

2019

**HOUSE
ENERGY & PUBLIC
UTILITIES**

MINUTES



North Carolina General Assembly

Energy and Public Utilities

2019-20 Session

Co- Chairs

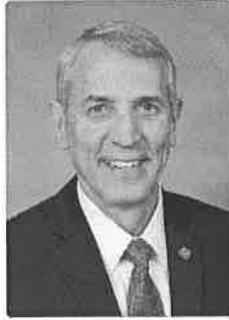
Representative Szoka

Representative Arp

Bev Slagle & Katie Stanley, Committee Clerks

ENERGY AND PUBLIC UTILITIES**House Standing Committee****DO NOT REMOVE FROM FOLDER****Chairs**

Rep. Arp



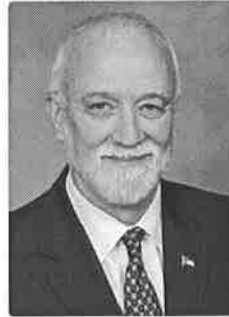
Rep. Szoka

Vice Chair

Rep. Jones

Members

Rep. Alexander



Rep. Autry



Rep. Bell



Rep. Black



Rep. Brisson



Rep. Brockman



Rep. Conrad



Rep. Cunningham



Rep. Dixon



Rep. Goodman



Rep. D. Hall



Rep. Hanig



Rep. Harrison



Rep. Hastings



Rep. Hawkins



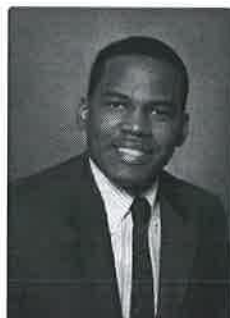
Rep. Holley



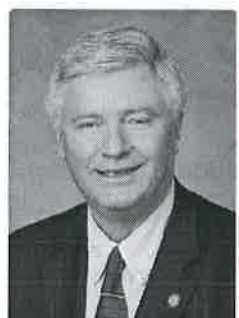
Rep. Howard



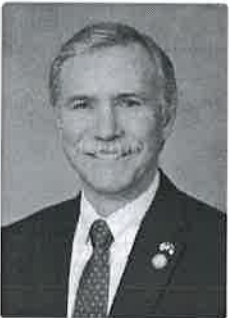
Rep. Humphrey



Rep. Montgomery



Rep. Richardson



Rep. Riddell



Rep. Saine



Rep. Sauls



Rep. Setzer



Rep. Strickland



Rep. Wray

Pursuant to House Rules 26(e) and 26(f), the Chair of the Committee on Rules, Calendar and Operations of the House, the Speaker Pro Tempore, the Majority Leader, and the Deputy Majority Leader are ex officio members of each standing committee and permanent subcommittee with the right to vote. The previous

HOUSE COMMITTEE ON ENERGY AND PUBLIC UTILITIES
2019-2020 Session

DO NOT REMOVE FROM FOLDER

<u>MEMBER</u>	<u>ASSISTANT</u>	<u>PHONE</u>	<u>OFFICE</u>
Rep. Arp, Chair	Katie Stanley	919-715-3007	307A LOB
Rep. Szoka, Chair	Bev Slagle	919-733-9892	2207 LB
Rep. Jones, Vice Chair	Andrew Bailey	919-733-5821	1227 LB
Rep. Alexander	Ann Raeford	919-733-5778	404 LOB
Rep. Autry	Tina Riley-Humphrey	919-715-0706	1019 LB
Rep. J. Bell	Susan Horne	919-715-3017	301F LOB
Rep. Black	Mimi Wilson	919-733-5872	501 LOB
Rep. Brisson	Caroline Stirling	919-733-5772	405 LOB
Rep. Brockman	Grady O'Brien	919-733-5825	2119 LB
Rep. Conrad	Ginny Taylor	919-733-5787	635 LOB
Rep. Cunningham	Sherrie Burnette	919-733-5807	609 LOB
Rep. Dixon	Michael Wiggins	919-715-3021	2226 LB
Rep. Goodman	Judy Veorse	919-733-5823	542 LOB
Rep. D. Hall	David Cobb	919-733-5931	530 LOB
Rep. Hanig	Wes Householder	919-733-5906	604 LOB
Rep. Harrison	Mary Lee	919-733-5771	1218 LB
Rep. Hastings	James Jenkins	919-715-2002	2208 LB
Rep. Hawkins	Anita Wilder	919-715-2528	1307 LB
Rep. Holley	Lee Lewis	919-733-5758	1219 LB
Rep. Howard	Cody Huneycutt	919-733-5904	302 LOB

Rep. Humphrey	Wanda Benson	919-733-5995	632 LOB
Rep. Montgomery	Carol Brooks	919-733-5829	1006 LB
Rep. Richardson	Leigh Lawrence	919-733-5601	1021 LB
Rep. Riddell	Polly Riddell	919-733-5905	416A LOB
Rep. Saine	Elise Yost	919-733-5782	1326 LB
Rep. Sauls	Karen Rosser	919-715-3026	408 LOB
Rep. Setzer	Margaret Herring	919-733-4948	2204 LB
Rep. Strickland	Kermit Stancil	919-733-5849	533 LOB
Rep. Wray	Susan Burleson	919-733-5662	2123 LB
Rep. Lewis, Ex-Officio	Grace Rogers	919-715-3015	2301 LB
Rep. Stevens, Ex-Officio	Lisa Brown	919-715-1883	419 LOB

ATTENDANCE

House Committee on Energy and Public Utilities

(Name of Committee)

DATES	2/19/19	3/12/19	3/19/19	3/26/19	4/2/19	4/9/19	4/25/19	5/02/19	5/22/19	6-25-19	7-9-19				
MEMBERS															
Rep. Arp, Chair	X	X	X			X	X	X	X	X	X				
Rep. Szoka, Chair		X	X	X	X	X	X	X	X	X	X				
Rep. Jones, Vice Chair	X	X		X	X	X				X	X				
Rep. Alexander	X					X	X			X	X				
Rep. Autry	X	X	X	X	X	X	X	X	X	X	X				
Rep. Bell									X	X					
Rep. Black		X	X	X	X	X	X	X	X						
Rep. Brisson	X								X	X					
Rep. Brockman		X	X			X	X			X					
Rep. Conrad	X	X		X	X	X	X	X		X					
Rep. Cunningham	X		X	X		X			X	X	X				
Rep. Dixon		X	X	X	X	X	X			X					
Rep. Goodman		X	X	X											
Rep. Hall					X		X	X							
Rep. Hanig	X	X	X	X		X	X		X	X					
Rep. Harrison	X	X	X	X	X	X	X	X	X	X	X				
Rep. Hastings	X		X				X	X	X	X					
Rep. Hawkins	X		X	X	X	X	X	X		X					
Rep. Holley	X	X	X	X		X	X		X	X	X				
Rep. Howard			X			X	X			X					
Rep. Humphrey	X	X	X	X	X	X	X		X	X	X				
Rep. Montgomery	X	X		X	X	X	X		X	X					
Rep. Richardson			X		X	X	X		X	X					
Rep. Riddell	X	X	X	X	X	X	X		X	X					
Rep. Saine	X	X		X						X	X				
Rep. Sauls	X	X		X			X				X				

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House Committee on Energy and Public Utilities
Tuesday, February 19, 2019 at 3:00 pm
Room 643

MINUTES

The House Committee on Energy and Public Utilities met at 3:00 pm on February 19, 2019 in Room 643 of the Legislative Office Building. Representatives Alexander, Arp, Autry, Brisson, Conrad, Cunningham, Hanig, Harrison, Hastings, Hawkins, Holley, Humphrey, Jones, Montgomery, Riddell, Saine, Sauls, Strickland, and Wray attended.

Representative Dean Arp presided. Representative Arp called the meeting to order and introduced the Pages and Sergeant At Arms who would be assisting with the Committee. Copies of the attendance and visitor registration are attached.

Edward Finley, Jr., Chairman of the North Carolina Utilities Commission, gave a presentation on the "Overview of the North Carolina Utilities Commission and Utility Regulation in North Carolina". (Attachment 1)

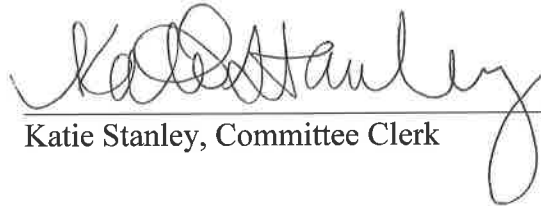
Christopher Ayers, Executive Director of Public Staff for the North Carolina Utilities Commission, gave a presentation on the "Structure and Function of Public Staff and Primer on Rate Making for Utilities". (Attachment 2)

Following these presentations, Representative Arp opened the floor for questions.

Being no further business, the meeting adjourned at 3:47 pm.



Rep. Dean Arp
Presiding



Katie Stanley, Committee Clerk

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AGENDA

House Committee on Energy and Public Utilities

Tuesday, February 19, 2019

3:00 P.M.

Room 643 LOB

I. Welcome and Opening Remarks

Representative Dean Arp, Presiding

II. Introduction of Pages/Sergeant-At-Arms

III. Presentations

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

Edward S. Finley, Jr., Chairman North Carolina Utilities Commission (Attachment 1)

Structure and Function of Public Staff and Primer on Rate Making for Utilities

Christopher Ayers, Executive Director Public Staff, North Carolina Utilities Commission (Attachment 2)

IV. Questions/Comments

V. Adjournment



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

February 19, 2019

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

ToNola D. Brown-Bland

Jerry C. Dockham

James G. Patterson

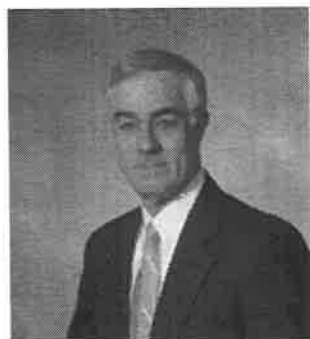
Lyons Gray

Daniel G. Clodfelter

Charlotte A. Mitchell



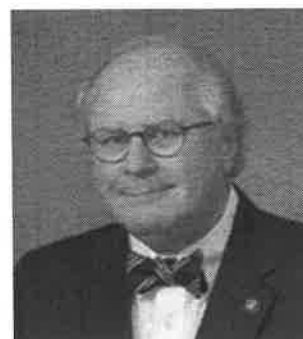
North Carolina
Utilities Commission



Chairman Finley



Commissioner Brown-Bland



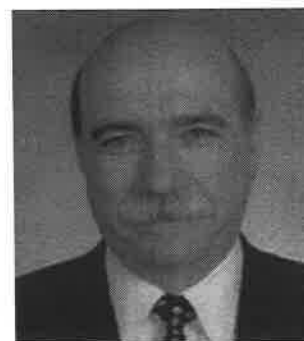
Commissioner Dockham



Commissioner Patterson



Commissioner Gray



Commissioner Clodfelter



Commissioner Mitchell

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

History of NC Utilities Commission

- Oldest regulatory body in state government: evolved from Railroad Commission (1891) to Corporation Commission (1899) to Utilities Commission (1933)
- History of significant legislative grants of, or limitation on, regulatory authority:
 - Railroad – 1891
 - Telephone – 1893
 - Electric, Gas, & Water – 1913
 - Wastewater – 1917
 - Housing – 1935
 - Hospitals – 1943
 - Buses/Brokers – 1949
 - Motor Carriers & Ferries – 1963
 - Electric Generation – 1965
 - Electric Membership Cooperatives – 1965
 - Payphone Service Providers – 1985
 - Long Distance Telephone Competition – 1985
 - Telephone Shared Tenant Service – 1987
 - Local Telephone Competition – 1995
 - Motor Carriers of Property, except Household Goods, Deregulation – 1995
 - Railroad Transferred to Dept. of Transportation – 1996
 - Water/Wastewater Resale – 1996
 - Charter Bus Deregulation – 1998
 - Long Distance Telephone Rate Deregulation – 2003
 - Electric Resale – 2011
 - Natural Gas Resale – 2017
 - Leasing of Solar Energy Facilities - 2017

NCUC Organization

- Administrative agency of General Assembly (*N.C. Gen. Stat. § 62-23*); legislative oversight by House Committee on Energy and Public Utilities, Senate Committee on Commerce and Insurance, and Joint Legislative Commission on Governmental Operations
- Seven members: appointed by Governor, subject to confirmation by General Assembly, serving staggered six-year terms (*N.C. Gen. Stat. § 62-10*)
- Chairman: appointed by Governor, four-year term, organizes Commission's work. *Ex officio* member of Geographic Information Coordinating Council. Membership responsibilities currently shared among Commissioners (*N.C. Gen. Stat. § 62-12, 13*)



NCUC 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 (*N.C. Gen. Stat. § 62-10[i]*)
- Commission employs up to 62 people, current staffing is 60, organized among four divisions: Legal, Operations, Fiscal Management, and Clerk and IT Services
- Certified FY 2018-2019 annual budget: \$ 8,107,898
NCUC budget: \$ 7,353,599
Gas Pipeline Safety budget: \$ 754,299
- NCUC is a fee-funded agency, supported by regulatory fee percentage applied to the jurisdictional revenues of public utilities (*N.C. Gen. Stat. § 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

NCUC's Responsibilities & Procedures

- For the 12-Month Period Ending 6/30/18:
 - 5,084 formal proceedings instituted before NCUC
 - 73 hearings in contested cases
 - 15,663 filings in Chief Clerk's office
 - 3,133 orders issued
 - 708 open dockets as of 6/30/18
- Appeals from general rate case decisions to NC Supreme Court; all others to NC Court of Appeals (absent federal jurisdiction)
- NCUC conducts proceedings pursuant to federal law and participates in proceedings before federal courts and regulatory agencies (N.C. Gen. Stat. § 62-48)

Regulated Entities

(As of 6/30/18)

	<u>QTY</u>
BUS / BROKER	11
ELECTRIC	5
ELECTRIC COOPERATIVES	31
ELECTRIC MERCHANT PLANTS	10
ELECTRIC RESELLER	47
FERRIES	9
MOTOR CARRIERS OF HOUSEHOLD GOODS	316
NATURAL GAS:	
- LOCAL DISTRIBUTION COMPANIES	4
- INTRASTATE PIPELINE	1
SMALL POWER PRODUCERS	1,082
TELEPHONE:	
- COMPETING LOCAL PROVIDERS	165
- INCUMBENT LOCAL EXCHANGE COMPANIES	16
- LONG DISTANCE CARRIERS	232
- PAYPHONE SERVICE PROVIDERS	31
- SHARED TENANT SERVICES	16
WATER / WASTEWATER	101
WATER / WASTEWATER RESELLERS	<u>1,379</u>
TOTAL	3,456

Industry Revenue Profile

- FY 2017-2018 Jurisdictional Revenues: \$11.58 billion
 - Electric: \$8.703 billion
 - Telecommunications: \$1.118 billion
 - Includes Local and Long Distance Telephone Companies, Payphone Service Providers, and Shared Tenant Service Providers
 - Natural Gas: \$1.45 billion
 - Water and Wastewater: \$219.0 million
 - Includes Water/Wastewater Resale Companies
 - Transportation: \$91.5 million
 - Includes Brokers, Buses, Ferries, and Household Goods (HHG) Carriers

Filings & Orders by Industry Group

(For the 12-Month Period Ending 6/30/18)

	<u>Filings</u>	<u>Orders</u>
• Electric	3,112	630
• Telephone	735	131
• Natural Gas	674	94
• Water/Wastewater	3,479	1,409
• Household Goods Carriers	1,233	284
• Small Power Producers	5,346	458
• Other (Bus/Broker, Electric Merchant Plant, EMC, Ferry, Payphone Provider, Renewable Energy Facilities, & Misc.)	<u>1,084</u>	<u>127</u>
TOTAL	15,663	3,133



Limited Jurisdiction to Regulate “Other Utilities”

- The Commission has limited authority to regulate municipal electric utilities and electric cooperatives.
- The Commission has no authority to regulate:
 - Publicly-owned water and sewer utilities
 - Broadband
 - Cell phone
 - Cable
 - Internet services
 - Interstate Gas Pipelines

Emerging Issues in Utility Regulation

- Era of more frequent general rate cases
 - Electric: coal ash spending is key driver
 - Water: capital spending is key driver
- Staffing challenges in a tight employment market
- Distributed generation revolution
 - North Carolina a leader in solar and renewables
 - Continued Implementation of HB 589
(presentation topic for next meeting)

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
- Eighty staff members organized into nine divisions
 - Electric, Natural Gas, Water/Sewer/Communications, Transportation
 - Accounting
 - Legal
 - Economic research
 - Executive
 - Consumer Services

Key Functions

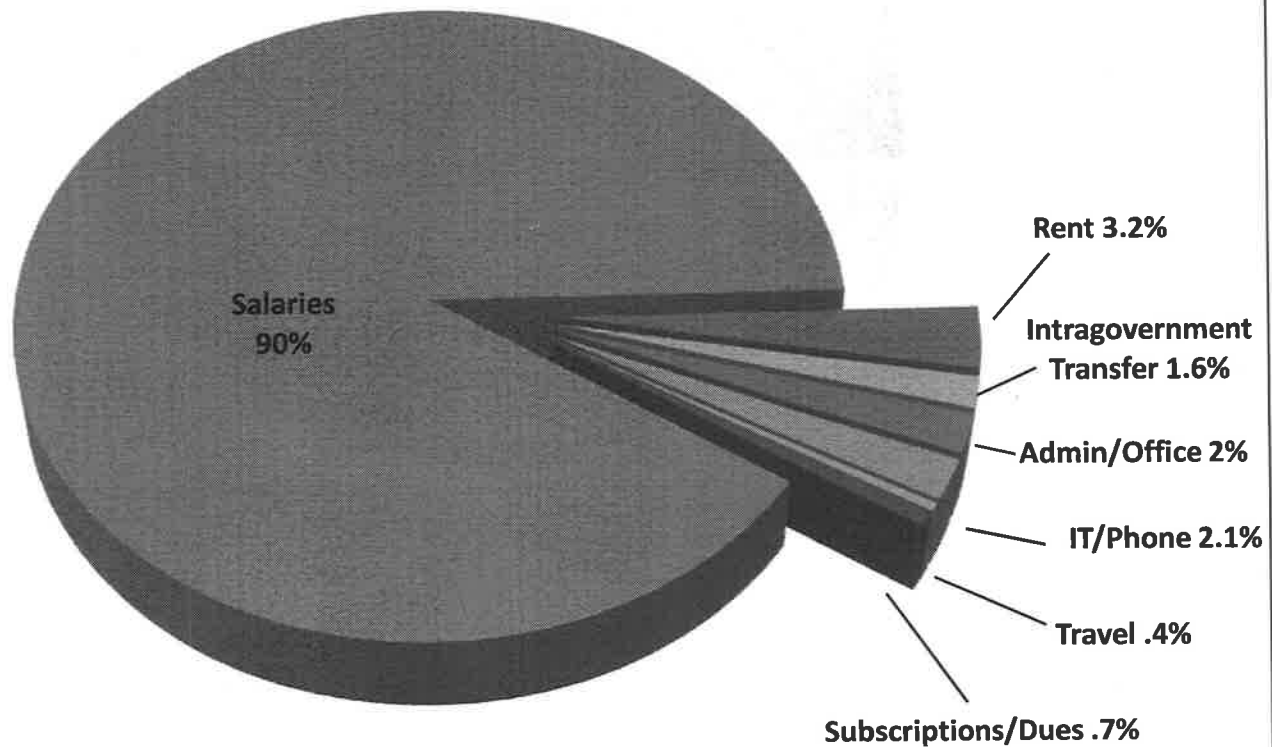
- Present testimony and recommendations to NCUC on behalf of utility customers
- Investigate customer complaints
- Audit public utilities in NCUC proceedings
- Assist legislative staff and legislators regarding proposed legislation and constituent service
- Work with other State agencies (e.g., DEQ),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

Differences Between NCUC and Public Staff

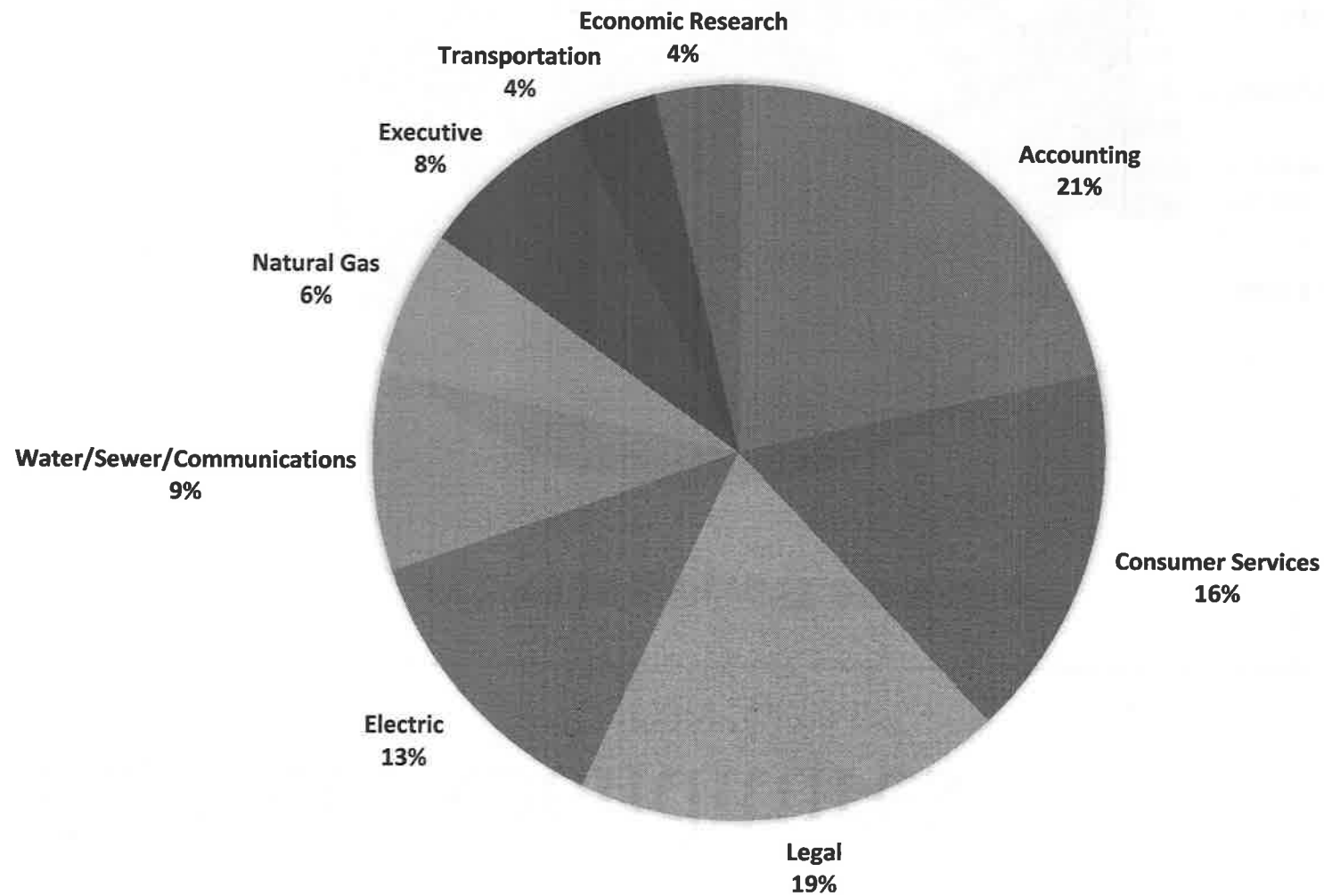
- Independent agencies
 - Separate staffs, leadership and budgets
- NCUC does not direct or oversee the Public Staff's operations
- Public Staff appears as a party before the NCUC
 - Public Staff may appeal decisions to appellate courts
 - Public Staff subject to ex parte rules and cannot independently 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

Budget Expenditures

FY 2018-19 Budget: \$8.918 million

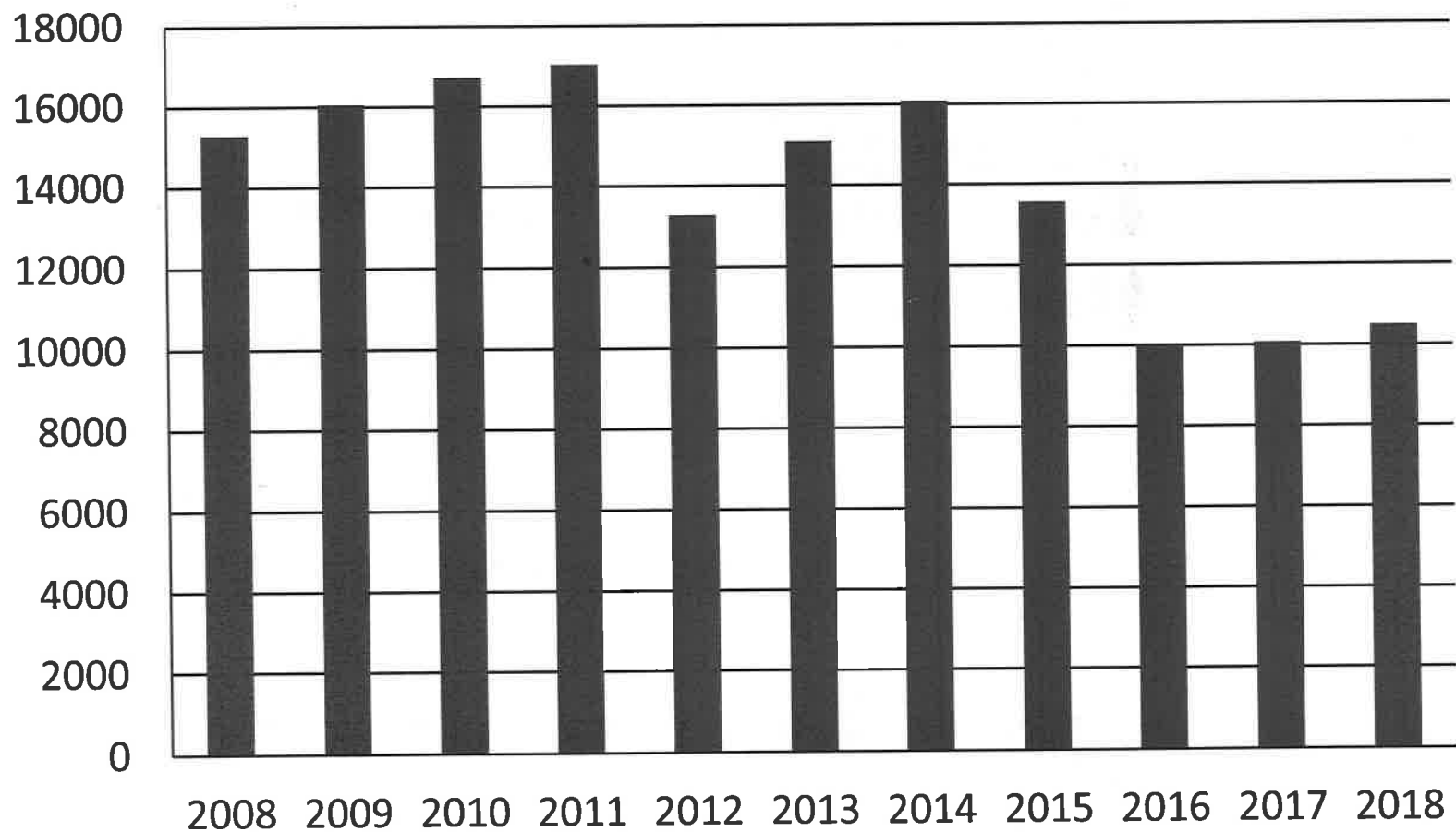


Staff Organization



Complaint Investigation

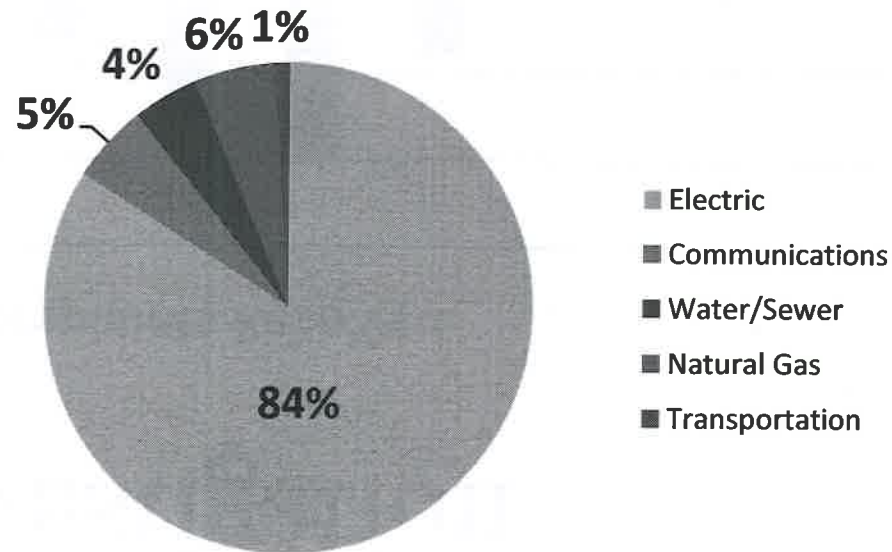
Annual Complaints Received



Complaint Investigation

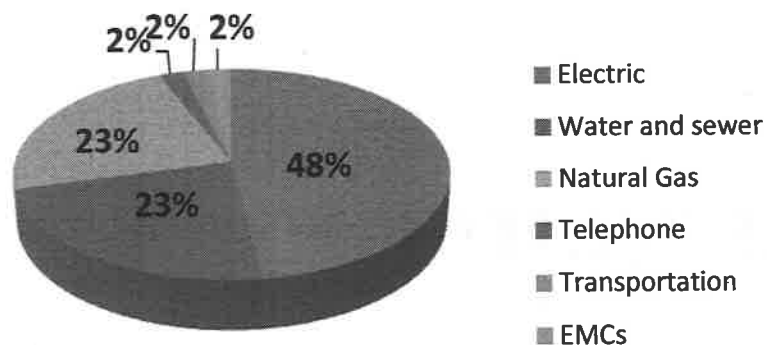
- Complaints by industry in 2018
 - Electric – 8,282
 - Telephone – 508
 - Natural Gas – 527
 - Water/Sewer – 425
 - Transportation – 63

Industry Percentages

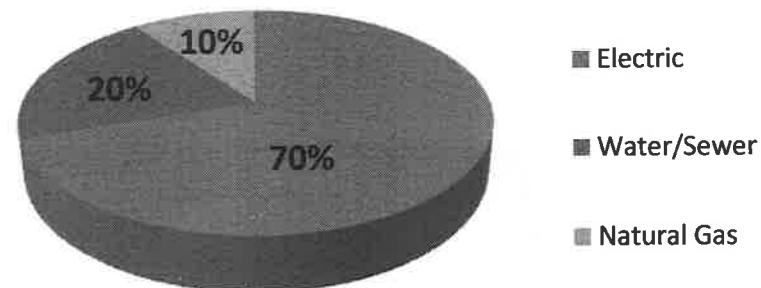


Allocation of Division Resources

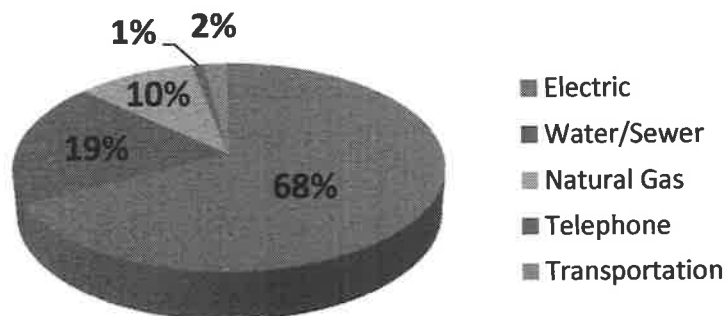
Accounting Division



Economic Research



Legal Division



Ratemaking Overview

Rate Case Process – 270 Days

N.C.G.S. § 62-134

- 1) Utility files rate case application, exhibits, testimony and proposed rates
- 2) NCUC suspends rates and schedules customer and evidentiary hearings
- 3) Public Staff engages in discovery, audits/investigates, files testimony
- 4) Intervenors engage in discovery and file testimony
- 5) Settlement discussions may occur between parties
- 6) Customer and evidentiary hearings
- 7) Parties file proposed orders
- 8) NCUC reviews all evidence and issues order
- 9) Utility puts new rates into effect

Ratemaking Overview

- Based on the cost of service in the test period
 - Test year – Financial data from a historical 12-month period
 - Serves as a proxy for the anticipated level of costs for the period of time the rates will be in effect
- Rates are prospective, but are established based on what the utility has already spent
 - Utilities typically do not recover expenses and capital costs in advance
- N.C. Gen. Stat. § 62-2(3a) requires “...energy planning and fixing of rates in a manner to result in the least cost mix of generation and demand side reduction measures which is achievable...”
- Rates must be just and reasonable

General Ratemaking Formula

- **Revenue Requirement** is determined as (**Rate Base** x **Rate of Return** (grossed up for income taxes)) + **Expenses**
- **Rate Base** – value of the property (net of depreciation) on which a utility may earn a rate of return.
 - Must be “used and useful” - Power plants, transmission and distribution lines, etc. actually used in providing service to customers
- **Rate of Return** – % return that utility may earn on invested capital, including debt and equity investments.
- **Expenses** – can recover reasonable and prudent expenses based on an historical test year.

Rate Base

- Rate base is the value of reasonable and prudent property on which a public utility is authorized to earn its rate of return
- Rate base calculation:

Original cost of the utility assets (prudent capital investment)
(minus)
Accumulated Depreciation

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

Rate of Return

- Percentage return that the utility is allowed to earn on its invested capital
- Designed to compensate investors for the use of their capital and associated risk
- Rate of return composed of three components:
 - Cost of equity
 - Cost of debt
 - Capital structure (debt and equity ratios)
- Rate of return is not a guaranteed return → it is the return the utility is authorized to earn
 - Rates are calculated using the rate of return

Expenses

- Utilities are authorized to recover reasonable and prudent expenses
 - Maintenance expense
 - Operating expense
 - Depreciation
 - Salaries
 - Fuel
 - Transportation
 - Customer service
 - General taxes
 - Administrative
 - Uncollectibles
 - Testing
 - Legal
 - Rate case expenses
 - Purchased power costs

Cost Allocation

- Attribute costs to different customer classes based on the cost incurred to serve those classes
 - Residential, commercial and industrial classes
 - Capital requirements vary by customer class
 - Residential customers require significant distribution facilities
 - Economies of scale
 - Municipalities and industrial customers are cheaper to serve on a per kWh basis
 - Time differentiation
 - Contribution to peak vs. non-peak demand
 - Retail vs. wholesale
 - Municipalities and electric cooperatives
 - System costs across multiple state jurisdictions
 - North Carolina/South Carolina allocate costs approximately 65:35

Cost Allocation Methodologies

- Summer coincident peak
 - Customer's share of the system load at the system's summer peak
- Winter/summer coincident peak and average demand
- Non-coincident peak and average demand
- Twelve month average peaks
- North Carolina allocates based on load demand at summer coincident peak

Rate Design

- Rates established to meet the revenue requirement
 - Customer rate classes
 - Residential
 - Commercial
 - Industrial
 - Designed to mirror the cost of service to each class
 - Various rate schedules in each customer class
- Average NC retail price of electricity per customer class
 - Residential: 11.29 cents/kWh (National average: 12.95 cents/kWh)
 - Commercial: 8.43 cents/kWh (National average: 10.56 cents/kWh)
 - Industrial: 5.75 cents/kWh (National average: 6.88 cents/kWh)

Source: Energy Information Administration (November 2018)

Fuel Rider

- Cost of fuel burned
 - Coal, gas, nuclear, biomass
- Cost of reagents used to treat emissions
- Certain purchased power costs*
 - Replacement power costs
 - Peak power purchases
 - Transmission charges
- Costs of energy and capacity purchased from qualifying facilities (QFs)*
- Net gains/losses from sale of fuel or by-products*
- Renewable energy procurement non-administrative costs*

*Limited to 2.5% annual increase in the aggregate amount of costs

Renewable Energy/Energy Efficiency Portfolio Standard Rider

- Incremental costs to comply with Renewable Energy Portfolio Standard (bundled costs minus avoided costs)
- Costs of Renewable Energy Certificates (RECs)
- Costs recoverable are capped by General Assembly
 - Residential rates: \$27/year
 - Commercial rates: \$150/year
 - Industrial rates: \$1,000/year

Demand Side Management (DSM)/Energy Efficiency (EE) Rider

- Costs of DSM/EE programs
 - LED bulbs
 - Refrigerator recycling program
 - Home energy audits
 - Load control
- Net lost revenues
 - First three years of program
- Utility incentives
 - Receive a percentage of savings achieved for customers from energy efficiency
- Must be cost effective

Joint Agency Asset Acquisition Rider

- Recovers the costs associated with Duke Energy Progress' purchase of generation assets from the North Carolina Eastern Municipal Power Agency in 2015
- Adjusted annually to reflect savings/expense associated with changes in the fuel cost

Avoided Cost Rates

- Incremental cost a utility would incur to generate or purchase the next kilowatt or kilowatt-hour of electricity
 - Cost of building the capacity
 - Cost of generating the energy
- “Avoided” because the utility has procured the electricity from another source rather than incurring the cost to produce the electricity itself
- Established for regulated electric utilities by the NCUC not less than every two years

How is Avoided Cost Calculated?

- North Carolina uses the Peaker Method
 - Capacity calculation based on the cost (per kW) of building a new peaking unit
 - Natural gas combustion turbine (peaking unit)
 - Energy calculation based on marginal system energy cost
 - Avoided cost elements must be “known and quantifiable”
- Variable and long-term fixed rate options
- Capacity payments are paid only for peak hours during which the unit is producing electricity

Purchased Power Tariff

Energy Credits – Applicable to All Generation

	<u>Interconnected to Distribution</u>		<u>Interconnected to Transmission</u>	
	<u>Variable Rate</u>	<u>Fixed Long- Term Rate (10 years)</u>	<u>Variable Rate</u>	<u>Fixed Long- Term Rate (10 years)</u>
I. Option A ¹ Energy Credit (£/kWh)				
a. On-peak kWh	3.54	3.66	3.48	3.59
b. Off-peak kWh	3.25	3.36	3.22	3.32
II. Option B ¹ Energy Credit (£/kWh)				
a. On-peak kWh	3.63	3.67	3.55	3.59
b. Off-peak kWh	3.28	3.41	3.24	3.37

Capacity Rates Based Upon Generation Resource:

1. Applicable to All But Hydroelectric Generation without Storage

I. Option A¹ Capacity Credits (£/kWh)

a. On-Peak kWh - Summer	0.00	0.55	0.00	0.54
b. On-Peak kWh - Non-Summer	0.00	1.12	0.00	1.10

II. Option B¹ Capacity Credits (£/kWh)

a. On-peak kWh – Summer	0.00	0.83	0.00	0.82
b. On-peak kWh – Non-Summer	0.00	1.93	0.00	1.89

2. Applicable to Hydroelectric Generation without Storage

I. Option A¹ Capacity Credits (£/kWh)

a. On-Peak kWh - Summer	0.00	1.05	0.00	1.04
b. On-Peak kWh - Non-Summer	0.00	2.14	0.00	2.10

II. Option B¹ Capacity Credit (£/kWh)

a. On-peak kWh – Summer	0.00	1.58	0.00	1.55
b. On-peak kWh – Non-Summer	0.00	3.68	0.00	3.61

¹ Summer months under both Options A and B are defined as the calendar months of June through September. All other months are Non-Summer for purposes of applying the capacity credits.

How is Avoided Cost Used?

- Rates for purchases from Qualifying Facilities
- Integrated Resource Plans
 - Allows utilities to assign dollar value to their options
- Determining savings from Demand Side Management/Energy Efficiency Programs
 - What did the utility save by avoiding the demand?
- Determining incremental costs of Renewable Energy Portfolio Standards compliance
 - What additional cost did the utility incur above the cost of the energy/capacity?

Contact Information

Christopher J. Ayers, Executive Director

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4326 Mail Service Center 27699-4326

(919) 733-2435

<http://publicstaff.nc.gov>

VISITOR REGISTRATION SHEET

House Committee on Energy and Public Utilities

2/19/19

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Kelly Higgins	OP
Dan Miskin	PSG
Preston Howard	NCMA
Susan Vick	Duke Energy
Jeffrey	NEEMC
Monteign	NMRS
Paul H. Mott	NEEMC
Scott Lester	KGANC
Sarah McQuinn	KGANC
Bice McQuinn	PSNC Energy
Sarah Patterson	WM

VISITOR REGISTRATION SHEET

House Committee on Energy and Public Utilities

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Name of Committee

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VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Boston Allen	NCTCC
Sharon Miller	CUCA
Ben Stockdale	NCSEA
Ahmad Ameen	Ref. Alexander
Henry M Lancaster ^D	LGA
Tom BEAN	EDP, NCSEA
Julie Robinson	NCSEA
John Lucey	DEA

VISITOR REGISTRATION SHEET

House Committee on Energy and Public Utilities

2/19/19

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME _____

FIRM OR AGENCY AND ADDRESS

Kara Weishaar

SA

Frances Liles

NKREA

Debra Dew

MC Chamber

**House Pages
Assignments
Tuesday, February 19, 2019
Session: 4:45 PM**

Committee	Room	Time	Staff	Comments	Member
Public Utilities	643	3:00 PM	Jacob Baker		Rep. Mark Brody
			Matthew Musilek		Rep. David R. Lewis
			Anastasia Schrader		Rep. John Sauls

Committee Sergeants at Arms

NAME OF COMMITTEE Energy and Public Utilities

DATE: 2-19-19 Room: 643 LOB

House Sgt-At Arms:

1. Name: Marvin Lee
2. Name: Reggie Sills
3. Name: David Leighton
4. Name: John Gilbert
5. Name: Rex Foster

Senate Sgt-At Arms:

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

Cancelled Notice

**NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2019-2020 SESSION**

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

DAY & DATE: Tuesday, March 5, 2019
TIME: 3:00 PM
LOCATION: 643 LOB
COMMENTS: This meeting is cancelled

Rep. Szoka, Presiding Chair

Respectfully,

Representative Dean Arp, Co-Chair
Representative John Szoka, Co-Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 1:06 PM on Monday, November 18, 2019.

___ Principal Clerk
___ Reading Clerk – House Chamber

Ann Luck (Committee Assistant)

**House Committee on Energy and Public Utilities
Tuesday, March 12, 2019 at 3:00 PM
Room 643 of the Legislative Office Building**

MINUTES

The House Committee on Energy and Public Utilities met at 3:00 PM on March 12, 2019 in Room 643 of the Legislative Office Building. Representatives Arp, Autry, Black, Brockman, Conrad, Cunningham, Dixon, Goodman, Hanig, Harrison, Holley, Humphrey, Jones, Montgomery, Riddell, Saine, Sauls, Szoka, and Wray attended.

Representative John Szoka, Chair, presided.

The following bills were considered: NO Bills Considered

Presentations:

Overview of S.L. 2017 – 192: Competitive Energy Solutions for NC, NCGA Staff Attorneys:
Jennifer McGinnis & Chris Saunders (ATTACHMENT 1)

NC Utilities Commission's Implementation of H.B. 589, Chairman Edward S. Finley
(ATTACHMENT 2)

Chairman Szoka opened the floor for questions.

The meeting adjourned at 4 PM.



Representative John Szoka, Chair
Presiding



Beverly Slagle, Committee Clerk

**House Committee on Energy and Public Utilities
Tuesday, March 12, 2019, 3:00 PM
643 Legislative Office Building**

AGENDA

Welcome and Opening Remarks: Chairman John Szoka, presiding

Introduction of Pages (& *All Girl Scouts*: Moira Kelly & Jevan Lyle)

Introduction of Sergeant-At-Arms:

- Glen Wall
- Marvin Lee
- Reggie Sills

Presentations

Overview of S.L. 2017 - 192: Competitive Energy Solutions for NC
Staff Attorneys, Legislative Analysis Division. Jennifer McGinnis & Chris Saunders

North Carolina Utilities Commission's Implementation of H.B.589
Chairman Edward S. Finley, Jr

Other Business

Adjournment

Overview of S.L. 2017-192 Competitive Energy Solutions for North Carolina

JENNIFER MCGINNIS
CHRIS SAUNDERS

STAFF ATTORNEYS, LEGISLATIVE ANALYSIS DIVISION

Process and Development

- Product of extensive stakeholder process involving:
 - Legislators
 - Legislative staff
 - Utilities Commission
 - Public Staff
 - Utilities
 - Renewable energy industry representatives
 - Environmental interests



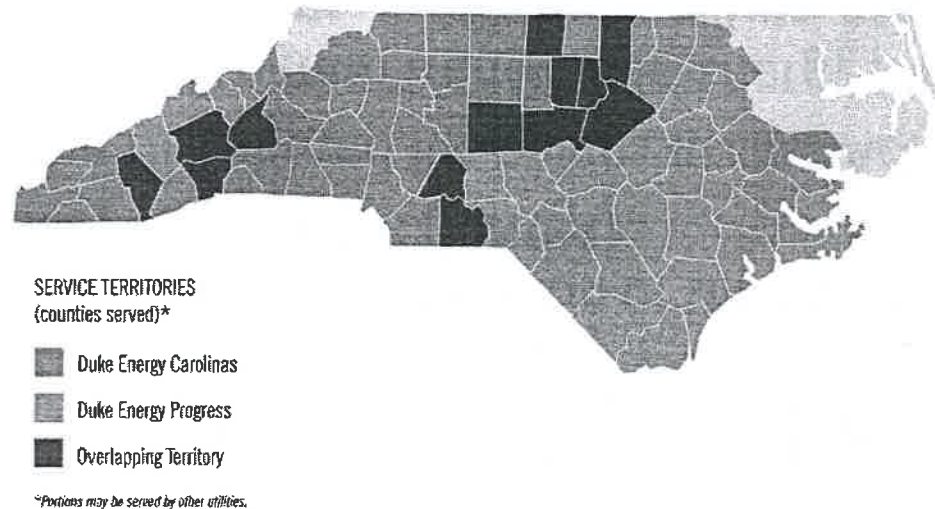
Key Elements of Legislation

- Reform of the State's implementation of the Public Utilities Regulatory Policy Act of 1978 (PURPA)
- Enactment of the Distributed Resources Access Act
- Green Source Rider Program (renewable energy procurement for major military installations, public universities, and other large customers)
- Solar Rebate Program

Parts I and II

Standard Contracts for Small Power Producers and Competitive Procurement of Renewable Energy

Transitions the State's utility-scale solar development model, driven historically by the Public Utility Regulatory Policies Act of 1978 (PURPA), to competitive procurement in the Duke Energy Carolinas LLC (Duke) and Duke Energy Progress LLC (Progress) service territories.



PURPA

PURPA and Qualifying Facilities: PURPA was enacted by Congress as part of a package of energy legislation to combat the 'energy crisis' of the late 1970s to reduce dependence on foreign oil and promote renewable energy. Pursuant to PURPA and federal regulations, utilities are required to buy energy generated by “qualifying facilities” (QF) at the utility’s “avoided cost.”



PURPA Implementation in NC

The Federal Energy Regulatory Commission (FERC) delegated PURPA implementation authority to the states.



The North Carolina Utilities Commission (Commission) was given jurisdiction to set standards for QFs including the avoided cost calculation and the terms and conditions of contracts and capacity thresholds for those facilities.



NC's "Pre-589" PURPA terms relative to other states

PURPA Terms in Southeastern US States

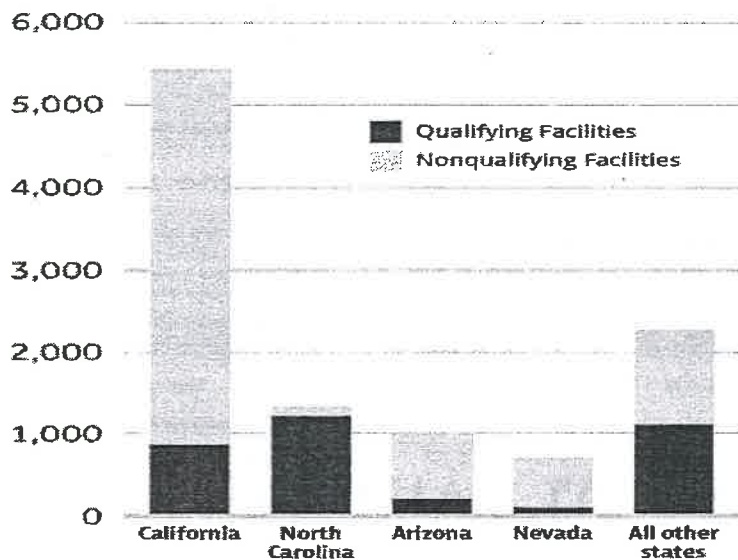
State	Pay Rate	Maximum Contract Term	Fixed or Variable Rates	Size Limits	REPS Mandate
North Carolina	Duke Energy Carolinas = \$56.20 per MWh; Duke Energy Progress = \$55.30 per MWh	15 years	Fixed	5 MWs	Yes — 12.5% by 2021
South Carolina	Duke Energy Carolinas = \$51.20 per MWh; Duke Energy Progress = \$45.96 per MWh	10 years	Fixed	2 MWs	No
Georgia	Solar avoided cost rate = \$40.10	5 years	Fixed	100 kWs	No
Mississippi	Highest on-peak rate = \$36.20 July–October	5 years	Fixed	100 kWs	No
Alabama	All schedule rates < \$40 per MWh	> =1 year	Variable, updated annually	100 kWs	No
West Virginia	Peak = \$34.30 per MWh; off-peak = \$22.20 per MWh	> =1 year	Variable, subject to revisions	100 kWs	No
Kentucky	<=100 kW = \$30.78 per MWh; >100 kW = PJM Interconnection location marginal price	No standard term	Variable	20 MWs	No
Florida	Actual avoided cost ex-post 2015 average was ~\$26/MWh	Annual renewal	Variable	80 MWs	No
Virginia	Based on the PJM Interconnection location marginal price	> =1 year	Variable	20 MWs	No
Tennessee	All schedule rates < \$30 per MWh	> =1 year	Variable, updated annually	100 MWs	No
Maryland	PJM Interconnection location marginal price	No standard term	Variable	100 kWs	Yes — 20% by 2022
Louisiana	Based on Midcontinent Independent System Operator (MISO) location marginal price	Negotiated term	Variable	20 MWs	No
Arkansas	Based on Midcontinent Independent System Operator (MISO) location marginal price	>100 kW minimum 5 years	Variable	20 MWs	No

Source: Kendal Bowman, Duke Energy Carolinas, presentation before the North Carolina House Energy and Public Utilities Committee, 3/8/17

NC had longest fixed rate contract term of 15 years among these states

North Carolina PURPA-qualifying solar facilities relative to other states

Utility-Scale Solar Photovoltaic Capacity in Megawatts



Source: U.S. Energy Information Administration

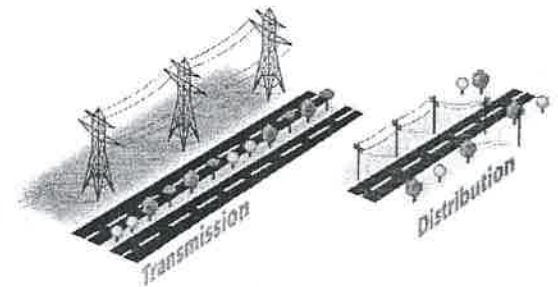
60% of US PURPA projects in NC

North Carolina #2 among states for installed solar capacity



Part I – Standard Contracts for Small Power Producers

- Lowered the threshold for eligibility for standard offer contracts for QFs under PURPA to projects of 1 MW or less, from the previous 5 MW.
- Shortened the length of standard offer QF contracts to 10 years from 15 years.*



Part II

Competitive Procurement of Renewable Energy

Establishes a competitive procurement process for larger new renewable energy facilities that requires electric public utilities with more than 150,000 customers to issue a request for proposals (RFP) for a total of 2,660 MW of capacity from renewable energy facilities over a 45-month term.

- Pro forma contract, with a term of 20 years (subject to adjustment by the Commission).
- Cost of energy procured capped at the forecasted avoided cost for the term of the agreement.
- Bidding process overseen by an independent administrator.

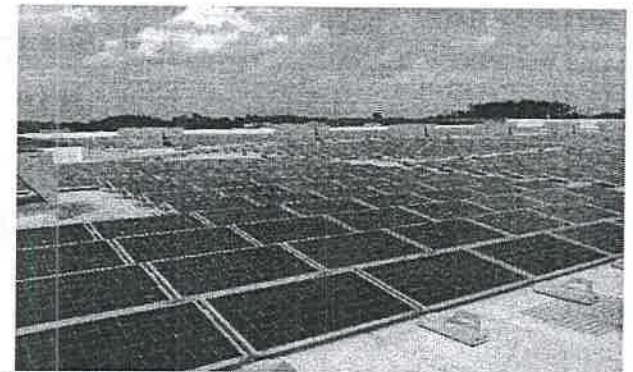
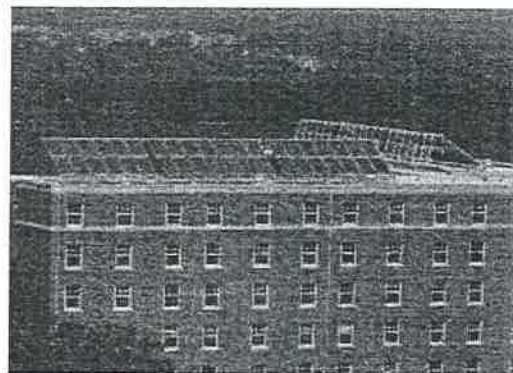
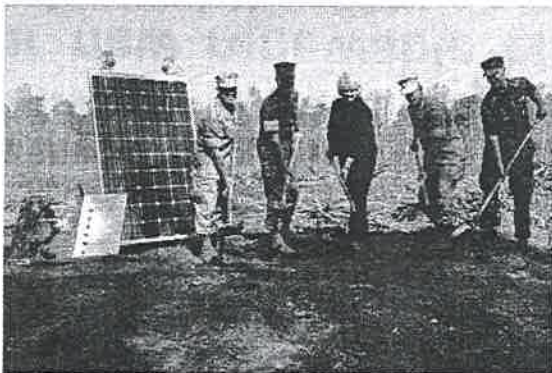
Existing and Transitional Solar Capacity in North Carolina	
Connected	1,800 MW
Under Construction	700 MW
Transition	1,000 MW
Sub-Total	3,500 MW

Competitive Procurement*	
2018	665 MW
2019	665 MW
2020	665 MW
2021	665 MW
Sub-Total	2,660 MW

Part III

Renewable Energy Procurement for Major Military Installations, Public Universities, and Other Large Customers (Green Source Rider Program)

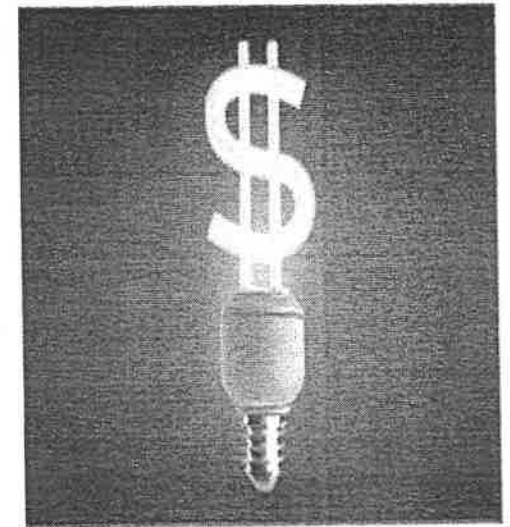
Establishes a new renewable energy procurement program for large energy users, the military, and the University of North Carolina system -- much like the now-expired “Green Source Rider” (GSR) program initiated in 2013 – that allows them the option of offsetting some or all of their energy consumption with renewable energy resources in the Duke Energy Carolinas service territory.



Part IV

Cost Recovery for Certain Small Power Producer Purchases

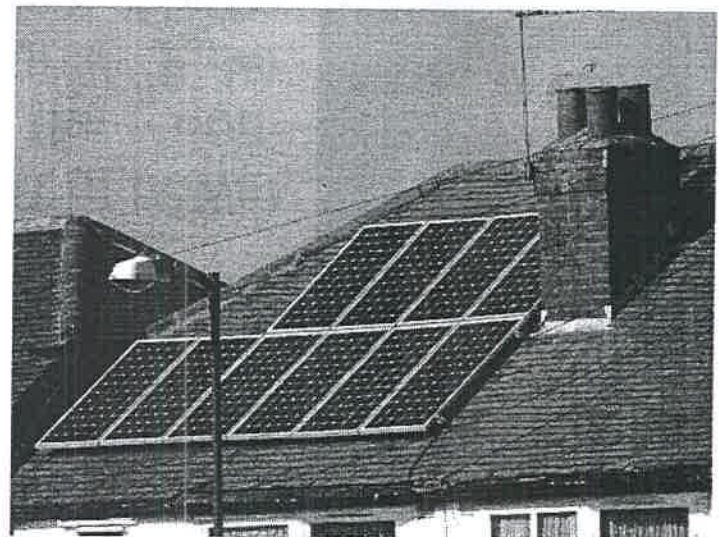
Allows each public utility to recover the cost of power purchased from PURPA QFs, and the non-administrative costs of the Green Source Rider program, through the utility's existing Fuel Clause Rider.



Chris Sanders

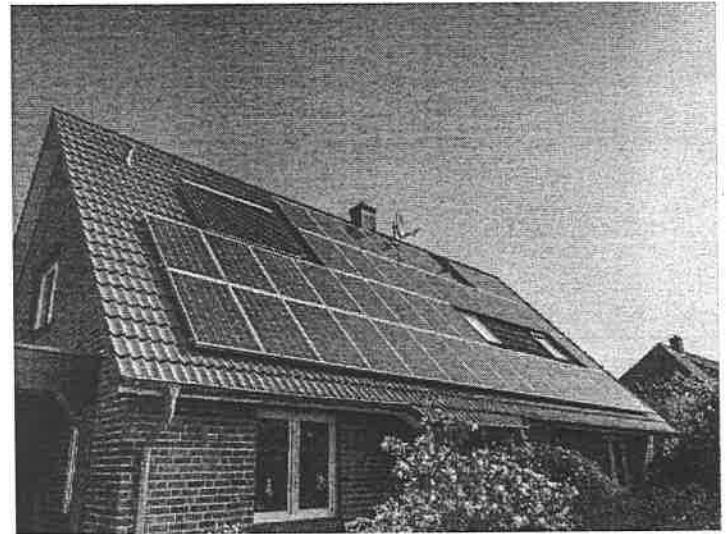
Part VI – Distributed Resources Access Act (Third Party Financing and Net Metering)

- Electric public utilities in North Carolina have the exclusive rights to sell electricity to consumers in a designated franchise area.
- Prior to S.L. 2017-192, utility customers could own renewable energy systems for their own use and were compensated via bill credits at a net metering rate established by the Commission.



Part VI – Distributed Resources Access Act (Third Party Financing and Net Metering)

Section 6.(a) allows third parties to offer leasing of solar energy facilities in the service area of an “offering utility” or municipality that offers electric service, and requires offering utilities to implement community solar programs.



Part VI – Distributed Resources Access Act (Third Party Financing and Net Metering)

- Under **Section 6.(a)**, the offering utility's retail electric customers may contract with solar developers or the utility for the lease of eligible solar facilities.
- The facility must meet several requirements:
 - Solar PV system.
 - Capacity limitations, and must not be intended to offset more than 100% of the customer's consumption.
 - Interconnect with the utility.
 - Safety, performance, reliability standards.



Part VI – Distributed Resources Access Act (Third Party Financing and Net Metering)

- **Net Metering** – A billing arrangement between the customer and the utility wherein the customer receives credit for excess renewable energy delivered to the grid.



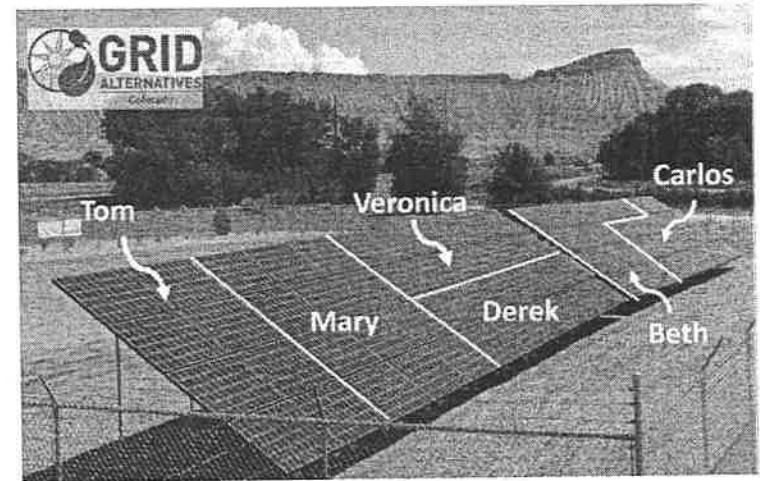
Part VI – Distributed Resources Access Act (Third Party Financing and Net Metering)

- **Section 6.(a)** directed offering utilities to file a docket with the Commission for revised new net metering rates.
- Existing retail customers who owned a renewable energy system were grandfathered.

Part VI – Distributed Resources Access Act (Third Party Financing and Net Metering)

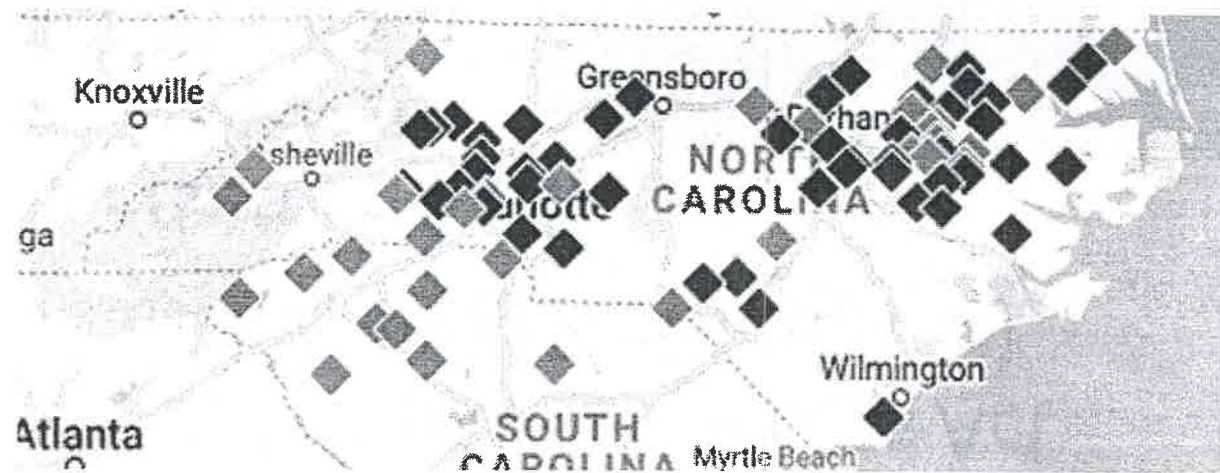
■ **Community Solar (Section 6.(a))**

Required offering utilities to develop a community solar program to allow customers to buy subscriptions for a certain amount of electricity produced by the solar energy facility.



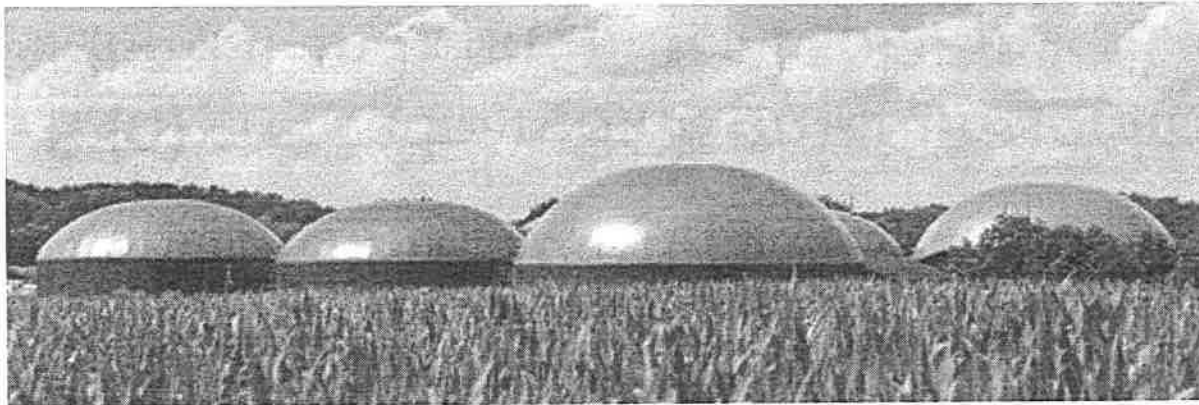
Part VI – Distributed Resources Access Act (Third Party Financing and Net Metering)

- **Municipal Solar Leasing (Section 6.(a))** – A municipality that sells electric power may offer leases to solar energy facilities in the municipality's service territory.



Part VII – Expedited Review of Interconnection of Swine & Poultry Waste

- **Section 7** directed the Commission to establish interconnection standards that include an expedited review process for small swine and poultry waste to energy projects.

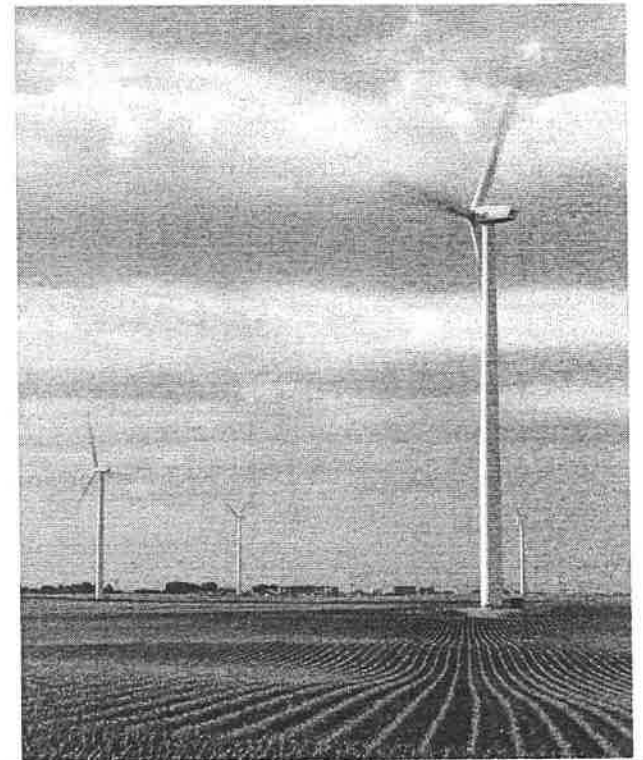


Part VIII – Solar Rebate Program

- **Section 8.(a)** created a rebate program applicable to small residential and commercial solar installations, to provide incentives to customers that install or lease solar energy facilities and are subject to the utility's net metering tariff.
- **Section 8.(b)** allowed the utilities to recover the cost of the rebate program.

Part XIII – Moratorium on Permits for Wind Energy Facilities

- **Section 13** established a moratorium on the consideration of applications and the issuance of permits for wind energy facilities and wind energy expansions in the State from January 1, 2017 to December 31, 2018. The moratorium has now expired.



Part XIII – Moratorium on Permits for Wind Energy Facilities

- **Section 13** also directed the General Assembly to study the extent and scope of military operations in the State to identify areas where wind energy infrastructure and development poses a threat to or encroaches upon military uses.
- The study, conducted by AECOM, was submitted to the Legislative Services Officer in May of 2018.

Questions?



North Carolina Utilities Commission's Implementation of H.B. 589

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

Chairman Edward S. Finley, Jr.

March 12, 2019



The Commission's Role in Energy Policy









- The Commission is a creature of statute, and exercises only that authority delegated to it by the General Assembly.
- The Commission is a quasi-judicial, quasi-legislative agency. It functions like a court, but also exercises delegated legislative authority.
- The Commission's orders reflect the Commission's efforts to implement the law consistent with the intent of the General Assembly.

Implementation of HB 589

- **Rule-Making:** The Commission initiated rulemaking proceedings on an expedited basis to adopt the following rules implementing these House Bill 589 programs:
 - Commission Rule R8-71: Competitive Procurement of Renewable Energy
 - Commission Rule R8-72: Community Solar Program
 - Commission Rule R8-73: Applications for Certificate of Authority to Engage in Business as an Electric Generator Lessor
- **Avoided Cost:** The Commission's avoided cost proceeding was pending when House Bill 589 became law. On October 11, 2017, the Commission issued an avoided cost order implementing the changes to N.C.G.S. § 62-156 that were made in Section 1 of House Bill 589.



Overview of Implementation Status

Program	Rule Adopted	Program Plan Approved (with modifications)	Status/ Notes
CPRE PROGRAM			Second Program Plan pending. First round of winning bids to be notified end of March.
GSA PROGRAM			Compliance filing pending. Program will open after final approval.
Community Solar		Filed, Pending Approval	n/a
Solar Leasing		n/a	Two certificates issued (one to Duke Energy Clean Energy Resources, LLC)
Solar Rebate	n/a	n/a	Two rounds of rebates claimed at full capacity available.  
Net Metering	Pending		Duke Energy is planning to host a stakeholder process with the goal of reaching consensus on a proposal related to net metering.

Competitive Procurement of Renewable Energy (CPRE Program) (N.C.G.S. § 62-110.8)

Timeline and Progress:

- July 28, 2017 (the day after House Bill 589 became law): the Commission issued an order establishing a rulemaking proceeding to implement the CPRE Program. (Docket No. E-100, Sub 150).
- November 6, 2017: the Commission adopted Commission Rule R8-71, implementing the requirements of the CPRE Program.
- November 27, 2017: Duke filed its proposed CPRE Program and Program Guidelines, as required by H.B. 589, § 2(c). (Docket Nos. E-2, Sub 1159, and E-7, Sub 1156).
- January 9, 2017: the Commission approved Accion Group, LLC, as the Independent Administrator of the CPRE Program.
- February 21, 2018: the Commission issued an Order requiring Duke to make modifications to the CPRE Program plan, and approving the CPRE Program plan, as modified.

CPRE Program (cont.)

- In its Order approving the CPRE Program, the Commission discussed its view that the CPRE Program is a market-based program, and that it is appropriate to make adjustments to the Program based on the results of the RFP Solicitations.
- The initial CPRE Program plans called for four RFP Solicitations, or “tranches,” to procure 2,660 MW of renewable supplied generating capacity.
 - Cost effectiveness requires that the price be below the avoided cost rates established by the Commission.
- Tranche 1 sought a total of 680 MW: 600 MW in DEC and 80 MW in DEP
- Bids were submitted based on decrements from current avoided cost rates to ensure cost effectiveness.
- Bids incorporating energy storage accepted, subject to energy storage protocol
- Duke is required to provide periodic updates to the Commission on Tranche 1.

CPRE Program (cont.)

Update on Tranche 1

- Submission Window:
 - From July 10, 2018, to October 9, 2018, bidders (“market participants”) gained access to view, complete, and submit RFP proposal forms.
- Number of Bids: 78 total proposals (some by the same market participant)
- Generating Capacity Submitted: Total 3,966 MW – approx. 5 times the 680 MW sought in the Tranche 1 RFP.
- Pricing:
 - Initial median price decrement was \$(6.73)/MWh below the avoided cost rates used for bid evaluation, for both DEP and DEC.
 - In the competitive tier, the decrement was \$(10.2)/MWh (DEP) and \$(7.63) (DEC).
 - Approximately 10-20% below the Commission-approved avoided cost rates
- Winning bids:
 - Notified March 25, 2019
 - Contracting period to be completed May 24, 2019

CPRE Program (cont.)

Potential Revisions to CPRE Program Plans:

- The Commission is waiting to take “lessons learned” from the Tranche 1 RFP Solicitation.
- On September 1, 2018, the Duke utilities submitted their Integrated Resource Plans, including revised CPRE Program plans.
- Proposed revisions include:
 - Recognition that “legacy PURPA projects” will exceed 3,550 MW. This reduces the total 2,660 MW required under CPRE, pursuant to G.S. 62-110.8(b)(3).
 - Reduced number of RFP tranches from 4 to 3.
 - Revised schedule.
 - Commission directed ongoing discussions among the stakeholders.

Green Source Advantage Program (GSA Program) (N.C.G.S. § 62-159.2)

- The GSA Program offers large commercial customers, major military installations, and the UNC system customers of Duke Energy the opportunity to direct the utility procure renewable resource-supplied power on the customer's behalf.
- The Commission received voluminous comments from a large number of parties, and held an oral argument with most of the parties choosing to participate.
- On February 1, 2019, the Commission issued an Order requiring modifications to the GSA Program and approving the Program, as modified.
- Final approval of the modified Program is pending, and the GSA Program should open shortly after Commission approval.

Community Solar Program (N.C.G.S. § 62-126.8)

- The Community Solar Program allows the Duke utilities' customers to offset a portion of their energy usage by subscribing to a community solar energy facility.
 - Available until the total capacity of all community solar energy facilities is 20 MW.
 - Each facility must be 5 MW or less.
 - No subscriber may have more than 40% interest in a community solar facility.
 - Subscribers may not offset more than 100% of their maximum annual demand for electricity.
- Duke filed its Community Solar Program and the Commission has received numerous comments from a number of parties. Duke filed a substantially revised program in response to comments.
- The Commission is deliberating on the approval of the Community Solar Program.



Solar Leasing Program (N.C.G.S. § 62-126.5)

- The Solar Leasing Program allows the Duke utilities' and third party solar facility developers to offer for lease to Duke's customers solar PV facilities that are located at the customer's premises.
- To engage in business of solar leasing, Duke or the third party solar facility developer must obtain a certificate from the Commission.
- Commission adopted Rule R8-73 detailing the requirements for applications for these certificates.
- To date, the Commission has issued two such certificates:
 1. Eagle Solar & Light, LLC
 2. Duke Energy Clean Energy Resources, LLC



Solar Rebate Program (N.C.G.S. § 62-155(f))

- The Solar Rebate Program allows the Duke utilities' to offer financial incentives to residential and non-residential customers for the installation of small customer-owned or –leased solar PV facilities.
- The Commission approved the Solar Rebate Program in April 2018.
- Update on Program Implementation:
 - Rebate Amount:
 - Residential Customers: \$0.60 / watt; Maximum: \$6,000
 - Nonresidential Customers \$0.50 / watt; Maximum \$50,000
 - Availability limited to 10,000 kW per year:
 - Nonresidential customers limited to 5,000 kW per year
 - 2,500 kW reserved for nonprofit organizations, with 50 kW reserved for NC Green Power Solar Schools Pilot program.
 - Results:
 - July 2018 Offering: All rebates available for residential class were claimed within 2 weeks.
 - January 2019 Offering: All rebates available for residential class were claimed within 2 days.
- Note: customer-owned facilities must be under net-metering arrangement...

Net-Metering Rates (N.C.G.S. § 62-126.4)

- “Net-Metering” allows a utility customer to offset all or a portion of the customer’s energy consumption by selling electric power to the utility.
 - What rate is the customer paid for generating power?
 - Full Retail Rate – “the meter spins backward”
 - Avoided Cost Rate – Similar to a QF generator
 - Something else? Approaches vary, and the debates are often contentions.
- Historically, the Commission allowed small facilities to participate in net metering arrangements at the full retail rate.
 - N.C.G.S. § 62-126.4(c) provides that these customers can continue under current rates until January 1, 2027.
- Duke is planning to host a stakeholder process with the goal of reaching consensus on a proposal related to net-metering.

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



HOUSE BILL 589: Competitive Energy Solutions for NC.

2017-2018 General Assembly

Committee:
Introduced by:
Analysis of: S.L. 2017-192

Date: August 8, 2017
Prepared by: Jennifer McGinnis
Staff Attorney

OVERVIEW: *S.L. 2017-192 amends 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 facilities, and the enactment of the Distributed Resources Access Act to authorize leasing of third-party owned solar development.*

This act has various effective dates. Please see the full summary for more detail.

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

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.

Karen Cochrane-Brown
Director



Legislative Analysis
Division
919-733-2578

House Bill 589

Page 2

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.(a) aligns 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.(b) requires 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 is capped to a total aggregate of 100 MW per public utility. Once the 100 MW cap is reached, the standard contract minimum capacity threshold is 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 will be negotiated between the small power producer and the utility for a fixed five-year term. Swine and poultry waste, small hydropower, and biogas facilities may negotiate, however, for a term beyond five years.

The act also requires 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.(c) provides 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 provides for an extension of the 30-month deadline and continued eligibility for the Sub 140 tariff for facilities that are otherwise qualified if they had met the deadline. These facilities, which are 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.(d) provides that this section is effective when it becomes law. Section 1.2 applies to standard contract offers made on or after that date and Section 1.3 applies 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.(a) creates a competitive procurement process for new renewable energy facilities 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 must be issued over a 45-month term for a total procurement of 2,660 MW of capacity from renewable energy

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).

⁵ 18 CFR 292.304(d).

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facilities. Any amount of renewable energy resources not contracted for during the competitive procurement is subject to rollover into a new competitive procurement. The Commission must determine whether any additional competitive procurement will be offered at the expiration of the initial 45-month competitive procurement based on a showing of need as evidenced by the utility's most recent biennial integrated resource plan or updates to the plan as approved by the Commission.

Existing and Transitional Solar Capacity in North Carolina	
Connected	1,800 MW
Under Construction	700 MW
Transition	1,000 MW
Sub-Total	3,500 MW

Competitive Procurement*	
2018	665 MW
2019	665 MW
2020	665 MW
2021	665 MW
Sub-total	2,660 MW

*The competitive procurement is required to be reasonably allocated over 45 months - the capacity stated in each year is an estimate.

Green Source Rider (see Part III)	600 MW
Community Solar (see Part VI)	40 MW
Total	6,800 MW

The amount of capacity from renewable energy facilities not procured during the 45-month competitive procurement period is subject to rollover and would be procured in a new competitive procurement (should an additional competitive procurement be offered at the expiration of the initial 45-month competitive procurement based on a showing of need as determined by the Commission).

This section places the following limitations on the procurement of renewable energy resources:

- The total amount of energy in the competitive procurement will 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 3,500 MW is the total amount of solar energy

House Bill 589

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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 will be capped at the forecasted avoided cost for the term of the agreement.
- The utility will be required to release a pro forma contract prior to the solicitation for bids on a renewable energy project. The pro forma contract will establish terms and conditions for resource dispatch and curtailment. The pro forma contract will be for a term of 20 years; that term, however, could be adjusted in the discretion of the Commission.
- The public utility will be able to participate as a developer of renewable energy facilities but will be limited to a maximum of 30% of the procurement amount.

The act provides that the utility has the authority to determine the location and allocated amounts of renewable energy resource projects within its service area. It will also have rights to dispatch, operate, and control third-party operated renewable energy facilities as it does its own generating facilities.

The competitive bidding process will be overseen by an independent administrator that is required to publish the methodology used to choose the projects. The public utility is required 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 are eligible to be recovered through an annual rider. The annual costs recoverable, however, are not allowed to exceed one percent of total revenues of the utility in the State for the prior calendar year.

The Utilities Commission is 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 is further 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.(b) makes 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.(c) provides that this 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 (GREEN SOURCE RIDER PROGRAM CONTINUED)

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

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consumption with renewable energy resources in the Duke Energy Carolinas service territory.⁶ The pilot program has expired.

Section 3 provides for a new renewable energy procurement program for large energy users, the military, and the University of North Carolina (UNC) system. Large energy users are 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 is required to file for Commission approval of the new program within 180 days of the effective date of the section. It will 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 are limited to contract for 125% of their maximum annual peak demand. The program participants are required to establish reasonable financial assurance requirements; however, the military and UNC are exempt from the requirements.

The program will expire in five years or on December 31, 2022, whichever is later. The program has 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 pays the contract price to the renewable energy developer. The avoided cost portion of the contract price is recovered through the fuel clause rider (see Part IV below). The program participant will 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.

PART IV. COST RECOVERY FOR CERTAIN SMALL POWER PRODUCER PURCHASES

Section 4 enables 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 also adds 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.

⁶ NCUC Docket E-7, Sub 1043.

⁷ S.L. 2007-397, also known as "Senate Bill 3."

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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 reduces the cost caps for residential customers under REPS from \$34 per account per year to \$27 per account per year. **Section 5.2** holds the public utility harmless for contracts entered into for REPS compliance prior to July 1, 2017.

PART VI. DISTRIBUTED RESOURCES ACCESS ACT

Third Party Financing 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.

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.(a) enacts 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.

⁸ NCUC Docket No. E-100, Sub 83 (March 31, 2009).

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The section allows 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 will 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 is 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: Section 6 requires the electric public utility to file a docket with the Commission for revised net metering rates. The rates will 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: Section 6 requires that the lease agreement provided by a lessor, including the utility or a third party developer, must 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.
- 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.

This section further requires 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.

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With regard to marketing materials, this section requires 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: Section 6 requires 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.

This section creates 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: Section 6 requires the development of a community solar program that will require the offering utilities to file a program with the Commission to construct up to 20 MWs of solar facilities per public utility that will 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 will be required to offset the electric needs of at least five subscribers and no single subscriber will be allowed to subscribe to more than 40% of the output of the facility. The facility will be limited to 5 MW in size and each subscription will 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 will 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 will 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 is required to file for Commission approval of the program within 180 days 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: Section 6 provides 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 prohibits 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.

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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.(b) makes 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.(c) makes 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 also requires 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.(a) creates 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 are 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. There are two utilities subject to this section, Duke Energy Carolinas and Duke Energy Progress, thus a total 100 MW of total installed capacity is 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.(b) amends the REPS rider to allow cost recovery by the public utility for the cost of the rebates program.

Section 8.(c) requires 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.

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PART IX. DEMAND-SIDE MANAGEMENT FOR STATE OWNED FACILITIES PILOT PROJECT

Section 9 establishes 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 allows load to be curtailed or shifted onto the generator when called upon for energy efficiency or emergency purposes and qualifies the agency to enroll in a potentially cost saving rate or tariff. The Department is required to report on the pilot program to the Joint Legislative Commission on Energy Policy by January 31 of each year and the program expires 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.(a) codifies 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 RECs 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.(b) amends the fees under G.S. 62-300. It creates 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 act); and (ii) the processing of the registration statement for a REC (see Section 10.1 of the act). This section also creates 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. UTILITIES COMMISSION/PUBLIC STAFF POSITIONS

Section 11 authorizes the Utilities Commission and the Public Staff to create two positions in order to meet the requirements created by the act.

PART XII. ENERGY STORAGE STUDY

Section 12 requires 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 is 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.

PART XIII. MORATORIUM ON PERMITS FOR WIND ENERGY FACILITIES

In 2013, the General Assembly enacted Article 21C of Chapter 143 of the General Statutes, which established a permitting program for the siting and operation of wind energy facilities in the State (S.L. 2013-51). No person may undertake construction, operation, or expansion activities associated with a wind energy facility without first obtaining a permit from the Department of Environmental Quality.

Section 13 establishes a moratorium on the consideration of applications and on the issuance of permits for wind energy facilities and wind energy expansions in the State from January 1, 2017, to December 31, 2018. The moratorium does not apply to:

- Facilities that received a "Determination of No Hazard to Air Navigation" issued by the Federal Aviation Administration on or before May 17, 2013; or
- Applicants who can show a completed application was submitted on or before January 1, 2017.

The act also directs the General Assembly to study the extent and scope of military operations in the State in order to create maps and data to be used to communicate the temporal and spatial use of land-, air-, and water-based military operations and identify areas where energy infrastructure and development pose a threat to, encroaches upon, or otherwise reduces operations, training capabilities, or readiness. The act provides the following timeline for the study:

- The Legislative Services Officer is required to issue an RFP for collection of data and creation of maps by September 1, 2017.
- A contract must be executed by November 1, 2017.
- The study, including maps and data, and findings and recommendations, must be submitted on or before May 31, 2018.

EFFECTIVE DATE: Except as otherwise provided, the act would become effective when it becomes law.

Layla Cummings, former staff attorney, substantially contributed to this summary.

**House Pages
Assignments
Tuesday, March 12, 2019
Session: 4:45 PM**

Girl Scouts

Committee	Room	Time	Staff	Comments	Member
Public Utilities/Energy	643	3:00 PM	Moirra Kelly		Speaker Tim Moore
			Jevan Lyle		Speaker Tim Moore

VISITOR REGISTRATION SHEET

House Committee on Energy and Public Utilities

3-12-19

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Sarah McQuillan	Kairos Gov Affairs
Betsy McCorkle	Kairos Gov Affairs
Alex Miller	AMGA
Stacy Levitas	Cypress Creek
Ty Ford	MWC
Ryan Miller	NC Building Performance Association
Sarah Patterson	WM
Ben Stockdale	NS Sustainable Energy Assoc.
Paul Matt	NC Assoc. of Electric Co-ops
Karyn High	NCMA
Elizabeth Roberts	NCMA

VISITOR REGISTRATION SHEET

House Committee on Energy and Public Utilities

3-12-19

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Chris Well	PG
Michelle Frazier	NP
Stephen De May	Duke Energy
Kathy Hawkins	Duke Energy
Susan Vick	Duke Energy
Kendal Bowman	Duke Energy
R. Kayla	Kayla Lane
L. Dwyer	CSF
Kara Weishaar	JA
Nelson Freeman	K. Patrick Townsend
Frances Liles	NCREA

VISITOR REGISTRATION SHEET

House Committee on Energy and Public Utilities

3-12-19

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Julie Robinson	NCSEA
Tom Bean	NCSEA, EDF
Brooks Rancy Pearson	SERC
John Lucey	DEQ
Henry M Lancaster	LCA
Sam Teague	UMI/LS
JA, Ro	NCATF
Cassidy Robertson	AMGA
Will Scott	NC Conservation Network
Alfred Windmeyer	NCCN

VISITOR REGISTRATION SHEET

House Committee on Energy and Public Utilities

3-12-19

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

B. Allen Allen	NCTCC
Brady Allen	NCTCC
Dwight Allen	Allen Law
Bo Sowers	Duke Energy
Lori Ann Harris	GAHA
Kathy Botsch	BP
GREG GERHARDT	CYPRESS CREEK
Jackson Smith	JSC
[Signature]	MWC

**3:House Committee on Energy and Public Utilities
Tuesday, March 19, 2019 at 3:00 PM
Room 643 of the Legislative Office Building**

MINUTES

The House Committee on Energy and Public Utilities met at 3:00 PM on March 19, 2019 in Room 643 of the Legislative Office Building. Representatives Arp, Autry, Black, Brockman, Cunningham, Dixon, Goodman, Hanig, Harrison, Hastings, Hawkins, Holley, Howard, Humphrey, Richardson, Riddell, Szoka, and Wray attended.

Representative John Szoka, Chair, presided.

The following bills were considered:

HB 235 Utilities Commission Technical & Admin Changes.-AB (Representatives Arp, Szoka)

AMENDMENT: Rep. Hanig explained and moved for the adoption of an amendment (H235-148-1 [v-2]), Rep. Arp seconded the motion and the amendment was adopted.

PRESENTATIONS:

ElectriCities Presentation: Understanding Public Power, ElectriCities of NC, Inc. / Roy Jones, CEO (ATTACHMENT 1)


How Electric Cooperatives Are Structured / Lee Ragsdale, Sr. VP, NC Electric Cooperatives/ S. Lee Ragsdale, Jr., PE (ATTACHMENT 2)

The floor was open for remarks and questions.

The meeting adjourned at 3:57 PM.



Representative John Szoka, Chair
Presiding



Beverly Slagle, Committee Clerk

**House Committee on Energy and Public Utilities
Tuesday, March 19, 2019, 3:00 PM
643 Legislative Office Building**

AGENDA

Welcome and Opening Remarks: Chairman John D. Szoka, presiding

Introduction of Pages & Sergeant-At-Arms

Bills

BILL NO.	SHORT TITLE	SPONSOR
HB 235	Utilities Commission Technical & Admin Changes.-AB	Representative Arp Representative Szoka

Please find attached a Proposed Committee Substitute (PCS) for HB 235

Amendment H235-ARI-1 [v.2] presented by Rep. Hanig

Presentations

ElectriCities Presentation: Understanding Public Power
Presenter: Roy Jones, CEO

How Electric Cooperatives Are Structured
Presenter: Lee Ragsdale, Sr. VP, Grid Infrastructure & Compliance / NC Electric Cooperatives

Other Business

Adjournment



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 235

AMENDMENT NO.

(to be filled in by
Principal Clerk)

Page 1 of 1

H235-ARI-1 [v.2]

Amends Title [NO]
H235-CSRI-f-1

Date March 19, ,2019

Representative Hanig

moves to amend the bill on page 1, line 31,
by rewriting that line to read:

"(1) "Broadband service" means any service that consists of or includes a high-speed access capability to transmit at a rate of not less than ~~200 kilobits per second in either the upstream or downstream direction the current threshold for broadband service established by the Federal Communications Commission~~ and either (i) is used to provide access to the Internet, or (ii) provides computer processing, information storage, information content, or protocol conversion, including any service applications or information service provided over such high-speed access service. "Broadband service" does not include intrastate service that was tariffed by the Commission and in effect as of the effective date of this subdivision."

SIGNED

Amendment Sponsor

SIGNED

Committee Chair if Senate Committee Amendment

ADOPTED

FAILED

TABLED



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

H

D

HOUSE BILL 235
PROPOSED COMMITTEE SUBSTITUTE H235-PCS30193-RIF-1

Short Title: Utilities Comm'n Tech. and Add'l Changes.-AB

(Public)

Sponsors:

Referred to:

March 4, 2019

A BILL TO BE ENTITLED
AN ACT TO MAKE TECHNICAL, CLARIFYING, CONFORMING, AND
ADMINISTRATIVE CHANGES TO THE LAWS RELATED TO PUBLIC UTILITIES; TO
INCREASE THE NONUTILITY FILING FEE FOR A CERTIFICATE OF PUBLIC
CONVENIENCE AND NECESSITY; TO ALLOW THE USE OF MASTER METERS IN
MULTI-UNIT APARTMENT BUILDINGS; AND TO GRANT THE UTILITIES
COMMISSION AND PUBLIC STAFF ADMINISTRATIVE FLEXIBILITY REGARDING
JOB CLASSIFICATIONS AND SALARIES, AS RECOMMENDED BY THE NORTH
CAROLINA UTILITIES COMMISSION.

The General Assembly of North Carolina enacts:

TECHNICAL, CLARIFYING, CONFORMING, AND ADMINISTRATIVE CHANGES
TO THE LAWS RELATED TO PUBLIC UTILITIES

SECTION 1. G.S. 20-398 reads as rewritten:

"§ 20-398. Household goods carrier; marking or identification of vehicles.

(a) No carrier shall operate or attempt to operate any motor vehicle upon a highway, public street, or public vehicular area within the State in the transportation of household goods for compensation unless the name or trade name and the North Carolina number assigned to the carrier by the North Carolina Utilities Commission appear on each side of the vehicle in letters and figures not less than three inches high. The North Carolina number assigned to the carrier shall also be placed on the rear left upper quadrant of the vehicle in letters and figures not less than three inches high. In case of a tractor-trailer unit, the side markings must be on the tractor and the rear markings must be on the trailer. The markings required may be printed on the vehicle or on durable placards securely fastened on the vehicle.

(e) Notwithstanding the provisions of G.S. 20-383 to the contrary, any law enforcement officer with territorial jurisdiction is authorized to enforce the provisions of this section.

SECTION 2. G.S. 62-3 reads as rewritten:

"§ 62-3. Definitions.

As used in this Chapter, unless the context otherwise requires, the term:

- (1) "Broadband service" means any service that consists of or includes a high-speed access capability to transmit at a rate of not less than 200 kilobits per second in either the upstream or downstream direction the current threshold for broadband service established by the Federal Communications Commission and either (i) is used to provide access to the Internet, or (ii) provides computer processing, information storage, information content, or



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protocol conversion, including any service applications or information service provided over such high-speed access service. "Broadband service" does not include intrastate service that was tariffed by the Commission and in effect as of the effective date of this subdivision.

...

(2) "Certificate" means a certificate of public convenience and necessity issued by the Commission to a person or public utility or a certificate of authority issued by the Commission to a bus company.

...

(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:

...

2. Diverting, developing, pumping, impounding, distributing or furnishing water to or for the public for compensation, or operating a public sewerage system for compensation; provided, however, that the term "public utility" shall not include any person or company whose sole operation consists of selling water or sewer service to less than 15 residential customers, except that any person or company which constructs a water or sewer system in a subdivision with plans for 15 or more lots and which holds itself out by contracts or other means at the time of said construction to serve an area containing more than 15 residential building lots shall be a public utility at the time of such planning or holding out to serve such 15 or more building lots, without regard to the number of actual customers connected;

...

c. The term "public utility" shall include all persons affiliated through stock ownership with a public utility doing business in this State as parent corporation or subsidiary corporation ~~as defined in G.S. 55-2~~ to such an extent that the Commission shall find that such affiliation has an effect on the rates or service of such public utility.

d. The term "public utility," except as otherwise expressly provided in this Chapter, shall not include the following:

1. a municipality, A municipality.

2. an An authority organized under the North Carolina Water and Sewer Authorities Act, Act.

3. An electric or telephone membership corporation; corporation.

4. or any Any person not otherwise a public utility who furnishes such service or commodity only to himself, his employees or tenants when such service or commodity is not resold to or used by others; provided, however, that any others.

d1. Any person other than a nonprofit organization serving only its members, who distributes or provides utility service to his employees or tenants by individual meters or by other coin-operated devices with a charge for metered or coin-operated utility service shall be a public utility within the definition and meaning of this Chapter with respect to the regulation of rates and provisions of service rendered through such meter or coin-operated device imposing such separate metered utility charge.

d2. If any person conducting a public utility shall also conduct any enterprise not a public utility, such enterprise is not subject to the provisions of this Chapter.

d3. A water or sewer system owned by a homeowners' association that provides water or sewer service only to members or leaseholds of members is not subject to the provisions of this Chapter.

i. The term "public utility" shall not include the State, the Department of Information Technology, or the Microelectronics Center of North Carolina in the provision or sharing of ~~switched~~ broadband telecommunications services with non-State entities or organizations of the kind or type set forth in ~~G.S. 143B-426.39~~ G.S. 143B-1371.

SECTION 3. G.S. 62-15 reads as rewritten:

"§ 62-15. Office of executive director; public staff, structure and function.

(b) There is established in the Commission a public staff. The public staff shall consist of the executive director and such other professional, administrative, technical, and clerical personnel as may be necessary in order for the public staff to represent the using and consuming public, as hereinafter provided. All such personnel shall be ~~appointed, hired,~~ supervised, and directed by the executive ~~director, director, as provided by law.~~ The public staff shall not be subject to the supervision, direction, or control of the Commission, the chairman, or members of the Commission.

(d) It shall be the duty and responsibility of the public staff to:

(4) When deemed necessary by the executive director in the interest of the using and consuming public, petition the Commission to initiate proceedings to review, investigate, and take appropriate action with respect to the ~~rates-rates,~~ operations, management, or service of public utilities;

(10) ~~Investigate and make appropriate recommendations to the Commission with respect to applications for certificates by radio common carriers, pursuant to the provisions of Article 6A of this Chapter;~~

(13) When deemed necessary by the executive director in the interest of the using and consuming public, appear before State and federal courts and agencies in matters affecting public utility service.

SECTION 4. G.S. 62-20 reads as rewritten:

"§ 62-20. Participation by Attorney General in Commission proceedings.

The Attorney General may intervene, when he deems it to be advisable in the public interest, in proceedings before the Commission on behalf of the using and consuming public, including utility users generally and agencies of the State. The Attorney General may institute and originate proceedings before the Commission in the name of the State, its agencies or citizens, in matters within the jurisdiction of the Commission. The Attorney General may appear before such State and federal courts and agencies as he deems it advisable in matters affecting public utility services. In the performance of his responsibilities under this section, the Attorney General shall have the right to employ expert witnesses, and the compensation and expenses therefor shall be paid from the Contingency and Emergency Fund. ~~The Upon request, the~~ Commission shall furnish the Attorney General with copies of all applications, petitions, pleadings, order and

1 decisions filed with or entered by the Commission. The Attorney General shall have access to all
2 books, papers, studies, reports and other documents filed with the Commission."

3 **SECTION 5.** G.S. 62-34 reads as rewritten:

4 **"§ 62-34. To investigate companies under its control; visitation and inspection.**

5 ...

6 (c) The Public Staff shall have the right to examine confidential information as defined
7 in G.S. 132-1.2 in exercising any power or performing any duty authorized by this Chapter. The
8 Public Staff shall not disclose confidential information except as authorized by (i) the person or
9 entity having the right to assert confidentiality, (ii) the Commission, or (iii) a court of competent
10 jurisdiction. Any information not designated in writing as confidential by the person or entity
11 disclosing it to the Public Staff is subject to disclosure. Any dispute about whether information
12 has been properly designated as confidential shall be determined by the Commission upon motion
13 and response of interested parties. Information shall be considered confidential only to the extent
14 provided by law."

15 **SECTION 6.** G.S. 62-39 reads as rewritten:

16 **"§ 62-39. To regulate crossings of telephone, telegraph, electric power lines and pipelines**
17 **and rights-of-way of railroads and other utilities by another utility.**

18 ...

19 (d) This section shall not be construed to limit the right of eminent domain conferred
20 upon public utilities and electric membership corporations by the laws of this State or to limit the
21 right and duty conferred by law with respect to crossing of railroads and ~~highways or railroads~~
22 ~~crossing railroads, highways,~~ but the duty imposed and the remedy given by this section shall be
23 in addition to other duties and remedies now prescribed by law. Any party shall have the right of
24 appeal from any final order or decision or determination of the Commission as provided by law
25 for appeals from orders or decisions or final determinations of the Commission."

26 **SECTION 7.** G.S. 62-49 reads as rewritten:

27 **"§ 62-49. Publication of utilities laws.**

28 The Commission is authorized and directed to secure publication of all North Carolina laws
29 affecting public utilities, together with the Commission rules and regulations, in an annotated
30 edition, and the Commission may adopt rules for distribution of said ~~publication, and shall~~
31 ~~publish biennial supplements to said utilities laws containing all amendments and additions~~
32 ~~thereto, publication~~ and may republish said laws at such times as may be reasonable and
33 necessary."

34 **SECTION 8.** G.S. 62-74 reads as rewritten:

35 **"§ 62-74. Complaints by public utilities.**

36 Any public utility shall have the right to ~~complain~~ file a complaint against any other public
37 utility or any person on any of the grounds upon which complaints are allowed to be filed by
38 other parties, and the same procedure shall be adopted and followed as in other cases, except that
39 the complaint and notice of hearing shall be served by the Commission upon such interested
40 persons as it may designate."

41 **SECTION 9.** G.S. 62-79 reads as rewritten:

42 **"§ 62-79. Final orders and decisions; findings; service; compliance.**

43 ...

44 (b) A copy of every final order or decision under the seal of the Commission shall be
45 ~~served by registered or certified mail in the manner prescribed by the Commission~~ upon the
46 person against whom it runs or his attorney and notice thereof shall be given to the other parties
47 to the proceeding or their attorney. Such order shall take effect and become operative when issued
48 unless otherwise designated therein and shall continue in force either for a period which may be
49 designated therein or until changed or revoked by the Commission. If an order cannot, in the
50 judgment of the Commission, be complied with within the time designated therein, the
51 Commission may grant and prescribe such additional time as in its judgment is reasonably

1 necessary to comply with the order, and may, on application and for good cause shown, extend
2 the time for compliance fixed in its order."

3 **SECTION 10.** G.S. 62-81 reads as rewritten:

4 **"§ 62-81. Special procedure in hearing and deciding rate cases.**

5 (a) All cases or proceedings, declared to be or properly classified as general rate cases
6 under G.S. 62-137, or any proceedings which will substantially affect any utility's overall level
7 of earnings or rate of return, shall be set for trial or hearing by the Commission, which trial or
8 hearing shall be set to commence within ~~six months~~ 180 days of the institution or filing thereof,
9 ~~and all such cases or proceedings shall be tried or heard and decided, with the issuance of a final~~
10 ~~order, by the Commission within nine months of the institution or filing thereof. thereof.~~ All such
11 cases or proceedings shall be tried or heard and decided in accordance with the rate-making
12 procedure set forth in G.S. 62-133 and such cases shall be given priority over all other cases or
13 proceedings pending before the Commission. In all such cases the Commission shall make a
14 transcript of the evidence and testimony presented and received by it and shall furnish a copy
15 thereof to any party so requesting by the third business day after the taking of such evidence and
16 testimony.

17 (b) Any public utility filing or applying for an increase in rates for electric, telephone,
18 natural ~~gas or water gas, water, or sewer~~ service shall notify its customers proposed to be affected
19 by such increase of such filing by regular mail or by newspaper publications, as directed by the
20 Commission, within 30 days of such filing, which notice shall state that the Commission shall
21 set and shall conduct a trial or hearing with respect to such filing or application within ~~six months~~
22 180 days of said filing date. All other public utilities shall give such notice in such manner as
23 shall be prescribed by the Commission.

24 ...

25 (d) In all proceedings for an increase in rates and all other proceedings declared to be
26 general rate cases under G.S. 62-137, the Commission shall conduct the hearing or portions of
27 the hearing within the area of the State served by the public utility whose rates are under
28 consideration, provided this subsection shall not apply to proceedings held pursuant to ~~G.S.~~
29 ~~62-134(e) and 62-133(f).~~ G.S. 62-133.2 and G.S. 62-133.4.

30 (e) ~~Notwithstanding the provisions of this section, application by any public utility for~~
31 ~~permission and authority to adjust its rates and charges based solely upon the cost of fuel used in~~
32 ~~the generation or production of electric power shall be determined in accordance with the~~
33 ~~provisions of G.S. 62-134(e).~~

34"

35 **SECTION 11.** G.S. 62-110.1 reads as rewritten:

36 **"§ 62-110.1. Certificate for construction of generating facility; analysis of long-range needs**
37 **for expansion of facilities; ongoing review of construction costs; inclusion of**
38 **approved construction costs in rates.**

39 ...

40 (c) The Commission shall develop, publicize, and keep current an analysis of the
41 long-range needs for expansion of facilities for the generation of electricity in North Carolina,
42 including its estimate of the probable future growth of the use of electricity, the probable needed
43 generating reserves, the extent, size, mix and general location of generating plants and
44 arrangements for pooling power to the extent not regulated by the Federal Energy Regulatory
45 Commission and other arrangements with other utilities and energy suppliers to achieve
46 maximum efficiencies for the benefit of the people of North Carolina, and shall consider such
47 analysis in acting upon any petition by any utility for construction. In developing such analysis,
48 the Commission ~~shall~~ shall, as it deems necessary, confer and consult with the public utilities in
49 North Carolina, the utilities commissions or comparable agencies of neighboring states, the
50 Federal Energy Regulatory Commission and other agencies having relevant information and may
51 participate as it deems useful in any joint boards investigating generating plant sites or the

1 probable need for future generating facilities. In addition to such reports as public utilities may
2 be required by statute or rule of the Commission to file with the Commission, any such utility in
3 North Carolina may submit to the Commission its proposals as to the future needs for electricity
4 to serve the people of the State or the area served by such utility, and insofar as practicable, each
5 such ~~utility-utility~~, the Public Staff, intervenors, and the Attorney General may attend or be
6 represented at any formal conference conducted by the Commission in developing a plan for the
7 future requirements of electricity for North Carolina or this region. In the course of making the
8 analysis and developing the plan, the Commission shall conduct a public hearing on such plan in
9 the year a biennial integrated resource plan is filed, and may hold a public hearing on such plan
10 in a year that an annual update of an integrated resource plan is filed. ~~conduct one or more public~~
11 ~~hearings.~~ Each year, the Commission shall submit to the Governor and to the appropriate
12 committees of the Joint Legislative Oversight Committee on Agriculture and Natural and
13 Economic Resources, the chairs of the Senate Appropriations Committee on Agriculture,
14 Natural, and Economic Resources, and the chairs of the House of Representatives Appropriations
15 Committee on Agriculture and Natural and Economic Resources a report of its analysis and plan,
16 the progress to date in carrying out such plan, and the program of the Commission for the ensuing
17 year in connection with such plan.

18"

19 **SECTION 12.** G.S. 62-111 reads as rewritten:

20 **"§ 62-111. Transfers of franchises; mergers, consolidations and combinations of public**
21 **utilities.**

22 ...

23 (d) No person shall obtain a franchise or certificate for the purpose of transferring the
24 same to another, and an offer of such transfer within one year after the same was obtained shall
25 be prima facie evidence that such franchise or certificate was obtained for the purpose of sale.

26"

27 **SECTION 13.** G.S. 62-130(c) is repealed.

28 **SECTION 14.** G.S. 62-133.4 reads as rewritten:

29 **"§ 62-133.4. Gas cost adjustment for natural gas local distribution companies.**

30 ...

31 (c) Each natural gas local distribution company shall submit to the Commission
32 information and data for an historical 12-month test period concerning the utility's actual cost of
33 gas, volumes of purchased gas, sales volumes, negotiated sales volumes, and transportation
34 volumes. This information and data shall be filed on an annual basis in the form and detail and
35 at the time required by the Commission. The Commission, upon notice and hearing, shall
36 compare the utility's prudently incurred costs with costs recovered from all the utility's customers
37 that it served during the test period. If those prudently incurred costs are greater or less than the
38 recovered costs, the Commission shall, subject to G.S. 62-158, require the utility to refund any
39 overrecovery by credit to bill or through a decrement in its rates and shall permit the utility to
40 recover any deficiency through an increment in its rates. If the Commission finds the
41 overrecovery or deficiency has been or is likely to be substantially reduced, negated, or reversed
42 before or during the period in which it would be credited or recovered, the Commission, in its
43 discretion, may order the utility to make an appropriate adjustment or no adjustment to its rates,
44 consistent with the public interest.

45"

46 **SECTION 15.** G.S. 62-133.10 is repealed.

47 **SECTION 16.** G.S. 62-140 reads as rewritten:

48 **"§ 62-140. Discrimination prohibited.**

49 ...

50 (c) No public utility shall offer or pay any compensation or consideration or furnish any
51 equipment to secure the installation or adoption of the use of such utility service except upon

1 filing of a schedule of such compensation or consideration or equipment to be furnished and
2 approved thereof by the Commission, and offering such compensation, consideration or
3 equipment to all persons within the same classification using or applying for such public utility
4 service; provided, in considering the reasonableness of any such schedule filed by a public utility
5 the Commission shall consider, among other things, evidence of consideration or compensation
6 paid by any competitor, regulated or nonregulated, of the public utility to secure the installation
7 or adoption of the use of such competitor's service. ~~Provided, further, that nothing herein shall~~
8 ~~prohibit a public utility from carrying out any contractual commitment in existence at the time~~
9 ~~of the enactment hereof, so long as such program does not extend beyond December 31, 1963.~~
10 For the purpose of this subsection, "public utility" shall include any electric membership
11 corporation operating within this State, and the terms "utility service" and "public utility service"
12 shall include the service rendered by any such electric membership corporation."

13 **SECTION 17.** G.S. 62-280.1 reads as rewritten:

14 **"§ 62-280.1. False representation of household goods carrier certificate unlawful.**

15 ...
16 (b) Any person who violates subsection (a) of this section or who knowingly aids and
17 abets another person in violating subsection (a) of this section shall be guilty of a Class 3
18 misdemeanor and punished only by a fine of not more than five hundred dollars (\$500.00) for
19 the first offense and not more than two thousand dollars (\$2,000) for any subsequent offense.

20 ...
21 (d) Notwithstanding the provisions of G.S. 20-383 to the contrary, any law enforcement
22 officer with territorial jurisdiction is authorized to enforce the provisions of this section."

23 **SECTION 18.** G.S. 143-166.13 reads as rewritten:

24 **"§ 143-166.13. Persons entitled to benefits under Article.**

25 (a) The following persons who are subject to the Criminal Justice Training and Standards
26 Act are entitled to benefits under this Article:

27 ...
28 (14) ~~Utilities Commission Transportation Inspectors and Special Investigators;~~
29"

30 **SECTION 19.** G.S. 143B-963 reads as rewritten:

31 **"§ 143B-963. Criminal history record checks of applicants for and current holders of**
32 **certificate to transport household goods.**

33 (a) The Department of Public Safety may provide to the Utilities Commission from the
34 State and National Repositories of Criminal Histories the criminal history of any applicant for or
35 current holder of a certificate to transport household goods. Along with the request, the
36 Commission shall provide to the Department of Public Safety the fingerprints of the applicant or
37 current holder, a form signed by the applicant or current holder consenting to the criminal history
38 record check and use of fingerprints and other identifying information required by the State and
39 National Repositories of Criminal Histories, and any additional information required by the
40 Department of Public Safety. The applicant's or current holder's fingerprints shall be forwarded
41 to the State Bureau of Investigation for a search of the State's criminal history record file, and the
42 State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of
43 Investigation for a national criminal history record check. The Utilities Commission shall keep
44 all information obtained pursuant to this section confidential. The Department of Public Safety
45 may charge a fee to offset the cost incurred by it to conduct a criminal history record check under
46 this section. The fee shall not exceed the actual cost of locating, editing, researching, and
47 retrieving the information. The Department of Public Safety shall send a copy of the results of
48 the criminal history record checks directly to the Utilities Commission Chief Clerk.

49 (b) The Utilities Commission may provide the information obtained pursuant to
50 subsection (a) of this section to the Public Staff for use in proceedings before the Commission.

1 The Public Staff shall keep all information obtained pursuant to subsection (a) of this section
2 confidential."

3 **SECTION 20.** G.S. 156-91 reads as rewritten:

4 **"§ 156-91. Manner of construction across railroad.**

5 ...

6 (b) ~~Utilities Commission to Settle. If the superintendent of construction and the railroad~~
7 ~~company shall not be able to agree as to the exact time at which such work can be done, including~~
8 ~~the time of beginning and the time to be consumed in such work, either party may give written~~
9 ~~notice thereof to the chairman of the Utilities Commission of the State, and thereupon the Utilities~~
10 ~~Commission shall cause an investigation to be made, and, after hearing both parties, shall fix the~~
11 ~~time of beginning such work and the time to be consumed in the work of construction, and the~~
12 ~~final determination of the Utilities Commission thereon shall be binding upon the superintendent~~
13 ~~of construction representing the district and the railroad company, and the work shall be done in~~
14 ~~such time as may be fixed by the Utilities Commission.~~

15"

16 **SECTION 21.** The Revisor of Statutes is authorized to substitute the term "Public
17 Staff" for the term "public staff" wherever the term appears in Chapter 62 of the General Statutes.

18 **SECTION 22.** The Revisor of Statutes is authorized to substitute the term
19 "ratemaking" for the terms "rate-making" or "rate making" wherever the term appears in Chapter
20 62 of the General Statutes.

21
22 **INCREASE THE NONUTILITY FILING FEE FOR A CERTIFICATE OF PUBLIC**
23 **CONVENIENCE AND NECESSITY**

24 **SECTION 23.(a)** G.S. 62-300 reads as rewritten:

25 **"§ 62-300. Particular fees and charges fixed; payment.**

26 (a) The Commission shall receive and collect the following fees and charges in
27 accordance with the classification of utilities as provided in rules and regulations of the
28 Commission, and no others:

29 ...

30 (5) With each application for a certificate of public convenience and necessity or
31 for any amendment thereto so as to extend or enlarge the scope of operations
32 thereunder, the fee shall be two hundred fifty dollars (\$250.00) for Class A
33 utilities, one hundred dollars (\$100.00) for Class B utilities, and twenty-five
34 dollars (\$25.00) for Class C and D utilities and ~~twenty-five dollars (\$25.00)~~
35 two hundred fifty dollars (\$250.00) for any other person seeking a certificate
36 of public convenience and necessity.

37"

38 **SECTION 23.(b)** This section becomes effective July 1, 2019.

39
40 **ALLOW THE USE OF MASTER METERS IN MULTI-UNIT APARTMENT**
41 **BUILDINGS**

42 **SECTION 24.(a)** G.S. 42-42.1 reads as rewritten:

43 **"§ 42-42.1. Water, electricity, and natural gas conservation.**

44 (a) For the purpose of encouraging water, electricity, and natural gas conservation,
45 pursuant to a written rental agreement, a lessor may charge for the cost of providing water or
46 sewer service to lessees pursuant to G.S. 62-110(g), electric service pursuant to G.S. 62-110(h),
47 ~~or natural gas service pursuant to G.S. 62-110(i).~~ G.S. 62-110(i); or for electricity or natural gas
48 used by a central system pursuant to G.S. 62-110(j).

49 (b) The lessor may not disconnect or terminate the lessee's electric service, water or sewer
50 services, or natural gas ~~service~~ service, nor may the landlord terminate the lessee's receipt of the

benefits of the use of a central system, due to the lessee's nonpayment of the amount due for electric service, water or sewer services, or natural gas service."

SECTION 24.(b) G.S. 62-110 is amended by adding a new subsection to read:

"(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, allow a lessor of a multi-unit apartment building who has obtained the approval of the Commission for the use of a master meter pursuant to G.S. 143-151.42 to charge each tenant for the electricity or natural gas used by a central system based on each tenant's metered or measured share of the electricity or natural gas used by the central system. In the case of electricity used by a central system, the provisions of subdivisions (2) through (8) of subsection (h) of this section shall apply. In the case of natural gas used by a central system, the provisions of subdivisions (2) through (8) of subsection (i) of this section shall apply."

SECTION 24.(c) G.S. 143-151.42 reads as rewritten:

"§ 143-151.42. Prohibition of master meters for electric and natural gas service.

(a) From and after September 1, 1977, in order that each occupant of an apartment or other individual dwelling unit may be responsible for his own conservation of electricity and gas, it shall be unlawful for any new residential building, as hereinafter defined, to be served by a master meter for electric service or natural gas service. Each individual dwelling unit shall have individual electric service with a separate electric meter and, if it has natural gas, individual natural gas service with a separate natural gas meter, which service and meters shall be in the name of the tenant or other occupant of said apartment or other dwelling unit. No electric supplier or natural gas supplier, whether regulated public utility or municipal corporation or electric membership corporation supplying said utility service, shall connect any residential building for electric service or natural gas service through a master meter, and said electric or natural gas supplier shall serve each said apartment or dwelling unit by separate service and separate meter and shall bill and charge each individual occupant of said separate apartment or dwelling unit for said electric or natural gas service. A new residential building is hereby defined for the purposes of this section as any building for which a building permit is issued on or after September 1, 1977, which includes two or more apartments or other family dwelling units. Provided, however, that any owner or builder of a multi-unit residential building who desires to provide central heat or air conditioning or central hot water from a central furnace, air conditioner or hot water heater which incorporates solar assistance or other designs which accomplish greater energy conservation than separate heat, hot water, or air conditioning for each dwelling unit, may apply to the North Carolina Utilities Commission for approval of said central heat, air conditioning or hot water system, which may include a central meter for electricity or gas used in said central system, and the Utilities Commission shall promptly consider said application and approve it for such central meters if energy is conserved by said design. This section shall apply to any dwelling unit normally rented or leased for a minimum period of one month or longer, including apartments, condominiums and townhouses, but shall not apply to hotels, motels, hotels or motels that have been converted into condominiums, dormitories, rooming houses or nursing homes, or homes for the ~~elderly-elderly~~, or to a multi-unit residential building or building complex where natural gas service is delivered to a master meter for use by the occupants of the units for use only in cooking, ventless fireplaces, or other ancillary purposes.

(b) The provisions of this section requiring that service and meters for each individual dwelling unit be in the name of the tenant or other occupant of the apartment or other dwelling unit shall not apply in either of the following circumstances:

- (1) The Utilities Commission has approved an application under ~~G.S. 62-110(h)~~ subdivisions (h) through (j) of G.S. 62-110.
- (2) The tenant and landlord have agreed in the lease that the cost of the electric service or natural gas service or both shall be included in the rental payments and the service shall be in the name of the landlord."

1 **SECTION 24.(d)** This section becomes effective October 1, 2019.

2
3 **GRANT THE UTILITIES COMMISSION AND PUBLIC STAFF ADMINISTRATIVE**
4 **FLEXIBILITY REGARDING JOB CLASSIFICATIONS AND SALARIES**

5 **SECTION 25.** (a) Notwithstanding G.S. 126-4(1), G.S. 126-4(2), or any other
6 provision of law, for the 2019-2020 fiscal year, the Utilities Commission and Public Staff shall
7 have the sole authority and discretion to take the following actions concerning the classification
8 of positions of and the salaries for employees of the Utilities Commission and Public Staff:

9 (1) Classify new positions or reclassify existing positions, including vacant
10 positions, within the classification system adopted by the State Human
11 Resources Commission or as otherwise provided by law.

12 (2) Determine the appropriate salary for employees, provided funding is available
13 and the salary remains within the minimum and maximum range of the salary
14 range associated with the position classification or as otherwise provided by
15 law.

16 (3) Make hiring decisions based on the flexibility authorized by this section.

17 (b) Upon request, the Office of State Human Resources and the Human Resources
18 Director of the Department of Commerce shall assist the Commission and Public Staff in taking
19 the actions authorized in subsection (a) of this section.

20 (c) The Commission may use available funds to contract with a qualified consultant to
21 study the appropriate job classifications and salaries for employees of the Commission and Public
22 Staff, including an analysis of market rates for employees with utility regulatory experience to
23 determine whether current employees are classified and compensated appropriately. The study
24 shall be completed no later than October 1, 2019. The Commission and Public Staff shall
25 implement the recommendations of the study consistent with the flexibility granted in subsection
26 (a) of this section.

27 (d) By March 1, 2020, the Commission and Public Staff shall report to the House
28 Committee on Energy and Public Utilities and the Fiscal Research Division on the following:

29 (1) The results of the study authorized under subsection (c) of this section.

30 (2) The number of classification actions and salary adjustments made under
31 subsection (a) of this section.

32 (3) The need to continue the flexibility authorized under this section, the length
33 of any proposed flexibility continuation, and any recommendations on
34 changes that should be made to the proposed flexibility continuation.

35
36 **EFFECTIVE DATE**

37 **SECTION 26.** Except as otherwise provided, this act is effective when it becomes
38 law.

**NORTH CAROLINA GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES**

**ENERGY AND PUBLIC UTILITIES COMMITTEE REPORT
Representative Dean Arp, Co-Chair
Representative John Szoka, Co-Chair**

FAVORABLE COM SUB , UNFAVORABLE ORIGINAL BILL AND RE-REFERRED

HB 235

Utilities Commission Technical & Admin Changes.-AB

Draft Number: H235-PCS30193-Rlf-1

Serial Referral: FINANCE

Recommended Referral: None

Long Title Amended: Yes

Floor Manager: Arp

TOTAL REPORTED: 1



* C M R 1 2 5 - V - 1 *



UNDERSTANDING PUBLIC POWER

A Focus on People, Not Profit

NC House Energy & Public Utilities Committee
March 19, 2019
Roy Jones, CEO



3 TYPES OF ELECTRIC UTILITIES



PUBLIC POWER UTILITIES

BUSINESS MODEL

Not for profit,
Community-owned

FEDERAL ENERGY REGULATORY COMMISSION JURISDICTIONS

Only for interstate
transmission

REGULATED BY STATE PUBLIC UTILITY COMMISSION

Very limited instances

GOVERNED BY

Elected/appointed boards,
mayors, city council members
and citizens

FINANCIAL CONTRIBUTION TO LOCAL GOVERNMENT

Exempt from most taxes;
instead make payments in
lieu of taxes or transfers to
the general fund

CAN RAISE FUNDS THROUGH

Tax-exempt municipal bonds



RURAL ELECTRIC COOPERATIVES

Not for profit,
Member-owned

Only for interstate
transmission

Some

Member-elected boards

May neither pay taxes nor
other contributions to local
government

Loans from the Dept of
Agriculture's Rural Utilities
Service or cooperative or
private lenders



INVESTOR-OWNED UTILITIES

For profit, Shareholder owned

For wholesale rates

All

Private boards

Pay taxes to local government

Stock issue or corporate debt

WHO DOES PUBLIC POWER SERVE?

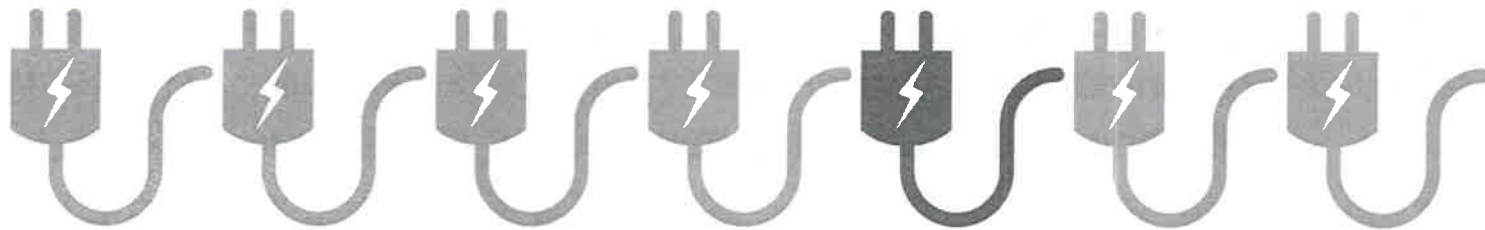
- More than 2,000 community-owned electric utilities serve more than 49 million people.¹
- Public power utilities serve small communities, including Bostic, N.C. and Hobgood, N.C., and large cities, including Los Angeles, San Antonio, Nashville, Orlando and Seattle.
- Public power serves customers in 49 states—all but Hawaii—and five U.S. territories.
- Three million businesses receive their power from a publicly owned electric utility.



¹ Based on U.S. Census Bureau statistics of 2.43 people per household/meter

1 IN 7

**ELECTRICITY CUSTOMERS IN THE
U.S. ARE SERVED BY PUBLIC POWER**

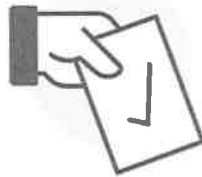


FIVE ELEMENTS OF PUBLIC POWER BUSINESS MODEL

While each community-owned utility is unique, all public power utilities share five characteristics that define the public power business model:



PUBLIC OWNERSHIP



LOCAL CONTROL



NONPROFIT OPERATIONS



LOW-COST STRUCTURE



CUSTOMER-FOCUSED



PURPOSE

Delivering value to public power communities through collective strength, wisdom and action while promoting a more successful future for our citizens.



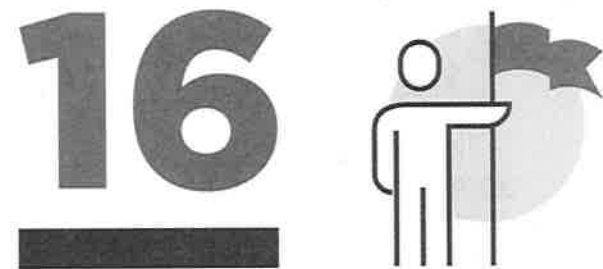
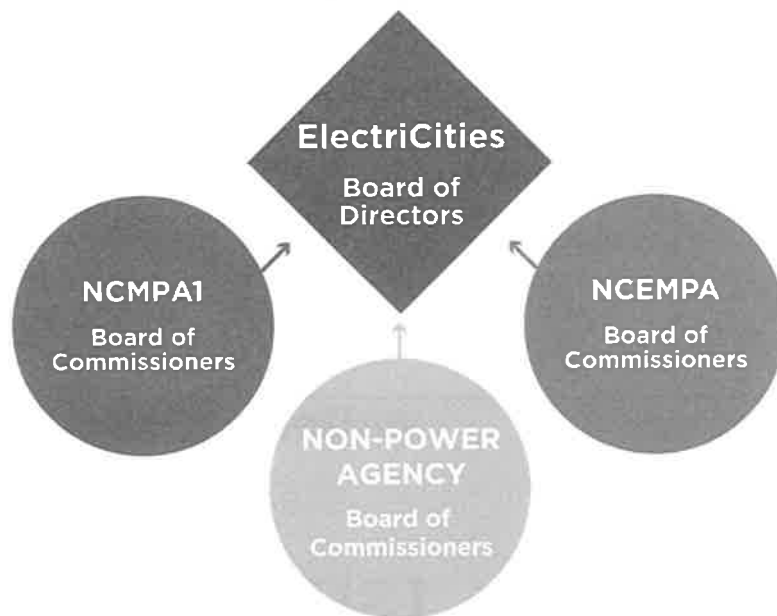
1.2 MILLION PEOPLE

NC Public Power illuminates the homes and workplaces of more than 1.2 million people

ABOUT ELECTRICITIES

ElectriCities, the energy behind public power, is a not-for-profit membership organization that consolidates many of the administrative, technical, legal and legislative services needed by municipally owned electric utilities.

Governance Structure



Governed by a 16-member board of directors

MEMBER LIST

NCMPA1

Albemarle, N.C.
Bostic, N.C.
Cherryville, N.C.
Cornelius, N.C.
Drexel, N.C.
Gastonia, N.C.
Granite Falls, N.C.
High Point, N.C.
Huntersville, N.C.
Landis, N.C.
Lexington, N.C.
Lincolnton, N.C.
Maiden, N.C.
Monroe, N.C.
Morganton, N.C.
Newton, N.C.
Pineville, N.C.
Shelby, N.C.
Statesville, N.C.

NCEMPA

Apex, N.C.
Ayden, N.C.
Belhaven, N.C.
Benson, N.C.
Clayton, N.C.
Edenton, N.C.
Elizabeth City, N.C.
Farmville, N.C.
Fremont, N.C.
Greenville, N.C.
Hamilton, N.C.
Hertford, N.C.
Hobgood, N.C.
Hookerton, N.C.
Kinston, N.C.
La Grange, N.C.

Laurinburg, N.C.
Louisburg, N.C.
Lumberton, N.C.
New Bern, N.C.
Pikeville, N.C.
Red Springs, N.C.
Robersonville, N.C.
Rocky Mount, N.C.
Scotland Neck, N.C.
Selma, N.C.
Smithfield, N.C.
Southport, N.C.
Tarboro, N.C.
Wake Forest, N.C.
Washington, N.C.
Wilson, N.C.

NON-POWER AGENCY

Concord, N.C.
Dallas, N.C.
East Carolina University
Elizabeth City State University
Enfield, N.C.
Fayetteville, N.C.
Forest City, N.C.
Fountain, N.C.
Kings Mountain, N.C.
Macclesfield, N.C.
New River Light and Power
North Carolina State University
Pinetops, N.C.
Sharpsburg, N.C.
Stantonsburg, N.C.
UNC-Chapel Hill
Windsor, N.C.
Winterville, N.C.

ASSOCIATE MEMBERS

Abbeville, S.C.
Bamberg, S.C.
Bedford, V.A.
Bennettsville, S.C.
Camden, S.C.
Clinton, S.C.
Danville, V.A.
Easley, S.C.
Front Royal, V.A.
Gaffney, S.C.
Greer, S.C.
Laurens, S.C.
Martinsville, V.A.
Newberry, S.C.
Rock Hill, S.C.
Union, S.C.
Western Carolina University
Westminster, S.C.

A BIT OF HISTORY

1965



ELECTRIC ACT OF 1965

Proposed legislation sparks the state's public power communities to form the North Carolina Municipally Owned Electric Systems Association. Three years later, the association becomes ElectriCities.

1975 & 1977



Amendments to the North Carolina Constitution help establish the Power Agencies, enabling public power communities to jointly build generation and partner with private utilities.

1976



POWER AGENCIES

North Carolina Municipal Power Agencies 1, 2 and 3 form.

1978



Power Agencies enter into agreements with Duke and CP&L to purchase power plant ownership shares.

1979



\$\$\$

Three Mile Island nuclear accident prompts regulations that lead to significantly higher-than-projected prices for nuclear energy. Ownership costs skyrocket for Catawba Nuclear Station in the west and Shearon Harris Nuclear Power Plant in the east.

1981



NCMPA2 and NCMPA3 combine to form North Carolina Eastern Municipal Power Agency (NCEMPA).

1984



- ElectriCities is incorporated.
- Emergency Assistance Program begins, creating a way for members to assist each other in emergencies.

RECENT HISTORY

1990s



Federal Power Act provides opportunities for NCMAPA1 and NCEMPA to reduce wholesale power supply costs.

2015



THE POWER AGENCIES

NCEMPA

North Carolina Eastern Municipal Power Agency
(NCEMPA) = 32 cities and towns in eastern NC



RESOURCE MIX



41%
NUCLEAR



31%
NATURAL GAS
& OIL



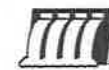
16%
COAL



6%
PURCHASED



5.7%
RENEWABLE



.3%
HYDRO

NCMPA1

North Carolina Municipal Power Agency Number 1
(NCMPA1) = 19 cities and towns in piedmont & western NC



RESOURCE MIX



90%
NUCLEAR



4%
NATURAL GAS
& OIL



5%
RENEWABLE



1%
HYDRO

North Carolina Municipal Power Agency 1 (NCMPA1) – Catawba Nuclear Station

- 859 MW (75 percent) ownership in Catawba Nuclear Station Unit 2
- Located in York County, SC
- Operated by Duke Energy



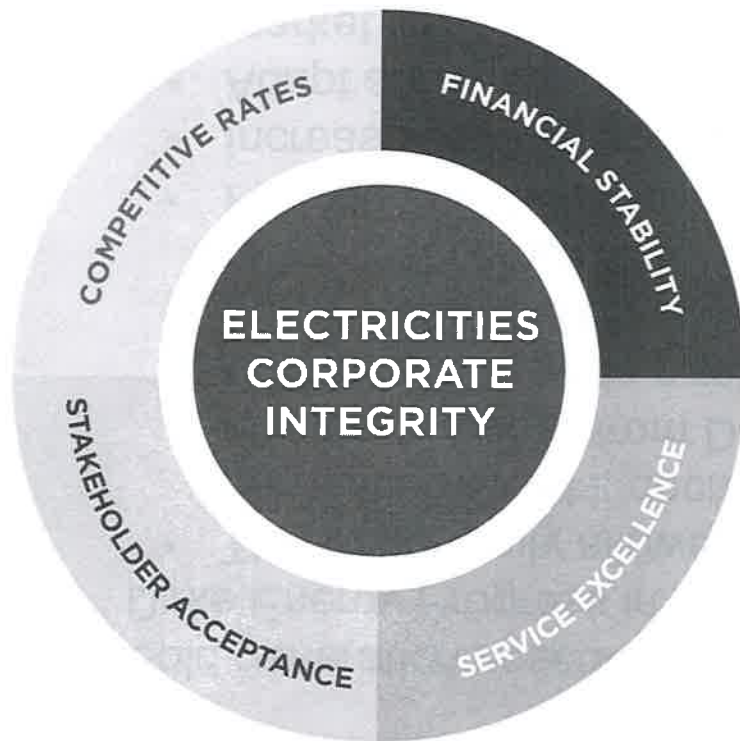
North Carolina Eastern Municipal Power Agency (NCEMPA)

- Sold generation assets (ownership in 4 power plants) to Duke Energy Progress in 2015
 - This opportunity allowed NCEMPA to sell power generation assets, decrease debt and purchase wholesale power from Duke Energy Progress
 - Continue to provide a reliable power supply
 - Lower rates and become more cost competitive
 - Provide long-term economic benefits
 - Increase stability and reduce risk
 - Adapt and respond to changing market conditions

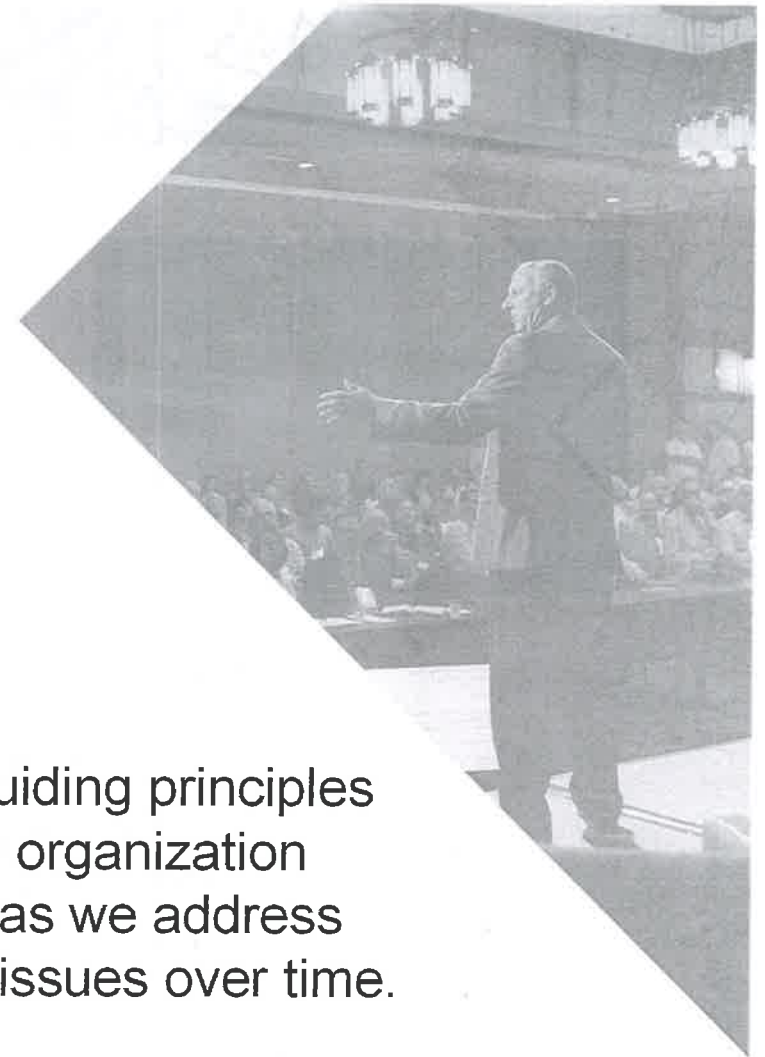


STRATEGIC PLAN

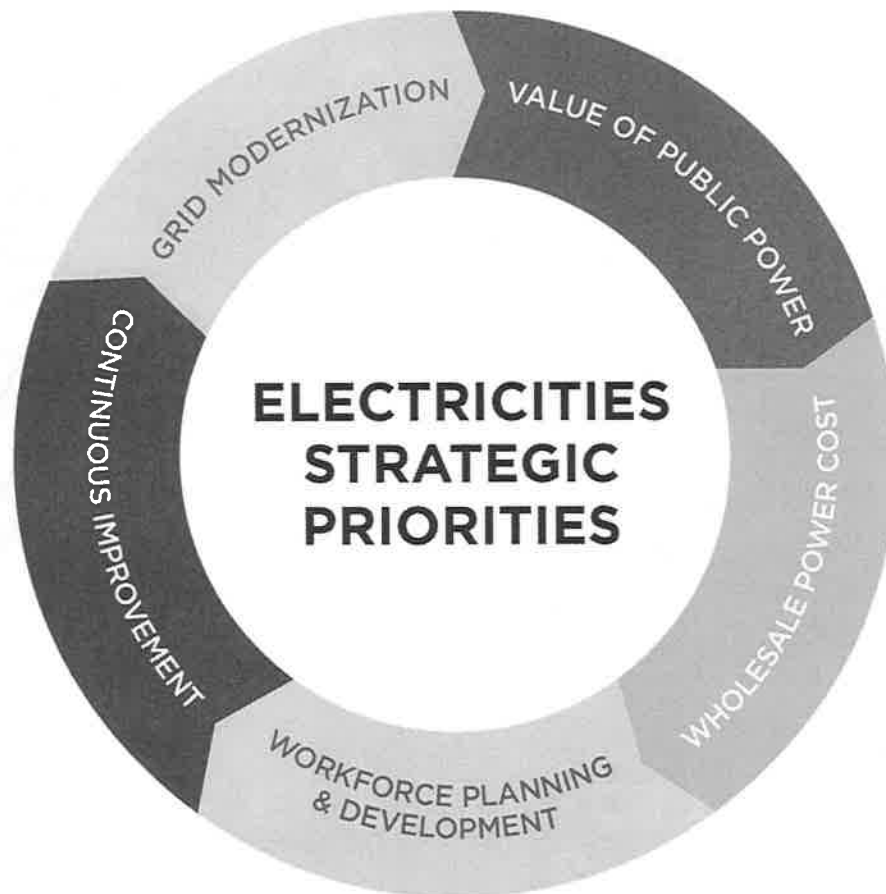
Guiding Principles



These guiding principles keep the organization focused as we address industry issues over time.



STRATEGIC PRIORITIES



Communicate the value of electric system ownership to key stakeholders

Provide competitive and stable wholesale electric rates that meet the power supply needs of Power Agency members

Promote a workforce plan to attract, develop, and retain the necessary human talent to provide safe, reliable power and lead public power forward

Constantly review and enhance all aspects of public power; focus on cost reduction and increased efficiencies in current and future operations

Promote investment in public power communities' electric distribution systems and in technology to ensure safety and reliability, and exceed customer expectations



ELECTRICITIES

of NORTH CAROLINA, INC.

The energy behind public power

www.electricities.com

STAY CONNECTED



@ncpublicpower



@Electricities



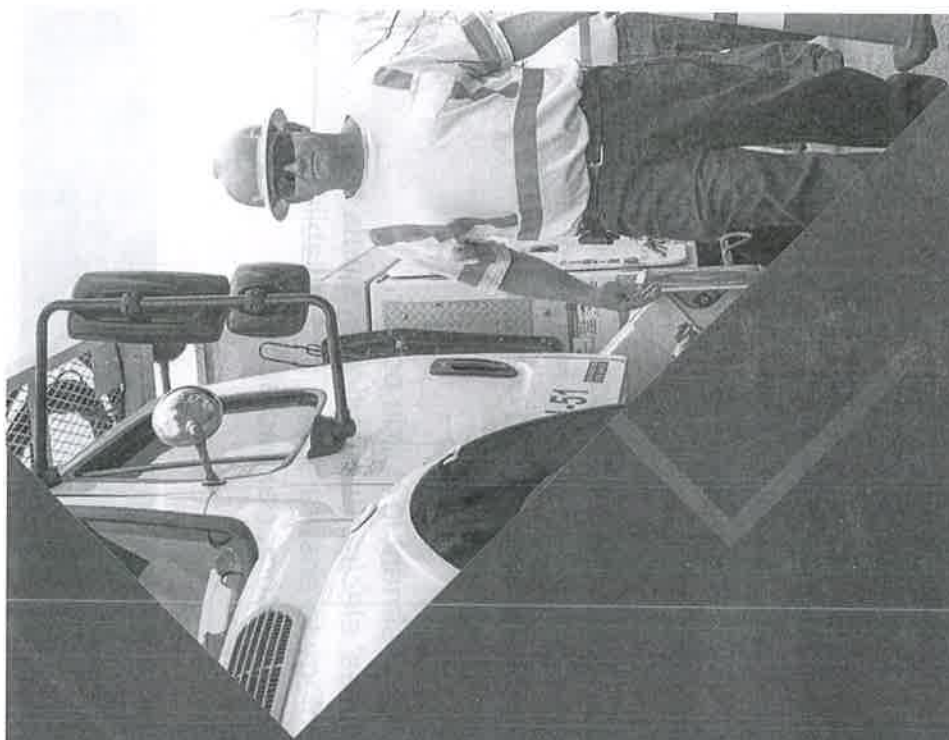
@ElectricitiesNC



Electricities of NC



NC Public Power Channel



NC Electric Cooperatives

March 19, 2019

S. Lee Ragsdale, Jr., PE
Senior VP, Grid Infrastructure & Compliance



POWERING EVERYDAY LIFE FOR 2.5 MILLION

24%

of the population

45%

of the land mass



10.1 CONSUMERS
PER MILE OF
POWER LINE

versus an average of 22.9 on investor-owned lines,
and 44.3 on municipal lines

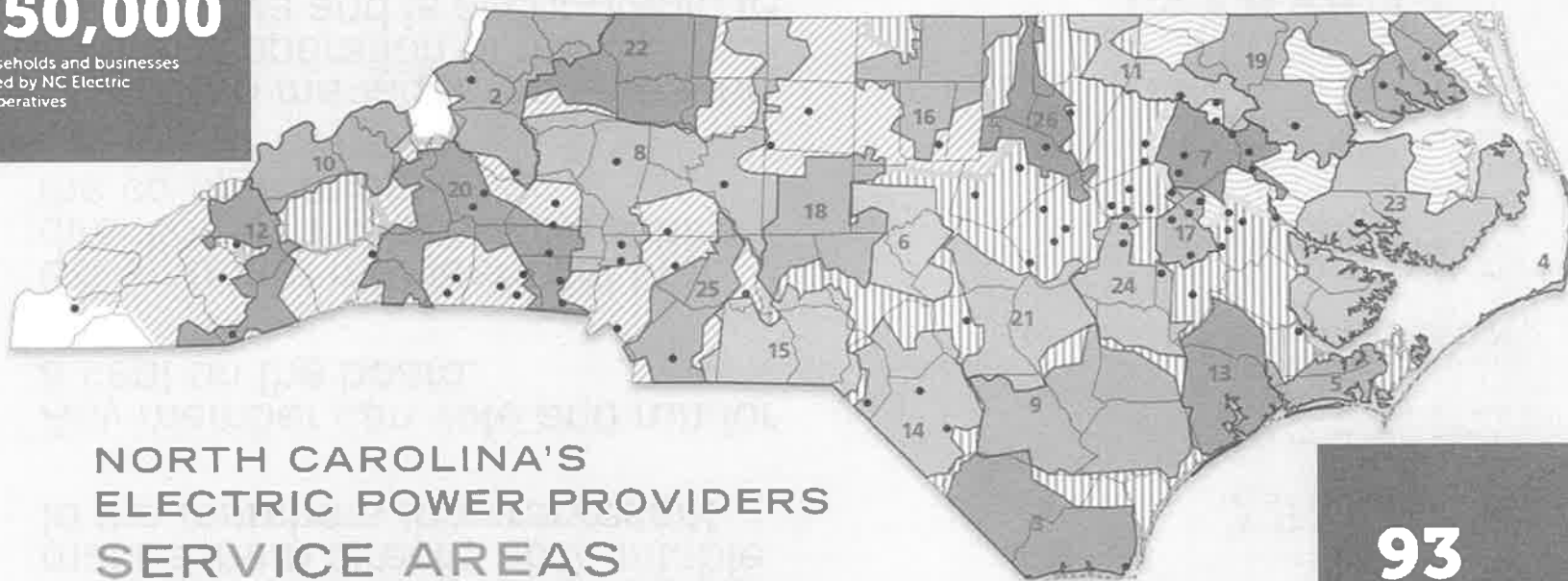
 **NC Electric Cooperatives**

Your Touchstone Energy® Cooperative 

NC Electric Co-op Territory

950,000

Households and businesses
served by NC Electric
Cooperatives



NORTH CAROLINA'S
ELECTRIC POWER PROVIDERS
SERVICE AREAS

26

Member owned
not-for profit
cooperatives

93

Counties we work in and around the state
of North Carolina

Local Accountability

- Board members are elected by the members of the co-op, which makes them directly accountable to the members they represent.
- Any member can vote and run for a seat on the board.
- Co-op board members set the direction of a cooperative & hire the co-op manager
- The co-op manager manages the staff and operation of the cooperative and is accountable to the board

SEVEN COOPERATIVE PRINCIPLES

VOLUNTARY
& OPEN MEMBERSHIP

DEMOCRATIC
MEMBER CONTROL

MEMBERS' ECONOMIC
PARTICIPATION

AUTONOMY
& INDEPENDENCE

EDUCATION
TRAINING & INFORMATION

COOPERATION
AMONG COOPERATIVES

CONCERN FOR
COMMUNITY

Sample Electric Cooperative Board

Halifax EMC



Morell Jones
District 1



Basil Williams
District 2



Barbara Brayboy
District 3



Leon Williams
District 4



Robert F. Harris
District 5



Stan Brothers
District 6



Robin Williams
District 7



Beverly Walker
District 8



Robert Edwards
District 8



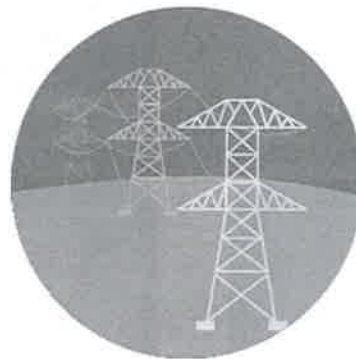
Charles Guerry
Executive Vice President and General Manager

A **Brighter** Energy Future

For electric cooperatives and the people and communities they serve.



Low Carbon



Grid Flexibility



**Beneficial
Electrification**

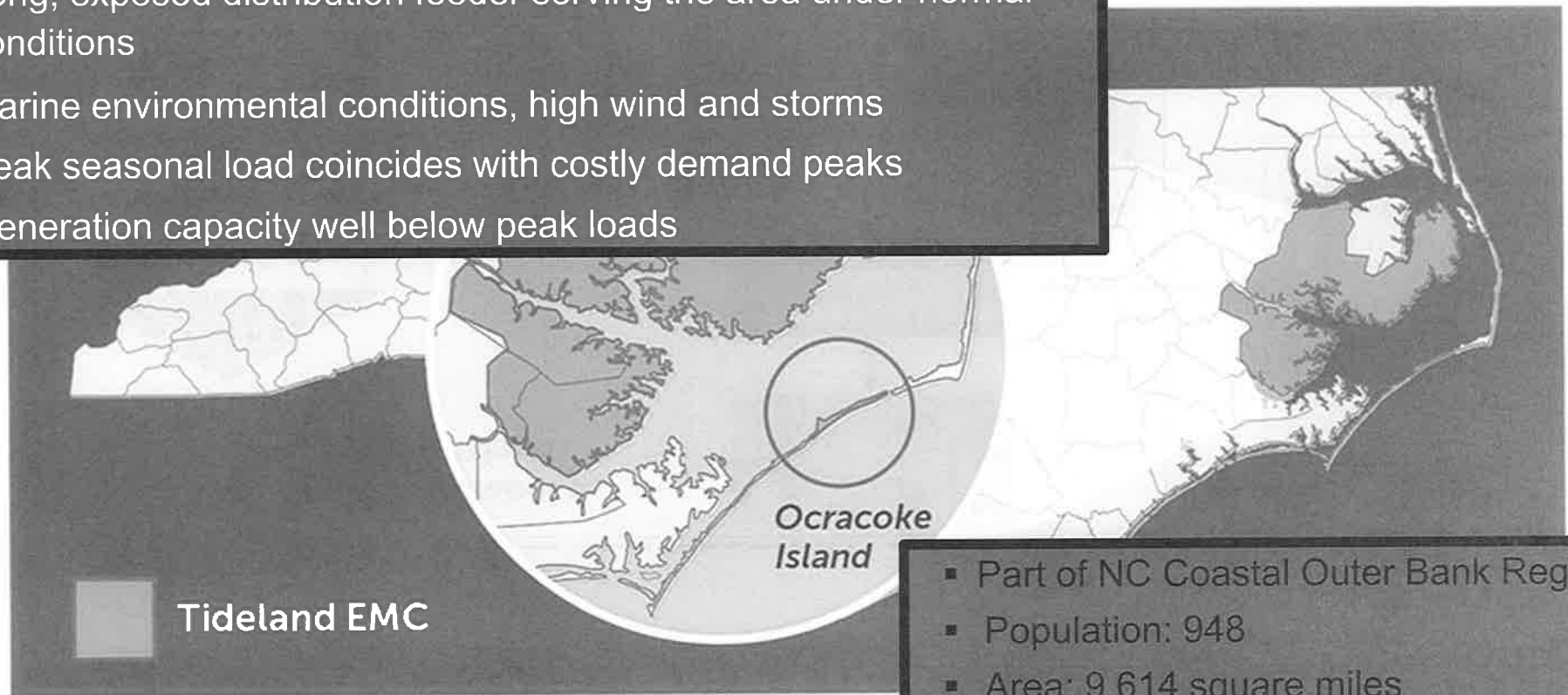
Pilots and Programs



Microgrids. Macro-Benefits.

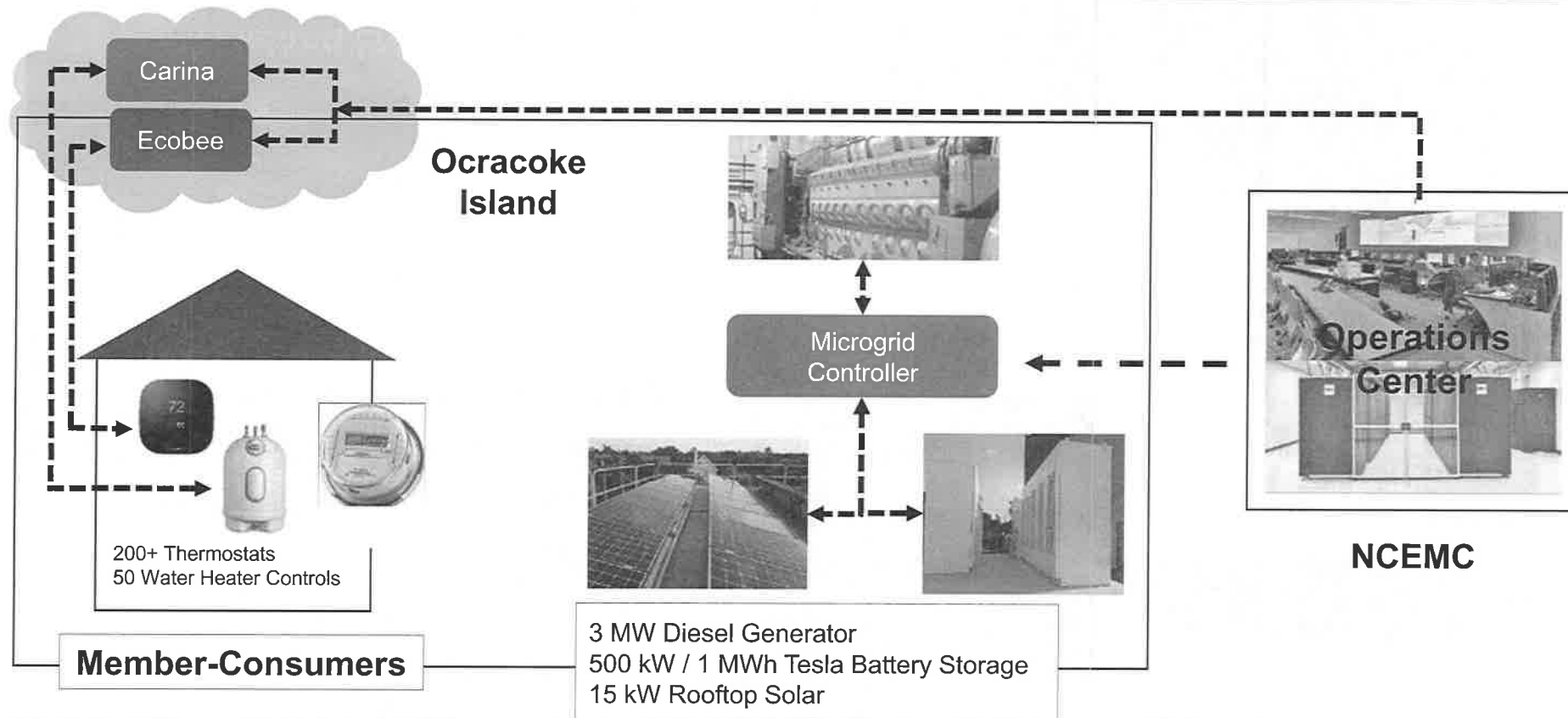
NCEMC System Microgrid Project

- Long, exposed distribution feeder serving the area under normal conditions
- Marine environmental conditions, high wind and storms
- Peak seasonal load coincides with costly demand peaks
- Generation capacity well below peak loads



- Part of NC Coastal Outer Bank Region
- Population: 948
- Area: 9.614 square miles

NCEMC System Microgrid



NCEMC Consumer Microgrid Project



Video: Butler Farms Agricultural Microgrid -
<https://youtu.be/psMLOWmSFm8>

Butler Farms Microgrid Components

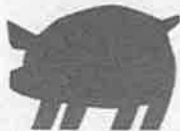
Resources owned by the farm:



20kW solar
panels



100kW
diesel
generator



185kW
biogas
generator

NCEMC-owned:



250kW/735kWh
battery system



Controller to
integrate and manage
all components





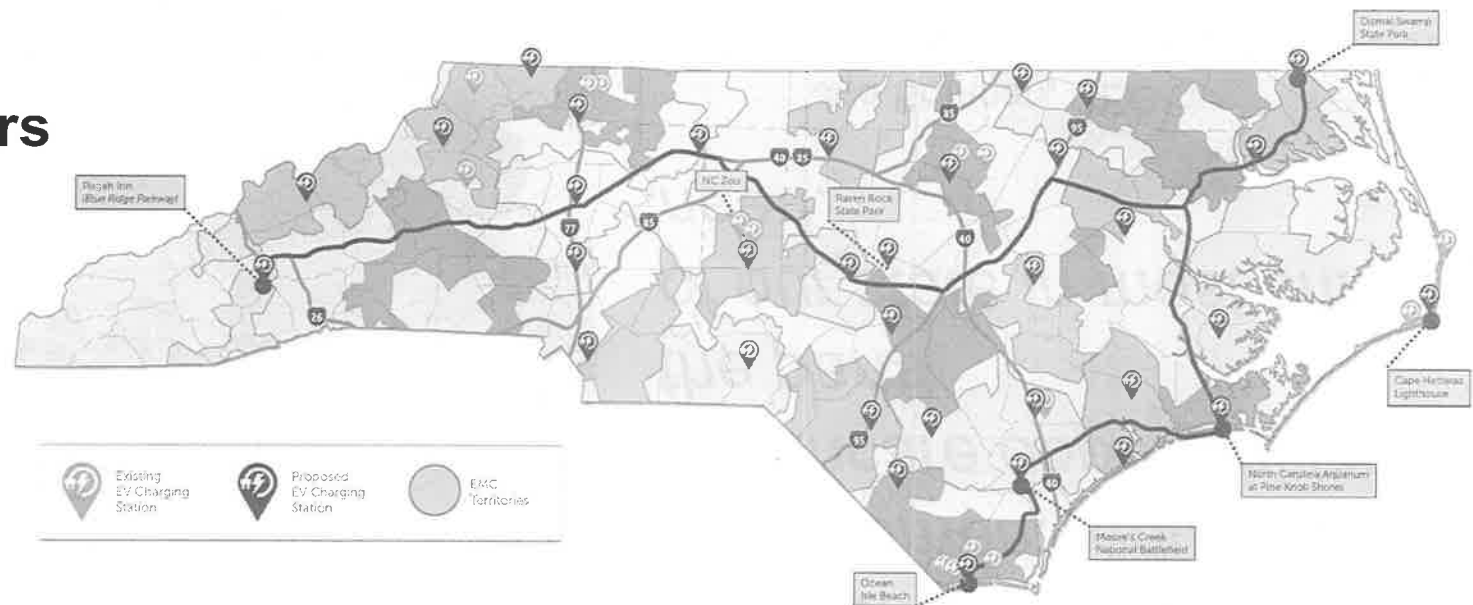
Technology is an Enabler

"Broadband technologies could bring economic development, education and healthcare opportunities to the parts of our state in most critical need."

Joe Brannan, CEO
North Carolina's Electric Cooperatives

Rural EV Charging Network

Level 2 and DC Fast Chargers




- Charging patterns
- Demographics

- Infrastructure impacts
- Impacts of different rate/billing structures



NC Electric
Cooperatives

Your Touchstone Energy® Cooperatives 

Committee Sergeants at Arms

NAME OF COMMITTEE House Committee on Energy & Public Utilities

DATE: 3/19/2019 Room: 643 LOB

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: _____

SPEAKER REGISTRATION SHEET

House Committee on Energy and Public Utilities 3/19/2019
Name of Committee Date

SPEAKERS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

[illegible]

VISITOR REGISTRATION SHEET

House Committee on Energy & Public Utilities

3/19/2019

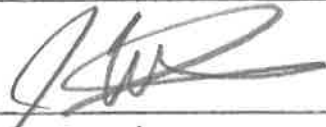
Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

	MWC
Michelle Frazier	NP
Tyler Ford	MWC
Elizabeth Oniz	SE Energy News
Susan	Duke Energy
Kara Winkler	Smith Anderson
Ruthy La	King In Law
Betsy McCorkle	KGANC
SCOTT LASTER	KGANC
PRESTON HENDON	NCMA
J. White	API

VISITOR REGISTRATION SHEET

House Committee on Energy & Public Utilities

3/19/2019

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jacques Jones	JSC
Tonya Horton	JSR
Ryan Miller	NCSRA PO BOX 868 Raleigh, NC 27602
Brady Allen	NCTCC
Dwight Allen	Allen Law PLLC
Dianna Downer	PSNCUC
Chris Ayers	PSNCUC
Patricia Bufflin	NCUC
Samuelson	NCUC
Greg Andeck	Audekon
Cassie Garvin	Siena Club

VISITOR REGISTRATION SHEET

House Committee on Energy & Public Utilities

3/19/2019

Name of Committee

Date _____

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME _____

FIRM OR AGENCY AND ADDRESS

Mary Maureen Asbill

SELL

Brooks Rainey Pearson

SELC

TOM DEAN

EDF, NCSEN

Henry M Lancaster^B

2CA

Rory McIlmoil

Appalachian Voices

Math Watson

Agalchen Varas

VISITOR REGISTRATION SHEET

House Committee on Energy & Public Utilities

3/19/2019

Name of Committee

Date _____

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME _____

FIRM OR AGENCY AND ADDRESS

Kathy Kingery

DP

Y. D. [unclear]

CS

House Committee on Energy and Public Utilities
Tuesday, March 26, 2019 at 3:00 p.m.
Room 643

MINUTES

The House Committee on Energy and Public Utilities met at 3:00 pm on March 26th in Room 643 LOB. Representatives Autry, Black, Conrad, Cunningham, Dixon, Goodman, Hanig, Harrison, Hawkins, Holley, Humphrey, Jones, Montgomery, Riddell, Saine, Sauls, Strickland, Szoka, and Wray attended.

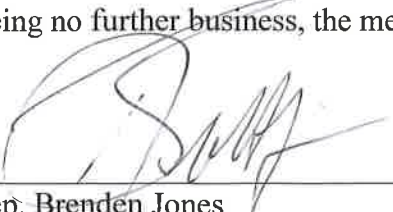
Rep. Brenden Jones, Vice Chair, presided.

House Bill 329, Exempt EV Stations/Public Utilities Regs was explained by Rep. Szoka. The committee passed the bill, with a motion by Rep. Dixon for a favorable report, with a referral to the House Committee on Rules, Calendar, and Operations.

House Bill 330, Efficient Government Buildings & Savings Act was explained by Rep. Szoka. A Proposed Committee Substitute was properly brought before the committee. Representative Saine and Representative Strickland introduced amendments to the bill. The committee passed the bill, with a motion by Rep. Harrison for a favorable report to a new PCS with Amendments rolled in, unfavorable to the original bill, with a referral to the House Committee on Rules, Calendar, and Operations.

House Bill 331, Small Hydro Amends, was explained by Rep. Szoka. A Proposed Committee Substitute was properly brought before the committee. The committee passed the bill, with a motion by Rep. Harrison for a report favorable to the PCS, unfavorable to the original, with a referral to the House Committee on Rules, Calendar, and Operations.

Being no further business, the meeting adjourned at 3:24 p.m.



Rep. Brenden Jones
Presiding



Katie Stanley, Committee Clerk

**House Committee on Energy and Public Utilities
Tuesday, March 26, 2019, 3:00 PM
643 Legislative Office Building**

AGENDA

Welcome and Opening Remarks

Rep. Brenden Jones, Vice Chair, presiding

Introduction of Pages and Sergeant-At-Arms

Bills:

HB 329	Exempt EV Stations/Public Utilities Regs.	Representative Szoka Representative Arp Representative Hanig Representative Warren
HB 330	Efficient Government Buildings & Savings Act.	Representative Szoka Representative Arp Representative Humphrey Representative Ross
HB 331	Small Hydro Amends.	Representative Szoka Representative Arp

Please find attached a Proposed Committee Substitute (PCS) for HB 330 and HB 331.

Other Business

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

H.B. 329
Mar 11, 2019
HOUSE PRINCIPAL CLERK

H

D

HOUSE BILL DRH10156-TQ-3

Short Title: Exempt EV Stations/Public Utilities Regs. (Public)
Sponsors: Representatives Szoka, Arp, Hanig, and Warren (Primary Sponsors).
Referred to:

A BILL TO BE ENTITLED
AN ACT TO EXEMPT ELECTRIC VEHICLE CHARGING STATIONS FROM
REGULATION AS PUBLIC UTILITIES.
The General Assembly of North Carolina enacts:

SECTION 1. G.S. 62-3(23) is amended by adding a new sub-subdivision to read:
"n. The term "public utility" shall not include a person who uses an electric vehicle charging station to resell electricity to the public for compensation, provided that all of the following apply:
1. The reseller has procured the electricity from an electric power supplier, as defined in G.S. 62-133.8(a)(3), that is authorized to engage in the retail sale of electricity within the territory in which the electric vehicle charging service is provided.
2. All resales are exclusively for the charging of plug-in electric vehicles, as defined in G.S. 20-4.01(28a).
3. The charging station is immobile.
4. Utility service to an electric vehicle charging station shall be provided subject to the electric power supplier's terms and conditions.
Nothing in this sub-subdivision shall be construed to limit the ability of an electric power supplier to use electric vehicle charging stations to furnish electricity for charging electric vehicles. Any increases in customer demand or energy consumption associated with transportation electrification shall not constitute found revenues for an electric public utility."

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





HOUSE BILL 329: Exempt EV Stations/Public Utilities Regs.

2019-2020 General Assembly

Committee:	House Energy and Public Utilities. If favorable, re-refer to Rules, Calendar, and Operations of the House	Date:	March 26, 2019
Introduced by:	Reps. Szoka, Arp, Hanig, Warren	Prepared by:	Chris Saunders
Analysis of:	First Edition		Committee Counsel

OVERVIEW: *House Bill 329 would amend the definition of "public utility" to provide that a person who uses an electric vehicle charging station to resell electricity to the public is not a public utility if certain conditions apply.*

CURRENT LAW: A "public utility" as defined in Chapter 62 of the General Statutes is any entity which owns and operates "equipment and facilities" that provides electricity "to or for the public for compensation." State law precludes retail electric competition and establishes regional monopolies on the sale of electricity, but there are some exceptions. The retail resale of electricity is generally prohibited, except for a narrow exception for campgrounds operated primarily to serve transient occupants, and marinas.

BILL ANALYSIS: House Bill 329 would provide that the term "public utility" does not include a person who uses an electric vehicle charging station to resell electricity to the public for compensation, provided that:

- The reseller procured the energy from an electric power supplier (a public utility, an electric membership corporation, or a municipality that sells electric power to retail electric power customers in the State) authorized to sell electricity in the territory where the service is provided.
- The resale of electricity is exclusively for charging plug-in electric vehicles.
- The charging station is immobile.
- Utility service to the charging station is provided subject to the electric power supplier's terms and conditions.

The bill would not limit an electric power supplier's ability to use electric vehicle charging stations to furnish electricity for charging electric vehicles. Increases in customer demand or energy consumption associated with transportation electrification would not constitute found revenues for an electric public utility.

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

Karen Cochrane-Brown
Director



Legislative Analysis
Division
919-733-2578

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

H.B. 330
Mar 11, 2019
HOUSE PRINCIPAL CLERK

H

D

HOUSE BILL DRH40128-TQ-2A

Short Title: Efficient Government Buildings & Savings Act.

(Public)

Sponsors: Representatives Szoka, Arp, Humphrey, and Ross (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED
AN ACT TO SAVE NORTH CAROLINA TAXPAYER DOLLARS BY REQUIRING
REDUCTIONS IN ENERGY AND WATER CONSUMPTION IN PUBLIC BUILDINGS
BY 2025.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-64.12 reads as rewritten:

**"§ 143-64.12. Authority and duties of the Department; State agencies and State institutions
of higher learning.**

(a) The Department of Environmental Quality through the State Energy Office shall develop a comprehensive program to manage energy, water, and other utility use for State agencies and State institutions of higher learning and shall update this program annually. Each State agency and State institution of higher learning shall develop and implement a management plan that is consistent with the State's comprehensive program under this subsection to manage energy, water, and other utility use, and that addresses any findings or recommendations resulting from the energy audit required by subsection (b1) of this section. The energy consumption per gross square foot for all State buildings in total shall be reduced by twenty percent (20%) by ~~2010 and 2010~~, thirty percent (30%) by ~~2015-2015~~, and forty percent (40%) by ~~2025~~ based on energy consumption for the 2002-2003 fiscal year. Each State agency and State institution of higher learning shall update its management plan ~~biennially-annually~~ and include strategies for supporting the energy consumption reduction requirements under this subsection. Each community college shall submit to the State Energy Office ~~a biennial~~ an annual written report of utility consumption and costs. Management plans submitted ~~biennially-annually~~ by State institutions of higher learning shall include all of the following:

...

(j) The State Energy Office shall submit a report by December 1 of every ~~odd-numbered~~ year to the Joint Legislative Energy Policy Commission, the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources, and the Fiscal Research Division describing the comprehensive program to manage energy, water, and other utility use for State agencies and State institutions of higher learning required by subsection (a) of this section. The report shall also contain the following:

- (1) A comprehensive overview of how State agencies and State institutions of higher learning are managing energy, water, and other utility use and achieving efficiency gains.
- (2) Any new measures that could be taken by State agencies and State institutions of higher learning to achieve greater efficiency gains, including any changes in general law that might be needed.



- 1 (3) A summary of the State agency and State institutions of higher learning
2 management plans required by subsection (a) of this section and the energy
3 audits required by subsection (b1) of this section.
- 4 (4) A list of the State agencies and State institutions of higher learning that did
5 and did not submit management plans required by subsection (a) of this
6 section and a list of the State agencies and State institutions of higher learning
7 that received an energy audit.
- 8 (5) Any recommendations on how management plans can be better managed and
9 implemented."

10 **SECTION 2.** G.S. 143-64.17 reads as rewritten:

11 **"§ 143-64.17. Definitions.**

12 As used in this Part:

- 13 (1) "Energy conservation measure" means a facility or meter alteration, training,
14 or services related to the operation of the facility or meter, when the alteration,
15 training, or services provide anticipated energy savings or ~~capture lost~~
16 generate revenue. Energy conservation measure includes any of the following:
- 17 a. Insulation of the building structure and systems within the
18 building-building, including proper air and duct sealing of all
19 applicable areas in the building.
- 20 b. Storm windows or doors, caulking, weatherstripping, multiglazed
21 windows or doors, heat-absorbing or heat-reflective glazed or coated
22 window or door systems, additional glazing, reductions in glass area,
23 or other window or door system modifications that reduce energy
24 consumption.
- 25 c. Automatic energy control systems.
- 26 d. Heating, ventilating, or air-conditioning system modifications or
27 replacements.
- 28 e. Replacement or modification of lighting fixtures to increase the energy
29 efficiency of a lighting system without increasing the overall
30 illumination of a facility, unless an increase in illumination is
31 necessary to conform to the applicable State or local building code or
32 is required by the light system after the proposed modifications are
33 made.
- 34 f. Energy recovery systems.
- 35 g. Cogeneration systems that produce steam or forms of energy such as
36 heat, as well as electricity, for use primarily within a building or
37 complex of buildings.
- 38 h. Repealed by Session Laws 2006-190, s. 2, effective August 3, 2006,
39 and applicable to contracts entered into or renewed on or after that
40 date.
- 41 i. Faucets with automatic or metered shut-off valves, leak detection
42 equipment, water meters, water recycling equipment, and wastewater
43 recovery systems.
- 44 j. Other energy conservation measures that conserve energy, water, or
45 other utilities.
- 46 k. Building analytics systems that allow for advanced software utilizing
47 statistical modeling and machine learning, whether supervised or
48 unsupervised, to establish data-driven benchmarks, predict future
49 energy performance, and find additional energy savings opportunities.
- 50 (2) "Energy savings" means a measured reduction in fuel costs, energy costs,
51 water costs, stormwater fees, other utility costs, or operating costs, including

environmental discharge fees, water and sewer maintenance fees, and increased meter accuracy, created from the implementation of one or more energy conservation measures when compared with an established baseline of previous costs, including ~~captured lost generated~~ revenues, developed by the governmental unit.

...."

SECTION 3. G.S. 143-135.37 reads as rewritten:

"§ 143-135.37. Energy and water use standards for public major facility construction and renovation projects; verification and reporting of energy and water use.

...

(b) Energy-Efficiency Standard. – For every major facility construction project of a public agency, the building shall be designed and constructed so that the calculated energy consumption is at least ~~thirty percent (30%)~~ forty percent (40%) less than the energy consumption for the same building as calculated using the energy-efficiency standard in ASHRAE 90.1-2004. For every major facility renovation project of a public agency, the renovated building shall be designed and constructed so that the calculated energy consumption is at least ~~twenty percent (20%)~~ thirty percent (30%) less than the energy consumption for the same renovated building as calculated using the energy-efficiency standard in ASHRAE 90.1-2004. For the purposes of this subsection, any exception or special standard for a specific type of building found in ASHRAE 90.1-2004 is included in the ASHRAE 90.1-2004 standard.

(c) Indoor Potable Water Use Standard. – For every major facility construction or renovation project of a public agency, the water system shall be designed and constructed so that the calculated indoor potable water use is at least ~~twenty percent (20%)~~ thirty percent (30%) less than the indoor potable water use for the same building as calculated using the fixture performance requirements related to plumbing under the 2006 North Carolina State Building Code.

...."

SECTION 4.(a) Each State agency and State institution of higher learning shall, no later than May 31, 2020, conduct a preliminary practicality and economic feasibility analysis of implementing energy conservation measures for all buildings greater than 20,000 square feet in size and that have been in use for more than 10 years. Energy conservation measures are deemed to be economically feasible if the resulting energy savings will cover the cost of implementing the measures within 10 years. Each State agency and State institution of higher learning shall submit its findings to the State Energy Office. If the agency or institution of higher learning determines that it is not practical or economically feasible to implement energy conservation measures, the agency or institution of higher learning shall include findings of fact supporting that determination in the findings it submits to the State Energy Office. If the State agency or State institution of higher learning determines that it is practical and economically feasible to implement energy conservation measures, the agency or institution of higher learning shall do so. The energy conservation measures may be achieved by issuing a request for proposal for a guaranteed energy savings contract for all covered buildings owned by the agency or institution of higher learning. If the agency or institution of higher learning issues a request for proposal for a guaranteed energy savings contract for one or more buildings, the agency or institution of higher learning shall issue the request for proposal no later than December 31, 2020. The agency or institution of higher learning shall follow the process provided in Part 2 of Article 3B of Chapter 143 of the General Statutes. The definitions provided in G.S. 143-64.17 shall apply for purposes of this section.

SECTION 4.(b) No later than May 31, 2025, each State agency and State institution of higher learning shall repeat the process set forth in subsection (a) of this section for all buildings greater than 10,000 square feet in size and that have been in use for more than 10 years. If the agency or institution of higher learning issues a request for proposal for a guaranteed energy

1 savings contract for one or more buildings, the agency or institution of higher learning shall issue
2 the request for proposal no later than December 31, 2025.

3 **SECTION 4.(c)** This section shall not apply to any building for which a practicality
4 and economic feasibility analysis of implementing energy conservation measures has been
5 conducted within three years prior to the effective date of this section.

6 **SECTION 4.(d)** This section is effective when it becomes law. This section shall
7 not be interpreted to prohibit any State agency or State institution of higher learning from issuing
8 any request for proposal for a guaranteed energy savings contract.

9 **SECTION 5.** Sections 4.2.(a) and 4.2.(b) of S.L. 2017-10 are repealed.

10 **SECTION 6.** Except as otherwise provided, this act is effective when it becomes
11 law.



HOUSE BILL 330: Efficient Government Buildings & Savings Act.

2019-2020 General Assembly

Committee:	House Energy and Public Utilities. If favorable, re-refer to Rules, Calendar, and Operations of the House	Date:	March 26, 2019
Introduced by:	Reps. Szoka, Arp, Humphrey, Ross	Prepared by:	Chris Saunders
Analysis of:	PCS to First Edition H330-CSTQ-2		Committee Counsel

OVERVIEW: *The Proposed Committee Substitute (PCS) for House Bill 330 would:*

- *Increase energy conservation requirements for all State buildings.*
- *Eliminate the requirement for the Department of Administration to conduct energy audits every five years.*
- *Increase energy efficiency standards for major facility construction projects and renovations by State agencies.*
- *Require a practicality and economic feasibility analysis for implementing energy conservation measures in certain State buildings.*

The PCS makes the following changes from the first edition of the bill:

- *Maintains the current frequency for State agencies to update management plans for energy, water, and other utility use.*
- *Eliminates the reinstatement of an annual Department of Administration report on the Sustainable Energy-Efficient Buildings Program.*
- *Amends the definitions of "energy conservation measure" and "energy savings" to allow consideration of generated revenues, and adjusts deadlines for the practicality and economic feasibility analysis for certain State buildings.*

CURRENT LAW:

The State Energy Office Comprehensive Program.

The Department of Environmental Quality through the State Energy Office (SEO) administers a comprehensive program to manage energy, water, and other utility use for State agencies and State institutions of higher learning. State agencies and institutions of higher learning are required to have an energy, water, and utility use management plan that is updated biennially. All State buildings must have cumulatively reduced their total gross energy consumption by twenty percent (20%) by 2010 and thirty percent (30%) by 2015. The SEO must submit a report describing the energy management program by December 1 each odd-numbered year to the Joint Legislative Energy Policy Commission, the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources, and the Fiscal Research Division.

Karen Cochrane-Brown
Director



Legislative Analysis
Division
919-733-2578

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

House PCS 330

Page 2

The Sustainable Energy Efficient Buildings Program.

The Department of Administration administers the Sustainable Energy Efficient Buildings Program applicable to any new construction or major renovation project by a public agency of a building larger than 20,000 gross square feet. For these projects, energy consumption must be reduced, based on a nationally accepted engineering standard, at least thirty percent (30%) for new construction and twenty percent (20%) for major renovation. Indoor potable water uses must be reduced by twenty percent (20%) for both new construction and major renovation projects of buildings larger than 20,000 gross square feet.

BILL ANALYSIS:

Section 1 of the PCS would require an additional 10% reduction in the gross energy consumption for all State buildings in total by 2025. It would also change from biennially to annually the frequency of reports of utility consumption and costs submitted by each community college to the SEO.

Section 2 would expand the definition of "energy conservation measure" to include building analytics systems that are capable of establishing data-driven benchmarks, predicting future energy performance, and finding additional energy savings opportunities. It would also amend the definitions of "energy conservation measure" and "energy savings" to allow generated revenue to be considered.

Section 3 would require an additional 10% savings in energy consumption and potable water usage for new construction and major renovation projects by public agencies involving buildings greater than 20,000 square feet. This section would apply to major facility construction and renovation projects that have not entered the schematic design phase prior to the effective date of the act.

Section 4 would do all of the following:

- For all State buildings greater than 20,000 square feet that have been in use more than 10 years, require each State agency and institution of higher learning to complete, by October 1, 2020, a practicality and economic feasibility analysis of implementing energy conservation measures and submit those findings to the SEO.
- For all State buildings greater than 10,000 square feet that have been in use more than 10 years, require each State agency and institution of higher learning to complete, by October 1, 2025, a practicality and economic feasibility analysis of implementing energy conservation measures and submit those findings to the SEO.
- Require the State agency or institution of higher learning to implement any energy conservation measures it finds practically and economically feasible and to support, through findings of fact, its determination that implementation of energy conservation measures are not practically and economically feasible.
- Exempt from the feasibility study any buildings for which a practicality and economic feasibility analysis has been conducted within three years of the effective date of this act.

EFFECTIVE DATE: Except as otherwise provided, this act would become effective when it became law.

Nick Giddings and Billy Godwin, counsel to House State and Local Government, substantially contributed to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

H

D

HOUSE BILL 330
PROPOSED COMMITTEE SUBSTITUTE H330-CSTQ-2 [v.4]

03/25/2019 02:22:59 PM

Short Title: Efficient Government Buildings & Savings Act.

(Public)

Sponsors:

Referred to:

March 12, 2019

1 A BILL TO BE ENTITLED
2 AN ACT TO SAVE NORTH CAROLINA TAXPAYER DOLLARS BY REQUIRING
3 REDUCTIONS IN ENERGY AND WATER CONSUMPTION IN PUBLIC BUILDINGS
4 BY 2025.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 143-64.12 reads as rewritten:

7 "§ 143-64.12. Authority and duties of the Department; State agencies and State institutions
8 of higher learning.

9 (a) The Department of Environmental Quality through the State Energy Office shall
10 develop a comprehensive program to manage energy, water, and other utility use for State
11 agencies and State institutions of higher learning and shall update this program annually. Each
12 State agency and State institution of higher learning shall develop and implement a management
13 plan that is consistent with the State's comprehensive program under this subsection to manage
14 energy, water, and other utility use, and that addresses any findings or recommendations resulting
15 from the energy audit required by subsection (b1) of this section. The energy consumption
16 per gross square foot for all State buildings in total shall be reduced by twenty percent (20%) by
17 2010 and 2010, thirty percent (30%) by 2015-2015, and forty percent (40%) by 2025 based on
18 energy consumption for the 2002-2003 fiscal year. Each State agency and State institution of
19 higher learning shall update its management plan biennially and include strategies for supporting
20 the energy consumption reduction requirements under this subsection. Each community college
21 shall submit to the State Energy Office a biennial an annual written report of utility consumption
22 and costs. Management plans submitted biennially by State institutions of higher learning shall
23 include all of the following:

24 ...
25 (b1) ~~The Department of Administration, as part of the Facilities Condition and Assessment~~
26 ~~Program, shall identify and recommend energy conservation maintenance and operating~~
27 ~~procedures that are designed to reduce energy consumption within the facility of a State agency~~
28 ~~or a State institution of higher learning and that require no significant expenditure of funds. Every~~
29 ~~State agency or State institution of higher learning shall implement these recommendations.~~
30 ~~Where energy management equipment is proposed for any facility of a State agency or of a State~~
31 ~~institution of higher learning, the maximum interchangeability and compatibility of equipment~~
32 ~~components shall be required. As part of the Facilities Condition and Assessment Program under~~
33 ~~this section, the Department of Administration, in consultation with the State Energy Office, shall~~
34 ~~develop an energy audit and a procedure for conducting energy audits. Every five years the~~
35 ~~Department shall conduct an energy audit for each State agency or State institution of higher~~



* H 3 3 0 - C S T Q - 2 *

learning, and the energy audits conducted shall serve as a preliminary energy survey. The State Energy Office shall be responsible for system level detailed surveys.

(b2) The Department of Administration shall submit a report of the energy audit required by subsection (b1) of this section to the affected State agency or State institution of higher learning and to the State Energy Office. The State Energy Office shall review each audit and, in consultation with the affected State agency or State institution of higher learning, incorporate the audit findings and recommendations into the management plan required by subsection (a) of this section.

...."

SECTION 2. G.S. 143-64.17 reads as rewritten:

"§ 143-64.17. Definitions.

As used in this Part:

- (1) "Energy conservation measure" means a facility or meter alteration, training, or services related to the operation of the facility or meter, when the alteration, training, or services provide anticipated energy ~~savings~~ savings, generate revenue, or capture lost revenue. Energy conservation measure includes any of the following:
 - a. Insulation of the building structure and systems within the building-building, including proper building envelope and duct sealing of all applicable areas in the building.
 - b. Storm windows or doors, caulking, weatherstripping, multiglazed windows or doors, heat-absorbing or heat-reflective glazed or coated window or door systems, additional glazing, reductions in glass area, or other window or door system modifications that reduce energy consumption.
 - c. Automatic energy control systems.
 - d. Heating, ventilating, or air-conditioning system modifications or replacements.
 - e. Replacement or modification of lighting fixtures to increase the energy efficiency of a lighting system without increasing the overall illumination of a facility, unless an increase in illumination is necessary to conform to the applicable State or local building code or is required by the light system after the proposed modifications are made.
 - f. Energy recovery systems.
 - g. Cogeneration systems that produce steam or forms of energy such as heat, as well as electricity, for use primarily within a building or complex of buildings.
 - h. Repealed by Session Laws 2006-190, s. 2, effective August 3, 2006, and applicable to contracts entered into or renewed on or after that date.
 - i. Faucets with automatic or metered shut-off valves, leak detection equipment, water meters, water recycling equipment, and wastewater recovery systems.
 - j. Other energy conservation measures that conserve energy, water, or other utilities.
 - k. Building analytics systems that allow for advanced software utilizing statistical modeling and machine learning, whether supervised or unsupervised, to establish data-driven benchmarks, predict future energy performance, and find additional energy savings opportunities.

- (2) "Energy savings" means a measured reduction in fuel costs, energy costs, water costs, stormwater fees, other utility costs, or operating costs, including environmental discharge fees, water and sewer maintenance fees, and increased meter accuracy, created from the implementation of one or more energy conservation measures when compared with an established baseline of previous costs, including captured lost revenues or generated revenues, developed by the governmental unit.

...."

SECTION 3. G.S. 143-135.37 reads as rewritten:

"§ 143-135.37. Energy and water use standards for public major facility construction and renovation projects; verification and reporting of energy and water use.

...

(b) Energy-Efficiency Standard. – For every major facility construction project of a public agency, the building shall be designed and constructed so that the calculated energy consumption is at least ~~thirty percent (30%)~~ forty percent (40%) less than the energy consumption for the same building as calculated using the energy-efficiency standard in ASHRAE 90.1-2004. For every major facility renovation project of a public agency, the renovated building shall be designed and constructed so that the calculated energy consumption is at least ~~twenty percent (20%)~~ thirty percent (30%) less than the energy consumption for the same renovated building as calculated using the energy-efficiency standard in ASHRAE 90.1-2004. For the purposes of this subsection, any exception or special standard for a specific type of building found in ASHRAE 90.1-2004 is included in the ASHRAE 90.1-2004 standard.

(c) Indoor Potable Water Use Standard. – For every major facility construction or renovation project of a public agency, the water system shall be designed and constructed so that the calculated indoor potable water use is at least ~~twenty percent (20%)~~ thirty percent (30%) less than the indoor potable water use for the same building as calculated using the fixture performance requirements related to plumbing under the 2006 North Carolina State Building Code.

...."

SECTION 4.(a) Each State agency and State institution of higher learning shall, no later than October 1, 2020, conduct a preliminary practicality and economic feasibility analysis of implementing energy conservation measures for all buildings greater than 20,000 square feet in size and that have been in use for more than 10 years. Energy conservation measures are deemed to be economically feasible if the resulting energy savings will cover the cost of implementing the measures within 10 years. Each State agency and State institution of higher learning shall submit its findings to the State Energy Office. If the agency or institution of higher learning determines that it is not practical or economically feasible to implement energy conservation measures, the agency or institution of higher learning shall include findings of fact supporting that determination in the findings it submits to the State Energy Office. If the State agency or State institution of higher learning determines that it is practical and economically feasible to implement energy conservation measures, the agency or institution of higher learning shall do so. The energy conservation measures may be achieved by issuing a request for proposal for a guaranteed energy savings contract for all covered buildings owned by the agency or institution of higher learning. If the agency or institution of higher learning issues a request for proposal for a guaranteed energy savings contract for one or more buildings, the agency or institution of higher learning shall issue the request for proposal no later than April 1, 2021. The agency or institution of higher learning shall follow the process provided in Part 2 of Article 3B of Chapter 143 of the General Statutes. The definitions provided in G.S. 143-64.17 shall apply for purposes of this section.

SECTION 4.(b) No later than October 1, 2025, each State agency and State institution of higher learning shall repeat the process set forth in subsection (a) of this section for

1 all buildings greater than 10,000 square feet in size and that have been in use for more than 10
2 years. If the agency or institution of higher learning issues a request for proposal for a guaranteed
3 energy savings contract for one or more buildings, the agency or institution of higher learning
4 shall issue the request for proposal no later than April 1, 2026.

5 **SECTION 4.(c)** This section shall not apply to any building for which a practicality
6 and economic feasibility analysis of implementing energy conservation measures has been
7 conducted within three years prior to the effective date of this section.

8 **SECTION 4.(d)** This section is effective when it becomes law. This section shall
9 not be interpreted to prohibit any State agency or State institution of higher learning from issuing
10 any request for proposal for a guaranteed energy savings contract.

11 **SECTION 5.** Except as otherwise provided, this act is effective when it becomes
12 law. Section 3 of this act applies to every major facility construction project and every major
13 facility renovation project of a public agency, as those terms are defined in G.S. 143-135.36, that
14 has not entered the schematic design phase prior to the effective date of this act.



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 330

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

H330-ATQ-6 [v.6]

Page 1 of 1

Amends Title [NO]
H330-CSTQ-2 [v.4]

Date March 26, 2019

Representative Saine

1 moves to amend the bill on page 2, lines 9 and 10, by inserting between those lines:
2

3 "SECTION 1.1 Article 3B of Chapter 143 of the General Statutes is amended by
4 adding a new section to read:

5 "§ 143-64.12A. Responsible lights out.

6 All State agencies and institutions of higher learning shall ensure that lighting in unoccupied
7 interior spaces and upward-directed flood lighting is turned off on the premises of all buildings
8 owned or leased by the State agency or institution of higher learning from midnight until 6:00
9 A.M., unless required for safety, emergency, or insurance purposes. The building manager or
10 property manager of each premises owned or leased by a State agency or institution of higher
11 learning, or an appropriate designee, shall be responsible for ensuring compliance with this
12 section.".

SIGNED

Amendment Sponsor

SIGNED

Committee Chair if Senate Committee Amendment

ADOPTED ☒

FAILED ☐

TABLED ☐



* H 3 3 0 - A T Q - 6 - V - 6 *



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 330

AMENDMENT NO. 2
(to be filled in by
Principal Clerk)

H330-ATQ-7 [v.1]

Page 1 of 1

Amends Title [NO]
H330-CSTQ-2 [v.4]

Date March 26, 2019

Representative

- 1 moves to amend the bill on page 1, lines 25 through 32, by rewriting the lines to read:
2
3 "b1) The Department of Administration, as part of the Facilities Condition and Assessment
4 Program, shall identify and recommend energy conservation maintenance and operating
5 procedures that are designed to reduce energy consumption within the facility of a State agency
6 or a State institution of higher learning and that require no significant expenditure of funds. Every
7 State agency or State institution of higher learning shall implement these recommendations.
8 Where energy management equipment is proposed for any facility of a State agency or of a State
9 institution of higher learning, the maximum interchangeability and compatibility of equipment
10 components shall be required. ~~As part of the Facilities Condition and Assessment Program~~
11 ~~under~~".
12

SIGNED Larry C. Strickland
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____



* H 3 3 0 - A T Q - 7 - V - 1 *



HOUSE BILL 329: Exempt EV Stations/Public Utilities Regs.

2019-2020 General Assembly

Committee:	House Energy and Public Utilities. If favorable, re-refer to Rules, Calendar, and Operations of the House	Date:	March 26, 2019
Introduced by:	Reps. Szoka, Arp, Hanig, Warren	Prepared by:	Chris Saunders
Analysis of:	First Edition		Committee Counsel

OVERVIEW: *House Bill 329 would amend the definition of "public utility" to provide that a person who uses an electric vehicle charging station to resell electricity to the public is not a public utility if certain conditions apply.*

CURRENT LAW: A "public utility" as defined in Chapter 62 of the General Statutes is any entity which owns and operates "equipment and facilities" that provides electricity "to or for the public for compensation." State law precludes retail electric competition and establishes regional monopolies on the sale of electricity, but there are some exceptions. The retail resale of electricity is generally prohibited, except for a narrow exception for campgrounds operated primarily to serve transient occupants, and marinas.

BILL ANALYSIS: House Bill 329 would provide that the term "public utility" does not include a person who uses an electric vehicle charging station to resell electricity to the public for compensation, provided that:

- The reseller procured the energy from an electric power supplier (a public utility, an electric membership corporation, or a municipality that sells electric power to retail electric power customers in the State) authorized to sell electricity in the territory where the service is provided.
- The resale of electricity is exclusively for charging plug-in electric vehicles.
- The charging station is immobile.
- Utility service to the charging station is provided subject to the electric power supplier's terms and conditions.

The bill would not limit an electric power supplier's ability to use electric vehicle charging stations to furnish electricity for charging electric vehicles. Increases in customer demand or energy consumption associated with transportation electrification would not constitute found revenues for an electric public utility.

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

Karen Cochrane-Brown
Director



Legislative Analysis
Division
919-733-2578

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

H.B. 331
Mar 11, 2019
HOUSE PRINCIPAL CLERK

H

D

HOUSE BILL DRH10144-RI-7

Short Title: Small Hydro Amends.

(Public)

Sponsors: Representatives Szoka and Arp (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO PROVIDE SMALL HYDROELECTRIC POWER FACILITIES CERTAIN
TREATMENT SIMILAR TO THAT GIVEN TO SMALL POWER PRODUCERS THAT
PRODUCE ENERGY FROM SWINE AND POULTRY WASTE.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 62-156(b)(3) reads as rewritten:

"(b) At least every two years, the 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:

...
(3) Availability and Reliability of Power. – The rates to be paid by electric public
utilities for 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
hydropower, if the hydroelectric power facility total capacity is equal to or
less than five megawatts (MW), or swine or poultry waste for which a need is
established consistent with G.S. 62-133.8(e) and (f)."

SECTION 1.(b) G.S. 62-133.8(i)(4) reads as rewritten:

"(i) Adoption of Rules. – The Commission shall adopt rules to implement the provisions
of this section. In developing rules, the Commission shall:

...
(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 hydroelectric power projects of two megawatts
(MW) or less, and 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."

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



* D R H 1 0 1 4 4 - R I - 7 *



HOUSE BILL 331: Small Hydro Amends.

2019-2020 General Assembly

Committee:	House Energy and Public Utilities. If favorable, re-refer to Rules, Calendar, and Operations of the House	Date:	March 26, 2019
Introduced by:	Reps. Szoka, Arp	Prepared by:	Jennifer McGinnis
Analysis of:	PCS to First Edition H331-CSRI-2		Committee Counsel

OVERVIEW: *The Proposed Committee Substitute (PCS) for H331 would extend certain treatment given to small power producers that produce energy from swine and poultry waste to certain small hydroelectric power facilities, with respect to an exemption concerning capacity payments to small power producers under standard contracts.*

CURRENT LAW/ BACKGROUND:

S.L. 2017-192 (H589) amended various laws related to energy policy, including a provision that required rates for small power producers over 1 MWⁱ to be negotiated between a small power producer and a utility for a fixed five-year term. Swine and poultry waste, small hydropower, and biogas facilities were allowed to negotiate, however, for a term beyond five years.

H589 also required that capacity payments be made only when capacity is needed by a 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, however, to swine and poultry waste for which a need is established by the State's Renewable Energy and Energy Efficiency Portfolio Standard (REPS)ⁱⁱ.

BILL ANALYSIS: The PCS for H331 would extend the exemption from the limitation established by H589 applicable to small power producers under standard contracts that capacity payments be made only when capacity is needed by a utility based on need for that resource as established by the utility's statutorily required integrated resource plan to hydropower small power producers with power purchase agreements with an electric public utility in effect as of July 27, 2017, and renewals of such power purchase agreements, if the hydroelectric small power producer's facility total capacity is equal to or less than five megawatts (along with swine and poultry waste for which a need is established by REPS).

EFFECTIVE DATE: The PCS would be effective when it becomes law.

ⁱ Or 100 kW once 100 MW of energy is purchased by a utility from such small producers.

ⁱⁱ The State's REPS, established by Senate Bill 3 in 2007, requires all investor-owned utilities in the State to supply 12.5% of 2020 retail electricity sales in the State from eligible energy resources by 2021. Eligible energy resources include solar, wind, hydropower, geothermal, or ocean current or wave energy resource; a biomass resource, including animal waste; and other resources. The overall target for renewable energy includes technology-specific targets, including targets for swine and poultry waste. Per Commission order, 0.20% from swine waste and 900,000 MWh from poultry waste is required by 2021.

Karen Cochrane-Brown
Director



Legislative Analysis
Division
919-733-2578

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

H

D

HOUSE BILL 331
PROPOSED COMMITTEE SUBSTITUTE H331-CSRI-2 [v.3]

03/25/2019 01:37:37 PM

Short Title: Small Hydro Amends.

(Public)

Sponsors:

Referred to:

March 12, 2019

A BILL TO BE ENTITLED

AN ACT TO PROVIDE SMALL HYDROELECTRIC POWER FACILITIES CERTAIN
TREATMENT SIMILAR TO THAT GIVEN TO SMALL POWER PRODUCERS THAT
PRODUCE ENERGY FROM SWINE AND POULTRY WASTE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 62-156(b)(3) reads as rewritten:

"(b) At least every two years, the 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:

...
(3) Availability and Reliability of Power. – The rates to be paid by electric public
utilities for 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~~ than
for: (i) swine or poultry waste for which a need is established consistent with
G.S. 62-133.8(e) and (f); and (ii) hydropower small power producers with
power purchase agreements with an electric public utility in effect as of July
27, 2017, and the renewal of such a power purchase agreement, if the
hydroelectric small power producer's facility total capacity is equal to or less
than five megawatts (MW)."

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



**NORTH CAROLINA GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES**

ENERGY AND PUBLIC UTILITIES COMMITTEE REPORT

**Representative Dean Arp, Co-Chair
Representative John Szoka, Co-Chair**

FAVORABLE COM SUB , UNFAVORABLE ORIGINAL BILL AND RE-REFERRED

HB 330

Efficient Government Buildings & Savings Act.

Draft Number: H330-PCS10265-TQ-2

**Serial Referral: RULES, CALENDAR, AND
OPERATIONS OF THE HOUSE**

Recommended Referral: None

Long Title Amended: No

Floor Manager: Szoka

HB 331

Small Hydro Amends.

Draft Number: H331-PCS40230-RI-2

**Serial Referral: RULES, CALENDAR, AND
OPERATIONS OF THE HOUSE**

Recommended Referral: None

Long Title Amended: No

Floor Manager: Szoka

TOTAL REPORTED: 2



* C M R 1 6 3 - V - 1 *

**NORTH CAROLINA GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES**

ENERGY AND PUBLIC UTILITIES COMMITTEE REPORT

**Representative Dean Arp, Co-Chair
Representative John Szoka, Co-Chair**

FAVORABLE AND RE-REFERRED

HB 329

Exempt EV Stations/Public Utilities Regs.

Draft Number: None

**Serial Referral: RULES, CALENDAR, AND
OPERATIONS OF THE HOUSE**

Recommended Referral: None

Long Title Amended: No

Floor Manager: Szoka

TOTAL REPORTED: 1



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

SPEAKERS

2 min

VISITOR REGISTRATION SHEET

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Katie Hall, DHA - Leg. Liaison

James McLachorn

Public Staff - NCUC

VISITOR REGISTRATION SHEET

House Committee on Energy and Public Utilities

3-26-19

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Dominic Arenas	National Audubon Society
Ben Graham	National Audubon Society
Sarah Patterson	WM
James McLawhorn	NCUC - Public Staff
Dianna Downey	NCUC - Public Staff
Justin DeBancroft	NC DOT
Ed Ingle	BP
Alex Marine	National Audubon Society
Mary Whiteacre	National Audubon Society
Catherine Alguire	Audubon N.C.
Patrick Bufflin	

VISITOR REGISTRATION SHEET

House Committee on Energy and Public Utilities

3-26-19

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME _____

FIRM OR AGENCY AND ADDRESS

tyler Ford

MWC

Henry M Lancaster

LCHA

Tom BEAN

EDF, NCSEA, NCWF

Came Gavin

Sierra Club

ml cat

MP C

Will Scott

NE Conservation Network

VISITOR REGISTRATION SHEET

House Committee on Energy and Public Utilities

3-26-19

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Elizabeth Outts	SE Energy News
Alfred Winkler	NCCN
Mary Maule Asbill	SEU
Greg Andeck	Audubon
Julie Robinson	NCSEA
Kevin Edwards	NC Small Hydro Group
Michelle Frazier	NP
Ryan Miller	NCBPA
Cassidy Robertson	AMGA
Sarah McQuillan	KGANC
David Schatz	ChargePoint

VISITOR REGISTRATION SHEET

House Committee on Energy and Public Utilities

3-26-19

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Katzy Kingdon	BP
Rw Kaylan	Kaylan Lane
Prosthorpe	NEMT
Swade	DUKE
Sushma Masemore	DEQ
Joy Hichas	DEQ
John Lucey	DEQ
Shirley Nunna	DEQ
Ben Stoddard	NCSEA
Dana Simpson	SA
Kara Weisner	SA
John Ginter	NC AF-C NMR5

VISITOR REGISTRATION SHEET

House Committee on Energy and Public Utilities

3-26-19

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

David McGowan	NCPL
Chris Wall	PG
DAVID BARNES	Electricities
Jill Palmer	Medden Audubon NC
Paul Dayer	Audubon NC
Anne Dayer	Audubon NC
Lena Gallitano	Audubon NC
GREGORY BECK	AUDUBON NC
REBBIE FOSTER	AUDUBON NC
Scott Lester	KGAC
Betsy McConne	KGAC

VISITOR REGISTRATION SHEET

House Committee on Energy and Public Utilities

3-26-19

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

LATIF KAID	NC DOA / SCO
KATIE HALL	NC DOA
Sallie James	Governor's office
Andy Elle	NCRMA
Elizabeth Ph	NCRMA
Harv Kise	NCRMA
Jim Harrell	Bode & Harrell
Doug Miskin	PSG
Willie Jones	Jordan Lane
Tommy Sever	MWC
S. White	APT

House Committee on Energy and Public Utilities
Tuesday, April 2, 2019 at 3:00 PM
Room 643 of the Legislative Office Building

MINUTES

The House Committee on Energy and Public Utilities met at 3:00 PM on April 2, 2019 in Room 643 of the Legislative Office Building. Representatives Autry, Black, Conrad, Dixon, D. Hall, Harrison, Hawkins, Humphrey, B. Jones, Montgomery, Richardson, Riddell, Szoka, and Wray attended.

Representative John Szoka, Chair, presided.

Jeffrey Merrifield, Chairman, E4 Carolinas (Partner/Pillsbury Law & former Commissioner of the Nuclear Regulatory Commission) gave a presentation (attachment A) on NC's Energy Economy and E4 position in that Economy. Following his presentation, an invitation was extended to committee members to attend an upcoming meeting on May 20-21, 2019 which will focus on the Southern States Energy on Clean Coal Energy Policies and Technologies.

No bills were considered/

The meeting adjourned at 3:45 pm.



Representative John Szoka, Chair
Presiding



Beverly Slagle, Committee Clerk

**House Committee on Energy and Public Utilities
Tuesday, April 2, 3:00 PM
643 LOB**

AGENDA

Welcome and Opening Remarks: Chair. John Szoka presiding.

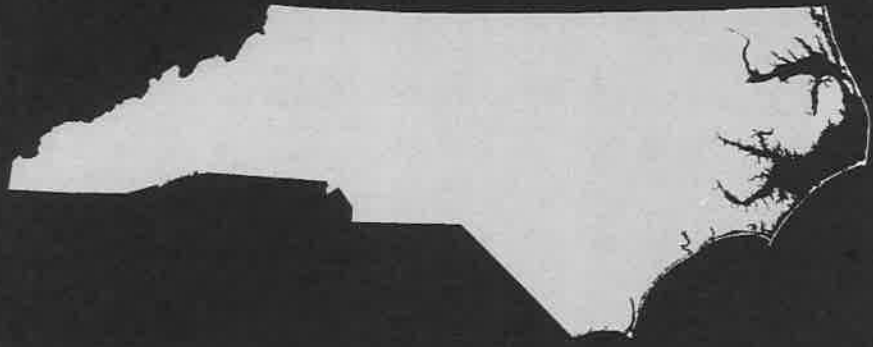
Introduction of Pages and Sergeant-At-Arms

Presentations: North Carolina's Energy Economy

→ Jeffrey Merrifield, Chairman, E4 Carolinas
Partner/Pillsbury Law and former Commissioner of the Nuclear Regulatory
Commission

Other Business

Adjournment

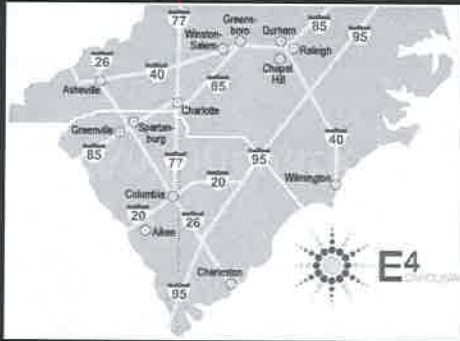


Believed to be the largest and most
diverse in the Eastern United States:

An Innovation Leader

North Carolina's Energy Economy

• Energy • Economy • Environment • Efficiency •



E4 Carolinas

- Trade association for **ALL** Carolina energy
- 140+ full members/118 associate members
 - All North Carolina utilities are members
- Creating value for Carolina Energy Economy
 - Economic Development
 - Innovation
 - Policy
 - Networking
 - Workforce



Economic Development



Innovation



Policy

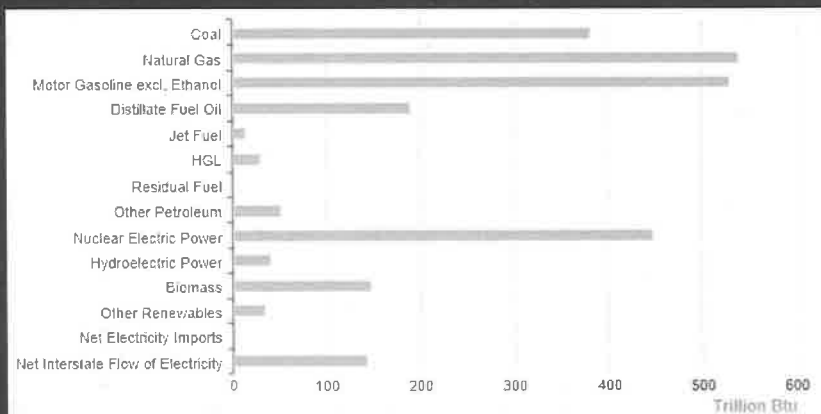


Networking

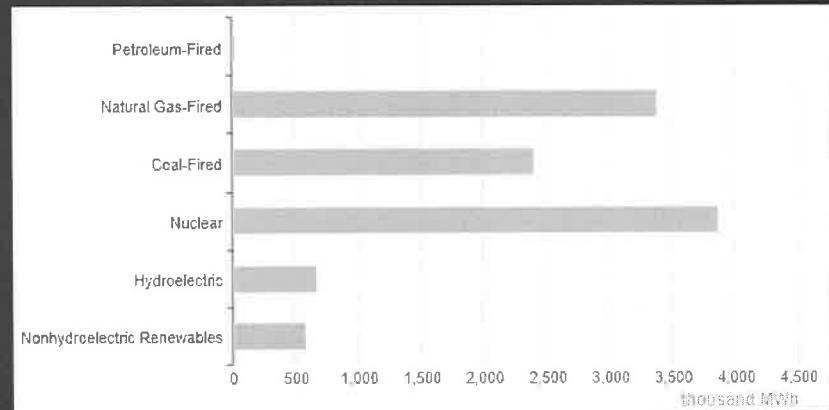


Workforce

North Carolina Energy Profile



Consumption



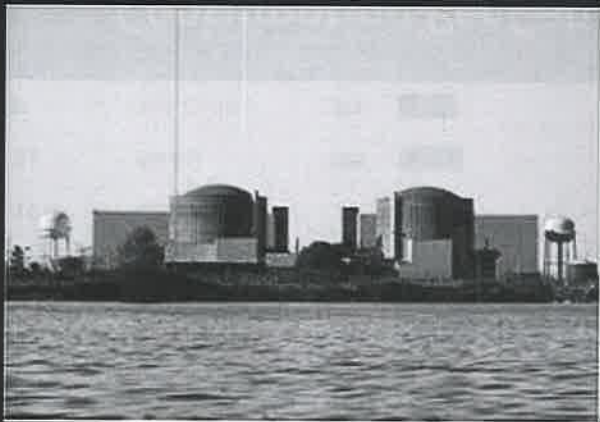
Fuel for Electricity

Rank	State	Total Energy Consumed per Capita (million Btu)
1	Louisiana	397
13	South Carolina	333
31	Virginia	277
33	Georgia	275
37	North Carolina	251

Consumption Per Capita

Rank	State	Total Carbon Dioxide Emissions (million metric tons)
1	Texas	657.4
2	California	363.3
3	Florida	231.3
4	Pennsylvania	218.6
5	Louisiana	210.3
6	Ohio	207.4
7	Illinois	205.2
8	Indiana	182.9
9	New York	164.6
10	Michigan	152.6
11	Georgia	137.0
12	Kentucky	124.6
13	North Carolina	121.2

Carbon Production



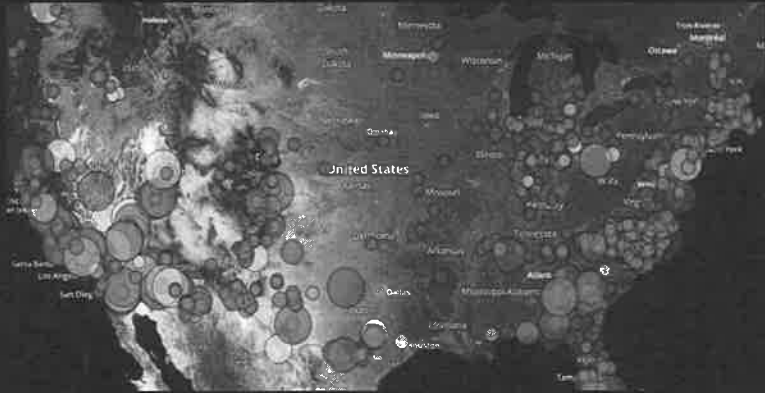
A national and global nuclear energy leader

- Policy built an industry
- Sixth in U.S. nuclear generating capacity
- 3,875,000 MWh consumed (35.4% of NC supply)
- 7,424 MW generating capacity (~92% load factor)
- 4 plants with 7 reactors
- Leading nuclear workforce and service industry

Nuclear Energy Leadership



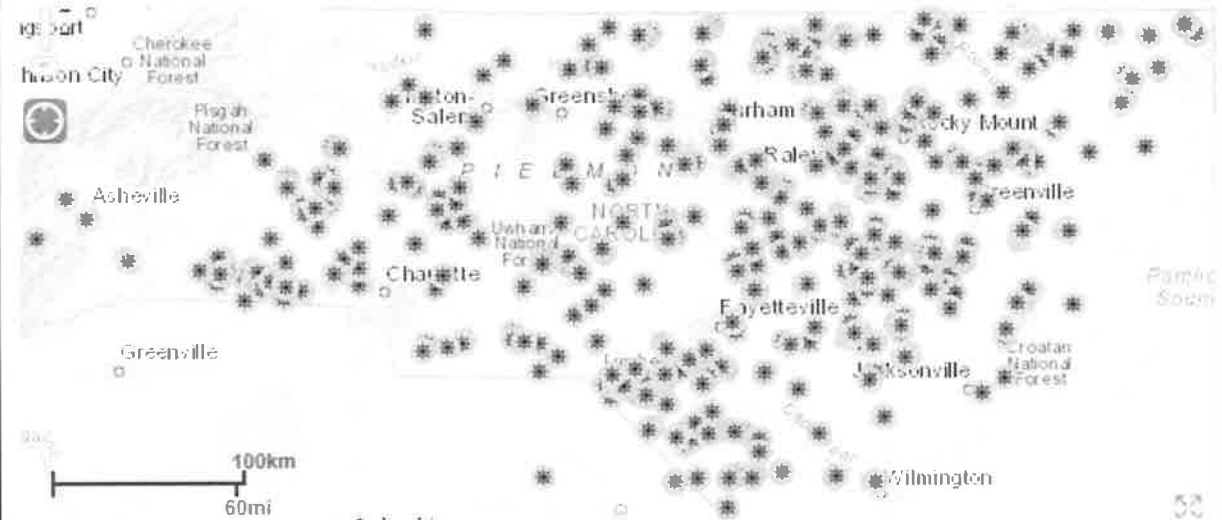
State	Dec. 2018 MW Capacity	% of US Total Nuclear MW	% of State Power MW
Illinois	8,855	12.4%	57%
Pennsylvania	7,626	10.6%	39%
South Carolina	4,510	6.3%	56%
New York	3,988	5.6%	35%
Alabama	3,952	5.5%	33%
North Carolina	3,875	5.4%	35%



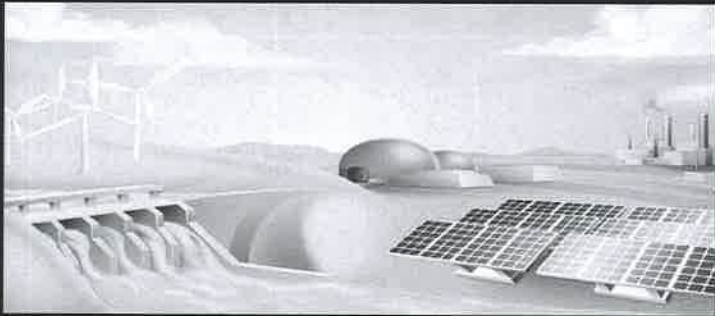
A national and global solar energy leader

- Policy built an industry
- Second in U.S. solar generating capacity
- 589,000 MWh consumed (5.4% of NC supply)
- 5,220 MW generating capacity (~31% load factor)
- 512 grid scale solar installations (1 MW+ 12/31/17)
- 3,357 MWh of grid scale solar
- 1,843 MWh smaller/most "behind the meter"

Solar Energy Leadership

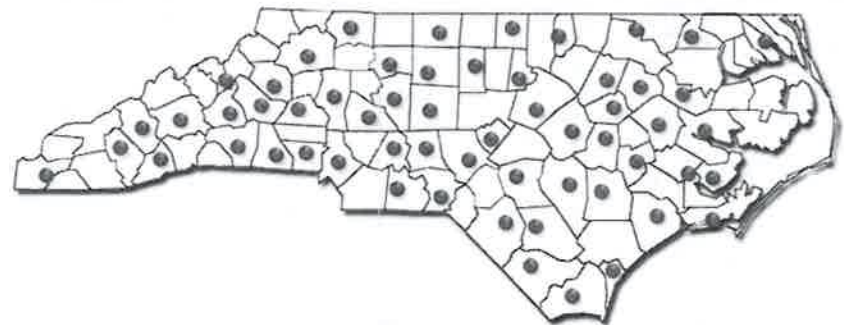
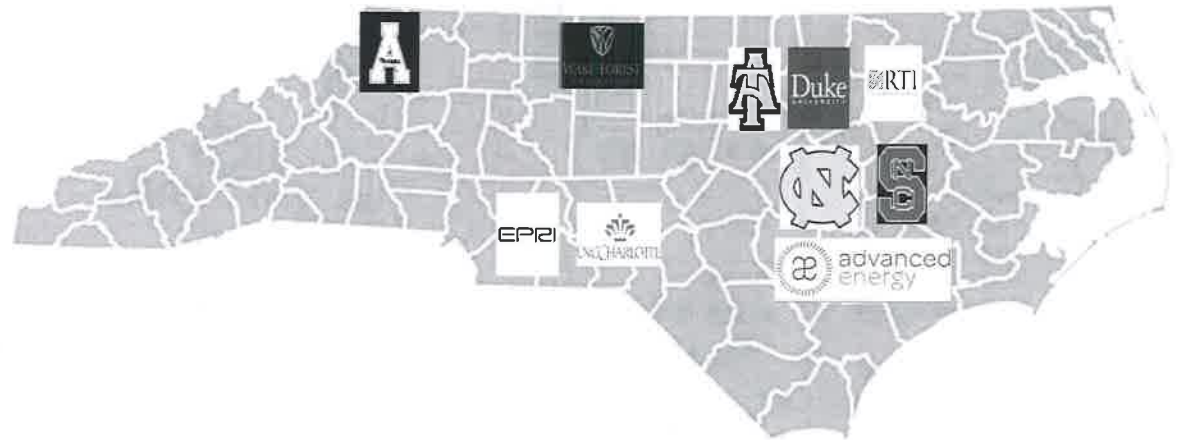


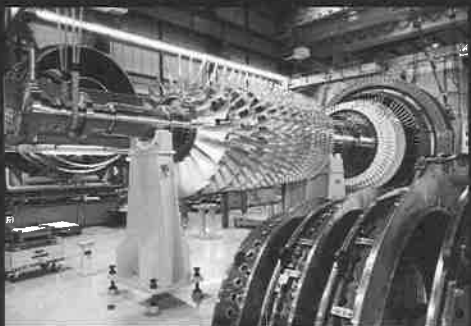
Energy Research Leadership



Energy Research & Education

- U.S. leading energy research universities
 - NC investments in energy research
 - Emerging research areas
- Community College – industry support





Manufacturing & Engineering

- Global leading manufacturers
- Global leading EPC companies

Energy Manufacturing & Engineering Leadership



SIEMENS

wood.

B&W



framatome

ZACHRY

BURNS
MCDONNELL

TOSHIBA
Leading Innovation >>>

HDR

SENSUS
a xylem brand



HITACHI

ABB

IR Ingersoll Rand



BLACK & VEATCH
Building a world of difference.

AECOM

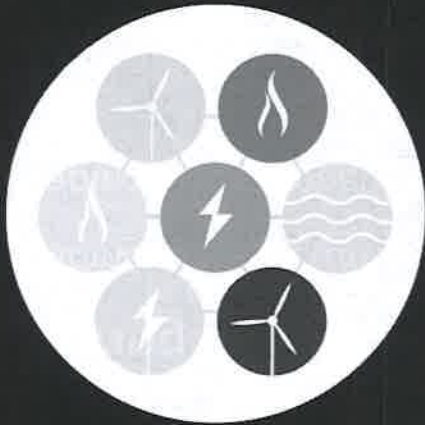


Westinghouse

ATKINS

Member of the SNC-Lavalin Group

FLUOR.



Energy Innovation & Policy Fuel Economic Development

- Increased products & services sold
- Job growth
- New ventures created
- New companies attracted to NC

Energy Innovation Leadership Examples of Solving Critical World Energy Problems



Net Power (Durham) – Developer of revolutionary carbon-capture power generation technology, based on the Allum Cycle



Albemarle (Charlotte) – A world leader in the development and distribution the lithium chemicals and products essential for devices and EVs



Atom Power (Charlotte) – Developer of the world's first solid state circuit breaker, which makes structure's electrically safe and programmable



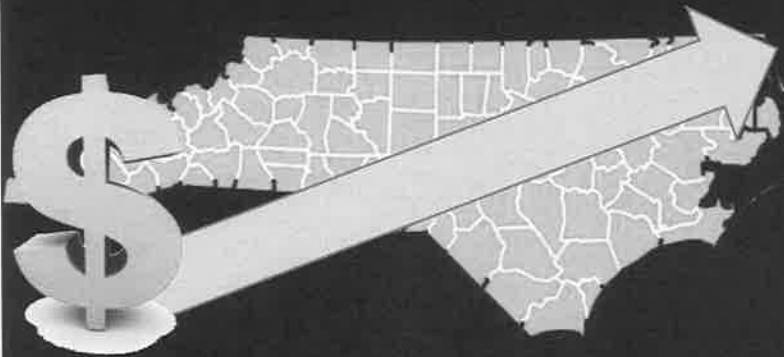
NuScale Power (Wilmington/Charlotte) – recipient of over \$50 million in DOE funding for a leading SMR design.



Tokai Carbon (Charlotte) – The nation's leader in developing and distributing of carbon and graphite products essential for steel and Li-on batteries



Ingersoll Rand (Davidson) – A global leader in building efficiency and energy storage technologies



Economic Opportunity

- Energy Storage
- Grid Technology
- Advanced/Next Generation Nuclear
- Advanced EPC
- Transportation Electrification

Creating Value with Development Clusters

Energy Storage – North Carolina is a leader with 25+ companies and organization in the national/global supply chain (E4 Carolinas, 2018)

Grid Technology – North Carolina is THE leader with 100+ companies and organizations in the national/global supply chain. (RTI International, 2017)

Advanced/Next Generation Nuclear – North Carolina is a leader with 100+ companies and organizations in the national/global supply chain (E4 Carolinas & Nuclear Energy Institute, 2016)

Advanced Engineering, Procurement & Construction – More than a dozen Global caliber and nearly 100 national/regional firms.

Transportation Electrification – Similar to solar energy opportunity a decade ago.



the
SOLUTIONS
Summit

Energy Innovation Initiative

- 2 year collaboration with NC DOC Office of Science, Technology & Innovation
- 50+ energy innovation professionals
- All energy sectors/supply chain members
- Issues/solutions summits + work groups
- Produced Energy Innovation Plan

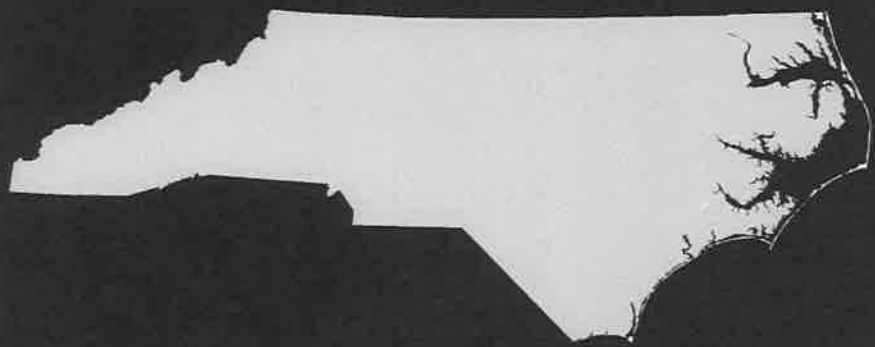
Essential to Expanding our Energy Economy

First Step to Energy Innovation Leadership

- Complete the energy industry inventory
 - Confirm/identify clusters of opportunity
 - Determine our national/global leadership opportunities
- Foster increased collaboration/value creation
 - Connect research, technology, innovators and capital
 - Increase entrepreneurship and commercialization
- Develop our energy brand
- Promote our energy industry based on fact

E4 Carolinas Starting “First Step”

- Inventory started – 1,000+ Carolina companies/organizations
- Staff added
- Additional funding needed to execute



Believed to be the largest and most
diverse in the Eastern United States:

An Innovation Leader

North Carolina's Energy Economy



Jeff Merrifield
Chairman, E4 Carolinas
Partner, Pillsbury Law



David Doctor
CEO, E4 Carolinas

Beverly Slagle (Rep. John Szoka)

From: Southern States Energy Board <sseb@sseb.org>
Sent: Wednesday, April 03, 2019 08:50 AM
To: Rep. John Szoka
Subject: Register today for the 2019 Clean Coal Energy Policies and Technologies Meeting

Meeting Update



Transcending Boundaries

Registration Now Open for the 2019 Committee on Clean Coal Energy Policies and Technologies Meeting **May 20-21 | Kingsport, TN**

Please plan to join us soon at the Southern States Energy Board's Committee on Clean Coal Energy Policies and Technologies meeting where we will discuss ways to promote the development and implementation of programs and projects that stimulate the use of the region's clean coal resources for American energy security.

The committee's goal is to utilize coal for energy, power, and transportation fuels while advancing workforce development, education, and training in the coal industry.

This event is held in conjunction with the Virginia Coal and Energy Alliance's Annual Meeting. Please note that SSEB has reserved a block of guest rooms for this event. To ensure a room at the conference rate of \$94 per night you must provide government ID or the rate will be \$126 per night + taxes. Click the blue button below to register.



*MeadowView Conference
Resort & Convention Center*

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VISITOR REGISTRATION SHEET

House Committee on Energy & Public Utilities

4-2-19

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

David McGowan

NOPC

DUSTON HOWARD

NCMA

Jay Rae

NC E MC

Susan Veen

DUKE ENERGY

Kara Weishaar

SA

Frances Liles

NR EA

Ben Stockdale

NC Sustainable Energy Assoc.

Chris Adams

VISITOR REGISTRATION SHEET

House Committee on Energy & Public Utilities

4-2-19

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Kory Kiper	NRMA
John Hardin	NC Dept. of Commerce
Tom BEAN	EDP, NCSEA, NLEF
DAVID BARNES	ElectricCities
Michelle Frazier	NP
Aime Winkler	NCON
Ernest Ortiz	SE Energy News
Will Scott	NC Conservation Network
Tyler Ford	MWC
Syanna Davis	NC DPS
LR	CSS

**House Committee on Energy and Public Utilities
Tuesday, April 9, 2019 at 3:00 PM
Room 643 of the Legislative Office Building**

MINUTES

The House Committee on Energy and Public Utilities met at 3:00 PM on April 9, 2019 in Room 643 of the Legislative Office Building. Representatives Alexander, Arp, Autry, Black, Brockman, Conrad, Cunningham, Dixon, Hanig, Harrison, Hawkins, Holley, Howard, Humphrey, Montgomery, Richardson, Riddell, Strickland, Szoka, and Wray attended.

Representative John Szoka, Chair, presided.

Rep. Szoka referred the committee to the Agenda, announcing that **HB 387 Electric Co-op Rural Broadband has been withdrawn by the primary sponsor, Rep. Arp.**

The following bills were considered:

HB 529 Utilities/Water and Wastewater Consumption. (Representatives Arp, Riddell, Conrad, Holley) was explained by Rep. Arp. The committee passed the bill, with a motion by Rep. Dixon for a favorable report with a referral to the House Committee on Rules, Calendar, and Operations.

HB 398 Info. Tech. Budget/2019-2021 Fiscal Biennium. (Representatives Arp, Szoka, Saine, Barnes) was explained by Rep. Arp. A Proposed Committee Substitute was properly brought before the committee. Rep. Chris Humphrey introduced a technical amendment to **HB 398 to rewrite line 36, on page 2, (Attachment A).** Without objections, Rep. Szoka (Chair) called for a vote on the amendment and it passed.

Rep. Dixon made a motion for a favorable report as amended through H398-PCS40321-TQa-9 with a referral to the Committee on Appropriations, Information Technology. Rep. Szoka presented the motion for a committee vote favorable committee substitute, unfavorable original bill and received a favorable report. The motion passed, with a referral to the House Committee on Appropriation, Information Technology

With no further business, the meeting adjourned at 3:31 pm.


Representative John Szoka, Chair
Presiding


Beverly Slagle, Committee Clerk

**House Committee on Energy and Public Utilities
Tuesday, April 9, 2019, 3:00 PM
643 Legislative Office Building**

AGENDA

Welcome and Opening Remarks

Introduction of Pages & Sergeant-At-Arms

Bills

BILL NO.	SHORT TITLE	SPONSOR
HB 529	Utilities/Water and Wastewater Consumption.	Representative Arp Representative Riddell Representative Conrad Representative Holley
HB 387	Electric Co-Op Rural Broadband (HB 387 was removed from agenda)	Representative Arp Representative Szoka Representative Lewis Representative Hunter
HB 398	Growing GREAT-Rural Broadband Funding	Representative Arp Representative Szoka Representative Saine Representative Barnes

Presentations

None

Other Business

Adjournment

**NORTH CAROLINA GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES**

**ENERGY AND PUBLIC UTILITIES COMMITTEE REPORT
Representative Dean Arp, Co-Chair
Representative John Szoka, Co-Chair**

FAVORABLE AND RE-REFERRED

HB 529 Utilities/Water and Wastewater Consumption.
Draft Number: None
Serial Referral: RULES, CALENDAR, AND
OPERATIONS OF THE HOUSE
Recommended Referral: None
Long Title Amended: No
Floor Manager: Arp

FAVORABLE COM SUB , UNFAVORABLE ORIGINAL BILL AND RE-REFERRED

HB 398 Growing GREAT-Rural Broadband Funding.
Draft Number: H398-PCS40321-TQa-9
Serial Referral: APPROPRIATIONS,
INFORMATION TECHNOLOGY
Recommended Referral: None
Long Title Amended: No
Floor Manager: Arp

TOTAL REPORTED: 2



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Attachment A

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 398

H398-ATQ-9 [v.1]

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

Page 1 of 1

Amends Title [NO]
First Edition

Date 4/9/2019, 2019

Representative

Hamprey

1 moves to amend the bill on page 2, line 36, by rewriting the line to read:

2

3 "households that have a minimum download and upload speed of 10:1, as measured using
4 Federal".

5

6

SIGNED

Chi. H. H. H.
Amendment Sponsor

SIGNED

Committee Chair if Senate Committee Amendment

ADOPTED

~~BB~~

FAILED

TABLED

~~BB~~ S



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GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

H

1

HOUSE BILL 529

Short Title: Utilities/Water and Wastewater Consumption. (Public)
Sponsors: Representatives Arp, Riddell, Conrad, and Holley (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, Rules, Calendar, and Operations of the House

April 1, 2019

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.



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

H

D

HOUSE BILL 398
PROPOSED COMMITTEE SUBSTITUTE H398-PCS40321-TQa-9

Short Title: Growing GREAT-Rural Broadband Funding.

(Public)

Sponsors:

Referred to:

March 21, 2019

A BILL TO BE ENTITLED
AN ACT TO MAKE VARIOUS CHANGES TO THE GROWING RURAL ECONOMIES
WITH ACCESS TO TECHNOLOGY (GREAT) PROGRAM.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Notwithstanding G.S. 143C-5-2, G.S. 143B-1373 is amended by adding a new subsection to read:

"(p) There is hereby appropriated each fiscal year the sum of fifteen million dollars (\$15,000,000) from the State Capital and Infrastructure Fund to the Growing Rural Economies with Access to Technology Fund established pursuant to this section to be used to administer the GREAT program."

SECTION 1.(b) This section shall expire on June 30, 2029.

SECTION 2. G.S. 143B-1373 reads as rewritten:

"§ 143B-1373. Growing Rural Economies with Access to Technology (GREAT) program.

(a) As used in this section, the following definitions apply:

...

(6) Eligible project. – An eligible project is a discrete and specific project located in an unserved area of an economically distressed county seeking to provide broadband service to homes, businesses, and community anchor points not currently served. Eligible projects do not include middle mile, backhaul, and other similar projects not directed at broadband service to end users. If a project area is located within more than one county, for the purposes of this section, the project shall be deemed to be located in the county where the greatest number of unserved households will be served.

...

(c) Project areas comprised of census blocks, or portions thereof, within which a broadband provider is receiving State or federal matching funds to deploy technologically neutral scalable broadband service within the next 18 months are ineligible for the GREAT program. It is essential for the Office to know the location of census blocks, or portions thereof, comprising these areas so it can determine project eligibility. A private provider receiving State or federal matching funds to deploy broadband service within such an area shall, within 60 days of the effective date of this section, submit only a listing of the census blocks, or portions thereof, comprising each of its federally funded project areas meeting this requirement and nothing more to the Office. In future program years, the cutoff date for submitting this census block data shall be May 15. This will enable the office to update maps and advise applicants as to the unserved areas of the State that are eligible for consideration in that program year. The Office shall only utilize this data to update maps of census blocks to reflect these census blocks, or portions thereof,



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as being served. Failure on the part of a provider to submit the listing of census blocks by the cutoff date shall result in those areas being eligible for inclusion under this program during the upcoming program year. The Office shall use the census block data provided only for mapping of unserved areas. Upon expiration of the 18-month period described in this subsection, a private provider receiving State or federal matching funds to deploy broadband service shall submit written documentation that broadband deployment has begun or been completed in the census blocks, or portions thereof, that have been deemed ineligible by the Office due to the existence of a federally funded project area. Information provided to the Office pursuant to this subsection is not a public record, as that term is defined in G.S. 132-1.

(d) Applications for grants will be submitted at times designated by the Secretary and will include, at a minimum, the following information:

- ...
- (5) An illustration or description of the area to be served and the number of homes, businesses, community anchor points, agricultural operations, or agricultural processing facilities that will have access to broadband as a result of the ~~project~~ project, including any publicly available addresses for the foregoing.

...

(d1) A wireless provider submitting an application pursuant to this section shall bear the burden of proof that the proposed area to be served can, in fact, be served using wireless technology. The burden of proof may be satisfied by the submission of data, maps, and any other information satisfactory to the Office, demonstrating that the area and number of households proposed to be served can be provided the minimum upload and download speeds indicated in the application.

(e) Applications shall be made publicly available by posting on the Web site of the Department of Information Technology for a period of at least 30 days prior to award. During the 30-day period, any interested party may submit comments to the Secretary concerning any pending application. A provider of broadband services may submit a protest of any application on the grounds the proposed project covers an area that is not an eligible area under this section. Protests shall be submitted in writing, accompanied by all relevant supporting documentation, and shall be considered by the Office in connection with the review of the application. Upon submission of evidence satisfactory to the Office that the proposed project area includes households that have a minimum download and upload speed of 10:1, as measured using Federal Communications Commission technology, the Office may amend an application to reduce the number of unserved households in the project area to reflect an accurate level of current broadband service. For applications with filed protests, the Secretary shall issue a written decision to the protesting party at least 15 days prior to the approval of that application.

(f) The Office may consult with the Department of Commerce to determine if a broadband project proposed under this section will benefit a potential economic development project relevant to the proposed area outlined in the broadband project.

(g) Applications shall be scored based upon a system that awards a single point for criteria considered to be the minimum level for the provision of broadband service with additional points awarded to criteria that exceed minimum levels. The Office shall score project applications in accordance with the following:

- ...
- (6) Base speed multiplier. – Projects that will provide minimum download and minimum upload speeds shall have the aggregate points given under subdivisions (1) through (5) of this subsection multiplied by a factor at the level indicated in the table below:

Minimum Download:

Minimum Upload

Score Multiplier

1	10:1 Mbps.	0.95
2	25:3 Mbps. or greater > 100:10 Mbps.	1.35
3	<u>100:10 Mbps. or greater</u>	<u>1.55</u>

4 (h) The Office shall score applications based upon the metrics provided in subsection (g)
5 of this section. In awarding grants based upon the scoring metrics, the Office shall also award an
6 additional point to projects where a county has a Community Broadband Planning Playbook that
7 meets the guidelines established by the Office.

8

9 **SECTION 3.** G.S. 143C-4-3.1 reads as rewritten:

10 **"§ 143C-4-3.1. State Capital and Infrastructure Fund.**

11 ...

12 (e) Use of Funds. – Monies in the Fund shall first be used to meet the debt service
13 obligations of the State. In addition to meeting the State's debt service obligations, monies in the
14 Fund may be used for the following purposes:

- 15 (1) New State and The University of North Carolina capital projects governed
16 pursuant to Article 8 of Chapter 143C of the General Statutes.
- 17 (2) Repair and renovation of existing capital assets, as provided in
18 G.S. 143C-8-13.
- 19 (3) Broadband infrastructure projects funded through appropriations to the
20 Growing Rural Economies with Access to Technology Fund established in
21 G.S. 143B-1373(b).

22 (f) Funds Available Only Upon Appropriation. – Funds reserved to the Fund shall be
23 available for expenditure only upon an act of appropriation by the General Assembly."

24 **SECTION 4.** This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

H

1

HOUSE BILL 398

Short Title: Growing GREAT-Rural Broadband Funding. (Public)

Sponsors: Representatives Arp, Szoka, Saine, and Barnes (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, Information Technology, if favorable, Appropriations, if favorable, Rules, Calendar, and Operations of the House

March 21, 2019

A BILL TO BE ENTITLED
AN ACT TO MAKE VARIOUS CHANGES TO THE GROWING RURAL ECONOMIES
WITH ACCESS TO TECHNOLOGY (GREAT) PROGRAM.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Notwithstanding G.S. 143C-5-2, G.S. 143B-1373 is amended by adding a new subsection to read:

"(p) There is hereby appropriated each fiscal year the sum of fifteen million dollars (\$15,000,000) from the State Capital and Infrastructure Fund to the Growing Rural Economies with Access to Technology Fund established pursuant to this section to be used to administer the GREAT program."

SECTION 1.(b) This section shall expire on June 30, 2029.

SECTION 2. G.S. 143B-1373 reads as rewritten:

"§ 143B-1373. Growing Rural Economies with Access to Technology (GREAT) program.

(a) As used in this section, the following definitions apply:

...

(6) Eligible project. — An eligible project is a discrete and specific project located in an unserved area of an economically distressed county seeking to provide broadband service to homes, businesses, and community anchor points not currently served. Eligible projects do not include middle mile, backhaul, and other similar projects not directed at broadband service to end users. If a project area is located within more than one county, for the purposes of this section, the project shall be deemed to be located in the county where the greatest number of unserved households will be served.

...

(c) Project areas comprised of census blocks, or portions thereof, within which a broadband provider is receiving State or federal matching funds to deploy technologically neutral scalable broadband service within the next 18 months are ineligible for the GREAT program. It is essential for the Office to know the location of census blocks, or portions thereof, comprising these areas so it can determine project eligibility. A private provider receiving State or federal matching funds to deploy broadband service within such an area shall, within 60 days of the effective date of this section, submit only a listing of the census blocks, or portions thereof, comprising each of its federally funded project areas meeting this requirement and nothing more to the Office. In future program years, the cutoff date for submitting this census block data shall



1 be May 15. This will enable the office to update maps and advise applicants as to the unserved
2 areas of the State that are eligible for consideration in that program year. The Office shall only
3 utilize this data to update maps of census blocks to reflect these census blocks, or portions thereof,
4 as being served. Failure on the part of a provider to submit the listing of census blocks by the
5 cutoff date shall result in those areas being eligible for inclusion under this program during the
6 upcoming program year. The Office shall use the census block data provided only for mapping
7 of unserved areas. Upon expiration of the 18-month period described in this subsection, a private
8 provider receiving State or federal matching funds to deploy broadband service shall submit
9 written documentation that broadband deployment has begun or been completed in the census
10 blocks, or portions thereof, that have been deemed ineligible by the Office due to the existence
11 of a federally funded project area. Information provided to the Office pursuant to this subsection
12 is not a public record, as that term is defined in G.S. 132-1.

13 (d) Applications for grants will be submitted at times designated by the Secretary and
14 will include, at a minimum, the following information:

15 ...

- 16 (5) An illustration or description of the area to be served and the number of
17 homes, businesses, community anchor points, agricultural operations, or
18 agricultural processing facilities that will have access to broadband as a result
19 of the ~~project~~ project, including any publicly available addresses for the
20 foregoing.

21 ...

22 (d1) A wireless provider submitting an application pursuant to this section shall bear the
23 burden of proof that the proposed area to be served can, in fact, be served using wireless
24 technology. The burden of proof may be satisfied by the submission of data, maps, and any other
25 information satisfactory to the Office, demonstrating that the area and number of households
26 proposed to be served can be provided the minimum upload and download speeds indicated in
27 the application.

28 (e) Applications shall be made publicly available by posting on the Web site of the
29 Department of Information Technology for a period of at least 30 days prior to award. During
30 the 30-day period, any interested party may submit comments to the Secretary concerning any
31 pending application. A provider of broadband services may submit a protest of any application
32 on the grounds the proposed project covers an area that is not an eligible area under this section.
33 Protests shall be submitted in writing, accompanied by all relevant supporting documentation,
34 and shall be considered by the Office in connection with the review of the application. Upon
35 submission of evidence satisfactory to the Office that the proposed project area includes
36 households that have a minimum upload and download speed of 10:1, as measured using Federal
37 Communications Commission technology, the Office may amend an application to reduce the
38 number of unserved households in the project area to reflect an accurate level of current
39 broadband service. For applications with filed protests, the Secretary shall issue a written
40 decision to the protesting party at least 15 days prior to the approval of that application.

41 (f) The Office may consult with the Department of Commerce to determine if a
42 broadband project proposed under this section will benefit a potential economic development
43 project relevant to the proposed area outlined in the broadband project.

44 (g) Applications shall be scored based upon a system that awards a single point for criteria
45 considered to be the minimum level for the provision of broadband service with additional points
46 awarded to criteria that exceed minimum levels. The Office shall score project applications in
47 accordance with the following:

48 ...

- 49 (6) Base speed multiplier. – Projects that will provide minimum download and
50 minimum upload speeds shall have the aggregate points given under

subdivisions (1) through (5) of this subsection multiplied by a factor at the level indicated in the table below:

Minimum Download:**Minimum Upload****Score Multiplier**

10:1 Mbps.	0.95
------------	------

25:3 Mbps. or greater > 100:10 Mbps.	1.35
---	------

<u>100:10 Mbps. or greater</u>	<u>1.55</u>
--------------------------------	-------------

(h) The Office shall score applications based upon the metrics provided in subsection (g) of this section. In awarding grants based upon the scoring metrics, the Office shall also award an additional point to projects where a county has a Community Broadband Planning Playbook that meets the guidelines established by the Office.

...."

SECTION 3. G.S. 143C-4-3.1 reads as rewritten:

"§ 143C-4-3.1. State Capital and Infrastructure Fund.

...

(e) Use of Funds. – Monies in the Fund shall first be used to meet the debt service obligations of the State. In addition to meeting the State's debt service obligations, monies in the Fund may be used for the following purposes:

(1) New State and The University of North Carolina capital projects governed pursuant to Article 8 of Chapter 143C of the General Statutes.

(2) Repair and renovation of existing capital assets, as provided in G.S. 143C-8-13.

(3) Broadband infrastructure projects funded through appropriations to the Growing Rural Economies with Access to Technology Fund established in G.S. 143B-1373(b).

(f) Funds Available Only Upon Appropriation. – Funds reserved to the Fund shall be available for expenditure only upon an act of appropriation by the General Assembly."

SECTION 4. This act is effective when it becomes law.



HOUSE BILL 398: Growing GREAT-Rural Broadband Funding.

2019-2020 General Assembly

Committee:	House Energy and Public Utilities. If favorable, re-refer to Appropriations, Information Technology. If favorable, re-refer to Appropriations. If favorable, re-refer to Rules, Calendar, and Operations of the House	Date:	April 9, 2019
Introduced by:	Reps. Arp, Szoka, Saine, Barnes	Prepared by:	Chris Saunders
Analysis of:	First Edition		Committee Counsel

OVERVIEW: House Bill 398 would appropriate \$15,000,000 per year, until the 2028-29 fiscal year, from the State Capital and Infrastructure Fund to the Growing Rural Economies with Access to Technology (GREAT) program, and make various changes to the program's application process.

CURRENT LAW: The Growing Rural Economies with Access to Technology (GREAT) program was established in the 2018 Appropriations Act to increase the availability of terrestrially deployed broadband at connection speeds exceeding 10 megabits per second (Mbps) download and one Mbps upload (10:1). Through the program, the Broadband Infrastructure Office (Office) of the Department of Information Technology (DIT) provides grants to broadband providers and cooperatives for projects designed to extend broadband service to unserved areas in economically distressed counties of the State.

Grant applicants must submit an application that provides certain information about the proposed project, including, among other things, the total project cost and duration, an estimate of the number of end users, a description of the services to be provided, a plan to encourage connection by end users, and evidence of support from the community. Project areas comprised of census blocks within which a broadband provider is receiving federal funds to deploy technologically neutral scalable broadband service within the next 18 months are ineligible for the program.

Applications are scored by the Office based on certain established criteria. Projects receive higher scores for:

- Utilizing partnerships or affiliations with other entities that will lower costs and facilitate broadband deployment;
- Locating the project in counties with higher numbers of unserved households;
- Providing service to greater numbers of unserved households and businesses;
- Minimizing deployment costs per household; and
- Providing faster connection speeds to end users.

BILL ANALYSIS:

Karen Cochrane-Brown
Director



Legislative Analysis
Division
919-733-2578

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

House Bill 398

Page 2

Section 1 of House Bill 398 would appropriate \$15,000,000 annually, until the 2028-29 fiscal year, from the State Capital and Infrastructure Fund to the Growing Rural Economies with Access to Technology Fund in DIT to be used for administration of the GREAT program.

Section 2 would do all of the following:

- Clarify that if a project area for an eligible project is located in more than one county, it is deemed to be located in the county where the greatest number of unserved households will be served.
- Require private providers receiving State or federal matching funds to deploy broadband service, at the end of the 18 month period in which the project area is ineligible for the GREAT program, to submit to the Office written documentation that broadband deployment has begun or been completed in the census blocks that have been deemed ineligible for the program due to the existence of a federally funded project area.
- Require grant applications to provide publicly available addressees for homes, businesses, or other customers who will have access to broadband at the end of the project.
- Require wireless providers submitting a grant application to prove that the proposed area to be served can be served using wireless technology while meeting the minimum upload and download speeds indicated in the application.
- Allow the Office to amend an application to reduce the number of unserved households in a proposed project area if it finds that the proposed project area includes households with a minimum upload and download speed of 10:1.
- Add a new score multiplier of 1.55x for projects with a minimum download and upload speed of 100:10. Under current law, the maximum score multiplier is 1.35x for projects with a minimum download and upload speed of 25:3.

Section 3 would allow money in the State Capital and Infrastructure Fund to be used for broadband infrastructure projects funded through appropriations to the GREAT program.

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



HOUSE BILL 529: – *Favorable* Utilities/Water and Wastewater Consumption.

2019-2020 General Assembly

Committee:	House Energy and Public Utilities. If favorable, re-refer to Rules, Calendar, and Operations of the House	Date:	April 9, 2019
Introduced by:	Reps. Arp, Riddell, Conrad, Holley	Prepared by:	Kyle Evans
Analysis of:	First Edition		Staff Attorney

OVERVIEW: House Bill 529 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.

[As introduced, this bill was identical to S429, as introduced by Sen. Newton, which is currently in Senate Commerce and Insurance.]

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 529 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.

Layla Cummings, former Staff Attorney, contributed significantly to this summary.

Douglas

Karen Cochrane-Brown
Director



H 5 2 9 - S M B R - 1 7 E 1 - V - 1

Legislative Analysis
Division
919-733-2578

Committee Sergeants at Arms

NAME OF COMMITTEE House Committee on Energy and Public Utilities

DATE: 4/9/2019

Room: 643 LOB

House Sgt-At Arms:

1. Name: Warren Hawkins
2. Name: Doug Harris
3. Name: David Linthicum
4. Name: Thomas Terry
5. Name: _____

Senate Sgt-At Arms:

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

**House Pages
Assignments
Tuesday, April 09, 2019
Session: 4:45 PM**

Committee	Room	Time	Staff	Comments	Member
Public Utilities	643	3:00 PM	Erin Bembridge		Rep. Bobby Hanig
Energy			Chloe Schubert		Rep. Bobby Hanig
			Dalton Snipes		Rep. John A. Torbett
			Natalie Stone		Rep. Lisa Stone Barnes

VISITOR REGISTRATION SHEET

House Committee on Energy and Public Utilities

04-09-2019

Name of Committee

Date

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FIRM OR AGENCY AND ADDRESS

Brady Allen

NCTCC

Mig D. Bailey

Charter Comm. Spectrum

Debra Den

NC Chamber

Kirsten Miller

JSC

Jacobi Stowell

JSC

Peter Daniel

ATT

Carlos Sanchez

ATT

Dan My

PSG

M. J. J.

BPMH

Brian Gregory

Charter

Britt. Allen

NC TCC

Sign In Sheet

Chamber

Angie Hedgepeth

Heidi Baker - Purologix Water Services

Christine Michaels - Greater Fayetteville Chamber

Henry Tyson - Tyson Commercial Properties

Heather Mulcahy^{Chair} - NCWORKS

Michael A. Bailey - NCWORKS

David G. - Greater Fayetteville Chamber

Christine Johnson - Patterson Record Storage and Shredding

VISITOR REGISTRATION SHEET

House Committee on Energy and Public Utilities

04-09-2019

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JOHN COOPER	CONNECT C
Joe Bost	CRBA
Kathleen Rehder	Brubaker 3 Assoc.
Al Ryz	RTZ
Cook	Soundly
Derry M Lancaster SR	LCA/NCIC
Helen McLemore	NCICU
Tom West	NCICU
Tom BERN	EOF, NCSEK, NCWF
Rose Williams	NCLM

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House Committee on Energy and Public Utilities

04-09-2019


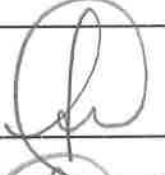
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Mark White	
Tony Sene	MWC
S. White	APB
Matthew Beland	PPAB
Patrick Buffin	NCUC
Gate Apodaca	Vista
Richard Bostic	NC SBA
Nelson Freeman	Kilpatrick Townsend
Cathy Thomas	FPA
Th W	CGA

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04-09-2019

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Date

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Jy Boe	NCREA
Dwight Allen	Allen Law PLLC
Frances Liles	NCREA
Carlie Higgins	NUGA
Lamuel Bonkat	GRANGE
Tyler Ford	MWC
Samantha Long	NCFIA
Claudia S. Mena	governors office
Conner Thui	NVA
Nate Dunning	NCDIT
Paul Shoman	NCFB

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House Committee on Energy and Public Utilities

04-09-2019

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Tiffany Gadhrey	IX Rural Center
Michelle Frazier	NP
Paul Finkel	NP
Steve Brewer	CTL
Derek Kelly	CTL
LAURA PURYEAR	MWC
KERRI BURKE	MWC

VISITOR REGISTRATION SHEET

House Committee on Energy and Public Utilities

Name of Committee

04-09-2019

Date _____

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NAME _____

FIRM OR AGENCY AND ADDRESS

Sarah Parker

with

[Signature]

MWC

Enteign

UMRS

[illegible]

House Committee on Energy and Public Utilities
Thursday, April 25, 2019 at 11:15 a.m.
Room 643

MINUTES

The House Committee on Energy and Public Utilities met at 3:00 pm on March 26th in Room 643 LOB. Representatives Alexander, Arp, Autry, Black, Brockman, Conrad, Dixon, Hall, Hanig, Harrison, Hastings, Hawkins, Holley, Howard, Humphrey, Lewis, Montgomery, Richardson, Riddell, Sauls, Strickland, Szoka, and Wray were in attendance.

Rep. Dean Arp, Chair, presided.

House Bill 387, Electric Co-Op Rural Broadband Services, was explained by Rep. Arp. A Proposed Committee Substitute was properly brought before the committee. The committee passed the bill, with a motion by Rep. Dixon for a favorable report to the PCS with a referral to the House Committee on Judiciary, and if favorable, to the Committee on Rules, Calendar, and Operations of the House.

House Bill 432, Water/Sewer to Contiguous Dwelling Units, was explained by Rep. Grange. A Proposed Committee Substitute was properly brought before the committee. The committee passed the bill, with a motion by Rep. Dixon for a favorable report to the PCS with a referral to the Committee on Rules, Calendar, and Operations of the House.

House Bill 522, Study Outside Water Rates, was explained by Rep. Szoka. The committee passed the bill, with a motion by Rep. Dixon for a favorable report with a referral to Committee on Rules, Calendar, and Operations of the House.

Being no further business, the meeting adjourned at 11:35 a.m.



Rep. Dean Arp, Presiding



Katie Stanley, Committee Clerk

1. 10. 1917.

**House Committee on Energy and Public Utilities
Thursday, April 25, 2019, 11:15 a.m.
643 Legislative Office Building**

AGENDA

Welcome and Opening Remarks
Rep. Dean Arp, presiding

Introduction of Pages and Sergeant-At-Arms

Bills:

<u>HB 387</u>	Electric Co-Op Rural Broadband Services.	Representative Arp Representative Szoka Representative Lewis Representative Hunter
<u>HB 432</u>	Water/Sewer to Contiguous Dwelling Units.	Representative Shepard Representative Grange Representative Hurley Representative Hardister
<u>HB 522</u>	Study Outside Water Rates.	Representative Szoka

Please find attached a Proposed Committee Substitute (PCS) for HB 387 and HB 432.

Other Business

Adjournment

**House Committee on Energy and Public Utilities
Thursday, April 25, 2019, 11:15 a.m.
643 Legislative Office Building**

AGENDA

Welcome and Opening Remarks
Rep. Dean Arp, presiding

Introduction of Pages and Sergeant-At-Arms

Bills:

<u>HB 387</u>	Electric Co-Op Rural Broadband Services.	Representative Arp Representative Szoka Representative Lewis Representative Hunter
<u>HB 432</u>	Water/Sewer to Contiguous Dwelling Units.	Representative Shepard Representative Grange Representative Hurley Representative Hardister
<u>HB 522</u>	Study Outside Water Rates.	Representative Szoka

Please find attached a Proposed Committee Substitute (PCS) for HB 387 and HB 432.

Other Business

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

H.B. 387
Mar 19, 2019
HOUSE PRINCIPAL CLERK

H

D

HOUSE BILL DRH30173-LM-30*

Short Title: Electric Co-Op Rural Broadband Services. (Public)

Sponsors: Representatives Arp, Szoka, Lewis, and Hunter (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT REMOVING RESTRICTIONS PROHIBITING ELECTRIC MEMBERSHIP
3 CORPORATIONS AND THEIR SUBSIDIARIES FROM SEEKING FEDERAL GRANT
4 FUNDS TO PROVIDE TELECOMMUNICATIONS AND BROADBAND SERVICES,
5 AUTHORIZING SUCH CORPORATIONS TO USE EASEMENTS HELD BY THE
6 CORPORATIONS TO SUPPLY TELECOMMUNICATIONS AND BROADBAND
7 SERVICES, AND PROVIDING FOR THE MANNER IN WHICH CLAIMS RELATED
8 TO THE EXPANDED USE OF EASEMENTS BY SUCH CORPORATIONS SHALL BE
9 RESOLVED.

10 Whereas, electric membership corporations were created for the purpose of extending
11 electric service to rural communities in the State, and they have effectively achieved this
12 necessary goal for many years; and

13 Whereas, telephone service is also a necessity for all North Carolinians and has been
14 successfully extended throughout the State; and

15 Whereas, broadband service has emerged as a necessity for all rural communities in
16 the State; and

17 Whereas, the General Assembly finds that electric membership corporations and their
18 subsidiaries, where they so choose, are uniquely positioned to pursue federal broadband funds
19 and to leverage their right-of-way corridors and existing broadband fiber networks to provide,
20 individually or in partnership, broadband services which will enable more rural communities to
21 connect to broadband services; and

22 Whereas, broadband infrastructure deployed by electric membership corporations and
23 their subsidiaries can coexist with electric infrastructure in right-of-ways owned or held by
24 electric membership corporations; and

25 Whereas, it has been recognized that in order for electric membership corporations to
26 effectively pursue federal funds and leverage their unique position, the General Assembly must
27 amend certain statutes regulating the operations and rights of electric membership corporations;

28 Now, therefore,

29 The General Assembly of North Carolina enacts:

30 **SECTION 1.** G.S. 117-18.1 reads as rewritten:

31 **"§ 117-18.1. Subsidiary business activities.**

32 (a) Electric membership corporations may form, organize, acquire, hold, dispose of, and
33 operate any interest up to and including full controlling interest in separate business entities that
34 provide energy services and products, telecommunications services and products, water, and
35 wastewater collection and treatment, so long as those other business entities meet all of the
36 following conditions:



* D R H 3 0 1 7 3 - L M - 3 0 *

1 ...
2 (d) The provisions of subdivisions (1) and (3) of subsection (a) of this section do not
3 apply to the separate business activities of an electric membership corporation that forms,
4 organizes, acquires, holds, disposes of, or operates any interest up to and including full
5 controlling interest in a separate business entity that provides or supports high-speed broadband
6 services to one or more households, businesses, or community anchor points. For purposes of
7 this subsection, the term "anchor points" includes schools, libraries, community colleges,
8 community centers, and other similar places, and the term "high-speed broadband services"
9 means Internet transmission speeds of a minimum of 25 megabits per second (Mbps) downstream
10 and 3 Mbps upstream."

11 **SECTION 2.** Article 3 of Chapter 117 of the General Statutes is amended by adding
12 a new section to read as follows:

13 **"§ 117-28.1. Electric membership corporations; easements.**

14 (a) Any easement owned, held, or otherwise used by an electric membership corporation
15 for the purpose stated in G.S. 117-10 may also be used by the corporation, or its subsidiary, for
16 the purpose of supplying telecommunications and broadband service.

17 (b) Notwithstanding G.S. 1A-1, Rule 23, a class action may not be maintained against an
18 electric membership corporation or its subsidiary in a suit in trespass or inverse condemnation
19 based on a claim of expanded use of an easement. If, in a suit in trespass or inverse condemnation
20 based on a claim of expanded use of an easement, an individual property owner prevails over a
21 corporation or its subsidiary, the trespass shall be deemed permanent and the actual damages
22 awarded shall be the fair market value which, notwithstanding any other provision of law, shall
23 always be greater than zero but shall not exceed the difference between the fair market value of
24 the property owner's entire property immediately before the taking and the fair market value of
25 the property owner's property immediately after the taking. Evidence of revenues or profits
26 derived or the rental value of an assembled communications corridor shall not be admissible in
27 determining fair market value. A property owner's actual damages shall be fixed at the time of
28 the initial trespass and shall not be deemed to continue, accumulate, or accrue. Upon payment of
29 damages, the corporation or its subsidiary shall be granted a permanent easement for the trespass
30 that was the subject of the claim."

31 **SECTION 3.** This act is effective when it becomes law and applies to all claims filed
32 on or after that date.

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019**

H

D

**HOUSE BILL 387
PROPOSED COMMITTEE SUBSTITUTE H387-CSRI-8 [v.1]**

4/23/2019 6:19:34 PM

Short Title: Electric Co-Op Rural Broadband Services.

(Public)

Sponsors:

Referred to:

March 20, 2019

A BILL TO BE ENTITLED

AN ACT REMOVING RESTRICTIONS PROHIBITING ELECTRIC MEMBERSHIP CORPORATIONS AND THEIR SUBSIDIARIES FROM SEEKING FEDERAL GRANT FUNDS TO PROVIDE TELECOMMUNICATIONS AND BROADBAND SERVICES, AUTHORIZING SUCH CORPORATIONS AND THEIR WHOLLY OWNED SUBSIDIARIES TO USE EASEMENTS HELD BY THE CORPORATIONS TO SUPPLY TELECOMMUNICATIONS AND BROADBAND SERVICES, AND PROVIDING FOR THE MANNER IN WHICH CLAIMS RELATED TO THE EXPANDED USE OF EASEMENTS BY SUCH CORPORATIONS SHALL BE RESOLVED.

Whereas, electric membership corporations were created for the purpose of extending electric service to rural communities in the State, and they have effectively achieved this necessary goal for many years; and

Whereas, telephone service is also a necessity for all North Carolinians and has been successfully extended throughout the State; and

Whereas, broadband service has emerged as a necessity for all rural communities in the State; and

Whereas, the General Assembly finds that electric membership corporations and their wholly owned subsidiaries created by electric membership corporations as required by applicable State law, where they so choose, are uniquely positioned to pursue federal broadband funds and to leverage their right-of-way corridors and existing broadband fiber networks to provide, individually or in partnership, broadband services which will enable more rural communities to connect to broadband services; and

Whereas, existing or future communications infrastructure deployed by electric membership corporations for electrification purposes can simultaneously be used by electric membership corporations or their wholly owned subsidiaries for the ancillary purpose of facilitating broadband extension into rural areas of North Carolina without need for additional construction; and

Whereas, it has been recognized that in order for electric membership corporations to effectively pursue federal funds and leverage their unique position, the General Assembly must amend certain statutes regulating the operations and rights of electric membership corporations; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 117-18.1 reads as rewritten:

"§ 117-18.1. Subsidiary business activities.

(a) Electric membership corporations may form, organize, acquire, hold, dispose of, and operate any interest up to and including full controlling interest in separate business entities that



1 provide energy services and products, telecommunications services and products, water, and
2 wastewater collection and treatment, so long as those other business entities meet all of the
3 following conditions:

4 ...
5 (d) The provisions of subdivisions (1) and (3) of subsection (a) of this section do not
6 apply to the separate business activities of an electric membership corporation that forms,
7 organizes, acquires, holds, disposes of, or operates any interest up to and including full
8 controlling interest in a separate business entity that provides or supports high-speed broadband
9 services to one or more households, businesses, or community anchor points in an unserved area.
10 For purposes of this subsection, the following definitions shall apply:

11 (1) "Anchor points." – The term shall include schools, libraries, community
12 colleges, community centers, and other similar places.

13 (2) "High-speed broadband services." – Internet transmission speeds of a
14 minimum of 25 megabits per second (Mbps) downstream and 3 Mbps
15 upstream.

16 (3) "Unserved area." – A location where inhabitants or businesses do not have
17 access to high-speed broadband services."

18 **SECTION 2.** Article 3 of Chapter 117 of the General Statutes is amended by adding
19 a new section to read as follows:

20 **"§ 117-28.1. Electric membership corporations; easements.**

21 (a) Any easement owned, held, or otherwise used by an electric membership corporation
22 for the purpose of electrification, as stated in G.S. 117-10 may also be used by the corporation,
23 or its wholly owned subsidiary, for the ancillary purpose of supplying high-speed broadband
24 service, where such use does not require additional construction and is ancillary to the
25 electrification purposes for which broadband fiber is or was installed.

26 (b) Notwithstanding G.S. 1A-1, Rule 23, a class action may not be maintained against an
27 electric membership corporation or its wholly owned subsidiary in a suit in trespass or inverse
28 condemnation based on a claim of expanded use of an easement. If, in a suit in trespass or inverse
29 condemnation based on a claim of expanded use of an easement, an individual property owner
30 prevails over a corporation or its wholly owned subsidiary, the trespass shall be deemed
31 permanent and the actual damages awarded shall be the fair market value which, notwithstanding
32 any other provision of law, shall always be greater than zero but shall not exceed the difference
33 between the fair market value of the property owner's entire property immediately before the
34 taking and the fair market value of the property owner's property immediately after the taking.
35 Evidence of revenues or profits derived or the rental value of an assembled communications
36 corridor shall not be admissible in determining fair market value. A property owner's actual
37 damages shall be fixed at the time of the initial trespass and shall not be deemed to continue,
38 accumulate, or accrue. Upon payment of damages, the corporation or its wholly owned subsidiary
39 shall be granted a permanent easement for the trespass that was the subject of the claim."

40 **SECTION 3.** This act is effective when it becomes law and applies to all claims filed
41 on or after that date.



HOUSE BILL 387: Electric Co-Op Rural Broadband Services.

2019-2020 General Assembly

Committee:	House Energy and Public Utilities. If favorable, re-refer to Judiciary. If favorable, re-refer to Rules, Calendar, and Operations of the House	Date:	April 25, 2019
Introduced by:	Reps. Arp, Szoka, Lewis, Hunter	Prepared by:	Jennifer McGinnis
Analysis of:	PCS to First Edition H387-CSRI-8		Committee Counsel

OVERVIEW: *The Proposed Committee Substitute (PCS) for H387 would do all of the following:*

- *Eliminate certain restrictions on the formation and operation of separate business entities (subsidiaries) by Electric Membership Corporations (EMCs) that provide or support high speed broadband services.*
- *Provide that the terms of any easement held or otherwise used by an EMC for the provision of electrification may be expanded to allow use by the EMC or a subsidiary of the EMC for the purpose of supplying high-speed broadband service.*
- *Prohibit class action suits against an EMC or a wholly-owned subsidiary of the EMC in a suit in trespass or inverse condemnation based on a claim of expanded use of an easement.*
- *Establish a measure of damages to be paid to a landowner, if, in a suit in trespass or inverse condemnation based on a claim of expanded use of an easement, the landowner prevails over an EMC or a wholly-owned subsidiary of the EMC. Among other limitations, the damages could not exceed the difference between the fair market value of the property owner's entire property immediately before the taking and the fair market value of the property owner's property immediately after the taking. Upon payment of damages, the EMC or a wholly-owned subsidiary of the EMC would be granted a permanent easement for the trespass that was the subject of the claim.*

[As introduced, this bill was identical to H387, as introduced by Reps. Arp, Szoka, Lewis, Hunter, which is currently in House Energy and Public Utilities.]

SECTION 1

CURRENT LAW:

Under current law, EMCs are non-profit organizations and are tax exempt. The EMCs are authorized, but not required, to form, organize, acquire, hold, dispose of, and operate any interest, up to and including full controlling interest, in separate business entities that provide energy services and products, telecommunications services and products, water, and wastewater collection and treatment. These are referred to as a subsidiary of the EMC, even though under the statutes these subsidiaries must be separate

Karen Cochrane-Brown
Director



Legislative Analysis
Division
919-733-2578

House PCS 387

Page 2

for-profit corporations, subject to all taxes (including income taxes), and must comply with the following additional conditions:

- The subsidiary is not financed with loans or grants from the Rural Utilities Service of the United States Department of Agriculture (USDA).
- The subsidiary fully compensates the EMC for the use of personnel, services, equipment, or tangible and intangible property.
- The subsidiary does not receive from an EMC any investment, loan, guarantee, or pledge of assets in an amount that, in the aggregate, exceeds 10% of the assets of that EMC.

BILL ANALYSIS:

Section 1 of the PCS would authorize subsidiary business entities of EMC's that provide or support "high speed broadband services to one or more households, businesses, or community anchor points in an unserved area" to do both of the following:

- Finance with loans or grants from the Rural Utilities Service of the United States Department of Agriculture (USDA).
- Compensate the EMC at less than full compensation for the use of personnel, services, equipment, or tangible and intangible property.

For purposes of the subsection:

- The term "anchor points" includes schools, libraries, community colleges, community centers, and other similar places.
- The term "high speed broadband services" means Internet transmission speeds of a minimum of 25 megabits per second (Mbps) downstream and 3 Mbps upstream.
- The term "unserved area" means a location where inhabitants or businesses do not have access to high-speed broadband services.

BACKGROUND:

The Rural Utilities Service at the USDA houses three ongoing assistance programs exclusively created and dedicated to financing broadband deployment: the Rural Broadband Access Loan and Loan Guarantee Program, the Community Connect Grant Program, and the ReConnect Program.

SECTION 2

CURRENT LAW

Article 2 of Chapter 117 of the General Statutes authorizes formation of EMCs "for the purpose of promoting and encouraging the fullest possible use of electric energy in the rural section of the State by making electric energy available to inhabitants of the State at the lowest cost consistent with sound economy and prudent management of the business of such corporations." The statutes currently authorize EMCs to "exercise the right of eminent domain for the purposes of constructing, operating and maintaining electric generating, transmission, distribution and related facilities, individually and solely in their own names, pursuant to the provisions of Chapter 40A of the General Statutes...."

BILL ANALYSIS:

Section 2 of the PCS would:

- Provide that any easement held or otherwise used by an EMC for the purpose of electrification may also be used by the EMC or a wholly-owned subsidiary of the EMC for the purpose of supplying high-speed broadband service where that use does not require additional construction and is ancillary to the electrification purposes.
- Prohibit class action suits against an EMC or a wholly-owned subsidiary of the EMC in a suit in trespass or inverse condemnation based on a claim of expanded use of an easement.
- Provide that if, in a suit in trespass or inverse condemnation based on a claim of expanded use of an easement, an individual property owner prevails over an EMC or a wholly-owned subsidiary of the EMC, the trespass would be deemed permanent and the actual damages awarded would be the fair market value, which would always be greater than zero but must not exceed the difference between the fair market value of the property owner's entire property immediately before the taking and the fair market value of the property owner's property immediately after the taking. In addition, calculation of the damages would be subject to the following conditions:
 - Evidence of revenues or profits derived or the rental value of an assembled communications corridor would not be admissible in determining fair market value.
 - A property owner's actual damages would be fixed at the time of the initial trespass and could not be deemed to continue, accumulate, or accrue.

Upon payment of damages, the EMC or a wholly-owned subsidiary of the EMC would be granted a permanent easement for the trespass that was the subject of the claim.

BACKGROUND:

Easements are typically created by conveyance in a deed or other written document and are generally considered contracts in North Carolina. In limited circumstances, a court will imply an easement as a matter of law. Easements may be acquired through the power of eminent domain under the statutes. The terms of the easement are considered the terms of the contract once entered into.

The transferability of an easement from one individual or entity to another is dependent on the nature of the easement – whether the easement is considered "appurtenant" or "in gross." "Easements appurtenant and appurtenant are always owned in connection with other real estate and as incidents to such ownership, while easements in gross are purely personal and usually end with the death of the grantee. However, an easement in gross designated as a profit à prendre, by which the right to take something from the land does not end with the death of the grantee necessarily, but may pass to his heirs or assigns." *Davis v. Robinson*, 189 N.C. 589, 127 S.E. 697 (1925). "If an easement is in gross there is no dominant tenement; an easement is in gross and personal to the grantee because it is not appurtenant to other premises. *ibid.*, pp. 626-7. An easement in gross attaches to the person and not to land." *Shingleton v. State*, 260 N.C. 451 (1963), citing 17A Am. Jur., Easements, ss. 9, 11, pp. 624, 625, 627.

With regard to changes in the parties to an easement, courts in North Carolina have held:

Grimes v. Virginia Elec. & Power Co., 245 N.C. 583, 96 S.E.2d 713 (1957). In *Grimes*, the plaintiff granted an express easement by contract to the defendant for power lines. *Id.* at 583, 96 S.E.2d at 713-14. The defendant later granted a license to the City of Washington to add additional lines on the same poles. *Id.* at 584, 96 S.E.2d at 714. The plaintiff sued for compensation for the additional

House PCS 387

Page 4

servitude on his land, while the defendant contended that "the plaintiff's grant was to the Virginia Electric & Power Company [("VEPC")] and to its -25- successors and assigns, and permitted it to make the assignment to the City of Washington." Id. (emphasis in original). The Supreme Court rejected the defendant's argument stating:

The answer to the defendant's contention is that the Virginia Electric & Power Company has not assigned anything. It still retains its right to maintain its full complement of wires and other facilities and to transmit electricity within the full limits of its grant. The contract between the defendants permits the power company to retain all its facilities and, in addition, permits the City of Washington to transmit its own current by means of its own wires attached to the power company's poles. The plaintiff was not a party to the contract between the defendants. The additional lines of the city, with the right to enter upon the lands for maintenance purposes, place an additional burden on plaintiff's land without his consent. Two power companies enjoy an easement over his land. He granted only one.

City of Charlotte v. BMJ of Charlotte, 196 N.C. App. 1 (2009), citing *Grimes v. Virginia Elec. & Power Co.*, 245 N.C. 583, 96 S.E.2d 713 (1957)

With regard to changes in the scope or purpose of an easement, the North Carolina courts have stated the following with respect to evaluating whether an undue burden exists:

"The following rules apply when overburdening or misuse of an easement is at issue:

First, the scope of an express easement is controlled by the terms of the conveyance if the conveyance is precise as to this issue. Second, if the conveyance speaks to the scope of the easement in less than precise terms (i.e., it is ambiguous), the scope may be determined by reference to the attendant circumstances, the situation of the parties, and by the acts of the parties in the use of the easement immediately following the grant. Third, if the conveyance is silent as to the scope of the easement, extrinsic evidence is inadmissible as to the scope or extent of the easement. However, in this latter situation, a reasonable use is implied."

City of Charlotte v. BMJ of Charlotte, 196 N.C. App. 1 (2009)

As easements are generally considered contracts, legislation that alters the existing terms of that real property contract, including legislation that changes the purpose for which the easement may be exercised or the parties that may use the easement, may give rise to constitutional considerations, including:

- Article I, Section 10, Clause 1 of the United States Constitution, which provides that "No State shall . . . pass any . . . Law impairing the Obligation of Contracts"
- The 5th Amendment to the United States Constitution, which states that private property shall not "be taken for public use without just compensation."
- Section 1 of the 14th amendment to the United States Constitution, which provides that no state may "deprive any person of life, liberty, or property, without due process of law."
- Article I, Section 19 of the State's Constitution, which provides "No person shall be...in any manner deprived of his ... property, but by the law of the land."

EFFECTIVE DATE: The PCS would be effective when it becomes law and apply to all claims filed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

H.B. 432
Mar 21, 2019
HOUSE PRINCIPAL CLERK

H

D

HOUSE BILL DRH40198-LM-14A

Short Title: Water/Sewer to Contiguous Dwelling Units. (Public)

Sponsors: Representatives Shepard, Grange, Hurley, and Hardister (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED
AN ACT PROVIDING THAT IF THE UTILITIES COMMISSION APPROVES A FLAT
RATE FOR WATER OR SEWER SERVICES FOR CONTIGUOUS DWELLING UNITS,
THE LESSOR OF THE UNITS MAY PASS THROUGH AND CHARGE THE TENANTS
THAT SAME FLAT RATE.

The General Assembly of North Carolina enacts:

SECTION 1. 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 leased premises. The following provisions shall apply:

...
(1b) Notwithstanding the provisions of subdivisions (1) and (1a) of this section, if
the Commission approves a flat rate for water or sewer services for contiguous
dwelling units rather than a rate based on metered consumption, the lessor
may pass through and charge the tenants of the contiguous dwelling units the
same flat rate for water or sewer services and an administrative fee as
authorized in subdivision (2) of this subsection. Bills for water and sewer
service sent by the lessor to the lessee shall contain all the information
required by sub-sub-subdivisions e.2. through e.5. of subdivision (1a) of this
section.

...."

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



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GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

H

D

HOUSE BILL 432
PROPOSED COMMITTEE SUBSTITUTE H432-CSRI-4 [v.3]

04/15/2019 05:36:10 PM

Short Title: Water/Sewer to Contiguous Dwelling Units.

(Public)

Sponsors:

Referred to:

March 25, 2019

A BILL TO BE ENTITLED

AN ACT PROVIDING THAT IF THE UTILITIES COMMISSION APPROVES A FLAT RATE TO BE CHARGED BY A WATER OR SEWER UTILITY FOR WATER OR SEWER SERVICES TO CONTIGUOUS DWELLING UNITS, THE LESSOR OF THE UNITS MAY PASS THROUGH AND CHARGE THE TENANTS THAT SAME FLAT RATE.

The General Assembly of North Carolina enacts:

SECTION 1. 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 leased premises. The following provisions shall apply:

...

(1b) Notwithstanding the provisions of subdivisions (1) and (1a) of this subsection, if the Commission approves a flat rate to be charged by a water or sewer utility for the provision of water or sewer services to contiguous dwelling units, the lessor may pass through and charge the tenants of the contiguous dwelling units the same flat rate for water or sewer services, rather than a rate based on metered consumption, and an administrative fee as authorized in subdivision (2) of this subsection. Bills for water and sewer service sent by the lessor to the lessee shall contain all the information required by sub-sub-subdivisions e.2. through e.5. of subdivision (1a) of this subsection.

...."

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



* H 4 3 2 - C S R I - 4 *



HOUSE BILL 432: Water/Sewer to Contiguous Dwelling Units.

2019-2020 General Assembly

Committee:	House Energy and Public Utilities. If favorable, re-refer to Rules, Calendar, and Operations of the House	Date:	April 15, 2019
Introduced by:	Reps. Shepard, Grange, Hurley, Hardister	Prepared by:	Jennifer McGinnis
Analysis of:	PCS to First Edition H432-CSRI-4		Committee Counsel

OVERVIEW: *House Bill 432 would provide that if the Utilities Commission (Commission) approves a flat rate to be charged by a water or sewer utility for the provision of water or sewer services to contiguous dwelling units of leased premises, the lessor may pass through and charge the tenants of the contiguous dwelling units the same flat rate for water or sewer services, rather than a rate based on metered consumption.*

CURRENT LAW:

The Commission is authorized by statute to adopt procedures that, for the purpose of encouraging water conservation, allow a lessor of leased premises to charge for the costs of providing water or sewer service to persons who occupy the leased premises subject to certain requirements, including the following;

- All charges for water or sewer service must be based on the user's metered consumption of water, and the rate charged by the lessor must not exceed the unit consumption rate charged by the supplier of the service.
- If the leased premises are contiguous dwelling units built prior to 1989, and the lessor determines that the measurement of the lessee's total water usage is impractical or not economical, the lessor may allocate the cost for water and sewer service to the lessee using equipment that measures the lessee's hot water usage.

Lessors are authorized to charge a reasonable administrative fee for providing water or sewer service not to exceed a maximum administrative fee established by the Commission.

BILL ANALYSIS: House Bill 432 would provide that (notwithstanding the requirement under current law that charges for water or service to persons who occupy a leased premise be based on the user's metered consumption of water) if the Commission approves a flat rate to be charged by a water or sewer utility for the provision of water or sewer services to contiguous dwelling units of leased premises, the lessor may pass through and charge the tenants of the contiguous dwelling units the same flat rate for water or sewer services, rather than a rate based on metered consumption.

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

Karen Cochrane-Brown
Director



Legislative Analysis
Division
919-733-2578

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

H.B. 522
Mar 28, 2019
HOUSE PRINCIPAL CLERK

H

D

HOUSE BILL DRH30237-BR-1

Short Title: Study Outside Water Rates.

(Public)

Sponsors: Representative Szoka.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO DIRECT THE LEGISLATIVE RESEARCH COMMISSION TO STUDY RATES
3 CHARGED BY MUNICIPALITIES FOR WATER AND WASTEWATER SERVICE TO
4 CUSTOMERS SERVED INSIDE AND OUTSIDE OF THE MUNICIPALITIES'
5 BOUNDARIES.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.(a)** The Legislative Research Commission shall study fee and charge
8 setting by municipalities in the operation of a water or sewer system. The Commission shall focus
9 on the disparity in fees between customers of the municipal system inside the boundaries of the
10 municipality and customers of the municipal system outside of those boundaries.

11 **SECTION 1.(b)** The Legislative Research Commission shall complete the study
12 required by subsection (a) of this section and report its findings and recommendations, including
13 any legislative proposals, to the General Assembly by May 1, 2020.

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





HOUSE BILL 522: Study Outside Water Rates.

2019-2020 General Assembly

Committee:	House Energy and Public Utilities. If favorable, re-refer to Rules, Calendar, and Operations of the House	Date:	April 25, 2019
Introduced by:	Rep. Szoka	Prepared by:	Kyle Evans
Analysis of:	First Edition		Committee Counsel

OVERVIEW: *House Bill 522 would direct the Legislative Research Commission to study fee and charge setting by municipalities in the operation of a water or sewer system.*

BILL ANALYSIS: House Bill 522 would direct the Legislative Research Commission to study fee and charge setting by municipalities in the operation of a water or sewer system. The study would focus on the disparity in fees between customers of the municipal system inside the boundaries of the municipality and customers of the municipal system outside of those boundaries. The Commission would be directed to report its findings, including legislative proposals, to the General Assembly by May 1, 2020.

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

BACKGROUND: Municipal water and sewer utilities often serve customers who live outside of city limits, and other utilities specify geographical boundaries within their service areas and identify their customers as residing "inside" and "outside" those boundaries. In many cases, utilities charge different rates for customers living inside or outside those boundaries.

Karen Cochrane-Brown
Director



H 5 2 2 - S M B R - 2 5 E 1 - V - 4

Legislative Analysis
Division
919-733-2578

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

**NORTH CAROLINA GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES**

ENERGY AND PUBLIC UTILITIES COMMITTEE REPORT

**Representative Dean Arp, Co-Chair
Representative John Szoka, Co-Chair**

FAVORABLE AND RE-REFERRED

HB 522

Study Outside Water Rates.

Draft Number: None

Serial Referral: **RULES, CALENDAR, AND
OPERATIONS OF THE HOUSE**

Recommended Referral: None

Long Title Amended: No

Floor Manager: Szoka

TOTAL REPORTED: 1



* C M R 3 2 0 - V - 1 *

**NORTH CAROLINA GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES**

**ENERGY AND PUBLIC UTILITIES COMMITTEE REPORT
Representative Dean Arp, Co-Chair
Representative John Szoka, Co-Chair**

FAVORABLE COM SUB , UNFAVORABLE ORIGINAL BILL AND RE-REFERRED

HB 387	Electric Co-Op Rural Broadband Services. Draft Number: H387-PCS10579-RI-8 Serial Referral: JUDICIARY Recommended Referral: None Long Title Amended: Yes Floor Manager: Arp
HB 432	Water/Sewer to Contiguous Dwelling Units. Draft Number: H432-PCS30420-RI-4 Serial Referral: RULES, CALENDAR, AND OPERATIONS OF THE HOUSE Recommended Referral: None Long Title Amended: Yes Floor Manager: Shepard

TOTAL REPORTED: 2



* C M R 3 2 3 - V - 1 *

VISITOR REGISTRATION SHEET

House Committee on Energy and Public Utilities

04-25-2019

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Lori Ann Harris	LATA
Tiffany Gladney	NC Rural Center
Mary Maule Aibel	SELC
Brooks Reing Pease	SELC
Ailene Wimberly	NCCN
Cassidy Robertson	ANCA
Lexi Annun	A. Arthur & Co.
Dan Collins	PERC
Tom BEAN	EDF, NCSEA, NCLWF
Ben Stockdale	NCSEA
Julie Robinson	NCSEA

VISITOR REGISTRATION SHEET

House Committee on Energy and Public Utilities

04-25-2019

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Joel Green	NBS
April Neumann	MMC
Dwight Allen	Allen Law, PLLC
Britton Allen	"
Marilyn Avila	CTS
Patrick Buffkin	NCEC
Maras Tatham	BPMH
MARVA Johnson	Charter Communications
Brian Gregory	"
Frances Liles	NCREA
Terilyn Hawthorne	CCU

VISITOR REGISTRATION SHEET

House Committee on Energy and Public Utilities

04-25-2019

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Mig Beiley

Charter Comm.

VISITOR REGISTRATION SHEET

Energy and Public Utilities

04/25/2019

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

James [unclear]	NMRS
Jay Rouse	NC Elect Coop
Wendy Keef	FPA
Thomas Moore	CGA
Doug Miskin	PSG
Ken Wright	DOR
Carrie Herby	MVH
Preston Howard	NCMA
Nelson Freeman	Kilpatrick Townsend
Chris Wall	PG
Jaime King Fugray	Vista Strategies

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VISITOR REGISTRATION SHEET

Energy and Public Utilities

04/25/2019

Name of Committee

Date _____

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME _____

FIRM OR AGENCY AND ADDRESS

Paul Mott

NC Electric Cooperatives

Heidi Bunce

mmce

LCR

CS5

VISITOR REGISTRATION SHEET

Energy and Public Utilities

04/25/2019


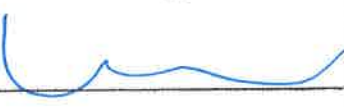

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

John McFalls	P.L.G. Group
Steve Woodson	NCFB
Kelly Garry	Upstate
Garantuk	Duke Energy 
Kara Westbrook	Smith Anderson
Sallie James	Governor's office
Nathan Babcock	PPAB
Hugh Johnson	NCAE
Erin Wynia	NCLM
	
Jarrod James	Intern

Committee Sergeants at Arms

Energy and Public Utilities

NAME OF COMMITTEE

DATE: 04/25/2019

Room: 643 LOB

House Sgt-At Arms:

1. Name: Terry McCraw
2. Name: Jim Moran
3. Name: Thomas Terry
4. Name: Will Crocker
5. Name:

Senate Sgt-At Arms:

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

House Committee on Energy and Public Utilities
Thursday, May 2, 2019 at 9:00 AM
Room 1228/1327 of the Legislative Building

MINUTES

The House Committee on Energy and Public Utilities met at 9:00 AM on May 2, 2019 in Room 1228/1327 of the Legislative Building. Representatives Arp, Autry, Conrad, D. Hall, Harrison, Hastings, Hawkins, Strickland, and Szoka attended.


Representative John Szoka, Chair, presided.

The following bills were considered:

HB 828 Energy Savings Incentives/State Agencies. (Representatives Harrison, McGrady, Warren, Hardister) (PCS): Tabled

HB 872 Underground Utility Safety Act/Changes. (Representatives Arp, Riddell, Holley)
Favorable Com Sub, Unfavorable Original Bill. Serial Referral: Rules.
Recommended Referral: FINANCE

With no further business before the committee, the meeting was adjourned at 9:31 pm.



Representative John Szoka, Chair
Presiding



Beverly Slagle, Committee Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

H

D

HOUSE BILL 872
PROPOSED COMMITTEE SUBSTITUTE H872-PCS30441-RIF-7

Short Title: Underground Utility Safety Act/Changes.

(Public)

Sponsors:

Referred to:

April 22, 2019

A BILL TO BE ENTITLED
AN ACT TO MAKE VARIOUS CHANGES TO THE UNDERGROUND UTILITY SAFETY
AND DAMAGE PREVENTION ACT, INCLUDING AUTHORIZING THE
UNDERGROUND DAMAGE PREVENTION REVIEW BOARD TO APPROVE
TRAINING COURSES AND TO IMPOSE A FEE ON OPERATORS TO FUND THE
ACTIVITIES OF THE BOARD.

The General Assembly of North Carolina enacts:

SECTION 1. Article 8A of Chapter 87 of the General Statutes reads as rewritten:
"Article 8A.

"Underground Utility Safety and Damage Prevention Act.

"§ 87-117. Definitions.

The following definitions apply in this Article:

...
(18a) Parcel. – An extended area of land with fixed boundaries.

"87-121. Facility operator responsibilities.

(a) An operator shall provide to the excavator the following:

(1) The horizontal location and description of all of the operator's facilities in the area where the proposed excavation or demolition is to occur. The location shall be marked by stakes, soluble paint, flags, or any combination thereof, as appropriate, depending upon the conditions in the area of the proposed excavation or demolition. The operator shall, when marking as provided under this subdivision, use the APWA Uniform Color Code. If the diameter or width of the facility is greater than four inches, the dimension of the facility shall be indicated at least every ~~25~~50 feet in the area of the proposed excavation or demolition. An operator who operates multiple facilities in the area of the proposed excavation or demolition shall locate each facility.

(1a) The operator's identity, marked as provided in subdivision (1) of this subsection, in the area where the proposed excavation or demolition is to occur. At a minimum, the operator's identity shall be marked at the beginning point, at intervals of 200 linear feet, and at the end point of the proposed excavation or demolition.

"§ 87-122. Excavator responsibilities.



* H 8 7 2 - P C S 3 0 4 4 1 - R I F - 7 *

(b) The notice required by subsection (a) of this section shall, at a minimum, contain all of the following:

(5) The location of the proposed excavation or demolition, ~~not to exceed one-quarter mile in geographical length, or five adjoining addresses, not to exceed one-quarter mile in geographical length.~~ demolition by one of the following:

a. A single parcel that may exceed 1/4 mile in linear length identified by a single address.

b. The lesser of five adjoining parcels identified by addresses, not to exceed 1/4 mile in linear length or an area not to exceed 1/4 mile in linear length.

(c) An excavator shall comply with the following:

(6) If an operator fails to respond to the positive response system, the excavator may proceed if there are no visible indications of a facility at the proposed excavation or demolition area, such as a pole, marker, pedestal, meter, or valve. However, if the excavator is aware of or observes indications of an unmarked facility at the proposed excavation or demolition area, the excavator shall not begin excavation or demolition until an additional ~~call~~ notice is made to the Notification Center detailing the facility and an arrangement is made for the facility to be marked by the operator within three hours from the time the additional ~~call~~ notice is received by the Notification Center.

(10) The excavator shall not use mechanized equipment within 24 inches of a facility that is ~~a gas, oil, petroleum, or an oil, petroleum products, or highly volatile liquid pipeline system, a gas transmission line, or an electric transmission line~~ unless the facility operator has consented to the use in writing and the operator's representative is on site during the use of the mechanized equipment. For purposes of this subdivision, the term "oil, petroleum products, or highly volatile liquid pipeline system" has the same meaning as the term "pipeline system" in Title 49 C.F.R. § 195.2, the term "gas, oil, petroleum transmission line" "gas transmission line" has the same meaning as the term "transmission line" in Title 49 C.F.R. § 192.3, and the term "electric transmission line" has the same meaning as the term "transmission line" in G.S. 62-100(7).

§ 87-124. Exemptions.

The notice requirements in G.S. 87-122(a) and G.S. 87-122(b) do not apply to the following:

(6) An excavation or demolition performed when those responsible for routine maintenance of a right-of-way or any other governmental entity are conducting performing, with labor on their permanent payroll, maintenance activities within the right-of-way. Maintenance activities shall include resurfacing, milling, emergency replacement of signs critical for maintaining safety, safety or the reshaping of shoulders and ditches to the original road profile. Maintenance activities do not include the initial installation of traffic signs, traffic control equipment, or guardrails-guardrails, or drainage structures. The provisions of this subdivision do not apply when the excavation or demolition is performed by a contractor acting on behalf of a

person or entity responsible for routine maintenance of a right-of-way or on behalf of any other governmental entity.

...

(9) Pavement milling and pavement resurfacing.

"§ 87-125. Notice in case of emergency excavation or demolition.

(a) An excavator performing an emergency excavation or demolition is not required to give notice to the Notification Center as provided in G.S. 87-122. However, the excavator shall, as soon as practicable, give ~~oral~~-written notice to the Notification Center which shall include a description of the circumstances justifying the emergency. The excavator may request emergency assistance from each affected operator in locating and providing immediate protection to the facilities in the affected area.

...

(c) Any person who falsely claims that an emergency exists requiring an excavation or demolition shall have violated the provisions of this Article and shall be guilty of a Class 3 misdemeanor.

(d) Any person who falsely claims an emergency exists requiring an excavation or demolition under G.S. 87-122 shall have violated the provisions of this Article.

...

"§ 87-129. Underground Damage Prevention Review Board; enforcement; civil penalties.

(a) There is hereby established the Underground Damage Prevention Review Board to review reports of alleged violations of this Article. The members of the Board shall be appointed by the Governor. The Board shall consist of 15 members as follows:

...

(12) A representative from a rural water system;system, who shall be recommended by the North Carolina Rural Water Association;

...

(b1) The Board shall review all reports of alleged violations of this Article and accompanying information. If the Board determines that a person has violated any provision of this Article, the Board shall determine the appropriate action or penalty to impose for each such violation. Actions and penalties may include training, education, and a civil penalty not to exceed two thousand five hundred dollars (\$2,500). The Board shall approve training courses and the sponsors of those training courses under this subsection. Any fees for training courses approved by the Board shall be paid by the person determined to have violated this Article. The Board shall notify each person who is determined to have violated this Article in writing of the Board's determination and the Board's recommended action or penalty. A person determined to be in violation of this Article may request a hearing before the Board, after which the Board may reverse or uphold its original finding. If the Board recommends a penalty, the Board shall notify the Utilities Commission of the recommended penalty, and the Utilities Commission shall issue an order imposing the penalty.

...

"§ 87-129A. Regulatory fee.

(a) Fee Imposed. – In addition to any costs that may be apportioned to operators to maintain the Notification Center pursuant to G.S. 87-120(b), the Board is authorized to impose a fee on operators in order to provide sufficient moneys to fund the activities and operations of the Board in reviewing reports of alleged violations of this Article. Such fee shall be based on the jurisdictional revenues of an operator and shall be set at a rate that the total proceeds of all fees collected shall not exceed two hundred thousand dollars (\$200,000) annually to fund the activities and operations of the Board.

(b) Use of Proceeds. – A special fund in the office of State Treasurer, the Underground Damage Prevention Review Board Fund, is created. The fees collected pursuant to this section shall be deposited in the Underground Damage Prevention Review Board Fund. The Fund shall

1 be placed in an interest-bearing account, and any interest or other income derived from the Fund
2 shall be credited to the Fund. Moneys in the Fund shall only be spent pursuant to appropriation
3 by the General Assembly. The Underground Damage Prevention Review Board Fund shall be
4 subject to the provisions of the State Budget Act except that no unexpended surplus of the Fund
5 shall revert to the General Fund. All funds credited to the Underground Damage Prevention
6 Review Board Fund shall be used only to pay the expenses of the Board in reviewing reports of
7 alleged violations of this Article."

8 **SECTION 2.** This act becomes effective October 1, 2019, and applies to excavations
9 and demolitions occurring on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

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HOUSE BILL 828

Short Title: Energy Savings Incentives/State Agencies. (Public)

Sponsors: Representatives Harrison, McGrady, Warren, 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, Rules, Calendar, and Operations of the House

April 18, 2019

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE THAT ANY ENERGY SAVINGS REALIZED BY STATE
3 AGENCIES MAY REMAIN AVAILABLE TO THE AGENCY FOR OTHER FACILITY
4 UPGRADES RELATED TO REDUCING ENERGY AND WATER CONSUMPTION.
5 The General Assembly of North Carolina enacts:
6 SECTION 1. Part 2 of Article 3B of Chapter 143 of the General Statutes is amended
7 by adding a new section to read:
8 "**§ 143-64.17N. Energy conservation savings nonreversion.**
9 (a) The General Fund current operations appropriations credit balance remaining at the
10 end of each fiscal year for utilities of a State governmental unit (other than the Board of
11 Governors of The University of North Carolina and its constituent institutions), to the extent that
12 credit balance represents energy savings realized from implementing an energy conservation
13 measure, shall be carried forward by the unit to the next fiscal year and is appropriated for energy
14 conservation measures by that unit. The use of funds appropriated under this section shall be
15 limited to one-time capital and operating expenditures that will not impose additional financial
16 obligations on the State. The Director of the Budget, under the authority set forth in
17 G.S. 143C-6-2, shall establish the General Fund current operations credit balance remaining in
18 each budget code of each unit.
19 (b) The Director of the Budget shall not decrease the recommended continuation budget
20 requirements for utilities for State governmental units carrying forward a credit balance under
21 subsection (a) of this section by the amount of energy savings realized from implementing energy
22 conservation measures, including savings achieved through a guaranteed energy savings
23 contract.
24 (c) State governmental units shall submit annual reports on the use of funds authorized
25 pursuant to this section as required under G.S. 143-64.12."
26 SECTION 2. G.S. 143-64.12(a) reads as rewritten:
27 "(a) The Department of Environmental Quality through the State Energy Office shall
28 develop a comprehensive program to manage energy, water, and other utility use for State
29 agencies and State institutions of higher learning and shall update this program annually. Each
30 State agency and State institution of higher learning shall develop and implement a management
31 plan that is consistent with the State's comprehensive program under this subsection to manage
32 energy, water, and other utility use, and that addresses any findings or recommendations resulting
33 from the energy audit required by subsection (b1) of this section. The energy consumption per
34 gross square foot for all State buildings in total shall be reduced by twenty percent (20%) by



2010 and thirty percent (30%) by 2015 based on energy consumption for the 2002-2003 fiscal year. Each State agency and State institution of higher learning shall update its management plan biennially and include strategies for supporting the energy consumption reduction requirements under this subsection. Each community college shall submit to the State Energy Office a biennial written report of utility consumption and costs. Management plans submitted biennially by State agencies and institutions of higher learning shall include all of the following:

- (1) Estimates of all costs associated with implementing energy conservation measures, including pre-installation and post-installation costs.
- (2) The cost of analyzing the projected energy savings.
- (3) Design costs, engineering costs, pre-installation costs, post-installation costs, debt service, and any costs for converting to an alternative energy source.
- (4) An analysis that identifies projected annual energy savings and estimated payback periods."

SECTION 3. This act is effective for taxes imposed for taxable years beginning on or after July 1, 2019.

**NORTH CAROLINA GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES**

ENERGY AND PUBLIC UTILITIES COMMITTEE REPORT

**Representative Dean Arp, Co-Chair
Representative John Szoka, Co-Chair**

FAVORABLE COM SUB , UNFAVORABLE ORIGINAL BILL AND RE-REFERRED

HB 872

Underground Utility Safety Act/Changes.

Draft Number: H872-PCS30441-Rlf-7

**Serial Referral: RULES, CALENDAR, AND
OPERATIONS OF THE HOUSE**

Recommended Referral: FINANCE

Long Title Amended: Yes

Floor Manager: Arp

TOTAL REPORTED: 1



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**NORTH CAROLINA GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES**

ENERGY AND PUBLIC UTILITIES COMMITTEE REPORT

**Representative Dean Arp, Co-Chair
Representative John Szoka, Co-Chair**

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VISITOR REGISTRATION SHEET

H C on Energy and Public Utilities

Name of Committee

5/2/2019

Date _____

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Sara Regina

UNC School of Med & Journalism

At the Wombourgs

NCN

Patrick Buffini

NCUC

Ben Stockdale

NCSEA

VISITOR REGISTRATION SHEET

H C on Energy and Public Utilities

5/2/2019

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Mike Hager	HSS
Mark Fleming	BCBS NC
Ed Shulze	BP
Jon Carr	NC Rural Water Association
David McDevan	NCPC
Bill Macaulay	Dominion
John White	NCPC
Chandler Spence	SA
Shirley Numa	DEQ
May Madea Abell	SEU
Brooks Perry-Peom	SEU

**House Committee on Energy and Public Utilities
Wednesday, May 22, 2019 at Immediately After Session
Room 643 of the Legislative Office Building**

MINUTES

The House Committee on Energy and Public Utilities met at Immediately After Session on May 22, 2019 in Room 643 of the Legislative Office Building. Representatives Arp, Autry, Bell, Black, Brisson, Cunningham, Hanig, Harrison, Hastings, Holley, Humphrey, Montgomery, Richardson, Riddell, Strickland, and Szoka attended.

Representative John Szoka, Chair, presided.

The following bills were considered:

SB 310 Electric Co-Op Rural Broadband Services. (Senators Brown, Newton, Woodard) was presented by Chairman. Arp., Rep. Dixon made a motion to give a Favorable Report SB310 with a referral to the House Committee on Rules, Calendar, and Operation. Chairman Szoka seeing no opposition to the motion he brought the Question before the committee and the bill passed with a Favorable Report to be referred to House Rules.

The meeting adjourned at 3:07 pm.


Representative John Szoka, Chair
Presiding


Beverly Slagle, Committee Clerk

House Committee on Energy and Public Utilities
Wednesday, May 22, 2019, Immediately After Session
1228/1327

AGENDA

Welcome and Opening Remarks

Rep. John Szoka, Chair

Introduction of Pages and Sergeant-At-Arms

Bills

BILL NO.	SHORT TITLE	SPONSOR
SB 310	Electric Co-Op Rural Broadband Services.	Senator Brown Senator Newton Senator Woodard

Other Business

Adjournment

Beverly Slagle (Rep. John Szoka)

Subject: SALT Task Force / 2019 Task Force
Location: Washington Court Hotel, 525 New Jersey Avenue, NW, Washington, D.C.
Start: Wed 05/08/2019 07:00 AM
End: Sun 05/12/2019 11:00 AM
Recurrence: (none)
Meeting Status: Meeting organizer
Organizer: Rep. John Szoka
Required Attendees: 'John Szoka'
Categories: OFFSITE EVENTS

Greetings NCSL SALT Task Force members,

From: Molly Ramsdell <molly.ramsdell@ncsl.org>
Sent: Thursday, March 07, 2019 2:26 PM
Cc: Erlinda Doherty <erlinda.doherty@ncsl.org>; Jackson Brainerd <Jackson.Brainerd@ncsl.org>; Arturo Perez <arturo.perez@ncsl.org>
Subject: NCSL SALT Task Force Update

Greetings NCSL SALT Task Force members,

I want to thank you for your patience, as we worked to identify a date for the next SALT Task Force meeting, which will be **May 10-11, 2019 in Washington, D.C.**, at the Washington Court Hotel, 525 New Jersey Avenue, NW, Washington, D.C. Please see the full 2019 Task Force meeting schedule below; more details on the May meeting to follow.

I'd also like to take this opportunity to introduce Erlinda Doherty who will staff the SALT Task Force along with Jackson Brainerd, Arturo Pérez and myself (*more on your SALT Task Force team below*). Erlinda is also the D.C. director to NCSL's Budgets and Revenue Committee. Please join me in welcoming Erlinda.

As for the upcoming meetings, based on our discussion last November in Scottsdale, below are some of the issues task force members mentioned as potential topics for discussion:

- Tax incentives
- Disasters/Catastrophic events and the impact on the tax base
- Blockchain

- Marijuana regulation
- Continued Post Wayfair discussion
- Gentrification – property tax relief
- Federal Enterprise Zone Program
- Transportation funding – tolls vs. gas tax, VMT

If you have other topics you would like to suggest for discussion, please email [Erlinda](#) and [Jackson](#). We will try our best to address your recommendations at one of the 2019 meetings.

Please don't hesitate to contact me if you have any questions and we hope to see you in May.

Sincerely,

Molly

Molly Ramsdell
Director, Washington Office
National Conference of state Legislatures
Phone: 202-624-3584

2019 SALT Task Force Meeting Schedule

- **May 10-11, 2019 – Washington, D.C.**
- Aug. 4-5, 2019 – Nashville, Tenn. (in conjunction with the 2019 NCSL Legislative Summit)
- Nov. 22-23, 2019 – Charleston, SC (in conjunction with the SGAC 2019 Leaders' Policy Conference)

Your SALT Task Force Team



Erlinda Doherty will serve as the lead staff in the D.C. office for the SALT Task Force and the Budgets and Revenue Committee. With a varied public policy and public affairs background spanning 20 years, Erlinda joins NCSL most recently from the South Carolina Senate Finance Committee where she was responsible for analyzing the state budget, stewarding pension reform, and spearheading fiscal-related legislation. In the role of budget analyst, she also performed communications duties for the Chairman of the Senate Finance Committee and President Pro-Tempore of the Senate. Erlinda received her master's in public policy from Georgetown University and her undergraduate degree

from Rutgers University.

Contact Info: erlinda.doherty@ncsl.org; (202) 624-8698



Jackson Brainerd is a policy specialist with the Fiscal Affairs Program. In this capacity, he oversees state tax, economic development and labor policy, and has authored a variety of articles and publications on these subjects. He also staffs NCSL's Labor and Economic Development Standing Committee. Jackson is a graduate of Colorado College with a bachelor's degree in political science.

Contact Info: jackson.brainerd@ncsl.org; (303) 856-1346



Arturo Pérez is director of the fiscal affairs program at the National Conference of State Legislatures (NCSL). He specializes in state tax and expenditure policy. An NCSL staff member since 1990, Pérez has bachelor's degrees in history and political science from Texas A&M University. He also received a master's degree from the Lyndon B. Johnson School of Public Affairs at the University of Texas at Austin.

Contact Info: arturo.perez@ncsl.org; (303) 856-1493



Molly Ramsdell is director of NCSL's Washington, D.C., office and oversees the Conference's state-federal affairs division. Molly joined NCSL in 1996 and has served as staff liaison for a number of NCSL's Standing Committees including Transportation, Budgets and Revenue, Environment and NCSL's Executive Committee Task Force on Homeland Security and Emergency Preparedness. She has led NCSL's advocacy activities before Congress and the administration on a range of issues including unfunded mandate reform. Molly holds a master's degree in public health from the George Washington University (GWU) School of Medicine and Health Sciences; she also earned her undergraduate degree from GWU.

Contact Info: molly.ramsdell@ncsl.org; (202) 624-3584



SENATE BILL 310: Electric Co-Op Rural Broadband Services.

2019-2020 General Assembly

Committee:	House Energy and Public Utilities. If favorable, re-refer to Rules, Calendar, and Operations of the House	Date:	May 22, 2019
Introduced by:	Sens. Brown, Newton, Woodard	Prepared by:	Jennifer McGinnis and Erika Churchill
Analysis of:	Second Edition		Staff Attorneys

OVERVIEW: *Senate Bill 310 would do all of the following:*

- *Eliminate certain restrictions on the formation and operation of separate business entities (subsidiaries) by Electric Membership Corporations (EMCs) that provide or support high speed broadband services.*
- *Provide that the terms of any easement held or otherwise used by an EMC for the provision of electrification may be expanded to allow use by the EMC or a subsidiary of the EMC for the purpose of supplying high-speed broadband service.*
- *Prohibit class action suits against an EMC or a wholly-owned subsidiary of the EMC in a suit in trespass or inverse condemnation based on a claim of expanded use of an easement.*
- *Establish a measure of damages to be paid to a landowner, if, in a suit in trespass or inverse condemnation based on a claim of expanded use of an easement, the landowner prevails over an EMC or a wholly-owned subsidiary of the EMC. Among other limitations, the damages could not exceed the difference between the fair market value of the property owner's entire property immediately before the taking and the fair market value of the property owner's property immediately after the taking. Upon payment of damages, the EMC or a wholly-owned subsidiary of the EMC would be granted a permanent easement for the trespass that was the subject of the claim.*

[As introduced, this bill was identical to H387, as introduced by Reps. Arp, Szoka, Lewis, Hunter, which is currently in the Committee on Rules, Calendar, and Operations of the House.]

SECTION 1

CURRENT LAW:

Under current law, EMCs are non-profit organizations and are tax exempt. The EMCs are authorized, but not required, to form, organize, acquire, hold, dispose of, and operate any interest, up to and including full controlling interest, in separate business entities that provide energy services and products, telecommunications services and products, water, and wastewater collection and treatment. These are referred to as a subsidiary of the EMC, even though under the statutes these subsidiaries must be separate

Karen Cochrane-Brown
Director



Legislative Analysis
Division
919-733-2578

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

Senate Bill 310

Page 2

for-profit corporations, subject to all taxes (including income taxes), and must comply with the following additional conditions:

- The subsidiary is not financed with loans or grants from the Rural Utilities Service of the United States Department of Agriculture (USDA).
- The subsidiary fully compensates the EMC for the use of personnel, services, equipment, or tangible and intangible property.
- The subsidiary does not receive from an EMC any investment, loan, guarantee, or pledge of assets in an amount that, in the aggregate, exceeds 10% of the assets of that EMC.

BILL ANALYSIS:

Section 1 of the bill would authorize subsidiary business entities of EMC's that provide or support "high speed broadband services to one or more households, businesses, or community anchor points in an unserved area" to do both of the following:

- Finance with loans or grants from the Rural Utilities Service of the United States Department of Agriculture (USDA).
- Compensate the EMC at less than full compensation for the use of personnel, services, equipment, or tangible and intangible property.

For purposes of the subsection:

- The term "anchor points" includes schools, libraries, community colleges, community centers, and other similar places.
- The term "high speed broadband services" means Internet transmission speeds of a minimum of 25 megabits per second (Mbps) downstream and 3 Mbps upstream.
- The term "unserved area" means a location where inhabitants or businesses do not have access to high-speed broadband services.

BACKGROUND:

The Rural Utilities Service at the USDA houses three ongoing assistance programs exclusively created and dedicated to financing broadband deployment: the Rural Broadband Access Loan and Loan Guarantee Program, the Community Connect Grant Program, and the ReConnect Program.

SECTION 2

CURRENT LAW

Article 2 of Chapter 117 of the General Statutes authorizes formation of EMCs "for the purpose of promoting and encouraging the fullest possible use of electric energy in the rural section of the State by making electric energy available to inhabitants of the State at the lowest cost consistent with sound economy and prudent management of the business of such corporations." The statutes currently authorize EMCs to "exercise the right of eminent domain for the purposes of constructing, operating and maintaining

Senate Bill 310

Page 3

electric generating, transmission, distribution and related facilities, individually and solely in their own names, pursuant to the provisions of Chapter 40A of the General Statutes...."

BILL ANALYSIS:

Section 2 of the bill would:

- Provide that any easement held or otherwise used by an EMC for the purpose of electrification may also be used by the EMC or a wholly-owned subsidiary of the EMC for the purpose of supplying high-speed broadband service where that use does not require additional construction and is ancillary to the electrification purposes.
- Prohibit class action suits against an EMC or a wholly-owned subsidiary of the EMC in a suit in trespass or inverse condemnation based on a claim of expanded use of an easement.
- Provide that if, in a suit in trespass or inverse condemnation based on a claim of expanded use of an easement, an individual property owner prevails over an EMC or a wholly-owned subsidiary of the EMC, the trespass would be deemed permanent and the actual damages awarded would be the fair market value, which would always be greater than zero but must not exceed the difference between the fair market value of the property owner's entire property immediately before the taking and the fair market value of the property owner's property immediately after the taking. In addition, calculation of the damages would be subject to the following conditions:
 - Evidence of revenues or profits derived or the rental value of an assembled communications corridor would not be admissible in determining fair market value.
 - A property owner's actual damages would be fixed at the time of the initial trespass and could not be deemed to continue, accumulate, or accrue.

Upon payment of damages, the EMC or a wholly-owned subsidiary of the EMC would be granted a permanent easement for the trespass that was the subject of the claim.

BACKGROUND:

Easements are typically created by conveyance in a deed or other written document and are generally considered contracts in North Carolina. In limited circumstances, a court will imply an easement as a matter of law. Easements may be acquired through the power of eminent domain under the statutes. The terms of the easement are considered the terms of the contract once entered into.

The transferability of an easement from one individual or entity to another is dependent on the nature of the easement – whether the easement is considered "appurtenant" or "in gross." "Easements appurtenant and appurtenant are always owned in connection with other real estate and as incidents to such ownership, while easements in gross are purely personal and usually end with the death of the grantee. However, an easement in gross designated as a profit à prendre, by which the right to take something from the land does not end with the death of the grantee necessarily, but may pass to his heirs or assigns." *Davis v. Robinson*, 189 N.C. 589, 127 S.E. 697 (1925). "If an easement is in gross there is no dominant tenement; an easement is in gross and personal to the grantee because it is not appurtenant to other premises. *ibid.*, pp. 626-7. An easement in gross attaches to the person and not to land." *Shingleton v. State*, 260 N.C. 451 (1963), citing 17A Am. Jur., Easements, ss. 9, 11, pp. 624, 625, 627.

With regard to changes in the parties to an easement, courts in North Carolina have held:

Grimes v. Virginia Elec. & Power Co., 245 N.C. 583, 96 S.E.2d 713 (1957). In *Grimes*, the plaintiff granted an express easement by contract to the defendant for power lines. *Id.* at 583, 96 S.E.2d at

Senate Bill 310

Page 4

713-14. The defendant later granted a license to the City of Washington to add additional lines on the same poles. *Id.* at 584, 96 S.E.2d at 714. The plaintiff sued for compensation for the additional servitude on his land, while the defendant contended that "the plaintiff's grant was to the Virginia Electric & Power Company [("VEPC")] and to its -25- successors and assigns, and permitted it to make the assignment to the City of Washington." *Id.* (emphasis in original). The Supreme Court rejected the defendant's argument stating:

The answer to the defendant's contention is that the Virginia Electric & Power Company has not assigned anything. It still retains its right to maintain its full complement of wires and other facilities and to transmit electricity within the full limits of its grant. The contract between the defendants permits the power company to retain all its facilities and, in addition, permits the City of Washington to transmit its own current by means of its own wires attached to the power company's poles. The plaintiff was not a party to the contract between the defendants. The additional lines of the city, with the right to enter upon the lands for maintenance purposes, place an additional burden on plaintiff's land without his consent. Two power companies enjoy an easement over his land. He granted only one.

City of Charlotte v. BMJ of Charlotte, 196 N.C. App. 1 (2009), citing *Grimes v. Virginia Elec. & Power Co.*, 245 N.C. 583, 96 S.E.2d 713 (1957)

With regard to changes in the scope or purpose of an easement, the North Carolina courts have stated the following with respect to evaluating whether an undue burden exists:

"The following rules apply when overburdening or misuse of an easement is at issue:

First, the scope of an express easement is controlled by the terms of the conveyance if the conveyance is precise as to this issue. Second, if the conveyance speaks to the scope of the easement in less than precise terms (i.e., it is ambiguous), the scope may be determined by reference to the attendant circumstances, the situation of the parties, and by the acts of the parties in the use of the easement immediately following the grant. Third, if the conveyance is silent as to the scope of the easement, extrinsic evidence is inadmissible as to the scope or extent of the easement. However, in this latter situation, a reasonable use is implied."

City of Charlotte v. BMJ of Charlotte, 196 N.C. App. 1 (2009)

As easements are generally considered contracts, legislation that alters the existing terms of that real property contract, including legislation that changes the purpose for which the easement may be exercised or the parties that may use the easement, may give rise to constitutional considerations, including:

- Article I, Section 10, Clause 1 of the United States Constitution, which provides that "No State shall . . . pass any . . . Law impairing the Obligation of Contracts"
- The 5th Amendment to the United States Constitution, which states that private property shall not "be taken for public use without just compensation."
- Section 1 of the 14th amendment to the United States Constitution, which provides that no state may "deprive any person of life, liberty, or property, without due process of law."
- Article I, Section 19 of the State's Constitution, which provides "No person shall be . . . in any manner deprived of his . . . property, but by the law of the land."

EFFECTIVE DATE: Effective when it becomes law and applies to all claims filed on or after that date.

**NORTH CAROLINA GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES**

ENERGY AND PUBLIC UTILITIES COMMITTEE REPORT

**Representative Dean Arp, Co-Chair
Representative John Szoka, Co-Chair**

FAVORABLE AND RE-REFERRED

SB 310 (CS#1)

Electric Co-Op Rural Broadband Services.

Draft Number: None

**Serial Referral: RULES, CALENDAR, AND
OPERATIONS OF THE HOUSE**

Recommended Referral: None

Long Title Amended: No

Floor Manager: Arp

TOTAL REPORTED: 1



*** C M R 4 8 0 - V - 1 ***

VISITOR REGISTRATION SHEET

Energy and Public Utilities

05/22/2019

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Tom Bean	EDF, NCSEA, NCWF
Johanna Reese	NCACC
Doug Miskin	PSL
Scott Laster	KGANC
Rhaegan Jackson	FPA
Demetrius Deloatch	NC LEM
Tiffany Gladney	Rural Center

VISITOR REGISTRATION SHEET

Energy and Public Utilities

05/22/2019


Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Paul Shorne	NCFB
Sallie James	Gov's Office
George	NMRS
John	NCAFE
Ornstein	Duke Energy 
Preston Howard	NEMA
Felix Jarvis-Earle	Rep. William Brinson
Caleb Fisher	Rep. Biddell

House Committee on Energy and Public Utilities
Tuesday, June 25, 2019 at 3:00 p.m.
Room 643

MINUTES


The House Committee on Energy and Public Utilities met at 3:00 pm on June 25th in Room 643 LOB. Representatives Alexander, Arp, Autry, Bell, Brisson, Brockman, Conrad, Cunningham, Dixon, Hanig, Harrison, Hastings, Hawkins, Holley, Howard, Humphrey, Lewis, Montgomery, Richardson, Riddell, Saine, Setzer, Stevens, Strickland, Szoka, and Wray were in attendance.

Rep. Dean Arp, Chair, presided.

House Bill 377, Military Base Protection Act, was explained by Rep. Szoka and Rep. Bell. A Proposed Committee Substitute was properly brought before the committee. Betsy McCorkle with Apex Clean Energy spoke from the public. The committee passed the bill, with a motion by Rep. Setzer for a report favorable to the PCS, unfavorable to the original bill, with a referral to the Committee on Rules, Calendar, and Operations of the House.

House Bill 559, Storm Securitization/Alt. Rates, was explained by Rep. Lewis. Rep. Harrison brought forth an amendment, and the amendment failed. Peter Ledford with NCSEA and Dan Nation with Parkdale Mills spoke from the public. The committee passed the bill, with a motion by Rep. Howard for a favorable report, with a referral to the Committee on Rules, Calendar, and Operations of the House.

Being no further business, the meeting adjourned at 3:45 p.m.



Rep. Dean Arp, Presiding



Katie Stanley, Committee Clerk

**House Committee on Energy and Public Utilities
Tuesday, June 25, 2019, 3:00pm
643 LOB**

AGENDA

Welcome and Opening Remarks

Rep. Dean Arp, Chair

Introduction of Pages and Sergeant-At-Arms

Bills

BILL NO.	SHORT TITLE	SPONSOR
<u>SB 559</u>	Storm Securitization/Alt. Rates.	Senator Rabon Senator Hise Senator Blue
<u>SB 377</u>	Military Base Protection Act.	Senator Brown Senator Newton Senator Sanderson

Other Business

Adjournment



SENATE BILL 377: Military Base Protection Act.

2019-2020 General Assembly

Committee:	House Rules, Calendar, and Operations of the House	Date:	June 25, 2019
Introduced by:	Sens. Brown, Newton, Sanderson	Prepared by:	Jennifer McGinnis
Analysis of:	PCS to Second Edition S377-CSRI-20		Staff Attorney

OVERVIEW: *The Proposed Committee Substitute (PCS) for Senate Bill 377 would –*

- *Add a definition for the term "commanding military officer's designee" in the wind permitting statutes.*
- *Require the Department of Environmental Quality (DEQ) to request any maps or narrative information related to any adverse impact on a installation's operations, training, or mission from the commanding military officers of all major military installations located within the State (in addition to "technical information" on such impacts that DEQ must already request under existing law).*

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.

Karen Cochrane-Brown
Director



Legislative Analysis
Division
919-733-2578

Senate PCS 377

Page 2

- 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 –

- Add a definition for the term "commanding military officer's designee, to mean "an individual appointed by a commanding military officer, who may represent the interests of the military installation of the commanding military officer they represent. The designee shall provide information from the major military installation or the commanding military officer they represent to the Department. The interests the designee represents may include the ongoing training and mission currently being conducted at the major military installation they represent."
- Require DEQ to request any maps or narrative information related to any adverse impact on the installation's operations, training, or mission (in addition to "technical information" on such impacts that DEQ must already request under existing law).

EFFECTIVE DATE: This bill would be effective when it becomes law and would apply to applications for permits for a proposed wind energy facility or a proposed wind energy facility expansion pending or submitted on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

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SENATE BILL 377
Finance Committee Substitute Adopted 6/5/19
PROPOSED HOUSE COMMITTEE SUBSTITUTE S377-CSRI-20 [v.4]
6/24/2019 7:49:07 PM

Short Title: Military Base Protection Act.

(Public)

Sponsors:

Referred to:

March 28, 2019

1 AN ACT TO AMEND VARIOUS STATUTES GOVERNING THE PERMITTING OF WIND
2 ENERGY FACILITIES.

3 The General Assembly of North Carolina enacts:

4 **SECTION 1.** G.S. 143-215.115 reads as rewritten:

5 **"§ 143-215.115. Definitions.**

6 In addition to the definitions set forth in G.S. 143-212, the following definitions apply to this
7 Article:

8 ...

9 (4) "Commanding military officer's designee" means an individual appointed by
10 a commanding military officer, who may represent the interests of the military
11 installation of the commanding military officer they represent. The designee
12 shall provide information from the major military installation or the
13 commanding military officer they represent to the Department. The interests
14 the designee represents may include the ongoing training and mission
15 currently being conducted at the major military installation they represent."

16 **SECTION 2.** G.S. 143-215.119 reads as rewritten:

17 **"§ 143-215.119. Permit application requirements; fees; notice of receipt of completed**
18 **permit; public hearing; public comment.**

19 ...

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

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

32 (2) A written request to the commanding military officer of a major military
33 installation or the commanding military officer's designee, for technical
34 information related to any adverse impact on the installation's operations,
35 training, or mission, including maps and narrative information identifying



1 military air navigation routes, air traffic control areas, military training routes,
2 special-use air space, radar or other military operations that may be affected.
3 (3) A written request for information related to potential adverse impacts of the
4 proposed wind energy facility or proposed wind energy facility expansion on
5 local governments from the board of commissioners for each county and the
6 governing body of each municipality."

7"

8 **SECTION 3.** This act is effective when it becomes law and applies to applications
9 pending or submitted on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

S

2

SENATE BILL 377
Finance Committee Substitute Adopted 6/5/19

Short Title: Military Base Protection Act.

(Public)

Sponsors:

Referred to:

March 28, 2019

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT CONSTRUCTION, OPERATION, OR EXPANSION OF WIND ENERGY FACILITIES IN AREAS OF THE STATE WHERE IMPACTS OF VERTICAL OBSTRUCTIONS HAVE BEEN DETERMINED TO BE SIGNIFICANTLY HIGH, WITH A HIGH RISK FOR DEGRADING SAFETY AND THE MILITARY'S ABILITY TO PERFORM AVIATION TRAINING FOR A PERIOD OF THREE YEARS TO PROVIDE THE FEDERAL GOVERNMENT ADEQUATE TIME TO REVIEW AND PROMULGATE GUIDANCE ON POTENTIAL RAMIFICATIONS FOR THE BASE REALIGNMENT AND CLOSURE PROCESS CONCERNING THE COMPATIBILITY OF WIND ENERGY FACILITIES ON MILITARY OPERATIONS, TRAINING, AND READINESS; AND TO INCREASE THE APPLICATION FEE FOR PERMITTING OF PROPOSED WIND ENERGY FACILITIES OR WIND ENERGY FACILITY EXPANSIONS.

The General Assembly of North Carolina enacts:

SECTION 1. There is hereby established a moratorium on the issuance of permits for wind energy facilities and wind energy facility expansions in this State for facilities or expansions to be located in the area designated in red as "Significant" on the map entitled "Vertical Obstruction Impact on the NC Military Mission," as the impacts of vertical obstructions in this area have been determined to be significantly high, with a high risk for degrading safety and the military's ability to perform aviation training. The purpose of this moratorium is to allow the federal government adequate time to review and promulgate guidance on potential ramifications to the Base Realignment and Closure process concerning the compatibility of wind energy facilities on military operations, training, and readiness. Neither the Department of Environmental Quality nor the Coastal Resources Commission shall issue a permit for a wind energy facility or wind energy facility expansion for the period beginning July 1, 2019, and ending on July 1, 2022.

SECTION 2. G.S. 143-215.119 reads as rewritten:

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

...

(c) Fees. – An applicant for a permit for a proposed wind energy facility or proposed wind energy facility expansion under this section shall submit with the application required pursuant to subsection (a) of this section, an application fee of ~~three thousand five hundred dollars (\$3,500)~~ four thousand dollars (\$4,000).

...."



1 **SECTION 3.** This act is effective when it becomes law and applies to applications
2 pending or submitted on or after that date.



**NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 559**

AMENDMENT NO. 1

(to be filled in by
Principal Clerk)

S559-ARI-28 [v.1]

Page 1 of 2

Amends Title [YES]
Third Edition

Date 6/25, 2019

Representative Harrison

moves to amend the bill on page 1, lines 3 through 5,
by rewriting those lines to read:

"REQUIRE THE UTILITIES COMMISSION TO STUDY THE USE OF "MULTIYEAR RATE
PLAN" AND "BANDING OF AUTHORIZED RETURN" MECHANISMS FOR
RATE-SETTING FOR ELECTRIC PUBLIC UTILITIES.

and on page 15, line 11, through page 16, line 44
by rewriting those lines to read:

**"PART II. UTILITIES COMMISSION TO STUDY ALTERNATIVE RATE-SETTING
MECHANISMS.**

SECTION 2.(a) The North Carolina Utilities Commission (Commission), in coordination with the Public Staff, shall conduct a study on the advisability of authorizing multiyear rate plans (MRPs), banding of authorized returns, or a combination thereof, for general rate case proceedings for electric public utilities. In conducting the study, the Commission shall examine other states' experiences allowing these alternative rate-setting mechanisms, identify advantages and disadvantages associated with MRPs, their impact on consumer rates and service quality, and any other factors the Commission deems relevant.

SECTION 2.(b) The Commission shall, within 60 days following the effective date of this act, establish a stakeholder process to support and provide comment on the study required by Section 2.(a) of this act. The stakeholder process shall, to the extent feasible, include:

- (1) The State Energy Director of the Department of Environment Quality;
- (2) A representative of the North Carolina Energy Policy Council;
- (3) The North Carolina President of Duke Energy or the President's designee;
- (4) A designee from Dominion North Carolina Power;
- (5) Representatives of commercial consumers of electricity in investor-owned utility (IOU) service territory in North Carolina;
- (6) Representatives of residential consumers of electricity in IOU service territory in North Carolina;



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**NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 559**

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

S559-ARI-28 [v.1]

Page 2 of 2

- 1 (7) Representatives of industrial consumers of electricity in IOU service territory
2 in North Carolina;
3 (8) Representatives of the environmental community;
4 (9) Representatives of the NC Clean Energy Technology Center;
5 (10) Representatives of institutions of higher learning in IOU service territory in
6 North Carolina;
7 (11) Representatives of the North Carolina Electric Cooperatives and ElectriCities
8 of North Carolina; and
9 (12) Representatives of North Carolina's renewable energy industry.

10 **SECTION 2.(c)** The Commission shall submit a report of the study's findings and
11 recommendations, including stakeholder input, to the Joint Legislative Commission on Energy
12 Policy no later than March 1, 2020.
13

14 **PART III. EFFECTIVE DATE.**

15 **SECTION 3.** This act is effective when it becomes law."
16
17

SIGNED _____

Amendment Sponsor

SIGNED _____

Committee Chair if Senate Committee Amendment

ADOPTED _____

FAILED _____



TABLED _____



SENATE BILL 559: Storm Securitization/Alt. Rates.

2019-2020 General Assembly

Committee:	House Energy and Public Utilities. If favorable, re-refer to Rules, Calendar, and Operations of the House	Date:	June 25, 2019
Introduced by:	Sens. Rabon, Hise, Blue	Prepared by:	Jennifer McGinnis
Analysis of:	Third Edition		Staff Attorney

OVERVIEW: *Senate Bill 559¹ does two different things:*

- *Part I would permit utility companies to use bond financing for certain storm recovery costs. This financing mechanism would not create any indebtedness for the State or any of its political subdivisions.*
- *Part II would authorize the Utilities Commission to fix rates for electric public utilities using "multiyear rate plan" and "banding of authorized returns" mechanisms.*

PART I: STORM SECURITIZATION

CURRENT LAW of PART I:

In 2018, Duke Energy incurred approximately \$571 million of storm expenditures from Hurricanes Florence and Michael and Winter Storm Diego within a four-month period. To finance these storm-recovery expenditures, the utility company would typically incur debt and recover the costs over time through the rate-making process. (See the Current Law of Part II for more details about rate-making.)

BILL ANALYSIS of PART I:

Part I of Senate Bill 559 would create a new financing tool that may be used to recover the storm restoration costs: *utility cost recovery charge securitization*. Under this financing tool, the utility company could issue storm recovery bonds with lower financing costs that are secured through a dedicated storm recovery charge that is separate and distinct from the utility's base rate. Securitization typically benefits utilities and their current customers. Utilities benefit because they receive an immediate source of cash from the bond proceeds and customers benefit because the cost of securitized debt is lower than the utility's cost of debt, which reduces the impact on their monthly bills.

More than 20 states have used this model to finance storm recovery costs, stranded costs, environmental restoration, utility restructuring, deferred fuel costs, and renewable energy projects. This legislation only creates a financing tool for storm recovery costs of a public utility that sells electric power to retail electric customers in this State. Duke Energy filed requests for deferrals for the 2018 storm costs for the Utilities Commission (Commission) consideration during the next rate case. If this legislation is enacted, storm recovery bonds could be used to finance the storm recovery costs.

There are three major components of utility cost recovery charge securitization:

¹ As introduced, this bill was identical to H624, as introduced by Reps. Lewis, Bell, Howard, Lucas, which is currently in House Energy and Public Utilities.

Karen Cochrane-Brown
Director



Legislative Analysis
Division
919-733-2578

Senate Bill 559

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- State legislation.
- A financing order.
- A true-up mechanism.

State Legislation

The legislation creates the storm recovery charge and provides that the revenues generated by this charge, known as storm recovery property, is a property right that can be transferred and pledged as security for the storm recovery bonds. Since this property right may not be governed by the Uniform Commercial Code (UCC), the legislation establishes the procedures for creating, perfecting, and enforcing the security interest in storm recovery property.

This property right is created through the political and regulatory process; to ensure the credibility of the storm recovery bonds, the legislation includes a state non-impairment obligation. If the storm recovery bonds are issued, the State and its agencies, including the Commission, agrees not to take any action that would limit or alter the storm recovery charges (which is the property right securing the bonds) until the storm recovery bonds have been paid and performed in full.

The legislation protects bondholders in several additional ways:

- It provides that the sale of an interest in storm recovery property is a true sale and that ownership passes to the party characterized as the purchaser. The purchaser may be a limited purpose subsidiary of the public utility created for the sole purpose of issuing the storm recovery bonds. This provision protects bondholders from the interruption or impairment of cash flows in the event of a utility bankruptcy.
- It provides that the interest in the storm recovery property is not affected or impaired by the commingling of storm recovery charges with other amounts.
- It provides that the storm recovery charge must be imposed on all customer bills collected by the public utility or its successors or assignees. The charge must be stated as a separate, itemized charge on customer bills that is separate and apart from the public utility's base rate.
- It provides that the storm recovery charge must be paid by all existing or future retail customers receiving transmission or distribution service from the public utility, even if a customer elects to purchase electricity from an alternative electricity supplier. (nonbypassability)

Financing Order

The legislation establishes the process by which a public utility that sells electric power to retail electric customers in the State may petition the Commission for a financing order. The financing order sets forth specific transaction terms and related provisions. Before granting a financing order, the Commission must find that the issuance of the storm recovery bonds and the imposition of storm recovery charges are expected to provide quantifiable benefits to customers as compared to the costs that would have been incurred absent the issuance of storm recovery bonds.

The petition must include a description of the storm recovery activities, an estimate of the storm recovery costs, the proposed level of storm recovery reserve, an indicator of the amount of storm recovery costs to be financed using storm recovery bonds, an estimate of the financing costs related to the bonds, an estimate of the storm recovery charges necessary to recover storm recovery costs, and a comparison between the net present value of the cost to customers estimated to result from the issuance of storm recovery bonds and the cost that would result from the application of the traditional method of financing and recovering

Senate Bill 559

Page 3

storm recovery costs; this comparison must demonstrate that issuance of storm recovery bonds and the imposition of storm recovery charges are expected to provide quantifiable benefits to customers.

The financing order must include the amount of storm recovery costs to be financed using storm recovery bonds, the imposition and collection of storm recovery charges that are nonbypassable and paid by all existing and future retail customers receiving transmission or distribution service from the public utility or its successors or assignees, the maturity period of the bonds, a formula-based true-up mechanism, the creation of storm recovery property that will be used to secure the bonds, and a method of tracing funds collected as storm recovery charges. The financing order is irrevocable.

True-Up Mechanism

The legislation specifies that the financing order must include a requirement that the public utility file with the Commission at least annually a petition or letter applying the formula-based mechanism, and request adjustments in the storm recovery charge, if necessary, to a sufficient level to ensure the bond payment obligations. The Commission does not have the discretion to disapprove or alter the true-up calculation, except to correct mathematical and clerical errors. The adjustment of the storm recovery charge through this mechanism is the most significant credit component of these transactions.

EFFECTIVE DATE of PART I:

Part I would be effective when it becomes law.

PART II: AUTHORIZE RATES USING ALTERNATIVE MECHANISMS

CURRENT LAW of PART II:

G.S. 62-133 requires the Commission to fix rates for electric public utilities based upon the following criteria:

- Rates must be fair to both the public utilities and the consumer.
- The Commission must fix such rates to be charged by the public utility as will earn, in addition to reasonable operating expenses, a rate of return fixed on the cost of the public utility's property. In order to establish such rates, the Commission must;
 - Ascertain the reasonable original cost or the fair value of the public utility's property used and useful, or to be used and useful within a reasonable time after a test period, less that portion of the cost that has been consumed by previous use recovered by depreciation expense.

The test period must consist of 12 months' historical operating experience prior to the date the rates are proposed to become effective, but the Commission must consider such relevant, material, and competent evidence to show actual changes in costs, revenues, or the cost of the public utility's property, which is based upon circumstances and events occurring up to the time a hearing is closed.

Reasonable and prudent expenditures for construction work in progress may be included in the cost of the public utility's property in certain circumstances to the extent the Commission considers inclusion of such expenditures in the public interest and necessary to the financial stability of the utility in question.

- Based on its determination of the reasonable original cost of a utility's property, fix a utility's rate of return as will enable the public utility to produce a fair return for its shareholders, considering changing economic conditions and other factors, to maintain its facilities and

Senate Bill 559

Page 4

services in accordance with the reasonable requirements of its customers in the territory covered by its franchise, and to compete in the market for capital funds on terms that are reasonable and that are fair to its customers and to its existing investors. In fixing a utility's rate of return, the Commission must also:

- Estimate the public utility's revenue under the present and proposed rates.
- Ascertain the public utility's reasonable operating expenses, including actual investment currently consumed through reasonable actual depreciation.

OVERVIEW OF RATEMAKING:

- Based on the cost of service in the test period.
- Test period – Financial data from a historical 12-month period, which serves as a proxy for the anticipated level of costs for the period of time the rates will be in effect.
- Rates are prospective, but are established based on what the utility has already spent – utilities typically do not recover expenses and capital costs in advance.

General Ratemaking Formula

- Revenue Requirement is determined as $(\text{Rate Base} \times \text{Rate of Return}) + \text{Expenses}$.
- Rate Base – value of the property (net of depreciation) on which a utility may earn a rate of return. Property must be "used and useful" (power plants, transmission and distribution lines, etc. actually used in providing service to customers).
- Rate of Return – % return that utility may earn on invested capital, including debt and equity investments.
- Expenses – can recover reasonable and prudent expenses based on an historical test year.

Rate Base

- Rate base is the value of reasonable and prudent property on which a public utility is authorized to earn its rate of return.
- Rate base calculation: Original cost of the utility assets (prudent capital investment) minus accumulated depreciation.

Rate of Return

- Percentage return that the utility is allowed to earn on its invested capital.
- Designed to compensate investors for the use of their capital and associated risk.
- Rate of return is composed of three components:
 - Cost of equity
 - Cost of debt
 - Capital structure (debt and equity ratios)

Rate of return is not a guaranteed return, it is the return the utility is authorized to earn.

Expenses

Utilities are authorized to recover reasonable and prudent expenses.

Senate Bill 559

Page 5

BACKGROUND FOR PART II:

Comprehensive information on multiyear rate plans (MRPs), their prevalence, rationale for their use, disadvantages associated with MRPs, and their impact on cost performance, is available in a report entitled "State Performance-Based Regulation Using Multiyear Rate Plans for U.S. Electric Utilities" issued by the Grid Modernization Laboratory Consortium of the U.S. Department of Energy in 2017, see:

https://eta.lbl.gov/sites/default/files/publications/multiyear_rate_plan_gmlc_1.4.29_final_report071217.pdf

BILL ANALYSIS of PART II:

Part II of the bill would provide that notwithstanding the methods for fixing rates established under G.S. 62-133, upon application of an electric public utility, the Commission could approve multiyear rate plans, banding of authorized returns, or a combination of these mechanisms ("alternative mechanisms"), in and along with a general rate case proceeding.

- "Banding of authorized returns" means a rate mechanism under which the Commission sets an authorized return on equity for an electric public utility that acts as a midpoint and then applies a low- and high-end range of returns to that midpoint under which an electric public utility will not over earn if within the high-end range and will not under earn if within the low-end range.
- "Multiyear rate plan" means a rate mechanism under which the Commission sets base rates and revenue requirements for a multiyear plan period based on a known and measurable set of capital investments and all the expenses associated with those capital investments and authorizes periodic changes in base rates during the approved plan period without the need for a base rate proceeding during the plan period.

Any banding of authorized returns approved by the Commission could not exceed 125 basis points above or 125 basis points below the authorized return on equity that is set by the Commission. If an electric public utility that is operating under a banding of authorized returns exceeds the high end range of the band that is approved by the Commission, the electric public utility would be required to refund or credit earnings above that high end range to customers in a manner to be prescribed by rules adopted by the Commission. If an electric public utility that is operating under a banding of authorized returns falls below the low end range of the band that is approved by the Commission, the electric public utility may file a general rate case proceeding. In setting a midpoint authorized rate of return on equity for banding, the Commission must consider any decreased or increased risk to an electric public utility that may result from having an approved multiyear rate plan, banding of authorized returns, or a combination thereof.

The Commission could approve use of these alternative mechanisms, however, only upon a finding that the mechanisms are just and reasonable, and are in the public interest. In reviewing an electric public utility's application to use these alternative mechanisms to set rates, the Commission must consider whether the electric public utility's application as proposed would:

- Establish rates that are fair both to the electric public utility and to the consumer.
- Reasonably assure the continuation of safe and reliable electric service.
- Not unreasonably prejudice any class of electric customers.
- Be otherwise consistent with the public interest.
- Will not result in sudden substantial rate increases, or "rate shock," to consumers.

Senate Bill 559

Page 6

The Commission is given authority to impose any or all conditions for approval of an application for use of alternate rate mechanisms that it deems necessary to ensure that rates are just and reasonable, and are in the public interest, including periodic reviews to be held during the period that a multiyear rate plan may be in effect, with opportunities for public hearings during such periodic reviews so that interested parties may be heard. If the Commission approves the application with modifications, the utility subject to such approval may, at its option, accept the modifications and implement the proposed plan as modified or may, at its option, withdraw its application for use of alternative mechanisms and be governed under the Commission's order ruling on the electric public utility's request to adjust base rates under the general rate making proceeding.

Part II would also:

- Provide that rates using alternative mechanisms could remain in effect for a period of no more than three years.
- Require an electric public utility to make an annual filing that sets forth the electric public utility's earned return on equity for the prior 12 month period, for the purpose of measuring its earnings under rates set using alternative mechanisms.
- Provide that the alternative mechanisms for rate-setting would operate independently from riders or other cost recovery mechanisms otherwise allowed by law, unless the riders or other cost recovery mechanisms are incorporated in a rate, plan, or settlement.
- Provide that the language may not be construed to:
 - Limit or abrogate the existing rate-making authority of the Commission.
 - Invalidate or void any rates approved by the Commission prior to the effective date of the provision.

The Commission would be required to adopt rules to implement the provisions of this Part no later than 120 days after the bill became law.

EFFECTIVE DATE of PART II: Part II of the bill would be effective when it becomes law and apply to any rate making mechanisms, designs, plans, or settlements filed by a public utility on or after the date that rules adopted by the Commission, as required by the bill, become effective. The remainder of the bill would be effective when it becomes law.

Cindy Avrette, counsel to Senate Finance, substantially contributed to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

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SENATE BILL 559

Agriculture/Environment/Natural Resources Committee Substitute Adopted 4/18/19
House Committee Substitute Favorable 6/19/19

Short Title: Storm Securitization/Alt. Rates.

(Public)

Sponsors:

Referred to:

April 3, 2019

A BILL TO BE ENTITLED

AN ACT TO PERMIT FINANCING FOR CERTAIN STORM RECOVERY COSTS AND TO
AUTHORIZE THE UTILITIES COMMISSION TO FIX RATES FOR ELECTRIC PUBLIC
UTILITIES USING "MULTIYEAR RATE PLAN" AND "BANDING OF AUTHORIZED
RETURN" MECHANISMS.

The General Assembly of North Carolina enacts:

PART I. STORM SECURITIZATION

SECTION 1.(a) Article 8 of Chapter 62 of the General Statutes is amended by adding
a new section to read:

"§ 62-172. Financing for certain storm recovery costs.

(a) Definitions. – The following definitions apply in this section:

(1) Ancillary agreement. – A bond, insurance policy, letter of credit, reserve
account, surety bond, interest rate lock or swap arrangement, hedging
arrangement, liquidity or credit support arrangement, or other financial
arrangement entered into in connection with storm recovery bonds.

(2) Assignee. – A legally recognized entity to which a public utility assigns, sells,
or transfers, other than as security, all or a portion of its interest in or right to
storm recovery property. The term includes a corporation, limited liability
company, general partnership or limited partnership, public authority, trust,
financing entity, or any entity to which an assignee assigns, sells, or transfers,
other than as security, its interest in or right to storm recovery property.

(2a) Bondholder. – A person who holds a storm recovery bond.

(2b) Code. – The Uniform Commercial Code, Chapter 25 of the General Statutes.

(3) Commission. – The North Carolina Utilities Commission.

(4) Financing costs. – The term includes all of the following:

a. Interest and acquisition, defeasance, or redemption premiums payable
on storm recovery bonds.

b. Any payment required under an ancillary agreement and any amount
required to fund or replenish a reserve account or other accounts
established under the terms of any indenture, ancillary agreement, or
other financing documents pertaining to storm recovery bonds.

c. Any other cost related to issuing, supporting, repaying, refunding, and
servicing storm recovery bonds, including, servicing fees, accounting
and auditing fees, trustee fees, legal fees, consulting fees, structuring



- adviser fees, administrative fees, placement and underwriting fees, independent director and manager fees, capitalized interest, rating agency fees, stock exchange listing and compliance fees, security registration fees, filing fees, information technology programming costs, and any other costs necessary to otherwise ensure the timely payment of storm recovery bonds or other amounts or charges payable in connection with the bonds, including costs related to obtaining the financing order.
- d. Any taxes and license fees or other fees imposed on the revenues generated from the collection of the storm recovery charge or otherwise resulting from the collection of storm recovery charges, in any such case whether paid, payable, or accrued.
- e. Any State and local taxes, franchise, gross receipts, and other taxes or similar charges, including regulatory assessment fees, whether paid, payable, or accrued.
- f. Any costs incurred by the Commission or public staff for any outside consultants or counsel retained in connection with the securitization of storm recovery costs.
- (5) Financing order. – An order that authorizes the issuance of storm recovery bonds; the imposition, collection, and periodic adjustments of a storm recovery charge; the creation of storm recovery property; and the sale, assignment, or transfer of storm recovery property to an assignee.
- (6) Financing party. – Bondholders and trustees, collateral agents, any party under an ancillary agreement, or any other person acting for the benefit of bondholders.
- (7) Financing statement. – Defined in Article 9 of the Code.
- (8) Pledgee. – A financing party to which a public utility or its successors or assignees mortgages, negotiates, pledges, or creates a security interest or lien on all or any portion of its interest in or right to storm recovery property.
- (9) Public utility. – A public utility, as defined in G.S. 62-3, that sells electric power to retail electric customers in the State.
- (10) Storm. – Individually or collectively, a named tropical storm or hurricane, a tornado, ice storm or snow storm, flood, an earthquake, or other significant weather or natural disaster.
- (11) Storm recovery activity. – An activity or activities by a public utility, its affiliates, or its contractors, directly and specifically in connection with the restoration of service and infrastructure associated with electric power outages affecting customers of a public utility as the result of a storm or storms, including activities related to mobilization, staging, and construction, reconstruction, replacement, or repair of electric generation, transmission, distribution, or general plant facilities.
- (12) Storm recovery bonds. – Bonds, debentures, notes, certificates of participation, certificates of beneficial interest, certificates of ownership, or other evidences of indebtedness or ownership that are issued by a public utility or an assignee pursuant to a financing order, the proceeds of which are used directly or indirectly to recover, finance, or refinance Commission-approved storm recovery costs and financing costs, and that are secured by or payable from storm recovery property. If certificates of participation or ownership are issued, references in this section to principal, interest, or premium shall be construed to refer to comparable amounts under those certificates.

1 (13) Storm recovery charge. – The amounts authorized by the Commission to
2 repay, finance, or refinance storm recovery costs and financing costs and that
3 are nonbypassable charges (i) imposed on and part of all retail customer bills,
4 (ii) collected by a public utility or its successors or assignees, or a collection
5 agent, in full, separate and apart from the public utility's base rates, and (iii)
6 paid by all existing or future retail customers receiving transmission or
7 distribution service, or both, from the public utility or its successors or
8 assignees under Commission-approved rate schedules or under special
9 contracts, even if a customer elects to purchase electricity from an alternative
10 electricity supplier following a fundamental change in regulation of public
11 utilities in this State.

12 (14) Storm recovery costs. – All of the following:

- 13 a. All incremental costs, including capital costs, appropriate for recovery
14 from existing and future retail customers receiving transmission or
15 distribution service from the public utility that a public utility has
16 incurred or expects to incur as a result of the applicable storm that are
17 caused by, associated with, or remain as a result of undertaking storm
18 recovery activity. Such costs include the public utility's cost of capital
19 from the date of the applicable storm to the date the storm recovery
20 bonds are issued calculated using the public utility's weighted average
21 cost of capital as defined in its most recent base rate case proceeding
22 before the Commission net of applicable income tax savings related to
23 the interest component.
- 24 b. Storm recovery costs shall be net of applicable insurance proceeds, tax
25 benefits and any other amounts intended to reimburse the public utility
26 for storm recovery activities such as government grants, or aid of any
27 kind and where determined appropriate by the Commission, and may
28 include adjustments for capital replacement and operating costs
29 previously considered in determining normal amounts in the public
30 utility's most recent general rate proceeding. Storm recovery costs
31 includes the cost to replenish and fund any storm reserves and costs of
32 repurchasing equity or retiring any existing indebtedness relating to
33 storm recovery activities.
- 34 c. With respect to storm recovery costs that the public utility expects to
35 incur, any difference between costs expected to be incurred and actual,
36 reasonable and prudent costs incurred, or any other rate-making
37 adjustments appropriate to fairly and reasonably assign or allocate
38 storm cost recovery to customers over time, shall be addressed in a
39 future general rate proceeding, as may be facilitated by other orders of
40 the Commission issued at the time or prior to such proceeding;
41 provided, however, that the Commission's adoption of a financing
42 order and approval of the issuance of storm recovery bonds may not
43 be revoked or otherwise modified.

44 (15) Storm recovery property. – All of the following:

- 45 a. All rights and interests of a public utility or successor or assignee of
46 the public utility under a financing order, including the right to impose,
47 bill, charge, collect, and receive storm recovery charges authorized
48 under the financing order and to obtain periodic adjustments to such
49 charges as provided in the financing order.
- 50 b. All revenues, collections, claims, rights to payments, payments,
51 money, or proceeds arising from the rights and interests specified in

the financing order, regardless of whether such revenues, collections, claims, rights to payment, payments, money, or proceeds are imposed, billed, received, collected, or maintained together with or commingled with other revenues, collections, rights to payment, payments, money, or proceeds.

(b) Financing Orders. –

(1) A public utility may petition the Commission for a financing order. The petition shall include all of the following:

- a. A description of the storm recovery activities that the public utility has undertaken or proposes to undertake and the reasons for undertaking the activities, or if the public utility is subject to a settlement agreement as contemplated by subdivision (2) of this subsection, a description of the settlement agreement.
- b. The storm recovery costs and estimate of the costs of any storm recovery activities that are being undertaken but are not completed.
- c. The level of the storm recovery reserve that the public utility proposes to establish or replenish and has determined would be appropriate to recover through storm recovery bonds and is seeking to so recover and such level that the public utility is funding or will seek to fund through other means, together with a description of the factors and calculations used in determining the amounts and methods of recovery.
- d. An indicator of whether the public utility proposes to finance all or a portion of the storm recovery costs using storm recovery bonds. If the public utility proposes to finance a portion of the costs, the public utility must identify the specific portion in the petition. By electing not to finance a portion of such storm recovery costs using storm recovery bonds, a public utility shall not be deemed to waive its right to recover such costs pursuant to a separate proceeding with the Commission.
- e. An estimate of the financing costs related to the storm recovery bonds.
- f. An estimate of the storm recovery charges necessary to recover the storm recovery costs, including the storm recovery reserve amount determined appropriate by the Commission, and financing costs and the period for recovery of such costs.
- g. A comparison between the net present value of the costs to customers that are estimated to result from the issuance of storm recovery bonds and the costs that would result from the application of the traditional method of financing and recovering storm recovery costs from customers. The comparison should demonstrate that the issuance of storm recovery bonds and the imposition of storm recovery charges are expected to provide quantifiable benefits to customers.
- h. Direct testimony and exhibits supporting the petition.

(2) If a public utility is subject to a settlement agreement that governs the type and amount of principal costs that could be included in storm recovery costs and the public utility proposes to finance all or a portion of the principal costs using storm recovery bonds, then the public utility must file a petition with the Commission for review and approval of those costs no later than 90 days before filing a petition for a financing order pursuant to this section.

(3) Petition and order. –

- a. Proceedings on a petition submitted pursuant to this subdivision begin with the petition by a public utility, filed subject to the time frame specified in subdivision (2) of this subsection, if applicable, and shall

be disposed of in accordance with the requirements of this Chapter and the rules of the Commission, except as follows:

1. Within 14 days after the date the petition is filed, the Commission shall establish a procedural schedule that permits a Commission decision no later than 135 days after the date the petition is filed.
2. No later than 135 days after the date the petition is filed, the Commission shall issue a financing order or an order rejecting the petition. A party to the Commission proceeding may petition the Commission for reconsideration of the financing order within five days after the date of its issuance.

b. A financing order issued by the Commission to a public utility shall include all of the following elements:

1. Except for changes made pursuant to the formula-based mechanism authorized under this section, the amount of storm recovery costs, including the level of storm recovery reserves, to be financed using storm recovery bonds. The Commission shall describe and estimate the amount of financing costs that may be recovered through storm recovery charges and specify the period over which storm recovery costs and financing costs may be recovered.
2. A finding that the proposed issuance of storm recovery bonds and the imposition and collection of a storm recovery charge are expected to provide quantifiable benefits to customers as compared to the costs that would have been incurred absent the issuance of storm recovery bonds.
3. A finding that the structuring and pricing of the storm recovery bonds are reasonably expected to result in the lowest storm recovery charges consistent with market conditions at the time the storm recovery bonds are priced and the terms set forth in such financing order.
4. A requirement that, for so long as the storm recovery bonds are outstanding and until all financing costs have been paid in full, the imposition and collection of storm recovery charges authorized under a financing order shall be nonbypassable and paid by all existing and future retail customers receiving transmission or distribution service, or both, from the public utility or its successors or assignees under Commission-approved rate schedules or under special contracts, even if a customer elects to purchase electricity from an alternative electric supplier following a fundamental change in regulation of public utilities in this State.
5. A determination of what portion, if any, of the storm recovery reserves must be held in a funded reserve and any limitations on how the reserve may be held, accessed, or used.
6. A formula-based true-up mechanism for making, at least annually, expeditious periodic adjustments in the storm recovery charges that customers are required to pay pursuant to the financing order and for making any adjustments that are necessary to correct for any overcollection or undercollection of the charges or to otherwise ensure the timely payment of

storm recovery bonds and financing costs and other required amounts and charges payable in connection with the storm recovery bonds.

7. The storm recovery property that is, or shall be, created in favor of a public utility or its successors or assignees and that shall be used to pay or secure storm recovery bonds and all financing costs.

8. The degree of flexibility to be afforded to the public utility in establishing the terms and conditions of the storm recovery bonds, including, but not limited to, repayment schedules, expected interest rates, and other financing costs.

9. How storm recovery charges will be allocated among customer classes.

10. A requirement that, after the final terms of an issuance of storm recovery bonds have been established and before the issuance of storm recovery bonds, the public utility determines the resulting initial storm recovery charge in accordance with the financing order and that such initial storm recovery charge be final and effective upon the issuance of such storm recovery bonds without further Commission action so long as the storm recovery charge is consistent with the financing order.

11. A method of tracing funds collected as storm recovery charges, or other proceeds of storm recovery property, and determine that such method shall be deemed the method of tracing such funds and determining the identifiable cash proceeds of any storm recovery property subject to a financing order under applicable law.

12. Any other conditions not otherwise inconsistent with this section that the Commission determines are appropriate.

c. A financing order issued to a public utility may provide that creation of the public utility's storm recovery property is conditioned upon, and simultaneous with, the sale or other transfer of the storm recovery property to an assignee and the pledge of the storm recovery property to secure storm recovery bonds.

d. If the Commission issues a financing order, the public utility shall file with the Commission at least annually a petition or a letter applying the formula-based mechanism and, based on estimates of consumption for each rate class and other mathematical factors, requesting administrative approval to make the applicable adjustments. The review of the filing shall be limited to determining whether there are any mathematical or clerical errors in the application of the formula-based mechanism relating to the appropriate amount of any overcollection or undercollection of storm recovery charges and the amount of an adjustment. The adjustments shall ensure the recovery of revenues sufficient to provide for the payment of principal, interest, acquisition, defeasance, financing costs, or redemption premium and other fees, costs, and charges in respect of storm recovery bonds approved under the financing order. Within 30 days after receiving a public utility's request pursuant to this paragraph, the Commission shall either approve the request or inform the public utility of any mathematical or clerical errors in its calculation. If the Commission

- 1 informs the utility of mathematical or clerical errors in its calculation,
2 the utility may correct its error and refile its request. The time frames
3 previously described in this paragraph shall apply to a refiled request.
- 4 e. Subsequent to the transfer of storm recovery property to an assignee
5 or the issuance of storm recovery bonds authorized thereby, whichever
6 is earlier, a financing order is irrevocable and, except for changes made
7 pursuant to the formula-based mechanism authorized in this section,
8 the Commission may not amend, modify, or terminate the financing
9 order by any subsequent action or reduce, impair, postpone, terminate,
10 or otherwise adjust storm recovery charges approved in the financing
11 order. After the issuance of a financing order, the public utility retains
12 sole discretion regarding whether to assign, sell, or otherwise transfer
13 storm recovery property or to cause storm recovery bonds to be issued,
14 including the right to defer or postpone such assignment, sale, transfer,
15 or issuance.
- 16 (4) At the request of a public utility, the Commission may commence a
17 proceeding and issue a subsequent financing order that provides for
18 refinancing, retiring, or refunding storm recovery bonds issued pursuant to the
19 original financing order if the Commission finds that the subsequent financing
20 order satisfies all of the criteria specified in this section for a financing order.
21 Effective upon retirement of the refunded storm recovery bonds and the
22 issuance of new storm recovery bonds, the Commission shall adjust the related
23 storm recovery charges accordingly.
- 24 (5) Within 60 days after the Commission issues a financing order or a decision
25 denying a request for reconsideration or, if the request for reconsideration is
26 granted, within 30 days after the Commission issues its decision on
27 reconsideration, an adversely affected party may petition for judicial review
28 in the Supreme Court of North Carolina. Review on appeal shall be based
29 solely on the record before the Commission and briefs to the court and is
30 limited to determining whether the financing order, or the order on
31 reconsideration, conforms to the State Constitution and State and federal law
32 and is within the authority of the Commission under this section.
- 33 (6) Duration of financing order. –
- 34 a. A financing order remains in effect and storm recovery property under
35 the financing order continues to exist until storm recovery bonds
36 issued pursuant to the financing order have been paid in full or
37 defeased and, in each case, all Commission-approved financing costs
38 of such storm recovery bonds have been recovered in full.
- 39 b. A financing order issued to a public utility remains in effect and
40 unabated notwithstanding the reorganization, bankruptcy or other
41 insolvency proceedings, merger, or sale of the public utility or its
42 successors or assignees.
- 43 (c) Exceptions to Commission Jurisdiction. –
- 44 (1) The Commission may not, in exercising its powers and carrying out its duties
45 regarding any matter within its authority pursuant to this Chapter, consider the
46 storm recovery bonds issued pursuant to a financing order to be the debt of
47 the public utility other than for federal income tax purposes, consider the
48 storm recovery charges paid under the financing order to be the revenue of the
49 public utility for any purpose, or consider the storm recovery costs or
50 financing costs specified in the financing order to be the costs of the public

utility, nor may the Commission determine any action taken by a public utility which is consistent with the financing order to be unjust or unreasonable.

- (2) The Commission may not order or otherwise directly or indirectly require a public utility to use storm recovery bonds to finance any project, addition, plant, facility, extension, capital improvement, equipment, or any other expenditure. After the issuance of a financing order, the public utility retains sole discretion regarding whether to cause the storm recovery bonds to be issued, including the right to defer or postpone such sale, assignment, transfer, or issuance. Nothing shall prevent the public utility from abandoning the issuance of storm recovery bonds under the financing order by filing with the Commission a statement of abandonment and the reasons therefor. The Commission may not refuse to allow a public utility to recover storm recovery costs in an otherwise permissible fashion, or refuse or condition authorization or approval of the issuance and sale by a public utility of securities or the assumption by the public utility of liabilities or obligations, solely because of the potential availability of storm recovery bond financing.

(d) **Public Utility Duties.** – The electric bills of a public utility that has obtained a financing order and caused storm recovery bonds to be issued must comply with the provisions of this subsection; however, the failure of a public utility to comply with this subsection does not invalidate, impair, or affect any financing order, storm recovery property, storm recovery charge, or storm recovery bonds. The public utility must do the following:

- (1) Explicitly reflect that a portion of the charges on such bill represents storm recovery charges approved in a financing order issued to the public utility and, if the storm recovery property has been transferred to an assignee, must include a statement to the effect that the assignee is the owner of the rights to storm recovery charges and that the public utility or other entity, if applicable, is acting as a collection agent or servicer for the assignee. The tariff applicable to customers must indicate the storm recovery charge and the ownership of the charge.
- (2) Include the storm recovery charge on each customer's bill as a separate line item and include both the rate and the amount of the charge on each bill.

(e) **Storm Recovery Property.** –

- (1) Provisions applicable to storm recovery property. –

- a. All storm recovery property that is specified in a financing order constitutes an existing, present intangible property right or interest therein, notwithstanding that the imposition and collection of storm recovery charges depends on the public utility, to which the financing order is issued, performing its servicing functions relating to the collection of storm recovery charges and on future electricity consumption. The property exists (i) regardless of whether or not the revenues or proceeds arising from the property have been billed, have accrued, or have been collected and (ii) notwithstanding the fact that the value or amount of the property is dependent on the future provision of service to customers by the public utility or its successors or assignees and the future consumption of electricity by customers.
- b. Storm recovery property specified in a financing order exists until storm recovery bonds issued pursuant to the financing order are paid in full and all financing costs and other costs of such storm recovery bonds have been recovered in full.
- c. All or any portion of storm recovery property specified in a financing order issued to a public utility may be transferred, sold, conveyed, or

- assigned to a successor or assignee that is wholly owned, directly or indirectly, by the public utility and created for the limited purpose of acquiring, owning, or administering storm recovery property or issuing storm recovery bonds under the financing order. All or any portion of storm recovery property may be pledged to secure storm recovery bonds issued pursuant to the financing order, amounts payable to financing parties and to counterparties under any ancillary agreements, and other financing costs. Any transfer, sale, conveyance, assignment, grant of a security interest in or pledge of storm recovery property by a public utility, or an affiliate of the public utility, to an assignee, to the extent previously authorized in a financing order, does not require the prior consent and approval of the Commission.
- d. If a public utility defaults on any required payment of charges arising from storm recovery property specified in a financing order, a court, upon application by an interested party, and without limiting any other remedies available to the applying party, shall order the sequestration and payment of the revenues arising from the storm recovery property to the financing parties or their assignees. Any such financing order remains in full force and effect notwithstanding any reorganization, bankruptcy, or other insolvency proceedings with respect to the public utility or its successors or assignees.
- e. The interest of a transferee, purchaser, acquirer, assignee, or pledgee in storm recovery property specified in a financing order issued to a public utility, and in the revenue and collections arising from that property, is not subject to setoff, counterclaim, surcharge, or defense by the public utility or any other person or in connection with the reorganization, bankruptcy, or other insolvency of the public utility or any other entity.
- f. Any successor to a public utility, whether pursuant to any reorganization, bankruptcy, or other insolvency proceeding or whether pursuant to any merger or acquisition, sale, or other business combination, or transfer by operation of law, as a result of public utility restructuring or otherwise, must perform and satisfy all obligations of, and have the same rights under a financing order as, the public utility under the financing order in the same manner and to the same extent as the public utility, including collecting and paying to the person entitled to receive the revenues, collections, payments, or proceeds of the storm recovery property. Nothing in this sub-subdivision is intended to limit or impair any authority of the Commission concerning the transfer or succession of interests of public utilities.
- g. Storm recovery bonds shall be nonrecourse to the credit or any assets of the public utility other than the storm recovery property as specified in the financing order and any rights under any ancillary agreement.
- (2) Provisions applicable to security interests. –
- a. The creation, perfection, and enforcement of any security interest in storm recovery property to secure the repayment of the principal and interest and other amounts payable in respect of storm recovery bonds; amounts payable under any ancillary agreement and other financing costs are governed by this subsection and not by the provisions of the Code.

- 1 b. A security interest in storm recovery property is created, valid, and
2 binding and perfected at the later of the time: (i) the financing order is
3 issued, (ii) a security agreement is executed and delivered by the
4 debtor granting such security interest, (iii) the debtor has rights in such
5 storm recovery property or the power to transfer rights in such storm
6 recovery property, or (iv) value is received for the storm recovery
7 property. The description of storm recovery property in a security
8 agreement is sufficient if the description refers to this section and the
9 financing order creating the storm recovery property.
- 10 c. A security interest shall attach without any physical delivery of
11 collateral or other act, and, upon the filing of a financing statement
12 with the office of the Secretary of State, the lien of the security interest
13 shall be valid, binding, and perfected against all parties having claims
14 of any kind in tort, contract, or otherwise against the person granting
15 the security interest, regardless of whether the parties have notice of
16 the lien. Also upon this filing, a transfer of an interest in the storm
17 recovery property shall be perfected against all parties having claims
18 of any kind, including any judicial lien or other lien creditors or any
19 claims of the seller or creditors of the seller, and shall have priority
20 over all competing claims other than any prior security interest,
21 ownership interest, or assignment in the property previously perfected
22 in accordance with this section.
- 23 d. The Secretary of State shall maintain any financing statement filed to
24 perfect any security interest under this section in the same manner that
25 the Secretary maintains financing statements filed by transmitting
26 utilities under the Code. The filing of a financing statement under this
27 section shall be governed by the provisions regarding the filing of
28 financing statements in the Code.
- 29 e. The priority of a security interest in storm recovery property is not
30 affected by the commingling of storm recovery charges with other
31 amounts. Any pledgee or secured party shall have a perfected security
32 interest in the amount of all storm recovery charges that are deposited
33 in any cash or deposit account of the qualifying utility in which storm
34 recovery charges have been commingled with other funds and any
35 other security interest that may apply to those funds shall be terminated
36 when they are transferred to a segregated account for the assignee or a
37 financing party.
- 38 f. No application of the formula-based adjustment mechanism as
39 provided in this section will affect the validity, perfection, or priority
40 of a security interest in or transfer of storm recovery property.
- 41 g. If a default or termination occurs under the storm recovery bonds, the
42 financing parties or their representatives may foreclose on or otherwise
43 enforce their lien and security interest in any storm recovery property
44 as if they were secured parties with a perfected and prior lien under the
45 Code, and the Commission may order amounts arising from storm
46 recovery charges be transferred to a separate account for the financing
47 parties' benefit, to which their lien and security interest shall apply. On
48 application by or on behalf of the financing parties, the Superior Court
49 of Wake County shall order the sequestration and payment to them of
50 revenues arising from the storm recovery charges.

(3) Provisions applicable to the sale, assignment, or transfer of storm recovery property. –

- a. Any sale, assignment, or other transfer of storm recovery property shall be an absolute transfer and true sale of, and not a pledge of or secured transaction relating to, the seller's right, title, and interest in, to, and under the storm recovery property if the documents governing the transaction expressly state that the transaction is a sale or other absolute transfer other than for federal and State income tax purposes. For all purposes other than federal and State income tax purposes, the parties' characterization of a transaction as a sale of an interest in storm recovery property shall be conclusive that the transaction is a true sale and that ownership has passed to the party characterized as the purchaser, regardless of whether the purchaser has possession of any documents evidencing or pertaining to the interest. A transfer of an interest in storm recovery property may be created only when all of the following have occurred: (i) the financing order creating the storm recovery property has become effective, (ii) the documents evidencing the transfer of storm recovery property have been executed by the assignor and delivered to the assignee, and (iii) value is received for the storm recovery property. After such a transaction, the storm recovery property is not subject to any claims of the transferor or the transferor's creditors, other than creditors holding a prior security interest in the storm recovery property perfected in accordance with subdivision (2) of subsection (e) of this section.
- b. The characterization of the sale, assignment, or other transfer as an absolute transfer and true sale and the corresponding characterization of the property interest of the purchaser, shall not be affected or impaired by the occurrence of any of the following factors:
1. Commingling of storm recovery charges with other amounts.
 2. The retention by the seller of (i) a partial or residual interest, including an equity interest, in the storm recovery property, whether direct or indirect, or whether subordinate or otherwise, or (ii) the right to recover costs associated with taxes, franchise fees, or license fees imposed on the collection of storm recovery charges.
 3. Any recourse that the purchaser may have against the seller.
 4. Any indemnification rights, obligations, or repurchase rights made or provided by the seller.
 5. The obligation of the seller to collect storm recovery charges on behalf of an assignee.
 6. The transferor acting as the servicer of the storm recovery charges or the existence of any contract that authorizes or requires the public utility, to the extent that any interest in storm recovery property is sold or assigned, to contract with the assignee or any financing party that it will continue to operate its system to provide service to its customers, will collect amounts in respect of the storm recovery charges for the benefit and account of such assignee or financing party, and will account for and remit such amounts to or for the account of such assignee or financing party.

7. The treatment of the sale, conveyance, assignment, or other transfer for tax, financial reporting, or other purposes.
 8. The granting or providing to bondholders a preferred right to the storm recovery property or credit enhancement by the public utility or its affiliates with respect to such storm recovery bonds.
 9. Any application of the formula-based adjustment mechanism as provided in this section.
- c. Any right that a public utility has in the storm recovery property before its pledge, sale, or transfer or any other right created under this section or created in the financing order and assignable under this section or assignable pursuant to a financing order is property in the form of a contract right or a chose in action. Transfer of an interest in storm recovery property to an assignee is enforceable only upon the later of (i) the issuance of a financing order, (ii) the assignor having rights in such storm recovery property or the power to transfer rights in such storm recovery property to an assignee, (iii) the execution and delivery by the assignor of transfer documents in connection with the issuance of storm recovery bonds, and (iv) the receipt of value for the storm recovery property. An enforceable transfer of an interest in storm recovery property to an assignee is perfected against all third parties, including subsequent judicial or other lien creditors, when a notice of that transfer has been given by the filing of a financing statement in accordance with sub-subdivision c. of subdivision (2) of this subsection. The transfer is perfected against third parties as of the date of filing.
- d. The Secretary of State shall maintain any financing statement filed to perfect any sale, assignment, or transfer of storm recovery property under this section in the same manner that the Secretary maintains financing statements filed by transmitting utilities under the Code. The filing of any financing statement under this section shall be governed by the provisions regarding the filing of financing statements in the Code. The filing of such a financing statement is the only method of perfecting a transfer of storm recovery property.
- e. The priority of a transfer perfected under this section is not impaired by any later modification of the financing order or storm recovery property or by the commingling of funds arising from storm recovery property with other funds. Any other security interest that may apply to those funds, other than a security interest perfected under subdivision (2) of this subsection, is terminated when they are transferred to a segregated account for the assignee or a financing party. If storm recovery property has been transferred to an assignee or financing party, any proceeds of that property must be held in trust for the assignee or financing party.
- f. The priority of the conflicting interests of assignees in the same interest or rights in any storm recovery property is determined as follows:
1. Conflicting perfected interests or rights of assignees rank according to priority in time of perfection. Priority dates from the time a filing covering the transfer is made in accordance with sub-subdivision c. of subdivision (2) of this subsection.

any assignee or financing party entering into a contract with the public utility.

The prohibited actions are as follows:

- a. Alter the provisions of this section, which authorize the Commission to create an irrevocable contract right or chose in action by the issuance of a financing order, to create storm recovery property, and make the storm recovery charges imposed by a financing order irrevocable, binding, or nonbypassable charges.
- b. Take or permit any action that impairs or would impair the value of storm recovery property or the security for the storm recovery bonds or revises the storm recovery costs for which recovery is authorized.
- c. In any way impair the rights and remedies of the bondholders, assignees, and other financing parties.
- d. Except for changes made pursuant to the formula-based adjustment mechanism authorized under this section, reduce, alter, or impair storm recovery charges that are to be imposed, billed, charged, collected, and remitted for the benefit of the bondholders, any assignee, and any other financing parties until any and all principal, interest, premium, financing costs and other fees, expenses, or charges incurred, and any contracts to be performed, in connection with the related storm recovery bonds have been paid and performed in full.

(2) Any person or entity that issues storm recovery bonds may include the language specified in this subsection in the storm recovery bonds and related documentation.

(l) Not a Public Utility. – An assignee or financing party is not a public utility or person providing electric service by virtue of engaging in the transactions described in this section.

(m) Conflicts. – If there is a conflict between this section and any other law regarding the attachment, assignment, or perfection, or the effect of perfection, or priority of, assignment or transfer of, or security interest in storm recovery property, this section shall govern.

(n) Consultation. – In making determinations under this section, the Commission or public staff or both may engage an outside consultant and counsel.

(o) Effect of Invalidity. – If any provision of this section is held invalid or is invalidated, superseded, replaced, repealed, or expires for any reason, that occurrence does not affect the validity of any action allowed under this section which is taken by a public utility, an assignee, a financing party, a collection agent, or a party to an ancillary agreement; and any such action remains in full force and effect with respect to all storm recovery bonds issued or authorized in a financing order issued under this section before the date that such provision is held invalid or is invalidated, superseded, replaced, or repealed, or expires for any reason."

SECTION 1.(b) G.S. 25-9-109(d) reads as rewritten:

"(d) Inapplicability of Article. – This Article does not apply to:

...

(13) An assignment of a deposit account in a consumer transaction, but G.S. 25-9-315 and G.S. 25-9-322 apply with respect to proceeds and priorities in proceeds; ~~or~~

(14) The creation, perfection, priority, or enforcement of any lien on, assignment of, pledge of, or security in, any revenues, rights, funds, or other tangible or intangible assets created, made, or granted by this State or a governmental unit in this State, including the assignment of rights as secured party in security interests granted by any party subject to the provisions of this Article to this State or a governmental unit in this State, to secure, directly or indirectly, any bond, note, other evidence of indebtedness, or other payment obligations for borrowed money issued by, or in connection with, installment or lease

purchase financings by, this State or a governmental unit in this State. However, notwithstanding this subdivision, this Article does apply to the creation, perfection, priority, and enforcement of security interests created by this State or a governmental unit in this State in equipment or ~~fixtures~~fixtures; or

- (15) The creation, perfection, priority, or enforcement of any sale, assignment of, pledge of, security interest in, or other transfer of, any interest or right or portion of any interest or right in any storm recovery property as defined G.S. 62-172."

PART II. AUTHORIZE RATES USING ALTERNATIVE MECHANISMS

SECTION 2.(a) Article 7 of Chapter 62 of the General Statutes is amended by adding a new section to read:

"§ 62-133A. Alternate rate methodology authorized.

(a) Notwithstanding the methods for fixing rates established under G.S. 62-133, the Commission, upon application by an electric public utility, is authorized to approve multiyear rate plans, banding of authorized returns, or a combination thereof, filed in and along with a general rate case proceeding initiated pursuant to G.S. 62-133. For purposes of this section, the following definitions apply:

- (1) "Banding of authorized returns" means a rate mechanism under which the Commission sets an authorized return on equity for an electric utility that acts as a midpoint and then applies a low- and high-end range of returns to that midpoint under which an electric public utility will not overearn if within the high-end range and will not underearn if within the low-end range.

- (2) "Multiyear rate plan" means a rate mechanism under which the Commission sets base rates and revenue requirements for a multiyear plan period based on a known and measurable set of capital investments and all the expenses associated with those capital investments and authorizes periodic changes in base rates during the approved plan period without the need for a base rate proceeding during the plan period.

(b) Any banding of authorized returns approved pursuant to this section shall not exceed 125 basis points above or 125 basis points below the authorized return on equity that is set by the Commission. If an electric public utility that is operating under a banding of authorized returns exceeds the high-end range of the band that is approved by the Commission, the electric public utility shall refund or credit earnings above that high-end range to customers in a manner to be prescribed by rules adopted by the Commission pursuant to subsection (g) of this section. If an electric public utility that is operating under a banding of authorized returns falls below the low-end range of the band that is approved by the Commission, the electric public utility may file a general rate case proceeding initiated pursuant to G.S. 62-133. In setting a midpoint authorized rate of return on equity for banding, the Commission shall consider any decreased or increased risk to an electric public utility that may result from having an approved multiyear rate plan, banding of authorized returns, or a combination thereof.

(c) The Commission shall, after notice and an opportunity for interested parties to be heard, issue an order, in addition to its order ruling on the electric public utility's request to adjust base rates under G.S. 62-133, denying or approving, with or without modifications, an electric public utility's proposed rate-making mechanism, plan, or settlement that includes multiyear rate plans, banding of authorized returns, or a combination thereof, filed pursuant to this section no later than 365 days after the date on which the electric public utility files a proposed rate-making mechanism, plan, or settlement that includes multiyear rate plans, banding of authorized returns, or a combination thereof. If the Commission denies an electric public utility's proposed rate-making mechanism, plan, or settlement that includes multiyear rate plans, banding of

1 authorized returns, or a combination thereof, filed pursuant to this section, the Commission's
2 order ruling on the electric public utility's request to adjust base rates shall govern. The
3 Commission may approve such rate-making mechanisms, plans, or settlements proposed by an
4 electric public utility only upon a finding by the Commission that such mechanisms, plans, or
5 settlements are just and reasonable, and are in the public interest. In reviewing any such
6 application under this section, the Commission shall consider whether the electric public utility's
7 application, as proposed: (i) establishes rates as shall be fair both to the electric public utility and
8 to the consumer, (ii) reasonably assures the continuation of safe and reliable electric service, (iii)
9 will not unreasonably prejudice any class of electric customers, (iv) will not result in sudden
10 substantial rate increases, or "rate shock," to consumers, and (v) is otherwise consistent with the
11 public interest. The Commission is granted explicit authority to impose any or all conditions for
12 approval of an application submitted under this section that the Commission deems necessary to
13 ensure that rates are just and reasonable, and are in the public interest, including periodic reviews
14 to be held during the period that a multiyear rate plan may be in effect, with opportunities for
15 public hearings during such periodic reviews so that interested parties may be heard. If the
16 Commission approves the multiyear rate plan, banding of authorized returns, or a combination
17 thereof, with modifications, the utility subject to such approval may, at its option, accept the
18 modifications and implement the multiyear rate plan, banding of authorized returns, or a
19 combination thereof, as modified or may, at its option, withdraw its application and be governed
20 under the Commission's order ruling on the electric public utility's request to adjust base rates
21 under G.S. 62-133.

22 (d) Any rate-making mechanisms, plans, or settlements approved pursuant to this section
23 shall remain in effect for a period of no more than three years.

24 (e) For purposes of measuring an electric public utility's earnings under any mechanisms,
25 plans, or settlements approved under this section, the electric public utility shall make an annual
26 filing that sets forth the electric public utility's earned return on equity for the prior 12-month
27 period.

28 (f) Nothing in this section shall be construed to (i) limit or abrogate the existing
29 rate-making authority of the Commission or (ii) invalidate or void any rates approved by the
30 Commission prior to the effective date of this section. In all respects, the rate-making
31 mechanisms, plans, or settlements approved under this section shall operate independently, and
32 be considered separately, from riders or other cost recovery mechanisms otherwise allowed by
33 law, unless otherwise incorporated into such mechanism, plan, or settlement.

34 (g) The Commission shall adopt rules necessary to implement the provisions of this
35 section."

36 **SECTION 2.(b)** The Commission shall adopt rules as required by G.S. 62-133A(g),
37 as enacted by Section 2(a) of this act, no later than 120 days after the date this act becomes law.
38

39 **PART III. EFFECTIVE DATE**

40 **SECTION 3.** Part I of this act is effective when it becomes law. Part II of this act is
41 effective when it becomes law and applies to any rate-making mechanisms, designs, plans, or
42 settlements filed by a public utility on or after the date that rules adopted pursuant to
43 G.S. 62-133A(g), as enacted by Section 2(a) of this act, become effective. The remainder of this
44 act is effective when it becomes law.

**NORTH CAROLINA GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES**

ENERGY AND PUBLIC UTILITIES COMMITTEE REPORT

Representative Dean Arp, Co-Chair

Representative John Szoka, Co-Chair

FAVORABLE AND RE-REFERRED

SB 559 (HCS#1)

Storm Securitization/Alt. Rates.

Draft Number: None

Serial Referral: RULES, CALENDAR, AND
OPERATIONS OF THE HOUSE

Recommended Referral: None

Long Title Amended: No

Floor Manager: Lewis

TOTAL REPORTED: 1



* C M R 6 2 5 - V - 1 *

**NORTH CAROLINA GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES**

ENERGY AND PUBLIC UTILITIES COMMITTEE REPORT

**Representative Dean Arp, Co-Chair
Representative John Szoka, Co-Chair**

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

SB 377 (CS#1)

Military Base Protection Act.

Draft Number: S377-PCS45317-RI-20

**Serial Referral: RULES, CALENDAR, AND
OPERATIONS OF THE HOUSE**

Recommended Referral: None

Long Title Amended: Yes

Floor Manager: Szoka

TOTAL REPORTED: 1



★ C M R 6 3 1 - V - 1 ★

Committee Sergeants at Arms

NAME OF COMMITTEE Energy and Public Utilities

DATE: Tuesday, June 25, 2019 Room: 643 LOB

House Sgt-At Arms:

1. Name: Jonas Cherry

2. Name: Rey Cooke

3. Name: Dean Marshbourne

4. Name: Kim Blackman

5. Name: _____

Senate Sgt-At Arms:

1. Name: _____

2. Name: _____

3. Name: _____

4. Name: _____

5. Name: _____

**House Pages
Assignments
Tuesday, June 25, 2019
Session: 4:00 PM**

Committee	Room	Time	Staff	Comments	Member
Education - K-12	643	1:00 PM	Caroline Bull		Rep. Darren G. Jackson
			Alice Connor		Rep. John Autry
			John D'Ambrosio		Rep. Gale Adcock
Public Utilities	643	3:00 PM	Kristen Sauls		Rep. John R. Bell, IV
			Emily Siniavsky		Rep. John R. Bell, IV

Eleanor Castoral

Speaker Tim Moore

Sinowsky

VISITOR REGISTRATION SHEET

Energy and Public Utilities

06/25/19

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

CURT LEONARD	A.C. L. 101 CONSTITUTION AVE, NW WASHINGTON, DC. 20001
Anteigen	NMRS
Ben Stodolke	NCSEA
Pete Polonsky	NC Conservation Network
Molly Duggan	NC Sierra Club
Cassie Garcia	Sierra Club
Brooks Paine Pearson	SELC
Miguel Arnes	SELC
Al Ryley	NCJC
Will Scott	NCCN
Matt Wasson	Appalachian Voices

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Energy and Public Utilities

06/25/19

Name of Committee

Date _____

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NAME _____

FIRM OR AGENCY AND ADDRESS

Kathy Hawkes

Duke Energy

John Burnette

Duke Energy

Susan Vick

Duke Energy

[Handwritten signature]

35

RESTOR HUMANO

ALMA

Rw Kanyana

Kayla Lane

1870-1871

1872-1873

1874-1875

1876-1877

1878-1879

1880-1881

1882-1883

VISITOR REGISTRATION SHEET

Energy and Public Utilities

06/25/19

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Date _____

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NAME _____

FIRM OR AGENCY AND ADDRESS

Alfred Wimbrey

NCCN

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Energy and Public Utilities

06/25/19

Name of Committee

Date

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NAME	FIRM OR AGENCY AND ADDRESS
<i>Greg Andeck</i>	<i>Oregon Inc</i>
<i>Zach Wallace</i>	<i>Audubon</i>
<i>Greg Andeck</i>	<i>Audubon</i>
<i>Sallie James</i>	<i>Governor's office</i>
<i>Bob Hinton</i>	<i>Public Staff</i>
<i>Mike Marress</i>	<i>Public Staff</i>
<i>Chris Ayers</i>	<i>Public Staff</i>
<i>Dranna Downing</i>	<i>Public Staff</i>
<i>Peter Hedford</i>	<i>NCSEA</i>
<i>Sarah McQuillen</i>	<i>KGMA</i>
<i>Scott Lash</i>	<i>KGMA</i>

VISITOR REGISTRATION SHEET

Energy and Public Utilities

06/25/19

Name of Committee

Date

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NAME	FIRM OR AGENCY AND ADDRESS
<i>[Signature]</i>	MWC
Julie Robinson	NCSEA
Tom BEAN	EDF, NCSEA, NCWE
Henry Manchester	LCA/NOTC
Kevin O'Donnell	CACA
Sharon Miller	CACA
Dan Nation	Parkdale Mills
Kirsten Miller	JSC
George WASHINGTON	CCC
Stephen Bourke	KMA
Andy Chase	KMA

VISITOR REGISTRATION SHEET

Energy and Public Utilities

06/25/19

Name of Committee

Date

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NAME

FIRM OR AGENCY AND ADDRESS

Don Koff	CAA
Lisa Malt	Capitol
Lisa Riegel	AARP
Debra Don	IC Chamber
Will Robinson	The Nature Conservancy
April Neumann	MNC
Paul Shuman	NEFB
Phyllis	NCAEC
Chris Wall	PC
Drew Zinn	Electricities
Katy Kingsley	US

VISITOR REGISTRATION SHEET

Energy and Public Utilities

06/25/19

Name of Committee

Date

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NAME

FIRM OR AGENCY AND ADDRESS

Sarah Patterson	WM
Cassidy Robertson	AMGA
Tracy Kimbrell	Parker Poe
Grace Rountree	Duke Energy
Nathan Balrodh	PPAB
John Hatcher	NCFA
Nancy Thompson	Weyerhaeuser
Kara Weishaar	SA
Joe Bost	CBRA
SASON Soper	NC Chamber
Elizabeth Robinson	NORMA
Andy Ellen	NORMA

VISITOR REGISTRATION SHEET

Energy and Public Utilities

06/25/19

Name of Committee

Date _____

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NAME _____

FIRM OR AGENCY AND ADDRESS

[illegible]

House Committee on Energy and Public Utilities
Wednesday, July 10, 2019 at 9:30 AM
Room 1228/1327 of the Legislative Building

MINUTES

The House Committee on Energy and Public Utilities met at 9:30 AM on July 10, 2019 in Room 1228/1327 of the Legislative Building. Representatives Alexander, Autry, Cunningham, Harrison, Holley, Humphrey, B. Jones, Saine, Strickland, and Szoka attended.

Representative John Szoka, Chair, presided.

The following bills were considered:

SB 320 Regional Water Systems and State Grants. (Senator J. Alexander): Rep. Barnes presented SB320. Rep. Saine made a Motion for a favorable report on the PCS S320-CSST-40 [v.4]. With no objections, the Chair called for a vote on the motion for a favorable report and the PCS passed with a serial referral to Rules, Calendar, and Operations of the House.

With no further business, the meeting adjourned at 9:37 AM.


Representative John Szoka, Chair
Presiding


Beverly Slagle, Committee Clerk

**NORTH CAROLINA GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES**

ENERGY AND PUBLIC UTILITIES COMMITTEE REPORT

Representative Dean Arp, Co-Chair

Representative John Szoka, Co-Chair

FAVORABLE HOUSE COM SUB, UNFAVORABLE ORIGINAL BILL AND RE-REFERRED

SB 320

Regional Water Systems and State Grants.

Draft Number: S320-PCS15387-ST-40

**Serial Referral: RULES, CALENDAR, AND
OPERATIONS OF THE HOUSE**

Recommended Referral: None

Long Title Amended: Yes

Floor Manager: Barnes

TOTAL REPORTED: 1



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**House Committee on Energy and Public Utilities
Wednesday, July 10, 2019, 9:30 AM
1228/1327 Legislative Building**

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
SB 320	Regional Water Systems and State Grants.	Senator J. Alexander

Presentations

Chair John Szoka, presiding

Other Business

Adjournment



SENATE BILL 320: Regional Water Systems and State Grants.

2019-2020 General Assembly

Committee:	House Energy and Public Utilities. If favorable, re-refer to Rules, Calendar, and Operations of the House	Date:	July 9, 2019
Introduced by:	Sen. J. Alexander	Prepared by:	Jennifer McGinnis
Analysis of:	Second Edition		Staff Attorney

OVERVIEW: *Senate Bill 320 would amend requirements governing disbursement of water/wastewater infrastructure grants or loans to recipients engaged in regionalization to require the Department of Environmental Quality (DEQ) to encourage written agreements between the recipient and each local government unit that serves a customer base of over 5,000 and that purchases treated or untreated water from the recipient stating the current rates of purchase and any anticipated increases over the term of the agreement, or a resolution approved by the governing board of the purchasing local government unit stating that it waives its option to establish such a written agreement. The bill also establishes a process for the Local Government Commission (LGC) to assist in resolving any disputes between local government units prior to execution of a written agreement*

[As introduced, this bill was identical to H414, as introduced by Rep. Barnes, which is currently in House State and Local Government.]

CURRENT LAW/BACKGROUND: Chapter 159G of the General Statutes governs a number of water infrastructure loan and grant funds administered by DEQ established to meet the water infrastructure needs of the State, including the following:

- The Clean Water State Revolving Fund -- The account receives federal funds for wastewater projects and the State funds required to match the federal funds.
- The Drinking Water State Revolving Fund -- The account receives federal funds for public water systems and the State funds required to match the federal funds.
- The Wastewater Reserve -- The account is established to receive State funds that are to be used for loans and grants for wastewater systems.
- The Drinking Water Reserve -- The account is established to receive State funds that are to be used for loans and grants for public water systems.

Current law requires that the proceeds of a loan or grant must be disbursed to a recipient in a series of payments based on the progress of the project for which the loan or grant was awarded. In addition, in order to obtain a payment, a loan or grant recipient must submit a request for payment to DEQ and document the expenditures for which the payment is requested.

BILL ANALYSIS: The bill would require that, prior to any disbursement of a loan or grant to a recipient that is engaged in regionalization or initiating regionalization with the loan or grant, DEQ must encourage an applicant to have one of the following with respect to each local government unit that serves a customer

Karen Cochrane-Brown
Director



Legislative Analysis
Division
919-733-2578

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

Senate Bill 320

Page 2

base of over 5,000 and that purchases treated or untreated water from the recipient at the time of the disbursement of the loan or grant or anticipated to be served within the 30 years following the disbursement of the loan or grant:

- A written agreement approved by the governing board of the recipient and the governing board of the local government unit stating the current rates of purchase and any anticipated increases over the term of the agreement.
- A resolution approved by the governing board of the purchasing local government unit stating the local government unit waives its option to establish such a written agreement.

In addition, the bill provides that in developing such agreements, either local government unit may request that the LGC assist in resolving any disputes between the local government units prior to execution of the written agreement. In such cases, the LGC would be required assist and provide recommendations within 90 days of the request.

EFFECTIVE DATE: The bill would be effective when it becomes law and apply to disbursements under Chapter 159G of the General Statutes on or after that date.



SENATE BILL 320: Regional Water Systems and State Grants.

2019-2020 General Assembly

Committee:	House Energy and Public Utilities. If favorable, re-refer to Rules, Calendar, and Operations of the House	Date:	July 10, 2019
Introduced by:	Sen. J. Alexander	Prepared by:	Jennifer McGinnis
Analysis of:	PCS to Second Edition S320-CSST-40		Staff Attorney

OVERVIEW: *The Proposed Committee Substitute (PCS) for Senate Bill 320 would amend requirements governing disbursement of water/wastewater infrastructure grants or loans to recipients engaged in regionalization to, in certain circumstances, require a written agreement between a recipient and local government units purchasing treated or untreated water from the recipient, stating the current rates of purchase and any anticipated increases over the term of the agreement, or a resolution approved by the governing board of the purchasing local government unit stating that it waives its option to establish such a written agreement. The bill also establishes a process for the Local Government Commission (LGC) to assist in resolving any disputes between local government units prior to execution of a written agreement. If the parties fail to reach agreement, the bill would prohibit the Department of Environmental Quality (DEQ) from disbursing any loan or grant to either local government unit until the dispute is resolved to the satisfaction of the LGC.*

[As introduced, this bill was identical to H414, as introduced by Rep. Barnes, which is currently in House State and Local Government.]

CURRENT LAW/BACKGROUND: Chapter 159G of the General Statutes governs a number of water infrastructure loan and grant funds administered by DEQ established to meet the water infrastructure needs of the State, including the following:

- The Clean Water State Revolving Fund -- The account receives federal funds for wastewater projects and the State funds required to match the federal funds.
- The Drinking Water State Revolving Fund -- The account receives federal funds for public water systems and the State funds required to match the federal funds.
- The Wastewater Reserve -- The account is established to receive State funds that are to be used for loans and grants for wastewater systems.
- The Drinking Water Reserve -- The account is established to receive State funds that are to be used for loans and grants for public water systems.

Current law requires that the proceeds of a loan or grant must be disbursed to a recipient in a series of payments based on the progress of the project for which the loan or grant was awarded. In addition, in order to obtain a payment, a loan or grant recipient must submit a request for payment to DEQ and document the expenditures for which the payment is requested.

Karen Cochrane-Brown
Director



Legislative Analysis
Division
919-733-2578

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

Senate PCS 320

Page 2

BILL ANALYSIS: The PCS would require that, prior to any disbursement of a loan or grant to a recipient that is engaged in regionalization or initiating regionalization with the loan or grant, the Department must ensure that the recipient has one of the following with respect to each local government unit that serves a customer base of over 5,000 and that purchases treated or untreated water from the recipient at the time of the loan, or is anticipated to be served within the 30 years following the disbursement of the loan or grant:

- A written agreement approved by the governing board of the recipient and the governing board of the local government unit stating the current rates of purchase and any anticipated increases over the term of the agreement.
- A resolution approved by the governing board of the purchasing local government unit stating the local government unit waives its option to establish such a written agreement.

In addition, the PCS provides that in developing such agreements, either local government unit may request that the LGC assist in resolving any disputes between the local government units prior to execution of the written agreement. In such cases, the LGC would be required assist and provide recommendations within 90 days of the request. If the parties fail to agree, or fail to adopt the recommendations of the LGC upon disagreement between the parties, the bill would prohibit the Department from disbursing any loan or grant to either local government unit until the dispute is resolved to the satisfaction of the LGC.

The PCS provides, however, that these requirements would only apply to disbursements of a loan or grant where the disbursement is for regionalization and the recipient or a beneficiary of the disbursement withdraws water from a reservoir owned by the United States Army Corps of Engineers lying in at least two states with a dam located outside North Carolina.

EFFECTIVE DATE: The bill would be effective when it becomes law and apply to disbursements under Chapter 159G of the General Statutes on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

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SENATE BILL 320
Second Edition Engrossed 5/7/19
PROPOSED HOUSE COMMITTEE SUBSTITUTE S320-CSST-40 [v.4]
06/12/2019 03:47:25 PM

Short Title: Regional Water Systems and State Grants.

(Public)

Sponsors:

Referred to:

March 21, 2019

A BILL TO BE ENTITLED
AN ACT TO FOSTER REGIONAL COOPERATION FOR WATER AND WASTEWATER
INFRASTRUCTURE AMONGST SYSTEMS UTILIZING RESERVOIR WATER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 159G-42 reads as rewritten:

"§ 159G-42. Disbursement of loan or grant.

(a) The Department must disburse the proceeds of a loan or grant to a recipient in a series of payments based on the progress of the project for which the loan or grant was awarded. To obtain a payment, a loan or grant recipient must submit a request for payment to the Department and document the expenditures for which the payment is requested.

(b) Prior to any disbursement of a loan or grant to a recipient that is engaged in regionalization or initiating regionalization with the loan or grant, the Department shall ensure that the recipient has one of the following with respect to each local government unit that (i) serves a customer base of over five thousand (5,000) and (ii) purchases treated or untreated water from the recipient at the time of the disbursement of the loan or grant or is anticipated to purchase treated or untreated water from the recipient within the 30 years following the disbursement of the loan or grant:

(1) A written agreement approved by the governing board of the recipient and the governing board of the local government unit stating the current rates of purchase and any anticipated increases over the term of the agreement.

(2) A resolution approved by the governing board of the purchasing local government unit stating the local government unit waives its option to establish such a written agreement.

(c) In developing any agreement for execution as required by subsection (b) of this section, either local government unit may request to the Local Government Commission to assist in resolving any disputes between the local government units prior to execution of the written agreement. When a request for assistance is made, the Local Government Commission shall assist and provide recommendations within 90 days of the request. If the parties fail to agree, or fail to adopt the recommendations of the Local Government Commission upon disagreement between the parties, the Department shall not disburse any loan or grant to either local government unit until the dispute is resolved to the satisfaction of the Local Government Commission.

(d) Subsections (b) and (c) of this section shall apply only to disbursements of a loan or grant where the disbursement is for regionalization and the recipient or a beneficiary of the



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1 disbursement withdraws water from a reservoir owned by the United States Army Corps of
2 Engineers lying in at least two states with a dam located outside North Carolina."

3 **SECTION 2.** This act is effective when it becomes law and applies to disbursements
4 under Chapter 159G of the General Statutes on or after that date.



SENATE BILL 320: Regional Water Systems and State Grants.

2019-2020 General Assembly

Committee:	House Energy and Public Utilities. If favorable, re-refer to Rules, Calendar, and Operations of the House	Date:	July 9, 2019
Introduced by:	Sen. J. Alexander	Prepared by:	Jennifer McGinnis
Analysis of:	Second Edition		Staff Attorney

OVERVIEW: *Senate Bill 320 would amend requirements governing disbursement of water/wastewater infrastructure grants or loans to recipients engaged in regionalization to require the Department of Environmental Quality (DEQ) to encourage written agreements between the recipient and each local government unit that serves a customer base of over 5,000 and that purchases treated or untreated water from the recipient stating the current rates of purchase and any anticipated increases over the term of the agreement, or a resolution approved by the governing board of the purchasing local government unit stating that it waives its option to establish such a written agreement. The bill also establishes a process for the Local Government Commission (LGC) to assist in resolving any disputes between local government units prior to execution of a written agreement*

[As introduced, this bill was identical to H414, as introduced by Rep. Barnes, which is currently in House State and Local Government.]

CURRENT LAW/BACKGROUND: Chapter 159G of the General Statutes governs a number of water infrastructure loan and grant funds administered by DEQ established to meet the water infrastructure needs of the State, including the following:

- The Clean Water State Revolving Fund -- The account receives federal funds for wastewater projects and the State funds required to match the federal funds.
- The Drinking Water State Revolving Fund -- The account receives federal funds for public water systems and the State funds required to match the federal funds.
- The Wastewater Reserve -- The account is established to receive State funds that are to be used for loans and grants for wastewater systems.
- The Drinking Water Reserve -- The account is established to receive State funds that are to be used for loans and grants for public water systems.

Current law requires that the proceeds of a loan or grant must be disbursed to a recipient in a series of payments based on the progress of the project for which the loan or grant was awarded. In addition, in order to obtain a payment, a loan or grant recipient must submit a request for payment to DEQ and document the expenditures for which the payment is requested.

BILL ANALYSIS: The bill would require that, prior to any disbursement of a loan or grant to a recipient that is engaged in regionalization or initiating regionalization with the loan or grant, DEQ must encourage an applicant to have one of the following with respect to each local government unit that serves a customer

Karen Cochrane-Brown
Director



Legislative Analysis
Division
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This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

Senate Bill 320

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base of over 5,000 and that purchases treated or untreated water from the recipient at the time of the disbursement of the loan or grant or anticipated to be served within the 30 years following the disbursement of the loan or grant:

- A written agreement approved by the governing board of the recipient and the governing board of the local government unit stating the current rates of purchase and any anticipated increases over the term of the agreement.
- A resolution approved by the governing board of the purchasing local government unit stating the local government unit waives its option to establish such a written agreement.

In addition, the bill provides that in developing such agreements, either local government unit may request that the LGC assist in resolving any disputes between the local government units prior to execution of the written agreement. In such cases, the LGC would be required assist and provide recommendations within 90 days of the request.

EFFECTIVE DATE: The bill would be effective when it becomes law and apply to disbursements under Chapter 159G of the General Statutes on or after that date.

Committee Sergeants at Arms

NAME OF COMMITTEE HC Energy and Public Utilities

DATE: 7/10/2019 Room: 1228/1327

House Sgt-At Arms:

1. Name: Rex Foster
2. Name: Russell Salisbury
3. Name: Warren Hawkins
4. Name: David Leighton
5. Name: _____

Senate Sgt-At Arms:

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

**House Pages
Assignments
Wednesday, July 10, 2019
Session: 2:00 PM**

Committee	Room	Time	Pages	Staff	Comments	Member
Public Utilities	1228/1327	9:30 AM	0	Reed Ballus	(Bell/11/12)	Rep. Lee Zachary
				Tucker Clark		Rep. Mitchell S. Setzer
				Fiona Newberry		Rep. C. Ray Russell
				Ryan Stokes		Rep. George G. Cleveland
				Stokes		
Judiciary I	544	10:00 AM		Jackson Buttler		Rep. Joe John
				Bryan Daniels		Rep. Allison A. Dahle
				John Rouse		Rep. John R. Bell, IV
				Mary Stokes		Rep. Cynthia Ball
State and Local Government I	1228/1327	10:00 AM		Mary Policastro		Speaker Tim Moore
				Anthony Tocci		Rep. Destin Hall
				Kasanna Veth		Rep. Pricey Harrison
				Brandon Ramirez		Rep. John Sauls

VISITOR REGISTRATION SHEET

HC Energy and Public Utilities

Name of Committee

7/10/2019

Date _____

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME _____

FIRM OR AGENCY AND ADDRESS

Cassidy Robertson
Active Writer

AMGA
Neal

Corey Senger

Sierra Club

VISITOR REGISTRATION SHEET

HC Energy and Public Utilities

Name of Committee

7/10/2019

Date _____

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NAME _____

FIRM OR AGENCY AND ADDRESS

Joy Allen

~~DLQ~~

John Lucey

DEQ

Addison McDowell

NCLM



North Carolina General Assembly

Energy and Public Utilities

2019-20 Session

**Representative Arp, Co-chair
Representative Szoka, Co-chair**

**Committee Clerk(s):
Bev Slagle (Szoka)**

The Energy and Public Utilities Committee did not meet during the 2020 Short Session.

X

John Szoka
Co-chair

A handwritten signature in cursive script that reads "John Szoka". The signature is written over a horizontal line.

