

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 1028*

Short Title: Electrical Contracting by Utilities.

(Public)

Sponsors: Representative Payne (By Request).

Referred to: Economic Expansion.

April 19, 1991

1 A BILL TO BE ENTITLED
2 AN ACT TO PREVENT UNFAIR COMPETITION BY ELECTRIC POWER
3 SUPPLIERS.

4 The General Assembly of North Carolina enacts:

5 Section 1. Chapter 87 of the General Statutes is amended by adding a new
6 Article to read:

7 **"ARTICLE 4A.**

8 **"UNFAIR ELECTRIC SUPPLIERS PRACTICES CONTROL ACT.**

9 **"§ 87-51.1. Short title.**

10 This act shall be known and may be cited as the Unfair Electric Power Suppliers
11 Practices Control Act.

12 **"§ 87-51.2. Purpose.**

13 (a) The General Assembly finds and declares as follows:

14 (1) It is the public policy of this State to promote free and open
15 competition in electrical contracting, as defined in G.S. 87-43.

16 (2) Free and open competition in electrical contracting will promote the
17 availability of quality electrical contracting at a reasonable cost to the
18 consumer.

19 (3) Such free and open competition can be achieved only if the market for
20 electrical contracting is not distorted or dominated by electric power
21 suppliers who, by virtue of their special status as regulated monopolies
22 in the development and distribution of energy, have an unfair
23 advantage in energy-related markets.

1 (4) Electric power suppliers should be in the business of development,
2 transport, sale, and conservation of their energies only.

3 (b) It is, therefore, the intent of the General Assembly that electric power
4 suppliers be prohibited from engaging in electrical contracting except in matters
5 pertaining to load control devices, single-family residential security lighting, roadway
6 and highway lighting.

7 **"§ 87-51.3. Prohibited activities.**

8 (a) Except as otherwise provided in this act, electric power suppliers are
9 prohibited from engaging in electrical contracting. An electric power supplier, for the
10 purpose of this act, is a public utility company, a private utility company, an electric
11 membership co-op, a municipal utility, or any other entity that furnishes electric energy
12 for private or public use.

13 (b) It shall not be unlawful for an electric power supplier, upon being properly
14 licensed pursuant to Article 4 of Chapter 87 of the General Statutes, to engage in
15 electrical contracting to the extent necessary to install, service, and remove load control
16 devices on and from appliances and equipment located on the premises of consumers.
17 The State Board of Examiners of Electrical Contractors shall establish a special
18 restricted classification of license, pursuant to G.S. 87-43.3, for such electrical
19 contracting.

20 (c) It shall not be unlawful for an electric power supplier to install, service, and
21 maintain single-family residential security lights mounted on poles owned by it.

22 (d) It shall not be unlawful for an electric power supplier to install, service, and
23 maintain roadway and highway lighting on public rights-of-way.

24 (e) It shall not be unlawful for an affiliated or subsidiary entity of an electric
25 power supplier to engage in electrical contracting provided the following criteria are
26 met:

27 (1) The affiliated business entity shall not have any place of business at a
28 premises owned by the electric power supplier, or at a premises leased
29 or subleased by the electric power supplier to the affiliated business
30 entity.

31 (2) The name of the affiliated business entity shall bear no resemblance to
32 the name of the electric power supplier. Neither the supplier nor the
33 affiliated business entity shall trade upon, promote, or advertise the
34 affiliated status in any manner.

35 (3) The affiliated business entity shall not share the use of equipment,
36 tools, vehicles, inventory, personnel, or other resources of the electric
37 power supplier.

38 (4) The affiliated business entity shall not advertise, promote, or market its
39 products or services through mailings of the electric power supplier or
40 in advertisements in which the electric power supplier's name is set
41 forth. The electric power supplier shall not advertise, promote, or
42 market its services through mailings of the affiliated business entity or
43 in advertisements in which the affiliated business entity's name is set
44 forth.

- 1 (5) The affiliated business entity shall maintain books and records separate
2 and distinct from those of the electric power supplier.
- 3 (6) All costs and expenses involved in operating the affiliated business
4 entity shall be borne by the affiliated business entity and not by the
5 electric power supplier and revenues from the affiliated business entity
6 shall not be provided or disbursed to the electric power supplier.
- 7 (7) All assets of the affiliated business entity shall be maintained separate
8 and distinct from those of the electric power supplier.
- 9 (8) The affiliated business entity shall transact its business wholly,
10 separately, and independently from the electric power supplier so as to
11 gain no competitive advantage by virtue of its status as an affiliated
12 company.
- 13 (9) The affiliated business entity shall be subject to the provisions of
14 Article 4 of Chapter 87 of the General Statutes and shall apply for and
15 obtain a license for electrical contracting in the license classification
16 applicable to its activities, pursuant to G.S. 87-43.3. It shall comply
17 with the applicable building and electrical codes, statutes, and
18 ordinances of the State of North Carolina and of any county or
19 municipality thereof now in force or hereafter enacted.

20 (f) It shall be unlawful for any electric power supplier to grant any preference or
21 privilege to its affiliated business entity in the transaction of business between them.

22 (g) It shall be unlawful for electric power suppliers or their agents, employees, or
23 representatives to refer or steer customers to specific individuals or companies engaged
24 in electrical contracting, including any affiliated business entity.

25 **§ 87-51.4. Powers and duties of the State Board of Examiners of Electrical**
26 **Contractors.**

27 (a) The State Board of Examiners of Electrical Contractors shall have jurisdiction
28 over affiliated business entities of electric power suppliers to ensure that electric power
29 suppliers are not engaged in electrical contracting. The Board shall adopt such rules as
30 are necessary for this purpose.

31 (b) The Board may review, inspect, and audit all books, accounts, papers,
32 records, and memoranda kept or required by rule to be kept by an affiliated business
33 entity.

34 (c) The Board may investigate upon its own initiative or upon complaint any
35 matter relative to the operations of the affiliated business entity and its relation to the
36 electric power supplier.

37 (d) The Board shall have jurisdiction over applicants for licenses and over
38 licensees, and shall have the powers as set forth in G.S. 87-47.

39 **§ 87-51.5. Remedies; penalties.**

40 (a) Any electric power supplier that violates any provision of this act shall be
41 guilty of a misdemeanor and shall, upon conviction, be fined not more than one
42 thousand dollars (\$1,000) which fine shall not be paid by the rate base.

43 (b) The superior courts shall have jurisdiction to prevent and restrain violations
44 of this act and may issue prohibitory and mandatory injunctive relief. The Attorney

1 General or any person aggrieved by a violation of this act may institute proceedings to
2 prevent and restrain violations.

3 (c) Any plaintiff other than the Attorney General who succeeds in obtaining the
4 relief sought shall be awarded reasonable court costs, including attorneys' fees. A
5 plaintiff may bring an action in the superior court without first obtaining an adjudication
6 by the State Board of Examiners of Electrical Contractors."

7 Sec. 2. G.S. 66-58(b)(13) reads as rewritten:

8 "(13) Rural electric membership ~~corporations~~—corporations, except for
9 electrical contracting as limited by Article 4A of Chapter 87 of the
10 General Statutes."

11 Sec. 3. All electric power suppliers and their affiliated business entities that
12 are in violation of this act shall cease all such activities no later than the effective date
13 of this act.

14 Sec. 4. This act becomes effective October 1, 1991.