

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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SENATE BILL 967  
Judiciary II Committee Substitute Adopted 4/15/09

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 TO AUTHORIZE ISSUANCE OF BONDS AND NOTES BY THE TRUST FOR THAT PURPOSE; 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.

**"§ 77-120. Trust established; purposes.**

There is established the Yadkin River Trust as a body politic and corporate. The purpose of the Trust is: (i) 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; (ii) to ensure the equitable distribution of water for public purposes; and (iii) to maintain recreational facilities associated with the Yadkin River. These purposes are declared to be in all respects for the benefit of the people of the State.

**"§ 77-121. Definitions.**

The following definitions apply in this Article:

- (1) Board. – The Board of Directors of the Yadkin River Trust.
- (2) Bonds. – The revenue bonds or other interest-bearing obligations authorized to be issued by the Board under this Article.
- (3) Costs. – The capital cost of a project, including:
  - a. The costs of doing any or all of the following:
    1. Acquiring, constructing, erecting, providing, developing, installing, furnishing, and equipping.
    2. Reconstructing, remodeling, altering, renovating, replacing, refurbishing, and reequipping.
    3. Enlarging, expanding, and extending.
    4. Demolishing, relocating, improving, grading, draining, landscaping, paving, widening, and resurfacing.



- 1            b. The costs of all property, both real and personal and both improved  
2            and unimproved, and of plants, works, appurtenances, structures,  
3            facilities, furnishings, machinery, equipment, vehicles, easements,  
4            water rights, air rights, franchises, and licenses used or useful in  
5            connection with the Yadkin Project.
- 6            c. The costs of demolishing or moving structures from land acquired  
7            and acquiring land to which the structures are to be moved.
- 8            d. Financing charges, including estimated interest during the acquisition  
9            or construction of a project and for one year thereafter and any  
10           payments related to hedging instruments.
- 11           e. The costs of services to provide plans, specifications, studies, reports,  
12           surveys, and estimates of costs and revenues.
- 13           f. The costs of paying any interim financing, including principal,  
14           interest, and premium, related to the acquisition or construction of  
15           the Yadkin Project.
- 16           g. Administrative and legal expenses and administrative charges.
- 17           h. The costs of obtaining bond and reserve fund insurance and  
18           investment contracts, of credit-enhancement facilities, liquidity  
19           facilities, and interest-rate agreements, and of establishing and  
20           maintaining debt service and other reserves.
- 21           i. Any other services, costs, and expenses necessary or incidental to the  
22           Yadkin Project.
- 23           (4) Credit facility. – An agreement with a banking institution, an insurance  
24           institution, an investment institution, or other financial institution located  
25           inside or outside the United States of America that provides for prompt  
26           payment, whether at maturity, presentment, or tender for purchase,  
27           redemption, or acceleration, of part or all of the principal or purchase price,  
28           redemption premium, if any, and interest on a bond or note issued by the  
29           Trust and for repayment of the institution.
- 30           (5) Local Government Commission. – The Local Government Commission of  
31           the Department of State Treasurer established by Article 2 of Chapter 159 of  
32           the General Statutes.
- 33           (6) Notes. – Revenue notes or revenue bond anticipation notes issued by the  
34           Trust under this Article.
- 35           (7) Par formula. – A provision or formula to make periodic adjustments in the  
36           interest rate of a bond or note, including:
- 37           a. A provision for an adjustment to keep the purchase price of the bond  
38           or note in the open market as close to par as possible.
- 39           b. A provision for an adjustment based on one or more percentages of a  
40           prime rate or base rate that may vary or apply for specified periods of  
41           time.
- 42           c. Any other provision that does not materially and adversely affect the  
43           financial position of the Trust and the marketing of the bonds or  
44           notes at a reasonable interest cost to the Trust.
- 45           (8) Person. – Any person, corporation, partnership, association, trust, or other  
46           legal entity.
- 47           (9) Revenues. – Rents, fees, charges, payments, proceeds, or other income or  
48           profit derived from the Yadkin Project or from any pledge of nontax  
49           revenues, appropriation, or payment made by the State or a county in which  
50           the Yadkin Project is located.

- 1           (10) Security document. – One or more written instruments establishing the rights  
2 and responsibilities of the Trust and the holders of bonds issued to finance  
3 the acquisition, improvement, or operation of the Yadkin Project and related  
4 facilities and to ensure compliance with the terms of any Yadkin Project  
5 license, permits, and contracts, including any license issued by the Federal  
6 Energy Regulatory Commission. A security document may provide for, or  
7 be in the form of an agreement with, a trustee for the benefit of the  
8 bondholders. A security document may contain an assignment, pledge,  
9 mortgage, or other encumbrance of part or all of the Trust's interest in, or  
10 right to receive revenues from, the Yadkin Project.
- 11           (11) Trust. – The Yadkin River Trust as established by this Article.
- 12           (12) Yadkin Project. – Project No. 2197 as described in a license issued by the  
13 Federal Energy Regulatory Commission as of May 1, 1958, and as thereafter  
14 amended and otherwise subject to the regulation of the Federal Energy  
15 Regulatory Commission.
- 16           (13) Yadkin Project License. – The license issued by the Federal Energy  
17 Regulatory Commission as of May 1, 1958, which expired on April 30,  
18 2008, the year-to-year annual licenses that have been issued since that time,  
19 and any future renewal license for Project No. 2197.

20 **§ 77-122. Board of Directors.**

21           (a) Appointment. – The Board of Directors of the Yadkin River Trust shall consist of  
22 seven directors who shall be appointed by the Governor upon the advice of the House Public  
23 Utilities Committee and Senate Commerce Committee and subject to confirmation by the  
24 General Assembly by joint resolution. Two of the directors shall have substantial work  
25 experience within the operations of electric cooperatives or investor-owned utilities or  
26 substantial experience on an electric cooperative board or investor-owned utility board but must  
27 not serve as an employee or board member of an electric cooperative or investor-owned utility  
28 during their term as a director of the Yadkin River Trust. The names of directors to be  
29 appointed by the Governor shall be submitted by the Governor to the General Assembly for  
30 confirmation by the General Assembly on or before June 1 of the year in which the terms for  
31 which the appointments are to be made are to expire. Upon failure of the Governor to submit  
32 names as herein provided, the President Pro Tempore of the Senate and Speaker of the House  
33 of Representatives jointly shall submit the names of a like number of directors to the General  
34 Assembly on or before June 15 of the same year for confirmation by the General Assembly.  
35 Regardless of the way in which the names of directors are submitted, confirmation of directors  
36 must be accomplished prior to adjournment of the then current session of the General  
37 Assembly.

38           (b) Terms. – The term of office of directors of the Board is four years. A director may  
39 be reappointed to any number of successive four-year terms. A director in office shall continue  
40 to serve until the director's successor is duly confirmed and qualified, but the holdover shall not  
41 affect the expiration date of the succeeding term.

42           (c) Chairman; Vice-Chair. – Upon confirmation of the directors by the General  
43 Assembly as provided in subsection (a) of this section, the Governor shall designate one of the  
44 directors to serve as chairman of the Board for the succeeding four years and until the director's  
45 successor is duly confirmed and qualified. Upon death or resignation of the director appointed  
46 as chairman, the Governor shall designate the chairman from the remaining directors and  
47 appoint a successor as hereinafter provided to fill the vacancy on the Board. The Governor shall  
48 convene the first meeting of the Board, at which time the members of the Board shall elect  
49 from their membership a vice-chair of the Board.

50           (d) Removal. – The Governor may remove any director of the Board for misfeasance,  
51 malfeasance, or nonfeasance as provided in G.S. 143B-13.

1       (e) Vacancies. – In case of death, incapacity, resignation, or vacancy for any other  
2 reason in the office of any director prior to the expiration of the director's term of office, the  
3 name of the director's successor shall be submitted by the Governor within four weeks after the  
4 vacancy arises to the General Assembly for confirmation by the General Assembly. Upon  
5 failure of the Governor to submit the name of the successor, the President Pro Tempore of the  
6 Senate and the Speaker of the House of Representatives jointly shall submit the name of a  
7 successor to the General Assembly within six weeks after the vacancy arises. Regardless of the  
8 way in which the names of directors are submitted, confirmation of directors must be  
9 accomplished prior to the adjournment of the then current session of the General Assembly. If a  
10 vacancy arises in the office of director when the General Assembly is not in session, and the  
11 appointment is deemed urgent by the Governor, the director may be appointed and serve on an  
12 interim basis pending confirmation by the General Assembly.

13       (f) Organization of the Board. – The Board shall adopt bylaws with respect to the  
14 calling of meetings, quorums, voting procedures, the keeping of records, and other  
15 organizational and administrative matters as the Board may determine. A quorum shall consist  
16 of a majority of the members of the Board. No vacancy in the membership of the Board shall  
17 impair the right of a quorum to exercise all rights and to perform all the duties of the Board and  
18 the Trust.

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

23       (h) Treasurer. – The Board shall select the Trust's treasurer. The Board shall require a  
24 surety bond of the appointee in the amount as the Board may fix, and the premium shall be paid  
25 by the Trust as a necessary expense of the Trust.

26       (i) Executive Director and Other Employees. – The Board shall appoint an executive  
27 director, whose salary shall be fixed by the Board, to serve at its pleasure. The executive  
28 director or a person designated by the executive director shall appoint, employ, dismiss, and,  
29 within the limits of available funding, fix the compensation of other employees as considered  
30 necessary.

31       (j) Office. – The Board shall establish an office for the transaction of the Trust's  
32 business at the place the Board finds advisable or necessary to implement the provisions of this  
33 Article.

34 **"§ 77-123. Authority to acquire Yadkin Project and Yadkin Project License.**

35       The Yadkin River Trust may acquire the Yadkin Project License and the Yadkin Project,  
36 including all associated facilities and land and water rights. If the Trust acquires the Yadkin  
37 Project License, it shall pursue transfer of the license at the Federal Energy Regulatory  
38 Commission and other transfer of title for property or permits and may enter into negotiations,  
39 execute agreements, file an application for a new license, amend the existing license, and take  
40 any other actions necessary to become the licensee for the Yadkin Project on behalf of the  
41 State. Any terms of acquisition shall be approved by the Board of Directors for the Trust prior  
42 to completion of the acquisition. If acquired, the Trust shall not agree to voluntarily surrender,  
43 terminate, transfer, or sell the license or the Yadkin Project without the consent of the General  
44 Assembly.

45 **"§ 77-124. Powers and duties.**

46       (a) The Trust has the power to: (i) develop the Yadkin River in Davidson, Montgomery,  
47 Rowan, and Stanly Counties as an instrumentality of intrastate, interstate, and foreign  
48 commerce and navigation; (ii) acquire existing hydroelectric facilities; and (iii) produce,  
49 distribute, and sell hydroelectric power from existing or new hydroelectric facilities. The Trust  
50 has all powers that may be necessary or convenient for the exercise of these powers including,  
51 without limiting, the generality of the foregoing, the following:

- 1           (1)    The powers of a corporate body, including the power to sue and be sued, to  
2           make contracts, to adopt and use a common seal, and to alter the adopted  
3           seal as needed.
- 4           (2)    To have perpetual succession as a corporation.
- 5           (3)    To adopt, alter, or repeal its own bylaws and adopt, promulgate, and amend  
6           rules to implement the provisions of this Article. The Trust and its activities  
7           shall not be governed by the North Carolina Utilities Commission but shall  
8           be governed by the provisions of this Article and the rules adopted  
9           thereunder.
- 10          (4)    To establish, finance, purchase, construct, operate, and regulate  
11          hydroelectric facilities to implement the provisions of this Article.
- 12          (5)    To manufacture, produce, and generate hydroelectric power using the waters  
13          of the Yadkin River and to sell the hydroelectric power to utilities within and  
14          without the State of North Carolina.
- 15          (6)    To set rates, services, and practices, or participate in any organized power  
16          sales market with one or more entities for the sale, transmission, or  
17          distribution of the power generated by the hydroelectric facility, and to  
18          charge and collect fees for the use of power generated.
- 19          (7)    To contract and enter into agreements with the State, local governments,  
20          other authorities of North Carolina, and other states for the interchange of  
21          business and to facilitate the business of the Trust.
- 22          (8)    To rent, lease, purchase, acquire, own, hold, use, encumber, sell, transfer, or  
23          dispose of any property, real, personal, or mixed, or any interest therein.
- 24          (9)    To acquire, purchase, establish, build, construct, maintain, equip, and  
25          operate any structure or facilities necessary, useful, or customarily used and  
26          employed in generation of hydroelectric power.
- 27          (10)   To appoint officers, agents, and employees, to prescribe their duties, and to  
28          fix their compensation.
- 29          (11)   To create and operate agencies and departments needed to implement this  
30          Article.
- 31          (12)   To pay all necessary costs and expenses in the formation, organization,  
32          administration, and operation of the Trust.
- 33          (13)   To apply for, accept, and administer loans and grants of money from any  
34          federal agency, from the State or its political subdivisions, or from any other  
35          public or private sources available, to expend the money in accordance with  
36          the requirements imposed by the lender or donor, and to give any evidences  
37          of indebtedness that are required. Bonds or notes issued under this Article  
38          shall not constitute a debt secured by a pledge of the faith and credit of the  
39          State or a political subdivision of the State and shall be payable solely from  
40          the revenues, income, or assets of the Trust that are pledged for their  
41          payment. The face of each bond or note issued shall contain a statement that  
42          the Trust is obligated to pay the bond or note or the interest on the bond or  
43          note only from the revenues, income, or assets pledged in payment of the  
44          bond or note and that neither the faith and credit nor the taxing power of the  
45          State or any political subdivision of the State is pledged in payment of the  
46          principal of or the interest on the bond or note.
- 47          (14)   To execute security documents and other instruments necessary in exercising  
48          its power under this Article.
- 49          (15)   To fix, charge, collect, pledge, or assign revenues of the Trust.
- 50          (16)   To employ consulting engineers, architects, attorneys, real estate counselors,  
51          appraisers, and other consultants and employees as may be required in the

1 judgment of the Board and to fix and pay their compensation from funds  
2 available to the Trust, and, when approved by the Local Government  
3 Commission under G.S. 159-123(e) and (f) as if the Trust were an issuing  
4 unit, to select and retain financial consultants, underwriters, and bond  
5 attorneys in connection with the issuance of any bonds and to pay for their  
6 services out of the proceeds of any bond issue for which their services were  
7 performed.

8 (17) To issue bonds or notes of the Trust as provided under this Article to pay the  
9 costs associated with the business of the Trust.

10 (18) To issue revenue refunding bonds of the Trust as provided under this Article.

11 (19) To procure and maintain adequate insurance or otherwise provide for  
12 adequate protection to indemnify the Trust and its officers, directors, agents,  
13 employees, adjoining property owners, or the general public against loss or  
14 liability resulting from any act or omission by or on behalf of the Trust.

15 (20) To purchase or finance real or personal property in the manner provided for  
16 cities and counties under G.S. 160A-20.

17 (21) With the approval of any unit of local government, to use officers,  
18 employees, agents, and facilities of the unit of local government for the  
19 purposes and upon the terms as may be mutually agreeable.

20 (22) To issue obligations, without Local Government Commission approval, to  
21 finance the purchase or acquisition of land or options on land or the  
22 construction of buildings or facilities. An obligation may be secured by the  
23 land purchased or acquired, or by the buildings or facilities constructed, may  
24 be unsecured, or may be made payable from revenues, the proceeds of notes,  
25 bonds, or the sale of any lands, the proceeds of any bonds of the State or  
26 moneys appropriated by the State, or any other available moneys of the  
27 Trust. An obligation to finance the purchase or acquisition of land or options  
28 on land, or the construction of buildings or facilities, may be sold only to the  
29 Escheat Fund as an investment of the Fund pursuant to G.S. 147-69.2(b)(11).

30 (23) To receive and use appropriations from the State, including an appropriation  
31 from the proceeds of State general obligation bonds or notes.

32 (24) To seek enforcement of environmental laws and contribution to  
33 environmental cleanup costs, consistent with its obligations under this act.

34 (b) To execute the powers provided in subsection (a) of this section, the Board shall  
35 determine the policies of the Trust by majority vote of the members of the Board present and  
36 voting, a quorum having been established. Once a policy is determined, the Board shall  
37 communicate it to the executive director who shall have the sole and exclusive authority to  
38 execute the policy of the Trust. No member of the Board shall have the responsibility or  
39 authority to give operational directives to any employee of the Trust other than the executive  
40 director.

41 (c) If the Yadkin River Trust acquires the Yadkin Project and Yadkin Project License  
42 as provided in this Article, in addition to other powers and duties, the Trust shall:

43 (1) Conduct environmental testing and assessment of all properties located in  
44 Stanly County currently or formerly owned and operated by Alcoa Power  
45 Generating, Inc., or Alcoa, Inc., and its subsidiaries, in order to evaluate  
46 danger to public health or the environment.

47 (2) Pursue remediation of contamination at the Badin Works site located in  
48 Stanly County to levels over and above the minimum levels that Alcoa or its  
49 subsidiaries would be required to perform under current law in order to  
50 restore the contaminated land and water to multiple use purposes.

- 1           (3)    Establish a remediation fund to perform necessary environmental testing and  
2           remediation of hazardous waste sites in the Yadkin River Basin, excluding  
3           properties owned or under the control of Alcoa Power Generating, Inc., or  
4           Alcoa, Inc., and its subsidiaries.
- 5           (4)    Install aeration technology in association with the Yadkin Project to increase  
6           dissolved oxygen levels and improve water quality in the Yadkin River.
- 7           (5)    Institute operational changes to the Yadkin Project that will retain more  
8           water in Badin, Falls, High Rock, and Tuckertown lakes and provide a  
9           consistent flow of water to downstream water users.
- 10          (6)    Extend the recreation seasons at Badin, Falls, High Rock, and Tuckertown  
11          lakes by three months from April 1 to October 31.
- 12          (7)    Implement a comprehensive drought management plan, or "Low Inflow  
13          Protocol," that requires the Trust to reduce power generation and send less  
14          water downstream when certain drought-related triggers are reached.
- 15          (8)    Develop and maintain new or expanded public recreation facilities across the  
16          Yadkin River, including a new public swim area in Rowan County, new  
17          tailwater fishing access areas, two new reservoir fishing piers, and 10 new  
18          campsites.
- 19          (9)    Allow the City of Albemarle to increase water withdrawals from the Yadkin  
20          River up to 30 million gallons per day.
- 21          (10)   Utilize a portion of the proceeds from power generation to fund a Yadkin  
22          River Basin Clean Water Trust Fund to be created in order to acquire land  
23          for water quality improvements, implement innovative stormwater  
24          strategies, state-of-the art wastewater improvements, and aquatic habitat  
25          improvements and to provide funding mechanisms to assist local  
26          governments to make water quality improvements throughout the Yadkin  
27          River Basin.
- 28          (11)   Apportion a percentage of electricity from the Yadkin Project output for use  
29          by a regional economic development entity to be designated by the  
30          Department of Commerce. To the extent that there are renewable energy  
31          credits attributable to the output, the credits shall belong to the designated  
32          entity.
- 33          (12)   Use proceeds from power generation to: (i) acquire and donate land to the  
34          Town of Badin for a new public park; (ii) acquire and donate land to Rowan  
35          County for the continued protection and public access to the Eagle Point  
36          Nature Preserve; (iii) acquire other land for conservation purposes; and (iv)  
37          make a forty thousand dollar (\$40,000) donation to the Yadkin-Pee Dee  
38          River Trail Fund.
- 39          (13)   Review the proposed Water Infrastructure Mitigation license condition  
40          proposed by the City of Salisbury and determine what the Yadkin River  
41          Trust can do to assure an adequate, clean future water supply for the region.

42    **"§ 77-125. Bonds and notes.**

43          (a)    The Trust may provide for the issuance, at one time or from time to time, of bonds  
44          and notes, including bond anticipation notes and renewal notes, of the Trust to carry out its  
45          corporate purposes including financing the costs of projects. The principal of and interest on  
46          the bonds or notes shall be payable from funds provided under this Article for their payment. A  
47          bond anticipation note may be made payable from the proceeds of bonds or renewal notes or, in  
48          the event bond or renewal note proceeds are not available, from any available Trust revenues or  
49          other funds provided for this purpose. Bonds and notes may also be paid from the proceeds of  
50          any credit facility.

1 All bonds, notes, or refunding bonds or notes of the Trust are subject to this section and  
2 G.S. 77-126.

3 The bonds and notes of each issue shall be dated and may be made redeemable prior to  
4 maturity at the option of the Trust or otherwise, at one or more prices, on one or more dates,  
5 and upon the terms and conditions set by the Trust. The bonds or notes may also be made  
6 payable from time to time on demand or tender for purchase by the owner upon terms and  
7 conditions set by the Trust.

8 A bond or note shall bear interest at a rate or rates, including variable rates, as determined  
9 by the Local Government Commission with the approval of the Trust. A bond or note may be  
10 secured by a reserve fund created for that purpose and funded from proceeds of the bond or  
11 note, revenues, or any other source of funds available to the Trust.

12 (b) In fixing the details of bonds or notes, the Trust may provide that the bonds or notes  
13 may:

14 (1) Be payable from time to time on demand or tender for purchase by the  
15 owner of the bond or note if a credit facility supports the bond or note,  
16 unless the Local Government Commission specifically determines that a  
17 credit facility is not required because the absence of a credit facility will not  
18 materially and adversely affect the financial position of the Trust and the  
19 marketing of the bonds or notes at a reasonable interest cost to the Trust.

20 (2) Be additionally supported by a credit facility.

21 (3) Be made subject to redemption or a mandatory tender for purchase prior to  
22 maturity.

23 (4) Be capital appreciation bonds.

24 (5) Bear interest at a rate or rates that may vary, including variations permitted  
25 pursuant to a par formula.

26 (6) Be made the subject of a remarketing agreement whereby an attempt is made  
27 to remarket the bonds or notes to new purchasers prior to their presentment  
28 for payment to the provider of the credit facility or to the Trust.

29 (c) Notes and bonds shall mature at the times determined by the Trust, not to exceed 40  
30 years from the date of issue. The Trust shall determine the form and manner of execution of a  
31 bond or note, including any interest coupons to be attached to the bond or note. The Trust shall  
32 fix the denominations and places of payment of principal and interest of the bond or note. The  
33 principal of and interest on a bond or note may be paid at any bank or trust company, whether  
34 located inside or outside the United States of America.

35 (d) The validity of a bond, note, or coupon that has the signature or facsimile signature  
36 of a person who was an officer when the bond, note, or coupon was signed or the facsimile  
37 signature attached but who is not that officer when the bond, note, or coupon is delivered is not  
38 affected by the change in officers. A bond, note, or coupon may bear the signature or facsimile  
39 signature of a person who will be the proper officer to sign the bond, note, or coupon when it is  
40 executed but who is not the officer on the date of the bond, note, or coupon.

41 (e) The Trust may provide for any of the following:

42 (1) Authentication of a bond or note by a trustee or other authenticating agent.

43 (2) Issuance of a bond or note as a certificated obligation, an uncertificated  
44 obligation, or both.

45 (3) Issuance of a bond or note in coupon form, in registered form, or both.

46 (4) Registration of a coupon bond or note as to principal alone or as to both  
47 principal and interest.

48 (5) The reconversion of a bond or note registered as to both principal and  
49 interest into a coupon bond or note.

50 (6) The interchange of registered and coupon bonds or notes.



1           (7) A system for registration in accordance with Chapter 159E of the General  
2           Statutes.

3           (8) Replacement of a bond or note that has been mutilated, lost, or destroyed.

4           (f) The Trust may not issue a bond or note under this Article, other than an obligation  
5           permitted under G.S. 77-123(a)(22), unless its issuance is approved by the Local Government  
6           Commission, and it is sold by the Local Government Commission. To obtain approval of a  
7           bond or note, the Trust shall file an application for approval with the Local Government  
8           Commission. The application shall contain the information required by the Local Government  
9           Commission.

10           In determining whether to approve a proposed bond or note issue of the Trust, the Local  
11           Government Commission shall consider the following:

12           (1) For bonds or notes to finance activities of the Trust, the criteria for its  
13           approval of revenue bonds under G.S. 159-86.

14           (2) The effect of the proposed financing upon any proposed or scheduled sale of  
15           obligations by the State, another State agency, or a unit of local government.

16           The Local Government Commission shall approve the proposed bond or note issue if it  
17           determines that the proposed financing for the issue meets the criteria and will effect the  
18           purposes of this Article.

19           When the Local Government Commission approves a bond or note issue of the Trust, the  
20           Trust may submit a written request to the Local Government Commission to sell the approved  
21           bonds or notes. Upon receiving a written request, the Local Government Commission shall  
22           consult with the Trust on the manner in which the bonds or notes will be sold and the price or  
23           prices at which the bonds or notes will be sold. With the approval of the Trust, the Local  
24           Government Commission shall sell the bonds or notes either at public or private sale in the  
25           manner and at the prices determined to be in the best interest of the Trust and to effect the  
26           purposes of this Article.

27           Bonds or notes may be issued under this Article without obtaining, except as otherwise  
28           expressly provided in this Article, the consent of any department, division, commission, board,  
29           body, bureau, or other agency of the State or without any other proceedings or conditions  
30           except as specifically authorized by this Article or by the provisions of the resolution  
31           authorizing the issuance of, or any trust agreement securing, the bonds or notes.

32           (g) Each bond or note that is represented by an instrument shall contain a statement  
33           signed by the Secretary of the Local Government Commission, or an assistant designated by  
34           the Secretary, certifying that the issuance of the bond or note has been approved under this  
35           Article. The signature may be a manual signature or a facsimile signature, as determined by the  
36           Local Government Commission. Each bond or note that is not represented by an instrument  
37           shall be evidenced by a writing relating to the obligation that identifies the obligation or the  
38           issue of which it is a part, contains the signed statement certifying approval of the Local  
39           Government Commission that is required on an instrument, and is filed with the Local  
40           Government Commission. A certification of approval by the Local Government Commission is  
41           conclusive evidence that a bond or note complies with this Article.

42           (h) The proceeds of a bond or note shall be used solely for the purposes for which the  
43           bond or note was issued and shall be disbursed in accordance with the resolution authorizing  
44           the issuance of the bond or note and with any trust agreement securing the bond or note.

45           (i) Prior to the preparation of definitive bonds, the Trust may issue interim receipts or  
46           temporary bonds, with or without coupons, exchangeable for definitive bonds when the bonds  
47           have been executed and are available for delivery.

48           (j) The Trust may secure a bond or note issued under this Article by a trust agreement  
49           between the Trust and a corporate trustee. The corporate trustee may be any trust company or  
50           bank having the powers of a trust company inside or outside the State. The Trust may secure a  
51           bond or note issued under this Article by a deed of trust. The trustee of the deed of trust may be

1 an individual who is a resident of the State. A bank or trust company that is incorporated in this  
2 State and is a depository of the proceeds of obligations, revenues, or other money of the Trust  
3 may furnish indemnifying bonds or pledge securities required by the Trust.

4 The pledge of any assets, income, or revenues of the Trust to the payment of the principal  
5 of or the interest on any obligations of the Trust is binding from the time the pledge is made,  
6 and any assets, income, or revenues of the Trust are immediately subject to the lien of the  
7 pledge without any physical delivery or other act. The lien created by a pledge is binding  
8 against all persons who have claims of any kind against the Trust, regardless of whether they  
9 have notice of the lien.

10 (k) A resolution authorizing the issuance of a bond or note and a trust agreement  
11 securing a bond or note may provide that any moneys held under the resolution or trust  
12 agreement may be temporarily invested pending disbursement. Any officer with whom, or any  
13 bank or trust company with which, the moneys are deposited is considered a trustee of the  
14 moneys and must hold and apply the moneys for their stated purpose in accordance with this  
15 Article and the resolution or trust agreement. The Trust may invest any moneys as allowed in  
16 G.S. 147-69.1 for investments of the State Treasurer or in this subsection.

17 In connection with or incidental to the acquisition or carrying of any investment relating to  
18 bonds, program of investment relating to bonds, or carrying of bonds, the Trust may, with the  
19 approval of the Local Government Commission, enter into a contract to place the investment or  
20 obligation of the Trust, as represented by the bonds, investment, or program of investment and  
21 the contract or contracts, in whole or in part, on an interest rate, currency, cash flow, or other  
22 basis, including the following:

- 23 (1) Interest rate swap agreements, currency swap agreements, insurance  
24 agreements, forward payment conversion agreements, and futures.
- 25 (2) Contracts providing for payments based on levels of, or changes in, interest  
26 rates, currency exchange rates, or stock or other indices.
- 27 (3) Contracts to exchange cash flows or a series of payments.
- 28 (4) Contracts to hedge payment, currency, rate, spread, or similar exposure,  
29 including interest rate floors or caps, options, puts, and calls.

30 The Trust may enter a contract of this type in connection with, or incidental to, entering into  
31 or maintaining any agreement that secures bonds. A contract shall contain the payment,  
32 security, term, default, remedy, and other terms and conditions the Board considers appropriate.  
33 The Trust may enter a contract of this type with any person after giving due consideration,  
34 where applicable, of the person's creditworthiness as determined by a rating by a nationally  
35 recognized rating agency or any other criteria the Board considers appropriate. In connection  
36 with, or incidental to, the issuance or carrying of bonds, or the entering of any contract  
37 described in this subsection, the Trust may enter into credit enhancement or liquidity  
38 agreements, with payment, interest rate, termination date, currency, security, default, remedy,  
39 and other terms and conditions as the Trust determines. Proceeds of bonds and any moneys set  
40 aside and pledged to secure payment of bonds or any of the contracts entered into under this  
41 subsection may be pledged to and used to service any of the contracts entered into under this  
42 section.

43 (l) Bonds and notes are exempt from all State, county, and municipal taxation or  
44 assessment, direct or indirect, general or special, whether imposed for the purpose of general  
45 revenue or otherwise, excluding inheritance and gift taxes, income taxes on the gain from the  
46 transfer of bonds and notes, and franchise taxes. The interest on bonds and notes is not subject  
47 to taxation as income.

48 (m) Bonds or notes issued under this Article shall not constitute a debt secured by a  
49 pledge of the faith and credit of the State or a political subdivision of the State and shall be  
50 payable solely from the revenues, income, or assets of the Trust that are pledged for their  
51 payment. The face of each bond or note issued shall contain a statement that the Trust is

1 obligated to pay the bond or note or the interest on the bond or note only from the revenues,  
2 income, or assets pledged in payment of the bond or note and that neither the faith and credit  
3 nor the taxing power of the State or any political subdivision of the State is pledged in payment  
4 of the principal of or the interest on the bond or note.

5 (n) The State pledges to the holder of a bond or note issued under this Article that, as  
6 long as the bond or note is outstanding and unpaid, the State will not limit or alter the power the  
7 Trust had when the bond or note was issued in a way that impairs the ability of the Trust to  
8 produce revenues sufficient with other available funds to do all of the following:

9 (1) Maintain and operate the project for which the bond or note was issued.

10 (2) Pay the principal of, interest on, and redemption premium, if any, of the  
11 bond or note.

12 (3) Fulfill the terms of an agreement with the holder.

13 The State further pledges to the holder of a bond or note issued under this Article that the  
14 State will not impair the rights and remedies of the holder concerning the bond or note.

15 (o) Obligations issued under this Article are made securities in which all public officers  
16 and public bodies of the State and its political subdivisions, and all insurance companies, trust  
17 companies, banking associations, investment companies, executors, administrators, trustees,  
18 and other fiduciaries may properly and legally invest funds, including capital in their control or  
19 belonging to them. The obligations are made securities that may properly and legally be  
20 deposited with and received by any State or municipal officer or any agency or political  
21 subdivision of the State for any purpose for which the deposit of bonds, notes, or obligations of  
22 the State is now or may be authorized by law.

23 **"§ 77-126. Refunding bonds or notes.**

24 (a) The Trust may issue refunding bonds or notes for the purpose of refunding any  
25 outstanding bonds or notes issued under this Article, including any redemption premium on the  
26 bonds or notes and any interest accrued or to accrue to the date of redemption. Refunding  
27 bonds or notes shall be issued in accordance with the same procedures and requirements as  
28 bonds or notes. Refunding bonds or notes may be sold or exchanged for outstanding bonds and  
29 notes issued under this Article.

30 Refunding bonds or notes may have different interest rates and maturities than the bonds or  
31 notes being refunded. The proceeds of refunding bonds or notes may be applied to any of the  
32 following:

33 (1) The payment, purchase, and retirement of the bonds or notes being refunded  
34 by direct application to the payment, purchase, and retirement.

35 (2) The payment, purchase, and retirement of the bonds or notes being refunded  
36 by the deposit in trust of the proceeds.

37 (3) The payment of any expenses incurred in connection with the refunding.

38 (4) For any other uses not inconsistent with the refunding.

39 (b) The proceedings providing for the issuance of refunding bonds or notes may limit  
40 the investments in which the proceeds of a particular refunding issue may be invested. Unless  
41 prohibited by the proceedings, the proceeds of refunding bonds or notes that are deposited in  
42 trust for the payment, purchase, and retirement of outstanding bonds or notes may be invested  
43 in any of the following:

44 (1) Direct obligations of the United States of America.

45 (2) Obligations whose principal and interest are guaranteed by the United States  
46 of America.

47 (3) Evidences of ownership of a proportionate interest in an obligation that is  
48 described in subdivision (1) or (2) of this subsection and is held in a  
49 custodial capacity by a bank or trust company organized under the laws of  
50 the United States of America or a state.

- 1           (4) Obligations of the State or a unit of local government of the State when  
2 payment of the principal of and interest on the obligations has been provided  
3 for by depositing with a trustee or other escrow agent obligations that meet  
4 all of the following:  
5           a. Are described in subdivision (1), (2), or (3) of this subsection.  
6           b. When due and payable, will provide enough money when added to  
7 any other money held in trust for this purpose to pay the principal of,  
8 premium, if any, and interest on the State or local obligations.  
9           c. Are rated in the highest category by Standard & Poor's Corporation  
10 and Moody's Investors Service, Inc.  
11       (5) Obligations of the State or a unit of local government when payment of the  
12 principal and interest on the obligations is insured by a bond insurance  
13 company rated in the highest category by Standard & Poor's Corporation and  
14 Moody's Investors Service, Inc.  
15       (6) Full faith and credit obligations of the State or a unit of local government of  
16 the State that are rated in the highest category by Standard & Poor's  
17 Corporation and Moody's Investors Service, Inc.  
18       (7) Any obligations or investments in which the State Treasurer is then  
19 authorized to invest funds of the State.  
20       (c) This section does not limit any of the following:  
21           (1) The period for which the proceeds of refunding bonds or notes may be held  
22 in trust to retire the bonds or notes that are being refunded and have not  
23 matured, are not redeemable, or, if redeemable, have not been called for  
24 redemption.  
25           (2) The power to issue bonds or notes for the combined purpose of refunding  
26 outstanding bonds or notes and of providing funds for any other corporate  
27 purpose.

28 **"§ 77-127. Public hearing requirements.**

29       To the extent federal tax law requires public hearings to be held with respect to the issuance  
30 of bonds to finance projects, the hearings may be called for by the executive director and held  
31 before one or more members of the Board of the Trust. The hearings may be held at any place  
32 within the State pursuant to public notice given in accordance with current federal tax  
33 regulations. To the extent federal tax law requires approval following the hearing of the  
34 issuance of bonds to finance a project, the approval shall be sought from the Governor  
35 following a report to the Governor of the results of the public hearing accompanied by  
36 information relating to the purposes for the proposed bond issue.

37 **"§ 77-128. Security documents.**

38       Bonds issued under the provisions of this Article may be secured by a security document  
39 which may be a trust instrument between the Trust and a bank or trust company or individual  
40 within the State, or a bank or a trust company outside the State, as trustee. The security  
41 document may pledge and assign the revenues provided for the security of the bonds, including  
42 proceeds from the sale of any project, or part thereof, and insurance proceeds, and may convey  
43 or mortgage the project and other property to secure a bond issue.

44       The revenues and other funds derived from the Yadkin Project, except for any part as may  
45 be necessary to provide reserves therefor, if any, may be set aside at regular intervals as may be  
46 provided in the security document in a sinking fund which may be pledged to, and charged  
47 with, the payment of the principal of and the interest on the bonds as the same shall become  
48 due and the redemption price or the purchase price of bonds retired by call or purchase as  
49 provided. The pledge shall be valid and binding from the time when the pledge is made. The  
50 revenues pledged and received by the Trust shall immediately be subject to the lien of the  
51 pledge without any physical delivery or further act, and the lien of any pledge shall be valid and

1 binding as against all parties having claims of any kind in tort, contract, or otherwise against  
2 the Trust, irrespective of whether the parties have notice. The use and disposition of money to  
3 the credit of the sinking fund shall be subject to the provisions of the security document. The  
4 security document may contain provisions for protecting and enforcing the rights and remedies  
5 of the bondholders as may be reasonable and proper and not in violation of law, including,  
6 without limitation, any one or more of the following:

- 7 (1) Acceleration of all amounts payable under the security document.
- 8 (2) Appointment of a receiver to manage the Yadkin Project and any other  
9 property mortgaged or assigned as security for the bonds.
- 10 (3) Foreclosure and sale of the Yadkin Project and any other property  
11 mortgaged or assigned as security for the bonds.
- 12 (4) Rights to bring and maintain such other actions at law or in equity as may  
13 appear necessary or desirable to collect the amounts payable under, or to  
14 enforce the covenants made in, the security document.

15 It shall be lawful for any bank or trust company incorporated under the laws of this State  
16 which may act as depository of the proceeds of bonds, revenues, or other funds provided under  
17 this Article to furnish indemnifying bonds or to pledge securities as may be required by the  
18 Trust. All expenses incurred in carrying out the provisions of the security document may be  
19 treated as a part of the cost of the project in connection with which bonds are issued or as an  
20 expense of administration of the Yadkin Project.

21 The Trust may subordinate the bonds or its rights under the security document or otherwise  
22 to any prior, contemporaneous, or future securities or obligations or lien, mortgage, or other  
23 security interest.

24 **"§ 77-129. Remedies.**

25 Any owner of bonds or notes issued under the provisions of this Article or any coupons  
26 appertaining thereto, and the trustee under any trust agreement securing or resolution  
27 authorizing the issuance of such bonds or notes, except to the extent the rights given may be  
28 restricted by the trust agreement or resolution, may either at law or in equity, by suit, action,  
29 mandamus, or other proceeding, protect and enforce any and all rights under the laws of the  
30 State or granted hereunder or under the trust agreement or resolution, or under any other  
31 contract executed by the Trust pursuant to this Article, and may enforce and compel the  
32 performance of all duties required by this Article or by the trust agreement or resolution by the  
33 Trust or by any officer of the Trust.

34 **"§ 77-130. Status of bonds and notes under Uniform Commercial Code.**

35 All bonds and notes and interest coupons, if any, issued under this Article are made  
36 investment securities within the meaning of and for all the purposes of Article 8 of the Uniform  
37 Commercial Code, as enacted in Chapter 25 of the General Statutes.

38 **"§ 77-131. Officers not liable.**

39 No director or officer of the Trust shall be subject to any personal liability or accountability  
40 by reason of the director or officer's execution of any bonds or notes or the issuance of any  
41 bonds or notes.

42 **"§ 77-132. Conflicts of interest.**

43 If any director, officer, or employee of the Trust shall be interested either directly or  
44 indirectly, or shall be an officer or employee of or have an ownership interest in any firm or  
45 corporation, not including units of local government, interested directly or indirectly, in any  
46 contract with the Trust, the interest shall be disclosed to the Board and shall be set forth in the  
47 minutes of the Board. The director, officer, or employee having an interest shall not participate  
48 on behalf of the Trust in the authorization of any contract. Other provisions of law  
49 notwithstanding, failure to take any or all actions necessary to carry out the purposes of this  
50 section may not affect the validity of any bonds or notes issued under this Article.

51 **"§ 77-133. Cooperation by other State agencies.**

1 All State officers and agencies shall render the services to the Trust within their respective  
2 functions as may be requested by the Trust.

3 **"§ 77-134. Net earnings; disposition and use.**

4 The Yadkin River Trust is a corporation completely owned by and to be operated for the  
5 benefit of the people of this State. Any and all net earnings of the Yadkin River Trust not  
6 necessary for the prudent conduct and operation of its business in the best interests of the Trust  
7 or to pay the principal of and interest on its bonds, notes, or other evidences of indebtedness or  
8 other obligations, or to fulfill the terms and provisions of any agreements made with the  
9 purchasers or holders thereof or others shall be remitted semiannually to the State Treasurer for  
10 deposit to the General Fund of the State. Nothing in this section shall prohibit the Trust from  
11 paying to the State each year up to one percent (1%) of its projected operating revenues, as  
12 such revenues would be determined on an accrual basis, from the combined electric and water  
13 systems.

14 **"§ 77-135. Funds of Trust.**

15 All funds of the Trust shall be deposited in one or more banks to be designated by the  
16 Board. The Funds shall be paid out only upon warrants signed by the treasurer or assistant  
17 treasurer of the Trust and countersigned by the chair, the acting chair, or the executive director.  
18 No warrants shall be drawn or issued disbursing any of the funds of the Trust except for a  
19 purpose authorized by this Article and only when the account or expenditure has been audited  
20 and approved by the Trust or the chairman of the board of directors.

21 **"§ 77-136. Exemption from taxation; payments in lieu of taxes.**

22 (a) Property owned by the Yadkin River Trust is exempt from taxation in accordance  
23 with Article V, Section 2 of the North Carolina Constitution, except as provided in this section.

24 (b) The Trust shall pay annually to all counties, municipalities, and school districts in  
25 which the Trust has acquired property a sum of money equivalent to the amount paid annually  
26 for taxes on properties within these jurisdictions at the time of acquisition of the property by the  
27 Trust. Payments shall be apportioned between the counties, municipalities, and school districts  
28 in which the property is owned or an operation is carried on by the Trust on the basis of the  
29 percentage of loss of property taxes to each. Payments in lieu of taxes shall only be made from  
30 the Trust after: (i) payment of necessary operating expenses; (ii) payment of all annual debt  
31 requirements on bonds, notes, or other obligations at any time outstanding; and (iii) the  
32 discharge of all annual obligations arising under finance agreements with the United States or  
33 any agency or corporation of the United States and indentures or other instruments under which  
34 bonds have been, or may be, issued.

35 **"§ 77-137. Annual budget and report.**

36 The Yadkin River Trust shall submit a budget for the upcoming fiscal year and a report  
37 regarding its operations and transactions for the preceding fiscal year to the Joint Legislative  
38 Commission on Governmental Operations, the Joint Legislative Utility Review Committee, and  
39 the House and Senate Committees on Appropriations on or before July 1 of each year. The  
40 annual report shall include, but not be limited to, the following information: (i) the amount of  
41 power and energy produced by the Trust; (ii) financial and operating information for the Trust  
42 during the preceding fiscal year including income and expense statements, balance sheets, and  
43 changes in financial position, debt structure, and a summary of funds on a cash basis, all in  
44 accordance with generally accepted accounting principles; (iii) the price of power and energy  
45 sold by the Trust; (iv) the amount of water distributed to each entity or water user; and (v) the  
46 status of environmental testing, assessment, and remediation of contamination at the Badin  
47 Works and other sites located in Stanly County."

48 **SECTION 2.** Notwithstanding G.S. 77-122(b), as enacted by Section 1 of this act,  
49 in order to provide for the staggering of the terms of the Board of Directors of the Yadkin River  
50 Trust, the terms of the initial appointments of the directors made by the Governor shall be made

1 as follows: (i) two shall be for a period of two years; (ii) two shall be for a period of three  
2 years; and (iii) three shall be for a period of four years.

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

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

5 ...

6 (26) The Yadkin River Trust."

7 **SECTION 4.** This act becomes effective July 1, 2009.