

GENERAL ASSEMBLY OF NORTH CAROLINA

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HOUSE BILL 990
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Short Title: Exempt Certain Nonprofit Utilities.

(Public)

Sponsors:

Referred to:

April 17, 1997

A BILL TO BE ENTITLED
AN ACT TO EXEMPT CERTAIN NONPROFIT AND CONSUMER-OWNED
WATER OR SEWER UTILITIES AND CERTAIN SMALL WATER OR SEWER
UTILITIES FROM REGULATION BY THE UTILITIES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 62-3(23) reads as rewritten:

"(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. Producing, generating, transmitting, delivering or furnishing electricity, piped gas, steam or any other like agency for the production of light, heat or power to or for the public for compensation; provided, however, that the term 'public utility' shall not include persons who construct or operate an electric generating facility, the primary purpose of which facility is for such person's own

- 1 use and not for the primary purpose of producing
2 electricity, heat, or steam for sale to or for the public for
3 compensation;
- 4 2. Diverting, developing, pumping, impounding, distributing
5 or furnishing water to or for the public for compensation,
6 or operating a public sewerage system for compensation;
7 provided, however, that the term 'public utility' shall not
8 include any person or company whose sole operation
9 consists of selling water to less than ~~40~~15 residential
10 customers, except that any person or company which
11 constructs a water system in a subdivision with plans for
12 ~~40~~15 or more lots and which holds itself out by contracts
13 or other means at the time of said construction to serve an
14 area containing more than ~~40~~15 residential building lots
15 shall be a public utility at the time of such planning or
16 holding out to serve such ~~40~~15 or more building lots,
17 without regard to the number of actual customers
18 connected;
- 19 3. Transporting persons or household goods by street,
20 suburban or interurban bus or railways for the public for
21 compensation;
- 22 4. Transporting persons or household goods by railways or
23 motor vehicles, or any other form of transportation for the
24 public for compensation, except motor carriers exempted
25 in G.S. 62-260, and except carriers by air;
- 26 5. Transporting or conveying gas, crude oil or other fluid
27 substance by pipeline for the public for compensation;
- 28 6. Conveying or transmitting messages or communications
29 by telephone or telegraph, or any other means of
30 transmission, where such service is offered to the public
31 for compensation.
- 32 b. The term 'public utility' shall for rate-making purposes include
33 any person producing, generating or furnishing any of the
34 foregoing services to another person for distribution to or for the
35 public for compensation.
- 36 c. The term 'public utility' shall include all persons affiliated
37 through stock ownership with a public utility doing business in
38 this State as parent corporation or subsidiary corporation as
39 defined in G.S. 55-2 to such an extent that the Commission shall
40 find that such affiliation has an effect on the rates or service of
41 such public utility.
- 42 d. The term 'public utility,' except as otherwise expressly provided
43 in this Chapter, shall not include a municipality, an authority

1 organized under the North Carolina Water and Sewer Authorities
2 Act, electric or telephone membership ~~corporation or nonprofit~~
3 ~~water membership or consumer owned corporations financed by the~~
4 ~~Farmers Home Administration, the United States Department of~~
5 ~~Housing and Urban Development, or any similar or successor federal~~
6 ~~financing agency, provided, that (i) any such financing administration,~~
7 ~~department or agency exercise substantial control over and regulation~~
8 ~~of any such corporation's rates and terms and conditions of service,~~
9 ~~and (ii) the members or consumer owners of any such corporation,~~
10 ~~pursuant to the corporation's articles of incorporation and bylaws, shall~~
11 ~~elect the governing board of the corporation; corporation; or any~~
12 person not otherwise a public utility who furnishes such service
13 or commodity only to himself, his employees or tenants when
14 such service or commodity is not resold to or used by others;
15 provided, however, that any person other than a nonprofit
16 organization serving only its members, who distributes or
17 provides utility service to his employees or tenants by individual
18 meters or by other coin-operated devices with a charge for
19 metered or coin-operated utility service shall be a public utility
20 within the definition and meaning of this Chapter with respect to
21 the regulation of rates and provisions of service rendered through
22 such meter or coin-operated device imposing such separate
23 metered utility charge. If any person conducting a public utility
24 shall also conduct any enterprise not a public utility, such
25 enterprise is not subject to the provisions of this Chapter. A water
26 or sewer system owned by a homeowners' association that
27 provides water or sewer service only to members or leaseholds of
28 members is not subject to the provisions of this Chapter.

- 29 e. The term 'public utility' shall include the University of North
30 Carolina insofar as said University supplies telephone service,
31 electricity or water to the public for compensation from the
32 University Enterprises defined in G.S. 116-41.1(9).
- 33 f. The term 'public utility' shall include the Town of Pineville
34 insofar as said town supplies telephone services to the public for
35 compensation. The territory to be served by the Town of
36 Pineville in furnishing telephone services, subject to the Public
37 Utilities Act, shall include the town limits as they exist on May 8,
38 1973, and shall also include the area proposed to be annexed
39 under the town's ordinance adopted May 3, 1971, until January 1,
40 1975.
- 41 g. The term 'public utility' shall not include a hotel, motel, time
42 share or condominium complex operated primarily to serve
43 transient occupants, which imposes charges to occupants for

1 local, long-distance, or wide area telecommunication services
2 when such calls are completed through the use of facilities
3 provided by a public utility, and provided further that the local
4 services received are rated in accordance with the provisions of
5 G.S. 62-110(d) and the applicable charges for telephone calls are
6 prominently displayed in each area where occupant rooms are
7 located.

8 h. The term 'public utility' shall not include the resale of electricity
9 by (i) a campground operated primarily to serve transient
10 occupants, or (ii) a marina; provided that (i) the campground or
11 marina charges no more than the actual cost of the electricity
12 supplied to it, (ii) the amount of electricity used by each campsite
13 or marina slip occupant is measured by an individual metering
14 device, (iii) the applicable rates are prominently displayed at or
15 near each campsite or marina slip, and (iv) the campground or
16 marina only resells electricity to campsite or marina slip
17 occupants.

18 i. The term 'public utility' shall not include the State, the Office of
19 the State Controller, or the Microelectronics Center of North
20 Carolina in the provision or sharing of switched broadband
21 telecommunications services with non-State entities or
22 organizations of the kind or type set forth in G.S. 143B-426.39.

23 j. The term 'public utility' shall not include any person, not
24 otherwise a public utility, conveying or transmitting messages or
25 communications by mobile radio communications service.
26 Mobile radio communications service includes one-way or two-
27 way radio service provided to mobile or fixed stations or
28 receivers using mobile radio service frequencies."

29 Section 2. Article 6 of Chapter 62 of the General Statutes is amended by
30 adding a new section to read:

31 "**§ 62-110.5. Commission may exempt certain nonprofit and consumer-owned water**
32 **or sewer utilities.**

33 The Commission may exempt any water or sewer utilities owned by nonprofit
34 membership or consumer-owned corporations from regulation under this Chapter, subject
35 to those conditions the Commission deems appropriate, if:

- 36 (1) The members or consumer-owners of the corporation elect the
37 governing board of the corporation pursuant to the corporation's articles
38 of incorporation and bylaws; and
39 (2) The Commission finds that the organization and the quality of service of
40 the utility are adequate to protect the public interest to the extent that
41 additional regulation is not required by the public convenience and
42 necessity."

43 Section 3. G.S. 62-300(a) is amended by adding a new subdivision to read:

1 "(15) One hundred dollars (\$100.00) for each application for exemption filed
2 by nonprofit and consumer-owned water or sewer utilities pursuant to
3 G.S. 62-110.5."

4 Section 4. This act is effective when it becomes law.