

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 722

Short Title: Omnibus Act Regarding Coal-Based Energy. (Public)

Sponsors: Representatives Harrison, Keever, Luebke, and Fisher (Primary Sponsors).
For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

Referred to: Public Utilities, if favorable, Rules, Calendar, and Operations of the House.

April 7, 2011

A BILL TO BE ENTITLED

AN ACT TO (1) PRESERVE THE APPALACHIAN MOUNTAINS BY PROHIBITING ELECTRIC PUBLIC UTILITIES THAT OPERATE COAL-FIRED GENERATING UNITS LOCATED IN NORTH CAROLINA FROM PURCHASING OR USING COAL THAT IS EXTRACTED USING MOUNTAINTOP REMOVAL COAL MINING; (2) REQUIRE PERMITS FOR CERTAIN SOLID WASTE DISPOSAL SITES FOR THE REUSE OF COMBUSTION PRODUCTS AND FOR CERTAIN SOLID WASTE DISPOSAL SITES FOR STRUCTURAL FILL AND TO ESTABLISH PERMIT FEES FOR THESE DISPOSAL SITES, IN ORDER TO ADEQUATELY PROTECT THE PUBLIC HEALTH AND THE ENVIRONMENT; AND (3) PROVIDE ECONOMIC RELIEF TO ELECTRIC UTILITY RATEPAYERS DURING THIS PERIOD OF ECONOMIC RECESSION AND THE COMING RECOVERY PERIOD BY PLACING A MORATORIUM ON THE CONSTRUCTION OF ANY NEW COAL-FIRED POWER PLANT UNLESS IT IS CARBON NEUTRAL.

The General Assembly of North Carolina enacts:

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

"Article 5B.

"Appalachian Mountains Preservation Act.

"§ 62-109.1. Short title.

This Article shall be known as the Appalachian Mountains Preservation Act.

"§ 62-109.2. Findings and purpose.

(a) The General Assembly finds:

- (1) North Carolina is home to the Appalachian Mountains, and the State's citizens and wildlife share in common this critical economic, environmental, and cultural resource with every state containing or bordering these ancient mountains.
- (2) From Maine to Alabama, these ancient mountains have shaped the economy, environment, and unique cultural heritage of the areas located along the Appalachian Mountains.
- (3) Coal mining has played a central role in shaping the economy, environment, and unique cultural heritage of the Appalachian coalfields.
- (4) Coal mining, whether conducted on the earth's surface or underground, poses significant risks to human health, local communities, the environment, real property, personal property, and wildlife resources.



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- 1 (5) By transforming the majestic mountains of the Appalachian coalfields into
2 flattened, eerily lifeless moonscapes, mountaintop removal coal mining, of
3 all the methods of extracting coal, poses the greatest risks to human health,
4 local communities, the environment, real property, personal property, and
5 wildlife resources.
- 6 (6) As of 2009, mountaintop removal coal mining has permanently erased more
7 than 470 peaks from the Appalachian skyline, buried or polluted more than
8 1,200 miles of pristine headwater streams, and swept away more than 800
9 square miles of one of America's most diverse and valuable ecosystems.
- 10 (7) Left unchecked, mountaintop removal coal mining will continue to
11 irreversibly destroy the people, communities, cultural heritage, and
12 environment of the Appalachian coalfields, as well as our wildlife resources.
- 13 (8) The impacts of mountaintop removal coal mining are unacceptable to the
14 citizens of this State.
- 15 (9) By consuming coal extracted by mountaintop removal coal mining to
16 provide power to our homes, businesses, and economy, North Carolina is
17 responsible, in part, for the permanent destruction to date of the Appalachian
18 coalfields and the wildlife resources of the Appalachian Mountains.
- 19 (10) Sixty-one percent (61%) of the electricity used to provide power to North
20 Carolina's homes, businesses, and economy is generated by coal-fired
21 generating units located in North Carolina.
- 22 (11) Fifty percent (50%) of the coal used to produce electricity in North Carolina
23 is extracted by mountaintop removal coal mining in the Appalachian
24 coalfields.
- 25 (12) Because North Carolina burns a significant amount of coal extracted by
26 mountaintop removal coal mining, we have an obligation to eliminate or
27 reduce the devastating social and environmental impacts of this mining in
28 the Appalachian Mountains.
- 29 (13) Fulfilling this obligation also will enhance the general welfare of North
30 Carolina's citizens, our wildlife resources, and our interest in preserving the
31 Appalachian Mountains for current and future generations.

32 (b) It is the purpose of this Article to promote the general welfare of North Carolina's
33 citizens, environment, and wildlife by prohibiting electric public utilities that operate coal-fired
34 generating units located in North Carolina from purchasing or using coal that is extracted by
35 mountaintop removal coal mining.

36 **"§ 62-109.3. Contracts to purchase or use coal extracted by mountaintop removal coal**
37 **mining prohibited.**

38 (a) No electric public utility that operates a coal-fired generating unit located in North
39 Carolina shall enter into any contract to purchase or use coal extracted by mountaintop removal
40 coal mining.

41 (b) The Commission may adopt rules to implement this Article.

42 (c) As used in this Article, the following definitions apply:

43 (1) Coal-fired generating unit. – Defined in G.S. 62-133.6.

44 (2) Mountaintop removal coal mining. – Any method of surface coal mining that
45 removes a mountaintop or ridgeline, whether or not the mined area will be
46 returned to its approximate original contour. "Mountaintop removal coal
47 mining" includes all of the following methods of surface coal mining:
48 cross-ridge mining, box-cut method mining, steep slope mining, area
49 mining, mountaintop mining, and any method of coal mining that utilizes
50 valley fills.

51 **"§ 62-109.4. Sworn statements of coal extraction methods used; report requirements.**

1 (a) Each electric public utility that operates a coal-fired generating unit located in North
2 Carolina shall ensure that the coal it agrees to purchase or use was not, nor will be, extracted
3 using mountaintop removal coal mining, by securing from its coal providers the sworn
4 statement of an authorized officer of the provider that contains all of the following information:

5 (1) The name and location of each mine from which the coal to be purchased
6 was, or will be, extracted.

7 (2) The mining methods utilized at each mine listed under subdivision (1) of this
8 subsection.

9 (3) A statement that the coal purchased was not, nor will be, extracted by
10 mountaintop removal coal mining.

11 (b) On the fifteenth day of each month, each electric public utility that operates a
12 coal-fired generating unit located in North Carolina shall file a report with the Commission that
13 itemizes the monthly and accumulated costs incurred by purchasing or using coal extracted by a
14 method other than mountaintop removal coal mining, using the most recent data available.

15 (c) As part of its annual reporting on cost of fuels and fuel-related costs, each electric
16 public utility that operates a coal-fired generating unit located in North Carolina shall submit to
17 the Commission copies of all of the following:

18 (1) Each sworn statement required under subsection (a) of this section.

19 (2) Each contract to purchase coal entered into during the reporting period.

20 (d) Each electric public utility that operates a coal-fired generating unit located in North
21 Carolina may file with the Commission an application to determine the rate that would include
22 all reasonable and prudent incremental fuel costs incurred by purchasing or using coal extracted
23 by a method other than mountaintop removal coal mining.

24 (e) The Commission shall, within 20 calendar days after receiving a written request,
25 provide a list of each public utility that operates a coal-fired generating unit located in North
26 Carolina, indicating whether each utility is in compliance with this section based upon the most
27 recent information available.

28 (f) If an electric public utility considers certain information required to be included in a
29 report under this section confidential and entitled to protection from public disclosure, the
30 utility may designate that information as confidential and file it with the Commission under
31 seal. Documents marked as confidential will be treated as required under applicable
32 Commission rules, procedures, and orders dealing with filings made under seal and with
33 nondisclosure agreements.

34 **"§ 62-109.5. Penalties.**

35 (a) Any electric public utility that is in violation of G.S. 62-109.3 shall be prohibited
36 from recovering the cost of fuel under G.S. 62-133.10 and all other fuel-related costs for the
37 coal obtained in violation of G.S. 62-109.3.

38 (b) If an electric public utility that operates a coal-fired generating unit located in North
39 Carolina fails to file the monthly or annual reports required under G.S. 62-109.4, the
40 Commission shall issue an order canceling or suspending the utility's certificate of convenience
41 and necessity 30 days after the date of service of the order. In the event the report is filed
42 during this 30-day period, the order of cancellation or suspension shall be void."

43 **SECTION 2.** Article 7 of Chapter 62 of the General Statutes is amended by adding
44 a new section to read:

45 **"§ 62-133.10. Cost recovery for incremental cost of certain coal mining methods.**

46 The Commission shall, upon petition of an electric public utility, approve an annual rider to
47 the electric public utility's rates to recover all reasonable and prudent incremental costs incurred
48 by each investor-owned public utility that operates a coal-fired generating unit located in North
49 Carolina for purchasing or using coal extracted by a method other than the mountaintop
50 removal coal mining prohibited by rules adopted in accordance with G.S. 62-109.3."

51 **SECTION 3.** G.S. 130A-290(a) reads as rewritten:

1 **"§ 130A-290. Definitions.**

2 (a) Unless a different meaning is required by the context, the following definitions shall
3 apply throughout this Article:

4 ...
5 (2c) "Combustion products landfill" means a facility or unit for the disposal or
6 reuse of combustion products, where the landfill is located at the same
7 facility with the coal fired generating unit or units producing the combustion
8 products, and where the landfill is located wholly or partly on top of a
9 facility that is, or was, being used for the disposal or storage of such
10 combustion products, including, but not limited to, landfills, wet and dry ash
11 ponds, and structural fill facilities.products.

12 ...
13 (6a) "Fully encapsulated" means encased or enclosed in such way as to prevent
14 the leaching of coal combustion residual constituents, including, but not
15 limited to, antimony, arsenic, barium, beryllium, cadmium, chromium, lead,
16 mercury, nickel, selenium, silver, and thallium, in trace amounts or
17 otherwise.

18 ...
19 (41) "Storage" means the containment of solid waste, either on a temporary basis
20 or for a period of years, in a manner which does not constitute disposal.

21 (41a) "Structural fill" means an engineered fill with a projected beneficial end use
22 that is constructed using coal combustion by-products properly placed and
23 compacted.

24 (41a)(41b) "Subsidiary" has the same meaning as in 17 Code of Federal Regulations
25 § 240.12b-2 (1 April 1996 Edition).

26 (41b)(41c) "Tire-derived fuel" means a form of fuel derived from scrap tires.

27"

28 **SECTION 4.** G.S. 130A-294(a) reads as rewritten:

29 "(a) The Department is authorized and directed to engage in research, conduct
30 investigations and surveys, make inspections and establish a statewide solid waste management
31 program. In establishing a program, the Department shall have authority to:

32 (1) Develop a comprehensive program for implementation of safe and sanitary
33 practices for management of solid waste;

34 ...

35 (4) a. Develop a permit system governing the establishment and operation
36 of solid waste management facilities. A solid waste disposal site for
37 the reuse of combustion products shall be subject to the permit
38 requirement of this section unless the end product is fully
39 encapsulated. A solid waste disposal site for structural fill shall be
40 subject to the permit requirement of this section unless the structural
41 fill is fully encapsulated. A solid waste disposal site for the reuse of
42 combustion products is prohibited when the end product is not fully
43 encapsulated. A solid waste disposal site for structural fill is
44 prohibited when the structural fill is not fully encapsulated. A landfill
45 with a disposal area of 1/2 acre or less for the on-site disposal of land
46 clearing and inert debris is exempt from the permit requirement of
47 this section and shall be governed by G.S. 130A-301.1. The
48 Department shall not approve an application for a new permit, the
49 renewal of a permit, or a substantial amendment to a permit for a
50 sanitary landfill, excluding demolition landfills as defined in the rules
51 of the Commission, except as provided in subdivisions (3) and (4) of

1 subsection (b1) of this section. No permit shall be granted for a solid
2 waste management facility having discharges that are point sources
3 until the Department has referred the complete plans and
4 specifications to the Environmental Management Commission and
5 has received advice in writing that the plans and specifications are
6 approved in accordance with the provisions of G.S. 143-215.1. If the
7 applicant is a unit of local government, and has not submitted a solid
8 waste management plan that has been approved by the Department
9 pursuant to G.S. 130A-309.09A(b), the Department may deny a
10 permit for a sanitary landfill or a facility that disposes of solid waste
11 by incineration, unless the Commission has not adopted rules
12 pursuant to G.S. 130A-309.29 for local solid waste management
13 plans. In any case where the Department denies a permit for a solid
14 waste management facility, it shall state in writing the reason for
15 denial and shall also state its estimate of the changes in the
16 applicant's proposed activities or plans that will be required for the
17 applicant to obtain a permit.

18"

19 **SECTION 5.** G.S. 130A-295.8(c) reads as rewritten:

20 "(c) An applicant for a permit shall pay an application fee upon submission of an
21 application according to the following schedule:

22 ...

23 (37) Disposal Site for Reuse of Combustion Products or for Structural Fill
24 consistent with G.S. 130A-294(a), accepting less than 100,000 tons/year of
25 combustion products, New Permit – \$25,000.

26 (38) Disposal Site for Reuse of Combustion Products or for Structural Fill
27 consistent with G.S. 130A-294(a), accepting less than 100,000 tons/year of
28 combustion products, Amendment – \$15,000.

29 (39) Disposal Site for Reuse of Combustion Products or for Structural Fill
30 consistent with G.S. 130A-294(a), accepting less than 100,000 tons/year of
31 combustion products, Modification – \$1,500.

32 (40) Disposal Site for Reuse of Combustion Products or for Structural Fill
33 consistent with G.S. 130A-294(a), accepting 100,000 tons/year or more of
34 combustion products, New Permit – \$50,000.

35 (41) Disposal Site for Reuse of Combustion Products or for Structural Fill
36 consistent with G.S. 130A-294(a), accepting 100,000 tons/year or more of
37 combustion products, Amendment – \$30,000.

38 (42) Disposal Site for Reuse of Combustion Products or for Structural Fill
39 consistent with G.S. 130A-294(a), accepting 100,000 tons/year or more of
40 combustion products, Modification – \$3,000."

41 **SECTION 6.** G.S. 130A-295.8(d) reads as rewritten:

42 "(d) A permitted solid waste management facility shall pay an annual permit fee on or
43 before 1 August of each year according to the following schedule:

44 ...

45 (13) Disposal Site for Reuse of Combustion Products or for Structural Fill
46 consistent with G.S. 130A-294(a) – \$3,500."

47 **SECTION 7.** Short Title. – Sections 7 through 14 of this act shall be known as The
48 Electric Utility Ratepayers Relief Act.

49 **SECTION 8.** Findings. – The General Assembly makes the following findings:

50 (1) North Carolina, the nation, and the globe are in the midst of an economic
51 recession.

- 1 (2) Plummeting property values, increased prices for goods and services, and
2 rising unemployment rates threaten the economic well-being of North
3 Carolina's citizens.
- 4 (3) Costs of constructing a new facility for the generation of electricity are
5 exorbitant during normal economic times and will continue to rise during the
6 global economic recession and the coming economic recovery period.
- 7 (4) Full recovery from the global recession will take many years.
- 8 (5) A certificate for the construction of a coal-fired unit for the generation of
9 electricity may be granted by the Utilities Commission only if the
10 Commission finds (i) that the construction and operation of the facility is in
11 the public interest and (ii) that energy efficiency measures; demand-side
12 management; renewable energy resource generation; combined heat and
13 power generation; or any combination thereof would not establish or
14 maintain a more cost-effective and reliable generation system.
- 15 (6) Once a certificate is issued by the North Carolina Utilities Commission,
16 construction of a facility for the generation of electricity may be cancelled
17 upon a finding that the construction is no longer in the public interest.
- 18 (7) During the recession and the ensuing economic recovery period, it would not
19 be reasonable and prudent to authorize the construction of a coal-fired
20 generating unit to begin nor to continue since the costs of that construction
21 will be passed on to the already economically distressed ratepayers.
- 22 (8) An additional benefit of prohibiting the construction of a coal-fired
23 generating unit to begin or to continue is it would provide sufficient time to
24 determine whether consumers prefer during a recession and the ensuing
25 economic recovery to use energy efficiency measures; demand-side
26 management; renewable energy resource generation; combined heat and
27 power generation; or any combination thereof to provide a more
28 cost-effective and reliable generation system.
- 29 (9) An additional benefit of prohibiting the construction of a coal-fired
30 generating unit to begin or to continue is it would provide sufficient time to
31 determine whether activity at the federal level will result in increasing the
32 projections of costs of producing electricity from coal-fired generating units,
33 including impacts from the federal stimulus funds to promote green energy
34 technologies and federal efforts to adopt a cap and trade program that could
35 result in dramatically increasing the costs of producing electricity generated
36 from coal-fired generating units.
- 37 (10) An additional benefit of prohibiting the construction of a coal-fired
38 generating unit to begin or to continue is it would provide sufficient time to
39 assess the latest scientific findings regarding the rate at which climate
40 change is occurring due to greenhouse gas emissions and to assess the
41 estimated economic impacts of climate change mitigation measures in North
42 Carolina.
- 43 (11) The public is becoming increasingly aware of the benefits of energy
44 conservation and becoming increasingly aware of the long-term impacts of
45 global warming.
- 46 (12) For a certificate that was issued before this recession, that construction of a
47 new coal-fired generating unit is no longer in the public interest.

48 **SECTION 9.** Purpose. – It is the purpose of Sections 7 through 14 of this act to
49 promote economic relief to electric public utility ratepayers by temporarily prohibiting, unless
50 the coal-fired generating unit is carbon neutral, the issuance of any new certificate authorizing
51 the construction of a coal-fired generating unit by the North Carolina Utilities Commission and

1 requiring the suspension, unless the coal-fired generating unit is carbon neutral, of any
2 certificate issued prior to July 1, 2011, for any such generating unit that has not commenced
3 operation by July 1, 2011.

4 **SECTION 10.** Definitions. – As used in Sections 7 through 14 of this act, the
5 following definitions apply:

6 (1) Carbon neutral. – The state of emitting no carbon dioxide into the
7 atmosphere. Carbon neutral includes employing a technique to absorb
8 carbon dioxide so it is not emitted into the atmosphere.

9 (2) Certificate. – Defined in G.S. 62-3.

10 (3) Coal-fired generating unit. – Defined in G.S. 62-133.6.

11 (4) Public utility. – Defined in G.S. 62-3.

12 **SECTION 11.** Moratorium. – No certificate shall be issued to operate a coal-fired
13 generating unit pursuant to any application filed with the North Carolina Utilities Commission
14 on or after July 1, 2011. This section does not apply if the coal-fired generating unit is carbon
15 neutral.

16 **SECTION 12.** Temporary Suspension. – Any certificate issued pursuant to an
17 application filed with the North Carolina Utilities Commission prior to July 1, 2011, to
18 construct any coal-fired generating unit that has not commenced electrical generating
19 operations as of July 1, 2011, shall be suspended by the North Carolina Utilities Commission,
20 and this suspension shall remain in effect until July 1, 2016. This section does not apply if the
21 coal-fired generating unit is carbon neutral.

22 **SECTION 13.** Costs Recovery. – Nothing in this act prohibits an electric public
23 utility from recovering, pursuant to Article 7 of Chapter 62 of the General Statutes, the costs
24 associated with construction work that is in progress.

25 **SECTION 14.** Penalties. – Any electric public utility that has obtained a certificate
26 to construct a coal-fired generating unit issued pursuant to an application filed with the North
27 Carolina Utilities Commission prior to July 1, 2011, that commences or continues construction
28 in violation of this act, shall be prohibited from applying to recover, pursuant to Article 7 of
29 Chapter 62 of the General Statutes, any such construction costs as a fixed rate, and any
30 temporary suspension under Section 12 of this act shall be made permanent. This section does
31 not apply if the coal-fired generating unit is carbon neutral.

32 **SECTION 15.** Effective Dates. – Sections 1 through 6 of this act become effective
33 January 1, 2012, Sections 1 and 2 of this act apply to contracts to purchase coal entered into on
34 or after that date, and Sections 4 through 6 of this act apply to combustion products that are
35 reused or disposed of on or after that date. The remaining sections of this act are effective when
36 they become law.