

2015

**HOUSE
PUBLIC UTILITIES**

MINUTES

House Committee On Public Utilities



Co-Chairs
Representative Dean Arp
Representative Jeff Collins
Representative Harry Warren

2015-2016 Session

Committee Clerks
Wendy Miller
Cristy Yates



HOUSE COMMITTEE ON PUBLIC UTILITIES
2015 - 2016 SESSION

<u>MEMBER</u>	<u>ASSISTANT</u>	<u>PHONE</u>	<u>OFFICE</u>	<u>SEAT</u>
ARP, Dean Chairman	Wendy Miller Committee Clerk	715-3007	531	66
COLLINS, Jeff Chairman	Wes Householder	733-5802	1106	29
WARREN, Harry Chairman	Cristy Yates Committee Clerk	733-5784	611	62
CUNNINGHAM, Carla Vice-Chairman	Sherri Burnette	733-5807	1109	59
HAGER, Mike Vice-Chairman	Baxter Knight	733-5749	301F	30
HANES, Edward Vice-Chairman	Rita Harris	733-5829	1006	94
WATFORD, Sam Vice-Chairman	Regina Irwin	715-2526	2121	88
ALEXANDER, Kelly	Marjorie Conner	733-5778	404	35
BELL, John	Susan Horne	715-3017	419B	27
BISHOP, Dan	David Larson	715-3009	607	86
BLACKWELL, Hugh	Dixie Riehm	733-5805	541	102
BRADFORD, John	Anita Spence	733-5828	2123	85
BROWN, Brian	Theresa Lopez	733-5757	604	90
BUMGARDNER, Dana	Margie Penven	733-5809	2119	40
CATLIN, Rick	Laura Holt Kabel	733-5830	638	55
CONRAD, Debra	Clark Riemer	733-5787	606	44
DOLLAR, Nelson	Candace Slate	715-0795	307B	4
EARLE, Beverly	Ann Raeford	715-2530	514	60



HOUSE COMMITTEE ON PUBLIC UTILITIES
2015 - 2016 SESSION

<u>MEMBER</u>	<u>ASSISTANT</u>	<u>PHONE</u>	<u>OFFICE</u>	<u>SEAT</u>
ELMORE, Jeffrey	Linda Stevenson	733-5935	306A3	75
HALL, Duane	Graham Kelly	733-5755	1019	46
HARRISON, Pricey	Sue Osborne	733-5771	1218	82
HASTINGS, Kelly	James Jenkins	715-2002	1206	20
JOHNSON, Linda	Joanna Hogg	733-5861	301D	3
JOHNSON, Ralph	Mildred Alston	733-5902	1317	116
LUEBKE, Paul	Joyce Harris	733-7663	513	70
MALONE, Chris	Wanda Benson	715-3010	603	64
MARTIN, Susan	R. Lynn Taylor	715-3023	306C	43
MEYER, Graig	Daphne Quinn	715-3019	1111	117
MILLIS, Chris	Vivian Sherrell	715-9664	609	87
MOORE, Rodney	Charmey Morgan	733-5606	1219	36
RIDDELL, Dennis	Polly Riddell	733-5905	533	99
WRAY, Michael	Susan Burleson	733-5662	503	24



HOUSE COMMITTEE ON PUBLIC UTILITIES
2015-2016 SESSION

Clerks: Wendy Miller, Cristy Yates



Rep. Dean Arp, Co-Chair



Rep. Jeff Collins, Co-Chair



Rep. Harry Warren, Co-Chair



**Rep. Carla Cunningham
Vice-Chair**



**Rep. Mike Hager
Vice-Chair**



**Rep. Edward Hanes
Vice-Chair**



**Rep. Sam Watford
Vice-Chair**



Rep. Kelly Alexander



Rep. John Bell



Rep. Dan Bishop



Rep. Hugh Blackwell





Rep. John Bradford



Rep. Brian Brown



Rep. Dana Bumgardner



Rep. Rick Catlin



Rep. Debra Conrad



Rep. Nelson Dollar



Rep. Beverly Earle



Rep. Jeffrey Elmore



Rep. Duane Hall



Rep. Pricey Harrison



Rep. Kelly Hastings



Rep. Linda Johnson



Rep. Ralph Johnson



Rep. Paul Luebke



Rep. Chris Malone



Rep. Susan Martin





Rep. Graig Meyer



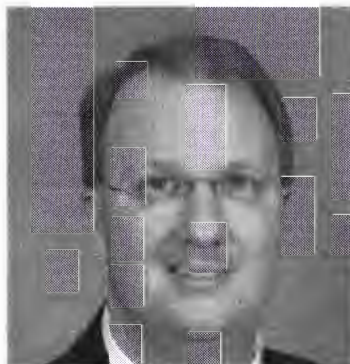
Rep. Chris Millis



Rep. Rodney Moore



Rep. Dennis Riddell



Rep. Michael Wray



**House Committee on Public Utilities
Wednesday, March 25, 2015 at 1:00 PM
Room 643 of the Legislative Office Building**

MINUTES

The House Committee on Public Utilities met at 1:00 PM on March 25, 2015 in Room 643 of the Legislative Office Building. Representatives Arp, J. Bell, Bishop, Bradford, Bumgardner, Collins, Conrad, Dollar, Earle, Elmore, Hager, D. Hall, Hanes, Hastings, L. Johnson, R. Johnson, Luebke, S. Martin, Meyer, Millis, R. Moore, Riddell, Warren, Watford, and Wray attended.

Representative Dean Arp, Chair, presided and welcomed everyone to the meeting. He then thanked and introduced the Sergeant-at-arms and the House Pages that were working the committee.

The following bills were considered:

HB 86 Utility Line Relocation/School Board. (Representatives McNeill, Hurley, Shepard)

Representative McNeill was recognized to explain the bill. Chairman Arp opened the floor for discussion. There being no discussion, Representative Hager was recognized and made a motion for a "Favorable Report for HB 86, with a Serial referral to Transportation". Chairman Arp opened the floor for a vote and the motion passed.

HB 265 NCEMPA Asset Sale. (Representatives Collins, S. Martin, Stam, Pierce)

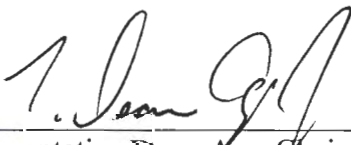
Chairman Arp stated that there was a PCS for HB 265 and recognized Representative Moore for a motion. Representative Moore made a motion that the PCS be before the committee. The motion passed.

Chairman Arp recognized Representatives Collins and Stam to explain the bill. Heather Fennell, Research Staff, was recognized to further explain the bill.

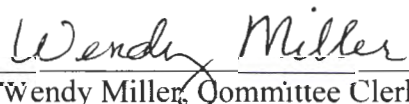
Chairman Arp opened the floor for discussion and recognized the following members: Representatives Hager, Bumgardner, Dollar, and Watford. Kent Fonvielle, Duke Energy, was recognized to answer a question.

Representative Hager was recognized and made a motion for an "Unfavorable to the original bill, Favorable to the PCS, with a Serial referral to Finance". Chairman Arp opened the floor for a vote and the motion passed.

The meeting adjourned at 1:24 pm.



Representative Dean Arp, Chair
Presiding



Wendy Miller, Committee Clerk



**House Committee on Public Utilities
Wednesday, March 25, 2015, 1:00 PM
643 Legislative Office Building**

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
HB 86	Utility Line Relocation/School Board.	Representative McNeill Representative Hurley Representative Shepard
HB 265	NCEMPA Asset Sale.	Representative Collins Representative S. Martin Representative Stam Representative Pierce

Presentations

Other Business

Adjournment



House Committee on Public Utilities

[illegible]



House Committee on Public Utilities

[illegible]



NORTH CAROLINA GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES

PUBLIC UTILITIES COMMITTEE REPORT

Representative Dean Arp, Co-Chair
Representative Jeff Collins, Co-Chair
Representative Harry Warren, Co-Chair

FAVORABLE AND RE-REFERRED

HB 86 Utility Line Relocation/School Board.
Draft Number: None
Serial Referral: **TRANSPORTATION**
Recommended Referral: None
Long Title Amended: No
Floor Manager: McNeill

FAVORABLE COM SUB , UNFAVORABLE ORIGINAL BILL AND RE-REFERRED

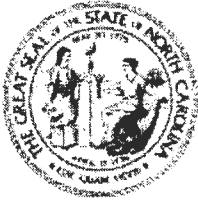
HB 265 NCEMPA Asset Sale.
Draft Number: H265-PCS40182-TDx-6
Serial Referral: **FINANCE**
Recommended Referral: None
Long Title Amended: No
Floor Manager: Collins

TOTAL REPORTED: 2



* C M R 8 O - V - 4 *





HOUSE BILL 86: Utility Line Relocation/School Board

2015-2016 General Assembly

Committee:	House Public Utilities, if favorable, Transportation	Date:	March 25, 2015
Introduced by:	Reps. McNeill, Hurley, Shepard	Prepared by:	Heather Fennell
Analysis of:	First Edition		Committee Counsel

SUMMARY: *House Bill 86 would require the Department of Transportation to pay the nonbetterment costs of moving water and sewer lines for a local board of education, when the lines are located in the right-of-way of a State transportation improvement project.*

CURRENT LAW: G.S. 136-27.1 requires the Department of Transportation to pay the nonbetterment costs of relocating the water and sewer lines owned by certain entities in the transportation right-of-way when the lines must be moved for a transportation improvement projects. The Department must pay to move water and sewer lines belonging to the following:

- Municipalities with a population of 5,500 or less, including lines for systems that were initially organized under Chapter 162A.¹
- Nonprofit water or sewer associations and corporations.
- A water or sewer system organized under Chapter 162A.
- A rural water system operated as a County enterprise system.
- Sanitary Districts.

BILL ANALYSIS: House Bill 86 would add water and sewer lines owned by local boards of education to the type of lines that the Department of Transportation must pay to relocate for transportation improvement projects.

EFFECTIVE DATE: This act becomes effective July 1, 2015, and applies to relocations on or after that date.

¹ Systems authorized under Chapter 162A are Metropolitan Water Districts, Metropolitan Sewerage Districts, Metropolitan Water and Sewerage Districts, and County Water and Sewerage Districts.

O. Walker Reagan
Director



Research Division
(919) 733-2578



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H

1

HOUSE BILL 86

Short Title: Utility Line Relocation/School Board. (Public)

Sponsors: Representatives McNeill, Hurley, and Shepard (Primary Sponsor).
For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

Referred to: Public Utilities, if favorable, Transportation.

February 16, 2015

1 A BILL TO BE ENTITLED
2 AN ACT TO REQUIRE THE DEPARTMENT OF TRANSPORTATION TO PAY THE
3 NONBETTERMENT COST OF RELOCATING WATER AND SEWER LINES OWNED
4 BY LOCAL BOARDS OF EDUCATION.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** G.S. 136-27.1 reads as rewritten:
7 "**§ 136-27.1. Relocation of water and sewer lines of ~~municipalities and~~ municipalities,**
8 **~~nonprofit water or sewer corporations or associations.~~ associations, and local**
9 **boards of education.**

10 The Department of Transportation shall pay the nonbetterment cost for the relocation of
11 water and sewer lines, located within the existing State transportation project right-of-way, that
12 are necessary to be relocated for a State transportation improvement project and that are owned
13 by: (i) a municipality with a population of 5,500 or less according to the latest decennial
14 census; (ii) a nonprofit water or sewer association or corporation; (iii) any water or sewer
15 system organized pursuant to Chapter 162A of the General Statutes; (iv) a rural water system
16 operated by a County as an enterprise system; (v) any sanitary district organized pursuant to
17 Part 2 of Article 2 of Chapter 130A of the General Statutes; ~~or~~ (vi) constructed by a water or
18 sewer system organized pursuant to Chapter 162A of the General Statutes and then sold or
19 transferred to a municipality with a population of greater than 5,500 according to the latest
20 decennial ~~census.~~ census; or (vii) a local board of education."

21 **SECTION 2.** This act becomes effective July 1, 2015, and applies to relocations of
22 water and sewer lines on or after that date.





GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2015

Legislative Fiscal Note

BILL NUMBER: House Bill 86 (First Edition)

SHORT TITLE: Utility Line Relocation/School Board.

SPONSOR(S): Representatives McNeill, Hurley, and Shepard

FISCAL IMPACT (\$ in millions)					
	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> No Estimate Available		
	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20
State Impact					
Highway Trust Fund Revenues:	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0
Highway Trust Fund Expenditures:	\$0.1	\$0.1	\$0.1	\$0.1	\$0.1
State Positions:	0.0	0.0	0.0	0.0	0.0
NET STATE IMPACT	(\$0.1)	(\$0.1)	(\$0.1)	(\$0.1)	(\$0.1)
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Transportation					
EFFECTIVE DATE: July 1, 2015					
TECHNICAL CONSIDERATIONS: None					

BILL SUMMARY:

H86. UTILITY LINE RELOACTION/SCHOOL BOARD. (February 12, 2015)

AN ACT TO REQUIRE THE DEPARTMENT OF TRANSPORTATION TO PAY THE NONBETTERMENT COST OF RELOCATING WATER AND SEWER LINES OWNED BY LOCAL BOARDS OF EDUCATION.

This bill amends G.S. 136-27.1 to include the relocation of water and sewer lines of local boards of education. It requires the Department of Transportation to also pay the nonbetterment cost for the relocation of water and sewer lines located within existing state transportation project rights-of-way that must be relocated for a state transportation improvement project and that are owned by local boards of education.

ASSUMPTIONS AND METHODOLOGY:

S.L. 2013-183, Strategic Transportation Investment Act, required DOT to reformulate projects in its State Transportation Improvement Program (STIP) based on a new prioritization process. As a result, the Draft STIP includes numerous projects without well-developed designs, which are necessary to accurately estimate the water and sewer relocation impacts to local boards of education.

Projects affecting local boards of education planned or implemented between January 2014 and December 2016 are used to estimate future annual costs to DOT to pay the nonbetterment cost to

relocate water and sewer lines owned by local boards of education. Four STIP projects were identified totaling \$70,310 in calendar year 2014, \$35,000 in calendar year 2015, and \$185,000 in calendar year 2016. The average cost of \$97,000 per year is used to estimate the fiscal impact resulting from this bill.

SOURCES OF DATA: Department of Transportation

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Amna Cameron

APPROVED BY:

Mark Trogdon, Director
Fiscal Research Division

DATE: February 27, 2015



Signed Copy Located in the NCGA Principal Clerk's Offices



HOUSE BILL 265: NCEMPA Asset Sale

2015-2016 General Assembly

Committee:	House Public Utilities, if favorable, Finance	Date:	March 24, 2015
Introduced by:	Reps. Collins, S. Martin, Stam, Pierce	Prepared by:	Heather Fennell
Analysis of:	PCS to First Edition		Committee Counsel
	H265-CSTDx-6		

SUMMARY: *House Bill 265 enacts legislative changes needed to effectuate the sale of the ownership interest in electric generation facilities of a municipal power agency to an investor-owned utility. The first part of the bill provides cost recovery for a public utility that purchases generation assets from a municipal power agency. The second part of the bill authorizes the municipal power agency to issue bonds to pay the difference in price paid for the assets and any outstanding amount owed on the assets. The second part of the bill also provides bonding authority and other statutory changes necessary to allow the power agencies to enter into power purchase agreements to replace the electricity that had been provided through the ownership interest in the electric generation facilities.*

The PCS incorporates changes that were adopted by the Senate on March 18, 2015. The changes are the following:

- **Clarifies that the rider allowed for the cost recovery of an asset purchase by a public utility will utilize the customer class allocation factors from the utility's last rate case.**
- **Removes an incorrect citation.**

[As introduced, this bill was identical to S305, as introduced by Sens. Newton, Pate, Bryant, which is currently in Senate Finance.]

CURRENT LAW: Investor-owned public utilities (IOUs) are private entities that are regulated by the North Carolina Utilities Commission. In general, an electric public utility can expect to recover the reasonable and prudent costs of electric generation, including the cost of purchasing electric generation facilities. Absent a special proceeding, the cost of purchasing a facility would be recovered in a general rate case.

Municipalities with electric distribution systems are authorized to form joint agencies to jointly own electric generation facilities with private entities. Rather than build electric generation facilities to provide electricity for their retail customers on their own, these municipalities sought to jointly own generation assets with the IOUs. Along with additional electricity purchased from IOUs, the electricity generated from their ownership interest in the electric generation facilities is used by the cities to serve the retail electric customers of the cities.

The joint agencies formed by the cities to own the electric generation facilities are referred to as "Municipal Power Agencies" or "MPAs." The MPAs are authorized to issue revenue bonds to finance the costs of constructing or purchasing generation facilities. Currently there are two joint agencies in the State that own interests in generation facilities, North Carolina Municipal Power Agency #1 (NCMPA1), and the North Carolina Eastern Municipal Power Agency (NCEMPA).

NCMPA1 consists of 19 member cities that jointly have a 75% ownership interest in Catawba Nuclear Station Unit 2, operated by Duke Power in York County, S.C. NCMPA1 also has an agreement with

O. Walker Reagan
Director



Research Division
(919) 733-2578

House Bill 265

Page 2

Duke that provides for electric power through the McGuire Nuclear Station and Catawba Unit 1 should Catawba 2 be unavailable for service.

NCEMPA consists of 32 municipalities that jointly own interests in five generating units built and operated by Duke Progress. These facilities include three nuclear units: 2 units at the Brunswick Plant in Brunswick County, and 1 unit at Shearon Harris Plant in Wake County, and an interest in two coal-fired plants in Person County, Roxboro Unit 4, and Mayo.¹

G.S. 159B-39 restricts how cities that are members of NCEMPA can use funds derived from electric service. Those cities are limited to using these funds for the direct and indirect costs of operating the system, making debt service payments, or transferring an amount that represents the rate of return on the system. The total amount transferred as a rate of return on the municipality's investment in the electric system is limited to either 3% of gross capital assets of the system in the prior year, or 5% of the annual gross revenues of the system in the prior year.

BILL ANALYSIS:

Cost Recovery for Purchase of Municipal Power Agency Interest in Generating Facility

Section 1 of House Bill 265 would authorize the recovery of costs incurred by a utility to purchase the electric generation facilities of a MPA in an annual rider, rather than a general rate case. The purchasing utility would be allowed to recover the actual amount paid for the assets, including any amount above book value. The Utilities Commission must adopt rules to implement the rider, and any rider would not be authorized until after a hearing.

The costs authorized for recovery in the rider are:

- The purchase price of the assets, levelized over the useful life of the assets.²
- Financing costs.
- Operating costs.

The ride will also include adjustments to reflect the changes in the proportion of wholesale to retail load in the State after the sale of the assets, and will utilize the customer allocations that were set in the utility's last rate case.

The rider will be adjusted annually, after a hearing by the Utilities Commission. To determine the annual amount of the rider the utility must submit information to the Commission including any under- or over-recovery from the prior year, changes in recoverable costs over the prior year, and any changes to the cost of capital that applies to the purchase price.

The rider will expire at the end of the useful life of the assets.

MPA Authority to Finance the Sale of the Electric Generation Facilities

Sections 2 – 8 of House Bill 265 would authorize a MPA that has purchased electric generation facilities to finance the sale of the assets, and enter into support contracts to provide for payment of any obligation incurred as a result of the sale of the assets. These sections also authorize financing that may

¹ An overview of the history of the joint municipal power agencies is provided in the "Background" section at the end of the summary.

² The useful life of the assets owned by NCEMPA are: Roxboro Unit 4 – 20 years, Mayo – 20 years, Brunswick Unit 1 – 21 years, Brunswick Unit 2 – 19 years, and Shearon Harris – 31 years

House Bill 265

Page 3

be required to purchase additional electricity to replace the electricity that had been provided through the ownership interest in the electric generating facilities.

Section 2 amends the purpose and findings of Chapter 159B to include financing the sale of the assets and support contracts.

Section 3 amends the statutory duties of MPAs to authorize the MPAs to set rates and collect payments for the support contracts.

Section 4 authorizes the MPAs to enter into support contracts if the MPA seeks to sell generation assets. Individual cities that are members of the MPA will make payments under the support contract to pay the costs of bonds necessary to finance any amount necessary for the sale of existing assets, to finance collateral posting requirements of power supply arrangements, and to finance any required reserves. A support contract may extend up to 30 years, and may require each city subject to the contract to agree to pay a proportionate share of the defaulted amount if any other city subject to the agreement defaults on payments. Payments required under support contracts are considered operational expenses of a city's public enterprise and revenues from the electric system must be used to first pay operational expenses before any other payments may be made.

Section 5 authorizes MPAs to issue bonds for the financing costs of a generation project that is sold and for financing collateral posting requirements of replacement power supply arrangements. Contracts to purchase additional electricity to replace the electricity that had been supplied from the electric generation facilities require the posting of collateral. The revenues pledged for the authorized bonds are the revenues from the individual city's retail electric system and revenues from the support contract payments made by the cities.

Sections 6, 7, and 8 provide that the revenues pledged for bonds issued under Chapter 159B can include payments under support contracts.

EFFECTIVE DATE: This act is effective when it becomes law.

BACKGROUND: In 1975, the General Assembly enacted the "Joint Municipal Power and Energy Act" that authorized municipalities to jointly own electric generation facilities with private entities. The Act enabled local government units with municipal power distribution systems to form a joint agency to own and operate electric generation facilities. Joint agencies created under the Act were authorized to issue revenue bonds to finance the costs of constructing or purchasing generation facilities. Shortly after the Act, NCMPA1 and NCEMPA were formed. In 1977, the people of North Carolina approved an amendment to the North Carolina Constitution to allow the MPAs to own jointly own generation facilities with other municipalities, and to share ownership of the facilities with private companies.

At the time of the enactment of the Act, municipalities had compelling economic motives for seeking ownership interest in power plants. In the 1970s, fuel and electricity prices were climbing while demand for energy was growing. By purchasing interest in generation facilities, the municipalities sought to guarantee a source of electricity that was less expensive than purchases on the wholesale market. By the 1980s many of the economic motives that led to the original purchase of the generation facilities had changed. Demand for electricity fell as energy conservation became more common. At the same time fuel prices declined. Most importantly, the regulatory environment for nuclear facilities changed after the incident at the Three Mile Island facility in Pennsylvania. These regulatory changes increased the construction costs for nuclear facilities while financing costs were also increased due to the historically high interest rates of the early 1980s.

House Bill 265

Page 4

NCEMPA Debt Responsibility by Power Agency Participants, as of 1/2/2015

Total Debt Outstanding: \$1,721,650,000.00

City	Percentage	Responsibility
Apex	0.7056 %	\$12,147,962
Ayden	1.1340 %	\$19,523,511
Belhaven	0.4090 %	\$7,041,549
Benson	0.5773 %	\$9,939,085
Clayton	0.7448 %	\$12,822,849
Edenton	1.5961 %	\$27,479,256
Elizabeth City	4.2510 %	\$73,187,342
Farmville	1.2901 %	\$22,211,007
Fremont	0.3062 %	\$5,271,692
Greenville	16.1343 %	\$277,776,176
Hamilton	0.0783 %	\$1,348,052
Hertford	0.4124 %	\$7,100,085
Hobgood	0.0913 %	\$1,571,866
Hookerton	0.1550 %	\$2,668,558
Kinston	8.6678 %	\$149,229,179
LaGrange	0.5014 %	\$8,632,353
Laurinburg	2.2675 %	\$39,038,414
Louisburg	0.8577 %	\$14,766,592
Lumberton	5.1568 %	\$88,782,047
New Bern	6.3676 %	\$109,627,785
Pikeville	0.2046 %	\$3,522,496
Red Springs	0.5798 %	\$9,982,127
Robersonville	0.5066 %	\$8,721,879
Rocky Mount	16.0260 %	\$275,911,629
Scotland Neck	0.5762 %	\$9,920,147
Selma	0.8102 %	\$13,948,808
Smithfield	2.0056 %	\$34,529,412
Southport	0.7139 %	\$12,290,859
Tarboro	4.7427 %	\$81,652,695
Wake Forest	0.7262 %	\$12,502,622
Washington	5.8920 %	\$101,439,618
Wilson	15.5120 %	\$267,062,348

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H

D

HOUSE BILL 265*
PROPOSED COMMITTEE SUBSTITUTE H265-CSTDx-6 [v.1]

3/24/2015 9:43:16 AM

Short Title: NCEMPA Asset Sale.

(Public)

Sponsors:

Referred to:

March 18, 2015

A BILL TO BE ENTITLED
AN ACT TO PROVIDE COST RECOVERY FOR ACQUISITION OF JOINT MUNICIPAL
POWER AGENCY OWNERSHIP INTEREST IN GENERATING FACILITIES, TO
AUTHORIZE MUNICIPALITIES THAT ARE MEMBERS OF JOINT MUNICIPAL
POWER AGENCIES TO ENTER INTO SUPPORT CONTRACTS, AND TO ISSUE
BONDS TO PAY THE COSTS OF PROJECTS THAT ARE SOLD.

The General Assembly of North Carolina enacts:

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

**"§ 62-133.14. Cost recovery for acquisition of joint municipal power agency ownership
interest in generating facilities.**

(a) The Commission shall, upon the petition of an electric public utility and after
hearing, approve an annual rider to the electric public utility's rates to recover the North
Carolina retail portion of all reasonable and prudent costs incurred to acquire, operate, and
maintain the proportional interest in electric generating facilities purchased from a joint agency
established under Chapter 159B of the General Statutes. For the purposes of this section,
"acquisition costs" means the amount paid by an electric public utility on or before December
31, 2016, to acquire the generating facilities, including the amount paid above the net book
value of the generating facilities. The Commission shall adopt rules to implement the
provisions of this section.

(b) In determining the amount of the rider, the Commission shall:

- (1) Allow an electric public utility to recover acquisition costs, as reasonable
and prudent costs. For the benefit of the consumer, the acquisition costs shall
be levelized over the useful life of the assets at the time of acquisition.
- (2) Include financing costs equal to the weighted average cost of capital as
authorized by the Commission in the electric public utility's most recent
general rate case.
- (3) Include an estimate of operating costs based on prior year's experience and
the costs projected for the next 12-month period for any proportional capital
investments in the acquired electric generating facilities.
- (4) Include adjustments to reflect the North Carolina retail portion of financing
and operating costs related to the electric public utility's other used and
useful generating facilities owned at the time of the acquisition to properly
account for updated jurisdictional allocation factors.
- (5) Utilize the customer allocation methodology approved by the Commission in
the electric public utility's most recent general rate case.



* H 2 6 5 - C S T D X - 6 - V - 1 *

(c) The Commission shall require that an electric public utility file the following proposed annual adjustments to the rider:

(1) Any under-recovery or over-recovery resulting from the operation of the rider.

(2) Any changes necessary to recover costs as forecast for the next 12-month period.

(3) Any changes to cost of capital determined in any general rate proceeding occurring after the initial establishment of the rider, where the cost of capital applies to both the remaining acquisition costs and additional capital investment in the electric generating facilities.

(4) Any changes to the customer allocation methodology determined in any general rate proceeding occurring after the initial establishment of the rider.

(d) Any rider established under this section will expire after the end of the useful life of the acquired electric generating facilities at the time of acquisition, with any remaining unrecovered costs deferred until the electric public utility's next general rate proceeding under G.S. 62-133."

SECTION 2. G.S. 159B-2 reads as rewritten:

"§ 159B-2. Legislative findings and purposes.

The General Assembly hereby finds and determines that:

A critical situation exists with respect to the present and future supply of electric power and energy in the State of North Carolina;

The public utilities operating in the State have sustained greatly increased capital and operating costs;

Such public utilities have found it necessary to postpone or curtail construction of planned generation and transmission facilities serving the consumers of electricity in the State, increasing the ultimate cost of such facilities to the public utilities, and that such postponements and curtailments will have an adverse effect on the provision of adequate and reliable electric service in the State;

The above conditions have occurred despite substantial increases in electric rates;

In the absence of further material increases in electric rates, additional postponements and curtailments in the construction of additional generation and transmission facilities may occur, thereby impairing those utilities' ability to continue to provide an adequate and reliable source of electric power and energy in the State;

Seventy-two municipalities in the State have for many years owned and operated systems for the distribution of electric power and energy to customers in their respective service areas and are empowered severally to engage in the generation and transmission of electric power and energy;

Such municipalities owning electric distribution systems have an obligation to provide their inhabitants and customers an adequate, reliable and economical source of electric power and energy in the future;

In order to achieve the economies and efficiencies made possible by the proper planning, financing, sizing and location of facilities for the generation and transmission of electric power and energy which are not practical for any municipality acting alone, and to insure an adequate, reliable and economical supply of electric power and energy to the people of the State, it is desirable for the State of North Carolina to authorize municipal electric systems to jointly plan, finance, develop, own and operate electric generation and transmission facilities appropriate to their needs in order to provide for their present and future power requirements for all uses without supplanting or displacing the service at retail of other electric suppliers operating in the State; and

1 The joint planning, financing, development, ownership and operation of electric generation
2 and transmission facilities by municipalities which own electric distribution systems and the
3 issuance of revenue bonds for such purposes as provided in this Chapter is for a public use and
4 for public and municipal purposes and is a means of achieving economies, adequacy and
5 reliability in the generation of electric power and energy and in the meeting of future needs of
6 the State and its inhabitants.

7 Municipal electric systems that have jointly planned, developed, acquired, owned, and
8 financed electric generation and transmission facilities through joint agencies in furtherance of
9 the purposes of this Chapter also may benefit from obtaining their power and energy
10 requirements from replacement resources, the disposition of facilities owned by joint agencies,
11 and the issuance by joint agencies of bonds to refinance the outstanding debt incurred with
12 respect to facilities to the extent outstanding debt cannot be completely defeased in connection
13 with the disposition of the facilities, and it is desirable for the State of North Carolina to
14 facilitate the foregoing. Refinancing debt, and financing any collateral posting requirements
15 incident to replacement power and energy resources that may be acquired, by the issuance of
16 revenue bonds secured by payments by municipal electric systems, is for a public use and for a
17 public and municipal purpose and is an alternative means, together with the disposition of the
18 jointly owned facilities and acquisition of replacement sources of power and energy, of
19 achieving economies, adequacy and reliability of electric power and energy supply, and in
20 meeting the future needs of the State and its inhabitants.

21 In addition to the authority granted municipalities to jointly plan, finance, develop, own and
22 operate electric generation and transmission facilities by Article 2 of this Chapter and the other
23 powers granted in said Article 2, and in addition and supplemental to powers otherwise
24 conferred on municipalities by the laws of this State for interlocal cooperation, it is desirable
25 for the State of North Carolina to authorize municipalities and joint agencies to form joint
26 municipal assistance agencies which shall be empowered to provide aid and assistance to
27 municipalities in the construction, ownership, maintenance, expansion and operation of their
28 electric systems, and to empower joint agencies authorized herein to provide aid and assistance
29 to municipalities or joint municipal assistance agencies in the development and implementation
30 of integrated resource planning, including, but not limited to, the evaluation of resources,
31 generating facilities, alternative energy resources, conservation and load management
32 programs, transmission and distribution facilities, and purchase power options, and in the
33 development, construction and operation of supply-side and demand-side resources, in addition
34 to exercising such other powers as hereinafter provided to joint municipal assistance agencies
35 and joint agencies. In order to provide maximum economies and efficiencies to municipalities
36 and the consuming public in the generation and transmission of electric power and energy
37 contemplated by Article 2 of this Chapter, it is also desirable that the joint municipal assistance
38 agencies authorized herein be empowered to act as provided in Article 3 of this Chapter and
39 that such agency or agencies be empowered to act for and on behalf of any one or more
40 municipalities or joint agencies, as requested, with respect to the construction, ownership,
41 maintenance, expansion and operation of their electric systems; and that the joint agencies
42 authorized herein be empowered to act as provided in Article 2 of this Chapter and that such
43 joint agencies be empowered to act for and on behalf of any one or more municipalities or joint
44 municipal assistance agencies, in each case as requested, with respect to the integrated resource
45 planning and development, construction, and operation of supply-side and demand-side options
46 described above."

47 **SECTION 3.** G.S. 159B-11 reads as rewritten:

48 **"§ 159B-11. General powers of joint agencies; prerequisites to undertaking projects.**

49 (a) Each joint agency shall have all of the rights and powers necessary or convenient to
50 carry out and effectuate the purposes and provisions of this Chapter, including, but without
51 limiting the generality of the foregoing, the rights and powers:

- 1 (1) To adopt bylaws for the regulation of the affairs and the conduct of its
2 business, and to prescribe rules, regulations and policies in connection with
3 the performance of its functions and ~~duties;~~duties.
- 4 (2) To adopt an official seal and alter the same at ~~pleasure;~~pleasure.
- 5 (3) To acquire and maintain an administrative office building or office at such
6 place or places as it may determine, which building or office may be used or
7 owned alone or together with any other joint agency or agencies, joint
8 municipal assistance agency, municipalities, corporations, associations or
9 persons under such terms and provisions for sharing costs and otherwise as
10 may be ~~determined;~~determined.
- 11 (4) To sue and be sued in its own name, and to plead and be
12 ~~impleaded;~~impleaded.
- 13 (5) To receive, administer and comply with the conditions and requirements
14 respecting any gift, grant or donation of any property or ~~money;~~money.
- 15 (6) To acquire by purchase, lease, gift, or otherwise, or to obtain options for the
16 acquisition of, any property, real or personal, improved or unimproved,
17 including an interest in land less than the fee ~~thereof;~~thereof.
- 18 (7) To sell, lease, exchange, transfer or otherwise dispose of, or to grant options
19 for any such purposes with respect to, any real or personal property or
20 interest ~~therein;~~therein.
- 21 (8) To pledge, assign, mortgage or otherwise grant a security interest in any real
22 or personal property or interest therein, including the right and power to
23 pledge, assign or otherwise grant a security interest in any money, rents,
24 charges or other revenues and any proceeds derived by the joint agency from
25 the sales of property, insurance or condemnation ~~awards;~~awards.
- 26 (9) To issue bonds of the joint agency for the purpose of providing funds for any
27 of its corporate ~~purposes;~~purposes.
- 28 (10) To study, plan, finance, construct, reconstruct, acquire, improve, enlarge,
29 extend, better, own, operate and maintain one or more projects, either
30 individually or jointly with one or more municipalities in this State or any
31 state contiguous to this State owning electric distribution facilities or with
32 any political subdivisions, agencies or instrumentalities of any state
33 contiguous to this State or with other joint agencies created pursuant to this
34 Chapter, and to pay all or any part of the costs thereof from the proceeds of
35 bonds of the joint agency or from any other available funds of the joint
36 agency; no provisions of law with respect to the acquisition, construction, or
37 operation of property by other public bodies shall be applicable to any
38 project as defined in this Chapter and as authorized by this subdivision
39 unless the General Assembly shall specifically so ~~state;~~state.
- 40 (11) To authorize the construction, operation or maintenance of any project or
41 projects by any person, firm, association, or corporation, public or
42 ~~private;~~private.
- 43 (12) To acquire by private negotiated purchase or lease or otherwise an existing
44 project, a project under construction, or other property, either individually or
45 jointly, with one or more municipalities or joint agencies in this State or any
46 state contiguous to this State owning electric distribution facilities or with
47 any political subdivisions, agencies or instrumentalities of any state
48 contiguous to this State or with other joint agencies created pursuant to this
49 Chapter; to acquire by private negotiated purchase or lease or otherwise any
50 facilities for the development, production, manufacture, procurement,
51 handling, storage, fabrication, enrichment, processing or reprocessing of fuel

of any kind or any facility or rights with respect to the supply of water, and to enter into agreements by private negotiation or otherwise, for a period not exceeding fifty (50) years, for the development, production, manufacture, procurement, handling, storage, fabrication, enrichment, processing or reprocessing of fuel of any kind or any facility or rights with respect to the supply of water; no provisions of law with respect to the acquisition, construction or operation of property by other public bodies shall be applicable to any agency created pursuant to this Chapter unless the legislature shall specifically so ~~state;state.~~

(13) To dispose of by private negotiated sale or lease, or otherwise, an existing project or a project under construction, or to dispose of by private negotiated sale or lease, or otherwise any facilities for the development, production, manufacture, procurement, handling, storage, fabrication, enrichment, processing or reprocessing of fuel of any kind or any facility or rights with respect to the supply of water; no provisions of law with respect to the disposition of property by other public bodies shall be applicable to an agency created pursuant to this Chapter unless the legislature shall specifically so ~~state;state.~~

(14) To fix, charge and collect rents, rates, fees and charges for electric power or energy and other services, facilities and commodities sold, furnished or supplied through any project or activity permitted in this ~~Chapter;Chapter.~~

(14a) To fix, charge, and collect payments pursuant to support contracts authorized by G.S. 159B-12(b).

(15) To generate, produce, transmit, deliver, exchange, purchase, sell for resale only, electric power or energy, and to enter into contracts for any or all such ~~purposes;purposes.~~

(16) To negotiate and enter into contracts for the purchase, sale for resale only, exchange, interchange, wheeling, pooling, transmission or use of electric power and energy with any person, firm, association, or corporation, public or ~~private;private.~~

(17) To make and execute contracts and other instruments necessary or convenient in the exercise of the powers and functions of the joint agency under this Chapter, including contracts with persons, firms, associations, or corporations, public or ~~private;private.~~

(18) To apply to the appropriate agencies of the State, the United States or any state thereof, and to any other proper agency, for such permits, licenses, certificates or approvals as may be necessary, and to construct, maintain and operate projects and undertake other activities permitted in this Chapter in accordance with such licenses, permits, certificates or approvals, and to obtain, hold and use such licenses, permits, certificates and approvals in the same manner as any other person or operating unit of any other ~~person;person.~~

(19) To employ engineers, architects, attorneys, real estate counselors, appraisers, financial advisors and such other consultants and employees as may be required in the judgment of the joint agency and to fix and pay their compensation from funds available to the joint agency therefor and to select and retain subject to approval of the Local Government Commission the financial consultants, underwriters and bond attorneys to be associated with the issuance of any bonds and to pay for services rendered by underwriters, financial consultants or bond attorneys out of the proceeds of any such issue with regard to which the services were ~~performed;performed.~~

- 1 (19a) To purchase power and energy, and services and facilities relating to the
2 utilization of power and energy, from any source on behalf of its members
3 and other customers and to furnish, sell, lease, exchange, transfer, or
4 otherwise dispose of, or to grant options for any such purposes with respect
5 to the same, to its members and other customers in such amounts, with such
6 characteristics, for such periods of time and under such terms and conditions
7 as the governing board of the joint agency shall ~~determine;~~determine.
- 8 (19b) To provide aid and assistance to municipalities, and to act for or on behalf of
9 any municipality, in any activity related to the development and
10 implementation of integrated resource planning, including, but not limited
11 to, the evaluation of resources, generating facilities, alternative energy
12 resources, conservation and load management programs, transmission and
13 distribution facilities, and purchased power options, and related to the
14 development, construction and operation of supply-side and demand-side
15 resources, and to do such other acts and things as provided in Article 3 of
16 this Chapter as if the joint agency were a joint municipal assistance agency,
17 and to carry out the powers granted in this Chapter in relation thereto; to
18 provide aid and assistance to any joint municipal assistance agency in the
19 exercise of its respective powers and ~~functions;~~and functions.
- 20 (20) To do all acts and things necessary, convenient or desirable to carry out the
21 purposes, and to exercise the powers granted to the joint agency in this
22 Chapter.

23 (b) No joint agency shall undertake any project required to be financed, in whole or in
24 part, with the proceeds of bonds without the approval of a majority of its members. Before
25 undertaking any project, a joint agency shall, based upon engineering studies and reports,
26 determine that such project is required to provide for the projected needs for power and energy
27 of its members from and after the date the project is estimated to be placed in normal and
28 continuous operation and for a reasonable period of time thereafter. Prior to or simultaneously
29 with granting a certificate of public convenience and necessity for any such generation project
30 the North Carolina Utilities Commission, in a proceeding instituted pursuant to G.S. 159B-24
31 of this Chapter, shall approve such determination. In determining the future power
32 requirements of the members of a joint agency, there shall be taken into account the following:

- 33 (1) The economies and efficiencies to be achieved in constructing on a large
34 scale facilities for the generation of electric power and energy;
- 35 (2) Needs of the joint agency for reserve and peaking capacity and to meet
36 obligations under pooling and reserve-sharing agreements reasonably related
37 to its needs for power and energy to which the joint agency is or may
38 become a party;
- 39 (3) The estimated useful life of such project;
- 40 (4) The estimated time necessary for the planning, development, acquisition, or
41 construction of such project and the length of time required in advance to
42 obtain, acquire or construct additional power supply for the members of the
43 joint agency;
- 44 (5) The reliability and availability of existing alternative power supply sources
45 and the cost of such existing alternative power supply sources.

46 A determination by the joint agency approved by the North Carolina Utilities Commission
47 based upon appropriate findings of the foregoing matters shall be conclusive as to the
48 appropriateness of a project to provide the needs of the members of a joint agency for power
49 and energy unless a party to the proceeding aggrieved by the determination of said Commission
50 shall file notice of appeal pursuant to Article 5 of Chapter 62 of the General Statutes of North
51 Carolina.

1 Nothing herein contained shall prevent a joint agency from undertaking studies to
2 determine whether there is a need for a project or whether such project is feasible."

3 SECTION 4. G.S. 159B-12 reads as rewritten:

4 "§ 159B-12. Sale of capacity and output by a joint agency; support contracts; other
5 contracts with a joint agency.

6 (a) Any municipality which is a member of the joint agency may contract to buy from
7 the joint agency power and energy for its present or future requirements, including the capacity
8 and output of one or more specified projects. As the creation of a joint agency is an alternative
9 method whereby a municipality may obtain the benefits and assume the responsibilities of
10 ownership in a project, any such contract may provide that the municipality so contracting shall
11 be obligated to make the payments required by the contract whether or not a project is
12 completed, operable or operating and notwithstanding the suspension, interruption,
13 interference, reduction or curtailment of the output of a project or the power and energy
14 contracted for, and that such payments under the contract shall not be subject to any reduction,
15 whether by offset or otherwise, and shall not be conditioned upon the performance or
16 nonperformance of the joint agency or any other member of the joint agency under the contract
17 or any other instrument. Any contract with respect to the sale or purchase of capacity or output
18 of a project entered into between a joint agency and its member municipalities may also
19 provide that if one or more of such municipalities shall default in the payment of its or their
20 obligations with respect to the purchase of said capacity or output, then in that event the
21 remaining member municipalities which are purchasing capacity and output under the contract
22 shall be required to accept and pay for and shall be entitled proportionately to and may use or
23 otherwise dispose of the capacity or output which was to be purchased by the defaulting
24 municipality. Notwithstanding the provisions of any other law to the contrary, any such
25 contract with respect to the sale or purchase of capacity, output, power, or energy from a
26 project may extend for a period not exceeding 50 years from the date a project is estimated to
27 be placed in normal continuous operation.

28 (b) If any municipality which is a member of the joint agency has contracted to buy
29 from the joint agency the capacity and output of one or more specified projects as contemplated
30 by and containing characteristics authorized by subsection (a) of this section, and if the joint
31 agency has acquired one or more projects and financed the acquisition of any project by issuing
32 bonds pursuant to the provisions of this Chapter, and if the joint agency sells or otherwise
33 disposes of any project, and if the proceeds of the sale or other disposition of any project,
34 together with other moneys available to the joint agency for the purpose of paying the bonds,
35 are not sufficient to pay or provide for the payment of the principal of, premium, if any, and
36 interest on all of such bonds issued to finance the acquisition of the existing project or projects,
37 the municipality may enter into a support contract with the joint agency to pay a proportionate
38 share of the principal of, premium, if any, and interest on bonds issued by the joint agency to (i)
39 refinance the bonds issued to finance the acquisition of any existing project being sold or
40 otherwise disposed of that are not defeased from other sources, (ii) finance any collateral
41 posting requirements of replacement power supply arrangements entered into by the joint
42 agency, and (iii) finance any required reserves and other costs associated with the support
43 contracts and the issuance of the bonds authorized by G.S. 159B-14.

44 As a support contract authorized by this subsection is a replacement for and in lieu of the
45 payment obligations authorized by subsection (a) of this section related to an existing project or
46 projects, any support contract may provide that the contracting municipality is obligated to
47 make the payments required by the support contract unconditionally and without offset,
48 counterclaim, or otherwise, and notwithstanding the performance or nonperformance of the
49 joint agency under the support contract, or of any other municipality entering into a similar
50 support contract with the joint agency, or the delivery of or failure to deliver power or energy
51 or the performance or nonperformance by any party under any related power supply contract.

1 Any support contract entered into between a joint agency and its member municipalities may
2 also provide that if any municipality defaults in the payment of its obligations under the support
3 contract, the remaining member municipalities subject to the contract are required to pay a
4 proportionate share of the defaulted payments.

5 Notwithstanding the provisions of any other law to the contrary, the obligations of the
6 municipality under a support contract may extend for a period of 30 years, except for accrued
7 obligations as of the expiration of the period for which the contract may be continued until the
8 accrued obligations are fully satisfied, and, with respect to administrative costs only, for a
9 reasonable period of time thereafter.

10 Obligations under a support contract shall not be taken into account in computing any debt
11 or other limitation that may be imposed by law. Being on account of the refinancing of
12 obligations incurred in connection with the acquisition of a project or projects, the obligations
13 of the municipality under any support contract shall constitute an operating expense of its
14 municipal electric system for all purposes of G.S. 159-47 and other purposes, save only as may
15 have been duly contracted with bondholders of the municipality.

16 (c) Any municipality may contract with a joint agency, or may contract indirectly with
17 a joint agency through a joint municipal assistance agency, to implement the provisions of
18 G.S. 159B-11(19a) and (19b). Notwithstanding the provisions of any law to the contrary,
19 including, but not limited to, the provisions of G.S. 159B-44(13), any contract between a joint
20 agency and a municipality or a joint municipal assistance agency (or between a municipality
21 and a joint municipal assistance agency) to implement the provisions of G.S. 159B-11(19b)
22 may extend for a period not exceeding 30 years; provided, that any such contract in respect of a
23 capital project to be used by or for the benefit of a municipality shall be subject to the prior
24 approval of the Local Government Commission of North Carolina. In reviewing any such
25 contract for approval, said Local Government Commission shall consider the municipality's
26 debt management procedures and policies, whether the municipality is in default with respect to
27 its debt service obligations and such other matters as said Local Government Commission may
28 believe to have a bearing on whether the contract should be approved.

29 (d) Notwithstanding the provisions of any law to the contrary, the execution and
30 effectiveness of any contracts authorized by this section shall not be subject to any
31 authorizations or approvals by the State or any agency, commission or instrumentality or
32 political subdivision thereof except as in this Chapter specifically required and provided.

33 Payments by a municipality under any contract authorized by this section shall be made
34 solely from the revenues derived from the ownership and operation of the electric system of
35 said municipality and any obligation under such contract shall not constitute a legal or equitable
36 pledge, charge, lien, or encumbrance upon any property of the municipality or upon any of its
37 income, receipts, or revenues, except the revenues of its electric system, and neither the faith
38 and credit nor the taxing power of the municipality are, or may be, pledged for the payment of
39 any obligation under any such contract. A municipality or joint agency, pursuant to an
40 agreement with a municipality, shall be obligated to fix, charge and collect rents, rates, fees and
41 charges for electric power and energy and other services, activities permitted in this Chapter,
42 facilities and commodities sold, furnished or supplied through the electric system of the
43 municipality sufficient to provide revenues adequate to meet its obligations under any such
44 contract and to pay any and all other amounts payable from or constituting a charge and lien
45 upon such revenues, including amounts sufficient to pay the principal of and interest on general
46 obligation bonds heretofore or hereafter issued by the municipality for purposes related to its
47 electric system-system and payments pursuant to support contracts authorized by subsection (b)
48 of this section. The willful or negligent failure by any municipality to comply with the
49 obligations applicable to it shall constitute a failure or refusal to comply with the provisions of
50 this Chapter for purposes of G.S. 159-181(c), and the financial powers of the governing board
51 of the municipality that may be vested in the Local Government Commission pursuant to

1 G.S. 159-181(c) shall include those powers incident to carrying out the requirements and
2 obligations specified in this section.

3 Payments by any joint municipal assistance agency to any joint agency under any contract
4 or contracts authorized by this section, shall be made solely from the sources specified in such
5 contract or contracts and no other, and any obligation under such contract shall not constitute a
6 legal or equitable pledge, charge, lien, or encumbrance upon any property of the joint
7 municipal assistance agency or upon any of its income, receipts, or revenues, or upon any
8 property of any municipality with which the joint agency or joint municipal assistance agency
9 contracts or upon any of such municipality's income, receipts, or revenues in each case except
10 such sources so specified. A joint municipal assistance agency shall be obligated to fix, charge
11 and collect rents, rates, fees, and charges for providing aid and assistance sufficient to provide
12 revenues adequate to meet its obligations under such contract.

13 Any municipality which is a member of a joint agency may furnish the joint agency with
14 money derived solely from the ownership and operation of its electric system or facilities and
15 provide the joint agency with personnel, equipment and property, both real and personal. Any
16 municipality may also provide any services to a joint agency.

17 Any member of a joint agency may contract for, advance or contribute funds derived solely
18 from the ownership and operation of its electric system or facilities to a joint agency as may be
19 agreed upon by the joint agency and the member, and the joint agency shall repay such
20 advances or contributions from proceeds of bonds, from operating revenues or from any other
21 funds of the joint agency, together with interest thereon as may be agreed upon by the member
22 and the joint agency."

23 **SECTION 5.** G.S. 159B-14 reads as rewritten:

24 **"§ 159B-14. Bonds of a joint agency.**

25 (a) A joint agency may issue bonds for the purpose of paying the cost of a project and
26 secure both the principal of and interest on the bonds by a pledge of part or all of the revenues
27 derived or to be derived from all or any of its projects, and any additions and betterments
28 thereto or extensions thereof, or from the sale of power and energy and services and facilities
29 related to the utilization of power and energy, or from other activities or facilities permitted in
30 this Chapter, or from contributions or advances from its members. A joint agency may issue
31 bonds that are not for the purpose of paying the cost of a project and secure the bonds solely by
32 a pledge of revenues, solely by a security interest in real or personal property, or by both a
33 pledge of revenues and a security interest in real or personal property. Bonds of a joint agency
34 shall be authorized by a resolution adopted by its governing board and spread upon its minutes.

35 (b) A joint agency may issue bonds for the purpose of refinancing bonds issued for the
36 purpose of paying the cost of a project, including, but not limited to, paying or providing for the
37 payment of the principal of, premium, if any, and interest on bonds theretofore issued by a joint
38 agency for the purpose of paying the cost of a project which is being sold or otherwise disposed
39 of by the joint agency in whole or in part, and for the purpose of financing any collateral
40 posting requirements of replacement power supply arrangements, and secure the principal of,
41 premium, if any, and interest on the bonds by a pledge of part or all of the revenues derived or
42 to be derived from all or any of its projects, and any additions and betterments thereto or
43 extensions thereof, or from the sale of power and energy and services and facilities related to
44 the utilization of power and energy, or from other activities or facilities permitted in this
45 Chapter, or by a pledge of payments derived from support contracts authorized by
46 G.S. 159B-12, or from contributions or advances from its members. Bonds of a joint agency
47 shall be authorized by a resolution adopted by its governing board and spread upon its
48 minutes."

49 **SECTION 6.** G.S. 159B-16(1) reads as rewritten:

50 "(1) The pledge of all or any part of the revenues derived or to be derived from
51 the project or projects to be financed by the bonds, or from the sale or other

1 disposition of power and energy and services and facilities related to the
2 utilization of power and energy, or from other services or activities permitted
3 in this Chapter, or from payments derived from support contracts authorized
4 by G.S. 159B-12, or from contributions and advances from members of a
5 joint agency, or from the electric system or other facilities of a municipality
6 or a joint agency."

7 **SECTION 7.** G.S. 159B-16.1 reads as rewritten:

8 **"§ 159B-16.1. Revenues – NCEMPA members.**

9 (a) A municipality is hereby authorized to fix, charge and collect rents, rates, fees and
10 charges for electric power and energy and other services, facilities and commodities sold,
11 furnished or supplied through the facilities of its electric system or its interest in any joint
12 project. Before it revises its rates, fees or charges as authorized under this subsection, a
13 municipality shall hold a public hearing on the matter. A notice of the hearing shall be
14 published at least once a week for two successive weeks in a newspaper having general
15 circulation in the municipality. The notice shall state that the public hearing will be held in
16 connection with the municipality's action to revise its rates, fees, or charges authorized in this
17 section and state the amount of the proposed revision. At the hearing, any retail electric
18 customer of the municipality may appear and be heard on the proposed revision to the rates,
19 fees, or charges. The provisions of G.S. 160A-81 shall apply to any public hearing held under
20 this subsection. The provisions of this subsection relating to a public hearing shall not apply to
21 action required to be taken for a municipality by the Local Government Commission, in
22 accordance with G.S. 159-181(c), or to action required to be taken by a municipality to revise
23 its rates, fees or charges authorized in this subsection if the revision is required to be
24 implemented immediately as a result of a catastrophic event or to avoid impairing the ability of
25 the municipality to comply with applicable law or its contractual obligations relating to its
26 outstanding bonds or other indebtedness. For so long as any bonds of a municipality ~~are~~
27 outstanding or amounts payable or to become payable by a municipality to a joint agency are
28 and-unpaid, or the payment of which is not fully provided for, the rents, rates, fees and charges
29 shall be so fixed as to provide revenues sufficient to pay all costs of and charges and expenses
30 in connection with the proper operation and maintenance of its electric system, and its interest
31 in any joint project, and all necessary repairs, replacements or renewals thereof, to pay when
32 due the principal of, premium, if any, and interest on all bonds and other evidences of
33 indebtedness payable from said revenues, to create and maintain reserves as may be required by
34 any resolution or trust agreement authorizing and securing bonds, to pay when due the principal
35 of, premium, if any, and interest on all general obligation bonds heretofore or hereafter issued
36 to finance additions, improvements and betterments to its electric system, and to pay any and
37 all amounts which the municipality may be obligated to pay from said revenues by law or
38 ~~contract.~~ contract, including, but not limited to, a support contract authorized by G.S. 159B-12.

39 (b) A joint agency is hereby authorized to fix, charge, and collect rents, rates, fees and
40 charges for electric power and energy and other services, facilities and commodities sold,
41 furnished or supplied through the facilities of its projects or otherwise as authorized by this
42 Chapter. A joint agency may only take action to change the rates, fees, or charges authorized in
43 this subsection in a public meeting. Notice of the public meeting shall be given to each
44 municipality that is a member of the joint agency. A notice of the meeting shall be published at
45 least once a week for two successive weeks in a newspaper having general circulation in each
46 municipality that is a member of the joint agency. The notice shall state that the public meeting
47 will be held in connection with the joint agency's action to revise its rates, fees, or charges
48 authorized in this subsection and state the amount of the proposed revision. The provisions of
49 this subsection relating to publication of a notice shall not apply to action required to be taken
50 by a joint agency to revise its rates, fees or charges authorized in this subsection if the revision
51 is required to be implemented immediately as a result of a catastrophic event or to avoid

1 impairing the ability of the joint agency to comply with applicable law or its contractual
2 obligations relating to its outstanding bonds or other indebtedness. For so long as any bonds of
3 a joint agency are outstanding and unpaid, the rents, rates, fees and charges shall be so fixed as
4 to provide revenues sufficient to pay all costs of and charges and expenses in connection with
5 the proper operation and maintenance of its projects, and all necessary repairs, replacements or
6 renewals thereof, to pay when due the principal of, premium, if any, and interest on all bonds
7 and other evidences of indebtedness payable from said revenues, to create and maintain
8 reserves as may be required by any resolution or trust agreement authorizing and securing
9 bonds, and to pay any and all amounts which the joint agency may be obligated to pay from
10 said revenues by law or contract.

11 (c) Any pledge of revenues, ~~securities~~ payments derived by support contracts
12 authorized by G.S. 159B-12, or other moneys made by a municipality, joint agency or joint
13 municipal assistance agency pursuant to this Chapter shall be valid and binding from the date
14 the pledge is made. The revenues, securities, support contract payments, and other moneys so
15 pledged and then held or thereafter received by the municipality, joint agency or joint
16 municipal assistance agency or any fiduciary or other depository shall immediately be subject
17 to the lien of the pledge without any physical delivery thereof or further act, and the lien of the
18 pledge shall be valid and binding as against all parties having claims of any kind in tort,
19 contract, or otherwise against the municipality, joint agency or joint municipal assistance
20 agency without regard to whether such parties have notice thereof. The resolution or trust
21 agreement or any financing statement, continuation statement or other instrument by which a
22 pledge of revenues, securities or other moneys is created need not be filed or recorded in any
23 manner.

24 (d) This section applies only to all rates, fees, or charges for electric service provided by
25 the North Carolina Eastern Municipal Power Agency (NCEMPA) or a member city or town of
26 the NCEMPA on or after October 1, 2012. The following cities and towns are members of the
27 North Carolina Eastern Municipal Power Agency: Apex, Ayden, Belhaven, Benson, Clayton,
28 Edenton, Elizabeth City, Farmville, Fremont, Greenville, Hamilton, Hertford, Hobgood,
29 Hookerton, Kinston, LaGrange, Laurinburg, Louisburg, Lumberton, New Bern, Pikeville, Red
30 Springs, Robersonville, Rocky Mount, Scotland Neck, Selma, Smithfield, Southport, Tarboro,
31 Wake Forest, Washington, and Wilson."

32 **SECTION 8.** G.S. 159B-17 reads as rewritten:

33 **"§ 159B-17. Revenues – other municipalities.**

34 (a) A municipality is hereby authorized to fix, charge and collect rents, rates, fees and
35 charges for electric power and energy and other services, facilities and commodities sold,
36 furnished or supplied through the facilities of its electric system or its interest in any joint
37 project. For so long as any bonds of a municipality or amounts payable or to become payable to
38 a joint agency are outstanding and are unpaid, or the payments of which is not fully provided
39 for, the rents, rates, fees and charges shall be so fixed as to provide revenues sufficient to pay
40 all costs of and charges and expenses in connection with the proper operation and maintenance
41 of its electric system, and its interest in any joint project, and all necessary repairs,
42 replacements or renewals thereof, to pay when due the principal of, premium, if any, and
43 interest on all bonds and other evidences of indebtedness payable from said revenues, to create
44 and maintain reserves as may be required by any resolution or trust agreement authorizing and
45 securing bonds, to pay when due the principal of, premium, if any, and interest on all general
46 obligation bonds heretofore or hereafter issued to finance additions, improvements and
47 betterments to its electric system, and to pay any and all amounts which the municipality may
48 be obligated to pay from said revenues by law or ~~contract~~ contract, including, but not limited
49 to, a support contract authorized by G.S. 159B-12.

50 (b) A joint agency is hereby authorized to fix, charge, and collect rents, rates, fees and
51 charges for electric power and energy and other services, facilities and commodities sold,

1 furnished or supplied through the facilities of its projects or otherwise as authorized by this
2 Chapter. For so long as any bonds of a joint agency are outstanding and unpaid, the rents, rates,
3 fees and charges shall be so fixed as to provide revenues sufficient to pay all costs of and
4 charges and expenses in connection with the proper operation and maintenance of its projects,
5 and all necessary repairs, replacements or renewals thereof, to pay when due the principal of,
6 premium, if any, and interest on all bonds and other evidences of indebtedness payable from
7 said revenues, to create and maintain reserves as may be required by any resolution or trust
8 agreement authorizing and securing bonds, and to pay any and all amounts which the joint
9 agency may be obligated to pay from said revenues by law or contract.

10 (c) Any pledge of revenues, ~~securities~~ payments derived from support
11 contracts authorized by G.S. 159B-12, or other moneys made by a municipality, joint agency or
12 joint municipal assistance agency pursuant to this Chapter shall be valid and binding from the
13 date the pledge is made. The revenues, securities, support contract payments, and other moneys
14 so pledged and then held or thereafter received by the municipality, joint agency or joint
15 municipal assistance agency or any fiduciary or other depository shall immediately be subject
16 to the lien of the pledge without any physical delivery thereof or further act, and the lien of the
17 pledge shall be valid and binding as against all parties having claims of any kind in tort,
18 contract, or otherwise against the municipality, joint agency or joint municipal assistance
19 agency without regard to whether such parties have notice thereof. The resolution or trust
20 agreement or any financing statement, continuation statement or other instrument by which a
21 pledge of revenues, securities support contract payment, or other moneys is created need not be
22 filed or recorded in any manner."

23 **SECTION 9.** This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H

1

HOUSE BILL 265*

Short Title: NCEMPA Asset Sale.

(Public)

Sponsors: Representatives Collins, S. Martin, Stam, and Pierce (Primary Sponsors).

For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.

Referred to: Public Utilities, if favorable, Finance.

March 18, 2015

A BILL TO BE ENTITLED

AN ACT TO PROVIDE COST RECOVERY FOR ACQUISITION OF JOINT MUNICIPAL POWER AGENCY OWNERSHIP INTEREST IN GENERATING FACILITIES, TO AUTHORIZE MUNICIPALITIES THAT ARE MEMBERS OF JOINT MUNICIPAL POWER AGENCIES TO ENTER INTO SUPPORT CONTRACTS, AND TO ISSUE BONDS TO PAY THE COSTS OF PROJECTS THAT ARE SOLD.

The General Assembly of North Carolina enacts:

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

"§ 62-133.14. Cost recovery for acquisition of joint municipal power agency ownership interest in generating facilities.

(a) The Commission shall, upon the petition of an electric public utility and after hearing, approve an annual rider to the electric public utility's rates to recover the North Carolina retail portion of all reasonable and prudent costs incurred to acquire, operate, and maintain the proportional interest in electric generating facilities purchased from a joint agency established under Chapter 159B of the General Statutes. For the purposes of this section, "acquisition costs" means the amount paid by an electric public utility on or before December 31, 2016, to acquire the generating facilities, including the amount paid above the net book value of the generating facilities. The Commission shall adopt rules to implement the provisions of this section.

(b) In determining the amount of the rider, the Commission shall:

- (1) Allow an electric public utility to recover acquisition costs, as reasonable and prudent costs. For the benefit of the consumer, the acquisition costs shall be leveled over the useful life of the assets at the time of acquisition.
- (2) Include financing costs equal to the weighted average cost of capital as authorized by the Commission in the electric public utility's most recent general rate case.
- (3) Include an estimate of operating costs based on prior year's experience and the costs projected for the next 12-month period for any proportional capital investments in the acquired electric generating facilities.
- (4) Include adjustments to reflect the North Carolina retail portion of financing and operating costs related to the electric public utility's other used and useful generating facilities owned at the time of the acquisition to properly account for updated jurisdictional allocation factors.



* H 2 6 5 - V - 1 *

(c) The Commission shall require that an electric public utility file the following proposed annual adjustments to the rider:

(1) Any under-recovery or over-recovery resulting from the operation of the rider.

(2) Any changes necessary to recover costs as forecast for the next 12-month period.

(3) Any changes to cost of capital determined in any general rate proceeding occurring after the initial establishment of the rider, where the cost of capital applies to both the remaining acquisition costs and additional capital investment in the electric generating facilities.

(d) Any rider established under this section will expire after the end of the useful life of the acquired electric generating facilities at the time of acquisition, with any remaining unrecovered costs deferred until the electric public utility's next general rate proceeding under G.S. 62-133."

SECTION 2. G.S. 159B-2 reads as rewritten:

"§ 159B-2. Legislative findings and purposes.

The General Assembly hereby finds and determines that:

A critical situation exists with respect to the present and future supply of electric power and energy in the State of North Carolina;

The public utilities operating in the State have sustained greatly increased capital and operating costs;

Such public utilities have found it necessary to postpone or curtail construction of planned generation and transmission facilities serving the consumers of electricity in the State, increasing the ultimate cost of such facilities to the public utilities, and that such postponements and curtailments will have an adverse effect on the provision of adequate and reliable electric service in the State;

The above conditions have occurred despite substantial increases in electric rates;

In the absence of further material increases in electric rates, additional postponements and curtailments in the construction of additional generation and transmission facilities may occur, thereby impairing those utilities' ability to continue to provide an adequate and reliable source of electric power and energy in the State;

Seventy-two municipalities in the State have for many years owned and operated systems for the distribution of electric power and energy to customers in their respective service areas and are empowered severally to engage in the generation and transmission of electric power and energy;

Such municipalities owning electric distribution systems have an obligation to provide their inhabitants and customers an adequate, reliable and economical source of electric power and energy in the future;

In order to achieve the economies and efficiencies made possible by the proper planning, financing, sizing and location of facilities for the generation and transmission of electric power and energy which are not practical for any municipality acting alone, and to insure an adequate, reliable and economical supply of electric power and energy to the people of the State, it is desirable for the State of North Carolina to authorize municipal electric systems to jointly plan, finance, develop, own and operate electric generation and transmission facilities appropriate to their needs in order to provide for their present and future power requirements for all uses without supplanting or displacing the service at retail of other electric suppliers operating in the State; and

The joint planning, financing, development, ownership and operation of electric generation and transmission facilities by municipalities which own electric distribution systems and the issuance of revenue bonds for such purposes as provided in this Chapter is for a public use and for public and municipal purposes and is a means of achieving economies, adequacy and

1 reliability in the generation of electric power and energy and in the meeting of future needs of
2 the State and its inhabitants.

3 Municipal electric systems that have jointly planned, developed, acquired, owned, and
4 financed electric generation and transmission facilities through joint agencies in furtherance of
5 the purposes of this Chapter also may benefit from obtaining their power and energy
6 requirements from replacement resources, the disposition of facilities owned by joint agencies,
7 and the issuance by joint agencies of bonds to refinance the outstanding debt incurred with
8 respect to facilities to the extent outstanding debt cannot be completely defeased in connection
9 with the disposition of the facilities, and it is desirable for the State of North Carolina to
10 facilitate the foregoing. Refinancing debt, and financing any collateral posting requirements
11 incident to replacement power and energy resources that may be acquired, by the issuance of
12 revenue bonds secured by payments by municipal electric systems, is for a public use and for a
13 public and municipal purpose and is an alternative means, together with the disposition of the
14 jointly owned facilities and acquisition of replacement sources of power and energy, of
15 achieving economies, adequacy and reliability of electric power and energy supply, and in
16 meeting the future needs of the State and its inhabitants.

17 In addition to the authority granted municipalities to jointly plan, finance, develop, own and
18 operate electric generation and transmission facilities by Article 2 of this Chapter and the other
19 powers granted in said Article 2, and in addition and supplemental to powers otherwise
20 conferred on municipalities by the laws of this State for interlocal cooperation, it is desirable
21 for the State of North Carolina to authorize municipalities and joint agencies to form joint
22 municipal assistance agencies which shall be empowered to provide aid and assistance to
23 municipalities in the construction, ownership, maintenance, expansion and operation of their
24 electric systems, and to empower joint agencies authorized herein to provide aid and assistance
25 to municipalities or joint municipal assistance agencies in the development and implementation
26 of integrated resource planning, including, but not limited to, the evaluation of resources,
27 generating facilities, alternative energy resources, conservation and load management
28 programs, transmission and distribution facilities, and purchase power options, and in the
29 development, construction and operation of supply-side and demand-side resources, in addition
30 to exercising such other powers as hereinafter provided to joint municipal assistance agencies
31 and joint agencies. In order to provide maximum economies and efficiencies to municipalities
32 and the consuming public in the generation and transmission of electric power and energy
33 contemplated by Article 2 of this Chapter, it is also desirable that the joint municipal assistance
34 agencies authorized herein be empowered to act as provided in Article 3 of this Chapter and
35 that such agency or agencies be empowered to act for and on behalf of any one or more
36 municipalities or joint agencies, as requested, with respect to the construction, ownership,
37 maintenance, expansion and operation of their electric systems; and that the joint agencies
38 authorized herein be empowered to act as provided in Article 2 of this Chapter and that such
39 joint agencies be empowered to act for and on behalf of any one or more municipalities or joint
40 municipal assistance agencies, in each case as requested, with respect to the integrated resource
41 planning and development, construction, and operation of supply-side and demand-side options
42 described above."

43 **SECTION 3.** G.S. 159B-11 reads as rewritten:

44 **"§ 159B-11. General powers of joint agencies; prerequisites to undertaking projects.**

45 (a) Each joint agency shall have all of the rights and powers necessary or convenient to
46 carry out and effectuate the purposes and provisions of this Chapter, including, but without
47 limiting the generality of the foregoing, the rights and powers:

48 (1) To adopt bylaws for the regulation of the affairs and the conduct of its
49 business, and to prescribe rules, regulations and policies in connection with
50 the performance of its functions and ~~duties;~~duties.

51 (2) To adopt an official seal and alter the same at ~~pleasure;~~pleasure.

- (3) To acquire and maintain an administrative office building or office at such place or places as it may determine, which building or office may be used or owned alone or together with any other joint agency or agencies, joint municipal assistance agency, municipalities, corporations, associations or persons under such terms and provisions for sharing costs and otherwise as may be ~~determined;~~determined.
- (4) To sue and be sued in its own name, and to plead and be ~~impleaded;~~impleaded.
- (5) To receive, administer and comply with the conditions and requirements respecting any gift, grant or donation of any property or ~~money;~~money.
- (6) To acquire by purchase, lease, gift, or otherwise, or to obtain options for the acquisition of, any property, real or personal, improved or unimproved, including an interest in land less than the fee ~~thereof;~~thereof.
- (7) To sell, lease, exchange, transfer or otherwise dispose of, or to grant options for any such purposes with respect to, any real or personal property or interest ~~therein;~~therein.
- (8) To pledge, assign, mortgage or otherwise grant a security interest in any real or personal property or interest therein, including the right and power to pledge, assign or otherwise grant a security interest in any money, rents, charges or other revenues and any proceeds derived by the joint agency from the sales of property, insurance or condemnation ~~awards;~~awards.
- (9) To issue bonds of the joint agency for the purpose of providing funds for any of its corporate ~~purposes;~~purposes.
- (10) To study, plan, finance, construct, reconstruct, acquire, improve, enlarge, extend, better, own, operate and maintain one or more projects, either individually or jointly with one or more municipalities in this State or any state contiguous to this State owning electric distribution facilities or with any political subdivisions, agencies or instrumentalities of any state contiguous to this State or with other joint agencies created pursuant to this Chapter, and to pay all or any part of the costs thereof from the proceeds of bonds of the joint agency or from any other available funds of the joint agency; no provisions of law with respect to the acquisition, construction, or operation of property by other public bodies shall be applicable to any project as defined in this Chapter and as authorized by this subdivision unless the General Assembly shall specifically so ~~state;~~state.
- (11) To authorize the construction, operation or maintenance of any project or projects by any person, firm, association, or corporation, public or ~~private;~~private.
- (12) To acquire by private negotiated purchase or lease or otherwise an existing project, a project under construction, or other property, either individually or jointly, with one or more municipalities or joint agencies in this State or any state contiguous to this State owning electric distribution facilities or with any political subdivisions, agencies or instrumentalities of any state contiguous to this State or with other joint agencies created pursuant to this Chapter; to acquire by private negotiated purchase or lease or otherwise any facilities for the development, production, manufacture, procurement, handling, storage, fabrication, enrichment, processing or reprocessing of fuel of any kind or any facility or rights with respect to the supply of water, and to enter into agreements by private negotiation or otherwise, for a period not exceeding fifty (50) years, for the development, production, manufacture, procurement, handling, storage, fabrication, enrichment, processing or

- 1 reprocessing of fuel of any kind or any facility or rights with respect to the
2 supply of water; no provisions of law with respect to the acquisition,
3 construction or operation of property by other public bodies shall be
4 applicable to any agency created pursuant to this Chapter unless the
5 legislature shall specifically so ~~state;state.~~
- 6 (13) To dispose of by private negotiated sale or lease, or otherwise, an existing
7 project or a project under construction, or to dispose of by private negotiated
8 sale or lease, or otherwise any facilities for the development, production,
9 manufacture, procurement, handling, storage, fabrication, enrichment,
10 processing or reprocessing of fuel of any kind or any facility or rights with
11 respect to the supply of water; no provisions of law with respect to the
12 disposition of property by other public bodies shall be applicable to an
13 agency created pursuant to this Chapter unless the legislature shall
14 specifically so ~~state;state.~~
- 15 (14) To fix, charge and collect rents, rates, fees and charges for electric power or
16 energy and other services, facilities and commodities sold, furnished or
17 supplied through any project or activity permitted in this ~~Chapter;Chapter.~~
- 18 (14a) To fix, charge, and collect payments pursuant to support contracts authorized
19 by G.S. 159B-12(b).
- 20 (15) To generate, produce, transmit, deliver, exchange, purchase, sell for resale
21 only, electric power or energy, and to enter into contracts for any or all such
22 ~~purposes;purposes.~~
- 23 (16) To negotiate and enter into contracts for the purchase, sale for resale only,
24 exchange, interchange, wheeling, pooling, transmission or use of electric
25 power and energy with any person, firm, association, or corporation, public
26 or ~~private;private.~~
- 27 (17) To make and execute contracts and other instruments necessary or
28 convenient in the exercise of the powers and functions of the joint agency
29 under this Chapter, including contracts with persons, firms, associations, or
30 corporations, public or ~~private;private.~~
- 31 (18) To apply to the appropriate agencies of the State, the United States or any
32 state thereof, and to any other proper agency, for such permits, licenses,
33 certificates or approvals as may be necessary, and to construct, maintain and
34 operate projects and undertake other activities permitted in this Chapter in
35 accordance with such licenses, permits, certificates or approvals, and to
36 obtain, hold and use such licenses, permits, certificates and approvals in the
37 same manner as any other person or operating unit of any other
38 ~~person;person.~~
- 39 (19) To employ engineers, architects, attorneys, real estate counselors, appraisers,
40 financial advisors and such other consultants and employees as may be
41 required in the judgment of the joint agency and to fix and pay their
42 compensation from funds available to the joint agency therefor and to select
43 and retain subject to approval of the Local Government Commission the
44 financial consultants, underwriters and bond attorneys to be associated with
45 the issuance of any bonds and to pay for services rendered by underwriters,
46 financial consultants or bond attorneys out of the proceeds of any such issue
47 with regard to which the services were ~~performed;performed.~~
- 48 (19a) To purchase power and energy, and services and facilities relating to the
49 utilization of power and energy, from any source on behalf of its members
50 and other customers and to furnish, sell, lease, exchange, transfer, or
51 otherwise dispose of, or to grant options for any such purposes with respect

to the same, to its members and other customers in such amounts, with such characteristics, for such periods of time and under such terms and conditions as the governing board of the joint agency shall ~~determine;~~determine.

(19b) To provide aid and assistance to municipalities, and to act for or on behalf of any municipality, in any activity related to the development and implementation of integrated resource planning, including, but not limited to, the evaluation of resources, generating facilities, alternative energy resources, conservation and load management programs, transmission and distribution facilities, and purchased power options, and related to the development, construction and operation of supply-side and demand-side resources, and to do such other acts and things as provided in Article 3 of this Chapter as if the joint agency were a joint municipal assistance agency, and to carry out the powers granted in this Chapter in relation thereto; to provide aid and assistance to any joint municipal assistance agency in the exercise of its respective powers and ~~functions;~~and functions.

(20) To do all acts and things necessary, convenient or desirable to carry out the purposes, and to exercise the powers granted to the joint agency in this Chapter.

(b) No joint agency shall undertake any project required to be financed, in whole or in part, with the proceeds of bonds without the approval of a majority of its members. Before undertaking any project, a joint agency shall, based upon engineering studies and reports, determine that such project is required to provide for the projected needs for power and energy of its members from and after the date the project is estimated to be placed in normal and continuous operation and for a reasonable period of time thereafter. Prior to or simultaneously with granting a certificate of public convenience and necessity for any such generation project the North Carolina Utilities Commission, in a proceeding instituted pursuant to G.S. 159B-24 of this Chapter, shall approve such determination. In determining the future power requirements of the members of a joint agency, there shall be taken into account the following:

- (1) The economies and efficiencies to be achieved in constructing on a large scale facilities for the generation of electric power and energy;
- (2) Needs of the joint agency for reserve and peaking capacity and to meet obligations under pooling and reserve-sharing agreements reasonably related to its needs for power and energy to which the joint agency is or may become a party;
- (3) The estimated useful life of such project;
- (4) The estimated time necessary for the planning, development, acquisition, or construction of such project and the length of time required in advance to obtain, acquire or construct additional power supply for the members of the joint agency;
- (5) The reliability and availability of existing alternative power supply sources and the cost of such existing alternative power supply sources.

A determination by the joint agency approved by the North Carolina Utilities Commission based upon appropriate findings of the foregoing matters shall be conclusive as to the appropriateness of a project to provide the needs of the members of a joint agency for power and energy unless a party to the proceeding aggrieved by the determination of said Commission shall file notice of appeal pursuant to Article 5 of Chapter 62 of the General Statutes of North Carolina.

Nothing herein contained shall prevent a joint agency from undertaking studies to determine whether there is a need for a project or whether such project is feasible."

SECTION 4. G.S. 159B-12 reads as rewritten:

1 "§ 159B-12. Sale of capacity and output by a joint agency; support contracts; other
2 contracts with a joint agency.

3 (a) Any municipality which is a member of the joint agency may contract to buy from
4 the joint agency power and energy for its present or future requirements, including the capacity
5 and output of one or more specified projects. As the creation of a joint agency is an alternative
6 method whereby a municipality may obtain the benefits and assume the responsibilities of
7 ownership in a project, any such contract may provide that the municipality so contracting shall
8 be obligated to make the payments required by the contract whether or not a project is
9 completed, operable or operating and notwithstanding the suspension, interruption,
10 interference, reduction or curtailment of the output of a project or the power and energy
11 contracted for, and that such payments under the contract shall not be subject to any reduction,
12 whether by offset or otherwise, and shall not be conditioned upon the performance or
13 nonperformance of the joint agency or any other member of the joint agency under the contract
14 or any other instrument. Any contract with respect to the sale or purchase of capacity or output
15 of a project entered into between a joint agency and its member municipalities may also
16 provide that if one or more of such municipalities shall default in the payment of its or their
17 obligations with respect to the purchase of said capacity or output, then in that event the
18 remaining member municipalities which are purchasing capacity and output under the contract
19 shall be required to accept and pay for and shall be entitled proportionately to and may use or
20 otherwise dispose of the capacity or output which was to be purchased by the defaulting
21 municipality. Notwithstanding the provisions of any other law to the contrary, any such
22 contract with respect to the sale or purchase of capacity, output, power, or energy from a
23 project may extend for a period not exceeding 50 years from the date a project is estimated to
24 be placed in normal continuous operation.

25 (b) If any municipality which is a member of the joint agency has contracted to buy
26 from the joint agency the capacity and output of one or more specified projects as contemplated
27 by and containing characteristics authorized by subsection (a) of this section, and if the joint
28 agency has acquired one or more projects and financed the acquisition of any project by issuing
29 bonds pursuant to the provisions of this Chapter, and if the joint agency sells or otherwise
30 disposes of any project, and if the proceeds of the sale or other disposition of any project,
31 together with other moneys available to the joint agency for the purpose of paying the bonds,
32 are not sufficient to pay or provide for the payment of the principal of, premium, if any, and
33 interest on all of such bonds issued to finance the acquisition of the existing project or projects,
34 the municipality may enter into a support contract with the joint agency to pay a proportionate
35 share of the principal of, premium, if any, and interest on bonds issued by the joint agency to (i)
36 refinance the bonds issued to finance the acquisition of any existing project being sold or
37 otherwise disposed of that are not defeased from other sources, (ii) finance any collateral
38 posting requirements of replacement power supply arrangements entered into by the joint
39 agency, and (iii) finance any required reserves and other costs associated with the support
40 contracts and the issuance of the bonds authorized by G.S. 159B-14.

41 As a support contract authorized by this subsection is a replacement for and in lieu of the
42 payment obligations authorized by subsection (a) of this section related to an existing project or
43 projects, any support contract may provide that the contracting municipality is obligated to
44 make the payments required by the support contract unconditionally and without offset,
45 counterclaim, or otherwise, and notwithstanding the performance or nonperformance of the
46 joint agency under the support contract, or of any other municipality entering into a similar
47 support contract with the joint agency, or the delivery of or failure to deliver power or energy
48 or the performance or nonperformance by any party under any related power supply contract.
49 Any support contract entered into between a joint agency and its member municipalities may
50 also provide that if any municipality defaults in the payment of its obligations under the support

1 contract, the remaining member municipalities subject to the contract are required to pay a
2 proportionate share of the defaulted payments.

3 Notwithstanding the provisions of any other law to the contrary, the obligations of the
4 municipality under a support contract may extend for a period of 30 years, except for accrued
5 obligations as of the expiration of the period for which the contract may be continued until the
6 accrued obligations are fully satisfied, and, with respect to administrative costs only, for a
7 reasonable period of time thereafter.

8 Obligations under a support contract shall not be taken into account in computing any debt
9 or other limitation that may be imposed by law. Being on account of the refinancing of
10 obligations incurred in connection with the acquisition of a project or projects, the obligations
11 of the municipality under any support contract shall constitute an operating expense of its
12 municipal electric system for all purposes of G.S. 159-47 and other purposes, save only as may
13 have been duly contracted with bondholders of the municipality.

14 (c) Any municipality may contract with a joint agency, or may contract indirectly with
15 a joint agency through a joint municipal assistance agency, to implement the provisions of
16 G.S. 159B-11(19a) and (19b). Notwithstanding the provisions of any law to the contrary,
17 including, but not limited to, the provisions of G.S. 159B-44(13), any contract between a joint
18 agency and a municipality or a joint municipal assistance agency (or between a municipality
19 and a joint municipal assistance agency) to implement the provisions of G.S. 159B-11(19b)
20 may extend for a period not exceeding 30 years; provided, that any such contract in respect of a
21 capital project to be used by or for the benefit of a municipality shall be subject to the prior
22 approval of the Local Government Commission of North Carolina. In reviewing any such
23 contract for approval, said Local Government Commission shall consider the municipality's
24 debt management procedures and policies, whether the municipality is in default with respect to
25 its debt service obligations and such other matters as said Local Government Commission may
26 believe to have a bearing on whether the contract should be approved.

27 (d) Notwithstanding the provisions of any law to the contrary, the execution and
28 effectiveness of any contracts authorized by this section shall not be subject to any
29 authorizations or approvals by the State or any agency, commission or instrumentality or
30 political subdivision thereof except as in this Chapter specifically required and provided.

31 Payments by a municipality under any contract authorized by this section shall be made
32 solely from the revenues derived from the ownership and operation of the electric system of
33 said municipality and any obligation under such contract shall not constitute a legal or equitable
34 pledge, charge, lien, or encumbrance upon any property of the municipality or upon any of its
35 income, receipts, or revenues, except the revenues of its electric system, and neither the faith
36 and credit nor the taxing power of the municipality are, or may be, pledged for the payment of
37 any obligation under any such contract. A municipality or joint agency, pursuant to an
38 agreement with a municipality, shall be obligated to fix, charge and collect rents, rates, fees and
39 charges for electric power and energy and other services, activities permitted in this Chapter,
40 facilities and commodities sold, furnished or supplied through the electric system of the
41 municipality sufficient to provide revenues adequate to meet its obligations under any such
42 contract and to pay any and all other amounts payable from or constituting a charge and lien
43 upon such revenues, including amounts sufficient to pay the principal of and interest on general
44 obligation bonds heretofore or hereafter issued by the municipality for purposes related to its
45 electric system-system and payments pursuant to support contracts authorized by subsection (b)
46 of this section. The willful or negligent failure by any municipality to comply with the
47 obligations applicable to it shall constitute a failure or refusal to comply with the provisions of
48 this Chapter for purposes of G.S. 159-181(c), and the financial powers of the governing board
49 of the municipality that may be vested in the Local Government Commission pursuant to
50 G.S. 159-181(c) shall include those powers incident to carrying out the requirements and
51 obligations specified in this section.

1 Payments by any joint municipal assistance agency to any joint agency under any contract
2 or contracts authorized by this section, shall be made solely from the sources specified in such
3 contract or contracts and no other, and any obligation under such contract shall not constitute a
4 legal or equitable pledge, charge, lien, or encumbrance upon any property of the joint
5 municipal assistance agency or upon any of its income, receipts, or revenues, or upon any
6 property of any municipality with which the joint agency or joint municipal assistance agency
7 contracts or upon any of such municipality's income, receipts, or revenues in each case except
8 such sources so specified. A joint municipal assistance agency shall be obligated to fix, charge
9 and collect rents, rates, fees, and charges for providing aid and assistance sufficient to provide
10 revenues adequate to meet its obligations under such contract.

11 Any municipality which is a member of a joint agency may furnish the joint agency with
12 money derived solely from the ownership and operation of its electric system or facilities and
13 provide the joint agency with personnel, equipment and property, both real and personal. Any
14 municipality may also provide any services to a joint agency.

15 Any member of a joint agency may contract for, advance or contribute funds derived solely
16 from the ownership and operation of its electric system or facilities to a joint agency as may be
17 agreed upon by the joint agency and the member, and the joint agency shall repay such
18 advances or contributions from proceeds of bonds, from operating revenues or from any other
19 funds of the joint agency, together with interest thereon as may be agreed upon by the member
20 and the joint agency."

21 **SECTION 5.** G.S. 159B-14 reads as rewritten:

22 **"§ 159B-14. Bonds of a joint agency.**

23 (a) A joint agency may issue bonds for the purpose of paying the cost of a project and
24 secure both the principal of and interest on the bonds by a pledge of part or all of the revenues
25 derived or to be derived from all or any of its projects, and any additions and betterments
26 thereto or extensions thereof, or from the sale of power and energy and services and facilities
27 related to the utilization of power and energy, or from other activities or facilities permitted in
28 this Chapter, or from contributions or advances from its members. A joint agency may issue
29 bonds that are not for the purpose of paying the cost of a project and secure the bonds solely by
30 a pledge of revenues, solely by a security interest in real or personal property, or by both a
31 pledge of revenues and a security interest in real or personal property. Bonds of a joint agency
32 shall be authorized by a resolution adopted by its governing board and spread upon its minutes.

33 (b) A joint agency may issue bonds for the purpose of refinancing bonds issued for the
34 purpose of paying the cost of a project, including, but not limited to, paying or providing for the
35 payment of the principal of, premium, if any, and interest on bonds theretofore issued by a joint
36 agency for the purpose of paying the cost of a project which is being sold or otherwise disposed
37 of by the joint agency in whole or in part, and for the purpose of financing any collateral
38 posting requirements of replacement power supply arrangements authorized in G.S. 159B-12,
39 and secure the principal of, premium, if any, and interest on the bonds by a pledge of part or all
40 of the revenues derived or to be derived from all or any of its projects, and any additions and
41 betterments thereto or extensions thereof, or from the sale of power and energy and services
42 and facilities related to the utilization of power and energy, or from other activities or facilities
43 permitted in this Chapter, or by a pledge of payments derived from support contracts authorized
44 by G.S. 159B-12, or from contributions or advances from its members. Bonds of a joint agency
45 shall be authorized by a resolution adopted by its governing board and spread upon its
46 minutes."

47 **SECTION 6.** G.S. 159B-16(1) reads as rewritten:

48 "(1) The pledge of all or any part of the revenues derived or to be derived from
49 the project or projects to be financed by the bonds, or from the sale or other
50 disposition of power and energy and services and facilities related to the
51 utilization of power and energy, or from other services or activities permitted

1 in this Chapter, or from payments derived from support contracts authorized
2 by G.S. 159B-12, or from contributions and advances from members of a
3 joint agency, or from the electric system or other facilities of a municipality
4 or a joint agency."

5 SECTION 7. G.S. 159B-16.1 reads as rewritten:

6 **"§ 159B-16.1. Revenues – NCEMPA members.**

7 (a) A municipality is hereby authorized to fix, charge and collect rents, rates, fees and
8 charges for electric power and energy and other services, facilities and commodities sold,
9 furnished or supplied through the facilities of its electric system or its interest in any joint
10 project. Before it revises its rates, fees or charges as authorized under this subsection, a
11 municipality shall hold a public hearing on the matter. A notice of the hearing shall be
12 published at least once a week for two successive weeks in a newspaper having general
13 circulation in the municipality. The notice shall state that the public hearing will be held in
14 connection with the municipality's action to revise its rates, fees, or charges authorized in this
15 section and state the amount of the proposed revision. At the hearing, any retail electric
16 customer of the municipality may appear and be heard on the proposed revision to the rates,
17 fees, or charges. The provisions of G.S. 160A-81 shall apply to any public hearing held under
18 this subsection. The provisions of this subsection relating to a public hearing shall not apply to
19 action required to be taken for a municipality by the Local Government Commission, in
20 accordance with G.S. 159-181(c), or to action required to be taken by a municipality to revise
21 its rates, fees or charges authorized in this subsection if the revision is required to be
22 implemented immediately as a result of a catastrophic event or to avoid impairing the ability of
23 the municipality to comply with applicable law or its contractual obligations relating to its
24 outstanding bonds or other indebtedness. For so long as any bonds of a municipality ~~are~~
25 ~~outstanding or amounts payable or to become payable by a municipality to a joint agency are~~
26 ~~and unpaid, or the payment of which is not fully provided for,~~ the rents, rates, fees and charges
27 shall be so fixed as to provide revenues sufficient to pay all costs of and charges and expenses
28 in connection with the proper operation and maintenance of its electric system, and its interest
29 in any joint project, and all necessary repairs, replacements or renewals thereof, to pay when
30 due the principal of, premium, if any, and interest on all bonds and other evidences of
31 indebtedness payable from said revenues, to create and maintain reserves as may be required by
32 any resolution or trust agreement authorizing and securing bonds, to pay when due the principal
33 of, premium, if any, and interest on all general obligation bonds heretofore or hereafter issued
34 to finance additions, improvements and betterments to its electric system, and to pay any and
35 all amounts which the municipality may be obligated to pay from said revenues by law or
36 ~~contract.~~ contract, including, but not limited to, a support contract authorized by G.S. 159B-12.

37 (b) A joint agency is hereby authorized to fix, charge, and collect rents, rates, fees and
38 charges for electric power and energy and other services, facilities and commodities sold,
39 furnished or supplied through the facilities of its projects or otherwise as authorized by this
40 Chapter. A joint agency may only take action to change the rates, fees, or charges authorized in
41 this subsection in a public meeting. Notice of the public meeting shall be given to each
42 municipality that is a member of the joint agency. A notice of the meeting shall be published at
43 least once a week for two successive weeks in a newspaper having general circulation in each
44 municipality that is a member of the joint agency. The notice shall state that the public meeting
45 will be held in connection with the joint agency's action to revise its rates, fees, or charges
46 authorized in this subsection and state the amount of the proposed revision. The provisions of
47 this subsection relating to publication of a notice shall not apply to action required to be taken
48 by a joint agency to revise its rates, fees or charges authorized in this subsection if the revision
49 is required to be implemented immediately as a result of a catastrophic event or to avoid
50 impairing the ability of the joint agency to comply with applicable law or its contractual
51 obligations relating to its outstanding bonds or other indebtedness. For so long as any bonds of

1 a joint agency are outstanding and unpaid, the rents, rates, fees and charges shall be so fixed as
2 to provide revenues sufficient to pay all costs of and charges and expenses in connection with
3 the proper operation and maintenance of its projects, and all necessary repairs, replacements or
4 renewals thereof, to pay when due the principal of, premium, if any, and interest on all bonds
5 and other evidences of indebtedness payable from said revenues, to create and maintain
6 reserves as may be required by any resolution or trust agreement authorizing and securing
7 bonds, and to pay any and all amounts which the joint agency may be obligated to pay from
8 said revenues by law or contract.

9 (c) Any pledge of revenues, ~~securities~~ payments derived by support contracts
10 authorized by G.S. 159B-12, or other moneys made by a municipality, joint agency or joint
11 municipal assistance agency pursuant to this Chapter shall be valid and binding from the date
12 the pledge is made. The revenues, ~~securities~~, support contract payments, and other moneys so
13 pledged and then held or thereafter received by the municipality, joint agency or joint
14 municipal assistance agency or any fiduciary or other depository shall immediately be subject
15 to the lien of the pledge without any physical delivery thereof or further act, and the lien of the
16 pledge shall be valid and binding as against all parties having claims of any kind in tort,
17 contract, or otherwise against the municipality, joint agency or joint municipal assistance
18 agency without regard to whether such parties have notice thereof. The resolution or trust
19 agreement or any financing statement, continuation statement or other instrument by which a
20 pledge of revenues, securities or other moneys is created need not be filed or recorded in any
21 manner.

22 (d) This section applies only to all rates, fees, or charges for electric service provided by
23 the North Carolina Eastern Municipal Power Agency (NCEMPA) or a member city or town of
24 the NCEMPA on or after October 1, 2012. The following cities and towns are members of the
25 North Carolina Eastern Municipal Power Agency: Apex, Ayden, Belhaven, Benson, Clayton,
26 Edenton, Elizabeth City, Farmville, Fremont, Greenville, Hamilton, Hertford, Hobgood,
27 Hookerton, Kinston, LaGrange, Laurinburg, Louisburg, Lumberton, New Bern, Pikeville, Red
28 Springs, Robersonville, Rocky Mount, Scotland Neck, Selma, Smithfield, Southport, Tarboro,
29 Wake Forest, Washington, and Wilson."

30 **SECTION 8.** G.S. 159B-17 reads as rewritten:

31 **"§ 159B-17. Revenues – other municipalities.**

32 (a) A municipality is hereby authorized to fix, charge and collect rents, rates, fees and
33 charges for electric power and energy and other services, facilities and commodities sold,
34 furnished or supplied through the facilities of its electric system or its interest in any joint
35 project. For so long as any bonds of a municipality or amounts payable or to become payable to
36 a joint agency are outstanding and are unpaid, or the payments of which is not fully provided
37 for, the rents, rates, fees and charges shall be so fixed as to provide revenues sufficient to pay
38 all costs of and charges and expenses in connection with the proper operation and maintenance
39 of its electric system, and its interest in any joint project, and all necessary repairs,
40 replacements or renewals thereof, to pay when due the principal of, premium, if any, and
41 interest on all bonds and other evidences of indebtedness payable from said revenues, to create
42 and maintain reserves as may be required by any resolution or trust agreement authorizing and
43 securing bonds, to pay when due the principal of, premium, if any, and interest on all general
44 obligation bonds heretofore or hereafter issued to finance additions, improvements and
45 betterments to its electric system, and to pay any and all amounts which the municipality may
46 be obligated to pay from said revenues by law or ~~contract~~ contract, including, but not limited
47 to, a support contract authorized by G.S. 159B-12.

48 (b) A joint agency is hereby authorized to fix, charge, and collect rents, rates, fees and
49 charges for electric power and energy and other services, facilities and commodities sold,
50 furnished or supplied through the facilities of its projects or otherwise as authorized by this
51 Chapter. For so long as any bonds of a joint agency are outstanding and unpaid, the rents, rates,

1 fees and charges shall be so fixed as to provide revenues sufficient to pay all costs of and
2 charges and expenses in connection with the proper operation and maintenance of its projects,
3 and all necessary repairs, replacements or renewals thereof, to pay when due the principal of,
4 premium, if any, and interest on all bonds and other evidences of indebtedness payable from
5 said revenues, to create and maintain reserves as may be required by any resolution or trust
6 agreement authorizing and securing bonds, and to pay any and all amounts which the joint
7 agency may be obligated to pay from said revenues by law or contract.

8 (c) Any pledge of revenues, ~~securities~~payments derived from support
9 contracts authorized by G.S. 159B-12, or other moneys made by a municipality, joint agency or
10 joint municipal assistance agency pursuant to this Chapter shall be valid and binding from the
11 date the pledge is made. The revenues, securities, support contract payments, and other moneys
12 so pledged and then held or thereafter received by the municipality, joint agency or joint
13 municipal assistance agency or any fiduciary or other depository shall immediately be subject
14 to the lien of the pledge without any physical delivery thereof or further act, and the lien of the
15 pledge shall be valid and binding as against all parties having claims of any kind in tort,
16 contract, or otherwise against the municipality, joint agency or joint municipal assistance
17 agency without regard to whether such parties have notice thereof. The resolution or trust
18 agreement or any financing statement, continuation statement or other instrument by which a
19 pledge of revenues, securities support contract payment, or other moneys is created need not be
20 filed or recorded in any manner."

21 **SECTION 9.** This act is effective when it becomes law.

Committee Sergeants at Arms

NAME OF COMMITTEE COMM ON PUBLIC UTILITIES

DATE: 01-25-15

Room: 643

House Sgt-At Arms:

1. Name: REGGIE SILLS

2. Name: MARVIN LEE

3. Name: TERRY McCRAW

4. Name: CHRIS McCracken

5. Name: _____

Senate Sgt-At Arms:

1. Name: _____

2. Name: _____

3. Name: _____

4. Name: _____

5. Name: _____



Wednesday, March 25
PUBLIC UTILITIES

Room
643

Time
1:00 pm

Name	County	Sponsor
Jayden Cheese	Wake	Rosa U. Gill
Christian Judkins	Wake	Yvonne Lewis Holley
Caroline Norton	Burke	Hugh Blackwell



VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON PUBLIC UTILITIES

3-25-15

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Dan Conrad	NCUC
Tony Wike	Public Staff - NCUC
Dranna Downey	PS NCUC
Ami [Signature]	[Signature]
Mia Bailey	Electric City
Steve Wall	UNC-IE
Jeremy Grissom	The Dauntless Group
Dave Horne	Saint Andrew
BRUCE THOMPSON	PARKER F&S
Hayden [Signature]	F&S
Tracy Kimbrell	Parker F&S



VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON PUBLIC UTILITIES

Name of Committee

3-25-15

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

John McMillan	MFS
Joseph Stern	CSS
DAVID BARNES	Electric Cities
Graham Edwards	"
Drew Saunders	"
Jay Rouse	NCAEC
Cindy Ohms	CUCA
Amanda Horner	Trautman Sanders
Reston Jones	NC DOT
Jerry Schill	NCFEA
B. H. Allen	NC + CC
John	Misc



VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON PUBLIC UTILITIES

3-25-15

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Preston Hwano	NCMA
Rian Menwald	WM
Amanda Norwood	NC Interfaith Power and Light
Susie Oliver	" " " "
Carann Hine	MVA
Tammy Sai	MVA
Doug Carter	NCIA
ANDY WALSH	SA
Richard Stevens	SA
Kathy Harkins	Duke
Kent Forvielle	Duke



VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON PUBLIC UTILITIES

3-25-15

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Starnes	Treasurer
Susan Vick	Duke Energy
Nancy Thompson	Neyachausen
David Greenwald	NC IPL
Dan Redman	BE
Erin Wynia	NCLM
Tom J. Hager	FSP



**House Committee on Public Utilities
Wednesday, April 1, 2015 at 1:00 PM
Room 643 of the Legislative Office Building**

MINUTES

The House Committee on Public Utilities met at 1:00 PM on April 1, 2015 in Room 643 of the Legislative Office Building. Representatives Alexander, Arp, Bishop, Blackwell, Bradford, B. Brown, Bumgardner, Catlin, Collins, Conrad, Cunningham, Dollar, Earle, Elmore, Hager, Hanes, Harrison, L. Johnson, R. Johnson, Luebke, Malone, S. Martin, Meyer, R. Moore, Warren, Watford, and Wray attended.

Representative Jeff Collins, Chair, presided and welcomed everyone to the meeting. He introduced and thanked the Sergeant-at-Arms. Chairman Collins introduced North Carolina Utilities Commissioners, Don Bailey and James Patterson.

The following bills were considered:

HB 332 Natural Gas Econ. Dev. Infrastructure. (Representatives Hager, Collins, McElraft, Saine)

Chairman Collins stated there was a PCS for HB 332 and recognized Representative Moore for a motion. Representative Moore made a motion that the PCS be before the committee. The motion passed.

Chairman Collins recognized Representative Hager to explain the bill. Heather Fennell of the Research staff was recognized to further explain the bill.

Chairman Collins opened the floor for discussion and recognized the following members: Representatives B. Brown, Blackwell, Earle, Warren, Dollar, Bishop, Bumgardner, and Luebke. Chris Ayers, Executive Director of the North Carolina Utilities Commission, was recognized to answer questions.

Chairman Collins recognized Sharon Miller, Executive Director of the Carolina Utility Customers Association, and Bill McAulay, representing PSNC Energy, to speak on the bill.

Representative Hager was recognized and made a motion for an "Unfavorable to the original bill, Favorable to the PCS, with a Serial referral to Finance". Chairman Collins opened the floor for a vote and the motion passed.

HB 351 Clarify Utility Rates. (Representatives Arp, Collins, Warren)

Chairman Collins stated there was a PCS for HB 351 and recognized Representative Hager for a motion. Representative Hager made a motion that the PCS be before the committee. The motion passed.



Chairman Collins recognized Representative Arp to explain the bill. Chairman Collins opened the floor for discussion and recognized Representative Dollar for a question.

Representative Dollar was recognized and made a motion for an "Unfavorable to the original bill, Favorable to the PCS, with a Serial referral to Finance". Chairman Collins opened the floor for a vote and the motion passed.

HB 356 NCUC Reg. Fee Changes. (Representatives Arp, Collins, Warren)

Chairman Collins recognized Representative Arp to explain the bill. Chairman Collins opened the floor for discussion and recognized Representative Dollar for a question.

Representative Hager was recognized and made a motion for a Favorable Report, with a Serial referral to Finance". Chairman Collins opened the floor for a vote and the motion passed.

The meeting adjourned at 1:45 p.m.


Representative Jeff Collins, Chair
Presiding


Cristy Yates, Committee Clerk



**House Committee on Public Utilities
Wednesday, April 1, 2015, 1:00 PM
643 Legislative Office Building**

AGENDA

Welcome and Opening Remarks

Introduction of Sergeant-at-Arms

Bills

BILL NO.	SHORT TITLE	SPONSOR
HB 332	Natural Gas Econ. Dev. Infrastructure.	Representative Hager Representative Collins Representative McElraft Representative Saine
HB 351	Clarify Utility Rates.	Representative Arp Representative Collins Representative Warren
HB 356	NCUC Reg. Fee Changes.	Representative Arp Representative Collins Representative Warren

Adjournment

1:45 p.m.



**NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2015-2016 SESSION**

You are hereby notified that the **House Committee on Public Utilities** will meet as follows:

DAY & DATE: Wednesday, April 1, 2015
TIME: 1:00 PM
LOCATION: 643 LOB
COMMENTS: Rep. Jeff Collins, Chairing

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 332	Natural Gas Econ. Dev. Infrastructure.	Representative Hager Representative Collins Representative McElraft Representative Saine
HB 351	Clarify Utility Rates.	Representative Arp Representative Collins Representative Warren
HB 356	NCUC Reg. Fee Changes.	Representative Arp Representative Collins Representative Warren

Respectfully,

Representative Dean Arp, Co-Chair
Representative Jeff Collins, Co-Chair
Representative Harry Warren, Co-Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 2:41 PM on Thursday, March 26, 2015.

____ Principal Clerk
____ Reading Clerk – House Chamber

Cristy Yates (Committee Assistant)



Wendy Miller (Rep. Dean Arp)

From: Cristy Yates (Rep. Harry Warren)
Sent: Thursday, March 26, 2015 02:46 PM
To: Rep. Pat McElraft; Rep. Jeff Collins; Rep. Mike Hager; Rep. Jason Saine; Rep. Harry Warren; Rep. Dean Arp
Cc: Nancy Fox (Rep. Pat McElraft); Wes Householder (Rep. Jeff Collins); Baxter Knight (Rep. Mike Hager); Laura Puryear (Rep. Jason Saine); Cristy Yates (Rep. Harry Warren); Wendy Miller (Rep. Dean Arp)
Subject: <NCGA> House Public Utilities Committee Meeting Notice for Wednesday, April 01, 2015 at 1:00 PM
Attachments: Add Meeting to Calendar_LINC_.ics

**NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2015-2016 SESSION**

You are hereby notified that the **House Committee on Public Utilities** will meet as follows:

DAY & DATE: Wednesday, April 1, 2015
TIME: 1:00 PM
LOCATION: 643 LOB
COMMENTS: Rep. Jeff Collins, Chairing

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 332	Natural Gas Econ. Dev. Infrastructure.	Representative Hager Representative Collins Representative McElraft Representative Saine
HB 351	Clarify Utility Rates.	Representative Arp Representative Collins Representative Warren
HB 356	NCUC Reg. Fee Changes.	Representative Arp Representative Collins Representative Warren



Respectfully,

Representative Dean Arp, Co-Chair
Representative Jeff Collins, Co-Chair
Representative Harry Warren, Co-Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 2:41 PM on Thursday, March 26, 2015.

____ Principal Clerk
____ Reading Clerk – House Chamber

Cristy Yates (Committee Assistant)



House Committee on Public Utilities

[illegible]



House Committee on Public Utilities

[illegible]



NORTH CAROLINA GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES

PUBLIC UTILITIES COMMITTEE REPORT

Representative Dean Arp, Co-Chair
Representative Jeff Collins, Co-Chair
Representative Harry Warren, Co-Chair

FAVORABLE AND RE-REFERRED

HB 356 NCUC Reg. Fee Changes.
Draft Number: None
Serial Referral: FINANCE
Recommended Referral: None
Long Title Amended: No
Floor Manager: Arp

FAVORABLE COM SUB , UNFAVORABLE ORIGINAL BILL AND RE-REFERRED

HB 332 Natural Gas Econ. Dev. Infrastructure.
Draft Number: H332-PCS20165-TD-8
Serial Referral: FINANCE
Recommended Referral: None
Long Title Amended: Yes
Floor Manager: Hager

HB 351 Clarify Utility Rates.
Draft Number: H351-PCS10197-TD-9
Serial Referral: FINANCE
Recommended Referral: None
Long Title Amended: Yes
Floor Manager: Arp

TOTAL REPORTED: 3



* C M R 1 1 5 - V - 3 *



**NORTH CAROLINA GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES**

PUBLIC UTILITIES COMMITTEE REPORT

**Representative Dean Arp, Co-Chair
Representative Jeff Collins, Co-Chair
Representative Harry Warren, Co-Chair**

FAVORABLE AND RE-REFERRED

HB 356

NCUC Reg. Fee Changes.

Draft Number: None

Serial Referral: **FINANCE**

Recommended Referral: None

Long Title Amended: No

Floor Manager: Arp

FAVORABLE COM SUB , UNFAVORABLE ORIGINAL BILL AND RE-REFERRED

HB 332

Natural Gas Econ. Dev. Infrastructure.

Draft Number: H332-PCS20165-TD-8

Serial Referral: **FINANCE**

Recommended Referral: None

Long Title Amended: Yes

Floor Manager: Hager

HB 351

Clarify Utility Rates.

Draft Number: H351-PCS10197-TD-9

Serial Referral: **FINANCE**

Recommended Referral: None

Long Title Amended: Yes

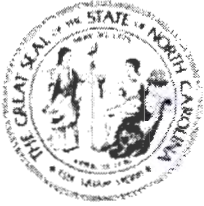
Floor Manager: Arp

TOTAL REPORTED: 3



* C M R 1 1 5 - V - 3 *





HOUSE BILL 356: NCUC Reg. Fee Changes

2015-2016 General Assembly

Committee:	House Serial Referral To Finance Added	Date:	April 1, 2015
Introduced by:	Reps. Arp, Collins, Warren	Prepared by:	Heather Fennell
Analysis of:	First Edition		Committee Counsel

SUMMARY: *House Bill 356 would increase the amount of funding reserves the Utilities Commission and the Public Staff could maintain, sets the utility regulatory fee in statute, partially increases the fee for the 2015 fiscal year, and authorizes the Commission to raise and lower the fee based on operating expenses.*

CURRENT LAW: Currently, all public utilities operating in the State pay a regulatory fee that is a percentage of their jurisdictional revenues. The regulatory fee is used to pay the expenses incurred by the Utilities Commission and the Public Staff in regulating public utilities. The amount of the fee is set by the General Assembly as a percentage rate of each public utility's revenues in the State.

S.L. 2014-59 amended the statute governing the regulatory fee paid by public utilities by dividing the revenues of public utilities into three categories, non-competitive jurisdictional revenues, subsection (h) competitive jurisdictional revenues, and subsection (m) competitive jurisdictional revenues. Subsection (h) and Subsection (m) refer to alternative forms of regulation that telephone companies whose territory is open to competition from other local providers can elect. The Commission does not regulate the rates for companies that have elected to participate in subsection (h) or subsection (m) alternative regulation.

S.L. 2014-59 also set the rate for the regulatory fee for subsection (h) competitive jurisdictional revenues, and subsection (m) competitive jurisdictional revenues. The rate for noncompetitive jurisdictional revenues was not set, but the act stated the noncompetitive jurisdictional rate "shall be adjusted to reflect the decrease in the total regulatory fee collected as a result" of the changes for subsection (h) and subsection (m) companies.

Section 14.19 S.L. 2009-451 transferred the fund balances of several funds including the fund balances of the Utilities Commission and the Public Staff of the Commission, to the General Fund for the 2009 FY. The act also provided that any amount greater than 20% of the operating budget of these fund balances would transfer to the General Fund on June 30th of each year.

BILL ANALYSIS:

Budget reserve - House Bill 356 would repeal the 20% cap on the reserve of the Utilities Commission and the Public Staff. The Utilities Commission and Public Staff would be authorized to maintain a reserve of up to 50% of their operating budgets, as reflected in the certified budget for the prior fiscal year.

Setting the fee in statute - The bill would set the rate for noncompetitive jurisdictional revenues at 0.148%. The current rate is set at 0.135%. The amount of the regulatory fee has been traditionally set in the annual appropriations act, in uncoded language. This bill sets the regulatory fee in the statute. The General Assembly retains the ability to change the fee each year.



House Bill 356

Page 2

The rate for subsection (h) and subsection (m) competitive jurisdictional revenues are also set out in statute in the bill. However, the rate set for these revenues is unchanged from current law. The bill codifies the rates set in S.L. 2014-59.

The regulatory rates, as set in the bill, are as follows:

	2014-15 FY	2015-16 FY
Noncompetitive jurisdictional revenues	0.148%	
Subsection (h) competitive jurisdictional revenues	0.06%	0.04%
Subsection (m) competitive jurisdictional revenues	0.05%	0.02%

Authorizing the Commission to raise and lower the fee - The Commission is directed to monitor the estimated operating costs and reserve of the Commission and the Public Staff. If the Commission determines the current rate for noncompetitive jurisdictional revenues is insufficient to meet the operating budget and reserve, the Commission may raise the fee up to 0.175%. If the Commission determines the rate on noncompetitive jurisdictional revenues will bring in revenues in excess of the operating budget and the reserve, the Commission must reduce the fee.

The Commission and the Public Staff are subject to the provisions of the State Budget Act, including the provision that limits entities to expending funds only as expressly authorized in an appropriation by the General Assembly. Regardless of the amount of the fee collected by the Commission and the Public Staff, these entities would only be authorized to use any revenues generated by the fee as expressly authorized by the General Assembly.

EFFECTIVE DATE: The portion of the bill related to the increase in the reserve is effective when the bill becomes law. Setting the rate for the utility regulatory fee in statute, increasing the fee for noncompetitive jurisdictional revenues, and authorizing the Commission to raise or lower the fee based on operating expenses is effective July 1, 2015.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H

1

HOUSE BILL 356

Short Title: NCUC Reg. Fee Changes.

(Public)

Sponsors: Representatives Arp, Collins, and Warren (Primary Sponsors).

For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.

Referred to: Public Utilities.

March 26, 2015

1 A BILL TO BE ENTITLED
2 AN ACT TO CLARIFY THE CAP ON THE UTILITIES REGULATORY FEE RESERVE,
3 TO SET THE REGULATORY FEE IN STATUTE, AND TO ALLOW THE
4 COMMISSION TO RAISE OR LOWER THE FEE.

5 The General Assembly of North Carolina enacts:

6 SECTION 1.(a) G.S. 62-302(a) reads as rewritten:

7 "(a) Fee Imposed. – It is the policy of the State of North Carolina to provide fair
8 regulation of public utilities in the interest of the public, as provided in G.S. 62-2. The cost of
9 regulating public utilities is a burden incident to the privilege of operating as a public utility.
10 Therefore, for the purpose of defraying the cost of regulating public utilities, every public
11 utility subject to the jurisdiction of the Commission shall pay a quarterly regulatory fee, in
12 addition to all other fees and taxes, as provided in this section. The fees collected shall be used
13 only to pay the expenses of the Commission and the Public Staff in regulating public utilities in
14 the interest of the ~~public~~-public and to maintain a reasonable margin for a reserve fund. The
15 amount of the reserve may not exceed one-half of the cost of operating the Commission and the
16 Public Staff as reflected in the certified budget for the previous fiscal year.

17 It is also the policy of the State to provide limited oversight of certain electric membership
18 corporations as provided in G.S. 62-53. Therefore, for the purpose of defraying the cost of
19 providing the oversight authorized by G.S. 62-53 and G.S. 117-18.1, each fiscal year each
20 electric membership corporation whose principal purpose is to furnish or cause to be furnished
21 bulk electric supplies at wholesale as provided in G.S. 117-16 shall pay an annual fee as
22 provided in this section.

23"

24 SECTION 1.(b) Subdivisions 14.19(e1)(4), (5), (6), and (10) of S.L. 2009-451 are
25 repealed.

26 SECTION 2. G.S. 62-302, as amended by Section 1.(a) of this act, reads as
27 rewritten:

28 "(a) Fee Imposed. – It is the policy of the State of North Carolina to provide fair
29 regulation of public utilities in the interest of the public, as provided in G.S. 62-2. The cost of
30 regulating public utilities is a burden incident to the privilege of operating as a public utility.
31 Therefore, for the purpose of defraying the cost of regulating public utilities, every public
32 utility subject to the jurisdiction of the Commission shall pay a quarterly regulatory fee, in
33 addition to all other fees and taxes, as provided in this section. The fees collected shall be used
34 only to pay the expenses of the Commission and the Public Staff in regulating public utilities in
35 the interest of the public and to maintain a reasonable margin for a reserve fund. The amount of





the reserve may not exceed one-half of the cost of operating the Commission and the Public Staff as reflected in the certified budget for the previous fiscal year.

It is also the policy of the State to provide limited oversight of certain electric membership corporations as provided in G.S. 62-53. Therefore, for the purpose of defraying the cost of providing the oversight authorized by G.S. 62-53 and G.S. 117-18.1, each fiscal year each electric membership corporation whose principal purpose is to furnish or cause to be furnished bulk electric supplies at wholesale as provided in G.S. 117-16 shall pay an annual fee as provided in this section. (b) Public Utility Rate. –

(1) Repealed by Session Laws 2000-140, s. 56, effective July 21, 2000.

(2) Unless adjusted under subdivision (3) of this subsection, the public utility fee is a percentage of a utility's jurisdictional revenues as follows:

Noncompetitive jurisdictional revenues 0.148%

Subsection (h) competitive jurisdictional revenues 0.06%

Subsection (m) competitive jurisdictional revenues 0.05%

~~For noncompetitive jurisdictional revenues as defined in sub-subdivision~~

~~(4)a. of this subsection, the public utility regulatory fee for each fiscal year is the greater of (i) a percentage rate, established by the General Assembly, of each public utility's noncompetitive jurisdictional revenues for each quarter or (ii) six dollars and twenty five cents (\$6.25) each quarter. For subsection (h) competitive jurisdictional revenues as defined in sub-subdivision (4)b. of this subsection, and subsection (m) competitive jurisdictional revenues as defined in sub-subdivision (4)c. of this subsection, the public utility regulatory fee for each fiscal year is a percentage rate established by the General Assembly of each public utility's competitive jurisdictional revenues for each quarter.~~

~~When the Commission prepares its budget request for the upcoming fiscal year, the Commission shall propose a percentage rate of the public utility regulatory fee. For fiscal years beginning in an odd-numbered year, that proposed rate shall be included in the budget message the Governor submits to the General Assembly pursuant to G.S. 143C-3-5. For fiscal years beginning in an even-numbered year, that proposed rate shall be included in a special budget message the Governor shall submit to the General Assembly. The General Assembly shall set the percentage rate of the public utility regulatory fee by law.~~

~~The percentage rate may not exceed the amount necessary to generate funds sufficient to defray the estimated cost of the operations of the Commission and the Public Staff for the upcoming fiscal year, including a reasonable margin for a reserve fund. The amount of the reserve may not exceed the estimated cost of operating the Commission and the Public Staff for the upcoming fiscal year. In calculating the amount of the reserve, the General Assembly shall consider all relevant factors that may affect the cost of operating the Commission or the Public Staff or a possible unanticipated increase or decrease in North Carolina jurisdictional revenues.~~

(3) In the first half of each calendar year, the Commission shall review the estimated cost of operating the Commission and the Public Staff for the next fiscal year, including a reasonable margin for the reserve fund allowed under this section. In making this determination, the Commission shall consider all relevant factors that may affect the cost of operating the Commission or the Public Staff or a possible unanticipated change in competitive and noncompetitive jurisdictional revenues. If the estimated receipts provided for



under this section are less than the estimated cost of operating the Commission and the Public Staff for the next fiscal year, including the reasonable margin for the reserve fund, then ~~If the Commission, the Public Staff, or both experience a revenue shortfall, the Commission shall may~~ implement a temporary increase the public utility regulatory fee surcharge on noncompetitive jurisdictional revenues effective for the next fiscal year to avert the deficiency that would otherwise occur. In no event may the total percentage rate of the public utility regulatory fee on noncompetitive jurisdiction revenues plus any surcharge established by the Commission exceed ~~twenty five hundredths percent (0.25%)~~ seventeen and one-half hundredths of one percent (0.175%). If the estimated receipts provided for under this section are more than the estimated cost of operating the Commission and the Public Staff for the next fiscal year, including the reasonable margin for the reserve fund, then the Commission shall decrease the public utility regulatory fee on noncompetitive jurisdictional revenues effective for the next fiscal year.

(4) As used in this section:

- a. "Noncompetitive jurisdictional revenues" means all revenues derived or realized from intrastate tariffs, rates, and charges approved or allowed by the Commission or collected pursuant to Commission order or rule, but not including tap-on fees or any other form of contributions in aid of construction.
- b. "Subsection (h) competitive jurisdictional revenues" means all revenues derived from retail services provided by local exchange companies and competing local providers that have elected to operate under G.S. 62-133.5(h).
- c. "Subsection (m) competitive jurisdictional revenues" means all revenues derived from retail services provided by local exchange companies and competing local providers that have elected to operate under G.S. 62-133.5(m).

(b1) Electric Membership Corporation Rate. – The electric membership corporation regulatory fee for each fiscal year ~~shall be a dollar amount as established by the General Assembly by law~~ is two hundred thousand dollars (\$200,000).

~~When the Commission prepares its budget request for the upcoming fiscal year, the Commission shall propose the amount of the electric membership corporation regulatory fee. For fiscal years beginning in an odd numbered year, the proposed amount shall be included in the budget message the Governor submits to the General Assembly pursuant to G.S. 143C-3-5. For fiscal years beginning in an even numbered year, the proposed amount shall be included in a special budget message the Governor shall submit to the General Assembly.~~

~~The amount of the electric membership corporation regulatory fee proposed by the Commission may not exceed the amount necessary to defray the estimated cost of the operations of the Commission and the Public Staff for the regulation of the electric membership corporations in the upcoming fiscal year, including a reasonable margin for a reserve fund. The amount of the reserve may not exceed the estimated cost of the Commission and the Public Staff for the regulation of the electric membership corporations for the upcoming fiscal year.~~

...
(e) ~~Recovery of fee increase.~~ Fee changes. – If a utility's regulatory fee obligation is ~~increased, changed,~~ the Commission shall either adjust the utility's rates to reflect the change allow for the recovery of the increased fee obligation, or approve the utility's request for an accounting order allowing deferral of the ~~increase change~~ in the fee obligation."



1 **SECTION 3.** G.S. 62-302(b)(2), as amended by Section 2 of this act, reads as
2 rewritten:

3 "(2) Unless adjusted under subdivision (3) of this subsection, the public utility
4 fee is a percentage of a utility's jurisdictional revenues as follows:

5 Noncompetitive jurisdiction revenues 0.148%

6 Subsection (h) competitive jurisdictional revenues ~~0.06%~~0.04%

7 Subsection (m) competitive jurisdictional revenues ~~0.05%~~0.02%"

8 **SECTION 4.** Section 2 is effective July 1, 2015, and applies to jurisdictional
9 revenues earned in each quarter that begins on or after July 1, 2015. Section 3 is effective July
10 1, 2016, and applies to jurisdictional revenues earned in each quarter that begins on or after
11 July 1, 2016. The remainder of this act is effective when it becomes law.





HOUSE BILL 332: Natural Gas Econ. Dev. Infrastructure

2015-2016 General Assembly

Committee: House Public Utilities
Introduced by: Reps. Hager, Collins, McElraft, Saine
Analysis of: PCS to First Edition
H332-CSTD

Date: April 1, 2015
Prepared by: Heather Fennell
Committee Counsel

SUMMARY: *The PCS to House Bill 332 would allow natural gas local distribution companies to recover the infeasible portion of a line extension through its rates for line extensions to companies that will invest at least \$200 million in improvements and employ at least 1,500 employees.*

[As introduced, this bill was identical to S628, as introduced by Sens. Brock, Rucho, B. Jackson, which is currently in Unknown.]

CURRENT LAW: The rates for natural gas local distribution companies (LDCs) are regulated by the Utilities Commission under G.S. 62-133 and 62-133.4. The rates include the wholesale cost of gas and the "margin." The margin amount includes the prudently incurred costs for delivering the gas sold and a rate of return on the capital investment made by the company. The wholesale cost of the natural gas distributed is passed through directly to the customer. Natural gas local distribution companies do not profit from fluctuations in the wholesale price of natural gas.

When service of natural gas is extended to a new customer, the LDC will calculate what portion of the cost of the line extension will be recovered through the margin generated by the increase in gas distributed through the line extension. The cost of the line extension that would be recovered through the margin is considered "feasible" where the cost of the line extension that would not be recovered through the margin is considered "infeasible." The customer requesting the line extension must cover the infeasible costs of the line extension.

The General Assembly has created several economic development tools to provide funding to expand natural gas for job creation:

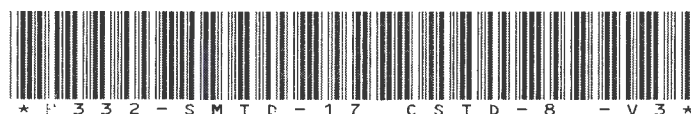
- Industrial Development Fund Utility Account. Funds can be used to construct or improve gas lines in economically distressed counties.
- Site Infrastructure Development Fund. Grants authorized for site development for businesses that will invest \$100 million and employ 100 new employees.
- Expanded Gas Products Service to Agriculture Fund. In Section 15.13 of S.L. 2014-100 the General Assembly allocated \$5 million for grants to expand natural gas service to agricultural projects under G.S. 143B-437.020.

BILL ANALYSIS: The PCS for House Bill 332 would allow a LDC to recover the infeasible portion of natural gas infrastructure to eligible projects in rates through an annual rider.

Commerce Approval: The Department of Commerce must first determine that the natural gas infrastructure is for an eligible project. To be eligible, a project must meet all of the following conditions:

- The project will provide opportunities for natural gas usage, jobs and other economic development benefits.

O. Walker Reagan
Director



Research Division
(919) 733-2578

House Bill 332

Page 2

- The business has invested or intends to invest at least \$200 million in private funds for real and personal property.
- The business will employ or intends to employ at least 1,500 full time employees.

The business must also meet a wage standard of 110% of the average wage in the county where the project is located, the business must pay at least 50% of the premiums for health insurance coverage for its employees, must not have any safety and health program violations, and must not have a disqualifying environmental event as determined by the Department of Environment and Natural Resources.

Utilities Commission: Costs for natural gas infrastructure may be recovered in a rider by an LDC for infrastructure related to projects approved by the Department of Commerce, if the Commission determines the project meets all of the following conditions:

- The project is located in an area where the natural gas infrastructure for the project is not economically feasible.
- The developer of the project, the prospective customer, or the occupant of the project provides a binding commitment that the project will use the natural gas service for at least 10 years.
- The projected margin generated by the eligible project will not cover the cost of the natural gas infrastructure.

Once approved, the economically infeasible costs of the infrastructure will be recovered in a rider. The costs recovered in the rider will include the costs normally recovered for infrastructure, including the planning and development costs, construction costs, financing costs, depreciation, and property taxes.

The Commission is directed to adopt rules to implement the rider mechanism. The rider may be allowed on an annual or semiannual basis, and will be subject to periodic reconciliation. The rider will terminate with the LDC's next general rate case. A LDC may not invest more than \$25 million a year in infrastructure development costs, and the amount recovered in the rider may not exceed 5% of the margin revenues approved in the last rate case of the LDC.

EFFECTIVE DATE: This act is effective when it becomes law and expires July 1, 2020.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H

D

HOUSE BILL 332
PROPOSED COMMITTEE SUBSTITUTE H332-PCS20165-TD-8

Short Title: Natural Gas Econ. Dev. Infrastructure.

(Public)

Sponsors:

Referred to:

March 24, 2015

A BILL TO BE ENTITLED
AN ACT TO PROVIDE RECOVERY OF CAPITAL-RELATED COSTS INCURRED BY A
NATURAL GAS UTILITY FOR CONSTRUCTING NATURAL GAS
INFRASTRUCTURE FOR A LARGE MANUFACTURING EMPLOYER.

The General Assembly of North Carolina enacts:

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

"§ 62-133.13. Cost recovery for natural gas economic development infrastructure.

(a) Purpose. – The purpose of this section is to prescribe a methodology for cost recovery by a natural gas local distribution company that constructs natural gas economic development infrastructure to serve a project the Department of Commerce determines is an eligible project under G.S. 143B-437.021. The Commission shall adopt rules to implement this section.

(b) Eligibility. – Cost recovery under this section is limited to natural gas economic development infrastructure the Commission determines satisfies all of the following conditions:

(1) The project will be located in an area where adequate natural gas infrastructure for the eligible project is not economically feasible.

(2) Either the developer, prospective customer, or the occupant of the eligible project provides, prior to initiation of construction of the natural gas economic development infrastructure, a binding commitment in the form of a commercial contract or other form acceptable to the Commission to the natural gas local distribution company regarding service needed for a period of at least 10 years from the date the gas is made available.

(3) The projected margin revenues not recoverable under G.S. 62-133.4 from the eligible project will not be sufficient to cover the cost of the natural gas infrastructure associated with the project.

(c) Economic Feasibility. – The Commission shall permit a natural gas local distribution company to recover reasonable and prudent natural gas economic development infrastructure costs only to the extent necessary to make the construction of the infrastructure economically feasible, as determined by the Commission. In determining economic feasibility, the Commission shall employ the net present value method of analysis. Only natural gas economic development infrastructure with a negative net present value shall be determined to be economically infeasible.

(d) Costs Recoverable. – Eligible economic development infrastructure development costs are the reasonable and prudent costs determined by the Commission to be directly related



* H 3 3 2 - P C S 2 0 1 6 5 - T D - 8 *

to the construction of natural gas infrastructure for an eligible project and may include any of the following:

- (1) Planning costs.
- (2) Development costs.
- (3) Construction costs and an allowance for funds used during construction and a return on investment once the project is completed calculated using the pretax overall rate of return approved by the Commission in the company's most recent general rate case.
- (4) A revenue retention factor.
- (5) Depreciation.
- (6) Property taxes.

(e) Rate Adjustment Surcharge Mechanism. – The Commission shall permit recovery of eligible economic development infrastructure costs in a rate adjustment surcharge mechanism. The mechanism shall allow for recovery on an annual or semiannual basis, as determined by the Commission, subject to audit and reconciliation procedures. Any rate adjustment surcharge mechanism adopted under this section shall terminate with the natural gas local distribution company's next general rate case, in which the eligible infrastructure development costs shall be included in the natural gas distribution company's rate base. Nothing in this section precludes the natural gas local distribution company from recovering eligible economic development infrastructure costs in a general rate case.

(f) Limitations. – A natural gas local distribution company shall not invest more than twenty-five million dollars (\$25,000,000) of eligible infrastructure development costs in any year. Cumulative rate adjustments allowed under a rate adjustment surcharge mechanism approved by the Commission under this section shall not exceed five percent (5%) of the total annual service margin revenues not recoverable under G.S. 62-133.4 approved by the Commission in the natural gas local distribution company's last general rate case."

SECTION 2. Article 10 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"§ 143B-437.021. Natural gas economic development infrastructure.

(a) Purpose and Definitions. – The purpose of this section is to provide eligibility criteria for projects that require natural gas service infrastructure. Costs of natural gas service infrastructure for projects the Department determines are eligible projects under this section may be recovered by natural gas local distribution companies with approval of the North Carolina Utilities Commission under G.S. 62-133.13. The definitions used in G.S. 143B-437.01 apply in this section. In addition, as used in this section, the term "Department" means the Department of Commerce.

(b) Eligibility. – An eligible project is an economic development project that the Department determines satisfies all of the following conditions:

- (1) The eligible project will provide opportunities for natural gas usage, jobs, and other economic development benefits in addition to those provided by the project.
- (2) The Department certifies that the business has invested or intends to invest at least two hundred million dollars (\$200,000,000) of private funds in improvements to real property and additions to tangible personal property in the project.
- (3) The business employs or intends to employ at least 1,500 full-time employees or equivalent full-time contract employees at the project at the time the application is made and the business agrees to maintain at least 1,500 full-time employees or equivalent full-time contract employees at the project.

1 (c) Wage Standard. – A project may be considered an eligible project under this section
2 only if the project is undertaken by a business that satisfies a wage standard at the project. A
3 business satisfies the wage standard if it pays an average weekly wage that is at least equal to
4 one hundred and ten percent (110%) of the average wage for all insured private employers in
5 the county. The Department of Commerce shall annually publish the wage standard for each
6 county. In making the wage calculation, the business shall include any jobs that were filled for
7 at least 1,600 hours during the calendar year, regardless of whether the jobs are full-time
8 positions or equivalent full-time contract positions. Each year that a rate adjustment surcharge
9 mechanism under G.S. 62-133.13 is in effect, the business shall provide the Department a
10 certification that the business continues to satisfy the wage standard.

11 (d) Health Insurance. – A project may be considered an eligible project under this
12 section only if the project is undertaken by a business that makes available health insurance for
13 all of the full-time employees and equivalent full-time contract employees of the project with
14 respect to which the application is made. For the purposes of this subsection, a business makes
15 available health insurance if it pays at least fifty percent (50%) of the premiums for health care
16 coverage.

17 Each year that a rate adjustment surcharge mechanism under G.S. 62-133.13 is in effect, the
18 business shall provide the Department a certification that the business continues to make
19 available health insurance for all full-time employees of the project governed by the agreement.

20 (e) Safety and Health Programs. – A project may be considered an eligible project
21 under this section only if the project is undertaken by a business that has no citations under the
22 Occupational Safety and Health Act that have become a final order within the last three years
23 for willful serious violations or for failing to abate serious violations with respect to the
24 location for which the eligible project is located. For the purposes of this subsection, "serious
25 violation" has the same meaning as in G.S. 95-127.

26 (f) Environmental Impact. – A project may be considered an eligible project under this
27 section only if the project is undertaken by a business that certifies that, at the time of the
28 application, the business satisfies the environmental impact standard under G.S. 105-129.83."

29 **SECTION 3.** This act is effective when it becomes law and expires July 1, 2020.
30 The expiration does not affect the validity of any rate adjustment surcharge mechanism
31 imposed or authorized under the provisions of this act prior to the effective date of the
32 expiration.



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H

1

HOUSE BILL 332

Short Title: Natural Gas Econ. Dev. Infrastructure.

(Public)

Sponsors: Representatives Hager, Collins, McElraft, and Saine (Primary Sponsors).

For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.

Referred to: Public Utilities.

March 24, 2015

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE RECOVERY OF CAPITAL RELATED COSTS INCURRED BY A
3 NATURAL GAS UTILITY FOR CONSTRUCTING NATURAL GAS
4 INFRASTRUCTURE FOR A LARGE MANUFACTURING EMPLOYER.

5 The General Assembly of North Carolina enacts:

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

8 **"§ 62-133.13. Cost recovery for natural gas economic development infrastructure.**

9 (a) Purpose. – The purpose of this section is to prescribe a methodology for cost
10 recovery by a natural gas local distribution company that constructs natural gas economic
11 development infrastructure as part of a project the Department of Commerce determines is an
12 eligible project under G.S. 143B-437.021. The Commission shall adopt rules to implement this
13 section.

14 (b) Eligibility. – Cost recovery under this section is limited to natural gas economic
15 development infrastructure the Commission determines satisfies all of the following conditions:

16 (1) The project will be located in an area where adequate natural gas
17 infrastructure for the eligible project is not available.

18 (2) Either the developer or the occupant of the eligible project provides, prior to
19 initiation of construction of the natural gas economic development
20 infrastructure, a binding commitment in the form of a commercial contract
21 or other form acceptable to the Commission, to the natural gas local
22 distribution company regarding service needed for a period of at least ten
23 years from the date the gas is made available.

24 (3) The projected non-gas revenues from the eligible project will not be
25 sufficient to cover the cost of the natural gas infrastructure associated with
26 the project.

27 (c) Economic feasibility. – The Commission shall permit a natural gas distribution
28 company to recover reasonable and prudent natural gas economic development infrastructure
29 costs only to the extent necessary to make the construction of the infrastructure economically
30 feasible, as determined by the Commission. In determining economic feasibility, the
31 Commission shall employ the net present value method of analysis. Only natural gas economic
32 development infrastructure with a negative net present value shall be determined to be
33 economically infeasible.





(d) Costs recoverable. – Eligible infrastructure development costs are the reasonable and prudent costs determined by the Commission to be directly related to the construction of natural gas infrastructure for an eligible project and may include any of the following:

(1) Planning costs.

(2) Development costs.

(3) Construction costs and an allowance for funds used during construction, and a return on investment once the project is completed calculated using the pretax overall rate of return approved by the Commission in the company's most recent general rate case.

(4) A revenue retention factor.

(5) Depreciation.

(6) Property taxes.

(e) Rate Adjustment Surcharge Mechanism. – The Commission shall permit recovery of eligible economic development infrastructure costs in a rate adjustment surcharge mechanism. The mechanism shall allow for recovery on an annual or semiannual basis, as determined by the Commission, subject to audit and reconciliation procedures. Any rate adjustment surcharge mechanism adopted under this section shall terminate with the natural gas local distribution company's next general rate case.

(f) Limitations. – A natural gas local distribution company shall not invest more than twenty-five million dollars (\$25,000,000) of eligible infrastructure development costs in any year. Cumulative rate adjustments allowed under a rate adjustment surcharge mechanism approved by the Commission under this section shall not exceed five percent (5%) of the total annual service non-gas revenues approved by the Commission in the natural gas local distribution company's last general rate case."

SECTION 2. Article 10 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"§ 143B-437.021. Natural gas economic development infrastructure.

(a) Purpose and definitions. – The purpose of this section is to provide eligibility criteria for projects that require natural gas service infrastructure. Costs of natural gas service infrastructure for projects the Department determines are eligible projects under this section may be recovered by natural gas local distribution companies with approval of the North Carolina Utilities Commission under G.S. 62-133.13. The definitions used in G.S. 143B-437.01 apply in this section. In addition, as used in this section, the term "Department" means the Department of Commerce.

(b) Eligibility. – An eligible project is an economic development project that the Department determines satisfies all of the following conditions:

(1) The eligible project will provide opportunities for natural gas usage, jobs, and other economic development benefits in addition to those provided by the project.

(2) The Department certifies that the business has invested or intends to invest at least two hundred million dollars (\$200,000,000) of private funds in improvements to real property and additions to tangible personal property in the project.

(3) The business employs at least 1,500 full-time employees or equivalent full-time contract employees at the project at the time the application is made, and the business agrees to maintain at least 1,500 full-time employees or equivalent full-time contract employees at the project.

(c) Wage Standard. – A project may be considered an eligible project under this section only if the project is undertaken by a business that satisfies a wage standard at the project. A business satisfies the wage standard if it pays an average weekly wage that is at least equal to one hundred and ten percent (110%) of the average wage for all insured private employers in



1 the county. The Department of Commerce shall annually publish the wage standard for each
2 county. In making the wage calculation, the business shall include any jobs that were filled for
3 at least 1,600 hours during the calendar year, regardless of whether the jobs are full-time
4 positions or equivalent full-time contract positions. Each year that a rate adjustment surcharge
5 mechanism under G.S. 62-133.13 is in effect, the business shall provide the Department a
6 certification that the business continues to satisfy the wage standard.

7 (d) Health Insurance. – A project may be considered an eligible project under this
8 section only if the project is undertaken by a business that makes available health insurance for
9 all of the full-time employees and equivalent full-time contract employees of the project with
10 respect to which the application is made. For the purposes of this subsection, a business makes
11 available health insurance if it pays at least fifty percent (50%) of the premiums for health care
12 coverage.

13 Each year that a rate adjustment surcharge mechanism under G.S. 62-133.13 is in effect, the
14 business shall provide the Department a certification that the business continues to make
15 available health insurance for all full-time employees of the project governed by the agreement.

16 (e) Safety and Health Programs. – A project may be considered an eligible project
17 under this section only if the project is undertaken by a business that has no citations under the
18 Occupational Safety and Health Act that have become a final order within the last three years
19 for willful serious violations or for failing to abate serious violations with respect to the
20 location for which the eligible project is located. For the purposes of this subsection, "serious
21 violation" has the same meaning as in G.S. 95-127.

22 (f) Environmental Impact. – A project may be considered an eligible project under this
23 section only if the project is undertaken by a business that certifies that, at the time of the
24 application, the business satisfies the environmental impact standard under G.S. 105-129.83."

25 **SECTION 3.** This act is effective when it becomes law and expires July 1, 2020.
26 The expiration does not affect the validity of any rate adjustment surcharge mechanism
27 imposed or authorized under the provisions of this act prior to the effective date of the
28 expiration.





HOUSE BILL 351: Clarify Utility Rates

2015-2016 General Assembly

Committee: House Serial Referral To Finance Added
Introduced by: Reps. Arp, Collins, Warren
Analysis of: PCS to First Edition
H351-CSTD-9

Date: April 1, 2015
Prepared by: Heather Fennell
Committee Counsel

SUMMARY: *House Bill 351 would clarify that it was the intent of the General Assembly to require the Utilities Commission to adjust utility rates to reflect the reduction in the corporate income tax rates enacted by S.L. 2013-316.*

The PCS clarifies that the interest imposed on refunds does not apply to refunds implemented on or before January 1, 2015.

CURRENT LAW: The Tax Reduction Act, S.L. 2013-316, included electricity and piped natural gas in the State sales tax base while repealing the utility franchise tax on electricity and the excise tax on piped natural gas. Section 4.2(a) of the Act directed the Utilities Commission to adjust the rates of electricity and piped natural gas to reflect the repeal of the utility franchise tax and the excise tax on piped natural gas. The Act also reduced the corporate income tax rate. However, the Act did not direct the Utilities Commission to take any action on utility rates related to the reduction in corporate income tax rates.

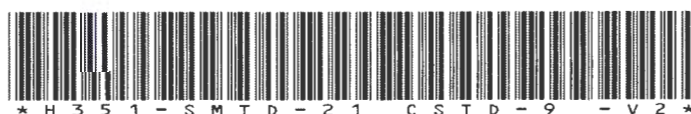
In May of 2014 the Commission took its first action related to the Act. The Commission issued an order directing utilities to adjust rates to reflect the repeal of the utility franchise tax, the repeal of the excise tax on piped natural gas, and the reduction in the corporate income tax rate. Dominion Power and PSNC Energy both appealed this order, on the grounds that the Act did not direct the Commission to take action related to the reduction in the corporate income tax rate.

In October of 2014 the Commission reversed its first order. The Commission authorized the utilities not to reduce their rates related to the changes in the corporate income tax rate, and allowed any utility that had reduced rates for this reason to recover those funds from customers.

No utility has taken this step of seeking to recover these funds from customers. Except for Dominion Power, all of the retail electric and piped natural gas utilities are passing on the savings from the reduction in the corporate income tax rates to their customers.

BILL ANALYSIS: House Bill 351 would clarify the intent of the General Assembly regarding the impact of the Act on utility rates. The bill would direct the Commission to adjust utility rates to reflect the reduction in the corporate income tax rate and would also direct the Commission to impose interest on any refunds issued to utility customers as a result of reduction in the corporate income tax rate.

EFFECTIVE DATE: The act is effective January 1, 2014, and applies to refunds issued on or after that date.





GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H

D

HOUSE BILL 351
PROPOSED COMMITTEE SUBSTITUTE H351-PCS10197-TD-9

Short Title: Clarify Utility Rates.

(Public)

Sponsors:

Referred to:

March 26, 2015

A BILL TO BE ENTITLED
AN ACT TO CLARIFY THAT TAX CHANGES ENACTED IN S.L. 2013-316 MUST BE
REFLECTED IN UTILITY RATES.

The General Assembly of North Carolina enacts:

SECTION 1.(a) The purpose of this section is to clarify the intent of the 2013 Session of the General Assembly that the Utilities Commission must adjust the rate for sales of electricity, piped natural gas, and water and wastewater services to reflect all of the tax changes as enacted in S.L. 2013-316.

SECTION 1.(b) Section 4.2(a) of S.L. 2013-316 reads as rewritten:

"**SECTION 4.2.(a)** Pursuant to G.S. 62-31 and G.S. 62-32, the Utilities Commission must adjust the rate set for the following utilities:

- (1) Electricity to reflect the repeal of G.S. 105-116 and the resulting liability of electric power companies for the tax imposed under ~~G.S. 105-122~~ and ~~for G.S. 105-122,~~ the increase in the rate of tax imposed on sales of electricity under ~~G.S. 105-164.4~~ G.S. 105-164.4, and the reduction in the corporate income tax rate imposed under G.S. 105-130.3.
- (2) Piped natural gas to reflect the repeal of Article 5E of Chapter 105 of the General Statutes, the repeal of the credit formerly allowed under G.S. 105-122(d1), and the resulting liability of companies for the tax imposed on sales of piped natural gas under ~~G.S. 105-164.4~~ G.S. 105-164.4, and the reduction in the corporate income tax rate imposed under G.S. 105-130.3.
- (3) Public water and wastewater companies to reflect the repeal of G.S. 105-116 and the resulting liability of public water and wastewater companies under G.S. 105-122, and the reduction in the corporate income tax rate imposed under G.S. 105-130.3."

SECTION 1.(c) The Utilities Commission must order a utility to add interest to money refunded to its customers for refunds resulting from the reduction of the corporate income tax rate effective for taxable years beginning or after January 1, 2014. Refunds subject to interest shall not include any amounts to be refunded arising from excess deferred income taxes due to the reduction in the corporate income tax rate effective for taxable years beginning on or after January 1, 2014. The interest rate applied to the refund must be set in accordance with G.S. 62-130.

SECTION 1.(d) Subsection (b) of this section is effective January 1, 2014. The remainder of this section is effective when it becomes law and applies to refunds issued on or



- 1 after that date unless a utility has implemented rate changes on or before January 1, 2015, to
2 effectuate the refunds.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H

1

HOUSE BILL 351

Short Title: Clarify Utility Rates.

(Public)

Sponsors: Representatives Arp, Collins, and Warren (Primary Sponsors).

For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.

Referred to: Public Utilities.

March 26, 2015

1 A BILL TO BE ENTITLED
2 AN ACT TO CLARIFY TAX CHANGES ENACTED IN S.L. 2013-316 MUST BE
3 REFLECTED IN UTILITY RATES.

4 The General Assembly of North Carolina enacts:

5 SECTION 1.(a) The purpose of this section is to clarify the intent of the 2013
6 Session of the General Assembly that the Utilities Commission must adjust the rate for sales of
7 electricity, piped natural gas, and water and wastewater services to reflect all of the tax changes
8 as enacted in S.L. 2013-316.

9 SECTION 1.(b) Section 4.2(a) of S.L. 2013-316 reads as rewritten:

10 "SECTION 4.2.(a) Pursuant to G.S. 62-31 and G.S. 62-32, the Utilities Commission
11 must adjust the rate set for the following utilities:

12 (1) Electricity to reflect the repeal of G.S. 105-116 and the resulting liability of
13 electric power companies for the tax imposed under ~~G.S. 105-122~~ and
14 ~~for G.S. 105-122~~, the increase in the rate of tax imposed on sales of
15 electricity under ~~G.S. 105-164.4~~, G.S. 105-164.4, and the reduction in the
16 corporate income tax rate imposed under G.S. 105-130.3.

17 (2) Piped natural gas to reflect the repeal of Article 5E of Chapter 105 of the
18 General Statutes, the repeal of the credit formerly allowed under
19 G.S. 105-122(d1), ~~and~~ the resulting liability of companies for the tax
20 imposed on sales of piped natural gas under ~~G.S. 105-164.4~~, G.S. 105-164.4,
21 and the reduction in the corporate income tax rate imposed under
22 G.S. 105-130.3.

23 (3) Public water and wastewater companies to reflect the repeal of G.S. 105-116
24 and the resulting liability of public water and wastewater companies under
25 G.S. 105-122, and the reduction in the corporate income tax rate imposed
26 under G.S. 105-130.3."

27 SECTION 1.(c) The Utilities Commission must order a utility to add interest to
28 money refunded to its customers for refunds resulting from the reduction of the corporate
29 income tax rate effective for taxable years beginning January 1, 2014, as provided in Section
30 4(b) of this act. The interest rate applied to the refund must be set in accordance with
31 G.S. 62-130.

32 SECTION 1.(d) Subsection (b) of this section is effective January 1, 2014. The
33 remainder of this section is effective when it becomes law and applies to refunds issued on or
34 after that date.





Committee Sergeants at Arms

NAME OF COMMITTEE House Committee on Public Utilities

DATE: 4-1-15

Room: 643

House Sgt-At Arms:

1. Name: Warren Hawkins

2. Name: Doug Harris

3. Name: David Leighton

4. Name: _____

5. Name: _____

Senate Sgt-At Arms:

1. Name: _____

2. Name: _____

3. Name: _____

4. Name: _____

5. Name: _____



VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON PUBLIC UTILITIES

Name of Committee

4/1/15

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Kelli Kulla	Duke Energy
Jay Bouse	NCAEC
Meghan Cook	OITS
Jonah Perrin	Rep Grad Meyer
Rian Merwald	Williams Mullen
Jaz Turrell	Piedmont NG
Carv McLamb	Traction Sockers
Cameron Henry	MVA
Ken Jannings	Duke Energy
Cindy Arrotto	NCGA - Research Div.
Cu	



VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON PUBLIC UTILITIES

Name of Committee

4/1/15

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Britten Allen	Carolina Link
Jim Harrell	BEA
Lori Ann Harri	LATA
Nancy LaPlante	NC WARN, Hillsborough Rd, Durham
Tracy Kimbrell	Parker Pde
AMT Logo	NMRS
Mg Mader ALU	SELC
Sarah Aardm	CTR
David Crawford	AIA NC



VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON PUBLIC UTILITIES

Name of Committee

4/1/15

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

J Goodman	NC Chamber
Nathan Bullock	NC Chamber
Jim Bohner	BSA
Preston Houser	NCMA
RW Kaylor	Kaylor Law Firm
Tommy Swice	MWA
Patricia Baffi	PK's electric cooperatives
Kara Weissman	SA
Shawn L	Duke Energy
Daniel Breen	Trouman Sandberg
Bill McLain	PSNC Energy



VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON PUBLIC UTILITIES

Name of Committee

4/1/15

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Sharon Millen	CUCA
Cindy Ohms	CUCA
DON M. BAILEY	NCUC
Betsy Bailey	Nc AGC
Maggie Clark	NCSEA
Steve Brewer	CTL
Jimmy Roberson	TWC
Julie Perry	Public Staff
Jeffrey Davis	Public Staff - Natural Gas Division
Lyman Horne	CarolinaLink
Dwight Allen	CarolinaLink



VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON PUBLIC UTILITIES

Name of Committee

4/1/15

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Chais Ayers	NCUC Public Staff
James Patterson	NCUC
Dan Conrad	NCUC
Tranna Downey	PSNCA
Jon Carr	Jordan & Co Law Firm
DAVID BARNES	Electric Cities
Mig Bailey	Electric Cities
Joey Peters	CSS
Andy Chase	KMA
Amanda Honaker	TSS
J Peters	CSS



**House Committee on Public Utilities
Wednesday, April 22, 2015 at 1:00 PM
Room 643 of the Legislative Office Building**

MINUTES

The House Committee on Public Utilities met at 1:00 PM on April 22, 2015 in Room 643 of the Legislative Office Building. Representatives Alexander, Arp, Bell, Bishop, Blackwell, Bradford, B. Brown, Bumgardner, Catlin, Collins, Conrad, Cunningham, Dollar, Earle, Elmore, Hager, Hall, Hanes, Harrison, Hastings, R. Johnson, Luebke, Malone, S. Martin, Meyer, Millis, R. Moore, Riddell, Warren, Watford, and Wray attended.

Representative Harry Warren, Chair, presided and welcomed everyone to the meeting. He introduced and thanked the Pages and Sergeant-at-Arms.

The following bills were considered:

HB 349 Develop Broadband Connectivity Plan. (Representatives Tine, Saine, Hager, Hanes)

Chairman Warren presented the PCS for HB 349 without objection. Chairman Warren recognized Representative Tine to explain the bill. There was no discussion on the bill. Rep. B. Brown was recognized and made a motion for an "Unfavorable to the original bill, Favorable to the PCS. Chairman Warren opened the floor for a vote and the motion passed.

HB 432 Counties/Internet Infrastructure. (Representatives Dobson, Setzer, Jones, Holloway)

Chairman Warren recognized Representative Dobson to explain the bill. Representatives Earle, Collins, and Elmore had questions on the bill. There was no vote on this bill. It was heard for discussion only.

HB 681 NC Energy Ratepayers Protection Act. (Representatives Millis, Hager, Collins, Warren)

Representative Arp took the Chairs' position for this bill so Representative Warren could speak on the bill if necessary. Chairman Arp stated there was a PCS for HB 681 and recognized Representative B. Brown for a motion. Representative B. Brown made a motion that the PCS be before the committee. The motion passed.

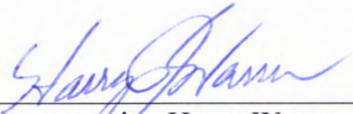
Chairman Arp recognized Representatives Millis and Collins to explain the bill. Representative Warren did not speak on the bill. Chairman Arp opened the floor for discussion and recognized the following members. Representatives Hastings, Dollar, D. Hall, and Harrison. Dan Conrad, Staff Attorney for the Public Utilities Commission was recognized to answer questions. John



Morrison of Strata Solar, Donald Bryson of Americans For Prosperity, and Carson Harkrader of Carolina Solar Energy also spoke on the bill.

Representative Riddell was recognized and made a motion for an “Unfavorable to the original bill, Favorable to the PCS, with a Serial referral to Finance. The motion failed.

The meeting adjourned at 1:50 p.m.



Representative Harry Warren, Chair
Presiding

Cristy Yates, Committee Clerk



**House Committee on Public Utilities
Wednesday, April 22, 2015, 1:00 PM
643 Legislative Office Building**

AGENDA

Welcome and Opening Remarks

Introduction of Pages and Sergeant-at-Arms

Bills

BILL NO.	SHORT TITLE	SPONSOR
HB 349	Develop Broadband Connectivity Plan.	Representative Tine Representative Saine Representative Hager Representative Hanes
HB 432	Counties/Internet Infrastructure.	Representative Dobson Representative Setzer Representative Jones Representative Holloway
HB 681	NC Energy Ratepayers Protection Act.	Representative Millis Representative Hager Representative Collins Representative Warren

Adjournment

1:50 p.m.



Corrected #1: Added HB 432 and HB 681

**NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2015-2016 SESSION**

You are hereby notified that the **House Committee on Public Utilities** will meet as follows:

DAY & DATE: Wednesday, April 22, 2015

TIME: 1:00 PM

LOCATION: 643 LOB

COMMENTS: Representative Harry Warren, Chairing

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 349	Develop Broadband Connectivity Plan.	Representative Tine Representative Saine Representative Hager Representative Hanes
HB 432	Counties/Internet Infrastructure.	Representative Dobson Representative Setzer Representative Jones Representative Holloway
HB 681	NC Energy Ratepayers Protection Act.	Representative Millis Representative Hager Representative Collins Representative Warren

Respectfully,

Representative Dean Arp, Co-Chair
Representative Jeff Collins, Co-Chair
Representative Harry Warren, Co-Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 7:31 PM on Tuesday, April 21, 2015.

___ Principal Clerk
___ Reading Clerk – House Chamber

Wendy Miller (Committee Assistant)

ATTENDANCE

House Committee on Public Utilities

[illegible]



House Committee on Public Utilities

[illegible]



**NORTH CAROLINA GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES**

PUBLIC UTILITIES COMMITTEE REPORT

**Representative Dean Arp, Co-Chair
Representative Jeff Collins, Co-Chair
Representative Harry Warren, Co-Chair**

FAVORABLE COM SUB , UNFAVORABLE ORIGINAL BILL

HB 349

Develop Broadband Connectivity Plan.

Draft Number: H349-PCS30345-TS-4

Serial Referral: None

Recommended Referral: None

Long Title Amended: No

Floor Manager: Tine

TOTAL REPORTED: 1



★ C M R 2 2 7 - V - 1 ★



Date: 4/22/15

Bill Number 349

PCS ✓

Motion to be before the committee by Brown

Rep Jane explained the bill. & Saine

Discussion on the Bill YES or NO

Rep Brown motioned for:

 Favorable Report

Adoption

_____Unfavorable Report

✓ Unfavorable to original bill, fav to PCS

_____ No vote

Amendments: : _____

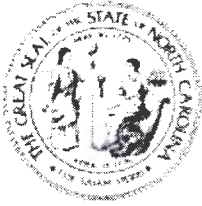
Serial referral to: _____

Speakers:

Handouts:

Adjourned
1:50 pm





HOUSE BILL 349: Develop Broadband Connectivity Plan

2015-2016 General Assembly

Committee: House Public Utilities
Introduced by: Reps. Tine, Saine, Hager, Hanes
Analysis of: PCS to First Edition
H349-CSTS-4

Date: April 22, 2015
Prepared by: Layla Cummings
Committee Counsel

SUMMARY: *The Proposed Committee Substitute (PCS) to House Bill 349 would require the Office of the State Chief Information Officer (Office) to develop a broadband connectivity plan to increase access to broadband throughout the State and expand the service area that broadband service providers are permitted to provide telephone service to their broadband customers.*

CURRENT LAW AND BILL ANALYSIS:

Section 1 would state the following findings of the General Assembly: the availability of broadband internet access in all North Carolina counties is vital for the continued economic prosperity of the State's citizens; and the development of a plan is the quickest and most efficient way to increase high quality broadband access.

Sections 2-4 would require the Office, through its Office of Digital Infrastructure, and with the assistance of the Department of Transportation, the Department of Administration, the Department of Commerce, North Carolina State University, the University of North Carolina at Charlotte, any other relevant state agency, and private sector stakeholders, to develop a State broadband plan including:

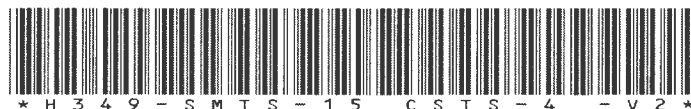
- Identification of the most effective and efficient means for deployment, utilization, and adoption of broadband throughout the State.
- A detailed strategy for achieving affordability of broadband service.
- An evaluation of the current status of broadband service deployment across the State.
- Recommendations to foster the deployment, utilization, and adoption of broadband for the purposes of enhancing economic development, education, public safety, health care delivery, energy efficiency, job creation, and government efficiency.

The Office would be required to report on the State broadband plan, including recommendations for legislative action and cost estimates for achieving the objectives set forth in the plan, no later than May 1, 2016, to the Joint Legislative Committee on Information Technology. Funding to implement these sections would be provided by the Office using available funds in the Information Technology Fund.

Section 5 would allow broadband service providers that provide telephone service within a defined service territory or franchise area may, in any area outside of its defined territory, provide telephone service to a customer with broadband services. This would apply only when the telecommunications or cable provider is not providing broadband service to the customer. Under the current law, broadband service providers may only provide telephone service to their broadband customers in areas contiguous to the providers' defined service territory or franchise area.

EFFECTIVE DATE: This bill would become effective when it becomes law.

O. Walker Reagan
Director



* H 3 4 9 - S M T S - 1 5 C S T S - 4 - V 2 *

Research Division
(919) 733-2578



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H

D

HOUSE BILL 349
PROPOSED COMMITTEE SUBSTITUTE H349-CSTS-4 [v.3]

4/20/2015 6:21:21 PM

Short Title: Develop Broadband Connectivity Plan.

(Public)

Sponsors:

Referred to:

March 26, 2015

A BILL TO BE ENTITLED

AN ACT TO ENCOURAGE PROVISION OF BROADBAND ACCESS IN ALL AREAS OF NORTH CAROLINA BY PROVIDING FOR THE CREATION OF A STATE BROADBAND PLAN BY THE OFFICE OF THE STATE CHIEF INFORMATION OFFICER AND BY SPECIFYING THAT BROADBAND SERVICE PROVIDERS MAY OFFER COMMUNICATIONS AND BROADBAND SERVICES IN AREAS WHERE THE INCUMBENT SERVICE PROVIDER IS NOT PROVIDING BROADBAND SERVICE.

The General Assembly of North Carolina enacts:

SECTION 1. The General Assembly finds that the availability of community broadband connectivity through the expansion of readily accessible Internet to all of North Carolina's counties is vital for the continued economic prosperity of all the State's citizens, and that a plan to meet this need for high quality digital access is necessary to achieve this end in the quickest and most efficient manner.

SECTION 2. The Office of the State Chief Information Officer, through its Office of Digital Infrastructure, and with the assistance of the Department of Transportation, the Department of Administration, the Department of Commerce, North Carolina State University, the University of North Carolina at Charlotte, any other relevant state agencies, and private sector stakeholders, shall develop a State broadband plan to ensure that all citizens of North Carolina have access to broadband capability. The plan shall include the following components:

- (1) Identification of the most effective and efficient means for deployment, utilization, and adoption of broadband throughout the State.
- (2) A detailed strategy for achieving affordability of such service.
- (3) An evaluation of the status of deployment of broadband service, including a survey of projects and programs undertaken across the State by commercial broadband providers, local governments, and nongovernmental organizations.
- (4) Recommendations to foster the deployment, utilization, and adoption of broadband for the purposes of enhancing economic development, education, public safety, healthcare delivery, energy efficiency, job creation, and government efficiency.

SECTION 3. The Office shall report no later than May 1, 2016, to the Joint Legislative Committee on Information Technology on the State broadband plan and include recommendations for necessary legislative action and cost estimates for achieving the objectives set forth in the plan.



1 **SECTION 4.** Funding for the implementation of this act shall be provided by the
2 Office of the State Chief Information Officer using funds available from the Information
3 Technology Fund.

4 **SECTION 5.** G.S. 62-113(c) reads as rewritten:

5 "(c) Any broadband service provider that provides voice grade communication services
6 within a defined service territory or franchise area, and elects to provide broadband service in
7 areas ~~contiguous to~~ outside its service territory or franchise area, may provide such voice grade
8 service as an incident to such broadband service to a customer when the incumbent
9 telecommunications or cable provider is not currently providing broadband service to the
10 customer, without violating its service territory restrictions or franchise agreement."

11 **SECTION 6.** This act is effective when it becomes law.

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015**

H

1

HOUSE BILL 349

Short Title: Develop Broadband Connectivity Plan. (Public)

Sponsors: Representatives Tine, Saine, Hager, and Hanes (Primary Sponsors).
For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.

Referred to: Public Utilities.

March 26, 2015

A BILL TO BE ENTITLED

AN ACT TO ENCOURAGE PROVISION OF BROADBAND ACCESS IN ALL AREAS OF
NORTH CAROLINA BY PROVIDING FOR THE CREATION OF A STATE
BROADBAND PLAN BY THE OFFICE OF THE STATE CHIEF INFORMATION
OFFICER AND BY SPECIFYING THAT BROADBAND SERVICE PROVIDERS MAY
OFFER COMMUNICATIONS AND BROADBAND SERVICES IN AREAS WHERE
THE INCUMBENT SERVICE PROVIDER IS NOT PROVIDING BROADBAND
SERVICE.

The General Assembly of North Carolina enacts:

SECTION 1. The General Assembly finds that the availability of community
broadband connectivity through the expansion of readily accessible Internet to all of North
Carolina's counties is vital for the continued economic prosperity of all the State's citizens, and
that a plan to meet this need for high quality digital access is necessary to achieve this end in
the quickest and most efficient manner.

SECTION 2. The Office of the State Chief Information Officer, through its Office
of Digital Infrastructure, and with the assistance of the Department of Transportation, the
Department of Administration, the Department of Commerce, North Carolina State University,
the University of North Carolina at Charlotte, shall develop a State broadband plan to ensure
that all citizens of North Carolina have access to broadband capability. The plan shall include
the following components:

- (1) An analysis of the most effective and efficient mechanisms for ensuring
broadband access by all citizens of the State.
- (2) A detailed strategy for achieving affordability of such service and maximum
utilization of broadband infrastructure and service by the citizens of the
State.
- (3) An evaluation of the status of deployment of broadband service, including a
survey of projects and programs undertaken across the State by commercial
broadband providers, local governments, and nongovernmental
organizations.
- (4) A plan for use of broadband infrastructure and services in advancing
consumer welfare, civic participation, public safety and homeland security,
community development, health care delivery, energy independence and
efficiency, education, worker training, private sector investment,
entrepreneurial activity, job creation, and economic growth.





1 **SECTION 3.** The Office shall report no later than May 1, 2016, to the Joint
2 Legislative Committee on Information Technology on the State broadband plan and include
3 recommendations for necessary legislative action and cost estimates for achieving the
4 objectives set forth in the plan.

5 **SECTION 4.** Funding for the implementation of this act shall be provided by the
6 Office of the State Chief Information Officer using funds available from the Information
7 Technology Fund.

8 **SECTION 5.** G.S. 62-113(c) reads as rewritten:

9 "(c) Any broadband service provider that provides voice grade communication services
10 within a defined service territory or franchise area, and elects to provide broadband service in
11 areas ~~contiguous to~~ outside its service territory or franchise area, may provide such voice grade
12 service as an incident to such broadband service to a customer when the incumbent
13 telecommunications or cable provider is not currently providing broadband service to the
14 customer, without violating its service territory restrictions or franchise agreement."

15 **SECTION 6.** This act is effective when it becomes law.



Bill Number 432

PCS _____

Motion to be before the committee by _____

Rep Dobson explained the bill.

Discussion on the Bill YES or NO

Rep _____ motioned for:

_____ Favorable Report

_____ Adoption

_____ Unfavorable Report

_____ Unfavorable to original bill, fav to PCS

_____ No vote

Amendments: : _____

Serial referral to: _____

Speakers:

Rep. Earle spoke on the bill (question)
Rep Collins - question
Rep Elmore - question

Handouts:

349 summary
PCS
bill

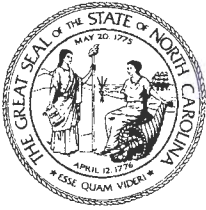
432
summary
bill

681
summary
PCS
bill

Date: 4/22/15

discussion
only





HOUSE BILL 432: Counties/Internet Infrastructure

2015-2016 General Assembly

Committee:	House Public Utilities, if favorable, Finance	Date:	April 22, 2015
Introduced by:	Reps. Dobson, Setzer, Jones, Holloway	Prepared by:	Layla Cummings
Analysis of:	First Edition		Committee Counsel

SUMMARY: *House Bill 432 would allow counties to provide infrastructure for high-speed internet access to unserved areas as a public enterprise.*

CURRENT LAW: Under Article 15 of Chapter 153A, a county is authorized to:

- Establish and operate a public enterprise to furnish services to the county and its citizens.
- Adopt rules by ordinance to regulate a public enterprise.
- Finance the cost of a public enterprise by levying taxes, borrowing money, and appropriating any other revenues, and by accepting and administering gifts and grants from any source.

"Public enterprise" in a county includes: water supply and distribution systems; wastewater collection, treatment, and disposal systems; solid waste collection and disposal systems and facilities; airports; off-street parking facilities; public transportation systems; and stormwater management programs.

BILL ANALYSIS:

Section 1 would amend the definition of public enterprise under Article 15 of Chapter 153A to include high-speed internet access service. High-speed internet access service is defined as internet access service with transmission speeds that are equal to or greater than the requirements for basic broadband tier 1 service as defined by the Federal Communications Commission for broadband data gathering and reporting.

Section 2 would allow a county to provide infrastructure to expand access to high-speed internet service in unserved areas of the county to promote and encourage economic development. Unserved area is defined as a census block in which at least fifty percent of households either have no access to high-speed internet service or have access to high-speed internet service only from a satellite provider.

The county would be permitted to lease the infrastructure to private providers. This section does not permit a county to provide internet service.

EFFECTIVE DATE: The bill would become effective when it becomes law.

O. Walker Reagan
Director



Research Division
(919) 733-2578



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H

1

HOUSE BILL 432

Short Title: Counties/Internet Infrastructure. (Public)

Sponsors: Representatives Dobson, Setzer, Jones, and Holloway (Primary Sponsors).
For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.

Referred to: Local Government, if favorable, Public Utilities, if favorable, Finance.

April 1, 2015

1 A BILL TO BE ENTITLED
2 AN ACT AUTHORIZING COUNTIES TO PROVIDE HIGH-SPEED INTERNET ACCESS
3 SERVICE AS A PUBLIC ENTERPRISE.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 153A-274 reads as rewritten:

6 "**§ 153A-274. Public enterprise defined.**

7 As used in this Article, "public enterprise" includes:

- 8 (1) Water supply and distribution systems.
- 9 (2) Wastewater collection, treatment, and disposal systems of all types,
10 including septic tank systems or other on-site collection or disposal facilities
11 or systems.
- 12 (3) Solid waste collection and disposal systems and facilities.
- 13 (4) Airports.
- 14 (5) Off-street parking facilities.
- 15 (6) Public transportation systems.
- 16 (7) Stormwater management programs designed to protect water quality by
17 controlling the level of pollutants in, and the quantity and flow of,
18 stormwater and structural and natural stormwater and drainage systems of all
19 types.
- 20 (8) High-speed Internet access service, as defined in G.S. 160A-340(4)."

21 SECTION 2. Part 1 of Article 15 of Chapter 153A of the General Statutes is
22 amended by adding a new section to read as follows:

23 "**§ 153A-275.1. Authority to provide high-speed Internet access service as a public**
24 **enterprise.**

25 (a) A county may provide infrastructure including, but not limited to, conduit,
26 fiber-optic cable, and fiber-optic wire for the purpose of expanding high-speed Internet access
27 service in unserved areas of the county to promote and encourage economic development in the
28 county. The county may lease the infrastructure to unaffiliated, qualified private providers of
29 high-speed Internet access service. Any lease contracts under this section shall comply with the
30 provisions of Article 8 of Chapter 143 of the General Statutes and shall be awarded on a
31 technology neutral basis. The county shall use only unrestricted general fund revenue to
32 provide the infrastructure. Nothing in this section shall be construed to permit a county to
33 provide Internet service.

34 (b) The following definitions apply in this section:

- 35 (1) High-speed Internet access service. – As defined in G.S. 160A-340(4).



1 (2) Unserved area. – As defined in G.S. 160A-340.2(b)."
2 **SECTION 3.** This act is effective when it becomes law.

Date: 4-22-15

Bill Number 681

PCS ✓

Motion to be before the committee by Brown

Rep Miller, Collins explained the bill.

Discussion on the Bill (YES or NO)

Rep Riddell motioned for:

____ Favorable Report

_____ Adoption

_____Unfavorable Report


✓ Unfavorable to original bill, fav to PCS

_____ No vote

Failed

Amendments: : _____

Serial referral to: ? Insurance - Removed because pay part out.

Speakers:  Wildlife Commission, Dan Conrad, Staff Attorney

Against - John Morrison

Saturn Solar - Opposes

For bill - Donald Bryson

→ State Dir. American 4

Handouts:

Against - Carson Hark

- Carolina Solar Prosperity

For bill -

Adjourned 1:50 pm



12

ROLL CALL VOTE

14 16 = 30 (TOTAL)
YES NO

HB# _____
SB# _____

HOUSE STANDING COMMITTEE ON PUBLIC UTILITIES

House Subcommittee on _____

YES	NO	MEMBER (last name)	YES	NO	MEMBER (last name)
-----	----	--------------------	-----	----	--------------------

Co-Chairs

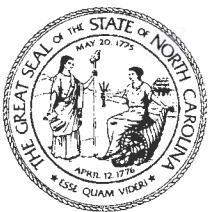
✓	ARP, Dean	✓	JOHNSON, Linda
✓	COLLINS, Jeff	✓	JOHNSON, Ralph
	WARREN, Harry	✓	LUEBKE, Paul

Vice-Chairs

✓	✓	CUNNINGHAM, Carla	✓	MALONE, Chris
✓		HAGER, Mike	✓	MARTIN, Susan
	✓	HANES, Edward	✓	MEYER, Graig
	✓	WATFORD, Sam	✓	MILLIS, Chris
			✓	MOORE, Rodney
	✓	ALEXANDER, Kelly	✓	RIDDELL, Dennis
✓		BELL, John		WRAY, Michael

✓	BISHOP, Dan	
✓	BLACKWELL, Hugh	
✓	BRADFORD, John	
✓	BROWN, Brian	
✓	BUMGARDNER, Dana	
✓	CATLIN, Rick	
✓	CONRAD, Debra	
	✓	DOLLAR, Nelson
	✓	EARLE, Beverly
✓	ELMORE, Jeffrey	
	✓	HALL, Duane
	✓	HARRISON, Pricey
	✓	HASTINGS, Kelly





HOUSE BILL 681: NC Energy Ratepayers Protection Act

2015-2016 General Assembly

Committee: House Public Utilities
Introduced by: Reps. Millis, Hager, Collins, Warren
Analysis of: PCS to First Edition
H681-CSTD

Date: April 22, 2015
Prepared by: Heather Fennell
Committee Counsel

SUMMARY: *The PCS to House Bill 681 would do all of the following:*

- *Provide that utilities must consider renewable energy in planning for future generation, to the extent renewable energy is the consistent with the least cost mix of generation.*
- *Amends provisions related to payments to qualifying facilities to provide standard contracts are limited to facilities with capacities of 100 kw or less, and standard contracts cannot require payment for unneeded capacity.*
- *Increases the percentage utilities can use energy efficiency to comply with REPS.*
- *Freezes the REPS cost cap at 2014 levels.*
- *Freezes the REPS requirements at 2015 levels.*
- *Directs the Energy Policy Council to conduct a study of the measurable costs and benefits of distributed generation.*
- *Provides a hold harmless provision for utilities that have incurred costs to comply with provisions modified or repealed by this act.*

CURRENT LAW: Renewable Energy Portfolio Standard (REPS)

In 2007, the General Assembly enacted a Renewable Energy Portfolio Standard (REPS) requirement for electric power suppliers.¹ REPS require electric power suppliers to provide a designated amount or percentage of power from renewable energy resources as a portion of their overall provision of electricity.

Types of Renewable Energy: Renewable energy resources that can be used to meet the REPS requirements are:

- Solar electric, solar thermal, wind, hydropower, geothermal, or ocean current or wave energy resource.
- A biomass resource, including agricultural waste, animal waste, wood waste, spent pulping liquors, combustible residues, combustible liquids, combustible gases, energy crops, or landfill methane.
- Waste heat derived from a renewable energy resource and used to produce electricity or useful, measurable thermal energy at a retail electric customer's facility.
- Hydrogen derived from a renewable energy resource.

"Renewable energy resource" does not include peat, a fossil fuel, or nuclear energy resource.

¹ S.L. 2007-397, also known as "Senate Bill 3."

O. Walker Reagan
Director



* H 6 8 1 - S M T D - 3 6 C S T D - 1 8 - V 9 *

Research Division
(919) 733-2578

House Bill 681

Page 2

REPS Requirements: The REPS requirements vary based on the type of electric supplier, and is as follows:

Calendar Year	Electric Public Utilities	Calendar Year	EMCs and Municipalities
2012	3% of 2011 retail sales	2012	3% of 2011 retail sales
2015	6% of 2014 retail sales	2015	6% of 2014 retail sales
2018	10% of 2017 retail sales	2018 and thereafter	10% of 2017 retail sales
2021 and thereafter	12.5% of 2020 retail sales		

All electric power suppliers may meet the REPS requirements by:

- Generating electric power at a new renewable energy facility.
- Reducing energy consumption through the implementation of an energy efficiency measure.
- Purchasing electric power from a new renewable energy facility.
- Purchasing renewable energy certificates derived from in-state or out-of-state new renewable energy facilities.
- Using electric power that is supplied by a new renewable energy facility or saved due to the implementation of an energy efficiency measure that exceeds the REPS requirements for any calendar year as a credit towards meeting the REPS requirements in the following calendar year or sell the associated renewable energy certificates.
- Reducing electricity demand with a program that is voluntary, under the real-time control of both the electric power supplier and the retail electric customer, and measured in real time, using two-way communications devices that communicate on the basis of standards.

Electric public utilities may also meet the REPS requirements by using a renewable energy resource to generate electric power at a generating facility. Electric membership corporations and municipalities may also meet the REPS requirements by purchasing electricity from renewable energy facilities, and acquiring all or part of its electric power from an electric power supplier who meets the REPS requirements.

Set-Asides: Commonly known as set-asides, part of the REPS requirements must be met with solar, poultry waste, and swine waste resources in the following amounts:

Solar		Swine Waste		Poultry Waste	
2010	0.02%	2012	0.07%	2012	170,000 MW hrs
2012	0.07%			2013	700,000 MW hrs
2015	0.14%	2015	0.14%	2014, and thereafter	700,000 MW hrs
2018 and thereafter	0.20%	2018 and thereafter	0.20%		

Off-Ramp: The Utilities Commission (Commission) may provide for a procedure to modify or delay compliance with the REPS provisions, if the Commission determines it is in the public interest to do so.

House Bill 681

Page 3

Cost Cap: Electric power suppliers are allowed to recover costs of compliance with the REPS requirements through an annual rider proceeding. The recovery of costs may not exceed an amount equal to the per-customer annual charges in the following schedule:

Customer Class	2008-2011	2012-2014	2015 and thereafter
Residential, per acct	\$10	\$12	\$34
Commercial, per acct	\$50	\$150	
Industrial, per acct	\$500	\$1000	

PURPA and Qualifying Facilities

The Public Utilities Regulatory Policy Act of 1978 (PURPA) was enacted by Congress to reduce dependence on foreign oil and promote renewable energy. PURPA requires utilities to purchase energy generated by qualified facilities at a rate based on "avoided cost." The avoided cost is "the incremental costs to an electric utility of electric energy or capacity or both which, but for the purchase from the qualifying facility or qualifying facilities, such utility would generate itself or purchase from another source."

BILL ANALYSIS: The PCS to House Bill 681 does all of the following:

Part I. Amends the declaration of policy to provide public utilities must look at all forms of generation, including generation from renewable resources, in planning generation needs to meet future growth. Repeals the provision that provides it is the policy of the State to promote renewable energy through the REPS. Provides that the policy of the State is to promote renewable energy to the extent it is consistent with the least cost mix of generation.

Part II. Amends provisions related to qualifying facilities and the calculation of avoided cost in the following ways:

- Amends the definition of small power producer to conform the definition of renewable energy resources in that definition with the definition of renewable energy resources in the REPS requirements. Under current law, the definition of small power producer was limited to producers of electricity from hydroelectric sources.
- Provides the Commission may provide standard contracts for the purchase of power from small power producers, but utilities are only required to provide the standard contracts to facilities with a capacity of 100 kw or less. Also provides that the standard contract shall not require payments for capacity in years the utility does not require the capacity.
- Provides that the costs considered in determining the avoided cost to the utility shall only consider the "known and measurable" costs.

Part III. Increases the percentage that energy efficiency measures can be used to meet the REPS requirements to 50%. Under current law public utilities can meet up to 25% of the REPS requirements with energy efficiency measures through 2021, and up to 40% after 2021.

Part IV. Amends the cost caps for REPS compliance. Electric public utilities are allowed to recover costs of compliance with the REPS requirements through an annual rider proceeding. The recovery of costs may not exceed the amount equal to the per-customer annual charges set in the statute. This part freezes the cost caps at the 2014 level. The 2014 cost caps are \$12 for residential, \$150 for commercial, and \$1000 for industrial accounts per year. For 2015, the residential cost cap was scheduled to increase to \$34. For 2015, the commercial and industrial cost caps are unchanged from 2014 levels.

House Bill 681

Page 4

Part V. This Part freezes the REPS requirements at the current level, resulting in a permanent REPS requirement of 6% of 2014 retail sales for electric public utilities, electric membership corporations, and municipalities.

Calendar Year	Electric Public Utilities	Calendar Year	EMCs and Municipalities
2012	3% of 2011 retail sales	2012	3% of 2011 retail sales
2015	6% of 2014 retail sales	2015	6% of 2014 retail sales

The PCS also repeals the increase in the solar and swine waste set-asides that are scheduled for 2018:

Solar		Swine Waste		Poultry Waste	
2010	0.02%	2012	0.07%	2012	170,000 MW hrs
2012	0.07%			2013	700,000 MW hrs
2015	0.14%	2015	0.14%	2014, and thereafter	700,000 MW hrs
2018 and thereafter	0.20%	2018 and thereafter	0.02%		

The Commission has the authority to modify or delay compliance with any REPS requirement if the Commission determines it is in the public interest. The Commission used this procedure to delay or modify the poultry and swine waste set-asides each year until 2014. In 2014, the swine waste set-aside was again delayed, but the poultry was set-aside was met. This act would not amend the modification or delay of a set-aside by the Commission prior to the effective date of this act, allowing the poultry and swine waste set-asides to continue. The Commission would retain the authority to modify or delay the set-asides if they could not be met, but would maintain the set-asides.

Part VI. Directs the Energy Policy Council to conduct a comprehensive study of the known and measurable costs and benefits to the electric grid of distributed generation. The assessment must include an analysis of, and recommendations on, the following:

- The impact of current and future non-dispatchable distributed generation on the electric grid.
- Whether changes to existing State law, regulations, policies, and incentives are appropriate considering the impact.
- Whether standby, generation, transmission, or other charges and credits are necessary to recognize the costs and benefits associated with non-dispatchable distributed generation.
- The costs and benefits of distributed solar generation to the State, customer-generators who participate in net metering, customers of a utility who do not participate in net metering, and each utility that offers net metering.

Part VII. Provides the incremental costs incurred by an electric power supplier to comply with any provision modified or repealed by this act can be recovered as provided in the REPS statute.

EFFECTIVE DATE: Unless otherwise provided, this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H

D

HOUSE BILL 681
PROPOSED COMMITTEE SUBSTITUTE H681-CSTD-18 [v.4]

4/21/2015 7:55:11 PM

Short Title: NC Energy Ratepayers Protection Act.

(Public)

Sponsors:

Referred to:

April 14, 2015

A BILL TO BE ENTITLED
AN ACT TO AMEND VARIOUS PROVISIONS OF THE GENERAL STATUTES
RELATED TO DISTRIBUTED GENERATION AND TO DIRECT THE ENERGY
POLICY COUNCIL TO PERFORM AN ASSESSMENT OF THE COSTS AND
BENEFITS OF DISTRIBUTED GENERATION.

The General Assembly of North Carolina enacts:

**PART I. CLARIFY DISTRIBUTED GENERATION MUST BE CONSIDERED IN
RESOURCE PLANNING.**

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

"(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:

...

(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 generation, including generation from renewable energy sources, and include 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;

...

(10) To promote ~~the development of renewable energy and energy efficiency in a manner that is consistent with the development of the least cost mix of generation through the implementation of a Renewable Energy and Energy Efficiency Portfolio Standard (REPS) that will do all of the following:~~

- a. ~~Diversify the resources used to reliably meet the energy needs of consumers in the State.~~
- b. ~~Provide greater energy security through the use of indigenous energy resources available within the State.~~



- e. ~~Encourage private investment in renewable energy and energy efficiency.~~
- d. ~~Provide improved air quality and other benefits to energy consumers and citizens of the State."~~

PART II. AMEND CONTRACTS FOR QUALIFYING FACILITIES AND CLARIFY AVOIDED COST REQUIREMENTS.

SECTION 2.(a) G.S. 62-3(27a) reads as rewritten:

"(27a) "Small power producer" means a person or corporation owning or operating an electrical power production facility with a power production capacity which, together with any other facilities located at the same site, does not exceed 80 megawatts of electricity and which depends upon renewable resources for its primary source of energy. For the purposes of this section, renewable resources shall mean: hydroelectric power, power, solar electric, solar thermal, wind, geothermal, ocean current, wave energy resources, and biomass derived from agricultural waste, animal waste, wood waste, spent pulping liquors, combustible residues, liquids, or gases not derived from fossil fuel, energy crops, or landfill methane. A small power producer shall not include persons primarily engaged in the generation or sale of electricity from other than small power production facilities."

SECTION 2.(b) G.S. 62-156 reads as rewritten:

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

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

(b) No later than March 1, 1981, and at least every two years thereafter, the ~~commission~~ Commission shall determine the rates to be paid by electric utilities for power purchased from small power producers, according to the following standards:

(1) Term of Contract. – The Commission shall approve standard contracts for the purchase of power from small power producers and shall require electric utilities to provide standard contracts to small power facilities that do not exceed 100 kilowatts of capacity. Long-term contracts for the purchase of electricity by the utility from small power producers shall be encouraged in order to enhance the economic feasibility of small power production facilities, but the term of a contract may not be for a period of greater than 15 years.

(2) Avoided Cost ~~of Energy~~ to the Utility. – The rates paid by a utility to a small power producer shall not exceed, over the term of the purchase power contract, the incremental cost to the electric utility of the electric energy which, but for the purchase from a small power producer, the utility would generate or purchase from another source. A determination of the avoided ~~energy~~ costs to the utility shall include a consideration of the following factors over the term of the power contracts: the known and measurable expected costs of the additional or existing generating capacity which could be displaced, the known and measurable expected cost of fuel and other operating expenses of electric energy production which a utility would otherwise incur in generating or purchasing power from another source, and the expected security of the supply of fuel for the utilities' alternative power sources.

- (3) Availability and Reliability of Power. – The rates to be paid by electric utilities for power purchased from a small power producer shall be established with consideration of the reliability and availability of the power.
- (4) Avoided Cost of Capacity. – The standard contract shall not require payment for capacity during the years in which the electric utility lacks a capacity need, as demonstrated through the electric public utility's most recent integrated resource plan approved by the Commission under G.S. 62-110.1(c)."

SECTION 2.(c) This section becomes effective July 1, 2015, and applies to rates approved by the Commission on or after that date.

PART III. ENERGY EFFICIENCY FOR REPS COMPLIANCE.

SECTION 3.(a) G.S. 62-133.8(b)(2)c. reads as rewritten:

- "c. Reduce energy consumption through the implementation of an energy efficiency measure; provided, however, an electric public utility subject to the provisions of this subsection may meet up to ~~twenty-five percent (25%)~~ fifty percent (50%) of the requirements of this section through savings due to implementation of energy efficiency measures. ~~Beginning in calendar year 2021 and each year thereafter, an electric public utility may meet up to forty percent (40%) of the requirements of this section through savings due to implementation of energy efficiency measures."~~

SECTION 3.(b) This section becomes effective July 1, 2015.

PART IV. AMEND COST CAPS FOR REPS COMPLIANCE.

SECTION 4.(a) G.S. 62-133.8(h)(4) reads as rewritten;

- "(4) An electric power supplier shall be allowed to recover the incremental costs incurred to comply with the requirements of subsections (b), (c), (d), (e), and (f) of this section and fund research as provided in subdivision (1) of this subsection through an annual rider not to exceed the following per-account annual charges:

Customer Class	2015 and thereafter		
	2008-2011	2012-2014	and thereafter
Residential per account	\$10.00	\$12.00	\$34.00
Commercial per account	\$50.00	\$150.00	\$150.00
Industrial per account	\$500.00	\$1,000.00	\$1,000.00"

SECTION 4.(b) This section becomes effective July 1, 2015, and applies to cost recovery proceedings that occur on or after that date.

PART V. FREEZE REPS REQUIREMENTS

SECTION 5.(a) G.S. 62-133.8 reads as rewritten:

"§ 62-133.8. Renewable Energy and Energy Efficiency Portfolio Standard (REPS).

...
(b) Renewable Energy and Energy Efficiency Standards (REPS) for Electric Public Utilities. –

- (1) Each electric public utility in the State shall be subject to a Renewable Energy and Energy Efficiency Portfolio Standard (REPS) according to the following schedule:

Calendar Year	REPS Requirement
2012	3% of 2011 North Carolina retail sales

1	2015 <u>and thereafter</u>	6% of 2014 North Carolina retail sales
2	2018	10% of 2017 North Carolina retail sales
3	2021 <u>and thereafter</u>	12.5% of 2020 North Carolina retail sales

4 ...

5 (c) Renewable Energy and Energy Efficiency Standards (REPS) for Electric
6 Membership Corporations and Municipalities. –

7 (1) Each electric membership corporation or municipality that sells electric
8 power to retail electric power customers in the State shall be subject to a
9 Renewable Energy and Energy Efficiency Portfolio Standard (REPS)
10 according to the following schedule:

11	Calendar Year	REPS Requirement
12	2012	3% of 2011 North Carolina retail sales
13	2015 <u>and thereafter</u>	6% of 2014 North Carolina retail sales
14	2018 <u>and thereafter</u>	10% of 2017 North Carolina retail sales

15 ...

16 (d) Compliance With REPS Requirement Through Use of Solar Energy Resources. –
17 For calendar year ~~2018–2015~~ and for each calendar year thereafter, at least ~~two-tenths of one~~
18 ~~percent (0.2%)~~ fourteen one-hundredths of one percent (0.14%) of the total electric power in
19 kilowatt hours sold to retail electric customers in the State, or an equivalent amount of energy,
20 shall be supplied by a combination of new solar electric facilities and new metered solar
21 thermal energy facilities that use one or more of the following applications: solar hot water,
22 solar absorption cooling, solar dehumidification, solar thermally driven refrigeration, and solar
23 industrial process heat. The terms of any contract entered into between an electric power
24 supplier and a new solar electric facility or new metered solar thermal energy facility shall be
25 of sufficient length to stimulate development of solar energy; provided, the Commission shall
26 develop a procedure to determine if an electric power supplier is in compliance with the
27 provisions of this subsection if a new solar electric facility or a new metered solar thermal
28 energy facility fails to meet the terms of its contract with the electric power supplier. As used in
29 this subsection, "new" means a facility that was first placed into service on or after January 1,
30 2007. The electric power suppliers shall comply with the requirements of this subsection
31 according to the following schedule:

32		Requirement for Solar
33	Calendar Year	Energy Resources
34	2010	0.02%
35	2012	0.07%
36	2015	0.14%
37	2018	0.20%

38 (e) Compliance With REPS Requirement Through Use of Swine Waste Resources. –
39 For calendar year ~~2018–2015~~ and for each calendar year thereafter, at least fourteen
40 one-hundredths of one percent (0.14%) ~~two-tenths of one percent (0.2%)~~ of the total electric
41 power in kilowatt hours sold to retail electric customers in the State shall be supplied, or
42 contracted for supply in each year, by swine waste. The electric power suppliers, in the
43 aggregate, shall comply with the requirements of this subsection according to the following
44 schedule:

45		Requirement for Swine
46	Calendar Year	Waste Resources
47	2012	0.07%
48	2015	0.14%
49	2018	0.20%

50 (f) Compliance With REPS Requirement Through Use of Poultry Waste Resources. –
51 For calendar year 2014 and for each calendar year thereafter, at least 900,000 megawatt hours

of the total electric power sold to retail electric customers in the State or an equivalent amount of energy shall be supplied, or contracted for supply in each year, by poultry waste combined with wood shavings, straw, rice hulls, or other bedding material. The electric power suppliers, in the aggregate, shall comply with the requirements of this subsection according to the following schedule:

Calendar Year	Requirement for Poultry Waste Resources
2012	170,000 megawatt hours
2013	700,000 megawatt hours
2014	900,000 megawatt hours

...."

SECTION 5.(b) The revisions in this act do not amend the modification or delay of a set-aside under G.S. 62-133.8 by the North Carolina Utilities Commission prior to the effective date of this act.

PART VI. TO PROVIDE A COMPREHENSIVE STUDY OF THE COSTS AND BENEFITS OF DISTRIBUTED GENERATION.

SECTION 6.(a) No later than May 1, 2016, the Energy Policy Council shall provide to the Joint Legislative Commission on Government Operations and the North Carolina Utilities Commission a comprehensive assessment of known and measurable cost and benefits to the electrical grid of distributed generation, including the comprehensive costs of and benefits of net metering from distributed solar generation in this State. The Energy Policy Council may contract with a consultant to perform the assessment.

The assessment shall include an analysis of, and recommendations with respect to, the following:

- (1) The impact of current and future non-dispatchable distributed generation on the affordability, reliability, resiliency, and safety of North Carolina's electric grid.
- (2) Whether changes to existing State law, regulations, policies, and incentives are appropriate considering the cost and operational impacts of current and future non-dispatchable distributed generation on North Carolina's electric grid.
- (3) Whether standby, generation, transmission, or other charges and credits are necessary to recognize the costs and benefits associated with non-dispatchable distributed generation to ensure the protection of North Carolina electric customers.
- (4) The costs and benefits of distributed solar generation to the State, customer-generators who participate in net metering, customers of a utility who do not participate in net metering, and each utility that offers net metering. The costs and benefits of solar distributed generation considered in the study shall include all of the following to the extent they are known and measurable:
 - a. Value of energy at the time of generation.
 - b. Market price effects on other fuel sources for energy production.
 - c. Effects on utility delivery systems, generation capacity, transmission capacity, and transmission and distribution line losses.
 - d. Environmental impacts of energy production.
 - e. Effects on reliability of the electric system.
 - f. Any fixed distribution costs that the utility recovers from its customers on a volumetric basis.

- 1 g. Any other costs or benefits the Energy Policy Council believes are
2 appropriate.

3 **SECTION 6.(b)** Each public utility, electric membership corporation, and
4 municipality that distributes electricity in this State shall to the fullest extent possible cooperate
5 with the Energy Policy Council and furnish the Energy Policy Council with any information it
6 requests in the course of completing the assessment provided for in this act.
7

8 **PART VII. COST RECOVERY HOLD HARMLESS**

9 **SECTION 7.** Incremental costs incurred by an electric power supplier prior to July
10 1, 2015, to comply with any requirement repealed or amended by this act may be recovered as
11 provided in G.S. 62-133.8(h), as amended by this act. For the purposes of cost recovery under
12 this act, costs incurred prior to July 1, 2015, include all of the following:

- 13 (1) Costs under purchase contracts for renewable energy entered into prior to
14 July 1, 2015, for the purpose of complying with REPS requirements repealed
15 or amended by this act.
16 (2) The costs of renewable energy facilities built by a public utility for which a
17 certificate of public convenience and necessity has been issued by the
18 Commission prior to July 1, 2015, for the purpose of complying with REPS
19 requirements repealed or amended by this act.
20 (3) Other costs the Utilities Commission determines are reasonable and prudent
21 costs incurred prior to July 1, 2015, to comply with the REPS requirements
22 repealed or amended by this act.
23

24 **PART VIII. SEVERABILITY CLAUSE AND EFFECTIVE DATE**

25 **SECTION 8.(a)** If any provision of this act or its application is held invalid, the
26 invalidity does not affect other provisions or applications of this act that can be given effect
27 without the invalid provisions or application and to this end the provisions of this act are
28 severable.

29 **SECTION 8.(b)** Unless otherwise provided, this act is effective when it becomes
30 law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H

1

HOUSE BILL 681

Short Title: NC Energy Ratepayers Protection Act. (Public)

Sponsors: Representatives Millis, Hager, Collins, and Warren (Primary Sponsors).
For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.

Referred to: Environment, if favorable, Public Utilities, if favorable, Finance.

April 14, 2015

A BILL TO BE ENTITLED
AN ACT TO AMEND VARIOUS PROVISIONS OF THE GENERAL STATUTES
RELATED TO DISTRIBUTED GENERATION AND TO DIRECT THE ENERGY
POLICY COUNCIL TO PERFORM AN ASSESSMENT OF THE COSTS AND
BENEFITS OF DISTRIBUTED GENERATION.

The General Assembly of North Carolina enacts:

**PART I. CLARIFY DISTRIBUTED GENERATION MUST BE CONSIDERED IN
RESOURCE PLANNING.**

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

"(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:

...
(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 generation, including generation from renewable energy sources, and include 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;

...
(10) To promote ~~the development of renewable energy and energy efficiency in a manner that is consistent with the development of the least cost mix of generation through the implementation of a Renewable Energy and Energy Efficiency Portfolio Standard (REPS) that will do all of the following:~~

- a. ~~Diversify the resources used to reliably meet the energy needs of consumers in the State.~~
- b. ~~Provide greater energy security through the use of indigenous energy resources available within the State.~~



- 1 e. ~~Encourage private investment in renewable energy and energy~~
2 ~~efficiency.~~
3 d. ~~Provide improved air quality and other benefits to energy consumers~~
4 ~~and citizens of the State."~~
5

6 **PART II. AMEND CONTRACTS FOR QUALIFYING FACILITIES AND CLARIFY**
7 **AVOIDED COST REQUIREMENTS.**

8 **SECTION 2.(a)** G.S. 62-3(27a) reads as rewritten:

9 "(27a) "Small power producer" means a person or corporation owning or operating
10 an electrical power production facility with a power production capacity
11 which, together with any other facilities located at the same site, does not
12 exceed 80 megawatts of electricity and which depends upon renewable
13 resources for its primary source of energy. For the purposes of this section,
14 renewable resources shall mean: hydroelectric power, solar electric,
15 solar thermal, wind, geothermal, ocean current, wave energy resources, and
16 biomass derived from agricultural waste, animal waste, wood waste, spent
17 pulping liquors, combustible residues, liquids, or gases not derived from
18 fossil fuel, energy crops, or landfill methane. A small power producer shall
19 not include persons primarily engaged in the generation or sale of electricity
20 from other than small power production facilities."

21 **SECTION 2.(b)** G.S. 62-156 reads as rewritten:

22 **"§ 62-156. Power sales by small power producers to public utilities.**

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

27 (b) No later than March 1, 1981, and at least every two years thereafter, the ~~commission~~
28 Commission shall determine the rates to be paid by electric utilities for power purchased from
29 small power producers, according to the following standards:

30 (1) Term of Contract. – The Commission shall approve standard contracts for
31 the purchase of power from small power producers and shall require electric
32 utilities to provide standard contracts to small power facilities that do not
33 exceed 100 kilowatts of capacity. Long-term contracts for the purchase of
34 electricity by the utility from small power producers shall be encouraged in
35 order to enhance the economic feasibility of small power production
36 ~~facilities.~~ facilities, but the term of a contract may not be for a period of
37 greater than 15 years.

38 (2) ~~Avoided Cost of Energy~~ to the Utility. – The rates paid by a utility to a small
39 power producer shall not exceed, over the term of the purchase power
40 contract, the incremental cost to the electric utility of the electric energy
41 which, but for the purchase from a small power producer, the utility would
42 generate or purchase from another source. A determination of the avoided
43 ~~energy~~ costs to the utility shall include a consideration of the following
44 factors over the term of the power contracts: the known and measurable
45 expected costs of the additional or existing generating capacity which could
46 be displaced, the known and measurable expected cost of fuel and other
47 operating expenses of electric energy production which a utility would
48 otherwise incur in generating or purchasing power from another source, and
49 the expected security of the supply of fuel for the utilities' alternative power
50 sources.

- (3) Availability and Reliability of Power. – The rates to be paid by electric utilities for power purchased from a small power producer shall be established with consideration of the reliability and availability of the power.
- (4) Avoided Cost of Capacity. – The contract shall not require payment for capacity to the extent the electric utility lacks a capacity need during the term of the contract, as demonstrated through the electric public utility's most recent integrated resource plan approved by the Commission under G.S. 62-110.1(c)."

SECTION 2.(c) This section becomes effective July 1, 2015, and applies to rates approved by the Commission on or after that date.

PART III. ENERGY EFFICIENCY FOR REPS COMPLIANCE.

SECTION 3.(a) G.S. 62-133.8(b)(2)c. reads as rewritten:

- "c. Reduce energy consumption through the implementation of an energy efficiency measure; provided, however, an electric public utility subject to the provisions of this subsection may meet up to ~~twenty-five percent (25%)~~ fifty percent (50%) of the requirements of this section through savings due to implementation of energy efficiency measures. ~~Beginning in calendar year 2021 and each year thereafter, an electric public utility may meet up to forty percent (40%) of the requirements of this section through savings due to implementation of energy efficiency measures."~~

SECTION 3.(b) This section becomes effective July 1, 2015.

PART IV. AMEND COST CAPS FOR REPS COMPLIANCE.

SECTION 4.(a) G.S. 62-133.8(h)(4) reads as rewritten;

- "(4) An electric power supplier shall be allowed to recover the incremental costs incurred to comply with the requirements of subsections (b), (c), (d), (e), and (f) of this section and fund research as provided in subdivision (1) of this subsection through an annual rider not to exceed the following per-account annual charges:

Customer Class	2008-2011	2012-2014 and thereafter	2015 and thereafter
Residential per account	\$10.00	\$12.00	\$34.00
Commercial per account	\$50.00	\$150.00	\$150.00
Industrial per account	\$500.00	\$1,000.00	\$1,000.00"

SECTION 4.(b) This section becomes effective July 1, 2015, and applies to cost recovery proceedings that occur on or after that date.

PART V. SUNSET REPS REQUIREMENTS

SECTION 5. G.S. 62-133.8 reads as rewritten:

"§ 62-133.8. Renewable Energy and Energy Efficiency Portfolio Standard (REPS).

...

(b) Renewable Energy and Energy Efficiency Standards (REPS) for Electric Public Utilities. –

- (1) Each electric public utility in the State shall be subject to a Renewable Energy and Energy Efficiency Portfolio Standard (REPS) according to the following schedule:

Calendar Year	REPS Requirement
2012	3% of 2011 North Carolina retail sales

1	2015 through 2018	6% of 2014 North Carolina retail sales
2	2018	10% of 2017 North Carolina retail sales
3	2021 and thereafter	12.5% of 2020 North Carolina retail sales

4 ...

5 (c) Renewable Energy and Energy Efficiency Standards (REPS) for Electric
6 Membership Corporations and Municipalities. –

7 (1) Each electric membership corporation or municipality that sells electric
8 power to retail electric power customers in the State shall be subject to a
9 Renewable Energy and Energy Efficiency Portfolio Standard (REPS)
10 according to the following schedule:

11	Calendar Year	REPS Requirement
12	2012	3% of 2011 North Carolina retail sales
13	2015 through 2018	6% of 2014 North Carolina retail sales
14	2018 and thereafter	10% of 2017 North Carolina retail sales

15 ...

16 (d) Compliance With REPS Requirement Through Use of Solar Energy Resources. –
17 For calendar year 2018 ~~and for each calendar year thereafter~~, at least two-tenths of one percent
18 (0.2%) of the total electric power in kilowatt hours sold to retail electric customers in the State,
19 or an equivalent amount of energy, shall be supplied by a combination of new solar electric
20 facilities and new metered solar thermal energy facilities that use one or more of the following
21 applications: solar hot water, solar absorption cooling, solar dehumidification, solar thermally
22 driven refrigeration, and solar industrial process heat. The terms of any contract entered into
23 between an electric power supplier and a new solar electric facility or new metered solar
24 thermal energy facility shall be of sufficient length to stimulate development of solar energy;
25 provided, the Commission shall develop a procedure to determine if an electric power supplier
26 is in compliance with the provisions of this subsection if a new solar electric facility or a new
27 metered solar thermal energy facility fails to meet the terms of its contract with the electric
28 power supplier. As used in this subsection, "new" means a facility that was first placed into
29 service on or after January 1, 2007. The electric power suppliers shall comply with the
30 requirements of this subsection according to the following schedule:

31		Requirement for Solar
32	Calendar Year	Energy Resources
33	2010	0.02%
34	2012	0.07%
35	2015 through 2018	0.14%
36	2018	0.20%

37 (e) Compliance With REPS Requirement Through Use of Swine Waste Resources. –
38 For calendar year 2018 ~~and for each calendar year thereafter~~, at least two-tenths of one percent
39 (0.2%) of the total electric power in kilowatt hours sold to retail electric customers in the State
40 shall be supplied, or contracted for supply in each year, by swine waste. The electric power
41 suppliers, in the aggregate, shall comply with the requirements of this subsection according to
42 the following schedule:

43		Requirement for Swine
44	Calendar Year	Waste Resources
45	2012	0.07%
46	2015 through 2018	0.14%
47	2018	0.20%

48 (f) Compliance With REPS Requirement Through Use of Poultry Waste Resources. –
49 For calendar year 2014 and for each calendar year ~~thereafter~~ through 2018, at least 900,000
50 megawatt hours of the total electric power sold to retail electric customers in the State or an
51 equivalent amount of energy shall be supplied, or contracted for supply in each year, by poultry

waste combined with wood shavings, straw, rice hulls, or other bedding material. The electric power suppliers, in the aggregate, shall comply with the requirements of this subsection according to the following schedule:

Calendar Year	Requirement for Poultry Waste Resources
2012	170,000 megawatt hours
2013	700,000 megawatt hours
2014 <u>through 2018</u>	900,000 megawatt hours
...."	

PART VI. REPEAL PROPERTY TAX EXCLUSION FOR SOLAR ENERGY ELECTRIC SYSTEMS.

SECTION 6.(a) G.S. 105-275(45) is repealed.

SECTION 6.(b) This section is effective for taxable years beginning on or after July 1, 2015.

PART VII. TO PROVIDE A COMPREHENSIVE STUDY OF THE COSTS AND BENEFITS OF DISTRIBUTED GENERATION.

SECTION 7.(a) No later than May 1, 2016, the Energy Policy Council shall provide to the Joint Legislative Commission on Government Operations and the North Carolina Utilities Commission a comprehensive assessment of known and measurable cost and benefits to the electrical grid of distributed generation, including the comprehensive costs of and benefits of net metering from distributed solar generation in this State. The Energy Policy Counsel may contract with a consultant to perform the assessment.

The assessment shall include an analysis of, and recommendations with respect to, the following:

- (1) The impact of current and future non-dispatchable distributed generation on the affordability, reliability, resiliency, and safety of North Carolina's electric grid.
- (2) Whether changes to existing State law, regulations, policies, and incentives are appropriate considering the cost and operational impacts of current and future non-dispatchable distributed generation on North Carolina's electric grid.
- (3) Whether standby, generation, transmission, or other charges and credits are necessary to recognize the costs and benefits associated with non-dispatchable distributed generation to ensure the protection of North Carolina electric customers.
- (4) The costs and benefits of distributed solar generation to the State, customer-generators who participate in net metering, customers of a utility who do not participate in net metering, and each utility that offers net metering. The costs and benefits of solar distributed generation considered in the study shall include all of the following to the extent they are known and measurable:
 - a. Value of energy at the time of generation.
 - b. Market price effects on other fuel sources for energy production.
 - c. Effects on utility delivery systems, generation capacity, transmission capacity, and transmission and distribution line losses.
 - d. Environmental impacts of energy production.
 - e. Effects on reliability of the electric system.
 - f. Any fixed distribution costs that the utility recovers from its customers on a volumetric basis.

- 1 g. Any other costs or benefits the Energy Policy Council believes are
2 appropriate.

3 **SECTION 7.(b)** Each public utility, electric membership corporation, and
4 municipality that distributes electricity in this State shall to the fullest extent possible cooperate
5 with the Energy Policy Council and furnish the Energy Policy Council with any information it
6 requests in the course of completing the assessment provided for in this act.
7

8 **PART VIII. COST RECOVERY HOLD HARMLESS**

9 **SECTION 8.(a)** Incremental costs incurred by an electric power supplier prior to
10 July 1, 2015, to comply with any requirement repealed or amended by this act may be
11 recovered as provided in G.S. 62-133.8(h), as amended by this act. For the purposes of cost
12 recovery under this act, costs incurred prior to July 1, 2015, include all of the following:

- 13 (1) Costs under purchase contracts for renewable energy entered into prior to
14 July 1, 2015, for the purpose of complying with REPS requirements repealed
15 or amended by this act.
16 (2) The costs of renewable energy facilities built by a public utility for which a
17 certificate of public convenience and necessity has been issued by the
18 Commission prior to July 1, 2015, for the purpose of complying with REPS
19 requirements repealed or amended by this act.
20 (3) Other costs the Utilities Commission determines are reasonable and prudent
21 costs incurred prior to July 1, 2015, to comply with the REPS requirements
22 repealed or amended by this act.
23

24 **PART IX. SEVERABILITY CLAUSE AND EFFECTIVE DATE**

25 **SECTION 9.(a)** If any provision of this act or its application is held invalid, the
26 invalidity does not affect other provisions or applications of this act that can be given effect
27 without the invalid provisions or application and to this end the provisions of this act are
28 severable.

29 **SECTION 9.(b)** Unless otherwise provided, this act is effective when it becomes
30 law.

Wednesday, April 22
PUBLIC UTILITIES

Room
643

Time
1:00 pm

Name	County	Sponsor
Alina Cardwell	Alamance	Dennis Riddell
Lizzie O'Briant	Randolph	Pat B. Hurley



Committee Sergeants at Arms

NAME OF COMMITTEE House Comm. on Public Utilities

DATE: 4/22/2015

Room: 643

House Sgt-At Arms:

1. Name: Charles Godwin

2. Name: Rey Cooke

3. Name: Dean Marshbourne

4. Name: _____

5. Name: _____

Senate Sgt-At Arms:

1. Name: _____

2. Name: _____

3. Name: _____

4. Name: _____

5. Name: _____



VISITOR REGISTRATION SHEET

House Committee on Public Utilities

4/22/2015

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Sam Hockaday	FLS Energy, Inc.
Angie Harris	Ward, Smith
Keith McAllister	Kestava Energy Management, LLC
Paul Sherman	NCFB
Joy Wicks	NCDA
Doug Miskew	Amanda Strydom & Assoc.
Amanda J. J...	"
Elmer Fudd	Werner Bros.
Paul K. T...	DENR
Matthew Dochman	NC DENR
Lor. Ann Harris	LANTA



VISITOR REGISTRATION SHEET

House Committee on Public Utilities

4/22/2015

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Vicki Gayer	self
J Goodman	NC CHAMBER
Steve Bowers	CENTURY LINK
Susan Vick	Duke Energy
Kathy Hawkins	" "
George Ewett	" "
Kelli Kukura	" "
Johanna Reese	NCACC
Hugh Johnson	NCACC
L. Payne	NC GRANGE
Gug Jones	Self



VISITOR REGISTRATION SHEET

House Committee on Public Utilities

4/22/2015

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Donald Bryson	AFP
Julie Robinson	
J. L. McMullen	MHS
Carson Harkrader	Carolina Solar Energy
RICHARD HARKRADER	" "
Dana B. Clark	UNC Dept. Govt.
Tony Wise	Public Staff- NCUC
Jeremy Grissom	American Values PAC
Josie Scott Driscoll	2125 White Oak Rd Raleigh, NC 27608
Seeger, Peter	CSO
Michael Nicolaides	NC DPI



VISITOR REGISTRATION SHEET

House Committee on Public Utilities

4/22/2015

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

John McFalls	Policy Group
Betsy Bailey	CACOG
David Crawford	AIA NC
TOM BEAN	WESEA
May Muller Allen	SDC
Cassie Gann	Sierra Club
Dan Conrad	NCUC
Debra Chivers Bayard	Sierra Club
Molly Duggan	Sierra Club
John Morrison	Strata Solar
STEW MILLER	YES! SOLAR SOLUTIONS



VISITOR REGISTRATION SHEET

House Committee on Public Utilities

4/22/2015

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Maggie Clark	NCSEA
Allison Eckley	NCSEA
Kurt Olson	NCTC
Angie Mauer	NCRP
RAY GRACE	NCCOS
Ha Nguyen	NCCOR
Pauley Baul	NCDPI
Anna Brown Gray	NC Family Action



VISITOR REGISTRATION SHEET

House Committee on Public Utilities

4/22/2015

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Greg Andeck	EDF
Erik Lensch	Entropy
Sharon Miller	CACA
Elizabeth Biser	BP
Marcus Tratra	BPMTL
Berry Jenkins	Carolinas AGC
Anne Arp	citizen
JANE Cate	Forsyth Co. NC
Crashy McCullis	NC Conservation Network
Mia Bailey	Electric Citizen
Chuck Greene	AT+T



VISITOR REGISTRATION SHEET

House Committee on Public Utilities

4/22/2015

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Chris McClure	BP
Jonathan Brubaker	Brubaker + Assoc
David McGowan	NCPL
Camron Haulf	MA
Bill McAulay	PSNC
Danice Baum	Troutman Sanders
Bob Ford	NC Poultry Fed.
Allen Hardison	CRSWMA
Patrick Bupper	Mc's electric cooperatives
Henry Jones	Jordan Price



VISITOR REGISTRATION SHEET

House Committee on Public Utilities

4/22/2015

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Frances Liles	NCREA - Commerce
Erin Wynia	NCLM
Emma Benson	AFP
Kara Weishaar	SA
Meghan Cook	OITS
Jeff Sural	OITS - ADT
Brady Allen	NCTCC
Britton Allen	NCTCC
Rw Kaylon	Rw Kaylon Law
Theresa Allen	FLS
Nancy Hauffer	FLS Energy



Cancelled Notice

NORTH CAROLINA HOUSE OF REPRESENTATIVES COMMITTEE MEETING NOTICE AND BILL SPONSOR NOTIFICATION 2015-2016 SESSION

You are hereby notified that the **House Committee on Public Utilities** will **NOT** meet as follows:

DAY & DATE: Wednesday, April 29, 2015
TIME: 1:00 PM
LOCATION: 643 LOB
COMMENTS: Representative Dean Arp, Chairing

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 681	NC Energy Ratepayers Protection Act.	Representative Millis Representative Hager Representative Collins Representative Warren

Respectfully,

Representative Dean Arp, Co-Chair
Representative Jeff Collins, Co-Chair
Representative Harry Warren, Co-Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 10:47 AM on Wednesday, June 10, 2015.

____ Principal Clerk
____ Reading Clerk – House Chamber

Wendy Miller (Committee Assistant)



Wendy Miller (Rep. Dean Arp)

From: Larry Elliott (House Sgt. At Arms)
Sent: Tuesday, April 28, 2015 10:50 PM
To: Booker Washburn (Housekeeping); Antonio Diaz (Housekeeping); Charles Weathersby (Facilities Services, Manager); Howard Morris (Police); Jeff Weaver (Police, Chief); Karen Mitchell (Administration); Carolyn Bowden (House Sgt. at Arms Office); Larry Elliott (House Sgt. At Arms); Garland Shephard (House Sgt. At Arms); Mark Coggins (Rep. David Lewis); Will Tomlinson (President Pro Tem's Office)
Cc: Larry Elliott (House Sgt. At Arms); Wendy Miller (Rep. Dean Arp)
Subject: 643 LOB reservation for 04/29/2015, 01:00PM - 02:00PM has been canceled

The following room reservation has been canceled:

Title: House Committee on Public Utilities
Requestor: Wendy Miller (Rep. Dean Arp)
Date: Wednesday, April 29, 2015
Room: 643 LOB
Time Room Needed: 01:00PM - 02:00PM

Equipment:
Housekeeping: Water, Coffee



**NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2015-2016 SESSION**

You are hereby notified that the **House Committee on Public Utilities** will meet as follows:

DAY & DATE: Wednesday, April 29, 2015
TIME: 1:00 PM
LOCATION: 643 LOB
COMMENTS: Representative Dean Arp, Chairing

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 681	NC Energy Ratepayers Protection Act.	Representative Millis Representative Hager Representative Collins Representative Warren

Respectfully,

Representative Dean Arp, Co-Chair
Representative Jeff Collins, Co-Chair
Representative Harry Warren, Co-Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 9:24 AM on Monday, April 27, 2015.

____ Principal Clerk
____ Reading Clerk – House Chamber

Wendy Miller (Committee Assistant)



Wendy Miller (Rep. Dean Arp)

From: Larry Elliott (House Sgt. At Arms)
Sent: Monday, April 27, 2015 10:46 AM
To: Booker Washburn (Housekeeping); Antonio Diaz (Housekeeping); Charles Weathersby (Facilities Services, Manager); Howard Morris (Police); Jeff Weaver (Police, Chief); Karen Mitchell (Administration); Carolyn Bowden (House Sgt. at Arms Office); Larry Elliott (House Sgt. At Arms); Garland Shephard (House Sgt. At Arms); Mark Coggins (Rep. David Lewis); Will Tomlinson (President Pro Tem's Office)
Cc: Larry Elliott (House Sgt. At Arms); Wendy Miller (Rep. Dean Arp)
Subject: 643 LOB has been reserved for 04/29/2015, 01:00PM - 02:00PM

The following room has been reserved:

Title: House Committee on Public Utilities
Requestor: Wendy Miller (Rep. Dean Arp)
Date: Wednesday, April 29, 2015
Room: 643 LOB
Time Room Needed: 01:00PM - 02:00PM

Equipment:
Housekeeping: Water, Coffee



**House Committee on Public Utilities
Wednesday, June 10, 2015 at 1:00 PM
Room 643 of the Legislative Office Building**

MINUTES

The House Committee on Public Utilities met at 1:00 PM on June 10, 2015 in Room 643 of the Legislative Office Building. Representatives Alexander, Arp, Bishop, Blackwell, Bradford, Bumgardner, Catlin, Collins, Conrad, Cunningham, Earle, Elmore, Hager, D. Hall, Hanes, Harrison, Hastings, L. Johnson, R. Johnson, Malone, S. Martin, Meyer, Millis, R. Moore, Riddell, Warren, Watford, and Wray attended.

Representative Dean Arp, Chair, presided.

The following bills were considered:

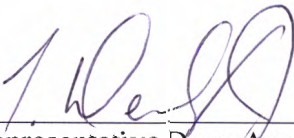
SB 716 Mountain Energy Act of 2015. (Senator Apodaca)

Chairman Arp stated that there was a PCS for SB 716. Representative Dana Bumgardner was recognized and made a motion for the PCS to be before the committee. The motion passed.

Chairman Arp introduced Representative Chuck McGrady to explain the bill. Chairman Arp then opened the floor for questions.

After much discussion, Chairman Arp recognized Representative Warren for the following motion: "Favorable to the House Committee Substitute, Unfavorable to the Senate Committee Substitute". The motion passed.

There being no further business before the committee, the meeting adjourned at 1:12 pm.



Representative Dean Arp, Chair
Presiding



Wendy Miller, Committee Clerk



**House Committee on Public Utilities
Wednesday, June 10, 2015, 1:00 PM
643 Legislative Office Building**

Chair – Representative Dean Arp

AGENDA

Welcome and Opening Remarks

Introduction of Sgt.-At-Arms and Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
SB 716	Mountain Energy Act of 2015.	Senator Apodaca

Other Business

Adjournment



House Committee on Public Utilities

[illegible]



House Committee on Public Utilities

[illegible]



**NORTH CAROLINA GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES**

PUBLIC UTILITIES COMMITTEE REPORT

**Representative Dean Arp, Co-Chair
Representative Jeff Collins, Co-Chair
Representative Harry Warren, Co-Chair**

FAVORABLE HOUSE COM SUB, UNFAVORABLE SENATE COM SUB

SB 716 (CS#1)

Mountain Energy Act of 2015.

Draft Number:	S716-PCS45379-TD-36
Serial Referral:	None
Recommended Referral:	None
Long Title Amended:	No
Floor Manager:	McGrady

TOTAL REPORTED: 1



★ C M R 4 3 9 - V - 1 ★



**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015**

S

D

**SENATE BILL 716
Commerce Committee Substitute Adopted 5/21/15
PROPOSED HOUSE COMMITTEE SUBSTITUTE S716-PCS45379-TD-36**

Short Title: Mountain Energy Act of 2015.

(Public)

Sponsors:

Referred to:

May 20, 2015

A BILL TO BE ENTITLED

AN ACT TO: (1) DIRECT THE NORTH CAROLINA UTILITIES COMMISSION TO RENDER AN EXPEDITED DECISION, UNDER CERTAIN CONDITIONS, ON AN APPLICATION FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR AN APPLICANT TO CONSTRUCT A GENERATING FACILITY THAT USES NATURAL GAS AS THE PRIMARY FUEL AND (2) MODIFY CERTAIN REQUIREMENTS UNDER THE COAL ASH MANAGEMENT ACT OF 2014 FOR COAL ASH SURFACE IMPOUNDMENTS LOCATED ON SITES AT WHICH ALL COAL-FIRED GENERATING UNITS PRESENT ON THOSE SITES WILL PERMANENTLY CEASE OPERATIONS BY JANUARY 31, 2020.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding G.S. 62-110.1, the Commission shall provide an expedited decision on an application for a certificate to construct a generating facility that uses natural gas as the primary fuel if the application meets the requirements of this section. A public utility shall provide written notice to the Commission of the date the utility intends to file an application under this section no less than 30 days prior to the submission of the application. When the public utility applies for a certificate as provided in this section, it shall submit to the Commission an estimate of the costs of construction of the gas-fired generating unit in such detail as the Commission may require. G.S. 62-110.1(e) and G.S. 62-82(a) shall not apply to a certificate applied for under this section. The Commission shall hold a single public hearing on the application applied for under this section and require the applicant to publish a single notice of the public hearing in a newspaper of general circulation in Buncombe County. The Commission shall render its decision on an application for a certificate, including any related transmission line located on the site of the new generation facility, within 45 days of the date the application is filed if all of the following apply:

- (1) The application for a certificate is for a generating facility to be constructed at the site of the Asheville Steam Electric Generating Plant located in Buncombe County.
- (2) The public utility will permanently cease operations of all coal-fired generating units at the site on or before the commercial operation of the generating unit that is the subject of the certificate application.
- (3) The new natural gas-fired generating facility has no more than twice the generation capacity as the coal-fired generating units to be retired.

SECTION 2.(a) Section 3(b) of S.L. 2014-122 reads as rewritten:



* S 7 1 6 - P C S 4 5 3 7 9 - T D - 3 6 *

1 "SECTION 3.(b) Notwithstanding G.S. 130A-309.211 or G.S. 130A-309.212, as enacted
2 by Section 3(a) of this act, and except as otherwise preempted by the requirements of federal
3 law, the following coal combustion residuals surface impoundments shall be deemed
4 high-priority ~~and, as soon as practicable, but no later than August 1, 2019, and~~ shall be closed
5 in conformance with Section 3(c) of this ~~act~~ act as follows:

- 6 (1) Coal combustion residuals surface impoundments located at the Dan River
7 Steam Station, owned and operated by Duke Energy Progress, and located in
8 Rockingham ~~County~~ County, as soon as practicable, but no later than August
9 1, 2019.
- 10 (2) Coal combustion residuals surface impoundments located at the Riverbend
11 Steam Station, owned and operated by Duke Energy Carolinas, and located
12 in Gaston ~~County~~ County, as soon as practicable, but no later than August 1,
13 2019.
- 14 (3) Coal combustion residuals surface impoundments located at the Asheville
15 Steam Electric Generating Plant, owned and operated by Duke Energy
16 Progress, and located in Buncombe ~~County~~ County, as soon as practicable,
17 but no later than August 1, 2022.
- 18 (4) Coal combustion residuals surface impoundments located at the Sutton
19 Plant, owned and operated by Duke Energy Progress, and located in New
20 Hanover ~~County~~ County, as soon as practicable, but no later than August 1,
21 2019."

22 SECTION 2.(b) The requirements of subsections (c) through (f) of
23 G.S. 130A-309.210 shall not apply to coal combustion residuals surface impoundments and
24 electric generating facilities located at the Asheville Steam Electric Generating Plant in
25 Buncombe County.

26 SECTION 2.(c) This section becomes effective August 1, 2016, if, on or before
27 that date, the North Carolina Utilities Commission has issued a certificate of public
28 convenience and necessity to Duke Energy Progress for a new natural gas-fired generating
29 facility, pursuant to Section 1 of this act, based upon written notice submitted to the
30 Commission from Duke Energy Progress that it will permanently cease operations of all
31 coal-fired generating units at the Asheville Steam Electric Generating Plant located in
32 Buncombe County no later than January 31, 2020.

33 SECTION 3. Except as otherwise provided, this act is effective when it becomes
34 law.



SENATE BILL 716: Mountain Energy Act of 2015

2015-2016 General Assembly

Committee: House Public Utilities
Introduced by: Sen. Apodaca
Analysis of: PCS to Second Edition
S716-CSTD-30

Date: June 10, 2015
Prepared by: Jennifer McGinnis
Heather Fennell
Committee Counsel

SUMMARY: *Senate Bill 716 would: (1) direct the North Carolina Utilities Commission (Commission) to render an expedited decision, under certain conditions, on an application for a certificate of public convenience and necessity for an applicant to construct a generating facility that uses natural gas as the primary fuel, and (2) modify certain requirements under the Coal Ash Management Act of 2014 for coal combustion residuals surface impoundments and electric generating facilities located at the Asheville Steam Electric Generating Plant located in Buncombe County, if certain criteria concerning construction of a gas-fired generating facility and cessation of coal-fired facilities at the site are met.*

The PCS would add a requirement for notice and a public hearing under the expedited process for a certificate to build the new gas-fired generating facility at the site of the Asheville Steam Electric Generating Plant.

BILL ANALYSIS:

Section 1

Current law provides that prior to constructing a generating facility, a public utility must obtain a certificate of public convenience and necessity. As a condition of receiving a certificate, the utility must provide an estimate of the construction costs of the facility with the Commission. The Commission must hold a public hearing on the application for a certificate within three months of the filing of the application for a certificate. Prior to the public hearing, the utility must provide notice of the hearing for four weeks in a newspaper with circulation in the area where the facility is proposed to be constructed.

The Commission may not approve the certificate if the proposed facility will not be consistent with the long-range needs of generation capacity in the State. The Commission may modify or revoke the certificate if the long-range needs for generation capacity changes, or if the certificate is otherwise no longer in the public interest.

Section 1 of Senate Bill 716 would provide an expedited process for an application to obtain a certificate of public convenience and necessity for a gas-fired generating facility to be constructed at the site of the Asheville Steam Electric Generating Plant located in Buncombe County. The Commission must render a decision on the certificate within 45 days of the application. The Commission must hold a public hearing on the certificate issued under this section, with notice of the public hearing to be given once in a newspaper with general circulation in Buncombe County. The utility must also submit an estimate of the proposed costs of constructing the gas-fired generation facility. In order to qualify for the expedited certificate process, the utility must cease operation of the coal-fired facilities at the same site,

O. Walker Reagan
Director



Research Division
(919) 733-2578

Senate Bill 716

Page 2

and the new gas-fired facilities may not have more than twice the capacity of the coal-fired units to be retired.

Section 2

Current law¹ designates coal combustion residuals surface impoundments (impoundments) located at the Asheville Steam Electric Generating Plant in Buncombe County, owned and operated by Duke Energy Progress, and impoundments located at three other facilities, as high-priority, and requires these impoundments to close no later than August 1, 2019, as follows:

- The impoundments must be dewatered.
- All coal combustion residuals (CCRs) must be removed from the impoundments and transferred for: (i) disposal in a combustion products landfill or coal combustion residuals landfill, industrial landfill, or municipal solid waste landfill; or (ii) use in a structural fill, or other beneficial use as allowed by law.
- Where groundwater quality is degraded as a result of the impoundment, corrective action is required to restore groundwater quality.

In addition, current law² imposes various restrictions on the generation, disposal, and use of CCRs, including:

- Prohibiting the discharge of stormwater into an impoundment: (i) at an electric generating facility where the coal-fired generating units are no longer producing CCRs on or after December 31, 2018; and (ii) at an electric generating facility where the coal-fired generating units are actively producing CCRs on or after December 31, 2019.
- Requiring all electric generating facilities owned by a public utility to convert to disposal of "dry" fly ash, or retire the facility on or before December 31, 2018.
- Requiring all electric generating facilities owned by a public utility to convert to disposal of "dry" bottom ash, or retire the facility on or before December 31, 2019.

Section 2 of Senate Bill 716 would: (i) change the date by which closure of the impoundments located at the Asheville Steam Electric Generating Plant is required from August 1, 2019 to August 1, 2022; and (ii) exempt impoundments and electric generating facilities located at the Asheville Steam Electric Generating Plant located in Buncombe County from the prohibitions related to stormwater discharge and requirements for conversion to "dry" fly and bottom ash as previously described.

EFFECTIVE DATE: Section 1 of the bill would be effective when it becomes law. Section 2 would become effective August 1, 2016, if, on or before that date, the Commission has issued a certificate of public convenience and necessity to Duke Energy Progress for a new natural gas-fired generating facility, pursuant to Section 1 of the bill, based upon written notice submitted to the Commission from Duke Energy Progress that it will permanently cease operations of all coal-fired generating units at the Asheville Steam Electric Generating Plant located in Buncombe County no later than January 31, 2020.

¹ Section 3(b) of S.L. 2014-122/S729

² G.S. 130A-309.210

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

S

D

SENATE BILL 716
Commerce Committee Substitute Adopted 5/21/15
PROPOSED COMMITTEE SUBSTITUTE S716-CSTD-30 [v.5]

6/5/2015 4:04:39 PM

Short Title: Mountain Energy Act of 2015.

(Public)

Sponsors:

Referred to:

May 20, 2015

A BILL TO BE ENTITLED

AN ACT TO: (1) DIRECT THE NORTH CAROLINA UTILITIES COMMISSION TO RENDER AN EXPEDITED DECISION, UNDER CERTAIN CONDITIONS, ON AN APPLICATION FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR AN APPLICANT TO CONSTRUCT A GENERATING FACILITY THAT USES NATURAL GAS AS THE PRIMARY FUEL AND (2) MODIFY CERTAIN REQUIREMENTS UNDER THE COAL ASH MANAGEMENT ACT OF 2014 FOR COAL ASH SURFACE IMPOUNDMENTS LOCATED ON SITES AT WHICH ALL COAL-FIRED GENERATING UNITS PRESENT ON THOSE SITES WILL PERMANENTLY CEASE OPERATIONS BY JANUARY 31, 2020.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding G.S. 62-110.1, the Commission shall provide an expedited decision on an application for a certificate to construct a generating facility that uses natural gas as the primary fuel if the application meets the requirements of this section. A public utility shall provide written notice to the Commission of the date the utility intends to file an application under this section no less than 30 days prior to the submission of the application. When the public utility applies for a certificate as provided in this section, it shall submit to the Commission an estimate of the costs of construction of the gas-fired generating unit in such detail as the Commission may require. G.S. 62-110.1(e) and G.S. 62-82(a) shall not apply to a certificate applied for under this section. The Commission shall hold a single public hearing on the application applied for under this section, and require the applicant to publish a single notice of the public hearing in a newspaper of general circulation in Buncombe County. The Commission shall render its decision on an application for a certificate, including any related transmission line located on the site of the new generation facility, within 45 days of the date the application is filed if all of the following apply:

- (1) The application for a certificate is for a generating facility to be constructed at the site of the Asheville Steam Electric Generating Plant located in Buncombe County.
- (2) The public utility will permanently cease operations of all coal-fired generating units at the site on or before the commercial operation of the generating unit that is the subject of the certificate application.
- (3) The new natural gas-fired generating facility has no more than twice the generation capacity as the coal-fired generating units to be retired.

SECTION 2.(a) Section 3(b) of S.L. 2014-122 reads as rewritten:



* S 7 1 6 - C S T D - 3 0 - V - 5 *

1 "SECTION 3.(b) Notwithstanding G.S. 130A-309.211 or G.S. 130A-309.212, as enacted
2 by Section 3(a) of this act, and except as otherwise preempted by the requirements of federal
3 law, the following coal combustion residuals surface impoundments shall be deemed
4 high-priority and, ~~as soon as practicable, but no later than August 1, 2019, and~~ shall be closed
5 in conformance with Section 3(c) of this ~~act~~ act as follows:

- 6 (1) Coal combustion residuals surface impoundments located at the Dan River
7 Steam Station, owned and operated by Duke Energy Progress, and located in
8 Rockingham ~~County~~ County, as soon as practicable, but no later than August
9 1, 2019.
- 10 (2) Coal combustion residuals surface impoundments located at the Riverbend
11 Steam Station, owned and operated by Duke Energy Carolinas, and located
12 in Gaston ~~County~~ County, as soon as practicable, but no later than August 1,
13 2019.
- 14 (3) Coal combustion residuals surface impoundments located at the Asheville
15 Steam Electric Generating Plant, owned and operated by Duke Energy
16 Progress, and located in Buncombe ~~County~~ County, as soon as practicable,
17 but no later than August 1, 2022.
- 18 (4) Coal combustion residuals surface impoundments located at the Sutton
19 Plant, owned and operated by Duke Energy Progress, and located in New
20 Hanover ~~County~~ County, as soon as practicable, but no later than August 1,
21 2019."

22 SECTION 2.(b) The requirements of subsections (c) through (f) of
23 G.S. 130A-309.210 shall not apply to coal combustion residuals surface impoundments and
24 electric generating facilities located at the Asheville Steam Electric Generating Plant located in
25 Buncombe County.

26 SECTION 2.(c) This section becomes effective August 1, 2016, if, on or before
27 that date, the North Carolina Utilities Commission has issued a certificate of public
28 convenience and necessity to Duke Energy Progress for a new natural gas-fired generating
29 facility, pursuant to Section 1 of this act, based upon written notice submitted to the
30 Commission from Duke Energy Progress that it will permanently cease operations of all
31 coal-fired generating units at the Asheville Steam Electric Generating Plant located in
32 Buncombe County no later than January 31, 2020.

33 SECTION 3. Except as otherwise provided, this act is effective when it becomes
34 law.

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015**

S

2

**SENATE BILL 716
Commerce Committee Substitute Adopted 5/21/15**

Short Title: Mountain Energy Act of 2015.

(Public)

Sponsors:

Referred to:

May 20, 2015

A BILL TO BE ENTITLED

AN ACT TO: (1) DIRECT THE NORTH CAROLINA UTILITIES COMMISSION TO RENDER AN EXPEDITED DECISION, UNDER CERTAIN CONDITIONS, ON AN APPLICATION FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR AN APPLICANT TO CONSTRUCT A GENERATING FACILITY THAT USES NATURAL GAS AS THE PRIMARY FUEL AND (2) MODIFY CERTAIN REQUIREMENTS UNDER THE COAL ASH MANAGEMENT ACT OF 2014 FOR COAL ASH SURFACE IMPOUNDMENTS LOCATED ON SITES AT WHICH ALL COAL-FIRED GENERATING UNITS PRESENT ON THOSE SITES WILL PERMANENTLY CEASE OPERATIONS BY JANUARY 31, 2020.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding G.S. 62-110.1, the Commission shall provide an expedited decision on an application for a certificate to construct a generating facility that uses natural gas as the primary fuel if the application meets the requirements of this section. When the public utility applies for a certificate as provided in this section, it shall submit to the Commission an estimate of the costs of construction of the gas-fired generating unit in such detail as the Commission may require. G.S. 62-110.1(e) and G.S. 62-82(a) shall not apply to a certificate applied for under this section. The Commission shall render its decision on an application for a certificate, including any related transmission line located on the site of the new generation facility, within 45 days of the date the application is filed if all of the following apply:

- (1) The application for a certificate is for a generating facility to be constructed at the site of the Asheville Steam Electric Generating Plant located in Buncombe County.
- (2) The public utility will permanently cease operations of all coal-fired generating units at the site on or before the commercial operation of the generating unit that is the subject of the certificate application.
- (3) The new natural gas-fired generating facility has no more than twice the generation capacity as the coal-fired generating units to be retired.

SECTION 2.(a) Section 3(b) of S.L. 2014-122 reads as rewritten:

"SECTION 3.(b) Notwithstanding G.S. 130A-309.211 or G.S. 130A-309.212, as enacted by Section 3(a) of this act, and except as otherwise preempted by the requirements of federal law, the following coal combustion residuals surface impoundments shall be deemed high-priority and, ~~as soon as practicable, but no later than August 1, 2019, and~~ shall be closed in conformance with Section 3(c) of this act: act as follows:



- (1) Coal combustion residuals surface impoundments located at the Dan River Steam Station, owned and operated by Duke Energy Progress, and located in Rockingham ~~County~~-County, as soon as practicable, but no later than August 1, 2019.
- (2) Coal combustion residuals surface impoundments located at the Riverbend Steam Station, owned and operated by Duke Energy Carolinas, and located in Gaston ~~County~~-County, as soon as practicable, but no later than August 1, 2019.
- (3) Coal combustion residuals surface impoundments located at the Asheville Steam Electric Generating Plant, owned and operated by Duke Energy Progress, and located in Buncombe ~~County~~-County, as soon as practicable, but no later than August 1, 2022.
- (4) Coal combustion residuals surface impoundments located at the Sutton Plant, owned and operated by Duke Energy Progress, and located in New Hanover ~~County~~-County, as soon as practicable, but no later than August 1, 2019."

SECTION 2.(b) The requirements of subsections (c) through (f) of G.S. 130A-309.210 shall not apply to coal combustion residuals surface impoundments and electric generating facilities located at the Asheville Steam Electric Generating Plant located in Buncombe County.

SECTION 2.(c) This section becomes effective August 1, 2016, if, on or before that date, the North Carolina Utilities Commission has issued a certificate of public convenience and necessity to Duke Energy Progress for a new natural gas-fired generating facility, pursuant to Section 1 of this act, based upon written notice submitted to the Commission from Duke Energy Progress that it will permanently cease operations of all coal-fired generating units at the Asheville Steam Electric Generating Plant located in Buncombe County no later than January 31, 2020.

SECTION 3. Except as otherwise provided, this act is effective when it becomes law.

Committee Sergeants at Arms

NAME OF COMMITTEE House Committee on Public Utilities

DATE: 6-10-2015

Room: 643

House Sgt-At Arms:

1. Name: Warren Hawkins

2. Name: Doug Harris

3. Name: David Leighton

4. Name: _____

5. Name: _____

Senate Sgt-At Arms:

1. Name: _____

2. Name: _____

3. Name: _____

4. Name: _____

5. Name: _____



Wednesday, June 10
PUBLIC UTILITIES

Room
643

Time
1:00 pm

Name	County	Sponsor
Chris Boulton	Mecklenburg	Jacqueline Michelle Schaffer
Jalen Cole	Wake	Yvonne Lewis Holley
Spencer Mangum	Wake	George Robinson
Levi McCracken	Haywood	Michele D. Presnell
Dylan Melvin	Bladen	William D. Brisson
Kodi Moses	Mecklenburg	Charles Jeter



VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON PUBLIC UTILITIES

June 10, 2015

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Sarah McQuillan

SSGNC

Kristen Haster

SSGNC

Cameron Harty

MVA

Angie Maier

NCPC

Deans Eatman

NCPC

Paul Sherman

MCFB

Laurie Onorio

LOLLC

R W Kayla

Kayla Law Firm

Henry Jones

Jordan Price

Patrick Byrnes

NCAEC

Dr. Paul Stens

SA



VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON PUBLIC UTILITIES

June 10, 2015

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Kara Weishaar	SA
Dana Simpson	SA
Pam Buff	School 2 Hrv.
Austin Pruitt	Perkinson Law
Daniel Rahn	Township Services
JAZ Tamm	Piedmont Nat Gas
Betsy McCoikle	B NCSEA
Frances Liles	NCREA
David McGowan	NCP
Tommy Scott	MCH
Bugs Dunne	Werner Bros



VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON PUBLIC UTILITIES

June 10, 2015

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Tom Bean	NCSEA, EDF
Sharon Miller	CUCA
Tonya Horton	TSS
Sandra Danner	PSNCC
Tony Wike	PSNCC
Dan Conrad	NCUC
Loren Hintz	Citizen Chapel Hill
Sam Watson	NCUC
Cassie Gavin	Siena Club
Molly Diggins	Siena Club
May Maller Ashin	SEU



VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON PUBLIC UTILITIES

June 10, 2015

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Brooks Rainey Pearson	SELC
James McLawhorn	NCUC - Public Staff
Becky Jenkins	CAGE
Betsy Baily	CAGE
BUD KNOTT	DENR
MATT Dockhorn	DENR
Nancy Lindner	NCWARN
Carol Townsend	Gov. Office
Park King	NCGIA staff
Peter Magner	NCLCV
Phoebe Landon	Brooks Pierce



VISITOR REGISTRATION SHEET

House Committee on Public Utilities

6-10-2015

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Susan Vick	Duke Energy
Hayden Bangues	FSP
Tom Jones	FSP
Tracy Kimbrell	Parker Poe
Kelli Kukura	Duke Energy
Kathy Harkins	Duke Energy
Meredith Archie	Duke Energy



**House Committee on Public Utilities
Wednesday, June 17, 2015 at 1:00 PM
Room 643 of the Legislative Office Building**

MINUTES

The House Committee on Public Utilities met at 1:00 PM on June 17, 2015 in Room 643 of the Legislative Office Building. Representatives Alexander, Arp, J. Bell, Bishop, Blackwell, Bradford, B. Brown, Bumgardner, Collins, Conrad, Cunningham, Dollar, Earle, Elmore, Hager, Hanes, Harrison, L. Johnson, Luebke, Malone, Meyer, Millis, R. Moore, Riddell, Warren, Watford, and Wray attended.

Representative Jeff Collins, Chair, presided.

The following bills were considered:


SB 88 Pole Attachment Disputes. (Senator Brown)

Chairman Collins stated that there was a House PCS for SB 88. He then recognized Representative Brian Brown for a motion that the House PCS for SB 88 be before the committee. The motion passed.

Chairman Collins recognized Representative Stam to explain the bill and then opened the floor for discussion.

Representative Bumgardner was recognized and made a motion for a "Favorable Report for the House Committee Substitute, Unfavorable to the Senate Committee Substitute with a recommended referral to House Finance." The motion passed.

The meeting adjourned at 1:12 pm.


Representative Jeff Collins, Chair
Presiding


Wendy Miller, Committee Clerk



**House Committee on Public Utilities
Wednesday, June 17, 2015, 1:00 PM
643 Legislative Office Building**

AGENDA

Representative Jeff Collins presiding.

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
SB 88	Pole Attachment Disputes.	Senator Brown

Adjournment



**NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2015-2016 SESSION**

You are hereby notified that the **House Committee on Public Utilities** will meet as follows:

DAY & DATE: Wednesday, June 17, 2015
TIME: 1:00 PM
LOCATION: 643 LOB
COMMENTS: Representative Jeff Collins Chairing

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 88	Pole Attachment Disputes.	Senator Brown

Respectfully,

Representative Dean Arp, Co-Chair
Representative Jeff Collins, Co-Chair
Representative Harry Warren, Co-Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 8:54 AM on Tuesday, June 16, 2015.

____ Principal Clerk
____ Reading Clerk – House Chamber

Wendy Miller (Committee Assistant)



House Committee on Public Utilities

[illegible]



House Committee on Public Utilities

[illegible]



NORTH CAROLINA GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES

PUBLIC UTILITIES COMMITTEE REPORT

Representative Dean Arp, Co-Chair
Representative Jeff Collins, Co-Chair
Representative Harry Warren, Co-Chair

FAVORABLE HOUSE COM SUB, UNFAVORABLE SENATE COM SUB AND RE-REFERRED

SB 88 (CS#1)

Pole Attachment Disputes.

Draft Number: S88-PCS25272-TD-35

Serial Referral: None

Recommended Referral: FINANCE

Long Title Amended: No

Floor Manager: Stam

TOTAL REPORTED: 1



* C M R 4 6 2 - V - 1 *



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

S

D

SENATE BILL 88
Commerce Committee Substitute Adopted 4/28/15
PROPOSED HOUSE COMMITTEE SUBSTITUTE S88-PCS25272-TD-35

Short Title: Pole Attachment Disputes.

(Public)

Sponsors:

Referred to:

February 17, 2015

1 A BILL TO BE ENTITLED
2 AN ACT TO ASSIGN POLE ATTACHMENT DISPUTES TO THE NORTH CAROLINA
3 UTILITIES COMMISSION.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 62-350(a) reads as rewritten:

6 "(a) A municipality, or a membership corporation organized under Chapter 117 of the
7 General Statutes, that owns or controls poles, ducts, or ~~e~~onduits-conduits, but which is exempt
8 from regulation under section 224 of the Communications Act of 1934, as amended, shall allow
9 any communications service provider to utilize its poles, ducts, and conduits at just, reasonable,
10 and nondiscriminatory rates, terms, and conditions adopted pursuant to negotiated or
11 adjudicated agreements. A request to utilize poles, ducts, or conduits under this section may be
12 denied only if there is insufficient capacity or for reasons of safety, reliability, and generally
13 applicable engineering principles, and those limitations cannot be remedied by rearranging,
14 expanding, or otherwise reengineering the facilities at the reasonable and actual cost of the
15 municipality or membership corporation to be reimbursed by the communications service
16 provider. In granting a request under this section, a municipality or membership corporation
17 shall require the requesting entity to comply with applicable safety requirements, including the
18 National Electrical Safety Code and the applicable rules and regulations issued by the
19 Occupational Safety and Health Administration. Any fees due from a communications service
20 provider accessing or attaching to poles, ducts, or conduits under this section must be billed by
21 separate invoice and shall not be bundled with charges for electric service."

22 **SECTION 2.** G.S. 62-350(c) reads as rewritten:

23 "(c) In the event the parties are unable to reach an agreement within 90 days of a request
24 to negotiate pursuant to subsection (b) of this section, or if either party believes in good faith
25 that an impasse has been reached prior to the expiration of the 90-day period, either party may
26 ~~bring an action in Business Court in accordance with the procedures for a mandatory business~~
27 ~~ease set forth in G.S. 7A-45.4, and the Business Court initiate proceedings to resolve the dispute~~
28 before the Commission. The Commission shall have exclusive jurisdiction over such
29 actions/proceedings arising under this section and shall adjudicate disputes arising under this
30 section on a case-by-case basis. The Commission shall not exercise general rate-making
31 authority over communication service provider utilization of municipal or membership
32 corporation facilities. This section does not impact or expand the Commission's authority under
33 G.S. 62-133.5(h) or (m). The Public Staff may, at the discretion of the Commission, be made a
34 party to any proceedings under this section as may be appropriate to serve the using and
35 consuming public. The parties shall identify with specificity in their respective pleadings-filings



* S 8 8 - P C S 2 5 2 7 2 - T D - 3 5 *

the issues in dispute, and the Business Court shall (i) establish a procedural schedule which, unless otherwise agreed by the parties, is intended to resolve the action within a time period not to exceed 180 days of the commencement of the action, (ii) ~~dispute~~. The Commission, in its discretion, may consider any evidence or rate-making methodologies offered or proposed by the parties and shall resolve any dispute identified in the ~~pleadings~~ filings consistent with the public interest and necessity so as to derive just and reasonable rates, terms, and conditions, ~~taking into consideration and applying such other factors or evidence that may be presented by a party, including without limitation the rules and regulations applicable to attachments by each type of communications service provider under section 224 of the Communications Act of 1934, as amended, and (iii) conditions.~~ The Commission shall apply any new rate adopted as a result of the action retroactively to the date immediately following the expiration of the 90-day negotiating period or initiation of the ~~lawsuit~~ proceeding, whichever is earlier. If the new rate is for the continuation of an existing agreement, the new rate shall apply retroactively to the date immediately following the end of the existing agreement. Prior to ~~commencing any action~~ initiating any proceedings under this subsection, a party must pay any undisputed fees related to the use of poles, ducts, or conduits which are due and owing under a preexisting agreement with the municipality or membership corporation. In any ~~action~~ proceeding brought under this subsection, the ~~court~~ Commission may resolve any existing disputes regarding fees alleged to be owing under a preexisting agreement or regarding safety compliance arising under subsection (d) of this section. The provisions of this section do not apply to an entity whose poles, ducts, and conduits are subject to regulation under section 224 of the Communications Act of 1934, as amended."

SECTION 3. G.S. 62-350(d)(4) reads as rewritten:

"(4) All attaching parties shall work cooperatively to determine the causation of, and to effectuate any remedy for, noncompliant lines, equipment, and attachments. In the event of disputes under this subsection, the involved municipality or membership corporation or any attaching party may ~~bring an action in the Business Court in accordance with the procedures for a mandatory business case set forth in G.S. 7A-45.4, and the Business Court initiate proceedings to resolve any dispute before the Commission. The Commission shall have exclusive jurisdiction over such actions. proceedings arising under this section and shall adjudicate disputes arising under this section on a case-by-case basis. The Commission shall not exercise general rate-making authority over communication service provider utilization of municipal or membership corporation facilities. This section does not impact or expand the Commission's authority under G.S. 62-133.5(h) or (m). The Public Staff may, at the discretion of the Commission, be made a party to any proceedings under this section as may be appropriate to serve the using and consuming public. The Business Court~~ Commission shall resolve such disputes consistent with the public interest and necessity. Nothing herein shall prevent a municipality or membership corporation from taking such action as may be necessary to remedy any exigent issue which is an imminent threat of death or injury to persons or damage to property."

SECTION 4. G.S. 62-350(f) reads as rewritten:

"(f) The ~~Business Court~~ Commission may adopt such rules as it deems necessary to ~~implement its jurisdiction and authority under this section. exercise its responsibility to adjudicate any disputes arising under this section.~~"

SECTION 5. G.S. 62-350 is amended by adding a new subsection to read:

"(h) As part of final adjudication, the Commission may assess the costs, not to exceed ten thousand dollars (\$10,000), of adjudicating a dispute under this section against the parties to the dispute proceeding. If the Public Staff is a party to a dispute proceeding and the Executive

1 Director of the Public Staff deems it necessary to hire expert witnesses or other individuals
2 with professional expertise to assist the Public Staff in the dispute proceeding, the Commission
3 may assess such additional costs incurred by the Public Staff by allocating such costs against
4 the parties to the dispute proceeding."

5 **SECTION 6.** G.S. 7A-45.4(b)(3) is repealed.

6 **SECTION 7.** Notwithstanding the deletion of language referencing the factors or
7 evidence that may be presented by a party in Section 2 of this act, the Commission may
8 consider any evidence presented by a party, including any methodologies previously applied.

9 **SECTION 8.** This act is effective when it becomes law and applies to any action
10 filed on or after that date.



.

.



.

.





SENATE BILL 88: Pole Attachment Disputes

2015-2016 General Assembly

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

Date: June 17, 2015
Prepared by: Heather Fennell
Committee Counsel

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

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

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

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

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

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

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

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

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

O. Walker Reagan
Director



Research Division
(919) 733-2578

Senate Bill 88

Page 2

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

- Inserts language restating federal law that municipalities and membership corporations are exempt from regulation under the federal law that provides guidance to the FCC on the regulation of rates, terms, and conditions for pole attachments.
- Deletes a specific reference to a section of the federal Communications Act that provides guidance to the FCC for regulation of rates, terms, and conditions for pole attachments between entities that are subject to that federal law, in the reference to the types of factors or evidence the parties may present in resolving a dispute.
- Removes the requirement that pole attachment disputes be subject to a procedural schedule that requires the action to be resolved by the adjudicating body within 180 days.

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

S

D

SENATE BILL 88
Commerce Committee Substitute Adopted 4/28/15
PROPOSED HOUSE COMMITTEE SUBSTITUTE S88-CSTD-35 [v.1]

6/9/2015 5:14:57 PM

Short Title: Pole Attachment Disputes.

(Public)

Sponsors:

Referred to:

February 17, 2015

A BILL TO BE ENTITLED

AN ACT TO ASSIGN POLE ATTACHMENT DISPUTES TO THE NORTH CAROLINA UTILITIES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 62-350(a) reads as rewritten:

"(a) A municipality, or a membership corporation organized under Chapter 117 of the General Statutes, that owns or controls poles, ducts, or ~~conduits~~ conduits, but which is exempt from regulation under section 224 of the Communications Act of 1934, as amended, shall allow any communications service provider to utilize its poles, ducts, and conduits at just, reasonable, and nondiscriminatory rates, terms, and conditions adopted pursuant to negotiated or adjudicated agreements. A request to utilize poles, ducts, or conduits under this section may be denied only if there is insufficient capacity or for reasons of safety, reliability, and generally applicable engineering principles, and those limitations cannot be remedied by rearranging, expanding, or otherwise reengineering the facilities at the reasonable and actual cost of the municipality or membership corporation to be reimbursed by the communications service provider. In granting a request under this section, a municipality or membership corporation shall require the requesting entity to comply with applicable safety requirements, including the National Electrical Safety Code and the applicable rules and regulations issued by the Occupational Safety and Health Administration. Any fees due from a communications service provider accessing or attaching to poles, ducts, or conduits under this section must be billed by separate invoice and shall not be bundled with charges for electric service."

SECTION 2. G.S. 62-350(c) reads as rewritten:

"(c) In the event the parties are unable to reach an agreement within 90 days of a request to negotiate pursuant to subsection (b) of this section, or if either party believes in good faith that an impasse has been reached prior to the expiration of the 90-day period, either party may ~~bring an action in Business Court in accordance with the procedures for a mandatory business case set forth in G.S. 7A-45.4, and the Business Court initiate proceedings to resolve the dispute before the Commission. The Commission shall have exclusive jurisdiction over such actions-proceedings arising under this section and shall adjudicate disputes arising under this section on a case-by-case basis. The Commission shall not exercise general rate making authority over communication service provider utilization of municipal or membership corporation facilities. This section does not impact or expand the Commission's authority under G.S. 62-133.5(h) or (m). The Public Staff may, at the discretion of the Commission, be made a party to any proceedings under this section as may be appropriate to serve the using and consuming public. The parties shall identify with specificity in their respective pleadings-filings~~



* S 8 8 - C S T D - 3 5 - V - 1 *

the issues in dispute, and the Business Court shall (i) establish a procedural schedule which, unless otherwise agreed by the parties, is intended to resolve the action within a time period not to exceed 180 days of the commencement of the action, (ii) dispute. The Commission, in its discretion, may consider any evidence or rate-making methodologies offered or proposed by the parties and shall resolve any dispute identified in the pleadings-filings consistent with the public interest and necessity so as to derive just and reasonable rates, terms, and conditions, taking into consideration and applying such other factors or evidence that may be presented by a party, including without limitation the rules and regulations applicable to attachments by each type of communications service provider under section 224 of the Communications Act of 1934, as amended, and (iii) conditions. The Commission shall apply any new rate adopted as a result of the action retroactively to the date immediately following the expiration of the 90-day negotiating period or initiation of the lawsuit, proceeding, whichever is earlier. If the new rate is for the continuation of an existing agreement, the new rate shall apply retroactively to the date immediately following the end of the existing agreement. Prior to commencing any action initiating any proceedings under this subsection, a party must pay any undisputed fees related to the use of poles, ducts, or conduits which are due and owing under a preexisting agreement with the municipality or membership corporation. In any action-proceeding brought under this subsection, the court-Commission may resolve any existing disputes regarding fees alleged to be owing under a preexisting agreement or regarding safety compliance arising under subsection (d) of this section. The provisions of this section do not apply to an entity whose poles, ducts, and conduits are subject to regulation under section 224 of the Communications Act of 1934, as amended."

SECTION 3. G.S. 62-350(d)(4) reads as rewritten:

"(4) All attaching parties shall work cooperatively to determine the causation of, and to effectuate any remedy for, noncompliant lines, equipment, and attachments. In the event of disputes under this subsection, the involved municipality or membership corporation or any attaching party may bring an action in the Business Court in accordance with the procedures for a mandatory business case set forth in G.S. 7A 45.4, and the Business Court initiate proceedings to resolve any dispute before the Commission. The Commission shall have exclusive jurisdiction over such actions-proceedings arising under this section and shall adjudicate disputes arising under this section on a case-by-case basis. The Commission shall not exercise general rate making authority over communication service provider utilization of municipal or membership corporation facilities. This section does not impact or expand the Commission's authority under G.S. 62-133.5(h) or (m). The Public Staff may, at the discretion of the Commission, be made a party to any proceedings under this section as may be appropriate to serve the using and consuming public. The Business Court-Commission shall resolve such disputes consistent with the public interest and necessity. Nothing herein shall prevent a municipality or membership corporation from taking such action as may be necessary to remedy any exigent issue which is an imminent threat of death or injury to persons or damage to property."

SECTION 4. G.S. 62-350(f) reads as rewritten:

"(f) The Business Court-Commission may adopt such rules as it deems necessary to implement its jurisdiction and authority under this section-exercise its responsibility to adjudicate any disputes arising under this section."

SECTION 5. G.S. 62-350 is amended by adding a new subsection to read:

"(h) As part of final adjudication, the Commission may assess the costs, not to exceed ten thousand dollars (\$10,000), of adjudicating a dispute under this section against the parties to the dispute proceeding. If the Public Staff is a party to a dispute proceeding and the Executive

1 Director of the Public Staff deems it necessary to hire expert witnesses or other individuals
2 with professional expertise to assist the Public Staff in the dispute proceeding, the Commission
3 may assess such additional costs incurred by the Public Staff by allocating such costs against
4 the parties to the dispute proceeding."

5 **SECTION 6.** G.S. 7A-45.4(b)(3) is repealed.

6 **SECTION 7.** Notwithstanding the deletion of language referencing the factors or
7 evidence that may be presented by a party in Section 2 of this act, the Commission may
8 consider any evidence presented by a party, including any methodologies previously applied.

9 **SECTION 8.** This act is effective when it becomes law and applies to any action
10 filed on or after that date.



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

S

2

SENATE BILL 88
Commerce Committee Substitute Adopted 4/28/15

Short Title: Pole Attachment Disputes.

(Public)

Sponsors:

Referred to:

February 17, 2015

1 A BILL TO BE ENTITLED
2 AN ACT TO ASSIGN POLE ATTACHMENT DISPUTES TO THE NORTH CAROLINA
3 UTILITIES COMMISSION.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 62-350(a) reads as rewritten:

6 "(a) A municipality, or a membership corporation organized under Chapter 117 of the
7 General Statutes, that owns or controls poles, ducts, or ~~conduits~~-conduits, but which is exempt
8 from regulation under section 224 of the Communications Act of 1934, as amended, shall allow
9 any communications service provider to utilize its poles, ducts, and conduits at ~~just,~~
10 ~~reasonable, just and reasonable and nondiscriminatory~~ rates, and ~~nondiscriminatory~~ terms, and
11 conditions adopted pursuant to negotiated or adjudicated agreements. A request to utilize poles,
12 ducts, or conduits under this section may be denied only if there is insufficient capacity or for
13 reasons of safety, reliability, and generally applicable engineering principles, and those
14 limitations cannot be remedied by rearranging, expanding, or otherwise reengineering the
15 facilities at the reasonable and actual cost of the municipality or membership corporation to be
16 reimbursed by the communications service provider. In granting a request under this section, a
17 municipality or membership corporation shall require the requesting entity to comply with
18 applicable safety requirements, including the National Electrical Safety Code and the
19 applicable rules and regulations issued by the Occupational Safety and Health Administration."

20 **SECTION 2.** G.S. 62-350(c) reads as rewritten:

21 "(c) In the event the parties are unable to reach an agreement within 90 days of a request
22 to negotiate pursuant to subsection (b) of this section, or if either party believes in good faith
23 that an impasse has been reached prior to the expiration of the 90-day period, either party may
24 ~~bring an action in Business Court in accordance with the procedures for a mandatory business~~
25 ~~ease set forth in G.S. 7A-45.4, and the Business Court initiate proceedings to resolve the dispute~~
26 ~~before the Commission. The Commission shall have exclusive jurisdiction over such~~
27 ~~actions-proceedings arising under this section and shall adjudicate individual disputes arising~~
28 ~~under this section on a case-by-case basis. The Commission shall not exercise general rate~~
29 ~~making authority over communication service provider utilization of municipal or membership~~
30 ~~corporation facilities. The Public Staff shall automatically be made a party to any proceedings~~
31 ~~under this section and shall provide evidence and argument as may be appropriate to serve the~~
32 ~~using and consuming public. The parties shall identify with specificity in their respective~~
33 ~~pleadings-filings the issues in dispute, and the Business Court shall (i) establish a procedural~~
34 ~~schedule which, unless otherwise agreed by the parties, is intended to resolve the action within~~
35 ~~a time period not to exceed 180 days of the commencement of the action, (ii) dispute. The~~
36 Commission, in its discretion, may consider any evidence or rate-making methodologies



1 offered or proposed by the parties and shall resolve any dispute identified in the pleadings
2 filings consistent with the public interest and necessity so as to derive just and reasonable rates,
3 terms, and conditions, taking into consideration and applying such other factors or evidence
4 that may be presented by a party, including without limitation the rules and regulations
5 applicable to attachments by each type of communications service provider under section 224
6 of the Communications Act of 1934, as amended, and (iii) conditions. The Commission shall
7 apply any new rate adopted as a result of the action retroactively to the date immediately
8 following the expiration of the 90-day negotiating period or initiation of the lawsuit proceeding,
9 whichever is earlier. If the new rate is for the continuation of an existing agreement, the new
10 rate shall apply retroactively to the date immediately following the end of the existing
11 agreement. Prior to commencing any action initiating any proceedings under this subsection, a
12 party must pay any undisputed fees related to the use of poles, ducts, or conduits which are due
13 and owing under a preexisting agreement with the municipality or membership corporation. In
14 any action proceeding brought under this subsection, the court-Commission may resolve any
15 existing disputes regarding fees alleged to be owing under a preexisting agreement or regarding
16 safety compliance arising under subsection (d) of this section. The provisions of this section do
17 not apply to an entity whose poles, ducts, and conduits are subject to regulation under section
18 224 of the Communications Act of 1934, as amended."

19 **SECTION 3.** G.S. 62-350(d)(4) reads as rewritten:

20 "(4) All attaching parties shall work cooperatively to determine the causation of,
21 and to effectuate any remedy for, noncompliant lines, equipment, and
22 attachments. In the event of disputes under this subsection, the involved
23 municipality or membership corporation or any attaching party may bring an
24 action in the Business Court in accordance with the procedures for a
25 mandatory business case set forth in G.S. 7A-45.4, and the Business Court
26 initiate proceedings to resolve any dispute before the Commission. The
27 Commission shall have exclusive jurisdiction over such actions, proceedings
28 arising under this section and shall adjudicate individual disputes arising
29 under this section on a case-by-case basis. The Commission shall not
30 exercise general rate making authority over communication service provider
31 utilization of municipal or membership corporation facilities. The Public
32 Staff shall automatically be made a party to any proceedings under this
33 section and shall provide evidence and argument as may be appropriate to
34 serve the using and consuming public. The Business Court-Commission shall
35 resolve such disputes consistent with the public interest and necessity.
36 Nothing herein shall prevent a municipality or membership corporation from
37 taking such action as may be necessary to remedy any exigent issue which is
38 an imminent threat of death or injury to persons or damage to property."

39 **SECTION 4.** G.S. 62-350(f) reads as rewritten:

40 "(f) The Business Court-Commission may adopt such rules as it deems necessary to
41 implement its jurisdiction and authority under this section, exercise its responsibility to
42 adjudicate any disputes arising under this section."

43 **SECTION 5.** G.S. 7A-45.4(b)(3) is repealed.

44 **SECTION 6.** Notwithstanding the deletion of language referencing the factors or
45 evidence that may be presented by a party in Section 2 of this act, the Commission may
46 consider any evidence presented by a party in a proceeding brought under G.S. 62-350.

47 **SECTION 7.** This act is effective when it becomes law and applies to any action
48 filed on or after that date.

Committee Sergeants at Arms

NAME OF COMMITTEE House Comm.on Public Utilities

DATE: 6 -17 2015 Room: 643

House Sgt-At Arms:

1. Name: Joe Austin
2. Name: Carlton Adams
3. Name: Joe Crook
4. Name: Martha Gadison
5. Name: _____

Senate Sgt-At Arms:

1. Name: _____
2. Name: _____
3. Name: _____
4. Name: _____
5. Name: _____



Wednesday, June 17
PUBLIC
UTILITIES

Room
643

Time
1:00 pm

Name	County	Sponsor
Matt Streets	Chatham	Robert T. Reives, II
Jalen Holloman	Wake	Susi H. Hamilton
Jordan Perry	Durham	Larry D. Hall
Natalie Monson	Orange	Graig R. Meyer



VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON PUBLIC UTILITIES

06-17-15

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Jance Moore	AT&T
Jonathan Brubaker	Brubaker + Assoc.
Cameron Hunt	MVA
Carv McLamb	TSS
Wendy Kelly	Focus Carolinix
Shirley M. S.	Poly Guy
Angie Maier	NBC
Fred Hunsado	NCMA
Conno Wilson	NCTT
Doug Miskew	PSG
Ral Shuman	NCFB
Deans Eatman	NCPC



VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON PUBLIC UTILITIES

06-17-15

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Tim Holder	tim
Henry Cooper	ATT
RICK FEATHERS	NCEMC
Tim Holder	Energy United
Dave Meisinger	Energy United
Steve Brower	CTL
Sarah Hardin	CTL
Trey Rabon	ATAI
Frances Liles	NCREA
Dwight Allen	Allen Law Offices, PLLC
Brady Allen	Allen Law Offices, PLLC



VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON PUBLIC UTILITIES

06-17-15

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

M. Jillian D. Johnson	MWC LLC
Peter Magner	NCLCV
Sara Price	NCLCV
DAN CRAWFORD	NCLCV
Kristen Laster	SSGNC
Sarah McQuillan	SSGNC
Betsy McCorkle	NCSEA
Lori Ann Harris	LATA
Dianna Downey	PSNCLC
Chris Ayers	PSNCLC
Ed Finley	NCLC



VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON PUBLIC UTILITIES

06-17-15

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

MgMallen Ashli	SELC
Brooks Rainey Pearson	SELC
Peter Detnial	CCS
Alex Bowen	CCS
Jackson Stanail	CCS
Demetrius Delatida	Rep. Harris
Mara Trathen	BLM HL
Jim Corbin	Chortev
Brian Gregory	"
Elizabeth Bisu	Brooks Perez
Penny Huffer	School 7 Gov
Scott Laster	SSGNC

