

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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HOUSE BILL 721

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

Sponsors: Representatives Harrison, Fisher, Autry, and Ager (Primary Sponsors).
For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Rules, Calendar, and Operations of the House

April 11, 2017

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; (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; AND (3) PROVIDE FOR DIVESTMENT OF STATE INVESTMENTS IN COAL-FIRED ENERGY.

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,



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

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

33 **"§ 62-109.3. Contracts to purchase or use coal extracted by mountaintop removal coal**
34 **mining prohibited.**

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

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

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

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

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

47 **"§ 62-109.4. Sworn statements of coal extraction methods used; report requirements.**

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

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

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

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

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

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

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

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

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

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

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

30 "**§ 62-109.5. Penalties.**

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

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

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

41 "**§ 62-133.15. Cost recovery for incremental cost of certain coal mining methods.**

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

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

51 **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.

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

SECTION 5. Purpose. – It is the purpose of Sections 3 through 10 of this act to promote economic relief to electric public utility ratepayers by temporarily prohibiting, unless the coal-fired generating unit is carbon neutral, the issuance of any new certificate authorizing the construction of a coal-fired generating unit by the North Carolina Utilities Commission and requiring the suspension, unless the coal-fired generating unit is carbon neutral, of any certificate issued prior to July 1, 2017, for any such generating unit that has not commenced operation by July 1, 2017.

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

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

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

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

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

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

SECTION 8. Temporary Suspension. – Any certificate issued pursuant to an application filed with the North Carolina Utilities Commission prior to July 1, 2017, to construct any coal-fired generating unit that has not commenced electrical generating operations as of July 1, 2017, shall be suspended by the North Carolina Utilities Commission, and this suspension shall remain in effect until July 1, 2022. This section does not apply if the coal-fired generating unit is carbon neutral.

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

SECTION 10. Penalties. – Any electric public utility that has obtained a certificate to construct a coal-fired generating unit issued pursuant to an application filed with the North Carolina Utilities Commission prior to July 1, 2017, that commences or continues construction in violation of this act shall be prohibited from applying to recover, pursuant to Article 7 of Chapter 62 of the General Statutes, any such construction costs as a fixed rate, and any temporary suspension under Section 8 of this act shall be made permanent. This section does not apply if the coal-fired generating unit is carbon neutral.

PART III. DIVESTMENT OF STATE INVESTMENTS IN COAL ENERGY

SECTION 11. Chapter 143C of the General Statutes is amended by adding a new Article to read:

"Article 6A.

"Coal Divestment Act.

"§ 143C-6A-1. Definitions.

As used in this Article:

(1) "Coal sector" means activities to mine, process, transport, or combust or otherwise use coal for the production of electricity.

(2) "Investment" means a commitment or contribution of funds or property, whatever the source, a loan or other extension of credit, and the entry into or renewal of a contract for goods or services. It does not include indirect

1 beneficial ownership through index funds, commingled funds, limited
2 partnerships, derivative instruments, or the like.

3 (3) "Investment activities in coal" means a person engages in investment
4 activities in coal if:

5 a. The person provides goods or services of twenty million dollars
6 (\$20,000,000) or more within any 12-month period in the coal sector.

7 b. The person is a financial institution that extends twenty million
8 dollars (\$20,000,000) or more in credit to another person for 45 days
9 or more if (i) the financial institution knows, or reasonably should
10 know, that person will use the credit to provide goods or services in
11 the coal sector and (ii) the person receiving credit is identified on a
12 list created pursuant to G.S. 143C-6A-2 as a person engaging in
13 investment activities in coal as described in this section.

14 (4) "Person" means any of the following:

15 a. A natural person, corporation, company, limited liability company,
16 business association, partnership, society, trust, or any other
17 nongovernmental entity, organization, or group.

18 b. Any successor, parent entity owning more than twenty percent
19 (20%), or majority-owned subunit or subsidiary of any entity
20 described in sub-subdivision a. of this subdivision.

21 (5) "State agency" means any board, commission, department, executive
22 department, officer, institution, and any political subdivision of the State.

23 **"§ 143C-6A-2. Prohibitions on State investment.**

24 No more than 30 days after the effective date of this Article, the State Treasurer shall adopt
25 a policy prohibiting the North Carolina Retirement Systems or the Department of the State
26 Treasurer from investing funds with a person engaging in investment activities in coal. At a
27 minimum, the policy shall provide:

28 (1) List of persons engaged in investment. – Within 120 days of adoption of the
29 policy, the State Treasurer shall develop and make publicly available, using
30 federal sanctions lists and any other credible information available to the
31 public, a list of persons it determines engage in investment activities in coal.
32 The State Treasurer shall make every effort to avoid erroneously including a
33 person on the list. The State Treasurer shall update the list every 180 days.
34 Before finalizing an initial list or an updated list, the State Treasurer must do
35 all of the following before a person is included on the list:

36 a. Provide 90 days' written notice of the State Treasurer's intent to
37 include the person on the list. The notice shall inform the person that
38 inclusion on the list would make the person ineligible for State
39 investment and may affect the person's ability to conduct other
40 business with the State and its subdivisions. The notice shall specify
41 that the person, if it ceases its engagement in investment activities in
42 coal, may be removed from the list.

43 b. The State Treasurer shall provide a person with an opportunity to
44 comment in writing that it is not engaged in investment activities in
45 coal. If the person demonstrates to the State Treasurer that the person
46 is not engaged in investment activities in coal, the person shall not be
47 included on the list.

48 (2) Investments prohibited. – Neither the North Carolina Retirement Systems
49 nor the State Treasurer may invest funds with a person that is identified on a
50 list created pursuant to subdivision (1) of this section as a person engaging in
51 investment activities in coal.

- 1 (3) Existing investments. – Any existing investment with a person that is
2 identified on a list created pursuant to subdivision (1) of this section as a
3 person engaging in investment activities in coal must be divested within 180
4 days of the adoption of the policy.
- 5 (4) Fiduciary duties. – Nothing in the policy or in this Article shall require the
6 North Carolina Retirement Systems or the State Treasurer to take action
7 unless it is determined by the State Treasurer, in good faith, that the action is
8 consistent with the fiduciary responsibilities of the Retirement Systems and
9 the State Treasurer.
- 10 (5) Exception. – Notwithstanding the policy, an investment may be made in a
11 person engaged in investment activities in coal if the State Treasurer makes a
12 good-faith determination, on a case-by-case basis, that the investments are
13 necessary to perform its functions."

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15 **PART IV. EFFECTIVE DATE**

16 **SECTION 12.** Effective Dates. – Sections 1 and 2 of this act become effective
17 January 1, 2018, and apply to contracts to purchase coal entered into on or after that date. The
18 remaining sections of this act are effective when this act becomes law.