

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 340

Short Title: Appalachian Mountains Preservation Act. (Public)

Sponsors: Representatives Harrison, Haire, Fisher, Howard (Primary Sponsors); M. Alexander, Bordsen, Brisson, Bryant, Cotham, Current, Glazier, Goforth, Gulley, Hall, Harrell, Holliman, Hughes, Insko, Jeffus, Jones, Luebke, Martin, Mobley, Parmon, Rapp, Underhill, R. Warren, Weiss, Whilden, Womble, and Wray.

Referred to: Environment and Natural Resources, if favorable, Public Utilities, if favorable, Commerce, Small Business, and Entrepreneurship.

March 2, 2009

A BILL TO BE ENTITLED

AN ACT TO PRESERVE THE APPALACHIAN MOUNTAINS BY PROHIBITING ELECTRIC PUBLIC UTILITIES THAT OPERATE COAL-FIRED GENERATING UNITS LOCATED IN NORTH CAROLINA FROM PURCHASING OR USING COAL THAT IS EXTRACTED USING MOUNTAINTOP REMOVAL COAL MINING.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 62 of the General Statutes is amended by adding a new Article to read:

"Article 5B.

"Appalachian Mountains Preservation Act.

"§ 62-109. Short title.

This Article shall be known as the Appalachian Mountains Preservation Act.

"§ 62-109.1. Findings and purpose.

(a) The General Assembly finds:

- (1) North Carolina is home to the Appalachian Mountains, and the State's citizens and wildlife share in common this critical economic, environmental, and cultural resource with every state containing or bordering these ancient mountains.
- (2) From Maine to Alabama, these ancient mountains have shaped the economy, environment, and unique cultural heritage of the areas located along the Appalachian Mountains.
- (3) Coal mining has played a central role in shaping the economy, environment, and unique cultural heritage of the Appalachian coalfields.
- (4) Coal mining, whether conducted on the earth's surface or underground, poses significant risks to human health, local communities, the environment, real property, personal property, and wildlife resources.
- (5) By transforming the majestic mountains of the Appalachian coalfields into flattened, eerily lifeless moonscapes, mountaintop removal coal mining, of all the methods of extracting coal, poses the greatest risks to human health, local communities, the environment, real property, personal property, and wildlife resources.



- 1 (6) As of 2009, mountaintop removal coal mining has permanently erased more
2 than 470 peaks from the Appalachian skyline, buried or polluted more than
3 1,200 miles of pristine headwater streams, and swept away more than 800
4 square miles of one of America's most diverse and valuable ecosystems.
- 5 (7) Left unchecked, mountaintop removal coal mining will continue to
6 irreversibly destroy the people, communities, cultural heritage, and
7 environment of the Appalachian coalfields, as well as our wildlife resources.
- 8 (8) The impacts of mountaintop removal coal mining are unacceptable to the
9 citizens of this State.
- 10 (9) By consuming coal extracted by mountaintop removal coal mining to
11 provide power to our homes, businesses, and economy, North Carolina is
12 responsible, in part, for the permanent destruction to date of the Appalachian
13 coalfields and the wildlife resources of the Appalachian Mountains.
- 14 (10) Sixty-one percent (61%) of the electricity used to provide power to North
15 Carolina's homes, businesses, and economy is generated by coal-fired
16 generating units located in North Carolina.
- 17 (11) Fifty percent (50%) of the coal used to produce electricity in North Carolina
18 is extracted by mountaintop removal coal mining in the Appalachian
19 coalfields.
- 20 (12) Because North Carolina burns a significant amount of coal extracted by
21 mountaintop removal coal mining, we have an obligation to eliminate or
22 reduce the devastating social and environmental impacts of this mining in
23 the Appalachian Mountains.
- 24 (13) Fulfilling this obligation also will enhance the general welfare of North
25 Carolina's citizens, our wildlife resources, and our interest in preserving the
26 Appalachian Mountains for current and future generations.

27 (b) It is the purpose of this Article to promote the general welfare of North Carolina's
28 citizens, environment, and wildlife by prohibiting electric public utilities that operate coal-fired
29 generating units located in North Carolina from purchasing or using coal that is extracted by
30 mountaintop removal coal mining.

31 **"§ 62-109.2. Contracts to purchase or use coal extracted by mountaintop removal coal**
32 **mining prohibited.**

33 (a) No electric public utility that operates a coal-fired generating unit located in North
34 Carolina shall enter into any contract to purchase or use coal extracted by mountaintop removal
35 coal mining.

36 (b) The Commission may adopt rules to implement this Article.

37 (c) As used in this Article, the following definitions apply:

38 (1) Coal-fired generating unit. – Defined in G.S. 62-133.6.

39 (2) Mountaintop removal coal mining. – Any method of surface coal mining that
40 removes a mountaintop or ridgeline, whether or not the mined area will be
41 returned to its approximate original contour. "Mountaintop removal coal
42 mining" includes all of the following methods of surface coal mining:
43 cross-ridge mining, box-cut method mining, steep slope mining, area
44 mining, mountaintop mining, and any method of coal mining that utilizes
45 valley fills.

46 **"§ 62-109.3. Sworn statements of coal extraction methods used; report requirements.**

47 (a) Each electric public utility that operates a coal-fired generating unit located in North
48 Carolina shall ensure that the coal it agrees to purchase or use was not, nor will be, extracted
49 using mountaintop removal coal mining, by securing from its coal providers the sworn
50 statement of an authorized officer of the provider that contains all of the following information:

- 1 (1) The name and location of each mine from which the coal to be purchased
2 was, or will be, extracted.
3 (2) The mining methods utilized at each mine listed under subdivision (1) of this
4 subsection.
5 (3) A statement that the coal purchased was not, nor will be, extracted by
6 mountaintop removal coal mining.

7 (b) On the fifteenth day of each month, each electric public utility that operates a
8 coal-fired generating unit located in North Carolina shall file a report with the Commission that
9 itemizes the monthly and accumulated costs incurred by purchasing or using coal extracted by a
10 method other than mountaintop removal coal mining, using the most recent data available.

11 (c) As part of its annual reporting on cost of fuels and fuel-related costs, each electric
12 public utility that operates a coal-fired generating unit located in North Carolina shall submit to
13 the Commission copies of all of the following:

- 14 (1) Each sworn statement required under subsection (a) of this section.
15 (2) Each contract to purchase coal entered into during the reporting period.

16 (d) Each electric public utility that operates a coal-fired generating unit located in North
17 Carolina may file with the Commission an application to determine the rate that would include
18 all reasonable and prudent incremental fuel costs incurred by purchasing or using coal extracted
19 by a method other than mountaintop removal coal mining.

20 (e) The Commission shall, within 20 calendar days after receiving a written request,
21 provide a list of each public utility that operates a coal-fired generating unit located in North
22 Carolina, indicating whether each utility is in compliance with this section based upon the most
23 recent information available.

24 (f) If an electric public utility considers certain information required to be included in a
25 report under this section confidential and entitled to protection from public disclosure, the
26 utility may designate that information as confidential and file it with the Commission under
27 seal. Documents marked as confidential will be treated as required under applicable
28 Commission rules, procedures, and orders dealing with filings made under seal and with
29 nondisclosure agreements.

30 **"§ 62-109.4. Penalties.**

31 (a) Any electric public utility that is in violation of G.S. 62-109.2 shall be prohibited
32 from recovering the cost of fuel under G.S. 62-133.10 and all other fuel-related costs for the
33 coal obtained in violation of G.S. 62-109.2.

34 (b) If an electric public utility that operates a coal-fired generating unit located in North
35 Carolina fails to file the monthly or annual reports required under G.S. 62-109.3, the
36 Commission shall issue an order canceling or suspending the utility's certificate of convenience
37 and necessity 30 days after the date of service of the order. In the event the report is filed
38 during this 30-day period, the order of cancellation or suspension shall be void."

39 **SECTION 2.** Article 7 of Chapter 62 of the General Statutes is amended by adding
40 a new section to read:

41 **"§ 62-133.10. Cost recovery for incremental cost of certain coal mining methods.**

42 The Commission shall, upon petition of an electric public utility, approve an annual rider to
43 the electric public utility's rates to recover all reasonable and prudent incremental costs incurred
44 by each investor-owned public utility that operates a coal-fired generating unit located in North
45 Carolina for purchasing or using coal extracted by a method other than the mountaintop
46 removal coal mining prohibited by rules adopted in accordance with G.S. 62-109.2."

47 **SECTION 3.** This act becomes effective January 1, 2010, and applies to contracts
48 to purchase coal entered into on or after that date.