

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

S

5

SENATE BILL 678
Agriculture, Energy, and Environment Committee Substitute Adopted 4/19/23
Third Edition Engrossed 4/26/23
House Committee Substitute Favorable 6/27/23
House Committee Substitute #2 Favorable 8/16/23

Short Title: Clean Energy/Other Changes.

(Public)

Sponsors:

Referred to:

April 10, 2023

A BILL TO BE ENTITLED

AN ACT TO: (I) REDEFINE "RENEWABLE ENERGY" AS "CLEAN ENERGY," TO PROVIDE THAT THE TERM INCLUDES NUCLEAR RESOURCES AND FUSION ENERGY, AND TO ELIMINATE LANGUAGE IMPEDING CPCN ISSUANCE FOR NUCLEAR FACILITIES; (II) MODIFY CLOSURE DEADLINES FOR CERTAIN COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS; (III) MODIFY APPLICATIONS FEES FOR DAM CONSTRUCTION, REPAIR, ALTERATION, OR REMOVAL UNDER THE DAM SAFETY ACT; (IV) INCREASE THE ROOFTOP SOLAR LEASING CAP; (V) 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 NONGOVERNMENTAL ENTITY; AND (VI) PROHIBIT LOCAL GOVERNMENTS FROM ENTERING NONDISCLOSURE AGREEMENTS IN ORDER TO RESTRICT ACCESS TO PUBLIC RECORDS SUBJECT TO DISCLOSURE UNDER THE PUBLIC RECORDS ACT.

The General Assembly of North Carolina enacts:

PART I. PROMOTE CLEAN ENERGY

SECTION 1.(a) G.S. 62-133.8 reads as rewritten:

"§ 62-133.8. ~~Renewable~~Clean Energy and Energy Efficiency Portfolio Standard ~~(REPS)~~,~~(CEPS)~~."

(a) Definitions. – As used in this section:

- (1) "Combined heat and power system" means a system that uses waste heat to produce electricity or useful, measurable thermal or mechanical energy at a retail electric customer's facility.
- (2) "Demand-side management" means activities, programs, or initiatives undertaken by an electric power supplier or its customers to shift the timing of electricity use from peak to nonpeak demand periods. "Demand-side management" includes, but is not limited to, load management, electric system equipment and operating controls, direct load control, and interruptible load.
- (3) "Electric power supplier" means a public utility, an electric membership corporation, or a municipality that sells electric power to retail electric power customers in the State.



* S 6 7 8 - V - 5 *

- 1 (3a) "Electricity demand reduction" means a measurable reduction in the
2 electricity demand of a retail electric customer that is voluntary, under the
3 real-time control of both the electric power supplier and the retail electric
4 customer, and measured in real time, using two-way communications devices
5 that communicate on the basis of standards.
- 6 (4) "Energy efficiency measure" means an equipment, physical, or program
7 change implemented after January 1, 2007, that results in less energy used to
8 perform the same function. "Energy efficiency measure" includes, but is not
9 limited to, energy produced from a combined heat and power system that uses
10 ~~nonrenewable-non-clean~~ energy resources. "Energy efficiency measure" does
11 not include demand-side management.
- 12 (4a) "Fusion" means a reaction in which at least one heavier, more stable nucleus
13 is produced from two lighter, less stable nuclei, typically through high
14 temperatures and pressures, emitting energy as a result.
- 15 (4b) "Fusion energy" means the product of fusion reactions inside a "fusion
16 device," used for the purpose of generating electricity or other commercially
17 usable forms of energy.
- 18 (5) "~~renewable-clean~~ energy facility" means a ~~renewable-clean~~ energy
19 facility that either:
20 a. Was placed into service on or after January 1, 2007.
21 b. Delivers or has delivered electric power to an electric power supplier
22 pursuant to a contract with NC GreenPower Corporation that was
23 entered into prior to January 1, 2007.
24 c. Is a hydroelectric power facility with a generation capacity of 10
25 megawatts or less that delivers electric power to an electric power
26 supplier.
- 27 (6) "Renewable energy certificate" means a tradable instrument that is equal to
28 one megawatt hour of electricity or equivalent energy supplied by a ~~renewable~~
29 clean energy facility, new ~~renewable-clean~~ energy facility, or reduced by
30 implementation of an energy efficiency measure that is used to track and
31 verify compliance with the requirements of this section as determined by the
32 Commission. A "renewable energy certificate" does not include the related
33 emission reductions, including, but not limited to, reductions of sulfur dioxide,
34 oxides of nitrogen, mercury, or carbon dioxide.
- 35 (7) "~~Renewable-~~"Clean energy facility" means a facility, other than a
36 hydroelectric power facility with a generation capacity of more than 10
37 megawatts, that either:
38 a. Generates electric power by the use of a ~~renewable-clean~~ energy
39 resource.
40 b. Generates useful, measurable combined heat and power derived from
41 a ~~renewable-clean~~ energy resource.
42 c. Is a solar thermal energy facility.
- 43 (8) "~~Renewable-~~"Clean energy resource" means a solar electric, solar thermal,
44 wind, hydropower, geothermal, or ocean current or wave energy resource; a
45 biomass resource, including agricultural waste, animal waste, wood waste,
46 spent pulping liquors, combustible residues, combustible liquids, combustible
47 gases, energy crops, or landfill methane; waste heat derived from a ~~renewable~~
48 clean energy resource and used to produce electricity or useful, measurable
49 thermal energy at a retail electric customer's facility; nuclear energy resources,
50 including an uprate to a nuclear energy facility; fusion energy; or hydrogen
51 derived from a ~~renewable-clean~~ energy resource. "~~Renewable-~~"Clean energy

1 resource" does not include peat, ~~a fossil fuel, or nuclear energy resource.~~ or a
 2 fossil fuel.
 3 (b) ~~Renewable-Clean~~ Energy and Energy Efficiency Standards (~~REPS~~)-(CEPS) for
 4 Electric Public Utilities. –

5 (1) Each electric public utility in the State shall be subject to a ~~Renewable-Clean~~
 6 Energy and Energy Efficiency Portfolio Standard (~~REPS~~)-CEPS according to
 7 the following schedule:

Calendar Year	REPS -CEPS Requirement
2012	3% of 2011 North Carolina retail sales
2015	6% of 2014 North Carolina retail sales
2018	10% of 2017 North Carolina retail sales
2021 and thereafter	12.5% of 2020 North Carolina retail sales

8
 9
 10
 11
 12
 13
 14 (2) An electric public utility may meet the requirements of this section by any one
 15 or more of the following:

- 16 a. Generate electric power at a new ~~renewable-clean~~ energy facility.
- 17 b. Use a ~~renewable-clean~~ energy resource to generate electric power at a
 18 generating facility other than the generation of electric power from
 19 waste heat derived from the combustion of fossil fuel.
- 20 c. Reduce energy consumption through the implementation of an energy
 21 efficiency measure; provided, however, an electric public utility
 22 subject to the provisions of this subsection may meet up to twenty-five
 23 percent (25%) of the requirements of this section through savings due
 24 to implementation of energy efficiency measures. Beginning in
 25 calendar year 2021 and each year thereafter, an electric public utility
 26 may meet up to forty percent (40%) of the requirements of this section
 27 through savings due to implementation of energy efficiency measures.
- 28 d. Purchase electric power from a new ~~renewable-clean~~ energy facility.
 29 Electric power purchased from a new ~~renewable-clean~~ energy facility
 30 located outside the geographic boundaries of the State shall meet the
 31 requirements of this section if the electric power is delivered to a
 32 public utility that provides electric power to retail electric customers
 33 in the State; provided, however, the electric public utility shall not sell
 34 the renewable energy certificates created pursuant to this paragraph to
 35 another electric public utility.
- 36 e. Purchase renewable energy certificates derived from in-State or
 37 out-of-state new ~~renewable-clean~~ energy facilities. Certificates derived
 38 from out-of-state new ~~renewable-clean~~ energy facilities shall not be
 39 used to meet more than twenty-five percent (25%) of the requirements
 40 of this section, provided that this limitation shall not apply to an
 41 electric public utility with less than 150,000 North Carolina retail
 42 jurisdictional customers as of December 31, 2006.
- 43 f. Use electric power that is supplied by a new ~~renewable-clean~~ energy
 44 facility or saved due to the implementation of an energy efficiency
 45 measure that exceeds the requirements of this section for any calendar
 46 year as a credit towards the requirements of this section in the
 47 following calendar year or sell the associated renewable energy
 48 certificates.
- 49 g. Electricity demand reduction.

50 (c) ~~Renewable-Clean~~ Energy and Energy Efficiency Standards (~~REPS~~)-(CEPS) for
 51 Electric Membership Corporations and Municipalities. –

- (1) Each electric membership corporation or municipality that sells electric power to retail electric power customers in the State shall be subject to a Renewable Clean Energy and Energy Efficiency Portfolio Standard (~~REPS~~)-(~~CEPS~~) according to the following schedule:

Calendar Year	REPS - CEPS Requirement
2012	3% of 2011 North Carolina retail sales
2015	6% of 2014 North Carolina retail sales
2018 and thereafter	10% of 2017 North Carolina retail sales

- (2) An electric membership corporation or municipality may meet the requirements of this section by any one or more of the following:
- a. Generate electric power at a new ~~renewable-clean~~ energy facility.
 - b. Reduce energy consumption through the implementation of demand-side management or energy efficiency measures.
 - c. Purchase electric power from a ~~renewable-clean~~ energy facility or a hydroelectric power facility, provided that no more than thirty percent (30%) of the requirements of this section may be met with hydroelectric power, including allocations made by the Southeastern Power Administration.
 - d. Purchase renewable energy certificates derived from in-State or out-of-state ~~renewable-clean~~ energy facilities. An electric power supplier subject to the requirements of this subsection may use certificates derived from out-of-state ~~renewable-clean~~ energy facilities to meet no more than twenty-five percent (25%) of the requirements of this section.
 - e. Acquire all or part of its electric power through a wholesale purchase power agreement with a wholesale supplier of electric power whose portfolio of supply and demand options meets the requirements of this section.
 - f. Use electric power that is supplied by a new ~~renewable-clean~~ energy facility or saved due to the implementation of demand-side management or energy efficiency measures that exceeds the requirements of this section for any calendar year as a credit towards the requirements of this section in the following calendar year or sell the associated renewable energy certificates.
 - g. Electricity demand reduction.

(d) Compliance With ~~REPS~~-~~CEPS~~ Requirement Through Use of Solar Energy Resources.
 – For calendar year 2018 and for each calendar year thereafter, at least two-tenths of one percent (0.2%) of the total electric power in kilowatt hours sold to retail electric customers in the State, or an equivalent amount of energy, shall be supplied by a combination of new solar electric facilities and new metered solar thermal energy facilities that use one or more of the following applications: solar hot water, solar absorption cooling, solar dehumidification, solar thermally driven refrigeration, and solar industrial process heat. The terms of any contract entered into between an electric power supplier and a new solar electric facility or new metered solar thermal energy facility shall be of sufficient length to stimulate development of solar energy; provided, the Commission shall develop a procedure to determine if an electric power supplier is in compliance with the provisions of this subsection if a new solar electric facility or a new metered solar thermal energy facility fails to meet the terms of its contract with the electric power supplier. As used in this subsection, "new" means a facility that was first placed into service on or after January 1, 2007. The electric power suppliers shall comply with the requirements of this subsection according to the following schedule:

1		Requirement for Solar
2	Calendar Year	Energy Resources
3	2010	0.02%
4	2012	0.07%
5	2015	0.14%
6	2018	0.20%

7 (e) Compliance With ~~REPS~~CEPS Requirement Through Use of Swine Waste Resources.
 8 – For calendar year 2018 and for each calendar year thereafter, at least two-tenths of one percent
 9 (0.2%) of the total electric power in kilowatt hours sold to retail electric customers in the State
 10 shall be supplied, or contracted for supply in each year, by swine waste. The electric power
 11 suppliers, in the aggregate, shall comply with the requirements of this subsection according to
 12 the following schedule:

13		Requirement for Swine
14		Waste Resources
15	Calendar Year	
16	2012	0.07%
17	2015	0.14%
18	2018	0.20%

19 (f) Compliance With ~~REPS~~CEPS Requirement Through Use of Poultry Waste
 20 Resources. – For calendar year 2014 and for each calendar year thereafter, at least 900,000
 21 megawatt hours of the total electric power sold to retail electric customers in the State or an
 22 equivalent amount of energy shall be supplied, or contracted for supply in each year, by poultry
 23 waste combined with wood shavings, straw, rice hulls, or other bedding material. The electric
 24 power suppliers, in the aggregate, shall comply with the requirements of this subsection
 25 according to the following schedule:

26		Requirement for Poultry
27		Waste Resources
28	Calendar Year	
29	2012	170,000 megawatt hours
30	2013	700,000 megawatt hours
31	2014	900,000 megawatt hours

32 (g) Control of Emissions. – As used in this subsection, Best Available Control
 33 Technology (BACT) means an emissions limitation based on the maximum degree a reduction
 34 in the emission of air pollutants that is achievable for a facility, taking into account energy,
 35 environmental, and economic impacts and other costs. A biomass combustion process at any new
 36 ~~renewable-clean~~ energy facility that delivers electric power to an electric power supplier shall
 37 meet BACT. The Environmental Management Commission shall determine on a case-by-case
 38 basis the BACT for a facility that would not otherwise be required to comply with BACT
 39 pursuant to the Prevention of Significant Deterioration (PSD) emissions program. The
 40 Environmental Management Commission may adopt rules to implement this subsection. In
 41 adopting rules, the Environmental Management Commission shall take into account cumulative
 42 and secondary impacts associated with the concentration of biomass facilities in close proximity
 43 to one another. In adopting rules the Environmental Management Commission shall provide for
 44 the manner in which a facility that would not otherwise be required to comply with BACT
 45 pursuant to the PSD emissions programs shall meet the BACT requirement. This subsection shall
 46 not apply to a facility that qualifies as a new ~~renewable-clean~~ energy facility under
 47 sub-subdivision b. of subdivision (5) of subsection (a) of this section.

48 ...
 49 (i) Adoption of Rules. – The Commission shall adopt rules to implement the provisions
 50 of this section. In developing rules, the Commission shall:

- 1 (1) Provide for the monitoring of compliance with and enforcement of the
2 requirements of this section.
- 3 (2) Include a procedure to modify or delay the provisions of subsections (b), (c),
4 (d), (e), and (f) of this section in whole or in part if the Commission determines
5 that it is in the public interest to do so. The procedure adopted pursuant to this
6 subdivision shall include a requirement that the electric power supplier
7 demonstrate that it made a reasonable effort to meet the requirements set out
8 in this section.
- 9 (3) Ensure that energy credited toward compliance with the provisions of this
10 section not be credited toward any other purpose, including another ~~renewable~~
11 clean energy portfolio standard or voluntary ~~renewable-clean~~ energy purchase
12 program in this State or any other state.
- 13 (4) Establish standards for interconnection of ~~renewable-clean~~ energy facilities
14 and other nonutility-owned generation with a generation capacity of 10
15 megawatts or less to an electric public utility's distribution system; provided,
16 however, that the Commission shall adopt, if appropriate, federal
17 interconnection standards. The standards adopted pursuant to this subdivision
18 shall include an expedited review process for swine and poultry waste to
19 energy projects of two megawatts (MW) or less and other measures necessary
20 and appropriate to achieve the objectives of subsections (e) and (f) of this
21 section.
- 22 (5) Ensure that the owner and operator of each ~~renewable-clean~~ energy facility
23 that delivers electric power to an electric power supplier is in substantial
24 compliance with all federal and state laws, regulations, and rules for the
25 protection of the environment and conservation of natural resources.
- 26 (6) Consider whether it is in the public interest to adopt rules for electric public
27 utilities for net metering of ~~renewable-clean~~ energy facilities with a generation
28 capacity of one megawatt or less.
- 29 (7) Develop procedures to track and account for renewable energy certificates,
30 including ownership of renewable energy certificates that are derived from a
31 customer owned ~~renewable-clean~~ energy facility as a result of any action by a
32 customer of an electric power supplier that is independent of a program
33 sponsored by the electric power supplier.
- 34 (j) Repealed by Session Laws 2021-23, s. 16, effective May 17, 2021.
- 35 (k) Tracking of Renewable Energy Certificates. – No later than July 1, 2010, the
36 Commission shall develop, implement, and maintain an Internet Web site for the online tracking
37 of renewable energy certificates in order to verify the compliance of electric power suppliers with
38 the ~~REPS-CEPS~~ requirements of this section and to facilitate the establishment of a market for
39 the purchase and sale of renewable energy certificates.
- 40 (l) The owner, including an electric power supplier, of each ~~renewable-clean~~ energy
41 facility or new ~~renewable-clean~~ energy facility, whether or not required to obtain a certificate of
42 public convenience and necessity pursuant to G.S. 62-110.1, that intends for renewable energy
43 certificates it earns to be eligible for use by an electric power supplier to comply with
44 G.S. 62-133.8 shall register the facility with the Commission. Such an owner shall file a
45 registration statement in the form prescribed by the Commission and remit to the Commission
46 the fee required pursuant to G.S. 62-300(a)(16)."

47 **SECTION 1.(b)** G.S. 62-2(a) reads as rewritten:

48 "**§ 62-2. Declaration of policy.**

49 (a) Upon investigation, it has been determined that the rates, services and operations of
50 public utilities as defined herein, are affected with the public interest and that the availability of
51 an adequate and reliable supply of electric power and natural gas to the people, economy and

1 government of North Carolina is a matter of public policy. It is hereby declared to be the policy
2 of the State of North Carolina:

3 ...

- 4 (10) To promote the development of ~~renewable-clean~~ energy and energy efficiency
5 through the implementation of a ~~Renewable-Clean~~ Energy and Energy
6 Efficiency Portfolio Standard (~~REPS~~)-(CEPS) that will do all of the following:
7 a. Diversify the resources used to reliably meet the energy needs of
8 consumers in the State.
9 b. Provide greater energy security through the use of indigenous energy
10 resources available within the State.
11 c. Encourage private investment in ~~renewable-clean~~ energy and energy
12 efficiency.
13 d. Provide improved air quality and other benefits to energy consumers
14 and citizens of the State."

15 **SECTION 1.(c)** G.S. 62-110.8 reads as rewritten:

16 **"§ 62-110.8. Competitive procurement of ~~renewable-clean~~ energy.**

17 (a) Each electric public utility shall file for Commission approval a program for the
18 competitive procurement of energy and capacity from ~~renewable-clean~~ energy facilities with the
19 purpose of adding ~~renewable-clean~~ energy to the State's generation portfolio in a manner that
20 allows the State's electric public utilities to continue to reliably and cost-effectively serve
21 customers' future energy needs. ~~Renewable-Clean~~ energy facilities eligible to participate in the
22 competitive procurement shall include those facilities that use ~~renewable-clean~~ energy resources
23 identified in G.S. 62-133.8(a)(8) but shall be limited to facilities with a nameplate capacity rating
24 of 80 megawatts (MW) or less that are placed in service after the date of the electric public
25 utility's initial competitive procurement. Subject to the limitations set forth in subsections (b) and
26 (c) of this section, the electric public utilities shall issue requests for proposals to procure and
27 shall procure, energy and capacity from ~~renewable-clean~~ energy facilities in the aggregate amount
28 of 2,660 megawatts (MW), and the total amount shall be reasonably allocated over a term of 45
29 months beginning when the Commission approves the program. The Commission shall require
30 the additional competitive procurement of ~~renewable-clean~~ energy capacity by the electric public
31 utilities in an amount that includes all of the following: (i) any unawarded portion of the initial
32 competitive procurement required by this subsection; (ii) any deficit in ~~renewable-clean~~ energy
33 capacity identified pursuant to subdivision (1) of subsection (b) of this section; and (iii) any
34 capacity reallocated pursuant to G.S. 62-159.2.

35 (b) Electric public utilities may jointly or individually implement the aggregate
36 competitive procurement requirements set forth in subsection (a) of this section and may satisfy
37 such requirements for the procurement of ~~renewable-clean~~ energy capacity to be supplied by
38 ~~renewable-clean~~ energy facilities through any of the following: (i) ~~renewable-clean~~ energy
39 facilities to be acquired from third parties and subsequently owned and operated by the soliciting
40 public utility or utilities; (ii) ~~renewable-clean~~ energy facilities to be constructed, owned, and
41 operated by the soliciting public utility or utilities subject to the limitations of subdivision (4) of
42 this subsection; or (iii) the purchase of ~~renewable-clean~~ energy, capacity, and environmental and
43 ~~renewable-clean~~ attributes from ~~renewable-clean~~ energy facilities owned and operated by third
44 parties that commit to allow the procuring public utility rights to dispatch, operate, and control
45 the solicited ~~renewable-clean~~ energy facilities in the same manner as the utility's own generating
46 resources. Procured ~~renewable-clean~~ energy capacity, as provided for in this section, shall be
47 subject to the following limitations:

- 48 (1) If prior to the end of the initial 45-month competitive procurement period the
49 public utilities subject to this section have executed power purchase
50 agreements and interconnection agreements for ~~renewable-clean~~ energy
51 capacity within their balancing authority areas that are not subject to economic

1 dispatch or curtailment and were not procured pursuant to G.S. 62-159.2
2 having an aggregate capacity in excess of 3,500 megawatts (MW), the
3 Commission shall reduce the competitive procurement aggregate amount by
4 the amount of such exceedance. If the aggregate capacity of such ~~renewable~~
5 clean energy facilities is less than 3,500 megawatts (MW) at the end of the
6 initial 45-month competitive procurement period, the Commission shall
7 require the electric public utilities to conduct an additional competitive
8 procurement in the amount of such deficit.

9 ...

10 (4) No more than thirty percent (30%) of an electric public utility's competitive
11 procurement requirement may be satisfied through the utility's own
12 development of ~~renewable-clean~~ energy facilities offered by the electric public
13 utility or any subsidiary of the electric public utility that is located within the
14 electric public utility's service territory. This limitation shall not apply to any
15 ~~renewable-clean~~ energy facilities acquired by an electric public utility that are
16 selected through the competitive procurement and are located within the
17 electric public utility's service territory.

18 (c) Subject to the aggregate competitive procurement requirements established by this
19 section, the electric public utilities shall have the authority to determine the location and allocated
20 amount of the competitive procurement within their respective balancing authority areas, whether
21 located inside or outside the geographic boundaries of the State, taking into consideration (i) the
22 State's desire to foster diversification of siting of ~~renewable-clean~~ energy resources throughout
23 the State; (ii) the efficiency and reliability impacts of siting of additional ~~renewable-clean~~ energy
24 facilities in each public utility's service territory; and (iii) the potential for increased delivered
25 cost to a public utility's customers as a result of siting additional ~~renewable-clean~~ energy facilities
26 in a public utility's service territory, including additional costs of ancillary services that may be
27 imposed due to the operational or locational characteristics of a specific ~~renewable-clean~~ energy
28 resource technology, such as nondispatchability, unreliability of availability, and creation or
29 exacerbation of system congestion that may increase redispatch costs.

30 (d) The competitive procurement of ~~renewable-clean~~ energy capacity established
31 pursuant to this section shall be independently administered by a third-party entity to be approved
32 by the Commission. The third-party entity shall develop and publish the methodology used to
33 evaluate responses received pursuant to a competitive procurement solicitation and to ensure that
34 all responses are treated equitably. All reasonable and prudent administrative and related
35 expenses incurred to implement this subsection shall be recovered from market participants
36 through administrative fees levied upon those that participate in the competitive bidding process,
37 as approved by the Commission.

38 ...

39 (g) An electric public utility shall be authorized to recover the costs of all purchases of
40 energy, capacity, and environmental and ~~renewable-clean~~ attributes from third-party ~~renewable~~
41 clean energy facilities and to recover the authorized revenue of any utility-owned assets that are
42 procured pursuant to this section through an annual rider approved by the Commission and
43 reviewed annually. Provided it is in the public interest, the authorized revenue for any ~~renewable~~
44 clean energy facilities owned by an electric public utility may be calculated on a market basis in
45 lieu of cost-of-service based recovery, using data from the applicable competitive procurement
46 to determine the market price in accordance with the methodology established by the
47 Commission pursuant to subsection (h) of this section. The annual increase in the aggregate
48 amount of these costs that are recoverable by an electric public utility pursuant to this subsection
49 shall not exceed one percent (1%) of the electric public utility's total North Carolina retail
50 jurisdictional gross revenues for the preceding calendar year.

1 (h) The Commission shall adopt rules to implement the requirements of this section, as
 2 follows:

- 3 (1) Oversight of the competitive procurement program.
- 4 (2) To provide for a waiver of regulatory conditions or code of conduct
 5 requirements that would unreasonably restrict a public utility or its affiliates
 6 from participating in the competitive procurement process, unless the
 7 Commission finds that such a waiver would not hold the public utility's
 8 customers harmless.
- 9 (3) Establishment of a procedure for expedited review and approval of certificates
 10 of public convenience and necessity, or the transfer thereof, for ~~renewable~~
 11 clean energy facilities owned by the public utility and procured pursuant to
 12 this section. The Commission shall issue an order not later than 30 days after
 13 a petition for a certificate is filed by the public utility.
- 14 (4) Establishment of a methodology to allow an electric public utility to recover
 15 its costs pursuant to subsection (g) of this section.
- 16 (5) Repealed by Session Laws 2021-165, s. 2(b), effective October 13, 2021.

17 (i) The requirements of this section shall not apply to an electric public utility serving
 18 fewer than 150,000 North Carolina retail jurisdictional customers as of January 1, 2017."

19 **SECTION 1.(d)** G.S. 62-126.4 reads as rewritten:

20 **"§ 62-126.4. Commission to establish net metering rates.**

21 (a) Each electric public utility shall file for Commission approval revised net metering
 22 rates for electric customers that (i) own a ~~renewable-clean~~ energy facility for that person's own
 23 primary use or (ii) are customer generator lessees.

24 ...

25 (c) Until the rates have been approved by the Commission as required by this section, the
 26 rate shall be the applicable net metering rate in place at the time the facility interconnects. Retail
 27 customers that own and install an on-site ~~renewable-clean~~ energy facility and interconnect to the
 28 grid prior to the date the Commission approves new metering rates may elect to continue net
 29 metering under the net metering rate in effect at the time of interconnection until January 1,
 30 2027."

31 **SECTION 1.(f)** G.S. 62-133.2 reads as rewritten:

32 **"§ 62-133.2. Fuel and fuel-related charge adjustments for electric utilities.**

33 (a) The Commission shall permit an electric public utility that generates electric power
 34 by fossil fuel or nuclear fuel to charge an increment or decrement as a rider to its rates for changes
 35 in the cost of fuel and fuel-related costs used in providing its North Carolina customers with
 36 electricity from the cost of fuel and fuel-related costs established in the electric public utility's
 37 previous general rate case on the basis of cost per kilowatt hour.

38 (a1) As used in this section, "cost of fuel and fuel-related costs" means all of the following:

39 ...

- 40 (6) Except for those costs recovered pursuant to G.S. 62-133.8(h), the total
 41 delivered costs of all purchases of power from ~~renewable-clean~~ energy
 42 facilities and new ~~renewable-clean~~ energy facilities pursuant to G.S. 62-133.8
 43 or to comply with any federal mandate that is similar to the requirements of
 44 subsections (b), (c), (d), (e), and (f) of G.S. 62-133.8.

45 ...

- 46 (11) All nonadministrative costs related to the ~~renewable-clean~~ energy procurement
 47 pursuant to G.S. 62-159.2 not recovered from the program participants.

48"

49 **SECTION 1.(g)** G.S. 62-133.16 reads as rewritten:

50 **"§ 62-133.16. Performance-based regulation authorized.**

51 ...

1 (d) Commission Action on Application. –

2 ...

3 (2) In reviewing any such PBR application under this section, the Commission
4 may consider whether the PBR application:

5 a. Encourages peak load reduction or efficient use of the system.

6 b. Encourages utility-scale ~~renewable~~clean energy and storage.

7"

8 **SECTION 1.(h)** G.S. 62-133.20 reads as rewritten:

9 **"§ 62-133.20. Cleanfields ~~renewable~~clean energy demonstration parks.**

10 (a) Criteria for Designation. – A parcel or tract of land, or any combination of contiguous
11 parcels or tracts of land, that meet all of the following criteria may be designated as a cleanfields
12 ~~renewable~~clean energy demonstration park:

13 ...

14 (7) The creation of the park is for the purpose of featuring clean-energy facilities,
15 laboratories, and companies, thereby spurring economic growth by attracting
16 ~~renewable~~clean energy and alternative fuel industries.

17 (8) The development plan for the park must include at least three ~~renewable~~clean
18 energy or alternative fuel facilities.

19 (9) The development plan for the park must include a biomass ~~renewable~~clean
20 energy facility that utilizes refuse derived fuel, including yard waste, wood
21 waste, and waste generated from construction and demolition, but not
22 including wood directly derived from whole trees, as the primary source for
23 generating energy. The refuse derived fuel shall undergo an enhanced
24 recycling process before being utilized by the biomass ~~renewable~~clean energy
25 facility.

26 (10) The initial biomass ~~renewable~~clean energy facility will not be a major source,
27 as that term is defined in 40 C.F.R. § 70.2 (July 1, 2009 edition), for air quality
28 purposes. The biomass ~~renewable~~clean energy facility will remain in
29 compliance with all applicable State and federal emissions requirements
30 throughout its operating life.

31 (b) Certification. – The owner of a parcel or tract of land that seeks to establish a
32 cleanfields ~~renewable~~clean energy demonstration park shall submit to the Secretary of State an
33 application for designation. The Secretary shall examine the application and may request any
34 additional information from the owner of the parcel or tract of land or the Department of
35 Environment and Natural Resources needed to verify that the project meets all of the criteria for
36 designation. The Secretary may rely on certifications provided by the owner or the Department
37 of Environment and Natural Resources that the criteria are met. If the Secretary determines that
38 the project meets all of the criteria, the Secretary shall make and issue a certificate designating
39 the parcel or tract of land as a cleanfields ~~renewable~~clean energy demonstration park to the
40 owner and shall file and record the application and certificate in an appropriate book of record.
41 The parcel or tract of land shall be designated as a cleanfields ~~renewable~~clean energy
42 demonstration park on the date the certificate is filed and recorded.

43 (c) ~~Renewable-Clean~~ Energy Generation. – The definitions in G.S. 62-133.8 apply to this
44 section. If the Utilities Commission determines that a biomass ~~renewable~~clean energy facility
45 located in the cleanfields ~~renewable~~clean energy demonstration park is a new ~~renewable~~clean
46 energy facility, the Commission shall assign triple credit to any electric power or renewable
47 energy certificates generated from ~~renewable~~clean energy resources at the biomass ~~renewable~~
48 clean energy facility that are purchased by an electric power supplier for the purposes of
49 compliance with G.S. 62-133.8. The additional credits assigned to the first 10 megawatts of
50 biomass ~~renewable~~clean energy facility generation capacity shall be eligible for use to meet the
51 requirements of G.S. 62-133.8(f). The additional credits assigned to the first 10 megawatts of

1 biomass ~~renewable-clean~~ energy facility generation capacity shall first be used to satisfy the
2 requirements of G.S. 62-133.8(f). Only when the requirements of G.S. 62-133.8(f) are met, shall
3 the additional credits assigned to the first 10 megawatts of biomass ~~renewable-clean~~ energy
4 facility generation capacity be utilized to comply with G.S. 62-133.8(b) and (c). The triple credit
5 shall apply only to the first 20 megawatts of biomass ~~renewable-clean~~ energy facility generation
6 capacity located in all cleanfields ~~renewable-clean~~ energy demonstration parks in the State."

7 **SECTION 1.(i)** G.S. 62-153 reads as rewritten:

8 "**§ 62-153. Contracts of public utilities with certain companies and for services.**

9 ...

10 (b) No public utility shall pay any fees, commissions or compensation of any description
11 whatsoever to any affiliated or subsidiary holding, managing, operating, constructing,
12 engineering, financing or purchasing company or agency for services rendered or to be rendered
13 without first filing copies of all proposed agreements and contracts with the Commission and
14 obtaining its approval. Provided, however, that this subsection shall not apply to (i) motor carriers
15 of passengers or (ii) power purchase agreements entered into pursuant to the competitive
16 ~~renewable-clean~~ energy procurement process established pursuant to G.S. 62-110.8."

17 **SECTION 1.(j)** G.S. 62-156 reads as rewritten:

18 "**§ 62-156. Power sales by small power producers to public utilities.**

19 ...

20 (c) Rates to be paid by electric public utilities to small power producers not eligible for
21 the utility's standard contract pursuant to subsection (b) of this section shall be established
22 through good-faith negotiations between the utility and small power producer, subject to the
23 Commission's oversight as required by law. In establishing rates for purchases from such small
24 power producers, the utility shall design rates consistent with the most recent
25 Commission-approved avoided cost methodology for a fixed five-year term. Rates for such
26 purchases shall take into account factors related to the individual characteristics of the small
27 power producer, as well as the factors identified in subdivisions (2) and (3) of subsection (b) of
28 this section. Notwithstanding this subsection, small power producers that produce electric energy
29 primarily by the use of any of the following ~~renewable-clean~~ energy resources may negotiate for
30 a fixed-term contract that exceeds five years: (i) swine or poultry waste; (ii) hydropower, if the
31 hydroelectric power facility total capacity is equal to or less than five megawatts (MW); or (iii)
32 landfill gas, manure digester gas, agricultural waste digester gas, sewage digester gas, or sewer
33 sludge digester gas.

34"

35 **SECTION 1.(k)** G.S. 62-159.2 reads as rewritten:

36 "**§ 62-159.2. Direct ~~renewable-clean~~ energy procurement for major military installations,
37 public universities, and large customers.**

38 ...

39 (b) Each public utility's program application required by this section shall provide
40 standard contract terms and conditions for participating customers and for ~~renewable-clean~~
41 energy suppliers from which the electric public utility procures energy and capacity on behalf of
42 the participating customer. The application shall allow eligible customers to select the new
43 ~~renewable-clean~~ energy facility from which the electric public utility shall procure energy and
44 capacity. The standard terms and conditions available to ~~renewable-clean~~ energy suppliers shall
45 provide a range of terms, between two years and 20 years, from which the participating customer
46 may elect. Eligible customers shall be allowed to negotiate with ~~renewable-clean~~ energy suppliers
47 regarding price terms.

48 (c) Each contracted amount of capacity shall be limited to no more than one hundred
49 twenty-five percent (125%) of the maximum annual peak demand of the eligible customer
50 premises. Each public utility shall establish reasonable credit requirements for financial
51 assurance for eligible customers that are consistent with the Uniform Commercial Code of North

1 Carolina. Major military installations and The University of North Carolina are exempt from the
2 financial assurance requirements of this section. The requirements of this subsection shall apply
3 except as otherwise provided by law.

4 (d) The program shall be offered by the electric public utilities subject to this section for
5 a period of five years or until December 31, 2022, whichever is later, and shall not exceed a
6 combined 600 megawatts (MW) of total capacity. For the public utilities subject to this section,
7 where a major military installation is located within its Commission-assigned service territory,
8 at least 100 megawatts (MW) of new ~~renewable-clean~~ energy facility capacity offered under the
9 program shall be reserved for participation by major military installations. At least 250
10 megawatts (MW) of new ~~renewable-clean~~ energy facility capacity offered under the programs
11 shall also be reserved for participation by The University of North Carolina. Major military
12 installations and The University of North Carolina must fully subscribe to all their allocations
13 prior to December 31, 2020, or a period of no more than three years after approval of the program,
14 whichever is later. If any portion of total capacity set aside to major military installations or The
15 University of North Carolina is not used, it shall be reallocated for use by any eligible program
16 participant. If any portion of the 600 megawatts (MW) of ~~renewable-clean~~ energy capacity
17 provided for in this section is not awarded prior to the expiration of the program, it shall be
18 reallocated to and included in a competitive procurement in accordance with G.S. 62-110.8(a).
19 The requirements of this subsection shall apply except as otherwise provided by law.

20 (e) In addition to the participating customer's normal retail bill, the total cost of any
21 ~~renewable-clean~~ energy and capacity procured by or provided by the electric public utility for the
22 benefit of the program customer shall be paid by that customer. The electric public utility shall
23 pay the owner of the ~~renewable-clean~~ energy facility which provided the electricity. The program
24 customer shall receive a bill credit for the energy as determined by the Commission; provided,
25 however, that the bill credit shall not exceed utility's avoided cost. The Commission shall ensure
26 that all other customers are held neutral, neither advantaged nor disadvantaged, from the impact
27 of the ~~renewable-clean~~ electricity procured on behalf of the program customer."

28 **SECTION 1.(l)** G.S. 62-300 reads as rewritten:

29 **"§ 62-300. Particular fees and charges fixed; payment.**

30 (a) The Commission shall receive and collect the following fees and charges in
31 accordance with the classification of utilities as provided in rules and regulations of the
32 Commission, and no others:

33 ...

34 (16) Two hundred fifty dollars (\$250.00) with each application for a certificate of
35 authority to engage in business as an electric generator lessor filed pursuant
36 to G.S. 62-126.7 or each registration statement for a ~~renewable-clean~~ energy
37 facility or new ~~renewable-clean~~ energy facility filed pursuant to
38 G.S. 62-133.8(l).

39"

40 **SECTION 1.(m)** G.S. 143-213 reads as rewritten:

41 **"§ 143-213. Definitions.**

42 Unless the context otherwise requires, the following terms as used in this Article and Articles
43 21A and 21B of this Chapter are defined as follows:

44 ...

45 (12a) The term "farm digester system" means a system, including all associated
46 equipment and lagoon covers, by which gases are collected and processed
47 from an animal waste management system for the digestion of animal biomass
48 for use as a ~~renewable-clean~~ energy resource. A farm digester system shall be
49 considered an agricultural feedlot activity within the meaning of "animal
50 operation" and shall also be considered a part of an "animal waste
51 management system" as those terms are defined in G.S. 143-215.10B.

1 ...

2 (14a) The term "~~renewable~~-clean animal biomass energy resource" means any
3 ~~renewable~~-clean energy resource, as defined in G.S. 62-133.8(a)(8), that
4 utilizes animal waste as a biomass resource, including a farm digester system.

5"

6 **SECTION 1.(n)** G.S. 143B-282 reads as rewritten:

7 **"§ 143B-282. Environmental Management Commission – creation; powers and duties.**

8 (a) There is hereby created the Environmental Management Commission of the
9 Department of Environmental Quality with the power and duty to promulgate rules to be followed
10 in the protection, preservation, and enhancement of the water and air resources of the State.

11 ...

12 (6) The Commission may establish a procedure for evaluating ~~renewable~~-clean
13 energy technologies that are, or are proposed to be, employed as part of a
14 ~~renewable~~-clean energy facility, as defined in G.S. 62-133.8; establish
15 standards to ensure that ~~renewable~~-clean energy technologies do not harm the
16 environment, natural resources, cultural resources, or public health, safety, or
17 welfare of the State; and, to the extent that there is not an environmental
18 regulatory program, establish an environmental regulatory program to
19 implement these protective standards.

20"

21 **SECTION 1.(o)** G.S. 160A-272 reads as rewritten:

22 **"§ 160A-272. Lease or rental of property.**

23 ...

24 (c) Notwithstanding subsection (b1) of this section, the council may approve a lease
25 without treating that lease as a sale of property for any of the following reasons:

26 (1) For the siting and operation of a ~~renewable~~-clean energy facility, as that term
27 is defined in G.S. 62-133.8(a)(7), for a term up to 25 years.

28"

29 **SECTION 1.(p)** G.S. 160D-1320 reads as rewritten:

30 **"§ 160D-1320. Program to finance energy improvements.**

31 (a) Purpose. – The General Assembly finds it is in the best interest of the citizens of North
32 Carolina to promote and encourage ~~renewable~~-clean energy and energy efficiency within the
33 State in order to conserve energy, promote economic competitiveness, and expand employment
34 in the State. The General Assembly also finds that a local government has an integral role in
35 furthering this purpose by promoting and encouraging ~~renewable~~-clean energy and energy
36 efficiency within the local government's territorial jurisdiction. In furtherance of this purpose, a
37 local government may establish a program to finance the purchase and installation of distributed
38 generation ~~renewable~~-clean energy sources or energy efficiency improvements that are
39 permanently affixed to residential, commercial, or other real property.

40 (b) Financing Assistance. – A local government may establish a revolving loan fund and
41 a loan loss reserve fund for the purpose of financing or assisting in the financing of the purchase
42 and installation of distributed generation ~~renewable~~-clean energy sources or energy efficiency
43 improvements that are permanently fixed to residential, commercial, or other real property. A
44 local government may establish other local government energy efficiency and distributed
45 generation ~~renewable~~-clean energy source finance programs funded through federal grants. A
46 local government may use State and federal grants and loans and its general revenue for this
47 financing. The annual interest rate charged for the use of funds from the revolving fund may not
48 exceed eight percent (8%) per annum, excluding other fees for loan application review and
49 origination. The term of any loan originated under this section may not be greater than 20 years.

50 (c) Definition. – As used in this Article, "~~renewable~~-clean energy source" has the same
51 meaning as "~~renewable~~-clean energy resource" in G.S. 62-133.8."

1 **SECTION 2.** G.S. 62-110.1 reads as rewritten:

2 "**§ 62-110.1. Certificate for construction of generating facility; analysis of long-range needs**
3 **for expansion of facilities; ongoing review of construction costs; inclusion of**
4 **approved construction costs in rates.**

5 ...

6 (e) As a condition for receiving a certificate, the applicant shall file an estimate of
7 construction costs in such detail as the Commission may require. The Commission shall hold a
8 public hearing on each application and no certificate shall be granted unless the Commission has
9 approved the estimated construction costs and made a finding that construction will be consistent
10 with the Commission's plan for expansion of electric generating capacity. A certificate for the
11 construction of ~~a coal or nuclear~~ any electric generating facility shall be granted only if the
12 applicant demonstrates and the Commission finds that energy efficiency measures; demand-side
13 management; ~~renewable clean~~ energy resource generation; combined heat and power generation;
14 or any combination thereof, would not establish or maintain a more cost-effective and reliable
15 generation system and that the construction and operation of the facility is in the public interest.
16 In making its determination, the Commission shall consider resource and fuel diversity and
17 reasonably anticipated future operating costs. Once the Commission grants a certificate, no
18 public utility shall cancel construction of a generating unit or facility without approval from the
19 Commission based upon a finding that the construction is no longer in the public interest.

20 ...

21 (g) The certification requirements of this section shall not apply to (i) a nonutility-owned
22 generating facility fueled by ~~renewable clean~~ energy resources under two megawatts in capacity;
23 (ii) to persons who construct an electric generating facility primarily for that person's own use
24 and not for the primary purpose of producing electricity, heat, or steam for sale to or for the
25 public for compensation; or (iii) a solar energy facility or a community solar energy facility, as
26 provided by and subject to the limitations of Article 6B of this Chapter. However, such persons
27 shall be required to report the proposed construction of the facility and the completion of the
28 facility to the Commission and the interconnecting public utility. Such reports shall be for
29 informational purposes only and shall not require action by the Commission or the Public Staff.

30 (h) Expired pursuant to its own terms, effective January 1, 2011."

31
32 **PART II. MODIFICATIONS TO CLOSURE DEADLINES FOR CERTAIN COAL**
33 **COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS**

34 **SECTION 3.(a)** G.S. 130A-309.214 reads as rewritten:

35 "**§ 130A-309.214. Closure of coal combustion residuals surface impoundments.**

36 (a) An owner of a coal combustion residuals surface impoundment shall submit a
37 proposed Coal Combustion Residuals Surface Impoundment Closure Plan for the Department's
38 approval. If corrective action to restore groundwater has not been completed pursuant to the
39 requirements of G.S. 130A-309.211(b), the proposed closure plan shall include provisions for
40 completion of activities to restore groundwater in conformance with the requirements of
41 Subchapter L of Chapter 2 of Title 15A of the North Carolina Administrative Code. In addition,
42 the following requirements, at a minimum, shall apply to such plans:

43 ...

44 (2) ~~Intermediate-risk~~ Except as otherwise provided by law, intermediate-risk
45 impoundments shall be closed as soon as practicable, but no later than
46 December 31, 2024. A proposed closure plan for such impoundments must be
47 submitted as soon as practicable, but no later than December 31, 2019. At a
48 minimum, such impoundments shall be dewatered, and the owner of an
49 impoundment shall close the impoundment in any manner allowed pursuant
50 to subdivision (1) of this subsection, or, if applicable, as provided in
51 G.S. 130A-309.216.

- 1 ...
2 (3) ~~Low-risk~~ Except as otherwise provided by law, low-risk impoundments shall
3 be closed as soon as practicable, but no later than December 31, 2029. A
4 proposed closure plan for such impoundments must be submitted as soon as
5 practicable, but no later than December 31, 2019. At a minimum, (i)
6 impoundments located in whole above the seasonal high groundwater table
7 shall be dewatered; (ii) impoundments located in whole or in part beneath the
8 seasonal high groundwater table shall be dewatered to the maximum extent
9 practicable; and (iii) at the election of the Department, the owner of an
10 impoundment shall either:
11"

12 **SECTION 3.(b)** The following coal combustion residuals surface impoundments
13 shall be closed as soon as practicable but not later than the following dates, except as otherwise
14 preempted by the requirements of federal law, and notwithstanding any applicable deadlines
15 established in State law, including (i) G.S. 130A-309.214, as amended by subsection (a) of this
16 section, (ii) G.S. 130A-309.216, and (iii) S.L. 2014-122 and S.L. 2016-95:

- 17 (1) Coal combustion residuals surface impoundments located at the H.F. Lee
18 Steam Station owned and operated by Duke Energy Progress, and located in
19 Wayne County, December 31, 2035.
20 (2) Coal combustion residuals surface impoundments located at the Cape Fear
21 Steam Station owned and operated by Duke Energy Progress, and located in
22 Chatham County, December 31, 2035.
23 (3) Coal combustion residuals surface impoundments located at the Allen Steam
24 Station owned and operated by Duke Energy Carolinas, and located in Gaston
25 County, December 31, 2038.
26 (4) Coal combustion residuals surface impoundments located at the Belews Creek
27 Steam Station owned and operated by Duke Energy Carolinas, and located in
28 Stokes County, December 31, 2034.
29 (5) Coal combustion residuals surface impoundments located at the Buck Steam
30 Station owned and operated by Duke Energy Carolinas, and located in Rowan
31 County, December 31, 2035.
32 (6) Coal combustion residuals surface impoundments located at the Rogers
33 Energy Complex (formerly Cliffside Steam Station) owned and operated by
34 Duke Energy Carolinas, and located in Cleveland County and Rutherford
35 County, December 31, 2029.
36 (7) Coal combustion residuals surface impoundments located at the Marshall
37 Steam Station owned and operated by Duke Energy Carolinas, and located in
38 Catawba County, December 31, 2035.
39 (8) Coal combustion residuals surface impoundments located at the Mayo Steam
40 Station owned and operated by Duke Energy Progress, and located in Person
41 County, December 31, 2029.
42 (9) Coal combustion residuals surface impoundments located at the Roxboro
43 Steam Station owned and operated by Duke Energy Progress, and located in
44 Person County, December 31, 2036.

45 **SECTION 3.(c)** The Environmental Management Commission may adopt
46 permanent rules governing permitting for closure and post-closure of coal combustion residuals
47 surface impoundments and landfills in accordance with the provisions of Chapter 150B of the
48 General Statutes, except the Commission is exempt from the fiscal note requirement of
49 G.S. 150B-21.4 and from the Rules Review Commission review under Part 3 of Article 2A of
50 Chapter 150B of the General Statutes in adopting rules to implement this section.
51

PART III. DAM SAFETY FEE**SECTION 4.** G.S. 143-215.28A reads as rewritten:**"§ 143-215.28A. Application fees.**

~~(a) In accordance with G.S. 143-215.3(a)(1a), the Commission may establish a fee schedule for processing applications for approvals of construction or removal of dams issued under this Part. In establishing the fee schedule, the Commission shall consider the administrative and personnel costs incurred by the Department for processing the applications and for related compliance activities. 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. An approval fee may not exceed the larger of two hundred dollars (\$200.00) or two percent (2%) of the actual cost of construction or removal of the applicable dam. The fee for notification of a professionally supervised dam removal under G.S. 143-215.27(e)(1) shall be five hundred dollars (\$500.00) and shall be paid to the Department. The provisions of G.S. 143-215.3(a)(1b) do not apply to these fees.~~

(a1) A nonrefundable application processing and compliance fee in the amount of two and one-quarter percent (2.25%) of the actual cost of construction, repair, alteration, breach, or removal of the applicable dam shall be paid for the processing of applications for approvals of construction, repair, or removal of dams issued under this Part as follows: (i) an initial fee of five hundred dollars (\$500.00) or one-half of the processing and compliance fee based on the engineer's estimated cost of construction, repair, alteration, or removal of the dam, whichever amount is greater, shall be submitted with the application and (ii) the remainder of the processing and compliance fee based on the engineer's estimated cost of construction, repair, alteration, or removal of the dam, whichever amount is greater, shall be paid when the as-built plans are submitted to the Department. The maximum fee shall not exceed fifty thousand dollars (\$50,000) for the construction, repair, alteration, or removal of a dam. In addition, the following provisions shall apply:

- (1) Each application for construction, repair, alteration, or removal of a dam shall be deemed incomplete and shall not be reviewed until the initial fee of five hundred dollars (\$500.00) or one-half of the processing and compliance fee is paid.
- (2) For purposes of determining the actual cost of construction, repair, alteration, or removal, the cost shall (i) include all labor and materials costs associated with the project for the applicable dam and (ii) not include the costs associated with acquisition of land or right-of-way, design, quality control, electrical generating machinery, or constructing a roadway across the dam.
- (3) Immediately upon completion of construction, repair, alteration, or removal of a dam, the owner shall file a certification with the Director, on a form prescribed by the Department, and accompanying documentation, which shows actual cost incurred by the owner for construction, repair, alteration, or removal of the applicable dam.
 - a. The owner's certification and accompanying documentation shall be filed with the as-built plans and the engineer's certification.
 - b. If the Director finds that the owner's certification and accompanying documentation contain inaccurate cost information, the Director shall either withhold final impoundment approval, if applicable, or revoke final impoundment approval, if applicable, until the owner provides accurate documentation and that documentation has been verified by the Department.
- (4) Final approval to impound shall not be granted until the owner's certification and the accompanying documentation are filed in accordance with subdivision

(3) of this subsection and the remainder of the application processing and compliance fee has been paid as provided by this subsection.

(5) Payment of the application processing and compliance fee shall be by check or money order made payable to the Department and reference the applicable dam.

(b) The Dam Safety Account is established as a nonreverting account within the Department. Fees collected under this section shall be credited to the Account and shall be applied to the costs of administering this Part."

PART IV. INCREASE THE ROOFTOP SOLAR LEASING CAP

SECTION 5.(a) G.S. 62-126.5 reads as rewritten:

"§ 62-126.5. Scope of leasing program in offering utilities' service areas.

...

(d) The total installed capacity of all solar energy facilities on an offering utility's system that are leased pursuant to this section shall not exceed ~~one percent (1%)~~ ten percent (10%) of the previous five-year average of the North Carolina retail contribution to the offering utility's coincident retail peak demand. The offering utility may refuse to interconnect customers that would result in this limitation being exceeded. Each offering utility shall establish a program for new installations of leased equipment to permit the reservation of capacity by customer generator lessees, whether participating in a public utility or nonutility lessor's leasing program, on its system, including provisions to prevent or discourage abuse of such programs. Such programs must provide that only prospective individual customer generator lessees may apply for, receive, and hold reservations to participate in the offering utility's leasing program. Each reservation shall be for a single customer premises only and may not be sold, exchanged, traded, or assigned except as part of the sale of the underlying premises.

(d1) A solar energy facility leased to an individual customer generator lessee pursuant to this section is limited to a capacity of (i) not more than the lesser of 1,000 kilowatts (kW) or one hundred percent (100%) of contract demand if a nonresidential customer or (ii) not more than 20 kilowatts (kW) or one hundred percent (100%) of estimated electrical demand if a residential customer.

(e) To comply with the terms of this section, each customer generator lessor's solar energy facility shall serve only one premises and shall not serve multiple customer generator lessees or multiple premises. The customer generator lessee must enroll in the applicable rate schedule made available by the interconnecting offering utility, subject to the participation limitations set forth in subsection (a) of this section."

SECTION 5.(b) This section is effective August 1, 2023, and applies to solar energy facility leases executed on or after that date.

PART V. 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 NONGOVERNMENTAL ENTITY; PROHIBIT LOCAL GOVERNMENTS FROM ENTERING NONDISCLOSURE AGREEMENTS IN ORDER TO RESTRICT ACCESS TO PUBLIC RECORDS SUBJECT TO DISCLOSURE UNDER THE PUBLIC RECORDS ACT

SECTION 6.(a) Article 8 of Chapter 159 of the General Statutes reads as rewritten:

"Article 8.

"Financing Agreements and Other Financing Arrangements; Arrangements for Nongovernmental Control of Public Enterprises.

...

"§ 159-154. Nongovernmental control of public enterprises.

1 (a) For purposes of this section, the following definitions apply:

2 (1) Adjusted revenues. – Gross revenue of a public enterprise minus the cost of
3 commodity purchases and wholesale electricity purchases for the public
4 enterprise.

5 (2) Consolidated nongovernmental entity. – Collectively, all affiliated
6 nongovernmental entities, which includes each entity's parents, subsidiaries,
7 and each other entity that owns, directly or indirectly, at least ten percent
8 (10%) of the capital or voting rights of the entity, and each other entity in
9 which the entity owns, directly or indirectly, at least ten percent (10%) of the
10 capital or voting rights.

11 (3) Control. – Any one or more of the following, except that a contractual
12 arrangement by a unit of local government with a nongovernmental entity to
13 provide specified maintenance services for a fixed fee or fee per service basis
14 alone does not create control of the public enterprise for purposes of this
15 section:

16 a. The authority to expend or otherwise manage during any fiscal year
17 more than fifty percent (50%) of a public enterprise's adjusted
18 revenues.

19 b. Responsibility for provision to the public of the services previously
20 provided by the public enterprise.

21 c. Responsibility for operation and maintenance of a material portion of
22 the assets and facilities of the public enterprise.

23 d. The authority to manage a material portion of the staff responsible for
24 operation and maintenance of the assets and facilities of the public
25 enterprise.

26 (4) Nongovernmental entity. – Any person or entity other than (i) the State, (ii) a
27 unit of local government, or (iii) a public body created pursuant to Chapter
28 159B of the General Statutes.

29 (5) Public enterprise. – All or a material portion of one or more of the systems set
30 forth in G.S. 160A-311, G.S. 153A-274, and Chapter 162A of the General
31 Statutes.

32 (6) Unit of local government. – A "unit of local government" as defined in
33 G.S. 159-7 and a "public authority" as defined in G.S. 159-7.

34 (b) No unit of local government may concede or transfer control of any public enterprise
35 that the unit of local government owns or operates to any nongovernmental entity or consolidated
36 nongovernmental entity or enter into an agreement to do so unless the concession or transfer of
37 control and the agreement thereunder have been approved by the Commission pursuant to this
38 section as evidenced by the secretary's certificate thereon. Any agreement subject to Commission
39 approval under this section that does not bear the secretary's certificate thereon shall be void, and
40 it shall be unlawful for any officer, employee, or agent of a unit of local government to take any
41 actions thereunder.

42 (c) Before executing an agreement subject to this section, the governing board of the unit
43 of local government shall file an application for Commission approval of the agreement with the
44 secretary of the Commission. The application shall state such facts and have attached to it such
45 documents concerning the proposed agreement and the arrangements proposed to be carried out
46 thereunder as the secretary may require. The Commission may prescribe the form of the
47 application. Before the secretary accepts the application, the secretary may require the governing
48 board or its representatives to attend a preliminary conference at which time the secretary and
49 deputies may informally discuss the proposed agreement and arrangements proposed to be
50 carried out thereunder.

1 (d) Prior to the Commission's consideration of whether to approve an agreement subject
2 to this section and the arrangements thereunder, the governing body of the unit of local
3 government shall conduct a public hearing on whether the proposed arrangement is in the public
4 interest and following the public hearing the governing body shall adopt a resolution or take a
5 similar action stating that it determines that the proposed arrangement is in the public interest.
6 The public hearing shall be held by the governing body of the unit of local government proposing
7 the arrangement following publication of notice of the public hearing at least 10 days prior to the
8 public hearing. The notice of public hearing shall describe the proposed arrangement in general
9 terms. In determining that the arrangement is in the public interest, the governing body of the
10 unit of local government shall consider, at a minimum, all of the following:

- 11 (1) The physical condition of the public enterprise.
- 12 (2) The capital replacements, additions, expansions, and repairs needed for the
13 public enterprise to provide reliable service and meet all applicable federal
14 standards.
- 15 (3) The availability of federal and State grants and loans for system upgrades and
16 repairs of the public enterprise.
- 17 (4) The willingness and the ability of the nongovernmental entity to make system
18 upgrades and repairs and provide high-quality and cost-effective service.
- 19 (5) The reasonableness of the amount to be paid to the unit of local government
20 to enter into the arrangement.
- 21 (6) The reasonableness of any amounts to be paid by the unit of local government
22 to exit the arrangement.
- 23 (7) The service quality guarantees provided by the arrangement and the
24 consequences of any failure to satisfy the guarantees.
- 25 (8) The most recent income and expense statement and asset and liabilities
26 balance sheet of the nongovernmental entity and any consolidated
27 nongovernmental entity.
- 28 (9) The projected rates to customers of the public enterprise during the term of
29 the arrangement and the affordability of the services of the public enterprise
30 resulting from such projected rates.
- 31 (10) The experience of the nongovernmental entity and its affiliates within the
32 consolidated nongovernmental entity in the operation of utility systems
33 similar to the public enterprise that is the subject of the arrangement.
- 34 (11) The alternatives to entering into the arrangement and the potential impact on
35 utility customers if the arrangement is not entered.

36 (e) The Commission may approve an agreement for a unit of local government to concede
37 or transfer control of a public enterprise and the arrangement to do so if it finds and determines
38 that the customers of the public enterprise will enjoy reasonable and material short-term and
39 long-term savings and other net benefits from the arrangement during the term of the arrangement
40 without the imposition of any material cost or charge on the unit of local government or its
41 customers upon termination of the arrangement. In determining whether a proposed agreement
42 and the arrangements thereunder shall be approved, the Commission shall have authority to
43 inquire into and to give consideration to such matters that it may believe to have bearing on
44 whether the proposed agreement and the arrangement thereunder should be approved. Such
45 matters may include any of the following:

- 46 (1) The projected financial feasibility of the proposed arrangement in the
47 short-term and long-term, its effect on rates to be charged to the customers of
48 the public enterprise under the arrangements being proposed, and its effect on
49 the quality of services to be provided by the public enterprise under the
50 arrangement.

- 1 (2) The projected rates to customers of the public enterprise during the term of
2 the arrangement, the basis for the establishment of such rates and the
3 reasonableness of the basis, and the affordability of the services of the public
4 enterprise resulting from such projected rates.
- 5 (3) If the unit of local government will receive an initial payment for participating
6 in the arrangement, a summary of the unit of local government's proposed
7 plans for the use of the initial payment.
- 8 (4) If there is any indebtedness of the unit of local government associated with
9 the public enterprise, the plans for the retirement or defeasance of such
10 indebtedness.
- 11 (5) The financial condition of the nongovernmental entity and its affiliates within
12 the consolidated nongovernmental entity and its ability to carry out the
13 undertakings required of the nongovernmental entity in the arrangement.
- 14 (6) The experience of the nongovernmental entity and its affiliates within the
15 consolidated non-governmental entity in the operation of utility systems
16 similar to the public enterprise that is the subject of the arrangement.
- 17 (7) The nongovernmental entity's plans to finance its initial participation in the
18 arrangement and future improvements to the public enterprise and the
19 expected participation of the unit of local government in any financing.
- 20 (8) The obligations of the nongovernmental entity set forth in the agreement for
21 the maintenance of the public enterprise and the installation of improvements
22 to the public enterprise during the term of the arrangement and the
23 requirements of the agreement that adequate reserves be maintained during
24 the term of the arrangement for such maintenance and improvements.
- 25 (9) The plans set forth in the agreements for the arrangement for maintaining the
26 quality of the components of the public enterprise to be returned to the control
27 of the unit of local government at the end of the term of the agreement.
- 28 (10) Any ongoing financial and other commitments of the unit of local government
29 under the arrangement during its term.
- 30 (11) Any financial payments the unit of local government is expected to be
31 required to pay to the nongovernmental entity or any other person or entity at
32 the end of the arrangement.
- 33 (12) The effect, if any, of the arrangement on the tax status of interest on debt
34 obligations issued by the unit of local government, or any other units of local
35 government on account of contractual arrangements the other unit of local
36 government may have with the unit of local government proposing the
37 agreement being considered.

38 (f) The Commission may require that any projection or other analysis provided to the
39 Commission in connection with its consideration of the arrangement be prepared by a qualified
40 independent expert approved by the Commission.

41 (g) If the Commission tentatively decides to deny the application because it cannot be
42 supported from the information presented to it, it shall so notify the unit of local government
43 filing the application. If the Commission approves or denies the application, the Commission
44 shall enter its order setting forth such approval or denial of the application. If the Commission
45 enters an order denying the application, the proceedings under this section shall be concluded.
46 An order approving an application shall not be construed as an approval of the legality of the
47 agreement in any respect.

48 (h) If the Commission approves an agreement and the arrangements thereunder as
49 provided in this section and thereafter the parties determine to terminate the agreement
50 voluntarily prior to the expiration of its stated term, the unit of local government shall not enter
51 into any such termination arrangement unless the termination is approved by the Commission

1 following a procedure similar to the procedure for initial approval of the agreement and
2 arrangement required by this section. This section shall not prohibit the termination of an
3 agreement in the exercise of legal remedies following a breach of the agreement in accordance
4 with its terms.

5 (i) If the Commission approves an agreement and the arrangements thereunder as
6 provided in this section and thereafter the parties determine to amend the agreement in a material
7 respect, the unit of local government shall not enter into any such amendment unless the
8 amendment is approved by the Commission following a procedure similar to the procedure for
9 initial approval of the agreement."

10 **SECTION 6.(b)** G.S. 132-1 is amended by adding a new subsection to read:

11 "(c) No political subdivision of this State may enter into a nondisclosure agreement in
12 order to restrict access to public records subject to disclosure under this Chapter. The contract by
13 which a political subdivision of this State agrees not to disclose information deemed confidential
14 under State law shall be a public record, unless the existence of the contract is also deemed
15 confidential under State law. If a nondisclosure agreement is associated with one or more closed
16 session meetings under Article 33C of Chapter 143 of the General Statutes, the nondisclosure
17 agreement shall be included in the minutes of each closed session meeting."

18 **SECTION 6.(c)** Subsection (b) of this section becomes effective October 1, 2023,
19 and applies to any nondisclosure agreement entered into on or after that date. The remainder of
20 this section is effective when it becomes law.

21
22 **PART VI. EFFECTIVE DATE**

23 **SECTION 7.** Except as otherwise provided, this act is effective when it becomes
24 law.