not apply to: (i) a city that owns or operates a public enterprise consisting of an electric power generation, transmission, or distribution system; or (ii) an electric membership corporation that owns or controls poles, ducts or conduits, but which is exempt from regulation under section 224 of the Communications Act of 1934.

- **Stadiums, Private Easements, Enforcement**

H3010 would provide for all of the following:

  - Clarify that nothing in the act would amend, modify, or otherwise affect any easement agreement between private parties.
  - That except as provided, or otherwise specifically authorized the General Statutes, a city could not do any of the following:

    - Adopt or enforce any regulation on the placement or operation of communications facilities in the rights-of-way, whether State or city, by a provider authorized by State law to operate in the rights-of-way and may not regulate any communications services.
    - Impose or collect any tax, fee, or charge to provide a communications service over a communications facility in the right-of-way.
    - Regulate small wireless facilities within any stadium or athletic facility, unless the city owns the stadium or athletic facility.
  - That approval of the installation, placement, maintenance, or operation of a small wireless facility pursuant to the act would not authorize the provision of any communications services or the installation, placement, maintenance, or operation of any communications facility, including a wireline backhaul facility, other than a small wireless facility, in the right-of-way.

**Section 3** of H310 concerns the regulation of wireless facilities in the rights-of-way of State-maintained highways. This section would add the placement of wireless facilities to the list of allowable activities in the State rights-of-way and would authorize the North Carolina Department of Transportation (NC DOT) to issue permits for the collocation of wireless facilities in the State rights-of-way. NC DOT would be required to approve or deny permits within a reasonable period of time of receiving an application.

The collocation of small wireless facilities in the State right-of-way would be subject to the following requirements:

- The facilities could not obstruct or hinder the usual travel or public safety on any State rights-of-way or obstruct the legal use of such rights-of-way by other utilities.
- Each new or modified utility pole and wireless support structure installed in the State right-of-way is not to exceed the greater of (i) 10 feet in height above the height of the tallest existing utility pole, in place as July 1, 2017, located within 500 feet of the new pole in the same rights-of-way, or (ii) 50 feet above ground level.
- Each new small wireless facility in the right-of-way is not to extend (i) more than 10 feet above an existing utility pole or wireless support structure in place as of July 1, 2017, or (ii) above the height permitted for a new utility pole or wireless support structure under this section.

**EFFECTIVE DATE:** Effective when it becomes law.

*Jennifer McGinnis and Layla Cummings, counsel to House Energy and Public Utilities, substantially contributed to this summary.*