2017-2018

HOUSE
ENERGY & PUBLIC UTILITIES

MINUTES

NORTH CAROLINA HOUSE OF REPRESENTATIVES
2017 – 2018 SESSION

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ENERGY & PUBLIC UTILITIES

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2017 SESSION

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HOUSE COMMITTEE ON ENERGY AND PUBLIC UTILITIES
2017 SESSION


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HOUSE COMMITTEE ON ENERGY AND PUBLIC UTILITIES

2017 - 2018 SESSION

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Rep. Goodman	Judy Veorse	733-5823	542	47
Rep. Duane Hall	Brad Kennedy	733-5755T	1004	58
Rep. Harrison	Sue Osborne	733-5771	1218	70
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Rep. Strickland	KJ Stancil	733-5849	602	112
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Rep. Zachary	Haley Kitts	715-8361	1002	74

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ATTENDANCE

HOUSE COMMITTEE ON ENERGY AND PUBLIC UTILITIES

2017-2018 SESSION

DATES	03-01-2017	03-08-2017	03-15-2017	04-05-2017	04-11-2017	04-19-2017	04-25-2017	04-26-2017	05-10-2017	05-18-2017	06-06-2017	
REP. SZOKA, SENIOR CHAIR	X	X	X	E	X	X	X	X	X	X	X	
REP. ARP, CHAIR	E	X	X	X	X	X	X	X	X		X	
REP. COLLINS, CHAIR	X	X	X	E	X	X	X	X	X	X	X	
REP. WATFORD, CHAIR	X	X	X	X	X	X	X	X	X	X	X	
REP. CUNNINGHAM, VICE CHAIR	X	X	X	X	X	X	X	X	X		X	
REP. HANES, VICE CHAIR	X	X	X	X	X	X	X	X	X		X	
REP. ALEXANDER	X		X			X	X	X			X	
REP. J. BELL						X	X	X				
REP. BLACKWELL	X	X	X		X	X	X		X	X	X	
REP. BRADFORD	X	X	E	X	X	E	X	X	X	E	X	
REP. BUMGARDNER	X	X	X		X	X	X	X	X	X	X	
REP. DOLLAR							X					
REP. EARLE	X	X			X	X	X	X	X			
REP. ELMORE	X	X			X	X	X	X		X	X	
REP. GOODMAN	X	X	X	X	X	X		X	X		X	
REP. DUANE HALL								X			X	
REP. HARRISON	X	X	X	X		X	X	X	X	X	X	
REP. HASTING		X					X	X			X	
REP. MALONE		X					X	X	X	X		
REP. S. MARTIN		X	X	X	X	X	X	X		X	X	
REP. R. MOORE		X	X	X			X	X	X	X		
REP. MURPHY			X	X		X	X	X	X			
REP. W. RICHARDSON	X			X				X	X	X	X	
REP. RIDDELL	X	X	X	X	X	X	X	X	X	X	X	
REP. ROGERS	X	X		X		X	X	X		X	X	
REP. SAULS	X	X	X	X		X	X	X		X	X	
REP. STONE	X	X	X	X	X	X	X	X	X	X	X	
REP. STRICKLAND	X	X	X	X	X	X	X	X	X	X	X	
REP. WRAY		X			X	X		X	X	X	X	
REP. ZACHARY			E	E	X	E	X	X	X	X	X	

House Committee on Energy and Public Utilities
Wednesday, March 1, 2017, 1:00 PM
643 Legislative Office Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Presentations

Report from the Chairman of the Utilities Commission
Ed Finley, Chairman
Utilities Commission

Report from the Executive Director of the Public Staff
Chris Ayers, Executive Director
Public Staff, Utilities Commission

Other Business

Please feel free to take the enclosed materials, but leave your folders to be used at the next meeting.

Adjournment

House Committee on Energy and Public Utilities
Wednesday, March 1, 2017 at 1:00 PM
Room 643 of the Legislative Office Building

MINUTES

The House Committee on Energy and Public Utilities met at 1:00 PM on March 1, 2017 in Room 643 of the Legislative Office Building. Representatives Szoka, Arp (Excused Abs), Collins, Watford, Cunningham, Hanes, Alexander, Blackwell, Bradford, Bumgardner, Earle, Elmore, Goodman, Harrison, W. Richardson, Riddell, Rogers, Sauls, Stone, and Strickland attended.

Jeff Collins, Presiding Chair.

No bills were considered, for presentations only.

Ed Finley, Chairman of the Utilities Commission upon invitation by NCGA Staff gave a presentation, Overview of the NC Utilities Commission and Utility Regulation in NC.

Chris Ayers, Executive Director Public Staff, Utilities Commission also at the invitation of NCGA Staff, gave a presentation, NC Utilities Commission Public Staff.

The meeting adjourned at 1:45 pm.

Representative Jeff Collins, Presiding Chair

Wes Householder, Committee Clerk

North Carolina Utilities Commission

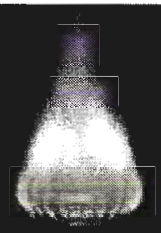
Overview of the North Carolina Utilities Commission and Utility Regulation in North Carolina

Presentation to the N.C. House
Committee on Energy and Public Utilities

March 1, 2017

www.ncuc.net

Who We Are



NORTH CAROLINA UTILITIES COMMISSION

Dobbs Building, 430 North Salisbury Street 27603-5918

4325 Mail Service Center, Raleigh, North Carolina 27699-4300

www.ncuc.net Phone: 919-733-4249 Fax: 919-733-7300

Commissioners

Edward S. Finley, Jr., Chairman

Bryan E. Beatty
ToNola D. Brown-Bland
Don M. Bailey
Jerry C. Dockham
James G. Patterson
Lyons Gray

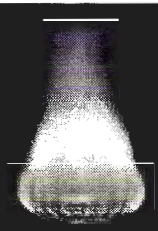
Commission Organization

- Administrative agency of General Assembly; legislative oversight by House Committee on Energy and Public Utilities, Senate Committee on Commerce and Insurance, and Joint Legislative Commission on Governmental Operations.
  - Within Department of Commerce for budget purposes

- Seven members: appointed by Governor, subject to confirmation by General Assembly. Terms of four Commissioners now serving are staggered, remaining portions of eight-year terms. Terms of three most recently appointed Commissioners are six-year terms. *(G.S. 62-10)*

- Chairman: appointed by Governor, four-year term, organizes and directs the Commission's work. (*G.S. 62-12,13)*

Commission Organization (*cont.*)



- Commissioners are subject to standards of judicial conduct and prohibited by law from engaging in any other employment, business or profession while in office *(G.S. 62-10[i])*

- Commission employs up to 60 people, current staffing is 55, organized among four divisions:
  - Legal, Administrative, Operations, and Fiscal Management

- Certified FY2016 annual budget: $7,773,281

NCUC budget:	$ 7,036,014
Gas Pipeline Safety budget:	$ 737,267

  - Gas Pipeline Safety is housed in the Commission and receives partial federal reimbursement
  - The Commission is a fee-funded agency, supported by regulatory fee percentage formula established by General Assembly and applied to the jurisdictional revenues of public utilities *(G.S. 62-302)*
  - The Public Staff maintains its own budget which is separate from the Commission's budget but it is funded by the same regulatory fee

Commission's Responsibilities & Procedures

- For the 12-Month Period Ending 6/30/16:
  - 4,099 formal proceedings instituted before NCUC
  - 76 hearings in contested cases
  - 14,201 filings in Chief Clerk's office
  - 3,249 orders issued
  - 706 open dockets as of 6/30/16

Commission's Responsibilities & Procedures (cont.)

- Appeals from general rate case decisions to NC Supreme Court; all others to NC Court of Appeals (absent federal jurisdiction).
- The Commission conducts proceedings pursuant to federal law and participates in proceedings before federal courts and regulatory agencies *(G.S. 62-48).*
- Publication requirements: Commission makes various reports to Governor and General Assembly as directed by statute.
- Limited jurisdiction over municipalities and cooperatives
- No jurisdiction over broadband, cell phone, cable, or internet services

Regulated Entities

(As of 6/30/16)

	QTY
BUS / BROKER	13
ELECTRIC	5
ELECTRIC COOPERATIVES	31
ELECTRIC MERCHANT PLANTS	10
ELECTRIC RESELLER	44
FERRIES	9
MOTOR CARRIERS OF HOUSEHOLD GOODS	286
NATURAL GAS:	
– LOCAL DISTRIBUTION COMPANIES	4
– INTRASTATE PIPELINE	1
SMALL POWER PRODUCERS	902
TELEPHONE:	
– COMPETING LOCAL PROVIDERS	169
– INCUMBENT LOCAL EXCHANGE COMPANIES	16
– LONG DISTANCE CARRIERS	267
– PAYPHONE SERVICE PROVIDERS	55
– SHARED TENANT SERVICES	16
WATER / WASTEWATER	108
WATER / WASTEWATER RESELLERS	1,185
TOTAL	3,122

Industry Revenue Profile

(All figures reflect 12-month period ending June 30, 2016)

- FY2015 Jurisdictional Revenues: $11.47 billion
  - Electric: $8.68 billion
  - Telecommunications: $1.28 billion
    - Includes Local and Long Distance Telephone Companies, Payphone Service Providers, and Shared Tenant Service Providers
  - Natural Gas: $1.20 billion
  - Water and Wastewater: $201 million
    - Includes Water/Wastewater Resale Companies
  - Transportation: $93.3 million
    - Includes Brokers, Buses, Ferries, and Household Goods (HHG) Carriers

Filings & Orders by Industry Group

(For the 12-Month Period Ending 6/30/16)

	Filings	Orders
Electric	1,792	462
Telephone	1,042	127
Natural Gas	611	88
Water/Wastewater	3,138	1,425
Household Goods Carriers	1,044	206
Small Power Producers	5,836	
Other (Bus/Broker, Electric Merchant Plant, EMC, Ferry, Payphone Provider, Renewable Energy Facilities, & Misc.)	738	776 165
TOTAL	14,201	3,249

Regulation of Public Utilities

- Purpose: protect the public's interest in receiving adequate service at reasonable rates.
- Traditional regulatory bargain: utilities exchange benefit of monopoly franchised service territory for obligation to provide adequate service at reasonable rates.
- Commission's regulatory obligation: to be fair and reasonable to public utilities and their customers.
- Commission's regulatory tools:
  - certification of new facilities
  - rate establishment or review
  - service quality oversight
- Recent trends: regulation of certain utility industries and services by the Commission has become more complex due to changes in State and Federal law and rules, and industry trends. Certain utility services have been fully or partially deregulated.

Ratemaking Overview

- The Commission has ratemaking authority pursuant to several sections of the Public Utilities Act (Ch. 62 of the General Statutes), for example:
  - G.S. 62-130(a); G.S. 62-131(a); 62-133(a).
- Rates shall be "just and reasonable" and "fair both to the public utilities and to the consumer."
- This statutory authority, as implemented by the Commission, has been interpreted by the state and federal courts in dozens of appellate decisions.

- Based on the cost of service in the test year financial data from a historical 12-month period
  - Updated prior to the hearing to include known and measurable changes following the test year.

- The Commission has 270 days to rule on a general rate case filing

Basic Ratemaking Concepts

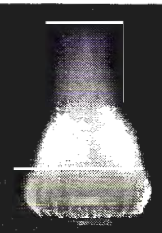
Ratemaking Formula: RR = E + (RB X RoR)

- **Revenue Requirement:** the total amount of expenses plus a reasonable rate of return on capital invested. Provides an opportunity, not a guarantee, to earn a given rate of return.
- **Expenses:** a public utility is allowed to recover its reasonable and prudent expenses incurred to deliver service to its customers, based upon a test year that approximates a "typical year."
  - This includes payroll, taxes, maintenance, depreciation, etc.
  - Expenses are non-capital costs
- **Rate Base:** the depreciated value of the property on which a utility may earn a rate of return, less capital costs provided by ratepayers (depreciation reserve, accumulated deferred taxes, etc.)
  - This includes "net plant in service."
  - Must be "used and useful." E.g., power plants, transmission, and distribution lines, etc.
- **Rate of Return:** % return that utility may earn on invested capital, including debt and equity investments. Approximates the utility's investors' cost of debt and equity.

Expenses

- Utilities are authorized to recover reasonable and necessary expenses as demonstrated in the test year
- Expenses =
  - Operating expense
    - Payroll
    - Fuel
    - Transportation
    - Customer service
    - Taxes
    - Administrative
    - Uncollectibles
  - Maintenance expense
  - Depreciation expense

Rate Base



- Rate base is the value of property on which a public utility is authorized to earn its rate of return

- **Rate Base =**

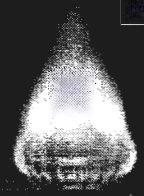
  Original cost of the utility assets (prudent capital investment)

  (minus)

  Depreciation expense

  - Investment costs include:
    - Power plants
    - Transmission lines
    - Distribution lines
    - Transformers
    - Computer systems

Rate of Return



- Rate of Return = Percentage return that the utility is allowed to earn on its invested capital

- Designed to compensate investors for the cost of using their capital and associated risk

- Rate of return composed of three components:
  - Cost of equity
  - Cost of debt
  - Ratio of debt to equity

- Rate of return **is not a guaranteed return, but it is the maximum allowed return the utility may earn**

Rate Design

- Individual rates established to meet the revenue requirement
  - Customer rate classes in North Carolina
    - Residential
    - Commercial (General Service)
    - Industrial
  - Various rate schedules in each customer class
    - Designed to mirror the cost of service to each class

- Average retail price of electricity per customer class
    - Residential: 11.22 cents/kwh
    - Commercial: 8.37 cents/kwh
    - Industrial: 5.74 cents/kwh

Source: Energy Information Administration (2016)

Other Mechanisms for Adjusting Utility Rates

- Fuel cost rider
- Renewable energy/energy efficiency rider
- Demand side management/energy efficiency rider
- Pass-through mechanisms
  - Bulk water/sewer
  - Gas pipeline integrity
  - Water system improvement charge
- Purchased Gas Adjustments (PGAs) for changes in benchmark commodity cost of natural gas
- Customer usage tracking adjustments

PURPA and QFs

- PURPA – Public Utility Regulatory Policies Act of 1978
  - 16 USC Chapter 46

- "Qualifying facility" (QF), is defined as:
  - Electric generating facilities of 80 MW or less using hydro, wind, solar, biomass, waste, or geothermal resources; or
  - Co-generation facilities: efficiently produce electricity and thermal energy
- Utility must pay QFs for the energy produced and the capacity constructed.
- Utility must interconnect the QF to the utility's electric system.

QFs and Avoided Cost

- Generally, QFs are to be paid for the energy and capacity provided to the utility at a rate equal to the utility's avoided cost.

- Avoided Cost is the cost a utility would incur to generate the next unit of electricity
    - Cost of building the generation capacity
    - Cost of generating the energy

- "Avoided" because the utility has procured the electricity from the QF rather than incurring the cost to produce the electricity itself.

How is Avoided Cost Used?

- Establishes payment amounts to QFs

- Also used in various Commission proceedings:
  - Integrated Resource Plans
  - Determining savings from Demand Side Management/Energy Efficiency Programs
  - Determining incremental costs of Renewable Energy Portfolio Standards compliance

Questions/Contact

NORTH CAROLINA UTILITIES COMMISSION

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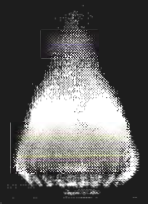
Appendices



A. Selected Mergers and Acquisitions 2003-Present
B. Industry Specific Information
    1. Electric
    2. Natural Gas
    3. Telecommunications
    4. Water and Wastewater
    5. Transportation

Appendix A

Selected Mergers and Acquisitions 2003 to Present[1]

- Electric
  - In 2005, Dominion joined PJM Interconnection, LLC
  - In 2006, Duke Energy acquired Cinergy
  - In 2012, Progress Energy merged with Duke Energy
  - In 2016, Duke Energy acquired Piedmont Natural Gas

- Natural Gas
  - In 2003, Piedmont acquired NCNG and 50% interest in Eastern NCNG
  - In 2005, Piedmont acquired the remaining 50% interest in Eastern NCNG
  - In 2007, Energy West acquired Frontier
  - Pending before the Commission, Frontier's parent company acquisition by FR Bison Holdings

[1] The business combinations presented, although dated, typically engender the greatest interest.

Appendix A (cont.)

Selected Mergers and Acquisitions 2003 to Present[1]

- Water/Wastewater
  - In 2004, Aqua America acquired stock of Heater
  - In 2006, Hydro Star acquired stock of Utilities, Inc., from nv Nuon
  - In 2007, Utilities, Inc. subsidiaries: Belvedere, Queens Harbor, Riverpointe, and Watauga Vista merged into Carolina Water
  - In 2008, Aqua America subsidiaries: Fairways, Glynnwood, Heater, Mountain Point, Rayco, and Willowbrook merged into Aqua NC
  - In 2009, Pluris acquired North Topsail
  - In 2010, Utilities, Inc. subsidiaries: Carolina Pines and Nero merged into Carolina Water
  - In 2012, Corix acquired stock of Utilities, Inc., from Hydro Star

[1] The business combinations presented, although dated, typically engender the greatest interest.

Appendix B

Industry Specific Overview

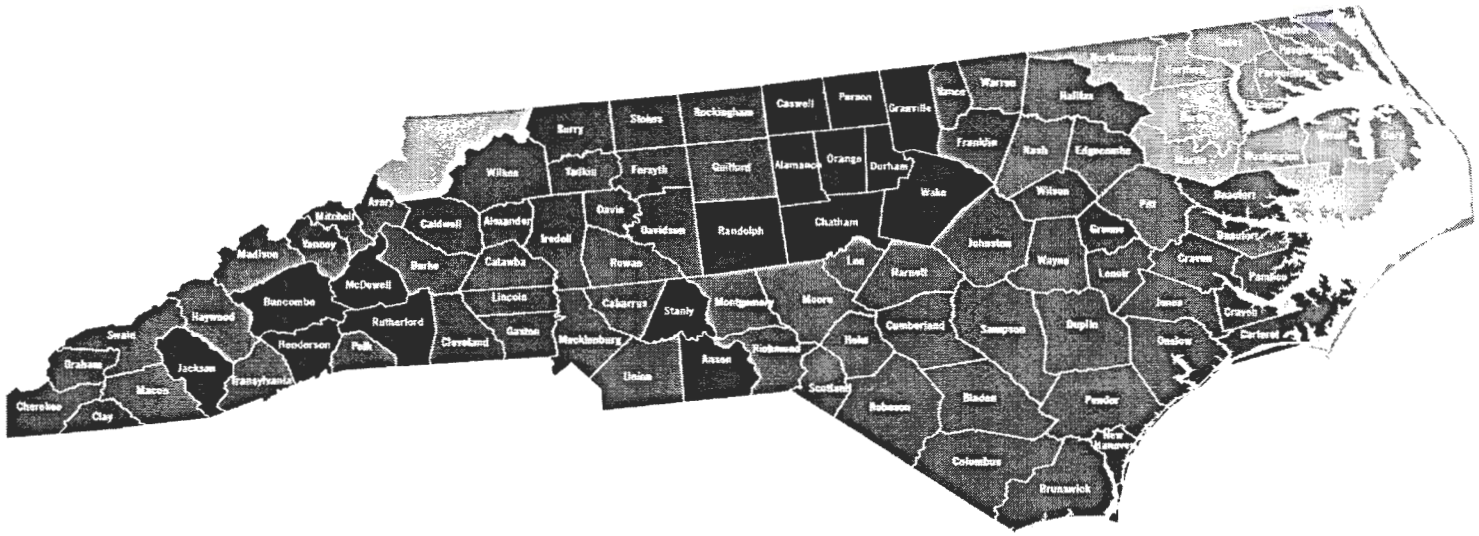
1. Electric
2. Natural Gas
3. Telecommunications
4. Transportation
5. Water and Wastewater

Appendix B. 1. Electric
Regulated Electric Utilities

- 3 Investor-Owned Utilities (IOUs)
  - Duke Energy Carolinas – 1,921,000 customers in Piedmont and Western North Carolina
  - Duke Energy Progress – 1,339,000 customers in Eastern and Western North Carolina
  - Dominion NC Power – 120,000 customers in Northeastern North Carolina

As of 6/30/16

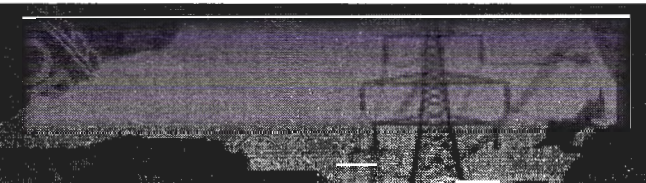
Appendix B. 1. Electric
North Carolina Electric IOU Service Area Map



SERVICE TERRITORIES
(counties served)

- Duke Energy Carolinas
- Duke Energy Progress
- Duke Energy Carolinas/ Duke Energy Progress overlapping counties
- Dominion North Carolina Power
- Dominion North Carolina Power/ Duke Energy Progress overlapping counties

Appendix B. 1. Electric
EMC, Municipal-Owned, & University-Owned



- 31 Electric Membership Corporations (EMCs) – 1,071,000 customers
- About 75 Municipal and University-owned electric distribution systems – 587,000 customers
- Limited Commission jurisdiction: EMCs, Munis, and certain University systems
  - Monitor subsidiary business activities of EMCs to prevent subsidization by electric customers *(G.S. 117-18.1)*
  - EMC territorial assignment issues *(G.S. 62-110.2)*
  - Certification authority for construction of electric generating facilities *(G.S. 62-110.1)* and electric transmission lines of 161 + kV *(G.S.62-101)*
  - Adjudicate pole attachment disputes *(G.S. 62-350)*
  - Safety jurisdiction over gas pipeline facilities operated by municipalities and similar entities *(G.S. 62-50)*
  - Rates charged to customers of New River Light and Power (Boone) and Western Carolina University (Cullowhee) are regulated by the Commission

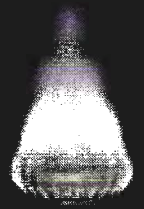
As of 6/30/16

Appendix B. 1. Electric

Renewable Energy & Energy Efficiency Portfolio Standard (REPS)

- In 2007, North Carolina became the first State in Southeast to adopt a renewable energy portfolio standard – Session Law 2007-397 (Senate Bill 3)
- REPS requirement may be met through combination of renewable energy generation and energy efficiency savings
- REPS requirement applies to investor-owned electric utilities (electric public utilities), electric membership corporations, and municipal utilities
- REPS requirement increases from 3% of customer electricity use in 2012 to 12.5% by 2021 (for electric public utilities)
- Specific requirements for energy derived from the sun and from poultry and swine waste, with solar requirement that began in 2010
- Cap on incremental cost of compliance, including annual rate adjustments for investor-owned utilities
- Legislation adopting REPS also provides timely cost recovery for new demand-side management programs and energy efficiency measures by electric public utilities, including the opportunity for utility incentives
- The Commission has registered about 1,450 renewable energy facilities, and a third-party renewable energy certificate (REC) tracking system became operational in 2010

Appendix B. 2. Natural Gas
Industry Structure

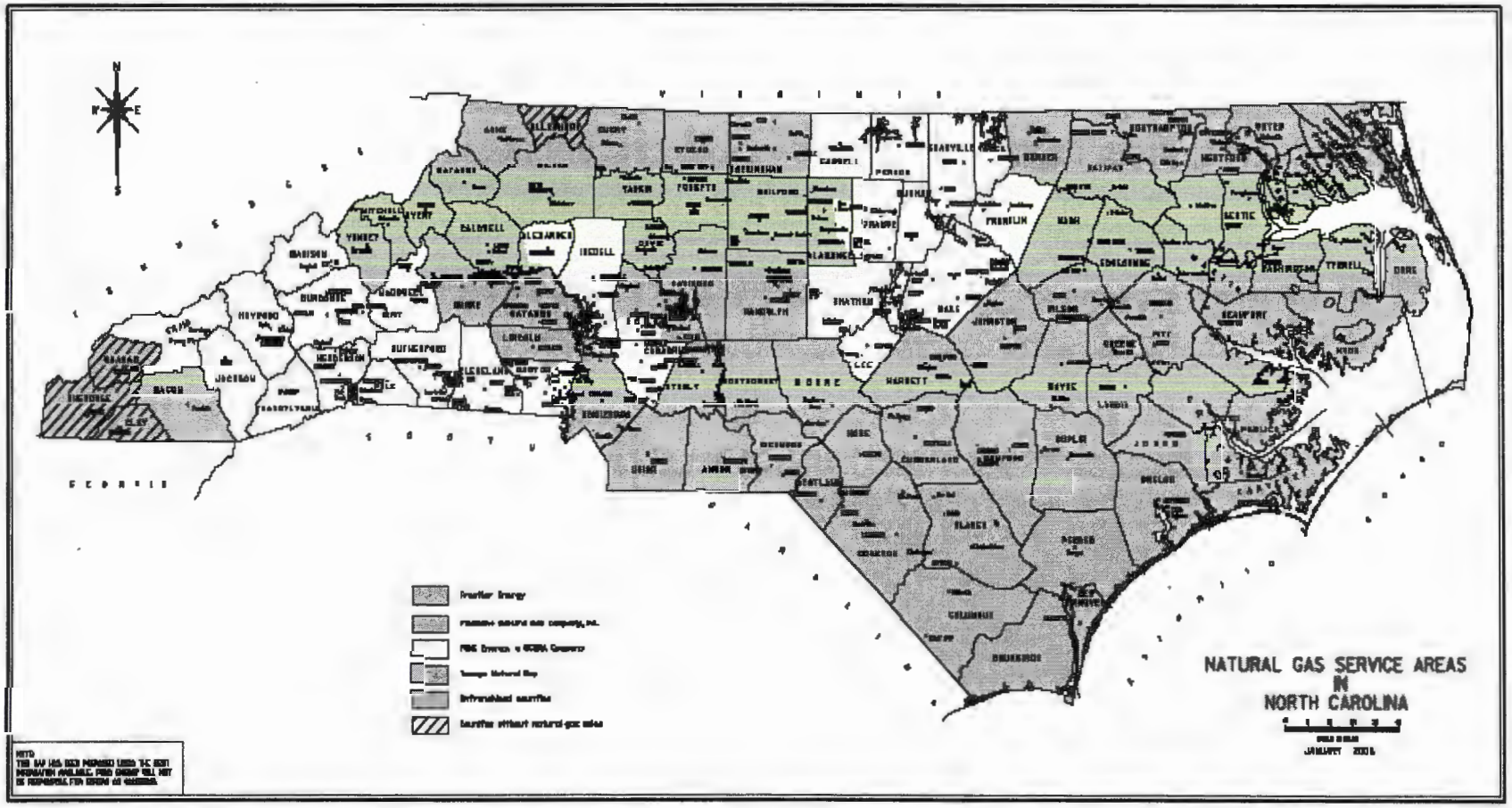


- Three parts of natural gas industry
  - Exploration and Production (E&P)
  - Interstate pipelines and storage facilities
  - Local Distribution Companies (LDCs)
- E&P companies are not price-regulated
- Interstate companies are regulated by FERC (Federal Energy Regulatory Commission)
- LDCs are regulated by state commissions

Appendix B. 2. Natural Gas
Natural Gas Utilities

- 4 Local Distribution Companies (LDCs) in the state
  - Piedmont Natural Gas Company, Inc.
  - PSNC Energy
  - Frontier Natural Gas Company, LLC
  - Toccoa Natural Gas
- 1 Intrastate Gas Pipeline (Cardinal Pipeline Company, LLC)
- 8 Municipal Gas Systems – rates not regulated by the Commission
- 1 Interstate Gas Pipeline (Transco) crosses the State
  - 2 others (Columbia and Patriot) provide small volumes
  - Atlantic Coast Pipeline to cross the State in late 2018
- 1 interstate liquefied natural gas storage facility (Pine Needle LNG Company, LLC)

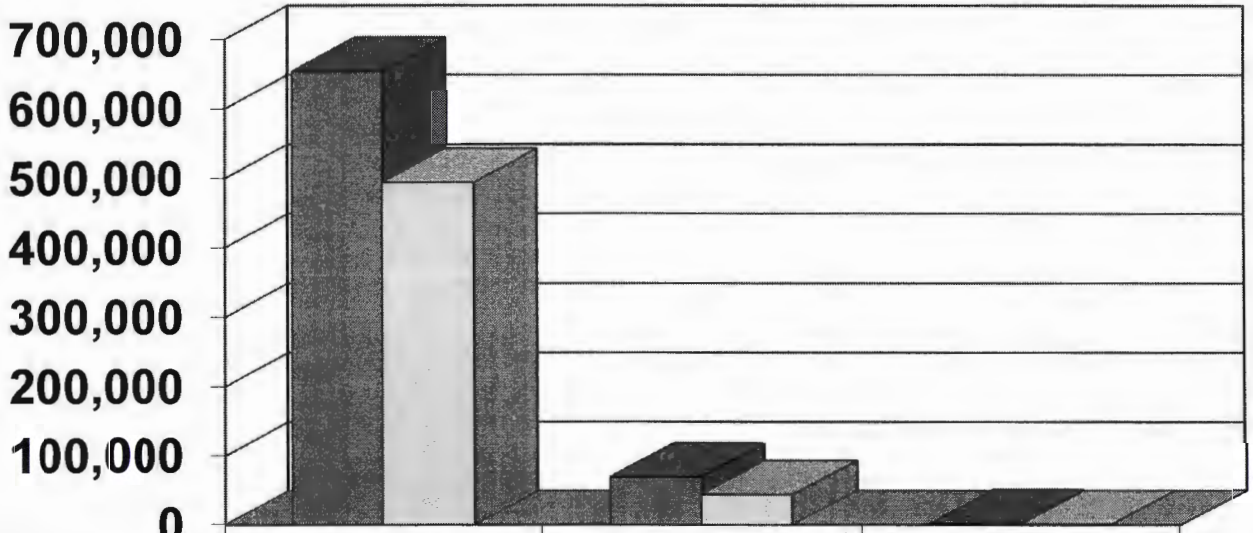
Appendix B. 2. Natural Gas Local Distribution Companies' Service Territories



Appendix B. 2. Natural Gas

Major Local Distribution Companies' Number of Customers

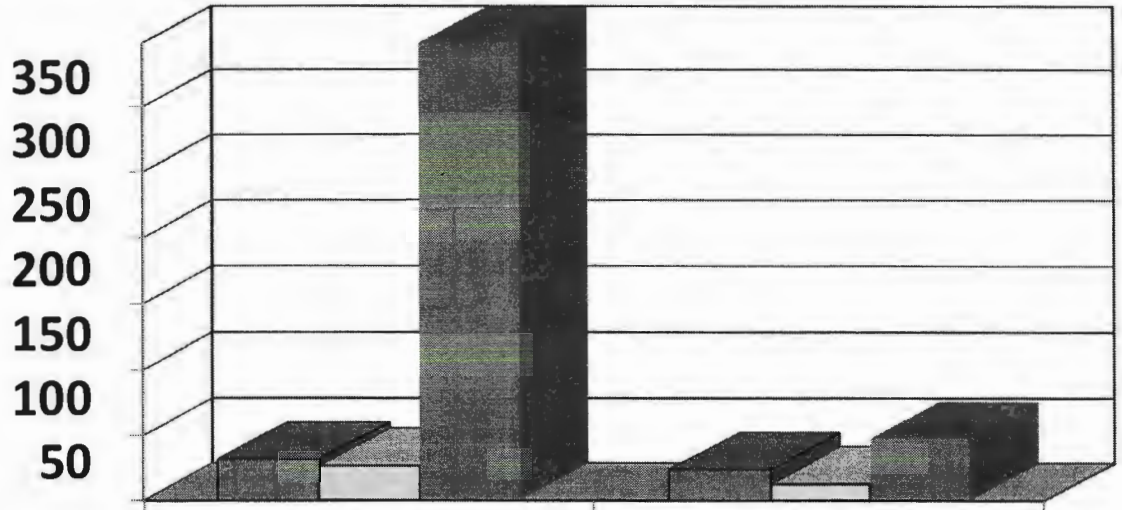
(As of 3/31/16)



	Residential	Commercial	Industrial
Piedmont	653,789	69,155	1,707
PSNC	494,055	43,763	685

Appendix B. 2. Natural Gas

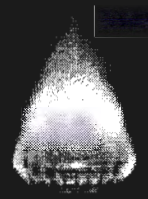
Major Local Distribution Companies'
Volumes Delivered (In Millions of Dekatherms) (12-Month Period Ending 3/31/16)



	Piedmont	PSNC
Residential	32.5	24.6
Commercial	27.5	13.5
Industrial	359.3	48.5

Note: "Industrial" volumes include deliveries to gas-fired electric generators; Piedmont's "Industrial" volumes include deliveries for resale to municipal gas systems.

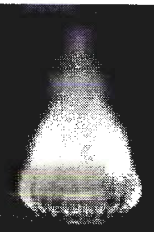
Appendix B. 2. Natural Gas



State Regulatory Framework For Local Distribution Companies' Rates

- The Commission establishes level of base rates in a general rate case
- LDCs earn a return on equity invested
  - Pass through prudently incurred costs
- LDCs may file purchased gas adjustments at any time
  - To adjust gas cost portion of rates prospectively
  - To pass through the wholesale cost of natural gas
  - LDCs do not profit from high gas prices
- The Commission annually reviews each LDC's gas purchasing practices
  - Compares prudently incurred costs to costs recovered
  - Changes rates to "true up" under-recoveries or over-recoveries

Appendix B. 2. Natural Gas



State Regulatory Framework For Local Distribution Companies *cont.*

Tracker Mechanisms

- Laws allow for certain costs to be recovered outside of a rate case
  - — G.S. 62-133.7 – customer usage adjustment
  - — G.S. 62-133.7A – safety-related capital expenditure adjustment

- G.S. 62-133.7 – Lets LDCs adjust rates to track customer usage
  - — Without this, reduced usage would cause LDCs to under-recover margin
  - — Would punish LDCs for promoting conservation and efficiency
  - — Tracker allows for rate adjustments to recover rate case margins

- G.S. 62-133.7A. – Lets LDCs put safety-related investments in rate base
  - — Federal pipeline safety laws and regulations require major investments
  - — Without this, LDCs might have to file frequent "pancaked" rate cases

Appendix B. 3. Telecommunications

Basic Facts: Telecom Utilities

(As of 6/30/16)

- 16 Incumbent Local Exchange Companies (ILECs)
  - 4 ILECs price-plan regulated[1]
  - No ILECs remain rate-of-return regulated
  - 8 ILECs Subsection (h) price-plan elected, effective upon filing notice[2] *(G.S. 62-133.5[h])*
  - 4 ILECs Subsection (m) price-plan elected, effective upon filing notice[3] *(G.S. 62-133.5[m])*

- 169 Competing Local Providers (CLPs)
  - Rates are not regulated; may raise rates after 14 days customer notice

- 267 Interexchange Long Distance Carriers (IXCs)
  - Senate Bill 814, signed into law on 5/30/03, found long distance services sufficiently competitive and no longer subject to regulation by the Commission. However, the Commission has authority regarding certification and enforcement of slamming and cramming rules.

[1] Barnardsville Telephone Company, Citizens Telephone Company, d/b/a Comporium, Saluda Mountain Telephone Company, and Service Telephone Company.
[2] Ellerbe Telephone Company, Frontier Communications of the Carolinas Inc., North State Telephone Company, Pineville Telephone Company, Verizon South, Inc. (Knotts Island exchange only), Windstream Concord Telephone Company, Windstream Lexcom Telephone Company, and Windstream North Carolina, LLC.
[3] BellSouth Telecommunications, Inc. d/b/a AT&T North Carolina, Carolina Telephone and Telegraph Company LLC d/b/a CenturyLink, Central Telephone Company d/b/a CenturyLink, and MebTel, Inc. d/b/a CenturyLink.

Appendix B. 3. Telecommunications

North Carolina ILECs

(As of 12/31/15)

- Largest NC Incumbent Local Exchange Companies (ILECs)
  - AT&T – 515,826 access lines
  - Carolina Telephone (d/b/a CenturyLink) – 496,104 access lines
  - Frontier – 140,898 access lines
  - Central Telephone (d/b/a CenturyLink) – 109,448 access lines
- All other ILECs serve total of 277,406 access lines in NC

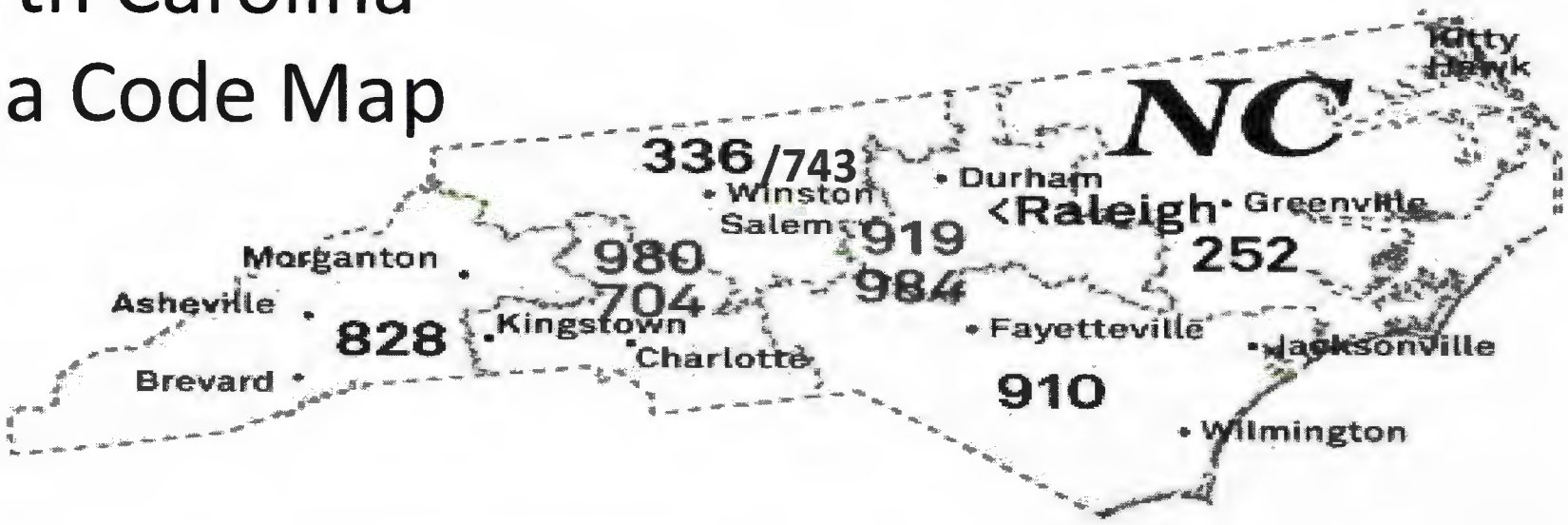
Appendix B. 3. Telecommunications

- Deregulation: The telecommunications industry in North Carolina is largely deregulated.

- The extent of the Commission's authority to regulate a telecommunications company pricing, but not rate of return, depends upon the telecommunications company's election under G.S. 62-133.5:
  - Subsection (h): ILECs must continue to offer stand-alone basic residential lines to all customers who choose to subscribe to that service, and the rate for stand-alone basic residential service may not increase more than the GDP-PI on an annual basis. Commission cannot regulate the rates, terms, conditions, or availability of retail services for Subsection (h) price-plan companies.
  - Subsection (m): company forgoes receipt of any State funding to support universal service. Commission cannot regulate the rates, terms, conditions, or availability of retail services for Subsection (m) price-plan companies, including stand-alone basic residential service. Company does not have any carrier of last resort obligations.

Appendix B. 3. Telecommunications

North Carolina Area Code Map



Single Area Code

Overlay Area Codes

Appendix B.4. Transportation

(As of 6/30/16)

- Motor Carriers of Household Goods (HHG)
  - 286 certificated movers
  - Subject to provisions of Maximum Rate Tariff, effective 1/1/03
  - Provide intrastate transport of HHG
- Regular Route Passenger Carriers
  - 2 certificated bus companies
  - Provide passenger service over regular routes
- Passenger Brokers
  - 11 licensed brokers
  - Broker tours and trips with charter bus companies
- Ferryboat Operators
  - 9 certificated ferryboat operators
  - Provide passenger service via water over authorized routes
  - Commission does not regulate ferries operated by NCDOT's Ferry Division

Appendix B. 5. Water and Wastewater

- Anyone furnishing water to the public for compensation or operating a public sewerage system for compensation is a public utility *(G.S. 62-3(23)a.2)*

- Regulation does not include –
  - — Operations with less than 15 residential customers
  - — Municipal or County systems
  - — Sanitary Districts
  - — Mobile Home Parks (where water/wastewater included in rent)
  - — Homeowners' Associations
  - — Nonprofit and consumer-owned corporations

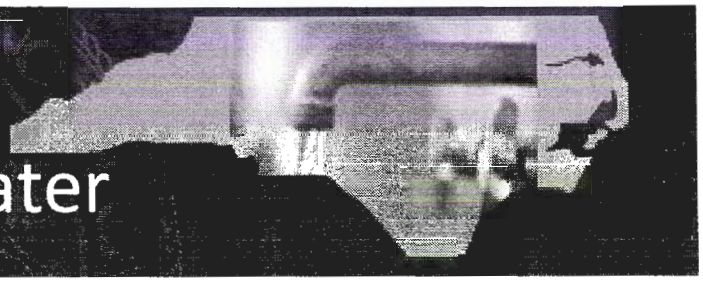
Appendix B. 5. Water and Wastewater

- The Commission grants certificates for specific service area and regulates rates and service aspects of utility operation

- The Commission does not regulate drinking water quality, but requires compliance with NCDEQ, Division of Water Resources, Public Water Supply regulations

- The Commission does not regulate discharge of sewage being treated, but requires compliance with NCDEQ, Division of Water Resources, Water Quality regulations

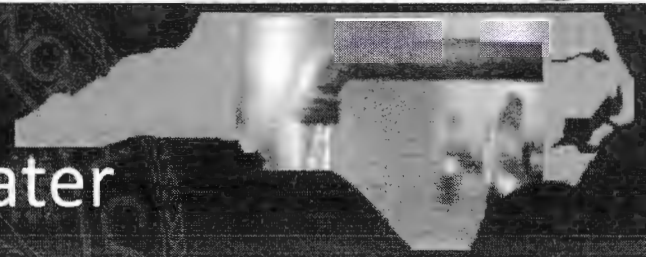
Appendix B. 5. Water and Wastewater



- Traditional Companies
  - The Commission establishes base rates in general rate case *(G.S. 62-133 and -133.1)*.
  - In general rate case, Company may seek approval of rate adjustment mechanism for investment in eligible repair, improvement, and replacement of water and sewer facilities *(G.S. 62-133.12)*. Once mechanism is approved and eligible system improvements are completed and placed in service between rate cases, Company may seek approval to impose water (and/or sewer) system improvement charge (WSIC and SSIC) pursuant to mechanism, subject to 5% statutory cap and Commission procedures *(Rules R7-39 and R10-26)*.
  - Company may request a pass-through rate adjustment, outside a general rate case, for changes in costs based on third-party supplier's rates *(G.S. 62-133.11)*.

- Resale Companies
  - The Commission establishes rates based upon charges by a third-party supplier of service and an administrative fee *(G.S. 62-110[g])*.

Appendix B. 5. Water and Wastewater

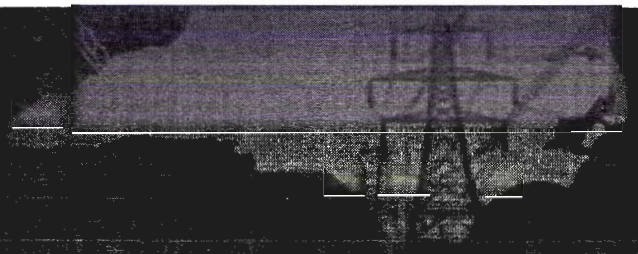


(As of 3/31/16)

- Traditional Companies
  - 44 Water and Wastewater
  - 35 Water only
  - 31 Wastewater only

  } 110 Total Companies
  - 1,192 Systems
  - 125,289 Water and 58,853 Wastewater customers
- Resale Companies
  - 1,154 Water and/or Wastewater

Questions/Contact



NORTH CAROLINA UTILITIES COMMISSION

Dobbs Building, 430 North Salisbury Street 27603-5918

4325 Mail Service Center, Raleigh, North Carolina 27699-4300

www.ncuc.net Phone: 919-733-4249 Fax: 919-733-7300

North Carolina Utilities Commission
Public Staff

Christopher J. Ayers
Executive Director

Public Staff

- Established in 1977 by N.C. Gen. Stat. § 62-15
- Represents the using and consuming public in North Carolina Utilities Commission proceedings
  - Not the public at-large
  - Economic regulator and advocate
- Seventy-eight staff members organized into nine divisions
  - Electric, Natural Gas, Water/Sewer/Communications, Transportation
  - Accounting
  - Legal
  - Economic research
  - Executive
  - Consumer Services (complaint analysts)

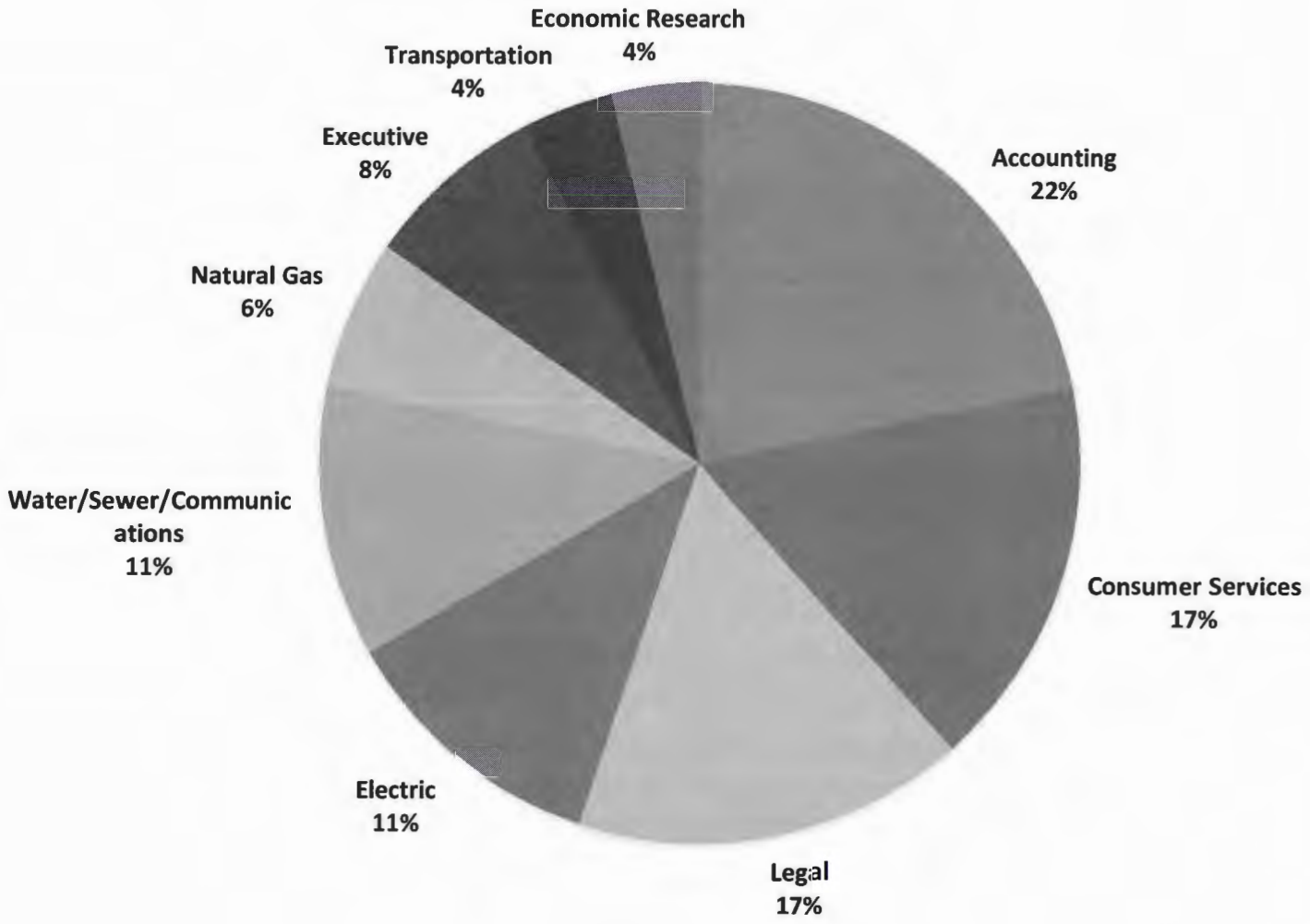
Key Functions

- Present testimony and recommendations to NCUC on behalf of utility customers
- Investigate customer complaints
- Audit public utilities in NCUC proceedings
- Assist legislative staff and legislators regarding proposed legislation and constituent service
- Work with other State agencies (e.g., DEQ), counties and municipalities on regulated utility matters
- Undertake studies and investigations as requested by NCUC

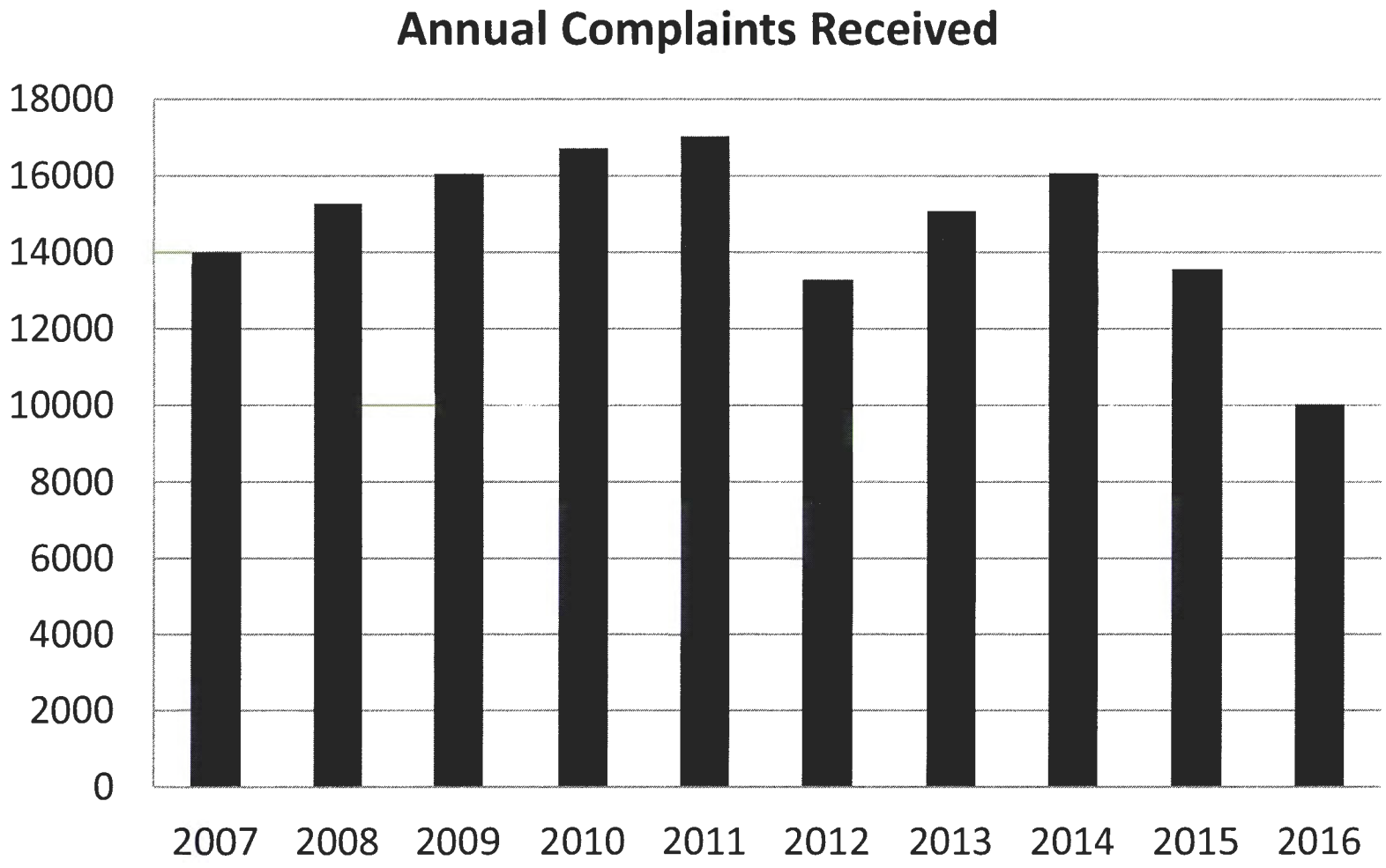
Differences Between NCUC and Public Staff

- Independent agencies
  - Separate staffs, leadership and budgets
- NCUC does not direct or oversee the Public Staff's operations
- Public Staff appears as a party before the NCUC
  - Public Staff may appeal decisions to appellate courts
  - Public Staff subject to ex parte rules and cannot independently communicate with NCUC on pending matters
  - Public Staff does not participate in NCUC decision-making
- Staff roles
  - NCUC staff is an advisory staff
  - Public Staff is an audit/advocacy staff

Staff Organization

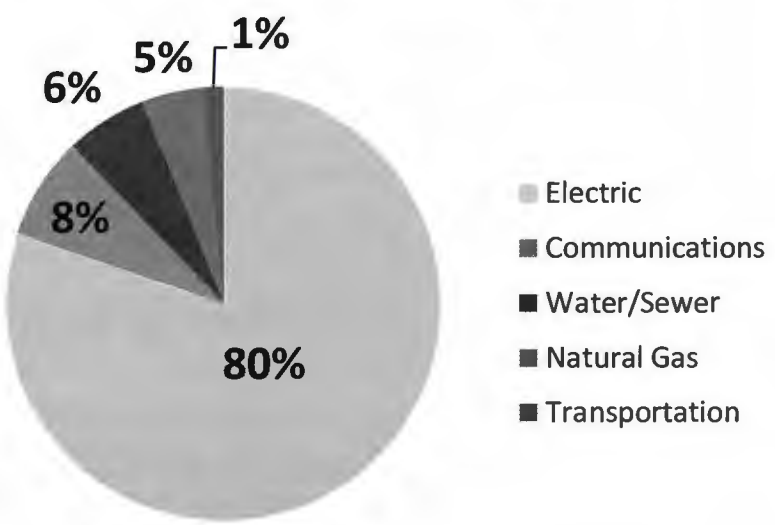


Complaint Investigation



Complaint Investigation

- Complaints by industry in 2016
  - Electric – 7,717
    - Duke Energy Carolinas – 4,629
    - Duke Energy Progress – 2,805
    - Dominion NC Power – 227
  - Communications – 741
  - Natural Gas – 434
  - Water/Sewer – 577
  - Transportation – 145



Public Staff Role in NCUC Cases

- Public Staff investigates filings made by utilities and other parties with the NCUC
  - Interviews, site visits and document requests
  - Review engineering and operational documentation
  - Audit financial records
  - Review financial data and underlying assumptions
- Presentation of Public Staff case
  - Testimony and exhibits presenting the Public Staff position
  - Analysis of utility and intervener positions
  - Cross examine utility and intervener witnesses
- Monitor utility compliance with NCUC orders going forward
- Other responsibilities as assigned by NCUC

2016 Major Proceedings

- Dominion North Carolina Power general rate case
- Public Service North Carolina general rate case
- Duke Energy/Piedmont Natural Gas merger
- Electric utility rider proceedings:
  - Fuel cost
  - Renewable energy/energy efficiency (REPS)
  - Demand side management/energy efficiency (DSM/EE)
  - NCEMPA acquisition rider
- Integrated resource planning
- DEC's Western Modernization Project
- Renewable Energy Portfolio Standard compliance
- Gas Integrity Management Rider adjustments
- Water and Sewer System Improvement Charge adjustments

Consumer Advocate Perspective

- Focus on safe, reliable service at reasonable rates
- Rates should be based on the cost of service
  - How much does it cost to provide safe, reliable service?
  - Least cost means for providing service
- Expenditure decisions should be both reasonable and prudent
  - Was the decision to incur the cost prudent?
  - Was the amount reasonable?
- Risks should be fairly allocated between customers and utility shareholders

Contact Information

Christopher J. Ayers, Executive Director

Dobbs Building, 430 North Salisbury Street 27603-5918

4326 Mail Service Center 27699-4326

(919) 733-2435

http://publicstaff.nc.gov

Committee Sergeants at Arms

NAME OF COMMITTEE Hse Comm. on Energy and Public Utilities

DATE: 3/1/2017 Room: 643

House Sgt-At Arms:

1. Name: Warren Hawkins
2. Name: Doug Harris
3. Name: Malachi McCullough, Jr.
4. Name: Bill Riley
5. Name:

Senate Sgt-At Arms:

1. Name:
2. Name:
3. Name:
4. Name:
5. Name:

House Pages Assignments
Wednesday, March 01, 2017
Session: 2:00 PM

Committee	Room	Time	Staff	Comments	Member
Pensions & Retirement and Aging	415	12:00 PM	Michaela-Sivan Steele		Rep. Speaker Tim Moore
Energy Policy Commission, Jt. Leg.	643	1:00 PM	Melvin McLawhorn		Rep. Speaker Tim Moore
			Kelsey Peterson		Rep. John Ager
Judiciary I	415	1:00 PM	Brion Rogers		Rep. Speaker Tim Moore
Judiciary III	421	1:00 PM	Sheridan Charles		Rep. Speaker Tim Moore

VISITOR REGISTRATION SHEET

Hse Comm. On Energy & Public Utilities — 3/1/2017

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mia Bailey	Charter Comm.
Lori Ann Harris	L. A. HARRIS & Assoc.
LC Bergman	CSS
James Patterson	NCUC
Don M Bailey	NCUC
Cassie Gavin	Sierra Club
Tom Bean	NCSEA
Kathy Harkins	Duke Energy
Kendal Bowman	Duke Energy
Hayden Bauguess	Electri Cities
DAVID BARNES	Electri Cities

VISITOR REGISTRATION SHEET

Hse Comm. On Energy & Public Utilities — 3/1/2017

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Brian Mould	WM
Kathy Kingsbury	DP
Isabel Villa-Garcia	NC REALTORS
Susan Via	Duke
Cindy Ohms	CUCA
Sharon Miller	CUCA
Tonya Horton	TSS
Patrick Buffkin	NCUC
Henry M Lancaster III	LCA
Meg Mallon Ardill	SELC
Karen Tucker	AARP

VISITOR REGISTRATION SHEET

Hse Comm. On Energy & Public Utilities — 3/1/2017

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Caroline Miller	AMGA
Joyce Ilges	CSS
Frances Liles	NCREA
Shannon Becker	Aqua
Doug Miskew	PSG

VISITOR REGISTRATION SHEET

Hse Comm. On Energy & Public Utilities — 3/1/2017

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Sean Spicer	White House
Grant Teague	NMRS
CS Hollis	CSH
Rw Kaylor	Kaylor Law Firm
Jaz Tunnell	Duke Energy
Bo [illegible]	McGuire Woods
David McGowan	NCPC
Tommy Smith	NCWC
Laura Purkear	NWCUC
John Del Giorno	Richardson Assoc
Julie Robinson	NC SEA
Jon Carr	Jordan Price Law Firm

VISITOR REGISTRATION SHEET

Hse Comm. On Energy & Public Utilities — 3/1/2017

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Sarah McQuillan	RGANC
[illegible]	Walk West
Betsy McCorkle	KGANC
Brady Allen	Allen Law Offices, PLLC
Britton Allen	//
Erin Wynia	NCLM
Jonatha Brubaker	Brubaker Assoc
Sarah Bates	
Bill McAulay	PSNC Energy
Marianna Chilcox	Meredith College
Rebekah Gruntuog	Meredith College

VISITOR REGISTRATION SHEET

Hse Comm. On Energy & Public Utilities — 3/1/2017

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Joy Garman	Meredith College
Kara Weishaar	SA
Ali Ahmadi	ASHRAE Triangle
Kelli Kuiuna	Duke Energy

House Committee on Energy and Public Utilities
Wednesday, March 8, 2017, 1:00 PM
643 Legislative Office Building

AGENDA

Welcome and Opening Remarks by Presiding Chairman

Representative John Szoka, Senior Chair

Introduction of Pages and Sergeant-at-Arms:

Doug Harris
Warren Hawkins
Malachi McCullough

Presentations

Report from Kendal Bowman, Vice President of Regulatory and Regulatory Policy, Duke Energy, will be present an overview of Duke Energy's operations in the State and electricity ratemaking

Report from Matthew Klein and Shannon Becker
National Association of Water Companies (NAWC) - Southeast Chapter
On Regulated Water & Wastewater Utilities in North Carolina

Other Business

Please feel free to take the enclosed materials, but leave the plastic sleeves and your folders to be used at the next meeting.

Adjournment

House Committee on Energy and Public Utilities
Wednesday, March 8, 2017 at 1:00 PM
Room 643 of the Legislative Office Building

MINUTES

The House Committee on Energy and Public Utilities met at 1:00 PM on March 8, 2017 in Room 643 of the Legislative Office Building. Representatives Arp, Blackwell, Bradford, Bumgardner, Collins, Cunningham, Earle, Elmore, Goodman, Hanes, Harrison, Hastings, Malone, S. Martin, R. Moore, Riddell, Rogers, Sauls, Stone, Strickland, Szoka, Watford, and Wray attended.

Representative John Szoka, Senior Chair, presided.

Presentations

Report from Kendal Bowman, Vice President of Regulatory and Regulatory Policy, Duke Energy, will be present an overview of Duke Energy's operations in the State and electricity ratemaking

Report from Matthew Klein and Shannon Becker
National Association of Water Companies (NAWC) - Southeast Chapter

On Regulated Water & Wastewater Utilities in North Carolina

The presiding chair requested that Duke Energy return for a Q & A as a follow up to Ms. Bowman's presentation.

The meeting adjourned at 1:45 p.m.

Representative John Szoka, Senior Chair
Presiding

Beverly Slagle, Committee Clerk

ATTENDANCE

HOUSE COMMITTEE ON ENERGY AND PUBLIC UTILITIES

2017-2018 SESSION

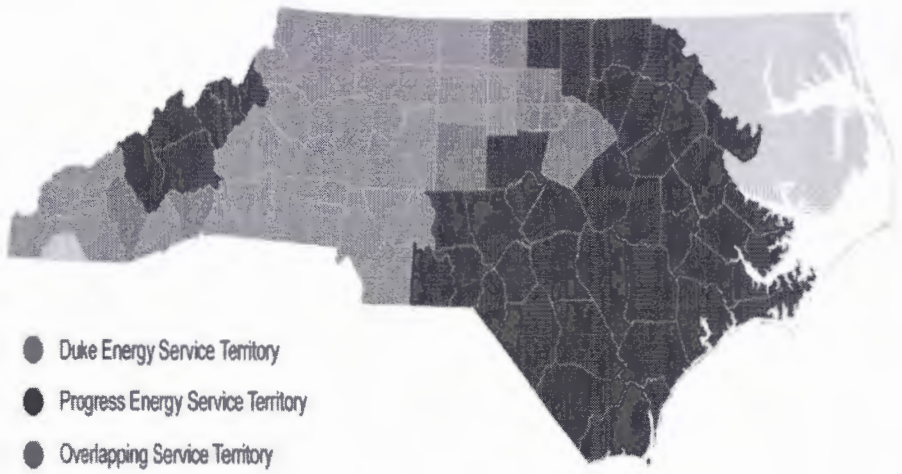
DATES	03-01-2017	03-08-2017										
REP. SZOKA, SENIOR CHAIR	X	X										
REP. ARP, CHAIR	E	X										
REP. COLLINS, CHAIR	X	X										
REP. WATFORD, CHAIR	X	X										
REP. CUNNINGHAM, VICE CHAIR	X	X										
REP. HANES, VICE CHAIR	X	X										
REP. ALEXANDER	X											
REP. J. BELL												
REP. BLACKWELL	X	X										
REP. BRADFORD	X	X										
REP. BUMGARDNER	X	X										
REP. DOLLAR												
REP. EARLE	X	X										
REP. ELMORE	X	X										
REP. GOODMAN	X	X										
REP. DUANE HALL												
REP. HARRISON	X	X										
REP. HASTING		X										
REP. MALONE		X										
REP. S. MARTIN		X										
REP. R. MOORE		X										
REP. MURPHY												
REP. W. RICHARDSON	X											
REP. RIDDELL	X	X										
REP. ROGERS	X	X										
REP. SAULS	X	X										
REP. STONE	X	X										
REP. STRICKLAND	X	X										
REP. WRAY		X										
REP. ZACHARY												

House Energy and Public Utilities Committee – March 8, 2017

Kendal Bowman – Vice President, Regulatory Affairs and Policy

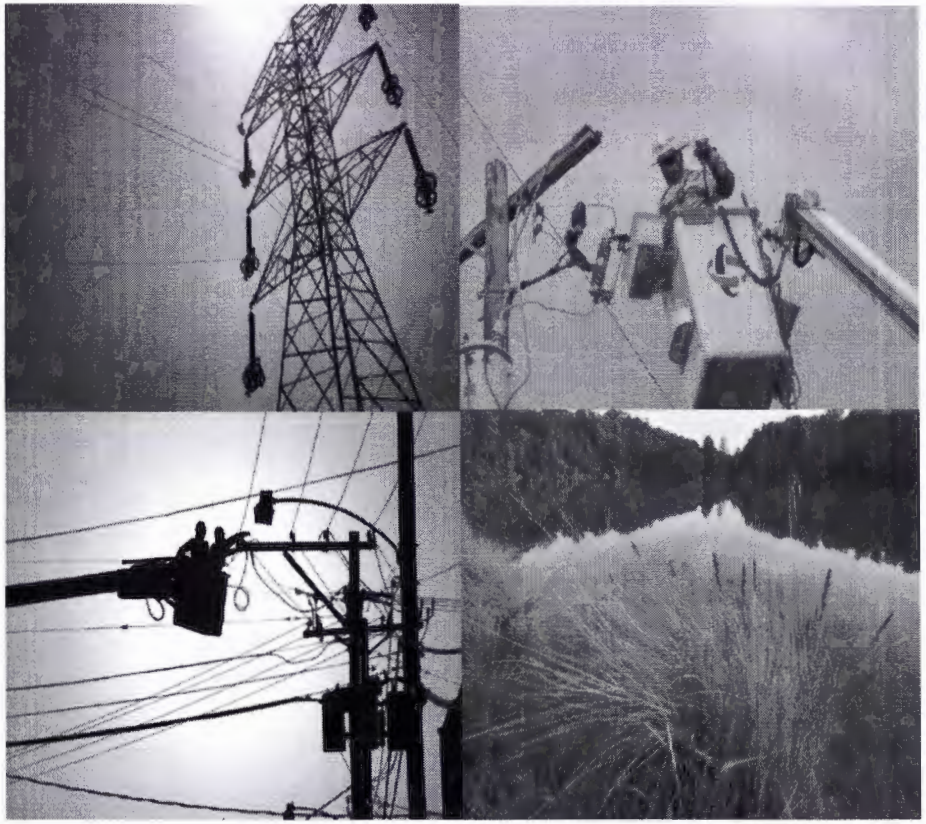
At A Glance – North Carolina

- 112 years of service
- 3.3 million retail customers in 83 counties
- 15,400 employees; 7,000 retirees
- $1.5 billion payroll
- $138 million in property taxes to N.C. local governments
- Two utilities
  - Duke Energy Carolinas
  - Duke Energy Progress



Maintaining Reliable Energy Infrastructure

- **56,000** square miles of service territory
- More than **32,000** megawatts of electric generating capacity in the Carolinas
- **19,400** miles of high-voltage transmission lines
- **170,600** miles of distribution lines
- **42** lakes and more than **3,000** miles of managed shoreline



Public Utility Compact

Utility's obligation:

- Have an obligation to serve all customers in its assigned territory
- ***Charge only those rates allowed by the Commission***

Commission's obligation:

- The utility is allowed a ***reasonable opportunity*** **to recover its costs (including earning a fair return** for its investors)
- Other companies generally cannot provide retail electric service inside defined territories

Base Rates vs. Riders

Base Rates

- Periodic adjustments to rates resulting from comprehensive rate filings and proceedings for all costs not recovered through riders

Riders

- Scheduled adjustments to rates for discrete components of costs (e.g., fuel, renewables, energy efficiency)
- Also known as trackers, clauses and adders

NC Riders

- Fuel Cost Adjustment
- Renewable Energy and Energy Portfolio Standard (REPS)
- Demand Side Management/Energy Efficiency (DSM/EE)
- Joint Agency Asset Rider (JAAR) – *DEP only*

Fuel Cost Adjustment Overview

- Representative level of fuel costs included in base rates; the fuel rider adjusts for actual fuel costs incurred
- Costs include fuel burned, certain purchased power costs, variable environmental costs and net gains/losses on the sale of fuel or fuel related by-products
- Annual rider adjustment can result in an increase or decrease in rates, billed as cents per kilowatt hour (kWh)

REPS Overview

- Recovers cost of compliance with Renewable Energy and Energy Efficiency Portfolio Standard, which requires DEP and DEC to supply a percentage of their NC retail sales with renewable energy
  - Current percentage = 6 percent
- Renewable energy resources include solar, wind, hydropower, geothermal, and biomass
- Types of cost recovered include: cost of renewable energy certificates (RECs), research and development costs (limited to $1 million per year), and labor and administrative costs related to compliance with the standard
- REPS costs are billed as a dollar amount per account and capped by customer account
  - Residential $34/year
  - Commercial $150/year
  - Industrial $1,000/year

DSM/EE Overview

- Recovers the costs of implementing programs designed to help increase efficiency, reduce energy consumption and save customers money on their energy bills
  - Billed as cents per kWh
- Types of costs recovered include cost to develop and offer programs, net lost revenues (not to exceed 36 months), a utility incentive based on kW and kWh savings achieved
  - Net lost revenues and utility incentives are based on independently evaluated and measured results
- Eligible non-residential customers may opt out of either or both rates if they have their own DSM and EE programs
  - Commercial customers with annual consumption of 1,000,000 kWh or greater in billing months of the prior calendar year and all industrial customers may apply

JAAR Overview

- Allows Duke Energy Progress to fully recover the non-fuel costs associated with the purchase of generating assets from the North Carolina Eastern Municipal Power Agency (NCEMPA)
  - Fuel costs and fuel savings are included in the fuel rider
- North Carolina Senate Bill 305 provided the framework to "recover the North Carolina retail portion of all reasonable and prudent costs incurred to acquire, operate, and maintain the proportional interest in the electric generating facilities purchased from a joint agency"
  - Acquisition costs ($1.2 billion) associated with the transaction, levelized over remaining life of assets, including financing costs
  - Incremental operating costs – additional depreciation/amortization, taxes, financing costs, and O&M associated with owning and maintaining acquired assets
- Billed as rate per kW for schedules with a demand charge and cents per kWh for all other schedules

DEC Residential Customer Bill Example

Base Rate and Miscellaneous	$ 93.16
Basic Facilities Charge	$ 11.80
Fuel Rider	$ (6.18)
REPS Rider	$ 0.91
DSM/EE Rider	$ 4.29
Total Bill	**$103.98**

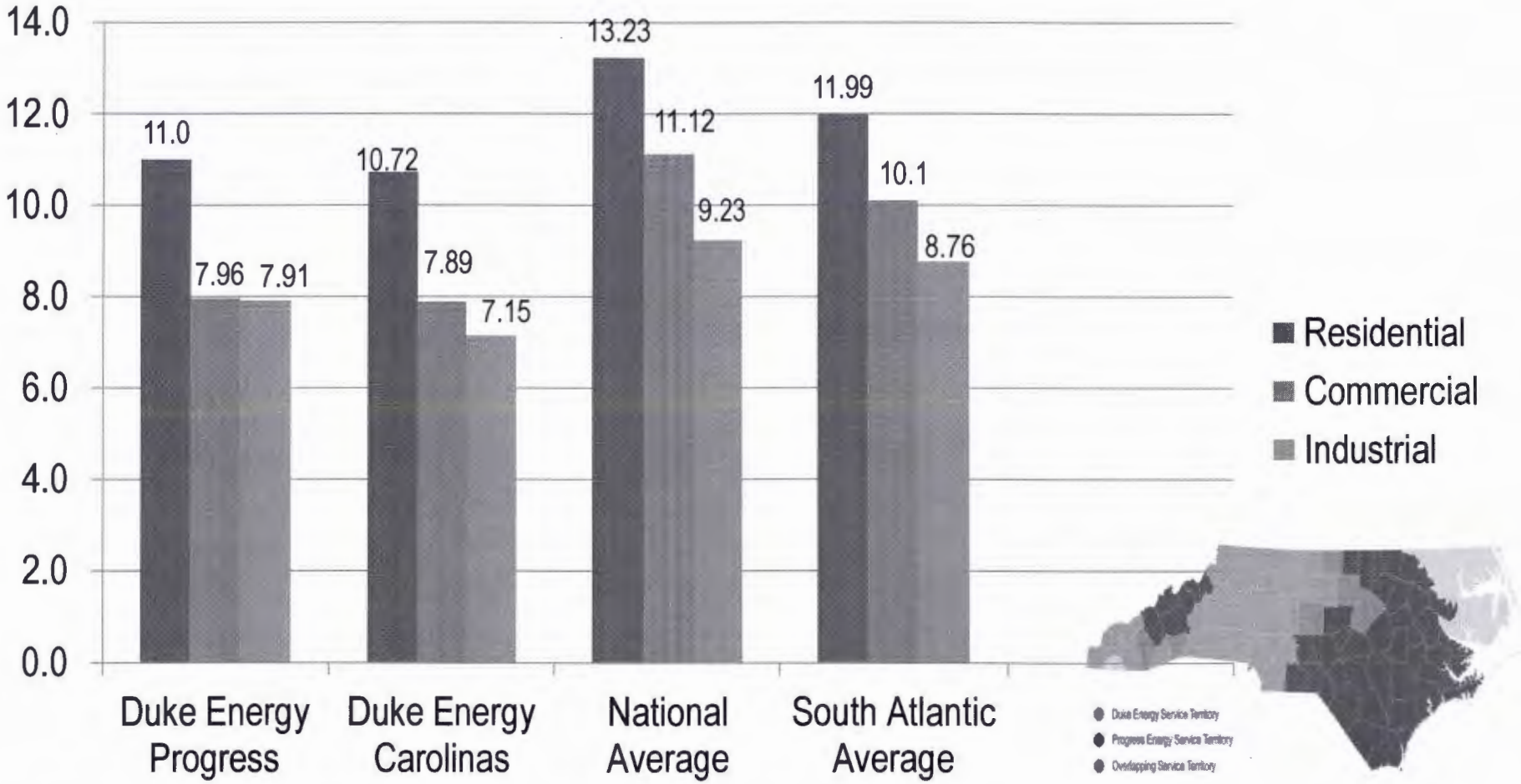
Based on 1,000 kWh usage

DEP Residential Customer Bill Example

Base Rate and Miscellaneous	$ 92.63
Basic Customer Charge	$ 11.13
Fuel Rider	$ (11.81)
REPS Rider	$ 1.29
DSM/EE Rider	$ 7.76
JAAR Rider	$ 2.23
Total Bill	**$ 103.23**

Based on 1,000 kWh usage

Average Customer Rates



NC Policy on PURPA

- Congress enacted the Public Utilities Regulatory Policy Act (PURPA) in 1978 and FERC enacted PURPA regulations
- Cogeneration and renewables facilities less than 80 MW are defined as "Qualifying Facilities" or "QFs" and have the right to force any utility to buy their power
- FERC enacts PURPA regulations but **state commissions implement them**, including calculation of avoided cost. Utilities have tariffs approved by state commissions that establish prices for certain types of QFs and QF sales.
  - Timing of obligation (LEO)
  - Term of contracts (15 years; there is no FERC minimum requirement)
  - Standard rates
  - 5 MW capacity limit for standard contracts (FERC requirement is100 kW)

Avoided Cost Calculation Methodology

Duke Energy Carolinas and Duke Energy Progress use the peaker methodology to calculate avoided costs

- The peaker method is a proxy for a combination of resources (peaking, intermediate, and baseload) and their trade off in production costs

Components of avoided cost tariff rates:

- **Avoided Capacity**
  - Capacity value is the annual cost of peaking capacity from a new simple cycle combustion turbine, including fixed operating and maintenance (O&M) costs based on publicly available data
  - The annual cost is allocated seasonally, then hourly, to determine the appropriate capacity rate expressed in cents/kWh
- **Avoided Energy**
  - Energy value reflects the difference in variable costs (fuel, variable O&M, etc.) between two simulation model runs
    - The first is the base case run, the second assumes 100 MW of "free" energy in each hour
  - The difference is identified by "on peak" and "off peak" periods in order to determine the appropriate energy rate expressed in cents/kWh

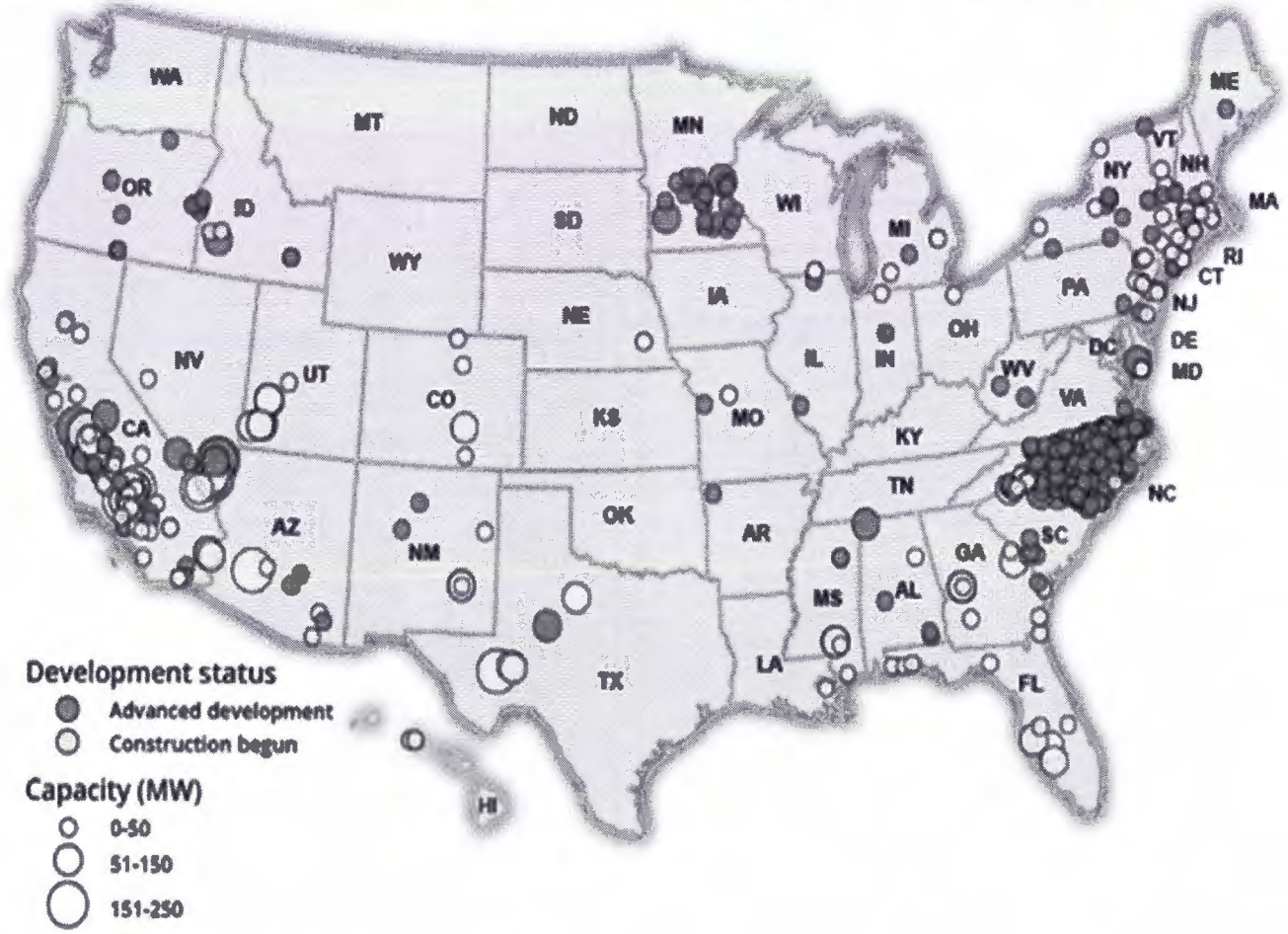
PURPA Comparison in Southeastern States

	State	Pay Rate	Maximum Contract Term	Fixed or Variable Rates	Size Limits
1	North Carolina	DEC = $56.20 per MWh DEP = $55.30 per MWh	15 year	Fixed	5MW
2	Indiana	$32.34 per MWh	1 year	Variable	20 MW
3	Kentucky	<=100 kw = $30.78 per MWh >100 kw = PJM LMP.	No Standard Term	Variable	20 MW
4	Ohio	PJM LMP	No Standard Term	Variable	20 MW
5	South Carolina	DEC = $51.20 per MWh DEP = $45.96 per MWh	10 year	Fixed	2 MW
6	Florida	Actual Avoided Cost Ex-Post 2015 average was ~$26/MWh	Annual Renewal	Variable	80 MW
7	Mississippi	Highest On Peak Rate = $36.20 July - October	5 year	Fixed	100 KW
8	Georgia	Solar Avoided Rate = $40.10	5 year	Fixed	100 KW
9	Alabama	All schedule rates < $40 per MWH	> =1 Year	Variable Updated Annually	100 KW
10	West Virginia	Peak = $34.30 per MWh Off Peak = $22.20 per MWh	> =1 Year	Variable Subject to revisions	100 KW
11	Virginia	Fx of PJM LMP	> =1 Year	Variable	20 MW
12	Tennessee	All schedule rates < $30 per MWH	> =1 Year	Variable Updated Annually	100 MW
13	Maryland	PJM LMP	No Standard Term	Variable	100 KW
14	Louisiana	Fx of MISO LMP	Negotiated Term	Variable	20 MW
15	Arkansas	Fx of MISO LMP	>100 KW min 5 yr Term	Variable	20 MW

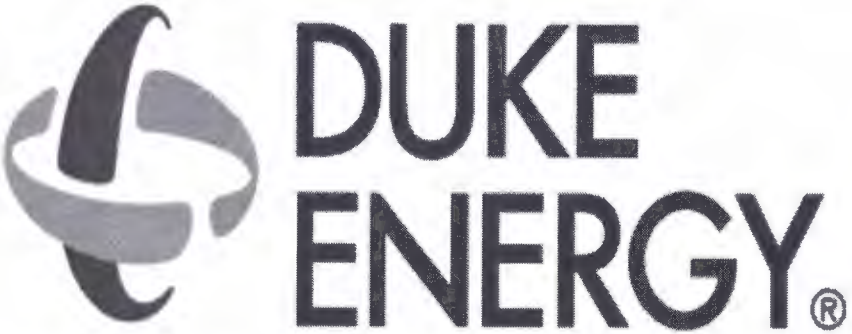
NC has the highest avoided cost rates, and the longest fixed rate term for utility-scale solar of any utility in the Southeast

NC Ranked #2 in the Nation for Connected Solar

US planned utility-scale solar projects in advanced development or under construction



As of May 26, 2016.
Source: SNL Energy, an offering of S&P Global Market Intelligence
Map credit: Alip Artates


DUKE
ENERGY®

Report to House Energy and Public Utilities Committee

Regulated Water & Wastewater Utilities in North Carolina

Matthew Klein and Shannon Becker

National Association of Water Companies (NAWC) - Southeast Chapter

MOVING WATER FORWARD

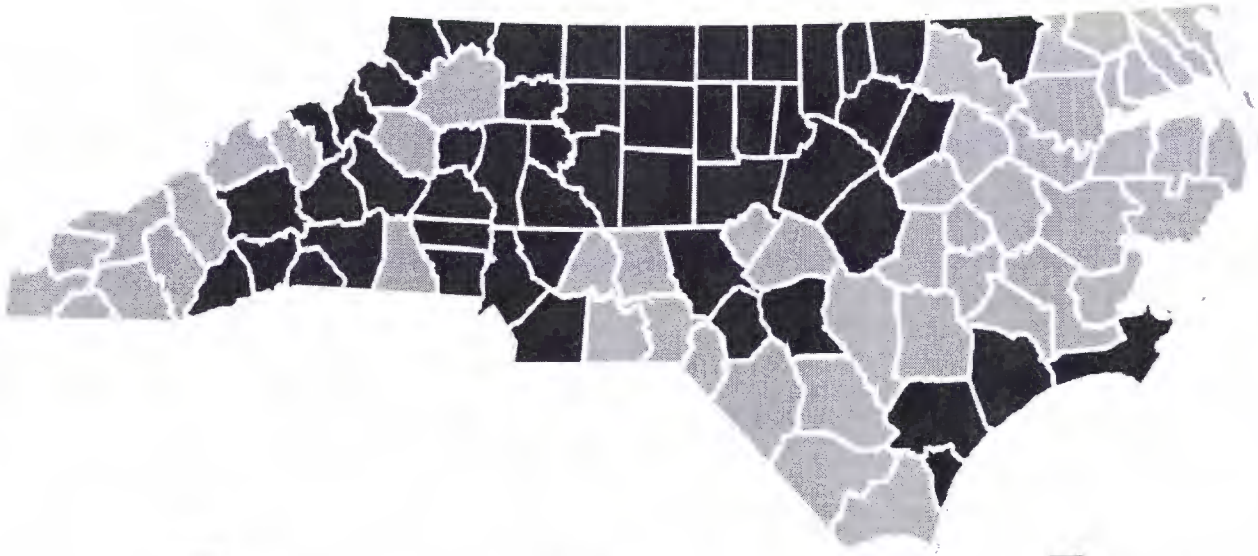
National Association of Water Companies (NAWC)

- Trade association representing the private water service industry
- Nearly 73 million Americans receive water service from a privately owned water utility or a municipal utility operating under a public-private partnership
- Private water companies own and operate 17% of the nation's community water systems

NAWC
SOUTHEAST
National Association
of Water Companies

Aqua North Carolina
Operations At-A-Glance

NYSE: WTR



■ Aqua

282k PEOPLE SERVED

1600+ WELLS

51 COUNTIES

165 EMPLOYEES

59 WASTEWATER TREATMENT PLANTS

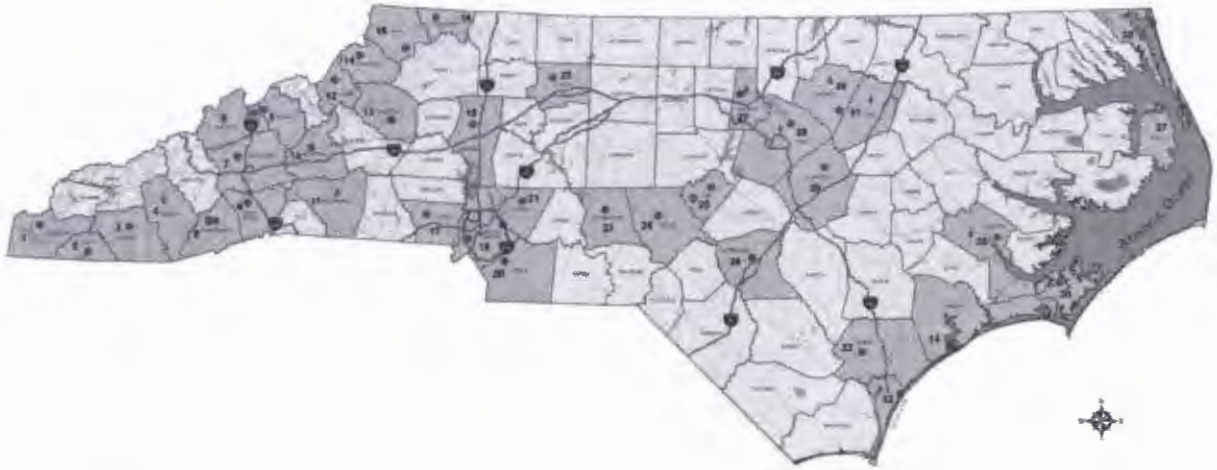
80k WATER CONNECTIONS

17k WASTEWATER CONNECTIONS

750 WATER SYSTEMS

Carolina Water Service, Inc. of North Carolina Operations At-A-Glance

NYSE: WTR



- **89k** PEOPLE SERVED
- **300+** WELLS
- **38** COUNTIES
- **85** EMPLOYEES
- **35** WASTEWATER TREATMENT PLANTS
- **35k** WATER CONNECTIONS
- **22k** WASTEWATER CONNECTIONS
- **105** WATER SYSTEMS

Regulated Water Utilities

- Oversight by NC Utilities Commission protects customers with respect to rates and service quality
- Fragmented—low economies of scale
- Heavy environmental regulation
- High capital needs; low rate of capital recovery
- There is no substitute for water
- Critical for economic stability & growth

Regulation of Water Utilities

Economic Regulation

- North Carolina Utilities Commission (NCUC)

Environmental Regulation

- North Carolina Department of Environmental Quality (NCDEQ)

- Environmental Protection Agency

Ratemaking

Principles

- Rates are tied directly to the cost of service
- Expenditures are scrutinized to ensure they are prudent and necessary
- Regulated water and wastewater utilities are granted an allowable return to ensure stability and attract investment. They are NOT guaranteed a certain rate of return.

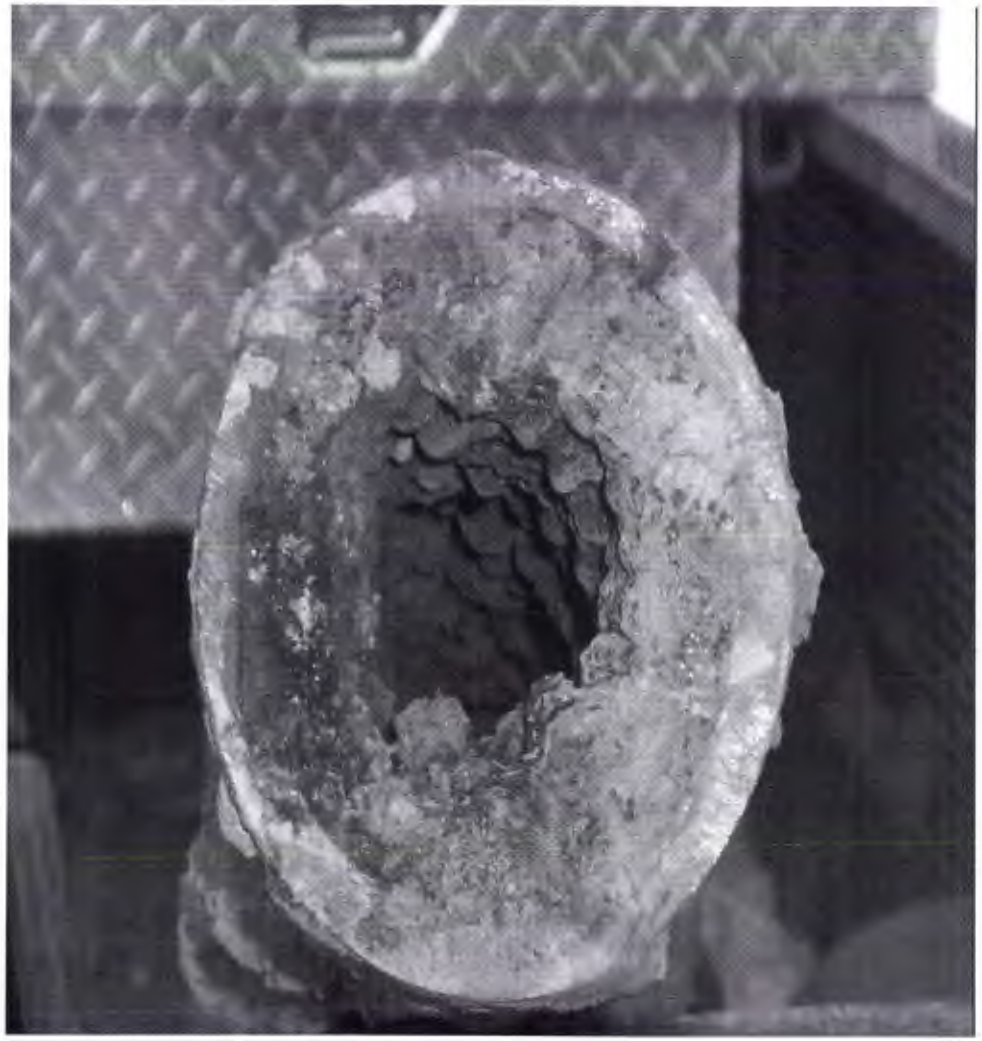
Process

- Rates are established by the North Carolina Utilities Commission
- In-depth review of financial and operational information
- Public field hearings to gather input from customers impacted by the ratemaking process
- Public Staff represents the interests of the customer
- The ratemaking process takes approximately 300 days to complete

State of Water & Sewer Infrastructure in North Carolina

- 20-Year capital cost estimates:
  - water = $10 to $15 billion
  - wastewater = $7 to $11 billion
- These are capital costs only—it excludes operation, maintenance, and on-going renewal and replacement
- Only a fraction of today's infrastructure capital needs can be met by currently available state or federal subsidizing funding levels

An example of the infrastructure issue



Policy Considerations

- Parity with Municipalities
- Ratemaking in a rising-cost environment
- Aging infrastructure
- Water conservation and reduced consumption

Contact Information

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National Association of Water Companies

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Aqua North Carolina

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Cary, North Carolina 27511

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President

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5701 Westpark Drive, Suite 101

Charlotte, North Carolina 28217

Committee Sergeants at Arms

NAME OF COMMITTEE Public Utilities

DATE: 3/8/2017 Room: 643

House Sgt-At Arms:

1. Name: Warren Hawkins
2. Name: Doug Harris
3. Name: Malachi McCullough, Jr
4. Name:
5. Name:

Senate Sgt-At Arms:

1. Name:
2. Name:
3. Name:
4. Name:
5. Name:

House Pages
Assignments
Wednesday, March 08, 2017
Session: 2:00 PM

Committee	Room	Time	Staff	Comments	Member
Judiciary III	421	1:00 PM	Rayquian Jones		Rep. Speaker Tim Moore
			Brian Ornelas		Rep. Speaker Tim Moore
Other	643	1:00 PM	Mahlaysia Thomas		Rep. Speaker Tim Moore

VISITOR REGISTRATION SHEET

Public Utilities — 3/8/2017

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Kim Burke	NWC
[illegible]	CSS
Preston Howard	NCMA
LuAnn Peterman	NCMA
Lori Ann Harris	LAHA
Kelli Ianna	Duke Energy
Kendal Bowman	Duke Energy
Kathy Barbo	Duke Energy
Brian Mewald	WM
Hayden Baugess	ElectriCities
David Barnes	ElectriCities

VISITOR REGISTRATION SHEET

Public Utilities — 3/8/2017

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Michelle Frazier	SML
Julie Robinson	NCSEA

VISITOR REGISTRATION SHEET

Public Utilities — 3/8/2017

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Patrick Ardis	Office of the Majority Leader 301 F
Lavelle Edwards	Marathon Petroleum
David McGowan	NCPC
Liz Bahnsen	Marathon Petroleum
JON SANDERS	jsanders@johnlocke.org
Dana Simpson	SVA
J. Tunnell	Duke Energy
Bo Somers	Duke Energy
RW Kaylor	Kaylor Law
Ken Jennings	DUKE
[illegible]	Duke

VISITOR REGISTRATION SHEET

Public Utilities — 3/8/2017

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jon Vague	Duke Energy
Kara Weisbaar	SA
Grace Rountree	Duke Energy
Jeff Brooks	Duke Energy
Amanda Donovan	TSS
Frances Liles	NCREA
Cassie Gavin	Sierra club
DAVID WILLIS	Union County
Deanna Downey	PSNCUC
Chris Ayers	PSNCUC
Patrick Buffkin	NCUC
Bill McCulloch	PSNC Energy
Alex Miller	AMGA

VISITOR REGISTRATION SHEET

Public Utilities — 3/8/2017

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John Mercer	Policy Group
[signature]	Vista Strategies
Anne Cap	Citizen
[signature]	CSS
Maggie Clark	SEIA
Sharon Miller	CUCA
Cindy Ohms	CUCA
Kevin [illegible]	CUCA
Brooks Rainey Pearson	SELC
MMAsbill	SELC
Tom BEAN	NCSEA

VISITOR REGISTRATION SHEET

Public Utilities — 3/8/2017

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Luke Stanley	James Sprunt Consulting
Prateek Patel	Elon University Young Republicans
Ryan Shindler	Elon University Young Republicans
Michael Kachur	Elon University Young Republicans
Joshua Fritz	Elon University College Republicans
Olivia Vomero	Elon University College Republicans
Gabrielle Cifelli	Elon University College Republicans
Bill Scoggin	DI

House Committee on Energy & Public Utilities

Wednesday, March 15, 1:00 pm

Room 643 Legislative Office Building

AGENDA

Welcome and Opening Remarks

Representative Sam Watford, Presiding Chair

Introduction of Pages/Sergeant-At-Arms

Agenda Items

Kendal Bowman, Vice President of Regulatory Policy, Duke Energy, will give an overview of last week's presentation; followed by a question & answer session.

Other Business

Please feel free to take the enclosed materials, but please leave your folder to be used at the next meeting. Thank you.

ADJOURNMENT

HOUSE COMMITTEE ON ENERGY AND PUBLIC UTILITIES

WEDNESDAY, MARCH 15, 2017

MINUTES

The House Committee on Energy and Public Utilities met in Room 643 of the Legislative Office Building on March 15, 2017 at 1:00 pm. The following members were present: Representatives Watford, Presiding Chair, Alexander, Arp, Blackwell, Bumgardner, Collins, Cunningham, Goodman, Hanes, Harrison, Martin, Moore, Murphy, Riddell, Sauls, Stone, Strickland, and Szoka. Layla Cummings, Jennifer McGinnis, and Mariah Matheson, Staff, were in attendance. A Visitor Registration log is attached and made part of these minutes (Attachment I).

Representative Watford, Presiding Chair, called the meeting to order at 1:10 pm. He introduced the Pages and the Sergeant of Arms staff (Attachment II).

The objective of this meeting was for Ms. Kendal Bowman, Vice President of Regulatory Policy, Duke Energy, to give an overview of last week's presentation (Attachment III); followed by a question & answer session.

The Chair welcomed Ms. Kendal Bowman and thanked her for taking time out of her busy schedule to speak to the members of this committee.

Representative Watford, Presiding Chair, opened the floor for questions.

Following a serious of questions by the committee members (Attachment IV), and there being no further business, the Chair thanked Ms. Bowman and adjourned the meeting at 1:50 pm.

Respectfully submitted,

Sam Watford
Representative Sam Watford, Presiding Chair

Regina Irwin
Regina Irwin, Committee Clerk

Questions & Answers Committee Meeting 03-15-2017

Q. Rep. Blackwell

Regarding your comments when showing the maps of all solar plant sitings in NC, I take it from your remark that happens not that the sun shines more in NC than CA, but that state law requires that Duke has to contract with the solar units?

A. Ms. Bowman – *Under PURPA, the Public Utilities Regulatory Act passed in 1978, Duke Energy is required to accept all solar energy put to it by solar development and to pay its avoided cost for the solar under multi-year contracts. It is a must-purchase relationship.*

Follow-up Rep. Blackwell

PURPA is Federal Law?

A. Ms. Bowman - *Yes sir. It was passed during the Carter Administration at the height of the energy crisis in order to promote alternative energy sources.*

Follow-up Rep. Blackwell

Federal application of law & regs will not be unique to NC; it will only be related to choices we make in NC that would explain the number of solar units?

A. Ms. Bowman - *The North Carolina Utilities Commission actually implements PURPA for the state and sets the standard contract terms and avoided cost. The avoided cost paid, in addition to the multi-year, standard contract length under PURPA have made NC very lucrative and attractive for solar development. NC accounts for 60% of all eligible and alternative power projects in the country—the largest PURPA market in the US. SB3 in 2007 established the Renewable Energy Portfolio Standard that also has encouraged the growth of renewable energy in the state.*

Follow up Rep. Blackwell

Sometimes Duke does not need their energy output, but Duke has to buy it anyway. Is there a corollary or opposite problem of the solar units not providing Duke power consistently & reliably during times Duke would have used it. But because the sun is not shining, Duke is not able to get what they have been getting, Duke has to overbill. Duke can't really do without plant that Duke has in reserve to make up for their deficiency in solar?

A. Ms. Bowman - *Yes, you are correct. Duke Energy cannot dispatch or curtail the energy put to it by solar developers except in case of an emergency. This results in over-generation. The same is true when the sun is not shining or it is cloudy, there can be intermittent drops in energy and Duke cannot rely on solar energy in meeting its baseline generation needs. Reliably planning and operating the Companies' systems is becoming increasingly challenging as the level of variable, non-dispatchable utility scaled solar continues to increase.*

Q. Rep. Collins

The Joint Agency Asset Rider - $2.00/$3.00 charge on utility bills from Duke Progress. Unless I am forgetting, the grafts that we came across last year when we passed legislation, last year or the year before last, I think over time, because of the change in fuel mix, that that purchase brought into play that over the span of the whole time of the rider, it will be a decrease, rather than an increase for customers over time?

A. Ms. Bowman - *Yes sir. The legislation enabling the NCEMPA asset purchase results in a long-term fuel savings benefiting all customers.*

Follow up Rep. Collins

Under the avoided capacity, peaking for solar facilities is there any avoided capacity when the generation is intermittent and Duke might have to replace it anytime, let say from late November through February. I assume the peak time is at 7:00 am when everyone gets ready for work and 5:30 pm when folks return home to cook dinner. Duke knows they are not getting any generation during that time. Duke really has to have the same amount of backup facilities that can provide the same amount of peak power that you would have if those facilities did not exist, in matter of fact my question is, how does Duke put a value on an avoided capacity? It seems to me the value is zero for an intermittent facility.

A. Ms. Bowman - *The value of avoided cost paid is based upon the projected cost of construction of Duke's next peaker generator—not on the real time production and supply of renewable energy. The avoided cost is supposed to hold a customer indifferent between the cost of utility or non-utility generation. However, due to low cost natural gas, Duke's true avoided cost is about $35.00 per megawatt hour vs. the $55 to $85 per megawatt hour Duke is currently paying under the multi-year contracts.*

Follow up Rep. Collins

When Duke has to buy power from the qualifying facility, you mentioned Duke has to pay them capacity, does that mean that Duke sometimes pays for electricity Duke is not able to use?

A. Ms. Bowman - *Yes*

Follow-up Rep. Collins

Can I build a qualifying facility anywhere I want to, even if Duke has all the electricity generation Duke needs in that area or is there someway to prevent me from doing that?

A. Ms. Bowman - *Currently qualifying facilities can locate wherever they want—which has resulted in an abundance of facilities in the DEP service territory, where the geography is flat. 75% of the solar in Duke Energy's territory is in DEP. The company needs more solar in DEC in order to comply with the REPS requirement of SB3.*

Q. Rep. Szoka

Can you tell me how many peaker plants Duke hasn't built because of renewable energy or how long Duke had to delay in building and outlay in capital to delay peaker plants since Duke measured them?

A. Ms. Bowman - *No, but I can supply that information.*

Ms. Bowman will provide requested information

Follow up Rep. Szoka

On the Joint Rider, Joint Agency Asset Rider. Since I am a Duke Energy customer I would like to be clear also on your answer to Rep. Collins. I understand that there is a benefit, but when I look at my bill, when I use 1000 megawatts, based on your chart, I, as a Duke Energy customer, I am paying $2.23 in addition and that is in essence subsidizing electricity in the eastern part of the state for ElectricCity?

A. Ms. Bowman - *What you are missing is the net based on fuel savings.*

Follow up Rep. Szoka

When you talk about the Fuel Rider I was led to believe that there is some component of renewable energy that also gets into fuel rider in a positive way?

A. Ms. Bowman - *Yes. RECS from the QF can flow through, but not if the REC is not bundled.*

Follow up Rep. Szoka

To make sure I fully understand it, what we are seeing here for the JAAR Rider and REPS Rider is just one aspect of cost of those programs, the benefits for them are included in the Fuel Rider?

A. Ms. Bowman - *Yes, the fuel savings resulting from the purchase of the NCEMPA assets flows through the fuel clause each year.*

Q. Rep. Bumgardner

Public Utilities Regulatory Policy Act of 1978 was passed in a time of energy hysteria. It's time we moved on from that. But in the end it is not just a series of barometers set forth by the federal government that we can follow all of or part of, and we have some discretion. So the reason we have a stampede into our state of solar panel farms is because we have given generously subsidies to them and its advantages for them to come here and that's why there are so many of them as you have shown on your map. Is that correct?

A. Ms. Bowman - *The reason NC is No. 2 in solar in the country is through PURPA implementation, specifically the standard contract length and avoided cost, which makes the terms lucrative.*

Follow up Rep. Bumgardner

One thing I want to ask about the coal ash issue. I have a plant in my district. I remember when we did the Joint Agency Rider and at that time I understood why it happened and what happened, we are passing the cost to Duke Rate payers. But let me get to the point. The coal ash problem, why would you not want to do one of those remora type riders, for the lack of a better analogy, onto the bill? I understand Duke is asking for a rate increase and related to that problem, why would you not go the other route instead, of doing a rider or something to that effect to deal with this problem. This was never a problem for the past 50 years. In the last 2 or 3 years it is a problem destroying the world.

A. Ms. Bowman - *Coal Ash cost recovery will be part of our next rate case filed with the North Carolina Utilities Commission. We have previously filed a deferral of those costs which means we are asking the Commission to determine what is appropriate for recovery.*

Q. Rep. Arp

I believe a strategic look ahead is imperative for adequate & sound energy policy. What do you see as biggest challenge coming on in the next 20 years and what is Duke doing regarding technology to keep us moving forward?

A. Ms. Bowman - *Investment in the grid is important. Duke Energy has recently announced a major grid initiative which will modernize, harden, and protect the grid which is the backbone of NC's economy and future growth.*

Follow up Rep. Arp

About capacity, both base & peak in terms on the capacity, basically supply & demand. Can you speak to the capacity where we are both on base & peak also the need & especially as it relates to the distributed energy generation that is coming on line & where does it fit into?

A. Ms. Bowman - *Solar QFs inject energy onto the system without notice—no day ahead or intra-day scheduling. It cannot be coordinated with our system operator and without commitment to deliver any scheduled quantities of energy. Systems have to be balanced in real time and therefore the system operator must instantaneously dispatch the output of its network in the opposite direction to respond to the increases or decreases in solar QJ injections.*

Q. Rep. Cunningham

I was looking at your graph and on line 8 on Georgia is a solar avoided rate. What is the solar avoided rate compared to what ours is? I understand that the term makes it look cheaper or whatever, but what is it?

A. Ms. Bowman - *Although the contract length may be different, ours is 15 and Georgia's is 5, the pay rate or avoided cost rate is able to be compared per MWh. Georgia's is $40.10 at NC's is between $55.30 and $56.20.*

Follow up Rep. Cunningham

Looking at what they have done, have we ever looked at how they deciphered it out & compare it? Would it be beneficial for us to do itemized items like that?

A. Ms. Bowman - *Our long term contracts do not allow us to adjust for fuel fluctuations like a 5-year contract would.*

Q. Rep. Riddell

I have a request if you can and possible other members too might like to get the information as well. Could we get a 10 years chart of the annual cost of the various Riders & PURPA?

A. Ms. Bowman - *Yes, we will get that chart for you.*

Q. Rep. Stone

The chart we are looking at the screen right now, just so I understand this, those are the size limits of the maximum contract term, and those are basically your power perseverance, is that what it is?

A. Ms. Bowman - *The standard PURPA contract length in North Carolina is 15 years.*

Follow up Rep. Stone

I would guess the biggest factor in that, why we have so much solar gear is the maximum contract term. Because you're looking at someone doing their performa they can extend it, they can have the certainty for over 15 years that could make the difference why it could be more appealing than anything else?

A. Ms. Bowman - *Yes sir.*

Follow up Rep. Stone

Size limit, is that a minimum or maximum size limit?

A. Ms. Bowman - *The size limit for a qualifying facility under PURPA implementation in NC is r 5 megawatts and under.*

Q. Rep. Harrison

I want to get back to the map of solar with NC #2 in solar capacity. I am pretty excited about that slot. That means lots of clean energy jobs and lots of investment in the rural communities even though with the tax abatement much reduced tax rate, but its more taxes they are getting. I am just wondering how NC compares, actual megawatts to CA, which I assume is #1?

A. Ms. Bowman - *Actually, when you compare megawatts built, NC has actually outpaced California on solar development.*

HOUSE CALENDAR
65th Legislative Day
Wednesday, May 17, 2017
House Convenes at 2:00 P.M.

Tim Moore, Speaker

CALENDAR

LOCAL BILLS

THIRD READING - ROLL CALL

HB **268** Bumgardner
CITY OF BELMONT CHARTER REVISIONS. (Finance) (1st Edition)

HB **393** Committee Substitute - Ross and Riddell (Primary Sponsors)
MEBANE CHARTER REVISED AND CONSOLIDATED. (Finance) (2nd Edition)

HB **491** McGrady and Henson (Primary Sponsors)
HENDERSON COUNTY FIRE TAX DISTRICTS. (Finance) (1st Edition)

PUBLIC BILLS

SECOND AND THIRD READINGS

HB **280** Committee Substitute - McGrady, Lewis, Duane Hall and S. Martin (Primary Sponsors)
JUVENILE JUSTICE REINVESTMENT ACT. (Appropriations) (2nd Edition)

HB **295** S. Martin and Dobson (Primary Sponsors)
HEALTH CARE SHARING EXPENSES DEDUCTION. (Finance) (1st Edition)

COMMITTEE MEETINGS

(Three digit rooms = Legislative Office Building - Four digit rooms = Legislative Building)

Wednesday, May 17			**Room**	**Time**
REGULATORY REFORM -- CORRECTED			1228/1327	1:00 pm
HB	279	Fantasy Sports Regulation.		
HB	590	Interior Design Profession Act.		

Thursday, May 18			**Room**	**Time**
ENERGY AND PUBLIC UTILITIES -- CORRECTED			643	12:00 pm
HB	310	Wireless Communications Infrastructure Siting.		
HOMELAND SECURITY, MILITARY, AND VETERANS AFFAIRS			421	9:00 am
SB	62	Veterans' Affairs Commission/Strategic Plan.		

(over)

Eligible to file in 2017 but no deadlines:

(1) Redistricting bills for House, Senate, Congress or local entities (H).
(2) Ratification of amendments to the Constitution of the United States (H).
(3) Bills introduced on the report of the House Committees on Appropriations, Finance, or Rules (H).
(4) Bills providing for action on gubernatorial nominations or appointments (S).
(5) Adjournment resolution (H & S).

James White
Principal Clerk

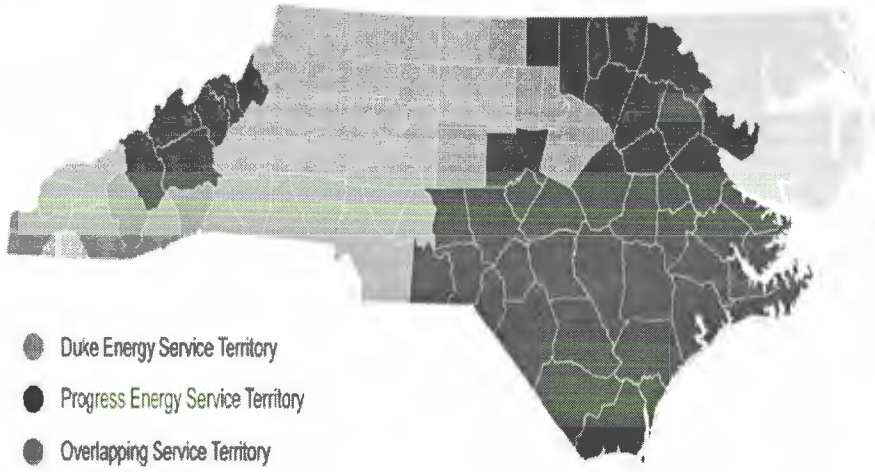
DUKE ENERGY®

House Energy and Public Utilities Committee – March 15, 2017

Kendal Bowman – Vice President, Regulatory Affairs and Policy

At A Glance – North Carolina

- 112 years of service
- 3.3 million retail customers in 83 counties
- 15,400 employees; 7,000 retirees
- $1.5 billion payroll
- $138 million in property taxes to N.C. local governments
- 56,000 square miles of service territory
- More than 32,000 megawatts of electric generating capacity in the Carolinas
- Two utilities
  - Duke Energy Carolinas
  - Duke Energy Progress



Public Utility Compact

Utility's obligation:

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Base Rates vs. Riders

Base Rates

- Periodic adjustments to rates resulting from comprehensive rate filings and proceedings for all costs not recovered through riders

Riders

- Scheduled adjustments to rates for discrete components of costs (e.g., fuel, renewables, energy efficiency)
- Also known as trackers, clauses and adders

NC Riders – Annual Proceedings

- Fuel Cost Adjustment
  - Costs include: fuel burned, certain purchased power costs, variable environmental costs and net gains/losses on the sale of fuel or fuel related by-products
  - Annual rider adjustment can result in an increase or decrease in rates, billed as cents per kilowatt hour (kWh)
- Renewable Energy and Energy Efficiency Portfolio Standard (REPS)
  - Costs recovered include: costs of renewable energy certificates (RECs), research and development costs (limited to $1 million per year), and labor and administrative costs related to compliance
- Demand Side Management/Energy Efficiency (DSM/EE)
  - Costs recovered include: costs to develop and implement programs, net lost revenues (not to exceed 36 months)
- Joint Agency Asset Rider (JAAR) – *DEP only*
  - Costs recovered include: non-fuel costs associated with the purchase of generating assets from the North Carolina Eastern Municipal Power Agency (NCEMPA)
  - Fuel costs and fuel savings are included in the fuel rider

Residential Customer Bill Examples

Duke Energy Carolinas	
Base Rate and Miscellaneous	$ 93.16
Basic Facilities Charge	$ 11.80
Fuel Rider	$ (6.18)
REPS Rider	$ 0.91
DSM/EE Rider	$ 4.29
Total Bill	**$ 103.98**

Based on 1,000 kWh usage

Duke Energy Progress	
Base Rate and Miscellaneous	$ 92.63
Basic Customer Charge	$ 11.13
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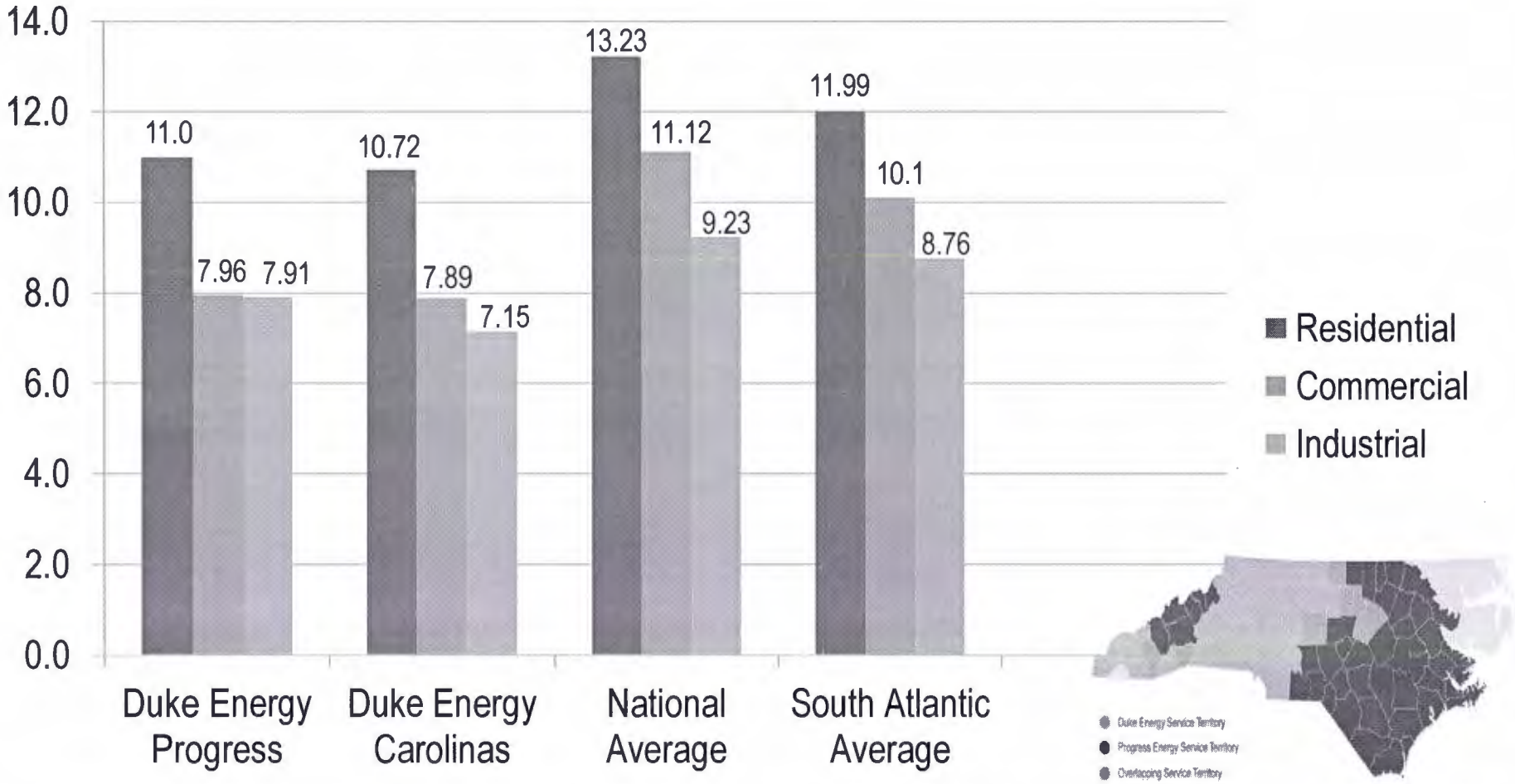
REPS Rider	$ 1.29
DSM/EE Rider	$ 7.76
JAAR Rider	$ 2.23
Total Bill	**$ 103.23**

Based on 1,000 kWh usage

Average Customer Rates

Data from Summer 2016 EEI Typical Bills Report



NC Policy on PURPA

- Congress enacted the Public Utilities Regulatory Policy Act (PURPA) in 1978 and FERC enacted PURPA regulations
- Cogeneration and renewables facilities less than 80 MW are defined as "Qualifying Facilities" or "QFs" and have the right to force any utility to buy their power
- FERC enacts PURPA regulations but **state commissions implement them**, including calculation of avoided cost. Utilities have tariffs approved by state commissions that establish prices for certain types of QFs and QF sales.
  - Timing of obligation (LEO)
  - Term of contracts (15 years; there is no FERC minimum requirement)
  - Standard rates
  - 5 MW capacity limit for standard contracts (FERC requirement is100 kW)

Avoided Cost Calculation Methodology

- **Duke Energy Carolinas and Duke Energy Progress use the peaker methodology to calculate avoided costs**
  - The peaker method is a proxy for a combination of resources (peaking, intermediate, and baseload) and their trade off in production costs
- **Components of avoided cost tariff rates:**
  - **Avoided Capacity**
    - Capacity value is the annual cost of peaking capacity from a new simple cycle combustion turbine, including fixed operating and maintenance (O&M) costs based on publicly available data
    - The annual cost is allocated seasonally, then hourly, to determine the appropriate capacity rate expressed in cents/kWh
  - **Avoided Energy**
    - Energy value reflects the difference in variable costs (fuel, variable O&M, etc.) between two simulation model runs
      - The first is the base case run, the second assumes 100 MW of "free" energy in each hour
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PURPA Comparison in Southeastern States

	State	Pay Rate	Maximum Contract Term	Fixed or Variable Rates	Size Limits
1	North Carolina	DEC = $56.20 per MWh DEP = $55.30 per MWh	15 year	Fixed	5MW
2	Indiana	$32.34 per MWh	1 year	Variable	20 MW
3	Kentucky	<=100 kw = $30.78 per MWh >100 kw = PJM LMP.	No Standard Term	Variable	20 MW
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5	South Carolina	DEC = $51.20 per MWh DEP = $45.96 per MWh	10 year	Fixed	2 MW
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7	Mississippi	Highest On Peak Rate = $36.20 July - October	5 year	Fixed	100 KW
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9	Alabama	All schedule rates < $40 per MWH	> =1 Year	Variable Updated Annually	100 KW
10	West Virginia	Peak = $34.30 per MWh Off Peak = $22.20 per MWh	> =1 Year	Variable Subject to revisions	100 KW
11	Virginia	Fx of PJM LMP	> =1 Year	Variable	20 MW
12	Tennessee	All schedule rates < $30 per MWH	> =1 Year	Variable Updated Annually	100 MW
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14	Louisiana	Fx of MISO LMP	Negotiated Term	Variable	20 MW
15	Arkansas	Fx of MISO LMP	>100 KW min 5 yr Term	Variable	20 MW

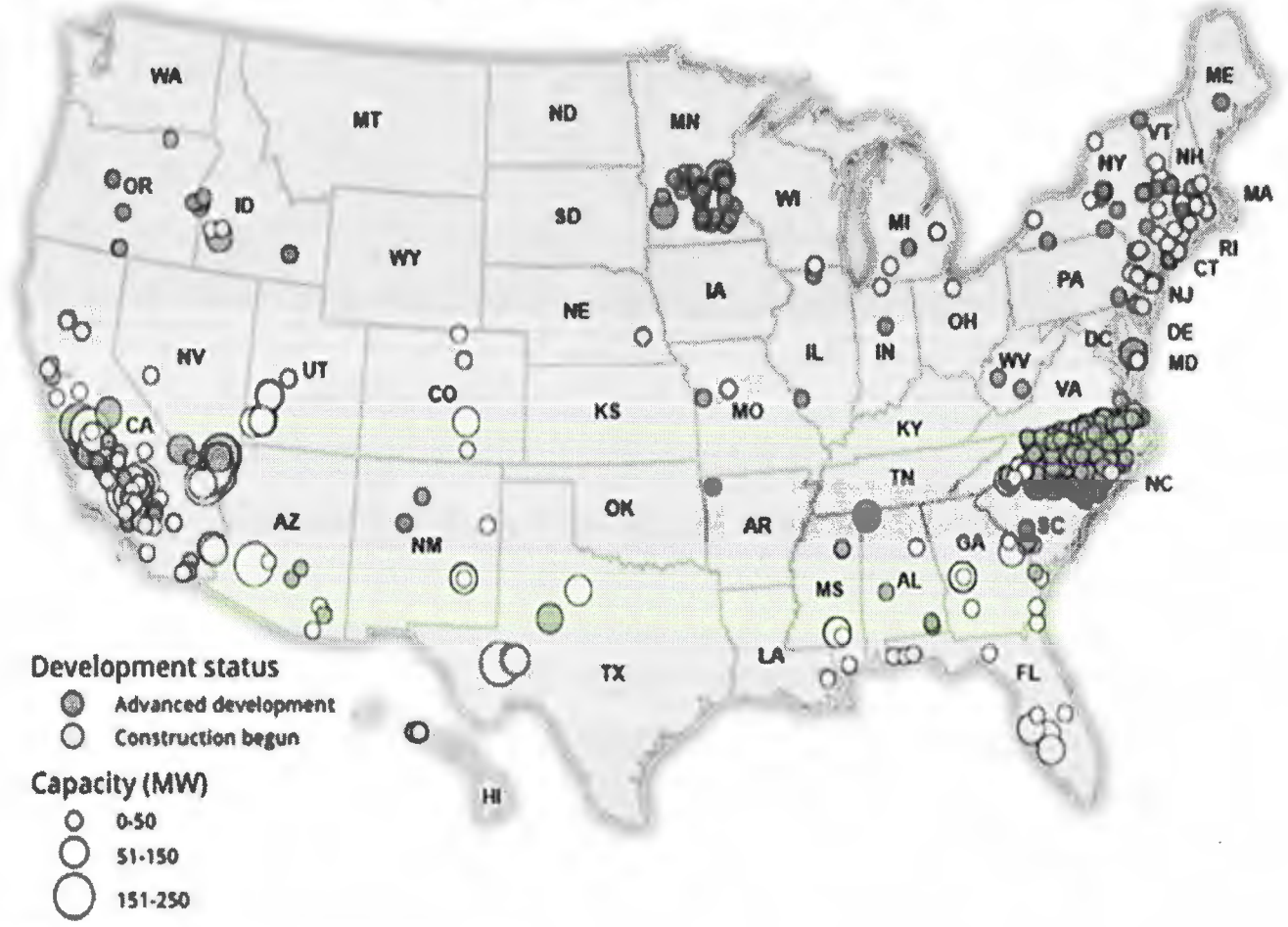
NC has the highest avoided cost rates, and the longest fixed rate term for utility-scale solar of any utility in the Southeast

Duke Energy NCUC Avoided Cost Filing

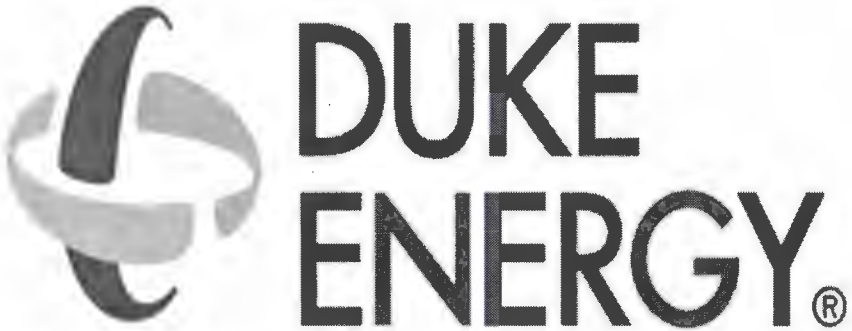
- Proposing a change to NC rules related to PURPA
- Reduce contract size from 5 MW to 1 MW
- Reduce contract term from 15-year fixed rates to 10-year term with a 2-year adjusted energy rate
- No capacity payments in years; no capacity is needed in the utilities IRPs (Integrated Resource Plans)
- Proposes a competitive RFP process for renewables
  - Provides a way to meet least cost requirements for customers
  - Provides a way to obtain curtailment rights and dispatchability rights for variable renewable resources

NC Ranked #2 in the Nation for Connected Solar

US planned utility-scale solar projects in advanced development or under construction



As of May 26, 2016.
Source: SNL Energy, an offering of S&P Global Market Intelligence
Map credit: Alip Artates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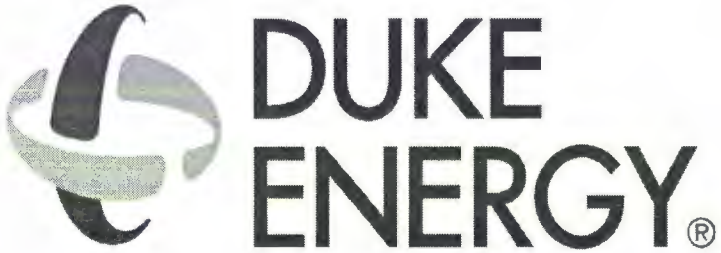
ENERGY®



House Energy and Public Utilities Committee – March 8, 2017

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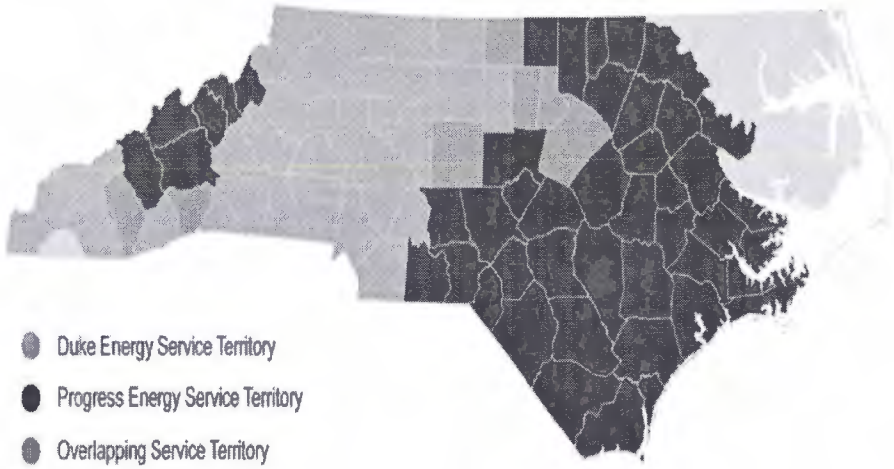
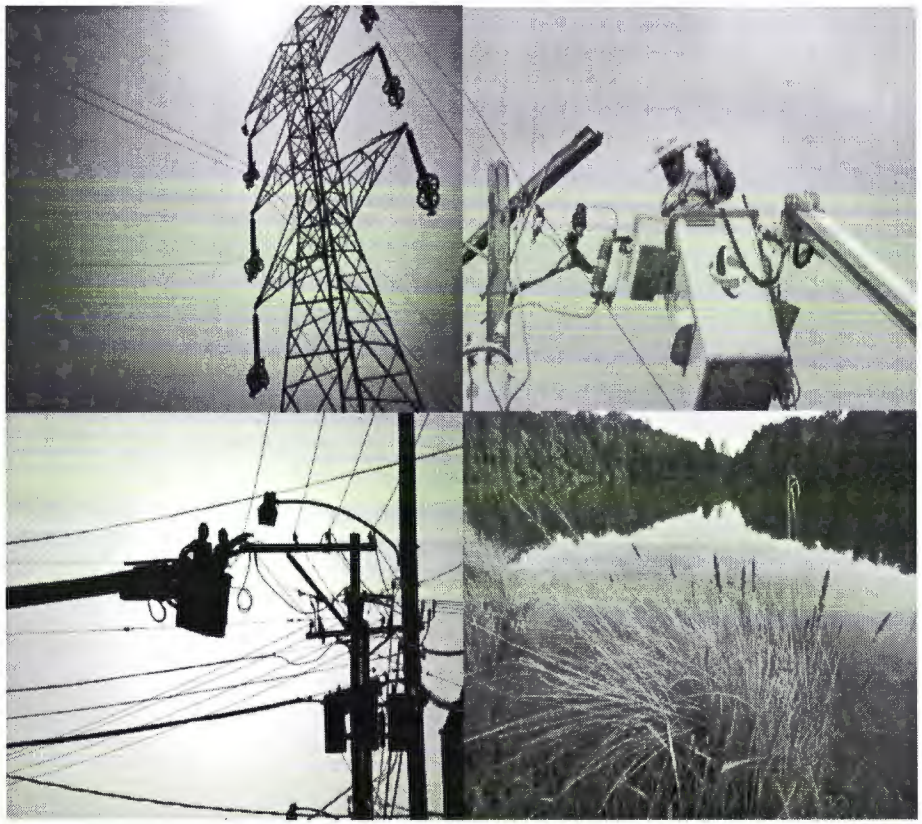


Maintaining Reliable Energy Infrastructure

- **56,000** square miles of service territory
- More than **32,000** megawatts of electric generating capacity in the Carolinas
- **19,400** miles of high-voltage transmission lines
- **170,600** miles of distribution lines
- **42** lakes and more than **3,000** miles of managed shoreline



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- Fuel Cost Adjustment
- Renewable Energy and Energy Portfolio Standard (REPS)
- Demand Side Management/Energy Efficiency (DSM/EE)
- Joint Agency Asset Rider (JAAR) – *DEP only*

Fuel Cost Adjustment Overview

- Representative level of fuel costs included in base rates; the fuel rider adjusts for actual fuel costs incurred
- Costs include fuel burned, certain purchased power costs, variable environmental costs and net gains/losses on the sale of fuel or fuel related by-products
- Annual rider adjustment can result in an increase or decrease in rates, billed as cents per kilowatt hour (kWh)

REPS Overview

- Recovers cost of compliance with Renewable Energy and Energy Efficiency Portfolio Standard, which requires DEP and DEC to supply a percentage of their NC retail sales with renewable energy
  - Current percentage = 6 percent
- Renewable energy resources include solar, wind, hydropower, geothermal, and biomass
- Types of cost recovered include: cost of renewable energy certificates (RECs), research and development costs (limited to $1 million per year), and labor and administrative costs related to compliance with the standard
- REPS costs are billed as a dollar amount per account and capped by customer account
  - Residential $34/year
  - Commercial $150/year
  - Industrial $1,000/year

DSM/EE Overview

- Recovers the costs of implementing programs designed to help increase efficiency, reduce energy consumption and save customers money on their energy bills
  - Billed as cents per kWh
- Types of costs recovered include cost to develop and offer programs, net lost revenues (not to exceed 36 months), a utility incentive based on kW and kWh savings achieved
  - Net lost revenues and utility incentives are based on independently evaluated and measured results
- Eligible non-residential customers may opt out of either or both rates if they have their own DSM and EE programs
  - Commercial customers with annual consumption of 1,000,000 kWh or greater in billing months of the prior calendar year and all industrial customers may apply

JAAR Overview

- Allows Duke Energy Progress to fully recover the non-fuel costs associated with the purchase of generating assets from the North Carolina Eastern Municipal Power Agency (NCEMPA)
  - Fuel costs and fuel savings are included in the fuel rider
- North Carolina Senate Bill 305 provided the framework to "recover the North Carolina retail portion of all reasonable and prudent costs incurred to acquire, operate, and maintain the proportional interest in the electric generating facilities purchased from a joint agency"
  - Acquisition costs ($1.2 billion) associated with the transaction, levelized over remaining life of assets, including financing costs
  - Incremental operating costs – additional depreciation/amortization, taxes, financing costs, and O&M associated with owning and maintaining acquired assets
- Billed as rate per kW for schedules with a demand charge and cents per kWh for all other schedules

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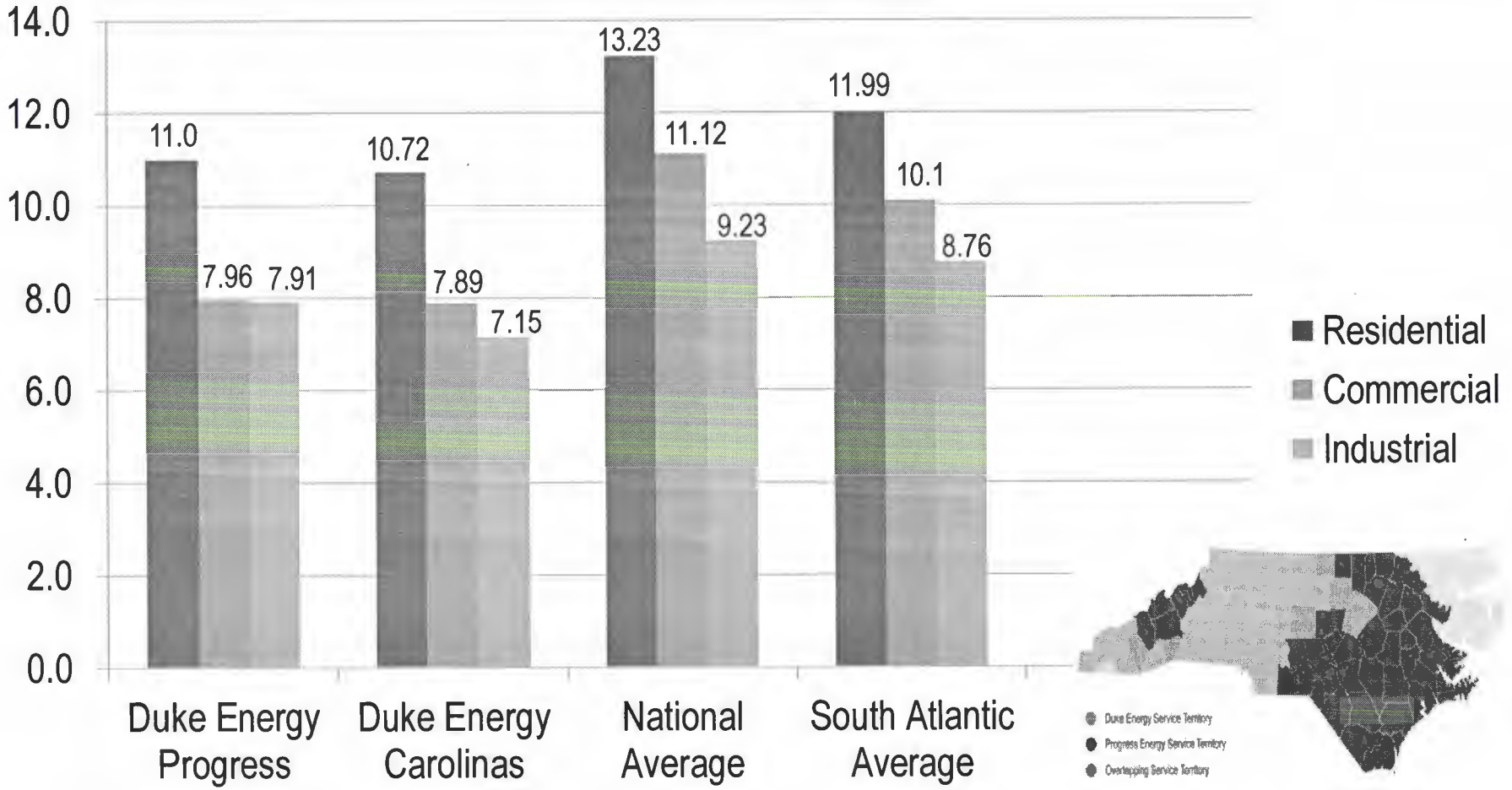

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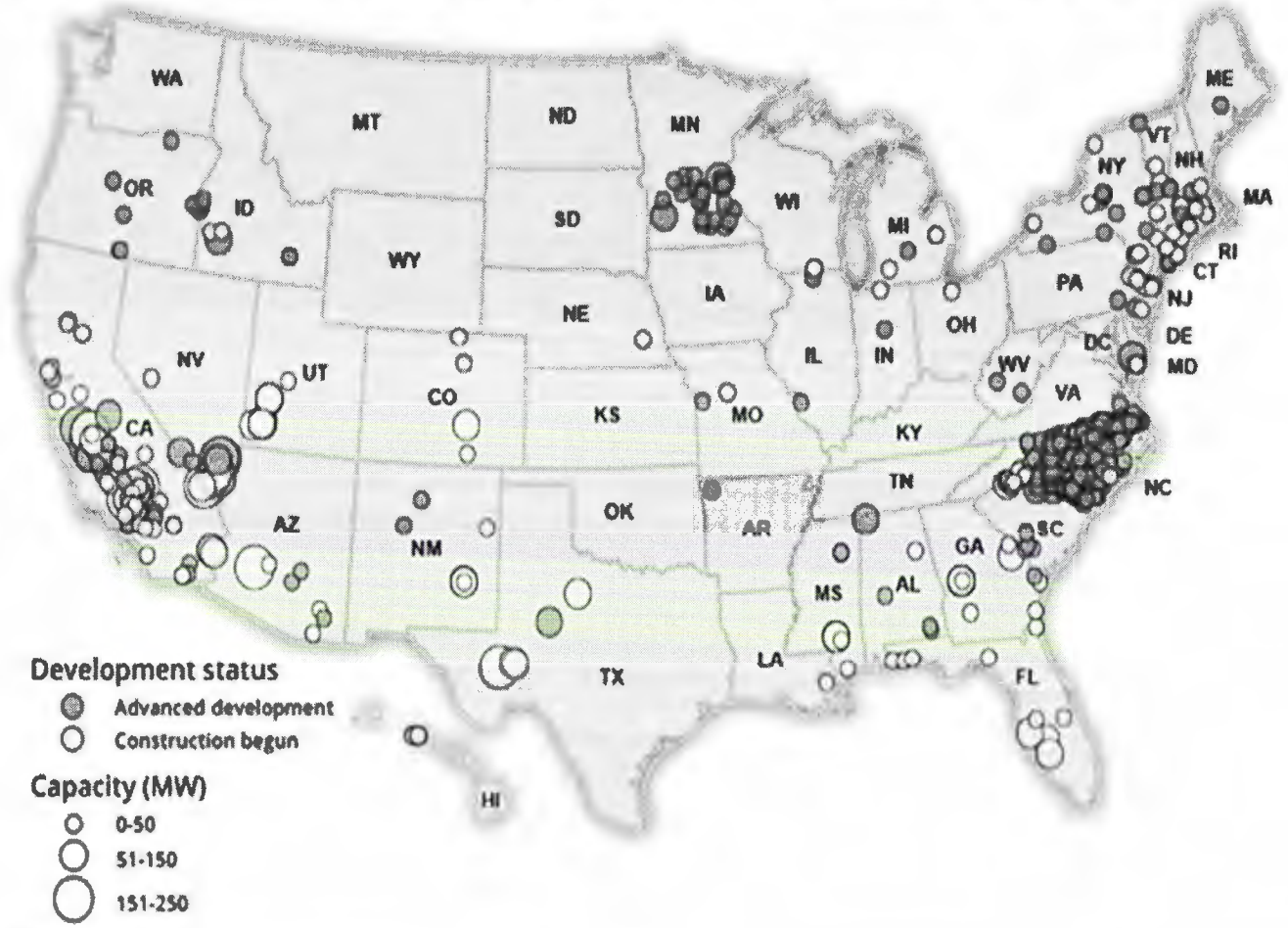

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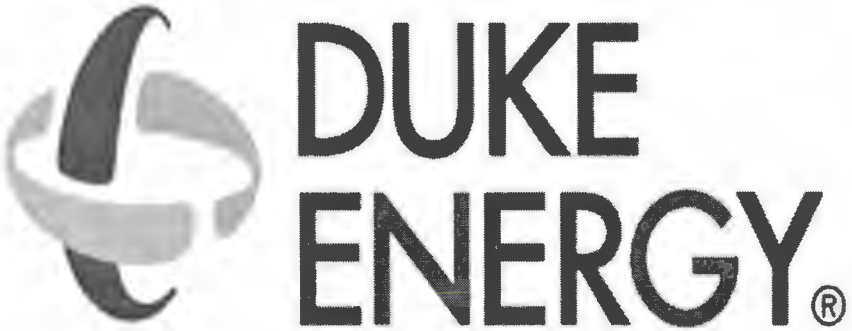
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Committee Sergeants at Arms

NAME OF COMMITTEE House Committee on Energy & Public Utilities

DATE: 3/15/2017 Room: 643

House Sgt-At Arms:

1. Name: Warren Hawkins
2. Name: Doug Harris
3. Name: Malachi McCullough, Jr.
4. Name:
5. Name:

Senate Sgt-At Arms:

1. Name:
2. Name:
3. Name:
4. Name:
5. Name:

House Pages
Assignments
Wednesday, March 15, 2017
Session: 2:00 PM

Committee	Room	Time	Staff	Comments	Member
Pensions and Retirement	415	12:00 PM	Yasmeen Ayesh		Rep. Speaker Tim Moore
			Hannah Lewis		Rep. Speaker Tim Moore
			Brooke Reutinger		Rep. Speaker Tim Moore
Energy Policy Commission, Jt. Leg.	643	1:00 PM	Kelley Hamilton		Rep. Darren Jackson
			Jasmine Jones		Rep. Speaker Tim Moore
			[redacted]		[redacted]
			Emilie Norwood		Rep. Speaker Tim Moore
Judiciary I	415	1:00 PM	Yara Mahmoud		Rep. Speaker Tim Moore
			Eleanor McNamee		Rep. Speaker Tim Moore
			Sophia Sload		Rep. Speaker Tim Moore
Judiciary III	421	1:00 PM	Eliza Hilton		Rep. Speaker Tim Moore
			Emily Kornegay		Rep. Speaker Tim Moore
			Emily Pennington		Rep. Speaker Tim Moore
			Makenzie Waites		Rep. Sarah Stevens

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VISITOR REGISTRATION SHEET

ENERGY & PUBLIC UTILITIES — **March 15, 2017**
Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY & ADDRESS
Will Culpepper	MUA
Kara Weishaar	SA
Dana Simpson	SA
Jeff Brooks	Duke Energy
Grace Rountree	Duke Energy
Doug Miskew	PSG
Chris McClure	BP
Sarah Bales	Brubaker Assoc.
Sean Spicer	White House
Patrick Buffkin	NCUC
Mary Teague	NMRS

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NAME	FIRM OR AGENCY & ADDRESS
Jaz Tunnell	Duke Energy
Susan Vick	Duke Energy
Preston Howard	NCMA
JC Raynor	CSS
Kelli Ludlam	Duke Energy
Kathy Hawkins	Duke Energy
Caroline Miller	AMGA
Bo Sanders	Duke Energy
Ken Jennings	Duke
Ken Kaylor	Kaylor Law
Hayden Burgess	ElectriCities

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NAME	FIRM OR AGENCY & ADDRESS
Chris Broughton	MWC
LAURA PURVEAR	MWC
Bobby Bailey	CAGC
Bill McAuley	PSNC Energy
Dwight Allen	Allen Law
Ali Ahmadi	ASHRAE Triangle
Frances Likes	NCREA
Tonya Horton	TSS
JON SANDERS	jsanders@johnlocke.org
Butch Gunnells	NCBA
Carmen Hunt	MVA

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NAME	FIRM OR AGENCY & ADDRESS
Isabel Villa-Grima	NRG ACTORS
Josh Lanier	SML
Michelle Frazier	SML
Jillie Robinson	NCSEA
Neil Saunders	Sierra club
Cassie Gavin	Sierra Club
Mg Nicole Osburn	SELC
Brooks Rainey Pearson	SELC
Kevin O'Donnell	CUCA
Cindy Ohms	CUCA
Sharon Miller	CUCA

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VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY & ADDRESS
Matthew Dockter	Appalachian State
Kathy Engram	BP
Elizabeth Bacz	BP
Jonathan Barbaler	Barbaler + Assoc

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Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY & ADDRESS
Joyce Peters	CSS
Padraig Gibbons	Connect C
Betsy McGuire	KGANC
David Ferrell	RB
[signature]	MWC

House Committee on Energy and Public Utilities
Wednesday, April 5, 2017, 1:00 PM
643 Legislative Office Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages and Sergeant-at-Arms:

Pages: Audra Cloer
Jared Diegelman
Samantha Lenger
Jenna Varnell

Sgt.-at-Arms: Joseph Crook
David Leighton
Jim Moran
Russell Salisbury

Presentations

BILL NO.	SHORT TITLE	SPONSOR
HB 242	License Plate Reader Systems in State ROWs.	Representative Faircloth Representative McNeill Representative Ross Representative Davis

Other Business

Please feel free to take the enclosed materials, but leave your folders to be used at the next meeting.

Adjournment

House Committee on Energy and Public Utilities
Wednesday, April 5, 2017 at 1:00 PM
Room 643 of the Legislative Office Building

MINUTES

The House Committee on Energy and Public Utilities met at 1:00 PM on April 5, 2017 in Room 643 of the Legislative Office Building. Representatives Arp, Bradford, Cunningham, Goodman, Hanes, Harrison, S. Martin, R. Moore, Murphy, W. Richardson, Riddell, Rogers, Sauls, Stone, Strickland, and Watford attended. Representatives Szoka, Collins, and Zachary had Excused Absence.

Representative Dean Arp, Presiding Chair.

The following bills were considered:

HB 242 License Plate Reader Systems in State ROWs. (Representatives Faircloth, McNeill, Ross, Davis). Representative Faircloth presented HB 242.

Representative John Bradford made a Motion for a Favorable Report, which passed and HB 242 was RE-REFERRED to JUDICIARY I

The meeting adjourned at 1:30 PM.

Representative Dean Arp, Presiding Chair

Beverly Slagle, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES

ENERGY AND PUBLIC UTILITIES COMMITTEE REPORT

Representative John Szoka, Senior Chair
Representative Dean Arp, Co-Chair
Representative Jeff Collins, Co-Chair
Representative Sam Watford, Co-Chair

FAVORABLE AND RE-REFERRED

HB **242** License Plate Reader Systems in State ROWs.

Draft Number:	None
Serial Referral:	**JUDICIARY I**
Recommended Referral:	None
Long Title Amended:	No
Floor Manager:	Faircloth

TOTAL REPORTED: 1

HOUSE BILL 242

Short Title:	License Plate Reader Systems in State ROWs.	(Public)
Sponsors:	Representatives Faircloth, McNeill, Ross, and Davis (Primary Sponsors). *For a complete list of sponsors, refer to the North Carolina General Assembly web site.*	
Referred to:	Transportation, if favorable, Energy and Public Utilities	

March 6, 2017

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE INSTALLATION AND USE OF AUTOMATIC LICENSE PLATE READER SYSTEMS IN STATE RIGHTS-OF-WAY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 136-18 is amended by adding a new subdivision to read:

"(46) For purposes of this subdivision, the term (i) "public utility" means any of the following: a public utility, as defined in G.S. 62-3(23); an electric membership corporation; telephone membership corporation; a joint municipal power agency; or a city or county engaged in producing, generating, transmitting, delivering, or furnishing electricity for private or public use and (ii) "automatic license plate reader system" is as defined in G.S. 20-183.30. The Department shall have the following powers related to automatic license plate reader systems:

a. To enter into agreements with municipalities, counties, and other governmental entities for the use of and encroachment upon the right-of-way of any road designated as part of the State highway system for the installation and use of automatic license plate reader systems; provided that (i) the agreements do not unreasonably interfere with the use of the right-of-way by a public utility with facilities already located within the right-of-way, (ii) the use shall immediately be terminated and the automatic license plate reader system and any related equipment removed upon request by any affected public utility, and (iii) the entity installing the automatic license plate reader system complies with the provisions of Article 8A of Chapter 87 of the General Statutes.

b. To approve requests by municipalities, counties, and other governmental entities to use land or right-of-way owned by the Department of Transportation that is encumbered by utility easements, or otherwise being lawfully occupied by a public utility, for the installation and use of automatic license plate reader systems; provided that (i) the use of the land or right-of-way is temporary in nature; (ii) the automatic license plate reader system shall be completely aboveground, easily moveable, and contain no combustible fuel; (iii) the use shall not unreasonably interfere with the operation and maintenance of the utility facilities or cause the utility facilities to fail to comply with all applicable laws, codes, and regulatory requirements; (iv) the use shall

immediately be terminated and the automatic license plate reader system and any related equipment removed upon request by any affected public utility; and (v) the use shall comply with provisions of Article 8A of Chapter 87 of the General Statutes. The affected public utility shall have the right to move the automatic license plate reader system in the event that the public utility needs immediate access to its utility facilities and, in such event, shall only be liable for damages to the automatic license plate reader system caused solely by its gross negligence or willful misconduct.

c. Nothing in this subdivision shall relieve any entity, public or private, of its obligation to comply with the provisions of Article 8A of Chapter 87 of the General Statutes."

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

HOUSE BILL 242:
License Plate Reader Systems in State ROWs.

2017-2018 General Assembly

Committee:	House Energy and Public Utilities. If favorable, re-refer to Judiciary I	**If Date:**	April 5, 2017
Introduced by:	Reps. Faircloth, McNeill, Ross, Davis	**Prepared by:**	Layla Cummings
Analysis of:	First Edition		Staff Attorney

OVERVIEW: House Bill 242 would authorize the Department of Transportation (DOT) to enter into encroachment agreements with municipalities, counties, and other governmental entities for automatic license plate reader system installation or temporary placement within the State highway rights-of-way (ROW).

CURRENT LAW: G.S. 138-18 lists the powers of DOT. The Department maintains exclusive control of the State highway system, which includes ROW.

G.S. 136-18(2)(c) authorizes DOT to use rights-of-way for water, sewer, telephone, electric, and other utility lines, and for nonutility owned communications or data transmission infrastructure.

DOT currently authorizes and approves encroachments into highway ROW with an agreement between DOT and the encroaching entity.

BILL ANALYSIS: House Bill 242 would authorize DOT to enter into encroachment agreements with municipalities, counties, and other governmental entities for the installation or temporary placement of automatic license plate reader systems within State highway ROW. The bill would also add provisions for encroachment agreements relating to existing utility interference, termination of automatic license plate reader systems by existing utilities, types of allowable temporary automatic license plate reader systems, and removal of temporary automatic license plate reader systems by existing utilities.

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

BACKGROUND: Article 3D of Chapter 20, as enacted by S.L. 2015-190, contains the State law governing use of automatic license plate reader systems (G.S. 20-183.31), and data use and preservation requirements (G.S. 20-183.32). An "automatic license plate reader system" is defined as a "system of one or more mobile or fixed automated high speed cameras used in combination with computer algorithms to convert images of license plates into computer readable data."

Karen Cochrane-Brown
Director

Legislative Analysis
Division
919-733-2578

Committee Sergeants at Arms

NAME OF COMMITTEE House Committee on Energy and Public Utilites

DATE: 4/5/2017 Room: 643

House Sgt-At Arms:

1. Name: David Leighton
2. Name: Joe Crook
3. Name: Russell Salisbury
4. Name: Jim Moran
5. Name: _____

Senate Sgt-At Arms:

1. Name: _____
2. Name: _____
3. Name: _____
4. Name: _____
5. Name: _____

VISITOR REGISTRATION SHEET

House Committee on Energy and Public Utilities — 4/5/2017

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Sammy Roberson	Charter
Fred Baggett	Police Chief's Assn
Patrick Biffle	NCUC
[illegible]	citizen
Doug Miskimon	PSG
Craig Barnett	Raleigh Police Department
Cassandra Deck-Brown	Police Chief's Assoc / Raleigh Police Dept
Jonathan Burke	GreenGo Energy US, Inc.
Michael Wallace	Sunlight Partners, LLC
Steve Miller	Y2S Solar Solutions
Caroline Miller	AMGA

VISITOR REGISTRATION SHEET

House Committee on Energy and Public Utilities — Name of Committee

4/5/2017 — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Michelle Frazier	SML
Josh Lanier	SML
Scott Last	KCNC
Dan Crawford	NCLCV

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House Committee on Energy and Public Utilities — 4/5/2017

Name of Committee — Date

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NAME	FIRM OR AGENCY AND ADDRESS
Tanya Hoban	TSS
Steve Metcalf	Raleigh Group
Michael Hicks	[illegible]
Britton Allen	[illegible] Carolina Lines
Dwight Allen	ALLEN LAW
Trey Raborn	AT&T
Ben Lowe	Aleod
DAVID BARNES	ElectriCities
[illegible]	CSS
Hayden Bauguess	ElectriCities
[illegible]	Duke Energy

VISITOR REGISTRATION SHEET

House Committee on Energy and Public Utilities — 4/5/2017

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
David McHenry	NRPC
Tommy [illegible]	MWC

House Committee on Energy and Public Utilities
Tuesday, April 11, 2017, 1:00 PM
423/424 Legislative Office Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
HB 68	BRIGHT Futures Act.	Representative Szoka Representative Saine Representative S. Martin Representative Brenden Jones

Adjournment

House Committee on Energy and Public Utilities
Tuesday, April 11, 2017 at 1:00 PM
Room 423/424 of the Legislative Office Building

MINUTES

The House Committee on Energy and Public Utilities met at 1:00 PM on April 11, 2017 in Room 423/424 of the Legislative Office Building. Representatives Arp, Blackwell, Bradford, Bumgardner, Collins, Cunningham, Earle, Elmore, Goodman, Hanes, S. Martin, Riddell, Stone, Strickland, Szoka, Watford, Wray, and Zachary attended.

Representative Jeff Collins, Chair presiding.

The following Proposed Committee Substitute Bill was presented by Chairman Szoka:

HB 68 BRIGHT Futures Act. (Representatives Szoka, Saine, S. Martin, Brenden Jones)

Representative Collins recognized Chairman Szoka to present a Proposed Committee Substitute Bill (PCS) for HB 68: BRIGHT Futures Act for discussion only. Chairman Szoka, before his presentation, stated to the committee that HB 68 would come before the committee next week for a Motion.

There were no Motions.

The meeting adjourned at 1:40 PM.

Representative Jeff Collins, Presiding Chair

Beverly Slagle, Committee Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H D

HOUSE BILL 68
PROPOSED COMMITTEE SUBSTITUTE H68-CSST-6 [v.7]
04/07/2017 05:31:19 PM

Short Title: BRIGHT Futures Act. (Public)

Sponsors:

Referred to:

February 9, 2017

A BILL TO BE ENTITLED

AN ACT ENCOURAGING THE ESTABLISHMENT OF BRIGHT MARKETS BY ADDING THE DIGITAL INFRASTRUCTURE NECESSARY FOR ECONOMIC DEVELOPMENT AND INNOVATION IN KEY MARKETS, INCLUDING BROADBAND, RETAIL ONLINE SERVICES, INTERNET OF THINGS, GRIDPOWER, HEALTH CARE, AND TRAINING AND EDUCATION.

Whereas, North Carolina's population of residents living in rural areas is the second largest of any state, with more than 3.3 million people living in the 85 counties considered rural; and

Whereas, these areas have historically been last to receive the necessary investment for the infrastructure required to support advances in economic development, including investment for basic roads, water, electricity, or telephone service, requiring public and private leaders to develop new and innovative approaches or business models to encourage or assist in the development of this infrastructure; and

Whereas, the rapid advances in gigabit connectivity and automation threaten the economic viability of these areas if steps are not taken to develop the digital infrastructure necessary to allow those in rural areas to take advantage of digitally integrated products and services; and

Whereas, the General Assembly has previously looked to local solutions, like member-owned utilities and public-private partnerships, as an effective way to provide for the development of the infrastructure necessary to support economic development in rural and underserved areas; and

Whereas, the General Assembly has long recognized that digital computing and communications technology is the key element of infrastructure for connecting each person to the economic development opportunities of the twenty-first century and has taken steps to directly advance the development and use of this infrastructure where possible through programs like the School Connectivity Initiative and Digital Learning Plan; and

Whereas, it is the intent of the General Assembly to rapidly develop the digital infrastructure necessary for economic development and innovation in key market segments, including Broadband, Retail online services, Internet of things, GridPower, Health care, and Training and education, known collectively by the acronym "BRIGHT" markets, and to use all means necessary to promote and encourage the development of this infrastructure so that each person in North Carolina has the ability to connect to opportunities presented by the growth in these BRIGHT market segments; Now therefore,

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-272(c) is amended by adding a new subdivision to read::

"(c) Notwithstanding subsection (b1) of this section, the council may approve a lease without treating that lease as a sale of property for any of the following reasons:

(1) For the siting and operation of a renewable energy facility, as that term is defined in G.S. 62-133.8(a)(7), for a term up to 25 years.

(2) For the siting and operation of a tower, as that term is defined in G.S. 146-29.2(a)(7), for communication purposes for a term up to 25 years.

(3) For the operation and use of components of a wired or wireless network, for a term up to 25 years."

SECTION 2.(a) G.S. 160A-272.1 reads as rewritten:

"**§ 160A-272.1. Lease of utility or enterprise property.**

(a) Subject to G.S. 160A-321, a city-owned utility or public service enterprise, or part thereof, may be leased.

(b) When leasing a part thereof is a component of a wired or wireless network, the city shall also comply with Article 12 of this Chapter."

SECTION 2.(b) G.S. 160A-321 reads as rewritten:

"**§ 160A-321. Sale, lease, or discontinuance of city-owned enterprise.**

(a) A city is authorized to sell or lease as lessor any public enterprise that it may own upon any terms and conditions that the council may deem best. However, except as to transfers to another governmental entity pursuant to G.S. 160A-274 or as provided in subsection (b) of this section, a city-owned public enterprise shall not be sold, leased to another, or discontinued unless the proposal to sell, lease, or discontinue is first submitted to a vote of the people and approved by a majority of those who vote thereon. Voter approval shall not be required for the sale, lease, or discontinuance of airports, off-street parking systems and facilities, or solid waste collection and disposal systems.

(b) For the sale, lease, or discontinuance of water treatment systems, water distribution systems, or wastewater collection and treatment systems, a city may, but is not required to, submit to its voters the question of whether such sale, lease, or discontinuance shall be undertaken. The referendum is to be conducted pursuant to the general and local laws applicable to special elections in such city.

(c) Notwithstanding subsections (a) and (b) of this section, a city may lease a part of the city-owned public enterprise to be operated and used as component of a wired or wireless network without a vote of people. Any lease under this subsection shall be subject to Article 12 of this Chapter."

SECTION 3.(a) Article 23 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"**§ 153A-458. Authority to construct internal communications.**

A county shall have the authority to purchase, lease, construct, and operate facilities to provide communications service, as defined in G.S. 160A-340, or high speed Internet service for the county's internal governmental purposes, including the sharing of data or voice between governmental entities for internal governmental purposes, or within the corporate limits of another unit of local government that is a party with the county to an interlocal agreement under Part 1 of Article 20 of Chapter 160A of the General Statutes for the provision of internal government services.

SECTION 3.(b) G.S. 143-128.1C is amended by adding a new subsection to read:

"(n) For purposes of this section, the term "public-private project" shall also include a capital improvement project undertaken for the benefit of a city or county pursuant to a development contract that includes construction of components of a wired or wireless network in conjunction with or part of another construction project undertaken by the city or county."

SECTION 4. G.S. 143B-472.127 reads as rewritten:

"**§ 143B-472.127. Programs administered.**

(a) The Rural Economic Development Division shall be responsible for administering the program whereby economic development grants or loans are awarded by the Rural Infrastructure Authority as provided in G.S. 143B-472.128 to local government units. The Rural Infrastructure Authority shall, in awarding economic development grants or loans under the provisions of this subsection, give priority to local government units of the counties that have one of the 80 highest rankings under G.S. 143B-437.08 after the adjustment of that section. The funds available for grants or loans under this program may be used as follows:

(1) To construct critical water and wastewater facilities or to provide other physical infrastructure needs, including, but not limited to, natural gas, ~~broadband,~~ and rail to sites where these facilities will generate private job-creating investment. The grants under this subdivision shall not be subject to the provisions of G.S. 143-355.4.

(1a) To construct digital infrastructure needed to support components of a wired or wireless network for the provision of communications services to promote economic development. The grants under this subdivision shall not be subject to the provisions of G.S. 143-355.4.

...."

SECTION 5. G.S. 143B-472.80 is amended by adding a new subdivision to read:

"**§ 143B-472.80. North Carolina Board of Science, Technology, and Innovation; creation; powers and duties.**

The North Carolina Board of Science, Technology, and Innovation of the Department of Commerce is created. The Board has the following powers and duties:

...

(5) On or before July 1, 2017, and annually on January 1 thereafter, the Board shall report to the Governor, the chairs of the House of Representatives Appropriations Committee on Agriculture and Natural and Economic Resources, the chairs of the Senate Appropriations Committee on Natural and Economic Resources, the Fiscal Research Division, the Secretary of Commerce, and any North Carolina nonprofit corporation with which the Department of Commerce contracts pursuant to G.S. 143B-431.01 on the impact that technology and innovation in the BRIGHT Markets is having on economic growth and development in this State, including recommendations for increasing that impact. As used in this subdivision, the term "BRIGHT Markets" means the following market segments: broadband, retail online services, the internet of things, the power grid, health care, and training and education. The report shall include:

a. An evaluation of the impact of the North Carolina Providing Access to Capital for Entrepreneurs and Small Businesses Act in S.L. 2016-103 on investment in BRIGHT Market enterprises for the previous reporting year and recommendations for increasing that impact.

b. Recommendations for the establishment and funding of a BRIGHT Futures Innovation Fund, to be administered by the Office of Science, Technology, and Innovation of the Department of Commerce, that would be funded for at least five years to be used to provide annual grants or loans to accelerate innovation by and investment in enterprises in BRIGHT Market segments."

SECTION 6. G.S. 115D-5.1(f) reads as rewritten:

"**§ 115D-5.1. Workforce Development Programs.**

...

(f) The State Board shall report on an annual basis to the Joint Legislative Education Oversight Committee ~~on:~~on all of the following:

(1) The total amount of funds received by a company under the Customized Training ~~Program;~~Program.

(1a) The types of services sought by the company, whether for new, expanding, or existing industry.

(2) The amount of funds per trainee received by that ~~company;~~company.

(3) The amount of funds received per trainee by the community college delivering the ~~training;~~training.

(4) The number of trainees trained by the company and community ~~college; and~~college.

(5) The number of years that company has been funded.

(6) An assessment of how the Customized Training Program has been used to support companies in BRIGHT Market segments, including recommendations on how these efforts can be expanded or aligned with nondegree certification programs to increase employment in jobs shown in the NCWorks Online system that require those nondegree certifications. As used in this subdivision, the term "BRIGHT Market" means the following market segments: broadband, retail online services, the internet of things, the power grid, health care, and training and education."

SECTION 7. G.S. 143B-438.14 is amended by adding a new subsection to read:

"**§ 143B-438.14. "No Adult Left Behind" Initiative.**

...

(e) On or before July 1, 2017, and annually on January 1 thereafter, the NCWorks Commission shall submit to the Governor and to the chairs of the House of Representatives Appropriations Committee on Agriculture and Natural and Economic Resources, the chairs of the Senate Appropriations Committee on Natural and Economic Resources, and the Fiscal Research Division the following regarding BRIGHT Market segments, which phrase means broadband, retail online services, the internet of things, the power grid, health care, and training and education:

(1) An assessment of current adult educational programs to expand economic opportunities for adult workers in BRIGHT Market segments.

(2) An evaluation of nondegree certifications, as reflected in the NCWorks Online system, that are being offered, including recommendations for how certification programs can be expanded, accelerated, and made more readily accessible.

(3) An evaluation of how data in the NCWorks Online system is made available for use in conjunction with other workforce and education data in systems operated by other State agencies, including the Department of Information Technology. The evaluation shall include recommendations for how information can be more readily shared with public and private enterprises through application interfaces and open data frameworks to accelerate and increase employment in the BRIGHT Market segments."

SECTION 8. Section 15.1 of S.L. 2016-94 is amended by adding two new subsections to read:

"**SECTION 15.1.(e)** On or before July 1, 2017, the Department of Commerce shall supplement the report submitted pursuant to subsection (b) of this section with all of the following:

(1) An evaluation of the impact of the inclusion of digital infrastructure in G.S. 143-128.1C(a)(8) and G.S. 143B-472.127(a)(1a) on the ability of individuals and communities to pursue public-private partnerships to

develop digital infrastructure in underserved areas and recommendations on how to accelerate development efforts.

(2) An evaluation of how funds allocated for downtown revitalization projects in Section 15.12(a) have been used to support the development of digital infrastructure, with recommendations for how future grants may be used in conjunction with a BRIGHT Futures Innovation Fund recommended by the North Carolina Board of Science, Technology, and Innovation pursuant to G.S. 143B-472.80(5)b..

(3) Recommendations for ways the Rural Economic Development Division, North Carolina Rural Electrification Authority, Labor Force Development Council, Rural Infrastructure Authority, Community Assistance Division, Employment and Training Division, Job Training Coordinating Council, along with the Departments of Information Technology, Department of Environmental Quality, Department of Labor, Department of Health and Human Services, Department of Public Instruction, North Carolina Community College System, The University of North Carolina, and the North Carolina Independent Colleges and Universities to align the resources and programs targeted at and available to connect people in rural communities with the opportunities presented by the growth in the BRIGHT Market segments.

"**SECTION 15.1.(f)** As used in subsection (e) of this section, the following meanings apply:

(1) BRIGHT Market means the following market segments: broadband, retail online services, the internet of things, the power grid, health care, and training and education.

(2) Digital infrastructure means the components that support broadband, computing, and communications."

SECTION 9. This act is effective July 1, 2017, and applies to contracts entered into on or after that date.

HOUSE BILL 68:
BRIGHT Futures Act.

2017-2018 General Assembly

Committee:	House Energy and Public Utilities. If favorable, re-refer to Commerce and Job Development	**Date:**	April 10, 2017
Introduced by:	Reps. Szoka, Saine, S. Martin, Brenden Jones	**Prepared by:**	Erika Churchill Staff Attorney
Analysis of:	PCS to First Edition H68-CSST-6		

OVERVIEW: The proposed committee substitute for House Bill 68 would:

- ***Clarify that cities may lease components of a wired or wireless network that are part of a public enterprise operated by the city;***
- ***Clearly establish that counties may construct and operate a communications network for internal governmental purposes;***
- ***Establish that counties and cities may lease components of a wired or wireless network, for a lease term of up to 25 years;***
- ***Establish that public-private partnerships may include capital improvement projects that include construction of components of a wired or wireless network in conjunction with or part of another construction project undertaken by a city or county;***
- ***Clarify that Rural Economic Development grants may be used for the purpose of constructing digital infrastructure needed to support components of a wired or wireless network;***
- ***Establishes several reporting requirements of various agencies.***

[As introduced, this bill was identical to S65, as introduced by Sen. Meredith, which is currently in Senate Rules and Operations of the Senate.]

CURRENT LAW AND BILL ANALYSIS:

➢ COUNTIES AND CITIES AND COMMUNICATIONS NETWORKS.

Generally, cities and counties may own and operate those services authorized by the General Assembly for cities and counties to provide. Cities are currently authorized to provide cable TV services as a public enterprise, and to provide communications services, within certain constraints. Exempt from these is the city owning and providing communications service for the city's internal governmental purposes.

Counties and cities generally dispose of real and personal property in accordance with the procedures established by Article 12 of Chapter 160A. Subject to certain limitations, a county or city can dispose of real or personal property belonging to the county or city by:

- Private negotiation and sale
- Advertisement for sealed bids
- Negotiated offer, advertisement, and upset bid
- Public auction
- Exchange with another unit of local government

With respect to the sale, lease or discontinuance of certain city-owned public enterprise, such as cable TV or gas systems, the city is required to hold a vote of the people prior to disposal of the property. With water systems, in particular, a vote of people may be held but is not required.

Section 1 would allow a unit of local government, when leasing property that is a component of a wired or wireless network, including property of a public enterprise, to do so for a term up to 25 years without treating the lease as a sale of the property under Article 12 of Chapter 160A of the General Statutes.
Section 2 would specify that a city leasing a component of a wired or wireless network within a public enterprise is not subject to the requirement of a vote of people prior to leasing the property of the public enterprise.
Section 3(a) would clarify that counties have the authority to own and provide communications service for the city's internal governmental purposes.
Section 3(b) would amend the statutory authority to enter into public-private partnerships to authorize cities and counties to undertake capital improvement projects for the benefit of a city or county that includes construction of components of a wired or wireless network in conjunction with, or part of, another construction project.

- **USES OF RURAL ECONOMIC DEVELOPMENT FUNDS.**

Currently, the Rural Economic Development Division administers economic development grants or loans awarded by the Rural Infrastructure Authority to units of local government to be used in specified programs. Part 2 of Article 10 of Chapter 143B.

Section 4 would specifically authorize funds from these grants or loans to also be used to construct the digital infrastructure needed to support components of a wired or wireless network for the provision of communications services to promote economic development.

- **ADDITIONAL REPORTING.**

Sections 5-8 establish additional reporting requirements of various agencies, as set out below, with respect to BRIGHT markets. BRIGHT markets are defined to mean broadband, retail online services, the internet of things, the power grid, health care, and training and education market segments.

- North Carolina Board of Science, Technology, and Innovation. Directs the Board to annually report on the impact that technology and innovation in the BRIGHT markets is having on economic growth and development in the State, including recommendations for increasing that impact, to the Governor, the chairs of the House of Representatives Appropriations Committee on Agriculture and Natural and Economic Resources, the Fiscal Research Division, the Secretary of Commerce, and certain nonprofits with which the Department of Commerce contracts.
- State Board of Community Colleges. Directs the Board to include in its annual report to the Joint Legislative Education Oversight Committee an assessment of how the Customized Training Program has been used to support companies in BRIGHT Market segments, including

recommendations on how efforts can be expanded or aligned with non-degree certification programs to increase employment in jobs in the NCWorks Online system.

- Direct the NCWorks Commission, in administering the "No Adult Left Behind" Initiative, to submit an annual report regarding BRIGHT Market segments to the Governor and Chairs of the House of Representatives Appropriations Committee on Agriculture and Natural and Economic Resources, the Chairs of the Senate Appropriations Committee on Natural and Economic Resources, and the Fiscal Research Division.
- Requires the Department of Commerce to supplement certain reports with additional evaluations and recommendations relating to BRIGHT Market segments.

EFFECTIVE DATE: July 1, 2017, and applies to contracts entered into on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 68*

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

H68-AST-12 [v.1]

Amends Title [NO]
H68-CSST-6 v.7

Date _____,2017

Representative _____

moves to amend the bill on page 2, lines 13-14, by rewriting those lines to read:

"(b) When leasing a part thereof that is a component of a wired or wireless network, the city shall also comply with Article 12 of this Chapter and make such facilities generally available to similarly situated provides on comparable terms and conditions.";

and on page 2, lines 37-43, by rewriting those lines to read:

"A county shall have the authority to purchase, lease, construct, and operate facilities to support intragovernmental services for the county's internal governmental purposes, including wired or wireless network facilities.";

and on page 2, line 48, by inserting the following at the end of that line:

"Nothing in this section authorizes a governmental entity to unilaterally provide high-speed Internet broadband service, or infrastructure needed to support broadband, computing and communications components.";

and on page 2, line 49 through page 3, line 17, by deleting those lines and renumbering the remaining bill sections accordingly;

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 68*

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

H68-AST-12 [v.1]

and on page 5, lines 3-8, by rewriting those lines to read:

"(2) An evaluation of how whether funds allocated for downtown revitalization projects can or should be used to support the development of digital infrastructure.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

VISITOR REGISTRATION SHEET

House Committee on Energy and Public Utilities — 4/11/2017

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Becki Gray	John Locke Foundation
Ha Nguyen	NCCOB
Rose Williams	NCLM
Erin Wynia	NCLM
Rick Henderson	John Locke Fdn
Elizabeth Biser	BP
Chris McClure	BP
Marcia Trotter	BP
John Cooper	Connect C
Peter Daniel	↓
Frances Liles	NCREA - Commerce
Dwight Allen	Allen Law
Chris Hayes	NC Chamber

VISITOR REGISTRATION SHEET

House Committee on Energy and Public Utilities — 4/11/2017

Name of Committee — Date

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NAME	FIRM OR AGENCY AND ADDRESS
Rosa Grant	SA
Susan Vick	Duke Energy
Rick Kaylor	Kaylor Law
Trey Rabon	AT&T
[illegible]	Charter
Steve Brewer	CTL
Brady Allen	NCTCC
Bill Allen	NC TCC
Jack Cecil	NCC
Paul Sherman	NCFB
Shannon Becker	Aqua NC

VISITOR REGISTRATION SHEET

House Committee on Energy and Public Utilities — 4/11/2017

Name of Committee — Date

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NAME	FIRM OR AGENCY AND ADDRESS
Dylan Finch	Rep. Martin office
Katie Gammon	Governor's Office
Justin Clayton	Governor
Jeff Sural	NCDIT Broadband Infrastructure
Michelle Frazier	SML
Hayden Bauguess	ElectriCities
DAVID BARNES	ElectriCities
Jay Rouse	NCAEC
David Dougherty	GridWorx
Mike Ozburn	GRIDWORX

VISITOR REGISTRATION SHEET

House Committee on Energy and Public Utilities — 4/11/2017

Name of Committee — Date

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NAME	FIRM OR AGENCY AND ADDRESS
LAURA PURYEAR	MWC
Jaime King Fuquay	Vista Strategies
Betsy Bailey	CAGC
David Crawford	AIA NC
Henry Jones	Jordan Price
BRUCE THOMPSON	PARKER POE
Jeff DeBellis	DoC
Kerri Burke	NWC
Dave Efird	Commerce
Will Miller	Commerce
Susan Fleetwood	NC DOT

VISITOR REGISTRATION SHEET

House Committee on Energy and Public Utilities — 4/11/2017

Name of Committee — Date

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NAME	FIRM OR AGENCY AND ADDRESS
~~Matthew~~ Babcock	PPAB
Josh Lanier	SPL
Laurie Bakwin	Grange
Cindy Ohms	CUCA
Andy Chase	RMA
Amber Harris	NCACC
Hugh Johnson	NCACC
Dan Crawford	NCLCV
Bo Hewitt	McGuireWoods

VISITOR REGISTRATION SHEET

House Committee on Energy and Public Utilities — 4/11/2017

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Joyce Peters	CSS

House Committee on Energy and Public Utilities
Wednesday, April 19, 2017, 1:00 PM
643 Legislative Office Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
HB 68	BRIGHT Futures Act.	Representative Szoka Representative Saine Representative S. Martin Representative Brenden Jones
HB 574	Wind Energy/Consistency With Military.	Representative Grange Representative Szoka Representative Watford
HB 352	Rate making/Water/Wastewater Public Utilities.	Representative Watford Representative Collins
HB 637	Clarify Regional Water and Sewer Funds.	Representative K. Hall Representative Bert Jones Representative Blust Representative Hardister

Presentations

HB 574 for discussion only

Other Business

Adjournment

House Committee on Energy and Public Utilities
Wednesday, April 19, 2017 at 1:00 PM
Room 643 of the Legislative Office Building

MINUTES

The House Committee on Energy and Public Utilities met at 1:00 PM on April 19, 2017 in Room 643 of the Legislative Office Building. Representatives Alexander, Arp, J. Bell, Blackwell, Bumgardner, Collins, Cunningham, Earle, Elmore, Goodman, Hanes, Harrison, S. Martin, Murphy, Riddell, Rogers, Sauls, Stone, Strickland, Szoka, Watford, and Wray attended. Rep. Bradford and Zachary had excused absences.

Representative John Szoka, presiding Chair.

The following bills were considered:

HB 68 BRIGHT Futures Act. (Representatives Szoka, Saine, S. Martin, Brenden Jones)
As primary sponsor and presenter of HB 68, Representative Szoka turned the gavel over to Representative Collins to proceed.

Recognized by the chair, Representative Riddle moved that the Proposed Committee Substitute (PCS) Bill come before the committee. Representative Szoka was recognized to present HB 68.

After a brief discussion, five members of the public were recognized to speak and were in support of HB68. Representative Susan Martin moved for a Favorable Report as the Committee Substitute Bill, Unfavorable as to the Original Bill, and recommendation that the Committee Substitute Bill Be Re-referred to the House Committee on Appropriations.

Representative Szoka then announced he was required to move to Judiciary III where, as primary sponsor of a Bill to be heard in that committee, and asked Representative Collins continue chairing the committee. Representative Collins agreed to do so.

HB 637 Clarify Regional Water and Sewer Funds. (Representatives K. Hall, Bert Jones, Blust, Hardister)

Representative Hall was recognized to present HB 637.

Representative Elmore was recognized to make a Motion to move HB 637 for a Favorable Report with a Referral to Appropriations. The Motion passed.

HB 352 Rate Making/Water/Wastewater Public Utilities. (Representatives Watford, Collins)

Representative Bell moved that a PCS be presented to the committee. Chairman Watford presents a PCS Bill. Representative Stone moves to adopt the PCS for Consideration.

The Motion passed.

Chairman Arp sent forth an Amendment.

Chairman Collins moves to adopt the Amendment to HB 352 for Discussion.

The Motion carried. Chairman Arp explained the Amendment.

The Chair recognized Representative Elwood who moves to adopt the PCS with the Arp Amendment rolled in, Unfavorable to the Original. There was no Referral.

The Motion passed.

HB 574 Wind Energy/Consistency With Military (for discussion only). (Representatives Grange, Szoka, Watford)

Representative Grange was recognized to present HB 574. Questions were taken from committee members and three (3) members of the public were recognized to speak on the bill. Representative Bell and Chairman Collins spoke on concerns of HB 574 but recognized that Representative Grange had spoken on working on these issues in her presentation.

The meeting adjourned at 1:50 PM.

Rep. John Szoka, Presiding Chair

Beverly Slagle, Committee Clerk

Rep. Jeff Collins, Presiding Chair

NORTH CAROLINA GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES

ENERGY AND PUBLIC UTILITIES COMMITTEE REPORT
Representative John Szoka, Senior Chair
Representative Dean Arp, Co-Chair
Representative Jeff Collins, Co-Chair
Representative Sam Watford, Co-Chair

FAVORABLE COM SUB , UNFAVORABLE ORIGINAL BILL AND RE-REFERRED

HB **68** BRIGHT Futures Act.

Draft Number:	H68-PCS40497-ST-6
Serial Referral:	**COMMERCE AND JOB DEVELOPMENT**
Recommended Referral:	None
Long Title Amended:	Yes
Floor Manager:	Szoka

TOTAL REPORTED: 1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H D

HOUSE BILL 68
PROPOSED COMMITTEE SUBSTITUTE H68-CSST-6 [v.15]
04/18/2017 02:22:40 PM

Short Title: BRIGHT Futures Act. (Public)

Sponsors:

Referred to:

February 9, 2017

A BILL TO BE ENTITLED

AN ACT ENCOURAGING THE ESTABLISHMENT OF BRIGHT MARKETS BY ENABLING THE LEASE OF ADDITIONAL DIGITAL INFRASTRUCTURE NECESSARY FOR ECONOMIC DEVELOPMENT AND INNOVATION IN KEY MARKETS, INCLUDING BROADBAND, RETAIL ONLINE SERVICES, INTERNET OF THINGS, GRIDPOWER, HEALTH CARE, AND TRAINING AND EDUCATION.

Whereas, North Carolina's population of residents living in rural areas is the second largest of any state, with more than 3.3 million people living in the 85 counties considered rural; and

Whereas, these areas have historically been last to receive the necessary investment for the infrastructure required to support advances in economic development, including investment for basic roads, water, electricity, or telephone service, requiring public and private leaders to develop new and innovative approaches or business models to encourage or assist in the development of this infrastructure; and

Whereas, the rapid advances in gigabit connectivity and automation threaten the economic viability of these areas if steps are not taken to develop the digital infrastructure necessary to allow those in rural areas to take advantage of digitally integrated products and services; and

Whereas, the General Assembly has previously looked to local solutions, like member-owned utilities and public-private partnerships, as an effective way to provide for the development of the infrastructure necessary to support economic development in rural and underserved areas; and

Whereas, the General Assembly has long recognized that digital computing and communications technology is the key element of infrastructure for connecting each person to the economic development opportunities of the twenty-first century and has taken steps to directly advance the development and use of this infrastructure where possible through programs like the School Connectivity Initiative and Digital Learning Plan;

Now therefore,

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-272 reads as rewritten:

"**§ 160A-272. Lease or rental of property.**

(a) Any property owned by a city may be leased or rented for such terms and upon such conditions as the council may determine, but not for longer than 10 years (except as otherwise provided in subsection (b1) of this section) and only if the council determines that the property will not be needed by the city for the term of the lease. In determining the term of a proposed

lease, periods that may be added to the original term by options to renew or extend shall be included.

(a1) Property may be rented or leased only pursuant to a resolution of the council authorizing the execution of the lease or rental agreement adopted at a regular council meeting upon 30 days' public notice. Notice shall be given by publication describing the property to be leased or rented, stating the annual rental or lease payments, and announcing the council's intent to authorize the lease or rental at its next regular meeting.

(b) No public notice as required by subsection (a1) of this section need be given for resolutions authorizing leases or rentals for terms of one year or less, and the council may delegate to the city manager or some other city administrative officer authority to lease or rent city property for terms of one year or less.

(b1) Leases for terms of more than 10 years shall be treated as a sale of property and may be executed by following any of the procedures authorized for sale of real property.

(c) Notwithstanding subsection (b1) of this section, the council may approve a lease without treating that lease as a sale of property for any of the following reasons:

(1) For the siting and operation of a renewable energy facility, as that term is defined in G.S. 62-133.8(a)(7), for a term up to 25 years.

(2) For the siting and operation of a tower, as that term is defined in G.S. 146-29.2(a)(7), for communication purposes for a term up to 25 years.

(3) For the operation and use of components of a wired or wireless network, for a term up to 25 years.

(d) Notwithstanding subsection (a) of this section, any lease by a city of any duration for components of a wired or wireless network shall be entered into on a competitively neutral and nondiscriminatory basis and made available to similarly situated providers on comparable terms and conditions and shall not be used to subsidize the provision of competitive service."

SECTION 2.(a) G.S. 160A-272.1 reads as rewritten:

"**§ 160A-272.1. Lease of utility or enterprise property.**

Subject to this Article and G.S. 160A-321, a city-owned utility or public service enterprise, or part thereof, may be leased."

SECTION 2.(b) G.S. 160A-321 reads as rewritten:

"**§ 160A-321. Sale, lease, or discontinuance of city-owned enterprise.**

(a) A city is authorized to sell or lease as lessor any public enterprise that it may own upon any terms and conditions that the council may deem best. However, except as to transfers to another governmental entity pursuant to G.S. 160A-274 or as provided in subsection (b) of this section, a city-owned public enterprise shall not be sold, leased to another, or discontinued unless the proposal to sell, lease, or discontinue is first submitted to a vote of the people and approved by a majority of those who vote thereon. Voter approval shall not be required for the sale, lease, or discontinuance of airports, off-street parking systems and facilities, or solid waste collection and disposal systems.

(b) For the sale, lease, or discontinuance of water treatment systems, water distribution systems, or wastewater collection and treatment systems, a city may, but is not required to, submit to its voters the question of whether such sale, lease, or discontinuance shall be undertaken. The referendum is to be conducted pursuant to the general and local laws applicable to special elections in such city.

(c) Notwithstanding subsections (a) and (b) of this section, a city may lease a part of the city-owned public enterprise to be operated and used as component of a wired or wireless network without a vote of people. Any lease under this subsection shall be subject to Article 12 of this Chapter."

SECTION 3.(a) Article 23 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"**§ 153A-458. Authority to construct internal communications.**

A county shall have the authority to purchase, lease, construct, and operate facilities to support intragovernmental services for the county's internal governmental purposes, including wired or wireless network facilities."

SECTION 3.(b) G.S. 143-128.1C is amended by adding a new subsection to read:

"(n) For purposes of this section, the term "public-private project" shall also include a capital improvement project undertaken for the benefit of a city or county pursuant to a development contract that includes construction of components of a wired or wireless network in conjunction with or part of another construction project undertaken by the city or county. Nothing in this subsection authorizes a city or county to unilaterally provide high-speed Internet broadband service, or infrastructure needed to support broadband, computing and communications components."

SECTION 5. G.S. 143B-472.80 is amended by adding a new subdivision to read:

"**§ 143B-472.80. North Carolina Board of Science, Technology, and Innovation; creation; powers and duties.**

The North Carolina Board of Science, Technology, and Innovation of the Department of Commerce is created. The Board has the following powers and duties:

...

(5) On or before July 1, 2017, and annually on January 1 thereafter, the Board shall report to the Governor, the chairs of the House of Representatives Appropriations Committee on Agriculture and Natural and Economic Resources, the chairs of the Senate Appropriations Committee on Natural and Economic Resources, the Fiscal Research Division, the Secretary of Commerce, and any North Carolina nonprofit corporation with which the Department of Commerce contracts pursuant to G.S. 143B-431.01 on the impact that technology and innovation in the BRIGHT Markets is having on economic growth and development in this State, including recommendations for increasing that impact. As used in this subdivision, the term "BRIGHT Markets" means the following market segments: broadband, retail online services, the internet of things, the power grid, health care, and training and education. The report shall include:

a. An evaluation of the impact of the North Carolina Providing Access to Capital for Entrepreneurs and Small Businesses Act in S.L. 2016-103 on investment in BRIGHT Market enterprises for the previous reporting year and recommendations for increasing that impact.

b. Recommendations for the establishment and funding of a BRIGHT Futures Innovation Fund, to be administered by the Office of Science, Technology, and Innovation of the Department of Commerce, that would be funded for at least five years to be used to provide annual grants or loans to accelerate innovation by and investment in enterprises in BRIGHT Market segments."

SECTION 6. G.S. 115D-5.1(f) reads as rewritten:

"**§ 115D-5.1. Workforce Development Programs.**

...

(f) The State Board shall report on an annual basis to the Joint Legislative Education Oversight Committee ~~on:~~on all of the following:

(1) The total amount of funds received by a company under the Customized Training ~~Program;~~Program.

(1a) The types of services sought by the company, whether for new, expanding, or existing industry.

(2) The amount of funds per trainee received by that ~~company;~~company.

(3) The amount of funds received per trainee by the community college delivering the ~~training;~~training.

(4) The number of trainees trained by the company and community ~~college; and~~college.

(5) The number of years that company has been funded.

(6) An assessment of how the Customized Training Program has been used to support companies in BRIGHT Market segments, including recommendations on how these efforts can be expanded or aligned with nondegree certification programs to increase employment in jobs shown in the NCWorks Online system that require those nondegree certifications. As used in this subdivision, the term "BRIGHT Market" means the following market segments: broadband, retail online services, the internet of things, the power grid, health care, and training and education."

SECTION 7. G.S. 143B-438.14 is amended by adding a new subsection to read:

"**§ 143B-438.14. "No Adult Left Behind" Initiative.**

...

(e) On or before July 1, 2017, and annually on January 1 thereafter, the NCWorks Commission shall submit to the Governor and to the chairs of the House of Representatives Appropriations Committee on Agriculture and Natural and Economic Resources, the chairs of the Senate Appropriations Committee on Natural and Economic Resources, and the Fiscal Research Division the following regarding BRIGHT Market segments, which phrase means broadband, retail online services, the internet of things, the power grid, health care, and training and education:

(1) An assessment of current adult educational programs to expand economic opportunities for adult workers in BRIGHT Market segments.

(2) An evaluation of nondegree certifications, as reflected in the NCWorks Online system, that are being offered, including recommendations for how certification programs can be expanded, accelerated, and made more readily accessible.

(3) An evaluation of how data in the NCWorks Online system is made available for use in conjunction with other workforce and education data in systems operated by other State agencies, including the Department of Information Technology. The evaluation shall include recommendations for how information can be more readily shared with public and private enterprises through application interfaces and open data frameworks to accelerate and increase employment in the BRIGHT Market segments."

SECTION 8. Section 15.1 of S.L. 2016-94 is amended by adding two new subsections to read:

"**SECTION 15.1.(e)** On or before July 1, 2017, the Department of Commerce shall supplement the report submitted pursuant to subsection (b) of this section with all of the following:

(1) An evaluation of the impact of the inclusion of digital infrastructure in G.S. 143-128.1C on the ability of individuals and communities to pursue public-private partnerships to develop digital infrastructure in underserved areas and recommendations on how to accelerate development efforts.

(2) An evaluation of whether funds allocated for downtown revitalization projects can or should be used to support the development of digital infrastructure.

(3) Recommendations for ways the Rural Economic Development Division, North Carolina Rural Electrification Authority, Labor Force Development Council, Rural Infrastructure Authority, Community Assistance Division,

Employment and Training Division, Job Training Coordinating Council, along with the Departments of Information Technology, Department of Environmental Quality, Department of Labor, Department of Health and Human Services, Department of Public Instruction, North Carolina Community College System, The University of North Carolina, and the North Carolina Independent Colleges and Universities to align the resources and programs targeted at and available to connect people in rural communities with the opportunities presented by the growth in the BRIGHT Market segments.

"**SECTION 15.1.(f)** As used in subsection (e) of this section, the following meanings apply:

(1) BRIGHT Market means the following market segments: broadband, retail online services, the internet of things, the power grid, health care, and training and education.

(2) Digital infrastructure means the components of a wired or wireless network."

SECTION 9. This act is effective July 1, 2017, and applies to contracts entered into on or after that date.

HOUSE BILL 68:
BRIGHT Futures Act.

2017-2018 General Assembly

Committee:	House Energy and Public Utilities. If favorable, re-refer to Commerce and Job Development	**Date:**	April 18, 2017
Introduced by:	Reps. Szoka, Saine, S. Martin, Brenden Jones	**Prepared by:**	Erika Churchill Staff Attorney
Analysis of:	PCS to First Edition H68-CSST-6 v.15		

OVERVIEW: The proposed committee substitute for House Bill 68, version 15, would:

- ***Clarify that cities may lease components of a wired or wireless network that are part of a public enterprise operated by the city;***
- ***Clearly establish that counties may construct and operate facilities to support intragovernmental services, including wired or wireless network facilities;***
- ***Establish that counties and cities may lease components of a wired or wireless network, for a lease term of up to 25 years;***
- ***Require that counties and cities, in leasing components or a wired or wireless network, do so on a competitively neutral and nondiscriminatory basis and made available to similarly situated providers on comparable terms and conditions;***
- ***Establish that public-private partnerships may include capital improvement projects that include construction of components of a wired or wireless network in conjunction with or part of another construction project undertaken by a city or county, while clarifying that the authority granted does not extend to a county or city unilaterally providing high-speed Internet or infrastructure needed to support broadband, computing or communications components; and***
- ***Establishes several reporting requirements of various agencies.***

[As introduced, this bill was identical to S65, as introduced by Sen. Meredith, which is currently in Senate Rules and Operations of the Senate.]

CURRENT LAW AND BILL ANALYSIS:

➢ **COUNTIES AND CITIES AND COMMUNICATIONS NETWORKS.**

Generally, cities and counties may own and operate those services authorized by the General Assembly for cities and counties to provide. Cities are currently authorized to provide cable TV services as a public enterprise, and to provide communications services, within certain constraints. Exempt from these is the city owning and providing communications service for the city's internal governmental purposes.

When acquiring, constructing or maintaining property, counties and cities must abide by Article 8 of Chapter 143, Purchase and Contract. That Article sets forth the requirements for bidding of certain types of contracts. One of the types of bidding authorized is for 'public-private partnerships.' With that type of bidding, the governmental entity determines in writing that it has a critical need for a capital improvement project, in an open meeting, then seeks interested private developers to submit qualifications, then selects one or more private developers with whom to negotiate the terms and conditions of the contract to perform the public-private project.

When disposing of property, counties and cities generally dispose of real and personal property in accordance with the procedures established by Article 12 of Chapter 160A of the General Statutes. Subject to certain limitations, a county or city can dispose of real or personal property belonging to the county or city by:

- Private negotiation and sale
- Advertisement for sealed bids
- Negotiated offer, advertisement, and upset bid
- Public auction
- Exchange with another unit of local government
- Lease

With respect to the sale, lease or discontinuance of certain city-owned public enterprises, such as cable TV or gas systems, the city is required to hold a vote of the people prior to disposal of the property. With water systems, in particular, a vote of people may be held but is not required.

Section 1 would:

1. Allow a unit of local government, when leasing property that is a component of a wired or wireless network, including property of a public enterprise, to do so for a term up to 25 years without treating the lease as a sale of the property under Article 12 of Chapter 160A of the General Statutes.
2. Require a unit of local government, property that is a component of a wired or wireless network, to do so on a competitively neutral and nondiscriminatory basis, made available to similarly situated providers on comparable terms and conditions, and not used to subsidize the provision of competitive service.

Section 2 would specify that a city leasing a component of a wired or wireless network within a public enterprise is not subject to the requirement of a vote of people prior to leasing the property of the public enterprise.

Section 3(a) would clarify that counties have the authority construct and operate facilities to support intragovernmental services for the county's internal governmental purposes, including wired or wireless network facilities.

Section 3(b) would amend the statutory authority to enter into public-private partnerships to authorize cities and counties to undertake capital improvement projects for the benefit of a city or county that includes construction of components of a wired or wireless network in conjunction with, or part of, another construction project. However, cities nor counties would be authorized to unilaterally provide high speed Internet broadband service, or infrastructure needed to support broadband, computing and communications components.

➢ **ADDITIONAL REPORTING.**

Sections 5-8 establish additional reporting requirements of various agencies, as set out below, with respect to BRIGHT markets. BRIGHT markets are defined to mean broadband, retail online services, the internet of things, the power grid, health care, and training and education market segments.

- *North Carolina Board of Science, Technology, and Innovation.* Directs the Board to annually report on the impact that technology and innovation in the BRIGHT markets is having on economic growth and development in the State, including recommendations for increasing that impact, to the Governor, the chairs of the House of Representatives Appropriations Committee on Agriculture and Natural and Economic Resources, the Fiscal Research Division, the Secretary of Commerce, and certain nonprofits with which the Department of Commerce contracts.
- *State Board of Community Colleges.* Directs the Board to include in its annual report to the Joint Legislative Education Oversight Committee an assessment of how the Customized Training Program has been used to support companies in BRIGHT Market segments, including recommendations on how efforts can be expanded or aligned with non-degree certification programs to increase employment in jobs in the NCWorks Online system.
- *NC Works Commission.* Directs the Commission, in administering the "No Adult Left Behind" Initiative, to submit an annual report regarding BRIGHT Market segments to the Governor and Chairs of the House of Representatives Appropriations Committee on Agriculture and Natural and Economic Resources, the Chairs of the Senate Appropriations Committee on Natural and Economic Resources, and the Fiscal Research Division.
- *Department of Commerce.* Requires the Department to supplement certain reports with additional evaluations and recommendations relating to BRIGHT Market segments.

EFFECTIVE DATE: July 1, 2017, and applies to contracts entered into on or after that date.

HOUSE BILL 68*

Short Title:	BRIGHT Futures Act.	(Public)
Sponsors:	Representatives Szoka, Saine, S. Martin, and Brenden Jones (Primary Sponsors). *For a complete list of sponsors, refer to the North Carolina General Assembly web site.*	
Referred to:	Energy and Public Utilities, if favorable, Commerce and Job Development	

February 9, 2017

A BILL TO BE ENTITLED

AN ACT ENCOURAGING THE ESTABLISHMENT OF BRIGHT MARKETS BY ADDING THE DIGITAL INFRASTRUCTURE NECESSARY FOR ECONOMIC DEVELOPMENT AND INNOVATION IN KEY MARKETS, INCLUDING BROADBAND, RETAIL ONLINE SERVICES, INTERNET OF THINGS, GRIDPOWER, HEALTH CARE, AND TRAINING AND EDUCATION.

Whereas, North Carolina's population of residents living in rural areas is the second largest of any state, with more than 3.3 million people living in the 85 counties considered rural; and

Whereas, these areas have historically been last to receive the necessary investment for the infrastructure required to support advances in economic development, including investment for basic roads, water, electricity, or telephone service, requiring public and private leaders to develop new and innovative approaches or business models to encourage or assist in the development of this infrastructure; and

Whereas, the rapid advances in gigabit connectivity and automation threaten the economic viability of these areas if steps are not taken to develop the digital infrastructure necessary to allow those in rural areas to take advantage of digitally integrated products and services; and

Whereas, the General Assembly has previously looked to local solutions, like member-owned utilities and public-private partnerships, as an effective way to provide for the development of the infrastructure necessary to support economic development in rural and underserved areas; and

Whereas, the General Assembly has long recognized that digital computing and communications technology is the key element of infrastructure for connecting each person to the economic development opportunities of the twenty-first century and has taken steps to directly advance the development and use of this infrastructure where possible through programs like the School Connectivity Initiative and Digital Learning Plan; and

Whereas, it is the intent of the General Assembly to rapidly develop the digital infrastructure necessary for economic development and innovation in key market segments, including Broadband, Retail online services, Internet of things, GridPower, Health care, and Training and education, known collectively by the acronym "BRIGHT" markets, and to use all means necessary to promote and encourage the development of this infrastructure so that each person in North Carolina has the ability to connect to opportunities presented by the growth in these BRIGHT market segments; Now therefore,

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143B-472.127 reads as rewritten:

"**§ 143B-472.127. Programs administered.**

(a) The Rural Economic Development Division shall be responsible for administering the program whereby economic development grants or loans are awarded by the Rural Infrastructure Authority as provided in G.S. 143B-472.128 to local government units. The Rural Infrastructure Authority shall, in awarding economic development grants or loans under the provisions of this subsection, give priority to local government units of the counties that have one of the 80 highest rankings under G.S. 143B-437.08 after the adjustment of that section. The funds available for grants or loans under this program may be used as follows:

(1) To construct critical water and wastewater facilities or to provide other physical infrastructure needs, including, but not limited to, natural gas, ~~broadband,~~ and rail to sites where these facilities will generate private job-creating investment. The grants under this subdivision shall not be subject to the provisions of G.S. 143-355.4.

(1a) To construct digital infrastructure needed to support broadband, computing, and communications components where these facilities will generate private job-creating investment. The grants under this subdivision shall not be subject to the provisions of G.S. 143-355.4.

...."

SECTION 2. G.S. 143-128.1C(a) reads as rewritten:

"**§ 143-128.1C. Public-private partnership construction contracts.**

(a) Definitions for purposes of this section:

...

(8) Public-private project. – A capital improvement project undertaken for the benefit of a governmental entity and a private developer pursuant to a development contract that includes construction of a public facility or other improvements, including paving, grading, utilities, physical infrastructure, digital infrastructure to support broadband, computing, and communications components, reconstruction, or repair, and may include both public and private facilities.

...."

SECTION 3. G.S. 143B-472.80 is amended by adding a new subdivision to read:

"**§ 143B-472.80. North Carolina Board of Science, Technology, and Innovation; creation; powers and duties.**

The North Carolina Board of Science, Technology, and Innovation of the Department of Commerce is created. The Board has the following powers and duties:

...

(5) On or before May 1, 2017, and annually on January 1 thereafter, the Board shall report to the Governor, the chairs of the House of Representatives Appropriations Committee on Agriculture and Natural and Economic Resources, the chairs of the Senate Appropriations Committee on Natural and Economic Resources, the Fiscal Research Division, the Secretary of Commerce, and any North Carolina nonprofit corporation with which the Department of Commerce contracts pursuant to G.S. 143B-431.01 on the impact that technology and innovation in the BRIGHT Markets is having on economic growth and development in this State, including recommendations for increasing that impact. As used in this subdivision, the term "BRIGHT Markets" means the following market segments: broadband, retail online services, the internet of things, the power grid, health care, and training and education. The report shall include:

a. An evaluation of the impact of the North Carolina Providing Access to Capital for Entrepreneurs and Small Businesses Act in S.L. 2016-103 on investment in BRIGHT Market enterprises for the previous reporting year and recommendations for increasing that impact.

b. Recommendations for the establishment and funding of a BRIGHT Futures Innovation Fund, to be administered by the Office of Science, Technology, and Innovation of the Department of Commerce, that would be funded for at least five years to be used to provide annual grants or loans to accelerate innovation by and investment in enterprises in BRIGHT Market segments."

SECTION 4. G.S. 115D-5.1(f) reads as rewritten:

"**§ 115D-5.1. Workforce Development Programs.**

...

(f) The State Board shall report on an annual basis to the Joint Legislative Education Oversight Committee ~~on:~~on all of the following:

(1) The total amount of funds received by a company under the Customized Training ~~Program;~~Program.

(1a) The types of services sought by the company, whether for new, expanding, or existing industry.

(2) The amount of funds per trainee received by that ~~company;~~company.

(3) The amount of funds received per trainee by the community college delivering the ~~training;~~training.

(4) The number of trainees trained by the company and community ~~college; and~~college.

(5) The number of years that company has been funded.

(6) An assessment of how the Customized Training Program has been used to support companies in BRIGHT Market segments, including recommendations on how these efforts can be expanded or aligned with nondegree certification programs to increase employment in jobs shown in the NCWorks Online system that require those nondegree certifications. As used in this subdivision, the term "BRIGHT Market" means the following market segments: broadband, retail online services, the internet of things, the power grid, health care, and training and education."

SECTION 5. G.S. 143B-438.14 is amended by adding a new subsection to read:

"**§ 143B-438.14. "No Adult Left Behind" Initiative.**

...

(e) On or before May 1, 2017, and annually on January 1 thereafter, the NCWorks Commission shall submit to the Governor and to the chairs of the House of Representatives Appropriations Committee on Agriculture and Natural and Economic Resources, the chairs of the Senate Appropriations Committee on Natural and Economic Resources, and the Fiscal Research Division the following regarding BRIGHT Market segments, which phrase means broadband, retail online services, the internet of things, the power grid, health care, and training and education:

(1) An assessment of current adult educational programs to expand economic opportunities for adult workers in BRIGHT Market segments.

(2) An evaluation of nondegree certifications, as reflected in the NCWorks Online system, that are being offered, including recommendations for how certification programs can be expanded, accelerated, and made more readily accessible.

(3) An evaluation of how data in the NCWorks Online system is made available for use in conjunction with other workforce and education data in systems operated by other State agencies, including the Department of Information Technology.

The evaluation shall include recommendations for how information can be more readily shared with public and private enterprises through application interfaces and open data frameworks to accelerate and increase employment in the BRIGHT Market segments."

SECTION 6. Section 15.1 of S.L. 2016-94 is amended by adding two new subsections to read:

"**SECTION 15.1.(e)** On or before May 1, 2017, the Department of Commerce shall supplement the report submitted pursuant to subsection (b) of this section with all of the following:

(1) An evaluation of the impact of the inclusion of digital infrastructure in G.S. 143-128.1C(a)(8) and G.S. 143B-472.127(a)(1a) on the ability of individuals and communities to pursue public-private partnerships to develop digital infrastructure in underserved areas and recommendations on how to accelerate development efforts.

(2) An evaluation of how funds allocated for downtown revitalization projects in Section 15.12(a) have been used to support the development of digital infrastructure, with recommendations for how future grants may be used in conjunction with a BRIGHT Futures Innovation Fund if that Fund is proposed by the North Carolina Board of Science, Technology, and Innovation pursuant to G.S. 143B-472.80(5)b..

(3) Recommendations for ways the Rural Economic Development Division, North Carolina Rural Electrification Authority, Labor Force Development Council, Rural Infrastructure Authority, Community Assistance Division, Employment and Training Division, Job Training Coordinating Council, along with the Departments of Information Technology, Department of Environmental Quality, Department of Labor, Department of Health and Human Services, Department of Public Instruction, North Carolina Community College System, The University of North Carolina, and the North Carolina Independent Colleges and Universities to align the resources and programs targeted at and available to connect people in rural communities with the opportunities presented by the growth in the BRIGHT Market segments.

"**SECTION 15.1.(f)** As used in subsection (e) of this section, the following meanings apply:

(1) BRIGHT Market means the following market segments: broadband, retail online services, the internet of things, the power grid, health care, and training and education.

(2) Digital infrastructure means the components that support broadband, computing, and communications."

SECTION 7. This act is effective when it becomes law.

April 19, 2017

Dear Representatives Szoka, Saine, S. Martin and Brendan Jones
and Mecklenburg Legislative Delegation,

We applaud the efforts of the North Carolina General Assembly to address the need for rural areas of North Carolina to connect to economic development opportunities. We are writing in support of House Bill 68. The BRIGHT Futures Act will allow rural and low income areas to better connect with emerging markets.

We believe it is critically important to ensure rural and low income areas of North Carolina have the resources they need to connect, innovate, and grow. This bill will allow those areas to connect to broadband using existing fiber, retail and online merchants to thrive, increased energy efficiency, ability for tele-medicine, and invests in the next generation of students and the current workforce through training.

We believe this is an important step in the right direction for the rural areas of North Carolina to have the resources they need to thrive.

Sincerely,

Bob Morgan
President & CEO

NORTH CAROLINA GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES

ENERGY AND PUBLIC UTILITIES COMMITTEE REPORT
Representative John Szoka, Senior Chair
Representative Dean Arp, Co-Chair
Representative Jeff Collins, Co-Chair
Representative Sam Watford, Co-Chair

FAVORABLE COM SUB , UNFAVORABLE ORIGINAL BILL AND RE-REFERRED

HB **352** Rate making/Water/Wastewater Public Utilities.

Draft Number:	H352-PCS40494-TS-1
Serial Referral:	**STATE AND LOCAL GOVERNMENT II**
Recommended Referral:	None
Long Title Amended:	No
Floor Manager:	Watford

TOTAL REPORTED: 1

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 352

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

H352-ATS-2 [v.4]

Amends Title [NO]
H352-CSTS-1 [v.4]

Date _____ ,2017

Representative Arp

moves to amend the bill on page 1, lines 9 through 11, by rewriting the lines to read:

"Commission approval to utilize a fully projected future test period, which shall consist of a 12-month period beginning on or after the date of filing of the application for a general rate case.";

and on page 2, lines 12 through 13, by rewriting the lines to read:

"**SECTION 2.** This act is effective when it becomes law and expires five years after the effective date.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H D

HOUSE BILL 352
PROPOSED COMMITTEE SUBSTITUTE H352-CSTS-1 [v.4]
04/18/2017 03:34:10 PM

Short Title: Rate making/Water/Wastewater Public Utilities. (Public)

Sponsors:

Referred to:

March 15, 2017

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE UTILITIES COMMISSION TO USE A FULLY PROJECTED FUTURE TEST PERIOD IN RATE MAKING FOR WATER AND WASTEWATER PUBLIC UTILITIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 62-133 is amended by adding a new subsection to read:

"(c1) As an alternative to the test period provided for in subsection (c) of this section, a water or wastewater public utility, as defined in G.S. 62-3(23)a.2., may submit a request for Commission approval to utilize a fully projected future test period, which shall consist of the 12-month period beginning with the first month that the new rates will be in effect after application of the full suspension period permitted under G.S. 62-134.

(1) When submitting a request for a fully projected future test period under this subsection, the utility shall provide an explanation as to why a fully projected future test period is more representative of the utility's operations than the test period prescribed in subsection (c) of this section. The Commission shall grant the utility's request if the Commission finds it is in the public interest.

(2) When utilizing a fully projected future test period under this subsection, the Commission shall determine, for ratemaking purposes, the projected rate base at the end of the future test period. Probable future revenues and expenses, including depreciation expense, accumulated depreciation and amortization, and other accumulated charges and credits to the rate base shall be annualized based on the plant and equipment projected to be in operation as of the end of the future test period, and otherwise adjusted as necessary to a representative ongoing level.

(3) The Commission shall adopt rules and regulations regarding information and data to be submitted upon notification by a water or wastewater public utility of its intent to use in a future rate case a fully projected future test period.

(4) No later than four months following the end of a fully projected future test period utilized pursuant to this subsection, the utility shall file with the Commission information and data evidencing all of the following items during the fully projected future test period, adjusted as appropriate to reflect the Commission's initial order setting rates in the proceeding:

a. Actual costs and in-service dates for capital investment, as well as all actual and appropriately adjusted rate base balances as of the end of the future test period.

b. Actual and appropriately adjusted operating revenues.

c. Actual and appropriately adjusted incurred expenses.

d. Realized rate-of-return, based on the appropriately adjusted revenues, expenses, and rate base.

e. Any other information the Commission requests to use in determining the accuracy of the fully projected future test year period projections.

(5) The Commission shall adopt a rate adjustment mechanism to (i) track and true-up any variations in the revenue requirement determined on the basis of the information provided in subdivision (4) of this subsection from that used to initially set rates in the general rate case proceeding, and (ii) adjust the initially set rates as appropriate on a going-forward basis, taking into account all applicable adjustments initially made by the Commission."

SECTION 2. This act is effective when it becomes law and expires on July 1, 2023.

HOUSE BILL 352:
Rate making/Water/Wastewater Public Utilities.

2017-2018 General Assembly

Committee:	House Energy and Public Utilities. If favorable, re-refer to State and Local Government II	**Date:**	April 19, 2017
Introduced by:	Reps. Watford, Collins	**Prepared by:**	Layla Cummings Committee Counsel
Analysis of:	PCS to First Edition H352-CSTS-1		

OVERVIEW: ***The Proposed Committee Substitute (PCS) to House Bill 352 would allow the Utilities Commission to approve the use a future test year period to calculate costs to waste and wastewater utilities as an alternative to the historical test period currently used for establishing rates.***

[As introduced, this bill was identical to S340, as introduced by Sen. Meredith, which is currently in Senate Rules and Operations of the Senate.]

CURRENT LAW: Water and wastewater utilities' rates are fixed pursuant to the procedure and criteria established in G.S. 62-133 by the Utilities Commission. G.S. 61-133(c) provides that the test period to establish costs shall consist of 12 months' historical operating experience prior to the date the rate is proposed to become effective.

BILL ANALYSIS: The PCS would create a future test year period as an alternative to the historical test year period used to determine costs and to establish rates for water and wastewater utilities. The water or wastewater utility may submit an application for Commission approval to use the future test period. The application must include an explanation to the Commission of why the future test period is more representative of the utility's operations than the historical test year.

The PCS would direct the Commission to determine the rate base at the end of the future test year and to adopt rules regarding information to be submitted by a water or wastewater utility requesting to use a future test year.

The PCS would require the water or wastewater utility to submit data to the Commission following the future test year and requires the Commission to adopt a rate adjustment mechanism that would true-up variations in the revenue requirement and to adjust rates going forward.

EFFECTIVE DATE: This act is effective when it becomes law and expires on July 1, 2023.

Karen Cochrane-Brown
Director

Legislative Analysis
Division
919-733-2578

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H 1

HOUSE BILL 352

Short Title:	Rate making/Water/Wastewater Public Utilities.	(Public)
Sponsors:	Representatives Watford and Collins (Primary Sponsors). *For a complete list of sponsors, refer to the North Carolina General Assembly web site.*	
Referred to:	Energy and Public Utilities, if favorable, State and Local Government II	

March 15, 2017

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE UTILITIES COMMISSION TO USE A FULLY PROJECTED FUTURE TEST PERIOD IN RATE MAKING FOR WATER AND WASTEWATER PUBLIC UTILITIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 62-133 reads as rewritten:

"**§ 62-133. How rates fixed.**

...

(c1) In lieu of the test period provided for in subsection (c) of this section, a water or wastewater public utility, as defined in G.S. 62-3(23)a.2., may elect to use a fully projected future test period which shall consist of the 12-month period beginning with the first month that the new rates will be in effect after application of the full suspension period permitted under G.S. 62-134. When using a fully projected future test period under this subsection, the Commission shall, for rate making purposes, determine the projected rate base at the end of the future test period. The Commission shall adopt rules and regulations regarding information and data to be submitted upon first notification by a water or wastewater public utility of its intent to use in a future rate case a fully projected future test period. When a public utility elects to use a fully projected future test period in any rate proceeding and the fully projected future test period forms a substantive basis for the final rate determination by the Commission, the public utility shall provide, as specified by the Commission in its final order, appropriate data evidencing the accuracy of the estimates contained in the fully projected future test period, and the Commission may, in its discretion, after reasonable notice and hearing, adjust the public utility's rates on the basis of that data. Notwithstanding the provisions of subsections (b) and (c) of this section that require the Commission to consider the cost of the public utility's property used and useful, if a public utility elects to use a fully projected future test period as authorized by this section, the Commission shall permit facilities projected to be in service during the fully projected future test period to be included in the rate base.

...."

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

NORTH CAROLINA GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES

ENERGY AND PUBLIC UTILITIES COMMITTEE REPORT
Representative John Szoka, Senior Chair
Representative Dean Arp, Co-Chair
Representative Jeff Collins, Co-Chair
Representative Sam Watford, Co-Chair

FAVORABLE AND RE-REFERRED

HB **637** Clarify Regional Water and Sewer Funds.

Draft Number:	None
Serial Referral:	**APPROPRIATIONS**
Recommended Referral:	None
Long Title Amended:	No
Floor Manager:	K. Hall

TOTAL REPORTED: 1

HOUSE BILL 637

Short Title:	Clarify Regional Water and Sewer Funds.	(Public)
Sponsors:	Representatives K. Hall, Bert Jones, Blust, and Hardister (Primary Sponsors). *For a complete list of sponsors, refer to the North Carolina General Assembly web site.*	
Referred to:	Energy and Public Utilities, if favorable, Appropriations	

April 10, 2017

A BILL TO BE ENTITLED

AN ACT TO PROVIDE ADDITIONAL FLEXIBILITY FOR CERTAIN REGIONAL WATER AND SEWER INFRASTRUCTURE FUNDING.

The General Assembly of North Carolina enacts:

SECTION 1. Section 14.20A of S.L. 2016-94 reads as rewritten:

"**REGIONAL WATER AND SEWER ~~AUTHORITY~~ FUNDING**

"**SECTION 14.20A.(a)** Of the funds appropriated to the Department of Environmental Quality, Division of Water Infrastructure, by this act, the sum of fourteen million five hundred forty-eight thousand nine hundred eighty-one dollars ($14,548,981) shall be used ~~by the Division~~ to fund ~~interconnection and~~ interconnection, extension of water ~~lines to participating counties and municipalities undertaken by a Regional Water and Sewer Authority established pursuant to Article 1 of Chapter 162A of the General Statutes, provided that the Authority includes~~ lines, and related water system modification and expansion involving the Counties of Rockingham and Guilford and ~~one or more municipalities within those counties. The funds allocated by this section may also be used for one or more regional interconnections with municipalities in Rockingham or Guilford Counties that do not join the Authority described by this subsection if the interconnections are necessary to provide sufficient water resources to support the water system expansion needed to meet current and planned future needs of the Authority.~~the municipalities of Oak Ridge, Stokesdale, Summerfield, Reidsville, Madison, and Mayodan. Of the funds allocated by this section, no more than twenty-five percent (25%) of the funds shall be used for Guilford County and may include one or more of the municipalities listed in this section located in Guilford County, and no more than seventy-five percent (75%) shall be used for Rockingham County and may include one or more of the municipalities listed in this section located in Rockingham County. The funds allocated by this section may be spent for planning, design, survey, real property acquisition, construction, repair, and any other activities necessary to improve the performance and reliability and expand the capacity and service footprint of participating water systems in Rockingham and Guilford Counties. The Counties of Rockingham and Guilford and the municipalities participating in the interconnection and extension of water lines within each county funded by this section shall agree on the use of the funds allocated by this section through any combination of (i) interlocal agreements under Article 20 of Chapter 160A of the General Statutes that specify, at a minimum, the ownership of the water lines and infrastructure funded by this section and long-term maintenance, repair, and replacement responsibility or (ii) one or more regional water and sewer authorities under Article 1 of Chapter 162A of the General Statutes.

"**SECTION 14.20A.(b)** ~~If the Regional Water Authority described by this section is formed prior to June 30, 2017, the Division of Water Infrastructure shall transfer the funds allocated by this section to the Authority for the purposes described in subsection (a) of this section. Otherwise, the funds allocated by this section shall revert to the General Fund.~~ Notwithstanding ~~G.S. 143C-6-23(f1)(1),~~ G.S. 143C-6-23(f1)(1) and G.S. 143C-1-2, funds allocated ~~to the Authority but not used~~ by this section shall be held in reserve by the Office of State Budget and Management and the allocations to each County shall be released when the County and one or more of the municipalities specified in subsection (a) of this section reach agreement on the funds allocated to that County by this section through interlocal agreements or the formation of regional water and sewer authorities or a combination of interlocal agreements and regional water and sewer authorities. Funds not spent or encumbered by June 30, 2020, shall be returned by the local governments or regional water and sewer authority to the Office of State Budget and Management and revert to the General Fund."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H D

HOUSE BILL 574
PROPOSED COMMITTEE SUBSTITUTE H574-CSRI-7 [v.2]
04/18/2017 12:10:02 PM

Short Title: Wind Energy/Consistency With Military. (Public)

Sponsors:

Referred to:

April 6, 2017

A BILL TO BE ENTITLED

AN ACT TO BETTER ENSURE COMPATIBILITY OF WIND ENERGY FACILITIES WITH MILITARY OPERATIONS AND READINESS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 21C of Chapter 143 of the General Statutes reads as rewritten:

"Article 21C.
"Permitting of Wind Energy Facilities.

...

"§ 143-215.116. Permit to site wind energy facilities.

No person shall undertake ~~construction, operation,~~ construction or expansion activities associated with a wind energy facility in this State without first obtaining a permit from the Department.

"§ 143-215.117. Permit preapplication site evaluation meeting; notice; preapplication package requirements.

(a) Permit Preapplication Site Evaluation Meeting. – No less than 180 days prior to filing an application for a permit to ~~construct, operate,~~ construct or expand a wind energy facility, a person shall request a preapplication site evaluation meeting to be held between the ~~applicant and the Department.~~ applicant, the Department, and the Department of Military and Veterans Affairs. The preapplication site evaluation meeting shall be held no less than 120 days prior to filing an application for a permit to construct, operate, or expand a wind energy facility and may be used by the participants to:

(1) Conduct a preliminary evaluation of the site or sites for the proposed wind energy facility or wind energy facility expansion. The preliminary evaluation of the proposed wind energy facility or proposed wind energy facility expansion shall determine if the site or sites:
   a. Pose serious risk to civil air navigation or military air navigation routes, air traffic control areas, military training routes, special-use air space, radar, or other potentially affected military operations.
   b. Pose serious risk to natural resources and uses, including to species of concern or their habitats.

(2) Identify areas where proposed construction or expansion activities pose minimal risk of interference with civil air navigation or military air navigation routes, air traffic control areas, military training routes, special-use air space, radar, or other potentially affected military operations.

(3) Identify areas where proposed construction or expansion activities pose minimal risk to natural resources and uses, including avian, bat, and endangered and threatened species.

...

(c) Notice to Interested Parties. – No less than 21 days prior to the date of the permit preapplication site evaluation meeting scheduled in accordance with subsection (a) of this section, the Department shall provide written notice of the meeting to the Department of Military and Veterans Affairs, the United States Army Corps of Engineers, the United States Fish and Wildlife Service, the North Carolina Wildlife Resources Commission, the commanding military officer or the commanding military officer's designee of any potentially affected major military installation, and any other party that the Department deems relevant. The notice shall include an invitation to participate in the permit preapplication site evaluation meeting.

"§ 143-215.118. Permit application scoping meeting and notice.

(a) Scoping Meeting. – No less than 60 days prior to filing an application for a permit for a proposed wind energy facility or proposed wind energy facility expansion, the applicant shall request the scheduling of a scoping meeting between the ~~applicant and the Department.~~ applicant, the Department, and the Department of Military and Veterans Affairs. The scoping meeting shall be held no less than 30 days prior to filing an application for a permit for a proposed wind energy facility or proposed wind energy facility expansion. The applicant and the Department shall review the permit for the proposed wind energy facility or proposed facility expansion at the scoping meeting.

(b) Notice of Scoping Meeting. – No less than 21 days prior to the scheduled permit application scoping meeting with an applicant, the Department shall provide written notice of the meeting to the Department of Military and Veterans Affairs, the commanding military officer of each major military installation, or the commanding military officer's designee, the Federal Aviation Administration, the North Carolina Wildlife Resources Commission, the United States Fish and Wildlife Service, the board of commissioners for each county and the governing body of each municipality in which the wind energy facility or proposed wind energy facility expansion is proposed to be located, and those local governments with jurisdictions over areas in which a major military installation is located. The notice shall include an invitation to participate in the scoping meeting.

"§ 143-215.119. Permit application requirements; fees; notice of receipt of completed permit; public hearing; public comment.

(a) Permit Requirements. – A person applying for a permit for a proposed wind energy facility or proposed wind energy facility expansion shall include all of the following in an application for the permit:

(1) A narrative description of the proposed wind energy facility or proposed wind energy facility expansion.

(2) A map showing the location of the proposed wind energy facility or proposed wind energy facility expansion that identifies the specific location of each turbine.

~~(3) A copy of a deed, purchase agreement, lease agreement, or other legal instrument demonstrating the right to construct, expand, or otherwise develop a wind energy facility on the property.~~

~~(4) Identification by name and address of property owners adjacent to the proposed wind energy facility or proposed wind energy facility expansion. The applicant shall notify every property owner identified pursuant to this subdivision by registered or certified mail or by any means authorized by G.S. 1A-1, Rule 4, in a form approved by the Department. The notice shall include all of the following:~~

~~a. The location of the proposed wind energy facility or proposed wind energy facility expansion and the specific location of each turbine proposed to be located within one-half mile of the boundary of the adjacent property owner.~~

~~b. A description of the proposed wind energy facility or proposed wind energy facility expansion.~~

(5) A description of civil air navigation or military air navigation routes, air traffic control areas, military training routes, special-use air space, radar, or other military operations that may be affected by the construction or operation of the proposed wind energy facility or proposed wind energy facility expansion.

(6) Documentation that addresses any potential adverse impact on military operations and readiness as identified by the Department of Defense Clearinghouse pursuant to Part 211 of Title 32 Code of Federal Regulations (July 1, 2012 edition) and any mitigation actions agreed to by the applicant.

(7) Documentation that the applicant has either (i) submitted Federal Aviation Administration Form 7460-1 for the turbines associated with the proposed wind energy facility or proposed wind energy facility expansion or (ii) initiated an informal review by the Department of Defense Siting Clearinghouse of the proposed wind energy facility or proposed wind energy facility expansion. If the applicant has submitted Federal Aviation Administration Form 7460-1 in order to fulfill the requirements of this subdivision, the applicant shall provide any determination reached by the Federal Aviation Administration at the time the application is submitted to the Department. If the Federal Aviation Administration has not made a determination at the time the application is submitted to the Department, the application shall include a description of the status of the applicant's engagement with the Federal Aviation Administration and the Department of Defense Siting Clearinghouse.

~~(8) A study of the noise impacts of the turbines to be associated with the proposed wind energy facility or proposed wind energy facility expansion.~~

~~(9) A study on shadow flicker impacts of the turbines to be associated with the proposed wind energy facility or proposed wind energy facility expansion, unless the turbines will be located in a sound or in offshore waters.~~

(10) A study of the impact of the proposed wind energy facility or proposed wind energy facility expansion on natural resources and uses, including avian, bat, and endangered and threatened species.

(11) An explanation of how the proposed wind energy facility or proposed wind energy facility expansion would be consistent with the criteria in subsection (a) of G.S. 143-215.120.

(12) The application fee required by subsection (c) of this section.

(13) A plan regarding the action to be taken upon the decommissioning and removal of the wind energy facility. The plan shall include an estimate of the cost to decommission and remove the wind energy facility. The plan shall also include the anticipated life of the project, an estimate of the cost to decommission and remove the wind energy facility, a description of the manner in which the facility will be decommissioned, and a description of the expected condition of the site once the wind energy facility has been decommissioned and removed.

(14) Other data or information the Department may reasonably require.

...

(d) Notice of Receipt of Complete Permit Application. – Within 10 days of receipt of a complete permit application for a proposed wind energy facility or proposed wind energy facility expansion submitted pursuant to subsection (a) of this section, the Department shall provide notice of the permit application to (i) the commanding military officer of all major military installations, (ii) ~~the commanding military officer of any military installation located outside the State that is located within 50 nautical miles of the location of the proposed wind energy facility or proposed wind energy facility expansion,~~ the Department of Military and Veterans Affairs, and (iii) the board of commissioners for each county and the governing body of each municipality in which the wind energy facility or wind energy facility expansion is proposed to be located. The notice shall include:

(1) A copy of the map showing the location of the proposed wind energy facility or proposed wind energy facility expansion that includes the specific locations of wind turbines.

(2) A written request to the commanding military officer of a major military installation or the commanding military officer's designee, for technical information related to any adverse impact on the installation's operations, training, or mission, including military air navigation routes, air traffic control areas, military training routes, special-use air space, radar or other military operations that may be affected.

(3) A written request for information related to potential adverse impacts of the proposed wind energy facility or proposed wind energy facility expansion on local governments from the board of commissioners for each county and the governing body of each municipality.

(e) Provision of Permit Application to Affected Entities. – Except as provided by G.S. 143-215.124, within 10 days of receipt of a written request from the commanding military officer of any major military installation or the commanding military officer's designee, the board of commissioners for any county in which the site is proposed to be located or the governing body of any municipality in which the site is proposed to be located, the Department shall provide a copy of a permit application filed pursuant to subsection (a) of this section, in addition to any supplements, changes, or amendments to the permit application to the requesting commanding military officer or local government.

(f) Public Hearing and Comment. – The Department shall hold a public hearing in each county in which the wind energy facility or wind energy facility expansion is proposed to be located within 75 days of receipt of a completed permit application. The Department shall provide notice including the time and location of the public hearing in a newspaper of general circulation in each applicable county. The notice of public hearing shall be published for at least two consecutive weeks beginning no less than 45 days prior to the scheduled date of the hearing. The notice shall provide that any comments on the proposed wind energy facility or proposed wind energy facility expansion should be submitted to the Department by a specified date, not less than 15 days from the date of the newspaper publication of the notice or 15 days after distribution of the mailed notice, whichever is later. No less than 30 days prior to the scheduled public hearing, the Department shall provide written notice of the hearing to:

(1) The North Carolina Utilities Commission.

(2) The Office of the Attorney General of North Carolina.

(3) The commanding military officer of any potentially affected major military installation or the commanding military officer's designee.

(4) The board of commissioners for each county and the governing body of each municipality with jurisdictions over areas in which a potentially affected major military installation is located.

(5) The Department of Military and Veterans Affairs.

"§ 143-215.119A. Letter to proceed determination by Department of Military and Veterans Affairs.

(a) Letter to Proceed. – Prior to issuing a permit under this Article, the applicant must obtain a letter to proceed from the Department of Military and Veterans Affairs as set forth in this section. The Department of Military and Veterans Affairs shall issue a letter to proceed only after the Department of Military and Veterans Affairs finds that the proposed wind energy facility or proposed wind energy facility expansion would not cause significant adverse impacts on air navigation routes, air traffic control areas, military training routes, or radar installations. For purposes of this section, "significant adverse impact" means any demonstrable adverse impact upon military operations and readiness, including flight operations research, development, testing, and evaluation and training, that (i) is likely to impair or degrade the ability of the Armed Forces to perform their warfighting missions and (ii) is unable to be addressed through mitigation measures.

(b) Time Line. – The Department of Military and Veterans Affairs shall determine whether to issue a letter to proceed under this section within 60 days of the public hearing required by G.S. 143-215.119(f).

(c) Basis for Letter. – The Department of Military and Veterans Affairs shall make its determination based on information submitted by the applicant pursuant to subdivisions (5) and (6) of subsection (a) of G.S. 143-215.119, and any information received by the Department of Military and Veterans Affairs pursuant to subdivision (2) of subsection (d) of G.S. 143-215.119.

(d) Failure of Department to Act. – If the Department of Military and Veterans Affairs fails to issue a letter to proceed within the time line set forth in subsection (b) of this section, the applicant may treat the Department's failure to issue the letter as a determination by the Department that the proposed wind energy facility or proposed wind energy facility expansion would not cause significant adverse impacts on air navigation routes, air traffic control areas, military training routes, or radar installations.

(e) Finding of Significant Adverse Impact. – If the Department of Military and Veterans Affairs finds that the proposed wind energy facility or proposed wind energy facility expansion would cause significant adverse impacts to air navigation routes, air traffic control areas, military training routes, or radar installations, the Department of Military and Veterans Affairs shall issue a letter of concern to the Department and the applicant.

(f) Letter of Concern. – Within 90 days of issuance of a letter of concern under subsection (e) of this section, the Department of Military and Veterans Affairs shall engage with the applicant, the commanding military officer of any major military installation impacted in the letter of concern, and the Department of Defense Clearinghouse designee for that installation to address the issues identified in the letter of concern. If the parties are unable to resolve the concerns, the applicant may treat the failure to agree as a denial of the letter to proceed and may challenge the denial as provided under Chapter 150B of the General Statutes.

"§ 143-215.120. Criteria for permit approval; time frame; permit conditions; other approvals required.

(a) Permit Approval. – The Department shall approve an application for a permit for a proposed wind energy facility or proposed wind energy facility expansion upon receipt of a letter to proceed from the Department of Military and Veterans Affairs issued as set forth in G.S. 143-215.119A unless the Department finds any one or more of the following:

(1) Construction or operation of the proposed wind energy facility or proposed wind energy facility expansion would be inconsistent with or violate rules adopted by the Department or any other provision of law.

~~(2) Construction or operation of the proposed wind energy facility or proposed wind energy facility expansion would encroach upon or would otherwise have a significant adverse impact on the mission, training, or operations of~~

~~any major military installation or branch of military in North Carolina and result in a detriment to continued military presence in the State. In its evaluation, the Department may consider whether the proposed wind energy facility or proposed wind energy facility expansion would cause interference with air navigation routes, air traffic control areas, military training routes, or radar based on information submitted by the applicant pursuant to subdivisions (5) and (6) of subsection (a) of G.S. 143-215.119, and any information received by the Department pursuant to subdivision (2) of subsection (d) of G.S. 143-215.119.~~

(3) Construction or operation of the proposed wind energy facility or proposed wind energy facility expansion would result in significant adverse impacts to ecological systems, natural resources, cultural sites, recreation areas, or historic sites of more than local significance; including national or State parks or forests, wilderness areas, historic sites, recreation areas, segments of the natural and scenic rivers system, wildlife refuges, preserves and management areas, areas that provide habitat for threatened or endangered species, primary nursery areas designated by the Marine Fisheries Commission and the Wildlife Resources Commission, and critical fisheries habitat identified pursuant to the Coastal Habitat Protection Plan.

(4) Construction or operation of the proposed wind energy facility or proposed wind energy facility expansion would have a significant adverse impact on fish or wildlife.

~~(5) Construction or operation of the proposed wind energy facility or proposed wind energy facility expansion would have a significant adverse impact on views from any State or national park, wilderness area, significant natural heritage area as compiled by the North Carolina Natural Heritage Program, or other public lands or private conservation lands designated or dedicated due to their high recreational values.~~

(6) Construction or operation of the proposed wind energy facility or proposed wind energy facility expansion would obstruct major navigation channels or create a significant obstacle to navigation in coastal waters, as determined by the United States Army Corps of Engineers and the United States Coast Guard.

~~(7) A permit for a proposed wind energy facility or proposed wind energy facility expansion would be denied under any other criteria set out in G.S. 113A-120.~~

(8) Construction of the proposed wind energy facility or proposed wind energy facility expansion would be prohibited under Article 14 of Chapter 113A of the General Statutes, the Mountain Ridge Protection Act of 1983.

(9) The applicant is not in compliance with all applicable federal, State, or local permit requirements, licenses, or approvals, including local zoning requirements.

(b) Permit Decision. – The Department shall make a final decision on a permit application within 90 days following receipt of a completed ~~application, except that the Department shall not be required to make a final decision until the Department has received a written "Determination of No Hazard to Air Navigation" issued by the Federal Aviation Administration pursuant to Subpart D of Part 77 of Title 14 of the Code of Federal Regulations (January 1, 2012 edition).~~ application. If the Department requests additional information following the receipt of a completed application, the Department shall make a final decision on a permit application within 30 days of receipt of the requested information. If the Department determines that an application for a wind energy facility or a wind energy facility expansion

fails to meet the requirements for a permit under this section, the Department shall deny the application, and the application shall be returned to the applicant accompanied by a written statement of the reasons for the denial and any modifications to the permit application that would make the application acceptable. If the Department fails to act within the time period set forth in this subsection, the applicant may treat the failure to act as a ~~denial of the permit and may challenge the denial as provided under Chapter 150B of the General Statutes.~~grant of the permit.

(c) Permit Conditions. – The Department (i) may include as a condition of a permit for a proposed wind energy facility or proposed wind energy facility expansion a requirement that the permit holder mitigate any adverse impacts and (ii) shall include as a condition of a permit for a proposed wind energy facility or proposed wind energy facility expansion a requirement that the permit holder obtain a written "Determination of No Hazard to Air Navigation" issued by the Federal Aviation Administration pursuant to Subpart D of Part 77 of Title 14 of the Code of Federal Regulations (January 1, 2012 edition) for the facility. No permit for a wind energy facility or wind energy facility expansion shall become effective until the Department has received and reviewed the "Determination of No Hazard to Air Navigation" issued by the Federal Aviation Administration for the facility. If the specific location of a turbine authorized to be constructed pursuant to a "Determination of No Hazard to Air Navigation" or the configuration of the wind energy facility varies from the information submitted by the applicant upon which the Department has made its permit decision, the Department may reevaluate the permit application and require the applicant to submit any additional information the Department deems necessary to approve or deny a permit for the facility as reconfigured.

(d) Other Approvals Required. – The issuance of a permit under this section shall not obviate the need for the applicant to obtain any and all other applicable local, State, or federal permits, licenses, or approvals. However, obtaining other applicable local, State, or federal permits, licenses, or approvals shall not be a requirement for the consideration and grant of a permit under this section. Furthermore, nothing in this Article shall be interpreted to limit, as applicable, (i) the application of Article 7 of Chapter 113A of the General Statutes to facilities permitted under this section, including the permitting requirements of G.S. 113A-118, (ii) the ability of a city or county to plan for and regulate the siting of a wind energy facility in accordance with land-use regulations authorized under Chapter 160A and Chapter 153A of the General Statutes, or (iii) the applicable requirements of Chapter 62 of the General Statutes.

"~~**§ 143-215.121. Financial assurance requirements.**~~

~~The applicant for a permit or a permit holder for a wind energy facility shall establish financial assurance that will ensure that sufficient funds are available for decommissioning of the facility and reclamation of the property to its condition prior to commencement of activities on the site, even if the applicant or permit holder becomes insolvent or ceases to reside in, be incorporated, do business, or maintain assets in the State. To establish sufficient availability of funds under this section, the applicant for a permit or a permit holder for a wind energy facility may use insurance, financial tests, third-party guarantees by persons who can pass the financial test, guarantees by corporate parents who can pass the financial test, irrevocable letters of credit, trusts, surety bonds, or any other financial device, or any combination of the foregoing, shown to provide protection equivalent to the financial protection that would be provided by insurance if insurance were the only mechanism used.~~

"**§ 143-215.122. Monitoring and reporting.**

The applicant shall annually submit copies to the Department of any post-construction monitoring, such as reports on the impacts on wildlife in the location of and in the area proximate to the wind energy facility or wind energy facility expansion and any impacts on military operations that are required by the United States Fish and Wildlife Service, the North Carolina Wildlife Resources Commission, the North Carolina Utilities Commission, or any other government agency.

"**§ 143-215.123. Annual review of military presence.**

The Department of Military and Veterans Affairs shall consult with representatives of the major military installations to review information regarding military air navigation routes, air traffic control areas, military training routes, special-use air space, radar, or other potentially affected military operations at least once per year. The Department of Military and Veterans Affairs shall provide relevant information on civil air navigation or military air navigation routes, air traffic control areas, military training routes, special-use air space, radar, or other potentially affected military operations to permit applicants as requested. Information obtained in the annual review required under this section may be used to determine the impact of wind energy facilities and expansion of wind energy facilities that have not previously received a permit from the Department of Military and Veterans Affairs or a letter to proceed from the Department of Military and Veterans Affairs.

...."

SECTION 2. This act is effective when it becomes law and applies only to those wind energy facilities or wind energy facility expansions for which no "Determination of No Hazard to Air Navigation" has been issued by the Federal Aviation Administration on or before that date.

HOUSE BILL 574:
Wind Energy/Consistency With Military.

2017-2018 General Assembly

Committee:	House Energy and Public Utilities. If favorable, re-refer to Homeland Security, Military, and Veterans Affairs	**Date:**	April 18, 2017
Introduced by:	Reps. Grange, Szoka, Watford	**Prepared by:**	Jennifer McGinnis Committee Counsel
Analysis of:	PCS to First Edition H574-CSRI-7		

OVERVIEW: House Bill 574 would modify the permitting process governing wind energy facilities.

The PCS makes technical, clarifying, and conforming changes to the First Edition of the bill.

CURRENT LAW: Article 21C of Chapter 143 the General Statutes requires all wind energy facilities that have a rated capacity of one megawatt or more to obtain a permit from the Department of Environmental Quality (DEQ) for construction and operation of the facility.

A permit application for a proposed wind energy facility must include:

- A narrative description of the proposed facility and map showing the location of each turbine.
- A description of civil air navigation or military activities that may be affected by the construction or operation of the proposed facility.
- Documentation addressing any potential adverse impacts on military activities as identified by the Department of Defense (DOD) Clearinghouse and any mitigation actions agreed to by the applicant.
- A study of the noise and shadow flicker impacts of the turbines associated with the proposed facility.
- A study of the effects of the proposed facility on natural resources.
- The permit application fee of $3,500.
- A plan for decommissioning and removal of the facility.

DEQ must approve an application for a proposed wind energy facility unless DEQ finds that construction or operation of the facility would:

- Be inconsistent with or violate applicable rules under the Administrative Code, or any other provision of law.
- Encroach upon or otherwise have a significant adverse impact on military operations.
- Result in significant adverse impacts to natural resources, fish, wildlife, or views from State or national parks and other areas with high recreational values.

- Obstruct major navigation channels.
- Be denied based on criteria under the Coastal Area Management Act or prohibited under the Mountain Ridge Protection Act.
- Not comply with all applicable federal, State, or local permitting requirements, licenses, or approvals, including local zoning requirements.

Article 21C otherwise requires permit holders to:

- Establish financial assurance that will ensure sufficient funds are available for decommissioning of the facility and reclamation of the property to its condition prior to commencement of activities on the site even if the applicant or permit holder becomes insolvent or ceases to reside in, be incorporated, do business, or maintain assets in the State.
- Submit copies of any required post-construction monitoring annually to the DEQ.

The Secretary of Environmental Quality is authorized to impose an administrative penalty in an amount not to exceed ten thousand dollars ($10,000) per day, or institute an action for injunctive relief, in response to construction or operation of a facility in violation of the permitting requirements.

BILL ANALYSIS: The bill would make the following changes to the permitting process for wind energy facilities:

- Eliminate the need for a permit to operate a wind energy facility, requiring only a permit to construct a facility or expand a facility.
- Add the Department of Military and Veterans Affairs (DMVA) as a State entity that, along with DEQ, has responsibility for evaluating certain criteria for permit issuance to construct or expand wind energy facilities.
- Eliminate several required elements of a permit application for a wind energy facility, including:
    - Submission of copy of a deed, purchase agreement, lease agreement, or other legal instrument demonstrating the right to construct, expand, or otherwise develop a wind energy facility on the property.
    - Identification by name and address of property owners adjacent to the proposed wind energy facility or proposed wind energy facility expansion, and a requirement that the permit applicant provide notice to these property owners of: (i) the location of the proposed wind energy facility or expansion, and the specific location of each turbine proposed to be located within one-half mile of the boundary of the adjacent property owner; and (ii) a description of the proposed wind energy facility or expansion.
    - Studies of: (i) the noise impacts of the turbines to be associated with the proposed wind energy facility or expansion; and (ii) shadow flicker impacts of the turbines to be associated with the facility, unless the turbines will be located in a sound or in offshore waters.
- Eliminate a requirement that DEQ provide notice of a completed permit application to the commanding military officer of any military installation located outside the State that is located within 50 nautical miles of the location of a proposed wind energy facility or facility expansion.
- Require a permit applicant for a wind energy facility or facility expansion to obtain a letter to proceed from the DMVA. The DMVA is directed to issue such a letter only after it has

determined that the proposed wind energy facility or proposed expansion of a wind energy facility would not cause significant adverse impacts on air navigation routes, air traffic control areas, military training routes, or radar installations."significant adverse impact" is defined under the bill to mean "any demonstrable adverse impact upon military operations and readiness, including flight operations research, development, testing, and evaluation and training, that (i) is likely to impair or degrade the ability of the Armed Forces to perform their warfighting missions and (ii) is unable to be addressed through mitigation measures." The DMVA must determine whether to issue a letter to proceed within 60 days of the public hearing required by the permitting process under existing law. If the DMVA fails to act within that timeframe, the applicant may treat the failure to act as the DMVA's determination that the proposed facility or expansion would not cause significant adverse impacts on air navigation routes, air traffic control areas, military training routes, or radar installations. If, however, within that timeframe the DMVA determines that the proposed facility or expansion would cause significant adverse impacts to military operations, the DMVA must issue a letter of concern to DEQ and the applicant. If a letter of concern is issued, the DMVA must engage with the applicant, the commanding military officer of any major military installation impacted in the letter of concern, and the DoD Clearinghouse designee for that installation to address the issues identified in the letter of concern. If the parties are unable to resolve the concerns, the applicant may treat the failure to agree as a denial of the letter to proceed and may challenge the denial as provided under Chapter 150B of the General Statutes.

- Modify DEQ's permit approval criteria to: (i) add receipt of a letter to proceed from the DMVA as requirement for approval; and (ii) eliminate DEQ's own consideration of a proposed facility's impact on military operations, as well as consideration of whether construction of a proposed wind energy facility or expansion would:
    - Have a significant adverse impact on views from any State or national park, wilderness area, significant natural heritage area as compiled by the North Carolina Natural Heritage Program, or other public lands or private conservation lands designated or dedicated due to their high recreational values.
    - Be denied under the permitting criteria established for development under the Coastal Area Management Act.

  In addition:

    - DEQ would no longer have to delay a final decision on a permit application pending receipt of a written "Determination of No Hazard to Air Navigation" issued by the Federal Aviation Administration.
    - DEQ's failure to act within 90 days of receipt of a completed application, would be treated as granting of the permit by DEQ (rather than a denial as provided under existing law).
- Eliminate the requirement that permit holders establish financial assurance that will ensure sufficient funds are available for decommissioning of the facility and reclamation of the property to its condition prior to commencement of activities on the site even if the applicant or permit holder becomes insolvent or ceases to reside in, be incorporated, do business, or maintain assets in the State.

EFFECTIVE DATE: This bill would be effective when it becomes law, and would apply only to those wind energy facilities or wind energy facility expansions for which no "Determination of No Hazard to Air Navigation" has been issued by the Federal Aviation Administration on or before that date.

HOUSE BILL 574

Short Title:	Wind Energy/Consistency With Military.	(Public)
Sponsors:	Representatives Grange, Szoka, and Watford (Primary Sponsors). *For a complete list of sponsors, refer to the North Carolina General Assembly web site.*	
Referred to:	Energy and Public Utilities, if favorable, Homeland Security, Military, and Veterans Affairs	

April 6, 2017

A BILL TO BE ENTITLED

AN ACT TO BETTER ENSURE COMPATIBILITY OF WIND ENERGY FACILITIES WITH MILITARY OPERATIONS AND READINESS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 21C of Chapter 143 of the General Statutes reads as rewritten:

"Article 21C.

"Permitting of Wind Energy Facilities.

...

"§ 143-215.116. Permit to site wind energy facilities.

No person shall undertake ~~construction, operation,~~ construction or expansion activities associated with a wind energy facility in this State without first obtaining a permit from the Department.

"§ 143-215.117. Permit preapplication site evaluation meeting; notice; preapplication package requirements.

(a) Permit Preapplication Site Evaluation Meeting. – No less than 180 days prior to filing an application for a permit to ~~construct, operate,~~ construct or expand a wind energy facility, a person shall request a preapplication site evaluation meeting to be held between the ~~applicant and the Department.~~ applicant, the Department, and the Department of Military and Veterans Affairs. The preapplication site evaluation meeting shall be held no less than 120 days prior to filing an application for a permit to construct, operate, or expand a wind energy facility and may be used by the participants to:

(1) Conduct a preliminary evaluation of the site or sites for the proposed wind energy facility or wind energy facility expansion. The preliminary evaluation of the proposed wind energy facility or proposed wind energy facility expansion shall determine if the site or sites:
   a. Pose serious risk to civil air navigation or military air navigation routes, air traffic control areas, military training routes, special-use air space, radar, or other potentially affected military operations.
   b. Pose serious risk to natural resources and uses, including to species of concern or their habitats.

(2) Identify areas where proposed construction or expansion activities pose minimal risk of interference with civil air navigation or military air

navigation routes, air traffic control areas, military training routes, special-use air space, radar, or other potentially affected military operations.

(3) Identify areas where proposed construction or expansion activities pose minimal risk to natural resources and uses, including avian, bat, and endangered and threatened species.

...

(c) Notice to Interested Parties. – No less than 21 days prior to the date of the permit preapplication site evaluation meeting scheduled in accordance with subsection (a) of this section, the Department shall provide written notice of the meeting to the United States Army Corps of Engineers, the United States Fish and Wildlife Service, the Department of Military and Veterans Affairs, the North Carolina Wildlife Resources Commission, the commanding military officer or the commanding military officer's designee of any potentially affected major military installation, and any other party that the Department deems relevant. The notice shall include an invitation to participate in the permit preapplication site evaluation meeting.

"§ 143-215.118. Permit application scoping meeting and notice.

(a) Scoping Meeting. – No less than 60 days prior to filing an application for a permit for a proposed wind energy facility or proposed wind energy facility expansion, the applicant shall request the scheduling of a scoping meeting between the ~~applicant and the Department.~~ applicant, the Department, and the Department of Military and Veterans Affairs. The scoping meeting shall be held no less than 30 days prior to filing an application for a permit for a proposed wind energy facility or proposed wind energy facility expansion. The applicant and the Department shall review the permit for the proposed wind energy facility or proposed facility expansion at the scoping meeting.

(b) Notice of Scoping Meeting. – No less than 21 days prior to the scheduled permit application scoping meeting with an applicant, the Department shall provide written notice of the meeting to the commanding military officer of each major military installation, or the commanding military officer's designee, the Federal Aviation Administration, the Department of Military and Veterans Affairs, the North Carolina Wildlife Resources Commission, the United States Fish and Wildlife Service, the board of commissioners for each county and the governing body of each municipality in which the wind energy facility or proposed wind energy facility expansion is proposed to be located, and those local governments with jurisdictions over areas in which a major military installation is located. The notice shall include an invitation to participate in the scoping meeting.

"§ 143-215.119. Permit application requirements; fees; notice of receipt of completed permit; public hearing; public comment.

(a) Permit Requirements. – A person applying for a permit for a proposed wind energy facility or proposed wind energy facility expansion shall include all of the following in an application for the permit:

(1) A narrative description of the proposed wind energy facility or proposed wind energy facility expansion.

(2) A map showing the location of the proposed wind energy facility or proposed wind energy facility expansion that identifies the specific location of each turbine.

~~(3) A copy of a deed, purchase agreement, lease agreement, or other legal instrument demonstrating the right to construct, expand, or otherwise develop a wind energy facility on the property.~~

~~(4) Identification by name and address of property owners adjacent to the proposed wind energy facility or proposed wind energy facility expansion. The applicant shall notify every property owner identified pursuant to this subdivision by registered or certified mail or by any means authorized by~~

~~G.S. 1A-1, Rule 4, in a form approved by the Department. The notice shall include all of the following:~~

~~a. The location of the proposed wind energy facility or proposed wind energy facility expansion and the specific location of each turbine proposed to be located within one-half mile of the boundary of the adjacent property owner.~~

~~b. A description of the proposed wind energy facility or proposed wind energy facility expansion.~~

(5) A description of civil air navigation or military air navigation routes, air traffic control areas, military training routes, special-use air space, radar, or other military operations that may be affected by the construction or operation of the proposed wind energy facility or proposed wind energy facility expansion.

(6) Documentation that addresses any potential adverse impact on military operations and readiness as identified by the Department of Defense Clearinghouse pursuant to Part 211 of Title 32 Code of Federal Regulations (July 1, 2012 edition) and any mitigation actions agreed to by the applicant.

(7) Documentation that the applicant has either (i) submitted Federal Aviation Administration Form 7460-1 for the turbines associated with the proposed wind energy facility or proposed wind energy facility expansion or (ii) initiated an informal review by the Department of Defense Siting Clearinghouse of the proposed wind energy facility or proposed wind energy facility expansion. If the applicant has submitted Federal Aviation Administration Form 7460-1 in order to fulfill the requirements of this subdivision, the applicant shall provide any determination reached by the Federal Aviation Administration at the time the application is submitted to the Department. If the Federal Aviation Administration has not made a determination at the time the application is submitted to the Department, the application shall include a description of the status of the applicant's engagement with the Federal Aviation Administration and the Department of Defense Siting Clearinghouse.

~~(8) A study of the noise impacts of the turbines to be associated with the proposed wind energy facility or proposed wind energy facility expansion.~~

~~(9) A study on shadow flicker impacts of the turbines to be associated with the proposed wind energy facility or proposed wind energy facility expansion, unless the turbines will be located in a sound or in offshore waters.~~

(10) A study of the impact of the proposed wind energy facility or proposed wind energy facility expansion on natural resources and uses, including avian, bat, and endangered and threatened species.

(11) An explanation of how the proposed wind energy facility or proposed wind energy facility expansion would be consistent with the criteria in subsection (a) of G.S. 143-215.120.

(12) The application fee required by subsection (c) of this section.

(13) A plan regarding the action to be taken upon the decommissioning and removal of the wind energy facility. The plan shall include an estimate of the cost to decommission and remove the wind energy facility. The plan shall also include the anticipated life of the project, an estimate of the cost to decommission and remove the wind energy facility, a description of the manner in which the facility will be decommissioned, and a description of the expected condition of the site once the wind energy facility has been decommissioned and removed.

(14) Other data or information the Department may reasonably require.

...

(d) Notice of Receipt of Complete Permit Application. – Within 10 days of receipt of a complete permit application for a proposed wind energy facility or proposed wind energy facility expansion submitted pursuant to subsection (a) of this section, the Department shall provide notice of the permit application to (i) the commanding military officer of all major military installations, (ii) ~~the commanding military officer of any military installation located outside the State that is located within 50 nautical miles of the location of the proposed wind energy facility or proposed wind energy facility expansion,~~ the Department of Military and Veterans Affairs, and (iii) the board of commissioners for each county and the governing body of each municipality in which the wind energy facility or wind energy facility expansion is proposed to be located. The notice shall include:

(1) A copy of the map showing the location of the proposed wind energy facility or proposed wind energy facility expansion that includes the specific locations of wind turbines.

(2) A written request to the commanding military officer of a major military installation or the commanding military officer's designee, for technical information related to any adverse impact on the installation's operations, training, or mission, including military air navigation routes, air traffic control areas, military training routes, special-use air space, radar or other military operations that may be affected.

(3) A written request for information related to potential adverse impacts of the proposed wind energy facility or proposed wind energy facility expansion on local governments from the board of commissioners for each county and the governing body of each municipality.

(e) Provision of Permit Application to Affected Entities. – Except as provided by G.S. 143-215.124, within 10 days of receipt of a written request from the commanding military officer of any major military installation or the commanding military officer's designee, the board of commissioners for any county in which the site is proposed to be located or the governing body of any municipality in which the site is proposed to be located, the Department shall provide a copy of a permit application filed pursuant to subsection (a) of this section, in addition to any supplements, changes, or amendments to the permit application to the requesting commanding military officer or local government.

(f) Public Hearing and Comment. – The Department shall hold a public hearing in each county in which the wind energy facility or wind energy facility expansion is proposed to be located within 75 days of receipt of a completed permit application. The Department shall provide notice including the time and location of the public hearing in a newspaper of general circulation in each applicable county. The notice of public hearing shall be published for at least two consecutive weeks beginning no less than 45 days prior to the scheduled date of the hearing. The notice shall provide that any comments on the proposed wind energy facility or proposed wind energy facility expansion should be submitted to the Department by a specified date, not less than 15 days from the date of the newspaper publication of the notice or 15 days after distribution of the mailed notice, whichever is later. No less than 30 days prior to the scheduled public hearing, the Department shall provide written notice of the hearing to:

(1) The North Carolina Utilities Commission.

(2) The Office of the Attorney General of North Carolina.

(3) The commanding military officer of any potentially affected major military installation or the commanding military officer's designee.

(4) The board of commissioners for each county and the governing body of each municipality with jurisdictions over areas in which a potentially affected major military installation is located.

(5) The Department of Military and Veterans Affairs.

"**§ 143-215.119A. Letter to proceed determination by Department of Military and Veterans Affairs.**

(a) Letter to Proceed. – Prior to issuing a permit under this Article, the applicant must obtain a letter to proceed from the Department of Military and Veterans Affairs as set forth in this section. The Department of Military and Veterans Affairs shall issue a letter to proceed only after the Department of Military and Veterans Affairs finds that the proposed wind energy facility or proposed expansion of a wind energy facility would not cause significant adverse impacts on air navigation routes, air traffic control areas, military training routes, or radar installations. For purposes of this section, "significant adverse impact" means any demonstrable adverse impact upon military operations and readiness, including flight operations research, development, testing, and evaluation and training, that (i) is likely to impair or degrade the ability of the Armed Forces to perform their warfighting missions and (ii) is unable to be addressed through mitigation measures.

(b) Time Line. – The Department of Military and Veterans Affairs shall determine whether to issue a letter to proceed under this section within 60 days of the public hearing required by G.S. 143-215.119(e).

(c) Basis for Letter. – The Department of Military and Veterans Affairs shall make its determination based on information submitted by the applicant pursuant to subdivisions (5) and (6) of subsection (a) of G.S. 143-215.119, and any information received by the Department of Military and Veterans Affairs pursuant to subdivision (2) of subsection (d) of G.S. 143-215.119.

(d) Failure of Department to Act. – If the Department of Military and Veterans Affairs fails to issue a letter to proceed within the time line set forth in subsection (b) of this section, the Department shall treat the failure to issue the letter as confirmation that the proposed wind energy facility or proposed expansion of a wind energy facility would not cause significant adverse impacts on air navigation routes, air traffic control areas, military training routes, or radar installations.

(e) Finding of Significant Adverse Impact. – If the Department of Military and Veterans Affairs finds that the proposed wind energy facility or proposed wind energy facility expansion would cause significant adverse impacts to air navigation routes, air traffic control areas, military training routes, or radar installations, the Department of Military and Veterans Affairs shall issue a letter of concern to the Department and the applicant.

(f) Letter of Concern. – Within 90 days of issuance of a letter of concern under subsection (e) of this section, the Department of Military and Veterans Affairs shall engage with the applicant, the commanding military officer of any major military installation impacted in the letter of concern, and the Department of Defense Clearinghouse designee for that installation to address the issues identified in the letter of concern. If the parties are unable to resolve the concerns, the applicant may treat the failure to agree as a denial of the letter to proceed and may challenge the denial as provided under Chapter 150B of the General Statutes.

"**§ 143-215.120. Criteria for permit approval; time frame; permit conditions; other approvals required.**

(a) Permit Approval. – The Department shall approve an application for a permit for a proposed wind energy facility or proposed wind energy facility expansion upon receipt of a letter to proceed from the Department of Military and Veterans Affairs issued as set forth in G.S. 143-215.119A unless the Department finds any one or more of the following:

(1) Construction or operation of the proposed wind energy facility or proposed wind energy facility expansion would be inconsistent with or violate rules adopted by the Department or any other provision of law.

~~(2) Construction or operation of the proposed wind energy facility or proposed wind energy facility expansion would encroach upon or would otherwise~~

~~have a significant adverse impact on the mission, training, or operations of any major military installation or branch of military in North Carolina and result in a detriment to continued military presence in the State. In its evaluation, the Department may consider whether the proposed wind energy facility or proposed wind energy facility expansion would cause interference with air navigation routes, air traffic control areas, military training routes, or radar based on information submitted by the applicant pursuant to subdivisions (5) and (6) of subsection (a) of G.S. 143-215.119, and any information received by the Department pursuant to subdivision (2) of subsection (d) of G.S. 143-215.119.~~

(3) Construction or operation of the proposed wind energy facility or proposed wind energy facility expansion would result in significant adverse impacts to ecological systems, natural resources, cultural sites, recreation areas, or historic sites of more than local significance; including national or State parks or forests, wilderness areas, historic sites, recreation areas, segments of the natural and scenic rivers system, wildlife refuges, preserves and management areas, areas that provide habitat for threatened or endangered species, primary nursery areas designated by the Marine Fisheries Commission and the Wildlife Resources Commission, and critical fisheries habitat identified pursuant to the Coastal Habitat Protection Plan.

(4) Construction or operation of the proposed wind energy facility or proposed wind energy facility expansion would have a significant adverse impact on fish or wildlife.

~~(5) Construction or operation of the proposed wind energy facility or proposed wind energy facility expansion would have a significant adverse impact on views from any State or national park, wilderness area, significant natural heritage area as compiled by the North Carolina Natural Heritage Program, or other public lands or private conservation lands designated or dedicated due to their high recreational values.~~

(6) Construction or operation of the proposed wind energy facility or proposed wind energy facility expansion would obstruct major navigation channels or create a significant obstacle to navigation in coastal waters, as determined by the United States Army Corps of Engineers and the United States Coast Guard.

~~(7) A permit for a proposed wind energy facility or proposed wind energy facility expansion would be denied under any other criteria set out in G.S. 113A-120.~~

(8) Construction of the proposed wind energy facility or proposed wind energy facility expansion would be prohibited under Article 14 of Chapter 113A of the General Statutes, the Mountain Ridge Protection Act of 1983.

(9) The applicant is not in compliance with all applicable federal, State, or local permit requirements, licenses, or approvals, including local zoning requirements.

(b) Permit Decision. – The Department shall make a final decision on a permit application within 90 days following receipt of a completed ~~application, except that the Department shall not be required to make a final decision until the Department has received a written "Determination of No Hazard to Air Navigation" issued by the Federal Aviation Administration pursuant to Subpart D of Part 77 of Title 14 of the Code of Federal Regulations (January 1, 2012 edition).~~ application. If the Department requests additional information following the receipt of a completed application, the Department shall make a final decision on a permit application within 30 days of receipt of the requested information. If the Department

determines that an application for a wind energy facility or a wind energy facility expansion fails to meet the requirements for a permit under this section, the Department shall deny the application, and the application shall be returned to the applicant accompanied by a written statement of the reasons for the denial and any modifications to the permit application that would make the application acceptable. If the Department fails to act within the time period set forth in this subsection, the applicant may treat the failure to act as a ~~denial of the permit and may challenge the denial as provided under Chapter 150B of the General Statutes.~~grant of the permit.

(c) Permit Conditions. – The Department (i) may include as a condition of a permit for a proposed wind energy facility or proposed wind energy facility expansion a requirement that the permit holder mitigate any adverse impacts and (ii) shall include as a condition of a permit for a proposed wind energy facility or proposed wind energy facility expansion a requirement that the permit holder obtain a written "Determination of No Hazard to Air Navigation" issued by the Federal Aviation Administration pursuant to Subpart D of Part 77 of Title 14 of the Code of Federal Regulations (January 1, 2012 edition) for the facility. No permit for a wind energy facility or wind energy facility expansion shall become effective until the Department has received and reviewed the "Determination of No Hazard to Air Navigation" issued by the Federal Aviation Administration for the facility. If the specific location of a turbine authorized to be constructed pursuant to a "Determination of No Hazard to Air Navigation" or the configuration of the wind energy facility varies from the information submitted by the applicant upon which the Department has made its permit decision, the Department may reevaluate the permit application and require the applicant to submit any additional information the Department deems necessary to approve or deny a permit for the facility as reconfigured.

(d) Other Approvals Required. – The issuance of a permit under this section shall not obviate the need for the applicant to obtain any and all other applicable local, State, or federal permits, licenses, or approvals. However, obtaining other applicable local, State, or federal permits, licenses, or approvals shall not be a requirement for the consideration and grant of a permit under this section. Furthermore, nothing in this Article shall be interpreted to limit, as applicable, (i) the application of Article 7 of Chapter 113A of the General Statutes to facilities permitted under this section, including the permitting requirements of G.S. 113A-118, (ii) the ability of a city or county to plan for and regulate the siting of a wind energy facility in accordance with land-use regulations authorized under Chapter 160A and Chapter 153A of the General Statutes, or (iii) the applicable requirements of Chapter 62 of the General Statutes.

"~~**§ 143-215.121. Financial assurance requirements.**~~

~~The applicant for a permit or a permit holder for a wind energy facility shall establish financial assurance that will ensure that sufficient funds are available for decommissioning of the facility and reclamation of the property to its condition prior to commencement of activities on the site, even if the applicant or permit holder becomes insolvent or ceases to reside in, be incorporated, do business, or maintain assets in the State. To establish sufficient availability of funds under this section, the applicant for a permit or a permit holder for a wind energy facility may use insurance, financial tests, third-party guarantees by persons who can pass the financial test, guarantees by corporate parents who can pass the financial test, irrevocable letters of credit, trusts, surety bonds, or any other financial device, or any combination of the foregoing, shown to provide protection equivalent to the financial protection that would be provided by insurance if insurance were the only mechanism used.~~

"**§ 143-215.122. Monitoring and reporting.**

The applicant shall annually submit copies to the Department of any post-construction monitoring, such as reports on the impacts on wildlife in the location of and in the area proximate to the wind energy facility or wind energy facility expansion and any impacts on military operations that are required by the United States Fish and Wildlife Service, the North

Carolina Wildlife Resources Commission, the North Carolina Utilities Commission, or any other government agency.

"**§ 143-215.123. Annual review of military presence.**

The Department of Military and Veterans Affairs shall consult with representatives of the major military installations to review information regarding military air navigation routes, air traffic control areas, military training routes, special-use air space, radar, or other potentially affected military operations at least once per year. The Department of Military and Veterans Affairs shall provide relevant information on civil air navigation or military air navigation routes, air traffic control areas, military training routes, special-use air space, radar, or other potentially affected military operations to permit applicants as requested. Information obtained in the annual review required under this section may be used to determine the impact of wind energy facilities and expansion of wind energy facilities that have not previously received a permit from the Department of Military and Veterans Affairs or a letter to proceed from the Department of Military and Veterans Affairs.

...."

SECTION 2. This act is effective when it becomes law and applies only to those wind energy facilities or wind energy facility expansions for which no "Determination of No Hazard to Air Navigation" has been issued by the Federal Aviation Administration on or before that date.

VISITOR REGISTRATION SHEET

House Comm. on Energy and PUs 04/19/17

Name of Committee Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Starnes	OST
Preston Howard	NCMA
Bo Heath	MWC
Jason Soper	NC Chamber
Susan Vick	Duke Energy
Hayden Barquess	ElectriCities
Jon Carr	Jordan Price
Brett McAulay	PSNC Energy
Jonathan Babalas	Babalas + Assoc
Dana Simpson	SCA
Rick Zechini	Williams Mullen

VISITOR REGISTRATION SHEET

House Comm. on Energy and PUs 04/19/17

Name of Committee Date

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NAME	FIRM OR AGENCY AND ADDRESS
Gary Salamido	NC Chamber
[illegible]	GA
Jake Ca[illegible]	NCC
Maren Tr[illegible]	BPMHC
[illegible]	Duke
[illegible]	[illegible]
Tray Robon	AT&T
Jaclesa Cozart	NSS
Will Culpepper	MVH
[illegible]	[illegible]
Greg Adcock	Audubon

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House Comm. on Energy and PUs 04/19/17

Name of Committee Date

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NAME	FIRM OR AGENCY AND ADDRESS
Laurie Orrio	Walk West
C M Scoggin	TS
LAURA PURYEAR	NVIC
Sean Spicer	White House
David McGowan	
Dwight Allen	Allen Law Offices
Bill for Allen	"
Rose Williams	NCLM
Jaime King Fogarty	Vista Strategics
Hannah Jordan	Vista Strategics
Chris	CHC-NC

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House Comm. on Energy and PUs 04/19/17

Name of Committee Date

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NAME	FIRM OR AGENCY AND ADDRESS
Mike Ozburn	GRIDWORKS
Jill Cramer	NC Dept Labor
Sarah Kance	NCDA
Jennifer Haigwood	NCLCL
DMTraynor	NMRS

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House Comm. on Energy and PUs 04/19/17

Name of Committee Date

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NAME	FIRM OR AGENCY AND ADDRESS
Katye Gobe	Smith Moore Leatherwood
Josh Lanier	SML
Michelle Frazier	SML
Lisa Garrison	SML
Tonya Hilton	TJS
Sarah McQuillan	KGANC
Frances Liles	NCREA
Dianna Downey	PSNCUC
Chris Ayers	PSNCUC
Sam Watson	NCUC
Patrick Buffkin	NCUC

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House Comm. on Energy and PUs 04/19/17

Name of Committee Date

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NAME	FIRM OR AGENCY AND ADDRESS
Betsy Bailey	CAGC
Betsy McCorkle	KGANC
Michael Youth	NCEMC
Sharon Miller	CUCA
Ed [illegible]	[illegible]
Harry Johnson	n/a
Martha Babcock	PPAB
William Moon	Coastal Carolina Accountability Project
Jason Cain	Dept Military & Veterans Affairs
Whitney Christensen	Ward & Smith, PA
James Norment	Ward and Smith, PA

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House Comm. on Energy and PUs 04/19/17

Name of Committee Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jackson Francis	Three Street Consulting
Luke Francis	" " "
John Cooper	Connect C
Peter Donatos Sr.	Connect C
Andy Chase	KMA
Lori Ann Harris	AT&T
Sarah Wolfe	NWC
Molly Diggins	Sierra Club
Cassie Garcia	Sierra Club
Doug Mishler	PSG
Shannon Becker	Aqua

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House Comm. on Energy and PUs 04/19/17

Name of Committee Date

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NAME	FIRM OR AGENCY AND ADDRESS
Mary Maclean Asbill	SELC
Brooke Peirce Pearson	SELC
Andy Mille	DEQ
Susan Fleetwood	NC DOC
Will Best	NC DOC
Dave Ifird	"

VISITOR REGISTRATION SHEET

House Comm. on Energy and PUs 04/19/17

Name of Committee Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Robert Sparks	Daily Bulletin
Christine Wunsche	SOG - Daily Bulletin
JEFF BARNHART	MWC
LAURIE BARNHART	NC GRANGE
Stevie McClees	McClees Consulting
John Mitchell	Policy Group
Pat Walker	Acting Chair NC Mil Affairs Commission
Paul Fogleman	HTGAC
Julie Bowman	NCSFA
TOM BEAM	NCSEA
BRUCE THOMPSON	PARKER POE

VISITOR ~~REGISTRATION SHEET~~

Energy & Public Utilities
(Committee Name)

04/19/2017
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

B. 11 #

NAME	FIRM OR AGENCY AND ADDRESS	
(1) PAT WALKER	Acting Chair NC M.I. AFFAIRS Comm	#574
~~Rose Williams~~	~~NCLM RE: Bright Futures~~	
(2) ~~Bo Heath #574~~	~~Friends of Seymour Johnson~~	~~574~~ Ag+
(3) James Norment	Allies for Cherry Point	574
~~Britton Allen~~	NC Telephone Coop Coalition	~~#68~~
~~Trey Baron~~	~~AT&T~~	~~#68~~
~~Steve Brewer~~	CTL	~~#68~~
~~Sammy Roberson~~	~~CHARTER~~	~~#68~~

09-21-201

Regina Irwin (Rep. Sam Watford)

om:	Beverly Slagle (Rep. John Szoka)
nt:	Thursday, April 20, 2017 12:10 PM
To:	Rep. Jeff Collins; Rep. Sam Watford; Rep. Jean Farmer-Butterfield; Rep. Susan Martin; Rep. Chuck McGrady; Rep. Dean Arp
Cc:	Wes Householder (Rep. Jeff Collins); Regina Irwin (Rep. Sam Watford); Portia Bright (Rep. Jean Farmer-Butterfield); Susie Farrell (Rep. Susan Martin); Kimberly Neptune (Rep. Chuck McGrady); Wendy Miller (Rep. Dean Arp)
Subject:	<NCGA> House Energy and Public Utilities Committee Meeting Notice for Tuesday, April 25, 2017 at 11:00 AM
Attachments:	Add Meeting to Calendar_LINC_.ics

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2017-2018 SESSION

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

DAY & DATE: Tuesday, April 25, 2017
TIME: **11:00 AM**
LOCATION: **1228/1327 LB**
COMMENTS: **Chairman Szoka, presiding**

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 351	Utilities/Rate Base/Fair Value Determination.	Representative Watford Representative Collins
HB 396	Municipal Broadband Service Area.	Representative S. Martin Representative Farmer-Butterfield
HB 718	Rates and Transfers by Public Enterprises.	Representative McGrady
HB 752	Utilities/Water and Wastewater Rates.	Representative Arp

House Committee on Energy and Public Utilities
Tuesday, April 25, 2017, 11:00 AM
1228/1327 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
HB 351	Utilities/Rate Base/Fair Value Determination.	Representative Watford Representative Collins
HB 396	Municipal Broadband Service Area.	Representative S. Martin Representative Farmer-Butterfield
HB 718	Rates and Transfers by Public Enterprises.	Representative McGrady
HB 752	Utilities/Water and Wastewater Rates.	Representative Arp

Presentations

Other Business

Adjournment

HOUSE COMMITTEE ON ENERGY AND PUBLIC UTILITIES

TUESDAY, APRIL 25, 2017

MINUTES

The House Committee on Energy and Public Utilities met in Room 1228 of the Legislative Building on April 25, 2017 at 11:00am. The following members were present: Representatives Szoka, Presiding Chair, Representatives, Arp, Bell, Blackwell, Bradford, Bumgardner, Collins, Cunningham, Dollar, Earle, Elmore, Hanes, Harrison, Hastings, Malone, Martin, Moore, Murphy, Riddell, Rogers, Sauls, Stone, Strickland, Szoka, Watford, and Zachary attended. Layla Cummings, Jennifer McGinnis, and Mariah Matheson, Staff, were in attendance. A Visitor Registration log is attached and made part of these minutes (Attachment I).

Representative Szoka, Chair, called the meeting to order at 11:00 am. He introduced the Pages and the Sergeant of Arms staff (Attachment II). The following bills were considered:

HB 351, entitled, AN ACT AUTHORIZING WATER AND WASTEWATER PUBLIC UTILITIES TO ELECT TO USE A FAIR VALUE DETERMINATION FOR RATE-MAKING PURPOSES WHEN ACQUIRING UTILITIES OWNED BY COUNTIES, MUNICIPALITIES, OR OTHER GOVERNMENTAL ENTITIES. Representative Szoka stated that HB 351 was before the Committee for discussion and, without objection, PCS H351-CSTS-2 [v.3] (Attachment III) be heard by the Committee. There being no objection, the PCS for HB 351 was properly before the Committee for consideration. Rep. Szoka recognized Representative Watford, bill sponsor, to explain the PCS. After some discussion Representative Bradford moved for a favorable report as to the committee substitute bill, unfavorable as to the original bill. The motion passed.

HB 396, entitled, A BILL TO BE ENTITLED AN ACT TO CLARIFY THE SERVICE AREA FOR COMMUNICATIONS SERVICES PROVIDED BY CERTAIN SERVICE PROVIDERS EXEMPTED FROM CERTAIN REQUIREMENTS OF ARTICLE 16A OF CHAPTER 160A OF THE GENERAL STATUTES. The Chair recognized Representative S. Martin, bill sponsor, to explain the bill. Representative Collins sent forth an amendment # H396-ARI-19 [v.12] (Attachment IV). Representative Stone moved for the adoption of the amendment for consideration. The motion passed. The Chair recognized Representative Collins to explain the amendment. After a brief discussion, Representative Szoka recognized Representative Martin to continue to explain the bill. The Chair recognized Brent Wooten, Pinetops, NC who spoke in opposition of the amendment, Jack Cozart, City of Wilson, Steve Brewer, CenturyLink, Sammy Roberson, Charter Communications, Marcus Trathen, Brooks Pierce, and Bill Paramore, VP Suddenlink Communication, who spoke in favor of the amendment. After additional discussion by committee members Representative Dollar moved to roll the amendment into a PCS, with a favorable report as to the PCS, unfavorable to the original bill & recommendation the bill be re-referred to the Committee on State & Local Government II. The motion passed

HB 752, entitled, AN ACT PROVIDING THAT THE UTILITIES COMMISSION MAY ADOPT, IMPLEMENT, MODIFY, OR ELIMINATE A RATE ADJUSTMENT MECHANISM FOR WATER OR WASTEWATER PUBLIC UTILITIES TO TRACK AND TRUE-UP VARIATIONS IN AVERAGE PER CUSTOMER USAGE FROM LEVELS APPROVED IN THE GENERAL RATE CASE PROCEEDING. The Chair recognized Representative Arp, bill sponsor, to explain the Bill (Attachment V). After a brief discussion, Representative Arp moved for a favorable report. The motion passed.

HB 718, entitled, AN ACT TO PROHIBIT COUNTIES AND CITIES FROM ESTABLISHING DIFFERENTIAL RATES FOR PUBLIC ENTERPRISES BASED SOLELY ON WHETHER THE SERVICE IS PROVIDED INSIDE THE COUNTY OR CITY'S JURISDICTION WITHOUT APPROVAL OF THE LOCAL GOVERNMENT COMMISSION; TO REQUIRE A PUBLIC ENTERPRISE TO BE ACCOUNTED FOR IN A SEPARATE, SEGREGATED FUND WITH LIMITED TRANSFERS OUT OF THAT FUND; AND TO REQUIRE THE LEGISLATIVE RESEARCH COMMISSION TO STUDY THE PROVISION OF WATER AND SEWER SERVICES BY PUBLIC ENTERPRISES. Representative Szoka stated that HB 718 was before the Committee for discussion and, without objection, PCS H718-CSST-14 [v.2] (Attachment VI) be heard by the Committee. There being no objection, the PCS for HB 718 was properly before the Committee for consideration. The Chair recognized Representative McGrady, bill sponsor, to explain the PCS. After a brief discussion Representative Blackwell moved for a favorable report as to the committee substitute bill, which changes the title, unfavorable as to the original bill. The motion passed.

There being no further business, the Chair adjourned the meeting at 11:50 am.

Respectfully submitted,

Representative John Szoka, Presiding Chair

Beverly Slagle, Committee Assistant

Regina Irwin

Regina Irwin, Committee Assistant

Attachments:

Visitor Registration Log
Committee Sergeant-at-Arms & Pages
PCS for HB 351 & Summary
HB 396, Summary & Amendment # H396-ARI-19 [v.12]
HB 752 & Summary
PCS for HB 718 & Summary

ATTACHMENT I

VISITOR REGISTRATION SHEET

House Committee on Energy and Public Utilities — 4/25/2017

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Rick Zechini	Williams Mullen
Elizabeth Bisor	Brooks Pierce
Marcus Trathen	Brooks Pierce
Derek Kelly	CenturyLink
Suzanne Coker Craig	Town of Pinetops
Jack Gozart	Wilson
Brent Wooten	Town of Pinetops
Keeve Ulla	Duke Energy
Mike Leighs	NCPC
Cindy Watkins	NCPC
Cassie Gavin	Sierra Club
Jon Carr	Jordan Price Law Firm

VISITOR REGISTRATION SHEET

House Committee on Energy and Public Utilities 4/25/2017

Name of Committee Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jim Harrell	BTH
Dana Simpson	SA
Meghan Lewis	NC chamber
Jason Opper	NC chamber
Chris McClure	BP
Jonathan Brubaker	Brubaker + Assoc
Amanda Donovan	KTS
Cameron Henley	MVA
Dan Crawford	NCCCV
Ken McHorse	K.M.A
Joyce Peters	CSS

VISITOR REGISTRATION SHEET

House Committee on Energy and Public Utilities — 4/25/2017

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
JGOODMAN	CCC
Patrick Buffkin	NCUC
Erin Wynia	NCLM
Sarah Collins	NCLM
Hugh Johnson	NCHCC
	Duke E
Kelly Hawks	Duke E
Chris Broughton	MNC
Bill McAulay	PSNC Energy
Mia Bailey	Charter Communications
Evelyn Hawthorne	CCUC

VISITOR REGISTRATION SHEET

House Committee on Energy and Public Utilities — 4/25/2017

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Penny Rheaume	Clerk
LISA SORG	NC POLICY WATCH
PRESTON HOWARD	NCMA
JAMES COLEY	NCS
Rukiya'la	Kay'la Law
J. TURNER	DUKE
JOHN Cooper	Comm AC
Deanna Downey	PSNCUC
Chris Ayers	PSNCUC
Chris Hayes	NC Chamber
TOM BEAN	NCSEA
	SA
Jeremy Tarr	OOTG
Steve Brewer	CTL
Becki Gray	John Locke Foundation
Trey Pebon	AT&T

VISITOR REGISTRATION SHEET

House Committee on Energy and Public Utilities — 4/25/2017

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Laura Kilian	VSG
[illegible]	Vista
Liz Be[illegible]	Marathon Petroleum
Dan[illegible] Miskin	PSG
Shannon V Becker	Aqua N.C.
Anastasia Beardhausen	W&G
[illegible]	CWA
Harold Black	CWA
GRANT WELCH	CWA
[illegible]	[illegible]
Henry M Lancaster	LCA
Hayden Bauguess	ElectriCities, NC
[illegible]	[illegible]
Bill PARAMORE	SUDDENLINK COMM

Committee Sergeants at Arms

NAME OF COMMITTEE House Committee on Energy and Public Utilities

DATE: 4/25/2017 Room: 1228/1327 LB

House Sgt-At Arms:

1. Name: Warren Hawkins
2. Name: Doug Harris
3. Name: Malachi McCullough, Jr.
4. Name: _____
5. Name: _____

Senate Sgt-At Arms:

1. Name: _____
2. Name: _____
3. Name: _____
4. Name: _____
5. Name: _____

HOUSE PAGES

Energy & Pub. Utilities

Name:	County:	Sponsor:
~~Zaccary Grierson~~	~~Cumberland~~	~~John Szoka~~
Alyssa Scott	Brunswick	Jimmy Dixon
Arran Walton	Wilson	Susan Martin

NORTH CAROLINA GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES

ENERGY AND PUBLIC UTILITIES COMMITTEE REPORT
Representative John Szoka, Senior Chair
Representative Dean Arp, Co-Chair
Representative Jeff Collins, Co-Chair
Representative Sam Watford, Co-Chair

FAVORABLE COM SUB , UNFAVORABLE ORIGINAL BILL

HB **351** Utilities/Rate Base/Fair Value Determination.

Draft Number:	H351-PCS40545-TS-2
Serial Referral:	None
Recommended Referral:	None
Long Title Amended:	No
Floor Manager:	Watford

TOTAL REPORTED: 1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H D

HOUSE BILL 351
PROPOSED COMMITTEE SUBSTITUTE H351-CSTS-2 [v.3]

04/24/2017 01:31:40 PM

Short Title: Utilities/Rate Base/Fair Value Determination. (Public)

Sponsors:

Referred to:

March 15, 2017

A BILL TO BE ENTITLED

AN ACT AUTHORIZING WATER AND WASTEWATER PUBLIC UTILITIES TO ELECT TO USE A FAIR VALUE DETERMINATION FOR RATE-MAKING PURPOSES WHEN ACQUIRING UTILITIES OWNED BY COUNTIES, MUNICIPALITIES, OR OTHER GOVERNMENTAL ENTITIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 62-133 reads as rewritten:

"**§ 62-133. How rates fixed.**

...

(b) In fixing such rates, the Commission shall:

(1) Ascertain the reasonable original cost or the fair value under G.S. 62-133.1A of the public utility's property used and useful, or to be used and useful within a reasonable time after the test period, in providing the service rendered to the public within the State, less that portion of the cost that has been consumed by previous use recovered by depreciation expense. In addition, construction work in progress may be included in the cost of the public utility's property under any of the following circumstances:

...

(c) The original cost of the public utility's property, including its construction work in progress, shall be determined as of the end of the test period used in the hearing and the probable future revenues and expenses shall be based on the plant and equipment in operation at that time. If the public utility elects to establish rate base using fair value, the fair value determination of the public utility's property shall be made as provided in G.S. 62-133.1A, and the probable future revenues and expenses shall be based on the plant and equipment in operation at the end of the test period. The test period shall consist of 12 months' historical operating experience prior to the date the rates are proposed to become effective, but the Commission shall consider such relevant, material and competent evidence as may be offered by any party to the proceeding tending to show actual changes in costs, revenues or the cost of the public utility's property used and useful, or to be used and useful within a reasonable time after the test period, in providing the service rendered to the public within this State, including its construction work in progress, which is based upon circumstances and events occurring up to the time the hearing is closed.

...."

SECTION 2. Article 7 of Chapter 62 of the General Statutes is amended by adding a new section to read as follows:

"**§ 62-133.1A. Fair value determination of government-owned water and wastewater systems.**

(a) Election. – A water or wastewater public utility, as defined by G.S. 62-3(23)a.2., may elect to establish rate base by using the fair value of the utility property instead of original cost when acquiring an existing water or wastewater system owned by a municipality or county or an authority or district established under Chapter 162A of the General Statutes.

(b) Determination of Fair Value. –

(1) The fair value of a system to be acquired shall be based on two separate appraisals conducted by accredited, impartial valuation experts chosen from a list to be established by the Commission. The following shall apply to the valuation:

a. One appraiser shall represent the public utility acquiring the system and another appraiser shall represent the utility selling the system.

b. Each appraiser shall determine fair value in compliance with the uniform standards of professional appraisal practice, employing cost, market, and income approaches to assessment of value.

c. Fair value, for rate-making purposes under G.S. 62-133, shall be the average of the appraisals provided for by this subsection.

d. The original source of funding for all or any portions of the water and sewer assets being acquired is not relevant to an evaluation of fair value.

(2) The acquiring public utility and selling utility shall jointly retain a licensed engineer to conduct an assessment of the tangible assets of the system to be acquired, and the assessment shall be used by both appraisers in determining fair value.

(3) Fees paid to utility valuation experts, in an amount not exceeding five percent (5%) of the fair value of the utility being sold, or in another amount approved by the Commission, may be included in the cost of the acquired system in addition to reasonable transaction and closing costs incurred by the acquiring public utility.

(4) The rate base value of the acquired system, which shall be reflected in the acquiring public utility's next general rate case for rate-making purposes, shall be the lesser of the purchase price negotiated between the parties to the sale or the fair value plus the fees and costs authorized in subdivision (3) of this subsection.

(5) The normal rules of depreciation shall begin to apply against the rate base value upon purchase of the system by the acquiring public utility.

(c) Application and Procedure. – An application to the Commission for a determination of the rate base value of the system to be acquired shall contain all of the following:

(1) Copies of the valuations performed by the appraisers, as provided in subdivision (1) of subsection (b) of this section.

(2) Any deficiencies identified by the engineering assessment conducted pursuant to subdivision (2) of subsection (b) of this section and a five-year plan for prudent and necessary infrastructure improvements by the acquiring entity.

(3) Projected rate impact for the selling entity's customers for the next five years.

(4) The averaging of the appraisers' valuations, which shall constitute fair value for purposes of this section.

(5) The assessment of tangible assets performed by a licensed professional engineer, as provided in subdivision (2) of subsection (b) of this section.

(6) The contract of sale.

(7) The estimated valuation fees and transaction and closing costs incurred by the acquiring public utility.

(8) A tariff, including rates equal to the rates of the selling utility. The selling utility's rates shall be the rates charged to the customers of the acquiring public utility until the acquiring public utility's next general rate case, unless otherwise ordered by the Commission for good cause shown.

(d) Final Order. – If the application meets all the requirements of subsection (c) of this section, the Commission shall issue its final order approving or denying the application within four months of the date on which the application was filed. An order approving an application shall determine the rate base value of the acquired property for rate-making purposes in a manner consistent with the provisions of this section.

(e) Commission's Authority to Set Rates. – The Commission shall retain its authority under Chapter 62 of the General Statutes to set rates for the acquired system in future rate cases, and shall have the discretion to classify the acquired system as a separate entity for ratemaking purposes, consistent with the public interest."

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

HOUSE BILL 351:
Utilities/Rate Base/Fair Value Determination.

2017-2018 General Assembly

Committee:	House Energy and Public Utilities	**Date:**	April 25, 2017
Introduced by:	Reps. Watford, Collins	**Prepared by:**	Layla Cummings Committee Counsel
Analysis of:	PCS to First Edition H351-CSTS-2		

OVERVIEW: ***The Proposed Committee Substitute (PCS) to House Bill 351 would allow water and wastewater public utilities to use fair value determination to calculate the rate base when purchasing a water or wastewater system owned by a municipality, county, or other governmental entity. The PCS makes the following changes:***

- ***Clarify that two separate appraisers shall make a valuation of the system.***
- ***An application to the Utilities Commission (Commission) to determine rates would include a 5-year plan for infrastructure improvements and the projected rate for the next 5 years.***
- ***The Commission would have discretion to classify the system as a separate entity for ratemaking purposes.***

[As introduced, this bill was identical to S339, as introduced by Sen. Meredith, which is currently in Senate Rules and Operations of the Senate.]

CURRENT LAW: Currently, regulated public utilities establish a rate base calculated on the original cost of the public utility system.

BILL ANALYSIS: The PCS would allow water and wastewater utilities that acquire systems from municipalities, counties, or other governmental entities to use a fair value determination to establish a rate base. The system would receive two different appraisals and the averaging of the appraisals would constitute fair value. The rate base would be the lesser of the purchase price negotiated between the parties to the sale or the fair value plus fees and costs authorized.

The public utility would apply for Commission approval to determine the rate base value of the acquired system. The application would identify deficiencies in the system, needed infrastructure improvements for the next five years, and projected rate impacts for the next five years.

The Commission would have the discretion to classify the acquired system as a separate entity for ratemaking purposes to avoid impacts to customers not served by the system.

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

Karen Cochrane-Brown
Director

Legislative Analysis
Division
919-733-2578

HOUSE BILL 351

Short Title:	Utilities/Rate Base/Fair Value Determination.	(Public)
Sponsors:	Representatives Watford and Collins (Primary Sponsors). *For a complete list of sponsors, refer to the North Carolina General Assembly web site.*	
Referred to:	Energy and Public Utilities, if favorable, State and Local Government II	

March 15, 2017

A BILL TO BE ENTITLED

AN ACT AUTHORIZING WATER AND WASTEWATER PUBLIC UTILITIES TO ELECT TO USE A FAIR VALUE DETERMINATION FOR RATE-MAKING PURPOSES WHEN ACQUIRING UTILITIES OWNED BY COUNTIES, MUNICIPALITIES, OR OTHER GOVERNMENTAL ENTITIES.

The General Assembly of North Carolina enacts:

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...

(b) In fixing such rates, the Commission shall:

(1) Ascertain the reasonable original cost or the fair value under G.S. 62-133.1A of the public utility's property used and useful, or to be used and useful within a reasonable time after the test period, in providing the service rendered to the public within the State, less that portion of the cost that has been consumed by previous use recovered by depreciation expense. In addition, construction work in progress may be included in the cost of the public utility's property under any of the following circumstances:

...

(c) The original cost of the public utility's property, including its construction work in progress, shall be determined as of the end of the test period used in the hearing and the probable future revenues and expenses shall be based on the plant and equipment in operation at that time. If the public utility elects to establish rate base using fair value, the fair value determination of the public utility's property shall be made as provided in G.S. 62-133.1A, and the probable future revenues and expenses shall be based on the plant and equipment in operation at the end of the test period. The test period shall consist of 12 months' historical operating experience prior to the date the rates are proposed to become effective, but the Commission shall consider such relevant, material and competent evidence as may be offered by any party to the proceeding tending to show actual changes in costs, revenues or the cost of the public utility's property used and useful, or to be used and useful within a reasonable time after the test period, in providing the service rendered to the public within this State, including its construction work in progress, which is based upon circumstances and events occurring up to the time the hearing is closed.

...."

SECTION 2. Article 7 of Chapter 62 of the General Statutes is amended by adding a new section to read as follows:

"§ 62-133.1A. Fair value determination of government-owned water and wastewater systems.

(a) Election. – A water or wastewater public utility, as defined by G.S. 62-3(23)a.2., may elect to establish rate base by using the fair value of the utility property instead of original cost when acquiring an existing water or wastewater system (system) owned by a municipality or county or an authority or district established under Chapter 162A of the General Statutes.

(b) Determination of Fair Value. –

(1) The fair value of a system to be acquired shall be based on two separate appraisals conducted by accredited, impartial valuation experts chosen from a list to be established by the Commission. The following shall apply to the valuation:

a. One appraiser shall represent the public utility acquiring the system and the utility selling the system.

b. Each appraiser shall determine fair value in compliance with the uniform standards of professional appraisal practice, employing cost, market, and income approaches to assessment of value.

c. Fair value, for rate-making purposes under G.S. 62-133, shall be the average of the appraisals provided for by this subsection.

d. The original source of funding for all or any portions of the water and sewer assets being acquired is not relevant to an evaluation of fair value.

(2) The acquiring public utility and selling utility shall jointly retain a licensed engineer to conduct an assessment of the tangible assets of the system to be acquired, and the assessment shall be used by both appraisers in determining fair value.

(3) Fees paid to utility valuation experts, in an amount not exceeding five percent (5%) of the fair value of the utility being sold, or in another amount approved by the Commission, may be included in the cost of the acquired system in addition to reasonable transaction and closing costs incurred by the acquiring public utility.

(4) The rate base value of the acquired system which shall be reflected in the acquiring public utility's next general rate case for rate-making purposes shall be the lesser of the purchase price negotiated between the parties to the sale or the fair value plus the fees and costs authorized in subdivision (3) of this subsection.

(5) The normal rules of depreciation shall begin to apply against the rate base value upon purchase of the system by the acquiring public utility.

(c) Application and Procedure. – An application to the Commission for a determination of the rate base value of the system to be acquired shall contain all of the following:

(1) Copies of the valuations performed by the appraisers, as provided in subdivision (1) of subsection (b) of this section.

(2) The averaging of the appraisers' valuations, which shall constitute fair value for purposes of this section.

(3) The assessment of tangible assets performed by a licensed professional engineer, as provided in subdivision (2) of subsection (b) of this section.

(4) The contract of sale.

(5) The estimated valuation fees and transaction and closing costs incurred by the acquiring public utility.

(6) A tariff, including rates equal to the rates of the selling utility. The selling utility's rates shall be the rates charged to the customers of the acquiring

public utility until the acquiring public utility's next general rate case, unless otherwise ordered by the Commission for good cause shown.

(d) Final Order. – If the application meets all the requirements of subsection (c) of this section, the Commission shall issue its final order approving or denying the application within four months of the date on which the application was filed. An order approving an application shall determine the rate base value of the acquired property for rate-making purposes in a manner consistent with the provisions of this section.

(e) Commission's Authority to Set Rates. – The Commission shall retain its authority under Chapter 62 of the General Statutes to set rates for the acquired system in future rate cases, consistent with the public interest."

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

NORTH CAROLINA GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES

ENERGY AND PUBLIC UTILITIES COMMITTEE REPORT
Representative John Szoka, Senior Chair
Representative Dean Arp, Co-Chair
Representative Jeff Collins, Co-Chair
Representative Sam Watford, Co-Chair

FAVORABLE COM SUB , UNFAVORABLE ORIGINAL BILL AND RE-REFERRED

HB **396** Municipal Broadband Service Area.

Draft Number:	H396-PCS30401-RI-17
Serial Referral:	**STATE AND LOCAL GOVERNMENT II**
Recommended Referral:	None
Long Title Amended:	Yes
Floor Manager:	S. Martin

TOTAL REPORTED: 1

HOUSE BILL 396

Short Title:	Municipal Broadband Service Area.	(Public)
Sponsors:	Representatives S. Martin and Farmer-Butterfield (Primary Sponsors). *For a complete list of sponsors, refer to the North Carolina General Assembly web site.*	
Referred to:	Rules, Calendar, and Operations of the House	

March 20, 2017

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE SERVICE AREA FOR COMMUNICATIONS SERVICES PROVIDED BY CERTAIN SERVICE PROVIDERS EXEMPTED FROM CERTAIN REQUIREMENTS OF ARTICLE 16A OF CHAPTER 160A OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-340.2(c)(3) reads as rewritten:

"(c) The provisions of G.S. 160A-340.1, 160A-340.3, 160A-340.4, 160A-340.5, and 160A-340.6 do not apply to a city or joint agency providing communications service as of January 1, 2011, provided the city or joint agency limits the provision of communications service to any one or more of the following:

...

(3) The following service areas:

...

c. For the city of Wilson, the service area is ~~the~~ any of the following:

1. The county limits of Wilson County, including the incorporated areas within the County.
2. The municipality of Pinetops.
3. Any service connection located within 800 feet of the center line of Christian Road (State Road No. 1942) between its intersection with Bloomery Road (State Road No. 1996) and West Hornes Church Road (State Road No. 1941).

...."

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

HOUSE BILL 396:
Municipal Broadband Service Area.

2017-2018 General Assembly

Committee:	House Energy and Public Utilities. If favorable, re-refer to State and Local Government II	**Date:**	April 25, 2017
Introduced by:	Reps. S. Martin, Farmer-Butterfield	**Prepared by:**	Jennifer McGinnis Committee Counsel
Analysis of:	First Edition		

OVERVIEW: ***H396 would modify an exemption for the City of Wilson (City) from requirements applicable to cities that operate a communications service that is offered to the public for a fee included in Article 16A of Chapter 160A of the General Statutes.***

[As introduced, this bill was identical to S360, as introduced by Sens. Ballard, Smith-Ingram, which is currently in Senate Rules and Operations of the Senate.]

CURRENT LAW: Article 16A of Chapter 160A of the General Statutes establishes requirements for cities providing communications services (cable, video programming, telecommunications, broadband, or high speed internet access) to the public for a fee. A city providing communications services must:

- Comply with all State, local, and federal laws and regulations to which a private company providing the same communications service is subject.
- Establish separate enterprise funds for the communications service and conduct annual audits of the communications service.
- Limit the provision of service to the jurisdictional boundaries of the city.
- Provide nondiscriminatory access of the city's rights-of-way, poles, or conduits to other service providers.
- Remit to its General Fund an amount equal to all the taxes and fees a private provider would pay if the private provider supplied the service.

City-owned communications service providers are prohibited from engaging in any of the following:

- Using the city's authority to require individuals or developments to subscribe to the communications service.
- Pricing the service below the cost of providing the service. The cost of providing the service must include the cost of capital components that would be equal to the cost of capital components a private provider would incur and an amount equal to all taxes a private provider would pay.
- Providing advertisements of the city-owned communications service on public, educational, and government access (PEG) channels of competing providers if the PEG channel is required to be carried on the system of another service provider. The use of funds not allocated to the communications service for advertisement is also prohibited.
- Subsidizing the provision of the communications service with other revenue.

Cities and joint agencies are prohibited from incurring debt, including installment purchase contracts and certificates of participation, for a communications system unless a special election is held, posing the question whether or not the city may offer the communications service.

Cities that choose to repair, improve, sell, or discontinue a city-owned communications service are not required to hold a referendum prior to action.

Cities that offered communications service as of January 1, 2011, are exempt from all of the provisions in the act provided the city limits the provision of service to the following:

- Persons within the corporate limits of the city providing the service. For the purposes of this section, the corporate limits include areas in the corporate limits as of April 1, 2011, and any later annexed areas.
- Existing customers of the service as of April 1, 2011, provided contracts for service outside the service area provided in the act are subject to public bidding upon expiration.
- **Persons within the service areas provided in the act. A city that is subject to a service area boundary will have 30 days from discovery or notice of providing service outside of the boundary to cease providing service outside the boundary without losing the exemption. G.S. 160A-340.2(c)(3) specifically exempts:**

  (3) The following service areas:

  ...

  c. For the city of Wilson, the service area is the county limits of Wilson County, including the incorporated areas within the County.

  ...

BILL ANALYSIS: House Bill 396 would modify the exemption for the city of Wilson, to include: (i) the municipality of Pinetops; and (ii) any service connection located within 800 feet of the center line of Christian Road (State Road No. 1942) between its intersection with Bloomery Road (State Road No. 1996) and West Hornes Church Road (State Road No. 1941).

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

Erika Churchill, staff attorney, substantially contributed to this summary.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 396

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

H396-ARI-19 [v.12]

Amends Title [YES]
First Edition

Date _____ ,2017

Representative _____

moves to amend the bill on page 1, line 1, through page 1, line 24, by rewriting those lines to read:

"A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE CITY OF WILSON TO CONTINUE THE PROVISION OF COMMUNICATION SERVICES IN THE CITY'S TEMPORARY EXTENSION AREAS UNTIL THIRTY DAYS AFTER ALTERNATIVE SERVICE IS ESTABLISHED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-340.2(c)(3) reads as rewritten:

"(c) The provisions of G.S. 160A-340.1, 160A-340.3, 160A-340.4, 160A-340.5, and 160A-340.6 do not apply to a city or joint agency providing communications service as of January 1, 2011, provided the city or joint agency limits the provision of communications service to any one or more of the following:

...

(3) The following service areas:

...

c. For the city of Wilson, the service area is the county limits of Wilson County, including the incorporated areas within the County. Notwithstanding any other provision of this Article, the city of Wilson may continue the provision of communication services to persons and businesses in the temporary extension areas under the condition that the provision of communication services in such areas is terminated by a date which is thirty days after the date retail service is first available in the area from a competitive provider of communications service that will provide Fiber to the Premises (FTTP) service. For purposes of this subdivision, "temporary extension areas" shall mean: (i) the corporate limits of the Town of Pinetops and (ii) any service connection located within 800 feet of the centerline of Christian Road (State Road No. 1942) between its intersection with Bloomery Road (State Road No. 1996) and West Hornes Church Road (State Road No. 1941). Prior to the cessation of service, the city of Wilson may establish rates, fees, charges, and

penalties for the communication services provided in the temporary extension areas in the same manner as communication services provided in the county limits of Wilson County, including the incorporated areas within the County. Service will be deemed available for purposes of this provision upon the certification by a competitive provider to the city that service is available in a temporary extension area. For purposes of this subdivision, a competitive provider is an incumbent local exchange carrier or cable telecommunications company that is not presently providing Fiber to the Premises (FTTP) service in the temporary extension areas.

...."

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

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

Regina Irwin (Rep. Sam Watford)

From: Rep. Susan Martin
Sent: Tuesday, April 25, 2017 10:09 AM
To: @House/Energy & Public Utilities
Subject: FW: HB396

Members of House Energy & Public Utilities Committee,
Today you will hear H396 pertaining to the service area for Wilson's Municipal Broadband system. I wanted to share with you one of the many letters I have received from citizens who will be directly impacted by our vote. I have worked hard to address the reality of the current situation while maintaining free market principals. I have also included a brief overview of facts following the letter. Thank you for your thoughtful consideration of this legislation. Susan

From: Amber Drake [mailto:amberdrake20@yahoo.com]
Sent: Tuesday, April 25, 2017 8:42 AM
To: Rep. Susan Martin
Subject: HB396

Good afternoon,

I hope this email finds you well. I am writing you today to ask you to support an issue that is dear to my and my community's heart. There is currently a bill in the NC house (HB396) that has the ability to either greatly improve or greatly harm Pinetops, NC and by extension rural towns and communities throughout the state. Currently the City of Wilson through Greenlight is providing internet services to Pinetops, NC. However, because they can do it affordably for the residents of Pinetops and at a better rate of speed than the leading internet providers, the leading internet providers are moving that this service be forcibly ceased through NC law. The leading internet providers are equally capable of serving Pinetops in this way but have refused and continue to refuse to do so because it isn't worth it to them. Since Greenlight has been installed in Pinetops, local businesses have been able to better serve the community, those working at home have less interruption with teleconferences and students are better able to complete assignments and even take online classes reliably. Due to the nature of our community (rural, impoverished and many children and grandchildren taking care of invalid elders) many of the college-aged students are unable to afford to live on campus or even commute back and forth unnecessarily. Reliable internet such as Greenlight allows students to attend universities and community colleges online and still complete their obligations at home. Please don't underestimate the importance of these services. The gratitude when Greenlight first came to Pinetops and the anticipation of the surrounding communities of promised expansion was palpable. Finally we could begin to grow and have the same opportunities as those that live in cities around us. Then came the mandate that is now being fought that this was somehow unfair competition. The communities surrounding Pinetops are now unable to partake in this life improvement and Pinetops is due to have their services cut shortly. This isn't unfair competition. Unfair competition is the leading companies using legislature to put down any small entity that might compete with them, even if it is in an area they are not currently utilizing. Unfair competition is those same companies paying lobbyists money that rural communities couldn't dream of paying just to sway legislature their way. Meanwhile, Pinetops, Wilson and surrounding areas are stuck with the mere hope of sending their elected official emails with the hope that they are read and cared about. You have a chance to help rural North Carolina. You have a chance to say thank you to those doing jobs that those in cities don't have any desire to do. Farmers and other agriculturists are now reliant on technology and good internet to handle their day to day business. The rural communities are how NC grew. Please don't turn your back on us now.

NORTH CAROLINA GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES

ENERGY AND PUBLIC UTILITIES COMMITTEE REPORT

Representative John Szoka, Senior Chair
Representative Dean Arp, Co-Chair
Representative Jeff Collins, Co-Chair
Representative Sam Watford, Co-Chair

FAVORABLE

HB **752** Utilities/Water and Wastewater Rates.

Draft Number:	None
Serial Referral:	None
Recommended Referral:	None
Long Title Amended:	No
Floor Manager:	Arp

TOTAL REPORTED: 1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

HOUSE BILL 752

Short Title:	Utilities/Water and Wastewater Rates.	(Public)
Sponsors:	Representative Arp. *For a complete list of sponsors, refer to the North Carolina General Assembly web site.*	
Referred to:	Energy and Public Utilities	

April 13, 2017

A BILL TO BE ENTITLED

AN ACT PROVIDING THAT THE UTILITIES COMMISSION MAY ADOPT, IMPLEMENT, MODIFY, OR ELIMINATE A RATE ADJUSTMENT MECHANISM FOR WATER OR WASTEWATER PUBLIC UTILITIES TO TRACK AND TRUE-UP VARIATIONS IN AVERAGE PER CUSTOMER USAGE FROM LEVELS APPROVED IN THE GENERAL RATE CASE PROCEEDING.

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 as follows:

"**§ 62-133.12A. Customer usage tracking rate adjustment mechanisms for water and wastewater rates.**

In setting rates for a water and wastewater utility in a general rate proceeding under G.S. 62-133, the Commission may adopt, implement, modify, or eliminate a rate adjustment mechanism for one or more of the company's rate schedules to track and true-up variations in average per customer usage from levels approved in the general rate case proceeding. The Commission may adopt a rate adjustment mechanism only upon a finding by the Commission that the mechanism is appropriate to track and true-up variations in average per customer usage by rate schedule from levels adopted in the general rate case proceeding and the mechanism is in the public interest."

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

HOUSE BILL 752:
Utilities/Water and Wastewater Rates.

2017-2018 General Assembly

Committee:	House Energy and Public Utilities	**Date:**	April 25, 2017
Introduced by:	Rep. Arp	**Prepared by:**	Layla Cummings Committee Counsel
Analysis of:	First Edition		

OVERVIEW: House Bill 752 authorizes the Utilities Commission (Commission) to adopt, implement, modify, or eliminate a rate adjustment mechanism for regulated water and wastewater utilities to reflect changes in customer usage in a general rate case.

CURRENT LAW: The rates for regulated water and wastewater public utilities are fixed by the Commission in a general rate case pursuant to G.S. 62-133.

BILL ANALYSIS: House Bill 752 would allow the Commission to adopt a rate adjustment mechanism to track and true-up variations in customer usage, provided it finds the mechanism in the public interest. This would allow regulated water and wastewater utilities to have their rates adjusted to accurately reflect sales volume of water between general rate cases. The Commission may also modify or eliminate the rate adjustment mechanism in a general rate case.

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

Karen Cochrane-Brown
Director

Legislative Analysis
Division
919-733-2578

NORTH CAROLINA GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES

ENERGY AND PUBLIC UTILITIES COMMITTEE REPORT
Representative John Szoka, Senior Chair
Representative Dean Arp, Co-Chair
Representative Jeff Collins, Co-Chair
Representative Sam Watford, Co-Chair

FAVORABLE COM SUB , UNFAVORABLE ORIGINAL BILL

HB **718** Rates and Transfers by Public Enterprises.

Draft Number:	H718-PCS10323-ST-14
Serial Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes
Floor Manager:	McGrady

TOTAL REPORTED: 1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H D

HOUSE BILL 718
PROPOSED COMMITTEE SUBSTITUTE H718-CSST-14 [v.2]

04/20/2017 10:46:11 AM

Short Title: Study Rates and Transfers/Public Enterprises. (Public)

Sponsors:

Referred to:

April 11, 2017

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE LEGISLATIVE RESEARCH COMMISSION TO STUDY THE PROVISION OF WATER AND SEWER SERVICES BY PUBLIC ENTERPRISES.

The General Assembly of North Carolina enacts:

SECTION 1.(a) The General Assembly finds that the ability of a city or county to efficiently and effectively provide public enterprise services, particularly water and sewer services, is challenged by that local government opting to use revenues of the public enterprise for purposes other than:

(1) Paying the costs of operating the public enterprise.
(2) Making debt service payments.
(3) Investing in improvements to the infrastructure of that public enterprise.
(4) Reimbursing the unit of local government for actual direct services provided to the public enterprise.

SECTION 1.(b) The General Assembly further finds that any excess net revenues should be used to lower rates, advance fund debt service, and fund infrastructure improvements of that public enterprise.

SECTION 1.(c) The Legislative Research Commission shall study the issues raised in this section and make recommendations to the General Assembly on:

(1) Fee and charge setting by units of local government in the operation of a water or sewer system, including collection rates of those fees and charges.
(2) Proper accounting controls to ensure transparency in budgeting and accounting for expenditures and interfund transfers of public enterprise services by units of local government.
(3) Legislation that may be necessary to ensure proper funding of infrastructure maintenance and improvements for the provision of water and sewer services, including whether regionalization could facilitate financially healthy systems with lower fees and charges to customers.
(4) Legislation that may be necessary to ensure that units of local government monitor aging water and sewer infrastructure to ensure proper maintenance and repair, including how this responsibility impacts the financial health of the public enterprise.

SECTION 1.(d) In making the study provided by this section, the Legislative Research Commission shall consult with the Local Government Commission, the School of Government, the Department of Environmental Quality, the North Carolina League of Municipalities, the North Carolina County Commissioners Association, and others.

SECTION 1.(e) The Legislative Research Commission shall make an interim report to the 2017 Regular Session of the General Assembly prior to its reconvening in 2018 and shall make a final report to the 2019 Regular Session of the General Assembly.

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

HOUSE BILL 718:
Study Rates and Transfers/Public Enterprises.

2017-2018 General Assembly

Committee:	House Energy and Public Utilities	**Date:**	April 25, 2017
Introduced by:	Rep. McGrady	**Prepared by:**	Jennifer McGinnis Committee Counsel
Analysis of:	PCS to First Edition H718-CSST-14		

OVERVIEW: ***The Proposed Committee Substitute (PCS) for H718 would require the Legislative Research Commission (LRC) to study matters related to local governments' funding and maintenance of a public enterprise for water and sewer services.***

CURRENT LAW: Cities and counties are given authority under the General Statutes to:

- Own and operate public enterprises, which include water supply and distribution systems[1].
- Finance the cost of public enterprises by levying taxes, borrowing money, and appropriating any other revenues.
- Establish and revise from time to time schedules of rents, rates, fees, charges, and penalties for the use of or the services furnished by any public enterprise. Schedules of rents, rates, fees, charges, and penalties may vary according to classes of service, and different schedules may be adopted for services provided outside the corporate limits of the city.

BILL ANALYSIS:

The PCS for H718 would set forth the following findings related to local government provision of public enterprise services, particularly water and sewer services:

- A local government's ability to efficiently and effectively provide such services is challenged by that local government opting to use revenues of the public enterprise for purposes other than:
  - Paying the costs of operating the public enterprise.
  - Making debt service payments.
  - Investing in improvements to the infrastructure of that public enterprise.
  - Reimbursing the unit of local government for actual direct services provided to the public enterprise.
- Any excess net revenues should be used to lower rates, advance fund debt service, and fund infrastructure improvements of that public enterprise.

The PCS would direct the LRC to study and make recommendations on all the following matters:

[1] The term "public enterprise" also includes: wastewater collection, treatment, and disposal systems of all types, including septic tank systems or other on-site collection or disposal facilities or systems; solid waste collection and disposal systems and facilities; public transportation systems; and stormwater management programs, among other things.

- Fee and charge setting by units of local government in the operation of a water or sewer system, including collection rates of those fees and charges.
- Proper accounting controls to ensure transparency in budgeting and accounting for expenditures and interfund transfers of public enterprise services by units of local government.
- Legislation that may be necessary to ensure proper funding of infrastructure maintenance and improvements for the provision of water and sewer services, including whether regionalization could facilitate financially healthy systems with lower fees and charges to customers.
- Legislation that may be necessary to ensure that units of local government monitor aging water and sewer infrastructure to ensure proper maintenance and repair, including how this responsibility impacts the financial health of the public enterprise.

In the conduct of the study, the PCS would require the LRC to:

- Consult with the Local Government Commission, the School of Government, the Department of Environmental Quality, the North Carolina League of Municipalities, the North Carolina County Commissioners Association, and others.
- Make an interim report to the General Assembly prior to its reconvening in 2018, and make a final report to the 2019 General Assembly.

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

HOUSE BILL 718

Short Title:	Rates and Transfers by Public Enterprises.	(Public)
Sponsors:	Representative McGrady. *For a complete list of sponsors, refer to the North Carolina General Assembly web site.*	
Referred to:	Energy and Public Utilities	

April 11, 2017

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT COUNTIES AND CITIES FROM ESTABLISHING DIFFERENTIAL RATES FOR PUBLIC ENTERPRISES BASED SOLELY ON WHETHER THE SERVICE IS PROVIDED INSIDE THE COUNTY OR CITY'S JURISDICTION WITHOUT APPROVAL OF THE LOCAL GOVERNMENT COMMISSION; TO REQUIRE A PUBLIC ENTERPRISE TO BE ACCOUNTED FOR IN A SEPARATE, SEGREGATED FUND WITH LIMITED TRANSFERS OUT OF THAT FUND; AND TO REQUIRE THE LEGISLATIVE RESEARCH COMMISSION TO STUDY THE PROVISION OF WATER AND SEWER SERVICES BY PUBLIC ENTERPRISES.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 160A-312 reads as rewritten:

"**§ 160A-312. Authority to operate public enterprises.**

(a) A city shall have authority to acquire, construct, establish, enlarge, improve, maintain, own, operate, and contract for the operation of any or all of the public enterprises as defined in this Article to furnish services to the city and its citizens. Subject to Part 2 of this Article, a city may acquire, construct, establish, enlarge, improve, maintain, own, and operate any public enterprise outside its corporate limits, within reasonable limitations, but in no case shall a city be held liable for damages to those outside the corporate limits for failure to furnish any public enterprise service.

(b) A city shall have full authority to protect and regulate any public enterprise system belonging to or operated by it by adequate and reasonable rules. The rules shall be adopted by ordinance, shall apply to the public enterprise system both within and outside the corporate limits of the city, and may be enforced with the remedies available under any provision of law.

(c) A city may operate that part of a gas system involving the purchase and/or lease of natural gas fields, natural gas reserves and natural gas supplies and the surveying, drilling or any other activities related to the exploration for natural gas, in a partnership or joint venture arrangement with natural gas utilities and private enterprise.

(d) A city shall account for a public enterprise in a separate fund and may not transfer any money from that separate fund to any other fund except as provided in this subsection or Article 3 of Chapter 159 of the General Statutes. Obligations of the public enterprise may be paid out of the separate fund. Permitted transfers out of the separate fund shall be as follows, if applicable:

(1) For a capital project fund established for the construction or replacement of assets for that public enterprise.

(2) To repay the city for any monies loaned to the public enterprise.
(3) To a fund within the city to cover the public enterprise's portion of any costs shared across city funds, including salaries and benefits of shared personnel.
(4) For debt service related to the public enterprise.

(e) For purposes of this section, "outside the corporate limits" shall include any area outside the principal municipal corporate limits without regard to the county."

SECTION 1.(b) G.S. 160A-314(a) reads as rewritten:

"(a) A city may establish and revise from time to time schedules of rents, rates, fees, charges, and penalties for the use of or the services furnished by any public enterprise. Schedules of rents, rates, fees, charges, and penalties may vary according to classes of ~~service, and different~~ service. Different schedules may be adopted for services provided outside the corporate limits ~~of the city.~~only if approved by the Local Government Commission after a public hearing. A city shall use revenue derived from rates, fees, charges, and penalties for the purpose of paying the expenses of maintaining, operating, and expanding the public enterprise, including debt payments and capital reserves."

SECTION 2.(a) G.S. 153A-275 reads as rewritten:

"**§ 153A-275. Authority to operate public enterprises.**

(a) A county may acquire, lease as lessor or lessee, construct, establish, enlarge, improve, extend, maintain, own, operate, and contract for the operation of public enterprises in order to furnish services to the county and its citizens. A county may acquire, construct, establish, enlarge, improve, maintain, own, and operate outside its borders any public enterprise.

(b) A county may adopt adequate and reasonable rules to protect and regulate a public enterprise belonging to or operated by it. The rules shall be adopted by ordinance, shall apply to the public enterprise system both within and outside the county, and may be enforced with the remedies available under any provision of law.

(c) A county shall account for a public enterprise in a separate fund and may not transfer any money from that separate fund to any other fund except as provided in this subsection or Article 3 of Chapter 159 of the General Statutes. Obligations of the public enterprise may be paid out of the separate fund. Permitted transfers out of the separate fund shall be as follows, if applicable:

(1) For a capital project fund established for the construction or replacement of assets for that public enterprise.
(2) To repay the county for any monies loaned to the public enterprise.
(3) To a fund within the county to cover the public enterprise's portion of any costs shared across county funds, including salaries and benefits of shared personnel.
(4) For debt service related to the public enterprise."

SECTION 2.(b) G.S. 153A-277(a) reads as rewritten:

"(a) A county may establish and revise from time to time schedules of rents, rates, fees, charges, and penalties for the use of or the services furnished by a public enterprise. Schedules of rents, rates, fees, charges, and penalties may vary for the same class of service in different areas of the county and may vary according to classes of ~~service, and different~~ service. Different schedules may be adopted for services provided outside of the ~~county.~~ county, only if approved by the Local Government Commission after a public hearing. A county may include a fee relating to subsurface discharge wastewater management systems and services on the property tax bill for the real property where the system for which the fee is imposed is located. A county shall use revenue derived from rates, fees, charges, and penalties for the purpose of paying the expenses of maintaining, operating, and expanding the public enterprise, including debt payments and capital reserves."

SECTION 3. G.S. 159-13(b)(14) reads as rewritten:

"(14) ~~No~~ Except as provided in G.S. 153A-277, G.S. 160A-312, or this subdivision, no appropriation may be made from a utility or public service enterprise fund to any other fund than the appropriate debt service ~~fund unless the total of all other appropriations in the fund equal or exceed the amount that will be required during the fiscal year, as shown by the budget ordinance, to meet operating expenses, capital outlay, and debt service on outstanding utility or enterprise bonds or notes.~~ fund. A county may, upon a finding that a fund balance in a utility or public service enterprise fund used for operation of a landfill exceeds the requirements for funding the operation of that fund, including closure and post-closure expenditures, transfer excess funds accruing due to imposition of a surcharge imposed on another local government located within the State for use of the disposal facility, as authorized by G.S. 153A-292(b), to support the other services supported by the county's general fund."

SECTION 4.(a) The General Assembly finds that the ability of a city or county to efficiently and effectively provide public enterprise services, particularly water and sewer services, is challenged by that local government opting to use revenues of the public enterprise for purposes other than:

(1) Paying the costs of operating the public enterprise.
(2) Making debt service payments.
(3) Investing in improvements to the infrastructure of that public enterprise.
(4) Reimbursing the unit of local government for actual direct services provided to the public enterprise.

SECTION 4.(b) The General Assembly further finds that any excess net revenues should be used to lower rates, advance fund debt service, and fund infrastructure improvements of that public enterprise.

SECTION 4.(c) The Legislative Research Commission shall study the issues raised in this section and make recommendations to the General Assembly on:

(1) Fee and charge setting by units of local government in the operation of a water or sewer system, including collection rates of those fees and charges.
(2) Proper accounting controls to ensure transparency in budgeting and accounting for expenditures and interfund transfers of public enterprise services by units of local government.
(3) Legislation that may be necessary to ensure proper funding of infrastructure maintenance and improvements for the provision of water and sewer services, including whether regionalization could facilitate financially healthy systems with lower fees and charges to customers.
(4) Legislation that may be necessary to ensure that units of local government monitor aging water and sewer infrastructure to ensure proper maintenance and repair, including how this responsibility impacts the financial health of the public enterprise.

SECTION 4.(d) In making the study provided by this section, the Legislative Research Commission shall consult with the Local Government Commission, the School of Government, the Department of Environmental Quality, the North Carolina League of Municipalities, the North Carolina County Commissioners Association, and others.

SECTION 4.(e) The Legislative Research Commission shall make an interim report to the 2017 Regular Session of the General Assembly prior to its reconvening in 2018 and shall make a final report to the 2019 Regular Session of the General Assembly.

SECTION 5. This act becomes effective July 1, 2017.

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2017-2018 SESSION

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

DAY & DATE: Wednesday, April 26, 2017
TIME: **1:00 PM**
LOCATION: **643 LOB**
COMMENTS: **Chairman Szoka, presiding**

H589 removed from the Agenda

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 574	Wind Energy/Consistency With Military.	Representative Grange Representative Szoka Representative Watford
HB 799	Utility Billing by Lessors.	Representative Bradford

Respectfully,
Representative John Szoka, Senior Chair
Representative Dean Arp, Co-Chair
Representative Jeff Collins, Co-Chair
Representative Sam Watford, Co-Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 3:21 PM on Tuesday, April 25, 2017.

___ Principal Clerk
___ Reading Clerk – House Chamber

Beverly Slagle (Committee Assistant)

House Committee on Energy and Public Utilities
Wednesday, April 26, 2017, 1:00 PM
643 Legislative Office Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
HB 574	Wind Energy/Consistency With Military.	Representative Grange Representative Szoka Representative Watford
HB 799	Utility Billing by Lessors.	Representative Bradford

Presentations

Other Business

Senior Chairman Szoka, presiding

Adjournment

Corrected #2: H589 Added to Agenda for DISCUSSION ONLY

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2017-2018 SESSION

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H589 for Discussion Only

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 574	Wind Energy/Consistency With Military.	Representative Grange Representative Szoka Representative Watford
HB 799	Utility Billing by Lessors.	Representative Bradford
HB 589	Utilities Commission Fees and Charges.	Representative Szoka Representative Arp Representative Watford

Respectfully,
Representative John Szoka, Senior Chair
Representative Dean Arp, Co-Chair
Representative Jeff Collins, Co-Chair
Representative Sam Watford, Co-Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 12:20 PM on Tuesday, April 25, 2017.

___ Principal Clerk
___ Reading Clerk – House Chamber

Beverly Slagle (Committee Assistant)

House Committee on Energy and Public Utilities
Wednesday, April 26, 2017 at 1:00 PM
Room 643 of the Legislative Office Building

MINUTES

The House Committee on Energy and Public Utilities met at 1:00 PM on April 26, 2017 in Room 643 of the Legislative Office Building. Representatives Alexander, Arp, J. Bell, Bradford, Bumgardner, Collins, Cunningham, Earle, Elmore, Goodman, Duane Hall, Hanes, Harrison, Hastings, Malone, S. Martin, R. Moore, Murphy, W. Richardson, Riddell, Rogers, Sauls, Stone, Strickland, Szoka, Watford, Wray, and Zachary attended.

Representative John Szoka, presided.

Recognitions:

Chairman Szoka recognized a group of military veterans attending Session in the audience and thanked them for their service.

The following bills were considered:

HB 574 Wind Energy/Consistency With Military. (Representatives Grange, Szoka, Watford)

The chair recognized Representative Holly Grange, primary sponsor of HB 574, to present a Proposed Committee Substitute Bill.

Following discussion and questions from the committee members, the public was given a 2 minute window to speak on the PCS.

Representative Bradford was recognized to express his support for the bill.

Chairman Collings called for a Roll Call Vote and Chairman Szoka recognized the request.

MOTION:

The chair recognized Representative Susan Martin who moved for a Favorable Report as to the PCS, Unfavorable to the Original Bill, and Recommendation that the Committee Substitue Bill be Re-referred to the House Committee on Homeland Security and Military Affairs and if Favorable to the Rules, Calendar, and Operations of the House.

ROLL CALL VOTE:

Having heard the Motion, the chair called for a Roll Call vote by the committee clerk, as requested by Chairman Collins.

The MOTION passed. The final vote was 19 YES and 09 NO, for a final total count of 28 members voting on HB 574.

HB 799 Utility Billing by Lessors. (Representative Bradford)

Representative John Bradford presents a proposed Committee Substitute Bill.

The chair recognized Chairman Arp who Moves to Adopt the PCS for consideration.

The MOTION passed.

The chair recognized Representative John Bell to Move for a Favorable Report as to the Committee Substitute Bill, Unfavorable as to the Original Bill.

The Motion passed.

The meeting adjourned at 1:45 PM.

Representative John Szoka, Chair presiding

Beverly Slagle, Committee Clerk

ROLL CALL VOTE

19		09	= 28 (TOTAL)	HB# 574
YES		NO		SB# _____

HOUSE STANDING COMMITTEE ON ENERGY & PUBLIC UTILITIES

YES	NO	MEMBER
X		ALEXANDER
	X	J. BELL
	-----	BLACKWELL
X		BRADFORD
	X	BUMGARDNER
	X	CUNNINGHAM
	-----	DOLLAR
	X	EARLE
	X	ELMORE
X		GOODMAN
X		DUANE HALL
X		HANES
X		HARRISON
	X	HASTINGS
X		MALONE
X		S. MARTIN
X		R. MOORE
X		MURPHY
X		W. RICHARDSON
	X	RIDDELL
X		ROGERS
	X	SAULS
X		STONE
X		STRICKLAND
X		WRAY
X		ZACHARY

YES	NO	MEMBER
X		SZOKA
X		ARP
	X	COLLINS
X		WATFORD

ROLL CALL VOTE

19 YES 9 NO = 28 (TOTAL)

HB# 574
SB# ____

HOUSE STANDING COMMITTEE ON ENERGY AND PUBLIC UTILITIES

House Subcommittee on _____

YES	NO	MEMBER (last name)
	✓	COLLINS
✓		SZOKA
✓		WATFORD
✓		ARP
✓		ALEXANDER
	✓	J. BELL
	—	BLACKWELL
✓		BRADFORD
	✓	BUMGARDNER
	✓	CUNNINGHAM
	—	DOLLAR
	✓	EARLE
	✓	ELMORE
✓		GOODMAN
✓		DUANE HALL
✓		HANES
✓		HARRISON
	✓	HASTINGS
✓		MALONE
✓		S. MARTIN
✓		R. MOORE

YES	NO	MEMBER (last name)
✓		MURPHY
✓		W. RICHARDSON
	✓	RIDDELL
✓		ROGERS
	✓	SAULS
✓		STONE
✓		STRICKLAND
✓		WRAY
✓		ZACHARY

NORTH CAROLINA GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES

ENERGY AND PUBLIC UTILITIES COMMITTEE REPORT
Representative John Szoka, Senior Chair
Representative Dean Arp, Co-Chair
Representative Jeff Collins, Co-Chair
Representative Sam Watford, Co-Chair

FAVORABLE COM SUB , UNFAVORABLE ORIGINAL BILL

HB **799** Utility Billing by Lessors.

Draft Number:	H799-PCS40565-TS-3
Serial Referral:	None
Recommended Referral:	None
Long Title Amended:	No
Floor Manager:	Bradford

FAVORABLE COM SUB , UNFAVORABLE ORIGINAL BILL AND RE-REFERRED

HB **574** Wind Energy/Consistency With Military.

Draft Number:	H574-PCS30411-RI-12
Serial Referral:	**HOMELAND SECURITY, MILITARY, AND VETERANS AFFAIRS**
Recommended Referral:	None
Long Title Amended:	No
Floor Manager:	Grange

TOTAL REPORTED: 2

NORTH CAROLINA GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES

ENERGY AND PUBLIC UTILITIES COMMITTEE REPORT
Representative John Szoka, Senior Chair
Representative Dean Arp, Co-Chair
Representative Jeff Collins, Co-Chair
Representative Sam Watford, Co-Chair

FAVORABLE COM SUB , UNFAVORABLE ORIGINAL BILL

HB **799** Utility Billing by Lessors.

Draft Number:	H799-PCS40565-TS-3
Serial Referral:	None
Recommended Referral:	None
Long Title Amended:	No
Floor Manager:	Bradford

FAVORABLE COM SUB , UNFAVORABLE ORIGINAL BILL AND RE-REFERRED

HB **574** Wind Energy/Consistency With Military.

Draft Number:	H574-PCS30411-RI-12
Serial Referral:	**HOMELAND SECURITY, MILITARY, AND VETERANS AFFAIRS**
Recommended Referral:	None
Long Title Amended:	No
Floor Manager:	Grange

TOTAL REPORTED: 2

Coastal Carolina Accountability Project

April 26, 2017

Mr. Chairman, Committee Members, and my Representative Holly Grange,

My name is Bill Moore, I reside in Kure Beach, NC in the Wilmington area. I am the Chair of the bi-partisan, non-profit Coastal Carolina Accountability Project (CCAP). My Group has authorized me to take a public stance **against** the proposed NC House Bill 574. I was here at last week's hearing on this bill, and we are very concerned about the answer given as to why several provisions of the current state wind energy rules are being gutted. The bill sponsor's repeated response was that the authority to protect the health, safety and welfare of citizens, small businesses, and the environment was being assigned to County Commissioners. We are very concerned not only about the merits of that strategy, but also with several provisions of H574.

First, County Commissioners could easily be blinded by the increase of property taxes (and local lease money) that would come from an industrial wind project. They are repeatedly told that this is "found money" by wind energy salespeople, and their marketing associates.

But what about the adverse local economic impacts? Who is thoroughly and objectively informing these local legislators about the other side of the coin? So far no state agency has filled that gap, so you tell us whose responsibility is it to educate local legislators — especially if H574 puts the full responsibility for this 20± year

industrial decision in their lap? Do you really believe the Commissioners are informed enough to consider the cost of such projects on tourism, agricultural yields, property values, health costs, and decommissioning? Or will they assume that since that State has set no meaningful regulations, why should they?

Secondly, often the Commissioners of one County make a decision that effects other Counties. For example, wind turbines in one area could affect the training for military bases in other Counties — especially when they are training pilots (like at Seymour Johnson). Lack of training areas could cause the military to shift the home bases of these aircraft. That would lessen the military benefit from that base ultimately moving it higher on the list for potential BRAC closure or reassignment. Reduced aircraft and/or changing the mission of NC bases could be a major negative economic liability to the area, and the entire State.

The purpose of the State government is to look out for the rights of citizens — but I've rarely heard citizen rights discussed regarding energy laws. In fact, H574 goes to great lengths to remove ALL citizen rights items from the current rules. The current State wind regulations (H484), allows Counties to add additional control items as they see fit. More importantly, it sets minimum standards that protect the health, safety and welfare of citizens from any long term effects of such decisions — so what's the problem?

Let me say in closing, CCAP is not anti-Alternative Energy. We support any alternative energy source that is a net economic and net environmental benefit to the region. But we will oppose any

proposal (like H574) that reduces protections to citizens. In our view there is a double whammy here as reducing citizen protections will also have a negative impact on the "Military Friendly" status of NC. The Military provides billions to our overall economy. That potential loss would be devastating to the counties surrounding those Bases and to the State as a whole.

Thank You for listening.
Bill Moore, Chair CCAP

Wes Householder (Rep. Jeff Collins)

From: Mel Atkins <creekr75@yahoo.com>
Sent: Sunday, April 23, 2017 07:01 PM
To: Rep. Jeff Collins
Subject: Opposition to HB #574 - Mel Atkins

REPRESENTATIVE JEFF COLLINS
N. C. HOUSE OF REPRESENTATIVES
25TH DISTRICT

1006 LEGISLATIVE BUILDING
16 W. JONES STREET
RALEIGH, NC 27601-1096
(919) 733-5802

DISTRICT ADDRESS:
P.O. BOX 8078
ROCKY MOUNT, NC 27804
(252) 908-2115

Dear Representative Collins:

My name is Mel Atkins and I am a resident of Perquimans County. I am contacting you in regards to my personal strong opposition to House Bill #574. There are many other citizens in this county that feel this same way. I am a retired professional firefighter and my wife is a retired school teacher. We retired and built our retirement home in Perquimans County. Our home represents our largest asset. We worked and saved all our lives to be able to live in peace and harmony with a good quality of life. As a result of the existing threat of the "wind policies", we live in constant fear of what the future of 600 foot wind turbines will do to our property values, health and future growth in our county.

We, as residents, have spent much time attending meetings in an attempt to convince our local leaders to stop this madness. Volunteering residents, have sold over 1000 Bar-B-Q dinners and secured donations from neighbors in an effort to hire legal representation to fight these industrial wind operations. We have secured petitions with a thousand signatures in opposition to the wind industry in Perquimans County. Our neighboring Chowan County has also raised funds in attempt to stop the effort in their county.

I have spoken to former colleagues that are considering retirement and they very bluntly have proclaimed that [redacted]ortheastern North Carolina is totally out of the question because of the recent events in Pasquoatank and [redacted]rquimans County. They fear that any decision to settle here would be a costly mistake.

I am 66 years old and this has left me, and many other citizens, very disappointed and upset that our state government has a total disregard for our personal lives and safety.

Representative Collins, we are in the fire and we drastically need your help as well as your fellow committee members to protect our homes and wellbeing.

Most sincerely,

Mel Atkins

Mel and Brenda Atkins
285 Riverfront Dr.
Hertford, NC 27944
757-619-4650

Mel Atkins

[redacted]*COURAGE MEANS BEING SCARED TO DEATH, BUT SADDLING UP ANYWAY "*

JOHN WAYNE

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H D

HOUSE BILL 574
PROPOSED COMMITTEE SUBSTITUTE H574-PCS30411-RI-12

Short Title: Wind Energy/Consistency With Military. (Public)

Sponsors:

Referred to:

April 6, 2017

A BILL TO BE ENTITLED

AN ACT TO BETTER ENSURE COMPATIBILITY OF WIND ENERGY FACILITIES WITH MILITARY OPERATIONS AND READINESS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 21C of Chapter 143 of the General Statutes reads as rewritten:

"Article 21C.
"Permitting of Wind Energy Facilities.

...

"**§ 143-215.116. Permit to site wind energy facilities.**

No person shall undertake construction, operation, or expansion activities associated with a wind energy facility in this State without first obtaining a permit from the Department.

"**§ 143-215.117. Permit preapplication site evaluation meeting; notice; preapplication package requirements.**

(a) Permit Preapplication Site Evaluation Meeting. – No less than 180 days prior to filing an application for a permit to construct, operate, or expand a wind energy facility, a person shall request a preapplication site evaluation meeting to be held between the ~~applicant and the Department.~~ applicant, the Department, and the Department of Military and Veterans Affairs. The preapplication site evaluation meeting shall be held no less than 120 days prior to filing an application for a permit to construct, operate, or expand a wind energy facility and may be used by the participants to:

(1) Conduct a preliminary evaluation of the site or sites for the proposed wind energy facility or wind energy facility expansion. The preliminary evaluation of the proposed wind energy facility or proposed wind energy facility expansion shall determine if the site or sites:
   a. Pose serious risk to civil air navigation or military air navigation routes, air traffic control areas, military training routes, special-use air space, radar, or other potentially affected military operations.
   b. Pose serious risk to natural resources and uses, including to species of concern or their habitats.

(2) Identify areas where proposed construction or expansion activities pose minimal risk of interference with civil air navigation or military air navigation routes, air traffic control areas, military training routes, special-use air space, radar, or other potentially affected military operations.

(3) Identify areas where proposed construction or expansion activities pose minimal risk to natural resources and uses, including avian, bat, and endangered and threatened species.

...

(c) Notice to Interested Parties. – No less than 21 days prior to the date of the permit preapplication site evaluation meeting scheduled in accordance with subsection (a) of this section, the Department shall provide written notice of the meeting to the Department of Military and Veterans Affairs, the United States Army Corps of Engineers, the United States Fish and Wildlife Service, the North Carolina Wildlife Resources Commission, the commanding military officer or the commanding military officer's designee of any potentially affected major military installation, and any other party that the Department deems relevant. The notice shall include an invitation to participate in the permit preapplication site evaluation meeting.

"**§ 143-215.118. Permit application scoping meeting and notice.**

(a) Scoping Meeting. – No less than 60 days prior to filing an application for a permit for a proposed wind energy facility or proposed wind energy facility expansion, the applicant shall request the scheduling of a scoping meeting between the ~~applicant and the Department.~~ applicant, the Department, and the Department of Military and Veterans Affairs. The scoping meeting shall be held no less than 30 days prior to filing an application for a permit for a proposed wind energy facility or proposed wind energy facility expansion. The applicant and the Department shall review the permit for the proposed wind energy facility or proposed facility expansion at the scoping meeting.

(b) Notice of Scoping Meeting. – No less than 21 days prior to the scheduled permit application scoping meeting with an applicant, the Department shall provide written notice of the meeting to the Department of Military and Veterans Affairs, the commanding military officer of each major military installation, or the commanding military officer's designee, the Federal Aviation Administration, the North Carolina Wildlife Resources Commission, the United States Fish and Wildlife Service, the board of commissioners for each county and the governing body of each municipality in which the wind energy facility or proposed wind energy facility expansion is proposed to be located, and those local governments with jurisdictions over areas in which a major military installation is located. The notice shall include an invitation to participate in the scoping meeting.

"**§ 143-215.119. Permit application requirements; fees; notice of receipt of completed permit; public hearing; public comment.**

(a) Permit Requirements. – A person applying for a permit for a proposed wind energy facility or proposed wind energy facility expansion shall include all of the following in an application for the permit:

(1) A narrative description of the proposed wind energy facility or proposed wind energy facility expansion.

(2) A map showing the location of the proposed wind energy facility or proposed wind energy facility expansion that identifies the specific location of each turbine.

(3) A copy of a deed, purchase agreement, lease agreement, or other legal instrument demonstrating the right to construct, expand, or otherwise develop a wind energy facility on the property.

(4) Identification by name and address of property owners adjacent to the proposed wind energy facility or proposed wind energy facility expansion. The applicant shall notify every property owner identified pursuant to this subdivision by registered or certified mail or by any means authorized by G.S. 1A-1, Rule 4, in a form approved by the Department. The notice shall include all of the following:

a. The location of the proposed wind energy facility or proposed wind energy facility expansion and the specific location of each turbine proposed to be located within one-half mile of the boundary of the adjacent property owner.
b. A description of the proposed wind energy facility or proposed wind energy facility expansion.

(5) A description of civil air navigation or military air navigation routes, air traffic control areas, military training routes, special-use air space, radar, or other military operations that may be affected by the construction or operation of the proposed wind energy facility or proposed wind energy facility expansion.

(6) Documentation that addresses any potential adverse impact on military operations and readiness as identified by the Department of Defense Clearinghouse pursuant to Part 211 of Title 32 Code of Federal Regulations (July 1, 2012 edition) and any mitigation actions agreed to by the applicant.

(7) Documentation that the applicant has either (i) submitted Federal Aviation Administration Form 7460-1 for the turbines associated with the proposed wind energy facility or proposed wind energy facility expansion or (ii) initiated an informal review by the Department of Defense Siting Clearinghouse of the proposed wind energy facility or proposed wind energy facility expansion. If the applicant has submitted Federal Aviation Administration Form 7460-1 in order to fulfill the requirements of this subdivision, the applicant shall provide any determination reached by the Federal Aviation Administration at the time the application is submitted to the Department. If the Federal Aviation Administration has not made a determination at the time the application is submitted to the Department, the application shall include a description of the status of the applicant's engagement with the Federal Aviation Administration and the Department of Defense Siting Clearinghouse.

(8) A study of the noise impacts of the turbines to be associated with the proposed wind energy facility or proposed wind energy facility expansion. This requirement can be met if the applicant demonstrates it has submitted a study pursuant to local requirements.

(9) A study on shadow flicker impacts of the turbines to be associated with the proposed wind energy facility or proposed wind energy facility expansion, unless the turbines will be located in a sound or in offshore waters. This requirement can be met if the applicant demonstrates it has submitted a study pursuant to local requirements.

(10) A study of the impact of the proposed wind energy facility or proposed wind energy facility expansion on natural resources and uses, including avian, bat, and endangered and threatened species.

(11) An explanation of how the proposed wind energy facility or proposed wind energy facility expansion would be consistent with the criteria in subsection (a) of G.S. 143-215.120.

(12) The application fee required by subsection (c) of this section.

(13) A plan regarding the action to be taken upon the decommissioning and removal of the wind energy facility. The plan shall include an estimate of the cost to decommission and remove the wind energy facility. The plan shall also include the anticipated life of the project, an estimate of the cost to decommission and remove the wind energy facility, a description of the manner in which the facility will be decommissioned, and a description of

the expected condition of the site once the wind energy facility has been decommissioned and removed.

(14) Other data or information the Department may reasonably require.

...

(d) Notice of Receipt of Complete Permit Application. – Within 10 days of receipt of a complete permit application for a proposed wind energy facility or proposed wind energy facility expansion submitted pursuant to subsection (a) of this section, the Department shall provide notice of the permit application to (i) the commanding military officer of all major military installations, (ii) the commanding military officer of any military installation located outside the State that is located within 50 nautical miles of the location of the proposed wind energy facility or proposed wind energy facility expansion, ~~and (iii)~~ (iii) the Department of Military and Veterans Affairs, and (iv) the board of commissioners for each county and the governing body of each municipality in which the wind energy facility or wind energy facility expansion is proposed to be located. The notice shall include:

(1) A copy of the map showing the location of the proposed wind energy facility or proposed wind energy facility expansion that includes the specific locations of wind turbines.

(2) A written request to the commanding military officer of a major military installation or the commanding military officer's designee, for technical information related to any adverse impact on the installation's operations, training, or mission, including military air navigation routes, air traffic control areas, military training routes, special-use air space, radar or other military operations that may be affected.

(3) A written request for information related to potential adverse impacts of the proposed wind energy facility or proposed wind energy facility expansion on local governments from the board of commissioners for each county and the governing body of each municipality.

(e) Provision of Permit Application to Affected Entities. – Except as provided by G.S. 143-215.124, within 10 days of receipt of a written request from the commanding military officer of any major military installation or the commanding military officer's designee, the board of commissioners for any county in which the site is proposed to be located or the governing body of any municipality in which the site is proposed to be located, the Department shall provide a copy of a permit application filed pursuant to subsection (a) of this section, in addition to any supplements, changes, or amendments to the permit application to the requesting commanding military officer or local government.

(f) Public Hearing and Comment. – The Department shall hold a public hearing in each county in which the wind energy facility or wind energy facility expansion is proposed to be located within 75 days of receipt of a completed permit application. The Department shall provide notice including the time and location of the public hearing in a newspaper of general circulation in each applicable county. The notice of public hearing shall be published for at least two consecutive weeks beginning no less than 45 days prior to the scheduled date of the hearing. The notice shall provide that any comments on the proposed wind energy facility or proposed wind energy facility expansion should be submitted to the Department by a specified date, not less than 15 days from the date of the newspaper publication of the notice or 15 days after distribution of the mailed notice, whichever is later. No less than 30 days prior to the scheduled public hearing, the Department shall provide written notice of the hearing to:

(1) The North Carolina Utilities Commission.

(2) The Office of the Attorney General of North Carolina.

(3) The commanding military officer of any potentially affected major military installation or the commanding military officer's designee.

(4) The board of commissioners for each county and the governing body of each municipality with jurisdictions over areas in which a potentially affected major military installation is located.

(5) The Department of Military and Veterans Affairs.

"**§ 143-215.119A. Letter to proceed determination by Department of Military and Veterans Affairs.**

(a) Letter to Proceed. – Prior to issuing a permit under this Article, the applicant must obtain a letter to proceed from the Department of Military and Veterans Affairs as set forth in this section. The Department of Military and Veterans Affairs shall issue a letter to proceed only after the Department of Military and Veterans Affairs finds that the proposed wind energy facility or proposed wind energy facility expansion would not cause significant adverse impacts on air navigation routes, air traffic control areas, military training routes, or radar installations. For purposes of this section, "significant adverse impact" means any demonstrable adverse impact upon military operations and readiness, including flight operations research, development, testing, and evaluation and training in North Carolina, that (i) is likely to impair or degrade the ability of the Armed Forces to perform their warfighting missions; (ii) would result in a detriment to continued military presence in the State; and (iii) is unable to be addressed through mitigation measures.

(b) Time Line. – The Department of Military and Veterans Affairs shall determine whether to issue a letter to proceed under this section within 60 days of receiving the results of a formal or informal review by the Department of Defense Siting Clearinghouse, or within 60 days of the public hearing required by G.S. 143-215.119(f), whichever occurs later.

(c) Basis for Letter. – The Department of Military and Veterans Affairs shall make its determination based on information submitted by the applicant pursuant to subdivisions (5) and (6) of subsection (a) of G.S. 143-215.119, and any information received by the Department of Military and Veterans Affairs pursuant to subdivision (2) of subsection (d) of G.S. 143-215.119.

(d) Failure of Department to Act. – If the Department of Military and Veterans Affairs fails to issue a letter to proceed within the time line set forth in subsection (b) of this section, the applicant may treat the Department's failure to issue the letter as an issuance of a letter of concern as outlined in subsection (f) of this section.

(e) Finding of Significant Adverse Impact. – If the Department of Military and Veterans Affairs finds that the proposed wind energy facility or proposed wind energy facility expansion would cause significant adverse impacts to air navigation routes, air traffic control areas, military training routes, or radar installations, the Department of Military and Veterans Affairs shall issue a letter of concern to the Department and the applicant.

(f) Letter of Concern. – Within 90 days of issuance of a letter of concern under subsection (e) of this section, the Department of Military and Veterans Affairs shall engage with the applicant, the commanding military officer of any major military installation impacted in the letter of concern, the Department of Defense Clearinghouse designee for that installation, and those local governments with jurisdiction over any major military installation impacted in the letter of concern, to address the issues identified in the letter of concern. If the parties are unable to resolve the concerns, the applicant may treat the failure to agree as a denial of the letter to proceed and may challenge the denial as provided under Chapter 150B of the General Statutes.

"**§ 143-215.120. Criteria for permit approval; time frame; permit conditions; other approvals required.**

(a) Permit Approval. – The Department shall approve an application for a permit for a proposed wind energy facility or proposed wind energy facility expansion upon receipt of a letter to proceed from the Department of Military and Veterans Affairs issued as set forth in G.S. 143-215.119A unless the Department finds any one or more of the following:

(1) Construction or operation of the proposed wind energy facility or proposed wind energy facility expansion would be inconsistent with or violate rules adopted by the Department or any other provision of law.

~~(2) Construction or operation of the proposed wind energy facility or proposed wind energy facility expansion would encroach upon or would otherwise have a significant adverse impact on the mission, training, or operations of any major military installation or branch of military in North Carolina and result in a detriment to continued military presence in the State. In its evaluation, the Department may consider whether the proposed wind energy facility or proposed wind energy facility expansion would cause interference with air navigation routes, air traffic control areas, military training routes, or radar based on information submitted by the applicant pursuant to subdivisions (5) and (6) of subsection (a) of G.S. 143-215.119, and any information received by the Department pursuant to subdivision (2) of subsection (d) of G.S. 143-215.119.~~

(3) Construction or operation of the proposed wind energy facility or proposed wind energy facility expansion would result in significant adverse impacts to ecological systems, natural resources, cultural sites, recreation areas, or historic sites of more than local significance; including national or State parks or forests, wilderness areas, historic sites, recreation areas, segments of the natural and scenic rivers system, wildlife refuges, preserves and management areas, areas that provide habitat for threatened or endangered species, primary nursery areas designated by the Marine Fisheries Commission and the Wildlife Resources Commission, and critical fisheries habitat identified pursuant to the Coastal Habitat Protection Plan.

(4) Construction or operation of the proposed wind energy facility or proposed wind energy facility expansion would have a significant adverse impact on fish or wildlife.

~~(5) Construction or operation of the proposed wind energy facility or proposed wind energy facility expansion would have a significant adverse impact on views from any State or national park, wilderness area, significant natural heritage area as compiled by the North Carolina Natural Heritage Program, or other public lands or private conservation lands designated or dedicated due to their high recreational values.~~

(6) Construction or operation of the proposed wind energy facility or proposed wind energy facility expansion would obstruct major navigation channels or create a significant obstacle to navigation in coastal waters, as determined by the United States Army Corps of Engineers and the United States Coast Guard.

~~(7) A permit for a proposed wind energy facility or proposed wind energy facility expansion would be denied under any other criteria set out in G.S. 113A-120.~~

(8) Construction of the proposed wind energy facility or proposed wind energy facility expansion would be prohibited under Article 14 of Chapter 113A of the General Statutes, the Mountain Ridge Protection Act of 1983.

(9) The applicant is not in compliance with all applicable federal, State, or local permit requirements, licenses, or approvals, including local zoning requirements.

(b) Permit Decision. – The Department shall make a final decision on a permit application within 90 days following receipt of a completed ~~application, except that the Department shall not be required to make a final decision until the Department has received a~~

~~written "Determination of No Hazard to Air Navigation" issued by the Federal Aviation Administration pursuant to Subpart D of Part 77 of Title 14 of the Code of Federal Regulations (January 1, 2012 edition).~~ application. If the Department requests additional information following the receipt of a completed application, the Department shall make a final decision on a permit application within 30 days of receipt of the requested information. If the Department determines that an application for a wind energy facility or a wind energy facility expansion fails to meet the requirements for a permit under this section, the Department shall deny the application, and the application shall be returned to the applicant accompanied by a written statement of the reasons for the denial and any modifications to the permit application that would make the application acceptable. If the Department fails to act within the time period set forth in this subsection, the applicant may treat the failure to act as a denial of the permit and may challenge the denial as provided under Chapter 150B of the General Statutes.

(c) Permit Conditions. – The Department (i) may include as a condition of a permit for a proposed wind energy facility or proposed wind energy facility expansion a requirement that the permit holder mitigate any adverse impacts and (ii) shall include as a condition of a permit for a proposed wind energy facility or proposed wind energy facility expansion a requirement that the permit holder obtain a written "Determination of No Hazard to Air Navigation" issued by the Federal Aviation Administration pursuant to Subpart D of Part 77 of Title 14 of the Code of Federal Regulations (January 1, 2012 edition) for the facility. No permit for a wind energy facility or wind energy facility expansion shall become effective until the Department has received and reviewed the "Determination of No Hazard to Air Navigation" issued by the Federal Aviation Administration for the facility. If the specific location of a turbine authorized to be constructed pursuant to a "Determination of No Hazard to Air Navigation" or the configuration of the wind energy facility varies from the information submitted by the applicant upon which the Department has made its permit decision, the Department may reevaluate the permit application and require the applicant to submit any additional information the Department deems necessary to approve or deny a permit for the facility as reconfigured.

(d) Other Approvals Required. – The issuance of a permit under this section shall not obviate the need for the applicant to obtain any and all other applicable local, State, or federal permits, licenses, or approvals. Furthermore, nothing in this Article shall be interpreted to limit, as applicable, (i) the application of Article 7 of Chapter 113A of the General Statutes to facilities permitted under this section, including the permitting requirements of G.S. 113A-118, (ii) the ability of a city or county to plan for and regulate the siting of a wind energy facility in accordance with land-use regulations authorized under Chapter 160A and Chapter 153A of the General Statutes, or (iii) the applicable requirements of Chapter 62 of the General Statutes.

(e) Permit Transfer. – The Department may transfer a permit issued pursuant to this Article provided that the successor-owner of the wind energy facility submits to the Department a written request for transfer of the permit and complies with all terms and conditions of the permit once the permit has been transferred. The Department may not impose new or different terms and conditions to the permit without prior express consent of the successor-owner.

"**§ 143-215.121. Financial assurance requirements.**

The applicant for a permit or a permit holder for a wind energy facility shall establish financial assurance that will ensure that sufficient funds are available for decommissioning of the facility and reclamation of the property to its condition prior to commencement of activities on the site, even if the applicant or permit holder becomes insolvent or ceases to reside in, be incorporated, do business, or maintain assets in the State. To establish sufficient availability of funds under this section, the applicant for a permit or a permit holder for a wind energy facility may use insurance, financial tests, third-party guarantees by persons who can pass the financial test, guarantees by corporate parents who can pass the financial test, irrevocable letters of credit, trusts, surety bonds, or any other financial device, or any combination of the foregoing,

shown to provide protection equivalent to the financial protection that would be provided by insurance if insurance were the only mechanism used. To satisfy this requirement, the applicant may demonstrate that it previously met the financial assurance requirements pursuant to local, State, or federal requirements.

"**§ 143-215.122. Monitoring and reporting.**

The applicant shall annually submit copies to the Department of any post-construction monitoring, such as reports on the impacts on wildlife in the location of and in the area proximate to the wind energy facility or wind energy facility expansion and any impacts on military operations that are required by the United States Fish and Wildlife Service, the North Carolina Wildlife Resources Commission, the North Carolina Utilities Commission, or any other government agency.

"**§ 143-215.123. Annual review of military presence.**

The Department of Military and Veterans Affairs shall consult with representatives of the major military installations to review information regarding military air navigation routes, air traffic control areas, military training routes, special-use air space, radar, or other potentially affected military operations at least once per year. The Department of Military and Veterans Affairs shall provide relevant information on civil air navigation or military air navigation routes, air traffic control areas, military training routes, special-use air space, radar, or other potentially affected military operations to permit applicants as requested. Information obtained in the annual review required under this section may be used to determine the impact of wind energy facilities and expansion of wind energy facilities that have not previously received a permit from the Department of Environmental Quality or a letter to proceed from the Department of Military and Veterans Affairs.

…."

SECTION 2. This act is effective when it becomes law and applies only to those wind energy facilities or wind energy facility expansions for which no "Determination of No Hazard to Air Navigation" has been issued by the Federal Aviation Administration on or before that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H D

HOUSE BILL 799
PROPOSED COMMITTEE SUBSTITUTE H799-PCS40565-TS-3

Short Title: Utility Billing by Lessors. (Public)

Sponsors:

Referred to:

April 13, 2017

A BILL TO BE ENTITLED

AN ACT TO ALLOW FOR LANDLORDS TO CHARGE INDIVIDUAL TENANTS FOR SHARED COST OF NATURAL GAS SERVICE PROVIDED TO LEASED PREMISES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 42-42.1 reads as rewritten:

"**§ 42-42.1. Water and electricity conservation.**

(a) For the purpose of encouraging ~~water and electricity~~ water, electricity, and natural gas conservation, pursuant to a written rental agreement, a ~~landlord~~ lessor may charge for the cost of providing water or sewer service to ~~tenants who occupy the same contiguous premises~~ lessees pursuant to ~~G.S. 62-110(g) or~~ G.S. 62-110(g), electric service pursuant to ~~G.S. 62-110(h).~~G.S. 62-110(h), or natural gas service pursuant to G.S. 62-110(i).

(b) The ~~landlord~~ lessor may not disconnect or terminate the ~~tenant's~~ lessee's electric ~~service or~~ service, water or sewer ~~services~~ services, or natural gas service due to the ~~tenant's~~ lessee's nonpayment of the amount due for electric ~~service or~~ service, water or sewer ~~services.~~services, or natural gas service."

SECTION 2. G.S. 62-110 reads as rewritten:

"**§ 62-110. Certificate of convenience and necessity.**

...

(g) In addition to the authority to issue a certificate of public convenience and necessity and establish rates otherwise granted in this Chapter, for the purpose of encouraging water conservation, the Commission may, consistent with the public interest, adopt procedures that allow a lessor to charge for the costs of providing water or sewer service to persons who occupy the ~~same contiguous~~ leased premises. The following provisions shall apply:

...

(1a) If the ~~contiguous~~ leased premises ~~were~~ are contiguous dwelling units built prior to ~~1989~~ 1989, and the lessor determines that the measurement of the ~~tenant's~~ lessee's total water usage is impractical or not economical, the lessor may allocate the cost for water and sewer service to the ~~tenant~~ lessee using equipment that measures the ~~tenant's~~ lessee's hot water usage. In that case, each ~~tenant~~ lessee shall be billed a percentage of the landlord's water and sewer costs for water usage in the dwelling units based upon the hot water used in the ~~tenant's~~ lessee's dwelling unit. The percentage of total water usage allocated for each dwelling unit shall be equal to that dwelling unit's individually submetered hot water usage divided by all submetered hot water usage in all dwelling units. The following conditions apply to billing for water and sewer service under this subdivision:

a. A lessor shall not utilize a ratio utility billing system or other allocation billing system that does not rely on individually submetered hot water usage to determine the allocation of water and sewer costs.

b. The lessor shall not include in a ~~tenant's~~ lessee's bill the cost of water and sewer service used in common areas or water loss due to leaks in the lessor's water mains. A lessor shall not bill or attempt to collect for excess water usage resulting from a plumbing malfunction or other condition that is not known to the ~~tenant~~ lessee or that has been reported to the lessor.

c. All equipment used to measure water usage shall comply with guidelines promulgated by the American Water Works Association.

d. The lessor shall maintain records for a minimum of 12 months that demonstrate how each ~~tenant's~~ lessee's allocated costs were calculated for water and sewer service. Upon advanced written notice to the lessor, a ~~tenant~~ lessee may inspect the records during reasonable business hours.

e. Bills for water and sewer service sent by the lessor to the ~~tenant~~ lessee shall contain all the following information:

1. The amount of water and sewer services allocated to the ~~tenant~~ lessee during the billing period.
2. The method used to determine the amount of water and sewer services allocated to the ~~tenant.~~lessee.
3. Beginning and ending dates for the billing period.
4. The past-due date, which shall not be less than 25 days after the bill is mailed.
5. A local or toll-free telephone number and address that the ~~tenant~~ lessee can use to obtain more information about the bill.

(2) The lessor may charge a reasonable administrative fee for providing water or sewer service not to exceed the maximum administrative fee authorized by the Commission.

(3) The Commission shall ~~issue~~ adopt rules to ~~define contiguous premises and to~~ implement this subsection. ~~In issuing the rule to define contiguous premises, the Commission shall consider contiguous premises where manufactured homes, as defined in G.S. 143-145(7), or spaces for manufactured homes are rented.~~

(4) The Commission shall develop an application that lessors must submit for authority to charge for water or sewer service. The form shall include all of the following:

a. A description of the applicant and the property to be served.
b. A description of the proposed billing method and billing statements.
c. The schedule of rates charged to the applicant by the supplier.
d. The schedule of rates the applicant proposes to charge the applicant's customers.
e. The administrative fee proposed to be charged by the applicant.
f. The name of and contact information for the applicant and its agents.
g. The name of and contact information for the supplying water or sewer system.
h. Any additional information that the Commission may require.

(4a) The Commission shall develop an application that lessors must submit for authority to charge for water or sewer service at single-family dwellings that allows the applicant to serve multiple dwellings in the State, subject to an approval by the Commission. The form shall include all of the following:
a. A description of the applicant and a listing of the addresses of all the properties to be served. An updated listing of addresses served by the applicant shall be provided to the Commission annually.
b. A description of the proposed billing method and billing statements.
c. The administrative fee proposed to be charged by the applicant.
d. The name and contact information for the applicant and its agents.
e. Any additional information the Commission may require.

(5) The Commission shall approve or disapprove an application within 30 days of the filing of a completed application with the Commission. If the Commission has not issued an order disapproving a completed application within 30 days, the application shall be deemed approved.

(6) A provider of water or sewer service under this subsection may increase the rate for service so long as the rate does not exceed the unit consumption rate charged by the supplier of the service. A provider of water or sewer service under this subsection may change the administrative fee so long as the administrative fee does not exceed the maximum administrative fee authorized by the Commission. In order to change the rate or administrative fee, the provider shall file a notice of revised schedule of rates and fees with the Commission. The Commission may prescribe the form by which the provider files a notice of a revised schedule of rates and fees under this subsection. The form shall include all of the following:
a. The current schedule of the unit consumption rates charged by the provider.
b. The schedule of rates charged by the supplier to the provider that the provider proposes to pass through to the provider's customers.
c. The schedule of the unit consumption rates proposed to be charged by the provider.
d. The current administrative fee charged by the provider, if applicable.
e. The administrative fee proposed to be charged by the provider.

(7) A notification of revised schedule of rates and fees shall be presumed valid and shall be allowed to become effective upon 14 days notice to the Commission, unless otherwise suspended or disapproved by order issued within 14 days after filing.

(8) Notwithstanding any other provision of this Chapter, the Commission shall determine the extent to which the services shall be regulated and, to the extent necessary to protect the public interest, regulate the terms, conditions, and rates that may be charged for the services. Nothing in this subsection shall be construed to alter the rights, obligations, or remedies of persons providing water or sewer services and their customers under any other provision of law.

(9) A provider of water or sewer service under this subsection shall not be required to file annual reports pursuant to G.S. 62-36 or to furnish a bond pursuant to G.S. 62-110.3.

(h) In addition to the authority to issue a certificate of public convenience and necessity and establish rates otherwise granted in this Chapter, the Commission may, consistent with the public interest, adopt procedures that allow a lessor of a single-family dwelling, residential ~~building~~ building, or multiunit apartment complex that has individually metered units for

electric service in the lessor's name to charge for the actual costs of providing electric service to each ~~tenant when the lessor has a separate lease for each bedroom in the unit.~~lessee. The following provisions shall apply to the charges authorized under this subsection:

(1) The lessor shall equally divide the actual amount of the individual electric service bill for a unit among all the ~~tenants~~ lessees in the unit and shall send one bill to each ~~tenant.~~lessee. The amount charged shall be prorated when a ~~tenant~~ lessee has not leased the unit for the same number of days as the other ~~tenants~~ lessees in the unit during the billing period. Each bill may include an administrative fee up to the amount of the then-current administrative fee authorized by the Commission in Rule 18-6 for water service and, when applicable, a late fee in an amount determined by the Commission. The lessor shall not charge the cost of electricity from any other unit or common area in a ~~tenant's~~ lessee's bill. The lessor may, at the lessor's option, pay any portion of any bill sent to a ~~tenant.~~lessee.

(2) A lessor who charges for electric service under this subsection is solely responsible for the prompt payment of all bills rendered by the electric utility providing service to the ~~residential building or complex~~ leased premises and is the customer of the electric utility subject to all rules, regulations, tariffs, riders, and service regulations associated with the provision of electric service to retail customers of the utility.

(3) The lessor shall maintain records for a minimum of 36 months that demonstrate how each ~~tenant's~~ lessee's allocated costs were calculated for electric service. A ~~tenant~~ lessee may inspect these records, including the actual per unit public utility billings, during reasonable business hours and may obtain copies of the records for a reasonable copying fee.

(4) Bills for electric service sent by the lessor to the ~~tenant~~ lessee shall contain all of the following information:

a. ~~The~~ When the lessor of a residential building or multiunit apartment complex has a separate lease for each bedroom in the unit, the bill charged by the electric supplier for the unit as a whole and the amount of charges allocated to the ~~tenant~~ lessee during the billing period.

b. The name of the electric power supplier providing electric service to the ~~unit.~~leased premises.

c. Beginning and ending dates for the usage period and, if provided by the electric supplier, the date the meter was read for that usage period.

d. The past-due date, which shall not be less than 25 days after the bill is mailed to the ~~tenant.~~lessee.

e. A local or toll-free telephone number and address that the ~~tenant~~ lessee can use to obtain more information about the bill.

f. The amount of any administrative fee and late fee approved by the Commission and included in the bill.

g. A statement of the ~~tenant's~~ lessee's right to address questions about the bill to the lessor and the ~~tenant's~~ lessee's right to file a complaint with, or otherwise seek recourse from, the Commission if the ~~tenant~~ lessee cannot resolve an electric service billing dispute with the lessor.

(5) The Commission shall develop an application that ~~a lessor~~ lessors must submit for Commission approval to charge for electric service as provided in this section. The form shall include all of the following:

a. A description of the lessor and the property to be served.
b. A description of the proposed billing method and billing statements.
c. The administrative fee and late payment fee, if any, proposed to be charged by the lessor.
d. The name of and contact information for the lessor and the lessor's agents.
e. The name of and contact information for the supplier of electric service to the lessor's rental property.
f. A copy of the lease forms used by the lessor for ~~tenants~~ lessees who are billed for electric service pursuant to this subsection.
g. Any additional information that the Commission may require.

(6) The Commission shall approve or disapprove an application within 60 days of the filing of a completed application with the Commission. If the Commission has not issued an order disapproving a completed application within 60 days, the application shall be deemed approved.

(7) A lessor who charges for electric service under this subsection shall not be required to file annual reports pursuant to G.S. 62-36.

(7a) An applicant may submit for authority to charge for electric service for more than one property in a single application. Information relating to all properties covered by the application need only be provided once in the application.

(8) The Commission shall adopt rules to implement the provisions of this subsection.

(i) In addition to the authority to issue a certificate of public convenience and necessity and establish rates otherwise granted in this Chapter, the Commission may, consistent with the public interest, adopt procedures that allow a lessor of single-family dwelling, a residential building, or multiunit apartment complex that has individually metered units for natural gas service in the lessor's name to charge for the actual costs of providing natural gas service to each lessee. The following provisions shall apply to the charges authorized under this subsection:

(1) The lessor shall equally divide the actual amount of the individual natural gas service bill for a unit among all the lessees in the unit and shall send one bill to each lessee. The amount charged shall be prorated when a lessee has not leased the unit for the same number of days as the other lessees in the unit during the billing period. Each bill may include an administrative fee up to the amount of the then-current administrative fee authorized by the Commission in Rule 18-6 for water service and, when applicable, a late fee in an amount determined by the Commission. The lessor shall not charge the cost of natural gas service from any other unit or common area in a lessee's bill. The lessor may, at the lessor's option, pay any portion of any bill sent to a lessee.

(2) A lessor who charges for natural gas service under this subsection is solely responsible for the prompt payment of all bills rendered by the natural gas utility providing service to the leased premises and is the customer of the natural gas utility subject to all rules, regulations, tariffs, riders, and service regulations associated with the provision of natural gas service to retail customers of the utility.

(3) The lessor shall maintain records for a minimum of 36 months that demonstrate how each lessee's allocated costs were calculated for natural gas service. A lessee may inspect these records, including the actual per unit

public utility billings, during reasonable business hours and may obtain copies of the records for a reasonable copying fee.

(4) Bills for natural gas service sent by the lessor to the lessee shall contain all of the following information:

a. When the lessor of a residential building or multiunit apartment complex has a separate lease for each bedroom in the unit, the bill charged by the natural gas supplier for the unit as a whole and the amount of charges allocated to the lessee during the billing period.

b. The name of the natural gas supplier providing natural gas service to the leased premises.

c. Beginning and ending dates for the usage period and, if provided by the natural gas supplier, the date the meter was read for that usage period.

d. The past-due date, which shall not be less than 25 days after the bill is mailed to the lessee.

e. A local or toll-free telephone number and address that the lessee can use to obtain more information about the bill.

f. The amount of any administrative fee and late fee approved by the Commission and included in the bill.

g. A statement of the lessee's right to address questions about the bill to the lessor and the lessee's right to file a complaint with, or otherwise seek recourse from, the Commission if the lessee cannot resolve a natural gas service billing dispute with the lessor.

(5) The Commission shall develop an application that lessors must submit for Commission approval to charge for natural gas service as provided in this section. The form shall include all of the following:

a. A description of the lessor and the property to be served.

b. A description of the proposed billing method and billing statements.

c. The administrative fee and late payment fee, if any, proposed to be charged by the lessor.

d. The name of and contact information for the lessor and the lessor's agents.

e. The name of and contact information for the supplier of natural gas service to the lessor's rental property.

f. A copy of the lease forms used by the lessor for lessees who are billed for natural gas service pursuant to this subsection.

g. Any additional information that the Commission may require.

(6) The Commission shall approve or disapprove an application within 60 days of the filing of a completed application with the Commission. If the Commission has not issued an order disapproving a completed application within 60 days, the application shall be deemed approved.

(7) A lessor who charges for natural gas service under this subsection shall not be required to file annual reports pursuant to G.S. 62-36.

(7a) An applicant may submit for authority to charge for natural gas service for more than one property in a single application. Information relating to all properties covered by the application need only be provided once in the application.

(8) The Commission shall adopt rules to implement the provisions of this subsection."

SECTION 3. This act becomes effective October 1, 2017.

HOUSE BILL 574:
Wind Energy/Consistency With Military.

2017-2018 General Assembly

Committee:	House Energy and Public Utilities. If favorable, re-refer to Homeland Security, Military, and Veterans Affairs. If favorable, re-refer to Rules, Calendar, and Operations of the House	**Date:**	April 26, 2017
Introduced by:	Reps. Grange, Szoka, Watford	**Prepared by:**	Jennifer McGinnis Committee Counsel
Analysis of:	PCS to First Edition H574-CSRI-12		

OVERVIEW: The Proposed Committee Substitute (PCS) for House Bill 574 would modify the permitting process governing wind energy facilities.

The PCS would make the following changes to the First Edition of the bill:

- Reinstate language from existing law that requires a permit to operate a wind energy facility (which language would have been eliminated by the First Edition).
- Reinstate language from existing law that requires the Department of Environmental Quality (DEQ) to provide notice of a completed permit application to the commanding military officer of any military installation located outside the State that is located within 50 nautical miles of the location of a proposed wind energy facility or facility expansion (which language would have been eliminated by the First Edition).
- Reinstate language from existing law that requires notice to adjacent property owners (which language would have been eliminated by the First Edition).
- Reinstate language from existing law that requires a permit application for a wind energy facility include submission of copy of a deed, purchase agreement, lease agreement, or other legal instrument demonstrating the right to construct, expand, or otherwise develop a wind energy facility on the property (which language would have been eliminated by the First Edition).
- Reinstate language from existing law that requires studies of: (i) the noise impacts of the turbines to be associated with the proposed wind energy facility or expansion; and (ii) shadow flicker impacts of the turbines to be associated with the facility, unless the turbines will be located in a sound or in offshore waters. The PCS would add language to the requirement for these studies to provide that the requirements can be met if the applicant demonstrates it has submitted such a study pursuant to local requirements.
- Reinstate language from existing law which provides that failure of DEQ to act within 90 days of receipt of a completed application, would be treated as a denial of the permit by DEQ (which had would have been modified to provide that DEQ's failure to act within the required timeframe would be treated as a grant of the permit under the First Edition).

Karen Cochrane-Brown
Director

H574-SMRI-37 CSRI-12 -V-5

Legislative Analysis
Division
919-733-2578

- Eliminate language included in the First Edition of the bill providing that obtaining other applicable local, State, or federal permits, licenses, or approvals would not be a requirement for the consideration and grant of a permit under the State permit process for wind energy facilities.
- Would modify language concerning the Department of Military and Veterans Affairs' (DMVA) failure to act within the required timeframe for a "letter to proceed" to provide that this would be treated as the DMVA's issuance "a letter of concern" with respect to a permit application for a proposed wind energy facility or facility expansion. The First edition would have allowed the applicant to treat the failure to act as the DMVA's determination that the proposed facility or expansion would not cause significant adverse impacts on air navigation routes, air traffic control areas, military training routes, or radar installations.
- Would add an element to the definition of the term "significant adverse impact" with respect to the DMVA's analysis of a wind facility's impact on military operations, to include whether impacts from the facility would result in a detriment to continued military presence in the State.
- Reinstate language from existing law which requires that applicants and permit holders for wind energy facilities establish financial assurance that will ensure sufficient funds are available for decommissioning of the facility and reclamation of the property to its condition prior to commencement of activities on the site even if the applicant or permit holder becomes insolvent or ceases to reside in, be incorporated, do business, or maintain assets in the State (which language would have been eliminated by the First Edition). The PCS also adds language to the requirement under existing law that provides: "To satisfy this requirement, the applicant may demonstrate that it previously met the financial assurance requirements pursuant to local, state or federal requirements."
- Would add language to existing law to allow DEQ to transfer a permit for a wind facility provided that the successor-owner of the facility submits a written request for the transfer of the permit to DEQ, and complies with all terms and conditions of the permit once the permit has been transferred. The provision would also prohibit DEQ from imposing new or different terms and conditions on the permit without prior express consent of the successor-owner.

CURRENT LAW: Article 21C of Chapter 143 the General Statutes requires all wind energy facilities that have a rated capacity of one megawatt or more to obtain a permit from DEQ for construction and operation of the facility.

A permit application for a proposed wind energy facility must include: .

- A narrative description of the proposed facility and map showing the location of each turbine.
- A description of civil air navigation or military activities that may be affected by the construction or operation of the proposed facility.
- Documentation addressing any potential adverse impacts on military activities as identified by the Department of Defense (DOD) Clearinghouse and any mitigation actions agreed to by the applicant.
- A study of the noise and shadow flicker impacts of the turbines associated with the proposed facility.
- A study of the effects of the proposed facility on natural resources.
- The permit application fee of $3,500.

- A plan for decommissioning and removal of the facility.

DEQ must approve an application for a proposed wind energy facility unless DEQ finds that construction or operation of the facility would:

- Be inconsistent with or violate applicable rules under the Administrative Code, or any other provision of law.
- Encroach upon or otherwise have a significant adverse impact on military operations.
- Result in significant adverse impacts to natural resources, fish, wildlife, or views from State or national parks and other areas with high recreational values.
- Obstruct major navigation channels.
- Be denied based on criteria under the Coastal Area Management Act or prohibited under the Mountain Ridge Protection Act.
- Not comply with all applicable federal, State, or local permitting requirements, licenses, or approvals, including local zoning requirements.

Article 21C otherwise requires permit holders to:

- Establish financial assurance that will ensure sufficient funds are available for decommissioning of the facility and reclamation of the property to its condition prior to commencement of activities on the site even if the applicant or permit holder becomes insolvent or ceases to reside in, be incorporated, do business, or maintain assets in the State.
- Submit copies of any required post-construction monitoring annually to the DEQ.

The Secretary of Environmental Quality is authorized to impose an administrative penalty in an amount not to exceed ten thousand dollars ($10,000) per day, or institute an action for injunctive relief, in response to construction or operation of a facility in violation of the permitting requirements.

BILL ANALYSIS: The PCS would make the following changes to the permitting process for wind energy facilities:

- Add the DMVA as a State entity that, along with DEQ, has responsibility for evaluating certain criteria for permit issuance to construct or expand wind energy facilities.
- Require a permit applicant for a wind energy facility or facility expansion to obtain a "letter to proceed" from the DMVA. The DMVA is directed to issue such a letter only after it has determined that the proposed wind energy facility or proposed expansion of a wind energy facility would not cause significant adverse impacts on air navigation routes, air traffic control areas, military training routes, or radar installations. "Significant adverse impact" is defined under the bill to mean "any demonstrable adverse impact upon military operations and readiness, including flight operations research, development, testing, and evaluation and training, that: (i) is likely to impair or degrade the ability of the Armed Forces to perform their warfighting missions; (ii) would result in a detriment to continued military presence in the State; and (iii) is unable to be addressed through mitigation measures." The DMVA must determine whether to issue a letter to proceed within 60 days of the public hearing required by the permitting process under existing law. If the DMVA fails to act within that timeframe, it would be treated as an issuance of a "letter of concern" (explained below). If, however, within that timeframe the DMVA determines that the proposed facility or expansion would cause significant adverse impacts to military

operations, the DMVA must issue a letter of concern to DEQ and the applicant. If a letter of concern is issued, the DMVA must engage with the applicant, the commanding military officer of any major military installation impacted in the letter of concern, and the DoD Clearinghouse designee for that installation to address the issues identified in the letter of concern. If the parties are unable to resolve the concerns, the applicant may treat the failure to agree as a denial of the letter to proceed and may challenge the denial as provided under Chapter 150B of the General Statutes.

- Modify DEQ's permit approval criteria to: (i) add receipt of a letter to proceed from the DMVA as requirement for approval; and (ii) eliminate DEQ's own consideration of a proposed facility's impact on military operations, as well as consideration of whether construction of a proposed wind energy facility or expansion would:
    - Have a significant adverse impact on views from any State or national park, wilderness area, significant natural heritage area as compiled by the North Carolina Natural Heritage Program, or other public lands or private conservation lands designated or dedicated due to their high recreational values.
    - Be denied under the permitting criteria established for development under the Coastal Area Management Act.

  In addition DEQ would no longer have to delay a final decision on a permit application pending receipt of a written "Determination of No Hazard to Air Navigation" issued by the Federal Aviation Administration.
- Add language to existing law to allow DEQ to transfer a permit for a wind facility provided that the successor-owner of the facility submits a written request for the transfer of the permit to DEQ, and complies with all terms and conditions of the permit once the permit has been transferred. The provision would also prohibit DEQ from imposing new or different terms and conditions on the permit without prior express consent of the successor-owner.

EFFECTIVE DATE: This bill would be effective when it becomes law, and would apply only to those wind energy facilities or wind energy facility expansions for which no "Determination of No Hazard to Air Navigation" has been issued by the Federal Aviation Administration on or before that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H D

HOUSE BILL 574
PROPOSED COMMITTEE SUBSTITUTE H574-CSRI-12 [v.9]

04/25/2017 5:47:51 PM

Short Title: Wind Energy/Consistency With Military. (Public)

Sponsors:

Referred to:

April 6, 2017

A BILL TO BE ENTITLED

AN ACT TO BETTER ENSURE COMPATIBILITY OF WIND ENERGY FACILITIES WITH MILITARY OPERATIONS AND READINESS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 21C of Chapter 143 of the General Statutes reads as rewritten:

"Article 21C.

"Permitting of Wind Energy Facilities.

...

"§ 143-215.116. Permit to site wind energy facilities.

No person shall undertake construction, operation, or expansion activities associated with a wind energy facility in this State without first obtaining a permit from the Department.

"§ 143-215.117. Permit preapplication site evaluation meeting; notice; preapplication package requirements.

(a) Permit Preapplication Site Evaluation Meeting. – No less than 180 days prior to filing an application for a permit to construct, operate, or expand a wind energy facility, a person shall request a preapplication site evaluation meeting to be held between the ~~applicant and the Department.~~ applicant, the Department, and the Department of Military and Veterans Affairs. The preapplication site evaluation meeting shall be held no less than 120 days prior to filing an application for a permit to construct, operate, or expand a wind energy facility and may be used by the participants to:

(1) Conduct a preliminary evaluation of the site or sites for the proposed wind energy facility or wind energy facility expansion. The preliminary evaluation of the proposed wind energy facility or proposed wind energy facility expansion shall determine if the site or sites:

a. Pose serious risk to civil air navigation or military air navigation routes, air traffic control areas, military training routes, special-use air space, radar, or other potentially affected military operations.

b. Pose serious risk to natural resources and uses, including to species of concern or their habitats.

(2) Identify areas where proposed construction or expansion activities pose minimal risk of interference with civil air navigation or military air navigation routes, air traffic control areas, military training routes, special-use air space, radar, or other potentially affected military operations.

(3) Identify areas where proposed construction or expansion activities pose minimal risk to natural resources and uses, including avian, bat, and endangered and threatened species.

...

(c) Notice to Interested Parties. – No less than 21 days prior to the date of the permit preapplication site evaluation meeting scheduled in accordance with subsection (a) of this section, the Department shall provide written notice of the meeting to the Department of Military and Veterans Affairs, the United States Army Corps of Engineers, the United States Fish and Wildlife Service, the North Carolina Wildlife Resources Commission, the commanding military officer or the commanding military officer's designee of any potentially affected major military installation, and any other party that the Department deems relevant. The notice shall include an invitation to participate in the permit preapplication site evaluation meeting.

"**§ 143-215.118. Permit application scoping meeting and notice.**

(a) Scoping Meeting. – No less than 60 days prior to filing an application for a permit for a proposed wind energy facility or proposed wind energy facility expansion, the applicant shall request the scheduling of a scoping meeting between the ~~applicant and the Department.~~ applicant, the Department, and the Department of Military and Veterans Affairs. The scoping meeting shall be held no less than 30 days prior to filing an application for a permit for a proposed wind energy facility or proposed wind energy facility expansion. The applicant and the Department shall review the permit for the proposed wind energy facility or proposed facility expansion at the scoping meeting.

(b) Notice of Scoping Meeting. – No less than 21 days prior to the scheduled permit application scoping meeting with an applicant, the Department shall provide written notice of the meeting to the Department of Military and Veterans Affairs, the commanding military officer of each major military installation, or the commanding military officer's designee, the Federal Aviation Administration, the North Carolina Wildlife Resources Commission, the United States Fish and Wildlife Service, the board of commissioners for each county and the governing body of each municipality in which the wind energy facility or proposed wind energy facility expansion is proposed to be located, and those local governments with jurisdictions over areas in which a major military installation is located. The notice shall include an invitation to participate in the scoping meeting.

"**§ 143-215.119. Permit application requirements; fees; notice of receipt of completed permit; public hearing; public comment.**

(a) Permit Requirements. – A person applying for a permit for a proposed wind energy facility or proposed wind energy facility expansion shall include all of the following in an application for the permit:

(1) A narrative description of the proposed wind energy facility or proposed wind energy facility expansion.

(2) A map showing the location of the proposed wind energy facility or proposed wind energy facility expansion that identifies the specific location of each turbine.

(3) A copy of a deed, purchase agreement, lease agreement, or other legal instrument demonstrating the right to construct, expand, or otherwise develop a wind energy facility on the property.

(4) Identification by name and address of property owners adjacent to the proposed wind energy facility or proposed wind energy facility expansion. The applicant shall notify every property owner identified pursuant to this subdivision by registered or certified mail or by any means authorized by G.S. 1A-1, Rule 4, in a form approved by the Department. The notice shall include all of the following:

a. The location of the proposed wind energy facility or proposed wind energy facility expansion and the specific location of each turbine proposed to be located within one-half mile of the boundary of the adjacent property owner.
b. A description of the proposed wind energy facility or proposed wind energy facility expansion.

(5) A description of civil air navigation or military air navigation routes, air traffic control areas, military training routes, special-use air space, radar, or other military operations that may be affected by the construction or operation of the proposed wind energy facility or proposed wind energy facility expansion.

(6) Documentation that addresses any potential adverse impact on military operations and readiness as identified by the Department of Defense Clearinghouse pursuant to Part 211 of Title 32 Code of Federal Regulations (July 1, 2012 edition) and any mitigation actions agreed to by the applicant.

(7) Documentation that the applicant has either (i) submitted Federal Aviation Administration Form 7460-1 for the turbines associated with the proposed wind energy facility or proposed wind energy facility expansion or (ii) initiated an informal review by the Department of Defense Siting Clearinghouse of the proposed wind energy facility or proposed wind energy facility expansion. If the applicant has submitted Federal Aviation Administration Form 7460-1 in order to fulfill the requirements of this subdivision, the applicant shall provide any determination reached by the Federal Aviation Administration at the time the application is submitted to the Department. If the Federal Aviation Administration has not made a determination at the time the application is submitted to the Department, the application shall include a description of the status of the applicant's engagement with the Federal Aviation Administration and the Department of Defense Siting Clearinghouse.

(8) A study of the noise impacts of the turbines to be associated with the proposed wind energy facility or proposed wind energy facility expansion. This requirement can be met if the applicant demonstrates it has submitted a study pursuant to local requirements.

(9) A study on shadow flicker impacts of the turbines to be associated with the proposed wind energy facility or proposed wind energy facility expansion, unless the turbines will be located in a sound or in offshore waters. This requirement can be met if the applicant demonstrates it has submitted a study pursuant to local requirements.

(10) A study of the impact of the proposed wind energy facility or proposed wind energy facility expansion on natural resources and uses, including avian, bat, and endangered and threatened species.

(11) An explanation of how the proposed wind energy facility or proposed wind energy facility expansion would be consistent with the criteria in subsection (a) of G.S. 143-215.120.

(12) The application fee required by subsection (c) of this section.

(13) A plan regarding the action to be taken upon the decommissioning and removal of the wind energy facility. The plan shall include an estimate of the cost to decommission and remove the wind energy facility. The plan shall also include the anticipated life of the project, an estimate of the cost to decommission and remove the wind energy facility, a description of the manner in which the facility will be decommissioned, and a description of

the expected condition of the site once the wind energy facility has been decommissioned and removed.

(14) Other data or information the Department may reasonably require.

...

(d) Notice of Receipt of Complete Permit Application. – Within 10 days of receipt of a complete permit application for a proposed wind energy facility or proposed wind energy facility expansion submitted pursuant to subsection (a) of this section, the Department shall provide notice of the permit application to (i) the commanding military officer of all major military installations, (ii) the commanding military officer of any military installation located outside the State that is located within 50 nautical miles of the location of the proposed wind energy facility or proposed wind energy facility expansion, ~~and (iii)~~ (iii) the Department of Military and Veterans Affairs, and (iv) the board of commissioners for each county and the governing body of each municipality in which the wind energy facility or wind energy facility expansion is proposed to be located. The notice shall include:

(1) A copy of the map showing the location of the proposed wind energy facility or proposed wind energy facility expansion that includes the specific locations of wind turbines.

(2) A written request to the commanding military officer of a major military installation or the commanding military officer's designee, for technical information related to any adverse impact on the installation's operations, training, or mission, including military air navigation routes, air traffic control areas, military training routes, special-use air space, radar or other military operations that may be affected.

(3) A written request for information related to potential adverse impacts of the proposed wind energy facility or proposed wind energy facility expansion on local governments from the board of commissioners for each county and the governing body of each municipality.

(e) Provision of Permit Application to Affected Entities. – Except as provided by G.S. 143-215.124, within 10 days of receipt of a written request from the commanding military officer of any major military installation or the commanding military officer's designee, the board of commissioners for any county in which the site is proposed to be located or the governing body of any municipality in which the site is proposed to be located, the Department shall provide a copy of a permit application filed pursuant to subsection (a) of this section, in addition to any supplements, changes, or amendments to the permit application to the requesting commanding military officer or local government.

(f) Public Hearing and Comment. – The Department shall hold a public hearing in each county in which the wind energy facility or wind energy facility expansion is proposed to be located within 75 days of receipt of a completed permit application. The Department shall provide notice including the time and location of the public hearing in a newspaper of general circulation in each applicable county. The notice of public hearing shall be published for at least two consecutive weeks beginning no less than 45 days prior to the scheduled date of the hearing. The notice shall provide that any comments on the proposed wind energy facility or proposed wind energy facility expansion should be submitted to the Department by a specified date, not less than 15 days from the date of the newspaper publication of the notice or 15 days after distribution of the mailed notice, whichever is later. No less than 30 days prior to the scheduled public hearing, the Department shall provide written notice of the hearing to:

(1) The North Carolina Utilities Commission.

(2) The Office of the Attorney General of North Carolina.

(3) The commanding military officer of any potentially affected major military installation or the commanding military officer's designee.

(4) The board of commissioners for each county and the governing body of each municipality with jurisdictions over areas in which a potentially affected major military installation is located.

(5) The Department of Military and Veterans Affairs.

"**§ 143-215.119A. Letter to proceed determination by Department of Military and Veterans Affairs.**

(a) Letter to Proceed. – Prior to issuing a permit under this Article, the applicant must obtain a letter to proceed from the Department of Military and Veterans Affairs as set forth in this section. The Department of Military and Veterans Affairs shall issue a letter to proceed only after the Department of Military and Veterans Affairs finds that the proposed wind energy facility or proposed wind energy facility expansion would not cause significant adverse impacts on air navigation routes, air traffic control areas, military training routes, or radar installations. For purposes of this section, "significant adverse impact" means any demonstrable adverse impact upon military operations and readiness, including flight operations research, development, testing, and evaluation and training in North Carolina, that: (i) is likely to impair or degrade the ability of the Armed Forces to perform their warfighting missions; (ii) would result in a detriment to continued military presence in the State; and (iii) is unable to be addressed through mitigation measures.

(b) Time Line. – The Department of Military and Veterans Affairs shall determine whether to issue a letter to proceed under this section within 60 days of receiving the results of a formal or informal review by the Department of Defense Siting Clearinghouse, or within 60 days of the public hearing required by G.S. 143-215.119(f), whichever occurs later.

(c) Basis for Letter. – The Department of Military and Veterans Affairs shall make its determination based on information submitted by the applicant pursuant to subdivisions (5) and (6) of subsection (a) of G.S. 143-215.119, and any information received by the Department of Military and Veterans Affairs pursuant to subdivision (2) of subsection (d) of G.S. 143-215.119.

(d) Failure of Department to Act. – If the Department of Military and Veterans Affairs fails to issue a letter to proceed within the time line set forth in subsection (b) of this section, the applicant may treat the Department's failure to issue the letter as an issuance of a letter of concern as outlined in subsection (f) of this section.

(e) Finding of Significant Adverse Impact. – If the Department of Military and Veterans Affairs finds that the proposed wind energy facility or proposed wind energy facility expansion would cause significant adverse impacts to air navigation routes, air traffic control areas, military training routes, or radar installations, the Department of Military and Veterans Affairs shall issue a letter of concern to the Department and the applicant.

(f) Letter of Concern. – Within 90 days of issuance of a letter of concern under subsection (e) of this section, the Department of Military and Veterans Affairs shall engage with the applicant, the commanding military officer of any major military installation impacted in the letter of concern, the Department of Defense Clearinghouse designee for that installation, and those local governments with jurisdiction over of any major military installation impacted in the letter of concern, to address the issues identified in the letter of concern. If the parties are unable to resolve the concerns, the applicant may treat the failure to agree as a denial of the letter to proceed and may challenge the denial as provided under Chapter 150B of the General Statutes.

"**§ 143-215.120. Criteria for permit approval; time frame; permit conditions; other approvals required.**

(a) Permit Approval. – The Department shall approve an application for a permit for a proposed wind energy facility or proposed wind energy facility expansion upon receipt of a letter to proceed from the Department of Military and Veterans Affairs issued as set forth in G.S. 143-215.119A unless the Department finds any one or more of the following:

(1) Construction or operation of the proposed wind energy facility or proposed wind energy facility expansion would be inconsistent with or violate rules adopted by the Department or any other provision of law.

~~(2) Construction or operation of the proposed wind energy facility or proposed wind energy facility expansion would encroach upon or would otherwise have a significant adverse impact on the mission, training, or operations of any major military installation or branch of military in North Carolina and result in a detriment to continued military presence in the State. In its evaluation, the Department may consider whether the proposed wind energy facility or proposed wind energy facility expansion would cause interference with air navigation routes, air traffic control areas, military training routes, or radar based on information submitted by the applicant pursuant to subdivisions (5) and (6) of subsection (a) of G.S. 143-215.119, and any information received by the Department pursuant to subdivision (2) of subsection (d) of G.S. 143-215.119.~~

(3) Construction or operation of the proposed wind energy facility or proposed wind energy facility expansion would result in significant adverse impacts to ecological systems, natural resources, cultural sites, recreation areas, or historic sites of more than local significance; including national or State parks or forests, wilderness areas, historic sites, recreation areas, segments of the natural and scenic rivers system, wildlife refuges, preserves and management areas, areas that provide habitat for threatened or endangered species, primary nursery areas designated by the Marine Fisheries Commission and the Wildlife Resources Commission, and critical fisheries habitat identified pursuant to the Coastal Habitat Protection Plan.

(4) Construction or operation of the proposed wind energy facility or proposed wind energy facility expansion would have a significant adverse impact on fish or wildlife.

~~(5) Construction or operation of the proposed wind energy facility or proposed wind energy facility expansion would have a significant adverse impact on views from any State or national park, wilderness area, significant natural heritage area as compiled by the North Carolina Natural Heritage Program, or other public lands or private conservation lands designated or dedicated due to their high recreational values.~~

(6) Construction or operation of the proposed wind energy facility or proposed wind energy facility expansion would obstruct major navigation channels or create a significant obstacle to navigation in coastal waters, as determined by the United States Army Corps of Engineers and the United States Coast Guard.

~~(7) A permit for a proposed wind energy facility or proposed wind energy facility expansion would be denied under any other criteria set out in G.S. 113A-120.~~

(8) Construction of the proposed wind energy facility or proposed wind energy facility expansion would be prohibited under Article 14 of Chapter 113A of the General Statutes, the Mountain Ridge Protection Act of 1983.

(9) The applicant is not in compliance with all applicable federal, State, or local permit requirements, licenses, or approvals, including local zoning requirements.

(b) Permit Decision. – The Department shall make a final decision on a permit application within 90 days following receipt of a completed ~~application, except that the Department shall not be required to make a final decision until the Department has received a~~

~~written "Determination of No Hazard to Air Navigation" issued by the Federal Aviation Administration pursuant to Subpart D of Part 77 of Title 14 of the Code of Federal Regulations (January 1, 2012 edition).~~ application. If the Department requests additional information following the receipt of a completed application, the Department shall make a final decision on a permit application within 30 days of receipt of the requested information. If the Department determines that an application for a wind energy facility or a wind energy facility expansion fails to meet the requirements for a permit under this section, the Department shall deny the application, and the application shall be returned to the applicant accompanied by a written statement of the reasons for the denial and any modifications to the permit application that would make the application acceptable. If the Department fails to act within the time period set forth in this subsection, the applicant may treat the failure to act as a denial of the permit and may challenge the denial as provided under Chapter 150B of the General Statutes.

(c) Permit Conditions. – The Department (i) may include as a condition of a permit for a proposed wind energy facility or proposed wind energy facility expansion a requirement that the permit holder mitigate any adverse impacts and (ii) shall include as a condition of a permit for a proposed wind energy facility or proposed wind energy facility expansion a requirement that the permit holder obtain a written "Determination of No Hazard to Air Navigation" issued by the Federal Aviation Administration pursuant to Subpart D of Part 77 of Title 14 of the Code of Federal Regulations (January 1, 2012 edition) for the facility. No permit for a wind energy facility or wind energy facility expansion shall become effective until the Department has received and reviewed the "Determination of No Hazard to Air Navigation" issued by the Federal Aviation Administration for the facility. If the specific location of a turbine authorized to be constructed pursuant to a "Determination of No Hazard to Air Navigation" or the configuration of the wind energy facility varies from the information submitted by the applicant upon which the Department has made its permit decision, the Department may reevaluate the permit application and require the applicant to submit any additional information the Department deems necessary to approve or deny a permit for the facility as reconfigured.

(d) Other Approvals Required. – The issuance of a permit under this section shall not obviate the need for the applicant to obtain any and all other applicable local, State, or federal permits, licenses, or approvals. Furthermore, nothing in this Article shall be interpreted to limit, as applicable, (i) the application of Article 7 of Chapter 113A of the General Statutes to facilities permitted under this section, including the permitting requirements of G.S. 113A-118, (ii) the ability of a city or county to plan for and regulate the siting of a wind energy facility in accordance with land-use regulations authorized under Chapter 160A and Chapter 153A of the General Statutes, or (iii) the applicable requirements of Chapter 62 of the General Statutes.

(e) Permit transfer. – The Department may transfer a permit issued pursuant to this Article provided that the successor-owner of the wind energy facility submits to the Department a written request for transfer of the permit and complies with all terms and conditions of the permit once the permit has been transferred. The Department may not impose new or different terms and conditions to the permit without prior express consent of the successor-owner.

"§ 143-215.121. Financial assurance requirements.

The applicant for a permit or a permit holder for a wind energy facility shall establish financial assurance that will ensure that sufficient funds are available for decommissioning of the facility and reclamation of the property to its condition prior to commencement of activities on the site, even if the applicant or permit holder becomes insolvent or ceases to reside in, be incorporated, do business, or maintain assets in the State. To establish sufficient availability of funds under this section, the applicant for a permit or a permit holder for a wind energy facility may use insurance, financial tests, third-party guarantees by persons who can pass the financial test, guarantees by corporate parents who can pass the financial test, irrevocable letters of credit, trusts, surety bonds, or any other financial device, or any combination of the foregoing,

shown to provide protection equivalent to the financial protection that would be provided by insurance if insurance were the only mechanism used. To satisfy this requirement, the applicant may demonstrate that it previously met the financial assurance requirements pursuant to local, State, or federal requirements.

"**§ 143-215.122. Monitoring and reporting.**

The applicant shall annually submit copies to the Department of any post-construction monitoring, such as reports on the impacts on wildlife in the location of and in the area proximate to the wind energy facility or wind energy facility expansion and any impacts on military operations that are required by the United States Fish and Wildlife Service, the North Carolina Wildlife Resources Commission, the North Carolina Utilities Commission, or any other government agency.

"**§ 143-215.123. Annual review of military presence.**

The Department of Military and Veterans Affairs shall consult with representatives of the major military installations to review information regarding military air navigation routes, air traffic control areas, military training routes, special-use air space, radar, or other potentially affected military operations at least once per year. The Department of Military and Veterans Affairs shall provide relevant information on civil air navigation or military air navigation routes, air traffic control areas, military training routes, special-use air space, radar, or other potentially affected military operations to permit applicants as requested. Information obtained in the annual review required under this section may be used to determine the impact of wind energy facilities and expansion of wind energy facilities that have not previously received a permit from the Department of Environmental Quality or a letter to proceed from the Department of Military and Veterans Affairs.

...."

SECTION 2. This act is effective when it becomes law and applies only to those wind energy facilities or wind energy facility expansions for which no "Determination of No Hazard to Air Navigation" has been issued by the Federal Aviation Administration on or before that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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HOUSE BILL 799
PROPOSED COMMITTEE SUBSTITUTE H799-CSTS-3 [v.2]
04/25/2017 11:30:58 AM

Short Title: Utility Billing by Lessors. (Public)

Sponsors:

Referred to:

April 13, 2017

A BILL TO BE ENTITLED

AN ACT TO ALLOW FOR LANDLORDS TO CHARGE INDIVIDUAL TENANTS FOR SHARED COST OF NATURAL GAS SERVICE PROVIDED TO LEASED PREMISES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 42-42.1 reads as rewritten:

"**§ 42-42.1. Water and electricity conservation.**

(a) For the purpose of encouraging ~~water and electricity~~water, electricity, and natural gas conservation, pursuant to a written rental agreement, a ~~landlord~~ lessor may charge for the cost of providing water or sewer service to ~~tenants~~ lessees ~~who occupy the same contiguous premises~~ pursuant to ~~G.S. 62-110(g) or~~G.S. 62-110(g), electric service pursuant to ~~G.S. 62-110(h).~~G.S. 62-110(h), or natural gas service pursuant to G.S. 62-110(i).

(b) The ~~landlord~~ lessor may not disconnect or terminate the ~~tenant's~~ lessee's electric ~~service or~~service, water or sewer ~~services~~ services, or natural gas service due to the ~~tenant's~~ lessee's nonpayment of the amount due for electric ~~service or~~service, water or sewer ~~services.~~services, or natural gas service."

SECTION 2. G.S. 62-110 reads as rewritten:

"**§ 62-110. Certificate of convenience and necessity.**

...

(g) In addition to the authority to issue a certificate of public convenience and necessity and establish rates otherwise granted in this Chapter, for the purpose of encouraging water conservation, the Commission may, consistent with the public interest, adopt procedures that allow a lessor to charge for the costs of providing water or sewer service to persons who occupy the ~~same contiguous~~leased premises. The following provisions shall apply:

...

(1a) If the ~~contiguous~~ leased premises ~~were~~ are contiguous dwelling units built prior to ~~1989~~ 1989, and the lessor determines that the measurement of the ~~tenant's~~lessee's total water usage is impractical or not economical, the lessor may allocate the cost for water and sewer service to the ~~tenant~~lessee using equipment that measures the ~~tenant's~~lessee's hot water usage. In that case, each ~~tenant~~lessee shall be billed a percentage of the landlord's water and sewer costs for water usage in the dwelling units based upon the hot water used in the ~~tenant's~~lessee's dwelling unit. The percentage of total water usage allocated for each dwelling unit shall be equal to that dwelling unit's individually submetered hot water usage divided by all submetered hot water usage in all dwelling units. The following conditions apply to billing for water and sewer service under this subdivision:

a. A lessor shall not utilize a ratio utility billing system or other allocation billing system that does not rely on individually

submetered hot water usage to determine the allocation of water and sewer costs.

b. The lessor shall not include in a ~~tenant's~~lessee's bill the cost of water and sewer service used in common areas or water loss due to leaks in the lessor's water mains. A lessor shall not bill or attempt to collect for excess water usage resulting from a plumbing malfunction or other condition that is not known to the ~~tenant~~lessee or that has been reported to the lessor.

c. All equipment used to measure water usage shall comply with guidelines promulgated by the American Water Works Association.

d. The lessor shall maintain records for a minimum of 12 months that demonstrate how each ~~tenant's~~ lessee's allocated costs were calculated for water and sewer service. Upon advanced written notice to the lessor, a ~~tenant~~lessee may inspect the records during reasonable business hours.

e. Bills for water and sewer service sent by the lessor to the ~~tenant~~lessee shall contain all the following information:

1. The amount of water and sewer services allocated to the ~~tenant~~lessee during the billing period.
2. The method used to determine the amount of water and sewer services allocated to the ~~tenant.~~lessee.
3. Beginning and ending dates for the billing period.
4. The past-due date, which shall not be less than 25 days after the bill is mailed.
5. A local or toll-free telephone number and address that the ~~tenant~~lessee can use to obtain more information about the bill.

(2) The lessor may charge a reasonable administrative fee for providing water or sewer service not to exceed the maximum administrative fee authorized by the Commission.

(3) The Commission shall ~~issue~~ adopt rules to ~~define contiguous premises and to~~ implement this subsection. ~~In issuing the rule to define contiguous premises, the Commission shall consider contiguous premises where manufactured homes, as defined in G.S. 143-145(7), or spaces for manufactured homes are rented.~~

(4) The Commission shall develop an application that lessors must submit for authority to charge for water or sewer service. The form shall include all of the following:

a. A description of the applicant and the property to be served.
b. A description of the proposed billing method and billing statements.
c. The schedule of rates charged to the applicant by the supplier.
d. The schedule of rates the applicant proposes to charge the applicant's customers.
e. The administrative fee proposed to be charged by the applicant.
f. The name of and contact information for the applicant and its agents.
g. The name of and contact information for the supplying water or sewer system.
h. Any additional information that the Commission may require.

(4a) The Commission shall develop an application that lessors must submit for authority to charge for water or sewer service at single-family dwellings that allows the applicant to serve multiple dwellings in the State, subject to an approval by the Commission. The form shall include all of the following:

a. A description of the applicant and a listing of the addresses of all the properties to be served. An updated listing of addresses served by the applicant shall be provided to the Commission annually.
b. A description of the proposed billing method and billing statements.
c. The administrative fee proposed to be charged by the applicant.
d. The name and contact information for the applicant and its agents.
e. Any additional information the Commission may require.

(5) The Commission shall approve or disapprove an application within 30 days of the filing of a completed application with the Commission. If the Commission has not issued an order disapproving a completed application within 30 days, the application shall be deemed approved.

(6) A provider of water or sewer service under this subsection may increase the rate for service so long as the rate does not exceed the unit consumption rate charged by the supplier of the service. A provider of water or sewer service under this subsection may change the administrative fee so long as the administrative fee does not exceed the maximum administrative fee authorized by the Commission. In order to change the rate or administrative fee, the provider shall file a notice of revised schedule of rates and fees with the Commission. The Commission may prescribe the form by which the provider files a notice of a revised schedule of rates and fees under this subsection. The form shall include all of the following:
a. The current schedule of the unit consumption rates charged by the provider.
b. The schedule of rates charged by the supplier to the provider that the provider proposes to pass through to the provider's customers.
c. The schedule of the unit consumption rates proposed to be charged by the provider.
d. The current administrative fee charged by the provider, if applicable.
e. The administrative fee proposed to be charged by the provider.

(7) A notification of revised schedule of rates and fees shall be presumed valid and shall be allowed to become effective upon 14 days notice to the Commission, unless otherwise suspended or disapproved by order issued within 14 days after filing.

(8) Notwithstanding any other provision of this Chapter, the Commission shall determine the extent to which the services shall be regulated and, to the extent necessary to protect the public interest, regulate the terms, conditions, and rates that may be charged for the services. Nothing in this subsection shall be construed to alter the rights, obligations, or remedies of persons providing water or sewer services and their customers under any other provision of law.

(9) A provider of water or sewer service under this subsection shall not be required to file annual reports pursuant to G.S. 62-36 or to furnish a bond pursuant to G.S. 62-110.3.

(h) In addition to the authority to issue a certificate of public convenience and necessity and establish rates otherwise granted in this Chapter, the Commission may, consistent with the public interest, adopt procedures that allow a lessor of a single-family dwelling, residential ~~building~~ building, or multiunit apartment complex that has individually metered units for electric service in the lessor's name to charge for the actual costs of providing electric service to each ~~tenant when the lessor has a separate lease for each bedroom in the unit.~~lessee. The following provisions shall apply to the charges authorized under this subsection:

(1) The lessor shall equally divide the actual amount of the individual electric service bill for a unit among all the ~~tenants~~ lessees in the unit and shall send one bill to each ~~tenant.~~lessee. The amount charged shall be prorated when a ~~tenant~~ lessee has not leased the unit for the same number of days as the other ~~tenants~~ lessees in the unit during the billing period. Each bill may include an administrative fee up to the amount of the then-current administrative fee authorized by the Commission in Rule 18-6 for water service and, when applicable, a late fee in an amount determined by the Commission. The lessor shall not charge the cost of electricity from any other unit or common area in a ~~tenant's~~ lessee's bill. The lessor may, at the lessor's option, pay any portion of any bill sent to a ~~tenant.~~lessee.

(2) A lessor who charges for electric service under this subsection is solely responsible for the prompt payment of all bills rendered by the electric utility providing service to the ~~residential building or complex~~leased premises and is the customer of the electric utility subject to all rules, regulations, tariffs, riders, and service regulations associated with the provision of electric service to retail customers of the utility.

(3) The lessor shall maintain records for a minimum of 36 months that demonstrate how each ~~tenant's~~ lessee's allocated costs were calculated for electric service. A ~~tenant~~ lessee may inspect these records, including the actual per unit public utility billings, during reasonable business hours and may obtain copies of the records for a reasonable copying fee.

(4) Bills for electric service sent by the lessor to the ~~tenant~~ lessee shall contain all of the following information:

a. ~~The~~When the lessor of a residential building or multiunit apartment complex has a separate lease for each bedroom in the unit, the bill charged by the electric supplier for the unit as a whole and the amount of charges allocated to the ~~tenant~~ lessee during the billing period.

b. The name of the electric power supplier providing electric service to the ~~unit.~~leased premises.

c. Beginning and ending dates for the usage period and, if provided by the electric supplier, the date the meter was read for that usage period.

d. The past-due date, which shall not be less than 25 days after the bill is mailed to the ~~tenant.~~lessee.

e. A local or toll-free telephone number and address that the ~~tenant~~ lessee can use to obtain more information about the bill.

f. The amount of any administrative fee and late fee approved by the Commission and included in the bill.

g. A statement of the ~~tenant's~~ lessee's right to address questions about the bill to the lessor and the ~~tenant's~~ lessee's right to file a complaint with, or otherwise seek recourse from, the Commission if the ~~tenant~~ lessee cannot resolve an electric service billing dispute with the lessor.

(5) The Commission shall develop an application that ~~a lessor~~lessors must submit for Commission approval to charge for electric service as provided in this section. The form shall include all of the following:

a. A description of the lessor and the property to be served.

b. A description of the proposed billing method and billing statements.

c. The administrative fee and late payment fee, if any, proposed to be charged by the lessor.
d. The name of and contact information for the lessor and the lessor's agents.
e. The name of and contact information for the supplier of electric service to the lessor's rental property.
f. A copy of the lease forms used by the lessor for ~~tenants~~ lessees who are billed for electric service pursuant to this subsection.
g. Any additional information that the Commission may require.

(6) The Commission shall approve or disapprove an application within 60 days of the filing of a completed application with the Commission. If the Commission has not issued an order disapproving a completed application within 60 days, the application shall be deemed approved.

(7) A lessor who charges for electric service under this subsection shall not be required to file annual reports pursuant to G.S. 62-36.

(7a) An applicant may submit for authority to charge for electric service for more than one property in a single application. Information relating to all properties covered by the application need only be provided once in the application.

(8) The Commission shall adopt rules to implement the provisions of this subsection.

(i) In addition to the authority to issue a certificate of public convenience and necessity and establish rates otherwise granted in this Chapter, the Commission may, consistent with the public interest, adopt procedures that allow a lessor of single-family dwelling, a residential building, or multiunit apartment complex that has individually metered units for natural gas service in the lessor's name to charge for the actual costs of providing natural gas service to each lessee. The following provisions shall apply to the charges authorized under this subsection:

(1) The lessor shall equally divide the actual amount of the individual natural gas service bill for a unit among all the lessees in the unit and shall send one bill to each lessee. The amount charged shall be prorated when a lessee has not leased the unit for the same number of days as the other lessees in the unit during the billing period. Each bill may include an administrative fee up to the amount of the then-current administrative fee authorized by the Commission in Rule 18-6 for water service and, when applicable, a late fee in an amount determined by the Commission. The lessor shall not charge the cost of natural gas service from any other unit or common area in a lessee's bill. The lessor may, at the lessor's option, pay any portion of any bill sent to a lessee.

(2) A lessor who charges for natural gas service under this subsection is solely responsible for the prompt payment of all bills rendered by the natural gas utility providing service to the leased premises and is the customer of the natural gas utility subject to all rules, regulations, tariffs, riders, and service regulations associated with the provision of natural gas service to retail customers of the utility.

(3) The lessor shall maintain records for a minimum of 36 months that demonstrate how each lessee's allocated costs were calculated for natural gas service. A lessee may inspect these records, including the actual per unit public utility billings, during reasonable business hours and may obtain copies of the records for a reasonable copying fee.

(4) Bills for natural gas service sent by the lessor to the lessee shall contain all of the following information:
a. When the lessor of a residential building or multiunit apartment complex has a separate lease for each bedroom in the unit, the bill charged by the natural gas supplier for the unit as a whole and the amount of charges allocated to the lessee during the billing period.
b. The name of the natural gas supplier providing natural gas service to the leased premises.
c. Beginning and ending dates for the usage period and, if provided by the natural gas supplier, the date the meter was read for that usage period.
d. The past-due date, which shall not be less than 25 days after the bill is mailed to the lessee.
e. A local or toll-free telephone number and address that the lessee can use to obtain more information about the bill.
f. The amount of any administrative fee and late fee approved by the Commission and included in the bill.
g. A statement of the lessee's right to address questions about the bill to the lessor and the lessee's right to file a complaint with, or otherwise seek recourse from, the Commission if the lessee cannot resolve a natural gas service billing dispute with the lessor.

(5) The Commission shall develop an application that lessors must submit for Commission approval to charge for natural gas service as provided in this section. The form shall include all of the following:
a. A description of the lessor and the property to be served.
b. A description of the proposed billing method and billing statements.
c. The administrative fee and late payment fee, if any, proposed to be charged by the lessor.
d. The name of and contact information for the lessor and the lessor's agents.
e. The name of and contact information for the supplier of natural gas service to the lessor's rental property.
f. A copy of the lease forms used by the lessor for lessees who are billed for natural gas service pursuant to this subsection.
g. Any additional information that the Commission may require.

(6) The Commission shall approve or disapprove an application within 60 days of the filing of a completed application with the Commission. If the Commission has not issued an order disapproving a completed application within 60 days, the application shall be deemed approved.

(7) A lessor who charges for natural gas service under this subsection shall not be required to file annual reports pursuant to G.S. 62-36.

(7a) An applicant may submit for authority to charge for natural gas service for more than one property in a single application. Information relating to all properties covered by the application need only be provided once in the application.

(8) The Commission shall adopt rules to implement the provisions of this subsection."

SECTION 3. This act becomes effective October 1, 2017.

HOUSE BILL 799:
Utility Billing by Lessors.

2017-2018 General Assembly

Committee:	House Energy and Public Utilities	**Date:**	April 26, 2017
Introduced by:	Rep. Bradford	**Prepared by:**	Layla Cummings
Analysis of:	PCS to First Edition H799-CSTS-3		Committee Counsel

OVERVIEW: The Proposed Committee Substitute (PCS) to House Bill 799 would clarify and amend the laws related to the billing of water, electricity, and natural gas utilities by lessors.

The PCS makes technical and conforming changes to G.S. 42-42.1.

BILL ANALYSIS:

Billing of Water or Sewer Service pursuant to G.S. 62-110(g): Under current law, G.S. 62-110(g) allows the billing of water or sewer services by a lessor for contiguous units pursuant to a written rental agreement.

The PCS would allow lessors of single family rental units that are not contiguous to pass through charges for water and sewer utility service to lessees. The provision would also direct the Utilities Commission (Commission) to develop an application that lessors must complete and will allow lessors to submit one application for the authority to charge for water and sewer service for multiple lessees with a single Commission approval.

Billing of Electric Service pursuant to G.S. 62-110(h): Under current law, G.S. 62-110(h) allows the billing of electric service by a lessor pursuant to a written rental agreement.

The PCS would clarify that the electric service may be to a single-family dwelling, residential building, or multiunit apartment complex and may be allocated when the lessor has a separate lease for each bedroom in the unit. The PCS would also allow lessors to submit one application for the authority to charge for electric service for multiple lessees with a single Commission approval.

Billing of Natural Gas Service pursuant to G.S. 62-110(i): The PCS would create a new section, G.S. 62-110(i), to allow the billing of natural gas service by a lessor that models the authority to bill for water and sewer service and electric service in the preceding sections pursuant to a written rental agreement.

The PCS would allow the lessor to divide the natural gas service bill among all lessees in each unit and send one bill to each lessee and requires the disclosure of certain information on the bill to the lessee. The PCS would also direct the Commission to develop an application that lessors must complete, and will allow lessors to submit one application for the authority to charge for natural gas service for multiple lessees with a single Commission approval.

EFFECTIVE DATE: This act would become effective October 1, 2017.

aren Cochrane-Brown
Director

Legislative Analysis
Division
919-733-2578

Public comment

VISITOR REGISTRATION SHEET

Energy & Public Utilities — 04-26-2017

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

	NAME	FIRM OR AGENCY AND ADDRESS	Bill #
last	7 ~~DAVID BELOTE~~	CASSITY & ASSOC 733 10th St NW WASH DC 20001	HB 574
last	8 ~~Alissa Cate~~	Weyerhaeuser Co. PO Box 787 Plymouth NC 27962	HB574
1	~~Bill Moore~~	COASTAL CAROLINA RCCI PROJECT	H574
2	~~Craig Honeycutt~~	Asst. County Manager, Wayne County	H574
3	~~Kate Daniels~~	President, Goldsboro Chamber Commerce	H574
4	~~BC Heath~~	Friends Seymour Johnson	H574
5	Frank Bottorff	Allies for Cherry Point	H574
6	~~Jamie Norment~~	Allies for Cherry Point	H574

VISITOR REGISTRATION SHEET

House Comm. on Energy and PU's 04/26/17

Name of Committee Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bill Moore	Coastal Carolina Tect Project
Alissa Cale	Weyerhaeuser Co.
Andy Miller	DEQ
Sharon Miller	CUCA
Cindy Ohms	CUCA
Corey Williams	Everyone's NC
MICHAEL EISENBERG	CONCERNED CITIZEN
Cassie Gavia	Sierra Club
MARC FINLAYSON	ALLIES for CHERRY POINT'S TOMORROW
FRANK BOTTORFF	City of Havelock
James Norment	Ward and Smith

VISITOR REGISTRATION SHEET

House Comm. on Energy and PU's 04/26/17

Name of Committee Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Peter Daniel	Connect C
John cooper	Connect C
Luke Stancil (INTERN!)	Jones Street
Jackson Stancil	Jones street.
Mary Dunn	DRNC

VISITOR REGISTRATION SHEET

House Comm. on Energy and PU's 04/26/17

Name of Committee Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[illegible]	Ward & Smith, P.A.
Sam Watson	NCUC
Pat Buffkin	"
Chris Ayers	PSNCUC
Dianna Downey	PSNCUC
Frances Likes	NCREA
Ryan Gee	CapAd
Lori Ann Morris	LATA
Angela Dunst	Mil + Vet Affairs
Jason Cain	Mil + Vet Affairs
Jackson Stancil	Jones Street Consulting

VISITOR REGISTRATION SHEET

House Comm. on Energy and PU's 04/26/17

Name of Committee Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
RAY GAJ	PAMLICO VC, MCL # 1413, AL200
RICHARD STAACEL	DAV USNAVY
CLARidge "AL" RICE	" "
Levi Clemons Jr	DAV Army
David Hand	AMVETS US Army
Marie Senzig	P.O. Box 363 Havelock, NC military officers Assn, Coastal Carolina, AL Post 539
Deborah Betts	Military Officers Assn of America Sanford Satellite Chapter, Sanford, NC
Teri Graham	North Carolina Veteran Council
[illegible]	DAV Chapter 37 Pitt County
PATRICIA A. HARRIS	NORTH CAROLINA VETERAN COUNCIL TAL
Ret MSG Dean M Moore Go 1715 Safrit Rd. Army Salisbury, NC 28146-9767-15 704-857-4473 704-754-3228 mdeanbon@aol.com	Amvets Post 846 Rockwell, NC

VISITOR REGISTRATION SHEET

House Comm. on Energy and PU's 04/26/17

Name of Committee Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Steve Brewer	CTL
Derek Kelly	CTL
[illegible]	Charter
Joyce Peters	CS
Elree T. Smith	NC State Veterans Council
Chris McClure	BP

VISITOR REGISTRATION SHEET

House Comm. on Energy and PU's 04/26/17

Name of Committee Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
James M. Beam	AmVets Post 460, Salisbury, N.C.
Randy Ferguson	109 Brueburn Cir Roanoke Rapids NC 27870 Commander AMVETS Dept. of NC
Danny A. Crotts	AMVETS National District II Commander 2246 Old Mountain Rd. Lexington, NC 27292
Teddy G. Acton	NC ELKS PAST STATE President 427 Egret Dr, Sunset Beach, NC 28468
Tommy T. Stephenson	DAV Chapter 37 2805 Cemetry Road, Greenville, NC 27834
Brooke Davis	DAV - Dept of NC (Dept Adjutant) 625 New Bern Ave, Raleigh, NC 27601
Harley Ellinger	MOAA NCCOC - Charlotte Metrolina 3205 Springs Farm Ln, Charlotte, NC 28226
Dwight Allen	ALLEN Law Office
Brady Allen	Allen Law Office
Britton Allen	
Trey Rabon	ATT

House Committee on Energy and Public Utilities
Wednesday, May 10, 2017, 1:00 PM
544 Legislative Office Building

AGENDA

Welcome and Opening Remarks by Rep. Dean Arp, Chair

Introduction of Page: Daniel Ma

Introduction of Sgt. At Arms: Warren Hawkins
Doug Harris
Malachi McCullough
David Linthicum

Bills: Discussion Only
The Committee should adopt the PCS for discussion to be properly discussed in the Committee.
Chair Arp would ask for a motion for discussion and would emphasize that the PCS is for discussion only and not for a vote.

BILL NO.	SHORT TITLE	SPONSOR
HB 310 (PCS to be adopted)	Wireless Communications Infrastructure Siting.	Representative Saine Representative Torbett Representative Wray

Presentations

Beth Cooley, CTIA State Legislative Affairs State Director, will present on 5g wireless and the importance of small cell technology

Other Business

A 'sign-up sheet"""" will be provided for those who wish to speak to the committee on HB310. The allotted time for each speaker will be limited to two (2) minutes.

Adjournment

House Committee on Energy and Public Utilities
Wednesday, May 10, 2017, 1:00 PM
544 Legislative Office Building

AGENDA

Welcome and Opening Remarks by Rep. Dean Arp, Chair

Introduction of Page: Daniel Ma

Introduction of Sgt. At Arms: Warren Hawkins
Doug Harris
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Bills: Discussion Only
The Committee should adopt the PCS for discussion to be properly discussed in the Committee.
Chair Arp would ask for a motion for discussion and would emphasize that the PCS is for discussion only and not for a vote.

BILL NO.	SHORT TITLE	SPONSOR
HB 310 (PCS to be adopted)	Wireless Communications Infrastructure Siting.	Representative Saine ✓ Representative Torbett ✓ Representative Wray

Presentations

Beth Cooley, CTIA State Legislative Affairs State Director, will present on 5g wireless and the importance of small cell technology

Other Business

A 'sign-up sheet""""" will be provided for those who wish to speak to the committee on HB310. The allotted time for each speaker will be limited to two (2) minutes.

Adjournment

House Committee on Energy and Public Utilities
Wednesday, May 10, 2017, 1:00 PM
544 Legislative Office Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
HB 310	Wireless Communications Infrastructure Siting.	Representative Saine Representative Torbett Representative Wray

Presentations

Beth Cooley, CTIA State Legislative Affairs State Director, will present on 5g wireless and the importance of small cell technology

Other Business

A 'sign-up sheet' will be provided for those who wish to speak to the committee on HB310.

The allotted time for each speaker will be limited to two (2) minutes.

Adjournment

House Committee on Energy and Public Utilities
Wednesday, May 10, 2017, 1:00 PM
544 Legislative Office Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
HB 310	Wireless Communications Infrastructure Siting.	Representative Saine Representative Torbett Representative Wray

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Beth Cooley, CTIA State Legislative Affairs State Director, will present on 5g wireless and the importance of small cell technology

Other Business

A 'sign-up sheet' will be provided for those who wish to speak to the committee on HB310.

The allotted time for each speaker will be limited to two (2) minutes.

Adjournment

House Committee on Energy and Public Utilities
Wednesday, May 10, 2017 at 1:00 PM
Room 544 of the Legislative Office Building

MINUTES

The House Committee on Energy and Public Utilities met at 1:00 PM on May 10, 2017 in Room 544 of the Legislative Office Building. Representatives Arp, Blackwell, Bradford, Bumgardner, Collins, Cunningham, Earle, Goodman, Hanes, Harrison, Malone, R. Moore, Murphy, W. Richardson, Riddell, Stone, Strickland, Szoka, Watford, Wray, and Zachary attended.

Representative Dean Arp, Chair presiding.

The following PCS Bill were considered FOR DISCUSSION ONLY:

HB 310 Wireless Communications Infrastructure Siting. (Representatives Saine, Torbett, Wray)

The Chair recognized Representatives Saine and Torbett to present HB 310 for a hearing (for discussion only). Representative Saine yielded the podium back to the chair.

Chairman Arp recognized NCGA Staff, Layla Cummings, to explain each section of Proposed Committee Substitute to the committee in layman terms. Following staff comments, the chair opened the discussion for questions from the committee members, presentations, and to the public for comments.

Presentations:

Representative Saine introduced Beth Cooley, CTIA State Legislative Affairs State Director who he invited to present on 5g wireless and the importance of small cell technology, to the committee.

The chair recognized the public who then spoke on the technology.

The meeting adjourned at 1:45 PM.

Representative Dean Arp, Presiding Chair

Beverly Slagle, Committee Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H D

HOUSE BILL 310
PROPOSED COMMITTEE SUBSTITUTE H310-CSTSf-5 [v.6]
05/10/2017 11:41:45 AM

Short Title: Wireless Communications Infrastructure Siting. (Public)

Sponsors:

Referred to:

March 13, 2017

A BILL TO BE ENTITLED

AN ACT TO REFORM COLLOCATION OF SMALL WIRELESS COMMUNICATIONS INFRASTRUCTURE TO AID IN DEPLOYMENT OF NEW TECHNOLOGIES.

The General Assembly of North Carolina enacts:

SECTION 1. The General Assembly finds the following:

(1) The design, engineering, permitting, construction, modification, maintenance, and operation of wireless facilities are instrumental to the provision of emergency services and to increasing access to advanced technology and information for the citizens of North Carolina.

(2) Cities and counties play a key role in facilitating the use of the public rights-of-way.

(3) Wireless services providers and wireless infrastructure providers must have access to the public rights-of-way and the ability to attach to poles and structures in the public rights-of-way to densify their networks and provide next generation services.

(4) Small wireless facilities, including facilities commonly referred to as small cells and distributed antenna systems, often may be deployed most effectively in the public rights-of-way.

(5) Expeditious processes and reasonable and nondiscriminatory rates, fees, and terms related to such deployments are essential to the construction and maintenance of wireless facilities.

(6) Wireless facilities help ensure the State remains competitive in the global economy.

(7) The timely design, engineering, permitting, construction, modification, maintenance, and operation of wireless facilities are matters of statewide concern and interest.

SECTION 2.(a) G.S. 160A-400.51(4a) is recodified as G.S. 160A-400.51(4d).

SECTION 2.(b) G.S. 160A-400.51(7a) is recodified as G.S. 160A-400.51(7b).

SECTION 2.(c) Part 3E of Article 19 of Chapter 160A of the General Statutes, as amended by subsections (a) and (b) of this section, reads as rewritten:

"Part 3E. Wireless Telecommunications Facilities.

"**§ 160A-400.50. Purpose and compliance with federal law.**

...

(c) This Part shall not be construed to authorize a city to require the construction or installation of wireless facilities or to regulate wireless services other than as set forth herein.

"**§ 160A-400.51. Definitions.**

The following definitions apply in this Part.

(1) Antenna. – Communications equipment that transmits, receives, or transmits and receives electromagnetic radio signals used in the provision of all types of wireless communications services.

(1a) Applicable codes. – The North Carolina State Building Code and any other uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization together with State or local amendments to those codes enacted solely to address imminent threats of destruction of property or injury to persons.

(2) Application. – ~~A formal request submitted to the city to construct or modify a wireless support structure or a wireless facility.~~ A request that is submitted by an applicant to a city for a permit to collocate wireless facilities or to approve the installation, modification, or replacement of a utility pole, city utility pole, or wireless support structure.

(2a) Base station. – A station at a specific site authorized to communicate with mobile stations, generally consisting of radio receivers, antennas, coaxial cables, power supplies, and other associated electronics.

(3) Building permit. – An official administrative authorization issued by the city prior to beginning construction consistent with the provisions of G.S. 160A-417.

(3a) City right-of-way. – A right-of-way owned, leased, or operated by a city, including any public street or alley that is not a part of the State highway system.

(3b) City utility pole. – A pole owned by a city in the city right-of-way that provides lighting, traffic control, or a similar function.

(4) Collocation. – The ~~placement or installation~~ placement, installation, maintenance, modification, operation, or replacement of wireless facilities ~~on~~ on, under, within, or on the surface of the ground adjacent to existing structures, including ~~electrical transmission towers,~~utility poles, city utility poles, water towers, buildings, and other structures capable of structurally supporting the attachment of wireless facilities in compliance with applicable codes.

(4a) Communications facility. – The set of equipment and network components, including wires and cables and associated facilities used by a communications service provider to provide communications service.

(4b) Communications service. – Cable service as defined in 47 U.S.C. § 522(6), information service as defined in 47 U.S.C. § 153(24), telecommunications service as defined in 47 U.S.C. § 153(53), or wireless services.

(4c) Communications service provider. – A cable operator, as defined in 47 U.S.C. § 522(5); a provider of information service, as defined in 47 U.S.C. § 153(24); a telecommunications carrier, as defined in 47 U.S.C. § 153(51); or a wireless provider.

(4d) Eligible facilities request. – A request for modification of an existing wireless tower or base station that involves collocation of new transmission equipment or replacement of transmission equipment but does not include a substantial modification.

(5) Equipment compound. – An area surrounding or near the base of a wireless support structure within which a wireless facility is located.

(5a) Fall zone. – The area in which a wireless support structure may be expected to fall in the event of a structural failure, as measured by engineering standards.

(6) Land development regulation. – Any ordinance enacted pursuant to this Part.

(6a) Micro wireless facility. – A small wireless facility that is no larger in dimension than twenty four (24) inches in length, fifteen (15) inches in width, and twelve (12) inches in height, and that has an exterior antenna, if any, no longer than eleven (11) inches.

(7) Search ring. – The area within which a wireless support facility or wireless facility must be located in order to meet service objectives of the wireless service provider using the wireless facility or wireless support structure.

(7a) Small wireless facility. – A wireless facility that meets both of the following qualifications:

a. Each antenna is located inside an enclosure of no more than six (6) cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements, if enclosed, could fit within an enclosure of no more than six cubic feet.

b. All other wireless equipment associated with the facility has a cumulative volume of no more than twenty eight (28) cubic feet in volume. For purposes of this sub-subdivision, the following types of ancillary equipment are not included in the calculation of equipment volume: electric meters, concealment elements, telecommunications demarcation boxes, ground-based enclosures, grounding equipment, power transfer switches, cut-off switches, vertical cable runs for the connection of power and other services, or other support structures.

(7b) Substantial modification. – The mounting of a proposed wireless facility on a wireless support structure that substantially changes the physical dimensions of the support structure. A mounting is presumed to be a substantial modification if it meets any one or more of the criteria listed below. The burden is on the local government to demonstrate that a mounting that does not meet the listed criteria constitutes a substantial change to the physical dimensions of the wireless support structure.

a. Increasing the existing vertical height of the structure by the greater of (i) more than ten percent (10%) or (ii) the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet.

b. Except where necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable, adding an appurtenance to the body of a wireless support structure that protrudes horizontally from the edge of the wireless support structure the greater of (i) more than 20 feet or (ii) more than the width of the wireless support structure at the level of the appurtenance.

c. Increasing the square footage of the existing equipment compound by more than 2,500 square feet.

(8) Utility pole. – A structure that is designed for and used to carry lines, cables, ~~or wires~~ wires, lighting facilities, or small wireless facilities, for telephone, cable television, ~~or~~ electricity, ~~or to provide lighting.~~lighting, or wireless services.

(8a) Water tower. – A water storage tank, a standpipe, or an elevated tank situated on a support structure originally constructed for use as a reservoir or facility to store or deliver water.

(9) Wireless facility. – ~~The set of equipment and network components, exclusive of the underlying wireless support structure or tower, including antennas, transmitters, receivers, base stations, power supplies, cabling, and associated~~

~~equipment necessary to provide wireless data and wireless telecommunications services to a discrete geographic area.~~ Equipment at a fixed location that enables wireless communications between user equipment and a communications network, including (i) equipment associated with wireless communications, and (ii) radio transceivers, antennas, wires, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration. The term includes small wireless facilities. The term shall not include any of the following:

a. The structure or improvements on, under, within, or adjacent to which the equipment is collocated.

b. Wireline backhaul facilities.

c. Coaxial or fiber-optic cable that is between wireless structures or utility poles or city utility poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna.

(9a) Wireless infrastructure provider. – Any person with a certificate to provide telecommunications service in the State who builds or installs wireless communication transmission equipment, wireless facilities, or wireless support structures for small wireless facilities, but that does not provide wireless services.

(9b) Wireless provider. – A wireless infrastructure provider or a wireless services provider.

(9c) Wireless services. – Any services, using licensed or unlicensed wireless spectrum, including the use of Wi-Fi, whether at a fixed location or mobile, provided to the public using wireless facilities.

(9d) Wireless services provider. – A person who provides wireless services.

(10) Wireless support structure. – A new or existing structure, such as a monopole, lattice tower, or guyed tower that is designed to support or capable of supporting wireless facilities. A utility pole or a city utility pole is not a wireless support structure.

...

"**§ 160A-400.54. Collocation of small wireless facilities.**

(a) Except as expressly provided in this Part, a city shall not prohibit, regulate, or charge for the collocation of small wireless facilities.

(b) A city may not establish a moratorium on (i) filing, receiving, or processing applications, or (ii) issuing permits or any other approvals for the collocation of small wireless facilities.

(c) Small wireless facilities that meet the height requirements of G.S. 160A 400.55(b)(2) shall only be subject to review and approval under subsection (d) of this section if they are collocated (i) in a city right-of-way within any zoning district, or (ii) outside of rights of way on property other than single family residential property.

(d) A city may require an applicant to obtain a permit to collocate a small wireless facility. A city shall receive applications for, process, and issue such permits subject to the following requirements:

(1) A city may not, directly or indirectly, require an applicant to perform services unrelated to the collocation for which approval is sought. For purposes of this subdivision, "services unrelated to the collocation," includes in-kind contributions to the city such as the reservation of fiber, conduit, or pole space for the city.

(2) The wireless provider completes an application as specified in form and content by the city. A wireless provider shall not be required to provide more

information to obtain a permit than communications service providers that are not wireless providers.

(3) A permit application shall be deemed complete unless the city provides notice otherwise in writing to the applicant within thirty (30) days of submission or within some other mutually agreed upon timeframe. The notice shall identify the deficiencies in the application which, if cured, would make the application complete. The application shall be deemed complete on resubmission if the additional materials cure the deficiencies identified.

(4) The permit application shall be processed on a nondiscriminatory basis and shall be deemed approved if the city fails to approve or deny the application within forty five (45) days from the time the application is deemed complete or a mutually agreed upon timeframe between the city and the applicant.

(5) A city may deny an application only on the basis that it does not meet the city's applicable codes; local code provisions or regulations that concern public safety, objective design standards for decorative utility poles, city utility poles, or reasonable and nondiscriminatory stealth and concealment requirements, including screening or landscaping for ground-mounted equipment; public safety and reasonable spacing requirements concerning the location of ground-mounted equipment in a right-of-way; or the historic preservation requirements in subsection 160A-400.55(h). The city must (i) document the basis for a denial, including the specific code provisions on which the denial was based, and (ii) send the documentation to the applicant on or before the day the city denies an application. The applicant may cure the deficiencies identified by the city and resubmit the application within thirty (30) days of the denial without paying an additional application fee. The city shall approve or deny the revised application within thirty (30) days of the date of which the application was resubmitted. Any subsequent review shall be limited to the deficiencies cited in the prior denial.

(6) An application must include an attestation that the small wireless facilities shall be collocated on the utility pole, city utility pole, or wireless support structure and that the small wireless facilities shall be activated for use by a wireless services provider to provide service no later than one year from the permit issuance date, unless the city and the wireless provider agree to extend this period or a delay is caused by a lack of commercial power at the site.

(7) An applicant seeking to collocate small wireless facilities at multiple locations within the jurisdiction of a city shall be allowed at the applicant's discretion to file a consolidated application for no more than twenty five (25) separate facilities and receive a single permit for the collocation of all the small wireless facilities meeting the requirements of this section. A city may remove small wireless facility collocations from a consolidated application and treat separately small wireless facility collocations for which (i) incomplete information has been provided, (ii) that do not qualify for consolidated treatment, or (iii) that are denied. The authority may issue a separate permit for each collocation that is approved.

(8) The permit may specify that collocation of the small wireless facility shall commence within six (6) months of approval and shall be activated for use no later than one year from the permit issuance date, unless the authority and the wireless provider agree to extend this period or a delay is caused by a lack of commercial power at the site.

(e) A city may charge an application fee that shall not exceed the lesser of (i) the actual, direct and reasonable costs to process and review applications for collocated small wireless facilities; (ii) the amount charged by the city for permitting of any similar activity; or (iii) one hundred dollars ($100.00) per facility for the first five small wireless facilities addressed in an application, plus fifty dollars ($50.00) for each additional small wireless facility addressed in the application. In any dispute concerning the appropriateness of a fee, the city has the burden of proving that the fee meets the requirements of this subsection.

(f) A city may impose a technical consulting fee for each application, not to exceed five hundred dollars ($500.00), for technical consultation to offset the cost of reviewing and processing applications required by this section. The fee must be based on the actual, direct, and reasonable administrative costs incurred for the review, processing, and approval of an application. A city may engage a third-party consultant for technical consultation and the review of an application. The fee imposed by a city for the review of the application shall not be used for either of the following:

(1) Travel expenses incurred in a third party's review of a collocation application.

(2) Direct payment or reimbursement for a consultant or other third party based on a contingent fee basis or results-based arrangement.

In any dispute concerning the appropriateness of a fee, the city has the burden of proving that the fee meets the requirements of this subsection.

(g) A city may require a wireless services provider to remove an abandoned wireless facility within one hundred and eighty (180) days of abandonment. Should the wireless services provider fail to timely remove the abandoned wireless facility, the city may cause such wireless facility to be removed and may recover the actual cost of such removal, including legal fees, if any, from the wireless services provider. For purposes of this subsection, a wireless facility shall be deemed abandoned at the earlier of the date that the wireless services provider indicates that it is abandoning such facility or the date that is one hundred and eighty (180) days after the date that such wireless facility ceases to transmit a signal, unless the wireless services provider gives the city reasonable evidence that it is diligently working to place such wireless facility back in service.

(h) A city shall not require an application or permit for (i) routine maintenance; (ii) the replacement of wireless facilities with wireless facilities that are the same size or smaller; or (iii) installation, placement, maintenance, or replacement of micro wireless facilities that are suspended on cables strung between existing utility poles or city utility poles in compliance with applicable codes by or for a communications service provider authorized to occupy the rights-of-way and who is remitting taxes under G.S. 105-164.4(a)(6) or G.S. 105-164.4(a)(4c).

(i) Nothing in this section shall prevent a city from requiring a work permit for work that involves excavation, affects traffic patterns, or obstructs vehicular traffic in the city right-of-way.

"**§ 160A-400.55. Use of public right-of-way.**

(a) A city shall not enter into an exclusive arrangement with any person for use of city rights-of-way for the construction, operation, marketing, or maintenance of wireless facilities or wireless support structures, or the collocation of small wireless facilities.

(b) Subject to the requirements of G.S. 160A-400.54, a wireless provider may collocate small wireless facilities along, across, upon, or under any city right-of-way. Subject to the requirements of this section, a wireless provider may place, maintain, modify, operate, or replace associated utility poles, city utility poles, conduit, cable, or related appurtenances and facilities along, across, upon, and under any city right-of-way. The placement, maintenance, modification, operation, or replacement of utility poles and city utility poles associated with the collocation of small wireless facilities, along, across, upon, or under any city right-of-way shall

be subject only to review or approval under subsection (d) of G.S. 160A-400.54 if the wireless provider meets all the following requirements:

(1) Each new utility pole and each modified or replacement utility pole or city utility pole installed in the right-of-way shall not exceed fifty (50) feet above ground level.

(2) Each new small wireless facility in the right-of-way shall not extend more than ten (10) feet above the utility pole, city utility pole or wireless support structure on which it is collocated.

(c) Nothing in this section shall be construed to prohibit a city from allowing utility poles, city utility poles, or wireless facilities that exceed the limits set forth in subdivision (1) of subsection (b) of this section.

(d) Applicants for use of a city right-of-way shall comply with a city's undergrounding requirements prohibiting the installation of above-ground structures in the rights-of-way without prior zoning approval, if those requirements (i) are nondiscriminatory with respect to type of utility, (ii) do not prohibit the replacement of structures existing at the time of adoption of the requirements, and (iii) have a waiver process.

(e) A city may only charge a wireless provider for the use of a city right-of-way to construct, collocate, install, mount, maintain, modify, operate, or replace a utility pole, wireless facility, or city utility pole if the city charges other communications service providers or publicly, cooperatively, or municipally owned utilities for similar uses of the right-of-way, to the extent allowed under G.S. 160A-296. Charges authorized by this section shall meet all of the following requirements:

(1) The right-of-way charge shall not exceed the direct and actual cost of managing the rights-of-way and shall not be based on the wireless provider's revenue or customer counts.

(2) The right-of-way charge shall not exceed that imposed on other users of the right-of-way, including publicly, cooperatively, or municipally owned utilities.

(3) The right-of-way charge shall be reasonable and nondiscriminatory.

Nothing in this subsection is intended to establish or otherwise affect rates charged for attachments to utility poles, city utility poles, or wireless support structures. At its discretion, a city may provide free access to city rights-of-way on a nondiscriminatory basis in order to facilitate the public benefits of the deployment of wireless services.

(f) Nothing in this section is intended to authorize a person to collocate small wireless facilities on a privately owned utility pole, a privately owned wireless support structure, or other private property without the consent of the property owner.

(g) A city may require a wireless provider to repair all damage to a city right-of-way directly caused by the activities of the wireless provider, while occupying, installing, repairing, or maintaining wireless facilities, wireless support structures, city utility poles, or utility poles, and to return the right-of-way to its functional equivalence before the damage. If the wireless provider fails to make the repairs required by the city within a reasonable time after written notice, the city may undertake those repairs and charge the applicable party the reasonable and documented cost of the repairs. The city may maintain an action to recover the costs of the repairs.

(h) This section shall not be construed to limit local government authority to enforce historic preservation zoning regulations consistent with Part 3C of Article 19 of this Chapter of the General Statutes, the preservation of local zoning authority under 47 U.S.C. § 332(c)(7), the requirements for facility modifications under 47 U.S.C. § 1455(a), or the National Historic Preservation Act of 1966, 54 U.S.C. § 300101 et seq., as amended, and the regulations, local acts, and city charter provisions adopted to implement those laws.

(i) A wireless provider may apply to an authority to place utility poles in the public rights-of-way, or to replace or modify utility poles or city utility poles in the public rights-of way, to support the collocation of small wireless facilities. A city shall accept and process the application in accordance with the provisions of G.S. 160A-400.54(d), applicable codes, and other local codes governing the placement of utility poles or city utility poles in the public rights-of-way, including provisions or regulations that concern public safety, objective design standards for decorative utility poles or city utility poles, or reasonable and nondiscriminatory stealth and concealment requirements, including those relating to screening or landscaping, or public safety and reasonable spacing requirements. The application may be submitted in conjunction with the associated small wireless facility application.

"**§ 160A-400.56. Access to city utility poles.**

(a) A city may not enter into an exclusive arrangement with any person for the right to collocate on city utility poles. A city shall allow any wireless provider to collocate on its city utility poles at just, reasonable, and nondiscriminatory rates, terms, and conditions adopted pursuant to negotiated or adjudicated agreements, but in no instance may the rate exceed thirty-five dollars ($35.00) per city utility pole per year. A request to collocate 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 city to be reimbursed by the wireless provider. In granting a request under this section, a city 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.

(b) If a city that operates a public enterprise as permitted by Article 16 of this Chapter has an existing city utility pole attachment rate, fee, or other term with an entity, then, subject to termination provisions, that attachment rate, fee, or other term shall apply to collocations by that entity or its related entities on city utility poles.

(c) Following receipt of the first request from a wireless provider to collocate on a city utility pole, a city shall, within 60 days, establish the rates, terms, and conditions for the use of or attachment to the city utility poles that it owns or controls. Upon request, a party shall state in writing its objections to any proposed rate, terms, and conditions of the other party.

(d) In any controversy concerning the appropriateness of a rate for a collocation attachment to a city utility pole, the city has the burden of proving that the rates are reasonably related to the actual, direct, and reasonable costs incurred for use of space on the pole for such period.

(e) The city shall provide a good faith estimate for any make-ready necessary to enable the city utility pole to support the requested collocation, including pole replacement if necessary, within 60 days after receipt of a complete application. Make-ready work, including any pole replacement, shall be completed within 60 days of written acceptance of the good faith estimate by the applicant. For purposes of this section, the term "make-ready work" means any modification or replacement of a city utility pole necessary for the city utility pole to support a small wireless facility in compliance with applicable safety requirements, including the National Electrical Safety Code, that is performed in preparation for a collocation installation.

(f) The city shall not require more make-ready work than that required to meet applicable codes or industry standards. Fees for make-ready work shall not include costs related to pre-existing or prior damage or noncompliance. Fees for make-ready work, including any pole replacement, shall not exceed actual costs or the amount charged to other communications service providers for similar work and shall not include any consultant fees or expenses.

(g) Nothing in this section shall be construed to apply to an entity whose poles, ducts, and conduits are subject to regulation under section 224 of the Communications Act of 1934, 47 U.S.C. § 151 et. seq., as amended or under G.S. 62-350.

(h) Nothing in this section shall be construed in any way to apply to a municipal electric provider or a membership corporation organized under Chapter 117 of the General Statutes, that owns or controls poles, ducts or conduits, but which is exempt from regulation under section 224 of the Communications Act of 1934. Nor does it affect the authority of an electric membership corporation or municipality organized under Chapter 117 of the General Statutes to deny, limit, restrict or determine the rates, fees, terms and conditions for the use of or attachment to its utility poles or wireless support structures by a wireless provider. Any rates, terms, or conditions for the use of such poles, ducts or conduits are governed by G.S. 62-350.

"**§ 160A-400.57. Applicability.**

(a) A city shall not adopt or enforce any ordinance, rule, regulation, or resolution that regulates the design, engineering, construction, installation, or operation of any small wireless facility located in an interior structure or upon the site of any stadium or athletic facility. This subsection does not apply to a stadium or athletic facility owned or otherwise controlled by the city. This subsection does not prohibit the enforcement of applicable codes.

(b) Nothing contained in this Part shall amend, modify, or otherwise affect any private easement. Any and all rights for the use of a right-of-way are subject to the rights granted pursuant to a private easement."

SECTION 3.(a) G.S. 136-18 reads as rewritten:

"**§ 136-18. Powers of Department of Transportation.**

...

(10) To make proper and reasonable rules, regulations and ordinances for the placing or erection of telephone, telegraph, electric and other lines, above or below ground, wireless facilities, signboards, fences, gas, water, sewerage, oil, or other pipelines, and other similar obstructions that may, in the opinion of the Department of Transportation, contribute to the hazard upon any of the said highways or in any way interfere with the same, and to make reasonable rules and regulations for the proper control thereof. And whenever the order of the said Department of Transportation shall require the removal of, or changes in, the location of telephone, telegraph, electric or other lines, wireless facilities, signboards, fences, gas, water, sewerage, oil, or other pipelines, or other similar obstructions, the owners thereof shall at their own expense, except as provided in G.S. 136-19.5(c), move or change the same to conform to the order of said Department of Transportation. Any violation of such rules and regulations or noncompliance with such orders shall constitute a Class 1 misdemeanor. For purposes of this subdivision, "wireless facilities" shall have the definition set forth in G.S. 160A-400.51.

...."

SECTION 3.(b) Article 2 of Chapter 136 of the General Statutes is amended by adding a new section to read:

"**§ 136-18.3A. Wireless communications infrastructure.**

(a) The definitions set forth in G.S. 160A-400.51 shall apply to this section.

(b) The Department of Transportation is authorized to issue permits to wireless providers for the collocation of wireless facilities and the construction, operation, modification, or maintenance of utility poles, wireless support structures, conduit, cable, and related appurtenances and facilities for the provision of wireless services along, across, upon, or under the rights-of-way of State-maintained highways. The permits and included requirements shall be issued and administered in a reasonable and nondiscriminatory manner.

(c) The Department of Transportation shall take action to approve or deny a permit application under this section within 60 days of receiving the application from a wireless provider.

(d) The collocation of small wireless facilities and the construction, operation, modification, or maintenance of utility poles, wireless support structures, conduit, cable, and related appurtenances and facilities for the provision of small wireless facilities along, across, upon, or under the rights-of-way of State-maintained highways shall be subject to all of the following requirements:

(1) The structures and facilities shall not obstruct or hinder the usual travel or public safety on any rights of way of State-maintained highways or obstruct the legal use of such rights-of-way by other utilities.

(2) Each new or modified utility pole and wireless support structure installed in the right-of-way of State-maintained highways shall not exceed the greater of (i) 10 feet in height above the height of the tallest existing utility pole, other than a utility pole supporting only wireless facilities, in place as July 1, 2017, located within 500 feet of the new pole in the same rights of way or (ii) 50 feet above ground level.

(3) Each new small wireless facility in the right-of-way shall not extend (i) more than 10 feet above an existing utility pole, other than a utility pole supporting only wireless facilities, or wireless support structure in place as of July 1, 2017; or (ii) above the height permitted for a new utility pole or wireless support structure under this section."

SECTION 4. Except as otherwise provided, this act is effective when it becomes law.

HOUSE BILL 310:
Wireless Communications Infrastructure Siting.

2017-2018 General Assembly

Committee:	House Energy and Public Utilities. If favorable, re-refer to Finance	**Date:**	May 10, 2017
Introduced by:	Reps. Saine, Torbett, Wray	**Prepared by:**	Layla Cummings Committee Counsel
Analysis of:	PCS to First Edition H310-CSTSf-5		

OVERVIEW: The Proposed Committee Substitute (PCS) to House Bill 310 would amend the laws relating to regulation by cities of wireless infrastructure siting with regard to the collocation of small wireless facilities on utility poles, city utility poles, and public rights-of-way.

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

CURRENT LAW: Article 19 of Chapter 160A and Article 18 of Chapter 153A of the General Statutes provides for local government regulation of the equipment and network components necessary to provide wireless service and new or existing structures designed to support wireless facilities.

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

BILL ANALYSIS:

Section 1 of the PCS would provide that the General Assembly finds that small wireless facilities, including facilities commonly referred to as small cells and distributed antenna systems, may be deployed most effectively in the public rights-of-way.

Section 2 of the PCS would amend Part 3E of Article 19 Chapter 160A to provide for the regulation of the siting and collocation of small wireless facilities by cities and it would clarify that a city cannot require the construction of wireless facilities or regulate wireless services beyond the authority granted in the Part.

Small wireless facilities would be defined as a wireless facility with both of the following: (i) antenna within an enclosure of no more than 6 cubic feet in volume; and (2) other wireless equipment associated with the small wireless facility of no more than 28 cubic feet in volume. This section would amend the definitions of application, collocation, utility pole, and wireless facility to include small wireless facilities.

Permitting of Small Wireless Facilities by Cities

G.S. 160A-400.54 would prohibit a city from establishing a moratorium on accepting applications, issuing permits, or otherwise regulating the collocation of small wireless facilities except as provided in this section.

A city would be authorized to require a permit for a wireless provider to collocate small wireless facilities within the city's jurisdiction. A city could require a permit for the collocation of small wireless facilities subject to the following conditions:

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

A city may review the permit and deny it only on one of the following basis:

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

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

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

Use of the City Right-of-Way

G.S. 160A-400.55 would: (i) prohibit a city from entering into an exclusive arrangement with any person for the use of the city right-of-way for wireless facilities, wireless support structures, or the collocation of small wireless facilities; and (ii) allow a wireless provider to collocate small wireless facilities in the city rights-of-way.

If the wireless provider seeks to install or modify a utility pole associated with the collocation of a small cell wireless facility and it meets the following height restrictions, the facility would only be subject to the permitting requirements set forth above: (i) new or modified utility poles or city poles not to exceed 50 feet; and (ii) collocated small wireless facilities do not extend more than 10 feet off the top of the structure. The city may, however, allow wireless facilities that exceed those height restrictions at the city's discretion.

Applicants for use of the city right-of-way would have to comply with the city's undergrounding requirements.

A city may charge a wireless provider for the use of the right-of-way. The charge must be reasonable and nondiscriminatory and must not exceed the direct and actual cost of managing the rights-of-way and shall not be based on the wireless provider's revenue or customer counts. The charge must not exceed similar charges imposed on other users of the right-of-way, including publicly, cooperatively, or municipally owned utilities.

This section would allow a city to require a wireless provider to repair any damage to the city right-of-way caused while installing or maintaining wireless facilities or other associated facilities. If the wireless provider fails to make those repairs, the city may charge the provider the reasonable cost of the repairs.

This section would not limit the enforcement of federal, State, or local historic preservation zoning requirements.

Access to City Utility Poles

G.S. 160A-400.56 would prohibit a city from entering into an exclusive arrangement with any person for the use of the city utility poles. A city must allow a wireless provider to collocate on utility poles at just, reasonable and non-discriminatory rates, not to exceed $35 per a city utility pole per year. The wireless provider seeking to collocate must comply with all applicable safety requirements, including the National Electric Safety Code and rules and regulations of the Occupational Safety and Health Administration.

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

The provisions of this section would not apply to investor owned utilities, electric cooperatives, telephone cooperatives, and municipal electric service providers.

Applicability

G.S. 160A-400.56 would prohibit a city from regulating small wireless facilities within any stadium or athletic facility, unless the city owns the stadium or athletic facility. This section would also clarify that nothing in the Part would amend, modify, or otherwise affect any private easement agreement.

Section 3 of the PCS concerns the regulation of wireless facilities in the State rights-of-way. This section would add the placement of wireless facilities to the list of allowable activities in the State rights-of-way and would authorize the Department of Transportation to issue permits for the collocation of wireless facilities in the rights-of-way of State-maintained highways. The Department would be required to approve or deny permits within 60 days of receiving an application.

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

- The facilities could not obstruct or hinder the usual travel or public safety on any rights-of-way of State-maintained highways or obstruct the legal use of such rights-of-way by other utilities.
- Each new or modified utility pole and wireless support structure installed in the right-of-way of State-maintained highways shall not exceed the greater of (i) 10 feet in height above the height of the tallest existing utility pole, in place as July 1, 2017, located within 500 feet of the new pole in the same rights-of-way, or (ii) 50 feet above ground level.

- Each new small wireless facility in the right-of-way shall not extend (i) more than 10 feet above an existing utility pole or wireless support structure in place as of July 1, 2017, or (ii) above the height permitted for a new utility pole or wireless support structure under this section.

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

HOUSE BILL 310

Short Title:	Wireless Communications Infrastructure Siting.	(Public)
Sponsors:	Representatives Saine, Torbett, and Wray (Primary Sponsors). *For a complete list of sponsors, refer to the North Carolina General Assembly web site.*	
Referred to:	Energy and Public Utilities, if favorable, Finance	

March 13, 2017

A BILL TO BE ENTITLED

AN ACT TO REFORM WIRELESS COMMUNICATIONS INFRASTRUCTURE LICENSING AND PERMITTING TO AID IN DEPLOYMENT OF NEW TECHNOLOGIES.

The General Assembly of North Carolina enacts:

SECTION 1. The General Assembly finds the following:

(1) The design, engineering, permitting, construction, modification, maintenance, and operation of wireless facilities are instrumental to the provision of emergency services and to increasing access to advanced technology and information for the citizens of North Carolina.

(2) Cities and counties play a key role in facilitating the use of the public rights-of-way.

(3) Wireless services providers and wireless infrastructure providers must have access to the public rights-of-way and the ability to attach to poles and structures in the public rights-of-way to densify their networks and provide next generation services.

(4) Small wireless facilities, including facilities commonly referred to as small cells and distributed antenna systems, often may be deployed most effectively in the public rights-of-way.

(5) Therefore, expeditious processes and reasonable and nondiscriminatory rates, fees, and terms related to such deployments are essential to the construction and maintenance of wireless facilities.

(6) Wireless facilities help ensure the State remains competitive in the global economy.

(7) The timely design, engineering, permitting, construction, modification, maintenance, and operation of wireless facilities are matters of statewide concern and interest.

SECTION 2.(a) G.S. 160A-400.51(4a) is recodified as G.S. 160A-400.51(4b).

SECTION 2.(b) G.S. 160A-400.51(7a) is recodified as G.S. 160A-400.51(7b).

SECTION 2.(c) Part 3E of Article 19 of Chapter 160A of the General Statutes, as amended by subsections (a) and (b) of this section, reads as rewritten:

"Part 3E. Wireless Telecommunications Facilities.

"**§ 160A-400.50. Purpose and compliance with federal law.**

...

(c) This Part shall not be construed to authorize a city to require the construction or installation of wireless facilities or to regulate wireless services other than as set forth herein.

"**§ 160A-400.51. Definitions.**

The following definitions apply in this Part.

(1) Antenna. – Communications equipment that transmits, receives, or transmits and receives electromagnetic radio signals used in the provision of all types of wireless communications services.

(1a) Applicable codes. – The North Carolina State Building Code and any other uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization together with State or local amendments to those codes enacted solely to address imminent threats of destruction of property or injury to persons.

(2) Application. – A formal request submitted to the city to construct or modify a wireless support structure or a wireless facility.

(2a) Base station. – A station at a specific site authorized to communicate with mobile stations, generally consisting of radio receivers, antennas, coaxial cables, power supplies, and other associated electronics.

(3) Building permit. – An official administrative authorization issued by the city prior to beginning construction consistent with the provisions of G.S. 160A-417.

(3a) City right-of-way. – A right-of-way owned, leased, or operated by a city, including any public street or alley that is not a part of the State highway system.

(3b) City utility pole. – A utility pole owned or operated by a city in the right-of-way of any public street or alley that is not a part of the State highway system.

(4) Collocation. – The ~~placement or installation~~ placement, installation, maintenance, modification, operation, or replacement of wireless facilities ~~on~~ on, under, within, or on the surface of the earth adjacent to existing structures, including electrical transmission towers, water towers, buildings, and other structures capable of structurally supporting the attachment of wireless facilities in compliance with applicable codes.

(4a) Communications service provider. – A cable operator, as defined in 47 U.S.C. § 522(5); a provider of information service, as defined in 47 U.S.C. § 153(24); a telecommunications carrier, as defined in 47 U.S.C. § 153(51); or a wireless provider.

(4b) Eligible facilities request. – A request for modification of an existing wireless tower or base station that involves collocation of new transmission equipment or replacement of transmission equipment but does not include a substantial modification.

(5) Equipment compound. – An area surrounding or near the base of a wireless support structure within which a wireless facility is located.

(5a) Fall zone. – The area in which a wireless support structure may be expected to fall in the event of a structural failure, as measured by engineering standards.

(6) Land development regulation. – Any ordinance enacted pursuant to this Part.

(7) Search ring. – The area within which a wireless support facility or wireless facility must be located in order to meet service objectives of the wireless service provider using the wireless facility or wireless support structure.

(7a) Small wireless facility. – A wireless facility that meets both of the following qualifications:

a. Each antenna is located inside an enclosure of no more than six cubic feet in volume or, in the case of an antenna that has exposed elements,

the antenna and all of its exposed elements, if enclosed, could fit within an enclosure of no more than six cubic feet.

b. All other wireless equipment associated with the facility has a cumulative volume of no more than 28 cubic feet. For purposes of this sub-subdivision, the following types of ancillary equipment are not considered "associated with the facility" and therefore are excluded from the calculation of cumulative volume: electric meters, concealment elements, telecommunications demarcation boxes, ground-based enclosures, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection of power and other services.

(7b) Substantial modification. – The mounting of a proposed wireless facility on a wireless support structure that substantially changes the physical dimensions of the support structure. A mounting is presumed to be a substantial modification if it meets any one or more of the criteria listed below. The burden is on the local government to demonstrate that a mounting that does not meet the listed criteria constitutes a substantial change to the physical dimensions of the wireless support structure.

a. Increasing the existing vertical height of the structure by the greater of (i) more than ten percent (10%) or (ii) the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet.

b. Except where necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable, adding an appurtenance to the body of a wireless support structure that protrudes horizontally from the edge of the wireless support structure the greater of (i) more than 20 feet or (ii) more than the width of the wireless support structure at the level of the appurtenance.

c. Increasing the square footage of the existing equipment compound by more than 2,500 square feet.

(8) Utility pole. – A structure that is designed for and used to carry lines, cables, or wires for telephone, cable television, or electricity, or to provide ~~lighting.~~lighting, traffic control, signage, or a similar function.

(8a) Water tower. – A water storage tank, a standpipe, or an elevated tank situated on a support structure originally constructed for use as a reservoir or facility to store or deliver water.

(9) Wireless facility. – ~~The set of equipment and network components, exclusive of the underlying wireless support structure or tower, including antennas, transmitters, receivers, base stations, power supplies, cabling, and associated equipment necessary to provide wireless data and wireless telecommunications services to a discrete geographic area.~~Equipment at a fixed location that enables wireless communications between user equipment and a communications network, including (i) equipment associated with wireless communications and (ii) radio transceivers, antennas, wires, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration. The term includes small wireless facilities but does not include any structure or improvements on, under, within, or adjacent to which the equipment is collocated.

(9a) Wireless infrastructure provider. – Any person with a certificate to provide telecommunications service in the State who builds or installs wireless

communication transmission equipment, wireless facilities, or wireless support structures but that does not provide wireless services.

(9b) Wireless provider. – A wireless infrastructure provider or a wireless services provider.

(9c) Wireless services. – Any services, whether at a fixed location or mobile, provided using wireless facilities.

(9d) Wireless services provider. – A person who provides wireless services.

(10) Wireless support structure. – A new or existing structure, such as a monopole, lattice tower, or guyed tower that is designed to support or capable of supporting wireless facilities. A utility pole is not a wireless support structure.

...

"**§ 160A-400.54. Collocation of small wireless facilities.**

(a) Except as expressly provided in this Part, a city may not prohibit, regulate, or charge for the collocation of small wireless facilities.

(b) A city may not institute, either expressly or in practice, a moratorium on (i) filing, receiving, or processing applications or (ii) issuing permits or any other approvals for the collocation of small wireless facilities.

(c) Small wireless facilities shall be classified as permitted uses and not subject to zoning review or approval authorized by Article 19 of this Chapter if they are collocated (i) in a city right-of-way within any zoning district or (ii) outside of rights-of-way on any property other than property zoned exclusively for single-family residential use.

(d) A city may require an applicant to obtain a building permit to collocate a small wireless facility, provided the permit is of general applicability and does not apply exclusively to wireless facilities. A city shall receive applications for, process, and issue such permits subject to the following requirements:

(1) A city may not, directly or indirectly, require an applicant to perform services unrelated to the collocation for which approval is sought. For purposes of this subdivision, "services unrelated to the collocation," includes, but is not limited to, in-kind contributions to the city such as the reservation of fiber, conduit, or pole space for the city.

(2) An applicant shall not be required to provide more information to obtain a permit than communications service providers that are not wireless providers.

(3) Within 10 days of receiving an application, a city must determine and notify the applicant whether the application is complete. If an application is incomplete, a city must specifically identify the missing information.

(4) The permit application shall be processed on a nondiscriminatory basis and shall be deemed approved if the city fails to approve or deny the application within 60 days.

(5) A city may deny an application only on the basis that it does not meet the city's applicable codes. The city must (i) document the basis for a denial, including the specific code provisions on which the denial was based, and (ii) send the documentation to the applicant on or before the day the city denies an application. The applicant may cure the deficiencies identified by the city and resubmit the application within 30 days of the denial without paying an additional application fee. The city shall approve or deny the revised application within 30 days. Any subsequent review shall be limited to the deficiencies cited in the prior denial.

(6) An applicant seeking to collocate small wireless facilities at multiple locations within the jurisdiction of a city shall be allowed at the applicant's discretion to file a consolidated application and receive a single permit for the collocation of all the small wireless facilities meeting the requirements of this section.

(7) The permit may specify that collocation of the small wireless facility shall commence within one year of approval and shall be pursued to completion. The permit may not place a time limitation on completion of the small wireless facility and shall remain in effect until the applicant requests that the permit be terminated.

(e) The city may charge a fee to offset the cost of reviewing and processing applications required by this section, subject to the following limitations:

(1) A city may charge an application fee only if a fee is required for other similar activities within the city's jurisdiction.

(2) The fee shall be reasonably related in time to the incurring of such costs.

(3) A fee may not include (i) travel expenses incurred by a third party in its review of an application or (ii) direct payment or reimbursement of third-party rates or fees charged under a contingency or result-based arrangement.

(4) In any dispute concerning the appropriateness of a fee, the city shall have the burden of proving that the fee meets the requirements of this subsection.

(5) The total application fee shall not exceed the lesser of (i) the actual, direct and reasonable costs to process and review applications for collocated small wireless facilities, (ii) the amount charged by the city for a building permit for any similar activity, and (iii) one hundred dollars ($100.00) per facility for the first five small wireless facilities addressed in an application plus fifty dollars ($50.00) for each additional small wireless facility addressed in the application.

(f) A city shall not require an application for (i) routine maintenance or (ii) the replacement of wireless facilities with wireless facilities that are substantially similar or the same size or smaller. Provided, however, that a city may require a permit to work within a city right-of-way for such activities, if applicable. Any such permits shall be subject to the requirements provided in subsections (d) and (e) of this section.

"**§ 160A-400.55. Use of public right-of-way.**

(a) This section shall apply to activities of a wireless provider within any city right-of-way.

(b) A city shall not enter into an exclusive arrangement with any person for use of city rights-of-way for the construction, operation, marketing, or maintenance of wireless facilities or wireless support structures or the collocation of small wireless facilities.

(c) The collocation of wireless facilities and the construction, operation, modification, or maintenance of utility poles, wireless support structures, conduit, cable, and related appurtenances and facilities along, across, upon, and under any city right-of-way shall not be subject to zoning review or approval authorized by Article 19 of this Chapter if the wireless provider wishing to undertake the collocation meets the following requirements:

(1) The wireless provider completes an application as specified in form and content by the city.

(2) The structures and facilities do not obstruct or hinder the usual travel or public safety on any rights-of-way or obstruct the legal use of such rights-of-way by other utilities.

(3) Each new or modified utility pole and wireless support structure installed in the right-of-way does not exceed the greater of (i) 10 feet in height above the height of the tallest existing utility pole in place as July 1, 2017, located within 500 feet of the new pole in the same rights-of-way or (ii) 50 feet above ground level.

(4) Each new wireless facility in the right-of-way does not extend (i) more than 10 feet above an existing utility pole or wireless support structure in place as of July 1, 2017, or (ii) above the height permitted for a new utility pole or wireless support structure under this section.

(d) A city may not prohibit the construction, modification, or maintenance of utility poles, wireless support structures, or wireless facilities that exceed the limits set forth in subdivision (3) of subsection (c) of this section if those structures and facilities comply with applicable zoning requirements for the site.

(e) Applicants for use of a city right-of-way shall comply with a city's undergrounding requirements prohibiting communications service providers from installing structures in the rights-of-way without prior zoning approval in areas zoned for single-family residential use, if those requirements (i) are nondiscriminatory with respect to type of utility and (ii) do not prohibit the replacement of structures existing at the time of adoption of the requirements.

(f) A city may charge a wireless provider for the use of a city right-of-way to construct, collocate, install, mount, maintain, modify, operate, or replace a wireless facility or wireless support structure if the city charges other communications service providers or publicly, cooperatively, or municipally owned utilities for similar uses of the right-of-way. Charges authorized by this section shall meet all of the following requirements:

(1) The charge shall not exceed the direct and actual cost of managing the rights-of-way and shall not be based on the wireless provider's revenue or customer counts. The city may not impose a charge if existing rates, fees, or taxes already recover the direct and actual costs of managing the rights-of-way.

(2) The charge shall not exceed that imposed on other users of the right-of-way, including investor, city, or cooperatively owned entities.

(3) The charge shall not be unreasonable, discriminatory, or violate any applicable law.

(4) In the case of collocation of small wireless facilities under G.S. 160A-400.54, the charge shall not exceed an annual amount equal to twenty dollars ($20.00) for each utility pole or wireless support structure in the city's corporate limits on which the wireless provider has collocated a small wireless facility antenna.

Nothing in this subsection is intended to prevent a city from providing free access to city rights-of-way on a nondiscriminatory basis in order to facilitate the public benefits of the deployment of wireless services.

(g) A city may require a wireless provider to repair all damage to a city right-of-way directly caused by the activities of the wireless provider, while occupying, installing, repairing, or maintaining wireless facilities, wireless support structures, or utility poles and to return the right-of-way to its functional equivalence before the damage. If the wireless provider fails to make the repairs required by the city within a reasonable time after written notice, the city may undertake those repairs and charge the applicable party the reasonable and documented cost of the repairs.

"**§ 160A-400.56. Dispute resolution.**

In the event a wireless provider and a city are unable to reach an agreement on fees or charges arising under this Part, either party may initiate proceedings to resolve the dispute before the Utilities Commission as set forth in G.S. 62-350(c). Unless the wireless provider and the city otherwise agree, the city shall allow the placement of a wireless facility or wireless support structure at a temporary rate of one-half of a city-proposed annual fee or charge or twenty dollars ($20.00), whichever is less, pending resolution of the dispute.

"**§ 160A-400.57. Limitation of authority.**

A city shall not adopt or enforce any ordinance, rule, regulation, or resolution that does any of the following:

(1) Regulates the design, engineering, construction, installation, or operation of any small wireless facility located in an interior structure or upon the site of any stadium or athletic facility. The prohibition set forth in this subdivision does not apply (i) if the city owns or otherwise controls the stadium or athletic facility or (ii) to the enforcement of applicable codes.

(2) Requires a wireless provider to (i) indemnify and hold harmless the city and its officers and employees or (ii) obtain insurance policies naming the city and its officers and employees as additional insureds against any claims, lawsuits, judgments, costs, liens, losses, expenses, or fees related to the installation, repair, or maintenance of wireless facilities."

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

"**§ 62-350. Regulation of pole attachments.**

...

(c) In the event the parties are unable to reach an agreement within 90 days of matters arising under Part 3E of Article 19 of Chapter 160A of the General Statutes or 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 initiate proceedings to resolve the dispute before the Commission. The Commission shall have exclusive jurisdiction over 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 filings the issues in 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 filings consistent with the public interest and necessity so as to derive just and reasonable rates, terms, and 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 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 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 proceeding brought under this subsection, the 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.

...

(e) For purposes of this section, the term "communications service provider" means a person or entity that provides or intends to provide: (i) telephone service as a public utility under Chapter 62 of the General Statutes or as a telephone membership corporation organized under Chapter 117 of the General Statutes; (ii) broadband service, but excluding broadband service over energized electrical conductors owned by a municipality or membership corporation; ~~or~~ (iii) cable service over a cable system as those terms are defined in Article 42 of Chapter 66 of the General ~~Statutes.~~Statutes; or (iv) services as a wireless provider as defined in G.S. 160A-400.51.

...."

SECTION 2.(e) This section becomes effective July 1, 2017, and applies to applications for wireless communications infrastructure received by cities on or after that date. Any charge imposed by a city on wireless providers for use of rights-of-way owned, leased, or operated by a city to construct, collocate, install, mount, maintain, modify, operate, or replace a wireless facility or wireless support structure shall comply with the requirements of G.S. 160A-400.55, as enacted by this subsection (c) of this section, no later than January 1, 2018.

SECTION 3.(a) G.S. 136-18 reads as rewritten:

"**§ 136-18. Powers of Department of Transportation.**

...

(10) To make proper and reasonable rules, regulations and ordinances for the placing or erection of telephone, telegraph, electric and other lines, above or below ground, wireless facilities, signboards, fences, gas, water, sewerage, oil, or other pipelines, and other similar obstructions that may, in the opinion of the Department of Transportation, contribute to the hazard upon any of the said highways or in any way interfere with the same, and to make reasonable rules and regulations for the proper control thereof. And whenever the order of the said Department of Transportation shall require the removal of, or changes in, the location of telephone, telegraph, electric or other lines, wireless facilities, signboards, fences, gas, water, sewerage, oil, or other pipelines, or other similar obstructions, the owners thereof shall at their own expense, except as provided in G.S. 136-19.5(c), move or change the same to conform to the order of said Department of Transportation. Any violation of such rules and regulations or noncompliance with such orders shall constitute a Class 1 misdemeanor. For purposes of this subdivision, "wireless facilities" shall have the definition set forth in G.S. 160A-400.51.

...."

SECTION 3.(b) Article 2 of Chapter 136 of the General Statutes is amended by adding a new section to read:

"**§ 136-18.3A. Wireless communications infrastructure.**

(a) The definitions set forth in G.S. 160A-400.51 shall apply to this section.

(b) The Department of Transportation is authorized to issue permits to wireless providers for the collocation of wireless facilities and the construction, operation, modification, or maintenance of utility poles, wireless support structures, conduit, cable, and related appurtenances and facilities for the provision of wireless services along, across, upon, and under the rights-of-way of State-maintained highways. The permits and included requirements shall be issued and administered in a reasonable and nondiscriminatory manner.

(c) If the Department of Transportation does not take action to approve or deny a permit application under this section within 60 days of receiving the application from a wireless provider, the permit is deemed approved.

(d) The Department of Transportation may charge a wireless provider for the use of the rights-of-way of a State-maintained highway to construct, collocate, install, mount, maintain, modify, operate, or replace a wireless facility or wireless support structure if and to the same extent the Department of Transportation charges other communications service providers or publicly, cooperatively, or municipally owned utilities for similar uses of the right-of-way. Charges authorized by this subsection shall not exceed the direct and actual cost of managing the rights-of-way and shall not be based on the wireless provider's revenue or customer counts. The Department of Transportation may not impose a charge if existing rates, fees, or taxes already recover the direct and actual costs of managing the rights-of-way.

(e) The Department of Transportation may require a wireless provider to repair all damage to a right-of-way directly caused by the activities of the wireless provider, while occupying, installing, repairing, or maintaining wireless facilities, wireless support structures, or utility poles and to return the right-of-way to its functional equivalence before the damage. If the wireless provider fails to make the repairs required by the Department of Transportation within a reasonable time after written notice, the Department of Transportation may undertake those repairs and charge the applicable party the reasonable and documented cost of the repairs."

SECTION 4. Except as otherwise provided, this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H D

HOUSE BILL 310
PROPOSED COMMITTEE SUBSTITUTE H310-CSTSf-5 [v.6]
05/10/2017 11:41:45 AM

Short Title: Wireless Communications Infrastructure Siting. (Public)

Sponsors:

Referred to:

March 13, 2017

A BILL TO BE ENTITLED

AN ACT TO REFORM COLLOCATION OF SMALL WIRELESS COMMUNICATIONS INFRASTRUCTURE TO AID IN DEPLOYMENT OF NEW TECHNOLOGIES.

The General Assembly of North Carolina enacts:

SECTION 1. The General Assembly finds the following:

(1) The design, engineering, permitting, construction, modification, maintenance, and operation of wireless facilities are instrumental to the provision of emergency services and to increasing access to advanced technology and information for the citizens of North Carolina.

(2) Cities and counties play a key role in facilitating the use of the public rights-of-way.

(3) Wireless services providers and wireless infrastructure providers must have access to the public rights-of-way and the ability to attach to poles and structures in the public rights-of-way to densify their networks and provide next generation services.

(4) Small wireless facilities, including facilities commonly referred to as small cells and distributed antenna systems, often may be deployed most effectively in the public rights-of-way.

(5) Expeditious processes and reasonable and nondiscriminatory rates, fees, and terms related to such deployments are essential to the construction and maintenance of wireless facilities.

(6) Wireless facilities help ensure the State remains competitive in the global economy.

(7) The timely design, engineering, permitting, construction, modification, maintenance, and operation of wireless facilities are matters of statewide concern and interest.

SECTION 2.(a) G.S. 160A-400.51(4a) is recodified as G.S. 160A-400.51(4d).

SECTION 2.(b) G.S. 160A-400.51(7a) is recodified as G.S. 160A-400.51(7b).

SECTION 2.(c) Part 3E of Article 19 of Chapter 160A of the General Statutes, as amended by subsections (a) and (b) of this section, reads as rewritten:

"Part 3E. Wireless Telecommunications Facilities.

"**§ 160A-400.50. Purpose and compliance with federal law.**

...

(c) This Part shall not be construed to authorize a city to require the construction or installation of wireless facilities or to regulate wireless services other than as set forth herein.

"**§ 160A-400.51. Definitions.**

The following definitions apply in this Part.

(1) Antenna. – Communications equipment that transmits, receives, or transmits and receives electromagnetic radio signals used in the provision of all types of wireless communications services.

(1a) Applicable codes. – The North Carolina State Building Code and any other uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization together with State or local amendments to those codes enacted solely to address imminent threats of destruction of property or injury to persons.

(2) Application. – ~~A formal request submitted to the city to construct or modify a wireless support structure or a wireless facility.~~ A request that is submitted by an applicant to a city for a permit to collocate wireless facilities or to approve the installation, modification, or replacement of a utility pole, city utility pole, or wireless support structure.

(2a) Base station. – A station at a specific site authorized to communicate with mobile stations, generally consisting of radio receivers, antennas, coaxial cables, power supplies, and other associated electronics.

(3) Building permit. – An official administrative authorization issued by the city prior to beginning construction consistent with the provisions of G.S. 160A-417.

(3a) City right-of-way. – A right-of-way owned, leased, or operated by a city, including any public street or alley that is not a part of the State highway system.

(3b) City utility pole. – A pole owned by a city in the city right-of-way that provides lighting, traffic control, or a similar function.

(4) Collocation. – The ~~placement or installation~~ placement, installation, maintenance, modification, operation, or replacement of wireless facilities ~~on~~ on, under, within, or on the surface of the ground adjacent to existing structures, including ~~electrical transmission towers,~~utility poles, city utility poles, water towers, buildings, and other structures capable of structurally supporting the attachment of wireless facilities in compliance with applicable codes.

(4a) Communications facility. – The set of equipment and network components, including wires and cables and associated facilities used by a communications service provider to provide communications service.

(4b) Communications service. – Cable service as defined in 47 U.S.C. § 522(6), information service as defined in 47 U.S.C. § 153(24), telecommunications service as defined in 47 U.S.C. § 153(53), or wireless services.

(4c) Communications service provider. – A cable operator, as defined in 47 U.S.C. § 522(5); a provider of information service, as defined in 47 U.S.C. § 153(24); a telecommunications carrier, as defined in 47 U.S.C. § 153(51); or a wireless provider.

(4d) Eligible facilities request. – A request for modification of an existing wireless tower or base station that involves collocation of new transmission equipment or replacement of transmission equipment but does not include a substantial modification.

(5) Equipment compound. – An area surrounding or near the base of a wireless support structure within which a wireless facility is located.

(5a) Fall zone. – The area in which a wireless support structure may be expected to fall in the event of a structural failure, as measured by engineering standards.

(6) Land development regulation. – Any ordinance enacted pursuant to this Part.

(6a) Micro wireless facility. – A small wireless facility that is no larger in dimension than twenty four (24) inches in length, fifteen (15) inches in width, and twelve (12) inches in height, and that has an exterior antenna, if any, no longer than eleven (11) inches.

(7) Search ring. – The area within which a wireless support facility or wireless facility must be located in order to meet service objectives of the wireless service provider using the wireless facility or wireless support structure.

(7a) Small wireless facility. – A wireless facility that meets both of the following qualifications:

a. Each antenna is located inside an enclosure of no more than six (6) cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements, if enclosed, could fit within an enclosure of no more than six cubic feet.

b. All other wireless equipment associated with the facility has a cumulative volume of no more than twenty eight (28) cubic feet in volume. For purposes of this sub-subdivision, the following types of ancillary equipment are not included in the calculation of equipment volume: electric meters, concealment elements, telecommunications demarcation boxes, ground-based enclosures, grounding equipment, power transfer switches, cut-off switches, vertical cable runs for the connection of power and other services, or other support structures.

(7b) Substantial modification. – The mounting of a proposed wireless facility on a wireless support structure that substantially changes the physical dimensions of the support structure. A mounting is presumed to be a substantial modification if it meets any one or more of the criteria listed below. The burden is on the local government to demonstrate that a mounting that does not meet the listed criteria constitutes a substantial change to the physical dimensions of the wireless support structure.

a. Increasing the existing vertical height of the structure by the greater of (i) more than ten percent (10%) or (ii) the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet.

b. Except where necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable, adding an appurtenance to the body of a wireless support structure that protrudes horizontally from the edge of the wireless support structure the greater of (i) more than 20 feet or (ii) more than the width of the wireless support structure at the level of the appurtenance.

c. Increasing the square footage of the existing equipment compound by more than 2,500 square feet.

(8) Utility pole. – A structure that is designed for and used to carry lines, cables, ~~or wires~~ wires, lighting facilities, or small wireless facilities, for telephone, cable television, ~~or~~ electricity, ~~or to provide lighting.~~lighting, or wireless services.

(8a) Water tower. – A water storage tank, a standpipe, or an elevated tank situated on a support structure originally constructed for use as a reservoir or facility to store or deliver water.

(9) Wireless facility. – ~~The set of equipment and network components, exclusive of the underlying wireless support structure or tower, including antennas, transmitters, receivers, base stations, power supplies, cabling, and associated~~

~~equipment necessary to provide wireless data and wireless telecommunications services to a discrete geographic area.~~ Equipment at a fixed location that enables wireless communications between user equipment and a communications network, including (i) equipment associated with wireless communications, and (ii) radio transceivers, antennas, wires, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration. The term includes small wireless facilities. The term shall not include any of the following:

a. The structure or improvements on, under, within, or adjacent to which the equipment is collocated.

b. Wireline backhaul facilities.

c. Coaxial or fiber-optic cable that is between wireless structures or utility poles or city utility poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna.

(9a) Wireless infrastructure provider. – Any person with a certificate to provide telecommunications service in the State who builds or installs wireless communication transmission equipment, wireless facilities, or wireless support structures for small wireless facilities, but that does not provide wireless services.

(9b) Wireless provider. – A wireless infrastructure provider or a wireless services provider.

(9c) Wireless services. – Any services, using licensed or unlicensed wireless spectrum, including the use of Wi-Fi, whether at a fixed location or mobile, provided to the public using wireless facilities.

(9d) Wireless services provider. – A person who provides wireless services.

(10) Wireless support structure. – A new or existing structure, such as a monopole, lattice tower, or guyed tower that is designed to support or capable of supporting wireless facilities. A utility pole or a city utility pole is not a wireless support structure.

...

"**§ 160A-400.54. Collocation of small wireless facilities.**

(a) Except as expressly provided in this Part, a city shall not prohibit, regulate, or charge for the collocation of small wireless facilities.

(b) A city may not establish a moratorium on (i) filing, receiving, or processing applications, or (ii) issuing permits or any other approvals for the collocation of small wireless facilities.

(c) Small wireless facilities that meet the height requirements of G.S. 160A 400.55(b)(2) shall only be subject to review and approval under subsection (d) of this section if they are collocated (i) in a city right-of-way within any zoning district, or (ii) outside of rights of way on property other than single family residential property.

(d) A city may require an applicant to obtain a permit to collocate a small wireless facility. A city shall receive applications for, process, and issue such permits subject to the following requirements:

(1) A city may not, directly or indirectly, require an applicant to perform services unrelated to the collocation for which approval is sought. For purposes of this subdivision, "services unrelated to the collocation," includes in-kind contributions to the city such as the reservation of fiber, conduit, or pole space for the city.

(2) The wireless provider completes an application as specified in form and content by the city. A wireless provider shall not be required to provide more

information to obtain a permit than communications service providers that are not wireless providers.

(3) A permit application shall be deemed complete unless the city provides notice otherwise in writing to the applicant within thirty (30) days of submission or within some other mutually agreed upon timeframe. The notice shall identify the deficiencies in the application which, if cured, would make the application complete. The application shall be deemed complete on resubmission if the additional materials cure the deficiencies identified.

(4) The permit application shall be processed on a nondiscriminatory basis and shall be deemed approved if the city fails to approve or deny the application within forty five (45) days from the time the application is deemed complete or a mutually agreed upon timeframe between the city and the applicant.

(5) A city may deny an application only on the basis that it does not meet the city's applicable codes; local code provisions or regulations that concern public safety, objective design standards for decorative utility poles, city utility poles, or reasonable and nondiscriminatory stealth and concealment requirements, including screening or landscaping for ground-mounted equipment; public safety and reasonable spacing requirements concerning the location of ground-mounted equipment in a right-of-way; or the historic preservation requirements in subsection 160A-400.55(h). The city must (i) document the basis for a denial, including the specific code provisions on which the denial was based, and (ii) send the documentation to the applicant on or before the day the city denies an application. The applicant may cure the deficiencies identified by the city and resubmit the application within thirty (30) days of the denial without paying an additional application fee. The city shall approve or deny the revised application within thirty (30) days of the date of which the application was resubmitted. Any subsequent review shall be limited to the deficiencies cited in the prior denial.

(6) An application must include an attestation that the small wireless facilities shall be collocated on the utility pole, city utility pole, or wireless support structure and that the small wireless facilities shall be activated for use by a wireless services provider to provide service no later than one year from the permit issuance date, unless the city and the wireless provider agree to extend this period or a delay is caused by a lack of commercial power at the site.

(7) An applicant seeking to collocate small wireless facilities at multiple locations within the jurisdiction of a city shall be allowed at the applicant's discretion to file a consolidated application for no more than twenty five (25) separate facilities and receive a single permit for the collocation of all the small wireless facilities meeting the requirements of this section. A city may remove small wireless facility collocations from a consolidated application and treat separately small wireless facility collocations for which (i) incomplete information has been provided, (ii) that do not qualify for consolidated treatment, or (iii) that are denied. The authority may issue a separate permit for each collocation that is approved.

(8) The permit may specify that collocation of the small wireless facility shall commence within six (6) months of approval and shall be activated for use no later than one year from the permit issuance date, unless the authority and the wireless provider agree to extend this period or a delay is caused by a lack of commercial power at the site.

(e) A city may charge an application fee that shall not exceed the lesser of (i) the actual, direct and reasonable costs to process and review applications for collocated small wireless facilities; (ii) the amount charged by the city for permitting of any similar activity; or (iii) one hundred dollars ($100.00) per facility for the first five small wireless facilities addressed in an application, plus fifty dollars ($50.00) for each additional small wireless facility addressed in the application. In any dispute concerning the appropriateness of a fee, the city has the burden of proving that the fee meets the requirements of this subsection.

(f) A city may impose a technical consulting fee for each application, not to exceed five hundred dollars ($500.00), for technical consultation to offset the cost of reviewing and processing applications required by this section. The fee must be based on the actual, direct, and reasonable administrative costs incurred for the review, processing, and approval of an application. A city may engage a third-party consultant for technical consultation and the review of an application. The fee imposed by a city for the review of the application shall not be used for either of the following:

(1) Travel expenses incurred in a third party's review of a collocation application.

(2) Direct payment or reimbursement for a consultant or other third party based on a contingent fee basis or results-based arrangement.

In any dispute concerning the appropriateness of a fee, the city has the burden of proving that the fee meets the requirements of this subsection.

(g) A city may require a wireless services provider to remove an abandoned wireless facility within one hundred and eighty (180) days of abandonment. Should the wireless services provider fail to timely remove the abandoned wireless facility, the city may cause such wireless facility to be removed and may recover the actual cost of such removal, including legal fees, if any, from the wireless services provider. For purposes of this subsection, a wireless facility shall be deemed abandoned at the earlier of the date that the wireless services provider indicates that it is abandoning such facility or the date that is one hundred and eighty (180) days after the date that such wireless facility ceases to transmit a signal, unless the wireless services provider gives the city reasonable evidence that it is diligently working to place such wireless facility back in service.

(h) A city shall not require an application or permit for (i) routine maintenance; (ii) the replacement of wireless facilities with wireless facilities that are the same size or smaller; or (iii) installation, placement, maintenance, or replacement of micro wireless facilities that are suspended on cables strung between existing utility poles or city utility poles in compliance with applicable codes by or for a communications service provider authorized to occupy the rights-of-way and who is remitting taxes under G.S. 105-164.4(a)(6) or G.S. 105-164.4(a)(4c).

(i) Nothing in this section shall prevent a city from requiring a work permit for work that involves excavation, affects traffic patterns, or obstructs vehicular traffic in the city right-of-way.

"**§ 160A-400.55. Use of public right-of-way.**

(a) A city shall not enter into an exclusive arrangement with any person for use of city rights-of-way for the construction, operation, marketing, or maintenance of wireless facilities or wireless support structures, or the collocation of small wireless facilities.

(b) Subject to the requirements of G.S. 160A-400.54, a wireless provider may collocate small wireless facilities along, across, upon, or under any city right-of-way. Subject to the requirements of this section, a wireless provider may place, maintain, modify, operate, or replace associated utility poles, city utility poles, conduit, cable, or related appurtenances and facilities along, across, upon, and under any city right-of-way. The placement, maintenance, modification, operation, or replacement of utility poles and city utility poles associated with the collocation of small wireless facilities, along, across, upon, or under any city right-of-way shall

be subject only to review or approval under subsection (d) of G.S. 160A-400.54 if the wireless provider meets all the following requirements:

(1) Each new utility pole and each modified or replacement utility pole or city utility pole installed in the right-of-way shall not exceed fifty (50) feet above ground level.

(2) Each new small wireless facility in the right-of-way shall not extend more than ten (10) feet above the utility pole, city utility pole or wireless support structure on which it is collocated.

(c) Nothing in this section shall be construed to prohibit a city from allowing utility poles, city utility poles, or wireless facilities that exceed the limits set forth in subdivision (1) of subsection (b) of this section.

(d) Applicants for use of a city right-of-way shall comply with a city's undergrounding requirements prohibiting the installation of above-ground structures in the rights-of-way without prior zoning approval, if those requirements (i) are nondiscriminatory with respect to type of utility, (ii) do not prohibit the replacement of structures existing at the time of adoption of the requirements, and (iii) have a waiver process.

(e) A city may only charge a wireless provider for the use of a city right-of-way to construct, collocate, install, mount, maintain, modify, operate, or replace a utility pole, wireless facility, or city utility pole if the city charges other communications service providers or publicly, cooperatively, or municipally owned utilities for similar uses of the right-of-way, to the extent allowed under G.S. 160A-296. Charges authorized by this section shall meet all of the following requirements:

(1) The right-of-way charge shall not exceed the direct and actual cost of managing the rights-of-way and shall not be based on the wireless provider's revenue or customer counts.

(2) The right-of-way charge shall not exceed that imposed on other users of the right-of-way, including publicly, cooperatively, or municipally owned utilities.

(3) The right-of-way charge shall be reasonable and nondiscriminatory.

Nothing in this subsection is intended to establish or otherwise affect rates charged for attachments to utility poles, city utility poles, or wireless support structures. At its discretion, a city may provide free access to city rights-of-way on a nondiscriminatory basis in order to facilitate the public benefits of the deployment of wireless services.

(f) Nothing in this section is intended to authorize a person to collocate small wireless facilities on a privately owned utility pole, a privately owned wireless support structure, or other private property without the consent of the property owner.

(g) A city may require a wireless provider to repair all damage to a city right-of-way directly caused by the activities of the wireless provider, while occupying, installing, repairing, or maintaining wireless facilities, wireless support structures, city utility poles, or utility poles, and to return the right-of-way to its functional equivalence before the damage. If the wireless provider fails to make the repairs required by the city within a reasonable time after written notice, the city may undertake those repairs and charge the applicable party the reasonable and documented cost of the repairs. The city may maintain an action to recover the costs of the repairs.

(h) This section shall not be construed to limit local government authority to enforce historic preservation zoning regulations consistent with Part 3C of Article 19 of this Chapter of the General Statutes, the preservation of local zoning authority under 47 U.S.C. § 332(c)(7), the requirements for facility modifications under 47 U.S.C. § 1455(a), or the National Historic Preservation Act of 1966, 54 U.S.C. § 300101 et seq., as amended, and the regulations, local acts, and city charter provisions adopted to implement those laws.

(i) A wireless provider may apply to an authority to place utility poles in the public rights-of-way, or to replace or modify utility poles or city utility poles in the public rights-of way, to support the collocation of small wireless facilities. A city shall accept and process the application in accordance with the provisions of G.S. 160A-400.54(d), applicable codes, and other local codes governing the placement of utility poles or city utility poles in the public rights-of-way, including provisions or regulations that concern public safety, objective design standards for decorative utility poles or city utility poles, or reasonable and nondiscriminatory stealth and concealment requirements, including those relating to screening or landscaping, or public safety and reasonable spacing requirements. The application may be submitted in conjunction with the associated small wireless facility application.

"**§ 160A-400.56. Access to city utility poles.**

(a) A city may not enter into an exclusive arrangement with any person for the right to collocate on city utility poles. A city shall allow any wireless provider to collocate on its city utility poles at just, reasonable, and nondiscriminatory rates, terms, and conditions adopted pursuant to negotiated or adjudicated agreements, but in no instance may the rate exceed thirty-five dollars ($35.00) per city utility pole per year. A request to collocate 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 city to be reimbursed by the wireless provider. In granting a request under this section, a city 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.

(b) If a city that operates a public enterprise as permitted by Article 16 of this Chapter has an existing city utility pole attachment rate, fee, or other term with an entity, then, subject to termination provisions, that attachment rate, fee, or other term shall apply to collocations by that entity or its related entities on city utility poles.

(c) Following receipt of the first request from a wireless provider to collocate on a city utility pole, a city shall, within 60 days, establish the rates, terms, and conditions for the use of or attachment to the city utility poles that it owns or controls. Upon request, a party shall state in writing its objections to any proposed rate, terms, and conditions of the other party.

(d) In any controversy concerning the appropriateness of a rate for a collocation attachment to a city utility pole, the city has the burden of proving that the rates are reasonably related to the actual, direct, and reasonable costs incurred for use of space on the pole for such period.

(e) The city shall provide a good faith estimate for any make-ready necessary to enable the city utility pole to support the requested collocation, including pole replacement if necessary, within 60 days after receipt of a complete application. Make-ready work, including any pole replacement, shall be completed within 60 days of written acceptance of the good faith estimate by the applicant. For purposes of this section, the term "make-ready work" means any modification or replacement of a city utility pole necessary for the city utility pole to support a small wireless facility in compliance with applicable safety requirements, including the National Electrical Safety Code, that is performed in preparation for a collocation installation.

(f) The city shall not require more make-ready work than that required to meet applicable codes or industry standards. Fees for make-ready work shall not include costs related to pre-existing or prior damage or noncompliance. Fees for make-ready work, including any pole replacement, shall not exceed actual costs or the amount charged to other communications service providers for similar work and shall not include any consultant fees or expenses.

(g) Nothing in this section shall be construed to apply to an entity whose poles, ducts, and conduits are subject to regulation under section 224 of the Communications Act of 1934, 47 U.S.C. § 151 et. seq., as amended or under G.S. 62-350.

(h) Nothing in this section shall be construed in any way to apply to a municipal electric provider or a membership corporation organized under Chapter 117 of the General Statutes, that owns or controls poles, ducts or conduits, but which is exempt from regulation under section 224 of the Communications Act of 1934. Nor does it affect the authority of an electric membership corporation or municipality organized under Chapter 117 of the General Statutes to deny, limit, restrict or determine the rates, fees, terms and conditions for the use of or attachment to its utility poles or wireless support structures by a wireless provider. Any rates, terms, or conditions for the use of such poles, ducts or conduits are governed by G.S. 62-350.

"**§ 160A-400.57. Applicability.**

(a) A city shall not adopt or enforce any ordinance, rule, regulation, or resolution that regulates the design, engineering, construction, installation, or operation of any small wireless facility located in an interior structure or upon the site of any stadium or athletic facility. This subsection does not apply to a stadium or athletic facility owned or otherwise controlled by the city. This subsection does not prohibit the enforcement of applicable codes.

(b) Nothing contained in this Part shall amend, modify, or otherwise affect any private easement. Any and all rights for the use of a right-of-way are subject to the rights granted pursuant to a private easement."

SECTION 3.(a) G.S. 136-18 reads as rewritten:

"**§ 136-18. Powers of Department of Transportation.**

...

(10) To make proper and reasonable rules, regulations and ordinances for the placing or erection of telephone, telegraph, electric and other lines, above or below ground, wireless facilities, signboards, fences, gas, water, sewerage, oil, or other pipelines, and other similar obstructions that may, in the opinion of the Department of Transportation, contribute to the hazard upon any of the said highways or in any way interfere with the same, and to make reasonable rules and regulations for the proper control thereof. And whenever the order of the said Department of Transportation shall require the removal of, or changes in, the location of telephone, telegraph, electric or other lines, wireless facilities, signboards, fences, gas, water, sewerage, oil, or other pipelines, or other similar obstructions, the owners thereof shall at their own expense, except as provided in G.S. 136-19.5(c), move or change the same to conform to the order of said Department of Transportation. Any violation of such rules and regulations or noncompliance with such orders shall constitute a Class 1 misdemeanor. For purposes of this subdivision, "wireless facilities" shall have the definition set forth in G.S. 160A-400.51.

...."

SECTION 3.(b) Article 2 of Chapter 136 of the General Statutes is amended by adding a new section to read:

"**§ 136-18.3A. Wireless communications infrastructure.**

(a) The definitions set forth in G.S. 160A-400.51 shall apply to this section.

(b) The Department of Transportation is authorized to issue permits to wireless providers for the collocation of wireless facilities and the construction, operation, modification, or maintenance of utility poles, wireless support structures, conduit, cable, and related appurtenances and facilities for the provision of wireless services along, across, upon, or under the rights-of-way of State-maintained highways. The permits and included requirements shall be issued and administered in a reasonable and nondiscriminatory manner.

(c) The Department of Transportation shall take action to approve or deny a permit application under this section within 60 days of receiving the application from a wireless provider.

(d) The collocation of small wireless facilities and the construction, operation, modification, or maintenance of utility poles, wireless support structures, conduit, cable, and related appurtenances and facilities for the provision of small wireless facilities along, across, upon, or under the rights-of-way of State-maintained highways shall be subject to all of the following requirements:

(1) The structures and facilities shall not obstruct or hinder the usual travel or public safety on any rights of way of State-maintained highways or obstruct the legal use of such rights-of-way by other utilities.

(2) Each new or modified utility pole and wireless support structure installed in the right-of-way of State-maintained highways shall not exceed the greater of (i) 10 feet in height above the height of the tallest existing utility pole, other than a utility pole supporting only wireless facilities, in place as July 1, 2017, located within 500 feet of the new pole in the same rights of way or (ii) 50 feet above ground level.

(3) Each new small wireless facility in the right-of-way shall not extend (i) more than 10 feet above an existing utility pole, other than a utility pole supporting only wireless facilities, or wireless support structure in place as of July 1, 2017; or (ii) above the height permitted for a new utility pole or wireless support structure under this section."

SECTION 4. Except as otherwise provided, this act is effective when it becomes law.

HOUSE BILL 310:
Wireless Communications Infrastructure Siting.

2017-2018 General Assembly

Committee:	House Energy and Public Utilities. If favorable, re-refer to Finance	**Date:**	May 10, 2017
Introduced by:	Reps. Saine, Torbett, Wray	**Prepared by:**	Layla Cummings Committee Counsel
Analysis of:	PCS to First Edition H310-CSTSf-5		

OVERVIEW: The Proposed Committee Substitute (PCS) to House Bill 310 would amend the laws relating to regulation by cities of wireless infrastructure siting with regard to the collocation of small wireless facilities on utility poles, city utility poles, and public rights-of-way.

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

CURRENT LAW: Article 19 of Chapter 160A and Article 18 of Chapter 153A of the General Statutes provides for local government regulation of the equipment and network components necessary to provide wireless service and new or existing structures designed to support wireless facilities.

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

BILL ANALYSIS:

Section 1 of the PCS would provide that the General Assembly finds that small wireless facilities, including facilities commonly referred to as small cells and distributed antenna systems, may be deployed most effectively in the public rights-of-way.

Section 2 of the PCS would amend Part 3E of Article 19 Chapter 160A to provide for the regulation of the siting and collocation of small wireless facilities by cities and it would clarify that a city cannot require the construction of wireless facilities or regulate wireless services beyond the authority granted in the Part.

Small wireless facilities would be defined as a wireless facility with both of the following: (i) antenna within an enclosure of no more than 6 cubic feet in volume; and (2) other wireless equipment associated with the small wireless facility of no more than 28 cubic feet in volume. This section would amend the definitions of application, collocation, utility pole, and wireless facility to include small wireless facilities.

Permitting of Small Wireless Facilities by Cities

G.S. 160A-400.54 would prohibit a city from establishing a moratorium on accepting applications, issuing permits, or otherwise regulating the collocation of small wireless facilities except as provided in this section.

A city would be authorized to require a permit for a wireless provider to collocate small wireless facilities within the city's jurisdiction. A city could require a permit for the collocation of small wireless facilities subject to the following conditions:

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

A city may review the permit and deny it only on one of the following basis:

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

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

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

Use of the City Right-of-Way

G.S. 160A-400.55 would: (i) prohibit a city from entering into an exclusive arrangement with any person for the use of the city right-of-way for wireless facilities, wireless support structures, or the collocation of small wireless facilities; and (ii) allow a wireless provider to collocate small wireless facilities in the city rights-of-way.

If the wireless provider seeks to install or modify a utility pole associated with the collocation of a small cell wireless facility and it meets the following height restrictions, the facility would only be subject to the permitting requirements set forth above: (i) new or modified utility poles or city poles not to exceed 50 feet; and (ii) collocated small wireless facilities do not extend more than 10 feet off the top of the structure. The city may, however, allow wireless facilities that exceed those height restrictions at the city's discretion.

Applicants for use of the city right-of-way would have to comply with the city's undergrounding requirements.

A city may charge a wireless provider for the use of the right-of-way. The charge must be reasonable and nondiscriminatory and must not exceed the direct and actual cost of managing the rights-of-way and shall not be based on the wireless provider's revenue or customer counts. The charge must not exceed similar charges imposed on other users of the right-of-way, including publicly, cooperatively, or municipally owned utilities.

This section would allow a city to require a wireless provider to repair any damage to the city right-of-way caused while installing or maintaining wireless facilities or other associated facilities. If the wireless provider fails to make those repairs, the city may charge the provider the reasonable cost of the repairs.

This section would not limit the enforcement of federal, State, or local historic preservation zoning requirements.

Access to City Utility Poles

G.S. 160A-400.56 would prohibit a city from entering into an exclusive arrangement with any person for the use of the city utility poles. A city must allow a wireless provider to collocate on utility poles at just, reasonable and non-discriminatory rates, not to exceed $35 per a city utility pole per year. The wireless provider seeking to collocate must comply with all applicable safety requirements, including the National Electric Safety Code and rules and regulations of the Occupational Safety and Health Administration.

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

The provisions of this section would not apply to investor owned utilities, electric cooperatives, telephone cooperatives, and municipal electric service providers.

Applicability

G.S. 160A-400.56 would prohibit a city from regulating small wireless facilities within any stadium or athletic facility, unless the city owns the stadium or athletic facility. This section would also clarify that nothing in the Part would amend, modify, or otherwise affect any private easement agreement.

Section 3 of the PCS concerns the regulation of wireless facilities in the State rights-of-way. This section would add the placement of wireless facilities to the list of allowable activities in the State rights-of-way and would authorize the Department of Transportation to issue permits for the collocation of wireless facilities in the rights-of-way of State-maintained highways. The Department would be required to approve or deny permits within 60 days of receiving an application.

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

- The facilities could not obstruct or hinder the usual travel or public safety on any rights-of-way of State-maintained highways or obstruct the legal use of such rights-of-way by other utilities.
- Each new or modified utility pole and wireless support structure installed in the right-of-way of State-maintained highways shall not exceed the greater of (i) 10 feet in height above the height of the tallest existing utility pole, in place as July 1, 2017, located within 500 feet of the new pole in the same rights-of-way, or (ii) 50 feet above ground level.

- Each new small wireless facility in the right-of-way shall not extend (i) more than 10 feet above an existing utility pole or wireless support structure in place as of July 1, 2017, or (ii) above the height permitted for a new utility pole or wireless support structure under this section.

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

HB 310

Without Local Zoning Land Use Development Standards

Impact on Cell Sites in ROW due to Section 6409(a) Middle Class Tax and Job Creation Act 2012 aka Spectrum Act

Infrastructure Report and Order

Transmission Equipment – "equipment that facilitates transmission of any Commission-licensed or authorized wireless communications service…" , including but not limited to antennas, receivers, cables, cabinets and power supplies.

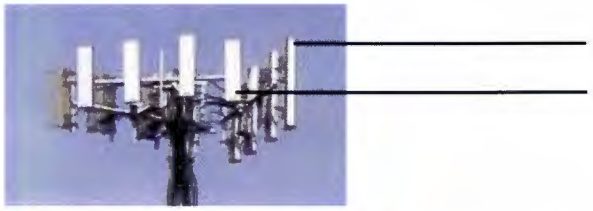
Further refinement:

- **Wireless Tower** – a structure built for the sole or primary purpose of supporting any commission licensed or authorized antennas and their associated facilities
- **Base Station** – Equipment and non-tower supporting structure at a "fixed" location that enable licensed or authorized wireless communications between user equipment and a communications network

FCC's Report and Order Clarification and Implementation of Section 6409(a) of the Spectrum Act

- A modification substantially changes the physical dimensions of a tower or base station (and therefore falls outside Section 6409 (a) if it meets any one of the following items:
  - For towers outside the public rights-of-way (ROW), it increases the height of the tower by more than 20' or 10%, whichever is greater; **for those towers in the ROW and for all base stations, it increases the height of the tower or base station by more than 10% or 10', whichever is greater;**

Vertical Height Increase Example



20' increase to 170' new height
150' original tower height

Section 6409(a)
10% of 150' is 15' 150' + 15' = 165 150' + 20' = 170' Tower could increase to maximum of 170'*

al

Example of Base Station Modification

10' increase to 40' new height

30' original base station height

Section 6409(a)
10% of 30' is 3' 30' + 10' = 40' (this is the greater) Base Station could increase to maximum of 40'* and meet definition of substantial

- Area of Base Station is entire rooftop once approved.
- Cannot require additional concealment if original "eligible facility" is not concealed.

al

FCC's Report and Order Clarification and Implementation of Section 6409(a) of the Spectrum Act

- A modification substantially changes the physical dimensions of a tower or base station (and therefore falls outside Section 6409 (a) if it meets any one of the following items:
  - For towers outside the ROW, it protrudes from the edge of the tower by more than 20', or more than the width of the tower structure at the level of the appurtenance, whichever is greater; **for those towers in the rights-of-way and for all base stations, it protrudes from the edge of the structure more than 6';**

FCC's Report and Order Clarification and Implementation of Section 6409(a) of the Spectrum Act

- It involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets;
- It entails any excavation or deployment outside the current site of the tower or base station; or
- It would defeat the existing concealment elements of the tower or base station; or
- It does not comply with conditions associated with the prior approval of the tower or base station unless, the non-compliance is due to an increase in height, increase in width, addition of cabinets or new excavation that does not exceed the corresponding "substantial change" thresholds.

FCC's Report and Order Clarification and Implementation of Section 6409(a) of the Spectrum Act

Local government can require compliance with generally applicable building, structural, electrical and safety codes or with other laws codifying objective standards reasonably related to health and safety.

Examples Supporting Local Zoning of Cellular Equipment in the Right-Of-Way

Examples Supporting Local Zoning of Cellular Equipment in the Right-Of-Way

Large amount of equipment mounted to pole where ground space is not available

Equipment cabinet new view from residential window

Examples Supporting Local Zoning of Cellular Equipment in the Right-Of-Way

Examples Supporting Local Zoning of Cellular Equipment in the Right-Of-Way

Committee Sergeants at Arms

NAME OF COMMITTEE House Committee on Energy & Public Utilities

DATE: 5/10/2017 Room: 544 LOB

House Sgt-At Arms:

1. Name: Warren Hawkins
2. Name: Doug Harris
3. Name: David Linthicum
4. Name: Malach McCullough, Jr.
5. Name:

Senate Sgt-At Arms:

1. Name:
2. Name:
3. Name:
4. Name:
5. Name:

House Pages
Assignments
Wednesday, May 10, 2017
Session: 3:00 PM

Committee	Room	Time	Staff	Comments	Member
State and Local Government	544	10:00 AM	Marc-Alain Bertoni		Rep. Debra Conrad
			Joshua Cartret		Rep. Brenden Jones
Health	544	11:00 AM	Daniel Ma		Rep. Nelson Dollar
			Mary Beth Rhyne		Rep. Rena Turner
Regulatory Reform	1228/1327	11:00 AM	Trey Blackwood		Rep. Hugh Blackwell
Judiciary I	415	12:00 PM	Marc-Alain Bertoni		Rep. Debra Conrad
			Mary Beth Rhyne		Rep. Rena Turner
Energy Policy Commission, Jt. Leg.	544	1:00 PM	Daniel Ma		Rep. Nelson Dollar
Judiciary I	415	1:00 PM	Trey Blackwood		Rep. Hugh Blackwell
			Joshua Cartret		Rep. Brenden Jones

Speakers

~~VISITOR~~ REGISTRATION SHEET

House Committee on Energy & Public Utilities 5/10/2017

Name of Committee Date

2 mins

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

	NAME	FIRM OR AGENCY AND ADDRESS
1	Trey Rabon	AT&T
2	Bob Davis	Verizon
3	Thomas Moore	Sprint
4	Erin Wynia	NCLM
5	Marcus Trather	Brooks Pierce
6	Susan Rabold	CityScape Consultants
7		
8		

VISITOR REGISTRATION SHEET

House Committee on Energy & Public Utilities 5/10/2017

Name of Committee Date

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Bill L. Upton	Haywood Co. Commissioner
Ira Dove	Haywood County, 215 N Main St. Waynesville
Jeff Sural	NC Broadband Infrastructure Office
Brady Allen	NCTCC
Dwight Allen	Allen Law
Wendy Kelly	Focus Carolina
DAVID BARNES	Electr. Cities
PRESTON HOWARD	NCMA
Hayden Baugess	ElectriCities
Sean Spicer	White House
Susan Kelly	Duke Energy

VISITOR REGISTRATION SHEET

House Committee on Energy & Public Utilities 5/10/2017
Name of Committee Date

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Trey Rabon	AT&T
Thomas Moore	CCA
Kelli Kuhn	Duke Energy
Demetrius Pulley	AT&T
Chuck Greene	AT&T
Beth Cooley	GTIA
Carlos E Sanchez	AT&T
Joy Hicks	NCDOT
Sadie Sands	NC
J Tunnell	Duke Energy
Vikki Marrow	Williford Family Resource Center / Williford Elementary School

VISITOR REGISTRATION SHEET

House Committee on Energy & Public Utilities 5/10/2017

Name of Committee Date

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Liz Hill	ATC
Robert Dorcauk	AT&T
John Lay	Gmtc
Robert Davis	Duke
Daryl Norris	City of Greenville
Kevin Mulligan	City of Greenville
JASON Super	NCC
GRANT WELCH	CWA
Harold Black	CWA
Michael Hicks	Mobilite
Doug Miskam	TSG

VISITOR REGISTRATION SHEET

House Committee on Energy & Public Utilities 5/10/2017

Name of Committee Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
C. Sinclair	Crown Castle
Ann Brooks	Crown Castle
Patrick Buffkin	NCUC
Hugh Johnson	NCLM
Jimmy B Clayton	Person County
Jeni Bono	NWC
Betsy Bailey	CAGC
Erin Wynia	NCLM
Connie Wilson	NCCTA
Maray Tratten	Brooks Pierce
Tammy Roberson	Charter

VISITOR REGISTRATION SHEET

House Committee on Energy & Public Utilities 5/10/2017

Name of Committee Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[illegible]	KOS

VISITOR REGISTRATION SHEET

House Committee on Energy & Public Utilities 5/10/2017

Name of Committee Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mia Bailey	Charter Comm.
Tonya Horton	TSS
[signature]	NWC
Angela Carmon	City of Winston-Salem
Lori Ann Harris	[illegible]
[signature]	NMRS
[signature]	NWC

Corrected #2: DATE and TIME Change to Thursday, May 18th at 12 noon

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2017-2018 SESSION

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

DAY & DATE: Thursday, May 18, 2017
TIME: **12:00 PM**
LOCATION: **643 LOB**
COMMENTS: **Chairman Jeff Collins, presiding**

Wes Householder, committee assistant

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 310	Wireless Communications Infrastructure Siting.	Representative Saine Representative Torbett Representative Wray

Respectfully,
Representative John Szoka, Senior Chair
Representative Dean Arp, Co-Chair
Representative Jeff Collins, Co-Chair
Representative Sam Watford, Co-Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 3:59 PM on Tuesday, May 16, 2017.

___ Principal Clerk
___ Reading Clerk – House Chamber

Beverly Slagle (Committee Assistant)

Regina Irwin (Rep. Sam Watford)

[redacted]om: Beverly Slagle (Rep. John Szoka)
[redacted]nt: Tuesday, May 16, 2017 03:07 PM
To: Rep. Michael Wray; Rep. John Torbett; Rep. Jason Saine
Cc: Susan Burleson (Rep. Michael Wray); Viddia Torbett (Rep. John Torbett); Stephen Wiley (Rep. Jason Saine)
Subject: <NCGA> House Energy and Public Utilities Committee Meeting Notice for Wednesday, May 17, 2017 at 1:00 PM - CORRECTED #2
Attachments: Add Meeting to Calendar_LINC_.ics

Corrected #2: The committee will meet at 1:00 PM 05/17/2017

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2017-2018 SESSION

[redacted]ou are hereby notified that the **House Committee on Energy and Public Utilities** will meet as follows:

DAY & DATE: Wednesday, May 17, 2017
TIME: **1:00 PM**
LOCATION: **643 LOB**
COMMENTS: **Chairman Jeff Collins, presiding**

Wes Householder, committee assistant

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 310	Wireless Communications Infrastructure Siting.	Representative Saine Representative Torbett Representative Wray

House Committee on Energy and Public Utilities
Thursday, May 18, 2017, 12:00 PM
643 Legislative Office Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
HB 310	Wireless Communications Infrastructure Siting.	Representative Saine Representative Torbett Representative Wray

Adjournment

House Committee on Energy and Public Utilities
Thursday, May 18, 2017 at 12:00 PM
Room 643 of the Legislative Office Building

MINUTES

The House Committee on Energy and Public Utilities met at 12:00 PM on May 18, 2017 in Room 643 of the Legislative Office Building. Representatives Szoka, Collins, Watford, Blackwell, Bumgardner, Elmore, Harrison, Malone, Susan Martin, R. Moore, William Richardson, Riddell, Rogers, Sauls, Stone, Strickland, Wray and Zachary attended.

Representative Jeff Collins, Chair, presided.

The following bills were considered:

HB 310 Wireless Communications Infrastructure Siting. (Representatives Saine, Torbett, Wray)

After discussion HB 310 was given a report of Favorable to the Committee Substitute, Unfavorable to the original bill and re-referred to the committee on Finance.

The meeting adjourned at 1:00 PM.

Representative Jeff Collins, Chair
Presiding

Wes Householder, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES

ENERGY AND PUBLIC UTILITIES COMMITTEE REPORT
Representative John Szoka, Senior Chair
Representative Dean Arp, Co-Chair
Representative Jeff Collins, Co-Chair
Representative Sam Watford, Co-Chair

FAVORABLE COM SUB , UNFAVORABLE ORIGINAL BILL AND RE-REFERRED

HB **310** Wireless Communications Infrastructure Siting.

Draft Number:	H310-PCS10351-RIf-19
Serial Referral:	**FINANCE**
Recommended Referral:	None
Long Title Amended:	Yes
Floor Manager:	Saine

TOTAL REPORTED: 1

HOUSE BILL 310

Short Title:	Wireless Communications Infrastructure Siting.	(Public)
Sponsors:	Representatives Saine, Torbett, and Wray (Primary Sponsors). *For a complete list of sponsors, refer to the North Carolina General Assembly web site.*	
Referred to:	Energy and Public Utilities, if favorable, Finance	

March 13, 2017

A BILL TO BE ENTITLED

AN ACT TO REFORM WIRELESS COMMUNICATIONS INFRASTRUCTURE LICENSING AND PERMITTING TO AID IN DEPLOYMENT OF NEW TECHNOLOGIES.

The General Assembly of North Carolina enacts:

SECTION 1. The General Assembly finds the following:

(1) The design, engineering, permitting, construction, modification, maintenance, and operation of wireless facilities are instrumental to the provision of emergency services and to increasing access to advanced technology and information for the citizens of North Carolina.

(2) Cities and counties play a key role in facilitating the use of the public rights-of-way.

(3) Wireless services providers and wireless infrastructure providers must have access to the public rights-of-way and the ability to attach to poles and structures in the public rights-of-way to densify their networks and provide next generation services.

(4) Small wireless facilities, including facilities commonly referred to as small cells and distributed antenna systems, often may be deployed most effectively in the public rights-of-way.

(5) Therefore, expeditious processes and reasonable and nondiscriminatory rates, fees, and terms related to such deployments are essential to the construction and maintenance of wireless facilities.

(6) Wireless facilities help ensure the State remains competitive in the global economy.

(7) The timely design, engineering, permitting, construction, modification, maintenance, and operation of wireless facilities are matters of statewide concern and interest.

SECTION 2.(a) G.S. 160A-400.51(4a) is recodified as G.S. 160A-400.51(4b).

SECTION 2.(b) G.S. 160A-400.51(7a) is recodified as G.S. 160A-400.51(7b).

SECTION 2.(c) Part 3E of Article 19 of Chapter 160A of the General Statutes, as amended by subsections (a) and (b) of this section, reads as rewritten:

"Part 3E. Wireless Telecommunications Facilities.

"**§ 160A-400.50. Purpose and compliance with federal law.**

...

(c) This Part shall not be construed to authorize a city to require the construction or installation of wireless facilities or to regulate wireless services other than as set forth herein.

"§ 160A-400.51. Definitions.

The following definitions apply in this Part.

(1) Antenna. – Communications equipment that transmits, receives, or transmits and receives electromagnetic radio signals used in the provision of all types of wireless communications services.

(1a) Applicable codes. – The North Carolina State Building Code and any other uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization together with State or local amendments to those codes enacted solely to address imminent threats of destruction of property or injury to persons.

(2) Application. – A formal request submitted to the city to construct or modify a wireless support structure or a wireless facility.

(2a) Base station. – A station at a specific site authorized to communicate with mobile stations, generally consisting of radio receivers, antennas, coaxial cables, power supplies, and other associated electronics.

(3) Building permit. – An official administrative authorization issued by the city prior to beginning construction consistent with the provisions of G.S. 160A-417.

(3a) City right-of-way. – A right-of-way owned, leased, or operated by a city, including any public street or alley that is not a part of the State highway system.

(3b) City utility pole. – A utility pole owned or operated by a city in the right-of-way of any public street or alley that is not a part of the State highway system.

(4) Collocation. – The ~~placement or installation~~ placement, installation, maintenance, modification, operation, or replacement of wireless facilities ~~on~~ on, under, within, or on the surface of the earth adjacent to existing structures, including electrical transmission towers, water towers, buildings, and other structures capable of structurally supporting the attachment of wireless facilities in compliance with applicable codes.

(4a) Communications service provider. – A cable operator, as defined in 47 U.S.C. § 522(5); a provider of information service, as defined in 47 U.S.C. § 153(24); a telecommunications carrier, as defined in 47 U.S.C. § 153(51); or a wireless provider.

(4b) Eligible facilities request. – A request for modification of an existing wireless tower or base station that involves collocation of new transmission equipment or replacement of transmission equipment but does not include a substantial modification.

(5) Equipment compound. – An area surrounding or near the base of a wireless support structure within which a wireless facility is located.

(5a) Fall zone. – The area in which a wireless support structure may be expected to fall in the event of a structural failure, as measured by engineering standards.

(6) Land development regulation. – Any ordinance enacted pursuant to this Part.

(7) Search ring. – The area within which a wireless support facility or wireless facility must be located in order to meet service objectives of the wireless service provider using the wireless facility or wireless support structure.

(7a) Small wireless facility. – A wireless facility that meets both of the following qualifications:

a. Each antenna is located inside an enclosure of no more than six cubic feet in volume or, in the case of an antenna that has exposed elements,

the antenna and all of its exposed elements, if enclosed, could fit within an enclosure of no more than six cubic feet.

b. All other wireless equipment associated with the facility has a cumulative volume of no more than 28 cubic feet. For purposes of this sub-subdivision, the following types of ancillary equipment are not considered "associated with the facility" and therefore are excluded from the calculation of cumulative volume: electric meters, concealment elements, telecommunications demarcation boxes, ground-based enclosures, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection of power and other services.

(7b) Substantial modification. – The mounting of a proposed wireless facility on a wireless support structure that substantially changes the physical dimensions of the support structure. A mounting is presumed to be a substantial modification if it meets any one or more of the criteria listed below. The burden is on the local government to demonstrate that a mounting that does not meet the listed criteria constitutes a substantial change to the physical dimensions of the wireless support structure.

a. Increasing the existing vertical height of the structure by the greater of (i) more than ten percent (10%) or (ii) the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet.

b. Except where necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable, adding an appurtenance to the body of a wireless support structure that protrudes horizontally from the edge of the wireless support structure the greater of (i) more than 20 feet or (ii) more than the width of the wireless support structure at the level of the appurtenance.

c. Increasing the square footage of the existing equipment compound by more than 2,500 square feet.

(8) Utility pole. – A structure that is designed for and used to carry lines, cables, or wires for telephone, cable television, or electricity, or to provide ~~lighting.~~lighting, traffic control, signage, or a similar function.

(8a) Water tower. – A water storage tank, a standpipe, or an elevated tank situated on a support structure originally constructed for use as a reservoir or facility to store or deliver water.

(9) Wireless facility. – ~~The set of equipment and network components, exclusive of the underlying wireless support structure or tower, including antennas, transmitters, receivers, base stations, power supplies, cabling, and associated equipment necessary to provide wireless data and wireless telecommunications services to a discrete geographic area.~~Equipment at a fixed location that enables wireless communications between user equipment and a communications network, including (i) equipment associated with wireless communications and (ii) radio transceivers, antennas, wires, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration. The term includes small wireless facilities but does not include any structure or improvements on, under, within, or adjacent to which the equipment is collocated.

(9a) Wireless infrastructure provider. – Any person with a certificate to provide telecommunications service in the State who builds or installs wireless

communication transmission equipment, wireless facilities, or wireless support structures but that does not provide wireless services.

(9b) Wireless provider. – A wireless infrastructure provider or a wireless services provider.

(9c) Wireless services. – Any services, whether at a fixed location or mobile, provided using wireless facilities.

(9d) Wireless services provider. – A person who provides wireless services.

(10) Wireless support structure. – A new or existing structure, such as a monopole, lattice tower, or guyed tower that is designed to support or capable of supporting wireless facilities. A utility pole is not a wireless support structure.

...

"**§ 160A-400.54. Collocation of small wireless facilities.**

(a) Except as expressly provided in this Part, a city may not prohibit, regulate, or charge for the collocation of small wireless facilities.

(b) A city may not institute, either expressly or in practice, a moratorium on (i) filing, receiving, or processing applications or (ii) issuing permits or any other approvals for the collocation of small wireless facilities.

(c) Small wireless facilities shall be classified as permitted uses and not subject to zoning review or approval authorized by Article 19 of this Chapter if they are collocated (i) in a city right-of-way within any zoning district or (ii) outside of rights-of-way on any property other than property zoned exclusively for single-family residential use.

(d) A city may require an applicant to obtain a building permit to collocate a small wireless facility, provided the permit is of general applicability and does not apply exclusively to wireless facilities. A city shall receive applications for, process, and issue such permits subject to the following requirements:

(1) A city may not, directly or indirectly, require an applicant to perform services unrelated to the collocation for which approval is sought. For purposes of this subdivision, "services unrelated to the collocation," includes, but is not limited to, in-kind contributions to the city such as the reservation of fiber, conduit, or pole space for the city.

(2) An applicant shall not be required to provide more information to obtain a permit than communications service providers that are not wireless providers.

(3) Within 10 days of receiving an application, a city must determine and notify the applicant whether the application is complete. If an application is incomplete, a city must specifically identify the missing information.

(4) The permit application shall be processed on a nondiscriminatory basis and shall be deemed approved if the city fails to approve or deny the application within 60 days.

(5) A city may deny an application only on the basis that it does not meet the city's applicable codes. The city must (i) document the basis for a denial, including the specific code provisions on which the denial was based, and (ii) send the documentation to the applicant on or before the day the city denies an application. The applicant may cure the deficiencies identified by the city and resubmit the application within 30 days of the denial without paying an additional application fee. The city shall approve or deny the revised application within 30 days. Any subsequent review shall be limited to the deficiencies cited in the prior denial.

(6) An applicant seeking to collocate small wireless facilities at multiple locations within the jurisdiction of a city shall be allowed at the applicant's discretion to file a consolidated application and receive a single permit for the collocation of all the small wireless facilities meeting the requirements of this section.

(7) The permit may specify that collocation of the small wireless facility shall commence within one year of approval and shall be pursued to completion. The permit may not place a time limitation on completion of the small wireless facility and shall remain in effect until the applicant requests that the permit be terminated.

(e) The city may charge a fee to offset the cost of reviewing and processing applications required by this section, subject to the following limitations:

(1) A city may charge an application fee only if a fee is required for other similar activities within the city's jurisdiction.

(2) The fee shall be reasonably related in time to the incurring of such costs.

(3) A fee may not include (i) travel expenses incurred by a third party in its review of an application or (ii) direct payment or reimbursement of third-party rates or fees charged under a contingency or result-based arrangement.

(4) In any dispute concerning the appropriateness of a fee, the city shall have the burden of proving that the fee meets the requirements of this subsection.

(5) The total application fee shall not exceed the lesser of (i) the actual, direct and reasonable costs to process and review applications for collocated small wireless facilities, (ii) the amount charged by the city for a building permit for any similar activity, and (iii) one hundred dollars ($100.00) per facility for the first five small wireless facilities addressed in an application plus fifty dollars ($50.00) for each additional small wireless facility addressed in the application.

(f) A city shall not require an application for (i) routine maintenance or (ii) the replacement of wireless facilities with wireless facilities that are substantially similar or the same size or smaller. Provided, however, that a city may require a permit to work within a city right-of-way for such activities, if applicable. Any such permits shall be subject to the requirements provided in subsections (d) and (e) of this section.

"**§ 160A-400.55. Use of public right-of-way.**

(a) This section shall apply to activities of a wireless provider within any city right-of-way.

(b) A city shall not enter into an exclusive arrangement with any person for use of city rights-of-way for the construction, operation, marketing, or maintenance of wireless facilities or wireless support structures or the collocation of small wireless facilities.

(c) The collocation of wireless facilities and the construction, operation, modification, or maintenance of utility poles, wireless support structures, conduit, cable, and related appurtenances and facilities along, across, upon, and under any city right-of-way shall not be subject to zoning review or approval authorized by Article 19 of this Chapter if the wireless provider wishing to undertake the collocation meets the following requirements:

(1) The wireless provider completes an application as specified in form and content by the city.

(2) The structures and facilities do not obstruct or hinder the usual travel or public safety on any rights-of-way or obstruct the legal use of such rights-of-way by other utilities.

(3) Each new or modified utility pole and wireless support structure installed in the right-of-way does not exceed the greater of (i) 10 feet in height above the height of the tallest existing utility pole in place as July 1, 2017, located within 500 feet of the new pole in the same rights-of-way or (ii) 50 feet above ground level.

(4) Each new wireless facility in the right-of-way does not extend (i) more than 10 feet above an existing utility pole or wireless support structure in place as of July 1, 2017, or (ii) above the height permitted for a new utility pole or wireless support structure under this section.

(d) A city may not prohibit the construction, modification, or maintenance of utility poles, wireless support structures, or wireless facilities that exceed the limits set forth in subdivision (3) of subsection (c) of this section if those structures and facilities comply with applicable zoning requirements for the site.

(e) Applicants for use of a city right-of-way shall comply with a city's undergrounding requirements prohibiting communications service providers from installing structures in the rights-of-way without prior zoning approval in areas zoned for single-family residential use, if those requirements (i) are nondiscriminatory with respect to type of utility and (ii) do not prohibit the replacement of structures existing at the time of adoption of the requirements.

(f) A city may charge a wireless provider for the use of a city right-of-way to construct, collocate, install, mount, maintain, modify, operate, or replace a wireless facility or wireless support structure if the city charges other communications service providers or publicly, cooperatively, or municipally owned utilities for similar uses of the right-of-way. Charges authorized by this section shall meet all of the following requirements:

(1) The charge shall not exceed the direct and actual cost of managing the rights-of-way and shall not be based on the wireless provider's revenue or customer counts. The city may not impose a charge if existing rates, fees, or taxes already recover the direct and actual costs of managing the rights-of-way.

(2) The charge shall not exceed that imposed on other users of the right-of-way, including investor, city, or cooperatively owned entities.

(3) The charge shall not be unreasonable, discriminatory, or violate any applicable law.

(4) In the case of collocation of small wireless facilities under G.S. 160A-400.54, the charge shall not exceed an annual amount equal to twenty dollars ($20.00) for each utility pole or wireless support structure in the city's corporate limits on which the wireless provider has collocated a small wireless facility antenna.

Nothing in this subsection is intended to prevent a city from providing free access to city rights-of-way on a nondiscriminatory basis in order to facilitate the public benefits of the deployment of wireless services.

(g) A city may require a wireless provider to repair all damage to a city right-of-way directly caused by the activities of the wireless provider, while occupying, installing, repairing, or maintaining wireless facilities, wireless support structures, or utility poles and to return the right-of-way to its functional equivalence before the damage. If the wireless provider fails to make the repairs required by the city within a reasonable time after written notice, the city may undertake those repairs and charge the applicable party the reasonable and documented cost of the repairs.

"**§ 160A-400.56. Dispute resolution.**

In the event a wireless provider and a city are unable to reach an agreement on fees or charges arising under this Part, either party may initiate proceedings to resolve the dispute before the Utilities Commission as set forth in G.S. 62-350(c). Unless the wireless provider and the city otherwise agree, the city shall allow the placement of a wireless facility or wireless support structure at a temporary rate of one-half of a city-proposed annual fee or charge or twenty dollars ($20.00), whichever is less, pending resolution of the dispute.

"**§ 160A-400.57. Limitation of authority.**

A city shall not adopt or enforce any ordinance, rule, regulation, or resolution that does any of the following:

(1) Regulates the design, engineering, construction, installation, or operation of any small wireless facility located in an interior structure or upon the site of any stadium or athletic facility. The prohibition set forth in this subdivision does not apply (i) if the city owns or otherwise controls the stadium or athletic facility or (ii) to the enforcement of applicable codes.

(2) Requires a wireless provider to (i) indemnify and hold harmless the city and its officers and employees or (ii) obtain insurance policies naming the city and its officers and employees as additional insureds against any claims, lawsuits, judgments, costs, liens, losses, expenses, or fees related to the installation, repair, or maintenance of wireless facilities."

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

"§ 62-350. Regulation of pole attachments.

...

(c) In the event the parties are unable to reach an agreement within 90 days of matters arising under Part 3E of Article 19 of Chapter 160A of the General Statutes or 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 initiate proceedings to resolve the dispute before the Commission. The Commission shall have exclusive jurisdiction over 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 filings the issues in 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 filings consistent with the public interest and necessity so as to derive just and reasonable rates, terms, and 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 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 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 proceeding brought under this subsection, the 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.

...

(e) For purposes of this section, the term "communications service provider" means a person or entity that provides or intends to provide: (i) telephone service as a public utility under Chapter 62 of the General Statutes or as a telephone membership corporation organized under Chapter 117 of the General Statutes; (ii) broadband service, but excluding broadband service over energized electrical conductors owned by a municipality or membership corporation; ~~or~~ (iii) cable service over a cable system as those terms are defined in Article 42 of Chapter 66 of the General ~~Statutes.~~Statutes; or (iv) services as a wireless provider as defined in G.S. 160A-400.51.

...."

SECTION 2.(e) This section becomes effective July 1, 2017, and applies to applications for wireless communications infrastructure received by cities on or after that date. Any charge imposed by a city on wireless providers for use of rights-of-way owned, leased, or operated by a city to construct, collocate, install, mount, maintain, modify, operate, or replace a wireless facility or wireless support structure shall comply with the requirements of G.S. 160A-400.55, as enacted by this subsection (c) of this section, no later than January 1, 2018.

SECTION 3.(a) G.S. 136-18 reads as rewritten:

"**§ 136-18. Powers of Department of Transportation.**

...

(10) To make proper and reasonable rules, regulations and ordinances for the placing or erection of telephone, telegraph, electric and other lines, above or below ground, wireless facilities, signboards, fences, gas, water, sewerage, oil, or other pipelines, and other similar obstructions that may, in the opinion of the Department of Transportation, contribute to the hazard upon any of the said highways or in any way interfere with the same, and to make reasonable rules and regulations for the proper control thereof. And whenever the order of the said Department of Transportation shall require the removal of, or changes in, the location of telephone, telegraph, electric or other lines, wireless facilities, signboards, fences, gas, water, sewerage, oil, or other pipelines, or other similar obstructions, the owners thereof shall at their own expense, except as provided in G.S. 136-19.5(c), move or change the same to conform to the order of said Department of Transportation. Any violation of such rules and regulations or noncompliance with such orders shall constitute a Class 1 misdemeanor. For purposes of this subdivision, "wireless facilities" shall have the definition set forth in G.S. 160A-400.51.

...."

SECTION 3.(b) Article 2 of Chapter 136 of the General Statutes is amended by adding a new section to read:

"**§ 136-18.3A. Wireless communications infrastructure.**

(a) The definitions set forth in G.S. 160A-400.51 shall apply to this section.

(b) The Department of Transportation is authorized to issue permits to wireless providers for the collocation of wireless facilities and the construction, operation, modification, or maintenance of utility poles, wireless support structures, conduit, cable, and related appurtenances and facilities for the provision of wireless services along, across, upon, and under the rights-of-way of State-maintained highways. The permits and included requirements shall be issued and administered in a reasonable and nondiscriminatory manner.

(c) If the Department of Transportation does not take action to approve or deny a permit application under this section within 60 days of receiving the application from a wireless provider, the permit is deemed approved.

(d) The Department of Transportation may charge a wireless provider for the use of the rights-of-way of a State-maintained highway to construct, collocate, install, mount, maintain, modify, operate, or replace a wireless facility or wireless support structure if and to the same extent the Department of Transportation charges other communications service providers or publicly, cooperatively, or municipally owned utilities for similar uses of the right-of-way. Charges authorized by this subsection shall not exceed the direct and actual cost of managing the rights-of-way and shall not be based on the wireless provider's revenue or customer counts. The Department of Transportation may not impose a charge if existing rates, fees, or taxes already recover the direct and actual costs of managing the rights-of-way.

(e) The Department of Transportation may require a wireless provider to repair all damage to a right-of-way directly caused by the activities of the wireless provider, while occupying, installing, repairing, or maintaining wireless facilities, wireless support structures, or utility poles and to return the right-of-way to its functional equivalence before the damage. If the wireless provider fails to make the repairs required by the Department of Transportation within a reasonable time after written notice, the Department of Transportation may undertake those repairs and charge the applicable party the reasonable and documented cost of the repairs."

SECTION 4. Except as otherwise provided, this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H D

HOUSE BILL 310
PROPOSED COMMITTEE SUBSTITUTE H310-PCS10351-RIf-19

Short Title: Wireless Communications Infrastructure Siting. (Public)

Sponsors:

Referred to:

March 13, 2017

A BILL TO BE ENTITLED

AN ACT TO REFORM COLLOCATION OF SMALL WIRELESS COMMUNICATIONS INFRASTRUCTURE TO AID IN DEPLOYMENT OF NEW TECHNOLOGIES.

The General Assembly of North Carolina enacts:

SECTION 1. The General Assembly finds the following:

(1) The design, engineering, permitting, construction, modification, maintenance, and operation of wireless facilities are instrumental to the provision of emergency services and to increasing access to advanced technology and information for the citizens of North Carolina.

(2) Cities and counties play a key role in facilitating the use of the public rights-of-way.

(3) Wireless services providers and wireless infrastructure providers must have access to the public rights-of-way and the ability to attach to poles and structures in the public rights-of-way to densify their networks and provide next generation services.

(4) Small wireless facilities, including facilities commonly referred to as small cells and distributed antenna systems, often may be deployed most effectively in the public rights-of-way.

(5) Expeditious processes and reasonable and nondiscriminatory rates, fees, and terms related to such deployments are essential to the construction and maintenance of wireless facilities.

(6) Wireless facilities help ensure the State remain competitive in the global economy.

(7) The timely design, engineering, permitting, construction, modification, maintenance, and operation of wireless facilities are matters of statewide concern and interest.

SECTION 2.(a) G.S. 160A-400.51(4a) is recodified as G.S. 160A-400.51(4d).

SECTION 2.(b) G.S. 160A-400.51(7a) is recodified as G.S. 160A-400.51(7b).

SECTION 2.(c) Part 3E of Article 19 of Chapter 160A of the General Statutes, as amended by subsections (a) and (b) of this section, reads as rewritten:

"Part 3E. Wireless Telecommunications Facilities.

"§ 160A-400.50. Purpose and compliance with federal law.

...

(c) This Part shall not be construed to authorize a city to require the construction or installation of wireless facilities or to regulate wireless services other than as set forth herein.

"§ 160A-400.51. Definitions.

The following definitions apply in this Part.

(1) Antenna. – Communications equipment that transmits, receives, or transmits and receives electromagnetic radio signals used in the provision of all types of wireless communications services.

(1a) Applicable codes. – The North Carolina State Building Code and any other uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization together with State or local amendments to those codes enacted solely to address imminent threats of destruction of property or injury to persons.

(2) Application. – ~~A formal request submitted to the city to construct or modify a wireless support structure or a wireless facility.~~A request that is submitted by an applicant to a city for a permit to collocate wireless facilities or to approve the installation, modification, or replacement of a utility pole, city utility pole, or wireless support structure.

(2a) Base station. – A station at a specific site authorized to communicate with mobile stations, generally consisting of radio receivers, antennas, coaxial cables, power supplies, and other associated electronics.

(3) Building permit. – An official administrative authorization issued by the city prior to beginning construction consistent with the provisions of G.S. 160A-417.

(3a) City right-of-way. – A right-of-way owned, leased, or operated by a city, including any public street or alley that is not a part of the State highway system.

(3b) City utility pole. – A pole owned by a city in the city right-of-way that provides lighting, traffic control, or a similar function.

(4) Collocation. – The ~~placement or installation~~ placement, installation, maintenance, modification, operation, or replacement of wireless facilities ~~on~~ on, under, within, or on the surface of the earth adjacent to existing structures, including ~~electrical transmission towers,~~utility poles, city utility poles, water towers, buildings, and other structures capable of structurally supporting the attachment of wireless facilities in compliance with applicable codes. The term "collocation" does not include the installation of new utility poles, city utility poles, or wireless support structures.

(4a) Communications facility. – The set of equipment and network components, including wires and cables and associated facilities used by a communications service provider to provide communications service.

(4b) Communications service. – Cable service as defined in 47 U.S.C. § 522(6), information service as defined in 47 U.S.C. § 153(24), telecommunications service as defined in 47 U.S.C. § 153(53), or wireless services.

(4c) Communications service provider. – A cable operator as defined in 47 U.S.C. § 522(5), a provider of information service, as defined in 47 U.S.C. § 153(24); a telecommunications carrier, as defined in 47 U.S.C. § 153(51), or a wireless provider.

(4d) Eligible facilities request. – A request for modification of an existing wireless tower or base station that involves collocation of new transmission equipment or replacement of transmission equipment but does not include a substantial modification.

(5) Equipment compound. – An area surrounding or near the base of a wireless support structure within which a wireless facility is located.

(5a) Fall zone. – The area in which a wireless support structure may be expected to fall in the event of a structural failure, as measured by engineering standards.

(6) Land development regulation. – Any ordinance enacted pursuant to this Part.

(6a) Micro wireless facility. – A small wireless facility that is no larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height and that has an exterior antenna, if any, no longer than 11 inches.

(7) Search ring. – The area within which a wireless support facility or wireless facility must be located in order to meet service objectives of the wireless service provider using the wireless facility or wireless support structure.

(7a) Small wireless facility. – A wireless facility that meets both of the following qualifications:

a. Each antenna is located inside an enclosure of no more than six cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements, if enclosed, could fit within an enclosure of no more than six cubic feet.

b. All other wireless equipment associated with the facility has a cumulative volume of no more than 28 cubic feet. For purposes of this sub-subdivision, the following types of ancillary equipment are not included in the calculation of equipment volume: electric meters, concealment elements, telecommunications demarcation boxes, ground-based enclosures, grounding equipment, power transfer switches, cut-off switches, vertical cable runs for the connection of power and other services, or other support structures.

(7b) Substantial modification. – The mounting of a proposed wireless facility on a wireless support structure that substantially changes the physical dimensions of the support structure. A mounting is presumed to be a substantial modification if it meets any one or more of the criteria listed below. The burden is on the local government to demonstrate that a mounting that does not meet the listed criteria constitutes a substantial change to the physical dimensions of the wireless support structure.

a. Increasing the existing vertical height of the structure by the greater of (i) more than ten percent (10%) or (ii) the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet.

b. Except where necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable, adding an appurtenance to the body of a wireless support structure that protrudes horizontally from the edge of the wireless support structure the greater of (i) more than 20 feet or (ii) more than the width of the wireless support structure at the level of the appurtenance.

c. Increasing the square footage of the existing equipment compound by more than 2,500 square feet.

(8) Utility pole. – A structure that is designed for and used to carry lines, cables, ~~or wires~~ wires, lighting facilities, or small wireless facilities for telephone, cable television, ~~or~~ electricity, ~~or to provide lighting.~~ lighting, or wireless services.

(8a) Water tower. – A water storage tank, a standpipe, or an elevated tank situated on a support structure originally constructed for use as a reservoir or facility to store or deliver water.

(9) Wireless facility. – ~~The set of equipment and network components, exclusive of the underlying wireless support structure or tower, including antennas, transmitters, receivers, base stations, power supplies, cabling, and associated equipment necessary to provide wireless data and wireless telecommunications services to a discrete geographic area.~~Equipment at a fixed location that enables wireless communications between user equipment and a communications network, including (i) equipment associated with wireless communications and (ii) radio transceivers, antennas, wires, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration. The term includes small wireless facilities. The term shall not include any of the following:

a. The structure or improvements on, under, within, or adjacent to which the equipment is collocated.

b. Wireline backhaul facilities.

c. Coaxial or fiber-optic cable that is between wireless structures or utility poles or city utility poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna.

(9a) Wireless infrastructure provider. – Any person with a certificate to provide telecommunications service in the State who builds or installs wireless communication transmission equipment, wireless facilities, or wireless support structures for small wireless facilities but that does not provide wireless services.

(9b) Wireless provider. – A wireless infrastructure provider or a wireless services provider.

(9c) Wireless services. – Any services, using licensed or unlicensed wireless spectrum, including the use of Wi-Fi, whether at a fixed location or mobile, provided to the public using wireless facilities.

(9d) Wireless services provider. – A person who provides wireless services.

(10) Wireless support structure. – A new or existing structure, such as a monopole, lattice tower, or guyed tower that is designed to support or capable of supporting wireless facilities. A utility pole or a city utility pole is not a wireless support structure.

…

"**§ 160A-400.54. Collocation of small wireless facilities.**

(a) Except as expressly provided in this Part, a city shall not prohibit, regulate, or charge for the collocation of small wireless facilities.

(b) A city may not establish a moratorium on (i) filing, receiving, or processing applications or (ii) issuing permits or any other approvals for the collocation of small wireless facilities.

(c) Small wireless facilities that meet the height requirements of G.S. 160A-400.55(b)(2) shall only be subject to administrative review and approval under subsection (d) of this section if they are collocated (i) in a city right-of-way within any zoning district or (ii) outside of rights-of-way on property other than single-family residential property.

(d) A city may require an applicant to obtain a permit to collocate a small wireless facility. A city shall receive applications for, process, and issue such permits subject to the following requirements:

(1) A city may not, directly or indirectly, require an applicant to perform services unrelated to the collocation for which approval is sought. For purposes of this subdivision, "services unrelated to the collocation," includes in-kind contributions to the city such as the reservation of fiber, conduit, or pole space for the city.

(2) The wireless provider completes an application as specified in form and content by the city. A wireless provider shall not be required to provide more information to obtain a permit than communications service providers that are not wireless providers.

(3) A permit application shall be deemed complete unless the city provides notice otherwise in writing to the applicant within 30 days of submission or within some other mutually agreed upon time frame. The notice shall identify the deficiencies in the application which, if cured, would make the application complete. The application shall be deemed complete on resubmission if the additional materials cure the deficiencies identified.

(4) The permit application shall be processed on a nondiscriminatory basis and shall be deemed approved if the city fails to approve or deny the application within 45 days from the time the application is deemed complete or a mutually agreed upon time frame between the city and the applicant.

(5) A city may deny an application only on the basis that it does not meet any of the following: (i) the city's applicable codes; (ii) local code provisions or regulations that concern public safety, objective design standards for decorative utility poles, city utility poles, or reasonable and nondiscriminatory stealth and concealment requirements, including screening or landscaping for ground-mounted equipment; (iii) public safety and reasonable spacing requirements concerning the location of ground-mounted equipment in a right-of-way; or (iv) the historic preservation requirements in subsection 160A-400.55(h). The city must (i) document the basis for a denial, including the specific code provisions on which the denial was based and (ii) send the documentation to the applicant on or before the day the city denies an application. The applicant may cure the deficiencies identified by the city and resubmit the application within 30 days of the denial without paying an additional application fee. The city shall approve or deny the revised application within 30 days of the date on which the application was resubmitted. Any subsequent review shall be limited to the deficiencies cited in the prior denial.

(6) An application must include an attestation that the small wireless facilities shall be collocated on the utility pole, city utility pole, or wireless support structure and that the small wireless facilities shall be activated for use by a wireless services provider to provide service no later than one year from the permit issuance date, unless the city and the wireless provider agree to extend this period or a delay is caused by a lack of commercial power at the site.

(7) An applicant seeking to collocate small wireless facilities at multiple locations within the jurisdiction of a city shall be allowed at the applicant's discretion to file a consolidated application for no more than 25 separate facilities and receive a permit for the collocation of all the small wireless facilities meeting the requirements of this section. A city may remove small wireless facility collocations from a consolidated application and treat separately small wireless facility collocations (i) for which incomplete information has been provided or (ii) that are denied. The city may issue a separate permit for each collocation that is approved.

(8) The permit may specify that collocation of the small wireless facility shall commence within six months of approval and shall be activated for use no later than one year from the permit issuance date, unless the city and the

wireless provider agree to extend this period or a delay is caused by a lack of commercial power at the site.

(e) A city may charge an application fee that shall not exceed the lesser of (i) the actual, direct, and reasonable costs to process and review applications for collocated small wireless facilities; (ii) the amount charged by the city for permitting of any similar activity; or (iii) one hundred dollars ($100.00) per facility for the first five small wireless facilities addressed in an application, plus fifty dollars ($50.00) for each additional small wireless facility addressed in the application. In any dispute concerning the appropriateness of a fee, the city has the burden of proving that the fee meets the requirements of this subsection.

(f) A city may impose a technical consulting fee for each application, not to exceed five hundred dollars ($500.00), to offset the cost of reviewing and processing applications required by this section. The fee must be based on the actual, direct, and reasonable administrative costs incurred for the review, processing, and approval of an application. A city may engage a third-party consultant for technical consultation and the review of an application. The fee imposed by a city for the review of the application shall not be used for either of the following:

(1) Travel expenses incurred in a third party's review of a collocation application.

(2) Direct payment or reimbursement for a consultant or other third party based on a contingent fee basis or results-based arrangement.

In any dispute concerning the appropriateness of a fee, the city has the burden of proving that the fee meets the requirements of this subsection.

(g) A city may require a wireless services provider to remove an abandoned wireless facility within 180 days of abandonment. Should the wireless services provider fail to timely remove the abandoned wireless facility, the city may cause such wireless facility to be removed and may recover the actual cost of such removal, including legal fees, if any, from the wireless services provider. For purposes of this subsection, a wireless facility shall be deemed abandoned at the earlier of the date that the wireless services provider indicates that it is abandoning such facility or the date that is 180 days after the date that such wireless facility ceases to transmit a signal, unless the wireless services provider gives the city reasonable evidence that it is diligently working to place such wireless facility back in service.

(h) A city shall not require an application or permit for (i) routine maintenance; (ii) the replacement of small wireless facilities with small wireless facilities that are the same size or smaller; or (iii) installation, placement, maintenance, or replacement of micro wireless facilities that are suspended on cables strung between existing utility poles or city utility poles in compliance with applicable codes by or for a communications service provider authorized to occupy the rights-of-way and who is remitting taxes under G.S. 105-164.4(a)(4c) or G.S. 105-164.4(a)(6).

(i) Nothing in this section shall prevent a city from requiring a work permit for work that involves excavation, affects traffic patterns, or obstructs vehicular traffic in the city right-of-way.

"**§ 160A-400.55. Use of public right-of-way.**

(a) A city shall not enter into an exclusive arrangement with any person for use of city rights-of-way for the construction, operation, marketing, or maintenance of wireless facilities or wireless support structures or the collocation of small wireless facilities.

(b) Subject to the requirements of G.S. 160A-400.54, a wireless provider may collocate small wireless facilities along, across, upon, or under any city right-of-way. Subject to the requirements of this section, a wireless provider may place, maintain, modify, operate, or replace associated utility poles, city utility poles, conduit, cable, or related appurtenances and facilities along, across, upon, and under any city right-of-way. The placement, maintenance, modification, operation, or replacement of utility poles and city utility poles associated with the collocation of small wireless facilities, along, across, upon, or under any city right-of-way shall

be subject only to review or approval under subsection (d) of G.S. 160A-400.54 if the wireless provider meets all the following requirements:

(1) Each new utility pole and each modified or replacement utility pole or city utility pole installed in the right-of-way shall not exceed 50 feet above ground level.

(2) Each new small wireless facility in the right-of-way shall not extend more than 10 feet above the utility pole, city utility pole, or wireless support structure on which it is collocated.

(c) Nothing in this section shall be construed to prohibit a city from allowing utility poles, city utility poles, or wireless facilities that exceed the limits set forth in subdivision (1) of subsection (b) of this section.

(d) Applicants for use of a city right-of-way shall comply with a city's undergrounding requirements prohibiting the installation of above-ground structures in the rights-of-way without prior zoning approval, if those requirements (i) are nondiscriminatory with respect to type of utility, (ii) do not prohibit the replacement of structures existing at the time of adoption of the requirements, and (iii) have a waiver process.

(e) Except as provided in this part, a city may assess a right-of-way charge under this section for use or occupation of the right-of-way by a wireless provider, subject to the restrictions set forth under G.S. 160A-296(a)(6). In addition, charges authorized by this section shall meet all of the following requirements:

(1) The right-of-way charge shall not exceed the direct and actual cost of managing the rights-of-way and shall not be based on the wireless provider's revenue or customer counts.

(2) The right-of-way charge shall not exceed that imposed on other users of the right-of-way, including publicly, cooperatively, or municipally owned utilities.

(3) The right-of-way charge shall be reasonable and nondiscriminatory.

Nothing in this subsection is intended to establish or otherwise affect rates charged for attachments to utility poles, city utility poles, or wireless support structures. At its discretion, a city may provide free access to city rights-of-way on a nondiscriminatory basis in order to facilitate the public benefits of the deployment of wireless services.

(f) Nothing in this section is intended to authorize a person to place, maintain, modify, operate, or replace a privately owned utility pole or wireless support structure or to collocate small wireless facilities on a privately owned utility pole, a privately owned wireless support structure, or other private property without the consent of the property owner.

(g) A city may require a wireless provider to repair all damage to a city right-of-way directly caused by the activities of the wireless provider, while occupying, installing, repairing, or maintaining wireless facilities, wireless support structures, city utility poles, or utility poles and to return the right-of-way to its functional equivalence before the damage. If the wireless provider fails to make the repairs required by the city within a reasonable time after written notice, the city may undertake those repairs and charge the applicable party the reasonable and documented cost of the repairs. The city may maintain an action to recover the costs of the repairs.

(h) This section shall not be construed to limit local government authority to enforce historic preservation zoning regulations consistent with Part 3C of Article 19 of this Chapter, the preservation of local zoning authority under 47 U.S.C. § 332(c)(7), the requirements for facility modifications under 47 U.S.C. § 1455(a), or the National Historic Preservation Act of 1966, 54 U.S.C. § 300101, et seq., as amended, and the regulations, local acts, and city charter provisions adopted to implement those laws.

(i) A wireless provider may apply to a city to place utility poles in the public rights-of-way, or to replace or modify utility poles or city utility poles in the public rights-of

way, to support the collocation of small wireless facilities. A city shall accept and process the application in accordance with the provisions of G.S. 160A-400.54(d), applicable codes, and other local codes governing the placement of utility poles or city utility poles in the public rights-of-way, including provisions or regulations that concern public safety, objective design standards for decorative utility poles or city utility poles, or reasonable and nondiscriminatory stealth and concealment requirements, including those relating to screening or landscaping, or public safety and reasonable spacing requirements. The application may be submitted in conjunction with the associated small wireless facility application.

"**§ 160A-400.56. Access to city utility poles.**

(a) A city may not enter into an exclusive arrangement with any person for the right to collocate small wireless facilities on city utility poles. A city shall allow any wireless provider to collocate small wireless facilities on its city utility poles at just, reasonable, and nondiscriminatory rates, terms, and conditions, but in no instance may the rate exceed fifty dollars ($50.00) per city utility pole per year. The North Carolina Utilities Commission shall not consider this subsection as evidence in a proceeding initiated pursuant to G.S. 62-350(c).

(b) A request to collocate 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 city to be reimbursed by the wireless provider. In granting a request under this section, a city 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.

(c) If a city that operates a public enterprise as permitted by Article 16 of this Chapter has an existing city utility pole attachment rate, fee, or other term with an entity, then, subject to termination provisions, that attachment rate, fee, or other term shall apply to collocations by that entity or its related entities on city utility poles.

(d) Following receipt of the first request from a wireless provider to collocate on a city utility pole, a city shall, within 60 days, establish the rates, terms, and conditions for the use of or attachment to the city utility poles that it owns or controls. Upon request, a party shall state in writing its objections to any proposed rate, terms, and conditions of the other party.

(e) In any controversy concerning the appropriateness of a rate for a collocation attachment to a city utility pole, the city has the burden of proving that the rates are reasonably related to the actual, direct, and reasonable costs incurred for use of space on the pole for such period.

(f) The city shall provide a good-faith estimate for any make-ready work necessary to enable the city utility pole to support the requested collocation, including pole replacement if necessary, within 60 days after receipt of a complete application. Make-ready work, including any pole replacement, shall be completed within 60 days of written acceptance of the good-faith estimate by the applicant. For purposes of this section, the term "make-ready work" means any modification or replacement of a city utility pole necessary for the city utility pole to support a small wireless facility in compliance with applicable safety requirements, including the National Electrical Safety Code, that is performed in preparation for a collocation installation.

(g) The city shall not require more make-ready work than that required to meet applicable codes or industry standards. Fees for make-ready work shall not include costs related to preexisting or prior damage or noncompliance. Fees for make-ready work, including any pole replacement, shall not exceed actual costs or the amount charged to other communications service providers for similar work and shall not include any consultant fees or expenses.

(h) Nothing in this section shall be construed to apply to an entity whose poles, ducts, and conduits are subject to regulation under section 224 of the Communications Act of 1934, 47 U.S.C. § 151, et seq., as amended, or under G.S. 62-350.

(i) This section shall not apply to an excluded entity. Nothing in this section shall be construed to affect the authority of an excluded entity to deny, limit, restrict, or determine the rates, fees, terms, and conditions for the use of or attachment to its utility poles, city utility poles, or wireless support structures by a wireless provider. This section shall not be construed to alter or affect the provisions of G.S. 62-350, and the rates, terms, or conditions for the use of poles, ducts, or conduits by communications service providers, as defined in G.S. 62-350, are governed solely by G.S. 62-350. For purposes of this section, "excluded entity" means (i) a city that owns or operates a public enterprise pursuant to Article 16 of this Chapter consisting of an electric power generation, transmission, or distribution system or (ii) an electric membership corporation organized under Chapter 117 of the General Statutes that owns or controls poles, ducts, or conduits, but which is exempt from regulation under section 224 of the Communications Act of 1934, 47 U.S.C. § 151 et seq., as amended.

"**§ 160A-400.57. Applicability.**

(a) A city shall not adopt or enforce any ordinance, rule, regulation, or resolution that regulates the design, engineering, construction, installation, or operation of any small wireless facility located in an interior structure or upon the site of any stadium or athletic facility. This subsection does not apply to a stadium or athletic facility owned or otherwise controlled by the city. This subsection does not prohibit the enforcement of applicable codes.

(b) Nothing contained in this Part shall amend, modify, or otherwise affect any private easement. Any and all rights for the use of a right-of-way are subject to the rights granted pursuant to a private easement.

(c) Except as provided in this Part or otherwise specifically authorized by the General Statutes, a city may not adopt or enforce any regulation on the placement or operation of communications facilities in the rights-of-way by a provider authorized by State law to operate in the rights-of-way and may not regulate any communications services.

(d) Except as provided in this Part or specifically authorized by the General Statutes, a city may not impose or collect any tax, fee, or charge to provide a communications service over a communications facility in the right-of-way.

(e) The approval of the installation, placement, maintenance, or operation of a small wireless facility pursuant to this Part does not authorize the provision of any communications services or the installation, placement, maintenance, or operation of any communications facility, including a wireline backhaul facility, other than a small wireless facility, in the right-of-way."

SECTION 3.(a) G.S. 136-18 reads as rewritten:

"**§ 136-18. Powers of Department of Transportation.**

The said Department of Transportation is vested with the following powers:

...

(10) To make proper and reasonable rules, regulations and ordinances for the placing or erection of telephone, telegraph, electric and other lines, above or below ground, wireless facilities, signboards, fences, gas, water, sewerage, oil, or other pipelines, and other similar obstructions that may, in the opinion of the Department of Transportation, contribute to the hazard upon any of the said highways or in any way interfere with the same, and to make reasonable rules and regulations for the proper control thereof. And whenever the order of the said Department of Transportation shall require the removal of, or changes in, the location of telephone, telegraph, electric or other lines, wireless facilities, signboards, fences, gas, water, sewerage, oil, or other pipelines, or other similar obstructions, the owners thereof shall at

their own expense, except as provided in G.S. 136-19.5(c), move or change the same to conform to the order of said Department of Transportation. Any violation of such rules and regulations or noncompliance with such orders shall constitute a Class 1 misdemeanor. For purposes of this subdivision, "wireless facilities" shall have the definition set forth in G.S. 160A-400.51.

...."

SECTION 3.(b) Article 2 of Chapter 136 of the General Statutes is amended by adding a new section to read:

"**§ 136-18.3A. Wireless communications infrastructure.**

(a) The definitions set forth in G.S. 160A-400.51 shall apply to this section.

(b) The Department of Transportation is authorized to issue permits to wireless providers for the collocation of wireless facilities and the construction, operation, modification, or maintenance of utility poles, wireless support structures, conduit, cable, and related appurtenances and facilities for the provision of wireless services along, across, upon, or under the rights-of-way of State-maintained highways. The permits and included requirements shall be issued and administered in a reasonable and nondiscriminatory manner.

(c) The Department of Transportation shall take action to approve or deny a permit application under this section within a reasonable period of time of receiving the application from a wireless provider.

(d) The collocation of small wireless facilities and the construction, operation, modification, or maintenance of utility poles, wireless support structures, conduit, cable, and related appurtenances and facilities for the provision of small wireless facilities along, across, upon, or under the rights-of-way of State-maintained highways shall be subject to all of the following requirements:

(1) The structures and facilities shall not obstruct or hinder the usual travel or public safety on any rights-of-way of State-maintained highways or obstruct the legal use of such rights-of-way by other utilities.

(2) Each new or modified utility pole and wireless support structure installed in the right-of-way of State-maintained highways shall not exceed the greater of (i) 10 feet in height above the height of the tallest existing utility pole, other than a utility pole supporting only wireless facilities, in place as of July 1, 2017, located within 500 feet of the new pole in the same rights-of-way or (ii) 50 feet above ground level.

(3) Each new small wireless facility in the right-of-way shall not extend (i) more than 10 feet above an existing utility pole, other than a utility pole supporting only wireless facilities, or wireless support structure in place as of July 1, 2017, or (ii) above the height permitted for a new utility pole or wireless support structure under subdivision (2) of this section."

SECTION 4. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H D

HOUSE BILL 310
PROPOSED COMMITTEE SUBSTITUTE H310-CSRIf-19 [v.4]
05/17/2017 08:20:12 PM

Short Title: Wireless Communications Infrastructure Siting. (Public)

Sponsors:

Referred to:

March 13, 2017

A BILL TO BE ENTITLED

AN ACT TO REFORM COLLOCATION OF SMALL WIRELESS COMMUNICATIONS INFRASTRUCTURE TO AID IN DEPLOYMENT OF NEW TECHNOLOGIES.

The General Assembly of North Carolina enacts:

SECTION 1. The General Assembly finds the following:

(1) The design, engineering, permitting, construction, modification, maintenance, and operation of wireless facilities are instrumental to the provision of emergency services and to increasing access to advanced technology and information for the citizens of North Carolina.

(2) Cities and counties play a key role in facilitating the use of the public rights-of-way.

(3) Wireless services providers and wireless infrastructure providers must have access to the public rights-of-way and the ability to attach to poles and structures in the public rights-of-way to densify their networks and provide next generation services.

(4) Small wireless facilities, including facilities commonly referred to as small cells and distributed antenna systems, often may be deployed most effectively in the public rights-of-way.

(5) Expeditious processes and reasonable and nondiscriminatory rates, fees, and terms related to such deployments are essential to the construction and maintenance of wireless facilities.

(6) Wireless facilities help ensure the State remains competitive in the global economy.

(7) The timely design, engineering, permitting, construction, modification, maintenance, and operation of wireless facilities are matters of statewide concern and interest.

SECTION 2.(a) G.S. 160A-400.51(4a) is recodified as G.S. 160A-400.51(4d).

SECTION 2.(b) G.S. 160A-400.51(7a) is recodified as G.S. 160A-400.51(7b).

SECTION 2.(c) Part 3E of Article 19 of Chapter 160A of the General Statutes, as amended by subsections (a) and (b) of this section, reads as rewritten:

"Part 3E. Wireless Telecommunications Facilities.

"**§ 160A-400.50. Purpose and compliance with federal law.**

...

(c) This Part shall not be construed to authorize a city to require the construction or installation of wireless facilities or to regulate wireless services other than as set forth herein.

"**§ 160A-400.51. Definitions.**

The following definitions apply in this Part.

(1) Antenna. – Communications equipment that transmits, receives, or transmits and receives electromagnetic radio signals used in the provision of all types of wireless communications services.

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(2) Application. – ~~A formal request submitted to the city to construct or modify a wireless support structure or a wireless facility.~~ A request that is submitted by an applicant to a city for a permit to collocate wireless facilities or to approve the installation, modification, or replacement of a utility pole, city utility pole, or wireless support structure.

(2a) Base station. – A station at a specific site authorized to communicate with mobile stations, generally consisting of radio receivers, antennas, coaxial cables, power supplies, and other associated electronics.

(3) Building permit. – An official administrative authorization issued by the city prior to beginning construction consistent with the provisions of G.S. 160A-417.

(3a) City right-of-way. – A right-of-way owned, leased, or operated by a city, including any public street or alley that is not a part of the State highway system.

(3b) City utility pole. – A pole owned by a city in the city right-of-way that provides lighting, traffic control, or a similar function.

(4) Collocation. – The ~~placement or installation~~ placement, installation, maintenance, modification, operation, or replacement of wireless facilities ~~on~~ on, under, within, or on the surface of the earth adjacent to existing structures, including ~~electrical transmission towers,~~utility poles, city utility poles, water towers, buildings, and other structures capable of structurally supporting the attachment of wireless facilities in compliance with applicable codes. The term "collocation" does not include the installation of new utility poles, city utility poles, or wireless support structures.

(4a) Communications facility. – The set of equipment and network components, including wires and cables and associated facilities used by a communications service provider to provide communications service.

(4b) Communications service. – Cable service as defined in 47 U.S.C. § 522(6), information service as defined in 47 U.S.C. § 153(24), telecommunications service as defined in 47 U.S.C. § 153(53), or wireless services.

(4c) Communications service provider. – A cable operator, as defined in 47 U.S.C. § 522(5); a provider of information service, as defined in 47 U.S.C. § 153(24); a telecommunications carrier, as defined in 47 U.S.C. § 153(51); or a wireless provider.

(4d) Eligible facilities request. – A request for modification of an existing wireless tower or base station that involves collocation of new transmission equipment or replacement of transmission equipment but does not include a substantial modification.

(5) Equipment compound. – An area surrounding or near the base of a wireless support structure within which a wireless facility is located.

(5a) Fall zone. – The area in which a wireless support structure may be expected to fall in the event of a structural failure, as measured by engineering standards.

(6) Land development regulation. – Any ordinance enacted pursuant to this Part.

(6a) Micro wireless facility. – A small wireless facility that is no larger in dimension than twenty four (24) inches in length, fifteen (15) inches in width, and twelve (12) inches in height, and that has an exterior antenna, if any, no longer than eleven (11) inches.

(7) Search ring. – The area within which a wireless support facility or wireless facility must be located in order to meet service objectives of the wireless service provider using the wireless facility or wireless support structure.

(7a) Small wireless facility. – A wireless facility that meets both of the following qualifications:

a. Each antenna is located inside an enclosure of no more than six (6) cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements, if enclosed, could fit within an enclosure of no more than six cubic feet.

b. All other wireless equipment associated with the facility has a cumulative volume of no more than twenty eight (28) cubic feet. For purposes of this sub-subdivision, the following types of ancillary equipment are not included in the calculation of equipment volume: electric meters, concealment elements, telecommunications demarcation boxes, ground-based enclosures, grounding equipment, power transfer switches, cut-off switches, vertical cable runs for the connection of power and other services, or other support structures.

(7b) Substantial modification. – The mounting of a proposed wireless facility on a wireless support structure that substantially changes the physical dimensions of the support structure. A mounting is presumed to be a substantial modification if it meets any one or more of the criteria listed below. The burden is on the local government to demonstrate that a mounting that does not meet the listed criteria constitutes a substantial change to the physical dimensions of the wireless support structure.

a. Increasing the existing vertical height of the structure by the greater of (i) more than ten percent (10%) or (ii) the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet.

b. Except where necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable, adding an appurtenance to the body of a wireless support structure that protrudes horizontally from the edge of the wireless support structure the greater of (i) more than 20 feet or (ii) more than the width of the wireless support structure at the level of the appurtenance.

c. Increasing the square footage of the existing equipment compound by more than 2,500 square feet.

(8) Utility pole. – A structure that is designed for and used to carry lines, cables, ~~or wires~~ wires, lighting facilities, or small wireless facilities, for telephone, cable television, ~~or~~ electricity, ~~or to provide lighting.~~lighting, or wireless services.

(8a) Water tower. – A water storage tank, a standpipe, or an elevated tank situated on a support structure originally constructed for use as a reservoir or facility to store or deliver water.

(9) Wireless facility. – ~~The set of equipment and network components, exclusive of the underlying wireless support structure or tower, including antennas, transmitters, receivers, base stations, power supplies, cabling, and associated equipment necessary to provide wireless data and wireless telecommunications services to a discrete geographic area.~~ Equipment at a fixed location that enables wireless communications between user equipment and a communications network, including (i) equipment associated with wireless communications, and (ii) radio transceivers, antennas, wires, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration. The term includes small wireless facilities. The term shall not include any of the following:

a. The structure or improvements on, under, within, or adjacent to which the equipment is collocated.

b. Wireline backhaul facilities.

c. Coaxial or fiber-optic cable that is between wireless structures or utility poles or city utility poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna.

(9a) Wireless infrastructure provider. – Any person with a certificate to provide telecommunications service in the State who builds or installs wireless communication transmission equipment, wireless facilities, or wireless support structures for small wireless facilities, but that does not provide wireless services.

(9b) Wireless provider. – A wireless infrastructure provider or a wireless services provider.

(9c) Wireless services. – Any services, using licensed or unlicensed wireless spectrum, including the use of Wi-Fi, whether at a fixed location or mobile, provided to the public using wireless facilities.

(9d) Wireless services provider. – A person who provides wireless services.

(10) Wireless support structure. – A new or existing structure, such as a monopole, lattice tower, or guyed tower that is designed to support or capable of supporting wireless facilities. A utility pole or a city utility pole is not a wireless support structure.

...

"**§ 160A-400.54. Collocation of small wireless facilities.**

(a) Except as expressly provided in this Part, a city shall not prohibit, regulate, or charge for the collocation of small wireless facilities.

(b) A city may not establish a moratorium on (i) filing, receiving, or processing applications, or (ii) issuing permits or any other approvals for the collocation of small wireless facilities.

(c) Small wireless facilities that meet the height requirements of G.S. 160A-400.55(b)(2) shall only be subject to administrative review and approval under subsection (d) of this section if they are collocated (i) in a city right-of-way within any zoning district, or (ii) outside of rights-of-way on property other than single family residential property.

(d) A city may require an applicant to obtain a permit to collocate a small wireless facility. A city shall receive applications for, process, and issue such permits subject to the following requirements:

(1) A city may not, directly or indirectly, require an applicant to perform services unrelated to the collocation for which approval is sought. For purposes of this subdivision, "services unrelated to the collocation," includes

in-kind contributions to the city such as the reservation of fiber, conduit, or pole space for the city.

(2) The wireless provider completes an application as specified in form and content by the city. A wireless provider shall not be required to provide more information to obtain a permit than communications service providers that are not wireless providers.

(3) A permit application shall be deemed complete unless the city provides notice otherwise in writing to the applicant within thirty (30) days of submission or within some other mutually agreed upon time frame. The notice shall identify the deficiencies in the application which, if cured, would make the application complete. The application shall be deemed complete on resubmission if the additional materials cure the deficiencies identified.

(4) The permit application shall be processed on a nondiscriminatory basis and shall be deemed approved if the city fails to approve or deny the application within forty five (45) days from the time the application is deemed complete or a mutually agreed upon time frame between the city and the applicant.

(5) A city may deny an application only on the basis that it does not meet any of following: (i) the city's applicable codes; (ii) local code provisions or regulations that concern public safety, objective design standards for decorative utility poles, city utility poles, or reasonable and nondiscriminatory stealth and concealment requirements, including screening or landscaping for ground-mounted equipment; (iii) public safety and reasonable spacing requirements concerning the location of ground-mounted equipment in a right-of-way; or (iv) the historic preservation requirements in subsection 160A-400.55(h). The city must (i) document the basis for a denial, including the specific code provisions on which the denial was based, and (ii) send the documentation to the applicant on or before the day the city denies an application. The applicant may cure the deficiencies identified by the city and resubmit the application within thirty (30) days of the denial without paying an additional application fee. The city shall approve or deny the revised application within thirty (30) days of the date of which the application was resubmitted. Any subsequent review shall be limited to the deficiencies cited in the prior denial.

(6) An application must include an attestation that the small wireless facilities shall be collocated on the utility pole, city utility pole, or wireless support structure and that the small wireless facilities shall be activated for use by a wireless services provider to provide service no later than one year from the permit issuance date, unless the city and the wireless provider agree to extend this period or a delay is caused by a lack of commercial power at the site.

(7) An applicant seeking to collocate small wireless facilities at multiple locations within the jurisdiction of a city shall be allowed at the applicant's discretion to file a consolidated application for no more than twenty five (25) separate facilities and receive a permit for the collocation of all the small wireless facilities meeting the requirements of this section. A city may remove small wireless facility collocations from a consolidated application and treat separately small wireless facility collocations for which (i) incomplete information has been provided, or (ii) that are denied. The city may issue a separate permit for each collocation that is approved.

(8) The permit may specify that collocation of the small wireless facility shall commence within six (6) months of approval and shall be activated for use no later than one year from the permit issuance date, unless the city and the wireless provider agree to extend this period or a delay is caused by a lack of commercial power at the site.

(e) A city may charge an application fee that shall not exceed the lesser of (i) the actual, direct and reasonable costs to process and review applications for collocated small wireless facilities; (ii) the amount charged by the city for permitting of any similar activity; or (iii) one hundred dollars ($100.00) per facility for the first five small wireless facilities addressed in an application, plus fifty dollars ($50.00) for each additional small wireless facility addressed in the application. In any dispute concerning the appropriateness of a fee, the city has the burden of proving that the fee meets the requirements of this subsection.

(f) A city may impose a technical consulting fee for each application, not to exceed five hundred dollars ($500.00), to offset the cost of reviewing and processing applications required by this section. The fee must be based on the actual, direct, and reasonable administrative costs incurred for the review, processing, and approval of an application. A city may engage a third-party consultant for technical consultation and the review of an application. The fee imposed by a city for the review of the application shall not be used for either of the following:

(1) Travel expenses incurred in a third party's review of a collocation application.

(2) Direct payment or reimbursement for a consultant or other third-party based on a contingent fee basis or results-based arrangement.

In any dispute concerning the appropriateness of a fee, the city has the burden of proving that the fee meets the requirements of this subsection.

(g) A city may require a wireless services provider to remove an abandoned wireless facility within one hundred and eighty (180) days of abandonment. Should the wireless services provider fail to timely remove the abandoned wireless facility, the city may cause such wireless facility to be removed and may recover the actual cost of such removal, including legal fees, if any, from the wireless services provider. For purposes of this subsection, a wireless facility shall be deemed abandoned at the earlier of the date that the wireless services provider indicates that it is abandoning such facility or the date that is one hundred and eighty (180) days after the date that such wireless facility ceases to transmit a signal, unless the wireless services provider gives the city reasonable evidence that it is diligently working to place such wireless facility back in service.

(h) A city shall not require an application or permit for (i) routine maintenance; (ii) the replacement of small wireless facilities with small wireless facilities that are the same size or smaller; or (iii) installation, placement, maintenance, or replacement of micro wireless facilities that are suspended on cables strung between existing utility poles or city utility poles in compliance with applicable codes by or for a communications service provider authorized to occupy the rights-of-way and who is remitting taxes under G.S. 105-164.4(a)(4c) or G.S. 105-164.4(a)(6).

(i) Nothing in this section shall prevent a city from requiring a work permit for work that involves excavation, affects traffic patterns, or obstructs vehicular traffic in the city right-of-way.

"**§ 160A-400.55. Use of public right-of-way.**

(a) A city shall not enter into an exclusive arrangement with any person for use of city rights-of-way for the construction, operation, marketing, or maintenance of wireless facilities or wireless support structures, or the collocation of small wireless facilities.

(b) Subject to the requirements of G.S. 160A-400.54, a wireless provider may collocate small wireless facilities along, across, upon, or under any city right-of-way. Subject to the requirements of this section, a wireless provider may place, maintain, modify, operate, or

replace associated utility poles, city utility poles, conduit, cable, or related appurtenances and facilities along, across, upon, and under any city right-of-way. The placement, maintenance, modification, operation, or replacement of utility poles and city utility poles associated with the collocation of small wireless facilities, along, across, upon, or under any city right-of-way shall be subject only to review or approval under subsection (d) of G.S. 160A-400.54 if the wireless provider meets all the following requirements:

(1) Each new utility pole and each modified or replacement utility pole or city utility pole installed in the right-of-way shall not exceed fifty (50) feet above ground level.

(2) Each new small wireless facility in the right-of-way shall not extend more than ten (10) feet above the utility pole, city utility pole or wireless support structure on which it is collocated.

(c) Nothing in this section shall be construed to prohibit a city from allowing utility poles, city utility poles, or wireless facilities that exceed the limits set forth in subdivision (1) of subsection (b) of this section.

(d) Applicants for use of a city right-of-way shall comply with a city's undergrounding requirements prohibiting the installation of above-ground structures in the rights-of-way without prior zoning approval, if those requirements (i) are nondiscriminatory with respect to type of utility, (ii) do not prohibit the replacement of structures existing at the time of adoption of the requirements, and (iii) have a waiver process.

(e) Except as provided in this part, a city may assess a right-of-way charge under this section for use or occupation of the right-of-way by a wireless provider, subject to the restrictions set forth under G.S. 160A-296(a)(6). In addition, charges authorized by this section shall meet all of the following requirements:

(1) The right-of-way charge shall not exceed the direct and actual cost of managing the rights-of-way and shall not be based on the wireless provider's revenue or customer counts.

(2) The right-of-way charge shall not exceed that imposed on other users of the right-of-way, including publicly, cooperatively, or municipally owned utilities.

(3) The right-of-way charge shall be reasonable and nondiscriminatory.

Nothing in this subsection is intended to establish or otherwise affect rates charged for attachments to utility poles, city utility poles, or wireless support structures. At its discretion, a city may provide free access to city rights-of-way on a nondiscriminatory basis in order to facilitate the public benefits of the deployment of wireless services.

(f) Nothing in this section is intended to authorize a person to place, maintain, modify, operate, or replace a privately owned utility pole or wireless support structure, or to collocate small wireless facilities on a privately owned utility pole, a privately owned wireless support structure, or other private property without the consent of the property owner.

(g) A city may require a wireless provider to repair all damage to a city right-of-way directly caused by the activities of the wireless provider, while occupying, installing, repairing, or maintaining wireless facilities, wireless support structures, city utility poles, or utility poles, and to return the right-of-way to its functional equivalence before the damage. If the wireless provider fails to make the repairs required by the city within a reasonable time after written notice, the city may undertake those repairs and charge the applicable party the reasonable and documented cost of the repairs. The city may maintain an action to recover the costs of the repairs.

(h) This section shall not be construed to limit local government authority to enforce historic preservation zoning regulations consistent with Part 3C of Article 19 of this Chapter of the General Statutes, the preservation of local zoning authority under 47 U.S.C. § 332(c)(7), the requirements for facility modifications under 47 U.S.C. § 1455(a), or the National Historic

Preservation Act of 1966, 54 U.S.C. § 300101 et seq., as amended, and the regulations, local acts, and city charter provisions adopted to implement those laws.

(i) A wireless provider may apply to a city to place utility poles in the public rights-of-way, or to replace or modify utility poles or city utility poles in the public rights-of way, to support the collocation of small wireless facilities. A city shall accept and process the application in accordance with the provisions of G.S. 160A-400.54(d), applicable codes, and other local codes governing the placement of utility poles or city utility poles in the public rights-of-way, including provisions or regulations that concern public safety, objective design standards for decorative utility poles or city utility poles, or reasonable and nondiscriminatory stealth and concealment requirements, including those relating to screening or landscaping, or public safety and reasonable spacing requirements. The application may be submitted in conjunction with the associated small wireless facility application.

"**§ 160A-400.56. Access to city utility poles.**

(a) A city may not enter into an exclusive arrangement with any person for the right to collocate small wireless facilities on city utility poles. A city shall allow any wireless provider to collocate small wireless facilities on its city utility poles at just, reasonable, and nondiscriminatory rates, terms, and conditions, but in no instance may the rate exceed fifty dollars ($50.00) per city utility pole per year. The North Carolina Utilities Commission shall not consider this subsection as evidence in a proceeding initiated pursuant to G.S. 62-350(c).

(b) A request to collocate 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 city to be reimbursed by the wireless provider. In granting a request under this section, a city 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.

(c) If a city that operates a public enterprise as permitted by Article 16 of this Chapter has an existing city utility pole attachment rate, fee, or other term with an entity, then, subject to termination provisions, that attachment rate, fee, or other term shall apply to collocations by that entity or its related entities on city utility poles.

(d) Following receipt of the first request from a wireless provider to collocate on a city utility pole, a city shall, within 60 days, establish the rates, terms, and conditions for the use of or attachment to the city utility poles that it owns or controls. Upon request, a party shall state in writing its objections to any proposed rate, terms, and conditions of the other party.

(e) In any controversy concerning the appropriateness of a rate for a collocation attachment to a city utility pole, the city has the burden of proving that the rates are reasonably related to the actual, direct, and reasonable costs incurred for use of space on the pole for such period.

(f) The city shall provide a good faith estimate for any make-ready necessary to enable the city utility pole to support the requested collocation, including pole replacement if necessary, within 60 days after receipt of a complete application. Make-ready work, including any pole replacement, shall be completed within 60 days of written acceptance of the good faith estimate by the applicant. For purposes of this section, the term "make-ready work" means any modification or replacement of a city utility pole necessary for the city utility pole to support a small wireless facility in compliance with applicable safety requirements, including the National Electrical Safety Code, that is performed in preparation for a collocation installation.

(g) The city shall not require more make-ready work than that required to meet applicable codes or industry standards. Fees for make-ready work shall not include costs related to pre-existing or prior damage or noncompliance. Fees for make-ready work, including any

pole replacement, shall not exceed actual costs or the amount charged to other communications service providers for similar work and shall not include any consultant fees or expenses.

(h) Nothing in this section shall be construed to apply to an entity whose poles, ducts, and conduits are subject to regulation under section 224 of the Communications Act of 1934, 47 U.S.C. § 151 et. seq., as amended, or under G.S. 62-350.

(i) This section shall not apply to an excluded entity. Nothing in this section shall be construed to affect the authority of an excluded entity to deny, limit, restrict, or determine the rates, fees, terms and conditions for the use of or attachment to its utility poles, city utility poles, or wireless support structures by a wireless provider. This section shall not be construed to alter or affect the provisions of G.S. 62-350, and the rates, terms, or conditions for the use of poles, ducts, or conduits by communications service providers, as defined in G.S. 62-350, are governed solely by G.S. 62-350. For purposes of this section "excluded entity" means: (i) a city that owns or operates a public enterprise pursuant to Article 16 of this Chapter consisting of an electric power generation, transmission, or distribution system; or (ii) an electric membership corporation organized under Chapter 117 of the General Statutes, that owns or controls poles, ducts or conduits, but which is exempt from regulation under section 224 of the Communications Act of 1934, 47 U.S.C. § 151 et. seq., as amended.

"**§ 160A-400.57. Applicability.**

(a) A city shall not adopt or enforce any ordinance, rule, regulation, or resolution that regulates the design, engineering, construction, installation, or operation of any small wireless facility located in an interior structure or upon the site of any stadium or athletic facility. This subsection does not apply to a stadium or athletic facility owned or otherwise controlled by the city. This subsection does not prohibit the enforcement of applicable codes.

(b) Nothing contained in this Part shall amend, modify, or otherwise affect any private easement. Any and all rights for the use of a right-of-way are subject to the rights granted pursuant to a private easement.

(c) Except as provided in this Part or otherwise specifically authorized by the General Statutes, a city may not adopt or enforce any regulation on the placement or operation of communications facilities in the rights-of-way by a provider authorized by State law to operate in the rights-of-way and may not regulate any communications services.

(d) Except as provided in this Part or specifically authorized by the General Statutes, a city may not impose or collect any tax, fee, or charge to provide a communications service over a communications facility in the right-of-way.

(e) The approval of the installation, placement, maintenance, or operation of a small wireless facility pursuant to this Part does not authorize the provision of any communications services or the installation, placement, maintenance, or operation of any communications facility, including a wireline backhaul facility, other than a small wireless facility, in the right-of-way."

SECTION 3.(a) G.S. 136-18 reads as rewritten:

"**§ 136-18. Powers of Department of Transportation.**

...

(10) To make proper and reasonable rules, regulations and ordinances for the placing or erection of telephone, telegraph, electric and other lines, above or below ground, wireless facilities, signboards, fences, gas, water, sewerage, oil, or other pipelines, and other similar obstructions that may, in the opinion of the Department of Transportation, contribute to the hazard upon any of the said highways or in any way interfere with the same, and to make reasonable rules and regulations for the proper control thereof. And whenever the order of the said Department of Transportation shall require the removal of, or changes in, the location of telephone, telegraph, electric or other lines, wireless facilities, signboards, fences, gas, water, sewerage, oil,

or other pipelines, or other similar obstructions, the owners thereof shall at their own expense, except as provided in G.S. 136-19.5(c), move or change the same to conform to the order of said Department of Transportation. Any violation of such rules and regulations or noncompliance with such orders shall constitute a Class 1 misdemeanor. For purposes of this subdivision, "wireless facilities" shall have the definition set forth in G.S. 160A-400.51.

...."

SECTION 3.(b) Article 2 of Chapter 136 of the General Statutes is amended by adding a new section to read:

"**§ 136-18.3A. Wireless communications infrastructure.**

(a) The definitions set forth in G.S. 160A-400.51 shall apply to this section.

(b) The Department of Transportation is authorized to issue permits to wireless providers for the collocation of wireless facilities and the construction, operation, modification, or maintenance of utility poles, wireless support structures, conduit, cable, and related appurtenances and facilities for the provision of wireless services along, across, upon, or under the rights-of-way of State-maintained highways. The permits and included requirements shall be issued and administered in a reasonable and nondiscriminatory manner.

(c) The Department of Transportation shall take action to approve or deny a permit application under this section within a reasonable period of time of receiving the application from a wireless provider.

(d) The collocation of small wireless facilities and the construction, operation, modification, or maintenance of utility poles, wireless support structures, conduit, cable, and related appurtenances and facilities for the provision of small wireless facilities along, across, upon, or under the rights-of-way of State-maintained highways shall be subject to all of the following requirements:

(1) The structures and facilities shall not obstruct or hinder the usual travel or public safety on any rights-of-way of State-maintained highways or obstruct the legal use of such rights-of-way by other utilities.

(2) Each new or modified utility pole and wireless support structure installed in the right-of-way of State-maintained highways shall not exceed the greater of (i) 10 feet in height above the height of the tallest existing utility pole, other than a utility pole supporting only wireless facilities, in place as July 1, 2017, located within 500 feet of the new pole in the same rights-of-way or (ii) 50 feet above ground level.

(3) Each new small wireless facility in the right-of-way shall not extend (i) more than 10 feet above an existing utility pole, other than a utility pole supporting only wireless facilities, or wireless support structure in place as of July 1, 2017; or (ii) above the height permitted for a new utility pole or wireless support structure under subdivision (2) of this section."

SECTION 4. This act is effective when it becomes law.

HOUSE BILL 310

Short Title:	Wireless Communications Infrastructure Siting.	(Public)
Sponsors:	Representatives Saine, Torbett, and Wray (Primary Sponsors). *For a complete list of sponsors, refer to the North Carolina General Assembly web site.*	
Referred to:	Energy and Public Utilities, if favorable, Finance	

March 13, 2017

A BILL TO BE ENTITLED

AN ACT TO REFORM WIRELESS COMMUNICATIONS INFRASTRUCTURE LICENSING AND PERMITTING TO AID IN DEPLOYMENT OF NEW TECHNOLOGIES.

The General Assembly of North Carolina enacts:

SECTION 1. The General Assembly finds the following:

(1) The design, engineering, permitting, construction, modification, maintenance, and operation of wireless facilities are instrumental to the provision of emergency services and to increasing access to advanced technology and information for the citizens of North Carolina.

(2) Cities and counties play a key role in facilitating the use of the public rights-of-way.

(3) Wireless services providers and wireless infrastructure providers must have access to the public rights-of-way and the ability to attach to poles and structures in the public rights-of-way to densify their networks and provide next generation services.

(4) Small wireless facilities, including facilities commonly referred to as small cells and distributed antenna systems, often may be deployed most effectively in the public rights-of-way.

(5) Therefore, expeditious processes and reasonable and nondiscriminatory rates, fees, and terms related to such deployments are essential to the construction and maintenance of wireless facilities.

(6) Wireless facilities help ensure the State remains competitive in the global economy.

(7) The timely design, engineering, permitting, construction, modification, maintenance, and operation of wireless facilities are matters of statewide concern and interest.

SECTION 2.(a) G.S. 160A-400.51(4a) is recodified as G.S. 160A-400.51(4b).

SECTION 2.(b) G.S. 160A-400.51(7a) is recodified as G.S. 160A-400.51(7b).

SECTION 2.(c) Part 3E of Article 19 of Chapter 160A of the General Statutes, as amended by subsections (a) and (b) of this section, reads as rewritten:

"Part 3E. Wireless Telecommunications Facilities.

"**§ 160A-400.50. Purpose and compliance with federal law.**

...

(c) This Part shall not be construed to authorize a city to require the construction or installation of wireless facilities or to regulate wireless services other than as set forth herein.

"§ 160A-400.51. Definitions.

The following definitions apply in this Part.

(1) Antenna. – Communications equipment that transmits, receives, or transmits and receives electromagnetic radio signals used in the provision of all types of wireless communications services.

(1a) Applicable codes. – The North Carolina State Building Code and any other uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization together with State or local amendments to those codes enacted solely to address imminent threats of destruction of property or injury to persons.

(2) Application. – A formal request submitted to the city to construct or modify a wireless support structure or a wireless facility.

(2a) Base station. – A station at a specific site authorized to communicate with mobile stations, generally consisting of radio receivers, antennas, coaxial cables, power supplies, and other associated electronics.

(3) Building permit. – An official administrative authorization issued by the city prior to beginning construction consistent with the provisions of G.S. 160A-417.

(3a) City right-of-way. – A right-of-way owned, leased, or operated by a city, including any public street or alley that is not a part of the State highway system.

(3b) City utility pole. – A utility pole owned or operated by a city in the right-of-way of any public street or alley that is not a part of the State highway system.

(4) Collocation. – The ~~placement or installation~~ placement, installation, maintenance, modification, operation, or replacement of wireless facilities ~~on~~ on, under, within, or on the surface of the earth adjacent to existing structures, including electrical transmission towers, water towers, buildings, and other structures capable of structurally supporting the attachment of wireless facilities in compliance with applicable codes.

(4a) Communications service provider. – A cable operator, as defined in 47 U.S.C. § 522(5); a provider of information service, as defined in 47 U.S.C. § 153(24); a telecommunications carrier, as defined in 47 U.S.C. § 153(51); or a wireless provider.

(4b) Eligible facilities request. – A request for modification of an existing wireless tower or base station that involves collocation of new transmission equipment or replacement of transmission equipment but does not include a substantial modification.

(5) Equipment compound. – An area surrounding or near the base of a wireless support structure within which a wireless facility is located.

(5a) Fall zone. – The area in which a wireless support structure may be expected to fall in the event of a structural failure, as measured by engineering standards.

(6) Land development regulation. – Any ordinance enacted pursuant to this Part.

(7) Search ring. – The area within which a wireless support facility or wireless facility must be located in order to meet service objectives of the wireless service provider using the wireless facility or wireless support structure.

(7a) Small wireless facility. – A wireless facility that meets both of the following qualifications:

a. Each antenna is located inside an enclosure of no more than six cubic feet in volume or, in the case of an antenna that has exposed elements,

the antenna and all of its exposed elements, if enclosed, could fit within an enclosure of no more than six cubic feet.

b. All other wireless equipment associated with the facility has a cumulative volume of no more than 28 cubic feet. For purposes of this sub-subdivision, the following types of ancillary equipment are not considered "associated with the facility" and therefore are excluded from the calculation of cumulative volume: electric meters, concealment elements, telecommunications demarcation boxes, ground-based enclosures, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection of power and other services.

(7b) Substantial modification. – The mounting of a proposed wireless facility on a wireless support structure that substantially changes the physical dimensions of the support structure. A mounting is presumed to be a substantial modification if it meets any one or more of the criteria listed below. The burden is on the local government to demonstrate that a mounting that does not meet the listed criteria constitutes a substantial change to the physical dimensions of the wireless support structure.

a. Increasing the existing vertical height of the structure by the greater of (i) more than ten percent (10%) or (ii) the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet.

b. Except where necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable, adding an appurtenance to the body of a wireless support structure that protrudes horizontally from the edge of the wireless support structure the greater of (i) more than 20 feet or (ii) more than the width of the wireless support structure at the level of the appurtenance.

c. Increasing the square footage of the existing equipment compound by more than 2,500 square feet.

(8) Utility pole. – A structure that is designed for and used to carry lines, cables, or wires for telephone, cable television, or electricity, or to provide ~~lighting.~~lighting, traffic control, signage, or a similar function.

(8a) Water tower. – A water storage tank, a standpipe, or an elevated tank situated on a support structure originally constructed for use as a reservoir or facility to store or deliver water.

(9) Wireless facility. – ~~The set of equipment and network components, exclusive of the underlying wireless support structure or tower, including antennas, transmitters, receivers, base stations, power supplies, cabling, and associated equipment necessary to provide wireless data and wireless telecommunications services to a discrete geographic area.~~Equipment at a fixed location that enables wireless communications between user equipment and a communications network, including (i) equipment associated with wireless communications and (ii) radio transceivers, antennas, wires, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration. The term includes small wireless facilities but does not include any structure or improvements on, under, within, or adjacent to which the equipment is collocated.

(9a) Wireless infrastructure provider. – Any person with a certificate to provide telecommunications service in the State who builds or installs wireless

communication transmission equipment, wireless facilities, or wireless support structures but that does not provide wireless services.

(9b) Wireless provider. – A wireless infrastructure provider or a wireless services provider.

(9c) Wireless services. – Any services, whether at a fixed location or mobile, provided using wireless facilities.

(9d) Wireless services provider. – A person who provides wireless services.

(10) Wireless support structure. – A new or existing structure, such as a monopole, lattice tower, or guyed tower that is designed to support or capable of supporting wireless facilities. A utility pole is not a wireless support structure.

...

"**§ 160A-400.54. Collocation of small wireless facilities.**

(a) Except as expressly provided in this Part, a city may not prohibit, regulate, or charge for the collocation of small wireless facilities.

(b) A city may not institute, either expressly or in practice, a moratorium on (i) filing, receiving, or processing applications or (ii) issuing permits or any other approvals for the collocation of small wireless facilities.

(c) Small wireless facilities shall be classified as permitted uses and not subject to zoning review or approval authorized by Article 19 of this Chapter if they are collocated (i) in a city right-of-way within any zoning district or (ii) outside of rights-of-way on any property other than property zoned exclusively for single-family residential use.

(d) A city may require an applicant to obtain a building permit to collocate a small wireless facility, provided the permit is of general applicability and does not apply exclusively to wireless facilities. A city shall receive applications for, process, and issue such permits subject to the following requirements:

(1) A city may not, directly or indirectly, require an applicant to perform services unrelated to the collocation for which approval is sought. For purposes of this subdivision, "services unrelated to the collocation," includes, but is not limited to, in-kind contributions to the city such as the reservation of fiber, conduit, or pole space for the city.

(2) An applicant shall not be required to provide more information to obtain a permit than communications service providers that are not wireless providers.

(3) Within 10 days of receiving an application, a city must determine and notify the applicant whether the application is complete. If an application is incomplete, a city must specifically identify the missing information.

(4) The permit application shall be processed on a nondiscriminatory basis and shall be deemed approved if the city fails to approve or deny the application within 60 days.

(5) A city may deny an application only on the basis that it does not meet the city's applicable codes. The city must (i) document the basis for a denial, including the specific code provisions on which the denial was based, and (ii) send the documentation to the applicant on or before the day the city denies an application. The applicant may cure the deficiencies identified by the city and resubmit the application within 30 days of the denial without paying an additional application fee. The city shall approve or deny the revised application within 30 days. Any subsequent review shall be limited to the deficiencies cited in the prior denial.

(6) An applicant seeking to collocate small wireless facilities at multiple locations within the jurisdiction of a city shall be allowed at the applicant's discretion to file a consolidated application and receive a single permit for the collocation of all the small wireless facilities meeting the requirements of this section.

(7) The permit may specify that collocation of the small wireless facility shall commence within one year of approval and shall be pursued to completion. The permit may not place a time limitation on completion of the small wireless facility and shall remain in effect until the applicant requests that the permit be terminated.

(e) The city may charge a fee to offset the cost of reviewing and processing applications required by this section, subject to the following limitations:

(1) A city may charge an application fee only if a fee is required for other similar activities within the city's jurisdiction.

(2) The fee shall be reasonably related in time to the incurring of such costs.

(3) A fee may not include (i) travel expenses incurred by a third party in its review of an application or (ii) direct payment or reimbursement of third-party rates or fees charged under a contingency or result-based arrangement.

(4) In any dispute concerning the appropriateness of a fee, the city shall have the burden of proving that the fee meets the requirements of this subsection.

(5) The total application fee shall not exceed the lesser of (i) the actual, direct and reasonable costs to process and review applications for collocated small wireless facilities, (ii) the amount charged by the city for a building permit for any similar activity, and (iii) one hundred dollars ($100.00) per facility for the first five small wireless facilities addressed in an application plus fifty dollars ($50.00) for each additional small wireless facility addressed in the application.

(f) A city shall not require an application for (i) routine maintenance or (ii) the replacement of wireless facilities with wireless facilities that are substantially similar or the same size or smaller. Provided, however, that a city may require a permit to work within a city right-of-way for such activities, if applicable. Any such permits shall be subject to the requirements provided in subsections (d) and (e) of this section.

"**§ 160A-400.55. Use of public right-of-way.**

(a) This section shall apply to activities of a wireless provider within any city right-of-way.

(b) A city shall not enter into an exclusive arrangement with any person for use of city rights-of-way for the construction, operation, marketing, or maintenance of wireless facilities or wireless support structures or the collocation of small wireless facilities.

(c) The collocation of wireless facilities and the construction, operation, modification, or maintenance of utility poles, wireless support structures, conduit, cable, and related appurtenances and facilities along, across, upon, and under any city right-of-way shall not be subject to zoning review or approval authorized by Article 19 of this Chapter if the wireless provider wishing to undertake the collocation meets the following requirements:

(1) The wireless provider completes an application as specified in form and content by the city.

(2) The structures and facilities do not obstruct or hinder the usual travel or public safety on any rights-of-way or obstruct the legal use of such rights-of-way by other utilities.

(3) Each new or modified utility pole and wireless support structure installed in the right-of-way does not exceed the greater of (i) 10 feet in height above the height of the tallest existing utility pole in place as July 1, 2017, located within 500 feet of the new pole in the same rights-of-way or (ii) 50 feet above ground level.

(4) Each new wireless facility in the right-of-way does not extend (i) more than 10 feet above an existing utility pole or wireless support structure in place as of July 1, 2017, or (ii) above the height permitted for a new utility pole or wireless support structure under this section.

(d) A city may not prohibit the construction, modification, or maintenance of utility poles, wireless support structures, or wireless facilities that exceed the limits set forth in subdivision (3) of subsection (c) of this section if those structures and facilities comply with applicable zoning requirements for the site.

(e) Applicants for use of a city right-of-way shall comply with a city's undergrounding requirements prohibiting communications service providers from installing structures in the rights-of-way without prior zoning approval in areas zoned for single-family residential use, if those requirements (i) are nondiscriminatory with respect to type of utility and (ii) do not prohibit the replacement of structures existing at the time of adoption of the requirements.

(f) A city may charge a wireless provider for the use of a city right-of-way to construct, collocate, install, mount, maintain, modify, operate, or replace a wireless facility or wireless support structure if the city charges other communications service providers or publicly, cooperatively, or municipally owned utilities for similar uses of the right-of-way. Charges authorized by this section shall meet all of the following requirements:

(1) The charge shall not exceed the direct and actual cost of managing the rights-of-way and shall not be based on the wireless provider's revenue or customer counts. The city may not impose a charge if existing rates, fees, or taxes already recover the direct and actual costs of managing the rights-of-way.

(2) The charge shall not exceed that imposed on other users of the right-of-way, including investor, city, or cooperatively owned entities.

(3) The charge shall not be unreasonable, discriminatory, or violate any applicable law.

(4) In the case of collocation of small wireless facilities under G.S. 160A-400.54, the charge shall not exceed an annual amount equal to twenty dollars ($20.00) for each utility pole or wireless support structure in the city's corporate limits on which the wireless provider has collocated a small wireless facility antenna.

Nothing in this subsection is intended to prevent a city from providing free access to city rights-of-way on a nondiscriminatory basis in order to facilitate the public benefits of the deployment of wireless services.

(g) A city may require a wireless provider to repair all damage to a city right-of-way directly caused by the activities of the wireless provider, while occupying, installing, repairing, or maintaining wireless facilities, wireless support structures, or utility poles and to return the right-of-way to its functional equivalence before the damage. If the wireless provider fails to make the repairs required by the city within a reasonable time after written notice, the city may undertake those repairs and charge the applicable party the reasonable and documented cost of the repairs.

"**§ 160A-400.56. Dispute resolution.**

In the event a wireless provider and a city are unable to reach an agreement on fees or charges arising under this Part, either party may initiate proceedings to resolve the dispute before the Utilities Commission as set forth in G.S. 62-350(c). Unless the wireless provider and the city otherwise agree, the city shall allow the placement of a wireless facility or wireless support structure at a temporary rate of one-half of a city-proposed annual fee or charge or twenty dollars ($20.00), whichever is less, pending resolution of the dispute.

"**§ 160A-400.57. Limitation of authority.**

A city shall not adopt or enforce any ordinance, rule, regulation, or resolution that does any of the following:

(1) Regulates the design, engineering, construction, installation, or operation of any small wireless facility located in an interior structure or upon the site of any stadium or athletic facility. The prohibition set forth in this subdivision does not apply (i) if the city owns or otherwise controls the stadium or athletic facility or (ii) to the enforcement of applicable codes.

(2) Requires a wireless provider to (i) indemnify and hold harmless the city and its officers and employees or (ii) obtain insurance policies naming the city and its officers and employees as additional insureds against any claims, lawsuits, judgments, costs, liens, losses, expenses, or fees related to the installation, repair, or maintenance of wireless facilities."

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

"**§ 62-350. Regulation of pole attachments.**

...

(c) In the event the parties are unable to reach an agreement within 90 days of matters arising under Part 3E of Article 19 of Chapter 160A of the General Statutes or 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 initiate proceedings to resolve the dispute before the Commission. The Commission shall have exclusive jurisdiction over 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 filings the issues in 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 filings consistent with the public interest and necessity so as to derive just and reasonable rates, terms, and 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 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 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 proceeding brought under this subsection, the 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.

...

(e) For purposes of this section, the term "communications service provider" means a person or entity that provides or intends to provide: (i) telephone service as a public utility under Chapter 62 of the General Statutes or as a telephone membership corporation organized under Chapter 117 of the General Statutes; (ii) broadband service, but excluding broadband service over energized electrical conductors owned by a municipality or membership corporation; ~~or~~ (iii) cable service over a cable system as those terms are defined in Article 42 of Chapter 66 of the General ~~Statutes.~~Statutes; or (iv) services as a wireless provider as defined in G.S. 160A-400.51.

...."

SECTION 2.(e) This section becomes effective July 1, 2017, and applies to applications for wireless communications infrastructure received by cities on or after that date. Any charge imposed by a city on wireless providers for use of rights-of-way owned, leased, or operated by a city to construct, collocate, install, mount, maintain, modify, operate, or replace a wireless facility or wireless support structure shall comply with the requirements of G.S. 160A-400.55, as enacted by this subsection (c) of this section, no later than January 1, 2018.

SECTION 3.(a) G.S. 136-18 reads as rewritten:

"**§ 136-18. Powers of Department of Transportation.**

...

(10) To make proper and reasonable rules, regulations and ordinances for the placing or erection of telephone, telegraph, electric and other lines, above or below ground, wireless facilities, signboards, fences, gas, water, sewerage, oil, or other pipelines, and other similar obstructions that may, in the opinion of the Department of Transportation, contribute to the hazard upon any of the said highways or in any way interfere with the same, and to make reasonable rules and regulations for the proper control thereof. And whenever the order of the said Department of Transportation shall require the removal of, or changes in, the location of telephone, telegraph, electric or other lines, wireless facilities, signboards, fences, gas, water, sewerage, oil, or other pipelines, or other similar obstructions, the owners thereof shall at their own expense, except as provided in G.S. 136-19.5(c), move or change the same to conform to the order of said Department of Transportation. Any violation of such rules and regulations or noncompliance with such orders shall constitute a Class 1 misdemeanor. For purposes of this subdivision, "wireless facilities" shall have the definition set forth in G.S. 160A-400.51.

...."

SECTION 3.(b) Article 2 of Chapter 136 of the General Statutes is amended by adding a new section to read:

"**§ 136-18.3A. Wireless communications infrastructure.**

(a) The definitions set forth in G.S. 160A-400.51 shall apply to this section.

(b) The Department of Transportation is authorized to issue permits to wireless providers for the collocation of wireless facilities and the construction, operation, modification, or maintenance of utility poles, wireless support structures, conduit, cable, and related appurtenances and facilities for the provision of wireless services along, across, upon, and under the rights-of-way of State-maintained highways. The permits and included requirements shall be issued and administered in a reasonable and nondiscriminatory manner.

(c) If the Department of Transportation does not take action to approve or deny a permit application under this section within 60 days of receiving the application from a wireless provider, the permit is deemed approved.

(d) The Department of Transportation may charge a wireless provider for the use of the rights-of-way of a State-maintained highway to construct, collocate, install, mount, maintain, modify, operate, or replace a wireless facility or wireless support structure if and to the same extent the Department of Transportation charges other communications service providers or publicly, cooperatively, or municipally owned utilities for similar uses of the right-of-way. Charges authorized by this subsection shall not exceed the direct and actual cost of managing the rights-of-way and shall not be based on the wireless provider's revenue or customer counts. The Department of Transportation may not impose a charge if existing rates, fees, or taxes already recover the direct and actual costs of managing the rights-of-way.

(e) The Department of Transportation may require a wireless provider to repair all damage to a right-of-way directly caused by the activities of the wireless provider, while occupying, installing, repairing, or maintaining wireless facilities, wireless support structures, or utility poles and to return the right-of-way to its functional equivalence before the damage. If the wireless provider fails to make the repairs required by the Department of Transportation within a reasonable time after written notice, the Department of Transportation may undertake those repairs and charge the applicable party the reasonable and documented cost of the repairs."

SECTION 4. Except as otherwise provided, this act is effective when it becomes law.

HOUSE BILL 310:
Wireless Communications Infrastructure Siting.

2017-2018 General Assembly

Committee:	House Energy and Public Utilities. If favorable, re-refer to Finance	**If Date:**	May 18, 2017
Introduced by:	Reps. Saine, Torbett, Wray	**Prepared by:**	Jennifer McGinnis Committee Counsel
Analysis of:	PCS to First Edition H310-CSRIf-19		

OVERVIEW: ***The Proposed Committee Substitute (PCS) to House Bill 310 would amend the laws relating to regulation by cities of wireless infrastructure siting with regard to the collocation of small wireless facilities on utility poles, city utility poles, and public rights-of-way.***

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

The PCS would, among other things:

- Modify the definition for the term "collocation" to include *maintenance, modification, operation, or replacement* of wireless facilities on existing structures and utility poles, and to provide that the term does not include installation of new utility poles or wireless support structures.
- Modify language that would provide cities authority to assess fees on wireless providers for occupation of rights-of way to delete language that limited the city's authority to assess such a fee on a wireless provider only to circumstances in which a city charged other communications service providers or publicly, cooperatively, or municipally owned utilities for similar uses of the right-of-way.
- Modify language that provided that nothing in the act would be intended to authorize persons to collocate small wireless facilities on privately owned utility poles or other private property absent consent of the property owner, to include language concerning *maintenance, modification, operation, or replacement* of private poles or wireless support structures.
- Increase a fee that cities would be authorized to charge wireless providers for collocation of small wireless facilities on city utility poles from $35 to $50.
- Modify language in the section that would govern a wireless provider's access to utility poles, which language formerly provided that the section would not be construed to apply to municipal electric providers or membership corporations that own or control poles, ducts or conduits, to include cities that own or operate public enterprises consisting of electric power generation, transmission, and distribution systems.
- Add language in the applicability section of the act to provide that:

- Except as provided in the act, or otherwise specifically authorized the General Statutes, a city may not: (i) adopt or enforce any regulation on the placement or operation of communications facilities in the rights-of-way by a provider authorized by State law to operate in the rights-of-way and may not regulate any communications services; or (ii) impose or collect any tax, fee, or charge to provide a communications service over a communications facility in the right-of-way.

- The approval of the installation, placement, maintenance, or operation of a small wireless facility pursuant to the act would not authorize the provision of any communications services or the installation, placement, maintenance, or operation of any communications facility, including a wireline backhaul facility, other than a small wireless facility, in the right-of-way.

CURRENT LAW: Article 19 of Chapter 160A and Article 18 of Chapter 153A of the General Statutes provides for local government regulation of the equipment and network components necessary to provide wireless service and new or existing structures designed to support wireless facilities.

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

BILL ANALYSIS:

Section 1 of the PCS would provide that the General Assembly finds that small wireless facilities, including facilities commonly referred to as small cells and distributed antenna systems, may be deployed most effectively in the public rights-of-way.

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

Permitting of Small Wireless Facilities by Cities

G.S. 160A-400.54 would prohibit a city from establishing a moratorium on accepting applications, issuing permits, or otherwise regulating the collocation of small wireless facilities except as provided in this section.

A city would be authorized to require a permit for a wireless provider to collocate small wireless facilities within the city's jurisdiction. A city could require a permit for the collocation of small wireless facilities subject to the following conditions:

- A city may not require applicants to provide unrelated services such as reservation of fiber, conduit, or pole space for the city.
- The city has 30 days to deem an application complete; 45 days to approve or deny the completed application; 30 days for an applicant to revise a denied application; and 30 days for the city to approve or deny a revised application.

- Applicants may include up to 25 small wireless facilities into a single application for a permit. A city may remove one or more those facilities from the consolidated application under certain conditions.
- The permit may require the applicant to commence construction within 6 months of approval and operation no later than one year from approval.

A city may review the permit and deny it only on one of the following basis:

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

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

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

Use of the City Right-of-Way

G.S. 160A-400.55 would: (i) allow a wireless provider to collocate small wireless facilities in the city rights-of-way; and (ii) prohibit a city from entering into an exclusive arrangement with any person for the use of the city right-of-way for wireless facilities, wireless support structures, or the collocation of small wireless facilities.

If the wireless provider seeks to install or modify a utility pole associated with the collocation of a small cell wireless facility and it meets the following height restrictions, the facility would only be subject to the permitting requirements set forth above: (i) new or modified utility poles or city poles not to exceed 50 feet; and (ii) collocated small wireless facilities do not extend more than 10 feet off the top of the structure. The city may, however, allow wireless facilities that exceed those height restrictions at the city's discretion.

Applicants for use of the city right-of-way would have to comply with the city's undergrounding requirements.

A city may charge a wireless provider for the use of the right-of-way. The charge must be reasonable and nondiscriminatory and must not exceed the direct and actual cost of managing the rights-of-way and shall not be based on the wireless provider's revenue or customer counts. The charge must not exceed similar charges imposed on other users of the right-of-way, including publicly, cooperatively, or municipally owned utilities.

This section would allow a city to require a wireless provider to repair any damage to the city right-of-way caused while installing or maintaining wireless facilities or other associated facilities. If the

wireless provider fails to make those repairs, the city may charge the provider the reasonable cost of the repairs.

This section would not limit the enforcement of federal, State, or local historic preservation zoning requirements.

Access to City Utility Poles

G.S. 160A-400.56 would prohibit a city from entering into an exclusive arrangement with any person for the use of the city utility poles. A city must allow a wireless provider to collocate on utility poles at just, reasonable and non-discriminatory rates, not to exceed $50 per a city utility pole per year. The wireless provider seeking to collocate must comply with all applicable safety requirements, including the National Electric Safety Code and rules and regulations of the Occupational Safety and Health Administration.

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

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

Applicability

G.S. 160A-400.56 would prohibit a city from regulating small wireless facilities within any stadium or athletic facility, unless the city owns the stadium or athletic facility. This section would also clarify that nothing in the act would amend, modify, or otherwise affect any private easement agreement. In addition, the section provides that:

- Except as provided in the act, or otherwise specifically authorized the General Statutes, a city may not: (i) adopt or enforce any regulation on the placement or operation of communications facilities in the rights-of-way by a provider authorized by State law to operate in the rights-of-way and may not regulate any communications services; or (ii) impose or collect any tax, fee, or charge to provide a communications service over a communications facility in the right-of-way.

- The approval of the installation, placement, maintenance, or operation of a small wireless facility pursuant to the act would not authorize the provision of any communications services or the installation, placement, maintenance, or operation of any communications facility, including a wireline backhaul facility, other than a small wireless facility, in the right-of-way.

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

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

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

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

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

House Committee on Energy and Public Utilities
Tuesday, June 6, 2017, 8:30 AM
544 Legislative Office Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages & Sargeant-At-Arms:

Bills

BILL NO.	SHORT TITLE	SPONSOR
HB 589	Utilities Commission Fees and Charges.	Representative Szoka Representative Arp Representative Watford

Presentations

Other Business

Chair Jeff Collins, presiding

Adjournment

House Committee on Energy and Public Utilities
Tuesday, June 6, 2017 at 8:30 AM
Room 544 of the Legislative Office Building

MINUTES

The House Committee on Energy and Public Utilities met at 8:30 AM on June 6, 2017 in Room 544 of the Legislative Office Building. Representatives Szoka, Arp, Collins, Watford, Cunningham, Hanes, Alexander, Blackwell, Bradford, Bumgardner, Elmore, Goodman, Duane Hall, Harrison, Hasting, Susan Martin, William Richardson, Riddell, Rogers, Sauls, Stone, Strickland, Wray, and Zachary attended.

Representative Jeff Collins, Chair, presided.

The following bills were considered:

HB 589 Competitive Energy Solutions for NC. (Representatives Szoka, Arp, Watford)

After discussion, HB 589 was given a report of Favorable to the Committee Substitute, Unfavorable to the original bill and re-referred to the committee on Finance.

The meeting adjourned at 9:00 AM.

Representative Jeff Collins, Chair
Presiding

Wes Householder, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES

ENERGY AND PUBLIC UTILITIES COMMITTEE REPORT
Representative John Szoka, Senior Chair
Representative Dean Arp, Co-Chair
Representative Jeff Collins, Co-Chair
Representative Sam Watford, Co-Chair

FAVORABLE COM SUB , UNFAVORABLE ORIGINAL BILL AND RE-REFERRED

HB **589** Utilities Commission Fees and Charges.

Draft Number:	H589-PCS40589-TSf-7
Serial Referral:	**FINANCE**
Recommended Referral:	None
Long Title Amended:	Yes
Floor Manager:	Szoka

TOTAL REPORTED: 1

HOUSE BILL 589

Short Title:	Utilities Commission Fees and Charges.	(Public)
Sponsors:	Representatives Szoka, Arp, and Watford (Primary Sponsors). *For a complete list of sponsors, refer to the North Carolina General Assembly web site.*	
Referred to:	Energy and Public Utilities, if favorable, Finance	

April 6, 2017

A BILL TO BE ENTITLED

AN ACT TO UPDATE THE FEES AND CHARGES OF THE UTILITIES COMMISSION FOR REVIEW OF RENEWABLE ENERGY FACILITIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 62-133.8 is amended by adding a new subsection to read:

"(*l*) The owner, including an electric power supplier, of each renewable energy facility or new renewable energy facility, whether or not required to obtain a certificate of public convenience and necessity pursuant to G.S. 62-110.1, that intends for renewable energy certificates it earns to be eligible for use by an electric power supplier to comply with this section shall register the facility with the Commission. Such an owner shall file a registration statement in the form prescribed by the Commission and remit to the Commission the fee required pursuant to G.S. 62-300(a)(16)."

SECTION 2. G.S. 62-300(a) is amended by adding two new subdivisions to read:

"(16) Two hundred fifty dollars ($250.00) for each registration statement for a renewable energy facility or new renewable energy facility filed pursuant to G.S. 62-133.8(*l*).

(17) Fifty dollars ($50.00) for each report of proposed construction filed by the owner of an electric generating facility that is exempt from the certification requirements of G.S. 62-110.1(a)."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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HOUSE BILL 589
PROPOSED COMMITTEE SUBSTITUTE H589-PCS40589-TSf-7

Short Title: Competitive Energy Solutions for NC. (Public)

Sponsors:

Referred to:

April 6, 2017

A BILL TO BE ENTITLED

AN ACT TO REFORM NORTH CAROLINA'S APPROACH TO INTEGRATION OF RENEWABLE ELECTRICITY GENERATION THROUGH AMENDMENT OF LAWS RELATED TO ENERGY POLICY AND TO ENACT THE DISTRIBUTED RESOURCES ACCESS ACT.

The General Assembly of North Carolina enacts:

PART I. STANDARD CONTRACTS FOR SMALL POWER PRODUCERS

SECTION 1.(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. A small power producer shall not include persons primarily engaged in the generation or sale of electricity from other than small power production facilities.~~that qualifies as a "small power production facility" under 16 U.S.C. § 796, as amended."

SECTION 1.(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 public utility, the ~~commission~~ Commission shall require the public utility to purchase the power, under rates and terms established as provided in ~~subsection (b) of this section.~~subsection (b) or (c) of this section.

(b) ~~No later than March 1, 1981, and at~~At least every two ~~years thereafter,~~years, the ~~commission~~ Commission shall determine the standard contract avoided cost rates to be included within the tariffs of each electric public utility and paid by electric public utilities for power purchased from small power producers, according to the following standards:

(1) ~~Term of Contract.~~ Standard Contract for Small Power Producers up to 1,000 kilowatts (kW). – The Commission shall approve a standard offer power purchase agreement to be used by the electric public utility in purchasing energy and capacity from small power producers subject to this subsection. Long-term contracts up to 10 years for the purchase of electricity by the electric public utility from small power producers with a design

capacity up to and including 1,000 kilowatts (kW) shall be encouraged in order to enhance the economic feasibility of these small power production ~~facilities.~~facilities; provided, however, that when an electric public utility, pursuant to this subsection, has entered into power purchase agreements with small power producer facilities (i) with a total capacity of 100 megawatts (MW) or more and (ii) which established a legally enforceable obligation after November 15, 2016, the eligibility threshold for that utility's standard offer shall be reduced to 100 kilowatts (kW).

(2) Avoided Cost of Energy to the Utility. – The rates paid by ~~a~~ an electric public utility to a small power producer for energy shall not exceed, over the term of the purchase power contract, the incremental cost to the electric public 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 expected costs of the additional or existing generating capacity which could be displaced, the 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 public utilities for ~~power~~ avoided capacity purchased from a small power producer shall be established with consideration of the reliability and availability of the power. A future capacity need shall only be avoided in a year where the utility's most recent biennial integrated resource plan filed with the Commission pursuant to G.S. 62-110.1(c) has identified a projected capacity need to serve system load and the identified need can be met by the type of small power producer resource based upon its availability and reliability of power, other than swine or poultry wastes for which a need is established consistent with G.S. 62-133.8(e) and (f).

(c) Rates to be paid by electric public utilities to small power producers not eligible for the utility's standard contract offer pursuant to subsection (b) of this section shall be established through good-faith negotiations between the utility and small power producer, subject to the Commission's oversight as required by law. In establishing rates for purchases from such small power producers, the utility shall design rates consistent with the Commission-approved avoided cost methodology for a fixed five-year term. Rates for such purchases shall take into account factors related to the individual characteristics of the small power producer, as well as the factors identified in subdivisions (2) and (3) of subsection (b) of this section. Notwithstanding this subsection, small power producers that produce electric energy solely by the use of swine or poultry waste may negotiate for a fixed-term contract that exceeds five years.

(d) Notwithstanding any other provision of this section, an electric public utility shall not be required to enter into a contract with or purchase power from a small power producer if the electric public utility's obligation to purchase from such small power producers has been terminated pursuant to 18 C.F.R. § 292.309."

SECTION 1.(c) A small power production facility which would otherwise be eligible for the standard offer rate schedules and power purchase agreement terms and conditions approved by the Commission in Docket No. E-100, Sub 140, but which fails to commence delivering power to the utility on or before September 10, 2018, shall, notwithstanding such failure, remain eligible for such rate schedules and terms and conditions, unless the nameplate capacity of the generation facility when taken together with the nameplate

capacity of other generation facilities connected to the same substation transformer exceeds the nameplate capacity of the substation transformer. The term of a power purchase agreement eligible for such rate schedules and terms and conditions pursuant to this section shall commence on September 10, 2018, and shall end on the date that is 15 years after the commencement date. An electric public utility shall have the option in its discretion of electing not to interconnect to its distribution system a solar photovoltaic facility with a nameplate capacity of 10 megawatts (MW) or greater that had not executed an interconnection agreement prior to July 1, 2017, and instead requiring such facility to interconnect to the utility's transmission system.

SECTION 1.(d) This section is effective when it becomes law. Subsection (b) of this section applies to any standard contract rates and terms approved by the Commission or nonstandard negotiated agreements entered into between a small power producer and the electric public utility on or after that date. Subsection (c) of this section applies to small power production facilities that established a legally enforceable obligation in accordance with the Commission's then applicable requirements on or before November 15, 2016.

PART II. COMPETITIVE PROCUREMENT OF RENEWABLE ENERGY

SECTION 2.(a) Article 6 of Chapter 62 of the General Statutes is amended by adding a new section to read:

"**§ 62-110.8. Competitive procurement of renewable energy.**

(a) Each electric public utility shall file for Commission approval a program for the competitive procurement of new renewable energy resources with the purpose of adding renewable energy resources to the State's generation resource portfolio in a manner that allows the State's electric public utilities to continue to reliably and cost-effectively serve customers' future energy needs. Renewable energy resources eligible to participate in the competitive procurement shall include resources identified in G.S. 62-133.8(a)(8), but shall be limited to facilities with a nameplate capacity rating of 80 megawatts (MW) or less that are placed in service after the date of the electric public utility's initial competitive procurement. Subject to the limitations set forth in subsections (b) and (c) of this section, the electric public utilities shall issue requests for proposals to procure, and shall procure, new renewable energy resources in the aggregate amount of 2,660 megawatts (MW), and the total amount shall be reasonably allocated over a term of 45 months beginning when the Commission approves the program. At the termination of the initial procurement period of 45 months, the offering of a new renewable energy resources competitive procurement and the amount to be procured shall be determined by the Commission, taking into consideration a showing of need evidenced by the electric public utility's most recent biennial integrated resource plan or annual update filed pursuant to G.S. 62-110.1(c). At a minimum, the Commission shall require the additional competitive procurement of renewable energy resources by the electric public utilities in an amount that includes all of the following: (i) any unawarded portion of the initial competitive procurement required by this subsection; (ii) any deficit in renewable energy capacity identified pursuant to subdivision (1) of subsection (b) of this section; and (iii) any capacity reallocated pursuant to G.S. 62-159.2.

(b) Electric public utilities may jointly or individually implement the aggregate competitive procurement requirements set forth in subsection (a) of this section and may satisfy such requirements for the procurement of new renewable energy resources through any of the following: (i) renewable energy facilities to be acquired from third parties and subsequently owned and operated by the soliciting public utility or utilities; (ii) renewable energy facilities to be constructed, owned, and operated by the soliciting public utility or utilities subject to the limitations of subdivision (4) of this subsection; or (iii) the purchase of renewable energy, capacity, and environmental and renewable attributes from renewable energy facilities owned and operated by third parties that commit to allow the procuring public utility rights to dispatch,

operate, and control the solicited renewable energy facilities in the same manner as the utility's own generating resources. Procured renewable energy resources shall be subject to the following limitations:

(1) If prior to the end of the initial 45-month competitive procurement period the public utilities subject to this section have executed power purchase agreements and interconnection agreements for renewable energy resource projects within their balancing authority areas that are not subject to economic dispatch or curtailment and were not procured pursuant to G.S. 62-159.2 and that have an aggregate capacity in excess of 3,500 megawatts (MW), the Commission shall reduce the competitive procurement aggregate amount by the amount of such exceedance. If the capacity of such renewable energy resources is less than 3,500 megawatts (MW) at the end of the initial 45-month competitive procurement period, the Commission shall require the electric public utilities to conduct an additional competitive procurement in the amount of such deficit.

(2) To ensure the cost-effectiveness of procured new renewable energy resources, each public utility's procurement obligation shall be capped by the public utility's current forecast of its avoided cost calculated over the term of the power purchase agreement. The public utility's current forecast of its avoided cost shall be consistent with the Commission-approved avoided cost methodology.

(3) Each public utility shall submit to the Commission for approval and make publicly available at 30 days prior to each competitive procurement solicitation a pro forma contract to be utilized for the purpose of informing market participants of terms and conditions of the competitive procurement. Each pro forma contract shall define limits and compensation for resource dispatch and curtailments. The pro forma contract shall be for a term of 20 years; provided, however, the Commission may approve a contract term of a different duration if the Commission determines that it is in the public interest to do so.

(4) No more than thirty percent (30%) of an electric public utility's competitive procurement requirement may be satisfied through the utility's own development of renewable energy facilities offered by the electric public utility or any subsidiary of the electric public utility that is located within the electric public utility's service territory. This limitation shall not apply to any renewable energy facilities acquired by an electric public utility that are selected through the competitive procurement and are located within the electric public utility's service territory.

(c) Subject to the aggregate competitive procurement requirements established by this section, the electric public utilities shall have the authority to determine the location and allocated amount of the competitive procurement within their respective balancing authority areas, whether located inside or outside the geographic boundaries of the State, taking into consideration (i) the State's desire to foster diversification of siting of renewable energy resources throughout the State; (ii) the efficiency and reliability impacts of siting of additional renewable energy resources in each public utility's service territory; and (iii) the potential for increased delivered cost to a public utility's customers as a result of siting additional renewable energy resources in a public utility's service territory, including additional costs of ancillary services that may be imposed due to the operational or locational characteristics of a specific renewable energy resource technology, such as nondispatchability, unreliability of availability, and creation or exacerbation of system congestion that may increase redispatch costs.

(d) The competitive procurement of renewable energy resources established pursuant to this section shall be independently administered by a third-party entity to be approved by the Commission. The third-party entity shall develop and publish the methodology used to evaluate responses received pursuant to a competitive procurement solicitation and to ensure that all responses are treated equitably. All reasonable and prudent administrative and related expenses incurred to implement this subsection shall be recovered from market participants through administrative fees levied upon those that participate in the competitive bidding process, as approved by the Commission.

(e) An electric public utility may participate in any competitive procurement process, but shall only participate within its own assigned service territory. If the public utility uses nonpublicly available information concerning its own distribution or transmission system in preparing a proposal to a competitive procurement, the public utility shall make such information available to third parties that have notified the public utility of their intention to submit a proposal to the same request for proposals.

(f) For purposes of this section, the term "balancing authority" means the entity that integrates resource plans ahead of time, maintains load-interchange-generation balance within a balancing authority area, and supports interconnection frequency in real time, and the term "balancing authority area" means the collection of generation, transmission, and loads within the metered boundaries of the balancing authority, and the balancing authority maintains load-resource balance within this area.

(g) An electric public utility shall be authorized to recover the costs of all purchases of energy, capacity, and environmental and renewable attributes from third-party renewable energy resources and to recover the authorized revenue of any utility-owned assets that are procured pursuant to this section through an annual rider approved by the Commission and reviewed annually. Provided it is in the public interest, the authorized revenue for any renewable energy facilities owned by an electric public utility may be calculated on a market basis in lieu of cost-of-service based recovery, using data from the applicable competitive procurement to determine the market price in accordance with the methodology established by the Commission pursuant to subsection (h) of this section. The annual increase in the aggregate amount of these costs that are recoverable by an electric public utility pursuant to this subsection shall not exceed one percent (1%) of the electric public utility's total North Carolina retail jurisdictional gross revenues for the preceding calendar year.

(h) The Commission shall adopt rules to implement the requirements of this section, as follows:

(1) Oversight of the competitive procurement program.

(2) To provide for a waiver of regulatory conditions or code of conduct requirements that would unreasonably restrict a public utility or its affiliates from participating in the competitive procurement process, unless the Commission finds that such a waiver would not hold the public utility's customers harmless.

(3) Establishment of a procedure for expedited review and approval of certificates of public convenience and necessity, or the transfer thereof, for renewable energy facilities owned by the public utility and procured pursuant to this section. The Commission shall issue an order not later than 30 days after a petition for a certificate is filed by the public utility.

(4) Establishment of a methodology to allow an electric public utility to recover its costs pursuant to subsection (g) of this section.

(5) Establishment of a procedure for the Commission to modify or delay implementation of the provisions of this section in whole or in part if the Commission determines that it is in the public interest to do so.

(i) The requirements of this section shall not apply to an electric public utility serving fewer than 150,000 North Carolina retail jurisdictional customers as of January 1, 2017."

SECTION 2.(b) G.S. 62-153(b) reads as rewritten:

"(b) No public utility shall pay any fees, commissions or compensation of any description whatsoever to any affiliated or subsidiary holding, managing, operating, constructing, engineering, financing or purchasing company or agency for services rendered or to be rendered without first filing copies of all proposed agreements and contracts with the Commission and obtaining its approval. Provided, however, that this subsection shall not apply to (i) motor carriers of ~~passengers.~~passengers or (ii) power purchase agreements entered into pursuant to the competitive renewable energy procurement process established pursuant to G.S. 62-110.8."

SECTION 2.(c) This section is effective when it becomes law. The program required to be filed with the Utilities Commission pursuant to G.S. 62-110.8(a), as enacted by subsection (a) of this section, shall be filed by the electric public utility no later than 120 days after the effective date of this section and the Commission shall issue an order to approve, modify, or deny the program no later than 90 days after the submission of the program by the electric public utility.

PART III. RENEWABLE ENERGY PROCUREMENT FOR MAJOR MILITARY INSTALLATIONS, PUBLIC UNIVERSITIES, AND OTHER LARGE CUSTOMERS

SECTION 3.(a) Article 7 of Chapter 62 of the General Statutes is amended by adding a new section to read:

"**§ 62-159.2. Direct renewable energy procurement for major military installations, public universities, and large customers.**

(a) Each electric public utility providing retail electric service to more than 150,000 North Carolina retail jurisdictional customers as of January 1, 2017, shall file with the Commission an application requesting approval of a new program applicable to major military installations, as that term is defined in G.S. 143-215.115(1), The University of North Carolina, as established in Article 1 of Chapter 116 of the General Statutes, and other new and existing nonresidential customers with either a contract demand (i) equal to or greater than one megawatt (MW) or (ii) at multiple service locations that, in aggregate, is equal to or greater than five megawatts (MW).

(b) Each public utility's program application required by this section shall provide standard contract terms and conditions for participating customers and for renewable energy suppliers from which the electric public utility procures energy and capacity on behalf of the participating customer. The application shall allow eligible customers to select the new renewable energy facility from which the electric public utility shall procure energy and capacity. The standard terms and conditions available to renewable energy suppliers shall provide a range of terms, between two years and 20 years, from which the participating customer may elect. Eligible customers shall be allowed to negotiate with renewable energy suppliers regarding price terms.

(c) Each contracted amount of capacity shall be limited to no more than one hundred twenty-five percent (125%) of the maximum annual peak demand of the eligible customer premises. Each public utility shall establish reasonable credit requirements for financial assurance for eligible customers that are consistent with the Uniform Commercial Code of North Carolina. Major military installations and The University of North Carolina are exempt from the financial assurance requirements of this section.

(d) The program shall be offered by the electric public utilities subject to this section for a period of five years or until December 31, 2022, whichever is later, and shall not exceed a combined 600 megawatts (MW) of total capacity. For the public utilities subject to this section, where a major military installation is located within its Commission-assigned service territory,

at least 100 megawatts (MW) of new renewable energy facility capacity offered under the program shall be reserved for participation by major military installations. At least 250 megawatts (MW) of new renewable energy facility capacity offered under the programs shall also be reserved for participation by The University of North Carolina. Major military installations and The University of North Carolina must fully subscribe to all their allocations prior to December 31, 2020, or a period of no more than three years after approval of the program, whichever is later. If any portion of total capacity set aside to major military installations or The University of North Carolina is not used, it shall be reallocated for use by any eligible program participant. If any portion of the 600 megawatts (MW) of renewable energy capacity provided for in this section is not awarded prior to the expiration of the program, it shall be reallocated to and included in a competitive procurement in accordance with G.S. 62-110.8(a).

(e) In addition to the participating customer's normal retail bill, the total cost of any renewable energy and capacity procured by or provided by the electric public utility for the benefit of the program customer shall be paid by that customer. The electric public utility shall pay the owner of the renewable energy facility which provided the electricity. The program customer shall receive a bill credit for the energy as determined by the Commission; provided, however, that the bill credit shall not exceed utility's avoided cost. The Commission shall ensure that all other customers are held neutral, neither advantaged nor disadvantaged, from the impact of the renewable electricity procured on behalf of the program customer."

SECTION 3.(b) This section is effective when it becomes law. The application required to be filed with the Utilities Commission pursuant to G.S. 62-159.2, as enacted by subsection (a) of this section, shall be filed by the electric public utility no later than 180 days after the effective date of this section.

PART IV. COST-RECOVERY FOR CERTAIN SMALL POWER PRODUCER PURCHASES

SECTION 4.(a) G.S. 62-133.2 reads as rewritten:

"**§ 62-133.2. Fuel and fuel-related charge adjustments for electric utilities.**

(a) The Commission shall permit an electric public utility that generates electric power by fossil fuel or nuclear fuel to charge an increment or decrement as a rider to its rates for changes in the cost of fuel and fuel-related costs used in providing its North Carolina customers with electricity from the cost of fuel and fuel-related costs established in the electric public utility's previous general rate case on the basis of cost per kilowatt hour.

(a1) As used in this section, "cost of fuel and fuel-related costs" means all of the following:

(1) The cost of fuel burned.

(2) The cost of fuel transportation.

(3) The cost of ammonia, lime, limestone, urea, dibasic acid, sorbents, and catalysts consumed in reducing or treating emissions.

(4) The total delivered noncapacity related costs, including all related transmission charges, of all purchases of electric power by the electric public utility, that are subject to economic dispatch or economic curtailment.

(5) The capacity costs associated with all purchases of electric power from qualifying cogeneration facilities and qualifying small power production facilities, as defined in 16 U.S.C. § 796, that are subject to economic dispatch by the electric public utility.

(6) Except for those costs recovered pursuant to G.S. 62-133.8(h), the total delivered costs of all purchases of power from renewable energy facilities and new renewable energy facilities pursuant to G.S. 62-133.8 or to comply

with any federal mandate that is similar to the requirements of subsections (b), (c), (d), (e), and (f) of G.S. 62-133.8.

(7) The fuel cost component of other purchased power.

(8) Cost of fuel and fuel-related costs shall be adjusted for any net gains or losses resulting from any sales by the electric public utility of fuel and other fuel-related costs components.

(9) Cost of fuel and fuel-related costs shall be adjusted for any net gains or losses resulting from any sales by the electric public utility of by-products produced in the generation process to the extent the costs of the inputs leading to that by-product are costs of fuel or fuel-related costs.

(10) The total delivered costs, including capacity and noncapacity costs, associated with all purchases of electric power from qualifying cogeneration facilities and qualifying small power production facilities, as defined in 16 U.S.C. § 796, that are not subject to economic dispatch or economic curtailment by the electric public utility and not otherwise recovered under subdivision (6) of this subsection.

(11) All nonadministrative costs related to the renewable energy procurement pursuant to G.S. 62-159.2 not recovered from the program participants.

(a2) For those costs identified in subdivisions (4), (5), ~~and (6)~~(6), (10), and (11) of subsection (a1) of this section, the annual increase in the aggregate amount of these costs that are recoverable by an electric public utility pursuant to this section shall not exceed ~~two percent (2%)~~ two and one-half percent (2.5%) of the electric public utility's total North Carolina retail jurisdictional gross revenues for the preceding calendar year. The costs described in subdivisions (4), (5), ~~and (6)~~(6), (10), and (11) of subsection (a1) of this section shall be recoverable from each class of customers as a separate component of the rider as follows:

(1) For the noncapacity costs described in ~~subdivision (4)~~subdivisions (4), (10), and (11) of subsection (a1) of this section, the specific component for each class of customers shall be determined by allocating these costs among customer classes based on the ~~electric public utility's North Carolina energy usage for the prior year,~~method used in the electric public utility's most recently filed fuel proceeding commenced on or before January 1, 2017, as determined by the Commission, until the Commission determines how these costs shall be allocated in a general rate case for the electric public utility commenced on or after January 1, ~~2008.~~2017.

(2) For the capacity costs described in subdivisions ~~(5) and (6)~~ (5), (6), (10), and (11) of subsection (a1) of this section, the specific component for each class of customers shall be determined by allocating these costs among customer classes based on the ~~electric public utility's North Carolina peak demand for the prior year,~~method used in the electric public utility's most recently filed fuel proceeding commenced on or before January 1, 2017, as determined by the Commission, until the Commission determines how these costs shall be allocated in a general rate case for the electric public utility commenced on or after January 1, ~~2008.~~2017.

...."

SECTION 4.(b) This section is effective when it becomes law.

PART V. AMEND COST CAPS FOR REPS COMPLIANCE

SECTION 5.1.(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	2015 and thereafter
Residential per account	$10.00	$12.00	~~$34.00~~$27.00
Commercial per account	$50.00	$150.00	$150.00
Industrial per account	$500.00	$1,000.00	$1,000.00"

SECTION 5.1.(b) This section becomes effective July 1, 2017, and applies to cost-recovery proceedings initiated on or after that date.

COST-RECOVERY HOLD HARMLESS

SECTION 5.2. All reasonable and prudent incremental costs incurred by an electric power supplier prior to July 1, 2017, to comply with any requirement repealed or amended by this act may be recovered as provided in G.S. 62-133.8(h), as amended by this act. For the purposes of cost recovery under this act, reasonable and prudent incremental costs shall include all of the following:

(1) Costs under purchase contracts for renewable energy entered into prior to July 1, 2017, for the purpose of complying with the renewable energy portfolio standards requirements amended by this act.

(2) The costs of renewable energy facilities built or acquired by a public utility for which a certificate of public convenience and necessity has been issued by the Commission prior to July 1, 2017.

PART VI. DISTRIBUTED RESOURCES ACCESS ACT

SECTION 6.(a) Chapter 62 of the General Statutes is amended by adding a new Article to read:

"Article 6B.
"Distributed Resources Access Act.

"**§ 62-126.1. Title.**

This Article may be cited as the "Distributed Resources Access Act."

"**§ 62-126.2. Declaration of policy.**

The General Assembly of North Carolina finds that as a matter of public policy it is in the interest of the State to encourage the leasing of solar energy facilities for retail customers and subscription to shared community solar energy facilities. The General Assembly further finds and declares that in encouraging the leasing of and subscription to solar energy facilities pursuant to this act, cross-subsidization should be avoided by holding harmless electric public utilities' customers that do not participate in such arrangements.

"**§ 62-126.3. Definitions.**

For purposes of this Article, the following definitions apply:

(1) Affiliate. – Any entity directly or indirectly controlling or controlled by or under direct or indirect common control with an electric power supplier.

(2) Commission. – The North Carolina Utilities Commission.

(3) Community solar energy facility. – A solar energy facility whose output is shared through subscriptions.

(4) Customer generator lessee. – A lessee of a solar energy facility.

(5) Electric generator lessor. – The owner of an eligible electric generation facility that leases the facility to a customer generator lessee, including any agents who act on behalf of the solar electric generator lessor. For purposes of this Article, an electric generator lessor shall not be considered a public utility under G.S. 62-3(23).

(6) Electric power supplier. – A public utility, an electric membership corporation, or a municipality that sells electric power to retail electric customers in the State.

(7) Electric public utility. – A public utility as defined by G.S. 62-3(23) that sells electric power to retail electric customers in the State.

(8) Maximum annual peak demand. – The maximum single hour of electric demand actually occurring or estimated to occur at a premises.

(9) Net metering. – To use electrical metering equipment to measure the difference between the electrical energy supplied to a retail electric customer by an electric power supplier and the electrical energy supplied by the retail electric customer to the electric power supplier over the applicable billing period.

(10) Offering utility. – Any electric public utility as defined in G.S. 62-3(23) serving at least 150,000 North Carolina retail jurisdictional customers as of January 1, 2017. The term shall not include any other electric public utility, electric membership corporation, or municipal electric supplier authorized to provide retail electric service within the State. An offering utility's participation in this Article as an electric generator lessor shall not otherwise alter its status as a public utility with respect to any other provision of this Chapter. An offering utility's participation in this Article shall be regulated pursuant to the provisions of this Article.

(11) Person. – The same meaning as provided by G.S. 62-3(21).

(12) Premises. – The building, structure, farm, or facility to which electricity is being or is to be furnished. Two or more buildings, structures, farms, or facilities that are located on one tract or contiguous tracts of land and that are utilized by one electric customer for commercial, industrial, institutional, or governmental purposes, shall constitute one "premises," unless the electric service to the building, structures, farms, or facilities are separately metered and charged.

(13) Property. – The tract of land on which the premises is located, together with all the adjacent contiguous tracts of land utilized by the same retail electric customer.

(14) Solar energy facility. – A solar energy facility leased to a customer generator lessee that meets the following requirements:

a. Generates electricity from a solar photovoltaic system and related equipment that uses solar energy to generate electricity.

b. Is limited to a capacity of (i) not more than the lesser of 1,000 kilowatts (kW) or one hundred percent (100%) of contract demand if a nonresidential customer or (ii) not more than 20 kilowatts (kW) or one hundred percent (100%) of estimated electrical demand if a residential customer.

c. Is located on a premises owned, operated, leased, or otherwise controlled by the customer generator lessee that is also the premises served by the solar energy facility.

d. Is interconnected and operates in parallel phase and synchronization with an offering utility authorized by the Commission to provide retail electric service to the premises and has been approved for interconnection and parallel operation by that public utility.

e. Is intended only to offset no more than one hundred percent (100%) of the customer generator lessee's own retail electrical energy consumption at the premises.

f. Meets all applicable safety, performance, interconnection, and reliability standards established by the Commission, the public utility, the National Electrical Code, the National Electrical Safety Code, the Institute of Electrical and Electronics Engineers, Underwriters Laboratories, the Federal Energy Regulatory Commission, and any local governing authorities.

(15) Subscription. – A contract between a subscriber and the owner of a community solar energy facility that allows a subscriber to receive a bill credit for the electricity generated by a community solar energy facility in proportion to the electricity generated.

"**§ 62-126.4. Commission to establish net metering rates.**

(a) Each electric public utility shall file for Commission approval revised net metering rates for electric customers that (i) own a renewable energy facility for that person's own primary use or (ii) are customer generator lessees.

(b) The rates shall be nondiscriminatory and established only after an investigation of the costs and benefits of customer-sited generation. The Commission shall establish net metering rates under all tariff designs that ensure that the net metering retail customer pays its full fixed cost of service. Such rates may include fixed monthly energy and demand charges.

(c) Until the rates have been approved by the Commission as required by this section, the rate shall be the applicable net metering rate in place at the time the facility interconnects. Retail customers that own and install an on-site renewable energy facility and interconnect to the grid prior to the date the Commission approves new metering rates may elect to continue net metering under the net metering rate in effect at the time of interconnection until January 1, 2027.

"**§ 62-126.5. Scope of leasing program in offering utilities' service areas.**

(a) An offering utility and its affiliates may be deemed to be electric generator lessors and may offer leases to solar energy facilities only within the offering utility's own assigned service area or, in the case of an affiliate, the service area assigned to an affiliated offering utility. The costs an offering public utility incurs in marketing, installing, owning, or maintaining leases through its own leasing programs as a lessor shall not be recovered from other nonparticipating utility customers through rates, and the Commission shall not have any jurisdiction over the financial terms of such leases. An offering utility, and the customer generator lessees that lease facilities from it, may participate on an equal basis with other lessors and lessees and in any approved incentive program offered by the utility to its customers.

(b) An electric generator lessor that owns a solar energy facility within the assigned service area of an offering utility and that is located on a premises owned or leased by a customer generator lessee shall be permitted to lease such facility exclusively to a customer generator lessee under a lease, provided that the solar electric generator lessor complies with the terms, conditions, and restrictions set forth within this section and holds a valid certificate issued by the Commission pursuant to G.S. 62-126.7. An electric generator lessor shall not be considered a "public utility" under G.S. 62-3(23) if the solar energy facility is only made available to a customer generator lessee under a lease that conforms to the requirements of G.S. 62-126.6 for the customer generator lessee's use on its premises where the solar energy facility is located to serve the electric energy requirements of that particular premises, including to enable the customer generator lessee to obtain a credit for the electricity generated under an applicable net metering tariff or to engage in the sale of excess energy from the solar energy facility to an offering utility.

(c) Any lease of a solar energy facility not entered into pursuant to this section is prohibited, and any electric generator lessor that enters into a lease outside of an offering utility's program implemented pursuant to this section or otherwise enters into a contract or

agreement where payments are based upon the electric output of a solar energy facility shall be considered a "public utility" under G.S. 62-3(23) and be in violation of the franchised service rights of the offering utility or any other electric power supplier authorized to provide retail electric service in the State. This section does not authorize the sale of electricity from solar energy facilities directly to any customer of an offering utility or other electric power supplier by the owner of a solar energy facility. The electrical output from any solar energy facility leased pursuant to this program shall be the sole and exclusive property of the customer generator lessee.

(d) The total installed capacity of all solar energy facilities on an offering utility's system that are leased pursuant to this section shall not exceed one percent (1%) of the previous five-year average of the North Carolina retail contribution to the offering utility's coincident retail peak demand. The offering utility may refuse to interconnect customers that would result in this limitation being exceeded. Each offering utility shall establish a program for new installations of leased equipment to permit the reservation of capacity by customer generator lessees, whether participating in a public utility or nonutility lessor's leasing program, on its system, including provisions to prevent or discourage abuse of such programs. Such programs must provide that only prospective individual customer generator lessees may apply for, receive, and hold reservations to participate in the offering utility's leasing program. Each reservation shall be for a single customer premises only and may not be sold, exchanged, traded, or assigned except as part of the sale of the underlying premises.

(e) To comply with the terms of this section, each customer generator lessee's solar energy facility shall serve only one premises and shall not serve multiple customer generator lessees or multiple premises. The customer generator lessee must enroll in the applicable rate schedule made available by the interconnecting offering utility, subject to the participation limitations set forth in subsection (a) of this section.

"**§ 62-126.6. Electric customer generator leasing requirements; disclosures; records.**

(a) A lease agreement offered by an electric generator lessor must meet the following requirements:

(1) Be signed and dated by the retail electric customer. Any agreement that contains blank spaces when signed by the retail electric customer is voidable at the option of the retail electric customer until the solar energy facility is installed.

(2) Be in at least 12-point type.

(3) Include a provision granting the retail electric customer the right to rescind the agreement for a period of not less than three business days after the agreement is signed by the retail electric customer.

(4) Provide a description of the solar energy facility, including the make and model of the solar energy facility's major components, and a guarantee concerning energy production output that the solar energy facility will provide over the expected life of the agreement.

(5) Separately set forth the following items, as applicable:

a. The total cost to the retail electric customer under the lease agreement for the solar energy facility over the life of the agreement.

b. Any interest, installation fees, document preparation fees, service fees, or other costs to be paid by the retail electric customer.

c. The total number of payments, including the interest, the payment frequency, the estimated amount of the payment expressed in dollars, and the payment due date over the leased term.

(6) Identify any state or federal tax incentives that are included in the calculation of lease payments.

(7) Disclose whether the warranty or maintenance obligations related to the solar energy facility may be sold or transferred to a third party.

(8) Include a disclosure, the receipt of which shall be separately acknowledged by the retail electric customer, if a transfer of the lease agreement is subject to any restrictions pursuant to the agreement on the retail electric customer's ability to modify or transfer ownership of a solar energy facility, including whether any modification or transfer is subject to review or approval by a third party. If the modification or transfer of the solar energy facility is subject to review or approval by a third party, the agreement must identify the name, address, and telephone number of, and provide for updating any change in, the entity responsible for approving the modification or transfer.

(9) Include a disclosure, the receipt of which shall be separately acknowledged by the retail electric customer, if a modification or transfer of ownership of the real property to which the solar energy facility is or will be affixed is subject to any restrictions pursuant to the agreement on the retail electric customer's ability to modify or transfer ownership of the real property to which the solar energy facility is installed or affixed, including whether any modification or transfer is subject to review or approval by a third party. If the modification or transfer of the real property to which the solar energy facility is affixed or installed is subject to review or approval by a third party, the agreement must identify the name, address, and telephone number of, and provide for updating any change in, the entity responsible for approving the modification or transfer.

(10) Provide a full and accurate summary of the total costs under the agreement for maintaining and operating the solar energy facility over the life of the solar energy facility, including financing, maintenance, and construction costs related to the solar energy facility.

(11) If the agreement contains an estimate of the retail electric customer's future utility charges based on projected utility rates after the installation of a solar energy facility, provide an estimate of the retail electric customer's estimated utility charges during the same period as impacted by potential utility rate changes ranging from at least a five percent (5%) annual decrease to at least a five percent (5%) annual increase from current utility costs. The comparative estimates must be calculated based on the same utility rates.

(12) Include a disclosure, the receipt of which shall be separately acknowledged by the retail electric customer that states: "Utility rates and utility rate structures are subject to change. These changes cannot be accurately predicted and projected savings from your solar energy facility are therefore subject to change. Tax incentives are subject to change or termination by executive, legislative, or regulatory action."

(b) Before the maintenance or warranty obligations of a solar energy facility under an existing lease agreement are transferred, the person who is currently obligated to maintain or warrant the solar energy facility must disclose the name, address, and telephone number of the person who will be assuming the maintenance or warranty of the solar energy facility.

(c) If the electric generator lessor's marketing materials contain an estimate of the retail electric customer's future utility charges based on projected utility rates after the installation of a solar energy facility, the marketing materials must contain an estimate of the retail electric customer's estimated utility charges during the same period as impacted by potential utility rate changes ranging from at least a five percent (5%) annual decrease to at least a five percent (5%) annual increase from current utility costs.

"**§ 62-126.7. Commission authority over electric generator lessors.**

(a) No person shall engage in the leasing of a solar energy facility without having applied for and obtained a certificate authorizing those operations from the Commission. The application for a certificate of authority to engage in business as an electric generator lessor shall be made in a form prescribed by the Commission and accompanied by the fee required pursuant to G.S. 62-300(a)(16).

(b) In acting upon the application for a certificate of authority to engage in business as an electric generator lessor, the Commission shall take into account the State's interest in encouraging the leasing of solar electric generation facilities and avoidance of cross-subsidization as declared by the policy objectives of this Article as provided in G.S. 62-126.2, as well as the policy of the State, as provided in G.S. 62-2(a). The Commission shall issue a certificate of authority to engage in business as an electric generator lessor if the Commission finds that the applicant is fit, willing, and able to conduct that business in accordance with the provisions of this Article. The certificate shall be effective from the date issued unless otherwise specified therein and shall remain in effect until terminated under the terms thereof, or until suspended or revoked as herein provided.

(c) As a condition for issuance and continuation of a certificate of authority for an electric generator lessor, the applicant shall certify to the Commission all of the following:

(1) The applicant will register with the Commission each solar energy facility that the applicant leases to a customer generator lessee.

(2) That each lease of a solar energy facility that the applicant offers or accepts will comply with the provisions of this Article.

(3) The applicant will consent to the auditing of its books and records by the Public Staff insofar as those records relate to transactions with an offering utility or a customer generator lessee that is located in the State.

(4) That the applicant will conduct its business in substantial compliance with all federal and State laws, regulations, and rules for the protection of the environment and conservation of natural resources, the provision of electric service, and the protection of consumers.

(d) Upon the request of a public utility, an electric membership corporation, the Public Staff, a customer generator lessee, or person having an interest in the solar electric generator lessor's conduct of its business, the Commission may review the certificate to determine whether the solar electric generator lessor is conducting business in compliance with this Article. After notice to the electric generator lessor, the Commission may suspend the certificate and enter upon a hearing to determine whether the certificate should be revoked. After the hearing, and for good cause shown, the Commission may, in its discretion, reinstate a suspended certificate, continue a suspension of a certificate, or revoke a certificate.

(e) It shall be a violation of law punishable by a civil penalty of not more than ten thousand dollars ($10,000) per occurrence for any person to either directly or indirectly do any of the following:

(1) Solicit business as a lessor of solar energy facilities without a valid certificate issued under this section or otherwise in violation of the terms of this Article.

(2) Engage in any unfair or deceptive practice in the leasing of solar energy facilities or otherwise violate the requirements of G.S. 62-126.6.

(3) Operate in violation of the terms of the certificate issued by this Article.

"**§ 62-126.8. Community solar energy facilities.**

(a) Each offering utility shall file a plan with the Commission to offer a community solar energy facility program for participation by its retail customers. The community solar energy facility program shall be designed so that each community solar energy facility offsets the energy use of not less than five subscribers and no single subscriber has more than a forty percent (40%) interest. The offering utility shall make its community solar energy facility

program available on a first-come, first-served basis until the total nameplate generating capacity of those facilities equals 20 megawatts (MW).

(b) A community solar energy facility shall have a nameplate capacity of no more than five megawatts (MW). Each subscription shall be sized to represent at least 200 watts (W) of the community solar energy facility's generating capacity and to supply no more than one hundred percent (100%) of the maximum annual peak demand of electricity of each subscriber at the subscriber's premises.

(c) A community solar energy facility must be located in the service territory of the offering utility filing the plan. Subscribers shall be located in the State of North Carolina and the same county or a county contiguous to where the facility is located. The electric public utility may file a request for Commission approval for an exemption from the location requirement of this subsection and the Commission may approve the request for a facility located up to 75 miles from the county of the subscribers, if the Commission deems the exemption to be in the public interest.

(d) The offering utility shall credit the subscribers to its community solar energy facility for all subscribed shares of energy generated by the facility at the avoided cost rate.

(e) The Commission may approve, disapprove, or modify a community solar energy facility program. The program shall meet all of the following requirements:

(1) Establish uniform standards and processes for the community solar energy facilities that allow the electric public utility to recover reasonable interconnection costs, administrative costs, fixed costs, and variable costs associated with each community solar energy facility, including purchase expenses if a power purchase agreement is elected as the method of energy procurement by the offering utility.

(2) Be consistent with the public interest.

(3) Identify the information that must be provided to potential subscribers to ensure fair disclosure of future costs and benefits of subscriptions.

(4) Include a program implementation schedule.

(5) Identify all proposed rules and charges.

(6) Describe how the program will be promoted.

(7) Hold harmless customers of the electric public utility who do not subscribe to a community solar energy facility.

(8) Allow subscribers to have the option to own the renewable energy certificates produced by the community solar energy facility.

"**§ 62-126.9. Scope of leasing program by municipalities.**

(a) A municipality that sells electric power to retail customers in the State may elect, by action of its governing council or commission, to be deemed to be an electric generator lessor and may offer leases to solar energy facilities located within the municipality's service territory. The costs a municipality incurs in marketing, installing, owning, or maintaining leases through its own leasing programs as a lessor shall not be recovered from other nonparticipating municipality retail customers through rates.

(b) Provided the municipality has elected to offer a leasing program, an electric generator lessor that owns a solar energy facility within a municipality's service territory and that is located on a premises owned or leased by a customer generator lessee shall be permitted to lease such facility exclusively to a customer generator lessee pursuant to a lease under terms and conditions approved by the municipality and holds a valid certificate issued by the Commission pursuant to G.S. 62-126.7. Notwithstanding this subsection, a municipality acting as an electric generator lessor shall not be required to comply with G.S. 62-126.7.

(c) An electric generator lessor, including a municipality acting as an electric generator lessor, shall not be considered a "public utility" under G.S. 62-3(23) if the solar energy facilities are only made available to a customer generator lessee under a lease that conforms to

the requirements of G.S. 62-126.6 for the customer generator lessee's use of the customer generator lessee's premises where the solar energy facility is located to serve the electric energy requirements of that particular premises, including to enable the customer generator lessee to obtain a credit under an applicable net metering tariff or to engage in the sale of excess energy from the solar energy facility to the municipality; provided, however, that the provisions of G.S. 62-126.4 shall not apply to a municipality or other electric generator lessor that offers leases to solar energy facilities located within the municipality's service territory pursuant to this section. Any net metering tariffs adopted by such municipality shall be adopted by its governing council or commission in accordance with the rate-setting procedures set forth in Article 16 of Chapter 160A of the General Statutes.

(d) Any lease of a solar energy facility in a municipal electric service area not entered into pursuant to this section is prohibited. This section does not authorize the sale of electricity from solar energy facilities directly to any customer of a municipality by the owner of a solar energy facility. The electrical output from any eligible renewable electric generation facility leased pursuant to this section shall be the sole and exclusive property of the customer generator lessee.

(e) Each eligible solar energy facility shall serve only one premises and shall not serve multiple customer generator lessees or multiple premises. The customer generator lessee must enroll in the applicable rate schedule made available by the municipality, subject to the participation limitations set forth in subsection (a) of this section.

"**§ 62-126.10. Rules.**

The Commission shall adopt rules to implement the provisions of this Article."

SECTION 6.(b) G.S. 62-3(23) reads as rewritten:

"**§ 62-3. Definitions.**

As used in this Chapter, unless the context otherwise requires, the term:

...

(23) a. "Public utility" means a person, whether organized under the laws of this State or under the laws of any other state or country, now or hereafter owning or operating in this State equipment or facilities for:

1. Producing, generating, transmitting, delivering or furnishing electricity, piped gas, steam or any other like agency for the production of light, heat or power to or for the public for compensation; provided, however, that the term "public utility" shall not include persons who construct or operate an electric generating facility, the primary purpose of which facility is ~~for such~~ either for (i) a person's own use and not for the primary purpose of producing electricity, heat, or steam for sale to or for the public for ~~compensation;~~compensation or (ii) a person who constructs or operates an eligible solar energy facility on the site of a customer's property and leases such facility to that customer, as provided by and subject to the limitations of Article 6B of this Chapter;

...."

SECTION 6.(c) G.S. 62-110.1(g) reads as rewritten:

"(g) The certification requirements of this section shall not apply to (i) a nonutility-owned generating facility fueled by renewable energy resources under two megawatts in ~~capacity or~~capacity; (ii) to persons who construct an electric generating facility primarily for that person's own use and not for the primary purpose of producing electricity, heat, or steam for sale to or for the public for compensation; ~~provided, however, that such persons shall, nevertheless, be required to report to the Utilities Commission the proposed construction of such a facility before beginning construction thereof.~~or (iii) a solar energy

facility or a community solar energy facility, as provided by and subject to the limitations of Article 6B of this Chapter. However, such persons shall be required to report the proposed construction of the facility and the completion of the facility to the Commission and the interconnecting public utility. Such reports shall be for informational purposes only and shall not require action by the Commission or the Public Staff."

SECTION 6.(d) This section is effective when it becomes law. The plan required to be filed with the Utilities Commission pursuant to G.S. 62-126.8(a), as enacted by subsection (a) of this section, shall be filed by the electric public utility no later than 180 days after the effective date of this section.

PART VII. EXPEDITED REVIEW OF INTERCONNECTION OF SWINE AND POULTRY WASTE

SECTION 7. G.S. 62-133.8(i)(4) reads as rewritten:

"(4) Establish standards for interconnection of renewable energy facilities and other nonutility-owned generation with a generation capacity of 10 megawatts or less to an electric public utility's distribution system; provided, however, that the Commission shall adopt, if appropriate, federal interconnection standards. The standards adopted pursuant to this subdivision shall include an expedited review process for swine and poultry waste to energy projects of two megawatts (MW) or less and other measures necessary and appropriate to achieve the objectives of subsections (e) and (f) of this section."

PART VIII. SOLAR REBATE PROGRAM

SECTION 8.(a) G.S. 62-155 is amended by adding a new subsection to read:

"(f) Each electric public utility serving more than 150,000 North Carolina retail jurisdictional customers as of January 1, 2017, shall file with the Commission an application requesting approval of a program offering reasonable incentives to residential and nonresidential customers for the installation of small customer owned or leased solar energy facilities participating in a public utility's net metering tariff, where the incentive shall be limited to 10 kilowatts alternating current (kW AC) for residential solar installations and 100 kilowatts alternating current (kW AC) for nonresidential solar installations. Each public utility required to offer the incentive program pursuant to this subsection shall be authorized to recover all reasonable and prudent costs of incentives provided to customers and program administrative costs by amortizing the total program incentives distributed during a calendar year and administrative costs over a 20-year period, including a return component adjusted for income taxes at the utility's overall weighted average cost of capital established in its most recent general rate case, which shall be included in the costs recoverable by the public utility pursuant to G.S. 62-133.8(h). Nothing in this section shall prevent the reasonable and prudent costs of a utility's programs to incentivize customer investment in or leasing of solar energy facilities, including an approved incentive, from being reflected in a utility's rates to be recovered through the annual rider established pursuant to G.S. 62-133.8(h). The program incentive established by each public utility subject to this section shall meet all of the following requirements:

(1) Shall be limited to 10,000 kilowatts (kW) of installed capacity annually starting in January 1, 2018, and continuing until December 31, 2022, and shall provide incentives to participating customers based upon the installed alternating current nameplate capacity of the generators.

(2) Nonresidential installations will also be limited to 5,000 kilowatts (kW) in aggregate for each of the years of the program.

(3) Two thousand five hundred kilowatts (kW) of the capacity for nonresidential installations shall be set aside for use by nonprofit organizations; 50 kilowatts (kW) of the set aside shall be allocated to the NC Greenpower Solar Schools Pilot or a similar program. Any set-aside rebates that are not used by December 31, 2022, shall be reallocated for use by any customer who otherwise qualifies. For purposes of this section, "nonprofit organization" means an organization or association recognized by the Department of Revenue as tax exempt pursuant to G.S. 105-130.11(a), or any bona fide branch, chapter, or affiliate of that organization.

(4) If in any year a portion of the incentives goes unsubscribed, the utility may roll excess incentives over into a subsequent year's allocation."

SECTION 8.(b) G.S. 62-133.8(h)(1) is amended by adding a new sub-subdivision to read:

"d. Provide incentives to customers, including program costs, incurred pursuant to G.S. 62-155(f)."

SECTION 8.(c) This section is effective when it becomes law. The application required to be filed with the Utilities Commission pursuant to G.S. 62-155(f), as enacted by subsection (a) of this section, shall be filed by the electric public utility no later than 180 days after the effective date of this section.

PART IX. DEMAND-SIDE MANAGEMENT FOR STATE-OWNED FACILITIES PILOT PROJECT

SECTION 9. Article 17 of Chapter 62 of the General Statutes is amended by adding a new section to read:

"**§ 62-351. Demand-side management policy; pilot project.**

(a) Declaration of Policy. – It is the policy of the State for government-owned facilities that have backup or emergency generators that meet the criteria of utility demand-side management programs or rates to enroll in such programs or rates to the extent those programs or rates are available without diminishing the purpose or use of the facility having the backup or emergency generator.

(b) Department of Public Safety Pilot Program. – By no later than January 1, 2018, the Department of Public Safety shall designate a backup or emergency generator to enroll in the demand-side management program or rate available that would allow electricity load to be shifted to its generator in response to utility-administered programs.

(c) Report. – The Department of Public Safety shall report to the Joint Legislative Commission on Energy Policy by January 31 of each year on the status of the designated backup or emergency generator and whether it is enrolled in the utility demand-side response program or rate.

(d) Sunset. – The pilot program and report required by subsections (b) and (c) of this section shall expire on January 1, 2020."

PART X. UPDATE UTILITIES COMMISSION CHARGES AND FEES

SECTION 10.(a) G.S. 62-133.8 is amended by adding a new subsection to read:

"(*l*) The owner, including an electric power supplier, of each renewable energy facility or new renewable energy facility, whether or not required to obtain a certificate of public convenience and necessity pursuant to G.S. 62-110.1, that intends for renewable energy certificates it earns to be eligible for use by an electric power supplier to comply with G.S. 62-133.8 shall register the facility with the Commission. Such an owner shall file a registration statement in the form prescribed by the Commission and remit to the Commission the fee required pursuant to G.S. 62-300(a)(16)."

SECTION 10.(b) G.S. 62-300(a) is amended by adding two new subdivisions to read:

"(16) Two hundred fifty dollars ($250.00) with each application for a certificate of authority to engage in business as a solar electric generator lessor filed pursuant to G.S. 62-126.7 or each registration statement for a renewable energy facility or new renewable energy facility filed pursuant to G.S. 62-133.8(*l*).

(17) Fifty dollars ($50.00) for each report of proposed construction filed by the owner of an electric generating facility that is exempt from the certification requirements of G.S. 62-110.1(a)."

PART XI. DIRECT THE JOINT LEGISLATIVE COMMISSION ON ENERGY POLICY TO STUDY PROPERTY TAX EXCLUSIONS FOR SOLAR ENERGY ELECTRIC SYSTEMS AND FACILITIES UTILIZING SWINE OR POULTRY WASTE RESOURCES

SECTION 11.(a) The Joint Legislative Commission on Energy Policy is directed to study the property tax exclusions for the creation of renewable energy through solar energy electric systems and energy and biogas facilities utilizing swine or poultry waste resources. As part of its study, the Commission shall consider the following:

(1) The economic impact of the property tax exclusion for solar energy electric systems under G.S. 105-275(45).

(2) Whether there should be a property tax exclusion for facilities utilizing swine or poultry waste resources to generate electricity or biogas.

(3) How much the property tax exclusion for facilities utilizing swine or poultry waste resources to generate electricity or biogas should be.

SECTION 11.(b) The Joint Legislative Commission on Energy Policy may request any information necessary to complete the study created under this section from any county tax office in this State, including at a minimum:

(1) The value of any property that currently qualifies for the property tax exclusion under G.S. 105-275(45) prior to the installation of a solar energy electric system.

(2) The value of any property that currently qualifies for the property tax exclusion under G.S. 105-275(45) after the installation of a solar energy electric system.

(3) The amount of property taxes collected from a property that currently qualifies for the property tax exclusion under G.S. 105-275(45) prior to the installation of a solar energy electric system.

(4) The amount of property taxes collected from a property that currently qualifies for the property tax exclusion under G.S. 105-275(45) after the installation of a solar energy electric system.

(5) The value of any property that abuts a property that currently qualifies for the property tax exclusion under G.S. 105-275(45) prior to the installation of a solar energy electric system.

(6) The value of any property that abuts a property that currently qualifies for the property tax exclusion under G.S. 105-275(45) after the installation of a solar energy electric system.

(7) The observed economic impact of solar energy electric systems, if available.

SECTION 11.(c) The Joint Legislative Commission on Energy Policy may request information from the Department of Revenue regarding system and nonsystem property owned by any public service company in this State to complete the study created under this section.

For the purposes of this section, the terms "system property," "nonsystem property," and "public service company" shall have the same meanings as defined in G.S. 105-333.

SECTION 11.(d) The Joint Legislative Commission on Energy Policy shall complete this study and report its findings and recommendations, including any legislative proposals, to the 2017 General Assembly by March 1, 2018.

PART XII. ENERGY STORAGE STUDY

SECTION 12. The North Carolina Policy Collaboratory (Collaboratory) at the University of North Carolina at Chapel Hill shall conduct a study on energy storage technology. The study shall address how energy storage technologies may or may not provide value to North Carolina consumers based on factors that may include capital investment, value to the electric grid, net utility savings, net job creation, impact on consumer rates and service quality, or any other factors related to deploying one or more of these technologies. The study shall also address the feasibility of energy storage in North Carolina, including services energy storage can provide that are not being performed currently, the economic potential or impact of energy storage deployment in North Carolina, and the identification of existing policies and recommended policy changes that may be considered to address a statewide coordinated energy storage policy. The Collaboratory shall provide the results of this study no later than December 1, 2018, to the Energy Policy Council and the Joint Legislative Commission on Energy Policy.

PART XIII. SEVERABILITY CLAUSE AND EFFECTIVE DATE

SECTION 13.(a) If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part declared to be unconstitutional or invalid.

SECTION 13.(b) Except as otherwise provided, this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H D

HOUSE BILL 589
PROPOSED COMMITTEE SUBSTITUTE H589-CSTSf-7 [v.18]
06/05/2017 11:08:47 AM

Short Title: Competitive Energy Solutions for NC. (Public)

Sponsors:

Referred to:

April 6, 2017

A BILL TO BE ENTITLED

AN ACT TO REFORM NORTH CAROLINA'S APPROACH TO INTEGRATION OF RENEWABLE ELECTRICITY GENERATION THROUGH AMENDMENT OF LAWS RELATED TO ENERGY POLICY, AND TO ENACT THE DISTRIBUTED RESOURCES ACCESS ACT.

The General Assembly of North Carolina enacts:

PART I. STANDARD CONTRACTS FOR SMALL POWER PRODUCERS

SECTION 1.1. 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 that qualifies as a "small power production facility" under 16 U.S.C. § 796, as amended.~~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. 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 1.2. 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 public utility, the ~~commission~~ Commission shall require the public utility to purchase the power, under rates and terms established as provided in ~~subsection (b) of this section.~~subsections (b) or (c) of this section.

(b) ~~No later than March 1, 1981, and at~~At least every two ~~years thereafter,~~years, the ~~commission~~ Commission shall determine the standard contract avoided cost rates to be included within the tariffs of each electric public utility and paid by electric public utilities for power purchased from small power producers, according to the following standards:

(1) ~~Term of Contract.~~Standard Contract for Small Power Producers up to one thousand kilowatts (1,000 kW). – The Commission shall approve a standard offer power purchase agreement to be used by the electric public utility in purchasing energy and capacity from small power producers subject to this subsection. Long-term contracts up to ten years for the purchase of electricity by the electric public utility from small power producers with a

design capacity up to and including one thousand kilowatts (1,000 kW) shall be encouraged in order to enhance the economic feasibility of these small power production ~~facilities.~~facilities; provided, however, that when an electric public utility, pursuant to this subsection, has entered into power purchase agreements with small power producer facilities (i) with a total capacity of one hundred megawatts (100 MW) or more, and (ii) which established a legally enforceable obligation after November 15, 2016, the eligibility threshold for that utility's standard offer shall be reduced to one hundred kilowatts (100 kW).

(2) Avoided Cost of Energy to the Utility. – The rates paid by ~~a~~ an electric public utility to a small power producer for energy shall not exceed, over the term of the purchase power contract, the incremental cost to the electric public 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 expected costs of the additional or existing generating capacity which could be displaced, the 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 public utilities for ~~power~~ avoided capacity purchased from a small power producer shall be established with consideration of the reliability and availability of the power. A future capacity need shall only be avoided in a year where the utility's most recent biennial integrated resource plan filed with the Commission pursuant to G.S. 62-110.1(c) has identified a projected capacity need to serve system load and the identified need can be met by the type of small power producer resource based upon its availability and reliability of power, other than swine or poultry wastes for which a need is established consistent with G.S. 62-133.8(e) and (f).

(c) Rates to be paid by electric public utilities to small power producers not eligible for the utility's standard contract offer pursuant to subsection (b) of this section shall be established through good faith negotiations between the utility and small power producer, subject to the Commission's oversight as required by law. In establishing rates for purchases from such small power producers, the utility shall design rates consistent with the Commission-approved avoided cost methodology for a fixed five-year term. Rates for such purchases shall take into account factors related to the individual characteristics of the small power producer, as well as the factors identified in subdivisions (b)(2) and (b)(3) of this section. Notwithstanding this subsection, small power producers that produce electric energy solely by the use of swine or poultry waste may negotiate for a fixed term contract that exceeds five years.

(d) Notwithstanding any other provision of this section, an electric public utility shall not be required to enter into a contract with or purchase power from a small power producer if the electric public utility's obligation to purchase from such small power producers has been terminated pursuant to 18 C.F.R. § 292.309."

SECTION 1.3 A small power production facility which would otherwise be eligible for the standard offer rate schedules and power purchase agreement terms and conditions approved by the Commission in Docket No. E-100, Sub 140, but which fails to commence delivering power to the utility on or before September 10, 2018, shall, notwithstanding such failure, remain eligible for such rate schedules and terms and conditions, unless the nameplate capacity of the generation facility when taken together with the nameplate

capacity of other generation facilities connected to the same substation transformer exceeds the nameplate capacity of the substation transformer. The term of a power purchase agreement eligible for such rate schedules and terms and conditions pursuant to this section shall commence on September 10, 2018, and shall end on the date that is fifteen years after the commencement date. An electric public utility shall have the option in its discretion of electing not to interconnect to its distribution system a solar photovoltaic facility with a nameplate capacity of ten megawatts (10 MW) or greater that had not executed an interconnection agreement prior to July 1, 2017, and instead requiring such facility to interconnect to the utility's transmission system.

SECTION 1.4. This section is effective when it becomes law. Section 1.2 applies to any standard contract rates and terms approved by the Commission or non-standard negotiated agreements entered into between a small power producer and the electric public utility on or after that date. Section 1.3 applies to small power production facilities that established a legally enforceable obligation in accordance with the Commission's then applicable requirements on or before November 15, 2016.

PART II. COMPETITIVE PROCUREMENT OF RENEWABLE ENERGY

SECTION 2.1 Article 6 of Chapter 62 of the General Statutes is amended by adding a new section to read:

"**§ 62-110.8. Competitive Procurement of Renewable Energy.**

(a) Each electric public utility shall file for Commission approval a program for the competitive procurement of new renewable energy resources with the purpose of adding renewable energy resources to the State's generation resource portfolio in a manner that allows the State's electric public utilities to continue to reliably and cost-effectively serve customers' future energy needs. Renewable energy resources eligible to participate in the competitive procurement shall include resources identified in G.S. 62-133.8(a)(8), but shall be limited to facilities with a nameplate capacity rating of eighty megawatts (80 MW) or less that are placed in service after the date of the electric public utility's initial competitive procurement. Subject to the limitations set forth in subsections (b) and (c) of this section, the electric public utilities shall issue requests for proposals to procure, and shall procure, new renewable energy resources in the aggregate amount of two thousand six hundred and sixty megawatts (2,660 MW) and the total amount shall be reasonably allocated over a term of forty-five (45) months beginning when the Commission approves the program. At the termination of the initial procurement period of forty-five (45) months, the offering of a new renewable energy resources competitive procurement and the amount to be procured shall be determined by the Commission, taking into consideration a showing of need evidenced by the electric public utility's most recent biennial integrated resource plan or annual update filed pursuant to G.S. 62-110.1(c). At a minimum, the Commission shall require the additional competitive procurement of renewable energy resources by the electric public utilities in an amount that includes all of the following: (i) any unawarded portion of the initial competitive procurement required by this subsection; (ii) any deficit in renewable energy capacity identified pursuant to subdivision (1) of subsection (b) of this section; and (iii) any capacity reallocated pursuant to G.S. 62-159.2.

(b) Electric public utilities may jointly or individually implement the aggregate competitive procurement requirements set forth in subsection (a) of this section, and may satisfy such requirements for the procurement of new renewable energy resources through any of the following: (i) renewable energy facilities to be acquired from third parties, and subsequently owned, and operated by the soliciting public utility or utilities; (ii) renewable energy facilities to be constructed, owned, and operated by the soliciting public utility or utilities subject to the limitations of subdivision (4) of this subsection, or (iii) the purchase of renewable energy, capacity, and environmental and renewable attributes from renewable

energy facilities owned and operated by third parties that commit to allow the procuring public utility rights to dispatch, operate, and control the solicited renewable energy facilities in the same manner as the utility's own generating resources. Procured renewable energy resources shall be subject to the following limitations:

(1) If prior to the end of the initial forty-five (45) month competitive procurement period the public utilities subject to this section have executed power purchase agreements and interconnection agreements for renewable energy resource projects within their balancing authority areas which are not subject to economic dispatch or curtailment and were not procured pursuant G.S. 62-159.2 and that have an aggregate capacity in excess of thirty-five hundred megawatts (3,500 MW), the Commission shall reduce the competitive procurement aggregate amount by the amount of such exceedance. If the capacity of such renewable energy resources is less than thirty-five hundred megawatts (3,500 MW) at the end of the initial forty-five (45) month competitive procurement period, the Commission shall require the electric public utilities to conduct an additional competitive procurement in the amount of such deficit.

(2) To ensure the cost effectiveness of procured new renewable energy resources, each public utility's procurement obligation shall be capped by the public utility's current forecast of the its avoided cost calculated over the term of the power purchase agreement. The public utility's current forecast of its avoided cost shall be consistent with the Commission-approved avoided cost methodology.

(3) Each public utility shall submit to the Commission for approval and make publicly available at least thirty (30) days prior to each competitive procurement solicitation, a pro forma contract to be utilized for the purpose of informing market participants of terms and conditions of the competitive procurement. Each pro forma contract shall define limits and compensation for resource dispatch and curtailments. The pro forma contract shall be for a term of twenty (20) years; provided, however, the Commission may approve a contract term of a different duration if the Commission determines that it is in the public interest to do so.

(4) No more than thirty percent (30%) of an electric public utility's competitive procurement requirement may be satisfied through the utility's own development of renewable energy facilities offered by the electric public utility or any subsidiary of the electric public utility that are located within the electric public utility's service territory. This limitation shall not apply to any renewable energy facilities acquired by an electric public utility that are selected through the competitive procurement and are located within the electric public utility's service territory.

(c) Subject to the aggregate competitive procurement requirements established by this section, the electric public utilities shall have the authority to determine the location and allocated amount of the competitive procurement within their respective balancing authority areas, whether located inside or outside the geographic boundaries of the State, taking into consideration the State's desire to (i) foster diversification of siting of renewable energy resources throughout the State; (ii) the efficiency and reliability impacts of siting of additional renewable energy resources in each public utility's service territory; and (iii) the potential for increased delivered cost to a public utility's customers as a result of siting additional renewable energy resources in a public utility's service territory, including additional costs of ancillary services that may be imposed due to the operational or locational characteristics of a specific

renewable energy resource technology, such as non-dispatchability, unreliability of availability, and creation or exacerbation of system congestion that may increase redispatch costs.

(d) The competitive procurement of renewable energy resources established pursuant to this section shall be independently administered by a third-party entity to be approved by the Commission. The third-party entity shall develop and publish the methodology used to evaluate responses received pursuant to a competitive procurement solicitation and to ensure that all responses are treated equitably. All reasonable and prudent administrative and related expenses incurred to implement this subsection shall be recovered from market participants through administrative fees levied upon those that participate in the competitive bidding process, as approved by the Commission.

(e) An electric public utility may participate in any competitive procurement process, but shall only participate within its own assigned service territory. If the public utility uses non-publicly available information concerning its own distribution or transmission system in preparing a proposal to a competitive procurement, the public utility shall make such information available to third parties that have notified the public utility of their intention to submit a proposal to the same request for proposals.

(f) For purposes of this section, the term "balancing authority" means the entity that integrates resource plans ahead of time, maintains load-interchange-generation balance within a balancing authority area, and supports interconnection frequency in real time; and the term "balancing authority area" means the collection of generation, transmission, and loads within the metered boundaries of the balancing authority and the balancing authority maintains load-resource balance within this area.

(g) An electric public utility shall be authorized to recover the costs of all purchases of energy, capacity, and environmental and renewable attributes from third-party renewable energy resources and to recover the authorized revenue of any utility-owned assets that are procured pursuant to this section through an annual rider approved by the Commission and reviewed annually. Provided it is in the public interest, the authorized revenue for any renewable energy facilities owned by an electric public utility may be calculated on a market basis in lieu of cost-of-service based recovery, using data from the applicable competitive procurement to determine the market price in accordance with the methodology established by the Commission pursuant to subsection (h) of this section. The annual increase in the aggregate amount of these costs that are recoverable by an electric public utility pursuant to this subsection shall not exceed one percent (1%) of the electric public utility's total North Carolina retail jurisdictional gross revenues for the preceding calendar year.

(h) The Commission shall adopt rules to implement the requirements of this section, as follows:

(1) Oversight of the competitive procurement program.

(2) To provide for a waiver of regulatory conditions or code of conduct requirements that would unreasonably restrict a public utility or its affiliates from participating in the competitive procurement process, unless the Commission finds that such a waiver would not hold the public utility's customers harmless.

(3) Establishment of a procedure for expedited review and approval of certificates of public convenience and necessity, or the transfer thereof, for renewable energy facilities owned by the public utility and procured pursuant to this section. The Commission shall issue an order not later than thirty (30) days after a petition for a certificate is filed by the public utility.

(4) Establishment of a methodology to allow an electric public utility to recover its costs pursuant to subsection (g) of this section.

(5) Establishment of a procedure for the Commission to modify or delay implementation of the provisions of this section in whole or in part if the Commission determines that it is in the public interest to do so.

(i) The requirements of this section shall not apply to an electric public utility serving fewer than 150,000 North Carolina retail jurisdictional customers as of January 1, 2017."

SECTION 2.2 G.S. 62-153(b) reads as rewritten:

"(b) No public utility shall pay any fees, commissions or compensation of any description whatsoever to any affiliated or subsidiary holding, managing, operating, constructing, engineering, financing or purchasing company or agency for services rendered or to be rendered without first filing copies of all proposed agreements and contracts with the Commission and obtaining its approval. Provided, however, that this subsection shall not apply to (i) motor carriers of ~~passengers.~~passengers, or (ii) power purchase agreements entered into pursuant to the competitive renewable energy procurement process established pursuant to G.S. 62-110.8."

SECTION 2.3 This section is effective when it becomes law. The program required to be filed with the Utilities Commission pursuant to G.S. 62-110.8(a) shall be filed by the electric public utility no later than 120 days after the effective date of this section and the Commission shall issue an order to approve, modify, or deny the program no later than 90 days after the submission of the program by the electric public utility.

PART III. RENEWABLE ENERGY PROCUREMENT FOR MAJOR MILITARY INSTALLATIONS, PUBLIC UNIVERSITIES, AND OTHER LARGE CUSTOMERS

SECTION 3.(a) Article 7 of Chapter 62 of the General Statutes is amended by adding a new section to read:

"**§ 62-159.2. Direct Renewable Energy Procurement for Major Military Installations, Public Universities, and Large Customers.**

(a) Each electric public utility providing retail electric service to more than 150,000 North Carolina retail jurisdictional customers as of January 1, 2017, shall file with the Commission an application requesting approval of a new program applicable to major military installations, as that term is defined in G.S. 143-215.115(1), The University of North Carolina, as established in Article 1 of Chapter 116 of the General Statutes, and other new and existing non-residential customers with either a contract demand (i) equal to or greater than one megawatt (1 MW) or (ii) a contract demand at multiple service locations that, in aggregate, is equal to or greater than five megawatts (5 MW).

(b) Each public utility's program application required by this section shall provide standard contract terms and conditions for participating customers and for renewable energy suppliers from which the electric public utility procures energy and capacity on behalf of the participating customer. The application shall allow eligible customers to select the new renewable energy facility from which the electric public utility shall procure energy and capacity. The standard terms and conditions available to renewable energy suppliers shall provide a range of terms, between two (2) years and twenty (20) years from which the participating customer may elect. Eligible customers shall be allowed to negotiate with renewable energy suppliers regarding price terms.

(c) Each contracted amount of capacity shall be limited to no more than one hundred and twenty-five percent (125%) of the maximum annual peak demand of the eligible customer premises. Each public utility shall establish reasonable credit requirements for financial assurance for eligible customers that are consistent with the Uniform Commercial Code of North Carolina. Major military installations and The University of North Carolina are exempt from the financial assurance requirements of this section.

(d) The program shall be offered by the electric public utilities subject to this section for a period of five years or until December 31, 2022, whichever is later, and shall not exceed a

combined six hundred megawatts (600 MW) of total capacity. For the public utilities subject to this section where a major military installation is located within its Commission-assigned service territory, at least one hundred megawatts (100 MW) of new renewable energy facility capacity offered under the program shall be reserved for participation by major military installations. At least two hundred and fifty megawatts (250 MW) of new renewable energy facility capacity offered under the programs shall also be reserved for participation by The University of North Carolina. Major military installations and The University of North Carolina must fully subscribe to all its allocation prior to December 31, 2020 or a period of no more than three years after approval of the program, whichever is later. If any portion of total capacity set aside to major military installations or The University of North Carolina is not used, it shall be reallocated for use by any eligible program participant. If any portion of the six hundred megawatts (600 MW) of renewable energy capacity provided for in this section is not awarded prior to the expiration of the program, it shall be reallocated to and included in a competitive procurement in accordance with G.S. 62-110.8(a).

(e) In addition to the participating customer's normal retail bill, the total cost of any renewable energy and capacity procured by or provided by the electric public utility for the benefit of the program customer shall be paid by that customer. The electric public utility shall pay the owner of the renewable energy facility which provided the electricity. The program customer shall receive a bill credit for the energy as determined by the Commission; provided, however, that the bill credit shall not exceed utility's avoided cost. The Commission shall ensure that all other customers are held neutral, neither advantaged nor disadvantaged, from the impact of the renewable electricity procured on behalf of the program customer."

SECTION 3.(b) This section is effective when it becomes law. The application required to be filed with the Utilities Commission pursuant to G.S. 62-159.2 shall be filed by the electric public utility no later than 180 days after the effective date of this section.

PART IV. COST RECOVERY FOR CERTAIN SMALL POWER PRODUCER PURCHASES

SECTION 4.(a) G.S. 62-133.2 reads as rewritten:

"§ 62-133.2. Fuel and fuel-related charge adjustments for electric utilities.

(a) The Commission shall permit an electric public utility that generates electric power by fossil fuel or nuclear fuel to charge an increment or decrement as a rider to its rates for changes in the cost of fuel and fuel-related costs used in providing its North Carolina customers with electricity from the cost of fuel and fuel-related costs established in the electric public utility's previous general rate case on the basis of cost per kilowatt hour.

(a1) As used in this section, "cost of fuel and fuel-related costs" means all of the following:

(1) The cost of fuel burned.

(2) The cost of fuel transportation.

(3) The cost of ammonia, lime, limestone, urea, dibasic acid, sorbents, and catalysts consumed in reducing or treating emissions.

(4) The total delivered noncapacity related costs, including all related transmission charges, of all purchases of electric power by the electric public utility, that are subject to economic dispatch or economic curtailment.

(5) The capacity costs associated with all purchases of electric power from qualifying cogeneration facilities and qualifying small power production facilities, as defined in 16 U.S.C. § 796, that are subject to economic dispatch by the electric public utility.

(6) Except for those costs recovered pursuant to G.S. 62-133.8(h), the total delivered costs of all purchases of power from renewable energy facilities and new renewable energy facilities pursuant to G.S. 62-133.8 or to comply

with any federal mandate that is similar to the requirements of subsections (b), (c), (d), (e), and (f) of G.S. 62-133.8.

(7) The fuel cost component of other purchased power.

(8) Cost of fuel and fuel-related costs shall be adjusted for any net gains or losses resulting from any sales by the electric public utility of fuel and other fuel-related costs components.

(9) Cost of fuel and fuel-related costs shall be adjusted for any net gains or losses resulting from any sales by the electric public utility of by-products produced in the generation process to the extent the costs of the inputs leading to that by-product are costs of fuel or fuel-related costs.

(10) The total delivered costs, including capacity and noncapacity costs, associated with all purchases of electric power from qualifying cogeneration facilities and qualifying small power production facilities, as defined in 16 U.S.C. § 796, that are not subject to economic dispatch or economic curtailment by the electric public utility and not otherwise recovered under subdivision (6) of this subsection.

(11) All non-administrative costs related to the renewable energy procurement pursuant to G.S. 62-159.2, not recovered from the program participants.

(a2) For those costs identified in subdivisions (4), (5), ~~and (6)~~(6), (10), and (11) of subsection (a1) of this section, the annual increase in the aggregate amount of these costs that are recoverable by an electric public utility pursuant to this section shall not exceed ~~two percent (2%)~~two and one-half percent (2.5%) of the electric public utility's total North Carolina retail jurisdictional gross revenues for the preceding calendar year. The costs described in subdivisions (4), (5), ~~and (6)~~(6), (10), and (11) of subsection (a1) of this section shall be recoverable from each class of customers as a separate component of the rider as follows:

(1) For the noncapacity costs described in ~~subdivision (4)~~subdivisions (4), (10), and (11) of subsection (a1) of this section, the specific component for each class of customers shall be determined by allocating these costs among customer classes based on the ~~electric public utility's North Carolina energy usage for the prior year,~~method used in the electric public utility's most recently filed fuel proceeding commenced on or before January 1, 2017, as determined by the Commission, until the Commission determines how these costs shall be allocated in a general rate case for the electric public utility commenced on or after January 1, ~~2008.~~2017.

(2) For the capacity costs described in subdivisions (5), (6), (10), and (11) ~~(5) and (6)~~ of subsection (a1) of this section, the specific component for each class of customers shall be determined by allocating these costs among customer classes based on the ~~electric public utility's North Carolina peak demand for the prior year,~~method used in the electric public utility's most recently filed fuel proceeding commenced on or before January 1, 2017, as determined by the Commission, until the Commission determines how these costs shall be allocated in a general rate case for the electric public utility commenced on or after January 1, ~~2008.~~2017.

. . ."

SECTION 4.(b) This section is effective when it becomes law.

PART V. AMEND COST CAPS FOR REPS COMPLIANCE

SECTION 5.1 (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	2015 and thereafter
Residential per account	$10.00	$12.00	~~$34.00~~$27.00
Commercial per account	$50.00	$150.00	$150.00
Industrial per account	$500.00	$1,000.00	$1,000.00

...."

SECTION 5.1.(b) This section becomes effective July 1, 2017, and applies to cost recovery proceedings initiated on or after that date.

COST RECOVERY HOLD HARMLESS

SECTION 5.2. All reasonable and prudent incremental costs incurred by an electric power supplier prior to July 1, 2017 to comply with any requirement repealed or amended by this act may be recovered as provided in G.S. 62-133.8(h), as amended by this act. For the purposes of cost recovery under this act, reasonable and prudent incremental costs shall include all of the following:

(1) Costs under purchase contracts for renewable energy entered into prior to July 1, 2017, for the purpose of complying with the renewable energy portfolio standards requirements amended by this act.

(2) The costs of renewable energy facilities built or acquired by a public utility for which a certificate of public convenience and necessity has been issued by the Commission prior to July 1, 2017.

PART VI. DISTRIBUTED RESOURCES ACCESS ACT

SECTION 6.1. Chapter 62 of the General Statutes is amended by adding a new Article to read:

"Article 6B.

"Distributed Resources Access Act.

"§ 62-126. 1. Title.

This act may be cited as the "Distributed Resources Access Act."

"§ 62-126.2. Declaration of Policy.

The General Assembly of North Carolina finds that as a matter of public policy it is in the interest of the State to encourage the leasing of solar energy facilities for retail customers and subscription to shared community solar energy facilities. The General Assembly further finds and declares that in encouraging the leasing of and subscription to solar energy facilities pursuant to this act, cross-subsidization should be avoided by holding harmless electric public utilities' customers that do not participate in such arrangements.

"§ 62-126.3. Definitions.

For purposes of this Article, the following definitions apply:

(1) Affiliate. – Any entity directly or indirectly controlling or controlled by or under direct or indirect common control with an electric power supplier.

(2) Commission. – The North Carolina Utilities Commission.

(3) Community solar energy facility. – A solar energy facility whose output is shared through subscriptions.

(4) Customer generator lessee. – A lessee of a solar energy facility.

(5) Electric generator lessor. – The owner of an eligible electric generation facility that leases the facility to a customer generator lessee, including any agents who act on behalf of the solar electric generator lessor. For purposes of this Article, an electric generator lessor shall not be considered a public utility under G.S. 62-3(23).

(6) Electric power supplier. – A public utility, an electric membership corporation, or a municipality that sells electric power to retail electric customers in the State.

(7) Electric public utility. – A public utility as defined by G.S. 62-3(23) that sells electric power to retail electric customers in the State.

(8) Maximum annual peak demand. – The maximum single hour of electric demand actually occurring or estimated to occur at a premises.

(9) Net metering. – To use electrical metering equipment to measure the difference between the electrical energy supplied to a retail electric customer by an electric power supplier and the electrical energy supplied by the retail electric customer to the electric power supplier over the applicable billing period.

(10) Offering utility. – Any electric public utility as defined in G.S. 62-3(23) serving at least 150,000 North Carolina retail jurisdictional customers as of January 1, 2017. The term shall not include any other electric public utility, electric membership corporation, or municipal electric supplier authorized to provide retail electric service within the State. An offering utility's participation in this Article as an electric generator lessor shall not otherwise alter its status as a public utility with respect to any other provision of this Chapter. An offering utility's participation in this Article shall be regulated pursuant to the provisions of this Article.

(11) Person. – The same meaning as provided by G.S. 62-3(21).

(12) Premises. – The building, structure, farm, or facility to which electricity is being or is to be furnished. Two or more buildings, structures, farms, or facilities that are located on one tract or contiguous tracts of land and that are utilized by one electric customer for commercial, industrial, institutional, or governmental purposes, shall constitute one "premises," unless the electric service to the building, structures, farms, or facilities are separately metered and charged.

(13) Property. – The tract of land on which the premises is located, together with all the adjacent contiguous tracts of land utilized by the same retail electric customer.

(14) Solar energy facility. – A solar energy facility leased to a customer generator lessee that meets the following requirements:

a. Generates electricity from a solar photovoltaic system and related equipment that uses solar energy to generate electricity.

b. Is limited to a capacity of: (i) not more than the lesser of one thousand kilowatts (1,000 kW) or one hundred percent (100%) of contract demand if a nonresidential customer; or (ii) not more than twenty kilowatts (20 kW) or one hundred percent (100%) of estimated electrical demand if a residential customer.

c. Is located on a premises owned, operated, leased, or otherwise controlled by the customer generator lessee that is also the premises served by the solar energy facility.

d. Is interconnected and operates in parallel phase and synchronization with an offering utility authorized by the Commission to provide retail electric service to the premises and has been approved for interconnection and parallel operation by that public utility.

e. Is intended only to offset no more than one hundred percent (100%) of the customer generator lessee's own retail electrical energy consumption at the premises.

f. Meets all applicable safety, performance, interconnection, and reliability standards established by the Commission, the public utility, the National Electrical Code, the National Electrical Safety Code, the Institute of Electrical and Electronics Engineers, Underwriters Laboratories, the Federal Energy Regulatory Commission, and any local governing authorities.

(15) Subscription. – A contract between a subscriber and the owner of a community solar energy facility that allows a subscriber to receive a bill credit for the electricity generated by a community solar energy facility in proportion to the electricity generated.

"**§ 62-126.4. Commission to establish net metering rates.**

(a) Each electric public utility shall file for Commission approval revised net metering rates for electric customers that (i) own a renewable energy facility for that person's own primary use, or (ii) are customer generator lessees.

(b) The rates shall be nondiscriminatory and established only after an investigation of the costs and benefits of customer-sited generation. The Commission shall establish net metering rates under all tariff designs that ensure that the net metering retail customer pays its full fixed cost of service. Such rates may include fixed monthly energy and demand charges.

(c) Until the rates have been approved by the Commission as required by this section, the rate shall be the applicable net metering rate in place at the time the facility interconnects. Retail customers that own and install an on-site renewable energy facility and interconnect to the grid prior to the date the Commission approves new metering rates may elect to continue net metering under the net metering rate in effect at the time of interconnection until January 1, 2027.

"**§ 62-126.5. Scope of leasing program in offering utilities' service areas.**

(a) An offering utility and its affiliates may be deemed to be electric generator lessors and may offer leases to solar energy facilities only within the offering utility's own assigned service area or, in the case of an affiliate, the service area assigned to an affiliated offering utility. The costs an offering public utility incurs in marketing, installing, owning, or maintaining leases through its own leasing programs as a lessor shall not be recovered from other nonparticipating utility customers through rates and the Commission shall not have any jurisdiction over the financial terms of such leases. An offering utility, and the customer generator lessees that lease facilities from it, may participate on an equal basis with other lessors and lessees, and in any approved incentive program offered by the utility to its customers.

(b) An electric generator lessor that owns a solar energy facility within the assigned service area of an offering utility and that is located on a premises owned or leased by a customer generator lessee, shall be permitted to lease such facility exclusively to a customer generator lessee under a lease, provided that the solar electric generator lessor complies with the terms, conditions, and restrictions set forth within this section and holds a valid certificate issued by the Commission pursuant to G.S. 62-126.7. An electric generator lessor shall not be considered a 'public utility' under G.S. 62-3(23) if the solar energy facility is only made available to a customer generator lessee under a lease that conforms to the requirements of G.S. 62-126.6 for the customer generator lessee's use on its premises where the solar energy facility is located to serve the electric energy requirements of that particular premises, including to enable the customer generator lessee to obtain a credit for the electricity generated under an applicable net metering tariff or to engage in the sale of excess energy from the solar energy facility to an offering utility.

(c) Any lease of a solar energy facility not entered into pursuant to this section is prohibited, and any electric generator lessor that enters into a lease outside of an offering utility's program implemented pursuant to this section or otherwise enters into a contract or

agreement where payments are based upon the electric output of a solar energy facility shall be considered a 'public utility' under G.S. 62-3(23), and be in violation of the franchised service rights of the offering utility or any other electric power supplier authorized to provide retail electric service in the State. This section does not authorize the sale of electricity from solar energy facilities directly to any customer of an offering utility or other electric power supplier by the owner of a solar energy facility. The electrical output from any solar energy facility leased pursuant to this program shall be the sole and exclusive property of the customer generator lessee.

(d) The total installed capacity of all solar energy facilities on an offering utility's system that are leased pursuant to this section shall not exceed one percent (1.0%) of the previous five year average of the North Carolina retail contribution to the offering utility's coincident retail peak demand. The offering utility may refuse to interconnect customers that would result in this limitation being exceeded. Each offering utility shall establish a program for new installations of leased equipment to permit the reservation of capacity by customer generator lessees, whether participating in a public utility or non-utility lessor's leasing program, on its system including provisions to prevent or discourage abuse of such programs. Such programs must provide that only prospective individual customer generator lessees may apply for, receive, and hold reservations to participate in the offering utility's leasing program. Each reservation shall be for a single customer premises only and may not be sold, exchanged, traded, or assigned except as part of the sale of the underlying premises.

(e) To comply with the terms of this section, each customer generator lessee's solar energy facility shall serve only one premises, and shall not serve multiple customer generator lessees or multiple premises. The customer generator lessee must enroll in the applicable rate schedule made available by the interconnecting offering utility, subject to the participation limitations set forth in subsection (a) of this section.

"**§ 62-126.6. Electric customer generator leasing requirements; disclosures; records.**

(a) A lease agreement offered by an electric generator lessor must meet the following requirements:

(1) Be signed and dated by the retail electric customer. Any agreement that contains blank spaces when signed by the retail electric customer is voidable at the option of the retail electric customer until the solar energy facility is installed.

(2) Be in at least twelve point type.

(3) Include a provision granting the retail electric customer the right to rescind the agreement for a period of not less than three (3) business days after the agreement is signed by the retail electric customer.

(4) Provide a description of the solar energy facility, including the make and model of the solar energy facility's major components, and a guarantee concerning energy production output that the solar energy facility will provide over the expected life of the agreement.

(5) Separately set forth the following items, as applicable:

a. The total cost to the retail electric customer under the lease agreement for the solar energy facility over the life of the agreement.

b. Any interest, installation fees, document preparation fees, service fees, or other costs to be paid by the retail electric customer.

c. The total number of payments, including the interest, the payment frequency, the estimated amount of the payment expressed in dollars, and the payment due date over the leased term.

(6) Identify any state or federal tax incentives that are included in the calculation of lease payments.

(7) Disclose whether the warranty or maintenance obligations related to the solar energy facility may be sold or transferred to a third-party.

(8) Include a disclosure, the receipt of which shall be separately acknowledged by the retail electric customer, if a transfer of the lease agreement is subject to any restrictions pursuant to the agreement on the retail electric customer's ability to modify or transfer ownership of a solar energy facility, including whether any modification or transfer is subject to review or approval by a third-party. If the modification or transfer of the solar energy facility is subject to review or approval by a third-party, the agreement must identify the name, address, and telephone number of, and provide for updating any change in, the entity responsible for approving the modification or transfer.

(9) Include a disclosure, the receipt of which shall be separately acknowledged by the retail electric customer, if a modification or transfer of ownership of the real property to which the solar energy facility is or will be affixed is subject to any restrictions pursuant to the agreement on the retail electric customer's ability to modify or transfer ownership of the real property to which the solar energy facility is installed or affixed, including whether any modification or transfer is subject to review or approval by a third-party. If the modification or transfer of the real property to which the solar energy facility is affixed or installed is subject to review or approval by a third-party, the agreement must identify the name, address, and telephone number of, and provide for updating any change in, the entity responsible for approving the modification or transfer.

(10) Provide a full and accurate summary of the total costs under the agreement for maintaining and operating the solar energy facility over the life of the solar energy facility, including financing, maintenance, and construction costs related to the solar energy facility.

(11) If the agreement contains an estimate of the retail electric customer's future utility charges based on projected utility rates after the installation of a solar energy facility, provide an estimate of the retail electric customer's estimated utility charges during the same period as impacted by potential utility rate changes ranging from at least a five percent (5%) annual decrease to at least a five percent (5%) annual increase from current utility costs. The comparative estimates must be calculated based on the same utility rates.

(12) Include a disclosure, the receipt of which shall be separately acknowledged by the retail electric customer that states:

"Utility rates and utility rate structures are subject to change. These changes cannot be accurately predicted and projected savings from your solar energy facility are therefore subject to change. Tax incentives are subject to change or termination by executive, legislative, or regulatory action."

(b) Before the maintenance or warranty obligations of a solar energy facility under an existing lease agreement are transferred, the person who is currently obligated to maintain or warrant the solar energy facility must disclose the name, address, and telephone number of the person who will be assuming the maintenance or warranty of the solar energy facility.

(c) If the electric generator lessor's marketing materials contain an estimate of the retail electric customer's future utility charges based on projected utility rates after the installation of a solar energy facility, the marketing materials must contain an estimate of the retail electric customer's estimated utility charges during the same period as impacted by potential utility rate changes ranging from at least a five percent (5%) annual decrease to at least a five percent (5%) annual increase from current utility costs.

"**§ 62-126.7. Commission authority over electric generator lessors.**

(a) No person shall engage in the leasing of a solar energy facility without having applied for and obtained a certificate authorizing those operations from the Commission. The application for a certificate of authority to engage in business as an electric generator lessor shall be made in a form prescribed by the Commission and accompanied by the fee required pursuant to G.S. 62-300(a)(16).

(b) In acting upon the application for a certificate of authority to engage in business as an electric generator lessor, the Commission shall take into account the State's interest in encouraging the leasing of solar electric generation facilities and avoidance of cross-subsidization as declared by the policy objectives of this Article as provided in G.S. 62-126.2, as well as the policy of the State as provided in G.S. 62-2(a). The Commission shall issue a certificate of authority to engage in business as an electric generator lessor, if the Commission finds that the applicant is fit, willing, and able to conduct that business in accordance with the provisions of this Article. The certificate shall be effective from the date issued unless otherwise specified therein, and shall remain in effect until terminated under the terms thereof, or until suspended or revoked as herein provided.

(c) As a condition for issuance and continuation of a certificate of authority for an electric generator lessor, the applicant shall certify to the Commission all of the following:

(1) The applicant will register with the Commission each solar energy facility that the applicant leases to a customer generator lessee.

(2) That each lease of a solar energy facility that the applicant offers or accepts will comply with the provisions of this Article.

(3) The applicant will consent to the auditing of its books and records by the Public Staff insofar as those records relate to transactions with an offering utility or a customer generator lessee that is located in the State.

(4) That the applicant will conduct its business in substantial compliance with all federal and State laws, regulations, and rules for the protection of the environment and conservation of natural resources, the provision of electric service, and the protection of consumers.

(d) Upon the request of a public utility, an electric membership corporation, the Public Staff, a customer generator lessee, or person having an interest in the solar electric generator lessor's conduct of its business, the Commission may review the certificate to determine whether the solar electric generator lessor is conducting business in compliance with this Article. After notice to the electric generator lessor, the Commission may suspend the certificate and enter upon a hearing to determine whether the certificate should be revoked. After the hearing, and for good cause shown, the Commission may, in its discretion, reinstate a suspended certificate, continue a suspension of a certificate, or revoke a certificate.

(e) It shall be a violation of law punishable by a civil penalty of not more than ten thousand dollars ($10,000) per occurrence for any person to either directly or indirectly do any of the following:

(1) Solicit business as a lessor of solar energy facilities without a valid certificate issued under this section or otherwise in violation of the terms of this Article.

(2) Engage in any unfair or deceptive practice in the leasing of solar energy facilities or otherwise violate the requirements of G.S. 62-126.6.

(3) Operate in violation of the terms of the certificate issued by this Article.

"§ 62-126.8. Community solar energy facilities.

(a) Each offering utility shall file a plan with the Commission to offer a community solar energy facility program for participation by its retail customers. The community solar energy facility program shall be designed so that each community solar energy facility offsets the energy use of not less than five subscribers and no single subscriber has more than a forty percent (40%) interest. The offering utility shall make its community solar energy facility

program available on a first-come, first-served basis until the total nameplate generating capacity of those facilities equals twenty megawatts (20 MW).

(b) A community solar energy facility shall have a nameplate capacity of no more than five megawatts (5 MW). Each subscription shall be sized to represent at least two hundred watts (200 W) of the community solar energy facility's generating capacity and to supply no more than one hundred percent (100%) of the maximum annual peak demand of electricity of each subscriber at the subscriber's premises.

(c) A community solar energy facility must be located in the service territory of the offering utility filing the plan. Subscribers shall be located in the State of North Carolina and the same county or a county contiguous to where the facility is located. The electric public utility may file a request for Commission approval for an exemption from the location requirement of this subsection and the Commission may approve the request for a facility located up to seventy-five (75) miles from the county of the subscribers, if the Commission deems the exemption to be in the public interest.

(d) The offering utility shall credit the subscribers to its community solar energy facility for all subscribed shares of energy generated by the facility at the avoided cost rate.

(e) The Commission may approve, disapprove, or modify a community solar energy facility program. The program shall meet all of the following requirements:

(1) Establish uniform standards and processes for the community solar energy facilities that allow the electric public utility to recover reasonable interconnection costs, administrative costs, fixed costs, and variable costs associated with each community solar energy facility, including purchase expenses if a power purchase agreement is elected as the method of energy procurement by the offering utility.

(2) Be consistent with the public interest.

(3) Identify the information that must be provided to potential subscribers to ensure fair disclosure of future costs and benefits of subscriptions.

(4) Include a program implementation schedule.

(5) Identify all proposed rules and charges.

(6) Describe how the program will be promoted.

(7) Hold harmless customers of the electric public utility who do not subscribe to a community solar energy facility.

(8) Allow subscribers to have the option to own the renewable energy certificates produced by the community solar energy facility.

"**§ 62-126.9. Scope of leasing program by municipalities.**

(a) A municipality that sells electric power to retail customers in the State may elect, by action of its governing council or commission, to be deemed to be an electric generator lessor and may offer leases to solar energy facilities located within the municipality's service territory. The costs a municipality incurs in marketing, installing, owning, or maintaining leases through its own leasing programs as a lessor shall not be recovered from other nonparticipating municipality retail customers through rates.

(b) Provided the municipality has elected to offer a leasing program, an electric generator lessor that owns a solar energy facility within a municipality's service territory and that is located on a premises owned or leased by a customer generator lessee, shall be permitted to lease such facility exclusively to a customer generator lessee pursuant to a lease under terms and conditions approved by the municipality and holds a valid certificate issued by the Commission pursuant to G.S. 62-126.7. Notwithstanding this subsection, a municipality acting as an electric generator lessor shall not be required to comply with G.S. 62-126.7.

(c) An electric generator lessor, including a municipality acting as an electric generator lessor, shall not be considered a 'public utility' under G.S. 62-3(23) if the solar energy facilities are only made available to a customer generator lessee under a lease that conforms to the

requirements of G.S. 62-126.6 for the customer generator lessee's use of the customer generator lessee's premises where the solar energy facility is located to serve the electric energy requirements of that particular premises, including to enable the customer generator lessee to obtain a credit under an applicable net metering tariff or to engage in the sale of excess energy from the solar energy facility to the municipality; provided, however, that the provisions of 62-126.4 shall not apply to a municipality or other electric generator lessor that offers leases to solar energy facilities located within the municipality's service territory pursuant to this section. Any net metering tariffs adopted by such municipality shall be adopted by its governing council or commission in accordance with the rate setting procedures set forth in Article 16 of Chapter 160A.

(d) Any lease of a solar energy facility in a municipal electric service area not entered into pursuant to this section is prohibited. This section does not authorize the sale of electricity from solar energy facilities directly to any customer of a municipality by the owner of a solar energy facility. The electrical output from any eligible renewable electric generation facility leased pursuant to this section shall be the sole and exclusive property of the customer generator lessee.

(e) Each eligible solar energy facility shall serve only one premises, and shall not serve multiple customer generator lessees or multiple premises. The customer generator lessee must enroll in the applicable rate schedule made available by the municipality, subject to the participation limitations set forth in subsection (a) of this section.

"§ 62-126.10. Rules.

The Commission shall adopt rules to implement the provisions of this Article."

SECTION 6.2. G.S. 62-3(23) reads as rewritten:

"§ 62-3. Definitions.

As used in this Chapter, unless the context otherwise requires, the term:

...

(23) a. "Public utility" means a person, whether organized under the laws of this State or under the laws of any other state or country, now or hereafter owning or operating in this State equipment or facilities for:

1. Producing, generating, transmitting, delivering or furnishing electricity, piped gas, steam or any other like agency for the production of light, heat or power to or for the public for compensation; provided, however, that the term "public utility" shall not include persons who construct or operate an electric generating facility, the primary purpose of which facility is either for (i) ~~for such~~ a person's own use and not for the primary purpose of producing electricity, heat, or steam for sale to or for the public for ~~compensation;~~compensation; or (ii) a person who constructs or operates an eligible solar energy facility on the site of a customer's property and leases such facility to that customer, as provided by and subject to the limitations of Article 6B of this Chapter;

...."

SECTION 6.3. G.S. 62-110.1(g) reads as rewritten:

"(g) The certification requirements of this section shall not apply ~~to~~ to: (i) a nonutility-owned generating facility fueled by renewable energy resources under two megawatts in ~~capacity or~~capacity; (ii) to persons who construct an electric generating facility primarily for that person's own use and not for the primary purpose of producing electricity, heat, or steam for sale to or for the public for compensation; ~~provided, however, that such persons shall, nevertheless, be required to report to the Utilities Commission the proposed construction of such a facility before beginning construction thereof.~~or (iii) a solar energy

facility or a community solar energy facility, as provided by and subject to the limitations of Article 6B of this Chapter. However, such persons shall be required to report the proposed construction of the facility and the completion of the facility to the Commission and the interconnecting public utility. Such reports shall be for informational purposes only and shall not require action by the Commission or the Public Staff."

SECTION 6.4. This section is effective when it becomes law. The plan required to be filed with the Utilities Commission pursuant to G.S. 62-126.8(a) shall be filed by the electric public utility no later than 180 days after the effective date of this section.

PART VII. EXPEDITED REVIEW OF INTERCONNECTION OF SWINE AND POULTRY WASTE

SECTION 7. G.S. 62-133.8(i)(4) reads as rewritten:

"(4) Establish standards for interconnection of renewable energy facilities and other nonutility-owned generation with a generation capacity of 10 megawatts or less to an electric public utility's distribution system; provided, however, that the Commission shall adopt, if appropriate, federal interconnection standards. The standards adopted pursuant to this subdivision shall include an expedited review process for swine and poultry waste to energy projects of two megawatts (2 MW) or less and other measures necessary and appropriate to achieve the objectives of subsection (e) and (f) of this section."

PART VIII. SOLAR REBATE PROGRAM

SECTION 8.1 G.S. 62-155 is amended by adding a new subsection to read:

"(f) Each electric public utility serving more than 150,000 North Carolina retail jurisdictional customers as of January 1, 2017 shall file with the Commission an application requesting approval of a program offering reasonable incentives to residential and non-residential customers for the installation of small customer-owned or leased solar energy facilities participating in a public utility's net metering tariff, where the incentive shall be limited to ten kilowatts alternating current (10 kW AC) for residential solar installations and one hundred kilowatts alternating current (100 kW AC) for non-residential solar installations. Each public utility required to offer the incentive program pursuant to this subsection shall be authorized to recover all reasonable and prudent costs of incentives provided to customers and program administrative costs by amortizing the total program incentives distributed during a calendar year and administrative costs over a twenty (20) year period including a return component adjusted for income taxes at the utility's overall weighted average cost of capital established in its most recent general rate case, which shall be included in the costs recoverable by the public utility pursuant to G.S. 62-133.8(h). Nothing in this section shall prevent the reasonable and prudent costs of a utility's programs to incentivize customer investment in or leasing of solar energy facilities, including an approved incentive, from being reflected in a utility's rates to be recovered through the annual rider established pursuant to G.S. 62-133.8(h). The program incentive established by each public utility subject to this section shall meet all of the following requirements:

(1) Shall be limited to ten thousand kilowatts (10,000 kW) of installed capacity annually starting in January 1, 2018 and continuing until December 31, 2022, and shall provide incentives to participating customers based upon the installed alternating current nameplate capacity of the generators.

(2) Non-residential installations will also be limited to five thousand kilowatts (5,000 kW) in aggregate for each of the years of the program.

(3) Twenty five hundred kilowatts (2,500 kW) of the capacity for non-residential installations shall be set-aside for use by non-profit

organizations; fifty kilowatts (50 kW) of the set-aside shall be allocated to the NC Greenpower Solar Schools Pilot or a similar program. Any set-aside rebates that are not used by December 31, 2022 shall be reallocated for use by any customer who otherwise qualifies. For purposes of this section, "nonprofit organization" means an organization or association recognized by the Department of Revenue as tax-exempt pursuant to G.S. 105-130.11(a), or any bona fide branch, chapter, or affiliate of that organization.

(4) If in any year a portion of the incentives goes unsubscribed, the utility may roll excess incentives over into a subsequent year's allocation."

SECTION 8.2 G.S. 62-133.8(h)(1) is amended by adding a new sub-subdivision to read:

"d. Provide incentives to customers, including program costs, incurred pursuant to G.S. 62-155(f)."

SECTION 8.3 This section is effective when it becomes law. The application required to be filed with the Utilities Commission pursuant to G.S. 62-155(f) shall be filed by the electric public utility no later than 180 days after the effective date of this section.

PART IX. DEMAND-SIDE MANAGEMENT FOR STATE OWNED FACILITIES PILOT PROJECT

SECTION 9. Article 17 of Chapter 62 of the General Statutes is amended by adding a new section to read:

"**§ 62-351. Demand-side management policy; pilot project.**

(a) Declaration of Policy. – It is the policy of the State for government-owned facilities that have backup or emergency generators that meet the criteria of utility demand-side management programs or rates to enroll in such programs or rates to the extent those programs or rates are available without diminishing the purpose or use of the facility having the backup or emergency generator.

(b) Department of Public Safety Pilot Program. – By no later than January 1, 2018, the Department of Public Safety shall designate a backup or emergency generator to enroll in the demand-side management program or rate available that would allow electricity load to be shifted to its generator in response to utility-administered programs.

(c) Report. – The Department of Public Safety shall report to the Joint Legislative Commission on Energy Policy by January 31 of each year on the status of the designated backup or emergency generator and whether it is enrolled in the utility demand-side response program or rate.

(d) Sunset. – The pilot program and report required by subsections (b) and (c) of this section shall expire on January 1, 2020."

PART X. UPDATE UTILITIES COMMISSION CHARGES AND FEES

SECTION 10.1. G.S. 62-133.8 is amended by adding a new subsection to read:

"(*l*) The owner, including an electric power supplier, of each renewable energy facility or new renewable energy facility, whether or not required to obtain a certificate of public convenience and necessity pursuant to G.S. 62-110.1, that intends for renewable energy certificates it earns to be eligible for use by an electric power supplier to comply with G.S. 62-133.8 shall register the facility with the Commission. Such an owner shall file a registration statement in the form prescribed by the Commission and remit to the Commission the fee required pursuant to G.S. 62-300(a)(16)."

SECTION 10.2. G.S. 62-300(a) is amended by adding two new subdivisions to read:

"(16) Two hundred and fifty dollars ($250.00) with each application for a certificate of authority to engage in business as a solar electric generator

lessor filed pursuant to G.S. 62-126.7 or each registration statement for a renewable energy facility or new renewable energy facility filed pursuant to G.S. 62-133.8(*l*).

(17) Fifty dollars ($50.00) for each report of proposed construction filed by the owner of an electric generating facility that is exempt from the certification requirements of G.S. 62-110.1(a)."

PART XI. DIRECT THE JOINT LEGISLATIVE COMMISSION ON ENERGY POLICY TO STUDY PROPERTY TAX EXCLUSIONS FOR SOLAR ENERGY ELECTRIC SYSTEMS AND FACILITIES UTILIZING SWINE OR POULTRY WASTE RESOURCES.

SECTION 11.1 The Joint Legislative Commission on Energy Policy is directed to study the property tax exclusions for the creation of renewable energy through solar energy electric systems and energy and biogas facilities utilizing swine or poultry waste resources. As part of its study, the Commission shall consider the following:

(1) The economic impact of the property tax exclusion for solar energy electric systems under G.S. 105-275(45).

(2) Whether there should be a property tax exclusion for facilities utilizing swine or poultry waste resources to generate electricity or biogas.

(3) How much the property tax exclusion for facilities utilizing swine or poultry waste resources to generate electricity or biogas should be.

SECTION 11.2 The Joint Legislative Commission on Energy Policy may request any information necessary to complete the study created under this section from any county tax office in this State, including at a minimum:

(1) The value of any property that currently qualifies for the property tax exclusion under G.S. 105-275(45) prior to the installation of a solar energy electric system.

(2) The value of any property that currently qualifies for the property tax exclusion under G.S. 105-275(45) after the installation of a solar energy electric system.

(3) The amount of property taxes collected from a property that currently qualifies for the property tax exclusion under G.S. 105-275(45) prior to the installation of a solar energy electric system.

(4) The amount of property taxes collected from a property that currently qualifies for the property tax exclusion under G.S. 105-275(45) after the installation of a solar energy electric system.

(5) The value of any property that abuts a property that currently qualifies for the property tax exclusion under G.S. 105-275(45) prior to the installation of a solar energy electric system.

(6) The value of any property that abuts a property that currently qualifies for the property tax exclusion under G.S. 105-275(45) after the installation of a solar energy electric system.

(7) The observed economic impact of solar energy electric systems, if available.

SECTION 11.3 The Joint Legislative Commission on Energy Policy may request information from the Department of Revenue regarding system and nonsystem property owned by any public service company in this State to complete the study created under this section. For the purposes of this section, the terms "system property", "nonsystem property", and "public service company" shall have the same meanings as defined in G.S. 105-333.

SECTION 11.4 The Joint Legislative Commission on Energy Policy shall complete this study and report its findings and recommendations, including any legislative proposals, to the General Assembly by March 1, 2018.

PART XII. ENERGY STORAGE STUDY

SECTION 12. The North Carolina Policy Collaboratory (Collaboratory) at the University of North Carolina at Chapel Hill shall conduct a study on energy storage technology. The study shall address how energy storage technologies may or may not provide value to North Carolina consumers based on factors that may include capital investment, value to the electric grid, net utility savings, net job creation, impact on consumer rates and service quality, or any other factors related to deploying one or more of these technologies. The study shall also address the feasibility of energy storage in North Carolina including services energy storage can provide that are not being performed currently, the economic potential or impact of energy storage deployment in North Carolina, and the identification of existing policies and recommended policy changes that may be considered to address a statewide coordinated energy storage policy. The Collaboratory shall provide the results of this study no later than December 1, 2018 to the Energy Policy Council and the Joint Legislative Commission on Energy Policy.

PART XIII. SEVERABILITY CLAUSE AND EFFECTIVE DATE

SECTION 13.1. If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part declared to be unconstitutional or invalid.

SECTION 13.2. Except as otherwise provided, this act is effective when it becomes law.

HOUSE BILL 589:
Competitive Energy Solutions for NC.

2017-2018 General Assembly

Committee:	House Energy and Public Utilities. If favorable, re-refer to Finance	**Date:**	June 6, 2017
Introduced by:	Reps. Szoka, Arp, Watford	**Prepared by:**	Layla Cummings Committee Counsel
Analysis of:	PCS to First Edition H589-CSTSf-7		

OVERVIEW: The Proposed Committee Substitute (PCS) to House Bill 589 would amend various laws related to energy policy, including reform of the State implementation of PURPA, the creation of a competitive bidding process for new renewable energy resources, and the enactment of the Distributed Resources Access Act to authorize leasing of third-party owned solar development.

CURRENT LAW, BACKGROUND, AND BILL ANALYSIS:

PART I: STANDARD CONTRACTS FOR SMALL POWER PRODUCERS

PURPA and Qualifying Facilities: The Public Utilities Regulatory Policy Act of 1978 (PURPA)[1] 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 (QF) or qualifying facilities, such utility would generate itself or purchase from another source."[2]

Implementation of PURPA in NC: The Federal Energy Regulatory Commission has delegated PURPA implementation authority to the States. The North Carolina Utilities Commission (Commission) has jurisdiction to set standards for QFs including the avoided cost calculation and the terms and conditions of contracts and capacity thresholds for those facilities. The Commission currently requires publicly owned electric utilities to offer standard 5-, 10-, and 15-year long term power purchase agreements for small power production facilities 5 MW and under.

The Commission establishes the avoided cost rate and terms and conditions of the standard contract biennially and there is currently an open docket to establish the avoided cost rate.[3] The Commission has not yet issued an order in the docket reestablishing the rate or terms and conditions of the contract.

In their avoided cost docket filing, Duke has stated that 60% of all PURPA projects in the country are in North Carolina. As of September 2016, 1,300 MW of utility scale solar has been interconnected in the service territories of Duke Energy Progress and Duke Energy Carolinas.[4]

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[1] Pub. L. No. 95-617, 92 Stat. 3117.

[2] 18 C.F.R. 292.101(b)(6).

[3] *Biennial Determination of Avoided Cost Rates for Electric Utility Purchases from Qualifying Facilities-2016,* NCUC Docket No.E-100, Sub 148.

[4] *Joint Initial Statement and Proposed Standard Avoided Cost Rate Tariffs of Duke Energy Carolinas, LLC and Duke Energy Progress, LLC,* NCUC Docket No. E-100, Sub-148 (filed Nov 15, 2016).

Legally Enforceable Obligation: Pursuant to PURPA and federal regulations, a QF has the right to sell energy and capacity under a legally enforceable obligation (LEO).[5] The LEO sets the point in time the QF has committed to sell energy or capacity to the utility and obligated the utility to purchase from the QF at the utility's avoided cost rates calculated when the LEO commitment is made.

Section 1.1 of the PCS would align the definition of small power producer in State law with the federal definition of a small power production facility. A small power production facility is a generating facility of 80 MW or less whose primary energy source is renewable, biomass, waste, or geothermal resources.

Section 1.2 of the PCS would require utilities to offer standard contracts to small power production facilities for up to 10-year terms for facilities that have a capacity up to 1 MW. The standard contract for 1 MW facilities would be capped to a total aggregate of 100 MW per public utility. Once the 100 MW cap is reached, the standard contract minimum capacity threshold would be reduced from 1 MW to 100 kW.

For small power producers over 1 MW, or 100 kW once the 100 MW cap is reached, the rates would be negotiated between the small power producer and the utility for a fixed five-year term. Swine and poultry waste facilities would be able to negotiate for a term beyond five years.

The PCS would also require that capacity payments be made only when capacity is needed by the utility based on need for that resource as established by the utility's statutorily required integrated resource plan. The limitation on capacity payments does not apply to swine and poultry waste for which a need is established by the renewable energy portfolio standards.

Section 1.3 of the PCS would provide for a grandfathering of small power production facilities that are currently eligible for the avoided cost rates in Commission Docket E-100, Sub 140 (the "Sub 140 tariffs" are the avoided cost rates determined in 2014). Facilities currently eligible for those rates have a 30-month deadline to be placed into service (that deadline is September 10, 2018).

This section would provide for an extension of the 30-month deadline and continued eligibility for the Sub 140 tariff for facilities that would have otherwise qualified if they had met the deadline. These facilities, which would be eligible for a 15-year contract under the Sub 140 tariff, will have the duration of the term begin on September 10, 2018.

Under this section, the utility has the option not to interconnect a solar facility to its distribution system with a nameplate capacity of ten megawatts (10 MW) or greater that had not executed an interconnection agreement prior to July 1, 2017, and may require such facility to interconnect to the utility's transmission system.

Section 1.4 of the PCS would provide that this section is effective when it becomes law. Section 1.2 would apply to standard contract offers made on or after that date and Section 1.3 would apply to small power production facilities that have established a legally enforceable obligation by November 15, 2016.

PART II. COMPETITIVE PROCUREMENT OF RENEWABLE ENERGY

Section 2.1 of the PCS would create a competitive procurement of new renewable energy resources by requiring electric public utilities with more than 150,000 customers (Duke Energy, including Duke Energy Carolinas and Duke Energy Progress) to issue a request for proposals (RFP). The RFP would be issued over a 45-month term for a total procurement of 2,660 MW of renewable energy resources.

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[5] 18 CFR 292.304(d).

Any amount of renewable energy resources not contracted for during the competitive procurement would be subject to rollover into a new competitive procurement. The Commission would determine whether any additional competitive procurement would be offered at the expiration of the initial 45-month competitive procurement based on a number of specified considerations. The PCS would provide the following limitations on the procurement of renewable energy resources:

- The total amount of energy in the competitive procurement would be adjusted up or down by any amount in which the public utility's renewable energy procurement outside of the competitive procurement and the green source rider program (see Part III below) is more or less than 3500 MW. Current estimates by the utility are that 3500 MW is the total amount of solar energy capacity in the State that is either connected, under construction, or will be developed prior to the first competitive procurement solicitation.
- The cost of the energy procured would be capped at the forecasted avoided cost for the term of the agreement.
- The utility would be required to release a pro forma contract prior to the solicitation for bids on a renewable energy project. The pro forma would establish terms and conditions for resource dispatch and curtailment. The pro forma contract would be for a term of 20 years; that term, however, could be adjusted in the discretion of the Commission.
- The public utility would be able to participate as a developer of renewable energy resources but would be limited to a maximum of 30% of the procurement amount.

The PCS would provide that the utility would have the authority to determine the location and allocated amounts of renewable energy resource projects within its service area. It would also have rights to dispatch, operate, and control third-party operated renewable energy resources as it does its own generating facilities.

The competitive bidding process would be overseen by an independent administrator that would be required to publish the methodology used to choose the projects. The public utility would also have to disclose any non-publicly available information concerning its own system in preparing its bid to other bidders.

The costs to procure energy in the competitive procurement would be eligible to be recovered through an annual rider. The annual costs recoverable, however, would not be allowed to exceed one percent of total revenues of the utility in the State for the prior calendar year.

The Utilities Commission would be required to adopt rules to provide oversight of the competitive procurement program and to establish a procedure to modify or delay the competitive procurement program if it determines it is in the public interest to do so. The Commission would also be required to adopt rules to:

- Provide for a waiver of regulatory conditions or code of conduct requirements that would unreasonably restrict a public utility or its affiliates from participating in the competitive procurement process, unless the Commission finds that such a waiver would not hold the public utility's customers harmless.
- Establish a procedure for expedited review and approval of certificates of public convenience and necessity for renewable energy facilities owned by the public utility.
- Establish a methodology to allow an electric public utility to recover its costs pursuant to the annual rider created in this section.

Section 2.2 of the PCS would make a conforming change to Chapter 62 to exempt power purchase agreements entered into pursuant to the competitive procurement from Commission filing and approval requirements.

Section 2.3 of the PCS would provide that the section is effective when it becomes law and specifies that the utilities must file the competitive procurement program with the Commission within 120 days of the effective date and the Commission must issue an order to approve, modify, or deny the program within 90 days of the filing.

PART III. RENEWABLE ENERGY PROCUREMENT FOR MAJOR MILITARY INSTALLATIONS, PUBLIC UNIVERSITIES, AND OTHER LARGE CUSTOMERS.

Background: In December of 2013, the Commission approved a three-year Green Source Rider pilot program designed to give large energy customers the option of offsetting some or all of their energy consumption with renewable energy resources in the Duke Energy Carolinas service territory.[6] The pilot program has expired.

Section 3 of the PCS would provide for a new renewable energy procurement program for large energy users, the military, and the University of North Carolina (UNC) system. Large energy users would be defined as those with a contract demand for 1 MW or more, or 5 MWs or more at multiple service locations when combined in aggregate.

The public utility would file for Commission approval of the new program within 180 days of the effective date of the section. It would provide for standard contract terms and conditions that allows the customer to choose the renewable energy facility and for a term ranging from 2 to 20 years.

The customer program participants would be limited to contract for 125% of their maximum annual peak demand. The program participants would also be required to establish reasonable financial assurance requirements; however, the military and UNC would be exempt from the requirements.

The program would expire in five years or on December 31, 2022, whichever is later. The program would have a cap of 600 MW of total capacity, with 100 MW set aside for the military and 250 MW set aside for UNC. If the set-asides are not used by December 31, 2020 or three years after the start of the program, whichever is later, the capacity can be used by any eligible program participant. If any capacity is not contracted for by the expiration of the program, it will rollover into the competitive procurement program.

Under the program, the utility would pay the contract price to the renewable energy developer. The avoided cost portion of the contract price would be collected via the fuel clause rider (see Part IV below). The program participant would receive a bill credit as determined by the Commission but not to exceed the utility's avoided cost. In determining the bill credit, the Commission will ensure that all other customers are held harmless from the impact of the renewable electricity procured on behalf of the program customer.

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[6] NCUC Docket E-7, Sub 1043.

PART IV. COST RECOVERY FOR CERTAIN SMALL POWER PRODUCER PURCHASES

Section 4 of the PCS would enable the public utility to recover the cost of PURPA QF purchased power and the non-administrative costs of the green source rider program through the existing fuel clause rider.

This section would also add those costs to the annual cap on cost increases for other parts of the fuel clause rider and raise the cap on those costs from 2.0% to 2.5% of total revenues of the utility for the prior calendar year.

PART V. AMEND COST CAPS FOR REPS COMPLIANCE

In 2007, the General Assembly enacted a Renewable Energy Portfolio Standard (REPS) requirement for electric power suppliers.[7] REPS requires 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.

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	

Section 5.1 would reduce the cost caps for residential customers under REPS from $34 per account per year to $27 per account per year. **Section 5.2** would hold the public utility harmless for contracts entered into for REPS compliance prior to July 1, 2017.

PART VI. DISTRIBUTED RESOURCES ACCESS ACT

Third Party Sales and Net Metering: In many states, the development of residential and commercial rooftop and on-site solar facilities involves third party financing options such as power purchase agreements (PPA) and leasing arrangements with third party solar developers. Under a PPA, the customer agrees to purchase all the energy produced by the system. With a leasing arrangement, the customer agrees to pay a fixed monthly fee to the third-party for the equipment that is not directly based on the amount of on-site electricity generation. Under either financing model, any excess generation not used on-site is typically subject to a net metering arrangement between the customer and the utility.

Under current law, electric public utilities in the State have the exclusive rights to sell electricity in a designated franchise area. Third-party financing models are not available because solar developers are not authorized to sell power back to the consumer in the State unless they are the regulated public utility serving that franchise area.

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[7] S.L. 2007-397, also known as "Senate Bill 3."

Retail customers, however, can own a renewable energy system for their own primary use and are compensated through bill credits under a net metering rate. The Commission established net metering rules for investor-owned utilities in 2005 and last revised those rules in 2009.[8] Under the current net metering rates, retail customers that own their own renewable energy systems receive a bill credit at the retail rate for net excess power generation. Those credits carry forward to the next month's bill and rollover month to month if not used. The credits expire annually at the beginning of the summer billing season.

Section 6.1 of the PCS would enact the Distributed Resources Access Act to allow third parties to offer leasing of solar energy facilities in the service area of an offering utility or a municipality that offers electric service and to create a community solar energy program to be implemented by the offering utility. The offering utility is any electric public utility as defined in G.S. 62-3(23) serving at least 150,000 North Carolina retail jurisdictional customers as of January 1, 2017, but does not include any other electric public utility, electric membership corporation, or municipal electric supplier.

The PCS would allow retail electric customers of an offering utility to enter into contracts with solar developers or the electric public utility for the lease of eligible solar facilities. The solar energy facility would have to meet the following requirements to be eligible:

- Generates electricity from a solar photovoltaic system.
- Is limited to a capacity of:
    - Nonresidential customers: 1MW or 100% of contract demand.
    - Residential customers: 20 kW or 100% of estimated demand.
- Is located on the premises of the customer being served.
- Is interconnected with the public utility.
- Is intended to offset no more than 100% of the customer's own consumption.
- Meets all applicable safety, performance, interconnection, and reliability standards.

The total installed capacity of all leased solar energy facilities on an offering utility's system would be capped at 1% of the previous five year average of the North Carolina retail contribution to the offering utility's coincident retail peak demand.

Net Metering: The PCS would require the electric public utility to file a docket with the Commission for revised net metering rates. The rates would be established after an investigation of the costs and benefits of customer-sited generation. The Commission is directed to establish rates that ensure net metering customers pay their full fixed cost of service and the rates may include fixed monthly charges. Retail customers that own their own renewable energy system and are on an approved net metering rate, prior to the approval of the revised net metering rates, are grandfathered in at the rate at the time of interconnection until January 1, 2027.

Consumer Protection: The PCS would require that the lease agreement provided by a lessor, including the utility or a third party developer, would be required to comply with the following requirements:

- Be signed and dated and in at least 12 point font.
- Include the right to rescind the agreement for three business days.
- Provide a description of the solar energy facility.
- List the cost, fees, payments, interest, etc. over the life of the agreement.
- Identify State and federal tax incentives that are included in the lease payments.

[8] NCUC Docket No. E-100, Sub 83 (March 31, 2009).

- Provide a disclosure if a transfer of the lease is subject to any restrictions.
- Provide a disclosure if a transfer of ownership of the real property to which the solar energy facility is affixed is subject to any restrictions.
- Provide a summary of total costs for maintaining and operating the solar energy facility.
- If the agreement contains an estimate of the customer's future utility charges, provide an estimate of the retail electric customer's estimated utility charges during the same period as impacted by potential utility rate changes ranging from at least a five percent (5%) annual decrease to at least a five percent (5%) annual increase from current utility costs.
- Provide a standard disclaimer that utility rates and tax incentives are subject to change.

The PCS would further require that if the maintenance or warranty for the solar energy facility is transferred, the person who is currently obligated to maintain or warrant the solar energy facility must disclose the contact information of the person who will be assuming the maintenance or warranty obligations of the solar energy facility.

With regard to marketing materials, the PCS would require that if those materials contain an estimate of the customer's future utility charges, it must provide an estimate of the retail electric customer's estimated utility charges during the same period as impacted by potential utility rate changes ranging from at least a five percent (5%) annual decrease to at least a five percent (5%) annual increase from current utility costs.

Commission Authority over Lessors: The PCS would require lessors to obtain a certificate from the Commission before beginning operations. To be certified an applicant must comply with the following requirements:

- Register each solar energy facility that the applicant leases to a customer.
- Certify that each lease of a solar energy facility that the applicant offers or accepts will comply with the requirements set out in the act.
- Consent to the auditing of its books and records by the Public Staff.
- Conduct its business in compliance with all federal and State laws, regulations, and rules for the protection of the environment and conservation of natural resources, the provision of electric service, and the protection of consumers.

The PCS would create a civil penalty of up to $10,000 for any person to operate in violation of the terms of the Act or to engage in unfair or deceptive practices in the leasing of solar energy facilities.

Community Solar: The PCS would require the development of a community solar program that would require the offering utilities to file a program with the Commission to construct up to 20 MWs of solar facilities per public utility that would allow customers to participate by buying subscriptions for a certain amount of output of the electricity produced by the facility. Each community solar energy facility would be required to offset the electric needs of at least five subscribers and no single subscriber would be allowed to subscribe to more than 40% of the output of the facility. The facility would be limited to 5 MW in size and each subscription would represent at least 200 W of generating capacity and no more than 100% of the maximum annual peak demand of electricity at the subscriber's premises.

The program would be capped at 20 MW per public utility, for a total of 40 MW between Duke Energy Carolinas and Duke Energy Progress. Subscribers to the program would be required to be in the same county or a county contiguous to the facility. If the subscriber does not meet the location requirements, the Commission may approve requests from the electric public utility to allow a subscriber to be up to

75 miles from the facility. Subscribers to the facility will receive a bill credit at the utility's avoided cost rate.

The public utility would be required to file for Commission approval of the program within 180 of the effective date of the section. The Commission may approve, disapprove, or modify the design of the community solar energy program submitted by the utility to ensure that customers who do not subscribe to a community solar energy facility are held harmless, among other requirements.

Leasing Program by Municipalities: The PCS would provide that a municipality that sells electric power to retail customers may offer leases to solar energy facilities located within the municipality's service territory at the election of its governing council or commission. It would prohibit the costs a municipality incurs in marketing, installing, owning, or maintaining leases through its own leasing programs as a lessor to be recovered from other nonparticipating municipality retail customers through rates.

If the municipality offers a leasing program, a third party lessor may lease a solar energy facility within the municipality's service territory if they have received a certificate issued by the Commission and comply with terms and conditions approved by the municipality. The Commission's net metering rates will not apply in the municipality's service territory: any net metering tariffs offered in a leasing arrangement under this section will be adopted by the municipality's governing council or commission.

Section 6.2 would make a conforming change to provide that lessors of solar energy facilities are not regulated public utilities under Chapter 62 of the General Statutes.

Section 6.3 would make a conforming change to G.S. 62-110.1(g) to exempt leased solar energy facilities from the certification requirements Chapter 62 (the certificate of public necessity and convenience). This section would also require the exempt facilities to report the proposed construction and completion of the facility to the Commission and the interconnecting public utility.

PART VII. EXPEDITED REVIEW OF INTERCONNECTION OF SWINE AND POULTRY WASTE

Under current law, the Commission has the authority to adopt rules to establish standards for interconnection of renewable energy facilities with a capacity of 10 MW or less to an electric public utility's distribution system.

Section 7 directs the Commission in its rule adoption authority under REPS, to establish interconnection standards that include an expedited review process for swine and poultry waste to energy projects of two megawatts (2 MW) or less, and other measures to help achieve compliance with the swine and poultry waste set-asides under REPS.

PART VIII. SOLAR REBATE PROGRAM

Section 8.1 would create a solar rebate program to provide incentives to customers that install or lease solar energy facilities and are subject to the public utility's net metering tariff. The incentives would be limited to facilities as follows: (i) residential: 10 kW alternating current; and (ii) non-residential: 100 kW alternating current. The program shall meet the following requirements:

- Limited to 10 MW annually of total installed capacity over five years from 2018 through 2022. (a total of 50 MW per utility). There are two utilities subject to this section, Duke Energy Carolinas and Duke Energy Progress, thus a total 100 MW of total installed capacity would be eligible for the rebates program.
- Non-residential installations must not exceed half of the capacity of the program, which is 5 MW. 2.5 MW must be set aside for non-residential installations by non-profits, with 50 kW set aside for NC Greenpower Solar Schools Pilot or a similar program.
- Any set-asides or any portion of the incentives that goes unsubscribed will rollover to subsequent years.

Section 8.2 would amend the REPS rider to allow cost recovery by the public utility for the cost of the rebates program.

Section 8.3 would require the public utilities to file the application for the rebates program within 180 days after the section becomes effective. The section becomes effective when it becomes law.

PART IX. DEMAND-SIDE MANAGEMENT FOR STATE OWNED FACILITIES PILOT PROJECT

Section 9 would establish a pilot program in the Department of Public Safety to enroll in a demand-side management program rate or tariff with the public utility if available. The program would potentially allow load to be curtailed or shifted onto the generator when called upon for energy efficiency or emergency purposes and would qualify the agency to enroll in a potentially cost saving rate or tariff. The Department would be required to report on the pilot program to the Joint Legislative Commission on Energy Policy by January 31 of each year and the program would expire on January 1, 2020.

PART X. UPDATE UTILITIES COMMISSION CHARGES AND FEES

The Commission and the Public Staff issued a recommendation to the General Assembly in 2016 to consider changes to fees and charges of the Commission, pursuant to a direction to review fees and charges included in the 2015 Appropriations Act.

The costs of the activities of the Commission and the Public Staff are supported by the fees and charges imposed under G.S. 62-300 and the utility regulatory fee imposed under G.S. 62-302. The fees and charges imposed under G.S. 62-300 are intended to defray the administrative costs of processing filings.

Section 10.1 would codify a required filing at the Commission for a renewable energy registration statement pursuant to Commission Rule R8-66 and reference a new associated fee for renewable energy facilities seeking a renewable energy certificate (REC). G.S. 62-133.8(k) currently requires the Commission to track renewable energy certificates but has no associated fee required to register and process facilities applying for the RECs under Commission rules adopted to implement the online tracking database.

Section 10.2 would amend the fees under G.S. 62-300. It would create a $250 fee for (i) an application for a certificate of authority to engage in business as a solar generator lessor (see Part VI of the PCS); and (ii) the processing of the registration statement for a REC (see Section 10.1 of the PCS). This section would also create a $50 fee for the processing of Reports of Proposed Construction that are

required to be filed with the Utilities Commission for facilities exempt from the requirement to obtain a certificate of public convenience and necessity.

PART XI. DIRECT THE JOINT LEGISLATIVE COMMISSION ON ENERGY POLICY TO STUDY PROPERTY TAX EXCLUSIONS FOR SOLAR ENERGY ELECTRIC SYSTEMS AND FACILITIES UTILIZING SWINE OR POULTRY WASTE RESOURCES

Section 11 of the PCS would require the Joint Legislative Commission on Energy Policy to study the property tax exclusions for solar energy electric systems and energy and biogas facilities utilizing swine or poultry waste resources. The Commission would consider the economic impact of the property tax exclusion for solar energy electric systems; whether there should be a property tax exclusion for facilities utilizing swine or poultry waste resources to generate electricity or biogas; and, if so, how much the property tax exclusion for facilities utilizing swine or poultry waste resources to generate electricity or biogas should be. The Commission would report its findings, including any legislative proposals, to the General Assembly by March 1, 2018.

PART XII. ENERGY STORAGE STUDY

Section 12 of the PCS would require the North Carolina Policy Collaboratory at UNC to conduct a study on energy storage including how energy storage may or may not provide value to North Carolina consumers based on capital investments, value to the grid, net customer savings, net job creation, impact to rates and service quality, and other factors. The study must address the feasibility of energy storage in North Carolina, what services energy storage can provide that are not being performed currently, the economic potential or impact of energy storage in North Carolina, and the policies needed or impacted by coordinated energy storage policy. The Collaboratory would be required to report the results of the study to the Energy Policy Council and the Joint Legislative Commission on Energy Policy by December 1, 2018.

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

HOUSE BILL 589

Short Title:	Utilities Commission Fees and Charges.	(Public)
Sponsors:	Representatives Szoka, Arp, and Watford (Primary Sponsors). *For a complete list of sponsors, refer to the North Carolina General Assembly web site.*	
Referred to:	Energy and Public Utilities, if favorable, Finance	

April 6, 2017

A BILL TO BE ENTITLED

AN ACT TO UPDATE THE FEES AND CHARGES OF THE UTILITIES COMMISSION FOR REVIEW OF RENEWABLE ENERGY FACILITIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 62-133.8 is amended by adding a new subsection to read:

"(*l*) The owner, including an electric power supplier, of each renewable energy facility or new renewable energy facility, whether or not required to obtain a certificate of public convenience and necessity pursuant to G.S. 62-110.1, that intends for renewable energy certificates it earns to be eligible for use by an electric power supplier to comply with this section shall register the facility with the Commission. Such an owner shall file a registration statement in the form prescribed by the Commission and remit to the Commission the fee required pursuant to G.S. 62-300(a)(16)."

SECTION 2. G.S. 62-300(a) is amended by adding two new subdivisions to read:

"(16) Two hundred fifty dollars ($250.00) for each registration statement for a renewable energy facility or new renewable energy facility filed pursuant to G.S. 62-133.8(*l*).

(17) Fifty dollars ($50.00) for each report of proposed construction filed by the owner of an electric generating facility that is exempt from the certification requirements of G.S. 62-110.1(a)."

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

NAME OF MEETING: Energy & Public Utilities

Room 544

DATE: 06/06/2017

PLEASE SIGN IN BELOW

NAME	FIRM OR AGENCY
Daniel Radford	NCFB
Kortney Smith	NCFB
Katy Kirkpatrick	GP
Grady McCallie	NC Conservation Network
Marilyn Avila	Speaker No Form
Maggie Clark	SEIA
Chris Carmody	NCCEBA
Dan Crawford	NCLCV
Mary Maddox Asbill	SELC
Brooks Rainey Pearson	SELC
Demi Davis	SELC
Jeri Burke	NWC
Brett Breitschwerdt	McGuireWoods
[illegible]	[illegible]
Peter Daniel	Concerned
John Cooper	"
Mike McBride	Biggen
Anna Brawley	AFP

NAME OF MEETING: Energy & Public Utilities

Room 544

DATE: 06/06/2017

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NAME	FIRM OR AGENCY
Tracy Kimbrell	Parker Poe
Donald Bryson	Americans for Prosperity
Jill Cramday	NCCN
Patrick Baffi	NCUC
Brian Gatha	Strata Solar
Betsy McCorkle	KGANC
Scott Castle	KGANC
Sarah McQuillan	KGANC
Maggie Meyers	
	Sierra Club
Caroline Gauri	Sierra Club
Michelle Frazier	SWL
Peter Daroff	SWL

NAME OF MEETING: Energy & Public Utilities

Room 544

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NAME	FIRM OR AGENCY
Henry Jones	Jordan Price
Preston Howard	NCMA
Lee Ann Pennington	CSS
Hayden Baucgess	Electric Cities of NC.
Doug Lassiter	NCSTA
Jessie White	NC Sierra Club
Rhonda Jackson	Focus Carolina
Courtney Johnson	NP
[illegible]	NJ
Jaz Turnell	Duke
Ken Jennings	Duke
Kelli [illegible]	Duke Energy
Kendal Bowman	Duke Energy
Kathy Hawkins	Duke Energy

NAME OF MEETING: Energy & Public Utilities

Room 544

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NAME	FIRM OR AGENCY
R Kaylor	Kaylor Law
Elizabeth Bisor	Brooks Pierce
Meaghan Lewis	NC Chamber
Gary Sola-ido	NC Chamber
Jason Toper	NC Chamber
Duncan Vick	Duke E
Jennifer Mundt	NCDOR
Dana Simpson	SA
Lexi Arthur	NCRMA
Chris Brewington	NHC
Bo Somers	Duke Energy
[illegible]	[illegible]
[illegible]	[illegible]
Chris McClure	EC
[illegible]	NCPA
[illegible]	NWC
David McGowan	NCPC
[illegible]	PPAB
Bill McAulay	PSNC Energy

NAME OF MEETING: Energy & Public Utilities

Room 544

DATE: 06/06/2017

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NAME	FIRM OR AGENCY
Mike Maness	Public Staff
Deanna Downey	PSNUC
James McLawhorn	Public Staff - NCUC
Tim Dodge	Public Staff - NCUC
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Ken Melton	K.M.A
Caroline Perry	Wall West
[illegible]	[illegible]
[illegible]	CCR
Vincent Gauthier	NCLCV
Phil Carter	Waste Industries
Julie Robinson	NCSEA

NORTH CAROLINA HOUSE OF REPRESENTATIVES

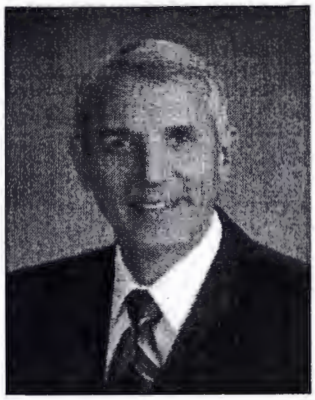
2018 SHORT SESSION

HOUSE STANDING COMMITTEE ON ENERGY & PUBLIC UTILITIES

REPRESENTATIVE JOHN SZOKA, SENIOR CHAIR
REPRESENTATIVE DEAN ARP, CO-CHAIR
REPRESENTATIVE JEFF COLLINS, CO-CHAIR
REPRESENTATIVE SAM WATFORD, CO-CHAIR

BEVERLY SLAGLE, COMMITTEE CLERK
WES HOUSEHOLDER, COMMITTEE CLERK
REGINA IRWIN, COMMITTEE CLERK

HOUSE COMMITTEE ON ENERGY AND PUBLIC UTILITIES
2017 SESSION



John Szoka, Senior Chair

Dean Arp, Chair

Jeff Collins, Chair

Sam Watford, Chair

Carla Cunningham, Vice Chair

Edward Hanes, Vice Chair

Kelly Alexander, Jr

John Bell, IV

Hugh Blackwell

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HOUSE COMMITTEE ON ENERGY AND PUBLIC UTILITIES
2017 SESSION


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Nelson Dollar


Beverly Earle


Jeffrey Elmore


Ken Goodman


Duane Hall


Pricey Harrison


Kelly Hastings


Chris Malone


Susan Martin


Rodney Moore


Gregory Murphy


William (Billy) Richardson


Dennis Riddell


David Rogers


John Sauls


Scott Stone


Larry Strickland


Michael H. Wray


Lee Zachary

HOUSE COMMITTEE ON ENERGY AND PUBLIC UTILITIES

2017 - 2018 SESSION

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Rep. Collins, Chair	Wes Householder	733-5802	1106	31
Rep. Watford, Chair	Regina Irwin	715-2526	2121	76
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Rep. Bradford	Anita Spence	733-5828	2123	75
Rep. Bumgardner	Margie Penven	733-5809	2119	40
Rep. Dollar	Candace Slate	715-0795	307B	4
Rep. Earle	Ann Raeford	715-2530	514	48
Rep. Elmore	Linda Stevenson	733-5935	306A3	63
Rep. Goodman	Judy Veorse	733-5823	542	47
Rep. Duane Hall	Florence Hall	733-5755	1004	58
Rep. Harrison	Rita Harris	733-5771	1218	70
Rep. Hastings	James Jenkins	715-2002	1206	17
Rep. Malone	Ben Malone	715-3010	1229	38
Rep. S. Martin	Susie Farrell	715-3023	526	29
Rep. R. Moore	Charmey Morgan	733-5606	402	36
Rep. Murphy	Anne Harvey Smith	733-5757	632	85
Rep. W. Richardson	Leigh Lawrence	733-5601	1021	71
Rep. Riddell	Polly Riddell	733-5905	533	99
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Rep. Stone	Marissa Turner	733-5886	2213	77
Rep. Strickland	KJ Stancil	733-5849	602	112
Rep. Wray	Susan Burleson	733-5662	503	24
Rep. Zachary	Martha Jenkins	715-8361	1002	74

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LOB - Room 545LOB
Tel: 733-2578

ATTENDANCE

HOUSE COMMITTEE ON ENERGY AND PUBLIC UTILITIES

2017-2018 SESSION

DATES	06-06-2018											
REP. SZOKA, SENIOR CHAIR	E											
REP. ARP, CHAIR	X											
REP. COLLINS, CHAIR	X											
REP. WATFORD, CHAIR	X											
REP. CUNNINGHAM, VICE CHAIR	X											
REP. HANES, VICE CHAIR												
REP. ALEXANDER	X											
REP. J. BELL												
REP. BLACKWELL	X											
REP. BRADFORD	E											
REP. BUMGARDNER	X											
REP. DOLLAR	X											
REP. EARLE												
REP. ELMORE												
REP. GOODMAN	X											
REP. DUANE HALL												
REP. HARRISON	E											
REP. HASTING												
REP. MALONE												
REP. S. MARTIN	X											
REP. R. MOORE												
REP. MURPHY	X											
REP. W. RICHARDSON												
REP. RIDDELL												
REP. ROGERS												
REP. SAULS												
REP. STONE	X											
REP. STRICKLAND	X											
REP. WRAY												
REP. ZACHARY	E											

HOUSE COMMITTEE ON ENERGY AND PUBLIC UTILITIES

WEDNESDAY, JUNE 6, 2018

MINUTES

The House Committee on Energy and Public Utilities met in Room 643 of the Legislative Office Building on June 6, 2018 at 1:00 pm. The following members were present: Representatives Watford, Presiding Chair, Alexander, Arp, Blackwell, Bumgardner, Collins, Cunningham, Dollar, Goodman, Martin, Murphy, Stone, and Strickland. Jennifer McGinnis, Chris Saunders and Kyle Evans, Staff, were in attendance. A Visitor Registration log is attached and made part of these minutes (Attachment I).

Representative Watford, Presiding Chair, called the meeting to order at 1:40 pm. He introduced the Sergeant-at-Arms staff (Attachment II) and welcomed the Pages (Attachment III).

The following bill was considered:

HB 1073, entitled, AN ACT TO ESTABLISH THE BLUE RIBBON TASK FORCE ON NATURAL GAS INFRASTRUCTURE AND ACCESS. The Chair recognized Representative Strickland, bill sponsor, to explain the bill (Attachment IV). Following the explanation the Chair recognized members for questions and comments. There being none, the Chair recognized Daren Parker, Parker Gas Company, Clinton, NC to speak on the bill. Representative Dollar moved for a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations of the House. The motion passed.

There being no further business, the Chair adjourned the meeting at 1:55 pm.

Respectfully submitted,

Sam Watford
Representative Sam Watford, Presiding Chair

Regina Irwin
Regina Irwin, Committee Clark

Attachments:

Attendance
Visitor Registration Log
Committee Sergeant-at-Arms & Pages
HB 1073 & Summary

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2017-2018 SESSION

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

DAY & DATE: Wednesday, June 6, 2018
TIME: **1:00 PM**
LOCATION: **643 LOB**

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 1073	Establish Econ. Dev. Energy Task Force.	Representative Strickland Representative Dixon Representative J. Bell Representative Brenden Jones

Respectfully,
Representative John Szoka, Senior Chair
Representative Dean Arp, Co-Chair
Representative Jeff Collins, Co-Chair
Representative Sam Watford, Co-Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 2:36 PM on Friday, June 01, 2018.

___ Principal Clerk
___ Reading Clerk – House Chamber

Regina Irwin (Committee Assistant)

AGENDA

HOUSE COMMITTEE ON ENERGY & PUBLIC UTILITIES

JUNE 6, 2018

Room 643, LOB

1:00 pm

WELCOME AND OPENING REMARKS

Representative Sam Watford, Presiding Chair

INTRODUCTION OF PAGES/SERGEANT-AT-ARMS

AGENDA ITEM

HB 1073 ESTABLISH ECON. DEV. ENERGY TASK FORCE.
Representative Strickland, Bill Sponsor
Representative Dixon, Bill Sponsor
Representative J. Bell, Bill Sponsor
Representative Brenden Jones, Bill Sponsor

ADJOURNMENT

ATTACHMENT I

PLEASE PRINT

VISITOR REGISTRATION SHEET

ENERGY & PUBLIC UTILITIES — **June 6, 2018**
Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY & ADDRESS
Starnes	OST
Martha Jenkins	Rep. Lee Zachary's office
Grace Irwin	Walk West
Shaeer Miller	CUCA
Cindy Ohms	CUCA
Joanna Downing	PSNCUC
Jum Penny	PSNCUC
JAN LARSEN	PSNCUC
John Feldmann	NCCN
Ben Zemonek	NCCN
Frances Liles	NCREA

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VISITOR REGISTRATION SHEET

ENERGY & PUBLIC UTILITIES — **June 6, 2018**
Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY & ADDRESS
Evan Nisbet	JLF
David McGowan	NCPC
Tommy Severs	NWWL
Gary Harris	NC Petroleum Marketers & C-Stores
Will Culpepper	MVA
Brian Allen	NC ICC
L. Lawrence	NCGA
Tafari Bailey	House Intern
Andy Miller	DCR
L Lilley	Governor
Bill McAulay	PSNC Energy

PLEASE PRINT

VISITOR REGISTRATION SHEET

ENERGY & PUBLIC UTILITIES — **June 6, 2018**
Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY & ADDRESS
Kara Weishaar	SA
Parker Smith	NCPC

Committee Sergeants at Arms

NAME OF COMMITTEE House Committee Energy & Public Utilities

DATE: 06/06/2018 Room: 643

House Sgt-At Arms:

1. Name: Terry McCraw
2. Name: Jim Moran
3. Name: Rex Foster
4. Name: Ken Gilbert
5. Name:

Senate Sgt-At Arms:

1. Name:
2. Name:
3. Name:
4. Name:
5. Name:

House Pages
Assignments
Wednesday, June 06, 2018
Session: 11:00 AM

Committee	Room	Time	Staff	Comments	Member
Health	643	10:00 AM	Zoe Nichols		Rep. Darren G. Jackson
			Leila Samiy		Speaker Tim Moore
			Amber Ward		Rep. James L. Boles, Jr.
			Bray Woodard		Rep. Ken Goodman
State and Local Government	544	10:00 AM	Miller Andrews		Speaker Tim Moore
			Anne Asbill		Rep. Cynthia Ball
			Emily Davis		Speaker Tim Moore
			Imari Simmons		Rep. Michael Speciale
Energy Policy Commission, Jt. Leg.	643	1:00 PM	Richard Asbill		Rep. John Autry
			Martin Kinney		Rep. George G. Cleveland
			Payton Martin		Rep. Julia C. Howard
			Leila Samiy		Speaker Tim Moore
Judiciary I	415	1:00 PM	Mitchell Messenger		Rep. George G. Cleveland
			Zoe Nichols		Rep. Darren G. Jackson
			Emerson Replogle		Rep. Grier Martin
			Christian Terrell		Rep. Rosa U. Gill
Judiciary II	1425	1:00 PM	Rebecca Burkhart		Speaker Tim Moore
			Emily Davis		Speaker Tim Moore

ATTACHMENT III

NORTH CAROLINA GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES

ENERGY AND PUBLIC UTILITIES COMMITTEE REPORT
Representative John Szoka, Senior Chair
Representative Dean Arp, Co-Chair
Representative Jeff Collins, Co-Chair
Representative Sam Watford, Co-Chair

FAVORABLE AND RE-REFERRED

HB **1073** Establish Econ. Dev. Energy Task Force.

Draft Number:	None
Serial Referral:	**APPROPRIATIONS**
Recommended Referral:	None
Long Title Amended:	No
Floor Manager:	Strickland

TOTAL REPORTED: 1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

HOUSE BILL 1073

Short Title:	Establish Econ. Dev. Energy Task Force.	(Public)
Sponsors:	Representatives Strickland, Dixon, J. Bell, and Brenden Jones (Primary Sponsors). *For a complete list of sponsors, refer to the North Carolina General Assembly web site.*	
Referred to:	Energy and Public Utilities, if favorable, Appropriations	

June 1, 2018

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE BLUE RIBBON TASK FORCE ON NATURAL GAS INFRASTRUCTURE AND ACCESS.

Whereas, the development of natural gas infrastructure is essential to economic growth in North Carolina; and

Whereas, there are over 4,226 miles of natural gas transmission pipeline in North Carolina; and

Whereas, there are over 30,000 miles of natural gas distribution pipeline in North Carolina; and

Whereas, it is in the interest of rural areas to have access to natural gas across the State; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1.(a) There is established the Blue Ribbon Task Force on Natural Gas Infrastructure and Access (Task Force). The purpose of the Task Force is to review current statutorily established funds that are available for development of natural gas infrastructure to enhance economic development, and to make recommendations on whether any changes to these funds are needed or advisable, and whether appropriations of additional funds may be needed or advisable. The Task Force shall also examine any financial barriers to expansion or development of natural gas infrastructure and methods to incentivize extension of natural gas service. At a minimum, the Task Force shall examine the following issues:

(1) Moneys currently available under G.S. 143B-437.021 (Natural gas economic development infrastructure), G.S. 143B-437.01 (Industrial Development Fund Utility Account), and G.S. 62-159 (Additional funding for natural gas expansion) (the Funds) and any funds or legislation relevant to natural gas infrastructure expansion or incentivization.

(2) Historic funding levels for the Funds and historic expenditures from the Funds.

(3) Current statutory eligibility criteria and application requirements for receipt of moneys under each fund, as well as guidelines adopted by the Department of Commerce pursuant to statute where relevant. In addition, the Task Force shall review and examine requirements for the appropriate protection of confidential and trade secret information submitted in any application or grant agreement for such fund, including the relevance of the information to the decision to award a grant.

(4) Current allowable uses for moneys available under each fund.
(5) Whether establishment of an additional fund is advisable and, if so, how such funds should be administered, including whether a governing board should be created for distribution of the funds.
(6) Provisions related to the development of natural gas infrastructure to enhance economic development under G.S. 62-133.15 (Cost recovery for natural gas economic development infrastructure).
(7) The current network for natural gas distribution in the State.
(8) The location of existing taps on natural gas pipelines that currently traverse the State, taps slated for natural gas pipelines proposed to traverse the State, and whether additional taps would be beneficial.
(9) Areas of the State in which additional natural gas infrastructure is needed to promote economic development. In studying this issue, the Task Force shall place particular emphasis on identifying such needs in counties of the State through which natural gas pipelines traverse in order to maximize opportunities for economic development that can be realized from the presence of the pipeline, including rural and coastal areas through which natural gas pipelines traverse.
(10) Opportunities for connecting new natural gas transmission lines into existing natural gas infrastructure.
(11) Whether projects involving the delivery of liquefied natural gas (LNG) should be considered infrastructure to enhance economic development eligible for receipt of moneys from the Funds or eligible for receipt of moneys from any additional fund that may be recommended for establishment by the Task Force.
(12) Entities that may serve a role in marketing availability of funds for development of natural gas infrastructure and rendering technical assistance to potential applicants for such funds.
(13) Whether county governments should be given authority to issue bonds for development of natural gas infrastructure to promote economic development within their jurisdictions.
(14) Natural gas utilities' long-term contracts that require purchase of certain volumes of natural gas relative to accounting for additional future "tap-ons" for return on investment (ROI) purposes.
(15) Any another issue related to the development of natural gas infrastructure to enhance economic development that the Task Force deems relevant.

SECTION 1.(b) The Task Force shall consist of 17 members, appointed as follows:
(1) Five members of the House of Representatives upon the recommendation of the Speaker of the House of Representatives, one of whom shall be a member of the minority party.
(2) Five members of the Senate upon the recommendation of the President Pro Tempore of the Senate, one of whom shall be a member of the minority party.
(3) The Commissioner of Agriculture or the Commissioner's designee, ex officio and nonvoting.
(4) Two county commissioners, who are advisory and nonvoting, one of whom is appointed upon the recommendation of the Speaker of the House of Representatives and one of whom is appointed upon the recommendation of the President Pro Tempore of the Senate.
(5) Two representatives of a local or regional economic development commission, who are advisory and nonvoting, one of whom is appointed upon the recommendation of the Speaker of the House of Representatives and one

of whom is appointed upon the recommendation of the President Pro Tempore of the Senate.

(6) Two representatives of an agricultural advocacy and outreach organization, who are advisory and nonvoting, one of whom is appointed upon the recommendation of the Speaker of the House of Representatives and one of whom is appointed upon the recommendation of the President Pro Tempore of the Senate.

SECTION 1.(c) The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each appoint a cochair of the Task Force from among its membership.

SECTION 1.(d) The Task Force shall meet upon the call of its cochairs. A quorum of the Task Force is a majority of its members. No action may be taken except by a majority vote at a meeting at which a quorum is present. The Task Force, while in the discharge of its official duties, may exercise all powers provided for under G.S. 120-19 through G.S. 120-19.4. The Task Force may contract for professional, clerical, or consultant services, as provided by G.S. 120-32.02. If the Task Force hires a consultant, the consultant shall not be a State employee or a person currently under contract with the State to provide services. Members of the Task Force shall receive per diem, subsistence, and travel allowances as provided in G.S. 120-3.1. The expenses of the Task Force shall be considered expenses incurred for the joint operation of the General Assembly.

SECTION 1.(e) In conducting this study, the Task Force shall consult with representatives of the Departments of Commerce and Transportation, the Utilities Commission, the Local Government Commission, and the Golden LEAF Foundation.

SECTION 1.(f) The Legislative Services Officer shall assign professional and clerical staff to assist the Task Force in its work. The Director of Legislative Assistants of the House of Representatives and the Director of Legislative Assistants of the Senate shall assign clerical support to the Task Force.

SECTION 1.(g) Meetings of the Task Force are authorized to begin on or after July 1, 2018. The Task Force shall submit a final report on the results of its study, including proposed legislation, to the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources and the Joint Legislative Commission on Energy Policy on or before December 1, 2018, by filing a copy of the report with the Office of the President Pro Tempore of the Senate, the Office of the Speaker of the House of Representatives, the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources and the Joint Legislative Commission on Energy Policy, and the Legislative Library. The Task Force shall terminate on December 1, 2019, or upon the filing of its final report, whichever comes first.

SECTION 1.(h) The sum of ten thousand dollars ($10,000) in recurring funds for the 2018-2019 fiscal year is appropriated from the unappropriated balance remaining in the General Fund to support the activities of the Task Force.

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

HOUSE BILL 1073:
Establish Econ. Dev. Energy Task Force.

2017-2018 General Assembly

Committee:	House Energy and Public Utilities. If favorable, re-refer to Appropriations	**Date:**	June 6, 2018
Introduced by:	Reps. Strickland, Dixon, J. Bell, Brenden Jones	**Prepared by:**	Jennifer McGinnis Committee Counsel
Analysis of:	First Edition		

OVERVIEW: ***House Bill 1073 would establish the Blue Ribbon Task Force on Natural Gas Infrastructure and Access (Task Force). The purpose of the Task Force is to: (i) review current statutorily established funds that are available for development of natural gas infrastructure to enhance economic development, and to make recommendations on whether any changes to these funds are needed or advisable, and whether appropriations of additional funds may be needed or advisable; and (ii) examine any financial barriers to expansion or development of natural gas infrastructure and methods to incentivize extension of natural gas service. The bill would appropriate $10,000 in recurring funds for the 2018-2019 fiscal year to support the activities of the Task Force.***

CURRENT LAW: Current statutorily established funds available for development of natural gas infrastructure (the Funds) include:

- G.S. 143B-437.021 (Natural gas economic development infrastructure): This fund allows natural gas local distribution companies to recover the infeasible portion of natural gas infrastructure to eligible projects in rates through an annual rider. Eligible projects are determined by the Department of Commerce based on criteria set forth in the statute. The act became effective July 28, 2016, and expires July 1, 2021.
- G.S. 143B-437.01 (Industrial Development Fund Utility Account): This fund provides moneys to local governments from the most economically distressed counties in the State for various projects designed to create jobs, which includes construction of or improvements to new or existing gas lines or equipment.
- G.S. 62-159 (Additional funding for natural gas expansion): This fund allows the Utilities Commission to provide funding through appropriations from the General Assembly to certain entities for the construction of natural gas facilities that otherwise would not be economically feasible for the company, person, or gas district to construct. In determining whether to approve the use of funds for a particular project, the Commission must consider, among other things, the number of unserved counties and the number of anticipated customers that would be served, and other relevant factors affecting the public interest.

BILL ANALYSIS: The bill would establish the Task Force to: (i) review current statutorily established funds that are available for development of natural gas infrastructure to enhance economic development, and to make recommendations on whether any changes to these funds are needed or advisable, and whether appropriations of additional funds may be needed or advisable; and (ii) examine any financial barriers to expansion or development of natural gas infrastructure and methods to incentivize extension of natural gas service. The bill details a number of specific issues that the Task Force must examine in the

conduct of the study, and requires the Task Force to consult with representatives of the Departments of Commerce and Transportation, the Utilities Commission, the Local Government Commission, and the Golden LEAF Foundation through the process.

The Task Force would consist of 17 members, including

- Five members of the House of Representatives, one of whom shall be a member of the minority party.
- Five members of the Senate, one of whom shall be a member of the minority party.
- The Commissioner of Agriculture or the Commissioner's designee, ex officio and nonvoting.
- Two county commissioners, who are advisory and nonvoting, one of whom is appointed upon the recommendation of the Speaker and one of whom is appointed upon the recommendation of the President Pro Tempore of the Senate.
- Two representatives of a local or regional economic development commission, who are advisory and nonvoting, one of whom is appointed upon the recommendation of the Speaker, and one of whom is appointed upon the recommendation of the President Pro Tempore of the Senate.
- Two representatives of an agricultural advocacy and outreach organization, who are advisory and nonvoting, one of whom is appointed upon the recommendation of the Speaker, and one of whom is appointed upon the recommendation of the President Pro Tempore of the Senate.

The Task Force would be authorized to begin meeting on or after July 1, 2018.

The bill would appropriate $10,000 in recurring funds for the 2018-2019 fiscal year to support the activities of the Task Force.

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