

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
House Committee Substitute Favorable 8/5/09
House Committee Substitute #2 Favorable 8/6/09

Short Title: Creation of Yadkin River Trust.

(Public)

Sponsors:

Referred to:

March 26, 2009

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

9 The General Assembly of North Carolina enacts:

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

12 "Article 11.

13 "Yadkin River Trust.

14 "§ 77-150. Yadkin River Trust.

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

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

23 "§ 77-151. Definitions.

24 The following definitions apply in this Article:

- 25 (1) Board. – The Board of Directors of the Yadkin River Trust.
26 (2) Trust. – The Yadkin River Trust as established by this Article.
27 (3) Yadkin Project. – Project No. 2197 as described in a license issued by the
28 Federal Energy Regulatory Commission as of May 1, 1958, and as thereafter
29 amended and otherwise subject to the regulation of the Federal Energy
30 Regulatory Commission.
31 (4) Yadkin Project License. – The license issued by the Federal Energy
32 Regulatory Commission as of May 1, 1958, which expired on April 30,
33 2008, the year-to-year annual licenses that have been issued since that time,
34 and any future renewal license for Project No. 2197.



1 "§ 77-152. Board of Directors.

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

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

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

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

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

49 (f) Compensation of the Board. – No part of the revenues or assets of the Trust shall
50 inure to the benefit of or be distributable to the members of the Board or officers or other

1 private persons. The members of the Board shall receive no salary for their services but shall be
2 entitled to receive per diem and allowances in accordance with the provisions of G.S. 138-5.

3 **"§ 77-153. Authority to acquire Yadkin Project and Yadkin Project License.**

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

15 **"§ 77-154: Reserved for future codification purposes.**

16 **"§ 77-155: Reserved for future codification purposes.**

17 **"§ 77-156. Duties of the Trust.**

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

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

1 necessary operating reserves, the Trust shall utilize the annual net revenues
2 from the Yadkin Project exclusively to fund projects to protect and improve
3 the health of the Yadkin River and the water quality in the Yadkin River
4 Basin.

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

10 **"§ 77-157: Reserved for future codification purposes.**

11 **"§ 77-158: Reserved for future codification purposes.**

12 **"§ 77-159: Reserved for future codification purposes.**

13 **"§ 77-160: Reserved for future codification purposes."**

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

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

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

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

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