

NORTH CAROLINA GENERAL ASSEMBLY
1977 SESSION

CHAPTER 468
SENATE BILL 229

AN ACT TO AMEND GENERAL STATUTES CHAPTER 62 TO PROVIDE FOR A
PUBLIC STAFF IN THE UTILITIES COMMISSION TO REPRESENT THE USING
AND CONSUMING PUBLIC.

The General Assembly of North Carolina enacts:

Section 1. G.S. 62-10 is hereby amended by rewriting the title, subsections (a), (h) and (i); and by further adding a new subsection (j); all to read as follows:

"§ 62-10. Number; appointment; terms; qualifications; chairman; vacancies; compensation; other employment prohibited. — (a) The North Carolina Utilities Commission shall consist of seven commissioners who shall be appointed by the Governor subject to confirmation by the General Assembly in joint session. Not less than two members of the commission shall be persons licensed to practice law in North Carolina. The names of commissioners to be appointed by the Governor shall be submitted by the Governor to the General Assembly for confirmation by the General Assembly on or before May 1, of the year in which the terms for which the appointments are to be made are to expire. Upon failure of the Governor to submit names as herein provided, the Lieutenant Governor and Speaker of the House jointly shall submit the names of a like number of commissioners to the General Assembly on or before May 15 of the same year for confirmation by the General Assembly. Regardless of the way in which names of commissioners are submitted, confirmation of commissioners must be accomplished prior to adjournment of the then current session of the General Assembly. This subsection shall be subject to the provisions of subsection (c) of this section.

(h) The salary of each commissioner shall be the same as that fixed from time to time for judges of the superior court except that the commissioner designated as chairman shall receive one thousand dollars (\$1,000) additional per annum.

(i) The standards of judicial conduct provided for judges in Article 30 Chapter 7A of the General Statutes shall apply to members of the commission. Members of the commission shall be liable to impeachment for the causes and in the manner provided for judges of the General Court of Justice in Chapter 123 of the General Statutes. Members of the commission shall not engage in any other employment, business, profession, or vocation while in office.

(j) Members of the commission shall be reimbursed for travel and subsistence expenses at the rates allowed to State officers and employees by G.S. 138-6(a)."

Sec. 2. G.S. 62-13 is hereby amended by deleting the present section and substituting in lieu thereof the following:

"§ 62-13. Chairman to direct commission. — (a) The chairman shall be the chief executive and administrative officer of the commission.

(b) The chairman shall determine whether matters pending before the commission shall be considered or heard initially by the full commission, a panel of three commissioners, a hearing commissioner, or a hearing examiner. Subject to the rules of the commission, the chairman shall assign members of the commission to proceedings and shall assign law members to preside at proceedings before the full commission or a panel of three commissioners.

(c) The chairman, the presiding commissioner, hearing commissioner, or hearing examiner shall hear and determine procedural motions or petitions not determinative of the merits of the proceedings and made prior to hearing; and at hearing shall make all rulings on motions and objections.

(d) The chairman acting alone, or any three commissioners, may initiate investigations, complaints, or any other proceedings within the jurisdiction of the commission."

Sec. 3. G.S. 62-14 is hereby amended by deleting the present section in its entirety and substituting in lieu thereof the following:

"§ 62-14. Commission staff; structure and function. — (a) The commission is authorized and empowered to employ hearing examiners; court reporters; a chief clerk and deputy clerk; a commission attorney and assistant commission attorney; transportation and pipeline safety inspectors; and such other professional, administrative, technical, and clerical personnel as the commission may determine to be necessary in the proper discharge of the commission's duty and responsibility as provided by law. The chairman shall organize and direct the work of the commission staff.

(b) The salaries and compensation of all such personnel shall be fixed in the manner provided by law for fixing and regulating salaries and compensation by other State agencies.

(c) The chairman, within allowed budgetary limits and as allowed by law, shall authorize and approve travel, subsistence and related expenses of such personnel, incurred while traveling on official business."

Sec. 4. G.S. 62-15 is hereby amended by deleting the present section in its entirety and substituting in lieu thereof the following:

"§ 62-15. Office of executive director; public staff, structure and function. — (a) There is established in the commission the office of executive director, whose salary shall be the same as that fixed for members of the commission. The executive director shall be appointed by the Governor subject to confirmation by the General Assembly in joint session. The name of the executive director appointed by the Governor shall be submitted to the General Assembly on or before May 1 of the year in which the term of his office begins. The term of office for the executive director shall be six years, and the initial term shall begin July 1, 1977. The executive director may be removed from office by the Governor in the event of his incapacity to serve; and the executive director shall be removed from office by the Governor upon the affirmative recommendation of a majority of the commission, concurred in by a majority of the Utility Review Committee of the General Assembly. In case of a vacancy in the office of executive director for any reason prior to the expiration of his term of office, the name of his successor shall be submitted by the Governor to the General Assembly, not later than four weeks after the vacancy arises. If a vacancy arises in the office when the General Assembly is not in session, the executive director shall be appointed by the Governor to serve on an interim basis pending confirmation by the General Assembly.

(b) There is established in the commission a public staff. The public staff shall consist of the executive director and such other professional, administrative, technical, and clerical personnel as may be necessary in order for the public staff to represent the using and consuming public, as hereinafter provided. All such personnel shall be appointed, supervised, and directed by the executive director. The public staff shall not be subject to the supervision, direction, or control of the commission, the chairman, or members of the commission.

(c) Except for the executive director, the salaries and compensation of all such personnel shall be fixed in the manner provided by law for fixing and regulating salaries and compensation by other State agencies.

(d) It shall be the duty and responsibility of the public staff to

- (1) review, investigate, and make appropriate recommendations to the commission with respect to the reasonableness of rates charged or proposed to be charged by any public utility and with respect to the consistency of

- such rates with the public policy of assuring an energy supply adequate to protect the public health and safety and to promote the general welfare;
- (2) review, investigate, and make appropriate recommendations to the commission with respect to the service furnished, or proposed to be furnished by any public utility;
 - (3) intervene on behalf of the using and consuming public, in all commission proceedings affecting the rates or service of any public utility;
 - (4) when deemed necessary by the executive director in the interest of the using and consuming public, petition the commission to initiate proceedings to review, investigate, and take appropriate action with respect to the rates or service of public utilities;
 - (5) intervene on behalf of the using and consuming public in all certificate applications filed pursuant to the provisions of G.S. 62-110.1, and provide assistance to the commission in making the analysis and plans required pursuant to the provisions of G.S. 62-110.1 and G.S. 62-155;
 - (6) intervene on behalf of the using and consuming public in all proceedings wherein any public utility proposes to reduce or abandon service to the public;
 - (7) investigate complaints affecting the using and consuming public generally which are directed to the commission, members of the commission, or the public staff and where appropriate make recommendations to the commission with respect to such complaints;
 - (8) make studies and recommendations to the commission with respect to standards, regulations, practices, or service of any public utility pursuant to the provisions of G.S. 62-43; provided, however, that the public staff shall have no duty, responsibility, or authority with respect to the enforcement of natural gas pipeline safety laws, rules, or regulations;
 - (9) when deemed necessary by the executive director, in the interest of the using and consuming public, intervene in commission proceedings with respect to transfers of franchises, mergers, consolidations, and combinations of public utilities pursuant to the provisions of G.S. 62-111;
 - (10) investigate and make appropriate recommendations to the commission with respect to applications for certificates by radio common carriers, pursuant to the provisions of Article 6A of this Chapter;
 - (11) review, investigate, and make appropriate recommendations to the commission with respect to contracts of public utilities with affiliates or subsidiaries, pursuant to the provisions of G.S. 62-153;
 - (12) when deemed necessary by the executive director, in the interest of the using and consuming public, advise the commission with respect to securities, regulations, and transactions, pursuant to the provisions of Article 8 of this Chapter.

(e) The public staff shall have no duty, responsibility, or authority with respect to the laws, rules or regulations pertaining to the physical facilities or equipment of common, contract and exempt carriers, the registration of vehicles or of insurance coverage of vehicles of common, contract and exempt carriers; the licensing, training, or qualifications of drivers or other persons employed by common, contract and exempt carriers, or the operation of motor vehicle equipment by common, contract and exempt carriers in the State.

(f) The executive director representing the public staff shall have the same rights of appeal from commission orders or decisions as other parties to commission proceedings.

(g) Upon request, the executive director shall employ the resources of the public staff to furnish to the commission, its members, or the Attorney General, such information and reports

or conduct such investigations and provide such other assistance as may reasonably be required in order to supervise and control the public utilities of the State as may be necessary to carry out the laws providing for their regulation.

(h) The executive director is authorized, on his own initiative or at the request of the commission, to employ expert witnesses for participation in commission proceedings, and the compensation and expenses therefor shall be paid from the Contingency and Emergency Fund.

(i) The executive director, within established budgetary limits, and as allowed by law, shall authorize and approve travel, subsistence, and related necessary expenses of the executive director or members of the public staff, incurred while traveling on official business."

Sec. 5. G.S. 62-16 is hereby repealed.

Sec. 6. G.S. 62-17 is hereby amended by designating the existing subsection (b) as subsection (c); and further by adding a new subsection (b) to read as follows:

"(b) The public staff of the commission shall make and publish annual reports to the General Assembly on its activities in the interest of the using and consuming public."

Sec. 7. G.S. 62-19 is hereby amended by deleting the existing subsections (a) and (b) and substituting in lieu thereof the following:

"§ 62-19. Public record of proceedings; chief clerk; seal. — (a) The commission shall keep in the office of the chief clerk at all times a record of its official acts, rulings, orders, decisions, and transactions, and a current calendar of its scheduled activities and hearings, which shall be public records of the State of North Carolina.

(b) Upon receipt by the commission, the chief clerk shall furnish to the executive director copies of all rates, tariffs, contracts, applications, petitions, pleadings, complaints, and all other documents filed with the commission and shall furnish to the executive director copies of all orders and decisions entered by the commission."

Sec. 8. G.S. 62-20 is hereby amended by deleting the present section and substituting in lieu thereof the following:

"§ 62-20. Participation by Attorney General in commission proceedings. — The Attorney General may intervene, when he deems it to be advisable in the public interest, in proceedings before the commission on behalf of the using and consuming public, including utility users generally and agencies of the State. The Attorney General may institute and originate proceedings before the commission in the name of the State, its agencies or citizens, in matters within the jurisdiction of the commission. The Attorney General may appear before such State and federal courts and agencies as he deems it advisable in matters affecting public utility services. In the performance of his responsibilities under this section, the Attorney General shall have the right to employ expert witnesses, and the compensation and expenses therefor shall be paid from the Contingency and Emergency Fund. The commission shall furnish the Attorney General with copies of all applications, petitions, pleadings, order and decisions filed with or entered by the commission. The Attorney General shall have access to all books, papers, studies, reports and other documents filed with the commission."

Sec. 9. G.S. 62-21 is hereby repealed in its entirety.

Sec. 10. G.S. 62-34(b) is hereby amended by rewriting said subsection (b) to read as follows:

"(b) Members of the commission, commission staff, and public staff may during all reasonable hours enter upon any premises occupied by any public utility, for the purpose of making the examinations and tests and exercising any power provided for in this Article, and may set up and use on such premises any apparatus and appliances necessary therefor. Such public utility shall have the right to be represented at the making of such examinations, tests and inspections."

Sec. 11. G.S. 62-48 is hereby amended by rewriting said section to read as follows:

"§ 62-48. Appearance before courts and agencies. — The commission is authorized and empowered to initiate or appear in such proceedings before federal and State courts and

agencies as in its opinion may be necessary to secure for the users of public utility service in this State just and reasonable rates and service; provided, however, that the commission shall not appear in any State appellate court in support of any order or decision of the commission entered in a proceeding in which a public utility had the burden of proof."

Sec. 12. G.S. 62-51 is hereby amended by rewriting said section to read as follows:

"§ 62-51. To inspect books and records of corporations affiliated with public utilities. — Members of the commission, commission staff, and public staff are hereby authorized to inspect the books and records of corporations affiliated with public utilities regulated by the Utilities Commission under the provisions of this Chapter, including parent corporations and subsidiaries of parent corporations. This authorization shall extend to all reasonably necessary inspection of all books and records of account and agreements and transactions between public utilities doing business in North Carolina and their affiliated corporations where such records relate either directly or indirectly to the provision of intrastate service by the utility. The right to inspect such books and records shall apply both to books and records in the State of North Carolina and such books and records located outside of the State of North Carolina. If any such affiliated corporation shall refuse to permit such inspection of its books and records and its transactions with public utilities doing business in North Carolina, the Utilities Commission is empowered to order the public utility regulated in North Carolina to show cause why it should not secure from its affiliated corporation such books and records for inspection in North Carolina or why their franchise to operate as a public utility in North Carolina should not be cancelled."

Sec. 13. G.S. 62-60.1(a) is hereby amended by rewriting subsection (a) as follows:

"(a) The Utilities Commission shall sit in panels of three commissioners each unless the chairman by order shall set the proceeding for hearing by the full commission."

Sec. 14. G.S. 62-70 is hereby amended by rewriting subsection (a) and adding subsection (g) as follows:

"(a) In all matters and proceedings pending on the commission's formal docket, with adversary parties of record, all communications or contact of any nature whatsoever between any party and the commission or any of its members, or any hearing examiner assigned to such docket, whether verbal or written, formal or informal, which pertains to the merits of such matter or proceeding, shall be made only with full knowledge of, or notice to, all other parties of record. All parties shall have an opportunity to be informed fully as to the nature of such communication and to be present and heard with respect thereto. In all matters and proceedings which are judicial in nature, it is the specific intent of this section that all members of the commission shall conduct all trials, hearings and proceedings before them in the manner and in accordance with the judicial standards applicable to judges of the General Court of Justice, as provided in Chapter 7A of the General Statutes, and upon the initiation of any such proceedings, and particularly during the trial or hearing thereof, there shall be no communications or contacts of any nature, including telephone communications, written correspondence, or direct office conferences, between any party or such party's attorney and any member of the commission or any hearing examiner, without all other parties to such proceeding having full notice and opportunity to be present and heard with respect to any such contact or communication.

Any commissioner who knowingly receives any such communication or contact during such proceeding and who fails promptly to report the same to the Attorney General, or who otherwise violates any of the provisions of this subsection shall be liable to impeachment. Any examiner who knowingly receives any such communication or contact during such proceeding and who fails promptly to report the same to the Attorney General or who otherwise violates any of the provisions of this subsection shall be subject to dismissal from employment for cause.

"(g) Notwithstanding the foregoing, no communication by a public utility or by the public staff with regard to matters affecting the rates charged or proposed to be charged by a public utility shall be made or directed to the commission, a member of the commission, or hearing examiner, except in the form of written tariff, petition, application, pleading, written response, written recommendation, recorded conference, intervention, answer, pleading, sworn testimony and related exhibits, oral argument on the record, or brief. Willful violations of the provisions of this section on the part of any public utility shall subject such public utility to the penalties provided in G.S. 62-310(a). Willful violations of the provisions of this section by a member of the public staff shall subject such person to dismissal for cause."

Sec. 15. G.S. 62-81 is hereby rewritten to read as follows:

"§ 62-81. Special procedure in hearing and deciding rate cases. — (a) All cases or proceedings, declared to be or properly classified as general rate cases under G.S. 62-137, or any proceedings which will substantially affect any utility's overall level of earnings or rate of return, shall be set for trial or hearing by the commission, which trial or hearing shall be set to commence within six months of the institution or filing thereof, and all such cases or proceedings shall be tried or heard and decided, with the issuance of a final order, by the commission within nine months of the institution or filing thereof. All such cases or proceedings shall be tried or heard and decided in accordance with the rate-making procedure set forth in G.S. 62-133 and such cases shall be given priority over all other cases or proceedings pending before the commission. In all such cases the commission shall make a transcript of the evidence and testimony presented and received by it and shall furnish a copy thereof to any party so requesting by the third business day after the taking of such evidence and testimony.

(b) Any public utility filing or applying for an increase in rates for electric, telephone, natural gas or water service shall notify its customers proposed to be affected by such increase of such filing by regular mail or by newspaper publications, as directed by the commission, within 30 days of such filing, which notice shall state that the commission shall set and shall conduct a trial or hearing with respect to such filing or application within six months of said filing date. All other public utilities shall give such notice in such manner as shall be prescribed by the commission.

(c) In cases or proceedings filed with and pending before the commission, where the total annual revenue requested, or where the total annual revenue increase requested, is less than one hundred thousand dollars (\$100,000), even though all or a substantial portion of the rate structure is being initially established or is under review, the chairman of the commission may refer the proceeding to a panel of three commissioners or to a hearing commissioner or to a hearing examiner for hearing.

(d) In all proceedings for an increase in rates and all other proceedings declared to be general rate cases under G.S. 62-137, the commission shall conduct the hearing or portions of the hearing within the area of the State served by the public utility whose rates are under consideration, provided this subsection shall not apply to proceedings held pursuant to G.S. 62-134(e) and G.S. 62-133(f).

(e) Notwithstanding the provisions of this section, application by any public utility for permission and authority to adjust its rates and charges based solely upon the cost of fuel used in the generation or production of electric power shall be determined in accordance with the provisions of G.S. 62-134(e)."

Sec. 16. Chapter 62 is hereby amended by adding a new Section 327 to read as follows:

"§ 62-327. Gifts to members of commission, commission employees, or public staff. — It shall be unlawful for any officer, agent, employee, or attorney of any public utility or any public utility holding company, subsidiary, or affiliated company, to knowingly offer or make to any member of the commission, commission staff, or public staff, any gift of money,

property, or anything of value. It shall be unlawful for any member of the commission, commission staff, or public staff to knowingly accept any gift of money, property, or anything of value from any officer, agent, employee, or attorney of any public utility or any public utility holding company, subsidiary, or affiliated company; provided, however, that it shall not be unlawful for members of the commission, commission staff, or public staff to attend public breakfasts, lunches, dinners, or banquets sponsored by such entities. Any person violating this section shall be guilty of a misdemeanor and may be fined in the discretion of the court; provided, further, that any member of the commission staff, or member of the public staff violating this section shall also be subject to dismissal for cause."

Sec. 17. G.S. 114-2(8) is hereby amended by inserting on the first line after the number eight in parenthesis "(8)" and before the letter "a.", the following words and punctuation:

"Subject to the provisions of G.S. 62-20;"

Sec. 18. Staff position assignments.

a. Initially, the following personnel positions in the Department of Commerce Regulation of Trade Program, Public Utilities Subprogram, shall be assigned to the commission staff authorized in G.S. 62-14 and thereafter the total number shall be limited to available funding: Positions No. 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 301, 302, 305, 307, 309, 316, 317, 400, 401, 402, 403, 506, 521, 543, 702, 721, 726, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 1001, 1004, 1101, 1102, 1103, and 1112.

b. Notwithstanding the provisions of G.S. 62-15(b) as set forth in this act, initially, the following personnel positions in the Department of Commerce Regulation of Trade Program, Public Utilities Subprogram, shall be assigned to the public staff authorized in G.S. 62-15 and thereafter the total number shall be limited to available funding: Positions No. 300, 303, 304, 306, 308, 311, 312, 313, 315, 318, 405, 500, 501, 502, 503, 504, 505, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 522, 523, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 701, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 722, 723, 724, 725, 1002, 1003, 1005, 1006, 1100, 1104, 1105, 1106, 1107, 1108, 1109, 1110, and 1111.

Sec. 19. Any position authorized by this act which is not listed in Section 18 herein may be established only if supporting funds are made available.

Sec. 20. Notwithstanding the third sentence of G.S. 62-15(a) as the same is set out in Section 4 of this act, the name of the Executive Director appointed by the Governor for the initial term shall be submitted to the General Assembly within seven days of the appropriation of the supporting funds for the said position of Executive Director.

Sec. 21. If any provision of this act or the application thereof to any person, utility or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application and to this end the provisions of this act are declared to be severable.

Sec. 22. It is the intent of the General Assembly that the provisions of this act shall be implemented without additional appropriations to the Department of Commerce for the use of the Utilities Commission, and nothing herein contained shall be construed to obligate the General Assembly to appropriate additional funds.

Sec. 23. Public staff provisions renewable after four years. (a) Unless the General Assembly shall otherwise direct, effective August 31, 1981, the provisions of G.S. 62-15 as set forth in Sections 4 and 18 of this bill relating to the office of executive director and the public staff in the commission shall terminate, the office of executive director shall terminate, the positions assigned to the public staff shall be assigned to the commission pursuant to pertinent provisions of Chapter 62 of the General Statutes, and the words "public staff" as they appear in

G.S. 62-34(b), G.S. 62-51, G.S. 62-70, and G.S. 62-327 shall be stricken from said sections of Chapter 62.

(b) No other provisions of this act shall be affected by the provisions of subsection (a) of this section and the termination date provided in subsection (a) of this section shall apply only to those provisions of this act establishing the office of executive director and a public staff in the commission and describing the duties and responsibilities of the executive director and the public staff.

Sec. 24. This act shall become effective on July 1, 1977.

In the General Assembly read three times and ratified, this the 3rd day of June, 1977.