

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019**

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HOUSE BILL 235

Short Title: Utilities Commission Technical & Admin Changes.-AB (Public)

Sponsors: Representatives Arp and Szoka (Primary Sponsors).

For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Energy and Public Utilities, if favorable, Finance, if favorable, Rules, Calendar, and Operations of the House

March 4, 2019

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL AND ADMINISTRATIVE CHANGES TO THE LAWS RELATED TO PUBLIC UTILITIES, TO INCREASE THE NONUTILITY FILING FEE FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY, AND TO GRANT THE UTILITIES COMMISSION AND PUBLIC STAFF ADMINISTRATIVE FLEXIBILITY REGARDING JOB CLASSIFICATIONS AND SALARIES, AS RECOMMENDED BY THE NORTH CAROLINA UTILITIES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-398 reads as rewritten:

"§ 20-398. Household goods carrier; marking or identification of vehicles.

(a) No carrier shall operate or attempt to operate any motor vehicle upon a highway, public street, or public vehicular area within the State in the transportation of household goods for compensation unless the name or trade name and the North Carolina number assigned to the carrier by the North Carolina Utilities Commission appear on each side of the vehicle in letters and figures not less than three inches high. The North Carolina number assigned to the carrier shall also be placed on the rear left upper quadrant of the vehicle in letters and figures not less than three inches high. In case of a tractor-trailer unit, the side markings must be on the tractor and the rear markings must be on the trailer. The markings required may be printed on the vehicle or on durable placards securely fastened on the vehicle.

...

(e) Notwithstanding the provisions of G.S. 20-383 to the contrary, any law enforcement officer with territorial jurisdiction is authorized to enforce the provisions of this section.

SECTION 2. G.S. 62-3 reads as rewritten:

"§ 62-3. Definitions.

As used in this Chapter, unless the context otherwise requires, the term:

...

(2) "Certificate" means a certificate of public convenience and necessity issued by the Commission to a person or public utility or a certificate of authority issued by the Commission to a bus company.

...

(23) a. "Public utility" means a person, whether organized under the laws of this State or under the laws of any other state or country, now or hereafter owning or operating in this State equipment or facilities for:

...



- 1 2. Diverting, developing, pumping, impounding, distributing or
- 2 furnishing water to or for the public for compensation, or
- 3 operating a public sewerage system for compensation;
- 4 provided, however, that the term "public utility" shall not
- 5 include any person or company whose sole operation consists
- 6 of selling water or sewer service to less than 15 residential
- 7 customers, except that any person or company which
- 8 constructs a water or sewer system in a subdivision with plans
- 9 for 15 or more lots and which holds itself out by contracts or
- 10 other means at the time of said construction to serve an area
- 11 containing more than 15 residential building lots shall be a
- 12 public utility at the time of such planning or holding out to
- 13 serve such 15 or more building lots, without regard to the
- 14 number of actual customers connected;
- 15 ...
- 16 c. The term "public utility" shall include all persons affiliated through
- 17 stock ownership with a public utility doing business in this State as
- 18 parent corporation or subsidiary corporation ~~as defined in G.S. 55-2~~ to
- 19 such an extent that the Commission shall find that such affiliation has
- 20 an effect on the rates or service of such public utility.
- 21 d. The term "public utility," except as otherwise expressly provided in
- 22 this Chapter, shall not include the following:
- 23 1. ~~a municipality.~~ A municipality.
- 24 2. ~~an~~ An authority organized under the North Carolina Water and
- 25 Sewer Authorities ~~Act,~~ Act.
- 26 3. An electric or telephone membership ~~corporation;~~ corporation.
- 27 4. ~~or any~~ Any person not otherwise a public utility who furnishes
- 28 such service or commodity only to himself, his employees or
- 29 tenants when such service or commodity is not resold to or
- 30 used by ~~others; provided, however, that any~~ others.
- 31 d1. Any person other than a nonprofit organization serving only its
- 32 members, who distributes or provides utility service to his employees
- 33 or tenants by individual meters or by other coin-operated devices with
- 34 a charge for metered or coin-operated utility service shall be a public
- 35 utility within the definition and meaning of this Chapter with respect
- 36 to the regulation of rates and provisions of service rendered through
- 37 such meter or coin-operated device imposing such separate metered
- 38 utility charge.
- 39 d2. If any person conducting a public utility shall also conduct any
- 40 enterprise not a public utility, such enterprise is not subject to the
- 41 provisions of this Chapter.
- 42 d3. A water or sewer system owned by a homeowners' association that
- 43 provides water or sewer service only to members or leaseholds of
- 44 members is not subject to the provisions of this Chapter.
- 45 ...
- 46 i. The term "public utility" shall not include the State, the Department of
- 47 Information Technology, or the Microelectronics Center of North
- 48 Carolina in the provision or sharing of ~~switched~~ broadband
- 49 telecommunications services with non-State entities or organizations
- 50 of the kind or type set forth in ~~G.S. 143B-426.39~~ G.S. 143B-1371.
- 51 "

1 **SECTION 3.** G.S. 62-15 reads as rewritten:

2 "**§ 62-15. Office of executive director; public staff, structure and function.**

3 ...

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

11 ...

12 (d) It shall be the duty and responsibility of the public staff to:

13 ...

14 (4) When deemed necessary by the executive director in the interest of the using
15 and consuming public, petition the Commission to initiate proceedings to
16 review, investigate, and take appropriate action with respect to the ~~rates~~ rates,
17 operations, management, or service of public utilities;

18 ...

19 ~~(10) Investigate and make appropriate recommendations to the Commission with~~
20 ~~respect to applications for certificates by radio common carriers, pursuant to~~
21 ~~the provisions of Article 6A of this Chapter;~~

22 ...

23 (13) When deemed necessary by the executive director in the interest of the using
24 and consuming public, appear before State and federal courts and agencies in
25 matters affecting public utility service.

26 "

27 **SECTION 4.** G.S. 62-20 reads as rewritten:

28 "**§ 62-20. Participation by Attorney General in Commission proceedings.**

29 The Attorney General may intervene, when he deems it to be advisable in the public interest,
30 in proceedings before the Commission on behalf of the using and consuming public, including
31 utility users generally and agencies of the State. The Attorney General may institute and originate
32 proceedings before the Commission in the name of the State, its agencies or citizens, in matters
33 within the jurisdiction of the Commission. The Attorney General may appear before such State
34 and federal courts and agencies as he deems it advisable in matters affecting public utility
35 services. In the performance of his responsibilities under this section, the Attorney General shall
36 have the right to employ expert witnesses, and the compensation and expenses therefor shall be
37 paid from the Contingency and Emergency Fund. ~~The~~ Upon request, the Commission shall
38 furnish the Attorney General with copies of all applications, petitions, pleadings, order and
39 decisions filed with or entered by the Commission. The Attorney General shall have access to all
40 books, papers, studies, reports and other documents filed with the Commission."

41 **SECTION 5.** G.S. 62-34 reads as rewritten:

42 "**§ 62-34. To investigate companies under its control; visitation and inspection.**

43 ...

44 (c) The Public Staff shall have the right to examine confidential information as defined
45 in G.S. 132-1.2 in exercising any power or performing any duty authorized by this Chapter. The
46 Public Staff shall not disclose confidential information except as authorized by (i) the person or
47 entity having the right to assert confidentiality, (ii) the Commission, or (iii) a court of competent
48 jurisdiction. Any information not designated in writing as confidential by the person or entity
49 disclosing it to the Public Staff is subject to disclosure. Any dispute about whether information
50 has been properly designated as confidential shall be determined by the Commission upon motion

1 and response of interested parties. Information shall be considered confidential only to the extent
2 provided by general law."

3 **SECTION 6.** G.S. 62-39 reads as rewritten:

4 "**§ 62-39. To regulate crossings of telephone, telegraph, electric power lines and pipelines**
5 **and rights-of-way of railroads and other utilities by another utility.**

6 ...

7 (d) This section shall not be construed to limit the right of eminent domain conferred
8 upon public utilities and electric membership corporations by the laws of this State or to limit the
9 right and duty conferred by law with respect to crossing of railroads and ~~highways or railroads~~
10 ~~crossing railroads, highways,~~ but the duty imposed and the remedy given by this section shall be
11 in addition to other duties and remedies now prescribed by law. Any party shall have the right of
12 appeal from any final order or decision or determination of the Commission as provided by law
13 for appeals from orders or decisions or final determinations of the Commission."

14 **SECTION 7.** G.S. 62-49 reads as rewritten:

15 "**§ 62-49. Publication of utilities laws.**

16 The Commission is authorized and directed to secure publication of all North Carolina laws
17 affecting public utilities, together with the Commission rules and regulations, in an annotated
18 edition, and the Commission may adopt rules for distribution of said ~~publication, and shall~~
19 ~~publish biennial supplements to said utilities laws containing all amendments and additions~~
20 ~~thereto, publication~~ and may republish said laws at such times as may be reasonable and
21 necessary."

22 **SECTION 8.** G.S. 62-74 reads as rewritten:

23 "**§ 62-74. Complaints by public utilities.**

24 Any public utility shall have the right to ~~complain~~ file a complaint against any other public
25 utility or any person on any of the grounds upon which complaints are allowed to be filed by
26 other parties, and the same procedure shall be adopted and followed as in other cases, except that
27 the complaint and notice of hearing shall be served by the Commission upon such interested
28 persons as it may designate."

29 **SECTION 9.** G.S. 62-79 reads as rewritten:

30 "**§ 62-79. Final orders and decisions; findings; service; compliance.**

31 ...

32 (b) A copy of every final order or decision under the seal of the Commission shall be
33 ~~served by registered or certified mail in the manner prescribed by the Commission~~ upon the
34 person against whom it runs or his attorney and notice thereof shall be given to the other parties
35 to the proceeding or their attorney. Such order shall take effect and become operative when issued
36 unless otherwise designated therein and shall continue in force either for a period which may be
37 designated therein or until changed or revoked by the Commission. If an order cannot, in the
38 judgment of the Commission, be complied with within the time designated therein, the
39 Commission may grant and prescribe such additional time as in its judgment is reasonably
40 necessary to comply with the order, and may, on application and for good cause shown, extend
41 the time for compliance fixed in its order."

42 **SECTION 10.** G.S. 62-81 reads as rewritten:

43 "**§ 62-81. Special procedure in hearing and deciding rate cases.**

44 (a) All cases or proceedings, declared to be or properly classified as general rate cases
45 under G.S. 62-137, or any proceedings which will substantially affect any utility's overall level
46 of earnings or rate of return, shall be set for trial or hearing by the Commission, which trial or
47 hearing shall be set to commence within ~~six months~~ 180 days of the institution or filing ~~thereof,~~
48 ~~and all such cases or proceedings shall be tried or heard and decided, with the issuance of a final~~
49 ~~order, by the Commission within nine months of the institution or filing thereof. thereof.~~ All such
50 cases or proceedings shall be tried or heard and decided in accordance with the rate-making
51 procedure set forth in G.S. 62-133 and such cases shall be given priority over all other cases or

1 proceedings pending before the Commission. In all such cases the Commission shall make a
2 transcript of the evidence and testimony presented and received by it and shall furnish a copy
3 thereof to any party so requesting by the third business day after the taking of such evidence and
4 testimony.

5 (b) Any public utility filing or applying for an increase in rates for electric, telephone,
6 natural gas or water gas, water, or sewer service shall notify its customers proposed to be affected
7 by such increase of such filing by regular mail or by newspaper publications, as directed by the
8 Commission, within 30 days of such filing, which notice shall state that the Commission shall
9 set and shall conduct a trial or hearing with respect to such filing or application within six months
10 of said filing date. All other public utilities shall give such notice in such manner as shall be
11 prescribed by the Commission.

12 ...

13 (d) In all proceedings for an increase in rates and all other proceedings declared to be
14 general rate cases under G.S. 62-137, the Commission shall conduct the hearing or portions of
15 the hearing within the area of the State served by the public utility whose rates are under
16 consideration, provided this subsection shall not apply to proceedings held pursuant to ~~G.S.~~
17 ~~62-134(e) and 62-133(f).~~ G.S. 62-133.2 and G.S. 62-133.4.

18 (e) ~~Notwithstanding the provisions of this section, application by any public utility for~~
19 ~~permission and authority to adjust its rates and charges based solely upon the cost of fuel used in~~
20 ~~the generation or production of electric power shall be determined in accordance with the~~
21 ~~provisions of G.S. 62-134(e).~~

22"

23 **SECTION 11.** G.S. 62-110.1 reads as rewritten:

24 **"§ 62-110.1. Certificate for construction of generating facility; analysis of long-range needs**
25 **for expansion of facilities; ongoing review of construction costs; inclusion of**
26 **approved construction costs in rates.**

27 ...

28 (c) The Commission shall develop, publicize, and keep current an analysis of the
29 long-range needs for expansion of facilities for the generation of electricity in North Carolina,
30 including its estimate of the probable future growth of the use of electricity, the probable needed
31 generating reserves, the extent, size, mix and general location of generating plants and
32 arrangements for pooling power to the extent not regulated by the Federal Energy Regulatory
33 Commission and other arrangements with other utilities and energy suppliers to achieve
34 maximum efficiencies for the benefit of the people of North Carolina, and shall consider such
35 analysis in acting upon any petition by any utility for construction. In developing such analysis,
36 the Commission ~~shall~~ shall, as it deems necessary, confer and consult with the public utilities in
37 North Carolina, the utilities commissions or comparable agencies of neighboring states, the
38 Federal Energy Regulatory Commission and other agencies having relevant information and may
39 participate as it deems useful in any joint boards investigating generating plant sites or the
40 probable need for future generating facilities. In addition to such reports as public utilities may
41 be required by statute or rule of the Commission to file with the Commission, any such utility in
42 North Carolina may submit to the Commission its proposals as to the future needs for electricity
43 to serve the people of the State or the area served by such utility, and insofar as practicable, each
44 such ~~utility~~ utility, the Public Staff, and the Attorney General may attend or be represented at any
45 formal conference conducted by the Commission in developing a plan for the future requirements
46 of electricity for North Carolina or this region. In the course of making the analysis and
47 developing the plan, the Commission shall conduct one or more public hearings. Each year, the
48 Commission shall submit to the Governor and to the appropriate committees of the Joint
49 Legislative Oversight Committee on Agriculture and Natural and Economic Resources, the
50 chairs of the Senate Appropriations Committee on Agriculture, Natural, and Economic
51 Resources, and the chairs of the House of Representatives Appropriations Committee on

1 Agriculture and Natural and Economic Resources a report of its analysis and plan, the progress
2 to date in carrying out such plan, and the program of the Commission for the ensuing year in
3 connection with such plan.

4"

5 **SECTION 12.** G.S. 62-111 reads as rewritten:

6 "**§ 62-111. Transfers of franchises; mergers, consolidations and combinations of public**
7 **utilities.**

8 ...

9 (d) No person shall obtain a franchise or certificate for the purpose of transferring the
10 same to another, and an offer of such transfer within one year after the same was obtained shall
11 be prima facie evidence that such franchise or certificate was obtained for the purpose of sale.

12"

13 **SECTION 13.** G.S. 62-130(c) is repealed.

14 **SECTION 14.** G.S. 62-133.4 reads as rewritten:

15 "**§ 62-133.4. Gas cost adjustment for natural gas local distribution companies.**

16 ...

17 (c) Each natural gas local distribution company shall submit to the Commission
18 information and data for an historical 12-month test period concerning the utility's actual cost of
19 gas, volumes of purchased gas, sales volumes, negotiated sales volumes, and transportation
20 volumes. This information and data shall be filed on an annual basis in the form and detail and
21 at the time required by the Commission. The Commission, upon notice and hearing, shall
22 compare the utility's prudently incurred costs with costs recovered from all the utility's customers
23 that it served during the test period. If those prudently incurred costs are greater or less than the
24 recovered costs, the Commission shall, subject to G.S. 62-158, require the utility to refund any
25 overrecovery by credit to bill or through a decrement in its rates and shall permit the utility to
26 recover any deficiency through an increment in its rates. If the Commission finds the
27 overrecovery or deficiency has been or is likely to be substantially reduced, negated, or reversed
28 before or during the period in which it would be credited or recovered, the Commission, in its
29 discretion, may order the utility to make an appropriate adjustment or no adjustment to its rates,
30 consistent with the public interest.

31"

32 **SECTION 15.** G.S. 62-133.10 is repealed.

33 **SECTION 16.** G.S. 62-140 reads as rewritten:

34 "**§ 62-140. Discrimination prohibited.**

35 ...

36 (c) No public utility shall offer or pay any compensation or consideration or furnish any
37 equipment to secure the installation or adoption of the use of such utility service except upon
38 filing of a schedule of such compensation or consideration or equipment to be furnished and
39 approved thereof by the Commission, and offering such compensation, consideration or
40 equipment to all persons within the same classification using or applying for such public utility
41 service; provided, in considering the reasonableness of any such schedule filed by a public utility
42 the Commission shall consider, among other things, evidence of consideration or compensation
43 paid by any competitor, regulated or nonregulated, of the public utility to secure the installation
44 or adoption of the use of such competitor's service. ~~Provided, further, that nothing herein shall~~
45 ~~prohibit a public utility from carrying out any contractual commitment in existence at the time~~
46 ~~of the enactment hereof, so long as such program does not extend beyond December 31, 1963.~~
47 For the purpose of this subsection, "public utility" shall include any electric membership
48 corporation operating within this State, and the terms "utility service" and "public utility service"
49 shall include the service rendered by any such electric membership corporation."

50 **SECTION 17.** G.S. 62-280.1 reads as rewritten:

51 "**§ 62-280.1. False representation of household goods carrier certificate unlawful.**

1 ...

2 (b) Any person who violates subsection (a) of this section or who knowingly aids and
3 abets another person in violating subsection (a) of this section shall be guilty of a Class 3
4 misdemeanor and punished only by a fine of not more than five hundred dollars (\$500.00) for
5 the first offense and not more than two thousand dollars (\$2,000) for any subsequent offense.

6 ...

7 (d) Notwithstanding the provisions of G.S. 20-383 to the contrary, any law enforcement
8 officer with territorial jurisdiction is authorized to enforce the provisions of this section."

9 **SECTION 18.** G.S. 62-300 reads as rewritten:

10 **"§ 62-300. Particular fees and charges fixed; payment.**

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

14 ...

15 (5) With each application for a certificate of public convenience and necessity or
16 for any amendment thereto so as to extend or enlarge the scope of operations
17 thereunder, the fee shall be two hundred fifty dollars (\$250.00) for Class A
18 utilities, one hundred dollars (\$100.00) for Class B utilities, and twenty-five
19 dollars (\$25.00) for Class C and D utilities and ~~twenty-five dollars (\$25.00)~~
20 two hundred fifty dollars (\$250.00) for any other person seeking a certificate
21 of public convenience and necessity.

22"

23 **SECTION 19.** G.S. 143-166.13 reads as rewritten:

24 **"§ 143-166.13. Persons entitled to benefits under Article.**

25 (a) The following persons who are subject to the Criminal Justice Training and Standards
26 Act are entitled to benefits under this Article:

27 ...

28 (14) ~~Utilities Commission Transportation Inspectors and Special Investigators;~~

29"

30 **SECTION 20.** G.S. 143B-963 reads as rewritten:

31 **"§ 143B-963. Criminal history record checks of applicants for and current holders of**
32 **certificate to transport household goods.**

33 (a) The Department of Public Safety may provide to the Utilities Commission from the
34 State and National Repositories of Criminal Histories the criminal history of any applicant for or
35 current holder of a certificate to transport household goods. Along with the request, the
36 Commission shall provide to the Department of Public Safety the fingerprints of the applicant or
37 current holder, a form signed by the applicant or current holder consenting to the criminal history
38 record check and use of fingerprints and other identifying information required by the State and
39 National Repositories of Criminal Histories, and any additional information required by the
40 Department of Public Safety. The applicant's or current holder's fingerprints shall be forwarded
41 to the State Bureau of Investigation for a search of the State's criminal history record file, and the
42 State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of
43 Investigation for a national criminal history record check. The Utilities Commission shall keep
44 all information obtained pursuant to this section confidential. The Department of Public Safety
45 may charge a fee to offset the cost incurred by it to conduct a criminal history record check under
46 this section. The fee shall not exceed the actual cost of locating, editing, researching, and
47 retrieving the information. The Department of Public Safety shall send a copy of the results of
48 the criminal history record checks directly to the Utilities Commission Chief Clerk.

49 (b) The Utilities Commission may provide the information obtained pursuant to
50 subsection (a) of this section to the Public Staff for use in proceedings before the Commission.

1 The Public Staff shall keep all information obtained pursuant to subsection (a) of this section
2 confidential."

3 **SECTION 21.** G.S. 156-91 reads as rewritten:

4 "**§ 156-91. Manner of construction across railroad.**

5 ...

6 (b) ~~Utilities Commission to Settle.— If the superintendent of construction and the railroad~~
7 ~~company shall not be able to agree as to the exact time at which such work can be done, including~~
8 ~~the time of beginning and the time to be consumed in such work, either party may give written~~
9 ~~notice thereof to the chairman of the Utilities Commission of the State, and thereupon the Utilities~~
10 ~~Commission shall cause an investigation to be made, and, after hearing both parties, shall fix the~~
11 ~~time of beginning such work and the time to be consumed in the work of construction, and the~~
12 ~~final determination of the Utilities Commission thereon shall be binding upon the superintendent~~
13 ~~of construction representing the district and the railroad company, and the work shall be done in~~
14 ~~such time as may be fixed by the Utilities Commission.~~

15"

16 **SECTION 22.** (a) Notwithstanding G.S. 126-4(1), G.S. 126-4(2), or any other
17 provision of law, for the 2019-2020 fiscal year, the Utilities Commission and Public Staff shall
18 have the sole authority and discretion to take the following actions concerning the classification
19 of positions of and the salaries for employees of the Utilities Commission and Public Staff:

20 (1) Classify new positions or reclassify existing positions, including vacant
21 positions, within the classification system adopted by the State Human
22 Resources Commission or as otherwise provided by law.

23 (2) Determine the appropriate salary for employees, provided funding is available
24 and the salary remains within the minimum and maximum range of the salary
25 range associated with the position classification or as otherwise provided by
26 law.

27 (3) Make hiring decisions based on the flexibility authorized by this section.

28 (b) Upon request, the Office of State Human Resources and the Human Resources
29 Director of the Department of Commerce shall assist the Commission and Public Staff in taking
30 the actions authorized in subsection (a) of this section.

31 (c) The Commission may use available funds to contract with a qualified consultant to
32 study the appropriate job classifications and salaries for employees of the Commission and Public
33 Staff, including an analysis of market rates for employees with utility regulatory experience to
34 determine whether current employees are classified and compensated appropriately. The study
35 shall be completed no later than October 1, 2019. The Commission and Public Staff shall
36 implement the recommendations of the study consistent with the flexibility granted in subsection
37 (a) of this section.

38 (d) By March 1, 2020, the Commission and Public Staff shall report to the House
39 Committee on Energy and Public Utilities and the Fiscal Research Division on the following:

40 (1) The results of the study authorized under subsection (c) of this section.

41 (2) The number of classification actions and salary adjustments made under
42 subsection (a) of this section.

43 (3) The need to continue the flexibility authorized under this section, the length
44 of any proposed flexibility continuation, and any recommendations on
45 changes that should be made to the proposed flexibility continuation.

46 **SECTION 23.** The Revisor of Statutes is authorized to substitute the term "Public
47 Staff" for the term "public staff" wherever the term appears in Chapter 62 of the General Statutes.

48 **SECTION 24.** This act is effective when it becomes law.