

NORTH CAROLINA GENERAL ASSEMBLY
1967 SESSION

CHAPTER 1190
HOUSE BILL 1202

1 AN ACT TO AMEND CHAPTER 62 OF THE GENERAL STATUTES TO CONFORM
2 WITH THE JUDICIAL REVIEW PROCEDURE PROVIDED IN THE ACT CREATING
3 THE NORTH CAROLINA COURT OF APPEALS.
4

5 The General Assembly of North Carolina do enact:
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7 **Section 1.** G.S. 62-90 is hereby amended by striking out subsections (b) and (d)
8 thereof, and renumbering subsection (c) as subsection (b), and by adding at the end thereof the
9 following:

10 "(c) The Commission may on motion of any party to the proceeding or on its own
11 motion set the exceptions to the final order upon which such appeal is based for further hearing
12 before the Commission.

13 "(d) The appeal shall lie to the Court of Appeals as provided in G.S 7A-29. The
14 appellant shall cause to be prepared a statement of the case as required by the rules of the Court
15 of Appeals. A copy of this statement shall be served on the Commission and all other parties, as
16 appellees, within 45 days from the entry of the appeal taken; within 20 days after such service,
17 the appellee shall return the copy with its approval or specified amendments endorsed or
18 attached; if the case be approved by the appellee it shall be filed by the appellant with the Clerk
19 of the Court of Appeals as part of the record; if not returned with objections within the time
20 prescribed, it shall be deemed approved. The Commission shall have the power, in the exercise
21 of its discretion, to enlarge the time in which to serve statement of case on appeal and
22 exceptions thereto or counterstatement of case.

23 "(e) If the case on appeal is returned by appellee with objections as prescribed, or if a
24 countercase is served on appellant, the appellant shall immediately request the Utilities
25 Commission to fix a time and place for meeting to agree on the case on appeal. If the appellant
26 delays longer than 15 days after the appellee serves its countercase or exceptions to request the
27 Commission to set a meeting to agree on the case on appeal, then the exceptions filed by the
28 appellee shall be allowed, or the countercase served by him shall constitute the case on appeal;
29 but the time may be extended by agreement of counsel.

30 "(f) The Commission shall forthwith notify the attorneys of the parties to meet before it
31 for the purpose at a certain time and place, which time shall not be more than 20 days from the
32 receipt of the request. At the time and place stated, the Commission shall determine if all
33 parties have agreed on a case on appeal. If they have, the appellant shall within five days
34 thereafter file it with the Clerk of the Court of Appeals, and if he fails to do so the appellee may
35 file its copy. If the case on appeal is not agreed upon by all parties to the appeal at said meeting,
36 the Commission shall immediately file with the Court of Appeals a request for appointment of
37 a referee to settle the case on appeal, whereupon the chief judge of the Court of Appeals shall
38 appoint a referee to settle and sign the case on appeal under such rules as may be set forth in his
39 appointment.

40 "(g) The Court of Appeals shall hear and determine all matters arising on such appeal, as
41 in this Article provided, and may in the exercise of its discretion assign the hearing of said
42 appeal to any panel of the Court of Appeals."

1 **Sec. 2.** G.S 62-92 is hereby amended by striking out the words "superior court"
2 appearing in line 1 of said Section and by inserting in lieu thereof the following: "Court of
3 Appeals".

4 **Sec. 3.** G.S. 62-96 is hereby amended by striking out the words "In all appeals
5 heard first in the superior court, any party may appeal to the Supreme Court from the judgment
6 of the superior court" appearing in lines 1 through 3 of said Section and by inserting in lieu
7 thereof the following: "In all appeals heard in the Court of Appeals, any party may file a motion
8 for review in the Supreme Court of the decision of the Court of Appeals under G.S. 7A-31, and
9 in cases entitled to be appealed as a matter of right under G.S. 7A-30(3) any party may appeal
10 to the Supreme Court from the decision of the Court of Appeals".

11 **Sec. 4.** G.S. 62-98 is hereby amended by striking out the words "An appeal shall lie
12 to the Supreme Court" appearing in line 1 of subsection (b) of said Section and by inserting in
13 lieu thereof the following: "An appeal shall lie to the Court of Appeals".

14 **Sec. 5.** Chapter 62 of the General Statutes is hereby amended by striking out in its
15 entirety the Section numbered G.S. 62-99 providing for direct appeal from the Commission to
16 the Supreme Court, and declared by the Supreme Court to be unconstitutional.

17 **Sec. 6.** G.S. 62-91 is hereby amended by rewriting said Section to read as follows:
18 "**G.S. 62-91. Appeal Docketed; Title on Appeal; Priorities on Appeal.** Unless otherwise
19 provided by the Rules of the Court of Appeals, the cause on appeal from the Utilities
20 Commission shall be entitled 'State of North Carolina ex rel. Utilities Commission (here add
21 any additional parties in support of the Commission Order and their capacity before the
22 Commission), Appellee(s) v. (here insert name of appellant and his capacity before the
23 Commission), Appellant'. Appeals from the Utilities Commission pending in the superior
24 courts on September 30, 1967, shall remain on the civil issue docket of such superior court and
25 shall have priority over other civil actions. Appeals to the Court of Appeals under G.S. 7A-29
26 shall be docketed in accordance with the Rules of the Court of Appeals."

27 **Sec. 7.** G.S. 62-300(a)(1) is hereby amended by striking out the words "to the
28 superior court" appearing in lines 1 and 2 of said subsection and by inserting in lieu thereof the
29 following: "to the Court of Appeals".

30 **Sec. 8.** G.S. 62-95 is hereby amended by striking out in lines 4 and 5 thereof the
31 words "the judge of the superior court" and by inserting in lieu thereof the words "a judge of
32 the Court of Appeals".

33 **Sec. 9.** All laws and clauses of laws in conflict with this Act are hereby repealed.

34 **Sec. 10.** This Act shall be in full force and effect from and after October 1, 1967.

35 In the General Assembly read three times and ratified, this the 6th day of July, 1967.