

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 967
Judiciary II Committee Substitute Adopted 4/15/09
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PROPOSED HOUSE COMMITTEE SUBSTITUTE S967-PCS55512-RI-58

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 11.

"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.



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1 (4) Yadkin Project License. – The license issued by the Federal Energy
2 Regulatory Commission as of May 1, 1958, which expired on April 30,
3 2008, the year-to-year annual licenses that have been issued since that time,
4 and any future renewal license for Project No. 2197.

5 **§ 77-152. Board of Directors.**

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

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

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

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

48 (e) Organization of the Board. – The Board shall adopt bylaws with respect to the
49 calling of meetings, quorums, voting procedures, the keeping of records, and other
50 organizational and administrative matters as the Board may determine. A quorum consists of a

1 majority of the members of the Board. No vacancy in the membership of the Board impairs the
2 right of a quorum to exercise all rights and to perform all the duties of the Board and the Trust.

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

7 **"§ 77-153. Authority to acquire Yadkin Project and Yadkin Project License.**

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

19 **"§ 77-154: Reserved for future codification purposes.**

20 **"§ 77-155: Reserved for future codification purposes.**

21 **"§ 77-156. Duties of the Trust.**

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

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

1 State Board of Community Colleges for instructional equipment at the
2 community colleges as determined by the State Board.

3 (6) After performance of subdivisions (1) through (5) of this subsection,
4 compliance with subsection (b) of this section, and retention of any
5 necessary operating reserves, the Trust shall utilize the annual net revenues
6 from the Yadkin Project exclusively to fund projects to protect and improve
7 the health of the Yadkin River and the water quality in the Yadkin River
8 Basin.

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

14 "§ 77-157: Reserved for future codification purposes.

15 "§ 77-158: Reserved for future codification purposes.

16 "§ 77-159: Reserved for future codification purposes.

17 "§ 77-160: Reserved for future codification purposes."

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

23 **SECTION 3.** The General Assembly strongly encourages the continuation of
24 discussions between the State of North Carolina, Alcoa Power Generating, Inc., and other
25 interested parties to explore potential settlement of the dispute concerning the Federal Energy
26 Regulatory Commission license for and operation of the Yadkin Project. The Department of
27 Justice shall report to the Joint Legislative Commission on Governmental Operations and the
28 Joint Legislative Utility Review Committee on or before July 1, 2010, on the status of the
29 matter.

30 **SECTION 4.** The Secretary of Commerce shall present a detailed business plan for
31 the operation of the Yadkin River Trust to the Joint Legislative Commission on Governmental
32 Operations and the Joint Legislative Utility Review Committee on or before March 1, 2010.

33 **SECTION 5.** If the Federal Energy Regulatory Commission issues a new multiyear
34 license to Alcoa Power Generating, Inc., for the Yadkin Project No. 2197, the provisions of this
35 act shall expire upon issuance of that license.

36 **SECTION 6.** This act is effective when it becomes law.