

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2015

H.B. 808  
Apr 14, 2015  
HOUSE PRINCIPAL CLERK

H

D

HOUSE DRH40362-MH-144 (03/28)

Short Title: Rural Consumer Protection Act. (Public)

Sponsors: Representatives Avila, Saine, and Hager (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO PROTECT RURAL CONSUMERS OF ELECTRICITY BY EXTENDING  
3 CERTAIN PROVISIONS OF THE PUBLIC UTILITIES ACT TO ELECTRIC  
4 MEMBERSHIP CORPORATIONS AND BY PROVIDING ADDITIONAL  
5 TRANSPARENCY TO THE OPERATION AND GOVERNANCE OF ELECTRIC  
6 MEMBERSHIP CORPORATIONS.

7 The General Assembly of North Carolina enacts:

8 **SECTION 1.** G.S. 62-3(23)d. reads as rewritten:

9 "d. The term "public utility," except as otherwise expressly provided in  
10 this Chapter, shall not include a municipality, an authority organized  
11 under the North Carolina Water and Sewer Authorities Act, ~~electric~~  
12 ~~or~~ telephone membership corporation; or any person not otherwise a  
13 public utility who furnishes such service or commodity only to  
14 himself, his employees or tenants when such service or commodity is  
15 not resold to or used by others; provided, however, that any person  
16 other than a nonprofit organization serving only its members, who  
17 distributes or provides utility service to his employees or tenants by  
18 individual meters or by other coin-operated devices with a charge for  
19 metered or coin-operated utility service shall be a public utility  
20 within the definition and meaning of this Chapter with respect to the  
21 regulation of rates and provisions of service rendered through such  
22 meter or coin-operated device imposing such separate metered utility  
23 charge. If any person conducting a public utility shall also conduct  
24 any enterprise not a public utility, such enterprise is not subject to the  
25 provisions of this Chapter. A water or sewer system owned by a  
26 homeowners' association that provides water or sewer service only to  
27 members or leaseholds of members is not subject to the provisions of  
28 this Chapter."

29 **SECTION 2.** Chapter 62 of the General Statutes is amended by adding a new  
30 Article to read:

31 "Article 7A.

32 "Electric Membership Corporations.

33 **"§ 62-159.10. Definition.**

34 For purposes of this Article, the term "electric membership corporation" means a nonprofit  
35 electric corporation organized under Chapter 117 of the General Statutes.

36 **"§ 62-159.15. Exemption from rate regulation.**



1        The provisions of G.S. 62-130, 62-131, 62-132, and 62-133 shall not apply to electric  
2 membership corporations that have, by an affirmative vote of the members and consumers  
3 pursuant to section G.S. 62-159.20, voted to exempt themselves from such provisions and to be  
4 subject to the provisions of this Article.

5 **"§ 62-159.20. Procedure for exemption.**

6        (a) An electric membership corporation shall comply with the following procedures in  
7 conducting a membership vote on exemption under G.S. 62-159.15:

8            (1) The board of directors of each electric membership corporation may, at its  
9 option, submit the question of its exemption from rate regulation under this  
10 Chapter to its members and its consumers. Approval by a majority of those  
11 voting in the election shall be required for such exemption.

12            (2) The board of directors of the electric membership corporation shall be  
13 responsible for mailing the ballots to all members and consumers of the  
14 corporation, for counting the returned ballots, and for determining the result  
15 of the election and shall also be responsible for insuring that the election is  
16 not held in a dishonest, corrupt, or fraudulent manner. The ballot shall  
17 contain language substantially similar to the following:

18 "Shall (name of the electric membership corporation) be exempt from  
19 regulation by the North Carolina Utilities Commission?

20 ( ) Yes ( ) No"

21            (3) The ballot must be postmarked or returned in an envelope accompanying the  
22 ballot with return postage paid within 30 days after it was mailed to the  
23 member or consumer.

24            (4) The results of the election held pursuant to this section shall be certified by  
25 the secretary of the board of directors of the electric cooperative no later  
26 than 60 days after the ballots are mailed to the members and consumers, and  
27 said secretary shall file the results with the Commission.

28        (b) Upon an affirmative vote of the members and consumers of the electric membership  
29 corporation on the question of exemption, the corporation shall be exempt under  
30 G.S. 62-159.15 beginning on the date the election results are filed with the Commission.

31 **"§ 62-159.25. Certificate of public convenience and necessity.**

32        (a) A certificate of public convenience and necessity shall be issued by the Commission  
33 for each electric membership corporation in accordance with G.S. 62-110.2.

34        (b) Upon complaint filed by any member or customer of an electric membership  
35 corporation or by any affected public utility, the Commission shall determine whether the rate,  
36 charge, rule, or regulation in question is contrary to this Article or Chapter 117 of the General  
37 Statutes.

38        (c) Whenever the Commission, after a hearing upon complaint, finds that an electric  
39 membership corporation is unwilling or unable to serve an existing or newly developing load  
40 within its certificated territory and that the public convenience and necessity requires a change,  
41 the Commission may, in its discretion, delete from the certificate of the electric cooperative that  
42 portion of said territory which the public utility is unwilling or unable to serve and incorporate  
43 the territory into the certificated territory of another electric public utility, including another  
44 electric membership corporation, upon such terms as are just and reasonable, having due regard  
45 to due process of law and to all the rights of the respective parties and to public convenience  
46 and necessity.

47        (d) The enactment of this Article shall neither enlarge nor diminish the rights and  
48 obligations of electric public utilities, other than electric membership corporations, under  
49 certificates of public convenience and necessity issued by the Commission. Nothing in this  
50 Article shall enlarge or diminish the respective rights and obligations of electric public utilities,

1 including electric membership corporations, or municipalities under franchise or other  
2 contractual agreements.

3 **"§ 62-159.30. Prohibited acts.**

4 (a) No electric membership corporation shall make a change in any rate charged for  
5 electric service or in any rule pertaining to rates unless the corporation provides public notice  
6 of such proposed change at least 30 days prior to the day the proposed change is to take effect.

7 (b) No electric membership corporation, as to rates, charges, service, or facilities or as  
8 to any other matter, shall make or grant any preference or advantage to any corporation or  
9 person or subject any corporation or person to any prejudice or disadvantage. No electric  
10 membership corporation shall establish or maintain any unreasonable difference as to rates,  
11 charges, service, or facilities or as to any other matter, either between localities or between any  
12 class of service. Any complaint alleging a violation of this subsection and signed by one or  
13 more customers of the corporation shall be resolved by the Commission in accordance with the  
14 hearing and enforcement procedures of this Chapter.

15 (c) No rates, charges, rules, or regulations of an electric membership corporation shall  
16 be unjust or unreasonable. Any complaint alleging a violation of this subsection shall be  
17 resolved by the Commission in accordance with the hearing and enforcement procedures  
18 established in this Chapter if the complaint is signed by (i) the mayor or a majority of the  
19 council, commission, or other legislative body of an affected county or city, (ii) the president or  
20 chairman of the board of trustees of an affected public utility, or any one or more affected  
21 entities constituting a separate rate class of the electric cooperative, or (iii) not less than 25  
22 customers or prospective customers of the electric membership corporation.

23 **"§ 62-159.35. Duties of electric membership corporations.**

24 (a) Electric membership corporations shall provide reasonably continuous and adequate  
25 electric utility service to all members and consumers within their certificated service areas.

26 (b) Electric membership corporations shall provide and maintain reasonably adequate  
27 facilities for the provision of electric utility service within their certificated service areas.

28 (c) All electric membership corporations shall cooperate with each other and with other  
29 electric utilities in avoiding unnecessary construction of facilities and cooperate in the joint use  
30 of facilities for generation, transmission, and distribution of electric energy.

31 (d) Electric membership corporations shall construct and maintain their facilities in a  
32 careful and safe fashion so as to minimize hazards to either persons or property.

33 (e) Electric membership corporations shall continue to file with the Commission those  
34 items required by this Chapter, including as required by G.S. 62-138(f).

35 (f) If an electric membership corporation has an immediate shutoff policy, the  
36 corporation shall enact provisions for an immediate appeal of such policy to the board of  
37 directors.

38 (g) The board of directors of an electric membership corporation shall adopt any rules  
39 necessary to comply with the provisions of this Article.

40 **"§ 62-159.40. Method of reimposing commission rate regulation.**

41 Any electric membership corporation may vote no more than once a year to place the rates  
42 charged by said corporation under the regulation of the Commission, as provided in this  
43 Chapter. The question shall only be submitted to the member-consumers of the corporation if at  
44 least five percent (5%) of the member-consumers of the corporation sign a petition requesting  
45 such an election and if such signatures are gathered within a six-month period immediately  
46 preceding the submission of the petition to the corporation's board of directors. No petition  
47 circulated pursuant to this section shall be valid unless the petition sponsor notifies the board in  
48 writing prior to circulation for signatures. Such petition shall be submitted to, and signatures  
49 certified by, the board at a regular scheduled meeting. Such certification shall include a  
50 determination as to whether the signatures on the petition were gathered within a six-month  
51 period immediately preceding the submission of the petition to the board. After the petition has

1 been certified by the board, the Commission shall conduct an election within 45 days on the  
2 question. If a majority of the persons voting at the election vote in favor of placing the  
3 corporation under Commission regulation, the Commission shall reassert its regulation upon  
4 determination of the election results."

5 **SECTION 3.** G.S. 117-10.1 reads as rewritten:

6 **"§ 117-10.1. Municipal franchises.**

7 An electric membership corporation shall be eligible to receive a franchise pursuant to  
8 G.S. 160-2(6)G.S. 160A-319 from any city or town:

9 "...."

10 **SECTION 4.** Article 2 of Chapter 117 of the General Statutes is amended by  
11 adding a new section to read:

12 **"§ 117-13.1. Public meetings.**

13 (a) All meetings of an electric membership corporation are declared to be open  
14 meetings and open to the members, consumers, and news media at all times; but such  
15 corporation, by a two-thirds affirmative vote of the board members present, may go into  
16 executive session for consideration of documents or testimony given in confidence, provided  
17 that the board shall not make final policy decisions or adopt or approve any resolution, rule,  
18 regulation, or formal action, any contract, or any action calling for the payment of money at  
19 any session which is closed to the members, consumers, and news media. Before the board of  
20 directors convenes in executive session, the board shall announce the general topic of the  
21 executive session.

22 (b) The following requirements apply to public meetings of an electric membership  
23 corporation:

24 (1) At every regular meeting of the board of directors, members of the  
25 corporation shall be given an opportunity to address the board on any matter  
26 concerning the policies and business of the corporation. The board may  
27 place reasonable, viewpoint-neutral restrictions on the amount and duration  
28 of public comment.

29 (2) Written minutes shall be made of all meetings of the board of directors. The  
30 minutes shall be posted on the Web site of the corporation as soon as they  
31 have been approved and shall remain posted until at least six months after  
32 the date of the meeting. Upon request by a member of the board, that  
33 member's own vote on any issue shall be noted in the minutes.

34 (c) Any action taken contrary to the provisions of this section shall be void.

35 **"§ 117-13.2. Consumer complaints.**

36 The board of directors of each electric membership corporation shall adopt regulations  
37 which specify a procedure for members and consumers to register complaints about and be  
38 given an opportunity to be heard by the board on the rates charged by the corporation, the  
39 manner in which the electric service is provided, and proposed changes in the rates or  
40 regulations. Such regulations may be amended whenever deemed appropriate by the board.

41 **"§ 117-13.3. Election policy and procedure.**

42 (a) The board of directors of each electric membership corporation shall adopt a written  
43 policy governing the election of directors. The election policy shall be posted on the  
44 corporation's Web site. The election policy shall contain true and complete information on the  
45 following subjects:

46 (1) The procedure and timing for a member to become a candidate for the board  
47 of directors and the process by which elections for the board of directors are  
48 held.

49 (2) The qualifications for candidates and requirements for appearing on the  
50 ballot.

1           (3)    The date of the election, which shall be fixed, posted on the corporation's  
2                Web site, and otherwise publicized no less than six months before the  
3                election.

4           (b)    In addition to the posting required in subsection (a) of this section, information on  
5                how to become a candidate and the schedule for elections shall be communicated to each  
6                member in a written or electronic mailing and on the corporation's Web site no less than two  
7                months before petitions to become a candidate are due.

8           (c)    The ballot mailing deadline shall be posted on the Web site at least three months  
9                before the deadline and shall remain posted until after the election.

10    **"§ 117-13.4. Nomination and elections.**

11           (a)    Nomination. – The following requirements apply to nominations to the board of  
12                directors of electric membership corporations:

13                (1)    A nomination for director on the board of directors of an electric  
14                    membership corporation may be made by written petition signed by at least  
15                    15 members of the corporation, and filed with the board of directors of such  
16                    corporation no later than 45 days prior to the date of the election. Any  
17                    petition so filed shall designate the name of the nominee and the term for  
18                    which nominated. The name of a nominee shall appear on the ballot if the  
19                    nominating petition is in apparent conformity with this section as determined  
20                    by the secretary of the board. Nomination and election of directors by  
21                    districts, if provided for in the bylaws of the corporation, shall be permitted.

22                (2)    Candidates for positions on the board of directors shall be entitled to receive  
23                    membership lists, in a usable format, on the same basis and at the same time  
24                    as such lists are made available to incumbent directors running for  
25                    reelection. Candidates shall use such lists only for purposes of the election  
26                    and shall return or destroy them immediately after the election.

27                (3)    All board members shall make available to corporation members some  
28                    means for direct contact, whether by telephone, electronic mail, or regular  
29                    mail. Information on how to contact each board member by one or more of  
30                    these methods shall be available on the corporation Web site.

31           (b)    Elections. – The following requirements apply to elections for the board of directors  
32                of electric membership corporations:

33                (1)    Each member of the corporation shall be entitled to vote in the election of  
34                    directors on the board of directors either at a meeting held for such purpose  
35                    or by mail, but not both. A member who has voted by mail shall not be  
36                    entitled to vote at the meeting. Mail voting shall be in writing on ballots  
37                    provided by the corporation. The mail ballot shall be voted by the member,  
38                    placed in a special envelope provided for the purpose so as to conceal the  
39                    marking on the ballot, deposited in a return envelope which must be signed  
40                    by the voting member, and mailed back to the corporation.

41                (2)    The order of names on the ballot shall be determined randomly in a manner  
42                    that does not automatically assign the top line to the incumbent.

43                (3)    The board of directors shall, when practicable, arrange for an independent  
44                    third party to oversee the storage and counting of ballots. If this is not  
45                    practicable, then ballots shall be collected and stored in a manner that  
46                    protects the privacy of their content. All candidates for the board of directors  
47                    shall be given the opportunity to be present to observe their tabulation.

48                (4)    Voting for directors on the board of directors by proxy or cumulative voting  
49                    is prohibited.

50           (c)    Prohibition on advocacy. – Neither the corporation nor the board of directors shall  
51                endorse or oppose the candidacy of an incumbent board member or other candidate for a

1 position on the board. During the two months immediately preceding the election, board  
2 members shall not send individual newsletters using the corporation's resources.

3 **"§ 117-13.5. Notice and agenda.**

4 (a) Notice of the time and place of a meeting of the board of directors and a copy of the  
5 agenda for such meeting shall be posted in every service office maintained by the corporation  
6 at least 10 days before the meeting. The agenda shall specifically designate the issues or  
7 questions to be discussed, or the actions to be taken, at the meeting. Copies of the agenda shall  
8 be available at each service office for members and consumers.

9 (b) The date, time, location, and agenda of every meeting of the board of directors shall  
10 be posted on the corporation's Web site no less than 10 days before the meeting in the case of  
11 regular meetings and as soon as the meeting is scheduled in the case of special meetings. If a  
12 meeting is postponed or cancelled, notice of the postponement or cancellation shall be posted  
13 immediately on the Web site."

14 **SECTION 5.** This act becomes effective August 1, 2015.