This chapter discusses legislation concerning utilities regulation and energy enacted by the 1998 General Assembly. Highlights of this session included an act substituting a new piped natural gas tax for the franchise and sales taxes on natural gas; an act authorizing a statewide referendum on bonds for water supply, wastewater, and natural gas facilities; and a recodification of the railroad laws that eliminates obsolete regulatory provisions.

**Electric Utilities**

**High-Voltage Safety Lines**
S.L. 1998-193 (S 656) amends G.S. 95-229.6(4) so that when work on high-voltage lines is done under contract with a governmental entity, the governmental entity is the “person responsible for the work to be done.” It also makes the high-voltage safety line act’s provisions on raising overhead lines and excavating foundations applicable to electric lines only. This change eliminates coverage of telephone, cable television, fire alarm and “other” lines.

**Natural Gas**

**Piped Natural Gas Tax**
S.L. 1998-22 (S 1327) eliminates the sales tax on piped natural gas and the utility franchise tax on piped natural gas companies and regional natural gas districts. It replaces these taxes with a new piped natural gas tax. Rates for the new tax range from $0.47 for the first 200 therms received by the end user each month to $0.003 for therms in excess of 500,000 per month.

One-half of the proceeds of the new tax collected within any city will be distributed quarterly to the city, but the quarterly distribution may not exceed a benchmark established by the Secretary of Revenue based on quarterly receipts (if any) attributable to piped natural gas during fiscal year 1998–99. The Revenue Laws Study Committee will examine the impact of this act on revenue distributions and will report to the 2000 legislative session.
Eight cities that operated their own piped natural gas distribution systems as of July 1, 1998 (Bessemer City, Greenville, Kings Mountain, Lexington, Monroe, Rocky Mount, Shelby, and Wilson), are exempted from the new tax. A service area limitation on city systems was included in the original bill but was deleted before enactment. The act further provides that a city may not levy a privilege license tax on a supplier of piped natural gas who is subject to the new tax. The act also allows corporations to claim a tax credit against corporate franchise taxes for one-half of the taxes paid under the new piped gas tax law and for investment tax credits under G.S. Chapter 105, Article 4, Division V.

**Natural Gas, Water Supply, and Wastewater Bonds**

S.L. 1998-132 (S 1354) authorized a statewide referendum on the issuance of $800 million in clean water bonds and $200 million in natural gas bonds. Voters approved both bond issues at the November 1998 general election. The bonds will be general obligation bonds of the State of North Carolina. The natural gas bonds will provide grants, loans, and other financing to natural gas local distribution companies, persons seeking natural gas distribution franchises, state or local government agencies, and other entities for construction of natural gas facilities. After public hearings, the Utilities Commission will allocate the natural gas bond proceeds to projects on the basis of standards set forth in the act (including feasibility and extension of service to unserved areas) and in implementing rules adopted by the commission.

Legislation regarding the clean water and natural gas bonds is discussed in more detail in Chapter 5 (Community Development and Housing), Chapter 15 (Land Use Regulation, Planning, Code Enforcement, and Transportation), and Chapter 16 (Local Government and Local Finance).

**Railroads**

**Recodification of the Railroads Statutes**

S.L. 1998-128 (H 1094) recodifies the railroad laws in G.S. Chapters 62, 14, and 136, repealing various obsolete or federally preempted provisions and making other conforming and clarifying changes. The repeals and deletions in G.S. Chapters 62 and 160A include references to railroads in definitions, references to conductors, rate-making and fee-setting powers of the Utilities Commission concerning railroads, and the powers of cities to regulate train speeds. Most of Article 11 of G.S. Chapter 62 (Railroads) is repealed except for provisions concerning the powers of railroad corporations, grade crossings, cattle guards, and injuries to passengers, all of which are recodified in G.S. Chapter 136 concerning highways. (Former powers of the Utilities Commission concerning grade crossings are transferred to the Department of Transportation.)

New provisions are added to G.S. Chapter 136 that authorize railroad ticket agents to refuse to sell passenger tickets to intoxicated persons and that authorize conductors to prevent such persons from boarding trains. Intoxicated persons who board trains after being forbidden by the conductor are guilty of a Class 1 misdemeanor.

Criminal prohibitions are added to G.S. Chapter 14 against riding on trains unlawfully (a Class 3 misdemeanor) and against unlawful manufacture, sale, or gift of duplicate switch-lock keys (a Class 1 misdemeanor). Forfeitures under G.S. 62-200(b) for common carriers that violate their duties to transport household goods within a reasonable time are reduced from $15 to $10 for the first day of unlawful detention or neglect and from $2 to $1 for each succeeding day. (The term “common carrier” no longer includes carriers by rail.)

The act appears to be consistent with the long-term trend toward deregulation of rail transport and the transfer of its organizational focus in state government from the Utilities Commission to the Department of Transportation.
Telecommunications

Sales Tax on Local Pay Phone Calls

S.L. 1998-197 (H 1126) exempts gross receipts of local calls at coin-operated pay telephones from the 3 percent sales tax on gross receipts of local telecommunications service, effective January 1, 2000. This legislation is discussed in more detail in Chapter 26 (State Taxation).

Shared Telephone Line Access

G.S. 62-110(d) has authorized the Utilities Commission to allow shared use or resale of telephone service to persons who occupy the same contiguous premises, but only the certificated local exchange company has been eligible to provide the service. S.L. 1998-180 (S 1135) allows this service to be provided by any certificated local provider or any other provider authorized by the commission. It makes the same statutory changes regarding telephone service provided to nonprofit colleges or universities under G.S. 62-110(e).

S.L. 1998-180 further amends G.S. 62-110(d) to authorize the commission to permit or approve flat rates, measured rates, message rates, or a combination of these rates for shared or resold services offered to patrons of hotels or motels and to occupants of timeshare or condominium complexes serving primarily transients. Previously, rates for these services could be authorized only on a measured or message basis.

Wireless 911 Board

S.L. 1998-158 (S 1242) creates a Wireless Telephone 911 Board with a mandate to levy a monthly wireless enhanced 911 service charge of eighty cents per month on each commercial mobile radio service (CMRS) connection in North Carolina. The State Treasurer will administer a fund in which the revenues from these service charges will be deposited; 60 percent of the revenues from these service charges will be used to reimburse CMRS providers for their actual costs in complying with federal requirements, 40 percent to make monthly distributions to public safety answering points.

The Governor will appoint two members of the board, and the General Assembly will appoint ten members, five on recommendation of the Senate President Pro Tempore and five on recommendation of the Speaker of the House. The Secretary of Commerce will serve as the board’s chair.

The act also authorizes the state to lease state-owned property not in the state parks system as sites for communication towers on state lands or for antennae on state-owned structures. Local ordinances apply to such towers and antennae.

Knowingly misusing wireless emergency telephone service to avoid CMRS charges or for a purpose other than obtaining public safety assistance is a misdemeanor. Proprietary information submitted to the 911 board or to the State Auditor is not subject to disclosure under the public records law. Civil liability of CMRS providers, local exchange companies, and service suppliers is limited to wanton or willful misconduct and to motor vehicle ownership or operation.

Utilities Commission

Appointments

Salaries

Section 28.2 of S.L. 1998-212 (S 1366) sets the annual salaries of the members of the Utilities Commission at $97,388 and the chair at $108,459—up from $94,552 and $95,542, respectively.

Regulatory Fee

To defray the cost of regulation, G.S. 62-302(b) sets a regulatory fee on public utilities under the commission’s jurisdiction. Section 29.8 of S.L. 1998-212 (S 1366) establishes a rate of .09 percent of jurisdictional revenues earned during each quarter that begins on and after July 1, 1998.

Local Acts

Natural Gas

Under state law, a franchised natural gas local distribution company has an exclusive franchise in its territory. S.L. 1998-8 (H 1328) modifies this rule so that any such company will lose its exclusive franchise in a county if the Utilities Commission determines that the company is not adequately serving at least a portion of the county. This act applies only to Camden, Currituck, Dare, and Tyrrell counties.

Milton S. Heath, Jr.