

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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SENATE BILL 1078
Agriculture/Environment/Natural Resources Committee Substitute Adopted
4/18/01
House Committee Substitute Favorable 6/11/02

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 IMPOSING LIMITS
ON THE EMISSION OF CERTAIN POLLUTANTS FROM CERTAIN
FACILITIES THAT BURN COAL TO GENERATE ELECTRICITY AND TO
PROVIDE FOR RECOVERY BY ELECTRIC UTILITIES OF THE COSTS OF
ACHIEVING COMPLIANCE WITH THOSE LIMITS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 21B of Chapter 143 of the General Statutes is amended
by adding a new section to read:

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

(a) As used in this section:

(1) 'Coal-fired generating unit' means a coal-fired generating unit, as
defined by 40 Code of Federal Regulations § 96.2 (1 July 2001
Edition), that is located in this State and has the capacity to generate
25 or more megawatts of electricity.

(2) 'Investor-owned public utility' means an investor-owned public utility,
as defined in G.S. 62-3.

(b) An investor-owned public utility that owns or operates coal-fired generating
units that collectively emitted more than 75,000 tons of oxides of nitrogen (NOx) in
calendar year 2000:

(1) Shall not collectively emit from the coal-fired generating units that it
owns or operates more than 35,000 tons of oxides of nitrogen (NOx) in
any calendar year beginning 1 January 2007.

(2) Shall not collectively emit from the coal-fired generating units that it
owns or operates more than 31,000 tons of oxides of nitrogen (NOx) in
any calendar year beginning 1 January 2009.

1 (c) An investor-owned public utility that owns or operates coal-fired generating
2 units that collectively emitted 75,000 tons or less of oxides of nitrogen (NOx) in
3 calendar year 2000 shall not collectively emit from the coal-fired generating units that it
4 owns or operates more than 25,000 tons of oxides of nitrogen (NOx) in any calendar
5 year beginning 1 January 2007.

6 (d) An investor-owned public utility that owns or operates coal-fired generating
7 units that collectively emitted more than 225,000 tons of sulfur dioxide (SO2) in
8 calendar year 2000:

9 (1) Shall not collectively emit from the coal-fired generating units that it
10 owns or operates more than 150,000 tons of sulfur dioxide (SO2) in
11 any calendar year beginning 1 January 2009.

12 (2) Shall not collectively emit from the coal-fired generating units that it
13 owns or operates more than 80,000 tons of sulfur dioxide (SO2) in any
14 calendar year beginning 1 January 2013.

15 (e) An investor-owned public utility that owns or operates coal-fired generating
16 units that collectively emitted 225,000 tons or less of sulfur dioxide (SO2) in calendar
17 year 2000:

18 (1) Shall not collectively emit from the coal-fired generating units that it
19 owns or operates more than 100,000 tons of sulfur dioxide (SO2) in
20 any calendar year beginning 1 January 2009.

21 (2) Shall not collectively emit from the coal-fired generating units that it
22 owns or operates more than 50,000 tons of sulfur dioxide (SO2) in any
23 calendar year beginning 1 January 2013.

24 (f) Each investor-owned public utility to which this section applies may
25 determine how it will achieve the collective emissions limitations imposed by this
26 section. Compliance with the emissions limitations set out in this section does not alter
27 the obligation of any person to comply with any other federal or State law, regulation,
28 or rule related to air quality or visibility. This subsection shall not be construed to limit
29 the authority of the Commission to impose specific limitations on the emission of
30 oxides of nitrogen (NOx) and sulfur dioxide (SO2) from an individual coal-fired
31 generating unit owned or operated by an investor-owned public utility.

32 (g) A coal-fired generating unit that is subject to the collective emissions
33 limitations set out in this section on 1 July 2002 shall remain subject to the collective
34 emissions limitations whether or not it thereafter continues to be owned or operated by
35 an investor-owned public utility.

36 (h) The Commission shall require that any permit or modified permit issued for a
37 coal-fired generating unit that is subject to this section include conditions that provide
38 for testing, monitoring, record keeping, and reporting adequate to assure compliance
39 with the requirements of this section.

40 (i) The Governor may enter into an agreement with an investor-owned public
41 utility under which the investor-owned public utility voluntarily agrees to transfer to the
42 State any emissions allowances acquired or that may be acquired by the investor-owned
43 public utility pursuant to 42 U.S.C. §§ 7651-7651o, as implemented by 40 Code of
44 Federal Regulations §§ 73.1 through 73.90 (1 July 2001 Edition); 42 U.S.C.

1 7410(a)(2)(D)(i)(I), as implemented by 40 Code of Federal Regulations § 51.121 (1 July
2 2001 Edition), related federal regulations, and the associated State Implementation Plan;
3 42 U.S.C. § 7426, as implemented by 40 Code of Federal Regulations § 52.34 (1 July
4 2001 Edition) and related federal regulations; or any similar program established under
5 federal law that result from compliance with the emissions limitations set out in this
6 section. An agreement entered into pursuant to this subsection shall be binding and shall
7 be enforceable by specific performance. If the Governor enters into an agreement that
8 provides for the transfer of emissions allowances to the State, the Governor shall file
9 verified copies of the agreement with the Attorney General, the Secretary of State, the
10 State Treasurer, the Secretary of Environment and Natural Resources, and the Utilities
11 Commission. The State Treasurer shall hold all emissions allowances that are
12 transferred to the State as provided in this subsection in trust for the people of this State
13 and shall sell, trade, transfer, or otherwise dispose of the emissions allowances only as
14 the General Assembly shall provide by law.

15 (j) An investor-owned public utility that is subject to the emissions limitations
16 set out in this section shall submit to the Utilities Commission and to the Department on
17 or before 1 April of each year a verified statement pursuant to subsection (i) of G.S.
18 62-133.6."

19 **SECTION 2.** G.S. 143-215.108 reads as rewritten:

20 **"§ 143-215.108. Control of sources of air pollution; permits required.**

21 ~~(a) After the effective date applicable to any air quality or emission control~~
22 ~~standards established pursuant to G.S. 143-215.107 and except~~ Except as provided in
23 subsections (a1) and (a2) of this section, no person shall do any of the following things
24 or carry out any of the following activities which contravene or will be likely to
25 contravene ~~such standards established pursuant to G.S. 143-215.107 or set out in G.S.~~
26 ~~143-215.107D until or unless such that person shall have applied for and shall have~~
27 ~~received~~ has obtained from the Commission a permit therefor and ~~shall have~~ has
28 complied with such conditions, if any, as are prescribed by such any conditions of this
29 permit:

- 30 (1) Establish or operate any air contaminant source;
- 31 (2) Build, erect, use or operate any equipment which may result in the
32 emission of air contaminants or which is likely to cause air pollution;
- 33 (3) Alter or change the construction or method of operation of any
34 equipment or process from which air contaminants are or may be
35 emitted;
- 36 (4) Enter into an irrevocable contract for the construction and installation
37 of any air-cleaning device, or allow or cause such device to be
38 constructed, installed, or operated.

39 (a1) The Commission may by rule establish procedures that meet the requirements
40 of section 502(b)(10) of Title V (42 U.S.C. § 7661a(b)(10)) and 40 Code of Federal
41 Regulations § 70.4(b)(12) (1 July 1993 Edition) to allow a permittee to make changes
42 within a permitted facility without requiring a revision of the permit.

43 (a2) The Commission may adopt rules that provide for a minor modification of a
44 permit. At a minimum, rules that provide for a minor modification of a permit shall

1 meet the requirements of 40 Code of Federal Regulations § 70.7(e)(2) (1 July 1993
2 Edition). If the Commission adopts rules that provide for a minor modification of a
3 permit, a permittee shall not make a change in the permitted facility while the
4 application for the minor modification is under review unless the change is authorized
5 under the rules adopted by the Commission.

6 (b) The Commission shall act upon all applications for permits so as to effectuate
7 the ~~purpose~~ purposes of this ~~section~~, Article by reducing existing air pollution and
8 preventing, so far as reasonably possible, any increased pollution of the air from any
9 additional or enlarged sources.

10 (c) The Commission shall have the power:

11 (1) To grant and renew a permit with ~~such any~~ any conditions attached ~~as that~~
12 the Commission believes necessary to achieve the purposes of this
13 ~~section~~ Article or the requirements of the Clean Air Act and
14 implementing regulations adopted by the United States Environmental
15 Protection Agency;

16"

17 **SECTION 3.** G.S. 143-215.107(a)(8) reads as rewritten:

18 "(8) To develop and adopt standards and plans necessary to implement
19 programs to control acid deposition and to regulate the use of sulfur
20 dioxide (SO₂) allowances and ~~nitrogen~~ oxides of nitrogen (NO_x)
21 emissions in accordance with Title IV and implementing regulations
22 adopted by the United States Environmental Protection Agency."

23 **SECTION 4.** G.S. 143-215.114A(a) reads as rewritten:

24 "(a) A civil penalty of not more than ten thousand dollars (\$10,000) may be
25 assessed by the Secretary against any person who:

26 (1) Violates any classification, standard or limitation established pursuant
27 to ~~G.S. 143-215.107~~; G.S. 143-215.107.

28 (2) Is required but fails to apply for or to secure a permit required by G.S.
29 143-215.108 or who violates or fails to act in accordance with the
30 terms, conditions, or requirements of such ~~permit~~; permit.

31 (3) Violates or fails to act in accordance with the terms, conditions, or
32 requirements of any special order or other appropriate document issued
33 pursuant to ~~G.S. 143-215.110~~; G.S. 143-215.110.

34 (4) Fails to file, submit, or make available, as the case may be, any
35 documents, data or reports required by this Article or Parts 1 or 7 of
36 Article 21 of this ~~Chapter~~; Chapter.

37 (5) Violates a rule of the Commission or a local governing body
38 implementing this Article or Parts 1 or 7 of ~~Article 21~~; Article 21.

39 (6) Violates the offenses set out in G.S. 143-215.114B.

40 (7) Violates the emissions limitations set out in G.S. 143-215.107D."

41 **SECTION 5.** G.S. 143-215-114A is amended by adding a new subsection to
42 read:

43 "(b1) The Secretary may assess a civil penalty of not more than ten thousand
44 dollars (\$10,000) per day for a violation of the emissions limitations set out in G.S.

1 143-215.107D as provided in this subsection. If at the end of any calendar year, an
2 investor-owned public utility has violated an emissions limitation set out in G.S. 143-
3 215.107D, the violation shall be considered to be continuous from the day that the
4 collective emissions first exceeded the emissions limitation set out in G.S.
5 143-215.107D through the end of the calendar year and the Secretary may assess a
6 separate civil penalty for each day."

7 **SECTION 6.** G.S. 143-215.114B(f) reads as rewritten:

8 "(f) Any person who negligently violates any classification, standard or limitation
9 established pursuant to ~~G.S. 143-215.107~~; G.S. 143-215.107 or by G.S. 143-215.107D
10 any term, condition, or requirement of a permit issued pursuant to G.S. 143-215.108 or
11 of a special order or other appropriate document issued pursuant to G.S. 143-215.110 or
12 any rule of the Commission implementing any of the said section, shall be guilty of a
13 Class 2 misdemeanor which may include a fine not to exceed fifteen thousand dollars
14 (\$15,000) per day of violation, provided that such fine shall not exceed a cumulative
15 total of two hundred thousand dollars (\$200,000) for each period of 30 days during
16 which a violation continues."

17 **SECTION 7.** G.S. 143-215.114B(g) reads as rewritten:

18 "(g) Any person who knowingly and willfully violates any classification, standard,
19 or limitation established in the rules of the Commission pursuant to ~~G.S. 143-215.107~~ or
20 G.S. 143-215.107; the emissions limitations set out in G.S. 143-215.107D; any term,
21 condition, or requirement of a permit issued pursuant to ~~G.S. 143-215.108~~ G.S.
22 143-215.108; or of a special order or other appropriate document issued pursuant to
23 G.S. 143-215.110, shall be guilty of a Class H felony, which may include a fine not to
24 exceed one hundred thousand dollars (\$100,000) per day of violation, provided that this
25 fine shall not exceed a cumulative total of five hundred thousand dollars (\$500,000) for
26 each period of 30 days during which a violation continues. For the purposes of this
27 subsection, the phrase "knowingly and willfully" shall mean intentionally and
28 consciously as the courts of this State, according to the principles of common law,
29 interpret the phrase in the light of reason and experience."

30 **SECTION 8.** G.S. 143-215.114B(h)(1) reads as rewritten:

31 "(1) Any person who knowingly violates any classification, standard, or
32 limitation established in the rules of the Commission pursuant to ~~G.S.~~
33 ~~143-215.107~~ or G.S. 143-215.107; the emissions limitations set out in
34 G.S. 143-215.107D; any term, condition, or requirement of a permit
35 issued pursuant to ~~G.S. 143-215.108~~ G.S. 143-215.108; or of a special
36 order or other appropriate document issued pursuant to G.S.
37 143-215.110 and who knows at that time that he thereby places
38 another person in imminent danger of death or serious bodily injury
39 shall be guilty of a Class C felony, which may include a fine not to
40 exceed two hundred fifty thousand dollars (\$250,000) per day of
41 violation, provided that this fine shall not exceed a cumulative total of
42 one million dollars (\$1,000,000) for each period of 30 days during
43 which a violation continues."

1 **SECTION 9.** Article 7 of Chapter 62 of the General Statutes is amended by
2 adding a new section to read:

3 **"§ 62-133.6. Environmental compliance costs recovery.**

4 (a) As used in this section:

5 (1) 'Coal-fired generating unit' means a coal-fired generating unit, as
6 defined by 40 Code of Federal Regulations § 96.2 (1 July 2001
7 Edition), that is located in this State and has the capacity to generate
8 25 or more megawatts of electricity.

9 (2) 'Environmental compliance costs' means only those capital costs
10 incurred by an investor-owned public utility to comply with the
11 emissions limitations set out in G.S. 143-215.107D that exceed the
12 costs required to comply with 42 U.S.C. § 7410(a)(2)(D)(i)(I), as
13 implemented by 40 Code of Federal Regulations § 51.121 (1 July 2001
14 Edition), related federal regulations, and the associated State or
15 Federal Implementation Plan, or with 42 U.S.C. § 7426, as
16 implemented by 40 Code of Federal Regulations § 52.34 (1 July 2001
17 Edition) and related federal regulations. The term 'environmental
18 compliance costs' does not include:

19 a. Costs required to comply with a final order or judgment
20 rendered by a state or federal court under which an investor-
21 owned public utility is found liable for a failure to comply with
22 any federal or state law, rule, or regulation for the protection of
23 the environment or public health.

24 b. The net increase in costs, above those proposed by the investor-
25 owned public utility as part of its plan to achieve compliance
26 with the emissions limitations set out in G.S. 143-215.107D,
27 that are necessary to comply with a settlement agreement,
28 consent decree, or similar resolution of litigation arising from
29 any alleged failure to comply with any federal or state law, rule,
30 or regulation for the protection of the environment or public
31 health.

32 c. Any criminal or civil fine or penalty, including court costs
33 imposed or assessed for a violation by an investor-owned public
34 utility of any federal or state law, rule, or regulation for the
35 protection of the environment or public health.

36 d. The net increase in costs, above those proposed by the investor-
37 owned public utility as part of its plan to achieve the emissions
38 limitations set out in G.S. 143-215.107D, that are necessary to
39 comply with any limitation on emissions of oxides of nitrogen
40 (NOx) or sulfur dioxide (SO₂) that are imposed on an
41 individual coal-fired generating unit by the Environmental
42 Management Commission or the Department of Environment
43 and Natural Resources to address any nonattainment of an air
44 quality standard in any area of the State.

1 (3) 'Investor-owned public utility' means an investor-owned public utility,
2 as defined in G.S. 62-3.

3 (b) The investor-owned public utilities shall be allowed to accelerate the cost
4 recovery of their estimated environmental compliance costs over a seven-year period,
5 beginning 1 January 2003 and ending 31 December 2009. For purposes of this
6 subsection, an investor-owned public utility subject to the provisions of subsections (b)
7 and (d) of G.S. 143-215.107D shall amortize environmental compliance costs in the
8 amount of one billion five hundred million dollars (\$1,500,000,000) and an investor-
9 owned public utility subject to the provisions of subsections (c) and (e) of G.S.
10 143-215.107D shall amortize environmental compliance costs in the amount of eight
11 hundred thirteen million dollars (\$813,000,000). During the rate freeze period
12 established in subsection (e) of this section, the investor-owned public utilities shall, at a
13 minimum, recover through amortization seventy percent (70%) of the environmental
14 compliance costs set out in this subsection. The maximum amount for each investor-
15 owned public utility's annual accelerated cost recovery during the rate freeze period
16 shall not exceed one hundred fifty percent (150%) of the annual levelized environmental
17 compliance costs set out in this subsection. The amounts to be amortized pursuant to
18 this subsection are estimates of the environmental compliance costs that may be
19 adjusted as provided in this section. The General Assembly makes no judgment as to
20 whether the actual environmental compliance costs will be greater than, less than, or
21 equal to these estimated amounts. These estimated amounts do not define or limit the
22 scope of the expenditures that may be necessary to comply with the emissions
23 limitations set out in G.S. 143-215.107D.

24 (c) The investor-owned public utilities shall file their compliance plans,
25 including initial cost estimates, with the Commission and the Department of
26 Environment and Natural Resources not later than 10 days after the date on which this
27 section becomes effective. The Commission shall consult with the Secretary of
28 Environment and Natural Resources and shall consider the advice of the Secretary as to
29 whether an investor-owned public utility's proposed compliance plan is adequate to
30 achieve the emissions limitations set out in G.S. 143-215.107D.

31 (d) Subject to the provisions of subsection (f) of this section, the Commission
32 shall hold a hearing to review the environmental compliance costs set out in subsection
33 (b) of this section. The Commission may modify and revise those costs as necessary to
34 ensure that they are just, reasonable, and prudent based on the most recent cost
35 information available and determine the annual cost recovery amounts that each
36 investor-owned public utility shall be required to record and recover during calendar
37 years 2008 and 2009. In making its decisions pursuant to this subsection, the
38 Commission shall consult with the Secretary of Environment and Natural Resources to
39 receive advice as to whether the investor-owned public utility's actual and proposed
40 modifications and permitting and construction schedule are adequate to achieve the
41 emissions limitations set out in G.S. 143-215.107D. The Commission shall issue an
42 order pursuant to this subsection no later than 31 December 2007.

43 (e) Notwithstanding G.S. 62-130(d) and G.S. 62-136(a), the base rates of the
44 investor-owned public utilities shall remain unchanged from the date on which this

1 section becomes effective through 31 December 2007. The Commission may, however,
2 consistent with the public interest:

3 (1) Allow adjustments to base rates, or deferral of costs or revenues, due
4 to one or more of the following conditions occurring during the rate
5 freeze period:

6 a. Governmental action resulting in significant cost reductions or
7 requiring major expenditures including, but not limited to, the
8 cost of compliance with any law, regulation, or rule for the
9 protection of the environment or public health, other than
10 environmental compliance costs.

11 b. Major expenditures to restore or replace property damaged or
12 destroyed by force majeure.

13 c. A severe threat to the financial stability of the investor-owned
14 public utility resulting from other extraordinary causes beyond
15 the reasonable control of the investor-owned public utility.

16 d. The investor-owned public utility persistently earns a return
17 substantially in excess of the rate of return established and
18 found reasonable by the Commission in the investor-owned
19 public utility's last general rate case.

20 (2) Approve any reduction in a rate or rates applicable to a customer or
21 class of customers during the rate freeze period, if requested to do so
22 by an investor-owned public utility that is subject to the emissions
23 limitations set out in G.S. 143-215.107D.

24 (f) In any general rate case initiated to adjust base rates effective on or after 1
25 January 2008, the investor-owned public utility shall be allowed to recover its actual
26 environmental compliance costs in accordance with Article 7 of this Chapter less the
27 cumulative amount of accelerated cost recovery recorded pursuant to subsection (b) of
28 this section.

29 (g) Consistent with the public interest, the Commission is authorized to approve
30 proposals submitted by an investor-owned public utility to implement optional,
31 market-based rates and services, provided the proposal does not increase base rates
32 during the period of time referred to in subsection (e) of this section.

33 (h) Nothing in this section shall prohibit the Commission from taking any actions
34 otherwise appropriate to enforce investor-owned public utility compliance with
35 applicable statutes or Commission rules or to order any appropriate remedy for such
36 noncompliance allowed by law.

37 (i) An investor-owned public utility that is subject to the emissions limitations
38 set out in G.S. 143-215.107D shall submit to the Commission and to the Department of
39 Environment and Natural Resources on or before 1 April of each year a verified
40 statement that contains all of the following:

41 (1) A detailed report on the investor-owned public utility's plans for
42 meeting the emissions limitations set out in G.S. 143-215.107D.

43 (2) The actual environmental compliance costs incurred by the investor-
44 owned public utility in the previous calendar year, including a

- 1 description of the construction undertaken and completed during that
2 year.
- 3 (3) The amount of the investor-owned public utility's environmental
4 compliance costs amortized in the previous calendar year.
- 5 (4) An estimate of the investor-owned public utility's environmental
6 compliance costs and the basis for any revisions of those estimates
7 when compared to the estimates submitted during the previous year.
- 8 (5) A description of all permits required in order to comply with the
9 provisions of G.S. 143-215.107D for which the investor-owned public
10 utility has applied and the status of those permits or permit
11 applications.
- 12 (6) A description of the construction related to compliance with the
13 provisions of G.S. 143-215.107D that is anticipated during the
14 following year.
- 15 (7) A description of the applications for permits required in order to
16 comply with the provisions of G.S. 143-215.107D that are anticipated
17 during the following year.
- 18 (8) The results of equipment testing related to compliance with G.S.
19 143-215.107D.
- 20 (9) The number of tons of oxides of nitrogen (NOx) and sulfur dioxide
21 (SO2) emitted during the previous calendar year from the coal-fired
22 generating units that are subject to the emissions limitations set out in
23 G.S. 143-215.107D.
- 24 (10) The emissions allowances described in G.S. 143-215.107D(i) that are
25 acquired by the investor-owned public utility that result from
26 compliance with the emissions limitations set out in G.S.
27 143-215.107D.
- 28 (11) Any other information requested by the Commission or the
29 Department of Environment and Natural Resources.
- 30 (j) The Secretary shall review the information submitted pursuant to subsection
31 (i) of this section and determine whether the investor-owned public utility's actual and
32 proposed modifications and permitting and construction schedule are adequate to
33 achieve the emissions limitations set out in G.S. 143-215.107D and shall advise the
34 Commission as to the Secretary's findings and recommendations.
- 35 (k) Any information, advice, findings, recommendations, or determinations
36 provided by the Secretary pursuant to this section shall not constitute a final agency
37 decision within the meaning of Chapter 150B of the General Statutes and shall not be
38 subject to review under that Chapter."

39 **SECTION 10.** It is the intent of the General Assembly that the State use all
40 available resources and means, including negotiation, participation in interstate
41 compacts and multistate and interagency agreements, petitions pursuant to 42 U.S.C. §
42 7426, and litigation to induce other states and entities, including the Tennessee Valley
43 Authority, to achieve reductions in emissions of oxides of nitrogen (NOx) and sulfur
44 dioxide (SO2) comparable to those required by G.S. 143-215.107D, as enacted by

1 Section 1 of this act, on a comparable schedule. The State shall give particular attention
2 to those states and other entities whose emissions negatively impact air quality in North
3 Carolina or whose failure to achieve comparable reductions would place the economy of
4 North Carolina at a competitive disadvantage.

5 **SECTION 11.** The Environmental Management Commission shall study the
6 desirability of requiring and the feasibility of obtaining reductions in emissions of
7 oxides of nitrogen (NOx) and sulfur dioxide (SO₂) beyond those required by G.S.
8 143-215.107D, as enacted by Section 1 of this act. The Environmental Management
9 Commission shall consider the availability of emissions reduction technologies,
10 increased cost to consumers of electric power, reliability of electric power supply,
11 actions to reduce emissions of oxides of nitrogen (NOx) and sulfur dioxide (SO₂) taken
12 by states and other entities whose emissions negatively impact air quality in North
13 Carolina or whose failure to achieve comparable reductions would place the economy of
14 North Carolina at a competitive disadvantage, and the effects that these reductions
15 would have on public health, the environment, and natural resources, including
16 visibility. In its conduct of this study, the Environmental Management Commission
17 may consult with the Utilities Commission and the Public Staff. The Environmental
18 Management Commission shall report its findings and recommendations to the General
19 Assembly and the Environmental Review Commission annually beginning 1 September
20 2005.

21 **SECTION 12.** The General Assembly anticipates that measures
22 implemented to achieve the reductions in emissions of oxides of nitrogen (NOx) and
23 sulfur dioxide (SO₂) required by G.S. 143-215.107D, as enacted by Section 1 of this
24 act, will also result in significant reductions in the emissions of mercury from coal-fired
25 generating units. The Division of Air Quality of the Department of Environment and
26 Natural Resources shall study issues related to monitoring emissions of mercury and the
27 development and implementation of standards and plans to implement programs to
28 control emissions of mercury from coal-fired generating units. The Division shall
29 evaluate available control technologies and shall estimate the benefits and costs of
30 alternative strategies to reduce emissions of mercury. The Division shall annually
31 report its interim findings and recommendations to the Environmental Management
32 Commission and the Environmental Review Commission beginning 1 September 2003.
33 The Division shall report its final findings and recommendations to the Environmental
34 Management Commission and the Environmental Review Commission no later than 1
35 September 2005. The costs of implementing any air quality standards and plans to
36 reduce the emission of mercury from coal-fired generating units below the standards in
37 effect on the date this act becomes effective, except to the extent that the emission of
38 mercury is reduced as a result of the reductions in the emissions of oxides of nitrogen
39 (NOx) and sulfur dioxide (SO₂) required to achieve the emissions limitations set out in
40 G.S. 143-215.107D, as enacted by Section 1 of this act, shall not be recoverable
41 pursuant to G.S. 62-133.6, as enacted by Section 9 of this act.

42 **SECTION 13.** The Division of Air Quality of the Department of
43 Environment and Natural Resources shall study issues related to the development and
44 implementation of standards and plans to implement programs to control emissions of

1 carbon dioxide (CO₂) from coal-fired generating units and other stationary sources of
2 air pollution. The Division shall evaluate available control technologies and shall
3 estimate the benefits and costs of alternative strategies to reduce emissions of carbon
4 dioxide (CO₂). The Division shall annually report its interim findings and
5 recommendations to the Environmental Management Commission and the
6 Environmental Review Commission beginning 1 September 2003. The Division shall
7 report its final findings and recommendations to the Environmental Management
8 Commission and the Environmental Review Commission no later than 1 September
9 2005. The costs of implementing any air quality standards and plans to reduce the
10 emission of carbon dioxide (CO₂) from coal-fired generating units below the standards
11 in effect on the date this act becomes effective, except to the extent that the emission of
12 carbon dioxide (CO₂) is reduced as a result of the reductions in the emissions of oxides
13 of nitrogen (NO_x) and sulfur dioxide (SO₂) required to achieve the emissions
14 limitations set out in G.S. 143-215.107D, as enacted by Section 1 of this act, shall not
15 be recoverable pursuant to G.S. 62-133.6, as enacted by Section 9 of this act.

16 **SECTION 14.** On or before 1 June of each year, the Department of
17 Environment and Natural Resources and the Utilities Commission shall report on the
18 implementation of this act to the Environmental Review Commission and the Joint
19 Legislative Utility Review Committee. The first report required by this section shall be
20 submitted no later than 1 June 2003.

21 **SECTION 15.** If any section or provision of this act is declared
22 unconstitutional or invalid by the courts, the unconstitutional or invalid section or
23 provision does not affect the validity of this act as a whole or any part of this act other
24 than the part declared to be unconstitutional or invalid.

25 **SECTION 16.** This act is effective when it becomes law except that G.S.
26 143-215.107D(i), as enacted by Section 1 of this act, is effective retroactively to 1 June
27 2002.