

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H.B. 613
Apr 8, 2013
HOUSE PRINCIPAL CLERK

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HOUSE DRH30333-MHF-159 (03/28)

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

Sponsors: Representatives Harrison, Fisher, and Luebke (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO (1) PRESERVE THE APPALACHIAN MOUNTAINS BY PROHIBITING ELECTRIC PUBLIC UTILITIES THAT OPERATE COAL-FIRED GENERATING UNITS LOCATED IN NORTH CAROLINA FROM PURCHASING OR USING COAL THAT IS EXTRACTED USING MOUNTAINTOP REMOVAL COAL MINING; (2) REQUIRE PERMITS FOR CERTAIN SOLID WASTE DISPOSAL SITES FOR THE REUSE OF COMBUSTION PRODUCTS AND FOR CERTAIN SOLID WASTE DISPOSAL SITES FOR STRUCTURAL FILL AND TO ESTABLISH PERMIT FEES FOR THESE DISPOSAL SITES IN ORDER TO ADEQUATELY PROTECT THE PUBLIC HEALTH AND THE ENVIRONMENT; (3) PROVIDE ECONOMIC RELIEF TO ELECTRIC UTILITY RATEPAYERS DURING THIS PERIOD OF ECONOMIC RECESSION AND THE COMING RECOVERY PERIOD BY PLACING A MORATORIUM ON THE CONSTRUCTION OF ANY NEW COAL-FIRED POWER PLANT UNLESS IT IS CARBON NEUTRAL; AND (4) REQUIRE THE STATE TREASURER TO REPORT TO THE GENERAL ASSEMBLY PRIOR TO THE 2014 SHORT SESSION REGARDING DIVESTMENT OF PUBLIC FUNDS FROM COMPANIES INVOLVED IN THE EXTRACTION, PROCESSING, COMBUSTION, TRANSPORTATION, STORAGE, OR BROKERAGE OF FOSSIL FUELS.

The General Assembly of North Carolina enacts:

PART I. APPALACHIAN MOUNTAINS PRESERVATION

SECTION 1. Chapter 62 of the General Statutes is amended by adding a new Article to read:

"Article 5B.

"Appalachian Mountains Preservation Act.

"§ 62-109.1. Short title.

This Article shall be known as the Appalachian Mountains Preservation Act.

"§ 62-109.2. Findings and purpose.

(a) The General Assembly finds:

(1) North Carolina is home to the Appalachian Mountains, and the State's citizens and wildlife share in common this critical economic, environmental, and cultural resource with every state containing or bordering these ancient mountains.

(2) From Maine to Alabama, these ancient mountains have shaped the economy, environment, and unique cultural heritage of the areas located along the Appalachian Mountains.



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

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

41 "**§ 62-109.3. Contracts to purchase or use coal extracted by mountaintop removal coal**
42 **mining prohibited.**

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

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

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

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

49 (2) Mountaintop removal coal mining. – Any method of surface coal mining that
50 removes a mountaintop or ridgeline, whether or not the mined area will be
51 returned to its approximate original contour. "Mountaintop removal coal

1 mining" includes all of the following methods of surface coal mining: cross
2 ridge mining, box cut method mining, steep slope mining, area mining,
3 mountaintop mining, and any method of coal mining that utilizes valley fills.

4 **"§ 62-109.4. Sworn statements of coal extraction methods used; report requirements.**

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

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

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

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

15 (b) On the 15th day of each month, each electric public utility that operates a coal-fired
16 generating unit located in North Carolina shall file a report with the Commission that itemizes
17 the monthly and accumulated costs incurred by purchasing or using coal extracted by a method
18 other than mountaintop removal coal mining, using the most recent data available.

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

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

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

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

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

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

38 **"§ 62-109.5. Penalties.**

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

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

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

49 **"§ 62-133.10. Cost recovery for incremental cost of certain coal mining methods.**

50 The Commission shall, upon petition of an electric public utility, approve an annual rider to
51 the electric public utility's rates to recover all reasonable and prudent incremental costs incurred

1 by each investor-owned public utility that operates a coal-fired generating unit located in North
 2 Carolina for purchasing or using coal extracted by a method other than the mountaintop
 3 removal coal mining prohibited by rules adopted in accordance with G.S. 62-109.3."
 4

5 **PART II. COMBUSTION PRODUCT DISPOSAL PERMITTING**

6 **SECTION 3.** G.S. 130A-290(a) reads as rewritten:

7 **"§ 130A-290. Definitions.**

8 (a) Unless a different meaning is required by the context, the following definitions shall
 9 apply throughout this Article:

10 ...

11 (2c) "Combustion products landfill" means a facility or unit for the disposal or
 12 reuse of combustion products, where the landfill is located at the same
 13 facility with the coal-fired generating unit or units producing the combustion
 14 products, and where the landfill is located wholly or partly on top of a
 15 facility that is, or was, being used for the disposal or storage of such
 16 combustion products, including, but not limited to, landfills, wet and dry ash
 17 ponds, and structural fill facilities-products.

18 ...

19 (6a) "Fully encapsulated" means encased or enclosed in such way as to prevent
 20 the leaching of coal combustion residual constituents, including, but not
 21 limited to, antimony, arsenic, barium, beryllium, cadmium, chromium, lead,
 22 mercury, nickel, selenium, silver, and thallium, in trace amounts or
 23 otherwise.

24 ...

25 (41) "Storage" means the containment of solid waste, either on a temporary basis
 26 or for a period of years, in a manner which does not constitute disposal.

27 (41a) "Structural fill" means an engineered fill with a projected beneficial end use
 28 that is constructed using coal combustion by-products properly placed and
 29 compacted.

30 (41a)(41b) "Subsidiary" has the same meaning as in 17 Code of Federal Regulations
 31 § 240.12b-2 (1 April 1996 Edition).

32 (41b)(41c) "Tire-derived fuel" means a form of fuel derived from scrap tires.

33"

34 **SECTION 4.** G.S. 130A-294(a) reads as rewritten:

35 "(a) The Department is authorized and directed to engage in research, conduct
 36 investigations and surveys, make inspections and establish a statewide solid waste management
 37 program. In establishing a program, the Department shall have authority to:

38 (1) Develop a comprehensive program for implementation of safe and sanitary
 39 practices for management of solid waste;

40 ...

41 (4) a. Develop a permit system governing the establishment and operation
 42 of solid waste management facilities. A solid waste disposal site for
 43 the reuse of combustion products shall be subject to the permit
 44 requirement of this section unless the end product is fully
 45 encapsulated and otherwise prohibited. A solid waste disposal site for
 46 structural fill shall be subject to the permit requirement of this
 47 section unless the structural fill is fully encapsulated and otherwise
 48 prohibited. A landfill with a disposal area of 1/2 acre or less for the
 49 on-site disposal of land clearing and inert debris is exempt from the
 50 permit requirement of this section and shall be governed by
 51 G.S. 130A-301.1. The Department shall not approve an application

1 for a new permit, the renewal of a permit, or a substantial amendment
 2 to a permit for a sanitary landfill, excluding demolition landfills as
 3 defined in the rules of the Commission, except as provided in
 4 subdivisions (3) and (4) of subsection (b1) of this section. No permit
 5 shall be granted for a solid waste management facility having
 6 discharges that are point sources until the Department has referred
 7 the complete plans and specifications to the Environmental
 8 Management Commission and has received advice in writing that the
 9 plans and specifications are approved in accordance with the
 10 provisions of G.S. 143-215.1. If the applicant is a unit of local
 11 government, and has not submitted a solid waste management plan
 12 that has been approved by the Department pursuant to
 13 G.S. 130A-309.09A(b), the Department may deny a permit for a
 14 sanitary landfill or a facility that disposes of solid waste by
 15 incineration, unless the Commission has not adopted rules pursuant
 16 to G.S. 130A-309.29 for local solid waste management plans. In any
 17 case where the Department denies a permit for a solid waste
 18 management facility, it shall state in writing the reason for denial and
 19 shall also state its estimate of the changes in the applicant's proposed
 20 activities or plans that will be required for the applicant to obtain a
 21 permit.

22"

23 **SECTION 5.** G.S. 130A-295.8(c) reads as rewritten:

24 "(c) An applicant for a permit shall pay an application fee upon submission of an
 25 application according to the following schedule:

26 ...

- 27 (37) Disposal Site for Reuse of Combustion Products or for Structural Fill
 28 consistent with G.S. 130A-294(a), accepting less than 100,000 tons/year of
 29 combustion products, New Permit – \$25,000.
 30 (38) Disposal Site for Reuse of Combustion Products or for Structural Fill
 31 consistent with G.S. 130A-294(a), accepting less than 100,000 tons/year of
 32 combustion products, Amendment – \$15,000.
 33 (39) Disposal Site for Reuse of Combustion Products or for Structural Fill
 34 consistent with G.S. 130A-294(a), accepting less than 100,000 tons/year of
 35 combustion products, Modification – \$1,500.
 36 (40) Disposal Site for Reuse of Combustion Products or for Structural Fill
 37 consistent with G.S. 130A-294(a), accepting 100,000 tons/year or more of
 38 combustion products, New Permit – \$50,000.
 39 (41) Disposal Site for Reuse of Combustion Products or for Structural Fill
 40 consistent with G.S. 130A-294(a), accepting 100,000 tons/year or more of
 41 combustion products, Amendment – \$30,000.
 42 (42) Disposal Site for Reuse of Combustion Products or for Structural Fill
 43 consistent with G.S. 130A-294(a), accepting 100,000 tons/year or more of
 44 combustion products, Modification – \$3,000."

45 **SECTION 6.** G.S. 130A-295.8(d) reads as rewritten:

46 "(d) A permitted solid waste management facility shall pay an annual permit fee on or
 47 before 1 August of each year according to the following schedule:

48 ...

- 49 (13) Disposal Site for Reuse of Combustion Products or for Structural Fill
 50 consistent with G.S. 130A-294(a) – \$3,500."
 51

PART III. COAL-FIRED POWER PLANT MORATORIUM

SECTION 7. Short title. – Sections 7 through 14 of this act shall be known as The Electric Utility Ratepayers Relief Act.

SECTION 8. Findings. – The General Assembly makes the following findings:

- (1) North Carolina, the nation, and the globe are in the midst of an economic recession.
- (2) Plummeting property values, increased prices for goods and services, and rising unemployment rates threaten the economic well-being of North Carolina's citizens.
- (3) Costs of constructing a new facility for the generation of electricity are exorbitant during normal economic times and will continue to rise during the global economic recession and the coming economic recovery period.
- (4) Full recovery from the global recession will take many years.
- (5) A certificate for the construction of a coal-fired unit for the generation of electricity may be granted by the Utilities Commission only if the Commission finds (i) that the construction and operation of the facility is in the public interest and (ii) 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.
- (6) Once a certificate is issued by the North Carolina Utilities Commission, construction of a facility for the generation of electricity may be cancelled upon a finding that the construction is no longer in the public interest.
- (7) During the recession and the ensuing economic recovery period, it would not be reasonable and prudent to authorize the construction of a coal-fired generating unit to begin nor to continue since the costs of that construction will be passed on to the already economically distressed ratepayers.
- (8) An additional benefit of prohibiting the construction of a coal-fired generating unit to begin or to continue is it would provide sufficient time to determine whether consumers prefer during a recession and the ensuing economic recovery to use energy efficiency measures; demand side management; renewable energy resource generation; combined heat and power generation; or any combination thereof to provide a more cost-effective and reliable generation system.
- (9) An additional benefit of prohibiting the construction of a coal-fired generating unit to begin or to continue is it would provide sufficient time to determine whether activity at the federal level will result in increasing the projections of costs of producing electricity from coal-fired generating units, including impacts from the federal stimulus funds to promote green energy technologies and federal efforts to adopt a cap and trade program that could result in dramatically increasing the costs of producing electricity generated from coal-fired generating units.
- (10) An additional benefit of prohibiting the construction of a coal-fired generating unit to begin or to continue is it would provide sufficient time to assess the latest scientific findings regarding the rate at which climate change is occurring due to greenhouse gas emissions and to assess the estimated economic impacts of climate change mitigation measures in North Carolina.
- (11) The public is becoming increasingly aware of the benefits of energy conservation and becoming increasingly aware of the long-term impacts of global warming.

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

3 **SECTION 9.** Purpose. – It is the purpose of Sections 7 through 14 of this act to
4 promote economic relief to electric public utility ratepayers by temporarily prohibiting, unless
5 the coal-fired generating unit is carbon neutral, the issuance of any new certificate authorizing
6 the construction of a coal-fired generating unit by the North Carolina Utilities Commission and
7 requiring the suspension, unless the coal-fired generating unit is carbon neutral, of any
8 certificate issued prior to July 1, 2013, for any such generating unit that has not commenced
9 operation by July 1, 2013.

10 **SECTION 10.** Definitions. – As used in Sections 7 through 14 of this act, the
11 following definitions apply:

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

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

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

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

18 **SECTION 11.** Moratorium. – No certificate shall be issued to operate a coal-fired
19 generating unit pursuant to any application filed with the North Carolina Utilities Commission
20 on or after July 1, 2013. This section does not apply if the coal-fired generating unit is carbon
21 neutral.

22 **SECTION 12.** Temporary suspension. – Any certificate issued pursuant to an
23 application filed with the North Carolina Utilities Commission prior to July 1, 2013, to
24 construct any coal-fired generating unit that has not commenced electrical generating
25 operations as of July 1, 2013, shall be suspended by the North Carolina Utilities Commission,
26 and this suspension shall remain in effect until July 1, 2018. This section does not apply if the
27 coal-fired generating unit is carbon neutral.

28 **SECTION 13.** Costs recovery. – Nothing in this act prohibits an electric public
29 utility from recovering, pursuant to Article 7 of Chapter 62 of the General Statutes, the costs
30 associated with construction work that is in progress.

31 **SECTION 14.** Penalties. – Any electric public utility that has obtained a certificate
32 to construct a coal-fired generating unit issued pursuant to an application filed with the North
33 Carolina Utilities Commission prior to July 1, 2013, that commences or continues construction
34 in violation of this act, shall be prohibited from applying to recover, pursuant to Article 7 of
35 Chapter 62 of the General Statutes, any such construction costs as a fixed rate, and any
36 temporary suspension under Section 12 of this act shall be made permanent. This section does
37 not apply if the coal-fired generating unit is carbon neutral.

38 **PART IV. PUBLIC FUNDS FOSSIL FUEL DIVESTMENT REPORT**

39 **SECTION 15.** Divestment study. – No later than May 1, 2014, the State Treasurer
40 shall report to the Joint Legislative Commission on Governmental Operations on a plan for
41 divestment of Public Funds held by the Treasurer all publicly traded securities held by the State
42 Treasurer in any Public Fund of any company engaged in the extraction, processing,
43 combustion, transportation, storage, or brokerage of fossil fuels. The plan shall include a list of
44 companies to be divested from the Public Funds as well as a schedule for completion of the
45 divestment. For purposes of this section, Public Fund shall have the meaning set forth in
46 G.S. 147-86.42.

47 **PART V. EFFECTIVE DATES**

48 **SECTION 16.** Effective dates. – Sections 1 through 6 of this act become effective
49 January 1, 2014, with Sections 1 and 2 of this act applying to contracts to purchase coal entered
50
51

1 into on or after that date, and Sections 3 through 6 of this act apply to combustion products that
2 are reused or disposed of on or after that date. The remaining sections of this act are effective
3 when this act becomes law.