

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 495

Short Title: Natural Gas.

(Public)

Sponsors: Representatives Owens; Miller, Culpepper, and Yongue.

Referred to: Commerce.

March 11, 1997

A BILL TO BE ENTITLED

1 AN ACT TO ADDRESS NORTH CAROLINA'S URGENT INFRASTRUCTURE
2 NEEDS BY CLARIFYING THAT THE NORTH CAROLINA UTILITIES
3 COMMISSION MAY ESTABLISH DIFFERENT RATES FOR NATURAL GAS
4 SERVICE TO UNSERVED COUNTIES THAT REFLECT THE ACTUAL COST
5 OF PROVIDING SERVICE TO THE UNSERVED COUNTIES AND
6 AUTHORIZING THE CREATION OF NATURAL GAS DISTRICTS FOR
7 NATURAL GAS EXPANSION.
8

9 The General Assembly of North Carolina enacts:

10 **PART I.**

11 **DIFFERENT RATES**

12 Section 1. G.S. 62-140(a) reads as rewritten:

13 "(a) No public utility shall, as to rates or services, make or grant any unreasonable
14 preference or advantage to any person or subject any person to any unreasonable
15 prejudice or disadvantage. No public utility shall establish or maintain any unreasonable
16 difference as to rates or services either as between localities or as between classes of
17 service. The Commission may determine any questions of fact arising under this section;
18 provided that it shall not be an unreasonable preference or advantage or constitute
19 discrimination against any person, firm or corporation or general rate payer for telephone
20 utilities to contract with motels, hotels and hospitals to pay reasonable commissions in

1 connection with the handling of intrastate toll calls charged to a guest or patient and
2 collected by the motel, hotel or hospital; provided further, that payment of such
3 commissions shall be in accordance with uniform tariffs which shall be subject to the
4 approval of the Commission. Provided further, that it shall not be considered an
5 unreasonable preference or advantage for the Commission to order, if it finds the public
6 interest so requires, a reduction in local telephone rates for low-income residential
7 consumers meeting a means test established by the Commission in order to match any
8 reduction in the interstate subscriber line charge authorized by the Federal
9 Communications Commission.

10 Nothing in this section prohibits the Commission from establishing different rates for
11 natural gas service to counties that are substantially unserved, to the extent that those
12 rates reflect the actual cost of providing service to the unserved counties and upon a
13 finding by the Commission that natural gas service would not otherwise become available
14 to the counties."

15 **PART II.**
16 **NATURAL GAS DISTRICTS**

17 Section 2. Chapter 160A of the General Statutes is amended by adding a new
18 Article to read:

19 **"ARTICLE 27.**

20 **"REGIONAL NATURAL GAS DISTRICT.**

21 **"§ 160A-630. Title.**

22 This Article shall be known and may be cited as the 'Regional Natural Gas District
23 Act'.

24 **"§ 160A-631. Definitions.**

25 As used in this Article, unless the context otherwise requires:

- 26 (1) 'District' means a regional natural gas district as defined by this section.
27 (2) 'Board of Trustees' means the governing board of the district in which
28 the general legislative powers of the district are vested.
29 (3) 'Regional natural gas district' means a body corporate and politic
30 organized in accordance with the provisions of this Article for the
31 purposes, with the powers, and subject to the restrictions set forth in this
32 Article.
33 (4) 'Unit of local government' means any county, city, town, or
34 municipality of this State, and any other political subdivision, public
35 corporation, or district in this State, that is or may be authorized by law
36 to acquire, establish, construct, enlarge, improve, maintain, own, or
37 operate natural gas systems.
38 (5) 'Unit of local government's chief administrative official' means the
39 county manager, city manager, town manager, or other person, by
40 whatever title known, in whom the responsibility for the unit of local
41 government's administrative duties is vested.

42 **"§ 160A-632. Definition of territorial jurisdiction and service area of district.**

1 A district may be created for the one or more entire counties that are totally unserved
2 for natural gas at the time of creation of the district. This area is the territorial
3 jurisdiction and the service area of the district.

4 **"§ 160A-633. Creation of district.**

5 (a) The boards of commissioners of any one or more counties within an area for
6 which a district may be created as provided by G.S. 160A-632 may by resolution signify
7 their determination to organize a district under the provisions of this Article. Each of
8 these resolutions shall be adopted after a public hearing thereon, notice of which hearing
9 shall be given by publication at least once, not less than 10 days prior to the date fixed for
10 the hearing, in a newspaper having a general circulation in the county. The notice shall
11 contain a brief statement of the substance of the proposed resolution, shall set forth the
12 proposed articles of incorporation of the district, and shall state the time and place of the
13 public hearing. No county shall be required to make any other publication of the
14 resolution under the provisions of any other law. Any municipality located within the
15 area may also join the district under the same procedures as a county.

16 (b) Each resolution shall include articles of incorporation which shall set forth all
17 of the following:

18 (1) The name of the district.

19 (2) The composition of the board of trustees, terms of office, and the
20 manner of making appointments and filling vacancies.

21 (3) A statement that the district is organized under this Article.

22 (4) The names of the organizing counties and municipalities.

23 (c) A certified copy of each of the resolutions signifying the determination to
24 organize a district under the provisions of this Article shall be filed with the Secretary of
25 State, together with proof of publication of the notice of hearing on each of the
26 resolutions. If the Secretary of State finds that the resolutions, including the articles of
27 incorporation, conform to the provisions of this Article and that the notices of hearing
28 were properly published, the Secretary of State shall file the resolutions and proofs of
29 publication, shall issue a certificate of incorporation under the seal of the State, and shall
30 record the certificate in an appropriate book of record. The issuance of this certificate of
31 incorporation by the Secretary of State shall constitute the district a public body and body
32 politic and corporate of the State of North Carolina. The certificate of incorporation shall
33 be conclusive evidence of the fact that the district has been duly created and established
34 under this Article.

35 (d) When the district has been duly organized and its officers elected, the secretary
36 of the district shall certify to the Secretary of State the names and addresses of the
37 officers as well as the address of the principal office of the district.

38 **"§ 160A-634. Membership; officers; compensation.**

39 (a) The governing body of a district is the Board of Trustees. The Board of
40 Trustees shall consist of members as provided in the articles of incorporation.

41 (b) Service on the Board of Trustees may be in addition to any other office which
42 a person is entitled to hold. Each voting member of the Board of Trustees may hold
43 elective public office as defined by G.S. 128-1.1(d).

1 (c) Members of the Board of Trustees shall reside within the territorial jurisdiction
2 of the district as defined by G.S. 160A-632.

3 (d) The Board of Trustees shall annually elect from its membership a Chair and a
4 Vice-Chair, and shall annually elect a Secretary and a Treasurer.

5 (e) Members of the Board of Trustees shall receive the sum of fifty dollars
6 (\$50.00) as compensation for attendance at each duly conducted meeting of the district.

7 **"§ 160A-635. Quorum.**

8 A majority of the members of the Board of Trustees shall constitute a quorum for the
9 transaction of business.

10 **"§ 160A-636. Advisory committees.**

11 The Board of Trustees may provide for the selection of any advisory committees that
12 it finds appropriate, which may or may not include members of the Board of Trustees.

13 **"§ 160A-637. Purpose of the district.**

14 The purpose of the district is to enhance the quality of life in its territorial jurisdiction
15 by promoting the development of natural gas distribution systems to enhance the
16 economic development of the area.

17 **"§ 160A-638. General powers of the district.**

18 The general powers of the district include all of the following:

19 (1) To sue and be sued.

20 (2) To have a seal.

21 (3) To make rules and regulations, not inconsistent with this Article, for its
22 organization and internal management.

23 (4) To employ persons deemed necessary to carry out the functions and
24 duties assigned to them by the district and to fix their compensation,
25 within the limit of available funds.

26 (5) With the approval of the unit of local government's chief administrative
27 official, to use officers, employees, agents, and facilities of the unit of
28 local government for such purposes and upon such terms as may be
29 mutually agreeable.

30 (6) To retain and employ counsel, auditors, engineers, and private
31 consultants on an annual salary, contract basis, or otherwise for
32 rendering professional or technical services and advice.

33 (7) To acquire, lease as lessee with or without option to purchase, hold,
34 own, and use any franchise, property, real or personal, tangible or
35 intangible, or any interest therein and to sell, lease as lessor with or
36 without option to purchase, transfer (or dispose thereof) whenever the
37 property is no longer required for purposes of the district, or exchange it
38 for other property or rights which are useful for the district's purposes.
39 Except as provided in any covenant or debt instrument designed to
40 protect the creditor, all or a substantial part of an operating natural gas
41 system may not be disposed of without the approval of the Department
42 of Commerce. If the sale is approved by the Department of Commerce,

- 1 the district shall repay the State the lesser of the amount of any capital
2 grant made by the State or one-half of the amount of the proceeds.
- 3 (8) To acquire by gift, purchase, lease as lessee with or without option to
4 purchase or otherwise to construct, improve, maintain, repair, operate,
5 or administer any component parts of a natural gas system. The district
6 also may contract for the maintenance, operation, or administration
7 thereof or to lease as lessor the same for maintenance, operation, or
8 administration by private parties.
- 9 (9) To make or enter into contracts, agreements, deeds, leases with or
10 without option to purchase, conveyances, or other instruments,
11 including contracts and agreements with the United States, the State of
12 North Carolina, and units of local government.
- 13 (10) To develop and make data, plans, information, surveys, and studies of
14 natural gas facilities within the territorial jurisdiction of the district, to
15 prepare and make recommendations in regard thereto.
- 16 (11) To enter in a reasonable manner lands, waters, or premises for the
17 purpose of making surveys, soundings, drillings, and examinations.
18 This entry shall not be deemed a trespass except that the district shall be
19 liable for any actual and consequential damages resulting from the
20 entry.
- 21 (12) To develop and carry out demonstration projects.
- 22 (13) To make, enter into, and perform contracts with private parties and
23 natural gas companies with respect to the management and operation of
24 natural gas systems.
- 25 (14) To make, enter into, and perform contracts with any public utility,
26 railroad, or transportation company for the joint use of property or
27 rights.
- 28 (15) To own, lease, and operate gas production, storage, transmission, and
29 distribution systems. These systems may also include the purchase or
30 lease, or both, of natural gas fields and natural gas reserves within the
31 State, and the purchase of natural gas supplies within or without the
32 State. A district may operate that part of a gas system involving the
33 purchase or lease, or both, of natural gas fields, natural gas reserves, and
34 natural gas supplies, in an operating agreement, partnership or joint
35 venture arrangement with natural gas utilities and private enterprise.
36 The district may acquire, purchase, construct, receive, own, operate,
37 maintain, enlarge, and improve natural gas systems, and transport and
38 sell at wholesale all or any part of its gas supply.
- 39 (16) To purchase or finance real or personal property under G.S. 160A-20.
- 40 (17) To obtain grants, loans, and assistance from the United States, the State
41 of North Carolina, any public body, or any private source.
- 42 (18) To enter into and perform contracts and agreements with other natural
43 gas districts, regional natural gas districts, or units of local government

1 pursuant to the provisions of G.S. 160A-460 through G.S. 160A-464
2 (Part 1 of Article 20 of Chapter 160A of the General Statutes) and to
3 enter into contracts and agreements with private natural gas companies,
4 but this subdivision does not authorize the operation of, or contracting
5 for the operation of, service of a natural gas system outside the service
6 area of the district.

7 (19) Except as restricted by covenants in bonds, notes, security interests, or
8 trust certificates, set in its sole discretion rates, fees, and charges for use
9 of its natural gas system in accordance with G.S. 160A-650.

10 (20) To do all related things necessary to carry out its purpose and to
11 exercise the powers granted to the district.

12 (21) To issue bonds or other obligations of the district as provided by law
13 and apply the proceeds thereof to the financing of any natural gas
14 system or any part thereof and to refund, whether or not in advance of
15 maturity or the earliest redemption date, any such bonds or other
16 obligations.

17 **"§ 160A-639. Power of the North Carolina Utilities Commission not affected.**

18 (a) Except as otherwise provided in this Article, nothing in this Article shall be
19 construed to limit or otherwise affect the powers of the North Carolina Utilities
20 Commission.

21 (b) The North Carolina Utilities Commission shall not have jurisdiction over rates,
22 fees, and charges of a district for service within its territorial jurisdiction, but safety
23 regulations of the Commission shall apply.

24 **"§ 160A-640. Fiscal accountability.**

25 A district is a public authority subject to the provisions of Chapter 159 of the General
26 Statutes.

27 **"§ 160A-641. Funds.**

28 The establishment and operation of a district is a public purpose, and the State of
29 North Carolina and any unit of local government may appropriate funds to support the
30 establishment and operation of the district. The State of North Carolina and any unit of
31 local government may also dedicate, sell, convey, donate, or lease any of their interests in
32 any property to the district. A district may apply for grants from the State of North
33 Carolina, or from the United States or any department, agency, or instrumentality thereof.
34 The Department of Commerce may allocate to a district any funds appropriated for
35 natural gas.

36 **"§ 160A-642. Effect on existing franchises and operations.**

37 Creation of the district does not affect any existing franchises granted by any unit of
38 local government. Those existing franchises shall continue in full force and effect until
39 legally terminated, and all ordinances and resolutions of the unit of local government
40 regulating local natural gas systems shall continue in full force and effect unless
41 superseded by regulations of the district. This superseding, if any, may occur only on the
42 basis of prior mutual agreement between the district and the respective unit of local
43 government.

1 **"§ 160A-643. Termination.**

2 The Board of Trustees after providing the continued availability of natural gas service
3 to its customers, if any, may terminate the existence of the district at any time when it has
4 no outstanding indebtedness. In the event of termination, all property and assets of the
5 district not otherwise encumbered shall automatically become the property of the State of
6 North Carolina, and the State of North Carolina shall succeed to all rights, obligations,
7 and liabilities of the district.

8 **"§ 160A-644. Controlling provisions.**

9 Insofar as the provisions of this Article are not consistent with the provisions of any
10 other law, public or private, the provisions of this Article shall be controlling.

11 **"§ 160A-645. Bonds and notes authorized.**

12 In addition to the powers granted by this Article, the district may issue bonds and
13 notes pursuant to the provisions of the Local Government Revenue Bond Act for the
14 purpose of financing natural gas systems or any part thereof and to refund the bonds and
15 notes, whether or not in advance of their maturity or earliest redemption date.

16 **"§ 160A-646. Equipment trust certificates.**

17 In addition to the powers granted in this Article, the district shall have continuing
18 power to purchase equipment, and in connection therewith to execute agreements, leases
19 with or without option to purchase, or equipment trust certificates. All money required to
20 be paid by the district under the provisions of these agreements, leases with or without
21 option to purchase, and equipment trust certificates shall be payable solely from the fares,
22 fees, rentals, charges, revenues, and earnings of the district, moneys derived from the sale
23 of any surplus property of the district and gifts, grants, and contributions from any
24 source. Payment for such equipment or rentals therefore, may be made in installments;
25 the deferred installments may be evidenced by equipment trust certificates payable solely
26 from the aforesaid revenues or receipts and title to the equipment may or may not vest in
27 the district until the equipment trust certificates are paid.

28 **"§ 160A-647. Acquisition, power of eminent domain.**

29 (a) The district shall have continuing power to acquire, by gift, grant, devise,
30 bequest, exchange, purchase, lease with or without option to purchase, or any other
31 lawful method including, but not limited to, the power of eminent domain, the fee or any
32 lesser interest in real or personal property for use by the district.

33 (b) Exercise of the power of eminent domain by the district shall be in accordance
34 with Chapter 40A of the General Statutes. Notwithstanding Chapter 40A of the General
35 Statutes, before final judgment may be entered in any action of condemnation initiated by
36 the district, the district shall furnish proof that the county board of commissioners of the
37 county where the land is located has consented by resolution or ordinance to the taking.

38 **"§ 160A-648. Tax exemption.**

39 The property of the district, both real and personal, its acts, activities, and income
40 shall be exempt from any tax or tax obligation; in the event of any lease of district
41 property, or other arrangement which amounts to a leasehold interest to a private party,
42 this exemption shall not apply to the value of such leasehold interest nor shall it apply to
43 the income of the lessee. Otherwise, however, for the purpose of taxation, when property

1 of the district is leased to private parties solely for the purpose of the district, the acts and
2 activities of the lessee shall be considered as the acts and activities of the district and the
3 exemption. The interest on bonds or obligations issued by the district shall be exempt
4 from State taxes.

5 **"§ 160A-649. Removal and relocation of utility structures.**

6 (a) The district shall have the power to require any public utility, railroad, or other
7 public service corporation owning or operating any installations, structures, equipment,
8 apparatus, appliances, or facilities in, upon, under, over, across, or along any ways on
9 which the district has the right to own, construct, operate, or maintain its natural gas
10 system, to relocate the installation, structures, equipment, apparatus, appliances, or
11 facilities from their locations, or, in the sole discretion of the affected public utility,
12 railroad, or other public service corporation, to remove the installations, structures,
13 equipment, apparatus, appliances, or facilities from their locations.

14 (b) If the owner or operator fails or refuses to relocate them, the district may
15 proceed to do so.

16 (c) The district shall provide any necessary new locations and necessary real estate
17 interests for the relocation, and for that purpose the power of eminent domain as provided
18 in G.S. 160A-647 may be exercised as long as the new locations are not in, on, or above a
19 public highway. The district may also acquire the necessary new locations by purchase
20 or otherwise.

21 (d) Any affected public utility, railroad, or other public service corporation shall
22 be compensated for any real estate interest taken in a manner consistent with G.S. 160A-
23 647, subject to the right of the district to reduce the compensation due by the value of any
24 property exchanged under this section.

25 (e) The method and procedures of a particular adjustment to the facilities of a
26 public utility, railroad, or other public service corporation shall be covered by an
27 agreement between the district and the affected party or parties.

28 (c) The district shall reimburse the public utility, railroad, or other public service
29 corporation, for the cost of relocations or removals which shall be the entire amount paid
30 or incurred by the utility properly attributable thereto after deducting the cost of any
31 increase in the service capacity of the new installations, structures, equipment, apparatus,
32 appliances, or facilities and any salvage value derived from the old installations,
33 structures, equipment, apparatus, or appliances.

34 **"§ 160A-650. Authority to fix and enforce rates.**

35 (a) A district may establish and revise from time to time schedules of reasonable
36 rents, rates, fees, charges, and penalties made applicable throughout the district for the
37 gas services. Schedules of rents, rates, fees, charges, or penalties may vary according to
38 classes of service. Before it establishes or revises a schedule of rents, rates, fees, charges,
39 or penalties, the district Board of Trustees shall hold a public hearing on the matter. A
40 notice of the hearing shall be given at least once in a newspaper having general
41 circulation in the area, not less than seven days before the public hearing.

42 (b) A district may collect delinquent accounts by any remedy provided by law for
43 collecting and enforcing private debts. A district may also discontinue service to any

1 customer whose account remains delinquent for more than 30 days. When service is
2 discontinued for delinquency, it shall be unlawful for any person other than a duly
3 authorized agent or employee of the district to do any act that results in a resumption of
4 services. If a delinquent customer is not the owner of the premises to which the services
5 are delivered, the payment of the delinquent account may not be required before
6 providing services at the request of a new and different tenant or occupant of the
7 premises, but this restriction shall not apply when the premises are occupied by two or
8 more tenants whose services are measured by the same meter.

9 (c) Rents, rates, fees, charges, and penalties for services shall be legal obligations
10 of the person contracting for them and shall in no case be a lien upon the property or
11 premises served.

12 (d) Rents, rates, fees, charges, and penalties for services shall be legal obligations
13 of the owner of the premises served when the property or premises are leased or rented to
14 more than one tenant and services rendered to more than one tenant are measured by the
15 same meter."

16 Section 3. G.S. 105-164.14(c) is amended by adding a new subdivision to
17 read:

18 "(22) A regional natural gas district created pursuant to Article 27 of Chapter
19 160A of the General Statutes."

20 Section 4. G.S. 159-81(1) reads as rewritten:

21 "(1) 'Municipality' means a county, city, town, incorporated village, sanitary
22 district, metropolitan sewerage district, metropolitan water district,
23 county water and sewer district, water and sewer authority, hospital
24 authority, hospital district, parking authority, special airport district,
25 regional public transportation authority, regional natural gas district,
26 regional sports authority, airport authority, joint agency created pursuant
27 to Part 1 of Article 20 of Chapter 160A of the General Statutes, and
28 joint agency authorized by agreement between two cities to operate an
29 airport pursuant to G.S. 63-56, but not any other forms of local
30 government."

31 Section 5. G.S. 160A-20(h) reads as rewritten:

32 "(h) As used in this section, the term 'unit of local government' means any of the
33 following:

- 34 (1) A county.
- 35 (2) A city.
- 36 (3) A water and sewer authority created under Article 1 of Chapter 162A of
37 the General Statutes.
- 38 (4) An airport authority whose situs is entirely within a county that has (i) a
39 population of over 120,000 according to the most recent federal
40 decennial census and (ii) an area of less than 200 square miles.
- 41 (5) An airport authority in a county in which there are two incorporated
42 municipalities with a population of more than 65,000 according to the
43 most recent federal decennial census.

