SENATE BILL 678:
Clean Energy/Other Changes.

2023-2024 General Assembly

Committee:		**Date:**	December 4, 2023
Introduced by:		**Prepared by:**	Jennifer McGinnis
Analysis of:	S.L. 2023-138		Staff Attorney

OVERVIEW: S.L. 2023-138 does all of the following:

- ***Changes the State's "Renewable Energy Portfolio Standard" to a "Clean Energy Portfolio Standard," and establishes a definition of "clean energy" to include renewable, nuclear, and fusion energy.***
- ***Modifies a provision governing issuance of certificates of public convenience and necessity (CPCN) for electric generating facilities to:***
- ***Eliminate a heightened Utilities Commission (Commission) analysis for coal or nuclear facilities to be constructed, including whether 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.***
- ***Establish a requirement that a generating facility to be constructed by an electric public utility must, in addition to being in the public interest: (i) be part of the least cost path to achieve compliance with authorized carbon reduction goals enacted in 2021; and (ii) maintain or improve upon the adequacy and reliability of the existing grid.***
- ***Extends closure deadlines for certain coal combustion residuals surface impoundments.***
- ***Increases application fees for dam construction, repair, alteration, or removal under the Dam Safety Act.***
- ***Requires 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.***
- ***Prohibits local governments from entering non-disclosure agreements in order to restrict access to public records subject to disclosure under the Public Records Act.***
- ***Establishes employee classification and compensation exemptions for the Commission and the Commission's Public Staff.***

This bill was vetoed by the Governor on October 2, 2023, and the veto was overridden by the General Assembly on October 10, 2023. Except as otherwise provided, this act became effective October 10, 2023.

Jeffrey Hudson
Director

Legislative Analysis Division
919-733-2578

BILL ANALYSIS:

Section 1

In 2007, the General Assembly enacted the State's Renewable Energy Portfolio Standard (REPS). 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.

The term "renewable energy resource" is defined 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."

Section 1 changes the State's "Renewable Energy Portfolio Standard" to a "Clean Energy Portfolio Standard," and establishes a definition of "clean energy" to include renewable, nuclear, and fusion energy resources.

Section 2 amends the statute governing issuance of CPCNs for electric generating facilities.

Prior to enactment of S.L. 2023-138, the statutes provided that a CPCN for the construction of a coal or nuclear facility was subject to a heightened analysis from the Commission. Specifically, a CPCN could be granted only for a coal or nuclear facility if the applicant demonstrated and the Commission found 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 was in the public interest. The statute further provided that in making this determination, the Commission had to consider resource and fuel diversity and reasonably anticipated future operating costs.

Section 2 of the act eliminates the heightened CPCN analysis for coal or nuclear facilities, and establishes a requirement that a generating facility to be constructed by an electric public utility must, in addition to being in the public interest: (i) be part of the least cost path to achieve compliance with authorized carbon reduction goals enacted in 2021; and (ii) maintain or improve upon the adequacy and reliability of the existing grid.

Section 3 modifies 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.

  Closure deadline for these impoundments prior to enactment of S.L. 2023-138: The H.F. Lee and Cape Fear Steam Stations are ash beneficiation sites selected pursuant to subsection G.S.

130A-309.216. That 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.

Closure deadline for these impoundments prior to enactment of S.L. 2023-138: Paragraph 24 of a Consent Order executed between the Department of Environmental Quality (DEQ), 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."

This section also authorizes 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 (APA), except the Commission is exempt from the APA's fiscal note requirement and from review of the rules by the Rules Review Commission.

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

Prior to enactment of S.L. 2023-138, DEQ was 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 was $500.00. The statute provided that the total amount of fees collected in any fiscal year cannot exceed one third of the total personnel and

administrative costs incurred by DEQ for processing the applications and for related compliance activities in the prior fiscal year.

The act repeals those fee provisions, and establishes 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 cannot exceed $50,000.

Section 5:

- Requires approval by the Local Government Commission (LGC) 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" is 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 LGC 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.

  The LGC can 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.

  The statute includes a host of criteria to be used in determining whether a proposed arrangement is in the public interest and whether an agreement should be approved,

- Prohibits 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 became effective November 1, 2023 and applies to any non-disclosure agreement entered into on or after that date.

Section 6 exempts the Commission and the Commission's Public Staff from certain classification and compensation rules established by the State Human Resources Commission.

EFFECTIVE DATE: This bill was vetoed by the Governor on October 2, 2023, and the veto was overridden by the General Assembly on October 10, 2023. Except as otherwise provided, this act became effective October 10, 2023.