

2003

**HOUSE
PUBLIC UTILITIES**

**COMMITTEE
MINUTES**

HOUSE PUBLIC UTILITIES COMMITTEE

| <u>MEMBER</u> | | <u>ASSISTANT</u> | <u>PHONE</u> | <u>OFFICE</u> | <u>SEAT</u> |
|---------------------------|----------------|------------------------------------|--------------|---------------|-------------|
| BRUBAKER, Harold | Chairman | Cindy Coley Committee Assistant | 715-4946 | 1229 | 2 |
| SAUNDERS, Drew | Chairman | Ruth Fish Committee Assistant | 733-5606 | 2217 | 48 |
| ALLEN, Gordon | Vice-Chair | Nancy Brantley | 733-5747 | 535 | 10 |
| BORDSEN, Alice | | Marian Phillips | 733-5820 | 533 | 119 |
| COATES, Lorene | | Melissa Lennon | 733-5784 | 633 | 80 |
| CULPEPPER, Bill | | Dot Crocker | 715-3028 | 404 | 36 |
| GIBSON, Pryor | | Shirlyn MacPherson | 715-3007 | 419A | 108 |
| HILL, Dewey | | Gennie Thurlow | 733-5830 | 1309 | 21 |
| HOLLIMAN, Hugh | | Carol Bowers | 715-0873 | 1213 | 55 |
| HOWARD, Julia | | Mary Marchman | 733-5904 | 1106 | 3 |
| JOHNSON, Linda | | Debbie Pons | 733-5861 | 1006 | 28 |
| LaROQUE, Stephen | | Patricia Freije | 715-3017 | 417B | 16 |
| McCOMAS, Danny | | Judy Lowe | 733-5786 | 506 | 13 |
| MINER, David | | Susan Phillips | 733-5934 | 2204 | 6 |
| SAULS, John | | Shara Graham | 715-3012 | 418A | 40 |
| SHERRILL, Wilma | | Rosa Kelley | 715-3026 | 302D | 17 |
| WILLIAMS, Keith | | Martha Hoover | 715-3009 | 418C | 5 |
| WRIGHT, Thomas | | Clarestene Stewart | 733-5754 | 528 | 19 |
| BRUBAKER, Harold | Ex-Officio | Cindy Coley | 715-4946 | 1229 | 2 |
| CULPEPPER, Bill | Ex-Officio | Dot Crocker | 715-3028 | 404 | 36 |
| CUNNINGHAM, Pete | Ex-Officio | Valerie Rustin | 733-5778 | 541 | 7 |
| EDDINS, Rick | Ex-Officio | Dorie Monroe | 733-5828 | 1002 | 26 |
| Committee Counsel: | Kory Goldsmith | 733-2578 | 545 | | |
| | Steve Rose | 733-2578 | 545 | | |

ATTENDANCE

HOUSE COMMITTEE ON PUBLIC UTILITIES

(Name of Committee)

[illegible]

North Carolina General Assembly
Through House Committee on
Public Utilities

Date: 08/06/2003
Time: 13:34
Page: 001 of 002
Leg. Day: H-102/S-102

2003-2004 Biennium

| Bill | Introducer | Short Title | Latest Action | In Date | Out Date |
|-----------------|------------------|--|---|-----------------|----------|
| H0256 | Baker | HERBICIDE APPLICATION BY PUBLIC UTILITY. | H Ref To Com On Public Utilities | 03-06-03 | |
| H0257 | Baker | UNAUTHORIZED USE OF CB EQUIPMENT. | *H Ref To Com On Judiciary I | 03-06-03 | 04-24-03 |
| H0356= | Tolson | REMOVE SUNSET/ MUNICIPAL ELECTRIC SERVICE. | H Ref To Com On Commerce | 03-10-03 | 03-24-03 |
| H0554 | McLawhorn | EXPAND PERMITTED USES OF 911 FUNDS. | H Ref To Com On Public Utilities | 03-19-03 | |
| H0600 | Hall | CHANGE 911 FUND USES. | H Ref To Com On Public Utilities | 03-24-03 | |
| H0643 | L. Allen | RAILROADS TO PAY SOME NONBETTERMENT COSTS. | H Ref To Com On Public Utilities | 03-25-03 | |
| H0767 | Fox | WARREN COUNTY TELECOMMUNICATIONS AUTHORITY. | H Ref To Com On Public Utilities | 03-27-03 | |
| H0770 | Stiller | NORTH BRUNSWICK UTILITIES. | H Ref To Com On Public Utilities | 03-27-03 | |
| H0872= | Insko | NET METERING. | H Ref To Com On Public Utilities | 04-07-03 | |
| H0913 | Brubaker | UNIVERSAL TELEPHONE SERVICE PROVIDER. | HR Ch. SL 2003-99 | 04-08-03 | 04-24-03 |
| H0982 | A. Williams | 911 FEES USES. | H Ref To Com On Public Utilities | 04-09-03 | |
| H1062 | McLawhorn | LOCAL WATER SUPPLY PLANS. | *H Pres. To Gov. 7/ 18/2003 | 04-10-03 | 04-17-03 |
| \$ H1150 | Nesbitt | APPLIANCE/EQUIPMENT ENERGY EFFICIENCY STDS. | H Ref To Com On Public Utilities | 04-10-03 | |
| H1201 | Allred | CONSECUTIVE WATER SYSTEMS/MANUFACTURED HOMES. | HR Ch. SL 2003-173 | 04-10-03 | 04-24-03 |
| H1272= | Brubaker | CONFIRMING JO ANNE SANFORD/UTILITIES COMMISSION. | H Re-ref Com On Public Utilities | 05-13-03 | 05-21-03 |
| H1272= | Brubaker | CONFIRMING JO ANNE SANFORD/UTILITIES COMMISSION. | H Re-ref Com On Public Utilities | 05-27-03 | |
| S0338= | Joe Sam Queen | REMOVE SUNSET/ MUNICIPAL ELECTRIC SERVICE. | HR Ch. SL 2003-24 | 03-31-03 | 04-09-03 |
| S0378 | Charlie S. Danne | 311 SERVICE. | H Ref To Com On Public Utilities | 04-30-03 | |
| S0799 | David W. Hoyle | TELEPHONE SOLICITATIONS/CONSENT TO CHARGE. | *H Ref To Com On Public Utilities | 04-22-03 | |
| S0801 | David W. Hoyle | INVESTIGATE CERTAIN TELECOM. ACTIVITIES. | *H Ref To Com On Public Utilities | 04-30-03 | |
| S0814 | Tony Rand | CLARIFY COMPET. TELECOMMUNICATIONS STATUTES. | *HR Ch. SL 2003-91 | 05-01-03 | 05-08-03 |
| S0872 | Scott Thomas | UNWANTED TELEPHONE SOLICITATIONS. | *H Pres. To Gov. 7/ 20/2003 | 04-30-03 | 07-09-03 |
| S0939 | John H. Kerr III | EXTEND TRS SURCHARGE TO WIRELESS CONNECTIONS. | *HR Ch. SL 2003-341 | 06-09-03 | 06-16-03 |

'\$' indicates the bill is an appropriation bill.

A bold line indicates the bill is an appropriation bill.

'*' indicates that the text of the original bill was changed by some action.

'=' indicates that the original bill is identical to another bill.

North Carolina General Assembly
Through House Committee on
Public Utilities

Date: 08/06/2003
Time: 13:34
Page: 002 of 002
Leg. Day: H-102/S-102

2003-2004 Biennium

| <u>Bill</u> | <u>Introducer</u> | <u>Short Title</u> | <u>Latest Action</u> | <u>In Date</u> | <u>Out Date</u> |
|-------------|-------------------|---|----------------------|----------------|-----------------|
| S1021= | R. C. Soles, Jr. | CONFIRM JO ANNE SANFORD UTILITIES COMMISSION. | HR Ch. Res 2003-16 | 05-26-03 | 06-11-03 |

'\$' indicates the bill is an appropriation bill.

A bold line indicates the bill is an appropriation bill.

'*' indicates that the text of the original bill was changed by some action.

'=' indicates that the original bill is identical to another bill.

AGENDA

HOUSE COMMITTEE ON PUBLIC UTILITIES

Room 1228/1327, Legislative Building

March 12, 2003

10:00 a.m.

OPENING REMARKS

**Representative Drew Saunders, Chair
Public Utilities Committee**

AGENDA ITEMS

Overview of Utilities Commission Activities

**Ms. Jo Anne Sanford, Chair
Utilities Commission**

Overview of Role of Public Staff

**Mr. Robert Gruber
Executive Director of the Public Staff**

ADJOURNMENT

MINUTES

HOUSE COMMITTEE ON PUBLIC UTILITIES

March 12, 2003

The House Committee on Public Utilities met at 10:00 a.m. on March 12, 2003, in Room 1228 of the Legislative Building. Members present were: Representatives Brubaker, Chair, and Representative Saunders, Chair, and Representatives Allen, Bordsen, Coates, Culpepper, Hill, Holliman, Howard, L. Johnson, LaRoque, McComas, Miner, Sauls, Sherrill, and K. Williams. Committee Counselors, Steve Rose and Kory Goldsmith, were also present. Visitor Registration Sheets are attached and made a part of the minutes. See Attachment #1.

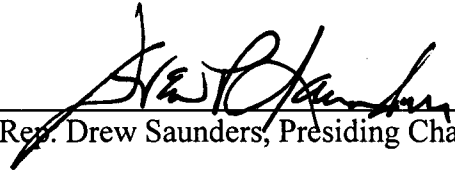
Representative Saunders, Chair, called the meeting to order and welcomed everyone on behalf of he and Representative Brubaker, Chair. He recognized Page Jennifer Payne of Cumberland County, sponsored by Representative Dickson, and Sergeant At Arms Staff members Matt Myers and Bob Fowler.

Representative Saunders then called on Ms. Jo Anne Sanford, Chair of North Carolina Utilities Commission. Ms. Sanford introduced Commissioners: Richard Conder, Robert Owens, Sam Ervin, Lorinzo Joyner, James Kerr, and Mike Wilkins. Then, Ms. Sanford gave a power point presentation overview of the Commission activities. She included the purpose, history, organization, responsibilities and procedures, and major issues in the overview. See Attachment #2.

Following Ms. Sanford's presentation, Mr. Robert Gruber, Executive Director of the Public Staff, gave a brief overview of the role of the Public Staff. He included information about the history and duties and responsibilities of the Public Staff, which are mandated by statute, N.C.G.S. 62-15(d) (1-12.) See Attachment #3.

A question and answer period followed the presentations.

The meeting was adjourned at 10:48 a.m.


Rep. Drew Saunders, Presiding Chair


Ruth Fish, Committee Assistant

Attachments

Attachment #1

VISITOR REGISTRATION SHEET

PUBLIC UTILITIES

MARCH 12, 2003

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Roy Ericson

NCUC STAFF

Bill McAulay

PSNC Energy

Dereva Shepper

NCUC Staff

Bill Gilmore

NCUC STAFF

Julius Allen

NC Statewatch

Ken Melton

Alley Associates, INC.

Mark Brown

CyberTango

Sharon Miller

CUC A

Tom Morrow

Sprint

Stan Pace

VERIZON

John Polinski

AT&T

VISITOR REGISTRATION SHEET

PUBLIC UTILITIES

MARCH 12, 2003

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

| | |
|-------------------|---------------------------|
| Don Hathcock | BellSouth Charlotte, N.C. |
| Linda Cheatham | " Raleigh |
| Bob Bennink | NCUC Staff Raleigh |
| Sam Kivley | NCUC Staff |
| Mike Wilkins | NCUC - Commissioner |
| Sen J. Ervin, D | NCUC - Commissioner |
| Lorenzo L. Joyner | NCUC - Commissioner |
| Bobby OWENS | NCUC - COMMISSIONER |
| Ken Woods | WorldCom - Atlanta |
| Ray McDonald | Bailey Stokes - Raleigh |
| Bill Pittman | Pittman Land Firm |

VISITOR REGISTRATION SHEET

Public Utilities

Name of Committee

3/12/03

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

| | |
|---------------------|---------------------------|
| Camille Stell | Kennedy, Covington |
| Enriquez | WPA |
| Katherine Dyer | Electric Cooperatives |
| Andrew Mehan | Campaign Conn. |
| Jan Higgins | BURNS DAY & PIERCE |
| Len Green | Attorney General's Office |
| Carol Symball Stahl | Public Staff |
| Ben Turner | Public Staff |
| Tony Wike | Public Staff |
| Mitch Williams | PROGRESS ENERGY |
| William Carter | Public Staff |
| Cynthia Smith | Public Staff |
| Andy Lee | Public Staff |
| Walt Carpenter | Public Staff |
| Jeffrey L. Davis | Public Staff |
| John McAlistor | Duke Energy |
| Lisa Piercy | Duke Energy |
| Sam Upchurch | Progress Energy |
| Daniel Long | NCUC |
| DAVID BARNES | Pager + Spruill LLP |
| Kevin O'Hara | Piedmont Natural Gas |
| Gisele Rankin | Public Staff - NCUC |
| Don Harrow | Piedmont Natural Gas |
| Esther Davis | Electricities |
| Rene | NC AEL |
| Chris Porter | Small Business |
| C. Crum | SPMHL |
| Robert Eckel | CORNING |

VISITOR REGISTRATION SHEET

Public Utilities

Name of Committee

3/12/03
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Grady Miller

N.C. Cooperative Network

Dwight Allen

NC Telephone Coalition

Dana Simpson

NC Telephone Coalition

Richard Gordon

NCHC

Jim Kerr

NCHC

Len Anthony

Progress Energy

Attachment #2

March 12, 2003



North Carolina's Public Utility Infrastructure & Regulatory Climate

NORTH CAROLINA UTILITIES COMMISSION
Dobbs Building, 430 North Salisbury Street 27603-5918
4325 Mail Service Center 27699-4325
Phone: 919/733-4249 Fax 919/733-7300
<http://www.ncuc.commerce.state.nc.us>

Commissioners

| | |
|------------------------|--------------------|
| J. Richard Conder | Lorinzo L. Joyner |
| Robert V. Owens, Jr. | James Y. Kerr, II |
| Sam J. Ervin, IV | Michael S. Wilkins |
| Jo Anne Sanford, Chair | |

March 12, 2003

1



Regulation of Public Utilities

- Purpose: protect interests of public in adequate service at reasonable rates.
- Traditional regulatory bargain: utilities exchange benefit of monopoly franchised service territory for obligation to provide adequate service at reasonable rates.
- Commission's regulatory obligation: to be fair and reasonable to public utilities and their customers.
- Commission's regulatory tools:
 - certification of new facilities
 - rate establishment or review &
 - service quality oversight
- Recent trends: certain utility services have been fully or partially deregulated, substantially changing the Commission's responsibility for determining rates and service quality standards.

2



History of NC Utilities Commission

- Oldest regulatory body in state government: evolved from Railroad Commission (1891) to Corporation Commission (1899) to Utilities Commission (1933)
- History of significant legislative grants of, or limitation on, regulatory authority:
 - Railroad – 1891
 - Telephone – 1893
 - Electric, Gas & Water – 1913
 - Sewer – 1917
 - Housing – 1935
 - Hospitals – 1943
 - Busses/Brokers – 1949
 - Motor Carriers & Ferries – 1963
 - Electric generation – 1965
 - Electric Membership Cooperatives – 1965
 - Payphone Service Providers – 1985
 - Long Distance Telephone Competition – 1985
 - Shared Tenant Service – 1987
 - Local Telephone Competition – 1995
 - Water Resale – 1996

3



NCUC Organization

- Administrative agency of General Assembly; legislative oversight by House Public Utilities Committee, Senate Commerce Committee, and Joint Legislative Utility Review Committee
- Seven members: appointed by Governor, subject to confirmation by General Assembly, serving staggered, eight-year terms (G.S. 62-10)
- Chair: appointed by Governor, 4-year term, organizes Commission's work. *Ex officio* member of Tax Review Board, Energy Policy Council, Agency for Public Telecommunications Board and Geographic Information Services Board. Membership responsibilities currently shared among commissioners. (G.S. 62-12, 13)

4



NCUC Organization *cont.*

- Commissioners subject to standards of judicial conduct and prohibited by law from engaging in any other employment, business or profession while in office (*G.S. 62-10(i)*)
- NCUC employs 63 people, organized among 3 divisions:
 - Administrative, Operations and Fiscal Management
- Annual budget: \$5,766,269 (authorized, 2002)
 - NCUC budget: \$5,367,484
 - Gas Pipeline Safety budget: \$398,785
- Gas Pipeline Safety is housed in Commission, partial federal reimbursement
- NCUC is fee-funded agency, supported by regulatory fee percentage established by General Assembly annually and applied to utility jurisdictional revenues (*G.S. 62-302*)

5



Commission's Responsibilities & Procedures

- Calendar year 2002:
 - 1,058 formal proceedings instituted before NCUC
 - 112 hearings in contested cases
 - 9,990 filings in Chief Clerk's office
 - 2,308 orders issued
 - Current docket = 535 items
- Appeals from general rate case decisions to NC Supreme Court; all others to NC Court of Appeals (absent federal jurisdiction)
- NCUC participates in proceedings before federal courts and regulatory agencies (*G.S. 62-48*)

6



NCUC's Responsibilities & Procedures *cont.*

- Publication requirements:
 - Annual reports to Governor include copies of general orders, regulations, comparative statistical data, rate comparisons, report of pending matters & digest of principal decisions
 - Final decisions on merits in formal proceedings
- Limited jurisdiction over municipalities and cooperatives



Certified Utilities

(AS OF 3/04/03)

| <u>UTILITY</u> | <u>QTY</u> |
|-----------------------------------|------------|
| BUS / BROKER | 36 |
| ELECTRIC | 5 |
| ELECTRIC COOPERATIVES | 32 |
| ELECTRIC MERCHANT PLANTS | 10 |
| FERRIES | 14 |
| GAS | 7 |
| MOTOR CARRIERS OF HOUSEHOLD GOODS | 198 |
| SMALL POWER | 76 |
| TELEPHONE: | |
| ■ COMPETITIVE LOCAL PROVIDERS | 197 |
| ■ INCUMBENT LOCAL EXCHANGE | 16 |
| ■ LONG DISTANCE CARRIERS | 430 |
| ■ PAYPHONE PROVIDERS | 304 |
| ■ SHARED TENANT SERVICES | 23 |
| WATER RESALE | 150 |
| WATER / WASTEWATER | 219 |
| TOTAL | 1717 |



Industry Revenue Profile

- FY2002 Jurisdictional Revenues: \$10,038,765,864
 - Electric \$5,771,618,438
 - Telecommunications \$3,198,123,588*
 - Natural Gas \$978,038,778
 - Water and Sewer \$59,710,091**
 - Transportation \$31,274,969***

9



Number of Filings Made and Orders Issued by Industry Group

(Calendar Year 2002)

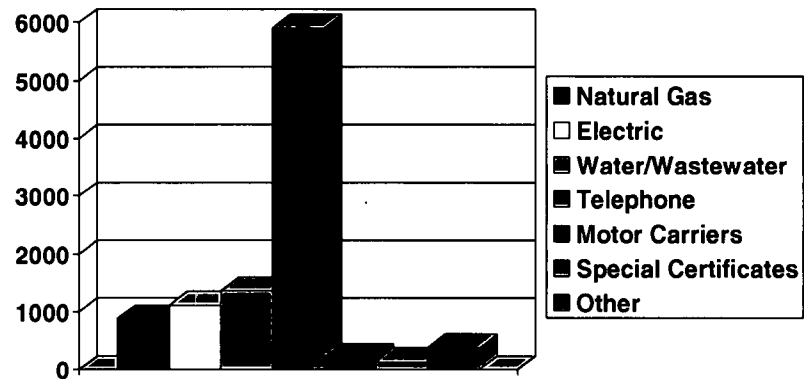
| | <u>Filings</u> | <u>Orders</u> |
|------------------------|----------------|---------------|
| ■ Electric | 1,114 | 260 |
| ■ Telephone | 5,906 | 977 |
| ■ Natural Gas | 882 | 171 |
| ■ Water/Wastewater | 1,366 | 539 |
| ■ Motor Carriers | 211 | 137 |
| ■ Special Certificates | 134 | 144 |
| ■ Other | <u>377</u> | <u>80</u> |
| ■ Total | 9,990 | 2,308 |

10



Number of Filings Made by Industry Group

(Calendar Year 2002)

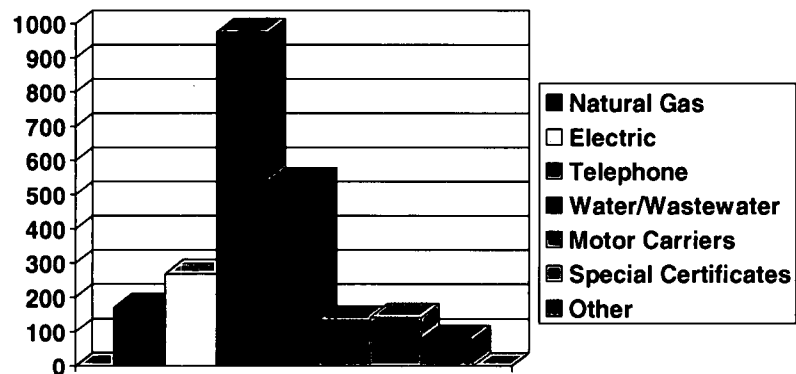


11



Number of Orders Issued by Industry Group

(Calendar Year 2002)



12



Industry Specific Overview

- I. Electric Industry
- II. Natural Gas Industry
- III. Telecommunications Industry
- IV. Transportation Industry
- V. Water and Wastewater Industry
- VI. Selected Financial and Operational Data

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I Electric

Basic Facts: Regulated Electric Utilities

- 3 Investor-Owned Utilities (IOUs)
 - Duke Energy, through Duke Power and Nantahala Power & Light - 1,669,000 customers in Piedmont and Western North Carolina
 - Progress Energy Carolinas - 1,132,000 customers in Eastern and Western North Carolina
 - North Carolina Power - 115,000 customers in Northeastern North Carolina
- 2 University-Owned Utilities
 - New River Light and Power, Boone
 - Western Carolina University, Cullowhee

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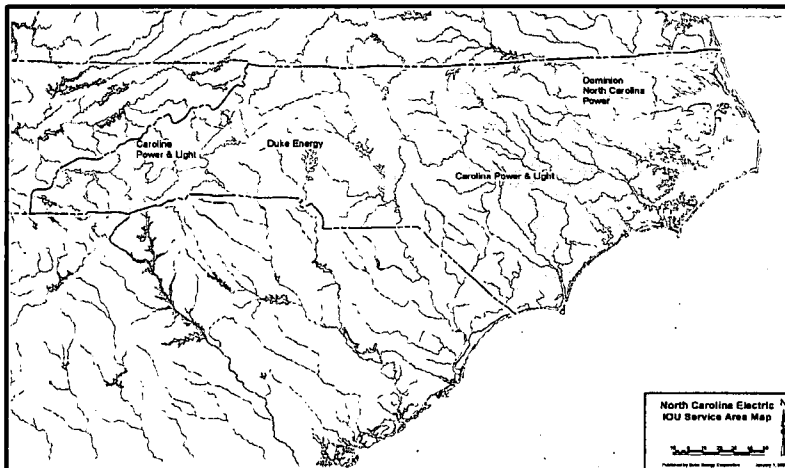
Basic Facts: EMC and Municipal-Owned

- 32 Electric Membership Corporations (EMCs) - 860,000 customers
- 71 Municipal-owned electric distribution systems - 500,000 customers
- Limited NCUC jurisdiction over EMCs and Munis:
 - Service complaint jurisdiction over EMCs (*G.S. 62-42*)
 - Monitor subsidiary business activities of EMCs to prevent subsidization by electric customers (*G.S. 117-18.1*)
 - EMC territorial assignment issues (*G.S. 62-110.2*)
 - Certification authority for construction of electric generating facilities (*G.S. 62-110.1*)
 - Certification authority for construction of electric transmission lines of 161+ KV (*G.S. 62-101*)
 - Safety jurisdiction over gas pipeline facilities operated by municipalities and similar entities (*G.S. 62-50*)

15



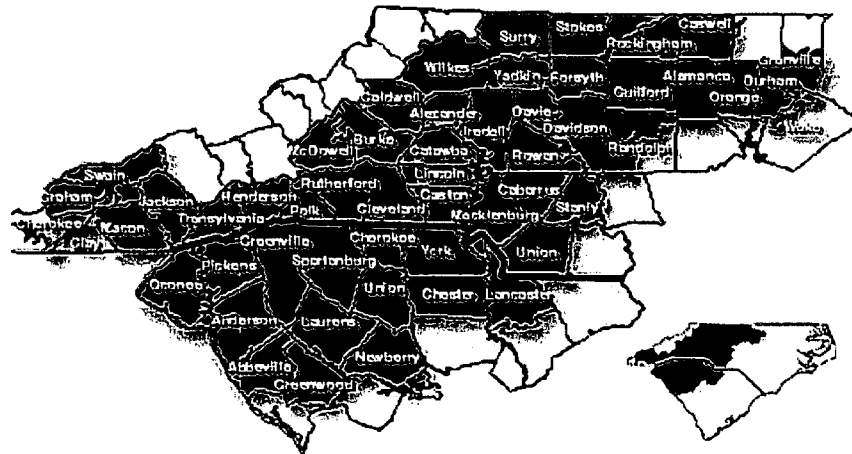
North Carolina Electric IOU Service Areas



16



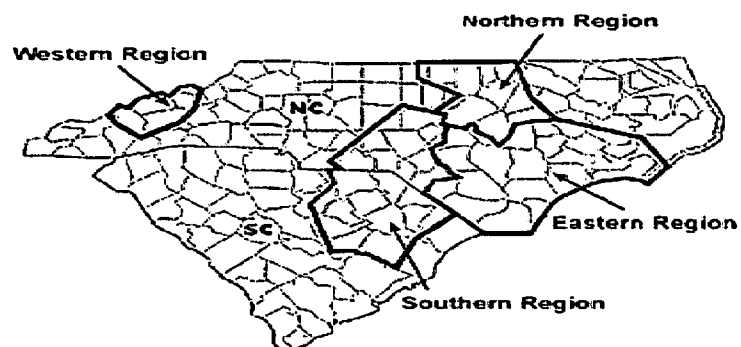
Duke Power Service Area



17



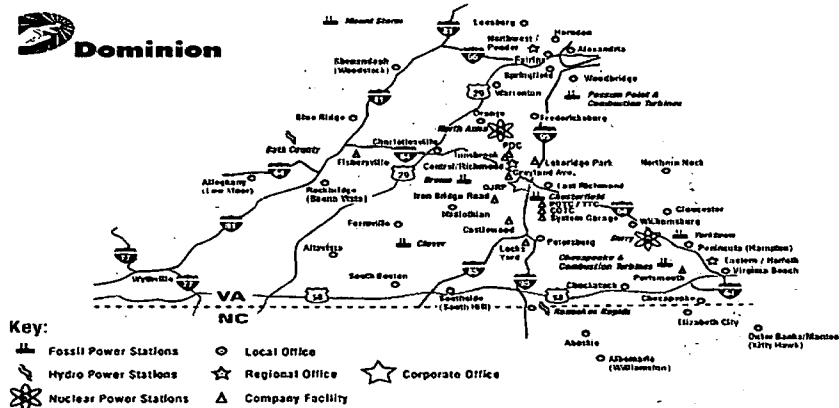
Progress Energy NC & SC Service Area



18



NC Power Service Area



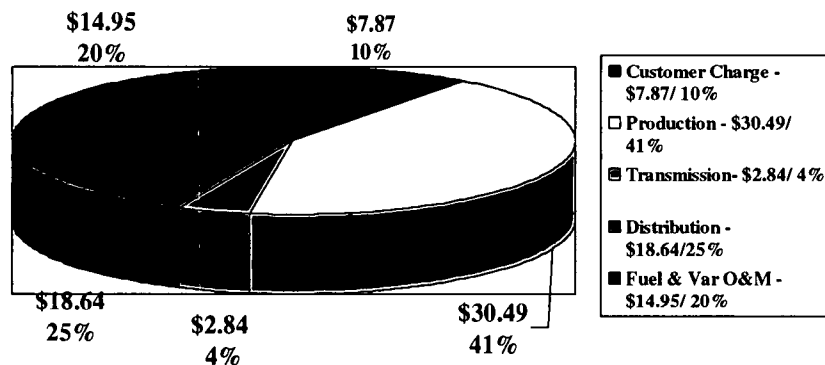
19



Duke Power

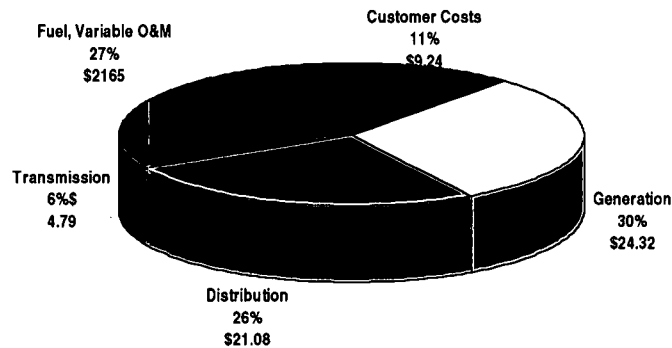
Typical Residential 1,000 kWh Monthly Bill (1/1/03)

Total: \$74.80



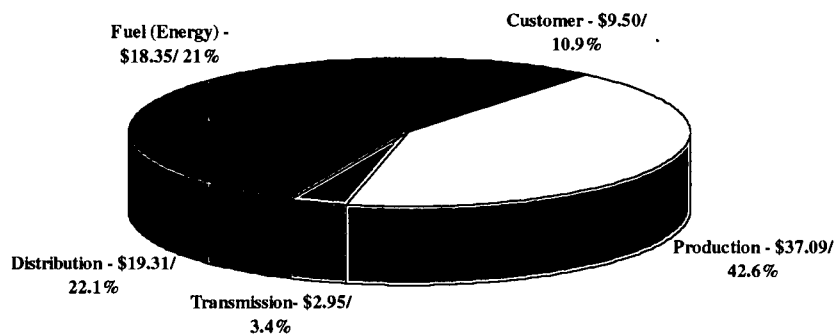
20

Progress Energy Residential Rates - N.C. Typical Residential 1,000 kWh monthly bill (1/1/03) Total \$81.08



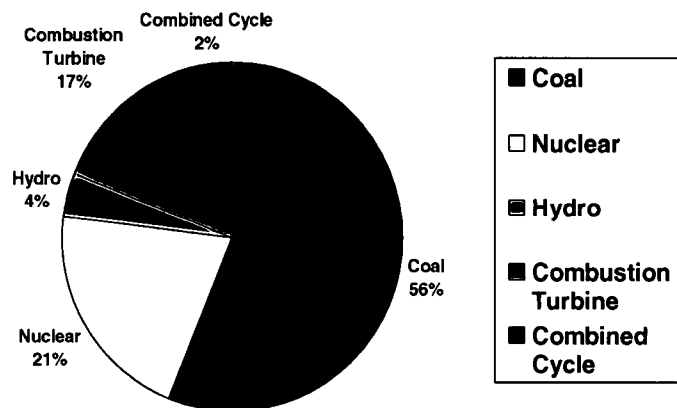
North Carolina Power

Typical Residential 1,000 kWh Monthly Bill
 Total: \$87.20



Note: Bill shown is weighted average of summer monthly bill and base monthly bill. Bill includes gross receipts tax but excludes any other state or local taxes.

IOU Generation Mix NC Based Capacity



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Projected Reserve Margins 2002-2012

| Company | Reserve Margins |
|----------|-----------------|
| Progress | 12.4 – 15.1% |
| Duke | 17.0 – 19.3% |
| NC Power | 12.5 – 14.3% |

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Basic Facts:

Fuel Mix Shift - Pros and Cons to Natural Gas

| Pros | Cons |
|---|---|
| •Domestic fuel source – decreased dependence on foreign fuel resources | •Reduced fuel diversity- increased dependence on one primary fuel |
| •Lower capital costs | •Same trend across the country – growing demand |
| •More environmentally friendly, thus lower compliance costs than displaced fuel (coal, oil) | •Higher incremental production costs than coal |
| •Transportable and storable | •Supply unknown & limited storage (presently) |
| | •More susceptible to price volatility |

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Retail Electric Competition

- General Assembly decides whether electricity markets will be competitive
- In 1997, General Assembly formed Study Commission on the Future of Electric Service in NC to examine this issue
- In May 2000, the Study Commission adopted a tentative schedule for implementing retail competition by 2006
- National move towards retail competition has slowed dramatically---some states have retrenched from earlier aggressive positions

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II Natural Gas

Basic Facts: Industry Structure

- Three parts of natural gas industry
 - Exploration and production (E&P)
 - Interstate transmission
 - Local distribution (LDCs)
- E&P companies not price-regulated
- Interstate pipeline rates fixed by FERC
- LDCs regulated by state commissions

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Basic Facts:

North Carolina Natural Gas Utilities

- Six Local Distribution Companies (LDCs)
 - Piedmont Natural Gas Company, Inc.
 - Public Service Company of N.C., Inc.
 - North Carolina Natural Gas Corp.
 - Frontier Energy, LLC
 - Toccoa Natural Gas
 - Eastern N.C. Natural Gas Company
- One Intrastate Gas Pipeline
 - Cardinal Pipeline Company, LLC
- Eight Municipal Gas Systems (not regulated by NCUC)
- Transco is single, major interstate pipeline
- Legislatively mandated, recent rapid expansion into unserved areas

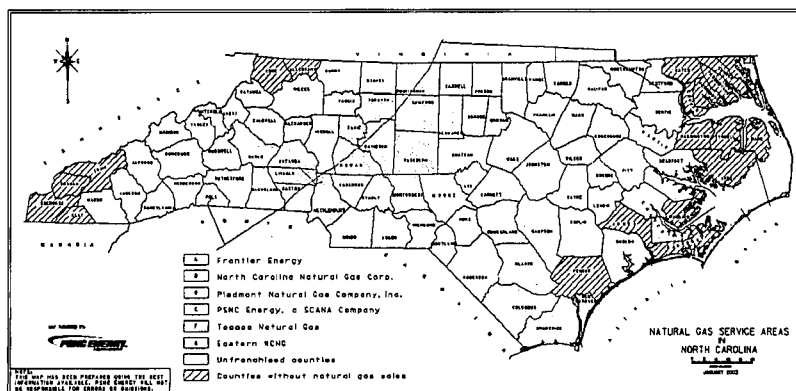
28

Basic Facts: Recent LDC Mergers and Acquisitions

- In 1999, NCNG was acquired by CP&L (now Progress Energy)
- In 1999, Public Service was acquired by SCANA Corporation
- In 2002, NUI North Carolina Gas was acquired by Piedmont
- Application is now pending for NCNG and one-half ownership interest in Eastern NCNG to be acquired by Piedmont

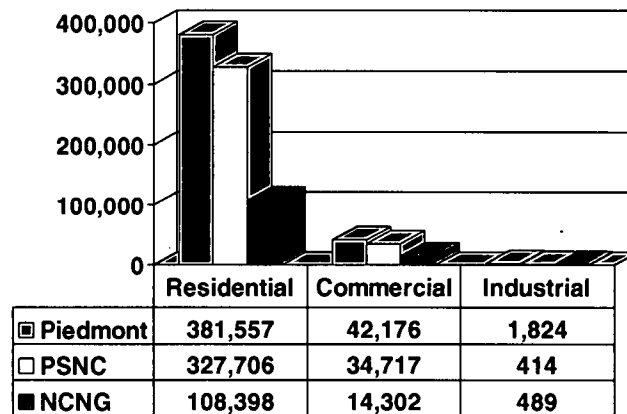
29

Local Distribution Companies' Service Territories



30

Local Distribution Companies' Customer Profile



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State Regulatory Framework for Local Distribution Companies

Certification

- NCUC issues certificates defining LDC service territories
- Certificate obligates holder to provide adequate service at reasonable rates
- LDC must provide adequate service to some portion of each county in certificated area within three years
- If adequate service not provided within three years, the Commission orders certificate forfeited

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State Regulatory Framework for Local Distribution Companies

Rates

- NCUC establishes level of base rates
- LDCs may file purchased gas adjustment proceedings at any time to adjust gas cost portion of rates prospectively
- NCUC conducts annual prudence review of each LDC to compare prudently incurred costs with costs actually recovered from customers and orders increments or decrements to "true up" under-recoveries or over-recoveries

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Current Issues: Expansion into Unserved Areas

- Ten years ago, one third of NC counties were unserved
- General Assembly established Natural Gas Expansion Fund in 1991
 - Allows LDCs to subsidize uneconomic expansion projects using refunds from interstate pipeline suppliers and other sources
- General Assembly authorized \$200 million bond issuance for natural gas expansion in 1998
- Service has been extended, or is being extended, to 30 counties using these mechanisms
- Only 4 counties remain without service or plans for service

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Current Issues: Gas Wholesale Price Volatility

- Natural gas has become a very volatile commodity
- In the 2000-2001 Winter, wholesale gas prices rose dramatically
- NCUC provided guidance to LDCs regarding hedging
- Recently, gas prices have begun another sudden increase
- NCUC has asked the three largest LDCs to meet March 17, 2003, to discuss the current price run-up

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III Telecommunications Basic Facts

- 16 Incumbent Local Exchange Companies (ILECs)
 - 8 ILECs price-plan regulated
 - 8 ILECs rate-of-return regulated
- 197 Competing Local Providers (CLPs)
- 430 Interexchange Long Distance Carriers (IXCs)
 - IXCs may lower or raise rates on 14 days' notice


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Basic Facts: Telecom Utilities *cont.*

- 304 Payphone Service Providers (PSPs)
- 23 Shared Tenant Services (STS)
- Commission does not regulate:
 - Telephone Membership Corporations
 - Cable and Satellite
 - Commercial Mobile Radio Service (*includes cellular and pagers*)
 - Data and Internet Service Providers

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Basic Facts: North Carolina ILECs

- Largest NC Incumbent Local Exchange Companies (ILECs):
 - BellSouth - 2,362,400 access lines
 - Carolina Telephone (i.e. Sprint) - 1,193,945 access lines
 - Verizon South - 342,535 access lines
 - Central Telephone (i.e. Sprint) - 276,397 access lines
- Other 12 ILECs serve total of 562,964 access lines in NC

38



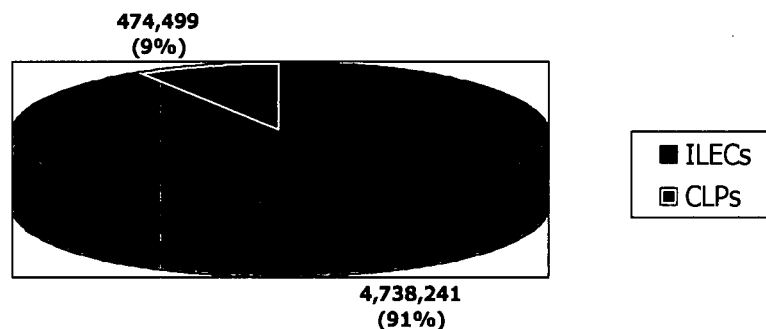
Basic Facts: North Carolina CLPs

- 197 Competitive Local Providers (CLPs) certified to provide local exchange service in NC
- 474,499 access lines served by CLPs *(Dec. 2002)*
 - 70,381 residential
 - 404,118 business

39



Basic Facts: Access Lines Served by ILECs and CLPs



40

Basic Facts: North Carolina Area Codes

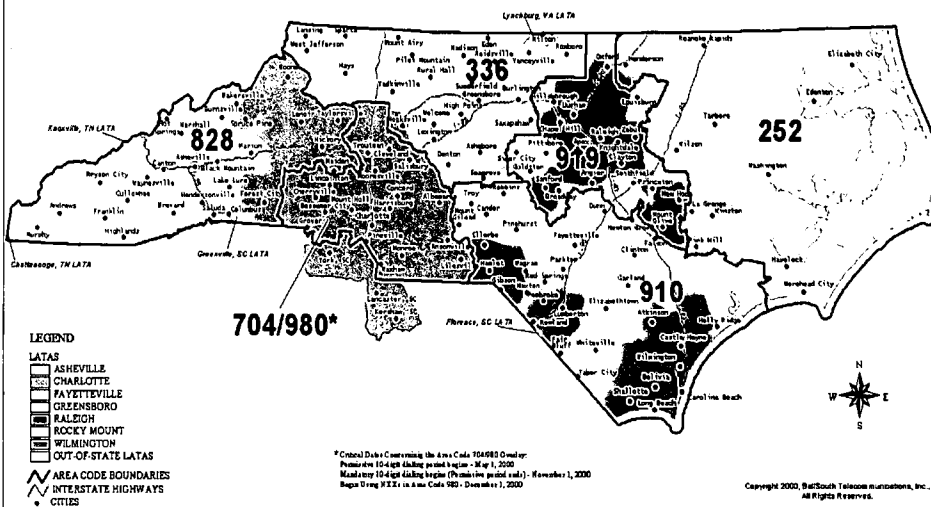


| <u>Area Code</u> | <u>Exhaust Date*</u> |
|------------------|---------------------------|
| 919 | 3 rd Qtr. 2005 |
| 336 | 2 nd Qtr. 2006 |
| 252 | 1 st Qtr. 2007 |
| 910 | 1 st Qtr. 2008 |
| 828 | 3 rd Qtr. 2011 |
| 704/980 | 4 th Qtr. 2017 |
| 919/984 | 2 nd Qtr. 2032 |

* Exhaust dates are current projections and change regularly.

41

North Carolina - Area Code Map





IV Transportation Basic Facts

- Motor Carriers of Household Goods
 - 198 Certificated Movers
 - New Certification Regulations Effective January 1, 2003
 - Maximum Rate Tariff Effective January 1, 2003
- Regular Route Passenger Carriers
 - 7 Certificated Bus Companies
 - Provides Passenger Service over Regular Routes
- Passenger Brokers
 - 29 Broker's Licenses
 - Brokers Tours and Trips with Existing Bus Companies
- Ferryboat Operators
 - 14 Certificated Ferry Boat Operators
 - Passenger Transportation Via Water

43



V Water and Wastewater Basic Facts

- Anyone furnishing water to the public for compensation or operating a public sewerage system for compensation is a public utility (*G.S. 62-3(23)a.2*)
- Regulation does not include –
 - Operations with less than 15 residential customers
 - Municipal or County systems
 - Sanitary Districts
 - Mobile Home Parks (where water/wastewater included in rent)
 - Homeowners' Associations
 - Nonprofit and consumer owned corporations

44



Basic Facts: Water/Wastewater Utilities

- NCUC grants certificates for specific service area and regulates rates and service aspects of utility operation
- NCUC does not regulate drinking water quality; requires compliance with DENR, Division of Environmental Health regulations
- NCUC does not regulate discharge of sewage being treated, but requires compliance with DENR, Division of Water Quality regulations

45



Basic Facts: Water/Wastewater Utilities

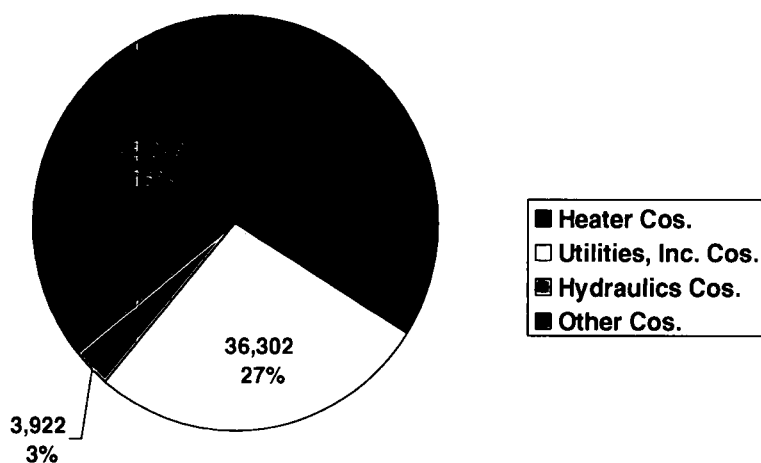
- Traditional Companies
 - 69 Water and Wastewater
 - 105 Water only
 - 45 Wastewater only
 - 133,633 Water and 62,218 Wastewater customers
- Resale Companies
 - 150 Water and Wastewater
 - 66,525 Water and Wastewater customers
- Traditional and Resale combined - 1,886 systems

46



Basic Facts: Water

Distribution of 133,633 Traditional Water Customers

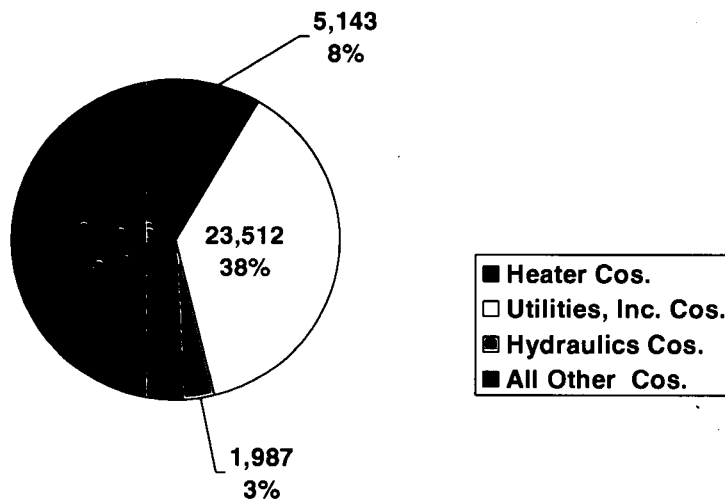


47



Basic Facts: Wastewater

Distribution of 62,218 Traditional Wastewater Customers



48

VI Financials

Electric Utilities Operating Revenues

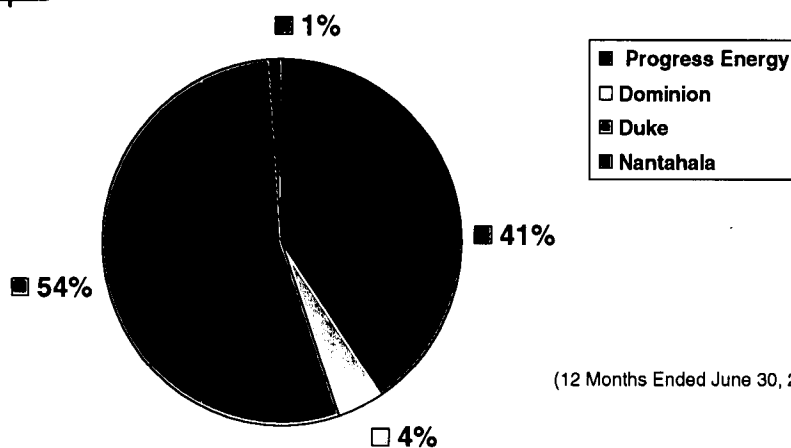
(\$ in Billions)

| | |
|-------------------|------------|
| ■ Progress Energy | \$2.4 |
| ■ Dominion | 0.3 |
| ■ Duke | 3.2 |
| ■ Nantahala | <u>0.1</u> |
| ■ Total | \$ 6.0 |

(12 Months Ended June 30, 2002)

49

Operating Revenues by Electric Utility - Percentages



(12 Months Ended June 30, 2002)

50



Electric Utilities: Net Plant Investment

(\$ in Billions)

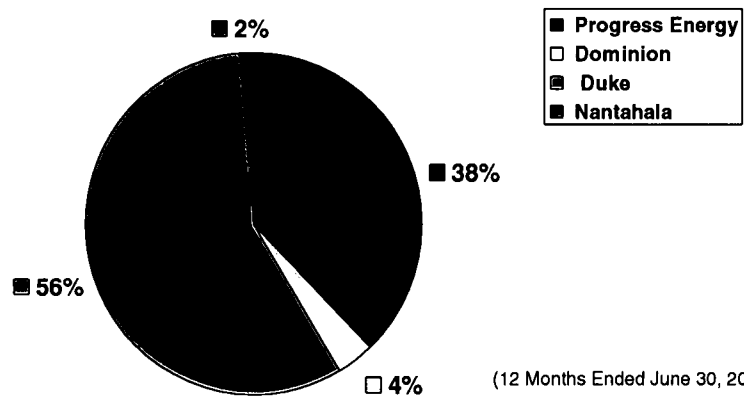
| | |
|-------------------|------------|
| ■ Nantahala | \$ 0.2 |
| ■ Dominion | 0.4 |
| ■ Progress Energy | 4.4 |
| ■ Duke | <u>6.6</u> |
| ■ Total | 11.6 |

(12 Months Ended June 30, 2002)

51



Net Plant Investment by Electric Utility - Percentages



(12 Months Ended June 30, 2002)

52



Natural Gas Utilities: Operating Revenues

(\$ in Millions)

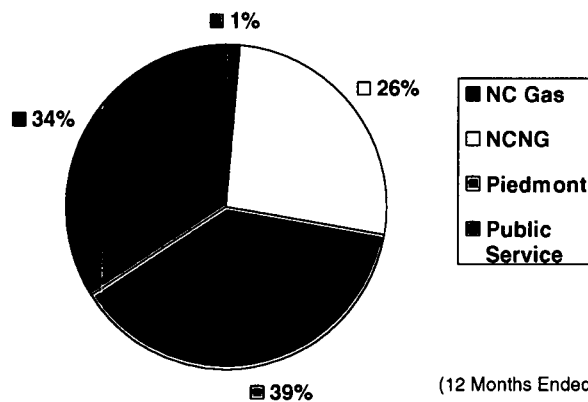
| | |
|------------------|--------------|
| ■ NC Gas Service | \$ 13.4 |
| ■ NCNG | 262.5 |
| ■ Public Service | 340.4 |
| ■ Piedmont | <u>379.9</u> |
| ■ Total | \$996.2 |

(12 Months Ended June 30, 2002)

53



Operating Revenues by Natural Gas Utility - Percentages



(12 Months Ended June 30, 2002)

54

Natural Gas Utilities: Net Plant Investment

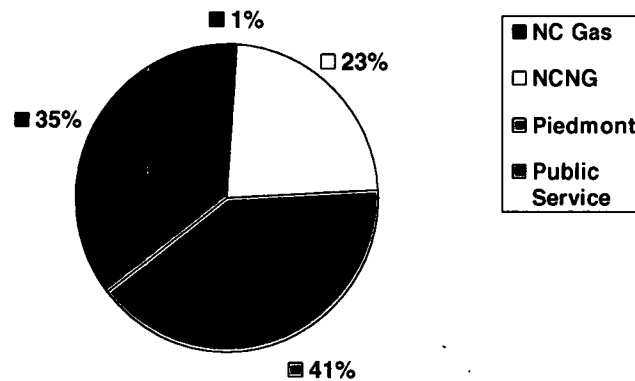
(\$ in Millions)

| | |
|------------------|--------------|
| ■ NC Gas Service | \$ 16.7 |
| ■ NCNG | 352.2 |
| ■ Public Service | 539.7 |
| ■ Piedmont | <u>612.9</u> |
| ■ Total | \$1,521.5 |

(12 Months Ended June 30, 2002)

55

Net Plant Investment by Natural Gas Utility - Percentages



(12 Months Ended June 30, 2002)

56



Telephone Utilities: Operating Revenues

(10 Largest Local Exchange Companies)

(\$ in Millions)

| | |
|---------------|--------------|
| ■ ALLTEL | \$ 106.6 |
| ■ BellSouth | 1,255.7 |
| ■ Carolina | 559.5 |
| ■ Central | 143.3 |
| ■ Citizens | 11.3 |
| ■ Concord | 63.3 |
| ■ LEXCOM | 20.5 |
| ■ MEBTEL | 8.8 |
| ■ North State | 79.0 |
| ■ Verizon | <u>198.0</u> |
| ■ Total | \$2,446.0 |

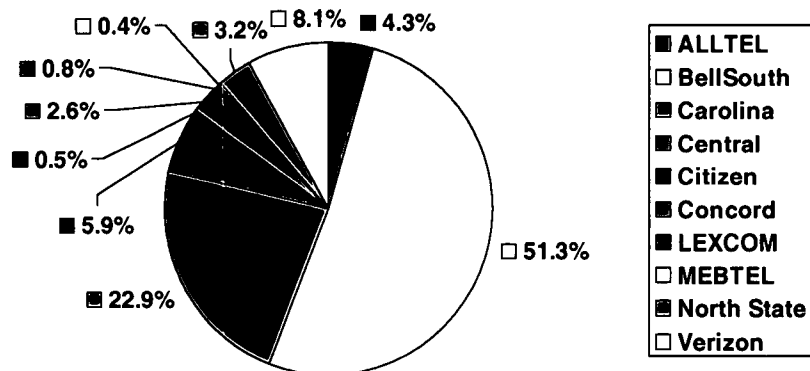
(12 Months Ended December 31, 2001)

57



Operating Revenues

(10 Largest Local Exchange Companies – Percentages)



(12 Months Ended December 31, 2001)

58

Telephone Utilities: Net Plant Investment

(10 Largest Local Exchange Companies)

(\$ in Millions)

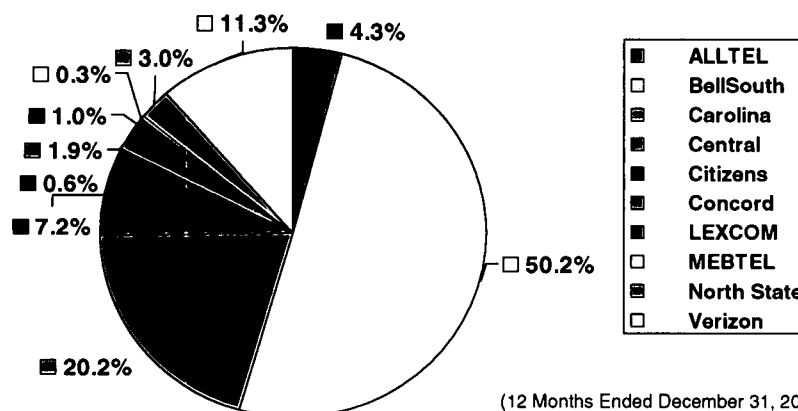
| | |
|---------------|--------------|
| ■ ALLTEL | \$ 165.0 |
| ■ BellSouth | 1,932.8 |
| ■ Carolina | 779.7 |
| ■ Central | 278.1 |
| ■ Citizens | 23.2 |
| ■ Concord | 74.0 |
| ■ LEXCOM | 38.8 |
| ■ MEBTEL | 10.8 |
| ■ North State | 114.8 |
| ■ Verizon | <u>433.5</u> |
| ■ Total | \$3,850.7 |

(12 Months Ended December 31, 2001)

59

Net Plant Investment

(10 Largest Local Exchange Companies – Percentages)



60



Major Issues

- **Electricity**
 - Transmission, nuclear waste disposal, Smokestack Bill & other environmental issues, Green Power, wholesale/retail competition, large municipal debt
- **Telecommunications**
 - Slow transition to competitive marketplace, market failures, broadband deployment, service quality, Universal Service
- **Natural Gas**
 - Price volatility, supply, dominant position as fuel source for new generation, infrastructure expansion
- **Water & Wastewater**
 - Supply, environmental issues, industry consolidation
- **Generic**
 - Financial market pressures, storm impacts, emergency preparedness, accounting issues, merger conditions, tension at intersection of regulated and competitive activities of regulated companies

Attachment #3

March 12, 2003

Overview of the Role of the Public Staff Before the House Utilities Committee

Mr. Chairmen and members of the Committee, it is a pleasure to appear before you and tell you a little about the Public Staff.

The duties and responsibilities of the Public Staff are mandated by statute, N.C.G.S. 62-15(d) (1-12), a copy of which is attached. By virtue of the statute, the Public Staff is authorized, and to a large extent, required to intervene before the Commission on behalf of the using and consuming public in practically every proceeding, which could affect the consumers' interests. The primary areas of concern to the Public Staff are:

- (1) Rates charged for services.
- (2) Level and quality of service rendered.
- (3) Issuance or cancellation of certificates of service and service areas.
- (4) Complaints of consumers.
- (5) Transfers, mergers, or consolidation of utilities providing services to the public.
- (6) Contracts of public utilities with and between affiliates or subsidiaries.
- (7) Issuance of securities or other financial matters affecting the utilities.

The specific activities of the Public Staff are dictated to a large extent by the nature and volume of the applications and other documents filed with the Commission. While general rate cases occupy much of the Public Staff's time and resources, there are numerous other types of proceedings and matters that vary from utility to utility, each requiring specialized knowledge and experience in the regulation of utility rates and services. To effectively fulfill its responsibilities the Public Staff has eighty-five employees, which are organized into nine, operating divisions. All divisions are supervised and directed by the Public Staff's Executive Director. The Executive Director is appointed by the Governor for a term of six years subject to confirmation by the legislature.

The Public Staff is accountable to the legislature. The Public Staff is required by statute to provide the legislature with a written annual report of its activities, and to appear before the Utility Review Committee and the House and Senate Utility Committees from time-to-time. The Public Staff also assists the legislature and its staff with bill-drafting, and by providing technical and legal background on utility issues.

Section 62-15(d) of the North Carolina General Statutes provides as follows:

- (d) It shall be the duty and responsibility of the public staff to
 - (1) Review, investigate and make appropriate recommendations to the Commission with respect to the reasonableness of rates charged or proposed to be charged by any public utility and with respect to the consistency of such rates with the public policy of assuring an energy supply adequate to protect the public health and safety and to promote the general welfare;
 - (2) Review, investigate and make appropriate recommendations to the Commission with respect to the service furnished, or proposed to be furnished by any utility;
 - (3) Intervene on behalf of the using and consuming public in all Commission proceedings affecting the rates or service of any public utility;
 - (4) When deemed necessary by the Executive Director, in the interest of the using and consuming public, petition the Commission to initiate proceedings to review, investigate, and take appropriate action with respect to the rates or service of public utilities;
 - (5) Intervene on behalf of the using and consuming public in all certificate applications filed pursuant to the provisions of G.S. 62-110.1, and provide assistance to the Commission in making the analysis and plans required pursuant to the provisions of G.S. 62-110.1 and G.S. 62-155;
 - (6) Intervene on behalf of the using and consuming public in all proceedings wherein any public utility proposes to reduce or abandon service to the public;
 - (7) Investigate complaints affecting the using and consuming public generally which are directed to the Commission, members of the Commission, or the public staff and where appropriate make recommendations to the Commission with respect to such complaints;
 - (8) Make studies and recommendations to the Commission with respect to standards, regulations, practices, or service of

any public utility pursuant to the provisions to G.S. 62-43; provided, however, that the Public Staff shall have no duty, responsibility or authority with respect to the enforcement of natural gas pipeline safety law, rules, or regulations;

- (9) When deemed necessary by the Executive Director, in the interest of the using and consuming public, intervene in Commission proceedings with respect to transfers of franchises, mergers, consolidations, and combinations of public utilities pursuant to the provisions of G.S. 62-111;
- (10) Investigate and make appropriate recommendations to the Commission with respect to applications for certificates by radio common carriers, pursuant to the provisions of Article 6A of Chapter 62 of the North Carolina General Statutes;
- (11) Review, investigate, and make appropriate recommendations to the Commission with respect to contracts of public utilities with affiliates or subsidiaries, pursuant to the provisions of G.S. 62-153; and
- (12) When deemed necessary by the Executive Director, in the interest of the using and consuming public, advise the Commission with respect to securities, regulations, and transactions, pursuant to the provisions of Article 8 of Chapter 62 of the General Statutes of North Carolina.

AGENDA

HOUSE COMMITTEE ON PUBLIC UTILITIES

**March 19, 2003
Room 1228/1327 Legislative Building
10:00 a.m.**

OPENING REMARKS

**Representative Harold J. Brubaker, Chair
Public Utilities Committee**

AGENDA ITEMS

**HB 356 REMOVE SUNSET/MUNICIPAL ELECTRIC
SERVICE
Representative Tolson and Representative LaRoque**

ADJOURNMENT

MINUTES

HOUSE COMMITTEE ON PUBLIC UTILITIES

March 19, 2003

The House Committee on Public Utilities met at 10:00 a.m. on March 19, 2003, in Room 1228 of the Legislative Building. Members present were: Representative Brubaker, Chair, and Representative Saunders, Chair, and Representative Bordsen, Coates, Culpepper, Gibson, Holliman, Howard, L. Johnson, LaRoque, McComas, Miner, Sauls, Sherrill and K. Williams. Committee Counsels, Kory Goldsmith and Steve Rose, were also present. Visitor Registration Sheets are attached and made a part of the Minutes. See Attachment #1.

Representative Brubaker, Chair, called the meeting to order. He recognized Pages Bethany Taylor of Franklin County, sponsored by Representative Lucy Allen; Will Lance of Nash County, sponsored by Representative Hall; Austin Barrard of Wake County, sponsored by Representative Ellis; and the Sergeant-At-Arms staff members Matt Myers and Jackson Stancill.

Representative Joe Tolson and Representative Stephen LaRoque, the Bill Sponsors, spoke in support of House Bill 356 – “Remove Sunset/Municipal Electric Service”.

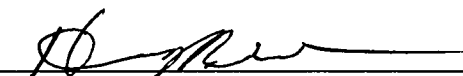
Steve Rose, Committee Counsel, presented the Summary of House Bill 356, which included the Current Law, Bill Analysis, and Background. See Attachment #2.


Jay Rouse, with the N. C. Association of Electric Cooperatives, Inc., also spoke in support of House Bill 356.

Rep. David Miner then explained the history of the legislation and the merits of “Removing Sunset/Municipal Electric Service”.

Upon motion by Rep. David Miner and seconded by Rep. Wilma Sherrill, the Committee unanimously approved House Bill 356 with a Favorable Report.

There being no further business, the meeting adjourned at 10:15 a.m.


Rep. Harold Brubaker, Presiding Chair


Cindy Coley, Committee Assistant

Attachments: #1 Visitor Registration Sheet
#2 Bill Summary

**2003 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative Harold Brubaker and Representative Drew Saunders (Chairs) for the
Committee on **PUBLIC UTILITIES**.

☐ Committee Substitute for

H.B. 356 A BILL TO BE ENTITLED AN ACT TO REMOVE THE SUNSET ON THE
LAW PROVIDING THAT CERTAIN SECONDARY SUPPLIERS OF ELECTRIC
SERVICE MAY FURNISH SERVICE WITHIN THE CORPORATE LIMITS OF A CITY
WITH WRITTEN CONSENT FROM THE CITY, ALLOWING THE MEMBERS OF AN
ELECTRIC MEMBERSHIP CORPORATION TO VOTE BY PROXY ON DECISIONS TO
ENCUMBER CORPORATE PROPERTY OR TO DISSOLVE THE CORPORATION,
AND MAKING TECHNICAL CHANGES TO THE LAW REGARDING MUNICIPAL
ELECTRIC SERVICE.

☒ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the
Committee on Appropriations ☐ Finance ☐ ☐.

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

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes
the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

03/19/03

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

H

1

HOUSE BILL 356*

Short Title: Remove Sunset/Municipal Electric Service. (Public)

Sponsors: Representatives Tolson, LaRoque (Primary Sponsors); Adams, B. Allen, G. Allen, Bell, Capps, Church, Clary, Culp, Culpepper, Dickson, Eddins, Fox, Frye, Glazier, Goforth, Goodwin, Gorman, Haire, Hall, Harrell, Hill, Hilton, Holliman, Hunter, Insko, L. Johnson, Justice, Justus, Kiser, Lewis, McHenry, McLawhorn, Moore, Munford, Owens, Preston, Saunders, Wainwright, Warren, A. Williams, and K. Williams.

Referred to: Public Utilities.

March 10, 2003

A BILL TO BE ENTITLED

AN ACT TO REMOVE THE SUNSET ON THE LAW PROVIDING THAT CERTAIN SECONDARY SUPPLIERS OF ELECTRIC SERVICE MAY FURNISH SERVICE WITHIN THE CORPORATE LIMITS OF A CITY WITH WRITTEN CONSENT FROM THE CITY, ALLOWING THE MEMBERS OF AN ELECTRIC MEMBERSHIP CORPORATION TO VOTE BY PROXY ON DECISIONS TO ENCUMBER CORPORATE PROPERTY OR TO DISSOLVE THE CORPORATION, AND MAKING TECHNICAL CHANGES TO THE LAW REGARDING MUNICIPAL ELECTRIC SERVICE.

The General Assembly of North Carolina enacts:

SECTION 1. Section 6 of Chapter 346 of the 1997 Session Laws, as amended by S.L. 1999-111, reads as rewritten:

"**Section 6.** This act is effective when it becomes law and applies only to annexations or incorporations that occur on or after the effective date. ~~This act expires on December 31, 2003.~~"

SECTION 2. This act is effective when it becomes law.



ATTACHMENT #2

HB 356: Remove Sunset/Municipal Electric Service

BILL ANALYSIS

Committee: House Public Utilities
Date: March 19, 2003
Version: 1

Introduced by: Rep. Tolson and Rep. LaRoque
Summary by: Steven Rose
Committee Counsel

SUMMARY: *HB 356 permanently removes a sunset date of December 31, 2003 that applies to S.L. 1997-336, as amended by S.L. 1999-111.*

CURRENT LAW: The provisions contained in S.L. 1997-336 will expire on December 31, 2003. A copy of S.L. 1997-336 is attached.

BILL ANALYSIS: S.L. 1997-346 allows secondary suppliers of electricity (suppliers other than the city or the entity holding a franchise from the city) to supply electricity in newly annexed municipal territory with the agreement of the city. The act also made changes to Chapter 117 of the General Statutes, which applies to electric and telephone membership corporations. It allows voting by proxy where the issue involves sale or encumbrance of co-op property, or the dissolution of an electric cooperative. Prior to the passage of S.L. 1997-346, only votes cast in person could be counted.

BACKGROUND: S.L. 1997-346 originally was to sunset at sine die adjournment of the 1999 General Assembly. S.L. 1999-111 extended the expiration date to December 31, 2003. This bill makes the provisions permanent.

The act is effective when it becomes law.

take place at an election held on a date set by the Jackson County Board of Elections, but no later than July 1, 1998. Initial terms shall expire at the time provided by general law as if the election had taken place at the general election on the Tuesday after the first Monday in November 1997.

Section 6. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 30th day of July, 1997.

Became law on the date it was ratified.

S.B. 848

CHAPTER 346

AN ACT TO PROVIDE THAT CERTAIN SECONDARY SUPPLIERS OF ELECTRIC SERVICE MAY FURNISH SERVICE WITHIN THE CORPORATE LIMITS OF A CITY WITH WRITTEN CONSENT FROM THE CITY, TO ALLOW THE BOARD OF AN ELECTRIC MEMBERSHIP CORPORATION TO VOTE BY PROXY ON DECISIONS TO ENCUMBER CORPORATE PROPERTY OR TO DISSOLVE THE CORPORATION, AND TO MAKE TECHNICAL CHANGES TO THE LAW REGARDING MUNICIPAL ELECTRIC SERVICE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-331 reads as rewritten:

"§ 160A-331. *Definitions.*

Unless the context otherwise requires, the following words and phrases shall have the meanings indicated when used in this Part:

(1) 'Assigned area' means any portion of an area annexed to or incorporated into a city which, on or before the effective date of annexation or incorporation, had been assigned by the North Carolina Utilities Commission to a specific electric supplier pursuant to G.S. 62-110.2.

(1a) 'Assigned supplier' means a person, firm, or corporation to which the North Carolina Utilities Commission had assigned a specific area for service as an electric supplier pursuant to G.S. 62-110.2, which area, in whole or in part, is subsequently annexed to or incorporated into a city.

(1b) The 'determination date' is

- a. April 20, 1965, with respect to areas within the corporate limits of any city as of April 20, 1965;
- b. The effective date of annexation with respect to areas annexed to any city after April 20, 1965;
- c. The date a primary supplier comes into being with respect to any city first incorporated after April 20, 1965.

(2) 'Line' means any conductor located inside the city for distributing or transmitting electricity, other than

- a. For overhead construction, a conductor from the pole nearest the premises of a consumer to such premises, or a conductor from a line tap to such premises, and

- b. For underground construction, a conductor from the transformer (or the junction point, if there be one) nearest the premises of a consumer to such premises.
- (3) 'Premises' means the building, structure, or facility to which electricity is being or is to be furnished. Two or more buildings, structures, or facilities that are located on one tract or contiguous tracts of land and are used by one electric consumer for commercial, industrial, institutional, or governmental purposes, shall together constitute one 'premises,' except that any such building, structure, or facility shall not, together with any other building, structure, or facility, constitute one 'premises' if the electric service to it is separately metered and the charges for such service are calculated independently of charges for service to any other building, structure, or facility.
- (4) 'Primary supplier' means a city that owns and maintains its own electric system, or a person, firm, or corporation that furnishes electric service within a city pursuant to a franchise granted by, or contract with, a city, or that, having furnished service pursuant to a franchise or contract, is continuing to furnish service within a city after the expiration of the franchise or contract.
- (5) 'Secondary supplier' means a person, firm, or corporation that furnishes electricity at retail to one or more consumers other than itself within the limits of a city but is not a primary supplier. A primary supplier that furnishes electric service within a city pursuant to a franchise or contract that limits or restricts the classes of consumers or types of electric service permitted to such supplier shall, in and with respect to any area annexed by the city after April 20, 1965, be a primary supplier for such classes of consumers or types of service, and if it furnishes other electric service in the annexed area on the effective date of annexation, shall be a secondary supplier, in and with respect to such annexed area, for all other electric service. A primary supplier that continues to furnish electric service after the expiration of a franchise or contract that limited or restricted such primary supplier with respect to classes of consumers or types of electric service shall, in and with respect to any area annexed by the city after April 20, 1965, be a secondary supplier for all electric service if it is furnishing electric service in the annexed area on the effective date of annexation."

Section 2. G.S. 160A-332(a) reads as rewritten:

"(a) The suppliers of electric service inside the corporate limits of any city in which a secondary supplier was furnishing electric service on the determination date (as defined in G.S. 160A-331(1)) shall have rights and be subject to restrictions as follows:

- (1) The secondary supplier shall have the right to serve all premises being served by it, or to which any of its facilities are attached, on the determination date.

conductor from the
re be one) nearest the

facility to which
two or more buildings,
one tract or contiguous
electric consumer for
governmental purposes,
except that any such
together with any other
one 'premises' if the
and the charges for
charges for service to

and maintains its own
corporation that furnishes
franchise granted by,
ing furnished service
continuing to furnish
of the franchise or

on, or corporation that
consumers other than
a primary supplier. A
service within a city
limits or restricts the
service permitted to such
area annexed by the city
for such classes of
other electric
date of annexation,
with respect to such
e. A primary supplier
after the expiration of a
restricted such primary
ers or types of electric
area annexed by the city
supplier for all electric
in the annexed area on

in:
corporate limits of any
electric service on the
shall have rights and be

right to serve all premises
s facilities are attached.

- (2) The secondary supplier shall have the right, subject to subdivision (3) of this section, to serve all premises initially requiring electric service after the determination date which are located wholly within 300 feet of its lines and located wholly more than 300 feet from the lines of the primary supplier, as such suppliers' lines existed on the determination date.
- (3) Any premises initially requiring electric service after the determination date which are located wholly within 300 feet of a secondary supplier's lines and wholly within 300 feet of another secondary supplier's lines, but wholly more than 300 feet from the primary supplier's lines, as the lines of all suppliers existed on the determination date, may be served by the secondary supplier which the consumer chooses, and no other supplier shall thereafter furnish electric service to such premises, except with the written consent of the supplier then serving the premises.
- (4) A primary supplier shall not furnish electric service to any premises which a secondary supplier has the right to serve as set forth in subdivisions (1), (2), and ~~(3)~~ (3), and (6a) of this section, except with the written consent of the secondary supplier.
- (5) Any premises initially requiring electric service after the determination date which are located wholly or partially within 300 feet of the primary supplier's lines and are located wholly or partially within 300 feet of the secondary supplier's lines, as such suppliers' lines existed on the determination date, may be served by either the secondary supplier or the primary supplier, whichever the consumer chooses, and no other supplier shall thereafter furnish service to such premises, except with the written consent of the supplier then serving the premises.
- (6) Any premises initially requiring electric service after the determination date, which are located only partially within 300 feet of the secondary supplier's lines and are located wholly more than 300 feet from the primary supplier's lines, as such supplier's lines existed on the determination date, may be served either by the secondary supplier or the primary supplier, whichever the consumer chooses, and no other supplier shall thereafter furnish service to such premises, except with the written consent of the supplier then serving the premises.
- (6a) Notwithstanding any other provision of law, a secondary supplier, upon obtaining the prior written consent of the city, shall be the exclusive provider of electric service within (i) any assigned area for which that secondary supplier had been assigned supplier prior to the determination date; or (ii) any area previously unassigned by the North Carolina Utilities Commission pursuant to G.S. 62-110.2. However, any rights of other electric suppliers existing under G.S. 62-110.2 prior to the determination date to provide service shall continue to exist without impairment in the areas described in (i) and (ii) above.
- (7) Except as provided in subdivisions (1), (2), (3), (5), and ~~(6)~~ (6), and (6a) of this section, a secondary supplier shall not furnish

CHAPTER 346

Session Laws — 1997

electric service within the corporate limits of any city unless it first obtains the written consent of the city and the primary supplier."

Section 3. G.S. 117-10.2 reads as rewritten:

"§ 117-10.2. *Restriction on municipal service.*

No Except as otherwise provided in this section, no electric membership corporation shall furnish electric service to, or within the limits of, any incorporated city or town, except pursuant to a franchise that may be granted under the provisions of G.S. 117-10.1, or as permitted under ~~G.S. 160-511, 160-512, and 160-513; provided, that an~~ G.S. 160A-331, 160A-332, and 160A-333. An electric membership corporation may furnish electric service to, or within the limits of, any incorporated city or town if the city or town and all electric suppliers, including public utilities, other electric membership corporations and other cities or towns, then furnishing electric service to or within such city or town consent thereto in writing."

Section 4. G.S. 117-20 reads as rewritten:

"§ 117-20. *Encumbrance, sale, etc., of property.*

No corporation may sell, mortgage, lease or otherwise encumber or dispose of any of its property (other than merchandise and property which lie within the limits of an incorporated city or town, or which shall represent not in excess of ten percent (10%) of the total value of the corporation's assets, or which in the judgment of the board are not necessary or useful in operating the corporation) unless

- (1) Authorized so to do by the votes cast in person or by proxy by at least two-thirds of its total membership, ~~without proxies,~~ and
- (2) The consent of the holders of seventy-five per centum (75%) in amount of the bonds of such corporation then outstanding is obtained.

Notwithstanding the foregoing provisions of this section, the members of such a corporation may, by the affirmative majority of the votes cast in person or by proxy at any meeting of the members, delegate to the board of directors the power and authority (i) to borrow moneys from any source and in such amounts as the board may from time to time determine, (ii) to mortgage or otherwise pledge or encumber any or all of the corporation's property or assets as security therefor, and (iii) with respect to Electric Membership Corporations only, to sell and lease back any of the corporation's property or assets."

Section 5. G.S. 117-24 reads as rewritten:

"§ 117-24. *Dissolution.*

Any corporation created hereunder may be dissolved by filing, as hereinafter provided, a certificate which shall be entitled and endorsed 'Certificate of Dissolution of' (the blank space being filled in with the name of the corporation) and shall state:

- (1) Name of the corporation, and if such corporation is a corporation resulting from a consolidation as herein provided, the names of the original corporations.
- (2) The date of filing of the certificate of incorporation, and if such corporation is a corporation resulting from a consolidation as

herein provided, the dates on which the certificates of incorporation of the original corporations were filed.

- (3) That the corporation elects to dissolve.
- (4) The name and post-office address of each of its directors, and the name, title and post-office address of each of its officers.

Such certificate shall be subscribed and acknowledged in the same manner as an original certificate of incorporation by the president or a vice-president, and the secretary or an assistant secretary, who shall make and annex an affidavit, stating that they have been authorized to execute and file such certificate by the votes cast in person or by proxy by at least two-thirds of its total membership, without proxies, membership.

A certificate of dissolution and a certified copy or copies thereof shall be filed in the same place as an original certificate of incorporation and thereupon the corporation shall be deemed to be dissolved.

Such corporation shall continue for the purpose of paying, satisfying and discharging any existing liabilities or obligations and collecting or liquidating its assets, and doing all other acts required to adjust and wind up its business and affairs, and may sue and be sued in its corporate name. Any assets remaining after all liabilities or obligations of the corporation have been satisfied or discharged shall be distributed among the members in such manner as is provided for in the corporation's charter or bylaws, and the charter or bylaws may provide for distributions to persons who were members in one or more prior years."

Section 6. This act is effective when it becomes law and applies only to annexations or incorporations that occur on or after the effective date. This act expires on the date of the adjournment sine die of the 1999 General Assembly.

In the General Assembly read three times and ratified this the 29th day of July, 1997.

Became law upon approval of the Governor at 4:05 a.m. on the 31st day of July, 1997.

S.B. 463

CHAPTER 347

AN ACT TO AUTHORIZE THE DIRECTOR OF THE BUDGET TO CONTINUE EXPENDITURES FOR THE OPERATION OF GOVERNMENT AT THE LEVEL IN EFFECT ON JUNE 30, 1997, AND TO EXTEND EXPIRING PROVISIONS OF LAW.

The General Assembly of North Carolina enacts:
FUNDS SHALL NOT REVERT

Section 1. Section 5 of S.L. 1997-256 reads as rewritten:

"Section 5. If the provisions of Senate Bill 352, 3rd edition, Senate Bill 352, 5th edition, or both, direct that funds shall not revert, the funds shall not revert on June 30, 1997. Unless these funds are encumbered on or before June 30, 1997, these funds shall not be expended after June 30, 1997, except as provided by a statute that becomes effective after June 30, 1997. If no such statute is enacted prior to August 1, 1997, August 15, 1997, these funds shall revert to the appropriate fund on that date."

VISITOR REGISTRATION SHEET

HOUSE PUBLIC UTILITIES COMMITTEE

March 19, 2003

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Sharon Lambert

Randolph EMC

Carla Bostick

Randolph EMC

STEVE Harris

Randolph EMC

VISITOR REGISTRATION SHEET

HOUSE PUBLIC UTILITIES COMMITTEE

March 19, 2003

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

| | |
|---------------|--------------------|
| Ron McIlhenny | JOEMC |
| Billy Crand | South River EMC |
| Becky Logan | Central Electives |
| Elaine Zeller | South River E.M.C. |
| Kathy McPhail | South River EMC |
| Ann Taw | South River EMC |
| Cathy O'Dell | South River EMC |
| Henry Hines | Randolph EMC |
| Bob Chiles | RANDOLPH EMC |
| Larry Batt | Randolph EMC |
| Paul Guinness | Randolph EMC |

AGENDA

HOUSE COMMITTEE ON PUBLIC UTILITIES

**April 9, 2003
Room 1228/1327 Legislative Building
10:00 a.m.**

OPENING REMARKS

Representative Drew Saunders, Chair

AGENDA ITEMS

SB 338 Remove Sunset/Municipal Electric Service

Senators Queen & Tillman

ADJOURNMENT

MINUTES

HOUSE COMMITTEE ON PUBLIC UTILITIES

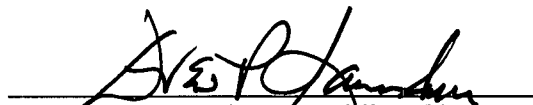
April 9, 2003

The House Committee on Public Utilities met at 10:00 a.m. on April 9, 2003, in Room 1228 of the Legislative Building. Members present were: Representatives G. Allen, Bordsen, Hill, Holliman, Howard, LaRoque, McComas, Sauls, Saunders, and K. Williams. Mr. Steve Rose, Committee Counselor, was also present. A Visitor Registration Sheet is attached and made a part of the minutes.

Representative Drew Saunders, Chair, called the meeting to order and recognized Pages: Margaret Armstrong from Nash County, sponsored by Representative Tolson, and Danielle Lucas from Cumberland County, sponsored by Representative Lucas. He also acknowledged Sergeant At Arms staff members, Matthew Myers and Jackson Stancil.

The only agenda item was **SB 338 REMOVE SUNSET/MUNICIPAL ELECTRIC SERVICE**; and Senator Queen, bill sponsor, was asked to explain the agenda item. Following the explanation, committee members were given a chance to ask questions. There were no questions, and Representative Holliman moved to give the bill a favorable report. A vote was taken, and the motion was approved.

There being no further business, the meeting was adjourned at 10:07 a.m.


Rep. Drew Saunders, Presiding Chair


Ruth Fish, Committee Assistant

Attachment

**2003 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representatives **BRUBAKER & SAUNDERS** (Chairs) for the Committee on **PUBLIC UTILITIES**.

☐ Committee Substitute for

S.B. 338 A BILL TO BE ENTITLED AN ACT TO REMOVE THE SUNSET ON THE LAW PROVIDING THAT CERTAIN SECONDARY SUPPLIERS OF ELECTRIC SERVICE MAY FURNISH SERVICE WITHIN THE CORPORATE LIMITS OF A CITY WITH WRITTEN CONSENT FROM THE CITY, ALLOWING THE MEMBERS OF AN ELECTRIC MEMBERSHIP CORPORATION TO VOTE BY PROXY ON DECISIONS TO ENCUMBER CORPORATE PROPERTY OR TO DISSOLVE THE CORPORATION, AND MAKING TECHNICAL CHANGES TO THE LAW REGARDING MUNICIPAL ELECTRIC SERVICE.

☒ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ .

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ .

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

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

03/19/03

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003**

S

1

SENATE BILL 338*

Short Title: Remove Sunset/Municipal Electric Service. (Public)

Sponsors: Senators Queen, Tillman; Albertson, Allran, Apodaca, Ballantine, Berger, Bingham, Blake, Brock, Carpenter, Clodfelter, Dorsett, Forrester, Foxx, Garrou, Garwood, Gulley, Hagan, Hargett, Hartsell, Holloman, Hoyle, Jenkins, Kinnaird, Lucas, Moore, Purcell, Rand, Reeves, Shaw, Shubert, Sloan, Smith, Stevens, Swindell, Thomas, Webster, and Weinstein.

Referred to: Commerce.

March 10, 2003

A BILL TO BE ENTITLED

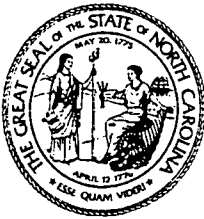
AN ACT TO REMOVE THE SUNSET ON THE LAW PROVIDING THAT CERTAIN SECONDARY SUPPLIERS OF ELECTRIC SERVICE MAY FURNISH SERVICE WITHIN THE CORPORATE LIMITS OF A CITY WITH WRITTEN CONSENT FROM THE CITY, ALLOWING THE MEMBERS OF AN ELECTRIC MEMBERSHIP CORPORATION TO VOTE BY PROXY ON DECISIONS TO ENCUMBER CORPORATE PROPERTY OR TO DISSOLVE THE CORPORATION, AND MAKING TECHNICAL CHANGES TO THE LAW REGARDING MUNICIPAL ELECTRIC SERVICE.

The General Assembly of North Carolina enacts:

SECTION 1. Section 6 of Chapter 346 of the 1997 Session Laws, as amended by S.L. 1999-111, reads as rewritten:

"Section 6. This act is effective when it becomes law and applies only to annexations or incorporations that occur on or after the effective date. ~~This act expires on December 31, 2003.~~"

SECTION 2. This act is effective when it becomes law.



SB 338: **Remove Sunset/Municipal Electric Service**

BILL ANALYSIS

Committee: House Public Utilities
Date: April 9, 2003
Version: 1

Introduced by: Sen. Queen
Summary by: Steven Rose
Committee Counsel

SUMMARY: *SB 338 permanently removes a sunset date of December 31, 2003 that applies to S.L. 1997-346, as amended by S.L. 1999-111. It is identical to HB 356. HB 356 received a favorable report from this committee, passed the House on March 25, 2003, and is presently in Senate Commerce.*

CURRENT LAW: The provisions contained in S.L. 1997-346 will expire on December 31, 2003. A copy of S.L. 1997-346 is attached.

BILL ANALYSIS: S.L. 1997-346 allows secondary suppliers of electricity (suppliers other than the city or the entity holding a franchise from the city) to supply electricity in newly annexed municipal territory with the agreement of the city. The act also made changes to Chapter 117 of the General Statutes, which applies to electric and telephone membership corporations. It allows voting by proxy where the issue involves sale or encumbrance of co-op property, or the dissolution of an electric cooperative. Prior to the passage of S.L. 1997-346, only votes cast in person could be counted.

BACKGROUND: S.L. 1997-346 originally was to sunset at sine die adjournment of the 1999 General Assembly. S.L. 1999-111 extended the expiration date to December 31, 2003. This bill makes the provisions permanent.

The act is effective when it becomes law.

S338-SMRL-003

Number of Members. The Village Council, which

uncil. The qualified voters he members of the Village

uncil Members. Members rms, except for the initial vo members of the Village wo members of the Village eafter, each member of the is.

of Office. The Mayor is rs of the entire Village of be elected in 1997 or 1998

Village officers shall be determined by the plurality

age of Forest Hills operates rt 3 of Article 7 of Chapter ll vote only in those cases

ouncil. Until members of rformance with the Village M: Hooper shall serve as Kolenbrander, James W. s interim members of the as if they had been duly

1997, the Jackson County election for the purpose of rcribed in Section 2.1 of the ion of whether or not such t Hills.

the ballot shall be:

rest Hills".

the votes are cast "For the s Charter becomes effective tions certifies the results of this act shall have no force

ove an incorporation of the e Council and Mayor shall

take place at an election held on a date set by the Jackson County Board of Elections, but no later than July 1, 1998. Initial terms shall expire at the time provided by general law as if the election had taken place at the general election on the Tuesday after the first Monday in November 1997.

Section 6. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 30th day of July, 1997.

Became law on the date it was ratified.

S.B. 848

CHAPTER 346

AN ACT TO PROVIDE THAT CERTAIN SECONDARY SUPPLIERS OF ELECTRIC SERVICE MAY FURNISH SERVICE WITHIN THE CORPORATE LIMITS OF A CITY WITH WRITTEN CONSENT FROM THE CITY, TO ALLOW THE BOARD OF AN ELECTRIC MEMBERSHIP CORPORATION TO VOTE BY PROXY ON DECISIONS TO ENCUMBER CORPORATE PROPERTY OR TO DISSOLVE THE CORPORATION, AND TO MAKE TECHNICAL CHANGES TO THE LAW REGARDING MUNICIPAL ELECTRIC SERVICE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-331 reads as rewritten:

"§ 160A-331. *Definitions.*

Unless the context otherwise requires, the following words and phrases shall have the meanings indicated when used in this Part:

(1) 'Assigned area' means any portion of an area annexed to or incorporated into a city which, on or before the effective date of annexation or incorporation, had been assigned by the North Carolina Utilities Commission to a specific electric supplier pursuant to G.S. 62-110.2.

(1a) 'Assigned supplier' means a person, firm, or corporation to which the North Carolina Utilities Commission had assigned a specific area for service as an electric supplier pursuant to G.S. 62-110.2, which area, in whole or in part, is subsequently annexed to or incorporated into a city.

(1) (1b) The 'determination date' is

- a. April 20, 1965, with respect to areas within the corporate limits of any city as of April 20, 1965;
- b. The effective date of annexation with respect to areas annexed to any city after April 20, 1965;
- c. The date a primary supplier comes into being with respect to any city first incorporated after April 20, 1965.

(2) 'Line' means any conductor located inside the city for distributing or transmitting electricity, other than

- a. For overhead construction, a conductor from the pole nearest the premises of a consumer to such premises, or a conductor from a line tap to such premises, and

- b. For underground construction, a conductor from the transformer (or the junction point, if there be one) nearest the premises of a consumer to such premises.
- (3) 'Premises' means the building, structure, or facility to which electricity is being or is to be furnished. Two or more buildings, structures, or facilities that are located on one tract or contiguous tracts of land and are used by one electric consumer for commercial, industrial, institutional, or governmental purposes, shall together constitute one 'premises,' except that any such building, structure, or facility shall not, together with any other building, structure, or facility, constitute one 'premises' if the electric service to it is separately metered and the charges for such service are calculated independently of charges for service to any other building, structure, or facility.
- (4) 'Primary supplier' means a city that owns and maintains its own electric system, or a person, firm, or corporation that furnishes electric service within a city pursuant to a franchise granted by, or contract with, a city, or that, having furnished service pursuant to a franchise or contract, is continuing to furnish service within a city after the expiration of the franchise or contract.
- (5) 'Secondary supplier' means a person, firm, or corporation that furnishes electricity at retail to one or more consumers other than itself within the limits of a city but is not a primary supplier. A primary supplier that furnishes electric service within a city pursuant to a franchise or contract that limits or restricts the classes of consumers or types of electric service permitted to such supplier shall, in and with respect to any area annexed by the city after April 20, 1965, be a primary supplier for such classes of consumers or types of service, and if it furnishes other electric service in the annexed area on the effective date of annexation, shall be a secondary supplier, in and with respect to such annexed area, for all other electric service. A primary supplier that continues to furnish electric service after the expiration of a franchise or contract that limited or restricted such primary supplier with respect to classes of consumers or types of electric service shall, in and with respect to any area annexed by the city after April 20, 1965, be a secondary supplier for all electric service if it is furnishing electric service in the annexed area on the effective date of annexation."

Section 2. G.S. 160A-332(a) reads as rewritten:

"(a) The suppliers of electric service inside the corporate limits of any city in which a secondary supplier was furnishing electric service on the determination date (as defined in G.S. 160A-331(1)) shall have rights and be subject to restrictions as follows:

- (1) The secondary supplier shall have the right to serve all premises being served by it, or to which any of its facilities are attached, on the determination date.

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or facility to which
two or more buildings,
the tract or contiguous
electric consumer for
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except that any such
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and the charges for
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and maintains its own
operation that furnishes
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continuing to furnish
of the franchise or

a, or corporation that
consumers other than
a primary supplier. A
service within a city
limits or restricts the
service permitted to such
area annexed by the city
for such classes of
furnishes other electric
service date of annexation,
with respect to such
service. A primary supplier
after the expiration of a
restricted such primary
classes or types of electric
service area annexed by the city
supplier for all electric
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shall have rights and be

right to serve all premises
whose facilities are attached.

- (2) The secondary supplier shall have the right, subject to subdivision (3) of this section, to serve all premises initially requiring electric service after the determination date which are located wholly within 300 feet of its lines and located wholly more than 300 feet from the lines of the primary supplier, as such suppliers' lines existed on the determination date.
- (3) Any premises initially requiring electric service after the determination date which are located wholly within 300 feet of a secondary supplier's lines and wholly within 300 feet of another secondary supplier's lines, but wholly more than 300 feet from the primary supplier's lines, as the lines of all suppliers existed on the determination date, may be served by the secondary supplier which the consumer chooses, and no other supplier shall thereafter furnish electric service to such premises, except with the written consent of the supplier then serving the premises.
- (4) A primary supplier shall not furnish electric service to any premises which a secondary supplier has the right to serve as set forth in subdivisions (1), (2), and (3) (3), and (6a) of this section, except with the written consent of the secondary supplier.
- (5) Any premises initially requiring electric service after the determination date which are located wholly or partially within 300 feet of the primary supplier's lines and are located wholly or partially within 300 feet of the secondary supplier's lines, as such suppliers' lines existed on the determination date, may be served by either the secondary supplier or the primary supplier, whichever the consumer chooses, and no other supplier shall thereafter furnish service to such premises, except with the written consent of the supplier then serving the premises.
- (6) Any premises initially requiring electric service after the determination date, which are located only partially within 300 feet of the secondary supplier's lines and are located wholly more than 300 feet from the primary supplier's lines, as such supplier's lines existed on the determination date, may be served either by the secondary supplier or the primary supplier, whichever the consumer chooses, and no other supplier shall thereafter furnish service to such premises, except with the written consent of the supplier then serving the premises.
- (6a) Notwithstanding any other provision of law, a secondary supplier, upon obtaining the prior written consent of the city, shall be the exclusive provider of electric service within (i) any assigned area for which that secondary supplier had been assigned supplier prior to the determination date; or (ii) any area previously unassigned by the North Carolina Utilities Commission pursuant to G.S. 62-110.2. However, any rights of other electric suppliers existing under G.S. 62-110.2 prior to the determination date to provide service shall continue to exist without impairment in the areas described in (i) and (ii) above.
- (7) Except as provided in subdivisions (1), (2), (3), (5), and (6) (6), and (6a) of this section, a secondary supplier shall not furnish

electric service within the corporate limits of any city unless it first obtains the written consent of the city and the primary supplier."

Section 3. G.S. 117-10.2 reads as rewritten:

"§ 117-10.2. *Restriction on municipal service.*

No Except as otherwise provided in this section, no electric membership corporation shall furnish electric service to, or within the limits of, any incorporated city or town, except pursuant to a franchise that may be granted under the provisions of G.S. 117-10.1, or as permitted under ~~G.S. 160-511, 160-512, and 160-513; provided, that an~~ G.S. 160A-331, 160A-332, and 160A-333. An electric membership corporation may furnish electric service to, or within the limits of, any incorporated city or town if the city or town and all electric suppliers, including public utilities, other electric membership corporations and other cities or towns, then furnishing electric service to or within such city or town consent thereto in writing."

Section 4. G.S. 117-20 reads as rewritten:

"§ 117-20. *Encumbrance, sale, etc., of property.*

No corporation may sell, mortgage, lease or otherwise encumber or dispose of any of its property (other than merchandise and property which lie within the limits of an incorporated city or town, or which shall represent not in excess of ten percent (10%) of the total value of the corporation's assets, or which in the judgment of the board are not necessary or useful in operating the corporation) unless

- (1) Authorized so to do by the votes cast in person or by proxy by at least two-thirds of its total membership, ~~without proxies, and~~
- (2) The consent of the holders of seventy-five per centum (75%) in amount of the bonds of such corporation then outstanding is obtained.

Notwithstanding the foregoing provisions of this section, the members of such a corporation may, by the affirmative majority of the votes cast in person or by proxy at any meeting of the members, delegate to the board of directors the power and authority (i) to borrow moneys from any source and in such amounts as the board may from time to time determine, (ii) to mortgage or otherwise pledge or encumber any or all of the corporation's property or assets as security therefor, and (iii) with respect to Electric Membership Corporations only, to sell and lease back any of the corporation's property or assets."

Section 5. G.S. 117-24 reads as rewritten:

"§ 117-24. *Dissolution.*

Any corporation created hereunder may be dissolved by filing, as hereinafter provided, a certificate which shall be entitled and endorsed 'Certificate of Dissolution of' (the blank space being filled in with the name of the corporation) and shall state:

- (1) Name of the corporation, and if such corporation is a corporation resulting from a consolidation as herein provided, the names of the original corporations.
- (2) The date of filing of the certificate of incorporation, and if such corporation is a corporation resulting from a consolidation as

herein provided, the dates on which the certificates of incorporation of the original corporations were filed.

(3) That the corporation elects to dissolve.

(4) The name and post-office address of each of its directors, and the name, title and post-office address of each of its officers.

Such certificate shall be subscribed and acknowledged in the same manner as an original certificate of incorporation by the president or a vice-president, and the secretary or an assistant secretary, who shall make and annex an affidavit, stating that they have been authorized to execute and file such certificate by the votes cast in person or by proxy by at least two-thirds of its total membership, without proxies, membership.

A certificate of dissolution and a certified copy or copies thereof shall be filed in the same place as an original certificate of incorporation and thereupon the corporation shall be deemed to be dissolved.

Such corporation shall continue for the purpose of paying, satisfying and discharging any existing liabilities or obligations and collecting or liquidating its assets, and doing all other acts required to adjust and wind up its business and affairs, and may sue and be sued in its corporate name. Any assets remaining after all liabilities or obligations of the corporation have been satisfied or discharged shall be distributed among the members in such manner as is provided for in the corporation's charter or bylaws, and the charter or bylaws may provide for distributions to persons who were members in one or more prior years."

Section 6. This act is effective when it becomes law and applies only to annexations or incorporations that occur on or after the effective date. This act expires on the date of the adjournment sine die of the 1999 General Assembly.

In the General Assembly read three times and ratified this the 29th day of July, 1997.

Became law upon approval of the Governor at 4:05 a.m. on the 31st day of July, 1997.

S.B. 463

CHAPTER 347

AN ACT TO AUTHORIZE THE DIRECTOR OF THE BUDGET TO CONTINUE EXPENDITURES FOR THE OPERATION OF GOVERNMENT AT THE LEVEL IN EFFECT ON JUNE 30, 1997, AND TO EXTEND EXPIRING PROVISIONS OF LAW.

The General Assembly of North Carolina enacts:
FUNDS SHALL NOT REVERT

Section 1. Section 5 of S.L. 1997-256 reads as rewritten:

"Section 5. If the provisions of Senate Bill 352, 3rd edition, Senate Bill 352, 5th edition, or both, direct that funds shall not revert, the funds shall not revert on June 30, 1997. Unless these funds are encumbered on or before June 30, 1997, these funds shall not be expended after June 30, 1997, except as provided by a statute that becomes effective after June 30, 1997. If no such statute is enacted prior to August 1, 1997, August 15, 1997, these funds shall revert to the appropriate fund on that date."

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON PUBLIC UTILITIES

April 9, 2003

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

| | |
|----------------|------------------------|
| Andrew Meehan | NC Assoc. Elec. Coops. |
| Ken M. Kithier | More + Van Allen |
| Julie Allen | NC Statewatch |
| Ken Mutton | Alley + Assoc. |
| Chris Nichols | Huntan + Williams |
| Ben | +CG |
| Ed Davis | EC |
| | |
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| | |
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| | |

AGENDA

HOUSE COMMITTEE ON PUBLIC UTILITIES

April 23, 2003

Room 1228/1327 Legislative Building

10:00 a.m.

OPENING REMARKS

Representative Harold J. Brubaker, Chair
Public Utilities Committee

AGENDA ITEMS

HB 257 UNAUTHORIZED USE OF CB EQUIPMENT
Representative Baker

HB 913 UNIVERSAL TELEPHONE SERVICE PROVIDER
Representative Brubaker and Saunders

**HB 1201 CONSECUTIVE WATER SYSTEMS/
MANUFACTURED HOMES**
Representative Allred

ADJOURNMENT

MINUTES

HOUSE COMMITTEE ON PUBLIC UTILITIES

April 23, 2003

The House Committee on Public Utilities met at 10:00 a.m. on April 23, 2003, in Room 1228 of the Legislative Building. Members present were: Representative Brubaker, Chair, and Representative Saunders, Chair, and Representative Allen, Bordsen, Coates, Gibson, Hill, Holliman, Linda Johnson, LaRoque, McComas, Miner, Sauls, Sherrill, Keith Williams and Thomas Wright. Committee Counsels, Kory Goldsmith and Steve Rose, were also present. Visitor Registration Sheets are attached and made a part of the Minutes. See Attachment #1.

Representative Brubaker, Chair, called the meeting to order. He recognized Pages Lindsey McEvoy of Cumberland County, sponsored by Representative Rick Glazier; Hope Pebble of Stokes County, sponsored by Representative Earline Parmon; and the Sergeant-At-Arms staff members Matthew Myers, Earl Tharrington and Dusty Rhodes. Rep. Saunders, Chair, then recognized his Legislative Intern, Kevin Tull of Alamance County, North Carolina.

A Proposed Committee Substitute for House Bill 257 was distributed to the members of the Committee. Representative Rex Baker, the Bill Sponsor, spoke in support of the Proposed Committee Substitute for House Bill 257 – “Unauthorized Use of CB Equipment”. Steve Rose, Committee Counsel, presented the Summary of the Proposed Committee Substitute for House Bill 257, which included the Current Law, Bill Analysis, and Background. See Attachment #2. A discussion followed by Representatives Sherrill, Holliman, LaRoque, Linda Johnson and Gibson.

Upon a motion by Representative Sherrill, the Proposed Committee Substitute for House Bill 257 was unanimously approved by the Committee with a Favorable Report.

Representative Saunders, Chair, explained House Bill 913 “Universal Telephone Service Provider” which was introduced by Representatives Brubaker and Saunders. Public Utilities Commissioner Kerr explained House Bill 913 and Steve Rose, Committee Counsel, presented the Summary of House Bill 913, which included the Current Law. See Attachment #3. A discussion followed by Representatives McComas, Gibson and Sherrill.


Upon a motion by Representative Sherrill, House Bill 913 was unanimously approved by the Committee with a Favorable Report.

Minutes
April 23, 2003
Page -2-

Representative Allred explained House Bill 1201 "Consecutive Water Systems/Manufactured Homes" which he had introduced. A discussion followed by Representatives Gibson and McComas.

Upon a motion by Representative Gibson, House Bill 1201 was unanimously approved by the Committee with a Favorable Report.

There being no further business, the meeting adjourned at 10:36 a.m.


Rep. Harold Brubaker, Presiding Chair


Cindy Coley, Committee Assistant

Attachments: #1
 #2
 #3

**2003 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representatives **BRUBAKER & SAUNDERS** (Chairs) for the Committee on **PUBLIC UTILITIES**.

☐ Committee Substitute for

H.B. 257 A BILL TO BE ENTITLED AN ACT TO PROHIBIT THE USE OF CB RADIO EQUIPMENT IN A MANNER NOT AUTHORIZED BY THE FEDERAL COMMUNICATIONS COMMISSION.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☒ With a favorable report as to the committee substitute bill (#257), ☒ which changes the title, unfavorable as to (the original bill) (~~Committee Substitute Bill #257~~), (and recommendation that the committee substitute bill #~~257~~) be re-referred to the Committee on ~~Public Utilities~~.)

☐ With a favorable report as to House committee substitute bill (#☐), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

03/19/03

**2003 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representatives **BRUBAKER & SAUNDERS** (Chairs) for the Committee on **PUBLIC UTILITIES**.

☐ Committee Substitute for

H.B. 913 A BILL TO BE ENTITLED AN ACT AUTHORIZING THE NORTH CAROLINA UTILITIES COMMISSION TO DETERMINE A TIME IN WHICH FINAL RULES CONCERNING THE DESIGNATION OF A UNIVERSAL SERVICE PROVIDER FOR TELEPHONE SERVICE SHALL BE ADOPTED.

☒ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐.

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

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

03/19/03

**2003 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representatives **BRUBAKER & SAUNDERS** (Chairs) for the Committee on **PUBLIC UTILITIES**.

☐ Committee Substitute for

H.B. 1201 A BILL TO BE ENTITLED AN ACT TO PROMOTE WATER
CONSERVATION BY EXPANDING THE DEFINITION OF CONTIGUOUS PREMISES
TO INCLUDE MANUFACTURED HOMES AND MANUFACTURED HOME PARKS.

- ☒ With a favorable report.
- ☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐.
- ☐ With a favorable report, as amended.
- ☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐.
- ☐ With a favorable report as to the committee substitute bill (#), ☐ which changes the title, unfavorable as to (the original bill) (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)
- ☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.
- ☐ With an unfavorable report.
- ☐ With recommendation that the House concur.
- ☐ With recommendation that the House do not concur.
- ☐ With recommendation that the House do not concur; request conferees.
- ☐ With recommendation that the House concur; committee believes bill to be material.
- ☐ With an unfavorable report, with a Minority Report attached.
- ☐ Without prejudice.
- ☐ With an indefinite postponement report.
- ☐ With an indefinite postponement report, with a Minority Report attached.
- ☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

03/19/03

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H

D

HOUSE BILL 257

PROPOSED COMMITTEE SUBSTITUTE H257-CSRL-21 [v.2]

4/22/2003 8:07:25 PM

Short Title: Unauthorized Use of CB Equipment.

(Public)

Sponsors:

Referred to:

March 6, 2003

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE USE OF CITIZENS BAND RADIO EQUIPMENT
NOT AUTHORIZED BY THE FEDERAL COMMUNICATIONS COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. Article 15 of Chapter 62 is amended by adding a new section
to read:

"§ 62-328. Unauthorized use of Citizens Band equipment.

(a) As used in this section, 'Citizens Band radio equipment' means Citizens Band
radio equipment authorized by the Federal Communications Commission.

(b) It shall be unlawful for any person to use Citizens Band radio equipment not
authorized by the Federal Communications Commission. Unauthorized Citizens Band
radio equipment includes the use of power amplifiers or equipment prohibited under 47
C.F.R. § 95.411 (October 1, 2002 Edition).

(c) This section does not apply to any licensee that is exempted under the
provisions of 47 U.S.C. § 302a (f)(2).

(d) Any person violating the provisions of this section shall be guilty of a Class 3
misdemeanor."

SECTION 2. This act becomes effective December 1, 2003, and applies to
offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

H

1

HOUSE BILL 257

Short Title: Unauthorized Use of CB Equipment.

(Public)

Sponsors: Representative Baker.

Referred to: Public Utilities.

March 6, 2003

1 A BILL TO BE ENTITLED
2 AN ACT TO PROHIBIT THE USE OF CB RADIO EQUIPMENT IN A MANNER
3 NOT AUTHORIZED BY THE FEDERAL COMMUNICATIONS COMMISSION.
4 The General Assembly of North Carolina enacts:

5 SECTION 1. Article 15 of Chapter 62 is amended by adding a new section
6 to read:

7 **"§ 62-322.1. Unauthorized use of CB equipment.**

8 (a) As used in this section, "Citizens Band ('CB') radio equipment" has the same
9 meaning as in 47 C.F.R. § 95.411.

10 (b) It shall be unlawful for any person to use CB radio equipment in a manner not
11 authorized by the Federal Communications Commission. Unauthorized CB radio
12 equipment shall include the use of power amplifiers or equipment that has not obtained
13 the appropriate Federal Communications Commission certification pursuant to Section
14 302 of the Communications Act of 1934.

15 (c) Any person violating the provisions of this section shall be guilty of a Class 3
16 misdemeanor."

17 SECTION 2. This act is effective when it becomes law, and applies to
18 offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

H

1

HOUSE BILL 913

Short Title: Universal Telephone Service Provider.

(Public)

Sponsors: Representatives Brubaker and Saunders (Primary Sponsors).

Referred to: Public Utilities.

April 8, 2003

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE NORTH CAROLINA UTILITIES COMMISSION TO
DETERMINE A TIME IN WHICH FINAL RULES CONCERNING THE
DESIGNATION OF A UNIVERSAL SERVICE PROVIDER FOR TELEPHONE
SERVICE SHALL BE ADOPTED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 62-110(f1) reads as rewritten:

"(f1) Except as provided in subsection (f2) of this section, the Commission is authorized, following notice and an opportunity for interested parties to be heard, to issue a certificate to any person applying to provide local exchange or exchange access services as a public utility as defined in G.S. 62-3(23)a.6., without regard to whether local telephone service is already being provided in the territory for which the certificate is sought, provided that the person seeking to provide the service makes a satisfactory showing to the Commission that (i) the person is fit, capable, and financially able to render such service; (ii) the service to be provided will reasonably meet the service standards that the Commission may adopt; (iii) the provision of the service will not adversely impact the availability of reasonably affordable local exchange service; (iv) the person, to the extent it may be required to do so by the Commission, will participate in the support of universally available telephone service at affordable rates; and (v) the provision of the service does not otherwise adversely impact the public interest. In its application for certification, the person seeking to provide the service shall set forth with particularity the proposed geographic territory to be served and the types of local exchange and exchange access services to be provided. Except as provided in G.S. 62-133.5(f), any person receiving a certificate under this section shall, until otherwise determined by the Commission, file and maintain with the Commission a complete list of the local exchange and exchange access services to be provided and the prices charged for those services, and shall be subject to such reporting requirements as the Commission may require.

1 Any certificate issued by the Commission pursuant to this subsection shall not
2 permit the provision of local exchange or exchange access service until July 1, 1996,
3 unless the Commission shall have approved a price regulation plan pursuant to G.S.
4 62-133.5(a) for a local exchange company with an effective date prior to July 1, 1996.
5 In the event a price regulation plan becomes effective prior to July 1, 1996, the
6 Commission is authorized to permit the provision of local exchange or exchange access
7 service by a competing local provider in the franchised area of such local exchange
8 company.

9 The Commission is authorized to adopt rules it finds necessary (i) to provide for the
10 reasonable interconnection of facilities between all providers of telecommunications
11 services; (ii) to determine when necessary the rates for such interconnection; (iii) to
12 provide for the reasonable unbundling of essential facilities where technically and
13 economically feasible; (iv) to provide for the transfer of telephone numbers between
14 providers in a manner that is technically and economically reasonable; (v) to provide for
15 the continued development and encouragement of universally available telephone
16 service at reasonably affordable rates; and (vi) to carry out the provisions of this
17 subsection in a manner consistent with the public interest, which will include a
18 consideration of whether and to what extent resale should be permitted. In adopting
19 rules to establish an appropriate definition of universal service, the Commission shall
20 consider evolving trends in telecommunications services and the need for consumers to
21 have access to high-speed communications networks, the Internet, and other services to
22 the extent that those services provide social benefits to the public at a reasonable cost.

23 Local exchange companies and competing local providers shall negotiate the rates
24 for local interconnection. In the event that the parties are unable to agree within 90 days
25 of a bona fide request for interconnection on appropriate rates for interconnection, either
26 party may petition the Commission for determination of the appropriate rates for
27 interconnection. The Commission shall determine the appropriate rates for
28 interconnection within 180 days from the filing of the petition.

29 Each local exchange company shall be the universal service provider in the area in
30 which it is certificated to operate on July 1, 1995, until otherwise determined by the
31 Commission. In continuing this State's commitment to universal service, the
32 Commission shall, by December 31, 1996, adopt interim rules that designate the person
33 that should be the universal service provider and to determine whether universal service
34 should be funded through interconnection rates or through some other funding
35 mechanism. By July 1, 2003, At a time determined by the Commission to be in the
36 public interest, the Commission shall complete conduct an investigation and adopt for
37 the purpose of adopting final rules concerning the provision of universal services, the
38 person that should be the universal service provider, and whether universal service
39 should be funded through interconnection rates or through some other funding
40 mechanism.

41 The Commission shall make the determination required pursuant to this subsection
42 in a manner that furthers this State's policy favoring universally available telephone
43 service at reasonable rates."

44 **SECTION 2.** This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H

1

HOUSE BILL 1201

Short Title: Consecutive Water Systems/Manufactured Homes.

(Public)

Sponsors: Representative Allred.

Referred to: Public Utilities.

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO PROMOTE WATER CONSERVATION BY EXPANDING THE
DEFINITION OF CONTIGUOUS PREMISES TO INCLUDE MANUFACTURED
HOMES AND MANUFACTURED HOME PARKS.

The General Assembly of North Carolina enacts:

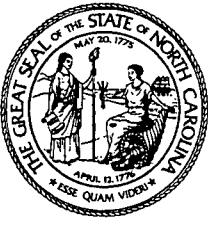
SECTION 1. G.S. 62-110(g) reads as rewritten:

"(g) For the purpose of encouraging water conservation, the Commission may, consistent with the public interest, adopt procedures that allow a lessor, pursuant to a written rental agreement, to allocate the costs for providing water and sewer service on a metered use basis to persons who occupy the same contiguous premises. A written rental agreement shall specify a monthly rent that shall be the sum of the base rent plus additional rent at a rate that does not exceed the actual purchase price of the water and sewer service to the provider plus a reasonable administrative fee. The Commission shall issue rules to define contiguous premises and to implement this subsection. In issuing the rule to define contiguous premises, the Commission shall consider contiguous premises where manufactured homes, as defined in G.S. 143-145(7), or spaces for manufactured homes are rented. Notwithstanding any other provision of this Chapter, the Commission shall determine the extent to which the services shall be regulated and, to the extent necessary to protect the public interest, regulate the terms, conditions, and rates that may be allocated for the services. Nothing in this subsection shall be construed to alter the rights, obligations, or remedies of persons providing water and sewer services and their customers under any other provision of law."

SECTION 2. In enacting Section 1 of this act, it is the intent of the General Assembly to promote water conservation while protecting public health, safety, welfare, and the environment and avoiding unduly burdensome requirements on consecutive water systems. Section 1 of this act shall not be construed to impose any requirement on a supplying water system other than the requirements that apply to the water system on the date this act becomes effective and that would apply to the supplying water system if a consecutive water system had not been authorized.

1

SECTION 3. This act is effective when it becomes law.



HB 257: Unauthorized Use of CB Equipment

BILL ANALYSIS

Committee: House Public Utilities

Date: April 23, 2003

Version: PCS H257-CSRL-21 [v.2]

Introduced by: Rep. Baker

Summary by: Steven Rose

Committee Counsel

SUMMARY: *HB 257 makes it unlawful to use power amplifiers on Citizens Band radios.*

CURRENT LAW: Federal law prohibits the use of equipment on Citizens Band radios to amplify the transmission signal beyond what is authorized. The prohibition is enforced by the FCC, but states and local governments are also authorized to enforce the prohibition.

BILL ANALYSIS: HB 257 makes it a Class 3 misdemeanor to operate a Citizens Band radio using a transmission signal amplifier. A Class 3 misdemeanor is punishable by a maximum fine of \$200. If there are no prior convictions, the person may also be sentenced to 1-10 days of community punishment. Prior convictions increase the punishment.

The act is effective December 1, 2004, and applies to acts committed on or after that date

BACKGROUND: Amplified CB transmission signals can cause interference with TV and radio reception.



HOUSE BILL 913: Universal Telephone Service Provider

BILL ANALYSIS

Committee: House Public Utilities
Date: April 22, 2003
Version: 1st Edition

Introduced by: Reps. Brubaker and Saunders
Summary by: Kory J. Goldsmith
Committee Counsel

SUMMARY: *HB 913 would allow the Utilities Commission to determine when it will adopt final rules concerning the provision of universal services, the person that should be the universal service provider, and whether universal service should be funded through interconnection rates or through some other funding mechanism.*

CURRENT LAW: G.S. 62-110(f1) requires the Commission adopt the above referenced rules by July 1, 2003.

The act is effective when it becomes law.

H913-SMRC-001

April 10, 2003

H 1201. CONSECUTIVE WATER SYSTEMS/MANUFACTURED HOMES. *TO PROMOTE WATER CONSERVATION BY EXPANDING THE DEFINITION OF CONTIGUOUS PREMISES TO INCLUDE MANUFACTURED HOMES AND MANUFACTURED HOME PARKS.* Currently, GS 62-110(g) authorizes the Utilities Comm'n to adopt procedures that allow a lessor to allocate the costs of providing water and sewer service on a metered use basis to persons who occupy the same contiguous premises. This bill directs the Comm'n, in making rules to define "contiguous premises," to consider contiguous premises where manufactured homes or spaces for manufactured homes are rented.

Intro. by Allred.

| | |
|--------------------------|-------|
| Ref. to Public Utilities | GS 62 |
|--------------------------|-------|

VISITOR REGISTRATION SHEET

HOUSE PUBLIC UTILITIES COMMITTEE

April 23, 2003

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

| NAME | FIRM OR AGENCY AND ADDRESS |
|---------------|----------------------------|
| Bob Gillum | Public Staff - NCUC |
| Bob Bennink | NCUC staff |
| Daniel Long | " |
| Jim KERR | NCUC |
| Chris Nichols | Hunter + Williams |
| David Ferrell | Vanderwater Black |
| Mary Beason | Capitol Group |
| Roger Bow | Born & Asser - |
| Bill Scobbin | KCH |
| Sam Bewley | LBT |
| | |

AGENDA

HOUSE COMMITTEE ON PUBLIC UTILITIES

**April 30, 2003
10:00 a.m.**

OPENING REMARKS

Representative Drew Saunders, Chair

BILLS TO BE DISCUSSED

HB 256 Herbicide Application By Public Utility

Bill Sponsor, Representative Rex Baker

ADJOURNMENT

MINUTES

HOUSE COMMITTEE ON PUBLIC UTILITIES

April 30, 2003

The House Committee on Public Utilities met at 10:00 a.m. on April 30, 2003, in Room 1228/1327 of the Legislative Building. Members in attendance were: Representatives G. Allen, Bordsen, Gibson, Hill, Holliman, LaRoque, McComas, Saunders, Sauls, and K. Williams. Mr. Steve Rose, Committee Counselor, was also in attendance. A Visitor Registration Sheet is attached and made a part of the minutes. (See Attachment #1.)

Representative Drew Saunders, Chair, called the meeting to order and introduced Pages: Sade Gilbert from Wake County, sponsored by Representative Ellis, and Precious Clements from Wake County, sponsored by Representative B. Allen. Sergeant At Arms Staff members: Earl Tharrington, Matthew Myers, and Jackson Stancil were recognized.

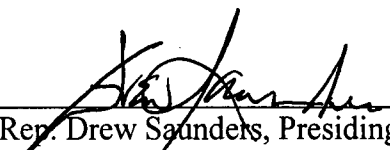
The only bill on the agenda was **HB 256 HERBICIDE APPLICATION BY PUBLIC UTILITY**. A Proposed Committee Substitute bill was offered, and Rep. G. Allen moved to consider it. Representative Rex Baker, Bill Sponsor, was asked to explain the bill. Following the explanation, Representative K. Williams offered to amend the bill on Page 1, Line 10 by deleting "500" and substituting "250" and on Page 1, Lines 17-18 by deleting "ten thousand dollars (\$10,000)" and substituting "five thousand dollars (\$5,000)." A vote was taken, and the amendment was adopted. (See Attachment #2.) A question and answer period followed.

Mr. Gene Upchurch with Progress Energy spoke in opposition to the bill. He stated that Progress Energy has had few complaints about herbicide, and there is an effective system in place for owners to notify Progress Energy regarding the spraying of herbicides.

Mr. John McAllister with Duke Energy also spoke in opposition to the bill. He agreed with Mr. Upchurch's statement that owners have the option to not spray herbicides and to place signs on the property to not spray.

Representative Saunders called for further action on the bill, and none was offered.

The meeting was adjourned at 10:25 a.m.


Rep. Drew Saunders, Presiding Chair


Ruth Fish, Committee Assistant

Attachments

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

H

D

HOUSE BILL 256
PROPOSED COMMITTEE SUBSTITUTE H256-CSRL-17 [v.2]

4/22/2003 8:08:30 AM

Short Title: Herbicide Application by Public Utility.

(Public)

Sponsors:

Referred to:

March 6, 2003

1 A BILL TO BE ENTITLED
2 AN ACT PROHIBITING PUBLIC UTILITIES FROM APPLYING HERBICIDES
3 WITHIN FIVE HUNDRED FEET OF CERTAIN PLACES AFTER RECEIVING
4 NOTIFICATION NOT TO APPLY HERBICIDES.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. Article 15 of Chapter 62 of the General Statutes is amended by
7 adding a new section to read:

8 **"§ 62-323.1. Herbicide application by public utility.**

9 (a) As used in this section, 'herbicide' has the same meaning as in G.S. 143-460.

10 (b) It shall be unlawful for a public utility to apply herbicide within 500 feet of a
11 residence, a well supplying water to a public water system, as defined in G.S. 130A-
12 313, or a well that supplies water for human consumption if the person responsible for
13 any of those premises notifies the public utility in writing, sent by registered or certified
14 mail with return receipt requested, that the public utility may not apply herbicide at
15 those premises.

16 (c) Any public utility that violates the provisions of this section shall be subject to
17 the provisions of G.S. 62-310, except the penalty shall be in the amount of ten thousand
18 dollars (\$10,000) for each violation. In addition to the penalty, the Commission is
19 authorized to require the public utility to restore the premises to which herbicide was
20 applied in violation of the provisions of subsection (b) of this section to its condition
21 prior to the application of the herbicide."

22 SECTION 2. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H

1

HOUSE BILL 256

Short Title: Herbicide Application by Public Utility.

(Public)

Sponsors: Representative Baker.

Referred to: Public Utilities.

March 6, 2003

A BILL TO BE ENTITLED
AN ACT PROHIBITING PUBLIC UTILITIES FROM APPLYING HERBICIDES
WITHIN FIVE HUNDRED FEET OF CERTAIN PLACES WITHOUT
PERMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. Article 15 of Chapter 62 of the General Statutes is amended by
adding a new section to read:

"§ 62-323.1. Herbicide application by public utility.

(a) As used in this section, "herbicide" has the same meaning as in G.S. 143-460.

(b) It shall be unlawful for a public utility to apply herbicide within 500 feet of
any of the following locations before obtaining written permission from the person
responsible for the premises.

(1) Child care center, as defined in G.S. 110-86, that is licensed under
Article 7 of Chapter 110 of the General Statutes.

(2) Church.

(3) Historic property acquired by the State pursuant to G.S. 121-9 or listed
in the North Carolina Register of Historic Places pursuant to G.S.
121-4.1.

(4) Hospital.

(5) National park.

(6) Outdoor recreational facility.

(7) Property boundary.

(8) Residence.

(9) School.

(10) State park, as defined in G.S. 113-44.9.

(11) Well supplying water to a public water system, as defined in G.S.
130A-313.

(12) Well that supplies water for human consumption.

1 (c) Any public utility that violates the provisions of this section shall be subject
2 to the penalties under G.S. 62-310."

3 **SECTION 2.** This act is effective when it becomes law, and applies to
4 offenses committed on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

Attachment #2

Apr. 30, 2003

EDITION No. PES-17 [v.2]

H. B. No. 256

DATE _____

S. B. No. _____

Amendment No. _____

COMMITTEE SUBSTITUTE ☒

(to be filled in by
Principal Clerk)

Rep. Williams
Sen.)

1 moves to amend the bill on page 1, line 10

2 () WHICH CHANGES THE TITLE

3 by deleting "500" and substituting
4 "257";

5
6 and on page 1, line 17-18

7 by deleting "Ten thousand dollars

8 (\$10,000)" and substituting

9
10 "five thousand dollars (\$5,000)."

11

12

13

14

15

16

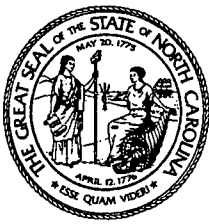
17

18

19

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____



HB 256: Herbicide Application By Public Utility

BILL ANALYSIS

Committee: House Public Utilities
Date: April 30, 2003
Version: PCS H256-CSRL-17 [v.2]

Introduced by: Rep. Baker
Summary by: Steven Rose
Committee Counsel

SUMMARY: *HB 256 adds a new section to Chapter 62 of the General Statutes providing that public utilities may not apply herbicide within 500 feet of a residence, public water system well, or any other well supplying water for human consumption, if the person responsible for the premises notifies the public utility by registered or certified mail, return receipt requested, that herbicide is not to be applied.*

The public utility is subject to a \$10,000 civil penalty for each violation. The Utilities Commission is given authority to order the utility to restore the sprayed premises to the condition it was in prior to the herbicide application.

The act is effective when it becomes law.

H256-SMRL-001

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON PUBLIC UTILITIES

April 30, 2003

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Jeff Fitzgerald

Pepsi, Roxboro, NC

Michelle Eury

Bewley and ASSOC.

Candy McKee

NC Consumer Watch.

Steve Hall

Conservation Council

Jeff VAN DYKE

BST

Bruce Coburn

KCLIA

Stan Pace

Verizon

David McLeod

NCDA + CS

Steve Woodson

NC Farm Bureau

Michael Thompson

Dominion NC Power

Mark Benson

Capital Energy

John Matlock

Duke Energy

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON PUBLIC UTILITIES

April 30, 2003

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Benjamin

agricultural Alliance of N. C.
Crop Protection Institute of N. C.

Bill McAulay

PSNC Energy

12u/lyhr

Kaylan Law Firm

Loahey

Duke Energy

PSP

OK FB

Julie R. Allen

NC Statewatch

AGENDA

HOUSE COMMITTEE ON PUBLIC UTILITIES

May 7, 2003

Room 1228/1327 Legislative Building

10:00 a.m.

OPENING REMARKS

Representative Harold J. Brubaker, Chair
Public Utilities Committee

AGENDA ITEMS

SB 814 CLARIFY COMPET. TELECOMMUNICATIONS
STATUTES
Senator Rand

Comments by Industry:

Wanda Montano, US LEC, Charlotte, N. C.
Don Ballard, Access Communications, Atlanta, Ga.

ADJOURNMENT

MINUTES

HOUSE COMMITTEE ON PUBLIC UTILITIES

May 7, 2003

The House Committee on Public Utilities met at 10:00 a.m. on May 7, 2003, in Room 1228 of the Legislative Building. Members present were: Representative Brubaker, Chair, Representative Saunders, Chair, and Representatives, Bordsen, Coates, Gibson, Hill, Holliman, Howard, Linda Johnson, LaRoque, McComas, Miner, Sauls, Sherrill, Keith Williams and Thomas Wright. Committee Counsels, Kory Goldsmith and Steve Rose, were also present. Visitor Registration Sheets are attached and made a part of the Minutes. See Attachment #1.

Representative Brubaker, Chair, called the meeting to order. He recognized Pages Scott Lassiter of Wake County, sponsored by Representative Bill Culpepper; Jeremy Williams of New Hanover County, sponsored by Representative Thomas Wright; Lionel Groves of Wake County, sponsored by Representative Sam Ellis; Kellan Rives of Davidson County, sponsored by Representative Hugh Holliman; and the Sergeant-At-Arms staff members Matthew Myers and Earl Tharrington.

Chairman Brubaker opened the discussion on the Committee Substitute for Senate Bill 814. Senator Tony Rand and Senator David Hoyle, the Bill Sponsors, spoke in support of the Committee Substitute for Senate Bill 814 – “Clarify Competitive Telecommunications Statutes”. Steve Rose, Committee Counsel, presented the Summary of the Proposed Committee Substitute for Senate Bill 814. See Attachment #2.

Chairman Saunders distributed an Amendment to the Committee Substitute for Senate Bill 814 to the members of the Committee. It is attached and made a part of these Minutes as Attachment #3. Senator Hoyle explained the Amendment and spoke in support of its adoption by the Committee. Upon a motion by Chairman Saunders, the Committee unanimously approved the Amendment to the Committee Substitute for Senate Bill 814

Chairman Brubaker recognized the following speakers for comments on the Committee Substitute for Senate Bill 814 and its Amendment:

1. Robert Schofield, Attorney and Public Interest Advocate, with the N. C. Justice and Community Development Center spoke against the Committee Substitute for Senate Bill 814 and the Amendment.
2. Mary Odom with the N. C. Advocacy Council of AARP North Carolina spoke against the Committee Substitute for Senate Bill 815 and the Amendment stating that it needed

further study. She submitted "AARP's Statement" which is attached and made a part of these Minutes as Attachment #4.

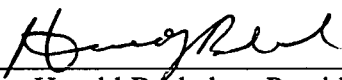
3. Wanda Montana with U. S. Lec of Charlotte, North Carolina spoke against the Committee Substitute for Senate Bill 814 and the Amendment.
4. Don Ballard with Access Communications of Atlanta, Georgia spoke against the Committee Substitute for Senate Bill 814 and the Amendment.
5. Robert Kaylor representing the industry explained to the Committee that the Utilities Commission would still regulate the pricing of utilities. The pricing, however, would not be based on the profit earnings of said utility.

Senators Rand and Hoyle stated that the rate of return should not be regulated and pointed out that U. S. Lec and Access Communications are not regulated based on their profit earnings.

Committee Members Wright, Holliman, McComas, Bordsen, and Gibson asked questions of Jo Anne Sanford, Utilities Commission Chairman, and the Sponsors of the legislation.

Upon a motion by Representative Stephen LaRoque for a Favorable Report, as Amended, the Committee unanimously approved the Committee Substitute for SB 814, as Amended.

There being no further business, the meeting adjourned at 10:50 a.m.


Rep. Harold Brubaker, Presiding Chair


Cindy Coley, Committee Assistant

Attachments: #1
#2
#3
#4

VISITOR REGISTRATION SHEETPublic Utilities

Name of Committee

5/7/03

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE ASSISTANT

| <u>NAME</u> | <u>FIRM OR AGENCY</u> |
|-------------------|-----------------------------------|
| John P. ... | AT&T |
| Bill Scarborough | KCH |
| Tom Morrison | State |
| Bob Wells | N.C. Tele. Alliance |
| Mike ... | N.C. State AFL-CIO |
| Doris Weaver | Communications Workers of America |
| Debra Derr | BellSouth |
| Estherine Davis | Electric Cities |
| Lorinzo L. Poyner | N.C. Utilities Commission |
| Camille Stoll | KCH |
| Rob Schofield | N.C. Justice Center |
| Sand ... | WFSR |
| Don ... | AIU |
| Wanda Montano | USLEC Corp. |
| Tony Wilke | Public Staff - NCUC |
| Bob Gilliam | Public Staff - NCUC |
| Daniel Long | NCUC |
| Mark ... | Capital Group |
| Sam J. Ervin | NCUC |
| Jack ... | Parsons P&E |
| Jonathan ... | N&O |
| Lynn ... | Moore & Van Allen |
| Stan Pace | Verizon |
| Don ... | BellSouth |
| Mark ... | Payson & Grunell |
| Kim ... | WFSR |
| Bob ... | AT&T |
| John M. Killian | Moore & Van Allen |

**2003 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representatives **BRUBAKER AND SAUNDERS** (Chairs) for the Committee on
PUBLIC UTILITIES.

- ☒ Committee Substitute for
S.B. 814 A BILL TO BE ENTITLED AN ACT TO CLARIFY THE LAW REGARDING
COMPETITIVE AND DEREGULATED OFFERINGS OF TELECOMMUNICATIONS
SERVICES.
- ☐ With a favorable report.
- ☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
Appropriations ☐ Finance ☐ ☐.
- ☐ With a favorable report, as amended.
- ☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the
Committee on Appropriations ☐ Finance ☐ ☐.
- ☐ With a favorable report as to the committee substitute bill (#), ☐ which changes the
title, unfavorable as to (the original bill) (Committee Substitute Bill #), (and
recommendation that the committee substitute bill #) be re-referred to the Committee
on .)
- ☒ With a favorable report as to House committee substitute bill (#), ☐ which changes
~~the title~~, unfavorable as to Senate committee substitute bill.
- ☐ With an unfavorable report.
- ☐ With recommendation that the House concur.
- ☐ With recommendation that the House do not concur.
- ☐ With recommendation that the House do not concur; request conferees.
- ☐ With recommendation that the House concur; committee believes bill to be material.
- ☐ With an unfavorable report, with a Minority Report attached.
- ☐ Without prejudice.
- ☐ With an indefinite postponement report.
- ☐ With an indefinite postponement report, with a Minority Report attached.
- ☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

03/19/03

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

S

2

SENATE BILL 814
Commerce Committee Substitute Adopted 4/29/03

Short Title: Clarify Compet. Telecommunications Statutes.

(Public)

Sponsors:

Referred to:

April 3, 2003

1 A BILL TO BE ENTITLED
2 AN ACT TO CLARIFY THE LAW REGARDING COMPETITIVE AND
3 DEREGULATED OFFERINGS OF TELECOMMUNICATIONS SERVICES.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 62-2 reads as rewritten:

6 "§ 62-2. Declaration of Policy.

7 (a) Upon investigation, it has been determined that the rates, services and
8 operations of public utilities as defined herein, are affected with the public interest and
9 that the availability of an adequate and reliable supply of electric power and natural gas
10 to the people, economy and government of North Carolina is a matter of public policy.
11 It is hereby declared to be the policy of the State of North Carolina:

12 (1) To provide fair regulation of public utilities in the interest of the
13 public;

14 (2) To promote the inherent advantage of regulated public utilities;

15 (3) To promote adequate, reliable and economical utility service to all of
16 the citizens and residents of the State;

17 (3a) To assure that resources necessary to meet future growth through the
18 provision of adequate, reliable utility service include use of the entire
19 spectrum of demand-side options, including but not limited to
20 conservation, load management and efficiency programs, as additional
21 sources of energy supply and/or energy demand reductions. To that
22 end, to require energy planning and fixing of rates in a manner to
23 result in the least cost mix of generation and demand-reduction
24 measures which is achievable, including consideration of appropriate
25 rewards to utilities for efficiency and conservation which decrease
26 utility bills;

27 (4) To provide just and reasonable rates and charges for public utility
28 services without unjust discrimination, undue preferences or
29 advantages, or unfair or destructive competitive practices and

consistent with long-term management and conservation of energy resources by avoiding wasteful, uneconomic and inefficient uses of energy;

(4a) To assure that facilities necessary to meet future growth can be financed by the utilities operating in this State on terms which are reasonable and fair to both the customers and existing investors of such utilities; and to that end to authorize fixing of rates in such a manner as to result in lower costs of new facilities and lower rates over the operating lives of such new facilities by making provisions in the rate-making process for the investment of public utilities in plants under construction;

(5) To encourage and promote harmony between public utilities, their users and the environment;

(6) To foster the continued service of public utilities on a well-planned and coordinated basis that is consistent with the level of energy needed for the protection of public health and safety and for the promotion of the general welfare as expressed in the State energy policy;

(7) To seek to adjust the rate of growth of regulated energy supply facilities serving the State to the policy requirements of statewide development;

(8) To cooperate with other states and with the federal government in promoting and coordinating interstate and intrastate public utility service and reliability of public utility energy supply; and

(9) To facilitate the construction of facilities in and the extension of natural gas service to unserved areas in order to promote the public welfare throughout the State and to that end to authorize the creation of expansion funds for natural gas local distribution companies or gas districts to be administered under the supervision of the North Carolina Utilities Commission.

(b) To these ends, therefore, authority shall be vested in the North Carolina Utilities Commission to regulate public utilities generally, their rates, services and operations, and their expansion in relation to long-term energy conservation and management policies and statewide development requirements, and in the manner and in accordance with the policies set forth in this Chapter. Nothing in this Chapter shall be construed to imply any extension of Utilities Commission regulatory jurisdiction over any industry or enterprise that is not subject to the regulatory jurisdiction of said Commission.

Because of technological changes in the equipment and facilities now available and needed to provide telephone and telecommunications services, changes in regulatory policies by the federal government, and changes resulting from the court-ordered divestiture of the American Telephone and Telegraph Company, competitive offerings of certain types of telephone and telecommunications services may be in the public interest. Consequently, authority shall be vested in the North Carolina Utilities Commission to allow competitive offerings of local exchange, exchange access, and

1 long distance services by public utilities defined in G.S. 62-3(23)a.6. and certified in
2 accordance with the provisions of G.S. 62-110, and the Commission is further
3 authorized after notice to affected parties and hearing to deregulate or to exempt from
4 regulation under any or all provisions of this Chapter: (i) a service provided by any
5 public utility as defined in G.S. 62-3(23)a.6. upon a finding that such service is
6 competitive and that such deregulation or exemption from regulation is in the public
7 interest; or (ii) a public utility as defined in G.S. 62-3(23)a.6., or a portion of the
8 business of such public utility, upon a finding that the service or business of such public
9 utility is competitive and that such deregulation or exemption from regulation is in the
10 public interest.

11 ~~The policy and authority stated in this section shall be applicable to common carriers~~
12 ~~of passengers by motor vehicle and their regulation by the North Carolina Utilities~~
13 ~~Commission only to the extent that they are consistent with the provisions of the Bus~~
14 ~~Regulatory Reform Act of 1985. Notwithstanding the provisions of G.S. 62-110(b) and~~
15 ~~G.S. 62-134(h), the following services provided by public utilities defined in G.S.~~
16 ~~62-3(23)a.6. are sufficiently competitive and shall no longer be regulated by the~~
17 ~~Commission: (i) intraLATA long distance service; (ii) interLATA long distance service;~~
18 ~~and (iii) long distance operator services. Nothing in this subsection shall limit the~~
19 ~~Commission's authority regarding certification of providers of such services or its~~
20 ~~authority to hear and resolve complaints against providers of such services alleged to~~
21 ~~have made changes to the services of customers or imposed charges without appropriate~~
22 ~~authorization.~~

23 The North Carolina Utilities Commission may develop regulatory policies to govern
24 the provision of telecommunications services to the public which promote efficiency,
25 technological innovation, economic growth, and permit telecommunications utilities a
26 reasonable opportunity to compete in an emerging competitive environment, giving due
27 regard to consumers, stockholders, and maintenance of reasonably affordable local
28 exchange service and long distance service.

29 (c) The policy and authority stated in this section shall be applicable to common
30 carriers of passengers by motor vehicle and their regulation by the North Carolina
31 Utilities Commission only to the extent that they are consistent with the provisions of
32 the Bus Regulatory Reform Act of 1985."

33 **SECTION 2. G.S. 62-133.5 reads as rewritten:**

34 **"§ 62-133.5. Alternative regulation, tariffing, and deregulation of**
35 **telecommunications utilities.**

36 (a) Any local exchange company, subject to the provisions of G.S. 62-110(f1),
37 that is subject to rate of return regulation pursuant to G.S. 62-133 or a form of
38 alternative regulation authorized by subsection (b) of this section may elect to have the
39 rates, terms, and conditions of its services determined pursuant to a form of price
40 regulation, rather than rate of return or other form of earnings regulation. Under this
41 form of price regulation, the Commission shall, among other things, permit the local
42 exchange company to determine and set its own depreciation rates, to rebalance its
43 rates, and to adjust its prices in the aggregate, or to adjust its prices for various
44 aggregated categories of services, based upon changes in generally accepted indices of

1 prices. Upon application, the Commission shall, after notice and an opportunity for
2 interested parties to be heard, approve such price regulation, which may differ between
3 local exchange companies, upon finding that the plan as proposed (i) protects the
4 affordability of basic local exchange service, as such service is defined by the
5 Commission; (ii) reasonably assures the continuation of basic local exchange service
6 that meets reasonable service standards that the Commission may adopt; (iii) will not
7 unreasonably prejudice any class of telephone customers, including telecommunications
8 companies; and (iv) is otherwise consistent with the public interest. Upon approval, and
9 except as provided in subsection (c) of this section, price regulation shall thereafter be
10 the sole form of regulation imposed upon the electing local exchange company, and the
11 Commission shall thenceforth regulate the electing local exchange company's prices,
12 rather than its earnings. The Commission shall issue an order denying or approving the
13 proposed plan for price regulation, with or without modification, not more than 90 days
14 from the filing of the application. However, the Commission may extend the time
15 period for an additional 90 days at the discretion of the Commission. If the Commission
16 approves the application with modifications, the local exchange company subject to
17 such approval may accept the modifications and implement the proposed plan as
18 modified, or may, at its option, (i) withdraw its application and continue to be regulated
19 under the form of regulation that existed immediately prior to the filing of the
20 application; (ii) file another proposed plan for price regulation; or (iii) file an
21 application for a form of alternative regulation under subsection (b) of this section. If
22 the initial price regulation plan is approved with modifications and the local exchange
23 company files another plan pursuant to part (ii) of the previous sentence, the
24 Commission shall issue an order denying or approving the proposed plan for price
25 regulation, with or without modifications, not more than 90 days from that filing by the
26 local exchange company.

27 (b) Any local exchange company that is subject to rate of return regulation
28 pursuant to G.S. 62-133 and which elects not to file for price regulation under the
29 provisions of subsection (a) above may file an application with the Commission for
30 forms of alternative regulation, which may differ between companies and may include,
31 but are not limited to, ranges of authorized returns, categories of services, and price
32 indexing. Upon application, the Commission shall approve such alternative regulatory
33 plan upon finding that the plan as proposed (i) protects the affordability of basic local
34 exchange service, as such service is defined by the Commission; (ii) reasonably assures
35 the continuation of basic local exchange service that meets reasonable service standards
36 established by the Commission; (iii) will not unreasonably prejudice any class of
37 telephone customers, including telecommunications companies; and (iv) is otherwise
38 consistent with the public interest. The Commission shall issue an order denying or
39 approving the proposed plan with or without modification, not more than 90 days from
40 the filing of the application. However, the Commission may extend the time period for
41 an additional 90 days at the discretion of the Commission. If the Commission approves
42 the application with modifications, the local exchange company subject to such
43 approval may, at its option, accept the modifications and implement the proposed plan
44 as modified or may, at its option, (i) withdraw its application and continue to be

1 regulated under the form of regulation that existed at the time of filing the application;
2 or (ii) file an application for another form of alternative regulation. If the initial plan is
3 approved with modifications and the local exchange company files another plan
4 pursuant to part (ii) of the previous sentence, the Commission shall issue an order
5 denying or approving the proposed plan, with or without modifications, not more than
6 90 days from that filing by the local exchange company.

7 (c) Any local exchange company subject to price regulation under the provisions
8 of subsection (a) of this section may file an application with the Commission to modify
9 such form of price regulation or for other forms of regulation. Any local exchange
10 company subject to a form of alternative regulation under subsection (b) of this section
11 may file an application with the Commission to modify such form of alternative
12 regulation. Upon application, the Commission shall approve such other form of
13 regulation upon finding that the plan as proposed (i) protects the affordability of basic
14 local exchange service, as such service is defined by the Commission; (ii) reasonably
15 assures the continuation of basic local exchange service that meets reasonable service
16 standards established by the Commission; ~~(iii) will not unreasonably prejudice any class~~
17 ~~of telephone customers, including telecommunications companies; and (iv) is otherwise~~
18 ~~consistent with the public interest. If the Commission disapproves, in whole or in part, a~~
19 ~~local exchange company's application to modify its existing form of price regulation,~~
20 ~~the company may elect to continue to operate under its then existing plan previously~~
21 ~~approved under this subsection or subsection (a) of this section.~~

22 (d) In determining whether a price regulation plan is otherwise consistent with
23 the public interest, the Commission shall not consider the local exchange company's
24 past or present earnings or rates of return.

25 ~~(d1)(d)~~ Any local exchange company subject to price regulation under the
26 provisions of subsection (a) of this section, or other alternative regulation under
27 subsection (b) of this section, or other form of regulation under subsection (c) of this
28 section shall file tariffs for basic local exchange service and toll switched access
29 services stating the terms and conditions of the services and the applicable rates.
30 However, fees charged by such local exchange companies applicable to charges for
31 returned checks shall not be tariffed or otherwise regulated by the Commission. The
32 filing of any tariff changing the terms and conditions of such services or increasing the
33 rates for such services shall be presumed valid and shall become effective, unless
34 otherwise suspended by the Commission for a term not to exceed 45 days, 14 days after
35 filing. Any tariff reducing rates for basic local exchange service or toll switched access
36 service shall be presumed valid and shall become effective, unless otherwise suspended
37 by the Commission for a term not to exceed 45 days, seven days after filing. Any local
38 exchange company subject to price regulation under the provisions of subsection (a) of
39 this section, or other alternative regulation under subsection (b) of this section, or other
40 form of regulation under subsection (c) of this section may file tariffs for services other
41 than basic local exchange services and toll switched access services. Any tariff
42 changing the terms and conditions of such services or increasing the rates for an existing
43 service or establishing the terms, conditions, or rates for a new service shall be
44 presumed valid and shall become effective, unless otherwise suspended by the

1 Commission for a term not to exceed 45 days, 14 days after filing. Any tariff reducing
2 the rates for such services shall be presumed valid and shall become effective, unless
3 otherwise suspended by the Commission for a term not to exceed 45 days, seven days
4 after filing. In the event of a complaint with regard to a tariff filing under this
5 subsection, the Commission may take such steps as it deems appropriate to assure that
6 such tariff filing is consistent with the plan previously adopted pursuant to subsection
7 (a) of this section, subsection (b) of this section, or subsection (c) of this section.

8 (e) Any allegation of anticompetitive activity by a competing local provider or a
9 local exchange company shall be raised in a complaint proceeding pursuant to G.S.
10 62-73.

11 (f) Notwithstanding the provisions of G.S. 62-140, or any Commission rule or
12 regulation, the Commission shall permit a local exchange company or a competing local
13 provider to offer competitive services with flexible pricing arrangements to business
14 customers pursuant to contract and shall permit other flexible pricing options. Local
15 exchange companies and competing local providers shall be required to give the
16 Commission one business day's notice but need not seek Commission approval for any
17 promotion or bundled service offering for residence or business customers involving
18 both regulated and nonregulated services that feature price discounts that apply
19 exclusively to services not regulated by the Commission. Furthermore, local exchange
20 companies and competing local providers may offer special promotions and bundles of
21 new or existing service or products without the obligation to identify or convert existing
22 customers who subscribe to the same or similar services or products.

23 (g) The following sections of Chapter 62 of the General Statutes shall not apply
24 to local exchange companies subject to price regulation under the terms of subsection
25 (a) of this section: G.S. 62-35(c), 62-45, 62-51, 62-81, 62-111, 62-130, 62-131, 62-132,
26 62-133, 62-134, 62-135, 62-136, 62-137, 62-139, 62-142, and 62-153."

27 **SECTION 3.** This act is effective when it becomes law.



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 814

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

S814-ARL-10 [v.1]

Page 1 of 1

Date _____, 2003

Comm. Sub. [NO]
Amends Title [NO]
Second Edition

Representative _____

- 1 moves to amend the bill on page 3, line 22, by rewriting that line to read:
2 "authorization. For purposes of this subsection, and notwithstanding G.S. 62-110(b),
3 'long distance services' shall not include existing or future extended area service, local
4 measured service, or other local calling arrangements, and any future extended area
5 service shall be implemented consistent with Commission rules existing as of May 1,
6 2003.";
7 and on page 6, line 22, by rewriting that line to read:
8 "customers who subscribe to the same or similar services or products. The
9 Commission's complaint authority under G.S. 62-73 and subsection (e) of this section is
10 applicable to any promotion or bundled service offering filed or offered under this
11 subsection.".
12
- ↑ governing extended area service*

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____



SB 814: Clarify Competitive Telecommunications Services

BILL ANALYSIS

Committee: House Public Utilities
Date: May 7, 2003
Version: 2

Introduced by: Sen. Rand
Summary by: Steven Rose
Committee Counsel

SUMMARY: *SB 814 provides for deregulation of intrastate long distance services and makes changes to statutes governing certain local telecommunications services.*

BILL ANALYSIS: The following changes to Chapter 62 of the General Statutes are found in SB 814:

Section 1. Amends G.S. 62-2 by making a finding that interLATA and intraLATA long distance services, and long distance operator services, are sufficiently competitive so as to no longer require regulation by the Utilities Commission. This would apply to all in-state long distance service. LATA means Local Access and Transport Area, a term designating the service territory of a local telephone company as determined under the judicial proceedings that led to the break-up of the AT&T/Bell System monopoly in 1983.

The Commission retains jurisdiction over complaints dealing with unauthorized changes of long distance services or unauthorized charges in connection with such services.

Section 2. Amends G.S. 62-133.5, a section of the statutes enacted in 1995 to help promote competition in the provision of local telephone service. This statute allows the Commission to approve pricing plans that are not based on a regulated recovery of costs and a regulated rate of return.

The amendment to G.S. 62-133.5(c) provides that when a company has already shifted from rate of return regulation to price regulation, as provided in subsection (a) of this statute, and then seeks a modification of that plan under subsection (c), if the Commission disapproves any part of the modification request, the company has the option of remaining under its previously approved price plan.

G.S. 62-133.5 is further amended by adding a provision, that will now be designated as subsection (d), prohibiting the Commission from using a company's earnings or rate of return to determine if a proposed price regulation plan is in the public interest. A plan not in the public interest would not be approved under the existing provisions of this statute.

G.S. 62-133.5 is also amended by redesignating subsection (d) as (d1) and adding a provision that returned check charges will no longer be regulated by the Commission. They would then be controlled by G.S. 25-3-506, which provides for a \$25.00 fee.

G.S. 62-133.5(f) is amended to allow local telephone providers and competing local providers to offer

SB 814

Page 2

certain services on one business day's notice to the Commission, and without Commission approval. These are promotional or bundled service offerings that combine regulated and non-regulated services featuring discounts applicable to nonregulated services. The companies are not obligated to convert existing customers who subscribe to the same or similar services.

Section 3. Provides that the act is effective when it becomes law.

SB814-SMRL-002



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 814

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

S814-ARL-10 [v.1]

Page 1 of 1

Date _____, 2003

Comm. Sub. [NO]
Amends Title [NO]
Second Edition

Representative _____

- 1 moves to amend the bill on page 3, line 22, by rewriting that line to read:
- 2 "authorization. For purposes of this subsection, and notwithstanding G.S. 62-110(b),
- 3 'long distance services' shall not include existing or future extended area service, local
- 4 measured service, or other local calling arrangements, and any future extended area
- 5 service shall be implemented consistent with Commission rules existing as of May 1,
- 6 2003.";
- 7 and on page 6, line 22, by rewriting that line to read:
- 8 "customers who subscribe to the same or similar services or products. The
- 9 Commission's complaint authority under G.S. 62-73 and subsection (e) of this section is
- 10 applicable to any promotion or bundled service offering filed or offered under this
- 11 subsection.".
- 12

↑ governing extended area service

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S

D

SENATE BILL 814

Commerce Committee Substitute Adopted 4/29/03

PROPOSED HOUSE COMMITTEE SUBSTITUTE S814-PCS35275-RL-32

Short Title: Clarify Compet. Telecommunications Statutes.

(Public)

Sponsors:

Referred to:

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE LAW REGARDING COMPETITIVE AND
DEREGULATED OFFERINGS OF TELECOMMUNICATIONS SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 62-2 reads as rewritten:

"§ 62-2. Declaration of Policy.

(a) Upon investigation, it has been determined that the rates, services and operations of public utilities as defined herein, are affected with the public interest and that the availability of an adequate and reliable supply of electric power and natural gas to the people, economy and government of North Carolina is a matter of public policy. It is hereby declared to be the policy of the State of North Carolina:

- (1) To provide fair regulation of public utilities in the interest of the public;
- (2) To promote the inherent advantage of regulated public utilities;
- (3) To promote adequate, reliable and economical utility service to all of the citizens and residents of the State;
- (3a) To assure that resources necessary to meet future growth through the provision of adequate, reliable utility service include use of the entire spectrum of demand-side options, including but not limited to conservation, load management and efficiency programs, as additional sources of energy supply and/or energy demand reductions. To that end, to require energy planning and fixing of rates in a manner to result in the least cost mix of generation and demand-reduction measures which is achievable, including consideration of appropriate rewards to utilities for efficiency and conservation which decrease utility bills;

- 1 (4) To provide just and reasonable rates and charges for public utility
2 services without unjust discrimination, undue preferences or
3 advantages, or unfair or destructive competitive practices and
4 consistent with long-term management and conservation of energy
5 resources by avoiding wasteful, uneconomic and inefficient uses of
6 energy;
- 7 (4a) To assure that facilities necessary to meet future growth can be
8 financed by the utilities operating in this State on terms which are
9 reasonable and fair to both the customers and existing investors of
10 such utilities; and to that end to authorize fixing of rates in such a
11 manner as to result in lower costs of new facilities and lower rates over
12 the operating lives of such new facilities by making provisions in the
13 rate-making process for the investment of public utilities in plants
14 under construction;
- 15 (5) To encourage and promote harmony between public utilities, their
16 users and the environment;
- 17 (6) To foster the continued service of public utilities on a well-planned
18 and coordinated basis that is consistent with the level of energy needed
19 for the protection of public health and safety and for the promotion of
20 the general welfare as expressed in the State energy policy;
- 21 (7) To seek to adjust the rate of growth of regulated energy supply
22 facilities serving the State to the policy requirements of statewide
23 development;
- 24 (8) To cooperate with other states and with the federal government in
25 promoting and coordinating interstate and intrastate public utility
26 service and reliability of public utility energy supply; and
- 27 (9) To facilitate the construction of facilities in and the extension of
28 natural gas service to unserved areas in order to promote the public
29 welfare throughout the State and to that end to authorize the creation
30 of expansion funds for natural gas local distribution companies or gas
31 districts to be administered under the supervision of the North Carolina
32 Utilities Commission.

33 (b) To these ends, therefore, authority shall be vested in the North Carolina
34 Utilities Commission to regulate public utilities generally, their rates, services and
35 operations, and their expansion in relation to long-term energy conservation and
36 management policies and statewide development requirements, and in the manner and
37 in accordance with the policies set forth in this Chapter. Nothing in this Chapter shall be
38 construed to imply any extension of Utilities Commission regulatory jurisdiction over
39 any industry or enterprise that is not subject to the regulatory jurisdiction of said
40 Commission.

41 Because of technological changes in the equipment and facilities now available and
42 needed to provide telephone and telecommunications services, changes in regulatory
43 policies by the federal government, and changes resulting from the court-ordered
44 divestiture of the American Telephone and Telegraph Company, competitive offerings

1 of certain types of telephone and telecommunications services may be in the public
2 interest. Consequently, authority shall be vested in the North Carolina Utilities
3 Commission to allow competitive offerings of local exchange, exchange access, and
4 long distance services by public utilities defined in G.S. 62-3(23)a.6. and certified in
5 accordance with the provisions of G.S. 62-110, and the Commission is further
6 authorized after notice to affected parties and hearing to deregulate or to exempt from
7 regulation under any or all provisions of this Chapter: (i) a service provided by any
8 public utility as defined in G.S. 62-3(23)a.6. upon a finding that such service is
9 competitive and that such deregulation or exemption from regulation is in the public
10 interest; or (ii) a public utility as defined in G.S. 62-3(23)a.6., or a portion of the
11 business of such public utility, upon a finding that the service or business of such public
12 utility is competitive and that such deregulation or exemption from regulation is in the
13 public interest.

14 ~~The policy and authority stated in this section shall be applicable to common carriers~~
15 ~~of passengers by motor vehicle and their regulation by the North Carolina Utilities~~
16 ~~Commission only to the extent that they are consistent with the provisions of the Bus~~
17 ~~Regulatory Reform Act of 1985. Notwithstanding the provisions of G.S. 62-110(b) and~~
18 ~~G.S. 62-134(h), the following services provided by public utilities defined in G.S.~~
19 ~~62-3(23)a.6. are sufficiently competitive and shall no longer be regulated by the~~
20 ~~Commission: (i) intraLATA long distance service; (ii) interLATA long distance service;~~
21 ~~and (iii) long distance operator services. Nothing in this subsection shall limit the~~
22 ~~Commission's authority regarding certification of providers of such services or its~~
23 ~~authority to hear and resolve complaints against providers of such services alleged to~~
24 ~~have made changes to the services of customers or imposed charges without appropriate~~
25 ~~authorization. For purposes of this subsection, and notwithstanding G.S. 62-110(b),~~
26 ~~"long distance services" shall not include existing or future extended area service, local~~
27 ~~measured service, or other local calling arrangements, and any future extended area~~
28 ~~service shall be implemented consistent with Commission rules governing extended~~
29 ~~area service existing as of May 1, 2003.~~

30 The North Carolina Utilities Commission may develop regulatory policies to govern
31 the provision of telecommunications services to the public which promote efficiency,
32 technological innovation, economic growth, and permit telecommunications utilities a
33 reasonable opportunity to compete in an emerging competitive environment, giving due
34 regard to consumers, stockholders, and maintenance of reasonably affordable local
35 exchange service and long distance service.

36 (c) The policy and authority stated in this section shall be applicable to common
37 carriers of passengers by motor vehicle and their regulation by the North Carolina
38 Utilities Commission only to the extent that they are consistent with the provisions of
39 the Bus Regulatory Reform Act of 1985."

40 **SECTION 2.** G.S. 62-133.5 reads as rewritten:

41 **"§ 62-133.5. Alternative regulation, tariffing, and deregulation of**
42 **telecommunications utilities.**

43 (a) Any local exchange company, subject to the provisions of G.S. 62-110(f1),
44 that is subject to rate of return regulation pursuant to G.S. 62-133 or a form of

1 alternative regulation authorized by subsection (b) of this section may elect to have the
2 rates, terms, and conditions of its services determined pursuant to a form of price
3 regulation, rather than rate of return or other form of earnings regulation. Under this
4 form of price regulation, the Commission shall, among other things, permit the local
5 exchange company to determine and set its own depreciation rates, to rebalance its
6 rates, and to adjust its prices in the aggregate, or to adjust its prices for various
7 aggregated categories of services, based upon changes in generally accepted indices of
8 prices. Upon application, the Commission shall, after notice and an opportunity for
9 interested parties to be heard, approve such price regulation, which may differ between
10 local exchange companies, upon finding that the plan as proposed (i) protects the
11 affordability of basic local exchange service, as such service is defined by the
12 Commission; (ii) reasonably assures the continuation of basic local exchange service
13 that meets reasonable service standards that the Commission may adopt; (iii) will not
14 unreasonably prejudice any class of telephone customers, including telecommunications
15 companies; and (iv) is otherwise consistent with the public interest. Upon approval, and
16 except as provided in subsection (c) of this section, price regulation shall thereafter be
17 the sole form of regulation imposed upon the electing local exchange company, and the
18 Commission shall thenceforth regulate the electing local exchange company's prices,
19 rather than its earnings. The Commission shall issue an order denying or approving the
20 proposed plan for price regulation, with or without modification, not more than 90 days
21 from the filing of the application. However, the Commission may extend the time
22 period for an additional 90 days at the discretion of the Commission. If the Commission
23 approves the application with modifications, the local exchange company subject to
24 such approval may accept the modifications and implement the proposed plan as
25 modified, or may, at its option, (i) withdraw its application and continue to be regulated
26 under the form of regulation that existed immediately prior to the filing of the
27 application; (ii) file another proposed plan for price regulation; or (iii) file an
28 application for a form of alternative regulation under subsection (b) of this section. If
29 the initial price regulation plan is approved with modifications and the local exchange
30 company files another plan pursuant to part (ii) of the previous sentence, the
31 Commission shall issue an order denying or approving the proposed plan for price
32 regulation, with or without modifications, not more than 90 days from that filing by the
33 local exchange company.

34 (b) Any local exchange company that is subject to rate of return regulation
35 pursuant to G.S. 62-133 and which elects not to file for price regulation under the
36 provisions of subsection (a) above may file an application with the Commission for
37 forms of alternative regulation, which may differ between companies and may include,
38 but are not limited to, ranges of authorized returns, categories of services, and price
39 indexing. Upon application, the Commission shall approve such alternative regulatory
40 plan upon finding that the plan as proposed (i) protects the affordability of basic local
41 exchange service, as such service is defined by the Commission; (ii) reasonably assures
42 the continuation of basic local exchange service that meets reasonable service standards
43 established by the Commission; (iii) will not unreasonably prejudice any class of
44 telephone customers, including telecommunications companies; and (iv) is otherwise

1 consistent with the public interest. The Commission shall issue an order denying or
2 approving the proposed plan with or without modification, not more than 90 days from
3 the filing of the application. However, the Commission may extend the time period for
4 an additional 90 days at the discretion of the Commission. If the Commission approves
5 the application with modifications, the local exchange company subject to such
6 approval may, at its option, accept the modifications and implement the proposed plan
7 as modified or may, at its option, (i) withdraw its application and continue to be
8 regulated under the form of regulation that existed at the time of filing the application;
9 or (ii) file an application for another form of alternative regulation. If the initial plan is
10 approved with modifications and the local exchange company files another plan
11 pursuant to part (ii) of the previous sentence, the Commission shall issue an order
12 denying or approving the proposed plan, with or without modifications, not more than
13 90 days from that filing by the local exchange company.

14 (c) Any local exchange company subject to price regulation under the provisions
15 of subsection (a) of this section may file an application with the Commission to modify
16 such form of price regulation or for other forms of regulation. Any local exchange
17 company subject to a form of alternative regulation under subsection (b) of this section
18 may file an application with the Commission to modify such form of alternative
19 regulation. Upon application, the Commission shall approve such other form of
20 regulation upon finding that the plan as proposed (i) protects the affordability of basic
21 local exchange service, as such service is defined by the Commission; (ii) reasonably
22 assures the continuation of basic local exchange service that meets reasonable service
23 standards established by the Commission; (iii) will not unreasonably prejudice any class
24 of telephone customers, including telecommunications companies; and (iv) is otherwise
25 consistent with the public interest. If the Commission disapproves, in whole or in part, a
26 local exchange company's application to modify its existing form of price regulation,
27 the company may elect to continue to operate under its then existing plan previously
28 approved under this subsection or subsection (a) of this section.

29 (d) In determining whether a price regulation plan is otherwise consistent with
30 the public interest, the Commission shall not consider the local exchange company's
31 past or present earnings or rates of return.

32 (d1)(d) Any local exchange company subject to price regulation under the
33 provisions of subsection (a) of this section, or other alternative regulation under
34 subsection (b) of this section, or other form of regulation under subsection (c) of this
35 section shall file tariffs for basic local exchange service and toll switched access
36 services stating the terms and conditions of the services and the applicable rates.
37 However, fees charged by such local exchange companies applicable to charges for
38 returned checks shall not be tariffed or otherwise regulated by the Commission. The
39 filing of any tariff changing the terms and conditions of such services or increasing the
40 rates for such services shall be presumed valid and shall become effective, unless
41 otherwise suspended by the Commission for a term not to exceed 45 days, 14 days after
42 filing. Any tariff reducing rates for basic local exchange service or toll switched access
43 service shall be presumed valid and shall become effective, unless otherwise suspended
44 by the Commission for a term not to exceed 45 days, seven days after filing. Any local

1 exchange company subject to price regulation under the provisions of subsection (a) of
2 this section, or other alternative regulation under subsection (b) of this section, or other
3 form of regulation under subsection (c) of this section may file tariffs for services other
4 than basic local exchange services and toll switched access services. Any tariff
5 changing the terms and conditions of such services or increasing the rates for an existing
6 service or establishing the terms, conditions, or rates for a new service shall be
7 presumed valid and shall become effective, unless otherwise suspended by the
8 Commission for a term not to exceed 45 days, 14 days after filing. Any tariff reducing
9 the rates for such services shall be presumed valid and shall become effective, unless
10 otherwise suspended by the Commission for a term not to exceed 45 days, seven days
11 after filing. In the event of a complaint with regard to a tariff filing under this
12 subsection, the Commission may take such steps as it deems appropriate to assure that
13 such tariff filing is consistent with the plan previously adopted pursuant to subsection
14 (a) of this section, subsection (b) of this section, or subsection (c) of this section.

15 (e) Any allegation of anticompetitive activity by a competing local provider or a
16 local exchange company shall be raised in a complaint proceeding pursuant to G.S.
17 62-73.

18 (f) Notwithstanding the provisions of G.S. 62-140, or any Commission rule or
19 regulation, the Commission shall permit a local exchange company or a competing local
20 provider to offer competitive services with flexible pricing arrangements to business
21 customers pursuant to contract and shall permit other flexible pricing options. Local
22 exchange companies and competing local providers shall be required to give the
23 Commission one business day's notice but need not seek Commission approval for any
24 promotion or bundled service offering for residence or business customers involving
25 both regulated and nonregulated services that feature price discounts that apply
26 exclusively to services not regulated by the Commission. Furthermore, local exchange
27 companies and competing local providers may offer special promotions and bundles of
28 new or existing service or products without the obligation to identify or convert existing
29 customers who subscribe to the same or similar services or products. The Commission's
30 complaint authority under G.S. 62-73 and subsection (e) of this section is applicable to
31 any promotion or bundled service offering filed or offered under this subsection.

32 (g) The following sections of Chapter 62 of the General Statutes shall not apply
33 to local exchange companies subject to price regulation under the terms of subsection
34 (a) of this section: G.S. 62-35(c), 62-45, 62-51, 62-81, 62-111, 62-130, 62-131, 62-132,
35 62-133, 62-134, 62-135, 62-136, 62-137, 62-139, 62-142, and 62-153."

36 **SECTION 3.** This act is effective when it becomes law.



ATTACHMENT 4

Statement of AARP on
Senate Bill 814
(Clarify Competitive Telecommunications Statutes)
May 7, 2003
House Public Utilities Committee

AARP is concerned about Senate Bill 814 in terms of its content as well as the lack of public input to the bill when it was considered by the Senate. We urge you to request more study of this issue rather than race to pass this bill in the 2003 legislative session.

AARP is concerned that the large local telephone companies are seeking deregulation through the legislature rather than through the Utilities Commission. The Utilities Commission has the expertise to determine whether or not true competition exists, and we recommend that this agency be permitted to perform its job. The NC Utilities Commission already has the authority to make many of the changes being sought if and when they are proven to be warranted.

We feel this move is premature. While we acknowledge that true and effective competition promises to benefit residential ratepayers in the form of lower prices and better-quality service, eliminating regulation and oversight of local-exchange companies before effective market competition exists will harm consumers.

Stakeholders have not had adequate time to study the impact of this bill on residential telephone rates and services. The bill raced through the Senate, being voted out of Committee before the bill was even in print. This important issue needs more thoughtful analysis than has been provided thus far.

We sincerely hope you will ensure that true competition for local residential telephone service exists before voting to supplant the expertise and mission of the Utilities Commission.

Thank you for considering AARP's views on this issue.

Attachment #1

AGENDA

HOUSE COMMITTEE ON PUBLIC UTILITIES

**May 21, 2003
10:00 a.m.**

OPENING REMARKS

Representative Drew Saunders, Chair

BILL TO BE DISCUSSED

HJR 1272 Confirming Jo Anne Sanford/Utilities Commission

Comments: Representative Joe Hackney

Representative Arlie Culp

ADJOURNMENT

MINUTES

HOUSE COMMITTEE ON PUBLIC UTILITIES

May 21, 2003

The House Committee on Public Utilities met at 10:00 a.m. on May 21, 2003, in Room 1228/1327 of the Legislative Building. Members present were: Representatives Brubaker, Coates, Gibson, Hill, Howard, LaRoque, McComas, Saunders, and Sherrill. Mr. Steve Rose and Ms. Kory Goldsmith, Committee Counsel members were also in attendance. A Visitor Registration Sheet is attached and made a part of the minutes.

Representative Drew Saunders, Chair, called the meeting to order and recognized Pages: Christine Pate from Wayne County, sponsored by Representative Pate, and Rafael Penn from Mecklenburg County, sponsored by Representative Alexander. He also acknowledged Sergeant At Arms staff members: Charlie Grady, Earl Tharrington, and Matthew Myers.

The only legislation to be considered at the meeting was **HJR 1272 A JOINT RESOLUTION PROVIDING FOR THE CONFIRMATION OF THE REAPPOINTMENT OF JO ANNE SANFORD TO THE NORTH CAROLINA UTILITIES COMMISSION**. Chairman Saunders stated that Ms. Sanford has been appointed by the Governor to fill the vacancy on the Public Utilities Commission created by the expiration of her current term as of June 30, 2003.

Representative Saunders first called upon Mr. Franklin Freeman, Senior Assistant for Governmental Affairs in the Governor's Legislative Office, to present Ms. Sanford as the Governor's nominee for Chair of the Public Utilities Commission. Mr. Freeman has worked with Ms. Sanford for eight years, and he asked for confirmation for her appointment as Chair of the Commission.

The second speaker recognized to speak on behalf of Ms. Sanford was Representative Arlie Culp. He stressed her leadership qualities and mentioned that Ms. Sanford won the Distinguished Woman for North Carolina award in 1999.

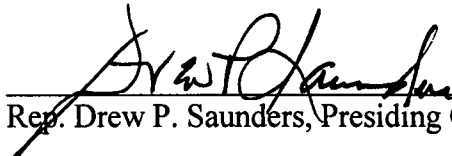
Representative Joe Hackney was the third speaker asked to address the Committee regarding Ms. Sanford's appointment. He spoke of the work experience of Ms. Sanford as a law clerk in his law office in Chapel Hill and her career in Government Law in the Attorney General's office. He endorsed the confirmation of Ms. Sanford as Chair of the Public Utilities Commission.

Representative Saunders announced Public Utilities Commissioners Richard Conder, Michael Wilkins, and Lorinzo Joyner as special guests. All three of them stated support for Ms. Sanford.

Representative Saunders then asked Ms. Sanford to speak to the Committee. She discussed her 28 years of work experience in the Attorney General's Office and with the Public Utilities Commission.

Representative Brubaker moved to give HJR 1272 a favorable report. The motion was approved by vote.

The meeting was adjourned at 10:23 a.m.


Rep. Drew P. Saunders, Presiding Chair


Ruth Fish, Committee Assistant

Attachment

**2003 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representatives **BRUBAKER & SAUNDERS** (Chairs) for the Committee on **PUBLIC UTILITIES**.

☐ Committee Substitute for

H.J.R. 1272 A HOUSE RESOLUTION PROVIDING FOR THE CONFIRMATION OF
THE REAPPOINTMENT OF JO ANNE SANFORD TO THE NORTH CAROLINA
UTILITIES COMMISSION.

- ☒ With a favorable report.
- ☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
Appropriations ☐ Finance ☐ .
- ☐ With a favorable report, as amended.
- ☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the
Committee on Appropriations ☐ Finance ☐ .
- ☐ With a favorable report as to the committee substitute bill (#), ☐ which changes the
title, unfavorable as to (the original bill) (Committee Substitute Bill #), (and
recommendation that the committee substitute bill #) be re-referred to the Committee
on .)
- ☐ With a favorable report as to House committee substitute bill (#), ☐ which changes
the title, unfavorable as to Senate committee substitute bill.
- ☐ With an unfavorable report.
- ☐ With recommendation that the House concur.
- ☐ With recommendation that the House do not concur.
- ☐ With recommendation that the House do not concur; request conferees.
- ☐ With recommendation that the House concur; committee believes bill to be material.
- ☐ With an unfavorable report, with a Minority Report attached.
- ☐ Without prejudice.
- ☐ With an indefinite postponement report.
- ☐ With an indefinite postponement report, with a Minority Report attached.
- ☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

03/19/03

FOR JOURNAL USE ONLY

- ____ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of _____.
- ____ The (committee substitute) bill/resolution (, as amended,) is (ordered engrossed and) re-referred to the Committee on _____.
- ____ The bill/resolution is re-referred to the Committee on _____.
- ____ On motion of Rep. _____, (the Chair,) the (committee substitute) bill/resolution is (ordered engrossed and) re-referred to the Committee on _____.
- ____ Pursuant to Rule 36(b), the (House)committee substitute bill (No. _____)/resolution is placed on the Calendar of _____. (The original bill) (House Committee Substitute Bill No. _____)/resolution is placed on the Unfavorable Calendar.
- ____ On motion of Rep. _____, (the rules are suspended) (Rule _____ is suspended) and the bill/resolution is placed on today's calendar. (for immediate consideration.)
- ____ On motion of Rep. _____, Committee Amendment No.(s) _____ is/are adopted (by EV _____).
- ____ On motion of Rep. _____, Committee Amendment No.(s) _____ is/are adopted (by EV _____).
- ____ Rep. _____ offers Amendment No. _____ which (is adopted.) (fails of adoption.) (by EV _____.) () This amendment changes the title.
- ____ The bill/resolution (, as amended,) passes its second reading (by following vote, _____ RC) (, by EV _____,) and (remains on the Calendar,) (and there being no objection is read a third time).
- ____ The bill/resolution (, as amended,) passes its third reading (by the following vote, _____ RC) (, by EV _____,) and is ordered _____ sent to the Senate.
____ without engrossment. _____ by Special message.
____ sent to the Senate for concurrence in _____ the House amendment (s).
____ the House committee substitute bill.
____ enrolled.
- ____ On motion of Rep. _____, the House concurs in the (material) Senate _____ (by the following vote, _____ RC) (, by EV _____,) and the bill is ordered enrolled.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

H

1

HOUSE JOINT RESOLUTION 1272

Sponsors: Representatives Brubaker, Saunders (Primary Sponsors); and Hackney.

Referred to: Public Utilities.

May 13, 2003

1 A JOINT RESOLUTION PROVIDING FOR THE CONFIRMATION OF THE
2 REAPPOINTMENT OF JO ANNE SANFORD TO THE NORTH CAROLINA
3 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

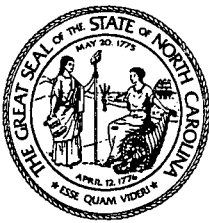
7 Whereas, a vacancy will occur on the North Carolina Utilities Commission on
8 June 30, 2003, by expiration of term; and

9 Whereas, the Governor has submitted to the presiding officers of the House
10 of Representatives and the Senate the name of his appointee, Jo Anne Sanford, to serve
11 a term on the North Carolina Utilities Commission, which will begin July 1, 2003, and
12 expire June 30, 2011; Now, therefore,

13 Be it resolved by the House of Representatives, the Senate concurring:

14 **SECTION 1.** The appointment of Jo Anne Sanford to the North Carolina
15 Utilities Commission for a term to begin July 1, 2003, and expire June 30, 2011, is
16 confirmed.

17 **SECTION 2.** This resolution is effective upon ratification.



BILL ANALYSIS

HOUSE JOINT RESOLUTION 1272: Confirmation of Appointment of Jo Anne Sanford to the North Carolina Utilities Commission

Committee: House Public Utilities
Date: May 20, 2004
Version: 1st Edition

Introduced by: Reps. Brubaker and Saunders
Summary by: Kory J. Goldsmith
Committee Counsel

SUMMARY: *Ms. Jo Anne Sanford has been appointed by the Governor to fill the vacancy on the Utilities Commission created by the expiration of her current term as of June 30, 2003. Ms. Sanford's new term will commence July 1, 2003 and expire June 30, 2011. HJR 1272 confirms this appointment as required by G.S. 62-10. The resolution is effective upon ratification.*

Ms. Sanford's resume and the Statement of Economic Interest she submitted to the North Carolina Board of Ethics are before this Committee.

BACKGROUND: 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 presently paid a salary of \$104,523 annually (the same as a Superior Court Judge). 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. Ms. Sanford currently receives \$465.62 per month due to length of service, and an additional \$11,882 annually as the Chair of the Commission.

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 that 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, certain telecommunications services, water and sewer services, taxis, and certain aspects of bus, train, trucking, express package and mail services. The extent of this regulation varies among the different types of utilities, and there are limitations imposed by federal law.

HOUSE JOINT RESOLUTION 1272

Page 2

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, use of natural gas expansion funds, 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 depends upon the type of utility service and is affected in some cases by federal law. The Commission also has limited authority over subsidiaries of electric cooperatives.

HJR1272-SMRC-001

Steve Rose contributed substantially to this summary

JO ANNE SANFORD

430 North Salisbury St. • 4325 Mall Service Ctr. • Raleigh, NC 27699 • 919-733-6067 • Sanford@ncuc.net

UTILITIES BACKGROUND

Chair, North Carolina Utilities Commission

- Re-appointed to four-year term beginning July 2001 by Governor Michael F. Easley
- Appointed to four-year term beginning July 1997 by Governor James B. Hunt
- Appointed to unexpired term beginning February 1997 by Governor James B. Hunt

Commissioner, North Carolina Utilities Commission

- Appointed to eight-year term beginning July 1995 by Governor James B. Hunt

RELATED APPOINTMENTS AND POSITIONS

- Board of Directors, National Association of Regulatory Utilities Commissioners
 - Chair, Subcommittee of Telecommunications Committee
 - Subcommittee on Administration
 - 2003 Triennial Review Implementation Process Task Force
- FCC North American Numbering Council (one of three original state appointees)
- FCC Joint Conference to promote universal deployment of broadband services
- Board of Directors, Universal Service Administration Corporation (sole state commissioner member)
- Chair, Board of Directors, National Regulatory Research Institute (at the Ohio State University)

Ex Officio Positions

- North Carolina Tax Review Board
- Energy Policy Council
- Agency for Public Telecommunications
- Geographic Information Systems Board

PRIOR EXPERIENCE

North Carolina Attorney General's Office (1975-1995)

- Special Deputy Attorney General
 - Managed Utilities and Insurance Section
 - Represented Department of Insurance, State Health Plan, Secretary of State, Secretary of Commerce, Office of the State Auditor and NC utilities ratepayers
- Chair, Department of Justice Insurance Committee
- Represented State's interest in environmental, energy and Indian law matters

EDUCATION

North Carolina State University, Bachelor of Arts in Political Science (1972)

University of North Carolina School of Law, Juris Doctor (1975)

Kennedy School of Government, 2002 State and Local Executives Program (IBM scholarship)

Aspen Institute, Advanced Communications Conference (2002)

Professional Affiliations and Certifications

- Licensed to Practice Law – NC
- Admitted to practice in US District Courts of NC
- Admitted before US Supreme Court
- Tenth Judicial District Bar
- Women Executives in State Government
- Susie Sharp Inns of Court
- North Carolina and Wake County Bar Associations

Awards and Recognition

- 2003 Outstanding Government and Public Sector Attorney (North Carolina Bar Association)
- 1999 Distinguished Woman of North Carolina (awarded for government service)
- 1998 Wake County YWCA Academy of Women Designation Award

Community Involvement

- Trinity United Methodist Church
- Society for the Preservation of Historic Oakwood
- North Carolina State University, Graduate School Board of Advisors

Personal Highlights

- Born in Laurinburg, NC 1950
- Attended and graduated from Randolph County Public Schools, Randleman, NC
- Married to Billy Brewer, Jr. (Lenoir County native)
- Mother of Charlotte, an Enloe High School senior, bound for Appalachian State University
- Resides with family in Oakwood, historic district in downtown Raleigh, NC

NO-CHANGE FORM ("Short Form")

to
Statement of Economic Interest
 Executive Order Number One

NORTH CAROLINA BOARD OF ETHICS
 For assistance call 919-733-2780 Fax 919-733-2785
 e-mail nc.boardofethics@ncmail.net www.doa.state.nc.us/doa/ethics

Office Use Only

Code _____

Appt by _____

Date filed:

3/26/03

Mail to: Board of Ethics, 1324 Mail Service Center, Raleigh, NC 27699-1324
 If you can use State Government Courier, use Courier 51-01-00
 Office location: Administration Building, 116 West Jones Street, Room 2009G, Raleigh

Executive Order Number One requires that Public Officials update their Statement of Economic Interest *each year* by **May 15**. See Sections 9 (b) & (e). New information must be reported and information no longer applicable must be deleted.

IF YOU DO **NOT** HAVE ANY CHANGES TO REPORT, please sign, date, and have this "No-Change" form notarized by a notary public. Upon completion, please return this signed, dated, and notarized page **ONLY** to the above address. If you do not have any material changes to report, this is the only form you need to submit.

IF YOU **DO** HAVE CHANGES TO REPORT, please make all necessary changes on a supplemental Statement of Economic Interest form. Other than your name and the name of your Board or Agency, YOU NEED ONLY ANSWER QUESTIONS WHERE YOU HAVE CHANGES TO REPORT.

Please sign, date, and have whichever form you use notarized before returning it to the Board of Ethics at the above address. **AGAIN, ALL FORMS MUST BE NOTARIZED.**

Name of Person Filing:

Jo Anne Sanford

Name of Board on which you are serving:

or

Name of State Agency in which you are employed:

NC Utilities Commission / Commerce

VERIFICATION OF NO MATERIAL CHANGES

I hereby certify that I have read Executive Order Number One and this form, and to the best of my information, knowledge and belief, there have been **no material changes** to my personal, familial, or financial situation which would require disclosure pursuant to Executive Order Number One (January 12, 2001), and I have no additional material information to disclose that was not disclosed in my previously filed Statement of Economic Interest. 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.

Date

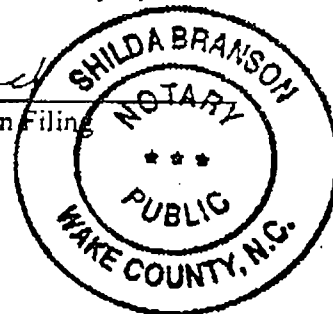
1-8-03

Signature of Person Filing

Jo Anne Sanford

STATE OF NORTH CAROLINA
COUNTY OF WakeSubscribed and sworn before me this the 8th day of January, 2003.My Commission Expires: 7-31-06

Notary Public



**Supplemental
Statement of Economic Interest**
Executive Order Number One

NORTH CAROLINA BOARD OF ETHICS

For assistance call 919-733-2780 Fax 919-733-2785

e-mail nc.boardofethics@ncmail.net www.doa.state.nc.us/doa/ethics

Mail to: Board of Ethics, 1324 Mail Service Center, Raleigh, NC 27699-1324
If you can use State Government Courier, use Courier 51-01-00
Office location: Administration Building, 116 West Jones Street, Room 2009G, Raleigh

Executive Order Number One requires that Public Officials update their Statement of Economic Interest each year between April 15 and May 15. See Sections 9 (b) & (e). New information must be reported and information no longer applicable must be deleted.

IF YOU DO NOT HAVE ANY CHANGES TO REPORT, please sign, date, and have this page notarized by a notary public. Upon completion, please return this signed, dated, and notarized page ONLY to the above address.

IF YOU DO HAVE CHANGES TO REPORT, please make all necessary changes on the enclosed Statement of Economic Interest form. YOU NEED ONLY ANSWER QUESTIONS WHERE YOU HAVE CHANGES TO REPORT. Please sign, date, and have the form notarized before returning it to the Board of Ethics at the above address.

Name of Person Filing:

J. Anne Sanford

Name of Board on which you are serving:

N.C. Utilities Commission

or

Name of State Agency in which you are employed:

VERIFICATION OF NO MATERIAL CHANGES

I hereby certify that I have read Executive Order Number One and this form, and to the best of my information, knowledge and belief, there have been no material changes to my personal, familial, or financial situation which would require disclosure pursuant to Executive Order Number One (January 12, 2001), and I have no additional material information to disclose that was not disclosed in my previously filed Statement of Economic Interest. 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.

1-23-02
Date

J. Anne Sanford
Signature of Person Filing

STATE OF NORTH CAROLINA
COUNTY OF Wake

Subscribed and sworn before me this 23rd day of January, 2002.

My Commission Expires: May 28, 2006

My Commission Expires 5-28-2006

Delbert C. Fearing
Notary Public



**NORTH CAROLINA BOARD OF ETHICS**

1324 MAIL SERVICE CENTER
RALEIGH, NC 27699-1324

GEORGE F. BASON
CHAIRMAN

PERRY Y. NEWSON
EXECUTIVE DIRECTOR

July 18, 2001

The Honorable Michael F. Easley
Governor of North Carolina
20301 Mail Service Center
Raleigh, North Carolina 27699-20301

Re: Evaluation of Statement of Economic Interest filed by
Jo Anne Sanford, Chair, Utilities Commission

Dear Governor Easley:

In accordance with Section 5(b) of Executive Order Number One ("the Order"), we have completed our evaluation of the statement of economic interest mentioned above.

We did not find an actual conflict of interest or the potential for conflict of interest.

Section 7 of the Order mandates that public officials perform their duties in a manner to promote the best interests of the public. Because conflicts of interest may arise while performing their public duties, public officials should make a due and diligent effort to determine whether they have a conflict of interest before taking any action that could have an impact on their own financial, familial, or personal interests.

We are sending a copy of this letter to the Chairman of the Commission with the request that our findings be read into the Commission's minutes.

Sincerely,

George F. Bason/md

George F. Bason
Chairman

cc: Ms. Jo Anne Sanford
Chairman of the Commission

Statement of Economic Interest

for Executive Order Number One

Governor Michael F. Easley

NORTH CAROLINA BOARD OF ETHICS

1324 Mail Service Center

Raleigh, NC 27699-1324

(919) 733-2780 FAX (919) 733-2785

Mail form to: Board of Ethics, 1324 Mail Service Center, Raleigh, N.C. 27699-1324

If you can use State Government Courier, use Courier 51-01-00

Office location: Administration Building, 116 West Jones Street, Room 2009G, Raleigh

For assistance call Millie Donavant or Christine Miller at (919) 733-2780

e-mail: millie.donavant@ncmail.net or christine.a.miller@ncmail.net

Name of Person Filing:

Jo Anne Sanford

Name of Spouse:

W.E. Brewer, Jr.

Home Address:

318 N. Boundary St
Raleigh NC 27604

Home Telephone:

919-821-2453

Name of Employer:

North Carolina Utilities Commission

Your Title:

Chair

Business Address:

4325 Mail Service Center
Raleigh, NC 27699

Business Telephone:

919-733-6067

Business Fax:

919-733-7300

Business Activity:

Chair of N.C.U.C., w/ all responsibilities
attendant for oversight of agency +
regulation of public utilities in D.C.Spouse's Employer
and Business Activity:

self- Brewer Law Firm, P.A.

Bankruptcy Atty.

If you are filing because you are serving on or being considered for appointment to a State Board (as defined above), state the name of the Board.

NC Utilities Commission

Are you, your employer, your spouse, or spouse's employer licensed or regulated by the Board on which you are/will be serving, or have business relationships with the Board? No If yes, please explain:

NOTE: Executive Order Number One requires you to list assets and liabilities with a value of \$10,000 or more for yourself and spouse, as set forth below. You are not required to include an estimated value of the assets and liabilities.

1. List all parcels of real estate located in North Carolina in which you, or your spouse, have an ownership interest valued \$10,000 or more. Give street address or other description adequate to determine the location of each parcel. State the specific interest held in each identified parcel.

318 N. Boundary St - fee simple

533 N. Bloodworth St.

Pinewood Forest Rest Home

522-29 No. "

Pink Hill, N.C.

317 Pell St

619 No. Person St

Identify real estate that is currently leased or rented to a State Government Agency, and identify the Agency. 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.

None

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 explain.

None

2. Identify personal property sold to or bought from the State within the preceding two years and personal property currently leased or rented to the State by you or your spouse. Indicate whether the transactions are in accordance with the provisions of the Division of Purchase and Contract. If not, please explain.

None

3. List the name of each **publicly-owned company** in which the value of securities held by you or your spouse is \$10,000 or more. You may attach a list from your broker.

None

4. List the name and business activity of each **non-publicly-owned company or business entity** in which the value of securities or other equity interests held by you or your spouse is \$10,000 or more, including but not limited to, interests held in partnerships, limited partnerships, joint ventures, limited liability companies or partnerships, and closely held corporations.

*(Spouse) Perimeter Associates - rest home
Riverview, NC*

With respect to the entities listed above, should any of the entities own securities or equity interests of \$10,000 or more in other companies or business entities, list the name of the company or business entity and a brief description of the business activity of each.

N/A

Are you, your spouse, or any of the entities listed above licensed by, regulated by, or have business relationships with the same area of State Government with which you are associated? If so, please explain.

- No for N/A

5. You are required to make a good faith effort to list any individual or business entity with which you or your spouse have a financial or professional relationship provided:

- (1) The nature of the relationship presents a conflict of interest or the appearance of a conflict of interest for you while performing your official duties, or
- (2) Any separate financial or professional interest of such individual or business entity would present a conflict of interest or appearance of a conflict of interest for you while performing your official duties. For each individual or business entity listed, generally describe the financial or professional relationship and provide a brief explanation of why the individual or business entity has been listed.

N/A

6. List all directorships on all boards on which you are serving. Please explain any situation that could appear to be a conflict of interest with your official duties.

Trinity Un. Methodist Church Bd of Trustees

NREI Board of Directors

NARUC Board of Directors

No Conflict

7. Are you an elected official at the local government level? If so, please explain.

No

8. If you, your spouse, or your dependent children are the **beneficiary of a trust** created, established or controlled by you, list the name and address of the trustee and a description of the trust. To the extent such information is available to you, include a list of businesses in which the trust has an ownership interest of \$10,000 or more.

No

9. List each asset with a valuation of \$10,000 or more, held by you or your spouse, which have not been listed elsewhere. Some examples are mutual funds, certificates of deposit, bank accounts and retirement accounts. It is not necessary to list furniture, jewelry, automobiles, and other personal effects.

- State govt. Deferred Comp plan
- State govt. Retirement

10. List each liability with a valuation of \$10,000 or more for you and your spouse. 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, and automobile loans.

527-29 W Bldworth St - St Employees Credit Union }
619 W Person St - Centura Bank } mtg. loans
317 Pell St - Shelma Sanford + Dario King }
Pinewood Associates - BB&T }

11. List each source of income for you and your spouse where \$10,000 or more was received. 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.

Sources for Person Filing:

St. Govt - wages

Sources for Spouse:

Law firm - wages
Pinewood Associates - business income

Please explain if any of the sources of income are regulated by, receive permits from, or otherwise are connected with the same area of State Government with which you are connected.

NO

12. 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 of \$10,000 or more from any of the following categories of legal representation:
- () Admiralty () Taxation () Decedent's estates () Corporation law () Real property
- () Negligence (representing plaintiffs) () Negligence (representing defendants)
- () Criminal law () Labor law () Insurance law () Administrative law
- () Utilities regulation or representation of regulated utilities () Representation of local governments

13. If the information has not been included in previous questions, list all **non-publicly owned businesses** you have been associated with during the past five years as an employee, officer, director, partner, or owner. 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 same area of State Government with which you are associated. State the nature of business, and whether you or the business is licensed by, regulated by, receive permits, grants or other funding from the same area of State Government with which you are associated.

N/A

14. List all **gifts** received with a value exceeding \$200 during the 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 \$100 during the twelve months preceding the date of this statement from any source having business with or regulated by the State.

None

15. List all **bankruptcies** filed during the preceding five years by you, your spouse, or any entity in which you or your spouse has been associated financially. Provide a brief summary of the facts and circumstances regarding each listed bankruptcy.

None

16. Having read Executive Order Number One, state any problems or conflicts of interest you may have that 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. I acknowledge that I am under a continuing obligation to avoid conflicts of interest and the appearance of conflicts of interest. If I believe a potential for conflict exists, I will inquire of the Board of Ethics as to that potential conflict.

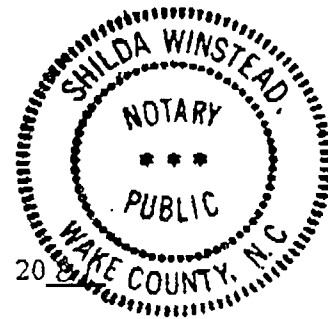
5-18-01

Date

Op Anne Sanford

Signature of Person Filing

STATE OF NORTH CAROLINA
COUNTY OF Wake



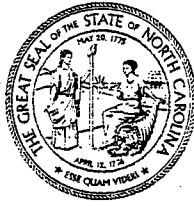
Subscribed and sworn to before me this the 18th day of May, 2001

My Commission Expires:

7-31-2001

Shilda Winstead

Notary Public



STATE OF NORTH CAROLINA
OFFICE OF THE GOVERNOR
20301 MAIL SERVICE CENTER • RALEIGH, NC 27699-0301

MICHAEL F. EASLEY
GOVERNOR

April 25, 2003

The Honorable James Black
Speaker of the House
NC General Assembly
2304 Legislative Building
Raleigh, NC 27601

Dear Speaker Black:

Pursuant to General Statute §62-10, I hereby reappoint Ms. Jo Anne Sanford to serve as a member and chairperson of the North Carolina Utilities Commission and submit her name for confirmation by the North Carolina General Assembly. Her term shall begin July 1, 2003 and will expire June 30, 2011.

Ms. Sanford has served as a member of the Commission since 1995 and as chair since 1997.

Enclosed is biographical information on Ms. Sanford. Please feel free to call on her or members of my staff if you need additional information.

With kindest regards, I remain

Very truly yours,

A handwritten signature in dark ink, appearing to read "Mike Easley".
Michael F. Easley

MFE:bc

Enclosure

c: The Honorable Beverly Perdue
The Honorable Marc Basnight
The Honorable Richard Morgan
Ms. Denise Weeks
Ms. Janet Pruitt

Read
APR 28 2003
Referred to Public Utilities

Jo Anne Sanford, Chair
North Carolina Utilities Commission
Biographical Information: March 2003

Prior to joining the Commission on July 19, 1995, Chairman Sanford worked 20 years with the North Carolina Attorney General's Office, serving in the Edmisten, Thornburg and Easley administrations of that office. As Special Deputy Attorney General, she led the Utilities and Insurance Section, representing the Department of Insurance, the State Health Plan, the Secretaries of State and Commerce, the Auditor and utilities ratepayers. Earlier assignments were in the areas of environmental, energy and Indian law. She chaired the 1994 Department of Justice Combined Campaign and Department of Justice Insurance committees.

Sanford, a Democrat, was born October 18, 1950, in Laurinburg and is a 1968 graduate of Randleman High School. She was an honors graduate of North Carolina State University in 1972 with a B.A. in Political Science and received a J.D. from the School of Law at the University of North Carolina in 1975. Governor James B. Hunt appointed her Chair of the Commission on February 1, 1997 to fill Judge Hugh Wells' unexpired term as chair, then re-appointed her to a four-year term beginning July 1, 1997. Governor Michael F. Easley appointed her to second full term as Chair in June, 2001. Her term as Commissioner expires June 30, 2003.

Professional affiliations include the North Carolina and Wake County Bar Associations, the 10th Judicial District Bar, the Susie Sharp Inns of Court and Women Executives in State Government. She is licensed to practice in all three federal districts in North Carolina and before the United States Supreme Court.

Sanford chaired a subcommittee of the National Association of Regulatory Utility Commissioners (NARUC) Communications Committee and is a member of the NARUC Board of Directors. She was one of three state appointees to the Federal Communications Commission's North American Numbering Council (NANC¹), is the sole state commissioner member of the Board of Directors, Universal Service Administration Corporation (USAC²), and serves with the five FCC Commissioners on a Joint Conference established to promote the deployment of broadband services to all parts of the country (FCC's Section 706 Joint Conference³). She chairs the Board of Directors of the National Regulatory Research Institute (NRRI⁴) at the Ohio State University and is a regular speaker at a variety of public utilities conferences and seminars. As Commission Chair, Sanford is an *ex officio* member of the North Carolina Tax Review Board, the Energy Policy Council, the Agency for Public Telecommunications and the

¹ The North American Numbering Council advises the FCC on technical and policy decisions concerning allocation of the telephone number supply for the North American continent.

² The Universal Service Administration Corporation administers the entire system for "support" for telephone service, found in the federal high cost fund, the low-income fund, the e-rate funds (used to wire schools and libraries across the nation), and the rural health care fund. These funds combine in a dollar figure in excess of \$6.5 billion.

³ The Joint Conference focuses on deployment of broadband to underserved areas. Working as a member of the conference and with industry and regulators, Sanford organized a national meeting in Greenville, N.C. in the spring of 2002, showcasing the telemedicine capabilities of the ECU School of Medicine.

⁴ The NRRI is a singular research institute dedicated to high quality research and publication on matters in issue before state and federal regulators, dealing with regulated public utilities. It is located and affiliated with the Ohio State University.

Geographic Information Systems Board. In 2002 she attended the Kennedy School of Government's State and Local Executives program on an IBM scholarship, as well as an advanced telecommunications conference at the Aspen Institute (along with FCC Commissioners and senior executives in the telecommunications industry). In March, 2003 Sanford was designated one of 5 state commissioners to participate in a national task force, charged to help implement a major, complex and vital telecommunications edict to be issued by the FCC.

Chairman Sanford chaired the 2002 Trinity United Methodist Church Board of Trustees during a major renovation project at the downtown church. She and her husband teach Sunday School and are active, with their daughter, in various church committees. She is a member of the Society for the Preservation of Historic Oakwood, Capital Area Preservation and North Carolina State University's Graduate School Board of Advisors. She is a recipient of the Wake County YWCA 1998 Academy of Women designation and the 1999 Distinguished Women of North Carolina award for government service.

Sanford and her husband, Billy Brewer, Jr., live with their daughter Charlotte in Oakwood, a historic district in downtown Raleigh.

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON PUBLIC UTILITIES

May 21, 2003

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

| | |
|------------------|-------------------------|
| Sharon Miller | ATCA |
| Lorinzo L Joyner | nc Utilities Commission |
| Len Anthony | Progress Energy |
| Mike Wilkins | NC Utilities Comm |
| Michael Corder | " |
| Rose Hlover | " |
| Debbie Holder | " |
| Terresa Kelly | " |
| Bob Gilliam | Public Staff - NCUC |
| Kathy House | NC Utilities Comm |
| Debra Dera | BellSouth |

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON PUBLIC UTILITIES

May 21, 2003

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

| | |
|-----------------|--------------------------------|
| Etherine Davis | Electric Cities |
| Sam Wescott | Sprint |
| Jay Peters | Idessa / Electric Cities |
| Bob Wykle | Division of H. C. F. & P. & S. |
| John Patino | AT&T |
| Dwight Allen | Smith Anderson |
| Bill McLary | PSNC |
| Alan Nisch | Gov.'s office |
| Greg McL | AGOTC |
| Gene Upchurch | Progress Energy |
| John McAllister | Onke Energy |

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON PUBLIC UTILITIES

May 21, 2003

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Frances Cockman

N.C. State Watch

Tom Moore

Sprint

KW Kuylen

Kayla Law Firm

Isaiah

Duke Energy

Jack Gort

Parker Poe

Wanda Montano

US LEC Corp.

KW Howell

Gov's office

Bill Pittman

The Pittman Law Firm, PLLC

AGENDA

HOUSE COMMITTEE ON PUBLIC UTILITIES

June 11, 2003

Room 1228/1327 Legislative Building

10:00 a.m.

OPENING REMARKS

Representative Harold J. Brubaker, Chair
Public Utilities Committee

AGENDA ITEMS

- | | | |
|-----------------|---|-----------------------|
| SJR 1021 | CONFIRM JO ANNE SANFORD UTILITIES COMMISSION | - Sen. Soles |
| HB 1150 | APPLIANCE/EQUIPMENT ENERGY EFFICIENCY STDS. | - Rep. Nesbitt |
| SB 939 | EXTEND TRS SURCHARGE TO WIRELESS CONNECTIONS | - Sen. Kerr |

ADJOURNMENT

MINUTES

HOUSE COMMITTEE ON PUBLIC UTILITIES

JUNE 11, 2003

The House Committee on Public Utilities met at 10:00 a.m. on June 11, 2003, in Room 1228 of the Legislative Building. Members present were: Representative Brubaker, Chair, Representative Saunders, Chair, and Representatives Gordon Allen, Bordsen, Coates, Gibson, Hill, Holliman, Howard, Linda Johnson, and Keith Williams. Committee Counsels, Kory Goldsmith and Steve Rose, were also present. Visitor Registration Sheets are attached and made a part of the Minutes. See Attachment #1.

Representative Brubaker, Chair, called the meeting to order. He recognized Pages Maggie Comer of Caldwell County, sponsored by Representative Edgar Starnes; Lucy Rogers of Wake County, sponsored by Representative Don Munford; and Alicia Davis of Wake County, sponsored by Representative Deborah Ross; and the Sergeant-At-Arms staff members Matthew Myers, Earl Tharrington and Charles Williams.

Chairman Brubaker opened the discussion on Senate Joint Resolution 1021. Representative Saunders spoke in support of Senate Joint Resolution 1021 – “Confirm Jo Anne Sanford Utilities Commission”. Upon a motion by Representative Saunders for a Favorable Report, the Committee unanimously approved Senate Joint Resolution 1021. See Attachment #2.

Chairman Brubaker distributed a Proposed Committee Substitute for House Bill 1150 to the members of the Committee. It is attached and made a part of these Minutes as Attachment #3. Representative Nesbitt, the Bill Sponsor, explained the Proposed Committee Substitute for House Bill 1150 and spoke in support of its adoption by the Committee. Questions followed by Representatives Hill, Gibson, and Coates. NCPIRG spoke in favor of the Committee Substitute. Paul Wells with the NC Home Builders expressed his organization’s concerns with the increased costs that would be passed on to future homebuyers. Upon a motion by Representative Keith Williams, the Committee unanimously agreed to send the Proposed Committee Substitute for House Bill 1150 to a subcommittee in the House Public Utilities Committee.

Chairman Brubaker recognized Senator Kerr to explain the Senate Bill 939 – “Extend TRS Surcharge to Wireless Connections”.

Public Utilities Committee Minutes

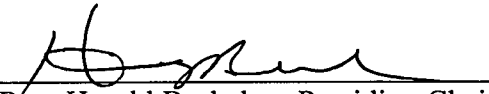
June 11, 2003

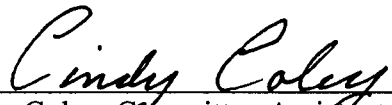
Page -2-

Chairman Jo Anne Sanford of the N. C. Utilities Commission stated her support for the proposed legislation.

Lanier Cansler, Deputy Secretary of the Department of Health and Human Services Upon a motion for a Favorable Report by Rep. Coates, the Committee unanimously approved Senate Bill 939 and rereferred the Bill to the House Finance Committee. See Attachment #4.

There being no further business, the meeting adjourned at 10:30 a.m.


Rep. Harold Brubaker, Presiding Chair


Cindy Coley, Committee Assistant

Attachments: #1 Visitor Registration
#2 Senate Joint Resolution 1021
#3 HB 1150 Proposed Committee Substitute
#4 SB 939

VISITOR REGISTRATION SHEET

HOUSE PUBLIC UTILITIES COMMITTEE

June 11, 2003

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

| | |
|------------------|----------------------|
| Bob Benmink | NCUC Staff |
| Pulley | Kayla Lane Foster |
| Elizabeth Overts | NCPIRC |
| Barbara Cansler | MHS |
| Randy Fyler | TWL |
| Walt Jones | Brook, Perie |
| John Withers | DSDH |
| Arden Naurig | DHHS |
| Lamin Cansler | DHHS |
| Lisa Page | Conservation Council |
| DAVID PRESTWOOD | NCPIRC |

VISITOR REGISTRATION SHEET

HOUSE PUBLIC UTILITIES COMMITTEE

June 11, 2003

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

| | |
|----------------|--|
| Bob Lammert | NC DHHS |
| Ben Turner | NC Public Staff - Utilities Commission |
| Bob Hillam | Public Staff - NCUC |
| Carille Steel | KCLH |
| Marloue Foster | Lowe's Companies, Inc. |
| FRAN PRESTON | NERMA |
| Stana McKenney | NC DHHS |
| SHARON STROUD | State Energy Office |
| Larry Shulley | State Energy Office |
| Pam Wasco H | Sprint |
| | |
| | |

VISITOR REGISTRATION SHEET

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME

FIRM OR AGENCY

| | |
|-------------------|---------------------|
| Stan Pace | Verizon |
| Arny Fullbright | Huntton's Williams |
| Lelia Derr | BellSouth |
| Mark Benson | Capitol Group |
| Deatrice Williams | CUCA |
| Robert W. Kaylor | The Kaylor Law Firm |
| Frank Perry | Duke Energy |
| John M. Glick | Duke Energy |
| Estherine Davis | Electric Cities |
| R. Paul Wilkins | NCHBA |
| Jeff Van Dyke | BST |
| Jim Upchurch | Prisma Group |
| Joim Monow | Sprint |
| Sabira Jang | David Knight |
| Haley Gilbert | David Knight |
| Tom Sri | NCRMA |
| John Mcullen | METS |
| Bill Scoggin | KCH |
| Ken Melton | Alloy Associates |
| Fran Cockman | NC State Water |
| Doug Lassiter | NCSTA |
| Rob Schuch | NC Justice Center |
| Lauren Boen | NC Sierra Club |
| Andy Eiken | NCRMA |
| | |
| | |

VISITOR REGISTRATION SHEET

Name of Committee

Date _____

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME

FIRM OR AGENCY

Bob Speer
Markham

NC Forestry Assoc
NCSPA ✓

Fuller, Theodore

OKR

**2003 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representatives **BRUBAKER AND SAUNDERS** (Chairs) for the Committee on
PUBLIC UTILITIES.

☐ Committee Substitute for
S.J.R. 1021 A JOINT RESOLUTION PROVIDING FOR THE CONFIRMATION OF THE
REAPPOINTMENT OF JO ANNE SANFORD TO THE UTILITIES COMMISSION.

- ☒ With a favorable report.
- ☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
Appropriations ☐ Finance ☐ ☐.
- ☐ With a favorable report, as amended.
- ☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the
Committee on Appropriations ☐ Finance ☐ ☐.
- ☐ With a favorable report as to the committee substitute bill (#), ☐ which changes the
title, unfavorable as to (the original bill) (Committee Substitute Bill #), (and
recommendation that the committee substitute bill #) be re-referred to the Committee
on .)
- ☐ With a favorable report as to House committee substitute bill (#), ☐ which changes
the title, unfavorable as to Senate committee substitute bill.
- ☐ With an unfavorable report.
- ☐ With recommendation that the House concur.
- ☐ With recommendation that the House do not concur.
- ☐ With recommendation that the House do not concur; request conferees.
- ☐ With recommendation that the House concur; committee believes bill to be material.
- ☐ With an unfavorable report, with a Minority Report attached.
- ☐ Without prejudice.
- ☐ With an indefinite postponement report.
- ☐ With an indefinite postponement report, with a Minority Report attached.
- ☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

03/19/03

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

S

1

SENATE JOINT RESOLUTION 1021

Sponsors: Senator Soles.

Referred to: Commerce.

May 8, 2003

1 A JOINT RESOLUTION PROVIDING FOR THE CONFIRMATION OF THE
2 REAPPOINTMENT OF JO ANNE SANFORD TO THE UTILITIES
3 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

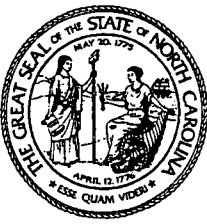
7 Whereas, a vacancy will occur on the North Carolina Utilities Commission on
8 June 30, 2003, by expiration of term; and

9 Whereas, the Governor has submitted to the presiding officers of the House
10 of Representatives and the Senate the names of his appointee, Jo Anne Sanford, to serve
11 a term on the North Carolina Utilities Commission, which will begin July 1, 2003, and
12 expire June 30, 2011; Now, therefore,

13 Be it resolved by the Senate, the House of Representatives concurring:

14 **SECTION 1.** The appointment of Jo Anne Sanford to the North Carolina
15 Utilities Commission for a term to begin July 1, 2003, and expire June 30, 2011, is
16 confirmed.

17 **SECTION 2.** This resolution is effective upon ratification.



BILL ANALYSIS

SENATE JOINT RESOLUTION 1021: Confirmation of Appointment of Jo Anne Sanford to the North Carolina Utilities Commission

Committee: House Public Utilities
Date: June 10, 2003
Version: 1st Edition

Introduced by: Senator Soles
Summary by: Kory J. Goldsmith
Committee Counsel

SUMMARY: *Ms. Jo Anne Sanford has been appointed by the Governor to fill the vacancy on the Utilities Commission created by the expiration of her current term as of June 30, 2003. Ms. Sanford's new term will commence July 1, 2003 and expire June 30, 2011. SJR 1021 confirms this appointment as required by G.S. 62-10. The resolution is effective upon ratification.*

Ms. Sanford's resume and the Statement of Economic Interest she submitted to the North Carolina Board of Ethics are before this Committee.

BACKGROUND: 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 presently paid a salary of \$104,523 annually (the same as a Superior Court Judge). 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. Ms. Sanford currently receives \$465.62 per month due to length of service, and an additional \$11,882 annually as the Chair of the Commission.

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 that 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, certain telecommunications services, water and sewer services, taxis, and certain aspects of bus, train, trucking, express package and mail services. The extent of this regulation varies among the different types of utilities, and there are limitations imposed by federal law.

SENATE JOINT RESOLUTION 1021

Page 2

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, use of natural gas expansion funds, 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 depends upon the type of utility service and is affected in some cases by federal law. The Commission also has limited authority over subsidiaries of electric cooperatives.

SJR1021-SMRC-001

Steve Rose contributed substantially to this summary

JO ANNE SANFORD

430 North Salisbury St. • 4325 Mail Service Ctr. • Raleigh, NC 27699 • 919-733-6067 • Sanford@ncuc.net

UTILITIES BACKGROUND

Chair, North Carolina Utilities Commission

- Re-appointed to four-year term beginning July 2001 by Governor Michael F. Easley
- Appointed to four-year term beginning July 1997 by Governor James B. Hunt
- Appointed to unexpired term beginning February 1997 by Governor James B. Hunt

Commissioner, North Carolina Utilities Commission

- Appointed to eight-year term beginning July 1995 by Governor James B. Hunt

RELATED APPOINTMENTS AND POSITIONS

- Board of Directors, National Association of Regulatory Utilities Commissioners
 - Chair, Subcommittee of Telecommunications Committee
 - Subcommittee on Administration
 - 2003 Triennial Review Implementation Process Task Force
- FCC North American Numbering Council (one of three original state appointees)
- FCC Joint Conference to promote universal deployment of broadband services
- Board of Directors, Universal Service Administration Corporation (sole state commissioner member)
- Chair, Board of Directors, National Regulatory Research Institute (at the Ohio State University)

Ex Officio Positions

- | | |
|--|--|
| • North Carolina Tax Review Board | • Energy Policy Council |
| • Agency for Public Telecommunications | • Geographic Information Systems Board |

PRIOR EXPERIENCE

North Carolina Attorney General's Office (1975-1995)

- Special Deputy Attorney General
 - Managed Utilities and Insurance Section
 - Represented Department of Insurance, State Health Plan, Secretary of State, Secretary of Commerce, Office of the State Auditor and NC utilities ratepayers
- Chair, Department of Justice Insurance Committee
- Represented State's interest in environmental, energy and Indian law matters

EDUCATION

North Carolina State University, Bachelor of Arts in Political Science (1972)

University of North Carolina School of Law, Juris Doctor (1975)

Kennedy School of Government, 2002 State and Local Executives Program (IBM scholarship)

Aspen Institute, Advanced Communications Conference (2002)

Professional Affiliations and Certifications

- Licensed to Practice Law – NC
- Admitted to practice in US District Courts of NC
- Admitted before US Supreme Court
- Tenth Judicial District Bar
- Women Executives in State Government
- Susie Sharp Inns of Court
- North Carolina and Wake County Bar Associations

Awards and Recognition

- 2003 Outstanding Government and Public Sector Attorney (North Carolina Bar Association)
- 1999 Distinguished Woman of North Carolina (awarded for government service)
- 1998 Wake County YWCA Academy of Women Designation Award

Community Involvement

- Trinity United Methodist Church
- Society for the Preservation of Historic Oakwood
- North Carolina State University, Graduate School Board of Advisors

Personal Highlights

- Born in Laurinburg, NC 1950
- Attended and graduated from Randolph County Public Schools, Randleman, NC
- Married to Billy Brewer, Jr. (Lenoir County native)
- Mother of Charlotte, an Enloe High School senior, bound for Appalachian State University
- Resides with family in Oakwood, historic district in downtown Raleigh, NC

ATTACHMENT #2-A

NO-CHANGE FORM ("Short Form")

to

Statement of Economic Interest

Executive Order Number One

NORTH CAROLINA BOARD OF ETHICS

For assistance call 919-733-2780 Fax 919-733-2785

e-mail nc.boardofethics@ncmail.net www.doa.state.nc.us/doa/ethics

Office Use Only

Code _____

Appl by _____

Date filed:

3/26/03

Mail to: Board of Ethics, 1324 Mail Service Center, Raleigh, NC 27699-1324

If you can use State Government Courier, use Courier 51-01-00

Office location: Administration Building, 116 West Jones Street, Room 2009G, Raleigh

Executive Order Number One requires that Public Officials update their Statement of Economic Interest *each year* by **May 15**. See Sections 9 (b) & (e). New information must be reported and information no longer applicable must be deleted.

IF YOU DO **NOT** HAVE ANY CHANGES TO REPORT, please sign, date, and have this "No-Change" form notarized by a notary public. Upon completion, please return this signed, dated, and notarized page **ONLY** to the above address. If you do not have any material changes to report, this is the only form you need to submit.

IF YOU **DO** HAVE CHANGES TO REPORT, please make all necessary changes on a supplemental Statement of Economic Interest form. Other than your name and the name of your Board or Agency, **YOU NEED ONLY ANSWER QUESTIONS WHERE YOU HAVE CHANGES TO REPORT.**

Please sign, date, and have whichever form you use notarized before returning it to the Board of Ethics at the above address. **AGAIN, ALL FORMS MUST BE NOTARIZED.**

Name of Person Filing:

Jo Anne Sanford

Name of Board on which you are serving:

or

Name of State Agency in which you are employed:

NC Utilities Commission / Commerce

VERIFICATION OF NO MATERIAL CHANGES

I hereby certify that I have read Executive Order Number One and this form, and to the best of my information, knowledge and belief, there have been **no material changes** to my personal, familial, or financial situation which would require disclosure pursuant to Executive Order Number One (January 12, 2001), and I have no additional material information to disclose that was not disclosed in my previously filed Statement of Economic Interest. 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.

Date

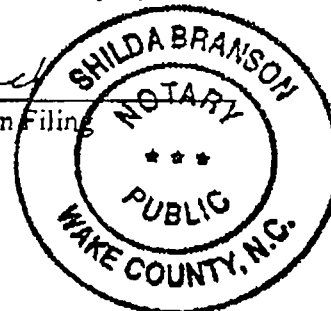
1-8-03

Signature of Person Filing

Jo Anne Sanford

STATE OF NORTH CAROLINA
COUNTY OF WakeSubscribed and sworn before me this the 8th day of January, 2003.My Commission Expires: 7-31-06

Notary Public



**Supplemental
Statement of Economic Interest**
Executive Order Number One

NORTH CAROLINA BOARD OF ETHICS

For assistance call 919-733-2780 Fax 919-733-2785

e-mail nc.boardofethics@ncmail.net www.doa.state.nc.us/doa/ethics

Mail to: Board of Ethics, 1324 Mail Service Center, Raleigh, NC 27699-1324
If you can use State Government Courier, use Courier 51-01-00
Office location: Administration Building, 116 West Jones Street, Room 2009G, Raleigh

Executive Order Number One requires that Public Officials update their Statement of Economic Interest each year between April 15 and May 15. See Sections 9 (b) & (e). New information must be reported and information no longer applicable must be deleted.

IF YOU DO NOT HAVE ANY CHANGES TO REPORT, please sign, date, and have this page notarized by a notary public. Upon completion, please return this signed, dated, and notarized page ONLY to the above address.

IF YOU DO HAVE CHANGES TO REPORT, please make all necessary changes on the enclosed Statement of Economic Interest form. YOU NEED ONLY ANSWER QUESTIONS WHERE YOU HAVE CHANGES TO REPORT. Please sign, date, and have the form notarized before returning it to the Board of Ethics at the above address.

Name of Person Filing:

J Anne Sanford

Name of Board on which you are serving:

NC Utilities Commission

or

Name of State Agency in which you are employed:

VERIFICATION OF NO MATERIAL CHANGES

I hereby certify that I have read Executive Order Number One and this form, and to the best of my information, knowledge and belief, there have been no material changes to my personal, familial, or financial situation which would require disclosure pursuant to Executive Order Number One (January 12, 2001), and I have no additional material information to disclose that was not disclosed in my previously filed Statement of Economic Interest. 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.

Date

1-23-02

Signature of Person Filing

J Anne Sanford

STATE OF NORTH CAROLINA
COUNTY OF Wake

Subscribed and sworn before me this the 23rd day of January, 2002.

My Commission Expires May 28, 2006

My Commission Expires 5-28-2006

Notary Public

Delia C. Fearing





NORTH CAROLINA BOARD OF ETHICS
1324 MAIL SERVICE CENTER
RALEIGH, NC 27699-1324

GEORGE F. BASON
CHAIRMAN

PERRY Y. NEWSON
EXECUTIVE DIRECTOR

July 18, 2001

The Honorable Michael F. Easley
Governor of North Carolina
20301 Mail Service Center
Raleigh, North Carolina 27699-20301

Re: Evaluation of Statement of Economic Interest filed by
Jo Anne Sanford, Chair, Utilities Commission

Dear Governor Easley:

In accordance with Section 5(b) of Executive Order Number One ("the Order"), we have completed our evaluation of the statement of economic interest mentioned above.

We did not find an actual conflict of interest or the potential for conflict of interest.

Section 7 of the Order mandates that public officials perform their duties in a manner to promote the best interests of the public. Because conflicts of interest may arise while performing their public duties, public officials should make a due and diligent effort to determine whether they have a conflict of interest before taking any action that could have an impact on their own financial, familial, or personal interests.

We are sending a copy of this letter to the Chairman of the Commission with the request that our findings be read into the Commission's minutes.

Sincerely,

George F. Bason /md

George F. Bason
Chairman

cc: Ms. Jo Anne Sanford
Chairman of the Commission

Statement of Economic Interest

for Executive Order Number One

Governor Michael F. Easley

NORTH CAROLINA BOARD OF ETHICS

1324 Mail Service Center

Raleigh, NC 27699-1324

(919) 733-2780 FAX (919) 733-2785

Mail form to: Board of Ethics, 1324 Mail Service Center, Raleigh, N.C. 27699-1324

If you can use State Government Courier, use Courier 51-01-00

Office location: Administration Building, 116 West Jones Street, Room 2009G, Raleigh

For assistance call Millie Donavant or Christine Miller at (919) 733-2780

e-mail: millie.donavant@ncmail.net or christine.a.miller@ncmail.net

Name of Person Filing:

Jo Anne Sanford

Name of Spouse:

W.E. Brewer, Jr.

Home Address:

318 N. Boundary St
Raleigh NC 27604

Home Telephone:

919-821-2453

Name of Employer:

North Carolina Utilities Commission

Your Title:

Chair

Business Address:

4325 Mail Service Center
Raleigh, NC 27699

Business Telephone:

919-733-6067

Business Fax:

919-733-7300

Business Activity:

Chair of N.C.U.C., w/ all responsibilities
attendant for oversight of agency &
regulation of public utilities in D.C.Spouse's Employer
and Business Activity:

self- Brewer Law Firm, P.A.

Bankruptcy Atty.

If you are filing because you are serving on or being considered for appointment to a State Board (as defined above), state the name of the Board.

NC Utilities Commission

Are you, your employer, your spouse, or spouse's employer licensed or regulated by the Board on which you are/will be serving, or have business relationships with the Board? No If yes, please explain:

NOTE: Executive Order Number One requires you to list assets and liabilities with a value of \$10,000 or more for yourself and spouse, as set forth below. You are not required to include an estimated value of the assets and liabilities.

1. List all parcels of real estate located in North Carolina in which you, or your spouse, have an ownership interest valued \$10,000 or more. Give street address or other description adequate to determine the location of each parcel. State the specific interest held in each identified parcel.

318 N. Boundary St - fee simple

533 N. Bloodworth St.

Pinewood Forest Rest Home

522-29 No.

Pike Hill, N.C.

517 Pell St

619 No. Person St

Identify real estate that is currently leased or rented to a State Government Agency, and identify the Agency. 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.

None

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 explain.

None

2. Identify personal property sold to or bought from the State within the preceding two years and personal property currently leased or rented to the State by you or your spouse. Indicate whether the transactions are in accordance with the provisions of the Division of Purchase and Contract. If not, please explain.

None

3. List the name of each **publicly-owned company** in which the value of securities held by you or your spouse is \$10,000 or more. You may attach a list from your broker.

None

4. List the name and business activity of each **non-publicly-owned company or business entity** in which the value of securities or other equity interests held by you or your spouse is \$10,000 or more, including but not limited to, interests held in partnerships, limited partnerships, joint ventures, limited liability companies or partnerships, and closely held corporations.

*(Spouse) Perennial Associates - rest home
Pink Hill, NC*

With respect to the entities listed above, should any of the entities own securities or equity interests of \$10,000 or more in other companies or business entities, list the name of the company or business entity and a brief description of the business activity of each.

N/A

Are you, your spouse, or any of the entities listed above licensed by, regulated by, or have business relationships with the same area of State Government with which you are associated? If so, please explain.

- No for N/A

5. You are required to make a good faith effort to list any individual or business entity with which you or your spouse have a financial or professional relationship provided:

- (1) The nature of the relationship presents a conflict of interest or the appearance of a conflict of interest for you while performing your official duties, or
- (2) Any separate financial or professional interest of such individual or business entity would present a conflict of interest or appearance of a conflict of interest for you while performing your official duties. For each individual or business entity listed, generally describe the financial or professional relationship and provide a brief explanation of why the individual or business entity has been listed.

N/A

6. List all directorships on all boards on which you are serving. Please explain any situation that could appear to be a conflict of interest with your official duties.

Trinity Un. Methodist Church Bld of Trustees

NARUC Board of Directors

NARUC Board of Directors

No Conflict

7. Are you an elected official at the local government level? If so, please explain.

NO

8. If you, your spouse, or your dependent children are the beneficiary of a trust created, established or controlled by you, list the name and address of the trustee and a description of the trust. To the extent such information is available to you, include a list of businesses in which the trust has an ownership interest of \$10,000 or more.

NO

9. List each asset with a valuation of \$10,000 or more, held by you or your spouse, which have not been listed elsewhere. Some examples are mutual funds, certificates of deposit, bank accounts and retirement accounts. It is not necessary to list furniture, jewelry, automobiles, and other personal effects.

- State govt. Deferred Comp plan
- State govt. Retirement

10. List each liability with a valuation of \$10,000 or more for you and your spouse. 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, and automobile loans.

527-29 No Bldworth St - St Employees Credit Union }
619 No Person St - Centura Bank } mtg. loans
317 Pell St - Shelma Sanford + Dario King }
Pinewood Associates - BB&T }

11. List each source of income for you and your spouse where \$10,000 or more was received. 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.

Sources for Person Filing:

St. Govt - wages

Sources for Spouse:

Law firm - wages
Pinewood Associates - business income

Please explain if any of the sources of income are regulated by, receive permits from, or otherwise are connected with the same area of State Government with which you are connected.

NO

12. 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 of \$10,000 or more from any of the following categories of legal representation:

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

13. If the information has not been included in previous questions, list all **non-publicly owned businesses** you have been associated with during the past five years as an employee, officer, director, partner, or owner. 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 same area of State Government with which you are associated. State the nature of business, and whether you or the business is licensed by, regulated by, receive permits, grants or other funding from the same area of State Government with which you are associated.

N/A

14. List all **gifts** received with a value exceeding \$200 during the 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 \$100 during the twelve months preceding the date of this statement from any source having business with or regulated by the State.

None

15. List all **bankruptcies** filed during the preceding five years by you, your spouse, or any entity in which you or your spouse has been associated financially. Provide a brief summary of the facts and circumstances regarding each listed bankruptcy.

None

16. Having read Executive Order Number One, state any problems or conflicts of interest you may have that 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. I acknowledge that I am under a continuing obligation to avoid conflicts of interest and the appearance of conflicts of interest. If I believe a potential for conflict exists, I will inquire of the Board of Ethics as to that potential conflict.

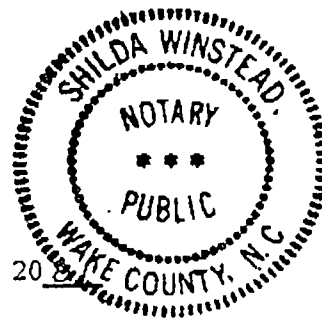
5-18-01

Date

Op Anne Sanford

Signature of Person Filing

STATE OF NORTH CAROLINA
COUNTY OF Wake



Subscribed and sworn to before me this the 18th day of May, 2001

My Commission Expires:

7-31-2001

Shilda Winstead

Notary Public

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

H

D

HOUSE BILL 1150
PROPOSED COMMITTEE SUBSTITUTE H1150-CSRC-78 [v.1]

6/10/2003 4:18:53 PM

Short Title: Appliance/Equipment Energy Efficiency Stds.

(Public)

Sponsors:

Referred to:

April 10, 2003

1 A BILL TO BE ENTITLED
2 AN ACT TO DIRECT THE STATE ENERGY OFFICE TO ESTABLISH ENERGY
3 EFFICIENCY STANDARDS FOR CERTAIN PRODUCTS SOLD IN THE STATE
4 AND TO APPROPRIATE FUNDS TO IMPLEMENT THE ACT.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. Chapter 113B of the General Statutes is amended by adding a
7 new Article to read:

8 "Article 3.

9 "Energy Efficiency Standards.

10 "§ 113B-41. Legislative findings.

11 The General Assembly finds that energy efficiency standards:

- 12 (1) Assure consumers and businesses that certain goods meet minimum
13 efficiency performance levels thus saving money on utility bills.
14 (2) Save energy and thus reduce pollution and other environmental
15 impacts associated with the production, distribution, and use of
16 electricity and natural gas.
17 (3) Make the distribution of electricity more reliable by reducing the strain
18 on the electric distribution grid during peak demand periods.
19 (4) Reduce or delay the need for new power plants, power transmission
20 lines, and power distribution system upgrades.
21 (5) Contribute to the economy of the State by enabling consumers and
22 business owners to spend less on energy and more for the purchase of
23 goods and services.

24 "§ 113B-42. Definitions.

25 As used in this Article:

- 26 (1) 'Ceiling fan' means a nonportable device that is suspended from a
27 ceiling for circulating air via the rotation of fan blades.

- (2) 'Ceiling fan light kit' means the equipment used to provide light from a ceiling fan. This equipment can be: (i) integral such that the ceiling fan light kit is hardwired to the ceiling fan, or (ii) attachable such that the ceiling fan light kit is not, at the time of sale, physically attached to the fan. Attachable ceiling fan light kits might be included inside the ceiling fan package at the time of sale or sold separately for subsequent attachment to the fan.
- (3) 'Commercial clothes washer' means a soft mount front-loading or soft mount top-loading clothes washer that is designed for use in (i) applications where the occupants of more than one household will be using it, such as in multifamily housing common areas and coin laundries; or (ii) other commercial applications, if the clothes container compartment is no greater than 3.5 cubic feet for horizontal-axis clothes washers, or no greater than 4.0 cubic feet for vertical-axis clothes washers.
- (4) 'Commercial refrigerators and freezers' means reach-in cabinets, pass-through cabinets, roll-in cabinets, and roll-through cabinets that have less than 85 cubic feet of capacity and that are not walk-in models or consumer products regulated under the National Appliance Energy Conservation Act of 1987 (Pub. L. 100-12, 101 Stat. 103, 42 U.S.C. § 6201).
- (5) 'Digital cable television box' means a device that acts as a tuner for cable television programming and that converts digital signals received from a cable service provider to a signal usable by a television set.
- (6) 'Digital television converter box' means a device that receives and decodes digital signals for display by an analog television set.
- (7) 'Energy Office' means the State Energy Office of the Department of Administration.
- (8) 'Illuminated exit sign' means an internally illuminated sign that is designed to be permanently fixed in place and used to identify an exit, a light source illuminates the sign or letters from within, and the background of the exit sign is not transparent.
- (9) 'Large package air-conditioning equipment' means packaged air-conditioning equipment having 240,000 Btu/hour or more of cooling capacity.
- (10) 'Low voltage dry-type distribution transformer' means a distribution transformer that (i) has an input voltage of 600 volts or less; (ii) is between 14 kVA and 2,501 kVA in size; (iii) is air-cooled; and (iv) does not use oil as a coolant.
- (11) 'Packaged air-conditioning equipment' means air-conditioning equipment that is built as a package and shipped as a whole to end-user sites.

- (12) 'Pass-through cabinet' means a commercial refrigerator or commercial freezer with hinged or sliding doors on both the front and rear of the refrigerator or freezer.
- (13) 'Reach-in cabinet' means a commercial refrigerator, commercial refrigerator-freezer, or commercial freezer with hinged or sliding doors or lids, but excluding roll-in or roll-through cabinets and pass-through cabinets.
- (14) 'Roll-in or roll-through cabinet' means a commercial refrigerator or commercial freezer with hinged or sliding doors that allows wheeled racks of product to be rolled into or through the refrigerator or freezer.
- (15) 'Set-top box' means a digital cable television box, wireless television receiver, or digital television converter box.
- (16) 'Torchiere lighting fixture' means a portable electric lighting fixture with a reflector bowl giving light directed upward so as to give indirect illumination.
- (17) 'Traffic signal module' means a standard 8-inch (200 mm) or 12-inch (300 mm) round traffic signal indication. It consists of a light source, lens, and all parts necessary for operation and communicates movement messages to drivers through red, amber, and green colors. Arrow modules in the same colors are used to indicate turning movements.
- (18) 'Transformer' means a device consisting essentially of two or more coils of insulated wire that transfers alternating current by electromagnetic induction from one coil to another in order to change the original voltage or current value.
- (19) 'Unit heater' means a self-contained fan-type heater that uses natural gas, propane, or fuel oil and that is designed to be installed within a heated space. Unit heaters include an apparatus or appliance to supply heat and a fan for circulating air over a heat exchange surface, all enclosed in a common casing. Unit heaters do not include 'warm air furnaces' as specifically defined under the federal Energy Policy Act of 1992 (Pub. L. 102-486, 106 Stat. 2776, 42 U.S.C. § 13201).
- (20) 'Wireless television receiver' means a device used in conjunction with a dish antenna to receive satellite or other wireless television programming and that converts signals from a dish antenna for use by a television set.

"§ 113B-43. Scope.

(a) The provisions of this Article apply to the establishment, testing, certification, and enforcement of energy efficiency standards for each of the following types of products sold, offered for sale, or installed in the State:

- (1) Ceiling fans and ceiling fan light kits.
- (2) Commercial clothes washers.
- (3) Commercial refrigerators and freezers.
- (4) Illuminated exit signs.

- (5) Large packaged air-conditioning equipment.
- (6) Low voltage dry-type distribution transformers.
- (7) Set-top boxes.
- (8) Torchiere lighting fixtures.
- (9) Traffic signal modules.
- (10) Unit heaters.
- (11) Other products as may be designated by the Energy Office in accordance with G.S. 113B-44(b).

(b) This Article does not apply to any of the following:

- (1) Products manufactured in the State and sold outside the State.
- (2) Products manufactured outside the State and sold at wholesale inside the State for final retail sale and installation outside the State.
- (3) Products installed in mobile manufactured homes at the time of construction.
- (4) Products designed expressly for installation and use in recreational vehicles.

"§ 113B-44. Efficiency standards.

(a) The Energy Office shall adopt rules to establish energy efficiency standards for the types of products set forth in G.S. 113B-43(a). The rules shall provide for the following minimum energy efficiency standards:

- (1) Ceiling fans and ceiling fan light kits shall meet the Tier 1 criteria of the product specification (Version 1.1) of the 'Energy Star Program Requirements for Residential Ceiling Fans' developed by the United States Environmental Protection Agency.
- (2) Commercial clothes washers shall meet the requirements shown in Table P-3 of section 1605.3 of the California Code of Regulations, Title 20: Division 2, Chapter 4, Article 4: Appliance Efficiency Regulations that took effect on November 27, 2002.
- (3) Commercial refrigerators and freezers shall meet the August 1, 2004 requirements shown in Table A-6 of section 1605.3 of the California Code of Regulations, Title 20: Division 2, Chapter 4, Article 4: Appliance Efficiency Regulations that took effect on November 27, 2002.
- (4) Illuminated exit signs shall meet the product specification (Version 2.0) of the 'Energy Star Program Requirements for Exit Signs' developed by the United States Environmental Protection Agency.
- (5) Large packaged air-conditioning equipment shall meet the Tier 2 efficiency levels of the 'Minimum Equipment Efficiencies for Unitary Commercial Air Conditioners' and 'Minimum Equipment Efficiencies for Heat Pumps' developed by the Consortium for Energy Efficiency, Boston, Massachusetts, that took effect on July 1, 2002.
- (6) Low voltage dry-type distribution transformers shall meet or exceed the energy efficiency values shown in Table 4-2 of National Electrical Manufacturers Association Standard TP-1-2002.

(7) Set-top boxes shall meet the Tier 2 criteria of the product specification of the 'Energy Star Program Requirements for Set-top Boxes' developed by the United States Environmental Protection Agency that took effect on January 1, 2001.

(8) Torchiere lighting fixtures shall not consume more than 190 watts and shall not be capable of operating with lamps that total more than 190 watts.

(9) Traffic signal modules shall meet the product specification of the 'Energy Star Program Requirements for Traffic Signals' developed by the United States Environmental Protection Agency that took effect in February 2001.

(10) Unit heaters shall not have pilot lights and shall have either power venting or an automatic flue damper.

(b) The Energy Office may adopt rules to establish minimum energy efficiency standards for products designated pursuant to G.S. 113B-43(a)(11).

(c) The Energy Office may adopt rules to establish energy efficiency standards for the products set forth in G.S. 113B-43(a) that exceed the energy efficiency standards established pursuant to this section. Prior to adopting a rule to establish an increased energy efficiency standard for a product, the Energy Office shall determine that the increased energy efficiency standard would promote energy conservation and would be cost-effective for consumers of that product. No energy efficiency standard established by a rule adopted pursuant to this subsection shall become effective earlier than one year after the adoption of the rule. For any product for which a federal energy conservation standard has been adopted, the Energy Office may apply for a waiver of federal preemption in accordance with subsection (d) of 42 U.S.C. § 6297.

"§ 113B-45. Testing, certification, labeling, and enforcement.

(a) The Energy Office through the Department of Administration shall adopt rules to provide for the testing of product compliance with energy efficiency standards adopted pursuant to G.S. 113B-44 if an applicable procedure is not set out in the State Building Code. The Energy Office shall use United States Department of Energy approved testing methods or other nationally recognized testing methods. Product manufacturers shall cause samples of their products to be tested in accordance with the test procedures adopted pursuant to this subsection and those set out in the State Building Code.

(b) A manufacturer of products subject to energy efficiency standards adopted pursuant to G.S. 113B-44 shall certify to the Energy Office that its products are in compliance with the provisions of this Article. The Energy Office through the Department of Administration shall adopt rules governing the certification of product compliance and may coordinate its certification rules with the certification programs of other states.

(c) A manufacturer of products subject to energy efficiency standards adopted pursuant to G.S. 113B-44 shall label each product that it offers for sale or installs in the State as being in compliance with the provisions of this Article with a label on the product and product package that is clearly visible at the time of sale or installation. The

1 Energy Office through the Department of Administration shall adopt rules governing
2 the labelling of products that are in compliance and may coordinate its labelling rules
3 with the labeling programs of other states.

4 (d) The Energy Office may test products subject to energy efficiency standards
5 adopted pursuant to G.S. 113B-44 using an accredited testing facility. If products that
6 are tested are found not to be in compliance with the energy efficiency standards
7 established pursuant to G.S. 113B-44, the Energy Office shall assess the manufacturer
8 of the product for the costs of product purchase and testing and may provide
9 information to the public on products found not to be in compliance with the standards.

10 (e) The Energy Office may cause periodic inspections to be made of distributors
11 or retailers of products subject to energy efficiency standards adopted pursuant to G.S.
12 113B-44 in order to determine compliance with the provisions of this Article. The
13 Energy Office shall also work with the State Building Commission to coordinate
14 inspections of products that are also regulated by the State Building Code.

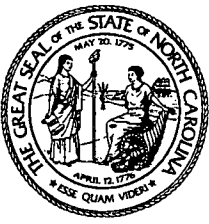
15 (f) The Energy Office shall investigate complaints received concerning
16 violations of this Article. If the Energy Office determines a manufacturer, distributor or
17 retailer has violated this Article, the Energy Office shall issue a warning to the violator.
18 If the Energy Office receives complaints about subsequent violations, the Energy Office
19 investigate the complaints and shall report the results of the investigation to the
20 Attorney General. The Attorney General may institute a civil action to enforce the
21 provisions of this Article. The court shall assess a civil penalty of not more than two
22 hundred fifty dollars (\$250.00) against the manufacturer, distributor, or retailer who
23 violates this Article. Each violation shall constitute a separate offense and each day that
24 a violation continues shall constitute a separate offense. Penalties assessed under this
25 subsection are in addition to costs assessed pursuant to subsection (d) of this section.

26 (g) The Energy Office through the Department of Administration may adopt
27 other rules necessary to insure the proper implementation and enforcement of the
28 provisions of this Article."

29 **SECTION 2.** If any section or provision of this act is declared
30 unconstitutional or invalid by the courts, the unconstitutional or invalid section or
31 provision does not affect the validity of this act as a whole or any part of this act other
32 than the part declared to be unconstitutional or invalid.

33 **SECTION 3.** There is appropriated from the General Fund to the State
34 Energy Office of the Department of Administration the sum of fifty thousand dollars
35 (\$50,000) for the 2003-2004 fiscal year and the sum of fifty thousand dollars (\$50,000)
36 for the 2004-2005 fiscal year to implement the provisions of this act.

37 **SECTION 4.** This act is effective when it becomes law, except that G.S.
38 113B-45(f) becomes effective January 1, 2006. The State Energy Office through the
39 Department of Administration shall adopt rules to implement Article 3 of Chapter 113B
40 of the General Statutes, as enacted by Section 1 of this act, so that the rules become
41 effective on January 1, 2006. No civil penalty shall be assessed pursuant to G.S.
42 113B-45(f), as enacted by Section 1 of this act, for products regulated under this act that
43 are manufactured before January 1, 2006.



HOUSE BILL 1150: Appliance/Equipment Energy Efficiency Stds.

BILL ANALYSIS

Committee: House Public Utilities
Date: June 10, 2003
Version: Proposed Committee Substitute
 H1150-CSRC-78[v.1]

Introduced by: Rep. Nesbitt
Summary by: Kory J. Goldsmith
 Committee Counsel

SUMMARY: *HB1150 would establish energy efficiency standards for certain products sold at retail in North Carolina. The Proposed Committee Substitute differs from the 1st Edition of the bill in that the State Energy Office, not the Utilities Commission, would be responsible for implementing the standards. The bill also appropriates \$50,000 for 2003-2004 fiscal year and 2004-2005 fiscal year.*

BILL ANALYSIS:

Section 1 of House Bill 1150 creates a new Article in Chapter 113B entitled "Energy Efficiency Standards.

G.S. 113B-41 makes legislative findings regarding the benefit of energy efficiency standards to the State.

G.S. 113B-42 provides definitions for the products that will be regulated.

G.S. 113B-43 provides that the Article applies to the establishment, testing, certification and enforcement of energy efficiency standards for certain product sold, offered for sale or installed in North Carolina. The products include:

- Ceiling fans and ceiling fan light kits.
- Commercial clothes washers.
- Commercial refrigerators and freezers.
- Illuminated exit signs.
- Large packaged air-conditioning equipment.
- Low voltage dry-type distribution transformers.
- Set-top boxes.
- Torchiere lighting fixtures.
- Traffic signal modules.
- Unit heaters.
- Other products designated by the Energy Office.

G.S. 113B-44 sets the minimum energy efficiency standards each product listed above, but the State Energy Office would have the authority to set stricter standards. Any rule adopted regarding energy efficiency standards would not become effective until one year after it was adopted.

G.S. 113B-45 authorizes the State Energy Office to adopt rule for testing energy efficiency of regulated products. Manufacturers of the products would be required to test their products according to the rules and certify to the Energy Office that the products complied with the minimum standards. The Energy

HOUSE BILL 1150

Page 2

Office may test products, and if a product is not in compliance, the Energy Office may charge the cost of the test to the manufacturer and notify the public of the results of the test. The Energy Office could make periodic inspections of distributors and retailers to monitor compliance with the Article. The Energy Office could investigate complaints about violations of the Article. If the Energy Office found a violation, it could issue a warning to the violator. The Attorney General would have authority to investigate subsequent complaints and bring a civil action to enforce the Article. Upon finding a violation of the act, a court could impose up to \$250 penalty for each occurrence.

Section 2 provides that if any provision of the Act is unconstitutional, that unconstitutional provision does not affect the validity of the Article as a whole.

Section 3 appropriates \$50,000 for the fiscal year of 2003-2004 and \$50,000 for the 2004-2005 fiscal year to implement the act.

The act is effective when it becomes law. Rules adopted to implement the act would not become effective until January 1, 2006. No action for civil enforcement could be taken until after January 1, 2006, and would not apply to products manufactured prior to January 1, 2006.

BACKGROUND: California, Massachusetts, Minnesota and New York have administratively adopted energy efficiency standards similar to what is in HB 1150. Legislation has been introduced in several other states (Connecticut, Illinois, Maryland, New Jersey and Rhode Island).

H1150-SMRC-001

**2003 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representatives **BRUBAKER AND SAUNDERS** (Chairs) for the Committee on
PUBLIC UTILITIES.

- ☐ Committee Substitute for
S.B. 939 A BILL TO BE ENTITLED AN ACT TO EXTEND THE SURCHARGE FOR
THE TELECOMMUNICATIONS RELAY SERVICE TO INCLUDE WIRELESS
COMMUNICATIONS.
- ☐ With a favorable report.
- ☒ With a favorable report and recommendation that the bill be re-referred to the Committee on
Appropriations ☐ Finance ☒ ☐.
- ☐ With a favorable report, as amended.
- ☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the
Committee on Appropriations ☐ Finance ☐ ☐.
- ☐ With a favorable report as to the committee substitute bill (#), ☐ which changes the
title, unfavorable as to (the original bill) (Committee Substitute Bill #), (and
recommendation that the committee substitute bill #) be re-referred to the Committee
on .)
- ☐ With a favorable report as to House committee substitute bill (#), ☐ which changes
the title, unfavorable as to Senate committee substitute bill.
- ☐ With an unfavorable report.
- ☐ With recommendation that the House concur.
- ☐ With recommendation that the House do not concur.
- ☐ With recommendation that the House do not concur; request conferees.
- ☐ With recommendation that the House concur; committee believes bill to be material.
- ☐ With an unfavorable report, with a Minority Report attached.
- ☐ Without prejudice.
- ☐ With an indefinite postponement report.
- ☐ With an indefinite postponement report, with a Minority Report attached.
- ☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

03/19/03

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

S

2

SENATE BILL 939
Finance Committee Substitute Adopted 5/28/03

Short Title: Extend TRS Surcharge to Wireless Connections.

(Public)

Sponsors:

Referred to:

April 3, 2003

A BILL TO BE ENTITLED
AN ACT TO EXTEND THE SURCHARGE FOR THE TELECOMMUNICATIONS
RELAY SERVICE TO INCLUDE WIRELESS COMMUNICATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 62-157 reads as rewritten:

"§ 62-157. Telecommunications relay service.

(a) Finding. – The General Assembly finds and declares that it is in the public interest to provide access to public telecommunications services for hearing impaired or speech impaired persons, including those who also have vision impairment, and that a statewide telecommunications relay service for telephone service should be established.

(a1) Definitions. – For purposes of this section:

(1) 'CMRS' is as defined in G.S. 62A-21.

(2) 'CMRS connection' is as defined in G.S. 62A-21.

(3) 'CMRS provider' is as defined in G.S. 62A-21.

~~(4)~~(4) "Exchange access facility" means the access from a particular telephone subscriber's premises to the telephone system of a local exchange telephone company, and includes local exchange company-provided access lines, private branch exchange trunks, and centrex network access registers, all as defined by tariffs of telephone companies as approved by the Commission.

~~(2)~~(5) "Local service provider" means a local exchange company, competing local provider, or telephone membership corporation.

(b) Authority to Require Surcharge. – The Commission shall require local service providers to impose a monthly surcharge on all residential and business local exchange access facilities to fund a statewide telecommunications relay service by which hearing impaired or speech impaired persons, including those who also have vision impairment, may communicate with others by telephone. This surcharge, however, may not be imposed on participants in the Subscriber Line Charge Waiver Program or the Link-up Carolina Program established by the Commission. This surcharge, and long distance

1 revenues collected under subsection (f) of this section, are not includable in gross
2 receipts subject to the franchise tax levied under G.S. 105-120 or the sales tax levied
3 under G.S. 105-164.4.

4 (c) Specification of Surcharge. – The Department of Health and Human Services
5 shall initiate a telecommunications relay service by filing a petition with the
6 Commission requesting the service and detailing initial projected required funding. The
7 Commission shall, after giving notice and an opportunity to be heard to other interested
8 parties, set the initial monthly surcharge based upon the amount of funding necessary to
9 implement and operate the service, including a reasonable margin for a reserve. The
10 surcharge shall be identified on customer bills as a special surcharge for provision of a
11 telecommunications relay service for hearing impaired and speech impaired persons.
12 The Commission may, upon petition of any interested party, and after giving notice and
13 an opportunity to be heard to other interested parties, revise the surcharge from time to
14 time if the funding requirements change. In no event shall the surcharge exceed
15 twenty-five cents (25¢) per month for each exchange access facility.

16 (d) Funds to Be Deposited in Special Account. – The local service providers shall
17 collect the surcharge from their customers and deposit the moneys collected with the
18 State Treasurer, who shall maintain the funds in an interest-bearing, nonreverting
19 account. After consulting with the State Treasurer, the Commission shall direct how and
20 when the local service providers shall deposit these moneys. Revenues from this fund
21 shall be available only to the Department of Health and Human Services to administer
22 the statewide telecommunications relay service program, including its establishment,
23 operation, and promotion. The Commission may allow the Department of Health and
24 Human Services to use up to four cents (4¢) per access line per month of the surcharge
25 for the purpose of providing telecommunications devices for hearing impaired or speech
26 impaired persons, including those who also have vision impairment, through a
27 distribution program. The Commission shall prepare such guidelines for the distribution
28 program as it deems appropriate and in the public interest. Both the Commission and the
29 Public Staff may audit all aspects of the telecommunications relay service program,
30 including the distribution programs, as ~~it does they do~~ with any public utility subject to
31 the provisions of this Chapter. Equipment paid for with surcharge revenues, as allowed
32 by the Commission, may be distributed only by the Department of Health and Human
33 Services.

34 (e) Administration of Service. – The Department of Health and Human Services
35 shall administer the statewide telecommunications relay service program, including its
36 establishment, operation, and promotion. The Department may contract out the
37 provision of this service for four-year periods to one or more service providers, using
38 the provisions of G.S. 143-129.

39 (f) Charge to Users. – The users of the telecommunications relay service shall be
40 charged their approved long distance and local rates for telephone services (including
41 the surcharge required by this section), but no additional charges may be imposed for
42 the use of the relay service. The local service providers shall collect revenues from the
43 users of the relay service for long distance services provided through the relay service.
44 These revenues shall be deposited in the special fund established in subsection (d) of

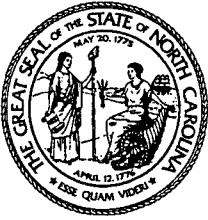
1 this section in a manner determined by the Commission after consulting with the State
2 Treasurer. Local service providers shall be compensated for collection, inquiry, and
3 other administrative services provided by said companies, subject to the approval of the
4 Commission.

5 (g) Reporting Requirement. – The Commission shall, after consulting with the
6 Department of Health and Human Services, develop a format and filing schedule for a
7 comprehensive financial and operational report on the telecommunications relay service
8 program. The Department of Health and Human Services shall thereafter prepare and
9 file these reports as required by the Commission with the Commission and the Public
10 Staff. The Department shall also be required to report to the Revenue Laws Study
11 Committee.

12 (h) Power to Regulate. – The Commission shall have the same power to regulate
13 the operation of the telecommunications relay service program as it has to regulate any
14 public utility subject to the provisions of this Chapter.

15 (i) Wireless Surcharge. – A CMRS provider, as part of its monthly billing
16 process, must collect the same surcharge imposed on each exchange access facility
17 under this section for each CMRS connection. A CMRS provider may deduct a one
18 percent (1%) administrative fee from the total amount of surcharge collected. A CMRS
19 provider shall remit the surcharge collected, less the administrative fee, to the Wireless
20 911 Board in the same manner and with the same frequency as the local service
21 providers remit the surcharge to the State Treasurer. The Wireless 911 Board shall remit
22 the funds collected from the surcharge to the special account created under subsection
23 (d) of this section."

24 **SECTION 2.** This act becomes effective January 1, 2004, and applies to
25 bills issued on or after that date.



SENATE BILL 939:

Extend TRS Surcharge to Wireless Connections

BILL ANALYSIS

Committee: House Public Utilities

Date: June 11, 2003

Version: 2nd Edition

Introduced by: Senator Kerr

Summary by: Steven Rose and Kory
Goldsmith
Committee Counsel

SUMMARY: *Senate Bill 939 would extend to wireless phone customers the imposition of the surcharge for the statewide telecommunications relay service (TRS) for hearing and speech-impaired persons. Landline customers currently pay a surcharge of 11¢ per line to fund the TRS. The surcharge on wireless customers would be collected by the wireless providers and remitted to the Wireless 911 Board. The Wireless 911 Board would then remit those funds to the Treasurer, who would add them to the TRS Fund. The bill would become effective January 1, 2004, and apply to bills dated on or after that date.*

CURRENT LAW: In 1989, the General Assembly of North Carolina established a statewide Telecommunications Relay System (TRS) to provide access to telecommunications services for deaf, hard of hearing, deaf-blind, and speech impaired individuals.

G.S. 62-157 granted authority to the Utilities Commission to require local exchange companies and telephone membership corporations to impose a monthly surcharge on all residential and business local exchange access facilities ("land lines") to fund the program. The Commission sets the monthly surcharge based upon the amount of funding necessary to implement and operate the system, including a reasonable margin for a reserve. Although the Commission regulates the program, the Department of Health and Human Services, through the Division of Services for the Deaf and the Hard of Hearing, administers, operates, and promotes the program. The Division must give a comprehensive financial and operational report on the TRS program to both the Commission and the Revenue Laws Study Committee. Any interested party may petition the Commission to change the amount of the monthly surcharge, either up or down, if an adjustment is needed properly meet the funding requirements of the program. The surcharge, which is currently 11¢, may not exceed 25¢ per access line per month.

In 1999, the NCGA amended G.S. 62-157 to allow DHHS to use up to four (4) cents per access line per month in the surcharge for distribution of telecommunications equipment to eligible North Carolinians. Wireless customers do not currently pay the surcharge, but they can communicate with TRS connected persons with their cell phones.

BILL ANALYSIS: Senate Bill 939 extends the current TRS surcharge imposed on landline phones to wireless phones.¹ The bill provides that a CMRS² provider must, as part of its monthly billing process, collect the same surcharge imposed on each landline phone from each CMRS connection. A CMRS connection means each mobile handset telephone number assigned to a CMRS customer with a place of

¹ There are approximately 3.5 million wireless connections and approximately 5 million landline phones.

² Commercial mobile radio service. The term is defined in federal law and includes service provided by any wireless two-way voice communication device. The same definition is used for the imposition of the 911 surcharge.

SENATE BILL 939

Page 2

primary use in North Carolina. The CMRS provider may deduct a 1% administrative fee from the surcharge collected.³ The remainder must be remitted to the Wireless 911 Board in the same manner and on the same schedule as the funds are handled by the local service providers. The Board must remit the surcharge revenues collected to the State Treasurer to be credited to the interest-bearing, nonreverting account established to fund the TRS program.

BACKGROUND: Deaf and Hard of Hearing people comprise 8.6% of North Carolina's population. The Department of Health and Human Services expects that figure to increase due to a projected increase in the elderly population.

The program for overseeing the relay service, video relay service, and distribution of telecommunications equipment is called Telecommunication Access of North Carolina (TANC). The program overseeing the distribution of equipment is called the Telecommunications Equipment Distribution Program (TEDP). TEDP was implemented in July, 2000. Up to four (4) cents per access line per month in the surcharge is used to purchase and distribute equipment to eligible North Carolinians. At this time, less than one (1) percent of all eligible North Carolinians have received equipment.

The surcharge supports the following:

1. \$4.5 million contract with Sprint to operate relay services in North Carolina (contract to be re-bid in 2004)
2. Four (4) full-time positions (TANC Administrator, TEDP Administrator, Office Assistant, TEDP Program Assistant)
3. Miscellaneous expenses (sign language interpreters, outreach activities and basic operations), and TEDP vendor contracts (\$200,000 per annum)

Currently, Illinois, Indiana, Kansas, Louisiana, Minnesota, Montana, Nebraska, Oregon, Texas and Vermont collect revenue from both land line and wireless service providers to provide relay and equipment services similar to those provided in North Carolina.

Cindy Avrette, Counsel to the Senate Finance Committee, substantially contributed to this summary.

S939-SMRL-001

³ The current law allows the local service providers to be compensated for their expenses of collecting and remitting the surcharge. The Utilities Commission sets the rate of compensation for the local service providers. It is my understanding that the current administrative fee allowed to local service providers is one cent per access line per month.

AGENDA

HOUSE COMMITTEE ON PUBLIC UTILITIES

**June 18, 2003
10:00 a.m.**

OPENING REMARKS

Representative Drew Saunders, Chair

BILLS TO BE DISCUSSED

SB 872 Unwanted Telephone Solicitations

Senator Scott Thomas, Bill Sponsor

Comments

Attorney General Roy Cooper

ADJOURNMENT

MINUTES

HOUSE COMMITTEE ON PUBLIC UTILITIES

June 18, 2003

The House Committee on Public Utilities met at 10:00 a.m. on June 18, 2003, in Room 1228/1327 of the Legislative Building. Members present were: Representatives Allen, Bordsen, Brubaker, Culpepper, Gibson, Holliman, Howard, LaRoque, McComas, Saunders, Sauls, and Wright. Committee Counsel members Kory Goldsmith and Steve Rose were also in attendance. A Visitor Registration List is attached and made a part of the minutes.

Representative Drew Saunders, Chair, called the meeting to order and introduced Pages, Lauren Ross and Lauren Bollinger of Mecklenburg County. Their sponsor is Speaker Jim Black. He also recognized Sergeant At Arms staff members: Charles Williams, Bill Sullivan and Matthew Myers.

The only bill on the agenda was **SB 872: UNWANTED TELEPHONE SOLICITATIONS**. Representative Saunders stated that no vote would be taken on the bill, and it would be for discussion only. Senator Thomas, Bill Sponsor, was asked to explain the bill. The bill would prohibit telephone solicitors from calling residential telephone subscribers' telephone numbers if the numbers appear in the "Do Not Call" Registry or if the subscribers have specifically requested to not receive further telephone solicitations from a telephone solicitor.

A number of individuals, representing different organizations, asked to speak about the bill. The first speaker was Attorney General Roy Cooper, who stated that he had received many complaints from consumers regarding unwanted telephone solicitations. He stated that North Carolina needs a law to regulate intrastate calls and others not regulated by the Federal Trade Commission. He urged committee members to resist any amendments for exemptions to the bill.

The second speaker was Mr. Ted Vaden, representing the North Carolina Press Association. Mr. Vaden asked that an exemption be made for the state's newspapers. Nine other states with "no call" laws have exemptions for newspapers. He stated that telemarketing has been very successful in obtaining new subscriptions to newspapers.

Ms. Stephanie Simpson, representing the North Carolina Association of Realtors, was the third speaker. Her concern was for small businesses and individual contractors.

The fourth speaker was Mr. Andy Ellen with the North Carolina Retail Merchants Association. He asked for a compromise on the bill for small retail businesses, as they differ from the large telemarketing companies.

The fifth speaker was Mr. Ed Turlington with the North Carolina Cable Telecommunications. He asked to work with the Attorney General's Office on the bill regarding a live call section, and he gave examples of autodial machine uses that should be allowed.

Mr. Josh Stein with the Attorney General's Office was the sixth speaker. He shared the concerns of small businesses and offered to exempt record-keeping requirements from the bill. He requested that the number of exemptions be limited.

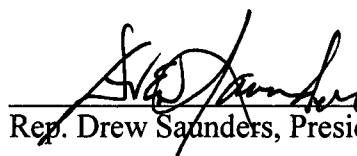
The seventh speaker was Mr. Richard Hatch, representing AARP. He said that the number one issue with AARP members was a do not call bill to prevent calls by telemarketers.

The final speaker was Mr. Brad Lamb with the North Carolina Consumers Council. He stated that now is the time to fine tune the bill. His concern is the autodial, especially in sales.

A question and answer period followed the speakers' comments. Members had questions regarding current state and federal laws and time of day restrictions in SB 872.

Representative Saunders stated that he and Representative Brubaker believed it was a good bill and that the bill would continue to be worked on to address concerns.

The meeting was adjourned at 10:46 a.m.


Rep. Drew Saunders, Presiding Chair


Ruth Fish, Committee Assistant

Attachment

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

S

2

SENATE BILL 872
Commerce Committee Substitute Adopted 4/29/03

Short Title: Unwanted Telephone Solicitations.

(Public)

Sponsors:

Referred to:

April 3, 2003

1 A BILL TO BE ENTITLED
2 AN ACT TO INCREASE PROTECTIONS FOR TELEPHONE SUBSCRIBERS WHO
3 WISH TO STOP UNWANTED TELEPHONE SOLICITATIONS AND FOR
4 CONSUMERS WHO ENTER INTO TELEMARKETING TRANSACTIONS.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 75-30 is repealed.

7 SECTION 2. G.S. 75-30.1 is repealed.

8 SECTION 3. Chapter 75 of the General Statutes is amended by adding a
9 new Article to read:

10 "Article 4.

11 "Telephone Solicitations.

12 "§ 75-100. Findings.

13 The General Assembly finds all of the following:

- 14 (1) The use of the telephone to market goods and services to the home is
15 now pervasive due to the increased use of cost-effective telephone
16 solicitation technologies and techniques.
- 17 (2) While some consumers enjoy and benefit from telephone solicitations
18 from legitimate telephone solicitors, many others object to these
19 telephone solicitations as an intrusive invasion of their privacy in the
20 home.
- 21 (3) In addition, the proliferation of telephone solicitations, especially
22 during the evening hours, creates a nuisance and a disturbance upon
23 the home and family life of telephone subscribers during a time of day
24 used by many families for traditional family activities.
- 25 (4) North Carolina residents should have the freedom to choose whether
26 or not to permit telephone solicitors to contact them.
- 27 (5) Individual privacy rights, personal safety, prevention of fraud, and
28 commercial freedom of speech and trade must be balanced in a way

1 that protects the privacy of individuals and permits legitimate
2 telephone solicitation practices.

3 (6) Legitimate telephone solicitors have no interest in continuing to invade
4 the privacy of those telephone subscribers who affirmatively express
5 their desires to receive no further telephone solicitations.

6 (7) Many telephone subscribers who have transacted business with firms
7 that employ telephone solicitations have experienced problems with
8 their checking and credit card accounts being debited before they can
9 evaluate the terms and conditions of the transaction, before they can
10 evaluate the merchandise or service to be delivered, or without their
11 agreement to enter into the transaction or authorize such transactions
12 in the first place. Other telephone subscribers have had unauthorized
13 charges placed on their telephone bill and have had their long distance
14 carrier switched without their authorization as a result of telephone
15 solicitations.

16 (8) New technologies that make telephone solicitations more
17 cost-effective also allow for the creation of a 'Do Not Call' Registry
18 through which North Carolina consumers can easily register their
19 desires not to receive further telephone solicitations and telephone
20 solicitors can easily access and employ lists of consumers who have
21 registered those desires.

22 (9) The public interest requires an efficient mechanism for telephone
23 subscribers to notify telephone solicitors that their telephone numbers
24 cannot be called and additional protections for North Carolina
25 residents who enter into consumer transactions initiated through
26 telephone solicitations.

27 **"§ 75-101. Definitions.**

28 The following definitions apply in this Article:

29 (1) Affiliate. – A business establishment, business, or other legal entity
30 that wholly or substantially owns, is wholly or substantially owned by,
31 or is under common ownership with a telephone solicitor.

32 (2) Automatic dialing and recorded message player. – Any automatic
33 equipment that incorporates a storage capability of telephone numbers
34 to be called or a random or a sequential number generator capable of
35 producing numbers to be called that, working alone or in conjunction
36 with other equipment, disseminates a prerecorded message to the
37 telephone number called.

38 (3) 'Do Not Call' Registry. – The registry created and maintained by the
39 Federal Trade Commission pursuant to the Telemarketing Sales Rule.
40 It also means any other telemarketing registry created by the federal
41 government, including the Federal Communications Commission. It
42 also means any registry created by the Attorney General pursuant to
43 G.S. 75-102(o).

- 1 (4) Doing business in this State. – To make or cause to be made any
2 telephone solicitation to North Carolina telephone subscribers, whether
3 the telephone solicitations are made from a location inside North
4 Carolina or outside North Carolina.
- 5 (5) Established business relationship. – A relationship between a seller
6 and a consumer based on:
- 7 a. The consumer's purchase, rental, or lease of the seller's goods or
8 services or a financial transaction between the consumer and the
9 seller or one or more of its affiliates, within the 18 months
10 immediately preceding the date of a telephone solicitation; or
11 b. The consumer's inquiry or application regarding a product or
12 service offered by the seller within the three months
13 immediately preceding the date of a telephone solicitation.
- 14 (6) Express invitation or permission. – Any invitation or permission that is
15 registered by the telephone subscriber on an independent form and that
16 contains the telephone number to which calls can be placed and the
17 signature of the telephone subscriber. The form may be completed and
18 signed electronically.
- 19 (7) Person. – Any individual, business establishment, business, or other
20 legal entity.
- 21 (8) Telemarketing Sales Rule. – The federal regulation promulgated by the
22 Federal Trade Commission, 16 C.F.R. Part 310 (January 29, 2003
23 Edition), as amended, to implement the Telemarketing and Consumer
24 Fraud and Abuse Prevention Act, 15 U.S.C. §§ 6101-6108, as
25 amended.
- 26 (9) Telephone subscriber. – An individual who subscribes to a residential
27 telephone service from a local exchange company, a competing local
28 provider certified to do business in North Carolina, or a wireless
29 telephone company; or the persons living or residing with that person.
- 30 (10) Telephone solicitation. – A voice communication, whether
31 prerecorded, live, or a facsimile, over a telephone line or wireless
32 telephone network or via a commercial mobile radio service that is
33 made by a telephone solicitor to a telephone subscriber for the purpose
34 of soliciting or encouraging the purchase or rental of, or investment in,
35 property, goods, or services; obtaining or providing information that
36 will or may be used for that purpose; soliciting or encouraging a
37 telephone subscriber's participation in any contest, sweepstakes, raffle,
38 or lottery, whether legal or illegal; or obtaining a charitable donation.
39 'Telephone solicitation' also includes those transactions that are
40 defined as 'telemarketing' under the Telemarketing Sales Rule.
- 41 (11) Telephone solicitor. – Any individual, business establishment,
42 business, or other legal entity doing business in this State that, directly
43 or through salespersons or agents, makes or attempts to make
44 telephone solicitations or causes telephone solicitations to be made.

'Telephone solicitor' also includes any party defined as a 'telemarketer' under the Telemarketing Sales Rule.

- (12) Unsolicited telephone call. – A voice communication, whether prerecorded, live, or a facsimile, over a telephone line or wireless telephone network or via a commercial mobile radio service that is made by a person to a telephone subscriber without prior express invitation or permission.

"§ 75-102. Restrictions on telephone solicitations.

(a) Except as provided in subsection (c) of this section, no telephone solicitor shall make a telephone solicitation to a telephone subscriber's telephone number if the telephone subscriber's telephone number appears in the latest edition of the 'Do Not Call' Registry.

(b) No telephone solicitor shall make a telephone solicitation to a telephone subscriber's telephone number if the telephone subscriber previously has communicated to the telephone solicitor a desire to receive no further telephone solicitations from the telephone solicitor to that number.

(c) Subsection (a) of this section does not apply to any of the following telephone solicitations:

- (1) To any telephone subscriber with the telephone subscriber's prior express invitation or permission.
- (2) To any telephone subscriber with whom the telephone solicitor has an established business relationship.
- (3) By or on behalf of a tax-exempt nonprofit organization.
- (4) By or on behalf of a telephone solicitor that employs fewer than 10 full or part-time direct employees, the telephone solicitations are made by the direct employees, and the direct employees collectively make or attempt to make no more than an average of 10 telephone solicitations to telephone subscribers per week during a calendar year.
- (5) To any telephone subscriber for the sole purpose of arranging a subsequent face-to-face meeting between the telephone solicitor and the telephone subscriber and the telephone solicitor does none of the following during the telephone solicitation:
 - a. Seek payment from the telephone subscriber in connection with the sale or rental of, or investment in, property, goods, or services.
 - b. Complete the sale or rental of, or investment in, property, goods, or services.
 - c. Obtain provisional acceptance of a sale, rental, or investment.
 - d. Obtain the agreement of the telephone subscriber to participate in any contest, sweepstakes, raffle, or lottery.
 - e. Directly following the telephone solicitation, go or cause an individual to go to the telephone subscriber to collect a payment or deliver any item purchased.

1 (d) Any telephone solicitor who makes a telephone solicitation shall do all of the
2 following:

- 3 (1) At the beginning of the telephone solicitation, state clearly the identity
4 of the telephone solicitor and identify the individual making the
5 telephone solicitation.
- 6 (2) Upon request, provide the telephone subscriber with the telephone
7 number or address at which the telephone solicitor may be contacted.
- 8 (3) If the telephone subscriber requests to be taken off the contact list of
9 the telephone solicitor, the telephone solicitor shall take all steps
10 necessary to remove the telephone subscriber's name and telephone
11 number from the contact list of the telephone solicitor and stop calling
12 the telephone subscriber within 30 business days.
- 13 (4) If the telephone subscriber objects to the telephone solicitation,
14 terminate the telephone solicitation and promptly disconnect from the
15 telephone line of the person receiving the call.
- 16 (5) Notwithstanding subdivision (3) of this subsection, if a telephone
17 solicitor relies on the established business relationship of an affiliate to
18 solicit a residential telephone subscriber whose telephone number is
19 listed in the latest edition of the 'Do Not Call' Registry and the person
20 called communicates a desire to receive no further telephone
21 solicitations from the telephone solicitor, the telephone solicitor shall
22 take all steps necessary to remove that telephone subscriber's
23 telephone number from the contact list of the telephone solicitor and
24 all of its affiliates, unless the telephone subscriber indicates otherwise,
25 and the telephone solicitor and its affiliates shall stop calling the
26 telephone subscriber at that number within 30 business days.

27 (e) Every telephone solicitor shall implement systems and written procedures to
28 prevent further telephone solicitations to any telephone subscriber who has asked not to
29 be called again at a specific number or numbers or whose telephone number appears in
30 the 'Do Not Call' Registry. Every telephone solicitor shall train, monitor, and enforce
31 compliance by its employees and shall monitor and enforce compliance by its
32 independent contractors in those systems and procedures. Every telephone solicitor shall
33 ensure that lists of telephone numbers that may not be contacted by the telephone
34 solicitor are maintained and recorded. Compliance with the time requirements within
35 the Telemarketing Sales Rule for incorporating and complying with updated versions of
36 the 'Do Not Call' Registry shall constitute compliance with North Carolina law.

37 (f) No telephone solicitor shall violate any requirement of section 310.3 of the
38 Telemarketing Sales Rule (Deceptive telemarketing acts or practices), section 310.4 of
39 the Telemarketing Sales Rule (Abusive telemarketing acts or practices), and section
40 310.5 of the Telemarketing Sales Rule (Record keeping requirements).

41 (g) No telephone solicitor shall make a telephone solicitation before 8:00 A.M. or
42 after 9:00 P.M.

43 (h) A telephone solicitor shall inquire as to whether the telephone subscriber is
44 under the age of 18. If the telephone subscriber purports to be less than 18 years of age,

1 the telephone solicitor shall discontinue the call immediately. No inquiry is required
2 where the solicitor has taken reasonable steps to remove all telephone contacts less than
3 18 years of age from its list of subscribers being contacted.

4 (i) No telephone solicitor shall knowingly use any method to block or otherwise
5 circumvent a telephone subscriber's use of a caller identification service. A telephone
6 solicitor who makes a telephone solicitation through the use of a private branch
7 exchange (PBX) or other call-generating system that is not capable of transmitting caller
8 identification information shall not be in violation of this subsection. No provider of
9 telephone caller identification services shall be held liable for violations of this
10 subsection committed by other individuals or entities.

11 (j) A telephone solicitor or its agent that makes telephone solicitations on its
12 behalf, provided that the telephone solicitor ensures compliance by its agent, shall keep
13 a record for a period of 24 months from the date a telephone solicitation is made of the
14 legal name, any fictitious name used, resident address, telephone number, and job title
15 of each individual who makes a telephone solicitation for that telephone solicitor. If an
16 individual who makes telephone solicitations for a telephone solicitor uses a fictitious
17 name, the fictitious name shall be traceable only to the specific individual.

18 (k) Nothing in this section prohibits a telephone solicitor from contacting by
19 nontelephonic notice a telephone subscriber whose telephone number appears in the 'Do
20 Not Call' Registry to obtain the telephone subscriber's express invitation or permission
21 allowing the telephone solicitor to make telephone solicitations to the telephone
22 subscriber. A telephone solicitor shall not contact a telephone subscriber by telephone to
23 obtain this express invitation or permission.

24 (l) Nothing in this section prohibits a telephone solicitor from advertising in a
25 general medium or contacting by nontelephonic notice a telephone subscriber whose
26 telephone number appears in the 'Do Not Call' Registry to encourage the telephone
27 subscriber to initiate telephone calls to the telephone solicitor. A telephone solicitor
28 shall not contact a telephone subscriber by telephone to obtain this express invitation or
29 permission.

30 (m) In any dispute regarding whether a telephone subscriber has provided an
31 express invitation or permission under subdivision (1) of subsection (c) of this section,
32 the telephone solicitor has the burden of proving that the telephone subscriber has
33 provided this permission by producing the original document, a facsimile document, or
34 an electronic form, signed by the telephone subscriber, or other authentication that
35 evidences permission. A telephone subscriber may subsequently retract express
36 invitation or permission by indicating a desire not to receive further telephone
37 solicitations under subsection (b) of this section.

38 (n) The Attorney General, in consultation with the Public Staff of the Public
39 Utilities Commission, shall draft the contents of a bill insert that notifies consumers of
40 the existence of the 'Do Not Call' Registry and provides information to consumers on
41 how to use it and the other provisions of this Article to object to receiving telephone
42 solicitations. Local exchange companies shall distribute the insert pursuant to G.S.
43 62-54.

1 (o) In the event that the federal 'Do Not Call' Registry is not operational by
2 January 1, 2004, or ceases to operate for any reason after January 1, 2004, the Attorney
3 General may develop, operate, and maintain such a registry for the benefit of North
4 Carolina telephone subscribers.

5 (p) In telephone solicitation transactions involving telephone subscribers, no
6 contract or purchase agreement entered into during a telephone solicitation is valid, and
7 no money from the prospective purchaser is due thereunder, unless all the following
8 conditions are satisfied:

9 (1) The contract and the sales representations that precede it are not
10 deceptive or abusive telemarketing acts or practices as elaborated in
11 section 310.3 of the Telemarketing Sales Rule and section 310.4 of the
12 Telemarketing Sales Rule.

13 (2) The telephone solicitor has complied with the record keeping
14 requirements of section 310.5 of the Telemarketing Sales Rule.

15 (3) The contract and the sales representations that precede it comply with
16 all other applicable federal and State laws, including Article 1 of this
17 Chapter.

18 **"§ 75-103. Restrictions on use of automatic dialing and recorded message players.**

19 (a) Except as provided in this section, no person may use an automatic dialing
20 and recorded message player to make an unsolicited telephone call.

21 (b) Notwithstanding subsection (a) of this section, a person may use an automatic
22 dialing and recorded message player to make an unsolicited telephone call under any
23 one or more of the following circumstances only:

24 (1) All of the following are satisfied:

25 a. The person making the call is any of the following:

26 1. A tax-exempt charitable or civic organization.

27 2. A political party or political candidate.

28 3. A governmental official.

29 4. An opinion polling organization, radio station, television
30 station, cable television company, or broadcast rating
31 service conducting a public opinion poll.

32 b. No part of the call is used to solicit or encourage the purchase
33 or rental of, or investment in, property, goods, or services; to
34 obtain or provide information that will or may be used to solicit
35 or encourage the purchase or rental of, or investment in,
36 property, goods, or services; or to solicit or encourage the
37 making of a charitable donation.

38 c. The person making the call clearly identifies the person's name
39 and contact information and the nature of the unsolicited
40 telephone call.

41 (2) Prior to the playing of the recorded message, a live operator complies
42 with G.S. 75-102(d), states the nature and length in minutes of the
43 recorded message, and asks for and receives prior approval to play the
44 recorded message from the person receiving the call.

(3) The unsolicited telephone call is in connection with an existing debt or contract for which payment or performance has not been completed at the time of the unsolicited telephone call.

(4) The call is placed by a person with whom the telephone subscriber has made an appointment, provided that the call is conveying information only about the appointment, or by a utility, telephone company, cable television company, satellite television company, or similar entity for the sole purpose of conveying information or news about network outages, repairs or service interruptions, and confirmation calls related to restoration of service.

(5) The person plays the recorded message in order to comply with the Telemarketing Sales Rule, 16 C.F.R. Part 310.4(b)(4).

"§ 75-104. Enforcement.

(a) The Attorney General may investigate any complaints received alleging violation of this Article. If the Attorney General finds that there has been a violation of this Article, the Attorney General may bring an action to impose civil penalties and to seek any other appropriate relief pursuant to this Chapter, including equitable relief to restrain the violation. If the Attorney General brings an action on behalf of telephone subscribers pursuant to subsection (b) of this section, the Attorney General may not seek treble damages on behalf of telephone subscribers pursuant to G.S. 75-16. Actions for civil penalties under this section shall be consistent with the provisions of this Chapter except that the penalty imposed for a violation of this Article shall be either of the following:

(1) Five hundred dollars (\$500.00) for the first violation, one thousand dollars (\$1,000) for the second violation, and five thousand dollars (\$5,000) for the third and any other violation that occurs within two years of the first violation.

(2) One hundred dollars (\$100.00) for each violation within two years of the first violation, if the telephone solicitor can show that the telephone solicitor has complied with G.S. 75-102(e) and the violations are a result of mistake.

(b) A telephone subscriber who has received a telephone solicitation from or on behalf of a telephone solicitor in violation of this Article may bring any of the following actions in civil court:

(1) An action to enjoin further violations of this Article by the telephone solicitor.

(2) An action to recover five hundred dollars (\$500.00) for the first violation, one thousand dollars (\$1,000) for the second violation, and five thousand dollars (\$5,000) for the third and any other violation that occurs within two years of the first violation.

(c) No action may be brought pursuant to subsection (b) of this section if the telephone solicitor can show that the telephone solicitor has complied with G.S. 75-102(e) and the violations are a result of mistake.

(d) In an action brought pursuant to this Article, the court may award a prevailing plaintiff reasonable attorney's fees if the court finds the defendant willfully engaged in the act or practice and the court may award reasonable attorney's fees to a prevailing defendant if the court finds that the plaintiff knew, or should have known, that the action was frivolous and malicious.

(e) A citizen of this State may also bring an action in civil court to enforce the private rights of action established by federal law under 47 U.S.C. § 227(b)(3) and 47 U.S.C. § 227(c)(5).

(f) Actions brought by telephone subscribers pursuant to this section, shall be tried in the county where the plaintiff resides at the time of the commencement of the action."

SECTION 4. G.S. 75-102(i), as enacted in Section 3 of this act, reads as rewritten:

"(i) No telephone solicitor shall knowingly use any method to block or otherwise circumvent a telephone subscriber's use of a caller identification service. ~~A telephone solicitor who makes a telephone solicitation through the use of a private branch exchange (PBX) or other call generating system that is not capable of transmitting caller identification information shall not be in violation of this subsection.~~ No provider of telephone caller identification services shall be held liable for violations of this subsection committed by other individuals or entities."

SECTION 5. G.S. 62-54 reads as rewritten:

"§ 62-54. Notification of opportunity to object to telephone solicitation.

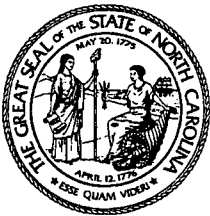
The Commission shall require each local exchange company and each competing local provider certified to do business in North Carolina to notify all ~~persons~~ telephone subscribers who subscribe to residential service from that company of the provisions of ~~G.S. 75-30.1, Article 4 of Chapter 75 of the General Statutes and of the federal laws and regulations~~ allowing consumers to object to receiving telephone solicitations, ~~and of programs made available by private industry that allow consumers to have their names removed from telemarketing lists, by enclosing that information, by enclosing a bill insert, drafted pursuant to G.S. 75-102(n), at least annually, in every at least one telephone bill mailed to customers.~~ every residential customer. The Commission shall also ensure that this information is printed in a clear, conspicuous manner in the consumer information pages of each telephone directory distributed to residential customers."

SECTION 6. Should one or more of the terms or provisions of this act or any application thereof be held or declared unenforceable or invalid to any extent, the remainder of this act, and the applications thereof that have not been held or declared unenforceable or invalid, shall remain in effect. In the specific event that the provisions of G.S. 75-102, as enacted in Section 3 of this act, or G.S. 75-103, as enacted in Section 3 of this act, are declared to be preempted or otherwise unenforceable in relation to interstate telephone calls, those provisions shall remain in force and effect with respect to intra-state telephone calls.

SECTION 7. Consistent with protected speech rights of businesses that engage in telephone solicitations, the provisions of this act shall be given broad

1 construction so as to protect telephone subscribers from unwanted telephone
2 solicitations and from problematic sales techniques and payment procedures often
3 associated with these solicitations.

4 **SECTION 8.** Section 4 of this act becomes effective January 1, 2006. G.S.
5 62-54, as amended by Section 5 of this act, applies to all telephone directories printed
6 on or after January 1, 2004. All other sections of this act become effective October 1,
7 2003, and apply to telephone solicitations made on or after that date.



SENATE BILL 872: Unwanted Telephone Solicitations.

BILL ANALYSIS

Committee: House Public Utilities
Date: June 18, 2003
Version: 2nd Edition

Introduced by: Senator Thomas
Summary by: Kory J. Goldsmith
Committee Counsel

SUMMARY: *SB872 would prohibit telephone solicitors from calling the telephone number of a residential telephone subscriber if the subscriber's telephone number appears in the "Do Not Call" Registry, or if the subscriber has specifically requested to not receive further telephone solicitations from that telephone solicitor.*

CURRENT LAW: Under the Telemarketing Sales Rule (TSR), the Federal Trade Commission (FTC) regulates telemarketing aimed at the sale of goods or services through interstate phone calls. Effective October 1, 2004, telemarketers who are subject to FTC jurisdiction will be prohibited from making telephone solicitations to consumers who have put their phone numbers on a national "do not call" registry. Some businesses that engage in interstate phone calls will remain exempt from the TSR, including long-distance phone companies and airlines, and insurance companies operating under state regulations. Although these companies are not subject to the TSR, any telemarketers they hire to make calls on their behalf are required to comply.

G.S. 75-30 currently regulates the use of automatic dialing and recorded message players for intrastate telephone solicitations. G.S. 75-30.1 currently regulates intrastate telephone solicitations.

BILL ANALYSIS:

Sections 1 and 2 repeal G.S. 75-30 and G.S. 75-30.1 respectively.

Section 3. Recodification and Amendment of Telephone Solicitation Laws.

Section 3 creates a new Article 4 (Telephone Solicitations) in Chapter 75 of the General Statutes. This new Article 4 largely recodifies and amends the provisions of current G.S. 75-30 and G.S. 75-30.1.

G.S. 75-100. Findings.

G.S. 75-101. Definitions.

Expands the definition of "telephone solicitation" to include telephone calls for the purpose of soliciting or encouraging participation in a contest, sweepstakes, raffle, or lottery and for the purpose of obtaining a charitable donation.

Defines "Do Not Call" Registry as the registry created and maintained by the Federal Trade Commission. It also means any other telemarketing registry created by the federal government or the Attorney General.

Defines "doing business in this State" as making or causing to be made any telephone solicitation to residential telephone subscribers, whether the telephone solicitations are made from a location inside or outside North Carolina.

G.S. 75-102. Restrictions on telephone solicitations.

Current G.S. 75-30.1 prohibits a telephone solicitor from calling a residential telephone subscriber who has communicated to that telephone solicitor a desire to be taken off the telephone solicitor's contact list. New G.S. 75-102 contains this prohibition and also prohibits a telephone solicitor from calling the

SENATE BILL 872

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telephone number of a residential telephone subscriber if the subscriber's telephone number appears in the "Do Not Call" Registry.

- The "Do Not Call" Registry prohibition does not apply to the following telephone solicitations:
 - Where the telephone subscriber has given prior express invitation or permission.
 - Where an established business relationship between the telephone subscriber and the telephone solicitor exists or has existed within the 18 months immediately preceding the telephone solicitation.
 - By or on behalf of a tax-exempt nonprofit organization.
 - By or on behalf of a telephone solicitor that employs fewer than 10 direct employees and those direct employees collectively make or attempt to make no more than an average of 10 telephone solicitations per week during a calendar year.
 - For arranging face-to-face meetings.
- Provide that if a telephone solicitor makes a call to a residential telephone subscriber whose number is in the "Do Not Call" Registry based on an existing or past business relationship of an affiliate and the subscriber communicates a desire to receive no further telephone solicitations from that telephone solicitor, the telephone solicitor will remove that person's number from its contact records and the contact records of all of its affiliates within 30 days.
- Provide that a telephone solicitor may contact a residential telephone subscriber whose telephone number appears in the "Do Not Call" Registry via non-telephonic means in order to obtain the subscriber's express written permission allowing the telephone solicitor to make telephone solicitations to the subscriber.
- Provide that a telephone solicitor may advertise in a general medium or contact a residential telephone subscriber whose telephone number appears in the "Do Not Call" Registry via non-telephonic means in order to encourage the subscriber to initiate telephonic communications to the telephone solicitor.

G.S. 75-103. Restrictions on use of automatic dialing and recorded message players.

In new G.S. 75-103, current law is rewritten and recodified so that no person may use an automatic dialing and recorded message player to make an unsolicited telephone call except under one of the following circumstances:

- The person making the call (1) is a tax-exempt charitable or civic organization, a political party or candidate, a governmental official, or an opinion polling organization, radio station, television station, or broadcast rating service conducting a public opinion poll; (2) no part of the call is used to solicit or encourage the purchase or rental of, or investment in, property, goods, or services; to obtain information that will or may be used to solicit or encourage the purchase or rental of, or investment in, property, goods, or services; or to solicit or encourage the making of a charitable donation; and (3) the person making the call identifies the name and contact information of the person calling and the nature of the call.
- Prior to playing the recorded message, a live operator states the nature and length of the message, and asks for and receives approval to play the message.
- The call is in connection with an existing debt or contract for which payment or performance is due.

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- The call is about an appointment made by the telephone subscriber.
- The call is from a utility or similar service provider about network outages, repairs, or service interruptions.

G.S. 75-104. Enforcement.

The new statute broadens the enforcement powers of the Attorney General related to telephone solicitations and increases the amounts of civil penalties that may be imposed or recovered for violation of telephone solicitation laws. The new statute specifically:

- Authorizes the Attorney General to investigate alleged violations of the new Article 4 (Telephone Solicitations).
- Provides that the Attorney General may not seek treble damages on behalf of residential telephone subscribers if the Attorney General brings an action on behalf of the residential telephone subscribers.
NOTE: It appears that a provision authorizing the Attorney General to bring an action on behalf of residential telephone subscribers has been inadvertently omitted from the bill.
- Authorizes the Attorney General to bring an action to impose the following civil penalties for violations of telephone solicitation laws:
 - \$500 for the first violation, \$1,000 for the second violation, and \$5,000 for the third and each subsequent violation within two years of the first violation.
 - \$100 for each violation within two years of the first violation if the telephone solicitor has established in-house procedures to comply with telephone solicitation requirements and the violations are the result of a mistake.
- Authorizes a residential telephone subscriber who has received telephone solicitations in violation of the telephone solicitation laws to bring an action to recover \$500 for the first violation, \$1,000 for the second violation, and \$5,000 for the third and each subsequent violation within the past two years. No action may be brought by or on behalf of residential telephone subscribers under this provision if the telephone solicitor has established in-house procedures to comply with telephone solicitation requirements and the violations are the result of a mistake.
- Provides that attorney's fees may be awarded under certain circumstances.
- Authorizes a citizen of the State to bring a civil action to enforce federal telephone solicitation laws.

Section 4. Caller Identification Block

Under current law, a telephone solicitor may not knowingly block a residential telephone subscriber's caller identification service. Use of a call generating system that does not transmit caller identification information, however, is not a violation of this prohibition. Section 4 repeals the exemption for call generating systems effective January 1, 2006.

Section 5. Notification of Opportunity to Object to Telephone Solicitations

Section 5 requires both local exchange companies and competing local providers to disseminate a bill insert produced by the Attorney General, in consultation with the Public Staff of the Utilities Commission, at least annually. This section applies to telephone directories printed on or after January 1, 2004.

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Section 6. Severability Clause

If any provision of this act is held to be unenforceable or invalid, the remainder of the act that has not been held to be unenforceable or invalid shall remain in effect. If certain provisions of the act are declared to be preempted or otherwise unenforceable in relation to interstate telephone calls, those provisions will remain in force with respect to intra-state calls.

Section 7. Construction of Act

Consistent with protected speech rights, this act shall be construed broadly to protect residential telephone subscribers from unwanted telephone solicitations and from problematic sales techniques and payment procedures often associated with these solicitations.

Section 8. Effective Dates

Except as otherwise noted, this act is effective October 1, 2003 and applies to telephone solicitations made on or after that date.

S872-SMRC-002. Jeff Hudson contributed substantially to this summary.

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON PUBLIC UTILITIES

June 18, 2003

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

| | |
|------------------|-----------------------|
| Mary H. Odom | AARP |
| Richard C. Hatch | AARP |
| Helen Savage | AARP |
| Randy Fraser | TWC |
| Ed TURLINGTON | Brooks Pierce |
| Isaiah King | Duke Energy |
| Richard W. Hatch | AARP Oak Island NC |
| Tracy Wood | Brooks Pierce |
| Debra Dean | Bell Smith |
| Stephane Simpson | NCAR |
| Rick ZECHIN | NC Assoc. of REACTORS |

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON PUBLIC UTILITIES

June 18, 2003

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

BILL HALE

JORDAN PRICE

Ted Vaden

NC Press Association

Teri Sawyer

NC Press Association

Bob Hillam

Public Staff - NCUC

Dexter Joyner

AARP Long Term

Deane Ogles

AARP

Andy Ellen

NLRMA

Fran Preston

NLRMA

Tom Sri

NLRMA

Amel Dobson

NC Statewatch.

Paul Strub

NC Bankers Assn.

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON PUBLIC UTILITIES

June 18, 2003

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

| | |
|--------------------|-----------------------------------|
| RON OTTAVIO | WACHOVIA |
| Ed Hutchins | Wachovia |
| Terrence Nunner | Wachovia |
| Etherine Davis | Electric City |
| Mark Deason | Capital Group |
| John Otale | Governor's Office |
| Alison Whalley | Concerned Women For America |
| Trish M. Miller | Concerned Women For America (CWA) |
| Marjorie G. Gentry | Concerned Women For America |
| Jim Ricks | NASW |
| DONTAHER | ADRP |

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON PUBLIC UTILITIES

June 18, 2003

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

| NAME | FIRM OR AGENCY AND ADDRESS |
|--------------------|----------------------------|
| Rob Schofield | NC Justice Center |
| Brad Lamb | NC Consumers Council |
| Candice Steel | KCLH |
| Charles E. Spruill | Poyner + Spruill |
| Dick Carlton | SIA / AMEX |
| Chad Dell | NC Trucking Association |
| John H. H. H. | NCFPC |
| John McHarg | GOV OFFICE |
| Cam Cover | RPMKL |
| Ken Melton | Alley Associates, Inc. |
| Stan Pace | Verizon |

VISITOR REGISTRATION SHEET

House Public Utilities

6-18-03

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME

FIRM OR AGENCY

| | |
|-------------------|-----------------------------|
| Tom Sri | NCRMA |
| John Medister | Duke Energy |
| Gene Unshorn | Progress Energy |
| Gene G. Feather | D.C. Army Central Office |
| Sand Sants | WCSR |
| Donald K. Korman | RIC ABID |
| John Palmer | ARET |
| Paul Wescott | Sprint |
| Paul J. Zimmerman | NILEG |
| Luella Doree | UCICU |
| Mike Zotta | AARP |
| Hadley Penn | |
| Adam Fitzwater | |
| Kevin LEANARD | WCSR |
| Arny Fullbright | Huntton's Wms |
| Barbara Candler | MFSS |
| John McNeill | MFSS |
| W. S. Sorensen | KCLH |
| Thomas Brown | Rose House |
| Larry Heckner | Household |
| Al W. Moschler | Local Education Bd |
| Mary Williams | Concerned Women For America |
| Kathie D. Winkert | Concerned Women For America |
| Janet W. W. | Sprint |
| Bob Jackson | AARP |
| Dana Simpson | Smixr Andersen |
| Kathryn Smoller | Charlotte Chamber |

VISITOR REGISTRATION SHEET

House Public Utilities

Name of Committee

6-18-03

Date _____

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME

FIRM OR AGENCY

NAME
Brenda
Hoy Roberts

AP

AGENDA

HOUSE COMMITTEE ON PUBLIC UTILITIES

June 25, 2003

Room 1228/1327 Legislative Building

10:00 a.m.

OPENING REMARKS

**Representative Harold J. Brubaker, Chair
Public Utilities Committee**

AGENDA ITEMS

**SB 872 UNWANTED TELEPHONE SOLICITATIONS
- Sen. Thomas**

ADJOURNMENT

MINUTES

HOUSE COMMITTEE ON PUBLIC UTILITIES

JUNE 25, 2003

The House Committee on Public Utilities met at 10:00 a.m. on June 25, 2003, in Room 1228 of the Legislative Building. Members present were: Representative Brubaker, Chair, Representative Saunders, Chair, and Representatives Gordon Allen, Bordsen, Coates, Culpepper, Gibson, Hill, Holliman, Howard, Linda Johnson, LaRoque, McComas, Miner, Sauls, Sherrill, Keith Williams and Wright. Committee Counsels, Kory Goldsmith and Steve Rose, were also present. Visitor Registration Sheets are attached and made a part of the Minutes. See Attachment #1.

Representative Brubaker, Chair, called the meeting to order. He recognized Pages Lauren Mikusa of Wake County, sponsored by Representative Sam Ellis; Julie Stevenson of Cherokee County, sponsored by Representative Roger West; Alecia Murphy of New Hanover County, sponsored by Representative Thomas Wright; Tara Scheidt of Rowan County, sponsored by Representative Lorene Coates; and the Sergeant-At-Arms staff members, Earl Tharrington, Martha Gadison and Frances Poole.

Chairman Brubaker opened the discussion on Senate Bill 872 "Unwanted Telephone Solicitations". See Attachment #2. Then, Kory Goldsmith, Committee Counsel, distributed the Bill Summary, Current Law, and Bill Analysis of Senate Bill 872 to the members of the Committee. See Attachment #3.

Chairman Brubaker recognized Representative LaRoque who distributed Amendment #1 on Senate Bill 872 to the Committee. See Attachment #4. Representative LaRoque spoke in favor of exempting newspaper publishers, radio stations or television stations from the Bill. Representative Bordsen also spoke in favor of Amendment #1. Senator Thomas, the bill sponsor, spoke against Amendment #1.

Representative Miner distributed a Perfecting Amendment to the LaRoque Amendment.#1. See Attachment #5. The following people spoke against the Perfecting Amendment: Senator Scott Thomas, Josh Stein with the Attorney General's Office, Representative Drew Saunders, Bob Jackson of AARP, and Don Beason representing AT&T Wireless.

Chairman Brubaker called for a vote by the Committee Members on the Perfecting Amendment. Nine (9) voting in the affirmative and four (4) voting in the negative, the Perfecting Amendment was approved by the Committee. Then, Chairman Brubaker called for a vote on the LaRoque Amendment #1, as Perfected. Ten (10) voting in the affirmative and four (4) voting in the negative, the LaRoque Amendment #1, as Perfected was approved by the Committee.

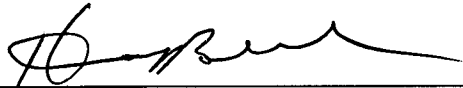
Representative Julia Howard distributed Amendment #2 exempting small businesses from Senate Bill 872. See Attachment #6. Senator Scott Thomas and Josh Stein with the Attorney General's Office stated that there were already exemptions in Senate Bill 872 for small businesses. Representative Thomas Wright stated that he does not want to exempt anyone. Rich Zechini with the NC Association of Realtors stated that Amendment #2 does apply to small businesses. Mr. Richard Hatch, a volunteer for AARP, proposed all future votes be "recorded". Chairman Brubaker called for a vote on the Howard Amendment #2. And Amendment #2 was unanimously approved by the Committee.

Representative Pryor Gibson distributed Amendment #3 which clarifies that persons under the age of 18 years of age would not be targeted by telephone solicitors. See Attachment #7. Chairman Brubaker called for a vote on the Gibson Amendment #3. Amendment #3 was unanimously approved by the Committee.

Representative David Miner distributed Amendment #4 which would exempt automatic dialing and recorded message players from the Bill if there was an established business relationship between the telephone solicitor and the telephone subscriber. Mr. Josh Stein with the Attorney General's Office stated that Amendment #4 would weaken the "pre-recorded message" section of the Bill. Senator Scott Thomas spoke against the Amendment #4. Representative David Miner and Wade Hargrove spoke for the adoption of Amendment #4. Then, Chairman Brubaker called for a vote on the Miner Amendment #4. Only one (1) Committee Member voting in the affirmative, Amendment #4 was defeated.

Chairman Brubaker called for further amendments, comments or discussion by the Committee Members or the Visitors. There being none, Representative Drew Saunders made a Motion for a Favorable Report, As Amended for SB 872, Unfavorable As To The Original SB 872.

There being no further business, the meeting adjourned at 10:55 a.m.


Rep. Harold Brubaker, Presiding Chair


Cindy Coley, Committee Assistant

Attachments: #1 Visitor Registration
#2 Senate Bill 872
#3 Bill summary for SB 872
#4 LaRoque Amendment #1
#5 Miner Perfecting Amendment of LaRoque Amendment #1
#6 Howard Amendment #2
#7 Gibson Amendment #3
#8 Miner Amendment #4

VISITOR REGISTRATION SHEET

HOUSE PUBLIC UTILITIES COMMITTEE

June 25, 2003

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

| | |
|-------------------|-----------------------|
| Cam Coxen | BPMHL |
| MARK PRAN | BPMHL |
| WADE HARGROVE | S |
| John McMillan | ME+S |
| Richard C Hatch | AARP |
| Helen Savage | AARP |
| Boa Reing | Duke Energy |
| BILL HAZE | JORDAN PRICE LAW FIRM |
| Stephanie Simpson | NC ASSN. OF REALTORS |
| Rick Lechini | NC Assn. of REALTORS |
| Larry Bending | SIA |

VISITOR REGISTRATION SHEET

HOUSE PUBLIC UTILITIES COMMITTEE

June 25, 2003

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| | |
|------------------|--------------------------------|
| Luey Edmondson | Public Staff - Utilities Comm. |
| Bill DeMa | NCPA / The Sanford Herald |
| Tori Saylen | NCPA |
| Toad Uckler | Chapel Hill News |
| Kevin Till | Totten |
| Robert Johnson | AARP |
| Betty Turner | Bank of America |
| Wes Gray | Tobacco Executive |
| Lance Mangum | Office of the Governor |
| Bradley J. Quinn | Office of the Rules Chairman |
| Julie Adler | NC Statewatch |

VISITOR REGISTRATION SHEET

HOUSE PUBLIC UTILITIES COMMITTEE

June 25, 2003

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Date

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| | |
|--------------------|------------------------|
| John McHugh | Gov OFFICE |
| Ken Melton | Alley Associates, Inc. |
| Adam Stallings | Hunter & Williams |
| Camille Steel | KCLH |
| Margaret Westbrook | KCLH |
| Pam Wescott | Sprint |
| Barbara Canler | MEIS |
| Terry Lawler | MCI |
| John Bowditch | Astrazeneca |
| Molly Ryan | NCSPA |
| Mary Thomas | REBIC |

VISITOR REGISTRATION SHEET

HOUSE PUBLIC UTILITIES COMMITTEE

June 25, 2003

Name of Committee

Date

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NAME

FIRM OR AGENCY AND ADDRESS

Paul F. Zimmerman

NCLEG

John Cyren

nc state thrange

in Mulover

ncic

Adam F. [unclear]

Inter

Manda Reeder

Intern / Rep. Goodwin

Dick Carlton

Carlton & Alexander PLLC

Roney Lamm

Citi group

Ram Carpenter

NCPC

Bern Anne Mumford

NCPC

Jeff Van Dyke

BST

David Anderson

PTF

VISITOR REGISTRATION SHEET

HOUSE PUBLIC UTILITIES COMMITTEE

June 25, 2003

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

| | |
|--------------------|-------------------|
| <i>[Signature]</i> | CWS/planning |
| Stan Pace | Verizon |
| Tom Monon | STANT |
| <i>[Signature]</i> | Proper Energy |
| <i>[Signature]</i> | NCRB |
| John McAlister | Anke Energy |
| Kevin G. Leonard | WCSR |
| Julie Woodson | NCCBI |
| Mark Fleming | University System |
| David Kirkman | AED |
| | |
| | |

**2003 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representatives **BRUBAKER AND SAUNDERS** (Chairs) for the Committee on
PUBLIC UTILITIES.

☒ Committee Substitute for

S.B. 872 A BILL TO BE ENTITLED AN ACT TO INCREASE PROTECTIONS FOR
TELEPHONE SUBSCRIBERS WHO WISH TO STOP UNWANTED TELEPHONE
SOLICITATIONS AND FOR CONSUMERS WHO ENTER INTO TELEMARKETING
TRANSACTIONS.

- ☐ With a favorable report.
- ☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
Appropriations ☐ Finance ☐ .
- ☐ With a favorable report, as amended.
- ☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the
Committee on Appropriations ☐ Finance ☐ .
- ☐ With a favorable report as to the committee substitute bill (#), ☐ which changes the
title, unfavorable as to (the original bill) (Committee Substitute Bill #), (and
recommendation that the committee substitute bill #) be re-referred to the Committee
on .)
- ☒ With a favorable report as to House committee substitute bill (#), ~~☐ which changes
the title,~~ unfavorable as to Senate committee substitute bill.
- ☐ With an unfavorable report.
- ☐ With recommendation that the House concur.
- ☐ With recommendation that the House do not concur.
- ☐ With recommendation that the House do not concur; request conferees.
- ☐ With recommendation that the House concur; committee believes bill to be material.
- ☐ With an unfavorable report, with a Minority Report attached.
- ☐ Without prejudice.
- ☐ With an indefinite postponement report.
- ☐ With an indefinite postponement report, with a Minority Report attached.
- ☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

03/19/03

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

S

2

SENATE BILL 872
Commerce Committee Substitute Adopted 4/29/03

Short Title: Unwanted Telephone Solicitations.

(Public)

Sponsors:

Referred to:

April 3, 2003

1 A BILL TO BE ENTITLED
2 AN ACT TO INCREASE PROTECTIONS FOR TELEPHONE SUBSCRIBERS WHO
3 WISH TO STOP UNWANTED TELEPHONE SOLICITATIONS AND FOR
4 CONSUMERS WHO ENTER INTO TELEMARKETING TRANSACTIONS.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 75-30 is repealed.

7 SECTION 2. G.S. 75-30.1 is repealed.

8 SECTION 3. Chapter 75 of the General Statutes is amended by adding a
9 new Article to read:

10 "Article 4.

11 "Telephone Solicitations.

12 "§ 75-100. Findings.

13 The General Assembly finds all of the following:

- 14 (1) The use of the telephone to market goods and services to the home is
15 now pervasive due to the increased use of cost-effective telephone
16 solicitation technologies and techniques.
- 17 (2) While some consumers enjoy and benefit from telephone solicitations
18 from legitimate telephone solicitors, many others object to these
19 telephone solicitations as an intrusive invasion of their privacy in the
20 home.
- 21 (3) In addition, the proliferation of telephone solicitations, especially
22 during the evening hours, creates a nuisance and a disturbance upon
23 the home and family life of telephone subscribers during a time of day
24 used by many families for traditional family activities.
- 25 (4) North Carolina residents should have the freedom to choose whether
26 or not to permit telephone solicitors to contact them.
- 27 (5) Individual privacy rights, personal safety, prevention of fraud, and
28 commercial freedom of speech and trade must be balanced in a way

1 that protects the privacy of individuals and permits legitimate
2 telephone solicitation practices.

3 (6) Legitimate telephone solicitors have no interest in continuing to invade
4 the privacy of those telephone subscribers who affirmatively express
5 their desires to receive no further telephone solicitations.

6 (7) Many telephone subscribers who have transacted business with firms
7 that employ telephone solicitations have experienced problems with
8 their checking and credit card accounts being debited before they can
9 evaluate the terms and conditions of the transaction, before they can
10 evaluate the merchandise or service to be delivered, or without their
11 agreement to enter into the transaction or authorize such transactions
12 in the first place. Other telephone subscribers have had unauthorized
13 charges placed on their telephone bill and have had their long distance
14 carrier switched without their authorization as a result of telephone
15 solicitations.

16 (8) New technologies that make telephone solicitations more
17 cost-effective also allow for the creation of a 'Do Not Call' Registry
18 through which North Carolina consumers can easily register their
19 desires not to receive further telephone solicitations and telephone
20 solicitors can easily access and employ lists of consumers who have
21 registered those desires.

22 (9) The public interest requires an efficient mechanism for telephone
23 subscribers to notify telephone solicitors that their telephone numbers
24 cannot be called and additional protections for North Carolina
25 residents who enter into consumer transactions initiated through
26 telephone solicitations.

27 **"§ 75-101. Definitions.**

28 The following definitions apply in this Article:

29 (1) Affiliate. – A business establishment, business, or other legal entity
30 that wholly or substantially owns, is wholly or substantially owned by,
31 or is under common ownership with a telephone solicitor.

32 (2) Automatic dialing and recorded message player. – Any automatic
33 equipment that incorporates a storage capability of telephone numbers
34 to be called or a random or a sequential number generator capable of
35 producing numbers to be called that, working alone or in conjunction
36 with other equipment, disseminates a prerecorded message to the
37 telephone number called.

38 (3) 'Do Not Call' Registry. – The registry created and maintained by the
39 Federal Trade Commission pursuant to the Telemarketing Sales Rule.
40 It also means any other telemarketing registry created by the federal
41 government, including the Federal Communications Commission. It
42 also means any registry created by the Attorney General pursuant to
43 G.S. 75-102(o).

- 1 (4) Doing business in this State. – To make or cause to be made any
2 telephone solicitation to North Carolina telephone subscribers, whether
3 the telephone solicitations are made from a location inside North
4 Carolina or outside North Carolina.
- 5 (5) Established business relationship. – A relationship between a seller
6 and a consumer based on:
- 7 a. The consumer's purchase, rental, or lease of the seller's goods or
8 services or a financial transaction between the consumer and the
9 seller or one or more of its affiliates, within the 18 months
10 immediately preceding the date of a telephone solicitation; or
- 11 b. The consumer's inquiry or application regarding a product or
12 service offered by the seller within the three months
13 immediately preceding the date of a telephone solicitation.
- 14 (6) Express invitation or permission. – Any invitation or permission that is
15 registered by the telephone subscriber on an independent form and that
16 contains the telephone number to which calls can be placed and the
17 signature of the telephone subscriber. The form may be completed and
18 signed electronically.
- 19 (7) Person. – Any individual, business establishment, business, or other
20 legal entity.
- 21 (8) Telemarketing Sales Rule. – The federal regulation promulgated by the
22 Federal Trade Commission, 16 C.F.R. Part 310 (January 29, 2003
23 Edition), as amended, to implement the Telemarketing and Consumer
24 Fraud and Abuse Prevention Act, 15 U.S.C. §§ 6101-6108, as
25 amended.
- 26 (9) Telephone subscriber. – An individual who subscribes to a residential
27 telephone service from a local exchange company, a competing local
28 provider certified to do business in North Carolina, or a wireless
29 telephone company; or the persons living or residing with that person.
- 30 (10) Telephone solicitation. – A voice communication, whether
31 prerecorded, live, or a facsimile, over a telephone line or wireless
32 telephone network or via a commercial mobile radio service that is
33 made by a telephone solicitor to a telephone subscriber for the purpose
34 of soliciting or encouraging the purchase or rental of, or investment in,
35 property, goods, or services; obtaining or providing information that
36 will or may be used for that purpose; soliciting or encouraging a
37 telephone subscriber's participation in any contest, sweepstakes, raffle,
38 or lottery, whether legal or illegal; or obtaining a charitable donation.
39 'Telephone solicitation' also includes those transactions that are
40 defined as 'telemarketing' under the Telemarketing Sales Rule.
- 41 (11) Telephone solicitor. – Any individual, business establishment,
42 business, or other legal entity doing business in this State that, directly
43 or through salespersons or agents, makes or attempts to make
44 telephone solicitations or causes telephone solicitations to be made.

'Telephone solicitor' also includes any party defined as a 'telemarketer' under the Telemarketing Sales Rule.

(12) Unsolicited telephone call. – A voice communication, whether prerecorded, live, or a facsimile, over a telephone line or wireless telephone network or via a commercial mobile radio service that is made by a person to a telephone subscriber without prior express invitation or permission.

"§ 75-102. Restrictions on telephone solicitations.

(a) Except as provided in subsection (c) of this section, no telephone solicitor shall make a telephone solicitation to a telephone subscriber's telephone number if the telephone subscriber's telephone number appears in the latest edition of the 'Do Not Call' Registry.

(b) No telephone solicitor shall make a telephone solicitation to a telephone subscriber's telephone number if the telephone subscriber previously has communicated to the telephone solicitor a desire to receive no further telephone solicitations from the telephone solicitor to that number.

(c) Subsection (a) of this section does not apply to any of the following telephone solicitations:

- (1) To any telephone subscriber with the telephone subscriber's prior express invitation or permission.
- (2) To any telephone subscriber with whom the telephone solicitor has an established business relationship.
- (3) By or on behalf of a tax-exempt nonprofit organization.
- (4) By or on behalf of a telephone solicitor that employs fewer than 10 full or part-time direct employees, the telephone solicitations are made by the direct employees, and the direct employees collectively make or attempt to make no more than an average of 10 telephone solicitations to telephone subscribers per week during a calendar year.
- (5) To any telephone subscriber for the sole purpose of arranging a subsequent face-to-face meeting between the telephone solicitor and the telephone subscriber and the telephone solicitor does none of the following during the telephone solicitation:
 - a. Seek payment from the telephone subscriber in connection with the sale or rental of, or investment in, property, goods, or services.
 - b. Complete the sale or rental of, or investment in, property, goods, or services.
 - c. Obtain provisional acceptance of a sale, rental, or investment.
 - d. Obtain the agreement of the telephone subscriber to participate in any contest, sweepstakes, raffle, or lottery.
 - e. Directly following the telephone solicitation, go or cause an individual to go to the telephone subscriber to collect a payment or deliver any item purchased.

1 (d) Any telephone solicitor who makes a telephone solicitation shall do all of the
2 following:

- 3 (1) At the beginning of the telephone solicitation, state clearly the identity
4 of the telephone solicitor and identify the individual making the
5 telephone solicitation.
- 6 (2) Upon request, provide the telephone subscriber with the telephone
7 number or address at which the telephone solicitor may be contacted.
- 8 (3) If the telephone subscriber requests to be taken off the contact list of
9 the telephone solicitor, the telephone solicitor shall take all steps
10 necessary to remove the telephone subscriber's name and telephone
11 number from the contact list of the telephone solicitor and stop calling
12 the telephone subscriber within 30 business days.
- 13 (4) If the telephone subscriber objects to the telephone solicitation,
14 terminate the telephone solicitation and promptly disconnect from the
15 telephone line of the person receiving the call.
- 16 (5) Notwithstanding subdivision (3) of this subsection, if a telephone
17 solicitor relies on the established business relationship of an affiliate to
18 solicit a residential telephone subscriber whose telephone number is
19 listed in the latest edition of the 'Do Not Call' Registry and the person
20 called communicates a desire to receive no further telephone
21 solicitations from the telephone solicitor, the telephone solicitor shall
22 take all steps necessary to remove that telephone subscriber's
23 telephone number from the contact list of the telephone solicitor and
24 all of its affiliates, unless the telephone subscriber indicates otherwise,
25 and the telephone solicitor and its affiliates shall stop calling the
26 telephone subscriber at that number within 30 business days.

27 (e) Every telephone solicitor shall implement systems and written procedures to
28 prevent further telephone solicitations to any telephone subscriber who has asked not to
29 be called again at a specific number or numbers or whose telephone number appears in
30 the 'Do Not Call' Registry. Every telephone solicitor shall train, monitor, and enforce
31 compliance by its employees and shall monitor and enforce compliance by its
32 independent contractors in those systems and procedures. Every telephone solicitor shall
33 ensure that lists of telephone numbers that may not be contacted by the telephone
34 solicitor are maintained and recorded. Compliance with the time requirements within
35 the Telemarketing Sales Rule for incorporating and complying with updated versions of
36 the 'Do Not Call' Registry shall constitute compliance with North Carolina law.

37 (f) No telephone solicitor shall violate any requirement of section 310.3 of the
38 Telemarketing Sales Rule (Deceptive telemarketing acts or practices), section 310.4 of
39 the Telemarketing Sales Rule (Abusive telemarketing acts or practices), and section
40 310.5 of the Telemarketing Sales Rule (Record keeping requirements).

41 (g) No telephone solicitor shall make a telephone solicitation before 8:00 A.M. or
42 after 9:00 P.M.

43 (h) A telephone solicitor shall inquire as to whether the telephone subscriber is
44 under the age of 18. If the telephone subscriber purports to be less than 18 years of age,

1 the telephone solicitor shall discontinue the call immediately. No inquiry is required
2 where the solicitor has taken reasonable steps to remove all telephone contacts less than
3 18 years of age from its list of subscribers being contacted.

4 (i) No telephone solicitor shall knowingly use any method to block or otherwise
5 circumvent a telephone subscriber's use of a caller identification service. A telephone
6 solicitor who makes a telephone solicitation through the use of a private branch
7 exchange (PBX) or other call-generating system that is not capable of transmitting caller
8 identification information shall not be in violation of this subsection. No provider of
9 telephone caller identification services shall be held liable for violations of this
10 subsection committed by other individuals or entities.

11 (j) A telephone solicitor or its agent that makes telephone solicitations on its
12 behalf, provided that the telephone solicitor ensures compliance by its agent, shall keep
13 a record for a period of 24 months from the date a telephone solicitation is made of the
14 legal name, any fictitious name used, resident address, telephone number, and job title
15 of each individual who makes a telephone solicitation for that telephone solicitor. If an
16 individual who makes telephone solicitations for a telephone solicitor uses a fictitious
17 name, the fictitious name shall be traceable only to the specific individual.

18 (k) Nothing in this section prohibits a telephone solicitor from contacting by
19 nontelephonic notice a telephone subscriber whose telephone number appears in the 'Do
20 Not Call' Registry to obtain the telephone subscriber's express invitation or permission
21 allowing the telephone solicitor to make telephone solicitations to the telephone
22 subscriber. A telephone solicitor shall not contact a telephone subscriber by telephone to
23 obtain this express invitation or permission.

24 (l) Nothing in this section prohibits a telephone solicitor from advertising in a
25 general medium or contacting by nontelephonic notice a telephone subscriber whose
26 telephone number appears in the 'Do Not Call' Registry to encourage the telephone
27 subscriber to initiate telephone calls to the telephone solicitor. A telephone solicitor
28 shall not contact a telephone subscriber by telephone to obtain this express invitation or
29 permission.

30 (m) In any dispute regarding whether a telephone subscriber has provided an
31 express invitation or permission under subdivision (1) of subsection (c) of this section,
32 the telephone solicitor has the burden of proving that the telephone subscriber has
33 provided this permission by producing the original document, a facsimile document, or
34 an electronic form, signed by the telephone subscriber, or other authentication that
35 evidences permission. A telephone subscriber may subsequently retract express
36 invitation or permission by indicating a desire not to receive further telephone
37 solicitations under subsection (b) of this section.

38 (n) The Attorney General, in consultation with the Public Staff of the Public
39 Utilities Commission, shall draft the contents of a bill insert that notifies consumers of
40 the existence of the 'Do Not Call' Registry and provides information to consumers on
41 how to use it and the other provisions of this Article to object to receiving telephone
42 solicitations. Local exchange companies shall distribute the insert pursuant to G.S.
43 62-54.

1 (o) In the event that the federal 'Do Not Call' Registry is not operational by
2 January 1, 2004, or ceases to operate for any reason after January 1, 2004, the Attorney
3 General may develop, operate, and maintain such a registry for the benefit of North
4 Carolina telephone subscribers.

5 (p) In telephone solicitation transactions involving telephone subscribers, no
6 contract or purchase agreement entered into during a telephone solicitation is valid, and
7 no money from the prospective purchaser is due thereunder, unless all the following
8 conditions are satisfied:

9 (1) The contract and the sales representations that precede it are not
10 deceptive or abusive telemarketing acts or practices as elaborated in
11 section 310.3 of the Telemarketing Sales Rule and section 310.4 of the
12 Telemarketing Sales Rule.

13 (2) The telephone solicitor has complied with the record keeping
14 requirements of section 310.5 of the Telemarketing Sales Rule.

15 (3) The contract and the sales representations that precede it comply with
16 all other applicable federal and State laws, including Article 1 of this
17 Chapter.

18 **"§ 75-103. Restrictions on use of automatic dialing and recorded message players.**

19 (a) Except as provided in this section, no person may use an automatic dialing
20 and recorded message player to make an unsolicited telephone call.

21 (b) Notwithstanding subsection (a) of this section, a person may use an automatic
22 dialing and recorded message player to make an unsolicited telephone call under any
23 one or more of the following circumstances only:

24 (1) All of the following are satisfied:

25 a. The person making the call is any of the following:

26 1. A tax-exempt charitable or civic organization.

27 2. A political party or political candidate.

28 3. A governmental official.

29 4. An opinion polling organization, radio station, television
30 station, cable television company, or broadcast rating
31 service conducting a public opinion poll.

32 b. No part of the call is used to solicit or encourage the purchase
33 or rental of, or investment in, property, goods, or services; to
34 obtain or provide information that will or may be used to solicit
35 or encourage the purchase or rental of, or investment in,
36 property, goods, or services; or to solicit or encourage the
37 making of a charitable donation.

38 c. The person making the call clearly identifies the person's name
39 and contact information and the nature of the unsolicited
40 telephone call.

41 (2) Prior to the playing of the recorded message, a live operator complies
42 with G.S. 75-102(d), states the nature and length in minutes of the
43 recorded message, and asks for and receives prior approval to play the
44 recorded message from the person receiving the call.

(3) The unsolicited telephone call is in connection with an existing debt or contract for which payment or performance has not been completed at the time of the unsolicited telephone call.

(4) The call is placed by a person with whom the telephone subscriber has made an appointment, provided that the call is conveying information only about the appointment, or by a utility, telephone company, cable television company, satellite television company, or similar entity for the sole purpose of conveying information or news about network outages, repairs or service interruptions, and confirmation calls related to restoration of service.

(5) The person plays the recorded message in order to comply with the Telemarketing Sales Rule, 16 C.F.R. Part 310.4(b)(4).

"§ 75-104. Enforcement.

(a) The Attorney General may investigate any complaints received alleging violation of this Article. If the Attorney General finds that there has been a violation of this Article, the Attorney General may bring an action to impose civil penalties and to seek any other appropriate relief pursuant to this Chapter, including equitable relief to restrain the violation. If the Attorney General brings an action on behalf of telephone subscribers pursuant to subsection (b) of this section, the Attorney General may not seek treble damages on behalf of telephone subscribers pursuant to G.S. 75-16. Actions for civil penalties under this section shall be consistent with the provisions of this Chapter except that the penalty imposed for a violation of this Article shall be either of the following:

(1) Five hundred dollars (\$500.00) for the first violation, one thousand dollars (\$1,000) for the second violation, and five thousand dollars (\$5,000) for the third and any other violation that occurs within two years of the first violation.

(2) One hundred dollars (\$100.00) for each violation within two years of the first violation, if the telephone solicitor can show that the telephone solicitor has complied with G.S. 75-102(e) and the violations are a result of mistake.

(b) A telephone subscriber who has received a telephone solicitation from or on behalf of a telephone solicitor in violation of this Article may bring any of the following actions in civil court:

(1) An action to enjoin further violations of this Article by the telephone solicitor.

(2) An action to recover five hundred dollars (\$500.00) for the first violation, one thousand dollars (\$1,000) for the second violation, and five thousand dollars (\$5,000) for the third and any other violation that occurs within two years of the first violation.

(c) No action may be brought pursuant to subsection (b) of this section if the telephone solicitor can show that the telephone solicitor has complied with G.S. 75-102(e) and the violations are a result of mistake.

(d) In an action brought pursuant to this Article, the court may award a prevailing plaintiff reasonable attorney's fees if the court finds the defendant willfully engaged in the act or practice and the court may award reasonable attorney's fees to a prevailing defendant if the court finds that the plaintiff knew, or should have known, that the action was frivolous and malicious.

(e) A citizen of this State may also bring an action in civil court to enforce the private rights of action established by federal law under 47 U.S.C. § 227(b)(3) and 47 U.S.C. § 227(c)(5).

(f) Actions brought by telephone subscribers pursuant to this section, shall be tried in the county where the plaintiff resides at the time of the commencement of the action."

SECTION 4. G.S. 75-102(i), as enacted in Section 3 of this act, reads as rewritten:

"(i) No telephone solicitor shall knowingly use any method to block or otherwise circumvent a telephone subscriber's use of a caller identification service. ~~A telephone solicitor who makes a telephone solicitation through the use of a private branch exchange (PBX) or other call generating system that is not capable of transmitting caller identification information shall not be in violation of this subsection.~~ No provider of telephone caller identification services shall be held liable for violations of this subsection committed by other individuals or entities."

SECTION 5. G.S. 62-54 reads as rewritten:

"§ 62-54. Notification of opportunity to object to telephone solicitation.

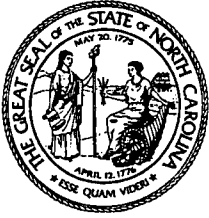
The Commission shall require each local exchange company and each competing local provider certified to do business in North Carolina to notify all ~~persons~~ telephone subscribers who subscribe to residential service from that company of the provisions of ~~G.S. 75-30.1, Article 4 of Chapter 75 of the General Statutes and of the federal laws and regulations~~ allowing consumers to object to receiving telephone solicitations, ~~and of programs made available by private industry that allow consumers to have their names removed from telemarketing lists, by enclosing that information, by enclosing a bill insert, drafted pursuant to G.S. 75-102(n), at least annually, in every at least one telephone bill mailed to customers.~~ every residential customer. The Commission shall also ensure that this information is printed in a clear, conspicuous manner in the consumer information pages of each telephone directory distributed to residential customers."

SECTION 6. Should one or more of the terms or provisions of this act or any application thereof be held or declared unenforceable or invalid to any extent, the remainder of this act, and the applications thereof that have not been held or declared unenforceable or invalid, shall remain in effect. In the specific event that the provisions of G.S. 75-102, as enacted in Section 3 of this act, or G.S. 75-103, as enacted in Section 3 of this act, are declared to be preempted or otherwise unenforceable in relation to interstate telephone calls, those provisions shall remain in force and effect with respect to intra-state telephone calls.

SECTION 7. Consistent with protected speech rights of businesses that engage in telephone solicitations, the provisions of this act shall be given broad

1 construction so as to protect telephone subscribers from unwanted telephone
2 solicitations and from problematic sales techniques and payment procedures often
3 associated with these solicitations.

4 **SECTION 8.** Section 4 of this act becomes effective January 1, 2006. G.S.
5 62-54, as amended by Section 5 of this act, applies to all telephone directories printed
6 on or after January 1, 2004. All other sections of this act become effective October 1,
7 2003, and apply to telephone solicitations made on or after that date.



SENATE BILL 872: Unwanted Telephone Solicitations.

BILL ANALYSIS

Committee: House Public Utilities
Date: June 18, 2003
Version: 2nd Edition

Introduced by: Senator Thomas
Summary by: Kory J. Goldsmith
 Committee Counsel

SUMMARY: *SB872 would prohibit telephone solicitors from calling the telephone number of a residential telephone subscriber if the subscriber's telephone number appears in the "Do Not Call" Registry, or if the subscriber has specifically requested to not receive further telephone solicitations from that telephone solicitor.*

CURRENT LAW: Under the Telemarketing Sales Rule (TSR), the Federal Trade Commission (FTC) regulates telemarketing aimed at the sale of goods or services through interstate phone calls. Effective October 1, 2004, telemarketers who are subject to FTC jurisdiction will be prohibited from making telephone solicitations to consumers who have put their phone numbers on a national "do not call" registry. Some businesses that engage in interstate phone calls will remain exempt from the TSR, including long-distance phone companies and airlines, and insurance companies operating under state regulations. Although these companies are not subject to the TSR, any telemarketers they hire to make calls on their behalf are required to comply.

G.S. 75-30 currently regulates the use of automatic dialing and recorded message players for intrastate telephone solicitations. G.S. 75-30.1 currently regulates intrastate telephone solicitations.

BILL ANALYSIS:

Sections 1 and 2 repeal G.S. 75-30 and G.S. 75-30.1 respectively. (See attached copies of statutes.)

Section 3. Recodification and Amendment of Telephone Solicitation Laws.

Section 3 creates a new Article 4 (Telephone Solicitations) in Chapter 75 of the General Statutes. This new Article 4 largely recodifies and amends the provisions of current G.S. 75-30 and G.S. 75-30.1.

G.S. 75-100. Findings.

G.S. 75-101. Definitions.

Expands the definition of "telephone solicitation" to include telephone calls for the purpose of soliciting or encouraging participation in a contest, sweepstakes, raffle, or lottery and for the purpose of obtaining a charitable donation.

Defines "Do Not Call" Registry as the registry created and maintained by the Federal Trade Commission. It also means any other telemarketing registry created by the federal government or the Attorney General.

Defines "doing business in this State" as making or causing to be made any telephone solicitation to residential telephone subscribers, whether the telephone solicitations are made from a location inside or outside North Carolina.

G.S. 75-102. Restrictions on telephone solicitations.

Current G.S. 75-30.1 prohibits a telephone solicitor from calling a residential telephone subscriber who has communicated to that telephone solicitor a desire to be taken off the telephone solicitor's contact list. New G.S. 75-102 contains this prohibition and also prohibits a telephone solicitor from calling the

SENATE BILL 872

Page 2

telephone number of a residential telephone subscriber if the subscriber's telephone number appears in the "Do Not Call" Registry.

- The "Do Not Call" Registry prohibition does not apply to the following telephone solicitations:
 - Where the telephone subscriber has given prior express invitation or permission.
 - Where an established business relationship between the telephone subscriber and the telephone solicitor exists or has existed within the 18 months immediately preceding the telephone solicitation.
 - By or on behalf of a tax-exempt nonprofit organization.
 - By or on behalf of a telephone solicitor that employs fewer than 10 direct employees and those direct employees collectively make or attempt to make no more than an average of 10 telephone solicitations per week during a calendar year.
 - For arranging face-to-face meetings.
- Provide that if a telephone solicitor makes a call to a residential telephone subscriber whose number is in the "Do Not Call" Registry based on an existing or past business relationship of an affiliate and the subscriber communicates a desire to receive no further telephone solicitations from that telephone solicitor, the telephone solicitor will remove that person's number from its contact records and the contact records of all of its affiliates within 30 days.
- Provide that a telephone solicitor may contact a residential telephone subscriber whose telephone number appears in the "Do Not Call" Registry via non-telephonic means in order to obtain the subscriber's express written permission allowing the telephone solicitor to make telephone solicitations to the subscriber.
- Provide that a telephone solicitor may advertise in a general medium or contact a residential telephone subscriber whose telephone number appears in the "Do Not Call" Registry via non-telephonic means in order to encourage the subscriber to initiate telephonic communications to the telephone solicitor.

G.S. 75-103. Restrictions on use of automatic dialing and recorded message players.

In new G.S. 75-103, current law is rewritten and recodified so that no person may use an automatic dialing and recorded message player to make an unsolicited telephone call except under one of the following circumstances:

- The person making the call (1) is a tax-exempt charitable or civic organization, a political party or candidate, a governmental official, or an opinion polling organization, radio station, television station, or broadcast rating service conducting a public opinion poll; (2) no part of the call is used to solicit or encourage the purchase or rental of, or investment in, property, goods, or services; to obtain information that will or may be used to solicit or encourage the purchase or rental of, or investment in, property, goods, or services; or to solicit or encourage the making of a charitable donation; and (3) the person making the call identifies the name and contact information of the person calling and the nature of the call.
- Prior to playing the recorded message, a live operator states the nature and length of the message, and asks for and receives approval to play the message.
- The call is in connection with an existing debt or contract for which payment or performance is due.

SENATE BILL 872

Page 3

- The call is about an appointment made by the telephone subscriber.
- The call is from a utility or similar service provider about network outages, repairs, or service interruptions.

G.S. 75-104. Enforcement.

The new statute broadens the enforcement powers of the Attorney General related to telephone solicitations and increases the amounts of civil penalties that may be imposed or recovered for violation of telephone solicitation laws. The new statute specifically:

- Authorizes the Attorney General to investigate alleged violations of the new Article 4 (Telephone Solicitations).
- Provides that the Attorney General may not seek treble damages on behalf of residential telephone subscribers if the Attorney General brings an action on behalf of the residential telephone subscribers.
NOTE: It appears that a provision authorizing the Attorney General to bring an action on behalf of residential telephone subscribers has been inadvertently omitted from the bill.
- Authorizes the Attorney General to bring an action to impose the following civil penalties for violations of telephone solicitation laws:
 - \$500 for the first violation, \$1,000 for the second violation, and \$5,000 for the third and each subsequent violation within two years of the first violation.
 - \$100 for each violation within two years of the first violation if the telephone solicitor has established in-house procedures to comply with telephone solicitation requirements and the violations are the result of a mistake.
- Authorizes a residential telephone subscriber who has received telephone solicitations in violation of the telephone solicitation laws to bring an action to recover \$500 for the first violation, \$1,000 for the second violation, and \$5,000 for the third and each subsequent violation within the past two years. No action may be brought by or on behalf of residential telephone subscribers under this provision if the telephone solicitor has established in-house procedures to comply with telephone solicitation requirements and the violations are the result of a mistake.
- Provides that attorney's fees may be awarded under certain circumstances.
- Authorizes a citizen of the State to bring a civil action to enforce federal telephone solicitation laws.

Section 4. Caller Identification Block

Under current law, a telephone solicitor may not knowingly block a residential telephone subscriber's caller identification service. Use of a call generating system that does not transmit caller identification information, however, is not a violation of this prohibition. Section 4 repeals the exemption for call generating systems effective January 1, 2006.

Section 5. Notification of Opportunity to Object to Telephone Solicitations

Section 5 requires both local exchange companies and competing local providers to disseminate a bill insert produced by the Attorney General, in consultation with the Public Staff of the Utilities Commission, at least annually. This section applies to telephone directories printed on or after January 1, 2004.

SENATE BILL 872

Page 4

Section 6. Severability Clause

If any provision of this act is held to be unenforceable or invalid, the remainder of the act that has not been held to be unenforceable or invalid shall remain in effect. If certain provisions of the act are declared to be preempted or otherwise unenforceable in relation to interstate telephone calls, those provisions will remain in force with respect to intra-state calls.

Section 7. Construction of Act

Consistent with protected speech rights, this act shall be construed broadly to protect residential telephone subscribers from unwanted telephone solicitations and from problematic sales techniques and payment procedures often associated with these solicitations.

Section 8. Effective Dates

Except as otherwise noted, this act is effective October 1, 2003 and applies to telephone solicitations made on or after that date.

S872-SMRC-002. Jeff Hudson contributed substantially to this summary.

SENATE BILL 872

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§ 75-30. Automatic dialing and recorded message players; restriction on use of.

(a) No person may make an unsolicited telephone call by the use of an automatic dialing and recorded message player unless:

- (1) Such calling person is a charitable, civic, political or opinion polling organization or a radio station, television station or broadcast rating service conducting a public opinion poll required by law; and
- (2) Such calling person clearly identifies the nature of the call and the name and address of the calling organization.

(b) As an exception to subsection (a) an unsolicited telephone call may be made by the use of an automatic dialing and recorded message player if the recorded message is preceded by an announcement made by a human operator who:

- (1) States the nature and length in minutes of the recorded message; and
- (2) Identifies the individual, business, group, or organization calling; and
- (3) Asks the called party whether he is willing to listen to the recorded message; and
- (4) Disconnects from the called party's line if the called party is unwilling to listen to the recorded message.

(c) For the purpose of this section an automatic dialing and recorded message player shall be defined as any automatic equipment which incorporates a storage capability of telephone numbers to be called or a random or sequential number generator capable of producing numbers to be called and the capability, working alone or in conjunction with other equipment, of disseminating prerecorded message to the telephone number called.

(d) For the purpose of this section, a telephone call shall be deemed to be unsolicited unless pursuant to a prior agreement between the parties the person called has agreed to accept such calls from the person calling.

(e) Violation of this section shall be a Class 3 misdemeanor, punishable only by a fine of one hundred dollars (\$100.00), for each occurrence. (1979, c. 573; 1993, c. 539, s. 562; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 75-30.1. Restrictions on telephone solicitations.

(a) For purposes of this section:

- (1) "Residential telephone subscriber" means a person who subscribes to residential telephone service from a local exchange company and uses that service primarily for residential purposes, or the persons living or residing with that person.
- (2) "Telephone solicitation" means a voice communication over a telephone line to a residential telephone subscriber for the purpose of soliciting or encouraging the purchase or rental of, or investment in, property, goods, or services, or for the purpose of obtaining information that will or may be used for that purpose, but does not include the following communications:
 - a. To any person with that person's prior express invitation or permission;
 - b. To any person with whom the telephone solicitor has an established business relationship; or

SENATE BILL 872

Page 6

c. By or on behalf of a tax-exempt nonprofit organization.

(3) "Telephone solicitor" means any business or other legal entity doing business in this State that makes telephone solicitations or causes telephone solicitations to be made.

(b) Any telephone solicitor who makes a telephone solicitation to a residential telephone subscriber shall:

- (1) At the beginning of the call, state clearly the identity of the business, individual, or other legal entity initiating the call, and identify the person making the call by that person's name.
- (2) Upon request, provide the telephone subscriber with the telephone number or address at which the person or entity may be contacted.
- (3) Terminate the call if the person does not consent to the call.
- (4) If the person called requests to be taken off the contact list of the telephone solicitor, take all steps necessary to remove that person's name and telephone number from the contact records of the business, individual, or other legal entity initiating the call.

(c) Every telephone solicitor who makes telephone solicitations in this State shall implement in-house systems and procedures designed to prevent further calls to persons who have asked not to be called again. Compliance with 47 C.F.R. § 64.1200(e) of the Federal Communications Commission's Restrictions on Telephone Solicitation constitutes compliance with this subsection.

(d) No telephone solicitor shall initiate a call to a residential telephone subscriber who has communicated to that telephone solicitor a desire to be taken off the contact list of that solicitor.

(e) No telephone solicitor shall initiate a call to a residential telephone subscriber after 9:00 P.M. or before 8:00 A.M. at the called party's location.

(f) No telephone solicitor who makes a telephone solicitation to the telephone line of a residential telephone subscriber in this State shall knowingly use any method to block or otherwise circumvent that subscriber's use of a caller identification service. A telephone solicitor who makes a telephone solicitation to the telephone line of a residential subscriber through the use of a private branch exchange (PBX) or other call-generating system that is not capable of transmitting caller identification information shall not be in violation of this subsection. No provider of telephone caller identification services shall be held liable for violations of this subsection committed by other persons or entities.

(g) Every telephone solicitor who makes telephone solicitations in this State shall keep a record for a period of 24 months from the date a call is placed of the legal name and any fictitious name used, resident address, telephone number, and job title of each person who places a telephone solicitation for that telephone solicitor. If callers for a telephone solicitor use fictitious names, each fictitious name shall be traceable to only one specific caller.

(h) The Attorney General may investigate any complaints received alleging violations of subsections (b) through (g) of this section. If, after investigating a complaint, the Attorney General finds that there has been a violation of subsections (b) through (g) of this section, the Attorney General may bring an action to impose a civil penalty and to seek any other appropriate relief, including equitable relief to restrain the violation pursuant to G.S. 75-14. Actions for civil

SENATE BILL 872

Page 7

penalties under this section shall be consistent with the provisions of G.S. 75-15.2, except that the penalty imposed for a violation of this section shall not exceed five hundred dollars (\$500.00) per violation.

(i) A person who has received more than one telephone solicitation within any 12-month period by or on behalf of the same telephone solicitor in violation of subsections (b) through (g) of this section may bring either or both of the following actions in the General Court of Justice:

- (1) An action to enjoin further violations.
- (2) An action to recover five hundred dollars (\$500.00) in damages for each violation.

In an action brought pursuant to this section, a prevailing plaintiff shall be entitled to recover reasonable attorneys' fees, and the court may award reasonable attorneys' fees to a prevailing defendant if the court finds that the plaintiff knew, or should have known, that the action was frivolous and malicious.

(j) A citizen of this State is also entitled to bring an action in the General Court of Justice to enforce the private rights of action established by federal law under 47 U.S.C. § 227(b)(3) and 47 U.S.C. § 227(c)(5).

(k) Actions brought pursuant to subsections (i) and (j) of this section shall be tried in the county where the plaintiff resides at the time of the commencement of the action. (2000-161, s. 2.)



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 872

S872-ARC-41 [v.1]

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

Page 1 of 1

Date _____, 2003

Comm. Sub. [NO]
Amends Title [NO]
Second Edition

Representative LaRoque

1 moves to amend the bill on page 4, by inserting after line 43 the following:

2

3

4

"(6) By or on behalf of a newspaper publisher, radio station or television station."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

ATTACHMENT #5

EDITION No. 2

H. B. No. _____

DATE 6/25/03

S. B. No. 872

Amendment No. _____

(to be filled in by
Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)

Sen.)

Minor

amendment
amend #1

1 moves to amend the bill on page 1, line 4

2 () WHICH CHANGES THE TITLE

3 by rewriting the line to read:

4 "station, or operator of a cable
5 television system franchised
6 under G.S. 153A-137 or
7 G.S. 160A-319."

8 _____

9 _____

10 _____

11 _____

12 _____

13 _____

14 _____

15 _____

16 _____

17 _____

18 _____

19 _____

SIGNED

[Signature]

ADOPTED _____ FAILED _____ TABLED _____



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 872

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

S872-ARC-47 [v.2]

Page 1 of 3

Date _____, 2003

Comm. Sub. [NO]
Amends Title [NO]
Second Edition

Representative Howard

moves to amend the bill on page 4, by deleting lines 17-43;

and on page 6, by deleting lines 30-37;

and on page 7, by inserting between lines 17 and 18 the following:

"§ 75-103. Limited exceptions.

(a) Except as provided in subsection (b) of this section, G.S. 75-102 does not apply to any of the following telephone solicitations that are made:

(1) To any telephone subscriber with the telephone subscriber's prior express invitation or permission.

(2) To any telephone subscriber with whom the telephone solicitor has an established business relationship.

(3) By or on behalf of a tax-exempt nonprofit organization.

(4) By or on behalf of a telephone solicitor that employs fewer than 10 full or part-time direct employees, the telephone solicitations are made by the direct employees, and the direct employees collectively make or attempt to make no more than an average of 10 telephone solicitations to telephone subscribers per week during a calendar year.

(5) To any telephone subscriber for the sole purpose of arranging a subsequent face-to-face meeting between the telephone solicitor and the telephone subscriber and the telephone solicitor does none of the following during the telephone solicitation:

a. Seek payment from the telephone subscriber in connection with the sale or rental of, or investment in, property, goods, or services.



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 872

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

S872-ARC-47 [v.2]

Page 2 of 3

- b. Complete the sale or rental of, or investment in, property, goods, or services.
- c. Obtain provisional acceptance of a sale, rental, or investment.
- d. Obtain the agreement of the telephone subscriber to participate in any contest, sweepstakes, raffle, or lottery.
- e. Directly following the telephone solicitation, go or cause an individual to go to the telephone subscriber to collect a payment or deliver any item purchased.

(b) G.S. 75-102(b), G.S. 75-102(d)(1), (2) and (4), G.S. 75-102(g), and G.S. 75-102(i) shall apply to any telephone solicitation made under subsection (a) of this section.

(c) In any dispute regarding whether a telephone subscriber has provided an express invitation or permission under subdivision (1) of subsection (a) of this section, the telephone solicitor has the burden of proving that the telephone subscriber has provided this permission by producing the original document, a facsimile document, or an electronic form, signed by the telephone subscriber, or other authentication that evidences permission. A telephone subscriber may subsequently retract express invitation or permission by indicating a desire not to receive further telephone solicitations under G.S. 75-102(b).";

and on page 8, lines 28-31, by rewriting the lines to read:

"(2) One hundred dollars (\$100.00) for each violation within two years of the first violation, if the solicitor can show that the violations are the result of a mistake and the telephone solicitor either made the telephone solicitation under G.S. 75-103 or can show that the telephone solicitor complied with G.S. 75-102(e).";

and on page 8, lines 41-43, by rewriting the lines to read:

"(c) No action may be brought under subsection (b) of this section if the violations are a result of mistake and the telephone solicitor either made the telephone solicitation under G.S. 75-103 or can show that the telephone solicitor complied with G.S. 75-102(e).";



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 872

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

S872-ARC-47 [v.2]

Page 3 of 3

- 1 and to renumber and redesignate those statutory sections, subsections and cross-
2 references that appear in the bill and in this amendment.
3

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 872

S872-ARC-44 [v.1]

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

Page 1 of 1

Date _____, 2003

Comm. Sub. [NO]
Amends Title [NO]
Second Edition

Representative _____

- 1 moves to amend the bill on page 6, line 3, by deleting the word "contacted." and
2 substituting the following:
3
4 "contacted or can demonstrate that it does not target subscribers who are less than 18
5 years of age.".
6

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 872

S872-ARC-45 [v.2]

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

Page 1 of 1

Date _____, 2003

Comm. Sub. [NO]
Amends Title [NO]
Second Edition

Representative _____

- 1 moves to amend the bill on page 8, by inserting between lines 12 and 13 the following:
2 (6) The unsolicited telephone call is made to any telephone subscriber
3 with whom the telephone solicitor has an established business
4 relationship."
5
6

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

S

D

SENATE BILL 872
Commerce Committee Substitute Adopted 4/29/03
PROPOSED HOUSE COMMITTEE SUBSTITUTE S872-PCS65332-RC-82

Short Title: Unwanted Telephone Solicitations.

(Public)

Sponsors:

Referred to:

April 3, 2003

A BILL TO BE ENTITLED
AN ACT TO INCREASE PROTECTIONS FOR TELEPHONE SUBSCRIBERS WHO
WISH TO STOP UNWANTED TELEPHONE SOLICITATIONS AND FOR
CONSUMERS WHO ENTER INTO TELEMARKETING TRANSACTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 75-30 is repealed.

SECTION 2. G.S. 75-30.1 is repealed.

SECTION 3. Chapter 75 of the General Statutes is amended by adding a
new Article to read:

"Article 4.

"Telephone Solicitations.

"§ 75-100. Findings.

The General Assembly finds all of the following:

- (1) The use of the telephone to market goods and services to the home is now pervasive due to the increased use of cost-effective telephone solicitation technologies and techniques.
- (2) While some consumers enjoy and benefit from telephone solicitations from legitimate telephone solicitors, many others object to these telephone solicitations as an intrusive invasion of their privacy in the home.
- (3) In addition, the proliferation of telephone solicitations, especially during the evening hours, creates a nuisance and a disturbance upon the home and family life of telephone subscribers during a time of day used by many families for traditional family activities.
- (4) North Carolina residents should have the freedom to choose whether or not to permit telephone solicitors to contact them.

- 1 (5) Individual privacy rights, personal safety, prevention of fraud, and
2 commercial freedom of speech and trade must be balanced in a way
3 that protects the privacy of individuals and permits legitimate
4 telephone solicitation practices.
- 5 (6) Legitimate telephone solicitors have no interest in continuing to invade
6 the privacy of those telephone subscribers who affirmatively express
7 their desires to receive no further telephone solicitations.
- 8 (7) Many telephone subscribers who have transacted business with firms
9 that employ telephone solicitations have experienced problems with
10 their checking and credit card accounts being debited before they can
11 evaluate the terms and conditions of the transaction, before they can
12 evaluate the merchandise or service to be delivered, or without their
13 agreement to enter into the transaction or authorize such transactions
14 in the first place. Other telephone subscribers have had unauthorized
15 charges placed on their telephone bill and have had their long-distance
16 carrier switched without their authorization as a result of telephone
17 solicitations.
- 18 (8) New technologies that make telephone solicitations more
19 cost-effective also allow for the creation of a 'Do Not Call' Registry
20 through which North Carolina consumers can easily register their
21 desires not to receive further telephone solicitations and telephone
22 solicitors can easily access and employ lists of consumers who have
23 registered those desires.
- 24 (9) The public interest requires an efficient mechanism for telephone
25 subscribers to notify telephone solicitors that their telephone numbers
26 cannot be called and additional protections for North Carolina
27 residents who enter into consumer transactions initiated through
28 telephone solicitations.

29 **"§ 75-101. Definitions.**

30 The following definitions apply in this Article:

- 31 (1) Affiliate. – A business establishment, business, or other legal entity
32 that wholly or substantially owns, is wholly or substantially owned by,
33 or is under common ownership with a telephone solicitor.
- 34 (2) Automatic dialing and recorded message player. – Any automatic
35 equipment that incorporates a storage capability of telephone numbers
36 to be called or a random or a sequential number generator capable of
37 producing numbers to be called that, working alone or in conjunction
38 with other equipment, disseminates a prerecorded message to the
39 telephone number called.
- 40 (3) 'Do Not Call' Registry. – The registry created and maintained by the
41 Federal Trade Commission pursuant to the Telemarketing Sales Rule.
42 It also means any other telemarketing registry created by the federal
43 government, including the Federal Communications Commission. It

- 1 also means any registry created by the Attorney General pursuant to
2 G.S. 75-102(m).
- 3 (4) Doing business in this State. – To make or cause to be made any
4 telephone solicitation to North Carolina telephone subscribers, whether
5 the telephone solicitations are made from a location inside North
6 Carolina or outside North Carolina.
- 7 (5) Established business relationship. – A relationship between a seller
8 and a consumer based on:
- 9 a. The consumer's purchase, rental, or lease of the seller's goods or
10 services or a financial transaction between the consumer and the
11 seller or one or more of its affiliates within the 18 months
12 immediately preceding the date of a telephone solicitation; or
13 b. The consumer's inquiry or application regarding a product or
14 service offered by the seller within the three months
15 immediately preceding the date of a telephone solicitation.
- 16 (6) Express invitation or permission. – Any invitation or permission that is
17 registered by the telephone subscriber on an independent form and that
18 contains the telephone number to which calls can be placed and the
19 signature of the telephone subscriber. The form may be completed and
20 signed electronically.
- 21 (7) Person. – Any individual, business establishment, business, or other
22 legal entity.
- 23 (8) Telemarketing Sales Rule. – The federal regulation promulgated by the
24 Federal Trade Commission, 16 C.F.R. Part 310 (January 29, 2003
25 Edition), as amended, to implement the Telemarketing and Consumer
26 Fraud and Abuse Prevention Act, 15 U.S.C. §§ 6101-6108, as
27 amended.
- 28 (9) Telephone subscriber. – An individual who subscribes to a residential
29 telephone service from a local exchange company, a competing local
30 provider certified to do business in North Carolina, or a wireless
31 telephone company; or the persons living or residing with that person.
- 32 (10) Telephone solicitation. – A voice communication, whether
33 prerecorded, live, or a facsimile, over a telephone line or wireless
34 telephone network or via a commercial mobile radio service that is
35 made by a telephone solicitor to a telephone subscriber for the purpose
36 of soliciting or encouraging the purchase or rental of, or investment in,
37 property, goods, or services; obtaining or providing information that
38 will or may be used for that purpose; soliciting or encouraging a
39 telephone subscriber's participation in any contest, sweepstakes, raffle,
40 or lottery, whether legal or illegal; or obtaining a charitable donation.
41 'Telephone solicitation' also includes those transactions that are
42 defined as 'telemarketing' under the Telemarketing Sales Rule.
- 43 (11) Telephone solicitor. – Any individual, business establishment,
44 business, or other legal entity doing business in this State that, directly

1 or through salespersons or agents, makes or attempts to make
2 telephone solicitations or causes telephone solicitations to be made.
3 'Telephone solicitor' also includes any party defined as a 'telemarketer'
4 under the Telemarketing Sales Rule.

5 (12) Unsolicited telephone call. – A voice communication, whether
6 prerecorded, live, or a facsimile, over a telephone line or wireless
7 telephone network or via a commercial mobile radio service that is
8 made by a person to a telephone subscriber without prior express
9 invitation or permission.

10 **"§ 75-102. Restrictions on telephone solicitations.**

11 (a) Except as provided in G.S. 75-103, no telephone solicitor shall make a
12 telephone solicitation to a telephone subscriber's telephone number if the telephone
13 subscriber's telephone number appears in the latest edition of the 'Do Not Call' Registry.

14 (b) No telephone solicitor shall make a telephone solicitation to a telephone
15 subscriber's telephone number if the telephone subscriber previously has communicated
16 to the telephone solicitor a desire to receive no further telephone solicitations from the
17 telephone solicitor to that number.

18 (c) Any telephone solicitor who makes a telephone solicitation shall do all of the
19 following:

20 (1) At the beginning of the telephone solicitation, state clearly the identity
21 of the telephone solicitor and identify the individual making the
22 telephone solicitation.

23 (2) Upon request, provide the telephone subscriber with the telephone
24 number or address at which the telephone solicitor may be contacted.

25 (3) If the telephone subscriber requests to be taken off the contact list of
26 the telephone solicitor, the telephone solicitor shall take all steps
27 necessary to remove the telephone subscriber's name and telephone
28 number from the contact list of the telephone solicitor and stop calling
29 the telephone subscriber within 30 business days.

30 (4) If the telephone subscriber objects to the telephone solicitation,
31 terminate the telephone solicitation and promptly disconnect from the
32 telephone line of the person receiving the call.

33 (5) Notwithstanding subdivision (3) of this subsection, if a telephone
34 solicitor relies on the established business relationship of an affiliate to
35 solicit a residential telephone subscriber whose telephone number is
36 listed in the latest edition of the 'Do Not Call' Registry and the person
37 called communicates a desire to receive no further telephone
38 solicitations from the telephone solicitor, the telephone solicitor shall
39 take all steps necessary to remove that telephone subscriber's
40 telephone number from the contact list of the telephone solicitor and
41 all of its affiliates, unless the telephone subscriber indicates otherwise,
42 and the telephone solicitor and its affiliates shall stop calling the
43 telephone subscriber at that number within 30 business days.

1 (d) Every telephone solicitor shall implement systems and written procedures to
2 prevent further telephone solicitations to any telephone subscriber who has asked not to
3 be called again at a specific number or numbers or whose telephone number appears in
4 the 'Do Not Call' Registry. Every telephone solicitor shall train, monitor, and enforce
5 compliance by its employees and shall monitor and enforce compliance by its
6 independent contractors in those systems and procedures. Every telephone solicitor shall
7 ensure that lists of telephone numbers that may not be contacted by the telephone
8 solicitor are maintained and recorded. Compliance with the time requirements within
9 the Telemarketing Sales Rule for incorporating and complying with updated versions of
10 the 'Do Not Call' Registry shall constitute compliance with North Carolina law.

11 (e) No telephone solicitor shall violate any requirement of section 310.3 of the
12 Telemarketing Sales Rule (Deceptive telemarketing acts or practices), section 310.4 of
13 the Telemarketing Sales Rule (Abusive telemarketing acts or practices), and section
14 310.5 of the Telemarketing Sales Rule (Record keeping requirements).

15 (f) No telephone solicitor shall make a telephone solicitation before 8:00 A.M. or
16 after 9:00 P.M.

17 (g) A telephone solicitor shall inquire as to whether the telephone subscriber is
18 under the age of 18. If the telephone subscriber purports to be less than 18 years of age,
19 the telephone solicitor shall discontinue the call immediately. No inquiry is required
20 where the solicitor has taken reasonable steps to remove all telephone contacts who are
21 less than 18 years of age from its list of subscribers being contacted or can demonstrate
22 that it does not target subscribers who are less than 18 years of age.

23 (h) No telephone solicitor shall knowingly use any method to block or otherwise
24 circumvent a telephone subscriber's use of a caller identification service. A telephone
25 solicitor who makes a telephone solicitation through the use of a private branch
26 exchange (PBX) or other call-generating system that is not capable of transmitting caller
27 identification information shall not be in violation of this subsection. No provider of
28 telephone caller identification services shall be held liable for violations of this
29 subsection committed by other individuals or entities.

30 (i) A telephone solicitor or its agent that makes telephone solicitations on its
31 behalf, provided that the telephone solicitor ensures compliance by its agent, shall keep
32 a record for a period of 24 months from the date a telephone solicitation is made of the
33 legal name, any fictitious name used, the resident address, the telephone number, and
34 the job title of each individual who makes a telephone solicitation for that telephone
35 solicitor. If an individual who makes telephone solicitations for a telephone solicitor
36 uses a fictitious name, the fictitious name shall be traceable only to the specific
37 individual.

38 (j) Nothing in this section prohibits a telephone solicitor from contacting by
39 nontelephonic notice a telephone subscriber whose telephone number appears in the 'Do
40 Not Call' Registry to obtain the telephone subscriber's express invitation or permission
41 allowing the telephone solicitor to make telephone solicitations to the telephone
42 subscriber. A telephone solicitor shall not contact a telephone subscriber by telephone to
43 obtain this express invitation or permission.

1 (k) Nothing in this section prohibits a telephone solicitor from advertising in a
2 general medium or contacting by nontelephonic notice a telephone subscriber whose
3 telephone number appears in the 'Do Not Call' Registry to encourage the telephone
4 subscriber to initiate telephone calls to the telephone solicitor. A telephone solicitor
5 shall not contact a telephone subscriber by telephone to obtain this express invitation or
6 permission.

7 (l) The Attorney General, in consultation with the Public Staff of the Public
8 Utilities Commission, shall draft the contents of a bill insert that notifies consumers of
9 the existence of the 'Do Not Call' Registry and provides information to consumers on
10 how to use it and the other provisions of this Article to object to receiving telephone
11 solicitations. Local exchange companies shall distribute the insert pursuant to G.S.
12 62-54.

13 (m) In the event that the federal 'Do Not Call' Registry is not operational by
14 January 1, 2004, or ceases to operate for any reason after January 1, 2004, the Attorney
15 General may develop, operate, and maintain such a registry for the benefit of North
16 Carolina telephone subscribers.

17 (n) In telephone solicitation transactions involving telephone subscribers, no
18 contract or purchase agreement entered into during a telephone solicitation is valid, and
19 no money from the prospective purchaser is due thereunder, unless all the following
20 conditions are satisfied:

21 (1) The contract and the sales representations that precede it are not
22 deceptive or abusive telemarketing acts or practices as elaborated in
23 sections 310.3 and 310.4 of the Telemarketing Sales Rule.

24 (2) The telephone solicitor has complied with the record keeping
25 requirements of section 310.5 of the Telemarketing Sales Rule.

26 (3) The contract and the sales representations that precede it comply with
27 all other applicable federal and State laws, including Article 1 of this
28 Chapter.

29 **"§ 75-103. Limited exceptions.**

30 (a) Except as provided in subsection (b) of this section, G.S. 75-102 does not
31 apply to any of the following telephone solicitations that are made:

32 (1) To any telephone subscriber with the telephone subscriber's prior
33 express invitation or permission.

34 (2) To any telephone subscriber with whom the telephone solicitor has an
35 established business relationship.

36 (3) By or on behalf of a tax-exempt nonprofit organization.

37 (4) By or on behalf of a telephone solicitor that employs fewer than 10
38 full-time or part-time direct employees, the telephone solicitations are
39 made by the direct employees, and the direct employees collectively
40 make or attempt to make no more than an average of 10 telephone
41 solicitations to telephone subscribers per week during a calendar year.

42 (5) To any telephone subscriber for the sole purpose of arranging a
43 subsequent face-to-face meeting between the telephone solicitor and

the telephone subscriber and the telephone solicitor does none of the following during the telephone solicitation:

- a. Seek payment from the telephone subscriber in connection with the sale or rental of, or investment in, property, goods, or services.
- b. Complete the sale or rental of, or investment in, property, goods, or services.
- c. Obtain provisional acceptance of a sale, rental, or investment.
- d. Obtain the agreement of the telephone subscriber to participate in any contest, sweepstakes, raffle, or lottery.
- e. Directly following the telephone solicitation, go or cause an individual to go to the telephone subscriber to collect a payment or deliver any item purchased.

(6) By or on behalf of a newspaper publisher, radio station, television station, or operator of a cable television system franchised under G.S. 153A-137 or G.S. 160A-319.

(b) G.S. 75-102(b), 75-102(c)(1), (2), and (4), 75-102(f), and 75-102(h) shall apply to any telephone solicitation made under subsection (a) of this section.

(c) In any dispute regarding whether a telephone subscriber has provided an express invitation or permission under subsection (a) of this section, the telephone solicitor has the burden of proving that the telephone subscriber has provided this permission by producing the original document, a facsimile document, or an electronic form, signed by the telephone subscriber, or other authentication that evidences permission. A telephone subscriber may subsequently retract express invitation or permission by indicating a desire not to receive further telephone solicitations under G.S. 75-102(b).

"§ 75-104. Restrictions on use of automatic dialing and recorded message players.

(a) Except as provided in this section, no person may use an automatic dialing and recorded message player to make an unsolicited telephone call.

(b) Notwithstanding subsection (a) of this section, a person may use an automatic dialing and recorded message player to make an unsolicited telephone call only under one or more of the following circumstances:

(1) All of the following are satisfied:

- a. The person making the call is any of the following:
 1. A tax-exempt charitable or civic organization.
 2. A political party or political candidate.
 3. A governmental official.
 4. An opinion polling organization, radio station, television station, cable television company, or broadcast rating service conducting a public opinion poll.
- b. No part of the call is used to solicit or encourage the purchase or rental of, or investment in, property, goods, or services; to obtain or provide information that will or may be used to solicit or encourage the purchase or rental of, or investment in,

property, goods, or services; or to solicit or encourage the making of a charitable donation.

c. The person making the call clearly identifies the person's name and contact information and the nature of the unsolicited telephone call.

(2) Prior to the playing of the recorded message, a live operator complies with G.S. 75-102(c), states the nature and length in minutes of the recorded message, and asks for and receives prior approval to play the recorded message from the person receiving the call.

(3) The unsolicited telephone call is in connection with an existing debt or contract for which payment or performance has not been completed at the time of the unsolicited telephone call.

(4) The call is placed by a person with whom the telephone subscriber has made an appointment, provided that the call is conveying information only about the appointment, or by a utility, telephone company, cable television company, satellite television company, or similar entity for the sole purpose of conveying information or news about network outages, repairs or service interruptions, and confirmation calls related to restoration of service.

(5) The person plays the recorded message in order to comply with section 16 C.F.R. Part 310.4(b)(4) of the Telemarketing Sales Rule.

"§ 75-105. Enforcement.

(a) The Attorney General may investigate any complaints received alleging violation of this Article. If the Attorney General finds that there has been a violation of this Article, the Attorney General may bring an action to impose civil penalties and to seek any other appropriate relief pursuant to this Chapter, including equitable relief to restrain the violation. If the Attorney General brings an action on behalf of telephone subscribers pursuant to subsection (b) of this section, the Attorney General may not seek treble damages on behalf of telephone subscribers pursuant to G.S. 75-16. Actions for civil penalties under this section shall be consistent with the provisions of this Chapter except that the penalty imposed for a violation of this Article shall be either of the following:

(1) Five hundred dollars (\$500.00) for the first violation, one thousand dollars (\$1,000) for the second violation, and five thousand dollars (\$5,000) for the third and any other violation that occurs within two years of the first violation.

(2) One hundred dollars (\$100.00) for each violation within two years of the first violation, if the solicitor can show that the violations are the result of a mistake and the telephone solicitor either made the telephone solicitation under G.S. 75-103 or can show that the telephone solicitor complied with G.S. 75-102(d).

(b) A telephone subscriber who has received a telephone solicitation from or on behalf of a telephone solicitor in violation of this Article may bring any of the following actions in civil court:

(1) An action to enjoin further violations of this Article by the telephone solicitor.

(2) An action to recover five hundred dollars (\$500.00) for the first violation, one thousand dollars (\$1,000) for the second violation, and five thousand dollars (\$5,000) for the third and any other violation that occurs within two years of the first violation.

(c) No action may be brought under subsection (b) of this section if the violations are a result of mistake and the telephone solicitor either made the telephone solicitation under G.S. 75-103 or can show that the telephone solicitor complied with G.S. 75-102(d).

(d) In an action brought pursuant to this Article, the court may award a prevailing plaintiff reasonable attorneys' fees if the court finds the defendant willfully engaged in the act or practice, and the court may award reasonable attorneys' fees to a prevailing defendant if the court finds that the plaintiff knew, or should have known, that the action was frivolous and malicious.

(e) A citizen of this State may also bring an action in civil court to enforce the private rights of action established by federal law under 47 U.S.C. § 227(b)(3) and 47 U.S.C. § 227(c)(5).

(f) Actions brought by telephone subscribers pursuant to this section shall be tried in the county where the plaintiff resides at the time of the commencement of the action."

SECTION 4. G.S. 75-102(h), as enacted in Section 3 of this act, reads as rewritten:

"(h) No telephone solicitor shall knowingly use any method to block or otherwise circumvent a telephone subscriber's use of a caller identification service. ~~A telephone solicitor who makes a telephone solicitation through the use of a private branch exchange (PBX) or other call generating system that is not capable of transmitting caller identification information shall not be in violation of this subsection.~~ No provider of telephone caller identification services shall be held liable for violations of this subsection committed by other individuals or entities."

SECTION 5. G.S. 62-54 reads as rewritten:

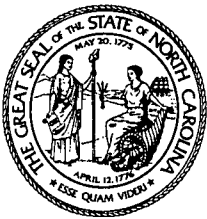
"§ 62-54. Notification of opportunity to object to telephone solicitation.

The Commission shall require each local exchange company and each competing local provider certified to do business in North Carolina to notify all ~~persons~~ telephone subscribers who subscribe to residential service from that company of the provisions of G.S. 75-30.1, Article 4 of Chapter 75 of the General Statutes and of the federal laws and regulations allowing consumers to object to receiving telephone solicitations, and of programs made available by private industry that allow consumers to have their names removed from telemarketing lists, by enclosing that information, by enclosing a bill insert, drafted pursuant to G.S. 75-102(l), at least annually, in every at least one telephone bill mailed to customers. every residential customer. The Commission shall also ensure that this information is printed in a clear, conspicuous manner in the consumer information pages of each telephone directory distributed to residential customers."

1 **SECTION 6.** Should one or more of the terms or provisions of this act or
2 any application thereof be held or declared unenforceable or invalid to any extent, the
3 remainder of this act, and the applications thereof that have not been held or declared
4 unenforceable or invalid, shall remain in effect. In the specific event that the provisions
5 of G.S. 75-102, 75-103, or 75-104, as enacted in Section 3 of this act, are declared to be
6 preempted or otherwise unenforceable in relation to interstate telephone calls, those
7 provisions shall remain in force and effect with respect to intrastate telephone calls.

8 **SECTION 7.** Consistent with protected speech rights of businesses that
9 engage in telephone solicitations, the provisions of this act shall be given broad
10 construction so as to protect telephone subscribers from unwanted telephone
11 solicitations and from problematic sales techniques and payment procedures often
12 associated with these solicitations.

13 **SECTION 8.** Section 4 of this act becomes effective January 1, 2006. G.S.
14 62-54, as amended by Section 5 of this act, applies to all telephone directories printed
15 on or after January 1, 2004. All other sections of this act become effective October 1,
16 2003, and apply to telephone solicitations made on or after that date.



SENATE BILL 872: Unwanted Telephone Solicitations.

BILL ANALYSIS

Committee:**Date:** June 15, 2003**Version:** 3rd Edition**Introduced by:** Senator Thomas**Summary by:** Kory J. GoldsmithCommittee Counsel

SUMMARY: *SB872 would prohibit telephone solicitors from calling the telephone number of a residential telephone subscriber if the subscriber's telephone number appears in the "Do Not Call" Registry, or if the subscriber has specifically requested to not receive further telephone solicitations from that telephone solicitor.*

CURRENT LAW: Under the Telemarketing Sales Rule (TSR), the Federal Trade Commission (FTC) regulates telemarketing aimed at the sale of goods or services through interstate phone calls. Effective October 1, 2004, telemarketers who are subject to FTC jurisdiction will be prohibited from making telephone solicitations to consumers who have put their phone numbers on a national "do not call" registry. Some businesses that engage in interstate phone calls will remain exempt from the TSR, including long-distance phone companies and airlines, and insurance companies operating under state regulations. Although these companies are not subject to the TSR, any telemarketers they hire to make calls on their behalf are required to comply.

G.S. 75-30 currently regulates the use of automatic dialing and recorded message players for intrastate telephone solicitations. G.S. 75-30.1 currently regulates intrastate telephone solicitations.

BILL ANALYSIS:

Sections 1 and 2 repeal G.S. 75-30 and G.S. 75-30.1 respectively. (See attached copies of statutes.)

Section 3. Recodification and Amendment of Telephone Solicitation Laws.

Section 3 creates a new Article 4 (Telephone Solicitations) in Chapter 75 of the General Statutes. This new Article 4 largely recodifies and amends the provisions of current G.S. 75-30 and G.S. 75-30.1.

G.S. 75-100. Findings.

G.S. 75-101. Definitions.

Expands the definition of "telephone solicitation" to include telephone calls for the purpose of soliciting or encouraging participation in a contest, sweepstakes, raffle, or lottery and for the purpose of obtaining a charitable donation.

Defines "Do Not Call" Registry as the registry created and maintained by the Federal Trade Commission. It also means any other telemarketing registry created by the federal government or the Attorney General.

Defines "doing business in this State" as making or causing to be made any telephone solicitation to residential telephone subscribers, whether the telephone solicitations are made from a location inside or outside North Carolina.

G.S. 75-102. Restrictions on telephone solicitations.

Current G.S. 75-30.1 prohibits a telephone solicitor from calling a residential telephone subscriber who has communicated to that telephone solicitor a desire to be taken off the telephone solicitor's contact list. New G.S. 75-102 contains this prohibition and also prohibits a telephone solicitor from calling the

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telephone number of a residential telephone subscriber if the subscriber's telephone number appears in the "Do Not Call" Registry.

- Provide that if a telephone solicitor makes a call to a residential telephone subscriber whose number is in the "Do Not Call" Registry based on an existing or past business relationship of an affiliate and the subscriber communicates a desire to receive no further telephone solicitations from that telephone solicitor, the telephone solicitor will remove that person's number from its contact records and the contact records of all of its affiliates within 30 days.
- Provide that a telephone solicitor may contact a residential telephone subscriber whose telephone number appears in the "Do Not Call" Registry via non-telephonic means in order to obtain the subscriber's express written permission allowing the telephone solicitor to make telephone solicitations to the subscriber.
- Provide that a telephone solicitor may advertise in a general medium or contact a residential telephone subscriber whose telephone number appears in the "Do Not Call" Registry via non-telephonic means in order to encourage the subscriber to initiate telephonic communications to the telephone solicitor.

G.S. 75-103. Limited Exceptions.

The "Do Not Call" Registry prohibition does not apply to the following telephone solicitations:

- Where the telephone subscriber has given prior express invitation or permission.
- Where an established business relationship between the telephone subscriber and the telephone solicitor exists or has existed within the 18 months immediately preceding the telephone solicitation.
- By or on behalf of a tax-exempt nonprofit organization.
- By or on behalf of a telephone solicitor that employs fewer than 10 direct employees and those direct employees collectively make or attempt to make no more than an average of 10 telephone solicitations per week during a calendar year.
- For arranging face-to-face meetings.
- By or on behalf of a newspaper publisher, radio station, television station, or cable television operator.

Although telephone solicitors that fall under this exception could place calls to telephone subscribers on the "Do Not Call" registry, the solicitor would still need to comply with the following requirements:

- Not call the subscriber if specifically requested by the subscriber.
- Begin the telephone conversation by identifying the telephone solicitor and the person making the telephone solicitation.
- Promptly disconnect the call if requested by the telephone subscriber.
- Not call before 8 a.m. or after 9 p.m.
- Not use call blocking technology.

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G.S. 75-104. Restrictions on use of automatic dialing and recorded message players.

In new G.S. 75-103, current law is rewritten and recodified so that no person may use an automatic dialing and recorded message player to make an unsolicited telephone call except under one of the following circumstances:

- The person making the call (1) is a tax-exempt charitable or civic organization, a political party or candidate, a governmental official, or an opinion polling organization, radio station, television station, or broadcast rating service conducting a public opinion poll; (2) no part of the call is used to solicit or encourage the purchase or rental of, or investment in, property, goods, or services; to obtain information that will or may be used to solicit or encourage the purchase or rental of, or investment in, property, goods, or services; or to solicit or encourage the making of a charitable donation; and (3) the person making the call identifies the name and contact information of the person calling and the nature of the call.
- Prior to playing the recorded message, a live operator states the nature and length of the message, and asks for and receives approval to play the message.
- The call is in connection with an existing debt or contract for which payment or performance is due.
- The call is about an appointment made by the telephone subscriber.
- The call is from a utility or similar service provider about network outages, repairs, or service interruptions.

G.S. 75-105. Enforcement.

The new statute broadens the enforcement powers of the Attorney General related to telephone solicitations and increases the amounts of civil penalties that may be imposed or recovered for violation of telephone solicitation laws. The new statute specifically:

- Authorizes the Attorney General to investigate alleged violations of the new Article 4 (Telephone Solicitations).
- Provides that the Attorney General may not seek treble damages on behalf of residential telephone subscribers if the Attorney General brings an action on behalf of the residential telephone subscribers. Authorizes the Attorney General to bring an action to impose the following civil penalties for violations of telephone solicitation laws:
 - \$500 for the first violation, \$1,000 for the second violation, and \$5,000 for the third and each subsequent violation within two years of the first violation.
 - \$100 for each violation within two years of the first violation if the violations are the result of a mistake, and the telephone solicitor has either established in-house procedures to comply with telephone solicitation requirements or made the telephone solicitation is allowed to make the telephone solicitation under the limited exception provisions.
- Authorizes a residential telephone subscriber who has received telephone solicitations in violation of the telephone solicitation laws to bring an action to recover \$500 for the first violation, \$1,000 for the second violation, and \$5,000 for the third and each subsequent violation within the past two years. No action may be brought by or on behalf of residential telephone subscribers under this provision if the telephone solicitor has established in-house procedures to comply with telephone solicitation requirements and the violations are the result of a mistake.

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- Provides that attorney's fees may be awarded under certain circumstances.
- Authorizes a citizen of the State to bring a civil action to enforce federal telephone solicitation laws.

Section 4. Caller Identification Block

Under current law, a telephone solicitor may not knowingly block a residential telephone subscriber's caller identification service. Use of a call generating system that does not transmit caller identification information, however, is not a violation of this prohibition. Section 4 repeals the exemption for call generating systems effective January 1, 2006.

Section 5. Notification of Opportunity to Object to Telephone Solicitations

Section 5 requires both local exchange companies and competing local providers to disseminate a bill insert produced by the Attorney General, in consultation with the Public Staff of the Utilities Commission, at least annually. This section applies to telephone directories printed on or after January 1, 2004.

Section 6. Severability Clause

If any provision of this act is held to be unenforceable or invalid, the remainder of the act that has not been held to be unenforceable or invalid shall remain in effect. If certain provisions of the act are declared to be preempted or otherwise unenforceable in relation to interstate telephone calls, those provisions will remain in force with respect to intra-state calls.

Section 7. Construction of Act

Consistent with protected speech rights, this act shall be construed broadly to protect residential telephone subscribers from unwanted telephone solicitations and from problematic sales techniques and payment procedures often associated with these solicitations.

Section 8. Effective Dates

Except as otherwise noted, this act is effective October 1, 2003 and applies to telephone solicitations made on or after that date.

S872-SMRC-002. Jeff Hudson contributed substantially to this summary.

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§ 75-30. Automatic dialing and recorded message players; restriction on use of.

(a) No person may make an unsolicited telephone call by the use of an automatic dialing and recorded message player unless:

- (1) Such calling person is a charitable, civic, political or opinion polling organization or a radio station, television station or broadcast rating service conducting a public opinion poll required by law; and
- (2) Such calling person clearly identifies the nature of the call and the name and address of the calling organization.

(b) As an exception to subsection (a) an unsolicited telephone call may be made by the use of an automatic dialing and recorded message player if the recorded message is preceded by an announcement made by a human operator who:

- (1) States the nature and length in minutes of the recorded message; and
- (2) Identifies the individual, business, group, or organization calling; and
- (3) Asks the called party whether he is willing to listen to the recorded message; and
- (4) Disconnects from the called party's line if the called party is unwilling to listen to the recorded message.

(c) For the purpose of this section an automatic dialing and recorded message player shall be defined as any automatic equipment which incorporates a storage capability of telephone numbers to be called or a random or sequential number generator capable of producing numbers to be called and the capability, working alone or in conjunction with other equipment, of disseminating prerecorded message to the telephone number called.

(d) For the purpose of this section, a telephone call shall be deemed to be unsolicited unless pursuant to a prior agreement between the parties the person called has agreed to accept such calls from the person calling.

(e) Violation of this section shall be a Class 3 misdemeanor, punishable only by a fine of one hundred dollars (\$100.00), for each occurrence. (1979, c. 573; 1993, c. 539, s. 562; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 75-30.1. Restrictions on telephone solicitations.

(a) For purposes of this section:

- (1) "Residential telephone subscriber" means a person who subscribes to residential telephone service from a local exchange company and uses that service primarily for residential purposes, or the persons living or residing with that person.
- (2) "Telephone solicitation" means a voice communication over a telephone line to a residential telephone subscriber for the purpose of soliciting or encouraging the purchase or rental of, or investment in, property, goods, or services, or for the purpose of obtaining information that will or may be used for that purpose, but does not include the following communications:
 - a. To any person with that person's prior express invitation or permission;
 - b. To any person with whom the telephone solicitor has an established business relationship; or

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c. By or on behalf of a tax-exempt nonprofit organization.

- (3) "Telephone solicitor" means any business or other legal entity doing business in this State that makes telephone solicitations or causes telephone solicitations to be made.

(b) Any telephone solicitor who makes a telephone solicitation to a residential telephone subscriber shall:

- (1) At the beginning of the call, state clearly the identity of the business, individual, or other legal entity initiating the call, and identify the person making the call by that person's name.
- (2) Upon request, provide the telephone subscriber with the telephone number or address at which the person or entity may be contacted.
- (3) Terminate the call if the person does not consent to the call.
- (4) If the person called requests to be taken off the contact list of the telephone solicitor, take all steps necessary to remove that person's name and telephone number from the contact records of the business, individual, or other legal entity initiating the call.

(c) Every telephone solicitor who makes telephone solicitations in this State shall implement in-house systems and procedures designed to prevent further calls to persons who have asked not to be called again. Compliance with 47 C.F.R. § 64.1200(e) of the Federal Communications Commission's Restrictions on Telephone Solicitation constitutes compliance with this subsection.

(d) No telephone solicitor shall initiate a call to a residential telephone subscriber who has communicated to that telephone solicitor a desire to be taken off the contact list of that solicitor.

(e) No telephone solicitor shall initiate a call to a residential telephone subscriber after 9:00 P.M. or before 8:00 A.M. at the called party's location.

(f) No telephone solicitor who makes a telephone solicitation to the telephone line of a residential telephone subscriber in this State shall knowingly use any method to block or otherwise circumvent that subscriber's use of a caller identification service. A telephone solicitor who makes a telephone solicitation to the telephone line of a residential subscriber through the use of a private branch exchange (PBX) or other call-generating system that is not capable of transmitting caller identification information shall not be in violation of this subsection. No provider of telephone caller identification services shall be held liable for violations of this subsection committed by other persons or entities.

(g) Every telephone solicitor who makes telephone solicitations in this State shall keep a record for a period of 24 months from the date a call is placed of the legal name and any fictitious name used, resident address, telephone number, and job title of each person who places a telephone solicitation for that telephone solicitor. If callers for a telephone solicitor use fictitious names, each fictitious name shall be traceable to only one specific caller.

(h) The Attorney General may investigate any complaints received alleging violations of subsections (b) through (g) of this section. If, after investigating a complaint, the Attorney General finds that there has been a violation of subsections (b) through (g) of this section, the Attorney General may bring an action to impose a civil penalty and to seek any other appropriate relief, including equitable relief to restrain the violation pursuant to G.S. 75-14. Actions for civil

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penalties under this section shall be consistent with the provisions of G.S. 75-15.2, except that the penalty imposed for a violation of this section shall not exceed five hundred dollars (\$500.00) per violation.

(i) A person who has received more than one telephone solicitation within any 12-month period by or on behalf of the same telephone solicitor in violation of subsections (b) through (g) of this section may bring either or both of the following actions in the General Court of Justice:

- (1) An action to enjoin further violations.
- (2) An action to recover five hundred dollars (\$500.00) in damages for each violation.

In an action brought pursuant to this section, a prevailing plaintiff shall be entitled to recover reasonable attorneys' fees, and the court may award reasonable attorneys' fees to a prevailing defendant if the court finds that the plaintiff knew, or should have known, that the action was frivolous and malicious.

(j) A citizen of this State is also entitled to bring an action in the General Court of Justice to enforce the private rights of action established by federal law under 47 U.S.C. § 227(b)(3) and 47 U.S.C. § 227(c)(5).

(k) Actions brought pursuant to subsections (i) and (j) of this section shall be tried in the county where the plaintiff resides at the time of the commencement of the action. (2000-161, s. 2.)