

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023**

**SESSION LAW 2023-138
SENATE BILL 678**

AN ACT TO (I) DEFINE "CLEAN ENERGY," WHICH INCLUDES "RENEWABLE ENERGY" AND NUCLEAR AND FUSION ENERGY; (II) ELIMINATE LANGUAGE IMPEDING CPCN ISSUANCE FOR NUCLEAR FACILITIES; (III) MODIFY CLOSURE DEADLINES FOR CERTAIN COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS; (IV) MODIFY APPLICATIONS FEES FOR DAM CONSTRUCTION, REPAIR, ALTERATION, OR REMOVAL UNDER THE DAM SAFETY ACT; (V) REQUIRE APPROVAL BY THE LOCAL GOVERNMENT COMMISSION FOR LOCAL GOVERNMENTS TO ENTER INTO AGREEMENTS TO CEDE OR TRANSFER CONTROL OVER A PUBLIC ENTERPRISE TO A NONGOVERNMENTAL ENTITY; (VI) PROHIBIT LOCAL GOVERNMENTS FROM ENTERING NONDISCLOSURE AGREEMENTS IN ORDER TO RESTRICT ACCESS TO PUBLIC RECORDS SUBJECT TO DISCLOSURE UNDER THE PUBLIC RECORDS ACT; AND (VII) ESTABLISH EMPLOYEE CLASSIFICATION AND COMPENSATION EXEMPTIONS FOR THE UTILITIES COMMISSION AND PUBLIC STAFF.

The General Assembly of North Carolina enacts:

PART I. PROMOTE CLEAN ENERGY

SECTION 1.(a) G.S. 62-133.8 reads as rewritten:

"§ 62-133.8. **Renewable—Clean Energy and Energy Efficiency Portfolio Standard** ~~(REPS)~~, ~~(CEPS)~~."

(a) Definitions. – As used in this section:

- (1) "Clean energy facility" means a renewable energy facility, a nuclear energy facility, including an uprate to a nuclear energy facility, or a fusion energy facility.
- (1a) "Clean energy resource" means renewable energy resources, nuclear energy resources, including an uprate to a nuclear energy facility, and fusion energy.
- (1b) "Combined heat and power system" means a system that uses waste heat to produce electricity or useful, measurable thermal or mechanical energy at a retail electric customer's facility.
- (2) "Demand-side management" means activities, programs, or initiatives undertaken by an electric power supplier or its customers to shift the timing of electricity use from peak to nonpeak demand periods. "Demand-side management" includes, but is not limited to, load management, electric system equipment and operating controls, direct load control, and interruptible load.
- (3) "Electric power supplier" means a public utility, an electric membership corporation, or a municipality that sells electric power to retail electric power customers in the State.
- (3a) "Electricity demand reduction" means a measurable reduction in the electricity demand of a retail electric customer that is voluntary, under the real-time control of both the electric power supplier and the retail electric



customer, and measured in real time, using two-way communications devices that communicate on the basis of standards.

- (4) "Energy efficiency measure" means an equipment, physical, or program change implemented after January 1, 2007, that results in less energy used to perform the same function. "Energy efficiency measure" includes, but is not limited to, energy produced from a combined heat and power system that uses ~~nonrenewable~~ non-clean energy resources. "Energy efficiency measure" does not include demand-side management.
- (4a) "Fusion" means a reaction in which at least one heavier, more stable nucleus is produced from two lighter, less stable nuclei, typically through high temperatures and pressures, emitting energy as a result.
- (4b) "Fusion energy" means the product of fusion reactions inside a fusion device, used for the purpose of generating electricity or other commercially usable forms of energy.
- (4c) "New clean energy facility" means:
 - a. A new renewable energy facility; or
 - b. Facilities placed into service on or after January 1, 2007, which are either (i) a nuclear energy facility, including an uprate to a nuclear energy facility, or (ii) a fusion energy facility.
- (5) "New renewable energy facility" means a renewable energy facility that either:
 - a. Was placed into service on or after January 1, 2007.
 - b. Delivers or has delivered electric power to an electric power supplier pursuant to a contract with NC GreenPower Corporation that was entered into prior to January 1, 2007.
 - c. Is a hydroelectric power facility with a generation capacity of 10 megawatts or less that delivers electric power to an electric power supplier.
- (6) "Renewable energy certificate" means a tradable instrument that is equal to one megawatt hour of electricity or equivalent energy supplied by a ~~renewable clean~~ renewable clean energy facility, new ~~renewable clean~~ renewable clean energy facility, or reduced by implementation of an energy efficiency measure that is used to track and verify compliance with the requirements of this section as determined by the Commission. A "renewable energy certificate" does not include the related emission reductions, including, but not limited to, reductions of sulfur dioxide, oxides of nitrogen, mercury, or carbon dioxide.
- (7) "Renewable energy facility" means a facility, other than a hydroelectric power facility with a generation capacity of more than 10 megawatts, that either:
 - a. Generates electric power by the use of a renewable energy resource.
 - b. Generates useful, measurable combined heat and power derived from a renewable energy resource.
 - c. Is a solar thermal energy facility.
- (8) "Renewable energy resource" means a solar electric, solar thermal, wind, hydropower, geothermal, or ocean current or wave energy resource; a biomass resource, including agricultural waste, animal waste, wood waste, spent pulping liquors, combustible residues, combustible liquids, combustible gases, energy crops, or landfill methane; waste heat derived from a renewable energy resource and used to produce electricity or useful, measurable thermal energy at a retail electric customer's facility; or hydrogen derived from a renewable energy resource. "Renewable energy resource" does not include peat, a fossil fuel, or nuclear energy resource.

(b) ~~Renewable-Clean~~ Energy and Energy Efficiency Standards (~~REPS~~)-(CEPS) for Electric Public Utilities. –

- (1) Each electric public utility in the State shall be subject to a ~~Renewable-Clean~~ Energy and Energy Efficiency Portfolio Standard (~~REPS~~)-CEPS according to the following schedule:

Calendar Year	REPS -CEPS Requirement
2012	3% of 2011 North Carolina retail sales
2015	6% of 2014 North Carolina retail sales
2018	10% of 2017 North Carolina retail sales
2021 and thereafter	12.5% of 2020 North Carolina retail sales

- (2) An electric public utility may meet the requirements of this section by any one or more of the following:

- a. Generate electric power at a new ~~renewable-clean~~ energy facility.
- b. Use a ~~renewable-clean~~ energy resource to generate electric power at a generating facility other than the generation of electric power from waste heat derived from the combustion of fossil fuel.
- c. Reduce energy consumption through the implementation of an energy efficiency measure; provided, however, an electric public utility subject to the provisions of this subsection may meet up to twenty-five percent (25%) of the requirements of this section through savings due to implementation of energy efficiency measures. Beginning in calendar year 2021 and each year thereafter, an electric public utility may meet up to forty percent (40%) of the requirements of this section through savings due to implementation of energy efficiency measures.
- d. Purchase electric power from a new ~~renewable-clean~~ energy facility. Electric power purchased from a new ~~renewable-clean~~ energy facility located outside the geographic boundaries of the State shall meet the requirements of this section if the electric power is delivered to a public utility that provides electric power to retail electric customers in the State; provided, however, the electric public utility shall not sell the renewable energy certificates created pursuant to this paragraph to another electric public utility.
- e. Purchase renewable energy certificates derived from in-State or out-of-state new ~~renewable-clean~~ energy facilities. Certificates derived from out-of-state new ~~renewable-clean~~ energy facilities shall not be used to meet more than twenty-five percent (25%) of the requirements of this section, provided that this limitation shall not apply to an electric public utility with less than 150,000 North Carolina retail jurisdictional customers as of December 31, 2006.
- f. Use electric power that is supplied by a new ~~renewable-clean~~ energy facility or saved due to the implementation of an energy efficiency measure that exceeds the requirements of this section for any calendar year as a credit towards the requirements of this section in the following calendar year or sell the associated renewable energy certificates.
- g. Electricity demand reduction.

(c) ~~Renewable-Clean~~ Energy and Energy Efficiency Standards (~~REPS~~)-(CEPS) for Electric Membership Corporations and Municipalities. –

- (1) Each electric membership corporation or municipality that sells electric power to retail electric power customers in the State shall be subject to a ~~Renewable~~

Clean Energy and Energy Efficiency Portfolio Standard (~~REPS~~–~~CEPS~~) according to the following schedule:

Calendar Year	REPS – CEPS Requirement
2012	3% of 2011 North Carolina retail sales
2015	6% of 2014 North Carolina retail sales
2018 and thereafter	10% of 2017 North Carolina retail sales

- (2) An electric membership corporation or municipality may meet the requirements of this section by any one or more of the following:
- a. Generate electric power at a new ~~renewable~~–~~clean~~ energy facility.
 - b. Reduce energy consumption through the implementation of demand-side management or energy efficiency measures.
 - c. Purchase electric power from a ~~renewable~~–~~clean~~ energy facility or a hydroelectric power facility, provided that no more than thirty percent (30%) of the requirements of this section may be met with hydroelectric power, including allocations made by the Southeastern Power Administration.
 - d. Purchase renewable energy certificates derived from in-State or out-of-state ~~renewable~~–~~clean~~ energy facilities. An electric power supplier subject to the requirements of this subsection may use certificates derived from out-of-state ~~renewable~~–~~clean~~ energy facilities to meet no more than twenty-five percent (25%) of the requirements of this section.
 - e. Acquire all or part of its electric power through a wholesale purchase power agreement with a wholesale supplier of electric power whose portfolio of supply and demand options meets the requirements of this section.
 - f. Use electric power that is supplied by a new ~~renewable~~–~~clean~~ energy facility or saved due to the implementation of demand-side management or energy efficiency measures that exceeds the requirements of this section for any calendar year as a credit towards the requirements of this section in the following calendar year or sell the associated renewable energy certificates.
 - g. Electricity demand reduction.

(d) Compliance With ~~REPS~~–~~CEPS~~ Requirement Through Use of Solar Energy Resources.
– For calendar year 2018 and for each calendar year thereafter, at least two-tenths of one percent (0.2%) of the total electric power in kilowatt hours sold to retail electric customers in the State, or an equivalent amount of energy, shall be supplied by a combination of new solar electric facilities and new metered solar thermal energy facilities that use one or more of the following applications: solar hot water, solar absorption cooling, solar dehumidification, solar thermally driven refrigeration, and solar industrial process heat. The terms of any contract entered into between an electric power supplier and a new solar electric facility or new metered solar thermal energy facility shall be of sufficient length to stimulate development of solar energy; provided, the Commission shall develop a procedure to determine if an electric power supplier is in compliance with the provisions of this subsection if a new solar electric facility or a new metered solar thermal energy facility fails to meet the terms of its contract with the electric power supplier. As used in this subsection, "new" means a facility that was first placed into service on or after January 1, 2007. The electric power suppliers shall comply with the requirements of this subsection according to the following schedule:

Calendar Year	Requirement for Solar Energy Resources
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2010	0.02%
2012	0.07%
2015	0.14%
2018	0.20%

(e) Compliance With ~~REPS~~CEPS Requirement Through Use of Swine Waste Resources. – For calendar year 2018 and for each calendar year thereafter, at least two-tenths of one percent (0.2%) of the total electric power in kilowatt hours sold to retail electric customers in the State shall be supplied, or contracted for supply in each year, by swine waste. The electric power suppliers, in the aggregate, shall comply with the requirements of this subsection according to the following schedule:

Calendar Year	Requirement for Swine Waste Resources
2012	0.07%
2015	0.14%
2018	0.20%

(f) Compliance With ~~REPS~~CEPS Requirement Through Use of Poultry Waste Resources. – For calendar year 2014 and for each calendar year thereafter, at least 900,000 megawatt hours of the total electric power sold to retail electric customers in the State or an equivalent amount of energy shall be supplied, or contracted for supply in each year, by poultry waste combined with wood shavings, straw, rice hulls, or other bedding material. The electric power suppliers, in the aggregate, shall comply with the requirements of this subsection according to the following schedule:

Calendar Year	Requirement for Poultry Waste Resources
2012	170,000 megawatt hours
2013	700,000 megawatt hours
2014	900,000 megawatt hours

(g) Control of Emissions. – As used in this subsection, Best Available Control Technology (BACT) means an emissions limitation based on the maximum degree a reduction in the emission of air pollutants that is achievable for a facility, taking into account energy, environmental, and economic impacts and other costs. A biomass combustion process at any new ~~renewable-clean~~ energy facility that delivers electric power to an electric power supplier shall meet BACT. The Environmental Management Commission shall determine on a case-by-case basis the BACT for a facility that would not otherwise be required to comply with BACT pursuant to the Prevention of Significant Deterioration (PSD) emissions program. The Environmental Management Commission may adopt rules to implement this subsection. In adopting rules, the Environmental Management Commission shall take into account cumulative and secondary impacts associated with the concentration of biomass facilities in close proximity to one another. In adopting rules the Environmental Management Commission shall provide for the manner in which a facility that would not otherwise be required to comply with BACT pursuant to the PSD emissions programs shall meet the BACT requirement. This subsection shall not apply to a facility that qualifies as a new ~~renewable-clean~~ energy facility under sub-subdivision b. of subdivision (5) of subsection (a) of this section.

...
 (i) Adoption of Rules. – The Commission shall adopt rules to implement the provisions of this section. In developing rules, the Commission shall:

- (1) Provide for the monitoring of compliance with and enforcement of the requirements of this section.

- (2) Include a procedure to modify or delay the provisions of subsections (b), (c), (d), (e), and (f) of this section in whole or in part if the Commission determines that it is in the public interest to do so. The procedure adopted pursuant to this subdivision shall include a requirement that the electric power supplier demonstrate that it made a reasonable effort to meet the requirements set out in this section.
- (3) Ensure that energy credited toward compliance with the provisions of this section not be credited toward any other purpose, including another ~~renewable clean~~ energy portfolio standard or voluntary ~~renewable-clean~~ energy purchase program in this State or any other state.
- (4) Establish standards for interconnection of ~~renewable-clean~~ energy facilities and other nonutility-owned generation with a generation capacity of 10 megawatts or less to an electric public utility's distribution system; provided, however, that the Commission shall adopt, if appropriate, federal interconnection standards. The standards adopted pursuant to this subdivision shall include an expedited review process for swine and poultry waste to energy projects of two megawatts (MW) or less and other measures necessary and appropriate to achieve the objectives of subsections (e) and (f) of this section.
- (5) Ensure that the owner and operator of each ~~renewable-clean~~ energy facility that delivers electric power to an electric power supplier is in substantial compliance with all federal and state laws, regulations, and rules for the protection of the environment and conservation of natural resources.
- (6) Consider whether it is in the public interest to adopt rules for electric public utilities for net metering of ~~renewable-clean~~ energy facilities with a generation capacity of one megawatt or less.
- (7) Develop procedures to track and account for renewable energy certificates, including ownership of renewable energy certificates that are derived from a customer owned ~~renewable-clean~~ energy facility as a result of any action by a customer of an electric power supplier that is independent of a program sponsored by the electric power supplier.

(j) Repealed by Session Laws 2021-23, s. 16, effective May 17, 2021.

(k) Tracking of Renewable Energy Certificates. – No later than July 1, 2010, the Commission shall develop, implement, and maintain an Internet Web site for the online tracking of renewable energy certificates in order to verify the compliance of electric power suppliers with the ~~REPS-CEPS~~ requirements of this section and to facilitate the establishment of a market for the purchase and sale of renewable energy certificates.

(l) The owner, including an electric power supplier, of each ~~renewable-clean~~ energy facility or new ~~renewable-clean~~ energy facility, whether or not required to obtain a certificate of public convenience and necessity pursuant to G.S. 62-110.1, that intends for renewable energy certificates it earns to be eligible for use by an electric power supplier to comply with G.S. 62-133.8 shall register the facility with the Commission. Such an owner shall file a registration statement in the form prescribed by the Commission and remit to the Commission the fee required pursuant to G.S. 62-300(a)(16)."

SECTION 1.(b) G.S. 62-2(a) reads as rewritten:

"§ 62-2. Declaration of policy.

(a) Upon investigation, it has been determined that the rates, services and operations of public utilities as defined herein, are affected with the public interest and that the availability of an adequate and reliable supply of electric power and natural gas to the people, economy and government of North Carolina is a matter of public policy. It is hereby declared to be the policy of the State of North Carolina:

...

- (10) To promote the development of ~~renewable-clean~~ energy and energy efficiency through the implementation of a ~~Renewable-Clean Energy~~ and Energy Efficiency Portfolio Standard (~~REPS~~)(CEPS) that will do all of the following:
 - a. Diversify the resources used to reliably meet the energy needs of consumers in the State.
 - b. Provide greater energy security through the use of indigenous energy resources available within the State.
 - c. Encourage private investment in ~~renewable-clean~~ energy and energy efficiency.
 - d. Provide improved air quality and other benefits to energy consumers and citizens of the State."

SECTION 1.(c) G.S. 62-133.16 reads as rewritten:

"§ 62-133.16. Performance-based regulation authorized.

...

- (d) Commission Action on Application. –

...

- (2) In reviewing any such PBR application under this section, the Commission may consider whether the PBR application:
 - a. Encourages peak load reduction or efficient use of the system.
 - b. Encourages utility-scale ~~renewable-clean~~ energy and storage.

...."

SECTION 1.(d) G.S. 62-300 reads as rewritten:

"§ 62-300. Particular fees and charges fixed; payment.

(a) The Commission shall receive and collect the following fees and charges in accordance with the classification of utilities as provided in rules and regulations of the Commission, and no others:

...

- (16) Two hundred fifty dollars (\$250.00) with each application for a certificate of authority to engage in business as an electric generator lessor filed pursuant to G.S. 62-126.7 or each registration statement for a ~~renewable-clean~~ energy facility or new ~~renewable-clean~~ energy facility filed pursuant to G.S. 62-133.8(l).

...."

SECTION 1.(e) G.S. 143B-282 reads as rewritten:

"§ 143B-282. Environmental Management Commission – creation; powers and duties.

(a) There is hereby created the Environmental Management Commission of the Department of Environmental Quality with the power and duty to promulgate rules to be followed in the protection, preservation, and enhancement of the water and air resources of the State.

...

- (6) The Commission may establish a procedure for evaluating ~~renewable-clean~~ energy technologies that are, or are proposed to be, employed as part of a ~~renewable-clean~~ energy facility, as defined in G.S. 62-133.8; establish standards to ensure that ~~renewable-clean~~ energy technologies do not harm the environment, natural resources, cultural resources, or public health, safety, or welfare of the State; and, to the extent that there is not an environmental regulatory program, establish an environmental regulatory program to implement these protective standards.

...."

SECTION 2. G.S. 62-110.1 reads as rewritten:

"§ 62-110.1. Certificate for construction of generating facility; analysis of long-range needs for expansion of facilities; ongoing review of construction costs; inclusion of approved construction costs in rates.

...

(e) As a condition for receiving a certificate, the applicant shall file an estimate of construction costs in such detail as the Commission may require. The Commission shall hold a public hearing on each application and no certificate shall be granted unless the Commission has approved the estimated construction costs and made a finding that construction will be consistent with the Commission's plan for expansion of electric generating capacity. A certificate for the construction of ~~coal or nuclear~~ generating facility by an electric public utility, as that term is defined by G.S. 62-110.9, shall be granted only if the applicant demonstrates and the Commission finds that energy efficiency measures; demand-side management; renewable energy resource generation; combined heat and power generation; or any combination thereof, would not establish or maintain a more cost-effective and reliable generation system the facility is part of the least cost path to achieve compliance with the authorized carbon reduction goals in G.S. 62-110.9, will maintain or improve upon the adequacy and reliability of the existing grid, and that the construction and operation of the facility is in the public interest. In making its determination, the Commission shall consider resource and fuel diversity and reasonably anticipated future operating costs. Once the Commission grants a certificate, no public utility shall cancel construction of a generating unit or facility without approval from the Commission based upon a finding that the construction is no longer in the public interest.

...

(g) The certification requirements of this section shall not apply to (i) a nonutility-owned generating facility fueled by ~~renewable~~ clean energy resources under two megawatts in capacity; (ii) to persons who construct an electric generating facility primarily for that person's own use and not for the primary purpose of producing electricity, heat, or steam for sale to or for the public for compensation; or (iii) a solar energy facility or a community solar energy facility, as provided by and subject to the limitations of Article 6B of this Chapter. However, such persons shall be required to report the proposed construction of the facility and the completion of the facility to the Commission and the interconnecting public utility. Such reports shall be for informational purposes only and shall not require action by the Commission or the Public Staff.

(h) Expired pursuant to its own terms, effective January 1, 2011."

PART II. MODIFICATIONS TO CLOSURE DEADLINES FOR CERTAIN COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS

SECTION 3.(a) G.S. 130A-309.214 reads as rewritten:

"§ 130A-309.214. Closure of coal combustion residuals surface impoundments.

(a) An owner of a coal combustion residuals surface impoundment shall submit a proposed Coal Combustion Residuals Surface Impoundment Closure Plan for the Department's approval. If corrective action to restore groundwater has not been completed pursuant to the requirements of G.S. 130A-309.211(b), the proposed closure plan shall include provisions for completion of activities to restore groundwater in conformance with the requirements of Subchapter L of Chapter 2 of Title 15A of the North Carolina Administrative Code. In addition, the following requirements, at a minimum, shall apply to such plans:

...

(2) ~~Intermediate-risk~~ Except as otherwise provided by law, intermediate-risk impoundments shall be closed as soon as practicable, but no later than December 31, 2024. A proposed closure plan for such impoundments must be submitted as soon as practicable, but no later than December 31, 2019. At a minimum, such impoundments shall be dewatered, and the owner of an impoundment shall close the impoundment in any manner allowed pursuant

to subdivision (1) of this subsection, or, if applicable, as provided in G.S. 130A-309.216.

...

- (3) ~~Low-risk~~ Except as otherwise provided by law, low-risk impoundments shall be closed as soon as practicable, but no later than December 31, 2029. A proposed closure plan for such impoundments must be submitted as soon as practicable, but no later than December 31, 2019. At a minimum, (i) impoundments located in whole above the seasonal high groundwater table shall be dewatered; (ii) impoundments located in whole or in part beneath the seasonal high groundwater table shall be dewatered to the maximum extent practicable; and (iii) at the election of the Department, the owner of an impoundment shall either:

...."

SECTION 3.(b) The following coal combustion residuals surface impoundments shall be closed as soon as practicable but not later than the following dates, except as otherwise preempted by the requirements of federal law, and notwithstanding any applicable deadlines established in State law, including (i) G.S. 130A-309.214, as amended by subsection (a) of this section, (ii) G.S. 130A-309.216, and (iii) S.L. 2014-122 and S.L. 2016-95:

- (1) Coal combustion residuals surface impoundments located at the H.F. Lee Steam Station owned and operated by Duke Energy Progress, and located in Wayne County, December 31, 2035.
- (2) Coal combustion residuals surface impoundments located at the Cape Fear Steam Station owned and operated by Duke Energy Progress, and located in Chatham County, December 31, 2035.
- (3) Coal combustion residuals surface impoundments located at the Allen Steam Station owned and operated by Duke Energy Carolinas, and located in Gaston County, December 31, 2038.
- (4) Coal combustion residuals surface impoundments located at the Belews Creek Steam Station owned and operated by Duke Energy Carolinas, and located in Stokes County, December 31, 2034.
- (5) Coal combustion residuals surface impoundments located at the Buck Steam Station owned and operated by Duke Energy Carolinas, and located in Rowan County, December 31, 2035.
- (6) Coal combustion residuals surface impoundments located at the Rogers Energy Complex (formerly Cliffside Steam Station) owned and operated by Duke Energy Carolinas, and located in Cleveland County and Rutherford County, December 31, 2029.
- (7) Coal combustion residuals surface impoundments located at the Marshall Steam Station owned and operated by Duke Energy Carolinas, and located in Catawba County, December 31, 2035.
- (8) Coal combustion residuals surface impoundments located at the Mayo Steam Station owned and operated by Duke Energy Progress, and located in Person County, December 31, 2029.
- (9) Coal combustion residuals surface impoundments located at the Roxboro Steam Station owned and operated by Duke Energy Progress, and located in Person County, December 31, 2036.

SECTION 3.(c) The Environmental Management Commission may adopt permanent rules governing permitting for closure and post-closure of coal combustion residuals surface impoundments and landfills in accordance with the provisions of Chapter 150B of the General Statutes, except the Commission is exempt from the fiscal note requirement of

G.S. 150B-21.4 and from the Rules Review Commission review under Part 3 of Article 2A of Chapter 150B of the General Statutes in adopting rules to implement this section.

PART III. DAM SAFETY FEE

SECTION 4. G.S. 143-215.28A reads as rewritten:

"§ 143-215.28A. Application fees.

~~(a) In accordance with G.S. 143-215.3(a)(1a), the Commission may establish a fee schedule for processing applications for approvals of construction or removal of dams issued under this Part. In establishing the fee schedule, the Commission shall consider the administrative and personnel costs incurred by the Department for processing the applications and for related compliance activities. The total amount of fees collected in any fiscal year may not exceed one-third of the total personnel and administrative costs incurred by the Department for processing the applications and for related compliance activities in the prior fiscal year. An approval fee may not exceed the larger of two hundred dollars (\$200.00) or two percent (2%) of the actual cost of construction or removal of the applicable dam. The fee for notification of a professionally supervised dam removal under G.S. 143-215.27(c)(1) shall be five hundred dollars (\$500.00) and shall be paid to the Department. The provisions of G.S. 143-215.3(a)(1b) do not apply to these fees.~~

(a1) A nonrefundable application processing and compliance fee in the amount of two and one-quarter percent (2.25%) of the actual cost of construction, repair, alteration, breach, or removal of the applicable dam shall be paid for the processing of applications for approvals of construction, repair, or removal of dams issued under this Part as follows: (i) an initial fee of five hundred dollars (\$500.00) or one-half of the processing and compliance fee based on the engineer's estimated cost of construction, repair, alteration, or removal of the dam, whichever amount is greater, shall be submitted with the application and (ii) the remainder of the processing and compliance fee based on the engineer's estimated cost of construction, repair, alteration, or removal of the dam, whichever amount is greater, shall be paid when the as-built plans are submitted to the Department. The maximum fee shall not exceed fifty thousand dollars (\$50,000) for the construction, repair, alteration, or removal of a dam. In addition, the following provisions shall apply:

- (1) Each application for construction, repair, alteration, or removal of a dam shall be deemed incomplete and shall not be reviewed until the initial fee of five hundred dollars (\$500.00) or one-half of the processing and compliance fee is paid.
- (2) For purposes of determining the actual cost of construction, repair, alteration, or removal, the cost shall (i) include all labor and materials costs associated with the project for the applicable dam and (ii) not include the costs associated with acquisition of land or right-of-way, design, quality control, electrical generating machinery, or constructing a roadway across the dam.
- (3) Immediately upon completion of construction, repair, alteration, or removal of a dam, the owner shall file a certification with the Director, on a form prescribed by the Department, and accompanying documentation, which shows actual cost incurred by the owner for construction, repair, alteration, or removal of the applicable dam.
 - a. The owner's certification and accompanying documentation shall be filed with the as-built plans and the engineer's certification.
 - b. If the Director finds that the owner's certification and accompanying documentation contain inaccurate cost information, the Director shall either withhold final impoundment approval, if applicable, or revoke final impoundment approval, if applicable, until the owner provides

accurate documentation and that documentation has been verified by the Department.

- (4) Final approval to impound shall not be granted until the owner's certification and the accompanying documentation are filed in accordance with subdivision (3) of this subsection and the remainder of the application processing and compliance fee has been paid as provided by this subsection.
- (5) Payment of the application processing and compliance fee shall be by check or money order made payable to the Department and reference the applicable dam.

(b) The Dam Safety Account is established as a nonreverting account within the Department. Fees collected under this section shall be credited to the Account and shall be applied to the costs of administering this Part."

PART IV. REQUIRE APPROVAL BY THE LOCAL GOVERNMENT COMMISSION FOR LOCAL GOVERNMENTS TO ENTER INTO AGREEMENTS TO CEDE OR TRANSFER CONTROL OVER A PUBLIC ENTERPRISE TO A NONGOVERNMENTAL ENTITY; PROHIBIT LOCAL GOVERNMENTS FROM ENTERING NONDISCLOSURE AGREEMENTS IN ORDER TO RESTRICT ACCESS TO PUBLIC RECORDS SUBJECT TO DISCLOSURE UNDER THE PUBLIC RECORDS ACT

SECTION 5.(a) Article 8 of Chapter 159 of the General Statutes reads as rewritten:
"Article 8.

"Financing Agreements and Other Financing Arrangements; Arrangements for Nongovernmental Control of Public Enterprises.

...

"§ 159-154. Nongovernmental control of public enterprises.

- (a) For purposes of this section, the following definitions apply:
 - (1) Adjusted revenues. – Gross revenue of a public enterprise minus the cost of commodity purchases and wholesale electricity purchases for the public enterprise.
 - (2) Consolidated nongovernmental entity. – Collectively, all affiliated nongovernmental entities, which includes each entity's parents, subsidiaries, and each other entity that owns, directly or indirectly, at least ten percent (10%) of the capital or voting rights of the entity, and each other entity in which the entity owns, directly or indirectly, at least ten percent (10%) of the capital or voting rights.
 - (3) Control. – Any one or more of the following, except that a contractual arrangement by a unit of local government with a nongovernmental entity to provide specified maintenance services for a fixed fee or fee per service basis alone does not create control of the public enterprise for purposes of this section:
 - a. The authority to expend or otherwise manage during any fiscal year more than fifty percent (50%) of a public enterprise's adjusted revenues.
 - b. Responsibility for provision to the public of the services previously provided by the public enterprise.
 - c. Responsibility for operation and maintenance of a material portion of the assets and facilities of the public enterprise.
 - d. The authority to manage a material portion of the staff responsible for operation and maintenance of the assets and facilities of the public enterprise.

- (4) Nongovernmental entity. – Any person or entity other than (i) the State, (ii) a unit of local government, or (iii) a public body created pursuant to Chapter 159B of the General Statutes.
- (5) Public enterprise. – All or a material portion of one or more of the systems set forth in G.S. 160A-311, G.S. 153A-274, and Chapter 162A of the General Statutes.
- (6) Unit of local government. – A "unit of local government" as defined in G.S. 159-7 and a "public authority" as defined in G.S. 159-7.

(b) No unit of local government may concede or transfer control of any public enterprise that the unit of local government owns or operates to any nongovernmental entity or consolidated nongovernmental entity or enter into an agreement to do so unless the concession or transfer of control and the agreement thereunder have been approved by the Commission pursuant to this section as evidenced by the secretary's certificate thereon. Any agreement subject to Commission approval under this section that does not bear the secretary's certificate thereon shall be void, and it shall be unlawful for any officer, employee, or agent of a unit of local government to take any actions thereunder.

(c) Before executing an agreement subject to this section, the governing board of the unit of local government shall file an application for Commission approval of the agreement with the secretary of the Commission. The application shall state such facts and have attached to it such documents concerning the proposed agreement and the arrangements proposed to be carried out thereunder as the secretary may require. The Commission may prescribe the form of the application. Before the secretary accepts the application, the secretary may require the governing board or its representatives to attend a preliminary conference at which time the secretary and deputies may informally discuss the proposed agreement and arrangements proposed to be carried out thereunder.

(d) Prior to the Commission's consideration of whether to approve an agreement subject to this section and the arrangements thereunder, the governing body of the unit of local government shall conduct a public hearing on whether the proposed arrangement is in the public interest and following the public hearing the governing body shall adopt a resolution or take a similar action stating that it determines that the proposed arrangement is in the public interest. The public hearing shall be held by the governing body of the unit of local government proposing the arrangement following publication of notice of the public hearing at least 10 days prior to the public hearing. The notice of public hearing shall describe the proposed arrangement in general terms. In determining that the arrangement is in the public interest, the governing body of the unit of local government shall consider, at a minimum, all of the following:

- (1) The physical condition of the public enterprise.
- (2) The capital replacements, additions, expansions, and repairs needed for the public enterprise to provide reliable service and meet all applicable federal standards.
- (3) The availability of federal and State grants and loans for system upgrades and repairs of the public enterprise.
- (4) The willingness and the ability of the nongovernmental entity to make system upgrades and repairs and provide high-quality and cost-effective service.
- (5) The reasonableness of the amount to be paid to the unit of local government to enter into the arrangement.
- (6) The reasonableness of any amounts to be paid by the unit of local government to exit the arrangement.
- (7) The service quality guarantees provided by the arrangement and the consequences of any failure to satisfy the guarantees.

- (8) The most recent income and expense statement and asset and liabilities balance sheet of the nongovernmental entity and any consolidated nongovernmental entity.
- (9) The projected rates to customers of the public enterprise during the term of the arrangement and the affordability of the services of the public enterprise resulting from such projected rates.
- (10) The experience of the nongovernmental entity and its affiliates within the consolidated nongovernmental entity in the operation of utility systems similar to the public enterprise that is the subject of the arrangement.
- (11) The alternatives to entering into the arrangement and the potential impact on utility customers if the arrangement is not entered.

(e) The Commission may approve an agreement for a unit of local government to concede or transfer control of a public enterprise and the arrangement to do so if it finds and determines that the customers of the public enterprise will enjoy reasonable and material short-term and long-term savings and other net benefits from the arrangement during the term of the arrangement without the imposition of any material cost or charge on the unit of local government or its customers upon termination of the arrangement. In determining whether a proposed agreement and the arrangements thereunder shall be approved, the Commission shall have authority to inquire into and to give consideration to such matters that it may believe to have bearing on whether the proposed agreement and the arrangement thereunder should be approved. Such matters may include any of the following:

- (1) The projected financial feasibility of the proposed arrangement in the short-term and long-term, its effect on rates to be charged to the customers of the public enterprise under the arrangements being proposed, and its effect on the quality of services to be provided by the public enterprise under the arrangement.
- (2) The projected rates to customers of the public enterprise during the term of the arrangement, the basis for the establishment of such rates and the reasonableness of the basis, and the affordability of the services of the public enterprise resulting from such projected rates.
- (3) If the unit of local government will receive an initial payment for participating in the arrangement, a summary of the unit of local government's proposed plans for the use of the initial payment.
- (4) If there is any indebtedness of the unit of local government associated with the public enterprise, the plans for the retirement or defeasance of such indebtedness.
- (5) The financial condition of the nongovernmental entity and its affiliates within the consolidated nongovernmental entity and its ability to carry out the undertakings required of the nongovernmental entity in the arrangement.
- (6) The experience of the nongovernmental entity and its affiliates within the consolidated non-governmental entity in the operation of utility systems similar to the public enterprise that is the subject of the arrangement.
- (7) The nongovernmental entity's plans to finance its initial participation in the arrangement and future improvements to the public enterprise and the expected participation of the unit of local government in any financing.
- (8) The obligations of the nongovernmental entity set forth in the agreement for the maintenance of the public enterprise and the installation of improvements to the public enterprise during the term of the arrangement and the requirements of the agreement that adequate reserves be maintained during the term of the arrangement for such maintenance and improvements.

- (9) The plans set forth in the agreements for the arrangement for maintaining the quality of the components of the public enterprise to be returned to the control of the unit of local government at the end of the term of the agreement.
- (10) Any ongoing financial and other commitments of the unit of local government under the arrangement during its term.
- (11) Any financial payments the unit of local government is expected to be required to pay to the nongovernmental entity or any other person or entity at the end of the arrangement.
- (12) The effect, if any, of the arrangement on the tax status of interest on debt obligations issued by the unit of local government, or any other units of local government on account of contractual arrangements the other unit of local government may have with the unit of local government proposing the agreement being considered.

(f) The Commission may require that any projection or other analysis provided to the Commission in connection with its consideration of the arrangement be prepared by a qualified independent expert approved by the Commission.

(g) If the Commission tentatively decides to deny the application because it cannot be supported from the information presented to it, it shall so notify the unit of local government filing the application. If the Commission approves or denies the application, the Commission shall enter its order setting forth such approval or denial of the application. If the Commission enters an order denying the application, the proceedings under this section shall be concluded. An order approving an application shall not be construed as an approval of the legality of the agreement in any respect.

(h) If the Commission approves an agreement and the arrangements thereunder as provided in this section and thereafter the parties determine to terminate the agreement voluntarily prior to the expiration of its stated term, the unit of local government shall not enter into any such termination arrangement unless the termination is approved by the Commission following a procedure similar to the procedure for initial approval of the agreement and arrangement required by this section. This section shall not prohibit the termination of an agreement in the exercise of legal remedies following a breach of the agreement in accordance with its terms.

(i) If the Commission approves an agreement and the arrangements thereunder as provided in this section and thereafter the parties determine to amend the agreement in a material respect, the unit of local government shall not enter into any such amendment unless the amendment is approved by the Commission following a procedure similar to the procedure for initial approval of the agreement.

(j) Nothing in this section shall be construed to apply to the sale of a public enterprise to a utility regulated by the North Carolina Utilities Commission."

SECTION 5.(b) G.S. 132-1 is amended by adding a new subsection to read:

"(c) No political subdivision of this State may enter into a nondisclosure agreement in order to restrict access to public records subject to disclosure under this Chapter. The contract by which a political subdivision of this State agrees not to disclose information deemed confidential under State law shall be a public record, unless the existence of the contract is also deemed confidential under State law. If a nondisclosure agreement is associated with one or more closed session meetings under Article 33C of Chapter 143 of the General Statutes, the nondisclosure agreement shall be included in the minutes of each closed session meeting."

SECTION 5.(c) Subsection (b) of this section becomes effective November 1, 2023, and applies to any nondisclosure agreement entered into on or after that date. The remainder of this section is effective when it becomes law.

PART V. EMPLOYEE CLASSIFICATION AND COMPENSATION EXEMPTIONS FOR UTILITIES COMMISSION AND PUBLIC STAFF

SECTION 6.(a) G.S. 62-14 reads as rewritten:

"§ 62-14. Commission staff; structure and function.

(a) The Commission is authorized and empowered to employ hearing examiners; court reporters; a chief clerk and deputy clerk; a commission attorney and assistant commission attorney; transportation and pipeline safety inspectors; and such other professional, administrative, technical, and clerical personnel as the Commission may determine to be necessary in the proper discharge of the Commission's duty and responsibility as provided by law. The chairman shall organize and direct the work of the Commission staff.

(b) The salaries and compensation of all such personnel shall be fixed in the manner provided by law for fixing and regulating salaries and compensation by other State ~~agencies-agencies~~, except that the Commission and its employees are exempt from the classification and compensation rules established by the State Human Resources Commission pursuant to G.S. 126-4(1) through (4); G.S. 126-4(5) only as it applies to hours and days of work, vacation, and sick leave; G.S. 126-4(6) only as it applies to promotion and transfer; G.S. 126-4(10) only as it applies to the prohibition of the establishment of incentive pay programs; and Article 2 of Chapter 126 of the General Statutes, except for G.S. 126-7.1.

(c) The chairman, within allowed budgetary limits and as allowed by law, shall authorize and approve travel, subsistence and related expenses of such personnel, incurred while traveling on official business."

SECTION 6.(b) G.S. 62-15 reads as rewritten:

"§ 62-15. Office of executive director; Public Staff, structure and function.

(a) There is established in the Commission the office of executive director, whose salary and longevity pay shall be the same as that fixed for members of the Commission. "Service" for purposes of longevity pay means service as executive director of the Public Staff. The executive director shall be appointed by the Governor subject to confirmation by the General Assembly by joint resolution. The name of the executive director appointed by the Governor shall be submitted to the General Assembly on or before May 1 of the year in which the term of his office begins. The term of office for the executive director shall be six years, and the initial term shall begin July 1, 1977. The executive director may be removed from office by the Governor in the event of his incapacity to serve; and the executive director shall be removed from office by the Governor upon the affirmative recommendation of a majority of the Commission, after consultation with the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources, the Senate Appropriations Committee on Agriculture, Natural, and Economic Resources, and the chairs of the House of Representatives Appropriations Committee on Agriculture and Natural and Economic Resources of the General Assembly. In case of a vacancy in the office of executive director for any reason prior to the expiration of his term of office, the name of his successor shall be submitted by the Governor to the General Assembly, not later than four weeks after the vacancy arises. If a vacancy arises in the office when the General Assembly is not in session, the executive director shall be appointed by the Governor to serve on an interim basis pending confirmation by the General Assembly.

(b) There is established in the Commission a Public Staff. The Public Staff shall consist of the executive director and such other professional, administrative, technical, and clerical personnel as may be necessary in order for the Public Staff to represent the using and consuming public, as hereinafter provided. All such personnel shall be hired, supervised, and directed by the executive director, as provided by law. The Public Staff shall not be subject to the supervision, direction, or control of the Commission, the chairman, or members of the Commission.

(c) Except for the executive director, the salaries and compensation of all such personnel shall be fixed in the manner provided by law for fixing and regulating salaries and compensation by other State ~~ageneies-agencies~~, except that the Public Staff and its employees are exempt from

the classification and compensation rules established by the State Human Resources Commission pursuant to G.S. 126-4(1) through (4); G.S. 126-4(5) only as it applies to hours and days of work, vacation, and sick leave; G.S. 126-4(6) only as it applies to promotion and transfer; G.S. 126-4(10) only as it applies to the prohibition of the establishment of incentive pay programs; and Article 2 of Chapter 126 of the General Statutes, except for G.S. 126-7.1.

...."

SECTION 6.(c) G.S. 126-5(c11) reads as rewritten:

"(c11) The following are exempt from (i) the classification and compensation rules established by the State Human Resources Commission pursuant to G.S. 126-4(1) through (4); (ii) G.S. 126-4(5) only as it applies to hours and days of work, vacation, and sick leave; (iii) G.S. 126-4(6) only as it applies to promotion and transfer; (iv) G.S. 126-4(10) only as it applies to the prohibition of the establishment of incentive pay programs; and (v) Article 2 of Chapter 126 of the General Statutes, except for G.S. 126-7.1:

- (1) The Office of the Commissioner of Banks and its employees.
- (2) The following employees of the Department of Natural and Cultural Resources:
 - a. Director and Associate Directors of the North Carolina Museum of History.
 - b. Program Chiefs and Curators.
 - c. Regional History Museum Administrators and Curators.
 - d. North Carolina Symphony.
 - e. Director, Associate Directors, and Curators of Tryon Palace.
 - f. Director, Associate Directors, and Curators of Transportation Museum.
 - g. Director and Associate Directors of the North Carolina Arts Council.
 - h. Director, Assistant Directors, and Curators of the Division of State Historic Sites.
- (3) Employees of the Department of Information Technology (DIT), and employees in all agencies, departments, and institutions with similar classifications as DIT employees, who voluntarily relinquish annual longevity payments, relinquish any claim to longevity pay, voluntarily relinquish any claim to career status or eligibility for career status as approved by the State Chief Information Officer and the Director of the Office of State Human Resources (OSHR).
- (4) Employees of the Utilities Commission and the Commission's Public Staff."

PART VI. EFFECTIVE DATE

SECTION 7. Except as otherwise provided, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 22nd day of September, 2023.

s/ Phil Berger
President Pro Tempore of the Senate

s/ Tim Moore
Speaker of the House of Representatives

VETO Roy Cooper
Governor

Became law notwithstanding the objections of the Governor at 1:29 p.m. this 10th day of October, 2023.

s/ Mr. James White
House Principal Clerk