

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2001**

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**SENATE BILL 1078\***

Short Title: Improve Air Quality/Electric Utilities. (Public)

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Sponsors: Senators Metcalf, Carter; Albertson, Allran, Ballance, Ballantine, Berger, Carpenter, Clodfelter, Cunningham, Forrester, Foxx, Garrou, Garwood, Gulley, Hagan, Hartsell, Horton, Kerr, Kinnaird, Lee, Lucas, Miller, Odom, Purcell, Rand, Reeves, Rucho, Weinstein, and Wellons.

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Referred to: Agriculture/Environment/Natural Resources.

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April 5, 2001

A BILL TO BE ENTITLED

AN ACT TO IMPROVE AIR QUALITY IN THE STATE BY REQUIRING  
REDUCTIONS IN THE EMISSIONS OF CERTAIN POLLUTANTS FROM  
CERTAIN FACILITIES THAT BURN COAL TO GENERATE ELECTRICITY.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 143-215.107 reads as rewritten:

**"§ 143-215.107. Air quality standards and classifications.**

(a) Duty to Adopt Plans, Standards, etc. – The Commission is hereby directed and empowered, as rapidly as possible within the limits of funds and facilities available to it, and subject to the procedural requirements of this Article and Article 21:

- (1) To prepare and develop, after proper study, a comprehensive plan or plans for the prevention, abatement and control of air pollution in the State or in any designated area of the State.
- (2) To determine by means of field sampling and other studies, including the examination of available data collected by any local, State or federal agency or any person, the degree of air contamination and air pollution in the State and the several areas of the State.
- (3) To develop and adopt, after proper study, air quality standards applicable to the State as a whole or to any designated area of the State as the Commission deems proper in order to promote the policies and purposes of this Article and Article 21 most effectively.
- (4) To collect information or to require reporting from classes of sources which, in the judgment of the Environmental Management Commission, may cause or contribute to air pollution. Any person operating or responsible for the operation of air contaminant sources of

1 any class for which the Commission requires reporting shall make  
2 reports containing such information as may be required by the  
3 Commission concerning location, size, and height of contaminant  
4 outlets, processes employed, fuels used, and the nature and time  
5 periods or duration of emissions, and such other information as is  
6 relevant to air pollution and available or reasonably capable of being  
7 assembled.

8 (5) To develop and adopt emission control standards as in the judgment of  
9 the Commission may be necessary to prohibit, abate, or control air  
10 pollution commensurate with established air quality standards. This  
11 subdivision does not apply to that portion of the National Emission  
12 Standards for Hazardous Air Pollutants for asbestos that governs  
13 demolition and renovation as set out in 40 C.F.R. § 61.141, 61.145,  
14 61.150, and 61.154 (1 July 1993 edition).

15 (6) To adopt motor vehicle emissions standards; to adopt, when necessary  
16 and practicable, a motor vehicle emissions inspection and maintenance  
17 program to improve ambient air quality; to require manufacturers of  
18 motor vehicles to furnish to the Equipment and Tool Institute and,  
19 upon request and at a reasonable charge, to any person who maintains  
20 or repairs a motor vehicle, all information necessary to fully make use  
21 of the on-board diagnostic equipment and the data compiled by that  
22 equipment; to certify to the Commissioner of Motor Vehicles that  
23 ambient air quality will be improved by the implementation of a motor  
24 vehicle emissions inspection and maintenance program in a county.  
25 The Commission shall implement this subdivision as provided in G.S.  
26 143-215.107A.

27 (7) To develop and adopt standards and plans necessary to implement  
28 programs for the prevention of significant deterioration and for the  
29 attainment of air quality standards in nonattainment areas.

30 (8) To develop and adopt standards and plans necessary to implement  
31 programs to control acid deposition and to regulate the use of sulfur  
32 dioxide allowances and nitrogen oxides (NOx) emissions in  
33 accordance with Title IV and implementing regulations adopted by the  
34 United States Environmental Protection Agency.

35 (8a) To develop and adopt standards and plans and to implement programs  
36 to control emissions of oxides of nitrogen (NOx) and sulfur dioxide  
37 from coal-fired generating units, as those terms are defined in 40 Code  
38 of Federal Regulations § 96.2 (1 July 2000 Edition), that are owned or  
39 operated by an investor-owned public utility, as defined in G.S. 62-3,  
40 and that have the capacity to generate 25 or more megawatts of  
41 electricity.

42 (9) To regulate the content of motor fuels, as defined in G.S. 119-16, to  
43 require use of reformulated gasoline as the Commission determines  
44 necessary, to implement the requirements of Title II and implementing

1 regulations adopted by the United States Environmental Protection  
2 Agency, and to develop standards and plans to implement this  
3 subdivision. Rules may authorize the use of marketable oxygen credits  
4 for gasoline as provided in federal requirements.

5 (10) To develop and adopt standards and plans necessary to implement  
6 requirements of the federal Clean Air Act and implementing  
7 regulations adopted by the United States Environmental Protection  
8 Agency.

9 (11) To develop and adopt economically feasible standards and plans  
10 necessary to implement programs to control the emission of odors  
11 from animal operations, as defined in G.S. 143-215.10B.

12 (12) To develop and adopt a program of incentives to promote voluntary  
13 reductions of emissions of air contaminants, including, but not limited  
14 to, emissions banking and trading and credit for voluntary early  
15 reduction of emissions.

16 (13) To develop and adopt rules governing the certification of persons who  
17 inspect vehicle-mounted tanks used to transport motor fuel and to  
18 require that inspection of these tanks be performed only by certified  
19 personnel.

20 (14) To develop and adopt rules governing the sale and service of mobile  
21 source exhaust emissions analyzers and to require that vendors of these  
22 analyzers provide adequate surety to purchasers for the performance of  
23 the vendor's contractual or other obligations related to the sale and  
24 service of analyzers.

25 (b) Criteria for Standards. – In developing air quality and emission control  
26 standards, motor vehicle emissions standards, motor vehicle emissions inspection and  
27 maintenance requirements, rules governing the content of motor fuels or requiring the  
28 use of reformulated gasoline, and other standards and plans to improve ambient air  
29 quality, the Commission shall consider varying local conditions and requirements and  
30 may prescribe uniform standards and plans throughout the State or different standards  
31 and plans for different counties or areas as may be necessary and appropriate to improve  
32 ambient air quality in the State or within a particular county or area, achieve attainment  
33 or preclude violations of state or national ambient air quality standards, meet other  
34 federal requirements, or achieve the purposes of this Article and Article 21.

35 (c) Chapter 150B of the General Statutes governs the adoption and publication of  
36 rules under this Article.

37 (d), (e) Repealed by Session Laws 1987, c. 827, s. 205.

38 (f), (g). Repealed by Session Laws 1995, c. 507, s. 27."

39 **SECTION 2.** The Environmental Management Commission shall adopt  
40 rules to implement G.S. 143-215.107(a)(8a), as enacted by Section 1 of this act, as  
41 provided in this section. For emissions of oxides of nitrogen (NOx), the Commission  
42 shall develop and adopt standards and plans and implement programs to control  
43 emissions from coal-fired generating units, as those terms are defined in 40 Code of  
44 Federal Regulations § 96.2 (1 July 2000 Edition), that are owned or operated by an

1 investor-owned public utility, as defined in G.S. 62-3, and that have the capacity to  
2 generate 25 or more megawatts of electricity so that no later than 1 January 2007 these  
3 units will collectively emit no more than 60,000 tons of oxides of nitrogen (NOx)  
4 annually and no later than 1 January 2009 these units will collectively emit no more  
5 than 56,000 tons of oxides of nitrogen (NOx) annually. For emissions of sulfur dioxide,  
6 the Commission shall develop and adopt standards and plans and implement programs  
7 to control emissions from coal-fired generating units, as those terms are defined in 40  
8 Code of Federal Regulations § 96.2 (1 July 2000 Edition), that are owned or operated by  
9 an investor-owned public utility, as defined in G.S. 62-3, and that have the capacity to  
10 generate 25 or more megawatts of electricity so that no later than 1 January 2009 these  
11 units will collectively emit no more than 250,000 tons of sulfur dioxide annually and no  
12 later than 1 January 2013 these units will collectively emit no more than 130,000 tons of  
13 sulfur dioxide annually.

14 **SECTION 3.** Article 7 of Chapter 62 of the General Statutes is amended by  
15 adding a new section to read:

16 **"§ 62-133.6. Environmental compliance expenditure-recovery.**

17 (a) As used in this section, the term 'environmental compliance expenditures'  
18 means all expenditures incurred by an electric utility to comply with standards adopted  
19 pursuant to G.S. 143-215.107(a)(8a) that exceed the expenditures required to comply  
20 with federal and State law in effect on 1 April 2001.

21 (b) The Commission shall allow each electric utility to recover all just,  
22 reasonable, and prudently incurred environmental compliance expenditures through an  
23 environmental compliance expenditure-recovery factor that is separate from the electric  
24 utility's base rates.

25 (c) The Commission shall set the environmental compliance expenditure-  
26 recovery factor for each utility at least annually. The Commission shall base the  
27 environmental compliance expenditure-recovery factor on the electric utility's  
28 projections of its environmental compliance expenditures for the next calendar year.  
29 The Commission shall incorporate into the environmental compliance expenditure-  
30 recovery factor determination the experienced under-recovery or over-recovery of the  
31 electric utility's environmental compliance expenditures incurred during the previous  
32 calendar year. Any refund or collection made as part of this process shall include  
33 interest at a rate to be determined by the Commission."

34 **SECTION 4.** It is the intent of the General Assembly that the State use all  
35 available resources and means, including negotiation, participation in interstate  
36 compacts and multistate and interagency agreements, and litigation, to induce other  
37 states and entities, including the Tennessee Valley Authority, to achieve reductions in  
38 emissions of oxides of nitrogen (NOx) and sulfur dioxide comparable to those required  
39 by G.S. 143-215.107(a)(8a), as enacted by Section 1 of this act, and Section 2 of this act  
40 on a comparable schedule. The State shall give particular attention to those states and  
41 other entities whose emissions negatively impact air quality in North Carolina or whose  
42 failure to achieve comparable reductions would place the economy of North Carolina at  
43 a competitive disadvantage.

1           **SECTION 5.** The Environmental Management Commission shall study the  
2 desirability of requiring and the feasibility of obtaining reductions in emissions of  
3 oxides of nitrogen (NOx) and sulfur dioxide beyond those required by G.S.  
4 143-215.107(a)(8a), as enacted by Section 1 of this act, and Section 2 of this act. The  
5 Environmental Management Commission shall consider the availability of emissions  
6 reduction technologies, increased cost to consumers of electric power, reliability of  
7 electric power supply, actions to reduce emissions of oxides of nitrogen (NOx) and  
8 sulfur dioxide taken by states and other entities whose emissions negatively impact air  
9 quality in North Carolina or whose failure to achieve comparable reductions would  
10 place the economy of North Carolina at a competitive disadvantage, and the effects that  
11 these reductions would have on public health, the environment, and natural resources,  
12 including visibility. In its conduct of this study, the Environmental Management  
13 Commission may consult with the Utilities Commission and its staff. The  
14 Environmental Management Commission shall report its findings and recommendations  
15 to the General Assembly and the Environmental Review Commission annually  
16 beginning 1 September 2004.

17           **SECTION 6.** The General Assembly anticipates that measures implemented  
18 to achieve the reductions in emissions of oxides of nitrogen (NOx) and sulfur dioxide  
19 required by G.S. 143-215.107(a)(8a), as enacted by Section 1 of this act, and Section 2  
20 of this act will also result in significant reductions in the emissions of mercury from  
21 coal-fired generating units. The Division of Air Quality of the Department of  
22 Environment and Natural Resources shall study issues related to monitoring emissions  
23 of mercury and the development and implementation of standards and plans to  
24 implement programs to control emissions of mercury from coal-fired generating units.  
25 The Division shall evaluate available control technologies and shall estimate the  
26 benefits and costs of alternative strategies to reduce emissions of mercury. The  
27 Division shall annually report on its interim findings and recommendations to the  
28 Environmental Management Commission and the Environmental Review Commission  
29 beginning 1 March 2002. The Division shall report its final findings and  
30 recommendations to the Environmental Management Commission and the  
31 Environmental Review Commission no later than 1 March 2005.

32           **SECTION 7.** The Division of Air Quality of the Department of Environment  
33 and Natural Resources shall study issues related to the development and implementation  
34 of standards and plans to implement programs to control emissions of carbon dioxide  
35 from coal-fired generating units and other stationary sources of air pollution. The  
36 Division shall evaluate available control technologies and shall estimate the benefits and  
37 costs of alternative strategies to reduce emissions of carbon dioxide. The Division shall  
38 report its findings and recommendations to the Environmental Management  
39 Commission and the Environmental Review Commission no later than 1 March 2002.

40           **SECTION 8.** This act is effective when it becomes law.