

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

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SENATE BILL 1078*
Agriculture/Environment/Natural Resources Committee Substitute Adopted
4/18/01

Short Title: Improve Air Quality/Electric Utilities.

(Public)

Sponsors:

Referred to:

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 any class for which the Commission requires reporting shall make reports containing such information as may be required by the Commission concerning location, size, and height of contaminant

1 outlets, processes employed, fuels used, and the nature and time
2 periods or duration of emissions, and such other information as is
3 relevant to air pollution and available or reasonably capable of being
4 assembled.

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

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

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

27 (8) To develop and adopt standards and plans necessary to implement
28 programs to control acid deposition and to regulate the use of sulfur
29 dioxide (SO₂) allowances and nitrogen oxides (NO_x) emissions in
30 accordance with Title IV and implementing regulations adopted by the
31 United States Environmental Protection Agency.

32 (8a) To develop and adopt standards and plans and to implement programs
33 to control emissions of oxides of nitrogen (NO_x) and sulfur dioxide
34 (SO₂) as provided in G.S. 143-215.107D.

35 (9) To regulate the content of motor fuels, as defined in G.S. 119-16, to
36 require use of reformulated gasoline as the Commission determines
37 necessary, to implement the requirements of Title II and implementing
38 regulations adopted by the United States Environmental Protection
39 Agency, and to develop standards and plans to implement this
40 subdivision. Rules may authorize the use of marketable oxygen credits
41 for gasoline as provided in federal requirements.

- 1 (10) To develop and adopt standards and plans necessary to implement
2 requirements of the federal Clean Air Act and implementing
3 regulations adopted by the United States Environmental Protection
4 Agency.
- 5 (11) To develop and adopt economically feasible standards and plans
6 necessary to implement programs to control the emission of odors
7 from animal operations, as defined in G.S. 143-215.10B.
- 8 (12) To develop and adopt a program of incentives to promote voluntary
9 reductions of emissions of air contaminants, including, but not limited
10 to, emissions banking and trading and credit for voluntary early
11 reduction of emissions.
- 12 (13) To develop and adopt rules governing the certification of persons who
13 inspect vehicle-mounted tanks used to transport motor fuel and to
14 require that inspection of these tanks be performed only by certified
15 personnel.
- 16 (14) To develop and adopt rules governing the sale and service of mobile
17 source exhaust emissions analyzers and to require that vendors of these
18 analyzers provide adequate surety to purchasers for the performance of
19 the vendor's contractual or other obligations related to the sale and
20 service of analyzers.

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

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

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

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

35 **SECTION 2.** Article 21B of Chapter 143 of the General Statutes is amended
36 by adding a new section to read:

37 "**§ 143-215.107D. Emissions of oxides of nitrogen (NO_x) and sulfur dioxide (SO₂)**
38 **from certain coal-fired electric generating units.**

39 The Environmental Management Commission shall adopt rules to implement G.S.
40 143-215.107(a)(8a) as provided in this section. For emissions of oxides of nitrogen
41 (NO_x), the Commission shall develop and adopt standards and plans and implement
42 programs to control emissions from coal-fired generating units, as those terms are

1 defined in 40 Code of Federal Regulations § 96.2 (1 July 2000 Edition), that are owned
2 or operated by an investor-owned public utility, as defined in G.S. 62-3, and that have
3 the capacity to generate 25 or more megawatts of electricity so that no later than 1
4 January 2007 these units will collectively emit no more than 60,000 tons of oxides of
5 nitrogen (NOx) annually and no later than 1 January 2009 these units will collectively
6 emit no more than 56,000 tons of oxides of nitrogen (NOx) annually. For emissions of
7 sulfur dioxide (SO2), the Commission shall develop and adopt standards and plans and
8 implement programs to control emissions from coal-fired generating units, as those
9 terms are defined in 40 Code of Federal Regulations § 96.2 (1 July 2000 Edition), that
10 are owned or operated by an investor-owned public utility, as defined in G.S. 62-3, and
11 that have the capacity to generate 25 or more megawatts of electricity so that no later
12 than 1 January 2009 these units will collectively emit no more than 250,000 tons of
13 sulfur dioxide (SO2) annually and no later than 1 January 2013 these units will
14 collectively emit no more than 130,000 tons of sulfur dioxide (SO2) annually."

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

17 **"§ 62-133.6. Environmental compliance expenditure-recovery.**

18 (a) As used in this section, the term 'environmental compliance expenditures'
19 means only those expenditures incurred after 1 July 2001 by an electric utility to comply
20 with standards adopted pursuant to G.S. 143-215. 107D that exceed the expenditures
21 required to comply with the revisions to the State Implementation Plan (SIP) to reduce
22 emissions of oxides of nitrogen (NOx) pursuant to the final notice published by the
23 Administrator of the United States Environmental Protection Agency at 63 Federal
24 Register 57491 (27 October 1998) codified at 40 Code of Federal Regulations § 51.121
25 (1 July 2000 Edition).

26 (b) The Commission shall hold a hearing and shall allow each electric utility to
27 recover all just, reasonable, and prudently incurred environmental compliance
28 expenditures through an environmental compliance expenditure-recovery factor that is
29 separate from the electric utility's base rates.

30 (c) The Commission shall set the environmental compliance expenditure-
31 recovery factor for each utility at least annually. The Commission shall base the
32 environmental compliance expenditure-recovery factor on projections of environmental
33 compliance expenditures for a future 12-month period. The Commission shall
34 incorporate into the environmental compliance expenditure-recovery factor
35 determination the experienced under-recovery or over-recovery of the electric utility's
36 environmental compliance expenditures incurred during the previous 12-month period.
37 Any refund or collection made as part of this process shall include interest at a rate to be
38 determined by the Commission.

39 (d) The Commission shall adopt rules to implement this section."

40 **SECTION 4.** It is the intent of the General Assembly that the State use all
41 available resources and means, including negotiation, participation in interstate
42 compacts and multistate and interagency agreements, and litigation to induce other

1 states and entities, including the Tennessee Valley Authority, to achieve reductions in
2 emissions of oxides of nitrogen (NOx) and sulfur dioxide (SO2) comparable to those
3 required by G.S. 143-215.107(a)(8a), as enacted by Section 1 of this act, and G.S.
4 143-215.107D, as enacted by Section 2 of this act, on a comparable schedule. The State
5 shall give particular attention to those states and other entities whose emissions
6 negatively impact air quality in North Carolina or whose failure to achieve comparable
7 reductions would place the economy of North Carolina at a competitive disadvantage.

8 **SECTION 5.** The Environmental Management Commission shall study the
9 desirability of requiring and the feasibility of obtaining reductions in emissions of
10 oxides of nitrogen (NOx) and sulfur dioxide (SO2) beyond those required by G.S.
11 143-215.107(a)(8a), as enacted by Section 1 of this act, and G.S. 143-215.107D, as
12 enacted by Section 2 of this act. The Environmental Management Commission shall
13 consider the availability of emissions reduction technologies, increased cost to
14 consumers of electric power, reliability of electric power supply, actions to reduce
15 emissions of oxides of nitrogen (NOx) and sulfur dioxide (SO2) taken by states and
16 other entities whose emissions negatively impact air quality in North Carolina or whose
17 failure to achieve comparable reductions would place the economy of North Carolina at
18 a competitive disadvantage, and the effects that these reductions would have on public
19 health, the environment, and natural resources, including visibility. In its conduct of
20 this study, the Environmental Management Commission may consult with the Utilities
21 Commission and the Public Staff. The Environmental Management Commission shall
22 report its findings and recommendations to the General Assembly and the
23 Environmental Review Commission annually beginning 1 September 2004.

24 **SECTION 6.** The General Assembly anticipates that measures implemented
25 to achieve the reductions in emissions of oxides of nitrogen (NOx) and sulfur dioxide
26 (SO2) required by G.S. 143-215.107(a)(8a), as enacted by Section 1 of this act, and G.S.
27 143-215.107D, as enacted by Section 2 of this act, will also result in significant
28 reductions in the emissions of mercury from coal-fired generating units. The Division
29 of Air Quality of the Department of Environment and Natural Resources shall study
30 issues related to monitoring emissions of mercury and the development and
31 implementation of standards and plans to implement programs to control emissions of
32 mercury from coal-fired generating units. The Division shall evaluate available control
33 technologies and shall estimate the benefits and costs of alternative strategies to reduce
34 emissions of mercury. The Division shall annually report on its interim findings and
35 recommendations to the Environmental Management Commission and the
36 Environmental Review Commission beginning 1 March 2002. The Division shall report
37 its final findings and recommendations to the Environmental Management Commission
38 and the Environmental Review Commission no later than 1 March 2005.

39 **SECTION 7.** The Division of Air Quality of the Department of Environment
40 and Natural Resources shall study issues related to the development and implementation
41 of standards and plans to implement programs to control emissions of carbon dioxide
42 from coal-fired generating units and other stationary sources of air pollution. The

1 Division shall evaluate available control technologies and shall estimate the benefits and
2 costs of alternative strategies to reduce emissions of carbon dioxide. The Division shall
3 report its findings and recommendations to the Environmental Management
4 Commission and the Environmental Review Commission no later than 1 March 2002.

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