

GENERAL ASSEMBLY OF NORTH CAROLINA
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HOUSE DRH10255-MH-137 (03/27)

Short Title: Omnibus Act Regarding Coal-Based Energy. (Public)

Sponsors: Representatives Harrison, Fisher, Luebke, and D. Hall (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO (1) PRESERVE THE APPALACHIAN MOUNTAINS BY PROHIBITING UNITS LOCATED IN NORTH CAROLINA FROM PURCHASING OR USING COAL THAT IS EXTRACTED USING MOUNTAINTOP REMOVAL COAL MINING; AND (2) PROVIDE ECONOMIC RELIEF TO ELECTRIC UTILITY RATEPAYERS DURING THIS PERIOD OF ECONOMIC RECOVERY BY PLACING A MORATORIUM ON THE CONSTRUCTION OF ANY NEW COAL-FIRED POWER PLANT UNLESS IT IS CARBON NEUTRAL.

The General Assembly of North Carolina enacts:

PART I. APPALACHIAN MOUNTAINS PRESERVATION

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

"Article 5B.

"Appalachian Mountains Preservation Act.

"§ 62-109.1. Short title.

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

"§ 62-109.2. Findings and purpose.

(a) The General Assembly finds:

- (1) North Carolina is home to the Appalachian Mountains, and the State's citizens and wildlife share in common this critical economic, environmental, and cultural resource with every state containing or bordering these ancient mountains.
- (2) From Maine to Alabama, these ancient mountains have shaped the economy, environment, and unique cultural heritage of the areas located along the Appalachian Mountains.
- (3) Coal mining has played a central role in shaping the economy, environment, and unique cultural heritage of the Appalachian coalfields.
- (4) Coal mining, whether conducted on the earth's surface or underground, poses significant risks to human health, local communities, the environment, real property, personal property, and wildlife resources.
- (5) By transforming the majestic mountains of the Appalachian coalfields into flattened, eerily lifeless moonscapes, mountaintop removal coal mining, of all the methods of extracting coal, poses the greatest risks to human health, local communities, the environment, real property, personal property, and wildlife resources.



- 1 (6) As of 2009, mountaintop removal coal mining has permanently erased more
2 than 470 peaks from the Appalachian skyline, buried or polluted more than
3 1,200 miles of pristine headwater streams, and swept away more than 800
4 square miles of one of America's most diverse and valuable ecosystems.
- 5 (7) Left unchecked, mountaintop removal coal mining will continue to
6 irreversibly destroy the people, communities, cultural heritage, and
7 environment of the Appalachian coalfields, as well as our wildlife resources.
- 8 (8) The impacts of mountaintop removal coal mining are unacceptable to the
9 citizens of this State.
- 10 (9) By consuming coal extracted by mountaintop removal coal mining to
11 provide power to our homes, businesses, and economy, North Carolina is
12 responsible, in part, for the permanent destruction to date of the Appalachian
13 coalfields and the wildlife resources of the Appalachian Mountains.
- 14 (10) Sixty-one percent (61%) of the electricity used to provide power to North
15 Carolina's homes, businesses, and economy is generated by coal-fired
16 generating units located in North Carolina.
- 17 (11) Fifty percent (50%) of the coal used to produce electricity in North Carolina
18 is extracted by mountaintop removal coal mining in the Appalachian
19 coalfields.
- 20 (12) Because North Carolina burns a significant amount of coal extracted by
21 mountaintop removal coal mining, we have an obligation to eliminate or
22 reduce the devastating social and environmental impacts of this mining in
23 the Appalachian Mountains.
- 24 (13) Fulfilling this obligation also will enhance the general welfare of North
25 Carolina's citizens, our wildlife resources, and our interest in preserving the
26 Appalachian Mountains for current and future generations.
- 27 (b) It is the purpose of this Article to promote the general welfare of North Carolina's
28 citizens, environment, and wildlife by prohibiting electric public utilities that operate coal-fired
29 generating units located in North Carolina from purchasing or using coal that is extracted by
30 mountaintop removal coal mining.

31 **"§ 62-109.3. Contracts to purchase or use coal extracted by mountaintop removal coal**
32 **mining prohibited.**

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

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

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

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

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

45 **"§ 62-109.4. Sworn statements of coal extraction methods used; report requirements.**

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

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

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

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

5 (b) On the 15th day of each month, each electric public utility that operates a coal-fired
6 generating unit located in North Carolina shall file a report with the Commission that itemizes
7 the monthly and accumulated costs incurred by purchasing or using coal extracted by a method
8 other than mountaintop removal coal mining, using the most recent data available.

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

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

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

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

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

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

28 **"§ 62-109.5. Penalties.**

29 (a) Any electric public utility that is in violation of G.S. 62-109.3 shall be prohibited
30 from recovering the cost of fuel under G.S. 62-133.10 and all other fuel-related costs for the
31 coal obtained in violation of G.S. 62-109.3.

32 (b) If an electric public utility that operates a coal-fired generating unit located in North
33 Carolina fails to file the monthly or annual reports required under G.S. 62-109.4, the
34 Commission shall issue an order canceling or suspending the utility's certificate of convenience
35 and necessity 30 days after the date of service of the order. In the event the report is filed
36 during this 30-day period, the order of cancellation or suspension shall be void."

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

39 **"§ 62-133.10. Cost recovery for incremental cost of certain coal mining methods.**

40 The Commission shall, upon petition of an electric public utility, approve an annual rider to
41 the electric public utility's rates to recover all reasonable and prudent incremental costs incurred
42 by each investor-owned public utility that operates a coal-fired generating unit located in North
43 Carolina for purchasing or using coal extracted by a method other than the mountaintop
44 removal coal mining prohibited by rules adopted in accordance with G.S. 62-109.3."

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46 **PART II. COAL-FIRED POWER PLANT MORATORIUM**

47 **SECTION 3.** Short Title. – Sections 3 through 10 of this act shall be known as The
48 Electric Utility Ratepayers Relief Act.

49 **SECTION 4.** Findings. – The General Assembly makes the following findings:

- 1 (1) North Carolina's recovery from the economic recession of 2007-2009 has
2 been slow and uneven, with job and wage growth numbers significantly
3 below past recoveries.
- 4 (2) Plummeting property values, increased prices for goods and services, and the
5 continuing displacement of high-wage manufacturing jobs by low-wage
6 service and retail jobs threaten the economic well-being of North Carolina's
7 citizens.
- 8 (3) Costs of constructing a new facility for the generation of electricity have
9 continued to rise during the global economic recession and the present
10 economic recovery period.
- 11 (4) Full recovery from the global recession of 2007-2009 continues and will
12 take many years.
- 13 (5) A certificate for the construction of a coal-fired unit for the generation of
14 electricity may be granted by the Utilities Commission only if the
15 Commission finds (i) that the construction and operation of the facility is in
16 the public interest and (ii) that energy efficiency measures, demand-side
17 management, renewable energy resource generation, combined heat and
18 power generation, or any combination thereof, would not establish or
19 maintain a more cost-effective and reliable generation system.
- 20 (6) Once a certificate is issued by the North Carolina Utilities Commission,
21 construction of a facility for the generation of electricity may be cancelled
22 upon a finding that the construction is no longer in the public interest.
- 23 (7) During the recession and the ensuing economic recovery period, it would not
24 be reasonable and prudent to authorize the construction of a coal-fired
25 generating unit to begin nor to continue since the costs of that construction
26 will be passed on to the already economically distressed ratepayers.
- 27 (8) An additional benefit of prohibiting the construction of a coal-fired
28 generating unit to begin or to continue is that it would provide sufficient
29 time to determine whether consumers prefer during a recession and the
30 ensuing economic recovery to use energy efficiency measures, demand-side
31 management, renewable energy resource generation, combined heat and
32 power generation, or any combination thereof, to provide a more
33 cost-effective and reliable generation system.
- 34 (9) An additional benefit of prohibiting the construction of a coal-fired
35 generating unit to begin or to continue is that it would provide sufficient
36 time to determine whether activity at the federal level will result in
37 increasing the projections of costs of producing electricity from coal-fired
38 generating units, including impacts from the federal stimulus funds to
39 promote green energy technologies and federal efforts to adopt a cap and
40 trade program that could result in dramatically increasing the costs of
41 producing electricity generated from coal-fired generating units.
- 42 (10) An additional benefit of prohibiting the construction of a coal-fired
43 generating unit to begin or to continue is that it would provide sufficient
44 time to assess the latest scientific findings regarding the rate at which
45 climate change is occurring due to greenhouse gas emissions and to assess
46 the estimated economic impacts of climate change mitigation measures in
47 North Carolina.
- 48 (11) The public is becoming increasingly aware of the benefits of energy
49 conservation and becoming increasingly aware of the long-term impacts of
50 global warming.

1 (12) For a certificate that was issued before this recession, that construction of a
2 new coal-fired generating unit is no longer in the public interest.

3 **SECTION 5.** Purpose. – It is the purpose of Sections 3 through 10 of this act to
4 promote economic relief to electric public utility ratepayers by temporarily prohibiting, unless
5 the coal-fired generating unit is carbon neutral, the issuance of any new certificate authorizing
6 the construction of a coal-fired generating unit by the North Carolina Utilities Commission and
7 requiring the suspension, unless the coal-fired generating unit is carbon neutral, of any
8 certificate issued prior to July 1, 2013, for any such generating unit that has not commenced
9 operation by July 1, 2013.

10 **SECTION 6.** Definitions. – As used in Sections 3 through 10 of this act, the
11 following definitions apply:

12 (1) Carbon neutral. – The state of emitting no carbon dioxide into the
13 atmosphere. Carbon neutral includes employing a technique to absorb
14 carbon dioxide so it is not emitted into the atmosphere.

15 (2) Certificate. – Defined in G.S. 62-3.

16 (3) Coal-fired generating unit. – Defined in G.S. 62-133.6.

17 (4) Public utility. – Defined in G.S. 62-3.

18 **SECTION 7.** Moratorium. – No certificate shall be issued to operate a coal-fired
19 generating unit pursuant to any application filed with the North Carolina Utilities Commission
20 on or after July 1, 2015. This section does not apply if the coal-fired generating unit is carbon
21 neutral.

22 **SECTION 8.** Temporary Suspension. – Any certificate issued pursuant to an
23 application filed with the North Carolina Utilities Commission prior to July 1, 2015, to
24 construct any coal-fired generating unit that has not commenced electrical generating
25 operations as of July 1, 2015, shall be suspended by the North Carolina Utilities Commission,
26 and this suspension shall remain in effect until July 1, 2020. This section does not apply if the
27 coal-fired generating unit is carbon neutral.

28 **SECTION 9.** Costs Recovery. – Nothing in this act prohibits an electric public
29 utility from recovering, pursuant to Article 7 of Chapter 62 of the General Statutes, the costs
30 associated with construction work that is in progress.

31 **SECTION 10.** Penalties. – Any electric public utility that has obtained a certificate
32 to construct a coal-fired generating unit issued pursuant to an application filed with the North
33 Carolina Utilities Commission prior to July 1, 2015, that commences or continues construction
34 in violation of this act, shall be prohibited from applying to recover, pursuant to Article 7 of
35 Chapter 62 of the General Statutes, any such construction costs as a fixed rate, and any
36 temporary suspension under Section 8 of this act shall be made permanent. This section does
37 not apply if the coal-fired generating unit is carbon neutral.

38 **PART III. EFFECTIVE DATE**

39 **SECTION 11.** Effective Dates. – Sections 1 and 2 of this act become effective
40 January 1, 2016, and apply to contracts to purchase coal entered into on or after that date. The
41 remaining sections of this act are effective when this act becomes law.
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