

GENERAL ASSEMBLY OF NORTH CAROLINA
1997 SESSION

S.L. 1997-437
HOUSE BILL 990

AN ACT TO EXEMPT CERTAIN NONPROFIT AND CONSUMER-OWNED
WATER OR SEWER UTILITIES AND CERTAIN SMALL 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;
 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 to less than ~~10~~15 residential customers, except that any person or company which constructs a water system in a subdivision with plans for ~~10~~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 ~~10~~15 residential building lots shall be a public utility at the time of such planning or holding out to serve such ~~10~~15 or more building lots, without regard to the number of actual customers connected;

3. Transporting persons or household goods by street, suburban or interurban bus or railways for the public for compensation;
 4. Transporting persons or household goods by railways or motor vehicles, or any other form of transportation for the public for compensation, except motor carriers exempted in G.S. 62-260, and except carriers by air;
 5. Transporting or conveying gas, crude oil or other fluid substance by pipeline for the public for compensation;
 6. Conveying or transmitting messages or communications by telephone or telegraph, or any other means of transmission, where such service is offered to the public for compensation.
- b. The term 'public utility' shall for rate-making purposes include any person producing, generating or furnishing any of the foregoing services to another person for distribution to or for the public for compensation.
 - 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 a municipality, an authority organized under the North Carolina Water and Sewer Authorities Act, electric or telephone membership ~~corporation~~ or ~~nonprofit water membership~~ or ~~consumer owned corporations financed by the Farmers Home Administration, the United States Department of Housing and Urban Development, or any similar or successor federal financing agency, provided, that (i) any such financing administration, department or agency exercise substantial control over and regulation of any such corporation's rates and terms and conditions of service, and (ii) the members or consumer owners of any such corporation, pursuant to the corporation's articles of incorporation and bylaws, shall elect the governing board of the corporation;~~ corporation; or 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 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. 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. 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.

- e. The term 'public utility' shall include the University of North Carolina insofar as said University supplies telephone service, electricity or water to the public for compensation from the University Enterprises defined in G.S. 116-41.1(9).
- f. The term 'public utility' shall include the Town of Pineville insofar as said town supplies telephone services to the public for compensation. The territory to be served by the Town of Pineville in furnishing telephone services, subject to the Public Utilities Act, shall include the town limits as they exist on May 8, 1973, and shall also include the area proposed to be annexed under the town's ordinance adopted May 3, 1971, until January 1, 1975.
- g. The term 'public utility' shall not include a hotel, motel, time share or condominium complex operated primarily to serve transient occupants, which imposes charges to occupants for local, long-distance, or wide area telecommunication services when such calls are completed through the use of facilities provided by a public utility, and provided further that the local services received are rated in accordance with the provisions of G.S. 62-110(d) and the applicable charges for telephone calls are prominently displayed in each area where occupant rooms are located.
- h. The term 'public utility' shall not include the resale of electricity by (i) a campground operated primarily to serve transient occupants, or (ii) a marina; provided that (i) the campground or marina charges no more than the actual cost of the electricity supplied to it, (ii) the amount of electricity used by each campsite or marina slip occupant is measured by an individual metering device, (iii) the applicable rates are prominently displayed at or near each campsite or marina slip, and (iv) the campground or marina only resells electricity to campsite or marina slip occupants.

- i. The term 'public utility' shall not include the State, the Office of the State Controller, 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.
- j. The term 'public utility' shall not include any person, not otherwise a public utility, conveying or transmitting messages or communications by mobile radio communications service. Mobile radio communications service includes one-way or two-way radio service provided to mobile or fixed stations or receivers using mobile radio service frequencies."

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

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

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

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

Section 3. G.S. 62-300(a) is amended by adding a new subdivision to read:

"(15) One hundred dollars (\$100.00) for each application for exemption filed by nonprofit and consumer-owned water or sewer utilities pursuant to G.S. 62-110.5."

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

In the General Assembly read three times and ratified this the 19th day of August, 1997.

s/ Marc Basnight
President Pro Tempore of the Senate

s/ Harold J. Brubaker
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 10:19 a.m. this 28th day of August, 1997