

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 990
Committee Substitute Favorable 4/24/97

Short Title: Exempt Certain Nonprofit Utilities.

(Public)

Sponsors:

Referred to:

April 17, 1997

A BILL TO BE ENTITLED

AN ACT TO EXEMPT CERTAIN NONPROFIT AND CONSUMER-OWNED
WATER OR SEWER UTILITIES FROM REGULATION BY THE UTILITIES
COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 62-3(23) reads as rewritten:

"(23)

a. 'Public utility' means a person, whether organized under the laws of this State or under the laws of any other state or country, now or hereafter owning or operating in this State equipment or facilities for:

1. Producing, generating, transmitting, delivering or furnishing electricity, piped gas, steam or any other like agency for the production of light, heat or power to or for the public for compensation; provided, however, that the term 'public utility' shall not include persons who construct or operate an electric generating facility, the primary purpose of which facility is for such person's own use and not for the primary purpose of producing

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- 1 electricity, heat, or steam for sale to or for the public for
2 compensation;
- 3 2. Diverting, developing, pumping, impounding, distributing
4 or furnishing water to or for the public for compensation,
5 or operating a public sewerage system for compensation;
6 provided, however, that the term 'public utility' shall not
7 include any person or company whose sole operation
8 consists of selling water to less than ~~10-15~~ residential
9 customers, except that any person or company which
10 constructs a water system in a subdivision with plans for
11 ~~10-15~~ or more lots and which holds itself out by contracts
12 or other means at the time of said construction to serve an
13 area containing more than ~~10-15~~ residential building lots
14 shall be a public utility at the time of such planning or
15 holding out to serve such ~~10-15~~ or more building lots,
16 without regard to the number of actual customers
17 connected;
- 18 3. Transporting persons or household goods by street,
19 suburban or interurban bus or railways for the public for
20 compensation;
- 21 4. Transporting persons or household goods by railways or
22 motor vehicles, or any other form of transportation for the
23 public for compensation, except motor carriers exempted
24 in G.S. 62-260, and except carriers by air;
- 25 5. Transporting or conveying gas, crude oil or other fluid
26 substance by pipeline for the public for compensation;
- 27 6. Conveying or transmitting messages or communications
28 by telephone or telegraph, or any other means of
29 transmission, where such service is offered to the public
30 for compensation.
- 31 b. The term 'public utility' shall for rate-making purposes include
32 any person producing, generating or furnishing any of the
33 foregoing services to another person for distribution to or for the
34 public for compensation.
- 35 c. The term 'public utility' shall include all persons affiliated
36 through stock ownership with a public utility doing business in
37 this State as parent corporation or subsidiary corporation as
38 defined in G.S. 55-2 to such an extent that the Commission shall
39 find that such affiliation has an effect on the rates or service of
40 such public utility.
- 41 d. The term 'public utility,' except as otherwise expressly provided
42 in this Chapter, shall not include a municipality, an authority
43 organized under the North Carolina Water and Sewer Authorities

1 Act, electric or telephone membership ~~corporation or nonprofit~~
2 ~~water membership or consumer-owned corporations financed by the~~
3 ~~Farmers Home Administration, the United States Department of~~
4 ~~Housing and Urban Development, or any similar or successor federal~~
5 ~~financing agency, provided, that (i) any such financing administration,~~
6 ~~department or agency exercise substantial control over and regulation~~
7 ~~of any such corporation's rates and terms and conditions of service,~~
8 ~~and (ii) the members or consumer owners of any such corporation,~~
9 ~~pursuant to the corporation's articles of incorporation and bylaws, shall~~
10 ~~elect the governing board of the corporation; corporation; or any~~
11 person not otherwise a public utility who furnishes such service
12 or commodity only to himself, his employees or tenants when
13 such service or commodity is not resold to or used by others;
14 provided, however, that any person other than a nonprofit
15 organization serving only its members, who distributes or
16 provides utility service to his employees or tenants by individual
17 meters or by other coin-operated devices with a charge for
18 metered or coin-operated utility service shall be a public utility
19 within the definition and meaning of this Chapter with respect to
20 the regulation of rates and provisions of service rendered through
21 such meter or coin-operated device imposing such separate
22 metered utility charge. If any person conducting a public utility
23 shall also conduct any enterprise not a public utility, such
24 enterprise is not subject to the provisions of this Chapter. A water
25 or sewer system owned by a homeowners' association that
26 provides water or sewer service only to members or leaseholds of
27 members is not subject to the provisions of this Chapter.

28 e. The term 'public utility' shall include the University of North
29 Carolina insofar as said University supplies telephone service,
30 electricity or water to the public for compensation from the
31 University Enterprises defined in G.S. 116-41.1(9).

32 f. The term 'public utility' shall include the Town of Pineville
33 insofar as said town supplies telephone services to the public for
34 compensation. The territory to be served by the Town of
35 Pineville in furnishing telephone services, subject to the Public
36 Utilities Act, shall include the town limits as they exist on May 8,
37 1973, and shall also include the area proposed to be annexed
38 under the town's ordinance adopted May 3, 1971, until January 1,
39 1975.

40 g. The term 'public utility' shall not include a hotel, motel, time
41 share or condominium complex operated primarily to serve
42 transient occupants, which imposes charges to occupants for
43 local, long-distance, or wide area telecommunication services

1 when such calls are completed through the use of facilities
2 provided by a public utility, and provided further that the local
3 services received are rated in accordance with the provisions of
4 G.S. 62-110(d) and the applicable charges for telephone calls are
5 prominently displayed in each area where occupant rooms are
6 located.

7 h. The term 'public utility' shall not include the resale of electricity
8 by (i) a campground operated primarily to serve transient
9 occupants, or (ii) a marina; provided that (i) the campground or
10 marina charges no more than the actual cost of the electricity
11 supplied to it, (ii) the amount of electricity used by each campsite
12 or marina slip occupant is measured by an individual metering
13 device, (iii) the applicable rates are prominently displayed at or
14 near each campsite or marina slip, and (iv) the campground or
15 marina only resells electricity to campsite or marina slip
16 occupants.

17 i. The term 'public utility' shall not include the State, the Office of
18 the State Controller, or the Microelectronics Center of North
19 Carolina in the provision or sharing of switched broadband
20 telecommunications services with non-State entities or
21 organizations of the kind or type set forth in G.S. 143B-426.39.

22 j. The term 'public utility' shall not include any person, not
23 otherwise a public utility, conveying or transmitting messages or
24 communications by mobile radio communications service.
25 Mobile radio communications service includes one-way or two-
26 way radio service provided to mobile or fixed stations or
27 receivers using mobile radio service frequencies."

28 Section 2. Article 6 of Chapter 62 of the General Statutes is amended by
29 adding a new section to read:

30 "**§ 62-110.5. Commission may exempt certain nonprofit and consumer-owned water**
31 **or sewer utilities.**

32 The Commission may exempt water or sewer utilities owned by nonprofit
33 membership or consumer-owned corporations from regulation under this Chapter, subject
34 to those conditions the Commission deems appropriate, if:

35 (1) The members or consumer-owners of the corporation elect the
36 governing board of the corporation pursuant to the corporation's articles
37 of incorporation and bylaws; and

38 (2) The Commission finds that the organization and the quality of service of
39 the utility are adequate to protect the public interest to the extent that
40 additional regulation is not required by the public convenience and
41 necessity."

42 Section 3. This act is effective when it becomes law.