

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 967
Judiciary II Committee Substitute Adopted 4/15/09
Judiciary II Committee Substitute Adopted 5/4/09
PROPOSED HOUSE COMMITTEE SUBSTITUTE S967-PCS15329-RI-54

Short Title: Creation of Yadkin River Trust.

(Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO CREATE THE YADKIN RIVER TRUST IN ORDER TO: (1) DEVELOP THE YADKIN RIVER IN DAVIDSON, MONTGOMERY, ROWAN, AND STANLY COUNTIES AS AN INSTRUMENTALITY OF INTRASTATE, INTERSTATE, AND FOREIGN COMMERCE AND NAVIGATION; (2) ACQUIRE AND OPERATE THE YADKIN PROJECT, AN EXISTING HYDROELECTRIC FACILITY; AND (3) PRODUCE, DISTRIBUTE, AND SELL HYDROELECTRIC POWER FROM EXISTING OR NEW HYDROELECTRIC FACILITIES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 77 of the General Statutes is amended by adding a new Article to read as follows:

"Article 9.

"Yadkin River Trust.

"§ 77-150. Yadkin River Trust.

There is established the Yadkin River Trust as a public agency and instrumentality of the State. The purpose of the Trust is to benefit the people of the State as follows:

- (1) To develop the Yadkin River in Davidson, Montgomery, Rowan, and Stanly Counties as an instrumentality of intrastate, interstate, and foreign commerce and navigation through the development, sale, and distribution of hydroelectric power.
- (2) To ensure the equitable distribution of water for public purposes.
- (3) To maintain recreational facilities associated with the Yadkin River.

"§ 77-151. Definitions.

The following definitions apply in this Article:

- (1) Board. – The Board of Directors of the Yadkin River Trust.
- (2) Trust. – The Yadkin River Trust as established by this Article.
- (3) Yadkin Project. – Project No. 2197 as described in a license issued by the Federal Energy Regulatory Commission as of May 1, 1958, and as thereafter amended and otherwise subject to the regulation of the Federal Energy Regulatory Commission.
- (4) Yadkin Project License. – The license issued by the Federal Energy Regulatory Commission as of May 1, 1958, which expired on April 30,



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1 2008, the year-to-year annual licenses that have been issued since that time,
2 and any future renewal license for Project No. 2197.

3 **"§ 77-152. Board of Directors.**

4 (a) Appointment. – The Board of Directors of the Yadkin River Trust shall consist of
5 seven directors who shall be appointed by the Governor upon the advice of the Speaker of the
6 House of Representatives and the President Pro Tempore of the Senate and subject to
7 confirmation by the General Assembly by joint resolution. Two of the directors shall have
8 substantial work experience within the operations of electric cooperatives or investor-owned
9 utilities or substantial experience on an electric cooperative board or investor-owned utility
10 board but must not serve as an employee or board member of an electric cooperative or
11 investor-owned utility during their term as directors of the Yadkin River Trust. The names of
12 directors to be appointed by the Governor shall be submitted by the Governor to the General
13 Assembly for confirmation by the General Assembly on or before June 1 of the year in which
14 the terms for which the appointments are to be made are to expire. Upon failure of the
15 Governor to submit names by that date, the President Pro Tempore of the Senate and Speaker
16 of the House of Representatives jointly shall submit the names of a like number of directors to
17 the General Assembly on or before June 15 of the same year for confirmation by the General
18 Assembly. Regardless of the way in which the names of directors are submitted, confirmation
19 of directors must be accomplished prior to adjournment of the then current session of the
20 General Assembly. The Governor may remove any director of the Board for misfeasance,
21 malfeasance, or nonfeasance.

22 (b) Terms. – The term of office of directors of the Board is four years. A director may
23 be reappointed to any number of successive four-year terms. A director in office continues to
24 serve until the director's successor is duly confirmed and qualified, but the holdover does not
25 affect the expiration date of the succeeding term.

26 (c) Chair; Vice-Chair. – Upon confirmation of the directors by the General Assembly as
27 provided in subsection (a) of this section, the Governor shall designate one of the directors to
28 serve as chair of the Board for the succeeding four years and until the director's successor is
29 duly confirmed and qualified. Upon death or resignation of the director appointed as chair, the
30 Governor shall designate the chair from the remaining directors and appoint a successor in
31 accordance with this section to fill the vacancy on the Board. The Governor shall convene the
32 first meeting of the Board, at which time the members of the Board shall elect from their
33 membership a vice-chair of the Board.

34 (d) Vacancies. – In case of death, incapacity, resignation, or vacancy for any other
35 reason in the office of any director prior to the expiration of the director's term of office, the
36 name of the director's successor shall be submitted by the Governor within four weeks after the
37 vacancy arises to the General Assembly for confirmation by the General Assembly. Upon
38 failure of the Governor to submit the name of the successor, the President Pro Tempore of the
39 Senate and the Speaker of the House of Representatives jointly shall submit the name of a
40 successor to the General Assembly within six weeks after the vacancy arises. Regardless of the
41 way in which the names of directors are submitted, confirmation of directors must be
42 accomplished prior to the adjournment of the then current session of the General Assembly. If a
43 vacancy arises in the office of director when the General Assembly is not in session, and the
44 appointment is deemed urgent by the Governor, the Governor may appoint a director to serve
45 on an interim basis pending confirmation by the General Assembly.

46 (e) Organization of the Board. – The Board shall adopt bylaws with respect to the
47 calling of meetings, quorums, voting procedures, the keeping of records, and other
48 organizational and administrative matters as the Board may determine. A quorum consists of a
49 majority of the members of the Board. No vacancy in the membership of the Board impairs the
50 right of a quorum to exercise all rights and to perform all the duties of the Board and the Trust.

1 (f) Compensation of the Board. – No part of the revenues or assets of the Trust shall
2 inure to the benefit of or be distributable to the members of the Board or officers or other
3 private persons. The members of the Board shall receive no salary for their services but shall be
4 entitled to receive per diem and allowances in accordance with the provisions of G.S. 138-5.

5 **"§ 77-153. Authority to acquire Yadkin Project and Yadkin Project License.**

6 The Trust may acquire the Yadkin Project License and may pursue transfer of the license at
7 the Federal Energy Regulatory Commission, file an application for a new license, amend the
8 existing license, and take any other actions necessary to become the licensee for the Yadkin
9 Project on behalf of the State. If the Trust acquires the license, it shall promptly thereafter
10 request permission from the General Assembly to issue revenue bonds or other financing
11 authority to enable acquisition and operation of the Yadkin Project. The State may negotiate,
12 pursue transfer of title for property or permits, and execute agreements necessary for
13 acquisition of the Yadkin Project. If the Yadkin Project License and the Yadkin Project are
14 acquired, the Trust cannot agree to voluntarily surrender, terminate, transfer, or sell the Yadkin
15 River License or the Yadkin Project unless an act of the General Assembly approves the action.

16 **"§ 77-154. Operation of the Trust.**

17 (a) Management. – The Board shall determine the policies of the Trust by majority vote
18 of the members of the Board present and voting, a quorum having been established. Once a
19 policy is determined, the Board must communicate it to the executive director, who shall have
20 the sole and exclusive authority to execute the policy of the Trust. No member of the Board has
21 the responsibility or authority to give operational directives to any employee of the Trust other
22 than the executive director.

23 (b) Employees. – The Board shall appoint an executive director, whose salary is fixed
24 by the Board, to serve at its pleasure. The executive director or a person designated by the
25 executive director shall appoint, employ, dismiss, and, within the limits of available funding,
26 fix the compensation of other employees as considered necessary. During any fiscal year, the
27 Trust may not expend funds for merit and performance-based salary increases in excess of the
28 funds that would have been expended had the employees of the Trust received the same
29 across-the-board salary increases granted by the General Assembly to State employees subject
30 to the State Personnel Act. These merit and performance-based salary increases may be
31 awarded on an aggregated average basis according to rules adopted by the Trust. Except as to
32 the provisions of Articles 6 and 7 of Chapter 126 of the General Statutes, the employees of the
33 Trust are exempt from the State Personnel Act.

34 (c) Consultants. – The Board may employ consulting engineers, architects, attorneys,
35 real estate counselors, appraisers, and other consultants as needed.

36 (d) Operator. – The Board may enter into a contract with an investor-owned utility,
37 electric membership corporation, or other qualified third party with experience in the operation
38 of electric generating facilities to operate the Yadkin Project on behalf of the Trust, provided
39 that such contract does not abrogate the duties of the Trust as established by G.S. 77-156 and is
40 otherwise consistent with the provisions of this Article.

41 **"§ 77-155. Powers of the Trust.**

42 The Trust has all the powers necessary to execute the provisions of this Article, including
43 the following:

- 44 (1) To adopt, alter, or repeal its bylaws and adopt, amend, or repeal rules to
45 implement the provisions of this Article. The Trust and its activities are not
46 subject to review or approval by the North Carolina Utilities Commission.
- 47 (2) To sue and be sued, to make contracts, to adopt and use a common seal, and
48 to alter the adopted seal as needed.
- 49 (3) To contract and enter into agreements with the State, local governments,
50 other authorities of North Carolina, and other states for the interchange of
51 business and to facilitate the business of the Trust.

- 1 (4) To procure and maintain adequate insurance or otherwise provide for
2 adequate protection to indemnify the Trust and its officers, directors, agents,
3 employees, adjoining property owners, or the general public against loss or
4 liability resulting from any act or omission by or on behalf of the Trust.
- 5 (5) To establish, purchase, construct, operate, and regulate hydroelectric
6 facilities on the Yadkin River to implement the provisions of this Article.
- 7 (6) To manufacture, produce, and generate hydroelectric power using the waters
8 of the Yadkin River and to sell the hydroelectric power to utilities within and
9 without the State of North Carolina.
- 10 (7) To acquire, purchase, establish, build, construct, maintain, equip, and
11 operate any structure or facilities necessary, useful, or customarily used and
12 employed in generation of hydroelectric power.
- 13 (8) To seek enforcement of environmental laws and contribution to
14 environmental cleanup costs, consistent with its obligations under this
15 Article.

16 **"§ 77-156. Duties of the Trust.**

17 (a) If the Trust acquires the Yadkin Project and Yadkin Project License as provided in
18 this Article, the Trust must:

- 19 (1) Conduct environmental site assessments of all properties located in the
20 Yadkin River Basin currently or formerly owned and operated by Alcoa
21 Power Generating, Inc., or Alcoa, Inc., or their subsidiaries, to the extent
22 necessary to evaluate risks to public health or the environment posed by
23 contamination at or emanating from such properties. The Trust shall pursue
24 remediation of such properties to levels sufficient to allow the unrestricted
25 use of such properties, including, to the extent necessary, by taking legal
26 action against the parties responsible for such contamination.
- 27 (2) Conduct environmental site assessments of hazardous waste sites that were
28 associated with the disposal of waste materials from the Badin Works site,
29 excluding properties owned or under the control of Alcoa Power Generating,
30 Inc., Alcoa, Inc., or their subsidiaries. The Trust shall pursue remediation of
31 such properties described to levels sufficient to support the unrestricted use
32 of such properties, including, to the extent necessary, by taking legal action
33 against the parties responsible for such contamination.
- 34 (3) Institute operational changes to the Yadkin Project that will retain more
35 water in Badin, Falls, High Rock, and Tuckertown Lakes and provide a
36 consistent flow of water to downstream water users.
- 37 (4) Apportion up to twenty-five percent (25%) of the net proceeds from the
38 Yadkin Project's electrical output for use by a regional "Power for Jobs"
39 fund to be established by the Department of Commerce. The Power for Jobs
40 fund may make grants to businesses and not-for-profit corporations to create
41 or retain jobs in the Yadkin River Basin.
- 42 (5) After performance of subdivisions (1) through (4) of this subsection,
43 compliance with subsection (b) of this section, and retention of any
44 necessary operating reserves, the Trust shall utilize up to twenty-five percent
45 (25%) of the remaining annual net revenues from the Yadkin Project to
46 make grants to the Community College System Office for allocation by the
47 State Board of Community Colleges for instructional equipment at the
48 community colleges as determined by the State Board.
- 49 (6) After performance of subdivisions (1) through (5) of this subsection,
50 compliance with subsection (b) of this section, and retention of any
51 necessary operating reserves, the Trust shall utilize the annual net revenues

1 from the Yadkin Project exclusively to fund projects to protect and improve
2 the health of the Yadkin River and the water quality in the Yadkin River
3 Basin.

4 (b) If the Trust acquires the Yadkin Project and Yadkin Project License as provided in
5 this Article, the Trust must, to the maximum extent practicable, comply with all terms and
6 conditions of the Relicensing Settlement Agreement filed with the Federal Energy Regulatory
7 Commission on May 7, 2007, for the Yadkin Project and shall assume, to the maximum extent
8 practicable, all rights and obligations of the Licensee as provided in the Agreement.

9 **"§ 77-157. Reserved for future codification purposes.**

10 **"§ 77-158. Use of revenues.**

11 Revenues from the Yadkin River Project must be used to pay the following obligations:

12 (1) To operate the Yadkin Project.

13 (2) To fulfill the duties under G.S. 77-156.

14 **"§ 77-159. Reserved for future codification purposes.**

15 **"§ 77-160. Report; audit.**

16 (a) Report. – The Trust must submit a report regarding its operations and transactions
17 for the preceding fiscal year to the Joint Legislative Commission on Governmental Operations,
18 the Joint Legislative Utility Review Committee, and the House and Senate Committees on
19 Appropriations on or before July 1 of each year. The annual report must include the following
20 information:

21 (1) The amount of power and energy produced by the Trust.

22 (2) The Trust's financial statements for the preceding fiscal year, prepared in
23 accordance with generally accepted accounting principles.

24 (3) The price of power and energy sold by the Trust.

25 (4) The amount of water distributed to each entity or water user.

26 (5) The status of environmental testing, assessment, and remediation of
27 contamination at the Badin Works and other sites located in Stanly County.

28 (b) Audit. – The operations of the Trust are subject to the oversight of the State Auditor
29 under Article 5A of Chapter 147 of the General Statutes.

30 **"§ 77-161. Conflicts of interest.**

31 A director, officer, or employee of the Trust who has a conflict of interest in a contract with
32 the Trust must disclose this interest to the Board, and the Board must note the conflict of
33 interest in its minutes. The director, officer, or employee who has a conflict of interest may not
34 participate on behalf of the Trust in the authorization of that contract. Failure to take the actions
35 required by this section does not affect the validity of any bonds or notes issued by the Trust.

36 A director, officer, or employee of the Trust has a conflict of interest if any one or more of
37 the following applies:

38 (1) The director, officer, or employee has a direct or indirect interest in a
39 contract with the Trust.

40 (2) The director, officer, or employee is an officer or employee of a firm or
41 corporation, not including a unit of local government, that has a direct or
42 indirect interest in a contract with the Trust.

43 (3) The director, officer, or employee has an ownership interest in a firm or
44 corporation that has a direct or indirect interest in a contract with the Trust."

45 **SECTION 2.** Notwithstanding G.S. 77-152, as enacted by Section 1 of this act, in
46 order to provide for the staggering of the terms of the Board of Directors of the Yadkin River
47 Trust, the terms of the initial appointments of the directors made by the Governor shall be made
48 as follows: (i) two shall be for a period of two years; (ii) two shall be for a period of three
49 years; and (iii) three shall be for a period of four years.

50 **SECTION 3.** G.S. 66-58(b) is amended by adding a new subdivision to read:

51 "(b) The provisions of subsection (a) of this section shall not apply to:

1 ...
2 (27) The Yadkin River Trust, established in G.S. 77-150."
3 **SECTION 4.** G.S. 126-5(c1) is amended by adding a new subdivision to read:
4 "(c1) Except as to the provisions of Articles 6 and 7 of this Chapter, the provisions of this
5 Chapter shall not apply to:

6 ...
7 (30) Employees of the Yadkin River Trust."
8 **SECTION 5.** G.S. 150B-1(c) is amended by adding a new subdivision to read:
9 "(c) Full Exemptions. – This Chapter applies to every agency except:
10 (1) The North Carolina National Guard in exercising its court-martial
11 jurisdiction.
12 (2) The Department of Health and Human Services in exercising its authority
13 over the Camp Butner reservation granted in Article 6 of Chapter 122C of
14 the General Statutes.
15 (3) The Utilities Commission.
16 (4) The Industrial Commission.
17 (5) The Employment Security Commission.
18 (6) The State Board of Elections in administering the HAVA Administrative
19 Complaint Procedure of Article 8A of Chapter 163 of the General Statutes.
20 (7) The North Carolina State Lottery.
21 (8) The Yadkin River Trust, established in G.S. 77-150."

22 **SECTION 6.** The General Assembly strongly encourages the continuation of
23 discussions between the State of North Carolina, Alcoa Power Generating, Inc., and other
24 interested parties to explore potential settlement of the dispute concerning the Federal Energy
25 Regulatory Commission license for and operation of the Yadkin Project. The Department of
26 Justice shall report to the Joint Legislative Commission on Governmental Operations and the
27 Joint Legislative Utility Review Committee on or before July 1, 2010, on the status of the
28 matter.

29 **SECTION 7.** The Secretary of Commerce shall present a detailed business plan for
30 the operation of the Yadkin River Trust to the Joint Legislative Commission on Governmental
31 Operations and the Joint Legislative Utility Review Committee on or before March 1, 2010.

32 **SECTION 8.** With the exception of G.S. 77-154(d), as enacted by Section 1 of this
33 act, the provisions of this act shall not apply to any investor-owned utilities regulated by the
34 North Carolina Utilities Commission.

35 **SECTION 9.** If the Federal Energy Regulatory Commission issues a new multiyear
36 license to Alcoa Power Generating, Inc., for the Yadkin Project No. 2197, the provisions of this
37 act shall expire upon issuance of that license.

38 **SECTION 10.** This act is effective when it becomes law.