

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2015

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HOUSE BILL 808

Short Title: Rural Consumer Protection Act. (Public)

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

*For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*

Referred to: Public Utilities, if favorable, Regulatory Reform, if favorable, Commerce and Job Development.

April 15, 2015

A BILL TO BE ENTITLED

AN ACT TO PROTECT RURAL CONSUMERS OF ELECTRICITY BY EXTENDING CERTAIN PROVISIONS OF THE PUBLIC UTILITIES ACT TO ELECTRIC MEMBERSHIP CORPORATIONS AND BY PROVIDING ADDITIONAL TRANSPARENCY TO THE OPERATION AND GOVERNANCE OF ELECTRIC MEMBERSHIP CORPORATIONS.

The General Assembly of North Carolina enacts:

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

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

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

"Article 7A.

"Electric Membership Corporations.

**§ 62-159.10. Definition.**



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

3 **"§ 62-159.15. Exemption from rate regulation.**

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

8 **"§ 62-159.20. Procedure for exemption.**

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

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

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

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

23 ( ) Yes ( ) No"

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

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

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

34 **"§ 62-159.25. Certificate of public convenience and necessity.**

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

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

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

50 (d) The enactment of this Article shall neither enlarge nor diminish the rights and  
51 obligations of electric public utilities, other than electric membership corporations, under

1 certificates of public convenience and necessity issued by the Commission. Nothing in this  
2 Article shall enlarge or diminish the respective rights and obligations of electric public utilities,  
3 including electric membership corporations, or municipalities under franchise or other  
4 contractual agreements.

5 **"§ 62-159.30. Prohibited acts.**

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

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

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

25 **"§ 62-159.35. Duties of electric membership corporations.**

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

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

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

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

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

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

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

42 **"§ 62-159.40. Method of reimposing commission rate regulation.**

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

1 determination as to whether the signatures on the petition were gathered within a six-month  
2 period immediately preceding the submission of the petition to the board. After the petition has  
3 been certified by the board, the Commission shall conduct an election within 45 days on the  
4 question. If a majority of the persons voting at the election vote in favor of placing the  
5 corporation under Commission regulation, the Commission shall reassert its regulation upon  
6 determination of the election results."

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

8 **"§ 117-10.1. Municipal franchises.**

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

11 ...."

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

14 **"§ 117-13.1. Public meetings.**

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

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

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

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

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

37 **"§ 117-13.2. Consumer complaints.**

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

43 **"§ 117-13.3. Election policy and procedure.**

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

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

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

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

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

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

12          **§ 117-13.4. Nomination and elections.**

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

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

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

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

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

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

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

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

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

1       (c)     Prohibition on advocacy. – Neither the corporation nor the board of directors shall  
2 endorse or oppose the candidacy of an incumbent board member or other candidate for a  
3 position on the board. During the two months immediately preceding the election, board  
4 members shall not send individual newsletters using the corporation's resources.

5 **"§ 117-13.5. Notice and agenda.**

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

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

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