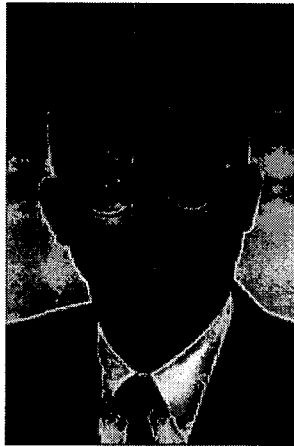


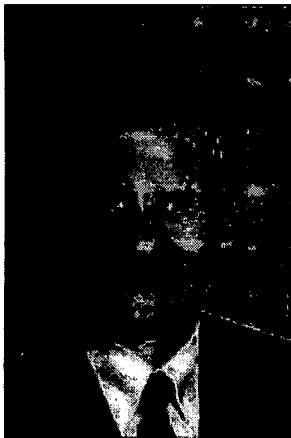
1997-1998

**HOUSE
COMMERCE –
PUBLIC UTILITIES**

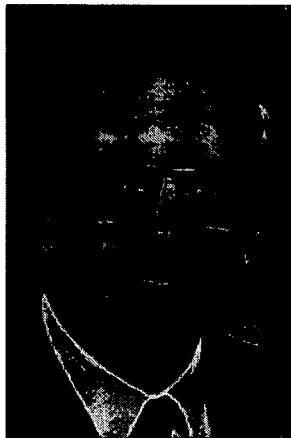
MINUTES



Rep. Daniel McComas
Chair
Subcommittee on Public Utilities



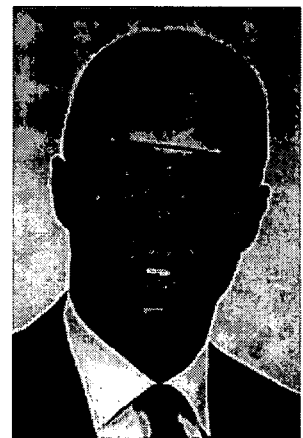
Rep. James Crawford
RMM



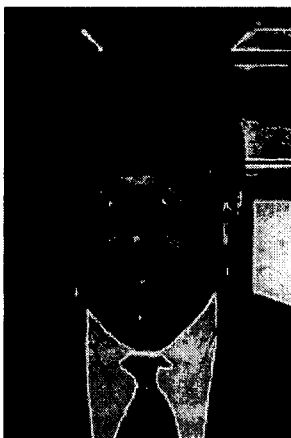
Rep. Cary Allred



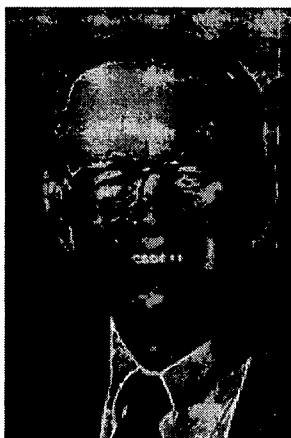
Rep. Donald Bonner



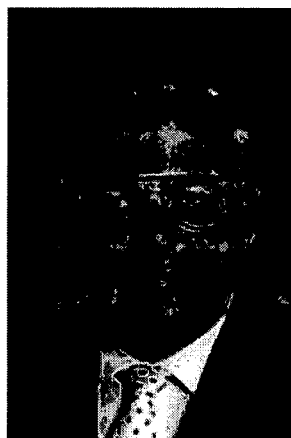
Rep. Jerry Braswell



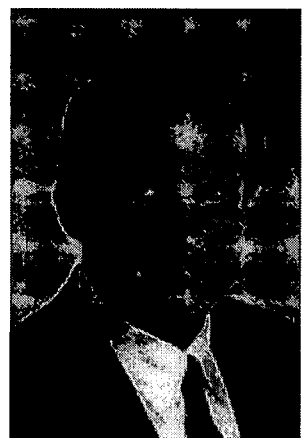
Rep. William Culpepper



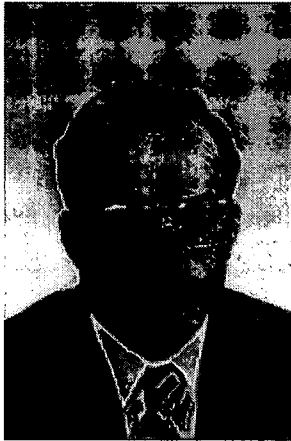
Rep. Walter Dickson



Rep. George Holmes



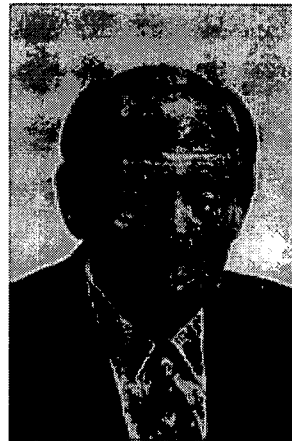
Rep. John Hurley



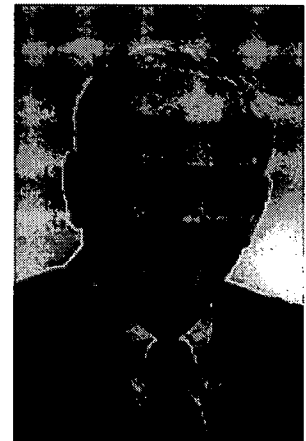
Rep. William Ives



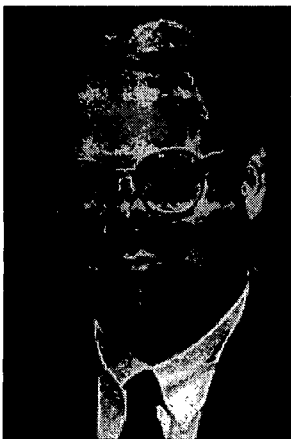
Rep. Eugene McCombs



Rep. Paul McCrary



Rep. Frank Mitchell



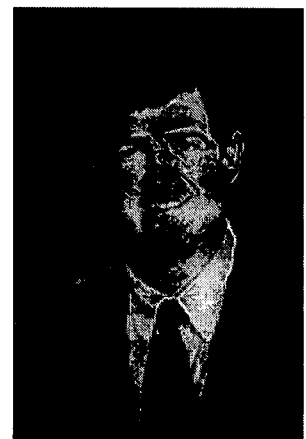
Rep. Richard Morgan



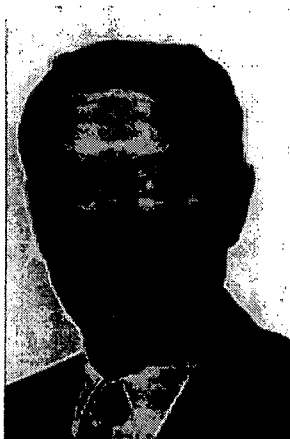
Rep. Charles Neely, Jr.



Rep. Edd Nye



Rep. Dennis Reynolds



Rep. Eugene Rogers



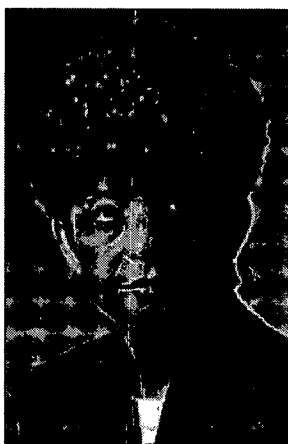
Rep. Constance Wilson



Rep. Larry Womble



Rep. Leo Daughtry
Majority Leader
Ex Officio



Rep. Julia Howard
Majority Whip
Ex Officio



Rep. Steve Wood
Speaker Pro Tem
Ex Officio

Subcommittee on Public Utilities 1997

**HOUSE COMMITTEE ON PUBLIC UTILITIES
1997 SESSION**

<u>MEMBER/Clerk</u>	<u>PHONE</u>	<u>OFFICE</u>	<u>SEAT</u>
Rep. Daniel McComas, Chairman Rita Quinn, Committee Clerk	3-5758	2123	63
Rep. James Crawford, RMM Linda Winstead	3-5824	1301	24
Rep. Cary Allred Jean Allred	3-5773	2223	11
Rep. Donald Bonner Lucy Johnson	5-9664	617	109
Rep. Jerry Braswell Dianna Gilmore	3-5809	539	96
Rep. William Culpepper Dot Crocker	3-5802	604	36
Rep. Walter Dickson Joyce Langdon	3-5662	530	25
Rep. George Holmes Glenda Jacobs	3-5900	631	6
Rep. John Hurley Dot Anderson	3-5859	1004	71
Rep. William Ives Jayne Walton	3-5784	633	90
Rep. Eugene McCombs Susanne Erskine	3-5881	514	55
Rep. Paul McCrary Barbara Berry	3-5780	610	10
Rep. Frank Mitchell Susan Thomason	3-5959	638	9
Rep. Richard Morgan Dixie Epps	5-3028	404	17
Rep. Charles Neely Betty Harrison	5-3001	420	29
Rep. Edd Nye Jo Bobbitt	3-5477	639	23

**HOUSE COMMITTEE ON PUBLIC UTILITIES
1997 SESSION**

Continued...

<u>MEMBER/Clerk</u>	<u>PHONE</u>	<u>OFFICE</u>	<u>SEAT</u>
Rep. Dennis Reynolds Tina Covington	3-5820	533	76
Rep. Eugene Rogers Judy Veorse	5-3023	416A	35
Rep. Constance Wilson Joanna Mills	3-7663	529	40
Rep. Larry Womble Phyllis Cameron	3-5751	540	105
Rep. Leo Daughtry, Majority Leader (Ex Officio) Bernice Bullard	5-0850	2301	30
Rep. Julia Howard, Majority Whip (Ex Officio) Gail Stewart	3-5904	1021	8
Rep. Steve Wood, Speaker Pro Tem (Ex Officio) Sylvia Perkins	3-5807	2208	12
Rep. David Miner, SRM (Commerce CTE CoChair) Stephanie Mansur	3-5749	2219	16
Rep. Cherie Berry (Commerce CTE CoChair) Betty Smith	3-5861	1006	41
Rep. Walter Church (Commerce CTE CoChair) Joyce Fuller	3-5805	1311	33
Rep. William Hiatt (Commerce CTE CoChair) Edna Pearce	3-5862	1008	14
Rep. Tallent (Commerce CTE CoChair) Joyce Bulluck	3-5934	1104	73
Steve Rose, Staff Attorney	5-2578	545	

SUBCOMMITTEE ON PUBLIC UTILITIES

[illegible]

NORTH CAROLINA GENERAL ASSEMBLY
COMMITTEE SUMMARY REPORT

1997-98 Regular Session	HOUSE: COMMERCE--PUBLIC UTILITIES	Valid Through 19-AUG-1997
<u>BILL</u>	<u>SHORT TITLE</u>	<u>LATEST ACTION ON BILL</u>
H 26=	THOMPSON	H -RE-REF COM ON RULES
H 495	OWENS	*H -PRES. TO GOV. 08-12
H 547=	CULP	H -ASSIGNED TO COMM-UTL
H1126	MINER	*S -REF TO COM ON FINANCE
	AMEND LP GAS CODE	IN DATE
	NATURAL GAS	02-04-97
	RENEWABLE RESOURCE ENERGY	04-02-97
	NO SALES TAX ON PAY PHONES	04-02-97
		05-28-97
		07-03-97

NOTES - = AFTER BILL NUMBER SHOWS THAT BILL IS IDENTICAL, AS INTRODUCED, TO ANOTHER BILL.
 * AFTER NUMBERS INDICATES THAT TEXT OF BILL WAS ALTERED BY ACTION ON THE BILL.
 BOLDDED LINE INDICATES BILL INDEXED AS AFFECTING APPROPRIATIONS.

**1997 PERMANENT SUBCOMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

FOR RECOMMENDING BILLS TO STANDING COMMITTEE OR TO THE FLOOR OF THE HOUSE
The following report(s) from permanent sub committee(s) is/are presented:

By Representative(s) Daniel F. McComas for the Permanent Subcommittee on Public Utilities of the
Standing Committee on COMMERCE.

Committee Substitute for

H.B. 26

☐ A BILL TO BE ENTITLED AN ACT TO MAKE CONFORMING
CHANGES TO THE LP GAS STATUTE.

REPORTED TO THE STANDING COMMITTEE ON **COMMERCE**

RECOMMENDED ACTION:

- ☐ With a favorable recommendation.
- ☐ With a favorable recommendation and recommend that the bill be re-referred to the Committee on
- ☐ With a favorable recommendation, as amended.
- ☐ With a favorable recommendation, as amended, and recommend that the bill be re-referred to the
Committee on
- ☐ With an unfavorable recommendation.
- ☒ With a favorable recommendation as to proposed committee substitute bill unfavorable as to original
bill, and re-referred to the Committee on Finance.
- ☐ With a favorable recommendation as to proposed House committee substitute bill, which
changes the title, unfavorable as to Senate committee substitute bill.
- ☐ Without prejudice.
- ☐ Other recommended action: _____

**WITH APPROVAL OF STANDING COMMITTEE CHAIR FOR REPORT TO BE MADE DIRECTLY
TO THE FLOOR OF THE HOUSE:**

Rep. _____ for the Standing Committee on _____

s/ _____

- ☐ With a favorable report.
- ☐ With a favorable report, as amended.
- ☐ With a favorable report as to committee substitute bill which changes the title, unfavorable
as to original bill.
- ☐ And having received a unanimous vote in committee, be placed on the Consent Calendar.-

**1997 PERMANENT SUBCOMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

FOR RECOMMENDING BILLS TO STANDING COMMITTEE OR TO THE FLOOR OF THE HOUSE
The following report(s) from permanent sub committee(s) is/are presented:

By Representative(s) Daniel F. McComas for the Permanent Subcommittee on Public Utilities of the
Standing Committee on COMMERCE.

Committee Substitute for

H.B. 495

☐ A BILL TO BE ENTITLED AN ACT TO ADDRESS NORTH
CAROLINA'S URGENT INFRASTRUCTURE NEEDS BY CLARIFYING THAT THE NORTH
CAROLINA UTILITIES COMMISSION MAY ESTABLISH DIFFERENT RATES FOR NATURAL
GAS SERVICE TO UNSERVED COUNTIES THAT REFLECT THE ACTUAL COST OF
PROVIDING SERVICE TO THE UNSERVED COUNTIES AND AUTHORIZING THE
CREATION OF NATURAL GAS DISTRICTS FOR NATURAL GAS EXPANSIION.

REPORTED TO THE STANDING COMMITTEE ON **COMMERCE**

RECOMMENDED ACTION:

- ☐ With a favorable recommendation.
- ☐ With a favorable recommendation and recommend that the bill be re-referred to the Committee on
- ☐ With a favorable recommendation, as amended.
- ☐ With a favorable recommendation, as amended, and recommend that the bill be re-referred to the
Committee on
- ☐ With an unfavorable recommendation.
- x With a favorable recommendation as to proposed committee substitute bill, which changes the title,
unfavorable as to original bill, and re-referred to the Committee on Finance.
- ☐ With a favorable recommendation as to proposed House committee substitute bill, which
changes the title, unfavorable as to Senate committee substitute bill.
- ☐ Without prejudice.
- ☐ Other recommended action: _____

WITH APPROVAL OF STANDING COMMITTEE CHAIR FOR REPORT TO BE MADE DIRECTLY
TO THE FLOOR OF THE HOUSE:

Rep. _____ for the Standing Committee on _____

s/ _____

- ☐ With a favorable report.
- ☐ With a favorable report, as amended.
- ☐ With a favorable report as to committee substitute bill which changes the title, unfavorable
as to original bill.
- ☐ And having received a unanimous vote in committee, be placed on the Consent Calendar.-

**1997 PERMANENT SUBCOMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

FOR RECOMMENDING BILLS TO STANDING COMMITTEE OR TO THE FLOOR OF THE HOUSE
The following report(s) from permanent sub committee(s) is/are presented:

By Representative(s) Daniel F. McComas for the Permanent Subcommittee on Public Utilities of the
Standing Committee on COMMERCE.

☐ Committee Substitute for

H.B. 1126

☒ A BILL TO BE ENTITLED AN ACT TO EXEMPT LOCAL PAY
PHONE SERVICES FROM SALES TAX.

REPORTED TO THE STANDING COMMITTEE ON **COMMERCE**

RECOMMENDED ACTION:

☐ With a favorable recommendation.

☒ With a favorable recommendation and recommend that the bill be re-referred to the Committee on
FINANCE.

☐ With a favorable recommendation, as amended.

☐ With a favorable recommendation, as amended, and recommend that the bill be re-referred to the
Committee on

☐ With an unfavorable recommendation.

☐ With a favorable recommendation as to proposed committee substitute bill which changes the
title, unfavorable as to original bill.

☐ With a favorable recommendation as to proposed House committee substitute bill, which
changes the title, unfavorable as to Senate committee substitute bill.

☐ Without prejudice.

☐ Other recommended action: _____

WITH APPROVAL OF STANDING COMMITTEE CHAIR FOR REPORT TO BE MADE DIRECTLY
TO THE FLOOR OF THE HOUSE:

Rep. _____ for the Standing Committee on _____

s/ _____

☐ With a favorable report.

☐ With a favorable report, as amended.

☐ With a favorable report as to committee substitute bill (# _____), ☐ which changes the title,
unfavorable as to original bill (Committee Substitute Bill # _____). (and recommendation that the
committee substitute bill (# _____) be referred to the Committee on _____ .)

☐ And having received a unanimous vote in committee, be placed on the Consent Calendar.
(PUBLIC BILLS ONLY)

4/24/97



North Carolina General Assembly
House of Representatives
State Legislative Building
Raleigh 27601-1096

REPRESENTATIVE DANIEL F. MCCOMAS
13TH DISTRICT

OFFICE ADDRESS: 2123 LEGISLATIVE BUILDING
RALEIGH, N.C. 27601-1096

TELEPHONE: (919) 733-5758
(919) 733-2599 FAX

E-MAIL ADDRESS: DANNYM@MS.NCGA.STATE.NC.US

HOME ADDRESS: P. O. BOX 2274
WILMINGTON, N.C. 28402

April 9, 1997

COMMITTEES:

COMMERCE
SUBCOMMITTEE ON PUBLIC UTILITIES, CHAIR
ENVIRONMENT
FINANCE, DEPUTY WHIP
SUBCOMMITTEE ON LOCAL, REGIONAL & STATE
REVENUES
INSURANCE
SUBCOMMITTEE ON HEALTH, CHAIR
TRANSPORTATION

TO: Principle Clerk's Office

FROM: Rita A. Quinn, Committee Clerk

RE: Action of Subcommittee on Public Utilities

At today's meeting, the Subcommittee on Public Utilities appointed a sub-subcommittee to further study HB 547 *Renewable Resource Energy*. The Representatives assigned are: Tallent, Chairman; Dickson; McCombs; Nye; Reynolds. Chairman Tallent will schedule the meetings and report back to the permanent subcommittee at the conclusion of the study.





North Carolina General Assembly

House of Representatives

State Legislative Building

Raleigh 27601-1096

MINUTES

HOUSE COMMERCE SUBCOMMITTEE ON PUBLIC UTILITIES

April 9, 1997

The Subcommittee on Public Utilities met at 10:00 a.m. on April 9, 1997 in the Legislative Office Building, Room 544.

Representative Daniel F. McComas, Chairman, presided and the following members were present:

Representatives Allred; Bonner; Braswell; Culpepper; Dickson; Holmes; Hurley; Ives; McCombs; McCrary; Mitchell; Morgan; Nye; Rogers; Tallent; C. Wilson; Womble

Staff Counsel Steve Rose was present to assist the Committee. The visitor registration sheet is attached as part of the minutes.


Chairman McComas called the meeting to order, introduced the Page serving the Committee and welcomed guests. The following bill was discussed:

Representative Arlie Culp, bill sponsor, was recognized to explain HB 547 *Renewable Resource Energy*. Also recognized for their input on this legislation were Steve Cook, Cook Industries, Inc.; Gene Upchurch, Carolina Power & Light; Bob Kaylor, Duke Power.

Chairman McComas announced the formation of a sub-subcommittee to further study HB 547. The members appointed were Representatives Tallent, Chairman; Dickson; McCombs; Nye; Reynolds. Chairman Tallent will schedule the meetings and report back to the permanent subcommittee at the conclusion of the study.

The meeting adjourned at 10:53 a.m.


Daniel F. McComas
Chairman


Rita A. Quinn
Committee Clerk





North Carolina General Assembly

House of Representatives

State Legislative Building

Raleigh 27601-1096

April 9, 1997

TO: Principle Clerk's Office

FROM: Rita A. Quinn, Committee Clerk

RE: Action of Subcommittee on Public Utilities

At today's meeting, the Subcommittee on Public Utilities appointed a sub-subcommittee to further study HB 547 *Renewable Resource Energy*. The Representatives assigned are: Tallent, Chairman; Dickson; McCombs; Nye; Reynolds. Chairman Tallent will schedule the meetings and report back to the permanent subcommittee at the conclusion of the study.





**North Carolina General Assembly
Legislative Services Office**

George R. Hall, Legislative Services Officer
(919) 733-7044

Elaine W. Robinson, Director
Administrative Division
Room 5, Legislative Building
16 W. Jones Street
Raleigh, NC 27603-5925
(919) 733-7500

Gerry F. Cohen, Director
Bill Drafting Division
Suite 401, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910


Donald W. Fulford, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

April 8, 1997

MEMORANDUM

**TO: Subcommittee on Public Utilities,
House Committee on Commerce**

FROM:  Committee Counsel for Public Utilities

RE: House Bill 547; Avoided costs for certain small power producers

House Bill 547 amends G.S. 62-156 by providing a specific method for calculation of rates to be paid by public utilities to power producers producing 5 megawatts of electricity or less at the same site at dams in existence prior to 1997.

As currently written, G.S. 62-156 requires the Utilities Commission to hold a biennial proceeding to determine the rates to be paid by electric utilities for power purchased by small power producers where the utility and the power producer cannot agree on the terms. Under present law, the rates paid by the utility to the small power producer shall not exceed the cost to the utility of the electric energy which, but for the purchase from the small power producer, the utility would generate or purchase from another source. This is known as the avoided cost rate.

The amendment would require that the rates paid to hydroelectric power producers producing 5 megawatts or less at the same site at dams in existence prior to 1997 be calculated by using the Commission's approved residential retail rate for electricity for the particular utility and deducting from it a billing and distribution charge, not to exceed 10% of the retail rate, and a handling charge, not to exceed 12% of the retail rate. The amendment allows for the deduction for billing and distribution, and the deduction for the handling charge to be established by agreement between the small power producer and the utility for a period of up to 15 years, provided that the rate paid by the utility fluctuates as the Commission's approved residential rate for the utility fluctuates.

The requirement that public utilities purchase electricity from small power producers is imposed by Congress pursuant to the Public Utilities Regulatory Policies Act of 1978 (PURPA).

Under PURPA, the amount paid by the electric utility to the small hydroelectric facility may not exceed the avoided cost to the utility. Under federal law, avoided cost is the cost to the electric utility of the electric energy which, but for the purchase from the small power producer, the utility would generate or purchase from another source. While differences exist in the methods which may be used to calculate avoided costs, a formula not based on avoided costs is not permissible under PURPA.

It should be pointed out to the Committee that, although House Bill 547 uses the "residential retail rate" as the starting point for calculating the amount to be paid to the small power producer, there are a number of different residential retail rates used by each of the public utilities.

The matter of payments to small hydroelectric power producers was referred to the Joint Legislative Utility Review Committee by the 1995 General Assembly. The Utility Review Committee considered the matter but declined to make a recommendation to the 1997 General Assembly.

House Bill 547 would become effective when it becomes law and applies to contracts entered into on or before January 1, 1997. This would affect preexisting contracts.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 547*

Short Title: Renewable Resource Energy.

(Public)

Sponsors: Representatives Culp and Allred (Cosponsors).

Referred to: Commerce.

March 19, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO ENHANCE, ENSURE, AND PROTECT THE PUBLIC'S RIGHT TO
3 CONTINUED ACCESS TO RENEWABLE RESOURCE ENERGY
4 GENERATED BY SMALL POWER PRODUCERS OF FIVE MEGAWATTS OR
5 LESS BY PROVIDING THAT AVOIDED COSTS TO A UTILITY FROM
6 THAT ENERGY BE CALCULATED BY THE RESIDUAL REVENUE
7 METHOD.

8 Whereas, it is in the public interest to encourage small business
9 development in the area of electric energy generation and to enhance the continued
10 economic feasibility of the production of renewable energy at small power production
11 facilities producing five megawatts or less of electricity; and

12 Whereas, the operation of such small power production facilities helps to
13 curtail the need for facilities operating on fossil fuels; Now, therefore,
14 The General Assembly of North Carolina enacts:

15 Section 1. G.S. 62-156 reads as rewritten:

16 "**§ 62-156. Power sales by small power producers to public utilities.**

17 (a) In the event that a small power producer and an electric utility are unable to
18 mutually agree to a contract for the sale of electricity or to a price for the electricity
19 purchased by the electric utility, the commission shall require the utility to purchase
20 the power, under rates and terms established as provided in subsection (b) of this
21 section.

22 (b) No later than March 1, 1981, and at least every two years thereafter, the
23 commission shall determine the rates to be paid by electric utilities for power

1 purchased from small power producers, other than those producers described in
2 subsection (c) of this section, according to the following standards:

3 (1) Term of Contract. -- Long-term contracts for the purchase of
4 electricity by the utility from small power producers shall be
5 encouraged in order to enhance the economic feasibility of small
6 power production facilities.

7 (2) Avoided Cost of Energy to the Utility. -- The rates paid by a utility
8 to a small power producer shall not exceed, over the term of the
9 purchase power contract, the incremental cost to the electric utility
10 of the electric energy which, but for the purchase from a small
11 power producer, the utility would generate or purchase from
12 another source. A determination of the avoided energy costs to the
13 utility shall include a consideration of the following factors over
14 the term of the power contracts: the expected costs of the
15 additional or existing generating capacity which could be
16 displaced, the expected cost of fuel and other operating expenses
17 of electric energy production which a utility would otherwise incur
18 in generating or purchasing power from another source, and the
19 expected security of the supply of fuel for the utilities' alternative
20 power sources.

21 (3) Availability and Reliability of Power. -- The rates to be paid by
22 electric utilities for power purchased from a small power producer
23 shall be established with consideration of the reliability and
24 availability of the power.

25 (c) The rates paid by a utility to a small power producer producing five megawatts
26 of electricity or less at the same site and at dams in existence prior to 1997, shall be
27 determined by using the residual revenue method as follows: by deducting from the
28 Commission's approved residential retail rate for electricity for the applicable utility a
29 billing and distribution charge, not to exceed ten percent (10%) of the retail rate, and
30 a handling charge, not to exceed twelve percent (12%) of the retail rate. The result of
31 this calculation shall be the avoided cost to the utility. The percentage deduction for
32 the billing and distribution charge and the handling charge may be established by
33 agreement between the small power producer and the utility for a period of up to 15
34 years, but the rate paid by a utility shall fluctuate as the Commission's approved
35 residential rate for electricity for the receiving utility fluctuates."

36 Section 2. This act is effective when it becomes law and applies to
37 contracts entered into on or before January 1, 1997.

22 retroactive?
S. Rose

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 547*

Short Title: Renewable Resource Energy.

(Public)

Sponsors: Representatives Culp and Allred (Cosponsors).

Referred to: Commerce.

March 19, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO ENHANCE, ENSURE, AND PROTECT THE PUBLIC'S RIGHT TO
3 CONTINUED ACCESS TO RENEWABLE RESOURCE ENERGY
4 GENERATED BY SMALL POWER PRODUCERS OF FIVE MEGAWATTS OR
5 LESS BY PROVIDING THAT AVOIDED COSTS TO A UTILITY FROM
6 THAT ENERGY BE CALCULATED BY THE RESIDUAL REVENUE
7 METHOD.

8 Whereas, it is in the public interest to encourage small business
9 development in the area of electric energy generation and to enhance the continued
10 economic feasibility of the production of renewable energy at small power production
11 facilities producing five megawatts or less of electricity; and

12 Whereas, the operation of such small power production facilities helps to
13 curtail the need for facilities operating on fossil fuels; Now, therefore,
14 The General Assembly of North Carolina enacts:

15 Section 1. G.S. 62-156 reads as rewritten:

16 "§ 62-156. Power sales by small power producers to public utilities.

17 (a) In the event that a small power producer and an electric utility are unable to
18 mutually agree to a contract for the sale of electricity or to a price for the electricity
19 purchased by the electric utility, the commission shall require the utility to purchase
20 the power, under rates and terms established as provided in subsection (b) of this
21 section.

22 (b) No later than March 1, 1981, and at least every two years thereafter, the
23 commission shall determine the rates to be paid by electric utilities for power

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2 subsection (c) of this section, according to the following standards:

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4 electricity by the utility from small power producers shall be
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8 to a small power producer shall not exceed, over the term of the
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10 of the electric energy which, but for the purchase from a small
11 power producer, the utility would generate or purchase from
12 another source. A determination of the avoided energy costs to the
13 utility shall include a consideration of the following factors over
14 the term of the power contracts: the expected costs of the
15 additional or existing generating capacity which could be
16 displaced, the expected cost of fuel and other operating expenses
17 of electric energy production which a utility would otherwise incur
18 in generating or purchasing power from another source, and the
19 expected security of the supply of fuel for the utilities' alternative
20 power sources.

21 (3) Availability and Reliability of Power. -- The rates to be paid by
22 electric utilities for power purchased from a small power producer
23 shall be established with consideration of the reliability and
24 availability of the power.

25 (c) The rates paid by a utility to a small power producer producing five megawatts
26 of electricity or less at the same site and at dams in existence prior to 1997, shall be
27 determined by using the residual revenue method as follows: by deducting from the
28 Commission's approved residential retail rate for electricity for the applicable utility a
29 billing and distribution charge, not to exceed ten percent (10%) of the retail rate, and
30 a handling charge, not to exceed twelve percent (12%) of the retail rate. The result of
31 this calculation shall be the avoided cost to the utility. The percentage deduction for
32 the billing and distribution charge and the handling charge may be established by
33 agreement between the small power producer and the utility for a period of up to 15
34 years, but the rate paid by a utility shall fluctuate as the Commission's approved
35 residential rate for electricity for the receiving utility fluctuates."

36 Section 2. This act is effective when it becomes law and applies to
37 contracts entered into on or before January 1, 1997.

S 408. RENEWABLE RESOURCE ENERGY. *TO ENHANCE, ENSURE, AND PROTECT THE PUBLIC'S RIGHT TO CONTINUED ACCESS TO RENEWABLE RESOURCE ENERGY GENERATED BY SMALL POWER PRODUCERS OF FIVE MEGAWATTS OR LESS BY PROVIDING THAT AVOIDED COSTS TO A UTILITY FROM THAT ENERGY BE CALCULATED BY THE RESIDUAL REVENUE METHOD.* Amends GS 62-156 to provide that rates paid by utility to small power producer producing five megawatts of electricity or less, with regard to same site and dams existing before 1997, will be determined by using residual revenue method to calculate an avoided cost by deducting from the Utility Comm'n's approved residential retail rate a billing and distribution charge not to exceed 10% of the retail rate and a handling charge not to exceed 12% of retail rate. The percentages used in calculating the avoided cost may be established by agreement between the producer and the utility for up to 15 years, but the rate paid by the utility continues to vary as the comm'n's approved residential rate for electricity for the receiving utility varies. Applies to contracts entered into on or before Jan. 1, 1997.

Intro. by Shaw of Guilford and Cochrane.

Ref. to Commerce

GS 62

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 408

Short Title: Renewable Resource Energy.

(Public)

Sponsors: Senators Shaw of Guilford and Cochrane.

Referred to: Commerce.

March 18, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO ENHANCE, ENSURE, AND PROTECT THE PUBLIC'S RIGHT TO
3 CONTINUED ACCESS TO RENEWABLE RESOURCE ENERGY
4 GENERATED BY SMALL POWER PRODUCERS OF FIVE MEGAWATTS OR
5 LESS BY PROVIDING THAT AVOIDED COSTS TO A UTILITY FROM
6 THAT ENERGY BE CALCULATED BY THE RESIDUAL REVENUE
7 METHOD.

8 Whereas, it is in the public interest to encourage small business
9 development in the area of electric energy generation and to enhance the continued
10 economic feasibility of the production of renewable energy at small power production
11 facilities producing five megawatts or less of electricity; and

12 Whereas, the operation of such small power production facilities helps to
13 curtail the need for facilities operating on fossil fuels; Now, therefore,
14 The General Assembly of North Carolina enacts:

15 Section 1. G.S. 62-156 reads as rewritten:

16 "§ 62-156. Power sales by small power producers to public utilities.

17 (a) In the event that a small power producer and an electric utility are unable to
18 mutually agree to a contract for the sale of electricity or to a price for the electricity
19 purchased by the electric utility, the commission shall require the utility to purchase
20 the power, under rates and terms established as provided in subsection (b) of this
21 section.

22 (b) No later than March 1, 1981, and at least every two years thereafter, the
23 commission shall determine the rates to be paid by electric utilities for power

1 purchased from small power producers, other than those producers described in
2 subsection (c) of this section, according to the following standards:

3 (1) Term of Contract. -- Long-term contracts for the purchase of
4 electricity by the utility from small power producers shall be
5 encouraged in order to enhance the economic feasibility of small
6 power production facilities.

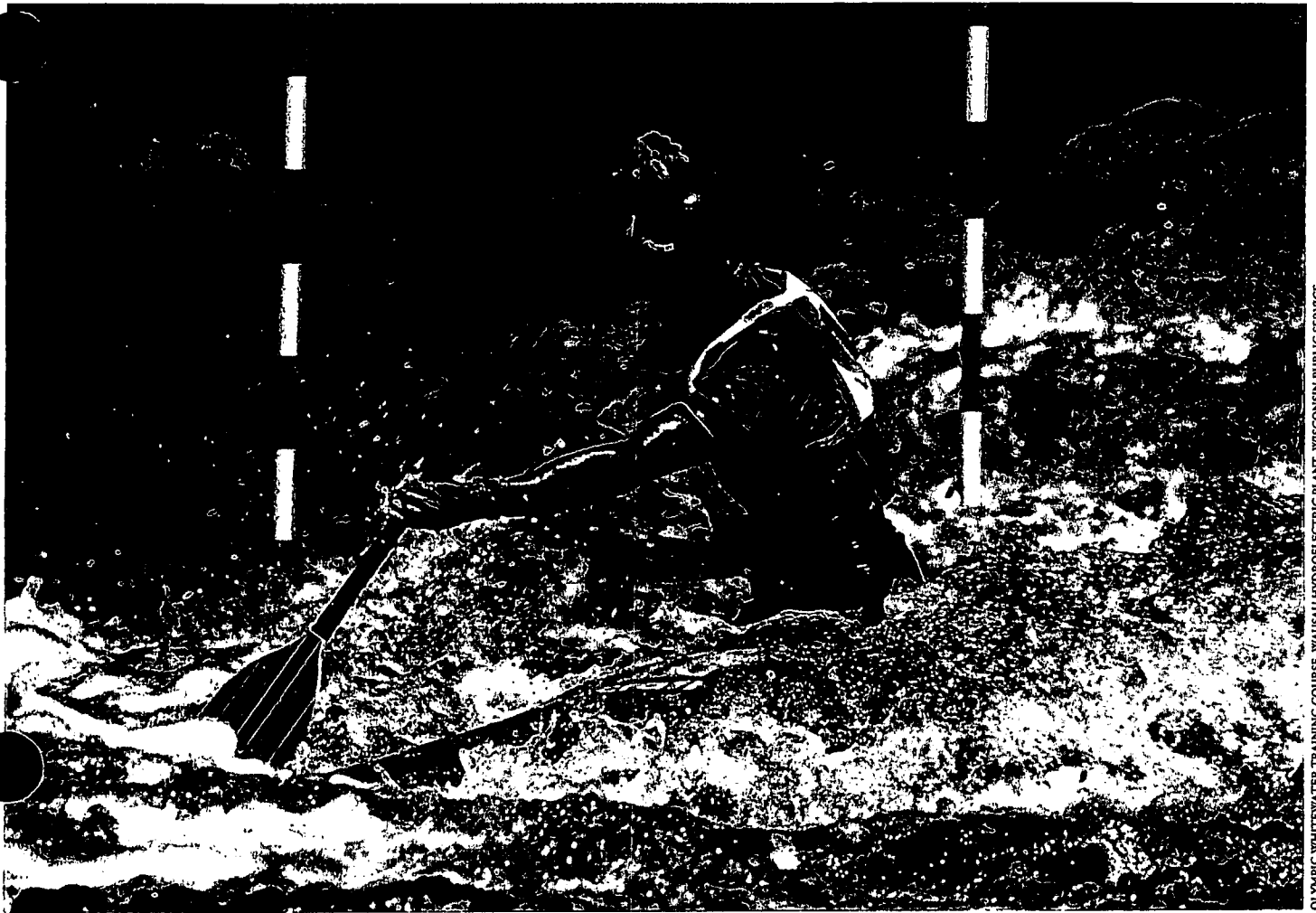
7 (2) Avoided Cost of Energy to the Utility. -- The rates paid by a utility
8 to a small power producer shall not exceed, over the term of the
9 purchase power contract, the incremental cost to the electric utility
10 of the electric energy which, but for the purchase from a small
11 power producer, the utility would generate or purchase from
12 another source. A determination of the avoided energy costs to the
13 utility shall include a consideration of the following factors over
14 the term of the power contracts: the expected costs of the
15 additional or existing generating capacity which could be
16 displaced, the expected cost of fuel and other operating expenses
17 of electric energy production which a utility would otherwise incur
18 in generating or purchasing power from another source, and the
19 expected security of the supply of fuel for the utilities' alternative
20 power sources.

21 (3) Availability and Reliability of Power. -- The rates to be paid by
22 electric utilities for power purchased from a small power producer
23 shall be established with consideration of the reliability and
24 availability of the power.





25 (c) The rates paid by a utility to a small power producer producing five megawatts
26 of electricity or less at the same site and at dams in existence prior to 1997, shall be
27 determined by using the residual revenue method as follows: by deducting from the
28 Commission's approved residential retail rate for electricity for the applicable utility a
29 billing and distribution charge, not to exceed ten percent (10%) of the retail rate, and
30 a handling charge, not to exceed twelve percent (12%) of the retail rate. The result of
31 this calculation shall be the avoided cost to the utility. The percentage deduction for
32 the billing and distribution charge and the handling charge may be established by
33 agreement between the small power producer and the utility for a period of up to 15
34 years, but the rate paid by a utility shall fluctuate as the Commission's approved
35 residential rate for electricity for the receiving utility fluctuates."

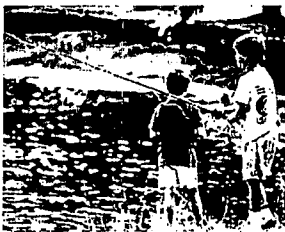
36 Section 2. This act is effective when it becomes law and applies to
37 contracts entered into on or before January 1, 1997.

MEET A FEW OF OUR BIGGEST FANS



OLYMPIC WHITEWATER TRAINING COURSE. WAUSAU HYDROELECTRIC PLANT, WISCONSIN PUBLIC SERVICE

Boaters. Swimmers. Fishermen. Hikers. Campers. Kayakers. Rafters. They're just a few of the diverse groups of nature lovers who are discovering that hydropower can make the great outdoors even greater.  By creating sparkling lakes, flowing streams, public parks and whitewater rapids, hydro stations have opened up new worlds of sporting and leisure throughout the country.  From coast to coast, Americans are learning that hydro-power generates more than clean, safe, low-cost electric energy. It generates extraordinary recreational opportunities too.  Rediscover hydropower — the world's oldest, most dependable source of endlessly renewable energy. You'll become a devoted fan, to  **HYDROPOWER. IT'S A NATURAL.**



CLEARLY THE RIGHT ALTERNATIVE



LAKE ALMANOR SITS AT THE TOP OF THE STAIRWAY OF POWER ON THE FEATHER RIVER IN CALIFORNIA. PC&E

Thanks to hydropower, Americans have a safe, sound and economical energy source. In fact, reservoirs and hydroelectric stations are already at the heart of many thriving communities across the country. In the United States today, hydroelectric plants provide over 90,000 megawatts of power. That's more than thirteen percent of all electric power generated. Power that causes no air pollution. No drilling. No waste disposal problems. No foreign oil imports. Instead, an abundance of clean, safe, low-cost domestic energy. What's more, experts estimate that we could double our current hydro resources. Rediscover hydropower — the world's oldest and most dependable source of endlessly renewable energy. Because it's clearly the right alternative.



HYDROPOWER. IT'S A NATURAL!

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HALLFAX HYDROPOWER PROJECT, VIRGINIA, SYNERGICS, INC.

It's bestowed countless communities with magnificent lakes, parks and woodlands. Transformed acres of western desert into fertile farmland. Provided a steady supply of clean, fresh water to households across the country. Sustained vital flood control networks. And created safe habitat for plants and wildlife.

It's hydropower. And no wonder generation. Of all America's energy recreational and environmental benefits. non-polluting, low-cost electricity.



it's America's first choice for electrical resources, only hydropower offers so many. All this, plus a domestic source of safe, Rediscover hydropower — the world's

oldest and most dependable source of endlessly renewable energy. You'll see why hydro users across the country are overflowing with enthusiasm.

HYDROPOWER. IT'S A NATURAL

Small Power Producers Of NC

5312 Groomtown Rd. Greensboro, NC 27407

Coordinators:

Steve Cook 910-294-9995

Tim Henderson 910-4495054

Bill Lee 910-824-2008

John Hagan 910-274-2044

Senate Bill S-408

House Bill HB-547

Save our Dams

Dear Senator/ Representative

These plants were snake pits and a detrimante to the community when we bought and redeveloped them in the early 1980's. Without this bill history will repeat and the NC communities will suffer.

Are the people of NC going to read that our State's Policy is to use it's cleanest electricity first or to do away with it and replace it with fossil fueled electricity? This is only a policy question. Duke and CP&L have lobbyist down here knee deep for weeks, we are told, saying the people will have to pay more. The people will pay the same as now and not one penny more in their monthly bill. If this bill does not pass Small Hydro will die and many jobs will die with it.

Two years ago the legislature voted unanimously in the House and Senate to save Small Hydro from over aggressive beaurocrats trying to take our water away. At that time Legislators expressed concern over decreasing rates to Small Hydro (while consumer rates were climbing) posing another threat to this renewable resource energy.

Duke and CP&L charge people at home about 7 cents per kilowatt for electricity whether it is produced by our Hydro or by their Coal. Our bill guarantees Duke and CP&L 12% profit and 10% for their expenses. We take the leftover or residue. We apologize for being blunt but, greed for total monopoly is the only true reason they are lobbying against our bill and why they are willing to deprive all of the people of their share of this clean electricity. **It comes down to this - Clean Electricity for 7 Cents or Fossil Fueled Electricity for 7 Cents?** If you help, we can save this clean energy. Small Hydro of 5 megawatts or less is paid a total of \$3.2 million per year. Duke and CP&L take in \$8 Billion per year. Shouldn't the people have the right to this renewable resource energy first regardless of Duke and CP&L's enormous lobbying power.

Every person associated with Small Hydro and the people, sincerely appreciates your support for these mom & pop businesses. Without your help these 40 Small Businesses are no match for Duke and CP&L's desire to finish us off.

Thank You

Phone _____

Support Points For The Small Hydro Bill

Senate Bill Number S408 Sponsored by Senator Bob Shaw 919-715-3050

Co-Sponsored by Senator Betsy Cochrane 919-715-2525

House Bill Number HB547 Sponsored by Representative Arlie Culp 919-733-5865

Co-Sponsored by Representative Cary Allred 919-733-5773

Duke Power & Carolina Power & Light are massive. Combined, they turn in about \$8 billion in sales annually. It's hard to take on companies this over-powering as small as we are. Thank you for taking time to read our side of the story. Duke and CP&L's greed to total market share should not prevail when they are not utilizing our natural resources. We are using them efficiently and no one will pay more at home if our Bill passes.

This is only a question of State Policy. **Is our State's policy going to be to use our cleanest electricity first?** This is the only clean renewable resource energy that this State has and the people do not believe it should be wasted. We have been told by numerous Legislators that Duke and CP&L have lobbyists nee deep down here for weeks saying the people will have to pay more if this bill passes. **The people will not pay one penny more in their monthly bill.** These rates are the same as the people already pay.

1. Our Bill calls for a new method to be used to calculate avoided cost for small power producers of 5 megawatts or less, called the Residual Revenue Method. This simply means that if you take out of retail residential rates those things that are not a part of avoided cost, the residue or left-over amount is the avoided cost.
2. We believe that the people have an inherent unwritten right through the NC Legislature to expect the cleanest electricity to be used first in this state, second cleanest second, third cleanest third and so on.
3. In 1984 & 1985 CP&L had a 1.5 penny spread between avoided cost and residential retail rate. In the current proceedings CP&L has almost a 6 penny spread. During the same period of time that they have raised what they have charged people for electricity they have also claimed their cost have gone down.
4. If CP&L had a 1.5 penny spread and now has near 6 pennies spread, why have residential rates not gone down?
5. Duke's residential retail rate, for example, today is 7.13 pennies. Our bill would deduct 12% for the power company's profit. It would then deduct another 10% for distribution and inter-connect expense. We would receive the left-over amount or about a nickel.
6. This bill ties us to the free market and lets our rates ride up and down with residential rates. If the people at home get a decrease, we do to. If the people at home get an increase, we do to. We think this is a reasonable approach.
7. With our rates riding up and down with the retail residential rates, the people are assured of getting our State's cleanest electricity first at the cheapest possible cost at all times.
8. This bill contains a formula for calculating avoided cost. Some folks will need to be reminded that a minimum of two formulas are already being used by the various utilities in this state, because of the special nature of those operations. Our bill contains simply a formula that more precisely calculates avoided cost for the special nature of our small industry.
9. Small Hydro of 5 megawatts or less received a combined total of \$3.2 million last year. Duke, CP&L, and all the utilities in NC last year took in \$8 billion. The amount paid to small hydro as a percentage of the total is an infinitesimally small amount but, should not be viewed as unimportant. We have no wind power in this State, there is no solar connected to the grid in this State, Small hydro

is one of the only substantial sources of clean renewable resource energy that we have and should not be destroyed simply because the utilities' would like to keep us out.

10. The utilities are saying that we are too small and they don't need us. That is exactly the same thing as having a reunion, 25 people come, Grandmother brings her famous Cherry Pie, and someone goes over to her, puts their hand on her shoulder and says; Madam, I'm sorry but you cannot put that on the table because you didn't bring enough for everybody. I thought this was supposed to be a united effort where every plant contributed what it could in an effort to give the people the cleanest electricity first at reasonable rates that move with the market.
11. All Small Hydro went in about 1981. Almost without exception, the plants took 15 year contracts with the utilities. Those contracts are running out now and spread over the next 36 months. We went in for about a nickel a kW and this new bill will yield about a nickel. If we get the nickel and sign another 15 year contract to ride up and down and average about a nickel, it will mean that in our 30th year in business we will be selling our product for about the same price as 30 years before. We really believe this is a more than reasonable way for the people to keep this clean energy.
12. In less number of years than described in #11 above, the Utilities' have let the residential rate climb from about 3 cents to 7 cents and in some cases over 9 cents, yet they seem to believe that small power producers should be able to take a 75% reduction. I really don't believe we're that smart,
13. In some states the people have elected to bid for this clean power through 100kW blocks and are paying as much as 40 cents to 50 cents per kW for the power. If we already have this power for about a nickel, doesn't it make more sense to keep it for about a nickel instead of paying 40 cents later to restart it. We have already paid to develop it in this state, so why throw it away.
14. We ask the Public Staff of the Utilities Commission at a point to calculate for us how much it would cost the individual household total per month if our rates were doubled from the nickel now to about a dime. The answer was that the average total bill would increase less than 13 cents a month. That's a total of less than 13 cents per month increase in an average \$100 per month bill, and yet we are not asking for an increase.
15. The Utilities' are telling everyone that since their proposed new avoided cost is about 2.6 cents per kW on 15 year contracts and about 1.5 cents per kW on open rates if 15 year contracts are eliminated, that the people will be paying more if we get about a nickel and that simply is not true. Please think about this! The people will not be paying more than now because they are already paying us about a nickel now and have been for 10 to 15 years. The people will see no increase in their bill at home if we maintain about a nickel as we now get. If we are eliminated, the people still will not see a decrease in their bill at home. Duke and CP&L have manipulated avoided cost to be exactly what they want it to be. They are now knowingly and without care, destroying our State's only substantial source of clean energy forever. Duke Power's own expert witness told the Utilities Commission on the record that there was no way the power companies were going to tell the commission their true avoided cost.

Steve Cook 910-294-9995 Tim Henderson 910-449-5054
Bill Lee 910-824-2008 John Hagan 910-274-2044
Ken Harris 910-275-4242 Bruce Cox 910-824-3791

" electricity from water power - our country's need to use its cleanest electricity first has not changed "

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

HB 547

1

SENATE BILL 408

Short Title: Renewable Resource Energy.

(Public)

Sponsors: Senators Shaw of Guilford and Cochrane.

Referred to: Commerce.

March 18, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO ENHANCE, ENSURE, AND PROTECT THE PUBLIC'S RIGHT TO
3 CONTINUED ACCESS TO RENEWABLE RESOURCE ENERGY
4 GENERATED BY SMALL POWER PRODUCERS OF FIVE MEGAWATTS OR
5 LESS BY PROVIDING THAT AVOIDED COSTS TO A UTILITY FROM
6 THAT ENERGY BE CALCULATED BY THE RESIDUAL REVENUE
7 METHOD.

8 Whereas, it is in the public interest to encourage small business
9 development in the area of electric energy generation and to enhance the continued
10 economic feasibility of the production of renewable energy at small power production
11 facilities producing five megawatts or less of electricity; and

12 Whereas, the operation of such small power production facilities helps to
13 curtail the need for facilities operating on fossil fuels; Now, therefore,
14 The General Assembly of North Carolina enacts:

15 Section 1. G.S. 62-156 reads as rewritten:

16 "§ 62-156. Power sales by small power producers to public utilities.

17 (a) In the event that a small power producer and an electric utility are unable to
18 mutually agree to a contract for the sale of electricity or to a price for the electricity
19 purchased by the electric utility, the commission shall require the utility to purchase
20 the power, under rates and terms established as provided in subsection (b) of this
21 section.

22 (b) No later than March 1, 1981, and at least every two years thereafter, the
23 commission shall determine the rates to be paid by electric utilities for power

1 purchased from small power producers, other than those producers described in
2 subsection (c) of this section, according to the following standards:

3 (1) Term of Contract. -- Long-term contracts for the purchase of
4 electricity by the utility from small power producers shall be
5 encouraged in order to enhance the economic feasibility of small
6 power production facilities.

7 (2) Avoided Cost of Energy to the Utility. -- The rates paid by a utility
8 to a small power producer shall not exceed, over the term of the
9 purchase power contract, the incremental cost to the electric utility
10 of the electric energy which, but for the purchase from a small
11 power producer, the utility would generate or purchase from
12 another source. A determination of the avoided energy costs to the
13 utility shall include a consideration of the following factors over
14 the term of the power contracts: the expected costs of the
15 additional or existing generating capacity which could be
16 displaced, the expected cost of fuel and other operating expenses
17 of electric energy production which a utility would otherwise incur
18 in generating or purchasing power from another source, and the
19 expected security of the supply of fuel for the utilities' alternative
20 power sources.

21 (3) Availability and Reliability of Power. -- The rates to be paid by
22 electric utilities for power purchased from a small power producer
23 shall be established with consideration of the reliability and
24 availability of the power.

25 (c) The rates paid by a utility to a small power producer producing five megawatts
26 of electricity or less at the same site and at dams in existence prior to 1997, shall be
27 determined by using the residual revenue method as follows: by deducting from the
28 Commission's approved residential retail rate for electricity for the applicable utility a
29 billing and distribution charge, not to exceed ten percent (10%) of the retail rate, and
30 a handling charge, not to exceed twelve percent (12%) of the retail rate. The result of
31 this calculation shall be the avoided cost to the utility. The percentage deduction for
32 the billing and distribution charge and the handling charge may be established by
33 agreement between the small power producer and the utility for a period of up to 15
34 years, but the rate paid by a utility shall fluctuate as the Commission's approved
35 residential rate for electricity for the receiving utility fluctuates."

36 Section 2. This act is effective when it becomes law and applies to
37 contracts entered into on or before January 1, 1997.

VISITOR REGISTRATION SHEET

Subcommittee on Public Utilities

4-9-97

Name of Committee

Date

VISITORS: Please sign below and return to Committee Clerk.

NAME

FIRM OR STATE AGENCY AND ADDRESS

Brenda Dougherty
Natalie HopkinsSprint
Charlotte Chamber

Michelle Cook

Weyerhaeuser

John Hagan

HydroDyne Industries

Jim Henderson

Art Properties

Steve Cook

Cook and Assoc.

Sam Kirby

NCUC

Gisele Rankin

Public Staff - NCUC

WILLIAM H. LEE

DEEP RIVER HYDRO

Jim Fulmer

High Shoals & Long Shoals Hydro

Bruce Cox

COX LAKE HYDRO

Jim Blackburn

County Comm's Assoc.

Kim Smith

League of Municipalities

Webb Hubbell

Arkansas

Tina Covington

Representative Reynolds' Office

David Simmons

Zeb Allen, PA

John Bode

Bode Call & Stroupe

Stuart Dixon

N.C. Natural Gas Corp.

Angie Harris

Commerce

Doug Culbreth

Commerce (Energy Div.)

"

"

"

DAVID SMITH

VISITOR REGISTRATION SHEET

Subcommittee on Public Utilities

4-9-97

Name of Committee

Date

VISITORS: Please sign below and return to Committee Clerk.

NAME

FIRM OR STATE AGENCY AND ADDRESS

Deborah Lamm

Dept of Commerce / Energy Div

N. DAVID SMITH

DEPT. OF AGRICULTURE

Gene Updegrave

CP&L

R. Kaylor

Kaylor Law Firm

John McAllister

Duke Power

Ed Borne

R. M. Borne

William Breeze

N.C. Merit Board



North Carolina General Assembly

House of Representatives
State Legislative Building
Raleigh 27601-1096

MINUTES

HOUSE COMMERCE SUBCOMMITTEE ON PUBLIC UTILITIES

April 16, 1997

The Subcommittee on Public Utilities met at 10:00 a.m. on April 16, 1997 in the Legislative Office Building, Room 544.

Representative Daniel F. McComas, Chairman, presided, and the following members were present:

Representatives: Bonner; Braswell; Dickson; Hurley; Ives; McCombs; McCrary; Mitchell; Reynolds; Rogers; C.; Wilson

Staff Counsel Steve Rose was present to assist the Committee. The visitor registration sheet is attached as part of the minutes.

Chairman McComas called the meeting to order, introduced the Page serving the Committee and welcomed guests. The following bills were discussed:

Rep. Thompson, bill sponsor, was recognized to explain HB 26 *Amend LP Gas Code*. An amendment was put forth by Rep. Thompson. Rep. Mitchell moved that the amendment be adopted. The adopted amendment is attached to the minutes. Rep. Dickson moved that the bill be reported favorably as amended. The bill passed as amended and was re-referred to the Committee on Finance.

Rep. Owens, bill sponsor, was recognized to explain HB 495 *Natural Gas Infrastructure*. Amendment #1 was put forth by Rep. Owens. Rep. McCombs moved that amendment #1 be adopted. The adopted amendment #1 is attached to the minutes. Rep. Owens put forth amendment #2. Rep. Dickson



MINUTES
HOUSE COMMERCE
SUBCOMMITTEE ON PUBLIC UTILITIES
April 16, 1997

HB 495 Continued...

moved that amendment #2 be adopted. The adopted amendment #2 is attached to the minutes. Chairman McComas put forth that the amendments to HB 495 be rolled into a Proposed Committee Substitute. Rep. Dickson moved that the Proposed Committee Substitute be adopted. The adopted Proposed Committee Substitute is attached to the minutes. Rep. Dickson moved that HB 495 be reported favorably as amended. The bill passed as amended and was re-referred to the Committee on Finance.

The meeting adjourned at 10:35 a.m.



Representative Daniel F. McComas
Chairman



Rita A. Quinn
Committee Clerk



**North Carolina General Assembly
Legislative Services Office**

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April 8, 1997

MEMORANDUM

TO: Subcommittee on Public Utilities,
House Commerce Committee

FROM:  Steven Rose, Counsel for Public Utilities

RE: House Bill 26; Amend LP Gas Code

House Bill 26 is a recommendation of the LRC Consumer Protection Study Committee. The bill removes the prohibition against unvented gas heaters in manufactured homes. It also removes the prohibition against unvented gas heaters in the bedroom of a home. Approval of certification laboratories is shifted from the Commissioner of Agriculture to the Building Code Council. Because of previous amendments to the statutes, jurisdiction over heating appliances inside homes has been shifted to the Building Code Council and jurisdiction over heating appliances inside manufactured homes has shifted to the Manufactured Housing Board. Both the Council and the Board are administratively assigned to the Department of Insurance.

It is my understanding that the Building Code Council and the Manufactured Housing Board, acting under their jurisdiction over heating appliances inside the home, already allow unvented gas heaters in the homes, but not in the bedrooms. By repealing subdivisions (2) and (3) of G.S. 119-58(a), the bill will allow the Building Code Council and the Manufactured Housing Board to also authorize unvented gas heaters in bedrooms. The repeal of subdivision (2) also recognizes that unvented gas heaters are already allowed in portions of a manufactured home.

The bill takes effect when it becomes law and applies to appliances installed on or after that date.

H26-SMRL-001

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 26*

Short Title: Amend LP Gas Code.

(Public)

Sponsors: Representatives Thompson, Beall, Cunningham, Preston, and Rayfield.

Referred to: Commerce Subcommittee on Public Utilities.

February 4, 1997

A BILL TO BE ENTITLED

AN ACT TO MAKE CONFORMING CHANGES TO THE LP GAS STATUTE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 119-58 reads as rewritten:

"§ 119-58. Unlawful acts.

(a) It shall be an unlawful act for any person to:

- (1) Sell any liquified petroleum gas burning appliance designed or built for domestic use which has not been approved by the American Gas Association, Inc., the Underwriters Laboratory, Inc., or other laboratory approved by the Commissioner of Agriculture; North Carolina Building Code Council. This subdivision shall not apply to appliances regulated under the North Carolina Building Code;
- ~~(2) Install any unvented space heating appliance in a manufactured home as defined in G.S. 143-145(7)~~
- ~~(3) Install any unvented space heating appliance in a sleeping room that has an input of over 30 BTU per cubic foot of enclosure;~~
- (4) Fill a consumer tank or container in excess of 85 percent (85%) of its water capacity, or to fill a tank or container on the premises of a consumer that is not equipped with a fill tube or gauge; provided, ~~said~~ the tank or container may be filled by weight if the tank or container is weighed before and after filling;
- (5) Disconnect an appliance from a gas supply line without capping or plugging ~~said~~ the line before leaving the premises;

1 (6) Turn on the gas after reestablishing an interrupted service without
2 first having checked and closed all gas outlets;

3 (7) Violate any provisions of this Article or any rules and regulations
4 promulgated thereunder.

5 (b) Every supply tank or container with its regulating equipment connected in a
6 service system, shall be identified while in service by the supplier with an attached
7 tag, label or other marking that includes the name of the person supplying liquefied
8 petroleum gas to ~~said~~ the system, and it shall be unlawful for any person, other than
9 ~~said~~ the supplier or the owner of the system, to disconnect, interrupt or fill ~~said~~ the
10 system with liquefied petroleum gas without the consent of ~~said~~ the supplier.
11 Provided, if another registered supplier is requested by the consumer to connect his
12 service and is given permission by the consumer to do so, the new supplier shall
13 notify the former supplier before disconnecting the former service and connecting the
14 new service and shall cap or plug all disconnected equipment outlets and leave ~~said~~
15 the equipment in a condition consistent with this Article and the rules and
16 regulations promulgated thereunder."

17 Section 2. This act is effective when it becomes law and applies to
18 appliances installed on and after that date.



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April 2, 1997

MEMORANDUM

TO: House Committee on Commerce

FROM:  Steven Rose, Committee Counsel for Utilities

RE: House Bill 495; Natural Gas Infrastructure

House Bill 495 is intended to promote the extension of natural gas service to unserved counties by permitting public utilities to charge different rates in those counties in order to reflect the additional cost of providing service, and by authorizing the creation of natural gas districts for the purpose of providing expansion into unserved counties.

Section 1 of the bill amends G.S. 62-140(a) by adding a provision authorizing the Utilities Commission to establish different rates for natural gas service to counties that are substantially unserved, to the extent that those rates reflect the actual cost of providing service to those counties. The Commission must find that natural gas service would not become available to those counties without the rate differential. As presently worded, G.S. 62-140(a) prohibits unreasonable differences as to rates or service to exist between localities or between classes of service.

chair and vice-chair from its membership, and also annually elects a secretary and a treasurer. Members of the board are compensated at the rate of \$50 for each meeting of the district. Proposed G.S. 160A-635 provides that a majority of the board constitutes a quorum. Proposed G.S. 160A-636 permits the election of advisory committees by the board, which may or may not include members of the board.

Proposed G.S. 160A-637 provides that the purpose of such a district is to enhance the quality of life within its jurisdiction by providing the development of natural gas distribution systems in order to enhance economic development in the area.

Proposed G.S. 160A-638 spells out the general powers of the district which include the making of rules and regulations, employment of persons, use of officers, employees, agents and facilities of units of local government with the approval of the chief administrator or official of the unit of local government, lease or ownership of property. Disposal of property constituting a substantial part of a natural gas system may only be disposed of with the approval of the Department of Commerce, and if approved, the district must repay the State the lesser of the amount of any capital grant made by the State or one half the amount of the proceeds from the sale. Among the powers granted to the district are the right to purchase, construct, and operate natural gas systems, the ability to contract with private parties and natural gas companies for management and operation of natural gas systems, the ability to own, lease, and operate gas systems which may include sources of gas supply such as gas fields and reserves, which must be located within the State, and the purchase of natural gas supplies within or without the State. The district may also enter into contracts and agreements with other natural gas districts, regional natural gas districts, or units of local government, and the district may also enter into contracts and agreements with private natural gas companies. The district is not authorized to operate or

Proposed G.S. 160A-644 provides that the provisions of this act control in the event of an inconsistency with any other law.

Proposed G.S. 160A-645 authorizes a gas district to issue bonds and notes pursuant to the Local Government Revenue Bond Act for the purpose of financing natural gas systems.

Proposed G.S. 160A-646 grants power to the district to purchase equipment and finance it in various ways. Payments shall be payable only from the income to the district, funds derived from sale of surplus property, and gift, grants, or contributions. Installment financing is permitted.

Proposed G.S. 160A-647 grants the power to acquire property, and specifically grants the power of eminent domain. In the event of the power of eminent domain is exercised, the county board of commissioners of the county where the land is located must consent to the taking.

Proposed G.S. 160A-648 provides that the property and income of the district is exempt from taxation except when a leasehold interest in district property is granted to a private party. Then the value of the leasehold interest is taxable and the income of the leasee is taxable. Interest on bonds or obligations is issued by the district is exempt from State taxes.

Proposed G.S. 160A-649 provides that the district has the power to require any public utility operating within the district to relocate structures, equipment, apparatus, and so forth. The district must provide new locations and may use the power of eminent domain for that purpose, except within the right-of-way of a public highway. Real estate taken from a public utility must be compensated subject to the right of the district to reduce the compensation by the value of property exchanged for that taken. The method and procedures of an adjustment to the facilities of the public utility are to be covered by an agreement between the district and the affected party. The district is responsible to reimburse the public utility for the cost of relocation or removal.

Pursuant to House Rule 38(b), if this bill is reported out favorably, the report should indicate that the bill authorizes the issuance of bonds or notes and, accordingly, it should be referred to the Committee on Finance.

H495-SMRL-001

Section 2 of the bill amends Chapter 160A of the General Statutes by adding a new Article 27 authorizing regional natural gas districts.

Proposed G.S. 160A-630 gives the title "Regional Natural Gas District Act" to the statutory provision. Proposed G.S. 160A-631 provides definitions to be used in the act.

Proposed G.S. 160A-632 provides that a district may be created for one or more entire counties that are totally unserved with natural gas at the time the district is created. This area constitutes the territorial jurisdiction and service area.

Proposed G.S. 160A-633 provides that a district may be created by the boards of county commissioners adopting a resolution to organize a district. The resolutions may be adopted only after a public hearing which occurs after a minimum of 10 days public notice in a general circulation newspaper. Municipalities located within the proposed service area may join the district using the same procedures as a county. The contents of the resolution includes articles of incorporation and a certified copy of each resolution must be filed with the Secretary of State together with proof of publication of the notice of hearing for each resolution. Upon a finding by the Secretary of State that the resolutions and articles of incorporation conform to the act, and that the notices of hearing were properly published, the Secretary of State shall file the resolutions and proofs of publication and issue a certificate of incorporation. After organization of the district, the secretary of the district must certify to the Secretary of State the names and addresses of the officers as well as the address of the principal office.

Proposed G.S. 160A-634 specifies that the governing body of the district is its board of trustees, the membership of which is as provided in the articles of incorporation. Persons serving on the board of trustees may hold an elective public office as well. Members of the board of trustees must reside within the territorial jurisdiction of the district. The board annually elects a

contract for the operation of service of a natural gas system outside the service area of the district. Rates and charges are set at the sole discretion of the district.

Proposed G.S. 160A-639 provides that the Utilities Commission does not have jurisdiction over the rates, fees, and charges of a district for service within its territorial jurisdiction. However, safety regulations of the Commission shall apply and, except as otherwise stated in this act, the powers of the Utilities Commission are not limited or affected.

Proposed G.S. 160A-640 provides that the district is a public authority subject to the provisions of Chapter 159, the Local Government Finance Act.

Proposed G.S. 160A-641 provides that such districts are considered to be for a public purpose and the State and any unit of local government may appropriate funds for such districts. The State and other units of local government may give or otherwise convey property to the district and the district may apply for a grants from the State, the United States, or any agency of either. The Department of Commerce is specifically authorized to allocate funds appropriated for natural gas.

Proposed G.S. 160A-642 provides that the creation of a district will not affect existing franchises granted by units of local government. Ordinances and resolutions of units of local government regulating local natural gas systems continue in full force and effect unless superseded by regulation of the district which the unit of local government has agreed to.

Proposed G.S. 160A-643 provides that the board of trustees may terminate the district after providing for continuity of natural gas service to its customers and provided it has no outstanding indebtedness. In the event of termination, assets become the property of the State.

Proposed G.S. 160A-650 authorizes a district to establish and revise its rates and charges for gas service. Variations may exist according to the classes of service. Before establishing or revising rates, the board of trustees must hold a public hearing which must be preceded by at least 7 days notice in a newspaper having general circulation in the area. The district may not refuse to provide service to a tenant occupying a particular premises because a previous tenant is delinquent in payment of its account. Rates and charges are the legal obligation of the person contracting for them and shall not be a lien upon the property.

Section 3 of the bill amends G.S. 105-164.14(c) by adding a new subdivision (22) specifying that regional natural gas districts are permitted to claim a sales and use tax refund for taxes paid on direct purchases of tangible personal property.

Section 4 of the bill amends G.S. 159-81(1) by adding to the definition of "municipality" a regional natural gas district. These definitions apply to Article 5 of Chapter 159, the State and Local Government Revenue Bond Act. Article 5 establishes the procedure for the issuance of revenue bonds by municipalities.

Section 5 of the bill amends G.S. 160A-20(h) by adding regional natural gas districts to the list of entities included under the term "unit of local government." Units of local government listed in G.S. 160A-20 may purchase or finance the purchase of real or personal property by use of installment contracts and may establish security interests to secure payment of the purchase price to the seller or the entity providing the financing.

Section 6 of the bill provides that the act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

D

HOUSE BILL 495
Proposed Committee Substitute H495-PCS8180

Short Title: Natural Gas.

(Public)

Sponsors:

Referred to:

March 11, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO ADDRESS NORTH CAROLINA'S URGENT INFRASTRUCTURE
3 NEEDS BY CLARIFYING THAT THE NORTH CAROLINA UTILITIES
4 COMMISSION MAY ESTABLISH DIFFERENT RATES FOR NATURAL GAS
5 SERVICE TO UNSERVED COUNTIES THAT REFLECT THE COST OF
6 PROVIDING SERVICE TO THE UNSERVED COUNTIES AND
7 AUTHORIZING THE CREATION OF NATURAL GAS DISTRICTS FOR
8 NATURAL GAS EXPANSION.

9 The General Assembly of North Carolina enacts:

10 PART I.
11 DIFFERENT RATES.

12 Section 1. G.S. 62-140(a) reads as rewritten:

13 "(a) No public utility shall, as to rates or services, make or grant any unreasonable
14 preference or advantage to any person or subject any person to any unreasonable
15 prejudice or disadvantage. No public utility shall establish or maintain any
16 unreasonable difference as to rates or services either as between localities or as
17 between classes of service. The Commission may determine any questions of fact
18 arising under this section; provided that it shall not be an unreasonable preference or
19 advantage or constitute discrimination against any person, firm or corporation or
20 general rate payer for telephone utilities to contract with motels, hotels and hospitals
21 to pay reasonable commissions in connection with the handling of intrastate toll calls
22 charged to a guest or patient and collected by the motel, hotel or hospital; provided
23 further, that payment of such commissions shall be in accordance with uniform tariffs

1 which shall be subject to the approval of the Commission. Provided further, that it
2 shall not be considered an unreasonable preference or advantage for the Commission
3 to order, if it finds the public interest so requires, a reduction in local telephone rates
4 for low-income residential consumers meeting a means test established by the
5 Commission in order to match any reduction in the interstate subscriber line charge
6 authorized by the Federal Communications Commission.

7 Nothing in this section prohibits the Commission from establishing different rates
8 for natural gas service to counties that are substantially unserved, to the extent that
9 those rates reflect the cost of providing service to the unserved counties and upon a
10 finding by the Commission that natural gas service would not otherwise become
11 available to the counties."

12 PART II.

13 NATURAL GAS DISTRICTS.

14 Section 2. Chapter 160A of the General Statutes is amended by adding a
15 new Article to read:

16 "ARTICLE 27.

17 "Regional Natural Gas District.

18 "§ 160A-630. Title.

19 This Article shall be known and may be cited as the 'Regional Natural Gas District
20 Act'.

21 "§ 160A-631. Definitions.

22 As used in this Article, unless the context otherwise requires:

- 23 (1) 'District' means a regional natural gas district as defined by this
24 section.
25 (2) 'Board of Trustees' means the governing board of the district in
26 which the general legislative powers of the district are vested.
27 (3) 'Regional natural gas district' means a body corporate and politic
28 organized in accordance with the provisions of this Article for the
29 purposes, with the powers, and subject to the restrictions set forth
30 in this Article.
31 (4) 'Unit of local government' means any county, city, town, or
32 municipality of this State, and any other political subdivision,
33 public corporation, or district in this State, that is or may be
34 authorized by law to acquire, establish, construct, enlarge, improve,
35 maintain, own, or operate natural gas systems.
36 (5) 'Unit of local government's chief administrative official' means the
37 county manager, city manager, town manager, or other person, by
38 whatever title known, in whom the responsibility for the unit of
39 local government's administrative duties is vested.

40 "§ 160A-632. Definition of territorial jurisdiction and service area of district.

41 (a) A district may be created for one or more entire counties that are totally
42 unserved with natural gas and in which a specific natural gas project has not been
43 approved by the Utilities Commission, at the time of creation of the district. This
44 area is the territorial jurisdiction and the service area of the district.

1 (b) The creation of a district does not confer on the district the exclusive right to
2 provide natural gas service in that territorial jurisdiction.

3 "§ 160A-633. Creation of district.

4 (a) The boards of commissioners of any one or more counties within an area for
5 which a district may be created as provided by G.S. 160A-632 may by resolution
6 signify their determination to organize a district under the provisions of this Article.
7 Each of these resolutions shall be adopted after a public hearing thereon, notice of
8 which hearing shall be given by publication at least once, not less than 10 days prior
9 to the date fixed for the hearing, in a newspaper having a general circulation in the
10 county. The notice shall contain a brief statement of the substance of the proposed
11 resolution, shall set forth the proposed articles of incorporation of the district, and
12 shall state the time and place of the public hearing. A copy of the notice shall be
13 mailed not later than the first day of newspaper publication to the business office of
14 any public utility that holds a franchise from the North Carolina Utilities Commission
15 to serve any part of the proposed district with natural gas service. No county shall be
16 required to make any other publication of the resolution under the provisions of any
17 other law. Any municipality located within the area may join the district by following
18 the procedures set out in this section.

19 (b) Each resolution shall include articles of incorporation which shall set forth all
20 of the following:

- 21 (1) The name of the district.
- 22 (2) The composition of the board of trustees, terms of office, and the
23 manner of making appointments and filling vacancies.
- 24 (3) A statement that the district is organized under this Article.
- 25 (4) The names of the organizing counties and municipalities.
- 26 (5) Provision for the distribution of assets in the event the district is
27 terminated.

28 (c) A certified copy of each of the resolutions signifying the determination to
29 organize a district under the provisions of this Article shall be filed with the
30 Secretary of State, together with proof of publication and mailing of the notice of
31 hearing on each of the resolutions. If the Secretary of State finds that the resolutions,
32 including the articles of incorporation, conform to the provisions of this Article and
33 that the notices of hearing were properly published and mailed, the Secretary of State
34 shall file the resolutions and proofs of publication and mailing, shall issue a certificate
35 of incorporation under the seal of the State, and shall record the certificate in an
36 appropriate book of record. The issuance of this certificate of incorporation by the
37 Secretary of State shall constitute the district a public body and body politic and
38 corporate of the State of North Carolina. The certificate of incorporation shall be
39 conclusive evidence of the fact that the district has been duly created and established
40 under this Article.

41 (d) When the district has been duly organized and its officers elected, the
42 secretary of the district shall certify to the Secretary of State the names and addresses
43 of the officers, the name and address of the registered agent, and the address of the

1 principal office of the district. The district shall be subject to the provisions of
2 Article 5 of Chapter 55A of the General Statutes.

3 (e) In the event the district is terminated, notification of the termination shall be
4 filed with the Secretary of State.

5 **"§ 160A-634. Membership; officers; compensation.**

6 (a) The governing body of a district is the Board of Trustees. The Board of
7 Trustees shall consist of members as provided in the articles of incorporation.

8 (b) Service on the Board of Trustees may be in addition to any other office which
9 a person is entitled to hold. Each voting member of the Board of Trustees may hold
10 elective public office as defined by G.S. 128-1.1(d).

11 (c) Members of the Board of Trustees shall reside within the territorial jurisdiction
12 of the district as defined by G.S. 160A-632.

13 (d) The Board of Trustees shall annually elect from its membership a Chair and a
14 Vice-chair, and shall annually elect a Secretary and a Treasurer.

15 (e) Members of the Board of Trustees shall receive the sum of fifty dollars
16 (\$50.00) as compensation for attendance at each duly conducted meeting of the
17 district.

18 **"§ 160A-635. Quorum.**

19 A majority of the members of the Board of Trustees shall constitute a quorum for
20 the transaction of business.

21 **"§ 160A-636. Advisory committees.**

22 The Board of Trustees may provide for the selection of any advisory committees
23 that it finds appropriate, which may or may not include members of the Board of
24 Trustees.

25 **"§ 160A-637. Purpose of the district.**

26 The purpose of the district is to enhance the quality of life in its territorial
27 jurisdiction by promoting the development of natural gas distribution systems to
28 enhance the economic development of the area.

29 **"§ 160A-638. General powers of the district.**

30 The general powers of the district include all of the following:

31 (1) To sue and be sued.

32 (2) To have a seal.

33 (3) To make rules and regulations, not inconsistent with this Article,
34 for its organization and internal management.

35 (4) To employ persons deemed necessary to carry out the functions
36 and duties assigned to them by the district and to fix their
37 compensation, within the limit of available funds.

38 (5) With the approval of the unit of local government's chief
39 administrative official, to use officers, employees, agents, and
40 facilities of the unit of local government for such purposes and
41 upon such terms as may be mutually agreeable.

42 (6) To retain and employ counsel, auditors, engineers, and private
43 consultants on an annual salary, contract basis, or otherwise for
44 rendering professional or technical services and advice.

- (7) To acquire, lease as lessee with or without option to purchase, hold, own, and use any franchise, property, real or personal, tangible or intangible, or any interest therein and to sell, lease as lessor with or without option to purchase, transfer (or dispose thereof) whenever the property is no longer required for purposes of the district, or exchange it for other property or rights which are useful for the district's purposes. Except as provided in any covenant or debt instrument designed to protect the creditor, if any loans or grants by the Department of Commerce have not been repaid, all or a substantial part of an operating natural gas district may not be disposed of without the approval of the Department of Commerce. If the sale is approved by the Department of Commerce, the district shall repay the State the lesser of the amount of any capital grant made by the State or one-half of the amount of the proceeds.
- (8) To acquire by gift, purchase, lease as lessee with or without option to purchase or otherwise to construct, improve, maintain, repair, operate, or administer any component parts of a natural gas system. The district also may contract for the maintenance, operation, or administration thereof or to lease as lessor the same for maintenance, operation, or administration by private parties.
- (9) To make or enter into contracts, agreements, deeds, leases with or without option to purchase, conveyances, or other instruments, including contracts and agreements with the United States, the State of North Carolina, and units of local government.
- (10) To develop and make data, plans, information, surveys, and studies of natural gas facilities within the territorial jurisdiction of the district, to prepare and make recommendations in regard thereto.
- (11) To enter in a reasonable manner lands, waters, or premises for the purpose of making surveys, soundings, drillings, and examinations. This entry shall not be deemed a trespass except that the district shall be liable for any actual and consequential damages resulting from the entry.
- (12) To develop and carry out demonstration projects.
- (13) To make, enter into, and perform contracts with private parties and natural gas companies with respect to the management and operation of natural gas systems.
- (14) To make, enter into, and perform contracts with any public utility, railroad, or transportation company for the joint use of property or rights.
- (15) To own, lease, and operate gas production, storage, transmission, and distribution systems. These systems may also include the purchase or lease, or both, of natural gas fields and natural gas reserves within the State, and the purchase of natural gas supplies

1 within or without the State. A district may operate that part of a
2 gas system involving the purchase or lease, or both, of natural gas
3 fields, natural gas reserves, and natural gas supplies, in an
4 operating agreement, partnership or joint venture arrangement
5 with natural gas utilities and private enterprise. The district may
6 acquire, purchase, construct, receive, own, operate, maintain,
7 enlarge, and improve natural gas systems, and transport and sell at
8 wholesale all or any part of its gas supply.

9 (16) To purchase or finance real or personal property under G.S. 160A-
10 20.

11 (17) To obtain grants, loans, and assistance from the United States, the
12 State of North Carolina, any public body, or any private source.

13 (18) To enter into and perform contracts and agreements with other
14 natural gas districts, regional natural gas districts, or units of local
15 government pursuant to the provisions of G.S. 160A-460 through
16 G.S. 160A-464 (Part 1 of Article 20 of Chapter 160A of the
17 General Statutes) and to enter into contracts and agreements with
18 private natural gas companies, but this subdivision does not
19 authorize the operation of, or contracting for the operation of,
20 service of a natural gas system outside the service area of the
21 district.

22 (19) Except as restricted by covenants in bonds, notes, security interests,
23 or trust certificates, to set in its sole discretion rates, fees, and
24 charges for use of its natural gas system in accordance with G.S.
25 160A-648.

26 (20) To do all related things necessary to carry out its purpose and to
27 exercise the powers granted to the district.

28 (21) To issue bonds or other obligations of the district as provided by
29 law and apply the proceeds thereof to the financing of any natural
30 gas system or any part thereof and to refund, whether or not in
31 advance of maturity or the earliest redemption date, any such
32 bonds or other obligations.

33 **"§ 160A-639. Fiscal accountability.**

34 A district is a public authority subject to the provisions of Chapter 159 of the
35 General Statutes.

36 **"§ 160A-640. Funds.**

37 The establishment and operation of a district is a public purpose, and the State of
38 North Carolina and any unit of local government may appropriate funds to support
39 the establishment and operation of the district. The State of North Carolina and any
40 unit of local government may also dedicate, sell, convey, donate, or lease any of their
41 interests in any property to the district. A district may apply for grants from the State
42 of North Carolina, or from the United States or any department, agency, or
43 instrumentality thereof. The Department of Commerce may allocate to a district any
44 funds appropriated for natural gas.

1 **"§ 160A-641. Effect on existing franchises and operations.**

2 Creation of the district does not affect any existing franchises granted by any unit
3 of local government. Those existing franchises shall continue in full force and effect
4 until legally terminated, and all ordinances and resolutions of the unit of local
5 government regulating local natural gas systems shall continue in full force and effect
6 unless superseded by regulations of the district. This superseding, if any, may occur
7 only on the basis of prior mutual agreement between the district and the respective
8 unit of local government.

9 **"§ 160A-642. Termination.**

10 The Board of Trustees after providing for the continued availability of natural gas
11 service to its customers, if any, may terminate the existence of the district at any time
12 when it has no outstanding indebtedness.

13 **"§ 160A-643. Controlling provisions.**

14 Insofar as the provisions of this Article are not consistent with the provisions of
15 any other law, public or private, the provisions of this Article shall be controlling.

16 **"§ 160A-644. Bonds and notes authorized.**

17 In addition to the powers granted by this Article, the district may issue bonds and
18 notes pursuant to the provisions of the Local Government Revenue Bond Act for the
19 purpose of financing natural gas systems or any part thereof and to refund the bonds
20 and notes, whether or not in advance of their maturity or earliest redemption date.

21 **"§ 160A-645. Equipment trust certificates.**

22 In addition to the powers granted in this Article, the district shall have continuing
23 power to purchase equipment, and in connection therewith to execute agreements,
24 leases with or without option to purchase, or equipment trust certificates. All money
25 required to be paid by the district under the provisions of these agreements, leases
26 with or without option to purchase, and equipment trust certificates shall be payable
27 solely from the fares, fees, rentals, charges, revenues, and earnings of the district,
28 moneys derived from the sale of any surplus property of the district, and gifts, grants,
29 and contributions from any source. Payment for such equipment or rentals therefore,
30 may be made in installments; the deferred installments may be evidenced by
31 equipment trust certificates payable solely from the aforesaid revenues or receipts and
32 title to the equipment may or may not vest in the district until the equipment trust
33 certificates are paid.

34 **"§ 160A-646. Acquisition, power of eminent domain.**

35 (a) The district shall have continuing power to acquire, by gift, grant, devise,
36 bequest, exchange, purchase, lease with or without option to purchase, or any other
37 lawful method including, but not limited to, the power of eminent domain, the fee or
38 any lesser interest in real or personal property for use by the district.

39 (b) Exercise of the power of eminent domain by the district shall be as a private
40 condemnor in accordance with Chapter 40A of the General Statutes.
41 Notwithstanding Chapter 40A of the General Statutes, before final judgment may be
42 entered in any action of condemnation initiated by the district, the district shall
43 furnish proof that the county board of commissioners of the county where the land is
44 located has consented by resolution or ordinance to the taking.

1 "§ 160A-647. Tax exemption.

2 The property of the district, both real and personal, its acts, activities, and income
3 shall be exempt from any tax or tax obligation; in the event of any lease of district
4 property, or other arrangement which amounts to a leasehold interest to a private
5 party, this exemption shall not apply to the value of such leasehold interest nor shall
6 it apply to the income of the lessee. Otherwise, however, for the purpose of taxation,
7 when property of the district is leased to private parties solely for the purpose of the
8 district, the acts and activities of the lessee shall be considered as the acts and
9 activities of the district and the exemption. The interest on bonds or obligations
10 issued by the district shall be exempt from State taxes.

11 "§ 160A-648. Authority to fix and enforce rates.

12 (a) A district may establish and revise from time to time schedules of reasonable
13 rents, rates, fees, charges, and penalties made applicable throughout the district for
14 the gas services. Schedules of rents, rates, fees, charges, or penalties may vary
15 according to classes of service. Before it establishes or revises a schedule of rents,
16 rates, fees, charges, or penalties, the district Board of Trustees shall hold a public
17 hearing on the matter. A notice of the hearing shall be given at least once in a
18 newspaper having general circulation in the area, not less than seven days before the
19 public hearing.

20 (b) A district may collect delinquent accounts by any remedy provided by law for
21 collecting and enforcing private debts. A district may also discontinue service to any
22 customer whose account remains delinquent for more than 30 days. When service is
23 discontinued for delinquency, it shall be unlawful for any person other than a duly
24 authorized agent or employee of the district to do any act that results in a resumption
25 of services. If a delinquent customer is not the owner of the premises to which the
26 services are delivered, the payment of the delinquent account may not be required
27 before providing services at the request of a new and different tenant or occupant of
28 the premises, but this restriction shall not apply when the premises are occupied by
29 two or more tenants whose services are measured by the same meter.

30 (c) Rents, rates, fees, charges, and penalties for services shall be legal obligations
31 of the person contracting for them and shall in no case be a lien upon the property or
32 premises served.

33 (d) Rents, rates, fees, charges, and penalties for services shall be legal obligations
34 of the owner of the premises served when the property or premises are leased or
35 rented to more than one tenant and services rendered to more than one tenant are
36 measured by the same meter."

37 Section 3. G.S. 105-164.14(c) is amended by adding a new subdivision to
38 read:

39 "(22) A regional natural gas district created pursuant to Article 27 of
40 Chapter 160A of the General Statutes."

41 Section 4. G.S. 159-81(1) reads as rewritten:

42 "(1) 'Municipality' means a county, city, town, incorporated village,
43 sanitary district, metropolitan sewerage district, metropolitan
44 water district, county water and sewer district, water and sewer

1 authority, hospital authority, hospital district, parking authority,
2 special airport district, regional public transportation authority,
3 regional natural gas district, regional sports authority, airport
4 authority, joint agency created pursuant to Part 1 of Article 20 of
5 Chapter 160A of the General Statutes, and joint agency
6 authorized by agreement between two cities to operate an airport
7 pursuant to G.S. 63-56, but not any other forms of local
8 government."

9 Section 5. G.S. 160A-20(h) reads as rewritten:

10 "(h) As used in this section, the term 'unit of local government' means any of the
11 following:

- 12 (1) A county.
13 (2) A city.
14 (3) A water and sewer authority created under Article 1 of Chapter
15 162A of the General Statutes.
16 (4) An airport authority whose situs is entirely within a county that
17 has (i) a population of over 120,000 according to the most recent
18 federal decennial census and (ii) an area of less than 200 square
19 miles.
20 (5) An airport authority in a county in which there are two
21 incorporated municipalities with a population of more than
22 65,000 according to the most recent federal decennial census.
23 (5a) An airport board or commission authorized by agreement
24 between two cities pursuant to G.S. 63-56, one of which is located
25 partially but not wholly in the county in which the jointly owned
26 airport is located, and where the board or commission provided
27 water and wastewater services off the airport premises before
28 January 1, 1995; provided that the authority granted by this
29 section may be exercised by such a board or commission with
30 respect to water and wastewater systems or improvements only.
31 (6) A local school administrative unit (i) that is located in a county
32 that has a population of over 90,000 according to the most recent
33 federal decennial census and (ii) whose board of education is
34 authorized to levy a school tax.
35 (7) An area mental health, developmental disabilities, and substance
36 abuse authority, acting in accordance with G.S. 122C-147.
37 (8) A consolidated city-county, as defined by G.S. 160B-2(1).
38 (9) A regional natural gas district, as defined by Article 27 of this
39 Chapter."

40 Section 6. G.S. 62-3(23) is amended by adding a new sub-subdivision to
41 read:

42 "k. The term 'public utility' shall not include a regional natural
43 gas district organized and operated pursuant to Article 27 of
44 Chapter 160A of the General Statutes."

Section 7. G.S. 62-50(g) reads as rewritten:

"(g) For the purpose of this section, 'gas operators' include gas utilities and gas pipeline carriers operating under a franchise from the Utilities Commission, municipal corporations operating municipally owned gas distribution systems, regional natural gas districts organized and operated pursuant to Article 27 of Chapter 160A of the General Statutes, and public housing authorities and any person operating apartment complexes or mobile home parks that distribute or submeter natural gas to their tenants. This section does not confer any other jurisdiction over municipally owned gas distribution systems, regional natural gas districts, public housing authorities or persons operating apartment complexes or mobile home parks."

PART III.

EFFECTIVE DATES.

Section 8. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 495

Short Title: Natural Gas.

(Public)

Sponsors: Representatives Owens; Miller, Culpepper, and Yongue.

Referred to: Commerce.

March 11, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO ADDRESS NORTH CAROLINA'S URGENT INFRASTRUCTURE
3 NEEDS BY CLARIFYING THAT THE NORTH CAROLINA UTILITIES
4 COMMISSION MAY ESTABLISH DIFFERENT RATES FOR NATURAL GAS
5 SERVICE TO UNSERVED COUNTIES THAT REFLECT THE ACTUAL
6 COST OF PROVIDING SERVICE TO THE UNSERVED COUNTIES AND
7 AUTHORIZING THE CREATION OF NATURAL GAS DISTRICTS FOR
8 NATURAL GAS EXPANSION.

9 The General Assembly of North Carolina enacts:

10 PART I.
11 DIFFERENT RATES

12 Section 1. G.S. 62-140(a) reads as rewritten:

13 "(a) No public utility shall, as to rates or services, make or grant any unreasonable
14 preference or advantage to any person or subject any person to any unreasonable
15 prejudice or disadvantage. No public utility shall establish or maintain any
16 unreasonable difference as to rates or services either as between localities or as
17 between classes of service. The Commission may determine any questions of fact
18 arising under this section; provided that it shall not be an unreasonable preference or
19 advantage or constitute discrimination against any person, firm or corporation or
20 general rate payer for telephone utilities to contract with motels, hotels and hospitals
21 to pay reasonable commissions in connection with the handling of intrastate toll calls
22 charged to a guest or patient and collected by the motel, hotel or hospital; provided
23 further, that payment of such commissions shall be in accordance with uniform tariffs
24 which shall be subject to the approval of the Commission. Provided further, that it

1 shall not be considered an unreasonable preference or advantage for the Commission
2 to order, if it finds the public interest so requires, a reduction in local telephone rates
3 for low-income residential consumers meeting a means test established by the
4 Commission in order to match any reduction in the interstate subscriber line charge
5 authorized by the Federal Communications Commission.

6 Nothing in this section prohibits the Commission from establishing different rates
7 for natural gas service to counties that are substantially unserved, to the extent that
8 those rates reflect the actual cost of providing service to the unserved counties and
9 upon a finding by the Commission that natural gas service would not otherwise
10 become available to the counties."

11 PART II.

12 NATURAL GAS DISTRICTS

13 Section 2. Chapter 160A of the General Statutes is amended by adding a
14 new Article to read:

15 "ARTICLE 27.

16 "Regional Natural Gas District.

17 "§ 160A-630. Title.

18 This Article shall be known and may be cited as the 'Regional Natural Gas District
19 Act'.

20 "§ 160A-631. Definitions.

21 As used in this Article, unless the context otherwise requires:

- 22 (1) 'District' means a regional natural gas district as defined by this
23 section.
24 (2) 'Board of Trustees' means the governing board of the district in
25 which the general legislative powers of the district are vested.
26 (3) 'Regional natural gas district' means a body corporate and politic
27 organized in accordance with the provisions of this Article for the
28 purposes, with the powers, and subject to the restrictions set forth
29 in this Article;
30 (4) 'Unit of local government' means any county, city, town, or
31 municipality of this State, and any other political subdivision,
32 public corporation, or district in this State, that is or may be
33 authorized by law to acquire, establish, construct, enlarge, improve,
34 maintain, own, or operate natural gas systems.
35 (5) 'Unit of local government's chief administrative official' means the
36 county manager, city manager, town manager, or other person, by
37 whatever title known, in whom the responsibility for the unit of
38 local government's administrative duties is vested.

39 "§ 160A-632. Definition of territorial jurisdiction and service area of district.

40 A district may be created for the one or more entire counties that are totally
41 unserved for natural gas at the time of creation of the district. This area is the
42 territorial jurisdiction and the service area of the district.

43 "§ 160A-633. Creation of district.

1 (a) The boards of commissioners of any one or more counties within an area for
2 which a district may be created as provided by G.S. 160A-632 may by resolution
3 signify their determination to organize a district under the provisions of this Article.
4 Each of these resolutions shall be adopted after a public hearing thereon, notice of
5 which hearing shall be given by publication at least once, not less than 10 days prior
6 to the date fixed for the hearing, in a newspaper having a general circulation in the
7 county. The notice shall contain a brief statement of the substance of the proposed
8 resolution, shall set forth the proposed articles of incorporation of the district, and
9 shall state the time and place of the public hearing. No county shall be required to
10 make any other publication of the resolution under the provisions of any other law.
11 Any municipality located within the area may also join the district under the same
12 procedures as a county.

13 (b) Each resolution shall include articles of incorporation which shall set forth all
14 of the following:

15 (1) The name of the district.

16 (2) The composition of the board of trustees, terms of office, and the
17 manner of making appointments and filling vacancies.

18 (3) A statement that the district is organized under this Article.

19 (4) The names of the organizing counties and municipalities.

20 (c) A certified copy of each of the resolutions signifying the determination to
21 organize a district under the provisions of this Article shall be filed with the
22 Secretary of State, together with proof of publication of the notice of hearing on each
23 of the resolutions. If the Secretary of State finds that the resolutions, including the
24 articles of incorporation, conform to the provisions of this Article and that the notices
25 of hearing were properly published, the Secretary of State shall file the resolutions
26 and proofs of publication, shall issue a certificate of incorporation under the seal of
27 the State, and shall record the certificate in an appropriate book of record. The
28 issuance of this certificate of incorporation by the Secretary of State shall constitute
29 the district a public body and body politic and corporate of the State of North
30 Carolina. The certificate of incorporation shall be conclusive evidence of the fact
31 that the district has been duly created and established under this Article.

32 (d) When the district has been duly organized and its officers elected, the
33 secretary of the district shall certify to the Secretary of State the names and addresses
34 of the officers as well as the address of the principal office of the district.

35 **"§ 160A-634. Membership; officers; compensation.**

36 (a) The governing body of a district is the Board of Trustees. The Board of
37 Trustees shall consist of members as provided in the articles of incorporation.

38 (b) Service on the Board of Trustees may be in addition to any other office which
39 a person is entitled to hold. Each voting member of the Board of Trustees may hold
40 elective public office as defined by G.S. 128-1.1(d).

41 (c) Members of the Board of Trustees shall reside within the territorial jurisdiction
42 of the district as defined by G.S. 160A-632.

43 (d) The Board of Trustees shall annually elect from its membership a Chair and a
44 Vice-Chair, and shall annually elect a Secretary and a Treasurer.

(e) Members of the Board of Trustees shall receive the sum of fifty dollars (\$50.00) as compensation for attendance at each duly conducted meeting of the district.

"§ 160A-635. Quorum.

A majority of the members of the Board of Trustees shall constitute a quorum for the transaction of business.

"§ 160A-636. Advisory committees.

The Board of Trustees may provide for the selection of any advisory committees that it finds appropriate, which may or may not include members of the Board of Trustees.

"§ 160A-637. Purpose of the district.

The purpose of the district is to enhance the quality of life in its territorial jurisdiction by promoting the development of natural gas distribution systems to enhance the economic development of the area.

"§ 160A-638. General powers of the district.

The general powers of the district include all of the following:

- (1) To sue and be sued.
- (2) To have a seal.
- (3) To make rules and regulations, not inconsistent with this Article, for its organization and internal management.
- (4) To employ persons deemed necessary to carry out the functions and duties assigned to them by the district and to fix their compensation, within the limit of available funds.
- (5) With the approval of the unit of local government's chief administrative official, to use officers, employees, agents, and facilities of the unit of local government for such purposes and upon such terms as may be mutually agreeable.
- (6) To retain and employ counsel, auditors, engineers, and private consultants on an annual salary, contract basis, or otherwise for rendering professional or technical services and advice.
- (7) To acquire, lease as lessee with or without option to purchase, hold, own, and use any franchise, property, real or personal, tangible or intangible, or any interest therein and to sell, lease as lessor with or without option to purchase, transfer (or dispose thereof) whenever the property is no longer required for purposes of the district, or exchange it for other property or rights which are useful for the district's purposes. Except as provided in any covenant or debt instrument designed to protect the creditor, all or a substantial part of an operating natural gas system may not be disposed of without the approval of the Department of Commerce. If the sale is approved by the Department of Commerce, the district shall repay the State the lesser of the amount of any capital grant made by the State or one-half of the amount of the proceeds.

- (8) To acquire by gift, purchase, lease as lessee with or without option to purchase or otherwise to construct, improve, maintain, repair, operate, or administer any component parts of a natural gas system. The district also may contract for the maintenance, operation, or administration thereof or to lease as lessor the same for maintenance, operation, or administration by private parties.
- (9) To make or enter into contracts, agreements, deeds, leases with or without option to purchase, conveyances, or other instruments, including contracts and agreements with the United States, the State of North Carolina, and units of local government.
- (10) To develop and make data, plans, information, surveys, and studies of natural gas facilities within the territorial jurisdiction of the district, to prepare and make recommendations in regard thereto.
- (11) To enter in a reasonable manner lands, waters, or premises for the purpose of making surveys, soundings, drillings, and examinations. This entry shall not be deemed a trespass except that the district shall be liable for any actual and consequential damages resulting from the entry.
- (12) To develop and carry out demonstration projects.
- (13) To make, enter into, and perform contracts with private parties and natural gas companies with respect to the management and operation of natural gas systems.
- (14) To make, enter into, and perform contracts with any public utility, railroad, or transportation company for the joint use of property or rights.
- (15) To own, lease, and operate gas production, storage, transmission, and distribution systems. These systems may also include the purchase or lease, or both, of natural gas fields and natural gas reserves within the State, and the purchase of natural gas supplies within or without the State. A district may operate that part of a gas system involving the purchase or lease, or both, of natural gas fields, natural gas reserves, and natural gas supplies, in an operating agreement, partnership or joint venture arrangement with natural gas utilities and private enterprise. The district may acquire, purchase, construct, receive, own, operate, maintain, enlarge, and improve natural gas systems, and transport and sell at wholesale all or any part of its gas supply.
- (16) To purchase or finance real or personal property under G.S. 160A-20.
- (17) To obtain grants, loans, and assistance from the United States, the State of North Carolina, any public body, or any private source.
- (18) To enter into and perform contracts and agreements with other natural gas districts, regional natural gas districts, or units of local government pursuant to the provisions of G.S. 160A-460 through

G.S. 160A-464 (Part 1 of Article 20 of Chapter 160A of the General Statutes) and to enter into contracts and agreements with private natural gas companies, but this subdivision does not authorize the operation of, or contracting for the operation of, service of a natural gas system outside the service area of the district.

(19) Except as restricted by covenants in bonds, notes, security interests, or trust certificates, set in its sole discretion rates, fees, and charges for use of its natural gas system in accordance with G.S. 160A-650.

(20) To do all related things necessary to carry out its purpose and to exercise the powers granted to the district.

(21) To issue bonds or other obligations of the district as provided by law and apply the proceeds thereof to the financing of any natural gas system or any part thereof and to refund, whether or not in advance of maturity or the earliest redemption date, any such bonds or other obligations.

"§ 160A-639. Power of the North Carolina Utilities Commission not affected.

(a) Except as otherwise provided in this Article, nothing in this Article shall be construed to limit or otherwise affect the powers of the North Carolina Utilities Commission.

(b) The North Carolina Utilities Commission shall not have jurisdiction over rates, fees, and charges of a district for service within its territorial jurisdiction, but safety regulations of the Commission shall apply.

"§ 160A-640. Fiscal accountability.

A district is a public authority subject to the provisions of Chapter 159 of the General Statutes.

"§ 160A-641. Funds.

The establishment and operation of a district is a public purpose, and the State of North Carolina and any unit of local government may appropriate funds to support the establishment and operation of the district. The State of North Carolina and any unit of local government may also dedicate, sell, convey, donate, or lease any of their interests in any property to the district. A district may apply for grants from the State of North Carolina, or from the United States or any department, agency, or instrumentality thereof. The Department of Commerce may allocate to a district any funds appropriated for natural gas.

"§ 160A-642. Effect on existing franchises and operations.

Creation of the district does not affect any existing franchises granted by any unit of local government. Those existing franchises shall continue in full force and effect until legally terminated, and all ordinances and resolutions of the unit of local government regulating local natural gas systems shall continue in full force and effect unless superseded by regulations of the district. This superseding, if any, may occur only on the basis of prior mutual agreement between the district and the respective unit of local government.

"§ 160A-643. Termination.

1 The Board of Trustees after providing the continued availability of natural gas
2 service to its customers, if any, may terminate the existence of the district at any time
3 when it has no outstanding indebtedness. In the event of termination, all property
4 and assets of the district not otherwise encumbered shall automatically become the
5 property of the State of North Carolina, and the State of North Carolina shall
6 succeed to all rights, obligations, and liabilities of the district.

7 **"§ 160A-644. Controlling provisions.**

8 Insofar as the provisions of this Article are not consistent with the provisions of
9 any other law, public or private, the provisions of this Article shall be controlling.

10 **"§ 160A-645. Bonds and notes authorized.**

11 In addition to the powers granted by this Article, the district may issue bonds and
12 notes pursuant to the provisions of the Local Government Revenue Bond Act for the
13 purpose of financing natural gas systems or any part thereof and to refund the bonds
14 and notes, whether or not in advance of their maturity or earliest redemption date.

15 **"§ 160A-646. Equipment trust certificates.**

16 In addition to the powers granted in this Article, the district shall have continuing
17 power to purchase equipment, and in connection therewith to execute agreements,
18 leases with or without option to purchase, or equipment trust certificates. All money
19 required to be paid by the district under the provisions of these agreements, leases
20 with or without option to purchase, and equipment trust certificates shall be payable
21 solely from the fares, fees, rentals, charges, revenues, and earnings of the district,
22 moneys derived from the sale of any surplus property of the district and gifts, grants,
23 and contributions from any source. Payment for such equipment or rentals therefore,
24 may be made in installments; the deferred installments may be evidenced by
25 equipment trust certificates payable solely from the aforesaid revenues or receipts and
26 title to the equipment may or may not vest in the district until the equipment trust
27 certificates are paid.

28 **"§ 160A-647. Acquisition, power of eminent domain.**

29 (a) The district shall have continuing power to acquire, by gift, grant, devise,
30 bequest, exchange, purchase, lease with or without option to purchase, or any other
31 lawful method including, but not limited to, the power of eminent domain, the fee or
32 any lesser interest in real or personal property for use by the district.

33 (b) Exercise of the power of eminent domain by the district shall be in accordance
34 with Chapter 40A of the General Statutes. Notwithstanding Chapter 40A of the
35 General Statutes, before final judgment may be entered in any action of
36 condemnation initiated by the district, the district shall furnish proof that the county
37 board of commissioners of the county where the land is located has consented by
38 resolution or ordinance to the taking.

39 **"§ 160A-648. Tax exemption.**

40 The property of the district, both real and personal, its acts, activities, and income
41 shall be exempt from any tax or tax obligation; in the event of any lease of district
42 property, or other arrangement which amounts to a leasehold interest to a private
43 party, this exemption shall not apply to the value of such leasehold interest nor shall
44 it apply to the income of the lessee. Otherwise, however, for the purpose of taxation,

1 when property of the district is leased to private parties solely for the purpose of the
2 district, the acts and activities of the lessee shall be considered as the acts and
3 activities of the district and the exemption. The interest on bonds or obligations
4 issued by the district shall be exempt from State taxes.

5 **"§ 160A-649. Removal and relocation of utility structures.**

6 (a) The district shall have the power to require any public utility, railroad, or other
7 public service corporation owning or operating any installations, structures,
8 equipment, apparatus, appliances, or facilities in, upon, under, over, across, or along
9 any ways on which the district has the right to own, construct, operate, or maintain
10 its natural gas system, to relocate the installation, structures, equipment, apparatus,
11 appliances, or facilities from their locations, or, in the sole discretion of the affected
12 public utility, railroad, or other public service corporation, to remove the
13 installations, structures, equipment, apparatus, appliances, or facilities from their
14 locations.

15 (b) If the owner or operator fails or refuses to relocate them, the district may
16 proceed to do so.

17 (c) The district shall provide any necessary new locations and necessary real estate
18 interests for the relocation, and for that purpose the power of eminent domain as
19 provided in G.S. 160A-647 may be exercised as long as the new locations are not in,
20 on, or above a public highway. The district may also acquire the necessary new
21 locations by purchase or otherwise.

22 (d) Any affected public utility, railroad, or other public service corporation shall
23 be compensated for any real estate interest taken in a manner consistent with G.S.
24 160A-647, subject to the right of the district to reduce the compensation due by the
25 value of any property exchanged under this section.

26 (e) The method and procedures of a particular adjustment to the facilities of a
27 public utility, railroad, or other public service corporation shall be covered by an
28 agreement between the district and the affected party or parties.

29 (c) The district shall reimburse the public utility, railroad, or other public service
30 corporation, for the cost of relocations or removals which shall be the entire amount
31 paid or incurred by the utility properly attributable thereto after deducting the cost of
32 any increase in the service capacity of the new installations, structures, equipment,
33 apparatus, appliances, or facilities and any salvage value derived from the old
34 installations, structures, equipment, apparatus, or appliances.

35 **"§ 160A-650. Authority to fix and enforce rates.**

36 (a) A district may establish and revise from time to time schedules of reasonable
37 rents, rates, fees, charges, and penalties made applicable throughout the district for
38 the gas services. Schedules of rents, rates, fees, charges, or penalties may vary
39 according to classes of service. Before it establishes or revises a schedule of rents,
40 rates, fees, charges, or penalties, the district Board of Trustees shall hold a public
41 hearing on the matter. A notice of the hearing shall be given at least once in a
42 newspaper having general circulation in the area, not less than seven days before the
43 public hearing.

(b) A district may collect delinquent accounts by any remedy provided by law for collecting and enforcing private debts. A district may also discontinue service to any customer whose account remains delinquent for more than 30 days. When service is discontinued for delinquency, it shall be unlawful for any person other than a duly authorized agent or employee of the district to do any act that results in a resumption of services. If a delinquent customer is not the owner of the premises to which the services are delivered, the payment of the delinquent account may not be required before providing services at the request of a new and different tenant or occupant of the premises, but this restriction shall not apply when the premises are occupied by two or more tenants whose services are measured by the same meter.

(c) Rents, rates, fees, charges, and penalties for services shall be legal obligations of the person contracting for them and shall in no case be a lien upon the property or premises served.

(d) Rents, rates, fees, charges, and penalties for services shall be legal obligations of the owner of the premises served when the property or premises are leased or rented to more than one tenant and services rendered to more than one tenant are measured by the same meter."

Section 3. G.S. 105-164.14(c) is amended by adding a new subdivision to read:

"(22) A regional natural gas district created pursuant to Article 27 of Chapter 160A of the General Statutes."

Section 4. G.S. 159-81(1) reads as rewritten:

"(1) 'Municipality' means a county, city, town, incorporated village, sanitary district, metropolitan sewerage district, metropolitan water district, county water and sewer district, water and sewer authority, hospital authority, hospital district, parking authority, special airport district, regional public transportation authority, regional natural gas district, regional sports authority, airport authority, joint agency created pursuant to Part 1 of Article 20 of Chapter 160A of the General Statutes, and joint agency authorized by agreement between two cities to operate an airport pursuant to G.S. 63-56, but not any other forms of local government."

Section 5. G.S. 160A-20(h) reads as rewritten:

"(h) As used in this section, the term 'unit of local government' means any of the following:

- (1) A county.
- (2) A city.
- (3) A water and sewer authority created under Article 1 of Chapter 162A of the General Statutes.
- (4) An airport authority whose situs is entirely within a county that has (i) a population of over 120,000 according to the most recent federal decennial census and (ii) an area of less than 200 square miles.

- 1 (5) An airport authority in a county in which there are two
2 incorporated municipalities with a population of more than 65,000
3 according to the most recent federal decennial census.
4 (5a) An airport board or commission authorized by agreement between
5 two cities pursuant to G.S. 63-56, one of which is located partially
6 but not wholly in the county in which the jointly owned airport is
7 located, and where the board or commission provided water and
8 wastewater services off the airport premises before January 1, 1995;
9 provided that the authority granted by this section may be
10 exercised by such a board or commission with respect to water and
11 wastewater systems or improvements only.
12 (6) A local school administrative unit (i) that is located in a county
13 that has a population of over 90,000 according to the most recent
14 federal decennial census and (ii) whose board of education is
15 authorized to levy a school tax.
16 (7) An area mental health, developmental disabilities, and substance
17 abuse authority, acting in accordance with G.S. 122C-147.
18 (8) A consolidated city-county, as defined by G.S. 160B-2(1).
19 (9) A regional natural gas district, as defined by Article 27 of this
20 Chapter."

PART III.

EFFECTIVE DATES

21
22
23 Section 6. This act is effective when it becomes law.

VISITOR REGISTRATION SHEET

PUBLIC UTILITIES

Name of Committee

APRIL 16, 1997

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

RICHARD WHISNANT	DEHNR
David Simmons	Zeb Miller PA
Jim Blackburn	{ N.C. Association of County Commissioners
Patrice Roester	
Andy Conest	N.C. L.M.
Jimmy Roberts	C.V.C.A.
STUART DIXON	NCNB
Joe Pennachia	Piedmont Natural GAS
Alice Garland	Electricity
Ram Carpenter	PCS/Phosphate
Lana Hartwell	MAC
John Hunt	PCS Nitrogen
Richard Fredenburg	NCDA
Deborah Hamm	Energy Energy Div / Commerce
Doug Culbreth	" "
Sam Kirby	NCUC
REMEY	Georgia-Pacific Corp
Sheriff Bert Austin	Dare County
Sheriff David Lane	Perquimans County
Sheriff Fred Spruiell	Chowan County
Donna Maynard	NC SA Spec Dir -
Tom Morrow	Sprint
Art Williams	Gov's Office



North Carolina General Assembly

House of Representatives

State Legislative Building

Raleigh 27601-1096

MINUTES

JOINT HOUSE MEETING COMMITTEE ON RULES, CALENDAR AND OPERATIONS COMMERCE SUBCOMMITTEE ON PUBLIC UTILITIES

June 25, 1997

The Subcommittee on Public Utilities met with the Committee on Rules, Calendar and Operations at 3:00 p.m. on June 25, 1997 in Room 544 LOB at the Legislative Office Building. Representative Richard Morgan presided. The following members of the Subcommittee on Public Utilities were present:

Representatives: McComas; Allred; Bonner; Crawford; Dickson; Ives; McCombs; McCrary; Miner; Mitchell; Neely; Nye; Reynolds; Roger; C. Wilson; Womble; Tallent

Staff Counsel Steve Rose was present to assist the Committees. The visitor registration sheet is attached and made part of the minutes.

Chairman Morgan called the meeting to order, and the Clerk called the role for the members of the Subcommittee on Public Utilities. The Chairman then introduced Rep. Daniel McComas, Chairman of the Subcommittee on Public Utilities to explain SJR 1078 and DRHJ2340 which provide for confirmation of appointments to the North Carolina Utility Commission.

Rep. McComas called upon nominee J. Richard Conder to present his qualifications. Rep. Jerry Dockham moved that SJR 1078 be given a favorable report. The resolution was voted upon and passed favorably.

Rep. McComas called upon nominee Robert V. Owens, Jr. to present his qualifications. Rep. Jerry Dockham moved that DRHJ2340 be given a favorable report. A vote was taken and the resolution passed favorably.

The Subcommittee on Public Utilities adjourned at 3:50 p.m.


Daniel F. McComas
Chairman


Rita A. Quinn
Committee Clerk





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June 25, 1997

MEMORANDUM

**TO: House Committee on Rules
House Subcommittee on Public Utilities**

**FROM:  Steven Rose, Committee Counsel for Subcommittee on
Public Utilities**

RE: Utilities Commission Appointments

The North Carolina Utilities Commission consists of seven commissioners who are appointed for eight year terms. Commissioners are appointed by the Governor and must be confirmed by the General Assembly by Joint Resolution.

A Utilities Commissioner is paid the same salary as a Superior Court Judge, \$90,915 at present. There are fixed salary increases based upon length of service on the Utilities Commission, 4.8% after five years of service and 9.6% after ten years. Members of the Utilities Commission are subject to the same standards of conduct as a judge. They may be removed during their term of office only for cause, by impeachment.

During service on the Commission, a Commissioner may not engage in any other employment, business, profession or vocation. During the term of office the Commissioner may

not be associated in any way with any public utility company, including ownership of any interest.

The General Assembly created the Utilities Commission and establishes policies which the Commission carries out, usually with broad discretion. The Commission is both a regulator of public utilities, as well as a judge in all contested matters relating to public utilities. Decisions of the Utilities Commission are appealable directly to the North Carolina Court of Appeals, with the exception of general rate cases, which are appealable directly to the North Carolina Supreme Court.

The North Carolina Utilities Commission regulates the rates and services of the intrastate operations of public utilities supplying electricity, gas, telecommunications services, water and sewer services, taxis, buses, trains, trucking services, express package and mail services, and radio common carriers. The extent of this regulation varies from utility to utility, and there are limitations imposed by federal law. The Commission hears and decides proceedings relating to the issuance of utility franchises, the construction of electric generating plants, the setting of utility rates, the adjustment of electric utility rates based upon fuel cost changes, the adjustment of natural gas rates based upon changes in the cost of natural gas, the provision of new utility services, and the adjudication of complaints concerning the services of public utilities. Again, the extent of the Commission's jurisdiction varies from utility to utility and is effected in some cases by federal law.

ARTICLE 2.

Organization of Utilities Commission.

§ 62-10. Number; appointment; terms; qualifications; chairman; vacancies; compensation; other employment prohibited.

(a) The North Carolina Utilities Commission shall consist of seven commissioners who shall be appointed by the Governor subject to confirmation by the General Assembly by joint resolution. The names of commissioners to be appointed by the Governor shall be submitted by the Governor to the General Assembly for confirmation by the General Assembly on or before May 1, of the year in which the terms for which the appointments are to be made are to expire. Upon failure of the Governor to submit names as herein provided, the Lieutenant Governor and Speaker of the House jointly shall submit the names of a like number of commissioners to the General Assembly on or before May 15 of the same year for confirmation by the General Assembly. Regardless of the way in which names of commissioners are submitted, confirmation of commissioners must be accomplished prior to adjournment of the then current session of the General Assembly. This subsection shall be subject to the provisions of subsection (c) of this section.

(b) The terms of the commissioners now serving shall expire at the conclusion of the term for which they were appointed which shall remain as before with two regular eight-year terms expiring on July 1 of each fourth year after July 1, 1965, and the fifth term expiring on July 1 of each eighth year after July 1, 1963. The terms of office of utilities commissioners thereafter shall be eight years commencing on July 1 of the year in which the predecessor terms expired, and ending on July 1 of the eighth year thereafter.

(c) In order to increase the number of commissioners to seven, the names of two additional commissioners shall be submitted to the General Assembly on or before May 27, 1975, for confirmation by the General Assembly as provided in G.S. 62-10(a). The commissioners so appointed and confirmed shall serve new terms commencing on July 1, 1975, one of which shall be for a period of two years (with the immediate successor serving for a period of six years), and one of which shall be for a period of two years.

Thereafter, the terms of office of the additional commissioners shall be for eight years as provided in G.S. 62-10(b).

(d) A commissioner in office shall continue to serve until his successor is duly confirmed and qualified but such holdover shall not affect the expiration date of such succeeding term.

(e) On July 1, 1965, and every four years thereafter, one of the commissioners shall be designated by the Governor to serve as chairman of the Commission for the succeeding four years and until his successor is duly confirmed and qualifies. Upon death or resignation of the commissioner appointed as chairman, the Governor shall designate the chairman from the remaining commissioners and appoint a successor as hereinafter provided to fill the vacancy on the Commission.

(f) In case of death, incapacity, resignation or vacancy for any other reason in the office of any commissioner prior to the expiration of his term of office, the name of his successor shall be submitted by the Governor within four weeks after the vacancy arises to the General Assembly for confirmation by the General Assembly. Upon failure of the Governor to submit the name of the successor, the Lieutenant Governor and Speaker of the House jointly shall submit the name of a successor to the General Assembly within six weeks after the vacancy arises. Regardless of the way in which names of commissioners are submitted, confirmation of commissioners must be accomplished prior to the adjournment of the then current session of the General Assembly.

(g) If a vacancy arises or exists pursuant to either subsection (a) or (c) or (f) of this section when the General Assembly is not in session, and the appointment is deemed urgent by the Governor, the commissioner may be appointed and serve on an interim basis pending confirmation by the General Assembly.

(h) The salary of each commissioner shall be the same as that fixed from time to time for judges of the superior court except that the commissioner designated as the chairman shall receive one thousand dollars (\$1,000) additional per annum. In lieu of merit and other increment raises paid to regular State employees, each commissioner, including the commissioner designated as chairman, shall receive as longevity pay an amount equal to four and eight-tenths percent (4.8%) of the annual salary set forth in the Current Operations Appropriations Act payable monthly after five years of service, and nine and six-tenths percent (9.6%) after 10 years of service. "Service" means service as a member of the Utilities Commission.

(i) The standards of judicial conduct provided for judges in Article 30 Chapter 7A of the General Statutes shall apply to members of the Commission. Members of the Commission shall be liable to impeachment for the causes and in the manner provided for judges of the General Court of Justice in Chapter 123 of the General Statutes. Members of the Commission shall not engage in any other employment, business, profession, or vocation while in office.

(j) Members of the Commission shall be reimbursed for travel and subsistence expenses at the rates allowed to State officers and employees by G.S. 138-6(a). (1941, c. 97, s. 2; 1949, c. 1009, s. 1; 1959, c. 1319; 1963, c. 1165, s. 1; 1967, c. 1238; 1975, c. 243, s. 3; c. 867, ss. 1, 2; 1977, c. 468, s. 1; c. 913, s. 2; 1983 (Reg. Sess., 1984), c. 1116, s. 91; 1989, c. 781, s. 41.2; 1993 (Reg. Sess., 1994), c. 769, s. 7.4(b); 1996, 2nd Ex. Sess., c. 18, s. 28.2(b).)

§ 62-11. Oath of office.

Each utilities commissioner before entering upon the duties of his office shall file with the Secretary of State his oath of office to support the Constitution and laws of the United States and the Constitution and laws of the State of North Carolina, and to well and truly perform the duties of his said office as utilities commissioner, and that he is not the agent or attorney of any public utility, or an employee thereof, and that he has no interest in any public utility. (1933, c. 134, s. 5; 1935, c. 280; 1939, c. 404; 1941, c. 97; 1963, c. 1165, s. 1.)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 2

SENATE JOINT RESOLUTION 1078

House Committee Substitute Favorable 6/26/97

Sponsors:

Referred to:

May 12, 1997

A JOINT RESOLUTION PROVIDING FOR THE CONFIRMATION OF THE APPOINTMENT OF RICHARD CONDER MADE BY THE GOVERNOR TO MEMBERSHIP ON THE NORTH CAROLINA UTILITIES COMMISSION.

Additional Information Available on:

Whereas, under the provisions of G.S. 62-10, appointments made by the Governor to membership on the North Carolina Utilities Commission are subject to confirmation by the General Assembly by joint resolution; and

Whereas, the Governor has submitted to the presiding officers of the House of Representatives and the Senate, the names of his appointees to serve full terms on the North Carolina Utilities Commission;

Now, therefore, be it resolved by the Senate, the House of Representatives concurring:

Section 1. The appointment of Richard Conder to the North Carolina Utilities Commission for a term beginning July 1, 1997, and expiring June 30, 2005, is confirmed.

Section 2. This resolution is effective upon ratification.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

D

HOUSE JOINT RESOLUTION DRHJR2340

Sponsors: Rules, Calendar, and Operations of the House.

Referred to:

1 A JOINT RESOLUTION PROVIDING FOR THE CONFIRMATION OF THE
2 APPOINTMENT OF ROBERT V. OWENS, JR. MADE BY THE GOVERNOR
3 TO MEMBERSHIP ON THE NORTH CAROLINA UTILITIES COMMISSION.

4 Whereas, under the provisions of G.S. 62-10, appointments made by the
5 Governor to membership on the North Carolina Utilities Commission are subject to
6 confirmation by the General Assembly by joint resolution; and

7 Whereas, the Governor has submitted to the presiding officers of the
8 House of Representatives and the Senate, the names of his appointees to serve full
9 terms on the North Carolina Utilities Commission;

10 Now, therefore, be it resolved by the House of Representatives, the Senate
11 concurring:

12 Section 1. The appointment of Robert V. Owens, Jr. to the North
13 Carolina Utilities Commission for a term beginning July 1, 1997, and expiring June
14 30, 2005, is confirmed.

15 Section 2. This resolution is effective upon ratification.

*J. Richard Conder
1401 Carolina Drive
Rockingham, N. C. 28379*

Education:

College: BS Degree in Accounting
East Carolina University

High School: Hamlet High School 1949

Other: Louisiana State University
Graduate School of Banking

N. C. Bankers Association School
Chapel Hill, N. C.

Personal Data:

Married, Three (3) Children, two daughters and one son

Member First Presbyterian Church, Rockingham, N. C.

Elder, First Presbyterian Church, Rockingham, N. C.

Experience:

1974 to Present - Vice President
First Union National Bank

1960 to 1974 Southern National Bank
Senior Vice President-Area Manager

1958 to 1960 Lundin and Spencer, CPA

Military Service:

U. S. Air Force
Honorable Discharge 1955

OTHER RESPONSIBILITIES:

County Commissioner 1962 to 1984 Richmond County

Chairman of Board for 20 years. 1964 to 1984

President of North Carolina County Commissioners Association 1973

President, National Association of Counties 1980

North Carolina Senator 1984 to Present

Chairman, Children and Youth Committee - 1987 - 1989

Chairman, N. C. Senate Education Committee - 1989 - 1992

Chairman, N. C. Senate Mental Health Committee 1993 - 1994

Majority Leader, N. C. Senate 1993 - to present

Civic Involvement:

Former Chairman Richmond County Economic Development Authority

Former President of Hamlet and Rockingham Rotary Clubs.

Former Hospital Trustee Richmond Memorial Hospital

Former Chairman of Cancer Drive Richmond County

Former Chairman of Heart Fund Richmond County

Former Member- President Reagan's Private Sector Initiative

Tar Heel of the Week - Raleigh News and Observer

Outstanding Alumnus Award - East Carolina University

N. C. Distinguished Citizens Award 1982

NORTH CAROLINA BOARD OF ETHICS
116 WEST JONES STREET
RALEIGH 27603-8003
(919) 733-5103

STATEMENT OF ECONOMIC INTEREST FOR EXECUTIVE ORDER NUMBER ONE
DATED JANUARY 9, 1993, BY GOVERNOR JAMES B. HUNT, JR.

MAIL FORM TO THE BOARD OF ETHICS, 116 WEST JONES STREET, RALEIGH,
NC 27603. FOR ASSISTANCE, CALL MILLIE DONAVANT AT 919-733-5103.

THE PERSON FILING SHALL INCLUDE IN THE FOLLOWING THE ASSETS,
LIABILITIES, AND SOURCES OF INCOME OF HIS OR HER SPOUSE WHICH ARE
DERIVED FROM THE ASSETS OR INCOME OF THE PERSON FILING, CONTROLLED
BY THE PERSON FILING, OR FOR WHICH THE PERSON FILING IS JOINTLY OR
SEVERALLY LIABLE.

Name of Person Filing J. Richard Conder

Home Address 1401 Carolina Drive
Rockingham, N. C. 28379

Home Telephone 910-895-9747

Occupation, Position, or Title V.P. First Union Bank/N. C. Senate

Employer First Union Bank/State of N. C.

Office Address 202 E. Washington Street
Rockingham, N. C. 28379

Office Telephone 910-997-5551

If you are filing as an appointee, please list the name of the
board or commission on which you are serving, and the position on
the board that you are appointed to.

N. C. Utilities Commission
Name of Board
At Large
Position (example = at large position)

1. List all parcels of real estate located in North Carolina in which you have an ownership interest of more than \$5,000, and asterisk (*) parcels valued more than \$10,000. Give street address or other description adequate to determine the location of each parcel. If persons other than your spouse have an ownership interest in the property, state the type of ownership and name of the person having the interest. If any parcels are located in an area over which the board you are serving on has regulatory authority or could otherwise be affected by board decisions, please state the particulars.

*Home - 1401 Carolina Drive

Rockingham, N.C. 28379

Joint Ownership with spouse.

2. List the name of each publicly-owned company in which you own securities valued more than \$10,000. These companies are required to register with the Securities and Exchange Commission.

*First Union National Bank

*Carolina Fincorp

These are held in a self directed IRA

3. List the name of each non-publicly-owned company or business entity in which you own securities or other equity interests with a value exceeding \$5,000. Asterisk (*) all with a value exceeding \$10,000.

None

With respect to the entities listed with a value exceeding \$10,000, should any of the entities own securities or equity interests exceeding \$10,000 in other companies or business entities, list the name of the company or business entity.

Unknown

Are you or any of the entities listed licensed by, regulated by, or have business relationships with the same area of state government with which you are associated? If so, state the particulars.

N/A

4. If you, your spouse, or your dependent children are the beneficiary of a trust created, established or controlled by you which holds assets, and if those assets are known, list the name and address of the trustee and describe the trust. List each business in which the trust has an ownership interest exceeding \$5,000, and asterisk (*) all with a value exceeding \$10,000.

N/A

5. List assets with a value exceeding \$5,000 each held by you which have not been listed elsewhere, and asterisk (*) all with a value exceeding \$10,000. Some examples are mutual funds, certificates of deposit, and retirement accounts. It is not necessary to list household furniture, jewelry, automobiles, and other personal effects.

*First Union Retirement Fund (Personal)

6. List liabilities with a value exceeding \$5,000 each, asterisk (*) all with a value exceeding \$10,000, give the name of the creditor, and describe the nature of the liability. It is not necessary to list credit card debts, mortgage for personal residence, automobile loans, and loans of this nature.

N/A

7. List sources of income shown on the most recent federal and state income tax returns of the person filing where \$5,000 or more was received from each source. For each source listed, describe the type of income received, and state the name of the business entity or individual from which the income was received. Some examples of income are salary or wages, professional fees, honoraria, interest, stock dividends, capital gains, and business profits.

Salary - First Union Bank - will resign if confirmed

Salary - N.C. Senate - will resign if confirmed

State the particulars if any of the sources of income are regulated by, receive permits from, or otherwise connected with the same area of state government with which you are connected.

N/A

8. If you are a practicing attorney, check each category of legal representation in which you and/or the law firm with which you are associated has during any single year of the past five years earned legal fees in excess of \$5,000 from any of the following categories of legal representation:

- ☐ Admiralty ☐ Taxation ☐ Decedent's estates
☐ Negligence (representing plaintiffs)
☐ Negligence (representing defendants)
☐ Criminal law ☐ Labor law ☐ Insurance law
☐ Utilities regulation or representation
 of regulated utilities
☐ Corporation law ☐ Administrative law
☐ Real property ☐ Representation of local governments

9. List all businesses you have been associated with during the past five years as an employee, officer, director, partner, or a material owner of a security or other equity interest which have not been previously listed. Include your present employment if it is not listed in Question three.

For each business listed, state your association, and the time period of your association.

To the best of your knowledge, state whether any of the businesses listed does business with the state, the nature of the business, and whether you or the business is licensed by, regulated by, receives permits, grants or other funding from, or otherwise connected with the same area of state government with which you are connected.

It is not necessary to list not-for-profit organizations or civic organizations unless the entities receive benefits from the same area of state government with which you are connected.

V.P. - First Union National Bank - Vice President for 23 years
as City Executive and Manager, including business developments

I assume that our Corporate Headquarters in Charlotte does
routine banking business with the State of North Carolina.

10. Explain any involvement your spouse has with any business or organization which might create a conflict of interest for you.

My wife owns the following utility stocks:

*Duke Power

*C.P. & L.

If these stocks pose a conflict of interest, she will dispose
them immediately.

11. List all gifts received with a value exceeding \$100 during the past twelve months preceding the date of this statement from sources other than your spouse or relatives.

N/A

List all gifts received with a value exceeding \$50 from any source having business with or regulated by the state.

N/A

12. Having read Executive Order Number One, state any problems or conflicts of interest you may have which are not fully covered in previous questions. Include an explanation of how you would propose to resolve the matter.

My wife's investments were paid 100% from her earnings as

Director of Literacy at Richmond Community College.

As indicated, she will dispose of them if necessary.

VERIFICATION

I hereby do certify that I have read this Statement of Economic interest, and all attachments, and to the best of my knowledge and belief it is true, correct and complete.

I hereby do certify that I have not transferred, and will not transfer, any asset, interest or property for the purpose of concealing it from disclosure while retaining an equitable interest therein.

May 13, 1997

Date

Richard Corder
Signature

STATE OF NORTH CAROLINA

COUNTY OF Wake

Subscribed and sworn to before me this the 13th day of
May 19 97.

My Commission Expires:

1/24/2000

Beverly Adams
Notary Public

**BIOGRAPHICAL SKETCH
ROBERT V. OWENS, JR.**

Post Office Box 968
Nags Head, NC 27959
(919) 441-5336

505 Amanias Dare Street
Manteo, NC 27954
(919) 473-2721

Personal Information:

Life-long resident of Dare County (64 years)

Married to Sarah A. Owens for 41 years

Two children: R.V. Owens, III, Manteo, NC, a Dare County entrepreneur

Married to Julie Tillett

Two children--Shannon and Robert Daniel ("Bo")

Lisa S. Hooper, Bruxton, NC, Homemaker and Active Community Volunteer

Married to Edgar Hooper, Jr.

Two children--Chase and Avery

Business Background:

Co-owner and manager of Owens' Restaurant, a family business in existence since 1946

Co-owner of a fast-food franchise in Dare County since 1985

Military/Education Background:

United States Coast Guard

Attended East Carolina University

Graduated from Manteo High School

Government Involvement:

Director of Governor's Eastern Office; 1993 to present

Dare County Board of Commissioners; 1970-1978; 1984 to present; Chairman, 13 years

North Carolina Tax Study Commission; 1986-1988

North Carolina State Banking Commission; 1982-1984

North Carolina State Parks and Recreation Commission; 1980-1982

Community Involvement:

Member of Manteo Baptist Church

Member of Manteo Lions Club, past president

Member of Manteo Masonic Lodge

Member of Dare County Shrine Club, past president

Served on numerous local commissions and committees

Special Recognition:

Leadership Award for Promotion of Education and Technology in Dare County Schools

Leadership Award for Promotion of Dare County Babe Ruth World Series

Dare County Citizen of the Year Award

Town of Manteo Citizen of the Year Award

Leadership Award for North Carolina Mentally Handicapped

NORTH CAROLINA BOARD OF ETHICS
116 WEST JONES STREET
RALEIGH 27603-8003
(919) 733-5103

SUPPLEMENTAL STATEMENT OF ECONOMIC INTEREST

FOR EXECUTIVE ORDER NUMBER ONE DATED JANUARY 9, 1993, BY
GOVERNOR JAMES B. HUNT, JR.

FOR A COPY OF YOUR PREVIOUS STATEMENT, OR ASSISTANCE, CALL
MILLIE DONAVANT AT 919-733-5103.

PLEASE NOTE THAT THIS FORM REQUIRES YOU TO ADD NEW INFORMATION,
AND TO DELETE INFORMATION WHICH IS NO LONGER APPLICABLE, TO YOUR
STATEMENT OF ECONOMIC INTEREST FOR EXECUTIVE ORDER NUMBER ONE DATED
JANUARY 9, 1993. IF YOU HAVE NOT FILED THAT STATEMENT, PLEASE
REQUEST THE STATEMENT OF ECONOMIC INTEREST FORM. IT IS NOT
NECESSARY TO HAVE THE SUPPLEMENTAL FORM NOTARIZED.


THE PERSON FILING SHALL INCLUDE IN THE FOLLOWING THE ASSETS,
LIABILITIES, AND SOURCES OF INCOME OF HIS OR HER SPOUSE WHICH ARE
DERIVED FROM THE ASSETS OR INCOME OF THE PERSON FILING, CONTROLLED
BY THE PERSON FILING, OR FOR WHICH THE PERSON FILING IS JOINTLY OR
SEVERALLY LIABLE.

Name of Person Filing

Robert V. Owen, Jr.

Dir. Governor's East Office
State Employee Position, Agency

Governor / East Office
Name of Board or Commission

 IF YOU DO NOT HAVE CHANGES TO REPORT, PLEASE SIGN YOUR NAME, ADD
DATE, AND RETURN THIS PAGE TO THE ABOVE ADDRESS.

Robert V. Owen, Jr.
Signature

5/2/92
Date

* Note: Last filed 2/27/96

NORTH CAROLINA BOARD OF ETHICS
116 WEST JONES STREET
RALEIGH 27603-8003
(919) 733-5103

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SEVERALLY LIABLE.

Name of Person Filing

ROBERT V. OWENS, JR.

GOVERNOR'S OFFICE

State Employee Position, Agency

DIRECTOR, GOVERNOR'S EASTERN OFFICE

Name of Board or Commission

✓ IF YOU DO NOT HAVE CHANGES TO REPORT, PLEASE SIGN YOUR NAME, ADD
DATE, AND RETURN THIS PAGE TO THE ABOVE ADDRESS.

Robert V. Owens Jr.
Signature

2/15/96
Date

NORTH CAROLINA BOARD OF ETHICS
116 WEST JONES STREET
RALEIGH 27603-8003
(919) 733-5103

SUPPLEMENTAL STATEMENT OF ECONOMIC INTEREST

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SEVERALLY LIABLE.

Name of Person Filing

ROBERT V. OWENS JR.

DIRECTOR, EASTERN GOVERNOR'S OFFICE
State Employee Position, Agency

Name of Board or Commission

* IF YOU DO NOT HAVE CHANGES TO REPORT, PLEASE SIGN YOUR NAME, ADD
DATE, AND RETURN THIS PAGE TO THE ABOVE ADDRESS.

Robert V. Owens Jr.
Signature

7/1/95
Date

→ SAME INFO AS PREVIOUSLY FILED

NORTH CAROLINA BOARD OF ETHICS

116 WEST JONES STREET

RALEIGH 27603-8003

(919) 733-5103

SUPPLEMENTAL STATEMENT OF ECONOMIC INTEREST

FOR EXECUTIVE ORDER NUMBER ONE DATED JANUARY 9, 1993, BY
GOVERNOR JAMES B. HUNT, JR.

FOR A COPY OF YOUR PREVIOUS STATEMENT, OR ASSISTANCE, CALL
MILLIE DONAVANT AT 919-733-5103.

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BY THE PERSON FILING, OR FOR WHICH THE PERSON FILING IS JOINTLY OR
SEVERALLY LIABLE.

Name of Person Filing

Robert V. Owens, Jr.

Director, Governor's Eastern Office

State Employee Position, Agency

Name of Board or Commission

IF YOU DO NOT HAVE CHANGES TO REPORT, PLEASE SIGN YOUR NAME, ADD
DATE, AND RETURN THIS PAGE TO THE ABOVE ADDRESS.

Robert V. Owens, Jr.
Signature

March 2, 1994

Date

6/8/93

NORTH CAROLINA BOARD OF ETHICS
116 WEST JONES STREET
RALEIGH 27603-8003
(919) 733-5103

STATEMENT OF ECONOMIC INTEREST FOR EXECUTIVE ORDER NUMBER ONE
DATED JANUARY 9, 1993, BY GOVERNOR JAMES B. HUNT, JR.

MAIL FORM TO THE BOARD OF ETHICS, 116 WEST JONES STREET, RALEIGH,
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BY THE PERSON FILING, OR FOR WHICH THE PERSON FILING IS JOINTLY OR
SEVERALLY LIABLE.

Name of Person Filing Robert V. Owens Jr.
Home Address 7114 S. VA. Doe Trail
Nags Head, N.C. 27959
Home Telephone 919-441-5336
Occupation, Position,
or Title Owner
Employer Owens' Motel / Restaurant
Office Address 7114 A. S. VA. Doe Trail
Nags Head, N.C. 27959
Office Telephone 919-441-7309

If you are filing as an appointee, please list the name of the
board or commission on which you are serving, and the position on
the board that you are appointed to.

Eastern Office of the Governor 919-514-4825
Name of Board Robert Owens
Director
Position (example = at large position)

1. List all parcels of real estate located in North Carolina in which you have an ownership interest of more than \$5,000, and asterisk (*) parcels valued more than \$10,000. Give street address or other description adequate to determine the location of each parcel. If persons other than your spouse have an ownership interest in the property, state the type of ownership and name of the person having the interest. If any parcels are located in an area over which the board you are serving on has regulatory authority or could otherwise be affected by board decisions, please state the particulars.

* *Owens' Motel and Restaurant property in South Hargett
16 1/2 M.P. lower level area.*

* *Lot adjoining Restaurant property, 50x400 same
location*

2. List the name of each publicly-owned company in which you own securities valued more than \$10,000. These companies are required to register with the Securities and Exchange Commission.

None

3. List the name of each non-publicly-owned company or business entity in which you own securities or other equity interests with a value exceeding \$5,000. Asterisk (*) all with a value exceeding \$10,000.

* Owens' Motel and Restaurant

* Kentucky Fried Chicken stores on Outer Banks, Nags Head and Kill Devil Hills (2)

With respect to the entities listed with a value exceeding \$10,000, should any of the entities own securities or equity interests exceeding \$10,000 in other companies or business entities, list the name of the company or business entity.

No

Are you or any of the entities listed licensed by, regulated by, or have business relationships with the same area of state government with which you are associated? If so, state the particulars.

No

4. If you, your spouse, or your dependent children are the beneficiary of a trust created, established or controlled by you which holds assets, and if those assets are known, list the name and address of the trustee and describe the trust. List each business in which the trust has an ownership interest exceeding \$5,000, and asterisk (*) all with a value exceeding \$10,000.

NONE

5. List assets with a value exceeding \$5,000 each held by you which have not been listed elsewhere, and asterisk (*) all with a value exceeding \$10,000. Some examples are mutual funds, certificates of deposit, and retirement accounts. It is not necessary to list household furniture, jewelry, automobiles, and other personal effects.

NONE

6. List liabilities with a value exceeding \$5,000 each, asterisk (*) all with a value exceeding \$10,000, give the name of the creditor, and describe the nature of the liability. It is not necessary to list credit card debts, mortgage for personal residence, automobile loans, and loans of this nature.

(Same as above)

<i>East Carol Bank</i>	<i>Martins</i>	<i>N.C.</i>	<i>(Note / Asset of Trust)</i>
<i>Centura Bank</i>	<i>Martins</i>	<i>N.C.</i>	

7. List each source of income received by you with a value exceeding \$5,000 shown on your most recent federal and state tax returns. For each source listed, describe the type of income received, and state the name of the business entity or individual from which the income was received. Some examples of income are salary or wages, professional fees, honoraria, interest, stock dividends, capital gains, and business profits.

Salaries (from business as listed above)

Salary (Dare County Commissioner)

Chairman of Dare County Commission

State the particulars if any of the sources of income are regulated by, receive permits from, or otherwise connected with the same area of state government with which you are connected.

NO

8. If you are a practicing attorney, check each category of legal representation in which you and/or the law firm with which you are associated has during any single year of the past five years earned legal fees in excess of \$5,000 from any of the following categories of legal representation:

- N/A
- ☒ Admiralty ☐ Taxation ☐ Decedent's estates
 - ☐ Negligence (representing plaintiffs)
 - ☐ Negligence (representing defendants)
 - ☐ Criminal law ☐ Labor law ☐ Insurance law
 - ☐ Utilities regulation or representation of regulated utilities
 - ☐ Corporation law ☐ Administrative law
 - ☐ Real property ☐ Representation of local governments

9. List all businesses you have been associated with during the past five years as an employee, officer, director, partner, or a material owner of a security or other equity interest which have not been previously listed. Include your present employment if it is not listed in Question three.

For each business listed, state your association, and the time period of your association.

To the best of your knowledge, state whether any of the businesses listed does business with the state, the nature of the business, and whether you or the business is licensed by, regulated by, receives permits, grants or other funding from, or otherwise connected with the same area of state government with which you are connected.

It is not necessary to list not-for-profit organizations or civic organizations unless the entities receive benefits from the same area of state government with which you are connected.

NONE

10. Explain any involvement your spouse has with any business or organization which might create a conflict of interest for you.

NONE

11. List all gifts received with a value exceeding \$100 during the past twelve months preceding the date of this statement from sources other than your spouse or relatives.

NONE

List all gifts received with a value exceeding \$50 from any source having business with or regulated by the state.

NONE

12. Having read Executive Order Number One, state any problems or conflicts of interest you may have which are not fully covered in previous questions. Include an explanation of how you would propose to resolve the matter.

NONE

VERIFICATION

I hereby do certify that I have read this Statement of Economic interest, and all attachments, and to the best of my knowledge and belief it is true, correct and complete.

I hereby do certify that I have not transferred, and will not transfer, any asset, interest or property for the purpose of concealing it from disclosure while retaining an equitable interest therein.

June 1, 1993
Date

Robert V. Ann Jr.
Signature

STATE OF NORTH CAROLINA

COUNTY OF Dare

Subscribed and sworn to before me this the 1 day of June 1993.

My Commission Expires:

1/7/95

Coa J. Ansee
Notary Public

PUBLIC UTILITIES
JUNE 25
Room 544

3:10 -
Roll Call

BILL ACTION WORKSHEET FOR COMMITTEE MEETINGS

McCOMAS
CANCIES
ON UTIL
COMMISSION

Bill
Favorable
Unfavorable
Amended
Comm. Sub.
Original Bill
Re-referred
Other Action

H
Motion:
Proposed
CIE SUB
FAVORABLE
STR 1078
PASSED

Sponsor
Motion by
Motion by
Motion by
Motion by
Motion by

LOCKHAM

SEN. CULBRE
Recommended
by Gov.
(NOMINATED)
by Gov.

OWENS

Bill
Favorable
Unfavorable
Amended
Comm. Sub.
Original Bill
Re-referred
Other Action

STR
DRAFT BILL
Motion
DRAFTED
FAVORABLE
PASSED

Sponsor
Motion by
Motion by
Motion by
Motion by
Motion by

LOCKHAM

MOVED
3:30P

Bill
Favorable
Unfavorable
Amended
Comm. Sub.
Original Bill
Re-referred
Other Action

Sponsor
Motion by
Motion by
Motion by
Motion by
Motion by

Bill
Favorable
Unfavorable
Amended
Comm. Sub.
Original Bill
Re-referred
Other Action

HB 1126
NYC
FINANCE

Sponsor
Motion by
Motion by
Motion by
Motion by
Motion by

JUNE 26
1:35
1:40

VISITOR REGISTRATION SHEET

COMMERCE/Subcommittee on Public Utilities *JUNE 25*, 1997

Name of Committee

Date _____

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Suzanne Sulley	Rep. Sulley's wife
Dan McCorquodale	NCRMA
Cam Coney	BPMHL
Gene Upchurch	CPTL
John McAlister	Duke Power
Maali Haskins	Charlotte Chamber
FRAN PEBSTON	NCRMA
Army Hendrix	Stanton & Williams
Ann Case	DEHNR
KATH HUNDLEY	WEYCO
Alm. Miles	Bailey & Dixon LLP
Darrel Simmons	ZOA, PA
Laura Harbelle	MCIC
Bill Holman	conc / Service 11-6
Bill Stobbin	NCRMA
Cost Williams	Governor's Office



North Carolina General Assembly

House of Representatives

State Legislative Building

Raleigh 27601-1096

MINUTES

HOUSE COMMERCE SUBCOMMITTEE ON PUBLIC UTILITIES

June 26, 1997

The Subcommittee on Public Utilities met 1:30 p.m. on June 26, 1997 in Room 425 LOB at the Legislative Office Building. Representative Daniel McComas presided. The following members were present:

Representatives: Bonner; McCombs; Nye; Reynolds; Miner; Tallent

Staff Counsel Steve Rose was present to assist the Committee.

Chairman McComas called the meeting to order welcomed those present. He then called for the agenda item.

Rep. David Miner was recognized to explain HB 1126 *No Sales Tax on Pay Phones*. Rep. Edd Nye moved that the bill be given a favorable report. The bill passed with a favorable report and was re-referred to the Committee on Finance.

The Subcommittee on Public Utilities adjourned at 1:40 p.m.

A large, stylized handwritten signature of Daniel F. McComas, written in black ink, positioned above the printed name and title.

Daniel F. McComas
Chairman

A handwritten signature of Rita A. Quinn, written in black ink, positioned above the printed name and title.

Rita A. Quinn
Committee Clerk





**North Carolina General Assembly
Legislative Services Office**

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Raleigh, NC 27603-5925
(919) 733-2578

June 26, 1997

MEMORANDUM

TO: House Subcommittee on Public Utilities

FROM:  **Steven Rose, Subcommittee Counsel**

RE: House Bill 1126: No sales tax on pay phones

House Bill 1126 amends G.S. 105-164.4(a)(4a) to eliminate the sales tax on coin operated pay telephones for calls paid for by coin. Under present law, the sales tax is 3% of the gross receipts.

The act becomes effective July 1, 1997, and applies to sales made on or after that date.

If the bill receives a favorable report it will be referred to Finance.

H1126-SMRL-001

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 1126

Short Title: No Sales Tax on Pay Phones.

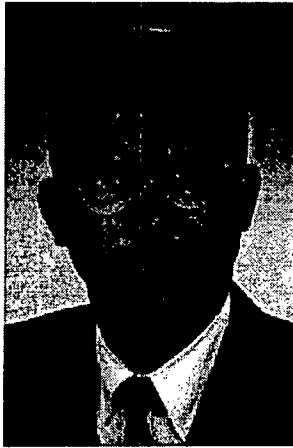
(Public)

Sponsors: Representative Miner.

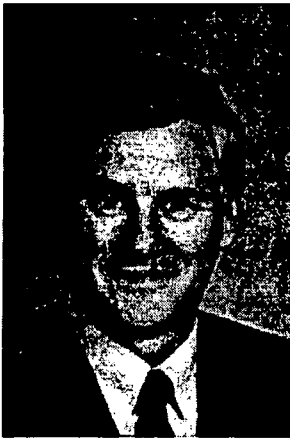
Referred to: Commerce, if favorable, Finance.

April 21, 1997

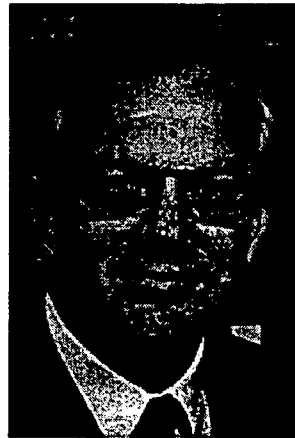
1 A BILL TO BE ENTITLED
2 AN ACT TO EXEMPT LOCAL PAY PHONE SERVICES FROM SALES TAX.
3 The General Assembly of North Carolina enacts:
4 Section 1. G. S. 105-164.4(a)(4a) reads as rewritten:
5 "(4a) The rate of three percent (3%) applies to the gross receipts derived
6 by a utility from sales of electricity, piped natural gas, or local
7 telecommunications service as defined by G.S. 105-120(e), other
8 than sales of electricity or piped natural gas subject to tax under
9 another subdivision in this section. Gross receipts from sales of
10 piped natural gas shall not include natural gas expansion
11 surcharges imposed under G.S. 62-158. Gross receipts from sales
12 of local telecommunications service shall not include receipts from
13 service provided by means of public coin-operated pay telephone
14 instruments and paid for by coin. A person who operates a utility
15 is considered a retailer under this Article."
16 Section 2. This act becomes effective July 1, 1997, and applies to sales
17 made on or after that date.



Rep. Daniel McComas
Chair
Subcommittee on Public Utilities



Rep. James Crawford
RMM



Rep. Cary Allred



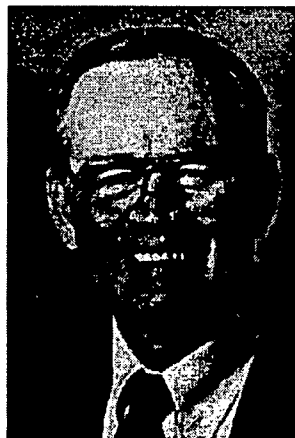
Rep. Donald Bonner



Rep. Jerry Braswell



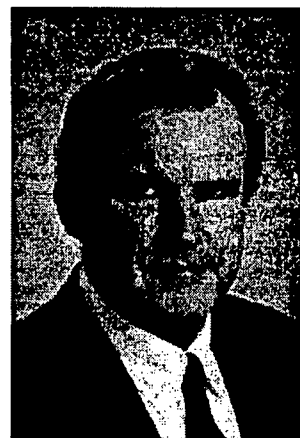
Rep. William Culpepper



Rep. Walter Dickson



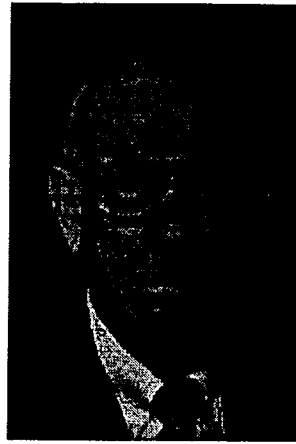
Rep. George Holmes



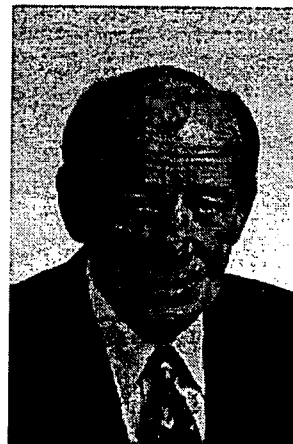
Rep. John Hurley



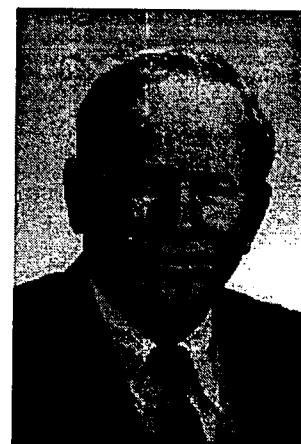
Rep. William Ives



Rep. Eugene McCombs



Rep. Paul McCrary



Rep. Frank Mitchell



Rep. Richard Morgan



Rep. Charles Neely, Jr.



Rep. Edd Nye



Rep. Dennis Reynolds



Rep. Eugene Rogers



Rep. Constance Wilson



Rep. Larry Womble

Subcommittee on Public Utilities 1997



Rep. Leo Daughtry
Majority Leader
Ex Officio



Rep. Julia Howard
Majority Whip
Ex Officio



Rep. Steve Wood
Speaker Pro Tem
Ex Officio

Subcommittee on Public Utilities 1997

HOUSE COMMERCE COMMITTEE
Subcommittee on Public Utilities
1997 Session

<u>MEMBER/Clerk</u>	<u>PHONE</u>	<u>OFFICE</u>	<u>SEAT</u>
Rep. Daniel McComas, Chairman Dee Bagley, Committee Clerk	3-5758	2123	63
Rep. James Crawford, RMM Linda Winstead	3-5824	1301	24
Rep. Cary Allred Jean Allred	3-5773	2223	11
Rep. Donald Bonner Lucy Johnson	5-9664	617	109
Rep. Jerry Braswell Dianna Gilmore	3-5809	539	96
Rep. William Culpepper Dot Crocker	3-5802	604	36
Rep. Walter Dickson Joyce Langdon	3-5662	530	25
Rep. George Holmes Glenda Jacobs	3-5900	631	6
Rep. John Hurley Dot Anderson	3-5859	1004	71
Rep. William Ives Jayne Walton	3-5784	633	90
Rep. Eugene McCombs Susanne Erskine	3-5881	514	10
Rep. Paul McCrary Barbara Berry	3-5780	610	55

MEMBER/Clerk	PHONE	OFFICE	SEAT
Rep. Frank Mitchell Susan West	3-5959	638	9
Rep. Richard Morgan Dixie Epps	5-3028	404	17
Rep. Charles Neely Betty Harrison	5-3001	420	29
Rep. Edd Nye Jo Bobbitt	3-5477	639	23
Rep. Dennis Reynolds Kara McCraw	3-5820	533	76
Rep. Eugene Rogers Sally Gillis	5-3023	416A	35
Rep. Constance Wilson Gail Musser	3-7663	529	40
Rep. Larry Womble Phyllis Cameron	3-5751	540	105
Rep. Leo Daughtry, Majority Leader (Ex Officio) Bernice Bullard	5-0850	2301	30
Rep. Julia Howard, Majority Whip (Ex Officio) Gail Stewart	3-5904	1021	8
Rep. Steve Wood, Speaker Pro Tem (Ex Officio) Sylvia Perkins	3-5807	2208	12
Rep. David Miner, SRM (Commerce Co-Chair) Susan Phillips	3-5749	2219	16
Rep. Cherie Berry (Commerce Co-Chair) Betty Smith	3-5861	1006	41

<u>MEMBER/Clerk</u>	<u>PHONE</u>	<u>OFFICE</u>	<u>SEAT</u>
Rep. Walter Church (Commerce Co-Chair) Joyce Fuller	3-5805	1311	33
Rep. William Hiatt (Commerce Co-Chair) Edna Pearce	3-5862	1008	14
Rep. Tim Tallent (Commerce Co-Chair) Joyce Bulluck	3-5934	1104	73
Steve Rose, Staff Attorney	3-2578	545	

SUBCOMMITTEE ON PUBLIC UTILITIES

[illegible]

NORTH CAROLINA GENERAL ASSEMBLY
COMMITTEE SUMMARY REPORT

1997-98 Regular Session		HOUSE: COMMERCE--PUBLIC UTILITIES		Valid Through 22-OCT-1998	
BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
H 26=	THOMPSON	AMEND LP GAS CODE	HF-POSTPONED INDEFINITELY	02-04-97	07-31-97
H 495	OWENS	NATURAL GAS	*R -CH. SL 97-0426	04-02-97	04-22-97
H 547=	CULP	RENEWABLE RESOURCE ENERGY	H -ASSIGNED TO COMM-UTL	04-02-97	
H1126	MINER	NO SALES TAX ON PAY PHONES	*H -PRES. TO GOV. 10-15	05-28-97	07-03-97
S1242=	HOYLE	WIRELESS TELEPHONE SERVICE ACT	*R -CH. SL 98-0158	08-04-98	08-05-98

NOTES- = AFTER BILL NUMBER SHOWS THAT BILL IS IDENTICAL, AS INTRODUCED, TO ANOTHER BILL.
 * AFTER NUMBERS INDICATES THAT TEXT OF BILL WAS ALTERED BY ACTION ON THE BILL.
 BOLDDED LINE INDICATES BILL INDEXED AS AFFECTING APPROPRIATIONS.

MEMORANDUM

TO: Representative Culp

FROM: Representative Daniel F. McComas, Chairman
COMMERCE/Subcommittee on Public Utilities

DATE: August 20, 1998

SUBJECT: HB 547, Renewable Resource Energy.

House Rule 36 speaks to reporting bills out of standing committees or permanent subcommittees by the last adjournment of the 1997-98 legislative session. -- "All House bills and resolutions **shall be reported from** the standing committee or permanent subcommittee to which referred with such recommendations as the standing committee or permanent subcommittee may desire to make **except in the case where the principal introducer requests in writing to the Chair of the standing committee or permanent subcommittee that the bill not be considered.**" If it is your intent that the bill listed above not be considered by subcommittee this legislative session, please **sign** and **date** the form and **return** it to the Subcommittee Clerk, Dee Bagley for the Committee on COMMERCE/Subcommittee on Public Utilities in Room 2123 by August 21, 1998.

oooooooooooo

Mr. Chairman:

I request that the above-mentioned House Bill # 547, for which I am the principal introducer, not be considered by your committee for the 1997-98 legislative session.

Daniel F. McComas (Sign)
Representative

8-20-98 (Date)

PLEASE DO NOT DETACH THE FORM FROM THE MEMORANDUM

HOUSE COMMERCE COMMITTEE
SUBCOMMITTEE ON PUBLIC UTILITIES
MINUTES

August 4, 1998

The House Commerce/Subcommittee on Public Utilities met on Tuesday, August 4, 1998, in Room 544 of the Legislative Office Building 15 minutes after Session.

Representative Daniel F. McComas, Chairman, presided and the following members were present:

Representatives Crawford, Bonner, Braswell, Culpepper, Dickson, Hurley, Ives, McCombs, McCrary, Mitchell, Nye, Reynolds, Rogers, C. Wilson and Womble. Representatives Miner and Hiatt, Co-Chairs of the Commerce Committee, were also present.

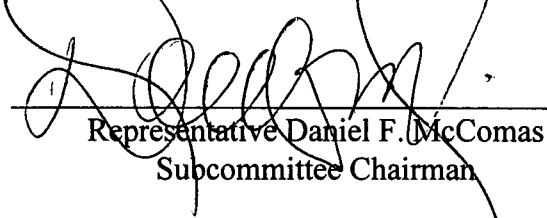
Visitors present were: (See Attachment 1)

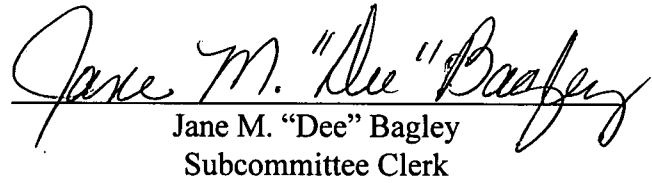
Staff Counsel Steve Rose was present to assist the Subcommittee.

Chairman McComas called the meeting to order, introduced the Pages and Sergeant-at-Arms serving the Subcommittee and welcomed guests. The following bills were considered:

Finance Committee Substitute No. 2 for SB 1242, An Act To Provide For A Wireless Enhanced 911 System For The Use of Cellular Telephone Customers, As Recommended By The Joint Legislative Utility Review Committee, And To Allow State Agencies To Lease Public Property For The Construction Of Wireless Communications Towers And To Encourage Co-Location Of Services To Those Towers, And To Make A Technical Correction To G.S. 62A-10. (see Attachment 2). Representative Mitchell moved to bring the bill before the Subcommittee for discussion. The motion passed. Representative Dickson was recognized to explain the bill for Senator David Hoyle, Bill Sponser. Representative Ives moved to amend the bill as follows: (see Attachment 3). The motion passed. After some discussion and questions concerning the bill, Representative Mitchell moved that the amendment be incorporated into a proposed House Committee Substitute and the proposed House Committee Substitute be given a favorable report. Upon a vote, the motion passed. Representative Miner informed the Chair that this bill would need to be referred to the Finance Committee. The Finance Committee Substitute No. 2 for SB 1242 was reported to the House Floor as follows: (see Attachments 4 and 5).

Upon a motion, the meeting adjourned at 3:45 p.m.


Representative Daniel F. McComas
Subcommittee Chairman


Jane M. "Dee" Bagley
Subcommittee Clerk

VISITOR REGISTRATION SHEET

Subcommittee on Public Utilities

August 4, 1998

Name of Committee

Date _____

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS[illegible]

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1997

S

3

SENATE BILL 1242*
Commerce Committee Substitute Adopted 6/16/98
Finance Committee Substitute #2 Adopted 7/9/98

Short Title: Wireless Telephone Service/Tower Act.

(Public)

Sponsors:

Referred to:

May 21, 1998

- 1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR A WIRELESS ENHANCED 911 SYSTEM FOR THE
3 USE OF CELLULAR, PERSONAL COMMUNICATIONS SERVICE, AND
4 OTHER WIRELESS TELEPHONE CUSTOMERS, AS RECOMMENDED BY
5 THE JOINT LEGISLATIVE UTILITY REVIEW COMMITTEE, AND TO
6 ALLOW STATE AGENCIES TO LEASE PUBLIC PROPERTY FOR THE
7 CONSTRUCTION OF WIRELESS COMMUNICATIONS TOWERS AND TO
8 ENCOURAGE CO-LOCATION OF SERVICES TO THOSE TOWERS, AND
9 TO MAKE A TECHNICAL CORRECTION TO G.S. 62A-10.
10 The General Assembly of North Carolina enacts:
11 Section 1. The General Statutes are amended by adding a new Chapter
12 to read:
13 "Chapter 62B.
14 "Wireless Telephone Service.
15 "§ 62B-1. Definitions.
16 As used in this Chapter:
17 (1) 'Automatic location identification' or 'ALI' means a wireless
18 Enhanced 911 service capability that enables the automatic display
19 of information defining the approximate geographic location of the
20 wireless telephone used to place a 911 call in accordance with the
21 FCC Order and includes pseudoautomatic number identification.

- (2) 'Automatic number identification' or 'ANI' means a wireless Enhanced 911 service capability that enables the automatic display of a mobile handset telephone number used to place a 911 call.
- (3) 'CMRS' means 'commercial mobile radio service' under sections 3(27) and 332(d) of the Federal Telecommunications Act of 1996, 47 U.S.C. § 151, et seq., and the Omnibus Budget Reconciliation Act of 1993, Pub. L. 103-66, August 10, 1993, 107 Stat. 312. It includes the term 'wireless' and service provided by any wireless two-way voice communication device, including radio-telephone communications used in cellular telephone service, personal communications service, or the functional competitive equivalent of a radio-telephone communications line used in cellular telephone service, a personal communications service, SMR mobile service, or a network radio access line which has access to E911 service.
- (4) 'CMRS connection' means each mobile handset telephone number assigned to a CMRS customer with a billing address in North Carolina.
- (5) 'CMRS provider' means a person or entity who is licensed by the FCC to provide CMRS service or is reselling CMRS service.
- (6) 'Eligible PSAPs' means those public safety answering points that have opted to provide wireless Enhanced 911 service and have submitted written notice to their CMRS providers and to the Wireless 911 Board.
- (7) 'FCC Order' means the Order of the Federal Communications Commission, FCC Docket No. 94-102, adopted on December 1, 1997.
- (8) 'Local exchange carrier' means any entity that is authorized to engage in the provision of telephone exchange service or exchange access in North Carolina.
- (9) 'Mobile set telephone number' means the number assigned to a CMRS connection.
- (10) 'Proprietary information' means customer lists and other related information, technology descriptions, technical information, or trade secrets, including the term 'trade secrets' as defined by the North Carolina Trade Secrets Protection Act, G.S. 66-152, and the actual or developmental costs of wireless Enhanced 911 systems that are developed, produced, or received internally by a CMRS provider or by a CMRS provider's employees, directors, officers, or agents.
- (11) 'PSAP' ('public safety answering point') means the public safety agency that receives incoming 911 calls and dispatches appropriate public safety agencies to respond to such calls.

- 1 (12) 'Pseudoautomatic number identification' or 'Pseudo-ANI' means a
2 wireless Enhanced 911 service capability that enables the automatic
3 display of the number of the cell site or cell face.
4 (13) 'Service supplier' means a person or entity who provides exchange
5 telephone service to a telephone subscriber.
6 (14) 'Wireless 911 system' means an emergency telephone system that
7 provides the user of a CMRS connection the ability to reach a
8 PSAP by dialing the digits 911.
9 (15) 'Wireless Enhanced 911 system' means an emergency telephone
10 system that provides the user of the CMRS connection with
11 wireless 911 service and, in addition, directs 911 calls to
12 appropriate PSAPs by selective routing based on the geographical
13 location from which the call originated and provides the capability
14 for ANI (or Pseudo-ANI) and ALI features, in accordance with the
15 requirements of the FCC Order.
16 (16) 'Wireless Fund' means the Wireless Emergency Telephone System
17 Fund required to be established and maintained pursuant to G.S.
18 62B-2(c).

19 "§ 62B-2. Wireless 911 Board.

20 (a) There is created a Wireless 911 Board ('Board'), consisting of thirteen
21 members as follows:

- 22 (1) Two members appointed by the Governor, one upon the
23 recommendation of the North Carolina League of Municipalities
24 and one upon the recommendation of the North Carolina
25 Association of County Commissioners;
26 (2) Five members appointed by the General Assembly upon the
27 recommendation of the Speaker of the House of Representatives,
28 one of whom shall be a sheriff, three representing CMRS providers
29 licensed to do business in North Carolina and one representing the
30 North Carolina Chapter of the Association of Public Safety
31 Communications Officials (APCO);
32 (3) Five members appointed by the General Assembly upon the
33 recommendation of the President Pro Tempore of the Senate, one
34 of whom shall be a chief of police, two representing CMRS
35 providers licensed to do business in North Carolina, one
36 representing local exchange carriers licensed to do business in
37 North Carolina, and one representing the North Carolina Chapter
38 of the National Emergency Number Association (NENA); and
39 (4) The Secretary of Commerce or the Secretary's designee, who shall
40 serve as the chair.

41 A quorum of the Board shall consist of seven members. The Board shall meet
42 upon the call of the chair.

(b) Each member shall serve a term of four years and may be appointed to no more than two successive terms. Vacancies may be filled in the same manner as the original appointment.

(c) There is established with the Treasurer the Wireless Fund into which the Board shall deposit all revenues derived from the service charge levied on CMRS connections in the State and collected pursuant to G.S. 62B-3. The Wireless Fund shall be a separate fund restricted to the uses set forth in this Chapter. (d)

Consistent with the provisions of G.S. 143-3.2, the Board shall disburse the revenues remitted to the Wireless Fund in the manner set forth in G.S. 62B-5. The Board shall establish procedures for disbursement of these revenues and advise the CMRS providers and eligible counties of such procedures within 60 days after all members are appointed pursuant to G.S. 62B-2(a).

(e) The Board shall serve without compensation, but members of the Board shall receive per diem, subsistence, and travel allowances at the rate established in G.S. 138-5.

"§ 62B-3. Amount of service charge.

(a) The Board shall levy a monthly wireless Enhanced 911 service charge on each CMRS connection. The rate of such service charge shall initially be set at eighty cents (80¢) per month per each CMRS connection beginning October 1, 1998. The service charge shall have uniform application and shall be imposed throughout the State.

(b) The service charge may be adjusted by the Board beginning July 1, 2000 and every two years thereafter. The Board is to set the service charge at such a rate as to ensure full recovery for CMRS providers and for PSAPs, over a reasonable period of time, of the costs associated with developing and maintaining a wireless Enhanced 911 system. If necessary to ensure full recovery of costs for both CMRS providers and PSAPs over a reasonable period of time, the Board may, at the time it adjusts the service charge, also adjust the allocation percentages set forth in G.S. 62B-5(a) and G.S. 62B-5(b).

(c) The service charge shall not exceed one dollar and twenty-five cents (\$1.25).

(d) The Board may adopt other rules and procedures as may be necessary to effect the provisions of this act but may not regulate any other aspect of the provision of wireless Enhanced 911 service, such as technical standards.

(e) No other State agency or local government may levy any additional surcharge relating to the provision of wireless Enhanced 911 service.

"§ 62B-4. Management of funds.

(a) Each CMRS provider, as a part of its monthly billing process, shall collect the wireless Enhanced 911 service charge described in G.S. 62B-3. The CMRS provider may list the service charge as a separate entry on each bill. If a CMRS provider receives a partial payment for a monthly bill from a subscriber, the provider shall apply the payment first against the amount the subscriber owes the provider.

(b) A CMRS provider has no obligation to take any legal action to enforce the collection of the service charges for which any subscriber is billed. However, a

1 collection action may be initiated by the Board and reasonable costs and attorneys'
2 fees associated with that collection action may be awarded.

3 (c) Each CMRS provider shall be entitled to deduct a one percent (1%)
4 administrative fee from the total service charges collected.

5 (d) All service charges collected by the CMRS providers, less the administrative
6 fee described in subsection (c) of this section, are to be remitted to the Wireless
7 Fund, not later than 30 days after the end of the calendar month in which such
8 service charges are collected.

9 "§ 62B-5. Use of funds.

10 (a) Sixty percent (60%) of the funds in the Wireless Fund established in G.S. 62B-
11 2(c) shall be used to reimburse CMRS providers, in response to sworn invoices
12 submitted to the Board, for the actual costs incurred by the CMRS providers in
13 complying with the wireless 911 requirements established by the FCC Order and any
14 rules and regulations which are or may be adopted by the FCC pursuant to the FCC
15 Order, including costs and expenses incurred for designing, upgrading, purchasing,
16 leasing, programming, installing, testing, or maintaining all necessary data, hardware,
17 and software required in order to provide such service as well as the recurring and
18 nonrecurring costs of operating such service. All costs and expenses must be
19 commercially reasonable.

20 (b) Forty percent (40%) of the funds in the Wireless Fund established in G.S.
21 62B-2(c) shall be used to make monthly distributions to eligible PSAPs (the '40%
22 Fund'). Money from the 40% Fund shall be used only to pay for the lease, purchase,
23 or maintenance of emergency telephone equipment for the wireless Enhanced 911
24 system, including necessary computer hardware, software and database provisioning,
25 and nonrecurring costs of establishing a wireless Enhanced 911 system. Money from
26 the 40% Fund shall also be used to pay the rates associated with the local telephone
27 companies' charges related to the operation of the wireless Enhanced 911 system.
28 The 40% Fund shall be distributed as follows:

29 (1) Fifty percent (50%) of it shall be divided equally among the total
30 number of PSAPs in North Carolina. However, monthly
31 distribution shall be made only to those PSAPs that have complied
32 with the provisions of this Chapter. Distribution to each eligible
33 PSAP will begin the month following its compliance with the
34 provisions of this Chapter. All monies remaining in this portion of
35 the 40% Fund on January 31 of each year will then be evenly
36 distributed to each of the eligible PSAPs.

37 (2) The other fifty percent (50%) shall be divided pro rata among the
38 eligible PSAPs based on the population served by the PSAP.
39 However, monthly distribution shall be made only to those PSAPs
40 that have complied with the provisions of this Chapter.
41 Distribution to each eligible PSAP will begin the month following
42 its compliance with the provisions of this Chapter. The population
43 data to be used shall be the latest certified county and official
44 municipal estimates of population published by the Office of State

1 Planning. All monies remaining in this portion of the 40% Fund
2 on January 31 of each year will then be distributed to each of the
3 eligible PSAPs based on the population served by the PSAP.

4 (c) Sworn invoices shall be presented by CMRS providers in connection with any
5 request for reimbursement under this section. In no event shall any invoice for
6 reimbursement be approved for the payment of costs that are not related to
7 compliance with the wireless Enhanced 911 service requirements established by the
8 FCC Order and any rules and regulations which are or may be adopted by the FCC
9 pursuant to the FCC Order.

10 (d) In no event shall any invoice for reimbursement be approved for payment of
11 costs of any CMRS provider exceeding one hundred twenty-five percent (125%) of
12 the service charges remitted by such CMRS provider unless prior approval for such
13 expenditures is received from the Board. If the total amount of invoices submitted to
14 the Board and approved for payment exceeds the amount in the Wireless Fund in
15 any month, CMRS providers that have invoices approved for payment shall receive a
16 pro rata share of the Wireless Fund, based on the relative amount of their approved
17 invoices available that month, and the balance of the payments will be carried over to
18 the following month or months and shall include interest at the rate set out in G.S.
19 24-1 until all of the approved payments are made.

20 (e) In January of each year every participating PSAP will submit to the Board a
21 copy of its governing agency's approved budget detailing the PSAP's revenues and
22 expenditures associated with the operation of its wireless Enhanced 911 system.
23 PSAPs must comply with all requests by the Board for financial information related
24 to the operation of the wireless Enhanced 911 system.

25 (f) On February 15, 2000, and every two years thereafter the Board shall report to
26 the Joint Legislative Commission on Governmental Operations and the Revenue
27 Laws Study Committee. The report shall contain complete information regarding
28 receipts and expenditures of all funds received by the Board during the period
29 covered by the report as well as the status of wireless Enhanced 911 systems in North
30 Carolina at the time of the report. The first report shall cover the period from the
31 formation of the Board to December 31, 1999. Each succeeding report shall cover
32 the two year period of time from the ending date of the previous report.

33 "§ 62B-6. Administrative fee.

34 The Board shall be entitled to deduct a one percent (1%) administrative fee from
35 the total service charges remitted by the CMRS providers for its expenses.

36 "§ 62B-7. Provision of services.

37 In accordance with the FCC Order, no CMRS provider shall be required to
38 provide wireless Enhanced 911 service until such time as (i) the provider receives a
39 request for such service from the administrator of a PSAP that is capable of receiving
40 and utilizing the data elements associated with the service; (ii) funds are available
41 pursuant to G.S. 62B-4; and (iii) the local exchange carrier is able to support the
42 wireless Enhanced 911 system.

43 "§ 62B-8. Audit.

The State Auditor may perform audits pursuant to Article 5A of Chapter 147 of the General Statutes to ensure that funds in the Wireless Fund are being managed in accordance with the provisions of this Chapter and shall perform an audit at least every two years. The State Auditor shall provide the audit to the Board when it meets to consider adjusting the service charge pursuant to G.S. 62B-3. The cost of audits shall be reimbursed to the State Auditor by the Board.

"§ 62B-9. Customer records.

Each CMRS provider shall provide its ten thousand number groups to the PSAPs upon request. This information shall remain the property of the disclosing CMRS provider and shall be used only in providing emergency response services to 911 calls. CMRS connection information obtained by PSAP personnel for public safety purposes is not public information under Chapter 132 of the General Statutes. No person shall disclose or use, for any purpose other than for the wireless 911 calling system, information contained in the data base of the telephone network portion of a wireless 911 calling system established pursuant to this Chapter.

"§ 62B-10. Proprietary information.

All proprietary information submitted to the Board or the State Auditor shall be retained in confidence. Proprietary information submitted pursuant to this Chapter shall not be subject to disclosure under Chapter 132 of the General Statutes, or otherwise released to any person other than to the submitting CMRS provider, the Board, and the independent, third-party auditor retained pursuant to G.S. 62B-6, without the express permission of the submitting CMRS provider. Further, proprietary information shall constitute trade secrets as defined by the North Carolina Trade Secrets Protection Act, Article 24 of Chapter 66 of the General Statutes. General information collected by the Board or the State Auditor shall be released or published only in aggregate amounts that do not identify or allow identification of numbers of subscribers or revenues attributable to an individual CMRS provider.

"§ 62B-11. Limitation of liability.

A CMRS provider, local exchange company, service supplier, or their employees, directors, officers, or agents, except in cases of wanton or willful misconduct, shall not be liable for any damages in a civil action resulting from death or injury to any person or from damage to property incurred by any person in connection with developing, adopting, implementing, maintaining, or operating any wireless 911 system or wireless Enhanced 911 system. This section shall not apply to actions arising out of the operation or ownership of a motor vehicle.

"§ 62B-12. Misuse of wireless 911 system; penalty.

Wireless emergency telephone service shall be used solely for emergency communications by the public. Any person who knowingly uses or attempts to use wireless emergency telephone service or information for a purpose other than obtaining public safety assistance, or who knowingly uses or attempts to use wireless emergency telephone service in an effort to avoid any CMRS charges, is guilty of a Class 3 misdemeanor. If the value of the CMRS charge or service obtained in a manner prohibited by this section exceeds one hundred dollars (\$100.00), the person is guilty of a Class 1 misdemeanor."

Section 2. G.S. 62A-10 reads as rewritten:

"§ 62A-10. Limitation of liability.

A service supplier, including any telephone company and its employees, directors, officers and agents, is not liable for any damages in a civil action for injuries, death, or loss to persons or property incurred by any person as a result of any act or omission of a service supplier or of any of its employees, directors, officers, or agents, except for willful or wanton misconduct, in connection with developing, adopting, implementing, maintaining, or operating any 911 system. This section shall not apply to actions arising out of the operation or ownership of a motor vehicle."

Section 3. Chapter 146 of the General Statutes is amended by adding a new section to read:

"§ 146-29.2. Lease provisions for communications towers.

The State may lease real property, or any interest in real property, for the purposes of construction and placement of communications towers on State land or for placement of antennas upon State-owned structures. The following additional requirements shall apply to such leases:

- (1) The lease shall require the lessee to permit other telecommunications carriers to co-locate on the communications tower on commercially reasonable terms between the lessee and the co-locating carrier until the communications tower reaches its capacity. Unless the State determines that co-location is not feasible at that location, the communications tower shall be designed and constructed to accommodate other carriers on the tower.
- (2) The State shall, in determining the location of lands to be leased for communications towers, encourage communications towers to be located near other communications towers to the extent technically desirable.
- (3) The State shall, when choosing a communications tower or antenna location, choose a location which minimizes the visual impact on surrounding landscape.

For purposes of this section, 'co-locate and co-location' mean the sharing of a communications tower by two or more services.

City and county ordinances apply to leases and rentals created under this section."

Section 4. G.S. 105-120 is amended by adding a new subsection to read:

"(c1) Enhanced 911 service charge. -- Gross receipts of an entity that provides local telecommunications service do not include wireless Enhanced 911 service charges imposed under G.S. 62B-3 and remitted to the Wireless Fund under G.S. 62B-4."

Section 5. G.S. 105-130.5(b) is amended by adding a new subdivision to read:

- "(17) The amount of wireless Enhanced 911 service charges collected under G.S. 62B-3 and remitted to the Wireless Fund under G.S. 62B-4."

1 Section 6. If any provision of this act or the application of this act to any
2 person or circumstance is held invalid, that invalidity shall not affect other provisions
3 or applications of this act that can be given effect without the invalid provision or
4 application, and to this end the provisions of this act are severable.

5 Section 7. Section 5 of this act is effective for taxable years beginning on
6 or after October 1, 1998. The remainder of this act is effective when it becomes law.



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1242

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)
Page 1 of 1

S1242-ARL-002

Date _____, 1998

Comm. Sub. [YES]
Amends Title []
Third Edition

Representative Ives

1 moves to amend the bill on page 8, lines 34,
2 by deleting the words "leases and rentals created" and substituting
3 the words "communications towers and antennas authorized".
4

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

**1998 PERMANENT SUBCOMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

FOR RECOMMENDING BILLS TO STANDING COMMITTEE OR TO THE FLOOR OF THE HOUSE
The following report(s) from permanent sub committee(s) is/are presented:

By Representative(s) Daniel F. McComas for the Permanent Subcommittee on Public Utilities of the
Standing Committee on COMMERCE.

☒ Committee Substitute for ^{#2}

S.B. 1242

☐ A BILL TO BE ENTITLED AN ACT TO PROVIDE FOR A
WIRELESS ENHANCED 911 SYSTEM FOR THE USE OF CELLULAR, PERSONAL
COMMUNICATIONS SERVICE, AND OTHER WIRELESS TELEPHONE CUSTOMERS, AS
RECOMMENDED BY THE JOINT LEGISLATIVE UTILITY REVIEW COMMITTEE, AND TO
ALLOW STATE AGENCIES TO LEASE PUBLIC PROPERTY FOR THE CONSTRUCTION OF
WIRELESS COMMUNICATIONS TOWERS AND TO ENCOURAGE CO-LOCATION OF
SERVICES TO THOSE TOWERS, AND TO MAKE A TECHNICAL CORRECTION TO G.S. 62A-
10.

REPORTED TO THE STANDING COMMITTEE ON

RECOMMENDED ACTION:

- ☐ With a favorable recommendation.
- ☐ With a favorable recommendation and recommend that the bill be re-referred to the Committee on
- ☐ With a favorable recommendation, as amended.
- ☐ With a favorable recommendation, as amended, and recommend that the bill be re-referred to the
Committee on
- ☐ With an unfavorable recommendation.
- ☐ With a favorable recommendation as to proposed committee substitute bill which changes the
title, unfavorable as to original bill.
- ☐ With a favorable recommendation as to proposed House committee substitute bill, which
changes the title, unfavorable as to Senate committee substitute bill.
- ☐ Without prejudice.
- ☐ Other recommended action: _____

WITH APPROVAL OF STANDING COMMITTEE CHAIR FOR REPORT TO BE MADE DIRECTLY
TO THE FLOOR OF THE HOUSE:

Rep. Miner for the Standing Committee on COMMERCE.

s/ 

- ☐ With a favorable report.
- ☐ With a favorable report, as amended.
- ☒ With a favorable report as to committee substitute bill (# 1242), ☐ which changes the title,
unfavorable as to original bill (Committee Substitute Bill # 2). (and recommendation that the
committee substitute bill (# 1242) be referred to the Committee on Commerce)
- ☐ And having received a unanimous vote in committee, be placed on the Consent Calendar.
(PUBLIC BILLS ONLY)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1997

S

D

SENATE BILL 1242*
 Commerce Committee Substitute Adopted 6/16/98
 Finance Committee Substitute #2 Adopted 7/9/98
 Proposed House Committee Substitute S1242-PCS9606-RL

Short Title: Wireless Telephone Service/Tower Act.

(Public)

Sponsors:

Referred to:

May 21, 1998

- 1 A BILL TO BE ENTITLED
 2 AN ACT TO PROVIDE FOR A WIRELESS ENHANCED 911 SYSTEM FOR THE
 3 USE OF CELLULAR, PERSONAL COMMUNICATIONS SERVICE, AND
 4 OTHER WIRELESS TELEPHONE CUSTOMERS, AS RECOMMENDED BY
 5 THE JOINT LEGISLATIVE UTILITY REVIEW COMMITTEE, AND TO
 6 ALLOW STATE AGENCIES TO LEASE PUBLIC PROPERTY FOR THE
 7 CONSTRUCTION OF WIRELESS COMMUNICATIONS TOWERS AND TO
 8 ENCOURAGE CO-LOCATION OF SERVICES TO THOSE TOWERS, AND
 9 TO MAKE A TECHNICAL CORRECTION TO G.S. 62A-10.
 10 The General Assembly of North Carolina enacts:
 11 Section 1. The General Statutes are amended by adding a new Chapter
 12 to read:
 13 "Chapter 62B.
 14 "Wireless Telephone Service.
 15 "§ 62B-1. Definitions.
 16 As used in this Chapter:
 17 (1) 'Automatic location identification' or 'ALI' means a wireless
 18 Enhanced 911 service capability that enables the automatic display
 19 of information defining the approximate geographic location of the
 20 wireless telephone used to place a 911 call in accordance with the
 21 FCC Order and includes pseudoautomatic number identification.

- (2) 'Automatic number identification' or 'ANI' means a wireless Enhanced 911 service capability that enables the automatic display of a mobile handset telephone number used to place a 911 call.
- (3) 'CMRS' means 'commercial mobile radio service' under sections 3(27) and 332(d) of the Federal Telecommunications Act of 1996, 47 U.S.C. § 151, et seq., and the Omnibus Budget Reconciliation Act of 1993, Pub. L. 103-66, August 10, 1993, 107 Stat. 312. It includes the term 'wireless' and service provided by any wireless two-way voice communication device, including radio-telephone communications used in cellular telephone service, personal communications service, or the functional competitive equivalent of a radio-telephone communications line used in cellular telephone service, a personal communications service, SMR mobile service, or a network radio access line which has access to E911 service.
- (4) 'CMRS connection' means each mobile handset telephone number assigned to a CMRS customer with a billing address in North Carolina.
- (5) 'CMRS provider' means a person or entity who is licensed by the FCC to provide CMRS service or is reselling CMRS service.
- (6) 'Eligible PSAPs' means those public safety answering points that have opted to provide wireless Enhanced 911 service and have submitted written notice to their CMRS providers and to the Wireless 911 Board.
- (7) 'FCC Order' means the Order of the Federal Communications Commission, FCC Docket No. 94-102, adopted on December 1, 1997.
- (8) 'Local exchange carrier' means any entity that is authorized to engage in the provision of telephone exchange service or exchange access in North Carolina.
- (9) 'Mobile set telephone number' means the number assigned to a CMRS connection.
- (10) 'Proprietary information' means customer lists and other related information, technology descriptions, technical information, or trade secrets, including the term 'trade secrets' as defined by the North Carolina Trade Secrets Protection Act, G.S. 66-152, and the actual or developmental costs of wireless Enhanced 911 systems that are developed, produced, or received internally by a CMRS provider or by a CMRS provider's employees, directors, officers, or agents.
- (11) 'PSAP' ('public safety answering point') means the public safety agency that receives incoming 911 calls and dispatches appropriate public safety agencies to respond to such calls.

- 1 (12) 'Pseudoautomatic number identification' or 'Pseudo-ANI' means a
2 wireless Enhanced 911 service capability that enables the automatic
3 display of the number of the cell site or cell face.
4 (13) 'Service supplier' means a person or entity who provides exchange
5 telephone service to a telephone subscriber.
6 (14) 'Wireless 911 system' means an emergency telephone system that
7 provides the user of a CMRS connection the ability to reach a
8 PSAP by dialing the digits 911.
9 (15) 'Wireless Enhanced 911 system' means an emergency telephone
10 system that provides the user of the CMRS connection with
11 wireless 911 service and, in addition, directs 911 calls to
12 appropriate PSAPs by selective routing based on the geographical
13 location from which the call originated and provides the capability
14 for ANI (or Pseudo-ANI) and ALI features, in accordance with the
15 requirements of the FCC Order.
16 (16) 'Wireless Fund' means the Wireless Emergency Telephone System
17 Fund required to be established and maintained pursuant to G.S.
18 62B-2(c).

19 **"§ 62B-2. Wireless 911 Board.**

20 (a) There is created a Wireless 911 Board ('Board'), consisting of thirteen
21 members as follows:

- 22 (1) Two members appointed by the Governor, one upon the
23 recommendation of the North Carolina League of Municipalities
24 and one upon the recommendation of the North Carolina
25 Association of County Commissioners;
26 (2) Five members appointed by the General Assembly upon the
27 recommendation of the Speaker of the House of Representatives,
28 one of whom shall be a sheriff, three representing CMRS providers
29 licensed to do business in North Carolina and one representing the
30 North Carolina Chapter of the Association of Public Safety
31 Communications Officials (APCO);
32 (3) Five members appointed by the General Assembly upon the
33 recommendation of the President Pro Tempore of the Senate, one
34 of whom shall be a chief of police, two representing CMRS
35 providers licensed to do business in North Carolina, one
36 representing local exchange carriers licensed to do business in
37 North Carolina, and one representing the North Carolina Chapter
38 of the National Emergency Number Association (NENA); and
39 (4) The Secretary of Commerce or the Secretary's designee, who shall
40 serve as the chair.

41 A quorum of the Board shall consist of seven members. The Board shall meet
42 upon the call of the chair.

(b) Each member shall serve a term of four years and may be appointed to no more than two successive terms. Vacancies may be filled in the same manner as the original appointment.

(c) There is established with the Treasurer the Wireless Fund into which the Board shall deposit all revenues derived from the service charge levied on CMRS connections in the State and collected pursuant to G.S. 62B-3. The Wireless Fund shall be a separate fund restricted to the uses set forth in this Chapter. (d)

Consistent with the provisions of G.S. 143-3.2, the Board shall disburse the revenues remitted to the Wireless Fund in the manner set forth in G.S. 62B-5. The Board shall establish procedures for disbursement of these revenues and advise the CMRS providers and eligible counties of such procedures within 60 days after all members are appointed pursuant to G.S. 62B-2(a).

(e) The Board shall serve without compensation, but members of the Board shall receive per diem, subsistence, and travel allowances at the rate established in G.S. 138-5.

"§ 62B-3. Amount of service charge.

(a) The Board shall levy a monthly wireless Enhanced 911 service charge on each CMRS connection. The rate of such service charge shall initially be set at eighty cents (80¢) per month per each CMRS connection beginning October 1, 1998. The service charge shall have uniform application and shall be imposed throughout the State.

(b) The service charge may be adjusted by the Board beginning July 1, 2000 and every two years thereafter. The Board is to set the service charge at such a rate as to ensure full recovery for CMRS providers and for PSAPs, over a reasonable period of time, of the costs associated with developing and maintaining a wireless Enhanced 911 system. If necessary to ensure full recovery of costs for both CMRS providers and PSAPs over a reasonable period of time, the Board may, at the time it adjusts the service charge, also adjust the allocation percentages set forth in G.S. 62B-5(a) and G.S. 62B-5(b).

(c) The service charge shall not exceed one dollar and twenty-five cents (\$1.25).

(d) The Board may adopt other rules and procedures as may be necessary to effect the provisions of this act but may not regulate any other aspect of the provision of wireless Enhanced 911 service, such as technical standards.

(e) No other State agency or local government may levy any additional surcharge relating to the provision of wireless Enhanced 911 service.

"§ 62B-4. Management of funds.

(a) Each CMRS provider, as a part of its monthly billing process, shall collect the wireless Enhanced 911 service charge described in G.S. 62B-3. The CMRS provider may list the service charge as a separate entry on each bill. If a CMRS provider receives a partial payment for a monthly bill from a subscriber, the provider shall apply the payment first against the amount the subscriber owes the provider.

(b) A CMRS provider has no obligation to take any legal action to enforce the collection of the service charges for which any subscriber is billed. However, a

1 collection action may be initiated by the Board and reasonable costs and attorneys'
2 fees associated with that collection action may be awarded.

3 (c) Each CMRS provider shall be entitled to deduct a one percent (1%)
4 administrative fee from the total service charges collected.

5 (d) All service charges collected by the CMRS providers, less the administrative
6 fee described in subsection (c) of this section, are to be remitted to the Wireless
7 Fund, not later than 30 days after the end of the calendar month in which such
8 service charges are collected.

9 "§ 62B-5. Use of funds.

10 (a) Sixty percent (60%) of the funds in the Wireless Fund established in G.S. 62B-
11 2(c) shall be used to reimburse CMRS providers, in response to sworn invoices
12 submitted to the Board, for the actual costs incurred by the CMRS providers in
13 complying with the wireless 911 requirements established by the FCC Order and any
14 rules and regulations which are or may be adopted by the FCC pursuant to the FCC
15 Order, including costs and expenses incurred for designing, upgrading, purchasing,
16 leasing, programming, installing, testing, or maintaining all necessary data, hardware,
17 and software required in order to provide such service as well as the recurring and
18 nonrecurring costs of operating such service. All costs and expenses must be
19 commercially reasonable.

20 (b) Forty percent (40%) of the funds in the Wireless Fund established in G.S.
21 62B-2(c) shall be used to make monthly distributions to eligible PSAPs (the '40%
22 Fund'). Money from the 40% Fund shall be used only to pay for the lease, purchase,
23 or maintenance of emergency telephone equipment for the wireless Enhanced 911
24 system, including necessary computer hardware, software and database provisioning,
25 and nonrecurring costs of establishing a wireless Enhanced 911 system. Money from
26 the 40% Fund shall also be used to pay the rates associated with the local telephone
27 companies' charges related to the operation of the wireless Enhanced 911 system.
28 The 40% Fund shall be distributed as follows:

29 (1) Fifty percent (50%) of it shall be divided equally among the total
30 number of PSAPs in North Carolina. However, monthly
31 distribution shall be made only to those PSAPs that have complied
32 with the provisions of this Chapter. Distribution to each eligible
33 PSAP will begin the month following its compliance with the
34 provisions of this Chapter. All monies remaining in this portion of
35 the 40% Fund on January 31 of each year will then be evenly
36 distributed to each of the eligible PSAPs.

37 (2) The other fifty percent (50%) shall be divided pro rata among the
38 eligible PSAPs based on the population served by the PSAP.
39 However, monthly distribution shall be made only to those PSAPs
40 that have complied with the provisions of this Chapter.
41 Distribution to each eligible PSAP will begin the month following
42 its compliance with the provisions of this Chapter. The population
43 data to be used shall be the latest certified county and official
44 municipal estimates of population published by the Office of State

Planning. All monies remaining in this portion of the 40% Fund on January 31 of each year will then be distributed to each of the eligible PSAPs based on the population served by the PSAP.

(c) Sworn invoices shall be presented by CMRS providers in connection with any request for reimbursement under this section. In no event shall any invoice for reimbursement be approved for the payment of costs that are not related to compliance with the wireless Enhanced 911 service requirements established by the FCC Order and any rules and regulations which are or may be adopted by the FCC pursuant to the FCC Order.

(d) In no event shall any invoice for reimbursement be approved for payment of costs of any CMRS provider exceeding one hundred twenty-five percent (125%) of the service charges remitted by such CMRS provider unless prior approval for such expenditures is received from the Board. If the total amount of invoices submitted to the Board and approved for payment exceeds the amount in the Wireless Fund in any month, CMRS providers that have invoices approved for payment shall receive a pro rata share of the Wireless Fund, based on the relative amount of their approved invoices available that month, and the balance of the payments will be carried over to the following month or months and shall include interest at the rate set out in G.S. 24-1 until all of the approved payments are made.

(e) In January of each year every participating PSAP will submit to the Board a copy of its governing agency's approved budget detailing the PSAP's revenues and expenditures associated with the operation of its wireless Enhanced 911 system. PSAPs must comply with all requests by the Board for financial information related to the operation of the wireless Enhanced 911 system.

(f) On February 15, 2000, and every two years thereafter the Board shall report to the Joint Legislative Commission on Governmental Operations and the Revenue Laws Study Committee. The report shall contain complete information regarding receipts and expenditures of all funds received by the Board during the period covered by the report as well as the status of wireless Enhanced 911 systems in North Carolina at the time of the report. The first report shall cover the period from the formation of the Board to December 31, 1999. Each succeeding report shall cover the two year period of time from the ending date of the previous report.

"§ 62B-6. Administrative fee.

The Board shall be entitled to deduct a one percent (1%) administrative fee from the total service charges remitted by the CMRS providers for its expenses.

"§ 62B-7. Provision of services.

In accordance with the FCC Order, no CMRS provider shall be required to provide wireless Enhanced 911 service until such time as (i) the provider receives a request for such service from the administrator of a PSAP that is capable of receiving and utilizing the data elements associated with the service; (ii) funds are available pursuant to G.S. 62B-4; and (iii) the local exchange carrier is able to support the wireless Enhanced 911 system.

"§ 62B-8. Audit.

1 The State Auditor may perform audits pursuant to Article 5A of Chapter 147 of
2 the General Statutes to ensure that funds in the Wireless Fund are being managed in
3 accordance with the provisions of this Chapter and shall perform an audit at least
4 every two years. The State Auditor shall provide the audit to the Board when it
5 meets to consider adjusting the service charge pursuant to G.S. 62B-3. The cost of
6 audits shall be reimbursed to the State Auditor by the Board.

7 **"§ 62B-9. Customer records.**

8 Each CMRS provider shall provide its ten thousand number groups to the PSAPs
9 upon request. This information shall remain the property of the disclosing CMRS
10 provider and shall be used only in providing emergency response services to 911
11 calls. CMRS connection information obtained by PSAP personnel for public safety
12 purposes is not public information under Chapter 132 of the General Statutes. No
13 person shall disclose or use, for any purpose other than for the wireless 911 calling
14 system, information contained in the data base of the telephone network portion of a
15 wireless 911 calling system established pursuant to this Chapter.

16 **"§ 62B-10. Proprietary information.**

17 All proprietary information submitted to the Board or the State Auditor shall be
18 retained in confidence. Proprietary information submitted pursuant to this Chapter
19 shall not be subject to disclosure under Chapter 132 of the General Statutes, or
20 otherwise released to any person other than to the submitting CMRS provider, the
21 Board, and the independent, third-party auditor retained pursuant to G.S. 62B-6,
22 without the express permission of the submitting CMRS provider. Further,
23 proprietary information shall constitute trade secrets as defined by the North Carolina
24 Trade Secrets Protection Act, Article 24 of Chapter 66 of the General Statutes.
25 General information collected by the Board or the State Auditor shall be released or
26 published only in aggregate amounts that do not identify or allow identification of
27 numbers of subscribers or revenues attributable to an individual CMRS provider.

28 **"§ 62B-11. Limitation of liability.**

29 A CMRS provider, local exchange company, service supplier, or their employees,
30 directors, officers, or agents, except in cases of wanton or willful misconduct, shall
31 not be liable for any damages in a civil action resulting from death or injury to any
32 person or from damage to property incurred by any person in connection with
33 developing, adopting, implementing, maintaining, or operating any wireless 911
34 system or wireless Enhanced 911 system. This section shall not apply to actions
35 arising out of the operation or ownership of a motor vehicle.

36 **"§ 62B-12. Misuse of wireless 911 system; penalty.**

37 Wireless emergency telephone service shall be used solely for emergency
38 communications by the public. Any person who knowingly uses or attempts to use
39 wireless emergency telephone service or information for a purpose other than
40 obtaining public safety assistance, or who knowingly uses or attempts to use wireless
41 emergency telephone service in an effort to avoid any CMRS charges, is guilty of a
42 Class 3 misdemeanor. If the value of the CMRS charge or service obtained in a
43 manner prohibited by this section exceeds one hundred dollars (\$100.00), the person
44 is guilty of a Class 1 misdemeanor."

Section 2. G.S. 62A-10 reads as rewritten:

"§ 62A-10. Limitation of liability.

A service supplier, including any telephone company and its employees, directors, officers and agents, is not liable for any damages in a civil action for injuries, death, or loss to persons or property incurred by any person as a result of any act or omission of a service supplier or of any of its employees, directors, officers, or agents, except for willful or wanton misconduct, in connection with developing, adopting, implementing, maintaining, or operating any 911 system. This section shall not apply to actions arising out of the operation or ownership of a motor vehicle."

Section 3. Chapter 146 of the General Statutes is amended by adding a new section to read:

"§ 146-29.2. Lease provisions for communications towers.

The State may lease real property, or any interest in real property, for the purposes of construction and placement of communications towers on State land or for placement of antennas upon State-owned structures. The following additional requirements shall apply to such leases:

(1) The lease shall require the lessee to permit other telecommunications carriers to co-locate on the communications tower on commercially reasonable terms between the lessee and the co-locating carrier until the communications tower reaches its capacity. Unless the State determines that co-location is not feasible at that location, the communications tower shall be designed and constructed to accommodate other carriers on the tower.

(2) The State shall, in determining the location of lands to be leased for communications towers, encourage communications towers to be located near other communications towers to the extent technically desirable.

(3) The State shall, when choosing a communications tower or antenna location, choose a location which minimizes the visual impact on surrounding landscape.

For purposes of this section, 'co-locate and co-location' mean the sharing of a communications tower by two or more services.

City and county ordinances apply to communications towers and antennas authorized under this section."

Section 4. G.S. 105-120 is amended by adding a new subsection to read:

"(c1) Enhanced 911 service charge. -- Gross receipts of an entity that provides local telecommunications service do not include wireless Enhanced 911 service charges imposed under G.S. 62B-3 and remitted to the Wireless Fund under G.S. 62B-4."

Section 5. G.S. 105-130.5(b) is amended by adding a new subdivision to read:

1 "(17) The amount of wireless Enhanced 911 service charges collected
2 under G.S. 62B-3 and remitted to the Wireless Fund under G.S.
3 62B-4."

4 Section 6. If any provision of this act or the application of this act to any
5 person or circumstance is held invalid, that invalidity shall not affect other provisions
6 or applications of this act that can be given effect without the invalid provision or
7 application, and to this end the provisions of this act are severable.

8 Section 7. Section 5 of this act is effective for taxable years beginning on
9 or after October 1, 1998. The remainder of this act is effective when it becomes law.