

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005**

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**HOUSE BILL 1162**

Short Title: Electric Service Territories. (Public)

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Sponsors: Representatives Cole; Adams, B. Allen, Allred, Bell, Blackwood, Bordsen, Brubaker, Cleveland, Coates, Crawford, Culp, Eddins, Faison, Fisher, Frye, Goforth, Goodwin, Grady, Haire, Harrell, Hill, Hilton, Hollo, Holloway, Holmes, Insko, Ed Jones, Justice, Kiser, LaRoque, Lewis, Lucas, Luebke, McAllister, McGee, Michaux, Parmon, Preston, Rapp, Sauls, Sherrill, Tolson, Tucker, Wainwright, Walend, Walker, Weiss, West, Wilkins, Wilson, Womble, and Wray.

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Referred to: Rules, Calendar, and Operations of the House.

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April 11, 2005

A BILL TO BE ENTITLED

1 AN ACT TO ESTABLISH STANDARDS FOR FAIR COMPETITION BY  
2 PRESERVING THE ASSIGNMENTS OF ELECTRIC SERVICE TERRITORIES  
3 MADE BY THE NORTH CAROLINA UTILITIES COMMISSION FROM  
4 EROSION DUE TO ANNEXATION AND TO PROHIBIT THE PRACTICE OF  
5 CONDITIONING THE PROVISION OF WATER AND SEWER SERVICE BY A  
6 CITY TO AN ANNEXATION PETITIONER UPON THE PETITIONER  
7 AGREEING TO BE SUPPLIED WITH ELECTRICITY BY THE CITY.  
8

9 The General Assembly of North Carolina enacts:

10 **SECTION 1. G.S. 62-110.2 reads as rewritten:**

11 "**§ 62-110.2. Electric service in areas outside of ~~municipalities~~ municipalities and**  
12 **areas annexed after June 30, 2005, by municipalities engaged in electric**  
13 **service competition.**

14 (a) As used in this section, unless the context otherwise requires, the term:

15 ...

16 (3) "Electric supplier" means any public utility furnishing electric service  
17 ~~or any service~~, electric membership ~~corporation~~ corporation, joint  
18 agency or joint municipal assistance agency created pursuant to  
19 Chapter 159B of the General Statutes, municipality that owns,  
20 operates, or maintains its own electric system, or municipality that on  
21 January 1, 2005, was a member of a joint agency or joint municipal  
22 assistance agency created pursuant to Chapter 159B of the General  
23 Statutes.

1           ...  
2           (b) In areas outside of ~~municipalities~~, municipalities and areas that are annexed  
3 after June 30, 2005, by a municipality that is an electric supplier, electric suppliers shall  
4 have rights and be subject to restrictions as follows:

5           ...  
6           (10) No electric supplier shall furnish electric service to any premises in  
7 this State outside the limits of any incorporated city or town or to any  
8 premises in this State wholly or partially within any area that is  
9 annexed after June 30, 2005, by a municipality that is an electric  
10 supplier, except as permitted by this section; provided, that nothing in  
11 this section shall restrict the right of an electric supplier to furnish  
12 electric service to itself or to exchange or interchange electric energy  
13 with, purchase electric energy from or sell electric energy to any other  
14 electric supplier.

15           ...  
16           (c) (1) In order to avoid unnecessary duplication of electric facilities, the  
17 Commission is authorized and directed to assign, as soon as  
18 practicable after January 1, 1966, to electric suppliers all areas, by  
19 adequately defined boundaries, that are outside the corporate limits of  
20 municipalities or any previously unassigned areas that are outside the  
21 corporate limits of a municipality when this section becomes effective  
22 but is subsequently annexed by a municipality that is an electric  
23 supplier, and that are more than 300 feet from the lines of all electric  
24 suppliers as such lines exist on the dates of the assignments; provided,  
25 that the Commission may leave unassigned any area in which the  
26 Commission, in its discretion, determines that the existing lines of two  
27 or more electric suppliers are in such close proximity that no  
28 substantial avoidance of duplication of facilities would be  
29 accomplished by assignment of such area. The Commission shall make  
30 assignments of areas in accordance with public convenience and  
31 necessity, considering, among other things, the location of existing  
32 lines and facilities of electric suppliers and the adequacy and  
33 dependability of the service of electric suppliers, but not considering  
34 rate differentials among electric suppliers.

35           ...  
36           (e) The furnishing of electric service in any area ~~which becomes a part of any~~ that  
37 is annexed after June 30, 2005, by a municipality that is an electric supplier after April  
38 20, 1965, either by annexation or incorporation, (whether or not ~~such the~~ the area, or any  
39 portion thereof, shall have been assigned pursuant to subsection (c) of this section) shall  
40 be subject to the provisions of ~~Part 2, Article 16 of Chapter 160A of the General~~  
41 ~~Statutes, and any~~ this section only. ~~Any provisions of this section~~ Part 2 of Chapter 160A  
42 of the General Statutes that are inconsistent with said Article ~~this section~~ shall not be  
43 applicable within ~~such the~~ the area after the effective date of ~~such annexation or~~  
44 ~~incorporation.~~ annexation. The furnishing of electric service in any area that becomes a

1 part of a municipality prior to June 30, 2005, by either annexation or incorporation  
2 (whether or not the area, or any portion thereof, shall have been assigned pursuant to  
3 subsection (c) of this section) shall be subject to the provisions of Part 2 of Article 16 of  
4 Chapter 160A of the General Statutes, and any provision of this section inconsistent  
5 with that Article shall not be applicable within the area after the effective date of  
6 incorporation."

7 **SECTION 2.** G.S. 160A-312(a) reads as rewritten:

8 "(a) A city shall have authority to acquire, construct, establish, enlarge, improve,  
9 maintain, own, operate, and contract for the operation of any or all of the public  
10 enterprises as defined in this Article to furnish services to the city and its citizens.  
11 Subject to Part 2 of this ~~Article~~, Article and the limitations on the extension or provision  
12 of electric service by municipalities that are electric suppliers as defined in  
13 G.S. 62-110.2, a city may acquire, construct, establish, enlarge, improve, maintain, own,  
14 and operate any public enterprise outside its corporate limits, within reasonable  
15 limitations, but in no case shall a city be held liable for damages to those outside the  
16 corporate limits for failure to furnish any public enterprise service."

17 **SECTION 3.** G.S. 160A-331 reads as rewritten:

18 **"§ 160A-331. Definitions.**

19 Unless the context otherwise requires, the following words and phrases shall have  
20 the meanings indicated when used in this ~~Part~~: Part, and shall apply only to areas that are  
21 annexed before June 30, 2005, by a municipality that is an electric supplier as defined in  
22 G.S. 62-110.2:

23 ...

- 24 (2) "Line" means any conductor located inside the city or within 300 feet  
25 of the corporate limits of the city for distributing or transmitting  
26 electricity, other than  
27 a. For overhead construction, a conductor from the pole nearest  
28 the premises of a consumer to such premises, or a conductor  
29 from a line tap to such premises, and  
30 b. For underground construction, a conductor from the transformer  
31 (or the junction point, if there be one) nearest the premises of a  
32 consumer to such premises.

33 ...

- 34 (5) "Secondary supplier" means a person, firm, or corporation that  
35 furnishes electricity at retail to one or more consumers other than itself  
36 within the limits of a city or that has a conductor within 300 feet of the  
37 limits of a city but is not a primary supplier. A primary supplier that  
38 furnishes electric service within a city pursuant to a franchise or  
39 contract that limits or restricts the classes of consumers or types of  
40 electric service permitted to such supplier shall, in and with respect to  
41 any area annexed by the city after April 20, 1965, be a primary  
42 supplier for such classes of consumers or types of service, and if it  
43 furnishes other electric service in the annexed area on the effective  
44 date of annexation, shall be a secondary supplier, in and with respect

1 to such annexed area, for all other electric service. A primary supplier  
2 that continues to furnish electric service after the expiration of a  
3 franchise or contract that limited or restricted such primary supplier  
4 with respect to classes of consumers or types of electric service shall,  
5 in and with respect to any area annexed by the city after April 20,  
6 1965, be a secondary supplier for all electric service if it is furnishing  
7 electric service in the annexed area on the effective date of  
8 annexation."

9 **SECTION 4.** G.S. 160A-332 reads as rewritten:

10 **"§ 160A-332. Electric service within city limits.**

11 (a) The suppliers of electric service in any area inside the corporate limits of any  
12 city that is not an electric supplier as defined in G.S. 62-110.2 or in any area that on or  
13 before June 30, 2005, is inside the corporate limits of a city that is an electric supplier as  
14 defined in G.S. 62-110.2, and the city is one in which a secondary supplier was  
15 furnishing authorized to furnish electric service on the determination date (as defined in  
16 G.S. 160A-331(1)) shall have rights and be subject to restrictions as follows:

17 ...

18 (7) Except as provided in subdivisions (1), (2), (3), (5), (6), and (6a) of  
19 this ~~section,~~section and in G.S. 62-110.2, a secondary supplier shall  
20 not furnish electric service within the corporate limits of any city  
21 unless it first obtains the written consent of the city and the primary  
22 supplier."

23 **SECTION 5.** G.S. 160A-333 reads as rewritten:

24 **"§ 160A-333. Temporary electric service.**

25 No electric supplier shall furnish temporary electric service for the construction of  
26 premises which it would not have the right to serve under this Part or G.S. 62-110.2 if  
27 such premises were already constructed. The construction of lines for, and the  
28 furnishing of, temporary electric service for the construction of premises which any  
29 other electric supplier, if chosen by the consumer, would have the right to serve if such  
30 premises were already constructed, shall not impair the right of such other electric  
31 supplier to furnish service to such premises after the construction thereof, if then chosen  
32 by the consumer; nor, unless the consumer chooses to have such premises served by the  
33 supplier that furnished the temporary service, shall the furnishing of such temporary  
34 service or the construction of a line therefor impair the right of any other electric  
35 supplier to furnish service to any other premises which, without regard to the  
36 construction of such temporary service line, it has the right to serve."

37 **SECTION 6.** G.S. 160A-336 reads as rewritten:

38 **"§ 160A-336. Electric service for city facilities.**

39 No provisions of this Part or G.S. 62-110.2 shall prevent a city that is a primary  
40 supplier from furnishing its own electric service for city ~~facilities,~~ or facilities. No  
41 provision of this Part shall prevent any ~~other~~ primary supplier from furnishing electric  
42 street lighting service to a city inside its corporate limits."

43 **SECTION 7.** G.S. 160A-337 reads as rewritten:

44 **"§ 160A-337. Effect of Part on rights and duties of primary supplier.**

1 Except for the rights granted to and restrictions upon primary suppliers contained in  
2 the provisions of this Part, nothing in this Part shall diminish, enlarge, alter, or affect in  
3 any way the rights and duties of a primary or secondary supplier to furnish electric  
4 service to premises within the corporate limits of a city. Nothing in this Part shall  
5 diminish, enlarge, alter, or affect in any way the rights granted to and restrictions placed  
6 upon electric suppliers under G.S. 62-110.2 to furnish electric service to premises that  
7 are wholly or partially within areas that are annexed after June 30, 2005, by a city that is  
8 an electric supplier as defined in G.S. 62-110.2."

9 **SECTION 8.** Part 1 of Article 4A of Chapter 160A of the General Statutes is  
10 amended by adding the following new section to read:

11 **"§ 160A-31.2. Conditions for provision of city services prohibited.**

12 (a) A city shall not require a petitioner or any other person to accept electric  
13 service provided by the city as a condition of granting a petition under this Part, and no  
14 person shall communicate such a requirement to a petitioner or any other person.

15 (b) A city shall not offer to accelerate the provision of municipal services under  
16 this Part to a petitioner or any other person if the petitioner or other person agrees to  
17 accept electric service provided by the city, and no person shall communicate such an  
18 offer to a petitioner or any other person.

19 (c) A violation of this section by a city or person shall constitute an unfair  
20 method of competition and an unfair act or practice under Chapter 75 of the General  
21 Statutes. A person who violates any provision of this section shall be guilty of a Class 2  
22 misdemeanor."

23 **SECTION 9.** Part 4 of Article 4A of Chapter 160A of the General Statutes is  
24 amended by adding the following new section to read:

25 **"§ 160A-58.5A. Conditions for provision of city services prohibited.**

26 (a) A city shall not require a petitioner or any other person to accept electric  
27 service provided by the city as a condition of granting a petition under this Part, and no  
28 person shall communicate such a requirement to a petitioner or any other person.

29 (b) A city shall not offer to accelerate the provision of municipal services under  
30 this Part to a petitioner or any other person if the petitioner or other person agrees to  
31 accept electric service provided by the city, and no person shall communicate such an  
32 offer to a petitioner or any other person.

33 (c) A violation of this section by a city or person shall constitute an unfair  
34 method of competition and an unfair act or practice under Chapter 75 of the General  
35 Statutes. A person who violates any provision of this section shall be guilty of a Class 2  
36 misdemeanor."

37 **SECTION 10.** G.S. 117-10.2 reads as rewritten:

38 **"§ 117-10.2. Restriction on municipal service.**

39 Except as otherwise provided in this ~~section~~,section and G.S. 62-110.2, no electric  
40 membership corporation shall furnish electric service to, or within the limits of, any  
41 incorporated city or town, except pursuant to a franchise that may be granted under the  
42 provisions of G.S. 117-10.1, or as permitted under G.S. 160A-331, 160A-332, and  
43 160A-333. An electric membership corporation may furnish electric service to, or  
44 within the limits of, any incorporated city or town if the city or town and all electric

1 suppliers, including public utilities, other electric membership corporations and other  
2 cities or towns, then furnishing electric service to or within such city or town consent  
3 thereto in writing. To the extent that the provision of electric service by an electric  
4 membership corporation is permitted under G.S. 62-110.2, an electric membership  
5 corporation may furnish electric service in areas that are annexed after June 30, 2005,  
6 by a city that is an electric supplier as defined in G.S. 62-110.2."

7         **SECTION 11.** This act is effective when it becomes law. Sections 1 through  
8 7 of this act shall apply to all areas within a city when this act becomes law, and to areas  
9 to be annexed by a city that is an electric supplier as defined in G.S. 62-110.2, as  
10 enacted in Section 1 of this act, but the annexation was not commenced (evidenced by  
11 the adoption of a resolution under G.S. 160A-37(a) or G.S. 160A-49(a) or the receipt of  
12 a valid petition under G.S. 160A-31 or G.S. 160A-58.1) before January 1, 2005.  
13 Sections 8 and 9 of this act shall apply to offenses committed on or after the effective  
14 date of this act.