

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 1020

Short Title: Joint Municipal Electric Amend.

(Public)

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Sponsors: Representatives Eddins, Creech, Ramsey; Barbee, Beall, J. Brown, Capps, Clary, Cocklereece, Culp, Davis, Dockham, Ives, Lee, McMahan, K. Miller, Morgan, Nichols, Pate, Pulley, Tallent, Tolson, Watson, and Wood.

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Referred to: Business & Labor.

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May 4, 1995

A BILL TO BE ENTITLED

1 AN ACT TO CLASSIFY CERTAIN JOINT MUNICIPAL POWER AGENCIES AS  
2 ELECTRIC SUPPLIERS AND TO APPLY THE FRANCHISE TAX TO CERTAIN  
3 JOINT MUNICIPAL POWER AGENCIES.  
4

5 The General Assembly of North Carolina enacts:

6 Section 1. G.S. 62-110.2(a) reads as rewritten:

7 "(a) As used in this section, unless the context otherwise requires, the term:

8 (1) 'Premises' means the building, structure, or facility to which electricity  
9 is being or is to be furnished; provided, that two or more buildings,  
10 structures, or facilities which are located on one tract or contiguous  
11 tracts of land and are utilized by one electric consumer for commercial,  
12 industrial, institutional, or governmental purposes, shall together  
13 constitute one 'premises,' except that any such building, structure, or  
14 facility shall not, together with any other building, structure, or facility,  
15 constitute one 'premises' if the electric service to it is separately metered  
16 and the charges for such service are calculated independently of charges  
17 for service to any other building, structure, or facility; and

- 1           (2) 'Line' means any conductor for the distribution or transmission of  
2           electricity, other than  
3           a.       In the case of overhead construction, a conductor from the pole  
4           nearest the premises of a consumer to such premises, or a  
5           conductor from a line tap to such premises, and  
6           b.       In the case of underground construction, a conductor from the  
7           transformer (or junction point, if there be one) nearest the  
8           premises of a consumer to such premises.
- 9           (3) 'Electric supplier' means any public utility furnishing electric ~~service or~~  
10          ~~service,~~ any electric membership ~~corporation.~~ corporation, any joint  
11          agency or joint municipal assistance agency created pursuant to Chapter  
12          159B of the General Statutes, or any municipality that on January 1,  
13          1995, was a member of a joint agency or joint municipal assistance  
14          agency organized under Chapter 159B of the General Statutes, so long  
15          as any debt issued by that joint agency or joint municipal assistance  
16          agency which was outstanding on January 1, 1995, or any reissues or  
17          refinancings of that debt, remains outstanding."

18           Sec. 2. G.S. 62-110.2(e) reads as rewritten:

19           "(e) The furnishing of electric service in any area which becomes a part of any  
20           municipality after April 20, 1965, either by annexation or incorporation, (whether or not  
21           such area, or any portion thereof, shall have been assigned pursuant to subsection (c) of  
22           this section) shall be subject to the provisions of Part 2, Article 16 of Chapter 160A of the  
23           General Statutes, and any provisions of this section inconsistent with said Article shall  
24           not be applicable within such area after the effective date of such annexation or  
25           incorporation. However, the furnishing of electric service in any area which becomes a  
26           part of any municipality that, on January 1, 1995, was a member of a joint agency or joint  
27           municipal assistance agency organized under Chapter 159B of the General Statutes,  
28           either by annexation or incorporation, (whether or not such area, or any portion thereof,  
29           shall have been assigned pursuant to subsection (c) of this section) shall remain subject to  
30           the other provisions of this section so long as any debt issued by that joint agency or joint  
31           municipal assistance agency which was outstanding on January 1, 1995, or any reissues  
32           or refinancings of that debt, remains outstanding."

33           Sec. 3. G.S. 62-140(c) reads as rewritten:

34           "(c) No public utility shall offer or pay any compensation or consideration or  
35           furnish any equipment to secure the installation or adoption of the use of such utility  
36           service except upon filing of a schedule of such compensation or consideration or  
37           equipment to be furnished and approved thereof by the Commission, and offering such  
38           compensation, consideration or equipment to all persons within the same classification  
39           using or applying for such public utility service; provided, in considering the  
40           reasonableness of any such schedule filed by a public utility the Commission shall  
41           consider, among other things, evidence of consideration or compensation paid by any  
42           competitor, regulated or nonregulated, of the public utility to secure the installation or  
43           adoption of the use of such competitor's service. Provided, further, that nothing herein

1 shall prohibit a public utility from carrying out any contractual commitment in existence  
2 at the time of the enactment hereof, so long as such program does not extend beyond  
3 December 31, 1963. For the purpose of this subsection, 'public utility' shall include any  
4 electric membership corporation operating within this State, and the terms 'utility service'  
5 and 'public utility service' shall include the service rendered by any such electric  
6 membership corporation. For purposes of this subsection, the term 'public utility' shall  
7 include any municipality that on January 1, 1995, was a member of a joint agency or joint  
8 municipal assistance agency organized under Chapter 159B of the General Statutes, and  
9 the terms 'utility service' and 'public utility service' shall include the service rendered by  
10 any such municipality."

11 Sec. 4. G.S. 105-116 reads as rewritten:

12 **"§ 105-116. Franchise or privilege tax on electric power, natural gas, water, and**  
13 **sewerage companies.**

14 (a) Tax. – An annual franchise or privilege tax is imposed on a person, firm, or  
15 corporation, ~~other than a municipal corporation, including any municipal corporation~~  
16 described in subsection (a1) of this section, that is:

- 17 (1) An electric power company engaged in the business of furnishing  
18 electricity, electric lights, current, or power.
- 19 (2) A natural gas company engaged in the business of furnishing piped  
20 natural gas.
- 21 (3) A water company engaged in owning or operating a water system  
22 subject to regulation by the North Carolina Utilities Commission.
- 23 (4) A public sewerage company engaged in owning or operating a public  
24 sewerage system.

25 The tax on an electric power company is three and twenty-two hundredths percent  
26 (3.22%) of the company's taxable gross receipts from the business of furnishing  
27 electricity, electric lights, current, or power. The tax on a natural gas company is three  
28 and twenty-two hundredths percent (3.22%) of the company's taxable gross receipts from  
29 the business of furnishing piped natural gas. The tax on a water company is four percent  
30 (4%) of the company's taxable gross receipts from owning or operating a water system  
31 subject to regulation by the North Carolina Utilities Commission. The tax on a public  
32 sewerage company is six percent (6%) of the company's taxable gross receipts from  
33 owning or operating a public sewerage company. A company's taxable gross receipts are  
34 its gross receipts from business inside the State less the amount of gross receipts from  
35 sales reported under subdivision (b)(2). A company that engages in more than one  
36 business taxed under this section shall pay tax on each business. A company is allowed a  
37 credit against the tax imposed by this section for the company's investments in certain  
38 entities in accordance with Division V of Article 4 of this Chapter.

39 (a1) Any municipality that, on January 1, 1995, was a member of a joint agency or  
40 joint municipal assistance agency organized under Chapter 159B of the General Statutes,  
41 shall be taxed as an electric power company under subsection (a) of this section on its  
42 gross receipts from the business of furnishing electricity, electric lights, current, or power  
43 outside of its corporate limits so long as any debt issued by that joint agency or joint

1 municipal assistance agency which was outstanding on January 1, 1995, or any reissues  
2 or refinancings of that debt, remains outstanding.

3 (b) Report and Payment. – The tax imposed by this section is payable monthly or  
4 quarterly as specified in this subsection. A report is due quarterly. An electric power  
5 company or a natural gas company shall pay tax monthly. A monthly tax payment is due  
6 by the last day of the month that follows the month in which the tax accrues, except the  
7 payment for tax that accrues in May. The payment for tax that accrues in May is due by  
8 June 25. An electric power company or a natural gas company is not subject to interest  
9 on or penalties for an underpayment of a monthly amount due if the company timely pays  
10 at least ninety-five percent (95%) of the amount due and includes the underpayment with  
11 the next report the company files. A water company or a public sewerage company shall  
12 pay tax quarterly when filing a report.

13 A quarterly report covers a calendar quarter and is due by the last day of the month  
14 that follows the quarter covered by the report. A company shall submit a report on a  
15 form provided by the Secretary. The report shall include the company's gross receipts  
16 from all property it owned or operated during the reporting period in connection with its  
17 business taxed under this section and shall contain the following information:

- 18 (1) The company's gross receipts for the reporting period from business  
19 inside and outside this State, stated separately.
- 20 (2) The company's gross receipts from commodities or services described in  
21 subsection (a) that are sold to a vendee subject to the tax levied by this  
22 section or to a joint agency established under G.S. Chapter 159B or a  
23 municipality having an ownership share in a project established under  
24 that Chapter.
- 25 (3) The amount of and price paid by the company for commodities or  
26 services described in subsection (a) that are purchased from others  
27 engaged in business in this State and the name of each vendor.
- 28 (4) For an electric power company or a natural gas company, the company's  
29 gross receipts from the sale within each municipality of the  
30 commodities and services described in subsection (a).

31 A company shall report its gross receipts on an accrual basis.

32 (c) Gas Special Charges. – Gross receipts of a natural gas company do not include  
33 the following:

- 34 (1) Special charges collected within this State by the company pursuant to  
35 drilling and exploration surcharges approved by the North Carolina  
36 Utilities Commission, if the surcharges are segregated from the other  
37 receipts of the company and are devoted to drilling, exploration, and  
38 other means to acquire additional supplies of natural gas for the account  
39 of natural gas customers in North Carolina and the beneficial interest in  
40 the surcharge collections is preserved for the natural gas customers  
41 paying the surcharges under rules established by the Commission.
- 42 (2) Natural gas expansion surcharges imposed under G.S. 62-158.

1 (d) Distribution. – For the purpose of this subsection, the term 'distribution  
2 amount' means three and nine hundredths percent (3.09%) of the taxable gross receipts  
3 derived during a period by an electric power company and a natural gas company from  
4 sales within a municipality of the commodities and services described in subsection (a) of  
5 this section. The Secretary shall distribute to each municipality the distribution amount  
6 for that municipality for the preceding calendar quarter less an amount equal to one-  
7 fourth of the excess of the distribution amount for that municipality for the period April  
8 1, 1994, to March 31, 1995, over the distribution amount for that municipality for the  
9 period April 1, 1990, to March 31, 1991, as certified by the Secretary. The Secretary  
10 shall distribute the revenue within 75 days after the end of each quarter. If a company's  
11 report does not state the company's taxable gross receipts derived within a municipality,  
12 the Secretary shall determine a practical method of allocating part of the company's  
13 taxable gross receipts to the municipality.

14 The distribution amount received by any municipality that was a member, on January  
15 1, 1995, of a joint agency or joint municipal assistance agency organized under Chapter  
16 159B of the General Statutes, from sales within that municipality of the commodities and  
17 services described in subsection (a)(1) of this section, shall be appropriated only for the  
18 purpose of making payments to that joint agency or joint municipal assistance agency,  
19 and may not be transferred for use to the General Fund of that municipality, so long as  
20 any debt issued by that joint agency or joint municipal assistance agency which was  
21 outstanding on January 1, 1995, or any reissues or refinancings of that debt, remains  
22 outstanding.

23 As used in this subsection, the term 'municipality' includes an urban service district  
24 defined by the governing board of a consolidated city-county. The amount due an urban  
25 service district shall be distributed to the governing board of the consolidated city-county.

26 (e) Local Tax. – So long as there is a distribution to municipalities of the amount  
27 herein provided from the tax imposed by this section, no municipality shall impose or  
28 collect any greater franchise, privilege or license taxes, in the aggregate, on the  
29 businesses taxed under this section, than was imposed and collected on or before January  
30 1, 1947. If any municipality shall have collected any privilege, license or franchise tax  
31 between January 1, 1947, and April 1, 1949, in excess of the tax collected by it prior to  
32 January 1, 1947, then upon distribution of the taxes imposed by this section to  
33 municipalities, the amount distributable to any municipality shall be credited with such  
34 excess payment."

35 Sec. 5. G.S. 160A-312(a) reads as rewritten:

36 "(a) A city shall have authority to acquire, construct, establish, enlarge,  
37 improve, maintain, own, operate, and contract for the operation of any or all of the public  
38 enterprises as defined in this Article to furnish services to the city and its citizens.  
39 Subject to Part 2 of this ~~Article~~, Article and Article 6 of Chapter 62 of the General  
40 Statutes, a city may acquire, construct, establish, enlarge, improve, maintain, own, and  
41 operate any public enterprise outside its corporate limits, within reasonable limitations,  
42 but in no case shall a city be held liable for damages to those outside the corporate limits  
43 for failure to furnish any public enterprise service. However, a city which on January 1,

1 1995, was a member of a joint agency or joint municipal assistance agency organized  
2 under Chapter 159B of the General Statutes, may not expand its existing electric  
3 distribution system to provide any service outside its corporate limits which was not  
4 being rendered on July 1, 1995, so long as any debt issued by that joint agency or joint  
5 municipal assistance agency which was outstanding on January 1, 1995, or any reissues  
6 or refinancings of that debt, remains outstanding. No municipality shall make as a  
7 condition of the provision or extension of any public enterprise to any person or entity the  
8 acceptance by that person or entity of other public enterprises provided by that  
9 municipality or any municipality, or joint agency or joint municipal assistance agency  
10 organized under Chapter 159B of the General Statutes."

11       Sec. 6. G.S. 160A-314(a) reads as rewritten:

12       "(a) A city may establish and revise from time to time schedules of rents, rates,  
13 fees, charges, and penalties for the use of or the services furnished by any public  
14 enterprise. Schedules of rents, rates, fees, charges, and penalties may vary according to  
15 classes of service, and different schedules may be adopted for services provided outside  
16 the corporate limits of the city. However, different schedules for providing electric  
17 services may not be adopted for services provided outside the corporate limits of any  
18 municipality that, on January 1, 1995, was a member of a joint agency or joint municipal  
19 assistance agency organized under Chapter 159B of the General Statutes."

20       Sec. 7. This act becomes effective July 1, 1995, and Section 4 of this act  
21 applies to gross receipts that accrue on or after that date.