

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 990

Short Title: Exempt Certain Nonprofit Utilities.

(Public)

Sponsors: Representatives Church and Buchanan.

Referred to: Commerce.

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 electricity, heat, or steam for sale to or for the public for compensation;

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

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

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

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

37 g. The term 'public utility' shall not include a hotel, motel, time
38 share or condominium complex operated primarily to serve
39 transient occupants, which imposes charges to occupants for
40 local, long-distance, or wide area telecommunication services
41 when such calls are completed through the use of facilities
42 provided by a public utility, and provided further that the local
43 services received are rated in accordance with the provisions of

1 G.S. 62-110(d) and the applicable charges for telephone calls are
2 prominently displayed in each area where occupant rooms are
3 located.

- 4 h. The term 'public utility' shall not include the resale of electricity
5 by (i) a campground operated primarily to serve transient
6 occupants, or (ii) a marina; provided that (i) the campground or
7 marina charges no more than the actual cost of the electricity
8 supplied to it, (ii) the amount of electricity used by each campsite
9 or marina slip occupant is measured by an individual metering
10 device, (iii) the applicable rates are prominently displayed at or
11 near each campsite or marina slip, and (iv) the campground or
12 marina only resells electricity to campsite or marina slip
13 occupants.
- 14 i. The term 'public utility' shall not include the State, the Office of
15 the State Controller, or the Microelectronics Center of North
16 Carolina in the provision or sharing of switched broadband
17 telecommunications services with non-State entities or
18 organizations of the kind or type set forth in G.S. 143B-426.39.
- 19 j. The term 'public utility' shall not include any person, not
20 otherwise a public utility, conveying or transmitting messages or
21 communications by mobile radio communications service.
22 Mobile radio communications service includes one-way or two-
23 way radio service provided to mobile or fixed stations or
24 receivers using mobile radio service frequencies."

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

27 **"§ 62-110.5. Commission may exempt certain nonprofit and consumer-owned water**
28 **or sewer utilities.**

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

- 32 (1) The members or consumer-owners of the corporation elect the
33 governing board of the corporation pursuant to the corporation's articles
34 of incorporation and bylaws; and
- 35 (2) The Commission finds that the organization and the quality of service of
36 the utility are adequate to protect the public interest to the extent that
37 additional regulation is not required by the public convenience and
38 necessity."

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