SENATE BILL 678:
Clean Energy/Other Changes.

2023-2024 General Assembly

Committee:		**Date:**	August 16, 2023
Introduced by:	Sens. P. Newton, B. Newton, Craven	**Prepared by:**	Jennifer McGinnis
Analysis of:	Fifth Edition		Staff Attorney

OVERVIEW: Senate Bill 678 would:

- ***Change references across the statutes[1] from "renewable energy" to "clean energy."***
- ***Modify the definition of "renewable energy resource" (or, as would be changed by the bill, "clean energy resource") to provide that the term includes nuclear resources and fusion energy.***
- ***Add definitions for "fusion" and "fusion energy."***
- ***Modify a provision governing issuance of certificates of public convenience and necessity (CPCN) to require that all electric generating facilities be a subject to a Commission finding 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 and that the construction and operation of the facility is in the public interest.***
- ***Extend closure deadlines for certain coal combustion residuals surface impoundments.***
- ***Increase application fees for dam construction, repair, alteration, or removal under the Dam Safety Act.***
- ***Add the contents of House Bill 535 (Solar Capacity Limit Increase) that passed the House and is currently in the Senate Rules Committee, which includes the following provisions:***
  - ***Increase the maximum authorized total installed capacity of all leased solar facilities on an offering utility's system from 1% to 10% of the previous five-year average of the North Carolina retail contribution to the offering utility's coincident retail peak demand.***
  - ***Clarify that leased solar energy facilities may not exceed 1,000kW or 100% of contract demand for nonresidential customers, or 20kW or 100% of estimated electrical demand for residential customers.***
- ***Require approval by the Local Government Commission for local governments to enter into agreements to cede or transfer control over a public enterprise to a non-governmental entity.***
- ***Prohibit local governments from entering non-disclosure agreements in order to restrict access to public records subject to disclosure under the Public Records Act.***

[1] With the exception of the term "renewable energy certificate," which is a recognized industry term.

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CURRENT LAW/BILL ANALYSIS:

Section 1

The term "renewable energy resource" is defined in the statute establishing the State's Renewable Energy Portfolio Standard (REPS) as follows:

> "Renewable energy resource" means a solar electric, solar thermal, wind, hydropower, geothermal, or ocean current or wave energy resource; a biomass resource, including agricultural waste, animal waste, wood waste, spent pulping liquors, combustible residues, combustible liquids, combustible gases, energy crops, or landfill methane; waste heat derived from a renewable energy resource and used to produce electricity or useful, measurable thermal energy at a retail electric customer's facility; or hydrogen derived from a renewable energy resource. "Renewable energy resource" does not include peat, a fossil fuel, or nuclear energy resource."

Among other things, REPS requires electric power suppliers to provide a designated amount or percentage of power from renewable energy resources as a portion of their overall provision of electricity.

Section 1 of the bill would:

- Change all references to "renewable energy" (and variations of that term, including "renewable energy resource," etc.[2]) throughout Chapter 62 of the General Statutes (Public Utilities) and several other statues outside of Chapter 62, to "clean energy."
- Modify the definition of "renewable energy resources" (which would become "clean energy resources," per the prior bullet) in the REPS statute to:
    - Include "nuclear energy resources, including an uprate to a nuclear energy facility" and "fusion energy."
    - Establish definitions for "fusion" and "fusion energy" as follows:
        - "Fusion" means a reaction in which at least one heavier, more stable nucleus is produced from two lighter, less stable nuclei, typically through high temperatures and pressures, emitting energy as a result.
        - "Fusion energy" means the product of fusion reactions inside a "fusion device," used for the purpose of generating electricity or other commercially usable forms of energy.

Section 2

Section 2 would amend the statute governing issuance of CPCNs for electric generating facilities. The statute currently provides that a CPCN for the construction of a **coal or nuclear facility** can be granted only if the applicant demonstrates and the Commission finds 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 and that the construction and operation of the facility is in the public interest. The statute goes on to provide that in making this determination, the Commission must consider resource and fuel diversity and reasonably anticipated future operating costs.

[2] See first footnote.

Section 2 of the bill would:

- Would eliminate the reference to "coal or nuclear" and require that all electric generating facilities be a subject to a Commission finding 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 and that the construction and operation of the facility is in the public interest.
- Change the reference to "renewable energy" in the statute to "clean energy" in conformance with the changes made in Section 1.

Section 3

Section 3 of the bill would modify the closure deadlines for certain coal combustion residuals (CCR) surface impoundments as follows:

- H.F. Lee Steam Station owned and operated by Duke Energy Progress, and located in Wayne County, December 31, 2035.
- Cape Fear Steam Station, owned and operated by Duke Energy Progress, and located in Chatham County, December 31, 2035.

  Current closure deadline for these impoundments: The H.F. Lee and Cape Fear Steam Stations are ash beneficiation sites selected pursuant to subsection G.S. 130A-309.216. The statute requires an impoundment owner to use commercially reasonable efforts to produce 300,000 tons of usable CCR at each site annually, and requires that the CCR surface impoundments located at a site at which an ash beneficiation project is installed and operating must be closed no later than December 31, 2029.

- Allen Steam Station owned and operated by Duke Energy Carolinas, and located in Gaston County, December 31, 2038.
- Belews Creek Steam Station owned and operated by Duke Energy Carolinas, and located in Stokes County, December 31, 2034.
- Buck Steam Station owned and operated by Duke Energy Carolinas, and located in Rowan County, December 31, 2035.
- Rogers Energy Complex (formerly Cliffside Steam Station) owned and operated by Duke Energy Carolinas, and located in Cleveland County and Rutherford County, December 31, 2029.
- Marshall Steam Station owned and operated by Duke Energy Carolinas, and located in Catawba County, December 31, 2035.
- Mayo Steam Station owned and operated by Duke Energy Progress, and located in Person County, December 31, 2029.
- Roxboro Steam Station owned and operated by Duke Energy Progress, and located in Person County, December 31, 2036.

  Current closure deadline for these impoundments: Paragraph 24 of a Consent Order executed between the Department of Environmental Quality, Duke Energy Progress, and a number of plaintiff-intervenors, which became effective on February 5, 2020, governs the closure deadlines for the impoundments listed above, which provides:

> "24. **Deadline for Closure.** Duke Energy Carolinas projects that it will require until December 3, 2037, to complete all excavation as required in Paragraphs 22 and 23 and the Parties understand that Duke Energy Carolinas will request variances to meet the deadline imposed by this Consent Order. Duke Energy Carolinas shall complete all excavation required in Paragraphs 22 and 23 by the statutory deadline set forth in CAMA, as amended by House Bill 630, or as may further be amended from time to time, and subject to any variances granted pursuant to N.C. Gen. Stat. § 1 30A-309.215, but in any event not later than December 31, 2038."

Section 3 would also authorize the Environmental Management Commission to adopt permanent rules governing permitting for closure and post-closure of coal combustion residuals surface impoundments and landfills in accordance with the provisions of the Administrative Procedure Act, except the Commission would be exempt from the APA's fiscal note requirement and from review of the rules by the Rules Review Commission.

Section 4

Section 4 of the bill would modify application fees for the construction, repair, alteration, breach, or removal of a dam under the Dam Safety Act.

Under current law, the Department of Environmental Quality is authorized to charge an application approval fee not to exceed the larger of $200.00 or 2% of the actual cost of construction or removal of the applicable dam. The fee for notification of a professionally supervised dam removal is $500.00. The statute provides that the total amount of fees collected in any fiscal year may not exceed one third of the total personnel and administrative costs incurred by the Department for processing the applications and for related compliance activities in the prior fiscal year.

The bill would repeal the current fee provisions, and establish a nonrefundable application processing and compliance fee, in the amount of 2.25% of the actual cost of construction, repair, alteration, breach, or removal of the applicable dam. The maximum fee could not exceed $50,000.

Section 5

Section 5 of the bill would:

- Increase the maximum authorized total installed capacity of all leased solar facilities on an offering utility's system from 1% to 10% of the previous five-year average of the North Carolina retail contribution to the offering utility's coincident retail peak demand.[3]

[3] Under current law, the total installed capacity of all leased solar energy facilities on an offering utility's system may not exceed one percent (1%) of the previous five-year average of the North Carolina retail contribution to the offering utility's coincident retail peak demand. A leased solar energy facility may only serve one premises.
An "offering utility" is defined as "[a]ny electric public utility… serving at least 150,000 North Carolina retail jurisdictional customers as of January 1, 2017." The only offering utilities in the State are Duke Energy Progress and Duke Energy Carolinas.
The term "coincident retail peak demand" refers to the demand of all retail customers at the time of the electric system's peak demand.

- Clarify that leased solar energy facilities may not exceed 1,000kW or 100% of contract demand for nonresidential customers, or 20kW or 100% of estimated electrical demand for residential customers.

This section would become effective August 1, 2023, and apply to solar energy facility leases executed on or after that date.

Section 6 would:

- Require approval by the Local Government Commission (Commission) for local governments to enter into agreements to cede or transfer control over a public enterprise to a non-governmental entity.

  For purposes of the provision, "control" would be defined as:

  - The authority to expend or otherwise manage during any fiscal year more than 50% of a public enterprise's adjusted revenues.
  - Responsibility for provision to the public of the services previously provided by the public enterprise.
  - Responsibility for operation and maintenance of a material portion of the assets and facilities of the public enterprise.
  - The authority to manage a material portion of the staff responsible for operation and maintenance of the assets and facilities of the public enterprise.

  Before executing an agreement to cede transfer or control over a public enterprise, the governing board of the unit of local government must: (i) file an application for Commission approval; (ii) conduct a public hearing on whether the proposed arrangement is in the public interest; and (iii) following the public hearing, adopt a resolution or take a similar action stating that it determines that the proposed arrangement is in the public interest. In determining that the arrangement is in the public interest, the governing body must consider, at a minimum, all of the following:

  - The physical condition of the public enterprise.
  - The capital replacements, additions, expansions, and repairs needed for the public enterprise to provide reliable service and meet all applicable federal standards.
  - The availability of federal and State grants and loans for system upgrades and repairs of the public enterprise.
  - The willingness and the ability of the non-governmental entity to make system upgrades and repairs and provide high quality and cost-effective service.
  - The reasonableness of the amount to be paid to the unit of local government to enter into the arrangement.
  - The reasonableness of any amounts to paid by the unit of local government to exit the arrangement.
  - The service quality guarantees provided by the arrangement and the consequences of any failure to satisfy the guarantees.
  - The most recent income and expense statement and asset and liabilities balance sheet of the non-governmental entity and any consolidated non-governmental entity.

- The projected rates to customers of the public enterprise during the term of the arrangement and the affordability of the services of the public enterprise resulting from such projected rates.
- The experience of the non-governmental entity and its affiliates within the consolidated non-governmental entity in the operation of utility systems similar to the public enterprise that is the subject of the arrangement.
- The alternatives to entering into the arrangement and the potential impact on utility customers if the arrangement is not entered.

The Commission may approve such an arrangement if it finds and determines that the customers of the public enterprise will enjoy reasonable and material short-term and long-term savings and other net benefits from the arrangement during the term of the arrangement without the imposition of any material cost or charge on the unit of local government or its customers upon termination of the arrangement. In determining whether a proposed agreement should be approved, the Commission may consider:

- The projected financial feasibility of the proposed arrangement in the short-term and long-term, its effect on rates to be charged to the customers of the public enterprise under the arrangements being proposed and its effect on the quality of services to be provided by the public enterprise under the arrangement.
- The projected rates to customers of the public enterprise during the term of the arrangement, the basis for the establishment of such rates and the reasonableness of the basis, and the affordability of the services of the public enterprise resulting from such projected rates.
- If the unit of local government will receive an initial payment for participating in the arrangement, a summary of the unit of local government's proposed plans for the use of the initial payment.
- If there is any indebtedness of the unit of local government associated with the public enterprise, the plans for the retirement or defeasance of such indebtedness.
- The financial condition of the non-governmental entity and its affiliates within the consolidated non-governmental entity and its ability to carry-out the undertakings required of the non-governmental entity in the arrangement.
- The experience of the non-governmental entity and its affiliates within the consolidated non-governmental entity in the operation of utility systems similar to the public enterprise that is the subject of the arrangement.
- The non-governmental entity's plans to finance its initial participation in the arrangement and future improvements to the public enterprise and the expected participation of the unit of local government in any financing.
- The obligations of the non-governmental entity set forth in the agreement for the maintenance of the public enterprise and the installation of improvements to the public enterprise during the term of the arrangement and the requirements of the agreement that adequate reserves be maintained during the term of the arrangement for such maintenance and improvements.
- The plans set forth in the agreements for the arrangement for maintaining the quality of the components of the public enterprise to be returned to the control of the unit of local government at the end of the term of the agreement.
- Any on-going financial and other commitments of the unit of local government under the arrangement during its term.

  - Any financial payments the unit of local government is expected to be required to pay to the non-governmental entity or any other person or entity at the end of the arrangement.
  - The effect, if any, of the arrangement on the tax-status of interest on debt obligations issued by the unit of local government, or any other units of local government on account of contractual arrangements the other unit of local government may have with the unit of local government proposing the agreement being considered.

- Prohibit local governments from entering non-disclosure agreements in order to restrict access to public records subject to disclosure under the Public Records Act. This provision would become effective October 1, 2023 and apply to any non-disclosure agreement entered into on or after that date.

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