



HOUSE bill 235: Utilities Comm'n Tech. and Add'l Changes.

2019-2020 General Assembly

Committee:	House Finance. If favorable, re-refer to Rules, Calendar, and Operations of the House	Date:	May 29, 2019
Introduced by:	Reps. Arp, Szoka	Prepared by:	Trina Griffin
Analysis of:	bill to Second Edition H235-CSSVf-19		Committee Co-Counsel

OVERVIEW: *House Bill 235 would make several technical, clarifying, conforming, and administrative changes to the laws related to public utilities, as recommended by the Utilities Commission. The bill is in House Finance because it would increase from \$25 to \$250 the nonutility filing fee for a certificate of public convenience and necessity (Section 23).*

The Proposed Committee Substitute changes Section 25 of the bill by authorizing only a study of whether the Utilities Commission should have administrative flexibility to classify or reclassify positions and to determine appropriate salaries for its employees.

BACKGROUND:

The North Carolina Utilities Commission (Commission) is an agency of the State created by the General Assembly to regulate the rates and services of all investor-owned public utilities in North Carolina. The Commission regulates companies that provide electricity (including electricity resellers), telephone service (including payphone service and shared tenant service), natural gas (including gas resellers), water (including water resellers), wastewater, household goods movers, buses, brokers, and ferryboats. To a limited degree, the Commission regulates electric membership corporations, small power producers, and electric merchant plants. The Commission is also responsible for administering programs in North Carolina to ensure the safety of natural gas pipelines. The Commission does not regulate telephone membership corporations, cable TV, satellite, commercial mobile radio service, cellular, pagers, or data and internet service providers.

The Public Staff is an independent agency created by the General Assembly in 1977 to review, investigate, and make appropriate recommendations to the Commission with respect to the reasonableness of rates charged and adequacy of service provided by any public utility and with respect to the consistency with the public policy of assuring an energy supply adequate to protect the public health and safety. The Public Staff intervenes on behalf of the using and consuming public in all Commission proceedings affecting rates or service. The Public Staff also:

- Petitions the Commission to initiate proceedings when in the public interest;
- Intervenes in all certificate applications and assists the Commission in analysis;
- Makes recommendations to the Commission with respect to standards, regulations, or practices;
- Investigates formal and informal complaints affecting the using and consuming public;
- Intervenes in all proceedings for franchise transfers, mergers, and consolidations of public utilities; and,
- Reviews, investigates, and recommends action to the Commission regarding affiliate contracts.

Public utility matters are generally governed by [Chapter 62 of the General Statutes](#).

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BILL ANALYSIS:

SECTION 1 would amend a statute that prohibits common carriers from operating vehicles for the transportation of household goods for compensation unless the vehicles are marked or identified on the rear and each side of the vehicle with the name or trade name and the number assigned to the carrier by the Commission. Current law provides that only designated inspectors, officers, and personnel of the Department of Public Safety shall have the authority to enforce these requirements.

Specifically, Section 1 would amend the statute to: (1) include language that also prohibits common carriers from attempting to operate such vehicles without the required marking or identification; and (2) provide that any law enforcement officer with territorial jurisdiction is authorized to enforce the provisions of the section.

SECTION 2 would make technical, clarifying, and conforming changes to definitions of the terms "broadband service," "certificate," and "public utility" within Chapter 62.

SECTION 3 would make several changes to the statute that establishes the Public Staff and its executive director and sets forth its duties. The bill would:

- Specify that the Public Staff has authority to petition the Commission to initiate proceedings to review, investigate, and take appropriate action with respect to the operations and management, of public utilities, in addition to its existing authority to petition the Commission on rates and service of public utilities.
- Eliminate a requirement that the Public Staff investigate and make recommendations to the Commission with respect to certificates for radio common carriers.
- Add language to provide that, when deemed necessary by the executive director in the interest of the using and consuming public, the Public Staff may appear before State and federal courts and agencies in matters affecting public utility service.

SECTION 4 would amend the statute that authorizes the Attorney General to intervene in proceedings before the Commission, institute and originate proceedings before the Commission, and appear before State and federal courts in matters affecting public utility services. The statute currently requires the Commission to furnish the Attorney General with copies of all applications, petitions, pleadings, order and decisions filed with or entered by the Commission.

The bill would amend the Commission's obligation to provide the Attorney General with such copies, to require it only upon request of the Attorney General.

SECTION 5 would amend a statute that requires the Commission to visit the places of business and investigate the books and papers of all public utilities to ascertain if all the orders, rules and regulations of the Commission have been complied with, and provides the Commission the power and authority to examine all officers, agents and employees of such public utilities to obtain the information necessary for carrying into effect and otherwise enforcing the provisions of Chapter 62.

The bill would add language to authorize the Public Staff to examine confidential information as needed to exercise their powers or duties under the statutes. The bill would prohibit the Public Staff from disclosing any confidential information except as authorized by (i) the person or entity having the right to assert confidentiality, (ii) the Commission, or (iii) a court of competent jurisdiction. Any dispute about whether information has been properly designated as confidential would be determined by the Commission.

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SECTION 6 would make a technical correction to the statute governing the Commission's authority to regulate crossings of telephone, telegraph, electric power lines and pipelines and rights-of-way of railroads and other utilities.

SECTION 7 would amend the statute that requires the Commission to publish all laws affecting public utilities, to eliminate a requirement the Commission publish biennial supplements of the law.

SECTION 8 would amend a statute that authorizes a public utility to file complaints on any grounds upon which complaints are allowed to be filed by other parties, to clarify that the right to file complaints by a utility may be against any other public utility or person.

SECTION 9 would amend a statute that requires service of final orders or decisions of the Commission by registered or certified mail to persons to which the order is directed or their attorney, to delete that particular method of service and allow service in a manner prescribed by the Commission.

SECTION 10 would amend the statute governing the procedure for rate cases to:

- Make several technical corrections.
- Eliminate a deadline for the Commission to issue a final order within 9 months of the institution of a rate case.
- Require a public utility applying for an increase in sewer rates to notify affected customers of the potential increase (such notice is already required for public utilities applying for rate increases for electric, telephone, natural gas, and water rates).
- Provide that hearings for changes to a public utility's rider for the cost of fuel and fuel related costs or hearings for rate changes for natural gas local distribution companies occasioned by changes in the cost of natural gas supply and transportation are not subject to the requirement that the Commission conduct hearings in areas of the State served by the public utility.

SECTION 11 would amend a statute that requires the Commission to develop, publicize, and keep current an analysis of the long-range needs for expansion of facilities for the generation of electricity in North Carolina to:

- Allow, rather than require (as provided under current law), the Commission to confer and consult with public utilities in North Carolina, the utilities commissions or comparable agencies of neighboring states, the Federal Energy Regulatory Commission and other agencies having relevant information, in development of this analysis.
- Allow, rather than require, the Commission to hold a public hearing on such plan in a year that an annual update of an integrated resource plan is filed. A public hearing would still, however, be required in the year a biennial integrated resource plan is filed.
- Authorize the Public Staff and intervenors to attend or be represented at any formal conference conducted by the Commission in developing a plan for the future requirements of electricity for the State.

SECTION 12 would make a technical correction to a statute requiring application to and written approval by the Commission of the transfer of franchises or certificates, mergers, consolidations and combinations of public utilities.

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SECTION 13 would repeal a section of the statutes providing that the Commission may make, require, or approve rates for milling in transit, processing in transit, or warehousing in transit of grain, lumber to be dressed, cotton, peanuts, tobacco, or such other commodities as the Commission may designate.

SECTION 14 would amend a statute governing gas cost adjustments for natural gas local distribution, companies, which directs the Commission, after comparison of a utility's prudently incurred costs with the costs recovered from the utility's customers during a certain period, to require a utility to refund any overrecovery by credit to bill or through a decrement in its rates and permit the utility to recover any deficiency through an increment in its rates.

The bill would add language to allow the Commission to order a utility to make an appropriate adjustment to its rates, consistent with the public interest, if the Commission finds an overrecovery or deficiency has been or is likely to be substantially reduced, negated, or reversed before or during the period in which it would be credited or recovered.

SECTION 15 would repeal a statute allowing an electric public utility that purchases or constructs a carbon offset facility to adjust its fuel and fuel related costs to retain the North Carolina retail allocation of the system fuel and fuel related cost savings resulting from the purchase or construction of the facility. Per the terms of subsection (j) of the statute, the provision is now obsolete.

SECTION 16 would amend a statute that prohibits public utilities from establishing or maintaining discriminatory rates or services to delete language authorizing fulfillment of contractual commitments expiring in 1963.

SECTION 17 would amend a statute that makes it unlawful for a person not issued a certificate to operate as a carrier of household goods to, directly or by implication, represent that the person holds a certificate or is otherwise authorized to operate as a carrier of household goods in this State. A violation is punishable as a Class 3 misdemeanor by a fine of not more than five hundred dollars (\$500.00) for the first offense and not more than two thousand dollars (\$2,000) for any subsequent offense.

The bill would:

- Apply the penalty to persons who knowingly aid and abet another person in such violations.
- Authorize any law enforcement officer with territorial jurisdiction to enforce the provisions of this section.

SECTION 18 would eliminate a reference to Commission Transportation Inspectors and Special Investigators from statutes authorizing continued payment of salary and maintenance of other benefits for certain state law enforcement officers notwithstanding their total or partial incapacity resulting in an inability to perform any duties to which the person may be lawfully assigned, if the incapacity is the result of an injury or injuries resulting from or arising out of an episode of violence, resistance, or due to other special hazards that occur while the eligible person is performing official duties. The Commission no longer employs Transportation Inspectors and Special Investigators that function in a law enforcement capacity.

SECTION 19 would amend a statute that requires the Department of Public Safety to provide the Commission with a criminal history record checks of applicants for and current holders of certificate to transport household goods.

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The bill would authorize the Commission to provide the information to the Public Staff for use in proceedings before the Commission. The Public Staff would be required to keep all information obtained confidential.

SECTION 20 would amend a statute in the Chapter of the General States that governs drainage, and the cutting of canals or ditches, or erecting of dams, to address drainage issues, by repealing a statute that directed the Commission to settle disputes over the timing that such work would be performed on railroad property.

SECTIONS 21 and 22 would authorize the Revisor of Statutes to amend the statutes to use consistent terminology throughout Chapter 62 in reference to the terms "Public Staff" and "ratemaking."

SECTION 23 would increase the nonutility filing fee for a certificate of public convenience and necessity (CPCN) from \$25.00 to \$250.00. This section would become effective July 1, 2019.

The most common nonutility that files an application for a CPCN is a small power producer, such as a renewable energy developer. This fee increase will treat CPCN applicants more equitably to the extent the nonutilities do not pay a regulatory fee, which helps offsets the Commission's costs in reviewing applications. This fee is also consistent with the fee increase authorized by the General Assembly in S.L. 2017-192 for applications for a certificate of authority to engage in business as an electric generator lessor and for registration statements for renewable energy facilities.

SECTION 24 would authorize the Commission to allow a lessor of a multi-unit apartment building to use a master meter for the provision of natural gas service and charge each tenant for the natural gas used by a central system based on each tenant's metered or measured share of the natural gas used only for cooking, ventless fireplaces, or other ancillary purposes. Under current law, use of master meters in multi-unit residential buildings is only allowed where central systems incorporate solar assistance or other designs that achieve energy conservation, and hotels, motels, hotels or motels that have been converted into condominiums, dormitories, rooming houses or nursing homes, or homes for the elderly.

This section would become effective October 1, 2019.

SECTION 25 would authorize the Commission to use available funds to contract with a qualified consultant to study the appropriate job classifications and salaries for employees of the Commission and Public Staff, including an analysis of market rates for employees with utility regulatory experience to determine whether current employees are classified and compensated appropriately. The study shall be completed no later than October 1, 2019.

By March 1, 2020, the Commission and Public Staff shall report to the Joint Legislative Commission on Energy Policy and the Fiscal Research Division on the results of the study and may make legislative recommendations with respect to whether the Commission and Public Staff should be granted administrative flexibility to classify new positions or reclassify existing positions, determine the appropriate salary for employees, and make hiring decisions based on the flexibility to determine appropriate job classifications and salaries.

EFFECTIVE DATE: Except as otherwise provided, the bill would be effective when it becomes law.

Jennifer McGinnis, counsel to House Utilities, substantially contributed to this summary.