

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 341*

Short Title: Appalachian Mountains Preservation Act. (Public)

Sponsors: Senators Goss; Atwater, Bingham, and Kinnaird.

Referred to: Commerce.

March 2, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO PRESERVE THE APPALACHIAN MOUNTAINS BY PROHIBITING
3 ELECTRIC PUBLIC UTILITIES THAT OPERATE COAL-FIRED GENERATING
4 UNITS LOCATED IN NORTH CAROLINA FROM PURCHASING OR USING COAL
5 THAT IS EXTRACTED USING MOUNTAINTOP REMOVAL COAL MINING.

6 The General Assembly of North Carolina enacts:

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

9 "Article 5B.

10 "Appalachian Mountains Preservation Act.

11 "**§ 62-109. Short title.**

12 This Article shall be known as the Appalachian Mountains Preservation Act.

13 "**§ 62-109.1. Findings and purpose.**

14 (a) The General Assembly finds:

- 15 (1) North Carolina is home to the Appalachian Mountains, and the State's
16 citizens and wildlife share in common this critical economic, environmental,
17 and cultural resource with every state containing or bordering these ancient
18 mountains.
- 19 (2) From Maine to Alabama, these ancient mountains have shaped the economy,
20 environment, and unique cultural heritage of the areas located along the
21 Appalachian Mountains.
- 22 (3) Coal mining has played a central role in shaping the economy, environment,
23 and unique cultural heritage of the Appalachian coalfields.
- 24 (4) Coal mining, whether conducted on the earth's surface or underground, poses
25 significant risks to human health, local communities, the environment, real
26 property, personal property, and wildlife resources.
- 27 (5) By transforming the majestic mountains of the Appalachian coalfields into
28 flattened, eerily lifeless moonscapes, mountaintop removal coal mining, of
29 all the methods of extracting coal, poses the greatest risks to human health,
30 local communities, the environment, real property, personal property, and
31 wildlife resources.
- 32 (6) As of 2009, mountaintop removal coal mining has permanently erased more
33 than 470 peaks from the Appalachian skyline, buried or polluted more than
34 1,200 miles of pristine headwater streams, and swept away more than 800
35 square miles of one of America's most diverse and valuable ecosystems.



- 1 (7) Left unchecked, mountaintop removal coal mining will continue to
2 irreversibly destroy the people, communities, cultural heritage, and
3 environment of the Appalachian coalfields, as well as our wildlife resources.
4 (8) The impacts of mountaintop removal coal mining are unacceptable to the
5 citizens of this State.
6 (9) By consuming coal extracted by mountaintop removal coal mining to
7 provide power to our homes, businesses, and economy, North Carolina is
8 responsible, in part, for the permanent destruction to date of the Appalachian
9 coalfields and the wildlife resources of the Appalachian Mountains.
10 (10) Sixty-one percent (61%) of the electricity used to provide power to North
11 Carolina's homes, businesses, and economy is generated by coal-fired
12 generating units located in North Carolina.
13 (11) Fifty percent (50%) of the coal used to produce electricity in North Carolina
14 is extracted by mountaintop removal coal mining in the Appalachian
15 coalfields.
16 (12) Because North Carolina burns a significant amount of coal extracted by
17 mountaintop removal coal mining, we have an obligation to eliminate or
18 reduce the devastating social and environmental impacts of this mining in
19 the Appalachian Mountains.
20 (13) Fulfilling this obligation also will enhance the general welfare of North
21 Carolina's citizens, our wildlife resources, and our interest in preserving the
22 Appalachian Mountains for current and future generations.

23 (b) It is the purpose of this Article to promote the general welfare of North Carolina's
24 citizens, environment, and wildlife by prohibiting electric public utilities that operate coal-fired
25 generating units located in North Carolina from purchasing or using coal that is extracted by
26 mountaintop removal coal mining.

27 **"§ 62-109.2. Contracts to purchase or use coal extracted by mountaintop removal coal**
28 **mining prohibited.**

29 (a) No electric public utility that operates a coal-fired generating unit located in North
30 Carolina shall enter into any contract to purchase or use coal extracted by mountaintop removal
31 coal mining.

32 (b) The Commission may adopt rules to implement this Article.

33 (c) As used in this Article, the following definitions apply:

34 (1) Coal-fired generating unit. – Defined in G.S. 62-133.6.

35 (2) Mountaintop removal coal mining. – Any method of surface coal mining that
36 removes a mountaintop or ridgeline, whether or not the mined area will be
37 returned to its approximate original contour. "Mountaintop removal coal
38 mining" includes all of the following methods of surface coal mining:
39 cross-ridge mining, box-cut method mining, steep slope mining, area
40 mining, mountaintop mining, and any method of coal mining that utilizes
41 valley fills.

42 **"§ 62-109.3. Sworn statements of coal extraction methods used; report requirements.**

43 (a) Each electric public utility that operates a coal-fired generating unit located in North
44 Carolina shall ensure that the coal it agrees to purchase or use was not, nor will be, extracted
45 using mountaintop removal coal mining, by securing from its coal providers the sworn
46 statement of an authorized officer of the provider that contains all of the following information:

47 (1) The name and location of each mine from which the coal to be purchased
48 was, or will be, extracted.

49 (2) The mining methods utilized at each mine listed under subdivision (1) of this
50 subsection.

1 (3) A statement that the coal purchased was not, nor will be, extracted by
2 mountaintop removal coal mining.

3 (b) On the fifteenth day of each month, each electric public utility that operates a
4 coal-fired generating unit located in North Carolina shall file a report with the Commission that
5 itemizes the monthly and accumulated costs incurred by purchasing or using coal extracted by a
6 method other than mountaintop removal coal mining, using the most recent data available.

7 (c) As part of its annual reporting on cost of fuels and fuel-related costs, each electric
8 public utility that operates a coal-fired generating unit located in North Carolina shall submit to
9 the Commission copies of all of the following:

10 (1) Each sworn statement required under subsection (a) of this section.

11 (2) Each contract to purchase coal entered into during the reporting period.

12 (d) Each electric public utility that operates a coal-fired generating unit located in North
13 Carolina may file with the Commission an application to determine the rate that would include
14 all reasonable and prudent incremental fuel costs incurred by purchasing or using coal extracted
15 by a method other than mountaintop removal coal mining.

16 (e) The Commission shall, within 20 calendar days after receiving a written request,
17 provide a list of each public utility that operates a coal-fired generating unit located in North
18 Carolina, indicating whether each utility is in compliance with this section based upon the most
19 recent information available.

20 (f) If an electric public utility considers certain information required to be included in a
21 report under this section confidential and entitled to protection from public disclosure, the
22 utility may designate that information as confidential and file it with the Commission under
23 seal. Documents marked as confidential will be treated as required under applicable
24 Commission rules, procedures, and orders dealing with filings made under seal and with
25 nondisclosure agreements.

26 **"§ 62-109.4. Penalties.**

27 (a) Any electric public utility that is in violation of G.S. 62-109.2 shall be prohibited
28 from recovering the cost of fuel under G.S. 62-133.10 and all other fuel-related costs for the
29 coal obtained in violation of G.S. 62-109.2.

30 (b) If an electric public utility that operates a coal-fired generating unit located in North
31 Carolina fails to file the monthly or annual reports required under G.S. 62-109.3, the
32 Commission shall issue an order canceling or suspending the utility's certificate of convenience
33 and necessity 30 days after the date of service of the order. In the event the report is filed
34 during this 30-day period, the order of cancellation or suspension shall be void."

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

37 **"§ 62-133.10. Cost recovery for incremental cost of certain coal mining methods.**

38 The Commission shall, upon petition of an electric public utility, approve an annual rider to
39 the electric public utility's rates to recover all reasonable and prudent incremental costs incurred
40 by each investor-owned public utility that operates a coal-fired generating unit located in North
41 Carolina for purchasing or using coal extracted by a method other than the mountaintop
42 removal coal mining prohibited by rules adopted in accordance with G.S. 62-109.2."

43 **SECTION 3.** This act becomes effective January 1, 2010, and applies to contracts
44 to purchase coal entered into on or after that date.