

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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HOUSE BILL 1015*

Short Title: Improve Air Quality/Electric Utilities. (Public)

Sponsors: Representatives Nesbitt, Haire (Primary Sponsors); Adams, Alexander, Allen, Baddour, Barefoot, Bell, Blue, Bonner, Bowie, Buchanan, Carpenter, Church, Coates, Cole, Cox, Earle, Easterling, Edwards, Fitch, Fox, Gibson, Goodwin, Hackney, Hall, Hensley, Hill, Holliman, Hurley, Jarrell, Jeffus, Lucas, Luebke, McAllister, McLawhorn, Miller, Oldham, Redwine, Saunders, Shubert, Smith, Sutton, Tucker, Underhill, Wainwright, Warner, Weiss, West, Womble, Wright, and Yongue.

Referred to: Public Utilities, if favorable, Environment and Natural Resources.

April 9, 2001

1 A BILL TO BE ENTITLED
2 AN ACT TO IMPROVE AIR QUALITY IN THE STATE BY REQUIRING
3 REDUCTIONS IN THE EMISSIONS OF CERTAIN POLLUTANTS FROM
4 CERTAIN FACILITIES THAT BURN COAL TO GENERATE ELECTRICITY.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** G.S. 143-215.107 reads as rewritten:

7 **"§ 143-215.107. Air quality standards and classifications.**

8 (a) Duty to Adopt Plans, Standards, etc. – The Commission is hereby directed
9 and empowered, as rapidly as possible within the limits of funds and facilities available
10 to it, and subject to the procedural requirements of this Article and Article 21:

11 (1) To prepare and develop, after proper study, a comprehensive plan or
12 plans for the prevention, abatement and control of air pollution in the
13 State or in any designated area of the State.

14 (2) To determine by means of field sampling and other studies, including
15 the examination of available data collected by any local, State or
16 federal agency or any person, the degree of air contamination and air
17 pollution in the State and the several areas of the State.

18 (3) To develop and adopt, after proper study, air quality standards
19 applicable to the State as a whole or to any designated area of the State
20 as the Commission deems proper in order to promote the policies and
21 purposes of this Article and Article 21 most effectively.

- 1 (4) To collect information or to require reporting from classes of sources
2 which, in the judgment of the Environmental Management
3 Commission, may cause or contribute to air pollution. Any person
4 operating or responsible for the operation of air contaminant sources of
5 any class for which the Commission requires reporting shall make
6 reports containing such information as may be required by the
7 Commission concerning location, size, and height of contaminant
8 outlets, processes employed, fuels used, and the nature and time
9 periods or duration of emissions, and such other information as is
10 relevant to air pollution and available or reasonably capable of being
11 assembled.
- 12 (5) To develop and adopt emission control standards as in the judgment of
13 the Commission may be necessary to prohibit, abate, or control air
14 pollution commensurate with established air quality standards. This
15 subdivision does not apply to that portion of the National Emission
16 Standards for Hazardous Air Pollutants for asbestos that governs
17 demolition and renovation as set out in 40 C.F.R. § 61.141, 61.145,
18 61.150, and 61.154 (1 July 1993 edition).
- 19 (6) To adopt motor vehicle emissions standards; to adopt, when necessary
20 and practicable, a motor vehicle emissions inspection and maintenance
21 program to improve ambient air quality; to require manufacturers of
22 motor vehicles to furnish to the Equipment and Tool Institute and,
23 upon request and at a reasonable charge, to any person who maintains
24 or repairs a motor vehicle, all information necessary to fully make use
25 of the on-board diagnostic equipment and the data compiled by that
26 equipment; to certify to the Commissioner of Motor Vehicles that
27 ambient air quality will be improved by the implementation of a motor
28 vehicle emissions inspection and maintenance program in a county.
29 The Commission shall implement this subdivision as provided in G.S.
30 143-215.107A.
- 31 (7) To develop and adopt standards and plans necessary to implement
32 programs for the prevention of significant deterioration and for the
33 attainment of air quality standards in nonattainment areas.
- 34 (8) To develop and adopt standards and plans necessary to implement
35 programs to control acid deposition and to regulate the use of sulfur
36 dioxide allowances and nitrogen oxides (NOx) emissions in
37 accordance with Title IV and implementing regulations adopted by the
38 United States Environmental Protection Agency.
- 39 (8a) To develop and adopt standards and plans and to implement programs
40 to control emissions of oxides of nitrogen (NOx) and sulfur dioxide
41 from coal-fired generating units, as those terms are defined in 40 Code
42 of Federal Regulations § 96.2 (1 July 2000 Edition), that are owned or
43 operated by an investor-owned public utility, as defined in G.S. 62-3,

1 and that have the capacity to generate 25 or more megawatts of
2 electricity.

3 (9) To regulate the content of motor fuels, as defined in G.S. 119-16, to
4 require use of reformulated gasoline as the Commission determines
5 necessary, to implement the requirements of Title II and implementing
6 regulations adopted by the United States Environmental Protection
7 Agency, and to develop standards and plans to implement this
8 subdivision. Rules may authorize the use of marketable oxygen credits
9 for gasoline as provided in federal requirements.

10 (10) To develop and adopt standards and plans necessary to implement
11 requirements of the federal Clean Air Act and implementing
12 regulations adopted by the United States Environmental Protection
13 Agency.

14 (11) To develop and adopt economically feasible standards and plans
15 necessary to implement programs to control the emission of odors
16 from animal operations, as defined in G.S. 143-215.10B.

17 (12) To develop and adopt a program of incentives to promote voluntary
18 reductions of emissions of air contaminants, including, but not limited
19 to, emissions banking and trading and credit for voluntary early
20 reduction of emissions.

21 (13) To develop and adopt rules governing the certification of persons who
22 inspect vehicle-mounted tanks used to transport motor fuel and to
23 require that inspection of these tanks be performed only by certified
24 personnel.

25 (14) To develop and adopt rules governing the sale and service of mobile
26 source exhaust emissions analyzers and to require that vendors of these
27 analyzers provide adequate surety to purchasers for the performance of
28 the vendor's contractual or other obligations related to the sale and
29 service of analyzers.

30 (b) Criteria for Standards. – In developing air quality and emission control
31 standards, motor vehicle emissions standards, motor vehicle emissions inspection and
32 maintenance requirements, rules governing the content of motor fuels or requiring the
33 use of reformulated gasoline, and other standards and plans to improve ambient air
34 quality, the Commission shall consider varying local conditions and requirements and
35 may prescribe uniform standards and plans throughout the State or different standards
36 and plans for different counties or areas as may be necessary and appropriate to improve
37 ambient air quality in the State or within a particular county or area, achieve attainment
38 or preclude violations of state or national ambient air quality standards, meet other
39 federal requirements, or achieve the purposes of this Article and Article 21.

40 (c) Chapter 150B of the General Statutes governs the adoption and publication of
41 rules under this Article.

42 (d), (e) Repealed by Session Laws 1987, c. 827, s. 205.

43 (f), (g). Repealed by Session Laws 1995, c. 507, s. 27."

1 **SECTION 2.** The Environmental Management Commission shall adopt
2 rules to implement G.S. 143-215.107(a)(8a), as enacted by Section 1 of this act, as
3 provided in this section. For emissions of oxides of nitrogen (NOx), the Commission
4 shall develop and adopt standards and plans and implement programs to control
5 emissions from coal-fired generating units, as those terms are defined in 40 Code of
6 Federal Regulations § 96.2 (1 July 2000 Edition), that are owned or operated by an
7 investor-owned public utility, as defined in G.S. 62-3, and that have the capacity to
8 generate 25 or more megawatts of electricity so that no later than 1 January 2007 these
9 units will collectively emit no more than 60,000 tons of oxides of nitrogen (NOx)
10 annually and no later than 1 January 2009 these units will collectively emit no more
11 than 56,000 tons of oxides of nitrogen (NOx) annually. For emissions of sulfur dioxide,
12 the Commission shall develop and adopt standards and plans and implement programs
13 to control emissions from coal-fired generating units, as those terms are defined in 40
14 Code of Federal Regulations § 96.2 (1 July 2000 Edition), that are owned or operated by
15 an investor-owned public utility, as defined in G.S. 62-3, and that have the capacity to
16 generate 25 or more megawatts of electricity so that no later than 1 January 2009 these
17 units will collectively emit no more than 250,000 tons of sulfur dioxide annually and no
18 later than 1 January 2013 these units will collectively emit no more than 130,000 tons of
19 sulfur dioxide annually.

20 **SECTION 3.** Article 7 of Chapter 62 of the General Statutes is amended by
21 adding a new section to read:

22 **"§ 62-133.6. Environmental compliance expenditure-recovery.**

23 (a) As used in this section, the term 'environmental compliance expenditures'
24 means all expenditures incurred by an electric utility to comply with standards adopted
25 pursuant to G.S. 143-215.107(a)(8a) that exceed the expenditures required to comply
26 with federal and State law in effect on 1 April 2001.

27 (b) The Commission shall allow each electric utility to recover all just,
28 reasonable, and prudently incurred environmental compliance expenditures through an
29 environmental compliance expenditure-recovery factor that is separate from the electric
30 utility's base rates.

31 (c) The Commission shall set the environmental compliance expenditure-
32 recovery factor for each utility at least annually. The Commission shall base the
33 environmental compliance expenditure-recovery factor on the electric utility's
34 projections of its environmental compliance expenditures for the next calendar year.
35 The Commission shall incorporate into the environmental compliance expenditure-
36 recovery factor determination the experienced under-recovery or over-recovery of the
37 electric utility's environmental compliance expenditures incurred during the previous
38 calendar year. Any refund or collection made as part of this process shall include
39 interest at a rate to be determined by the Commission."

40 **SECTION 4.** It is the intent of the General Assembly that the State use all
41 available resources and means, including negotiation, participation in interstate
42 compacts and multistate and interagency agreements, and litigation, to induce other
43 states and entities, including the Tennessee Valley Authority, to achieve reductions in
44 emissions of oxides of nitrogen (NOx) and sulfur dioxide comparable to those required

1 by G.S. 143-215.107(a)(8a), as enacted by Section 1 of this act, and Section 2 of this act
2 on a comparable schedule. The State shall give particular attention to those states and
3 other entities whose emissions negatively impact air quality in North Carolina or whose
4 failure to achieve comparable reductions would place the economy of North Carolina at
5 a competitive disadvantage.

6 **SECTION 5.** The Environmental Management Commission shall study the
7 desirability of requiring and the feasibility of obtaining reductions in emissions of
8 oxides of nitrogen (NOx) and sulfur dioxide beyond those required by G.S.
9 143-215.107(a)(8a), as enacted by Section 1 of this act, and Section 2 of this act. The
10 Environmental Management Commission shall consider the availability of emissions
11 reduction technologies, increased cost to consumers of electric power, reliability of
12 electric power supply, actions to reduce emissions of oxides of nitrogen (NOx) and
13 sulfur dioxide taken by states and other entities whose emissions negatively impact air
14 quality in North Carolina or whose failure to achieve comparable reductions would
15 place the economy of North Carolina at a competitive disadvantage, and the effects that
16 these reductions would have on public health, the environment, and natural resources,
17 including visibility. In its conduct of this study, the Environmental Management
18 Commission may consult with the Utilities Commission and its staff. The
19 Environmental Management Commission shall report its findings and recommendations
20 to the General Assembly and the Environmental Review Commission annually
21 beginning 1 September 2004.

22 **SECTION 6.** The General Assembly anticipates that measures implemented
23 to achieve the reductions in emissions of oxides of nitrogen (NOx) and sulfur dioxide
24 required by G.S. 143-215.107(a)(8a), as enacted by Section 1 of this act, and Section 2
25 of this act will also result in significant reductions in the emissions of mercury from
26 coal-fired generating units. The Division of Air Quality of the Department of
27 Environment and Natural Resources shall study issues related to monitoring emissions
28 of mercury and the development and implementation of standards and plans to
29 implement programs to control emissions of mercury from coal-fired generating units.
30 The Division shall evaluate available control technologies and shall estimate the
31 benefits and costs of alternative strategies to reduce emissions of mercury. The
32 Division shall annually report on its interim findings and recommendations to the
33 Environmental Management Commission and the Environmental Review Commission
34 beginning 1 March 2002. The Division shall report its final findings and
35 recommendations to the Environmental Management Commission and the
36 Environmental Review Commission no later than 1 March 2005.

37 **SECTION 7.** The Division of Air Quality of the Department of Environment
38 and Natural Resources shall study issues related to the development and implementation
39 of standards and plans to implement programs to control emissions of carbon dioxide
40 from coal-fired generating units and other stationary sources of air pollution. The
41 Division shall evaluate available control technologies and shall estimate the benefits and
42 costs of alternative strategies to reduce emissions of carbon dioxide. The Division shall
43 report its findings and recommendations to the Environmental Management
44 Commission and the Environmental Review Commission no later than 1 March 2002.

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SECTION 8. This act is effective when it becomes law.